

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

RECEIVED

JUN 04 2018

S.C. SUPREME COURT

REGINALD CANTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002316

APPENDIX

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1 MONDAY, AUGUST 8, 2011

2 THE COURT: All right, the state ready to call the
3 first case?

4 MR. MEADORS: If it pleases Your Honor? Your Honor,
5 the state at this time calls *State of South Carolina vs.*
6 *Reginald Canty*. He is represented by Mr. Garryl Deas.
7 *State of South Carolina vs. Daniel Deangelo Jackson*, who's
8 represented by Mr. Wilder. Your Honor, they are charged in
9 2008-GS-43-993, a Third Circuit true-billed indictment,
10 with murder and armed robbery.

11 THE COURT: All right, please pass up the indictment.

12 (A PAUSE.)

13 THE COURT: All right, ladies and gentlemen, we are
14 about to begin the case of *State vs. Reginald Canty and*
15 *Daniel Deangelo Jackson*, and the indictment on these
16 gentlemen reads as follows. Under count one, murder. That
17 Reginald Canty and Daniel Deangelo Jackson did in Sumter
18 County on or about January 12, 2008, feloniously, wilfully,
19 and with malice aforethought, either expressed or implied,
20 kill one William J. Flexon by means of shooting him with a
21 firearm. That said William J. Flexon did die as a
22 proximate result thereof.

23 Count two reads armed robbery. That Reginald Canty
24 and Daniel Deangelo Jackson did in Sumter County on or
25 about January 12, 2008, violate section 16-11-330 of the

1 code of laws of the State of South Carolina 1976 as amended
2 while armed with a deadly weapon -- to wit, firearms -- did
3 feloniously take from William J. Flexon in the presence of
4 William J. Flexon by means force or intimidation goods or
5 monies of the said William J. Flexon, such goods or monies
6 being described as three Sambino's pizzas.

7 Now, ladies and gentlemen of the jury panel, let me
8 remind you. The fact that these defendants were arrested,
9 charged, and indicted in no way indicates that they are
10 guilty of the crime charged. The state has the burden of
11 proving their guilt beyond a reasonable doubt. And it's
12 only until the state has satisfied the jury of that guilt
13 beyond a reasonable doubt that these men could be
14 convicted. They are presumed to be innocent at this time.

15 *JURY VOIR DIRE*

16 Now, ladies and gentlemen, before we select the jury,
17 there's several questions that I'm going to need to ask you
18 under oath. And I remind you that you are still under oath
19 from the oath that you took earlier this morning.

20 And one of the reasons that you are under oath during
21 this phase is because this is such a critical stage in this
22 trial. Just like a building must have a firm foundation to
23 be strong and protective of those who live in it, so must a
24 jury be strong as the basis of a fair and impartial trial
25 for those who participate, the solicitor for the people and

1 the defendants who are on trial. Your answers to these
2 questions are the foundation by which the attorneys will
3 build a jury. And they are relying on your truthful
4 answers to help them strike an unbiased jury who will
5 diligently listen to the facts and deliver a just verdict.
6 And again thank you for your complete truthfulness as I go
7 through these questions.

8 Now, ladies and gentlemen, has anyone in the jury
9 panel been related by blood or marriage or had a close,
10 personal relationship with either -- or with Reginald
11 Canty, or Daniel Deangelo Jackson, or the alleged victim,
12 William J. Flexon? So, if any member of the jury panel
13 knows the defendants or the victim, if you would please
14 stand at this time.

15 All right, thank you. No one is standing.

16 Now, ladies and gentlemen, listen carefully. We have
17 a long list of witnesses, so I'm going to ask you the same
18 question: if you've ever been related by blood or marriage,
19 or had a personal or business relationship with any of
20 these witnesses. Marcus Branch, Detrone Jenkins, Rayshawn
21 Holmes, Donovan Shields, Henry Parker, Deputy Jay Griffith,
22 Corporal Hice, Cindy Pierson, Ray Mackessy, Mike Bean,
23 Marie Hodge, Robert Burnish, John Franklin Baldwin,
24 Dominick. I'll -- stand at the end. Let me go through the
25 whole list. Dominick West, Linda McDuffie, Regina

1 Patterson, Jennifer Dickey, Ray Dickey, Jeff Parrott of
2 State Law Enforcement Division, Verona Gibson, James
3 Kennedy, Anthony Rush, Curtis Wheeler, Amy Stephens of
4 State Law Enforcement Division, Selena Kinard, of the State
5 Law Enforcement Division, Robin Kreib, Lashawnda Canty,
6 Andrea Russell Boyd, Isaac Boyd, Maryann Boehm of SLED,
7 Reginald Canty, Dorothy Canty, LaToya Rush, Anthony Rush,
8 Rashawn Holmes, Ronnie Chandler, Priscilla Depaul, or Ray
9 Dickey.

10 So, if any member the jury panel is related by blood
11 or marriage, or knows, or has had a professional or
12 business relationship, personal relationship with any of
13 these potential witnesses, please stand at this time and
14 tell me what the relationship is.

15 All right, thank you. Yes, Ms. Hurst.

16 JUROR: Robert Burnish, a professional relationship.

17 THE COURT: Okay. Would the fact that you had a
18 professional relationship with Mr. Burnish make it so that
19 you couldn't be fair and impartial to the state or the
20 defense in this case?

21 JUROR: No.

22 THE COURT: You could be, you could be fair and
23 impartial?

24 JUROR: Uh-huh.

25 THE COURT: Thank you, Ms. Hurst.

1 MR. WILDER: Your Honor, may we have the juror number?

2 THE COURT: Yeah, what's your juror number, please?

3 JUROR: 165.

4 THE COURT: All right, 165.

5 Yes, ma'am.

6 JUROR: I'm not really sure.

7 THE COURT: All right, what's your name and juror
8 number?

9 JUROR: Sarah Jackson.

10 THE COURT: Yes, Ms. Jackson.

11 JUROR: Juror number 87.

12 THE COURT: Okay.

13 JUROR: I really did not catch whether or not the, one
14 of the officers was Hice you said? Is that Curtis Hice?

15 THE COURT: They don't, they don't say. It just says
16 Corporal Hice. Is it? It is Curtis Hice, yes, ma'am.

17 JUROR: Okay. I, I know him personally.

18 THE COURT: Okay. Would the fact that you know him
19 personally make it so that you couldn't be fair and
20 impartial to the state or the defense in this case?

21 JUROR: Honestly?

22 THE COURT: Yes, ma'am.

23 JUROR: I'm really not sure, to be honest with you.

24 THE COURT: All right, any objection to me dismissing
25 this juror for cause?

1 MR. DEAS: No objection from defendants.

2 MR. MEADORS: None.

3 THE COURT: All right, thank you. You will not be
4 called this case. Remain seated; there will be another
5 case.

6 Yes, sir.

7 JUROR: Franklin Benenhaley, juror number 11.

8 THE COURT: What's your juror number?

9 JUROR: Number 11.

10 THE COURT: Yes, sir.

11 JUROR: Cindy Pierson.

12 THE COURT: Okay.

13 JUROR: A neighbor.

14 THE COURT: Would the fact that you know Cindy Pierson
15 make it so that you can't be fair and impartial to the
16 state or the defendants in this matter?

17 JUROR: No, sir.

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

19 Yes, sir?

20 JUROR: Jerry Howell, jury number 71. Curtis Hice is
21 my son-in-law.

22 THE COURT: He's your what?

23 JUROR: He's my son-in-law, Curtis Hice.

24 THE COURT: All right, that's close enough that I
25 think I'm going to remove you from this case for cause.

1 MR. MEADORS: Your Honor, what number was this?

2 THE COURT: 71.

3 All right, the attorneys in this case ---

4 MR. MEADORS: Judge.

5 THE COURT: Oh. Yes, sir?

6 MR. MEADORS: There's one other list. Can we
7 approach?

8 THE COURT: Yes.

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 THE COURT: All right, ladies and gentlemen,
11 apparently they didn't give me all possible witnesses, so
12 let me go through this list. And so if you are related by
13 blood or marriage, I'm going to ask you this question
14 again. Deputy Jennifer Thompson of the Sumter County
15 Sheriff's Office, Corporal Curtis Hice of the Sumter County
16 Sheriff's Office, Sergeant Robert Burnish of the Sumter
17 County Sheriff's Office, Sergeant Ray Mackessy formerly of
18 the Sumter County Sheriff's Office, Investigator Kip Coker
19 of the Clarendon County Sheriff's Office, Investigator Mike
20 Bean of the Sumter County Sheriff's Office, Investigator
21 Robert Skinner of the Sumter County Sheriff's Office,
22 Investigator Dominick West formerly of the Sumter County
23 Sheriff's Office, Sergeant Alex Dukes of the Sumter County
24 Sheriff's Office, Thomas Miller of the Sumter Third Circuit
25 Solicitor's Office, Special Agent Tracy Thrower of the

1 State Law Enforcement Division, Jeff Parrott of the State
2 Law Enforcement Division, Amy Stephens of the State Law
3 Enforcement Division, Illa Simmons of the State Law
4 Enforcement Division, Joe Powell of the Sumter County
5 Sheriff's Office, Maryann Boehm of the State Law
6 Enforcement Division, Veronica T. Gibson of the State Law
7 Enforcement Division, Investigator Cindy Pierson of the
8 Sumter County Sheriff's Office, Sergeant Robert Reynolds of
9 the Sumter County Sheriff's Office, Dr. Janis E. Ross
10 pathologist, Selena Kinard of the State Law Enforcement
11 Division, Curt Gowdy of Farmers Telephone Company, Patricia
12 Crooks of the State Law Enforcement Division, Lisa Waananen
13 of the State Law Enforcement Division, Thomas Darnell of
14 the State Law Enforcement Division, Isaac Boyd, Henry
15 Parker, Andrea Russell, Priscilla Depaul, John Baldwin,
16 Tanya Knudson, Ray Dickey, Jennifer Dickey, Linda McDuffie,
17 Regina Patterson, Anitta Shannon, Eugene Mackovitch,
18 Lashawnda Canty, Dorothy Canty, Larry Archie, Investigator
19 of the Clarendon County Sheriff's Office, Investigator
20 Marie Hodge of the Sumter Police Department, Esther Sharpe,
21 Rodney Sharpe, and Jacoby Fields.

22 So, in addition to the other list -- I understand that
23 some of these were stated twice -- is there any member of
24 the jury panel who is related by blood or marriage, or has
25 a professional or personal relationship with any of these

1 possible witnesses? If, so please stand at this time. If
2 you've already stood, that's fine.

3 Yes, sir?

4 JUROR: Juror number 164, Howard Harris. I possibly
5 taught one of the last names you mentioned, but I
6 definitely taught Officer Dukes back in high school, sir.

7 THE COURT: Would the fact that you possibly taught
8 one of the witnesses or did teach Officer Dukes in high
9 school -- how long ago was that?

10 JUROR: It was approximately fifteen years ago.

11 THE COURT: The fact that you taught him fifteen years
12 ago, would that make it so that you couldn't be fair and
13 impartial to the state or the defendants in this case?

14 JUROR: No, it would not, sir.

15 THE COURT: All right. Thank you very much.

16 All right, ladies and gentlemen, the attorney for the
17 solicitor's office is Mr. Meadors. Please stand, Mr.
18 Meadors. And Mr. Reginald Canty is represented by Mr.
19 Garryl Deas, and Mr. Daniel Deangelo Jackson is represented
20 by Mr. Arthur Wilder. Is there any member of the jury
21 panel who is related by blood or marriage, or has ever been
22 represented by any of these attorneys or their law firms?
23 If, so please stand.

24 Yes, ma'am. State your name and number, please.

25 JUROR: 118 relating to -- he had me with a case with

1 my son's father with the court, Garryl Deas.

2 THE COURT: Mr. Deas did?

3 JUROR: Yes.

4 THE COURT: Mr. Deas represented your father?

5 JUROR: My son's father.

6 THE COURT: Your son's father?

7 JUROR: But he represent me against him. So, I don't
8 know.

9 THE COURT: I'm not following you. He represented
10 you?

11 JUROR: He represent me. He took me to court.

12 THE COURT: Some case -- so, he took you to court?

13 JUROR: My son's father did.

14 THE COURT: Okay.

15 JUROR: A civil matter.

16 THE COURT: Would the fact that the other side in this
17 case was represented by Mr. Deas make it so that you
18 couldn't be fair and impartial to the state or the
19 defendants in this matter?

20 MR. DEAS: Your Honor, I think, I think what she's
21 saying is ---

22 JUROR: Yeah, that's right.

23 MR. DEAS: --- that I was actually her lawyer.

24 JUROR: He was my lawyer.

25 MR. DEAS: Against her son's father.

1 JUROR: Yes.

2 THE COURT: Okay.

3 MR. DEAS: She and I.

4 THE COURT: Okay. So, you were the one who
5 represented her?

6 MR. DEAS: Yes, sir.

7 THE COURT: Okay. Anyone object to her being removed
8 for cause? I would take her off for cause.

9 All right, thank you, ma'am.

10 Anyone else?

11 (NO ONE STANDS.)

12 THE COURT: All right, thank you. Has any member of
13 the jury panel formed or expressed an opinion about any
14 issue or matter involved in this case? And, ladies and
15 gentlemen, the idea is that you are to hear about this case
16 from the evidence that is presented in this court. So,
17 does anybody have -- know anything about this matter that
18 would not -- that you would come in here with a prejudice
19 before the case starts?

20 (NO ONE STANDS.)

21 THE COURT: All right. Thank you. Is there any
22 member of the jury panel that was also a member of the
23 grand jury that indicted this case? If so, please stand.

24 (NO ONE STANDS.)

25 THE COURT: All right. Thank you. Is there any

1 member of the jury panel who is a member of or a
2 contributor to any group which has as its primary concern
3 the promotion of law enforcement or victims' rights? These
4 groups would include but certainly not limited to Mothers
5 Against Drunk Drivers, Students Against Drunk Drivers, or
6 Citizens Against Violent Crime. Is so, please stand.

7 Thank you. No one is standing. Does any member of
8 the jury panel know of any reason whatsoever why he or she
9 should not serve as a juror in this case, with particular
10 emphasis being placed on your ability to be fair and
11 impartial to both the state and the defendants? If so,
12 please stand.

13 All right, thank you. No one is standing. Is there
14 any member of the jury panel who is related by blood or
15 marriage to the solicitor, Ernest A. Finney, III, or any
16 member of his staff? If so, please stand.

17 (NO ONE STANDS.)

18 THE COURT: Has any member of the jury or anyone you
19 are related to closely or affiliated with ever been the
20 victim of a violent crime? If so, please stand.

21 Yes, ma'am. You want to come down? Why don't you
22 come down.

23 (THE FOLLOWING CONFERENCE IS HELD AT THE BAR IN THE
24 PRESENCE OF ALL COUNSELORS.)

25 THE COURT: Yes. Ms. Jackson?

1 JUROR: No. Lisa Gainey, juror 55. My niece was just
2 murdered last month; she was shot and killed.

3 THE COURT: Okay. Would the fact that your niece was
4 murdered last month make it so you couldn't be fair and
5 impartial to the state or the defense in this case?

6 JUROR: I couldn't honestly say.

7 THE COURT: Okay, I'm going to remove her for cause.
8 Thank you.

9 (JUROR NUMBER 55 RETURNS TO THE JURY POOL.)

10 MR. MEADORS: While we're up here, Judge, I would
11 object. I would object to 5 and 6 respectfully, Mr. Deas.
12 I think number 6 is covered in your general charge.

13 THE COURT: That's right.

14 MR. MEADORS: And number ---

15 MR. DEAS: Withdrawn.

16 MR. MEADORS: And number 4.

17 MR. DEAS: I withdraw.

18 MR. MEADORS: Withdraw? He said he withdraws, okay.

19 THE COURT: Number 4.

20 MR. MEADORS: Oh, I'm sorry. I think you already
21 covered that.

22 THE COURT: Yes. 5 and 6?

23 MR. MEADORS: 5 and 6, yes, sir.

24 (END OF CONFERENCE AT THE BENCH.)

25 THE COURT: Has any member of the jury panel or anyone

1 related to you or closely affiliated with you ever been
2 charged with a violent crime? Is so, please stand. All
3 right, thank you. No one is standing.

4 Is there any member of the jury panel -- let me make
5 sure I've got this right. Is there any member of the jury
6 panel that has any personal knowledge of the events
7 surrounding the incident case, or any knowledge, or formed
8 any opinion about the defendants' guilt or innocence? If
9 so, please stand.

10 (NO ONE STANDS.)

11 THE COURT: Thank you.

12 Does the state have any additional questions it would
13 like for me to ask?

14 MR. MEADORS: No, sir, Your Honor.

15 THE COURT: Mr. Deas, does you client have any
16 additional questions he would like for me to ask?

17 MR. DEAS: No, sir, Your Honor.

18 THE COURT: Mr. Wilder?

19 MR. WILDER: No, Your Honor.

20 THE COURT: Thank you.

21 MR. MEADORS: Your Honor, I need to...

22 THE COURT: Did we....

23 MR. MEADORS: This will be the last time. I promise.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: All right, ladies and gentlemen, now the

1 computer is going to come up with a random list of jurors.
2 As your name is called, please come forward and turn around
3 and face General Thomas Sumter. The state will then have
4 an opportunity to strike you, and then the -- each
5 defendant will have an opportunity to strike you.

6 Now, ladies and gentlemen, please do not be offended
7 if you are stricken. The attorneys can strike you for any
8 reason or no reason except for they can't strike you based
9 on your race or your gender. These attorneys have an idea
10 of what they think would be the ideal jury for this case.
11 So, again, please do not take it personally if you are
12 stricken from this case. You'll have several opportunities
13 to be selected on juries before this week is out, I can
14 assure you.

15 Bring your personal items up so in case you are
16 selected, you will have those items already there with you.

17 All right, are we ready to proceed?

18 CLERK OF COURT: Yes, sir.

19 THE COURT: And we will have two alternates.

20 CLERK OF COURT: Please the court, Your Honor?

21 THE COURT: Yes, sir.

22 *JURY SELECTION*

23 CLERK OF COURT: Ladies and gentlemen, when your name
24 is called, come through the double gates here on your left
25 or the single gate on your right, which is most convenient.

1 Juror number 64, Wayne Green.

2 (AFRICAN-AMERICAN MALE COMES FORWARD.)

3 CLERK OF COURT: Turn around and face the back of the
4 courtroom, please, sir.

5 What saith the state?

6 JUROR: Sir?

7 CLERK OF COURT: No, you stay right there.

8 MR. MEADORS: Please excuse Mr. Green.

9 CLERK OF COURT: Had a seat back with the panel;
10 you've been excused from this trial, please, sir.

11 Juror number 47, Deneen Fioritto.

12 (WHITE FEMALE COMES FORWARD.)

13 CLERK OF COURT: What saith the state?

14 MR. MEADORS: Please present Ms. Fioritto.

15 CLERK OF COURT: What saith Defendant Canty?

16 MR. DEAS: Please excuse the juror on the trial of
17 this case.

18 CLERK OF COURT: Have a seat back with the panel;
19 you've been excused from this trial, please, ma'am.

20 Juror number 157, Patricia Williams.

21 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

22 CLERK OF COURT: What saith the state?

23 MR. MEADORS: Please excuse Ms. Williams.

24 CLERK OF COURT: Have a seat back with the panel.

25 You've been excused from this trial, please, ma'am.

1 Juror number 75, Perry Hendrix.

2 (WHITE MALE COMES FORWARD.)

3 CLERK OF COURT: What saith the state?

4 MR. MEADORS: Please present Mr. Hendrix.

5 CLERK OF COURT: What saith Defendant Canty?

6 MR. DEAS: Please excuse the juror on the trial of

7 this case.

8 CLERK OF COURT: Have a seat back with the panel.

9 You've been excused from this trial, please, sir.

10 Juror number 60, Sherry Glasscho.

11 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

12 CLERK OF COURT: What saith the state?

13 MR. MEADORS: Please present Ms. Glasscho.

14 CLERK OF COURT: What saith Defendant Canty?

15 MR. DEAS: Please swear the juror.

16 CLERK OF COURT: What saith Defendant Jackson?

17 MR. WILDER: Please swear the juror.

18 CLERK OF COURT: Have a seat in the jury box, please,

19 ma'am.

20 Juror number 30, Terry Crowder.

21 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

22 CLERK OF COURT: What saith the state?

23 MR. MEADORS: Please excuse Ms. Crowder.

24 CLERK OF COURT: Have a seat back with the panel;

25 you've been excused from this trial, please, ma'am.

1 Juror number 100, Michael Knight.
2 (WHITE MALE COMES FORWARD.)
3 CLERK OF COURT: What saith the state?
4 MR. MEADORS: Please present Mr. Knight.
5 CLERK OF COURT: What saith Defendant Canty?
6 MR. DEAS: Please swear the juror.
7 CLERK OF COURT: What saith Defendant Jackson?
8 MR. WILDER: Please swear Mr. Knight.
9 CLERK OF COURT: Have a seat in the jury box, please,
10 sir.
11 Juror number 167, Marion Thomas.
12 (AFRICAN-AMERICAN MALE COMES FORWARD.)
13 CLERK OF COURT: What saith the state?
14 MR. MEADORS: Please excuse Mr. Thomas.
15 CLERK OF COURT: Have a seat back with the panel.
16 You've been excused from this trial, please, sir.
17 MR. WILDER: Your Honor, we'd ask that the record
18 reflect a motion to be heard later.
19 THE COURT: Yes.
20 MR. MEADORS: On both sides, Your Honor.
21 THE COURT: Yes, sir.
22 MR. DEAS: Same for Reginald.
23 MR. MEADORS: Both sides.
24 MR. DEAS: Reginald Canty.
25 THE COURT: Duly noted.

1 CLERK OF COURT: Juror 46, Jason Evans.
2 (AFRICAN-AMERICAN MALE COMES FORWARD.)
3 CLERK OF COURT: What saith the state?
4 MR. MEADORS: Please excuse Mr. Evans.
5 CLERK OF COURT: Have a seat back with the panel.
6 You've been excused from this trial, please, sir.
7 Juror number 32, Essie Dallas.
8 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
9 CLERK OF COURT: What saith the state?
10 MR. MEADORS: Please excuse Ms. Dallas.
11 CLERK OF COURT: Have a seat back with the panel;
12 you've been excused from this trial, please, ma'am.
13 MR. WILDER: We'd ask that our motion run throughout.
14 THE COURT: Yes.
15 MR. MEADORS: As I would, Your Honor. May we
16 approach?
17 THE COURT: You may.
18 (OFF-THE-RECORD BENCH CONFERENCE.)
19 THE COURT: Next.
20 CLERK OF COURT: Juror number 28, Linda Cooper.
21 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
22 CLERK OF COURT: What saith the state?
23 MR. MEADORS: Please excuse Ms. Cooper.
24 CLERK OF COURT: Have a seat back with the panel.
25 You've been excused from this trial, please, ma'am.

1 Juror number 13, Sherrie Benenhaley.

2 (WHITE FEMALE COMES FORWARD.)

3 CLERK OF COURT: Was saith the state?

4 MR. MEADORS: Please present Ms. Benenhaley.

5 CLERK OF COURT: What saith Defendant Canty?

6 MR. DEAS: Please excuse the juror on the trial of
7 this case.

8 CLERK OF COURT: Have a seat back with the panel.

9 You've been excused from this trial, please, ma'am.

10 Juror number 115, Kelley McMillan.

11 (WHITE FEMALE COMES FORWARD.)

12 CLERK OF COURT: What saith the state?

13 MR. MEADORS: Please present Ms. McMillan.

14 CLERK OF COURT: What saith Defendant Canty?

15 MR. DEAS: Please swear the juror.

16 CLERK OF COURT: What saith Defendant Jackson?

17 MR. WILDER: Please swear Ms. McMillan.

18 CLERK OF COURT: Have a seat in the jury box, please,
19 ma'am.

20 Juror number 109, called Sean McCombs.

21 (WHITE MALE COMES FORWARD.)

22 CLERK OF COURT: Was saith the state?

23 MR. MEADORS: Please present Mr. McCombs.

24 CLERK OF COURT: What saith Defendant Canty?

25 MR. DEAS: Please swear the juror.

1 CLERK OF COURT: What saith Defendant Jackson?

2 MR. WILDER: What's the number, please?

3 CLERK OF COURT: The number is 109.

4 MR. WILDER: 109, thank you. Please excuse the juror
5 from this trial.

6 CLERK OF COURT: Have a seat back with the panel.

7 You've been excused from this trial, please, sir.

8 Juror number 120, Charles Mullins.

9 (ASIAN MALE COMES FORWARD.)

10 CLERK OF COURT: What saith the state?

11 MR. MEADORS: Please present Mr. Mullins.

12 CLERK OF COURT: What saith Defendant Canty?

13 MR. DEAS: Please swear the juror.

14 CLERK OF COURT: What saith Defendant Jackson?

15 MR. WILDER: Swear Mr. Mullins.

16 CLERK OF COURT: Have a seat in the jury box, please,
17 sir.

18 Juror number 143, Martin Stegner.

19 (WHITE MALE COMES FORWARD.)

20 CLERK OF COURT: What saith the state?

21 MR. MEADORS: Please present Mr. Stegner.

22 CLERK OF COURT: What saith Defendant Canty?

23 MR. DEAS: Please excuse the juror on the trial of
24 this case.

25 CLERK OF COURT: Have a seat back with the panel.

1 You've been excused from this trial, please, sir.

2 Juror number 124, Thomas Nissen.

3 (ASIAN MALE COMES FORWARD.)

4 CLERK OF COURT: What saith the state?

5 MR. MEADORS: Please present Mr. Nissen.

6 CLERK OF COURT: What saith Defendant Canty?

7 MR. DEAS: Please present the juror.

8 CLERK OF COURT: What saith Defendant Jackson?

9 MR. WILDER: Please swear Mr. Nissen.

10 CLERK OF COURT: Have a seat in the jury box, please,

11 sir.

12 Juror number 6, Erin Anderson.

13 (WHITE FEMALE COMES FORWARD.)

14 CLERK OF COURT: What saith the state?

15 MR. MEADORS: Please present Ms. Anderson.

16 CLERK OF COURT: What saith Defendant Canty?

17 MR. DEAS: Please swear Ms. Anderson.

18 CLERK OF COURT: What saith Defendant Jackson?

19 MR. WILDER: Please swear Ms. Anderson.

20 CLERK OF COURT: Have a seat in the jury box, please,

21 ma'am.

22 Juror number 123, Lisa Ottenschot-Newman.

23 (WHITE FEMALE COMES FORWARD.)

24 CLERK OF COURT: What saith the state?

25 MR. MEADORS: Please present Ms. Ottenschot-Newman.

1 CLERK OF COURT: What saith Defendant Canty?

2 MR. DEAS: Please swear the juror.

3 CLERK OF COURT: What saith Defendant Jackson?

4 MR. WILDER: Please excuse the juror from this trial.

5 CLERK OF COURT: Have a seat back with the panel.

6 You've been excused from this trial, please, ma'am.

7 Juror number 34, Connie Davis.

8 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)

9 CLERK OF COURT: What saith the state?

10 MR. MEADORS: Please present Ms. Davis.

11 CLERK OF COURT: What saith Defendant Canty?

12 MR. DEAS: Please swear the juror.

13 CLERK OF COURT: What saith Defendant Jackson?

14 MR. WILDER: Please swear Ms. Davis.

15 CLERK OF COURT: Have a seat in the jury box, please,
16 ma'am.

17 Juror number 159, Jaron Wilson.

18 (ASIAN MALE COMES FORWARD.)

19 CLERK OF COURT: What saith the state?

20 MR. MEADORS: Please present Mr. Wilson.

21 CLERK OF COURT: What saith Defendant Canty?

22 MR. DEAS: Please swear Mr. Wilson.

23 CLERK OF COURT: What saith Defendant Jackson?

24 MR. WILDER: Please swear Mr. Wilson.

25 CLERK OF COURT: Have a seat in the jury box, please,

1 sir.

2 Juror number 155, Marcus White.

3 (AFRICAN-AMERICAN MALE COMES FORWARD.)

4 CLERK OF COURT: What saith the state?

5 MR. MEADORS: Please present Mr. White.

6 CLERK OF COURT: What saith Defendant Canty?

7 MR. DEAS: Please swear Mr. White.

8 CLERK OF COURT: What saith Defendant Jackson?

9 MR. WILDER: Please swear Mr. White.

10 CLERK OF COURT: Have a seat in the jury box, please,

11 sir.

12 Juror number 82, Johnnie Holland.

13 (AFRICAN-AMERICAN MALE COMES FORWARD.)

14 CLERK OF COURT: What saith the state?

15 MR. MEADORS: Please present Mr. Holland.

16 CLERK OF COURT: What saith Defendant Canty?

17 MR. DEAS: Please swear Mr. Holland.

18 CLERK OF COURT: What saith Defendant Jackson?

19 MR. WILDER: Please swear Mr. Holland.

20 CLERK OF COURT: Have a seat in the jury box, please,

21 sir.

22 Juror number 132, Robert Rogers.

23 (WHITE MALE COMES FORWARD.)

24 CLERK OF COURT: What saith the state?

25 MR. MEADORS: Please present Mr. Rogers.

1 CLERK OF COURT: What saith Defendant Canty?

2 MR. DEAS: Please swear the juror.

3 CLERK OF COURT: What saith Defendant Jackson?

4 MR. WILDER: Please swear the juror.

5 CLERK OF COURT: Have a seat in the jury box, please,
6 sir.

7 Juror number 43, Angela Edwards.

8 (WHITE FEMALE COMES FORWARD.)

9 CLERK OF COURT: What saith the state?

10 MR. MEADORS: Please present Ms. Edwards.

11 CLERK OF COURT: What saith Defendant Canty?

12 MR. DEAS: Please excuse the juror from the trial of
13 this case.

14 CLERK OF COURT: Have a seat back with the panel.
15 You've been excused from this trial, please, ma'am.

16 Juror number 164, Beckham Harris, Jr.

17 (WHITE MALE COMES FORWARD.)

18 CLERK OF COURT: What saith the state?

19 MR. MEADORS: Please present Mr. Harris.

20 CLERK OF COURT: What saith Defendant Canty?

21 MR. DEAS: Please swear the juror.

22 CLERK OF COURT: What saith Defendant Jackson?

23 MR. WILDER: Please excuse the juror.

24 CLERK OF COURT: Have a seat back with the panel.
25 You've been excused from this trial, please, sir.

1 Juror number 166, Shawn McLaughlin.
2 (WHITE MALE COMES FORWARD.)
3 CLERK OF COURT: What saith the state?
4 MR. MEADORS: Please excuse Mr. McLaughlin.
5 CLERK OF COURT: Have a seat back with the panel.
6 You've been excused from this trial, please, sir.
7 Juror number 165, Terry Hearst.
8 (WHITE FEMALE COMES FORWARD.)
9 CLERK OF COURT: What saith the state?
10 MR. MEADORS: Please present Ms. Hearst.
11 CLERK OF COURT: What saith Defendant Canty?
12 MR. DEAS: Please excuse the juror on the trial of
13 this case.
14 CLERK OF COURT: Have a seat back with the panel.
15 You've been excused from this trial, please, ma'am.
16 Juror number required 144, Wendy Stickle.
17 (WHITE FEMALE COMES FORWARD.)
18 CLERK OF COURT: What saith the state?
19 MR. MEADORS: Please present Ms. Stickle.
20 CLERK OF COURT: What saith Defendant Canty?
21 MR. DEAS: Please swear the juror.
22 CLERK OF COURT: What saith Defendant Jackson?
23 MR. WILDER: Swear the juror.
24 CLERK OF COURT: Have a seat in the jury box, please,
25 ma'am.

1 Alternate juror. Juror number 17, Ieshia Bradley.
2 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
3 CLERK OF COURT: What saith the state?
4 MR. MEADORS: Please present Ms. Bradley.
5 CLERK OF COURT: What saith Defendant Canty?
6 MR. DEAS: Please swear the juror.
7 CLERK OF COURT: What saith Defendant Jackson?
8 MR. WILDER: Swear Ms. Bradley.
9 CLERK OF COURT: Have a seat in the jury box, please,
10 ma'am.
11 Juror number 140, Walnetta Spears, second alternate.
12 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
13 CLERK OF COURT: What saith the state?
14 MR. MEADORS: Please excuse Ms. Spears.
15 CLERK OF COURT: Have a seat back with the panel;
16 you've been excused from this trial, please, ma'am.
17 Juror number 145, Lakeishia Stubbs.
18 (AFRICAN-AMERICAN FEMALE COMES FORWARD.)
19 CLERK OF COURT: Any reason for cause from the state?
20 MR. MEADORS: Please present the juror.
21 CLERK OF COURT: What saith Defendant Canty?
22 MR. DEAS: Please swear the juror.
23 CLERK OF COURT: What saith Defendant Jackson?
24 MR. WILDER: Swear the juror.
25 CLERK OF COURT: Have a seat in the jury box, please,

1 ma'am.

2 THE COURT: Please call the names of the jurors who
3 have been selected.

4 CLERK OF COURT: Ladies and gentlemen, when I call
5 your name, please raise your hand. Sherry Glasscho,
6 Michael Knight, Kelley McMillan, Charles Mullins, Thomas
7 Nissen, Erin Anderson, Connie Davis, Jaron Wilson, Marcus
8 White, Johnnie Holland, Robert Rogers, Wendy Stickle,
9 Ieshia Bradley, Lakeishia Stubbs. Thank you.

10 THE COURT: All right, thank you, Mr. Bradley.

11 CLERK OF COURT: Yes, sir.

12 THE COURT: All right, ladies and gentlemen, you have
13 been selected as the jurors for this case. I'm going to
14 send you back to the jury room for a few minutes while we
15 take up a few matters before the court.

16 Please do not discuss anything about this case.
17 You'll get tired of hearing me say that, but please do not
18 discuss anything about this case while you're in the jury
19 room. Thank you.

20 (THE JURY EXITS AT 12:44 P.M.)

21 THE COURT: All right, are there any objections to the
22 jury that has been selected, and the manner in which they
23 have been selected from the state?

24 MR. MEADORS: Beg the court's indulgence?

25 THE COURT: Yes, sir.

1 (A PAUSE.)

2 MR. MEADORS: Nothing.

3 THE COURT: Mr. Deas?

4 MR. DEAS: Court's indulgence.

5 (DEFENSE COUNSELORS CONFER.)

6 MR. DEAS: Your Honor, from the Defendant Reginald
7 Canty, we would like to take up that motion.

8 THE COURT: All right, Mr. Wilder, you ---

9 MR. WILDER: *Batson*, Your Honor.

10 THE COURT: Yes, sir.

11 MR. WILDER: Yes, sir.

12 THE COURT: Tell you what. It's about lunch time.

13 So, ladies and gentlemen, those of you who have not been
14 selected, I'm going to dismiss you now with instructions to
15 be back here at 2:30, where you will have an opportunity to
16 be selected on a jury at that time.

17 So, have a nice lunch break, and be back to at -- and
18 go to courtroom number 2, all right? Not this courtroom
19 but the other one around the corner.

20 (THE JURY PANEL EXITS.)

21 THE COURT: All right, Mr. Wilder, you have made a
22 *Batson* motion.

23 MR. WILDER: Yes, Your Honor. We'd move to quash the
24 selection of the panel.

25 Your Honor, I intended no disrespect to Mr. Meadors by

1 asking the court to note that it run throughout. I just
2 want to say that. He seems like he was upset by it. But,
3 Your Honor, if I don't say something, I have had a judge
4 who'll say, well, you should have made it in a timely
5 fashion.

6 THE COURT: No. It's my understanding is you actually
7 make it after all the jurors have been selected.

8 MR. WILDER: And had I known that was Your Honor's
9 understanding about it, I might not have said anything
10 about it at all. But because -- but the purpose of putting
11 it on the record was to let him know that he was going to
12 have to justify to the court if he did it again. And I,
13 you know, just as a kind of courtesy, I wanted to tell him,
14 you know, better, better keep note of your records because
15 we're going, we're going to be into this.

16 Now, the time ---

17 THE COURT: I think from here on out, we'll let you
18 try your case, and we'll let him try his case.

19 MR. WILDER: I think that's an excellent suggestion,
20 Your Honor.

21 MR. MEADORS: And I'll just say for the record I
22 appreciate him letting me know what I need to do. But I
23 did take personal offense at it because it is supposed --
24 Your Honor is supposed to ask if any -- you're not even
25 supposed to mention the word *Batson*, which they did at the

1 end with this jury panel.

2 But the timing was incredible: after I had struck
3 folks which I believe I had very good reasons. And he
4 wants, I think, to infer that I'm striking on that. That's
5 why I took offense because I don't do that, and his timing
6 was incredible. That's why I did. But I accept his
7 apology.

8 THE COURT: All right. Very well.

9 MR. WILDER: Your Honor, and I would note for the
10 record that I waited to do it until a pattern had been
11 established. Didn't say anything on the first black juror
12 that was struck. Didn't say anything on the second one. I
13 think I waited until the third or fourth one before I said
14 anything at all. So, I don't know how any juror could have
15 inferred anything from me asking the court to note a motion
16 at that point. So ---

17 THE COURT: All right, I'm not, I'm not worried about
18 that at this point.

19 MR. WILDER: Okay. Your Honor, so we want to move
20 under *Batson*. He did strike black jurors. I believe it's
21 incumbent upon him now to state race-neutral reasons why he
22 did so.

23 THE COURT: All right, Mr. Meadors, as to those that
24 you did strike, and I think there were eight jurors that
25 you struck.

1 MR. MEADORS: That's correct.

2 THE COURT: Could you please give a race neutral ---

3 MR. MEADORS: Judge, I will, I will take them just as
4 they -- as we did them, if they will, and I will do so now.

5 I almost made a *Batson* motion myself because every
6 person they struck was white.

7 THE COURT: Yes, sir.

8 MR. MEADORS: Judge, as to juror number 64, Mr.
9 Griffin was assisting me in this, and he has pending
10 burglary charges. Every one on this list had had a pending
11 or a serious conviction or charge -- I don't care if
12 they're black, white, or purple -- I struck them. Anything
13 beside a traffic offense, which I never use, but if there's
14 a serious offense out there that's either still pending or
15 convicted or we're not sure, I struck them.

16 I have a burglary charge for this individual. That's
17 why I struck him.

18 THE COURT: Mr. Green, there was burglary charge
19 pending?

20 MR. MEADORS: Yes, sir. That's juror number 64.

21 THE COURT: Right.

22 MR. MEADORS: Judge, juror, juror number 157. Judge,
23 as we approached -- I've done this my whole career. People
24 that want off, I don't put on. There were several people
25 that wanted off Your Honor transferred. This next juror,

1 157, wanted off. I believe she was the attendance
2 coordinator. It was obvious to me -- not, not disagreeing
3 with you keeping her on, Judge, but it was obvious to me
4 she wanted off. And everyone that wanted off, that is my
5 reason that I chose not to present her.

6 Your Honor, number 30 has charges, and I don't know.
7 They're from Baltimore, but they're charges of possession
8 of heroin, intent to distribute, possession of Valium with
9 intent to distribute, possession of paraphernalia with
10 intent to inject something, nuisance, conspiracy to violate
11 the drug laws; possession of narcotics. That's why I
12 struck her, Judge.

13 THE COURT: All right.

14 MR. WILDER: Your Honor, did he say she has a
15 conviction for that?

16 THE COURT: She has pending charges showing up on her
17 sheet.

18 MR. MEADORS: As I said, everybody ---

19 MR. WILDER: She had pending charges?

20 THE COURT: She has pending charges.

21 MR. WILDER: All right.

22 MR. MEADORS: I forgot where I was now, Judge.

23 THE COURT: Mr. Thomas.

24 MR. MEADORS: 167. I struck everyone that came up
25 that was unemployed, that stated they were unemployed. And

1 while we're at there, he is a black male, juror 166.
2 Number right next to him, Judge, is a while male. He's
3 unemployed. I struck him, too.

4 Juror number 46, Your Honor, has a -- came up, I
5 believe came up when we were all present, said he had a gun
6 charge that's pending. That's why I struck him.

7 Juror number 32 also in my notes had said she did not
8 want to serve. I had written that down. That was
9 consistent with that.

10 And finally, juror number 28, Judge, fraudulent check
11 convictions, false statement to obtain benefits
12 convictions, other fraudulent check convictions, just
13 convictions of fraud and deceit, and that's why I
14 respectfully struck that juror.

15 Again for the record, all of their strikes were
16 exercised against white individuals. Your Honor, I think I
17 provided a race-neutral reason for each one of them. We
18 would respectfully ask you keep this jury. Thank you.

19 THE COURT: All right, since you didn't make a motion
20 for that, I won't go into it.

21 MR. MEADORS: I'm sorry, Judge; I apologize. I won't
22 say anything.

23 THE COURT: All right. Thank you.

24 Anything from y'all?

25 MR. WILDER: No, Your Honor. Just leave it in Your

1 Honor's discretion. If you find those reasons
2 satisfactory, I have nothing else to say.

3 THE COURT: Well, I looked at the jury. You know,
4 you're not entitled to the perfect jury or to one of all --
5 but certainly the ones who have pending charges, I find
6 that to be race neutral and deny your motion.

7 All right, let me bring the jury back in, and I will
8 excuse them until tomorrow morning at 10:00, when we will
9 start this trial. We've got some motions we need to take
10 up this afternoon, I understand.

11 Let's bring the jury in.

12 And for your record, your motion is denied.

13 MR. WILDER: Thank you.

14 (THE JURY ENTERS AT 12:55 P.M.)

15 CLERK OF COURT: Your Honor, we have all the jurors
16 present in the courtroom.

17 THE COURT: Thank you, Mr. Bradley.

18 Ladies and gentlemen, y'all have indeed been selected
19 as the jurors for this case, but we have some things that
20 we need to take up this afternoon. So, the trial won't
21 actually start until tomorrow morning. So, I am going to
22 dismiss you for the balance of the day, with instructions
23 that you be back here just a little bit before 10:00
24 tomorrow morning.

25 Again, please do not discuss this case with anyone

1 when you go home tonight. Please do not read anything in
2 the newspapers concerning this trial.

3 All right, ladies and gentlemen, have a nice day, and
4 we'll see y'all back here at 10:00 in the morning. Thank
5 you.

6 (THE JURY EXITS AT 12:56 P.M.)

7 THE COURT: All right, I think we need to go ahead and
8 take a break now, and then we will reconvene at 2:30, when
9 we'll take up the pretrial motions.

10 MR. MEADORS: Thank you, Your Honor.

11 THE COURT: All right, thank you. Court is in recess
12 until 12:30 -- 2:30, excuse me.

13 (OFF THE RECORD.)

14 (MENTAL EVALUATION OF DEFENDANT JACKSON MARKED INTO
15 EVIDENCE AS COURT'S EXHIBIT NUMBER 1.)

16 THE COURT: All right, are we ready to proceed?

17 MR. MEADORS: State's ready.

18 THE COURT: All right. Mr. Wilder, Mr. Deas, y'all
19 have some motions?

20 MR. WILDER: Yes, Your Honor. Thank you.

21 Your Honor, first I hand up to the court a motion, a
22 copy of a motion that was filed July 28th of 2010. And
23 this, Your Honor, is a motion for a speedy trial and/or
24 motion for release on personal cognizance that was filed
25 and then served on the solicitor's office. It contains a

1 reference to code section 17-23-90 of Code of Laws. And
2 this motion has been filed and served on the state over a
3 year ago, Your Honor. And in there it also notes that
4 we're asking for dismissal if the state fails to try the
5 case within two terms.

6 That code section I cited is what's sometimes referred
7 to as the two-term rule. There are some old cases under
8 there. I think one of them is called *State vs. Ricardo*,
9 and it, and it stands for the principle it's not two week
10 terms but two statutory terms. There came a time wherein
11 the state, the chief justice signed an order doing away
12 with statutory terms even and replacing them with an order
13 establishing weekly terms of court.

14 But anyway, there have been many, many weekly terms of
15 court, and there have been statutory terms of court, over
16 two since we filed that. In fact, it is now over a year
17 later. And that motion, Your Honor, it put the state on
18 notice that we were asking for a speedy trial, as the
19 constitution entitles us to.

20 And, Your Honor, that is going to play into some of
21 the other motions we make this afternoon asking for justice
22 here because the state, if they had any intention of trying
23 us, should have moved forward in an expedited fashion with
24 some kind of discovery. And yet you're going to see here
25 in just a moment, as I hand up these things that were late

1 arriving from the state, they did not respond to our
2 discovery motions in a timely fashion. But, in fact,
3 delayed apparently as long as they could in giving us some
4 of the things ---

5 THE COURT: Well, my understanding, didn't you make a
6 motion for continuance last month?

7 MR. WILDER: Well, I had to, and that was, that was
8 based on late-arriving discovery, and I'm going to address
9 that in just a moment, but that is correct. But that was
10 over -- well, many months after that, that motion for
11 speedy trial was filed.

12 So, our motion is that they should have tried it
13 before last month. And indeed a year ago when we asked for
14 this relief. At that time, two terms of court had already
15 passed. So, so, we believe that the facts necessary for
16 tolling the statute had already, had already transpired.

17 Your Honor, but anyway, we had moved for the speedy
18 trial back then. We didn't get it back then. We didn't
19 get it until last month. If we had gone ahead with the
20 discovery as it stand at -- stood at that time -- so, we're
21 beginning by asking the court just to dismiss it because
22 they didn't do that for -- a year ago.

23 THE COURT: All right. Thank you.

24 Mr. Meadors.

25 MR. DEAS: May it please the court? Judge, the State

1 of South Carolina cannot try someone until they know
2 whether or not that person is competent. What Mr. Wilder
3 left out, Your Honor, and he consented, actually, for an
4 evaluation of his client, Mr. Jackson. In fact, on -- I'm
5 trying to see where Judge King in December 2010 -- and,
6 Your Honor, I have marked Court's Exhibit 1, which is a
7 South Carolina Department of Mental Health Forensic
8 Evaluation Report signed by Dr. Richard Frierson which,
9 dictated on March 28th of this year, is when he was found
10 competent to stand trial. So, we couldn't have tried him
11 before March.

12 So, since that term, I know I called it once, and Mr.
13 Wilder moved for the continuance. So, I would like this to
14 be marked number 1. And for the record, we had talked
15 about it previously. There's no question, I don't believe,
16 from either side that he is competent, understands the
17 charges, and is capable of assisting his attorney, Mr.
18 Wilder. But that's reflected in Court's 1.

19 THE COURT: All right, motion denied. I'll give him a
20 speedy -- you'll get a speedy trial. It'll start tomorrow.

21 MR. WILDER: Your Honor, if it please the court, our
22 next motion would be based on the failure of the state to
23 comply with our discovery and *Brady* motion.

24 Now, this motion was filed on May the 25th of 2011,
25 Your Honor. And attached to this motion, we're handing up

1 the packet to the court served on the state, also filed
2 with the Clerk of Court's office, Your Honor.

3 MR. MEADORS: Mr. Wilder.

4 MR. WILDER: Yes.

5 MR. MEADORS: Can I see this one you're talking about?

6 MR. WILDER: Sure.

7 (COUNSELORS CONFER.)

8 MR. WILDER: Your Honor, this details, Your Honor, the
9 fact that we had previously filed on February the 5th,
10 2008, original request under both Rule 5 and *Brady*. And,
11 Your Honor, as of that time, the state was then obligated
12 under Rule 5 to within thirty days respond to our request
13 for discovery.

14 What is attached to this motion and, Your Honor, we
15 would rely on the grounds as are set forth in this written
16 motion which is, as I say, a record with the Clerk of
17 Court's office. And, Your Honor, it details the history of
18 the case which was originally brought forward during the
19 time of the former solicitor, Kelly Jackson, and was
20 assigned to Assistant Solicitor Catherine Fant.

21 And what we're really saying in this motion, Your
22 Honor, is as of February 5, 2008, they had a obligation to
23 respond with what they had under Rule 5 and *Brady*. And
24 they failed to do so. Attached to the motion is the
25 discovery that we received as of May 25, 2011. And that,

1 Your Honor, was what necessitated the motion for the
2 continuance to arise.

3 But I wanted Your Honor to see the extent of the
4 exculpatory evidence that the state had in its possession
5 to the tune of having developed a suspect by the name of
6 Marcus Branch, which they did not tell us about until this
7 date. And also exculpatory fingerprint testing,
8 exculpatory DNA testing, exculpatory information that led
9 to fingerprints being returned to people that they -- a
10 witness that possibly could have been outside of the
11 Cherryvale Grocery the night they say this happened. And
12 this information that was brought to our attention in --
13 May 25, 2011, Your Honor, is three years after. I mean,
14 it's -- they had from February 5th of 2008 all the way to
15 May 25th of 2011 to give us this information. And
16 obviously all that stuff that's attached to that motion,
17 Your Honor, is things -- are things that were in the
18 state's possession that they failed to turn over to us.

19 Now, I reference again to the speedy trial motion that
20 was filed. Yes, it is true that my client in December of
21 2010 asked for a mental evaluation. But that's already
22 several months after the speedy trial motion was filed. Is
23 the state saying that they didn't give it to us for three
24 years because at the last moment, after my client's being
25 held in detention and he feels like he's got some mental

1 issues that have arisen because he was locked up, does
2 that, does that entitle them not to give me the stuff
3 within thirty days as Rule 5 sets forth?

4 Your Honor, I submit that for them to withhold all of
5 this information is grounds for extraordinary relief. And
6 one of the things that Rule 5 provides is that the court
7 can fashion its own relief, whatever you think is just, in
8 addition to other things like possibly excluding evidence,
9 or making other extraordinary relief.

10 But we're asking that the court dismiss it and not
11 allow the state to do things like this, to wait three years
12 to turn this kind of evidence.

13 You'll notice that there are fingerprints that were
14 analyzed by Jeff Parrott over at SLED. Said not identified
15 with Daniel Jackson in that packet of material. You'll
16 notice that -- and, Your Honor, I mention Jeff Parrott
17 because he no longer works with SLED. It was necessary to
18 find him after he had departed from SLED and make
19 arrangements to serve a subpoena on him after he had even
20 left from SLED.

21 There may be other problems that we don't even know of
22 yet as we encounter, we move forward with this trial. But
23 I don't believe it's fair for them to have all this
24 material which leads other directions other than Mr.
25 Jackson and/or Mr. Canty here. And, and, and conceal it

1 basically from the defendant, even though we have made our
2 request for this material with the court. And so we move
3 for the extraordinary remedy of dismissing the case as a
4 result of all of this.

5 THE COURT: Thank you.

6 MR. WILDER: Thank you.

7 MR. DEAS: Your Honor, before you hear from Mr.
8 Meadors on that, on that particular motion, I do join in
9 the motion Mr. Wilder has as to Mr. Canty. Mr. Canty did a
10 motion, a Rule 5 and *Brady* material back on July 3, 2008.
11 I believe the court has a record of that.

12 We received additional discovery material as late as
13 Friday evening, one of which was a report that indicated
14 there were some fingerprints that were submitted to SLED
15 for analysis that were taken from pizza boxes. But we
16 don't have any report from the analysis of these
17 fingerprints. All we have is something indicating that,
18 that the fingerprints were sent for analysis. And we
19 didn't get this until as late as Friday evening.

20 If indeed the analysis would exclude both Mr. Canty
21 and Mr. Jackson, I certainly think that is discoverable
22 material, and this is probably information we should have
23 gotten prior to Friday to give myself and Mr. Jackson an
24 opportunity to explore that further because if indeed this
25 report from this analysis -- the report from this analysis

1 excludes my client, Mr. Canty, that would certainly be
2 exculpatory. And we would be entitled to that information.

3 But as it stands, all we know is that there was, there
4 was, there were fingerprints submitted for analysis, and we
5 didn't find that out until Friday. Friday evening, that
6 information was provided to us by Mr. Meadors.

7 THE COURT: All right, Mr. Meadors.

8 MR. MEADORS: Thank you, Your Honor. Judge, I don't
9 know if you have a copy of his ---

10 THE COURT: Yes.

11 MR. MEADORS: Judge, looking through here, I found
12 where Ms. Fant had sent a discovery to Mr. Wilder and Mr.
13 Deas, and they both signed -- well, in August of 2008,
14 August 25th of 2008 it looks like to Mr. Deas and to Mr.
15 Wilder. In that, it did include the SLED firearm
16 department report on January 15th, which is included in
17 this packet. So, I don't want Your Honor to think all of
18 this is new stuff.

19 This is stuff I just got and put it together when I
20 got involved in the case. I talked to Mr. Wilder, I
21 remember, outside the courtroom one day. I said what case
22 do you want to try? He said call whatever you want to. I
23 found Mr. Jackson had just been found competent. It was an
24 older case; I got it ready.

25 So, Judge, first and foremost, not everything in here

1 had they not received before. Specifically, the SLED
2 latent prints were identified. Ms. Fant had given that
3 over to them. Had the firearm report, along with several
4 other items, Your Honor.

5 Judge, what I think it boils down, when I got
6 involved, I did -- and SLED has what they I-Lab. I went
7 and you can now, and Columbia had somebody else do it, but
8 now you can go on, download SLED reports. Well, I did
9 that. I found that there was a DNA report which was
10 included in this packet. Soon as I got it, I gave it to
11 both attorneys. I think I gave it to Wilder first and then
12 Mr. Deas.

13 Judge, I wasn't here when this case first started. I
14 don't think it's fair to put myself in that prosecutor's
15 position, and I'm not going to do that. I will say that
16 nothing in this SLED report contained evidence inconsistent
17 with the defendants' guilt. I don't think there's anything
18 exculpatory.

19 As a matter of fact, the only thing that came up with
20 DNA on it were clothes that the defendant -- that were from
21 the defendants. And when Mr. Wilder and I first looked at
22 it, said oh goodness. What's that? We found out it was
23 his. They'd just turned over from his family. So, that,
24 that, that wasn't anything.

25 Other than that, Your Honor, it's our position there's

1 nothing exculpatory in this DNA report. I don't know what
2 else to say about that. I think that was initially the big
3 item that Mr. Wilder and Mr. Deas had mentioned.

4 Judge, before I forget, the fingerprints that were
5 turned over Friday were actually Marie Hodge's. He already
6 had the results from that when we went out to look at the
7 evidence. That was just where Bean had taken the pictures
8 and lifted the prints, but the results they do have.
9 They've had them -- I think we first got them shortly after
10 we went out to look at the evidence. So, those were the
11 print analyses that Investigator Marie Hodge did. That's
12 just showing where Bean took the fingerprints.

13 And, Judge, those were inconclusive. The only
14 fingerprint that's lifted in this case is a lady named
15 Linda McDuffie from a pay phone in Cherryvale. I'm going
16 to call her. She got -- she used that phone, Judge. Every
17 other fingerprint was inconclusive, so I don't know how it
18 would be exculpatory, but it's out there, and we provided
19 them with that information.

20 I don't know why they didn't get it earlier. Can't
21 answer. Not trying to, but I don't think it's exculpatory.

22 I think one other thing he mentioned was a gentleman
23 named Mr. Black Bear -- I'm sorry, Marcus Branch. He was
24 listed, I think, on the DNA analysis from SLED and maybe
25 some other items. I looked through the file, and I found

1 this actually on a different case number. We're not
2 involved in the case we're in, but I just turned it over.
3 That resulted in some motions from Mr. Wilder, which is
4 fine.

5 But, Judge, that's where that name came in. And I've
6 since done some investigation with Investigator Jennifer
7 Thomas, I believe now, who had responded. And those
8 individuals in this other report, Marcus Branch and these
9 other individuals were in -- a few days prior to this
10 incident, they had been involved in something with a Mr.
11 Henry Parker. So, it wasn't even related to this. I still
12 gave it to them. I don't think that -- maybe didn't even
13 have to be given to them, but I gave that information to
14 them. Marcus Branch subsequently gave a statement and
15 passed a polygraph, for whatever it's worth for these
16 purposes, that he didn't have anything to do with it.

17 So, I think that's kind of a smokescreen there, but we
18 provided it with them, and that's how that got in. And
19 certainly I would object if they try to bring that name in,
20 citing third-party guilt without any showing, Judge.

21 Judge, it's been a continuing process. When you get
22 an old case, you get it ready. As we were preparing to
23 come in here today, Your Honor, there's a photo lineup
24 which appeared with Mr. West that I'd never seen before. I
25 was fixing to bring it up. Doesn't have anything to do

1 with anything. Nobody was picked out. Don't think it has
2 to be turned over. I just found out about it, and I'm
3 going to do it. So, I don't know if we need to any memo,
4 but we can do it on the record. But -- and I just found
5 that out ten minutes ago. He's going to bring that up with
6 his testimony. I need the -- let me beg the court's
7 indulgence.

8 (A PAUSE.)

9 MR. MEADORS: Our position is that they've had the
10 information on the firearms. They didn't have the DNA, but
11 there's nothing exculpatory in there, Your Honor. And the
12 information on Marcus Branch we say is not relevant, is not
13 discoverable, but I gave it anyway, and there's nothing
14 tying him to this incident that we're aware of.

15 THE COURT: Mr. Wilder, you agree that most of the
16 stuff that you gave me in this motion was already received
17 by y'all?

18 MR. WILDER: No, Your Honor. Paragraph 5 will tell
19 you exactly what we had and what we didn't have. And the
20 relevant stuff we didn't get is listed in paragraph 5.

21 She did not reveal the results of the fingerprint
22 testing, the latent report examinations attached to this
23 motion, nor did she reveal the results of DNA testing
24 attached to this motion, and serology test.

25 Now, I will agree that he did have some of the things

1 that she gave me duplicated in this packet. However, those
2 things specifically were not given to us in the August --
3 yeah, August 25th discovery packet, and which, Your Honor,
4 if I need to, if they want to contest that, I have a copy
5 of the August 25th discovery packet. Didn't want to copy
6 all that stuff, too. But if I need to put that into the
7 record to show what we did get, I'll be glad to do that,
8 Your Honor, if they contest anything.

9 MR. MEADORS: I'll be happy to look, see what he has,
10 and I'm sure we can agree with it.

11 THE COURT: Yes.

12 MR. MEADORS: I have no problem with that. I just --
13 on Ms. Fant's discovery receipt, well, it just had SLED
14 latent prints and the lab number. So, I had ---

15 MR. WILDER: That's it right there.

16 THE COURT: And all this stuff, you received at least
17 two months ago?

18 MR. WILDER: Yes, Your Honor, and before you rule
19 because Mr. Deas kind of jumped ahead about what we just
20 received Friday, but there are two more stages of
21 discovery. And I want to show you everything so you'll
22 have it all in front of you when you decide whether or not
23 they were holding back anything that they should have given
24 us and we -- without having you try to rule three, three
25 different times in a row on the same thing, Judge.

1 THE COURT: All right.

2 MR. MEADORS: Actually got some stuff in here I don't
3 have, Judge.

4 (A PAUSE.)

5 MR. MEADORS: Your Honor, I see one SLED fingerprint
6 report which has -- and I don't think it changed for the
7 rifle. Had no value for identification, and that's what I
8 was referring to. This, this is the fingerprint report,
9 which it appears they had the one I was referring to.

10 MR. WILDER: Not the same one that's got Marcus Branch
11 listed as a suspect, nor does it have the one where it says
12 that Daniel Jackson's fingerprints are not identified as
13 being part of that.

14 MR. MEADORS: I'm sorry.

15 MR. WILDER: So, there are two different ones, but
16 that's, that's not the one I'm complaining about in
17 paragraph 5, Judge.

18 And maybe it would be better that we just mark this
19 packet as a court's exhibit. And that way if any question
20 arises that is it the same report, and there are going to
21 be other issues about those pictures coming up here in a
22 minute. So, I want to put the packet in.

23 MR. MEADORS: All I have is her summary. We'll just
24 make a copy of this, too.

25 THE COURT: All right.

1 MR. MEADORS: And make this part of the record.

2 MR. WILDER: And, Your Honor, in that regard I wrote
3 at the top here: Copy mailed to defendant. And at that
4 time, our investigator was John Johnson. So, 8/30/08, soon
5 as I got it, I mailed a copy to my client. So, this can
6 stand for a record of that, and that's usually why I keep a
7 packet separate.

8 THE COURT: All right.

9 MR. WILDER: So I can show that I gave it to my
10 client.

11 THE COURT: Court's Exhibit Number 2.

12 (PACKET OF DISCOVERY MATERIALS FOR JACKSON MARKED INTO
13 EVIDENCE AS COURT'S EXHIBIT NUMBER 2.)

14 (PACKET OF RULE 5 MATERIALS FOR JACKSON MARKED INTO
15 EVIDENCE AS COURT'S EXHIBIT NUMBER 3.)

16 THE COURT: All right, Mr. Wilder.

17 MR. WILDER: Now, Your Honor.

18 MR. MEADORS: Judge, Judge, before -- can I just say?

19 THE COURT: Yes.

20 MR. MEADORS: The only difference being -- there is a
21 latent fingerprint report in there, and he's saying there
22 was one that had Marcus Branch. And then I think at some
23 point after that, they asked for major case prints for Mr.
24 Jackson and Mr. Canty, which they basically, they're
25 inconclusive. I mean, there's no evidence there, so we --

1 and we provided that to them. It's, I think, along with
2 the other material which is in his other main motion,
3 right?

4 MR. WILDER: Well.

5 THE COURT: All right.

6 MR. WILDER: All of them are main motions.

7 MR. MEADORS: But we -- our position is there wasn't
8 anything exculpatory.

9 THE COURT: Okay.

10 MR. MEADORS: In that other fingerprint analysis.

11 THE COURT: All right.

12 MR. WILDER: And just in response to that, Your Honor,
13 any time it says they looked somewhere and it's not
14 identified with Daniel Jackson, my position is it's
15 exculpatory.

16 All right, now, Your Honor, on June 3, 2011, all of
17 that prompted yet another round of disclosures by the
18 state. And I will hand up to the court of another motion
19 asking for a dismissal, and that's when I filed the motion
20 for a continuance, Your Honor, at the last term of court.

21 And this packet of discovery has yet more material
22 that was not given to us previously by the state,
23 disclosed. And I believe at some point along about that
24 time, and Mr. Meadors can correct me if I'm not accurate.
25 But he said, well, I've got my trial notebook. You flip

1 through here, and if you see anything in there you don't
2 have, we'll make you a copy of it. So, I appreciated that
3 and graciously accepted and began flipping pages, and took
4 out pages of things I hadn't received, and he did make me
5 copies of those, Your Honor, and I appreciate that.

6 But to the extent that we didn't have them before here
7 on June 3rd, we filed a motion to preserve and document the
8 fact that they didn't give them to us three years ago. And
9 so all of that came forth. And I appreciate the fact he
10 says he didn't have them in his notebook and whatever that
11 was he was referring to in my original discovery packet.
12 But those things came from Catherine Fant. So, the state
13 had them in their possession at that time. And, of course,
14 I'm not responsible for what Catherine may or may not have
15 given Mr. Meadors.

16 But, nonetheless, this, this round of material came
17 forth. And you will see in there that there is
18 information, statements given by various witnesses and so
19 forth that we believe will help exculpate Mr. Jackson. And
20 they should have given those to us in a timely fashion.

21 Thank you.

22 THE COURT: Mr. Meadors.

23 MR. MEADORS: Judge, I don't have the documents.

24 Can I see that?

25 MR. WILDER: Sure.

1 MR. MEADORS: Just to make sure.

2 (A PAUSE.)

3 MR. MEADORS: Judge, again, the first few pages were
4 autopsies, which they had the autopsy report. Statement of
5 Lashawnda Canty, Esther Sharpe, Henry Parker, Depaul, all
6 of that was referenced in a summary of the case.

7 Judge, everything else here had already been
8 referenced in the summary, the case summary of the
9 officers. And I found here -- I guess when he looked
10 through here, I gave it to him -- oral statements and
11 interviews was just preparation. It may have been from Ms.
12 Fant. I turned those over. Well, they got those. They
13 already had knowledge of the actual statements, but this
14 was just a summary of them.

15 I think they already had the phone calls in here. I
16 think a lot of this stuff, they already have several of
17 this stuff. But they've got the phone calls, I'm almost
18 positive they had.

19 But I -- the main thing I want to get to at the end,
20 that the reference to Marcus Branch, to Charlie Dickens,
21 James Kennedy, Shields, that was all under a different case
22 number, as I referred earlier. It was not even this case.
23 So, I don't know if that's one of those cases they sent
24 over or not. I don't know. But it may have helped --- and
25 I think it does help explain now because if you look at the

1 bottom, it's Deputy J. Griffin. There's no Deputy J. --
2 Jennifer Thomas, this was the incident she responded to on
3 January 8th, Judge, and look at the bottom on this. This
4 murder happened on January 12th. So, clearly it's our
5 position it's not even relevant.

6 THE COURT: Erroneously ---

7 MR. MEADORS: It's not even relevant. It happened
8 before.

9 THE COURT: It happened before.

10 MR. MEADORS: It happened before, but that may -- in
11 trying to assist Mr. Wilder or Mr. Deas in finding out
12 about Marcus Branch, that's how I think his name came into
13 it. He was involved here with Mr. Harry Parker four days
14 earlier. So, they got all that.

15 I wasn't trying to cause more confusion, and I don't
16 know if that's why she didn't turn it over or not. I don't
17 think she had to, but it was in there. I gave it all over.
18 So, Your Honor, we don't think it's relevant. We clearly
19 don't think it's exculpatory. That's all I have.

20 THE COURT: All right.

21 MR. WILDER: Your Honor, it's our position that if the
22 day before or two days before or even a week before, if, if
23 there were a group of young men out there, including a
24 suspect listed, Marcus Branch, who's running around holding
25 up people out there at the O.C. Mobile Home Park who all

1 live there, and that's where the pizza was delivered, and
2 the state knew who those, those young men were involved in
3 that gang out there that was conducting that kind of
4 activity, that that was material and relevant to this case.

5 And so we, we, believe that it not only -- it did help
6 us, Judge. It helped us understand what took place quite,
7 quite nicely. However, they should have given it to us
8 three years ago where we would have been able to find some
9 of these people.

10 MR. MEADORS: And I'll object to those, some of those
11 members who may not be part of a gang. I have no idea if
12 they're a gang. They might have just been out there, in
13 fairness to them.

14 THE COURT: All right, Mr. Wilder.

15 MR. WILDER: All right, right, furthering along, I'll
16 now hand up a packet of material that was given to me
17 Friday afternoon at my retirement party. Your Honor, Mr.
18 Meadors came by the house, and after the courthouse had
19 closed and everybody had gone home for the evening, he
20 handed me a packet of material that contained yet more
21 information that the state has had for -- ever since 2008.
22 And that new information is attached to that motion, Your
23 Honor, in addition to the copies of the pictures.

24 Now, what's not attached to that motion -- but which I
25 filed in a sealed envelope with the Clerk of Court, Your

1 Honor, and I do have a copy of the disk -- there was a C.D.
2 with over a hundred pictures which was in the packet
3 brought to me Friday evening. In the packet -- and then
4 the question was, well, how can I show that some of those
5 pictures weren't given to me before?

6 Well, in Ms. Fant's original discovery packet, there
7 are about forty-four different pictures that are in there.
8 So, what I did was I attached the ones that she gave me to
9 the motion in order to distinguish them from the rest of
10 the 106-some-odd pictures that were not given so I would be
11 able to show which ones I had and which ones I didn't.

12 And so the sealed C.D. is with the Clerk of Court now,
13 but it contains, Your Honor, folders with multiple pictures
14 in there of latent prints which were lifted from the pizza
15 box.

16 Now, Your Honor, I ask you to think about this for a
17 minute. The state has charged my client with armed
18 robbery. They have pizza boxes that they say were stolen
19 by these two gentlemen who are on trial. They have
20 fingerprints on those pizza boxes that they lifted and sent
21 off that are AFIS quality to SLED. They've had those
22 fingerprints and could not identify with either one of our
23 clients for over three years. And they did not disclose it
24 to me until Friday afternoon of last week after the
25 courthouse closed.

1 Your Honor, that's exculpatory information. They know
2 they don't -- those, those fingerprints don't belong to my
3 client. The question is who do they belong to? And those
4 are on the pizza boxes that they say were stolen from Mr.
5 Flexon when he was killed.

6 THE COURT: Mr. Meadors.

7 MR. MEADORS: It's amazing the spin he put on that,
8 Judge. They have had, respectfully, they have had the
9 results of those fingerprints since shortly before when we
10 went out to look at evidence. That's Marie Hodge; that's
11 all that was. So, they had had the final product.

12 We went out to the evidence room, and we all had
13 access to the pizza boxes and the warmers right there.
14 Took them out there. So, that's not new.

15 Judge, all this was Raymond Mackessy. Raymond
16 Mackessy retired. To nobody's fault, just been difficult
17 getting together. I got together. He had kept his disk
18 with his pictures on it.

19 I'll agree. I'll bet we could stipulate to the
20 pictures they had before. I have no problem with that.
21 I'll stipulate to it right now. The ones, they were ones
22 of the body, and lot ■ at the trailer park. The other
23 pictures were just pictures Investigator Bean had taken of
24 where they got the pizza box, of where he tried to get a
25 print. Other pictures throughout which we say ---

1 THE COURT: You intend to put any pictures in that he
2 didn't have?

3 MR. MEADORS: We were going to decide that tonight
4 but, Your Honor, we'll take them up one by one if we need
5 to. I'll try not to.

6 THE COURT: Okay.

7 MR. MEADORS: I'll try not to. But if there is some,
8 I'd like for you to consider it. I think if there are any,
9 they would already be described in detail in the, in the
10 report. But if that's -- I certainly will try not to, but
11 there are some, I'll bring it to your attention. I clearly
12 -- I agree. I think we'll know which ones were given late.

13 That's the bulk of the pictures that Mackessy had. He
14 had the ones, I think, that Investigator Bean had. Just
15 didn't have the ones Mackessy had. I think that's what it
16 was, and there was a detailed report of that.

17 And other than that, again for the record, the
18 fingerprint analysis that Ms. Hodge had completed, and they
19 did have that. So, I mean, they had the results of what
20 he's talking about.

21 MR. WILDER: Your Honor, you, if you look in that
22 packet I just handed you, you'll find a fingerprint
23 analysis done by Ray Mackessy. That's the one we didn't
24 have for three years. The one that says: Fingerprint
25 lifted from pizza box number 1 that is sent off for --

1 suitable for AFIS. That means that there's ridge detail.
2 They can classify it. They know that it belongs -- they
3 have every reason to believe that when they find the person
4 that actually owns that fingerprint, they'll be able to
5 tell you whose fingerprint came off that pizza box. And
6 they sent it to AFIS for that reason. Mackessy, therefore,
7 knows that, that my clients did not put that fingerprint on
8 that box.

9 And, Your Honor, what's kind of twisting around behind
10 this, most of those kids out there are juveniles, or were
11 at the time this took place. And as Your Honor knows,
12 juvenile fingerprints are a little more difficult to get
13 into that system than the adult fingerprints. It may
14 depend on whether or not you know specifically that there's
15 probable cause to try to match the juvenile print with the
16 one on the box. So, if they run it even in AFIS, if there
17 are only adult fingerprints that they, they compare them
18 to, it's not necessarily going to pop out as a match to the
19 one that a juvenile left on the box.

20 And that is why it's so important for us to be able to
21 connect the dots and have our own investigator take that
22 fingerprint off the box. And compare it to specific
23 fingerprints that we know of the suspects in this case so
24 we can show who it was that stole the pizza box.

25 We realize that we just can't fly off, you know,

1 talking about third-party guilt and all that stuff unless
2 we have good reason to do so. And we believe that's good
3 reason to do so. When you got a fingerprint on there that
4 they know belongs to somebody else, and they're trying to
5 wait until Friday before trial to give it to me, that's
6 just not right.

7 THE COURT: Mr. Meadors.

8 MR. MEADORS: Judge, maybe we'll have to clear, clear
9 this up later. The number one I have here belonged to
10 Linda McDuffie.

11 MR. WILDER: That's the one off the phone.

12 MR. MEADORS: Right.

13 MR. WILDER: I'm talking about the pizza box, my
14 friend.

15 MR. MEADORS: I understand, my friend, and I don't
16 see:

17 There were no images from the two cuttings from
18 the pizza boxes of sufficient quality for entry
19 and search on the AFIS system.

20 MR. WILDER: Read Mackessy's report that's attached to
21 the stuff you brought over.

22 MR. MEADORS: Judge, I want to talk to you. I'm not
23 going to talk to him.

24 THE COURT: Yes.

25 MR. MEADORS: So, Judge, maybe ---

1 THE COURT: Direct all your comments to me, Mr.
2 Wilder.

3 MR. WILDER: Yes, sir.

4 MR. MEADORS: Judge, it is what it is, and I don't
5 know if we can do any more to it until Investigator
6 Mackessy gets here. The only fingerprint analysis report I
7 have is from Marie Hodge, which they have. And it does not
8 implicate their clients, so there's nothing exculpatory.

9 THE COURT: All right, Mr. Wilder, what's your next
10 motion?

11 MR. WILDER: Let's see. Your Honor, that was -- we've
12 now come to the end of the motions for dismissal and other
13 extraordinary relief related to Rule 5 and *Brady*. That's
14 all I have to show the court at this time on that. And I,
15 and again I'd ask for extraordinary relief of dismissal for
16 any other relief you think may be -- just like the rule
17 calls for, Your Honor.

18 If, if -- and he's still talking about, well, we're
19 going to have to get into some of these things about the
20 pictures, depending on -- one at a time. But, Your Honor,
21 they just didn't give me that stuff. And, and in all
22 honesty, Your Honor, please look at Raymond Mackessy's
23 report which is attached to that thing because I still
24 don't think that Mr. Meadors is looking at what, what it is
25 that I'm looking at that says ---

1 THE COURT: Well, let's make sure.

2 MR. WILDER: Yes, sir. Yes, sir. Let me show it to
3 him, Your Honor.

4 THE COURT: Don't speculate, Mr. Wilder, he's looking
5 at the same thing.

6 (COUNSELORS CONFER.)

7 MR. MEADORS: Your Honor, he's got the art of
8 cross-examination.

9 THE COURT: He will.

10 MR. MEADORS: They didn't come back to his clients.
11 It had been sitting outside. It could be anybody in the
12 world. You can't check everybody. I mean, that -- so, the
13 fact is they checked. That's what's been amazing to me,
14 Your Honor. They're saying they didn't do this, they
15 didn't do that. They tried.

16 THE COURT: Anything further?

17 MR. WILDER: Just that my point is if they had given
18 me that three years ago, I could have had my own
19 fingerprint examiner look at, look at that thing, and they
20 know it doesn't match my client. My point is it does match
21 somebody, and that, and that's a somebody I want ---

22 THE COURT: And we may never know who that is. Motion
23 denied. All right.

24 MR. WILDER: All right. Your Honor, next motion would
25 be a motion *in limine*.

1 THE COURT: I find that the state has substantially
2 complied with the discovery. It appears that a lot of this
3 stuff was already given to you, and they were just given
4 again. So, motion is denied.

5 MR. WILDER: Thank you, Your Honor. Your Honor, the
6 next motion would be a motion *in limine* to suppress any
7 statement my client may have given to law enforcement.

8 THE COURT: All right, then we would need a *Jackson*
9 *vs. Denno* issue hearing?

10 MR. WILDER: Yes.

11 MR. MEADORS: We're prepared for that.

12 THE COURT: All right.

13 MR. MEADORS: Just give in me one second. Dominick
14 West.

15 DOMINICK WEST, BEING DULY SWORN,
16 TESTIFIES AS FOLLOWS:

17 CLERK OF COURT: Please state your full name. Spell
18 your last name for the record.

19 WITNESS: Dominick West, W-E-S-T.

20 DIRECT EXAMINATION BY MR. MEADORS:

21 Q. Thank you for being here, Mr. West.

22 A. No problem.

23 Q. Very briefly, where are you working now?

24 A. Department of Mental Health, Public Safety Division.

25 Q. And back in January of '08, you were with the Sumter

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1 County, Sumter Sheriff's Department, correct?

2 A. Yes, I was.

3 Q. And your capacity then was investigator?

4 A. Yes, I was.

5 Q. Investigator, if you'll listen to me closely now. I'm
6 just going to ask you questions now pertaining to the
7 opportunity you had to talk to the defendant Deangelo
8 Jackson. Do you understand that? That's what this hearing
9 is limited to.

10 A. Yes, sir.

11 Q. Okay, and did you have occasion to speak with one
12 Deangelo Daniel Jackson on January 16th of '08?

13 A. Yes, sir.

14 Q. Okay, and for what purpose were you seeing Mr. Jackson
15 in?

16 A. That was the night he was arrested.

17 Q. And did -- was he served with an arrest warrant?

18 A. Yes, sir.

19 Q. All right, and that was an arrest warrant for what?

20 A. Murder and armed robbery.

21 MR. MEADORS: Beg the court's indulgence.

22 (A PAUSE.)

23 (MIRANDA WARNING FORM-JACKSON MARKED AS STATE'S
24 EXHIBIT NUMBER 1 FOR IDENTIFICATION.)

25 COURT REPORTER: State's 1 for I.D.

1 BY MR. MEADORS:

2 Q. I'm going to show you what's marked State's 1 for I.D.
3 Mr. West, can you tell me. Do you recognize that?

4 A. Yes, sir. It's a form, Miranda rights form from
5 Sumter County Sheriff Office.

6 Q. Is this the standard form y'all use?

7 A. Yes, sir.

8 Q. And where were you specifically on January 16th? I
9 think it says 9:02 p.m. Where were you when you had the
10 opportunity to speak with Deangelo Jackson?

11 A. Back in the interview room in investigations.

12 Q. And did you read him his Miranda warnings?

13 A. Yes, I did.

14 Q. Can you tell the judge how you did that? What's your
15 procedure and what, in fact, did you do on January 16th?

16 A. Before, we have to advise a suspect before we question
17 them in reference to an incident. We have a Miranda form
18 that's printed off at the Sumter County Sheriff Office with
19 the sheriff logo and his name on it. It reads at the top:
20 Miranda Warning Waiver of Rights.

21 Q. And did you read Deangelo Daniel Jackson his rights?

22 A. Yes, sir.

23 Q. Would you, would you do it like you did that night for
24 the judge?

25 A. Okay. It has 1, 2, 3, 4, 5 on the -- number 1 is: You

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1 have the right to remain silent. It has a line at the end
2 of it where we ask the individual to put his initials at if
3 he understood that.

4 Q. And did he sign?

5 A. He put his initials there.

6 Q. Initials, I'm sorry, and did you put your initials?

7 A. Yes, sir. I put my initials right beside the number.

8 Q. And why did you do that?

9 A. Just to have the understanding that he understood what
10 I was reading to him.

11 Q. And as far as that, did he appear to you to understand
12 it?

13 A. Yes, sir.

14 Q. Did he say he did?

15 A. Yes, sir.

16 Q. Did he put his initials that he did?

17 A. Yes, sir, he did.

18 Q. Okay. What did you do next?

19 A. I went to number 2, and it says: Anything you say can
20 and will be used against you in a court of law. Again, it
21 has a line next to the ending of it. He put his initials
22 there, and I put my initials at the beginning.

23 Q. And next, please, sir.

24 A. Number 3, it says: You have the right to talk to an
25 attorney and have him or her present while you are being

1 questioned. Again, it has a line at the end. He put his
2 officials there, and I put my initials at the beginning.

3 Number 4 says: If you cannot afford to hire an
4 attorney, one will be appointed to represent you before any
5 questioning, if you wish. He -- again a line is at the
6 end. He put his initials there, my initials at the
7 beginning.

8 Number 5, it says: You can decide at any time to
9 exercise these rights and not answer any questions or make
10 any statements. Again it has a line. He put his initials,
11 and I put my initials.

12 Q. So, any time during 1 through 5, did you have trouble
13 understanding him?

14 A. No, sir.

15 Q. Did he appear to have trouble understanding you based
16 on his responses?

17 A. No, sir.

18 Q. Were his responses appropriate?

19 A. Yes, sir. It was.

20 Q. And underneath there, what's the next line?

21 A. Under there it says:

22 I understand each of the above rights which have
23 been read and explained by Investigator D. West,
24 myself, of the Sumter County Sheriff Office at
25 107 East Hampton at 9:02 p.m.

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1 Q. And East Hampton is the Law Enforcement Center?

2 A. Yes, sir, the Law Enforcement Center.

3 Q. And underneath there, who has signed?

4 A. First line it has Daniel Jackson's signature and my,
5 my signature on the witnessed by.

6 Q. And did you force him to sign that?

7 A. No, sir. I did not.

8 Q. At any time during the waiver of those rights, did he,
9 did he appear to be under the influence of any alcohol,
10 drugs, or any other foreign substance?

11 A. No, sir. He did not.

12 Q. Did you threaten or coerce him?

13 A. No, sir. I did not.

14 Q. Hold any hope of a reward?

15 A. No, sir.

16 Q. Underneath that, it's called a Waiver of Rights.

17 Would you please read that as you read it to -- read it to
18 His Honor as you read it to Daniel Jackson?

19 A. Yes. Yes, sir. Like you said, it's -- under there
20 is, has Waiver of Rights:

21 Having been advised you right -- having been
22 advised my rights, I fully understand my rights.
23 I do not wish to answer questions at this time,
24 and I do not wish to have a -- have an attorney
25 present. My decision to answer questions now

1 without an attorney is made freely and is on --
2 my own choice. No one has threatened me in any
3 way or promised me anything.

4 Again, it has three lines. Daniel Jackson signed one,
5 I signed one, date and time.

6 Q. And again, did you force him to sign that?

7 A. I did not.

8 Q. Did he under -- appear to you to understand the Waiver
9 of Rights as you read them to him?

10 A. Yes, he did.

11 Q. Did he tell you I understand?

12 A. Yes.

13 Q. And the time there is 9:03 on 1/16/08?

14 A. Yes, sir.

15 Q. Now, for these purposes it's admissible, but had he
16 been in trouble before, either in juvenile or did -- had he
17 had contact with law enforcement? Do you know?

18 A. I never been in contact with him.

19 Q. But he appeared to understand his rights?

20 A. Yes, sir.

21 Q. His Waiver of Rights? Now, that's at 9:03. Was there
22 anybody else present?

23 A. It was Sergeant Burnish.

24 Q. Okay. Can you tell the judge what, if anything,

25 Defendant Daniel Deangelo Jackson told you and/or Sergeant

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1 Burnish?

2 A. After being advised of the Miranda warning rights,
3 rights form, we present -- we told him what we had him in
4 here for, what he was being arrested for. We served his
5 warrants on him, his two warrants on him. In the process,
6 he stated how can I be charged with armed robbery when I
7 didn't stole anything from the pizza man.

8 Q. How can I be charged with armed robbery when I didn't
9 steal anything from the pizza man?

10 A. Yes, sir.

11 Q. And did you hear those words?

12 A. Yes, sir.

13 Q. Any doubt in your mind those were the words he said?

14 A. No doubt.

15 Q. Now, did he say anything else about whether or not he
16 knew y'all had been to his aunt's house?

17 A. Yes. Once we asked -- went down to Summerton where
18 his aunt stayed at, into the apartment complex. Once we
19 got there, he was nowhere to be found, but when -- during
20 questioning, he said that he saw us coming, and he took off
21 running.

22 Q. So, when you're at your aunt's house -- his aunt's
23 house in Summerton, he said he saw y'all coming, and he
24 took off running?

25 A. Uh-huh. Yes, sir. Sorry about that.

1 Q. And then how could y'all charge him with armed robbery
2 if he didn't take any money from the pizza man, or if he
3 didn't steal any money from the pizza man?

4 A. Yes, sir.

5 Q. Any other -- did he tell you anything else?

6 A. No, sir.

7 Q. And at 9:25, did he request his attorney?

8 A. Interview was ended at 9:25 because he said he wanted
9 an attorney.

10 MR. MEADORS: Beg the court's indulgence.

11 (A PAUSE.)

12 Q. Did you have an occasion to talk to him again or try
13 to talk to him again?

14 A. The -- my next contact with Mr. Jackson was possibly
15 when I was trying to get the oral swabs for DNA comparison.

16 MR. MEADORS: Beg the court's indulgence.

17 THE COURT: Yes.

18 (MIRANDA WARNING FORM-JACKSON MARKED AS STATE'S
19 EXHIBIT NUMBER 2 FOR IDENTIFICATION.)

20 COURT REPORTER: State's 2 for I.D..

21 BY MR. MEADORS:

22 Q. I'm showing you what's State's 2. Is that your
23 handwriting?

24 A. Yes, it is.

25 Q. And did -- do you remember if the defendant said

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1 anything to you then?

2 A. No, sir.

3 Q. And you think that was when you went to get the oral
4 swab?

5 A. Yes, sir.

6 Q. Is the person who told you that he fled from his
7 aunt's house when y'all, when you and your other law
8 enforcement, or when law enforcement went to his aunt's
9 house, and the person who told you how could he be charged
10 with armed robbery when I didn't take anything from the
11 pizza man, is that person in the courtroom?

12 A. Yes, sir.

13 Q. Please point him out.

14 A. The defendant, Mr. Jackson. Mr. Wilder's defendant.

15 MR. MEADORS: Sitting next to Mr. Wilder. We'd ask
16 the record so reflect.

17 That's all we have. Thank you.

18 THE COURT: The record shall so reflect.

19 All right, Mr. Wilder.

20 CROSS-EXAMINATION BY MR. WILDER:

21 Q. Mr. West, did you write down in your notes what
22 happened?

23 A. What you mean write down?

24 Q. Did you write down in your notes what happened when
25 you advised Mr. Jackson of his rights?

1 A. It wasn't a note to really take, but besides he --
2 what he state.

3 Q. Did you write that down?

4 A. I do not remember. If I, if I wrote it down, I would
5 have retyped something. I retype it and put it into the
6 case file.

7 Q. Did you find a report where your filled it out that
8 you wrote down what was said?

9 A. No. Not in the case file.

10 Q. And you don't, don't remember writing any notes about
11 it?

12 A. No, sir. I did not write anything to put in the case
13 file.

14 Q. So, you didn't, you didn't make any record of the
15 fact, what was said to you at all, did you?

16 A. I remember what was said to me.

17 Q. Did you make a record of it? Did you put it in
18 writing?

19 A. I didn't have to put it in writing. I remembered it.

20 Q. Is the answer no, you didn't?

21 A. I didn't put it in writing.

22 Q. All right. Thank you. Did you make a tape recording
23 of it?

24 A. I didn't put it in writing or make a tape recording.

25 Q. Was there a tape recording made of your interview with

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1 Mr. Jackson?

2 A. No, sir.

3 Q. Now, on State's Exhibit 1 and 2, on both of these it
4 said: Daniel Jackson requested his attorney.

5 A. Yes, sir.

6 Q. And on the other one, it says: Daniel wants to have
7 attorney present. You remember those?

8 A. Yes, sir.

9 Q. You remember writing those on both of them?

10 A. I wrote it on one.

11 Q. Did somebody else write it on the other?

12 A. That was Sergeant Burnish handwriting on the other
13 one.

14 Q. But it is written on both of them?

15 A. It is.

16 Q. Is it possible he was yet advised of his rights again
17 and asked for an attorney some other time?

18 A. I believe this one is from when I went to go get a
19 buccal swab, his DNA, and this is the night of the incident
20 -- the night of him being arrested.

21 Q. All right. So, there is a notation that he asked for
22 a lawyer, but there aren't, there aren't any notes as to
23 him saying anything, right?

24 A. He asked for a lawyer at 9:25.

25 Q. So, the only ---

1 A. P.M.

2 Q. So, the only notes that you made were the fact that he
3 asked for a lawyer?

4 A. That's the note that Sergeant Burnish made.

5 Q. Well, one of them, you wrote that he wanted a lawyer.

6 A. That was at a later date.

7 Q. A later date?

8 A. Yes, sir.

9 Q. Now, in terms of the statement about I was at my
10 aunt's house when I ran, or something like that, that was
11 when he first turned himself in at the Law Enforcement
12 Center, wasn't it?

13 A. That was one of the interviews.

14 Q. Was it when he first turned himself in?

15 A. That was after he was Mirandized and given his
16 warrants and everything.

17 Q. Oh, so the statement about how I could I be charged
18 with armed robbery, that was when he was being given an
19 armed robbery warrant?

20 A. That was after everything was given to him. After he
21 was given his Miranda form, he signed it, initialed it,
22 given his warrants, and he made the statement how can I be
23 charged with armed robbery when I ain't stole anything.

24 Q. So, you're saying that he had already been served with
25 his warrants before he made a statement? Is that right?

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1 A. That's what I'm saying.

2 Q. And, therefore, that the note was put on there that he
3 wanted a lawyer at the time those forms were filled out,
4 right?

5 A. No. The form was filled out at 9:02 p.m. The time he
6 requested a lawyer was at 9:25 p.m. So, was later,
7 twenty-three minutes later.

8 Q. What time did you serve him with the warrants?

9 A. Right after we read him the Miranda form and he signed
10 the Waiver of Rights form.

11 Q. So, the warrants were served on him before you
12 interviewed him? Is that the way you usually do it?

13 A. It's different ways of interviewing somebody.

14 Q. Well, that particular time, did you serve the warrants
15 on him first and then interview him?

16 A. He already know what he was being arrested for. So,
17 we, we served the warrants on him for it.

18 Q. So, you had the warrants and you ---

19 A. And if he had -- if he wanted a opportunity to talk to
20 us, he could talk to us about the incident.

21 Q. So, you had the warrants in your pocket while you were
22 interviewing him? Is that right?

23 A. No. I don't carry warrants to my pocket. They was on
24 the table.

25 Q. You hadn't served it on him, though?

1 A. After he was read his Miranda form and Waiver of
2 Rights.

3 Q. Who brought him to the Law Enforcement Center?

4 A. I couldn't tell you that.

5 Q. Was he free to leave?

6 A. No. We had arrest warrants on him; that's the reason
7 why he was brought to the Law Enforcement Center.

8 Q. Well, he asked his aunt to bring him there, didn't he?

9 A. That's your, that's your client. You have to ask him.

10 Q. Had you seen him earlier that day?

11 A. I never met him.

12 Q. Okay. So, then in an interview room is the first
13 opportunity you had to talk to him. Is that what you're
14 saying?

15 A. That's my first, first time.

16 Q. So, you don't know if he had anything to drink earlier
17 that day, right?

18 A. He didn't smell like alcohol; he didn't smell like he
19 was drinking. He didn't -- his words wasn't staggering,
20 slurred, or...

21 Q. When a man asks for a lawyer, you're just supposed to
22 stop talking to him and leave him alone, aren't you?

23 A. At 9:25, he was. The interview was ended.

24 Q. And would that be why you went out to him later to
25 talk to him yet again, even though he'd already asked for a

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1 lawyer?

2 A. No. I went out to go get a swab, DNA swab, and he did
3 denied, he denied me from getting a swab. So, I got a
4 search warrant for his DNA.

5 Q. But you read him his rights again and tried to get him
6 to give a statement, right?

7 A. No.

8 Q. Well, why in the world did he fill out this second
9 form?

10 A. Like I said. I was going to get the DNA swab.

11 Q. He must have said something in order for you to make
12 the note that he asked for a lawyer again, didn't he?

13 A. He told me I couldn't get his DNA swab. So, I went to
14 go get a search warrant.

15 Q. Didn't he ask for a lawyer?

16 A. Yes. I put that on there he wants an attorney, but I
17 got -- I went to go get a search warrant. I got the
18 statement before.

19 Q. But you didn't see fit to get him a lawyer, did you?

20 A. What day that was?

21 MR. MEADORS: Your Honor, objection to that. I don't
22 know if that's his ---

23 THE COURT: Sustained. It's not his responsibility to
24 give him a lawyer.

25 BY MR. WILDER:

- 1 Q. He didn't have one, did he?
- 2 A. Not at that date. He didn't say if he had a lawyer or
3 not.
- 4 Q. But every time you talked to him, he asked for a
5 lawyer at some point?
- 6 A. That was just twice, so.
- 7 Q. Twice. Did you talk to him some other time?
- 8 A. No. After he told me I couldn't get the DNA swab, I
9 went to go get a search warrant.
- 10 Q. And then you did get a DNA swab?
- 11 A. Yes, sir.
- 12 MR. WILDER: All right, no other questions.
- 13 THE COURT: Mr. Deas.
- 14 MR. DEAS: No questions.
- 15 MR. MEADORS: Very briefly.
- 16 REDIRECT EXAMINATION BY MR. MEADORS:
- 17 Q. So, this was a short -- the first time you met with
18 him and you served the warrant, this wasn't a long,
19 extended period of questioning, was it?
- 20 A. The first time?
- 21 Q. Yes.
- 22 A. First time was the questioning. That was the 16th.
- 23 Q. So, this 9:02 to 9 -- 9:03 to 9:25, that was the
24 extent of it, right?
- 25 A. Yes.

R. BURNISH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. All right, and I think you testified to it, but you
2 didn't threaten him, correct?

3 A. No, sir.

4 Q. Now, on this second, did he sign this?

5 A. Yes, he did.

6 Q. And you signed it, and I say the second. Court's 2 --
7 State's 2 for I.D., I apologize, and your testimony is you
8 think you went out there to get an oral swab?

9 A. Yes, sir.

10 Q. And do you remember exactly why you read him his
11 rights again?

12 A. I guess, you know, just ---

13 Q. If you don't, it's okay.

14 A. --- thinking about procedure, I guess.

15 Q. You don't remember why you read them again?

16 A. No, sir.

17 Q. Could he have said I want to talk to you again, and
18 you read him his rights again?

19 A. I doubt it.

20 Q. Okay. Did you put down he said anything?

21 A. No.

22 Q. You're not offering the court anything that he said?

23 A. Uh-huh. No, sir.

24 MR. MEADORS: Thank you. That's all.

25 THE COURT: All right. Thank you.

1 You may step down.

2 (THE WITNESS EXITS THE STAND.)

3 MR. MEADORS: Robert Burnish.

4 ROBERT BURNISH, BEING DULY SWORN,
5 TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: State your full name. Spell your
7 last name for the record.

8 WITNESS: Robert Boyd Burnish, B-U-R-N-I-S-H.

9 DIRECT EXAMINATION BY MR. MEADORS:

10 Q. Investigator, were you the chief investigator in this
11 case?

12 A. Yes, sir.

13 Q. And did you have an occasion to talk to Defendant
14 Daniel Jackson on January 16th of '08?

15 A. Yes, sir. I did.

16 Q. And can you tell the judge how that came about?

17 A. Yes, sir. He was, he was brought to the Law
18 Enforcement Center by a relative -- I don't recall which
19 relative that was -- after a search that was conducted by
20 myself and Investigator West and several other officers
21 with Clarendon County Sheriff's Office in the town of
22 Summerton. We were attempting to execute warrants in
23 reference to this case for robbery and murder.

24 Q. And specifically where were you?

25 A. At the time of this?

R. BURNISH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. Yes.

2 A. We were at the Law Enforcement Center. We are at 107
3 East Hampton.

4 Q. And where in there?

5 A. In the interview room at the Investigation Division.

6 Q. Is that a large room?

7 A. It's a fairly decent size room, but I wouldn't say a
8 large room.

9 Q. And were you present when he was read his rights?

10 A. Yes, sir. I was.

11 Q. And did you hear Investigator West at the time read
12 him his rights?

13 A. Yes, sir.

14 Q. And did you hear or see Defendant Jackson waive his
15 rights?

16 A. Yes, sir.

17 Q. Did you see him write his initials?

18 A. Yes, sir.

19 Q. You've been in law enforcement how long?

20 A. Nineteen years.

21 Q. Did it appear to you, based on your training and
22 experience and watching and observing and listening to West
23 and Jackson, that Mr. Jackson understood his rights?

24 A. Yes, sir.

25 Q. And did he give responses in a timely manner, or when

1 he was being told about a right, did he respond? Did he
2 have to wait and think, or did -- was it timely?

3 A. Yes, sir. It was.

4 Q. And was it appropriate in context? I mean, it seemed
5 to make sense?

6 A. Yes, sir.

7 Q. The question being did he appear to you to know what
8 was going on?

9 A. Yes, sir.

10 Q. Did he appear to you to be under the influence of
11 alcohol, drugs?

12 A. No, sir.

13 Q. Did, did you, Investigator Robert Burnish, threaten
14 him?

15 A. No, sir.

16 Q. Coerce him?

17 A. No, sir.

18 Q. Hold out any hope of reward?

19 A. No, sir.

20 Q. Was he handcuffed?

21 A. Not at the time of this. He wasn't handcuffed until
22 after he was placed under arrest.

23 Q. And was he offered any food or refreshment, or if not,
24 if he had asked, would you have offered that to him or
25 given it to him?

R. BURNISH - DIRECT EXAMINATION BY MR. MEADORS

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1 A. I don't think he was offered, but had he asked, he
2 would had been given.

3 Q. Same, same include restroom privileges? If somebody
4 needed to use the bathroom, would ---

5 A. Yes, sir.

6 Q. --- y'all let them go?

7 A. Yes, sir.

8 Q. And were you also present when he signed his name?

9 A. Yes, sir.

10 Q. And were you also present at the Waiver of Rights?

11 A. Yes, sir.

12 Q. When it was read and when Mr. Jackson and Mr. West
13 signed it?

14 A. Yes, sir.

15 Q. All during this process, process, did it appear to you
16 that Daniel Jackson understood his rights?

17 A. Yes, sir.

18 Q. Could you actually hear him say I understood,
19 Investigator?

20 A. Yes, sir.

21 Q. What, if anything, after the Waiver of Rights had been
22 read and signed did you hear Defendant Jackson say?

23 A. He stated that he was at his aunt's apartment in
24 Summerton when he saw law enforcement officers coming

25 there. He ran out the door and, and ran off. And it was a

1 little while later he asked the question about how could he
2 be charged with armed robbery if he didn't take anything
3 away from the pizza man.

4 Q. And did you hear those words?

5 A. Yes, sir. I was present when he said that.

6 Q. And, and, and the reason for being there then was the
7 serving of the murder and armed robbery, right?

8 A. That's right.

9 Q. And his question was in -- or was it in direct
10 response to the armed robbery?

11 A. Yes, sir.

12 Q. Why can I, how can I be charged with armed robbery if
13 I didn't take anything from him?

14 A. That's right.

15 Q. Do you know anything about Court's 2?

16 A. I wasn't present for that one.

17 Q. And on Court's 1 again, whose handwriting is this in:
18 Daniel Jackson requested an attorney?

19 A. That's my handwriting.

20 Q. That's your handwriting?

21 A. Yes, sir.

22 Q. All right, and when he requested an attorney, how many
23 more questions did you ask him?

24 A. None. The interview was over at that time.

25 Q. And is Daniel Jackson in the courtroom and if so,

R. BURNISH - CROSS-EXAMINATION BY MR. WILDER

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1 would you point him out?

2 A. Yes, sir. He's sitting over there by Mr. Wilder.

3 MR. MEADORS: Thank you, Judge. That's all.

4 THE COURT: Mr. Wilder.

5 CROSS-EXAMINATION BY MR. WILDER:

6 Q. Mr. Burnish, was that interview recorded?

7 A. No, sir.

8 Q. And where in your notes did you write down what was
9 said?

10 A. I didn't take any notes, sir.

11 Q. So, if you didn't take any notes and Mr. West didn't
12 take any notes, I guess there were no notes taken of that?

13 A. No, sir.

14 Q. Y'all are the only two people in the room besides Mr.
15 Jackson?

16 A. Yes, sir.

17 Q. No video camera?

18 A. No video camera, no, sir.

19 Q. Okay. Now, you must have at some point mentioned to
20 Catherine Fant that a statement was made. Do you recall
21 doing that?

22 A. I talked to her numerous times about this case; I
23 couldn't tell you when or what dates.

24 Q. Okay, but you probably told her that a statement was
25 made by somebody, a statement was made by Mr. Jackson to

1 somebody?

2 A. Regarding?

3 Q. What you just testified to.

4 A. About the -- his question to me?

5 Q. Yes, sir.

6 A. Yes, sir.

7 Q. Probably?

8 A. I'm sure I, I'm sure I told her, yes, sir.

9 Q. Sure he, sure he did that. Okay. Now, and you would
10 have told her the date and time it took place, wouldn't
11 you?

12 A. I'm sure I would have the date it took place, yes.

13 Q. And that it was made to you?

14 A. It was made to both of us in general. It was a
15 general statement.

16 Q. To you and to Mr. West?

17 A. Right.

18 Q. You would have told that to Ms. Fant?

19 A. That's right.

20 Q. Okay. All right, now, and then at some point, you
21 became aware that she was going to have to respond to a
22 discovery request to let me know what statements, if any,
23 were made by my client, right?

24 A. Yes, sir.

25 Q. Okay. All right, and no notation was made by either

R. BURNISH - CROSS-EXAMINATION BY MR. WILDER

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1 one of you?

2 A. No, sir.

3 Q. Do you mean that you can sit on the stand and tell the
4 judge exactly what my client said?

5 A. Yes, sir. The statement that he said to us both
6 caught us off guard. It's not a usual statement that's
7 been made. So, that's how I remember that statement.

8 Q. All right. Repeat to the judge exactly what he said.

9 A. I can't repeat exactly.

10 Q. Sir?

11 A. I cannot repeat verbatim what he said.

12 Q. Well, I just asked you could you do it.

13 A. I cannot repeat verbatim what he said.

14 Q. Was your memory better about it three years ago or
15 now?

16 A. I'm sure it was better about it three years ago when
17 he made the statement.

18 Q. So, to be accurate about it, it would have been
19 helpful if somebody had written it down, wouldn't it?

20 A. That's possible, yes, sir.

21 Q. You do agree that he did ask for a lawyer almost
22 immediately?

23 A. Not almost immediately. It was, I want to say,
24 twenty-some-odd minutes after Miranda was given to him
25 before he asked for an attorney.

1 Q. 9:25 interview ended. Daniel Jackson requested his
2 attorney.

3 A. That's correct. That's when he requested his
4 attorney, and all interview ceased.

5 MR. WILDER: Thank you.

6 THE COURT: Mr. Meadors.

7 REDIRECT EXAMINATION BY MR. MEADORS:

8 Q. He asked you about Ms. Fant. You obviously told Ms.
9 Fant around August of 2008, didn't you? Or do you remember
10 at some point telling her the substance of this statement?

11 A. I remember at some point telling her the substance. I
12 don't remember the date.

13 Q. And I don't know if you know or not, but that's when
14 she gave the sum and substance to Mr. Wilder?

15 A. I don't know that.

16 Q. You're not making this up, are you?

17 A. No, sir.

18 Q. I mean, you heard it with your own ears?

19 A. Yes, sir.

20 MR. MEADORS: Thank you.

21 MR. WILDER: No other questions for the witness.

22 THE COURT: Excuse me?

23 MR. WILDER: No other questions for the witness.

24 THE COURT: Okay. Thank you.

25 All right, you may step down.

1 (THE WITNESS EXITS THE STAND.)

2 MR. MEADORS: Judge, that's all we have.

3 MR. WILDER: Your Honor, if it please the court? In
4 addition to my motion to suppress, now we know what they
5 say they heard and what they say was said.

6 But on both of these two exhibits, the defendant asked
7 to have his attorney at some point in the interview, both
8 of them, and we know they went back even after the first
9 time he asked for a lawyer. They went back and confronted
10 him again, still having gotten him no lawyer.

11 Your Honor, on May 13, 2011, I filed a supplemental
12 *Brady* request, which I would hand up to the court. And let
13 me make sure I got that paragraph number correct.
14 Paragraph 7 is what I now am going to refer to.

15 When it became apparent, Your Honor, that the state
16 had not given me many things that we felt they should have
17 early on in the case, I filed that supplemental *Brady*
18 request and, and Rule 5 request. Under Rule 5, the state
19 is obligated to give me a copy of any statement that the
20 defendant may have made. And we submit that the disclosure
21 that Ms. Fant made is not sufficient under Rule 5,
22 especially with me having asked her to tell me exactly what
23 it was my client said, and who and where it was made to.

24 Your Honor, what that enables them to do, and you will
25 note that the testimony now reveals that nobody made any

1 notation of this, no recording, no, no memorialization of
2 this alleged statement. What we've got is we've got every
3 place that's written my client asked for a lawyer, okay?
4 But any place that's not written, they want to come up and
5 say what it is they think they remember he was -- him
6 saying, which I submit it defies human imagination to think
7 they can remember exactly what was said by a man. All
8 right, but I ---

9 THE COURT: Mr. Wilder, it wasn't a difficult
10 statement. It was a question submitted by your client to
11 them, in essence. You know, how can you charge me with
12 this. I mean, it's not a detailed statement that's real
13 difficult to remember.

14 MR. WILDER: Which it should be easy for them to say
15 who it was the statement was made to, and that's what I
16 asked for in the disclosures.

17 THE COURT: Well, you just had two people testify to
18 that.

19 MR. WILDER: But it wasn't given to me ten days before
20 trial, nor was it given me back in 2008 when I could have
21 researched the matter and asked my client to disclose the
22 specifics so that we could be prepared to refute it.

23 And so by delaying three years until this, this
24 afternoon when they got on the stand, Your Honor -- the
25 point is they didn't tell me it was made to Dominick West.

1 They didn't tell me it was made to Burnish. They didn't
2 tell me it was made at the Law Enforcement Center between
3 9:03 and 9:25. And the point, the point is I can't ---

4 THE COURT: You mean you're telling me you didn't have
5 this until today?

6 MR. WILDER: Oh, I have that, which says ---

7 THE COURT: Then this is all you need.

8 MR. WILDER: It says he asked for a lawyer. It
9 doesn't say what he allegedly said, Your Honor.

10 THE COURT: The note attached to it says what he said.

11 MR. WILDER: Not to who, and the point is, Judge, I
12 believe under Rule 5 they should have to tell me to whom
13 and to where the statement was allegedly made.

14 Your Honor, the point is they, they can invent
15 anything he said at any point in time.

16 THE COURT: That, that is true. They could do.

17 MR. WILDER: That's true.

18 THE COURT: And that would be for the jury to
19 determine as to whether they are committing perjury when
20 they do that. But they have given the Miranda warning.
21 You've got your client's initials next to it. He waives
22 his rights at 9:03. Then he makes one statement, and then
23 apparently he comes along and then he invokes it, which it
24 appears they stopped the questioning at that point.

25 I guess I'm not seeing where you're going with this,

1 Mr. Wilder.

2 MR. WILDER: Your Honor, with due respect, where I'm
3 going is I believe they have to tell me who the statement
4 was made to, and they don't do that. They do not do that
5 in the disclosures. And had they done that, I'd have been
6 able to gather the information to refute it at this
7 hearing. And so it's a Rule 5 violation, Your Honor, is
8 what I'm arguing.

9 THE COURT: Okay.

10 MR. WILDER: It -- and, and if the court allows them
11 to do this kind of stuff, then what we'll wind up with is
12 they'll never record a statement that the guy makes,
13 they'll never memorialize it in their notes, they'll never
14 video tape, and they'll always be wishy-washy on what they
15 do from the defense because the defendant ---

16 THE COURT: Well, let me ask you this, Mr. Wilder.
17 Who else would they have talking to? You got Dominick West
18 signing it here.

19 MR. WILDER: But I don't know that that's when the
20 statement was allegedly made. It could have been made at
21 his aunt's house. It could have been made at the Law
22 Enforcement Center. The week, week later, whenever they
23 went back out there, could have been made when they
24 approached him about the swab. They wouldn't tell me, and
25 that's the point I make in the supplemental Brady motion,

1 Your Honor.

2 THE COURT: All right.

3 MR. WILDER: And I appreciate that.

4 THE COURT: Yes, sir.

5 MR. WILDER: And I move to suppress it. Thank you.

6 THE COURT: All right, motion to suppress, you have
7 any other witnesses?

8 MR. MEADORS: I just wanted -- the first line which he
9 had in August of 2008 says: Following service of warrants
10 for armed robbery and Miranda. Judge, that's back in 2008
11 he knew the substance of this statement when Jackson also
12 asked the investigators several time how he could be
13 charged. Well, that was Burnish and West, Judge. And he's
14 had that information since 2008. I just wanted that to be
15 put on the record.

16 THE COURT: All right, I find that the statement, that
17 the defendant was given his Miranda warnings. He initialed
18 each one. He apparently waived for just a few minutes, or
19 a few minutes made a statement that was memorialized. Said
20 when law enforcement came to the house, and then said saw
21 the officers and ran out to the field and that he didn't
22 take the money. I find that he made the statement freely
23 and voluntarily, and I am denying your motion. Thank you.

24 Next motion.

25 MR. WILDER: Your Honor, I would request that the

1 court make a specific finding based on the report that was
2 handed up. I believe there's a code section once a
3 defendant does have a mental evaluation, requires a court
4 to make a finding as to competence.

5 THE COURT: All right.

6 MR. WILDER: I would agree that Mr. Meadors ---

7 THE COURT: Have I received it?

8 MR. WILDER: --- can put the report in. That he
9 doesn't need to have the doctor over here, but, but I do
10 think the court does need to make that finding before the
11 court -- the trial goes forward.

12 MR. MEADORS: Mr. Wilder and I had discussed that
13 previously, and I don't -- I think they're sitting with
14 that report.

15 THE COURT: All right.

16 MR. MEADORS: There's no dispute with the report, and
17 we'd ask that report be made a court's exhibit, which it
18 is, and the findings be made such.

19 (A PAUSE.)

20 THE COURT: All right, I'm reviewing the report dated
21 January 27, 2011, and March 24, 2011. Apparently it was
22 submitted on March 31, 2011. The conclusion, amongst other
23 things, is that he knew who his attorney was. He
24 understood the charges against him and, therefore, in the
25 opinion of the South Carolina Department of Mental Health,

1 that he is currently competent to stand trial. The court
2 makes so finding.

3 MR. MEADORS: Thank you.

4 THE COURT: All right. Thank you. Anything further?

5 MR. DEAS: Your Honor, we do have some motion to
6 suppress as to Reginald Canty.

7 THE COURT: All right.

8 MR. DEAS: Before we get into that, Your Honor, just
9 regards to the prior motion that was made by Mr. Wilder as
10 to the -- his motion to dismiss and other extraordinary
11 relief based on the prior written motion that he handed up
12 to the court, I want to make Mr. Canty's, Canty's discovery
13 that I received from Ms. Fant back on August 21, 2008, a
14 court exhibit.

15 Like with Mr. Jackson, although on Friday I received
16 the information relating to the latent prints that were
17 lifted from the pizza box, that is not information we had
18 in prior discovery that was given to us by Ms. Fant. And I
19 understand that you've already ruled on that motion as to
20 Mr. Jackson. And I assume your ruling ---

21 THE COURT: And I would make the same ruling.

22 MR. DEAS: --- would be the same as to Mr. Canty.

23 THE COURT: Mr. Canty.

24 MR. DEAS: Just wanted to clarify that for the record.

25 With regards to Mr. Canty, Your Honor, and I probably

1 need to forewarn you of this. He gave five different
2 statements, some of which I believe were given to
3 Investigator West, some of which were given to Sergeant
4 Burnish. So, we're going to probably have to have a
5 *Jackson vs. Denno* issue hearing with both Burnish and Mr.
6 West. But instead of just one statement, we're going to be
7 dealing with, like, five statements.

8 THE COURT: All right. Very well.

9 Y'all ready to proceed?

10 MR. MEADORS: Investigator West.

11 (PACKET OF DISCOVERY MATERIALS FOR CANTY MARKED INTO
12 EVIDENCE AS COURT'S EXHIBIT NUMBER 4.)

13 (DOMINICK WEST RESUMES THE WITNESS STAND.)

14 CLERK OF COURT: You're still under oath.

15 MR. DEAS: Your Honor, I tabbed the statements in
16 purple there.

17 THE COURT: All right. You're still under oath.

18 WITNESS: Yes, sir.

19 MR. DEAS: And, Your Honor, that motion, my motion in
20 *limine* to suppress is in writing. I filed it with the
21 court back on June the 2, 2011. If you do not have a copy,
22 I've got a copy.

23 THE COURT: All right.

24 (STATEMENT BY CANTY MARKED AS STATE'S EXHIBIT NUMBER 3
25 FOR IDENTIFICATION.)

D. WEST - DIRECT EXAMINATION BY MR. MEADORS

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1 COURT REPORTER: State's exhibit 3 for I.D.

2 MR. MEADORS: Your Honor, before we start, for the
3 record, I just maybe -- I would agree there are one, two,
4 three, five statements. One of those, a statement on
5 January 17th, actually takes two forms, an oral statement
6 and then a written statement. So, possibly it could be six
7 if you view it that way.

8 THE COURT: Okay.

9 MR. MEADORS: There's another letter after that which
10 I would like to get to today which I think -- in the motion
11 he denies making. But anyway, that's a separate issue.

12 THE COURT: All right.

13 DIRECT EXAMINATION BY MR. MEADORS:

14 Q. Investigator, let me show you what's marked State's 3,
15 and let me know if you recognize the fact that's your
16 signature on there.

17 A. Yes, sir.

18 Q. And what's the date on State's 3 for I.D.?

19 A. The date is the 15th, January 15h, 2008.

20 Q. And that time, did you have occasion to talk to
21 Reginald Canty?

22 A. Yes, I did that.

23 Q. And then where was that?

24 A. At the Sumter county Law Enforcement Center.

25 Q. And let's go over briefly at the top there. It's

1 Canty, Reginald Rashard, age sixteen, [REDACTED]/91. How did you
2 acquire that information?

3 A. From him.

4 Q. Okay, and when he gave you that, did you have any
5 trouble understanding him?

6 A. No, sir.

7 Q. Did you get his birth date?

8 A. [REDACTED]/91.

9 Q. So, he was how old?

10 A. Sixteen at the time.

11 Q. And this was at the Law Enforcement Center also?

12 A. Yes, sir.

13 Q. Okay, and you said you got his address, his date of
14 birth, age sixteen. Now, underneath there where it has his
15 initials, Reginald Canty, R.C..

16 A. Yes.

17 Q. Can you read that sentence to the judge?

18 A. It says:

19 I, Reginald Canty, understand I do not have to
20 say anything, and I volunteer the following
21 information on my own free will for whatever
22 purposes it may serve. I -- it has can, cannot,
23 and he circled can -- read and write and
24 completed the seventh grade in school.

25 Q. Okay, and did he -- who's filling this out?

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1 A. I wrote his name, and he filled out the rest. Well, I
2 wrote the seventh.

3 Q. Okay.

4 A. And he -- well, actually I did everything because he
5 -- I was asking him.

6 Q. Okay.

7 A. And he said he can.

8 Q. But he's providing the information, correct?

9 A. He provided the information.

10 Q. Okay. Now, was he free to leave at this -- in this
11 statement? Was this a voluntary statement?

12 A. This statement right here?

13 Q. Yes.

14 A. Yes, sir.

15 Q. Did you say yes, sir?

16 A. Yes, sir.

17 Q. I mean, just yes. You don't have to say sir to me,
18 but he signed here, or he initialed here that he understood
19 he didn't have to say anything, say anything, but he's
20 volunteering this information of his own free will,
21 correct?

22 A. Yes, sir.

23 Q. And can you, can you, can you tell the judge what he
24 told you just by reading it?

25 A. I started off the statement. This is what is, what is

1 in the statement:

2 The statement is being written by Investigator D.
3 West by the request of Reginald Canty. I am not
4 currently under the influence of any alcohol or
5 drugs that may make me give any false information
6 in the statement.

7 Q. And was that in response to you asking him are you
8 under the influence of anything?

9 A. Yes.

10 Q. Did he put that down there then, or tell you ---

11 A. Yes.

12 Q. --- to put it down there?

13 A. I asked whether you're under drugs or alcohol before.

14 Q. All right. Go ahead.

15 A. On the night of the shooting, Deangelo asked my
16 cousin Desmond Canty to take him to the
17 Cherryvale Grocery. I went along because I
18 needed batteries. After arriving at the store,
19 me and Deangelo, Deangelo got out of the car and
20 went to use the pay phone. So, I stood beside
21 him swinging my phone, and I overheard him
22 stating, stating he wanted to order three large
23 pizzas: one pepperoni, one all pepperoni, and one
24 of all cheese. I didn't hear the other one.

25 Q. All right, let me stop you there. Go back to where it

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1 says: So, I. And it looks like something is scratched out
2 and he initialed. Did he changed something you had
3 written?

4 A. No. It was something that wasn't supposed to be
5 there, so I scratched it out, and he put his initials, and
6 then I put my initials. You can see my small initials
7 right there. So, I corrected it.

8 Q. But that shows you and he both initialed the change?

9 A. Yes, sir.

10 Q. Okay: I didn't hear the other one.

11 A. Didn't hear the other one. He told me while on
12 the phone with the order that the address is [REDACTED]
13 Cherryvale Drive, lot [REDACTED]. He got off the phone
14 and he went in the store.

15 Q. Does that say: We went?

16 A. He got off the phone and we went into the -- in
17 the store. I, I went to look for some batteries.
18 Deangelo brought a snack cake. While I was in
19 the store, the manager approached me and asked me
20 what, what did -- what I took, and I told him
21 nothing. That I had my phone. Deangelo was
22 standing to the door waiting for, waiting for me.
23 After we left the store, we was going back home,
24 and Deangelo asked to be dropped off to Oaklawn,
25 but we already had passed it. So, we went back

1 home, and Deangelo left walking. I went outside
2 and then came back. I went inside and then get
3 back outside to sit on the porch. As I came out
4 the house, I saw Desmond walk by, and I asked
5 where, where he -- where you going, and he stated
6 nothing and walked towards the back of the mobile
7 home park. Tonya Rush, who stays beside me, she
8 told me that -- to watch her house while she was
9 gone. I went to the house, and I got something
10 to drink. I went to the house and got something
11 to drink and sat on the porch. I saw car lights
12 where lot [REDACTED] is, and I went to my fence, and I saw
13 a white man wrestling with a tall black man over
14 a gun. The black man told him to stop, and then
15 I heard a gunshot. Deangelo was standing next to
16 the van looking at the guys wrestling. The other
17 guy had a handgun that looked, that looked like a
18 revolver. After the gun fired, everyone ran. I
19 ran in the house. I told my moms what I saw
20 later on that night. I wasn't truthful to law
21 enforcement at the beginning because I was
22 nervous and scared because I never saw anyone get
23 killed before.

24 Q. And does he put his initials at the end of that
25 paragraph on the front?

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1 A. His initials at the end.

2 Q. And there's an X here with his initials on page 2.

3 Why, why is that?

4 A. That's just to show nobody can't add anything towards
5 the statement.

6 Q. And did he and you both sign the bottom of that?

7 A. Yes, we did.

8 Q. And I believe he said I -- are his initials on the
9 first page:

10 I have read each page of this statement
11 consisting of two pages, each page of which bears
12 my signature, and corrections, if any, bears my
13 initials. And I certify the facts contained here
14 are true and correct.

15 A. Yes. I -- during a statement, I always ask read, when
16 you read a statement, finish reading it, put your initials
17 at the beginning and the end of each page of the statement
18 form. And then put your initials where you said: I have
19 read each page of the statement consisting of two pages.
20 Put your initials there also.

21 Q. Okay, and then he was free to leave and did leave,
22 correct?

23 A. Yes. 11:25, everything was concluded.

24 Q. And is the person who gave you that statement in the
25 courtroom, and if so, would you point him out?

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1 A. Mr. Canty is Mr. Deas's defendant.

2 MR. MEADORS: And ask the record to reflect. Thank
3 you.

4 BY MR. MEADORS:

5 Q. Now, did you have occasion to talk Mr. Canty again?

6 A. Yes, sir.

7 Q. Specifically, on January 17th?

8 A. On the 17th, yes, sir. He was brought to the Law
9 Enforcement Center by his aunt.

10 Q. Okay, and at this time on the 17th, did you have
11 occasion to read him, Mr. Canty, his Miranda rights?

12 A. Yes, sir.

13 MR. MEADORS: Beg the court's indulgence. I'm sorry.

14 (A PAUSE.)

15 (MIRANDA WARNING FORM-CANTY MARKED AS STATE'S EXHIBIT
16 NUMBER 4 FOR IDENTIFICATION.)

17 COURT REPORTER: State's 4 for I.D.

18 (STATEMENT BY CANTY MARKED AS STATE'S EXHIBIT NUMBER 5
19 FOR IDENTIFICATION.)

20 COURT REPORTER: State's 5 for I.D.

21 MR. MEADORS: Thank you. Thank you, Judge.

22 BY MR. MEADORS:

23 Q. I'm going to hand you what's State's, been marked
24 State's 4 for I.D. Investigator West, do you recognize
25 this?

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1 A. That's the Miranda form for the Sumter County Sheriff
2 Office.

3 Q. And you said something earlier. Who had -- how had
4 Mr. Canty gotten to the Law Enforcement Center?

5 A. By his aunt, Ms. Glover.

6 Q. Did you start talking to him then?

7 A. No. I waited for his mom to come, to arrive, Ms.
8 Dorothy Canty.

9 Q. And did you have the opportunity to advise Mr. Canty
10 his Miranda warnings and Waiver of Rights when his mother
11 was there?

12 A. I did. All that was done in front of her because at
13 that time, we was -- we, we went from getting a voluntary
14 statement as a witness to possibly him being charged.

15 Q. And thus you read him his Miranda rights?

16 A. Yes, sir.

17 Q. And when you go through again with Mr. Canty, tell His
18 Honor. Did you have occasion to read him his you have the
19 right to remain silent?

20 A. Yes, sir. Like I stated before, the Miranda warning,
21 waiver of -- Waiver of Rights as 1 through 5. Number 1
22 stated: You have the right to remain silent. Once again,
23 it has a line. He put his initials, R.C. I put my
24 initials on the far, far left by the number.

25 Q. And, Investigator West, is that your initials to show

1 that you read it?

2 A. Yes, sir.

3 Q. And he understood it? His initials show that it was
4 read to him and ---

5 A. It was read to him, and he understood it.

6 Q. Please just go through.

7 A. Number 2: Anything you say can and will be used
8 against you in a court of law. Once again, his initials
9 and my initials.

10 3: You have the right to talk to an attorney and have
11 him or her present while you are being questioned. His
12 initials and my initials.

13 Number 4: If you cannot afford to hire an attorney,
14 one will be appointed to represent you before any
15 questioning if you wish. His initials.

16 Number 5: You have the right to not answer any
17 questions or make any statements. He put R. Instead of
18 putting R.C., he just put R., but I put my initials there
19 as well.

20 Q. And let me stop. During the reading of these five
21 rights, did Mr. Canty appear to understand you?

22 A. Yes, sir.

23 Q. Did he indicate to you he understood --- he understood
24 it?

25 A. Yes, he did.

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1 Q. And were his answers appropriate to the questions?

2 A. Yes, sir.

3 Q. And you understood his words?

4 A. Yes, sir.

5 Q. Did he appear to be under the influence of alcohol,
6 drugs, or any other intoxicant?

7 A. No, sir.

8 Q. You smell anything on him?

9 A. No, sir.

10 Q. Were you again in the same interview room?

11 A. Yes, sir.

12 Q. Describe the atmosphere to the judge.

13 A. The interview?

14 Q. Well, the atmosphere when the three of y'all were
15 there.

16 A. Just normal. It's...

17 Q. Were you yelling at him?

18 A. No, sir. No fussing or ---

19 Q. Was he yelling at you?

20 A. No, sir.

21 Q. His mom was there?

22 A. Yes, sir.

23 Q. All right.

24 I understand each of these above rights. I

25 understand each of the above rights which I have

1 been read and explained by Investigator D. West
2 of the Sumter County Sheriff's Office at 107 East
3 Hampton Avenue at 3:33 p.m.

4 Did he indicate to you below the rights that he did
5 understand that by signing his name?

6 A. Yes, his Waiver of Rights he -- well, under that, yes,
7 he signed his name, his mother signed her name, and I
8 signed my name.

9 Q. And did you read him the Waiver of Rights?

10 A. The Waiver of Rights also. Having been advised his
11 rights and fully understand his rights:

12 I do wish to answer questions at this time. I do
13 not wish to have an attorney present. My
14 decision to answer questions now without an
15 attorney is made freely and is of my own choice.
16 No one has threatened me in any way or promised
17 me anything.

18 He signed. His mom signed it. I signed.

19 Q. No one has threatened me in any way or promised me
20 anything. And he signed. Dorothy Canty, in parentheses
21 she puts mother?

22 A. Yes.

23 Q. And you signed?

24 A. Yes.

25 Q. And that's at 1/17, 3:34 p.m.?

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1 A. Yes, sir.

2 Q. Can you tell the judge. Prior to, prior to us
3 discussing what's State's 4, not 3, did you have an
4 occasion, and I don't, I don't know. Is it your practice,
5 did you have an occasion to just talk before you put
6 something down in writing with him?

7 A. After the Miranda form was read and he signed and
8 everything was understood, the reason why we brought him
9 back because some of his stories were just inconsistent
10 with the previous stories he gave to law enforcement. And
11 we was just questioning him about it. At the beginning, it
12 going -- before I, I did a written statement, I was doing
13 -- just talking to him orally, taking notes. It was so
14 much being said, I was taking notes at that time. And so
15 he went on, and he was just telling us what was going on
16 and...

17 Q. Did you confront him and say it's not adding up?

18 A. Yeah. I, I told him it was -- his stories were
19 inconsistent.

20 Q. And did he give you an oral statement prior to the
21 written statement?

22 A. Yes, sir.

23 Q. Will you tell the judge about that oral statement?

24 A. It was -- I typed up a oral statement that, that was
25 -- we was doing. We was talking, and then after we

1 finished talking, I told him, well, I need to put this on
2 a, on a form. Whatever he told me, I put it on the form
3 word -- verbatim.

4 Q. Can you talk about the oral statement to start with?

5 A. The oral statement?

6 Q. Yes, sir.

7 A. You want me to read it?

8 Q. Yes, sir.

9 A. Okay. He was brought to the Law Enforcement Center.

10 Q. And that was Reginald, Reginald Canty was brought?

11 A. Reginald Canty was brought to the Law Enforcement
12 Center by his aunt, Ms. Glover. Reginald's
13 mother, Dorothy Canty, arrived at the Law
14 Enforcement Center, and the interview began. I
15 started by advising Reginald his Miranda rights.
16 He signed a Waiver of Rights form in front of his
17 mother due to the fact he was being charged at
18 the present time. After reading him his rights,
19 I then advised Reginald that his story in the
20 past was inconsistent and that he needed to be
21 truthful from here on out. Reginald began
22 telling the story of all the events that happened
23 on how he was at home, and Daniel Jackson
24 approached him and asked whether he wanted to
25 make any money robbing the pizza man, and he told

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1 him yes. Reginald then asked his cousin Desmond
2 Canty to take him and Daniel to the store,
3 Cherryvale Grocery, where he stated Daniel made a
4 telephone call to Sambino's pizza restaurant.
5 Reginald then stated that they went inside the
6 store, and he wanted to buy some batteries but
7 did not have that -- have it -- but they did not
8 have the kind he wanted. Reginald stated that
9 Daniel bought Debbie cake, Debbie snack cake and
10 left the store. I then asked what did they do
11 next. He stated that they went back to his
12 house. Daniel walked back to the rear of the
13 mobile home park, O.C. Mobile Home Park.

14 Q. And will you slow down a little bit?

15 A. I'm sorry.

16 Q. That's okay. He went back to the rear of O.C. Mobile
17 Home Park.

18 A. Yes, sir.

19 And he watched until the pizza man drive up in a
20 van. He began to say he stood in his yard by the
21 gate and saw a black male struggling with the
22 pizza man, and another black male holding a
23 revolver. I asked him how he knew it was a
24 revolver, it being dark with no light and all,
25 and he said it was a glare from the gun. He then

1 stated it was not supposed to happen like that,
2 and I asked him what did he meant by that. And
3 he stated the pizza man was not supposed to get
4 shot.

5 Q. It was not supposed to happen like that, and the pizza
6 man was not supposed to get shot?

7 A. Yes.

8 Q. All right. Go ahead.

9 A. He stated it was a accident. His mother then did
10 he -- how he knew it was a accident and you say
11 you weren't there, and how you know it was a
12 revolver and it was dark outside. Reginald then
13 began to cry, and he stated that he did not shoot
14 and kill anyone. He kept saying it was a
15 accident. He kept saying that he wasn't there.
16 So, I asked him there is no way you can say it
17 was a accident and you weren't there, and he put
18 his head on the table and continued to cry.
19 Reginald then stated that the suspects ran away,
20 and he ran in the house.

21 Q. Put his head on the table. Continued to cry?

22 A. Uh-huh. Yes, sir.

23 Q. All right, is it fair to say that was the substance of
24 an oral statement that he gave you at 3:34ish shortly
25 after, or after reading the Miranda rights?

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1 A. After Miranda, yes, sir.

2 Q. All right. After that ---

3 MR. MEADORS: And what I'll call, Judge, it's still
4 the same time frame.

5 Q. But after that, there's a -- did you put in writing?

6 A. Yes, sir. I put everything in ---

7 Q. Is that what State's 5 is?

8 A. Yes. Yes. 17th? Yes, sir.

9 Q. Now, this is on the same voluntary form. I want to
10 look at this other one and see, but did you have him fill
11 out also: I am giving of my own free will and accord?

12 A. Yes.

13 Q. And: I can read and write. Did he initial that also
14 in State's 5?

15 A. Yes.

16 Q. Okay, but you had already -- this was contemporaneous
17 with the rights you'd already read him, correct?

18 A. Yes.

19 Q. Miranda rights?

20 A. All was the same time frame.

21 Q. Oral statement, and now I believe the time on here,
22 4:44?

23 A. Yeah. That's when everything was completed.

24 Q. So, is it fair to say from the time of rights to start
25 writing of this, y'all were talking, and that's part of the

1 time where he was telling you about ---

2 A. Yes, sir. Went from the oral, from recording the oral
3 statement, to me getting a written statement on the form.

4 Q. And is this -- are these his words in your
5 handwriting?

6 A. In my handwriting, his words.

7 Q. And at any time during the process of the oral
8 statement or this written statement that you took from him,
9 did he ever, did he ever say I don't want to talk to you?

10 A. No.

11 Q. Did he ever say get me a lawyer, Dominick?

12 A. No, sir.

13 Q. If he had, what would you have done?

14 A. Stopped the interview.

15 Q. Did his mom ever say that?

16 A. No, sir.

17 Q. And please publish that to the judge, if you would.

18 A. The written statement?

19 Q. Yes.

20 A. Excuse me.

21 This statement is being written by Investigator

22 D. West by the request of Reginald Canty.

23 MR. MEADORS: Judge, for these purposes, I don't even
24 know if we need to do that.

25 THE COURT: I've got it right here.

D. WEST - DIRECT EXAMINATION BY MR. MEADORS

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1 BY MR. MEADORS:

2 Q. During the reading of this -- during the statement
3 that he gave you which was -- did you put into writing some
4 of the things he had told you in the oral and some he
5 didn't?

6 A. Some things that was in the oral, he didn't put into
7 the written, and some things that was in the written.

8 Q. Is this January 17, '08, 4:44 p.m.?

9 A. Yes, that's when it occurred.

10 Q. Reginald, Reginald Canty?

11 A. Yes, sir.

12 Q. And did you sign the bottom, too?

13 A. Yes.

14 Q. And on the second page, does he initial the top and
15 bottom of the paragraph?

16 A. Initialed the top, bottom, and across the page.

17 Q. And at the bottom, is it Reginald Canty's signature
18 and your signature?

19 A. Yes.

20 Q. At any time during the taking of the oral or the
21 written statements, did you threaten, coerce him, or hold
22 out any hope of reward?

23 A. No, sir.

24 Q. Did he appear to understand your questioning during
25 both the oral and the written?

1 A. Yes, sir.

2 Q. And tell me. Look at this, Investigator. Look at
3 this. When you were writing this down, these weren't your
4 words, right?

5 A. No, sir.

6 Q. His words?

7 A. It was his words.

8 Q. Could you understand him?

9 A. Yes, sir.

10 Q. Enough to write it down?

11 A. Yes, sir, I did.

12 Q. And is the person who gave you that oral and written
13 statement in the courtroom?

14 A. Yes, he is.

15 Q. And would you point him out to the judge?

16 A. He's Mr. Deas's client.

17 MR. MEADORS: Okay, now we go to, Your Honor, what is
18 the -- I'll call fourth statement.

19 Q. And going back to that January 17th statement again,
20 was Investigator Burnish there for the written portion, or
21 what portion was he there?

22 A. None. It was just me and his mother.

23 Q. Okay, and his mother was there for that whole time
24 period, the oral and the written?

25 A. Yes, sir.

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1 Q. Okay, unless I'm mistaken, the next is January 25,
2 2008.

3 (MIRANDA WARNING FORM-CANTY MARKED AS STATE'S EXHIBIT
4 NUMBER 6 FOR IDENTIFICATION.)

5 (STATEMENT BY CANTY MARKED AS STATE'S EXHIBIT NUMBER 7
6 FOR IDENTIFICATION.)

7 COURT REPORTER: State's 6 for I.D. State's 7 for
8 I.D.

9 (A PAUSE.)

10 MR. MEADORS: Beg the court's indulgence.

11 THE COURT: Yes, sir. I'll tell you. While you get
12 that ready, why don't we take a short break?

13 MR. MEADORS: I'm sorry.

14 THE COURT: We've been in here almost two hours now.

15 MR. MEADORS: I apologize.

16 THE COURT: We'll stand in recess for ten minutes.
17 You may step down.

18 (OFF THE RECORD.)

19 THE COURT: All right, Mr. Meadors, you ready to
20 proceed?

21 MR. MEADORS: Please the court?

22 THE COURT: Yes, sir.

23 BY MR. MEADORS:

24 Q. I refer you to State's 6 for I.D. and State's 7 for
25 I.D., and did you have an occasion to speak with Mr. Canty

1 on January 25th approximately 10:40?

2 A. Yes.

3 Q. And I have, State's 6 is a Miranda warning and Advice
4 of Rights sheet that's signed by Reginald Canty, Dorothy
5 Canty, his mother, and Sergeant Burnish. Were you present
6 during the reading of these rights?

7 A. I do not recall.

8 Q. Okay. Look at State's, what State's 7 is. Were you
9 involved in that?

10 A. Yes. He gave another statement. That's my signature
11 at the bottom.

12 Q. All right, and that statement was given at 12:06 on
13 January 25th?

14 A. It started, yeah.

15 Q. It ended ---

16 A. It ended, yes.

17 Q. --- at 12:06?

18 A. Yes, sir.

19 Q. All right, and this is state's 7 I.D. Where was this
20 statement given?

21 A. When? 25th.

22 Q. Where?

23 A. Where? At Sumter County Law Enforcement Center.

24 Q. Okay, and when this written statement was given, whose
25 handwriting was this in?

D. WEST - DIRECT EXAMINATION BY MR. MEADORS

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1 A. It was filled out by Sergeant Burnish. His
2 handwriting -- it was Mr. Canty handwriting on the -- for
3 the narrative, and this, this signature, top portion
4 Sergeant Burnish. Middle portion Reginald Canty, signature
5 Reginald Canty. And witnessed by myself.

6 Q. Okay, by yourself, and again on this form, Mr. Canty
7 initialed before the first line of the statement and at the
8 end of the statement, and then twice in the middle with an
9 X to show that nothing could be added?

10 A. Yes, sir.

11 Q. And that's his name there, correct?

12 A. Yes, sir.

13 Q. Did you threaten or coerce him at any time when he
14 gave this statement?

15 A. No, sir.

16 Q. During the course of this statement. I apologize.
17 Did he appear to be under the influence of alcohol or drugs
18 or any other intoxicant?

19 A. No, sir.

20 Q. Did he understand or appear to understand, based on
21 your training, what y'all were asking him?

22 A. Yes, sir.

23 Q. Could you understand him?

24 A. Yes, sir.

25 Q. I mean, you could understand his words and what he was

1 talking about. You didn't threaten him?

2 A. No, sir.

3 Q. Hold out any hope of reward?

4 A. No, sir.

5 Q. A promise?

6 A. No, sir.

7 Q. Could you publish this for the judge? This is State's

8 7.

9 A. Like I say, it's in Mr. Canty handwriting.

10 When we got home, Brick went to the back of the
11 trailers, and he wait at the back for the pizza
12 man to come. When the pizza man came, they
13 started to rob the man. The pizza man was trying
14 to take the gun from Brick and Brick said stop.
15 And after he said stop, he shot the pizza man.
16 Then he stayed there for a second. Then he ran.
17 It looked like it was another person running away
18 with him around the car. Brick is Daniel
19 Jackson.

20 Q. Brick is Daniel Jackson, and what's -- right after
21 that period, what initials are there?

22 A. R.C.

23 Q. And you said you do not recall whether or not you were
24 present when the rights were read on State's 6, which was
25 the Miranda rights for the statement, correct?

D. WEST - DIRECT EXAMINATION BY MR. MEADORS

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1 A. Yes.

2 Q. But you were present ---

3 A. When the statement was given.

4 Q. --- when the statement was given, and again on here,
5 did it have:

6 I, Reginald Canty, understand I don't have to say
7 anything. I volunteer this information of my
8 free will.

9 A. Yes.

10 Q. And: I can read.

11 A. Yes.

12 Q. And at this point, I guess you had, say, gotten to
13 know him, but you had been involved in several statements,
14 correct, with him?

15 A. Yes, I was.

16 Q. Did you ever yell at him or get upset with him?

17 A. No, sir.

18 MR. MEADORS: Beg the court's indulgence.

19 (A PAUSE.)

20 Q. And were the, were those Miranda warnings given
21 because the charges had been upgraded to murder?

22 A. On the new one?

23 Q. Yes, sir.

24 A. What's that, the 25th? Can I see that warrant?

25 Q. Or do you know? Let me make sure I have it.

1 A. I know at the first time when we questioned him, we,
2 we -- when I said his story was inconsistent, we charged
3 him with accessory after the fact.

4 Q. Correct.

5 A. And then ---

6 Q. This is January 25th. Was he served with murder and
7 armed robbery warrants?

8 A. Yes, he was.

9 Q. And that is the same day that Sergeant Burnish talked
10 to him and you talked to him?

11 A. Yes.

12 Q. And is the person who gave you that statement on the
13 25th in the courtroom?

14 A. Yes, sir, and Mr. Deas ---

15 Q. Standing with Mr. Deas?

16 A. Mr. Deas's client.

17 MR. MEADORS: We'd ask the record so reflect.

18 THE COURT: All right, the record will so reflect.

19 MR. MEADORS: Judge, that's all we have as to the
20 statements with this witnesses.

21 THE COURT: All right, Mr. Deas.

22 MR. DEAS: Thank you, Your Honor. May it please the
23 court? Your Honor, for the record, and I'll show this to
24 Mr. Meadors.

25 (COUNSELORS CONFER.)

D. WEST - CROSS-EXAMINATION BY MR. DEAS

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1 MR. DEAS: Your Honor, what we have is a -- and I want
2 to mark as a court exhibit. I guess it would be Court
3 Exhibit Number 2.

4 COURT REPORTER: Court's 5.

5 MR. DEAS: Court's 5. It's an affidavit of indigency,
6 indigency that was filled out by Mr. Canty, which is dated
7 April 10, '08 -- I'm sorry, April 1, '08, and then it's
8 filed with the court April 2, '08.

9 THE COURT: All right.

10 MR. DEAS: And then the letter from the public
11 defender's office assign me the case under the Rule 608
12 contract.

13 THE COURT: All right.

14 (AFFIDAVIT OF INDIGENCY MARKED INTO EVIDENCE AS
15 COURT'S EXHIBIT NUMBER 5.)

16 (LETTER OF ASSIGNMENT MARKED INTO EVIDENCE AS COURT'S
17 EXHIBIT NUMBER 6.)

18 COURT REPORTER: Court's 5 and Court's 6.

19 CROSS-EXAMINATION BY MR. DEAS:

20 Q. Mr. West, you first encountered Mr. Canty back on --
21 your first time interviewing him was back on January 15th
22 of '08?

23 A. Yes, sir.

24 Q. Okay, and now, and you correct me if I'm wrong, and
25 you may know this more so than anyone. He essentially at

1 some point prior to talking to you gave two statements to
2 Sergeant Burnish. Is that correct?

3 A. From my knowledge, from what I was told, yes, sir.

4 Q. Okay, and if you know, correct me if I'm wrong. Those
5 two statements were given on January 13th. Two, two
6 statements given on January 13th?

7 A. Yes, sir, as the statement form states.

8 Q. And then he gave his statement to you in January 15th?

9 A. 15th.

10 Q. Okay. Now, when, when he gave you -- when he made the
11 statement to you on January 15th, he was not represented by
12 an attorney, correct?

13 A. No, sir. He wasn't ---

14 Q. Because he hadn't been ---

15 A. --- being charged.

16 Q. --- assigned me as his attorney?

17 A. He wasn't being charged at that time.

18 Q. Okay.

19 A. On the 15th.

20 Q. Okay. So, he was unrepresented. Is that correct?

21 A. Yes.

22 Q. Okay, and at the time you initially encountered him,
23 he was sixteen years old?

24 A. Yes.

25 Q. Okay, and when you -- when he gave you his statement

D. WEST - CROSS-EXAMINATION BY MR. DEAS

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1 on January 15th of '08, is it true that his mother was not
2 present?

3 A. No.

4 Q. His mother was not present?

5 A. No, sir.

6 Q. So, he was by himself?

7 A. Uh-huh.

8 Q. Okay.

9 A. Yes, sir.

10 Q. Now, that statement that he gave you on January 15th,
11 was he, was he Mirandized?

12 A. He was, he was a witness. He wasn't being questioned
13 as a suspect at that time. So, there was no need for
14 Miranda.

15 Q. So, at that time he was being viewed as someone who
16 may have knowledge about ---

17 A. Who ---

18 Q. --- the incident?

19 A. Who knew something about the incident.

20 Q. But he was not being ---

21 A. Because it happened right there in his ---

22 Q. He was not under investigation?

23 A. --- back yard. No, sir.

24 Q. Okay. So, so, he was not Mirandized when this January
25 15th ---

1 A. No, sir.

2 Q. --- statement was given? He did not sign a Waiver of
3 Rights form?

4 A. It wasn't no need for -- to do a Waiver of Rights form
5 because he was being talked to as a possible witness, not
6 as a suspect.

7 Q. Now, in that January 15th statement, he does indicate
8 that he went to the Cherryvale Grocery Store with Mr.
9 Jackson?

10 A. Yes.

11 Q. And he also indicates that he saw several men approach
12 the pizza man?

13 A. Yes.

14 Q. And in that, in the January 15th statement, he, he
15 does not implicate Mr. Jackson at that point, correct? He
16 just says that Mr. Jackson was near where the incident
17 happened. Would that be fair to say?

18 A. That he, as he was sitting on the porch, Daniel walked
19 by towards the back of the mobile home park, and that
20 Deangelo was standing next to the van looking at the guys
21 wrestle.

22 Q. So, it would be fair to say that he indicates that
23 Deangelo, Deangelo ---

24 A. Was in the proximity of the incident.

25 Q. --- was in the proximity of the incident but was not

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1 engaging the, the ---

2 A. Yes. In that statement, he was in proximity of the
3 incident.

4 Q. Right.

5 A. But not the person who was wrestling with the, the
6 victim, Mr. ---

7 Q. Mr. Flexon.

8 A. Flexon.

9 Q. All right. Now, the next time you spoke with Mr.
10 Canty, my client, was on January 17th of '08. Is that
11 correct?

12 A. Yes, it was.

13 Q. And then at that point, was he now considered a
14 suspect and not just a witness?

15 A. He was.

16 Q. Okay, and what changed his status from being a witness
17 to a suspect? How, how did that occur?

18 A. Possibly different evidence that, that was brought in
19 to play or, you know, different -- his statements that he
20 was giving. Then we brought him back in for questioning
21 when his aunt brought him there, and then when we waited
22 for his mom for his interview to begin.

23 Q. So, on the 17th of '08, January 17th of '08, his mom
24 at some point was present when he gave a statement?

25 A. Yes.

- 1 Q. But he still wasn't represented by counsel?
- 2 A. No. His mom was there, so, and it ---
- 3 Q. Now.
- 4 A. Miranda was also given.
- 5 Q. Now, initially he give an oral statement. In other
6 words, he was, he was being questioned and he gave, and he
7 gave statements in response to your questions?
- 8 A. Yes. After Miranda was given, the statement took --
9 everything took place.
- 10 Q. All right. So, he was Mirandized for the January 17th
11 statement?
- 12 A. Yes.
- 13 Q. All right, and, and he signed a Waiver of Rights form?
- 14 A. Yes, he did, along with his mother.
- 15 Q: Did at any point during your questioning on January
16 17th '08, did he or his mother ever invoke his right to
17 counsel?
- 18 A. No, they didn't.
- 19 Q. Did he ever ask for an attorney?
- 20 A. No. No, he didn't.
- 21 Q. Were you aware of what his status was so far as
22 whether he had a lawyer or not?
- 23 A. No, sir. No lawyer was being -- no lawyer was
24 mentioned during that time.
- 25 Q. And, and as far as you knew at the time, I was not his

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1 attorney at that point, correct?

2 A. Not at the present time. I didn't know anything.

3 Q. Now, in the oral statement he gave, would you agree
4 with me there's some differences between the oral statement
5 he gave and the written statement he gave, both on June
6 17th?

7 A. There was some things left out during oral statement.
8 It was him talking, me, him talking, and his moms. I'm
9 writing everything that he was saying, trying to remember.
10 But during the written statement, I was writing what he
11 said verbatim, and I was telling him take his time. It was
12 some things he wanted, wanted into the written statement
13 that he didn't want into, you know.

14 Q. Do you -- did you ask him specifically why there was
15 some difference between what he told you orally at 2:34
16 p.m. and what was written ---

17 A. 3:34 ---

18 Q. --- in the written statement at 4:44 p.m.?

19 A. It was 3:34 and ---

20 Q. I'm sorry, 3:34 p.m.

21 A. And the -- it finished at 4:44. So, the oral, it was
22 just small things left out as -- where is that statement?
23 It wasn't that many things left out but, you know, his mom
24 asked how you know it was a revolver, and you said that you
25 wasn't around. And the way, when he put his head down,

1 that wasn't into the...

2 Q. One of the specifics that was in the written statement
3 that is not in the oral statement is that he indicated that
4 Mr. Flexon was approached by three males with hoodies, and
5 that's what was stated in the written statement. But
6 that's not what was indicated in the oral statement?

7 A. Like I say, he, he told me different things. So, you
8 know, I wrote what, what was going to the oral statement.
9 Then when I say I needed to put it on the written statement
10 form, he started telling me. Again, you know, verbatim. I
11 wrote it down word for word what he was saying.

12 Q. Is there ---

13 A. Told him to take his time.

14 Q. Is there any possibility that he may have said some of
15 the very same things that are in the written statement, but
16 you just didn't write them down when you took your notes on
17 the oral statement?

18 A. I doubt it.

19 Q. This, this written transcript of what he said orally
20 to you, did you type that up?

21 A. Yes, sir. I did.

22 Q. Okay, and did you type that up contemporaneously with
23 the interview or later, later on?

24 A. Later on. I had a notepad, you know. I took my
25 notes. Are you talking about the whole statement form,

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1 the ---

2 Q. Right.

3 A. Yes. I -- different days and I dated and time it.

4 Q. Now, subsequent to the statement he gave on January
5 17th, you met with him again on January 25th?

6 A. Yes.

7 Q. Of '08, and then he gave another statement?

8 A. Yes.

9 Q. And this was, this, this statement also was in
10 writing?

11 A. Yes.

12 Q. And it is in his own handwriting. Is that correct?

13 A. His own handwriting.

14 Q. And in this statement, it seems to just add some
15 additional detail to the January 17th statement.

16 A. Yes.

17 Q. Would you agree with that?

18 A. Charges was upgraded from -- an additional statement
19 was taken from him implicating Mr. Jackson.

20 Q. All right. In the January 17th statement, he says Mr.
21 Jackson is present but not actually physically engaging Mr.
22 Flexon. But in the January 25th statement, he actually
23 says Mr. Daniel Deangelo Jackson was the person that shot
24 William Flexon. Is that, would that be a fair way of
25 describing the difference between the January 17th

1 statement and the January 25th statement?

2 A. Beg your indulgence.

3 (A PAUSE.)

4 A. When you said in the January 17th statement that he
5 said that only Daniel was present in proximity. He said he
6 was one of the three black males back there. Said that the
7 guy was wrestling with another black male. Daniel was in
8 proximity. And in that statement form right there, he said
9 that Daniel was the one that shot him.

10 Q. Right, so that basically in the 17th statement, he
11 basically indicated Daniel Deangelo Jackson was merely
12 present. But in the January 25th statement, he indicates
13 that Mr. Jackson shot William Flexon.

14 A. Yes.

15 Q. Is that correct?

16 A. Yes.

17 Q. Okay. Now, that January 25th statement, was that the
18 last time you had -- took any statements from Mr. Canty?

19 A. I met with him in reference to a photo lineup. I do
20 not recall who was in the photo lineup. I usually have the
21 driver license picture with the name of the guy who is in
22 the photo lineup on my information. But for some unknown
23 reason, I do not know who was in that photo lineup, but he
24 did not pick anyone out of that photo lineup, so.

25 Q. Did he at any point during any of your contacts with

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1 Mr. Canty, and I'm talking about back on January 7th --
2 January 15th, January 17th, January 25th, and April of '08
3 when you showed him the photo line up. At any point during
4 any of those times, did he ask for an attorney?

5 A. No, sir.

6 Q. Do you think at sixteen years of age, he understood
7 his constitutional rights?

8 A. Well, at ---

9 Q. His legal rights?

10 A. At the time, his mother was present during the time he
11 was being charged. In April of that year, he was seventeen
12 at the -- at that time. So, there was no need for a
13 parent, guardian to be present for him.

14 Q. Now, you said his mom was present for the 17th?

15 A. Yes.

16 Q. But you would agree with me his mom was not present
17 when you gave that voluntary -- well, when ---

18 A. The 15th, the 15th.

19 Q. --- he gave a statement as a witness on January 15th?

20 A. As a witness.

21 Q. So, any -- so, any statements that he gave once he
22 became a suspect, you're saying his mother was present?

23 A. His mother was present.

24 Q. All right.

25 A. Beside that time when I went to do photo lineup

1 because he was at the age of seventeen.

2 Q. Now, at any point during any of these statements --
3 that's the 17th, both the oral statement and the written
4 statement, and the statement on the 25th -- did, did you at
5 any point tell him that you would help him out by getting
6 him a lower bond if he were willing to give a statement?

7 A. I, I don't make promises because I can't fulfill those
8 promises. I can only say you can help yourself out if you
9 cooperate with law enforcement. And we as a law
10 enforcement officer can talk on your behalf saying that you
11 participated, you help, helped with the case, with the
12 investigation.

13 Q. So, you never said to him hey, give us a statement,
14 and I'll make sure you get out on bond?

15 A. No.

16 Q. Never said that?

17 A. I, I don't -- I can't promise nobody like that because
18 I'm not the judge.

19 Q. Did you tell him that he was -- how many years he was
20 facing in prison if he got convicted of these crimes? In
21 other words, use that to coerce him into giving these
22 statements?

23 A. I don't recall that. No, sir.

24 Q. Never mentioned to him how much time he was facing?

25 A. No.

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1 Q. Was his mom present even during the -- your
2 questioning of him? Not just when he was signing the
3 Waiver of Rights form, but was she present at all times
4 during the questioning?

5 A. The interview didn't start until his mom got there.
6 That's, that's with the Miranda form or the oral interview,
7 the written interview.

8 Q. How long would you say you interviewed or questioned
9 Mr. Canty on January 17th?

10 A. It goes from when the interview started from the
11 Miranda form until the concluding of the written. So, the
12 17th, the interview started at 3:34. Let me see; let me
13 look at the Miranda form. 3:33, it started at 3:33 and it
14 ended at 4:44.

15 Q. And on January 25th, how long did you question him
16 before he gave that statement on January 25th?

17 A. The 25th, 10:40 a.m. it started and ended at 12:06
18 p.m.

19 Q. All right. Was anybody present with you during your
20 questioning of Mr. Canty on the 17th? Was Sergeant Burnish
21 present or any other investigator?

22 A. That was me, him, and his mother.

23 Q. Same thing on the 25th?

24 A. Sergeant Burnish started the Miranda sheet for the
25 25th, but I must, I must have been there for that, for the

1 written statement part because I signed. Sergeant Burnish
2 started the voluntary statement form at the top, and then
3 that's when Mr. Canty wrote the narrative, and then I, I
4 was at the bottom where I signed it. So, Sergeant Burnish
5 must have began it, and I came in to the end towards ---

6 Q. In the state ---

7 A. Before the statement.

8 Q. Go ahead. I'm sorry.

9 A. Go ahead. I was just saying I came in before the
10 statement was being written up right at the time.

11 Q. Did at any point in any of these statements that you
12 participated in with -- where you interviewed and
13 questioned Mr. Canty and informed him of his Miranda
14 rights, did he at any point say that he was the individual
15 that shot Mr. William Flexon?

16 A. He said that he did not shoot and kill anyone.

17 MR. DEAS: Court's indulgence.

18 THE COURT: Yes, sir.

19 (COUNSEL CONFERS WITH DEFENDANT CANTY.)

20 MR. DEAS: Thank you, Your Honor, so far.

21 THE COURT: Thank you.

22 Mr. Meadors, any redirect?

23 MR. MEADORS: No, sir.

24 THE COURT: Thank you. You may step down.

25 MR. MEADORS: May we ask the investigator be excused?

1 He's got a job to get to. I have him under subpoena, and
2 he will be back this week.

3 MR. DEAS: No objection.

4 THE COURT: Okay. Thank you.

5 MR. MEADORS: Thank you.

6 (THE WITNESS EXITS THE STAND.)

7 MR. DEAS: Thank you.

8 Your Honor, I think that two statements were given
9 by ---

10 THE COURT: Burnish.

11 MR. DEAS: --- Mr. Canty to Mr. Burnish or Sergeant
12 Burnish. I believe there was a letter that's also at
13 issue.

14 MR. MEADORS: I think I can do this from our side
15 relatively quickly.

16 THE COURT: Okay.

17 MR. MEADORS: I call Robert Burnish.

18 THE COURT: All right.

19 (STATEMENT BY CANTY MARKED AS STATE'S EXHIBIT NUMBER 8
20 FOR IDENTIFICATION.)

21 (STATEMENT BY CANTY MARKED AS STATE'S EXHIBIT NUMBER 9
22 FOR IDENTIFICATION.)

23 COURT REPORTER: State's 8 for I.D. State's 9 I.D.

24 (ROBERT BURNISH RESUMES THE WITNESS STAND.)

25 DIRECT EXAMINATION BY MR. MEADORS:

- 1 Q. Sergeant Burnish, we are on Mr. Canty's statements,
2 and I'm going to show you first what's 8 for I.D. and 9 for
3 I.D., and did you take these statements of Mr. Canty?
4 Specifically, number 8?
- 5 A. Yes, sir. I did.
- 6 Q. What time of day is that?
- 7 A. The -- it ended at 4:55 p.m.
- 8 Q. And what day was it? I apologize.
- 9 A. January 13th.
- 10 Q. All right. Where was that taken?
- 11 A. This was taken at the Central Carolina Technical
12 College, Shaw campus, on 4 -- 441.
- 13 Q. And who was there was?
- 14 A. It was myself and Lieutenant Tony Horton of the Sumter
15 Sheriff's Office.
- 16 Q. Yourself and Tony Horton?
- 17 A. Yes, sir.
- 18 Q. And at this point, was Mr. Canty under arrest?
- 19 A. No, sir.
- 20 Q. So, this was a voluntary statement?
- 21 A. That's correct. Yes, sir.
- 22 Q. And he signed it?
- 23 A. Yes, sir.
- 24 Q. And was free to leave?
- 25 A. Yes, sir.

R. BURNISH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. It actually says: I'm free to walk away without saying
2 anything, and I volunteer to give you this information.

3 A. Yes, sir.

4 Q. For whatever purpose it may serve?

5 A. That's correct.

6 Q. And he signed the bottom?

7 A. Yes, sir, he did.

8 Q. You signed at the bottom?

9 A. Yes, sir.

10 Q. You signed the bottom? Did you threaten or coerce
11 him?

12 A. No, sir.

13 Q. Did he appear to understand you?

14 A. Yes, sir.

15 Q. Did you promise him anything, hold out any hope of
16 reward?

17 A. No, sir.

18 Q. And State's 9 later on that day at 6:00, was this also
19 a voluntary statement?

20 A. Yes, sir, it is.

21 Q. And he agreed to talk to you?

22 A. Yes, sir.

23 Q. Signed that it was voluntary?

24 A. Yes, sir.

25 Q. You signed it also?

1 A. Yes, sir.

2 Q. Still appear to be sober?

3 A. Yes, sir.

4 Q. Not under the influence of anything?

5 A. Yes, sir. In fact, we were still at the same location
6 as the first one.

7 Q. Okay, and you, could you understand him?

8 A. Yes, sir.

9 Q. Could he understand you, based on his answers to your
10 questions?

11 A. Yes, sir.

12 Q. And you didn't threaten or coerce him?

13 A. No, sir.

14 Q. Wasn't handcuffed, was he, because he ---

15 A. No, sir.

16 Q. Now, the next involvement you had, I believe, was on
17 January 17th, correct?

18 A. I believe so, yes.

19 Q. And is the individual who gave you those voluntary
20 statements, State's 8 and 9, is that Mr. Canty with Mr.
21 Deas?

22 A. Yes, sir.

23 Q. And just for the, for the record, the first statement
24 is:

25 Saw two people fighting, then heard gunfire.

R. BURNISH - DIRECT EXAMINATION BY MR. MEADORS

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1 Looked like a rifle. Person with the rifle had a
2 hoodie on, but he could not see the gentleman's
3 face.

4 A. That's correct.

5 Q. The second -- 9, I believe -- January 13th at the
6 Peach Orchard:

7 It was the same as above, but he had added he saw
8 the victim fall down and the bad guy could be
9 James or J-Boy because he had on a black hoodie
10 with a gold dragon on the back, short pants with
11 blue designs on the pockets, and the front of the
12 hoodie looked like it zipped up. The guy had a
13 black bandana over his face. Thinks it's got to
14 be J-Boy. Saw him shoot the victim with a long
15 rifle, then run. Heard more than one person's
16 footsteps running away.

17 A. Right. That's correct.

18 Q. And then in the sequence, the next one was January 15,
19 2008, but you weren't involved in that. The judge has
20 already heard testimony about that, correct?

21 A. That's correct.

22 Q. Okay. Then we go to January 17th, and at this point
23 he was -- he being Mr. Canty -- was under arrest for
24 accessory, correct?

25 A. That's correct.

1 Q. All right, and is that where his mother came down with
2 him?

3 A. Yes, sir.

4 Q. And specifically I think we've heard testimony of an
5 oral statement and a written statement, correct?

6 A. Yes, sir.

7 Q. And I'll show you what's marked State's 4 for I.D. It
8 has Mr. West and Mr. Canty and his mother, Dorothy Canty,
9 and the Advice of Rights. Were you present for that?

10 A. I don't recall being present for this one.

11 Q. Okay, and on this January 17th statement then -- I
12 call it the second part of January 17th, whatever, the
13 written part. Were you there for that?

14 A. I do not recall being present for this one, no, sir.

15 Q. And January 25th was just Investigator West only, I
16 believe, correct?

17 A. I believe so, yes, sir.

18 MR. MEADORS: Judge, that's all I have. There is
19 another issue of a letter. I don't really plan on offering
20 it. So, I don't...

21 MR. DEAS: If he doesn't plan on offering it, I ---

22 MR. MEADORS: I don't see any need. It's clearly not
23 a statement that ---

24 MR. WILDER: Your Honor, I'd like to ask him about it
25 because I believe ---

R. BURNISH - CROSS-EXAMINATION BY MR. DEAS

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1 MR. MEADORS: That's fine, but I just wanted to say
2 I'm not going to go into it right now.

3 THE COURT: Yes.

4 MR. MEADORS: That's all I have.

5 THE COURT: All right. Thank you.

6 Mr. Deas.

7 MR. DEAS: Yes, sir, Your Honor.

8 CROSS-EXAMINATION BY MR. DEAS:

9 Q. Sergeant Burnish, you met with Mr. Canty twice on
10 January 13th. Is that accurate?

11 A. Yes. Yes, sir.

12 Q. And at the time, was he -- what was his status? Was
13 he a suspect or a witness?

14 A. No, sir. He was just a witness since this incident
15 occurred right in front of his house. We were talking to
16 him to see if he had any further information he could help
17 us in the case.

18 Q. And how -- what led you to talking to Mr. Canty?

19 A. Well, like I said, his, where his residence is
20 located, we just wanted to talk to him to see if he had
21 heard or seen anything that he was afraid to divulge in
22 before. And that was my first dealing with Mr. Canty. So,
23 I wanted to make sure I had a chance to talk to any
24 witnesses.

25 Q. Now, so at that point, he was not Mirandized or read

1 his rights, or he didn't sign a Waiver of Rights form?

2 A. That's correct.

3 Q. Was he -- did you talk to him at that point about him
4 deriving some benefit from, from cooperating and giving a
5 statement?

6 A. No, sir.

7 Q. Was he told at that point that he was -- that he could
8 be arrested and charged in association with this crime?

9 A. No, sir.

10 Q. And this conversation took place at his home?

11 A. No, sir. This conversation took place at the, as I
12 stated earlier, the Shaw campus of Central Carolina Tech.

13 Q. And who -- was he with his mother at the time?

14 A. His mother brought him there, yes.

15 Q. For both the statement that was given at 4:55 p.m. on
16 January 13th and the one given at 6:00 p.m. on January
17 13th?

18 A. That's correct. Yes, sir.

19 Q. Was there any -- what led to the second statement
20 roughly about an hour after the first statement?

21 A. After giving the first statement, after I read it I
22 asked him was there, was there anything in the, in the
23 first statement that he was leaving out. And then he
24 started to divulge some more information, which is notated
25 in the second statement. So, that's why we asked him to

R. BURNISH - CROSS-EXAMINATION BY MR. WILDER

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1 write a second statement.

2 Q. Okay. So, in the second statement, he just gives a
3 little more detail than the first statement?

4 A. Yes, sir.

5 Q. Now, he, he was again sixteen years of age when this
6 was given?

7 A. Yes, sir.

8 Q. When the statement was given. I see on the first
9 statement that was given on January 13th, on the actual
10 statement it says that it was given on January 13, 2007.
11 That would obviously have been a year before the incident
12 happened. So, I assume that's just a typo?

13 A. Yes, sir.

14 Q. All right. Well, just an error?

15 A. Yes, sir. That would be an error, beginning of the
16 year. Honestly, I didn't catch it before.

17 Q. Then the second statement indicates that whatever --
18 what -- the statement he gave was given on January 13,
19 2008?

20 A. That's correct. Yes, sir.

21 Q. Was there -- did at any point during your questioning
22 of Mr. Canty did he say, did he ever indicate that he
23 wanted to consult with an attorney?

24 A. No, sir.

25 Q. Were you aware of whether he had an attorney or even

1 needed an attorney at that point?

2 A. No, sir.

3 Q. And at that, at that stage, he was not being developed
4 as a suspect?

5 A. That's correct.

6 MR. DEAS: Court's indulgence?

7 THE COURT: Yes, sir.

8 MR. WILDER: May it please the court?

9 THE COURT: He hasn't finished yet.

10 (A PAUSE.)

11 MR. DEAS: Nothing further.

12 THE COURT: All right, thank you.

13 Mr. Wilder.

14 CROSS-EXAMINATION BY MR. WILDER:

15 Q. Mr. Burnish, did you receive a letter from Mr. Canty?

16 A. Yes, sir, I did.

17 Q. And do you have it with you today, or is it over here?

18 A. It's over there.

19 MR. MEADORS: I've got one right here.

20 Q. Is that a copy of it?

21 A. Yes, sir.

22 MR. WILDER: Your Honor, please the court? I'd ask
23 that the state produce the original so we can have it
24 marked as a ---

25 THE COURT: Do you have a copy of it?

R. BURNISH - CROSS-EXAMINATION BY MR. WILDER

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1 MR. WILDER: --- as a court's exhibit.
2 MR. MEADORS: Yes, sir.
3 MR. WILDER: Okay, thank you.
4 BY MR. WILDER:
5 Q. All right, now I'm going to show you a yellow piece of
6 paper and ask you can you identify as being the letter you
7 received?
8 A. Yes, sir. Yes, sir, this is the original.
9 Q. All right.
10 MR. WILDER: Your Honor, I'd ask that this be marked
11 as a court's exhibit for the purpose of this hearing.
12 THE COURT: All right, please mark it. This will be
13 number 11 or 10?
14 COURT REPORTER: 7.
15 THE COURT: 7.
16 MR. MEADORS: Judge, could we also make this part of
17 it, too?
18 THE COURT: The envelope?
19 (LETTER AND ENVELOPE MARKED INTO EVIDENCE AS COURT'S
20 EXHIBIT NUMBER 7.)
21 BY MR. WILDER:
22 Q. All right, Mr. Burnish, so in addition to receiving
23 the statements that you witnessed and the statements that
24 Mr. West witnessed, you also got a letter from Mr. Canty
25 from jail, right?

1 A. That's correct. Yes, sir.

2 Q. And that's now been marked as Court's Exhibit Number
3 7, along with the envelope it came in, addressed to
4 Sergeant Robert Burnish?

5 A. Yes, sir.

6 Q. Okay, and I assume the postmark on it -- or is the
7 postmark relatively accurate to your -- insofar as your
8 memory of when you received it?

9 A. Yes, sir.

10 Q. So, in -- is that June of 2008, June 26th?

11 A. June 26th, yes, sir.

12 Q. Of 2008. All right, so in addition to the other
13 statements received by Mr. Canty, this was also received by
14 law enforcement?

15 A. Yes, sir.

16 Q. And whatever, whatever it says?

17 A. Yes, sir.

18 Q. I guess you carefully read it?

19 A. I do. I did. I don't recall exactly what was in it
20 at this point.

21 Q. Okay, and insofar as if you determined whether any
22 other leads that developed out of there, do you remember if
23 you arrested anybody else as result of ---

24 A. No.

25 Q. --- receiving that?

R. BURNISH - CROSS-EXAMINATION / REDIRECT EXAMINATION 167

1 A. No arrests were made as a result of that letter.

2 Q. Well, would it be fair to say that by the time you got
3 that, he'd told so many stores, you didn't know if he was
4 telling the truth or not?

5 A. It would be fair, yes, sir.

6 Q. Because his lips were moving, and any time his lips
7 were moving, apparently he wasn't telling the truth, right?

8 A. It would be fair to say that there was quite a few
9 stories said.

10 Q. Okay. So, we just didn't know if that was going to be
11 reliable or not, right?

12 A. That's correct.

13 Q. Okay.

14 MR. WILDER: Now, let's see. I'll give this back to
15 Mr. Deas. I have no other questions for Mr. Burnish.

16 THE COURT: Thank you.

17 Any redirect?

18 MR. MEADORS: Very briefly.

19 MR. DEAS: No questions.

20 REDIRECT EXAMINATION BY MR. MEADORS:

21 Q. Are you aware through the investigation that the names
22 mentioned in this, some of the names mentioned in this
23 letter are from the incident four days before that Deputy
24 Griffin had investigated ---

25 A. I would have ---

1 Q. --- as being involved?

2 A. To answer that question, I would have to look at it to
3 refresh my memory. But the names that are in there, I, I
4 don't recall what names are in there.

5 Q. And, and are you aware that Mr. Canty has denied
6 making the statement through his attorney? That he's
7 saying that Jackson made this statement, and he's denying
8 even making the statement?

9 A. I don't recall that as being, that being ---

10 Q. That's a part of the record, one of motions, so I ---

11 MR. WILDER: Your Honor, out of an abundance of
12 caution, I'm going to object to the form of the question
13 because it is kind of leading.

14 THE COURT: All right.

15 MR. WILDER: To say are you aware.

16 MR. MEADORS: I apologize. It's late in the day, and
17 I didn't mean to. I was just...

18 MR. WILDER: Normally I don't object to that during a
19 suppression hearing, but...

20 BY MR. MEADORS:

21 Q. Following up on Mr. Wilder's questions, did you know
22 that Mr. Canty has said he did not make this statement?

23 A. I don't recall being told that.

24 Q. You don't know that?

25 MR. MEADORS: That's all. Thank you.

R. BURNISH - RECROSS / R. CANTY - DIRECT

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1 MR. WILDER: May I have one follow up?

2 THE COURT: You may. You may.

3 RECROSS-EXAMINATION BY MR. WILDER:

4 Q. You don't have a statement from Mr. Canty that says he
5 didn't make that?

6 A. No, sir. I do not.

7 MR. WILDER: Thank you.

8 THE COURT: All right, may step down.

9 (THE WITNESS EXITS THE STAND.)

10 MR. DEAS: Your Honor, in reply to Sergeant Burnish,
11 we call Mr. Canty.

12 THE COURT: You may. Yes, sir, for the limited
13 purposes of this hearing.

14 REGINALD R. CANTY, BEING DULY
15 SWORN, TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: State your full name. Spell your
17 last name for the record.

18 WITNESS: Reginald, Reginald Rashard Canty, C-A-N-T-Y.
19 Reginald Rashard Canty, C-A-N-T-Y.

20 DIRECT EXAMINATION BY MR. DEAS:

21 Q. Mr. Canty, you're going to need to speak up loudly and
22 clearly so the court reporter can hear you, okay?

23 Mr. Canty, after you were arrested for this crime on
24 January 17th of 2008, you were transported to the Sumter
25 Lee Regional Detention Center. Is that correct?

R. CANTY - DIRECT EXAMINATION BY MR. DEAS

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1 A. On the 17th of January?

2 Q. Yeah.

3 A. No. I went to DJJ.

4 Q. You were, you were sent to DJJ first? Do you remember
5 when you got transported to Sumter Lee Regional Detention
6 Center?

7 A. Yes, sir.

8 Q. When was that?

9 A. February 27th.

10 Q. Of 2008?

11 A. 2008.

12 Q. All right. At some point, were you being housed in
13 the same pod or the same unit with Mr. Jackson?

14 A. Yes, sir.

15 Q. Okay. Now, you see this letter here?

16 A. Yes, sir.

17 Q. It's been marked as Court's Exhibit Number 7.

18 A. Yes, sir.

19 Q. Did you write this letter?

20 A. Yes, I wrote that letter.

21 Q. Okay, and did you mail the letter?

22 A. No, I did not mail that letter.

23 Q. Who mailed the letter?

24 A. Daniel, Daniel mailed the letter.

25 Q. All right. Is -- whose handwriting is this? Is this

R. CANTY - DIRECT EXAMINATION BY MR. DEAS

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1 your handwriting on this letter?

2 A. That's my handwriting.

3 Q. And is this -- on the top of the letter, it has your
4 name, Reggie Canty. Is that -- did you write that?

5 A. Yeah, that's my name.

6 Q. Why, why did Mr. Jackson mail the latter and not you?

7 A. I don't know.

8 Q. After you wrote this letter, did you give it to him?

9 A. Yeah, I give it to him.

10 Q. How were you able to give it to him in jail?

11 A. Because we were right next door to each other.

12 Q. So, y'all were next door to each other in the same
13 pod?

14 A. In the same pod.

15 Q. Did you write this at his request?

16 A. Yes, sir.

17 Q. And then you gave it to him?

18 A. Yes, sir.

19 Q. Was it, was it on all the same yellow paper?

20 A. Yes, sir.

21 Q. And you just, you -- what, did it have an envelope at
22 the time?

23 A. No, sir.

24 Q. You just gave him the plain yellow sheet of paper with
25 your writing on both sides?

1 A. Yes, sir.

2 Q. Did you know who the letter was going to go to?

3 A. No, sir.

4 MR. DEAS: Thank you, sir. I have no further
5 questions.

6 THE COURT: Mr. Meadors or ---

7 MR. WILDER: No questions.

8 THE COURT: Mr. Meadors.

9 MR. MEADORS: Yes, sir. May it please the court?

10 CROSS-EXAMINATION BY MR. MEADORS:

11 Q. Mr. Canty, on your statement here, do you remember on
12 the 13th of January talking with this fellow over here,
13 Sergeant Burnish?

14 A. Yes, sir.

15 Q. And, and that's your signature on State's 8 and
16 State's 9, isn't it?

17 A. Yes, sir.

18 Q. And you voluntarily gave him those statements?

19 A. Yes, sir.

20 MR. DEAS: Your Honor, that's outside the scope of my
21 examination of Mr. ---

22 THE COURT: It's still cross-examination. I'm going
23 to let him.

24 MR. MEADORS: Judge, I think you still hadn't ruled on
25 the voluntariness of the -- his statements.

R. CANTY - CROSS-EXAMINATION BY MR. MEADORS

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1 THE COURT: All right.

2 BY MR. MEADORS:

3 Q. So, those are your statement signatures there?

4 A. Yes, sir.

5 Q. Okay, and during that time you gave that information
6 to Sergeant Burnish, y'all just had a nice conversation? I
7 mean, there wasn't any bad words going back and forth or
8 anything?

9 A. No, sir.

10 Q. And do you remember, Mr. Canty, meeting and talking
11 with Investigator West on the 15th of January, and I just
12 to show you, if you don't mind. I'm showing you State's 3.
13 That's your name down there?

14 A. Yes, sir.

15 Q. And you've signed that?

16 A. Yes, sir.

17 Q. Voluntarily signed it?

18 A. Yes, sir.

19 Q. All right. I mean, I mean, Investigator West didn't
20 threaten or force you or anything to sign that, did he?

21 A. I mean, on the last statement, he did. Well, I don't
22 want to call it a threat or whatever, but he did said that
23 somebody else close to Deangelo Jackson in the other room
24 said that they -- if they statement wasn't better than
25 mine, or if it wasn't -- if their statement was better than

1 mine, that he would charge me with the alleged crime.

2 Q. Okay, but did he -- that's your statement -- I mean,
3 your signature?

4 A. Yes, sir.

5 Q. And he didn't make you sign that? I mean, you did it
6 on your own free will?

7 A. I did.

8 Q. And up here, your initials there that I don't, I don't
9 have to say anything because you weren't under arrest here
10 -- he let you go here on the 15th?

11 A. Yes, sir.

12 Q. I've just got a few more questions. On the 17th, do
13 you remember when your aunt brought you down, and then you
14 and your mom talked with the investigator?

15 A. Yes.

16 Q. Investigator West, who isn't here, and is that your
17 signature?

18 A. Yes, sir.

19 Q. And is that your momma's signature?

20 A. Yes, sir.

21 Q. And that's West's signature?

22 A. Yes, sir.

23 Q. And all those were voluntary?

24 A. Yes, sir.

25 Q. And did you sign each one of these after he read your

R. CANTY - CROSS-EXAMINATION BY MR. MEADORS

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1 rights here?

2 A. Yes, sir.

3 Q. I mean, did you actually put R.C. down there?

4 A. Yes, sir.

5 Q. And do you understand what he was -- you understood
6 what he was telling you?

7 A. Mostly, yes, sir.

8 Q. All right. Now, are you ---

9 A. At the time.

10 Q. Are you familiar with the Miranda rights?

11 A. I mean, I'm, I'm familiar with it, but at the time I
12 didn't know anything about the law or anything to it.

13 Q. But you're familiar with Miranda rights?

14 A. I'm, I'm familiar with what he was saying about it
15 but, but I didn't really know.

16 Q. And you -- but you -- and you signed here that you
17 were familiar with them, right, and your momma was there?

18 A. Yes, sir.

19 Q. And on the 25th, I think on the 25th, Reginald, Mr.
20 Canty, that's your signature down here?

21 A. Yes, sir.

22 Q. And those are your initials?

23 A. Yes, sir.

24 Q. And this is a statement here. You remember when you
25 crossed out that page so nobody else could put anything on

1 it, and did you sign those initials?

2 A. Yes, sir.

3 Q. And did he tell you to do that so nobody else could go
4 back and add anything?

5 A. Yes, sir.

6 Q. And is that your R.C. up front and R.C. up there?

7 A. Yes, sir.

8 Q. And that's the statement you gave? That's actually in
9 your handwriting, isn't it?

10 A. Yes, sir.

11 Q. Now, this letter, these weren't your words, though,
12 were they?

13 A. Those, those are not my words.

14 Q. You just said those weren't your words.

15 A. Those are not my words.

16 Q. And what you mean by that is somebody was telling you
17 to write -- put these words down?

18 A. Yes, sir.

19 Q. And who was telling you to put those words down?

20 A. Mr. Jackson.

21 Q. Those are -- really aren't your words?

22 A. No, sir. That's my handwriting but not my words.

23 Q. And so he was giving you the words to say?

24 A. Yes, sir.

25 Q. And you didn't mail it?

R. CANTY -- CROSS-EXAMINATION BY MR. WILDER

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1 A. No, sir.

2 MR. MEADORS: That's all. Thank you.

3 THE COURT: Anything further, Mr. Wilder?

4 MR. WILDER: Yes, Your Honor.

5 CROSS-EXAMINATION BY MR. WILDER:

6 Q. Reginald, when you first talked to Mr. West and Mr.
7 Burnish over here, it was just you and your mother talking
8 to them?

9 A. When I went up, yes. Yes, sir.

10 Q. Okay, and nobody was telling you what to say then,
11 were they?

12 A. No, sir.

13 Q. Okay. So, whatever they wrote down on that day, those
14 were your words, weren't they?

15 A. Yes, sir.

16 Q. Okay, and on that day -- well, no, let's move forward
17 then. In the, in the same pod. Which pod were you in with
18 Mr. Jackson?

19 A. Bravo pod.

20 Q. Bravo pod, and in Bravo pod, y'all have separate
21 cells, don't you?

22 A. Yes, sir.

23 Q. So, Mr. Canty wasn't even in the same -- you have to
24 speak up now.

25 A. Yes.

1 Q. For the court reporter so she can hear you.

2 THE COURT: She can't hear you.

3 Q. In Bravo pod, there's no way for you to even reach out
4 and touch the person in the cell next to you, is there?

5 A. Yes. If the flaps are open, you can touch their
6 hands.

7 Q. All right, but you have to kind of reach out, and the
8 guards can see you do that?

9 A. We was in a back hall, so nobody couldn't see us.

10 Q. Okay, but in order for anybody to touch you, you'd
11 have to put your hand outside the window, wouldn't you,
12 outside the flap?

13 A. Yes, sir.

14 Q. Okay. So, nobody, no way anybody could get at you if
15 you didn't want to reach and touch them, is there?

16 A. No, sir.

17 Q. Okay. All right. So, when you say those aren't your
18 words but it's your handwriting, you were writing them in
19 your cell by yourself, weren't you?

20 A. Yes, sir.

21 Q. Okay. So, what you're now trying to say is that
22 somebody else gave you the information, right?

23 A. Yes, sir.

24 Q. But it's -- you wrote it?

25 A. Yes, sir.

R. CANTY - CROSS-EXAMINATION BY MR. WILDER

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1 Q. But when you wrote it, it was a voluntary thing you
2 were writing, wasn't it, because nobody was there to make
3 you?

4 A. No, sir.

5 Q. Nobody was there to make you, right?

6 A. No, sir.

7 Q. Okay, and you didn't have to give him the letter, did
8 you? You could have given it to a C.O.

9 A. You're correct, I guess.

10 Q. Okay. Now, the time you first met the police
11 officers, you weren't even in custody, were you?

12 A. No, sir.

13 Q. And so you weren't being charged with anything. They
14 weren't threatening you in any way, were they?

15 A. No, not -- I wouldn't say threatening. Basically
16 what, okay, well, what Dominick West said, told me that I
17 was up there talk about why, why was my crime, that the
18 sentence on my crime. Say that I would had, I would have,
19 I would have gotten, like, thirty years, thirty to life.

20 Q. Thirty to life?

21 A. Thirty to life.

22 Q. And you heard him say that, and you decided you wanted
23 to give a statement without a lawyer present, right?

24 A. At, at the time, I was sixteen years old. I didn't
25 really know.

1 Q. Okay. All right. So, because Dominick said that, you
2 knew it was very serious, what you were doing, didn't you?

3 A. Yes, sir.

4 Q. Okay, and -- but there was nobody that put the words
5 in your mouth? You were telling them what you wanted to
6 tell them, right?

7 A. Yes, sir.

8 Q. Mr. West didn't tell you what to say, did he?

9 A. No, sir.

10 Q. And Mr. Burnish didn't tell you what to say?

11 A. No, sir.

12 Q. Okay.

13 MR. WILDER: All right, thank you. No other
14 questions.

15 MR. MEADORS: Can I do one follow up?

16 THE COURT: Yes, sir.

17 RECROSS-EXAMINATION BY MR. MEADORS:

18 Q. You testified those weren't your words. How did you
19 get those words to put on there?

20 A. Said how did I get the words? You know what I'm
21 saying? We was next, we was next door to each other. I
22 was in 110, he was in 111, so we was able to touch each
23 other. So, basically we were right beside each other.
24 Like, I could hear him talking.

25 Q. So, you could hear?

R. CANTY - RECROSS-EXAMINATION BY MR. MEADORS

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1 A. I could hear him.

2 Q. And I'm just trying to clarify. Did -- so, did he
3 tell you what to write down?

4 A. No. He written down what he want me to write down.

5 Q. That's what I -- he, he wrote? So, he gave you
6 something?

7 A. Correct.

8 Q. And did you copy it?

9 A. Yes, sir.

10 Q. So, they were his words that he gave you, and you
11 copied what he wrote?

12 A. Yes, sir.

13 Q. So, your testimony is you had a document that
14 Defendant Jackson had given you, and you copied it,
15 correct?

16 A. Because I don't have it, the doc -- I don't have what
17 he had wrote.

18 Q. I understand, but who was this supposed to go to?

19 A. I didn't, I didn't know where it was supposed to go.
20 He told me to wrote it -- told me to write it.

21 Q. And you just did, did what he said yes?

22 A. Yes. Yes, sir.

23 Q. Why?

24 A. Scared.

25 MR. MEADORS: Thank you.

1 MR. DEAS: Nothing further, Your Honor.

2 THE COURT: All right, thank you. You may step down.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Anything further, Mr. Deas?

5 MR. DEAS: Nothing further, Your Honor. Not by way of
6 testimony.

7 THE COURT: All right.

8 MR. MEADORS: Nothing further from the state.

9 THE COURT: Anything further?

10 MR. MEADORS: No, sir.

11 THE COURT: Does the state want to make a statement?

12 MR. MEADORS: Your Honor, I think we've shown, first
13 of all, the first two statements he was not in custody. I
14 don't think there's respectfully an issue there. And first
15 -- the third statement he wasn't in custody actually. I'm
16 sorry if we wasted the court's the time even doing those.

17 January 17th and 25th I guess are what at issue. We
18 have received testimony that he understood his rights. He
19 wasn't under the influence. Wasn't threatened or coerced.
20 That the officers understood him, and he appeared to
21 understand them.

22 We've had his testimony. He says he wasn't forced to
23 sign, and his mother was even present. So, Your Honor, we
24 think we respectfully have shown those were freely and
25 voluntarily given.

1 Judge, I'm not sure which statements, if any, we're
2 going to offer. If it's needed to be done -- now of course
3 there may be another issue if we just decide to offer one
4 of them. I guess we will reach that. Obviously, we'll
5 take that up *in camera*, but we won't do that without trying
6 to bring it to the court's attention and these lawyers'
7 attention. But as far as that matter, that's all we have.

8 As far as the letter, I mean, I'm certainly not going
9 to offer a letter that he is denying he's, he's the real
10 author of. So, I don't have anything else to say to that.

11 THE COURT: Mr. Deas.

12 MR. DEAS: Thank you, Your Honor. May it please the
13 court? Your Honor, just briefly, Your Honor, we're asking
14 that certainly the letter be suppressed, given the fact
15 that he's denied he actually composed it or came up with
16 the content of it. And that he didn't even know who it was
17 mailed it, and that it was mailed by actually Daniel
18 Deangelo Jackson. So, I would, we would move to suppress
19 that, that letter.

20 Also as to the other statements, we'd just indicate
21 that the police questioned him on at least six other
22 occasions. At the time, he was only sixteen years old, has
23 a seventh grade education. Did not have any knowledge as
24 to his Miranda rights. We would indicate that as a result,
25 those statements are not voluntary and, therefore, should

1 be suppressed.

2 In particular, I would say that the oral statement on
3 January 17th is somewhat duplicative of the January 17th
4 written statement. So, it would be my position that to
5 allow both into evidence would be somewhat self-serving and
6 duplicative. So, we would ask that the oral statement be
7 suppressed if the court is not inclined to suppress both
8 the statements.

9 THE COURT: All right.

10 Mr. Wilder, do you want to make...

11 MR. WILDER: Your Honor, we would at this point renew
12 our motion for severance. Now the court has the statements
13 in front of you, and you see what -- we've gone all the way
14 from Mr. Jackson was not involved in it, he didn't do it,
15 and then he started adding him in there a little bit. That
16 he was present but didn't shoot a weapon. That later he
17 says something else, and then he admits writing the
18 statement in his own handwriting.

19 That statement is written in his own handwriting, and
20 I believe that at a separate trial, if we were to go into
21 any of those statements, that I would have a right to go
22 into all of them to show that he changed them over time,
23 and that he, he made different statements. And all that
24 would go to the credibility of anything he said.

25 Remember what Investigator Burnish said? Basically

1 that he said so many different statements, he didn't know
2 whether he was telling the truth at all. And only if
3 you've got the benefit of knowing how many of those things
4 were made and the different times would you be able to come
5 to that conclusion.

6 If you just take a little piece of one, you might be
7 inclined to give it some degree of credibility or no
8 credibility. But at this juncture, to let any of them in I
9 believe is prejudicial to my client.

10 And if you let any of them in, then we're back to the
11 question of how you redact them. If any of them are
12 redacted, I believe that it's still going to cast an
13 inference because of the fact there are two defendants on
14 trial. You're going to have him saying Mr. Blank did so
15 and so. Mr. Blank did so and so, and all that kind of
16 stuff. I, I would move that they be thoroughly redacted if
17 you keep it, keep, keep any of them in.

18 But again, it all goes to the question of whether or
19 not it's even fair to try these two guys together, and I,
20 and I believe it's not.

21 So, I appreciate the court hearing my motions. I
22 would move that you suppress all of them. And then if you
23 do let any of them in, that they be thoroughly redacted,
24 but I don't think that's going to protect us. So, I'll
25 renew the motion for severance on the grounds of the

1 statements that have actually been presented now and the
2 court has heard them all.

3 THE COURT: All right, let me rule on the
4 admissibility first, and then I'll hear from you on the
5 severance.

6 It's clear that these statements were made freely and
7 voluntarily. I don't think there's -- even his own
8 testimony states that.

9 He was not a suspect at that time that he gave the
10 initial two. So, I find that all statements can through --
11 can come in with the exception of, which you probably
12 wouldn't use anyway, the written statement, the letter that
13 he says he didn't really write. So, all the statements are
14 admissible.

15 All right, as to the severance.

16 MR. MEADORS: Yes, sir, and did -- well, you provided
17 an argument for the -- back to the severance, I guess,
18 since we're doing that motion now. Okay.

19 Judge, I don't think we're any different from where we
20 were. There's mechanisms in place, another person --
21 there's a way where, the best we can, try not to cast any
22 light on the co-defendant.

23 You know, it is what it is, and I don't think it's
24 fair to the state not to be able to present the testimony,
25 with the exception of redacting any reference that Mr.

1 Canty makes to Mr. Jackson.

2 The other issue, Your Honor, which I guess we will
3 have to decide, and I've got some case law I'll provide
4 you. It may be -- and I don't know everybody else will be
5 thinking about it. We might want to offer just one
6 statement, and obviously we'd offer every statement
7 contemporaneous with this. The issue then becomes if you
8 offer that, do you have to offer all on top?

9 Again, I don't think you do. I've got some case law
10 I'd ask Your Honor to consider respectfully. I obviously
11 defer to Your Honor. That decision has to be made by
12 Wednesday, I presume. I don't think we'll get to this
13 tomorrow.

14 THE COURT: Okay.

15 MR. MEADORS: But, but that being said, I don't think
16 there's any other way. Your Honor's ruled. We'd ask you
17 to stay with that ruling.

18 Any statements that we do present, we'll have them
19 fully redacted. We'll go over with the court *in camera*
20 before we bring them out, and we'll make sure Mr. Jackson's
21 name does not appear in Mr. Canty's statements unless he
22 takes the stand. And then it's open game for everybody.

23 THE COURT: All right, I'm going to deny the motion
24 for severance. Like I said, I don't think anything has
25 changed from my earlier ruling. And then we'll see where

1 we are on redaction if any statements are proposed by the
2 state.

3 MR. MEADORS: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MR. WILDER: Your Honor, I have one more motion.

6 THE COURT: All right, for somebody who's retiring,
7 you must -- really, some motions that didn't get made in
8 your lifetime that you want to make at the end?

9 MR. WILDER: Your Honor, I actually handed it up to
10 the court earlier. It was a renewal, an expanded *Brady* and
11 Rule 5 request, Your Honor. And it had several
12 subparagraphs of things I was asking for specifically.
13 And, Your Honor, I would rely on the written motion just
14 like I filed it and served it on the state.

15 THE COURT: Is this the one?

16 MR. WILDER: That's the most recent one, but there's
17 one I handed you ---

18 THE COURT: And let me -- the solicitor's office needs
19 to update your date stamp because apparently somebody
20 hasn't done it because it said that y'all received it on
21 August 9, 2011, which is not until tomorrow.

22 MR. MEADORS: And I haven't received it yet, so that
23 may, that may explain it.

24 MR. WILDER: Well, I actually did give it to them at
25 8:30 this morning. The clerk's office was correct, Your

1 Honor. They -- I think I filed it at 8:45 this morning.

2 THE COURT: 8:45 yesterday.

3 MR. WILDER: Was it?

4 THE COURT: Yes, and we're off at that time. So,
5 Sunday morning someone was down here diligent. So, it must
6 be with the month. They're all confused on the dates and
7 times.

8 MR. WILDER: Okay. Well, Your Honor, this one was
9 filed, I believe, in May or sometime later. It was
10 expanded. There are several paragraphs. I'm specifically
11 asking for discovery, and I believe I handed it to the
12 court earlier, and I wish I could put my hand on a copy of
13 it. But anyway, I'll just rely on the written motion.

14 I hope that by now Mr. Meadors has given me everything
15 I'm entitled to receive under Rule 5 and *Brady*. But if
16 not, I call on him to produce it now.

17 THE COURT: Yes.

18 MR. WILDER: I want to make sure the record reflects
19 that I'm asking for it before we do opening statements.

20 MR. MEADORS: I gave this, just what I referred to
21 earlier.

22 THE COURT: You now, Mr. Meadors, have given him
23 everything that you have?

24 MR. MEADORS: Yes, sir, and I had mentioned that to
25 them earlier, and so I gave ---

1 MR. WILDER: Mentioned it, but now we're first getting
2 it today. This would be the lineup and the ---

3 THE COURT: Which y'all don't intent to ---

4 MR. MEADORS: No, sir. No, sir. Judge, could I?
5 Just one follow up, and I don't want to keep everybody
6 late.

7 This, this kind of answers one thing. I just want the
8 record to reflect if you go back and look at Ms. Fant's
9 Rule 5, what she did give them, one -- 4.A was Sumter
10 County Investigative Report and the report the case number.
11 And, Judge, if you look at page 3 on that, that's all I'll
12 say. I just wanted:

13 Sergeant Burnish, Investigator West, Captain
14 Turner met with Daniel Jackson at the Law
15 Enforcement Center. Burnish served the armed
16 robbery warrant and the murder warrant on
17 Jackson. Jackson was given Miranda warnings,
18 warnings verbally and Waiver of Rights, which he
19 signed. Jackson made a verbal statement that he
20 was in his aunt's apartment when he saw law
21 enforcement arrive, and he ran out the door into
22 a field located behind the apartment complex.
23 Jackson asked numerous times how can he be
24 charged with armed robbery if he did not take any
25 money from the pizza man. After answering his

1 questions, he requested to speak to an attorney.
2 The interview ended, and he was taken by
3 Investigator Reynolds.

4 Judge, I just want the record to reflect he did have
5 that August of 2008. And earlier when he was talking about
6 he didn't know who or where, respectfully I think this
7 summary kind of speaks for itself. That he had that
8 information, those two statements, which Ms. Fant did turn
9 over on August 2008, and that's all I have today.

10 MR. WILDER: Your Honor, and if that was given to me,
11 it will be in that packet that we handed up to the court.
12 And in that report, Your Honor, I gave you the last copy of
13 that packet I had.

14 THE COURT: And y'all can come back and -- yeah, if
15 y'all want to look.

16 MR. WILDER: Would appreciate if I could get, get it
17 and run down to the office and make a copy of it so I'll
18 have it during the trial tomorrow.

19 THE COURT: I think this is it, yes.

20 MR. WILDER: And I'll give it right back to you. But
21 I do -- let's look in here, if I might, because if Mr.
22 Meadors is correct, I'll stand here in court and admit it.

23 MR. MEADORS: Thank you.

24 MR. DEAS: I'll take my lumps.

25 (COUNSELORS CONFER.)

1 MR. MEADORS: Judge, I'm reading from her report which
2 says: Sumter County Investigative Report and Cases and
3 Other Relevant Materials. And on my discovery, that's in
4 there and it's referenced as that, so.

5 MR. WILDER: And right here, Your Honor, on my
6 discovery there is an investigative report here, but it
7 doesn't have what he just referred to.

8 MR. MEADORS: Your Honor, that's an incident report.
9 This is an investigative report which was given.

10 (COUNSELORS CONFER.)

11 MR. MEADORS: Your Honor, investigative report is
12 different from the incident report, and here it is right
13 here, investigative report, which she signed that she gave
14 over. I don't --- maybe this ---

15 MR. WILDER: Well, Mr. Deas would also have that in
16 his, Your Honor. And if we could check that, at least we
17 would know whether they intended to give it to us.

18 THE COURT: Here, I'll let you look at it.

19 MR. WILDER: All right, and let's just let Mr. Meadors
20 flip through this one.

21 MR. MEADORS: Judge, that's all we have.

22 (COUNSELORS CONFER.)

23 MR. WILDER: Your Honor, it's not in either one of the
24 ones we received, so ---

25 MR. MEADORS: And, Your Honor, I'll go back and check,

1 but it's certainly listed as that way on Ms. Fant's.
2 They're not disputing that.

3 THE COURT: And I don't find there's any bad faith.

4 MR. MEADORS: No, sir, but I'll try to find her file.

5 THE COURT: But I'm not going to throw the case ---

6 MR. MEADORS: And see what happened to that.

7 THE COURT: --- as a result of that.

8 MR. WILDER: I know I wouldn't have been asking for it
9 if I already had it.

10 THE COURT: Thank you.

11 Any other motions to be heard this afternoon?

12 MR. MEADORS: Nothing from the state.

13 MR. DEAS: None, Your Honor. None from the defendant.

14 THE COURT: Mr. Wilder, you come up with something
15 tonight, we'll give you a little time in the morning if you
16 need it.

17 MR. WILDER: Thank you, Your Honor. Appreciate that.

18 THE COURT: All right, thank you.

19 MR. DEAS: Are we allowed to copy this?

20 THE COURT: Yes.

21 MR. DEAS: Okay.

22 THE COURT: I mean, these are just -- well, yes. Mr.
23 Wilder is taking his copy, and you may do likewise.

24 MR. WILDER: Thank you.

25 MR. DEAS: Thank you, Your Honor.

1 THE COURT: All right, court's adjourned until 10:00
2 tomorrow morning.

3 MR. MEADORS: Thank you, Your Honor.

4 THE COURT: All right, thank you.

5 (A PAUSE.)

6 THE COURT: Competency to stand trial coming in? Did
7 y'all ---

8 MR. WILDER: I'm sorry, Judge?

9 THE COURT: Did y'all need for that come in?

10 MR. MEADORS: Court's exhibit.

11 THE COURT: Court's exhibit.

12 MR. WILDER: Court's exhibit, no problem with court's
13 exhibit.

14 THE COURT: All right, thank you.

15 (WHEREUPON, THE CASE IS AT EASE.)

16 TUESDAY, AUGUST 9, 2011

17 (COURT RESUMES AT 10:00 A.M.)

18 THE COURT: Let me see the attorneys up here just a
19 second.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 (JUROR NUMBER 159 ENTERS THE COURTROOM.)

22 THE COURT: All right, Mr. Wilson, it's my
23 understanding that you work at Wal-Mart. Is that correct?

24 JUROR: Yes, sir.

25 THE COURT: And you assisted someone in the victim's

1 family last week when they were out there shopping or
2 something like that?

3 JUROR: It was actually the day before.

4 THE COURT: The day before?

5 JUROR: Yes.

6 THE COURT: So, it would have been Sunday?

7 JUROR: Yes, sir.

8 THE COURT: And when you walked out, you said hello
9 or?

10 JUROR: Yeah.

11 THE COURT: Would the fact that you had seen them the
12 day before make it so that you couldn't be fair and
13 impartial to the state or the defense in this case?

14 JUROR: No, sir.

15 THE COURT: Does the state have any questions that you
16 would like for me to ask?

17 THE COURT: No, sir.

18 THE COURT: Mr. Deas, do you have any questions?

19 MR. DEAS: Yes. If you could ask him exactly when he
20 had his interaction with the family member yesterday.

21 THE COURT: Okay. When did you have the interaction?

22 JUROR: Let's see. Today is ---

23 THE COURT: Tuesday.

24 JUROR: Tuesday. So, it would be on Sunday. I was
25 putting up my freight, and I was asked a question, and I

1 answered it. You know, like a friendly way you would ---

2 CLERK OF COURT: Speak into the mic.

3 THE COURT: Yes.

4 JUROR: You know, friendly way you would ask -- you
5 would give a customer. That was it.

6 THE COURT: And then you saw somebody else, and you
7 just said hi?

8 JUROR: Yes.

9 MR. DEAS: Does he know in particular who he spoke to
10 on yesterday?

11 JUROR: Yes, sir.

12 MR. DEAS: And who was that?

13 JUROR: This young lady right here.

14 THE COURT: Mr. Wilder.

15 MR. WILDER: No questions, Your Honor.

16 THE COURT: All right. I find that the contact was
17 inconsequential. It was just a greeting, and I'm going to
18 -- and I will tell you later you're not to have any
19 contact with anyone. But I can see how at a small
20 courthouse things like that happen. All right.

21 MR. DEAS: Your Honor, just for the record, I would
22 ask that he be replaced with an alternate.

23 MR. MEADORS: Could we do that out of his presence,
24 any motions they have?

25 THE COURT: All right.

1 MR. MEADORS: We'd ask that he stay, but if we could
2 do it out of his presence.

3 THE COURT: All right, if you could step back here.

4 JUROR: Okay.

5 (JUROR EXITS THE COURTROOM.)

6 THE COURT: All right, Mr. Deas.

7 MR. DEAS: Yes, sir. Although his contact sir was
8 relatively uneventful, the fact that he did have contact
9 with a family member after the jury panel was impaneled I
10 would say ---

11 THE COURT: Well, they haven't been really impaneled.
12 They've been selected, but they've not been sworn.

13 MR. DEAS: Right. My position would be is to err on
14 the side of caution is have him replaced by, by an
15 alternate.

16 THE COURT: Mr. Wilder.

17 MR. WILDER: Your Honor, up until the point where Mr.
18 Deas objected in his presence, I was kind of okay with not
19 having a dog in the fight. But the two things I have
20 concern about, then we got into Mr. Meadors trying to get
21 him out of the room. So, that seemed to me to be the wrong
22 way to -- but then also while he was standing there, the
23 two clients were brought into the courtroom from the lockup
24 area. So, I was little bit concerned about that, too, with
25 him witnessing it.

1 THE COURT: Well, I can imagine it would not surprise
2 the jurors if the defendants in this case were locked up.

3 MR. WILDER: And, and so again I was just kind of
4 uneasy but not wanting to say anything. But now that we've
5 got -- Mr. Deas made the motion in the presence of the
6 juror, I think we'd better excuse him because he might hold
7 that against Mr. Deas since it's obvious to him Mr. Deas is
8 the one who wants him gone.

9 THE COURT: Mr. Meadors.

10 MR. MEADORS: Judge, I didn't know I did anything. I
11 was really trying to say let's do this in front of you. I
12 don't think what Mr. Deas -- anyway, that is what it is,
13 Judge.

14 We -- he said he could be fair and impartial. That it
15 was an inadvertent contact. I don't -- he doesn't know
16 them. He just happened to see them in Wal-Mart. Saw them
17 the other day and said hey. They hadn't been introduced.
18 He said he could be fair and impartial. I don't know what
19 else to say. We'd ask that he remain, but whatever Your
20 Honor does.

21 THE COURT: I think this is serious charges. Both of
22 them have the potential for life imprisonment. I am going
23 to err on the side of caution, and I am going to relieve
24 him.

25 If you can have a randomly drawing -- I mean, that's

1 why we have two. Let my court reporter draw two. We're
2 randomly drawing.

3 All right, juror number 145, Lakeishia Stubbs, will be
4 the next juror in this case. If you can excuse him, and he
5 needs to be back at?

6 CLERK OF COURT: Call that number.

7 THE COURT: Call that number.

8 (A PAUSE.)

9 THE COURT: Anything before we bring the jury in?

10 MR. WILDER: Yes, sir, Your Honor.

11 THE COURT: Mr. Wilder.

12 Hold on. Hold on.

13 MR. WILDER: I'd like to make a motion to sequester
14 the witnesses on both sides. And the reason is multiple
15 statements have been given by witnesses, some of which
16 there have been no, no notation of what they're going to
17 say provided to us. So, we have no way of checking to see
18 if their testimony may have changed from what was given to
19 the state initially and what, what they are now. And many
20 of these statements are inconsistent. So, the ability to
21 impeach with those statements that were given may be
22 impeded. So, I would ask that witnesses be sequestered.

23 I guess I'm not including the investigator, chief
24 investigator, but the remainder of the witnesses I would
25 maybe sequester.

1 THE COURT: Mr. Meadors.

2 MR. MEADORS: Judge, they weren't yesterday during
3 *Jackson vs. Denno*. We were surprised he didn't make a
4 motion then. So, Judge, I guess we'd just ask it go both
5 ways. I know he's got a lot of witnesses. I know the
6 mother is one of the witnesses potentially. So, I guess
7 that we'd ask that she be sequestered, too, out of
8 fairness.

9 THE COURT: Then I'm going to make it both ways.

10 MR. MEADORS: Since he brought it up.

11 THE COURT: In a trial like this where the testimony
12 is so crucial, I am going to order that anyone who is going
13 to testify be sequestered. If they're not going to
14 testify, they're family members and they want to remain
15 here, they may do so, but they can't testify.

16 MR. WILDER: All right, Your Honor.

17 THE COURT: The chief officer will be able to stay
18 here as well.

19 MR. WILDER: Now, may I inquire in the gallery here to
20 see if there's anybody who responded to one of my
21 subpoenas? Did any of y'all get a subpoena from me?

22 MR. DEAS: I know Mr. Dorothy Canty was subpoenaed by
23 me, and that's Mr. Canty's mother.

24 THE COURT: All right, she's going to need to remain
25 outside the courtroom as well.

1 MR. MEADORS: Judge, the only, only other exception
2 would be Tom Miller, who is a chain witness from downstairs
3 and up here.

4 THE COURT: I'm not going to make him leave; he
5 assists y'all in the trial.

6 MR. WILDER: I have no objection to him staying if
7 that's all he's going to do.

8 THE COURT: Okay. All right.

9 MR. MEADORS: And of course Dominick. Your Honor, we
10 had two chief investigators. You object to that?

11 MR. WILDER: Yeah, because he's not even employed now.
12 I object to him remaining.

13 THE COURT: All right, we're going to make it clean.

14 (A PAUSE.)

15 MR. MEADORS: Your Honor, the only witness I have here
16 is my first witness. I don't think there's any objection
17 to that.

18 THE COURT: Okay. All right, there's no one in this
19 courtroom at this time who's going to testify in this case
20 other than Dominick West who's going to testify?

21 All right. Very well. Now let's bring our jury in.

22 MR. MEADORS: Judge, just for clarification.

23 THE COURT: Hold on.

24 MR. MEADORS: I'm sorry. They did, I think they did
25 object to you.

1 THE COURT: Yes, you were objected to. If you're
2 going to be the first witness, then you can stay.

3 MR. DEAS: Your Honor, we also did have Lashawnda
4 Canty step out.

5 THE COURT: All right.

6 MR. DEAS: She's also a witness.

7 THE COURT: Now I think we're ready.

8 CLERK OF COURT: Thank you, Judge.

9 (THE JURY ENTERS AT 10:12 A.M.)

10 THE COURT: Mr. Holland, you will sit in this chair
11 here, sir. Everybody else can sit where they want to, but
12 you'll always sit in that chair.

13 CLERK OF COURT: Your Honor, we have all the jurors
14 present in the courtroom.

15 THE COURT: Thank you, Mr. Bradley.

16 Good morning, ladies and gentlemen, and thank you for
17 your promptness. We're about to start the trial of this
18 case.

19 Mr. Bradley, would you please swear the jury?

20 CLERK OF COURT: Yes, sir, Your Honor.

21 (WHEREUPON, THE JURY IS SWORN.)

22 THE COURT: Thank you, ladies and gentlemen, and
23 please bear with us concerning the temperature in this
24 room. I understand that the Freon is out; they're trying
25 to bring some in. So, this may be like the old days when

1 it gets a little more warm in here. I can assure you if
2 we're ordered it, they fix. So, tomorrow you would need to
3 bring sweaters in here with you.

4 Now, ladies and gentlemen, before we begin this trial,
5 let me tell you, Mr. Holland, I am going to appoint you as
6 the foreperson of this jury. I'll give you instructions on
7 that. You always sit there, and as the alternate, ma'am,
8 you will always sit there. The rest of you can sit
9 whatever you want to. I do find it amusing as I've gone
10 all over the state, jurors tend to get territorial with
11 their seats after a couple of hours. But you're welcome to
12 sit, other than the two I've just talked about, you're
13 welcome to sit anywhere you'd like to.

14 Now, ladies and gentlemen, before we began this trial,
15 I want to tell you this trial will probably be different
16 from what you might expect. You know, most people never
17 have the opportunity to attend an actual court session as
18 you are today, and may think by watching T.V., movies, or
19 reading books that trials are always full of high drama,
20 intense action, and riveting circumstances.

21 Now, while all these things may be true at times, this
22 trial is not for entertainment. This is a real trial which
23 is a fundamental part of our democracy. It is a search for
24 the truth in an effort to make sure that justice is done.
25 And, ladies and gentlemen, searching for the truth and

1 ensuring that justice is done is often slow, deliberate,
2 and repetitive, the absolute opposite of what you might
3 have seen on television, in movies, or read in books.

4 Now, ladies and gentlemen, this courtroom is a place
5 of honor that is dedicated to the protection and the
6 preservation of our citizens' rights through what I truly
7 believe to be the greatest justice system ever created by
8 man.

9 The attorneys who are appearing before you are
10 advocates for the parties that they represent. But first
11 and foremost, they are officers of this court who are sworn
12 to uphold the integrity and the fairness of our judicial
13 system, and to help you in your search for the truth. You
14 should expect them to be professional, competent, and
15 ethical in the representation of their clients' interests.

16 And, ladies and gentlemen, remember you also just took
17 an oath to listen to the evidence in this case and to reach
18 a fair and just verdict. And, ladies and gentlemen, you
19 are expected to be professional, reasonable, and ethical as
20 well. Ladies and gentlemen, let me thank you again for
21 accepting this very, very important responsibility and your
22 contribution to our justice system.

23 Now, ladies and gentlemen, what I am telling you is
24 intended just to serve as an introduction to the trial of
25 this case. This is not a charge on the law in this case.

1 I will charge you the law that is applicable to this
2 specific case at the end of all the evidence and at the end
3 of the trial. This is merely an explanation as to the
4 procedures that we will follow so you may better understand
5 what's happening in this courtroom.

6 Now, let me say up front, ladies and gentlemen, you
7 will not be allowed to take notes during this trial.
8 Therefore, it's very important that you listen closely
9 throughout this trial.

10 The defendants in this case are charged by indictment
11 of murder and armed robbery. The elements will be
12 explained to you later. And the indictment charging the
13 defendants is simply a document by which the case is
14 brought into court. It is not in any sense evidence of the
15 allegations contained therein.

16 The defendants have pled not guilty to the charges in
17 the indictment. So, the state, therefore, has the burden
18 of proving all the evidence of the charges against each
19 defendant beyond a reasonable doubt. And it will be your
20 duty, ladies and gentlemen, to decide whether the state has
21 met that burden.

22 Now, ladies and gentlemen, as jurors your purpose is
23 to determine the facts in this case, and you are to
24 determine the facts from the testimony that you will hear
25 from this witness stand and other evidence that is

1 introduced here in court. It is up to you to determine the
2 inferences you feel may be properly drawn from the evidence
3 that is presented.

4 And, ladies and gentlemen, it is especially important
5 that you perform your duty diligently and conscientiously
6 because ordinarily there is no way to correct an erroneous
7 determination of facts by a jury.

8 Now, ladies and gentlemen, but with equal emphasis
9 the same law that makes you the judges of the facts makes
10 you the judge of the law. The that law is given to you by
11 me is the only law that you may consider. Now, you must
12 accept the law as I give it to you, even though you may
13 disagree with what I tell you. I cannot tell you what the
14 facts are and, ladies and gentlemen, you cannot disagree
15 with the me about what the law is, or what you believe the
16 law should be.

17 Your job, as jurors, is to take the law as I give it
18 to you and apply it to the facts as you find them from the
19 testimony of witnesses and any other evidence that is
20 presented. After hearing the evidence, you will deliberate
21 and render a true and just verdict under the solemn oath
22 that you just took as jurors.

23 Now, ladies and gentlemen, until I advise you to begin
24 your deliberations at the conclusion of this case, you must
25 not discuss the case with others, including your fellow

1 jurors except when authorized to do so by me.

2 You may not use a computer, cellular phone, or other
3 electronic device with communication capabilities while in
4 attendance at this trial or during your deliberations.

5 Now, these devices may be used when you break at lunch or
6 when you go home for the evening, but they may not be used
7 to obtain or disclose any information about the case when
8 you're not in court.

9 Information about the case would include but certainly
10 would not be limited to any information about a party,
11 witness, an attorney, or a court officer, any news accounts
12 about this case.

13 And I'll go ahead and warn you. The media, *The Item*
14 that was in here yesterday, they're in here today. So, I
15 caution you: please do not read *The Item* for the next
16 several days because there will be articles in there about
17 that.

18 Now, information collected through juror research on
19 any topics raised, or testimony offered by any witness, or
20 any information collected by you, again the idea is that
21 you will receive all the information that you will need to
22 decide this case from either this witness stand or other
23 evidence that is produced. So, you're to get nothing from
24 outside of this courtroom.

25 Now, ladies and gentlemen, after the case is submitted

1 to you, you must discuss it only in the jury room with your
2 fellow jurors. The attorneys and the parties in this case
3 are advised that they are not to talk to you all. So, if
4 you see anyone who is involved in this case around this
5 small courthouse square that we have and they don't even
6 say hello, well, ladies and gentlemen, they're not being
7 unfriendly. They are merely following my instructions
8 concerning that.

9 Now, ladies and gentlemen, it is important that you
10 keep an open mind and not decide any issue in this case
11 until all of the evidence has been presented, the attorneys
12 have made their closing arguments, and I have instructed
13 you on the law in this matter.

14 Ladies and gentlemen, it is your solemn responsibility
15 to determine the guilt or the innocence of these
16 defendants, and your verdict must be based solely on the
17 evidence that is presented to you in this trial, and on the
18 law as I instruct you during and at the close of this
19 trial.

20 Now, in just a few minutes the solicitor will make
21 what is called an opening statement in which he will
22 explain to you what he believes the issues are in this
23 case. The attorneys for the defendants may also make an
24 opening statement. However, they are not required to do
25 so.

1 What the attorneys tell you during their opening
2 statements is not evidence in this case. It is only their
3 contention as to what they believe the evidence or the
4 issues are in this case.

5 Now, from time to time during this trial, you may hear
6 one of the lawyers say something like Your Honor, I believe
7 we have question of law or a matter of law to discuss with
8 you. Or Your Honor, may we approach the bench. Or
9 sometimes I may find it necessary to excuse you from the
10 courtroom for a short while the attorneys and I discuss a
11 matter of law.

12 Now, the reason for this is, as I have told, that you
13 are the judges of the facts. And sometimes when I'm
14 discussing matters of law with the attorneys, it may be
15 necessary for me to make some comment as to the facts in
16 connection with making a ruling on whether a particular law
17 applies. And as I've said, I am not supposed to tell you
18 what the facts are. So, therefore, I will excuse you from
19 the courtroom while these discussions take place so you
20 will in no way be influenced by anything that I might say
21 or do in connection with these, the facts.

22 Also during the trial, you may hear one of the
23 attorneys make an objection to certain evidence that is
24 about to be presented. Whether I sustain, which would be
25 to grant the objection, or overrule, which would be to deny

1 the objection, should not be construed that I favor one
2 side over the other. I do not. Nor should you infer that
3 the objecting party is trying to hide something from you.

4 In this courtroom, as in all situations of life, there
5 are specific rules that must be followed, and the
6 attorneys, as officers of this court, are merely trying to
7 follow the rules of evidence in this court in making their
8 objections. And I am only making my ruling based upon what
9 I believe the law of this state to be concerning the
10 evidence which is being presented.

11 Now, ladies and gentlemen, in determining what the
12 true facts are in this case, you must decide whether or not
13 the testimony of a witness is believable. It will be my
14 responsibility to determine whether, as a matter of law,
15 whether certain testimony is admissible. But once the
16 testimony is admitted, whether or not you decide to believe
17 it as jurors is solely for you to determine.

18 In deciding whether to believe a witness, you have the
19 right to consider the interest of any witness, the bias of
20 any witness, the prejudice of any witness, the opportunity
21 for the witness to actually have observed the matter and
22 things about which the witness testifies, and the way the
23 witness acts on the witness stand.

24 Ladies and gentlemen, you have a right to consider
25 anything that is in the record that will help you evaluate

1 the testimony of a witness. Ladies and gentlemen, that
2 means it's your responsibility to pay close attention to
3 these witnesses, to observe the witness, and to listen to
4 the witnesses, and to pay close attention to the attorneys
5 and to the court.

6 Ladies and gentlemen, please don't let your minds
7 wander, but give strict attention to the testimony in this
8 case. So, at the end of all the testimony, after the
9 argument of counsel, and the charge on the law by me, you
10 will then be in a position to determine what the true facts
11 are, and to apply the law as I give it to you, and thus
12 render a true and just verdict.

13 Now, Mr. Foreman, in addition, it will be your
14 responsibility to preside in the jury room, and to be the
15 jury's spokesperson here in court. It will also be your
16 responsibility to write the verdict on the verdict form
17 that will be provided at the end of the trial. But I will
18 give you further instructions on that at the conclusion of
19 the case.

20 Now, in order to preserve everyone's rights, I will
21 give the parties an opportunity to object to anything that
22 I have stated.

23 Does the state have any objection to my ---

24 MR. MEADORS: No, sir.

25 THE COURT: --- opening statement?

1 MR. MEADORS: No, sir.

2 THE COURT: Mr. Deas, any objection for Mr. Canty?

3 MR. DEAS: No, objection.

4 THE COURT: Mr. Wilder, any objection for Mr. Jackson?

5 MR. WILDER: None, Your Honor. Thank you.

6 THE COURT: All right. Thank you, ladies and
7 gentlemen. We will now begin the trial of this case.

8 Mr. Meadors.

9 MR. MEADORS: May it please the court?

10 THE COURT: Yes, sir.

11 MR. MEADORS: William Flexon. William Flexon is dead.
12 William Bill Flexon is dead. He was gunned down, gunned
13 down on January 12, 2008, in an abandoned trailer, lot
14 number ■, on Cherryvale Road here in Sumter County while he
15 was delivering a pizza, while he was delivering a pizza.
16 That's what this case is about: the murder of William Bill
17 Flexon as he was delivering a pizza.

18 Ladies and gentlemen, my name is John Meadors. I'm an
19 assistant solicitor here in the Third Judicial Circuit.
20 And I have the pleasure and the honor of working for
21 Solicitor Chip Finney, Ernest Finney, III. I'm sitting
22 here with Sergeant Burnish, Investigator Mims, Investigator
23 Miller, and the Flexon family. I represent the State of
24 South Carolina, the people of Sumter, and the family of
25 Bill Flexon. And I've here today representing the state,

1 the people, against defendants Daniel Jackson, represented
2 by Mr. Wilder, and Reginald Canty, represented by Mr. Deas.

3 First, very briefly I want to thank you for being
4 here, and thank you for the attention I know you will give.
5 As Your Honor said, this is opening statements, and we're
6 allowed to give you what we believe the evidence will show.
7 I'll be relatively brief, but I want to start out talking
8 about a couple of things that are foundations. They're
9 important, and I bring them up.

10 First is the presumption of innocence. These two
11 defendants sit there presumed innocent, presumed innocent.
12 It's got a cloak of innocence around them, and they are
13 presumed innocent and that cloak stays with them. Remember
14 the cloak. The cloak stays with them unless and until,
15 unless and until the state proves them guilty beyond a
16 reasonable doubt. That's our burden. You've all heard
17 beyond a reasonable doubt. Not beyond all doubt. Beyond a
18 doubt that makes reasonable folks hesitate to act.

19 What are they charged with? Y'all all know. You can
20 say it as good as I can: murder. Murder is the
21 intentional, unlawful killing of another human, living,
22 breathing being -- Bill -- with malice aforethought.

23 What is malice aforethought? Malice is meanness, an
24 evilness, a wickedness, a spitefulness one person shows to
25 the other. I think in this case, the evidence will show

1 mean was the right word. Meanness, evilness, wickedness.

2 Malice can be expressed. Someone can say I'm going to
3 kill you. It's also permissible under certain
4 circumstances, and I believe the evidence will show in this
5 case, to infer or imply malice by the use of a deadly
6 weapon. In this case weapons.

7 Unlawful killing of another person with malice
8 aforethought. Now, malice is a term, aforethought is a
9 term of art. You don't have to plan something you. You
10 don't have to say I'm going to get up and kill this pizza
11 guy today. I'm going to kill him five minutes before.
12 Aforethought, it can exist in the instant it happens. It's
13 a term of art, pulling of the trigger. Malice
14 aforethought.

15 And we must prove that William Bill Flexon died as a
16 proximate result of the injuries. In this case, being shot
17 with two firearms: a 30-30 rifle and another firearm which
18 may be some type of revolver. We'll hear from the expert.
19 Two bullets from different guns came from his body.

20 What's the other charge?

21 And as a final to murder, we'll have to prove that he
22 died as a proximate result of those gunshots. We'll bring
23 a pathologist in to present that evidence to you.

24 Armed robbery: you take the goods of someone else
25 without permission by means of force or intimidation while

1 you're armed with a deadly weapon. In this case, the goods
2 of Bill Flexon and Sambino's Pizza, pizza. Murder and
3 armed robbery.

4 Now, you're going to hear different types of evidence
5 in this case, ladies and gentlemen. Just very briefly,
6 there's direct evidence. That's what somebody sees, hears,
7 smells, touches. They gather with their senses. They come
8 in here and tell y'all I saw this, I heard this.

9 Circumstantial evidence, as the judge will charge you,
10 is testimony as to a fact or facts which taken together
11 leads to the conclusion of another fact. It snowed. Of
12 course it didn't. This weather, we wish it did, but if it
13 snowed last night, you didn't see it. You got out and saw
14 snow on the ground, well, it snowed. Anybody can see it.
15 There will be examples of circumstantial evidence in this
16 case.

17 Documentary evidence, documents we may or may not put
18 in. Video that you may see, different types of evidence.

19 Credibility in this case will be an issue, as it is in
20 all cases, credibility and believability. Your common
21 sense stayed with you when you came in this courtroom.
22 Evaluate, evaluate the witnesses and the testimony you hear
23 because this is the only testimony you can consider are
24 exhibits and testimony that came from this stand. Use your
25 common sense in deciding what the truth -- what's

1 believable.

2 What happened? We believe the evidence will show that
3 January 12, 2008, we're at Sambino's. We're going to take
4 you to Sambino's, Sambino's, Sambino's on 441 Peach Orchard
5 Road. Tanya Knudson owns the place. She's going to be the
6 first witness, along with her husband, Rodney.

7 She gets a phone call approximately 8:06. Three large
8 pizzas were ordered. She's going to tell you what kind of
9 pizzas. She's going to tell you who she heard on the other
10 end of the phone. Says it sounded like a male. They order
11 three pizzas. She asked them where they were, where they
12 were calling from, as she does. Said I'm calling from a
13 pay phone, calling from a pay phone. Where is it? It's
14 lot number ■, O.C. Mobile Home Park in Cherryvale, lot
15 number ■, O.C. Mobile Home Park. She takes the order.

16 Bill Flexon, the evidence will show, this is the last
17 delivery, last delivery. Wasn't even going to take this,
18 but decided he would take it along with another one. And
19 you'll see on the pad where it's scratched out, and then
20 Bill's name put it. It was Al scratched out, and then
21 Bill.

22 He's leaving to take the order. Jennifer Griffin,
23 who's now Jennifer Thomas, who works for the Sumter County
24 Sheriff's Department, was eating in Sambino's, eating in
25 Sambino's and sees Bill Flexon leave with three pizzas.

1 Short while later, Jennifer Griffin, now Thomas, gets a
2 call: shots fired Cherryvale.

3 She leaves, the evidence will show, and she goes down
4 to lot number █ O.C. Mobile Home Trailer Park, and she sees
5 the body of Bill Flexon lying dead on the ground. That's
6 what evidence will show.

7 She, Ms. Knudson, heads down there when she gets the
8 call back that it's her delivery carrier. She comes down,
9 comes in contact with Sergeant Burnish. Informs them that
10 she had gotten a call from a pay phone.

11 They go down to Cherryvale Grocery, law enforcement.
12 They go in and talk to a fellow named Eugene Mackovitch.
13 He said, well, about this time, we believe the evidence
14 will show two young men came in here. Describes them.
15 They get the video the next day. A guy named John Baldwin
16 is going to come in here some time today and tell you how
17 he downloaded the video.

18 They look at the video with Mr. Mackovitch, Mr.
19 Baldwin and law enforcement, and one of the employees
20 identifies one of the persons who came in there and went
21 outside the store is Daniel Jackson sitting over there. At
22 some point, the other individual, the evidence will show,
23 is identified as Mr. Canty.

24 Law enforcement has the video. They gather -- you'll
25 hear from a Raymond Mackessy. He's now retired, but he's

1 coming back to testify about the evidence he gathered at
2 the scene, the pizza boxes, and where they were gathered
3 around and where they were located in relation to lot
4 number ■, O.C. Mobile Home Trailer Park.

5 January 13th, law enforcement talks to Mr. Canty. Mr.
6 Canty gives approximately five statements to law
7 enforcement. The first two, the evidence will show, denies
8 any knowledge of it. We get into the next series of
9 statements -- three, four, and five -- and you'll hear it
10 in detail. Mr. Canty says I was there. Then says another
11 person asked me do I want to rob the pizza man. Yes. I
12 was with another person when it happened. Another person
13 did it. Give a series of five statements, so we're going
14 to put it up here and show for you to evaluate this.

15 Law enforcement is working. They've identified two
16 individuals, time frame, taken a statement from Mr. Canty.
17 At some point in the investigation the next few days -- and
18 I'll have this lined up for you to look at them at the end
19 -- law enforcement goes to a lady named Andrea Russell's
20 house, the evidence will show, in Summerton.

21 Ms. Russell is the aunt of Deangelo Jackson. She
22 consents to letting law enforcement come in. Mr. Jackson,
23 we would show, was there but fled when the police came.
24 When the police leave, Mr. Jackson, we believe the evidence
25 will show, comes back.

1 The evidence will show that Ms. Russell then called
2 law enforcement. Ms. Russell called law enforcement and
3 said after you left, I found a rifle under my futon and
4 it's not mine. Y'all come get it.

5 They did. Investigator Kipp Coker from Clarendon
6 Sheriff's Department, along with one of these officers of
7 one of these other officers, Investigator Hammett, went to
8 Ms. Russell's house and got the gun. Gave it over to
9 Sergeant Burnish, along with some other bullets that she
10 gave over to them that she said, the evidence will show,
11 weren't hers. And she'll tell you whose they were.

12 Law enforcement also goes to Mr. Canty's house and
13 finds a shelling case under his bed. And then later on,
14 Ms. Russell calls back and says I found another shell
15 casing. I found another shell casing. And listen to her
16 testimony where she said she found it. She turns that over
17 to law enforcement.

18 Excuse me, family. Homicide cases, pathologist gets
19 involved, have to do an autopsy. Get two bullets out.
20 Evidence will show one came from a rifle, one came from a
21 handgun. Evidence will show through testimony, SLED
22 agents, pathologist, specifically SLED agents who took the
23 projectile, took the shell casings from Mr. Canty and the
24 shell casing from Mr. Jackson, and they said they came from
25 that rifle. And they're going to be able to say that one

1 of the bullets from the body of Bill Flexon was fired by
2 the rifle. That's what the evidence will show.

3 Ladies and gentlemen, both individuals were arrested.
4 Mr. Jackson was arrested. As you will hear the testimony,
5 officers will go over his Miranda rights. Read him his
6 rights, and the testimony will be he said two things. When
7 y'all came to my aunt's house, I took off. And the second
8 question. After being served with a warrant for murder and
9 armed robbery, his question to law enforcement was how ---

10 MR. WILDER: Your Honor, I'd like to interpose an
11 objection at this point on grounds previously raised.

12 THE COURT: All right, overruled. This is opening
13 statement.

14 MR. MEADORS: After being served with the murder and
15 armed robbery warrants, he looked at the law enforcement
16 there, and you'll hear from them, and he said how can you
17 charge me with armed robbery if I didn't take anything from
18 the pizza man?

19 Ladies and gentlemen, all I ask you is to listen. Use
20 your common sense. We're going to take you through this
21 investigation, take you through Mr. Canty's statement, take
22 you through Mr. Jackson's statement, show you the
23 investigation, offer a video. We're going to go through
24 and show you this investigation and present the evidence to
25 you. And all we can ask is just listen. Be fair to both

1 sides.

2 We all have our roles here, and I'm about through.
3 His Honor is the judge of the law. He is the law; there's
4 no question about that. What he says governs this. This
5 is his courtroom. He is the law.

6 We all have roles here, Mr. Wilder, Mr. Deas, myself.
7 But in all due respect to these gentlemen and to the judge,
8 I've always thought, and I do think y'all have to most
9 important role of all. You are the judge of the facts;
10 you're a judge, too. You're the judge of the facts.
11 Listen to them. Evaluate them. Decide what the truth is,
12 and at the end of the trial, His Honor is going charge you
13 on the law.

14 And Your Honor's right. This is an important case.
15 This is an important case. It's as important a case as is
16 tried in this country this year, today, this week. You'll
17 take the law he gives and apply it to the facts, and you'll
18 come back with a verdict.

19 And the word verdict is beautiful. It means to speak
20 the truth: *veredicto*, to speak the truth. And all any of
21 us can ask is that you speak the truth. And at the end,
22 I'm going to respectfully, respectfully ask you to come
23 back with a verdict that said that on January 12, 2008,
24 Bill Flexon was gunned down for no reason at all. And I'm
25 going to ask you to convict both defendants. Thank you.

1 THE COURT: Thank you, Mr. Meadors.

2 Mr. Deas and Mr. Wilder.

3 MR. DEAS: Thank you. May it please the court?

4 THE COURT: The court is pleased.

5 MR. DEAS: Mr. Foreman, ladies and gentlemen of the
6 jury, Mr. Meadors, my name is Garryl Deas. I practice law
7 here in Sumter. Born and raised here in Sumter, and I
8 represent the defendant Mr. Reginald Canty. Mr. Canty is
9 seated here to my immediate left.

10 At the time of this incident back on January 12, 2008,
11 he was sixteen years old, living with his mother in
12 Cherryvale Mobile Home Park.

13 One thing I agree with my colleague, Mr. Meadors, is
14 that this case is about Mr. William Flexon and his family,
15 and I want to first say that there is -- what they've
16 experienced is a tragedy that none of us would hope to
17 experience or encounter. My heart goes out to them. My
18 heart and prayers are with their deceased loved one, Mr.
19 Flexon. If you have red blood running through your veins,
20 if you have a beating heart, there is no way you cannot
21 feel for this family and the tragedy they've experienced.

22 But, ladies and gentlemen, let me tell you that one
23 thing my father used to tell me years ago before he passed
24 away during my first year of law school is that, he used to
25 always tell me son, two wrongs don't make a right. And how

1 true that rings in this particular situation because if
2 indeed, ladies and gentlemen, after such a tragic
3 experience encountered by this family, endured by this
4 family, and we have the two wrong individuals on trial for
5 what occurred to Mr. Flexon, that is also a wrong. And
6 that is also tragic.

7 I submit to you, ladies and gentlemen, that throughout
8 this week you're going to hear evidence, and you're going
9 to hear testimony. You're going to see videotapes, and
10 you're going to hear from the lawyers. And when it's all
11 said and done, in the end you, as the jurors in this case,
12 it's your responsibility to ultimately judge the facts and
13 to help us in this quest to find the truth of what really
14 happened back on January 12, 2008.

15 It's easy to conclude that because you have two
16 defendants sitting at the defense table, and because you
17 have the state attempting to establish their guilt by
18 producing evidence, and establishing their guilt beyond a
19 reasonable doubt, it's easy to become a part of the rush to
20 judgment and say that they're sitting at that defense
21 table, they must have done it.

22 I submit to you, ladies and gentlemen, that both Mr.
23 Canty and Mr. Jackson walked into this courtroom cloaked in
24 innocence. That's not because I say so, but because of our
25 rule of law, a defendant is innocent until he is proven

1 guilty beyond a reasonable doubt by the state. The
2 obligation to prove a defendant's guilt beyond a reasonable
3 doubt rests with this state from the beginning of this
4 process to the conclusion of it. If the state fails to
5 meet that burden and prove the defendant's guilt on each
6 and every element of each crime that they are charged with,
7 if they fail to do -- meet that burden, ladies and
8 gentlemen, it's your obligation to return a verdict of not
9 guilty. It is also equally your obligation if they do meet
10 that burden to return a verdict of guilty.

11 What I ask you to do, ladies and gentlemen, don't be
12 part of the rush to judgement. Simply sit back, listen,
13 watch, and base your judgment not on preconceived notions
14 of disposition. Base it on the evidence and testimony
15 you'll hear in this courtroom this week.

16 I, myself, have been guilty of sometimes making a rush
17 to judgment. I'm going to tell you a little story very
18 quick. I have two daughters. One's eleven, one's eight.
19 My eleven-year-old daughter takes after my wife: she's
20 sweet, kind, pretty, very angelic spirit. You know, just
21 the apple of my eye. My youngest daughter takes after me.
22 She looks like me. She probably won't like that when she
23 gets older, but she sort of has my attitude. She is also
24 sweet and angelic, but she's a little more mischievous than
25 my older daughter.

1 My older daughter almost never gets into trouble. One
2 of the things that she did recently to get in trouble is I
3 usually bring to court a calculator. I usually keep it in
4 that little black bag over there, and she had a tendency to
5 want to take it, take it and use it at school. And right
6 before school ended she had a test, and I knew, I thought
7 for sure she had taken my calculator because she had done it
8 in the past.

9 And so when I got home -- I had been in court, and I
10 was going through my bag looking for that calculator.
11 Couldn't find it. And I'd already said to myself I know
12 she took it because she's done it before. So, I got home.
13 I was mad and upset with her, and I said you took my
14 calculator to school, didn't you, for that test you had.
15 And she said no, Daddy. I didn't take it. I said yes, you
16 did because I've looked in my bag and I can't find it. She
17 said I'll tell you, Daddy. I promise you I did not take
18 it.

19 Despite her pleas of innocence, I punished her. Took
20 away the T.V. and wii and sent her to her room, put her on
21 restriction for a week.

22 One day about a week later, I'm in court again and I'm
23 going through that same black bag, and I look inside one of
24 the pockets in there that I didn't look in before, and
25 there was the calculator. I said to myself I'm guilty of

1 the very thing that often times I'm encouraging and
2 imploring jurors not to do is to make a rush to judgment.

3 So, I come home. Say to myself now how do I
4 apologize? How do I make amends for accusing my daughter
5 of doing something she didn't? All I could do was
6 basically bow my head to her and to tell her Daddy's sorry.
7 And in her true sweet and angelic way, she said that's
8 okay, Daddy. I know you've got a lot on you. You don't --
9 you didn't mean it, and I'm going to be okay.

10 It was easy to rectify that situation. All I had to
11 do was tell her I'm sorry. But once you make a rush to
12 judgement in a court of law, it's not easy to undo the
13 wrong. And that's why it's important, ladies and
14 gentlemen, that you base your verdict on the evidence. On
15 what you hear, what you see from witnesses, and when you
16 review the evidence, whether it's documentation or any
17 other form of evidence.

18 Now, on the day of this incident, and Mr. Meadors
19 already alluded to this, it is true that my client, Mr.
20 Canty, and Mr. Jackson went to the mobile -- went to
21 Cherryvale Grocery. It is true that my client was with Mr.
22 Jackson on that day at the Cherryvale Grocery near this
23 mobile home park.

24 But once this actual shooting occurred, I submit to
25 you, ladies and gentlemen, that the evidence will establish

1 that Mr. Canty was not within proximity of Mr. Flexon. He
2 did not at any point physically have contact or engage Mr.
3 Flexon.

4 The state is going to attempt to establish that my
5 client, under a theory of accomplice liability -- under the
6 hand of one, hand of all theory -- regardless of whether he
7 was actually at any point had any contact with Mr. Flexon,
8 regardless of whether he actually pulled the trigger on one
9 of these weapons, that simply because he was with the
10 parties that may have done, and simply because he was with
11 Mr. Jackson at the Cherryvale Grocery Store, and simply
12 because he was in the vicinity when Mr. Flexon was shot and
13 killed, that his mere presence in the vicinity leads to a
14 conclusion that he was a participant in this heinous crime.

15 I submit to you, ladies and gentlemen, that merely
16 being present or in proximity to an act, to a crime does
17 not mean you are responsible or guilty of it. I submit to
18 you, ladies and gentlemen, that when you hear the evidence,
19 when you have heard all the testimony, you will conclude as
20 I do that Mr. Canty, although he went to the store with Mr.
21 Jackson -- the same store the phone call was made to order
22 pizza -- he was not in any shape, form, or fashion in close
23 proximity. Or he did not -- and he not have any actual
24 contact. He did not actually engage Mr. Flexon at any
25 point at the time Mr. Flexon was shot and killed. He was

1 in the proximity. He was near enough to what happened to
2 see, but he did not participate in this, in the carrying
3 out of this crime.

4 And that's what state has to establish beyond a
5 reasonable doubt. Not that just he was there or that he
6 was close by, or that he rode to the store with Mr. Jackson
7 and back to the mobile home park. They're going to have to
8 prove beyond a reasonable doubt that Mr. Canty is guilty of
9 murder, which means they must prove that Mr. Canty
10 intentionally killed William Flexon with malice
11 aforethought.

12 And what that means by malice, what, what is meant by
13 malice aforethought is that he did so, he committed this
14 intentional killing knowing it was wrong, without any just,
15 legal cause. That he intended to kill Mr. Flexon. That
16 his intentional act was the proximate cause of Mr. Flexon's
17 death, and that he did so without any just, legal cause.
18 That's what has to be proven by the state beyond, beyond a
19 reasonable doubt for you to conclude that Mr. Canty is
20 guilty of murder.

21 Likewise, in order to establish his guilt beyond a
22 reasonable doubt as to the charge of armed robbery, the
23 state has to prove that Mr. Canty took property from Mr.
24 Flexon. And that he did, he took this property directly
25 from Mr. Flexon or his immediate presence, and that he did

1 so through the use of some form of violence or
2 intimidation. And that he did so through the use of a
3 deadly weapon, or some form of weapon when it, when it
4 occurred.

5 I submit to you, ladies and gentlemen, that can't
6 happen if you're just merely near the individual or in
7 close proximity to the individual that's being victimized.
8 Mere presence, merely being in close proximity to a crime
9 does not make you guilty of the crime.

10 Now, as Mr. Meadors talked about previously, everyone
11 here has a role. His Honor, he's the judge of the law. At
12 the appropriate time, he will instruct you on the specifics
13 of the laws that will be applied to the facts of this case
14 so that you can render a verdict. What I say, what Mr.
15 Meadors says, what Mr. Wilder, what he will say, it's our,
16 it's our role as the lawyers to project and convey to you
17 your position as to our particular defendants that we
18 represent. For Mr. Meadors, it's his job, it's his
19 responsibility to present the position of the state. What
20 we say isn't evidence; it's just our theories, our
21 philosophies, our positions as to how the facts and how the
22 events of January 12, 2008, appear to us.

23 But what you will base your decision on is what His
24 Honor tells you when he instructs you on the law, and what
25 you hear from this witness stand, and what you see in this

1 courtroom by way of evidence.

2 All I ask you to do is don't do what I did and make a
3 rush to judgment when I accused my daughter of taking my
4 calculator. All I ask you to do is simply withhold making
5 any judgment, withhold forming any opinion, withhold
6 forming any views until you've heard it all and seen it
7 all.

8 Now, the one part of this case that I'm sure will come
9 up, and in actuality it already has, is that my client, Mr.
10 Canty, gave some, gave statements. And actually when this
11 incident occurred, his mother is the person that told the
12 police that she thinks her son either saw or heard
13 something. That's how law enforcement initially began to
14 develop Mr. Canty as a witness or a suspect in this case:
15 because Mr. Canty's mother told them that he had come home,
16 or he had come back in the house and told her that he had
17 saw, he either saw or heard something. From that, the
18 police began to question him.

19 And they began to question him on January 13, 2008,
20 the day after the incident. Mr. Canty is sixteen years of
21 age. He had no lawyer. His mother was present, and he
22 initially did what a lot of young children do when they may
23 have seen something or heard something and it may have
24 involved people they know. The first instinct is to
25 pretend you don't know anything; the first instinct is to

1 basically act clueless. When you're sixteen years of age
2 and you see something like this, not hard to understand why
3 initially he pretended to be clueless.

4 In the world he grows up -- he grew up in that area of
5 town, unfortunately guns and acts of violence are nothing
6 out of the ordinary. Guns are more plentiful than
7 basketball goals or baseball gloves or baseball bats. In
8 his neighborhood, when you see somebody do something you
9 know they shouldn't, mum's the word. You don't tell
10 anybody. You don't rat out your friends. In his world
11 where he grew up, snitches are the scum of the earth. You
12 don't tell on their friends.

13 So, initially when he was approached by the police at
14 sixteen years of age about what he saw on January 12, 2008,
15 of course he was reluctant to talk about what he saw.

16 That's the explanation, ladies and gentlemen, for why
17 his initial statements were vague: being he was trying to
18 be loyal to the neighborhood and his friends. He wasn't
19 necessarily trying to protect himself, ladies and
20 gentlemen, because he was not in close proximity to Mr.
21 Flexon when Mr. Flexon was shot and killed. He was trying
22 to look out for the ones that were involved.

23 Is that wrong? Yes. Does that make him guilty of
24 murder, I submit to you, or armed robbery? I submit to
25 you, ladies and gentlemen, no, it doesn't. At sixteen

1 years of age, he did what his instincts told him, and
2 that's to play it clueless.

3 Now, as the time went on, after he went from January
4 of 2008 to May of 2008 and no lawyer, no legal counsel
5 whatsoever, and after giving almost, as Mr. Meadors alluded
6 to, four or five additional statements, he ultimately gave
7 more detail each time he gave a statement. His statements
8 weren't completely in discord with one another. It's just
9 that each one, he finally became more willing to give full
10 details. And ultimately when he finally gave his last
11 statement -- which was on January 25, 2008 -- after having
12 statements taken from him January 13th twice, January 15th,
13 January 17th, on January 25th he finally gave a statement
14 that gave the full details of what happened. Because he
15 ultimately realized at sixteen years of age, without the
16 benefit of a lawyer, that if he was going to do right, he
17 had to tell the truth. And that's what he did on January
18 25, 2008, when he gave that final statement.

19 Now, is the fact that he gave multiple statements,
20 some of which were vague and the last that were more
21 detailed, does that mean he can't be believed? Does that
22 mean he really participated in the shooting and senseless
23 the killing of Mr. Flexon? I submit to you no, it doesn't.
24 What it does mean is he made a mistake. The mistake he
25 made was that he should have just told the full truth right

1 from the beginning. But he didn't because he relied on
2 what his instincts told him, which were to play clueless
3 and don't tell anybody, and maybe this will all go away.

4 It's not, but we know it's not going to go away in
5 that fashion. That's the mistake Mr. Canty made at sixteen
6 years of age after seeing such a tragic and heinous event
7 take place. He waited a few weeks before he told the full
8 truth.

9 Now, what I'm going to ask you to do, ladies and
10 gentlemen, is what I alluded to earlier. When you hear the
11 full facts in this courtroom this week, and only until you
12 hear the full facts in this courtroom this week, and when
13 you go back into your deliberation room to begin to discuss
14 the verdicts you're going to render in this case, think
15 about what I just said regarding Mr. Canty. And whether or
16 not riding to the store with Mr. Jackson, his friend,
17 riding back to O.C. Mobile Home Park with his friend, Mr.
18 Jackson, and seeing these events take place, and then not
19 being directly and fully honest about it with the police
20 initially, whether those things add up to guilt of murder
21 and armed robbery, or if it has to be established. And if
22 you heard enough evidence in this courtroom this week to
23 establish that he participated in the carrying out of the
24 senseless and heinous shooting of Mr. Flexon. Whether or
25 not or not he truly participated in that act, and whether

1 or not he was, he actively participated in the armed
2 robbery of Mr. Flexon. Not that he was just there, not
3 that just he was in the near vicinity, not just that he saw
4 it, but whether or not he truly actively participated. And
5 if you conclude, ladies and gentlemen, the state has failed
6 its burden to establish that beyond a reasonable doubt,
7 then I am confident you'll return a verdict of not guilty
8 as to Mr. Canty. Thank you.

9 THE COURT: Thank you, Mr. Deas.

10 Mr. Wilder.

11 MR. WILDER: May it please the court, Your Honor?

12 THE COURT: Yes, sir.

13 MR. WILDER: Ladies and gentlemen of the jury, my name
14 is Arthur Wilder. I've been practicing law here in Sumter
15 County almost thirty-five years. It's been my privilege to
16 practice in this courtroom and the small courtroom
17 sometimes over in magistrate's courts here in Sumter
18 County.

19 But it's been a wonderful thing to participate in our
20 system. And I've had many roles over the years. I served
21 as city judge for a while, and then I went and worked with
22 the public defender's office as an assistant public
23 defender. After a few years, got to be chief public
24 defender over there. And then one day they asked me to
25 serve on the Commission on Indigent Defense. I did that

1 for a while with the State of South Carolina. And when Mr.
2 Culp retired as solicitor, I served as the solicitor for
3 the Third Judicial Circuit. So, I've actually done the job
4 that Mr. Meadors will be doing in prosecuting cases in this
5 courtroom. And after that was over, I came back and went
6 back to work defending cases for the public defender's
7 office. Been the chief litigator for a while, and now I've
8 been appointed on this case since back in 2008 to defend
9 Mr. Daniel Jackson.

10 And I want to say about that. Even though that's who
11 I am, this case is not about me. As the judge said, what
12 Mr. Meadors says and what I say, what Mr. Deas says, that's
13 not evidence in a case. You haven't -- in fact, you
14 haven't heard any evidence yet. Evidence is going to come
15 from the testimony that you hear from this witness stand.
16 And what you as individual jurors think the evidence proves
17 is going to be what, what you find it to be in this case.

18 Judge has told you you're the finders of the fact;
19 you're the judges of the fact. And I agree that your role
20 is very important in our, in our justice system. We could
21 not have court without our jury system, and it is the
22 finest system in the world.

23 On this day in January, January 12, 2008, Mr. Flexon
24 was killed. And Mr. Meadors explained to you how they went
25 to the Cherryvale Grocery and they got this video, and they

1 began to look at it, and they focused in on Mr. Canty and
2 Mr. Jackson. Well, I presume that at some point the
3 state's going to offer that video into evidence, and I'm
4 going to ask you to pay attention to the whole video, all
5 of it.

6 Pay attention to who else came in the store that
7 night. Pay attention to the time line. Who came and went?
8 Cherryvale Grocery is a busy place, and when the state
9 starts trying to focus in on just one little thing, got to
10 keep your mind open. Step back a little bit. Let's see
11 who was in there at about that time, and what were the
12 events that took place. Pay attention to the time and date
13 stamp on the video because that's going to show you some
14 things about the time line.

15 I believe when Mr. Mackovitch testifies, you're going
16 to hear that you can't see where the phone is located from
17 the place where the cashier's station is. So, the video is
18 not going to show you who made the phone call.

19 They're not even going to show you that they have the
20 right, specific time that they say the phone call was made
21 to Sambino's. A phone call was made from that place, from,
22 from Cherryvale Grocery to Sambino's, and that's, and they
23 want to say that was the one where the pizza order was
24 ordered, and that's critical.

25 Then you're going to hear, well, they went out there

1 and they took fingerprints off the phone to establish who
2 made the call. Pay close attention to what they found when
3 they lifted those fingerprints.

4 Who else was in the store? Law enforcement has a job
5 to show you the truth, the whole truth, nothing but the
6 truth. Let them carry their burden of proof.

7 You're going to find out the pizza was ordered to lot
8 ■ O.C. Mobile Home Park. Well, they focused in on Mr.
9 Canty. One reason is because he lived right on the corner
10 of where that pizza box was ordered, where the pizza order
11 was, was called to.

12 But who else lives there on that cul-de-sac in the
13 O.C. Cherryvale Mobile Home Park? Well, you're going to
14 find out, I believe, that A.R. lives at O.C. Mobile
15 Home Park, lot number ■, and D.S. lives at O.C.
16 Mobile Home Park, lot number ■ right next to where Mr.
17 Flexon wound up.

18 Lot ■ they go and they do a search in that mobile
19 home, and they find all kind of evidence in there. They
20 find blood in there. They find all kinds of DNA in there.
21 They didn't tell you the whole truth because, ladies and
22 gentlemen, everywhere they went to look to try to establish
23 that Mr. Jackson committed this crime, the evidence leads
24 somewhere else.

25 They took fingerprints that don't come back to Mr.

1 Jackson. Footprints were there but didn't match the shoes
2 he was wearing that night. And, ladies and gentlemen, we
3 know what kind of shoes he was wearing that night because
4 he had Timberland boots on when he came in O.C. --
5 Cherryvale Grocery over there. And so you're going to see
6 that, and you'll know that those aren't his footprints that
7 are found in proximity where Mr. Flexon's car was.

8 You're going to know that it's not his DNA that was
9 taken. They say that Mr. Flexon had a struggle with
10 whoever it was and that his fingernails had some DNA.
11 Whoever did it left it under his fingernails. Not Mr.
12 Jackson.

13 They're going to say that the pizza was stolen, the
14 boxes. Well, the boxes were found. Guess what? They
15 found the boxes, and do you know what? They took
16 fingerprints off the boxes. Not Mr. Jackson's
17 fingerprints.

18 Every place they went to look to try to put this on
19 Mr. Jackson, the evidence isn't there. Mr. Meadors wants
20 to talk about the circumstances. The circumstantial
21 evidence shows that he's not the one that did it.

22 So, now, what else did they find? Well, when we took
23 him into custody and we were interrogating him, he said how
24 could I do it? I didn't steal any pizza from anybody.
25 What else did he say? Well, I ran away when you came to my

1 aunt's house, but then he gets in a car and asks his aunt,
2 Angela Boyd, to drive him to the Law Enforcement Center so
3 he can turn himself in. That's not the actions of a guilty
4 man, to come on down and turn himself in so that they can
5 interrogate him.

6 All right, so you're going to find out from Dominick
7 West, who no longer is employed with the sheriff's
8 department. Ask why. And Mr. Robert Burnish is sitting
9 right here. When they start asking him questions, do they,
10 do they videotape it like you see on T.V.? Do they tape
11 record the conversation? Do they make notes while they're
12 talking to the man? No. They do none of that. So, they
13 make no record of what he supposedly said, and yet they
14 want to base their whole case on something he said.

15 Those are all reasons for doubt, reasonable doubt.
16 See, it would be tragic, not only tragic to try two guys
17 that didn't do it, but to convict somebody that didn't do
18 it. My client was nineteen years old when this happened,
19 facing charges that are the most serious we have under our
20 system of justice. Wouldn't that be a tragic thing?

21 If the state is going to carry its burden, let them
22 show you fingerprints on the pizza boxes. Let them show
23 you the scrapings under the fingerprints of Mr. Flexon.
24 Let them show you who else is on the video. Let them show
25 you who owns and stays in those mobile homes around where

1 that pizza was ordered to. Let them show you tape
2 recordings, videotape of any kind of interview or
3 interrogation that they did with Mr. Jackson. Let them
4 show you the footprints that they should have taken from
5 the scene. Let them show you these things that should add
6 up to evidence and proof beyond a reasonable doubt. And I
7 think what you're going to find is they don't have any of
8 those things.

9 What they got is the day after this took place, my
10 client got a phone call from a guy named Curtis Wheeler,
11 and he asked his uncle, Daniel Jackson's uncle, to give him
12 a ride so that he could go and get from Mr. Wheeler -- Mr.
13 Wheeler told he could have a rifle the day after the
14 shooting. And so like an idiot, he goes over to Mr.
15 Wheeler's house, and Mr. Wheeler gives him the rifle. And
16 the uncle is going to come in here, I believe, and testify
17 to just that: the day after the shooting.

18 Well, that explains how he came into possession of the
19 rifle. How come the police didn't follow up on what the
20 uncle said about where it was and who he, who he was that
21 got that rifle for Mr. Jackson?

22 And maybe that rifle was used in the shooting. I
23 don't know, but I'm here to tell you his. My client didn't
24 shoot him, Mr. Flexon. He didn't have the rifle on the day
25 when this happened, and the police know he got the rifle

1 the next day.

2 Ladies and gentlemen, I do appreciate your being here.
3 I thank you for be willing to serve as jurors. And like it
4 was said earlier, that, you know, jury duty is a high
5 calling. It may be the most important thing you ever do in
6 your entire life because if you want justice somewhere
7 else, you got to insist on it here in Sumter County. It
8 may be the only opportunity you have to participate in our
9 system of justice like this. And we thank you for your
10 willingness to be here, and we ask you for your close
11 attention to the evidence that comes from that witness
12 stand.

13 THE COURT: Thank you, Mr. Wilder.

14 All right, ladies and gentlemen, before we begin the
15 testimony, I'm going to give you a short break. We'll take
16 a fifteen minute recess.

17 If you could take them back and get them something,
18 some coffee or something like that. We will start back --
19 court will be in recess until 11:30.

20 (THE JURY EXITS AT 11:16 P.M.)

21 THE COURT: All right, court will be in recess until
22 11:30.

23 (OFF THE RECORD.)

24 (PRINTOUT OF CALLER I.D. MARKED AS STATE'S EXHIBIT
25 NUMBER 10 FOR IDENTIFICATION.)

1 (PRINTOUT OF CALLER I.D. MARKED AS STATE'S EXHIBIT
2 NUMBER 11 FOR IDENTIFICATION.)

3 (PIZZA RECEIPT MARKED AS STATE'S EXHIBIT NUMBER 12 FOR
4 IDENTIFICATION.)

5 (PIZZA BOXES MARKED AS STATE'S EXHIBIT NUMBER 13 FOR
6 IDENTIFICATION.)

7 (PIZZA WARMER MARKED AS STATE'S EXHIBIT NUMBER 14 FOR
8 IDENTIFICATION.)

9 (PIZZA WARMER MARKED AS STATE'S EXHIBIT NUMBER 15 FOR
10 IDENTIFICATION.)

11 (PIZZA WARMER MARKED AS STATE'S EXHIBIT NUMBER 16 FOR
12 IDENTIFICATION.)

13 (PIZZA BOXES MARKED AS STATE'S EXHIBIT NUMBER 17 FOR
14 IDENTIFICATION.)

15 (VIDEO MARKED AS STATE'S EXHIBIT NUMBER 18 FOR
16 IDENTIFICATION.)

17 MR. MEADORS: Please the court? After this next
18 witness, we may need a brief recess to get that in order
19 because the two witnesses after that involve that.

20 THE COURT: All right.

21 MR. MEADORS: If that's okay.

22 THE COURT: All right. Anything before we bring the
23 jury?

24 MR. MEADORS: Nothing from the state.

25 THE COURT: All right.

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1 MR. DEAS: Nothing from defendant.

2 MR. WILDER: Nothing, Your Honor.

3 THE COURT: All right, let's bring our jury in.

4 (THE JURY ENTERS AT 11:34 A.M.)

5 CLERK OF COURT: Your Honor, we have all jurors
6 present in the courtroom.

7 THE COURT: All right. Thank you, Mr. Bradley.

8 All right, is the state ready to proceed?

9 MR. MEADORS: State's ready, Your Honor.

10 THE COURT: State may call its first witness.

11 MR. MEADORS: If it pleases the court, Your Honor?

12 The state would call Ms. Tanya Knudson to the stand.

13 TANYA KNUDSON, BEING DULY SWORN,

14 TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: please state your full name. Spell
16 your last name for the record.

17 WITNESS: Tanya Jean Knudson, K-N-U-D-S-O-N.

18 DIRECT EXAMINATION BY MR. MEADORS:

19 Q. Good morning.

20 A. Good morning.

21 Q. Ms. Knudson, as I do with all my witnesses, would you
22 just acquaint yourself with the jury? Where are you from?

23 Where were you born?

24 A. North Carolina.

25 Q. And specifically Salisbury?

- 1 A. Salisbury.
- 2 Q. Where did you live after that?
- 3 A. My father was military, so we went to Seymour,
4 Johnson, Alaska, and Goldsboro.
- 5 Q. Goldsboro?
- 6 A. Uh-huh.
- 7 Q. And at some point, did you come to Sumter?
- 8 A. Shaw was our last base.
- 9 Q. And how old were you when you came to Sumter?
- 10 A. I was in the fifth grade.
- 11 Q. And, and where did you go to high school?
- 12 A. Hillcrest High School.
- 13 Q. And after you graduated -- when did you graduate?
- 14 A. '91.
- 15 Q. What did you do after that?
- 16 A. My husband and I got married, and we opened up
17 Sambino's in March of 2010.
- 18 Q. And that's pronounced Sambino's, correct?
- 19 A. Sambino's.
- 20 Q. And where was -- have you been in another location
21 prior to where you are now?
- 22 A. Our first location we opened on Broad Street Extension
23 right across from the base.
- 24 Q. Is that near the Cherryvale Road area?
- 25 A. Yes.

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1 Q. And during that time, were you serving the Cherryvale
2 area?

3 A. Yes.

4 Q. When did y'all move Sambino's?

5 A. We closed our first location in May of 2007 to
6 relocate, and it took four months to open. The new place
7 opened in September of '07.

8 Q. And everybody may know, but where are you located now?

9 A. We're at 305 Peach Orchard Road.

10 Q. Is also 441?

11 A. 441, uh-huh.

12 Q. Now, did William Bill Flexon work for you?

13 A. Yes, he did.

14 Q. Can you tell the ladies and gentlemen of this jury?
15 How long had he been employed with you?

16 A. Bill had been employed with us for three years. He
17 was with us at our first location, and he also was with us
18 when we reopened.

19 Q. Did, did he work somewhere else in the time period
20 when you were waiting to reopen?

21 A. It took longer than we anticipated to reopen, and he
22 needed, you know, work, and so he went and worked at Pizza
23 Hut for the four months while we were closed.

24 Q. And then came back when you went to 441?

25 A. Yes.

1 Q. Let's go straight to January of 2008. Can you give
2 the jury -- what was Bill's job, Mr. Flexon's job?

3 A. Bill was a pizza delivery driver for us.

4 Q. How many pizza delivery drivers did you employ a day?

5 A. During Monday through Thursday was probably two, and
6 Friday and Saturday we had three at that time.

7 Q. And then would you agree with me that January 12th of
8 '08 was a Saturday?

9 A. It was a Saturday.

10 Q. And so was Bill working that day?

11 A. He was. He was our day driver and our night driver.
12 He came in at 11 that day.

13 Q. How long was he supposed work that day?

14 A. We only had three drivers, and he was the early
15 person. He would be the first person off. There was no
16 specific time when you would get off. You know, usually
17 8:00, the first person would get off.

18 Q. And did it, did it obviously depend on how much
19 business was going on?

20 A. It depended on how busy we were. That's why we had
21 three drivers on the weekends.

22 Q. Now, were you working that night?

23 A. I was.

24 Q. And what was your job or your duty? I know you owned
25 the place, but what were you doing that night?

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1 A. I was working the front counter, doing the carry-out
2 orders, the call-in order.

3 Q. And do you have, and if you can remember, do you have
4 specials all the time?

5 A. Yes. We have specials we run on pizzas for pickup or
6 delivery.

7 Q. And when you were working the counter that night as
8 you were, were you receiving money from people that were
9 eating there? Did you -- were you taking money in?

10 A. Yes, we have dine in.

11 Q. And were you also taking orders?

12 A. Yes.

13 Q. Over the phone?

14 A. Yes.

15 Q. All right. Now, at approximately 8:04, did you get a
16 phone call from -- 8:04 p.m. on January 12th of '08, did
17 you get a phone call, an order ordering some pizzas?

18 A. Yes.

19 Q. And who answered that phone call?

20 A. I answered the phone.

21 Q. And did the person order pizzas?

22 A. Yes.

23 Q. Can you -- what pizzas did they order?

24 A. They wanted, they asked for our pizza specials. He
25 asked me what my pizza specials were, and I asked him for

1 pickup or delivery, and he said for delivery. And I told
2 him we had that large four-topping, we had the two large
3 one-topping, and then the two large with five toppings each
4 and the two-liter special.

5 Q. And you kind of know your specials. When people call,
6 you can just reel it right off, you would agree, right?

7 A. I mean, yeah.

8 Q. Now, was it your practice, and specifically in this
9 case and this phone call at 8:04, did you -- you asked if
10 it was delivery, correct?

11 A. I'll ask him if it's for pickup or delivery so I know.
12 I have a separate sheet to write them on.

13 Q. What other information do you get from a caller?

14 A. If -- I always get their, try to get their name.

15 Q. Okay.

16 A. And I ask them for a phone number. And if they give
17 me -- I have caller I.D., and if they give me a different
18 number than what's on my caller I.D., I write them both
19 down. That way we have, I have the number they gave me
20 plus the number that showed up on my caller I.D.

21 Q. All right, and did you ask this caller at 8:04 on
22 January 12, 2008, what was their number or where they were
23 calling from?

24 A. I asked him for a phone number, and he specifically
25 told he was calling from a pay phone.

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1 Q. And you're saying he right now. Was it -- sound like
2 a male?

3 A. It was a male's voice.

4 Q. All right.

5 A. And so when he said that it was coming from a pay
6 phone, I wrote down the number. Of course it was on the
7 caller I.D.

8 MR. MEADORS: Beg the court's indulgence.

9 Q. I'm going to show you what's marked 10 and 11, State's
10 10 and State's 11. Would you look at it and just tell me
11 whether they relate to your testimony? Do you recognize
12 it? Does it relate to your testimony right now?

13 A. Yes, it does.

14 MR. MEADORS: Your Honor, we'd offer State's 10 and 11
15 without objection.

16 THE COURT: Any objection from either defendant?

17 MR. DEAS: No objection.

18 MR. WILDER: None, Your Honor.

19 THE COURT: All right, State's Exhibit 10 and 11 are
20 admitted without objection.

21 MR. MEADORS: Thank you, sir.

22 (PRINTOUT OF SAMBINO'S CALLER I.D MARKED INTO EVIDENCE
23 AS STATE'S EXHIBIT NUMBER 10.)

24 (PRINTOUT OF SAMBINO'S CALLER I.D MARKED INTO EVIDENCE
25 AS STATE'S EXHIBIT NUMBER 11.)

1 THE COURT: You may proceed.

2 MR. MEADORS: May I approach?

3 THE COURT: You may.

4 BY MR. MEADORS:

5 Q. You just said your caller I.D., correct?

6 A. Yes.

7 Q. And are you looking at this as you're on the phone
8 taking an order?

9 A. Yes, I am.

10 Q. So, if somebody, I think you said, gives you a number
11 and it's different than your caller I.D., you'll take down
12 both of them?

13 A. I'll write both numbers down.

14 Q. So, looking at State's Number 11, what, what does that
15 show?

16 A. When that call comes in, it will show the date and the
17 time.

18 Q. And could you tell the ---

19 A. That the call comes in.

20 Q. Could you tell the jury what the date is?

21 A. January 12th, 8:04 p.m.

22 Q. January 12th, 8:04 p.m., and that's State's 11. Now,
23 State's 10, what is that?

24 A. The phone number that came on the caller I.D. when the
25 call came in.

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1 Q. And you're sure about that?

2 A. Yes. I'm positive.

3 Q. And that phone number, would you read it to the jury?

4 A. [REDACTED]-1073.

5 Q. And who took these pictures?

6 A. I did.

7 Q. When did you take them?

8 A. When we got back from the family of Bill's home, when
9 we had to go and tell them. We went with victim's advocate
10 to his family. And when I got back, I pulled up my caller
11 I.D. and took pictures with my cell phone.

12 Q. And you still have that on your phone today, correct?

13 A. I do.

14 Q. Now, did this person make an order?

15 A. They did.

16 Q. Okay, and I'm going to show you what's marked State's

17 12. And do you recognize that, and did you produce it?

18 A. Yes, I did. That is my handwriting.

19 MR. MEADORS: Your Honor?

20 A. That's our delivery sheet.

21 Q. That's your delivery sheet?

22 A. Uh-huh.

23 MR. MEADORS: We'd offer State's 12.

24 THE COURT: Any objection?

25 MR. WILDER: Let me see.

1 MR. MEADORS: I thought they'd seen it. I'm sorry.

2 (COUNSELORS CONFER.)

3 THE COURT: Any objection?

4 MR. DEAS: No objection.

5 MR. WILDER: No objection.

6 THE COURT: State's Exhibit Number 12 is admitted
7 without objection.

8 You may proceed.

9 MR. MEADORS: Thank you, Your Honor.

10 (PIZZA RECEIPT MARKED INTO EVIDENCE AS STATE'S EXHIBIT
11 NUMBER 12.)

12 BY MR. MEADORS:

13 Q. Ms. Knudson, this is, what is this?

14 A. That's our pizza delivery sheet. It's a three-part
15 sheet. The back of it gets stuck to the pizza box so the
16 delivery driver knows where they're going. And the yellow
17 stays with us so when we check them out, we can balance
18 out. And they take the pink with them or else it's left on
19 the box, whichever they prefer.

20 Q. And on here, did this caller give you a location of
21 where he wanted to pizza to go?

22 A. He did. He said he wanted it delivered to [REDACTED]
23 Cherryvale Drive, lot number [REDACTED].

24 Q. Were you familiar with the Cherryvale area?

25 A. If they give me a mobile home, if they say, like,

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1 Oaklawn Mobile Home, lot number whatever or Burgess Glenn,
2 lot number whatever, I know where those are. But I was not
3 familiar when he said [REDACTED] Cherryvale Drive, lot [REDACTED].

4 Q. And did, did you check to see if y'all had delivered
5 in that area before?

6 A. I had asked the gentleman to hold on a moment, and I
7 went in the back and asked my husband if he was familiar
8 with [REDACTED] Cherryvale Drive and he said yes, but it was O.C.
9 Trailer Park. That we hadn't had any problems with it.
10 That it was okay to go ahead and take the order.

11 Q. So, you got back on the phone and said okay, I'll take
12 an order?

13 A. That's when I proceeded with the order.

14 Q. And what did this person order?

15 A. He ordered three large pizzas. He asked for a
16 pepperoni, a sausage, and a double cheese.

17 Q. And is that reflected there with the three X's?

18 A. The three X's represent the number of pizzas they
19 want.

20 Q. And there's -- three X is a large, P.S. and a 2C?

21 A. Yeah. 2C is our initial for double cheese.

22 Q. And does it have the time on here?

23 A. It does. That could been the time either that I came
24 back on the phone and proceeded with the order or, you
25 know, it wasn't exactly the time that maybe the call came

1 in. It's just in the process of me taking the order, I
2 look at my watch and note the time.

3 Q. And the number underneath here, is that the same
4 number that's on State's 9, I think?

5 A. Yes, it is.

6 Q. State's 10, I apologize. And does it have the amount
7 that you charged on there?

8 A. Yes.

9 Q. And, and lot 28 Cherryvale, and did you ask -- I mean,
10 I guess you asked for a name, correct?

11 A. I had to keep asking him to, to repeat himself because
12 it was like, it was either he was trying to muffle the
13 phone, or there was something in his mouth. I had to keep
14 asking him to repeat himself. I do remember that. And I
15 had thought I'd heard him. I had asked for a name, and
16 when he said his name, I asked him, I said I'm sorry. I
17 couldn't hear, and he repeated it again, and I wrote down
18 Jesse because I assumed that's what he had said, Jesse.

19 Q. Jesse?

20 A. Yes.

21 Q. Is there any way for you to verify if someone has
22 given you a real name?

23 A. No.

24 Q. I'd talked to you previously. Had Bill originally,
25 Mr. Flexon, was he going to take this order?

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1 A. Originally he was not.

2 Q. And who was going to?

3 A. One of our other drivers, Al Roberts.

4 Q. Al Roberts?

5 A. Uh-huh.

6 Q. And how did that change?

7 A. Bill was already scheduled to take our Frierson Road
8 delivery, and that was going to be his last delivery of the
9 night. And when we got the call in for the [REDACTED] Cherryvale
10 Drive, he was going, he was going home. He was going to
11 come back later and get checked out when things slowed
12 down, which he normally did. And he said, well, that's on
13 my way home. I'll just take it because that call came in
14 right after the Frierson Road one. He said that's on my
15 way home. I'll just go ahead and take it.

16 Q. So, Al was supposed to go but?

17 A. Al was supposed to have originally taken that
18 delivery.

19 (COUNSELORS CONFER.)

20 (PIZZA DELIVERY SHEET MARKED AS STATE'S EXHIBIT NUMBER
21 19 FOR IDENTIFICATION.)

22 COURT REPORTER: 19 for identification.

23 BY MR. MEADORS:

24 Q. I'm going to show you what's marked State's 19. Does
25 this -- do you recognize that?

1 A. Yes. That is our pizza delivery sheet.

2 Q. And that's different from this how?

3 A. This is the top copy. It's a three part -- it's --
4 that's the top copy, and then it goes on to the next three
5 copies.

6 Q. And on this one, it's got a name, and this one it
7 doesn't?

8 A. Yes, because that's mine. Their slips are ready torn
9 off and taken over to the pizza box to be put on, and this
10 one is where we write who takes the delivery.

11 MR. MEADORS: State's 19, Your Honor, without any
12 objection.

13 THE COURT: Any objection?

14 MR. DEAS: No objection, Your Honor.

15 MR. WILDER: No objection.

16 THE COURT: All right, without objection.

17 (PIZZA DELIVERY SHEET MARKED INTO EVIDENCE AS STATE'S
18 EXHIBIT NUMBER 19.)

19 BY MR. MEADORS:

20 Q. And so that just shows that Al was supposed to, and
21 Bill ended up taking it?

22 A. Al was originally going to take it, and Bill took it.

23 Q. Do you have some -- this is a crazy question, but do
24 you have police sometime eat at Sambino's?

25 A. All the time, uh-huh.

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1 Q. And was there an officer eating there about this same
2 time, 8:00 on January 12th?

3 A. There were a few, actually, in the dining room eating.

4 Q. After -- well, did Mr. Flexon leave with the pizza?

5 A. He'd left with those deliveries.

6 Q. And after that, you kept working obviously?

7 A. Yes.

8 Q. And at some point after that, did you, did you
9 yourself learn that there had been a shooting?

10 A. I did. The officers had come up quite quick to the
11 counter to check out, and I had heard something over their
12 radio about some shots in Cherryvale Drive. And I looked
13 at the officer and I was, like, I have a driver delivering
14 over in O.C. Trailer Park right now. And they, you know,
15 they just continued to check out as fast as they could and
16 they left.

17 Q. And at some point after that, you learned that it was
18 your driver?

19 A. I did. It had been a little while, and I wasn't
20 expecting Bill to come back, so I didn't think anything
21 different because of course he was going to go home and
22 come back later to be checked out. And one of the officers
23 came in and went around in to the counter, and I just felt
24 real uneasy about it.

25 I felt my heart sink, and I knew. I just felt

1 something bad had happened. So, I grabbed my cell phone
2 real quick and tried to call Bill's cell phone to see if
3 he'd answer and make sure everything's okay.

4 And a few minutes later, the officer comes back around
5 the counter and tells me that my husband wants to see me in
6 the office. And he had told me what happened.

7 Q. And that's when you learned of Bill's death, Mr.
8 Flexon's?

9 A. Yes, sir.

10 Q. Do you need a moment here?

11 (A PAUSE.)

12 Q. Ms. Knudson, Tanya, did you have an occasion to go to
13 the O.C. Mobile Home Park?

14 A. I never went there, but I was familiar with it because
15 my sister-in-law lived over in the Cherryvale area.

16 Q. Did you have an occasion to go there that evening?

17 A. I did.

18 Q. And did you come in contact with this fellow right
19 here, Sergeant Burnish?

20 A. I did.

21 Q. And had you had a prior dealing with him and a check
22 for some incident at your establishment?

23 A. Yes.

24 Q. Or someone had written bad ---

25 A. Some returned checks.

T. KNUDSON - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. And it is -- did you have the opportunity to convey to
2 him that somebody had ordered a pizza from a pay phone?

3 A. I did.

4 Q. And that was your driver?

5 A. Uh-huh.

6 Q. And were you familiar with the area and the pay phones
7 in the area?

8 A. Yes, I was.

9 Q. And what was the closest pay phone?

10 A. The closest one would have been at the Cherryvale
11 Grocery.

12 Q. And that's an area y'all had used to -- y'all being
13 Sambino's, y'all had served that area before?

14 A. A lot.

15 Q. You don't serve it anymore, do you?

16 A. Rarely.

17 (A PAUSE.)

18 Q. I'm going to show you what's marked State's 13, and
19 can you recognize this? Do you recognize it? I'm sorry.

20 A. I do. Those are our pizza boxes. I do. Those are
21 our pizza boxes.

22 MR. MEADORS: Your Honor, this is State's 13 without
23 objection.

24 THE COURT: Without objection, gentlemen?

25 MR. DEAS: No objection.

1 MR. WILDER: No objection.

2 THE COURT: Without objection.

3 (PIZZA BOXES MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 13.)

5 BY MR. MEADORS:

6 Q. I won't get these out, but this is State's 17. Do you
7 recognize those?

8 A. I do. It still has the white sheet. That's exactly
9 like the other evidence. That's the third copy that's
10 attached to the box.

11 Q. And it does, doesn't it? And that white sheet says
12 what?

13 A. It says Jesse, [REDACTED] Cherryvale Drive, lot [REDACTED]. And if
14 you look on the other boxes, they'll have the initial of
15 what the other pizzas are. This one has an S, which the
16 driver knew that was his other sausage pizza. That he
17 needed to take that one with him as well.

18 Q. These really are the pizzas that came from your place.

19 MR. MEADORS: That's State's 17, I believe, without
20 objection.

21 THE COURT: Any objection?

22 MR. DEAS: No objection, Your Honor.

23 MR. WILDER: No objection.

24 THE COURT: Without objection, State's 17 is admitted.

25 (PIZZA BOXES MARKED INTO EVIDENCE AS STATE'S EXHIBIT

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1 NUMBER 17.)

2 BY MR. MEADORS:

3 Q. Now, you like to keep your pizzas warm for when they
4 get there, don't you?

5 A. Yes.

6 Q. And I don't know if there's anything, but did you miss
7 three pizza warmers after this?

8 A. The two red ones are ours.

9 Q. Okay. That's State's 16 and State's 14, these are
10 yours?

11 A. Those are ours.

12 MR. MEADORS: Your Honor, we'd offer these without
13 objection.

14 THE COURT: Any objection, gentlemen?

15 MR. MEADORS: I'll bring them over.

16 MR. WILDER: Your Honor.

17 (COUNSELORS CONFER.)

18 BY MR. MEADORS:

19 A. The others at my store look exactly like those.

20 MR. MEADORS: So, it's 14 and 16 without objection,
21 Your Honor.

22 THE COURT: Without objection?

23 MR. WILDER: Without objection.

24 MR. DEAS: No objection.

25 THE COURT: Thank you.

1 (PIZZA WARMER MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 14.)

3 (PIZZA WARMER MARKED INTO EVIDENCE AS STATE'S EXHIBIT
4 NUMBER 16.)

5 BY MR. MEADORS:

6 Q. And this one you don't recognize?

7 A. I think it was a Pizza Hut one Bill had kept in his
8 car when he worked at Pizza Hut for those four months we
9 were closed.

10 Q. Do you think this was -- this came -- this was Bill's
11 when he worked at Pizza Hut?

12 A. Yes, I know it was Bill's because he left an extra bag
13 in his car. When he had extra pizzas and didn't have an
14 extra bag, he would use that one.

15 MR. MEADORS: And we'd offer 15.

16 THE COURT: Any objection?

17 MR. WILDER: No objection.

18 MR. DEAS: No objection, Your Honor.

19 THE COURT: Without objection.

20 (PIZZA WARMER MARKED INTO EVIDENCE AS STATE'S EXHIBIT
21 NUMBER 15.)

22 MR. MEADORS: Beg the court's indulgence.

23 THE COURT: Yes, sir.

24 BY MR. MEADORS:

25 Q. This just came to me. Do drivers collect money?

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1 A. They do.

2 Q. All right, and if you go take a, if you're going to
3 make a couple of different stops off, where, where do they
4 keep the money? Or do y'all have a procedure of what they
5 do with it until they come back, bring the money to you,
6 the owners?

7 A. Some drivers, they would, they would make a drop with
8 me and my husband, and we would keep it separate.

9 Bill was a locksmith by trade, and he had lock boxes
10 all in his car, and he always told my husband. He called
11 him Boss Man. He said Boss Man, nobody will ever find my
12 money because he kept it locked in different areas. But
13 that night, he had it in his pocket.

14 Q. So, so, was the plan then when he got through with the
15 deliveries, if he had the opportunity to, he would have
16 brought the money back when?

17 A. He would have come back when we slowed down and get
18 checked out. He would give us a call and see how things
19 were going, and he would come back and get checked out.

20 Q. But he wasn't able to come and check out?

21 A. Yes.

22 MR. MEADORS: Beg the court's indulgence?

23 THE COURT: Yes, sir.

24 (A PAUSE.)

25 MR. MEADORS: Judge, that's all we have. Thank you,

1 sir. Thank you.

2 THE COURT: Mr. Deas.

3 MR. DEAS: Thank you, Your Honor.

4 CROSS-EXAMINATION BY MR. DEAS:

5 Q. Ms. Knudson, how are you doing?

6 A. Hi.

7 Q. My name is Garryl Deas, and I represent the defendant
8 Mr. Canty.

9 When this call came in to, to your place of business
10 on January 12th, you said it was 8:04 approximately?

11 A. It was between 8 and 8:05.

12 Q. Okay, and that's what your caller I.D. indicates?

13 A. Yes.

14 Q. That call came in at that time?

15 A. My caller I.D.

16 Q. And that's the store's caller I.D. Is that correct?

17 A. The store's caller I.D.

18 Q. All right. Now, do you recall what time it was when
19 Mr. Flexon left the store to take the two deliveries, the
20 one to Frierson Road and then the Cherryvale?

21 A. No. It wouldn't haven't been long after that because
22 it doesn't take long for those pizzas to go to the oven.

23 Q. Okay. So, you all's policy and procedure is once a
24 call comes in, is that then cook the pizza, or are the
25 pizzas already pre-made?

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1 A. No, they're not pre-made. They're cooked to order.

2 Q. Okay. So, when the call came in 8:04 p.m. before Mr.

3 Flexon would leave to take the two deliveries, that ---

4 A. I think he was just about on his way out with that

5 Frierson. That one came. He said it's on my way out.

6 I'll wait for it real quick.

7 Q. Okay, but once, once the order was made by the

8 customer or by the person that called at 8:04 p.m., before

9 Mr. Flexon would leave the store, he would have to wait for

10 the pizzas to be cooked, correct?

11 A. Yes.

12 Q. Okay, and how long does it typically take to make ---

13 A. It takes about ---

14 Q. --- three pizzas?

15 A. They have usually the dough prepped, and they just

16 have to top it real quick, and we have two people back

17 that's doing the top, and it takes about six to seven

18 minutes for it to run through the oven.

19 Q. For them to come out of the oven?

20 A. Out of the oven from ---

21 Q. Okay, for a total ---

22 A. From the time they go in the oven until the time they

23 come out.

24 Q. So, total prep time would be about maybe seven

25 minutes, you said?

1 A. Possibly, yes.

2 Q. Okay, and then once the pizzas were prepared, once
3 they were cooked, at that point Mr. Flexon would have then
4 put them in warmers and left?

5 A. Yes.

6 Q. Would he be the one that would do that or someone
7 else?

8 A. It just depends. The other drivers help each other
9 out and get their runs ready. So, Bill could have done it,
10 or one of the other drivers could have put it in the bag.

11 Q. But, and I understand this was back in January 2008.
12 So, we're talking about a little more than three years ago.
13 But do you have any recollection of approximately what time
14 it was when he left?

15 A. When he left?

16 Q. When he left to take the two orders.

17 A. I don't.

18 Q. Would it be fair to say that it was obviously at some
19 point after 8:15?

20 A. I'm not sure.

21 Q. Do you know what time it was, or do you recall what
22 time it was when you got the phone call about the incident
23 that happened with Mr. Flexon?

24 A. I did not get a phone call.

25 Q. Okay. How did you become aware that something

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1 happened with Mr. Flexon?

2 A. One of the officers had come back into the store.

3 Q. Okay, and do you remember what time that was?

4 A. I do not.

5 Q. When the officer came back in the store and told you
6 about what happened with Mr. Flexon.

7 A. Looking at the clock was the last thing -- I wouldn't
8 have, you know.

9 Q. Now, you mentioned that there was an officer eating in
10 the store?

11 A. There were a few of them in there eating.

12 Q. Do you recall if that officer received some type of,
13 if that officer received some type of call on her
14 transistor radio or her radio about this incident?

15 A. Whether it was a female or not -- I don't believe the
16 one I heard was on a female's radio. It might have been.
17 I'm not sure, but they had to have gotten the call when
18 they were in dining room eating because they came up real
19 quick to check out so that when they got the call, they
20 would have been sitting in the dining room. I, I didn't
21 hear it in there. I heard it on another one's radio when
22 he came up to the counter to pay.

23 Q. And how many officers were there total in ---

24 A. There, there could have ---

25 Q. -- in the restaurant that evening?

- 1 A. There was probably maybe three, four.
- 2 Q. But you don't dispute that a call did come in on the
3 officer's radio about the incident?
- 4 A. It would have had to have when they were in, they were
5 in the dining room eating because they came up real quick
6 to pay.
- 7 Q. Do you know approximately what time it was when these
8 officers came up to pay after receiving this call on their
9 radio?
- 10 A. No.
- 11 Q. You also mentioned that you at some point went out to
12 the mobile home park that evening after learning about what
13 happened ---
- 14 A. That evening.
- 15 Q. --- to Mr. Flexon?
- 16 A. Yes, I did.
- 17 Q. Did you go, did you go there? Was that the first
18 place you went after you left your store?
- 19 A. Yes.
- 20 Q. After, after learning ---
- 21 A. Immediately.
- 22 Q. --- what happened?
- 23 A. We closed and we went straight there.
- 24 Q. Do you remember what time it was when you got out to
25 the, to the mobile home park to the scene of where the

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1 incident had happened?

2 A. No. It happened. You know, we just left immediately.

3 As soon as we found out, we shut down and went.

4 Q. Okay, and you, you -- it was nighttime?

5 A. It was.

6 Q. It was dark out?

7 A. Yes.

8 Q. And can you tell me, or if you recall, where exactly
9 it was you went when you went out to the mobile home park?

10 A. We went as far as the officer, the patrol cars would
11 let us go. And then I -- we didn't have to walk very far
12 to where the investigators were.

13 Q. And is that where you encountered Sergeant Burnish?

14 A. Yes.

15 Q. Did, did Sergeant Burnish at that time take any
16 statement from you about your phone call with the person
17 that ordered the pizza?

18 A. Whether he took a statement, I offered it to him. I
19 let him know that when the call came in, the gentleman told
20 me specifically he was calling from a pay phone because
21 when I asked for a phone number, he could not give me one.
22 And he just plainly said I'm calling from a pay phone. And
23 so when he made that call, with the vicinity of where I
24 knew he was, the delivery was going, the closest pay phone
25 to him was Cherryvale Grocery.

1 Q. Okay. So, at the time, you really hadn't -- you
2 didn't know specifically which pay phone the call came
3 from. You just assumed it was Cherryvale Grocery because
4 that was the closest one?

5 A. Yes.

6 Q. But you didn't know that specifically?

7 A. No.

8 Q. Now, at some point did you give Sergeant Burnish and
9 one of the other investigating officers the picture of your
10 -- the picture you took with your cell phone of your caller
11 I.D.?

12 A. I showed them, but I gave the pictures to Mr. Meadors.

13 Q. So, correct me if I'm wrong, Ms. Knudson, but
14 basically then, so far at the time frame, the one thing
15 that you're clear on is that the call came in at 8:04?

16 A. My caller I.D. says 8:04.

17 Q. But you, you're not certain as to when Mr. Flexon left
18 the, left Sambino's to deliver the pizzas. Is that
19 correct?

20 A. I don't know exactly the time that he left, but he was
21 only waiting on that, that order to be made.

22 Q. And he wasn't -- the only two orders that he was
23 taking that evening was the one to Frierson Road and the
24 one to Cherryvale?

25 A. Yes.

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- 1 Q. And do you know if he took the order to Frierson Road?
- 2 A. He did.
- 3 Q. He did?
- 4 A. He did. He knew that was the first order, order
5 called in, and so that's where he would have went first.
- 6 Q. Now, your -- the location of Sambino's where the call
7 came in, that's the one that's on -- is that the one that's
8 on 441?
- 9 A. 1305 Peach Orchard Road.
- 10 Q. And that's off of 441?
- 11 A. Yes.
- 12 Q. How far is that? How far is Frierson Road from but
13 1305 Peach Orchard Road?
- 14 A. Our drivers have access to Shaw Air Force Base, and so
15 they're able to cut through the gate, and Frierson Road's
16 right there.
- 17 Q. So, how long would you say it would take to get from
18 your store to, to ---
- 19 A. Depending on how fast they're going. There's no
20 telling. They're out to make some money.
- 21 Q. Would you say it's probably about a five mile trip one
22 way from your store to, to ---
- 23 A. I couldn't be sure.
- 24 Q. --- to Frierson Road?
- 25 A. I couldn't be sure.

1 Q. It wouldn't take an hour to get there, would it?

2 A. Oh, no.

3 Q. Would it take under ten minutes?

4 A. Possibly, because they're able to cut through Shaw Air
5 Force Base.

6 Q. So, you have knowledge that he did make the Frierson
7 Road delivery prior ---

8 A. He did make the Frierson.

9 Q. --- prior to going to Cherryvale Road?

10 A. He did.

11 Q. And then he would have left Frierson Road, heading on
12 to Cherryvale Road?

13 A. Yes.

14 Q. And just to clarify, you're, you're not certain today
15 as to what time it was. You were informed by law
16 enforcement that an incident had happened to Mr. Flexon?

17 A. I did not look at the clock when the officer came in.

18 Q. Okay, and you're also not certain as to the time that
19 the officers in the restaurant received a call on their
20 radio about the incident. Is that correct?

21 A. I don't know what time they received a call.

22 Q. And, and, Ms. Knudson, you don't know for sure whether
23 it was Mr. Canty that made the phone call, to order the
24 pizzas, do you?

25 A. I didn't see their faces when they called my phone.

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1 Q. So, you don't know who made the phone call, correct?

2 A. No, I don't.

3 MR. DEAS: Court's indulgence.

4 THE COURT: Your Honor.

5 MR. DEAS: Court's indulgence. Nothing further.

6 THE COURT: Thank you.

7 Mr. Wilder.

8 MR. WILDER: Thank you.

9 CROSS-EXAMINATION BY MR. WILDER:

10 Q. Good morning. I believe you testified that you gave a
11 picture, the picture that's now in evidence, to Mr.
12 Meadors?

13 A. Yes, I did.

14 Q. And so since Mr. Meadors hadn't been employed here
15 except for a few months, I guess that would have been you
16 gave the picture to Mr. Meadors just a couple of months
17 ago, right?

18 A. Yes, I did.

19 Q. All right. So, from all the way from 2008 to a couple
20 of months ago, nobody asked you for a picture of a phone
21 call?

22 A. No, they didn't. I had the call on my phone, on my
23 pictures, and I had just recently started paying my bill
24 online on Verizon's website. And did not know that I could
25 transfer pictures from phone to my Verizon Wireless account

1 and that you were able to print them until recently.

2 Q. Okay. So, you figured out how to do that, and you let
3 Mr. Meadors know you could provide him with a picture?

4 A. Yes.

5 Q. Now, the -- well, within just a few hours after this
6 incident, another call came in to Sambino's of a young man
7 looking for a job, didn't it?

8 A. It did.

9 Q. And did you give Mr. Meadors a copy of the phone call
10 from a young man looking for a job?

11 A. The call came up private on the caller I.D. There was
12 no phone number associated with it.

13 Q. And so you figured it was just a sick prank that ---

14 A. Yes.

15 Q. --- somebody would make a phone call within hours of
16 the shooting of Mr. Flexon, saying they were looking for a
17 job.

18 A. Yes.

19 Q. But you called. You gave that information to law
20 enforcement immediately, did you not?

21 A. I let them know that a call had come in with a private
22 number to see if they could get some records from the phone
23 company to see if they could get the number traced.

24 Q. All right. Do you know if they traced that number?

25 A. To my knowledge, I don't think they were able to trace

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1 it.

2 Q. Okay. All right. Now, that caller, whoever it was,
3 was aware that whoever was shot apparently was working for
4 Sambino's.

5 MR. MEADORS: Objection, Your Honor. There's just no
6 way she'd know.

7 THE COURT: Sustained.

8 BY MR. WILDER:

9 Q. Was the caller -- did the caller say that they were
10 aware, they were aware that there was a job opening?

11 A. They had said that we hear you're looking for a pizza
12 delivery driver.

13 Q. Okay. Sounds like they were aware, doesn't it?

14 A. If that was the way you would take it.

15 Q. All right. Now, looking at the pizza boxes that have
16 been entered into evidence, this one up here, State's
17 Exhibit Number 17, and I'm going to ask you to look in the
18 wrapper there, if you would, and look at the pizza box
19 itself. You can see the purple stains that are on the
20 boxes?

21 A. Yes.

22 Q. All right. Now, when you send your pizza boxes out,
23 they don't have purple stains on them like that, do they?

24 A. No.

25 Q. And presumably maybe that's fingerprint powder or

1 something law enforcement used to try to lift fingerprints,
2 but ---

3 A. I'm not sure.

4 Q. But whatever it is, this didn't come from Sambino's,
5 did it?

6 A. No.

7 Q. Okay, all right, and the same would be true with the
8 other pizza boxes. To the extent that they have purple
9 stains on them, they didn't come from Sambino's, did they?

10 A. No.

11 Q. All right, but you said you could identify for the
12 jury that those were the specific pizza boxes that were
13 sent to lot number ■ on Cherryvale, right?

14 A. Yes, they are.

15 Q. Because of the attached receipt on the box?

16 A. And they also have -- this one has a 2C on it, which
17 would represent the double cheese that was ordered, and the
18 other box has an S written on it which would represent the
19 sausage.

20 MR. WILDER: All right, Your Honor, with permission of
21 the court, I'd like permission for the witness to show that
22 marking to the jury.

23 THE COURT: You may, yes.

24 BY MR. WILDER:

25 Q. It is in evidence, so if you would show the jurors

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1 that marking you're referring to so that they can see,
2 please.

3 A. (WITNESS COMPLIES.)

4 Q. And would you also show the stains that are on the box
5 that are not from Sambino's?

6 A. (WITNESS COMPLIES.)

7 Q. Okay, thank you. You may return to your seat. All
8 right, now Mr. Deas was trying to get you to name specific
9 times. But I'm going to ask you if you have an impression
10 of how much time there was between the time Mr. Flexon left
11 and the time you found out that there had been a shooting
12 at Cherryvale.

13 A. I do not recall the time frame that was in between
14 those two.

15 Q. All right. Some time after you received the call,
16 obviously time enough to cook the pizzas, time enough for
17 him to go by one other place, and then get to Cherryvale,
18 right?

19 A. Yes.

20 Q. And then whatever time the call came in to law
21 enforcement, which I guess the police have a record of
22 that, right?

23 A. Yes.

24 Q. Okay. Now, the receipt, you wrote those -- that's
25 your handwriting on State's Exhibit Number 12?

1 A. That is my handwriting.

2 Q. And you wrote down the name Jesse?

3 A. Yes, I did.

4 Q. Now, you said that time that you put down there was at
5 some point following the phone call. It's your impression
6 that that's ---

7 A. It could have been ---

8 Q. --- a few minutes?

9 A. --- the time when I came back from asking my husband
10 where [REDACTED] Cherryvale Drive was.

11 Q. Okay. All right.

12 MR. WILDER: Ask the court's indulgence for one
13 moment.

14 THE COURT: Yes, sir.

15 (A PAUSE.)

16 BY MR. WILDER:

17 Q. When you were speaking with Officer Burnish that
18 evening out at Cherryvale, how, how far away from Mr.
19 Flexon's car were y'all standing?

20 A. I could see the car was facing out, and the front door
21 was open. The ambulance was just leaving when we got
22 there.

23 Q. Okay. So, the ambulance has just been leaving, and
24 you're standing somewhere close enough to see the car and
25 the open door?

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1 A. Yes.

2 Q. All right. Would you say it was, like, from here to
3 the end of the courtroom or closer where the car was?

4 A. I couldn't give you an exact.

5 Q. Well, what's your impression, ma'am, of how close the
6 car was to you? Was it, is it, was it 10 feet, 100 feet?
7 How far away from the, from open car door were you
8 standing?

9 A. I knew what Bill's van looked like, and I could see
10 his van with the front door open from where I was standing.

11 Q. All right. Was it down the little lane where the car
12 was?

13 A. The car -- O.C. Trailer Park has a horseshoe, and Bill
14 must have driven through the second driveway. So, he would
15 be coming out and facing his van to come out the first
16 entrance.

17 Q. Okay, but I'm interested in where you were standing
18 when you talked to Investigator ---

19 A. I was not in the horseshoe. I must have been right at
20 the edge of it.

21 Q. Right at the edge of the horseshoe. So, you were on
22 Cherryvale Drive, not ---

23 A. I was on Cherryvale Drive. I was not ---

24 Q. Not the little loop?

25 A. --- in O.C.

1 Q. Okay. So, you were on, on Cherryvale Drive, and it
2 was very shortly after the incident because the ambulance
3 was just pulling ---

4 A. The ambulance was pulling away when we got there.

5 Q. Okay, and was traffic able to go up and down
6 Cherryvale Drive? At that point, had the police blocked
7 off that one little driveway? Were you still able to drive
8 your car up and down Cherryvale Drive?

9 A. I don't recall if they had it, the whole road, blocked
10 off.

11 Q. But you were standing there in the roadway at that
12 location on Cherryvale Drive?

13 A. Yes.

14 Q. Did you see crime scene tape being stretched around?

15 A. I don't remember any crime scene.

16 Q, Do you, do you, did you recognize any of the other
17 officers who were out there that evening other than Mr.
18 Burnish?

19 A. I spoke with Glenn Herrett, and I spoke with Mr.
20 Burnish.

21 Q. Anybody else you saw you recognized?

22 A. There was so many things going on. I wasn't focused
23 on who I was -- you know, I was talking to Mr. Burnish.

24 Q. Now, you mentioned to the jury during your original
25 testimony that you had attempted to place a call to the

T. KNUDSON - CROSS-EXAMINATION BY MR. WILDER

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1 cell phone that belonged to Mr. Flexon?

2 A. I did.

3 Q. So, therefore, you knew that he had a cell phone with
4 him?

5 A. Yes. He had a bluetooth.

6 Q. Did Officer Burnish ask you to identify Mr. Flexon's
7 cell phone?

8 A. His cell phone?

9 Q. His cell phone, yes, ma'am.

10 A. No, he did not.

11 Q. Did he ask you to identify any cell phones at any
12 point during his investigation of this case?

13 A. No, he did not.

14 Q. Did you ever see Mr. Flexon's cell phone again?

15 A. No, I did not.

16 Q. Did you get close enough to the car to examine its
17 contents?

18 A. No, I did not.

19 Q. Do you know whether the black pizza warmer box that
20 you said was Mr. Flexon's, do you know whether it was even
21 in his car that evening?

22 A. The black one? No, I don't.

23 Q. The other pizzas that were delivered before Mr. Flexon
24 was supposed to go to the lot ■ on Cherryvale, the O.C.

25 Mobile Home -- but those other pizzas, you said you knew he

1 delivered those pizzas, right?

2 A. That was his first delivery. He knew he was to go
3 there first. So, he would have went and dropped those
4 first.

5 Q. He would have, but you don't know if he actually did
6 or not, do you?

7 A. That would make no sense to backtrack. He would have
8 went to Frierson Road first.

9 Q. And you're basing that on what you presume to be this
10 logical route of travel, correct?

11 A. Yes.

12 Q. You do not know whether or not he delivered those
13 other pizzas that night, do you?

14 A. No, I don't.

15 Q. Have you ever see the pizza boxes that were delivered
16 to that first location that night again?

17 A. I wouldn't have seen them again.

18 Q. I'm asking you. Did you?

19 A. No, I did not.

20 Q. Okay. Now, these pizza warmers, those are the kind
21 you use. Are you sure those are the ones that came from
22 Sambino's, the red ones?

23 A. They look exactly like the exact same ones we have in
24 our store. Those are our pizza bags.

25 Q. The blue stain or the purple stain that's on those,

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1 they wouldn't have been on the boxes that you -- or the
2 warmers that you normally have, would they?

3 A. No.

4 MR. WILDER: Nothing further.

5 THE COURT: Mr. Meadors, any redirect?

6 MR. MEADORS: Very briefly.

7 REDIRECT EXAMINATION BY MR. MEADORS:

8 Q. Mr., I think Mr. Deas asked you about the time frame.
9 Well, I know he did, and then Mr. Wilder was asking you
10 about the boxes and all. After the order comes in, did
11 Bill make the pizzas?

12 A. Those pizzas he didn't, he didn't make.

13 Q. So, somebody else made the pizzas?

14 A. Yes.

15 Q. Somebody else gets the box and puts the pizza in
16 there?

17 A. Uh-huh.

18 Q. And then somebody puts it in the warmer?

19 A. Yes.

20 Q. So, it's handled by a few folks before it gets to
21 Bill?

22 A. The box itself can be handled by many people. We fold
23 boxes ahead of time and stack them.

24 Q. So, they might be sitting?

25 A. Yes.

1 Q. Need to ask you about if you know for sure. State's
2 16 entered without objection. These are your pizza boxes?

3 A. Those are my pizza bags.

4 Q. And he asked you about some stains not being on there
5 before. But these are white when you get them out, right?

6 A. Yes, they're white.

7 Q. And I think he might have even asked you if those
8 could be from law enforcement, but you, you didn't have
9 anything to do that, did you?

10 A. No.

11 Q. He asked you about this phone call earlier in the
12 evening. I think it was 2:00 in the morning after this.
13 Rodney actually got that phone call and told you about it,
14 right?

15 A. He took the office -- the call in the office.

16 Q. And that's a pretty sick joke, isn't it?

17 A. It is.

18 Q. And it was a private phone number, and you had no way
19 of knowing who it was?

20 A. No. It came up private.

21 Q. That's mean, isn't it?

22 A. Very.

23 Q. Now, Mr. Wilder asked you about whether you knew the
24 first order was, was given. Why did you say that order
25 would have been delivered first?

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1 A. Their orders are taken in the order they come in.
2 That order came in first, and so that order would have went
3 to that home first. He would have made those other
4 deliveries en route after that first delivery because he
5 knew he was going there first, and then he was going home.
6 And he was just going to take the Cherryvale Drive one on
7 his way home because he had to pass right by there to go
8 home.

9 Q. Do you try to do first call, first serve?

10 A. Yes.

11 Q. And you try to get pizzas there quick when people
12 order them, or do you take your time?

13 A. Those drivers are trying to make their money. They're
14 trying to get there quick.

15 Q. And if you ordered a pizza, somebody ordered a pizza
16 and didn't get it, would they ever call you about it, that
17 I didn't get the pizza?

18 A. Oh, they're going to call.

19 Q. Did you get any calls where nobody got their pizza?

20 A. No, I didn't.

21 Q. You sure about that?

22 A. I'm positive.

23 Q. That's pretty much common sense, isn't it?

24 A. Yes.

25 Q. Where did Mr. Flexon live?

1 A. Bill lived in Burgess Glenn Mobile Home Park.

2 MR. MEADORS: Thank you. That's all.

3 THE COURT: Any recross based upon his redirect?

4 MR. DEAS: Nothing further.

5 THE COURT: Mr. Wilder?

6 MR. WILDER: None, Your Honor.

7 THE COURT: All right, thank you.

8 Ma'am, you may step down.

9 (THE WITNESS EXITS THE STAND.)

10 THE COURT: All right, it's 12:30. It's an
11 appropriate time to break for lunch. Ladies and gentlemen,
12 I'm going to excuse you for lunch with strict instructions
13 that you not speak to anyone concerning this trial. Do not
14 discuss this case amongst yourselves. We will resume
15 taking testimony at 2 p.m. Be back just a little bit
16 before then so we can start right on time. And again I
17 appreciate your promptness so we can keep the trial going.

18 All right, thank you, ladies and gentlemen. Have a
19 nice lunch.

20 (THE JURY EXITS AT 12:25 P.M.)

21 THE COURT: All right, court's adjourned until 2:00.

22 (OFF THE RECORD.)

23 (DVD MARKED AS STATE'S EXHIBIT NUMBER 20 FOR
24 IDENTIFICATION.)

25 THE COURT: Anything further before we bring our jury

1 in?

2 MR. MEADORS: Nothing from the state.

3 THE COURT: All right, bring the jury in.

4 (THE JURY ENTERS AT 2:05 P.M.)

5 CLERK OF COURT: Your Honor, we have all the jurors
6 present in the courtroom.

7 THE COURT: All right, thank you.

8 And, ladies and gentlemen, thank you for your
9 promptness. I would hope that you did not overeat at
10 lunch. What I've found is that on warm days like this --
11 in fact, a couple of months back we had a trial, and I
12 noticed one juror kind of nodding off because of the heat
13 and the full stomach. So, I asked all the jurors to stand
14 up. Well, they didn't all stand up. One of them was sound
15 asleep. So, we'll try to give you enough breaks today to
16 keep active. If we need to do a set of stretches, you can
17 do that as well.

18 So, state ready to proceed with the next witnesses?

19 MR. MEADORS: Yes, sir.

20 THE COURT: All right. You may call your next
21 witness.

22 MR. MEADORS: If it pleases the court? State would
23 call John Baldwin.

24 JOHN BALDWIN, BEING DULY SWORN,

25 TESTIFIES AS FOLLOWS:

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1 (PROPERTY LIST MARKED AS STATE'S EXHIBIT NUMBER 21 FOR
2 IDENTIFICATION.)

3 (SURVEILLANCE PHOTOGRAPH MARKED AS STATE'S EXHIBIT
4 NUMBER 22 FOR IDENTIFICATION.)

5 (SURVEILLANCE PHOTOGRAPH MARKED AS STATE'S EXHIBIT
6 NUMBER 23 FOR IDENTIFICATION.)

7 COURT REPORTER: State's 21, 22, and 23 for I.D.

8 THE COURT: 21. What are they again?

9 COURT REPORTER: 21, 22, and 23 for I.D.

10 THE COURT: All right. Very well. Thank you.

11 CLERK OF COURT: State your full name. Spell your last
12 name for the record.

13 WITNESS: John Baldwin, B-A-L-D-W-I-N.

14 DIRECT EXAMINATION BY MR. MEADORS:

15 Q. Good afternoon, Mr. Baldwin. Good afternoon.

16 A. Good afternoon.

17 Q. Please look at these ladies and gentlemen and tell
18 them in little bit about John Baldwin. Where you're from,
19 where you grew up, where you lived, and how you got to
20 Sumter.

21 A. I was born in North Carolina. I grew up in Mexico,
22 Minnesota. I joined the Air Force in 1979. I got out of
23 the Air Force in '83. I received some avionics training in
24 the Air Force.

25 Q. Slow down a little bit.

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1 A. I'm sorry. For the next twenty years or so, I worked
2 as a bartender/waiter, and for the last ten years I've been
3 in video surveillance.

4 Q. What type business was your dad in?

5 A. My dad was a computer systems analyst.

6 Q. And your moving around was a lot to do with his
7 profession?

8 A. Yes, sir.

9 Q. And you joined the Air Force when you were sixteen?

10 A. Yes, sir.

11 Q. And where were you there? Where were you stationed?

12 A. I was stationed at Lackland Air Force Base for basic
13 training. That's in San Antonio, Texas. I was -- then for
14 technical school, I went to Lowry Air Force in Denver,
15 Colorado. And for my permanent base was Eglin Air Force
16 Base.

17 Q. And you were in Eglin roughly when? Do you remember?

18 A. Yes, sir, from '81 to '82.

19 Q. And did you receive any type training at that point in
20 your life involving ---

21 A. I received general electronics training.

22 Q. And I think you said you bartended?

23 A. Yes, sir, bartended and waited tables for
24 approximately twenty years.

25 Q. And where was that?

- 1 A. Florida. Just outside at Milton, Florida. Pensacola,
2 Florida. Also in Alabama.
- 3 Q. And then in '92 and '93, you came to Sumter?
- 4 A. Yes, sir.
- 5 Q. Quit bartending?
- 6 A. Yes, sir. Well, no, sir. I didn't. I started
7 working at the officers' club.
- 8 Q. Okay.
- 9 A. On Shaw Air Force Base as a bartender.
- 10 Q. And had your father come to Sumter previously?
- 11 A. My father had moved here with my mother about two
12 years before that.
- 13 Q. And at the Air Force, what did -- you got what type of
14 training in electronics specifically?
- 15 A. Just the basic electronics, how it worked.
- 16 Q. And what connection did your dad have with Cherryvale
17 Grocery, if anything?
- 18 A. My father owned Cherryvale Grocery Store in 1992, I
19 believe.
- 20 Q. He owned it?
- 21 A. He owned it. He owned it until my mother died.
- 22 Q. And when you moved here to Sumter, who did you stay
23 with?
- 24 A. I stayed with my brother.
- 25 Q. Here in Sumter?

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1 A. Yes, sir.

2 Q. And at some point, did you begin on your own
3 installing satellite equipment?

4 A. Yes, sir. I applied for a job Direct Broadcasting
5 Services in Sumter as a satellite installer.

6 Q. And did you get training for that?

7 A. On-the-job training, yes, sir.

8 Q. How long did you do that?

9 A. About two and half years.

10 Q. And then you went to work for a Ken Turner?

11 A. Yes, sir, Protection Plus. It's an alarm company.

12 Q. And how long did you do that?

13 A. About two and a half years.

14 Q. And after you stopped working for Mr. Turner, what did
15 you do after that?

16 A. I went to work for Clifton Reynolds, Carolina Security
17 and Fire, as his video surveillance.

18 Q. And what was your job then?

19 A. To sell and to install camera systems.

20 Q. And how long have you been doing that?

21 A. Since 2005.

22 Q. You're still doing that?

23 A. Yes, sir.

24 Q. So, you actually go to residences or businesses and
25 install surveillance equipment?

1 A. Yes, sir.

2 Q. All right. Now, the Cherryvale Grocery back in June
3 -- January of 2008, Mr. Baldwin, was it equipped with a
4 surveillance system?

5 A. It was equipped with the surveillance system I
6 provided for them, yes, sir.

7 Q. So, you actually were the one that was -- installed
8 it, monitored it?

9 A. Yes, sir. Yes, sir. I installed two cameras at that
10 time and the DVR system.

11 Q. Who owns the store now, Cherryvale Grocery?

12 A. I don't know his last name, but his name is Early.

13 Q. Early something?

14 A. Yes, sir.

15 Q. All right. Did you get a call from -- I don't know
16 who. From somebody to go to Cherryvale Grocery to download
17 or to put on a VHS a certain time period at Cherryvale
18 Grocery in January of 2008?

19 A. Yes, sir, I did.

20 Q. And do you remember who contacted you?

21 A. He's in, he was sitting in here just a second -- there
22 he is.

23 Q. Sergeant Burnish?

24 A. Yes, sir. I believe it was Officer Burnish that
25 called me. I do not know for sure. It was a phone call.

J. BALDWIN - DIRECT EXAMINATION BY MR. MEADORS

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1 It was that long ago, but he's the one that came, picked me
2 up from my house.

3 Q. Something the police want to see at Cherryvale. You
4 installed the system. Police call you to come down and get
5 the information?

6 A. Yes, sir.

7 Q. Fair to say?

8 A. Yes, sir.

9 Q. And did, did you do that?

10 A. Yes, sir.

11 Q. Tell the jury what you did.

12 A. I waited to be picked up at my house. I live five
13 house from Cherryvale. I was taken down there. I was
14 handed -- I was told what time the people came in, and I
15 recorded the time off the DVR onto a VCR tape.

16 Q. I'm going to show you.

17 (COUNSELORS CONFER.)

18 MR. MEADORS: And I apologize, Judge.

19 BY MR. MEADORS:

20 Q. I'm going to show you what's marked State's 18. Just
21 look at it. We call pull it out if you want to. Tell me
22 if you recognize it. Does it relate to what you were
23 talking about just a few minutes ago?

24 A. Yes, sir. This is the VCR tape, I believe.

25 Q. That you copied from ---

1 A. On DVD.

2 Q. --- Cherryvale Grocery surveillance system?

3 A. Yes, sir.

4 Q. Can you tell them how you did that?

5 A. I hooked up the VCR to the DVR system. To do that, I
6 hooked up the input of the VCR from the output of the DVR,
7 the output of the VCR back to the monitor so I view what I
8 was recording at the time.

9 Q. And the specific time periods they gave you, you
10 recorded?

11 A. Yes, sir.

12 Q. And do you remember -- and we've looked at a copy of
13 this together, correct?

14 A. Yes, sir.

15 Q. And there's a time on there. Do you remember that?

16 A. Yes, sir I do.

17 Q. Like the time of day, and I believe it's in military
18 time. You were in the military?

19 A. Yes, sir.

20 Q. When you went down there on January of 2008, did you
21 have an opportunity to look at it live like it was taken
22 then?

23 A. Yes, sir.

24 Q. And what observations, if any, did you make about the
25 time when you saw it down there on January '08, 2008 before

J. BALDWIN - DIRECT EXAMINATION BY MR. MEADORS

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1 you recorded what happened when you were looking at it
2 live? What observations, if any, did you make about the
3 time that was on there?

4 A. The time was one hour off.

5 Q. One hour off, and any question about that?

6 A. No, sir.

7 Q. I remember looking at it and ---

8 A. Yes, sir.

9 Q. --- looking at your own watch and going that's an hour
10 off?

11 A. Yes, sir.

12 Q. Okay, and you ever heard of the term fall back before?

13 A. Yes, sir.

14 Q. Did it appear that that machine had not? Somebody
15 hadn't turned it back for fall?

16 A. No, sir. I mean, yes, sir, it did appear that way.

17 Q. But other than that, the hour, was the time correct?
18 Just being an hour off?

19 A. Yes, sir.

20 Q. Does that make sense? Would that be correct?

21 A. Yes, sir.

22 MR. MEADORS: I believe we'd offer the VHS, 18,
23 without objection.

24 THE COURT: Any objection, Mr. Deas?

25 MR. DEAS: No objection.

1 THE COURT: Mr. Wilder? Mr. Wilder?

2 MR. WILDER: No objection.

3 THE COURT: Without objection, that would be State's
4 Exhibit Number 21?

5 COURT REPORTER: 18.

6 THE COURT: 18. All right. Very well.

7 (VIDEO MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
8 18.)

9 BY MR. MEADORS:

10 Q. All right. Now, on here, John, Mr. Baldwin, marked
11 State's 21, is your signature on there?

12 A. Yes, sir.

13 Q. And what is, what is that?

14 A. It's a Sumter County Sheriff's Office property list.

15 Q. And does that show where you gave that tape to
16 Sergeant Burnish?

17 A. Yes, sir.

18 MR. MEADORS: Your Honor, I believe State's 21 without
19 objection.

20 MR. WILDER: No objection.

21 MR. DEAS: No objection.

22 THE COURT: State's 21 is admitted without objection.

23 (PROPERTY LIST MARKED INTO EVIDENCE AS STATE'S EXHIBIT
24 NUMBER 21.)

25 BY MR. MEADORS:

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1 Q. Now, you have -- have you, excuse me, viewed what's
2 marked as State's 20 with me, a portion of it, to see if it
3 reflects what's on State's 18?

4 A. Yes, sir.

5 Q. And it appeared to you that what's on this disk,
6 State's 20, was the same that was on that VHS?

7 A. Yes, sir.

8 Q. All right. You and I didn't watch that whole VHS
9 together to see if it's all the same on here, correct?

10 A. No, sir. We did not.

11 Q. And you didn't copy this yourself from the VHS?

12 A. No, sir. I did not.

13 Q. Your understanding law enforcement made a copy of that
14 onto this, correct?

15 A. I understand what I was told, yes, sir.

16 MR. MEADORS: Your Honor, this is State's 20. I'd
17 like the record to reflect Mr. Baldwin has -- what he has
18 seen on there is on here. We'd offer it as State's 20.
19 There may be an objection.

20 MR. WILDER: Your Honor, we'd like just to wait until
21 Investigator Bean gets here to say that it contains
22 everything that's on the tape.

23 MR. MEADORS: So, we would -- 20 for I.D. depending on
24 Your Honor's ruling. It just shall go to I.D.

25 THE COURT: When do you intend to call Investigator

1 Bean?

2 MR. MEADORS: Judge, this afternoon and the morning,
3 there are some witnesses that will need to look at that,
4 and the only practical thing we have is the DVD, and
5 that's...

6 THE COURT: All right. I'm going to overrule your
7 objection. If it comes up and Officer Bean does not
8 testify, then I'll have it stricken.

9 All right, you may proceed.

10 MR. WILDER: Your Honor, may our objection run
11 throughout?

12 THE COURT: Absolutely.

13 MR. WILDER: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 (DVD MARKED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER
16 20.)

17 (A PAUSE.)

18 THE COURT: Do y'all want to move around so that y'all
19 can see?

20 MR. MEADORS: Your Honor, this will be very -- I'm
21 going to direct him to the time, and that's it. I'm not
22 going to be long with him.

23 THE COURT: All right.

24 (A PAUSE.)

25 (PORTIONS OF STATE'S 20 ARE PLAYED FOR THE JURY

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1 THROUGHOUT THE FOLLOWING TESTIMONY.)

2 MR. MEADORS: Mr. Baldwin, can you see this?

3 WITNESS: No, sir. Is it all right if I go down?

4 THE COURT: Do you need to get down to see? He can't
5 see it. Can you not blow it up any more than that?

6 MR. MEADORS: Can you blow it up any more than that?

7 WITNESS: I can see from here, sir.

8 MR. MEADORS: If that's okay with Your Honor.

9 Pause it here real quick, Mr. Miller.

10 BY MR. MEADORS:

11 Q. How many cameras in January of 2008 were installed or,
12 and are -- and operated at Cherryvale Grocery?

13 A. Five.

14 Q. And did you have a camera outside?

15 A. No, sir.

16 Q. Now, you had mentioned earlier, you had testified
17 earlier about the time, I believe, had been an hour off,
18 correct?

19 A. Yes, sir.

20 Q. Would that be reflected right here, 2103 ---

21 A. Yes, sir.

22 Q. 53? So, according to your testimony and being down
23 there at Cherryvale on January 12, 2008, this time would
24 have been 8:04, correct?

25 A. Yes, sir.

1 Q. Now, also, I just -- actually right here it says
2 January 12th. That was the right day, wasn't it?

3 A. Yes, sir.

4 Q. But it's got 2088?

5 A. I have no idea about that one, sir.

6 Q. That clearly can't be correct, right?

7 A. Yes. Yes, sir, that couldn't ---

8 MR. WILDER: Object to the leading, Your Honor.

9 THE COURT: Sustained.

10 BY MR. MEADORS:

11 Q. What year is it?

12 A. That was 2008, sir.

13 Q. Have we gotten to 2088 yet?

14 A. No, sir.

15 Q. What, what part of the store are these cameras showing
16 now?

17 A. Right now, that's showing -- camera one is showing the
18 back register. Camera two is also showing the back
19 register from a different angle. Camera three is showing
20 their wine coolers or beer coolers or soda in the back of
21 the store where the camera is. Camera four down there is
22 showing the front of the store at the front counter. And
23 the other camera four, which is on a quad splitter --
24 that's why there's only two cameras showing there, is
25 showing the front door.

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1 Q. When, if ever, will the, will the cameras start
2 recording?

3 A. When there's motion in the camera.

4 Q. If there's no motion, what do we see? A picture?

5 A. Nothing.

6 Q. Why is, why is that?

7 A. There is no reason to record nothing. It saves the
8 hard drive on the DVR.

9 Q. It still shows the picture, the picture when there was
10 movement?

11 A. Yes, sir.

12 Q. Do you know what this is?

13 A. It's the front door.

14 Q. And what is this over here?

15 A. It's the front register from the angle above the front
16 door.

17 Q. And how far is it from here to here generally?

18 A. About 12 feet.

19 Q. You can have a seat now. Thank you.

20 Now, were you in Cherryvale Grocery at that time
21 period that law enforcement was asking you to record? I
22 mean, you weren't at Cherryvale at that time, were you?

23 A. I got to Cherryvale a little after 11.

24 Q. My point being that at 8:04, you weren't at
25 Cherryvale?

1 A. No, sir. I was at home.

2 Q. Okay.

3 MR. MEADORS: Beg the court's indulgence.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 MR. MEADORS: That's all. Thank you.

7 THE COURT: Mr. Deas.

8 MR. DEAS: Thank you, Your Honor. May it please the
9 court?

10 CROSS-EXAMINATION BY MR. DEAS:

11 Q. Mr. Baldwin, good afternoon, sir. My name is Garryl
12 Deas. I represent the defendant Mr. Reginald Canty.

13 You indicated that you were contacted either by
14 Sergeant Burnish or someone else with law enforcement to
15 come out and actually record what was captured on the video
16 surveillance at Cherryvale Grocery. Is that correct?

17 A. Yes, sir.

18 Q. Okay. Do you recall when you, you received that
19 contact from law enforcement?

20 A. I believe it was, it was somewhere about a quarter to
21 11, 11:00.

22 Q. On, on January 12th of 2008?

23 A. Yes, sir.

24 Q. Okay, and you actually were picked up by someone from
25 law enforcement?

J. BALDWIN - CROSS-EXAMINATION BY MR. WILDER

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1 A. Yes, sir.

2 Q. And then you were transported out to the store?

3 A. Yes, sir. Like I stated earlier, I live five houses
4 away.

5 Q. Now, this video surveillance equipment, you installed
6 it?

7 A. Yes, sir. I installed ninety percent of it.

8 Q. Okay, and whose responsibility is it to maintain the
9 equipment such as changing the time and things of that
10 nature?

11 A. It's the store's responsibility. It's not mine.

12 Q. Now, you indicated previously on -- during direct
13 examination that the time that's shown on the video
14 surveillance is 2103. That would have been, in standard
15 time, that would be 9:03 ---

16 A. Yes, sir.

17 Q. --- p.m., correct?

18 A. Yes, sir.

19 Q. But you also indicated you, that you felt that was
20 wrong, the time was wrong?

21 A. Yes, sir. When I got there, the time was an hour off.

22 Q. And did you notice that when you arrived?

23 A. Yes, sir.

24 Q. Now, is this machine capable of accounting for the
25 change in time during Daylight Savings Time automatically?

1 A. It is if it has been programmed, yes, it is.

2 Q. Okay. How do you know that machine wasn't programmed
3 to do that?

4 A. I have no idea, sir.

5 MR. MEADORS: Your Honor, can he repeat the question?

6 MR. DEAS: I asked him how does he know this
7 particular machine wasn't programmed to do that, programmed
8 to account for the change in time automatically.

9 BY MR. DEAS:

10 A. When I first installed it, it was, sir. But as I
11 stated, it was approximately two years after that. I have
12 no idea what happened after that.

13 Q. So, when you installed it, you programmed it to
14 account for, to account for the change in time
15 automatically?

16 A. Yes, sir. There's a box that you can click for
17 Daylight Savings Time.

18 Q. Do you remember what time you arrived at the store
19 back on January 12, 2008?

20 A. It's between 11, 11:15.

21 Q. Now, you don't, you don't have any specific knowledge
22 as to what, what the frames are showing at this point?

23 A. No, sir.

24 Q. At 2103 on January 12, 2008, you don't, you don't have
25 any idea as to what, what the video frame is showing at

J. BALDWIN - CROSS-EXAMINATION BY MR. WILDER

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1 this point, do you?

2 A. Well, I know where the cameras are. I know what's
3 showing right there, yes, sir.

4 Q. So, it's basically just showing the front door of the
5 store?

6 A. Yes, sir, the front door of the store, and the other
7 camera's showing the front register.

8 Q. Now, is it possible that this machine did account for
9 the change in time, and that it recorded at 9:03 p.m.?

10 A. I can't answer.

11 Q. You don't know, do you?

12 A. I don't know. I can't answer.

13 MR. DEAS: Court's indulgence.

14 (A PAUSE.)

15 MR. DEAS: No further questions.

16 THE COURT: Mr. Wilder.

17 CROSS-EXAMINATION BY MR. WILDER:

18 Q. Mr. Baldwin, do you know Eugene R. Mackovitch?

19 A. No, sir.

20 Q. Do you know the name of the clerk who was on duty that
21 night?

22 A. No, sir.

23 Q. Do you know who was actually attending the store at
24 that time?

25 A. No, sir. I was not at the store.

1 Q. Do you know the names of -- well, how many -- tell the
2 jury. Did you watch the whole tape?

3 A. I watched where I, only what I was told to, what they
4 had me do the time from.

5 Q. But you made the assumption that the times were at an
6 hour off. So, you watched an hour different from what the
7 police told you?

8 A. No, sir. I looked at my watch. I looked at the time
9 on the live picture and saw it was an hour off.

10 Q. And so you watched an hour off from what the police
11 told you to run?

12 MR. MEADORS: Your Honor, object. That's not what he
13 said.

14 THE COURT: He's on cross-examination. I'm going to
15 give him some leeway. The witness can handle it.

16 BY MR. WILDER:

17 A. No, sir. I put, I -- what the police told me the time
18 that I was to record from, and I noticed that it was an
19 hour off from the DVR. So, I went back to the proper time.

20 Q. So, you adjusted what the police told you?

21 A. No, sir. I just went back to the time ---

22 Q. Let's do it ---

23 A. --- it should be at.

24 Q. Let's do it this way. What time did the police tell
25 you to record?

J. BALDWIN - CROSS-EXAMINATION BY MR. WILDER

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1 A. I don't remember, sir. They had a list written down.
2 I just did what the list said with the time that they had
3 written down from ---

4 Q. Did they ask, did they ask for more than one time?

5 A. I don't recall, sir.

6 Q. I thought I heard you say that they had the times
7 written down.

8 A. Time is from the beginning time to the end time.

9 Q. All right. How long a period of time did they ask
10 for?

11 A. It couldn't have been more than five minutes.

12 Q. And how long was the tape you made?

13 A. I don't recall, sir. I have not seen the whole tape
14 again. I do not recall how long I was there.

15 Q. What's your recollection as to how many people came
16 and went from the store during the time that you actually
17 recorded?

18 A. Sir, I didn't specifically view the tape as I was
19 recording. I viewed the time stamp on the bottom to make
20 sure I got it from the time he wanted to the end of the
21 time he wanted.

22 Q. And, sir, wouldn't it make sense, Mr. Baldwin, that if
23 they asked for a particular time and you observed that it
24 was an hour off, that you would adjust the time they asked
25 for by an hour?

1 A. I can't adjust it on that DVR. I just did what I was
2 asked to do, sir. I'm not understanding your question all
3 the way.

4 Q. Well, I'm trying to get to the point of time that the
5 police asked and the time that you made the recording of.
6 And I guess you're telling us you don't remember?

7 A. No, sir. I don't remember that.

8 Q. All right, and since you weren't in the store, you
9 can't actually tell this jury how many people came and went
10 during whatever period of time it was they wanted?

11 A. That's correct.

12 Q. All right, what was the actual hour that you checked
13 against whatever clock you had?

14 A. I don't understand your question. I looked at my
15 watch and it was, like, 11:05 or something like that.

16 Q. Okay. You looked at your watch?

17 A. Uh-huh. Yes, sir.

18 Q. Are you aware that when the police check time, they
19 call it in to the dispatcher and have the dispatcher clock
20 in the official time?

21 A. Sure.

22 Q. Did you do that with your watch?

23 A. Why would I do that with my watch, sir?

24 Q. In case your watch was off.

25 A. No, sir. I did not do that with my watch.

J. BALDWIN - CROSS-EXAMINATION BY MR. WILDER

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- 1 Q. All right. So, we don't know if your, your watch was
2 actually on time or not, do we?
- 3 A. No, sir. You don't.
- 4 Q. And so when you say it's exactly an hour different, we
5 don't have anybody but your word, and you can't remember
6 what time it was you checked it, right?
- 7 A. I told you 11:05, sir.
- 8 Q. But your watch could be wrong, right?
- 9 A. If you say so, sir.
- 10 Q. Well, I'm asking you.
- 11 A. Yes, sir. My watch could be wrong.
- 12 Q. Okay, and so there's no way to verify right now
13 whether three years ago it was right or wrong?
- 14 A. I'll agree with that.
- 15 Q. Now, when you installed the camera equipment, were
16 there any cameras outside that had the cameras trained on
17 the phone that's outside?
- 18 A. No, sir. I did not install any cameras outside.
- 19 Q. To your knowledge, have there ever been any cameras
20 outside?
- 21 A. I wouldn't -- I mean, to my knowledge, no.
- 22 Q. When you made the tape of the video, did you recognize
23 any faces that were on the camera?
- 24 A. No, sir.
- 25 Q. Are you telling the jury that the police asked for

1 five minutes of video tape?

2 A. It was three years ago, sir, and they gave me a time
3 to -- from the start to the finish. I believe it was about
4 five minutes.

5 Q. And that's all they wanted?

6 A. They wanted the view of some people coming into the
7 store and then leaving the store, yes, sir.

8 Q. So, they asked you to look for people coming in,
9 specific people coming in?

10 A. No, sir. They gave me the time.

11 Q. They gave you the time?

12 A. Uh-huh.

13 Q. Okay.

14 MR. WILDER: Thank you very much.

15 MR. MEADORS: Just a couple.

16 THE COURT: Any brief redirect?

17 MR. MEADORS: Yes, sir.

18 REDIRECT EXAMINATION BY MR. MEADORS:

19 Q. Did the police ask you to video a certain time period?

20 A. Yes, sir.

21 Q. Did you do that?

22 A. Yes, sir.

23 Q. Based on your watch, was that off an hour?

24 A. Yes, sir.

25 Q. He asked you if you called dispatch. Weren't the

J. BALDWIN - REDIRECT EXAMINATION BY MR. MEADORS

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1 police the ones asking for this?

2 A. The person that called on the phone was the one that
3 asked me for it. I believe it was Officer Burnish.

4 Q. And did you give it to the police?

5 A. Yes, sir.

6 MR. MEADORS: That's all. Thank you.

7 THE COURT: Anything further?

8 MR. DEAS: Nothing further, Your Honor.

9 THE COURT: Cross? No cross?

10 MR. WILDER: No, sir.

11 THE COURT: Thank you. You may step down.

12 Any objection to this witness being excused for the
13 balance of the trial?

14 MR. MEADORS: Thank you.

15 MR. DEAS: None, none.

16 MR. WILDER: None.

17 THE COURT: All right, thank you. You are excused,
18 sir.

19 WITNESS: Thank you.

20 THE COURT: Thank you.

21 (THE WITNESS EXITS THE STAND.)

22 (A PAUSE.)

23 THE COURT: Who would the state call as its next
24 witness?

25 MR. MEADORS: Eugene Mackovitch, Your Honor.

1 THE COURT: Is someone going to get him?

2 If the jurors would like to stand up for just a moment
3 while this witness comes up, you may do so.

4 (A PAUSE.)

5 MR. MEADORS: Your Honor, the state would call Eugene
6 Mackovitch.

7 EUGENE R. MACKOVITCH, BEING DULY
8 SWORN, TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please state your full name. Spell
10 your last name for the record.

11 WITNESS: Eugene R. Mackovitch, M-A-C-K-O-V-I-T-C-H.

12 DIRECT EXAMINATION BY MR. MEADORS:

13 Q. Mackovitch?

14 A. Yes, sir.

15 Q. I apologize.

16 A. I've been called worse.

17 Q. I understand. Just be sure. I don't think we'll have
18 trouble hearing.

19 A. Okay.

20 Q. Well, you've been called worse, but most people call
21 you Mack, right.

22 A. Yeah.

23 Q. Or your friends call you Mack?

24 A. Most people, yes, sir.

25 Q. Well, Mack or Mr. Mackovitch, would you please tell

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS 313

1 these folks about you? Just where you're from, kind of a
2 little bit about where you grew up.

3 A. I'm originally from upstate New York. Been in the
4 service. Retired.

5 Q. Where were you in the service?

6 A. All over. Last station was here. Spent fifteen years
7 overseas, and we liked the area, fishing and all that. So,
8 got out here.

9 Q. What year did you get here, Mr. Mackovitch.

10 A. Oh, geez, I don't know. Probably around '76 or
11 something like that.

12 Q. Okay, and retired here obviously?

13 A. Yes, sir.

14 Q. And when you got -- what did you do when you got to
15 Sumter County?

16 A. Well, after retirement I delivered newspapers for *The*
17 *State*. Worked for Security Management South Carolina.
18 Worked at Howser's Suit and Rack, and now Cherryvale
19 Grocery.

20 Q. And I'm sure most folks know, but Cherryvale Grocery
21 is where?

22 A. In Cherryvale. That's right out Broad Street by a
23 Chinese restaurant and Citgo Station.

24 Q. If you're leaving town, would you take a left on
25 Cherryvale?

- 1 A. Yeah.
- 2 Q. And Cherryvale Grocery is down on the right?
- 3 A. Right.
- 4 Q. How long have you been employed with Cherryvale
5 Grocery, Mack?
- 6 A. I think it's going on seven, eight years.
- 7 Q. And what is your job there?
- 8 A. Cashier, manager. You know, shift.
- 9 Q. A little bit ---
- 10 A. I work the night shift, okay.
- 11 Q. And what is the night shift?
- 12 A. 3 to 10.
- 13 Q. And do you work every night?
- 14 A. I have off on Fridays and some other days.
- 15 Q. And when you're working there, are you by yourself?
16 Are there other employees there on the night shift?
- 17 A. Well, during the weekends, we have -- weekdays we have
18 one come in at 5:00.
- 19 Q. At 5:00?
- 20 A. Yeah. On weekends, I'm there with a guy who just
21 cleans up and assists and, you know.
- 22 Q. And what's that gentleman's name?
- 23 A. Junior.
- 24 Q. Junior?
- 25 A. Right.

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. Now, let me take you back, Mr. Mack, to January of
2 2008. Specifically, January 12th of 2008. It's this
3 incident we're talking about, okay?

4 A. Yes, sir.

5 Q. Had you or were, were you working the night shift on
6 January 12th of 2008?

7 A. Yes, sir.

8 Q. And would you dispute that was a Saturday night?

9 A. No, I wouldn't.

10 Q. Okay, and who else was there working with you that
11 night?

12 A. I was working by myself, and Junior was sitting
13 around, you know, keeping things up.

14 Q. And where would Junior sit when he was in there if he
15 wasn't...

16 A. He'd sit at the bar under the counter down there.

17 Q. And I may get you to show that in a minute.

18 MR. MEADORS: Beg the court's indulgence.

19 (A PAUSE.)

20 BY MR. MEADORS:

21 Q. Who owns Cherryvale Grocery?

22 A. Mr. Early Dubose.

23 Q. Mr. Early Dubose. Now, Mr. Mack, did the, did the
24 police come and see you sometime that evening of January
25 the 12th?

1 A. Yes, they did.

2 Q. Okay, and do you remember for what purpose they came
3 to see you?

4 A. They came to see me, wondering if I seen any personnel
5 around certain time of the evening, or if I could remember
6 anything special.

7 Q. And did they, they give you a time period roughly?

8 A. They told me it was between about 8, 8:30.

9 Q. And your store, Mr. Early's store, is equipped with
10 surveillance cameras?

11 A. Yes, sir.

12 Q. And they were operating that night?

13 A. They were. We don't, we don't have any outside, but
14 we got them inside.

15 Q. Okay, and did you have occasion some time that evening
16 or around that day to look at the videotape?

17 A. During that, that night, you mean?

18 Q. Yes, sir.

19 A. No, sir. Not until they told me to ---

20 Q. Okay.

21 A. --- pull it.

22 Q. And was that the next day?

23 A. No. That, it was that evening they came in there.

24 Q. Would it be fair to say the 12th or the 13th?

25 A. I think was still the 12th because I left right after.

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

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1 I think Early came out that evening, too, so.

2 Q. And I apologize. That's my fault. It was the
3 question, but you had a chance to look at that tape?

4 A. Afterwards.

5 Q. Okay.

6 A. But not...

7 Q. And maybe I'm being -- I don't mean ---

8 A. Yeah.

9 Q. --- right when things are happening.

10 A. Yeah.

11 Q. But did you review it and look at it with the police
12 later on that evening?

13 A. Well, I ran it to approximately where they told me to,
14 and we identified any...

15 Q. And, and was there something on the tape that you --
16 what, if anything, had you told the police about any
17 individuals that had come in and left that night?

18 A. Well, the only incident I knew that night was a couple
19 individuals came in, and they were in the back. I had
20 customers coming in and out. I thought I noticed someone
21 put something in their pocket, and just -- how you glance
22 up all the time.

23 Well, one -- they came to the counter. They bought a
24 Little Debbie snack, I guess. And as they were going out,
25 I went around the counter and approached him and just ask

1 -- you know, questioned them about if they got anything in
2 their pocket. He said no, and that's -- other, you know --
3 I don't get too involved. You know, it didn't look -- no
4 bulges. So, I just let him go, and this was -- that was
5 it.

6 Q. And had you told the police about that incident?

7 A. Yes, I did.

8 Q. And did you have an occasion to view the video and
9 show the police on the tape what you were talking about?

10 A. Yeah. We ran it to that portion that evening.

11 Q. Okay, and did a fellow come down, Mr. Baldwin, do you
12 know, and made a copy of it?

13 A. I think he did it the next day or something. I don't
14 know when it was.

15 Q. All right, but do you remember a copy being made?

16 A. Yes, sir.

17 Q. And you've had the chance to review that?

18 A. Just vaguely.

19 Q. The incident of them going out the door?

20 A. Right.

21 THE COURT: And subject to your continuing objection.

22 MR. WILDER: Yes, Your Honor.

23 THE COURT: Whether Sergeant Bean testifies.

24 MR. MEADORS: Yes, sir.

25 MR. DEAS: That's correct.

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

319

1 (PORTIONS OF STATE'S 20 ARE PLAYED FOR THE JURY
2 THROUGHOUT THE FOLLOWING TESTIMONY.)

3 BY MR. MEADORS:

4 Q. Do you recognize this, Mr. Mack?

5 A. Yeah. Yeah.

6 Q. Can you see from here?

7 A. Yeah.

8 Q. Let me ---

9 THE COURT: Watch out.

10 Q. Can you see that, sir?

11 A. Yeah.

12 Q. Do you recognize this?

13 A. Yeah. That's the Cherryvale Grocery.

14 Q. That's the Cherryvale Grocery?

15 A. That's right.

16 Q. And I'll tell you ---

17 THE COURT: You're going to need to speak up if you're
18 going to get away from ---

19 MR. MEADORS: Your Honor, if he could come right here?

20 THE COURT: You can come to that microphone right
21 there, sir. Thank you.

22 BY MR. MEADORS:

23 Q. Mack, you just talk into there, please.

24 A. Yeah, that's inside the Cherryvale Grocery.

25 Q. That's inside Cherryvale Grocery. What's this right

1 here?

2 A. That's the counter.

3 Q. Can you get louder?

4 A. That's the counter.

5 Q. What is this? Not the person, but what's this right
6 here?

7 A. That's the front doors.

8 Q. Now, you testified about an incident about two
9 individuals?

10 A. Right.

11 Q. That came in the store, and you went to talk to one of
12 them.

13 MR. MEADORS: Freeze it. Freeze it. Will you go
14 back? Sorry about that. That's my fault. This right
15 here. Keep going. Pause it, please.

16 Q. Where are you right now in this video? Remember
17 you're got to talk to me here.

18 A. I'm still probably behind the register.

19 Q. Behind the register?

20 A. Yeah.

21 MR. MEADORS: All right, go ahead.

22 Q. Who is this right here?

23 A. Looks like me.

24 MR. MEADORS: All right, keep going. Stop right here.

25 Q. All right. Now, you testified earlier about an

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

321

1 incident where you approached and talked to one of the
2 customers.

3 A. Yes, sir.

4 Q. Is this what you were talking about?

5 A. Yes, sir.

6 Q. And are these the two individuals that you spoke with,
7 or this is the individual you spoke?

8 A. Right. The other one came back in.

9 Q. And you said you sold one of them a Little Debbie
10 snack cake?

11 A. Yes.

12 Q. A little snack?

13 A. Well, they call them pies.

14 MR. MEADORS: Keep going. All right, freeze it.

15 Q. Is that you talking to one of the individuals still?

16 A. Yes, sir.

17 MR. MEADORS: Keep going, please, and -- freeze it,
18 please.

19 Q. What does it appear this individual is doing while
20 you're talking to this individual?

21 A. It looks like he's watching.

22 MR. MEADORS: Keep going. Stop.

23 Q. Did this individual buy anything from you?

24 A. I don't know which one bought the pie, but.

25 MR. MEADORS: Okay, keep going. Stop.

1 Q. Do you see him doing anything there?

2 A. Looks like he had something his right hand.

3 MR. MEADORS: Keep going.

4 A. Yeah, that looks like a snack.

5 Q. That looks like a snack.

6 A. It does to me.

7 MR. WILDER: Object to the leading.

8 MR. MEADORS: Your Honor, I ---

9 THE COURT: No, he stated.

10 MR. MEADORS: I'm repeating his question -- I mean,
11 his answer.

12 THE COURT: He didn't. Yeah, he was just stating it.
13 Overruled.

14 MR. MEADORS: Your Honor, is it all right if I
15 communicate with Mr. Miller about...

16 (A PAUSE.)

17 BY MR. MEADORS:

18 Q. Now, Mack.

19 MR. MEADORS: Freeze it, please.

20 Q. Do you see this person here?

21 A. Yes, sir.

22 Q. What do people do, if anything, when they are in that
23 position and you're behind the counter?

24 A. Well, up there, most of them have -- two or three will
25 come together.

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. That's a terrible question. Where do you take the
2 stuff?

3 A. Right.

4 Q. Where do you pay for stuff?

5 A. Right at the, where that, right where that first
6 individual is.

7 Q. Here?

8 A. Yes, sir.

9 Q. Are you behind there?

10 A. Yes, sir.

11 Q. Where is the cash register?

12 A. Cash register is -- we got a little space here. The
13 cash register would be right here on the right.

14 Q. If I or Mr. Wilder or Mr. Deas was going to go in
15 there and buy something, where would we go to pay you on
16 here, Mack?

17 A. Okay.

18 Q. Would it be?

19 A. Right there at the counter.

20 MR. MEADORS: Keep going, please. Stop it, please.

21 Stop it, please.

22 Q. What, if anything, does it appear that person did?

23 A. He's leaving the register.

24 Q. Leaving the register?

25 A. Yes, sir.

1 Q. This person is leaving the register, correct?

2 A. Yes, sir.

3 Q. And where are you? Behind the register?

4 A. I'm still behind the register.

5 MR. MEADORS: Go ahead, please. Stop.

6 Q. Does it appear that person has anything in his hand?

7 A. Which one?

8 Q. This one.

9 A. It looks in this right hand he's got something.

10 MR. MEADORS: Keep going. Stop.

11 Q. Who's this fellow right here?

12 A. Me, myself.

13 MR. MEADORS: Keep going, please. Stop.

14 Q. Did this fellow come back inside, or did he stay at
15 the door when you were talking with the other fellow?

16 A. He came back in after, after a minute or so.

17 MR. MEADORS: Keep going, please. Stop.

18 Q. Can you tell which way, if any way, that person went
19 when they walked out the door?

20 A. Well, they went to the right.

21 Q. They went to the right?

22 A. Yes, sir.

23 MR. MEADORS: Keep going, please.

24 Q. Mack, January 12, 2008, was there a pay phone to the
25 right of Cherryvale when you came out?

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS 325

1 A. Yes, sir.

2 Q. Were there other pay phones there in January of 2008?

3 A. We had two down. I don't know if one was torn down by
4 that time or not, or.

5 Q. When you come out and take a right, is there a pay
6 phone there?

7 A. Yes, sir.

8 MR. MEADORS: Beg the court's indulgence.

9 Q. Is this what you showed the police on January 12,
10 2008?

11 A. Yes, sir.

12 Q. I think you can sit back down. Thank you, Mack.

13 (SNACK WRAPPER MARKED AS STATE'S EXHIBIT NUMBER 24 FOR
14 IDENTIFICATION.)

15 COURT REPORTER: State's 24 for I.D.

16 THE COURT: State's 24 for I.D.

17 BY MR. MEADORS:

18 Q. I'm going to show you what's marked State's 24, Mr.
19 Mackovitch. What was it you said that one of these
20 individuals you sold them was? A what?

21 A. A Little Debbie cake.

22 Q. Little Debbie?

23 A. Pie. They call them pies.

24 Q. Looking at State's 24, is that the type y'all sold on
25 January of 2009?

1 A. Yes, sir.

2 Q. Does that appear to be a product you had in your
3 store?

4 A. Yes, sir. What's the date sell by? Yeah.

5 Q. Well, I didn't see that. What does that say?

6 A. Sell by January 22nd.

7 Q. So, you got fresh stuff in there?

8 A. Yeah.

9 MR. MEADORS: Your Honor, we'd offer State's 24.

10 THE COURT: Any objection?

11 MR. DEAS: No objection from defendant Reginald Canty.

12 THE COURT: Mr. Wilder?

13 MR. WILDER: Yes, Your Honor. We object.

14 THE COURT: What's basis of your objection?

15 MR. WILDER: Your Honor, there's been no testimony as
16 to where that was, relevance, materiality, chain of custody
17 anything of that nature. It appears like it's been
18 fingerprinted. So, I, I object until we establish the
19 chain of custody.

20 THE COURT: Sustained.

21 MR. MEADORS: That's fine, and I think he knows it's
22 been fingerprinted obviously. So, Your Honor, we'd offer
23 this as 24 for I.D.

24 THE COURT: All right.

25 BY MR. MEADORS:

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. Is this similar, that's similar to a Debbie snack cake
2 that y'all sold?

3 A. Yes, sir.

4 Q. And you sold one that night to one of those
5 individuals?

6 A. Yes, sir.

7 MR. MEADORS: 24 for I.D.

8 Q. Mack, you like your job, don't you?

9 A. Yeah. It pays bills.

10 Q. And is it fair to say you have regular customers?

11 A. Yeah. We have regulars.

12 Q. I mean, I mean, people have their own store they go
13 to, convenience store? I mean, do you see the same people
14 daily?

15 A. Yes, sir.

16 Q. Regulars?

17 A. Right.

18 Q. And do some of them, do you know them? I mean, you
19 know them but you don't know their names? Sort of like you
20 know them by face?

21 A. Right.

22 Q. And had -- did you recognize these two fellows by
23 face?

24 A. Recognize them by face. Yeah, I don't know names.

25 Q. You didn't know their names?

1 A. No, sir.

2 Q. But you knew -- had they been in the store?

3 A. Oh, yeah. They come, they come and go.

4 Q. Come and go?

5 A. Yes, sir.

6 Q. And I -- are these the two fellows that were on there
7 that night or on that tape?

8 A. Well, they look familiar, but I can't really say yea
9 or nay.

10 Q. But they look familiar?

11 A. Yes, sir.

12 Q. Now, Mack, you had two phones out there, right? And I
13 apologize for the record. Not you. Mr. Early did.

14 A. Well, some, some contractor put them in, yes.

15 Q. And did you ever use that phone?

16 A. No, I didn't, but I, I just go out there and get the
17 number if it's jammed and call the individual.

18 Q. I couldn't follow you, Mr. Mack. What did you say?
19 I'm sorry.

20 A. I never used the phone, no, sir.

21 Q. All right.

22 A. But ---

23 Q. You said you went out and what?

24 A. If the phone ever gets jammed, people say they lose
25 their money, I tell them, well, I'll call the individual.

E. MACKOVITCH - DIRECT EXAMINATION BY MR. MEADORS

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1 and he'll come out and fix it and leave their money.

2 Q. Do people use the pay phone now as much as they used
3 to?

4 A. Yeah.

5 Q. They do? Do you remember what that phone number was?

6 A. Not off hand because since then, they replaced new
7 ones. I can't remember the number, but I think the first
8 few was [REDACTED].

9 Q. How can you remember the first few were [REDACTED]?

10 A. Because when I went out there checking for a couple of
11 times, I seen the number and I played it on the lottery.
12 It didn't do no good, though.

13 Q. You played 415 on the lottery?

14 A. Yeah. Yes, sir.

15 MR. MEADORS: Beg the court's indulgence.

16 THE COURT: Yes, sir.

17 (A PAUSE.)

18 MR. MEADORS: One more second, Your Honor. I
19 apologize.

20 THE COURT: Yes, sir.

21 MR. MEADORS: I think that's all I have. Thank you.

22 THE COURT: Mr. Deas.

23 MR. DEAS: Thank you, Your Honor. May it please the
24 court?

25 CROSS-EXAMINATION BY MR. DEAS:

1 Q. Good afternoon, Mr. Mackovitch.

2 A. Yes, sir.

3 Q. My name is Garryl Deas. I represent the defendant
4 Reginald Canty.

5 You had an opportunity to look at the videotape from
6 the store, correct? You just saw it along with all of us
7 here today?

8 A. Yes, sir.

9 Q. Do you recall if law enforcement back on the date of
10 the January '08 incident, do you recall if law enforcement
11 came to the store and asked you to look for specific people
12 on the videotape? Or did they just ask you to give them a
13 specific time frame on the videotape?

14 A. A specific time frame, yeah.

15 Q. Do you recall what that time frame was that they asked
16 for?

17 A. What I -- well, they said it's somewhere between 8 and
18 9:00.

19 Q. Between 8 and 9:00?

20 A. Yeah.

21 Q. Were you aware that the video surveillance equipment
22 at the store, were you, did you have any knowledge that the
23 time was off on the videotape?

24 A. It was off an hour. I told them that, yes, sir.

25 Q. And you knew that before January, before the incident

E. MACKOVITCH - CROSS-EXAMINATION BY MR. DEAS

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1 of January 12th or ---

2 A. Yes, sir.

3 Q. Or when that happened?

4 A. I knew it before then.

5 Q. And you, you alerted law enforcement to the fact that
6 that's -- that the video, the video surveillance equipment
7 was off an hour?

8 A. Yes, sir.

9 Q. Who did you tell that to?

10 A. I think Officer Burnish when he came in.

11 Q. Now, you said you were the only cashier there, there
12 the night of January 12, '08. Is that correct?

13 A. Yes, sir.

14 Q. And then you mentioned something. I think you
15 mentioned on direct examination about someone named Junior?

16 A. Right. He hangs around there, and he gets paid just
17 to stay there.

18 Q. Okay.

19 A. Right.

20 Q. So, he's, he's kind -- he's sort of, he's sort of like
21 your right-hand man while you work?

22 A. On weekends, yeah.

23 Q. Okay.

24 A. He knows everybody and, you know.

25 Q. I understand. Now, on the video, and I know it's not

1 cued to that particular section of the video now, but at
2 some point during the video, there appeared to have been
3 two gentleman entering the store, and -- one of which
4 actually came to register and purchased something.

5 A. Yeah.

6 Q. Is that a fair statement?

7 A. Yes, sir.

8 Q. Okay, and I believe you testified previously that one
9 of the gentleman seemed -- purchased a snack cake?

10 A. Yes, sir.

11 Q. Okay. Now, would you -- you had an opportunity to
12 take a good look at the two gentlemen that came -- that
13 were on the video that we just watched, correct? You had a
14 chance to see both of them on the video?

15 A. Well, yeah. Yes.

16 Q. Would you, would you -- would it be reasonable for me
17 to say that one of them was a browner skin
18 African-American, someone like my complex or a little
19 darker, and the other one was a fairer skin
20 African-American male? Would that be a fair statement?

21 A. Yes, sir.

22 Q. Okay, and you correct me if I'm wrong, but would it
23 also be reasonable to say that it was the fairer skin
24 African-American male that purchased the snack cake?

25 A. Yes, sir.

E. MACKOVITCH - CROSS-EXAMINATION BY MR. DEAS

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1 Q. Okay. Now, you indicated that when these gentlemen
2 exited the store after this, this snack cake was purchased
3 by the fairer skinned gentleman, and after you spoke with
4 the darker skinned gentleman, they both left the store,
5 correct?

6 A. Yes, sir.

7 Q. And they exited to the right?

8 A. Yes, sir.

9 Q. Once they existed to the right and once they exited
10 the store, you don't know what they did at that point, do
11 you?

12 A. Well, no, because another customer came in. I had to
13 take care of the customer.

14 Q. So, you don't know whether either one of the gentlemen
15 used the pay phone or not, do you?

16 A. Not off hand. Besides, it's sort of -- the lighting's
17 hard with the -- at nighttime.

18 Q. You never saw either of them use the pay phone that
19 night, did you?

20 A. I can't say honestly I did.

21 Q. You never told law enforcement or anyone from the
22 police department that you saw either one of these
23 gentlemen use the pay phone, did you?

24 A. No, sir. I just told them about the incident that
25 came up that night.

1 MR. DEAS: Thank you, Mr. Mackovitch.

2 WITNESS: Yes, sir.

3 MR. DEAS: Court's indulgence.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 MR. WILDER: May it please the court?

7 THE COURT: Well, he needs to talk to his client
8 first.

9 MR. WILDER: Oh.

10 THE COURT: Then he'll let you know if he's ready.

11 MR. DEAS: No further questions.

12 THE COURT: All right, thank you.

13 Now, Mr. Wilder.

14 MR. WILDER: Thank you.

15 CROSS-EXAMINATION BY MR. WILDER:

16 Q. How you doing, Mack?

17 A. Pretty good, sir.

18 Q. Did they let you watch the whole video that was
19 copied?

20 A. Well, mostly there ain't much on it. I mean, you
21 know, it's so short.

22 Q. Well, let's see.

23 MR. WILDER: Mr. Miller, can you cue up the very first
24 segment that you have? And if there's a way to do it, I
25 hope it can be by fast forwarding so we don't have to watch

E. MACKOVITCH - CROSS-EXAMINATION BY MR. WILDER

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1 the whole thing. If, if -- and I don't know if you have
2 that capability, Mr. Miller.

3 (PORTIONS OF STATE'S 20 ARE PLAYED FOR THE JURY
4 THROUGHOUT THE FOLLOWING TESTIMONY.)

5 BY MR. WILDER:

6 Q. If so, Mack, come down here where you can talk again
7 in the mic, please, sir.

8 MR. WILDER: All right, and is the earliest one you
9 have there, Mr. Miller, and if you can pause it for one
10 second at 2101 I believe is what I'm showing over here on
11 the date stamp. Is that correct, Mr. Miller?

12 BY MR. WILDER:

13 Q. All right, Mr. Mackovitch, if you would look up there?
14 And so the date stamp is 2101, and we're looking at the
15 front doors of the store, right?

16 A. Yes, sir.

17 Q. And according to everything you know about Mr. Baldwin
18 and the copy that was made and all of that, this is the
19 video from the Cherryvale Grocery where you worked from
20 that particular night, is it not?

21 A. To the best of my knowledge.

22 Q. Okay.

23 A. Yes, sir.

24 Q. Okay, and didn't you say at one point that it's your
25 recollection that it's close to your closing time, close?

1 A. It was close to closing time when the officers came
2 in.

3 Q. Okay.

4 A. Yes, sir.

5 Q. When the officers came in?

6 A. Yes.

7 Q. And do you have a, like a recollection you can tell
8 the jury of how long it was between the incident that you
9 just told us about and the time the officers came in?

10 A. Let's see, probably would have been about an hour
11 forty, fifty minutes.

12 Q. An hour and forty minutes?

13 A. Forty, fifty minutes, yes, sir.

14 Q. Okay, now, let me make sure I understand. Is it an
15 hour or forty or fifty minutes, or hour and forty ---

16 A. An hour and forty or fifty minutes.

17 Q. Yes, sir. Thank you.

18 MR. WILDER: All right, now, Mr. Miller if you would
19 go as fast as you can run the thing.

20 Q. And would you watch, Mr. Mack, to see where we're
21 going here and see how long this video ---

22 MR. WILDER: Whoa. If you could stop right there, Mr.
23 Miller.

24 Q. There's a gentleman in a hoodie.

25 A. Yes, sir.

E. MACKOVITCH - CROSS-EXAMINATION BY MR. WILDER

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1 Q. Time being 2101, gentleman in hoodie, black thing.
2 All right, can you tell the jury who that was that came in
3 the store right there?

4 A. No, sir.

5 Q. All right. Now, even as he comes in, there are
6 people over, customers over where you pointed the counter
7 was where the purchasing is going on and sell. Would you
8 tell the jury who those people were?

9 A. No, not, not as small as that is.

10 Q. Okay, but that was going on in the store that night?

11 A. Oh, yeah.

12 Q. Because we know that ---

13 A. We get busy.

14 MR. WILDER: All right, let her run, Mr. Miller.

15 Q. Man in the hoodie goes on in the store. All right.

16 MR. MEADORS: Your Honor, I'm going to object to the
17 extra comments.

18 MR. WILDER: All right.

19 THE COURT: Yes. Don't editorialize, Mr. Wilder.

20 MR. WILDER: Yes, sir.

21 THE COURT: Let him testify.

22 MR. WILDER: All right, stop there, Mr. Miller.

23 BY MR. WILDER:

24 Q. Mack, there's a head right there in the corner. Do
25 you see what I'm pointing to?

1 A. Yes, sir.

2 Q. With my pen, and do you know who that individual is?

3 A. I seen him full length that night.

4 MR. WILDER: Run it a little bit more, Mr. Miller.

5 All right, stop, please.

6 Q. This gentleman exiting the store, is he going to the
7 right or to the left as he goes out?

8 A. If you can run it one more step, I can tell you.

9 MR. WILDER: Please do that, Mr. Miller.

10 Q. Are you able to tell?

11 A. No, sir.

12 Q. Okay, and the lady exiting the store now, do you know
13 who she is?

14 A. No, sir.

15 A. All right, the gentleman that just went out, did you
16 know who he was?

17 A. I can't tell by the back of head.

18 Q. Okay.

19 MR. WILDER: All right, let her run. Are we at the
20 end of the first second segment? No. Okay, keep rolling,
21 please. All right, stop it, please.

22 Q. Did you know the gentleman that just went out the door
23 there?

24 A. No, sir.

25 MR. WILDER: Okay. Let her run. Stop, please. Is

E. MACKOVITCH - CROSS-EXAMINATION BY MR. WILDER

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1 this, this is now 2101. Looks like it's a repeat. Is this
2 a repeat, Mr. Miller? All right, now, if you'll move it to
3 the next segment. You got another segment?

4 All right, stop right there, please. One, two, three,
5 four, five, six, seven, eight, nine. Nine segments. Okay,
6 go ahead. Next one, please.

7 All right, this looks like it would be a repeat of the
8 same one, Mr. Miller. Is it? Because it says 210 ---

9 MR. MILLER: That's 2102.

10 MR. WILDER: 2? Oh, okay, 2102. Let her run. All
11 right, stop that.

12 BY MR. WILDER:

13 Q. You know this gentleman? Looks like the fellow that
14 used to work at Seaco to you, Mack? Right there?

15 A. Citgo?

16 Q. Seaco right across the street here.

17 A. I don't know.

18 Q. You don't know the D.J.?

19 A. No, sir.

20 Q. Okay.

21 MR. WILDER: All right, let her run.

22 Q. And this is, I believe, what we watched earlier, is it
23 not?

24 A. Yes, sir.

25 Q. Okay. All right. Now, the gentleman kind of dancing

1 around, do you know him?

2 A. Yes, sir.

3 Q. All right. Tell the jury who he is.

4 A. That's Junior's nephew.

5 Q. Is he the guy that works with you, Mack?

6 A. No.

7 Q. No?

8 A. No, sir.

9 Q. Okay. So, you know this fellow?

10 A. I know him, yeah.

11 Q. Okay.

12 MR. WILDER: All right, please run it on.

13 Q. Now, does he go to the right or the left?

14 A. Looks like he walked right out.

15 Q. Walked right out?

16 A. Yes, sir.

17 Q. Okay.

18 MR. WILDER: All right, stop it, please.

19 Q. The gentleman that just went out, did he go to the
20 right or the left?

21 A. I didn't catch a glance at that.

22 MR. WILDER: Could you back it up, Mr. Miller, please?

23 Q. Right there, which way did he go?

24 A. He's heading towards the right.

25 Q. To the right?

E. MACKOVITCH - CROSS-EXAMINATION BY MR. WILDER

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1 A. Yes, sir.

2 Q. Do you know who he is?

3 A. No, sir.

4 Q. All right. Thank you.

5 MR. WILDER: Let it run.

6 Q. All right, now that's the incident you said took place
7 at the door, right?

8 A. Yes, sir.

9 Q. Okay.

10 MR. WILDER: Let her run. Excuse me, back it up a
11 little bit, please, Mr. Miller.

12 Q. Right there, that gentleman with the jacket on, can
13 you tell the jury who he is?

14 A. I didn't see no face.

15 Q. All right, and is he wearing a hood, a jacket with a
16 hood on it?

17 A. Yes, he is.

18 Q. You know, and this is, like, January, so I guess a lot
19 of people had jackets with hoods on them?

20 A. Yes, sir.

21 Q. Right?

22 MR. WILDER: Okay, let her run.

23 A. He went to the right.

24 Q. Thank you, sir.

25 A. Thank you.

1 Q. Appreciate that.

2 MR. WILDER: We're moving to the next segment. Thank
3 you.

4 Q. All right, another gentleman coming in here -- a lady.
5 Okay, sorry, lady. All right, but do you know who the lady
6 is?

7 A. I hadn't seen this part, I don't think.

8 MR. WILDER: All right, can we fast forward it now?

9 Q. All right, Mack, we're looking at the beer cooler over
10 here now, aren't we?

11 A. That is correct.

12 Q. And I guess it's important to have a camera on the
13 beer cooler because sometimes you have trouble over there?

14 A. Yes, sir.

15 Q. Okay. All right, this gentleman just went in the beer
16 cooler, do you know him?

17 A. I didn't catch a glimpse of him.

18 MR. WILDER: Okay, it's at 2040 something, 2045, 46.

19 Can you back it up a little, Mr. Miller, try to freeze
20 frame? Freeze it right there.

21 Q. Do you know this gentleman right here?

22 A. I can't see no face.

23 Q. Okay, but yet apparently somebody bought beer from you
24 along about that time, 2048?

25 A. Apparently so, yes.

E. MACKOVITCH - CROSS-EXAMINATION BY MR. WILDER

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1 Q. But the time is off?

2 A. By an hour.

3 Q. Okay.

4 MR. WILDER: All right, let her run.

5 Q. And it looks to me in the background, that was a lot
6 of activity over there. Can you describe for the jury how
7 many people come and go? Another going.

8 A. At that store, they come in streaks.

9 Q. Streaks?

10 A. Yes, sir.

11 Q. Like?

12 A. Sometimes you'll be busy for about fifteen, twenty
13 minutes, then dead for twenty more.

14 Q. Would it be like hours of boredom punctuated by
15 moments of the sheer terror?

16 A. Not that bad, no, sir.

17 Q. Not that bad, okay. Fair enough. All right, I'm not
18 going to labor on any more. You can step back to the
19 stand.

20 A. Thank you.

21 Q. If you would, Mack.

22 A. Yes, sir.

23 Q. And I will ask you to note that we are only half way
24 of that segment.

25 MR. MEADORS: Is that a question?

1 Q. All right.

2 MR. WILDER: Pardon?

3 MR. MEADORS: I didn't know if you had a question.

4 MR. WILDER: Okay. Sorry.

5 BY MR. WILDER:

6 Q. Now, State's Exhibit for I.D. Number 24, they asked
7 you to look at that. And I believe you said it looks like
8 something you may have sold at the store?

9 A. We sell Little Debbie snacks, yes, sir.

10 Q. And how often does the Little Debbie snack truck come
11 around there?

12 A. Once a week.

13 Q. Okay, and so how many Little Debbie cakes do they
14 leave off at the Cherryvale Grocery?

15 A. They got about fifteen, twenty different kinds.

16 Q. Fifteen, twenty different kinds?

17 A. Fifteen or twenty different varieties.

18 Q. And on that particular night, you can't remember
19 exactly what variety was sold to that particular customer,
20 can you?

21 A. Not off hand I can't, no, sir.

22 Q. Okay. So, you can't say that that wrapper is the one
23 that we just saw on any kind of cake in any of these people
24 that bought anything from the store that night, can you?

25 A. Well, it's a Little Debbie snack. That's all I know.

E. MACKOVITCH - REDIRECT EXAMINATION BY MR. MEADORS

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1 Q. That's all you know, and in terms of tracing it back
2 to the Cherryvale Grocery that night, we knew that the
3 expiration was a certain date there, but we don't know if
4 that Little Debbie cake was one that came right out of your
5 grocery store that particular night, do we?

6 A. Not off hand, no, sir.

7 Q. No way. All right, now, when the Little Debbie truck
8 comes around, they go to a lot of other stores in Sumter,
9 don't they?

10 A. Evidently so.

11 Q. Okay, and do you know how many Little Debbie cakes
12 they sell in Sumter County a week?

13 A. You'd have to ask the distributor.

14 Q. Okay. Could be a lot, though?

15 A. Yeah.

16 Q. And your imagination and maybe your common sense,
17 would that tell you it's a good, good size number, right?

18 A. Yes.

19 Q. Okay.

20 MR. WILDER: Thank you, Mack.

21 REDIRECT EXAMINATION BY MR. MEADORS:

22 Q. Just a couple of questions. Did you tell Sergeant
23 Burnish right off the bat that the clock was wrong?

24 A. Yes, I did.

25 Q. And you told him about -- did you tell him about an

1 incident that you were involved in, and that's what you
2 brought to their attention, and that's what was shown on
3 here with the two gentlemen?

4 A. Yes, sir.

5 MR. MEADORS: Thank you. That's all.

6 THE COURT: Anything further?

7 MR. DEAS: Nothing further.

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

10 (THE WITNESS EXITS THE STAND.)

11 THE COURT: All right, I think it's an excellent time
12 for a break, ladies and gentlemen. I'm going to give you a
13 fifteen minute recess so you can use the restroom. If you
14 need to smoke, you may smoke. They'll take you out where
15 you can sweat outside for a few minutes.

16 And, ladies and gentlemen, please do not discuss
17 anything about the case while you're back in there with the
18 other jurors. Thank you.

19 (THE JURY EXITS AT 3:25 P.M.)

20 THE COURT: All right, court will be in recess for
21 fifteen minutes.

22 MR. DEAS: Thank you, Your Honor.

23 (OFF THE RECORD.)

24 MR. MEADORS: If it please the court?

25 THE COURT: Yes, sir.

1 MR. MEADORS: Judge, just scheduling purposes, we have
2 two other witnesses ready to go to today. I don't know how
3 long they will take. I would propose adjourning after that
4 just for -- it might make tomorrow go smoother, and plus
5 the heat. Tomorrow after these two witnesses, I'll just be
6 candid. Tell the court we'll have the crime scene, which
7 is relatively short, Raymond Mackessy, and Bean.
8 Investigator Bean just took some pictures of it. And then
9 after that, Your Honor, we'll have Investigator West and
10 Burnish, and maybe a few of the smaller witnesses. But I
11 think, I think I can finish tomorrow.

12 THE COURT: Okay.

13 MR. MEADORS: And I know one in addition to that. Of
14 course we'll have the SLED agents and the pathologist, but
15 all of those are not lengthy witnesses.

16 THE COURT: But I have already assured Mr. Wilder he
17 would not have to put up any of his witnesses before
18 Thursday if he chose to do so.

19 MR. MEADORS: Correct.

20 MR. WILDER: Thank you, Your Honor.

21 MR. MEADORS: So ---

22 MR. WILDER: And again, as I stated to y'all earlier,
23 I will make every effort to have my people here whenever
24 but -- because there are a few of them I can move around
25 that wouldn't be inconvenienced to Wednesday afternoon if

1 that becomes...

2 MR. MEADORS: If we, if we do what we're proposing, I
3 think I'd take up all tomorrow, but I'd finish tomorrow.

4 THE COURT: Okay.

5 MR. MEADORS: I mean, I think it would be a fairly
6 busy day tomorrow, but I think I can still finish tomorrow.

7 THE COURT: All right. Very well. Thank you.

8 All right, let's bring our jury back in.

9 (THE JURY ENTERS AT 3:45 P.M.)

10 CLERK OF COURT: Your Honor, all the jurors are back
11 in the courtroom.

12 THE COURT: All right. Thank you.

13 All right, is the state ready to present its next
14 witness?

15 MR. MEADORS: Yes, sir.

16 THE COURT: All right.

17 MR. MEADORS: Your Honor, if it pleases you, Anitta
18 Shannon.

19 THE COURT: Yes, sir.

20 ANITTA SHANNON, BEING DULY SWORN,

21 TESTIFIES AS FOLLOWS:

22 CLERK OF COURT: State your full name. Spell your
23 last name for the record.

24 WITNESS: My name is Anitta Shannon, S-H-A-N-N-O-N.

25 DIRECT EXAMINATION BY MR. MEADORS:

A. SHANNON - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. Good afternoon, Ms. Shannon.

2 A. How you doing?

3 Q. Will you please tell the ladies and gentlemen of this,
4 this jury about Anitta Shannon? Just generally. Where
5 were you born?

6 A. I was born in Virginia, but I was raised in Las Vegas.

7 Q. And when did you come this way? When did you leave
8 Las Vegas and come back?

9 A. In '89.

10 Q. And where did you go in '89?

11 A. In Sumter, South Carolina.

12 Q. And then what were you doing then?

13 A. I was, I was military family, so I came here and I was
14 in school.

15 Q. And what -- how old were you when you came here?

16 A. About twelve or thirteen.

17 Q. And where did you go to high school?

18 A. Hillcrest High School.

19 Q. If you don't mind me asking, what year did you
20 graduate?

21 A. 1996.

22 Q. What did you do after that?

23 A. Cashier jobs.

24 Q. And at a convenience store?

25 A. Yes, sir.

A. SHANNON - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. And you've been doing that up through today?

2 A. Yes, sir.

3 Q. And I think you told me you're going back to school,
4 want to do some more schooling?

5 A. Yes, sir.

6 Q. What are you interested in?

7 A. Human behavioral science.

8 Q. I want to take you back to January of 2008. Where
9 were you working then?

10 A. Cherryvale Grocery.

11 Q. And during that month of January, were you working
12 there?

13 A. Yes, sir.

14 Q. And did you have an occasion to view a video, either
15 at the request of law enforcement or with law enforcement
16 about something or about some people that had been in
17 Cherryvale Grocery on January 12th of 2008?

18 A. Yes.

19 MR. MEADORS: Your Honor, one second?

20 THE COURT: Yes.

21 (A PAUSE.)

22 (PORTIONS OF STATE'S 20 ARE PLAYED FOR THE JURY
23 THROUGHOUT THE FOLLOWING TESTIMONY.)

24 BY MR. MEADORS:

25 Q. Now, did you have an opportunity to view this store

A. SHANNON - DIRECT EXAMINATION BY MR. MEADORS

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1 surveillance tape back in January of 2008?

2 A. Yes, sir.

3 Q. And did you inform law enforcement that you knew one
4 of these individuals that were leaving the door?

5 A. Yes, sir.

6 Q. And, and who did you say you knew?

7 A. Daniel Jackson.

8 Q. And, and is person the closest to the door, or the one
9 farther from the door?

10 A. Closest to the door.

11 Q. So, you identified this person as Daniel Jackson?

12 A. Yes, sir.

13 Q. And was that -- you just, you know him?

14 A. Yeah, from -- uh-huh.

15 Q. Through, through a relationship with somebody else?

16 A. Yes, sir. My niece.

17 Q. Okay, but there was no doubt in your mind that that
18 was Daniel Jackson?

19 A. There was no doubt.

20 Q. And you told law enforcement that?

21 A. Yes, sir.

22 Q. Did you know who this other person was?

23 A. No, ma'am -- no, sir.

24 Q. And is Daniel Jackson in the courtroom today?

25 A. Yes, sir.

1 Q. And would you point him out?

2 A. (WITNESS COMPLIES.)

3 Q. Is he to the right of Mr. Canty?

4 A. Uh-huh.

5 MR. MEADORS: And we'd like the record to so reflect.

6 THE COURT: Record will so reflect.

7 BY MR. MEADORS:

8 Q. Now, that's all I have on this. Just a couple of
9 other questions. Were you working on that day, the 12th?

10 A. I was coming in later on that evening.

11 Q. Did you know anything about the murder of Bill Flexon?

12 A. No, sir.

13 Q. You don't know anything about that?

14 A. No, sir.

15 MR. MEADORS: That's all I have. Thank you.

16 THE COURT: Thank you.

17 Mr. Deas.

18 MR. DEAS: Thank you, Your Honor. May it please the
19 court?

20 CROSS-EXAMINATION BY MR. DEAS:

21 Q. Ms. Shannon, my name is Garryl Deas. I represent the
22 defendant Reginald Canty.

23 On that video, a frame shows two, two young men, two
24 African-American men, one more fairer skin, one with darker
25 skin. The one that you identified as the person that you

A. SHANNON - CROSS-EXAMINATION BY MR. DEAS

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1 know is the fairer skin young man, Daniel Jackson. Is that
2 correct?

3 A. Yes, sir.

4 Q. Do you know Reginald Canty?

5 A. No, sir.

6 Q. Have you ever seen him in the store before, Cherryvale
7 Grocery?

8 A. I don't remember.

9 Q. I believe you've already answered this, but I'm going
10 to ask it again just in case. Were you at the Cherryvale
11 Grocery on January 12, 2008?

12 A. Yes, sir.

13 Q. Do you, do you have any specific recollection of these
14 two gentlemen entering the store?

15 A. I was coming in that evening. I wasn't working at the
16 time when they came in the store.

17 Q. Do you have any and knowledge as to what time it was
18 when they came in the store? I'm talking about, I'm
19 speaking of specific knowledge yourself.

20 A. No, sir, because I wasn't there.

21 Q. When was it that law enforcement asked you to view the
22 videotape?

23 A. Shortly after I came in. They were viewing the
24 videotape.

25 Q. And about what, do you know about what time it was

1 when you came into the store?

2 A. No, sir.

3 Q. But it was on January 12, '08?

4 A. Yes, sir.

5 Q. And you were, you were scheduled to work that day?

6 A. I was. I worked that day. I work double shifts on
7 Saturdays, and I came back in that evening.

8 Q. Do you remember what time you were slated to come back
9 in that evening?

10 A. It varied. I don't remember.

11 Q. What was your typical schedule when you worked double
12 shifts?

13 A. Just whenever I got home and got ready and came back.

14 Q. You don't really have any specific recollection of
15 when it was you came back that evening?

16 A. No, sir.

17 Q. To work your, to work your second shift?

18 A. No, sir.

19 Q. But when you realize law enforcement was there, they
20 were -- law enforcement was at the store?

21 A. Yes, sir.

22 MR. DEAS: Court's indulgence.

23 (A PAUSE.)

24 MR. DEAS: Nothing further.

25 THE COURT: Thank you.

A. SHANNON - CROSS-EXAMINATION BY MR. WILDER

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1 Mr. Wilder.

2 MR. WILDER: Thank you.

3 CROSS-EXAMINATION BY MR. WILDER:

4 Q. Ma'am, is it Anitta or Anittra?

5 A. It's Anitta Shannon.

6 Q. Anitta Shannon. All right, Ms. Shannon, did the law
7 enforcement officers ask you to identify everybody who came
8 in the store that evening?

9 A. No. I just knew the person on the videotape. That I,
10 I recognized Daniel Jackson on the videotape.

11 Q. Well, did they ask for your help in identifying who
12 else might be there about the same time?

13 A. Yeah, but I didn't recognize anybody on the tape.

14 Q. Well, how many folks did you kind of go through trying
15 to figure out if you knew any of them?

16 A. I don't remember.

17 Q. Was it more than ten?

18 A. I don't remember.

19 Q. If I played the tape for you -- how long was the tape
20 you watched?

21 A. I watched it as he was coming in, when as he was
22 walking in the door and walking out the door.

23 Q. That's it?

24 A. Uh-huh.

25 Q. You didn't watch the rest of the video?

1 A. I didn't watch the whole video.

2 Q. So, if there was an hour worth of tape, you didn't
3 watch but a short period of it?

4 A. No, sir, because I wasn't there. I just, I wasn't
5 there when it happened. I just came in for my, my second
6 shift.

7 Q. And nobody seemed to be remotely curious to who had
8 come into the store before or after that?

9 MR. MEADORS: Objection, Your Honor. She can't answer
10 that.

11 THE COURT: Sustained. She wouldn't know that.
12 Required speculation.

13 BY MR. WILDER:

14 Q. Did anybody ask you to help the identify anybody who
15 came in before or after that particular segment?

16 A. No. I just recognized Daniel Jackson on the
17 videotape.

18 Q. Was it that they happened to be watching that and ---

19 A. Yeah, and I ---

20 Q. --- you pointed ---

21 A. --- pointed him out. I pointed him out.

22 Q. Now, the portion of the tape you remember looking at
23 in making that identification, how many other people were
24 in that segment of tape?

25 A. I saw one, like, right beside Daniel Jackson, and I

A. SHANNON - CROSS-EXAMINATION BY MR. WILDER

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1 don't recognize the, I don't recognize the guy.

2 Q. Just one?

3 A. Yeah.

4 Q. Now, if I showed you some segments of the tape, could
5 you possibly help the jury understand who else might have
6 been in the store that night?

7 A. Yeah.

8 Q. Now, Mack works there. Who else works there?

9 A. It was just me and Mack that night.

10 Q. Is there a third person that works in the store?

11 A. With us? No.

12 Q. Is there another shift that comes in at another time?

13 A. Mack worked the second shift; I worked the first
14 shift. But I came back as a double shift on that day.

15 Q. All right. Was there anybody else working with Mack
16 that night?

17 A. No.

18 Q. He was ---

19 A. During, during the time or after the time?

20 Q. During this time.

21 A. I mean, during the time that I was gone?

22 Q. Well.

23 A. No. He was by himself.

24 Q. That night, he was by himself?

25 A. Yes.

1 Q. Is there somebody named Junior that works in the
2 store?

3 A. Yes.

4 Q. Were you ---

5 A. He's just a stocker. He, he just stocks.

6 Q. Stocker?

7 A. Uh-huh.

8 Q. And where is Junior today?

9 A. Where is Junior today? I couldn't tell you. I don't
10 work at the store anymore; I don't go in the neighborhood
11 barely.

12 Q. All right, but the police didn't ask you to try to
13 look at any other area of the tape?

14 A. No. All I saw when they were viewing the tape, I
15 pointed out Danny Jackson.

16 MR. WILDER: Thank you.

17 MR. MEADORS: Very briefly?

18 THE COURT: Yes, sir.

19 REDIRECT EXAMINATION BY MR. MEADORS:

20 Q. What are the hours of Cherryvale?

21 A. The hours of Cherryvale are 7 to 10 Monday through
22 Saturday, and 8 to 10 on Sunday.

23 Q. So, they're open on Sunday?

24 A. Uh-huh.

25 Q. All right. So, this particular weekend, would you

A. SHANNON - REDIRECT EXAMINATION BY MR. MEADORS

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1 have worked that Saturday or that Sunday, or do you
2 remember?

3 A. I worked six days a week.

4 Q. Okay. Which one of those days do you not work?

5 A. Monday.

6 Q. So, you would have worked Sunday the 13th?

7 A. Uh-huh.

8 Q. And when you said you worked a double shift, explain
9 that to me.

10 A. I would come in, like, from 7 to 3, and then I would
11 come back at a certain time of the night.

12 Q. And what time would that be generally, or, or if
13 there's ---

14 A. It's going to be, like, 6:30, 7, something like that.
15 Sometimes I'd be a little late.

16 Q. Sometimes you'd be a little late?

17 A. Uh-huh.

18 Q. So, you were saying you were or were not working when
19 this incident happened?

20 A. I wasn't there at the time. I was coming in to work.

21 Q. So, it would have, would have -- would it have been
22 after that when you viewed it, correct?

23 A. Huh? Excuse me?

24 Q. It would have been after that when you viewed it,
25 after you came in?

1 A. Yeah.

2 Q. Okay, and you know Sergeant Burnish was the person
3 that showed it to you?

4 A. Yes, sir.

5 Q. And you were there on Saturday and Sunday. Could it
6 have been Sunday when he showed it to you?

7 A. I saw a tape. I don't, I don't remember if it was
8 Saturday or Sunday.

9 Q. All right, but do you remember looking at that tape
10 and saying that's Daniel Jackson?

11 A. Yes, sir.

12 Q. Is there any doubt about that?

13 A. No, sir.

14 MR. MEADORS: That's all. Thank you.

15 THE COURT: Just very brief cross?

16 MR. DEAS: Nothing further, Your Honor. Thank you.

17 THE COURT: Mr. Wilder?

18 MR. WILDER: No, Your Honor.

19 THE COURT: Thank you. You may step down.

20 (THE WITNESS EXITS THE STAND.)

21 THE COURT: Any objection to this witness being
22 excused for the balance of the trial?

23 MR. MEADORS: We would ask, ask ---

24 MR. DEAS: No objection.

25 MR. WILDER: No objection.

J. THOMAS - DIRECT EXAMINATION BY MR. MEADORS

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1 THE COURT: All right. Thank you, ma'am.

2 MR. MEADORS: Deputy Griffin. Excuse me, please the
3 court?

4 THE COURT: Yes, sir.

5 MR. MEADORS: State would now call Deputy Griffin.

6 THE COURT: All right.

7 JENNIFER THOMAS, BEING DULY SWORN,

8 TESTIFIES AS FOLLOWS:

9 CLERK OF COURT: Please state your full name. Spell
10 you last name for the record.

11 WITNESS: Jennifer Thomas, T-H-O-M-A-S.

12 DIRECT EXAMINATION BY MR. MEADORS:

13 Q. And you're a deputy?

14 A. Yes, sir.

15 Q. Good afternoon, Deputy.

16 A. Good afternoon.

17 Q. Please tell these ladies and gentlemen of this jury
18 about yourself. Specifically, where you're from, where you
19 were born, your experiences briefly in life, and how you
20 got here, please.

21 A. I was born and raised here in Sumter, South Carolina.
22 I attended Lakewood High school. I later went to USC of
23 Sumter. I then went on to dispatch for the city police
24 department while going to school. I then became a class 3
25 officer for the Sumter County Sheriff's Office.

1 Q. What's that mean?

2 A. Class 3 officer is pretty much you have limited
3 duties. You just go to the Academy for your legals. Then
4 I went back a year later full-fledged class 1 patrol
5 deputy. And that's when I was assigned to patrol, and I've
6 been a deputy ever since.

7 Q. Okay, and so that -- what year would you have gone
8 back as a full-fledged deputy?

9 A. 2006.

10 Q. And when you started off, were you -- and I don't mean
11 this bad -- you were a road deputy? Are you still a road
12 deputy?

13 A. Yes, sir.

14 Q. Okay, and are you and were you assigned to certain
15 areas as a road deputy?

16 A. Yes, sir.

17 Q. And in January of 2008, did you have a specific region
18 or area that the sheriff told you to supervise?

19 A. Yes, sir.

20 Q. What was that?

21 A. Cherry -- the Cherryvale area, which is district 4.

22 Q. District 4, and was there a substation there then?

23 A. Yes, sir.

24 Q. And it's there still now?

25 A. Yes. There still is.

J. THOMAS - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. And where is it?

2 A. It's on Confederate Road in Cherryvale, at the
3 Cherryvale Community Center.

4 Q. And is a part of that program that you become a part
5 of the community, so to speak?

6 A. Yes, sir.

7 Q. You get to know the folks there?

8 A. Yes, sir. That's correct.

9 Q. Now, back in '08, January of '08, you were Deputy
10 Griffin?

11 A. Yes, sir.

12 Q. Now Deputy Thomas?

13 A. Yes, sir.

14 Q. So, the documents have you down as another name. You
15 just got married since then?

16 A. Yes, sir.

17 Q. And recently had a child?

18 A. Yes, sir, number two.

19 Q. Let me take back to January 12th of '02, Deputy. And
20 are you familiar with Sambino's on 441, also known as Peach
21 Orchard?

22 A. Yes, sir.

23 Q. And have you been there to eat?

24 A. Several times, yes, sir.

25 Q. And on January 12th of '08, did you an occasion to go

1 to Sambino's?

2 A. Yes, sir. I went to Sambino's and ate.

3 Q. And did you see William Flexon while you were there
4 eating at Sambino's?

5 A. Yes, sir.

6 Q. And where did you see him?

7 A. In the back area, behind the counter area.

8 Q. Did you know him?

9 A. No. Just by name from coming into, eating at
10 Sambino's.

11 Q. And were you present when he left with a delivery?

12 A. Yes, sir.

13 Q. Did you see him leave with a delivery?

14 A. Yes, sir.

15 Q. And at that time, you were eating?

16 A. Yes, sir. I was eating.

17 Q. Please tell the jury what, if anything, happened after
18 that.

19 A. As I was eating, finishing up eating at the register,
20 I got a call for shots fired at Cherryvale, in Cherryvale
21 Drive at O.C. Mobile Home Park, and that's when I
22 responded. I left Sambino's and headed out towards O.C.
23 Mobile Home Park that's located on Cherryvale Drive.

24 Q. With that being your region, you knew exactly where it
25 was?

J. THOMAS - DIRECT EXAMINATION BY MR. MEADORS

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1 A. That's correct.

2 Q. You're driving down Cherryvale. Just, just for the
3 record, take us from Sambino's to Cherryvale.

4 A. Okay.

5 Q. And specifically the mobile home park.

6 A. Okay. If you pull out of Sambino's, I would have made
7 a left-hand turn onto 441, and I would have come to the
8 intersection of Highway 378 West. I'd have made a left
9 turn at the light and headed eastbound toward Cherryvale,
10 and I would have made a right turn onto Cherryvale Drive.
11 And O.C. Mobile Home Park was probably a couple blocks down
12 on your right-hand side, and I would have made the
13 right-hand turn into where Mr. Flexon was laying.

14 Q. Were you the first officer there?

15 A. Yes, sir.

16 Q. Describe to these ladies and gentlemen of the jury
17 what you saw when you got there.

18 A. Dark. The complainant, a couple other people pointing
19 me towards where he was laying. I used my spotlight to
20 see. There was a body laying on the ground.

21 Q. What did you do next?

22 A. Got out. The other patrol deputies, they were behind
23 me. Went to go see if there was any, any life, I guess you
24 would say. Checked to see if the injuries of this person
25 laying down, to get first responders en route, and start

1 beginning to secure the scene once they were called.

2 Q. Did you actually go to the body of William Flexon,
3 Bill Flexon?

4 A. Yes, sir. I did.

5 Q. Did you touch him?

6 A. Yes, sir.

7 Q. And was he dead?

8 A. Yes, sir. He appeared lifeless.

9 Q. And you've had training and all that, and based -- I
10 guess. And based on your experience, were you able to tell
11 he wasn't living anymore?

12 A. Yes, sir.

13 Q. But did you still, or is ---

14 A. Still ---

15 Q. --- it procedure to call EMS?

16 A. That's right. We still go ahead.

17 Q. What is your job as a deputy? You're not an
18 investigator, correct?

19 A. No, sir.

20 Q. So, as a first responder, which you clearly were, you
21 checked Mr. Flexon. What did you do? Did you hold the
22 scene until investigators got there?

23 A. That's correct. Me and the officers start putting the
24 crime scene tape and securing the area.

25 Q. And was that done?

J. THOMAS - DIRECT EXAMINATION BY MR. MEADORS

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1 A. Yes, sir.

2 MR. MEADORS: Beg the court's indulgence.

3 THE COURT: Yes.

4 (COUNSELORS CONFER.)

5 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 25 FOR
6 IDENTIFICATION.)

7 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 26 FOR
8 IDENTIFICATION.)

9 COURT REPORTER: 25 and 26 for I.D.

10 BY MR. MEADORS:

11 Q. Can you recognize, and I'm showing you State's 26, can
12 you recognize this, and does it relate to your testimony?

13 A. Yes, sir.

14 Q. You didn't take this, did you?

15 A. No, I didn't take that.

16 Q. And can you, 25, can you recognize that of what you
17 may or may not have seen that night?

18 A. The mobile home and the van.

19 MR. MEADORS: Your Honor, State's 25 and 26 without
20 objection.

21 THE COURT: All right, without objection?

22 MR. WILDER: Without objection.

23 MR. DEAS: No objection

24 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 25.)

1 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 26.)

3 BY MR. MEADORS:

4 Q. With deference to the family now, what does 26 show?

5 A. It shows Mr. Flexon lying on the ground.

6 Q. And, and ---

7 A. With a, looks like a gunshot wound to the chest area.

8 Q. And when you got there, there appears to be something
9 on Mr. Flexon here that maybe EMS did. Was that there when
10 you got there?

11 A. I can't remember that ---

12 Q. Well, did you get there before EMS or not?

13 A. Yes, sir, I did.

14 Q. So, if there was anything on here where it looked like
15 life support, that wouldn't have been on there yet?

16 A. No.

17 Q. Right?

18 A. That wouldn't have been there.

19 Q. Was Mr. Flexon laying on the ground?

20 A. Yes, he was laying on the ground.

21 Q. Does that appear to be in roughly the same position?

22 A. Right.

23 THE COURT: You may publish.

24 MR. MEADORS: Thank you, and I apologize.

25 BY MR. MEADORS:

J. THOMAS - DIRECT EXAMINATION BY MR. MEADORS

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1 Q. Now, State's 25, you said you recognized that. This
2 is a, looks like a closeup picture. What is that a picture
3 of?

4 A. Of Mr. Flexon's Caravan, Dodge Caravan.

5 Q. You've got to talk. I'm, I'm not ---

6 A. Okay. That's okay. Mr. Flexon's Dodge Caravan.

7 Q. Right, and what does this appear also on State's 25
8 next to the trailer -- next to the car? Is that the
9 trailer?

10 A. On?

11 Q. Yes, sir -- yes, ma'am.

12 A. On this one?

13 Q. Yes, ma'am?

14 A. Lot number ■ of O.C. Mobile Home Park.

15 Q. Okay.

16 MR. MEADORS: May I show this, too?

17 THE COURT: You may. You may publish.

18 BY MR. MEADORS:

19 Q. And were there some other pictures taken by
20 Investigator Bean later on to your knowledge? Do
21 investigators come in and take pictures generally?

22 A. Yes, sir.

23 Q. Did you secure the scene until the investigators got
24 there?

25 A. Yes, sir, the best that we could.

1 Q. And did you, after that -- your role, and I don't mean
2 this bad. Basically, when the investigators get there,
3 they kind of take over, correct?

4 A. That's right. We're pretty much crowd control at that
5 point.

6 Q. And being familiar with the area, did you know where
7 Cherryvale Grocery was?

8 A. Yes, sir.

9 Q. And were there pay phones at Cherryvale Grocery in
10 January of 2008?

11 A. Yes, sir.

12 Q. Do you know of any other pay phones in that area?

13 A. No, sir.

14 (COUNSELORS CONFER.)

15 (PHOTOGRAPH MARKED AS STATE'S EXHIBIT NUMBER 27 FOR
16 IDENTIFICATION.)

17 COURT REPORTER: 27 for I.D.

18 MR. MEADORS: Thank you.

19 BY MR. MEADORS:

20 Q. Did you, and if you didn't, that's fine. Did you make
21 any observations about anything around the body? See any
22 items of potential evidence? And I'll ask you to look at
23 it 27. Just tell me if you recognize it. That's all.

24 MR. WILDER: Well, Your Honor, the way the question is
25 postured is leading because he asked her ---

1 THE COURT: Sustained.

2 MR. WILDER: --- about it and then showed her the
3 picture. So, I think ---

4 THE COURT: Sustained. Rephrase your question.

5 MR. MEADORS: Your Honor, for the record, they, they
6 -- I don't think they have objection to this. They just
7 wanted to put it in perspective. That's what I was told,
8 and that's why I thought ---

9 MR. WILDER: And that's true.

10 THE COURT: Okay. No objection?

11 MR. WILDER: Your Honor, later on it's my
12 understanding whoever took that picture is going to
13 testify. So, subject to whoever ---

14 THE COURT: Just like the video?

15 MR. WILDER: Yes, Your Honor.

16 THE COURT: Right. Okay.

17 MR. WILDER: Subject to that.

18 MR. MEADORS: I thought we had that understanding, and
19 I was just trying to get there, Judge. I'll wait.

20 BY MR. MEADORS:

21 Q. Also, is it part of your job to take down names of
22 people that may be there or around at the time?

23 A. Yes, sir.

24 Q. And put that in a report?

25 A. Yes, sir.

1 MR. MEADORS: Judge, I think that's all I have. Thank
2 you.

3 THE COURT: Thank you.

4 Mr. Deas.

5 MR. DEAS: Thank you, Your Honor. May it please the
6 court?

7 CROSS-EXAMINATION BY MR. DEAS:

8 Q. Good afternoon, Deputy Griffith.

9 A. Good afternoon, sir.

10 Q. My name is Garryl Deas, and I represent defendant
11 Reginald Canty.

12 During your direct examination, you indicated that you
13 were eating at Cherryvale -- Sambino's on the evening of
14 January 12, 2008. Is that correct?

15 A. Yes, sir.

16 Q. Were you on, were you on duty at the time?

17 A. Yes, sir.

18 Q. So, you were in uniform?

19 A. Yes, sir.

20 Q. Now, do you recall what time it was when you, when you
21 arrived at Sambino's that evening to eat? Now, I know this
22 was more than three years ago, but do you have some
23 recollection of that?

24 A. By my report or just -- you want the time?

25 Q. Whether it's, whether it's by your report.

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 A. Okay.

2 Q. Or based on your own specific memories.

3 A. Okay. I know it was around 8:00, but the exact time
4 of the call was 8:44.

5 Q. And so you have, you have your report right there with
6 you?

7 A. Yes, sir, I do.

8 Q. Okay. May I take a look at that?

9 A. Sure.

10 Q. And this report, you prepared this yourself?

11 A. Yes, sir.

12 (A PAUSE.)

13 A. That's not the report that you're looking at.

14 Q. Okay. So, the rest of this is not necessarily your
15 report? Just the first part is your report?

16 A. The first three pages of the report.

17 Q. I'm going to hand it back to you. Now, so basically,
18 then, you said it was probably around 8:00 when you first
19 arrived to eat. Is that correct?

20 A. Uh-huh.

21 Q. And were you by yourself, or you had other officers
22 with you?

23 A. No. I had other officers with me.

24 Q. Okay. They were other sheriff, sheriff -- officers in
25 the sheriff's department?

1 A. Yes, sir.

2 Q. Okay. Do you know who it was?

3 A. I remember Corporal Hice being there, and I believe my
4 sergeant at the time was there.

5 Q. You remember, remember who?

6 A. Sergeant Horton.

7 Q. Horton?

8 A. Yes, sir?

9 Q. Now, according to your report and based on your
10 testimony, you said you got a call about 8:44 p.m.?

11 A. Yes, sir.

12 Q. And you received this call on your radio?

13 A. Yes, sir.

14 Q. Would it have been, been a radio like the one you have
15 on your shoulder today?

16 A. Yes, sir. What I'm wearing right now.

17 Q. And that, would that call have come in from dispatch?

18 A. Yes, sir.

19 Q. Do you recall exactly what was said over the radio at
20 the time?

21 A. Something along the lines of signal 2 in the area of
22 Cherryvale Drive, O.C. Mobile Home Park was the original
23 call, I remember.

24 Q. And what does that mean in laymen's terms?

25 A. Shots fired.

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 Q. You used to be a dispatcher at one time. Is that
2 correct? I believe you ---

3 A. Yes.

4 Q. --- testified to that on direct?

5 A. Yes, sir.

6 Q. And you're familiar, then, with dispatch reports?

7 A. Yes, sir.

8 Q. You've seen them before?

9 A. Yes, sir.

10 MR. DEAS: Court's indulgence.

11 THE COURT: Yes.

12 (COUNSELORS CONFER.)

13 MR. MEADORS: He's going to offer that into evidence.

14 We have no objection.

15 MR. DEAS: Your Honor, I'm ---

16 THE COURT: Check with Mr. Wilder.

17 (COUNSELORS CONFER.)

18 THE COURT: Any objection, Mr. Wilder?

19 MR. WILDER: No objection.

20 THE COURT: Without objection, Defense Exhibit ---

21 MR. DEAS: 1.

22 THE COURT: 1.

23 (DISPATCH REPORT MARKED INTO EVIDENCE AS
24 DEFENDANT-CANTY'S EXHIBIT NUMBER 1.)

25 MR. DEAS: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. DEAS:

3 Q. Ms. -- Deputy Thomas, I'm going to hand you what's
4 been marked as Defense Exhibit 1, and it's been admitted
5 into evidence without objection. Are you familiar with
6 that type of a dispatch report?

7 A. It looks like a copy or printout of our CAD screen.

8 Q. Now, what -- tell me exactly what that means or what
9 that is.

10 A. When, when ---

11 Q. The document there in your hand.

12 A. When dispatch receives a call and they enter the call
13 into our CAD system, a call is obviously generated, the
14 address, and in it are comments of the call. And this
15 looks like a printout of the comments that would be on that
16 call put in by a dispatcher.

17 Q. And would these be the comments of the dispatcher, or
18 would these be comments of the responding officer?

19 A. It would be all. It would be any information from the
20 caller, from the officer. Anything that they felt would be
21 important, they would type in the system.

22 Q. Now, one of entries on the report, and I will direct
23 you to it, it says it was made at 210456, which in --
24 that's military time, but in a regular time that would be
25 9:04:56. Is that correct?

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 A. Right.

2 Q. And that particular entry states that dispatcher or
3 one of the responding officers had disseminated some
4 information that there were three male suspects in the area
5 running across -- running into a wooded area from the
6 scene.

7 A. Uh-huh.

8 Q. Is that correct?

9 A. That's what this report says, yes, sir.

10 Q. And could you state specifically what it says at that
11 particular entry?

12 A. It states at 2104, stated that: About three male
13 subjects went 10/8 across the street into the woods.

14 Q. Okay. Were you aware that evening that that's
15 information that was being disseminated by, by a
16 dispatcher? Do you have any specific recollection of that
17 particular information being disseminated amongst the
18 officers by dispatch?

19 A. I remember being on scene, and one of the complainants
20 said that they saw the subjects ---

21 MR. WILDER: Objection.

22 A. --- running to the wood line.

23 MR. WILDER: I'm going to object.

24 THE COURT: What's your objection?

25 MR. WILDER: One of the complainants said she said,

1 and whatever she said is hearsay.

2 THE COURT: Sustained.

3 BY MR. DEAS:

4 Q. Without talking about what someone said or what you
5 heard, so you have any specific recollection of that
6 particular dispatch entry being broadcasted over the radio,
7 that there were three male subjects running into the wooded
8 area from the scene?

9 A. What they told me, I gave to the dispatcher over the
10 radio that subjects went. So, they -- she would have typed
11 what I said.

12 Q. Okay.

13 A. And if somebody would have called in and said the same
14 thing, they could have put that also.

15 Q. Okay. So, this information that's on that report
16 would have been based on ---

17 A. Could be from either or.

18 Q. Would have been either based on information that you
19 gave to dispatch, or information that came from another
20 source?

21 A. That's correct.

22 Q. Was there any attempts -- and you were the first one,
23 I guess you were the first law enforcement officer to
24 respond to the scene. Is that correct?

25 A. Yes, sir.

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 Q. All right. Do you know, does your report indicate
2 exactly when you arrived on the scene?

3 A. Yes, sir. It does.

4 Q. And when was that?

5 A. Time of arrival, according to dispatch, time was down
6 there was 2103.

7 Q. So, that would have been roughly about 9:03 p.m.?

8 A. 9:03 p.m., yes.

9 Q. Okay, and when this dispatch entry was made about the
10 three subjects running into the wooded area, that was
11 roughly about a minute after that, a minute or so after you
12 first arrived on the scene. Is that correct? Would you
13 just ---

14 A. According to that time, 2104.

15 Q. So.

16 A. So, according to this, yes, it would be a minute.

17 Q. About a minute later?

18 A. Uh-huh.

19 Q. Do you, as you were approaching the scene of this
20 incident, do you have any specific recollection of seeing
21 any male, three male subjects running from the scene?

22 A. No, I did not.

23 Q. Or near the scene?

24 A. I did not see anybody running.

25 Q. Did you at any point when you first arrived on the

1 scene, did you at any point conduct any search of the area
2 to see if there were any assailants or suspects in the, in
3 the area at the time?

4 A. When we first got there, and we checked the victim
5 that was laying there. Then we would secure the scene, and
6 then start talking with people to get some information.

7 Q. Now, when you first arrived on the scene, were you by
8 yourself, or did -- was Corporal Hice and Sergeant Horton
9 with you?

10 A. Yes, sir.

11 Q. They were with you?

12 A. I pulled in first, and they pulled in right behind me.

13 Q. And y'all were each in three separate ---

14 A. Yes.

15 Q. --- police vehicles?

16 A. Yes, sir.

17 Q. Now, your first responsibility or duty that, that
18 evening when you arrived, you went directly to where ---

19 A. To the victim.

20 Q. --- Mr. Flexon was?

21 A. Yes, sir.

22 Q. Were the other two officers with you when you
23 approached, when you approached him in the area, when you
24 approached him on the scene?

25 A. Yes.

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 Q. Now, can you describe and -- well, let me ask you, and
2 you correct me if I'm wrong. Essentially, when you come in
3 to this area where Mr. Flexon was lying on the ground, is
4 it sort of like a cul-de-sac? Sort of like a U-shaped
5 cul-de-sac?

6 A. Yes, sir.

7 Q. Would that be a fair description?

8 A. That would be a fair description, yes.

9 Q. And then there's trailers or mobile homes around this
10 U-shaped cul-de-sac?

11 A. Right. Like a horseshoe, and then there's like one
12 house in the center of the horseshoe, and the trailers line
13 around it.

14 Q. Around?

15 A. Yes.

16 Q. So, in, in, in -- with regards to this horseshoe
17 that's the cul-de-sac, where in relation to that horseshoe
18 was Mr. Flexon lying?

19 A. They're numbered 1, 2, 3, 4, 5, 6, 7 like that around.
20 Was he lying near 7. So, it would be -- there's two
21 entrances into it. He would be the second entrance.

22 Q. Okay. So, there's ---

23 A. If you're coming from 378 on Cherryvale Drive, you
24 would have to make the second turn into O.C. Mobile Home
25 Park.

- 1 Q. So, there are two entrances into this U-shaped
2 cul-de-sac?
- 3 A. Yes.
- 4 Q. And if you were coming into the second entrance?
- 5 A. Right.
- 6 Q. Mr. Flexon would have been lying, as you're counting
7 around the horseshoe, around the seventh lot?
- 8 A. Right. Yes, sir.
- 9 Q. Was he, and he was lying right in front of that lot?
- 10 A. Beside. He would be beside it.
- 11 Q. Beside the lot?
- 12 A. Uh-huh.
- 13 Q. Now, do you have any specific knowledge as to where
14 Reginald Canty lives in relation to where lot number [REDACTED] is?
- 15 A. At that time?
- 16 Q. Yes.
- 17 A. No, sir.
- 18 Q. Now, you mentioned that when -- after securing the
19 scene and after you approached Mr, Mr. Flexon's -- Mr.
20 Flexon, who was lying on the ground, and once you
21 determined that he, he had passed away, you then -- did you
22 talk with anyone in the area at that point?
- 23 A. Yes, sir.
- 24 Q. Now, don't tell me what they said. I'm just asking
25 you. Did you talk to any of the bystanders or individuals

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 in the neighborhood?

2 A. Yes, sir. I did.

3 Q. Do you know how many people you spoke to, just you
4 personally?

5 A. Maybe three to four, I would say.

6 Q. Did you, did you take any notes as to what they may
7 have told you, if anything?

8 A. Whatever they would have told me, I would have put it
9 in my report.

10 Q. And it would be in that report that you have there?

11 A. Yes, sir.

12 Q. Now, after you arrived on the scene, you spoke with
13 several individuals in the area, did you have -- did you at
14 any point advise any of your colleagues, any other law
15 enforcement officers about the fact that there had been a
16 dispatch report which indicated that there had been three
17 male subjects running into a wooded area from the scene?
18 Did you inform any, anyone of that?

19 A. Yes.

20 Q. Okay, and what, if anything, happened as a result of
21 you giving your fellow law enforcement officers that, that
22 information? Was any type of search conducted with K-9
23 units or anything of that nature?

24 A. Yes, sir. There was.

25 Q. There was?

1 A. Yes, sir.

2 Q. And actual canines were used?

3 A. Yes, sir.

4 Q. You have a specific recollection of that?

5 A. Yeah, I remember that. Corporal Hice that was on
6 scene right behind my patrol vehicle, he had his canine
7 with him that night.

8 Q. But this search utilizing the canines yielded no
9 positive results, or yielded no, no arrests or any
10 detainees of any -- or any, or any detention of any
11 assailants or potential suspects?

12 A. No.

13 MR. DEAS: May I approach, Your Honor?

14 THE COURT: You may.

15 BY MR. DEAS:

16 Q. Do you know, Deputy Thomas, as to whether any steps
17 were taken beyond the use of the K-9 units to explore this,
18 this report from dispatch that shortly after the incident
19 happened, three male subjects were running into the scene,
20 into a wooded area? Do you know if anything else was done
21 to follow up that lead besides the use of the K-9 units?

22 A. I did not go with the K-9 unit, so I do not know.

23 Q. Did the, the three or four people that you spoke with
24 once you arrived on the scene and as part of your
25 investigation, do you know if they lived in the Cherryvale

J. THOMAS - CROSS-EXAMINATION BY MR. DEAS

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1 Mobile Home Park area? Do you have any recollection as to
2 whether they lived in that area?

3 A. The addresses that they gave me were all in
4 Cherryvale, yes, sir.

5 Q. Now, you stated that if you had spoken with
6 individuals that day, you would have noted in your report
7 what their names were?

8 A. Yes, sir. It's on the report.

9 Q. Okay. Could you point out for me where that is?

10 A. Yes, sir. That would be this complainant, Ray Dickey.
11 Then that's the victim. That's the suspect. On the second
12 page, that would be another complainant, another
13 complainant, and then on the third page, that would also be
14 another complainant, and then their testimony or whatever
15 they told me at the time would be in the report.

16 Q. All right. Now, on your report, it states that you --
17 well, your report, and you just indicated this. It says
18 that you spoke with a Ray Dickey?

19 A. Yes, sir.

20 Q. And that would have been one of the individuals that
21 was, that was out at the mobile home park that evening?

22 A. Yes, sir.

23 Q. And you spoke with him?

24 A. Yes, sir.

25 Q. Then according to your report, you also spoke to

1 someone by the name of Jennifer Dickey?

2 A. Yes, sir.

3 Q. And then it also states that you spoke with someone by
4 the name of Linda Canty?

5 A. Yes, sir.

6 Q. And also on your report, it indicates that a suspect
7 is Daniel Jackson.

8 MR. WILDER: Objection. Your Honor, I have a motion.

9 THE COURT: All right, ladies and gentlemen of the
10 jury, I'm going to give you a break at this point in time.
11 If you want some refreshments, you may have them.

12 If you would, take them back to the jury room.

13 CLERK OF COURT: Sir.

14 THE COURT: Please do not discuss the case while
15 you're out.

16 (THE JURY EXITS AT 4:32 P.M.)

17 THE COURT: All right, Mr. Wilder.

18 MR. WILDER: If it please the court? The question you
19 entered on your report that the suspect listed there is
20 Daniel Jackson, that calls for rank hearsay, all kinds of
21 speculation as to when or where that name was decided, she
22 decided to add that there. But the very question itself, I
23 think, is prejudicial, and it shouldn't have been stated in
24 front of the jury.

25 So, I move that the question be stricken, but I also

1 move for a mistrial just because of the fact that the
2 question was asked. Certainly if the answer, if she
3 doesn't know of her own personal knowledge that Daniel
4 Jackson supposedly did something, to list him as a suspect
5 on a report that can't even be admitted into evidence --
6 because it's based hearsay also -- is extremely prejudicial
7 to my client.

8 THE COURT: Well, how is it prejudicial for your
9 client? He's a defendant in the courtroom. I mean, they
10 would have to suspect that at some point in time his name
11 would come into play.

12 MR. WILDER: At some point in time, Judge. They're
13 posturing as though he was a suspect at that particular
14 time on that particular night when the report was issued,
15 and I object to that. That's not even true.

16 THE COURT: Mr. Meadors.

17 MR. MEADORS: I don't know if I have a dog in this
18 fight. I, I don't know that she put that on there.

19 WITNESS: I did not put that on there.

20 MR. MEADORS: That's what I didn't -- it looks like
21 there's different writing. So, I don't know if that helps
22 or hurt either side, but I didn't know.

23 I didn't ask that question. I didn't know it was
24 coming. I don't think it's worth a mistrial, Your Honor.
25 Obviously, they both are on trial.

1 I'd like that -- I don't know if I'm allowed to ask
2 her questions, but that doesn't appear -- it just appears
3 to me that's different handwriting, if nothing else, and
4 that may not have been her that put that on there.

5 THE COURT: All right, I'm not going to grant a
6 mistrial based on that. I will strike the answer. But, I
7 mean, I think it's pretty obvious. I mean, here they're
8 defendants in the trial, so ---

9 MR. WILDER: Yes, Your Honor, and obviously ---

10 THE COURT: --- there's no prejudice.

11 MR. WILDER: --- she didn't even write it there, then
12 that's ---

13 THE COURT: I'll, I'll instruct the jury that they are
14 to disregard their last ---

15 MR. WILDER: Thank you, and I do, now that you haven't
16 granted my mistrial, ask that you do give that instruction.

17 THE COURT: I will be happy to.

18 MR. WILDER: And to do the best we can to cure it.

19 THE COURT: All right. Thank you.

20 MR. WILDER: Thank you.

21 THE COURT: Well, while they're out, do y'all want to
22 take a five minute break and cool down? Let's take five
23 minutes. Nobody be far away.

24 (OFF THE RECORD.)

25 THE COURT: All right, let's bring our jury back in.

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1 (THE JURY ENTERS AT 4:47 P.M.)

2 CLERK OF COURT: Your Honor, we have all our jurors
3 back in the courtroom.

4 THE COURT: Thank you.

5 Ladies and gentlemen, at the end of the last
6 testimony, an objection was made. I sustain the objection
7 and, therefore, I'm going to ask that the jury disregard
8 the last statement of this witness, all right? Thank you.

9 Please proceed.

10 MR. DEAS: Thank you, Your Honor. May it please the
11 court?

12 BY MR. DEAS:

13 Q. Deputy Thomas, other than Ray Dickey and Jennifer
14 Dickey, were there any other -- and Linda Canty, were there
15 any other individuals that you spoke with that evening?

16 A. Ms. Esther Sharpe, I remember talking with her across
17 the street.

18 Q. And those would have been the four individuals that
19 you spoke with that evening?

20 A. Yes, sir.

21 MR. DEAS: Okay. Thank you, ma'am. I have no further
22 questions.

23 THE COURT: Thank you.

24 Mr. Wilder.

25 MR. WILDER: Thank you, Your Honor.

1 WITNESS: Can I have my report back? Thank you.

2 MR. DEAS: Yes, ma'am.

3 CROSS-EXAMINATION BY MR. WILDER:

4 Q. It's Deputy Thomas now?

5 A. Yes, sir.

6 Q. And it used to be Deputy J. Griffin?

7 A. Yes, sir.

8 Q. And it would be unit number 0563?

9 A. Yes, sir.

10 Q. And anything with Deputy J. Griffin, 0563, down at the
11 bottom of it would be an incident report which you probably
12 filed?

13 A. Yes, sir. That's correct.

14 Q. And that number, unit number is how y'all keep track
15 of -- maybe you got two officers that have the same name,
16 last name. Might get confusing, but the number is unique,
17 isn't it?

18 A. Yes, sir.

19 Q. Okay. So, then I will ask you then. It's not your
20 job, is it, to even enter who the suspect might be on that
21 report that you just referred to, is it?

22 A. Unless I know who the suspect is, I would write them
23 down.

24 Q. And you didn't write it on that report, did you?

25 A. No. That was not my handwriting.

J. THOMAS - CROSS-EXAMINATION BY MR. WILDER

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1 Q. That's not your handwriting, okay. Now, okay, let me
2 show you an incident report and ask you if that's your
3 signature or your unit number and your report?

4 A. Yes, sir.

5 Q. Now, I would like you to leaf through there and ask if
6 your signature and unit number is on the bottom of each
7 page of that report.

8 MR. MEADORS: Your Honor, could I see which one he's
9 referring to?

10 THE COURT: Yes, you may. Mr. Wilder, if you'd let
11 Mr. Meadors see it, please.

12 Q. Can you identify it?

13 A. Yes, sir.

14 MR. MEADORS: Your Honor, may we approach?

15 THE COURT: You may.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: Objection is sustained.

18 BY MR. WILDER:

19 Q. All right, Deputy Griffin -- or Thomas now, you did
20 identify this as being your report?

21 A. Yes, sir.

22 MR. WILDER: I would ask that it be marked for
23 identification.

24 THE COURT: Marked for identification only.

25 (INCIDENT REPORT MARKED AS DEFENDANT-JACKSON'S EXHIBIT

1 NUMBER 2 FOR IDENTIFICATION.)

2 COURT REPORTER: Defendant's 2 for identification.

3 MR. WILDER: All right. Now, Your Honor, when I get
4 done, if it pleases the court, I'll come back to that in a
5 setting where the court will approve of me going into it
6 further.

7 THE COURT: All right.

8 BY MR. WILDER:

9 Q. All right. Now, moving on to something that you were
10 asked about earlier, your report indicates that you,
11 Corporal Williams, Reserve Figér, Corporal Hice, Sergeant
12 Horton, Sergeant Dukes, EMS, Captain Bradford and Turner,
13 Investigators Barron, Reynolds, Boland, Gardner, Verner,
14 Skinner, West, Corporal Moore, Vernon Moore. I guess
15 that's the coroner. EMS, and the crime scene person,
16 Mackessy and Bean were all notified and responded to the
17 scene while you were there. Is that not correct?

18 A. Yes, sir.

19 Q. And that was that night?

20 A. Yes, sir.

21 Q. Now, did you have occasion to get out the yellow tape,
22 draw -- cordon off a particular area out there?

23 A. Yes, sir.

24 Q. And might it have been an area of the drive where the
25 car was located?

J. THOMAS - CROSS-EXAMINATION BY MR. WILDER

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1 A. Yes, sir.

2 Q. Okay, and then traffic could have still gone up and
3 down Cherryvale Drive?

4 A. Up and down Cherryvale Drive itself? Yes, sir.
5 Traffic could still go on Cherryvale Drive.

6 Q. All right, and O.C., the little roundabout or whatever
7 that is back up in there with the trailer off of it, that
8 would have been the area you put the tape over, right?

9 A. Right.

10 Q. All right. Now, Mr. Meadors asked you about State's
11 for I.D. that had a picture, I believe, of a cell phone on
12 it. Can you tell the jury where the cell phone was when
13 you got there?

14 MR. MEADORS: Judge, I ---

15 A. I don't remember.

16 MR. MEADORS: I did not show her that picture.

17 (COUNSELORS CONFER.)

18 THE COURT: It was objected to, so it did not.

19 BY MR. WILDER:

20 Q. All right. Do you remember seeing a cell phone?

21 A. I don't remember a cell phone.

22 Q. Could there have been a cell phone on the ground next
23 to where Mr. Flexon was laying?

24 A. There could have been. I don't remember the cell
25 phone, no.

1 Q. And in addition to that cell phone, was -- did you see
2 another cell phone belonging to Mr. Flexon?

3 A. I do not. I don't remember a cell phone.

4 Q. All right. Now, back up on Cherryvale Drive, did you
5 happen to see a Dunkin' Donuts wrapper?

6 A. No, sir. I don't remember seeing a wrapper.

7 Q. Don't, don't remember seeing a candy wrapper or
8 anything like that around the body?

9 A. No, sir.

10 Q. All right. Now, we know that, based on what Mr. Deas
11 was asking you, that you talked to Ray Dickey, Jennifer
12 Dickey, Regina Patterson, and Linda Canty because your
13 report said so, right?

14 A. Yes, sir.

15 Q. All right, and then we know the dispatcher called in
16 something about three black males running away, no names,
17 right?

18 A. I don't recall dispatch saying. I remember I was
19 saying it.

20 Q. You were saying that? You called it in to the
21 dispatcher?

22 A. But they could have said it as well.

23 Q. They could have said it ---

24 A. Through all the commotion, yes.

25 Q. Based on what you told them?

J. THOMAS - CROSS-EXAMINATION BY MR. WILDER

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- 1 A. Right. Well, by this CAD report that shows -- it
2 doesn't say who said it. That's -- I just don't want that
3 be confused because this exhibit says that.
- 4 Q. Okay, but when you called it in, you didn't call in a
5 name of a suspect, did you?
- 6 A. No, I did not call a suspect's name.
- 7 Q. Okay. So, but if one of those people that you talked
8 to at the scene had given you a name of a suspect, you
9 would have called that in for sure, wouldn't you?
- 10 A. Definitely.
- 11 Q. All right. So, we may then conclude that nobody gave
12 you the name of a suspect, right?
- 13 A. No. I did not get a suspect's name.
- 14 Q. Thank you. All right. Now, but those three people
15 that you talked to, or four, one, two, three, four, they
16 were all at the scene and could have moved stuff around, or
17 touched the body, or touched Mr. Flexon, or gone in his car
18 or anything before you got there, couldn't they?
- 19 A. They didn't while I was there. I mean ---
- 20 Q. But they could have before you got there, couldn't
21 they?
- 22 A. Yes, sir.
- 23 Q. Because until you got there, nobody had secured the
24 crime scene, and there were at least four people lived in
25 the neighborhood that were there, right?

1 A. Yes, sir.

2 Q. All right, and then this group of people whose list of
3 names we read with law enforcement, they began to arrive on
4 the scene. And at some point, y'all put yellow tape up
5 there, but you didn't see any candy wrapper or anything at
6 all at that point in time that you can remember?

7 A. No, sir. I wasn't paying attention to the candy
8 wrapper.

9 Q. All right. Now, then next off, Mackessy and Bean are
10 called because they are the investigative people, and it's
11 their job to document what's on the crime scene, right?

12 A. Right.

13 Q. And, and when they show up, were there maybe other
14 people who had come like the people from Sambino's who
15 heard about it? You know, because, you know, people begin
16 to hear something happened, so a crowd sometimes gathers,
17 right? Did they ---

18 A. Not in the crime scene.

19 Q. But.

20 A. No, sir.

21 Q. But then ---

22 A. Only first responders would be in the crime scene.

23 Q. But all next to where you had the yellow tape out
24 there, people were standing on the other side of the tape,
25 right?

J. THOMAS - CROSS-EXAMINATION BY MR. WILDER

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1 A. Around, yes, sir.

2 Q. Okay, and tell the jury how many people were standing
3 around at that point in time.

4 A. That I seen? I couldn't give you a number. I
5 don't ---

6 Q. Take a guess.

7 A. Maybe without the first responders, I would say maybe
8 five or six people.

9 Q. Okay. Do you know who they were?

10 A. Four of them we've already named, and maybe, I don't
11 know. Like a couple other -- neighbors would start coming
12 out of their houses, but not ---

13 Q. Neighbors?

14 A. --- where we were.

15 Q. Okay. Well, did you see the neighbors who live, say,
16 in lot number █ O.C. Mobile Home Park? Did you see those
17 neighbors come out?

18 A. Not that I recall. I mean, they could have. I don't
19 remember.

20 Q. But they could have. Isn't that right next to where
21 the car was?

22 A. Yes, sir.

23 Q. And so did you talk to the people that lived in lot █
24 O.C. Mobile Home that night?

25 A. I don't recall.

1 Q. Could you have possibly talked to them?

2 A. Possibly.

3 Q. All right. Do you recall talking to other young black
4 men out there that night?

5 A. Besides the ones that remained?

6 Q. Yes, ma'am.

7 A. No, sir.

8 Q. Okay, and so you probably would have written it down
9 if you had done that?

10 A. Right. If I would have gotten ---

11 Q. Because it looks, looks like you keep pretty good
12 notes.

13 A. Yes, sir.

14 Q. When you talk to somebody, you write it down on a
15 report, right?

16 A. Yes, sir.

17 Q. And you're supposed to do that. Why you do that?

18 A. In case something happens, or to solve cases.

19 Q. Would it be like, does it help you remember all the
20 details later if you write down exactly what was said to
21 you?

22 A. Right.

23 Q. And so it's important for accuracy to write down what
24 people tell you?

25 A. That's right.

J. THOMAS - CROSS-EXAMINATION BY MR. WILDER

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1 Q. So you can remember all the details later, right?

2 A. Right.

3 Q. Now, which direction did the dogs go for the trackers?

4 A. If you're facing Cherryvale Drive from where the
5 victim was lying, they went out and over to the left.

6 Q. All right. Now, did you happen to see over that
7 direction any pizza boxes that night?

8 A. No, sir.

9 Q. Did not, and in kind of scoping out the general area
10 and checking around, did you see any pizza boxes that
11 night?

12 A. No, sir. I didn't.

13 Q. Do you think you would have seen them if they were
14 lying right there on the road, right across the other side
15 of the road?

16 A. I stayed at the crime scene pretty much the whole
17 time. The K-9 is the one that went out. I did not go with
18 the K-9.

19 Q. Well, whose job out of that list of people that we
20 just read would have kind of fanned out through the
21 neighborhood and kind of look around? Whose job would that
22 have been?

23 A. All additional officers that were on the scene.

24 Q. Horton, Dukes, Bradford, Turner, Barron, those guys?

25 A. And probably everybody. Once this scene was secure

1 and they took photos and do what they had to do on the
2 scene, the other officers definitely would have left to
3 look for the suspect.

4 Q. Now, would it have amazed you if there were pizza
5 boxes right across the street and nobody saw them?

6 MR. MEADORS: Objection, Your Honor.

7 THE COURT: Sustained. Calls for speculation.

8 BY MR. WILDER:

9 Q. All right, let's try it this way. Did you see anybody
10 look over that direction right across the street?

11 A. Yes.

12 Q. Who?

13 A. Myself. I stepped across the street.

14 Q. So, if there had been a pizza box right across the
15 street, would you have seen it?

16 A. If it was in plain view, yes, sir. I'm pretty sure I
17 would have seen it.

18 Q. Okay. Let's hold that thought.

19 MR. MEADORS: What was that last?

20 THE COURT: If it was in plain view.

21 MR. MEADORS: I thought he -- I thought you said
22 something else. I apologize.

23 THE COURT: Hold that thought.

24 MR. MEADORS: I apologize.

25 MR. WILDER: All right. Now, Your Honor, I need to

J. THOMAS - REDIRECT EXAMINATION BY MR. MEADORS

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1 pursue the matter we discussed over ---

2 MR. MEADORS: Judge, I still have some follow-up
3 questions.

4 MR. WILDER: Oh. Well, maybe we can do it that way.
5 I'm just reserving my ---

6 THE COURT: Well, he -- let him follow up, and then
7 you can do what you wanted to do.

8 MR. WILDER: All right. Thank you. That preserves my
9 right to pursue it?

10 THE COURT: Yes, sir.

11 MR. WILDER: Thank you.

12 MR. MEADORS: Just a few briefly.

13 THE COURT: Mr. Meadors.

14 REDIRECT EXAMINATION BY MR. MEADORS:

15 Q. Your job that night, Deputy Thomas, was what as a
16 deputy, road deputy for the Sumter County Sheriff's
17 Department when you responded to the scene?

18 A. When I responded, as I'm responding to the scene, any
19 suspects that might be leaving. Once you get there, check
20 the victim, make sure the victim's okay first. Then you
21 would secure the scene.

22 Q. And did you secure the scene?

23 A. Right.

24 Q. And after you got there, was the scene secure until
25 investigators got there?

1 A. Yes, sir.

2 Q. And who is it that looks for evidence, takes pictures
3 of the evidence, takes pictures of pizza boxes if they're
4 there and does that? Is that you or investigators that are
5 on the case?

6 A. That's investigators.

7 Q. What does CAD stand for?

8 A. Hold on. Let me think. They call it CAD reports, and
9 I don't, I don't know right now.

10 Q. If it helps any, I don't either. All right, my
11 question then was on what's been admitted I think in
12 Defense Canty. It's Exhibit Number 1, I presume. That was
13 on the report as coming from -- you don't know who, who
14 made that report? I'm just trying to clarify. I was
15 listening. You don't know who called that in, or do you?

16 A. Right. I don't know if she was typing what somebody
17 called in, or one of those officers while we were there.

18 Q. Okay.

19 A. She didn't state. She just stated that they ---

20 Q. And that's where I'm not -- she is who?

21 A. The dispatcher.

22 Q. Okay.

23 A. That entered those comments, and that's her last name
24 right there.

25 Q. Okay. So, call came in, either from you or somebody

J. THOMAS - REDIRECT EXAMINATION BY MR. MEADORS

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1 else, three black males running from the area?

2 A. Right.

3 MR. MEADORS: Beg the court's indulgence.

4 THE COURT: Yes, sir.

5 (A PAUSE.)

6 MR. MEADORS: That's all. Thank you.

7 THE COURT: Thank you.

8 Any recross?

9 MR. DEAS: None, Your Honor.

10 THE COURT: Any recross?

11 MR. WILDER: Not at this moment.

12 THE COURT: Okay.

13 Thank you. You may step down.

14 (THE WITNESS EXITS THE STAND.)

15 THE COURT: All right, ladies and gentlemen, that is
16 all the testimony that we are going to have for today. I
17 am going to dismiss you for the evening with strict
18 instructions that you not speak to anyone concerning this
19 case, and with strict instructions that you not look at any
20 news reports that may come on to WIS or any of the other
21 stations that cover this area, or that you read *The State*
22 newspaper or *The Item* tomorrow.

23 All right. So, ladies and gentlemen, have a nice
24 evening, and we will start again at 9:30 tomorrow, okay?
25 Thank you.

1 (THE JURY EXITS AT 5:07 P.M.)

2 THE COURT: All right, Mr. Wilder.

3 MR. WILDER: Thank you, Your Honor. We would ask that
4 the witness return to the stand.

5 (JENNIFER THOMAS RESUMES THE WITNESS STAND.)

6 PROFFERED EXAMINATION BY MR. WILDER:

7 Q. Deputy Thomas, reminding you that you're still under
8 oath.

9 MR. WILDER: And for the record, I proffer this
10 testimony, Your Honor.

11 THE COURT: Yes.

12 BY MR. WILDER:

13 Q. Defense Exhibit for I.D. Number 2-Jackson, I'm going
14 to hand you this report back again. This is the one,
15 Deputy Thomas, you identified your signature at the bottom
16 of.

17 A. Yes, sir.

18 Q. And a few days before this incident at Cherryvale or
19 O.C. Mobile Home Park, did you have occasion to take an
20 incident report concerning a robbery right there at the
21 approximate location of where this incident occurred?

22 A. Yes, sir.

23 Q. And who was the complainant out there just three or
24 four days before January 12th of 2008?

25 A. The maintenance man, Henry Parker.

J. THOMAS - PROFFERED EXAMINATION BY MR. WILDER

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1 Q. Maintenance man, Henry Parker. All right, and that
2 report that's been identified, is that your report
3 concerning what you did when you took that complaint?

4 A. Right.

5 Q. And does it contain the addresses of suspects in that
6 robbery that live there at number █ O.C. Mobile Home Park
7 right next to where Mr. Flexon's body was found?

8 A. Whose address?

9 Q. The suspects in that case, in that robbery.

10 A. In this robbery? Yes, it has all the names and
11 addresses.

12 Q. All right. Well, do two of them live right there at
13 the O.C. Mobile Home Park?

14 A. It's showing Reginald Canty as █ Cherryvale Drive.

15 Q. All right. Anthony Rush, was he a suspect in that
16 robbery?

17 A. In this robbery?

18 Q. In the robbery that I'm asking you about in that
19 incident report.

20 A. Yes, lot █.

21 Q. And Anthony Rush lives at lot █ O.C. Mobile Home Park
22 right next to where Mr. Flexon's body was found, correct?

23 A. Yes.

24 Q. And you verified that three days before and put it in
25 your report, did you not?

1 A. Yes, I did.

2 Q. Okay. So, you know that as of that time back in 2008,
3 that's where Anthony Rush lived?

4 A. Yes, at lot number ■.

5 Q. Okay. Who else lives at lot number ■ right then at
6 the time this happened in 2008?

7 A. According to this lieutenant's report and what they
8 were telling me, Donovan Shields lived at lot ■, and that's
9 it.

10 MR. WILDER: Okay, and the report itself, Your Honor,
11 I would just move it in for the purpose of proffering it at
12 this point because I ---

13 THE COURT: Only for purpose of proffering it. It's
14 not going in.

15 MR. WILDER: And I would ask the court to examine the
16 contents. No need for me to publish it, but I give it to
17 the court for what it's worth, and I would, I would ask
18 that ---

19 MR. MEADORS: Can I cross her on it? I mean, for ---

20 THE COURT: Yes. You may certainly cross her.

21 MR. WILDER: For the record.

22 PROFFERED EXAMINATION BY MR. MEADORS:

23 Q. This is an incident that occurred on January 8th?

24 A. Yes, sir.

25 Q. And it has 2007 at the bottom. Is that correct, or is

1 that just just ---

2 A. No.

3 Q. --- a typo?

4 A. That was just -- yeah, that's a typo.

5 Q. First of the year, people make mistakes like that?

6 A. Yes, sir.

7 Q. All right, because number 2 of the report does say
8 January 8th.

9 A. It's supposed to be 2008, yes, sir.

10 Q. And this report is 8 -- case number 8003209, correct?

11 A. Yes, sir.

12 Q. And that's not the same case number as the case we're
13 on trial in, correct?

14 A. No. No, sir.

15 Q. As a matter of fact, on January 8, 2008, Mr. William
16 was still alive, correct?

17 A. Right. Yes, sir.

18 Q. Had not been murdered until four days later?

19 A. Right.

20 Q. And this has nothing to do with this case, does it?

21 MR. WILDER: Objection to the leading.

22 Q. Does this have anything to do with this case?

23 A. No. It's a separate incident to show us that they
24 engaged in other criminal activity by, by what this
25 maintenance man was saying.

1 Q. And that they just happened to live there?

2 A. Uh-huh.

3 MR. MEADORS: Judge, that's all. Judge, I just, I can
4 imagine if I was trying to offer this into evidence.

5 THE COURT: Oh, you'd never get it in.

6 MR. MEADORS: Against their clients about something
7 that happened four days earlier.

8 THE COURT: Well, that's why he's, he's not getting it
9 in either.

10 MR. MEADORS: It's just not, it's not -- has nothing
11 to do with this case, and they're trying to build a
12 smokescreen.

13 THE COURT: I find it's inadmissible. He can proffer
14 it and on appeal, he can show it to the appellate court,
15 but it's not coming in to evidence in this matter.

16 MR. WILDER: And, Your Honor, there are varying
17 degrees of it that I would proffer. In other words, if
18 Your Honor were to find, as you already have, that the
19 whole thing was not relevant to the case on trial, I was
20 still ask that Your Honor allow me to admit the portion of
21 it that identifies who lives at lot number █ O.C. Mobile
22 Home Park right next to where Mr. Flexon's body was found.
23 But whether or not ---

24 THE COURT: No. I mean, that's part of the report.
25 I'm not going to let any of it in. I mean, if you want to

1 put up testimony to do that, you are welcome to do that.
2 But I'm not going to let you piggyback on that to get your
3 evidence in that way.

4 MR. WILDER: Well, is, is the court -- in other words,
5 I, what I was trying to do was just ask her who lived at
6 lot ■, O.C.

7 THE COURT: Do you have any objection to that?

8 MR. MEADORS: Judge, actually what he was, what he was
9 doing when he was crossing her in front of the jury, he was
10 asking her if she had interviewed anybody at lot ■. And I
11 took it like he was asking about this case when, in fact, I
12 think he was asking her if she had interviewed lot ■ four
13 days earlier.

14 MR. WILDER: No, no.

15 MR. MEADORS: But that's when she had done it, four
16 days earlier.

17 MR. WILDER: I know that, but I want to -- I would
18 like for her to testify who lives there.

19 MR. MEADORS: Judge, I ---

20 MR. WILDER: Who lived there at that time.

21 THE COURT: For the purpose of proffer, she can say
22 that. I mean, if she knows.

23 MR. WILDER: Well, she already put that in the report,
24 Your Honor. So, she got that information from somewhere.

25 MR. MEADORS: She put that in the report on a

1 different incident four days earlier, which is just
2 really ---

3 THE COURT: That's, that's why it's not coming into
4 evidence in this trial.

5 MR. WILDER: Well, it does ---

6 THE COURT: If you want to proffer it, you're welcome
7 to proffer. It's not coming into evidence, and if you want
8 to put it in through a different way, you may do so. But
9 I'm not going to let you do it through this way.

10 MR. WILDER: I understand the court's ruling. Not
11 trying to go around the court's ruling.

12 THE COURT: Thank you. Thank you.

13 MR. WILDER: Thank you. All right, no other questions
14 at this time.

15 THE COURT: Thank you.

16 All right, you may step down.

17 WITNESS: Thank you.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: All right, anything else before we break
20 for the day?

21 MR. MEADORS: No, sir. Thank you.

22 THE COURT: And you still believe you will finish your
23 testimony by tomorrow?

24 MR. MEADORS: The worst case scenario since we went --

25 THE COURT: We can go late.

1 MR. MEADORS: We may do the pathologist Thursday
2 morning, but I think we'll be rolling tomorrow. We'll be
3 nonstop.

4 THE COURT: Okay. Well, we think. We could have a
5 lot of cross-examination.

6 All right, very well. All right, court's adjourned
7 until 9:30 then tomorrow morning. Thank you.

8 MR. MEADORS: Thank you.

9 (WHEREUPON, THE CASE IS AT EASE.)

10 WEDNESDAY, AUGUST 10, 2011

11 (COURT RESUMES AT 9:36 A.M.)

12 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
13 28 THROUGH 50 FOR IDENTIFICATION.)

14 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 51 FOR
15 IDENTIFICATION.)

16 (DIAGRAM MARKED AS STATE'S EXHIBIT NUMBER 52 FOR
17 IDENTIFICATION.)

18 THE COURT: Is there anything before we start this
19 morning?

20 Mr. WILDER: Your Honor, may it please the court?

21 THE COURT: Yes, sir.

22 MR. WILDER: In accordance with conversations that Mr.
23 Meadors, Mr. Deas, and Your Honor and I have had earlier in
24 the week, I'm preparing my witnesses to arrive in the
25 morning, and I wish to, before it becomes an issue in any

1 way and to make sure that if the state has any help they
2 can give us with this process, that they -- they are
3 alerted. But I have a stack of subpoenas, and a service of
4 process has been indicated on the back of each one, and I'd
5 like to make the collective group of them a packet as a
6 court's exhibit because among them are the subpoenas which
7 have been sent to SLED. And I have called SLED to alert
8 them to the fact that we need them in the morning. And
9 little by little, some responses have been received, and
10 most of them don't appear to be any kind of problems.

11 But there, there was a response we received from
12 Selena Kinard that when we called her, she said she had
13 annual leave. And I said, well, she got the subpoena. And
14 she said, well, she planned to take off and da, da, da, da
15 da. It's her day off or something like that. And, you
16 know, we have the service of process on her and, and she's
17 been notified to be here in the morning.

18 Now, I don't know if she's going to call the court or
19 if the state plans to call her today, you know, since she
20 issued one of the reports.

21 THE COURT: Mr. Meadors, are you going to call her
22 today?

23 Mr. MEADORS: Judge, she is one of those witnesses
24 that he said he was going to call. If he's giving his word
25 as an officer of the court he's going to call her ---

1 THE COURT: But now she's saying she may not come.

2 Mr. MEADORS: Well, I will stipulate to her testimony.
3 I have no problem with that.

4 MR. WILDER: Well, we, we may find that to be
5 acceptable. I don't know. But until I clear that with my
6 client and after he finishes his case -- see, I don't know
7 what he's going to put in today. For instance, Ms. Boehm,
8 Maryann Boehm may testify for him. I don't know. She said
9 she might ---

10 Mr. MEADORS: Judge, she's a DNA -- there's no DNA
11 related to them. I'm going to call her, but he said he's
12 going to call her. So, if he's really going to call her, I
13 will stipulate to all the chain on that.

14 MR. WILDER: Well, here's, here's the problem. He
15 said, he's just going to call her.

16 Mr. MEADORS: No, I said if you don't -- if you're
17 giving me your word you're going to call her, then I'll
18 make sure she's here in the morning.

19 MR. WILDER: Well, I can't give him my word, see?
20 Well, I may fold my case. I don't know what all he's going
21 to put up. I may fold.

22 THE COURT: You know, you're just going to have to
23 call her as if he's not going to call her because he, he
24 may put up no testimony.

25 Mr. MEADORS: Right. But, I mean, he'd been telling

1 me the whole time he was going to.

2 THE COURT: Right.

3 Mr. MEADORS: And that's where we've been trying to
4 work together on this for the court's scheduling.

5 THE COURT: And I'm sorry it's not working, but you
6 can't -- I mean, Mr. Wilder has to -- his, his case is
7 fluid apparently at this point in time.

8 Mr. MEADORS: So, I don't know how I can help him
9 then.

10 THE COURT: Then you can't. It's his case.

11 MR. WILDER: Okay, and so I would put these as a
12 court's exhibit. Proof, proof of service, Your Honor, and
13 then ---

14 THE COURT: If she's not here, I'll have a sheriff's
15 deputy go to her house, if necessary.

16 Mr. MEADORS: And if that being the case, Your Honor,
17 I'll have her here in the morning and I just ---

18 THE COURT: She is not going to be able to just thumb
19 her nose at a...

20 Mr. MEADORS: But now who are you talking about?
21 Selena? I will stipulate to her testimony. I have her
22 subpoenaed, too, but he's saying he'll check with her.
23 I'll have Maryann Boehm here in the morning for her
24 testimony. So, I mean, I doubt we'll rest today.

25 THE COURT: All right.

1 Mr. MEADORS: So, I'll have her here in the morning
2 and then I can call her then.

3 THE COURT: All right.

4 Mr. MEADORS: That's the safest thing to do.

5 THE COURT: Thank you.

6 (SUBPOENA MARKED INTO EVIDENCE AS COURT'S EXHIBIT
7 NUMBER 8.)

8 COURT REPORTER: Court's Exhibit 8.

9 MR. WILDER: Thank you, Your Honor.

10 THE COURT: Anything else before we proceed?

11 Mr. MEADORS: Your Honor, just, just for -- maybe help
12 the process along, we've marked these pictures. Could we
13 all three look at them real quickly?

14 THE COURT: Certainly.

15 MR. MEADORS: That might save some time.

16 THE COURT: Do these look like what's already in?

17 Mr. MEADORS: Well, there's some additional ones, too,
18 Your Honor.

19 THE COURT: Are there going to be any objections to
20 the photos?

21 MR. WILDER: Yes, Your Honor. Any of them basically
22 that the wounds in color, we would ask the court to make a
23 ruling as to whether the prejudicial nature of them
24 outweighs the probative value. They will have to put up a
25 pathologist, Your Honor, so, to establish the cause of

1 death. A pathologist can testify as to what the nature of
2 wound would be.

3 I do not know of any reason to compel them to put a
4 color photograph of the, the wounds into evidence except to
5 insight the passion and prejudice of the jury against my
6 client. It's not going to be to establish the cause of
7 death because the pathologist will do that. So, I don't
8 believe there's any necessity for it.

9 THE COURT: Let me see the pictures.

10 Mr. WILDER And we would move to suppress them on the
11 grounds of the prejudicial nature outweighs probative
12 value.

13 Mr. DEAS: And, Your Honor, I would concur as to these
14 two photos. They, they do seem to be extreme, and it would
15 seem that the prejudicial effect would outweigh any
16 probative value.

17 THE COURT: Mr. Meadors.

18 Mr. MEADORS: Your Honor, we're not offering for that
19 reason and would not do that. I will withdraw one of them.
20 The other one, then, I would just like for Your Honor to
21 consider. It's a picture of the arm. Obviously, we're
22 just arguing it goes to the malice. I'll withdraw the
23 other. That was State's 50 for I.D. I won't offer that
24 one.

25 THE COURT: All right, State's 48 shows a picture of

1 an arm with a bullet hole in it. It has blood around it,
2 which would be expected. I don't find that to be -- I find
3 that this is presentable.

4 This was a shooting. There are going to be pictures
5 of the body. They're already in evidence. It is bloody,
6 but it's not excessive bloody. So, I find that the
7 probative outweighs the prejudice.

8 MR. WILDER: Your Honor, I ask that my objection
9 attach to that exhibit.

10 THE COURT: Yes, sir.

11 MR. WILDER: Do I need to raise it again when they put
12 it in front of the jury?

13 THE COURT: No, sir.

14 MR. WILDER: Thank you.

15 THE COURT: Your objection continues.

16 MR. WILDER: Thank you.

17 Mr. MEADORS: And then, Your Honor, for -- just for
18 the record, if we could go over this now, I'd like to save
19 even more time. As far as State's 28, State's 29, State's
20 30, State's 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 43,
21 there's no objection on those, Your Honor.

22 THE COURT: Is that correct?

23 MR. WILDER: That's correct.

24 MR. DEAS: That's correct.

25 THE COURT: We will put them in over your objection to

1 number 48.

2 MR. WILDER: Thank you.

3 MR. MEADORS: Your Honor, 48 is the one you ruled on.
4 I will withdraw State's 42 I.D. I apologize. I'll put
5 that over here. So, just a few more. I appreciate it.

6 (A PAUSE.)

7 MR. MEADORS: Your Honor, a few more, and I appreciate
8 it. State's 44 and 45, which is a picture of the Little
9 Debbie snack cake wrapper, we're going to offer it. I
10 don't know if Mr. -- you might have an objection on that,
11 but Investigator Bean found it by the body. So, we're
12 going to offer that.

13 THE COURT: What's your objection?

14 MR. WILDER: Well, first of all, it was not found by a
15 body. I believe ---

16 THE COURT: Well, I mean, there's going to be
17 testimony to that. I mean, they're going to ---

18 MR. WILDER: No. No, Your Honor. My understanding is
19 their testimony will be that it was found over by the road.

20 THE COURT: I mean, they can put pictures in of what
21 they found. Whether or not they can connect it to the
22 thing is a different matter.

23 MR. WILDER: And, Your Honor ---

24 THE COURT: If it comes in -- but whether -- as long
25 as it -- and you have the right to cross-examine him as to

1 where the Little Debbie cake was found.

2 MR. WILDER: Well, Your Honor, I submit that it's so
3 far out of the secure crime area and that, that they're not
4 going to be able to testify that it was even there when the
5 officer got there on the scene and arrived there later.

6 So, so ---

7 THE COURT: Well, I'm not going to rule on that now.
8 I'll wait and see what the testimony is.

9 MR. WILDER: All right, and I do, Your Honor, believe
10 that -- if they have to establish the foundation, which I'm
11 asking that they do, that we will find that it's, that it's
12 evidence of nothing. So, therefore ---

13 THE COURT: It maybe.

14 MR. WILDER: --- I'm objecting.

15 MR. DEAS: I'll go on the record. We have no
16 objection to the Little Debbie cake wrapper coming in.

17 THE COURT: All right.

18 MR. MEADORS: And, Your Honor, and then that last ones
19 are 46, 47, and 49 without objection, Your Honor.

20 THE COURT: All right.

21 MR. WILDER: Your Honor, I -- 49, no objection. 46,
22 no objection. 47, no objection.

23 MR. MEADORS: And finally, Judge, 51 and 52, I
24 believe, are without objection.

25 MR. WILDER: Your Honor, I would object to that

1 without the testimony of who prepared those diagrams.

2 MR. MEADORS: Obviously we'll do that.

3 THE COURT: Right. Okay. I'll rule on that at the
4 appropriate time.

5 (A PAUSE.)

6 (PHOTOGRAPHS MARKED INDIVIDUALLY INTO EVIDENCE AS
7 STATE EXHIBIT NUMBERS 28, 29, 30, 31, 32, 33, 34, 35, 36,
8 37, 38, 39, 40, 41, 43, 44, 45, 46, 47, 48, 49.)

9 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
10 NUMBER 51.)

11 (DIAGRAM MARKED INTO EVIDENCE AS STATE'S EXHIBIT
12 NUMBER 52.)

13 MR. MEADORS: Thank you, Judge.

14 THE COURT: Anything else? All right. Let's bring
15 our jury in.

16 (THE JURY ENTERS AT 9:46 A.M.)

17 CLERK OF COURT: Your Honor, we have all jurors
18 present in the courtroom.

19 THE COURT: Thank you.

20 Well, good morning, ladies and gentlemen. I hate to
21 tell you this, but they didn't get the air conditioner
22 fixed yesterday. So, if you brought your coats you, might
23 want to be removing them as the day progresses. So, we'll
24 just see how it goes, and if we have to bring in some fans,
25 we may have to just do that. So -- but thank you for your

R. MACKESSY - DIRECT EXAMINATION BY MR. MEADORS

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1 promptness again this morning.

2 State ready to proceed?

3 MR. MEADORS: Yes, sir, Your Honor.

4 THE COURT: All right. You may call your next
5 witness.

6 MR. MEADORS: Your Honor, if it pleases the court, the
7 state calls Raymond Mackessy.

8 RAYMOND MACKESSY, FIRST BEING DULY
9 SWORN, TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Please state your full name and spell
11 your last name for the record.

12 WITNESS: Raymond Mackessy, M-A-C-K-E-S-S-Y.

13 DIRECT EXAMINATION BY MR. MEADORS:

14 Q. Good morning, Mr. Mackessy.

15 A. Morning.

16 Q. Are you retired right now?

17 A. Yes, sir.

18 Q. Can you tell the ladies and gentlemen of this jury
19 where you're from?

20 A. I'm from Baltimore, Maryland.

21 Q. And did you have any involvement or work with law
22 enforcement there?

23 A. Yes, sir. I was with the Baltimore City Police for
24 fifteen years.

25 Q. And what were your different positions there?

- 1 A. I was in patrol division and also the helicopter unit.
- 2 Q. And where is your wife from?
- 3 A. My wife is from Sumter.
- 4 Q. And as a result of that, where did you come to after
- 5 Baltimore?
- 6 A. In 1985 I came to -- I moved here to Sumter, and in
- 7 1986 I was hired by the Sumter County Sheriff's Office.
- 8 Q. And what was it you did then in '86 for the Sheriff's
- 9 Office?
- 10 A. I went to the patrol division where I remained for
- 11 approximately eighteen months.
- 12 Q. What did you do after that?
- 13 A. And then I was promoted to investigator and went into
- 14 investigations, where I remained until my retirement.
- 15 Q. Had anything specifically in investigations that you
- 16 did?
- 17 A. Yes, sir. I started out investigating cases and doing
- 18 crime scene when, when I got to investigations. I
- 19 eventually just took over the Crime Scene Unit, and that's
- 20 what I did until I retired in May of 2009.
- 21 Q. May of 2009?
- 22 A. Yes, sir.
- 23 Q. So, roughly twenty-three years you were in
- 24 investigations in the Crime Scene Unit?
- 25 A. Yes, sir.

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1 Q. Other than your education and training for your life,
2 what, what other training did you receive in law
3 enforcement?

4 A. I received training in -- when I was Baltimore before
5 I left, I received training in latent fingerprint
6 processing. And after coming here to Sumter, I received
7 training from SLED and from Criminal Justice Academy, and
8 also various forensic firms in, in crime scene processing,
9 which included, you know, latent print processing, latent
10 print identification, photography, collection of various
11 types of evidence.

12 Q. What's a latent print?

13 A. Latent print, latent being unknown. It's -- a latent
14 print is, is your fingerprint. That's what -- the powders
15 that we use or chemicals that we use, that's what develops
16 the fingerprint.

17 Q. In an ink print, or -- is there a known and a latent
18 print?

19 A. There's a known if we have a known ---

20 Q. In general, right.

21 A. --- available to us, and there's -- a latent print,
22 that's the actual print that's lifted at the crime scene or
23 off of pieces of evidence.

24 Q. Now, let me take you back in time to January of 2008
25 when you were, you employed with the Sumter County

1 Sheriff's Department.

2 A. Yes, sir.

3 Q. And did you have an occasion -- is it all right if I
4 call you Mr. Mackessy?

5 A. Yes, sir.

6 Q. All right. Mr. Mackessy, to go to lot █ of O.C.
7 Mobile Home Park in Cherryvale?

8 A. Yes, sir.

9 Q. And, and was that regarding William Flexon?

10 A. That's correct.

11 Q. And is that in Sumter County?

12 A. Yes, it is.

13 Q. Can you tell the ladies and gentlemen, please, as
14 you're driving there in your vehicle, what time did you get
15 there and what were your first observations?

16 A. My time of arrival, I don't have the log sheet with me
17 on the -- the crime scene log in my file, but it was
18 sometime after 9:00, 9:00 p.m.

19 Q. And when you arrived, did you see the body of William
20 Flexon?

21 A. Yes, sir, I did.

22 Q. I'm showing you what's been entered as State's 49. Do
23 you recognize that?

24 A. Yes, sir.

25 Q. And does that appear to be the body of William Flexon?

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1 A. Yes, sir, it does.

2 MR. MEADORS: May I show it to the jury, Judge?

3 THE COURT: You may. Without objection.

4 BY MR. MEADORS:

5 Q. And what's your job when you get here, Mr. Mackessy?

6 A. The first thing I do is, is what we call cursory
7 search. That is a search of the crime scene to see what
8 evidence is there. The evidence is then marked, and then
9 photographs are taken.

10 Q. Let's go back to where -- and I know you prepared a
11 report. What wounds, if any, did you observe on Mr.
12 Flexon?

13 A. I observed bullet wounds in the left arm and the
14 chest.

15 Q. Showing you what's marked for -- as State's 48. Do
16 you recognize that?

17 A. Yes, sir.

18 Q. And what does that reflect?

19 A. That's a bullet wound in the left arm.

20 MR. MEADORS: With the court's permission?

21 THE COURT: Yes, sir.

22 BY MR. MEADORS:

23 Q. What did you observe or, or do next?

24 A. Well, I had Investigator Mike Bean, who's also with
25 the Crime Scene Unit. I had him take photographs of the

1 scene while, while Evidence Technician Cindy Pierson and
2 myself took measurements and, and sketched the scene.

3 Q. Okay. Were there any vehicles in what you would call
4 the scene?

5 A. Yes, sir. There was a 2002 Dodge Caravan which bore a
6 South Carolina tag of 435 XVI which was about 11 feet from
7 the victim.

8 Q. 11 feet from what?

9 A. 11 feet from the -- well, from the front of the van.
10 Where the victim was laying, 11 feet from the front of the
11 van.

12 Q. Okay. So, the victim was 11 feet from the van?

13 A. Yes, sir.

14 Q. How did you know that?

15 A. We measured it.

16 Q. And I'm going to show you State's, already entered as
17 State's 25, I believe. Do you recognize that?

18 A. Yes, sir, I do.

19 Q. And is -- what is that?

20 A. That's the van.

21 Q. So, the body is 11 feet from the van, correct?

22 A. Yes, sir.

23 Q. What do you do next?

24 A. After Technician Pierson and I were photographing the,
25 or not photographing, but measuring and stretching the

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1 scene, Investigator Bean was the one who took photographs
2 of the scene.

3 Q. Okay.

4 A. I then advised the coroner at the time, Ms. Moore, to
5 remove the body to the morgue, and then I had the van towed
6 to the evidence processing building at the Sumter County
7 Public Works, and it was secured in the building by
8 Technician Cindy Pierson.

9 I was then advised by Sergeant Robert Reynolds that
10 they found some shoe impressions and possible blood inside
11 the -- of a vacant trailer at lot number [REDACTED]. I went there
12 and I examined these shoe impressions, and they were not
13 suitable for photography. We tried to bring them up with
14 powder and it didn't work, and we -- I made attempt to lift
15 one of the impressions, but that attempt failed.

16 Q. All right. Let me show you what's marked State's 47
17 and State's 46, and I'll start with State's 46. Do you
18 recognize that?

19 A. Yes. That's photograph of a shoe print. I don't know
20 where that shoe print was. That's a photograph taken by
21 Investigator Bean.

22 Q. Is this one of the shoe impressions you're talking
23 about?

24 A. No. The shoe impressions I was talking about were
25 inside the trailer.

1 Q. Okay, and that's 47, correct?

2 A. Yes, sir.

3 Q. And you said what, what about this, 47?

4 A. We attempted to bring them with up with, with latent
5 fingerprint powder, and it didn't develop well enough for
6 photography to be able to compare it to any shoe or any --
7 I did try to lift one, and that didn't work either. It
8 didn't even lift.

9 Q. How do you mean? What do you mean you tried to lift
10 one?

11 A. I used what's called gel lifter, and I used gel
12 lifters to lift latent impressions. And with this gel
13 lifter, I just peeled back a piece of plastic, lay it over
14 the top of the print that's already been processed with the
15 powder, and then I put a roller over it and then lift it.
16 And the impression should adhere to the gel lifter, but in
17 this case it didn't.

18 Q. And I think also you said you went inside the trailer?

19 A. Yes, sir.

20 Q. Okay, and what did you do in there, if anything?

21 A. Well, that was what the, what I was just talking
22 about. The, the shoe impressions were inside that trailer.
23 I also did some fingerprinting of countertops and various
24 places inside the trailer. No fingerprints were developed.

25 Q. And let me stop right there. Earlier you said you

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1 went in there and you attempted to do what, fingerprints?

2 A. Process for fingerprints inside the trailer.

3 Q. How do you do that?

4 A. In this case, I used fingerprint powder.

5 Q. And, and what was the results of that?

6 A. Negative results. There was nothing there to develop.

7 Q. And, and, so, you couldn't find fingerprints in there
8 at all?

9 A. No. No, sir.

10 Q. Did that surprise you?

11 A. No, sir, it really doesn't. It, you know, in case of
12 vacant trailers, you know, normally they're left out in the
13 open. The elements get the print destroyed.

14 Q. Well, and do elements have an affect on whether -- on
15 prints? On -- elements, do they affect whether or not a
16 print could be there?

17 A. Yes, sir, they do.

18 Q. Okay, and how?

19 A. Temperature, for one, affects a fingerprint. Moisture
20 will effect a fingerprint. Sunlight can affect a
21 fingerprint, and it can destroy what we call ridge detail.
22 That's -- if you look at your, your finger, you'll see
23 lines and we call them ridges. It destroys those ridges to
24 where you can't identify, identity the fingerprint to a
25 known fingerprint card.

1 Q. Okay. Showing you State's 27. You mentioned
2 something about blood, I think.

3 A. Yes, sir, there was blood. Let me see where I lifted
4 that from. Small area of blood on the hallway floor.

5 Q. Showing you what's State's 27, I believe without
6 objection but not as entered. Go ahead.

7 A. Yes, sir. Yes, that's a photograph of a Little Debbie
8 donut ---

9 Q. That's not -- I'm asking you about the floor down
10 here.

11 A. Oh, the floor?

12 Q. Yes, sir.

13 A. Yes, sir. That's markers that were placed at the
14 point where you saw footprints or shoe prints.

15 MR. WILDER: Your Honor, is Mr. Mackessy saying he
16 took that picture?

17 WITNESS: No, sir, I didn't.

18 MR. WILDER: I still object.

19 BY MR. MEADORS:

20 Q. Did, did you go in and look at this ---

21 A. Yes, sir.

22 Q. --- that trailer?

23 A. Yes, sir.

24 Q. Okay.

25 A. I looked at it.

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1 Q. It appeared -- that's the way it was that evening?

2 A. Yes, sir. That's the way it appeared.

3 THE COURT: Overruled.

4 MR. MEADORS: Okay, Bean took them. He's going to be
5 next.

6 THE COURT: Overruled.

7 MR. MEADORS: That's 27.

8 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 27.)

10 BY MR. MEADORS:

11 Q. You've mentioned something about blood, that you were
12 shown potential blood. Did you take that?

13 A. Yes, sir, I looked at the blood.

14 Q. Okay. Where was that?

15 A. It was, it was on the hallway floor inside the, inside
16 trailer number ■.

17 Q. Now, did you see a Little Debbie snack cake?

18 A. Yes, sir.

19 Q. And where was that?

20 A. That was, that was on the side of the road near the
21 entrance to where lot ■ was.

22 Q. Near the entrance to where lot ■ was?

23 A. Yes, sir.

24 Q. And, and did you visually see the Little Debbie snack
25 cake?

1 A. Yes, sir, I saw it.

2 Q. And looking back at 27, do you see the Little Debbie
3 snack cake in State's 27?

4 A. Yes, sir.

5 Q. And I think you testified earlier the body was about
6 11 feet from the van, correct?

7 A. Yes, sir.

8 Q. Can you tell on there how close that Little Debbie
9 snack cake is to the van?

10 A. I didn't measure that.

11 Q. Okay, but can you tell by looking at that picture how
12 close it is?

13 A. No, sir, not by looking at the photograph. I can't
14 tell.

15 Q. Are they in the same photograph, the Little Debbie
16 snack cake and the tire?

17 A. No, sir.

18 Q. The top on the -- down here at the bottom.

19 A. Oh, at the bottom. Yes, sir, it's, it's near -- it's
20 near a tire. I don't know -- Investigator Bean took that
21 photograph.

22 Q. Tell the jury what you did next. Please refer to your
23 report if it will help you if, if you want to go by your
24 report, please, sir.

25 A. Yes, sir. After lifting the blood, I collected that

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1 Little Debbie wrapper off the ground at the entrance to the
2 mobile home park on Cherryvale Drive where the victim was
3 found. I then collected a Virgin mobile cell phone and the
4 battery off the ground, which was laying on Cherryvale
5 Drive near the road where the, the victim was found. There
6 was no back to that phone, and it wasn't in working order.

7 Q. You said it was not in working order?

8 A. It was not in working order. All of these items were
9 photographed by Investigator Bean prior to us seizing them.
10 The coroner ---

11 Q. Who collected those items?

12 A. I collected them.

13 Q. What did you do next?

14 A. The coroner, she, she handed me the victim's cell
15 phone, which she had removed from the victim prior to him
16 being taken from the scene.

17 MR. WILDER: Your Honor, in this case I would object
18 to him characterizing it as the victim's cell phone without
19 him establishing what the coroner, where she got it from.

20 THE COURT: Sustained.

21 BY MR. MEADORS:

22 A. After that, I left the scene and went to Cherryvale
23 Grocery, which is up the road from, from the scene on
24 Cherryvale Drive. That's four-tenths of a mile from, from
25 where the victim was.

1 Q. And how do you know that?

2 A. That was measured by the odometer in the -- in my van.

3 Q. We're going to come back to the scene in a minute and
4 get you, if you can, to I.D. this blood and the phones, if
5 you will. But let's go on to Cherryvale Grocery right now.
6 What did you do there?

7 A. I took possession of some latent fingerprints that
8 Investigator Dominick West had lifted off a public pay
9 phone at the store.

10 Q. And had you been to Cherryvale before?

11 A. Oh, many times. I've been ---

12 Q. Cherryvale Grocery?

13 A. Yes, I've been to Cherryvale Grocery.

14 MR. MEADORS: Okay. Beg the court's indulgence.

15 THE COURT: Yes, sir.

16 (CELL PHONE MARKED AS STATE'S EXHIBIT NUMBER 53 FOR
17 IDENTIFICATION.)

18 (CELL PHONE MARKED AS STATE'S EXHIBIT NUMBER 54 FOR
19 IDENTIFICATION.)

20 THE COURT: Any objection?

21 MR. DEAS: No objection.

22 MR. WILDER: No objection.

23 THE COURT: Without objection.

24 (CELL PHONE MARKED INTO EVIDENCE AS STATE'S EXHIBIT
25 NUMBER 53.)

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1 (CELL PHONE MARKED INTO EVIDENCE AS STATE'S EXHIBIT
2 NUMBER 54.)

3 BY MR. MEADORS:

4 Q. I'm going to show you what's marked State's 53. It's
5 without objection, but is your name on there, and is that
6 one of the phones you collected?

7 A. Yes, sir, it is.

8 Q. Has your name at the bottom, doesn't it?

9 A. Yes, sir.

10 Q. And what about this phone, and that's State's ---

11 MR. MEADORS: I'm sorry, Judge. That's State's 54.

12 BY MR. MEADORS:

13 A. Yes, sir, this is the telephone I received from, from
14 Coroner Moore.

15 MR. MEADORS: Judge, in a, in a -- just for time
16 purposes, can we have a very short recess to get these
17 others marked? I apologize.

18 THE COURT: Yes, sir.

19 All right, ladies and gentlemen, you'll get a short
20 break at this time if you'd like a cup of coffee. We'll
21 break for about fifteen minutes. So, that will give you
22 sufficient time to get a cup of coffee. If you need to
23 smoke you may smoke. Please do not discuss anything about
24 the can case while you're back there.

25 (THE JURY EXITS AT 10:07 A.M.)

1 THE COURT: All right, court will be in recess for
2 approximately fifteen minutes.

3 I'll remind you, Detective, you're still on the stand.
4 You may not discuss anything.

5 WITNESS: Okay.

6 (OFF THE RECORD.)

7 (DNA SWAB MARKED AS STATE'S EXHIBIT NUMBER 55 FOR
8 IDENTIFICATION.)

9 (FINGERPRINT CARD MARKED AS STATE'S EXHIBIT NUMBER 56
10 FOR IDENTIFICATION.)

11 (CUTTINGS FROM PIZZA BOX MARKED AS STATE'S EXHIBIT
12 NUMBER 57 FOR IDENTIFICATION.)

13 THE COURT: Are we ready now?

14 All right. Let's bring our jury back in.

15 (THE JURY ENTERS AT 10:30 A.M.)

16 CLERK OF COURT: Your Honor, all jurors are back in
17 the courtroom.

18 THE COURT: All right. Thank you.

19 MR. MEADORS: Please the court?

20 THE COURT: All right. Thank you. You may proceed.

21 MR. MEADORS: Your Honor, we appreciate the patience
22 of the jury panel. Thank you.

23 BY MR. MEADORS:

24 Q. Mr. Mackessy, I want to show you what's marked 55
25 next, and ask you if you recognize it and does it have your

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1 name on there?

2 A. Yes, sir.

3 Q. And you, you had ---

4 THE COURT: Any objections?

5 MR. WILDER: No objection.

6 MR. DEAS: No objection.

7 THE COURT: Without objection, number 55 is admitted.

8 (DNA SWAB MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 55.)

10 BY MR. MEADORS:

11 Q. Is this the, the blood you were talking about, State's
12 55?

13 A. Yes, sir.

14 Q. And that came from where?

15 A. That came from the floor of or the hallway floor in
16 trailer number ■.

17 Q. And was that trailer vacant or occupied?

18 A. It was vacant.

19 Q. And I believe you also stated you got some prints from
20 one of the investigators from Cherryvale Grocery, correct?

21 A. Yes, sir, that's correct.

22 Q. And that was from Investigator Dominick West?

23 A. Yes, sir.

24 Q. This is State's 56. Did you say you received some
25 prints from Investigator Dominick West?

1 A. Yes, sir.

2 Q. Could you look in State's 56 and see if you -- if
3 these are the prints you received from Investigator
4 Dominick West?

5 A. Yes, sir. Two fingerprint cards here that I received
6 from Dominick West. Your Honor, the other one isn't.

7 Q. Okay, and I believe there's some others items in
8 those. Are these two items which are ---

9 MR. MEADORS: And I think, Your Honor, for this
10 purpose we'll make this State's 56 included four other
11 fingerprint cards.

12 THE COURT: All right. Without objection?

13 MR. WILDER: No objection.

14 MR. DEAS: No objection.

15 (FINGERPRINT CARDS MARKED INTO EVIDENCE AS STATE'S
16 EXHIBIT NUMBER 56.)

17 BY MR. MEADORS:

18 Q. Now, on January 13th, did you go with Sergeant,
19 Sergeant Burnish to a location where you saw some pizza
20 boxes?

21 A. Yes, sir.

22 Q. And is that included in your report?

23 A. Yes, sir, it is.

24 Q. And can you tell the jury where you went?

25 A. That was the next day on January 13th, 2008. Sergeant

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1 Burnish called me, advised me he located what he believed
2 to be two of the three pizza boxes in this incident. I
3 responded to Cherryvale Drive near Caleb Mobile Home Park
4 where Investigator Burnish showed me the pizza boxes.

5 Q. Okay, and you say boxes, correct?

6 A. Yes, sir, plural.

7 Q. And I'm going to show you what is already entered as
8 State's 17 and ask you if you can identify these.

9 A. Yes, sir. These are the pizza boxes that were found
10 in Cherryvale Drive.

11 Q. All right, and just tell us. You're the investigator.
12 Can you tell us where they were found?

13 A. They were found -- the pizza box that I designated as
14 Item 1, and I don't know what state's number is on that.
15 That was found on the ground on the side of the road on
16 Cherryvale Drive. That was approximately 375 feet from the
17 road where the victim was found.

18 Q. When you did a diagram -- I'm going to show the jury
19 that in a minute -- correct?

20 A. Yes, sir.

21 Q. And where was the other one?

22 A. The other one, which I designated as pizza box number
23 two, Item 23, was in the driveway that was next to [REDACTED]
24 Cherryvale Drive. That was about 591 feet from the road
25 where the victim was found.

1 Q. Now, what, if anything, did you do with these boxes
2 processing wise?

3 A. I took them back to the lab, and I used a chemical
4 called ninhydrin.

5 Q. Called what?

6 A. Ninhydrin. It's a chemical that develops fingerprints
7 on paper and cardboard. I processed the, these two boxes
8 here and developed some ridge detail on those boxes.

9 Q. I'm going to show you what's State's 57, and does it
10 have your name on it related to what you were just talking
11 about?

12 A. Yes, sir, it does.

13 Q. Okay, and what is that?

14 A. These are the, the ninhydrin developed prints, which
15 they're faded in time here, but these are the, the latent
16 prints developed on the pizza box, or one of them.

17 MR. WILDER: No objection.

18 THE COURT: Without objection.

19 MR. MEADORS: That's State's 57.

20 THE COURT: All right.

21 (CUTTING FROM PIZZA BOX MARKED INTO EVIDENCE AS
22 STATE'S EXHIBIT NUMBER 57.)

23 BY MR. MEADORS:

24 Q. What did you do with the van, if anything?

25 A. The van was towed to public works and placed in the

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1 evidence processing building.

2 Q. And, and did you, yourself, have any part of
3 processing the van?

4 A. Yes, sir. I processed it for latent fingerprints.

5 Q. And tell the jury what you did.

6 A. I lifted palm prints off the left sliding door window
7 and the left sliding door. I also took possession of --
8 there was two pizza warmers inside that van. I took
9 possession of those, and there was an order slip that bore
10 the address of [REDACTED] Cherryvale Drive lot [REDACTED]. This is the
11 vacant mobile home near where the victim was found that I
12 previously testified about the shoe prints. I processed, I
13 processed the pizza warmers later on for latent prints with
14 negative results.

15 Q. All right. Let's go back to the van. I apologize.
16 Showing you what's also contained in 56. I think you
17 looked at it earlier.

18 A. Yes, sir.

19 Q. You mentioned lifting something. Do you see in there
20 anything you did that relates to the van as far as
21 processing it?

22 A. Yes, sir. This is 8 by 10, what we call Prolift,
23 large fingerprint lifter. That bears a palm print that I,
24 I got off the driver's side, driver's side sliding door.

25 Q. And that's what you've testified earlier to, correct?

1 A. Yes, sir.

2 MR. MEADORS: Your Honor, that's also contained in 56
3 and was already in.

4 THE COURT: Okay. Without objection.

5 BY MR. MEADORS:

6 Q. Now, the two pizza warmers you took possession of?

7 A. Yes, sir, they came out of the van, yes, sir.

8 Q. I want to show you State's 14 and State's 15. Do you
9 see your name on there, and can you identify these?

10 A. Yes, sir. My initials are on here along with the case
11 number, yes, sir.

12 Q. Will you look at State's 15?

13 A. Yes, sir. It bears my initials and case number of
14 this case.

15 Q. And what, if anything -- if we put your initials on
16 there, it's suppose to help us when we come to court.

17 Isn't it ---

18 A. Yes, sir.

19 Q. --- to identify it?

20 A. Yes, sir.

21 Q. What did you do processing wise on those?

22 A. I processed them for fingerprints, and nothing was
23 developed.

24 Q. And tell these folks. I mean, you tried and looked
25 and tried to find something. You couldn't?

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1 A. Yes, sir.

2 Q. And explain that, why. I mean, what ---

3 A. The process that I put these pizza warmers through is,
4 first off, I had -- I can't remember the name of the scope
5 now, it's been so long. But it's, it's -- ultraviolet
6 light is used and I look through a scope that can detect
7 fingerprints on a surface without even putting any kind of
8 fingerprint powder, chemicals, anything on it. I examined
9 those under that light and didn't see anything. I then
10 used fingerprint powder on both those items, and I didn't
11 see any fingerprints come up at all.

12 Q. But you tried?

13 A. I tried to get them. There was none there.

14 Q. Have you had occasion -- I believe you testified, on
15 January 22, 2008, at the request of Sergeant Burnish to go
16 to a vacant mobile home on St. Mark's Circle, correct?

17 A. Yes, sir.

18 Q. And did you see a pizza box there?

19 A. Yes, sir, I did.

20 Q. And a red warmer?

21 A. Yes, sir.

22 Q. And I want to show you 16.

23 A. Yes, sir, I can identify this. It's pizza warmer
24 number three that came out of a trailer on St. Mark's
25 Circle and bears my initials.

1 Q. And you took pictures of all this stuff, too, did you
2 not?

3 A. I took pictures of those.

4 Q. And look at State's 13. Do you recognize that?

5 A. Yes, sir. This is the pizza box obtained at the
6 trailer, trailer at St. Mark's Circle. It bears my
7 initial.

8 Q. Okay. So, both of these items, State's Number 13
9 which you just identified and State's Number 16, what, if
10 anything, did you do as a crime scene investigator to
11 examine these?

12 A. Okay. After seizing them, photographing and seizing
13 them, I took them back to the lab. I sprayed the cardboard
14 pizza box with ninhydrin, and I also took the pizza warmer.
15 I did just like the other pizza warmers. I looked at it
16 under alternate light and didn't see any fingerprints. I
17 also processed them with powder and didn't see any
18 fingerprints.

19 Q. And the -- is the purpose here, is that what you're
20 talking about?

21 A. Yes, sir. That's the chemical ninhydrin. That's what
22 it does on the surface.

23 Q. So, you put that there?

24 A. Yes, sir.

25 Q. And, again, what, what can affect whether or not

1 there's fingerprints on an item? You said the elements?

2 A. The elements can affect fingerprints on, on a
3 nonporous item and also porous if moisture can get to the
4 porous items. But sometimes I can develop fingerprints on
5 porous items, and by porous I mean paper, cardboard.
6 Sometimes when it is wet, if I let it dry, there are
7 occasions where I do develop fingerprints. But these pizza
8 boxes, they were, they were kind of greasy and that affects
9 the fingerprint, the development of fingerprint also. They
10 weren't wet.

11 But the fingerprints normally on a, on a porous
12 surface, they are absorbed into the fiber of that, that
13 surface, and this chemical called ninhydrin actually goes
14 below that into the fiber and lifts the fingerprint out of
15 that fiber.

16 Q. I think you also, in your report, said you collected
17 an order slip from the van?

18 A. Yes, sir.

19 Q. Is that it? Does that have your name on it? It's
20 already in evidence.

21 A. Yes, sir.

22 Q. And that's State's -- what's that number on there?

23 A. That's State's Number 12.

24 Q. All right, and I think you already -- I want to show
25 you State's 24, a Little Debbie snack cake. Did you -- or

1 a wrapper. I'm sorry. Is that your name on there?

2 A. Yes, sir. It bears my name, yes, sir.

3 Q. And that's -- I showed you a picture earlier near the
4 van, but we don't know if that's the van of the victim or
5 not in State's 27, correct?

6 A. Well, I can say from where I found it that's not the
7 victim's van.

8 Q. So, you can actually say that?

9 A. I can actually say that. That's not the victim's van.

10 Q. Okay. Where did you find the van?

11 A. It was found on the side of road, as you come out of
12 the -- I'll call it the driveway back to where the victim
13 was found. When you come out of that driveway, you bare to
14 the left. Just as you bare to the left on the side of the
15 road is where the Little Debbie snack cake was found.

16 Q. Can you come down please, sir ---

17 THE COURT: Yes, sir.

18 Q. --- in front of the jury. If you need to bring your
19 notes.

20 THE COURT: Y'all can get to where y'all need to
21 observe.

22 MR. WILDER: Are the diagrams in evidence? Are the
23 diagrams in evidence?

24 MR. MEADORS: I was fixing to ask him. State's ---

25 THE COURT: I thought they were.

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1 MR. MEADORS: I thought we'd already --- I thought
2 they were already in.

3 THE COURT: Without objection.

4 MR. MEADORS: I think, I think the question was did he
5 prepare them, and I, Your Honor...

6 BY MR. MEADORS:

7 Q. I want you to look at State's 51 and 52. Do you
8 recognize these and did you prepare them?

9 A. Yes, sir. They're sketches that I did.

10 MR. WILDER: No objection.

11 THE COURT: All right.

12 MR. DEAS: No objection.

13 MR. WILDER: And what number was that?

14 MR. MEADORS: 51 and 52.

15 MR. WILDER: 51 and 52. Thank you.

16 BY MR. MEADORS:

17 Q. Now, you're going to have to speak up so the court
18 reporter can hear you. What is State's 51?

19 A. State's 51 is a sketch of the, that was drawn on, by
20 me on the 12th of January, 2008, of the scene on Cherryvale
21 Drive.

22 Q. And let's tell the ladies and gentlemen of the jury.
23 This van, is that the van?

24 A. Yes, sir.

25 Q. And beside it appeared to be a body?

- 1 A. Yes, sir, that's the victim's -- victim.
- 2 Q. And how far did you say his body was from the van?
- 3 A. 11 feet.
- 4 Q. And you measured that, correct?
- 5 A. Yes, sir.
- 6 Q. Now, there's been testimony that the pizza was suppose
7 to be delivered to mobile home number ■.
- 8 A. Yes, sir.
- 9 Q. How far was the body and/or the van from number ■?
- 10 A. The victim to number ■ was 26 feet, and the -- if you,
11 if you're traveling number ■, the victim was 26 feet.
- 12 Q. 26 feet. Had you been out before to O.C. Mobile Home
13 Park?
- 14 A. I'm out there on occasion for, for other crime scenes.
- 15 Q. So, this would indicate trailer 8. Does that mean
16 they're back down to number 1?
- 17 A. Yes, sir. I believe there's other trailers in that
18 lot. I believe there's other trailers there. It's been a
19 while. So, I can't remember.
- 20 Q. State's 52, could you indicate on State's 52 where
21 some pizza boxes were found?
- 22 A. Yes, sir.
- 23 Q. Could you explain this to the jury?
- 24 A. Okay. Down here I have the road where the victim --
25 the drive where the victim was found. Here I have pizza

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1 box that I designated number one. That was found 375 feet
2 from the victim. There's also a pizza box that's
3 designated number two that was found on a road next to [REDACTED]
4 Cherryvale

5 Drive that was 591 feet from where the victim was found.

6 Q. And those would be State's 17, correct?

7 A. Yes, sir, that's correct.

8 Q. Thank you. I think that's all we have on these.

9 Thank you, Mr. Mackessy. I think if you'll just sit there.

10 I want to show you some photographs. They might be --
11 these are already in evidence. State's 40, do you
12 recognize that?

13 A. Yes, sir.

14 Q. What is that?

15 MR. MEADORS: Can I show these to ---

16 THE COURT: You may. They're in evidence.

17 BY MR. MEADORS:

18 Q. What is that?

19 A. They're the pizza warmers that were inside the
20 victim's van.

21 Q. Okay. Now, is it your practice that do you take a
22 picture of evidence before you collect it?

23 A. Yes, sir.

24 Q. And why is that?

25 A. To be able to show that the -- the location of where

1 the evidence was found.

2 Q. State's 39.

3 A. 39 is the, I guess the order slip that the victim was
4 carrying, and that was inside the van.

5 Q. State's 37. You said you went to another location at
6 the request of Sergeant Burnish?

7 A. Yes, sir.

8 Q. To get a pizza box?

9 A. Yes, sir. That's -- this is the pizza box that was
10 found inside the vacant trailer at St. Mark's Circle.

11 Q. And that's State's 13 here?

12 A. Yes, sir, pizza box number three.

13 Q. And, and looking on State's 38, what is that?

14 A. That's the pizza that was inside pizza box number
15 three.

16 Q. That's not the way it is in 37. So, how did it get
17 opened?

18 A. I opened it.

19 Q. Okay, and to see what was inside?

20 A. Yes, sir.

21 Q. And you processed this box, you said?

22 A. Yes, sir, I processed the box.

23 Q. Once again, for the record, State's 13. This is
24 State's 36.

25 A. Yes, sir.

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1 Q. Do you know ---

2 A. That's the vacant trailer at St. Mark's Circle where
3 pizza box number three was found.

4 Q. Do you recognize State's 35?

5 A. Yes, sir. That, that's a photograph of the -- has a
6 numerical and letter designation 2-C, it looks like, on the
7 side of the box, pizza box number three. That's the pizza
8 that was found at St. Mark's Circle.

9 Q. You didn't necessarily do it in order, but did you
10 also take pictures of the pizza boxes that you found
11 relatively near the scene?

12 A. Yes, sir.

13 Q. And looking at State's, State's 32, State's 33, do you
14 recognize those?

15 A. Yes, sir. These are pizza boxes that -- or pizza box
16 that was found. I believe it's the side of the road on
17 that one.

18 Q. 32 and 33, and sometimes do you take a far away shot,
19 closer up shot?

20 A. Yes, sir.

21 Q. Is that supposed to also help me and you?

22 A. It shows relationship of where the, the items were.

23 Q. Let's start with 30.

24 A. Okay. 30 is the pizza box. It's pizza box number
25 two. This was found next to the -- I believe it was ██████████

1 Cherryvale Drive.

2 Q. 31.

3 A. 31 is another photograph of pizza box number two
4 showing its relationship to Cherryvale, Cherryvale Drive.

5 Q. 29 in evidence.

6 A. 29 is the pizza box number two showing its
7 relationship to residence at █████ Cherryvale.

8 Q. State's 28.

9 A. State's 28 is a, is a pizza box number two showing its
10 relationship opposite to another trailer.

11 Q. State's 43.

12 A. 43 is a photograph of the interior of the victim's van
13 showing the pizza warmer was inside the van.

14 Q. Which you've already talked about and said you
15 processed with negative results, correct?

16 A. Yes, sir, that's right.

17 Q. Item 16.

18 A. Yes, sir.

19 Q. State's 41.

20 A. 41 is a picture of the victim's driver's license and
21 wallet.

22 Q. Just got a couple more. 44 and 45.

23 A. That's the Little Debbie donut or donut stick wrapper
24 that were found on the side of the road of Cherryvale
25 Drive.

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1 MR. WILDER: Your Honor, subject to our objection.

2 THE COURT: Subject to the objection.

3 BY MR. MEADORS:

4 Q. I think you've already mentioned State's 34.

5 A. Yes, sir, that's, that's a -- well, it doesn't show
6 much. I attempted to photograph a shoe print, or that
7 might be the blood. Let me see. This is photograph -- I
8 believe Investigator Bean took this.

9 MR. MEADORS: Okay. Beg the court's indulgence.

10 THE COURT: Yes, sir.

11 (A PAUSE.)

12 MR. MEADORS: I think that's all I've got. Thank you,
13 sir.

14 THE COURT: Thank you.

15 Mr. Deas.

16 MR. DEAS: Thank you, Your Honor. Please the court?

17 CROSS-EXAMINATION BY MR. DEAS:

18 Q. Good morning, Mr. Mackessy.

19 A. Good morning, sir.

20 Q. My name is Garryl Deas. I represent the defendant
21 Reginald Canty. Mr. Mackessy, you were the lead
22 investigator initially on this case?

23 A. No, sir. I was just crime scene.

24 Q. And did you respond to the scene back on January 12,
25 2008?

1 A. That's correct.

2 Q. Shortly after the incident occurred?

3 A. Yes, sir.

4 Q. Do you, do you recall what time you arrived at the
5 scene?

6 A. It was after 9:00 p.m. I, I don't have it in my
7 report, but it was after 9:00 p.m.

8 Q. Now, were you the person that actually, that actually
9 found the first two pizza boxes, pizza box number one and
10 pizza box number two?

11 A. No, sir.

12 Q. Do you know who found them?

13 A. Investigator -- or Sergeant Burnish called me and told
14 me that he found pizza box, or there was some pizza boxes
15 found. I don't know who found them, but they were --
16 Sergeant Burnish called me and told me that two pizza boxes
17 were found in Cherryvale Drive.

18 Q. But they were not found by you on January 12th when
19 you, when you arrived at the scene? You didn't observe
20 them?

21 A. I didn't observe them that way, no.

22 Q. And when -- did you get the call from Sergeant Burnish
23 or some other officer about the pizza boxes on the next
24 day?

25 A. Yes, sir, the next day.

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1 Q. Do you know what pizza boxes were found on the next
2 day, or you just got a call?

3 A. I just got the call that they had pizza boxes. They
4 wanted me to come out and see, photograph and see them.

5 Q. Now, pizza box number one, which was found on the
6 ground about 375 feet from where the victim was located,
7 that pizza box, it was tested for fingerprints. Is that
8 correct?

9 A. Yes, sir.

10 Q. And were any fingerprints detected on this particular
11 pizza box?

12 A. Bear with me here.

13 (A PAUSE.)

14 A. Yes, sir, fingerprints were developed.

15 Q. Okay. Fingerprints were developed on pizza box number
16 one?

17 A. On number one.

18 Q. That's the one that's 375 feet from where the victim
19 was found?

20 A. That's correct.

21 Q. And do those -- do you know, do you know if those
22 fingerprints matched Reginald Canty?

23 A. I don't know the results of the fingerprints.

24 Q. You do not know that?

25 A. I don't have that in my file what the results were.

1 Q. You don't know whether they matched either defendant
2 Mr. Canty or Mr. Jackson?

3 A. No, sir, I don't.

4 Q. But fingerprints were detected?

5 A. Yes, sir.

6 Q. Now, at the pizza box number two, you found in the
7 driveway of [REDACTED] Cherryvale?

8 A. Yes, sir, that was, that was processed.

9 Q. That was processed for fingerprints as well?

10 A. Yes, sir.

11 Q. Were fingerprints detected on that pizza box?

12 A. There were insufficient ridge detail for positive
13 identification, which means what was developed couldn't
14 have been matched up to anybody.

15 Q. Is the, is the reason why you don't know, you don't
16 know what the results of the fingerprints analysis, is that
17 because that information would have been disseminated to,
18 to the lead investigator and not necessarily to you?

19 A. The results come back to me. I then -- from Marie
20 Hodge, who is the AFIS operator, fingerprint operator for
21 the city police. They come back to me. I then make copies
22 of the reports, and then it's disseminated to the
23 investigator that's assigned to the case.

24 Q. So, the results from the fingerprint analysis on pizza
25 box number one, that information would have come back to

1 you?

2 A. It would have initially come back to me, but it would
3 have went to -- Sergeant Burnish I think was assigned the
4 case.

5 Q. So, this -- you just, you just don't remember what the
6 results were?

7 A. I don't remember what the results. I don't have it in
8 my file. Since I retired, I, I don't have it in here.

9 Q. But obviously someone, if, if not you, someone in, in,
10 within the department would know those results, correct?

11 A. Yes, sir.

12 Q. All right. So, there was insufficient ridge detail to
13 lift prints from pizza box number two, the one that was
14 found, found at [REDACTED] Cherryvale. Is that correct?

15 A. That's correct.

16 Q. All right, and then pizza box number three, which is
17 found in the vacant trailer at St. Mark's Circle, that,
18 that pizza box was also tested for fingerprints?

19 A. Yes, sir.

20 Q. And were there any fingerprints detected?

21 A. No fingerprints were developed, no, sir.

22 Q. Out of the three pizza boxes, only one was found to
23 have fingerprints?

24 A. Yes, sir.

25 Q. And, and at this point you're not -- you don't have

1 any knowledge as to the results?

2 A. No, sir, I don't know. I don't, I don't have them in
3 my file.

4 Q. Now, the cell phone that was found at the scene, you
5 indicated that it was a cell phone found not only on, on
6 the, on Mr. Flexon which was Mr. Flexon's cell phone.

7 There was another cell phone found at the scene. Is that
8 correct?

9 A. Yes, sir.

10 Q. And I believe it, it's in evidence?

11 A. Yes, sir.

12 Q. It's marked as State's Exhibit Number 53?

13 A. That's correct.

14 Q. And this would be the cell phone that was found at the
15 scene?

16 A. Yes, sir.

17 Q. All right. Can you tell me how close this cell phone
18 was to Mr. Flexon at the scene? If it's in your notes or,
19 or you remember from, from your investigation on January
20 12th, '08?

21 A. It was found on the road, on the ground on Cherryvale
22 Drive. It was, it was near the road where the victim was
23 found. I believe that was found basically in the same area
24 as the, the Little Debbie snack wrapper.

25 Q. Okay. Can you -- do you have any question today based

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1 on your memory of what you observed when you arrived at the
2 scene as to how far away this cell phone and the Little
3 Debbie snack cake wrapper was from the -- from Mr. Flexon's
4 body?

5 A. I'm going to say approximately 20 feet from the edge
6 of that road that the victim was found on to where these
7 items were found on Cherryvale Road.

8 Q. And, and is it your recollection that, that the
9 wrapper, snack cake wrapper and the cell phone were, were
10 in close proximity to one another?

11 A. Yes, they were. I do remember that, yes, sir.

12 Q. Do you know if -- do you recall if they were right
13 beside each other?

14 A. No, they weren't, weren't right beside each other. I
15 think the -- they were probably within maybe 10 feet of
16 each other, if I can recall right.

17 Q. Now, the cell phone that was found, were there any
18 steps taken to trace that phone back to its owner?

19 A. Not to my knowledge. That, that would be something
20 you'd have to ask someone else.

21 Q. Your, your job at the time was just simply to collect
22 it, photograph it, and, if possible, attempt to lift
23 fingerprints up off it?

24 A. Yes, sir.

25 Q. Is that right?

1 A. Yes, sir.

2 Q. And, and did you make -- take steps to lift
3 fingerprints from the cell phone?

4 A. Yes, sir.

5 Q. And what were the results of that?

6 A. No fingerprints were developed.

7 Q. Insufficient ridge detail?

8 A. No ridge detail at all. None.

9 Q. And likewise with the, with the plastic Little, Little
10 Debbie snack cake wrapper, did you make attempts to lift
11 fingerprints from the snack, from the snack cake wrapper?

12 A. Yes. Yes, sir, I did.

13 Q. And what were the results of that?

14 A. That was insufficient, insufficient ridge detail for
15 positive identification.

16 Q. We've got no fingerprints on the, on the, on the cake
17 wrapper, no, no fingerprints on the, on the cell phone, and
18 no fingerprints on two of the pizza boxes?

19 A. That's correct.

20 Q. Okay. You mentioned during your testimony also in
21 your report that at lot number [REDACTED] there were -- there was
22 blood found?

23 A. Yes, sir.

24 Q. At the trailer on lot number [REDACTED]?

25 A. Yes, sir.

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1 Q. And that was found in the hall?

2 A. Yes, sir.

3 Q. And that, that was collected by you?

4 A. Yes, sir, I collected it. Investigator Bean
5 photographed it and I collected it.

6 Q. And I believe that's in evidence, correct?

7 A. Yeah, it's up here.

8 Q. Was -- were, were there any steps taken to, to
9 determine if the blood evidence matched my client, Reginald
10 Canty?

11 A. Yes, sir, it was sent to SLED.

12 Q. Do you know the results of that?

13 A. No, I don't have the results in my file, no.

14 Q. If I told you that it didn't match Reginald Canty,
15 would you disagree with that?

16 A. Well, I don't know either way whether it did or it
17 didn't.

18 Q. And likewise would that, with the analysis of the
19 blood, would that information have initially come back to
20 you, and then you would disseminate it to the other
21 investigators?

22 A. It would have come back to the evidence custodian
23 Cindy Pierson ---

24 Q. Okay.

25 A. --- and she would disseminate it back to the

1 investigator.

2 Q. Now, in addition to the blood that was found in the
3 hallway, did you also attempt to lift fingerprints from
4 inside the trailer?

5 A. Yes, sir, I did.

6 Q. At the door and other areas of the trailer?

7 A. Yes, sir.

8 Q. At lot number █?

9 A. At lot number █.

10 Q. And were you able to -- were any fingerprints
11 detected?

12 A. No, sir. I didn't develop any fingerprints.

13 Q. And that's because there was insufficient ridge
14 detail?

15 A. I don't even think I developed insufficient ridge
16 detail. I don't think -- there was just nothing there.

17 Q. But did you test that, that mobile home for
18 fingerprints?

19 A. Oh, yes, sir.

20 Q. But just with negative results?

21 A. Yes, sir, negative results.

22 Q. Going back to the, to the cell phone, do you recall
23 what kind of cell phone it was?

24 A. I've got it marked as a Virgin mobile cell phone.

25 Q. Do you have any knowledge, as an investigator, as to

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1 whether or not it's possible to trace back, to trace the
2 owner of a cell phone if you have the actual cell phone in
3 your possession? Do you know if there's a particular way
4 to do that?

5 A. You mean by serial number?

6 Q. Correct.

7 A. I would -- I can't say positively, but I would assume
8 that it's possible, yes, that can be traced.

9 Q. You just don't know if that was done in the process?

10 A. No, I don't know if it was done, no.

11 Q. Now, you also mentioned that there was some shoe
12 impressions. Were those shoe impressions found near the
13 scene, or were the shoe impressions inside the trailer at
14 lot number ■ or ---

15 A. There was, there was a shoe impression. There's a
16 photograph of an actual shoe impression on the road. I --
17 Investigator Bean took that. I don't know where that shoe
18 impression was located. There were shoe impressions inside
19 the vacant trailer at lot ■, but all of those shoe
20 impressions, they, they couldn't be photographed, lifted.
21 They were just in poor condition.

22 Q. And this, this was, this was -- this is a photograph
23 of the shoe impression found near the scene?

24 A. That could be near the -- I don't know. Investigator
25 Bean took that photograph.

1 Q. Now, do you know if any steps were taken to try to
2 match that shoe impression with any specific suspect?

3 A. I don't know that any attempt was made. By -- just
4 from looking, from what I know of shoe impressions, just
5 looking at that photograph, for one, I don't think that the
6 photograph, the shoe impression was sufficient for casting.
7 It's just not deep enough.

8 And, and even if you take a scaled photograph like
9 this like we did, to match that up, you would be able to
10 say that -- you wouldn't be able to say that that
11 impression came from this shoe. You might be able to get a
12 brand of shoe. But you're not going to be able to say that
13 shoe print or that shoe, if we had a shoe, matched that
14 shoe print.

15 Q. Now, with regard to the blood stain shoe impression
16 inside of the trailer at lot number ■, I, I believe you
17 indicated you attempted to, to do a casting, but it was
18 actually -- the shoe impression was not sufficient enough
19 to do that?

20 A. I didn't -- well, there's no blood stain shoe
21 impression.

22 Q. Okay.

23 A. There, there were shoe impressions with blood.

24 Q. Inside the trailer?

25 A. Inside the trailer at lot ■.

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1 Q. And so you mean like a shoe print?

2 A. A shoe print, but you couldn't even -- you'd have to
3 look at it from an angle just to be able to see it. You
4 couldn't get up on top of them, which we tried to do, and
5 photograph them, and they wouldn't photograph.

6 Q. So, what was causing, I guess, the imprint? Was it
7 like dirt or some other substance?

8 A. Probably dirt or whatever was on the surface of the
9 shoe that placed it there.

10 Q. Okay, and with regard to the pizza boxes, and I know
11 you've already indicated that you got the phone call the
12 next day about pizza box number one and two. Do you recall
13 when it was you got the phone call you were contacted about
14 the pizza box number three that was found at the St. Mark's
15 Circle?

16 A. Yes, sir. That was on -- at nighttime on the 22nd of
17 January of 2008.

18 Q. Well, this has been some, some, I believe, ten days
19 after the, after the incident.

20 A. Yes, sir.

21 Q. And was that pizza box actually found -- it was found
22 inside the vacant trailer?

23 A. Yes, sir, it was inside.

24 Q. And the pizza warmers, those two that are in evidence,
25 the two red ones, those were found inside Mr. Flexon's van,

1 or were they found somewhere near or around the scene?

2 A. Two of the pizza warmers were found inside the van.

3 There was another one found on St. Mark's Circle.

4 Q. And do you know which one that was found -- I'm
5 talking about pizza warmers.

6 A. Pizza warmers.

7 Q. Do you know which one was found at St. Mark's Circle?

8 A. The one that I had, the one I have designated as
9 number three, which is Item 47, our Item 47. I don't know
10 what the state's number is.

11 Q. So, one of these pizza boxes that -- pizza warmers
12 were found actually ---

13 A. One red one and one black one was found in the van,
14 and one red one found in the trailer at St. Mark's Circle.

15 Q. Okay, which is the same place that the pizza box was
16 found?

17 A. Yes, sir.

18 Q. Now, do you, as part of your investigation back on
19 January 12th when you arrived at the scene, did you have
20 any conversation with any neighbors or anyone near the
21 area?

22 A. I didn't, no.

23 Q. Pretty much you were there to, to secure the scene,
24 gather and collect any evidence, and prepare for any
25 analysis?

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1 A. Yes, sir.

2 Q. Take pictures and things of that nature?

3 A. Yes, sir, that's correct.

4 Q. And as you've already indicated, you don't have any
5 personal knowledge as to whether any fingerprints found on
6 pizza box number one matched either Mr. Canty or Mr.

7 Jackson? You don't have any personal knowledge of that?

8 A. No, sir, I don't have personal ---

9 Q. And you don't have any -- and the blood evidence that
10 was found in the hallway in the trailer at lot number ■,
11 you don't have any personal knowledge as to whether that
12 blood evidence matched Mr. Canty or Mr. Jackson?

13 A. No, sir, I have no knowledge of that.

14 MR. DEAS: Court's indulgence.

15 THE COURT: Yes, sir.

16 (A PAUSE.)

17 MR. DEAS: Nothing further.

18 THE COURT: Mr. Wilder.

19 CROSS-EXAMINATION BY MR. WILDER:

20 Q. Morning, Ray.

21 A. Morning.

22 Q. Let me show you a Sheriff's Department form that's got
23 your name stamped on it and ask you if you can tell the
24 ladies and gentlemen of the jury what that is.

25 A. That's an evidence card that the sheriff's department

1 uses.

2 Q. Okay, and the evidence room is where y'all keep things
3 maybe secure so that the evidence can be -- identify it in
4 a chain of custody later and nobody messes with it, or
5 tampers with it, and it's safe, made safe and secure,
6 right?

7 A. Yes, sir.

8 Q. Now, because of that, that form has your particular
9 signature stamped on it. Was that your responsibility at
10 that time?

11 A. If I, if I did this with my name on it, yes, that was.
12 That is logged into the evidence room by me.

13 Q. Okay, and that particular form, what does that form
14 concern?

15 A. That concerns Items 29 and Item 30, which was a red
16 pizza warmer and a black pizza warmer that were removed
17 from the victim's van.

18 Q. Okay. So, because your name was on there, you would
19 have been responsible for the evidence room at that time,
20 right?

21 A. I was one of three persons who had access to the
22 evidence room, one of three evidence custodians.

23 Q. And we know Cindy Pierson was one at that time, right?

24 A. Yes, sir.

25 Q. And who was the third one?

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1 A. Mike Bean, officer ---

2 Q. Okay.

3 A. --- had access.

4 Q. All right. So, the three of y'all?

5 A. Yes, sir.

6 Q. All right. Now -- all right. Now, that particular
7 form has the case number on it, doesn't it, of this
8 particular case, the ---

9 A. Yes, sir.

10 Q. --- Canty and Jackson case involving Mr. Flexon ---

11 A. Yes, sir.

12 Q. --- as, as the victim. Okay. Now, what's that
13 number? Can you tell the jury what this number is?

14 A. The Case Number is 08004893.

15 Q. All right. So, anything with that number on it would
16 have been processed with respect to this case?

17 A. All evidence in this case would be filed under that
18 case number.

19 Q. All right, and that's how you tracked the evidence
20 that comes and goes from your evidence room or the
21 sheriff's department evidence room ---

22 A. Yes, sir.

23 Q. --- on this case?

24 A. Yes, sir.

25 Q. That number. Okay. Now, let's show you another form

1 and ask you can you identify that as belonging to this
2 case.

3 A. Yes, sir, I can.

4 Q. And that one has Cindy Pierson's number, name on it,
5 doesn't it?

6 A. Yes, sir.

7 Q. All right. Does that -- never mind. Oh, here. All
8 right. So, does it have this case number on it?

9 A. Yes, sir, it does.

10 Q. All right, and does it have -- what, what does that
11 particular form pertain to? Which item of, of evidence?

12 A. Item 15, which is postmortem prints of William Flexon.
13 Item 16, which is right-hand nail scrapings.

14 Q. Okay.

15 A. And Item 17, left-hand nail scrapings.

16 Q. All right. So, presumably those things would have
17 been, at some point, forwarded to SLED so they would have
18 them for purposes of analysis? Would that be a correct ---

19 A. Yes, sir.

20 Q. --- assumption ---

21 A. Yes, sir.

22 Q. --- or conclusion? All right, and -- all right, and
23 this one, if you could make sure it's the same case number.
24 That's the first thing on it I ask you.

25 A. Yes, sir, same case number.

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1 Q. And what does that evidence form pertain to?

2 A. These were items received by Investigator Bean from
3 Newberry Pathology. Do you want me to say what the items
4 are?

5 Q. Yes, please, if you would.

6 A. Item 1 is a black and white short sleeve button shirt
7 with flames. Item 2 is one pair of white tennis shoes with
8 a pair of white socks, and Item 3 is one pair of blue jeans
9 with black belt. Item 4 is one green Digita wrist --
10 digital, I guess he meant to put digital, wrist watch that
11 was made in China.

12 Q. All right, and, again, that has our case number on it,
13 correct?

14 A. Yes, sir.

15 Q. Okay, and let me show you this one. Also check the
16 number, please.

17 A. Yes, sir, the same case number.

18 Q. All right. Could you tell the ladies and gentlemen of
19 the jury what that is?

20 A. It's an evidence card for one fingerprint card, Item
21 32, that Investigator West had gotten off the pay phones on
22 Cherryvale Drive.

23 Q. All right, and does it have a name associated with the
24 card?

25 A. No, sir, there's no name on the card, no.

1 Q. All right. Well -- okay. Thank you.

2 A. Just has the case number. You mean at the top here?

3 Q. No, I'm sorry. All right: Let me show you another
4 one and ask you the same number.

5 A. Yes, sir, same number. This ---

6 Q. What's that one pertain to?

7 A. This was Item 18 was the Little Debbie donut sticks
8 wrapper that was found at the entrance of O.C. Mobile Home
9 Park. It's Item 18. Item 19, one swab bearing suspected
10 blood off of hallway floor in vacant trailer Number ■.
11 That was marked with Marker 9 in the photograph. Item 20,
12 Nokia cell phone with case that came from the victim.

13 Q. And does that particular card have your signature on
14 it or somebody else's?

15 A. No. That's my name on it.

16 Q. Oh, and so it's found at the, the Dunkin', Debbie,
17 Dunkin' Donuts wrapper?

18 A. Yes, sir.

19 Q. You listed it there as being found at the entrance to
20 the mobile home park, right?

21 A. Yeah, that's how I have it listed here.

22 Q. And the entrance to the mobile home park on your
23 diagram is a hundred and something feet away from where Mr.
24 Flexon's body was discovered, correct?

25 A. From the victim's feet to Cherryvale Drive is 117

1 feet.

2 Q. Not 20 feet like you told us a little while ago, but
3 117 feet?

4 A. No, that's -- when I answered that, I meant 1
5 Cherryvale Drive. When you come out of that, that little
6 road there or driveway, to the left, it was about 20 feet
7 from that driveway.

8 Q. From the entrance?

9 A. From the entrance to that driveway.

10 Q. Okay. So, now tell the ladies and gentlemen of the
11 jury how many feet it was away from Mr. Flexon's van and
12 his body.

13 A. All right. The Little Debbie snack, how far away that
14 was?

15 Q. Yes, sir.

16 A. Well, I'm going to say it's probably going to be -- I
17 don't have it marked, but in estimation, it's probably
18 going to be about 137 feet away.

19 Q. Okay. Now, let me show you this one, that little
20 picture there, and Mr. Meadors was starting to ask you
21 about that, and ask you. Wasn't it found right next to the
22 victim's van?

23 MR. MEADORS: Your Honor, that's improper. Later on in
24 his testimony he said he didn't know where that came from.

25 MR. WILDER: Well, after the break I'm going to point

1 that out.

2 THE COURT: Overruled.

3 MR. WILDER: Thank you.

4 MR. MEADORS: Well, Your Honor, I want to approach.

5 THE COURT: Okay.

6 (OFF-THE-RECORD BENCH CONFERENCE.)

7 THE COURT: Objection sustained.

8 BY MR. WILDER:

9 Q. Now, Mr. Mackessy, it's obvious from the picture that
10 the Debbie cake was next to a car, right?

11 A. Yes, sir.

12 Q. And it's also obvious to you from that picture that
13 that Debbie cake wrapper was next to a car that was not the
14 victim's car. Isn't that correct?

15 A. That's correct.

16 Q. Okay. Now, before the break this morning, apparently
17 you were asked isn't it true that the Debbie cake wrapper
18 was next to the victim's van. Do you remember being asked
19 that question by Mr. Meadors?

20 A. Was it next to the victim's van?

21 Q. Right.

22 A. I don't remember that. I could have been asked that.

23 Q. You could have been asked that, and now we find out
24 that it's next to somebody else's car. Isn't that correct?

25 A. That's what it appears, yes. I didn't take these

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1 photographs.

2 Q. Okay. All right. Well, now let me ask you. Whose
3 car is that Debbie wrapper next to?

4 A. I don't know from the photograph. I can't tell.

5 Q. Well, could it have been a police officer's car who
6 parked there alongside Cherryvale Drive?

7 A. It could have been. It could not have been. I don't
8 -- I would suspect it would probably be a police vehicle
9 since it was so close to the scene. That's the only
10 vehicles allowed down there anyway.

11 Q. All right. You guys are notorious for eating donuts,
12 aren't you?

13 A. It's a misnomer, Mr. Wilder.

14 Q. And I ---

15 MR. MEADORS: I object.

16 THE COURT: Sustained.

17 MR. MEADORS: There's nothing funny about this.

18 THE COURT: Sustained.

19 by MR. WILDER:

20 Q. Well, the point is you just don't know where that
21 Dunkin' Donut wrapper came from, do you?

22 A. No, sir, I don't.

23 Q. Okay, and the results of your examination on it don't
24 reveal fingerprints or anything like that on it, do you?

25 A. No, sir.

1 Q. So, you can't tell, for instance, where -- what, what
2 store that wrapper came from or anything like that? You
3 just don't know?

4 A. I don't know. I don't know where it came from. It
5 just was fresh. It looked like it had been there a short
6 time.

7 Q. All right. Let me ask you this. Was there a piece of
8 yellow tape that was stretched across the entrance to that
9 driveway?

10 A. I'd have to look at the photographs to remember. It
11 was secured. I believe it was secured with tape. But I
12 don't -- if it actually come across the driveway, I don't
13 know.

14 Q. And so you don't remember, do you?

15 A. I don't remember. It's been over three years ago.

16 Q. Okay, and if the area that was secured was inside the
17 turn-off, that wrapper was found outside the turn-off,
18 correct?

19 A. If it was secured at the turn-off ---

20 Q. Right.

21 A. --- then the wrapper would be -- that's awful close.
22 I don't know. I can't answer that.

23 Q. All right. Now -- okay. Let's move on.

24 THE COURT: And, Mr. Wilder, as you speak, could you
25 keep facing this way so the court reporter can pick up your

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1 voice on her tape?

2 MR. WILDER: Thank you, Your Honor, and I, I would
3 love for everybody to hear me. Thank you.

4 by MR. WILDER:

5 Q. All right. Continuing on, let me show you another one
6 of the forms and ask you. Does it have our case number on
7 it?

8 A. Yes, sir.

9 Q. And it is the case number of the one we've been
10 tracking, right?

11 A. Yes, sir.

12 Q. What is that?

13 A. This is evidence card, it's, it's Item 43. It's a
14 fingerprint ink card containing fingerprints of a Marcus
15 Branch it looks like from the ---

16 Q. Marcus Branch.

17 A. --- from Investigator West.

18 Q. Marcus Branch, received from Investigator West.

19 Do you know where Marcus Branch lives?

20 A. I don't know a Marcus Branch.

21 Q. Okay. Do you know the cell phone is in the evidence
22 room, the one that apparently was not on Mr. Flexon, do you
23 know who that was -- who that belongs to?

24 A. No, sir, I don't.

25 Q. What connection would Jamie Turner be to this case?

1 A. He's captain of investigations. It's his
2 responsibility to assign the case to someone.

3 Q. Now, when evidence has come up -- comes back from SLED
4 or reports or things, do the reports typically come to the
5 evidence room?

6 A. They come back to the evidence room and Cindy Pierson
7 makes copies of those results, and they go in a book that's
8 at the evidence room that she keeps. And then copies of
9 those go to the investigator assigned the case.

10 Q. Okay, and ---

11 A. She handles all evidence or she -- at that time she
12 did.

13 Q. All right. Let me ask you if you can identify the
14 case number of our case on that report.

15 A. Yes, sir.

16 Q. And what, what does that appear to be?

17 A. This is a, a SLED or State Law Enforcement Division
18 serology analysis results.

19 Q. Okay, and does that have our case number on it?

20 A. Yes, sir.

21 MR. WILDER: All right. I ask that that be marked for
22 identification, Your Honor, at this time.

23 THE COURT: All right.

24 (SEROLOGY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
25 NUMBER 3 FOR IDENTIFICATION.)

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1 COURT REPORT: Defendant's Number 3 for I.D.

2 BY MR. WILDER:

3 Q. And are you still holding the one for Marcus Branch's
4 fingerprint card?

5 A. Yes, sir.

6 MR. WILDER: And I'd ask that that be marked for
7 identification, please.

8 THE COURT: Yes, sir.

9 (PROPERTY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
10 NUMBER 4 FOR IDENTIFICATION.)

11 COURT REPORT: Defendant's Exhibit Number 4 for I.D.

12 MR. WILDER: Thank you.

13 BY MR. WILDER:

14 Q. And so that would have been marked Defense 4 for I.D.
15 and the serology report was Number 3 for I.D. All right.
16 Now, I'm going to ask you -- I'm going to hand you up a
17 report and ask you if you can identify your signature on
18 that report.

19 A. Yes, sir.

20 Q. And explain to the jury what it is, please.

21 A. It's a photo log, crime scene photo lot.

22 Q. And did you prepare that report?

23 A. Yes, sir.

24 Q. And is that what you used to keep track of when you
25 take a picture of something?

1 A. I generally use that to keep track of what
2 photographs, what photographs to put in. But it's hard to
3 do with the way things are done now. So -- but that is a
4 photo log of the
5 photographs in this case.

6 Q. In this case, right?

7 A. Yes, whether they're taken by Investigator Bean or
8 taken by myself.

9 Q. All right, and does it have a signature in there?

10 A. Yes, sir, my signature.

11 Q. Your signature, and that was prepared by you?

12 A. Yes, sir.

13 Q. All right, sir, and accordingly it has your signature
14 on it.

15 MR. WILDER: All right, Your Honor, I'd ask ---

16 MR. MEADORS: We have no objection if he's offering
17 that into evidence.

18 MR. WILDER: I'd like it marked for identification at
19 this moment..

20 THE COURT: All right. Be Defense Number 5.

21 (CRIME SCENE PHOTO LOG MARKED AS DEFENDANT JACKSON'S
22 EXHIBIT NUMBER 5 FOR IDENTIFICATION.)

23 by MR. WILDER:

24 Q. All right, let me hand you up a evidence form and ask
25 you if it has your signature on it.

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1 A. Yes, sir.

2 Q. And does it have our case number on it?

3 A. Yes, sir, same case number.

4 Q. And tell the ladies and gentlemen of the jury what
5 that form is.

6 A. Yes, sir, this evidence form, it lists Item 38, which
7 is a 3 by 3 inch cut out section of pizza box one bearing
8 latent print developed with ninhydrin. Item 39 is a one
9 and seven-eighths inch by five-eighths inch cut out section
10 of pizza box number one bearing latent prints developed
11 with ninhydrin.

12 MR. WILDER: Okay. Your Honor, I'd ask that be marked
13 for identification.

14 THE COURT: Defense Exhibit Number 6 for ID only.

15 (PROPERTY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
16 NUMBER 6 FOR IDENTIFICATION.)

17 BY MR. WILDER:

18 Q. Now, I'm going to hand you up a latent processing
19 report, and ask you. Does it have our case number on it?

20 A. Yes, sir, the same case number.

21 Q. Okay.

22 MR. WILDER: All right, I'd ask that be marked for
23 identification.

24 Q. Does it also have your signature on it?

25 A. Yes, sir.

1 MR. WILDER: Ask that it be marked for identification,
2 Your Honor.

3 THE COURT: Defense Exhibit, Exhibit Number 7 for I.D.
4 only.

5 (LATENT PROCESSING REPORT MARKED AS DEFENDANT
6 JACKSON'S EXHIBIT NUMBER 7 FOR IDENTIFICATION.)

7 by MR. WILDER:

8 Q. Ray, could you tell the ladies and gentlemen of the
9 jury what an AFIS system is?

10 A. AFIS stands for -- it's A-F-I-S, and it stands for
11 Automated Fingerprint Identification System. All the
12 fingerprints that were ever taken from anyone from 19, I
13 believe it's '57, '58 until the present are stored in that
14 system, and that system is located at SLED. We also have
15 a, what I like to call satellite system here in Sumter
16 which is run by the City Police Department, and Fingerprint
17 Examiner Marie Hodge is the one who runs that.

18 Q. Now, when you have a younger individual like a
19 juvenile, do those fingerprints go in the AFIS system?

20 A. I can't remember the -- I can't remember the rules
21 regarding juveniles and the AFIS system. I believe under
22 certain crimes they may, but I'm, I'm just assuming that.

23 Q. But your recollection is there's something different
24 about juveniles and the protocol about that?

25 A. Yes, there is.

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1 Q. And so when you said all fingerprints went in there,
2 it could have been juveniles didn't go in till a certain
3 day or except for a certain crime or something like that,
4 right?

5 A. Yes, sir. I'm, I'm assuming that, yes.

6 Q. Okay, but there's something different about juveniles,
7 but when they're -- and that is to the age of seventeen in
8 our system of justice, doesn't it?

9 A. That's correct.

10 Q. Okay. So, if they're sixteen years of age or older,
11 that -- it's kind of like, well, you want to specifically
12 make sure that that particular fingerprint doesn't match,
13 but at seventeen years old, AFIS will probably have them in
14 there, right?

15 A. Yes, sir.

16 Q. Now, let me show you -- and again the purpose of AFIS
17 is so that you can compare that not only against specific
18 individual, but kind of just hopefully compare them again
19 to everything you've ever -- everything fingerprint you've
20 ever taken if you can, right?

21 A. If you have an unknown suspect, yes, you compare it to
22 the entire system.

23 Q. Okay. So, AFIS has kind of come up with an unknown
24 suspect to try to identify who that might be and hopefully
25 get a lead and then you can specifically take a closer look

1 to make sure you can identify that specifically, right?

2 A. That's right.

3 Q. That's fair. All right, sir. Let me show you this
4 and ask you. Does it have your signature on it?

5 A. Yes, sir.

6 Q. All right. What date was that report prepared?

7 A. 14th of January 2008.

8 Q. And in relationship to this incident that we're
9 talking about here, that would have been like two days
10 later?

11 A. According to this date, yes, sir. That's when it was
12 processed, yes, sir.

13 Q. Two days later you signed that report and processed
14 it, correct?

15 A. Yes, sir. I processed it that day and made out this
16 report.

17 Q. Okay.

18 MR. WILDER: Well, let me have it marked.

19 (LATENT PROCESSING REPORT MARKED AS DEFENDANT
20 JACKSON'S EXHIBIT NUMBER 8 FOR IDENTIFICATION.)

21 COURT REPORT: Defense 8 for I.D.

22 MR. WILDER: Defense 8 for I.D., Your Honor.

23 (COUNSELORS CONFER.)

24 MR. MEADORS: Beg the court's indulgence.

25 THE COURT: Yes, sir.

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1 (A PAUSE.)

2 MR. MEADORS: Let the record reflect this was
3 originally together.

4 THE COURT: Now it's two different ones?

5 MR. WILDER: Two different ones for I.D. both before
6 court.

7 THE COURT: The same?

8 MR. WILDER: The same?

9 THE COURT: All right.

10 by MR. WILDER:

11 Q. All right. Now -- all right. Now, Mr. Mackessy,
12 you've examined those items and issued that report,
13 correct?

14 A. Correct.

15 Q. Would you please tell the ladies and gentlemen of the
16 jury what you found as a result of your examination?

17 A. On Item 18, which was the Little Debbie, Dunkin'
18 sticks wrapper, there was insufficient ridge detail for
19 positive identification. On Item 21, which was the Virgin
20 mobile home or Virgin mobile cell phone and battery, no
21 ridge detail was developed. On pizza box number one,
22 latent prints were developed, photographed, and two
23 cuttings were submitted to AFIS. On pizza box number two,
24 which is Item 23, insufficient ridge detail for positive
25 identification was developed.

1 Q. Of the fingerprints off pizza box number one that you
2 submitted into AFIS, what was the purpose of sending those
3 fingerprint lifts to AFIS?

4 A. To be run through the AFIS system to see if any
5 matches came up.

6 Q. All right, and, in your opinion, those -- were those
7 fingerprints sufficient AFIS quality fingerprints such that
8 if they had found somebody to compare them to, they could
9 have made a match?

10 A. I thought there was sufficient there, and based on my
11 knowledge of the criteria of the AFIS system, I thought
12 they were sufficient enough to run through the system.

13 Q. All right, and you even took pictures of them, and Mr.
14 Meadors asked you about the pictures?

15 A. Yes, sir.

16 Q. Okay, and those pictures are in evidence and the boxes
17 that they came off of, are they also in evidence?

18 A. Yes, sir.

19 Q. Okay. I'll show you another form and ask you. Does
20 it have our case number on it and your name?

21 A. Yes, sir, it does.

22 Q. And what -- would you tell the jury what those two
23 things do?

24 A. This Item 27 is a Winchester 94 30-30 rifle bearing
25 Serial Number 2835601 with cartridge loaded in chamber.

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1 Item 28 is one Styrofoam cartridge holder containing
2 eighteen unfired Winchester 30-30 cartridges.

3 Q. Okay, and does that report indicate where it was
4 found?

5 A. No. You'll see I received it from Sergeant Burnish,
6 but it doesn't indicate where he got it from.

7 MR. WILDER: Okay, ask that be marked for
8 identification, Your Honor.

9 (PROPERTY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
10 NUMBER 9 FOR IDENTIFICATION.)

11 THE COURT: Be number 8?

12 COURT REPORT: Number 9.

13 by MR. WILDER:

14 Q. Next, could you identify that one for us?

15 A. Yes, sir. It bears the same case number, my
16 signature. Lists Item 24, which is a one 3 by 5 inch card
17 lift bearing latent palm prints off of left sliding door
18 window. Item 25 is an 8 by 10 inch Prolift bearing
19 handprint off left sliding door, and a piece of order slip
20 with the address [REDACTED] Cherryvale, lot [REDACTED], ticket number
21 378649 out of victim's van.

22 Q. Okay. Now ---

23 MR. MEADORS: Judge, for the record, they're already
24 in evidence.

25 THE COURT: All right.

1 MR. WILDER: I'd like this marked for identification,
2 please.

3 THE COURT: I don't know that it needs to be marked
4 for I.D. They're already in evidence. Please refer to
5 them as the evidence number. They don't need to be marked
6 for I.D. They're in evidence.

7 MR. WILDER: The lists are, Your Honor, but the chain
8 of custody forms are not.

9 THE COURT: Oh, okay. Okay.

10 (PROPERTY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
11 NUMBER 10 FOR IDENTIFICATION.)

12 COURT REPORT: Defendant's 10 for I.D.

13 by MR. WILDER:

14 Q. All right. Now, now, identify this one for me please,
15 Mr. Mackessy.

16 A. Evidence card, same case number, my signature. List
17 Item 22, one pizza box number one found on Cherryvale Drive
18 375 feet from road victim was found on. Item 23, one pizza
19 box number two found on road next to [REDACTED] Cherryvale Drive,
20 591 feet from road where victim was found on.

21 MR. WILDER: All right, I ask that be marked for I.D.

22 THE COURT: Yes. Number 11?

23 COURT REPORT: 11.

24 (PROPERTY REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
25 NUMBER 11 FOR IDENTIFICATION.)

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1 by MR. WILDER:

2 Q. All right, going back to for I.D. Number 10 and the
3 palm print, was that, was that sufficient quality to do a
4 check on to see who belonged to the palm print?

5 A. Yes, sir, I believe it was.

6 Q. And whose responsibility would it have been to check
7 that palm print out to see who it belonged to?

8 A. That would have been sent by me to Marie Hodge, and
9 she would check it out.

10 Q. So, was a report received from Marie Hodge that went
11 into the evidence room?

12 A. I don't have it in my file. I'm, I'm sure there
13 probably was, but I don't have it in my file.

14 Q. All right, and then there was a red and black pizza
15 warmer that came out of Mr. Flexon's car, correct?

16 A. Yes, sir.

17 Q. Okay, and the diagrams, you prepared those personally
18 to show the distance on them, right?

19 A. Yes, sir.

20 Q. Okay. Now, let me ask you about this, and ask you.
21 Can you identify what that is?

22 A. Yes, sir, I can.

23 Q. And tell the ladies and gentlemen of the jury what
24 that is.

25 A. That's a crime scene log that's prepared by a deputy

1 at the scene. It lists the people that responded to the
2 scene and the reason they were there at the scene.

3 Q. Okay. Is that ordinarily kept in the case of a crime
4 scene investigation?

5 A. In a major case, yes, sir.

6 Q. And Mr. Deas asked you earlier, you know, what time
7 you got there, and you couldn't remember exactly. Do you
8 remember approximately?

9 A. Yes, sir.

10 Q. Would you read the time you got there off the crime
11 scene log?

12 A. 2141, which would have been 9:41.

13 Q. Okay, and who all got there before you did?

14 A. You want me to go through and list, read every one of
15 them?

16 Q. Just who got there before you did.

17 A. I have Deputy Williams, Deputy Griffin. I guess it's
18 Reserve Figers, Deputy Hice, EMS Conscious, EMS Thomas,
19 Supervisor Sergeant Dale Horton, Supervisor Alexander
20 Dukes, Rodney Sharpe, which is listed as a neighbor, Tommy
21 Barren from investigations, Robert Reynolds from
22 investigations, Coroner Vernon Moore, Captain Bradford,
23 Investigator Wesley Gardner, and Shift Supervisor Horton.
24 Crime Scene would be Cindy Pierson and Mike Bean, Aaron
25 Boland from investigations. Robert Burnish and I arrived

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1 at the same time.

2 MR. WILDER: I ask that this be marked for
3 identification, Your Honor.

4 THE COURT: 13?

5 COURT REPORT: 12.

6 THE COURT: 12.

7 (CRIME SCENE LOG MARKED AS DEFENDANT JACKSON'S EXHIBIT
8 NUMBER 12 FOR IDENTIFICATION.)

9 by MR. WILDER:

10 Q. All right, sir. Now, Investigator Burnish came to the
11 St. Mark's Church Road. How many days after that January
12 12th is it that you were asked to respond to that scene?

13 A. If you're referring to St. Mark's Circle off St.
14 Paul's Church road?

15 Q. St. Mark's Circle, St. Paul's Church Road, right.

16 A. Okay.

17 Q. I'm just asking because I don't know the area.

18 A. St. Mark's Circle off St. Paul's Church Road.

19 Q. Okay.

20 A. That's how I have it in my report.

21 Q. Okay. Well, that's fine, and I'm not trying to jump
22 on you about that. I just want you to tell the jury what
23 day it was you got there.

24 A. Okay. January 22nd, 2008.

25 Q. And you took some pictures there, right?

1 A. Yes, sir.

2 Q. And you processed that scene because those pizza boxes
3 from this case were found there, right?

4 A. Yes, sir.

5 Q. And pizza warmers from this case were found there?

6 A. A pizza box and a pizza warmer were found there.

7 Q. Okay.

8 A. It's not ---

9 Q. All right, and so you processed that scene and were
10 looking for fingerprint and footprints and all that,
11 correct?

12 A. Yes.

13 Q. Okay, and took some pictures, at least one of which
14 made it's way into something they asked you about earlier,
15 right?

16 A. Yes, sir.

17 Q. All right, and I believe the uneaten pizza was in that
18 house or that trailer ---

19 A. Yeah.

20 Q. --- mobile home, whatever you want to call it?

21 A. Yes, sir.

22 Q. All right. Now, and I think you said you didn't find
23 any fingerprints or anything that we could trace back to
24 that location, right?

25 A. That's right.

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1 Q. Identified, I mean.

2 A. Identified, no.

3 Q. Okay. Now, did you find any blood that you did some
4 testing on there or ---

5 A. Not at St. Mark Circle, no.

6 Q. Okay, and tell the ladies and gentlemen of the jury.
7 I believe you said it was vacant?

8 A. Yes, sir.

9 Q. But we know somebody was in there when the pizza was
10 eaten or at least somebody -- it wasn't rats that ate it,
11 correct?

12 A. Right.

13 Q. Okay. So, I believe there were cushions, chairs, and
14 stuff in there that would indicate that somebody had gone
15 in there, you know, hung out for a while, correct?

16 A. Could be.

17 Q. Okay. All right. Now, who owns or rents, or who does
18 that mobile home belong to?

19 A. I don't know.

20 Q. Would it have been your responsibility to find out?

21 A. That's usually the investigator assigned to the case
22 or the investigator called me to the scene. That's their
23 responsibility, I would assume.

24 Q. Would this be the gentleman whose responsibility it
25 was?

- 1 A. He was the lead investigator on the case.
- 2 Q. Robert Burnish?
- 3 A. Yes, sir.
- 4 Q. All right. Now, I believe you testified that lot
5 number █ O.C. Mobile Home was vacant also, correct?
- 6 A. Right.
- 7 Q. And somebody had to be there to leave blood and
8 footprints and whatever all trace evidence they left in
9 there?
- 10 A. Yes, sir.
- 11 Q. Where the blood was left and the footprints were left,
12 right?
- 13 A. Yes.
- 14 Q. Tell the ladies and gentlemen of the jury who owns,
15 leases, or rents number █ O.C. Mobile Home Park.
- 16 A. I don't know.
- 17 Q. Whose responsibility would that be to find that out?
- 18 A. I guess Sergeant Burnish, the lead investigator on the
19 case.
- 20 Q. Not you, right?
- 21 A. Not me, no.
- 22 Q. Okay. Now, the diagram that you compared and is now
23 in evidence as State's Exhibit Number 51, I'm going to show
24 it to you. I'm not trying to trick you. I just want you
25 to look at it. You prepared, right?

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1 A. Yes, sir.

2 Q. You've got another trailer identified as being next to
3 Number █. What number is on that diagram?

4 A. Number 8.

5 Q. Number 8. Who at that time lived, owned, or rented
6 lot number 8, Cherryvale or O.C. Mobile Home Park?

7 A. I don't know and I don't know if it was occupied or
8 unoccupied. I don't remember.

9 Q. And it seemed like when they asked you were there
10 other trailers there, you couldn't really remember even if
11 there were other trailers there. Do you remember of your
12 own knowledge?

13 A. There was other trailers, but how many I don't
14 remember. It's been over three years since I've been
15 there.

16 Q. Okay, and in order, Number █, Number 8. If there were
17 a Number █, would be on the corner, wouldn't it?

18 A. It could be. I'm not -- I don't know.

19 Q. Okay. You don't know who lived in number █ O.C.
20 Mobile Home Park right there on that corner, do you?

21 A. If there was a number █ there, no, sir, I don't know
22 who lived there.

23 Q. Do you know where Mr. Canty lived back in '08?

24 A. No, sir, I don't.

25 Q. Do you know where Mr. Jackson lived back in '08?

1 A. No, sir.

2 MR. WILDER: That's all I have.

3 THE COURT: Any redirect?

4 MR. MEADORS: Yes, sir.

5 REDIRECT EXAMINATION BY MR. MEADORS:

6 Q. Mr. Wilder asked you about it -- Mr. Deas may have --
7 about a shoe, shoe print or impressions outside, and was
8 your testimony it wasn't cast worthy? You didn't think it
9 would be ---

10 A. It my opinion it wasn't cast worthy.

11 Q. And they did an impression inside the trailer which
12 you said you even had a hard time photographing it?

13 A. Yes, sir.

14 Q. It may or may not be the one?

15 A. Yes, sir.

16 Q. And everything was negative as to prints as far as you
17 can determine except the, what you believed was AFIS worthy
18 on a pizza box, a cutting of the pizza box?

19 A. Yes, sir.

20 Q. That pretty much summarizes it then?

21 A. Yes, sir.

22 Q. And, and respectfully, your, your job in this was to
23 gather and look at the evidence and then send it on for
24 somebody else to examine it, right?

25 A. Yes, sir, so far as the fingerprint evidence or ---

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1 Q. Right.

2 A. That was sent on.

3 Q. And would that be Marie Hodge who looked at these,
4 what you provided, that she's going to testify as to what
5 she found, correct?

6 A. Yes, sir.

7 Q. And that, that's kind of the way it works?

8 A. Right.

9 Q. Did you also take latent fingerprints from other
10 defendants?

11 A. I believe I did, yes.

12 Q. Okay, and submitted them into, into evidence.

13 A. Yes, sir.

14 Q. I mean, if you had them?

15 A. Yes, sir.

16 MR. MEADORS: That's all. Thank you.

17 MR. DEAS: Very briefly?

18 THE COURT: Recross.

19 RE-CROSS-EXAMINATION BY MR. DEAS:

20 Q. Mr. Mackessy, Mr. Mackessy, I hand you this report.

21 MR. DEAS: May I approach, Your Honor?

22 THE COURT: You may.

23 BY MR. DEAS:

24 Q. Can you identify that, please?

25 A. Yes, sir. That's an evidence card bearing the case

1 number of this case.

2 Q. Thank you. What, what does that report indicate?

3 A. It indicates Item 44, a fingerprint, inked fingerprint
4 card containing fingerprints of Reginald Rashard Canty.

5 Q. Would that mean that his fingerprints were at some
6 point forwarded to AFIS?

7 A. I would, I would think his were, his fingerprints were
8 given to Marie Hodge at one point, yes, sir.

9 MR. DEAS: All right. Thank you, sir.

10 THE COURT: Anything further?

11 MR. DEAS: No, nothing further.

12 THE COURT: Mr. Wilder, any recross?

13 MR. WILDER: No, Your Honor.

14 THE COURT: All right. Thank you. You may step down.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Let me see the attorneys over here for
17 just a moment.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: All right, ladies and gentlemen, I think
20 we have -- based upon the other witnesses that will be
21 called, it will be a good time to take a lunch break. So,
22 I'm going to dismiss you for lunch with instructions that
23 you do not speak to anyone as always, and let's start back
24 at 1:30. That will give you an hour and half for lunch
25 roughly. So, testimony will resume at 1:30. So, be back

1 here just a little bit before that. Have a nice lunch,
2 ladies and gentlemen.

3 (THE JURY EXITS AT 11:54 P.M.)

4 THE COURT: All right, court will be in recess until
5 1:30.

6 (OFF THE RECORD.)

7 (BULLETS REMOVED FROM VICTIM MARKED AS STATE'S EXHIBIT
8 NUMBER 58 FOR IDENTIFICATION.)

9 (LIGHTS/KEYS FROM VICTIM MARKED AS STATE'S EXHIBIT
10 NUMBER 59 FOR IDENTIFICATION.)

11 (NAIL SCRAPINGS OF VICTIM MARKED AS STATE'S EXHIBIT
12 NUMBER 60 FOR IDENTIFICATION.)

13 (POSTMORTEM PRINTS MARKED AS STATE'S EXHIBIT NUMBER 61
14 FOR IDENTIFICATION.)

15 (GSR OF VICTIM MARKED AS STATE'S EXHIBIT NUMBER 62 FOR
16 IDENTIFICATION.)

17 (RIFLE AND AMMUNITION MARKED AS STATE'S EXHIBIT NUMBER
18 63 FOR IDENTIFICATION.)

19 MR. WILDER: Please the court?

20 THE COURT: Yes, sir.

21 MR. WILDER: We had a discussion in chambers about
22 Selena Kinard, who's a SLED agent that I've subpoenaed.

23 THE COURT: Right.

24 MR. WILDER: And I believe Mr. Meadors is willing to
25 stipulate, when we get to it in my case, that the

1 information come into evidence. This is Ms. Kinard's ---

2 THE COURT: She's indicate she's -- her husband's in
3 the hospital.

4 MR. WILDER: We received word she's -- first we
5 received word she's on annual leave. Then we've got
6 information her husband was in the hospital.

7 THE COURT: It's terrible to have your husband in the
8 hospital when you're on annual leave.

9 MR. WILDER: That would be awful, Judge. And so I
10 want to try to get word to help the lady. I'm really not
11 trying to inconvenience anybody just to make sure my case
12 goes forward. And I'd liked to have this marked for
13 identification so that at whatever point in time it's
14 appropriate to move it into evidence, I can, I can do so.

15 MR. MEADORS: I stipulate everything that her name is
16 on ---

17 THE COURT: All right.

18 MR. MEADORS: --- without having to call her.

19 THE COURT: Very well.

20 MR. WILDER: At some point I'm going to go down to my
21 office and have somebody call her.

22 THE COURT: All right. All right. Thank you.

23 (SLED REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
24 NUMBER 13 FOR IDENTIFICATION.)

25 COURT REPORTER: Defendant's 13 for I.D.