

VOLUME II of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

Honorable Daniel D. Hall, Circuit Court Judge ^{S.C.} SUPREME COURT

STEVEN SPAGNOLI,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000961

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT (dated April 19-26, 2012).....	1
APPLICATION FOR POST-CONVICTION RELIEF (Filed June 6, 2013).....	916
RETURN (Filed May 13, 2015).....	923
AFFIDAVIT OF JAMES W. HANCOCK, JR. (dated May 29, 2012).....	928
ORDER OF DISMISSAL AND GRANT OF APPEAL PURSUANT TO <u>WHITE V. STATE</u> (Filed May 9, 2016).....	929
INDICTMENTS.....	932

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-501-

1 to the point that he would fall to the floor?

2 A. Right.

3 Q. Where is the injury, sir?

4 A. On his head.

5 Q. With his head?

6 A. On his head.

7 Q. On his head. Was it a bullet wound?

8 A. I assumed so. I heard two gun shots and he was
9 bleeding.

10 Q. You heard two gun shots and he was bleeding at that
11 time?

12 A. Right.

13 Q. And you don't know what happened in the hallway or
14 you weren't in there; is that right?

15 A. I was not.

16 Q. And when you heard two gun shots there wasn't but
17 one gun involved in all this was there?

18 A. I think so.

19 Q. That's it? So you're saying that the gentleman was
20 originally shot in the hall?

21 A. I have to believe he was shot in the hallway cause
22 he was bleeding and then when Spag come back in another
23 time he shot him again.

24 Q. Now you indicated the truth was the best way to tell
25 this story; is that right?

1 A. Right.

2 Q. And you started with a statement that indicated and
3 I'm referring to the statement given to Detective Strait
4 on 9/29 immediately after this happened. You said that -
5 And this is a synopsis of what you told him, okay?

6 A. Sir?

7 Q. Have you seen it?

8 MR. HANCOCK: If I may approach the witness, Your
9 Honor.

10 A. Yes, sir.

11 Q. So you know what that statement is?

12 A. Yes, sir.

13 Q. And you signed that?

14 A. Right.

15 Q. And can - This is a waiver of your rights; is that
16 correct, sir?

17 A. Yes.

18 Q. And at no place in this statement did you say that
19 Mr. Spagnoli reentered the house and shot Leach in the
20 head; is that right?

21 A. Yes.

22 Q. And you said he came through the door uninvited?

23 THE COURT: He who?

24 MR. HANCOCK: Mr. Leach.

25 Q. Is that correct?

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-503-

1 A. Sir?

2 Q. Did you not say in that that he showed up at the
3 house?

4 A. He was expected and the door was ajar and he just
5 walked through.

6 Q. He just walked through?

7 A. Yes.

8 Q. And he said I'll F any white girl any time I want
9 to. That's what he said?

10 A. No, sir.

11 Q. That's what you said he said.

12 A. Yes, sir.

13 Q. Okay. And you were talking to a police detective and
14 you weren't telling the truth then were you?

15 A. No, sir. No, sir, I wasn't.

16 Q. And you also told him - You didn't tell him that you
17 felt like you were threatened; isn't that correct, sir?

18 A. Yes, sir.

19 Q. And you told him you hadn't touched the bat too
20 didn't you, sir?

21 A. I did.

22 Q. You told him you didn't know anything about the
23 knife didn't you, sir?

24 A. I did.

25 Q. And you didn't tell him that Mr. Leach may have been

1 expected did you?

2 A. I don't remember.

3 Q. May you find that anywhere in that statement, sir?

4 A. Its not in there, sir.

5 Q. Okay. So you don't remember if you told him that.

6 And this is your statement of 9/29 immediately after
7 - or a synopsis of your statement after 9/29 immediately
8 after the event itself; is that correct; sir?

9 A. Right.

10 Q. And you later signed - You later signed another
11 statement that was a synopsis of what you were saying that
12 says "Statement of Chris Varnadore of May the 12th, 2011."

13 MR. HANCOCK: May I approach the witness, Your Honor?

14 THE COURT: Yes you may.

15 A. Yes, sir, it's me.

16 Q. All right. And do you remember giving that
17 statement?

18 A. I do.

19 Q. In that statement you said "all of a sudden Rick
20 came through the door and said I'll fuck any white woman -
21 Excuse me - "I'll F any white woman I want to" and he's
22 coming toward me it seemed." Is that correct what you
23 gave in that statement?

24 A. I did say that.

25 Q. You gave that. "And then you started hitting him and

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-505-

1 you hit him maybe five times and he went down." Is that
2 correct?

3 A. I said that.

4 Q. And never in that statement did you say that Mr.
5 Spagnoli shot this man in the head did you, sir?

6 A. No, sir.

7 Q. So that's your statement that was made the 12th of
8 2011; is that correct, sir?

9 A. I believe so.

10 MR. HANCOCK: If I may approach, Your Honor.

11 Q. Can you identify that, sir?

12 A. This is my statement, yes.

13 Q. And this was the statement you gave to Detective
14 Doug Patterson; is that correct?

15 A. Yes, sir.

16 Q. May the 13th, 2011.

17 A. Yes, sir.

18 Q. All right, sir. In that statement you basically
19 said you all - that you were sitting in the living room
20 listening to music. The door was already ajar. Right?

21 A. Yeah.

22 Q. And you stated then that they went into the hallway
23 this time; is that correct?

24 A. Pardon?

25 Q. You stated at that time they went into the hallway;

1 is that correct? There were two shots back there in the
2 hallway.

3 A. Yes.

4 Q. And then Varnadore came back and fell on the floor.
5 face down; is that correct?

6 A. Mr. Leach did, yes.

7 Q. And you picked up a bat and hit him in the head two
8 times; is that correct?

9 A. A short period of time later he was getting up.

10 Q. But now you said you hit him in the head two times
11 this time. Before you said you hit him five times when he
12 walked in the door.

13 A. That was not a true statement.

14 Q. And you hit him two times here. That's not a true
15 statement either?

16 A. It is.

17 Q. This is a true statement?

18 A. Sometime after he fell into the floor coming out the
19 hallway he was getting up and I hit him two times. It's
20 the only times I hit him.

21 Q. And then you said that you all sat there for about
22 an hour and then you heard Spagnoli said "You
23 disrespectful M F and heard another bang."

24 A. We didn't set there about an hour. I sat there about
25 an hour. Spag was not in the house. Spag came back in I

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-507-

1 would say close to an hour later and Leach was getting up
2 again and Spag shot him in the top of the head.

3 Q. But you didn't say - You said you just heard another
4 bang.

5 A. No I saw this.

6 Q. But you had never seen or said in any statement that
7 you saw that have you, sir?

8 A. I didn't say in that statement whether I saw it or
9 heard it, but I saw it.

10 Q. That's not in this statement is it?

11 A. I testified in that statement what I saw or heard.
12 I'm telling you now that I saw him do it.

13 Q. So what we're trying to discover here, Mr. Varnadore,
14 exactly which statement is true.

15 A. The one you have in your hand just now. The last
16 one.

17 Q. All right. And then you gave a different account of
18 events when you decided to plead guilty; isn't that
19 correct?

20 A. No, sir.

21 Q. And in this though you start giving - And I'll give
22 you this.

23 MR. HANCOCK: And I approach, this is his plea
24 agreement.

25 Q. And this is your plea agreement is it not, sir?

1 A. . Yes. To change my charge from murder to
2 manslaughter.

3 Q. And that was the deal that if you gave 'em a
4 statement that they liked that they thought was the truth,
5 and the Solicitor thought was the truth, then you got a
6 deal to go from murder to manslaughter; isn't that right?

7 A. I don't remember exactly how it worked.

8 Q. Well you knew that you weren't gonna get a deal if
9 you gave them anything that wasn't what they were looking
10 for; isn't that correct?

11 A. That was a quick paper I initialed in the courtroom
12 next door.

13 Q. Right.

14 A. Right.

15 Q. But you knew when you gave them this statement that
16 you had to tell them what they wanted too and you didn't
17 get your deal did you?

18 A. I'm telling the truth.

19 Q. Well in this - I noticed in this statement that
20 say that you affirm. In other words they're telling you
21 what to say aren't they?

22 A. ' No, sir.

23 Q. Okay. They weren't asking you questions in a manner
24 of well nobody was there trespassing that day were they?

25 A. Sir?

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-509-

1 Q. That's the way they were asking you questions wasn't
2 it, sir?

3 A. I didn't understand the question you're asking.

4 Q. That they were asking you in the form of "Mr.
5 Varnadore, you can now affirm to us and tell us now that
6 nobody trespassed that day?" And then you say "Yeah."

7 A. I don't think anybody did trespass.

8 Q. But that's the way the question was ask to you, isn't
9 it correct, sir?

10 A. Well nobody trespassed.

11 Q. Okay. But that's the way the question was ask to
12 you. That's what I'm asking.

13 A. I really don't remember.

14 Q. And you confirm that neither Richard Leach nor
15 Erick Harris ever threatened him Steve Spagnoli. You
16 affirm it. In other words someone - When someone ask you
17 a question do you affirm so they are saying no one
18 threatened Steve in any way did they, Mr. Varnadore?

19 A. Not that I know of.

20 Q. That's what it says here doesn't it?

21 A. It - I didn't hear any conversation with them two.

22 Q. So they are telling you time after time because
23 you've taken an oath a couple of times you swear or affirm
24 that that which you are about to tell this court is the
25 truth, nothing but the truth, the whole truth?

1 A. That's right.

2 Q. Okay. They tell you what to swear to affirm don't
3 they?

4 A. Right.

5 Q. Okay. And they told you what to swear or affirm
6 right here didn't they?

7 A. Again, that was a quick saying that I signed in the
8 other courtroom over there the day I pled guilty.

9 Q. It was a quick thing?

10 A. It certainly was.

11 Q. Was it handed to you in this manner?

12 A. It was laid on a eight inch board like that ---

13 Q. Uh-huh.

14 A. --- and I leaned over and initialed it.

15 Q. Did you have a chance to read it?

16 A. I didn't. I felt like everything was okay good to
17 go and I agreed so I signed it or I initialed it.

18 Q. You didn't read it?

19 A. I didn't.

20 Q. Your attorney told you what might be in it?

21 A. Nobody told me anything what was in it.

22 Q. So you did not read the agreement that you signed on
23 a plea of guilty to then manslaughter, sir?

24 A. Well certainly not anything that could be worse
25 than the trouble I was already in.

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK

-511-

1 Q. So if there is anything in there you really don't
2 know what was in there when you signed it did you, sir?

3 A. We had gone over some things and I agreed to it and
4 I agreed to what I initialed yes.

5 Q. Who'd gone over it?

6 A. Me and my attorneys.

7 Q. Now, Mr. Varnadore, we have to this point have four,
8 at least three or four different stories that you told
9 regarding your involvement and Spagnoli's in this case.
10 Isn't that true?

11 A. I admit that the first three were not the truth.

12 Q. So now we're to believe that you lied, and you lied
13 and you lied, and then when somebody says well we'll drop
14 it to manslaughter, you told the truth without even
15 reading the statement which allowed that. Isn't that what
16 you just said, sir?

17 A. I don't know if I said that exactly.

18 Q. Well I ask you if you'd read it and you said no.

19 Isn't that correct, sir?

20 A. I did say no, yeah.

21 Q. So now when we hear you come up and you are now
22 telling the - Basically the fourth story was one which you
23 plead on that you hadn't read, now you come into this
24 courtroom and say it's time I told the truth. That's what
25 you're doing isn't it?

CHRISTOPHER VARNADORE: CROSS BY MR. HANCOCK
REDIRECT BY SOLICITOR THOMPSON

-512-

1 A. That's what I'm doing right now.

2 Q. Mr. Varnadore, would you recognize the truth if it
3 jumped up and bit you?

4 SOLICITOR THOMPSON: Objection, Your Honor.

5 MR. HANCOCK: I'll withdraw the question, Your Honor.

6 I beg the indulgence of the Court one moment.

7 (PAUSE AT 02:15 P.M..)

8 MR. HANCOCK: I have no further questions of this
9 witness, Your Honor.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 CHRISTOPHER VARNADORE BY SOLICITOR THOMPSON:

13 Q. Mr. Varnadore, in any of the statements that Mr.
14 Hancock went over did you ever say that you saw Erick
15 Harris?

16 A. No.

17 Q. Did you ever say Erick Harris was there?

18 A. No.

19 Q. Or that Erick Harris came to the house?

20 A. Sir?

21 Q. Or that Erick Harris came in the house?

22 A. He did not.

23 Q. Did you say that in any of your statements?

24 A. No.

25 Q. Thank you.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON

-513-

1 SOLICITOR THOMPSON: No further questions.

2 THE COURT: Recross?

3 MR. HANCOCK: Nothing further, Your Honor.

4 THE COURT: All right, you can step down. Thank you.

5 (WITNESS LEAVING WITNESS STAND/EXITS COURTROOM.)

6 THE COURT: Call your next witness.

7 SOLICITOR THOMPSON: The State would call Melanie
8 O'Neal.

9 Ms. O'Neal, if you'll go up and be sworn please.

10 MADAM CLERK: Raise your right hand, place your
11 left hand on the Bible.

12 (WHEREUPON, THE WITNESS BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 DIRECT EXAMINATION

15 MELANIE O'NEAL BY SOLICITOR THOMPSON:

16 Q. Ms. O'Neal, could you give your full name for the
17 court please.

18 A. Melanie Walker O'Neal.

19 Q. I'm sorry, I can't hear you.

20 A. Melanie Walker O'Neal.

21 Q. And if you'll spell your first and last name for the
22 court reporter please.

23 A. M-e-l-a-n-I-e, O-n -- '-N-e-a-l.

24 Q. I'm sorry, I'm still having a hard time hearing - -

25 A. O--'-N-e-a-l.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON

-514-

1 Q. Okay. Can you tell me, Ms. O'Neal, how do you know
2 the defendant Steven Spagnoli?

3 A. We lived together for six and a half years.

4 Q. All right. And when was the time that you lived
5 together?

6 A. From April '04 until April of 2010.

7 Q. Until 2010? All right.

8 THE COURT: You got to answer with words yes or no.

9 A. Oh. Yes.

10 Q. And during that period of time where did you all
11 live?

12 A.

13 Q. All right. And can you tell me, I know there's two
14 houses there, which house did you live in?

15 A. We started out living in the front house and then
16 we moved to the back house.

17 Q. All right. And while you were there did you live
18 with Mr. Spagnoli the entire time?

19 A. Yes.

20 Q. You didn't stay at separate houses on the property?

21 A. No, sir.

22 Q. Did he have a nickname for you, Ms. O'Neal?

23 A. Yes.

24 Q. What was the nickname?

25 A. Twink.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON

-515-

1 Q. I'm sorry?

2 A. Twink.

3 Q. And how is that spelled?

4 A. T-w-i-n-k.

5 Q. Okay. And can you tell me, did you know Richard
6 Leach?

7 A. Yes, sir.

8 Q. And how did you know him?

9 A. He was our drug dealer.

10 Q. When you say our drug dealer, whose?

11 A. Mine and Steve's.

12 Q. Okay. And how long was he your and Steve's drug
13 dealer?

14 A. Five, six years.

15 Q. And was this during the time you lived on
16 ?

17 A. Yes, sir.

18 Q. Did it end before you left or did it continue at the
19 time you left?

20 A. It was still continuing.

21 THE COURT: You need to kind of speak up into the
22 microphone please, ma'am.

23 Q. What type drugs would you and Steven get from Mr.
24 Leach?

25 A. Crack.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON

-516-

1 Q. . Would you get other things as well?

2 A. Sometimes coke.

3 Q. Okay. And how often would you get drugs from Mr.
4 Leach?

5 A. A couple a times a week..

6 Q. Did you go to him or would he come to you?

7 A. Both.

8 Q. Was it easy for you all to call him and get a hold
9 of him?

10 A. Yes.

11 Q. Did he ever give you drugs on credit or did you have
12 to pay for them right away?

13 A. He'd give it to us on credit.

14 Q. I'm sorry?

15 A. He'd give it to us on credit.

16 Q. Okay. And tell me how that worked.

17 A. He'd bring it to us and we'd pay him whenever Steve
18 got paid.

19 Q. All right. Would he sometimes come around to ask for
20 payment that you hadn't paid in a while?

21 A. Yes.

22 MR. HANCOCK: Your Honor, I would object. Again
23 we just --

24 THE COURT: You got to stop leading, Mr. Thompson.

25 MR. HANCOCK: The Solicitor is testifying.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON

-517-

1 THE COURT: You know how to ask questions.

2 BY SOLICITOR THOMPSON:

3 Q. In regards to Mr. Leach, how would you describe his
4 personality?

5 A. He was a very nice man.

6 Q. Was there ever a time that he was mean towards you
7 or Steven?

8 A. Not towards me.

9 Q. All right. Do you recall if - did you ever see him
10 mean towards anyone?

11 A. No and never have.

12 Q. Did you know him to carry any weapons with him?

13 A. No, sir.

14 Q. I ask you to look at State's Exhibit Number 1-0-3.

15 If you'll look at that and tell me if you recognize
16 that.

17 A. Yes I do.

18 Q. And how do you recognize that?

19 A. Its Steve's.

20 Q. All right. And is it - -

21 MR. HANCOCK: If I may, the young lady - - -

22 SOLICITOR THOMPSON: Hard for them to hear I believe.

23 MR. HANCOCK: As the Solicitor said, I cannot hear
24 what she is saying.

25 THE COURT: Ask the question again.

MELANIE O'NEAL: DIRECT BY SOLICITOR THOMPSON
CROSS BY MR. HANCOCK

-518-

1 And speak into the microphone. Lift your voice up
2 some, please. We want everybody to be able to hear you.

3 BY SOLICITOR THOMPSON:

4 Q. Do you recognize this?

5 A. Yes.

6 Q. And what is it?

7 A. It's Steve's knife.

8 Q. All right. And did he have this knife when you
9 were living with him?

10 A. Yes.

11 Q. Thank you.

12 SOLICITOR THOMPSON: I have no further questions.

13 THE COURT: Mr. Hancock.

14 MR. HANCOCK: If it please the Court.

15 CROSS-EXAMINATION

16 MELANIE O'NEAL BY MR. HANCOCK:

17 Q. How long did you live with Mr. Spagnoli?

18 A. Six years.

19 Q. How many?

20 A. Six.

21 Q. Six years?

22 A. Yes, sir.

23 Q. And did you all do drugs that entire time?

24 A. Yes.

25 Q. And was - For how long was Mr. Leach your primary

MELANIE O'NEAL: CROSS BY MR. HANCOCK

-519-

1 drug dealer?

2 A. Five years.

3 Q. Five years? And you indicate you got crack cocaine
4 and coke cocaine from him; is that correct, ma'am?

5 A. Yes.

6 Q. And did you all smoke it or how did you do that?

7 A. Smoked it.

8 Q. You smoked it. Did you smoke it in some kind of
9 pipes or something?

10 A. Yes, sir.

11 Q. And those pipes were in the house?

12 A. Yes, sir.

13 Q. And so there would be - That paraphernalia was kept
14 in the house and all around the house?

15 A. Yes.

16 Q. And you indicate that you know what that knife was,
17 it was Steve Spagnoli's knife; is that correct?

18 A. Yes.

19 Q. And you don't know where that knife was that night,
20 the night of September 28th; is that correct?

21 A. No.

22 Q. You weren't there?

23 A. No.

24 Q. So you don't know what happened to that knife do
25 you, ma'am?

MELANIE O'NEAL: CROSS BY MR. HANCOCK

-520-

1 A. No.

2 Q. And when I say drug paraphernalia, you're talking
3 about pipes, do you mean what form and how large and how
4 small or just the description please, ma'am?

5 A. Little glass pipes.

6 Q. And did you ever snort cocaine through something?

7 A. We snorted cocaine sometimes but we mostly smoked it.

8 Q. You mostly smoked it. And if Mr. Spagnoli had
9 stopped doing that you would know that; is that correct?

10 A. No. I left months before.

11 Q. You left five or six months before this didn't you?

12 A. Yes.

13 Q. So you don't know what the arrangements were between
14 he and Mr. Leach after that do you, ma'am?

15 A. No I don't.

16 Q. And so whatever may have happened with them or
17 whatever drugs he may have bought he may you don't know
18 what they were and in what quantities?

19 A. I don't.

20 Q. I that correct, ma'am? So you don't know what was
21 happening at that time?

22 A. No I don't.

23 MR. HANCOCK: I have no further questions, Your
24 Honor.

25 SOLICITOR THOMPSON: Nothing further, Your Honor.

1 THE COURT: All right. You can step down and be
2 excused, Ms. O'Neal. We appreciate your time.

3 (WITNESS LEAVING WITNESS STAND.)

4 THE COURT: Call your next witness.

5 SOLICITOR BRACKETT: Your Honor, if we could get a
6 break at this time?

7 THE COURT: All right. We'll take a break.
8 How long, ten minutes?

9 SOLICITOR THOMPSON: That's fine, Your Honor.

10 THE COURT: Take a ten minute break.

11 (JURY EXITS COURTROOM AT 02:28 P.M..)

12 (COURT IN RECESS AT 02:29 P.M..)

13 (COURT BACK IN SESSION AT 02:50 P.M..)

14 THE COURT: Thank you. Take your seats.

15 Is the State ready?

16 SOLICITOR BRACKETT: We're ready, Your Honor.

17 THE COURT: The Defense ready?

18 MR. HANCOCK: We're ready, Your Honor.

19 THE COURT: Bring in the jury.

20 Are they coming?

21 THE BAILIFF: I did not hear you ask for them.

22 THE COURT: I'm sorry. Yes.

23 (JURY REENTERS COURTROOM AT 02:53 P.M..)

24 THE COURT: Call your next witness.

25 SOLICITOR THOMPSON: May it please the Court, Your

1 Honor. The State would call Detective Fred Moore.

2

3

(WHEREUPON, FRED MOORE,

4

BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

5

DIRECT EXAMINATION

6

DETECTIVE FRED MOORE BY SOLICITOR THOMPSON:

7

Q. Good afternoon, Detective Moore. Could you give your
8 full name for the court please?

9

A. Fred Wesley Moore, Junior.

10

Q. And where do you work?

11

A. York County Sheriff's Office.

12

Q. How long have you been with the sheriff's office?

13

A. Eight years.

14

Q. And what is your capacity at the sheriff's office?

15

A. Detective assigned to the violent crimes unit.

16

Q. And you were the detective assigned to that unit back
17 in September, 2010?

18

A. Yes.

19

Q. And you had the chance to become involved in this
20 case on September 28th, 2010?

21

A. Yes.

22

Q. How did you become involved?

23

A. I was secondary on call and received a call from

24

Detective Martin advised me we had a shooting victim at

25

Carolinas Medical Main and responded there to meet and

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON

-523-

1 interviewed him.

2 Q. Do you know about what time you were called out?

3 A. It was around eleven thirty.

4 Q. Okay.

5 A. But I arrived a few minutes after midnight.

6 Q. So you got to Carolinas Medical Center just after
7 midnight?

8 A. Yes.

9 Q. And when you got there what was your first order of
10 business?

11 A. Located the victim Erick Harris in the emergency
12 room.

13 Spoke with a nurse and got his identification and then
14 tried - and then made contact and interviewed the victim.

15 Q. All right. Were they trying to treat him at that
16 point in time?

17 A. They were. They were working on him, I only had
18 about ten minutes in the emergency room trying to get
19 information from Mr. Harris. He was - They had doctors
20 and nurses; it was a pretty hectic situation in getting
21 information from him.

22 Q. All right.

23 A. I would ask him questions he'd respond. He was
24 bleeding from his injury he received on his mouth. Every
25 time he would answer me it was bleeding spurting blood

1 from his mouth.

2 Q. . Okay. So spurting blood as he began to talk to you?

3 A. Yes.

4 Q. And you said every time he talked to you he -

5 A. Maybe he was having blood coming from his injury that
6 he received.

7 Q. Okay. And was he still willing to try to cooperate
8 with you at that time?

9 A. Yes.

10 Q. So you had mentioned about ten minutes, what if
11 anything stopped you from continuing to talk to him with
12 him at that time?

13 A. The doctors and the medical staff said they were
14 taking him to - up to ICU and I could try to make contact
15 with him later. For medical purposes they took him out of
16 the emergency room.

17 Q. All right. And did you stick around to try to have
18 contact with him a little later?

19 A. I did. I probably within thirty to forty minutes
20 I went to the ICU and continued a series of questions for
21 probably another ten or fifteen minutes there.

22 Q. All right. And did he continue to talk to you and
23 cooperate at that time?

24 A. He did.

25 Q. And at that point was he starting to receive

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON

-525-

1 medication?

2 A. He was.

3 Q. Did you then - Did you stay long at that point or
4 what did you do after that?

5 A. I got as much information as I could at that point.

6 He received medication and then I left shortly after.

7 Q. All right. And where did you go next?

8 A. I went back down to the emergency room later and
9 collected - There was the nurse there that collected the
10 clothing and several pieces of evidence.

11 Q. All right. And so you collected the clothing from
12 the nurse at that point?

13 A. Yes. It was a RN Cynthia Wallace.

14 Q. And she had taken them from Erick Harris; is that
15 correct?

16 A. Yes.

17 Q. And I show you State's Exhibit Number Ninety, Number
18 One Twenty-eight and Number One Twenty-nine.

19 If you'll look first at Number Ninety for me.

20 If you could tell me what that is?

21 A. Mr. Harris' shoe.

22 Q. All right. And did you collect that from the nurse
23 at that time?

24 A. Yes.

25 Q. And did you - Is it still in the bag that you

1 collected it in and then transferred it to the bag that
2 it's in?

3 A. Yes, sir.

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

5 A. No.

6 SOLICITOR THOMPSON: Your Honor, I'd ask to enter
7 State's Exhibit Number Ninety into evidence at this time.

8 MR. HANCOCK: Without objection.

9 THE COURT: In without objection.

10 ((WHEREUPON, STATE'S EXHIBIT NUMBER NINETY,
11 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.))

12 BY SOLICITOR THOMPSON:

13 Q. Thank you. You can put that back.

14 If you'd look at Number One Twenty-eight and One
15 Twenty-nine and tell me what the two of those are.

16 A. Sock.

17 Q. Okay. Which one is that, the one with the number - -

18 A. One twenty-eight.

19 Q. One twenty-eight? Then that's the sock that Erick
20 Harris - That was recovered at the time from the hospital?

21 A. Yes.

22 Q. All right. And then the other one if you'll tell me
23 what that is? Were they packaged separately like that
24 when you received them?

25 A. Yes, sir. One twenty-nine.

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON

-527-

1 Q. Is that another sock?

2 A. Yes.

3 Q. Okay. Are they substantially in the same condition
4 as when you retrieved them?

5 A. Yes.

6 Q. All right.

7 SOLICITOR THOMPSON: Your Honor, I'd ask then that
8 these be entered into evidence at this time, One Twenty-
9 eight and One Twenty-nine.

10 MR. HANCOCK: NO objection, Your Honor.

11 THE COURT: In without objection.

12 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE TWENTY-EIGHT
13 AND ONE TWENTY-NINE, IDENTIFIED AND MARKED, RECEIVED INTO
14 EVIDENCE.)

15 Q. On that One twenty-nine, Detective Moore, if you
16 would pull that out one more time.

17 Q. Is that different from the other sock in any way?

18 A. Yes. Mud stains, dirt stains.

19 Q. Okay. On the bottom of the sock?

20 A. Yes, sir.

21 Q. Okay. Thank you. What was your next order of
22 business, Detective?

23 A. I took - received the evidence and then I gave them
24 to FSU, Kevin Sullivan, and then I went back to the scene
25 to see what else I could do for the investigation.

1 Q. All right. And how long did you stay at the scene at
2 that point in time?

3 A. I was back there briefly and in the morning we went
4 back. Several detectives we were searching for the murder
5 weapon. I was in the woods looking.

6 Q. Okay. So at that time had the gun been recovered
7 when you went back later in the morning?

8 A. It was there. When I went back the second time it
9 was recovered while I was there. I was in the woods.

10 Q. Okay. When you arrived there had it been recovered?

11 A. No, sir.

12 Q. And so what was the purpose of you and other
13 detectives being there at the time?

14 A. I was to see if there was anything else I could do.
15 We had an ongoing investigation.

16 Q. All right. I guess I'm relating it back to the gun.
17 Were you all charged with looking for that gun in any way?

18 A. Yes.

19 Q. Did you - Tell me what you did.

20 A. I was in the woods with several other detectives on
21 the outside of the property searching for the murder
22 weapon.

23 Q. All right. And it was mentioned it was found while
24 you were there. Is that when Detective George or I'm
25 sorry, Investigator George of the FSU found it?

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON

-529-

1 A. That's correct.

2 Q. After that where did you go? What did you do at
3 that point?

4 A. I went back. The next day I went back to the
5 hospital.

6 Q. Would that be September 30th?

7 A. Yes.

8 Q. 2010?

9 A. Yes.

10 Q. Okay. And what was your purpose to go back to the
11 hospital at that time?

12 A. We had part of the investigation formulated some
13 more questions for clarification that I was gonna ask Mr.
14 Harris the victim. Also --

15 Q. Well I'll tell you, before I get into that let me
16 ask you and show you State's Exhibit Number One twenty-
17 six.

18 If you can tell me what that is?

19 A. As I went back that afternoon and met with the
20 operating room nurse, Lisa - RN Lisa Karr and retrieved
21 the bullet that was taken from Harris' side that had was
22 removed.

23 Q. Okay. So the bullet that was removed basically
24 from his face?

25 A. Yes.

1 Q. All right. And you retrieved that again from which
2 nurse?

3 A. Lisa Karr.

4 Q. And when you received that what did you do with it?

5 A. Packaged it and placed it in York County evidence.

6 Q. All right. Was it ultimately sent to SLED for
7 testing?

8 A. Yes it was.

9 Q. All right.

10 SOLICITOR THOMPSON: Your Honor, I'd ask to enter
11 that into evidence at this time as State's Exhibit Number
12 One twenty-six.

13 MR. HANCOCK: Without objection, Your Honor.

14 THE COURT: In without objection.

15 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE TWENTY-SIX,
16 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

17 BY SOLICITOR THOMPSON:

18 Q. All right, now, what day was that that you collected
19 that again?

20 A. This was on the 30th.

21 Q. All right. And what time?

22 A. 14:20.

23 Q. All right. Which is what time? That's military
24 time. What time was it --

25 A. 2:20.

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON

-531-

1 Q. 2:20? In the afternoon?

2 A. Yes, sir.

3 Q. Okay. Now after you collected that and took it
4 back, what other contact did you have with Erick Harris?

5 A. It was the next day on October the 1st ---

6 Q. Okay.

7 A. --- was the next time we went to actually do the
8 followup interview with Mr. Harris.

9 Q. All right. And did you do that?

10 A. Yes I did.

11 Q. Where did you do that?

12 A. He was still at CMC Main.

13 Q. All right.

14 A. Recovering from his injuries.

15 Q. And did he continue to cooperate with you at that
16 time?

17 A. Yes he did.

18 Q. And did he answer the further questions you had?

19 A. Yes.

20 Q. And as well did you do anything else with Erick
21 Harris at that time?

22 A. Collected some buccle swabs for DNA purposes.

23 Q. Okay. And would you describe how do you collect
24 the buccle swabs?

25 A. We swab the inside of his mouth and seal 'em back.

1 and place 'em back in the container and then we package
2 'em.

3 Q. And I show you State's Exhibit Number Twenty-seven.

4 Are those the buccle swabs that you took from Erick
5 Harris?

6 A. Yes they are.

7 Q. All right. I'm sorry, it's One Twenty-seven. I
8 said have said Twenty-seven. And after you collected
9 those did you seal 'em up and send them to put into
10 evidence?

11 A. Placed 'em into evidence and they were forwarded.

12 Q. And were they ultimately sent to SLED for testing?

13 A. Yes they were.

14 SOLICITOR THOMPSON: Your Honor, I'd ask to enter
15 State's Exhibit Number One Twenty-seven at this time.

16 MR. HANCOCK: In without objection, Your Honor.

17 THE COURT: In without objection.

18 ((WHEREUPON, STATE'S EXHIBIT NUMBER ONE TWENTY-SEVEN,
19 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.))

20 BY SOLICITOR THOMPSON:

21 Q. Now, Detective, is it standard in a case in which
22 someone is shot to them if possible to attempt a GSR
23 Kit or a gunshot residue kit?

24 A. At times yes. But this situation Mr. Harris was -
25 hands were covered with blood.

DETECTIVE FRED MOORE: DIRECT BY SOLICITOR THOMPSON
OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-533-

1 Q. I'm sorry. I couldn't hear you.

2 A. His hands were covered with blood so we weren't
3 able to.

4 Q. How does that affect your ability to take the test?

5 A. Not able to do GSR when the hands are covered with
6 blood.

7 Q. Okay. Is that part of I guess basically the rules
8 and regulations for taking - -

9 A. Yes. I mean at the time of the investigation there
10 was nothing suggesting Mr. Harris had fired a weapon also.

11 Q. Okay. Thank you.

12 SOLICITOR THOMPSON: No further questions.

13 MR. HANCOCK: I have no questions, Your Honor.

14 THE COURT: Thank you. We appreciate your time.
15 You can be excused.

16 (WITNESS LEAVING WITNESS STAND.)

17 THE COURT: Call your next witness.

18 SOLICITOR THOMPSON: May it please the Court, Your
19 Honor. The State would call Chris Bomar.

20 MADAM CLERK: Raise your right hand, place your left
21 hand on the Bible.

22 (WHEREUPON, CHRIS BOMAR, BEING
23 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

24 DIRECT EXAMINATION

25 OFFICER CHRIS BOMAR BY SOLICITOR THOMPSON:

1 Q. Officer Bomar, good afternoon.

2 A. Good afternoon.

3 Q. If you'd do me a favor and give your full name for
4 the court reporter please.

5 A. My name is Christopher Lowell Bomar.

6 Q. And where do you work?

7 A. I work for the York County Sheriff's Office.

8 Q. How long have you worked there?

9 A. I've worked for the York County Sheriff's Office for
10 thirteen years.

11 Q. What are some of your duties there at the sheriff's
12 department?

13 A. I'm currently assigned to the Violent Crimes Unit
14 but in the Violent Crimes Unit I am also have to analyze
15 computers, cell phones, and other digital devices.

16 Q. And tell me, what do you mean by analyze them? What
17 do you do with them?

18 A. What we do is we try to retrieve data or any
19 information digitally stored on these devices for any
20 evidentiary purposes.

21 Q. And do you have special training to retrieve data
22 from cell phones?

23 A. I have.

24 Q. What type of training do you have in that?

25 A. For the past five and a half years I've attended

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-535-

1 training with Cellebrite, with Mpe which is access data.
2 These are companies that produce either the software or
3 the hardware for these particular devices that go into 'em
4 to retrieve 'em. I've had other training dealing with
5 ICAC which is Internet Crimes Against Children Task Force
6 which is mostly where a lot of these devices are found in
7 type of solicitation cases.

8 Q. Okay. How many phones have you been able to
9 actually distract information from that you've worked
10 with?

11 A. Somewhere around close to a hundred and seventy,
12 seventy-two in the last four years.

13 Q. All right. And is that become a part as a normal
14 part of any investigation at times?

15 A. Yes it does.

16 Q. And have you testified in court as an expert in
17 examining and retrieving of evidence from cell phones?

18 A. I have.

19 SOLICITOR THOMPSON: Your Honor, I tender Officer
20 Bomar as an expert in the examination and retrieval of
21 data from cell phones.

22 MR. HANCOCK: Without objection, Your Honor.

23 THE COURT: I find he is qualified.

24 BY SOLICITOR THOMPSON:

25 Q. Officer Bomar, would you tell me, in this case did

1 you have an opportunity to examine some cell phones?

2 A. I did.

3 Q. All right. Let's start out if you would with the
4 Pantech Ap flip phone that you examined and if you'll tell
5 me where that phone was recovered from?

6 A. This Pantech cell phone - I completed this forensic
7 back in October 11 of 2010. This phone according to the
8 evidence form was taken from the pocket of Mr. Varnadore.

9 Q. Okay. And with this particular phone I'd just ask
10 a few questions about it. When was the last call made by
11 Mr. Varnadore on that phone or by whoever possessed that
12 phone?

13 A. The last call received was by a Mr. Scott as is in
14 his contact around September 28th of 2010 around 4:07 p.m.

15 Q. Okay. Did there appear to be any other calls or text
16 to or from that phone at that time?

17 A. The only things that were noted on the phone were
18 maybe some people calling in and it's going directly to
19 voice mail and some miscalls.

20 Q. Okay. And can you tell me, in his contacts does
21 there appear to be any contact that linked the defendant
22 Steven Spagnoli?

23 A. There is a contact in his - on his cell phone which
24 is specified as Spag, S-p-a-g, with his cell phone number.

25 Q. All right. And could you tell us that cell phone

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-537-

1 number please?

2 A. That cell phone number is

3 Q. All right. Now tell me, what did you have
4 to do to examine this particular phone?

5 A. Well when we examine cell phones we first try to do
6 what we call an automated process which we stick it to a
7 device, our device that we use at the sheriff's office is
8 Cellebrite. Cellebrite is a named brand of a company that
9 manufactures this device that goes into the phone and
10 tries to extract the digital information stored on it.

11 When I attached the Cellebrite to it it did not
12 recognize the cell phone which is common because not ever
13 device can access every cell phone that's out there
14 because of proprietary - what we call proprietary
15 programing on the phone.

16 Q. All right.

17 A. So I then had to go back to what I call manual mode
18 so I then had to take digital pictures with a camera so I
19 just basically flipped through the contacts on the cell
20 phone, take photographs, and anything that the search
21 warrant specified me to grab.

22 Q. All right. Did you do that on this phone?

23 A. I did.

24 Q. Okay. One other thing, I believe you also examined
25 a cell phone that is associated with Mr. Richard Leach?

1 A. I did.

2 Q. And did that contact with Mr. Richard Leach or his
3 cell phone number show up in any of Mr. Varnadore's
4 contacts?

5 A. I did not see any contact with Mr. Leach in Mr.
6 Varnadore's phone.

7 Q. Now, going to Mr. Leach's phone then if you would.
8 Tell me what type of phone that is.

9 A. This phone was an HTC Touch Screen cell phone; had
10 a T-Mobile, what we call a SIM card, in there so we
11 believed it was with T-Mobile. And also had one SD memory
12 card.

13 Q. All right. And where do you have this phone as
14 being recovered from?

15 A. This was recovered I believe in the vehicle of the
16 deceased.

17 Q. All right. And what is the phone number to this
18 particular phone?

19 A. This phone number I have is

20 Q. All right. And in examining this phone what did you
21 have to do to distract information from it?

22 A. As stated before we tried to use the automated
23 process using Cellebrite and Cellebrite did recognize this
24 phone and we were able to get a generated HTML report
25 which grabbed - Well Cellebrite was able to - - -

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-539-

1 Q. What is a HTML report? I guess is - -

2 A. Yeah. HTML is the basic programing code for what
3 you get when you go web - surf the web. It's basically
4 the coding that you are able to view web sites. But they
5 put it also into a report form so that way you have to use
6 the internet browser to be able to review the report.

7 And this report was able to get the contacts, text
8 messages, call logs, and any images stored on the phone.

9 Q. All right. And so were you able to print that out
10 and have something to look at in regard to what calls were
11 made and received in this phone?

12 A. Correct. Once it's printed out then I give it to
13 the investigator to look for any kind of information that
14 they may need for their case.

15 Q. All right. Well let's first start with the contacts
16 in that phone. Were you able to retrieve contacts out of
17 that phone?

18 A. I was.

19 Q. Okay. And in the contacts were you able to find
20 anything that linked a contact with the defendant Steven
21 Spagnoli?

22 A. In Mr. Leach's phone there was a contact under
23 Steve and it had the phone number of stored
24 in his contact.

25 Q. All right. And I believe that was the same number

1 stored under Spag in Mr.?

2 A. Varnadore's phone number.

3 Q. Varnadore's phone? Okay. Now as well within those
4 contacts, was there one for someone named Blonde?

5 A. There was. There was a contacts with Blondie spelled
6 B-l-o-n-d-I-e.

7 Q. All right.

8 A. Phone number of

9 Q. Okay. Now in this particular phone how far
10 was it - did it actually go back? Were you able to
11 retrieve far back within this phone?

12 A. On this phone it had a very limited amount of
13 space for call logs so the call logs would only go back to
14 for incoming calls we only got a record of going back to
15 September 28th of 2010 around 6:41.

16 Q. All right.

17 A. And that's in the morning.

18 Q. All right. Now when you look at these phones in
19 particular when you look at this phone, do you try to
20 verify the time that the phone keeps?

21 A. When we turn the phone on the first process we do is
22 we photograph what we're examining so that way we can tie
23 it to court purposes. Then we'll turn the phone on and
24 then make sure that the phone is actually keeping accurate
25 time. So we'll photograph that and in this particular

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-541-

1 instance this phone was twelve hours ahead of time ---

2 Q. All right.

3 A. --- when we photographed the front of the screen.

4 Q. So when this phone said a certain time you actually
5 have to subtract twelve hours from it?

6 A. Subtract twelve hours from the date and time that is
7 on the call logs.

8 Q. And so it's a half a day fast?

9 A. That's correct.

10 Q. Okay. Now in giving the times to us now I'm gonna
11 ask you if you would to go ahead and convert those for us
12 so we know the actual times that we're discussing.

13 A. Okay.

14 Q. We don't have to convert it back to twelve hours.

15 Can you tell me in the context obviously you didn't
16 go to far back with what happened the day of the 28th,
17 earlier that day. As you told us from incoming calls were
18 there any incoming calls that were related to the
19 defendant Steven Spagnoli?

20 A. There is one for the contact Steve on September 28th
21 of 2010 around 9:56 in the evening.

22 Q. Okay. And does it tell the duration of that call?

23 A. It says it was thirty-seven seconds.

24 Q. All right. And does it show whether the call was
25 coming into that phone or coming out of that phone?

1 A. This was under incoming.

2 Q. All right. So the call would have been from?

3 A. It would be coming from Steve to Mr. Leach.

4 Q. To Mr. Leach. Okay. Was there also a call a
5 little earlier than that?

6 A. There was. There was another phone call on September
7 28th around 9:20 in the evening for forty-four seconds.

8 Q. And was that coming in from Mr. --

9 A. That was also being called from Mr. - under the
10 contact Steve to Mr. Leach.

11 Q. Okay. So far we have those two calls, 9:20 and
12 9:56. Correct?

13 A. 9:58 and - Excuse me. Yeah, 9:56 and 9:20.

14 Q. All right. Now that's what you have as far as the
15 incoming calls. Are there any outgoing calls that you see
16 going out of Mr. Leach's phone to the defendant Mr.
17 Spagnoli?

18 A. There is. There is an outgoing phone call on
19 September 28th around 10:30 p.m. for fifty-three seconds.
20 And that's going from Mr. Leach to the contact Steve.

21 Q. All right. So at 10:30 p.m. that evening the 28th.
22 And how long did that last again?

23 A. Fifty-three seconds.

24 Q. Fifty-three seconds. Are there any others?

25 A. There's one prior to that time around 10:30 and

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-543-

1 the duration was just one second so it looks like maybe
2 called and either somebody hung up. It was just a quick
3 connect.

4 Q. All right. And then immediately the call or the
5 call that came after that?

6 A. Yes. And then on September 28th around 10:14 p.m.
7 another call is going out to the contact Steve and that
8 was for a minute and twenty-three seconds.

9 Q. All right. In looking through that were there any
10 other call that you can see that as far as Mr. Leach's
11 phone goes does it record any other calls to or from Mr.
12 Spagnoli?

13 A. I have no other record except for a text message
14 that was sent from - It was an incoming text message sent
15 from the contact Steve to Mr. Leach. Its says "What's
16 up?" Or it says "What up?" W-h-a-t, u-p-e question mark.
17 And that was sent on April 14th of 2010, 1:43 Greenwich
18 time.

19 Q. All right. And what is Greenwich time?

20 A. Well that's basically subtract five hours from the
21 time that you are here.

22 Q. Okay. So as far back as April there's some - at
23 least one text in there?

24 A. There's one text message.

25 Q. And its coming from which phone?

1 A. It's in incoming text message from contact Steve.

2 Q. And that's the number you've already given for
3 Steve. Correct?

4 A. That's correct.

5 Q. Now, I believe that covers Mr. Leach's phone at this
6 point. If you'll visit now to the phone or phones that
7 you had related to Mr. Spagnoli. First if we could I
8 believe - Is there two of those?

9 A. There are two phones that were associated to Mr.
10 Spagnoli. The had both the same phone numbers attached to
11 the cell phones. One was an LG cell phone. I believe
12 this was found in the back bedroom.

13 Q. All right.

14 A. And then there is a Motorola cell phone I believe
15 which was found on the arm chair, the arm part of the
16 chair, there in the living room area.

17 Q. Okay. Let's address the one in the back bedroom
18 first.

19 A. Okay.

20 Q Were you able to run a report on that or be able to
21 examine that phone?

22 A. I was able to examine this one and we was able to
23 run a Cellebrite report on that phone.

24 Q. All right. And what if anything did that Cellebrite
25 report have in it regarding --

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-545-

1 A. On the LG phone I had a contact for R and under R
2 had Mr. Leach's number from the cell phone that we
3 examined previously,

4 Q. All right. And that is the phone number I believe
5 you just said you read off of --

6 A. Off of Mr. Leach's phone, that's correct.

7 Q. And what is the title of that contact?

8 A. R.

9 Q. And how far did that phone - Could you tell from
10 the things that you recovered when that phone appeared to
11 last be used?

12 A. This one appeared to be last used back in April of
13 2010.

14 Q. Okay. Now you mentioned it has the same number as
15 the other phone that's recovered from Mr. Spagnoli's
16 residence?

17 A. Correct.

18 Q. So does it appear that this phone stopped use in
19 April of 2010?

20 A. We don't have any record of anything being used on
21 the phone past April.

22 Q. Okay. And so let's go to the next phone, the one you
23 said you recovered from the arm of the chair in the living
24 room. Is that also the same number that you had for Mr.
25 Spagnoli?

1 A. It is. It also registers as 803-280-9726.

2 Q. Okay.

3 A. And this is the Motorola.

4 Q. All right. And did this phone appear to be in
5 working order when you saw it?

6 A. It was except for a cracked screen on the front but
7 did not effect the readout of the cell phone because you
8 can flip it and there's also an inside screen.

9 Q. Okay. And when you looked at this phone were you
10 able to run a report on it?

11 A. We ran a report on Cellebrite and here again you
12 deal with limitations of what a device would be able to
13 do. We ran Cellebrite that says this phone was supported
14 by Cellebrite but when we ran it we got the contact list
15 in outgoing and incoming calls but it was missing the
16 dates and times of when those calls were being made. I
17 felt that that was very important so then I then had to go
18 back and manually photograph those same calls, calls
19 coming in and going out, so that way it would pick up the
20 dates and times to go back with the report.

21 Q. Tell me what you do to photograph a call. What do
22 you mean by that?

23 A. What I will do is I will take a digital camera and
24 basically look in the phone and go under call logs. And
25 most phones will keep your all your call logs in one area

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-547-

1 so to show all your incoming missed without outgoing phone
2 calls. You can separate 'em by either recent phone calls
3 or you can caterogize 'em as missed phone calls but in
4 this scenario we just through and just went through all
5 the phone calls that were on there and just started
6 photographing 'em.

7 Q. Okay.

8 A. And then you can open up each individual one and it
9 would even give you more details such as duration and
10 such.

11 Q. All right. So you opened the phone and literally
12 just started taking pictures?

13 A. Just start taking pictures.

14 Q. And scroll down and continue to --

15 A. Continue to take pictures until we're done with
16 recording.

17 Q. All right. And did you do that with this phone?

18 A. I did.

19 Q. So were you able to determine the times and
20 durations and origins of these calls?

21 A. I did.

22 Q. And specifically if you will look at a couple of
23 things. First of all any contacts on the 28th of
24 September, 2010 that Mr. Spagnoli has that seem to link
25 with Mr. Leach's phone?

1 A. There was a phone call to R around 10:33 p.m.
2 September, 28th, 2010. And this phone was actually
3 recording the correct date and time. We checked that when
4 we opened up the screen as well.

5 Q. All right.

6 A. And that call - Then I have to go back like I said
7 you either open up the call and get the duration and then
8 you have to open up another screen to find out whether its
9 an incoming or outgoing call. And that call was an
10 incoming call coming from Mr. Leach.

11 Q. And that phone listed it at 10:33?

12 A. 10:33 p.m., September 28th.

13 Q. For how long was the duration?

14 A. The duration on that one was fifty-one seconds.

15 Q. And does that match up with any of the call logs on
16 Mr. Leach's phone?

17 A. It does. It matches up exactly on Mr. Leach's call
18 logs.

19 Q. Okay. And when is the next call that you see on that
20 call log?

21 A. The next call comes in at 10:32 September 28th and
22 that was just the hit and miss call that we got for one
23 second on Mr. Leach's but on Mr. Spagnoli's phone shows
24 zero seconds.

25 Q. All right. And what is the next one that you see?

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-549-

1 A. The next phone call we get is 10:17 p.m. September
2 28th, 2010 for a minute and twenty-one seconds. And that
3 is a incoming call. Excuse me. Yes, a incoming call
4 coming from Mr. Leach.

5 Q. Okay. Does it match up with one of the calls on
6 Mr. Leach's phone?

7 A. It does.

8 Q. When is the next one you see?

9 A. The next phone call coming from Mr. Leach is at
10 9:58 p.m. September 28th, 2010 for fifty-four seconds.
11 This is an actual call coming from Mr. Spagnoli's phone to
12 Mr. Leach's phone so it's an outgoing phone call.

13 Q. And does that match up with what you found on Mr.
14 Leach's phone as well?

15 A. It does.

16 Q. What is the next one you see?

17 A. The next one is for September 28th around 9:22 p.m.
18 for fifty-nine seconds. This phone call -. I have to go
19 back. This was an outgoing call to Mr. Leach.

20 Q. All right. And the duration?

21 A. Duration on that one was fifty-nine seconds.

22 Q. Does that match up with a phone call from Mr. Leach's
23 phone as well?

24 A. It does.

25 Q. Now are these all that you see on the 28th of

1 September, 2010 that relate to these phones?

2 A. Except for other people yes.

3 Q. Right. And then so all in all on the 28th what is
4 the total number of call that went back and forth -

5 A. Except for the one missed call you have one, two,
6 three, four, five.

7 Q. I'm talking about the 28th.

8 A. Right.

9 Q. Okay.

10 A. The 28th you have a total of one, two, three, four,
11 five phone calls.

12 Q. Okay.

13 A. Including the missed phone.

14 Q. Including the missed phone call. All right.

15 And just to kind of clarify, two calls from Mr.
16 Spagnoli's phone to Mr. Leach's phone, one at 9:22 and one
17 at 9:58 p.m. according to Mr. Spagnoli's phone?

18 A. Now what was that question? I'm sorry.

19 Q. I just wanted to clarify and kind of have in order
20 these calls. We go from the earliest to the latest and
21 just tell us the times on - without the missed call - the
22 four calls that connected?

23 A. Okay. The calls that connected is 9:22 p.m., and
24 then - I have to go back to my list. And then 9:58 p.m.,
25 10:17 p.m., and you have a missed call and then another

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-551-

1 connected call was at 10:33 p.m.

2 Q. Okay.

3 A. And that was the last.

4 Q. So that's the total calls on the 28th. Correct?

5 A. Correct.

6 Q. Now, were you also able to find any text messages for
7 the time period that we're talking about here from around
8 9:22 to the 10:33 time period on Mr. Spagnoli's phone?

9 A. I was.

10 Q. And what if anything or to whom did it say those
11 text messages were addressed or coming from?

12 A. This text messages were being sent to a contact
13 called Bradley.

14 Q. All right. And what is the number for Bradley?

15 A. Bradley's - I have to go back. Bradley's cell phone
16 number is . . .

17 Q. All right. And was his text messages in sent
18 messages or in box?

19 A. These were sent text messages.

20 Q. Do they appear to have any reply to them?

21 A. None that I can tell.

22 Q. Okay. And what were the times of the text messages
23 and what did the text messages say?

24 A. Okay. You want to go from the earliest to the
25 latest?

1 Q. Yes, please.

2 A. Okay. Hold on one second. Okay, the earliest text
3 message that was sent was September 28th, 10:20 p.m., sent
4 to Bradley and it says "Yo, cum here." And its spelled
5 comma c-u-m.

6 Q. . Okay.

7 A. H-e-r-e.

8 Q. All right.

9 A. The next text message was sent was at 10:23 on
10 September 28th of 2010 and it says again, "Yo, c-u-m here.
11 Yo, cum here." And then at 10:27 p.m. we get another text
12 message to Bradley saying, "Yo, u there?" Yo, Y-o, letter
13 u then t-h-e-r-e. And then the last text message sent
14 was at 10:30 p.m., September 28th saying "Yo, u there?"

15 Q. All right. And now those time frames fall I believe
16 in between the last two calls that we had just talked
17 about; is that correct, the two telephone calls?

18 A. That's correct.

19 Q. Is the last - When is the last telephone call from
20 Mr. Leach's phone to Mr. Spagnoli's?

21 A. The last phone call to Mr. Leach or the last time
22 they communicated was 10:33 p.m.

23 Q. All right. And these would have come right after
24 I believe the 10:17 call; is that correct?

25 A. That's correct.

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-553-

1 Q. Now, if we could are there other phone calls from
2 different days that are listed on Mr. Spagnoli's phone
3 that connect with Mr. Leach's phone?

4 A. There are.

5 Q. And can you tell me, let's start if you would with
6 the ones farthest away, how far back does this phone
7 actually have messages that you can retrieve that connect
8 these two phones?

9 A. The last recorded date to Mr. Leach I believe is
10 gonna be September 26 of 2010 is what I have on my list
11 right here.

12 Q. All right. September 26. So I'm gonna have you now
13 if you would go through kind of in chronological order
14 from the lowest time to the highest with calls that you
15 have logged in on the 26th of September. But right before
16 you do that if you'll tell me in the information that you
17 retrieved and what you're looking at, how do you tell on
18 this phone whether it's an incoming call and outgoing call
19 or a missed call.

20 A. Okay. You'll notice on the screen the photographs,
21 if it has an X in a box by the name it means it was a
22 missed call. If you have a blue arrow going down means
23 that it's a call going out. And then you have a green
24 arrow going to the very far up then it's an incoming call.

25 Q. So let me get this straight. The X means missed

1 call?

2 A. Missed call.

3 Q. The arrow coming down is an incoming call; is that
4 correct?

5 A. What's that?

6 Q. The arrow coming down is an incoming call?

7 A. That is correct?

8 q. And the arrow going up and out is the outgoing call?

9 A. The green arrow going out is outgoin.

10 Q. Okay. So we can remember it going down as in up as
11 out.

12 A. Blue is going out. I mean coming in. And green's
13 going out.

14 Q. Okay.

15 A. It's colored coded on the actual phone itself.

16 Q. But also the direction?

17 A. The direction too.

18 Q. Okay.

19 A. So you got one going down and one going out.

20 Q. Down in, up out. Is that right?

21 A. That's correct.

22 Q. Okay.

23 A. When its pointed this way its going out. When its
24 coming down it's coming in.

25 Q. Now going back then again to the 26th of September of

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-555-

1 2010, if you'll go ahead and tell us the phone calls made
2 during that period of time tell us the duration of those
3 calls and whether they were going in or out.

4 A. All right. This is going to be sort of out of
5 chronological order on my sheet right here so I'll just
6 have to - The earliest one I have recorded is September
7 26, 2010 at 9:48 p.m. and it's a outgoing call.

8 Q. Okay. And it's from Mr. Spagnoli to who?

9 A. To Mr. - Well the contact is R which we specify as
10 Mr. Leach.

11 Q. Okay. And how long is the duration of that call?

12 A. All right. Let me go to my other call log. Let's
13 see September 14; that was thirty-one seconds.

14 Q. All right. And when is the next call?

15 A. The next one is 10:05 p.m. to Mr. R on the 26th and
16 its an outgoing call again. And that one is for seven
17 seconds.

18 Q. All right. And when is the next one?

19 A. The next one is going to be 10:7 - Excuse me, 10:09
20 p.m. on September 26th as an outgoing phone call for
21 twenty-two seconds.

22 Q. All right. So that's three so far. When is the next
23 one?

24 A. The next one is 10:17 p.m. on the 26th also an
25 outgoing call to Mr. Leach for nineteen seconds.

1 Q. All right. That would be four. When is the next
2 call?

3 A. The next one I believe is gonna be 10:36 p.m. on the
4 26th, an outgoing call to Mr. Leach for fifty-three
5 seconds.

6 Q. All right. And that's five. When is the next one?

7 A. The next one I believe is 10:57 p.m. on the 26th.
8 It's an incoming call to Mr. Leach.

9 Q. An incoming call from Mr. Leach?

10 A. From Mr. Leach to Mr. Spagnoli's phone.

11 Q. Okay.

12 A. 10:57 p.m. And that's for a minute and thirty-eight
13 seconds.

14 Q. All right. That would be six I believe. Is there
15 any more calls on the 26th?

16 A. There is another one on 10:59 p.m. on the 26th as also
17 another incoming call. And it's at 10:59 p.m and it's for
18 two minutes and four seconds.

19 Q. All right. So that's from Mr. Leach to Mr. Spagnoli?

20 A. That's correct.

21 Q. All right. So that's a total of seven calls on
22 the 26th?

23 A. That's correct.

24 Q. I ask you to go to the 27th in the a.m. hours. Did
25 the calls continue?

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-557-

1 A. They do. You got another one coming in at 12:55
2 in the morning on the 27th. That one's for four minutes
3 and forty-seven seconds and that one is an outgoing call
4 to Mr. Leach.

5 Q. Okay. So from Mr. Spagnoli to Mr. Leach?

6 A. That's correct.

7 Q. For four minutes and forty-seven seconds?

8 A. Four minutes and forty-seven seconds.

9 Q. All right. And that's in the early morning of the
10 27th?

11 A. 12:55 in the morning on the 27th.

12 Q. All right. Does the call - the calls keep continuing
13 at that point?

14 A. It does. You have another one at 1:34 I believe a.m.
15 on the 27th. And I'm trying to - I think I got this thing
16 screened twice so I'm just trying to look at the - It's
17 an outgoing call and it looks like for thirty seconds.

18 Q. All right. I'm sorry, what time was that call again?

19 A. I'm sorry. I'm looking on the different - Yeah, I'm
20 sitting here going back to 1:15. Excuse me, I'm sorry. I
21 skipped a whole page.

22 Q. Okay.

23 A. That's 1:15 in the morning is an outgoing call to
24 Mr. Leach and that's for thirty seconds.

25 Q. All right. And does it continue then as well?

1 A. It does. You got another one at 1:16 in the morning
2 outgoing call to Mr. Leach for eighteen seconds.

3 Q. All right. And is there another one?

4 A. Then you have another one at 1:16 again an outgoing
5 call to Mr. Leach for twenty-six seconds at 1:16 in the
6 morning on the 27th.

7 Q. And do you have another one?

8 A. And then we have another outgoing call to Mr. Leach
9 at 1:29 in the morning and it's for twenty-six seconds.

10 Q. All right. And any more?

11 A. Then we have another one at 1:30 in the morning
12 September 27th and it's for thirty seconds.

13 Q. All right. More?

14 A. There's plenty more. We got another one at 1:30
15 again. Outgoing call to Mr. Leach on the 27th at 1:30
16 for nineteen seconds. And then another one at 1:32 in
17 the morning on September 27th of 2010 and that's for
18 twenty-nine seconds. And then another one at 1:34 in the
19 morning on September 27th for eighteen seconds which is an
20 outgoing phone call. These are all outgoing phone calls
21 at this point in time. Let me find my next page.

22 Then you got another one at 2:08 in the morning on
23 September 27th seconds[sic] another outgoing call and
24 that's for nineteen seconds.

25 Q. All right.

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-559-

1 A. And then you have another one at 2:09 in the morning,
2 outgoing call to Mr. Leach on September 27th and that's
3 for twenty-three seconds. And then you have - Let me find
4 another page.

5 Q. All right.

6 A. Got another one at 2:22 in the morning. It's an
7 outgoing call to Mr. Leach for twenty-four seconds. And
8 you got another one at 2:22 in the morning outgoing call
9 for sixteen seconds. You got another one on the 27th at
10 2:23 in the morning, outgoing call for eighteen seconds.
11 You got another phone call going to Mr. Leach on the 27th
12 at 2:28 in the morning for a minute and thirty-two
13 seconds. That's an outgoing phone call.

14 Q. All right.

15 A. And then on the 27th 2:38 again in the morning you
16 have another outgoing phone call for a minute and twenty-
17 four seconds. And then on the 27th at 2:43 in the morning
18 another outgoing call to Mr. Leach for fourteen seconds.
19 Then on the 27th around 2:44 in the morning another phone
20 call going out to Mr. Leach for two - Excuse me, 2:44 in
21 the morning which is six seconds.

22 Q. Okay.

23 A. And then another one at 2:27[sic] at 2:45 in the
24 morning, twenty-four seconds another outgoing call. Then
25 on the 27th around 2:53 in the morning - and I believe on

1 2:53 is a outgoing call for twenty-seven seconds.

2 Q. All right.

3 A. And then on 1:00 p.m. on the 27th -

4 Q. Before we go to that -

5 A. Okay.

6 Q. --- these ones on the a.m., the one at 2:53 is now
7 you're saying before we go to the afternoon.

8 A. That's correct.

9 Q. These are all early in the morning. That last call
10 2:53, was that to Mr. Leach or was that from Mr. Leach?

11 A. Hold on. That was from Mr. Leach.

12 Q. Okay. So in that series of calls on the morning of
13 the 27th, I believe that was the only one you testified to
14 was actually from Mr. Leach; is that correct?

15 A. That's correct, for twenty-seven seconds.

16 Q. All right. Now, before we go on if we could just
17 have a brief description, in your experience in retrieving
18 data from cell phones, these calls that are say seven
19 seconds, fifteen seconds, twenty-four seconds, what if
20 anything does that indicate to you? Does it mean that
21 someone has actually had a conversation or could it mean
22 something else?

23 A. Well it just means that the fifteen seconds, twelve
24 seconds, anything around there, sounds high or sounded
25 very short in nature and then they hang up.

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-561-

1 Q. All right. Does it mean that the other person
2 actually answered the phone or no?

3 A. Well yeah they have to answer the phone in order to
4 be able to have that connect time so there's that connect
5 time: Now if it's one second usually somebody will either
6 reject and it's usually a missed call. But anything in
7 the twelve seconds yeah there was a pickup and there was
8 some type of conversation, very short, very brief.

9 Q. Okay. Now you were mentioning as we go along that
10 you went to the afternoon. What calls appear in the
11 afternoon on the 27th of 2010?

12 A. On the - Okay, you have a phone call, the first one
13 we have in the afternoon is 1:01 p.m. and that is a missed
14 phone call. You just got zero seconds there for that one.

15 Q. All right.

16 A. You have another one at 1:02 p.m. another zero
17 seconds and a missed call. And then at 3:39 p.m. we have
18 another missed phone call.

19 Q. And are these missed phone calls are they coming from
20 Mr. Leach?

21 A. It has Xs so I can only tell you if it's coming or
22 going.

23 Q. Okay.

24 A. It just has an X by them so.

25 Q. All right.

1 A. My opinion though on that is that any time you have
2 a missed phone call it's gonna be an incoming phone call
3 coming to your phone though.

4 Q. All right.

5 A. Then on - let's see - back to 3:39 is a missed
6 phone call. 4:24 in the afternoon you got another missed
7 phone call coming in. 5:29 p.m. you got another missed
8 phone call coming in. On 7:18 p.m. you got another missed
9 phone call coming in.

10 Q. All right. And does that conclude the phone call
11 on the 27th?

12 A. It does.

13 Q. All right.

14 A. And then you get it back into the 20th.

15 Q. Okay. Now if you would there is one other thing
16 I'd like you to look at on this phone, and that is if
17 there is a contact for Sloan in the phone, Sloan
18 McConnell?

19 A. There is.

20 Q. And what is the phone number for the contact on
21 Sloan? Let me explain to the jury. Are the contacts
22 actually in order on the phone or they outside the order?

23 A. No. And there's - You don't know how many contacts
24 there are on that phone. There are - I got it recorded
25 three hundred contacts on this phone. The chances of me

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-563-

1 missing it too are -

2 Q. It'll be kind of around the middle of the stack.

3 A. What's that?

4 Q. Look kind of around in the middle of the stack.

5 (PAUSE.)

6 A. Oh, okay. It's actually Number Two Hundred and
7 Sixteen. It's

8 Q. All right. And if you look back to the contact I
9 believe on Mr. Leach's phone for Blondie. Is that the
10 same number list for Blondie?

11 A. It is.

12 Q. Now I noticed you're having to look back and forth
13 between two sets of pictures. Would you describe to the
14 jury why you're having to do that?

15 A. As far as the Motorola phone goes like I said when
16 you look at the screen it will show you a listing of all
17 the calls coming in and it tells you whether it's
18 outgoing, ingoing, or missed phone calls. It doesn't tell
19 you the duration of that phone call so you actually have
20 to click on that item, the outgoing, ingoing, or missed
21 phone call to get the further details.

22 So what I did was I went ahead and took photographs
23 of all the calls whether incoming, outgoing, missed phone
24 calls, then I had to go back and click on each phone call
25 and get the detailed report so that's why I'm having to go

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-564-

1 back and forth.

2 Q. So you're looking at the detail telling it's the time
3 and the length of the call and then having to look at
4 another.

5 A. Whether to find out if it's incoming or outgoing or
6 missed.

7 Q. Okay. I gotha. Now you printed out the entire
8 reports for both Mr. Spagnoli's phone that we just
9 discussed and the one off of the arm chair in the living
10 room.

11 A. That's correct.

12 Q. And the one that - to Mr. Leach from the console of
13 his vehicle; is that correct?

14 A. That's correct. And then the one that was in Mr.
15 Varnadore's possession.

16 Q. All right.

17 SOLICITOR THOMPSON: But specifically as to those
18 two, Your Honor, I'd like to number each of those reports
19 and enter them into evidence at this time if the defense
20 has any objection.

21 MR. HANCOCK: No objection, Your Honor.

22 THE COURT: In without objection.

23 BY SOLICITOR THOMPSON:

24 Q. And I believe you prepared the reports, the same ones
25 you handed to us earlier?

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON

-565-

1 A. That's correct.

2 Q. Okay. And so if I can number your reports State's
3 Exhibit Number One-thirty.

4 A. Okay. Hold on, let me organize this stuff.

5 Q. Okay.

6 A. Which one do you want to put - -

7 Q. If One Thirty would be Mr. Leach's phone please.

8 A. Mr. Leach's phone? That report.

9 Q. Okay. And then One Thirty-one would be Mr.
10 Spagnoli's phone from the arm chair.

11 A. From the arm chair. Okay. That would be that
12 report.

13 Q. Is that part of this?

14 A. Because we did both the phones at the same time.

15 Q. Okay.

16 A. I have - That's actually the summary of both reports
17 but their in two separate formats.

18 Q. All right. Then I'll tell you what, we'll put the
19 Summary with this one.

20 A. Okay.

21 SOLICITOR THOMPSON: If there is no objection to that
22 Mr. Hancock?

23 MR. HANCOCK: Without objection.

24 SOLICITOR THOMPSON: And just to make it clear we'll
25 go ahead, Number One Thirty-two the other, Mr. Spagnoli's

OFFICER CHRIS BOMAR: DIRECT BY SOLICITOR THOMPSON
CROSS BY MR. HANCOCK

-566-

1 phone and ask to enter that in at this time as well.

2 Is that all right, Mr. Hancock?

3 MR. HANCOCK: That's fine.

4 THE COURT: In without objection.

5 ((WHEREUPON, STATE'S EXHIBIT NUMBERS ONE THIRTY; ONE-
6 THIRTY-ONE, ONE THIRTY-TWO, IDENTIFIED AND MARKED,
7 RECEIVED INTO EVIDENCE.))

8 SOLICITOR THOMPSON: The Court's indulgence one
9 moment, Your Honor.

10 Q. And I believe the only other report you have up there
11 at this point is Mr. Varnadore's; is that correct?

12 A. That's correct.

13 Q. All right. Thank you.

14 SOLICITOR THOMPSON: I have no further questions at
15 this time.

16 MR. HANCOCK: May it please the Court.

17 CROSS EXAMINATION

18 CHRIS BOMAR BY MR. HANCOCK:

19 Q. Detective Bomar, this just tells you that this phone
20 was used; is that correct?

21 A. That's correct.

22 Q. It does not tell you who was using it?

23 A. That's correct.

24 Q. So you don't know who was using the phone to make
25 the phone call or received a phone call?

OFFICER CHRIS BOMAR: CROSS BY MR. HANCOCK
BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-567-

1 A. That's correct.

2 Q. That's in any of the three phones that you have
3 analyzed?

4 A. That's correct.

5 Q. Or was it four phones, excuse me, that you've
6 analyzed?

7 A. That's correct.

8 MR. HANCOCK: I have no further questions, Your
9 Honor.

10 SOLICITOR THOMPSON: Nothing further, Your Honor.

11 THE COURT: You can step down and be excused. We
12 appreciate your time.

13 (WITNESS LEAVING WITNESS STAND.)

14 THE COURT: Call your next witness.

15 SOLICITOR BRACKETT: The State would call Agent Betty
16 Butler.

17 MADAM CLERK: Raise your right hand, place your
18 left hand on the Bible.

19 (WHEREUPON, THE WITNESS
20 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

21 DIRECT EXAMINATION

22 BETTY BUTLER BY SOLICITOR BRACKETT:

23 Q. Good afternoon, ma'am. Would you please state your
24 full name and spell your last for the court reporter?

25 A. Good afternoon. Betty Walker Butler. B-u-t-l-e-r.

1 Q. And where are you employed, Ms. Butler?

2 A. I'm employed with the South Carolina Law Enforcement
3 Division also known as SLED.

4 Q. What do you do for SLED, ma'am?

5 A. I'm a forensic technician in the Evidence Processing
6 Unit in DNA.

7 Q. Okay. Can you explain to the jury a little bit about
8 what a forensic technician in the Evidence Processing Unit
9 in the DNA section does; what your job entails?

10 A. As a forensic technician I am looking for - do a
11 presumptive test for blood, semen, hairs, fibers, skin
12 cells, any biological fluids or anything that would be of
13 value to a particular case.

14 Q. All right. And all of those things that you just
15 listed, the hair, blood, semen, saliva, these sorts of
16 things all have DNA, skin cells?

17 A. Yes they do.

18 Q. So you're looking for those samples on different
19 pieces of evidence?

20 A. That's correct.

21 Q. All right. Were you sent some evidence in regards
22 to a case that was assigned the SLED Lab Number L1013305?

23 A. That's correct.

24 Q. All right. And what items of evidence were you sent?

25 A. I received Item 4 from Steven Spagnoli.

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-569-

1 Q. Spagnoli?

2 A. Spagnoli?

3 Q. S-p-a-g-n-o-l-I?

4 A. That's correct.

5 Q. All right. And what else?

6 A. That was jeans, a short sleeved t-shirt, belt,
7 underwears, and a pair of socks.

8 Q. Okay. And how did these items come to you? What -
9 How do you get items like that?

10 A. When evidence comes to me it comes into either
11 sealed, boxed, or heat sealed pouch.

12 Q. Okay. And who - I mean who within SLED sends the
13 evidence along to you?

14 A. I receive evidence from the evidence control unit.

15 That's people who take into evidence and log it into
16 our system for tracking purposes.

17 Q. Okay. And just for explanation purposes when a
18 sheriff's office for example brings evidence like this
19 they take it to one central place and they route it to
20 you?

21 A. That's correct.

22 Q. Okay. So the clothing of Mr. Spagnoli that you just
23 described was brought to you. Was any other evidence
24 brought to you in regards to that lab number?

25 A. Yes.

1 Q. What was that?

2 A. Items Number 5 which is clothing from Christopher
3 Varnadore?

4 Q. Varnadore.

5 A. Varnadore.

6 Q. Okay.

7 A. It was jeans, short sleeved t-shirt, belt, a pair
8 of sneakers.

9 Q. Okay. I am going to show you what has been marked -
10 find where it is - as State's Exhibit One Hundred in
11 evidence and I'd ask, ma'am, if you could, can you take a
12 look at the - this box and the item that's contained
13 within it and tell us if you recognize those items?

14 The bag is tearing.

15 A. Items Number 5, 5.1 through 5.4 and 6, I have my
16 initials, the lab number which is L1013305 and the date I
17 processed it and on each piece of evidence I have the item
18 number we choose for tracking purposes, my initials, and
19 the lab number again on each evidence.

20 Q. Okay. And do you recognize these generally as the
21 items that you processed at SLED?

22 A. Yes I do.

23 Q. Okay. Do each of them bear your initials and SLED
24 lab number?

25 A. Each bear my initials but the item number and the

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-571-

1 lab number.

2 Q. Okay. Slip them back in there. Can you put the
3 gloves on for a minute cause I have another box to show
4 you. What do you - When you get a package like that
5 containing clothes and you're ask to examine that item for
6 possible DNA sources, what do you do? Describe for the
7 jury the process that you go through to do your job.

8 A. When I first receive this particular box I make sure
9 that the box is completely sealed with the agency's
10 initials and date. Then I take the bag out and I use
11 clean white paper on the table, lay all the evidence out.
12 First I do a visual. In this case they were looking for
13 possible blood. I do a visual test where I look for any
14 possible blood. After I circle the evidence we do a
15 chemical test. It its possible blood that particular swab
16 would turn pink. That way I know to cut that particular
17 spot out and route it to DNA.

18 Q. All right. And did you do that with each of the
19 pieces of clothing that are contained in that box?

20 A. Yes I did.

21 Q. All right, ma'am. Now when you received that box,
22 you said you first checked to make sure that the seals are
23 intact and if the package was sealed. For example I note
24 that the bag inside the box has red evidence tape across
25 it and you inspect that to make sure that the evidence

1 tape which is on there is intact and so forth. Was the
2 evidence taken intact did it appear to be sealed and not
3 altered or tampered with?

4 A. That's correct. It wasn't tampered with. If it was
5 tampered with I would note it on my particular sheet.

6 Q. All right. And what is tamper evidence tape? That
7 red tape that's across there can you tell the jury what
8 that is?

9 A. Before I do anything I make sure this seal is here
10 where they have the submitting agencies initials and date
11 of process sealed. This has to make sure this is not
12 broken. And then I look at the next thing were if this
13 was broken I would have notated that this wasn't sealed
14 also.

15 Q. All right. So everything appeared to be in order?

16 A. Yes.

17 Q. All right. Now did you identify any blood or DNA
18 sources on the clothing in State's Exhibit One Hundred?

19 A. Yes I did.

20 Q. Can you tell the jury where and what you did with
21 those sections of clothing that you identified the blood
22 on?

23 A. My 5.1 which was the jeans I took three cuttings
24 which is 5.1.1; 5.1.2 and 5.1.3.

25 Q. And when you say a cutting, what exactly do you mean?

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-573-

1 A. As I stated before I do the visual test and then I
2 do a chemical test to make sure that it is possible blood.
3 If it is I circle it and I take a cutting out of each
4 spot. This is 5.1.2. This is another spot which I did a
5 representative sample. It turned positive by I take that
6 one. There was one at the leg 5.1.1. And the very back I
7 did another cutting 5.1.3.

8 Q. Okay. All right, and what do you do with these
9 cuttings after you remove them from the clothing? You cut
10 them out what do you do with them?

11 A. After I take the cuttings I'll put it into a gold
12 envelop where I initial, I seal it and then I initial and
13 I date that particular seal and that particular envelop
14 goes into a heat sealed pouch. With that particular pouch
15 I seal it up and I put my initials, date, and I also sign
16 the pack.

17 Q. All right.

18 A. To make sure it won't be tampered with.

19 Q. Okay. So we've seen exactly how you do it using the
20 jeans. So you don't have to pull everything out but can
21 you go through your notes and your report and tell us the
22 other items and articles of clothing contained and shoes
23 contained in State's Exhibit One Hundred what did you
24 analysis and inspection of those items of clothing yield
25 in the way of cuttings and samples?

1 A. 5.2 which is a pair of white socks; it was negative
2 for possible blood. 5.3 short sleeved t-shirt I made two
3 cuttings, 5.3.1, 5.3.2 for possible blood. And 5.4 which
4 is a belt and I made one swab which is 5.4.1.

5 Q. And can you just tell the jury briefly when you say
6 a swab, I think they're somewhat familiar with that; but
7 just to confirm what exactly you do.

8 A. A swab is I get a clean swab and I actually take the
9 belt, do a visual as I said before, swab it, put a
10 chemical test, if it turn pink that means I can take a
11 sample of it and I dry it out after I take the sample of
12 the possible blood I dry it out, and I put that particular
13 swab into a coin envelop and route it to DNA.

14 Q. All right. And that was Item 5.4 the belt?

15 A. Yes.

16 Q. Okay. And how about Item 6 the pair of sneakers
17 contained in State's Exhibit One Hundred?

18 A. Item 6 pair of sneakers, I took one swab from the
19 left foot which is 6.1 and one swab from the right foot
20 which is 6.2 and that was a representative sample that I
21 collected there.

22 Q. All right. And was that the extent of our
23 examinations of the items in State's Exhibit One Hundred?

24 A. That's correct.

25 Q. Okay. Move this out of the way.

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-575-

1 And turn your attention to State's Exhibit Ninety-
2 Nine. I ask you if you would take a look and see if you
3 recognize this box and the contents inside and the
4 contents to the bag inside.

5 A. Yes I do.

6 Q. And what are those items and how do you recognize
7 them?

8 A. These Item 4.1 which is a pair of jeans. Items 4.2-
9 Our Items 4.2 which is a short sleeved t-shirt. And 4.3
10 brown belt. 4.4 underwear. And 4.5 a pair of white
11 socks.

12 Q. Okay. When you received State's Exhibit Ninety-nine
13 at the lab there for analysis, was it likewise did you
14 inspect it for signs of tampering or signs that the tamper
15 tape or the seals had been damaged or obstructed in any
16 way?

17 A. That's correct.

18 Q. Did you note any issues in that regard?

19 A. No it wasn't tampered with.

20 Q. Okay. Now, did you process the clothing items you
21 just described in the same manner in which you processed
22 the items in State's Exhibit One Hundred?

23 A. That's correct, yes.

24 Q. All right. And if you could go through item by item
25 and tell the jury what you were able to identify as

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-576-

1 possible DNA sources on each of the items that you've
2 described.

3 A. Item 4.1 which is a pair of jeans, I took three
4 cuttings. Item 4.1.1; 4.1.2 and Item 4.1.3 from the pair
5 of jeans. Item 4. - Our Item 4.2 short sleeved t-shirt I
6 made one cutting. Item 4.2.1 the belt I made - took one
7 swab as I stated before the swab which is Item 4.3.1. The
8 underwear was no apparent blood stains so I didn't take
9 anything there. And Item 4.5 was negative areas for
10 possible blood.

11 Q. And that was a pair of socks?

12 A. That was a pair of socks.

13 Q. Okay. Now for the swabs and the cuttings that you
14 took in regards to the bloody items in State's Exhibit
15 Ninety-nine, what did you do with the cuttings and the
16 swabs again?

17 A. The cuttings I put into a gold coin envelop, seal it,
18 put my initials and date and then after that after the
19 swabs are dry I did the same thing putting into the
20 envelop, initial, date, put it into a heat sealed pouch
21 where I seal it, put my initials, the date, and I sign it
22 and date it.

23 SOLICITOR BRACKETT: Ms. Wanda, do you have the
24 latest numbers or, Merry, do you have them?

25 MADAM COURT REPORTER: I have One Thirty-two as the

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-577-

1 last one.

2 SOLICITOR BRACKETT: Okay. I'm showing you what's
3 been marked as State's Exhibit One Thirty-three. And I'd
4 ask if you could identify the item that I just handed you
5 One Thirty-three for identification?

6 And if you'd like I can open that for you.

7 A. This is the heat sealed pouch that I placed the items
8 in with the SLED lab number. I sign it, date it, put my
9 initials and the date on this particular bag. These is
10 the envelopes I'm referring to with the item number, the
11 lab number, the - where it came from, the different test
12 that I performed. Yes I do recognize it.

13 Q. Okay. And where did you send all these swatches and
14 swabs that's contained in State's One Thirty-three for
15 identification?

16 A. The DNA analyst Catherine Leisy she picked it up.
17 I gave them directly to her.

18 Q. Okay. Okay. And I think we're done with the
19 evidence processing if you want to take the gloves off.

20 SOLICITOR BRACKETT: Your Honor, at this time I would
21 introduce into evidence State's Exhibit One Thirty-three
22 for identification. The swabs and cuttings made by Ms.
23 Butler from the clothes contained in State's Ninety-nine
24 and State's One Hundred.

25 MR. HANCOCK: Without objection.

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-578-

1 THE COURT: In without objection.

2 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE HUNDRED
3 THIRTY-THREE, IDENTIFIED AND MARKED, RECEIVED INTO
4 EVIDENCE.)

5 BY SOLICITOR BRACKETT:

6 Q. During the processing of this evidence do you take
7 care to make sure that there is no contamination of the
8 evidence?

9 A. Yes I do. We always have to wear gloves. As you
10 see I always put gloves on. We use a lab coat, we use
11 clean paper that we put on the table. We have to clean
12 everything down and then we put clean paper on the table
13 between each piece of evidence that we do.

14 Q. So between the underwear and then the socks you would
15 change the paper?

16 A. The ones that - No, the ones that packaged together
17 which is 4.1 through 4.5 was packaged together so they
18 laid out on the table together.

19 Q. I see.

20 A. But then 5, Items 5 which is a different set of
21 clothes we have to clean everything down, wipe everything
22 down and use clean paper so we won't get anything cross
23 contaminated between one set of items to the next.

24 Q. So between your analysis of Mr. Varnadore's clothes
25 and Mr. Spagnoli's clothes you cleaned then changed all

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-579-

1 the paper and then pulled out the next set of clothes; is
2 that right?

3 A. That's correct.

4 Q. Did you prepare a report or was a report prepared
5 by your department in regards to your work in this case?

6 A. Yes it was.

7 Q. And do you have a copy of that report with you?

8 A. I don't have a copy.

9 Q. Okay. I have one right here. So as regards to this
10 evidence, I'm showing you an item that's been marked One
11 Thirty-four for identification and ask if you can identify
12 this document?

13 A. Yes I can.

14 Q. All right. And what is that document there?

15 A. This particular document is the report that every
16 piece of evidence that we do we have to have a review of
17 which is in this case was forensic scientist Stephanie
18 Stanley. She reviewed our evidence and then she prepares
19 a report.

20 Q. Does that report accurately express the work that was
21 done in this case by yourself on the items contained in
22 State's Ninety-nine and One Hundred?

23 A. Yes it does.

24 Q. All right.

25 SOLICITOR BRACKETT: Your Honor, at this time I would

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-580-

1 introduce State's Exhibit One Hundred - One Thirty-four
2 for identification into evidence.

3 Q. MR. HANCOCK: Let me see if I'm looking at the same
4 thing you are?

5 SOLICITOR BRACKETT: Yes, sir.

6 (MR. HANCOCK REVIEWING DOCUMENTS.)

7 MR. HANCOCK: Without objection.

8 THE COURT: In without objection.

9 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE HUNDRED
10 THIRTY-FOUR, IDENTIFIED AND MARKED, RECEIVED INTO
11 EVIDENCE.)

12 BY SOLICITOR BRACKETT:

13 Q. All right now I'm gonna show you one more piece of
14 evidence and I will -

15 Let me show you what's been marked State's Exhibit
16 1-0-3 in evidence and ask if you can identify this
17 document?

18 MR. HANCOCK: Do I have that?

19 A. Yes I can.

20 Q. And what is that?

21 A. This is our Item 19 which is a knife.

22 Q. Okay. And did you process this knife as well?

23 A. Yes I did.

24 Q. And what did you do to process the knife?

25 A. After I did the visual on this particular knife, I

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-581-

1 was looking for two things which is possible blood and for
2 touch. Touch means that anybody that handled that
3 particular evidence then I can swab it. When I say skin
4 cells, swab a particular handle for the touch. I made
5 Items 19.1 which is the swab from the blade which is
6 positive for possible blood. Item 19.2 swab from the
7 handle it was positive for possible blood. And I went
8 back avoiding the possible blood for some type of skin
9 cells where I was swabbing for somebody that touched the
10 knife which is Item 19.3.

11 Q. All right, ma'am. And what did you do with those
12 swabs?

13 A. After I dried the swabs out I put them into a gold
14 coin envelop, seal it, initial and date it, put it into a
15 heat sealed pouch, I initial and date the top of the seal
16 and sign and date and seal and gave it to Forensic
17 Scientist Catherine Leisy.

18 Q. All right. In the same manner as the other swabs
19 and cuttings that you described earlier?

20 A. That's correct.

21 Q. Okay. And did you prepare a report as regards to
22 that as well?

23 A. Again Forensic Scientist Stephanie Stanley, she
24 reviewed my evidence and she prepared this report of the
25 knife.

BETTY BUTLER: DIRECT BY SOLICITOR BRACKETT

-582-

1 Q. And does that report accurately reflect the work that
2 you did?

3 A. That's correct.

4 Q. Okay. What number?

5 SOLICITOR BRACKETT: Your Honor, I mark that report
6 as State's Exhibit One Thirty-five, the report that Ms.
7 Butler just identified, and I would seek to introduce that
8 into evidence at this time.

9 MR. HANCOCK: Without objection, Your Honor.

10 THE COURT: In.

11 (WHEREUPON, STATE'S EXHIBIT NUMBER ONE THIRTY-FIVE,
12 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

13 SOLICITOR BRACKETT: All right. I believe - One
14 moment. I think that's all the questions I have for you
15 today, Ms. Butler. Please answer any questions that
16 Defense counsel may have for you.

17 MR. HANCOCK: I have no questions of this witness,
18 Your Honor.

19 THE COURT: You can step down and be excused. We
20 appreciate your time.

21 (WITNESS LEAVING WITNESS STAND.)

22 THE COURT: Why don't we take about a ten minute
23 break? Follow the bailiff to the jury room.

24 (JURY EXITS COURTROOM AT 04:24 P.M..)

25 (COURT IN RECESS AT 04:25 P.M..)

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-583-

1 (COURT BACK IN SESSION AT 04:42 P.M..)

2 THE COURT: Thank you. Take your seats.

3 Get Mr. Spagnoli back in.

4 (DEFENDANT REENTERS COURTROOM.)

5 THE COURT: Bring in the jury.

6 (JURY REENTERS COURTROOM AT 04:44 P.M..)

7 THE COURT: You may call your next witness.

8 SOLICITOR BRACKETT: The State would call Catherine
9 Leisy. Please step forward and be sworn.

10 (WHEREUPON, CATHERINE LEISY,
11 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

12 DIRECT EXAMINATION

13 CATHERINE LEISY BY SOLICITOR BRACKETT:

14 Q. Good afternoon, ma'am.

15 A. Good afternoon.

16 Q. Would you please state your full name and spell
17 your last for the court reporter?

18 A. Catherine Leis. L-e-I-s-y.

19 Q. All right, Ms. Leisy. Where are you employed?

20 A. I work for the South Carolina Law Enforcement
21 Division as a forensic scientist assigned to the DNA
22 and zorology unit.

23 Q. All right. And what do you do the for the DNA
24 and zorology unit as a forensic scientist? What's your
25 job responsibilities?

1 A. My responsibility include processing forensic cases
2 generating reports based on the results and conclusions
3 drawn and testifying to those reports as necessary.
4 Essentially my job is to try and develop DNA profiles from
5 unknown biological materials found at crime scene or items
6 of evidence, compare those vials to the profile of a known
7 individual and try and determine whether or not that
8 individual could be the contributor of the unknown
9 material found at the crime scene.

10 Q. Okay. Now do you have to have any special training
11 or background experience in order to process biological
12 samples for DNA?

13 A. You do. I have a Bachelor's of Science degree in
14 genetic engineering from Cedar Crest College in Allentown,
15 Pennsylvania. I have received in house training at SLED
16 from other court qualified analyst and all the different
17 types of test and analysis I perform. I'm also required
18 to participate in continuing education which consist of
19 seminars or training sessions that target specific test or
20 types of analysis relating to forensic DNA testing.

21 Q. And how long have you been a forensic DNA analyst?

22 A. I've been an analyst with SLED for six years and
23 prior to my time with SLED I spent approximately four
24 years as a forensic DNA analyst at a private testing
25 facility known as Orchid Cellmark in Germantown, Maryland

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-585-

1 and my responsibilities there were essentially the same as
2 they are here at SLED.

3 Q. Okay. Have you ever been qualified before in state
4 courts or in federal courts as a DNA analyst?

5 A. I have. I've been qualified in various jurisdictions
6 in South Carolina, California, Massachusetts, New Jersey,
7 Florida, the District of Columbia as well as United States
8 District Court.

9 SOLICITOR BRACKETT: Your Honor, at this time I would
10 tender Ms. Leis as a forensic - as a expert in forensic
11 DNA analysis.

12 MR. HANCOCK: Without objection.

13 THE COURT: I find she is qualified.

14 BY SOLICITOR BRACKETT:

15 Q. Now, can you give the jury - I think most people are
16 familiar generally with what DNA is, but can you give them
17 a little bit more of an in-depth - not too deep mind you,
18 we don't need to get too heavily into it - but just give
19 them a basic prime on what DNA is and what you can learn
20 from DNA in a criminal crime scene setting.

21 A. DNA stands for deoxyribonucleic acid. It's the
22 genetic material found in all of our body cells with the
23 exception of our red blood cells. DNA is packaging in
24 structures called chromosomes which contain our genes and
25 genes are strains of our DNA that code for our physical

1 characteristics such as our height or eye color.

2 We receive half of our DNA from our mother and half
3 from our father and therefore we have two copies of every
4 gene. Now approximately 99.90 percent of an individual's
5 DNA is identical to that of everyone else's and it's the
6 variation on that remaining .1 percent that we test to try
7 and tell different people apart.

8 Q. All right. Now are the DNA of any two people in
9 this room, assuming that there are no identical twins in
10 the room, are the DNA of any of the people in this room
11 identical?

12 A. No the over all DNA profile would be unique to each
13 individual.

14 Q. Now in a crime scene we've had some testimony prior
15 to your coming into court regarding swabs that were taken
16 of the crime scene, physical pieces of evidence that were
17 taken at the crime scene, clothing that was seized and
18 swatches have been cut out of it and swabs taken from
19 belts and so forth and all of these items have been
20 packaged and sent to SLED for analysis either directly to
21 you or through Ms. Butler. You saw Ms. Butler testimony I
22 believe?

23 A. Yes, sir.

24 Q. All right. Now did you receive all of that material
25 that was - for DNA testing in this case related to SLED

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-587-

1 lab number L1013305?

2 A. Yes I did.

3 Q. Okay. So were there any other DNA analysis done
4 by any other analyst at SLED but you for this case?

5 A. No I performed all the DNA testing for this
6 particular case.

7 Q. Okay. Now what - the swabs and the cuttings and
8 so forth, - Well let me back up. Can you tell the jury
9 what is an unknown sample when we talk about an unknown
10 sample of DNA can you tell us what that is?

11 A. When we refer to an unknown sample we mean either
12 a biological fluid such as blood, saliva or semen or touch
13 DNA such as skin cells that are transferred in the actual
14 physical touching of an item. Those materials that are
15 found at a crime scene and collected for testing are what
16 we refer to as unknowns.

17 Q. Okay. So that's the mystery blood that's found at a
18 crime scene. No one knows exactly where it came from for
19 sure?

20 A. Correct.

21 Q. Now what is the known standard?

22 A. Known standard is what we receive to develop a DNA
23 profile from a known individual to compare to those
24 unknowns. Typically what we receive for a known standards
25 are either tubes of blood drawn from the individual or

1 what's called a buccle swab which is just a cheek swab
2 where it looks basically like a Q-tip, a sterile Q-tip is
3 rubbed against the inside of an individual's cheek to
4 collect skin cells that are present that I can develop a
5 DNA profile from.

6 Q. All right. Now did you receive any known standards
7 for testing in this case?

8 A. Yes I did.

9 Q. And can you tell the jury what those - who those
10 known standards were for?

11 A. I received known standards for Richard Leach, Steven
12 Spagnoli, Christopher Varnadore and Erick Harris and I was
13 to develop DNA profiles from those items and compare them
14 to the DNA profiles obtained from items of evidence in
15 this case.

16 Q. The unknown samples?

17 A. Correct.

18 Q. You take the known standards and we know whose these
19 are and then you compare them to the unknown to see if
20 there is a match?

21 A. That's correct.

22 Q. All right. Now without going through - We've had
23 a number of different items that have been sent to you
24 from Ms. Butler as well as directly from the sheriff's
25 office and the forensic services unit here in York. In

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-589-

1 each case where you received either a swab or a swatch in
2 this case, do you examine that package for signs of.
3 tampering or alternations?

4 A. I do. All of the evidence that is transferred to my
5 custody either from Ms. Butler or from the log in control
6 technicians I examine to make sure that the heat sealed
7 pouch is still properly sealed and that it is properly
8 dated and initialed with the individual who sealed the
9 pouch prior to transfer.

10 Q. Were there any samples that you tested, any of the
11 unknown samples or any of the known standards that you
12 tested that showed any signs of tampering or alterations
13 in the case?

14 A. No. The packages were all sealed properly.

15 Q. Now let's use State's Exhibit One Thirty-three for
16 - in evidence that Ms. Butler referred to, the swabs and
17 the swatches from the clothing contained in State's
18 Ninety-nine and State's One Hundred. Can you from a
19 representative sample of what the work that you do can you
20 take a look at those items and tell us what they are and
21 what you do with those items when you received them?

22 A. When I would take custody - the custody of these
23 items from Ms. Butler they would be within this heat
24 sealed pouch. I identify it by the SLED case number and
25 by Ms. Butler's name and initials. I can tell that this

1 seal has been properly closed. She has her initials on it
2 and it's dated. Within that pouch I would find what we
3 call a coin envelop. Each envelop contains the case
4 number, the specific item number and a brief description
5 of where the item was taken from. It is also sealed and
6 labeled with Ms. Butler's initials and the date. I also
7 recognize my initials on these coin envelops indicating
8 that I had custody of these items during testing.

9 Q. Okay. Now picking one at random say a cutting from
10 Mr. Varnadore's blue jeans or anyone that happens to come
11 to hand. How would you process that? Just an over view
12 of how you process that piece of evidence to develop a DNA
13 profile.

14 A. My first step if at all possible would be to perform
15 a presumptive zoology test, basically repeating what Ms.
16 Butler did looking for the possible presence of blood.
17 That test is not always run based on the size of the stain
18 present. If there's insufficient amount or if I'm afraid
19 the is too small I'll just go ahead and process for DNA.
20 Once I've decided that a stain or a item is suitable for
21 testing I perform what's called a DNA extraction basically
22 where I remove the DNA from that particular item.

23 Once I have the DNA retracted I amplify it or make
24 copies of the DNA locations I'm interested in testing.

25 When I have the results from those locations I have

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-591-

1 what are called DNA types and it's this collection of DNA
2 types at these locations, the over all collection that
3 gives us what we call a DNA profile. And once I have a
4 profile from a piece of evidence I compare it to the
5 profile of a known individual to try and determine if they
6 are from the same person.

7 Q. Okay. Now taking I believe you issued two reports in
8 this case; is that right?

9 A. Correct.

10 Q. Okay. Let's start with the report that was issued
11 by you on July the 7th of 2011. That is the larger of two
12 reports?

13 A. Yes, sir.

14 Q. Do you have a copy of that with you?

15 A. I do.

16 Q. All right. And let me just show you what's been
17 marked as State's Exhibit One Thirty-seven for
18 identification and ask is that report - Is the document I
19 just handed to you an accurate copy of the report that you
20 issued in this case?

21 A. Yes it is.

22 Q. All right.

23 SOLICITOR BRACKETT: Your Honor, I would seek to
24 introduce State's Exhibit One Thirty-seven at this time.

25 MR. HANCOCK: Without objection, Your Honor.

1 THE COURT: In without objection.

2 ((WHEREUPON, STATE'S EXHIBIT NUMBER ONE THIRTY-SEVEN,
3 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.))

4 BY SOLICITOR BRACKETT:

5 Q. So this report accurately documents the testing that
6 you did on the various items that are listed on this?

7 A. It does.

8 Q. Okay. Let's start from the beginning. Can you tell
9 us - Starting on the front page, Item 1 submitted to you,
10 what was that?

11 A. SLED Item 1 is a blood standard that was submitted
12 from Richard Leach for use as a known DNA standard.

13 Q. Okay. Item 3.

14 A. SLED Item 3 is the swab from the barrel of a bat.

15 Q. Okay. Did you test the swab from the barrel of the
16 bat?

17 A. I did. I first tested it for blood. I received a
18 positive presumptive result indicating the possible
19 presence of blood. I then performed DNA analysis on that
20 item.

21 Q. All right. And then can you tell us what the results
22 of the DNA analysis on the swab from the barrel of the
23 baseball bat?

24 A. The DNA profile developed from the swab from the
25 barrel of the bat matches the DNA profile of Richard

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-593-

1 Leach. The probability of randomly selecting an unrelated
2 individual having a DNA profile matching this item is
3 approximately one in 4.4 quintillion.

4 Q. Quintillion?

5 A. Yes, sir.

6 Q. Okay. That's how many people in the world are
7 there right now?

8 A. Approximately seven billion.

9 Q. Seven billion. So you go from billion to trillion?

10 A. Billion to trillion, quadrillion and then
11 quintillion.

12 Q. And then quintillion?

13 A. Yes, sir.

14 Q. So we can be fairly certain the blood on the bat
15 was Mr. Leach's?

16 A. I can say within a reasonable degree of scientific
17 certainty he is the contributor of the DNA from that item
18 yes.

19 Q. Okay. All right. Item Number 4.1.1.

20 A. What is listed as SLED Item 4.1.1 is a cutting and
21 swabs taken from black jeans from the lower right leg.
22 They are identified as belonging to Mr. Spagnoli.

23 Q. All right. And was any DNA - Was again a profile
24 developed from that cutting?

25 A. There was no human DNA obtained from that particular

1 item.

2 Q. All right. Item 4.1.2.

3 A. This was also identified as a cutting taken from the
4 right leg of the pair of black jeans belonging to Mr.
5 Spagnoli. There was blood indicated and I did develop a
6 DNA profile.

7 Q. And that would be the right front leg of the black
8 jeans worn by Mr. Spagnoli?

9 A. It was identified to me as the front upper right leg
10 area.

11 Q. All right. And you did develop a DNA profile then?

12 A. I did.

13 Q. And whose - Were you able to compare and match that
14 DNA profile from the jeans that Mr. Spagnoli to one of the
15 known standards?

16 A. The DNA profile developed from that particular
17 cutting of the jeans is a mixture of at least two
18 individuals. The DNA profile developed from the major
19 contributor to this mixture matches the DNA profile of
20 Erick Harris. The probability of randomly selecting an
21 unrelated individual having a DNA profile matching the
22 major contributor to this mixture is approximately one in
23 2.4 quadrillion. And the partial DNA profile developed
24 from the minor contributor is insufficient for reliable
25 interpretation.

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-595-

1 Q. So when you say there is a major contributor and a
2 minor contributor, can you explain a little bit better to
3 the jury what that means because we've encountered that
4 several times?

5 A. When we have DNA from more than one individual on a
6 particular item we identify as a mixture. And when one of
7 those individuals contributes significantly more DNA than
8 the other we can determine what we call a major profile.
9 And when one of those individuals contributes
10 significantly more DNA than the other we can determine
11 what we call a major profile. It just means that their
12 DNA types gave a much stronger signal than the minor
13 contributor which basically allows us to pull out the
14 profile of the major contributor for comparison purposes.

15 Q. All right. And was the DNA source that you found on
16 the front right leg jeans of Mr. Spagnoli was - Did you
17 say that was blood?

18 A. There was blood indicated, the possible presence. I
19 can't necessarily say that particular profile came from a
20 blood, just that there was blood on the item that I
21 tested.

22 Q. Okay. And the major contributor again was?

23 A. It matched Mr. Harris.

24 Q. In one and how many quadrillion?

25 A. 2.4 quadrillion.

1 Q. Again, well beyond the population of the world?

2 A. That's correct.

3 Q. Item 4.1.3.

4 A. SLED Item 4.1.3 again a cutting and swabs from the
5 pair of black jeans belonging to Steven Spagnoli. This
6 item was taken from the left leg. There was blood
7 indicated and I was able to develop a DNA profile.

8 Q. And who - Were you able to compare that with a
9 known standard?

10 A. I was. The DNA profile developed from this cutting
11 again is a mixture of at least two individuals. The DNA
12 profile developed from the major contributor to this
13 mixture matches the DNA profile of Steven Spagnoli. The
14 probability of randomly selecting an unrelated individual
15 having a DNA profile matching the major contributor to
16 this mixture is approximately one in 2.2 quadrillion.

17 Erick Harris cannot be excluded as a possible minor
18 contributor to this mixture. And the probability of
19 randomly selecting an unrelated individual who could have
20 contributed to the mixture is approximately one in twenty-
21 two thousand. And Richard Leach and Christopher Varnadore
22 are excluded as possible contributors to this mixture.

23 Q. Okay. So when you say Erick Harris cannot be
24 excluded

25 but Varnadore and Leach can be, we know it's not Varnadore

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-597-

1 and Leach's DNA?

2 A. Correct. I'm confident in excluding them as possible
3 contributors to that particular mixture.

4 Q. And you say that Erick Harris cannot be excluded.
5 Can you explain the significance of that?

6 A. It means that when I compare Mr. Harris' profile to
7 the mixture obtained from this item, there's enough
8 consistency and at each location it is possible that he
9 could have contributed, that I determined that he cannot
10 be excluded as a possible contributor and determine that
11 the frequency of individuals who could not be excluded at
12 approximately one in twenty-two thousands.

13 Q. Okay. So possibly in a population of two hundred
14 and twenty thousand people it would ten people that might
15 have that similar characteristic?

16 A. Statistically that's correct yes.

17 Q. Okay. Items 4.2.1 and 4.3.1 were you able to
18 develop a DNA profile off of those two items the cuttings
19 and swabs from the black short sleeved t-shirt of Mr.
20 Spagnoli and the swabs from the belt of Mr. Spagnoli?

21 A. No there was no human DNA obtained from those items.

22 Q. Okay. Item 5.1.1 the cutting from the blue jeans
23 from the front lower right leg of Mr. Varnadore here?

24 A. The DNA profile developed from this item also matches
25 the DNA profile of Richard Leach.

1 Q. All right. And were you able to develop a
2 statistical?

3 A. The same statistical would apply. The approximate
4 preconceived would be one in 4.4 quintillion.

5 Q. Item 5.1.2 the cutting from Mr. Varnadore's blue
6 jeans from his front upper left leg of Mr. Varnadore?

7 A. The DNA profile developed from Item 5.1.2 is a
8 mixture of at least two individuals. The DNA profile
9 developed from the major contributor to this mixture also
10 matches the DNA profile of Richard Leach. No conclusive
11 statement can be made regarding the inclusion or exclusion
12 of Christopher Varnadore as a possible contributor. And
13 Erick Harris and Steven Spagnoli are excluded as possible
14 contributors to this mixture.

15 Q. 4.1.3 the cutting from the blue jeans back left leg
16 of Mr. Varnadore.

17 A. The DNA profile developed from Item 5.1.3 again is a
18 mixture of at least two individuals. The DNA profile
19 developed from the major contributor to this mixture also
20 matches the DNA profile of Richard Leach. No conclusive
21 statement can be made regarding the inclusion or exclusion
22 of Steven Spagnoli as a possible contributor to this
23 mixture. And Christopher Varnadore and Erick Harris are
24 excluded as possible contributors to this mixture.

25 Q. Item 5.3.1 the cutting and swab from a white short

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-599-

1 sleeved t-shirt from the front of Mr. Varnadore.

2 A. The DNA profile developed from the t-shirt is a
3 mixture of at least three individuals. The DNA profile
4 developed from the major contributor to this mixture is
5 from an unidentified male individual. Christopher
6 Varnadore cannot be excluded as a possible minor
7 contributor to this mixture. And Richard Leach, Erick
8 Harris, and Steven Spagnoli are excluded as possible
9 contributors.

10 Q. All right. Is it unusual to find unknown DNA samples
11 on items that you test?

12 A. It is not, no.

13 Q. . Okay. If I've been in contact with a variety of -
14 as a hypothetical - with a variety of people throughout
15 the day is it possible that the DNA of Mr. Thompson or
16 Detective Strait might be on my clothes if you were to
17 test all of them?

18 A. It is. Any transfer of biological material be it
19 fluid or just, again, skin cells, could cause the presence
20 or an unidentified individual on articles of clothing.

21 Q. So it could have been from somebody sneezing for
22 example?

23 A. It could be, yes.

24 Q. All right. Item 5.3.2 the cutting and swab from the
25 left sleeve of the white t-shirt of Christopher Varnadore.

1 A. The DNA profile developed from the left sleeve also
2 matches the DNA profile of Richard Leach.

3 Q. Item 5.4.1 swabs from Mr. Varndadore's belt.

4 Q. Richard Leach, Christopher Varnadore, Steven
5 Spagnoli and Erick Harris are excluded as possible
6 contributors to the DNA profile developed from the belt.

7 Q. So this is again another unidentified DNA profile?

8 A. It is. And it was also very weak. It was just
9 difficult to make a comparison but those four individuals
10 are excluded.

11 Q. Okay. Item 6.1 swabs from the left sneaker of Mr.
12 Varnadore as well as 6.2 swabs from the right sneaker of
13 Mr. Varnadore. I believe the results on those two are the
14 same?

15 A. Correct. The DNA profiles developed from the sneakers
16 from Mr. Varnadore are mixtures of at least two
17 individuals. The DNA profile developed from the major
18 contributor to these mixtures matches the DNA profile of
19 Richard Leach. And the partial DNA profiles developed
20 from the minor contributors are insufficient for reliable
21 interpretation.

22 Q. Item 11 swab from the driver's rear door handle
23 inside from the Nissan Altima.

24 A. The DNA profile developed from Item 11 is a mixture
25 of at least two individuals. Richard Leach, Christopher

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-601-

1 Varnadore, Steven Spagnoli and Erick Harris are excluded
2 as possible contributors to this mixture.

3 Q. Item 12 swab from the - So that's another mystery.
4 Another unidentified basically DNA?

5 A. Correct. It's again multiple contributors but the
6 four individuals that I have standards for are excluded.

7 Q. Okay. Item 12 swab from the driver's door handle.

8 A. No human DNA was obtained from that particular swab.

9 Q. Okay. Does that mean that no one ever touched that
10 door handle?

11 A. No. It just either means that there was an
12 insufficient amount that the test weren't sensitive enough
13 to register or that the DNA was exposed to environmental
14 conditions that could cause it to degrade or break down.
15 Sunlight, heat, humidity, bacteria, enzymes, all of these
16 things break down the DNA which would make it difficult if
17 not possible for us to test.

18 Q. Item 13 swab from the steering wheel of the Nissan
19 Altima.

20 A. The DNA profile developed from the swab from the
21 steering wheel is a mixture of at least two individuals.
22 The DNA profile developed from the major contributor to
23 this mixture matches the DNA profile of Erick Harris.
24 Again the probability of randomly selecting an unrelated
25 individual having a DNA profile matching the major

1 contributor to this item is approximately one in 2.4
2 quadrillion. And the partial DNA profile developed from
3 the minor contributor is insufficient for a reliable
4 interpretation.

5 Q. Where you able to from a serological standpoint
6 identify the source of the DNA and what kind of?

7 A. The swab was positive for the possible presence of
8 blood. Again with multiple contributors you can't
9 necessarily tell who contributed the blood. Maybe someone
10 else contributed skin cells. I can't necessarily identify
11 it that way but I can say there was possibly blood present
12 based on the testing I performed.

13 Q. Okay. And finally State's - I mean your Item Number
14 14 a swab from the driver's rear outside handle.

15 A. There was no human DNA obtained from that item.

16 Q. Okay. Were you subsequently ask to conduct some
17 additional testing in this case?

18 A. Yes I was.

19 Q. Okay.

20 SOLICITOR BRACKETT: One moment, Your Honor.

21 I beg the Court's indulgence one moment.

22 (PAUSE.)

23 Q. So you were ask to perform some additional test in
24 regard to this case?

25 A. Yes I was.

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-603-

1 Q. And I'm showing you what's been marked as State's
2 Exhibit One Thirty-six for identification. Can you
3 identify that document?

4 A. This is the supplemental DNA report that I issued
5 for this particular case.

6 Q. And when did you issue that report?

7 A. It was dated April 17th of this year.

8 Q. Just last week?

9 A. Correct.

10 Q. All right. So you just did these test very
11 recently?

12 A. Yes, sir.

13 Q. And as a matter of fact I think were you still in
14 possession of the slides, the swabs and the material you
15 tested?

16 A. Yes, sir.

17 Q. Okay. And did you bring those to court with you
18 today from SLED?

19 A. I did.

20 Q. Okay. Can I see those.

21 (ATTORNEYS IN SIDE BAR OFF THE RECORD.)

22 Q. I show you what's been marked as State's Exhibit
23 1-3-8 and 1-3-9 for identification and ask you if you
24 could identify for the record what those items are?

25 A. These pouches contain swabs taken from a knife that

1 was submitted in this case. These swabs were transferred
2 to my custody from Forensic Technician Betty Butler. I
3 recognize the SLED case number, my initials, as well as
4 Ms. Butler's initials and the date that she heat sealed
5 the pouch. SLED Item 20 contains the DNA or - excuse me,
6 it contains the swab taken from the interior floor in
7 front of the door.

8 Q. Okay. And when you received those items were they
9 sealed and were the seals intact?

10 A. Yes. They were properly sealed.

11 Q. And did they appear to be tampered with in any way
12 shape or form?

13 A. No they did not.

14 Q. All right.

15 SOLICITOR BRACKETT: Your Honor, at this time I would
16 seek to introduce State's One thirty-six, the report in
17 this case as well as One Thirty-eight and One Thirty-nine
18 the swabs that were tested that form the basis for the
19 report and One Thirty-six.

20 MR. HANCOCK: Without objection, Your Honor.

21 THE COURT: In without objection.

22 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE THIRTY-SIX,
23 ONE THIRTY-EIGHT, ONE THIRTY-NINE, IDENTIFIED AND MARKED,
24 RECEIVED INTO EVIDENCE.)

25 BY SOLICITOR BRACKETT:

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-605-

1 Q. Okay. Turning your attention - Do you have a copy of
2 the report?

3 A. Yes, sir.

4 Q. Okay. Turning your attention to One Thirty-six.

5 What were the items that you received for testing in
6 this case?

7 A. I received what was marked as SLED Item Number 19.1 a
8 swab taken from the blade of the knife. SLED Item 19.2
9 swab taken from the top of the handle of the knife. SLED
10 Item 19.3 which was a swab from the knife handle. And
11 again swab 20 was a swab taken from the interior floor in
12 front of the door.

13 Q. All right. And of course did you still have in
14 your possession the known standards of Richard Leach,
15 Christopher Varnadore, Erick Harris and the defendant
16 Steven Spagnoli?

17 A. I was able to use the DNA profile that I originally
18 reported out from each of those individuals for
19 comparison. I did not perform retesting on those others.

20 Q. You still have the test that you performed in that
21 profile?

22 A. Correct.

23 Q. All right. Turning your attention to 19.1 the swab
24 from the knife blade. Can you tell us what the results of
25 your examination of that swab were?

1 A. The DNA profile developed from the swab from the
2 knife blade is a mixture of at least two individuals. The
3 DNA profile developed from the major contributor to this
4 mixture also matches the DNA profile of Richard Leach.
5 And the partial DNA profile developed from the minor
6 contributor is insufficient for reliable interpretation.

7 Q. All right. And 19.2 the swab from the top of the
8 knife.

9 A. The DNA profile developed from the swab from the top
10 of the handle of the knife also matches the DNA profile of
11 Richard Leach.

12 Q. All right. And the 19.3 the swab from the knife
13 handle itself.

14 A. The DNA profile developed from the swab from the
15 handle is a mixture of at least three individuals. The
16 DNA profile developed from the major contributor to this
17 mixture also matches the DNA profile of Richard Leach. No
18 conclusive statement can be made regarding the inclusion
19 or exclusion of Steven Spagnoli as a possible minor
20 contributor to this mixture. And Christopher Varnadore
21 and Erick Harris are excluded as possible contributors to
22 this mixture.

23 Q. Okay. Now from the DNA in all three of 19.1 and 19.2
24 and 19.3 the DNA of Richard Leach was found. I presume
25 the same quadrillion quintillion type numbers that we were

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-607-

1 talking about before.

2 A. .Correct. The same approximate frequency of one in
3 4.4 quintillion applies and the major contributor or in
4 the case of the top of the handle the sole profile does
5 match the DNA profile of Richard Leach.

6 Q. Okay. And what was the nature of the DNA source?

7 What was - Were you able to ascertain that?

8 A. All three of those swabs were positive for the
9 possible presence or blood.

10 Q. So you did the presumptive test for blood on those
11 and they were all positive?

12 A. Correct.

13 Q. And finally, Item 20 swab from the interior floor in
14 the front door.

15 A. The partial DNA profile developed from the swab from
16 the floor is insufficient for reliable interpretation.

17 Q. Okay. And were you able to determine whether it was
18 blood?

19 A. That swab was positive for the possible presence
20 of blood, yes.

21 Q. All right. Now is - You said it was insufficient
22 for reliable interpretation. Is there - What could cause
23 that?

24 A. . When we say insufficient basically what we mean is
25 that the profile or partial profile we've developed is

CATHERINE LEISY: DIRECT BY SOLICITOR BRACKETT

-608-

1 just too weak or too limited to make a comparison. That
2 can result from either too small an amount of DNA being
3 present. It's just too limited for the test to develop a
4 profile. And again it could be because the DNA has been
5 degraded by environmental factors or chemical factors that
6 have been introduced into the sample.

7 Q. What kind of chemicals can degrade the DNA?

8 A. Bleaches, types of cleaning products. There are
9 various things that can break down the structure which
10 make it more difficult if not impossible for us to develop
11 DNA profiles.

12 Q. All right. And so typically the things used to
13 clean a floor for example?

14 A. That could cause break down or degradation of DNA
15 that's correct.

16 SOLICITOR BRACKETT: The Court's indulgence one
17 moment.

18 (PAUSE.)

19 SOLICITOR BRACKETT: Thank you very much, Ms. Leisy.
20 Please answer any questions that Mr. Hancock, counsel
21 for the defendant may have.

22 MR. HANCOCK: I have no questions, Your Honor.

23 THE COURT: You can step down and be excused. We
24 appreciate your time.

25 MS. LEISY: Thank you, Your Honor.

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-609-

(WITNESS LEAVING WITNESS STAND.)

THE COURT: Call your next witness.

SOLICITOR THOMPSON: The State would call Ila
Simmons.

(WHEREUPON, THE WITNESS
BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

DIRECT EXAMINATION

ILA SIMMONS BY SOLICITOR THOMPSON:

Q. MS. Simmons, could you give your full name for the
court please and spell it for the court reporter?

A. My name is Ila Simmons. My first name is spelled
I-l-a. My last name is spelled S-i-m-m-o-n-s.

Q. And where do you work?

A. At the South Carolina Law Enforcement Division also
known as SLED in the Forensic Laboratory's Trace Evidence
Department.

Q. All right. And how long have you worked there?

A. Twelve years.

Q. And what kind of things do you do in the trace
evidence department?

A. We analyze gunshot residue, gun powder residue, we
perform comparisons of fibers, glass, and paint as well as
post-blastic explosive residues and any debris that may be
found in an arson scene.

Q. And what type of training do you have in determining

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-610-

1 or testing gunshot residue?

2 A. I have a Bachelor's of Science degree in Chemistry.

3 After completing that I came to SLED where I under went

4 in-house training with a court qualified trace evidence

5 examiner. During that time I had to take written and

6 practical examinations and pass them with one hundred

7 percent efficiency. After completing those I was then

8 qualified to analyze trace evidence. I'm also a member of

9 the American Academy of Forensic Science and the FBI's Gun

10 shot Residue Symposium where each year we go to Quantico

11 at the FBI Laboratory and discuss and set up the standards

12 and practices that everyone around the world would use

13 when analyzing gunshot residue.

14 Q. And have you been qualified before to testify as an

15 expert regarding gunshot residue?

16 A. Yes, sir, in federal and state Courts of South

17 Carolina as well as civil courts in South Carolina over

18 two hundred times.

19 SOLICITOR THOMPSON: Your Honor, I would ask to

20 present this witness as an expert in trace evidence in

21 particular gunshot residue testing.

22 MR. HANCOCK: Without objection.

23 THE COURT: I find she is qualified.

24 BY SOLICITOR THOMPSON:

25 Q. Agent Simmons, can you tell me, in this particular

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-611-

1 case were you able to receive some gunshot residue test
2 that you ended up performing trace on?

3 A. Yes, sir, I did.

4 Q. And which people did you receive gunshot residue kits
5 from?

6 A. I received a gunshot collection - gunshot residue
7 collection kit from Chris Varnadore. Also one from Steve
8 Spagnoli and one from Richard L. Leach.

9 Q. All right. Let me show you what's been marked as
10 State's Exhibit Number One Sixteen.

11 If you can look in there for me I believe all three
12 may be in there.

13 A. Yes, sir. State's One Sixteen contains the three
14 gunshot residue kits that I mentioned.

15 Q. All right.

16 A. They are marked with my laboratory identification
17 number, a unique identification number for each item, and
18 my initials and the date that each kit was opened to begin
19 processing.

20 Q. Okay. Can you tell us kind of quickly what is
21 gunshot residue or GSR? What is that exactly?

22 A. Gunshot residue is a mixture of microscopic chemicals
23 that come out of a gun when it's discharged. They come
24 from the cartridge that's placed inside the gun to be
25 fired. A cartridge has multiple components. It has a

1 primer on one end which contains shock sensitive
2 chemicals. It also contains inside the cartridge case a
3 gunpowder and on the other end opposite the primer it
4 contains a projectile or bullet. When someone pulls the
5 trigger of a gun the firing pin falls, strikes the primer,
6 the primer containing the shock sensitive chemicals
7 creates a small spark setting the gunpowder on fire. When
8 the gunpowder begins to burn it builds up pressure inside
9 the gun and pushes the bullet or projectile down the
10 barrel and out toward a target. Well a mixture of all
11 these chemicals come out of the gun along with the bullet
12 and they can go several feet beyond the end of a gun and
13 can get on anything in close proximity to the gun
14 including the hands of the person holding the gun when
15 it's discharged.

16 Q. All right. And would someone fires a gun you
17 mentioned it could get on their hands. What do you expect
18 showing when someone fires a gun as far as a pistol in
19 particular when for gunshot residue on the hands?

20 A. We expect to find gunshot residue on the palm and
21 back of one hand if they're holding the gun with one hand.
22 And on the palms and backs of both hands if they're
23 holding it in both hands.

24 Q. All right. And after a gun is fired if it's handled
25 a little bit, in other words if having been fired the

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-613-

1 person transfers it to another hand, or hands into another
2 person, does the gun - would the gun have as well possible
3 gun shot residue on it ---

4 A. Yes, sir, it can.

5 Q. --- and transfer?

6 A. Yes, sir. And it can transfer to anything that made
7 contact with the gun.

8 Q. All right. How stable is this gun shot residue?

9 A. Gunshot residue has a consistency of baby powder so
10 it's very light, very easily removed. If someone were to
11 shoot a gun and get gunshot residue on their hands and
12 wipe their hands on a towel, put their hands in and out of
13 their pockets, wash their hands, this would all cause the
14 gunshot residue to be wiped away.

15 Q. All right. And then when you would test you
16 wouldn't find it; it that correct?

17 A. That's correct.

18 Q. Okay. Is it unusual at times to have - to not find
19 gunshot residue when someone has actually fired a gun that
20 you know of?

21 A. No, sir.

22 Q. All right. And let's go over briefly we talked
23 about in the testing that you did for Chris Varnadore,
24 describe briefly again what someone has to do for as far
25 as a kit goes in order to present this GSR or gunshot

1 residue kit to you.

2 A. A gunshot residue kit is a standardized kit that is
3 made by a company, they're passed out through our evidence
4 control area. The submitting agency will collect a kit
5 from whomever they believe may have been in contact with
6 gunshot residue. It's a two part kit, it contains
7 particle lifts which is a double sided tape with a handle
8 so that the only thing that ever touches the tape that we
9 analyze is the hand of the person that may have come in
10 contact with gunshot residue.

11 The person collecting the kit never touches that
12 tape, they hold the handle. The second portion of the kit
13 is a Q-tip type swabs, they're sterile, and you put a
14 couple of drops of sterile nitric acid on the Q-tips and
15 rub it over the areas of the hands.

16 Q. All right. And do they do both the front and back
17 of each hand when they do these kits?

18 A. Yes. They take a sample from the palm of the right
19 hand, another sample from the back of the right hand. A
20 sample from the palms of the left hand and from the back
21 left hand.

22 Q. And the kit you received on Christopher Varnadore
23 were you able to process that kit and determine whether
24 you could find gunshot residue on that?

25 A. Yes, sir, I did.

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-615-

1 Q. And what was the result of your testing?

2 A. The quantities and metals we found did not indicate
3 the presence of gunshot residue.

4 Q. All right. And that would include both the right
5 and the back palm and the right and back - back of the
6 hand?

7 A. Yes, sir.

8 Q. Right back right left; is that right?

9 A. Yes, sir.

10 Q. Now as to the defendant Steven Spagnoli, did you also
11 have a GSR gunshot residue kit on him?

12 A. Yes, sir.

13 Q. And were you able to test that as well?

14 A. Yes, sir, I was.

15 Q. And what were the results of that test?

16 A. The quantities and metals we found did not
17 indicate the presence of gunshot residue.

18 Q. And that's on both hands as well?

19 A. Yes, sir.

20 Q. All right. And then the final person that you did
21 it on, Richard Leach the deceased, did you find gunshot
22 residue in the kit that you performed for him or that you
23 tested for him?

24 A. No, sir, we did not.

25 Q. All right. Now if you could explain to me, you

ILA SIMMONS: DIRECT BY SOLICITOR THOMPSON

-616-

1 had mentioned that if someone wipes their hands or sticks
2 them in and out of their pockets it can rub this off. How
3 about when someone has been killed what in your experience
4 is it a higher probability or a lower probability that
5 person has come in contact with gunshot residue on their
6 hands that you would find that on their hands?

7 A. When someone is deceased the body quits absorbing
8 things through the skin. The hands aren't constantly
9 making contact with things. It becomes like an inanimate
10 object. On a living person we will not analyze a gunshot
11 residue kit that's collected more than six hours after a
12 shooting incident. However on someone who is deceased
13 it's an indefinite amount of time. We'll accept it even
14 days or weeks later because the skin comes like an
15 inanimate object and it will remain on the skin
16 indefinitely until it's removed by an outside source.

17 Q. Thank you

18 SOLICITOR THOMPSON: No further questions.

19 MR. HANCOCK: Nothing, Your Honor.

20 THE COURT: Thank you. We appreciate your time. You
21 can step down and be excused.

22 (WITNESS LEAVING WITNESS STAND.)

23 THE COURT: Call your next witness.

24 SOLICITOR BRACKETT: Your Honor, I believe the
25 remaining witnesses' we have will be for in the morning.

-617-

1 I believe that's all we have at this time. We have just a
2 couple, three more and we'll be wrapping up as well.

3 THE COURT: Members of the jury panel, we're gonna
4 stop for the day and start back at 9:30. Keep in mind
5 you're not yet in a position to make up your mind or
6 discuss the case, you are not to let yourselves be exposed
7 to any news or do any independent research. So we'll see
8 you back at 9:30.

9 (JURY EXITS COURTROOM AT 03:26 P.M..)

10 THE COURT: Let me see counsel in chambers just a
11 minute before we . . .

12 (COURT IN RECESS AT 05:30 P.M..)

13 (COURT BACK IN SESSION THURSDAY, APRIL 26, 2012 AT
14 09:41 A.M..)

15 THE COURT: Good morning. Take your seats.

16 Anything before the jury comes in from the State?

17 SOLICITOR THOMPSON: No, Your Honor.

18 THE COURT: Anything from the Defense before the jury
19 comes in?

20 MR. HANCOCK: Nothing, Your Honor.

21 THE COURT: Bring in the jury.

22 (JURY ENTERS COURTROOM AT 09:42 A.M..)

23 MR. HANCOCK: Judge, just one thing, and I will beg
24 the indulgence of the Court. I've got these letters
25 sorted out in one manner, but they may be presenting them

KEN WHITLER: DIRECT BY SOLICITOR THOMPSON

-618-

1 in another and so I might be taking a minute to find them.

2 THE COURT: Okay. All right. I'm glad you did.

3 That's why I ask before I invite the jury in if anybody
4 has anything so we don't : . . .

5 (JURY REENTERS COURTROOM AT 09:42 A.M..)

6 THE COURT: Good morning.

7 Call your next witness.

8 SOLICITOR THOMPSON: May it please the Court, Your
9 Honor. The State would call Ken Whitler.

10 MADAM CLERK: Please raise your right hand, place
11 your left hand on the Bible.

12 (WHEREUPON, THE WITNESS BEING
13 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

14 MADAM CLERK: Thank you. You can have seat right
15 up there.

16 DIRECT EXAMINATION

17 KEN WHITLER BY SOLICITOR THOMPSON:

18 Q. Good morning, Agent Whitler.

19 A. Good morning.

20 Q. If you would give your full name for the court and
21 spell your last name for the court reporter please.

22 A. My name is Kenneth H. Whitler and the last name is
23 spelled W-h-i-t-l-e-r.

24 Q. All right. And Agent Whitler, where do you work?

25 A. I work for the South Carolina Law Enforcement

KEN WHITLER: DIRECT BY SOLICITOR THOMPSON

-619-

1 Division that's also known as SLED.

2 Q. And how long have you worked with SLED?

3 A. Since 1997.

4 Q. What are your duties with SLED?

5 A. I am a firearms examiner in the Forensics Firearm
6 Department.

7 Q. All right. And how long have you been a firearm
8 examiner?

9 A. I been a qualified firearms examiner since 1991.

10 Q. And can you tell me just briefly about some of your
11 training in firearms examination?

12 A. Yes, sir. There is no school that you can go to or
13 university to get a degree in firearms identification.
14 You have to learn it from other qualified examiners. And
15 when I was employed in the FBI Laboratory I underwent
16 their training program which was approximately a little
17 over two years where I worked with all the examiners in
18 the unit and during that time I worked on real cases. I
19 also worked on cases that were made up for me.

20 I did a lot of independent study and research and
21 basically during the training period when you work with an
22 examiner when you first start off you do a lot of watching
23 to see how it's done and they do a lot of most of the
24 work. Toward the end of your training period you do most
25 of the work and they do most of the watching.

1 When all the examiners in the unit that's determined
2 that they feel you reached the level of competence that
3 you are able to do the work they give you a series of
4 three test and if you successfully complete the three test
5 cases then you are certified by the laboratory to do
6 firearms identification cases for the FBI lab. I
7 successfully completed the training period and was so
8 certified in 1991 by the FBI laboratory to conduct
9 examinations for them.

10 In 1997 I was getting a little old and I'm tired of
11 commuting to the Washington DC and I was offered a job to
12 come back to South Carolina and work for SLED doing
13 basically the same job. And I decided to take it and I
14 been there since 1997 as a firearms examiner.

15 Q. All right. And have you been qualified before as
16 an expert in firearms examination?

17 A. I been qualified as a firearms - in firearms
18 identification in approximately two hundred and fifty
19 state and federal and territorial courts.

20 Q. All right.

21 SOLICITOR THOMPSON: Your Honor, at this point I
22 would ask to tender Agent Whitler as an expert in firearms
23 examination.

24 THE COURT: Any voir dire?

25 MR. HANCOCK: None, Your Honor.

KEN WHITLER: DIRECT BY SOLICITOR THOMPSON

-621-

1 THE COURT: I find he is qualified.

2 BY SOLICITOR THOMPSON:

3 Q. Agent Whitler, can you tell us just briefly, in -
4 when you receive say projectiles and firearms, what do you
5 look to do with them? What is your job when you get those
6 in?

7 A. If I get projectiles and firearms my - the main
8 question is was the bullet that was submitted was it fired
9 by that particular firearm. And what I will do is test
10 fire the firearm to get a known sample bullet and then I
11 take that bullet and put it on a comparison microscope and
12 compare it to the submitted or questioned bullet. And the
13 microscope allows you to look at two objects side by side
14 so you can compare the marks on one bullet to the marks on
15 the test bullet.

16 If you find enough agreement of those marks then
17 we're able to say that bullet was fired by that gun. If
18 there aren't enough marks then we are left with either it
19 was negative or it's inconclusive meaning that it could
20 have been fired by that gun or another gun with similar
21 rifling characteristics.

22 In this case though the evidence that was submitted
23 was identified to the gun.

24 Q. All right. Let me show you that now. I believe it's
25 State's Exhibits Number One Twenty-six and 1-0-7 and One

1 Twenty-three. If you can examine those and tell me are
2 those the items that were submitted to you in this case?

3 A. The gun is. These two items are - each are a bullet.

4 The outer packaging which has my initials and a
5 taped seal on 'em which hasn't been broken, bears my
6 initials and the date I sealed 'em. And I would assume
7 that unless you really want to see the bullets --

8 Q. Well --

9 A. These are the items ---

10 Q. Just make sure.

11 A. --- I examined.

12 Q. I'd like to have them opened. We'll do that now.

13 This is State's Exhibit One Twenty-six.

14 A. State's Exhibit One Twenty-six is a bullet that I
15 did examine. Its still in the sealed packaging that I
16 returned it in.

17 Q. All right. And 1-0-7.

18 A. State's Exhibit 1-0-7 is also a fired bullet that is
19 still in the sealed packaging that I when I finished my
20 exam and returned the evidence.

21 Q. All right. And did the packaging that you have does
22 it indicate where each of the bullets came from and where
23 they were recovered from?

24 A. It looks like I didn't write this. It looks like
25 whoever recovered it - it looks like pine more inside

KEN WHITLER: DIRECT BY SOLICITOR THOMPSON

-623-

1 something. I can't read the writing that well.

2 Q. Okay. Well that's already been testified to. We will
3 refer back to that in other testimony. With that
4 particular projectile if you would tell me when you got
5 all these, what did you do then to examine them?

6 A. Well initially the State's Exhibit 1-0-7 bullet and
7 the State's Exhibit One Twenty-three pistol were
8 submitted. And I conducted a comparison of this bullet as
9 compared to was it fired by this particular pistol. I
10 tested fired the pistol and then compared the test bullets
11 to this bullet and determined that that firearm, State's
12 Exhibit One Twenty-three, fired the State's Exhibit 1-0-7
13 bullet.

14 Q. All right.

15 A. . Later the gun which was State's Exhibit One Twenty-
16 three was the State's Exhibit Sixteen bullet was
17 resubmitted with the pistol and I did basically the same
18 exam. I took the test bullets and compared 'em against
19 this bullet and determined that the State's Exhibit One
20 Twenty-six bullet was fired by the State's Exhibit One
21 Twenty-three pistol.

22 Q. All right. So both of the bullets that you received
23 you were able to determine were fired by that pistol?

24 A. That's correct.

25 Q. Okay. And is that the exclusion of all other

1 pistols?

2 A. It's a reasonable scientific certainty I think is
3 the term they like you to say.

4 Q. All right. And if you would tell me just a little
5 bit about the firearm itself. Did you - You said you
6 would have to test fire that firearm as part of your
7 procedure as well?

8 A. Yes, sir.

9 Q. All right. Was it in proper working order when you
10 test fired it?

11 A. Yes it was. Well it's in working order. We don't -
12 When we test a gun what we are determining is does the gun
13 work as designed, meaning if it's a pistol, can you put
14 the cartridges in the magazine, put the magazine in the
15 pistol, pull the slides of the rear chamber around and
16 pull the trigger and it goes bang.

17 Q. All right.

18 A. If it does that that is in proper working order. Now
19 maybe it's a little bit out of time or something like that
20 but that's what it's designed to do is chamber around and
21 fire. So when we say working order, it means that we can
22 do that to it. It was no jams or misfires or anything
23 like this.

24 Q. Okay. And for this particular firearm, this pistol,
25 does it eject the shell casing after it is fired or does

KEN WHITLER: DIRECT BY SOLICITOR THOMPSON

-625-

1 it keep it within the pistol?

2 A. The pistol will eject the cartridge case when it's
3 fired. That's the way the gun operates. Once a cartridge
4 is fired the bullet goes down the barrel, the slide or
5 part of the gun pulls - goes to the rear and it pulls the
6 fired cartridge case out of the chamber and at a certain
7 point it will throw the cartridge case clear of the
8 firearm. And then as the slide goes forward it picks up a
9 new cartridge and puts it in the chamber so that the gun
10 is ready to fire again.

11 Generally most pistols are designed with the ejection
12 port - that's the hole that lets the cartridge case out of
13 the gun - to - that's on the right hand side of the gun.
14 And generally that means that the cartridge case is gonna
15 be ejected to the right but at this point it can go to the
16 right, it can go to the rear, or front, or whatever but
17 generally it's gonna leave the gun in that direction.

18 Now sometimes they will come back just depending on
19 how the gun is being held and how the gun operates with
20 that particular ammunition. Some guns are very
21 consistent, they will throw all the cartridge cases in the
22 same spot, some will throw 'em all over the place. That's
23 if you hold it in the same position. If you do like you
24 see on television heroes they turn the gun sideways. Now
25 instead of the ejection port being pointed to the right,

1 it's now pointed up and maybe - I've seen some where they
2 actually almost turn the gun inverted so it's gonna shoot
3 'em this way even if it does it properly.

4 Q. All right. So by the fact that we were to find a
5 shell casing does that necessarily tell us where someone
6 was standing when they fired --

7 A. Not necessarily. Particularly if there's only one or
8 two shots or a very few because you've got the question of
9 how the gun was held, how the gun ejects, when people
10 arrive at the scene do they kick cartridges cases out of
11 the way. And then the fact that when a cartridge case say
12 hits a hard surface it doesn't automatically stop. It can
13 roll one way or the other.

14 Q. All right. Thank you, Agent Whitler.

15 SOLICITOR BRACKETT: Thank you, Agent Whitler.

16 Please answer any questions the Defense has.

17 MR. HANCOCK: I have no questions, Your Honor.

18 THE COURT: All right. You can step down and be
19 excused. We appreciate your time. Thank you.

20 SOLICITOR BRACKETT: Thank you.

21 (WITNESS LEAVING WITNESS STAND.)

22 SOLICITOR BRACKETT: The State would call Sherri
23 Moss. Go up there to the Clerk if you would, ma'am, and
24 be sworn.

25 MADAM CLERK: Please raise your right hand, place

SHERRI MOSS: DIRECT BY SOLICITOR BRACKETT

-627-

1 your left hand on the Bible.

2 (WHEREUPON, THE WITNESS

3 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

4 MADAM CLERK: Thank you. You can have a seat right
5 up there.

6 DIRECT EXAMINATION

7 SHERRI MOSS BY SOLICITOR BRACKETT:

8 Q. Good morning, ma'am. Would you please state your
9 full name for the jury and spell the last for the court
10 reporter.

11 A. Sherri Moss. M-o-s-s.

12 Q. All right. Thank you, Ms. Moss. Would you please
13 tell the jury who you are and whether or not you know the
14 defendant in this case Mr. Spagnoli.

15 A. I am his ex-wife. We were married in 1989 and we
16 have three children together. We were divorced in 2001.

17 Q. Okay. So you're the ex-wife of Mr. Spagnoli. And
18 when I say Mr Spagnoli are we talking about this gentleman
19 right over here?

20 A. Yes.

21 Q. Okay. And that was your - is your ex-husband?

22 A. Yes, sir.

23 Q. Okay.

24 SOLICITOR BRACKETT: Your Honor, I'd ask that the
25 record reflect the witness has identified the defendant

SHERRI MOSS: DIRECT BY SOLICITOR BRACKETT

-628-

1 Mr. Steven Spagnoli.

2 (WITNESS AFFIRMED IDENTIFY OF DEFENDANT STEVEN
3 SPAGNOLI.)

4 Q. So do you know Bradley Spagnoli of course?

5 A. Yes that's my son.

6 Q. Okay. Now in 2010 and 2011 do you know where Bradley
7 was living?

8 A. He lived with me for a little bit right after his
9 son B.S. was born, my grandson. And some things came
10 up and he decided he wanted to leave, he didn't want to
11 live with us any more so he went to his dad's.

12 Q. And was he in a relationship at that point?

13 A. Yes. With Amber Shedd.

14 Q. And -

15 A. My grandson's mother.

16 Q. Okay. B.S. 's mother?

17 A. Yes.

18 Q. All right. And at some point were they living out
19 at ?

20 A. Yes in the front double wide.

21 Q. All right. And turning your attention and focusing
22 on the spring/March period of 2011, did you have occasion
23 to go to with Amber Shedd?

24 A. Yes. Yes. On several occasions I picked my grandson
25 up to keep him on the weekends and the particular time I

SHERRI MOSS: DIRECT BY SOLICITOR BRACKETT

-629-

1 think you're talking about Amber - they had to move. The
2 house wasn't in good enough condition for the baby to live
3 in. It was cold so I went to help her pack up and move
4 back to my house.

5 Q. All right. I'm showing you four envelopes that have
6 been marked as State Exhibit Eighty, Eighty-one, Eighty-
7 two, and Eighty-three. And I'd ask if you can identify
8 those four envelopes and the contents particularly --

9 A. Pull each one out?

10 Q. Well just enough for you to look at it and see
11 whether you recognize what it is.

12 A. These are letters to Bradley from his dad Steve.

13 Q. Okay. And have you seen those before?

14 A. Yes. I found them. While I was moving Amber out
15 they were in a box.

16 Q. Okay.

17 A. In the den and I was packing 'em and I read them.
18 They were already opened so I read them. I didn't
19 appreciate what the contents said so I talked to my son
20 about it. He was incarcerated at the time so I visited
21 him and talked to him about it. Told him they were wrong
22 and we needed to do something with 'em and I ask him you
23 know could I turn them in to the sheriff's office and he
24 said do - He was disgusted. He said do with what you want
25 with them.

SHERRI MOSS: DIRECT BY SOLICITOR BRACKETT

-630-

1 Q. All right.

2 A. So do you want me to continue what I did?

3 Q. Yes. Well go ahead and tell the jury what you
4 ultimately did with the letters.

5 A. Okay. So I came up to the Moss Justice Center, I ask
6 who was the detective on Steve's case and they told me
7 Eddie Strait and they gave me his phone number so I got in
8 touch by phone with Detective Strait and he said - First
9 he wanted to know did I have permission to have the
10 letters. I told him yes. He said sure I'd like to read
11 'em.

12 MR. HANCOCK: Your Honor, I'm going to object to her
13 saying what --

14 THE COURT: All right. Just don't go into what the
15 detective said. That would be called hearsay.

16 A. Okay.

17 THE COURT: Don't tell us what --

18 A. I turned the letters over to him.

19 Q. Did you explain the circumstances of --

20 A. Yes I did.

21 Q. And did you explain to him the circumstances of your
22 conversation with Bradley?

23 A. Yes I did.

24 Q. All right. And what did you ultimately do with the
25 letters?

SHERRI MOSS: DIRECT BY SOLICITOR BRACKETT

-631-

1 A. I gave them to - I put 'em in an envelop and I
2 dropped 'em off at the front desk of the York Sheriff's
3 Office to his attention.

4 Q. All right. And you talk about Detective Strait. Is
5 that this gentleman who is seated here?

6 A. I never met him.

7 Q. Okay.

8 A. I only talked to him on the telephone.

9 Q. Okay. But those are the letters that you found?

10 A. Yes they are.

11 SOLICITOR BRACKETT: And, Your Honor, I believe two
12 of the four are already in evidence. One moment.

13 Eighty and Eighty-three are in evidence. At this
14 time I would move Eighty-one and Eighty-two into evidence
15 as well.

16 THE COURT: Subject to previous rulings they are in
17 over objection.

18 MR. HANCOCK: Yes, sir.

19 THE COURT: Rather based on. Not subject to but
20 based on earlier rulings.

21 SOLICITOR BRACKETT: Yes, sir.

22 ((WHEREUPON, STATE'S EXHIBIT NUMBER EIGHTY-ONE AND
23 EIGHTY-TWO , IDENTIFIED AND MARKED, RECEIVED INTO
24 EVIDENCE.))

25 SOLICITOR BRACKETT: Thank you very much, Ms. Moss.

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-632-

1 Please answer any questions Mr. Hancock may have for
2 you.

3 MR. HANCOCK: I have no questions of this witness,
4 Your Honor.

5 THE COURT: All right. Can the witness can step down
6 and be excused?

7 SOLICITOR BRACKETT: Yes, sir. I'd ask that she be
8 excused.

9 THE COURT: All right. You can step down and be
10 excused. We appreciate your time. Thank you.

11 (WITNESS LEAVING WITNESS STAND.)

12 THE COURT: Call your next witness.

13 SOLICITOR BRACKETT: The State would call Detective
14 Eddie Strait.

15 (WHEREUPON, THE WITNESS BEING
16 FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

17 DIRECT EXAMINATION

18 DETECTIVE EDDIE STRAIT BY SOLICITOR BRACKETT:

19 Q. Sir, would you please state your full name for the
20 jury and spell your last for the court reporter?

21 A. Eddie Strait. S-t-r-a-i-t.

22 Q. All right, sir. And can you tell the jury where
23 you're employed?

24 A. York County Sheriff's Office.

25 Q. And what do you do for the York County Sheriff's

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-633-

1 Office?

2 A. The detective assigned to the Violent Crimes Unit.

3 Q. All right. And how long have you been with the
4 sheriff's office?

5 A. Eighteen years.

6 Q. And how long have you been a detective?

7 A. Ten years.

8 Q. Okay. And were you employed then as a detective in
9 2010?

10 A. Yes I was.

11 Q. And were you assigned as part of your responsibility
12 the investigation into the death of Mr. Richard Leach?

13 A. Yes I was.

14 Q. On ?

15 A. Yes, sir.

16 Q. On September 28th of 2010?

17 A. Yes, sir.

18 Q. Okay. And can you tell the jury what day of the week
19 is - was September 28th of 2010?

20 A. It was a Tuesday.

21 Q. Okay. Now what were some of your responsibilities
22 as part of your involvement in this investigation? You
23 just generally describe what you do.

24 A. The - We have two detectives on call at a time so
25 those two detectives responded first. I was called about

1 one o'clock in the morning to respond to the Moss Justice
2 Center. At that time Chris Varnadore was being
3 transported over here. My primary objective at that time
4 was to interview Mr. Varnadore.

5 Q. Okay. And where did this interview take place?

6 A. In the conference room in the Detective Division.

7 Q. And was - How soon after the event itself? I mean
8 did you transport him here directly or did he sleep or did
9 you interview him directly?

10 A. No he was transported here directly from the scene.

11 Q. Okay. And did you have occasion to conduct
12 interviews of other witnesses', miscellaneous witnesses'
13 that may have had knowledge about this case?

14 A. Yes.

15 Q. Can you just tell us some of those folks?

16 A. We spoke to neighbors, we had people calling in
17 that, you know, offered information. We spoke to those,
18 documented those interviews. I was the case agent on the
19 case which just means that all other interviews came to me
20 to be put together in the case file. And of course I had
21 the opportunity to talk to Ms. Sherri Moss.

22 Q. Before we get to that, as part of your investigation
23 and the information you collected, I think you said you
24 organized the file. Everything comes to you, you're sort
25 of a central depository?

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-635-

1 A. That's correct.

2 Q. Okay. Do you - Did you as part of the investigation
3 learn what the height and weight of Mr. Spagnoli is?

4 A. Yes. It was listed as six foot, two hundred pounds.

5 Q. All right. And were you able to establish to any
6 degree of certainty what time the event itself, the
7 shooting and the beating, the assault of Mr. Leach took
8 place?

9 A. Based on the phone records, the last call, I believe
10 it was ten thirty-three. The 911 call came in at ten
11 fifty-two and officers were dispatched at ten fifty-three.
12 Based on statements from Erick Harris they weren't quite
13 at the residence on that last phone call, probably three
14 or four minutes away so somewhere between ten thirty-five
15 to ten forty-five maybe.

16 Q. All right.

17 A. Because Erick Harris obviously had to have time to
18 leave the scene and get to where 911 was called.

19 Q. And is it unusual for the time on one cell phone
20 to be off from the time a 911 call ---

21 A. No, sir.

22 Q. --- in your experience?

23 A. No.

24 Q. So it could be a variation, a few minutes on either
25 side?

1 A. Right.

2 MR. HANCOCK: Your Honor, I'm going to object.

3 THE COURT: Yeah, that is a leading question. I
4 sustain the objection. Just disregard the Solicitor's
5 testimony.

6 SOLICITOR BRACKETT: Yes, sir.

7 Q. Did you have occasion at some point in time for -
8 to come into contact with a Ms. Sherri Moss?

9 A. Yes.

10 Q. All right. And can you describe what the
11 circumstances of that was?

12 A. She had found letters to her son Bradley Spagnoli
13 from Steven Spagnoli and she contacted me by phone and
14 wanted to turn those letters over. She left them at the
15 front desk in an envelop with my name on 'em. After I
16 read those letters and had talked to her to make sure she
17 had permission to give those letters to me and where she
18 had found 'em, some of the content in the letters referred
19 to Bradley going to his grandfather's house; some of the
20 statements were study and learn this; some of 'em was
21 memorize this, this is your testimony and they were
22 directed both toward Bradley and Amber.

23 Q. All right. And what did you do with the letters
24 that you received from Ms. Moss?

25 A. I took those letters and based on certain statements

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-637-

1 in those letters, I presented that to a judge and ask for
2 a search warrant on Mr. Richard Spagnoli's house.

3 Q. Okay. And why did you think that there might be
4 things that Richard Spagnoli - Who is Richard Spagnoli
5 first?

6 A. Richard Spagnoli is the father of Steven Spagnoli.

7 Q. And why did you think that there might be things
8 there?

9 A. Well he - The letters referred to him as Pop, as
10 Bradley's grandfather and they were referring Bradley to
11 go to Pop's house and he had letters for him to study and
12 memorize and that would be his and Amber's testimony.

13 Q. Did you present that information to a magistrate?

14 A. I did.

15 Q. Did you obtain a search warrant?

16 A. I did.

17 Q. And was that search warrant executed on the home of
18 Mr. Richard "Pop" Spagnoli?

19 A. Yes it was.

20 Q. And were you able to search that house?

21 A. Yes. We actually did not have to conduct a search.

22 He had the letters compiled together in one place
23 and he turned those over to us.

24 Q. All right.

25 A. Pursuant to the search warrant.

1 Q. Sir, I'm showing you a manila folder and ask if you
2 would look at the contents of those. They contain
3 documents that are numbered State's Exhibit One Hundred
4 and Forty through One Hundred and Fifty-eight. Do you
5 recognize those items?

6 A. Yes, sir.

7 Q. What are those items?

8 A. These are a good portion of the letters that we
9 recovered from Richard Spagnoli's house.

10 Q. Okay. Are they all the letters that you recovered?

11 A. No, sir.

12 Q. Okay. Can you describe - Tell the jury what -- Have
13 you read through all those letters?

14 A. Yes I have.

15 Q. And the letters that are not contained in there,
16 what did those letters concern?

17 A. A lot of them were through the holidays and they were
18 just personal letters to his dad wishing his family well.
19 Some of them were early on when Mr. Spagnoli was still
20 trying to conduct his business through his father, had no
21 mention of the case or no relevance to the case.

22 Q. All right. And are the letters contained in that
23 file folder marked State's One Forty through One Fifty-
24 eight, do those letters refer to and specifically discuss
25 the case at hand here?

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-639-

1 A. Yes they do.

2 SOLICITOR BRACKETT: Your Honor, at this time I would
3 seek to introduce State's One Forty through One Fifty-
4 eight. And I would note for the record the previous
5 stipulation between counsel for Mr. Spagnoli and the State
6 that the handwriting on the letters is the handwriting of
7 the defendant Mr. Spagnoli.

8 MR. HANCOCK: Without objection, Your Honor. They
9 have been provided in discovery. I've had a chance to
10 review them and so that is without objection.

11 THE COURT: All right.

12 MR. HANCOCK: I would just ask the court as they're
13 entered into evidence they're gonna refer to a letter and
14 it's going to take me a moment to find it because mine I
15 think may be characterized in a different manner than
16 theirs and I would beg the indulgence of the court.

17 THE COURT: Just let me know then, glad to
18 accommodate you.

19 SOLICITOR BRACKETT: Let me see if I can expedite
20 that with a moments notice.

21 Your Honor, at this time the State would request
22 permission to publish State's Exhibit One Forty through
23 One Fifty-eight. And I previously discussed with Mr.
24 Hancock, not every portion of the letters contains
25 references to the case. Some of it is personal and I sort

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-640-

1 of highlighted those portions that are relevant and I will
2 just be reading those with those in evidence including the
3 personal but I'll only be publishing what I perceive to be
4 relevant portions. Of course Mr. Hancock is free to read
5 the rest of it out loud if he wishes. That's the first
6 issue I wish to address.

7 The second is that some of the language in the
8 letters is harsh and it includes cuss words, swear words,
9 racial epithets and I apologize in advance for that.

10 THE COURT: When the Solicitor says he's publishing
11 that simply means he is reading verbatim what is in the
12 record.

13 MR. HANCOCK: And if I may, Your Honor, that's
14 subject to previous objections as to the entrance of the
15 --

16 THE COURT: And that's based on earlier rulings.
17 They are in evidence.

18 MR. HANCOCK: Yes, sir.

19 SOLICITOR BRACKETT: Thank you, Your Honor.

20 (WHEREUPON, STATE'S EXHIBIT NUMBERS ONE FORTY THROUGH
21 ONE FIFTY-EIGHT, IDENTIFIED AND MARKED, RECEIVED INTO
22 EVIDENCE.)

23 SOLICITOR BRACKETT: One more house keeping matter,
24 Your Honor. State's Exhibit One Forty-six was slightly
25 redacted to exclude some - pursuant to our discussions

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-641-

1 yesterday I have the unredacted copy which is Court's
2 Exhibit Three and I'll hand that over to the court
3 reporter now.

4 (WHEREUPON, COURT'S EXHIBIT NUMBER THREE, IDENTIFIED
5 AND MARKED, RECEIVED INTO EVIDENCE.)

6 SOLICITOR BRACKETT: Bear with me one moment.

7 MR. HANCOCK: Your Honor, we did agree to that
8 redaction in the record.

9 THE COURT: All right. Thank you.

10 SOLICITOR BRACKETT: Here's a copy of the State's
11 Exhibits, Your Honor, that include the numbers that I'll
12 be reading and the numbers that I reference for example
13 when I say State's Exhibit One Forty, that will be a
14 letter that is dated Wednesday, October 13 starts "Dad,
15 hi, thanks for the glasses."

16 You let me know when you're with me, Mr. Hancock.

17 Here you go, Wanda.

18 Q. "Dad, hi, thanks for the glasses. According to the
19 inmate handbook outgoing stamped mail cannot be opened so
20 I'm curious if during their search if the police found the
21 pistol I hid in the kitchen pantry in a coffee can up top,
22 there was a box of .25 shells inside the cupboard on the
23 bottom far left cabinets below the plates. If you will
24 check and see if this stuff is there or not I would
25 appreciate it. If so, take it out of there and maybe to

1 your house.

2 The next would be State's Exhibit Eighty which was
3 previously introduced and partially published but I'll be
4 reading it again because in chronological order the
5 context of some of these letters relates one letter to the
6 next.

7 This one is dated 10/19 of 2010 it starts, "Bradley,
8 thanks for coming to see me today."

9 MR. HANCOCK: Okay.

10 Q. Starting on the second page, "If you go see Chick
11 tell him not to discuss any details with Chris. I hope to
12 get Tom in to explain what happened. They both were
13 inside the house when shot. First Erick and then Rick.
14 Then shot the windows after Rick ran. Chris was fighting
15 Rick with ball bat. Rick had a knife. Erick had a pistol
16 with him. Chris and I were attacked by them. Erick threw
17 down and the gun jammed. That gave me time to throw down
18 on him. Twice I shot him and he ran. Then Rick came at
19 me with a knife. Twice I shot him too. He went down.
20 Chris smacked him at the same time is why blood was on the
21 wall near the TV. The bullet in the wall may have
22 ricocheted off his hard head or gone through Erick when he
23 was shot. I don't know. I do know Rick was busted a day
24 or two before this night when I threatened to call the law
25 on him. He really freaked out. So that's the story and

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-643-

1 Chris should remember it the same way. Tell Chick.
2 Either Tiny or Bill will contact Chris and his lawyer to
3 discuss details just like I wrote you. According to the
4 inmate handbook the York County Detention Center cannot
5 open and read outgoing stamped mail. Also when visiting
6 they are not supposed to record any audio from the camera
7 phones but do the video. This is why you burn these
8 letters and don't tell the law anything."

9 The next would be State's Exhibit One Forty-one. It
10 is dated Tuesday, October 26th. Starts "Dad, thanks for
11 coming today to visit."

12 MR. HANCOCK: I got it.

13 SOLICITOR BRACKETT: "Dad, thanks for coming today
14 to visit. I thank you for your help but I wanted to tell
15 you about the pistol. Back a few weeks ago I bought the
16 .25 up in Charlotte from a guy on the job where we were
17 working. With Amber alone in the front house with no car
18 or phone I thought maybe they should have one for
19 protection. There have been several break-ins already,
20 the most recent one on file at the sheriff's department.
21 Bradley was target shooting at the creek that afternoon.
22 I gave him the gun with two bullets in the clip to take to
23 the front house. The box of bullets and the box the gun
24 came in I took back to the house - I took to the back
25 house." I'm sorry. "Evidently when these guys came back

1 that night they some how got the gun from Bradley from the
2 front house. They quietly pulled to the back house. I
3 didn't hear or see them coming. I was near the kitchen
4 and Chris back in the bathroom when the two forced their
5 way in the front door into the living room. The one guy
6 Eddie says, "So you're gonna call the police on me. Not
7 tonight." And then guy B comes straight towards me
8 pulling the slide on the gun as he approaches and the
9 pistol jams. I immediately charged him and wrestled with
10 him for control of the .25. I managed to complete the
11 slide loading the gun. I stepped back and shot guy B. I
12 start pushing him out the front door he runs. I have no
13 more bullets. I go and reload the clip in the kitchen.
14 Chris and guy A are fighting. I hear metal to metal I run
15 back to the front door and see guy B in their car looking
16 for something. I shoot the windows, the side windows. He
17 gets out and runs. I hear Chris telling guy A to drop the
18 knife. I go back in the living room they are - -

19 THE COURT: Don't read quite so fast. The court
20 reporter's got to keep up with you.

21 SOLICITOR BRACKETT: I'm sorry, Wanda.

22 "I go back in the living room they are still fighting
23 coming towards the door. Instead of guy A running out the
24 door he charges at me with the knife so shot guy A. He
25 dropped down still breathing. Chris and I can't believe

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-645-

1 what happened. I go outside and look for guy B. I don't
2 see him anywhere. I come back in and talk to Chris. He
3 had told guy A several times to put the knife down. We
4 are both in shock in seeing him. I start looking for my
5 phone. I'm looking on the table, the floor, couch, chair,
6 I can't find it. I tell Chris we need to get him to the
7 hospital. I still can't find the phone. Chris notices
8 guy A's car keys we had no car there so we start to load
9 him in his car. The guy A's car was pulled in where we
10 couldn't get the back door to open. This is when I pulled
11 the car around and close to the steps. Now we're about to
12 take him for help. I decide to change my bloody shirt
13 with guy B's blood on it. In the bedroom then back to the
14 living room it dawns on me that guy B somehow got the .25
15 from Bradley or house and the two were obviously at the
16 front house before they broke in the back house.

17 I start to drive up there but didn't. I continued
18 looking for my phone. I finally find it under the chair.
19 I texted Bradley several times trying to check on him. I
20 got no response. I feel like I'm having an anxiety
21 attack. Guy A on the floor I can't locate Bradley not
22 sure what the scene is there now I hear sirens coming.
23 Chris reminds me that we should make a statement with a
24 lawyer present not then. So cop after cop after cops
25 start to show up and then here comes Bradley and he says

1 in front of the cops " you didn't have to shoot him, Dad."
2 My only response at the time was to hang my head and nod
3 no like I cant' believe you just said that.

4 So the rest you can guess. This is the story.
5 Between you and I, I do not trust Bradley or Amber. For
6 all I know they encouraged the whole thing. His mom and
7 step-dad maybe couching them now to gain control of the
8 property. Brad has taken money and valuables already.
9 Best you see. I wish I knew if these guys stole the
10 pistol form Brad or did he sell it to them. Or did he owe
11 them money or what. This is about the closest thing to a
12 written statement I've made."

13 State's Exhibit One Forty-two dated approximately
14 11/2/2010. It starts off "Here's what happened."

15 MR. HANCOCK: I got it.

16 SOLICITOR BRACKETT: "Here's what happened. After
17 working that day me, Bradley, Chris and Sloan stopped at
18 Max Barbecue for drinks. We stayed until approximately
19 6:15, 6:30 p.m. Coming home through Lake Wylie stopped at
20 a liquor store and bought a bottle of Tequila. We arrived
21 at my place approximately 7:15 to 7:30. I checked emails
22 at the back house. Everyone else was at the creek starting
23 a camp fire and drinking. I joined them about 8:15 or
24 8:30. For whatever reason we were discussing Richard
25 Leach. He had come by the front house several times

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-647-

1 during the day when he knew nobody but Amber and the baby
2 would be there. He made sexual advances towards her. I
3 ask her if she wanted a gun for her protection and she
4 declined. That was the third or fourth time in two weeks
5 he came by unannounced. I assumed Bradley owed him money.
6 Richard was a drug dealer on call for weed or whatever he
7 delivered. Something had to be done about this. I called
8 Rick and told him not to be back on my property but I know
9 he's been coming around. He hung up on me. I called back
10 and threatened to call the law on him if he comes back.
11 Chris was going to stay the night in the spare bedroom.
12 While he was back there getting ready for bed I was in the
13 kitchen cleaning up when Richard and Harris stormed in the
14 front door. Richard has a bad attitude asking if I was
15 going to call the cops. I told him I'm going to right
16 now. Erick comes at me with a knife. Rick says give me
17 all your money. I pull the pistol from my back pocket and
18 shot Erick. He dropped the knife and I wrestled him out
19 the front door. He went straight for the car and went
20 inside looking for something. I shot from the porch into
21 the car shattering the glass. Erick ran through the
22 woods. I went back in the house where Chris and Richard
23 were fighting. I was in the living room and they were in
24 the hallway. Suddenly Richard backs into the living room
25 then turns to me. Now he's holding the knife. Instead of

1 going out the door he chose to come at me with a knife and
2 I shot him twice in the head. He was down but not dead.
3 My heart was pounding and adrenaline in my mouth I had to
4 sit down. Chris and I looked at each other shocked by
5 what just happened. My thoughts were now calling the
6 police and 911. I couldn't find the phone. Chris and I
7 studied the best way to move Rick and him bleeding. We
8 were not sure if we should try to wrap his head or which
9 way to turn him or what. He was on an area rug we could
10 use as a stretcher. We were both unsure. I lite a
11 cigarette and dropped my lighter. When I went to pick it
12 up I noticed my phone had dropped off the table. This was
13 where Erick and I were wrestling. When I opened the phone
14 the screen was black with traces of light. The front
15 screen was shattered but it - I turned the phone off and
16 then back on and then I saw a half screen. I charged it
17 for a couple of minutes and tried again. This time I was
18 able to text Bradley. As I was about to dial 911 I heard
19 the police coming. I waited for them outside."

20 State's Exhibit One Forty-three dated November 15.
21 "Hi, Dad." It was good seeing you again Tuesday."

22 MR. HANCOCK: Yeah.

23 SOLICITOR BRACKETT: The second page, this is to his
24 father. "If I get Bill's private investigator to search
25 and he finds that revolver in the woods and the detectives

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-649-

1 missed it it would be no surprise. That will prove the
2 two shots fired at me from Harris after he retrieved the
3 gun from the car and explains my shooting outside. If the
4 spent two rounds are connected will be good insurance.
5 The winter elements will be having an effect on it's
6 appearance."

7 State's Exhibit One Forty-four, dated November 18th,
8 a letter to Bradley. "Bradley, just got your letter dated
9 the 3rd."

10 MR. HANCOCK: November?

11 SOLICITOR BRACKETT: November the 18th it says . . .
12 Starting with the second page.

13 "I know no one saw me shoot any God damn body. If
14 they say they did they're lying because I didn't shoot
15 anyone. Tiny and I and Pop Pop with all your convict
16 knowledge should have given you a clue as to not to talk
17 to the detectives. I need to know exactly what you and
18 Amber told them. What they took from the property and
19 where on the property they went. Pop Pop caught them in
20 cottage last week. Broke the fuck in after the new locks
21 were put on. I need to compare what you say to what is in
22 evidence. I know you think I'm going down the road but
23 anyone could have shot them. My lawyer will get me out of
24 this. It could have been another guy riding with them
25 that shot them. You see it's important not to say

1 anything that will be used against us. You see how the
2 solicitor lied in court. That's his job. They blow
3 things out of proportion and make me look bad. The only
4 things I told the cops was that I had just got there ten
5 minutes before they did. That's all that's on the
6 record."

7 I'm sorry. "The only things I told the cops was that
8 I had just got there ten minutes before they did. That's
9 all that's on the record. I expect to have charges
10 dismissed or at least bond out next month. The self-
11 defense thing was a last resort plan. Don't think that's
12 the final say. I was throwing things out for
13 consideration is all, testing the water just like the bond
14 hearing was a fact finding mission to see what the
15 solicitor had to work with.

16 Well when I'm found not guilty I'll have a case
17 against the State. Between losing the job in Charlotte
18 and the ---- in my name Tuesday they should settle in the
19 low millions maybe. I'm going to send this to Pop Pop's
20 house since you say people are circling the driveway.
21 Read the letter make notes of what you want and then get
22 the letter to Pop Pop to hold on to. I want you to bring
23 any other letters to him too. Okay?"

24 State's Exhibit One Forty-five. It's dated November
25 30th and it's two separate pieces, the smaller one starts

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-651-

1 "Hi, Dad, I missed seeing you today." And then "Dad, hope
2 you enjoyed Thanksgiving."

3 MR. HANCOCK: I think I missed seeing that.

4 SOLICITOR BRACKETT: The next one starts "Dad, hope
5 you enjoyed Thanksgiving."

6 November 30th, Tuesday to his father.

7 "I'm expecting Bill sometime this week. I wish I knew
8 when I have a revised statement to write and send you. I
9 would like your opinion and plan to tell Bill to work with
10 it. We may need to get the main points to Chris too. "

11 And the second letter with the same package.

12 "The only thing I can think of is if Harris hide the
13 revolver somewhere when he ran from the scene. I'm sure
14 Hancock would insist that the detective retrace the area
15 where the two guys in the green car were looking. If they
16 were to find a revolver with two spent shells in it it
17 would prove that Harris was armed and shot at me from the
18 car. That being when why he was shot at and explains the
19 glass. There may be medical testimony about glass
20 fragments in his wounds. All those shot at in the house
21 I'm not sure he was hit or where. Anyway with the weather
22 turning leaves falling it may be a good idea to have the
23 scene revisited right away.

24 There is crop of rocks between the shop and black
25 house where it may be. This being part of the evidence

1 that can only ensure the attackers were armed with not
2 only knives but gun too. I'm hoping to contact my
3 neighbor Jack. He's a pretty good guy. We get along. He
4 may be a character witness for me. I guess I have only
5 one shot at freedom with a fourth hearing. You see what
6 I'm saying? I need you help. If any weights can tip the
7 scale in my favor need to see to it. Hancock will work
8 with what I provide. He needs tangible evidence and
9 credible witnesses."

10 > The next State's Exhibit One Forty-six, it's the
11 letter dated December 1st, it starts "Hi, Dad," and this is
12 the redacted.

13 Wednesday, December 1st, "Hi, Dad. He said he spoke
14 to Chris's attorney and Chris had told them nothing at
15 this time. He wants to know what I said. So I have
16 enclosed a statement. The body of a statement minus the
17 intro and conclusion. We should get this info to Chris by
18 Mike at CIF. Bill said he would arrange for a search of
19 the revolver and any other evidence. He will contact an
20 expert blood spatter and windshield glass guys to testify.
21 He said a bond is not out of the question. We need to get
22 the details of my statement to Chris. We need to arrange
23 the search for the revolver."

24 And the three page statement that was attached to
25 that. Page One: "I was in the kitchen, Chris was in the

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-653-

1 back of the house either in the bathroom or office
2 watching a video. R L and E H stormed in the house
3 through the front door. R L was extremely upset and
4 screaming "So you're gonna call the law on me?" I ask or
5 told him to leave that I talked to Amber. He said he
6 would fuck any bitch he wanted. Chris came out from the
7 back of the house and punched R L in the face in the
8 hallway of the living room. E H hold the revolver out and
9 pointed it at Chris from near the front door the door was
10 open. I went into the kitchen and got a .25 pistol. I
11 came around into the living room pointing the gun and told
12 E H to get out now and fired a shot at him not sure if it
13 hit him or not.

14 Chris and R L continued fighting into the hallway.
15 E H runs to the car green BMW and appears to leave. I
16 walk on porch and see E H pointing his pistol at me. I
17 shoot again at him through the passenger window. E H gets
18 out the driver's side and fires a shot at me on the porch
19 from above the roof of the BMW. I duck back in the house.
20 I see E H back in the BMW down in the back seat looking
21 for something. He sees me and points the pistol at me
22 again. I shoot at the back window passenger side. E H
23 gets back out of driver's side and shoots again at me on
24 the porch. I jumped down and run around the house. As I
25 came around the house and approach the car I heard E H

1 running through the woods. I yell for Bradley. I go back
2 in the house Chris and R L are now fighting in the living
3 room. Chris has a ball bat, R L a knife.. I point the gun
4 at R L and told him to get out again. He goes back into
5 the hallway from the kitchen and tries to attack me from
6 behind. I duck out of his way. I back up and as he moves
7 forward away from me I fire at his head. Chris near the
8 hall swings the bat at him and hits his head as he's
9 falling to the ground. Chris and I are both in shock. We
10 are both okay no cuts or bullets. R L lay bleeding on the
11 floor. I locate my phone on the floor front screen is
12 broken try to call out. Screen is dead I plug charger
13 into the phone I yell for Bradley no response from front
14 house. I notice a car key on the floor and go outside and
15 find it's to the BMW. I yell to Chris so let's get him to
16 the hospital I pull the car up and back in so the back
17 door is at the bottom of the porch steps. I go inside
18 hide the gun and then get my phone. I could not call I
19 texted Bradley once or twice. Before we moved R L we
20 heard sirens coming so we waited for them to arrive."

21 Thursday, December 2nd, State's Exhibit One Forty-
22 seven. Starts "Dad, I may have thought of another way."

23 "Also if you get Bradley and Amber out of the house
24 for a few there is a group of rocks on the right side of
25 the washout between the shop and black house. It's the

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-655-

1 logical place for E H to make a stash. The leaves in the
2 stuff may have covered it or maybe its up under a rock but
3 a PI can locate it with a metal detector. It should be
4 completely clean outside and including the casings. The
5 sooner they find it the better. Two shots were fired I
6 need them to locate this to assure a self-defense. E H
7 ran right by there so it makes sense. Okay. Let me mail
8 this to you tonight."

9 State's Exhibit One Forty-eight dated December 5th,
10 2010, "Hi, Dad." This is one that is in the script "hope
11 you're doing okay."

12 "Hi, Dad, hope your doing okay. Regarding Bradley
13 meeting with Bill on Wednesday. He should have a prep
14 talk before going. Please understand he and Amber are
15 both idiots. This is a time for screwed exaggeration. A
16 time to give Bill the ammo he needs to further exaggerate.
17 Some points come to mind including the .25 that was in
18 fact the pistol for Amber to have available at the front
19 house when at home alone with the baby. As for his
20 relationship with Leach, R L was his pot connection.

21 I was not happy with R L coming to the house and
22 Bradley knew this. Bradley can say he and R L were not on
23 good terms and may have even been fighting about Bradley
24 owing him money for some pot. Bradley may have also
25 threatened to call the police on him for dealing drugs

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-656-

1 therefore infuriating R L into a violent rage.

2 I would appreciate you making sure he goes to the
3 meeting Wednesday. God knows he is likely to over sleep
4 or forget or not have gas in the car. If you will get him
5 moving over there it will be a big help. This may give
6 you time to look around the property too without either of
7 them seeing what you're doing."

8 State's Exhibit One Forty-nine, Tuesday, starts "Hi"
9 again, hope Bradley and Amber were able to interview."

10 MR. HANCOCK: Okay.

11 SOLICITOR BRACKETT: "Hi, again. Hope Bradley and
12 Amber were able to interview with Bill. Too bad he is
13 such an idiot. His testimony and statements can save my
14 ass. I guess if there's nothing in it immediately for
15 them they don't give a damn. They would sell my soul for
16 a bag of weed. After talking with you on the phone I see
17 I made a mistake leading Bill to believe he would find
18 that in the woods. He and I both thought it would be the
19 key to freedom. My timing was off so I have a contact - I
20 have to contact a third party to make this happen. I'll
21 send my friend Jim by to pick that up. Hopefully it's
22 weathered. Either way when you shoot two rounds after
23 cleaning it and put it in a paper bag for Jim please let
24 me know as I assume Bill wants to have a search party go
25 out sooner than later. Once in evidence a bond will be

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-657-

1 certain. If not a plea agreement at most. I understand
2 Mike over at CIF was asking my friend Jim if he heard any
3 news from me. Hopefully you will touch base with him this
4 week too and give him the latest to get to Chris."

5 State's Exhibit One Fifty, starts - it says Monday,
6 "Dad, hi. I want to write you before you head up north."

7 "Monday. Dad, Hi. I want to write you before you
8 head up north for a few weeks. I want to apologize for
9 assuming you were working with me involving that hardware.
10 Since you suggested I refine my story I took it a step
11 further and thought we were on the same page. As you're
12 aware communication is not black and white here and I made
13 the wrong assumption. It was a vision of freedom is all.
14 A Presbyterian may have considered it the way it should
15 be. Likewise any white man I know. This is your choice.
16 You have ever right to do or not do what you feel is right
17 or wrong. Again, I apologize for assuming you were
18 helping me secure a not guilty verdict or bargaining power
19 towards a plea. You don't understand or see that the cops
20 and prosecution will lie, cheat and hide evidence, et
21 cetera to prove a victory. I feel it only fair to level
22 the playing field and as far as the niggers fuck them as
23 Richard Nixon would say. I only wish I wouldn't have
24 indicated to Bill that his team locate the hardware. This
25 would just result in lost time and money searching for

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-658-

1 something that's not there. I assume you conveyed the
2 refined story for Mike at CIF. I must say it's quite
3 aggravating trying to develop a defense from in here. I
4 wish I would have fled the scene of the incident and
5 handled the defense from hiding cause now I see an attack
6 dog killing an intruder in my home would be treated better
7 than South Carolina has treated me. God damn this state
8 and fuck a God damn dealing white girl screwing there."

9 State's Exhibit One Fifty-one, dated Monday, 1/11/11.
10 Two pages, one to Dad and one that says to Chris, it
11 starts Monday.

12 MR. HANCOCK: And this is - -

13 SOLICITOR BRACKETT: The one that says Dad it says
14 enclosed is a letter to Chris. Would you please see it
15 might be --

16 (PAUSE.)

17 SOLICITOR BRACKETT: Its two pages dated January
18 11th, both of them. The first one "Dad, enclosed is a
19 letter to Chris, will you please see if Mikey will send it
20 to him." I would like to open a line a more direct of
21 communication between Chris and I. I obviously want us to
22 stay on the same page and as we approach trial I have
23 established a method of communication."

24 January 11/11. "Mondo, how are you doing? I'm gonna
25 try and get this letter through to you. Hope you get it.

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-659-

1 Richard usually comes to see me on Tuesday's. I expect
2 I'll see him tomorrow. Hopefully he has some good news.
3 I might see if he'll get Mikey to mail this letter to you.
4 You can write me at SMC0 Post Office 196. Pop gets my
5 mail from there every week. He can remail a letter from
6 you to here if you want to communicate. We should compare
7 notes. My attorney Wild Bill Hancock should be coming to
8 visit again soon. I guess you know what I told Hancock
9 already. I want you and I to stay on the same page since
10 our testimony together will out weigh anything Erick
11 Harris says. It's self-defense on both our parts and I
12 expect we will be found not guilty. Keep the faith,
13 brother. Write me at the post office box. Now flush
14 this. Take care. Spagnoli."

15 State's Exhibit One Fifty-two. It's dated February
16 1st of 2011. "Hi, Dad. It was good to see you again today.
17 Thank you for coming."

18 MR. HANCOCK: "Thanks for coming to visit?"

19 SOLICITOR BRACKETT: "I got a letter from Susie
20 today." Did he mention -

21 MR. HANCOCK: February the 1st?

22 SOLICITOR BRACKETT: 2011.

23 MR. HANCOCK: Yes.

24 SOLICITOR BRACKETT: "Hi, Dad. I'm gonna try to
25 adjust my sleeping schedule so I wont' be sound asleep

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-660-

1 when Hancock gets here. I have many questions for him.
2 The 'self-defense is an obvious strategy however my not
3 being there period may be another. Since the cops didn't
4 arrest anyone else at the scene the only witness Harris it
5 could be a reasonable doubt thing. I don't know. However
6 Hancock feels this is best. I do want to establish a good
7 line of communication with Chris. This is needed unless
8 Hancock can work directly with his attorney for my
9 benefit."

10 State's Exhibit One Fifty-three. Dated Tuesday,
11 February the 8th, 2011, starts "Hi, Dad. Good to see you
12 today, I'm glad you moved away."

13 MR. HANCOCK: Got it.

14 SOLICITOR BRACKETT: "Chris and I will have to make
15 statements at some point before the Grand Jury. They may
16 want to bargain after they hear witness's stories. This
17 is why grooming Bradley and Amber now in advance is what
18 needs to be done. Like I said earlier, the Leach guy had
19 to be stalking Amber for weeks while we the guys were
20 working. Bradley was being played by him for various
21 reasons including him being Brad's weed connection. He
22 wanted to set up a kennel out there and raise pit bulls.
23 He wanted Bradley to help train the dogs. He mentioned
24 this to me as well but the Grand Jury needs to hear these
25 facts in order to better understand the situation of what

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-661-

1 happened that tragic night.

2 The fact that I warned Leach to stay away from the
3 property just alienated him. When he was arrested days
4 before the incident he surely must have thought I set him
5 up with the cops because it was right in line with phone
6 calls back and forth with me telling him to keep away or
7 else. His being seen at the house on more than one
8 occasion terrorizing Amber falls in place with the phone
9 calls, his arrest, and explains his outrage. Number two
10 guy is alive and that should be easy to prove. He rode
11 out there that night to cause trouble instead he found it
12 and got what he deserved. He should be in jail with
13 multiple charges. Anyway I'll write again later."

14 SOLICITOR BRACKETT: Tuesday, February 15th, a letter
15 to Brad, State's Exhibit Eighty-three, this has been
16 partially published already.

17 It starts, "Hey, Brad, Pops just left from visiting."
18 You got it?

19 "Hey, Brad. Pops just left from visiting. I guess
20 he's heading your way. He told me you contacted someone
21 to harvest trees from the property. Do not cut down one
22 mother fucking tree down off my property. Not one tree.
23 Listen, before you wind up in exile or locked up or dead,
24 how about you and Amber giving a statement again to
25 Hancock that I can use in court. I need an affidavit from

1 both of you. Something that can be presented to the
2 judge. I'm not feeling you coming to court to testify
3 since you can't meet with DSS or help your seventy-five
4 year old grandfather help fix my house you're living in
5 rent free. I don't feel you are responsible enough to be
6 available when I need you Amber either. Get up with Pop
7 Pop and make your statement to Bill. Do it or get the
8 fuck out of my house off the property and out of my life."

9 "Brad, you and Amber get up with Pop Pop and study
10 what I sent him. This is your testimony you are to learn
11 and memorize. There's no excuse for not doing this. I'm
12 not kidding I want it done now. You better straighten
13 your ass out soon. If you're running with King you'll
14 wind up in jail. Leave him alone."

15 "Bradley, I've contacted Bill to schedule a sit down
16 with you and Amber. This is no one else's business. Do
17 not discuss the case with any mother fucking body. Now
18 it's time to set my defense in stone and I don't want it
19 fuked up with people trying to say this and that. You
20 call Pop Pop and go over my time line of events I wrote
21 him and then go see Bill and record the statement with
22 Amber too. Do this or get the fuck out of my life. Okay?
23 Good."

24 SOLICITOR BRACKETT: The next letter State's Exhibit
25 One Fifty-four, dated 2/15, "Hi, Dad, thanks for visiting

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-663-

1 today." This is a lengthy one.

2 MR. HANCOCK: Okay.

3 SOLICITOR BRACKETT: "Hi, Dad. Thanks again for
4 visiting today. It seemed like the hour flew by. With
5 regards to Bradley, I have enclosed a ten page time line
6 of events recollection of facts leading up to the incident
7 on my arrest. Since he is acting the way he has been will
8 you study my papers and go over it with Bradley and Amber?
9 Please drill the pertinent facts into their mushy minds so
10 they remember. It would be nice if Hancock can ask them
11 key questions and draw up an affidavit to their sworn
12 statements. This may be good or better than their verbal
13 testimony that would be subject to questioning from the
14 prosecutor.

15 Please make a copy of the ten page report and send a
16 copy to Hancock from me and keep one there. If you can
17 send me some carbon paper I would use it next time.

18 I can write and rewrite the time line of events but
19 you'll see the message I or we are going to convey to the
20 prosecution and the Grand Jury, judge, jury, whoever is
21 concerned is that Bradley's relationship with Leach went
22 from bad to worse over time. Leach was playing Bradley or
23 tried to gain access and control over property in an
24 effort for him to expand his dog breeding drug pushing
25 enterprises. When Leach was finally refused access and

1 cut off he became hostile. His harassing and stalking
2 Amber was an assault on her and all of us. When I
3 informed him of filing a complaint and restraining order
4 he chose to assemble his younger henchmen and terrorize
5 Chris and I in revengeful retaliation. The true victims
6 here are first Amber, then Chris and I. Leach and Harris
7 are victims of their own actions. Chris and I deserve no
8 punishment for justifiably guarding our lives and my
9 house. Surely testimony from witnesses and facts will be
10 available and sufficient to build a defense that will win
11 in court if it goes that far.

12 I'm still unsure about the process and think that a
13 judge who looks at the evidence from both sides and hears
14 testimony from witnesses if I'm not mistaken both
15 prosecution and defense provide the judge with evidence -
16 If the evidence presented is one side the judge can decide
17 to throw the case out. Obviously bone headed Bradley and
18 Amber's testimony is very important so please help me
19 groom them now before something happens to them and they
20 disappear. Okay. That's all for now. Thanks again.
21 Love you, Steven."

22 SOLICITOR BRACKETT: February 2011 time line of
23 events. "Steven Spagnoli SS has lived at his home in York
24 County for almost twenty years. Prior to then SS went to
25 high school and college here in York County too. SS was

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-665-

1 married and lived with his three children and maintained a
2 job in any industrial manufacturing industry. SS has
3 developed the property he lives on by moving two houses on
4 it as dwellings for his family members.

5 During the mid 90s his wife started having problems.
6 One time a verbal argument led to SS being arrested and
7 charged with CDV. Only in court did SS learn from the
8 judge that the law says that if one person makes another
9 person feel uncomfortable in his or her house that person
10 is guilty of CD so SS plead guilty to the charge and paid
11 his fine.

12 Four or five years later a traffic stop resulted in a
13 handgun being found in one of SS's companies trucks. His
14 marriage continued to decline in the late 90's resulting
15 in a divorce. SS was given custody of his three children
16 and raised them as a sincere parent - a single parent for
17 several years. The children went to live with their
18 mother only after she remarried in 2004. SS continued
19 living and working from his address during the mid
20 2000's. By 2006 his son Bradley was pleading with his
21 father to move back in with him. Bradley Spagnoli BS
22 found himself in and out of jail on a number of charges.
23 His girlfriend Amber Shedd was also no stranger to the
24 law.

25 After the couples failed attempts of making it on

1 their own, in 2007 SS agreed to let the two move back to
2 the York property. SS went as far as signing paperwork
3 with Amber's probation officer agreeing to let her live
4 with him. SS encouraged BS to work and pay S to finish
5 highschool which they both did. SS worked at home in his
6 office on job sites frequently out of town leaving Bradley
7 and Amber alone at the house. Problems developed with the
8 couple with their drug use and Steven Spagnoli would not
9 tolerate it. This coupled with the people they had
10 visiting the house prompted Steven Spagnoli to ask them to
11 leave to move out. By 2008 they had bounced around living
12 here and there in their car pleading again with Spagnoli
13 they begged to move back in. Amber Shedd was pregnant
14 they had no where else to go.

15 Steven Spagnoli agreed to give them another chance.
16 By this time Bradley Spagnoli had lost his job in Rock
17 Hill. Steven Spagnoli found work for him to do in the
18 industry with him. With the approach of a new baby Steven
19 Spagnoli started moving himself from the front house with
20 the kids to the back house which is still in the process
21 of being remodeled. They started working on a nursery for
22 the baby in the front house. The kids even got a dog for
23 themselves, a Pit bull. Steven Spagnoli was not
24 threatened with the addition of the breed of dog. Steven
25 Spagnoli came to learn that a new friend of Bradley

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-667-

1 Spagnoli's and Amber's Shedd's was Richard Leach.
2 Evidently Bradley and Amber became friends when they lived
3 in Rock Hill. Richard Leach started coming by to visit
4 him. Spagnoli learned he gave Bradley Spagnoli and Amber
5 Shedd a pit bull. Once Steven saw Richard Leach at the
6 front house visiting the kids and stopped to investigate.
7 Richard Leach seemed very personable and friendly.
8 Richard Leach's visits became more frequent and not only
9 to see the kids but would drop in on Steven Spagnoli at
10 the back house. Having learned what Steven Spagnoli did
11 for work Richard Leach offered him some industrial
12 electric motors once and some aluminum cable tread another
13 time. Steven Spagnoli bought these items for Richard
14 Leach for resale.

15 Bradley working with Steven every day gave Steven
16 reason to closely monitor Bradley's behavior and actions.
17 Over time Steven noticed a direct connection between
18 Bradley being hung over and Richard Leach's visits the
19 night before. This became so obvious that Steven realized
20 Richard Leach was getting the kids high and tried to put a
21 stop to it. Steven told Bradley and Richard there was to
22 be no drug use on the property. Richard Leach assured
23 Steven Spagnoli he would not provide drugs to the kids.
24 By the spring time of 2009 Leach's visits declined.
25 However he started trying to convince Bradley Spagnoli to

1 raise Pit bulls in a kennel like our neighbors had. That
2 he would pay for the kennel provide the dogs and even pay
3 Bradley to feed them and train the dogs.

4 Steven Spagnoli instantly refused to even consider
5 the possibility and told Bradley to forger about it.

6 Richard heard this from Bradley and Richard went to visit
7 Steven and ask him personally about raising the dogs and
8 how much money was involved. He went on to say he fought
9 the dogs and the purse would sometimes exceed Fifty
10 Thousand Dollars and he sold dogs for over Five Thousand
11 Dollars. Steven kindly refused the offer. After this
12 Richard Leach's visits to the kids increased. He was
13 obviously getting the kids high and Steven Spagnoli put
14 his foot down and demanded Richard Leach keep off the
15 property. Steven Spagnoli took the treat of Richard Leach
16 very seriously. Months passed and on January of 2010
17 Bradley and Amber's baby boy was born. Although the pit
18 bull puppy Richard Leach had given the couple had long
19 gone from the York home Richard Leach started to come
20 around again and Steven Spagnoli caught him on the
21 property and again told Richard Leach to stay away he was
22 not welcome on the property.

23 Throughout the summer he continued to ride out to the
24 property. During June of 2010 Steven Spagnoli took the
25 kids and baby to the beach for Father's Day. They enjoyed

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-669-

1 a long weekend there only to return home and find that the
2 houses had been broken into. Steven Spagnoli called the
3 York County Sheriff's Office to investigate. There was
4 broken windows, fingerprints and blood samples taken. The
5 break in is still under investigation. Steven Spagnoli
6 and Bradley Spagnoli continued working in the summer of
7 2010 in Charlotte, North Carolina close to the home.
8 During this time Amber Shedd mentioned Richard Leach once
9 again coming by to visit. Amber said she ignored his
10 knocking and once told him to leave the guys were working.
11 Amber said Richard would ride to the back house also while
12 there. Bradley and Steven called Richard and made him
13 understand he was trespassing and not to harass any more -
14 not to harass Amber any more. Now Richard Leach not only
15 harassed but stalked Amber Shedd while the men were at
16 work. Richard Leach replied with threats, once with a
17 voice mail saying he was going to pimp Amber out according
18 to Amber. Richard Leach on 9/26 or 27 came to the house
19 and entered picking the baby up and telling her to undress
20 that he was going to screw her. Amber snatched the baby
21 from him and left to the neighbors house for help. She
22 heard Richard say he would be back with a condom. When
23 the neighbors walked over to investigate Richard Leach
24 drove off. Once calmed down Amber Shedd returned to the
25 house only to realize Richard Leach another white male

1 were banging on the windows and doors trying to enter the
2 house. They made such a racket the neighbors, on alert,
3 came back over. Richard and his buddy left in the car
4 once they saw the neighbors. After hearing this that next
5 morning Steven Spagnoli and Bradley Spagnoli planned to go
6 to the sheriff's department and file charges and
7 restraining orders against Richard Leach. The next day
8 Steven Spagnoli picked up Christopher Varnadore to baby
9 sit after work. While Steven Spagnoli and Amber and Brad
10 went to the police department the next morning.

11 That Tuesday Steven Spagnoli called Richard Leach
12 once to tell him he talked to Amber. Richard Leach hung
13 up and Steven Spagnoli called back and told Richard Leach
14 he was going to the cops and filling charges if he ever
15 showed up again. Steven Spagnoli would tell the cops he,
16 Richard Leach, was a drug pusher that he had been selling
17 drugs to my son. That same evening Bradley and Amber were
18 in the front house and Chris Varnadore and Steven Spagnoli
19 were at the back house ready to settle in for the night.
20 Steven Spagnoli and Chris Varnadore had music playing
21 while Steven Spagnoli was putting things away in the
22 kitchen and Chris Varnadore was in the bathroom.
23 Unexpectedly without warning Steven Spagnoli realized the
24 front door was open and Richard Leach and Erick Harris
25 were standing in the living room. Richard Leach started

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-671-

1 screaming at Steven Spagnoli about calling the cops on him
2 as he aggressively approached Steven Spagnoli. As Richard
3 Leach attacks Steven Spagnoli Steven Spagnoli pushed
4 Richard Leach back towards the front door and Erick
5 Harris. Chris Varnadore appeared from the back of the
6 house and surprised the two intruders. Now Richard Leach
7 lunged towards Chris Varnadore who immediately punched
8 Richard Leach. Richard Leach called to E H to shoot him
9 and Richard Leach and Chris Varnadore fist fought. Steven
10 Spagnoli backed into the kitchen to retrieve a .25 semi-
11 automatic handgun. Erick Harris had a black revolver, a
12 .38 caliber - question mark - pointed at Christopher
13 Varnadore then at Steven Spagnoli. Steven Spagnoli
14 entered back into the living room pointed the .25 and shot
15 at Erick Harris. Richard Leach and Chris Varnadore
16 continued fighting out in the hall way of the house.
17 Erick Harris ran outside and took cover behind the BMW he
18 and Richard Leach arrived in. Steven Spagnoli walked out
19 on the porch when he, Erick Harris, fired the revolver at
20 Steven Spagnoli. Steven Spagnoli returned fire and shot
21 out the BMW window. Richard Leach immediately shot a
22 second round at Steven Spagnoli from his revolver and
23 Steven Spagnoli again shot another window out of the BMW.
24 Steven Spagnoli notice Erick Harris searching one of the
25 seats of the car for something and he grabs a McDonald's

1 bag and takes off running through the woods. Steven
2 Spagnoli turned from the front door and witnessed
3 Varnadore and Leach still fighting. Now Richard Leach had
4 a knife and Chris Varnadore a baseball bat. Steven
5 Spagnoli thinks Richard Leach grabbed the knife from a
6 bowl or table inside the house on the west wall of the
7 living room beside - between the front door and hallway
8 entrance. As Richard Leach notices Steven Spagnoli back
9 in the house he backs up in the hallway out of sight
10 Varnadore screaming at him to drop the knife. Richard
11 Leach is screaming for Erick Harris. Steven Spagnoli
12 walks toward the kitchen from the front door and suddenly
13 attacked by Richard Leach coming from the kitchen through
14 the hallway. Richard Leach went to stab Steven Spagnoli
15 as Steven Spagnoli drops down and backwards avoiding being
16 cut. As Richard Leach was in motion Steven Spagnoli
17 pointed and shot Richard Leach with the .25 at the same
18 time smashing while Christopher Varnadore at the same time
19 smashed him with a baseball bat.

20 Richard Leach laid on the floor knocked out. Steven
21 Spagnoli and Christopher Varnadore both stunned and in
22 shock looked at each other in amazement at what just
23 happened. The facts that either one could have easily
24 been killed moments before for having to defend themselves
25 and each now having an emotional drain on them. Not

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-673-

1 knowing what to expect next Steven Spagnoli searched for
2 his cell phone to call 911. He could not locate the
3 phone. In a state of confusion Steven Spagnoli yelled out
4 for his son at the front house and there was no answer.
5 Steven Spagnoli knows Erick Harris is out there somewhere
6 armed and dangerous. Steven Spagnoli walks back outside
7 and sees a loose key in a key ring on the porch picks it
8 up and walks around the BMW. The windows are shot out on
9 the passenger side and both doors open on the driver's
10 side. Steven Spagnoli closes the back door and gets in
11 the driver' seat and checks the key he found. It turned
12 over the ignition. Still confused Steven Spagnoli pulled
13 the BMW out and started up the drive to check on the kids.
14 The BMW as the only car at the back house that ran. An
15 old Cierra was parked back there but it did not run. As
16 Steven Spagnoli was driving away Chris Varnadore yelled
17 for Steven Spagnoli. Steven Spagnoli turned around and
18 pulled back up to the house. Steven Spagnoli and Chris
19 Varnadore decide now that Richard Leach was awake and
20 moaning we should take him to the hospital. Steven
21 Spagnoli backed the BMW up so that the back door would be
22 open at the base of the porch steps. Neither Steven
23 Spagnoli or Christopher Varnadore were sure about how to
24 move Richard Leach to the car but considered using the
25 area rug that he was already lying on as a stretcher to

1 transport him to the car.

2 In preparing to leave Steven Spagnoli hid the .25 in
3 a coffee can in the kitchen pantry and looking down saw
4 his cell phone on the floor under a table by the door.
5 The screen was broken and battery dead so Steven Spagnoli
6 immediately plugged it in. The outside screen lite up but
7 was unreadable. The inside screen lite up and Steven
8 Spagnoli immediately texted his son's phone. Text is
9 their only option to communicate at that time. At the
10 same time Steven Spagnoli and Chris Varnadore heard sirens
11 and when Steven Spagnoli walked out on the porch he saw a
12 number of police with flash lights walking back from the
13 front house. Upon arrival the police immediately
14 handcuffs Steven Spagnoli and Chris Varnadore and state
15 that he claimed he shot - and claimed that Erick Harris
16 claimed he saw Steven Spagnoli shoot Richard Leach and
17 him. Then the police start questioning Steven Spagnoli
18 and Christopher Varnadore. Richard Leach lay moaning on
19 the living room floor. Steven Spagnoli told the police
20 lady that he just returned home from work not long ago.
21 Christopher Varnadore told the cop that the bastard said
22 he'd fuck Amber had knocked him out then he too ask for a
23 lawyer. Steven Spagnoli soon showed up to see his dad
24 handcuffed and said to his dad "you didn't have to shoot
25 them dad." Steven Spagnoli hung his head and noddod no in

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-675-

1 response. There was no verbal response to Bradley's
2 comment. Steven Spagnoli and Christopher Varnadore were
3 transported separately to the York County Detention Center
4 in York where they await trial on charges of murder,
5 attempted murder, and illegal use of a firearm during a
6 violent crime. The two men Steven Spagnoli and
7 Christopher Varnadore pray that they will be found not
8 guilty, that they only acted in self-defense against the
9 two attackers."

10 SOLICITOR BRACKETT: State's Exhibit One Fifty-five,
11 dated Sunday, 2/27, it starts "Hi, dad, thanks for the
12 info."

13 MR. HANCOCK: I'm sorry, dated? Kevin, dated?

14 SOLICITOR BRACKETT: 2/27, Sunday, 2/27, "Hi, dad,
15 thanks for the info."

16 "Bradley is in segregation in the unit next to me
17 here. I can see him through the glass when I'm out on
18 recreation. We can communicate with sign language only.
19 I think he's said his court date was March 23rd."

20 Tuesday, March the 1st, State's Exhibit 1-5-6.

21 "Hi, dad, thanks for stopping by today."

22 MR. HANCOCK: Judge, can we take a short break?

23 THE COURT: Okay. We'll take a break. Probably a
24 good time to anyway. We'll take a ten to twelve minute
25 break.

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-676-

1 (JURY EXITS COURTROOM AT 11:04 A.M..)

2 THE COURT: Do you have something to take up or do
3 you need a break?

4 MR. HANCOCK: About ten?

5 THE COURT: Okay.

6 (COURT IN RECESS AT 11:04 A.M..)

7 (COURT BACK IN SESSION AT 11:22 A.M..)

8 THE COURT: Thank you. Take your seats.

9 Is the State ready to proceed?

10 Bring in the jury.

11 SOLICITOR BRACKETT: Your Honor, before we do that.

12 THE COURT: Whoa.

13 SOLICITOR BRACKETT: Mr. Hancock brought something
14 to my attention. He said he had a motion.

15 THE COURT: All right.

16 MR. HANCOCK: Your Honor, it's not basically at this
17 time in the form of a motion. I left the courtroom just
18 briefly and had to walk out the front door, I noticed
19 individuals there with t-shirts that had pictures of Mr.
20 Harris I believe it is - I mean Mr. Leach, and it says
21 "Gone but not forgotten." I don't know how far your
22 authority goes but I'm asking the court to at least
23 instruct - and I think the Solicitor has taken some
24 appropriate steps - that I feel that would be possibly an
25 undue influence on the jury, and I would ask that it at

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-677-

1 least be stricken from the courtroom. But I would also
2 ask that there not be any attempt to influence the jury by
3 showing a depiction of the deceased in some light that he
4 is of a great interest to the community or this sort of
5 thing and it might influence the jury improperly, sir.

6 SOLICITOR BRACKETT: Your Honor, we spoke to the
7 family. I was just back there talking to them now, I
8 explained to them that at this point in time the
9 courthouse while the trial is going on it would not be
10 appropriate to wear those shirts. I don't believe that -
11 I was out in the hallway before court convened this
12 morning, I didn't see anybody wearing such a shirt, but
13 the family has assured me that they will not. I said if
14 you don't have a change of clothes, a different shirt to
15 wear, then you either have to leave or go in the bathroom
16 and take it off and turn it inside out and wear it
17 backwards because you can't wear it on the court, in the
18 courtroom, in the hallway, or on the grounds of the court,
19 anywhere the jurors might see them coming or going is what
20 my instruction was.

21 THE COURT: I appreciate you taking care of that. I
22 don't want to stifle peoples freedom of expression but I
23 don't want to mis-try this case and end up having to start
24 from scratch which could be a - could happen were there to
25 be some extraneous influence on the jury outside of the

1 courtroom. So I appreciate the Solicitor doing that and I
2 just want to exercise to those in my hearing that that
3 conduct is certainly appropriate in the appropriate place
4 but we need to have a jury to make a decision free of any
5 external influences and so whatever happens in this case
6 as far as a verdict we want it to be permanent and stick
7 and not be subject to being attacked for some reason such
8 as a outside influence. So I appreciate everybody working
9 with us.

10 MR. HANCOCK: And, Your Honor, I don't know how far
11 that goes, I know that still we've got freedom of speech,
12 but during the time that we do break or anything like that
13 if I see anyone I want to inform the court and I don't
14 know, possibly I'll let the court go ahead and work from
15 there as far as where we might --

16 SOLICITOR BRACKETT: I believe that everybody who is
17 here in the courthouse today on behalf of Mr. Leach is
18 present in the courtroom now, if I'm not mistaken,
19 everybody here in his behalf they are present. I don't
20 think there's anybody else out there and I believe as I
21 look around the courtroom now for the record I do not see
22 anybody wearing any sort of t-shirt that is of the sort
23 that Mr. Hancock is concerned about. I've spoken with
24 them personally and I believe they understand and I don't
25 think we're gonna have that issue between now and the time

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-679-

1 of a verdict.

2 THE COURT: Does anyone need to call anything to my
3 attention from either side do like this.

4 But I think we probably cured the situation.

5 SOLICITOR BRACKETT: Yes, sir. Thank you.

6 The State is ready, Your Honor.

7 THE COURT: Bring in the jury.

8 SOLICITOR BRACKETT: Your Honor, I have three more
9 witnesses. Just three more letters and I believe we're
10 done after that. We'll rest after that.

11 MR. HANCOCK: Your Honor, as I ask yesterday and I'll
12 ask your guidance after we finish with the letters we
13 gonna have time to go over much of the evidence and I'll
14 appreciate maybe a lunch break to go into the cell and
15 determine if my client is going to testify and speak with
16 him a little bit at length before any testimony if he
17 decides to take the witness stand.

18 THE COURT: Okay.

19 MR. HANCOCK: Its eleven thirty now.

20 THE COURT: Right. We can probably arrange that.

21 (JURY ENTERS COURTROOM AT 11:27 A.M..)

22 THE COURT: You may proceed.

23 SOLICITOR BRACKETT: May it please the Court.

24 DIRECT EXAMINATION

25 INVESTIGATOR EDDIE STRAIT BY SOLICITOR BRACKETT:

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-680-

1 SOLICITOR BRACKETT: State's Exhibit One Fifty-six in
2 evidence, dated 3/1, starts "Hi, Dad, thanks for stopping
3 by today."

4 "In an effort to locate the missing revolver used
5 in the attack, I wrote letters to both Jack Kerce, my
6 neighbor on the first house on the left,
7 and Everett Worsley, the second house on the left coming
8 in the neighborhood and ask them both to keep their eyes
9 open for a revolver in the woods that I expect the gun as
10 he ran from the scene he may have stashed the gun anywhere
11 between my back house and where he searched
12 for help.

13 I enclosed a letter to Gainey for you to give or to
14 let him read. If you want to let him read the ten page
15 letter I wrote you explain what it is. Robbie will go
16 look for and maybe even find the revolver or help Everett
17 or Jack look in the woods. If its located he or either
18 neighbor can call either Hancock, his investigator, or the
19 cops and turn it in for evidence.

20 I need all the help I can get. Break it down to
21 Robbie and see that he helps me and Chris out. I need to
22 get out of here. If I can get things resolved I want to
23 get home and get busy. If the State learns about a
24 revolver being found and entered into evidence they may be
25 encouraged to settle the case without going to trial."

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-681-

1 SOLICITOR BRACKETT: State's Exhibit One Fifty-seven,
2 dated 3/15, starts "Hi, Dad, it was good to see you today.
3 You look well."

4 MR. HANCOCK: 3/15?

5 SOLICITOR BRACKETT: Yes, sir.

6 MR. HANCOCK: I barely could see it.

7 SOLICITOR BRACKETT: "Bradley I guess goes to court
8 next Wednesday. We'll see what happens there. I thought
9 while he's here and sober that Hancock should reinterview
10 him and since I see in his statements to the police he
11 throws me under the bus - that Hancock should reinterview
12 him since I see in his statements to the police he threw
13 me under the bus. Of course he was worried about getting
14 locked up himself and the threats from people. I wish I
15 could rely on him and Amber as good witnesses but they're
16 both too stupid and selfish to be concerned with it.

17 Their testimony is going to have to be drilled into
18 their minds. A re-interview with Hancock or his PI is
19 inevitable. Same with Sloan who I see gave a statement
20 putting himself there at the scene. I wasn't going to get
21 him involved but now it's clear he is. Sloan's statements
22 no doubt started while he was here under arrest for Forty
23 Thousand Dollars back child support talking either
24 directly to the detectives or to an informant or both - or
25 both motivated to get out of jail. Well now I understand

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-682-

1 while he was running his mouth was" - I'm sorry - "Well
2 now I understand why he was running his mouth was that he
3 witnessed the shootings from the woods and left quietly
4 before the cops got there. He also said Bradley called
5 Richard Leach on my phone and instigated the fight that
6 night. This part is not typed in his statement. It's in
7 Sloan's statement though that Bradley drove to Sloan's at
8 3:00 a.m. that night to notify him of mine and Chris's
9 arrest.

10 Bill says that one of my neighbors called him. I
11 want to know if there's been any developments. It's
12 probably a good time for you to go visit Mikey Hanover at
13 CIF in Newport. If you will go over my ten page review
14 that you have, hopefully you will get the gist of it to
15 Chris. Do this verbally and let Mike make notes. I thank
16 you in advance and again for helping me out there. This
17 would be much easier if I was out on bail and I can do my
18 leg work. I told Bradley not to discuss anything with
19 anybody but he's got a mouth that can't be quite like his
20 mother's. Which reminds me, I hope my letters are safe
21 with you. They are private, right?

22 When ever you get a chance to talk to Mike tell him
23 to remind him Chris that should remind - remind Chris that
24 he should recall me telling him, Chris, my plan on how to
25 deal with Richard Leach's actions against Amber and that

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-683-

1 was, I plan to make a report at the sheriff's department
2 the next day. I mentioned this to several people. Maybe
3 you too question mark. John Boyd and his brother Joe,
4 Bradley, Amber and Sloan, I had no motive to shoot anyone.
5 Bradley, Sloan and Chris all had an opportunity to call
6 Richard Leach on my phone and instigate trouble.
7 According to info in here Sloan claimed Bradley made the
8 calls to him from down by the creek when I was in my
9 office checking emails and doing paperwork. I hope that
10 if I - we can put enough evidence together that the State
11 would be inclined to drop the charges and call it
12 justified action in self-defense or whatever their term
13 will be. I don't know what else I can do at this time.
14 If I had the discovery package to study I could write a
15 book of ideas, show reasons, facts, et cetera. I could
16 review the photos if they are on disc but not without a
17 laptop. I think there should be a schedule set by the
18 judge for both prosecution and the defense to have their
19 discovery turned then the time schedule for motions,
20 pretrial and finally a trial.

21 SOLICITOR BRACKETT: Finally, State's Exhibit-
22 One Fifty-eight, dated 3/16, "Hello again, Dad."

23 "Hello again, Dad. I was wondering if you would
24 write Bradley a letter reminding him of the following
25 things. One: Richard Leach was a friend of his not mine.

1 Two: That he and Amber both used my cell phone after
2 7:00 p.m. when calls were free on a regular basis.

3 Three: That the night of the incident he had my
4 phone until around 10:00 p.m. I saw some of what he said
5 in his statement to the cops and it doesn't look like he
6 was being truthful just trying to turn the spot light on
7 me.

8 After pondering his and Sloan's statements I can see
9 where between the two of them they could and probably did
10 instigate trouble that night although the two of them find
11 it hard to admit. It would make sense in the bigger scope
12 of things. I don't think that they could be charged with
13 accessory but could be looked down on for instigating the
14 start of trouble that night. Bradley not being smart
15 enough to orchestrate and foresee the potential danger was
16 probably going along with Sloan's drunken plan since he
17 had and knew that Bradley both had dogs in the fight
18 against Leach.

19 Sloan's girlfriend Blondie was sexually harassed
20 weeks prior to this then he saw an opportunity to cause
21 trouble for Leach by turning him on me and taking a seat
22 to the side to witness the action. This makes sense to
23 me. What do you think? I can ask myself what would the
24 jury do? And I think they would have to consider the fact
25 that it did or could have been instigated by someone

DETECTIVE EDDIE STRAIT: DIRECT BY SOLICITOR BRACKETT

-685-

1 besides me or Chris. Of course testimony from the two of
2 their three including Blondie would help reenforce that
3 fact. This can be arranged with Hancock one way or
4 another. You know, I can go on and on thinking how not
5 only to prepare for but prove self-defense when I'm not
6 sure that that's the defense that Hancock wants to use."

7 BY SOLICITOR BRACKETT:

8 Q. Sir, when was the search warrant served?

9 A. April 5th of 2011.

10 Q. All right. So the letters that you have only go up
11 to that date?

12 A. That's correct.

13 Q. Of 2011? April 5th, 2011?

14 A. Yes.

15 SOLICITOR BRACKETT: Thank you very much, Detective
16 Strait. Please answer any questions that Mr. Hancock may
17 have.

18 MR. HANCOCK: I have no questions of this witness.

19 THE COURT: You can step down and be excused. We
20 appreciate your time. Thank you.

21 (WITNESS LEAVING WITNESS STAND.)

22 SOLICITOR BRACKETT: If it please the Court, Your
23 Honor, subject to double checking the exhibits and making
24 sure that what we believe is in evidence is also marked by
25 the Court Reporter is in evidence that would be the

1 State's case and we would rest at this time.

2 THE COURT: Members of the jury panel, the State is
3 resting, and that means the State has presented their
4 case. Under certain circumstances they might have a right
5 to present evidence later but you've heard their case in
6 chief as we call it.

7 We have to take up some legal matters outside your
8 presence now and even though it's - Well like yesterday,
9 it's again a little early for lunch, we're gonna take an
10 early lunch because it will help us move things along
11 cause we've got some work to do between now and the next
12 stage. You might be sitting there thinking well why did
13 they not do this at an earlier time and not get into this
14 situation. Well, we can't. There are certain things that
15 have to be done in a certain order and I can't address
16 certain things until other things have happened. Like a
17 ball game, you can't play the third inning until you've
18 played the second. And so that's sort of the way this
19 situation is now. So we're gonna break 'till one o'clock
20 and we'll try to start as promptly at one if we can.

21 And you're still yet not in a position to make up
22 your mind. The case hadn't got to that point. You
23 haven't heard the arguments of the attorneys and haven't
24 heard my charge so take your time and have a pleasant
25 lunch and we'll see you back at one o'clock and we'll try

1 to start as promptly around one as we can. Thank you.

2 (JURY EXITS COURTROOM FOR LUNCH AT 11:38 A.M..)

3 THE COURT: Anything from the State?

4 SOLICITOR BRACKETT: No, sir, Your Honor. We'll just
5 check the exhibits and then -

6 THE COURT: All right. The Defense?

7 MR. HANCOCK: Your Honor, I move for a directed
8 verdict, Your Honor.

9 THE COURT: All right.

10 MR. HANCOCK: On the grounds of the evidence being
11 viewed in the light most favorable to the State - -

12 THE COURT: The motion is denied. There is ample
13 evidence and I don't know whether you call letters
14 circumstantial evidence or not, but if they fall into that
15 category they certainly are substantial, circumstantial
16 evidence but there is ample direct evidence.

17 And again, if letters can be considered
18 circumstantial - substantial circumstantial evidence that
19 the jury could conclude that the death of Mr. Leach
20 constituted murder and that that was done by the defendant
21 Mr. Spagnoli, so I deny your motion.

22 Mr. Spagnoli, can you hear me?

23 MR. SPAGNOLI: Yes, sir.

24 THE COURT: We've reached the point in the trial
25 where you have a right to present a defense if you wish,

1 but you don't have to call any witnesses because you're
2 presumed innocent as you may heard me remark to the jury
3 two days ago.

4 You're presumed innocent, you need not prove your
5 innocence. The State has to prove your guilt beyond a
6 reasonable doubt. You have a right to call witnesses' if
7 you wish, and you also have a right to testify, you also
8 have the right to remain silent.

9 Does he have any prior record for impeachment
10 purposes?

11 SOLICITOR THOMPSON: Your Honor, for impeachment
12 purposes I believe the only thing would be - I talked to
13 Mr Hancock about this and I know he has an issue with it -
14 the fact that he's not allowed to possess a pistol under
15 state law in South Carolina from a prior conviction, a
16 prior conviction from a long time ago.

17 THE COURT: Well, I'm not gonna allow you to impeach
18 him on that because that - We had this same thing in a
19 case last week oddly enough. I think that that's - if
20 this is the right way to analyze it - the prejudicial
21 value would outweigh any probative value for impeachment
22 on that since he's charged with possessing a firearm
23 during the commission of a violent crime, so I'll not
24 allow you to impeach him with that.

25 SOLICITOR THOMPSON: All right. Thank you.

1 THE COURT: But if you have a right to testify and
2 you will be under oath in the case and your attorney Mr.
3 Hancock has the right to ask you any questions and then
4 the State would have the right to cross examine you.

5 If you exercise your constitutional right to remain
6 silent I will instruct the jury that that is what you have
7 done; that you've exercised your constitutional right to
8 remain silent. I will instruct the jury that they cannot
9 use that against you in any way whatsoever; they cannot
10 discuss in the jury room with each other the fact that you
11 have exercised your constitutional right to remain silent.
12 I will tell them they cannot factor it into their own
13 deliberations as they deliberate what verdict to render.

14 I will remind them that you are presumed innocent,
15 you need not prove your innocence, but the State must
16 prove your guilt beyond a reasonable doubt.

17 Do you understand all of that?

18 MR. SPAGNOLI: Yes, sir.

19 THE COURT: Do you have any questions about that?

20 MR. SPAGNOLI: No, sir.

21 THE COURT: This decision as to whether to testify or
22 not is yours. It is not Mr. Hancock's or the State's, of
23 course, or mine, or your family and friends, but you can
24 get and discuss your options with whomever you wish -

25 MR. SPAGNOLI: Okay.

1 THE COURT: --- and to make up your mind. So we'll
2 break until one o'clock and then we'll see where we are at
3 that time. Okay. Everybody will be at ease until one
4 o'clock.

5 (COURT IN LUNCH RECESS AT 11:42 A.M..)

6 (COURT BACK IN SESSION AT 01:07 P.M..)

7 THE COURT: Thank you. Take your seats.

8 And bring in Mr. Spagnoli.

9 (DEFENDANT, STEVEN SPAGNOLI, REENTERS COURTROOM.)

10 THE COURT: We're back on the record. Mr. Spagnoli is
11 present with counsel. Is the State still resting or have
12 they decided they - the State decided other matters to do?

13 SOLICITOR BRACKETT: No, sir, Your Honor. The State
14 rest.

15 THE COURT: All right. And the defense has made a
16 motion for a directed verdict that's been denied.

17 Does the Defense wish to go forward with any
18 witnesses?

19 MR. HANCOCK: Your Honor, I would like to inquire
20 as to -

21 THE COURT: Mr. Spagnoli, have you had a chance to
22 determine whether you wish to testify or exercise your
23 constitutional right to remain silent?

24 MR. SPAGNOLI: I'll testify, Your Honor.

25 THE COURT: Okay. All right. Then we'll have the

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-691-

1 jurors come -

2 Do you have any other witnesses?

3 MR. HANCOCK: No other witnesses, Your Honor.

4 THE COURT: All right. We'll have the jury come back
5 in and have the testimony of the defendant Mr. Spagnoli
6 and then after that we will - We've already had some
7 discussion about the charge. We of course will have a
8 recess between the testimony and any reply if there is
9 any, and the charge.

10 So bring the jury in. Bring in the jury.

11 (JURY REENTERS COURTROOM AT 01:10 P.M..)

12 THE COURT: Mr. Hancock.

13 MR. HANCOCK: If it please the Court. Call to the
14 witness stand Steven Spagnoli.

15 THE COURT: Please come up and be sworn.

16 MR. HANCOCK: Step up here, Steve, and put your left
17 hand on the Bible and raise your right hand and be sworn,
18 sir.

19 MADAM CLERK: Thank you. You can have a seat.

20 (WHEREUPON, STEVEN SPAGNOLI,
21 BEING FIRST CALLED AND DULY SWORN, TESTIFIED AS FOLLOWS:)

22 DIRECT EXAMINATION

23 STEVEN SPAGNOLI BY MR. HANCOCK:

24 Q. Please state your name for the Court.

25 A. Steve - Steven Spagnoli. S-p-a-g-n-o-l-i.

1 Q. Okay. And are you nervous, Steve?

2 A. Absolutely.

3 Q. Okay. I want you to speak up just as if you're
4 speaking to me at all times. I may not be at the same
5 place in the courtroom; speak loud enough as I am speaking
6 so that the last juror can hear everything you say. They
7 can't take down a nod of the head or a shake of the head.

8 A. Okay.

9 Q. The lady has to take down every word you say in
10 testimony.

11 A. Yes, sir.

12 Q. Okay, sir?

13 A. Yes.

14 Q. Steve, how old are you?

15 A. I'm forty-nine years old.

16 Q. Where do you live?

17 A. in .

18 Q. And how long have you lived there?

19 A. Roughly twenty years.

20 Q. And are you married?

21 A. I'm not.

22 Q. Children?

23 A. I have four children.

24 Q. And let's go to the - Are you employed?

25 A. I'm self employed.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-693-

1 Q. What do you do, sir?

2 A. I work in the industrial arena of buying and selling
3 processing equipment and I work with some companies in
4 moving plant machinery from one location to another and
5 that type of thing.

6 Q. In the course of that employment you have any help?

7 A. Yes it does so from time to time yes.

8 Q. And would you please relate to us the events of the
9 28th. And you been sitting in the courtroom, you know what
10 we talking about?

11 A. Yes, sir.

12 Q. Okay. Would you please just give me a - how that day
13 went for you?

14 A. That day went up to Charlotte to work in a plant on
15 Old Pineville Road.

16 Q. Now, Steve, if I may, don't let it interrupt your
17 chain of thought, it may, but I will interrupt to ask
18 questions for you to clarify.

19 A. Yeah.

20 Q. I want you to tell us exactly what was happening.

21 Okay?

22 A. From the time I got to work up there or?

23 Q. Okay. You went to work. Who if anyone went with
24 you?

25 A. Well I've got a crew that was up there that rides in

1 a separate car and then Chris Varnadore and I were -
2 arrived later that morning to the job site in Charlotte.

3 Q. And what do you do?

4 A. That particular job we were moving some glass lined
5 reactors and some chemical processing equipment to a
6 facility here in Rock Hill.

7 Q. And on that day what if any contact did you have with
8 Amber Shedd?

9 A. I saw Amber when we returned from work that evening.

10 Q. What time was that, sir?

11 A. That was maybe around seven thirty or so.

12 Q. And who if anyone returned from work with you?

13 A. Chris Varnadore, my son Bradley and Sloan McConnell.

14 Q. And you are familiar with Amber Shedd?

15 A. Yes, sir.

16 Q. Where does she live?

17 A. She at the time lived in - at

18 Q. And what is your relationship with her?

19 A. She's my - was my son's girlfriend and the mother of
20 their child they had together, little B.S.

21 Q. And did you speak with her by phone that day or not?

22 A. I don't think so. Not that day, no.

23 Q. And what if anything did you learn about her and Mr.
24 Richard Leach?

25 A. The day before I talked to Amber about Richard

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-695-

1 Leach having come over there and coming in the house,
2 forcing his way in the door, which she told me, and was
3 handling the baby and made some sexual advances to her.
4 And it scared her, she had to flee from the house to the
5 neighbors to get him to leave - until he left. And then
6 she said he had come back again banging on the doors and
7 the windows trying to get in the house until the neighbors
8 ran him off the second time. So I had learned that that
9 day before we started out talking about it, the 27th I
10 guess.

11 Q. What time was that?

12 A. After work, again, about seven thirty, seven, so
13 somewhere along those lines.

14 Q. And what if anything did you do?

15 A. On the 27th I ask Amber why she didn't call the
16 police. She said I don't want to cause any problems for
17 you or Leach. Rick she called him.

18 Q. Did you call the police, sir?

19 A. No I thought it was my son's responsibility to get
20 with Amber and do what needs to be done as far as that
21 goes.

22 Q. What was your association with Richard Leach?

23 A. I've known Richard just a couple of years. I think
24 I meet him around 2008. It was originally an associate -
25 meet him through my son actually, Bradley. And had seen

1 him off and on. Since then I found out he was selling
2 drugs and had actually bought some from him directly.

3 The kids I ask - warned the kids that they shouldn't be
4 messin with him and for sure made sure that they knew not
5 to bring him out to the house again. They were the
6 original ones that brought him out to the property so met
7 him a result, you know, their relationship.

8 Q. Did you use drugs?

9 A. Occasionally.

10 Q. What kind of drugs?

11 A. I smoked a little weed every now and then and I used
12 to sniff some cocaine.

13 Q. And where did you get your marijuana and or cocaine?

14 A. Different places. Leach for one provided it.

15 Q. And on the 27th did you have any conversation with
16 Mr. Leach?

17 A. I think I - I think it was the 27th I called him
18 early in the afternoon. The call records would verify
19 it. I don't know. I think it was around five thirty.
20 Let me think. Monday. I'm sorry. Monday around the time
21 when I got home, seven, seven-thirty around that time if
22 my memory serves me. I don't really remember what time it
23 was but I called him and told him that I had talked to
24 Amber and was basically looking for a confirmation from
25 him that maybe she wasn't telling me a story about it.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-697-

1 Q. Okay.

2 A. And he -

3 Q. Steve, is this on the 27th?

4 A. 27th. Correct.

5 Q. All right.

6 A. And he told me to mind my own business on the 27th.

7 And that was the extent of that call. I thought that I
8 needed to talk with Bradley about it and Bradley was off
9 and didn't come home that night so I wasn't able to talk
10 to him until the next day about this situation.

11 Q. And the next day, the day this shooting took place,
12 the day that --

13 A. The 28th, yes.

14 Q. The 28th. Let's return to that. You went to work
15 and you had your crew.

16 A. Yes, sir.

17 Q. And when did you quit work that day?

18 A. Probably right before five o'clock, four, four
19 forty-five, something like that.

20 Q. And where then did you go?

21 A. We were working on Old Pineville Road, went down
22 and got on 49. There's a little place called Max. I
23 believe it's Max, a little barbeque, beer place on 49. We
24 got a patio area out there so we're not getting any nice
25 tables dirty or sitting on the picnic tables eating so the

1 guys are dirty from work and stuff, you know, so it was a
2 decent place for us to stop and have a couple of beers and
3 let the traffic die down a little bit.

4 Q. And what did you have to drink?

5 A. I had two or three mixed drinks.

6 Q. And how long did you stay there?

7 A. Probably an hour and a half or so. Maybe two hours.

8 Q. Did you have a watch on at that time?

9 A. I just had the phone. I usually look at the phone
10 and see what time it is.

11 Q. Did you have any reason to sit down and watch every
12 minute that you were going places or stopping at places at
13 that time?

14 A. No.

15 Q. All right. And did you leave Max?

16 A. Yes.

17 Q. When you left Max who was with you?

18 A. The same, Bradley, Chris and Sloan and myself.

19 Q. And where did you go?

20 A. We headed back to here to York, stopped in Lake Wylie
21 and I'm not sure who ran in and bought a bottle of
22 Tequila.

23 Q. Somebody went in and bought a bottle of Tequila?

24 A. Yeah. So took that and arrived back to my place.

25 Q. When you say my place?

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-699-

1 A.

2 Q. All right, sir.

3 A. And checked on Amber, said hello, and we decided to
4 ride down by the creek and mess around down there just a
5 little bit just, you know, unwinding or whatever.

6 Q. Who was down at the creek?

7 A. The four of us went down and Bradley stayed up there
8 with Amber for a little while and then he joined us and I
9 was back and forth from there to the back house where I
10 live. Drinking going on, I think somebody built a little
11 fire, camp fire, I had a little pistol, a little .25
12 pistol out shooting it. Out in the country no where near
13 any houses or anything, you know, a safe place to shoot as
14 far as location goes. So anyway like I said I was back
15 and forth from the back house down there. Eventually as
16 it got dark, started to get dark, Amber came to pick
17 Bradley up.

18 Q. Okay.

19 A. They were going to get something from Wendy's or
20 wherever it was so they took off. Sloan and Chris and I
21 eventually wound up back at the back house and we were
22 sitting around hanging out up there.

23 Q. The back house is your house?

24 A. Yeah. Right. There's a front house and where
25 Bradley and Amber stayed and then the back house where I

1 stayed.

2 Q. And you wound back up at your house?

3 A. Yes, sir.

4 Q. What if anything did you do then?

5 A. Checking emails. I had been checking emails and what
6 not. I think I put on a play list of some music so we
7 were listening to some music, just continued talking.
8 Sloan hung out for a little while and he left and then it
9 was Chris and I alone in the house just not doing anything
10 in particular. Just, you know, just hanging out watching
11 the videos on -

12 Q. Where were you watching the videos?

13 A. I've got the back - one back bedroom with a computer
14 set up back there and we could - I pulled videos up and
15 we'd go watch 'em on a screen the music videos in that
16 back bedroom.

17 Q. Where is that in relation to the main living area?

18 A. When you walk in the front door of the house directly
19 straight ahead there is a - an open doorway. There is not
20 a door, it's just an opening, doorway opening. There's
21 one bedroom straight ahead and there is another bedroom to
22 the right, back far right, that's where the computer is.
23 There is no bedroom to the immediate right but that back
24 bedroom in the far right corner is where the computer's
25 set up.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-701-

1 Q. All right. And on that vantage point can you view
2 the door?

3 A. You can view the front door. Where I've got a desk
4 and a chair normally positioned you can turn around and
5 see into the living room and you can see through part of
6 the hallway and into the living room but you cannot see
7 the front door. There's not that type of angle there.

8 Q. So at that time you and Mr. Varnadore were not in
9 the front room?

10 A. No. We're pretty much glued to the screen back
11 there. He was.

12 Q. How long were you all doing that, sir?

13 A. Sir?

14 Q. How long were you all doing that, sir?

15 A. I didn't understand you. I'm sorry.

16 Q. How long were you all looking at movies, viewing
17 movies?

18 A. Oh. I guess, you know, an hour or more, two. Maybe
19 an hour after Sloan left or so cause when Sloan was there
20 we were all in the front room. Okay. And then when it
21 was just Chris and I then we could - it's too crowded with
22 three people back there but two people can sit and watch.
23 I have two chairs pulled up in front of the computer and
24 we were watching it up and down. You know I was up and
25 down just watching music videos.

1 Q. All right. And what if any contact did you have with
2 Mr. Richard Leach during that period of time?

3 A. At one point in the evening I called Richard on the
4 cell phone. I think I called him once and maybe it went
5 to voice mail. Then he tried me back and I didn't hear
6 his call, it went to voice mail or whatever and neither
7 one of us left any messages but then I called him I think
8 a second time. Finally he called me back and I wanted to
9 talk to him some more about the incident the day before
10 and let him know I was extremely upset about it. And that
11 he shouldn't be treating my people like that and I don't
12 never want him out there again and he's gonna have to
13 explain to the police what he did because I'm that mad
14 about it and don't appreciate it. And I'm giving you a
15 warning now that they are gonna be coming out there so put
16 your drugs up.

17 Q. You said they're gonna be coming out?

18 A. So - So put your drugs up because they're coming to
19 talk to you about with Amber.

20 Q. Who's they?

21 A. They - the police. I meant when I said they their
22 gonna be coming I meant the police.

23 Q. Did he make an recognition of what you may have
24 meant in this?

25 A. I'm sorry. What did you say?

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-703-

1 Q. Did he make any recognition to you that he knew
2 that you were talking about the police?

3 A. Oh, yeah. Yes I told him. No question he understood
4 what I said. I made it clear I was going to the police.

5 Q. Okay. And before that you had numerous phone calls
6 back and forth to Mr. Leach on the 27th and that day. What
7 were those calls about?

8 A. I don't believe I made those calls. I made the one
9 call the day before. What we saw on the screen that's
10 news to me. I'm not the only one that uses that phone by
11 the way.

12 Q. Who uses it the phone?

13 A. The - Amber uses it, they use it every time I see
14 'em they need the phone so sometimes in the evenings I
15 leave it with them when the calls are free. And then on
16 the weekends I give it to 'em on just to get 'em - because
17 if I don't give it to 'em they both have pre-paid phones
18 but their minutes run out the day they get the minutes so
19 I'm constantly having to give them my phone to make their
20 calls.

21 Q. I ask you to return, you all were playing the video
22 game.

23 A. Yes, sir.

24 Q. About what time was this?

25 A. When I called Leach out or what time, what?

1 Q. Did you call Leach?

2 A. It was around I guess ten fifteen or whenever the
3 call records have. It was around that time like around
4 ten fifteen.

5 Q. Ten fifteen?

6 A. P.M. at night.

7 Q. And after you talked with Mr. Leach what did you do,
8 sir?

9 A. I texted Bradley. They can communicate with Amber's
10 phone. When she runs out of minutes she can still text so
11 I texted to Brad. I ask him where he was at. I was gonna
12 tell him - I was gonna tell him that I talked to Leach and
13 that I was planning to go in the morning to down here to
14 the Moss Justice Center and I wanted him or at least him
15 or at least Amber to - one or both of 'em to be ready to
16 go to come down here the next morning since I had made
17 contact with Leach and told him I was just spreading the
18 word to him about where I was at with the situation.

19 Q. Okay. And - -

20 A. And they didn't return the text so I don't know if
21 he got it or heard it or what.

22 Q. And then what if any contact did you have with
23 Richard Leach?

24 A. The next contact I had was not too long after the
25 call. Chris was still in the back bedroom watching the

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-705-

1 music.

2 Q. Where were you?

3 A. I was up and down and I happen to be in the kitchen
4 at the time the door opened and I heard Leach screaming
5 about you gonna call the police on me, why don't you try
6 to call 'em right now. And I couldn't see him right away
7 but - but as I heard his tone I had that pistol out from
8 earlier on a table. Actually not on a - it wasn't on a
9 table, it was in a kitchen drawer. I opened the kitchen
10 draw and took it out of the kitchen drawer. I pulled the
11 slide back.

12 Q. Why did you take the pistol out of the drawer?

13 A. Because I figured there was trouble them coming in
14 and when I was running. Cause when I got into the living
15 room --

16 Q. Just wait just a second.

17 (PAUSE.)

18 Q. All right, now.

19 A. I got a terrible glare from right here. May I step
20 up? I can't see, really see this.

21 THE COURT: You may step down. Just don't stand
22 between the jury and the screen.

23 A. Okay.

24 (WITNESS LEAVING WITNESS STAND.)

25 DEPUTY SHERIFF: Yes, sir.

1 BY MR. HANCOCK:

2 Q. Now, Steve, even though you're looking at this and
3 explain it, you're gonna have to speak loud enough so that
4 this jury can hear you.

5 A. All right.

6 Q. And I'll try to - Okay. Now tell me you've got the
7 front door is where? Right about there?

8 A. That's not a really good drawing to describe where I
9 was because I'm up in the upper left hand corner. That's
10 where the kitchen goes on back further, going to the very
11 top.

12 Q. Okay.

13 A. See there where it says 6 8? I remodeled that house
14 and it used to be a wall there but it's open from the
15 living room into the kitchen.

16 Q. All right.

17 A. So that's not a wall right there where below where it
18 says 6 8.

19 Q. Okay. It's six feet, eight inches across.

20 A. And then to get a perspective on where Chris was
21 located, that's not on this drawing either. But if you
22 see right where if you were in that opening to the
23 hallway?

24 Q. All right.

25 A. Right there. There is one bedroom that goes

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-707-

1 directly across ---

2 Q. Okay.

3 A. --- there. And then the other one he was in the
4 back further this way. So in the back hall corner.

5 And like I said, I was in the kitchen.

6 Q. You were back here?

7 A. I was in the kitchen I think right by the sink which
8 is on further back.

9 Q. Back here?

10 A. Right. So when I heard Leach, he came in through
11 the front door evidently he came through the front door.
12 No knocking, no nothing. He came on in and I had just got
13 off the phone with him fifteen minutes earlier telling him
14 not to come out there.

15 Q. This is on this.

16 MR. HANCOCK: Judge, I would inquire, it seems they
17 could, but I would just ask the jury, inquire of the jury
18 if they can hear.

19 THE COURT: Can you hear?

20 They shook their head they can.

21 MR. HANCOCK: Okay.

22 A. So like I said I started to tell you, I was in the
23 kitchen. I heard Mr. Leach raising his voice. And the
24 kitchen drawer was right - to the right. Originally - See
25 that table right there is originally where the gun was

1 before I put it in the kitchen drawer as the night went
2 on. I was gonna clean and I decided not to and leave it
3 in the drawer.

4 Q. All right.

5 A. So when I heard his tone I got the gun.

6 Q. Why did you get the gun?

7 A. To protect myself because I thought he was upset
8 about what I told him and I don't know what he's capable
9 of so --

10 Q. When he said what he did coming in the door, what if
11 anything did you notice about his tone or his manner?

12 A. He was - He was aggressive and screaming so enough
13 to alarm me to tell me that no social visit here, he's
14 coming over to fight with me. So I grabbed the gun and I
15 loaded it up, pulled the slide on the gun and I walked
16 towards the - into the living room. When I saw a strange
17 man I never seen before I my life walking towards me and
18 had --

19 Q. Well did that scare you?

20 A. Yes. He - -

21 Q. Where were you?

22 A. I'm between - When I notice him I'm at that opening
23 between the kitchen and the living room right at - right
24 between that chair and that table in the - where the fire
25 place to be, right in there.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-709-

1 Q. Okay.

2 A. So I saw him from that distance. And I saw something
3 in his hand whether it was a gun, knife, a cell phone, I
4 don't know but it was something in his hand. And I told
5 him to get out of the house. I said get out. I pointed
6 the gun at him and I shot - shot. I don't know if I hit
7 him or not but I continued walking -

8 Q. Why would you shoot at that time if you didn't have
9 any fear?

10 A. Absolutely. I -

11 SOLICITOR THOMPSON: Objection to leading, Your
12 Honor.

13 A. I heard - Wait.

14 MR. HANCOCK: You can go ahead.

15 THE COURT: Yeah. He ask you - Ask the question
16 again so we can get back on track.

17 MR. HANCOCK: I will.

18 A. I was wondering if I should answer the question.

19 Q. What if anything are you feeling at that time?

20 A. I was feeling like my home was being invaded and I
21 don't know what to expect next I'm sorry I didn't -----
22 myself.

23 Q. Go ahead.

24 A. So I walked - followed the man out of the front door
25 and as I get - You can't see the porch on there much

1 either one of the steps but I get out onto the porch and
2 as I walk toward the driveway I see a strange car - -

3 Q. Where? You have seen a man here and you shot at him?

4 A. Yes.

5 Q. In this area or where? Where?

6 A. Yeah, right in - He was probably standing on the
7 corner of that road right there.

8 Q. The corner of the road?

9 A. Yeah.

10 Q. That's it?

11 A. Right inside the corner yeah. Maybe a little
12 further.

13 Q. Okay.

14 A. In that - I don't know exactly where I was. It was
15 in that area.

16 Q. All right.

17 A. So like I said while I was on the porch - -

18 Q. Well, wait a minute. You proceeded. Where was Mr.
19 Leach?

20 A. Mr. Leach was in the back bedroom with Chris.

21 Q. Well how did he get - -

22 A. Back in there somewhere. I don't know, I couldn't
23 see where. I couldn't see them, I don't know. I don't
24 know where they were.

25 Q. So you were back ---

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-711-

1 A. But I assume --

2 Q. --- in this area?

3 A. That's the hallway so they could a been in any of
4 those bedrooms or bathroom or wherever back there. The
5 picture doesn't show the whole lay out.

6 Q. Okay. So they were back here and you couldn't see
7 them?

8 A. No I couldn't see them.

9 Q. Could you hear anything?

10 A. I could hear a commotion going on, yes.

11 Q. All right. What did you do after that?

12 A. Like I said I followed the stranger out onto the -
13 I followed behind him. I was on the porch and I noticed
14 he was in - rummaging around in a strange car that I had
15 never seen before. There was a parked car located -

16 Q. Where was the car located? This is your deck right
17 here. Where was the car located?

18 A. To the left. Off to the left and there is a
19 driveway, there is a driveway that kind of leads up to
20 that corner maybe set off away from the house a little
21 bit. The driveway is right - Yeah, right in that area.

22 Q. Right here?

23 A. Yes.

24 Q. And which way was it facing?

25 A. It was facing - pulled straight in.

1 Q. What do you mean straight in?

2 A. Pulled --

3 Q. Where were the headlights?

4 A. They headlights would a been shining down toward the
5 side of the house back -

6 Q. Back this way?

7 A. Yes.

8 Q. All right.

9 A. Okay. So -

10 Q. What did you see?

11 A. So I saw some commotion. The --- was standing
12 at the car at the passenger door cracked open, he was
13 sitting down looking around rummaging around in the car
14 looking for something. I tried to get his attention. I
15 saying - I'm waiving the gun - get out of here, you need
16 to get out of here now. And I continued down the steps
17 and as soon as I get down there he comes up from reaching
18 under the seat and he's got a gun in his hand and before
19 he even had a chance to point it at me I shot through the
20 glass.

21 Q. Could you see through the glass?

22 A. Could I - Yeah, I could see. Yeah. The interior
23 light was on the car so I could see. I kept it just like
24 one fluid motion, okay. I kept walking down toward the
25 long length of the car and I saw Mr. Harris, I presume,

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-713-

1 twisting around in the car. At one point he was facing me
2 from the back seat and then the next - I went to shoot
3 again and he was getting out going out toward the driver's
4 door. So I was continued walking around the car and as I
5 came upon the driver's side he kicked the door open and he
6 bumped into me and as he got out of the car we started to
7 struggle and there was a struggle for a few seconds and I
8 pushed him down and I continued around to the front of the
9 car and I'm moving, I'm trying to get back to the house
10 and I hear two shots.

11 Q. Where were you when you heard the shots?

12 A. I was - I wasn't even quite to the - It was almost
13 like instantaneous - I wasn't even to the steps yet.

14 Q. To the steps in here?

15 A. The steps would be right at the corner of the house
16 going down. So I just didn't - just shot another round
17 off in that general area and went inside.

18 Q. Where were you standing when you fired back on him?

19 A. I was not yet on the steps.

20 Q. In this area?

21 A. I think so, yeah.

22 Q. Okay.

23 A. So --

24 Q. All right. What did you do then?

25 A. Well I went in the house. I closed the door.

1 Q. You closed the door?

2 A. Yes. I called for Chris and he didn't answer but
3 he almost at the same time the door closed I heard - I
4 called for Chris and then Leach came out from the kitchen.

5 Q. Came out --

6 A. I heard footsteps so - He put the music on - I heard
7 running so it was running from or stomping hard, whatever,
8 from the hallway into the kitchen. I - He was - I was
9 maybe half way up the length of the rug -

10 Q. Here? Where?

11 A. Right in there. Right. When he came around into
12 vision and he saw me he crouched down with a knife in his
13 hand - and when he saw me he crouched down and he kind of
14 running at me like he got a football - like a football
15 player's crouched down. So I thought I was - I thought he
16 was gonna stab me so I pulled the trigger and I shot him
17 and he fell down on the rug right there face down.

18 Q. All right. You thought he was gonna stab you?

19 A. I thought he was gonna stab me.

20 Q. Were you afraid at that time?

21 A. Absolutely. Yes.

22 Q. What were you afraid of?

23 A. I was afraid of being invaded by both of these -
24 those guys. The guy outside and Leach.

25 Q. Invaded. What do you mean invaded?

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-715-

1 A. Maybe it's not the right word. I feel like I was
2 in - the house was invaded. I was invaded by people that
3 were un - uninvited. For sure they were in fact go a step
4 further and say warned not to be out there. Maybe not Mr.
5 Harris but Mr. Leach sure heard it - the warning.

6 Q. All right. What happened after that?

7 A. Chris came out and he was -

8 Q. Came out from where?

9 A. He came out from the back through that little thing
10 right there in the back room. I don't know where he was
11 back there. He slid the doorway open.

12 Q. All right.

13 A. And he's pale and he's shaken and I'm shaking and
14 we're trying to figure out what the hell just happened.
15 And Chris even said did you know he was coming? So I said
16 I just got off talking to him on the phone a little while
17 ago and told him not to come out here. So we're just
18 talking trying to calm down a little bit. I'm immediately
19 concerned with where the strange man's at outside with a
20 gun. I don't have a vehicle there so I'm trying to think
21 I want to check on the kids at the front house.

22 THE COURT: Mr. Hancock, are you all through with the
23 screen?

24 MR. HANCOCK: Not quite.

25 THE COURT: Okay.

1 Q. And where was Mr. Leach at this time?

2 A. Leach was laying right down on the rug.

3 Q. Right here?

4 A. No.

5 Q. Which way was his head facing?

6 A. If you go to the top side of that rug he was
7 laying along the length of it there. Maybe a foot or so
8 inside it.

9 Q. Okay. Which way was his head facing?

10 A. Towards that way.

11 Q. That way?

12 A. To the right.

13 Q. All right. Was he approximately in this area right
14 here?

15 A. That's correct. Face down.

16 Q. How did he get there?

17 A. That's where he dropped after he was shot.

18 Q. And what did you do after that?

19 A. Like I said I wanted to check on the kids. I was
20 concerned with the guy outside. I was looking around on
21 the floor for my cell phone. I couldn't find it, it was
22 not on the table. I thought it was on the table, I
23 couldn't find it. In searching for the phone a loose key
24 ring with a single key on it I checked it fit the car. I
25 came back in I said, Chris, I'm gonna go down here and

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-717-

1 check on the kids, I'm taking their car. So I told him I
2 said I'll be back. I'll be back just as soon as I check
3 this out. So I left shut the door and started the car up.
4 I backed up and I went - pointed the high beams in the
5 woods. I'm scanning for the strange man. You know I'm
6 going kind of slow. I go around the curve I cross the
7 little bridge I'm still looking. There's a tree line
8 right there I'm looking and I continued, backed up rather
9 cause the soil is soft right there, and I went back up and
10 I rode around the front of the house.

11 Q. Hold on just a second.

12 I would defer to State's Exhibit Ninety-three.

13 This will be fine. If you will step right here.

14 THE COURT: They can't see on the back row.

15 MR. HANCOCK: Okay. You gonna have to move back to
16 this side. No. So that lady can see everything that you
17 talking about.

18 A. Let me get my bearings here. I haven't seen this
19 yet. Okay. The bridge, the bridge, lets use that as a
20 reference point. The bridge is right in here somewhere,
21 okay. This is a steep grade going up to that curve. You
22 see kind of a steep grade going either way up this road or
23 this not really a road but everybody uses it like one
24 which is the way I went. But when I - You want to know
25 the path I took in the car?

1 Q. Yes.

2 A. Okay. From here here's the house, from here I backed
3 up and shined the lights in this area. All right. I'm
4 coming around, come around, come around. There's a sharp
5 drop off on that side. I'm not even really much worried
6 about looking over there. I continued over the bridge
7 coming off this tree line right here. I shined the lights
8 down there didn't see him. Backed up, come up here, and
9 that's the neighbors actually over there but the other
10 front house - Is this it? Yeah, this is it right here.
11 Circular drive right here. You can't hardly see it but I
12 circled around there and drove back to the - there was no
13 action going on there so I didn't see any doors open. I
14 didn't see any action going on so I figured it best to get
15 back there and get my bearings and see what's going on. I
16 figured - try and figure out what to do. I didn't know
17 what to do. I didn't know what to do - my family. So I
18 got back there.

19 Q. Have a seat. You can have a seat.

20 (WITNESS RETURNS TO WITNESS STAND.)

21 Q. All right. And you're driving back and you're just
22 going back to your home; is that correct?

23 A. Right. Yes.

24 Q. Tell me what happened then?

25 A. I backed the car in, I'm still kind of scanning for

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-719-

1 the strange man. I knew he had been shot and I didn't
2 know if he was laying down somewhere or wounded or whether
3 he got out of there or what so I sat there in the car just
4 looking. Even after I shut the car off I just sat there
5 and listened and try to see if I could determine if he was
6 anywhere close by the house. So anyway I went back up the
7 stairs and knocked on the window to let Chris know it was
8 me. And as I went to open the door he was opening the
9 door for me, he had a ball bat in his hand, and I noticed
10 all the blood on the wall and I ask Chris what happened.
11 And he told me that he - Leach started to get up and he
12 didn't know what to do so he was afraid and he hit the man
13 over the head is what he told me.

14 Q. Did you witness any of that?

15 A. No. No, sir, didn't see any of that.

16 Q. When you went back to the house was the door open
17 or closed?

18 A. The door was closed.

19 Q. And what did you do after that, sir?

20 A. Again, I still feel like I was in a state of shock.
21 I was very anxious and shaken, shaken up badly. Just
22 discussed - discussed the need for Leach to go to the
23 hospital. Leach was laying there, I don't know if he was
24 dead or alive at that point. I went out onto the porch to
25 think about what was going on and when he - I heard him

1 breathing and he was trying to get up. And at that point
2 like I need to get him to the hospital so I'm thinking how
3 is the best way to do this. I had already thought about
4 it in my mind when I backed the car up about possibly
5 taking him to the hospital or because I thought there
6 would be a place to get him right away and then interview
7 with whatever police or whatever needed to get the story,
8 you know, about what happened so I could tell the story to
9 the police. So we was back and forth trying to decide the
10 best way to do it and if we were gonna move him and we
11 thought about - talked about maybe using the rug as a
12 stretcher. The whole time he's still in that same
13 position face down. I never did see him rolled over in
14 the rug like people are claiming later. But anyway let me
15 back up and say that I had almost come to terms with the
16 fact that I'm gonna take the man to the hospital and
17 forget about not worry - and not worry about moving him,
18 just get him to the hospital.

19 And at that - around that time I think is when I
20 heard sirens and the police didn't show up right away but
21 before I had made any effort to move him or, you know,
22 like I said, I didn't have anything to do with rolling
23 him. If he rolled over on his back, I noticed he was
24 rolled over on his back at one point, I don't have
25 anything to do with that. When Chris sat up here

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-721-

1 yesterday said I helped him move him, that's a lie.

2 Q. You can't comment - -

3 A. But I'm telling you ---

4 Q. --- on what Chris said.

5 A. It's a lie. I'm just speaking in the only language
6 I know how. Once I heard sirens I knew with all that
7 gunfire and everything and screaming that it was the cops
8 coming there. So about maybe ten minutes later the first
9 police car started - or not the cars - actually it was
10 Bradley leading three or four, maybe four or five
11 policemen down that hill from the behind the front house
12 towards the bridge and when I noticed 'em I flipped the
13 lights and I said I'm over here. I said I'm over here and
14 waived 'em in. They were being very cautious and I was
15 being real cautious too. Oh let me back up for a second
16 because when I heard the sirens I knew we were gonna have
17 a confrontation with the police, I took the .25 pistol and
18 I put it in the coffee can in the pantry where I keep it
19 sometimes. And I didn't want anybody busting in thinking
20 , you know, was going to grab for the gun and shot an
21 officer and an officer shoot me. Okay. So I got rid of
22 it before they got back there. I wasn't trying to hide
23 it. The crime scene and all I just wanted it out of the
24 way for right then. Okay. So I did that. I did change
25 my shirt. Where that original shirt is I had on I don't

1 know but I had a shirt on that had blood on it. And I had
2 actually changed that before - earlier before I even took
3 the car up to the front house and changed the shirt. But
4 anyway so I'm not trying to hide anything as far as that
5 goes, you know, I changed my shirt cause of the scuffle
6 with Harris I had it on my shirt.

7 Q. You seen the pictures of the front table. There was
8 a towel with blood on it ---

9 A. Yeah.

10 Q. --- on the front table.

11 A. I saw a picture. I saw it in the picture but I
12 don't know how it got blood on it. I was not handling
13 that particular --

14 Q. You didn't handle it so you don't know?

15 A. No. I do not know.

16 Q. Okay. When Mr. Harris and Mr. Leach entered your
17 home, what was your state of mind at that time?

18 A. My state of mind was I wasn't even thinking about
19 Leach or anything cause I figured I put that issue to bed.
20 I called him and it was, you know, I set that to bed. I
21 wasn't worried about that. I was trying to probably more
22 along the lines of thinking of what I was gonna do the
23 next day cause I get up at four thirty in the morning to
24 go to work. So by eleven o'clock I'm usually asleep.

25 Q. . When Mr. Leach and Mr. Harris entered your home ---

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-723-

1 A. Yes.

2 Q. --- what if anything did you think at that time?

3 A. I thought he was coming to cause trouble about the
4 phone call that I --

5 Q. What kind of trouble?

6 A. What kind of trouble?

7 Q. Yeah.

8 A. I wasn't sure. I don't know what he was capable of.

9 Q. You didn't know what he was capable of. What did
10 you think he was capable of?

11 A. Shooting - Shooting me, kidnaping me. I don't know
12 what.

13 Q. So your state of mind was you were afraid he might
14 shoot you?

15 A. At that time. I thought you were asking me what my
16 state of mind was before that.

17 Q. No. At that time.

18 A. I felt in fear for my life.

19 Q. Well if he shot you what would be the damage?

20 A. I'd be dead.

21 Q. So you were afraid you were going to be killed?

22 A. Yes absolutely afraid I was going to be killed.

23 Q. So you were arrested; is that correct, sir?

24 A. Yes. When the police got there there was this - it
25 was strange because one cop went in the living room and

1 just lit into Chris yelling at Chris how can you do this
2 and just say how can you let this man -

3 Q. You can't say what these people are saying.

4 A. Okay.

5 Q. Only what you said.

6 A. So I was just overwhelmed with the number of
7 policemen there and in the way the one policeman was
8 acting inside over - I thought he was being overly
9 aggressive. I thought that I would just wait until I had
10 an attorney present before I answered any questions for
11 the police.

12 Q. And --

13 A. And that's what I told them.

14 Q. You were taken into custody. Correct?

15 A. Yes. Right.

16 Q. And where were you placed, sir?

17 A. I was placed in the booking here at Moss Justice in
18 YC DC.

19 Q. And have you remained there since that time?

20 A. I was transferred from booking over to maximum
21 security I Block where I been in a eighty by twelve foot
22 cell twenty-three hours a day for over a year and a half.

23 Q. Why were you transferred?

24 A. I was considered --

25 SOLICITOR THOMPSON: Objection, Your Honor.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-725-

1 Objection.

2 THE COURT: I sustain the objection.

3 BY MR. HANCOCK:

4 Q. But you were transferred?

5 A. Yes.

6 Q. What is I Block?

7 A. I Block's a maximum security --

8 SOLICITOR THOMPSON: Objection, Your Honor. I don't
9 know the relevance of this.

10 THE COURT: Yeah. I sustain the objection.

11 MR. HANCOCK: Your Honor, if I may address the Court
12 on that particular --

13 THE COURT: Let me let the jury go out. I think I
14 know what we need to talk about.

15 Let me let the jury go to the jury room for a minute.

16 (JURY EXITS COURTROOM AT 01:59 P.M..)

17 THE COURT: I'll be glad to hear from both of you.

18 Mr. Thompson, you got a whole lot going on while
19 he was incarcerated between him and Bradley lip syncing,
20 not lip syncing but lip reading and passing of notes and
21 so I think perhaps that there might be some things
22 relevant about where he was and where Bradley was and
23 those sort of things. I presume that's where Mr.
24 Hancock's going.

25 SOLICITOR THOMPSON: Your Honor, I don't think that's

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK - IN CAMERA

-726-

1 where Mr. Hancock's going. I think he can tell us, let me
2 make sure, but I don't think that's where Mr. Hancock's
3 going.

4 MR. HANCOCK: Your Honor, I believe they've opened
5 the door; it's wide as you can get. I am going to where
6 he was incarcerated. He was incarcerated and has been in
7 isolation basically for over a year and some period of
8 time. During that time is when he wrote all the letters
9 that they have introduced and I'm about to go in and --

10 THE COURT: Make a proffer ---

11 MR. HANCOCK: Okay, sir.

12 THE COURT: --- cause I'm not sure that he wrote 'em.
13 No matter where I don't think but maybe it does.

14 MR. HANCOCK: Yes, sir.

15 DIRECT EXAMINATION - IN CAMERA

16 STEVEN SPAGNOLI BY MR. HANCOCK:

17 Q. And, Steve, where have you been incarcerated? You
18 said I Block?

19 A. Yes, sir.

20 Q. How long you been in there?

21 A. Over a year and a half.

22 Q. What is your activity there?

23 A. I come out one hour a day to get a shower and make
24 a phone call and get a little exercise and then back in
25 the cell.

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK - IN CAMERA

-727-

1 Q. Are you in a cell twenty-three hours a day?

2 A. The other activities I have are reading what books
3 I can get a hold of and thinking about my case.

4 Q. Is that what you bee doing twenty-three hours a day
5 as much time as you could?

6 A. A good portion of the time is spent about thinking
7 about this case and worried about it obviously.

8 Q. And did it have any effect your mental state?

9 A. I was - I was taking medication for high anxiety
10 before I came here. When they took it and wouldn't allow
11 me to have that medicine here I was really a nervous wreck
12 for a few weeks and I'm still anxious every day even right
13 now. More so right now.

14 Q. It doesn't have any effect on you and your writing
15 of these letters?

16 A. Oh absolutely. I think that I was trying to -
17 trying to get - to this day and tell my story. It was
18 frustrating because there was some things for example when
19 Mr. Harris came in the living room he had something in his
20 hand. I don't know whether it was a gun or the knife,
21 cell phone, or what. And I'm writing letters - In my
22 imagination I'm writing letters and I'm trying to imagine
23 what it could a been and writing letters, personal
24 letters, to my father for his idea and for his - maybe he
25 had some ideas on to talk to me about. I got no one to

1 talk to. I mean I even had an eight by twelve cell with a
2 listening device in the room, camera on me twenty-four
3 hours a day, any phone calls I make are recorded, the
4 visiting and audio and visual is recorded so they open my
5 mail coming in so as far as communication I have no
6 communication with anybody. I can write my father and he
7 choose not to write back about certain things he knew I
8 was wondering about cause he doesn't know. He basically
9 listening to what's in my head in my random scribbling
10 that I would send him. And the state of mind I was in I
11 got out of line suggesting that bit about the .38. I
12 think at one point I apologized to him for even
13 considering it. But I know that there was a gun there
14 besides the .25 and I wanted somebody to find it. My dad
15 assured me that the police looked with the K 9 Unit - -
16 Q. You're getting off where we want to go.
17 A. And if it was there it would have been found so I was
18 upset about that you know.

19 MR. HANCOCK: Your Honor, I'm just using that state
20 of mind as to what he was thinking when he wrote the
21 letters and why he was so intent with so much time on his
22 hands.

23 THE COURT: Mr. Thompson.

24 SOLICITOR THOMPSON: The State's concerned, Your
25 Honor, the main thrust of the objection was I know he was

1 assaulted at some point in the detention center by someone
2 who was supposed to be related in some way to the Leach
3 family. I did not want that to be brought in because it
4 has nothing to do with this case.

5 THE COURT: It does appear that that's where he was
6 going though.

7 SOLICITOR THOMPSON: I wanted to put that out there
8 that was the thrust of my objection. If he's just gonna
9 say he was cramped in a cell and having a hard time that's
10 why I wrote the letters I don't think I could object to
11 that. However, if he starts going into much of a
12 description of the jail I would object to that.

13 THE COURT: I over rule the objection as far as what
14 Mr. Spagnoli's testified to regarding his mental state and
15 the genesis of the letters. But as far as was any
16 assault, that's the first I heard about it, but that's not
17 relevant to this case. We'll take a short break and I
18 over rule the objection.

19 MR. HANCOCK: Thank you, sir.

20 THE COURT: We'll take about a five minute refresher
21 break.

22 (COURT IN RECESS AT 02:06 P.M..)

23 (COURT BACK IN SESSION AT 02:13 P.M..)

24 THE COURT: Take your seats.

25 Is the State ready?

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-730-

1 SOLICITOR BRACKETT: Yes, sir.

2 MR. HANCOCK: Just to clarify for the defendant that
3 he may not give a reason as to why he was in the cell that
4 he was and transferred. Is that correct, sir?

5 THE COURT: That's correct. I don't know why he
6 was transferred but apparently it had something to do with
7 the assaults. I know he can't go into that.

8 MR. HANCOCK: Yes, sir.

9 THE COURT: All right. Bring in the jury.

10 (JURY REENTERS COURTROOM AT 02:15 P.M..)

11 THE COURT: All right, you may continue, Mr. Hancock.

12 MR. HANCOCK: If it please the Court?

13 THE COURT: Yes, sir.

14 DIRECT EXAMINATION - CONTINUES

15 STEVEN SPAGNOLI BY MR. HANCOCK:

16 Q. Mr. Spagnoli, ---

17 A. Yes, sir.

18 Q. --- you are defeintly in custody?

19 A. Yeah.

20 Q. And have been since the 27th?

21 A. Yes, sir, over a year and a half now.

22 Q. Year and a half. And for that year and a half the
23 majority how long have you been in - What did you say, I
24 Block?

25 A. I Block Maximum Security area twenty-three hours a

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-731-

1 day locked down one hour I can come out take a shower and
2 make a phone call, collect phone calls or just walk around
3 a little bit.

4 Q. And what kind of contact do you have with the
5 outside world?

6 A. The only - The only contact - I have no private
7 contact but like a telephone. I said there's a telephone
8 I can make collect calls. There's a video phone where I
9 can have a visit every week for a hour and writing letters
10 is basically the only way I can communicate unless my
11 attorney's here.

12 Q. Well you have heard the letters that have been read
13 here today have you not?

14 A. Yes I have.

15 Q. What was the purpose of those letters, sir?

16 A. Those letters were basically me scribbling random
17 thoughts in my mind. I sent them in confidence to my
18 father, personal letters. And obviously the case has been
19 on my mind a lot being in lock down like this. And a
20 couple of things I wasn't sure about I would write and see
21 how it sounds was it a gun was it a knife. I don't know
22 because I didn't see. It could a been a cell phone for
23 one thing. Then I got out of hand with the business with
24 the .38 and I was wrong to have suggested for my father to
25 even consider planting a gun because it's absolutely

1 wrong. I realize that. I apologize to him. But the fact
2 remains there was a gun on the scene and no one's found
3 it. So - Yeah, I wish I wouldn't have wrote those letters a
4 lot of 'em. But a lot of what I wrote basically is what
5 happened. And letting him know, my father, personally
6 that when I ask Bradley to talk to you my attorney and the
7 letters to him I wasn't asking Bradley to make up anything
8 and say anything that wasn't true. I wasn't asking
9 Bradley to say any lies or anything. I was asking Bradley
10 to simply tell my attorney what's your relationship with
11 Leach is. Instead of distancing yourself from my case
12 tell the man what happened the day before because to my
13 understanding it wasn't until July that Detective Strait
14 interviewed them and got the story from Amber about that.
15 They tried to distance themselves from the moment of the
16 incident and I was highly upset about that and there was a
17 reason for my foul language to him and demands and this
18 and that. There was some other things going on that
19 Bradley the stunts he was pulling that I had no control
20 over in here that affected me and I was upset with Bradley
21 you know. So - But basically when I ask him to go over
22 there and study the time line, a ten page report, yeah I
23 wanted him to review that. But basically what I was after
24 was Bradley to tell my attorney what relationship he had
25 with Leach and what else maybe I don't know that was going

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK

-733-

1 on between them that would have, you know, prompted him
2 going to coming on to Amber like that. Anything that
3 could help me on my case that I wasn't aware of. So
4 that's the thing. I'm just frustrated, I can't talk on
5 the phone, I can't talk about visits, I can't get any
6 replies back in by my mail cause they read my mail. So
7 the only outlet I had for my nervousness and high anxiety
8 and trying to brain storm the whole thing is writing my
9 dad. And I think if anybody looks at the letters closely
10 you will see that their - Yeah I'm out of line here and
11 there but they pretty much all say the same thing and it's
12 the same story I would a told the cops that night had I
13 been able to interview with them on the night of the
14 arrest. I been waiting for a year and a half to get to
15 this point here.

16 Q. Okay. You say the same story?

17 A. The same story that - -

18 Q. What do you mean by story?

19 A. Recalling the events that as I knew them. And yeah I
20 fudged on whether Erick Harris was carrying a knife or a
21 gun. I was writing it down and sending it to my dad
22 through a personal letter and basically hoping that
23 somehow discuss with him what - let him know - aware of
24 him originally know that there was a gun and it was
25 possibly a knife. As the discovery came in I understand

1 it was too knives found so I'm thinking maybe it could a
2 been a knife just look. I got nothing else to do. I'm in
3 my room twenty-three hours a day and I was on medication
4 before I came in here for my anxiety. When I --

5 Q. What were you taking?

6 A. I was taking Xanax. I been taking 'em for years for
7 my nerves and high anxiety. And when I came in here I was
8 going through withdrawals from my son, I was not smoking
9 any cigarettes, none - no Zane and none of the medication
10 I had that I took to straighten my blood pressure medicine
11 out. So I was in a pretty much a complete basket case
12 since I got here as far as my mind and imagination or -
13 I'm talking about my imagination and to writing down what
14 could have been and certain things I wasn't sure of mainly
15 the what Harris had in his hand when he came in the house.

16 Q. Well is what you told the jury today your imagination
17 or is it what has happened, sir?

18 A. I'll be honest and if you would ask me what Harris
19 had in his hand when he entered the house ---

20 Q. I'm not talking about Erick Harris. Your --

21 A. --- I can say honestly I don't know.

22 Q. The entire testimony you've given this jury as to
23 what happened on that day ---

24 A. Yes I'm being truthful.

25 Q. --- your imagination or the truth?

STEVEN SPAGNOLI: DIRECT BY MR. HANCOCK
CROSS BY SOLICITOR THOMPSON

-735-

1 A. I'm being truthful now today. Been waiting for this
2 day.

3 Q. All right. Now let me ask you this. Are you schooled
4 in the law?

5 A. No, sir.

6 Q. Do you know the elements involved in crimes and
7 everything in that nature?

8 A. I've tried to study some but I'm not an expert. I'm
9 not familiar with all the aspects no.

10 MR. HANCOCK: I beg the indulgence of the Court one
11 moment, sir.

12 (PAUSE.)

13 Q. Were you ever in the back hallway alone with Leach?

14 A. No.

15 MR. HANCOCK: I have no further questions, Your
16 Honor.

17 Please answer any questions the Solicitor may have of
18 you please, sir.

19 CROSS-EXAMINATION

20 STEVEN SPAGNOLI BY SOLICITOR THOMPSON:

21 Q. Mr. Spagnoli, let's start out here with State's
22 Exhibit One Twenty-three. Is this the gun that you used
23 that night?

24 A. It appears to be yes, sir.

25 Q. This is the gun you shot both Richard Leach and

1 Erick Harris with?

2 THE COURT: Let's don't point that gun toward the
3 jury even though it is on safety.

4 SOLICITOR THOMPSON: I'm sorry.

5 A. Yes, sir, it appears to be the gun that was used
6 that night.

7 Q. And that is your gun?

8 A. Yeah. Yes.

9 Q. State's Exhibit Number 1-0-3. The knife recovered
10 from the scene that night?

11 A. Yes.

12 Q. And that's your knife is it not?

13 A. Yes.

14 Q. And I think by your testimony now, you're saying you
15 never saw anyone with a knife. Correct?

16 A. I saw Richard Leach with the knife. A knife. I
17 didn't know - recognize that knife that night.

18 Q. And you're saying that's when he came at you like
19 a football player?

20 A. Yes.

21 Q. And that's when you shot him?

22 A. That's correct.

23 Q. And you only shot at him one time. Correct?

24 A. Yes.

25 Q. You're the only one who had that gun at any point

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-737-

1 in time during this whole incident weren't you?

2 A. Yeah. As far as I know I'm the only one with it yes.

3 Q. Because you said you pulled it from the kitchen
4 drawer?

5 A. Yeah. Right. Yeah I put it -

6 Q. You didn't put it back when the police came?

7 A. --- the time I put it - From the time I got it from
8 the kitchen drawer I had it until I put it in the coffee
9 can.

10 Q. All right. And that's right as the police were
11 coming?

12 A. That's when - Yes. That's when I heard, yes, the
13 police come.

14 Q. All right. So you're the only one who had it during
15 that period of time?

16 A. That's correct.

17 Q. Now as to the other knife, you've seen that in
18 discovery have you not? These picture so them?

19 A. I saw a description. I don't - didn't know what it
20 looked like. I hadn't seen photos of anything.

21 Q. A small black paring knife?

22 A. I don't know - know about it.

23 Q. You didn't see - -

24 A. I can't imagine one in the couch but it could
25 possibly fell off somebody's plate and left it there.

1 Q. All right. Now, you had been drinking fairly
2 heavily that night. Right?

3 A. I wouldn't say I was drinking heavily. I - -

4 Q. How many drinks did you have at the bar?

5 A. I had very little of that Tequila.

6 Q. I'm talking about the bar. You stopped at a bar.

7 A. I had two or three. I think three drinks at the bar.

8 Q. All right. And what did you drink at the bar?

9 A. Crown and Seven.

10 Q. Okay. And then you had a little bit of that Tequila
11 as you said when you got back.

12 A. Yes.

13 Q. It was a bottle of Jack's sitting on that round
14 table in this room too wasn't there? In your living room?

15 A. I think that was old.

16 Q. That was old. It wasn't being --

17 A. No. No.

18 Q. No one was drinking that that night? You all also
19 had some beer that night. Right?

20 A. I didn't have any beer.

21 Q. All right. So you're gonna tell us today that you
22 were not intoxicated at that point?

23 A. No I'm - I was drinking, you know, I wasn't - I
24 wouldn't consider it heavily though.

25 Q. Had you taken any other drugs at that point or

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-739-

1 throughout the day? Pills?

2 A. Well my blood pressure medicine in the morning I
3 think I took.

4 Q. Okay.

5 A. I know I took, I don't know but - I don't recall if
6 I took anything else or not.

7 Q. Anything anti-anxiety wise?

8 A. I doubt it cause I don't - If I do take that it's
9 not at work or it's late at night, you know, at night.

10 Q. All right. Now, the only incident that you ever
11 know about that happened with Amber was the one that
12 happened the day before; isn't that correct?

13 A. The only incident?

14 Q. The incident with Amber and Richard Leach was the one
15 from the day before this happened; isn't that correct?

16 A. I believe there were times before that but I don't
17 know for sure. I don't know.

18 Q. But you did not testify to that on your direct.
19 Correct? You didn't say that there were times before
20 this with Amber.

21 A. Was I ask - I don't know. I thought we were talking
22 about the one night.

23 Q. But I'm asking you is this the only incident Amber
24 ever told you about?

25 A. Yes.

1 Q. Okay. So that's the only one you knew about?

2 A. I heard rumors that Leach had been coming over there.

3 Q. Well let - Rumors. Okay.

4 A. Right. That's what - That's what they are rumors.

5 Q. And you never talked to Amber about those rumors?

6 A. Yeah I did talk to Amber about those rumors.

7 Q. And apparently she denied those rumors cause this is
8 the only one she ever told you about.

9 A. That's correct.

10 Q. Now you decided not to tell the police about this.
11 Correct?

12 A. When I saw how Chris was being treated I
13 automatically just went on the defensive and said I'll
14 talk to you but I want my attorney there.

15 Q. I'm not talking about that. I'm talking about when
16 Amber - with Amber; the whole incident with Richard Leach
17 and Amber.

18 A. Oh. When she first told me about it I ask her why
19 she didn't call the police and she said she didn't want to
20 get me involved and she - you know having the cops come
21 out to the house along those lines. She just give me that
22 excuse. And she also -

23 Q. But you didn't call the police. Correct?

24 A. No I didn't.

25 Q. Okay.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-741-

1 A. Okay. So --

2 Q. So you didn't think it was enough of a problem that
3 you should call the police?

4 A. Yes I thought that Bradley and Amber should both go
5 down and make a report is what I thought they should do.

6 Q. But you did not. You were not gonna force them to do
7 that?

8 A. I was - had a wait and see attitude at that time. I
9 was expecting them to do the responsible thing and go
10 report that.

11 Q. And you were the one who actually let Bradley know
12 about this. Correct?

13 A. Yes the next day, right.

14 Q. And you were angry when you told Bradley about this
15 weren't you?

16 A. I was upset about it yes.

17 Q. All right. And it was something that would make
18 any person upset?

19 A. Yes.

20 Q. And did Bradley get upset then?

21 A. Yes.

22 Q. So both of you were upset about this. Correct?

23 A. Right. We weren't losing - we could concentrate on
24 what we were doing besides --

25 Q. I understand. But you were upset. It was something

1. you wanted to talk about?

2. A. Yes.

3. Q. And talked --

4. A. And I talked to 'em about it.

5. Q. And you talked about it to Mr. Varnadore as well
6. didn't you?

7. A. That's right.

8. Q. And you talked about it with Sloan as well too didn't
9. you?

10. A. Yes.

11. Q. And so you would have had to have talked about it
12. more than once in that day because you didn't have all of
13. them with you at one time. Right?

14. A. Chris, Bradley and I were in the either the truck or
15. the car - I forget - and talked about it. Then I
16. mentioned something to Sloan about it. And he's told me
17. that -

18. Q. I'm not gonna ask you about what Sloan said.

19. A. Okay.

20. Q. What I'm asking, you talked to Sloan about it?

21. A. Yes I did.

22. Q. Okay. And you talked to him all during that day.
23. Correct?

24. A. No I didn't. I didn't dwell on it for any length
25. of time.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-743-

1 Q. But you told each one of them that day?

2 A. Yes I mentioned it to everybody.

3 Q. And I'm sure as you mentioned to them you were upset
4 each time you had to mention it weren't you?

5 A. Not to the point where ranting and raving. I just
6 mentioned it. Had things to do.

7 Q. Now let me get something strait. When you talked
8 about the shooting of Erick Harris, you said he basically
9 came in and just had gotten to the corner of rug right in
10 front of the - right in front of the front door. Correct?

11 A. In that area yes.

12 Q. All right. And you said he had something in his
13 hand when he came in?

14 A. Yes.

15 Q. Was he yelling at you?

16 A. He was coming towards me.

17 Q. He was walking in wasn't he?

18 A. Yes.

19 Q. Okay. So anyone walking in that door would have
20 been coming towards you wouldn't they?

21 A. Yes.

22 Q. And as he - He wasn't running towards you?

23 A. No.

24 Q. And he wasn't screaming?

25 A. No I didn't hear a peep out of him the whole time.

1 Q. And he wasn't holding his hand in a threatening
2 manner was he?

3 A. No he wasn't.

4 Q. Okay. But you decided to shoot him at that point in
5 time didn't you?

6 A. . Because of the attitude that Leach had when he came
7 in the door.

8 Q. And where was Leach when Erick walked in the door?

9 A. He was already into the hallway or the back bedroom
10 or somewhere out there ---

11 Q. So he was out ---

12 A. --- I don't know ---

13 Q. --- of your sight?

14 A. --- I couldn't see.

15 THE COURT: Let him finish his answer before you ask
16 the next question.

17 SOLICITOR THOMPSON: All right.

18 A. I couldn't see from the living room..

19 Q. Right.

20 A. And the strange man had my attention as far as
21 looking at him. I wasn't --

22 Q. So Leach was out of your sight at this point?

23 A. Correct.

24 Q. Okay. And you fired at Erick Harris?

25 A. I did.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-745-

1 Q. I'm assuming he immediately ran out of that door?

2 A. He turned around and he ran yes.

3 Q. All right. And you said he went to the car outside?

4 A. That's right.

5 Q. Did you immediately go to the door to see where he
6 went?

7 A. Yes.

8 Q. And you had the gun with you at that time?

9 A. Yes.

10 Q. And you went out on your porch?

11 A. Yes.

12 Q. Did you come off of your porch at that time?

13 A. Yes.

14 Q. Where did you go when you came off your porch?

15 A. Down to the driveway beside the car.

16 Q. All right. Now how far was the car away from the
17 driveway at that point?

18 A. Away from the highway?

19 Q. Away from the porch. Let me say that.

20 A. Oh. Maybe - I don't know. Ten feet.

21 Q. All right. But you said it was pulled kind of
22 straight in.

23 A. Yeah.

24 Q. And the headlights were on?

25 A. No.

1 Q. No?

2 A. The car was off, shut off.

3 Q. Okay. It was shut off completely?

4 A. Yes.

5 Q. It wasn't running?

6 A. No.

7 Q. Was it pulled - Was it straight, kind of facing
8 straight downward beside ---

9 A. I really don't remember ---

10 Q. --- of your house?

11 A. --- if it was at some kind of angle. It's pretty
12 more or less straight. It may have been at one angle or
13 the other. I don't know.

14 Q. And you said that Erick was at the passenger door.
15 Correct?

16 A. That's right.

17 Q. On the front passenger door?

18 A. Yeah. Yes.

19 Q. He was not inside the car. He had the door open?

20 A. He had one leg out of the car on the driveway and he
21 was in the car rummaging around.

22 Q. All right. So he has one foot out and the rest of
23 him in?

24 A. Right.

25 Q. And but so obviously the door is not shut?

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-747-

1 A. Right. Yes.

2 Q. And you came up to the car then and shot him again?

3 A. I had - While I was walking on the porch towards him
4 I was trying to get his attention and I was waving the gun
5 telling him to get out of here, to get the hell out is
6 what I was telling him. And as I kept on walking his way
7 towards him he got in the car and he acted - he was
8 reaching up under the seat and when he came up and he
9 looked at me I saw the gun and that's when I - I didn't
10 even give him a chance to point it at me I shot right
11 through the glass.

12 Q. And so you had no problem seeing through the door
13 down underneath the seat to where he grabbed the gun?

14 A. No he had - It was in view. It was within - I could
15 see through the glass window that he had a gun.

16 Q. Okay. So how close were you standing to the car?

17 A. Two to three feet.

18 Q. So you're right up on it?

19 A. Yeah.

20 Q. And you fired at him at that point?

21 A. Yes I did and I continued around the car. He was
22 twisting about in the back seat, obviously he lost his
23 shoe and trying to get out and at one point he flipped
24 around and he still had the gun. It was in his right hand
25 then, I shot him again --

1 Q. Now hold on. I didn't hear before, you're saying
2 now he flipped around and lost his shoe. You saw that -

3 A. I was referring the shoe we saw about in evidence
4 that the shoe was in the back seat of the car. I
5 understand now how it wound up there.

6 Q. Are you saying you noticed it at the time?

7 A. No I didn't notice it at the time.

8 Q. Okay.

9 A. I was out of line saying that. I try to stick with
10 you now.

11 Q. Are you trying to stick with your story that you
12 told today?

13 A. No. I was just referring back to the tennis shoe
14 that we saw earlier or yesterday on the film.

15 Q. All right. So he's twisting around and you start
16 running back round the car. What happens then?

17 A. After I shot a second time?

18 Q. When you shoot the second time where are you when you
19 shoot the second time?

20 A. I'm beside the car.

21 Q. On - Still on the same side that you first came out
22 on?

23 A. The passenger side. We were going around towards
24 the trunk, right.

25 Q. All right. So even though he's at that point trying

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-749-

1 to get out away from you, you shoot him again?

2 A. He was twisting around in the car. He was at one
3 point facing me and then turned around and I was already
4 pulling the trigger so.

5 Q. Well he's already shot. Right?

6 A. Yeah he's shot.

7 Q. And now he's turned ---

8 A. I guess he's shot.

9 Q. --- around trying to get away from you; you're
10 shooting again?

11 A. I guess he's shot. I'm guessing he's shot. Okay.

12 I don't know for sure if he's shot. I'm guessing
13 he's shot. I'm pretty close I bet money he was shot but I
14 don't know for sure. I'm walking - And I know that this
15 is strange guy strange car it's late at night Leach is in
16 over here - coming over here with an attitude so I'm
17 thinking this is his - this is his wing man. And which
18 exactly what he is. He came over there to get in some
19 trouble and he found it.

20 Q. All right. And you're the trouble he found?

21 A. That's right.

22 Q. You weren't looking for any trouble were you?

23 A. No I wasn't. I was on the contrary trying to settle
24 the situation that was getting volatile.

25 Q. You wouldn't call the police but you would call Mr.

1 Leach; is that right?

2 A. Yes. I figured it better to talk with him first.

3 Q. And you said you made the call to Mr. Leach, the call
4 that we all heard testified to about 10:14 or 10:15
5 somewhere in there?

6 A. I'm guessing on the times. I'm not sure exactly
7 what - I was looking - I mentioned because of the call
8 records.

9 Q. All right.

10 A. I know it was around that time somewhere but.

11 Q. But where you're mistaken about that is that call
12 was actually from Mr. Leach to you wasn't it?

13 A. There were a couple of calls. I called him, I missed
14 him so it went to probably one of the short length calls
15 we heard about yesterday where the timer start clicking
16 maybe as soon as I hit the send button. I don't know but
17 I'm guessing and assuming that he was on another line and
18 it was trying to go to voice mail. When he called me back
19 it was another few seconds call I think he missed me. I
20 called him back a second time, he called me back a second
21 time finally we talked about what I wanted to talk to him
22 about.

23 Q. So alternating calls back and forth trying to reach
24 each other?

25 A. Right.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-751-

1 Q: All right. But obviously that's not what the phone
2 records show?

3 A. That's why I'm saying that because of the phone
4 records.

5 Q. The phone records show though that at 9:20 it was a
6 call from you to Mr. Leach; isn't that right?

7 A. I don't think I talked to him that early but - -

8 Q. And that at 9:56 there was another call from you to
9 Mr. Leach ---

10 A. That one might a been me.

11 Q. --- for thirty-seven seconds?

12 A. No cause I didn't talk to him.

13 Q. But it was connected for at least thirty-seven
14 seconds.

15 A. Okay. It might a been. I don't - I don't remember.
16 I remember trying to get a hold of him and not being able
17 to get his voice.

18 Q. And then the next - -

19 A. It may a been the voice mail picked up or whatever.

20 Q. The next call at 10:14 was for Mr. Leach to you for
21 a minute and twenty-three seconds and you didn't call back
22 again because the next call was from Mr. Leach to you and
23 that was the one second call that we talked about that was
24 a possible immediately hang up or - -

25 A. Okay. So then the calls were made earlier than I

1 thought.

2 Q. And then at 10:30 there was another call from Mr.

3 Leach to you for fifty-three seconds.

4 A. I don't recall that.

5 Q. So the way you're recalling it is wrong isn't it?

6 A. Possible yes. Possibly. I'm not exactly sure about
7 the times until I look at something like all the records
8 which I haven't seen so I don't know.

9 Q. And speaking of which you went back and said that on
10 the 27th that a little after seven or so is that when you
11 said you made a call to Mr. Leach ---

12 A. I think so.

13 Q. --- again?

14 A. I think so. It may have been earlier but it may have
15 about - it may have been earlier.

16 Q. But you understand that the phone records actually
17 show that at 7:16 Mr. Leach tried to make a call to you
18 but that call was never answered; that it was an X there
19 next to it. Its one of the no connect calls.

20 A. All right.

21 Q. Missed call?

22 A. Okay.

23 Q. So you actually never did talk to him that afternoon
24 did you or that evening?

25 A. Yes I did. Do you have - -

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-753-

1 Q. And that would be reflected in your phone logs
2 wouldn't it?

3 A. It would be reflected in his phone logs cause I may
4 have used another phone to talk to him.

5 Q. Oh, so now not only do other people use your phone,
6 but you turn around and use other people's phones?

7 A. Yeah I got - -

8 Q. Would it be Chris Varnadore's phone that you used?

9 A. I don't think so.

10 Q. Yeah. And you don't have any idea whose phone you
11 would have used do you?

12 A. I was about to tell you that I think I have two
13 prepaid phones I don't think the police got that have
14 minutes on that I give the workers to use and so we can
15 talk back and forth.

16 Q. But you gave those then to your attorney. Right?

17 A. Pardon me?

18 Q. You gave those to your attorney. Right?

19 A. No.

20 Q. No?

21 A. I didn't give him the phone. I told him about it.

22 Q. You wouldn't give those to your attorney so that he
23 could look at the call logs on those?

24 A. Listen, I don't know what happened to the calls. I
25 suspect - I mean the phones. I suspect that Bradley and

1 Amber took the phones and used the minutes and no telling
2 where the phones are at now. They're the twenty dollar
3 phones; that's why I bought 'em.

4 Q. Bradley and Amber have their own phones as you
5 would say. Correct?

6 A. Amber had her own phone but she primarily for talking
7 used my phone or those prepaid phones while there are
8 minutes on 'em.

9 Q. Now it's interesting that you would say you would
10 use the prepaid phone when there's calls all throughout
11 that afternoon that are made from his phone to yours that
12 you don't answer it.

13 A. I'm at work. It could a been anywhere where I wasn't
14 able to get to the phone.

15 Q. But you wouldn't use your phone to call him back?

16 A. I don't know. I may have even thought if I was going
17 to talk to him about the incident that maybe he wouldn't
18 answer my call and I used another phone.

19 Q. And you said you also texted. What did you text
20 about this whole incident happening?

21 A. Texting Bradley.

22 Q. You texted Bradley?

23 A. Yes.

24 Q. Okay. And you used your phone. This phone we're
25 talking about here that we have a phone log on.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-755-

1 A. Yes.

2 Q. Correct?

3 A. Yeah.

4 Q. And that text doesn't show up anywhere in the text
5 that were recovered does it?

6 A. It - Yeah it does.

7 Q. It does?

8 A. You referenced them yesterday.

9 Q. The text - Now, you texted Bradley telling him all
10 about what happened? So these text would say ---

11 A. No.

12 Q. --- you know - -

13 A. I thought that I saw a printout of the text that I
14 made to Amber's phone to Bradley on Amber's phone just
15 briefly hello what - where are you or basically I think I
16 said where are you.

17 Q. I think we're talking about something different here
18 because I'm talking earlier in the day you said you made
19 text describing what had happened to Amber to Bradley.

20 A. I did not say that.

21 Q. Then what text are ---

22 A. I was at work.

23 Q. --- are you referring to?

24 A. When I was at work -

25 THE COURT: Wait. Wait. Mr. Thompson.

1 MR. HANCOCK: If I may, Your Honor. It would ease
2 things if he would give him the records in evidence if
3 he's gonna cross examine him continuously on those things.

4 THE COURT: Well, I'll let him deal with that.

5 MR. HANCOCK: Yes, sir.

6 THE COURT: But I will deal with this.

7 Let him finish his answer. The speech pattern trail
8 is a little - Just wait, Mr. Thompson, until you're sure
9 he's through.

10 And don't start answering his question until he
11 reaches the question mark if you don't mind.

12 A. Yes, sir.

13 THE COURT: All right.

14 BY SOLICITOR THOMPSON:

15 Q. Let's start this again. What text did you just
16 testify to on your direct by Mr. Hancock?

17 A. The text - The only text that I did was that
18 evening after I talked to Leach to Bradley on Amber's
19 phone.

20 Q. All right.

21 A. And I may have sent it twice.

22 Q. And you sent the text to say - Why were you sending
23 that text to Bradley?

24 A. I was hoping that he would come back there and let
25 me talk to him or at least - because I wanted to tell him

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-757-

1. that I talked to Leach and that I expected him or him and
2. Amber in the morning to come to Moss Justice Center and
3. file a report.

4. Q. And you said you texted something of that effect to
5. him at that point?

6. A. No I didn't say that. The text was real short.
7. Hello or maybe it didn't say - I said are you there. I
8. may have abbreviated it. I'm pretty sure I probably did.

9. Q. All right. Now, you're saying after you shot Erick
10. Harris that he came around and struggled with you at that
11. point. Or you came around the other side of the car
12. where he was getting out?

13. A. Right.

14. Q. You gonna shoot him again at that point?

15. A. Uh - I don't know.

16. Q. But he struggled with you and the gun came out then
17. didn't it?

18. A. Say again?

19. Q. He struggled with you there and you dropped the gun
20. at that point didn't you?

21. A. No I didn't drop the gun.

22. Q. You didn't?

23. A. No.

24. Q. But he was able to get away at that point?

25. A. He was knocked down and was trying to get away at

1 that point.

2 Q. All right. And then he ran off into the woods?

3 A. Not before he shot a couple of rounds.

4 Q. Oh he shot - He shot a couple of rounds and you
5 right there?

6 A. He's on one side of the car I'm going towards the
7 porch so the car was between us.. He was on that far side
8 and I was on this side, the right side, close to the
9 porch.

10 Q. So after you struggled and he ran into the woods he
11 turned around and shot back at you?

12 A. Right. Those were the only shots he fired.

13 Q. And he missed you?

14 A. Yeah.

15 Q. And he missed the house behind you?

16 A. He may have shot straight up in the air. I don't
17 know what he shot.

18 Q. So you fired -

19 A. I'm sorry, I didn't tell you about the house. Where?

20 Q. So he missed the house behind you too?

21 A. Behind me?

22 Q. Yeah.

23 A. The other house back there?

24 Q. No your house. You're between him and the house
25 aren't you?

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-759-

1 A. Yeah. Right.

2 Q. So not only did he miss you he missed the house
3 behind you? .

4 A. He was on the other side of the car. I didn't see
5 him ---

6 Q. Right.

7 A. --- but I heard a gun go off.

8 Q. How many times did you shoot at him then?

9 A. I returned one shot.

10 Q. Okay. So a total of four shots at Erick Harris.
11 Correct? One when he's inside?

12 A. Right.

13 Q. Two right at the car on one side and then one more
14 so he shoots at you ---

15 A. Correct. Four shots.

16 Q. --- from the woods?

17 A. Right.

18 Q. Okay. So four shots on here. And then a fifth shot
19 you fire into Richard Leach's head?

20 A. That's correct.

21 Q. Okay. But now there's also a bullet that was
22 recovered from the side wall in your house right next to
23 the front door. So is that a sixth shot by you?

24 A. I don't think so. I think it was when I missed
25 Harris.

1 Q. And when you miss him when he was at the front door?

2 A. Yeah. I wasn't sure about that. Assuming that one
3 of the - that both the shots outside hit him I wasn't sure
4 about and originally I thought he was hit in the house but
5 I had no idea about the bullet in the wall and even when I
6 heard about it I was still in my mind had Leach - I mean
7 Harris hit in the house.

8 Q. Now as far as Mr. Leach goes you've known him for
9 some time hadn't you?

10 A. About 2008 I met him.

11 Q. He was a contact in your phone?

12 A. Yeah.

13 Q. You had him listed under R?

14 A. That's right.

15 Q. And it wasn't unusual for you to call Mr. Leach
16 and have him give you some drugs at times. Correct?

17 A. That was the main reason for any contact with him
18 yes.

19 Q. Okay. And the type of drugs you would get from him
20 I think you testified cocaine?

21 A. Yes.

22 Q. Marijuana?

23 A. Yes.

24 Q. Did you ever get pills from him?

25 A. Never.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-761-

1 Q. Did you ever get crack from him?

2 A. No.

3 Q. And you used to do that with your old girlfriend
4 Twink. Right?

5 A. Used to do it when she was around yes.

6 Q. And you did it since then too?

7 A. Appetite left with her.

8 Q. Your appetite left with her but you still had times
9 where you had him come over didn't you and give you drugs?

10 A. No. Since --

11 Q. You never bought from him again after Twink left?

12 A. I tell you this, when Brad - When Amber - Found out
13 Amber was pregnant and they wanted to move back in up
14 there because they --

15 Q. I don't believe you're answering my question.

16 A. I'm trying to --

17 Q. I'm simply asking you, so you never did the drugs
18 again after Twink left?

19 A. I'm not saying - I'm not gonna say that no.

20 Q. And then times that you knew Erick or I'm sorry, the
21 times that you knew Richard Leach he was never violent
22 towards you was he?

23 A. I'd seen him get upset before.

24 Q. But he was never violent towards you was he?

25 A. I've seen him violent. Not towards me but I've seen

1 him get violent.

2 Q. You've been in situations where you've seen him get
3 violent?

4 A. I've seen him get violent, yeah, violent.

5 Q. Other than this night?

6 A. Yeah.

7 Q. Times that you were dealing drugs with him?

8 A. One time in town I met him and he was having a
9 problem with a guy and he went off pretty violently.

10 Q. But you never knew him to carry weapons did you?

11 A. I don't know what he was carrying.

12 Q. And you're telling us that this guy who came in
13 obviously angry and screaming came into your house and
14 held his key in his hand. Wouldn't he put his key in his
15 pocket cause you find that key, what did you say, on the
16 floor?

17 A. Yeah.

18 Q. Some how he just sits his key out on the floor and
19 opens his hands -

20 A. I don't know.

21 Q. --- so he can drop it?

22 A. I don't know.

23 Q. This man who's coming in to assault you is gonna ---

24 A. I never - I never seen --

25 Q. --- carry his keys in his hand?

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-763-

1 A. I never seen the car before.

2 Q. I'm not asking you about the car. I'm asking you
3 about the key.

4 A. The key was on the floor.

5 Q. And it's a regular type of key. Right?

6 A. Just a single key on --

7 Q. You have to stick it into the ignition to turn it on.
8 Right?

9 A. The key? Yeah ---

10 Q. Yeah.

11 A. --- right.

12 Q. Now when you actually struggled with Erick Harris
13 next to the car, did you strike him or did he strike you?

14 A. There were no punches thrown. It was more of a
15 pushing match. Pushing match than anything.

16 Q. And during this whole time this is happening Chris
17 is inside fighting with Richard Leach?

18 A. Everything happened real fast.

19 Q. All right. But they're literally fighting inside.
20 From what you could tell there was noise going on when he
21 was back there yelling.

22 A. And the noise when I got back in the door too.

23 Q. And after the gun shots fired Richard Leach doesn't
24 come out? Nothing happens with that? He just stays in
25 there.

1 A. The gun shots outside, yeah.

2 Q. But the gun shot inside. There's a gun shot inside.

3 A. Oh.

4 Q. You fired the gun inside. Richard Leach doesn't
5 stop? He doesn't come out?

6 A. I don't know I was outside. I didn't see what he was
7 doing.

8 Q. Now today is the first time that you have ever said
9 that you went out to that car and Erick Harris struggled
10 with you isn't it?

11 A. That's right.

12 Q. In all the letters you wrote and all the stories you
13 told in those letters ---

14 A. That's right.

15 Q. --- you never said that.

16 A. I had a concern with whether or not it would a been
17 legal for me to have went out to the car and approach him
18 out there like that.

19 Q. But like you said, you're talking to your dad,
20 someone you can confide in. You would have told him that.

21 A. I think I did tell him that. Or I jumped ahead and

22 ---

23 Q. You think you told him that ---

24 A. --- said that --

25 Q. --- that you wrestled with Erick Harris outside

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-765-

1 that car?

2 A. I switched it from outside to inside when I - in
3 the letters.

4 Q. And as a matter of fact, when you say he comes
5 inside, at one time you said he has your gun don't you?

6 A. Yeah I did say that.

7 Q. That he would gotten from Amber and Bradley.

8 A. That's right I did say that.

9 Q. And one time you said he had a knife.

10 A. That's right I did say that.

11 Q. And you don't just say he came in the door and was
12 shot at at that point. You say he comes in and starts
13 going at people don't you?

14 A. I embellished the story, yes.

15 Q. Is this what you considered your shrewd
16 exaggerations?

17 A. Possibly yes.

18 Q. Now, you wrote that letter to Bradley, the one where
19 it starts out, "Yo, B.", the one that he'd gotten at the
20 detention center from you; isn't that correct?

21 A. Uh - yes.

22 Q. And isn't that how it got to Bradley, you were able
23 to see him through the glass, you told him you were gonna
24 kite him something?

25 A. Yes.

1 Q. And you instructed him that that letter was to go to
2 him, then to Scott Varnadore. Right?

3 A. Right.

4 Q. From Scott Varnadore to Chick, Scott's dad. Right?

5 A. I was surprised to see Scott there and I wrote down
6 that page of stuff real quick and sent it over there while
7 he was here.

8 Q. And then from Chick -

9 A. I thought it was an opportunity to get some
10 information to Chris.

11 Q. Right.

12 A. Right.

13 Q. Who got it from Chick when you wanted it to go to
14 Chris.

15 A. Right.

16 Q. And in that letter you need to get information to
17 Chris just like you said ---

18 A. I'm trying yes.

19 Q. --- to say this is what your testimony needs to
20 be?

21 A. Basically I would have liked to compare notes with
22 him the first night after the incident but we didn't never
23 talk about anything. We were both shaken up pretty bad
24 and if you could have just imagined yourself in my shoes
25 in that eight by twelve cell wondering what actually

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-767-

1 happened and what he saw in the back of the house going on
2 and what things I didn't see I would have loved to know.
3 I still want to know.

4 Q. But the reason that you sent that letter to him was
5 because you needed to get your stories straight isn't it?

6 A. I wanted to talk with him about - Yes I did. I
7 wanted to talk to him exactly, yes. I admit to that.

8 Q. And in that letter you're telling him what the story
9 is aren't you?

10 A. I think you'll find a question mark on there too on
11 certain items that I listed is there not?

12 Q. The jury will have it. They'll see. And a matter of
13 fact you start out by telling him the first thing he needs
14 to do is change his statement and make it self-defense.

15 A. Yes. Because when he made the plea agreement with
16 you I don't think Chris is smart enough to even understand
17 what he signed.

18 Q. So --

19 A. And I thought that it's in his best interest to
20 withdraw his plea and talk to a private attorney.

21 Q. So now you're smart enough to advise Chris on what
22 he needs to do despite the fact that he has an attorney.
23 Right? But you can't help but write these exaggerated
24 letters, you're telling us this story of oh its so
25 difficult in the detention center that's why I wrote these

1 letters; that's why I made things up but yet you're smart
2 enough you can advise Chris on what he should do when
3 you're telling us you didn't know what to do. Oh whoa is
4 me.

5 A. If Chris has a private attorney its possible for all
6 I know about the law that one private attorney can talk to
7 the other private attorney and both of our best interest.
8 I see that that's not possible with a private attorney and
9 a public defender and it might not be possible with a
10 private attorney and a private attorney. I see
11 everybody's just worried about their own client.

12 Q. Well --

13 A. And I was trying to communicate with Chris I admit
14 that. I been trying to communicate with him since day one
15 and when I saw his brother locked up across the hall from
16 me, yeah I sent him that.

17 Q. Just like you tried to communicate with other people
18 like Bradley.

19 A. Yes. I'm not disputing that at all.

20 Q. And Amber.

21 A. That's right.

22 Q. And tell them what their testimony is?

23 A. I'll back up and say again that anything I told
24 Bradley to say - what I expected Bradley to say was the
25 truth things you didn't even hear up here from him or

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-769-

1 Amber. Okay. There's a lot more going on with them too
2 and Leach ---

3 Q. So ---

4 A. --- leading up that then he said ---

5 Q. --- telling Bradley he should --

6 A. --- yesterday.

7 THE COURT: Let me stop you again.

8 Let him finish, Mr. Thompson. You've picked up
9 on his speech pattern by now haven't you?

10 A. There's more to - There's more to what he heard
11 from Bradley and Amber about their relationship and the
12 problems they may have had with Rick Leach that they
13 didn't talk about in here yesterday.

14 Q. And you all didn't ask them about in here yesterday
15 did you?

16 A. Try not to waste any more of the Court's time than
17 necessary.

18 Q. Now, obviously it made you angry when Leach had made
19 sexual advance to Amber. Right?

20 A. Yes.

21 Q. But what really chapped you in addition to that was
22 the fact that it was a black man making an advance on a
23 white woman?

24 A. That doesn't matter, no. This could a been a white
25 guy been the same. I still be mad at the white guy too.

1 Q. But that added to your anger didn't it?

2 A. You keep saying anger. My definition of anger is
3 not what I was. I was upset.

4 Q. All right. You were upset then?

5 A. Yes.

6 Q. And then when you wrote a letter on December 13th,
7 2010 and said "God damn this state and fuck a God damn
8 drug dealing white girl screwing nigger."

9 A. Yeah.

10 Q. You were mad then too weren't you?

11 A. I'll tell you why.

12 Q. No, let - Let me finish the question and I'll let
13 you explain it. You were mad because he was a black man
14 doing this to a white girl weren't you? That made you
15 angry didn't it?

16 A. I'm --

17 Q. Regardless of whether it was Amber that made you
18 angry?

19 A. No and I'm gonna tell you why that was on my mind
20 at that particular time when I wrote that letter is
21 because I've had threats since the minute I got here. I
22 was in a fight in C Block, they had to put me in
23 protective custody and I have been ---

24 SOLICITOR THOMPSON: Your Honor, I object. This is
25 non-responsive to this question.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-771-

1 A. --- I have -

2 THE COURT: Wait, wait just a minute.

3 MR. HANCOCK: Your Honor, I think he opened the door.

4 THE COURT: Yeah I think so. Let him go on - .

5 A. I have been threatened a dozen times in here. The
6 sheriff's office themselves have had calls with threats
7 about to me and my family. I've been threatened by
8 countless people who come through here and even in my own
9 block with people that knew Leach. And I had to stay on
10 in I Block in a certain room in I Block because there's
11 Leach family members in every other block in this place so
12 that's been the story I have been telling the whole time
13 and still people that they know and relatives happen to
14 come back in where I was.

15 Q. So then that prompts you to put in this that white
16 girl ---

17 A. Well when --

18 Q. --- screwing nigger?

19 A. When I'm hearing the racial remarks at me then I
20 blew off some steam. I'm not a racist guy. I'm really
21 not. I said that. I know I obviously wrote that and it
22 was on my mind at the time but I'm sitting in here
23 listening to racial hateful things to me every day and I
24 can't even walk away from it.

25 Q. Wouldn't you agree without a doubt that this is a

1 racist statement?

2 A. Yeah it is but I'm not a racist -

3 Q. And it can --

4 A. --- and I appreciate you not making it racist
5 cause it's not. It doesn't matter if it was an Indian, a
6 Chinaman, a white man or a black man that had that problem
7 or with got in that trouble with Amber then so I
8 appreciate you not going there cause that's not what it's
9 about.

10 Q. Now, in the first letter that Mr. Brackett read this
11 afternoon, in that first letter you ask your Pop about the
12 gun in the coffee can and the police have found it and if
13 they haven't for him to take it out of there.

14 A. Yes because the house was unattended and there were
15 people in and out of that house like we know for sure they
16 were.

17 Q. You're asking him to remove evidence aren't you?

18 A. Not asking him to handle it. He could tell if the
19 gun was in there and put the lid back on it and leave it
20 just the way it was. I wanted it out of the reach of
21 anybody that was in and out of that house when I wasn't
22 there. I didn't want it exposed to whoever was coming in.
23 God knows who cause I'm not there.

24 Q. But you didn't tell him to take it to the police.

25 You said take it out of there to your place maybe.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-773-

1 A. Well I told him about the gun and where to find it
2 when I made the first call at booking from here so if
3 anybody cared to listen back on the phone call they'd know
4 right then where it was. But I wasn't trying to hide it
5 from the police the fact - and I wasn't trying to hide it
6 from the police.

7 Q. But then in this series obviously like you said you
8 ask him to remove evidence though. Correct?

9 A. Yes.

10 Q. All right. You also ask him to add evidence. You
11 ask him to put a gun out there for you didn't you?

12 A. I suggested that he do that out of using poor
13 judgment and being dumbfounded about where the gun was.

14 Q. And you wanted it to be a .38 revolver. Right?

15 A. There were rumors I heard in here ---

16 Q. I'm not asking you about rumors.

17 A. --- about what kind of gun it might a been.

18 SOLICITOR THOMPSON: Your Honor, he's being
19 unresponsive to the question.

20 THE COURT: He ask you whether the caliber of the gun
21 that you suggested or whatever ---

22 A. For lack of -

23 THE COURT: --- whether it was a .38.

24 A. For lack of a description I stuck on the .38 for
25 some reason. I don't know.

1 Q. Well you wanted it to be a revolver too didn't you?

2 A. I don't know.

3 Q. You said in your letters you wanted it to be a
4 revolver didn't you?

5 A. I think I did write revolver, yes.

6 Q. Because a revolver doesn't drop a shell casing does
7 it?

8 A. Not automatically no.

9 Q. So you know that would help explain why there's no
10 other shell casings buy yours. Correct?

11 And then you said it should be fired twice ---

12 A. Yes.

13 Q. --- to try and show that two shots were fired at
14 you; isn't that right?

15 A. I was guessing at the caliber and I was guessing
16 by what I heard and I was guessing by what other people
17 heard and the rumors and all that together I assumed that
18 it was a .38.

19 Q. And I suppose you're the person creating these
20 rumors?

21 A. No.

22 Q. Okay. Well, doesn't the .38, that's also something
23 you told Bradley so that he could testify about hearing a
24 .38 something different than your caliber or maybe a .9
25 millimeter?

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-775-

1 A. Larger caliber shot than the .25 so basically
2 distinguish that there was two guns. One was louder.

3 That .38 is louder ---

4 Q. Right.

5 A. --- than a .25.

6 Q. And you were trying to tell Bradley to testify to
7 that weren't you?

8 A. Did I ask him specifically about that or?

9 Q. I'm asking you and you told Bradley ---

10 A. I talked to Bradley ---

11 Q. --- to testify to that.

12 A. --- and he agreed that he thought it was a louder
13 gun. The gun he heard was louder than the - it wasn't the
14 .25. A .25 is not near as loud as a .38.

15 Q. And that is not what Bradley testified to was it?

16 A. No.

17 Q. And you didn't ask him about that yesterday either
18 did you?

19 A. No.

20 Q. Now as well you admitted that then you took your
21 shirt off after it had blood on it. Correct?

22 A. That's right.

23 Q. And you put that shirt somewhere else. Once again
24 evidence at a crime you discarded isn't it?

25 A. I didn't discard it. I left it in the house. I

1 still don't know where the shirt is. At one point I
2 thought it was possibly the white t-shirt that was found
3 in the woods was my shirt and I've wondered how it got out
4 there I thought for the longest time.

5 Q. And then you also - I'm sorry. Was it a white
6 t-shirt that you were wearing?

7 A. Yes.

8 Q. And it had blood all over it?

9 A. Yes.

10 Q. And the police just missed it?

11 A. Yes evidently. I didn't do anything with it.

12 Q. But of the five shots that were fired by you, only
13 three shell casings are found; isn't that correct?

14 A. I believe so yeah.

15 Q. And your gun ejects its shell casings, doesn't it?

16 A. Right.

17 Q. And it didn't jam on you did it?

18 A. It did jam.

19 Q. When did it jam?

20 A. It jammed after I fired the first shot.

21 Q. Really?

22 A. Really.

23 Q. And so now you're gonna tell us that for the first
24 time right now?

25 A. I'm telling you that in the letters. I said that I

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-777-

1 jammed when Harris was in the house and now I'm telling
2 you the truth ---

3 Q. . You said it jammed with Harris tried to shoot you.

4 A. --- it was an uneventful jamming.

5 THE COURT: Let's --

6 A. I was the only one that knew about the jamming.

7 THE COURT: Mr. Spagnoli, let's go back to one at a
8 time.

9 Mr. Thompson, you just as guilty as he is of the
10 infraction so let's both take turns.

11 A. The gun jammed after the first shot.

12 Q. Okay. And you're the only one who knew about the
13 jamming?

14 A. Right.

15 Q. And you haven't said that before have you?

16 A. I used it in another - in a scenario that Harris was
17 inside and ---

18 Q. And that it ---

19 A. --- we were struggling in there.

20 Q. --- that it jammed on Harris.

21 A. That it jammed, yes, that too.

22 Q. Okay. So this is another time you're telling me
23 about it?

24 A. Yeah, I was out of line. I was out of line saying
25 that, writing that rather and I realized I was out of line

1 doing it.

2 Q. And it seems that the vast majority of your testimony
3 is something you only know about isn't it?

4 A. And Chris should know what happened in the back of
5 the house. I know what happened in the front.

6 Q. So now today we're hearing much of this for the first
7 time. Right?

8 A. Very similar to the - that ten page time line that
9 you read earlier.

10 Q. Okay.

11 A. That Mr. Brackett read earlier.

12 Q. Very similar to the ten page time line.

13 A. Similar yes.

14 Q. But still not ---

15 A. Right.

16 Q. --- right?

17 A. Right.

18 Q. Now you were concerned about whether people would
19 get the letters you sent out weren't you?

20 A. Yes.

21 Q. A matter of fact you ask in some letter for people
22 to burn them?

23 A. Yes.

24 Q. Flush them?

25 A. Yes.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-779-

1 Q. You ask Bradley to give them to Pop Pop?

2 A. Yes.

3 Q. You even ask Pop Pop if they were safe with him?

4 A. That's right, yes.

5 Q. And you continued to come up with stories as time
6 went on didn't you? Different stories?

7 A. There was the blue print that all of those letters
8 tell the story. As there - --

9 Q. Is there a blue print to the letter that says "I know
10 no one saw me shoot any God damn body. If they say they
11 did their lying because I didn't shoot anyone. Anybody
12 could have shot them, another guy riding with them."

13 A. That was something I threw out there before that
14 person that the letter was addressed to that was gonna go
15 run their mouth and tell other people about it. So as far
16 as what they were telling anybody else, let 'em think
17 that. That's what I decided to write that day.

18 Q. Okay. And that letter was to Bradley. Right?

19 A. Yeah I think so.

20 Q. And I believe that letter was dated November 18th.

21 It's State's Exhibit One Forty-four. Look at that.
22 I believe it's that letter.

23 A. What word are you picking up on it?

24 Q. Go to the second page of it, the end of the first
25 full paragraph, the last two sentences.

1 A. The top of the first paragraph at the top?

2 Q. The end of the top paragraph, yes.

3 A. Starting with what?

4 Q. It says "I know no one saw me shoot."

5 A. Oh. Wait this might be the third.

6 Q. It's actually a number two at the top of the page.

7 A. I'm not sure I have the same label he did.

8 Q. All right.

9 A. I'm not seeing what you're talking about.

10 Q. Up there where it says "I know".

11 A. All right. I was reading up --

12 Q. All right.

13 A. I was reading up --

14 Q. And that's where you tell Bradley this on that
15 letter that no one saw you shoot. Right?

16 A. That's right because before that I was referencing
17 the gossip that I heard about on Face book and that train
18 of thought at the time I was commenting to him as far as
19 any comments that are made on Face book that that's all
20 they should know about. So if you read the paragraph
21 before that I was talking about some communication with
22 some people out there on Face book.

23 Q. But you --

24 A. And that's why I wrote that particular paragraph
25 because that was to be - if anything was going to be

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-781-

1 conveyed on Face book let it be that. I don't want my
2 details going out on the computer for everybody to read.

3 Q. All right. Then you said you put that in the letter.

4 You just now testified before, you say you put that
5 in the letter ---

6 A. Right.

7 Q. --- so that he wouldn't run his mouth cause he
8 didn't need to know this.

9 A. Because I didn't want to make it public knowledge.
10 Read the paragraph before that.

11 Q. I understand. But you're saying you didn't want
12 Bradley to run his mouth. That's why you wouldn't tell
13 him what happened.

14 A. Bradley - Bradley has noticed the same story as
15 I been telling the whole time with the exception of a few
16 couple of things in there.

17 Q. I'm asking you a question for you to answer, not to
18 keep rambling. Please answer the question. You said just
19 before we gave you the letter in your hand that you wrote
20 that down so that someone wouldn't run their mouth and
21 you're referring to Bradley not running his mouth. Right?

22 A. On the computer on Face book.

23 Q. All right. And so that's why you wrote that letter.

24 That's why you wrote that line that you didn't shoot
25 anybody.

1 A. That's correct.

2 Q. Okay. But in October 19th you had already told
3 Bradley that you had shot 'em both.

4 A. Yes.

5 Q. So before that you've already told Bradley so he
6 already knows what you're starting to say.

7 A. Sir, I was referencing the paragraph before that. It
8 was talking about some communication out there in cyber
9 world on Face book. And when I wrote that he can use - he
10 can follow the story that I'm writing right there and I'm
11 saying as far as Face book goes don't tell anybody
12 anything. As far as anybody in cyber world knows I didn't
13 shoot anybody. That's what I'm saying in there. I'm not
14 trying to tell him I didn't shoot any.

15 Q. Why you've got that ---

16 A. --- he knows the story.

17 Q. While you've got that letter in your hand, if you'll
18 go back to the first page in it all the way down to the
19 bottom. Go two sentences - two lines up from the bottom.

20 Starts with "F-u-c-k."

21 A. That's my - Do you want me ---

22 Q. No. Before you - -

23 A. --- to comment on it or read it or?

24 Q. Well, you read it. I'm having you look at it so you
25 can see. You said that you're not a racist it wouldn't

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-783-

1 matter if the person is red, white, yellow, green, black
2 or blue.

3 A. No.

4 Q. But then in this letter talking about someone else
5 you say "Fuck that Jew bastard".

6 A. Yes. That's a close friend of mine. He calls me
7 a whop, I call him a Jew and Bradley knows I call him that
8 kiddingly.

9 Q. Now one of the other things that are in the letters
10 is the fact that you kind of refer to self-defense as a
11 thing being of a last resort plan.

12 A. Yes.

13 Q. So are you in here today as a last resort?

14 A. I'm - This has been my - the thought of my defense
15 since the minute it happened. If it was a way that it
16 could a been handled without getting a jury involved I
17 would have been, you know, looking forward to settling
18 something right away.

19 Q. But one of your other plans was just to say you
20 weren't there at all isn't it?

21 A. It might a been. I don't know.

22 Q. And as a matter of fact you even threw in a new
23 statement.

24 A. If to say --

25 Q. If you'll let me ask the question.

1 A. Yes. I'm sorry. Go ahead.

2 Q. A matter of fact you threw in a new statement in one
3 of your things saying when you were talking about not
4 being there at all and then you told - the only thing you
5 told the police is that you had only gotten there ten
6 minutes before this happened.

7 A. I said that I just had gotten there not long ago is
8 what I said. If I wrote that --

9 Q. You never told the police that did you?

10 A. Yes.

11 Q. You told the police that?

12 A. I told the police I had just gotten there from work.

13 It was maybe Officer Nichols or another female
14 officer that was there. Nicholson I think.

15 Q. But you didn't tell that in your direct testimony
16 did you?

17 A. I'm saying it now.

18 Q. Right. You're saying a lot of new things now aren't
19 you?

20 A. You ask me questions I'm gonna answer 'em.

21 Q. With whatever pops in your mind aren't you?

22 A. The best I can. If I was out of line doing something
23 I'll tell you I was out of line.

24 Q. The only thing these letters show is that you were
25 familiar with the whole idea of discovery weren't you?

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-785-

1 A. Yes. As a -

2 Q. And you're familiar that as discovery comes in it
3 kinds of trickles in sometimes. As a matter of fact you
4 commented in here in some of your letters that you wish
5 that they would hurry up and get the stuff tested at SLED
6 so that you can see what the results were.

7 A. Exactly. Yes.

8 Q. And your attorney would come in on occasion and have
9 his investigator with him - Mr. Barnhill I haven't seen at
10 the moment but have his investigator sometime - and they
11 would talk to you about the evidence wouldn't they?

12 A. Yes.

13 Q. And as you got the evidence in you dreamed up new
14 things to write didn't you?

15 A. I brought up the knife being a possibility of being
16 in Harris' hand ---

17 Q. And that's --

18 A. --- and I was curious about the blood.

19 Q. A matter of fact you said on the letter dated March
20 15th of 2011 "If I had the discovery package to study I
21 could write a book of ideas".

22 A. Yeah.

23 Q. One of 'em said as a matter of fact I believe even
24 in your time line of events that when Bradley came he told
25 you or he said to you you didn't have to shoot them. "You

1 didn't have to shoot them, Dad." And you dropped your
2 head and nodded no; is that not right?

3 A. That's correct.

4 Q. And you didn't have to shoot him did you?

5 A. I was afraid for my life.

6 Q. And you were afraid for your life so that when the
7 police first got there you just said "I was afraid for my
8 life"?

9 A. I'll say again that the conduct of one of the
10 officers talking to Chris was overly aggressive I thought
11 and that with that I decided that I would talk to the
12 police with an attorney - with my attorney.

13 Q. They had to go by you to get to Chris didn't they?

14 A. The police?

15 Q. Yes.

16 A. Yeah.

17 Q. Because you were the one on the porch.

18 A. Right.

19 Q. Chris was inside sitting down wasn't he?

20 A. Yes.

21 Q. So the police talked to you first.

22 A. One policeman talked to me, another one talked to
23 him.

24 Q. But it wasn't instantaneous was it?

25 A. Pretty much yeah. Everybody got there at the same

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-787-

1 time.

2 Q. So in the condition you were in waiting for the
3 police to get there you weren't chomping at the bit to
4 tell them I was just - I had to save my life?

5 A. I absolutely was. I certainly was. I certainly was
6 and I often think maybe I should have.

7 Q. Also in the time line - and you haven't mentioned it
8 today so let's see what happened with this one - in the
9 time line you said that at some point he went in and he
10 reached out to get a McDonald's bag.

11 A. He had a white bag or a shirt or something white.
12 Shirt or a white McDonald's bag that he grabbed ---

13 Q. You were specific --

14 A. --- that he grabbed at.

15 Q. You were specific that he grabbed a white McDonald's
16 bag.

17 A. Yes. I think it was a - I still believe it was a
18 McDonald's bag.

19 Q. And you could see that in the light from the porch
20 somehow in this dark night?

21 A. With this car light on yeah.

22 Q. There was never a McDonald's bag recovered anywhere
23 was there?

24 A. I think he took it with him.

25 Q. I think I ended one question a little premature.

1 Going back to the shell casings. You took them out
2 from inside didn't you?

3 A. No I did not. Certainly did not.

4 Q. So there was two shots fired inside and those shell
5 cases just magically disappear?

6 A. Like you said it's awfully dark out there and there
7 was no way --

8 Q. Inside?

9 A. Huh? Oh, yeah, right.

10 Q. . Inside?

11 A. I don't know what happened to those. Somebody must
12 have - they must have tracked 'em in their boots or
13 whatever with people walking through there. I might a
14 done it myself with my boots I had on that night.

15 Q. You had on cowboy boots didn't you?

16 A. I had a pair of boots with brand new soles put on
17 em and you can find 'em and look for yourself and see Mr.
18 Gin or whoever over on Love's Plaza had put on a week
19 before a brand new tread.

20 Q. So that night since Bradley wouldn't take care of it
21 you decided to didn't you?

22 A. I was planning like I said to talk to Leach to first
23 confirm that what Amber told me was true. And as far as
24 taking care of it I meant to go to the police, yes, but
25 since they weren't taking care of it.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-789-

1 Q. And you told them earlier in the day though you told
2 them not to worry about it didn't you? You told them you
3 would take care of it earlier in the day.

4 A. Yeah cause I got tired of hearing no I'm not going.
5 I'm not gonna do it.

6 Q. But you told Amber that ---

7 A. Yes.

8 Q. --- when you first found out about it didn't you?

9 A. I said we'll take care of it meaning if you're not
10 gonna go I will. We were gonna talk to Bradley hopefully
11 that too would accept responsibility for what's going on
12 and go down there and take it up and leave me out of it.
13 I wanted to be left out of it.

14 Q. But you also --

15 A. I wanted Bradley and Amber to go handle it. Since
16 they're not going to then I'm taking care of it. I'll
17 take care of it then.

18 Q. You also told Bradley don't worry about it you would
19 handle it.

20 A. That's right. Yes I did.

21 Q. So you weren't waiting for them to do something were
22 you? You had already told them you were gonna handle it.

23 A. What I'm saying to you is that it was obvious to me
24 they were making no effort in that direction to do
25 anything about it so then it left it to me.

1 Q. Bradley had just found out about it that day from
2 you. Right?

3 A. Yes.

4 Q. And you had gone out to work all day. Right?

5 A. Right.

6 Q. And so they weren't acting fast enough to call the
7 police for you?

8 A. No they weren't.

9 Q. But you didn't call the police?

10 A. In fact I was hoping when we got back the first day
11 that Amber would have taken care of it with her mother or
12 somebody that while we were at work that day.

13 Q. But you didn't call the police?

14 A. No I didn't.

15 Q. But you were gonna take care of it weren't you?

16 A. I was going to the police station the next day, yes,
17 the 29th was my plan.

18 Q. As a matter of fact you said that in one of your
19 letters didn't you?

20 A. Did I?

21 Q. You said that Chris Varnadore was over as a matter of
22 fact so he could baby sit?

23 A. That's right.

24 Q. You were gonna leave the baby with Chris Varnadore
25 and you were gonna take - who had been drinking heavily

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-791-

1 all night; right, and you were gonna take Amber and
2 Bradley and the three of you were gonna give a statement
3 to the police department?

4 A. They were gonna make a police - the report, yes.
5 They were gonna make the report. I didn't think the baby
6 would need to go.

7 Q. You didn't think if you'd just call them and have
8 them come out or talk to you on the phone or anything like
9 that?

10 A. Which ever way ---

11 Q. Didn't cross you mind?

12 A. --- they wanted to handle it. I don't know.

13 Q. So it's true ---

14 A. I was ---

15 Q. --- that Chris Varnadore was there ---

16 A. --- visualizing - I visualized coming down here and
17 doing it in person.

18 Q. So it's true Chris Varnadore was there to watch the
19 baby?

20 A. Chris would stay in the front house with them
21 for several months prior to that and - -

22 Q. You're not answering my question.

23 A. I'm trying to to let you give me an idea that Chris
24 is -- was okay with to keep Bradley and Amber and as far as
25 being around with the baby for an hour I'd trust him to

1 stay with the baby for an hour, yeah.

2 Q. So you're still maintaining that you had Chris over
3 that night so he could stay the night and watch the baby
4 in the morning so you all could --

5 A. No that's not the main reason he was over there. The
6 main reason he should a got a ride to work with another
7 worker that morning and he didn't show so I went and got
8 him and brought him and we did some - it was what he told
9 you yesterday, he went to the scrape yard and got some - -

10 Q. But you didn't have any vehicle you could drive.

11 A. I took the - another guy that runs - working with us
12 truck to do that and that's when I picked Bradley up and
13 that's in the course of either heading out there or coming
14 back up to get it before I went to Charlotte.

15 Q. So when you got in that car after you had shot Erick
16 Harris and he run in the woods, I believe you said you
17 were gone out to warm Bradley and Amber. Right?

18 A. Yes.

19 Q. But you never actually warned Bradley and Amber did
20 you?

21 A. No.

22 Q. You just drove around the place and then went back
23 to yours?

24 A. Yes.

25 Q. So this man you're scared of that you say had a gun

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-793-

1 you're not even gonna tell Bradley and Amber that he's out
2 there?

3 A. I would have imagined that Bradley would have - I
4 would have heard some activity and Bradley - the doors
5 would have been open or I would have heard activity if
6 that was what he was in the house or bothering them.

7 Q. Oh, so you would have wanted him to walk outside and
8 investigate activity so he could run into an armed gunman?

9 A. I don't know.

10 Q. It doesn't make sense does it?

11 A. I saw everything was okay up there for the time
12 being and I felt like the urgent need to get back to the
13 back house cause Chris and Leach went back to.

14 Q. And you took and you pointed the high beams of that
15 car into the woods looking for Erick Harris didn't you?

16 A. I scanned it on the way up there yes. I scanned the
17 whole property. I tried to scan the whole line of the
18 property if I could have.

19 Q. And once again that's the first time you've ever
20 said that isn't it? That's not in any of the letters.

21 A. Yeah it is.

22 Q. Really?

23 A. I'm sure it is.

24 Q. Okay. Well the jury will have them to see.

25 A. Yeah.

1 Q. Cause in the letters isn't it true you say you got in
2 the car to turn it around so you could put him in the back
3 door?

4 A. Yeah I mentioned that at one point too. I'm sure
5 that I wrote that somewhere too, yes.

6 Q. But obviously the back door was quite easy to get
7 into in that car. You just testified Erick Harris was
8 standing to the side of the car opening the door. What
9 would have obstructed the back door from where it was
10 parked originally?

11 A. Because we're trying to move somebody then at that
12 point it'd be easier to back the car up and go in through
13 the back door that way cause otherwise the front door
14 opening right there.

15 Q. But the cars not even backed - it's backed up so the
16 very end of the car comes to the first rail on the steps
17 isn't it? Its not even backed up all the way so the back
18 door can open to the steps is it?

19 A. Right.

20 Q. So that's not a good access to the back door is it?

21 A. Better than it was.

22 Q. Oh, the car out in the yard was - is worse access
23 than when you pulled it up and put the rear end of it
24 against --

25 A. I may have even had to try to move the car down and

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-795-

1 zero in where I needed to be. I'm just - -

2 Q. Isn't it true you positioned that car so you could
3 take his body and stick it in the trunk?

4 A. No it's not.

5 Q. Cause that was the last piece of evidence you wanted
6 to get rid of wasn't it?

7 A. No it's not. No it's not.

8 Q. Cause in reality the whole fly in your ointment in
9 this thing was the fact that Erick Harris was in that car
10 sitting outside. You didn't expect him to come with
11 someone else, you expected him to come alone didn't you?

12 A. I didn't expect anybody to come.

13 Q. Okay, I see here. What I was asking you about text
14 earlier you had mentioned you had texted Amber's phone
15 about Leach. Tell me again when you texted Amber's phone
16 about Leach.

17 A. After I talked to him on his phone whatever time it
18 was.

19 Q. So that night, the night this happened?

20 A. Yeah. Yes.

21 Q. After you talked to him you texted Amber's phone
22 about him and you told Amber what in that text?

23 A. It was to Bradley. I was expecting Bradley to read
24 it and I said where are you I think. I forget exactly
25 what I typed.

1 Q. And now you're saying you didn't even mention Leach
2 in the text that you sent her about Leach.

3 A. No I didn't mention Leach in the text.

4 Q. You're telling us you all never laid the rug over
5 him at all?

6 A. I did not.

7 Q. And the whole thing with the bat happened after you
8 shot him?

9 A. Yes.

10 Q. After he had a bullet that went straight through the
11 top of his head and destroyed his brain and incapacitated?

12 A. As far as the blood in the living room, it happened -
13 I didn't see what happened in the back of the house. All
14 I saw was the result of what happened in the living room.

15 Q. But you're telling the Court that it sounded to you
16 like there was some serious fighting going on in the back
17 of the house.

18 A. I said I heard noise.

19 Q. A lot of noise?

20 A. Yes.

21 Q. And you hear things getting banged into?

22 A. I heard footsteps on the floor, the hardwood floor
23 as I heard.

24 Q. Did you hear men yelling?

25 A. I did.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-797-

1 Q. Did you hear things get knocked over?

2 A. No.

3 Q. But during this time somehow Richard Leach had a
4 knife?

5 A. That's correct.

6 Q. . And Mr. Varnadore never got cut?

7 A. I don't know that he had contact with Varnadore with
8 the knife. I couldn't see back there.

9 Q. But the two of them were the ones tussling with each
10 other the whole time. Right?

11 A. For the short amount of time it was, yes.

12 SOLICITOR THOMPSON: The Court's indulgence one
13 moment, Your Honor.

14 (PAUSE AT 03:32 P.M..)

15 Q. Didn't Amber tell you that when he came by that
16 he was looking for you?

17 A. That's what she said.

18 Q. Richard Leach.

19 A. That's what she said.

20 Q. Is that what she said? And he was looking for you
21 for a reason at that point wasn't he?

22 A. He's trying to contact me he could a called me.

23 Q. Oh, as a matter of fact the call logs show that there
24 were calls between the two of you the day before. Right?

25 A. I --

1 Q. I believe the call logs show that you were ignoring
2 his calls that day.

3 A. I'm not sure about that.

4 Q. Isn't it true that you owed him some money for the
5 drugs that you'd been buying from him?

6 A. No I didn't owe him any money.

7 Q. And you owed him money and that's why he was
8 trying to get a hold of you; that's why he was trying to
9 find you that day?

10 A. No. I had - it been a while since I'd even seen him.

11 Q. Because you had just got a job and it looks you'd be
12 paid soon wouldn't it?

13 A. I was working on that job for three months when that
14 happened.

15 Q. And so he was expecting payment wasn't he?

16 A. No not from me.

17 Q. And then when you heard about the thing with Amber
18 you decided to kill two birds with one stone didn't you?

19 A. No.

20 Q. When you called him you told him you were gonna pay
21 him didn't you?

22 A. No I did not.

23 Q. That's why Mr. Leach ---

24 A. I didn't owe him any money --

25 Q. --- came over.

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-799-

1 A. When I talked to him there was nothing said about
2 any money. The money didn't enter into this. Any money
3 that I owed anybody didn't enter into this at all.

4 Q. Cause you're already saying as far as you know
5 neither Richard Leach nor Erick Harris came into that
6 house with any weapons on them. Correct?

7 A. I never - I don't know what they were carrying.

8 Q. Right. You can't say that they had any weapons when
9 they came in that house can you?

10 A. I was mistaken, I couldn't tell for sure what Leach
11 - Harris had when he came in the door.

12 Q. Is it --

13 A. I thought it was a gun at first and I thought it
14 was a knife. It could a been a cell phone. I don't know.

15 Q. Isn't it interesting that this guy that you're so
16 afraid of comes to you house and as you say barges in and
17 he doesn't have any weapons in his hands?

18 A. He had a - He had a guy with him and he thought I
19 was alone so I thank God that Chris was there because
20 Chris got his attention. The way they came in that house
21 Rick went into the hall way; Harris came this way to me,
22 they would a had me cornered in the kitchen there was no
23 better way I could go except back and that would a been my
24 only escape.

25 Q. But they --

1 A. But I'd had to unlock all that door and everything
2 so I felt threatened right off the bat before I saw any
3 weapons to be honest with you.

4 Q. Did they have to break in your door to get in?

5 A. No. I'm the kind of person that locks the door when
6 I leave, not when I come home.

7 Q. Was the door propped open that day or sitting open or
8 was it shut?

9 A. I'm not sure. I want to say it was shut but I
10 wouldn't swear to it. I don't know. Could a been cracked
11 open.

12 Q. Now, Mr. Hancock talked to Mr. Varnadore and
13 mentioned - he gave one, two, three, three statements and
14 now you're telling us the truth on this fourth one. I
15 have to ask you, Mr. Spagnoli, I believe it's about
16 twenty-one letters sitting there, so you gave not just
17 one, two, three, four, eight, ten, fifteen, eighteen,
18 twenty, twenty-one statements as to things that happened
19 and now today you saying you're telling us the absolute
20 truth?

21 A. That's right.

22 Q. That was not included wholly in any one of these
23 letters.

24 A. I may have filled in the blank to the things I was
25 wondering about in those letters, sending 'em in

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-801-

1 confidence to my father, personal letters blowing off
2 steam cause I got nothing better to do here but to think
3 about my case and so the letters are what they are.

4 Q. In confidence to your father when you're telling him
5 to make sure other people study them that's in confidence?

6 A. That goes - I maybe was not referencing anything
7 except the time line of events to give Bradley an idea of
8 what I was gonna be expecting from him as far as his
9 relationship with Leach going back. I didn't want him -
10 didn't expect Bradley to lie about anything. I just
11 wanted him to make my attorney and ultimately the police
12 and you guys or whoever aware that it just wasn't all -
13 this wasn't - the whole incident wasn't just out of the
14 blue because and they go oh, his dad's a drug dealer.
15 Come on. I met him through Bradley so I wanted Bradley to
16 make everybody aware of the fact of any problems they had,
17 anything I didn't know, certain things that we know like
18 when Amber told me about Leach coming - I wasn't the only
19 one she told that to. She would cry and do a lot of
20 people about that including my dad.

21 SOLICITOR THOMPSON: Your Honor, at some point this
22 is unresponsive - completely unresponsive. He's just
23 rambling.

24 THE COURT: Mr. Spagnoli,

25 A. That's the only way I know how to communicate. I'm

STEVEN SPAGNOLI: CROSS BY SOLICITOR THOMPSON

-802-

1 sorry.

2 THE COURT: He's gonna ask you another question.

3 I guess.

4 Q. So it's in confidence to your dad. You haven't
5 answered the first question. When you're trying to send -
6 tell him to tap other people come instead of the letters.
7 You call that in confidence?

8 A. Yeah. Yes.

9 Q. And it's in confidence to your dad and you're telling
10 him get this stuff to Chris Varnadore I got to open a line
11 of communication with him?

12 MR. HANCOCK: Your Honor, I think this question
13 has been ask and ---

14 THE COURT: Yeah. I think we -

15 MR. HANCOCK: --- answered over and over again.

16 THE COURT: Let's move on.

17 BY SOLICITOR THOMPSON:

18 Q. With the only thing that is true - isn't it true
19 the only thing that was in confidence with your dad is
20 the stories you were trying to spin so that you could lie
21 and not tell the truth so that you could get out of the
22 crimes you committed; isn't that true?

23 A. I wasn't doing anything without talking to my
24 attorney except blowing steam with those letters to my
25 father. He knows me he knows I tend to ramble. He knows

STEVEN SPAGNOLI: REDIRECT BY MR. HANCOCK

-803-

1 when I'm being sarcastic. Okay. He knows when I'm
2 serious and when I'm not.

3 Q. And so is that why you're rambling today, you're
4 still blowing steam?

5 A. Yes.

6 SOLICITOR THOMPSON: Thank you.

7 THE COURT: All right. Any redirect?

8 MR. HANCOCK: Only one question.

9 REDIRECT EXAMINATION

10 STEVEN SPAGNOLI BY MR. HANCOCK:

11 Q. The Solicitor has questioned you many times about -
12 for a long period of time about you not telling the police
13 immediately what happened. Did they read you any rights
14 that night?

15 A. I don't recall.

16 MR. HANCOCK: I have no further questions, Your
17 Honor.

18 THE COURT: You can step down and have a seat with
19 your counsel.

20 (WITNESS LEAVING WITNESS STAND.)

21 THE COURT: Any other witnesses, Mr. Hancock?

22 MR. HANCOCK: None, Your Honor.

23 THE COURT: Anything in reply?

24 SOLICITOR BRACKETT: Just one moment, Your Honor.

25 SOLICITOR THOMPSON: Nothing, Your Honor.

1 THE COURT: All right. Members of the jury panel,
2 you now have received all the evidence, the exhibits and
3 the testimony. I'm gonna let you go to the jury room just
4 for a few minutes. When you come back you will hear the
5 closing arguments of the attorneys and then I will give
6 you my charge on the law. Don't start discussing the
7 case, we are not quite there, we're close, but don't start
8 discussing the case or try to make up your own mind until
9 you hear closing arguments and my charge on the law. So
10 we'll take about a ten or fifteen minute break and then
11 we'll proceed.

12 . (JURY EXITS COURTROOM AT 03:42 P.M..)

13 THE COURT: Anything from the State at this point?

14 SOLICITOR BRACKETT: No, sir. I just would need when
15 in closing -

16 THE COURT: We're gonna take - the charges, anything
17 of substance?

18 SOLICITOR BRACKETT: Yes, sir. We would request a
19 charge under -

20 THE COURT: We'll get that in just a minute. That's
21 what I'm saying, --

22 SOLICITOR BRACKETT: No, sir. Nothing as far as -

23 THE COURT: Okay. All right. Mr. Hancock.

24 MR. HANCOCK: Only, Your Honor, and I know I did not
25 supposedly did not renew the motion, but I renew all

1 previous motions and renew my motion for a directed
2 verdict.

3 THE COURT: All right. Motions are all - All rulings
4 are affirmed and the motion for a directed verdict at this
5 stage is denied.

6 Now, we'll go to charging. What are you gonna ask
7 for, Mr. --

8 SOLICITOR BRACKETT: Your Honor, the State would
9 request a charge under the hand of one is the hand of all.
10 That's the only thing we did not mention back in chambers.
11 I think that that would be appropriate under the facts of
12 this case. And then we are prepared to discuss the Castle
13 Doctrine.

14 THE COURT: All right. I'll get to that in just a
15 second.

16 Anything - Any request - particular request?

17 MR. HANCOCK: I believe that of course I am going to
18 request the Castle Doctrine, protecting property and
19 person's property Act that it would be part of the charge.
20 I would also like a charge on that once you have the right
21 to fire or begin your self-defense you have the right to
22 carry it out until all danger is passed.

23 THE COURT: All right. And the later is already in
24 there - the form. I'm not gonna charge the protection and
25 property - Protection of Person and Property Act. I have

1 read and reread and reread this many many times in
2 particular over lunch and the Act I think is a little
3 confusing but I have determined and ruled that it applies
4 only as to the Court's consideration as to whether or not
5 Mr. Spagnoli, or any defendant, is entitled to immunity
6 under the Act. That the presumption under 16-11-440
7 applies only in an analysis of immunity, not in regard to
8 the defense of self-defense.

9 And I have ruled that Mr. Spagnoli is not immune from
10 prosecution but is entitled to self-defense. We have no
11 real guidelines to go by and like I say I have studied
12 this over and over and over again and it is my
13 determination that is based to some - Well to the language
14 as I read it 16-11-420 says it's the intent of the General
15 Assembly to codify the common law of Castle Doctrine which
16 you already have it recognizes a person's home is his
17 castle and to extend it to other places.

18 Then it talks in that same session but that was under
19 A - under E about no person shall be required to
20 needlessly retreat in the face of an intrusion or attack.
21 Then it has a definition in a section under 430 then it
22 gets into the presumption. But all of that in my opinion
23 is ground work for 16-11-450 it says a person who uses
24 deadly force as permitted by the provisions of this
25 article or another applicable provision of law is

1 justified in using deadly force and immune from criminal
2 prosecution.

3 I have found that Mr. Spagnoli is not entitled to
4 the presumption under 16-11-440. The presumption is
5 simply an inference which can be rebutted and I find that
6 the evidence before the court certainly rebuts any
7 presumption under - that would be for Mr. Spagnoli to be
8 entitled to under 16-11-440 and that's taking the totality
9 of the circumstances and at this point I guess I'm the
10 judge of the facts and in determining that there are -
11 that the facts are sufficient for the presumption to be
12 over come.

13 Now, I will tell you that I have in my self-defense
14 charge expanded the usual language about duty to retreat.
15 What I usually charge quite frankly this to me is actually
16 a little stronger than the Act. If the defendant was on
17 his or her own premises the defendant had no duty to
18 retreat before acting in self-defense. It's got to meet
19 the other qualifications anyway.

20 But I have expanded that and taken some of the
21 language out of the presumption and also after that say
22 one who has a reasonable fear of imminent peril of death
23 or great bodily injury and if within their residence, has
24 a right to use deadly force if going through his or is in
25 the process of unlawfully and forcibly entering the

1 residence.

2 So that's not charging the act. I'm taking some
3 language out of the Act and I'm doing that because the
4 legislature said it was codifying the common law principle
5 and it uses that language. So I'm not charging the Act
6 but I am charging that language.

7 Now I got - Anything on that from the State?

8 SOLICITOR BRACKETT: No, sir. That's exactly what we
9 were actually suggesting.

10 THE COURT: All right. The Defense?

11 MR. HANCOCK: Nothing, Your Honor.

12 THE COURT: All right. A couple of questions. I
13 don't remember any witness having a prior record.

14 SOLICITOR BRACKETT: No one was impeached.

15 THE COURT: Okay. Now, this is interesting when it
16 came up last week, attempted murder, lesser includes start
17 go down the steps, assault and battery of a high and
18 aggravated nature. Attempted murder is a violent crime
19 but so is assault and battery of a high and aggravated
20 nature.

21 Now, last week I ruled that since the charge in the
22 indictment was simply possessing a weapon while in the
23 commission of attempted murder, that I would not charge,
24 that if the jury found the lesser included of assault and
25 battery of a high and aggravated nature could they - could

1 go further and consider the possession of a weapon during
2 that offense. It's a little tricky, but what does the
3 State have to say about that?

4 SOLICITOR BRACKETT: Your Honor, I believe that by
5 charging under the to wit portion - to wit, possession
6 during a violent crime wit murder I believe that that
7 embraces all the lesser included violent crimes. And just
8 as in and we've done this countless times over the years
9 here, where someone was charged with murder and they had a
10 lesser included offense charged to the jury as a possible
11 verdict of manslaughter, voluntary manslaughter which is
12 also a violent crime. The jury could return a verdict of
13 guilty of possession of a pistol during the commission of
14 that violent crime if we allege the substantive major
15 crime then I believe it embraces all the lesser
16 included's.

17 THE COURT: Well that's my question. You don't have
18 a to wit.

19 SOLICITOR BRACKETT: Well then --

20 THE COURT: In court two you referenced Section
21 16-23-490.

22 SOLICITOR BRACKETT: Which is possession of a pistol
23 during the commission of a violent crime statute.

24 I don't believe that it requires us to say which
25 violent crime it was. Frankly the court knows that

1 obviously AGHAN and attempted murder are both violent
2 crimes so if they find either one of those then he will be
3 guilty of that.

4 THE COURT: Well I understand but that's the law.
5 What does the Defense have to say about that? .

6 MR. HANCOCK: Your Honor, we're satisfied with what
7 you're planning to instruct the jury.

8 THE COURT: Well I think that the new reference to
9 Code Section and I think that's enough to put my concerns
10 notice I think that is enough place - Well is enough to
11 place the defendant who is not an attorney not the defense
12 counsel but the defendant themselves on notice that their
13 subject under the lesser included to the possession of a
14 firearm charge.

15 SOLICITOR BRACKETT: Certainly the attempted murder
16 in fact it would.

17 THE COURT: Yeah as to attempted murder. What about
18 the lesser included?

19 SOLICITOR BRACKETT: I believe the greater defense
20 automatically embraces the lesser offenses.

21 THE COURT: Well we know that but does a regular
22 defendant who this has got to give notice to, are we to
23 imput to every defendant that when we say you're being
24 charged with attempted murder that they're supposed to
25 know that all those lesser included's are included. I

1 mean they're presumed to know the law, I understand that.

2 SOLICITOR BRACKETT: We could not ever do that
3 because often times we don't know what the lesser
4 included's are gonna be until the defense is put up which
5 they're not required to tell us so for us to charging in
6 the indictment this one or maybe this one when that one
7 might not even be an option for the jury so it would be an
8 impossibility of that.

9 THE COURT: Well I understand it but because it's
10 impossible it doesn't - It does not -

11 SOLICITOR BRACKETT: How can the State ever construct
12 an indictment with that scenario?

13 THE COURT: Well maybe the State would never be
14 entitled to a charge of possession of - during a violent
15 crime when the person is found guilty of a lesser
16 included.

17 SOLICITOR BRACKETT: I don't think that's a state of
18 law. I see what you're saying but I believe that the
19 greater offense always embraces. I think that's a
20 principle of law and I think that every man is presumed to
21 know the law and I know this is a hyper technical point
22 but certainly the defendant in this case is - has got the
23 counsel of an able veteran criminal defense attorney who
24 advised him of the law on these things.

25 THE COURT: Well I think I will charge and do a

1 verdict forms that says that if they find the defendant
2 guilty of attempted murder, or, assault and battery of a
3 high and aggravated nature then they can consider the
4 count two under that indictment, over the objection of -

5 MR. HANCOCK: Over my objection.

6 THE COURT: Over the objection. I've gone back and
7 forth with that and I haven't researched it quite frankly,
8 only happen to come up two weeks in a row.

9 All right, let's take about a ten minute break.

10 And I know we don't usually charge after four, but I
11 think this is Thursday and the jury would like to - We've
12 had two bad Thursday experiences but I did not provide
13 doughnuts this time so hopefully we had a long - so let's
14 take about ten minutes. We'll start back at four o'clock
15 or right after.

16 SOLICITOR BRACKETT: And between arguments, Your
17 Honor, I would like a few minutes to get - I'll need to
18 get some evidence out and lay it out for my closing as
19 well. I hate to take another break.

20 THE COURT: Let's have a little order real quick.
21 Waive opening?

22 SOLICITOR BRACKETT: Yes.

23 (COURT IN RECESS AT 03:50 P.M..)

24 (COURT BACK IN SESSION AT 04:17 P.M..)

25 THE COURT: Close to ready?

CLOSING ARGUMENT: BY MR. HANCOCK

-813-

1 You ready?

2 SOLICITOR BRACKETT: Yes, sir, the State is ready.

3 THE COURT: Mr. Hancock?

4 MR. HANCOCK: The Defense is ready, Your Honor.

5 THE COURT: Bring in the jury.

6 (JURY REENTERS COURTROOM AT 04:20 P.M..)

7 THE COURT: Members of the jury panel, you will now
8 hear the closing arguments of the attorneys and then I
9 will give you the charge that you are to use in applying
10 to the facts as you determine them to be..

11 Counsel. Mr. Hancock.

12 MR. HANCOCK: If it please the Court.

13 Ladies and gentlemen of the jury, this is what we
14 call closing arguments. You have all the evidence that's
15 been presented in this trial. It is quite voluminous.
16 You've heard testimony of all the witnesses, you've heard
17 experts, you've heard gun shot experts, you've heard blood
18 smear experts, spatter experts, and you've got the
19 evidence before you.

20 You are to make a decision based solely on that
21 evidence; not what I basically say but I reflect on the
22 evidence. I am not again, as I only iterate from the
23 opening what I say is not evidence. I'm just reflecting on
24 what has happened and if I say something that is different
25 from this evidence which is the physical evidence, or the

CLOSING ARGUMENT: BY MR. HANCOCK

-814-

1 circumstantial evidence which is the evidence that you can
2 infer things from then you take what you heard. That's
3 way you got your ears and eyes of twelve people here.

4 I'm not purposely trying to mislead you into a
5 verdict or any decision. And don't hold it against Steven
6 Spagnoli because I misinterpret things also and sometimes
7 I may be doing something and hear something different than
8 I thought I heard, so don't hold it against Steve.

9 These are comments on the evidence and I will ask at
10 the end by thanking you for being here. You've been a
11 most attentive jury. No one had to hit on the table or
12 anything to wake somebody up or gawk. You've been very
13 attentive to everything that has gone on on in this
14 courtroom and I thank you for it. That's what necessary
15 for you to arrive at a decision that speaks the truth.

16 And that's all we're asking here is that you arrive
17 at a decision that speaks the truth solely in this case.
18 Not based on outside, not on prejudice, or anything of
19 that nature but solely what has happened in this courtroom
20 today as a representation of what happened on September
21 27th and 28th, 2010.

22 Now as we go through this you're going to hear much
23 from both myself and the solicitor. It's been a long
24 trial but again we go back to the defendant is presumed
25 innocent until proven guilty beyond all reasonable doubt.

CLOSING ARGUMENT: BY MR. HANCOCK

-815-

1 Now reasonable doubt is a standard that is held in
2 every criminal trial be it trespassing or be it murder.
3 It's not a rock that a defendant hides behind to jump out
4 and say reasonable doubt so don't convict him, acquit him..

5 It is the basic standard of our justice system
6 because a citizen has a right to ask a jury to decide
7 their fate. But in doing so they can't prove their
8 innocence and they are not - they are up against the
9 entire power of the State whatever it may be in order to
10 be tried for the crime that they have a right to be tried
11 for if they say their not guilty. And so because of that
12 and because of the form experience or our - the makers of
13 our constitution they gave a reasonable doubt standard, is
14 what you must find before anyone can be convicted.

15 A reasonable doubt - And the judge will instruct you
16 as to reasonable doubt. If I say anything that's
17 different or contradictory to that, again, take it as you
18 hear the judge's instructions because they are the law and
19 you are to take them without question.

20 But he will instruct you, I believe, a reasonable
21 doubt is basically a doubt for which you can give a
22 credible reason. Its not a fanciful or whimsical doubt.
23 It is doubt that would cause you to hesitate to act in
24 your movement to a verdict of guilty. Any doubt however
25 small, however slender, must be given to the defendant.

1 They must be found not guilty if anyone who finds
2 reasonable doubt.

3 It has to be in your mind and in your conscious and
4 it must come from the evidence here. Not from any bias or
5 prejudice you may have or have had in the future or may
6 have in the past or may have in the future. That doubt
7 has to be reasonable. The judge will instruct you on
8 that. He will instruct you at length on that particular -
9 that particular point.

10 You have heard during the course of this trial
11 objections. Now objections are not - they are not to stop
12 you from hearing evidence. We have books and books that
13 indicate trial procedure. We have decisions of the Court,
14 we have evidence that can be entered and evidence that
15 can't be entered. You heard us telling someone that they
16 can't say what somebody else said. That's called hearsay.
17 That is one of our rules that you cannot use hearsay.

18 So if hearsay is coming in then it is the duty, they
19 duty that we undertake as attorneys that proper procedures
20 are followed. Thereby we sit at the table, we hear it, we
21 stand up and say I object, Your Honor. And then the judge
22 decides whether or not the rules are being followed.
23 That's all that is, is just fact and we're trying to make
24 everybody follow the rules.

25 Now there are times, there are times when you hear

CLOSING ARGUMENT: BY MR. HANCOCK

-817-

1 leading questions that may go by and we do that when there
2 is things like you work don't you and that sort of thing.
3 But we are given the responsibility to object when we feel
4 the rules are not followed and that the judge who is the
5 sole orator of the law to let him listen and if he
6 requires argument he may send you out. You've been sent
7 out a few times for us to discuss legal matters. He will
8 send you out and hear arguments and we say okay, Judge,
9 it's hearsay or it's not by the rules. And then the judge
10 will say your objection is over ruled as he has, or, it is
11 sustained. So you don't hold that against the defendant.

12 It's just a part of our procedure and as I said it's
13 necessary. And this is a case of murder. You're going to
14 hear murder and assault and battery with intent to kill.
15 The judge is going to instruct you that there are other -
16 and assault and battery with intent to kill, there are
17 other lesser included offenses. There may be as - There
18 may be assault and battery with intent to kill, it may be
19 assault and battery of a high and aggravated nature. And
20 you will hear as assault and battery first, second, and
21 third which are lesser included offenses.

22 If you find that Mr. Spagnoli is not guilty of
23 assault with intent to kill you may find a lesser included
24 offense. They may be as assault and battery first is that
25 you just have an unlawful touching. And then you go all

CLOSING ARGUMENT: BY MR. HANCOCK

-818-

1 the way up to assault and battery of a high and aggravated
2 nature which is assault and battery that does great bodily
3 harm to someone. You will listen to those and make a
4 decision on those as to whether they fit the facts. That
5 is if you find not guilty of assault and battery with
6 intent to kill.

7 Now we are going - You are going to listen to all the
8 evidence as it has reflected on what happened that night.
9 Now that night we know that Erick Harris arrived at Steven
10 Spagnoli's residence. Then it becomes a question of was
11 he invited or lured. Well, the testimony that we have and
12 the only testimony you have is that Mr. Spagnoli indicated
13 that he told Mr. Harris and they were disputing or having
14 a dispute over what was said to Amber that Mr. Spagnoli
15 felt was totally out of line.

16 You can't know that was out of line or not but an
17 individual would go in to a young lady's house and tell
18 her that he's going to get a prophylaxy and he's going to
19 come back and he's going to have sex with her and to a
20 point that she was in fact frightened enough to go next
21 door.

22 So Mr. Spagnoli does get in touch with Mr. Leach many
23 times. Not like they don't know each other. Mr. Leach is
24 a drug dealer. Mr. Spagnoli uses drugs so he buys them
25 from Mr. Leach. That's his trade. We heard no other

CLOSING ARGUMENT: BY MR. HANCOCK

-819-

1 trade that Mr. Leach has so that's the way he earned money
2 for himself and the family. So Mr. Spagnoli calls him.
3 You have numerous phone calls and text, but, what you
4 don't have is you don't have the context or the voice of
5 what was actually said. You must go by evidence not
6 supposition. And so you have basically no evidence that
7 says Mr. Spagnoli invited him over to his house. It's not
8 there and it's not - you must not assume things or suppose
9 things because then you would have to make a jump from the
10 fact that a phone call was made as to what was said during
11 the phone call. The Only evidence that you have that you
12 can consider at this time, I believe, and if I'm speaking
13 wrong then I am mistaken, but I don't believe so, as Mr.
14 Spagnoli said that he had called him and threatened him
15 with jail or threatened to have the police on him which
16 doesn't sit well with a drug dealer.

17 They don't like to be threatened cause they can't be
18 investigated. If they're investigated you got to at least
19 two to three witnesses on the Spagnoli property in itself
20 that could help put him in jail. So there is a dispute.
21 The question becomes is Mr. Leach is he angry enough that
22 he would be threatened in that manner by one to whom he
23 sells drugs to go in and go to his house with an evil
24 intent or intent to do harm? That's the case that you
25 have to decide.

1 But we do know that Mr. Leach entered that house.
2 There is conflict in the testimony as to whether he
3 entered through a door and a knock on the door or through
4 a door that was ajar. There's testimony from two people
5 that the door was ajar or could have been ajar and one
6 from Mr. Harris that says he actually went up and knocked
7 on the door. Mr. Leach entered. Mr. Spagnoli's testimony
8 indicates that he entered there to harm him and so he
9 wasn't gonna take - you aren't sending me to jail, it's
10 not gonna happen. And that's his testimony. And he came
11 in and he came into the house and he was taken back in the
12 back by Mr. Varnadore.

13 Mr. Varnadore tells you that he was taken back in the
14 back by Mr. Spagnoli at which time he had two shots fired.
15 Well the only problem with that is is the State has
16 scoured that home over and over again and if you shoot a
17 gun and a bullet comes out and the bullet leaves a hole.
18 There are no holes back in the hallway. There are no
19 shell casings back in the hallway. So that means a lack
20 of credibility of Mr. Varnadore's statement with what is
21 called tangible evidence before you right now. But he
22 indicates he went back there and that Mr. Harris came in
23 with some object in his hand.

24 Now I think the judge would charge you when we get
25 into the law of self-defense that one who is threatened in

CLOSING ARGUMENT: BY MR. HANCOCK

-821-

1 their own home has a right to judge things by appearances.
2 It doesn't have to be a study of evaluation of the facts
3 and circumstances because we have realized in our law that
4 that study of evaluation of facts and circumstances is
5 someone is there to do harm to you if you have to a lot of
6 times take time to stand there and go through each dat gum
7 thing and say okay then a person couldn't do it and there
8 would be no reason for self-defense because they would
9 argue harm. You may act on appearances and act
10 immediately on appearances when you can evoke self-
11 defense.

12 What is self-defense? Self-defense is a doctrine
13 that we call castle doctrine. In this particular case a
14 man is his castle. If someone invades your castle you
15 have the right to invoke the defense of self-defense and
16 it is a complete defense.

17 The elements of self-defense are that you are without
18 fault in bringing on the difficulty. That's where we get
19 to the luring. Did he lure or did he not lure Mr. Leach
20 to the home? And I have indicated I don't think he can
21 make that jump in evidence. So if he didn't and all he
22 did - All Mr. Spagnoli did was say okay you are going to
23 jail then he is without fault in bringing on that
24 difficulty because that would mean that Mr. Leach entered
25 the home wrongfully and in doing so evoked the right of

CLOSING ARGUMENT: BY MR. HANCOCK

-822-

1 self-defense. And so therefore he would be without fault
2 in bringing on the difficulty.

3 The fourth one I believe the judge will charge you is
4 that everyone has a duty to retreat. In other words you
5 have to if you can get away from danger without getting
6 bodily harmed or getting kill you must do so except for
7 when you are in your own home. That time you have no duty
8 to retreat. I believe the judge will charge you that
9 basically Mr. Spagnoli after the charge he's not gonna
10 tell you this because it would be a conclusion of the law,
11 but the fact is Mr. Spagnoli had no duty to retreat, he
12 was in his house.

13 The next thing in self-defense is one must act as a
14 reasonable person would act under the circumstances. That
15 is after a person assesses the situation and does so in a
16 reasonable manner. What is reasonable manner?

17 It's very difficult to explain but it actually takes
18 into effect all of you that each of you determines what is
19 reasonable to yourself. And in a jury room you will
20 decide if his actions were reasonable. Was it reasonable
21 for him to expect death or bodily harm from someone Mr.
22 Spagnoli knows two people that entered his residence to do
23 him bodily harm and he has no duty to retreat. Is that a
24 reasonable thing to think? Would you? Would you think
25 that if it were your home? So is it a reasonable person

CLOSING ARGUMENT: BY MR. HANCOCK

-823-

1 and was Mr. Spagnoli reasonable in his actions?

2 You also must consider another element and that is
3 did he act as a reasonable person would under the
4 circumstances after accessing reasonable danger. In
5 other words what would you have done. What could you have
6 done? In expecting death by bodily harm in your home what
7 would or could you have done? Each of you answers that
8 question in your own mind as to what is reasonable.

9 That actually an instantaneous assessment of the
10 situation then if you agree Mr. Spagnoli indicates that
11 Mr. Harris was there. He had something that could have
12 been a cell phone. If it were a cell phone and a person
13 is in his house is it reasonable that you cannot recognize
14 what may be in someone's hand? Is it reasonable to assume
15 that that is a cell phone or that it is some weapon that
16 is brought there to harm him? In assessing that Mr.
17 Spagnoli had a gun and fired a shot. That shot is still
18 lodged and you will see into evidence and the picture of a
19 light bulb with blood spatter. There is a hole there and
20 they dug the bullet out of the hole because you remember
21 the gentleman said that he had reached down there with a
22 probing object cause it was among all the wires. So Mr.
23 Spagnoli was across the room, he fired. He went out on
24 the porch and Mr. Harris is wandering around in the car,
25 he doesn't know where Mr. Harris is going. He doesn't

CLOSING ARGUMENT: BY MR. HANCOCK

-824-

1 know whether Mr. Harris at that time was going over to the
2 windows, he fires something in the door and the window,
3 because if you look at the pictures of the house you will
4 have them back there, there are two windows and they were
5 described in testimony. At that time he didn't know
6 whether the gentleman was gonna turn around and do
7 something, but he does have the right to access the
8 situation and by doing so he goes outside and he sees a
9 gentleman rambling in a car and he comes off the porch and
10 he says he sees a gun at that time. Fires a shot, he hits
11 Mr. Harris. He moves around to the car and Mr. Harris is
12 - has gotten into the back seat. And I say that because
13 we can only assume because he said - and you can't assume
14 anything but you can infer - because Mr. Harris' shoe was
15 found in the back seat. At that time Mr. Spagnoli fired
16 another shot.

17 Well I think that you will hear the judge also
18 indicate to you that if a person is justified in the
19 doctrine of self-defense, in firing that first shot they
20 may continue to fire that shot until that danger in their
21 own mind is completely passed even to the death of the
22 person whom they think is going to harm them.

23 The first shot if justified, justifies all the -----
24 - . Not to the point or even to the point that if someone
25 is suspected and you have a reasonable - a reasonable

CLOSING ARGUMENT: BY MR. HANCOCK

-825-

1 assessment that they have a gun, if they are moving away
2 and they turn around like this and fire another shot. The
3 first shot, self-defense, all of it's basically self-
4 defense and you heard testimony to that effect.

5 You heard Mr. Spagnoli indicate that he left and he
6 was out there with Mr. Harris. He indicated that when he
7 was in the house that Leach was back in the back and we
8 tried to show you in - You will have that there in your
9 diagram - Mr. Leach is back in the back. He and Mr.
10 Varnadore are having and nobody has said a fight or malay
11 but it was Mr. Varnadore back there because Mr. Spagnoli
12 couldn't a been back there because there was no gun shots.

13 And so it's a connection there right there where they
14 were. If you look at these diagrams and it goes straight
15 to the kitchen. Mr. Spagnoli sees Mr. Leach coming at
16 him, Mr. Leach, I don't know, he coming at him in a lower
17 manner like this; he's got a knife in his hand and Mr.
18 Spagnoli fired one shot that hits him about right here and
19 comes out here.

20 The coroner's testified that that was a fatal wound.
21 The man goes down to the floor and then Mr. Varnadore
22 testifies - And we know he was hit. Mr. Leach was hit
23 with a bat in a rather strong manner. Mr. Varnadore then
24 takes the bat and cracks this gentleman's skull apart.
25 The police are called, they come over there and the

CLOSING ARGUMENT: BY MR. HANCOCK

-826-

1 Solicitor made a big thing about when they came up why
2 didn't you tell them your story. I think the judge if you
3 listen to - you listen to what his charge will be and you
4 know television, you've watched TV and heard of Miranda
5 Rights.

6 You have the right to remain silent, to remain
7 silent. You can exercise that right and that is your
8 right not to speak with an attorney. I'm not speaking
9 with the police officer until you have spoken with an
10 attorney and determine your peril under the law and you
11 have that right and they have to read it to you before
12 they can question you. So you can't hold that against Mr.
13 Spagnoli that he didn't run up to the police and say okay
14 this happened because the man is exercising his right to
15 each one that you have and I have for any, for any contact
16 with police however small you have the right to remain
17 silent.

18 So the Solicitor questioned quite heavily on that but
19 that was his right and he so exercised it. He didn't know
20 what his legal peril was. We have a lot of letters and
21 Mr. Spagnoli has testified and you can assess the letters
22 if you wish. They indicate and I believe that it was an
23 attempt to influence to hide evidence, et cetera, et
24 cetera. Mr. Spagnoli said that really wasn't my intent
25 but what you have to do here is you will have into effect

CLOSING ARGUMENT: BY MR. HANCOCK

-827-

1 not any evil intent. You can find that and you don't have
2 to find it. But you got a gentleman that he testified
3 after questioning of the solicitor who had been beaten up,
4 had been threatened by families of the deceased to a point
5 that he is put into a block or cell where all he can do is
6 sit for twenty-three hours a day. He had no other real
7 outside contact. That's all he can do. He has high
8 anxiety put on his medication and he doesn't have any
9 medication. And for at least a short period of time - I
10 don't know if any of you have ever been smokers but when
11 you start - If you smoke and when you try to quit its
12 tough. But he didn't have his Xanax. Am I saying that he
13 was insane? No. Am I saying that he was troubled? Yes.
14 Am I saying that he was also a desperate man at this time
15 or not not knowing what was gonna happen, not basically
16 knowing all of the events or all of the evidence against
17 him.

18 Because, ladies and gentlemen, we had fifteen hundred
19 pages of evidence in this case. That assessment takes a
20 while and many of the pages came in somewhat late. So Mr.
21 Spagnoli at that particular time during periods of this
22 process had no idea what may have been recovered or not
23 been recovered; what shells or what guns or other items
24 may or may not have been recovered.

25 We are looking for - We're looking for a gun that he

1 says two shots were fired. And there is no infallibility
2 the gun was never found but the search was also not very
3 complete by the police. Because if you remember the
4 officer with the dog indicated that he was making a short
5 sweep and in a road blind and they didn't know the exact
6 route that Mr. Harris is supposed to have taken and they
7 did not even search all the way back up to Ms. Burris'
8 house where he went to call 911. And that was testimony
9 and is in evidence. So their search was in fact not
10 complete. That gun could still be there, ladies and
11 gentlemen, and Mr. Spagnoli was correct in his assessment.

12 Now, as we have gone along in this you have heard the
13 testimony, you are the persons that get - you judge the
14 credibility of a witness and all witnesses that were on
15 this witness stand. You observed what stake they have in
16 - You consider what stake they have in a trial, you can
17 consider what their demeanor is. You can consider their
18 interest in the trial. Now that makes it a difficult
19 thing because every defendant has an interest in a trial.
20 But they are presumed innocent therefore they are presumed
21 as truthful as anyone else until you find that they are
22 not truthful by observing them, by listening to the
23 testimony and evaluating that testimony.

24 Mr. Varnadore actually gave statements. Mr. Spagnoli
25 was writing a rambling letter that you will be able to

CLOSING ARGUMENT: BY MR. HANCOCK

-829-

1 read and you look at them and evaluate them. But Mr.
2 Varnadore was giving statements to the police, three or
3 four different statements, all different, all wrong, and
4 untruthful. He gave what he said was the truthful
5 statement after he was offered a plea bargain arrangement
6 that would cause him not to be tried for murder. All of a
7 sudden he decided now to be truthful. That's what Mr.
8 Spagnoli did, Mr. Spagnoli wouldn't give a statement to
9 the police under oath after being read his Miranda rights.
10 He was writing rambling letters.

11 Mr. Harris has his own stake in this in that he
12 doesn't want to have been there in the first place. I
13 know he doesn't, he doesn't want to be shot. I listen to
14 several things that didn't ring too true in what he said.
15 One was that this statement of Defendant's One which I put
16 into evidence, actually denying in every statement,
17 denying everything thing, the whole thing that he was
18 purely innocent, had no idea why they were going where
19 they were; that he was a cousin of Mr. Leach but didn't
20 know he was a drug dealer. That they were pretty close
21 but didn't know he was a drug dealer. And he had all this
22 knowledge but he had no reason why they were headed out to
23 this remote location.

24 You've seen it's very remote in how to get there and
25 that man didn't question anything. He didn't ask whether

1 you were going there to do this that and the other. He
2 said he never knew, never had any at all, no knowledge
3 whatsoever except for the fact in this he indicates Erick
4 was going to visit a female friend. And that wasn't quite
5 true unless he was going over and intend to stop by
6 Amber's on the way in. But he denied that in everything
7 that was said up until that morning. And that's a summary
8 of a statement that he gave at a later date. You can
9 evaluate that.

10 You can also evaluate some of the evidence in that
11 it's little things that you look at because everything
12 gets fairly confusing during a malay such as this one.
13 And one was that Mr. Spagnoli said he fired two shots at
14 Erick Harris when the car was in one place. He said he
15 was heading up to the porch and he heard two shots and he
16 turned back and he fired again.

17 But, ladies and gentlemen, I refer to State's Exhibit
18 Fifty-three, that's where the car was pulled. It is
19 pulled in and backed in on the right side with the left
20 side facing from Mr. Spagnoli. That car was not parked
21 there when this malay took place cause Mr. Spagnoli
22 indicated that he fired a bullet from that location.
23 Number Seventeen I believe you will find is a shell casing
24 from that gun. If he didn't fire it the State has not
25 addressed how did it get there. Other than - - what the

CLOSING ARGUMENT: BY MR. HANCOCK

-831-

1 State said and their expert said is you're talking about
2 an automatic weapon. Its an automatic weapon because ---
3 ----- a semi automatic weapon that when fired it ejects a
4 bullet. According how you fire you if you go up down
5 sideways but it can't go anywhere but down. And that's a
6 shell that is right there by that car after - before it
7 was parked there otherwise it couldn't have been there.

8 Mr. Spagnoli told you he was there firing back after
9 two shots. You can consider that, ladies and gentlemen,
10 in your evaluation but this is evidence tendered by the
11 State that you may observe.

12 You will also understand that however it got there we
13 don't know but you've heard testimony as to what happened
14 and you have a dead body with Mr. Spagnoli's knife that he
15 has testified that somewhere in the kitchen or somewhere
16 that Mr. Leach had been and you will look at the pictures
17 of Mr. Leach's body which are - I'm not gonna show it to
18 you now, they're rather gruesome - but you will see and
19 you have seen already that that knife is lying basically
20 at his head and it has his blood on it.

21 Are they saying or have they said that the knife
22 was planted or was it the fact that Mr. Leach actually had
23 that weapon as Mr. Spagnoli said, prior to him shooting?
24 But that piece of evidence is there for you to view. It's
25 for your evaluation in having to determine exactly what

1 happened and if that supports what Mr. Spagnoli has said.

2 As I have said, ladies and gentlemen, I have only
3 touched on some of the evidence. If we began to go
4 through this piece by piece I don't know whether the
5 solicitor intends to because we don't tell each our basic
6 intent at all times especially in opening and closings.
7 But the evidence is voluminous. You will have an
8 opportunity to go through all of it piece by piece if you
9 wish. I'm not going to sit here because I know that you
10 were an attentive jury and I watched you as you sat there
11 and you listened closely to the evidence so you know
12 basically what's in here. You can look at those if you
13 wish, you can look at the pictures that I have just shown
14 you, you can look at the exhibits such as this, and make
15 your determination as to guilty or not guilty.

16 Basically there is no innocence here, ladies and
17 gentlemen, that's why I don't say guilty or innocent. I
18 don't believe Mr. Harris is innocent. I know Mr. Leach
19 wasn't. He was a drug dealer. I know Mr. Spagnoli
20 wasn't. We're all flawed. It's just how much. For some
21 it is more than others. So there is no innocence here.
22 There's guilt or lack of guilt; lack of guilt to be
23 determined by what I told you is reasonable doubt.

24 And I will remind you that anytime that you have as
25 to the guilt of Mr. Spagnoli must be in his favor and

CLOSING ARGUMENT: BY MR. HANCOCK
BY SOLICITOR BRACKETT

-833-

1 there must be a verdict for acquittal. Thank you.

2 I will not have another chance to speak with you.

3 The Solicitor will give his closing argument. At that
4 time the judge will then give you the law in it's entirety
5 that you are to follow. And you will go to the jury room
6 for the evidence to be delivered and for you to begin your
7 deliberations and your judgment of guilt or lack of guilt
8 in this case. I only ask that you review the evidence in
9 its' entirety and you return after your deliberations and
10 after proper consideration of all the charges and you
11 return with a verdict of not guilty. A verdict that
12 speaks the truth. Its not your duty to find lack of guilt
13 nor guilt. It is your duty to find a verdict that speaks
14 the truth from the evidence and the law as presented to
15 you by the judge. I ask for that and you will have done
16 your duty with the utmost courageing commitment and I
17 thank you for your time.

18 (911 CALL BY MS. BURRIS PUBLISHED TO THE JURY AT
19 05:00 P.M..)

20 SOLICITOR BRACKETT: Let's try that again. Just a
21 little bit different this time.

22 (911 CALL BY MS. BURRIS REPLAYED AT BEGINNING.)

23 SOLICITOR BRACKETT: Yeah, this is Steven Spagnoli
24 I'm over at . Two guys just came in
25 my house they were trying to kill me I think. I had to

1 pull a gun out and shoot 'em. One guys still laying here
2 and he's bleeding and I think he's hurt real bad. There's
3 another guy with a gun outside in the woods. I don't know
4 where he is and he might came back any minute please send
5 the police and a ambulance as quick as you can.

6 So that's the phone call that Steven Spagnoli didn't
7 make with this phone on September 28th, 2010. That's a
8 powerful piece of evidence you just heard. That's
9 powerful. And I'll tell you why and by the end you will
10 know just how powerful that is. But sometimes the
11 evidence that you don't hear is even more powerful than
12 the evidence that you do hear.

13 Now, I'm gonna take a few minutes; it shouldn't take
14 too long, I'm gonna walk you through some of this evidence
15 because there's been a lot of it. And like Mr. Hancock
16 said; there's been so much, so much evidence that I can
17 spend all night here. But I'm not gonna do that and I
18 know you're happy to hear that. But I have to take some
19 time because there are some important things that you can
20 draw from the evidence that will help you do your job.

21 We've been working on this case for a long time;
22 we've been looking at this evidence, myself, I'm Kevin
23 Brackett the solicitor for the Sixteenth Circuit. I've
24 been trying this case with my able Deputy Willy Thompson
25 over here now for a couple of days but we been working on

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-835-

1 it since September of 2010. So we know a lot about this
2 case and we've got a lot of insight into the evidence that
3 we want to share with you and that's really the purpose of
4 closing argument, is to take our - the benefit of our
5 thinking about this case and share it with you so that
6 will help you do your job when you go back to deliberate

7 Because when we're done, and the judge is done
8 telling you what the law is, then the case is yours. And
9 it's your job to find what the true and just verdict in
10 this case is and come back into this courtroom and render
11 a verdict that does justice, justice by Steven Spagnoli,
12 justice by Erick Harris, and justice by Richard Leach.

13 Now, the first thing I want to talk to you about is
14 the crime scene. On the subject of the evidence that you
15 didn't hear in addition to the phone call that wasn't made
16 by Mr. Spagnoli, what did you hear the officer say as they
17 approached the porch where they saw Mr. Spagnoli standing?

18 What did they say? They said Bradley said to him,
19 "Did you shoot someone?" And then depending on which
20 officer they said either he said yes or they didn't hear
21 him say anything he just hung his head.

22 But what didn't you hear him say? Many of the same
23 things that I just said on my fake 911 call that we
24 expected him to say had he really been the victim of a
25 home invasion like he told you from the witness stand.

1 He did not say those things to his son when his son
2 ask him did you shoot someone. Yeah, I shot somebody, I
3 shot some guy who came in my house and tried to kill me.
4 You didn't hear that.

5 What did you see when they went in the house? This
6 is a picture looking in. There's the carpet, there's the
7 furniture, coming back towards the door there's the table.
8 Nothings disturbed. Depending on which letter you want to
9 believe or whether you want to believe the testimony there
10 was a titanic struggle that took place in there. A big
11 fight with four guys involved in it and a baseball bat and
12 guns pushing back and forth. But it doesn't really appear
13 like there's any evidence of that. And the crime scene
14 officers testified they searched the entire house and this
15 is where they found all the evidence. All the blood,
16 everything happened right here in this living room -
17 State's Exhibit Twenty-two

18 There State's Exhibit Five on the arm chair of the
19 white chair in the back ground. State's Exhibit Five is
20 the cell phone Mr. Spagnoli did not use to call the
21 police, did not use to call an ambulance. And there is
22 the bottle of Jack Daniels right there sitting on the
23 table. A small detail but remember what Mr. Varnadore
24 said when they came back from drinking Tequila at the
25 creek they walked back in and drank a few more beers and

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-837-

1 some Jack Daniels. It's the little things that you can
2 look to and say, yeah, he did say that. He said they
3 drank a little more Jack.

4 And low and behold there's a bottle of Jack Daniels
5 in a Coke and Mt. Dew chaser right there sitting next to
6 it. And all the ashtray and glasses and undisturbed items
7 that did not get knocked over in the big struggle that was
8 described by Mr. Spagnoli in the letters. There on the
9 floor is a knife. And, again, it's not a foreign knife to
10 the house. This is a knife that was already in the house
11 that this man who is coming over to do Mr. Spagnoli harm,
12 who chose not to come in with his own weapon but instead
13 relied on being able to arm himself with one of Mr.
14 Spagnoli's knives after he had come into the house, which,
15 if you believe Mr. Spagnoli's stories which ever one you
16 choose to believe, is ridiculous.

17 If Mr. Leach really intended him harm don't you think
18 he would have come in with his own gun, his own knife,
19 instead of him saying I'll find one once I get inside the
20 house. And as a practical matter what were the odds that
21 Richard Leach is gonna drive way out in the middle of the
22 woods and go to this mans house to give him a bunch of
23 grief? Really? I submit that's incredible.

24 There's the gun that he hid which would why would
25 you hide the gun? Why would you hide the gun if you were

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-838-

1 gonna - If the police are coming put it down on the ground
2 and step away from it and hold your hands up and show 'em
3 I don't have anything here. But he didn't just do that.
4 He actually went to the trouble to go into the kitchen
5 open the coffee can which was apparently empty and this
6 where he kept it the whole time - put the lid back on it
7 and put it on the shelf and closed the door and then write
8 his father from jail and ask him to go look for the gun.
9 "If its still there maybe you need to get it out of the
10 house and hide it. I didn't do anything wrong." For a
11 guy who didn't do anything wrong he's sure acting like he
12 did something wrong.

13 What's the word - the verse from Proverbs 28, the
14 wicked flee where none pursue but the righteous man stands
15 bold by -

16 MR. HANCOCK: I believe I'm gonna object to that,
17 Your Honor. I don't think that was interjected.

18 SOLICITOR BRACKETT: I think it's a proverb.

19 THE COURT: I over rule the objection.

20 What are you objecting to?

21 MR. HANCOCK: Just as to bringing religion into this
22 and I don't know -

23 THE COURT: Just disregard this. This is not a
24 religious situation. He's just using that as an example
25 as a comment.

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-839-

1 SOLICITOR BRACKETT: State's Exhibit Twenty-five:

2 This piece of evidence along with the testimony of
3 George Weeks - and I do not have this on another slide as
4 well - but this piece of evidence along with the testimony
5 of George Weeks and the testimony of Doctor Earl Jenkins,
6 makes his story from the witness stand today impossible.
7 It could not have happened the way Steven Spagnoli said it
8 happened. What did he tell us? He said first of all Mr.
9 Leach came out of the kitchen, he ran into the hallway
10 around to the back through the kitchen where I guess is
11 where he's trying to say maybe he got the knife, and then
12 he charged at me from the kitchen like a bull or a
13 football player or he must have had his head straight down
14 because you remember what Doctor Jenkins said? The gun
15 shot wound to the top of his head - Remember I said, Now
16 how did that go? Was that like front and to the back or
17 this way and come in angle direction? He said, no, it was
18 on the top of his head and straight down. Not angled not
19 forward to back not left to right. It's a straight shot
20 straight down to the base of his brain.

21 And I don't know whether Mr. Hancock said this in his
22 closing argument or not, something about an exit wound
23 that the bullet came out here. The bullet came out of the
24 top of his head in Mr. - Doctor Jenkins' hands holding a
25 forcep when he reached down into his brain and pulled it

1 out because the bullet stayed inside of his head and
2 remained there until Doctor Jenkins got it out during the
3 autopsy.

4 And what did Doctor Jenkins say when I ask him what
5 would be the effect on somebody getting shot in the top of
6 their head straight into their brain like that? What
7 impact - How would that effect somebody's ability to move
8 around and get up off the ground? And he said that there
9 would be no more movement. When you get a bullet to the
10 top of your head that goes straight down through the brain
11 all the way to the bottom of the base of your brain,
12 there's not getting up, there's no movement, you're out.
13 You are in the process of dying with that but there's no
14 more movement.

15 Now how does that coupled with George Weeks'
16 testimony make Mr. Spagnoli's testimony impossible?
17 Remember what Mr. Weeks - he was the blood spatter expert
18 who testified I believe it was Tuesday. He came in here
19 and showed you a blow up of this picture and he zoomed in
20 on it and he said there's different kinds of blood on the
21 wall and so there's really two kinds. There's cast off.
22 Remember? The bat gets blood on it and as you swing the
23 bat around and rear it back like that, the blood on the
24 bat flies off the bat, so if you're going like this,
25 bloods gonna go in an arc behind you. If you're going

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-841-

1 like this, then it's gonna go that way. So it just
2 basically it flies off the bat by cyntripical force.

3 The other kind of blood that was on the wall that he
4 looks for, in ninety degree spatters is what he called it,
5 was the round drops of blood which on an object that is
6 bloody like a head is struck with a bat, if it's like a
7 puddle, it moves out in a ninety degree pattern. And he
8 said he looked at the wall and there was three sets of
9 ninety degree blood on the wall at forty-three inches.

10 About as high as this. Eighteen inches and then some
11 ninety degree spatter - I apologize, I keep sniffing
12 here. I got a cold and been fighting it all week - But
13 ninety degree spatter on the baseboard of the wall.

14 Right here, this stuff, this fine circular blood is
15 right there. So if the object if it's ninety degree
16 spatter like he said at forty-three inches, eighteen
17 inches and right there at the baseboard, then Mr. Leach,
18 his head had to be roughly here when it was hit one time.
19 About eighteen inches when it was hit another time. And
20 then all the way down on the floor when it's hit the last
21 time in order for that ninety degree spatter to come off.

22 Spagnoli testified that he shot him, he left, he came
23 back and the place is a bloody mess, and Varnadore had to
24 work him over with a bat while he was gone because he
25 tried to get up off the ground. How could he have tried

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-842-

1 to get up off the ground after he was shot through the top
2 of his head? And Doctor Jenkins says you're not moving
3 after that, you're dying. If you're not dead already you
4 are in the process of dying. Your brain has been
5 completely penetrated by this bullet all the way down to
6 the base of your brain.

7 So what did Varnadore do pick him up off the ground
8 and start wailing on him while he was laying there? That
9 doesn't even make sense. What makes sense in this
10 circumstance Richard Leach was lured over to that house.
11 He was invited over to the house and he was ambushed.
12 They jumped him in the house and they beat him down. They
13 beat him down and then shot him in the head and that's
14 what makes sense. It is impossible for Mr. Spagnoli's
15 story to be true if you believe Doctor Jenkins and Mr.
16 Weeks.

17 More detailed photographs in State's Exhibit Ninety-
18 five. The exterior shots of the house. I put this on
19 here because I wanted to in response to what Mr. Hancock
20 said in his closing statement. He tried to make some
21 point about where the shell casings were found. What did
22 Mr. Whitler say? You can't tell where somebody was
23 standing from where a shell casing was because the shell
24 casing bounces how you hold the gun whether you shoot it
25 like this, like this. Some people even turn it completely

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-843-

1 upside down. That all effects where the shell casing goes
2 to.

3 But what's the other thing we don't really know that
4 makes it hard to say where somebody was standing in
5 relation to the car? The car was moved. We don't know
6 where the car was when Erick Harris was shot in the car so
7 how can we possibly know where he was standing in relation
8 to the car when we don't even know where the car was?
9 Nobody can say anything more than an estimate. Well it
10 was facing the house, it was parked in, he turned around
11 and came in. It's impossible to say. And the spread of
12 the evidence around the car that's the position the car
13 was in when the police arrived there. It was backed in
14 but when Erick Harris was there that was not the position
15 the car was in.

16 The car was pointing towards the house because the
17 windows that are broken in are on this side of the car,
18 right here. The front of the car was facing towards the
19 back of the house right there. But was it here, was it -
20 This isn't showing up well. Was the car here, was it
21 here, was it over here? Was it closer to there? We don't
22 know. Nobody knows. Not even Erick Harris can possibly
23 say exactly where it was because he wasn't paying
24 attention to that kind of detail.

25 So where the shell casings were found is no use to

1 you in trying to figure out where somebody was standing
2 when the gun was fired for that's impossible for anybody
3 to know.

4 What can you deduce from that though? Remember how
5 the seat was canted back and Erick Harris said he was
6 sitting in the passenger - the front passenger seat. Look
7 where the front of the shot is. It's towards the back of
8 the window back where Erick would a been sitting while he
9 was waiting for Richard Leach to come back out of the
10 house.

11 In State's Exhibit Seventy-nine the picture itself
12 isn't really what's so valuable, it's what the picture
13 shows. This little item right here. This is an
14 interesting piece of evidence. You say to yourself how
15 can a shoe be an interesting piece of evidence? Well this
16 is the shoe that's still loosely tied, and he slips into
17 that shoe but it's still loosely tied here just as it was
18 when it was found. This is the shoe that that man right
19 back there ran out of to get away from the man who was
20 trying to kill him. He ran out of this shoe and let it in
21 the car as he ran for his life.

22 Now this piece of evidence over here, State's Exhibit
23 One Twenty-four, the contents of this bag have not been -
24 one minute. These are Richard Leach's shoes. Just give
25 me one second. Here we go.

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-845-

1 This guy right here has not been sitting next to this
2 one since September 28th of 2010 when Erick Harris ran out
3 of this one. This shoe stayed on his foot all the way
4 through the woods out to the road all the way down

5 , all the way to Ms. Burris' house, in the
6 ambulance, in the helicopter to Charlotte where it was
7 recovered by Detective Moore who went up to Charlotte.
8 Remember? He kept that shoe on his foot.

9 And there's some socks in evidence too and I think
10 you might have seen 'em. There's one white sock and then
11 there's one white sock that's got mud all the way around
12 it. Erik Harris and if you've ever run before with one
13 shoe on you know you'd rather run barefoot with no shoes
14 on than try to run with one shoe on. If you've ever tried
15 to run with one shoe on it's actually kind of hard. It's
16 uncomfortable and it's clumsy and you can't really run as
17 fast. You kick that other shoe off and go barefoot before
18 you ran with just one shoe.

19 Erick Harris was so scared he didn't even stop to
20 take this other shoe off. He ran all the way down

21 and then the shoe stayed on his foot until he
22 got to CMC. This shoe stayed behind in the car to be
23 found by Kevin Sullivan the crime scene guy who processed
24 the car. This is the shoe he ran out of. These are the
25 little details, the small things that tell you you've got

1 to look for what's got the ring of truth to it. What has
2 the air of truth to it?

3 The other thing that's interesting about this shoe,
4 and the other reason its such a powerful piece of
5 evidence, is he never - Spagnoli in all of his letters
6 never said that he shot Erick Harris inside the car. He
7 always puts him outside the car coming in the house here
8 and there. It's only after he comes to trial and realizes
9 oh, they got one shoe in the car and the other shoe at the
10 hospital so I've got to adjust my story to account for the
11 additional shoe, I've got to figure out a way to explain
12 that.

13 And that's what you all got fair glimpse of in the
14 case. You all got a really interesting view of how a
15 defendant puts together his defense, a man in Mr.
16 Spagnoli's position, how he adjust. And we'll talk about
17 that more in just a minute.

18 > What didn't they find? There were clearly shots
19 fired in the house. There's a bullet in the wall. What
20 isn't in the house? More shell casings. There's one in
21 the wall. We know Richard Leach got shot. And then he
22 says that he fired at Harris in the house. He says that
23 in the letters and he said that here in court. So there
24 should be at least three shell casings found in the house.
25 Who cleaned those up and why? Where did those go? They

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-847-

1 didn't get found by the forensic Services Unit. And they
2 were looking for them because they know somebody's been
3 shot in the house. But there are no shell casings found
4 anywhere inside in the house.

5 The next thing I want to turn your attention to is
6 the autopsy. And these are hard pictures to look at. But
7 I want you to pay attention to them because I'm not
8 convinced, obviously I don't believe, and I don't believe
9 it's possible I submit to you from Mr. Spagnoli's version
10 of events and you heard what he said he was shot in the
11 top of the head. It's impossible for that to have
12 happened. So the bat, the assault with the baseball bat
13 subduing him I submit to you I think it's logical to
14 conclude that that came first.

15 But look at these injuries to the other side of the
16 head. Look at the injury to his right hand. Do you think
17 that hand was holding the knife after it warded off a bat
18 blow and broke his hand, the bone in his hand right there
19 above the knuckle? You think he was welding a knife with
20 that hand? Look at that. I submit to you he wasn't.

21 Another blow to the side of his head. And the fatal
22 gunshot wound straight down through the top of his head.
23 Another point that you need to keep in mind from the
24 location of this gunshot wound another piece of
25 information that you can deduce from this. If I'm

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-848-

1 shooting somebody who is roughly my height, within six
2 inches or more, there is no way for me to reach over like
3 this, it's extremely difficult and they're probably not
4 going to stand still for it while I'm trying to do it, the
5 only way you shoot somebody in the head like that is like
6 this. You shoot them when their down on the ground.
7 They're prone, they're laying on the ground and they're
8 helpless right after they've been beaten. I don't know
9 brutalized with a baseball bat and they can't defend
10 themselves.

11 This was not a shot that was fired as he was charging
12 across the living room at Mr. Spagnoli. Mr. Spagnoli
13 executed Richard Leach in the living room of his home at
14 after he had been beaten down with a
15 baseball bat.

16 What do the forensic show us? I'll go through them
17 briefly. The blood spatter I've touched on. Multiple
18 hits of blood all over the room. The gunshot residue. No
19 gunshot residue on anybody hands. But again, you heard
20 from the expert not necessarily surprised. It's like baby
21 powder sprinkled on your hand. There was a rag in there
22 with blood on it. Somebody could have wiped that blood
23 off their hands. I submit there was probably blood on
24 Varnadore's hands. That would be the beating with the bat
25 cause there's blood all over the walls. If you're the guy

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-849-

1 holding the bat and you're only one bat length away from
2 somebody you think blood gets on your hands and on your
3 arms? I submit it was and that's what he used to wipe it
4 off..

5 The firearms: Same gun that was used to kill Richard
6 Leach was used to shot Erick Harris in the face. With the
7 exclusion of any other gun the rifling characteristics on
8 the bullets themselves no other gun fired that bullet.

9 The DNA: Leach's blood is on Varnadore. You could
10 almost see that without even needing the DNA person to
11 come. That was blood spatter all around the bottom of his
12 pants right here. And what else does that tell you? Were
13 do you think Richard Leach's head was when that spatter
14 was getting on the bottom of his pants and his shoes.

15 He was down here getting hit like that. If his head
16 had been up here he would have had a lot more spatter up
17 here wouldn't he? He hit him when he was laying on the
18 ground helpless.

19 The other really important piece of DNA is the fact
20 that Harris' DNA was found on the right front pants of
21 Steven Spagnoli. Now how do you think that happened?
22 Only one way. Erick Harris must a been telling the truth
23 when he said he fell out of the car on the ground and he
24 looks up and sees Spagnoli coming around the car at him.
25 And of course he didn't know him to be Spagnoli. He just

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-850-

1 sees this assailant coming at him and he reaches up and
2 they struggle. And during the course of that struggle
3 some of Mr. Harris' blood had got on Mr. Spagnoli's pants
4 and remained there for Catherine Leisey our DNA expert to
5 find on his upper toe a year later when they're testing
6 the pants at SLED.

7 And the phones: You have to believe lie to believe
8 Mr. Spagnoli's story about all of those phone calls that
9 were made. And I submit to you, ladies and gentlemen,
10 those phone calls were not made by Bradley Spagnoli. He
11 didn't just hand over his phone during all that time
12 period. He doesn't have another phone back in that house.
13 Do you think he's gonna do without his own phone? You
14 read those letters. He's an arrogant man. Look at how he
15 talked to his son. Do you think he just gives him his
16 phone like that for lengthy periods of time to let him
17 make all these telephone calls?

18 The Sunday night before the Tuesday that Richard
19 Leach and Erick Harris were shot, the Sunday night there's
20 phone calls till three in the morning from Spagnoli's
21 phone to Richard Leach's phone. And Richard Leach isn't
22 calling him back. He's not taking the calls and he's not
23 calling him back until the very day and that was what
24 ended those unconnected calls that short period of time.
25 I submit to you - I submit to you somebody was looking for

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-851-

1 something that night, looking for something from Mr. Leach
2 and Mr. Leach wasn't willing to come out and give it to
3 him.

4 There's an extensive relationship between Mr. Leach
5 and Steven Spagnoli that he couldn't admit in this
6 courtroom because to do so puts him in the trigger pattern
7 for this killing cause he can't just be the innocent dad
8 who's trying to help his son out who's gotten mixed up
9 with this criminal element down there and he's trying to
10 show him the right way to live.

11 The letters: Rarely does a jury get to peak - This is
12 like the Wizard of Oz. That scene in the Wizard of Oz
13 when the curtain is pulled back and the guy who's
14 pretending to be the Wizard is really working the levers.
15 Well, Toto has pulled back the curtain on Mr. Spagnoli
16 because we got to peer inside his mind as he's struggling
17 to come to terms with the evidence against him and trying
18 to find an explanation, trying desperately to find an
19 explanation that will explain away all the evidence and
20 leave him innocent and there is simply no way to do it.

21 But Mr. Spagnoli - I'll talk about it a little bit
22 more - I'm not gonna read all the letters to you. I
23 brought a couple here just to refresh your memory. You'll
24 have them back there and you can read 'em until your
25 heart's content. But a couple of them that I think that

1 are important and you should consider he's still
2 maintaining that there was a gun out there in the woods.
3 That whole series and he just says I was out of line like
4 that really excuses the obstruction of justice in trying
5 to plant evidence in the woods that's gonna be his key to
6 freedom. His vision of freedom if somebody would just
7 take a hand gun and stick it out in the woods make it
8 looked weathered and fire two shots out of it so that his
9 private investigator can go out there in the woods and
10 find it well then everything will be okay. Cause then the
11 State's gonna have to explain hey, where did this gun come
12 from? It must have been in Erick Harris' hands. He was
13 looking to shore up the defense you just heard in here
14 with one piece of physical evidence that might have been
15 difficult to explain if we hadn't know how it really got
16 out there.

17 I mean if you think about it how do you explain a gun
18 that's found out in the woods. How would we have
19 encountered that? He would have trodded that gun in here
20 and moved it on this rail and went there it is, folks,
21 stainless steel proof that Mr. Spagnoli was defending
22 himself that night. And no one would have never known
23 that his buddy or his dad or whoever planted that out in
24 the woods for him.

25 Well I will tell you this. Steven Spagnoli can't

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-853-

1 say, he can never tell anybody that he didn't know right
2 from wrong but that he didn't come from good stock cause
3 his father, his father knew better than to do what his son
4 was asking him to do, to fabricate evidence in an effort
5 to get him off of a brutal and savage killing. He didn't
6 so that and that's to his credit. And it speaks poorly of
7 him. He knows better. He had a father who knows better.
8 We know that now but he didn't know any better. He didn't
9 even know any better than to ask his father to do that
10 despicable act but thank God his father did know better.

11 Now he comes to court today and he still tells us, he
12 still tells us from that witness stand that he had a gun.
13 He still maintains that it's out there in the woods
14 somewhere. But listen to his own words.

15 "December 13th, 2010. I only wish I wouldn't have
16 indicated to Bill that his team would locate the hardware.
17 This will just result in loss time and money searching for
18 something not there." He knows there's no gun out in the
19 woods. And how does he know that? Cause Erick Harris
20 never had a gun. Ladies and gentlemen, Erick Harris was
21 just sitting in that car minding his own business
22 listening to music and waiting for his cousin to come back
23 out of that house just like he told you he was.

24 He didn't have anything to do with anything. He
25 didn't try to hurt anybody that night. He didn't go

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-854-

1 anywhere to break into somebody's house to mean them harm,
2 to do them harm. He didn't do anything like that he was
3 minding his own business when that man right there tried
4 to steal his life away.

5 The other letter that I brought out, he sat there and
6 said well these were just ideas. I was just trying to get
7 Bradley to go to Bills. I wasn't actually trying to make
8 up a story, I was just trying to get him to go and say
9 what he knew to tell the truth that I knew he knew. But
10 listen to his letter of February the 15th.

11 "Hey, Brad. Pop" - this is a letter that he sent to
12 his father - "get up with Pop Pop and make your statement
13 to Bill. Do it or get the fuck out of my house off the
14 property and out of my life." Then the next page.

15 "Brad, you and Amber get up with Pop Pop and study"
16 underlined twice - "what I sent him. This is your
17 testimony." This is you don't need to know what the truth
18 is you just tell them what I'm telling them to tell them.
19 "This is your testimony. You are to learn it and
20 memorize."

21 Well, excuse me, but you don't have to learn and
22 memorize the truth. You just go in and tell it. That's
23 all you do. Just like Mr. Varnadore said from the stand,
24 I finally decided that the truth is the best story. Cause
25 he worked his way through - He was trying to squeeze and

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-855-

1 wiggle and beginning talking to the police and maybe I was
2 defending myself. And then eventually he got confronted
3 with the evidence against him and - I've tried all my two
4 stepping and fancy shuffling and there's nothing left to
5 say but the truth. And so finally he just, Yeah, we
6 weren't defending ourselves.

7 But the interesting thing about Mr. Varnadore's
8 statement, the one thing he never said in any of the
9 statements that he made to the police, which ever one's
10 you want to believe or not believe, even the ones that
11 were clearly lies, even he admits their lies now, he never
12 ever said Erick Harris came in the house. Never once.
13 There is absolutely nobody who says that except him.

14 And he has to say that. Don't you see? He can't
15 possibly explain why he would go outside and shoot a man
16 sitting peacefully in the front seat of a car. There is
17 no explanation for that. You can't. As a matter of fact
18 if anybody had the right to self-defense that night, it was
19 Erick Harris sitting in the front seat of the car minding
20 his own business. Not Steven Spagnoli.

21 The letters, that's a treasure trove of information
22 that you will have back there. And like I said I can go
23 through and parse each letter. You all are free to read
24 them as you'd like to and see the many many theories and
25 notions and possibilites that Steven Spagnoli dreamed up

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-856-

1 as he was sitting there contemplating what kind of excuse
2 he could come in and tell you all. He was literally
3 adrift on a sea of possibilities, totally out there no
4 wind to guide him just blowing in one direction and then
5 the next. Maybe I was there. Maybe I wasn't. I didn't
6 shoot anybody I shot 'em both. It just depended on the
7 day.

8 His testimony actually I thought of it was I was
9 sitting there, he's like a painter who doesn't really know
10 what he's supposed to paint. You know like a painter
11 whose painting a picture. Not like a house painter but a
12 painter whose painting a picture. And he doesn't really
13 quite understand what it is he's supposed to paint.

14 But as the discovery comes in; remember the
15 discovery? You heard about that. We give our whole file
16 to him but it comes in in pieces. The forensic test, the
17 DNA stuff. We didn't get that report until July of last
18 year almost a full year after the shooting. He doesn't
19 get that information so he's in the blind. And it's like
20 he's being told okay, I need to do a painting of some
21 roses so he draws - he paints some roses that are growing
22 in a garden. And then he gets a little discovery and he
23 goes oh, no, those need to be in a vase. So he erases
24 that and he paints some roses in a vase. Oh, wait a
25 minute, they're supposed to be on a table not sitting on a

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-857-

1 window ledge. So he erases the window ledge and now he
2 paints a table. As the discovery rolls in Steven Spagnoli
3 has to adjust for the new information that he's getting.

4 He has to change his story to allow for Oh my gosh,
5 my blood is on - Erick Harris' blood is on my pants. He
6 finds that out in July of 2011 so when he comes into court
7 now he's like Oh, yeah, we tussled outside of the car. I
8 can't say we didn't tussle cause how else am I gonna
9 explain how his blood and his DNA is on my pants. You
10 can't. So he's got to have that in it.

11 What are some of the things we heard for the first
12 time? What's new in Mr. Spagnoli's story? You never
13 heard the gun was in the kitchen drawer. At one point it
14 was in his back pocket. At another point it's up at the
15 house with Bradley and Amber for her protection during the
16 day and somehow the bad guys broke into the house got the
17 .25 and came down to their house with it. Remember that
18 letter? Its in there if you don't, you can read it.

19 The tracks in the grass: In the letters all he says
20 is the most he says is he got in the car and started to
21 drive up and check on them about the call back. But now
22 he's in court and he sees that picture, and you'll have it
23 there's a bunch of 'em. There's three or four pictures of
24 the tracks in the grass all car tracks going down. So he
25 comes to court, he's got to explain that some how. There

1 are definitely tracks in the grass in the dew he's got to
2 explain it.

3 So for the first time we hear yes I did drive up and
4 down looking. He's got to include that. He said he was
5 gonna check on Bradley and Amber and he actually went all
6 the way up to the house although he didn't check on them
7 oddly enough. He says he doesn't know what Erick Harris
8 had in his hand. He says he shot at Erick Harris for the
9 first time although as I told you earlier Varnadore never
10 said Erick Harris came in the house. He says for the
11 first time today that Richard Leach is in a big struggle -
12 epic fight in the back bedroom. You never heard that. No
13 evidence of it whatsoever. You never heard that in any
14 letter until it comes into court today.

15 And then as I mentioned earlier he shot Erick Harris
16 in the car. That's the first time you hear about that but
17 he has to put that in his newest story because now he
18 knows for the first time at trial we have Erick Harris'
19 shoe from the car and the other one from the hospital.
20 So he now knows Erick Harris literally ran out of his shoe
21 in an effort to get away.

22 Remember I talked to you earlier the Jenkins and
23 Weeks testimony make it impossible for his version of how
24 Richard Leach died to be true.

25 Now the judge is gonna charge you on the law and I'm

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-859-

1 gonna touch on some things really briefly. The hand of
2 one is the hand of all. That's a law that's been in place
3 in this state for many many years and across the country.
4 And basically what it means is that when two people get
5 together to commit a crime, if one person is doing what
6 they're supposed to be doing and the other person does
7 what they're supposed to, even though one person may not
8 have struck the fatal blow, they're both equally
9 responsible for the death. In other words, if I'm the
10 bank robber and my job is to drive the car and I'm
11 supposed to sit outside with the engine running waiting
12 for everybody to run out with the money bag, that's my
13 job. And even though I never went inside I'm guilty of
14 bank robbery because if I hadn't agreed to sit out there
15 with the engine running and ready to roll, maybe the other
16 guys wouldn't a gone in and done their part.

17 I'm just as guilty as the people who went in the
18 bank. The hand of one is the hand of all.

19 You've heard about the Rule 5 and the discovery. I
20 mentioned that briefly. I've already told you here we
21 turn over everything and that's really how Mr. Spagnoli
22 changed his - why he changed his story to be evolved as he
23 got more intermission.

24 Mr. Thompson told you at the beginning malice
25 aforethought. That doesn't mean that this had to be

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-860-

1 planned although I submit to you in this particular case
2 there's ample reason to suspect that there was extensive
3 planning before Richard Leach got there. It may have been
4 drunken stupid planning, but any kind of a planning is
5 clearly malice aforethought. But even if they hadn't,
6 even if they just initially thought well we're gonna rough
7 him up when he get here, malice can occur in a fraction of
8 a second. Malice can occur just like that. And what it
9 really means - what it really comes down to is a evil
10 wicked intent. A real inhuman cruel vicious intent. And
11 I think you can look at those autopsy pictures and look at
12 that coup de gras shot and the execution style shot to the
13 top of Richard Leach's head, you take a good look at those
14 pictures and you ask yourself if you see malice in those.
15 I submit to you that they are dripping off the
16 photographs.

17 Credibility: Just like the judge is the judge of the
18 law, and you must take the law as he charges it to you,
19 you twelve jurors are the judges of the credibility of the
20 witnesses and judges of the facts. You are the ones who
21 decide who to believe and who not to believe. And how do
22 you - How do you go about deciding who to believe and who
23 not to believe? There is no magic stick you can point
24 that lights up when somebody's lying. I wish we had that
25 and, you know, it would make our jobs a lot easier but we

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-861-

1 don't have that. But you do bring something to this box
2 that each and every one of you has that's invaluable. You
3 bring your common sense.

4 You bring your common sense to the job. And you just
5 ask yourself and you look at this evidence and you ask
6 yourself listen to the testimony think back on it who was
7 telling the truth? Who seemed credible? Who told their
8 story the same and consistently? In this particular case
9 your job is made exceptionally easy by those letters
10 because it's just one story after another as he cast about
11 for a defense that's gonna work for him. Clearly Mr.
12 Spagnoli in many of those letters is incredible, he is not
13 to be believed.

14 Self-defense: Ladies and gentlemen, the minute you
15 decide - When you go back there and the minute you decide
16 that Richard Leach wasn't going by that house because he
17 was invited, he was going there to meet with him at the
18 invitation of Mr. Spagnoli, then there is no self-defense
19 and you can just stop thinking about that. Because while
20 a man has the right to protect himself in his house I
21 don't dispute that. It's absolutely the law. Its
22 important. Your home is your castle. But what you don't
23 have the right to do is invite a man into your house and
24 kill him and say my home's my castle, I can do whatever I
25 want with anybody in here. You can't bring a guy into

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-862-

1 your house and say yeah, come on over here. And the
2 minute they walk into the living room well you're not
3 welcome here anymore, bam, bam, bam, bang. You do not do
4 that.

5 That's not self-defense. So the minute you decide
6 and I submit when you read those letters the decision is
7 clear, when you look at the phone logs and you see the
8 extensive relationship between these two men Mr. Spagnoli
9 and Mr. Leach, and you listen to the testimony of Erick
10 Harris, he was driving home, I got to run by there for a
11 minute, he's only known for a brief period of time and I'm
12 gonna take you home. He wasn't expecting anything. He
13 was clearly going - He wasn't expecting a big brawl. He
14 was going by for a real fast thing. He was invited, he
15 was expected.

16 Reasonable doubt: If we were required to prove
17 something beyond all doubt nobody would ever found guilty.
18 Nothing could be proven beyond every doubt. I don't know
19 if I could prove to you what I ate for dinner last night
20 beyond all doubt. It's a reasonable doubt, doubt for
21 which you could give a good reason. The judge will charge
22 you on that.

23 Now when you consider the evidence in this case and
24 ask yourself what is and is not a reasonable doubt there
25 is no magic formula. It's not like a map, this isn't an

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-863-

1 engineering problem. This is a very, you know, you have
2 to - You basically have to access the evidence and use
3 your common sense. But again, I think that aided with
4 those letters, there is really - Your job is much
5 simplified in this case.

6 The last thing I want to talk to you about is the
7 moment of truth. The moment the epiphany strikes. In
8 every case I've ever had and in every trial I've ever done
9 and I've had this moment where you get this kind of
10 realization and it just hits you all of a sudden and you
11 go wait a minute, then all that makes - that's a perfect
12 way to explain this. This makes perfect sense to me.

13 And it hit me the other night. If Harris is lying he
14 must be like Hannibal Lector, this criminal genius,
15 brilliant, brilliant guy. I want you to imagine for a
16 minute and do a quick exercise with me. Let's suppose for
17 the sake of argument that I'm trying Erick Harris and I'm
18 trying to cross examine him on his story. Remember the
19 story I played for you at the beginning? And I challenged
20 him on his story and I say now wait a minute. You say
21 this guy, this white guy comes out of the house and he
22 walks up to you like this, and you're reaching for the
23 window handle to crank it down, and just as he gets up he
24 produces a gun and shoots you through it. And then you
25 jump out and you're flailing across the car trying to get

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-864-

1 away from him and he shoots you again in the back. Well
2 if that's true, if that's true, then there ought to be a
3 car out there at with bullet holes
4 in the window. Woo. Well there is in fact a car out
5 there. Okay. So then you fell out of the car and you
6 struggled with your assailant and you're bleeding you been
7 shot in the back. You fall out of the car and you're
8 getting up and you're fighting with him and you manage to
9 knock the gun out of his hand. Well if that's true surely
10 some of the blood and some of your DNA must be on that
11 guy. Right? Well let's just see about it. I'll be darn.
12 The cutting from the front right leg of his pants in fact
13 has some of Mr. Harris' DNA on Mr. Spagnoli's pants.

14 So you're telling me after you fought your way to
15 freedom you ran off into the woods and he's driving around
16 in your car, in your cousin's car shining the lights down,
17 well then if there's dew on the ground but there is cause
18 it's kind of a damp night there should be some tire tracks
19 over there shouldn't there? Oh, there are in fact tire
20 tracks over there.

21 As you ran - As Mr. Leach went into the house he
22 knocks on the door he goes in and he closes the door
23 behind him. Well then if Mr. Leach was so brutally beaten
24 inside that house afterwards, and the door opened and
25 instead of being busted open like they say when they just

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-865-

1 stormed in, well then if all that blood that was thrown
2 around there should be some blood on the back of the door
3 on the inside of the house showing the door was closed at
4 the time he was beaten with the baseball bat.

5 And there it is. Okay. Well then you say as you ran
6 through the woods you took your t-shirt off, your white t-
7 shirt. Pretty obvious it makes you really visible. You
8 took that off and you threw it on the ground. Well then
9 when we go back and look through those woods we can find
10 the white t-shirt on the ground. Okay. Well there is in
11 fact a t-shirt out in the woods right where you said you
12 threw it as you ran for your life.

13 And finally you say he shot you twice in the car and
14 then you think he shot at you again as you ran in the
15 woods. Well then there should be at least three shell
16 casings out there by the area where the car was. And if
17 you look at State's Exhibit Sixty-nine you will see the
18 location of each of the shell casings on the ground where
19 they found it out there just like Mr. Harris said that
20 they would be. So the epiphany was how in the world, how
21 in the world did Erick Harris shot in the face, shot in
22 the back, running for his life through the woods hunted
23 like a dog, running down the street to some home with all
24 these barking dogs that he doesn't know are gonna jump on
25 him and hurt him some more to some stranger's house that

1 he doesn't know, all in the space of ten or fifteen
2 minutes, how could Erick Harris have come up with a better
3 story in that time period under those circumstances in ten
4 or fifteen minutes than Steven Spagnoli can come up with
5 with all the evidence in front of him in eighteen months?

6 He didn't have to change his story. Everything he
7 said and he didn't go back to the crime scene and look at
8 it, he made all of his statements right there that day and
9 then later at the hospital to Fred Moore. He chased me.
10 You can ever hear it on the 911. He drove around and
11 looked for me shining his lights down in the woods. How
12 can you ever know that those tracks were there? He
13 couldn't have. The only way it could be that way is if
14 Erick Harris is telling the truth. Erick Harris is
15 telling the truth. It'd have to be just the way he said
16 it was.

17 Now, Lady Justice as you see her there holding the
18 scales ready to stand in judgment in weighing the evidence
19 in a court, what has she got over her eyes? She's blind
20 folded. We never ever from the very beginning of this
21 case never ran away from the fact that Richard Leach was
22 what he was, a drug dealer. We told you that. Our
23 witnesses told you that. We don't dispute it. Our people
24 said it. Our witnesses and we never ran away from it. I
25 never tried to paint him in some kind of hero. And I'll

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-867-

1 tell you as I stand here right now in front of you, on
2 another day in front of a different jury if he was still
3 alive I could be prosecuting Richard Leach. He could be
4 sitting where Steven Spagnoli is.

5 Never did. Never tried to make him out to be
6 something that he wasn't. And, ladies and gentlemen, no
7 matter what he did, no matter who he was, Richard Leach
8 has all the same rights, the right for which everyone of
9 us does. And no man has the right to decide that
10 somebody's life is so valueless, whether their pride is
11 more important than somebody else's life and that they get
12 to take it. Every man - I will quote Mr. Hancock from his
13 opening statement - Every man's entitled to a defense.
14 Every man is entitled to that much. And no matter what
15 Richard Leach did in his lifetime no matter the drugs he
16 sold or whatever else he did nobody deserves to die like
17 that. And Richard Leach is just as entitled to justice as
18 any other victim who stood in this courtroom.

19 Ladies and gentlemen, this is a compelling and
20 powerful case. Richard Leach was brutally murdered on
21 September 28th of 2010, and the man seated back over there
22 Erick Harris, that fellow right there tried to kill him
23 too. He killed Richard Leach and tried to kill Erick
24 Harris. And I submit to you that he did it because in
25 part he is a racist and that's what the evidence in those

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-868-

1 letters show. And he tries to say well this is just
2 something I was angry about because I was sitting in the
3 detention center and I was getting teased.

4 I would refer you back to the testimony of
5 Christopher Varnadore on cross examination. Remember what
6 Mr. Hancock ask him? He said what did you first tell the
7 police that Richard Leach said as he came in the room?
8 And he read it from this table, isn't it true Mr.
9 Varnadore and it was right there in Detective Strait's
10 notes, when the police came in Christopher Varnadore told
11 the police that Richard Leach busted into the room. And
12 what did he say that Richard Leach said? I'll fuck any
13 white woman I want. That was what he said September 29th
14 at two o'clock in the morning. That's what he's telling
15 the police. That's what's on his mind.

16 Why would he say that to the police if it didn't have
17 something to do with this case? If they weren't talking
18 about it, they being Christopher Varnadore and Steven
19 Spagnoli, why would Christopher Varnadore have said that
20 to the police? Why would he have said a white woman? He
21 said it to the police because it was on Christopher
22 Varnadore's mind at the time of the murder because he and
23 Steven Spagnoli talked about it that night because that
24 was an issue with them. They had a problem with it. And
25 that is also malice.

CLOSING ARGUMENT: BY SOLICITOR BRACKETT

-869-

1 The word veri dicto comes from the Latin and it means
2 to speak the truth and you heard an awful lot of lies in
3 this case. Its time that we did some truth and it's time
4 that we do justice by Richard Leach. It's time to do
5 justice by Erick Harris who will carry a bullet in his
6 kidney for the rest of his life.

7 The only justice, the only verdict that will do
8 justice by these two individuals is a verdict of guilty on
9 the charge of murder. A verdict of guilty on the charge
10 of possession of a firearm during the commission of a
11 violent crime and for the killing of Richard Leach. A
12 verdict of guilty for attempting to kill Erick Harris.
13 Your verdict of guilty for possession of a firearm during
14 the commission of that violent crime. And find a verdict
15 of guilty on the charge of conspiracy, the conspiracy that
16 Christopher Varnadore and Richard - and Steven Spagnoli
17 hatched when they plan to take the life of Richard Leach
18 on September 28th, 2010 on here in York
19 County. I ask you to return that verdict on behalf of the
20 people of South Carolina. Thank you very much.

21 THE COURT: Members of the jury panel, we're gonna
22 take a little refresher break before I give you the
23 charge. Madam Forelady, I'm gonna let you all go to use
24 the restroom or whatever. Just knock on the door and tell
25 the bailiff when you all are ready to come back.

CHARGE TO THE JURY:

-870-

1 Don't start deliberating. You haven't heard my
2 charge on the law, you're not quite ready yet. We're
3 gonna take a real short break.

4 (JURY EXITS COURTROOM AT 06:05 P.M..)

5 (COURT IN RECESS AT 06:05 P.M..)

6 (COURT BACK IN SESSION AT 06:16 P.M..)

7 THE COURT: Thank you. Take your seats.

8 Is the State ready? Is the State ready?

9 SOLICITOR THOMPSON: Yes, Your Honor.

10 THE COURT: Is the Defense ready?

11 MR. HANCOCK: Yes, Your Honor.

12 THE COURT: All right. Bring in the jury.

13 (JURY REENTERS COURTROOM AT 06:16 P.M..)

14 THE COURT: Members of the jury panel, I appreciate
15 your kind attention you've given to me and to the lawyers
16 and the witnesses. Now it's my time to charge you the law
17 that you are to apply to the facts as you determine them
18 to be in this case.

19 Mr. Spagnoli is charged with murder, attempted
20 murder, possession of a weapon during the commission of a
21 violent crime, both murder and the attempted murder. You
22 have two counts, second counts on each of those, and
23 conspiracy.

24 The fact that Mr. Spagnoli was arrested for these,
25 the fact that he has been charged with these, the fact

CHARGE TO THE JURY:

-871-

1 that he was indicted for these, the fact that he is on
2 trial is not any evidence he committed these offenses.
3 That's just the way our system works. When someone is
4 thought by law enforcement to have committed a crime
5 that's what happens. They are arrested, charged, indicted
6 for trial but that is not evidence that they committed the
7 offenses. It is up to you to determine whether or not he
8 committed these offenses and the facts as I have just gone
9 over them do not create any inference of guilt.

10 The indictments simply contain the charges against
11 Mr. Spagnoli and are the paperwork by way of which this
12 case is processed through our court system. You will have
13 the indictments in the jury room with you but they are not
14 evidence. They just contain the charges.

15 Now each of the indictments stands on its own
16 footing. That is you are to look at the charges and look
17 at the law and look at the facts and decide a verdict as
18 to each charge and to count two is on each of those two
19 attempted murder and murder independent of each other with
20 one exception. The count two on the attempted murder and
21 the murder charge allege that Mr. Spagnoli committed a
22 violent crime and at that time possessed a weapon during
23 the commission - a firearm during the commission of that
24 crime.

25 But if you don't find him guilty of a violent crime -

CHARGE TO THE JURY:

-872-

1 and I will tell you a little more about that momentarily -
2 you can't find that he was guilty of possessing a pistol
3 committing a violent crime if you find he didn't commit a
4 violent crime. So other than that each of these
5 indictments and the charges stand on their own.

6 Mr. Spagnoli like anyone charged in our system of any
7 offense is presumed innocent. This presumption of
8 innocence is a substantial right. It's not a mere legal
9 theory or a mere legal phrase. The presumption of
10 innocence is a substantial right that attaches to an
11 individual at the time they are arrested, remains with
12 them as their case is processed through our court system.
13 The presumption of innocence in his favor remains with Mr.
14 Spagnoli as I speak and remains with him as you
15 deliberate.

16 The presumption of innocence in his favor is removed
17 if and when, and, only if and when you find the State has
18 as to a charge proven his guilt beyond a reasonable doubt.

19 Now the State is not required to prove his guilt
20 beyond all or beyond every doubt but beyond a reasonable
21 doubt. A reasonable doubt has been defined by our courts
22 as the kind of doubt that would cause a reasonable person
23 to hesitate to act. Proof beyond a reasonable doubt is
24 proof that leaves you firmly convinced of someone's guilt.

25 There are very few things in our world that we can

CHARGE TO THE JURY:

-873-

1 know with absolute certainty and absolute certainty is not
2 required in a case such as this. Our law does not require
3 proof that over comes every doubt - every possible doubt.
4 If based on your consideration of the evidence you are
5 firmly convinced that Mr. - excuse me - Spagnoli is guilty
6 of one or more of the charges you would so find him. If
7 on the other hand you think there is a real possibility
8 that he is not guilty as to a charge, you would give him
9 the benefit of that doubt and find him not guilty. He is
10 entitled to the benefit of any reasonable doubt you have
11 as to any element in this trial.

12 As I told you when we started I am the sole judge of
13 the law in this case and you must take and accept and
14 apply the law as I charge it. This is true even if you
15 think I charge the law in error or even if you think the
16 law should be different. Your oath requires you to take
17 accept and apply the law as I charge it.

18 You are not to infer from anything I say or do as
19 indicating an opinion of mine on the facts. Our law does
20 not allow a trial judge to formulate or express to a jury
21 any opinion on the facts. It is solely up to you as the
22 trial jury in this case to examine the evidence and to
23 give to it the effect the value the weight and the truth
24 you believe it should have.

25 In doing this you may believe one witness as opposed

CHARGE TO THE JURY:

-874-

1 to several, several witnesses as opposed to one. You may
2 believe all, part, or none of a witnesses testimony. Use
3 your common sense, your sense of reason, your sense of
4 logic, use your experiences in life as you analyze the
5 evidence. As judges of the facts you necessarily must
6 judge the credibility, the believability, of the witnesses
7 who have testified. In accessing believability use those
8 things I've already talked about. Use those things that
9 you in your day to day life find as being indicative of
10 truthfulness. And you can use certain evaluators, that
11 is, how a witness acts on the stand. Is a witness's
12 testimony consistent or inconsistent? Does a witness have
13 any bias or prejudice, that is, whether a witness would
14 wish to help or hurt one side or the other? You can
15 consider the opportunity a witness had to know those
16 things about which they testified. All these things you
17 consider determine the true facts and return a verdict
18 that speaks the truth.

19 In this case there has been evidence that witnesses
20 have at some prior time made statements which are not
21 consistent with their present testimony. You may use the
22 evidence of prior inconsistent statements to decide
23 whether to believe the witness. You may also use evidence
24 where earlier contradictory statements to determine the
25 truth of the statements and it is up to you to decide

CHARGE TO THE JURY:

-875-

1 whether to believe the earlier statement, or, testimony
2 given at trial.

3 If a witness has shown to have knowingly testified
4 untruthfully concerning any material matter, you may
5 consider this in determining whether to trust the witness'
6 testimony on other matters. You may reject all of that
7 witness' testimony or give all of that witness' testimony,
8 or part of it, the weight you think it deserves.

9 In cases such as this we sometimes have what are
10 called expert witnesses testify. These are individuals
11 who because of their skill, knowledge, training, and
12 education can take facts and from those facts reach
13 opinions. Generally an individual can only testify to
14 something they've observed with one of their five senses.
15 It's usually something that's been seen or observed but it
16 could be taste touch or smell.

17 However where an individual has the training, skill,
18 or expert expertise and education in a certain area, that
19 person can take facts and from those facts reach an
20 opinion. Now the opinions of experts are allowed into
21 evidence to assist you, they are not binding on you. You
22 do not have to accept in whole a witness - an experts
23 testimony. You can accept it in whole or you can accept
24 it in part and you can reject it in part. When you look
25 at an experts testimony you use that same lens I've

CHARGE TO THE JURY:

-876-

1 already talked about that you use to look at all
2 witnesses, plus with an expert you, even though I have
3 qualified them as an expert, you look at their credentials
4 and determine whether or not you believe they are
5 qualified to reach the opinion they reached.

6 You also examine the reasons they reached the opinion
7 they reached. You are allowed to consider expert
8 witnesses testimony to assist you. Their testimony is not
9 binding on you.

10 Now in cases such as this there are usually two types
11 of evidence presented, direct and circumstantial evidence.

12 Direct evidence is the testimony of someone who
13 claims to have actual knowledge of the facts such as an
14 eye witness. Direct evidence is evidence which
15 immediately establishes the main fact sought to be proven.

16 Circumstantial evidence is proof of a chain of facts
17 and circumstances which indicate the existence of a fact.
18 Circumstantial evidence is evidence which immediately
19 establishes collateral facts from which the main fact may
20 be inferred. Circumstantial evidence is based on
21 inference and not on personal knowledge or observation.

22 Our law makes absolutely no distinction to be given
23 between direct and circumstantial evidence. Nor is one
24 required - Nor is there a greater degree of certainty
25 required for one as to the other. What you should do is

CHARGE TO THE JURY:

-877-

1 weigh all of the evidence in this case. If after weighing
2 all the evidence you are not convinced of Mr. Spagnoli's
3 guilt of the offense beyond a reasonable doubt you would
4 find him not guilty.

5 The first charge I'm gonna go over is murder.

6 Mr. Spagnoli is charged with murder. Here the State
7 must prove beyond a reasonable doubt that Mr. Spagnoli
8 killed another person with malice aforethought. I'm now
9 going to define for you malice aforethought - malice and
10 what malice aforethought means.

11 Now attempted murder also requires malice
12 aforethought so I'm not going to recharge you these
13 elements when I charge you attempted murder, but when I
14 charge you malice and malice aforethought at this point I
15 will refer to them when I charge attempted murder but they
16 are the same for murder or attempted murder.

17 Malice as to both murder and attempted murder is
18 hatred, ill will or hostility towards another person.
19 Malice is the intentional doing of a wrongful act without
20 just cause or excuse and with an intent to conflict an
21 injury or under circumstances from which our law would
22 infer an evil intent.

23 malice aforethought is not required that malice exist
24 for any particular time prior to the act being committed.
25 However malice must exist in the mind of a defendant just

CHARGE TO THE JURY:

-878-

1 before and at the time the act is committed. Therefore,
2 there must be a combination of the previous intent and the
3 act itself.

4 malice aforethought may be expressed or inferred.
5 These terms do not mean different kinds of malice but
6 merely the manner in which malice may be shown to exist.
7 This is either by direct evidence or by inference from the
8 facts and circumstances which have been proven. Express
9 malice is shown when a person speaks words which express
10 hatred or ill will for another or when the person prepared
11 beforehand to do the act which was later accomplished.

12 Malice may be inferred from conduct showing a total
13 disregard for human life. The State must prove that Mr.
14 Spagnoli committed mal - murder, that is killed another
15 person with malice aforethought beyond a reasonable doubt
16 before you could convict him of that offense.

17 He is also charged with attempted murder. Attempted
18 murder is when a person who, with intent to kill, attempts
19 to kill another person with malice aforethought either
20 expressed or implied.

21 And I have as I just said defined for you malice
22 aforethought and told you that they can be shown expressly
23 or they can be inferred. So attempted murder is when a
24 person with the intent to kill attempts to kill another
25 person with malice aforethought either expressed or

CHARGE TO THE JURY:

-879-

1 implied.

2 And attempt is an effort to accomplish a crime which
3 does not succeed. An attempt includes a specific intent
4 to do a particular criminal act along with an act falling
5 short of the act intended. The State must show more than
6 mere preparation and intent. There must be some overt act
7 committed in the effort to commit the crime.

8 Intent means something that actually occurs;
9 something that is not accidental or involuntary. Intent
10 may be shown by acts and conducts of a defendant and from
11 other circumstances from which you may naturally and
12 reasonably infer intent.

13 The State must prove attempted murder beyond a
14 reasonable doubt by proving that Mr. Spagnoli attempted to
15 kill another person with malice aforethought.

16 Now as to attempted murder there are - not with
17 murder - but as to attempted murder there are what are
18 called by law lesser included offense. If you think about
19 steps, you have steps that go down. You start off with
20 attempted murder which is the highest and most severe of
21 the offenses for which I will talk to you about.

22 Then you go down the steps to assault and battery of
23 a high and aggravated nature. Then on down to assault and
24 battery in the first degree, second degree, and third
25 degree. It's steps, each one being a less severe, for lack

CHARGE TO THE JURY:

-880-

1 of a better way to say it, offense or a lesser offense
2 that by law is included in the greater offense of
3 attempted murder.

4 First is assault and battery of a high and aggravated
5 nature. Here the State must prove that Mr. Spagnoli
6 committed assault and battery of a high and aggravated
7 nature. As to all of these lesser includes the - they
8 include terms assault and battery so I have to define
9 those words for you.

10 An assault occurs when a person unlawfully attempts
11 or offers to commit a violent injury upon another person
12 and has the present ability to complete the attempted
13 injury. An assault is the intentional creation of a
14 reasonable fear of immediate bodily harm. It is not
15 necessary that the attempted injury or harm actually take
16 place. The example I always use is that if I am in
17 striking distance of you and I raise back my fist in a rude
18 and angry resentful manner as if I'm going to strike you,
19 that is an assault.

20 A battery is an unlawful touching of another person
21 by a person who has committed an assault. An unlawful
22 touching can be caused by a part of the accused body or by
23 any object the accused puts into motion. A battery is the
24 completion of the assault by using or applying force to
25 another person, however slight, in a rude, angry, or

CHARGE TO THE JURY:

-881-

1 resentful manner without legal justification for doing so.

2 Following my earlier example if I rear back to hit
3 you and that's the assault. If I come forward in striking
4 you and it's only slight then I have committed a battery.

5 To prove assault and battery of a high and aggravated
6 nature, this first step down, the State must prove beyond
7 a reasonable doubt that the defendant unlawfully injured
8 another person. The State must also prove beyond a
9 reasonable doubt that either great bodily injury resulted
10 or that the act was accomplished by means likely to
11 produce death or great bodily injury.

12 This is a statutory offense and our legislature has
13 defined the term of great bodily injury for us and this is
14 the definition that you would apply in determining whether
15 or not the State has proven, if you consider the lesser
16 included assault and battery of a high and aggravated
17 nature, of whether or not Mr. Spagnoli had been proven he
18 committed that beyond a reasonable doubt.

19 Great bodily injury means bodily injury which causes
20 a substantial risk of death or which causes serious,
21 permanent disfigurement or protracted loss or impairment
22 of the function of a bodily member or organ. So assault
23 and battery in the first degree again - I'm sorry.
24 Assault and battery of a high and aggravated nature the
25 State must prove that Mr. Spagnoli unlawfully injured

CHARGE TO THE JURY:

-882-

1 another person and that either great bodily injury
2 resulted or that the act was accomplished by means likely
3 to produce death or great bodily injury.

4 The next step down is assault and battery in the
5 first degree. To prove assault and battery in the first
6 degree the State must prove beyond a reasonable doubt the
7 defendant offered or attempted to injure another person
8 with the present ability to do so and that the act was
9 accomplished by means likely to produce or great bodily
10 injury.

11 Now, the difference between assault and battery of a
12 high and aggravated nature and assault and battery in the
13 first degree is that in order to find Mr. Spagnoli guilty
14 of assault and battery of a high and aggravated nature,
15 the State must prove beyond a reasonable doubt that either
16 great bodily injury resulted or that the act at issue was
17 accomplished by means likely to produce death or great
18 bodily injury.

19 As to assault and battery first degree the State just
20 first prove beyond a reasonable doubt the defendant
21 offered or attempted to injure another person with the
22 present ability to do so, and that it was accomplished by
23 means likely to produce death or great bodily injury.

24 Now the next step down is assault and battery in the
25 second degree. If you find that the State has failed to

CHARGE TO THE JURY:

-883-

1 prove beyond a reasonable doubt that Mr. Spagnoli
2 committed one of the higher degrees, you may consider
3 whether he committed assault and battery in the second
4 degree.

5 To prove assault and battery in the second degree,
6 the State must prove beyond a reasonable doubt that Mr.
7 Spagnoli unlawfully injured another person, or offered or
8 attempted to injure another person with the present
9 ability to do so.

10 Next as to second degree assault and battery the
11 State must prove beyond a reasonable doubt that moderate
12 bodily injury - You will recall I just used the term great
13 bodily injury as to second degree the State must prove
14 beyond a reasonable doubt that moderate bodily injury to
15 another person resulted or moderate bodily injury to
16 another person could have resulted.

17 Our legislature has again defined that term moderate
18 bodily injury or great bodily injury. That definition is
19 this. Moderate bodily injury is defined as physical
20 injury requiring treatment to an organ system or the body
21 other than the skin, muscles, and connective tissues of
22 the body, except when there is penetration of the skin,
23 muscles, and connective tissues that require surgical
24 repair of a complex nature or when treatment of the injury
25 requires the use of a regional or general anesthetic.

1 Now, the next step and the last step down is assault
2 and battery in the third degree. To prove assault and
3 battery in the third degree the State must prove beyond a
4 reasonable doubt that Mr. Spagnoli unlawfully injured
5 another person, or offered or attempted to injure another
6 person with the present ability to do so.

7 Assault and battery in the third degree is not
8 required either great bodily injury or moderate bodily
9 injury. It simply refers to an assault and battery.

10 Of course if you find Mr. Spagnoli guilty of any of
11 those offenses the State must convince you of that guilt
12 beyond a reasonable doubt.

13 Now as to the murder and attempted murder, the
14 defendant Mr. Spagnoli is charged with possessing a
15 weapon, a firearm during the commission of that violent
16 crime. Murder and attempted murder are violent crimes as
17 codified as an act of our legislature.

18 The first step down on the lesser include's under
19 attempted murder assault and battery of a high and
20 aggravated nature is also a violent crime. So if you find
21 Mr. Spagnoli guilty of any of those three you may consider
22 whether he's guilty of, at that time, possessing a
23 firearm. Here the State must prove beyond a reasonable
24 doubt Mr. Spagnoli was in possession of a firearm during
25 the commission of a violent crime.

CHARGE TO THE JURY:

-885-

1 A firearm includes a revolver or a pistol, or any
2 weapon which will or is designed to or may be readily
3 converted to expel a projectile. In order to find Mr.
4 Spagnoli guilty of possession of a weapon during the
5 commission of a violent crime you must first find him
6 guilty of a violent crime or attempt to commit a violent
7 crime. Again, murder, attempted murder, assault and
8 battery of a high and aggravated nature all are violent
9 crimes.

10 The State next has charged Mr. Spagnoli with the
11 statutory offense called conspiracy. Here the State must
12 prove beyond a reasonable doubt that Mr. Spagnoli combined
13 with one or more persons for the purpose of committing an
14 unlawful act or committing a lawful act by unlawful means.

15 Here there must be a mutual understanding, agreement,
16 or common intention and plan. Mere passive knowledge of
17 or consent to the criminal conduct of another is not
18 enough to make a person a conspirator. There must be
19 guilty knowledge and participation.

20 Similarly. The mere fact that a defendant may have
21 associated with another person or met with another person
22 and discussed common aims and interests does not
23 necessarily establish proof of the existence of a
24 conspiracy or that a defendant was involved in a
25 conspiracy.

1 On the other hand, it not necessary that the
2 agreement be a formal one or that it be in writing. It
3 does not require that the person holds a meeting - that
4 the persons hold meetings or expressly state the terms of
5 their common plan, or that there even be an - or that it
6 be stated in words between them. The agreement of a
7 criminal conspiracy may come into being through an
8 implied, mutual understanding, the willful, intentional,
9 or the willful intentional, and knowing adoption by two or
10 more persons of a common plan is sufficient.

11 No overt acts need to be shown to establish a
12 conspiracy. A conspiracy may be shown by circumstantial
13 evidence and the conduct of the parties.

14 In order to convict Mr. Spagnoli of conspiracy, the
15 State must prove beyond a reasonable doubt not only that
16 he knew of the unlawful conduct at issue, but that he
17 agreed to combine with the other persons for the purpose
18 of accomplishing the unlawful conduct.

19 Again the State must prove conspiracy beyond a
20 reasonable doubt before you could convict Mr. Spagnoli of
21 that offense.

22 We have in our law a theory or concept called the
23 hand of one is the hand of all. If a crime is committed
24 by two or more persons who are acting together in
25 committing a crime the act of one is the act of all. A

CHARGE TO THE JURY:

-887-

1 person who joins with another to commit an unlawful act is
2 criminally responsible for everything done by the other
3 person which happens as a natural or probable consequence
4 of the acts done in carrying out the common plan and
5 purpose.

6 If two or more people are together, acting together,
7 assisting each other in committing a crime, the act of one
8 is the act of all. The hand of one is the hand of all.

9 Guilt as a principal is shown by actual or
10 constructive presence at the scene as a result of a prior
11 arrangement. Therefore, a finding of a prior arranged
12 plan or common scheme is necessary for finding - of a
13 finding of the guilt as a principal. The State must prove
14 beyond a reasonable doubt by competent evidence this
15 theory of the hand of one is the hand of all.

16 A principal in a crime is one who either actually
17 commits the crime or is present aiding, abetting, or
18 assisting others in committing the crime. When a person
19 does an act in the presence of and with the assistance of
20 another, the act is done by both. Where two or more
21 acting in the common plan or intent or present at the
22 commission of a crime it does no matter who actually
23 commits the crime all are guilty. The hand of one is the
24 hand of all.

25 Present at the commission of a crime means to be

CHARGE TO THE JURY:

-888-

1 sufficiently near to aid, abet, and assist in the
2 commission of the crime. However mere presence at the
3 scene of the crime alone is not sufficient to convict one
4 as a principal under this theory. There must have been a
5 common design or an intent to commit a crime and the crime
6 must have been committed pursuant thereto with the person,
7 the defendant, aiding and abetting by some overt act.

8 Intent again means a continuing result. An intent is
9 something that is intentional and is not accidental or
10 involuntary. Intent may be shown by acts and conducts of
11 a defendant and from other circumstances from which you
12 may naturally and reasonably infer intent. And this
13 theory must be proven beyond a reasonable doubt before you
14 could apply it in this case.

15 Here Mr. Spagnoli has raised the defense of self-
16 defense. Self-defense is a complete defense and, if it is
17 established by Mr. Spagnoli, you must find him not guilty.
18 The State has to the burden of disproving self-defense by
19 proof beyond a reasonable doubt. If you have an
20 reasonable doubt of Mr. Spagnoli's guilt after considering
21 all the evidence, including the evidence of self-defense,
22 then you would find him not guilty.

23 On the other hand, if you have no reasonable doubt as
24 to his guilt after considering all the evidence including
25 the evidence of self-defense, you would find him guilty.

CHARGE TO THE JURY:

-889-

1 The following elements are required to establish
2 self-defense. First, the defendant must be without fault
3 in bringing on the difficulty. If a defendant's conduct
4 was the type which was reasonably calculated to, and did,
5 provoke a deadly assault, the defendant would be at fault
6 in bringing on the difficulty and would not be entitled to
7 an acquittal based on self-defense.

8 The next element of self defense has that the
9 defendant was actually in imminent danger of death or
10 serious or great bodily injury or the he believe he was in
11 imminent danger of death or great bodily - or serious
12 bodily injury.

13 If a defendant was actually in imminent danger, it
14 must be shown that the circumstances would have warranted
15 a person of ordinarily firmness and courage to strike a
16 fatal blow to prevent their death or serious bodily or
17 great bodily injury. If the defendant believed he was in
18 imminent danger of death or serious bodily injury, it must
19 be shown that a reasonably prudent person of ordinary
20 firmness and courage would have had the same belief.

21 In deciding whether a defendant actually was, or
22 believed they were in imminent danger of death or great or
23 serious bodily injury, you should consider all the facts
24 and circumstances surrounding the alleged crime, including
25 the physical condition and characteristics of the

CHARGE TO THE JURY:

-890-

1 defendant and of the victim.

2 A defendant does not have to show that they were
3 actually in danger. It is enough that they believed that
4 they were in danger and a reasonably prudent person or
5 ordinary firmness and courage would have had the same
6 belief. A defendant has a right to act on appearances
7 even though those appearances and beliefs may be
8 mistaken. It is for you to decide whether a defendant's
9 fear of imminent danger or death or serious or great
10 bodily injury was reasonable and would have been felt by
11 an ordinary person in the same situation.

12 Words accompanied by hostile acts may, depending on
13 the circumstances, establish self-defense.

14 The relative sizes, ages, and weights of a defendant
15 and the victim may be considered in deciding the apparent
16 or actual need for force in self-defense and the amount of
17 force needed.

18 The last element of self-defense is that the
19 defendant had no other probable way to avoid the danger of
20 death or serious or great bodily injury than to act as he
21 did in the particular instance.

22 If a defendant is or was on their own premises at the
23 time they had no duty to retreat before acting in self-
24 defense. One who has a reasonable fear of imminent peril
25 or death or great bodily injury and is within their

CHARGE TO THE JURY:

-891-

1 residence has a right to use deadly force against one who
2 has or is in the process of unlawfully and forcefully
3 entering the residence..

4 A defendant has no duty to retreat if, by doing so,
5 the danger of their being injured or killed would
6 increase.

7 A person cannot be required to make an exact
8 calculation as to the degree or amount of force which may
9 be needed to avoid death or serious or great bodily harm.
10 Therefore, in self-defense, the defendant has the right to
11 use the force needed to avoid death or great or serious
12 bodily harm. The force used in self-defense does not have
13 to be limited to the degree or amount of force used by the
14 victim. The defendant has the right to use as much force
15 as appeared to be necessary for complete self-protection,
16 and which a person of ordinary reason and firmness would
17 have believed to be needed to prevent serious bodily harm
18 or death.

19 A defendant is justified in defending himself and
20 others in firing if they are justified in defending
21 themselves and firing the first shot then they are also
22 justified in continuing to shoot until it is apparent the
23 danger of death or serious bodily injury has completely
24 ended. That is known as the defense of self-defense.

25 I charge you that voluntary intoxication never is an

CHARGE TO THE JURY:

-892-

1 excuse for or a defense to a crime regardless of the
2 seriousness of the crime. A person who voluntarily
3 renders themselves intoxicated is no less responsible for
4 their acts while in this condition.

5 If one voluntarily drinks intoxicating liquors, wine,
6 or beer, or is under the influence of drugs; and becomes
7 intoxicated to whatever degree, and if while in that
8 condition commits an act which would be a crime if it had
9 been committed by a sober person, the fact the
10 intoxication would not relieve the intoxicated person from
11 responsibility.

12 Now your verdict in this case must be unanimous. All
13 twelve jurors must agree. Once you've all agreed the
14 Forelady, you will write your verdict on the verdict form
15 and I will go over those with you in just a minute.

16 Your verdict cannot be based on passion, prejudice,
17 sympathy, public opinion or matters outside the record.
18 In South Carolina we do not send in any written charge in.
19 If you wish me to go over any part or all of the law just
20 send out a note. Any time you have a note knock on the
21 door, give it to the bailiff, the bailiff will come and
22 get us. We are not starting any other work tonight so we
23 should be able to send for you promptly.

24 But if you wish for me to go over any part of my
25 charge on the law let me know and I will bring you back

CHARGE TO THE JURY:

-893-

1 and here in open court re-charge you.

2 We also can have testimony replayed. You will have
3 the exhibits with you in the jury room and the boom box or
4 whatever it's called to play the tape. But if you wish to
5 have testimony replayed, let us know and we will bring you
6 back in and do that here in open court.

7 If you have any questions, Madam Forelady, write them
8 down, knock on the door and give them to the bailiff. He
9 will come and give it to me and I will confer with the
10 attorneys. After that it may be that I will have to bring
11 you here in the courtroom and answer the question or it
12 may be that I can write an answer on the note itself. If
13 I write an answer on the note keep that note and turn it
14 in with the exhibits because it has to be a part of the
15 record.

16 When you've reached a unanimous verdict knock on the
17 door and tell the bailiff. The bailiff will come and get
18 us. We're not starting anything else so we should be able
19 to send for you promptly. We ordered pizza, it's eating
20 time so we've ordered some pizza for you and we have some
21 soft drinks there also and probably some coffee.

22 When you first go into the jury room all of you but
23 Ms. Cousar and Ms. Turner, the two of you will stay in
24 here this time when the jury goes out. When you go to the
25 jury room do not start deliberating at this time because I

CHARGE TO THE JURY:

-894-

1 have to go over with the attorneys my charge. If I have
2 made an error I will have to bring you back in and correct
3 it. If not I will send in the indictments and the
4 exhibits and the bailiff will tell you to start
5 deliberating.

6 Now, the indictments as I've already told you are not
7 evidence but you will have them in the jury room for your
8 consideration. To each I have attached a verdict form
9 which is where you will enroll your verdict.

10 Now the order in which these verdicts appear on these
11 forms is of no moment, of no importance. I always use
12 this chronology and the fact that one precedes the other
13 one on a piece of paper does not give it any more weight
14 or any more or not worthy of any more consideration.
15 That's just the way I do it.

16 As to conspiracy you have two choices. We find the
17 defendant guilty of criminal conspiracy or we find the
18 defendant not guilty. Whatever the unanimous verdict that
19 you reach, Madam Forelady, you will simply put a check in
20 front or an x in front of that verdict.

21 As to the murder charge it's a little different cause
22 you have the two choices. We find the defendant guilty of
23 murder or we find the defendant not guilty. That's count
24 one murder.

25 There is a little sentence under that that says if

CHARGE TO THE JURY:

-895-

1 the jury has found the defendant not guilty of murder stop
2 here and do not make a finding as to count two.

3 Count two is the possession of a firearm during the
4 commission of a violent crime and as I told you if you
5 don't find him guilty of the violent crime you don't need
6 to consider whether he possessed a weapon cause he didn't
7 commit the offense.

8 But as to count two if you find him guilty of murder,
9 and do consider count two, the options are we find the
10 defendant guilty of possession of a firearm during the
11 commission of a violent crime and the other option we find
12 the defendant not guilty of that offense.

13 As to the attempted murder it's a little different
14 also because it has the lesser included offenses on it.
15 And they go down the line just like I did in my charge and
16 you would put an x in front of the line that the jury has
17 unanimously determined the verdict.

18 And they go down from guilty of attempted murder to
19 guilty of the lesser included assault and battery of a
20 high and aggravated nature to the lesser included first -
21 assault and battery first degree, assault and battery
22 second degree, assault and battery third degree. The last
23 line is we find the defendant not guilty, of course, would
24 be or if that's the jury's finding.

25 If you find Mr. Spagnoli guilty of either attempted

CHARGE TO THE JURY:

-896-

1 murder, or assault and battery of a high and aggravated
2 nature then you would go on to count two. There is a
3 sentence that tells you that. And that is possession of a
4 firearm during the commission of a firearm and of course
5 those options would be we find the defendant guilty of
6 possession of a firearm during the commission of a violent
7 crime or not guilty.

8 Now again the two alternates will stay in here, the
9 rest of you will go out. Don't start deliberating yet
10 until you hear from me because I have to go over my charge
11 with the attorneys.

12 (JURY EXITS COURTROOM AT 06:53 P.M..)

13 THE COURT: Ladies, I will be with you all in just
14 one minute.

15 Anything from the State?

16 SOLICITOR BRACKETT: Your Honor, there's only one
17 thing that occurred to me. I'm sorry that I didn't think
18 of this but we were given the charge of third degree, did
19 you charge what a stipulation is at the time we stipulated
20 to the - I just can't remember.

21 THE COURT: No but I'll bring them back in and do
22 that.

23 SOLICITOR BRACKETT: And I would like that.

24 THE COURT: Okay. Anything from the Defense?

25 MR. HANCOCK: No additions or exceptions, Your Honor.

CHARGE TO THE JURY:

-897-

1 THE COURT: Bring the jury back in.

2 I'll still be with you.

3 SOLICITOR BRACKETT: I think that was the only
4 stipulation.

5 THE COURT: That's the only concern?

6 Bear with me.

7 (JURY REENTERS COURTROOM AT 06:54 P.M..)

8 THE COURT: I do need to mention one more thing.
9 During the case on a couple of occasions it is up to you
10 to remember the facts and to remember the evidence
11 presented, the parties stipulated to circumstance. A
12 stipulation is an agreement. That means that if something
13 is stipulated to the parties agree that it's true. .
14 Something that has been stipulated to that means that
15 either side has - of course the defense doesn't have to
16 prove anything but it does not mean that you have to
17 wrestle with whether or not a stipulated fact is true.
18 The parties have agreed that it is true and you can take
19 it as true and use it in your deliberations as a true
20 fact.

21 So other than that I'm gonna let you go back but
22 don't start quite yet.

23 (JURY EXITS COURTROOM AT 06:56 P.M..)

24 THE COURT: Anything further?

25 SOLICITOR BRACKETT: No, sir.

1 MR. HANCOCK: Nothing further, Your Honor.

2 THE COURT: Check everything, the indictments and
3 verdict form and the exhibits.

4 And, ladies, you all are through for the week. Thank
5 you for your help. You can stick around, there will
6 probably enough pizza if you want to but I don't know that
7 you want to spend the evening in the Moss Justice Center.

8 You don't? Okay. Well everybody probably don't
9 either. This will be the third time in the last four
10 weeks we've gone into Thursday night. But thank you for
11 your help and you will be mailed a check. Thank you.

12 (ALTERNATES DISMISSED AT 06:57 P.M..)

13 THE COURT: All right, we'll be at ease.

14 (COURT AT EASE AT 07:00 P.M..)

15 (JURY RECEIVED EVIDENCE AT 07:15 P.M..)

16 (WHEREUPON, COURT'S EXHIBITS FOUR AND FIVE,
17 IDENTIFIED AND MARKED, RECEIVED INTO EVIDENCE.)

18 (COURT BACK IN SESSION AT 08:36 P.M..)

19 THE COURT: Thank you. Take your seats.

20 Let's get Mr. Spagnoli in.

21 (DEFENDANT, STEVEN SPAGNOLI REENTERS COURTROOM.)

22 THE COURT: We will go back on the record. Mr.
23 Spagnoli is here with counsel. The jury wants a recharge
24 on conspiracy, so anything before the jury comes in from
25 the State?

CHARGE TO THE JURY AS TO CONSPIRACY:

-899-

1 SOLICITOR BRACKETT: No, sir, Your Honor.

2 THE COURT: From the Defense?

3 MR. HANCOCK: No, sir, Your Honor.

4 THE COURT: Bring in the jury.

5 (JURY REENTERS COURTROOM AT 08:37 P.M..)

6 THE COURT: I have received your note and you've ask
7 for a recharge on the law on conspiracy. Conspiracy is a
8 statutory offense, that is an offense that was established
9 by our legislature codified into our law. Here the State
10 must prove beyond a reasonable doubt that Mr. Spagnoli
11 combined with one or more persons for the purpose of
12 committing an unlawful act or committing an lawful act by
13 unlawful means.

14 There must be a mutual understanding, agreement, or
15 common intent and plan. Mere passive knowledge of or
16 consent to the criminal conduct of another is alone not
17 enough to make a person a conspirator. There must be
18 guilty knowledge and participation.

19 Similarly, the mere fact that a defendant may have
20 associated with another person or met with another person
21 and discussed the common aims and interests does not
22 necessarily establish proof of the existence of a
23 conspiracy or that the defendant was involved in a
24 conspiracy.

25 On the other hand, it is not necessary that the

CHARGE TO THE JURY AS TO CONSPIRACY:

-900-

1 agreement be a formal one, not necessarily be in writing,
2 its not necessary that the person alleged to have been
3 involved in a conspiracy hold a meeting or expressly state
4 to the terms of any common plan, or that there be any
5 agreement stated in words between them. The agreement of
6 a criminal conspiracy may come into being through an
7 implied, mutual understanding. The willful, intentional,
8 and knowing adoption by two or more persons of a common
9 plan is sufficient to constitute a conspiracy.

10 No overt acts need to be shown to establish a
11 conspiracy. A conspiracy may be shown by circumstantial
12 evidence and by the conduct of the parties.

13 In order to convict Mr. Spagnoli of conspiracy, the
14 State must prove beyond a reasonable doubt not only that
15 he knew of the unlawful conduct, but that he agreed to
16 combine with the other person for the purpose of
17 accomplishing the unlawful conduct.

18 Again, the State has to prove those elements beyond a
19 reasonable doubt before the jury, you, could find Mr.
20 Spagnoli guilty of criminal conspiracy.

21 I'll let you go back to deliberate. Thank you.

22 (JURY EXITS COURTROOM AT 08:40 P.M..)

23 THE COURT: Anything from the State?

24 SOLICITOR BRACKETT: No, Your Honor.

25 THE COURT: From the Defense?

VERDICT:

-901-

1 MR. HANCOCK: Nothing, Your Honor.

2 THE COURT: We'll be at ease.

3 (COURT AT EASE AT 08:41 P.M..)

4 (COURT BACK IN SESSION AT 08:51 P.M..)

5 THE COURT: Thank you. Take your seats.

6 We've received a note from the jury that they have
7 reached a verdict, so the State is present, anything
8 before we get the jury in?

9 SOLICITOR BRACKETT: Nothing from the State.

10 THE COURT: The Defense is present.

11 MR. HANCOCK: Nothing, Your Honor.

12 THE COURT: And Mr. Spagnoli is present.

13 All right, bring in the jury.

14 And while the jury is coming in I warn everyone that
15 there should be no outbreaks. I don't know what the
16 verdict is of course, but if you don't think you can
17 handle any kind of emotion, depending on what the verdict
18 is, you better leave now because if there are any outburst
19 of any kind I will of course have to hold that person in
20 contempt of court and have you sit back here in this
21 holding cell for a while, several days.

22 So if you can't control your emotions please leave
23 now but I invite all of you to stay.

24 (JURY REENTERS COURTROOM AT 08:52 P.M..)

25 THE COURT: Madam Forelady, I understand the jury has

1 reached verdicts. If you'll hand them to the bailiff he
2 will hand them up to me.

3 (VERDICT RECEIVED UP BY THE COURT.)

4 THE COURT: Madam Clerk.

5 MADAM CLERK: Indictment 2010-GS-46-1122 the State of
6 South Carolina versus Steven Spagnoli we find the
7 defendant guilty of murder signed by the foreperson dated
8 today's date.

9 Indictment 2011-GS-46-1122(A) the State versus Steven
10 Spagnoli we find the defendant guilty of possession of a
11 firearm during the commission of a violent crime signed by
12 the foreperson dated today's date.

13 Indictment 2011-GS-46-1123 the State versus Steven
14 Spagnoli we find the defendant guilty of attempted murder
15 signed by the foreperson dated today's date.

16 Indictment 2011-GS-46-1123(A) the State versus Steven
17 Spagnoli we find the defendant guilty of possession of a
18 firearm during the commission of a violent crime signed by
19 the foreperson dated today's date.

20 Indictment 2011-GS-46-1124 the State of South
21 Carolina versus Steven Spagnoli we find the defendant
22 guilty of criminal conspiracy signed by the foreperson
23 dated today's date.

24 Ladies and gentlemen of the jury, if this be your
25 verdict so say you all by raising your right hand.

1 Let the record show all jurors affirmed this verdict.

2 (ALL JURORS AFFIRMED VERDICT BY RAISING THEIR RIGHT
3 HAND.)

4 THE COURT: Anything from the State before the jury is
5 dismissed?

6 SOLICITOR BRACKETT: Nothing from the State, Your
7 Honor.

8 THE COURT: Anything from the Defense?

9 MR. HANCOCK: Nothing from the Defense.

10 THE COURT: Members of the jury panel, thank you for
11 your help. You will be mailed a check. You can leave, I
12 don't require the jury to stay around while I have to go
13 through a little bit more to do sentencing. If any of you
14 want to see the next part, event of the case, if you will
15 go, we will make the back row available if any of you
16 would like to, you don't have to, but if any of you want
17 to see what the sentence is imposed and that sort of
18 thing, you can come around to the back, the bailiff will
19 show you.

20 Madam Forelady, you need to go with the Clerk and
21 sign, you need to transfer the verdicts over to the
22 indictment. We thank you so much for your help.

23 (JURY DISMISSED AT 08:55 P.M..)

24 THE COURT: Anything from the State at this point
25 before I hear from any of the victim's family?

SENTENCING:

-904-

1 SOLICITOR BRACKETT: The Court's indulgence for one
2 moment.

3 Yes, sir, Your Honor.

4 THE COURT: All right. Why don't you move the podium
5 up here where they can use that.

6 Before we do that though, anything on behalf of Mr.
7 Spagnoli, Mr. Hancock?

8 MR. HANCOCK: No, sir, not at this time.

9 THE COURT: All right. I'll hear from the victim's
10 family and then I'll hear from Mr. Spagnoli and you, Mr.
11 Hancock, and anyone on his behalf.

12 SOLICITOR BRACKETT: Yes, sir, Your Honor.

13 Purcell Ross, Junior and Greg

14 THE COURT: Yes, sir, your name?

15 A. Purcell Ross.

16 THE COURT: All right. Be glad to hear from you.

17 MR. ROSS: Yes, sir, Your Honor. First I'd like to
18 say I think for your commitment, this has been an
19 exhausting week however these past two years have been
20 just as exhausting and very emotional. So many things I
21 can say about Richard Leach. He was an awesome person.
22 He was wonderful in the community, the community is gonna
23 miss him greatly. The family of course will miss him even
24 more. A very industrious productive person.

25 He did have to pay for a mistake that he made based

SENTENCING:

-905-

1 on I guess as a result of how he was born. He was born
2 with a trusting heart and he paid the price of trusting
3 others that did not care as much for him as he did them.
4 And so with that we understand that maybe hopefully that
5 everyone of course will have to bear that burden for
6 paying the cost for mistakes as well.

7 Family members have been crying, have had
8 uncontrolled crying since - for two years now, children
9 that does not have a father any more, he did what he could
10 to be what he needed to be. And of course with certain
11 decisions made in life had to make due the best way he
12 could but he never ran from his responsibilities. And I
13 think that the facts will bear to that because he was a
14 very caring person, a very decent person, others could
15 have a relationship with him. No matter what the business
16 was if a person is decent he don't want to fool with them.
17 And so I'd like the courts to know that he was far more
18 than a drug dealer.

19 I don't even equate him as that. He was a generous
20 person, done anything in the world for anyone. He did run
21 his own business as well and so we are gonna miss him
22 greatly. And we just want the court to know the side of
23 him that was not maybe presented and what this week and
24 maybe what the media over the past two years could not
25 show you of what we know of him from a life time.

SENTENCING:

-906-

1 THE COURT: I appreciate your remarks. Thank you.

2 Yes, sir.

3 A. It's kind of hard for me 'cause Ricky and I was
4 extremely close.

5 THE COURT: I hate to interrupt you, your name?

6 A. Craig Page. I'm sorry.

7 THE COURT: Okay. Go ahead.

8 MR. PAGE: But I met Rick when I was about maybe
9 fourteen, fifteen years old, I was a sophomore in high
10 school. And the way I came across Rick was he wanted to
11 talk to my cousin. She and I both had just moved here
12 from New York and she was maybe thirteen years old. And
13 she came to me one day and she said I met this guy and he
14 bought me a watch. She said his name was Richard Leach.
15 And I said Rick is like two years older than you and we
16 laughed and talked about it.

17 A couple of weeks after that Rick and I both used to
18 like to sing a lot. I met him at a talent show audition.
19 We ended up singing the same songs, I ended up singing the
20 song with him many times so from that day on we became the
21 best of friends.

22 In our twenties when we both moved out of our houses
23 with our parents sometimes I would stay with Rick. I had
24 an apartment and sometimes Rick would come and live with
25 me when he didn't have an apartment. And one thing I can

SENTENCING:

-907-

1 say about Rick, he's a good guy.

2 And if you knew him - Steven, if you knew Rick you
3 know that I'm telling you the truth, Rich was a good
4 person. And I just want to tell you today it's okay to be
5 angry at people sometimes. I was angry with Rick when he
6 bought my cousin that watch. But we as people we have to
7 stop taking lives for granted. We have to stop the
8 senseless killing over senseless things. When you take a
9 life you don't just take that person's life, you take
10 fathers, and you take son's, and brothers and friends.
11 And its really painful when we just take life for granted
12 like it's nothing. That morning I will never forget my
13 mom called me and told me Rick was gone.

14 I'll never forget that cause I'm thinking to myself
15 how could anyone take Rick's life. I've never seen Rick
16 be violent or just to a point where he would get so angry
17 that he would want to take somebody's life.

18 Surely he may have made a mistake and said some
19 things to people with this and things to people but it's
20 just not worth taking a life so it's not worth it. And so
21 I hope that whatever you go through from now on that you
22 think about the fact - Just think about was it worth it
23 all just to take somebody's life for something so
24 senseless. It's okay to be upset and it's okay to be mad
25 but it's not okay to take a life. I'm gonna miss Rick and

SENTENCING:

-908-

1 I'm just glad justice was served here today. Thank you.

2 THE COURT: Thank you, Mr. Page.

3 SOLICITOR BRACKETT: And finally Robert Lee Leach.

4 A. Robert Lee Leach.

5 THE COURT: Yes, sir.

6 MR. LEACH: When you think about it you always like
7 to think of the youngest burying the oldest. And being
8 the oldest I watched my brothers and sisters as they grew.
9 Now Rick was a very caring person. He would do whatever
10 he could for you. Now you say he was a drug dealer. One
11 thing I can say about it, he gave me respect on that end.
12 I never knew that. I never knew that. He kept it from
13 me. The people in the street might a said it. I just
14 have to look it. I say one thing I have to say about my
15 brother being the oldest he gives me respect enough not to
16 bring it around me. So that shows me that he had respect
17 for his elders.

18 We were raised in a religious family. We all tried
19 our best to serve the Lord the best way we can. And one
20 of the commandments is thou should not kill. And
21 everybody being human have their faults but we all must
22 learn to live and forgive stuff.

23 Now I can say a lot of stuff and I thought about it
24 and no this is not the place. But Sa - what is it?

25 THE COURT: Spagnoli.

SENTENCING:

-909-

1 MR. LEACH: Spagnoli lived out on . When
2 the family ate he ate. When the family drank he drank.
3 He knows I'm telling the truth. I did not know this until
4 after this happened. The family started talking about
5 it. He would be out there all the time. I said if he was
6 out there all the time why did he do that? He was like
7 part of the family. You understand what I'm saying? So
8 you don't think a family raising their arms against their
9 brother. Its another Cain and Abel situation. So with
10 all of that just remember, I forgive you but take my
11 brothers life and I'm gonna miss him.

12 THE COURT: Thank you, Mr. Leach.

13 Anything else, Mr. Solicitor?

14 SOLICITOR BRACKETT: Yes, sir, Your Honor, just the
15 record ---

16 THE COURT: Okay.

17 SOLICITOR BRACKETT: --- of the defendant. 1980
18 conviction for house breaking and larceny. A second house
19 breaking and larceny a month later. 1980 attempted -
20 attempt to obtain drugs by fraud. 1980 simple possession
21 of marijuana. There's one additional family member that
22 wishes to speak.

23 THE COURT: Okay. Go ahead and hear the record.

24 SOLICITOR BRACKETT: Yes, sir. October of 1980 grand
25 larceny. 1982 disorderly conduct. '86 illegal purchase

SENTENCING:

-910-

1 and possession of a pistol. 1995 criminal domestic
2 violence. 1999 unlawful carrying of a weapon. 1999
3 public disorderly conduct. And that's the extent of the
4 criminal record.

5 What's her name?

6 SOLICITOR THOMPSON: Nicole Massey.

7 SOLICITOR BRACKETT: Ms. Nicole Massey, Your Honor,
8 wishes to speak.

9 THE COURT: Good evening.

10 A. Good evening, Judge Hayes. My name is Nicole Massey.
11 Richard was my uncle. My momma's the oldest and he was
12 the baby. I was four years older - Richard was four years
13 older than me so I raised up with him and Bernard and the
14 rest of my family has been my siblings. That's my
15 brothers and my sisters instead of them being my aunts and
16 my uncles.

17 But, Mr. Spagnoli, ever since we been in this
18 courtroom you have never once gave us any kind of remorse.
19 You have never even gotten up to even say you are sorry.
20 Never thought about it. You just came about just trying
21 to say different things to prevent yourself from being
22 what you are today. You took a life from us.

23 Regardless you want to paint him as a drug dealer,
24 then in your mind and in your case it was your drug
25 dealer. But he was more than a drug dealer to us. He has

SENTENCING:

-911-

1 two sons. He has grand kids. He has a daughter. I mean
2 we're not gonna get to see him. He has one son that just
3 went yesterday to enlist himself in the Army. He already
4 has a son in the Army. He has a grandson that was just
5 born on April the 5th that he cannot see.

6 VICTIM'S ADVOCATE: Face the judge.

7 MS. MASSEY: Okay. He had a son. He had a grandson
8 that was just born April 5th. I just want to him to know it
9 would have made us feel a lot just a little bit of
10 pleasure to see some kind of remorse or something to say
11 I'm sorry, to say he's sorry to the Spagnoli family, also
12 the Varnadore family that ended up being here. This is
13 not you all's fault because you all didn't take the life
14 of my brother. Its really not you all's fault but I feel
15 that was a coward way to do my brother. Thank you.

16 THE COURT: Thank you.

17 SOLICITOR BRACKETT: Your Honor, you've heard the
18 facts in exhausting detail and I can't add any more but I
19 would like to call Your Honor's attention to the one
20 comment that I made in closing argument which I feel are
21 very strongly that the facts support completely. I
22 believe and I think the evidence is very strong supports
23 the notion that Mr. Leach was on his knees for lower when
24 the final shot was fired into his head killing him.

25 He was prostrated on the ground and helpless before

SENTENCING:

-912-

1 Mr. Spagnoli when he died. And this was nothing less than
2 an execution of him. I think a sentence should reflect
3 that fact. Thank you.

4 THE COURT: Mr. Hancock, will you bring Mr. Spagnoli
5 around?

6 MR. HANCOCK: Yes, sir.

7 (DEFENDANT STEVEN SPAGNOLI AND DEFENSE ATTORNEY
8 WILLIAM HANCOCK APPROACH THE BAR.)

9 THE COURT: Mr. Hancock, be glad to hear from you.

10 MR. HANCOCK: Your Honor, I believe Mr. Spagnoli
11 wishes to say something.

12 THE COURT: Okay. Mr. Spagnoli.

13 MR. SPAGNOLI: I'd like to apologize to Rick's family
14 and Erick - Erick's family. A terrible thing that
15 happened it was not planned, it was not an execution type
16 thing. It was just a mix up that happened at the wrong
17 time, the wrong place. Nothing - nothing - None of it was
18 premeditated. It just was one of those things that
19 happened. It shouldn't a gone as far as it did and I know
20 that it's a terrible loss for you. I'm sorry for your
21 loss. I'm sorry for the injuries that you suffered here.
22 And just sorry that the events took place the way they
23 did. I apologize to all of the family that had to go
24 through all this suffering the last year and a half to get
25 to this point here. So I just want to take the time to

SENTENCING:

-913-

1 say I'm sorry. And one thing to maybe keep in mind in the
2 future is my drinking should be a lesson to what can
3 happen to lead somebody to maybe do something they
4 wouldn't do when they're drinking. And the drugs it's the
5 whole life style associated with the drinking and drugs
6 are - is a epidemic level, the abuse in York County. And
7 unless something is done about it more things are likely
8 to happen like this cause it's just a recipe for disaster.
9 And - I guess that's about it. Again, my apologies to
10 both families and my own.

11 THE COURT: Mr. Hancock, anything you want to say?

12 MR. HANCOCK: I'm glad that he thought of his own
13 family because they are totally devastated. I know them
14 and know them well. I've seen and met part of the family
15 this week and I know them well. Mr. Spagnoli's father and
16 he's just a fine person.

17 You have heard the facts. I can't change the facts,
18 Your Honor. You have heard his record, his record was
19 only substantial as to thirty-two years ago I believe if
20 my math is correct in 1980. We just ask at this time for
21 the leniency of the Court something less than a life
22 sentence because even less than a life sentence is a death
23 sentence for this gentleman, he's forty-nine years old. I
24 would just ask for your leniency and your consideration,
25 Your Honor.

SENTENCING:

-914-

1 THE COURT: All right. Well this one bothered me.
2 In fact this was purely and simply an unprovoked ruthless
3 killing, a ruthless murder.

4 On the murder charge, Mr. Spagnoli, the sentence is
5 life imprisonment. And the attempted murder the sentence
6 is thirty years consecutive to your life sentence or other
7 the other three charges, the two gun charges, weapon
8 charges and the conspiracy are each for five years and
9 they are all to run concurrent to the life sentence.

10 SOLICITOR BRACKETT: Thank you very much, Your Honor.

11 SOLICITOR THOMPSON: Thank you, Your Honor.

12 THE COURT: All right, we'll be adjourned 'till ten
13 in the morning. Thank you.

14 (COURT ADJOURNED AT 09:15 P.M..)

15 (END OF TRANSCRIPT OF RECORD)

16
17
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25

CERTIFICATE OF REPORTER

State of South Carolina)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 19th, 24th, 25th and 26th days of April, 2012.

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

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021
DATE: April 7 / 2015

CERTIFIED TRUE COPY
FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Steven Spagnol

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2013 JUN -8 PM 2:08
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

IN THE COURT OF COMMON PLEAS

2013CP46 1662

FILED RECEIVED
2013 MAY 28 AM 10:05
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- LIEBER CORRECTIONAL INSTITUTE, EDISTO B7
PO BOX 205 RIDGEVILLE SC 29472
1. Place of detention PO BOX 205 RIDGEVILLE SC 29472
 2. Name and location of Court which imposed sentence YORK, SC
 3. Name(s) of co-defendant(s) (if any) CHRIS VARNADORE
 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) J-155925, 9/28/2010
 - (b) J-155926, 9/28/2010
 - (c) J-155928, 9/28/2010
 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) _____
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) INEFFECTIVE COUNSEL, FAILED TO COMMUNICATE WITH APPEALS COURT.
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: THAT LAWS PROTECT ME FROM BEING PROSECUTED FOR STANDING MY GROUND AND PROTECTING MYSELF FROM INTRUDERS IN MY OWN HOME.

- (a) THAT I WAS UNFIT TO STAND TRIAL AT THE TIME
 (b) THAT I HAD INEFFECTIVE COUNSEL
 (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. MR. BILL HANCOCK, 1240 EBENEZER RD ROCK HILL, SC
29732
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
TO BE EXONERATED, RELEASED FROM PRISON AND FREE TO MOVE
FROM SC TO ANOTHER STATE.
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Steven Spagnoli

SWORN to and subscribed before me this 23rd
day of May, 2013.

Ludheen Bryant (L.S.)
Notary Public

My Commission Expires: May 21, 2026

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Sto Spagnoli
Applicant

SWORN or affirmed to and subscribed before me this
23rd day of May, 2013.

Lucretia Baycut
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Steven Spagnoli #350895,

2013-CP-46-1662

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed June 6, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the April 2011 term of the York County Grand Jury for Murder (2011-GS-46-1122), Attempted Murder (2011-GS-46-1123), two (2) counts of Possession of a Firearm during the Commission of a Violent Crime (2011-GS-46-1122A, 1123A), and Criminal Conspiracy (2011-GS-46-1124). James W. Hancock, Jr., Esquire, represented him. On December 5, 2011, Applicant proceeded to trial and was found guilty as indicted. The Honorable John C. Hayes, III sentenced him to life imprisonment for Murder, thirty (30) years for Attempted Murder, five (5) years for Criminal Conspiracy, and five (5) years each for count of Possession of a Firearm during the Commission of a Violent Crime, all running concurrently.

A notice of appeal was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed his appeal for failure to timely order the trial transcript. The Remittitur was issued on February 25, 2013

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "That laws protect me from being prosecuted for standing my ground and protecting myself from intruders in my own home."
- b. "That I was unfit to stand trial"
- c. "That I had ineffective counsel

Any claims not specifically enumerated in the post-conviction relief application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the

application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent

requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return and Motion to Dismiss, the State requests that the Applicant's current application for PCR be summarily denied and dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By:  *for Rutledge Johnson*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

May 6, 2015

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

2013-CP-46-1662

STEVEN SPAGNOLI, #350895

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

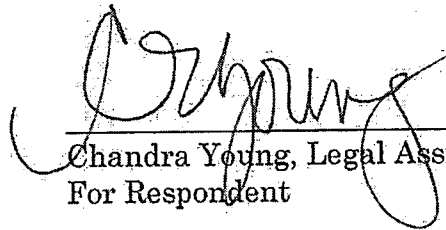
STATE OF SOUTH CAROLINA,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Leah B. Moody, Esquire
235 East Main Street; Suite 115
Rock Hill, SC 29730

DATED this 6th day of May, 2015.


Chandra Young, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
YORK COUNTY

STATE OF SOUTH CAROLINA

Plaintiff,

versus

STEVE SPAGNOLI,

Defendant,

)
) IN THE FAMILY COURT OF THE
) SIXTEENTH JUDICIAL CIRCUIT
)
)
)
)

AFFIDAVIT OF JAMES W. HANCOCK, JR

File Book:2011-DR-12-307

AFFIDAVIT OF JAMES W. HANCOCK, JR. BARR NO: 2655

I was the defense attorney for Steve Spagno. His father paid me \$25,000.00.
A few days after conviction, on Monday, April 30, 2012, Mr. Spagnoli fell or jumped from the second floor of the Moss Justice Center and landed directly on his head. I do not know whether Mr. Spagnoli is still on life support but he is not capable of speaking.

Further, he is incapable of filling out this paperwork, so I am attempting to do so as accurately as I can so all is upon information and belief.

Mr. Spagnoli is currently at Columbia Regional Care Center on Farrow Road in Columbia, South Carolina.

Sworn to and subscribed before

me on May 29, 2012



Notary Public for South Carolina
My commission expires 9-1-2014



James W. Hancock, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Steven Spagnoli,)
S.C.D.C. No. 350895,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-1662

MAY 28 2016

SC SUPREME COURT

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT TO
WHITE V. STATE**

This matter comes before the Court by way of an Application for post-conviction relief (PCR) filed June 6, 2013. Respondent made its Return on May 13, 2015.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. Applicant was indicted at the April 2011 term of the York County Grand Jury for Murder (2011-GS-46-1122), Attempted Murder (2011-GS-46-1123), two (2) counts of Possession of a Firearm during the Commission of a Violent Crime (2011-GS-46-1122A, 1123A), and Criminal Conspiracy (2011-GS-46-1124). James W. Hancock, Jr., Esquire, (hereinafter "Counsel") represented him. On April 19-26, Applicant proceeded to trial and was found guilty as indicted. The Honorable John C. Hayes, III sentenced him to life imprisonment for Murder, thirty (30) years for Attempted Murder, five (5) years for Criminal Conspiracy, and five (5) years each for count of Possession of a Firearm during the Commission of a Violent Crime, all running concurrently.

This Court has before it an affidavit from Counsel, signed May 29, 2012. In this affidavit, Counsel explains that a few days after the conviction, on Monday, April 30, 2012, Applicant fell

or jumped from the second floor of the Moss Justice Center and landed directly on his head. Applicant was on life support for a short time and was not capable of speaking or communicating with Counsel

On May 4, 2012, Counsel filed a notice of appeal on Applicant's behalf. On November 1, 2012, the South Carolina Court of Appeals sent a letter to Counsel notifying him that the transcript had not been ordered as required by Rule 207 SCACR. By Order filed January 30, 2013, South Carolina Court of Appeals dismissed the appeal for failure to timely order the trial transcript. Counsel filed a Motion on or about February 5, 2013, to reopen the appeal. In this motion, Counsel notifies the Court of Appeals that Applicant filed a notice of appeal through Counsel but was unable to take the necessary steps to perfect the appeal because Applicant was hospitalized for several months. The Remittitur was issued on February 25, 2013. On May 6, 2013, Applicant sent a pro se Motion to Reinstate Appeal.

On June 6, 2013, Applicant filed this PCR action, alleging several grounds of ineffective assistance of counsel, including that Counsel failed to communicate with the appellate court and properly file the direct appeal.

II.

This Court agrees that Applicant did not waive his right to a direct appeal. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues

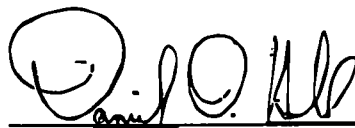
pursuant to White v. State, See Rule 227(g) (1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

This Court affirmatively finds the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his convictions. A petition for belated review pursuant to White v. State can remedy Applicant's lack of a direct appeal.

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for Applicant must file a Notice of Appeal to secure the appropriate review of Applicant's convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.
3. That Applicant be remanded to the custody of Respondent

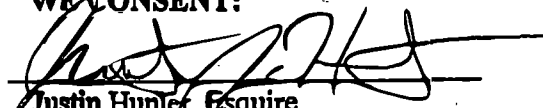
AND IT IS SO ORDERED



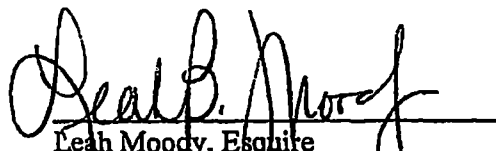
DANIEL D. HALL
Chief Administrative Judge
Sixteenth Judicial Circuit

4-22, 2016
York, South Carolina

WE CONSENT:



Justin Hunter, Esquire
Assistant Attorney General
Attorney for the Respondent



Leah Moody, Esquire
Attorney for Applicant

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WITNESSES

YCSO / Strait

mac

ARREST WARRANT NUMBER

COUNT ONE: J155925

COUNT TWO: J155928

ACTION OF GRAND JURY

TRUE BILL

George M. Hylton
Foreperson of Grand Jury 4/21/11

VERDICT

Count 1 - Guilty

Count 2 - Guilty

Deborah Turner
Foreperson of Petit Jury

Date: 4/26/12

DOCKET NO. 2011-GS46- 01122
2011-GS46- 01122A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 21, TERM 2011

THE STATE

vs.

STEVEN SPAGNOLI

Indictment for

COUNT 1 - MURDER

SC Code: § 16-11-0310

CDR Code: 0116

**COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME**

SC Code: 16-23-0490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on April 21, 2011, the Grand Jurors of York County present upon their oath:

COUNT ONE - MURDER

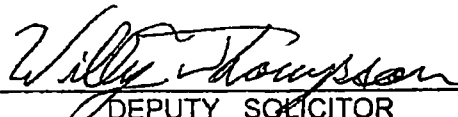
Steven Spagnoli did in York County on or about September 28, 2010, feloniously, willfully and with malice aforethought, kill one Richard Leach by means of beating and shooting said victim and Richard Leach died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at
 in York, South Carolina.

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
 COMMISSION OF A VIOLENT CRIME**

Steven Spagnoli did in York County on or about September 28, 2010, possess a firearm while committing the violent crime of murder in York, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

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 DEPUTY SOLICITOR

WITNESSES

YCSO / Strait

mac

ARREST WARRANT NUMBER

COUNT ONE: J155926

COUNT TWO: DIR IND RE: J155926

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

VERDICT

Count 1 - Guilty

Count 2 - Guilty

Foreperson of Petit Jury

Date: 4/26/12

DOCKET NO. 2011-GS46-01123
2011-GS46-01123A

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 21, TERM 2011

THE STATE

vs.

STEVEN SPAGNOLI

Indictment for

COUNT 1 - ATTEMPTED MURDER

SC Code: § 16-03-0029

CDR Code: 3410

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME

SC Code: 16-23-0490

CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

INDICTMENT

At a Court of General Sessions, convened on April 21, 2011, the Grand Jurors of York County present upon their oath:

COUNT ONE – ATTEMPTED MURDER

Steven Spagnoli did in York County on or about September 28, 2010, feloniously, willfully and with malice aforethought, either express or implied, attempt to kill Erick Lamont Harris by means of shooting said victim all with the intent to kill said victim, all in violation of Section 16-3-0029 *Code of Laws of South Carolina* (1976, 2010), as amended. This occurring at in York, South Carolina.

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

Steven Spagnoli did in York County on or about September 28, 2010, possess a firearm while committing the violent crime of attempted murder in York, South Carolina, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended

Against the peace and dignity of the State, and contrary to the statute in such case and provided.

0-11-100-105
0-11-100-106
0-11-100-107

10:6 AM 62 JUNE 1962

Willy Thompson
DEPUTY SOLICITOR

WITNESSES

YCSO / Strait

mac

ARREST WARRANT NUMBER

Direct Indictment

ACTION OF GRAND JURY
TRUE BILL

George M. Hunt
Foreperson of Grand Jury

VERDICT

Guilty

Deborah Turner
Foreperson of Petit Jury

Date: 4/26/12

DOCKET NO. 2011-GS46-01124

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

APRIL 21, TERM 2011

THE STATE

vs.

STEVEN SPAGNOLI

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code:0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on April 21, 2011, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Steven Spagnoli did in York County on or about September 28, 2010, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have a tacit understanding with Christopher Ladd Varnadore for the purpose of committing Murder upon Richard Leach and/or Erick Harris. The crimes occurred at or near _____, York, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

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Willy Thompson
 DEPUTY SOLICITOR