

VOLUME I OF III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

RECEIVED

JUL 30 2018

S.C. SUPREME COURT

JEFFREY MICHAELSON,

PETITIONER

v.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002373

APPENDIX

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)
 County of Berkeley) Ninth Judicial Circuit
)
 State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Case No. 2009-GS-08-2295
) 2008-GS-08-1699
 Jeffrey A. Michaelson,)
)
 Defendant.)
)

VOLUME I of II

TRANSCRIPT OF RECORD

June 28-30 and July 1, 2010

Moncks Corner, South Carolina

B E F O R E:

The Hon. Kristi Lea Harrington, Judge, and a Jury

A P P E A R A N C E S:

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Bryan A. Alfaro, Esq.
Attorneys for the State

Patricia A. Kennedy, Esq.
David P. Schwacke, Esq.
Attorneys for the Defendant

Brenda Cooley
Circuit Court Reporter

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BATSON LIST

COUNTY: Berkeley TRIAL DATE: June 28, 29, 30, 2010 and
July 1, 6, 7, 9, 2010

CASE NOS.: 2009-GS-08-2295 JUDGE:
2008-GS-08-1699 The Hon. Kristi Lea Harrington

STATE: State of South Carolina STATE'S ATTORNEYS:
Anne Williams, Esq.
Bryan A. Alfaro, Esq.

vs.

DEFENDANT: Jeffrey A. Michaelson DEFENSE ATTORNEYS:
Patricia A. Kennedy, Esq.
David P. Schwacke, Esq.

COURT REPORTER:
Brenda Cooley

JUROR NO.	JUROR NAME	RACE	SEX	STRIKES		SEATED
				STATE	DEFENSE	
173	Christina Tebben	W	F			X
85	Dona Inthaxoum	A	F			X
33	Denise Chandler	W	F			X
156	Malcolm Scarborough	W	M			X
5	Brian A. Allison	W	M			X
90	Brenda Johnson	B	F			X
57	Eric Gabriel	W	M			X
29	Jeffery Burke	W	M		X	
130	Christopher Newton	W	M		X	
169	Sallie Spencer	B	F	X		
18	Johnny Bland	W	M		X	
145	Soni Ring	W	F			X
108	Kenneth Lott III	W	M		X	
91	Gregory Johnson	B	M	X		
112	Debra Mallard	B	F			X
49	Lauryn Earls	W	F		X	
97	Rhonda Key	W	F			X
40	Debra Davis	W	F			X
28	James Brunson, Jr.	W	M		X	
138	Shanara Pou	B	F			X
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96	Cameron Judge	B	M	X		
64	Carlise Golden	B	F			X
171	Donna Stewart	W	F		X	
183	Robert Wadford	W	M			X

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(The exhibits are retained by the Clerk of Court.)

1 (On Monday, June 28, 2010, the trial convenes
2 at approximately 2:05 p.m., the defendant being present
3 with counsel, Ms. Kennedy and Mr. Schwacke, and the
4 following proceedings were had:)

5 THE COURT: Please be seated.

6 All right. We're going to begin with the
7 defendant's request for a continuance.

8 Ms. Williams, this is your argument on behalf
9 of the state?

10 MS. WILLIAMS: Yes, Your Honor.

11 THE COURT: And I have heard on a previous --
12 on a previous motion for a continuance, having heard
13 this matter, is it the state's position, first of all,
14 that if this case is called for trial and I do not grant
15 the motion for continuance that you will be able to
16 prove every element of this case?

17 MS. WILLIAMS: Yes, Your Honor.

18 THE COURT: And you will be able to prove
19 every element of this case without referring to or
20 having the Court make a determination that Detective
21 Merrithew is unavailable for the purposes of any hearsay
22 statements?

23 MS. WILLIAMS: Yes, Your Honor. In fact, the
24 video -- yes, Your Honor. The videotape shows the whole
25 interview with Detective Merrithew and Ms. Kennedy's

1 client. And as he enters the room, he introduces
2 himself, making it obvious that he's never met
3 Mr. Michaelson before. And the whole interview is
4 taped, and that tape is available for the Court's review
5 if you so wish.

6 THE COURT: And is it the state's position
7 that based upon your review and preparation for this
8 case, as well as during discussions with other
9 witnesses, that Detective Merrithew would be able to --
10 would not, would not provide any exculpatory evidence in
11 this case?

12 MS. WILLIAMS: Absolutely, Your Honor.

13 THE COURT: All right. Thank you. And,
14 Ms. Williams, you -- assuming that should the Court rule
15 and deny the request for a continuance, you are well
16 aware that that motion for continuance could be renewed
17 at any point during this trial, especially at the close
18 of the state's case, and at that point if the Court
19 feels that you have not met your burden and the Court
20 grants the renewed motion for a continuance, assuming it
21 is not granted at this time, that jeopardy could attach
22 at that time and thus precluding this case to go forward
23 again?

24 MS. WILLIAMS: Yes, we understand that, Your
25 Honor.

1 THE COURT: All right. Ms. Kennedy, I have
2 reviewed the memorandum in support. I have reviewed the
3 cases that you have presented. I will be happy to hear
4 from you again regarding your motion for a continuance.

5 And, first of all, I'd like for you to
6 address if there is any new information that the Court
7 -- that has occurred or due to your preparation in this
8 case if there's anything new that you have made a
9 determination regarding that was not presented in the
10 last argument.

11 MS. KENNEDY: Yes, Your Honor. And I
12 appreciate the Court's patience, but -- and I have
13 prepared my presentation consistent with an outline that
14 addresses -- beginning with the outline, that addresses
15 the issues that were raised in the -- in the response
16 that the state filed, and then I would be prepared to go
17 forward with the due process issues and the
18 confrontation issues that weren't addressed by -- in the
19 Court's order, with all due respect to your prior
20 findings, Your Honor.

21 THE COURT: All right.

22 MS. KENNEDY: Thank you, Your Honor.

23 Before we start, what I would respectfully
24 request is that the Court grant a motion based on my
25 argument to preclude any further investigation of this

1 case by the Solicitor's Office and/or any of its agents,
2 to include the investigators employed by the Solicitor's
3 Office and also the folks in the Berkeley County
4 Sheriff's Office.

5 This motion requires me, in effect, to lay
6 out my defense in anticipation -- so that the Court will
7 understand and know the reason that I consider Detective
8 Merrithew material. So I just would like to shut it
9 down right now and have the Court rule that they can't
10 use any of the information that I'm using in my argument
11 to further beef up their case.

12 THE COURT: Ms. Williams, your response to
13 that request?

14 MS. WILLIAMS: We are here the day of trial.
15 I don't know of any rule that would preclude either
16 party from exercising due diligence in advocating the
17 state's case or the defense's case.

18 I don't know of any rule of law that would
19 allow her to -- would allow defense counsel to prevent
20 us from preparing for trial. It would be like if we
21 gave her a witness list, it would be like I'm saying,
22 oh, you've got our witness list now, that gives you an
23 in to our strategy, so you can't call any of our
24 witnesses.

25 You know, we're not in an investigative mode

1 right now, but I can't imagine what she would say that
2 would make that happen, but I'm a little reluctant to
3 say that we're going to stop preparing for trial just
4 because Ms. Kennedy is arguing a continuance motion. So
5 I don't think we agree to that. If there is some case
6 law or some kind of rule that she knows of, I would like
7 to understand what it is.

8 THE COURT: What I heard Ms. Kennedy, what
9 her concern is, that she is going to reveal a
10 substantial portion of her trial strategy in order to --
11 in order for the Court to understand what Detective
12 Merrithew's materiality is with respect to this, and
13 that based upon that, she is requesting that they won't
14 backtrack, I'm assuming, and fill in the gaps, were
15 there to be any, of Detective Merrithew's testimony.

16 Did I accurately state your position?

17 MS. KENNEDY: Yes. Yes, Your Honor. Because
18 the rule and the case law requires that I establish my
19 case through materiality, and my position simply is
20 this. Given one portion of it, given the inadequacies
21 of the investigation, that those would be the things
22 that I could attack Detective Merrithew on, and those
23 are also the things that would alert the state to what I
24 regard as significant potential weaknesses in the
25 strength of their evidence.

1 THE COURT: Any response to that,
2 Ms. Williams?

3 MS. WILLIAMS: Your Honor, the evidence is
4 what it is. There's no witness who's going to change
5 their story because of anything Ms. Kennedy says. If
6 something were to come up during direct examination,
7 cross-examination, redirect during the trial, we would
8 have the right to then investigate matters to
9 rehabilitate witnesses or to cross-examine witnesses.

10 We will follow all the rules of evidence and
11 all the rules of criminal procedure and any rule that
12 this Court imposes upon us, but I'm just -- that sounds
13 like a very blanket rule, and I'm not sure I understand
14 what the basis is, because we're going to be revealing
15 things, too, when we argue our motion. It's the day of
16 trial, the facts are going to unfold, and I think each
17 party has a right to continue to exercise due diligence
18 to prepare for trial.

19 THE COURT: Your response to that,
20 Ms. Kennedy, and any case law or anything that ---

21 MS. KENNEDY: Your Honor, I'll be candid with
22 the Court, I have no -- no case law because this is a
23 situation of -- of first impression based on my review
24 of Supreme Court cases and also South Carolina cases.

25 The assistant solicitor is absolutely

1 correct; we are here on the day of trial. Her case has
2 already been prepared. She has structured her case
3 around the witnesses she intends to present. I just got
4 a witness list this morning. I was just advised this
5 morning that -- of the state's intention to sever these
6 cases. And that tells me that they have their case in
7 place. They are prepared to go forward on what their
8 theory of the case is.

9 I just don't want -- in order to protect my
10 client's rights, I don't want us to be in a position at
11 some point where I am revealing, which I have to do for
12 purposes of this motion, my theory of the case, and then
13 based on my representations today, they then are allowed
14 to reopen their investigation and fill in, as you say,
15 the gaps in their case, which only strengthens their
16 case and undermines my ability to present my -- my
17 defense for my client.

18 There's no rule there. It's just simple
19 common sense, given where we are and the posture of the
20 case that the state has put us in this morning.

21 THE COURT: Ms. Kennedy, I hear what you're
22 saying, but without case law to -- to define this
23 argument for the Court, I am denying a blanket request.
24 The rule of discovery is ongoing. You will be given --
25 even if I grant your request for a continuance at this

1 point in time, it's not going to make -- make a
2 difference at that point. And then if I do not grant
3 your request for a continuance, you would have the
4 opportunity to examine and cross-examine and make a
5 motion to exclude any new -- newly discovered evidence
6 that has been given to you.

7 MS. KENNEDY: Your Honor, I understand your
8 ruling. May I respectfully request that I be allowed to
9 renew that, my motion, or address some of those issues
10 that the Court is raising or the assistant solicitor is
11 raising at the end of my argument?

12 THE COURT: Yes, ma'am.

13 MS. KENNEDY: Thank you. The other, just two
14 housekeeping matters, Your Honor...

15 THE COURT: Yes, ma'am.

16 MS. KENNEDY: --- before I start the
17 substance of argument.

18 We met in chambers this morning to discuss
19 the process of the trial. During the course of that,
20 that meeting, I advised the Court that I had not been
21 provided certain discovery materials. One of them, the
22 main one is a document entitled South Carolina Law
23 Enforcement Division Polygraph Report. It was a
24 post-polygraph report given to -- given to the
25 prosecution. It was a polygraph examination done on one

1 Jeremiah Scharer, S-C-H-A-R-E-R. I did -- I advised the
2 Court I did receive the preliminary field polygraph
3 report, but the subsequent post-interview report I did
4 not receive in my discovery materials.

5 And I would advise the Court that I was, in
6 speaking with -- with Ms. Melissa Gay who represents
7 Trey Feaster in this matter, she made me aware of it
8 yesterday afternoon in a conversation that she and I
9 had.

10 I have looked at my discovery materials
11 again. I did not receive this from the Solicitor's
12 Office.

13 THE COURT: And have you had an opportunity
14 after our pretrial conference to obtain a copy of that
15 information?

16 MS. KENNEDY: Yes, Your Honor, I did. I did.

17 THE COURT: And based upon that, do you feel
18 that the state intentionally was attempting to deprive
19 the defendant of that material?

20 MS. KENNEDY: No, Your Honor. I can't make
21 that assertion whatsoever, and I do not attempt to.

22 THE COURT: And, Ms. Kennedy, what -- are you
23 asking for any relief?

24 MS. KENNEDY: This is for purposes of the
25 record, Your Honor.

1 THE COURT: Yes, ma'am.

2 MS. KENNEDY: Based on the evolution of this
3 case, because we've gone from my understanding that
4 certain witnesses would be called, and they are not
5 being called. We've gone through the state's continuous
6 opposition to our motion for severance based on *Brewton*
7 issues and some -- a number of others, but that that was
8 subsequently changed at the last moment. I'm just doing
9 that to preserve the record so that there won't be any
10 more additional surprises.

11 THE COURT: And you are not requesting any
12 additional relief?

13 MS. KENNEDY: Not at this time, Your Honor.

14 THE COURT: Thank you.

15 MS. KENNEDY: Thank you.

16 THE COURT: Any other housekeeping matters?

17 MS. KENNEDY: Yes, Your Honor. I would
18 respectfully request that you place me under oath for
19 purposes of the Rule 7(a) and (b), materiality issue.

20 THE COURT: All right. And, Ms. Kennedy, do
21 you believe that I must swear you in, or is it the --
22 the very fact that you are an officer of the Court and
23 have submitted affidavits, do you not believe that is
24 sufficient?

25 MS. KENNEDY: No. I would, ordinarily, Your

1 Honor, but that's been one of the constant arguments
2 against -- against my motion and certain assertions that
3 were made regarding the first motion for continuance.

4 My understanding is under *State vs. Smith*
5 that was tried in this courtroom, and the Court of
6 Appeals case 4662 SCCA, South Carolina Court of Appeals,
7 it requires that I be placed under oath. The motion --
8 that case specifically says that the motion for
9 continuance is being denied because there was no
10 testimony under oath about the continuance and also
11 because -- it wasn't done under oath.

12 THE COURT: Ms. Kennedy, that was *State*
13 *v. Schmidt or Smith*?

14 MS. KENNEDY: Smith, Your Honor. It's *State*
15 *vs. Marquita Smith*, M-A-R-Q-U-I-T-A. I'm sorry, Your
16 Honor, I just have the advance sheet, Court of Appeals,
17 number 4662.

18 THE COURT: And that was Judge Jefferson's
19 case. Is that correct?

20 MS. KENNEDY: Yes. Yes, Your Honor. And it
21 specifically states: No motion for a continuance of
22 trial shall be granted on account of a witness's absence
23 without the oath of the party, his counsel, or agent to
24 the following effect: the testimony of the witness is
25 material to the support of the action or defense of the

1 moving party; the motion is not intended for delay, but
2 is made solely because he cannot go safely to trial
3 without such testimony; and has made use of due
4 diligence to procure the testimony of the witness or
5 such other circumstances as will satisfy the court that
6 the motion was not intended for delay.

7 THE COURT: Ms. Williams, is it just -- is it
8 your understanding that I must place Ms. Kennedy or is
9 your belief that -- that I must place her under oath?

10 MS. WILLIAMS: No, Your Honor. I think the
11 fact that it's on the record, she's an officer of the
12 Court, and we've never -- the only time that we've ever
13 taken issue with a 7(a) or (b) issue is when there was a
14 conference in chambers with a different judge, not Your
15 Honor, and we asked that it be put on the record.

16 We would stipulate that if she as an officer
17 of the Court makes her argument on the record that that
18 would satisfy 7(b).

19 THE COURT: Ms. Kennedy, I agree that since
20 you are an officer of the Court and you are making your
21 motion, additionally that you have provided an affidavit
22 detailing certain issues and the time line concerning
23 this case, I am not going to place you under oath. I
24 believe that the fact that you are an officer of this
25 Court that one could make the assertion that is

1 sufficient enough for the purposes of a motion for a
2 continuance.

3 MS. KENNEDY: Thank you, Your Honor.

4 THE COURT: Thank you.

5 MS. KENNEDY: Just trying to preserve the
6 record.

7 THE COURT: Yes, ma'am.

8 MS. KENNEDY: All right. Your Honor, as the
9 Court is well aware, this is the -- the initial motion
10 for continuance was filed as a Rule 7(a), pursuant to
11 Rule 7(a) of the South Carolina Rules of Criminal
12 Procedure. There was, as Ms. Williams asserted, an
13 in-chambers conference that was done off the record
14 because it was done the Wednesday before Thanksgiving
15 and there was no court reporter present.

16 The rule requires, which I have complied
17 with, that the -- that an order issued shall be in
18 writing, and that I was required, which apparently Judge
19 Young or Markley Dennis were satisfied -- shall be made
20 in writing, shall be made only upon a showing of good
21 and sufficient legal cause, and shall be filed forthwith
22 the clerk of court.

23 I submitted a proposed order because the
24 whole issue in that case initially or the motion was the
25 unavailability of Detective Gerald Merrithew for

1 purposes of the trial that was supposed to be called on
2 Monday, November 30th.

3 I realize, again according to the rule, that
4 the motion for continuance cannot be extended beyond the
5 next term of court without the approval of the chief
6 administrative judge, which obviously at that point in
7 time...

8 THE COURT: It was Judge Dennis.

9 MS. KENNEDY: Was Judge Dennis, yes, Your
10 Honor. But they didn't put it back on the trial docket
11 until you assumed the bench or the administrative --
12 your term as chief administrative judge.

13 There are a number of assertions in
14 Ms. Williams' response to -- to my motion which I'll
15 just go through one by one.

16 As indicated, she took issue that the -- that
17 the hearing was not on the record. I explained to the
18 Court that ---

19 THE COURT: Ms. Kennedy, I'm going to
20 interrupt you just for a variety of reasons.

21 MS. KENNEDY: Okay.

22 THE COURT: Do we need to rehash the previous
23 motion for a continuance? Because this Court is
24 treating this motion for continuance, because we are
25 here today, and I am going to treat your motion for

1 continuance -- you may, of course, reference any of the
2 others, but I'm going to treat it as a motion for a
3 continuance. So I don't -- I do not know that I need to
4 hear all the particulars of the previous motion for a
5 continuance.

6 MS. KENNEDY: Your Honor, I'm not doing that.
7 I've simply gone through Ms. Williams' -- the assistant
8 solicitor's response to my motion and which was filed on
9 June the 24th which addresses the state's issues. And I
10 apologize to the Court because it has to necessarily
11 incorporate some prior matters that were heard, but this
12 is what was filed last Friday.

13 She refers to it as a meeting with Judge
14 Dennis. It says Judge Dennis continued the case for the
15 November 30th term and suggested that I contact Witness
16 Merrithew about a possible deposition. And at some
17 point contact information was given to me so that on
18 January of 2010, again after the conclusion of Judge
19 Dennis' administrative term, so that I could do that.

20 Your Honor, I have in my research, and I've
21 provided cases to Your Honor and to the solicitor, I
22 know of no method, either by videotape or affidavit,
23 that I could use to secure the testimony of Detective
24 Merrithew.

25 South Carolina law allows for the videotaping

1 of certain witnesses under certain circumstances, and
2 it's limited to children, and that is done for obvious
3 reasons. The case law dating back to I think 1952, Your
4 Honor, asserts that there is a -- that videos -- I mean,
5 that affidavits are inadmissible in a criminal trial.
6 So the suggestion that I have some way to secure
7 Detective Merrithew's testimony by videotaping is
8 contrary to the law.

9 In addition to which, Your Honor, even though
10 South Carolina has adopted the -- what is called the --
11 Court's indulgence -- Uniform Act to Secure the
12 Attendance of Witnesses from Without a State in Criminal
13 Proceedings, and I apologize to the Court I don't have
14 the cite for that, it obviously relates only to a
15 witness who is outside of the confines of the United
16 States. It has no accessibility to a person who is
17 outside of this country. I have no method of compulsory
18 process to have Detective -- or secure Detective
19 Merrithew's presence.

20 As Your Honor knows, the state under the
21 guise of having a meeting with you to -- with the Court
22 to address issues in cases that were related to and just
23 ultimate disposition of Detective Merrithew's cases, we
24 were in chambers with Your Honor and with Leigh Hunter
25 who at that point in time was representing Jason

1 Maxwell. The ostensible reason for us to be able to
2 meet with you was to discuss what cases and how to
3 handle Detective Merrithew's absence. It was in that
4 chambers conference that Assistant Solicitor Williams
5 asserted that they don't have any intention of using him
6 as a witness.

7 I would advise the Court that my client was
8 arrested on August the 7th of 2007. We are now almost
9 to August of 2010. Allowing for the fact that there
10 were only -- that when this case first came in to the
11 Solicitor's Office, there were like four months,
12 discounting the four months from August through December
13 which I would concede there's obviously no opportunity
14 to prepare to get this case for trial. In the terms of
15 the years 2008 and 2009, there were over 30 terms of
16 court during which this case could have been called
17 during which Detective Merrithew was present and
18 available to me for compulsory process.

19 And it was only after -- and I only quite
20 found out by happenstance that Detective Merrithew was
21 unavailable. It was only after he had effectively
22 removed himself from the jurisdiction of the court that
23 this case was actually placed on final notice for trial.

24 Prior to that, I had received a number of
25 notices and with the standard "if the case is not

1 reached during this term of court, it will be carried
2 over to the next term of court."

3 So there were like two or three terms of
4 court during which and from October to the time when
5 Detective Merrithew left, my understanding, in November,
6 that this case could have been called for trial.

7 THE COURT: He left in November of '08 or
8 '09?

9 MS. KENNEDY: '09, Your Honor, '09. He left
10 in December of '09.

11 And we -- and if that happened, we would not
12 be in -- in the position that we are today. There are
13 -- so, Your Honor, that addresses the procedural issues.

14 The materiality, the materiality issues are
15 simply this. Detective Merrithew was the lead
16 investigator in the case. He assumed control over it,
17 authority over it, whatever, in August of -- sometime in
18 2006.

19 In August of 2007, Katherine Feaster, a
20 defendant, a codefendant in this case, was initially
21 brought into custody based on Detective Merrithew's
22 investigation for receiving stolen goods.

23 THE COURT: Hold on one second.

24 If you wish to hear, if you can't hear,
25 please move up instead of leaning over the -- over the

1 bench. Y'all are free to move up a couple of seats if
2 you'd like to. Thank you.

3 (Said persons in the audience comply.)

4 MS. KENNEDY: Your Honor, so, and this -- and
5 this is the sequence of the investigation. Detective
6 Merrithew testified at the preliminary hearing that he
7 was given a list of people to -- got a list of people
8 from Ms. Frances Reeves, who is the decedent's mother,
9 about people who were in the area at the time. He used
10 that list to develop leads.

11 I have a right, I believe, under cross to
12 examine him on that issue, because there's been --
13 there's no list been provided to me, because it goes to
14 -- it goes to the issue of how my client was developed
15 as a suspect.

16 In addition to that, Detective Merrithew
17 testified that they did additional follow-up stuff after
18 Ms. Feaster was in custody, but there's no information
19 about what that follow-up stuff is.

20 The problem with that is, with it is, Your
21 Honor, simply that Katherine Feaster was arrested when
22 they went to -- Detective Merrithew and Sergeant Diane
23 Freeman went to Pelzer and picked her up based on
24 information and matching of pawnshop records about some
25 jewelry that was allegedly stolen from Mr. Reeves. He

1 developed her as a suspect. He brought her in.

2 What the evidence would show, Your Honor, is
3 that they went to -- they went to Pelzer and picked her
4 up. I would concede that police officers can drive
5 their cars very fast, but it's at least a
6 three-and-a-half hour drive from -- from Pelzer back to
7 Moncks Corner. During that time, the whole time,
8 Ms. Feaster was in the custody of Diane Freeman and
9 Detective Merrithew.

10 There is a written -- there is a written
11 statement that was purportedly taken at 2:30 in the
12 afternoon. That statement was -- if you leave Pelzer at
13 twelve o'clock, the way Detective Merrithew testified in
14 the preliminary hearing, it is impossible to get down to
15 Moncks Corner to the Berkeley County detective unit
16 office and have a written statement in hand at 2:30.

17 That statement was completed, completed and
18 written, and there is a videotape after that where
19 Detective Merrithew is seen questioning Katherine
20 Feaster, saying I just want to brush up on a few of the
21 things that you said in your statement.

22 Thereafter, the codefendant, another
23 codefendant who is Ms. Feaster's brother, Jeremiah
24 Scharer, came to the detective office I assume some time
25 around one o'clock in the morning that same or following

1 the next morning. He is brought into the detective
2 office. He is -- there is a videotaped statement,
3 confession, whatever, and then there is -- and he then
4 at some point, and I don't know when, gives a written
5 statement. Well, when in relation to the written
6 statement was it done, to the video, to the videotaped
7 statement? The tape merely stopped. He asked could he
8 go out and get a cigarette, and then it just -- it
9 stopped. So I have no idea what information was
10 garnered then in terms of Mr. Scharer.

11 Moving on to ---

12 THE COURT: Do you plan to introduce those,
13 the videos?

14 MS. WILLIAMS: Your Honor, I don't think
15 Ms. Kennedy nor I can introduce hearsay from other
16 people that were interviewed. So, no.

17 Jeremiah Scharer is one of the witnesses on
18 the state's list. He is going to testify, as is Diane
19 Freeman who was in the interview room. Mark Mason who
20 interviewed Jeremiah Scharer is available and has been
21 available to Ms. Kennedy. So, you know, those people
22 are all available for her to question at whatever length
23 that she needs to do that.

24 THE COURT: But at this time, for whatever
25 reason, you do not plan to introduce those videotapes?

1 MS. WILLIAMS: I don't think that -- we
2 can't. The rules of evidence would prevent us from ---

3 THE COURT: All right. Thank you.

4 MS. WILLIAMS: --- from introducing other
5 witnesses' statements, especially people that have a
6 Fifth Amendment right.

7 THE COURT: Ms. Kennedy, was the fact -- is
8 it pretty much the existence of the videotapes that
9 you're -- what is the reason that you believe Detective
10 Merrithew...

11 MS. KENNEDY: Well, Your Honor, if I can
12 finish, I'll address it in terms of the statement.

13 At around -- moving into the next day,
14 Mr. Feaster, Treze Feaster, apparently drove down from
15 Pelzer at some point, and he was -- he gave a statement.
16 He gave -- his initial statement was on video.

17 And -- and I will concede for purposes of my
18 argument at this point in time, given the state's
19 position about severance issues, it causes some
20 difficulty, but I just want the Court to understand my
21 position in terms of Detective Merrithew.

22 Mr. Feaster was interviewed extensively, and
23 then Detective Merrithew says: We want you to write
24 this all down.

25 Mr. Feaster then replies: Well, you know

1 better than I do what needs to be put in there, so why
2 don't you do it for me.

3 All right. And so by this point in time all
4 of these folks are in custody.

5 Now, Detective Merrithew testified in
6 response to a question that I had for him at the
7 preliminary hearing: Did y'all discuss the case and the
8 particulars on the ride down?

9 "Yes. We've already addressed that."

10 And then I asked him whether or not there had
11 been an opportunity -- because with each successive
12 witness or defendant, with Ms. Feaster, Mr. Feaster, and
13 Mr. Scharer, they then get to my client last.

14 And my client is the only one who is not
15 related to the victim. My client is the only one who
16 doesn't have any issue with the victim. My client
17 didn't even know him before this incident occurred.

18 So then what happens is, so I asked Detective
19 Merrithew: Was there any opportunity whatsoever for
20 these three people to get together and, you know, come
21 up with a story?

22 He said: Absolutely not.

23 Your Honor, the state has provided me with
24 the videotapes of -- I mean, audiotapes of conversations
25 at the jail that -- that clearly show otherwise, because

1 Katherine Feaster says in one of those tapes that had
2 she known that they were going to be doing this to them,
3 she wouldn't have given them the information about how
4 to get in touch with Mr. Feaster or her brother, she
5 wouldn't have told them anything, she wouldn't have done
6 any of those things. All right?

7 So where we end up is we have three people,
8 as I said, who are all pointing the finger at my client.

9 I assume that the state is trying to say, you
10 know -- because my client denies shooting Mr. Reeves.
11 Now, Mr. Feaster and Mr. Scharer both say that he did.
12 And Ms. Feaster says, well, I was told about it later.

13 The problem is that in those audio -- I mean,
14 the written statements and the videotaped statements,
15 there are certain details which goes to my motion to
16 preclude any further investigation.

17 Detective Merrithew was told that -- that my
18 client wanted to shoot Mr. Reeves because his
19 grandmother died that day and he just felt like killing
20 somebody. Then there was a suggestion by Mr. Scharer at
21 some point that everybody was doing -- you know,
22 everybody was getting high and smoking dope and that
23 that was the explanation. And there is information that
24 -- that Mr. Michaelson's grandmother died that day and
25 he was upset about his grandmother being dead and so he

1 just felt like shooting somebody.

2 My investigation of this matter would show
3 that his grandmother had been dead a little while before
4 this. And I think I would have the right to ask
5 Detective Merrithew a list of things. I'd like to ask
6 Detective Merrithew why that lead wasn't followed up on.

7 In addition to which there was information
8 given that the Feasters', Katherine Feaster's and
9 Jeremiah Scharer's, maternal aunt had also died when all
10 this stuff was going on, that that is -- my
11 investigation would show that that was otherwise.

12 All the information that -- that there are
13 significant, significant discrepancies, and, again,
14 information offered by all of these witnesses.

15 Your Honor, I have had the tapes reviewed and
16 the written statements reviewed by a police officer with
17 a number of years of experience who advises me that
18 there are certain investigative issues that should have
19 been addressed that were not addressed that go to the
20 heart of my defense, because I think I'm entitled to
21 argue and develop a theory of accessory after the fact.
22 I cannot do that without Detective Merrithew's
23 testimony.

24 The state has argued that they can introduce
25 all of this evidence through other people. Well, that's

1 all well and good, but it completely ignores my right
2 and, quite frankly, my obligation to introduce witnesses
3 or introduce evidence that's contrary to that.

4 The art of cross-examination is through
5 leading questions, and so as these issues, a witness is
6 put up and I have the right to cross-examine that
7 witness. And, again, with all deference to the Court's
8 prior ruling, it ignores the fact that I have a right in
9 my case in chief to call adverse witnesses and examine
10 them the same way. Adverse witnesses, hostile
11 witnesses, whatever the Court wants to -- however the
12 Court wants to label them, they are all -- it is proper
13 procedure, and to deny me the opportunity to have
14 Detective Merrithew here denies me the opportunity to
15 present my defense.

16 I have, in my view, based on my -- my reading
17 of the case and my understanding of the evidence and my
18 prior investigation, I have the right to argue mere
19 presence is not enough.

20 And if all we're going to do is allow
21 Detective Freeman and Detective Crumley and, you know,
22 Detective Mason and whoever to come in here and say, oh,
23 yeah, all these statements were taken in conformity with
24 Miranda and then all these things are okay because they
25 can introduce them now, I have no ability to challenge

1 that, and I have a responsibility to my client to do
2 that.

3 The Solicitor's Office controls ---

4 THE COURT: How would you not have an ability
5 to challenge ---

6 MS. KENNEDY: Because Detective Merrithew --
7 I'm sorry, Your Honor.

8 THE COURT: If it were -- because what I'm
9 hearing, and maybe I'm -- this is where I've missed
10 something, if there was always a witness to the
11 advisement of rights and to the taking of the statement
12 or the videotaping of the statement and it was always
13 Detective Merrithew and another individual, how can you
14 not cross-examine those witnesses on the advisement of
15 rights and those issues?

16 MS. KENNEDY: Your Honor, that's not my
17 issue. That's not my issue. My issue is that the --
18 Gerald Merrithew was the lead detective in the case.
19 All right? I have a right under hostile examination to
20 present my case in chief. That includes my ability to
21 question him.

22 In terms of the videotapes, Katherine Feaster
23 is being, you know, cajoled, and, you know, let's -- I
24 just want to ask a few more things. You know, it's very
25 nice, very warm, and very folksy. And Your Honor is

1 familiar with Detective Merrithew, so you know how that
2 that's done. The same -- the same applies to the
3 interrogation of Jeremiah Scharer that's on the
4 videotape. The same applies, but -- but not as
5 strongly, to the videotape of -- statement given by
6 Mr. Feaster.

7 What then happens is, because my client is
8 the last one arrested, there is a significant change or
9 tone in the demeanor in which Detective Merrithew
10 attacks my client. And, literally, that's what it is.
11 He confronts him with, you know, we know this, this,
12 this, and this, and, you know, you better tell us about
13 it or -- or whatever. All right?

14 And the -- so that it's my contention that
15 given the evolution of the way the witnesses were
16 arrested and the witness statements and the audio
17 statements that he decided at some point that my client
18 was the most culpable. I have a right to explore how
19 that decision came to be made. I have a right to
20 explore the methodology of his investigation because,
21 quite frankly, Your Honor, there really hasn't been.

22 The other, another issue that came up at the
23 preliminary hearing ---

24 THE COURT: Ms. Kennedy, let me ask you.

25 MS. KENNEDY: Yes.

1 THE COURT: Is it your position, Ms. Kennedy
2 -- because my experience with lead detectives has run
3 the gamut of a lead detective may be the only one that
4 signs the warrant or is the name that appears on the
5 indictment or to where the lead detective is the only
6 person who is doing the investigation. Is it your
7 position that he falls in the former or the latter, or
8 does it make a difference in the Court's ruling?

9 MS. KENNEDY: Your Honor, my position is
10 this. Detective Merrithew was the lead detective. He
11 was the one that did all investigation. And even, if
12 you recall at our prior -- prior hearing, Frances Reeves
13 asserted to Your Honor in response to some issues raised
14 with a bond for Mr. Scharer that Gerry was the only --
15 that nobody was doing anything until Gerry got the case.

16 So there was a whole year of investigation,
17 and, Your Honor, which culminated in my client's arrest,
18 but never any investigation of the issues and the
19 discrepancies in the -- in the testimony that was
20 provided by the three defendants who had an opportunity
21 to give statements prior to the time that my client came
22 in.

23 There are other issues in terms of the
24 evidence, Your Honor. Detective Merrithew testified
25 that one of the issues in this case is who rented a

1 backhoe to -- to dig the hole in which -- at which point
2 the burn barrel got buried. And he testified at the
3 preliminary hearing that he believed that that bush --
4 bush hog was rented by Mr. Feaster and that they were
5 doing a follow-up investigation about that, and he
6 believed he had some documentation, and to date no such
7 documentation has been -- has been provided to me.

8 Now, that's a critical issue because the body
9 was buried a couple of days later. The body was placed
10 in a -- on some property that Mr. Feaster was living on
11 one part of it and my client was living in another part
12 of it, and so it -- it allowed the other three
13 codefendants to assert, well, it was buried in his yard
14 and somehow, which the state could logically do, draw an
15 inference that my client, again, was the one most
16 culpable because the body was in his -- his yard.

17 Now, I have -- again, I have the right to --
18 and it's not an issue of whether or not the statements
19 come in. I have a right to examine Detective Merrithew
20 on the process of the investigation, the inadequacies of
21 the investigation, quite frankly, the misinformation
22 that -- that has arisen as a result of the preliminary
23 hearing. I have a right to cross-examine him. I have
24 -- I mean, it's -- it's compelling that I have a right
25 to do that. I can't develop my case and my theory of

1 the case, and it inhibits me substantially from being
2 able to present a defense.

3 Otherwise, I'm just going to have to simply
4 say, okay, well, yeah, you've given a statement, you
5 have this person come in, you have that -- I can't -- no
6 one, Detective Mason, Detective Crumley, Detective
7 Freeman, asked any questions during the interrogation of
8 -- of these people.

9 Now, at the end of my client's statement
10 Detective Freeman says, well, you might want to put in,
11 you know, the part about so and so, in his written
12 statement, you might want to add that.

13 And Detective Merrithew leaves the room while
14 my client is writing out his -- his statement. When
15 Detective Merrithew comes back in and he's reading it to
16 -- just so he understands it, and he says something
17 like, hey, why don't -- let me make sure you've got
18 everything down here. And then he leaves, he leaves the
19 room again, and Detective Freeman says be sure to add
20 all those things. So when Detective Merrithew ---

21 THE COURT: And can you see that on the
22 video?

23 MS. KENNEDY: Yes, Your Honor, you certainly
24 can. You can hear Detective Freeman saying, well, you
25 need to add this part and you need to add that part, and

1 then he does it. So when Detective Merrithew comes back
2 in, Detective Merrithew -- she says, well, I told him he
3 needs to add all this stuff. And Detective Merrithew
4 goes, oh, yeah, yeah, that's a really good idea.

5 THE COURT: Well, in that videotape, since
6 the video -- wouldn't Detective Freeman be able to
7 testify as to the methodology and strategy of the
8 investigation?

9 MS. KENNEDY: No, Your Honor. It is simply a
10 follow up to, in my view, what the -- what the tape
11 shows is a follow up to remind my client that he should
12 put certain -- and even Detective Merrithew said, oh,
13 you might want to put the part in about you being
14 threatened by Trey Feaster. Okay? So I have the right,
15 I need the ability, to attack that investigation.
16 Otherwise, I can't develop my defense.

17 When this case started with the Assistant
18 Solicitor Jennifer Porter who had the case, she had
19 approached me when my client was scheduled to be
20 debriefed in July of '08 about my client providing
21 information to the state to testify against his
22 codefendants. Then what happened is we changed horses,
23 it went in a completely different direction, and we are
24 here now where my client is now being the principal one
25 charged and the state has made the decision not to -- to

1 try him and not to try the other three people because,
2 quite frankly, they've been in jail for almost three
3 years. My client's been out.

4 And I have an absolute right under the
5 compulsory process, due process, Sixth Amendment
6 confrontation. All of those things are -- those are
7 essential to my defense. And they, the state, can
8 assert all it wants to that they have -- that because
9 other people are there then they -- then all this
10 evidence comes in.

11 A couple of last points, Your Honor.

12 There were other -- there was a search
13 warrant done on my client's storage shed. All right?
14 That search warrant was done, I believe, by Detective
15 Crumley. That was done under the directive of Detective
16 Merrithew.

17 At some point, I think in October of 2009, a
18 decision was made to dredge the Tailrace Canal because
19 my client says, you know, the gun was thrown into the
20 Tailrace Canal. And the decision was made then to
21 dredge the canal. That is information that my client
22 gave to them on August the 7th, 2007, when he was
23 arrested. And I have a right to ask him why it wasn't
24 done then. And clearly in discovery, the discovery
25 clearly states that upon the directive, that upon -- and

1 it didn't use the word "directive," but upon the
2 directive of Detective Merrithew and Assistant Solicitor
3 Mikell Henderson this is what we did.

4 Your Honor, the state gets to control the
5 docket and the trial of these cases. They get to
6 control discovery. They get to control, as this
7 morning, which -- which case gets to be tried. They get
8 to put -- wait till the last minute to give me a witness
9 list. And now they're trying to say that they can
10 dictate what witnesses I can call, what theory of the
11 case I can develop, because they don't intend to use
12 Detective Merrithew. It's got nothing to do with the --
13 it's got everything to do with the -- with the course of
14 the investigation and the way Detective Merrithew
15 handled it and the way -- and the way that -- that it
16 was done.

17 A trial is a search for the truth.
18 Fundamentally, it is a search for the truth. They get
19 to put up their facts; I get to put up mine.

20 THE COURT: But in no way, Ms. Kennedy, has
21 my ruling on the motion for continuance indicated that
22 you may not call Detective Merrithew.

23 MS. KENNEDY: Your Honor, I was ---

24 THE COURT: But the point is, the outcome of
25 the motion for continuance is that you're not going to

1 be able to call him because he in essence -- what I'm
2 hearing is neither you nor the state has the ability to
3 bring him back from Afghanistan. But in no way have I
4 said to you and your client that Detective Merrithew's
5 testimony is precluded in any way, but it -- and it may
6 be six of one, a half dozen of the other, because the
7 outcome is the same, but the issue is that Detective
8 Merrithew is not here.

9 And so what I need, basically, in ruling on
10 your motion, whether or not to grant your motion for
11 continuance, is whether or not his testimony is so
12 material to your client's defense that justice would not
13 be done if we went forward here today. Do you agree
14 with that, Ms. Kennedy?

15 MS. KENNEDY: Yes, Your Honor, I agree with
16 the Court's analysis, and that -- but that analysis has
17 to take into consideration my ability to call witnesses
18 in my case in chief. And Detective Merrithew is the
19 witness in my case in chief, and I need to have the
20 ability to have him -- there are other ways, quite
21 frankly. There other ways to dispose of this case.
22 Other ways, all right? And I shouldn't be penalized
23 because the state let -- let it languish for two, almost
24 three years and Detective Merrithew leaves, because I --
25 had he been here, we wouldn't be having this issue. I

1 would have been able to call him. I would have been
2 able to develop my theory of the case. I simply cannot
3 do that. It would be simply unsatisfactory and, quite
4 frankly, contrary to the constitution of the United
5 States of America and South Carolina to say otherwise.
6 I am being deprived of an opportunity to have -- to
7 present a defense.

8 Now, I will say, in a chambers conference
9 Judge Dennis clearly said to Deputy Solicitor Alfaro it
10 is clear that Detective Merrithew is under your control,
11 and it was at that point in time that he suggested the
12 videotape or the affidavits or whatever. He also said
13 to the deputy solicitor -- and Mr. Schwacke was present
14 for that -- he also said get in touch with him, find out
15 when he can come back. None of that's been done. The
16 burden is not on me to get him here under these
17 circumstances.

18 Now, I will agree with you and the case law
19 supports the fact that had I -- had I tried to issue a
20 subpoena for a witness and that witness didn't appear or
21 had I -- and the Court could issue a bench warrant or
22 the Court could require compulsory process. That's
23 fine. If Detective Merrithew had been in some other
24 state, I would have done whatever I needed to do to get
25 him. The fact of the matter is: There is no way under

1 these circumstances that I can get him here.

2 My understanding is that he -- because, Your
3 Honor, and I'll remind the Court that, again, back to
4 the March 26th chambers conference, the case, as I
5 understood it, was set for April 30th on the premise and
6 the supposition that Detective Merrithew would be
7 present.

8 What then happened is Detective Merrithew
9 blew into town early in March. And, again, I had no
10 notice of that. I only found out about it through --
11 through folks at the jail. If he had been -- he had
12 been in Berkeley County, he had been in at the jail, and
13 I would have had an opportunity at that point in time
14 had I been made aware of it to put him under subpoena.

15 THE COURT: Ms. Kennedy, any indication that
16 -- that the state has played any role in precluding you
17 from allowing Detective Merrithew to testify or issue a
18 subpoena for him?

19 MS. KENNEDY: No, Your Honor. I wouldn't
20 begin to say that, but I find it suspicious that it was
21 put -- that it was put on what I would call the final
22 trial docket for November 30th almost immediately after
23 he left, because it was first noticed for October the
24 12th.

25 But Detective -- and, Your Honor, given your

1 prior experience as an assistant solicitor, particularly
2 in this county, you are more than familiar with
3 Detective Merrithew and -- and the things he does and
4 doesn't do. And my client is entitled to his day in
5 court, my client is entitled to be able to present a
6 defense, and I am representing to the Court that I
7 simply cannot do that and develop my theory of the case
8 absent his presence.

9 The other issue is, and it goes to the heart
10 of the investigation, is that -- that he is the
11 authority figure. He is the one who decides what --
12 what people are charged with based on what he hears. He
13 also is the person who is entitled to treat somebody
14 with leniency, given what he knows.

15 And we end up here today because the state
16 has made a determination that of all the people who are
17 involved in this -- and, again, my client did not know
18 Mr. Reeves. And, in fact, the videotaped statement
19 shows Detective Merrithew handing him pictures of -- you
20 know, the driver's license picture, saying do you know
21 this person? Do you know this person? Do you know this
22 person? He could identify his codefendants. He could
23 not identify Mr. Reeves. Detective Merrithew asked him
24 about three or four times the same thing with the
25 potential witness Sammy Harris.

1 There is nothing that connects -- and my
2 client's also charged with burglary. There is nothing
3 that connects my client to any evidence other than --
4 other than the statement made by the codefendants that
5 -- that he was involved in any kind of burglary.

6 To the contrary, Mr. Feaster in his
7 statement, video statement, says, well, I've been -- I
8 was in that house before. I took the -- you know, I
9 took the -- I took the safe just to show Mr. Reeves that
10 I could do it.

11 There's a suggestion that all of this
12 happened on the same day, that Mr. Scharer -- that they
13 went there to rob him. There's other evidence that
14 shows that, no, they all went back there a couple of
15 days later and that's when all this -- this alleged
16 burglary took place. You know, it's like Groundhog Day
17 all over again. The problem is that I can't -- I mean,
18 and conceivably Detective Merrithew might be -- might be
19 the only witness that I would call, but he is material
20 to the presentation of my case.

21 Now, I will be happy to concede the judge
22 asked us to get in touch with and I spoke with
23 Detective Ollic, major I guess it is now, you know, at
24 the sheriff's office, saying do you have any idea when
25 he's coming back. They had no contact with him either.

1 And for them to give -- for the state to give me an
2 e-mail address so I can say "oh, by the way, Detective
3 Merrithew, when might you be coming back" is totally
4 insufficient.

5 Now, my understanding is, his employment, he
6 can come back here pretty much anytime he wants to.

7 THE COURT: And, Ms. Kennedy, have you
8 availed yourself an e-mail to Detective Merrithew to --
9 to find out when he's coming back?

10 MS. KENNEDY: Your Honor, no, I haven't done
11 an e-mail. We have explored that through other
12 witnesses and other sources and as recently as last
13 Friday, and nobody knows. Nobody knows.

14 My understanding from other people who -- who
15 have that same employment is -- and the process to that
16 is that they can come back pretty much anytime they want
17 to.

18 If he decides -- I mean, we've got another
19 term of court in July. We've got another term in
20 August.

21 I'm happy to do that, but I can't effect
22 compulsory process. I have no ability to serve him with
23 a subpoena or to secure his presence in the courtroom.

24 THE COURT: And do you believe that the state
25 does?

1 MS. KENNEDY: No, Your Honor, I don't. But
2 that's -- that's their issue. I mean, they're stating
3 to the Court that they can get in all their evidence,
4 and that may be true, I don't know, that may be true.
5 But I'm telling you, as an officer of the Court, based
6 on my investigation in this case, based on the case law
7 that I have provided to the Court, that -- that I have a
8 right under the South Carolina constitution and the
9 United States constitution to present my defense, and my
10 first witness would be to call Detective Merrithew. And
11 it is not an attempt to delay or any of those things
12 that are addressed in the rule. The problem is, I have
13 a right to get him here, to have him here. And if they
14 disagree with that, then make a plea offer that's
15 acceptable.

16 THE COURT: Ms. Kennedy, in the compulsory
17 process analysis, isn't it true that you have to show
18 that the state has violated or in some way caused the
19 witness not to be present?

20 MS. KENNEDY: No, Your Honor, not my -- my
21 reading of the case law. I respectfully disagree with
22 that, that assessment. All the cases I have provided to
23 the Court would indicate otherwise.

24 And, Your Honor, it seems that I always have
25 an overreliance on South Carolina case law versus

1 Supreme Court law, but it provides that -- this is the
2 case of *State vs. Schmidt*, S-C-H-M-I-D-T, 288 S.C. 301,
3 342 S.E.2d 401, 1986, and this is -- specifically
4 states: The Sixth Amendment rights to notice,
5 confrontation, and compulsory process guarantee that a
6 criminal charge may be answered through the calling and
7 interrogation of favorable witnesses, cross-examination
8 of adverse witnesses, and the orderly introduction of
9 evidence. These basic rights are principally stated in
10 the due process clause of the Fourteenth Amendment. The
11 amendment essentially constitutionalizes the right to
12 present -- to present a defense in an adversary criminal
13 proceeding.

14 The state is making a presumption of what the
15 strength of my evidence would be, and I have a right at
16 the end of that case to submit evidence or submit
17 testimony that would tend to support my position of what
18 -- in terms of what my client's culpability in this
19 matter is.

20 And I have a right -- again, under that case,
21 it says: Evidence is relevant if it tends -- tends to
22 establish or make more or less probable some matter in
23 issue upon which it directly or indirectly bears. And
24 that is the heart of my defense.

25 THE COURT: But, Ms. Kennedy, the cases that

1 you have cited and submitted to the Court deal -- all of
2 them deal with some issue in which the state caused
3 there to be some exclusion of evidence, that it was the
4 state caused a witness to be unavailable or moved for
5 the witness to be excluded. There's -- do you agree
6 with that, or have I missed the point in those cases, as
7 well, according to you?

8 MS. KENNEDY: Your Honor, I loathe to suggest
9 to the Court that it misread the cases. But the cases,
10 while they are not on point, they deal with matters of
11 discovery and sanctions and exclusions of witnesses.

12 I would draw the Court's attention, first of
13 all, to our second motion for continuance, the case of
14 *Washington vs. State of Texas*, 388 U.S. 14, 88 --
15 87 S. Ct. 1920, and also *United States vs. Foster*
16 which address the issue of compulsory process and my
17 right to present a defense.

18 And I'm not contending that the state has
19 done anything untoward or interfered in any way, you
20 know. My point in referencing the prior procedural
21 issues and when the case was put on the trial docket is
22 that -- that this case is almost three years old, that
23 there was an opportunity when it was only two years old
24 and even before that to -- to have placed it on the
25 trial docket and we would have had Detective Merrithew.

1 Compulsory process allows me, again, Your
2 Honor, to put up a defense. I can call adverse
3 witnesses. I can call hostile witnesses. I can call
4 any witness I want, any witness I want, and the ---

5 THE COURT: And, again, Ms. Kennedy, I agree
6 with you, you may call whomever you wish to call or you
7 may call no one in your defense, and in no way does --
8 should my previous ruling be construed to say that you
9 are not entitled to call Detective Merrithew.

10 The issue before the Court, as I see it here
11 today, the state has indicated that they are prepared to
12 go forward, that there is nothing that Detective
13 Merrithew did alone or that -- that most everything that
14 he did following a certain point was done either by
15 somebody else or alongside someone else. So the issue
16 becomes whether or not Detective Merrithew's presence is
17 -- is so material to your client's defense if we must go
18 forward today.

19 MS. KENNEDY: Yes, Your Honor.

20 THE COURT: And so I want you to be clear. I
21 hear your constitutional argument, and I agree that you
22 have the right to call Detective Merrithew, that you are
23 given the right to call him. The issue then becomes
24 whether or not we're going to go forward today and how
25 material that right is to your client's defense.

1 MS. KENNEDY: Well, Your Honor, with all due
2 respect, I think the Court is confusing my right to call
3 the witness versus what the materiality issue is, but I
4 -- I do not have to -- my evidence is my evidence. They
5 can -- their evidence is their evidence. The detectives
6 who are involved in this case cannot get inside the mind
7 of Detective Merrithew. The detectives involved in this
8 case that are on the witness list, based on what we were
9 given this morning, don't have any information about the
10 investigative process. What they did, they did as in
11 companion with Detective Merrithew or as a directive
12 from Detective Merrithew, and that is insufficient for
13 me to be able to cross-examine him.

14 For instance, you know: Detective Merrithew,
15 did you receive information that -- from one of the
16 other people in this case that the motive for this, that
17 the motive for this murder was that my client's
18 grandmother died that day and he felt like killing
19 somebody? Did you check that information out? The
20 answer is no.

21 All right. The other information in the
22 trial: Detective Merrithew, you received information
23 through the written witness statements and the audio
24 statements, you know, that as I said before, the aunt
25 died and all this was going on. Did you check that out?

1 No.

2 Detective Merrithew, you testified at the
3 preliminary hearing that Mr. Feaster -- or, you know,
4 rented a backhoe. You said you had -- that you would
5 provide documentation. Did you do that? No.

6 Detective Merrithew, did you or did you not
7 direct Detective Crumley to execute a search warrant in
8 a storage shed? No.

9 Do you have any idea, any idea whatsoever,
10 when that -- that those items that were supposedly taken
11 from the storage shed that -- and then, tangentially,
12 tied to the items that were taken as a part of the
13 burglary? No information about that.

14 Detective Merrithew said that in that
15 investigation that he had -- he developed it through
16 pawnshop leads and he showed -- and showed, again,
17 Ms. Reeves and Ms. Brenda Ahrenholz who is the mother of
18 Katherine Feaster and Trey Feaster, that he showed them
19 this jewelry. There is nothing connecting my client to
20 that. Detective Merrithew never connected him with the
21 coins that were supposedly stolen.

22 THE COURT: And what is it that you
23 anticipate that Detective Merrithew would be able --
24 that would aid -- if he were to testify, what would he
25 testify to?

1 MS. KENNEDY: Your Honor, that would be my --
2 my ability to cross-examine him on that and then make a
3 motion to exclude the evidence because there's no
4 linkage.

5 THE COURT: But do you know that he will
6 provide you testimony that would -- that you would be
7 able to make that motion?

8 MS. KENNEDY: Your Honor, I can only make
9 that motion based on my reading of the evidence, and --
10 and that's one of the issues because ---

11 THE COURT: But, Ms. Kennedy, am I correct in
12 that you don't know what his answer would be?

13 MS. KENNEDY: Well, Your Honor, with all due
14 respect, I never know what a witness's answer is going
15 to be. What I can tell the Court is that -- that,
16 again, at the directive of Detective Merrithew the
17 storage shed that was -- detectives were sent to this
18 storage shed. A consent, consent to search was given.
19 It's my client's storage shed that he had in common.
20 Now, there's no evidence -- and in that storage shed,
21 they found some coins. There's absolutely no evidence
22 linking the coins that were found in that storage shed
23 with what was allegedly stolen during this burglary.
24 There is no itemization of anything that was stolen
25 allegedly during this burglary, and I have a right to

1 cross-examine on that because that's the basis of him
2 being charged with burglary.

3 THE COURT: But wasn't Crumley with him?

4 MS. KENNEDY: No, Your Honor. That was done
5 separately. As I read the evidence, that consent to
6 search and that information was taken from my client's
7 girlfriend, from the statement that Detective Merrithew
8 refers to as his common-law wife. All of that was done
9 while all these folks were in custody.

10 THE COURT: All right. Again, I am confused.
11 I thought the search warrant was conducted by Detective
12 Crumley at the direction of Detective Merrithew.
13 Detective Crumley cannot testify?

14 MS. KENNEDY: Because he can't -- he can
15 testify to the contents. He can't testify as to the
16 linkage between the contents in the storage shed and
17 what was allegedly stolen.

18 THE COURT: Crumley cannot?

19 MS. KENNEDY: No, Your Honor.

20 THE COURT: But you believe that Merrithew
21 can?

22 MS. KENNEDY: Yes, Your Honor. I know that
23 he can. Because he in his preliminary hearing said he
24 got a list of people and he got a list of stuff. He
25 took the jewelry and he's matched it up with pawnshop

1 tickets. He then took the pawnshop tickets and
2 discovered that Katherine Feaster was the one that
3 pawned all the jewelry. That is the only -- the only
4 thing that they can link to this alleged burglary.

5 After the fact, a couple of years after the
6 fact, they're saying, you know, that all this stuff was
7 taken, but there is nothing in there to match up, as I
8 said, any of the -- any of the items removed from the
9 storage shed to link my client to the burglary. And I
10 have, again, an absolute right to ask him, to ask him
11 about that.

12 In addition to which, Your Honor, just that
13 there was no -- that what happened is ---

14 THE COURT: All right. Here's what I'm going
15 to do, and I don't mean -- how much longer do you think
16 you need, Ms. Kennedy?

17 MS. KENNEDY: Your Honor, probably about ten
18 more minutes.

19 THE COURT: All right.

20 MS. KENNEDY: I know you have a jury waiting.

21 THE COURT: All right. I'm going to go ahead
22 and qualify -- just generally qualify the jury. And so
23 y'all are free to remain there, of course, during the
24 general qualification, but I'd like to go ahead and do
25 that. So if there's anyone that needs to be excused,

1 you may excuse them, and then we'll continue this
2 argument. After the qualifications, we'll make a
3 determination on whether or not to draw the jury today
4 or at some other time.

5 MS. KENNEDY: Thank you, Your Honor.

6 THE COURT: We'll take a short recess.

7 I need everyone who is a witness to move as
8 the bailiffs will direct them. I don't know how many
9 jurors we have, but we'll have to make accommodations.

10 All right. We'll be at ease in this matter.

11 (A break is taken at approximately 3:15 p.m.)

12 (At approximately 3:45 p.m., the defendant
13 being present with counsel, Ms. Kennedy and
14 Mr. Schwacke, the following proceedings were had:)

15 THE COURT: Thank you. Please be seated.

16 Ladies and gentlemen, I am Judge Kristi
17 Harrington. I am a resident judge for Berkeley County.
18 It is my pleasure to be presiding over this term of
19 General Sessions court, otherwise known as criminal
20 court.

21 Ladies and gentlemen, I have a few questions
22 to ask of you to determine your qualification as jurors,
23 but before that, I must swear you in.

24 Madam Clerk.

25 THE CLERK: Ladies and gentlemen of the jury,

1 would you please stand and raise your right hand.

2 (Whereupon, the jury panel is duly sworn by
3 the clerk.)

4 THE CLERK: Please be seated.

5 THE COURT: All right. Ladies and gentlemen,
6 I'm now going to ask you a series of questions just to
7 determine your general eligibility. If any of you
8 cannot hear me, if you do not understand my question,
9 please raise your hand so that I may speak louder or
10 more clearly or we may move you closer to the front.
11 Can everyone hear me? Is that a "now"?

12 (Potential jurors reply in the affirmative.)

13 THE COURT: Thank you.

14 Ladies and gentlemen, I will give you also an
15 opportunity to meet with me to answer some of these
16 questions perhaps in private. While y'all have already
17 spent a couple of hours, a couple of hours together and
18 you may have made some new best friends, some of these
19 questions may be a bit personal. So I will give you an
20 opportunity to come forward and meet with me in private.
21 So just remember that you need to answer the questions
22 because it is important that you answer these questions
23 completely and truthfully.

24 Ladies and gentlemen, is there any member of
25 the jury panel who is not a citizen of the United

1 States? If so, please stand.

2 (There was no response.)

3 THE COURT: Thank you. There are none.

4 Is there any member of the jury panel who is
5 not a resident of Berkeley County? If so, please stand.

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel who is
9 unable to read, write, speak, or understand the English
10 language? If so, please stand.

11 All right. Sir, you need to stand. State
12 your juror number and name for the record.

13 (Said potential juror and the bailiff
14 confer.)

15 THE BAILIFF: Judge, number 158, Jose Servin.

16 THE COURT: All right. Sir, if you will come
17 forward at the end. Thank you.

18 That's Juror 158? Is that correct?

19 THE BAILIFF: Yes, ma'am.

20 THE COURT: 158. Thank you.

21 Yes, ma'am.

22 A POTENTIAL JUROR: Chum Wartluft. I don't
23 understand English, not sure of the jury and I don't
24 think I can be on the jury.

25 THE COURT: All right. Your jury number?

1 MS. WARTLUFT: 185.

2 THE COURT: All right. And, also, ma'am,
3 please come forward at the end. All right?

4 MS. WARTLUFT: Yes, ma'am.

5 THE COURT: Thank you.

6 Is there anyone else?

7 (There was no response.)

8 THE COURT: Thank you. There are none.

9 Ladies and gentlemen, is there any member of
10 the jury panel that has less than a sixth-grade
11 education or its equivalent? If so, please stand.

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 Is there any member of the jury panel unable
15 because of a physical or mental infirmity that you're
16 unable to render efficient jury service this week? Does
17 any member have a medical condition that would prevent
18 you from serving on the jury?

19 Sometimes the jury members tell me if they
20 sit too long they would be unable to render efficient
21 jury service. We typically take a break every hour,
22 hour and 15 minutes, and we would make adjustments if
23 that would apply to you.

24 If there's any member because of a mental or
25 physical infirmity that you cannot render sufficient

1 jury service, please stand now, or this may be a time
2 when you wish to speak to me in private. If so, you may
3 stand now.

4 Thank you. There are none -- yes, ma'am.

5 A POTENTIAL JUROR: I'm supposed to have a
6 back procedure tomorrow, so I don't know if I can be
7 here tomorrow.

8 THE COURT: All right. Your jury number and
9 name?

10 A POTENTIAL JUROR: Sixty-one, Deborah
11 Garrett.

12 THE COURT: All right. And, Ms. Garrett, if
13 you'll please speak with me and we'll go over it in
14 private so I'm not speaking over all of your new best
15 friends, please, and so we'll talk about your schedule.
16 All right. Thank you.

17 Anyone else?

18 (There was no response.)

19 THE COURT: Thank you. There are none.

20 Is there any member of the jury panel that
21 has been convicted by a guilty plea or a trial in a
22 state or federal court of record of a crime punishable
23 by imprisonment for more than one year and your civil
24 rights have not been restored by pardon or amnesty?
25 Punishable by more than one year means that you could

1 have received a sentence of more than one year
2 regardless of what sentence you actually received. If
3 that applies to you, please stand.

4 Yes, sir. Your jury number and name?

5 A POTENTIAL JUROR: Jefferson Black, 16.

6 THE COURT: Yes, sir.

7 MR. BLACK: Can I do that after? Can I talk
8 to you after we're done?

9 THE COURT: All right. You mean talk to me
10 when I tell you to come forward and we'll speak in
11 private?

12 MR. BLACK: Yes.

13 THE COURT: All right. Juror 16.

14 Is there anyone else?

15 (There was no response.)

16 THE COURT: Thank you. There are none.

17 Is there any member of the jury panel a
18 clerk, deputy clerk of court, constable, sheriff, other
19 commissioned law enforcement officer, probate judge,
20 county commissioner, magistrate, or other county officer
21 or employed within the walls of any courthouse? If that
22 applies to you, please stand.

23 (There was no response.)

24 THE COURT: Thank you. There are none.

25 Is there any member of the jury panel who has

1 previously had jury duty in circuit court this calendar
2 year? It must be circuit court, you know, in this
3 courthouse, not federal court, county court, traffic
4 court. Anyone who served on circuit court previously
5 this year? If so, please stand.

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel who has
9 previously served as a member of the Berkeley County
10 grand jury during the past several years? If so, please
11 stand.

12 (There was no response.)

13 THE COURT: Thank you. There are none.

14 We're going to be moving on to jury
15 exemptions. The state does provide for several
16 exemptions to jury service. An exemption does not mean
17 that you're not qualified to serve. It simply means
18 that you have the right to say, Judge, I choose not to
19 serve this week. If any of these applies to you and you
20 wish to claim your exemption, please stand and we'll
21 address those matters.

22 Those of you who are 65 years of age or older
23 may be exempted from jury service. Those of you who are
24 65 years of age or older represent a pool of tremendous
25 talent, and we wish to have you remain with us, but if

1 you wish to be exempted you may certainly do so.

2 Is there any member of the jury panel who is
3 age 65 years or older and you wish to claim your
4 exemption?

5 Yes, sir. Your jury number and name?

6 A POTENTIAL JUROR: Eighty-nine.

7 THE COURT: And your last name, sir?

8 MR. JANNEY: Eighty-nine. I'll be 69 next
9 month.

10 THE COURT: All right. And you wish to be
11 exempted?

12 THE BAILIFF: Do you wish to be exempted?

13 MR. JANNEY: Yes, please.

14 THE COURT: You're free to remain with us,
15 sir.

16 MR. JANNEY: That's fine.

17 THE COURT: All right. You're juror 89?

18 MR. JANNEY: Yes, ma'am.

19 THE COURT: All right. You are exempted.

20 Good luck to you, sir. Thank you very much.

21 MR. JANNEY: Yes, ma'am.

22 THE COURT: Is there anyone else?

23 (There was no response.)

24 THE COURT: Thank you. There are none.

25 Another exemption concerns prior jury

1 service. No person is required to serve as a juror more
2 often than once every three calendar years. If you have
3 served and had jury duty during the last two years and
4 you wish to claim your exemption, please stand. And,
5 again, it must be in circuit court. If anybody has
6 previously served on jury duty in the last two calendar
7 years, please stand.

8 (There was no response.)

9 THE COURT: Thank you. There are none.

10 Those of you who have served as grand jurors
11 in any calendar in the last five years can also be
12 exempted from jury service this week. Is there any
13 member of the jury panel who has served on a grand jury
14 during the last five calendar years? If so, please
15 stand.

16 (There was no response.)

17 THE COURT: Thank you. There are none.

18 The next exemption deals with those of you
19 who have small children. Please listen very carefully
20 as all of these must apply to you in order to be
21 exempted from jury service. You may be exempted from
22 jury service if you have a small child or children under
23 the age of seven years, you have the legal custody or
24 control of your child or children, you have the care,
25 custody, and control of your child or children and you

1 are unable to make adequate arrangements for the care of
2 your child while you're performing jury duty. If all of
3 these apply and this applies to you and you wish to
4 claim your exemption, please stand.

5 A POTENTIAL JUROR: I've got a six-month-old
6 and a six-year-old, and if I don't show up for work
7 every day I can't afford daycare.

8 THE COURT: All right, sir. Do you work
9 outside of the home?

10 A POTENTIAL JUROR: Yes.

11 THE COURT: And who takes care of your
12 children?

13 A POTENTIAL JUROR: Daycare.

14 THE COURT: All right, sir. This exemption
15 would not apply to you. It may be that another one may.

16 A POTENTIAL JUROR: Excuse me. I
17 misunderstood you.

18 THE COURT: All right. Thank you.

19 All right. Is there anyone else?

20 (There was no response.)

21 THE COURT: Thank you. There are none.

22 The next exemption deals with those of you
23 who may be attending school at this time or work in a
24 related capacity within a school. If this exemption
25 applies to you and you wish to be exempted, we will

1 transfer your service to another term of court that will
2 not conflict with your school responsibilities.

3 Is there any member of the jury panel who is
4 a full-time student, schoolteacher, school crossing
5 guard, school bus driver, or who serves in any other
6 school-related capacity who is unable to serve on jury
7 duty this week? If that applies to you and you wish to
8 be transferred, please stand.

9 Yes, ma'am.

10 A POTENTIAL JUROR: I have one class that
11 starts at 6:00 p.m.

12 THE COURT: So you are -- your jury number
13 and name?

14 MS. INTHAXOUM: Eighty-five, Dona Inthaxoum.

15 THE COURT: And you go to school, and class
16 starts at 6:00 p.m.?

17 MS. INTHAXOUM: Yes.

18 THE COURT: All right. This would not apply
19 to you because that would not be full time, but it may
20 be another exemption applies to you. Your jury number?
21 Hold on one second. Your jury number one more time?

22 MS. INTHAXOUM: Eighty-five.

23 THE COURT: And your last name?

24 MS. INTHAXOUM: Inthaxoum.

25 THE COURT: Thank you.

1 Yes, ma'am.

2 A POTENTIAL JUROR: Juror number 161,
3 Marvette Simmons.

4 THE COURT: Yes, ma'am.

5 MS. SIMMONS: I'm a school bus driver, and I
6 just started working for Durham Schools.

7 THE COURT: Yes, ma'am.

8 MS. SIMMONS: I'll be driving a bus in one of
9 the programs.

10 THE COURT: All right. So school is still in
11 session?

12 MS. SIMMONS: No. Like a summer program.

13 THE COURT: All right. But school is in
14 session for summer?

15 MS. SIMMONS: Yes, ma'am.

16 THE COURT: And so do you wish to claim your
17 exemption and we'll transfer you to a time when school
18 is not in session?

19 MS. SIMMONS: Yes, ma'am.

20 THE COURT: All right. You're Juror 161?

21 MS. SIMMONS: Yes, ma'am.

22 (The clerk and the Court confer.)

23 THE COURT: All right. Ma'am, I'm going to
24 need you to come speak with me at the end because you
25 have been transferred before. So we'll have to talk

1 about when we're going to transfer you. All right?

2 MS. SIMMONS: Yes, ma'am.

3 THE COURT: Thank you. Just stay with us a
4 few moments.

5 Is there anyone else?

6 (There was no response.)

7 THE COURT: Thank you. There are none.

8 Is there any member of the jury panel who is
9 employed with the Department of Corrections or a prison?
10 If so, please stand.

11 (There was no response.)

12 THE COURT: Thank you. There are none.

13 Ladies and gentlemen, is there any member of
14 the jury who is a primary caretaker of a severely
15 disabled person who is unable to care for himself or
16 herself and that person cannot be left unattended, or is
17 there any juror who is the primary caretaker of a person
18 aged 65 years of age or older? If either of those
19 applies to you and you wish to be exempted, please
20 stand.

21 (There was no response.)

22 THE COURT: Thank you. There are none.

23 Ladies and gentlemen, the final question that
24 I have: Is there any juror who performs services for a
25 business, commercial, or agricultural enterprise but

1 you're so essential to the operation of that enterprise
2 that if you were required to perform jury service the
3 enterprise would close or stop functioning, the business
4 would shut its doors if you were working and performing
5 jury service this week?

6 (There was no response.)

7 THE COURT: That is the final question, and
8 so I did not ask anybody to stand, but I'm just going to
9 go ahead and do it at the end.

10 Ladies and gentlemen, if you need to answer
11 any of the previous questions or if for some reason this
12 is just not the week to perform jury service for you,
13 you have visitors coming from out of town or you're
14 getting married this week or whatever and this is just
15 not the week and you particularly -- you have not been
16 transferred before and you wish to speak with me in
17 private about that matter, please understand we
18 understand that this is not for most of you where you
19 want to be today or the remainder of the week, but
20 understand that general inconvenience is not going to
21 excuse you from jury service.

22 So if you need to answer any of the previous
23 questions -- Juror 61, 186 (sic), and 158, I also need
24 to speak with you -- but please come forward at this
25 time. The bailiffs will escort you in the center, and I

1 will meet with you in private.

2 THE BAILIFF: Number 175, Francis Thomas.

3 (The following on-the-record bench conference
4 was had in the presence of the jury panel but out of the
5 hearing of the jury panel:)

6 MR. THOMAS: I expected to serve 25 years,
7 and I think it's '98. It was a third-degree felony for
8 failure to grout the well proper. This meant the cement
9 wasn't one foot above grade. I paid a fine, no jail,
10 but I didn't -- you said if it was more than a year, if
11 you were convicted or not, so I had no answer for you.

12 THE COURT: All right.

13 MR. THOMAS: I paid a \$10,000 fine. That
14 was...

15 THE COURT: And your juror number?

16 MR. THOMAS: 175.

17 THE COURT: Juror number 175.

18 MR. ALFARO: Charged with failure to grout a
19 well properly.

20 THE COURT: Ms. Kennedy, this individual was
21 charged with -- convicted of unlawful well drilling.
22 Out of an abundance of caution, I'm going to go ahead
23 and excuse him. I don't know for sure, but...

24 MS. KENNEDY: Okay. Thank you, Your Honor.

25 THE COURT: Mr. Thomas, I'm going to go ahead

1 and excuse you. You're excused.

2 MR. THOMAS: Good.

3 THE COURT: Thank you.

4 MR. THOMAS: Thank you. You have a good day.

5 (Said bench conference being concluded, the
6 following proceedings were had:)

7 THE COURT: Juror number 179 (sic) is
8 excused.

9 THE BAILIFF: Juror 61, Deborah Garrett.

10 THE CLERK: It would be 175.

11 THE COURT: 175. I'm sorry.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 THE COURT: What's your juror number?

16 MS. GARRETT: Sixty-one.

17 THE COURT: Sixty-one. Yes, ma'am.

18 MS. GARRETT: Just that I have a back
19 procedure tomorrow, and I didn't know if it would
20 interfere with the jury duty or not.

21 THE COURT: All right. Tell me what you're
22 going to have done tomorrow.

23 MS. GARRETT: One of the procedures when they
24 put the needle in your back and put a camera in there
25 and push the medicine in there so that somehow -- I've

1 never had one before.

2 THE COURT: They told you to take the whole
3 day off?

4 MS. GARRETT: Yes. I will have a driver, and
5 my husband is supposed to take care of me tomorrow.

6 THE COURT: I'm going to transfer you to
7 another term of court because we will -- I'm just going
8 to transfer you to another term of court.

9 MS. GARRETT: Okay.

10 (Said bench conference being concluded, the
11 following proceedings were had:)

12 THE COURT: Sixty-one will be transferred.

13 And you'll get a new notice in the mail.

14 Thank you.

15 MS. GARRETT: Thank you.

16 THE COURT: Good luck to you.

17 THE BAILIFF: Number 95, Tina Jost.

18 (The following on-the-record bench conference
19 was had in the presence of the jury panel but out of the
20 hearing of the jury panel:)

21 THE COURT: Yes, ma'am.

22 MS. JOST: I have three sons, 13, 10, and 9,
23 and I live on Daniel Island. I don't work outside the
24 home. So there you go.

25 THE COURT: No, ma'am. What do you normally

1 do with them during the day?

2 MS. JOST: I home school, and so they're with
3 me all the time. I don't have family in town, and I
4 don't have anybody to leave them with.

5 THE COURT: All right. I'm going to excuse
6 you.

7 (Said bench conference being concluded, the
8 following proceedings were had:)

9 THE COURT: Juror 95 is excused.
10 Good luck to you.

11 THE BAILIFF: Number 161, Marvette Simmons.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 THE COURT: Good afternoon, Ms. Simmons. How
16 are you?

17 MS. SIMMONS: Good. I was telling you that
18 I'm driving a school bus.

19 THE COURT: Yes, ma'am. You've been
20 transferred once before, but you're a school bus driver.
21 Can you pick a time that we can transfer you to?

22 MS. SIMMONS: I mean, and I have a dentist
23 appointment. I have a real bad abscess.

24 THE COURT: Oh. I'm trying to work with your
25 schedule as a school bus driver, but you've already been

1 transferred once.

2 MS. SIMMONS: Yes, ma'am.

3 THE COURT: And so I'd like to transfer you
4 to a time when you're not driving ---

5 MS. SIMMONS: They just started me this week
6 here until Friday. So after this week, then I'll be
7 free.

8 THE COURT: All right. So I can transfer you
9 to -- when is the next term of court?

10 THE CLERK: July 26.

11 THE COURT: All right. I'm going to transfer
12 you to July 26. But I'm going to tell the clerk that
13 they can't transfer you anymore, so you're sure that's
14 going to be a good week?

15 MS. SIMMONS: Yes, ma'am.

16 THE COURT: All right. So between now and
17 then you need to get that tooth taken care of, as well.
18 All right?

19 MS. SIMMONS: Yes, ma'am.

20 THE COURT: All right.

21 MS. SIMMONS: Thank you.

22 THE COURT: Thank you, Ms. Simmons. You'll
23 be transferred.

24 (Said bench conference being concluded, the
25 following proceedings were had:)

1 THE BAILIFF: Number 188, Cristine Whipple.

2 (The following on-the-record bench conference
3 was had in the presence of the jury panel but out of the
4 hearing of the jury panel:)

5 THE COURT: Hello, Ms. Whipple.

6 MS. WHIPPLE: I'm not sure if I have a
7 problem or not. I had back surgery about a year ago. I
8 have a hard time sitting for any length of time. If
9 I've got to stand next to my chair or whatever, can I
10 get up?

11 THE COURT: If you are selected, we will make
12 every accommodation for you. We will take breaks,
13 whatever you need.

14 MS. WHIPPLE: Okay.

15 THE COURT: I'm the judge presiding this
16 week, and it doesn't make a difference. But you can
17 stand and be comfortable?

18 MS. WHIPPLE: Yes, I'm more comfortable
19 standing than sitting.

20 THE COURT: Okay. And your juror number?

21 MS. WHIPPLE: 188.

22 (Said bench conference being concluded, the
23 following proceedings were had:)

24 THE COURT: 188 will remain.

25 Thank you, Ms. Whipple.

1 THE BAILIFF: Number 103, Jeri Lee.

2 (The following on-the-record bench conference
3 was had in the presence of the jury panel but out of the
4 hearing of the jury panel:)

5 MS. LEE: I have a hearing problem. So, I
6 mean, if I get picked, I just want to let you know so I
7 can be put where I can hear.

8 THE COURT: It will be in this courtroom, and
9 the jurors sit right there. Is that close enough in
10 that jury-box right behind you?

11 MS. LEE: Yes, ma'am.

12 THE COURT: Is that close enough?

13 MS. LEE: Yeah, it should be.

14 THE COURT: You'll be able to hear? All
15 right. I don't know where you were seated, but were you
16 able to hear where you were seated? Have you been able
17 to hear?

18 MS. LEE: Yeah. I was up in the front,
19 barely but I could.

20 THE COURT: All right. But I'm going to have
21 you remain with us. All right? And if you get
22 selected, please just let me know.

23 MS. LEE: Okay.

24 THE COURT: So we're going to have to make
25 sure everybody speaks very loudly. All right?

1 MS. LEE: Okay.

2 THE COURT: Thank you.

3 (Said bench conference being concluded, the
4 following proceedings were had:)

5 THE COURT: 103 will remain.

6 THE BAILIFF: Number 16, Jefferson P. Black,
7 the Third.

8 (The following on-the-record bench conference
9 was had in the presence of the jury panel but out of the
10 hearing of the jury panel:)

11 THE COURT: Yes, Mr. Black.

12 MR. BLACK: How are you doing?

13 THE COURT: Good.

14 MR. BLACK: I was looking at my record, and
15 it's says everything was disposed of.

16 THE COURT: Okay.

17 MR. BLACK: But like in 1999, I got 15
18 months.

19 THE COURT: All right. And what did you get
20 15 months for?

21 MR. BLACK: It was trafficking, and I plead
22 guilty to PWID.

23 THE COURT: All right, sir. That would
24 disqualify you from serving with us this week, and so
25 I'm going to excuse you. Good luck to you, Mr. Black.

1 MR. BLACK: All right. Thank you.

2 THE COURT: Thank you.

3 (Said bench conference being concluded, the
4 following proceedings were had:)

5 THE COURT: Juror 16 is excused.

6 THE BAILIFF: Number 91, Gregory S. Johnson.

7 (The following on-the-record bench conference
8 was had in the presence of the jury panel but out of the
9 hearing of the jury panel:)

10 THE COURT: How are you, Mr. Johnson?

11 MR. JOHNSON: How are you? My wife is
12 disabled, and I have to pick up her medicine and take
13 her to the doctor Thursday.

14 THE COURT: All right. And have you been
15 transferred before?

16 MR. JOHNSON: Been transferred?

17 THE COURT: Yes, sir.

18 MR. JOHNSON: No. I have to drive, and I
19 don't know when we'll be done.

20 THE COURT: All right. And what time would
21 you need to leave Thursday?

22 MR. JOHNSON: We leave on Thursday morning at
23 nine o'clock.

24 THE COURT: Thursday morning at 9:00? And
25 are you driving?

1 MR. JOHNSON: Yes, driving.

2 THE COURT: All right. So you have doctor
3 appointments?

4 MR. JOHNSON: Doctors and the medication.

5 THE COURT: All right, sir. So are you
6 telling me that this week is not good for you?

7 MR. JOHNSON: No, it's not.

8 THE COURT: And is there going to be a better
9 week for you?

10 MR. JOHNSON: Well, maybe. Maybe.

11 THE COURT: All right. Well, in view of
12 that, and I know if I ask all the other 80 people, as
13 well...

14 MR. JOHNSON: Yes, ma'am.

15 THE COURT: --- it's going to be, as well.

16 MR. JOHNSON: Yes, ma'am.

17 THE COURT: And I'm not trying to be
18 difficult, but there are certain guidelines that I have
19 to follow in order to excuse you. I'm going to have you
20 remain with us. All right, sir? Your juror number?

21 MR. JOHNSON: Ninety-one.

22 (Said bench conference being concluded, the
23 following proceedings were had:)

24 THE COURT: Juror 91 will remain. Thank you.

25 THE BAILIFF: Number three, Diane Adams.

1 (The following on-the-record bench conference
2 was had in the presence of the jury panel but out of the
3 hearing of the jury panel:)

4 THE COURT: Yes, Ms. Adams.

5 MS. ADAMS: Yes. My daughter graduates from
6 the military.

7 THE COURT: Yes, ma'am.

8 MS. ADAMS: And I'm leaving on Tuesday.

9 THE COURT: Tomorrow?

10 MS. ADAMS: Tomorrow, Tuesday.

11 THE COURT: Okay.

12 MS. ADAMS: And Wednesday morning is when I
13 get off and our vacation starts. And I've got to go to
14 Atlanta to pick up my grandmother to go with us, bring
15 her back here, my grandmother, and then we're taking her
16 to Virginia.

17 THE COURT: And what are you asking,
18 Ms. Adams?

19 MS. ADAMS: To be excused because we already
20 planned family vacation and everything.

21 THE COURT: And where is she graduating from?

22 MS. ADAMS: She's graduating from the Army,
23 from Jacksonville -- I mean, not Jacksonville. Fort
24 Jackson in Columbia from boot camp, and then we are
25 taking her to Virginia, and then we have family

1 vacation. Everything is already paid for. I'm asking
2 to be excused at this time.

3 THE COURT: All right. I'm just going to
4 transfer you to the next term of court.

5 Do you want it to be -- do you want it later?

6 THE CLERK: That's fine.

7 THE COURT: July 26th. I'm going to transfer
8 you.

9 MS. ADAMS: July 26th? Oh, God.

10 THE COURT: Yes, ma'am.

11 MS. ADAMS: That's going to be a bad time
12 because there's a wedding and it's out of town. I've
13 just got too much family.

14 THE CLERK: August 2nd.

15 THE COURT: August 2nd?

16 MS. ADAMS: Yeah. I'll be back in town.

17 Yes, that's a good time. There's -- on August 2nd.
18 Somebody is getting married, and somebody is having a
19 baby.

20 THE COURT: Better make sure. You get one
21 time. Is that good?

22 MS. ADAMS: Because we'll be back -- I'm not
23 sure. The 26th? I haven't been to bed since 9:00, and
24 so I'm...

25 THE CLERK: We have a term in September.

1 THE COURT: All right. How about September?

2 MS. ADAMS: September what?

3 THE CLERK: The 13th.

4 MS. ADAMS: That will be good.

5 THE COURT: All right. September 13th.

6 You'll get a new notice in the mail. Good luck to you.

7 (Said bench conference being concluded, the
8 following proceedings were had:)

9 THE BAILIFF: Number 150, Sonya Rogers. 150,
10 Sonya Rogers.

11 (The following on-the-record bench conference
12 was had in the presence of the jury panel but out of the
13 hearing of the jury panel:)

14 THE COURT: Yes, ma'am.

15 MS. ROGERS: May 11th someone broke into my
16 daughter's home and assault and battery, and he's in
17 jail right now awaiting trial. It happened in
18 Charlotte. And I don't think I could clearly -- it
19 wouldn't be fair to any defendant to have me.

20 THE COURT: All the purpose right here is
21 that we need just to make sure that you're qualified to
22 serve. All right? And we haven't even got to any
23 particular case. I'm just going through making sure you
24 live in Berkeley County, that you haven't been convicted
25 of a crime, that you're physically able to sit here,

1 that you don't work in various places, and that's all
2 I'm doing right now.

3 MS. ROGERS: Okay. But I wouldn't -- if
4 there's any crime to do with assault and battery or
5 breaking or entering or theft...

6 THE COURT: You may get some of those
7 questions later today ---

8 MS. ROGERS: Okay.

9 THE COURT: --- and so that will be a more
10 appropriate time. I'm just making sure that you're
11 qualified to serve right now. Okay?

12 MS. ROGERS: Okay.

13 THE COURT: I'm going to have you stay with
14 us. You're juror number 150?

15 MS. ROGERS: Yes, ma'am.

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE COURT: All right. 150 will remain.
19 Thank you.

20 THE BAILIFF: Number 158, Jose Servin.

21 (The following on-the-record bench conference
22 was had in the presence of the jury panel but out of the
23 hearing of the jury panel:)

24 THE COURT: Yes, sir.

25 MR. SERVIN: I don't speak much English.

1 THE COURT: All right. How far did you go in
2 school?

3 MR. SERVIN: I finished high school in
4 Mexico.

5 THE COURT: All right. And what type of work
6 do you do?

7 MR. SERVIN: Me?

8 THE COURT: Yes.

9 MR. SERVIN: Electrical.

10 THE COURT: All right. Are you able to read
11 a newspaper?

12 MR. SERVIN: Well, my kids are still -- were
13 born here. My kids, they teach me. But I got a -- got
14 out of high school, but so I quit school.

15 THE COURT: All right. Slow down. One more
16 time, sir. What was the last thing you just said?

17 MR. SERVIN: I went to high school, but I
18 didn't ever complete, okay, you know, and I didn't go...

19 THE COURT: But you understood all of my
20 questions?

21 MR. SERVIN: No. A few. Not every one.

22 THE COURT: And is Spanish your native
23 language?

24 MR. SERVIN: Yeah. I'm from Mexico.

25 THE COURT: And how long have you been in

1 Berkeley County?

2 MR. SERVIN: Six years. Because I lived in
3 Dorchester.

4 THE COURT: All right, sir. I'm going to
5 excuse you based on the fact that you said that you have
6 a hard time understanding the English language. So I'm
7 going to excuse you.

8 (Said bench conference being concluded, the
9 following proceedings were had:)

10 THE COURT: 158 is excused. Thank you.

11 THE BAILIFF: Number 185, Chum C. Wartluft.

12 (The following on-the-record bench conference
13 was had in the presence of the jury panel but out of the
14 hearing of the jury panel:)

15 MS. WARTLUFT: Your Honor, I couldn't
16 understand some of them so much. I can't read that
17 writing, either. So I can't be in jury duty. Is it
18 possible to excuse?

19 THE COURT: How far did you go to school?

20 MS. WARTLUFT: I didn't go to school. In my
21 country my family so poor we couldn't go to school. So
22 I only go in sixth grade. When I come to United States,
23 when my husband got -- I live in -- here. My husband,
24 he was in the -- in the Air Force, and he bring me
25 moving here. He passed away four years ago, so then

1 it's kind of difficult. So if you can just excuse me?
2 So, I can't have a good language, you know?

3 THE COURT: All right. Were you able to
4 understand all of my questions here today?

5 MS. WARTLUFT: Not so much I understand.

6 THE COURT: Some of them?

7 MS. WARTLUFT: Some of them I understand, and
8 some of them I don't. So I cannot -- I can't -- some of
9 them missing something, you know.

10 THE COURT: And your juror number?

11 MS. WARTLUFT: 185.

12 (Said bench conference being concluded, the
13 following proceedings were had:)

14 THE COURT: Juror 185 is excused.

15 Good luck to you, ma'am.

16 MS. WARTLUFT: Thank you very much.

17 THE BAILIFF: Number 85, Dona Inthaxoum.

18 (The following on-the-record bench conference
19 was had in the presence of the jury panel but out of the
20 hearing of the jury panel:)

21 THE COURT: Yes, ma'am.

22 MS. INTHAXOUM: One thing I do have a class.
23 It's a summer course, only a five-year program, and you
24 have to be there 20 percent of the time. We have to be
25 there at 6:00 p.m.

1 THE COURT: Okay. Where do you go to school?

2 MS. INTHAXOUM: Charleston Southern

3 University.

4 THE COURT: If you are selected for the jury,
5 I will make sure that you leave -- that you leave no
6 later than 5:15.

7 MS. INTHAXOUM: Yeah. I was just afraid that
8 would ---

9 THE COURT: All right. Just make sure that
10 you remind us should you be selected. Your juror
11 number?

12 MS. INTHAXOUM: Eighty-five.

13 (Said bench conference being concluded, the
14 following proceedings were had:)

15 THE COURT: Juror 85 will remain. Thank you.

16 THE BAILIFF: Number 143, Christy Reninga.

17 (The following on-the-record bench conference
18 was had in the presence of the jury panel but out of the
19 hearing of the jury panel:)

20 THE COURT: Yes, ma'am.

21 MS. RENINGA: My only problem, I already
22 talked to Ms. Hill (phonetic), is transportation. Me
23 and my husband only have one vehicle.

24 THE COURT: All right. If you are selected
25 for the jury, I will make sure that a deputy comes and

1 picks you up and takes you home. Okay?

2 MS. RENINGA: All right.

3 THE COURT: Your juror number?

4 MS. RENINGA: 143.

5 (Said bench conference being concluded, the
6 following proceedings were had:)

7 THE COURT: 143 will remain.

8 THE BAILIFF: Number 29, Jeffery Burke.

9 (The following on-the-record bench conference
10 was had in the presence of the jury panel but out of the
11 hearing of the jury panel:)

12 MR. BURKE: I'm not trying to get out, but I
13 just want to tell you, let you know that I am totally
14 speech deaf in my left ear, and I wear a hearing aid.
15 And as long as it's quiet like this, I can understand
16 everything you said. I understood everything. But if
17 somebody has a coughing fit around me when somebody else
18 is talking, I'll miss the conversation. So but other
19 than that, I just wanted to let you know that I do have
20 that problem.

21 THE COURT: And will you be able -- if
22 someone starts to cough, would you be able then to let
23 me know that you didn't hear that and that we need it to
24 be repeated?

25 MR. BURKE: Yes, ma'am.

1 THE COURT: All right. And you were able to
2 hear all of my questions?

3 MR. BURKE: Yes, ma'am, I sure was.

4 THE COURT: I'm going to have you stay with
5 us.

6 MR. BURKE: Okay.

7 THE COURT: And should you be selected for
8 any jury, please just make sure that you're in a place
9 that I can see you or that you're close to the foreman
10 so that we can take a break if we need to. Okay?

11 MR. BURKE: Yes, ma'am.

12 (Said bench conference being concluded, the
13 following proceedings were had:)

14 THE COURT: All right. Juror 29 will remain.
15 Thank you.

16 THE BAILIFF: Number 21, Seth Botelho.

17 (The following on-the-record bench conference
18 was had in the presence of the jury panel but out of the
19 hearing of the jury panel:)

20 THE COURT: Yes, sir.

21 MR. BOTELHO: I can't read and write, and I
22 help my dad. He has real bad cancer.

23 THE COURT: All right. How far have you been
24 in school?

25 MR. BOTELHO: I went through -- graduated.

1 THE COURT: And you're unable to read?

2 MR. BOTELHO: (Nods head up and down.)

3 THE COURT: And unable to write?

4 MR. BOTELHO: (Nods head up and down.)

5 THE COURT: Is that a yes?

6 MR. BOTELHO: Yes.

7 THE COURT: She's got to write down
8 everything that is said. I want you to speak loud. And
9 what type of work do you do?

10 MR. BOTELHO: I help my dad because he's got
11 real bad cancer.

12 THE COURT: And what do you do with your dad?

13 MR. BOTELHO: Just take him to the doctor
14 appointments and stuff.

15 THE COURT: Okay. Do you work out of the
16 home, outside of your home?

17 MR. BOTELHO: I cut grass for him and
18 everything. That's what I do.

19 THE COURT: And have you ever held a job?

20 MR. BOTELHO: Uh-uh.

21 THE COURT: You've always worked for your
22 dad?

23 MR. BOTELHO: (Nods head up and down.)

24 THE COURT: Is that a yes?

25 MR. BOTELHO: Yes.

1 THE COURT: All right. Where did you go to
2 school?

3 MR. BOTELHO: Berkeley.

4 THE COURT: Berkeley High School? And you
5 graduated?

6 MR. BOTELHO: (Nods head up and down.)

7 THE COURT: Is that a yes?

8 MR. BOTELHO: Yes.

9 THE COURT: All right. Were you able to
10 understand everything that I said, sir?

11 MR. BOTELHO: Uh-uh.

12 THE COURT: Is that a no?

13 MR. BOTELHO: No.

14 THE COURT: All right. Your juror number?

15 MR. BOTELHO: Twenty-one.

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE COURT: Juror 21 is excused. Thank you.

19 (There was an off-the-record bench
20 conference.)

21 (Said bench conference being concluded, the
22 following proceedings were had:)

23 (There was off-the-record discussion by the
24 Court and the clerk.)

25 THE COURT: All right. Ladies and gentlemen

1 of the jury panel, did everyone that needed to speak
2 with the Court have the opportunity to do so? If you
3 did not have an opportunity to speak with the Court,
4 please stand at this time.

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 (There was off-the-record discussion by the
8 Court and the clerk.)

9 THE COURT: Ladies and gentlemen of the jury,
10 I need for each of you to go back over to the jury
11 selection room. Ladies and gentlemen, we are attempting
12 to alleviate all of you coming back, back and forth
13 every day. So I know that you don't quite understand
14 what we're doing. It seems like you're just sitting
15 here. Trust me, we are working diligently to ensure
16 that you only need to report when we absolutely need you
17 to report. So please understand that moving up and down
18 and back and forth to rooms, we're not just playing
19 musical chairs with you, but we truly are working to
20 minimize your inconvenience.

21 So, ladies and gentlemen, with that said, you
22 do have an opportunity to take any comfort break that
23 you need to take, but please report back over to the big
24 jury room, and you will receive further instructions as
25 to your reporting in about ten minutes. So please go

1 over to the big jury panel room where you first
2 reported. Thank you.

3 (Whereupon, the jury panel leaves the
4 courtroom at approximately 4:25 p.m.)

5 THE COURT: All right. Counsel, I'll see
6 y'all in chambers just for scheduling.

7 (There was an off-the-record chambers
8 conference.)

9 (Said chambers conference being concluded,
10 the following proceedings were had:)

11 (The trial reconvenes at approximately
12 4:40 p.m., the defendant being present with counsel,
13 Ms. Kennedy and Mr. Schwacke, and the following
14 proceedings were had:)

15 THE COURT: Ms. Kennedy, I'll allow you to
16 continue your argument.

17 MS. KENNEDY: Thank you, Your Honor. May it
18 please the Court.

19 Your Honor, given the colloquy that I had
20 with the Court prior to the break and the jury
21 qualification, I just would -- and I don't think -- I
22 don't want there to be any problem or any
23 misunderstanding and any confusion of the right of
24 compulsory process vis-à-vis my inability to get
25 Detective Merrithew here versus my right of

1 confrontation, because they're two separate issues.

2 Obviously, I can't -- without compulsory
3 process, I can't get him here, but -- but it goes to the
4 whole -- the issue is my right of confrontation and my
5 right to develop my theory of the case based on the
6 evidence as I know it to be or believe it to be, and I
7 have a right to present what I regard as relevant
8 evidence that would rebut the state's theory of the
9 case, and I have no ability to do that without being
10 able to confront Detective Merrithew.

11 The Court asked me in terms of my ability to
12 -- what I would anticipate Detective Merrithew to -- how
13 he would answer my questions. And I, in truth, said I
14 don't know how he would answer them. I do know that
15 given my ability to ask leading questions that require
16 -- would require yes or no answers, that would be the
17 way through which I would extract my evidence.

18 The other part of it is certain things like,
19 you know, for instance with Detective Crumley or any of
20 the other people involved along the process of the
21 investigation, would simply be that I -- I could ask
22 them, you know, well, why did you do this, why did you
23 -- what was this part of the investigation, why did you
24 do this. The answers most probably would be because
25 Detective Merrithew told me to do it, and then -- but

1 they don't have any reason, and they can't say why.

2 They can't say why.

3 If it were just simply a matter of them being
4 able to -- I mean, the focus is or as I understand the
5 state's argument is that they have a -- they can
6 introduce all this evidence through other witnesses.
7 That's all well and good, I will concede that, but I
8 have a right to introduce my own evidence through my own
9 witnesses, and it involves the confrontation clause of
10 the constitution and -- and the South Carolina
11 constitution, Your Honor.

12 He is material. He is essential. I cannot
13 rebut the state's evidence or what they intend -- what
14 they assert they intend to call or present without --
15 without being able to offer my explanation of what it is
16 they say the evidence is. I have a right to explain it.
17 I have an obligation to explain it.

18 And that -- that goes to the heart of the
19 confrontation issue and the due process issues. I mean,
20 we cannot simply focus on the compulsory process part of
21 it. It goes to the heart of the trial, of what the
22 process of the trial is, and my ability to explain the
23 facts as I understand them to be.

24 The jury can believe or not believe what I
25 say. I mean, that's their job to judge the credibility

1 of the witnesses and to assess the facts and the
2 evidence that's presented by each side.

3 I am -- because Detective Merrithew is not
4 here, I am precluded from offering a defense.

5 THE COURT: Ms. Kennedy, are you not
6 precluded from offering -- based upon that statement,
7 you're not precluded from offering a defense. You're
8 precluded from calling Detective Merrithew.

9 MS. KENNEDY: Your Honor, that I'm precluded
10 from -- from presenting a defense, because my theory of
11 the case, my defense of the case, is accessory after the
12 fact, and I can't extract that information from any
13 other witness but Detective Merrithew, given the
14 evidence and the -- and the discovery that I've been
15 provided. Nobody else can answer those questions.

16 And I have a right -- I have a right to be
17 able to cast a shadow and cast doubt on what the state
18 says, based on the evidence I present, and I need
19 Detective Merrithew, under the confrontation clause, to
20 be able to present it. Nobody else can explain that.
21 Nobody else can explain it.

22 THE COURT: And, Ms. Kennedy, one more time.

23 MS. KENNEDY: Yes, Your Honor.

24 THE COURT: And I know that we have broken
25 several times, and I have directed you on some different

1 questions, but tell me what it is that Detective
2 Merrithew will testify to that is material to your
3 client's defense.

4 MS. KENNEDY: My theory of the case, Your
5 Honor, is that I have -- I can ask for, based on the
6 evidence to be offered, an accessory after the fact
7 charge should I elect to do so.

8 The evidence that we'd show that I would
9 present through Detective Merrithew is simply this, that
10 he decided after all this other, the statements that I
11 alluded to earlier in my argument, that Mr. Michaelson
12 was the one who is most culpable.

13 He decided not to pursue other leads and
14 other information that would -- that would have been
15 readily available had he investigated any of those
16 things that were in the statements, the issue about the
17 conversation with Frances Reeves and the list of people
18 that he got, his contact with the people at the
19 pawnshop, his representation at the preliminary hearing
20 about the backhoe investigation and all that, the issue
21 of the burglary and the search warrant, the issue of the
22 dredging of the Tailrace Canal and whose directive it
23 was done under, all of those things.

24 And he -- and I have a right to attack not --
25 not -- you know, I have a right to attack not only the

1 things that were done; but also, to bring out those
2 things that were not done that were -- that were
3 relevant to this investigation and relevant -- relevant
4 to the guilt or innocence of my client.

5 And following that, whether or not he should
6 be found guilty of murder or if I can -- if I can put up
7 -- because I have to put up -- if I'm going to ask for a
8 charge of accessory after the fact, I have to be able to
9 put up that evidence to support the charge, as you well
10 know. I can't do that through any other witness, you
11 know, because the detectives that the state is intending
12 to call know nothing about that. They can't address it
13 in any way.

14 He is the lynchpin of my defense and the
15 right that my client has to confrontation.

16 THE COURT: All right. And, Ms. Kennedy, you
17 have spoken to Detective Merrithew and you know that
18 what he -- what you have indicated to the Court that you
19 would examine him on or cross-examine him, whatever the
20 case may be, is material to your client's defense?

21 MS. KENNEDY: Your Honor, I cannot represent
22 to you that I have spoken to him recently. He and I
23 have had -- he and I had an informal conversation about
24 this case at the inception when Assistant Solicitor
25 Jennifer Porter had it. That was before, quite frankly,

1 I got a lot of the discovery. Because as I noted in my
2 earlier motion, the initial discovery came in -- in
3 September of 2007. Another package came after that.
4 And as a matter of fact, I'm continuing to get
5 discovery. So there was never an opportunity to -- to
6 discuss all this thoroughly because I didn't have -- I
7 didn't have all the discovery.

8 Plus, Your Honor, there -- and I've got -- I
9 mean, there's the whole issue of the transcript from the
10 preliminary hearing. That -- that is admissible. I am
11 entitled to cross-examine him about his statements
12 concerning the investigation and the things he
13 represented to the court at the preliminary hearing
14 about this investigation which turn out not to be true
15 based on the evidence I have since received, and I have
16 a right to question him about that.

17 That would be all, Your Honor, unless the
18 Court has any more questions.

19 THE COURT: And, Ms. Kennedy, just so the
20 time line is correct, this was on the October 2009 trial
21 docket?

22 MS. KENNEDY: Your Honor, it was Solicitor
23 Henderson's initially. Court's indulgence. I have a
24 copy of it.

25 THE COURT: Yes, ma'am.

1 MS. KENNEDY: That initially that would be on
2 the October 12th docket, and then if not, then it would
3 be carried over. I am not certain whether it was...

4 MS. WILLIAMS: November 2nd.

5 MS. KENNEDY: Whether it was November 2nd and
6 then November the 30th.

7 But, Your Honor, the October 12th, Detective
8 Merrithew was still here.

9 I have reason to believe, based on some
10 conversations, that the Solicitor's Office was aware,
11 and I can't represent to you the veracity of what I was
12 told, but what I was told was that they -- that they
13 received -- the Solicitor's Office received notice at or
14 about the same time the sheriff's office was advised
15 that Detective Merrithew was leaving. Had I -- and,
16 Your Honor, that's the whole point. Had I been made
17 aware of that, I would have put him under subpoena.

18 THE COURT: But, clearly, this was put on the
19 docket for October 12th, and you were -- and you were
20 notified that if it wasn't tried October the 12th that
21 it would be tried November the 2nd and each subsequent
22 trial term after that?

23 MS. KENNEDY: Your Honor, I have the letter
24 from the Assistant Solicitor Mikell, and it said if we
25 didn't -- if it is not reached.

1 At that point in time -- and I think I see
2 where the Court's going. At that point in time, though,
3 Your Honor, it -- I didn't -- this is part of the game
4 we play, unfortunately, or the game is played. We don't
5 get a witness list, in this instance till this morning.
6 I had planned to call -- I was unaware that he was not
7 available.

8 And my conversations with Mikell Henderson,
9 Assistant Solicitor Henderson, were that in all
10 likelihood on October the 12th the case would not be
11 reached. And I am remiss in not, you know, looking in
12 the Clerk of Court's files to see exactly what happened
13 that week, but I -- but that was the information that I
14 received.

15 Subsequently, I then get other -- other
16 e-mails and letters from the Solicitor's Office saying
17 it's going to be then, it's going to be then, it's going
18 to be then. This case has been docketed for November
19 the 30th, as you well know, and here we are back again
20 because they -- they decided at some point not to call
21 it in January, not to call it in February. But Your
22 Honor continued it at -- for the first -- the first week
23 in April, and now we are into June, but ---

24 THE COURT: My question to you, Ms. Kennedy,
25 is, and you may not be able to answer the question, but

1 if you believe that Detective Merrithew was so material
2 to your defense why didn't you subpoena him?

3 MS. KENNEDY: Your Honor, you mean for
4 October the 12th?

5 THE COURT: October the 12th, November the
6 2nd.

7 MS. KENNEDY: The answer to that is because
8 Assistant Solicitor Henderson advised me that it would
9 -- he didn't think it was going to be called. Now, and
10 I rely on the representations of the solicitor. And
11 Your Honor well knows Assistant Solicitor Henderson, and
12 you know that he's a man of his word.

13 So I understand the Court's inquiry, but I
14 still -- what I don't understand is, given the knowledge
15 that -- that I believe the Solicitor's Office had -- and
16 we're back to compulsory process issue. I mean, the
17 fact of the matter is, you know, he's gone. He's gone.
18 I don't have any way to get him here, but -- but putting
19 that -- that aside, I have the right of confrontation, I
20 have a right to call whomever I want, and it's not my
21 client's fault and it's certainly not my fault that --
22 that we are where we are because of scheduling issues
23 and because of -- and because of...

24 THE COURT: And, Ms. Kennedy, again, do you
25 believe that it's the state's fault?

1 MS. KENNEDY: The state's fault? I can't
2 honestly say that. I have to respond to you, Your
3 Honor, and say I have an honest and good faith belief
4 that they knew he was not going to be here, and that's
5 based on my conversations with certain personnel at the
6 sheriff's office.

7 THE COURT: Anything further, Ms. Kennedy?

8 MS. KENNEDY: Beg the Court's indulgence.

9 (Ms. Kennedy and Mr. Schwacke confer.)

10 MS. KENNEDY: And, Your Honor, in terms of --
11 just one additional thing. In terms of your -- the
12 Court's inquiry as to why I did not subpoena him, as I
13 said, I've been continuing to get discovery. So even if
14 that had been the case and there -- we'd still have the
15 issue to deal with that when -- when was the case
16 actually ready for trial. Because as I said, I just got
17 discovery -- additional discovery this morning. So I've
18 been continuing to get it ever since November 30th. I
19 got things that were provided to me in March. I got
20 things that were provided to me in April and May. I got
21 things that were provided to me in June. And so had I
22 subpoenaed him for that term of court, given where we
23 are and then the additional information that I've been
24 provided, the case would have had -- couldn't have gone
25 forward anyway.

1 THE COURT: Ms. Kennedy, just -- and I think
2 this is my final question. You indicated that you had
3 the e-mail address to Detective Merrithew?

4 MS. KENNEDY: Yes, Your Honor.

5 THE COURT: In my review of Rule 7(b), you
6 have to show the Court that you used due diligence. Do
7 you believe that not e-mailing Detective Merrithew was
8 or was not due diligence?

9 MS. KENNEDY: Your Honor, I would
10 respectfully disagree with the assertion that my failure
11 to e-mail Detective Merrithew was a lack of due
12 diligence, because had I even contacted him I still
13 would not have had any mechanism by which I could secure
14 his presence here. He is not subject to compulsory
15 process. So if the Court's suggestion is that I should
16 somehow -- I should have e-mailed him and said, Gerry,
17 when are you coming back, that's insufficient. It's
18 totally insufficient.

19 THE COURT: But, Ms. Kennedy, you would know
20 if you had listened to the Court and if you had said,
21 Detective, when are you coming back, and he said,
22 Ms. Kennedy, I'll be happy to come back on this day or
23 I can't come back or I'm never coming back.

24 MS. KENNEDY: Well, but, Your Honor, but that
25 completely puts the burden back on me when at the

1 earlier chambers conference Judge Dennis clearly said to
2 the deputy solicitor that he was a witness that was
3 clearly in their control, and they were supposed to
4 contact him about when he was supposed to come back, not
5 me.

6 THE COURT: But, Ms. Kennedy, if the state is
7 not calling him and do not plan to call him, and if you
8 make the case and he is your witness, the fact that he
9 used to be employed but is no longer employed by an
10 agency of the state, how does that make it under their
11 control?

12 MS. KENNEDY: But, Your Honor, here's --
13 here's again where we have to part company a little bit.
14 The compulsory process issue should not be confused
15 with the confrontation issue, and those are two separate
16 things. The confrontation clause allows me to question
17 him about that investigation, and I cannot do that.

18 What the Court is suggesting at this point in
19 time is that I contact -- and the other thing I would
20 say, Your Honor, is that e-mail -- that e-mail
21 information was not given to me until January, and
22 Detective Merrithew came back ---

23 THE COURT: Hold on one second, I'm sorry.

24 All right. You were not given the e-mail
25 address until January?

1 MS. KENNEDY: Yes, Your Honor. And my
2 understanding is with regard to subpoenas that they are
3 only issued for a specific term of court. So even let's
4 just say arguendo that I had put him under subpoena for
5 the October 12th term of court and that case did not go
6 as according to some schedule, then I would have had to
7 reissue him another subpoena and that by that point in
8 time he would have been gone. He would have been gone.

9 So they get to -- I mean, they get to call
10 the cases. They get to set the docket. They didn't
11 call it for October the 12th.

12 THE COURT: Ms. Kennedy, I am not in a
13 position ---

14 MS. KENNEDY: I understand.

15 THE COURT: --- to change the constitution of
16 our state that allows and gives the authority of that to
17 the state.

18 MS. KENNEDY: Your Honor, and I -- and I
19 understand that, and that's -- that's an issue for
20 another day. But my point to you in response to your
21 question is the subpoena would have been issued for
22 the October 12th case term. If the case was not called,
23 which it obviously was not, that subpoena would have
24 been invalid. I can't issue an open-ended subpoena.

25 Thank you, Your Honor.

1 MS. WILLIAMS: Your Honor, just for
2 clarification, for the October 12th term of court
3 Ms. Kennedy had an order of protection. She had just
4 completed another trial, and I think that she -- that
5 she had an order of protection. That's why the case was
6 not called for that term.

7 Your Honor, this issue is framed by
8 Rule 7(b). The Court very eloquently articulated the
9 materiality or lack thereof of Detective Merrithew in
10 your order during the last motion for continuance.

11 And in 7(b), section two, it says very
12 specifically, and the case law holds it to the specific
13 words of the rule, that the party applying for a
14 postponement on account of the absence of a witness
15 shall set forth under oath in addition to the foregoing
16 matter what fact or facts he believes the witness, if
17 present, would testify to and the grounds for why that
18 witness would testify to those facts.

19 There are no facts that Ms. Kennedy has
20 articulated today, with all due respect, that Detective
21 Merrithew would testify to.

22 THE COURT: How about Ms. Kennedy's
23 contention that she can't even figure it out because
24 you've been submitting discovery up until today's date
25 and he has been gone since November of 2009?

1 MS. WILLIAMS: Well, first of all, let me
2 just say unequivocally that we have done -- we have not
3 delayed calling this case in order to prevent her from
4 calling Detective Merrithew. I just want to make sure
5 that's clear.

6 THE COURT: And I don't believe that I've
7 heard Ms. Kennedy assert that.

8 MS. WILLIAMS: I just want to make sure that
9 -- that we're clear on that issue. If I could get
10 Detective Merrithew here today, I would be so happy to
11 be able to provide him for Ms. Kennedy.

12 As far as ongoing discovery, that's true with
13 every case. I still don't know what any of the ongoing
14 discovery that she has articulated, jail tapes between
15 the defendants, a picture of the defendant's house, any
16 of those materials, I don't understand what about that
17 would -- would suggest that Detective Merrithew could
18 testify to a factual fact that any other witness could
19 not testify to.

20 And for clarification, Detective Merrithew
21 had nothing to do with the consent to search of
22 Mr. Michaelson's storage unit. That was Detective
23 Crumley and Detective Shuler.

24 As far as the dig -- I mean, I'm sorry -- the
25 dive for the gun, that was done by Detective Freeman.

1 And although Detective Merrithew might have
2 been the face of the investigation for Frances Reeves
3 who had searched and searched and searched for her son
4 and that their personalities really hit it off, he by no
5 means did all the work in this case. Detective Freeman
6 would testify that she was the one that researched all
7 the pawnshop tickets. You know, it was -- it was a case
8 where lots of different people were involved.

9 And to suggest that Gerry Merrithew was, you
10 know, the Houdini behind the scenes is just simply not
11 true. And during the *Denno* hearing and during some of
12 those other evidentiary hearings, I think it will be
13 clear when the other detectives testify that that's not
14 the case.

15 With regard to Ms. Kennedy's client, again,
16 he is in the interrogation room on video. Gerry
17 Merrithew walks in and introduces himself. Obviously,
18 he has never spoken with Mr. Michaelson before, and that
19 is clear on the video. The whole interview is
20 videotaped, and the whole time Detective Freeman is
21 sitting there.

22 If Detective Merrithew were here, he could
23 not testify about what other defendants in this case
24 were saying. Even if he were here, he couldn't tell the
25 jury what Trey Feaster said. He couldn't tell the jury

1 what Kat Feaster said. It's hearsay. It's inadmissible
2 hearsay. It would be a violation of their Fifth
3 Amendment right not to testify.

4 So even if he were here and there were some
5 kind of secret method of interrogation that he had used
6 for those witnesses, which we don't believe he did, but
7 even if he did, he couldn't testify what these other
8 people had said.

9 This case is a hand-of-one case.
10 Mr. Michaelson is charged with murder, Jeremiah Scharer
11 is charged with murder, and Trey Feaster is charged with
12 murder. All three of them are charged with the same
13 thing. This is not a ganging up on Mr. Michaelson. So
14 our theory of the case that he is the shooter makes
15 Mr. Feaster no less liable in our eyes than
16 Mr. Michaelson.

17 So the fact that he was interviewed last, I'm
18 not sure I understand what the significance is of that
19 in terms of what Detective Merrithew would testify to.
20 So in terms of ---

21 THE COURT: I think that one of Ms. Kennedy's
22 points is that we don't know why he was interviewed
23 last.

24 MS. WILLIAMS: I think it was just because he
25 came in last. I don't really think there's any big

1 secret mystery to that.

2 They were trying -- this is what happened,
3 Your Honor. Let's be clear. Detective Freeman and
4 Detective Merrithew together drove up to Pelzer and
5 picked up Kat Feaster. She came back and was arrested
6 for receiving stolen goods.

7 At that point, all hands were on deck. There
8 were detectives. Everybody was working the case. Kat
9 Feaster was calling her husband, trying to find him. I
10 think she had a lot of trouble finding him. She was --
11 her mother found her brother who was living somewhere in
12 Walterboro. Each of these people are driving in. In
13 the meantime, they are trying to find Mr. Michaelson and
14 finally found him through his ex-girlfriend or wife,
15 Christine Thomas, and arranged for her to bring him over
16 to the trailer park where she lived.

17 So everybody is trying to find the people
18 that are involved because Kat Feaster gave the names of
19 the other three people involved. So there's no mystery
20 to that. They can cross-examine Detective Freeman about
21 that. The three-hour drive up and the three-hour drive
22 back, Detective Freeman was there the whole time.

23 So just for clarification on the facts, I
24 just haven't heard any material fact that -- that
25 Detective Merrithew could testify to except like

1 speculation in his head which I don't know if he can
2 testify to that anyway.

3 With regard to compulsory process, I had an
4 opportunity to read the cases that Ms. Kennedy has cited
5 in her motion. Every single one of these cases is a
6 situation where the court is either suppressing evidence
7 or telling the defense, because the state objects, you
8 cannot let that witness testify. None of these cases
9 deal with an unavailable witness. There's always an
10 action taken by the court, a suppression, limiting the
11 testimony of a defense witness, not allowing a defense
12 witness to testify.

13 In fact, in U.S. Supreme Court *Taylor vs.*
14 *Illinois*, because the defense violated discovery, they
15 suppressed the witness, and so that -- in that case they
16 discussed compulsory process.

17 I have never found a case where the court has
18 said compulsory process was denied to the defendant
19 because the defense's own witness was unavailable.

20 With regard to the confrontation clause, I
21 think the Court put it best when you -- you cited *State*
22 *v. Starnes* that there's no violation of the
23 confrontation clause if the state chooses not to call a
24 witness. You don't have a right to confront a witness
25 that we don't want to call.

1 And as I cited in my last response to defense
2 motion, the state is under no obligation to call every
3 single witness whose has knowledge of material facts.
4 And that's *State v. Richardson*.

5 So we have chosen not to call Detective
6 Merrithew. I don't think that the defendant now has a
7 right to confront Detective Merrithew if we choose not
8 to call him. So I don't think there is a violation of
9 the Sixth Amendment.

10 For clarification on the facts, Your Honor,
11 Mr. Alfaro ---

12 THE COURT: Ms. Williams, make that statement
13 one more time.

14 MS. WILLIAMS: About the confrontation
15 clause?

16 THE COURT: Yes, ma'am.

17 MS. WILLIAMS: In your own order, you said:
18 Yet the appropriate question under the confrontation
19 clause is whether there has been any interference with
20 the defendant's opportunity for effective
21 cross-examination at trial. And you were quoting *State*
22 *vs. Starnes*. And you said: The confrontation clause of
23 the Sixth Amendment of the Constitution -- I'm sorry,
24 excuse me, Your Honor -- this trial right includes the
25 opportunity to cross-examine and to have a jury weigh

1 the demeanor of the witness.

2 So the appropriate question is, is the
3 confrontation clause violated if the state chooses not
4 to call that witness, and the answer is no. There is no
5 right to confront a witness. There's no Sixth Amendment
6 right to confront a witness that we don't call. It's a
7 trial right.

8 And for purposes of the record and to clarify
9 the facts of the record, the November 25th meeting in
10 Judge Dennis' chambers was when Mr. Alfaro informed
11 Ms. Kennedy at that time that we had no intention of
12 calling Detective Merrithew. It was not in March when
13 we had the status conference with Your Honor. So they
14 knew at that point, and at that time we did everything
15 we could to get as much information to Ms. Kennedy --
16 not just the e-mail address. I think we also provided a
17 cell number.

18 Court's indulgence for just a second.

19 Ms. Kennedy referred to documents that
20 Detective Merrithew testified to about a backhoe.
21 Actually, Detective Merrithew never followed up on that.
22 We hounded him about it, and we hounded him about it.
23 He never did follow up on finding the documents.

24 We did ask Detective Freeman to follow up on
25 finding those documents, and she did a lot of work on

1 that issue. She found the person who actually had owned
2 the company that rented the backhoe. The company had
3 closed. He told her about the storage unit where the
4 receipts might have been kept. She followed up on that.

5 So all of the information about the backhoe,
6 Detective Freeman was actually the person that -- that
7 did the follow up on that. Gerry just kind of dropped
8 the ball and did not follow up on that or didn't have
9 time.

10 Again, Detective Freeman actually did the
11 dive. She was the diver that went in to look for the
12 weapon. That was never done when Detective Merrithew
13 was here. And, actually, Mikell Henderson requested
14 that they do the dive. It was not at the -- at the
15 direction of Detective Merrithew.

16 Your Honor, I would also just bring up that
17 this motion for continuance, I recognize and have a lot
18 of reverence for the rights of the defendant, and I have
19 a lot of respect for the process, but the state -- if
20 this case is continued again, the state will be
21 prejudiced.

22 Sitting in the courtroom, as she is for every
23 single one of these proceedings, is the 79-year-old
24 mother of the victim. She has waited nine years for her
25 day in court. She just got out of the hospital.

1 We also have another witness who is critical
2 to this case, Sammy Harris who is a fact witness who is
3 in terrible health.

4 And we stand to lose those witnesses. This
5 is a nine-year-old case. You know, some of the reasons
6 why it's so old is not anyone's fault, but we will be
7 compromised in our ability to effectively put on a case.

8 THE COURT: The case itself is not nine years
9 old. The incident began nine years ago.

10 MS. WILLIAMS: That is correct, Your Honor.
11 The arrests weren't made for six and a half years. The
12 case is three years old. Yes, Your Honor.

13 And then just lastly, Your Honor, these
14 affidavits that were provided to us this morning, we
15 would take issue with the Feaster affidavit, number
16 five. That no other employee of Berkeley County was
17 involved in the investigation for over a year is just
18 simply not true. To suggest that Detective Merrithew
19 acted alone in this investigation is just simply not
20 true.

21 And number six in Ms. Kennedy's affidavit on
22 Jeffrey Michaelson, we would take issue with that fact
23 that there was significant disparity in the questions
24 that Detective Merrithew chose to ask.

25 Each of those interviews are on tape. You

1 know, usually defense counsels are saying if only we had
2 them on tape then we could see the truth. Well, we have
3 that here. The Court can review the tapes, the jury can
4 see Mr. Michaelson's tape, and we can see what really
5 happened.

6 We would just ask respectfully that you
7 please allow this case to go forward and deny the
8 motion. Thank you, Your Honor.

9 THE COURT: Ms. Kennedy.

10 MS. KENNEDY: Just very briefly, Your Honor.

11 You know, I would submit that Ms. Williams
12 just made my argument for me with her reference to the
13 fact that Detective Merrithew, quote, dropped the ball.
14 That is the essence of my defense.

15 And because and as I said earlier, the right
16 of confrontation means that I can call my own witnesses.
17 I don't have to rely on them to call witnesses or choose
18 which witnesses that they can call for me.

19 Your Honor, it's -- it's of no significance,
20 in my view, that all these other detectives were
21 involved in this, because what they were doing was at
22 the directive of Detective Merrithew. As a matter of
23 fact, the letter directing Detective Freeman to do -- to
24 do the dredging of the Tailrace Canal says at the
25 request of Detective Merrithew and Mikell Henderson this

1 was being done.

2 The fact that -- that the assistant solicitor
3 makes reference to the fact or the issue of the backhoe
4 and Detective Merrithew not following up, that was --
5 that was part and parcel of the argument which, again,
6 goes to my motion, my first motion, to preclude them
7 from doing any further investigation. The fact that
8 they got Detective Freeman to go back and try to get the
9 information about the backhoe is -- is -- is indicative
10 of what Detective Merrithew didn't do. They obviously
11 have had conversations with -- with Detective Merrithew
12 or -- or are using my argument to beef up their
13 investigation.

14 My point, Your Honor, is simply this. There
15 is an overreliance on Rule 7(b) in terms of the
16 materiality issue, which I think has been satisfied by
17 all the -- all the prior filings. The assistant
18 solicitor can take issue with -- with whatever she wants
19 to in -- in my affidavit, but that affidavit is an
20 assertion of my view of the facts and -- and corresponds
21 with the evidence that I will intend to produce. But,
22 again, that goes to the Rule 7 issue and not to the
23 issue of compulsory process or to due process or to the
24 confrontation clause, which my understanding of the law
25 is simply this, that the -- that case law and certainly

1 the constitution overrides any kind of consideration
2 for -- for a rule, a rule of criminal -- criminal
3 procedure.

4 As to the chambers conference, the deputy
5 solicitor asserted during that conference that it was
6 his view that -- that the investigation actually began
7 with the arrest of these four individuals.

8 The assertion that -- that, you know, I can't
9 bring in any -- any additional information about the
10 codefendants, I can ask those questions without
11 identifying who they are. And there's no Fifth
12 Amendment privilege or hearsay or any of those things
13 that the assistant solicitor addressed because I don't
14 have to frame the questions that way, number one, and
15 number two, I have a right to call them if I want to and
16 they can take the Fifth. Nobody is impinging on their
17 right to call whoever they want to. The suggestion is
18 that -- again, that I don't have the ability or the
19 right to control my case.

20 With all due deference to Ms. Williams, and I
21 sympathize with her situation, I certainly do, but --
22 but we're back to the issue of why this case wasn't
23 called before, and it was because -- I mean, they're
24 arguing the same thing I'm arguing, you know, Your
25 Honor, we can't call this case for trial if these

1 witnesses aren't available.

2 You know, if Mr. Harris has been sick and
3 Ms. Reeves, again with all due deference, just got out
4 of the hospital, and so if we get to that point and
5 they're not available, are they going -- are they going
6 to take the case off the docket?

7 I mean, Ms. Williams made my argument for me.
8 Detective Merrithew dropped the ball. I have a right to
9 confront him about his dropping the ball.

10 THE COURT: Ms. Kennedy, what fact about
11 dropping the ball? And I think that dropping the ball
12 could be a term -- different things mean different
13 things to different people. What fact in this case can
14 Detective Merrithew testify that is essential to the
15 defense of your client?

16 MS. KENNEDY: I will reiterate the ones that
17 I -- that I told you.

18 THE COURT: And I'm hearing potentially
19 material. I want to know the ones that are material,
20 not the ones that -- that you believe may but that are
21 -- are truly material.

22 MS. KENNEDY: It's truly material to my
23 defense, Your Honor, that as the -- as to the way the
24 investigation unfolded. It is a -- particularly, as it
25 relates to my client being brought into custody and when

1 he was brought into custody.

2 Christine Ahrenholz, his common-law wife,
3 girlfriend, the mother of his child, was being
4 interviewed by other detectives while they were
5 gathering -- while they were trying to get my client.

6 My client had -- that information was already
7 in hand in terms of the storage -- the storage unit that
8 was -- that was ultimately searched.

9 They lured, and that's just what -- they
10 lured my client to his girlfriend's house through a
11 series of text messaging and telling him -- and telling
12 him -- of her telling him that there was a -- that she
13 needed some money for their child. My client ---

14 THE COURT: And "they" being Detective
15 Merrithew again?

16 MS. KENNEDY: At -- yes. Yes, Your Honor.
17 At Detective Merrithew's direction, based on all the
18 information we've already gotten from Katherine Feaster,
19 Treze Feaster, and Jeremiah Scharer.

20 When he drove into the -- the trailer park
21 where his girlfriend resided, he was immediately
22 descended upon by three officers, taken into custody,
23 unlike the other three who were allowed to voluntarily
24 come in and who were allowed to -- to talk to Detective
25 Merrithew. So that's the whole issue. It's material to

1 my defense that I be able to develop that because my
2 part of it, again, it goes to the successive issue that
3 -- that I have a right to explore that and the
4 circumstances under which all these people were taken
5 into custody, starting with Detective Merrithew.

6 My understanding in terms of the pawnshop
7 ticket is that it wasn't done by Detective Freeman. It
8 was done by -- according to Detective Merrithew's
9 testimony at the preliminary hearing that he did all
10 that. And that started in 2006.

11 There is no -- there is no clearcut line in
12 terms of and I've been offered no evidence as to when --
13 as to when Detective Freeman actually became involved in
14 the investigation. My understanding is that she became
15 involved on the day when all these folks were arrested
16 and she -- she accompanied Detective Merrithew to Pelzer
17 because they were -- they were going to -- getting a
18 female witness and that's what's required by the
19 sheriff's office.

20 I need to be able to interrogate Detective
21 Merrithew about the jewelry that was shown, which pieces
22 of jewelry were shown to the Witness Ms. Frances Reeves
23 and also the Witness Ms. Ahrenholz, because I still
24 don't know. I still don't know. And that is material,
25 and the discovery reflects that.

1 Materially, it's important that I be able to
2 -- for a motion for a directed verdict on the burglary,
3 I need to be able to interrogate him and question him
4 about the burglary, his knowledge of the burglary, about
5 the -- about the safe, because that's an issue, and the
6 linkage or lack thereof between what was found in the
7 storage shed versus what was supposedly taken from --
8 from the house.

9 And keep in mind, Your Honor, this was an
10 ongoing investigation involving other people, other
11 people prior to Detective Merrithew's involvement in
12 this case. All of that is material to my defense, you
13 know, in terms of accessory after the fact, and I
14 don't ---

15 THE COURT: Did I understand you to say that
16 there were people involved prior to Detective Merrithew?

17 MS. KENNEDY: Yes, Your Honor. It was a cold
18 case.

19 THE COURT: In investigation?

20 MS. KENNEDY: Right. The sequence of -- the
21 sequence of the investigation is this, that when he --
22 Mr. Reeves was reported missing in 2001. There was some
23 -- a preliminary investigation done. Nothing was done
24 until -- nothing else was -- there's a follow-up report
25 made that Detective Lee did, and then it sat as a cold

1 case for -- till 2006 at which point in time Detective
2 Merrithew testified under oath at the preliminary
3 hearing that he was assigned to the case and he began
4 his investigation.

5 And the assertion that -- that all of this
6 was done or that -- that Detective Freeman did all of
7 these things is simply -- which again points to the
8 issue of my being able to cross-examine him because it
9 is contradicted by his testimony at the preliminary
10 hearing.

11 THE COURT: Ms. Kennedy, have you provided to
12 the Court or do you know of any case law that would show
13 that the refusal of a continuance alone is a
14 constitutional violation?

15 MS. KENNEDY: Your Honor, I think the cases
16 that I provided to the Court support my contention that
17 it is, that it's a violation of due process under the
18 confrontation clause. As I mentioned earlier, the
19 *Foster* case, the *Washington* case. I mean, and I realize
20 -- I mean, it's rare in what we do to be able to ever
21 find a case that's directly on point. However, the
22 discussion of what's expected in terms of and what's
23 required in the compulsory process, due process,
24 confrontation, those -- the fact that I don't have cases
25 on point in no way mitigates or changes the fact that

1 those cases discuss the right of confrontation, the
2 right of being -- being able to put -- put up a defense,
3 the right of me having the ability to -- to rebut the
4 evidence.

5 I have no way to rebut the state's evidence.
6 I suppose that the expectation is that I'm going to have
7 -- have to -- to sit here and let all of this come in
8 and -- and not be able to challenge it. And that is
9 simply not the law. A trial has been and is supposed to
10 be a quest for the truth. They get to tell their story;
11 I get to tell mine. I need Detective Merrithew to be
12 able to -- to tell my story.

13 And the Court raises a valid point; and that
14 is, at any point during this proceeding if the Court
15 decides not to grant my motion for a continuance, then
16 we are at a point where I would renew my motion for
17 continuance, I would ask for a mistrial, and we are --
18 we are back where we started. The cleanest, most
19 efficient way to do this is to allow me to develop my
20 case. If they've got problems with witnesses, if
21 they've got issues with the case, then as I said, there
22 are -- there are other ways to dispose of it.

23 THE COURT: And, Ms. Kennedy, let's assume
24 that I grant your motion for a continuance.

25 MS. KENNEDY: Yes, Your Honor.

1 THE COURT: How are we going to get Detective
2 Merrithew here? How are you going to get Detective
3 Merrithew here?

4 MS. KENNEDY: Your Honor, I'll address the
5 issue. I have no way of -- what I know is this. All
6 right? What I know is that the job that he has taken is
7 for a year at a time. He started that employment in
8 November. So July -- September, October, that's another
9 five months. All right.

10 The other thing is, as I said, Detective
11 Merrithew came back in March. And as I said, had I
12 known he was here then, I would have put him under
13 subpoena, and I would have requested -- requested the
14 Court's permission to have it be an open-ended or to
15 have Detective Merrithew here to -- to advise the Court
16 when he would be coming back so that we could get the
17 case ready for a date certain. I was deprived of the
18 opportunity to do that. And when we had our chambers
19 conference, the state asserted that they were aware that
20 he had been here.

21 Now, all of this could have been avoided had
22 there just been some simple notice that he was here. We
23 could have had, as Judge Dennis suggested, a conference
24 about when he would be here so that we could -- we could
25 go forward with it. None of that was done.

1 And to assert that my client should be
2 deprived of his constitutional right to put forth a
3 defense because of other potential issues related to
4 other witnesses is -- is tantamount to him being
5 deprived of the opportunity to have a fair trial.

6 Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Ms. Kennedy and Mr. Schwacke confer.)

9 MS. KENNEDY: Your Honor, and in terms of why
10 the case wasn't called, I -- I apologize to the Court.
11 I did have an order of protection since I had just
12 completed a capital case. So that, that was my
13 responsibility.

14 But, again, I wouldn't have been able to
15 subpoena him because the issue is that a subpoena is
16 specific to a specific term of court.

17 THE COURT: Anything further, Ms. Kennedy?

18 MS. KENNEDY: No, Your Honor. Thank you.

19 THE COURT: Do you have any response,
20 Ms. Williams?

21 MS. WILLIAMS: Just that, Your Honor, we
22 didn't know Detective Merrithew was here until after he
23 left. Our understanding is that his wife is now over
24 there, and we don't think he is coming back any time
25 soon. If we did, then we would certainly make the Court

1 aware of that.

2 THE COURT: Anything further?

3 (Ms. Kennedy and Mr. Schwacke confer.)

4 MS. KENNEDY: No, Your Honor. Thank you.

5 THE COURT: We have the *Jackson v. Denno*
6 hearing that's scheduled in the morning?

7 MS. WILLIAMS: Yes, Your Honor. We could
8 actually -- well, it's probably too late now. I was
9 going to say we could start. In the morning would be
10 fine, Your Honor.

11 THE COURT: All right. I am reserving my
12 ruling until the morning. We will proceed with the
13 *Jackson v. Denno* hearing. I do not believe that that
14 will impact the continuance motion to allow -- to
15 continue with that hearing.

16 MS. KENNEDY: Your Honor, may I inquire to
17 the Court will you make your ruling prior to the
18 *Jackson v. Denno* hearing? Because there's a certain
19 issue of law unrelated to these arguments that -- that
20 might arise in the event that the Court does not grant
21 my motion for continuance.

22 THE COURT: You'll have my ruling before we
23 begin the *Jackson v. Denno* hearing.

24 MS. KENNEDY: Thank you.

25 THE COURT: There was some discussion in

1 chambers that the video is an hour long. Is that
2 correct?

3 MS. WILLIAMS: Yes, Your Honor.

4 THE COURT: Do you have a copy for the Court
5 so that I may...

6 (Videotape tendered to the Court.)

7 THE COURT: Ms. Williams, is there any way --
8 I don't know that I have anything to watch that on.

9 MS. WILLIAMS: I'm sure Mr. Alfaro would lend
10 you his VCR.

11 MR. ALFARO: We have it on DVD, but we've had
12 problems playing it in our office.

13 MS. WILLIAMS: And it's not a complete
14 version.

15 (Mr. Alfaro and Ms. Williams confer.)

16 THE COURT: All right. So I have solved the
17 technology problem.

18 And, Ms. Kennedy, just for the record, any
19 objection to the Court reviewing the statement in
20 preparation for the *Jackson v. Denno* hearing, the
21 Court's version? And in no way is the viewing going to
22 be an indication -- the viewing of the videotape is in
23 no way to indicate how I'm going to rule.

24 MS. KENNEDY: I understand, Your Honor, and I
25 have no objection. Just as the Court has indicated, it

1 will make its ruling prior to the hearing.

2 THE COURT: Yes, ma'am.

3 I am aware that it's 5:30 and well after
4 working hours, and that is why we are breaking at this
5 point. We will begin at 9:00 a.m. in the morning.
6 Please have all of your witnesses up here by then.
7 Thank you.

8 (Whereupon, at approximately 5:30 p.m. the
9 trial is recessed to the following day, Tuesday,
10 June 29, 2010, at 9:00 a.m.)

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1 (On Tuesday, June 29, 2010, the trial
2 reconvenes at approximately 9:00 a.m., the defendant
3 being present with counsel, Ms. Kennedy and
4 Mr. Schwacke, and the following proceedings were had:)

5 THE COURT: Is your client ready to proceed?

6 MS. KENNEDY: Yes, Your Honor.

7 THE COURT: The state ready to proceed?

8 MS. WILLIAMS: The state is ready, Your
9 Honor.

10 THE COURT: And I thank you for accommodating
11 the Court due to the lateness of the hour yesterday
12 evening. It also gave me the opportunity to again
13 review the Court's previous order as well as review very
14 thoroughly the argument and presentation by both the
15 defendant and the state.

16 Based upon my review of the affidavits, the
17 memos that have been presented, the case law that has
18 been presented, I am denying the motion for continuance
19 on behalf of Jeffrey Michaelson.

20 The Court relies on the previous order which
21 was filed April 23rd, 2010. The Court has listened
22 intently to the arguments by counsel on behalf of the
23 defendant, which, primarily, the fact that Detective
24 Merrithew is not available. Neither the state nor the
25 defendant has articulated any reason or -- articulated

1 any reason that the state has prohibited or prevented
2 the defendant from calling Detective Merrithew, former
3 Detective Merrithew, in the matter. The detective is
4 simply unavailable. And so the Court finds that the
5 constitutional grounds that have been raised by the --
6 by the defendant that would support the granting of a
7 continuance in this case are without merit.

8 Therefore, the Court finds that the issuance
9 -- the appropriate standard for issuing the continuance
10 in this case is Rule 7(b) of the Rules of Criminal
11 Procedure. And, again, those were articulated in the
12 order filed April 23rd of 2010.

13 As I cautioned the state, the state indicates
14 that they are ready to proceed and can proceed without
15 Detective Merrithew, Mr. Merrithew, at this time. The
16 state is aware and I have made the state aware and I
17 will make the state aware again that a motion for
18 continuance can be raised at any point at the conclusion
19 of the state's evidence, and so the granting -- or the
20 denial of this motion for continuance at this time does
21 not preclude the defendant from raising the same grounds
22 throughout, well, not necessarily throughout the trial
23 but at the close of the state's case.

24 I believe, Ms. Kennedy, that your argument
25 has been fully articulated and preserved for the record,

1 and I will note your -- your exception to my ruling at
2 this time.

3 MS. KENNEDY: Your Honor, if I may. In view
4 of the Court's adverse ruling, I have prepared a Notice
5 of Intent to Appeal which if the Court will allow me to
6 go file it so that the appellate court can review the
7 Court's decision with -- with more thoroughness before
8 we proceed in this case. I do that upon the advice of
9 the Office of Appellate Defense.

10 THE COURT: Ms. Williams.

11 MS. WILLIAMS: Your Honor, defense has no
12 right to file an interlocutory appeal, and I have case
13 law on that if the Court would just give me a moment.
14 The judgment has to be final before she can appeal it.

15 MS. KENNEDY: Your Honor, if I may.

16 THE COURT: Yes, ma'am.

17 MS. KENNEDY: I have been in consultation
18 with the Office of Appellate Defense, and I have a right
19 to file it. If I am wrong in my assertion, they will
20 kick it back, but it's procedurally improper for the
21 state to -- the state to disallow me the opportunity to
22 file the intent to appeal. I can take it downstairs. I
23 can ask the clerk to file it.

24 But where we are procedurally, based on my
25 understanding of the law, that is what I am entitled to

1 do and what I'm allowed to do. And if I am wrong, then
2 higher authority will -- will take care of it, but I do
3 have the right to file my notice, and that can't be
4 prevented by this Court. And when I file the notice,
5 then this Court loses, as you well know, jurisdiction.

6 So, procedurally, I think I'm on solid
7 ground, again based on my -- my advice and consultation
8 with the appellate -- the Office of Appellate Defense.
9 If I'm wrong, then so be it, but I have a right to do
10 that.

11 MS. WILLIAMS: Your Honor.

12 THE COURT: Yes, ma'am.

13 MS. WILLIAMS: I can find that law, but there
14 is no right to appeal it until the judgment is final,
15 and this is just a backdoor way of getting a
16 continuance.

17 THE COURT: Well...

18 MS. WILLIAMS: So...

19 THE COURT: And I appreciate everyone's very
20 zealous position. Ms. Kennedy, I assume Mr. Schwacke
21 went down to file that appeal?

22 MS. KENNEDY: Yes, Your Honor, he did.

23 THE COURT: All right. I'm going to take a
24 moment. I believe that you are correct I cannot stop
25 you from filing the appeal.

1 MS. KENNEDY: Yes, Your Honor.

2 THE COURT: Whether or not that that would
3 stop the process at that time, I'm going to take a
4 moment, allow Ms. Williams to present case law that --
5 well, we'll be back in just a moment. Do you have an
6 extra copy of it, or you don't have the filed copy?

7 MS. KENNEDY: Yes, Your Honor, it's being
8 filed. And then I would direct the Court's attention to
9 Rule 20-205, the effect of appeal: Upon the service of
10 Notice of Appeal, the appellate court shall have
11 exclusive jurisdiction.

12 THE COURT: All right. We'll be at ease.

13 MS. KENNEDY: Thank you, Your Honor.

14 THE COURT: Thank you.

15 (A break is taken at approximately 9:10 a.m.)

16 (The trial reconvenes at approximately
17 9:45 a.m., the defendant being present with counsel,
18 Ms. Kennedy and Mr. Schwacke, and the following
19 proceedings were had:)

20 THE COURT: All right. I have received a
21 copy of the Notice of Intent to Appeal based upon the
22 Court's ruling denying your motion for continuance,
23 Mr. Michaelson. We will be proceeding. Based upon the
24 Court's research, this is an interlocutory appeal, it is
25 not immediately appealable, and it is not affecting the

1 merits. We will proceed.

2 I assume you have a *Jackson v. Denno*?

3 MS. WILLIAMS: Yes, Your Honor.

4 MS. KENNEDY: Your Honor, if I may.

5 THE COURT: Yes.

6 MS. KENNEDY: My understanding is that --
7 that once the appeal is filed it operates as a stay of
8 proceedings and that the opposing party has certain
9 paperwork that they have to file.

10 To expect me to go forward and to ask me to
11 go forward under these circumstances or, more
12 importantly, to require me to go forward under these
13 circumstances would, in effect, operate as a waiver of
14 my intent and operate as a waiver of -- of my position.

15 If it's interlocutory, Your Honor, the Court
16 of Appeals can take care of it, but the Notice of Intent
17 to Appeal operates as a stay to these proceedings.
18 There are certain things that the opposing party can do
19 to put jurisdiction back into this court, but that has
20 to be done.

21 And, Your Honor, I don't want to be held in
22 contempt of Court, I don't want to cause any kind of
23 problem, but given the Court's ruling and given the
24 Court's position on the Notice of Intent to Appeal, with
25 all due respect, I think it's erroneous. I think that I

1 have to preserve my client's rights, refuse to
2 participate in this proceeding.

3 THE COURT: And, Ms. Kennedy, I have called
4 the Clerk's Office of the Supreme Court. Nothing has
5 been -- been filed. The Notice of Intent to Appeal and,
6 again, based upon my review of the case law, unless you
7 can present something that indicates to the Court that
8 this is an issue that is immediately appealable, we will
9 be going forward.

10 MS. KENNEDY: Your Honor, in view of that, I
11 would like the opportunity to talk to the Office of
12 Appellate Defense.

13 THE COURT: All right. I will give you 15
14 minutes. Will that be sufficient, Ms. Kennedy?

15 MS. KENNEDY: No, Your Honor. I need to be
16 -- I need to be able to call them and discuss the matter
17 with them.

18 I understand what the Court is -- my
19 understanding of what you're saying is that because it
20 couldn't -- I mean, because it's not physically in the
21 Court of Appeals that the jurisdiction would still
22 remain with you?

23 THE COURT: Ms. Kennedy, my research
24 indicates that this -- that a denial of a motion for
25 continuance is not immediately appealable and that we

1 will go forward on this matter ---

2 MS. KENNEDY: Your Honor.

3 THE COURT: --- on the trial of this case.

4 MS. KENNEDY: Right.

5 THE COURT: I believe that the issue is
6 preserved for appeal and you may go forward. The issue
7 may be moot at some point.

8 MS. KENNEDY: Your Honor, with all due --
9 with all due respect, the rule -- and, again, we're
10 going back to ---

11 THE COURT: All right. We're going to do
12 this, Ms. Kennedy.

13 MS. KENNEDY: Yes, Your Honor.

14 THE COURT: In order to protect everyone's
15 rights...

16 MS. KENNEDY: Yes, Your Honor.

17 THE COURT: --- and the integrity of the
18 system, I will allow you 30 minutes...

19 MS. KENNEDY: Thank you, Your Honor.

20 THE COURT: --- to go back to your office and
21 to speak with whomever you need to speak with. We will
22 resume back here at 10:15.

23 MS. KENNEDY: Yes, Your Honor.

24 THE COURT: And I will be happy to hear from
25 you.

1 And I understand, Ms. Williams, you have some
2 case law you have indicated?

3 MS. WILLIAMS: Yes, Your Honor, I do have.

4 THE COURT: Please make sure you provide
5 Ms. Kennedy a copy.

6 MS. WILLIAMS: Yes, Your Honor. I do have
7 *Miller v. State* and *Clifford v. State* which is the only
8 case that cites *Miller v. State*. And, clearly, that
9 without a judgment of a sentence, the only appealable --
10 that is when defense may appeal. It says very clearly:
11 In South Carolina, a criminal defendant may not appeal
12 until sentence has been imposed.

13 THE COURT: All right. We'll be at ease
14 until 10:15.

15 Ms. Kennedy, if something were to happen, if
16 you'll just contact my clerk, but we will resume on this
17 issue at 10:15. Thank you.

18 MS. KENNEDY: Thank you, Your Honor.

19 (A break is taken at approximately 9:50 a.m.)

20 (The trial reconvenes at approximately
21 10:30 a.m., the defendant being present with counsel,
22 Ms. Kennedy and Mr. Schwacke, and the following
23 proceedings were had:)

24 THE COURT: Please be seated.

25 Please let the record reflect it is 10:30, I

1 allowed Ms. Kennedy an additional few minutes to
2 complete her research.

3 Ms. Kennedy, I'll be happy to hear from you.

4 MS. KENNEDY: Thank you, Your Honor. May it
5 please the Court. I will respectfully request that -- a
6 motion for you to reconsider your ruling this morning.

7 Based upon all the argument that you have
8 previously heard, in particular those that were advanced
9 yesterday, it's my understanding that the Court's
10 ruling, again, is grounded in the unavailability of the
11 witness as defined by the rule, Rule 7, and I would
12 maintain and reiterate that Detective Merrithew is an
13 essential witness for my case in chief, again, based on
14 the argument advanced yesterday, and would respectfully
15 advise the Court that -- that a denial of the motion for
16 reconsideration, I've been instructed to do a writ of
17 supersedeas and that possibly Appellate Defense is in
18 the process of drafting that or assisting with drafting
19 that for me at the present time. That is not, as Your
20 Honor well knows, interlocutory and that for purposes of
21 the jury panel and for purposes of this procedure, Your
22 Honor, we can, as I understand from the chief appellate
23 defender, proceed with the case; but the moment the
24 supersedeas is filed, the case has to stop, and we will
25 be filing that possibly by the noon hour, certainly no

1 later than one o'clock today.

2 THE COURT: All right. And for all of the
3 reasons articulated in my April 23rd order as well as
4 for the reasons articulated during this morning's ruling
5 on your motion for continuance, I am denying your motion
6 to reconsider.

7 MS. KENNEDY: Thank you, Your Honor.

8 THE COURT: All right. Due to the -- the
9 jury now has been waiting 30 minutes. We're going to go
10 ahead and select our jury. Then we will begin with the
11 *Jackson v. Denno*. So we will likely select the jury,
12 release the jury for lunch, an early lunch, and then do
13 a *Jackson v. Denno* and then proceed.

14 MS. KENNEDY: I'm sorry, Your Honor. We're
15 going to do jury selection?

16 THE COURT: We're going to select a jury.

17 MS. KENNEDY: Yes, ma'am. Thank you.

18 THE COURT: Then we will break for lunch
19 which should be -- we can appropriately break for an
20 early lunch.

21 MS. KENNEDY: Yes, Your Honor.

22 THE COURT: Do a *Jackson v. Denno* during our
23 lunch break, and then have the jury return, just for
24 scheduling. Thank you.

25 All right. Ladies and gentlemen in the

1 audience, we're going to bring the jury panel back. I
2 don't know how many there are, so if everyone will move
3 to the last two rows. Thank you.

4 I don't have additional voir dire from either
5 party. Is that correct?

6 MS. WILLIAMS: The state doesn't have any.

7 THE COURT: Defendant's voir dire?

8 MS. KENNEDY: Yes, Your Honor. The questions
9 about whether or not there's anything about this,
10 whether it's a murder, whether it's a -- whether or not
11 anyone is a member of a crime prevention organization,
12 whether -- whether or not they have been victims,
13 victims of a crime. Your Honor, Ms. Clausen had them
14 here and previously had given them to me. Whether or
15 not that they or any member of their family has been the
16 victim of a crime. I think that was -- that was it,
17 Your Honor.

18 THE COURT: All right. And do you have any
19 additional witnesses, Ms. Kennedy?

20 MS. KENNEDY: Any additional?

21 THE COURT: Do you have any additional
22 witnesses?

23 MS. KENNEDY: No.

24 THE COURT: I don't have a witness list.

25 MS. KENNEDY: No. No, Your Honor. That

1 would have been Detective Merrithew.

2 THE COURT: All right. Thank you.

3 MS. WILLIAMS: Your Honor.

4 THE COURT: Yes, ma'am.

5 MS. WILLIAMS: We do have one additional
6 witness.

7 MS. KENNEDY: I'm sorry. In view of the --
8 the unusual nature of these proceedings, I would reserve
9 the right to call witnesses. I think Your Honor is well
10 aware that under the constitution I don't have to put up
11 a defense, and therefore I don't -- I don't necessarily
12 at this point in time have to produce a witness list.

13 And, again, the issue of unfair prejudice
14 arises because I didn't get a witness list from the
15 state until yesterday. And to be forced to provide,
16 additionally, my witness list to the state gives them
17 time to prepare, unfair time, more time to prepare than
18 I have for -- for examination of my witnesses.

19 THE COURT: All right. So I will not have
20 any witnesses to call on behalf of the defendant at this
21 time.

22 MS. KENNEDY: Thank you, Your Honor.

23 THE COURT: All right. Anything additional
24 before we bring in the jury?

25 MS. WILLIAMS: Yes, Your Honor. And I will

1 give you and the court reporter a corrected version.
2 And I apologize to the Court, but Katie Shuler who is
3 with the Berkeley -- I think I have the amended list if
4 the Court would like it. She is with the Berkeley
5 County sheriff's department, and she was inadvertently
6 left out of the state's first list, so but I believe she
7 is on this one. She is number 15. And it doesn't say
8 it, but she is with the Berkeley County sheriff's
9 department. I apologize to the Court.

10 THE COURT: Thank you.

11 All right. Anything before we bring in the
12 jury? Five and ten with two alternates, is that
13 correct, from the state?

14 MS. WILLIAMS: Yes, Your Honor.

15 THE COURT: Ms. Kennedy?

16 MS. KENNEDY: Yes, Your Honor.

17 THE COURT: Thank you.

18 All right. Let's bring in the jury.

19 (Whereupon, the jury panel enters the
20 courtroom at approximately 10:40 a.m.)

21 THE COURT: Members of the jury, I appreciate
22 your patience. There were some matters that the Court
23 had to deal with unrelated to the matter. I appreciate
24 your patience.

25 Ladies and gentlemen, the case that we are to

1 select a jury for is the case of The State of South
2 Carolina vs. Jeffrey Michaelson.

3 Ladies and gentlemen, you are -- I remind you
4 that you took an oath to give complete and truthful
5 responses yesterday. I remind you you're still under
6 the same oath as jurors.

7 And just as yesterday I gave you an
8 opportunity to come forward, there may be some questions
9 that are again personal that you wish to speak with me
10 in private concerning, and I will give you the
11 opportunity.

12 Ladies and gentlemen, the case that we're
13 about to begin is the case of The State vs. Jeffrey
14 Michaelson. Mr. Michaelson is charged in an indictment,
15 two, two indictments in this case, and the indictment is
16 just a formal document that brings us to court here
17 today. The allegations contained in the indictment are
18 in no way evidence of what it states, and Mr. Michaelson
19 has pled not guilty to these two indictments, and we are
20 here before you today to begin the jury selection
21 process.

22 Mr. Michaelson has been charged in indictment
23 2008-GS-08-1669 with burglary in the second degree and,
24 two, in indictment 2009-GS-08-2295 with a true-billed
25 indictment for murder.

1 Ms. Kennedy, if you will please stand,
2 introduce your client, the office you're in, and any
3 persons that will be assisting you in the court
4 throughout the week.

5 MS. KENNEDY: My name is Patti Kennedy. I'm
6 with the Public Defender's Office.

7 This is my client, Jeffrey Michaelson.
8 Sitting with me as co-counsel is David
9 Schwacke. He is also with the Public Defender's Office.

10 THE COURT: Ladies and gentlemen, is there
11 any member of the jury panel related by blood, marriage,
12 or close personal friend to Mr. Michaelson? If so,
13 please stand.

14 (There was no response.)

15 THE COURT: Thank you. There are none.

16 Is there any member of the jury panel related
17 by blood, marriage, close personal friend, ever been
18 represented by or have any business, personal, or
19 professional dealings with Ms. Kennedy or Mr. Schwacke?
20 If so, please stand.

21 (There was no response.)

22 THE COURT: Thank you. There are none.

23 Ms. Williams, if you will please stand,
24 introduce yourself and any persons that will be seated
25 at your table throughout the trial.

1 MS. WILLIAMS: Thank you, Your Honor.

2 Good morning. My name is Anne Williams. I'm
3 an attorney with the state, Berkeley County Solicitor's
4 Office.

5 Seated with me is Deputy Solicitor Bryan
6 Alfaro, also with the state.

7 Seated also is Diane Freeman (phonetic) with
8 the Berkeley County sheriff's department.

9 We both work with Scarlett Wilson, the
10 elected solicitor for the Ninth Circuit which is
11 Charleston and Berkeley.

12 THE COURT: Is there any member of the jury
13 panel related by blood, marriage, close personal friend,
14 ever been represented by or have any personal or
15 professional dealings with either Ms. Williams or
16 Mr. Alfaro? If so, please stand.

17 (There was no response.)

18 THE COURT: Thank you. There are none.

19 Is there any member of the jury panel who is
20 employed by the Ninth Circuit Solicitor's Office, which
21 consists of Berkeley and Charleston County, or you have
22 a family member or very close friend employed by the
23 Solicitor's Office? If so, please stand.

24 (There was no response.)

25 THE COURT: Thank you. There are none.

1 Any member of the jury panel have any matters
2 handled by either the Public Defender's Office or the
3 Solicitor's Office either here or in Charleston County?
4 If so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 Ladies and gentlemen, I'm now going to call a
8 list of potential witnesses that may be called to
9 testify in this case. If you are related by blood,
10 marriage, close personal friend, have any business,
11 personal, or professional dealings with any of these
12 individuals, please stand:

13 Frances Reeves; Lieutenant Anthony Phyll,
14 Berkeley County Sheriff's Office; Detective P.J. Lee;
15 Brenda Ahrenholz; Sergeant Freeman, Berkeley County
16 Sheriff's Office; Sammy Harris; Jeremiah Scharer;

17 John Burnett, State Law Enforcement Division;
18 Gary Bowman, Money Man Pawn Shop; Lieutenant Mark Mason,
19 Berkeley County Sheriff's Office; Vicki Hallman with
20 SLED, State Law Enforcement Division; Lieutenant Dean
21 Kokinda, Berkeley County Sheriff's Office;

22 Detective Frank Drennon, Berkeley County
23 Sheriff's Office; Detective Mike Crumley, Berkeley
24 County Sheriff's Office; Katie Shuler, Berkeley County
25 Sheriff's Office;

1 Christine Thomas; Crystal Spence, Berkeley
2 County Sheriff's Office; Tabitha Thomas-Harding,
3 Berkeley County Sheriff's Office; Eowyn Corcrain,
4 Medical University of South Carolina;

5 Ben Varnadore, State Law Enforcement
6 Division; Catherine Leisy, State Law Enforcement
7 Division; Sharee Brown, State Law Enforcement Division;
8 Amy Stephens, State Law Enforcement Division; Selena
9 Kinard, State Law Enforcement Division; Suzanne Cromer,
10 State Law Enforcement Division;

11 Ryan Almers; Geneva Harris Morris; Detective
12 Bobby Shuler, Berkeley County Sheriff's Office; Martin
13 Morris; George Novak; Brian Valbert; Dr. Erin Presnell,
14 Medical University of South Carolina.

15 Once again, if you are related by blood or
16 marriage or close personal friend with any of these
17 individuals, please stand.

18 Tell me your juror number, please.

19 A POTENTIAL JUROR: Number 97. I've worked
20 with the...

21 THE COURT REPORTER: I'm sorry, I couldn't
22 hear her.

23 THE COURT: She has worked in the Berkeley
24 County Detention Center.

25 Are you now employed with the Berkeley County

1 Detention Center?

2 MS. KEY: No, I'm not.

3 THE COURT: And I need you to speak very
4 loudly for me. Your juror number?

5 MS. KEY: Ninety-seven.

6 THE COURT: Okay. And when did you work in
7 the Berkeley County Detention Center?

8 MS. KEY: From 1999 to 2007.

9 THE COURT: And what was your last day in
10 2007; do you recall?

11 MS. KEY: March 27th, 2007.

12 THE COURT: And what do you currently do?

13 MS. KEY: I'm a security officer.

14 THE COURT: Thank you. I have called a list
15 of potential witnesses, some of which are from the
16 Berkeley County Sheriff's Office. Is there anything
17 about your previous employment with the Berkeley County
18 Detention Center that would affect your ability to be
19 able to be fair and impartial in this case?

20 MS. KEY: No, ma'am.

21 THE COURT: Ma'am, I need you to speak up.

22 MS. KEY: No, ma'am.

23 THE COURT: Your juror number and name?

24 MS. KEY: Ninety-seven, Rhonda Key.

25 THE COURT: Thank you. You may be seated.

1 Thank you.

2 Is there anyone else?

3 (There was no response.)

4 THE COURT: Thank you. There are none.

5 Ladies and gentlemen, the state alleges
6 through the indictment that as I have indicated to you
7 is merely the formal document that brings us here today
8 that Jeffrey Michaelson did in Berkeley County on or
9 between January 17th, 2001, and February 1st, 2001,
10 unlawfully enter the dwelling of Parrish Reeves and/or
11 Brenda Ahrenholz located at [REDACTED] Alan Park Lane, in
12 Cordesville, South Carolina, and without consent and
13 with the intent to commit a crime therein, to wit:
14 larceny. This is in violation of the Code of Laws of
15 South Carolina.

16 The state further alleges that Mr. Michaelson
17 did in Berkeley County on or about January 17th of 2001,
18 willfully, knowingly, unlawfully, and with malice
19 aforethought, and in concert with others, kill one
20 Parrish Reeves by means of gunshot wound to the head and
21 that said Parrish Reeves did die as a proximate result
22 thereof in Berkeley County on or about January 17th,
23 2001. This is in violation of the Code of Laws of South
24 Carolina.

25 Ladies and gentlemen, based upon that

1 information, is there any member of the jury panel who
2 knows anything, has heard anything about this case,
3 other than what I have just read to you? If so, please
4 stand.

5 Please stand, sir. And your juror number and
6 name?

7 A POTENTIAL JUROR: Sixty-seven, Vincent
8 Greene.

9 THE COURT: All right. And, sir, I'm going
10 to have you come forward at the end, and I'm going to
11 need you to remember to come forward, Mr. Greene.

12 MR. GREENE: Okay.

13 THE COURT: All right. Thank you.

14 Is there anyone else?

15 (There was no response.)

16 THE COURT: Thank you. There are none.

17 Ladies and gentlemen, is there any member of
18 the jury panel, other than juror number 97, who has ever
19 been employed with the Berkeley County sheriff's
20 department in any capacity or close family member or
21 friend has worked for the Berkeley County sheriff's
22 department? If so, please stand.

23 (There was no response.)

24 THE COURT: Thank you. There are none.

25 Is there any member of the jury panel who has

1 ever worked for the State Law Enforcement Division or a
2 member of your immediate family ever worked for the
3 State Law Enforcement Division, otherwise known as SLED?
4 If so, please stand.

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 Any member of the jury panel ever worked for,
8 currently employed by, or have a close family member or
9 friend that is employed with the Medical University of
10 South Carolina in any capacity? If so, please stand.

11 Yes, ma'am. And your juror number and name?

12 A POTENTIAL JUROR: Forty-nine.

13 THE COURT: Juror 49?

14 MS. EARLS: Yes, ma'am.

15 THE COURT: Your last name?

16 MS. EARLS: Earls.

17 THE COURT: And you are presently employed at
18 MUSC?

19 MS. EARLS: Yes, ma'am.

20 THE COURT: And what do you do at MUSC?

21 MS. EARLS: I work at the Storm Eye
22 Institute, a technician.

23 THE COURT: I have listed some potential
24 witnesses that are employed by MUSC. Are you familiar
25 with any of those individuals?

1 MS. EARLS: No, ma'am.

2 THE COURT: And is there anything about an
3 individual employed by MUSC testifying that would affect
4 your ability to be fair and impartial in this case?

5 MS. EARLS: No, ma'am.

6 THE COURT: All right. Thank you.

7 Ms. Earls, Juror 49; is that correct?

8 MS. EARLS: Yes, ma'am.

9 THE COURT: All right. Is there anyone else?

10 A POTENTIAL JUROR: Ma'am, did you say close
11 friends?

12 THE COURT: Yes, ma'am.

13 A POTENTIAL JUROR: At MUSC, yes. Yes,
14 ma'am, I do.

15 THE COURT: Your juror number and name?

16 A POTENTIAL JUROR: 129, Yvonne Murray.

17 THE COURT: And is there anything about your
18 relationship with your close friends that are employed
19 by MUSC that will affect your ability to be fair and
20 impartial in this case?

21 MS. MURRAY: No, ma'am.

22 THE COURT: Your juror number one more time?

23 MS. MURRAY: 129.

24 THE COURT: Thank you.

25 Is there anyone else?

1 (There was no response.)

2 THE COURT: Thank you. There are none.

3 Is there any member of the jury panel ever
4 been employed by, family member employed by, or close
5 friend employed by the Money Man Pawn Shop? If so,
6 please stand.

7 Yes, sir. Your juror number and name?

8 A POTENTIAL JUROR: Eighty-seven, Jalon
9 Jackson.

10 THE COURT: And you were employed by Money
11 Man?

12 MR. JACKSON: No. My neighbor was.

13 THE COURT: And how long ago was that, sir?

14 MR. JACKSON: I believe she finished up about
15 two months ago.

16 THE COURT: And is there anything about your
17 relationship with your friend that used to work for
18 Money Man Pawn Shop that would -- and if there is a
19 witness on the witness list that is employed by Money
20 Man Pawn Shop that would affect your ability to be fair
21 and impartial in this case?

22 MR. JACKSON: No, ma'am.

23 THE COURT: Thank you. Juror number?

24 MR. JACKSON: Eighty-seven.

25 THE COURT: Thank you, sir.

1 Is there anyone else?

2 (There was no response.)

3 THE COURT: Thank you. There are none.

4 Ladies and gentlemen, is there any member of
5 the jury panel who is a member of a victim's rights
6 advocacy group such as Mothers Against Drunk Driving,
7 People Against Rape, Students Against Drunk Driving? If
8 so, please stand.

9 (There was no response.)

10 THE COURT: Thank you. There are none.

11 Ladies and gentlemen, I'm now going to ask
12 you to come forward, you will also need to come forward,
13 but I have a few more questions to ask about to
14 determine more questions to ask of you.

15 Has any member of the jury panel been a
16 victim of a violent crime or have a family member or a
17 close friend who has been the victim of a violent crime?
18 I need you to come forward at the appropriate time.

19 And if there is, based upon anything that I
20 have said or based upon any of my questions or, again,
21 if this is just not the week for you or you believe that
22 based upon your religious, moral, political beliefs that
23 you will be unable to sit this week for this particular
24 case and you need to speak with me in private concerning
25 that, now is the time to come forward. Again, the

1 bailiffs will assist you.

2 MS. KENNEDY: Your Honor, if I may, before we
3 start, one additional.

4 THE COURT: I'll allow you time to do that.

5 MS. KENNEDY: Thank you.

6 THE BAILIFF: Number 45, Thadus Dorsey.

7 (The following on-the-record bench conference
8 was had in the presence of the jury panel but out of the
9 hearing of the jury panel:)

10 THE COURT: Thadus Dorsey?

11 MR. DORSEY: Yes, ma'am. I have had a
12 stepfather shot, my uncle killed, mother convicted and
13 associated with that crime.

14 THE COURT: All right. And is that here in
15 Berkeley County?

16 MR. DORSEY: No. Anderson County.

17 THE COURT: How long ago was that?

18 MR. DORSEY: That was many years ago.

19 THE COURT: And that was your brother?

20 MR. DORSEY: Mother.

21 THE COURT: She was convicted?

22 MR. DORSEY: Yes, ma'am.

23 THE COURT: And is there anything about that
24 that will affect your ability to be fair and impartial
25 in this case?

1 MR. DORSEY: No, ma'am.

2 THE COURT: And your juror number and name?

3 MR. DORSEY: Forty-five, Thadus Dorsey.

4 THE COURT: Thank you, Mr. Dorsey.

5 (Said bench conference being concluded, the
6 following proceedings were had:)

7 THE BAILIFF: Number 182, Connie Vorhis.

8 (The following on-the-record bench conference
9 was had in the presence of the jury panel but out of the
10 hearing of the jury panel:)

11 MS. VORHIS: Hello.

12 THE COURT: How are you?

13 MS. VORHIS: My sister was kidnapped and
14 raped, and he was tried and he was convicted. And a
15 friend probably about two years ago was raped.

16 THE COURT: All right. Is there anything --
17 that's two separate incidents. Is there anything about
18 either one of those incidents that would affect your
19 ability to be fair and impartial in this case?

20 MS. VORHIS: Probably not.

21 THE COURT: All right. Ms. Vorhis, it
22 doesn't matter what the answer is. I need a yes or a
23 no.

24 MS. VORHIS: Okay.

25 THE COURT: The defendant and the state

1 deserve jurors who are fair and impartial. Will you be
2 able to listen to the facts as presented from the
3 witness stand and apply the law as the Court gives it
4 and render a verdict that is fair and impartial based
5 only upon those things?

6 MS. VORHIS: Yes. Yes.

7 THE COURT: Your juror number?

8 MS. VORHIS: 182.

9 THE COURT: 182 will remain. Thank you.

10 (Said bench conference being concluded, the
11 following proceedings were had:)

12 THE BAILIFF: Number 171, Donna Stewart.

13 (The following on-the-record bench conference
14 was had in the presence of the jury panel but out of the
15 hearing of the jury panel:)

16 MS. STEWART: I was the victim of a violent
17 crime in '89.

18 THE COURT: And was that here in Berkeley
19 County?

20 MS. STEWART: In Massachusetts.

21 THE COURT: Okay. Was the person -- what
22 kind of violent crime?

23 MS. STEWART: Kidnapping and held at
24 gunpoint.

25 THE COURT: Okay. And was the person or

1 persons convicted with that crime?

2 MS. STEWART: He was killed. The sheriff
3 killed him because of the situation.

4 THE COURT: And is there anything about that
5 that will affect your ability to be fair and impartial
6 in this case?

7 MS. STEWART: Nothing. Absolutely nothing.
8 I have done major counseling, and I feel fine.

9 THE COURT: All right. Thank you.

10 MS. STEWART: Thank you.

11 THE COURT: Juror 171 will remain.

12 (Said bench conference being concluded, the
13 following proceedings were had:)

14 THE BAILIFF: Number 67, Vincent Greene.

15 (The following on-the-record bench conference
16 was had in the presence of the jury panel but out of the
17 hearing of the jury panel:)

18 THE COURT: Mr. Greene, I believe you
19 indicated you knew something about this case?

20 MR. GREENE: I was in Iraq part of 2008, and
21 my wife would send me newspapers, and I was shocked to
22 hear about it.

23 THE COURT: All right.

24 MR. GREENE: He was -- lived beside me in
25 Goose Creek.

1 THE COURT: Is there anything about your
2 familiarity with and reading about this case in the
3 newspaper that will affect your ability to be fair and
4 impartial in this case?

5 MR. GREENE: I don't think I would be partial
6 or unfair about it, but, I mean, that struck close to
7 home. That's the way I feel about it.

8 THE COURT: Tell me how you knew Mr. Reeves.

9 MR. GREENE: As he was a small boy, he was
10 about maybe two years old, and they lived near us in
11 Goose Creek.

12 THE COURT: I'm going to ask you again, but
13 let me ask you, and I need you to give a yes or no
14 answer. Will you be able to listen to the facts
15 presented from the witness stand, apply the law as the
16 Court gives it, and render a verdict that is fair and
17 impartial based only on those things?

18 MR. GREENE: Yes.

19 THE COURT: Juror 67 will remain.

20 (Said bench conference being concluded, the
21 following proceedings were had:)

22 THE BAILIFF: Juror 188, Christine Whipple.

23 (The following on-the-record bench conference
24 was had in the presence of the jury panel but out of the
25 hearing of the jury panel:)

1 MS. WHIPPLE: My son's girlfriend was a
2 victim of a home invasion. She was robbed and beaten
3 and raped.

4 THE COURT: Was that here in Berkeley County?

5 MS. WHIPPLE: No, it was not.

6 THE COURT: And was the person or persons
7 convicted of that?

8 MS. WHIPPLE: He was caught after he killed
9 somebody.

10 THE COURT: But is there anything involving
11 that that will affect your ability to be fair and
12 impartial in this case?

13 MS. WHIPPLE: I hope not. I don't know. I
14 always said if you were a moral ---

15 THE COURT: No, ma'am. Do you have -- I know
16 this is very emotional for you. You need to tell us --
17 hopefully not. But that incident, that it will not
18 affect your ability to be fair and impartial. Both the
19 state and the defendant deserve fair and impartial
20 jurors who will be able to listen to the facts as
21 presented from the witness stand and apply the law as
22 the Court gives it and render a verdict based only upon
23 those things. Would you be able to do that?

24 MS. WHIPPLE: I would hope so. I don't know
25 the answer. I think so, yes. I'm not sure.

1 THE COURT: And, I mean, you need to give a
2 yes or no response.

3 MS. WHIPPLE: Okay.

4 THE COURT: The Court doesn't care if it's
5 yes or no, but as I indicated, the state and -- the
6 defendant and the state deserve jurors who have the
7 ability to set aside those things and apply the facts
8 from the witness stand and any evidence that may be
9 introduced from the testimony and take the law as the
10 Court gives it to you and apply it to the facts and
11 render a verdict that is fair and impartial based only
12 on those things. So will you be able to do that?

13 MS. WHIPPLE: Yes.

14 THE COURT: Thank you, Ms. Whipple. You will
15 remain. Thank you.

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 THE BAILIFF: Number 32, Theresa Case.

19 (The following on-the-record bench conference
20 was had in the presence of the jury panel but out of the
21 hearing of the jury panel:)

22 THE COURT: Good morning.

23 MS. CASE: I'm not sure of the names, but I
24 listened very closely to the names. I didn't hear this
25 name mentioned, but I do know someone that works in

1 connection with the Solicitor's Office, and he was in
2 the room when I first walked in yesterday.

3 THE COURT: Who do you know?

4 MS. CASE: Shawn Abbott (phonetic). He's my
5 daughter's neighbor, but I just wanted to -- I didn't...

6 THE COURT: No. I appreciate your sharing
7 that with us. Is there anything about your relationship
8 with Mr. Abbott in the Solicitor's Office or your
9 daughter's relationship with Mr. Abbott that will affect
10 your ability to be fair and impartial in this case?

11 MS. CASE: No. They never discussed anything
12 professionally. I just know the connection. I just
13 know...

14 THE COURT: Ms. Case, your juror number?

15 MS. CASE: Thirty-two.

16 THE COURT: Juror 32 will remain.

17 (Said bench conference being concluded, the
18 following proceedings were had:)

19 THE BAILIFF: Number 169, Sallie Spencer.

20 (The following on-the-record bench conference
21 was had in the presence of the jury panel but out of the
22 hearing of the jury panel:)

23 THE COURT: Good morning.

24 MS. SPENCER: I really don't know of the law,
25 but I want to just ask is this a death penalty. If a

1 person is in fact found guilty of a crime such as a
2 murder, I don't know if they are -- is there a
3 possibility that he would receive that for...

4 THE COURT: This is not a death penalty case,
5 and the Court will instruct you as to all the law that's
6 applicable to this case.

7 MS. SPENCER: Okay.

8 THE COURT: This is not a death penalty case.

9 MS. SPENCER: Okay. That's all I needed to
10 know.

11 THE COURT: Thank you, Ms. Spencer. And your
12 juror number?

13 MS. SPENCER: 169.

14 THE COURT: All right. Thank you.

15 Juror 169 will remain.

16 (Said bench conference being concluded, the
17 following proceedings were had:)

18 (There was an off-the-record bench conference
19 by the Court, solicitors, and defense counsel, in the
20 presence of the jury panel but out of the hearing of the
21 jury panel.)

22 (Said bench conference being concluded, the
23 following proceedings were had:)

24 THE COURT: Ladies and gentlemen, I have one
25 more question. I had gone through a whole list of

1 Berkeley County and State Law Enforcement Division. Is
2 there any member of the jury panel who is currently
3 employed with any law enforcement agency or you have a
4 family member who is employed by a law enforcement
5 agency or a very close friend that is employed by a law
6 enforcement agency? If so, please stand.

7 And juror number 97, I believe we know you
8 were employed, so you may remain seated.

9 Is there anyone else?

10 Yes, ma'am. Your juror number and name?

11 A POTENTIAL JUROR: 129.

12 THE COURT: Yes, ma'am.

13 MS. MURRAY: I have a relative being a
14 magistrate. Is that...

15 THE COURT: Well, you have a relative who is
16 a magistrate?

17 MS. MURRAY: Yes.

18 THE COURT: And here in Berkeley County
19 or ---

20 MS. MURRAY: Jasper County.

21 THE COURT: And is there anything about your
22 relative being a magistrate that will affect your
23 ability in any way to be fair and impartial in this
24 case?

25 MS. MURRAY: No. No.

1 THE COURT: Your juror number and name?

2 MS. MURRAY: 129, Yvonne Murray.

3 THE COURT: Thank you, Ms. Murray.

4 Is there anyone else?

5 (There was no response.)

6 THE COURT: Thank you. There are none.

7 A POTENTIAL JUROR: My number is 18. My son
8 works at the Berkeley County jail.

9 THE COURT: All right. Is that your son?

10 MR. BLAND: Yes, ma'am. My son started
11 working ---

12 THE COURT: What is your son's name?

13 MR. BLAND: Andy.

14 THE COURT: His last name?

15 MR. BLAND: Bland.

16 THE COURT: And, sir, how long has he been
17 working there?

18 MR. BLAND: He just started like last week.

19 THE COURT: And is there anything about your
20 son working in the Berkeley County Detention Center that
21 would affect your ability to be fair and impartial in
22 this case?

23 MR. BLAND: No, ma'am.

24 THE COURT: Juror number 18; is that correct?

25 MR. BLAND: Eighteen.

1 THE COURT: Thank you.
2 Is there anyone else?
3 (There was no response.)
4 THE COURT: Thank you. There are none.
5 Ms. Kennedy, any further questions?
6 MS. KENNEDY: No, ma'am.
7 THE COURT: Ms. Williams, any additional
8 questions?
9 MS. WILLIAMS: No, ma'am.
10 THE COURT: Any objection to the clerk
11 drawing the jury?
12 MS. WILLIAMS: No, ma'am.
13 THE COURT: Ms. Kennedy?
14 MS. KENNEDY: No, ma'am.
15 THE COURT: Thank you.
16 Madam Clerk, please select the jury.
17 Is the state ready?
18 MS. WILLIAMS: The state is ready, Your
19 Honor.
20 THE COURT: Defendant ready?
21 MS. KENNEDY: Yes, Your Honor.
22 THE COURT: Madam Clerk.
23 THE CLERK: Ladies and gentlemen of the jury,
24 as I call your name, please come forth and bring your
25 personal belongings with you. If I say seat the juror,

1 please have a seat in the jury-box to my right. If I
2 say excuse the juror, please return to your original
3 seating.

4 Juror 173, Christina Tebben.

5 (White female approaches.)

6 THE CLERK: What sayeth the state?

7 MS. WILLIAMS: Please seat the juror.

8 THE CLERK: What sayeth the defense?

9 (Ms. Kennedy and Mr. Schwacke confer.)

10 MS. KENNEDY: Please seat the juror.

11 THE CLERK: Seat the juror.

12 Juror 85, Dona Inthaxoum.

13 (Asian female approaches.)

14 THE CLERK: What sayeth the state?

15 MS. WILLIAMS: Please seat the juror.

16 THE CLERK: What sayeth the defense?

17 (Ms. Kennedy and Mr. Schwacke confer.)

18 MS. KENNEDY: Please seat the juror.

19 THE CLERK: Seat the juror.

20 Juror 33, Denise Chandler.

21 (White female approaches.)

22 THE CLERK: What sayeth the state?

23 MS. WILLIAMS: Please seat the juror.

24 THE CLERK: What sayeth the defense?

25 MS. KENNEDY: Please seat the juror.

1 THE CLERK: Seat the juror.
2 Juror 156, Malcolm Scarborough.
3 (White male approaches.)
4 THE CLERK: What sayeth the state?
5 MS. WILLIAMS: Please seat the juror.
6 THE CLERK: What sayeth the defense?
7 MS. KENNEDY: Court's indulgence.
8 THE COURT: Yes, ma'am.
9 MS. KENNEDY: Please seat the juror.
10 THE CLERK: Seat the juror.
11 Juror number five, Brian A. Allison.
12 (White male approaches.)
13 THE CLERK: What sayeth the state?
14 MS. WILLIAMS: Please seat the juror.
15 THE CLERK: What sayeth the defense?
16 (Ms. Kennedy and Mr. Schwacke confer.)
17 MS. KENNEDY: Please seat the juror.
18 THE CLERK: Seat the juror.
19 Juror 90, Brenda Johnson.
20 (Black female approaches.)
21 THE CLERK: What sayeth the state?
22 MS. WILLIAMS: Please seat the juror.
23 THE CLERK: What sayeth the defense?
24 MS. KENNEDY: One moment.
25 (Ms. Kennedy and Mr. Schwacke confer.)

1 MS. KENNEDY: Please seat the juror.

2 THE CLERK: Seat the juror.

3 Juror 57, Eric Gabriel.

4 (White male approaches.)

5 THE CLERK: What sayeth the state?

6 MS. WILLIAMS: Please seat the juror.

7 THE CLERK: What sayeth the defense?

8 (Ms. Kennedy and Mr. Schwacke confer.)

9 MS. KENNEDY: Please seat the juror.

10 THE CLERK: Seat the juror.

11 Juror 29, Jeffery Burke.

12 (White male approaches.)

13 THE CLERK: What sayeth the state?

14 MS. WILLIAMS: Please seat the juror.

15 THE CLERK: What sayeth the defense?

16 (Ms. Kennedy and Mr. Schwacke confer.)

17 MS. KENNEDY: Please excuse Mr. Burke from
18 the trial of the case.

19 THE CLERK: Excuse the juror.

20 Juror 130, Christopher Newton.

21 (White male approaches.)

22 THE CLERK: What sayeth the state?

23 MS. WILLIAMS: Please seat the juror.

24 THE CLERK: What sayeth the defense?

25 (Ms. Kennedy and Mr. Schwacke confer.)

1 MS. KENNEDY: Please excuse the juror from
2 the trial of the case.

3 THE CLERK: Excuse the juror.

4 Juror 169, Sallie Spencer.

5 (Black female approaches.)

6 THE CLERK: What sayeth the state?

7 MS. WILLIAMS: Please excuse the juror.

8 THE CLERK: Excuse the juror.

9 Juror 18, Johnny Bland.

10 (White male approaches.)

11 THE CLERK: What sayeth the state?

12 MS. WILLIAMS: Please seat the juror.

13 THE CLERK: What sayeth the defense?

14 MS. KENNEDY: Please excuse Mr. Bland from
15 the trial of the case.

16 THE CLERK: Excuse the juror.

17 Juror 145, Soni Ring.

18 (White female approaches.)

19 THE CLERK: What sayeth the state?

20 MS. WILLIAMS: Please seat the juror.

21 THE CLERK: What sayeth the defense?

22 (Ms. Kennedy and Mr. Schwacke confer.)

23 MS. KENNEDY: Please seat the juror.

24 THE CLERK: Seat the juror.

25 Juror 108, Kenneth Lott, the Third.

1 (White male approaches.)

2 THE CLERK: What sayeth the state?

3 MS. WILLIAMS: Court's indulgence for just a
4 second.

5 THE COURT: Yes, ma'am.

6 MS. WILLIAMS: Please seat the juror.

7 THE CLERK: Seat the juror -- what sayeth the
8 defense?

9 (Ms. Kennedy and Mr. Schwacke confer.)

10 MS. KENNEDY: Please excuse Mr. Lott from the
11 trial of the case.

12 THE CLERK: Excuse the juror.

13 Juror 91, Gregory Johnson.

14 (Black male approaches.)

15 THE CLERK: What sayeth the state?

16 MS. WILLIAMS: Please excuse the juror.

17 THE CLERK: What sayeth the defense?

18 MS. KENNEDY: She excused the juror.

19 THE COURT: Mr. Johnson, you may have a seat.

20 THE CLERK: Excuse the juror.

21 (Mr. Johnson returns to the audience.)

22 THE CLERK: Juror 112, Debra Mallard.

23 (Black female approaches.)

24 THE CLERK: What sayeth the state?

25 MS. WILLIAMS: Please seat the juror.

1 THE CLERK: What sayeth the defense?

2 MS. KENNEDY: Please seat the juror.

3 THE CLERK: Seat the juror.

4 Juror -- Juror 49, Lauryn Earls.

5 (White female approaches.)

6 THE CLERK: What sayeth the state?

7 MS. WILLIAMS: Please seat the juror.

8 THE CLERK: What sayeth the defense?

9 MS. KENNEDY: Court's indulgence.

10 THE COURT: Yes, ma'am.

11 (Ms. Kennedy and Mr. Schwacke confer.)

12 MS. KENNEDY: Please excuse the juror from
13 the trial of the case.

14 THE CLERK: Excuse the juror.

15 Juror 97, Rhonda Key.

16 (White female approaches.)

17 THE CLERK: What sayeth the state?

18 MS. WILLIAMS: Please seat the juror.

19 THE CLERK: What sayeth the defense?

20 MS. KENNEDY: Court's indulgence.

21 THE COURT: Yes, ma'am.

22 (Ms. Kennedy and Mr. Schwacke confer.)

23 MS. KENNEDY: Please seat the juror.

24 THE CLERK: Seat the juror.

25 Juror 40, Debra Davis.

1 (White female approaches.)

2 THE CLERK: What sayeth the state?

3 MS. WILLIAMS: Please seat the juror.

4 THE CLERK: What sayeth the defense?

5 (Ms. Kennedy and Mr. Schwacke confer.)

6 MS. KENNEDY: Seat the juror.

7 THE CLERK: Seat the juror.

8 THE COURT: Ladies and gentlemen, we're
9 having a hard time hearing you, so if you could speak
10 up. Thank you.

11 THE CLERK: Juror 28, James Brunson, Jr.

12 (White male approaches.)

13 THE CLERK: What sayeth the state?

14 MS. WILLIAMS: Please seat the juror.

15 THE CLERK: What sayeth the defense?

16 MS. KENNEDY: Court's indulgence.

17 THE COURT: Yes, ma'am.

18 MS. KENNEDY: Please excuse Mr. Brunson from
19 the trial of the case.

20 THE CLERK: Excuse the juror.

21 Juror 138, Shanara Pou.

22 (Black female approaches.)

23 THE CLERK: What sayeth the state?

24 MS. WILLIAMS: Please seat the juror.

25 THE CLERK: What sayeth the defense?

1 MS. KENNEDY: Court's indulgence.

2 THE COURT: Yes, ma'am.

3 MS. KENNEDY: Please seat the juror.

4 THE CLERK: Seat the juror.

5 THE COURT: All right. Picking our first
6 alternate, alternate one.

7 THE CLERK: Juror 96, Cameron Judge.

8 (Black male approaches.)

9 THE CLERK: What sayeth the state?

10 MS. WILLIAMS: Please excuse the juror.

11 THE CLERK: Excuse the juror.

12 Juror 64, Carlise Golden.

13 (Black female approaches.)

14 THE CLERK: Any cause for challenge from the
15 state?

16 MS. WILLIAMS: No. Please seat the juror.

17 THE CLERK: What sayeth the defense?

18 MS. KENNEDY: Please seat the juror.

19 THE CLERK: Seat the juror.

20 Alternate two. Juror 171, Donna Stewart.

21 (White female approaches.)

22 THE CLERK: What sayeth the state?

23 MS. WILLIAMS: Please seat the juror.

24 THE CLERK: What sayeth the defense?

25 MS. KENNEDY: Please excuse Ms. Stewart from

1 the trial of this case.

2 THE CLERK: Excuse the juror.

3 Juror 183, Robert Wadford.

4 (White male approaches.)

5 THE CLERK: What sayeth the state?

6 MS. WILLIAMS: Court's indulgence.

7 THE COURT: Yes, ma'am.

8 (Ms. Williams and Mr. Alfaro confer.)

9 MS. WILLIAMS: Please seat the juror.

10 THE CLERK: What sayeth the defense?

11 MS. KENNEDY: Court's indulgence.

12 THE COURT: Yes, ma'am.

13 (Ms. Kennedy and Mr. Schwacke confer.)

14 MS. KENNEDY: Please seat Mr. Wadford.

15 THE CLERK: Seat the juror.

16 THE COURT: Any motions or matters pertaining
17 to the jury selection from the state?

18 MS. WILLIAMS: None from the state, Your
19 Honor.

20 THE COURT: From the defendant?

21 MS. KENNEDY: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Ms. Kennedy and Mr. Schwacke confer.)

24 MS. KENNEDY: Nothing, Your Honor.

25 THE COURT: Ladies and gentlemen, you have

1 been selected as the jury in this case. The bailiffs
2 will escort you to your jury room. We will receive you
3 back in the courtroom in just a few moments.

4 (Whereupon, the jury goes to the jury room at
5 approximately 11:25 a.m.)

6 THE COURT: Thank you. Please be seated.

7 Are there any motions or matters pertaining
8 to the jury as selected, outside the presence of the
9 jury, from the state?

10 MS. WILLIAMS: None from the state, Your
11 Honor.

12 THE COURT: From the defense?

13 MS. KENNEDY: None from the defense, Your
14 Honor.

15 THE COURT: Ladies and gentlemen of the
16 remaining panel, you are -- you are excused for the
17 remainder of the day. Your instructions are to call the
18 hotline after 6:00 p.m. to receive your instructions for
19 tomorrow. Thank you again for your service to Berkeley
20 County and have a wonderful afternoon. You are excused.

21 (Whereupon, the jury panel is excused at
22 approximately 11:25 a.m.)

23 THE COURT: All right. Be seated.

24 We're going to go ahead with the jury and
25 give them just my general charge instructions that I

1 normally give them and swear them. We'll have them
2 return at 2:00. That will give us time for a *Jackson v.*
3 *Denno* and a sufficient lunch hour. All right.

4 MS. KENNEDY: Your Honor, may we approach?

5 THE COURT: You may.

6 (There was an off-the-record bench
7 conference.)

8 (Said bench conference being concluded, the
9 following proceedings were had:)

10 THE COURT: All right. If anyone needs --
11 I'll remain on the bench. If anyone needs to take a --
12 take a comfort break or step outside or stretch, now is
13 the appropriate time.

14 (A break is taken at approximately
15 11:28 a.m.)

16 (The trial reconvenes at approximately
17 11:32 a.m., the defendant being present with counsel,
18 Ms. Kennedy and Mr. Schwacke, and the following
19 proceedings were had:)

20 THE COURT: Any motions to put on the record?
21 Once I swear the jury, then I believe that the bonds
22 person has completed their obligation on the bond.
23 Does the state have any announcement regarding that
24 matter?

25 MS. WILLIAMS: No, Your Honor.

1 THE COURT: No objection to the defendant, in
2 essence, remaining on the bond? I understand that there
3 was some indication that the bonds person will remain on
4 the bond?

5 MS. KENNEDY: Yes, Your Honor. For purposes
6 of the time, Mr. Michaelson's bondsman is in Myrtle
7 Beach. So if we are -- well, we would need sufficient
8 time to get whatever form the Court requires to execute
9 and to get in telephone contact with him.

10 THE COURT: Even something faxed over on
11 their letterhead that they will remain on the bond
12 throughout the course of the trial I believe is
13 appropriate, and just an indication that he will remain.

14 Mr. Michaelson, I just want to caution you,
15 we -- you have been out on bond, I understand, for a
16 length of time. I'm not quite sure how long.

17 MS. KENNEDY: November of 2008, Your Honor.

18 THE COURT: Thank you.

19 And what the attorneys and I were talking,
20 the bonds person, in the Court's view, has completed his
21 or her obligations to remain on your bond. The state is
22 not opposed to you remaining out on bond, and so the
23 Court is going to allow you to remain on bond.

24 Mr. Michaelson, you have already selected the
25 jury in your case, and we will continue with the

1 progression of this case even if you decide not to join
2 us and remain with us throughout this case.

3 Should you decide not to appear for whatever
4 reason, a bench warrant will likely issue for your
5 arrest, and we will continue with the trial, with the
6 trial of this case. Do you understand that,
7 Mr. Michaelson?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Yes, ma'am.

10 MS. WILLIAMS: Your Honor, I just wanted to
11 state our position. We understand that the issue is
12 within the Court's discretion. Our position remains
13 that he should be detained during the trial, but we
14 would defer and we understand it's within the Court's
15 discretion, but officially the state's position is that
16 he should be detained, but we understand that this issue
17 is in the Court's discretion.

18 THE COURT: All right. Thank you.

19 MS. WILLIAMS: Thank you.

20 THE COURT: Mr. Michaelson, you will remain
21 out on your current bond.

22 Let's bring in the jury. Please rise for the
23 jury.

24 (Whereupon, the jury enters the courtroom at
25 approximately 11:35 a.m.)

1 THE COURT: Thank you. Please be seated.

2 Ladies and gentlemen, Mr. Wadford and
3 Ms. Golden, you are the alternates in this case, so I
4 need you to remain -- the two of you may switch seats at
5 your discretion, but I need the two of you to remain in
6 those seats designated as alternate seats.

7 Mr. Scarborough, you have been selected as
8 the chairperson in this case, and as such, you are the
9 jury spokesperson here in court. You are also
10 responsible for signing the verdict, but I will give you
11 more information regarding that task later in the trial.

12 Please swear the defendant -- I mean, excuse
13 me -- the jury. Please rise.

14 THE CLERK: Please raise your right hand.

15 (Whereupon, the jury is duly sworn by the
16 clerk.)

17 THE CLERK: Thank you. Please be seated.

18 THE COURT: All right. Ladies and gentlemen,
19 as I indicated to you, the case that we are about to try
20 is the case of The State vs. Jeffrey Michaelson.

21 Before we begin this trial, I wanted to tell
22 you that this trial probably will be different from what
23 you expect. Most people don't have the opportunity to
24 attend court sessions such as you're doing now, and a
25 lot of times what we think about court comes from

1 watching shows like "Judge Judy" or watching movies or
2 reading books. In those cases, those trials are always
3 full of high drama, intense action, and riveting
4 circumstance. Sometimes those things may be true in
5 this case, but I want to caution you this trial is not
6 for entertainment. This trial is a fundamental part of
7 our democracy. It is a search for the truth in an
8 effort to make sure that justice is done between the
9 parties here before the Court. Searching for the truth
10 is often sure, is often slow, deliberate, and
11 repetitive, the opposite of what you may have seen in
12 television, in movies, or read in books. This courtroom
13 is a place of honor. It is dedicated to the
14 preservation and protection of citizens' rights through
15 what many have called the greatest justice system ever
16 created.

17 The attorneys that appear before you here
18 today are advocates for the parties that they represent,
19 but first and foremost they are officers of this Court.
20 They are sworn to uphold the integrity and the fairness
21 of our judicial system, and they are here to help you in
22 the search for the truth. You should expect them to be
23 professional, competent, and ethical in the
24 representation of their client's interest.

25 Remember that you have just taken an oath,

1 and you are also expected to be professional,
2 reasonable, and ethical. Thank you again for accepting
3 this most important responsibility of jury service and
4 for your contribution here today to our justice system.

5 What I now say is intended to serve as an
6 introduction to the trial of this case. Please keep in
7 mind these are not a charge on the law. They're just
8 simply an overview so that you may better anticipate and
9 know what we will be doing for the remainder of the
10 week. I will instruct you on the law applicable to this
11 case at the end of the trial before you retire to
12 consider your verdict.

13 Ladies and gentlemen, you will be allowed to
14 take notes, and we'll bring -- after I give you my
15 general charge on the law, we're going to take our lunch
16 break. When you return, I will -- you will be given
17 notepads and pencils. I often caution jurors, though,
18 and you will be allowed to take notes, but some of us
19 were much better note-takers in school, and so just keep
20 in mind that those notes are for your own use. One
21 juror's notes are no better or more accurate than
22 another juror's. And I also caution you while you are
23 taking notes some of us do have a tendency to look down,
24 so you may miss what's going on in the courtroom in
25 front of you.

1 With those caveats, you are free to take
2 notes, and we will collect the notebooks at the end of
3 the day, lock them away, and then return those to you
4 every morning, so that those notes are always kept your
5 personal notes and no one involved in the case will see
6 those notes.

7 As I indicated to you during the jury
8 selection process, the defendant is charged with an
9 indictment filed in the court with the crime of murder
10 and burglary in the second degree, the elements which
11 will be explained to you later. The indictment, as I
12 indicated, is simply the charge by which this case is
13 brought into court. It is not in any sense evidence of
14 the allegations it contains.

15 The defendant has pled not guilty to each
16 indictment, and the state therefore has the burden of
17 proving each of the elements of each indictment beyond a
18 reasonable doubt. It will be your duty, ladies and
19 gentlemen, to decide whether the state has met that
20 burden. Your purpose as jurors is to find and determine
21 the facts. You are the sole judge of the facts in this
22 case.

23 Ladies and gentlemen, you may have noticed
24 when you came in this time the parties involved as well
25 as the members of the audience were standing for you and

1 remained standing until you were all seated. This is
2 out of respect for your new position as judges of the
3 facts.

4 Ladies and gentlemen, if at any time I make a
5 comment regarding the facts, you must disregard it. You
6 are to determine the facts from the testimony that you
7 hear and any other evidence that is introduced in the
8 court. It is up to you to determine the inferences that
9 you feel may be properly drawn from the evidence.

10 It is especially important that you determine
11 the duty of -- that you perform your duty of determining
12 the facts diligently and conscientiously because
13 ordinarily there is no way to correct an erroneous
14 determination of the facts by a jury.

15 On the other hand and with equal emphasis,
16 the same law that makes you the judges of the facts
17 makes me the judge of the law. The law as given by this
18 Court is the only law that you may consider. You must
19 accept it and follow it even though you may disagree
20 with it. I cannot tell you what the facts are, and you
21 cannot tell me what you think the law is or what the law
22 should be.

23 Your job is to take the facts as you find
24 them, apply the law as I give it to you, and from doing
25 that you will render your verdict which will be a true

1 and just verdict under the solemn oath which you just
2 took as jurors.

3 Ladies and gentlemen, it is important that
4 until I advise you that you may begin your deliberations
5 you must not discuss this case with anyone. That
6 includes your fellow jurors, friends, family members,
7 anyone involved in this case. Ladies and gentlemen, let
8 me caution you that includes face-to-face discussions,
9 but it also includes e-mails, texting, Face Booking, My
10 Spacing, twittering, any -- and that is certainly not an
11 exhaustive list by any means, but you may not discuss
12 this case with anyone. And once I tell you that you may
13 begin your deliberations once the case is submitted to
14 you, you may only discuss it in the jury room and only
15 with your fellow jurors.

16 Ladies and gentlemen, the parties and the
17 attorneys involved in this case have also been advised
18 that they are not to talk to you at all. So if you
19 should see them in the hallway or at lunch and they do
20 not speak to you, please do not think they're being
21 rude. They're merely following the Court's instruction.

22 During the trial please do not read, watch,
23 listen to any news accounts regarding this case should
24 there be any. Please do not do any independent
25 investigation. You must not consider anything that you

1 may have read or heard about this case outside of the
2 courtroom whether before or during the trial.

3 It is important that you always keep an open
4 mind and not decide any issue in this case until all of
5 the evidence has been presented, the parties have made
6 their opening -- excuse me -- their closing arguments,
7 and I have instructed you on the law that is applicable
8 to this case.

9 It is your solemn responsibility to determine
10 the guilt or innocence of the defendant, and your
11 verdict must be based solely on the evidence as it is
12 presented to you in this trial and on the law as I
13 instruct you during and at the close of the trial.

14 After lunch the solicitor will make what is
15 called an opening statement in which the solicitor will
16 explain to you the issues in this case or at least what
17 the solicitor believes the issues are. The attorney may
18 also -- the defendant may also make an opening statement
19 although the defendant is not required to do so.

20 I will also inform you that what the
21 attorneys tell you during their opening statements is
22 not to be considered as evidence in this case. It is
23 merely their contention as to what the issues are.

24 The evidence in this case will be presented
25 to you by the -- from the witness stand through the

1 testimony of sworn witnesses and any other exhibits that
2 may be introduced during the trial.

3 Also, you may hear from time to time one of
4 the attorneys say, Your Honor, I believe we have a
5 matter of law, or may we approach, or I might find it
6 necessary to excuse you from the courtroom for a short
7 time while I rule on a matter of law. The reason for
8 this is, as I indicated to you, I cannot have an opinion
9 or I cannot tell you what I think the facts are, and
10 sometimes it is necessary for me to make a comment on
11 the facts in making my ruling on the law, so I will
12 excuse you so that nothing I say or do in connection
13 with the law will influence you in any way.

14 Ladies and gentlemen, in determining what the
15 true facts are in this case, you must decide whether or
16 not the testimony of the witnesses is believable. It
17 will be my responsibility to rule as a matter of law as
18 to whether certain testimony is admissible or not at
19 all; but once the testimony is admitted, whether or not
20 you believe it is solely for you to determine.

21 In deciding whether to believe a witness, you
22 have the right to consider the interest of any witness,
23 the bias of any witness, the prejudice of any witness,
24 the opportunity for that witness to have seen the
25 matters and things about which the witness may testify,

1 as well as the way the witness acts on the witness
2 stand.

3 You have a right to consider anything that is
4 in the record that will help you evaluate the testimony
5 of the witnesses; that is, it's your duty to pay close
6 attention, to observe the witnesses, to listen to the
7 witnesses, the Court, and to the attorneys.

8 Please do not let your thoughts wander but
9 give strict attention to the testimony so that at the
10 end of the testimony, after arguments of counsel, and I
11 instruct you on the law, you will be in a position to
12 determine what the true facts are and apply those facts
13 to the law.

14 It is your added duty, as I indicated, to be
15 the jury spokesperson here in court, and you will also
16 have the duty to write the verdict.

17 Ladies and gentlemen, we are going to go
18 ahead and break for lunch. Please be back in your jury
19 room at 2:00 p.m. We will begin promptly at that time.
20 Ladies and gentlemen, we cannot begin unless all
21 fourteen of you are here. So we will begin promptly at
22 2:00 p.m. Please have a wonderful lunch, please
23 remember my admonition, and we'll see you back in the
24 jury room at 2:00 p.m.

25 Please rise for the jury.

1 (Whereupon, the jury leaves the courtroom at
2 approximately 11:45 a.m.)

3 THE COURT: Thank you. Please be seated.

4 All right. Let's get ready on our *Jackson v.*
5 *Denno*.

6 MS. KENNEDY: Your Honor, if I may just
7 briefly.

8 THE COURT: Yes, ma'am.

9 MS. KENNEDY: I would object to the presence
10 of Detective Crumley and Detective Freeman who's already
11 been adopted in as the lead investigator in this case,
12 and I think his presence here is improper, and I would
13 request a motion for the sequestration for all the
14 witnesses, Your Honor.

15 THE COURT: All right.

16 MR. ALFARO: Your Honor, we're not going to
17 be opposed to the sequestration. Detective Crumley is
18 actually going to be the first witness in the *Denno*.

19 THE COURT: All right.

20 MS. KENNEDY: Thank you.

21 (The rule being invoked, the Court gives the
22 following instructions:)

23 THE COURT: I am invoking the rule, so it
24 will go forward from -- for the purposes of this hearing
25 and throughout the trial.

1 MS. WILLIAMS: Your Honor, just for
2 scheduling purposes, the state has a motion in limine
3 pending. Whenever the Court finds it fit for that to be
4 heard, I'm not sure it's being opposed or not.

5 We also have an oral motion in limine for any
6 polygraph results being entered into the record. I
7 think it's a pretty well settled issue of law that those
8 are inadmissible, but if we need to have a hearing on
9 that, I think South Carolina requires what's called a
10 *Council* hearing.

11 So with that point, I just wanted to make the
12 Court aware of that for scheduling purpose.

13 THE COURT: Thank you. As to the motion in
14 limine about the victim's picture, do you have an
15 objection with that?

16 MS. KENNEDY: Your Honor, I would certainly
17 object to that for a number of reasons.

18 THE COURT: All right. I'm just trying --
19 just for scheduling.

20 MS. KENNEDY: Okay.

21 THE COURT: So there is an objection.

22 And as to the polygraph issue, there is an
23 objection?

24 MS. KENNEDY: Your Honor, just from my
25 understanding, there were a couple of polygraphs that

1 were completed. I'm not real sure which one she's
2 talking about. The state did one, and I did one, also.

3 MS. WILLIAMS: Your Honor, the facts show
4 that Mr. Michaelson was offered a polygraph by
5 detectives and he refused it. We don't think that's
6 admissible. We are prepared to redact that from any
7 kind of testimony that's given by the state.

8 Then apparently later on he was given one by
9 defense counsel and passed it.

10 One of the state's witnesses was -- the
11 deception found on one question was that have you given
12 us all of the information, and deception was indicated
13 on that question on one of the state's witnesses.

14 As I said before, we've never been provided
15 Mr. Michaelson's polygraph.

16 I don't think any of this is admissible. In
17 fact, if it's mentioned I think that the jury has to be
18 admonished and an instruction has to be given, a
19 curative instruction; but in rare cases, if someone is
20 arguing that some part is admissible, that the South
21 Carolina law requires a 702 hearing that's known as a
22 *Council* hearing.

23 And we would just -- you know, just advise
24 the Court that we're prepared not to mention polygraph
25 results at all. And that's our oral motion.

1 MS. KENNEDY: Your Honor, if I may briefly
2 respond.

3 THE COURT: You may.

4 MS. KENNEDY: If Your Honor viewed the video
5 last night, you would note or you should have noted that
6 Mr. Michaelson -- it's a mischaracterization of the
7 videotaped statement to say that he declined to take the
8 polygraph.

9 The question and the issue was: Would you
10 take one?

11 He then said: Well, what benefit is it to
12 me?

13 Then Detective Merrithew left the room, and
14 it was never mentioned again. He indicated, as Your
15 Honor would have known or should know from the
16 videotape, that, you know, "if I can make arrangements,"
17 and he left the room.

18 So, again, it's a mischaracterization of the
19 video to say that he declined to take it.

20 As to the polygraph results of the witness,
21 Jeremiah Scharer, Mr. Scharer, he indicated deception on
22 -- but two times, Your Honor, in two separate. He, for
23 lack of a better term, flunked it the first time, and
24 then there is a post-interview, but -- but he was
25 deceptive twice, not just once.

1 Your Honor, at the appropriate time if it
2 becomes an issue then we'll deal with the *Council*
3 hearing.

4 And I don't know if you want me to respond to
5 anything in the motion in limine or not.

6 THE COURT: Just as to the polygraph, based
7 upon -- do you agree with counsel's statement that it is
8 not admissible except for very limited...

9 MS. KENNEDY: Except for what?

10 THE COURT: Except for limited circumstances.

11 MS. KENNEDY: Yes, Your Honor.

12 THE COURT: And so any objection to not
13 discussing the polygraph unless it -- unless you believe
14 that it becomes admissible, and then we will need to
15 have a hearing?

16 MS. KENNEDY: As it relates to my client,
17 Your Honor?

18 THE COURT: Yes.

19 MS. KENNEDY: Yes, Your Honor, I would.

20 The other thing is, just for purposes of the
21 record, and, again, it relates back to the issue of
22 where we were when this started in -- in August of 2007.
23 Polygraph results of my client were provided to the
24 assistant solicitor who had the case at that point in
25 time, Jennifer Porter, and -- and those polygraph

1 results have been discussed with the assistant
2 solicitor, and she was advised that -- that the names of
3 the individuals and the company who did the polygraph,
4 and those were given to -- those results were offered to
5 her and she declined, saying -- basically, the
6 information was that she -- that she didn't trust the
7 results because the same folks had done a polygraph on
8 another client of mine that the assistant solicitor and
9 I had in common. So she -- she indicated early on her
10 lack of interest in that, but those were provided to the
11 solicitor.

12 THE COURT: All right. All right. Thank
13 you.

14 So let's go ahead. As to the *Jackson v.*
15 *Denno*, there are how many statements? There's the
16 videotape statement and then the written statement. Is
17 that correct?

18 MR. ALFARO: Yes, Your Honor.

19 THE COURT: And the written statement is the
20 one that was on video. Is that correct?

21 MR. ALFARO: Yes, Your Honor.

22 THE COURT: All right.

23 MS. KENNEDY: And, Your Honor, if I may, just
24 before we start with that, I am unaware of Detective
25 Crumley's involvement in this. The assistant solicitor

1 repeatedly asserted Detective Freeman was present for
2 all of this, she was the one that was present in the
3 room and she was the one who was present when my
4 client's written statement was given. So just if the
5 solicitor would be kind enough to explain Detective
6 Crumley's involvement in it so that I'll have at least a
7 few minutes to prepare.

8 MR. ALFARO: Your Honor, Detective Crumley is
9 the officer that actually took Mr. Michaelson into
10 custody, transported him to the sheriff's office, and
11 did the supplemental report which was provided to
12 defense counsel, that he Mirandized the defendant.

13 THE COURT: All right. And that was also
14 referenced, I believe, within the first few minutes of
15 the video interview that ---

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

17 THE COURT: --- Detective Merrithew indicated
18 that he had already been given his Miranda.

19 I'm going to mark the video, just out of an
20 abundance of caution, as Court's one that I viewed last
21 evening after we broke. So I understand, Mr. Alfaro,
22 you have an additional copy?

23 MR. ALFARO: We do, Your Honor.

24 (Court's Exhibit No. 1, redacted CD copy of
25 video of defendant's statement, is marked for

DET. CRUMLEY - DIRECT/MR. ALFARO (IN CAMERA)

1 identification.)

2 MS. KENNEDY: And, Your Honor, I stand
3 corrected on that issue; but just for purposes of the
4 record, I understood that the Court reviewed the --
5 reviewed the video in its entirety, including the
6 discussion of the polygraph test and also including the
7 supplemental information that Detective Freeman asked my
8 client to put in his witness statement.

9 THE COURT: All right. Call your first
10 witness.

11 MR. ALFARO: The state calls Michael Crumley.

12 DETECTIVE MICHAEL CRUMLEY,
13 being first duly sworn by the clerk, is examined and
14 testifies as follows:

15 THE CLERK: Thank you. Please be seated.
16 State your full name and spell your last name for the
17 record.

18 THE WITNESS: Michael Thomas Crumley,
19 C-R-U-M-L-E-Y.

20 DIRECT EXAMINATION (IN CAMERA)

21 BY MR. ALFARO:

22 Q. Detective Crumley, could you please tell the
23 Court where you currently work?

24 A. The Berkeley County Sheriff's Office.

25 Q. And how long have you been with the sheriff's

1 office?

2 A. Approximately four years.

3 Q. And other than your time with the sheriff's
4 office, do you have any other prior law enforcement
5 experience?

6 A. Yes. I've been in law enforcement for
7 approximately twelve years. Goose Creek Police
8 Department, Dorchester County Sheriff's Office.

9 Q. And were you working in the criminal
10 investigation division of the Berkeley County Sheriff's
11 Office in August of 2007?

12 A. Yes.

13 Q. And what were your duties at that time?

14 A. I was assigned to the criminal investigations
15 division as a detective, and my job was to follow up on
16 incident reports. My duties ranged from interviewing
17 witnesses, suspects, and gathering evidence to prepare
18 -- to prepare cases.

19 Q. And in that capacity did you have the opportunity
20 to assist in the investigation into the disappearance
21 and death of Parrish Reeves?

22 A. Yes.

23 Q. And during your role in that investigation, did
24 you have the opportunity to come into contact with this
25 defendant, Jeffrey Michaelson, on August the 7th of

1 2007?

2 A. Yes.

3 Q. And where did you come in contact with him?

4 A. In Wilmor Acres Mobile Home Park off of College
5 Park Road in the Ladson area of Berkeley County.

6 Q. And do you recall approximately what time that
7 contact occurred?

8 A. It was approximately three o'clock p.m.

9 Q. And when you came into contact with
10 Mr. Michaelson, was he taken into custody at that time?

11 A. Yes.

12 Q. And when you took him into custody, did you
13 provide him with his Miranda rights?

14 A. I did.

15 Q. And could you describe for the Court how you went
16 about doing that?

17 A. I read his Miranda rights from a card that I
18 carry in my credentials wallet, and the card reads:

19 You have the right to remain silent. Anything
20 you say can and will be used against you in a court of
21 law. You have the right to speak to an attorney and to
22 have an attorney present during any questioning. If you
23 cannot afford a lawyer, one will be provided for you at
24 government expense.

25 And then I asked Mr. Michaelson if he understood

1 what I had just read to him.

2 Q. And the rights that you just read to the Court
3 are the same rights that you read to Mr. Michaelson on
4 that day?

5 A. Yes.

6 Q. Did he appear to understand his rights?

7 A. He did.

8 Q. Did he indicate to you in some way that he
9 understood his rights?

10 A. He shook his head and acknowledged verbally that,
11 yes, he did.

12 Q. And after Mirandizing him, did you -- do you ask
13 him any questions?

14 A. No.

15 Q. Did he make any spontaneous statements or
16 utterances in your presence?

17 A. No.

18 Q. Is there a reason why you did not ask him any
19 questions?

20 A. Yes. I was told do not ask any questions, to
21 bring him into custody, Mirandize him and bring him
22 straight to the sheriff's office.

23 Q. And did anyone else ride with you to the
24 sheriff's office other than Mr. Michaelson?

25 A. I believe so.

1 Q. At any time while Mr. Michaelson was in your
2 custody, was he threatened in any way?

3 A. No.

4 Q. Was any -- any force applied to him to try to
5 coerce him into giving any kind of statement?

6 A. No.

7 Q. And was he promised anything in exchange for
8 cooperation?

9 A. No.

10 Q. And did you take him straight to the sheriff's
11 office?

12 A. I did.

13 Q. And about how long would you estimate he was in
14 your custody during that ride?

15 A. Twenty minutes.

16 Q. And what did you do with Mr. Michaelson when you
17 got to the sheriff's office?

18 A. I brought him to the sheriff's office where I
19 turned him over to Detective Sergeant Freeman and
20 Detective Sergeant Merrithew.

21 Q. And after turning him over to detectives, did you
22 have any further contact with Mr. Michaelson on -- on
23 that day?

24 A. No.

25 MR. ALFARO: Thank you. Please answer any

1 questions the defense might have.

2 MS. KENNEDY: Your Honor, may I approach the
3 witness?

4 THE COURT: You may. And you have continuing
5 permission.

6 MS. KENNEDY: Thank you.

7 CROSS-EXAMINATION (IN CAMERA)

8 BY MS. KENNEDY:

9 Q. I would just like a copy of the Miranda warnings.
10 Is that the one that you carry?

11 A. Yes. (The witness tenders document to
12 Ms. Kennedy.)

13 MS. KENNEDY: Court's indulgence.

14 THE COURT: Yes, ma'am.

15 (Ms. Kennedy and Mr. Schwacke confer.)

16 MS. KENNEDY: Your Honor, may I ask for
17 purposes of this examination if the officer could
18 provide me a copy of the original one that he carries in
19 his wallet rather than a copy?

20 THE COURT: If you would ask. I don't know
21 that he has it. If you'll inquire.

22 BY MS. KENNEDY:

23 Q. Detective Crumley, you indicated in your direct
24 examination by the deputy solicitor that you carry a
25 copy of the Miranda warnings in your wallet?

1 A. That's correct.

2 Q. Do you have that in your wallet today?

3 A. I do.

4 Q. May I see it, please?

5 A. (The witness tenders document to Ms. Kennedy.)

6 (Ms. Kennedy, Mr. Schwacke, and the defendant
7 review document.)

8 MS. KENNEDY: May I approach the witness,
9 Your Honor?

10 THE COURT: You may.

11 BY MS. KENNEDY:

12 Q. You're sure that this is the one that you had in
13 hand on the date that you took Mr. Michaelson into
14 custody?

15 A. Yes.

16 Q. Okay. Detective Crumley, you indicated that you
17 are with the criminal investigations division?

18 A. I was during that time, yes.

19 Q. Okay. When did you assume your position with the
20 sheriff's office in that department?

21 A. August or September of 2006.

22 Q. Okay. All right. And you also indicated that
23 you were -- when were you -- when did you become -- what
24 date did you become involved in this case?

25 A. I believe it was the date of Mr. Michaelson's

1 arrest which was August 7th.

2 Q. Okay. And at whose direction did you become
3 involved in it?

4 A. I believe it was Sergeant Merrithew.

5 Q. And he at that point in time, what was his job in
6 this case at that point in time?

7 A. I don't know the extent of it. I know that he
8 was involved in the investigation of this case.

9 Q. Would it be fair to characterize his involvement
10 or the definition of his role as the lead investigator
11 in this case?

12 A. To that, I'm not sure.

13 Q. But you were sure that you acted under his
14 directive to ensure the arrest of Mr. Michaelson?

15 A. That's correct.

16 Q. Okay. And that was, as you indicated,
17 approximately 3:00 p.m. on the afternoon of the 7th?

18 A. Yes.

19 Q. Do you have any idea what took place prior to
20 your involvement in that?

21 A. As to what other people did, no.

22 Q. But do you have any idea how it is or why it is
23 you came to go to Wilmor Acres to secure the custody of
24 Mr. Michaelson?

25 A. Oh, yes.

1 Q. Please tell me that, sir.

2 A. Well, I was instructed by Sergeant Merrithew to
3 accompany Sergeant Alteri, Sergeant Shuler, Detective
4 Muckelvaney to Wilmor Acres where the defendant would be
5 arriving in that neighborhood, to keep an eye out for
6 him, and if we saw him to take him into custody for an
7 arrest warrant that was active for him, bring him
8 straight to the sheriff's office, do not talk to him, do
9 not ask him any questions, Mirandize him and bring him
10 straight to the sheriff's office.

11 Q. A couple of things in that regard, Detective
12 Crumley. You indicated that there may -- a number of
13 other officers involved in the arrest of Mr. Michaelson.
14 How many patrol cars were involved in it?

15 A. I don't remember any marked patrol cars. I know
16 that we had our unmarked Crown Vics and there were -- I
17 was riding with Detective Muckelvaney, and I know that
18 there was at least one other car and possibly two.

19 Q. And your instructions were to take him into
20 custody?

21 A. That is correct.

22 Q. And, again, who gave you those instructions?

23 A. Sergeant Merrithew.

24 Q. And you were instructed not to ask him any
25 questions whatsoever. Correct?

1 A. Correct.

2 Q. And were you also instructed not to advise him as
3 to why he was being taken into custody?

4 A. Yes.

5 Q. And so when you took him into custody,
6 Mr. Michaelson had no idea why the three -- two,
7 possibly three, patrol cars descended upon him into
8 Wilmor Acres. Correct?

9 A. Other than there was an active arrest warrant,
10 no.

11 Q. Did you know what the arrest warrant was for?

12 A. I did not.

13 Q. Okay. To the best of your knowledge, did anybody
14 else, Sergeant Alteri, Sergeant Shuler, or Detective
15 Muckelvaney, did any of those officers have any idea
16 what he was being arrested for?

17 A. I don't know.

18 Q. Okay. Do you know the circumstances under which
19 Mr. Michaelson was lured into Wilmor -- Wilmor Acres so
20 that you all could effect his arrest?

21 A. I don't.

22 Q. So you're unaware that there were a number of
23 text messages between him and his girlfriend or common
24 law wife, whatever, to get him to come into that
25 neighborhood so that y'all could effect his arrest?

1 A. I didn't know that.

2 Q. Okay. And you took him straight to the detective
3 unit?

4 A. Yes.

5 Q. Okay. And what happened once you got him to the
6 detective -- did you ask him any questions during the
7 ride?

8 A. No.

9 Q. Okay.

10 A. None whatsoever.

11 Q. And you indicated you Mirandized him, but he made
12 no response other than to nod his head?

13 A. Right. He nodded his head, and he said something
14 to the effect of yes. I asked him, "Do you understand
15 what I just read to you?" He nodded his head and
16 verbally responded in the affirmative.

17 Q. As to each one of the Miranda warnings?

18 A. No, not each one. The brief paragraph that I
19 read to the Court, I read that in its entirety and then
20 at the end asked if he understood.

21 Q. All right. And am I to assume that he nodded his
22 head and then you required him to answer yes, or...

23 A. I believe it was altogether.

24 Q. Altogether?

25 A. Right.

1 Q. All right. And once you arrived at the detective
2 office, what happened?

3 A. I brought him up to the office there and turned
4 him over to Sergeant Freeman, Sergeant Merrithew. And
5 then that was it. I left.

6 Q. When you were traveling to the detective office,
7 did you alert Detective Merrithew that you had him in
8 custody?

9 A. I'm sure that I did, to let him know that we were
10 in route.

11 Q. Did you receive any further instruction from
12 Detective Merrithew about what to do with him?

13 A. Not that I recall.

14 Q. Okay. And you took him in, and he was
15 immediately taken to the interview room?

16 A. Yes.

17 Q. Okay. And turned over to Detective Merrithew?

18 A. Correct.

19 Q. And he was in cuffs the whole time?

20 A. Yes.

21 MS. KENNEDY: Court's indulgence.

22 THE COURT: Yes, ma'am.

23 (Ms. Kennedy and Mr. Schwacke confer.)

24 MS. KENNEDY: Thank you, Your Honor. That's
25 all I have.

1 Thank you, Detective Crumley.

2 THE COURT: Mr. Alfaro.

3 MR. ALFARO: Briefly, Your Honor.

4 REDIRECT EXAMINATION (IN CAMERA)

5 BY MR. ALFARO:

6 Q. Just for -- just for clarification, when you
7 brought Mr. Michaelson to the sheriff's office, you
8 turned him over to Detective Freeman and Detective
9 Merrithew. Is that correct?

10 A. That's correct, the two of them.

11 MR. ALFARO: Thank you. Nothing else.

12 THE COURT: Ms. Kennedy.

13 MS. KENNEDY: No further questions, Your
14 Honor.

15 THE COURT: Detective, you may step down.

16 (The witness leaves the witness stand.)

17 THE COURT: And now any objection to
18 Detective Crumley remaining in the courtroom?

19 MS. KENNEDY: Not -- no, Your Honor.

20 THE COURT: For the purposes of the hearing.

21 MS. KENNEDY: Right. That's my
22 clarification, Your Honor. Thank you.

23 THE COURT: All right. Detective, you may
24 remain with us. I understand you may want to go ahead
25 and have your lunch, but feel free to remain with us.

1 Call your next witness.

2 MR. ALFARO: State calls Diana Freeman.

3 MS. KENNEDY: Your Honor, if I may.

4 THE COURT: Yes.

5 MS. KENNEDY: I think I probably would have
6 spoken too soon. If he could leave, because there may
7 be...

8 THE COURT: All right. Detective, Detective
9 Crumley, I'm going to have you stay outside. So now why
10 don't you go ahead and have your lunch break or
11 whatever, but I'm going to have you remain outside while
12 Detective Freeman testifies for the purpose of this
13 hearing. And I know you know what the rule of
14 sequestration means, but I'm just going to caution you.
15 You don't get to talk about your testimony, proposed or
16 otherwise, what you testified to with any -- you were
17 the first witness in this room, but any of the
18 additional witnesses or even proposed witnesses on the
19 witness list. Do you understand that, Detective?

20 DETECTIVE CRUMLEY: Yes, Judge, I do.

21 THE COURT: Okay.

22 DETECTIVE CRUMLEY: 2:00 p.m.?

23 THE COURT: We're going to start back at
24 2:00 p.m. with openings.

25 DETECTIVE CRUMLEY: Thank you.

DET. FREEMAN - DIRECT/MR. ALFARO (IN CAMERA)

1 THE COURT: Thank you.

2 (Detective Crumley leaves the courtroom.)

3 (Detective Freeman enters the courtroom.)

4 DETECTIVE DIANA FREEMAN,

5 being first duly sworn by the clerk, is examined and
6 testifies as follows:

7 THE CLERK: Please be seated. State your
8 full name, spell your last name for the record.

9 THE WITNESS: Diana Lynn Bernard Freeman,
10 F-R-E-E-M-A-N.

11 DIRECT EXAMINATION (IN CAMERA)

12 BY MR. ALFARO:

13 Q. Sergeant Freeman, where do you currently work?

14 A. Berkeley County Sheriff's Office.

15 Q. And how long have you been with the sheriff's
16 office?

17 A. Approximately fourteen years.

18 Q. And what are your current duties?

19 A. Civil processing and judgment executions.

20 THE COURT: Maybe my hearing is going. I'm
21 having a hard time hearing you, as well, so if you could
22 please speak up. Thank you.

23 BY MR. ALFARO:

24 Q. Were you working for the sheriff's office in
25 2007?

1 A. Yes.

2 Q. And in what capacity were you serving in the
3 sheriff's office?

4 A. Sergeant of property crimes and criminal
5 investigations division.

6 Q. And what were your duties as sergeant of property
7 crimes?

8 A. I worked cases, mostly white collar crimes,
9 animal crimes, managed supervisory tasks over
10 subordinates in the property crimes division or assisted
11 when needed in getting up anything else in the division
12 that we needed.

13 Q. And did you become involved in the investigation
14 into the disappearance and death of Parrish Reeves in
15 August of 2007?

16 A. Yes.

17 Q. And your involvement, when you became --
18 initially became involved in the investigation, what
19 type of case was it classified as?

20 A. It had started as a missing person with
21 suspicious activity, a burglary and a larceny.

22 Q. And you said that as a sergeant in the property
23 crimes division of investigations you had supervisory
24 authority over personnel?

25 A. Yes, sir.

1 Q. And how many people did you supervise at that
2 time?

3 A. It changed. The individuals changed
4 periodically. It went from anywhere from three people
5 to six people at a time.

6 Q. And did you have the opportunity to come in
7 contact with Jeffrey Michaelson in August of 2007?

8 A. Yes.

9 Q. Do you recall when you met with him?

10 A. Yes.

11 Q. When was that?

12 A. August the 7th of 2007 at approximately four
13 o'clock in the afternoon.

14 Q. And when you came into contact with
15 Mr. Michaelson, how did he -- how was he brought to you?

16 A. Detective Crumley brought him in. He walked in.
17 He was handcuffed. We carried him straight into the
18 interview room.

19 Q. And when you say we, who is the we you're
20 referring to?

21 A. Myself and Detective Merrithew.

22 Q. And was Detective Merrithew one of the detectives
23 that you were supervising at that time?

24 A. Yes.

25 Q. And when you -- you said you walked him into the

1 interview room. Could you describe the interview room
2 for us?

3 A. It has a wooden -- wooden desk. It has three
4 chairs. Tile floors. Color of the wall about the same
5 color as this. It's about a 10-by-10 room.

6 Q. And when you first came into contact with
7 Mr. Michaelson, were you advised whether he had been
8 Mirandized or not?

9 A. Yes. He had been.

10 Q. Okay. Who Mirandized him to your knowledge?

11 A. Detective Crumley.

12 Q. And when you first went into the room with the
13 defendant, at some point did you confirm with him that
14 he had been informed of his rights previously?

15 A. Yes.

16 Q. And at that time did he ask for a lawyer?

17 A. No.

18 Q. At that time did he ask to not continue the
19 conversation with you?

20 A. No.

21 Q. And the room that you described, is that room
22 also equipped with audio and video recording equipment?

23 A. Yes, it is.

24 Q. And at some point during that interview, was the
25 defendant -- did you -- was the defendant again provided

1 with his Miranda rights?

2 A. Yes, he was.

3 Q. And would you describe how he was provided with
4 those rights?

5 A. It was read to him off of the standard
6 defendant's form that the sheriff's office has approved
7 and uses.

8 Q. And were you present for the reading of those
9 rights to Mr. Michaelson?

10 A. Yes.

11 Q. And who else was in the room with you at that
12 time?

13 A. Detective Merrithew.

14 (Mr. Alfaro tenders document to Ms. Kennedy.)

15 (Ms. Kennedy reviews document.)

16 MR. ALFARO: Could I have this marked as
17 state's exhibit one for purposes of the *Denno*
18 proceeding.

19 (State's Exhibit No. 1, defendant's written
20 statement, is marked for identification.)

21 BY MR. ALFARO:

22 Q. I'm going to show you what's been marked as
23 state's exhibit one for identification. Would you
24 review that document and tell me if you recognize what
25 it is?

1 A. Yes, sir.

2 Q. And do you recognize it?

3 A. I do.

4 Q. And tell the Court what it is.

5 A. It is the defendant's statement form, Berkeley
6 County Sheriff's Office, that was prepared, signed,
7 written by Mr. Michaelson on 8/7/07.

8 Q. You testified that Mr. Michaelson was read his
9 rights from a standard form. Is that the form that was
10 used to read him his rights?

11 A. Yes, sir.

12 Q. And can you describe for the Court what process
13 was used in obtaining the -- or providing the Miranda
14 rights and obtaining the waiver of those rights?

15 A. The rights were read from this form, and after
16 they were read to him, he was asked if he understood and
17 asked to initial by each.

18 Q. And did he in fact initial by each of those
19 rights?

20 A. He did.

21 Q. And was he informed what type of case he was
22 being spoken with about?

23 A. Yes.

24 Q. And what was that?

25 A. Death and larceny.

1 Q. And did Mr. Michaelson acknowledge, indicate to
2 you that he understood his rights?

3 A. Yes.

4 Q. And how did he acknowledge that he understood
5 each of those rights?

6 A. By initialling beside each and then signing at
7 the bottom of the rights form.

8 Q. And after being provided all of those rights, did
9 he in fact agree to waive each of those rights and
10 voluntarily give you a statement ---

11 A. Yes.

12 Q. --- regarding his involvement?

13 A. He did.

14 Q. And at any point in time during your interview
15 with him, was he promised anything to get him to agree
16 to waive those rights?

17 A. No.

18 Q. At any time did he ask to stop the interview
19 process?

20 A. No.

21 Q. And at any time did he ask for an attorney?

22 A. No.

23 Q. And during the course of your interview, was
24 there some interviewing that took place prior to the
25 actual giving of his written statement?

1 A. Yes.

2 Q. And the statement itself, was that written by the
3 defendant or was that written for him?

4 A. It was written by him.

5 Q. And was he given a choice of whether he wanted to
6 write it or have somebody else write it?

7 A. He was given a choice.

8 Q. And did he have the opportunity to review the
9 statement in its entirety after it was completed?

10 A. Yes, he did.

11 Q. Was he given the opportunity to add or change
12 things off the statement?

13 A. Yes, sir.

14 Q. And was he provided a copy of his statement after
15 it was completed?

16 A. Yes.

17 Q. And there appear to be signatures at the bottom
18 of each of the pages. Is one of those your signature?

19 A. Yes, it is.

20 Q. And that's in the witness -- the witness block.
21 Is that correct?

22 A. That is correct.

23 Q. And there is another signature in the witness
24 box. Whose signature is that?

25 A. Detective Merrithew's.

1 Q. And the defendant's signature is on each of those
2 pages, as well?

3 A. Yes, it is.

4 Q. And were you present for the entire interview
5 with Mr. Michaelson?

6 A. Yes.

7 Q. Was there any point in time during that interview
8 where you were -- you left the room and Detective
9 Merrithew was alone with the defendant?

10 A. No.

11 MR. ALFARO: At this time, Your Honor, the
12 state would ask that exhibit one be entered into
13 evidence for purposes of this hearing.

14 THE COURT: Any objection for purposes of
15 this hearing?

16 MS. KENNEDY: Not for the purposes of this
17 hearing, Your Honor.

18 THE COURT: Thank you.

19 (State's Exhibit No. 1, previously marked for
20 identification, is received in evidence for purposes of
21 the *Jackson v. Denno* hearing.)

22 BY MR. ALFARO:

23 Q. Detective Freeman, you also indicated that the
24 room where the interview was conducted was wired for
25 audio and video?

1 A. Yes.

2 Q. To your knowledge, was the interview recorded?

3 A. Yes, it was.

4 Q. Was it recorded in its entirety?

5 A. Yes.

6 MR. ALFARO: May I have this videotape marked
7 as state's exhibit two for purposes of the *Denno*
8 hearing.

9 (State's Exhibit No. 2, videotape of
10 defendant's interview, is marked for identification.)

11 BY MR. ALFARO

12 Q. I'm going to ask if you recognize state's exhibit
13 two.

14 A. Yes.

15 Q. What do you recognize that as?

16 A. This is the VHS tape that was made of the
17 interview.

18 Q. And did you have the opportunity previously to
19 review that videotape?

20 A. Yes, I have.

21 Q. And does that videotape fairly and accurately
22 depict the entire course of the interview conducted at
23 the sheriff's office on August the 7th, 2007, with the
24 defendant, Jeffrey Michaelson?

25 A. Yes.

1 Q. In your review, prior review of that video, did
2 you -- did it appear that the video ran or the camera
3 recorded throughout the entire interview?

4 A. Yes.

5 Q. Did there appear to be any portions of the
6 interview that were missing from the videotape?

7 A. No.

8 Q. And are you aware if that tape was secured into
9 evidence after the interview was completed?

10 A. Yes.

11 MR. ALFARO: At this time the state would
12 offer this into evidence for purposes of the *Denno*
13 hearing.

14 MS. KENNEDY: No objection.

15 THE COURT: State's two into evidence for the
16 purpose of this hearing.

17 (State's Exhibit No. 2, previously marked for
18 identification, is received in evidence for purposes of
19 the *Jackson v. Denno* hearing.)

20 THE COURT: And just so the record is clear,
21 that is what you gave -- you gave me a copy, which is
22 Court's one, of state's two. Is that correct?

23 MR. ALFARO: That's correct, Your Honor.
24 State's exhibit two is the original, and Court's one is
25 a copy of that.

1 THE COURT: Thank you.

2 MR. ALFARO: Your Honor, for purposes of the
3 *Denno* hearing, the state would publish the contents of
4 the video for this hearing. We can set that up. If
5 not, we'll take these if that will be sufficient.

6 THE COURT: Ms. Kennedy, do we need to review
7 the video? I can have the equipment brought into the
8 courtroom.

9 MS. KENNEDY: Your Honor, just give me one
10 moment. I know there's a time issue here and...

11 THE COURT: Ms. Kennedy, the jury is coming
12 back at 2:00. If you need additional time, then we will
13 make additional time. So please do not allow that to
14 factor into your strategy. Thank you.

15 MS. KENNEDY: Thank you, Your Honor.

16 (Ms. Kennedy and Mr. Schwacke confer.)

17 MS. KENNEDY: No objection.

18 THE COURT: All right. So we do not need to
19 publish?

20 MS. KENNEDY: No, Your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Alfaro, you may continue.

23 MR. ALFARO: Thank you, Your Honor.

24 BY MR. ALFARO:

25 Q. Just so we can be clear, the defendant was

1 Mirandized once in your presence. Is that correct?

2 A. Yes.

3 Q. And that was from the written form that was
4 state's exhibit one?

5 A. Yes.

6 Q. And was he given his Miranda rights in your
7 presence at any other time during the course of the
8 interview?

9 A. Once.

10 Q. Just that one time or one more?

11 A. Once he was actually read his Miranda rights in
12 my presence.

13 Q. And that was from state's exhibit one?

14 A. Correct.

15 MR. ALFARO: Please answer any questions
16 defense counsel may have.

17 THE COURT: Ms. Kennedy.

18 MS. KENNEDY: Thank you, Your Honor.

19 CROSS-EXAMINATION (IN CAMERA)

20 BY MS. KENNEDY:

21 Q. Detective Freeman, what rank was Detective
22 Merrithew at the time this investigation took place?

23 A. At that time he was not sergeant. He had not
24 made sergeant yet. He was still a detective corporal.

25 Q. Okay. So it's my understanding then that you --

1 you're his supervisor?

2 A. I was one of his supervisors, yes.

3 Q. My question to you, ma'am, is: Were you his
4 supervisor?

5 A. Well, I was -- again, in that structure I was a
6 -- I was one of his supervisors, yes. And we didn't --
7 we did not always follow just property crimes or just
8 people crimes.

9 Q. Okay. Well, then I'm a little confused about the
10 structure. If you weren't his -- who was his immediate
11 supervisor?

12 A. Lieutenant Mark Mason.

13 Q. Okay. So whose job is it then -- so it's
14 Lieutenant Mason, and then Lieutenant Mason is your
15 supervisor?

16 A. He is my supervisor.

17 Q. Okay. And is there another officer in the
18 sheriff's department -- you indicated that you were one
19 of the supervisors. Is there another sergeant who would
20 have been a supervisor?

21 A. Sergeant Alteri.

22 Q. Okay. And whose responsibility is it under that
23 command structure to assign and divide up cases?

24 A. Lieutenant Mason actually divides the cases and
25 assigns the cases.

1 Q. So is it my understanding then it's Lieutenant
2 Mason who actually gave Detective Merrithew the
3 responsibility for the investigation?

4 A. Yes.

5 Q. And do you know when that occurred, Detective
6 Freeman?

7 A. No, I do not.

8 Q. Do you know what work Detective Merrithew did on
9 this case before you became involved?

10 A. He had just picked the case up. Detective
11 Merrithew had just come in to the division, and he was
12 taking some cold cases or cases that had not been solved
13 previously.

14 He was not aware of some of the processes that we
15 had, like the pawnshop records. So he had come to me
16 and he knew that I could assist him in that, and I
17 actually started assisting him with that and working
18 with him on that.

19 Q. Okay. So, just so I understand it, Detective
20 Merrithew picked it up, got assigned to it, whatever,
21 and the initial, as you indicated, was a missing
22 persons, suspicious activity, burglary. Where did you
23 get that information from?

24 A. That's how it was titled on the report.

25 Q. Which report?

1 A. The incident report.

2 Q. In 2001?

3 A. Correct.

4 Q. And you weren't involved in it then?

5 A. No.

6 Q. And then subsequently I believe Detective

7 P.J. Lee was involved in it?

8 A. Alteri was also involved.

9 Q. My question to you is: Detective Lee was
10 involved in it, right?

11 A. Correct.

12 Q. And there is -- in the course of the discovery,
13 there are incident reports and supplemental reports that
14 Detective Lee submitted?

15 A. Correct.

16 Q. And Sergeant Alteri's involvement in this, I
17 don't know if this is the right jargon, reviewing
18 officer, whatever, the reports that he submitted?

19 A. No. That is incorrect.

20 Q. Okay. What was Sergeant Alteri's involvement in
21 it?

22 A. Sergeant Alteri -- Detective Lee was a lieutenant
23 at that time.

24 Q. All right.

25 A. At that time we had two lieutenants. Sergeant

1 Alteri was a sergeant. He originally, if you check your
2 incident reports, his was the first supplement that was
3 written, and she was the approving officer.

4 Q. So it's fair to say that you didn't have any
5 involvement in this until 2007?

6 A. Correct. Well, 2006.

7 Q. And what was your involvement then, Detective
8 Freeman?

9 A. When Detective Merrithew started working on it,
10 he came to me, he had a list, he didn't know how to work
11 pawnshop records. And he knew that because of property
12 crimes, a lot of that we do do. So he came to me and
13 asked me, he said he had a whole list, could I run them
14 for him.

15 Q. So he, in his picking up the cold case in 2006,
16 he asked for your assistance, your knowledge, your
17 expertise...

18 A. Correct.

19 Q. --- in developing leads to -- through the
20 pawnshop records?

21 A. In checking the information in the pawnshop
22 records.

23 Q. Right. All right. Which then developed leads
24 into this case?

25 A. Correct.

1 Q. All right. Other than assisting him in 2006 with
2 showing him how to do what you did, what was your
3 involvement in this case?

4 A. After we checked the pawnshop records, he was
5 advised to talk to Gary from Money Man, what type of
6 documents he needed from Money Man. The person, one of
7 the persons that had purchased one of the items, was
8 located. He was put in contact with -- he was a former
9 employee. He was put in contact with him.

10 Q. I'm sorry. Who was the former employee?

11 A. Jeffrey Demoan (phonetics).

12 Q. Jeffrey who?

13 A. Demoan.

14 Q. Was he a source that you used or -- Mr. Demoan?

15 A. I don't understand what you mean by "source."

16 Q. Well, you said he was put in contact. Are you
17 saying that Detective Merrithew was put in contact with
18 Mr. Demoan or ---

19 A. Correct.

20 Q. Okay. And was he a source that you would use in
21 the course of your position in property crimes?

22 A. He was -- he used to be one of the employees
23 under me in property crimes.

24 Q. Okay.

25 A. He was a detective.

1 Q. Okay, okay. I just wasn't clear. You said
2 he ---

3 A. Right. No, he wasn't a source. That's why I
4 said he was a former employee.

5 Q. Okay.

6 A. We -- it got to the point where he obtained a
7 warrant. He was able to verify some jewelry.

8 Q. But ---

9 A. You're asking me what I did, and that's what I'm
10 telling you.

11 Q. Okay.

12 A. Okay? I went with him to Anderson to actually
13 pick up Ms. Feaster. We interviewed her on the way
14 back. I sat in on the interviews, on all but one of the
15 interviews. I dove for the gun, myself and the
16 underwater recovery team. I was present at the dig.

17 Q. Well, confining your involvement in this case to
18 the events of August 6th and 7th and the time frame
19 which preceded it, my understanding is that your only
20 involvement up unto that point was to give guidance to
21 Detective Merrithew about how to pursue an investigation
22 through the pawnshop records.

23 A. No. I actually pulled the pawnshop files.

24 Q. Okay. You pulled the pawnshop files?

25 A. That's correct.

1 Q. And then you gave them to Detective Merrithew?

2 A. And I helped him match up the list that he had.

3 Q. It all had to do with the pawnshop records?

4 A. That's how I -- it started because he had a list
5 of jewelry stolen.

6 Q. And when you -- if you remember, when was -- when
7 was that process completed?

8 A. You want a date?

9 Q. Yes, or a time frame.

10 A. Time frame was just prior -- well, okay. You
11 want the date when everything was completed, when the
12 jewelry was received or identified, or...

13 Q. My question to you, ma'am, is this. At what
14 point in time was that process completed to allow
15 Detective Merrithew to identify Katherine Feaster as the
16 individual who had pawned those items?

17 A. In 2007.

18 Q. What month?

19 A. I don't remember.

20 Q. Okay.

21 A. I would have to look at the -- at the books.

22 Q. I'm sorry?

23 A. I would have to look at the records.

24 Q. Do you have the records with you?

25 A. Yes.

1 MS. KENNEDY: Your Honor, may she have access
2 to the records?

3 MR. ALFARO: Your Honor, we object. I think
4 we've gone beyond the scope of the inquiry for the
5 *Denno*...

6 THE COURT REPORTER: Please speak up.

7 MR. ALFARO: I believe we've gone beyond the
8 scope of the inquiry proper for a *Denno* hearing, that
9 none of this testimony has anything to do with the
10 voluntariness of the statement or the Miranda rights
11 provided to the defendant.

12 THE COURT: Ms. Kennedy, your response?

13 MS. KENNEDY: Yes, Your Honor. I would
14 respectfully disagree with the deputy solicitor.

15 The whole issue here is circumstances under
16 which Detective Mike -- I mean, Jeffrey Michaelson came
17 into custody and the process which preceded it. He was
18 the last person that was arrested. He was the last
19 person to give a statement.

20 The state's position has consistently been
21 that she was present, that Detective Freeman was present
22 for everything, and that that's how they intend to
23 introduce this evidence. And I think I'm allowed to
24 explore her prior involvement in it before in terms of
25 what happened when he got -- when he gave his statement.

1 THE COURT: All right. But the Court's
2 concern is to the admission of the statement as whether
3 or not this confession was freely and voluntarily and
4 knowingly made. I believe that we have gone beyond the
5 point of the *Jackson v. Denno* as to the voluntariness of
6 the confession. I believe those questions are
7 appropriate but not appropriate for this hearing. I
8 sustain the objection.

9 MS. KENNEDY: Thank you, Your Honor.

10 BY MS. KENNEDY:

11 Q. Detective Freeman, you indicated that you --
12 well, that you rode with Detective Merrithew to Anderson
13 or Pelzer to take Ms. Feaster into custody?

14 A. Yes.

15 Q. Okay. And you also indicated that she -- you had
16 conversations with her during the ride from Pelzer or
17 Anderson to Moncks Corner?

18 A. Yes.

19 Q. Okay. And the information that she provided to
20 you during that ride down was information that was used
21 in the investigation to -- in order to get Jeffrey
22 Michaelson into custody. Correct?

23 A. All of the defendants. But she was the first
24 one, yes.

25 Q. Okay. And were you involved in any way in the

1 texting of Mr. Michaelson's girlfriend, Ms. Thomas?

2 A. No.

3 Q. Who did that?

4 MR. ALFARO: Objection, Your Honor. Again,
5 this is beyond the scope of the *Denno* hearing.

6 THE COURT: Ms. Kennedy, if you could please
7 tie that -- tie that up for me.

8 MS. KENNEDY: Your Honor, Mr. Michaelson was
9 lured into that area so they could effect custody of him
10 so that his statement could be obtained.

11 And, again, we're back to the same issue.
12 The state has maintained consistently in the pretrial
13 proceedings that Detective Freeman knows everything
14 about his case. And that's pertinent to -- because the
15 sequence of the statements and my client being last is
16 pertinent to the information that was obtained from him
17 in the interrogation that was subsequently conducted on
18 the video.

19 THE COURT: I'm going to sustain the
20 objection for the same reasons as stated before. Let's
21 move on.

22 MS. KENNEDY: Thank you, Your Honor.

23 BY MS. KENNEDY:

24 Q. So you indicated that you were -- describe for me
25 the scene when Mr. Michaelson was brought into the

1 sheriff's -- the sheriff's detective unit for -- for
2 interrogation.

3 A. Which scene are you referring to?

4 Q. From the minute he hit the door in the
5 detective's unit, where was he?

6 A. Where was he?

7 Q. Yes, ma'am.

8 A. He entered through the doorway that we enter
9 from. We come into the parking lot which is in the
10 compound which is fenced in.

11 Q. Okay. And at what point did you come in contact
12 with Mr. Michaelson?

13 A. As he was coming down, down the hallway, escorted
14 him in, escorted him into the room, and that's when.

15 Q. And where was Detective Merrithew at that point
16 in time?

17 A. He was in that hallway, also.

18 Q. Okay. So the two of you escorted Mr. Michaelson
19 into the videotaping room?

20 A. He was escorted in. I assume I walked in first
21 and Detective Merrithew walked in afterwards.

22 Q. Okay. And he was immediately -- the videotaping
23 immediately started, correct?

24 A. Yes.

25 Q. Okay. And during that entire hour and a half or

1 how long, did you ask any questions of Mr. Michaelson?

2 A. I did speak to him. There were a few questions
3 asked for clarification.

4 Q. During the point of interrogation when the
5 videotaped statement was given, did you ask any
6 questions?

7 A. Here again, there were -- I did ask questions for
8 clarification.

9 Q. Well, let's back up a minute. Mr. Michaelson
10 gave a videotaped statement. Correct?

11 A. Correct.

12 Q. He was then given an opportunity to give a
13 written statement?

14 A. Correct.

15 Q. Did you participate in any way in the videotaped
16 statement that was given prior to the time
17 Mr. Michaelson gave his written statement?

18 A. I've answered that question. I don't understand.
19 I apologize, I don't understand what you're asking for.

20 Q. All right. My -- and feel free to correct me.
21 My viewing of the videotape shows that Detective
22 Merrithew read -- read his Miranda warning. You were
23 present. Detective Merrithew did the entire
24 interrogation on the video. Mr. Michaelson was then
25 given an opportunity to write his own statement.

1 A. Correct.

2 Q. Detective Merrithew at some point left the room
3 while Mr. Michaelson was writing his statement.

4 Correct?

5 A. Uh-huh.

6 Q. According to the video?

7 A. Right.

8 Q. Okay. And he had completed his statement.

9 Detective Merrithew came back in. He, Detective
10 Merrithew, read the information from the statement to
11 Mr. Michaelson just to make sure it was what
12 Mr. Michaelson said. Detective Merrithew then left the
13 room again, and you said to Mr. Michaelson you might
14 want to put the stuff in about the burn barrel.

15 Correct?

16 A. Correct.

17 Q. Okay. And you might want to put the stuff in
18 about, you know, being threatened by Mr. Feaster?

19 A. Detective Merrithew said that.

20 Q. Okay. But there are additions to the written
21 statement made at your request?

22 A. Based upon Detective Merrithew.

23 Q. I'm sorry?

24 A. Detective Merrithew.

25 Q. But did you ---

1 A. Told him -- I'm sorry.

2 Q. Did you or did you not suggest and tell Detective
3 Merrithew that you had instructed Mr. Michaelson to add
4 certain information to his written statement?

5 A. I asked questions -- again, I asked questions for
6 clarification during the verbal.

7 Q. During the verbal?

8 A. When we were speaking to him verbally,
9 interviewing him verbally.

10 Q. And that's on the videotape?

11 A. I think it is.

12 Q. Okay.

13 A. I know I'm soft-spoken, but it is on the
14 videotape. Detective Merrithew, when he was writing the
15 statement, did tell him that he needed to -- you know,
16 if you say -- you know, if you say that he threatened
17 you, you might want to put that in there.

18 MS. KENNEDY: Your Honor, could we approach?

19 THE COURT: You may.

20 (There was an off-the-record bench
21 conference.)

22 (Said bench conference being concluded, the
23 following proceedings were had:)

24 BY MS. KENNEDY:

25 Q. And just so I have it straight, Detective

1 Freeman, your involvement in this in terms of the
2 videotaped statement and also in terms of the written
3 statement that Mr. Michaelson subsequently gave is that
4 your purpose there and your participation there was
5 limited to clarification issues?

6 A. I was a witness to his statement. We usually do
7 try to have two detectives involved at all times to make
8 sure there are no improprieties.

9 MS. KENNEDY: Your Honor, with all due
10 respect, I would simply request that the Court instruct
11 the witness to answer the question that I'm asking.

12 THE COURT: Detective, if you'll answer
13 specifically, and if you need either Ms. Kennedy or even
14 Mr. Alfaro to ever rephrase a question, if you need
15 clarification, please indicate that, but please answer
16 the question Ms. Kennedy has asked you. Thank you.

17 BY MS. KENNEDY:

18 Q. As reflected on the videotape and as reflected in
19 his written statement, your involvement was limited to
20 clarifications of issues raised by Detective Merrithew
21 in his interrogation of Mr. Michaelson, yes or no?

22 A. Yes.

23 Q. Thank you. And what involvement -- and I assume
24 that your involvement in the death/larceny, as it's --
25 it's phrased in the statement that Mr. Michaelson gave,

1 began the day before? The death/larceny investigation
2 that this trial is all about?

3 A. Could you please repeat that?

4 Q. Okay.

5 A. I apologize.

6 Q. Okay. You indicated earlier that you traveled
7 with Detective Merrithew to Pelzer, Anderson, wherever
8 it is. Did you have any -- from the time that you gave
9 him instructions, advice, guidance about the property
10 crime, burglary, receiving stolen goods case, prior to,
11 did you have any other involvement in this case prior to
12 -- I mean, from that point in time till August the 6th,
13 2007, when you witnessed all these statements and when
14 you rode with Detective Merrithew to Pelzer?

15 A. Between the pawnshop and that?

16 Q. Yes, ma'am. Yes or no?

17 A. Yes.

18 Q. What was it?

19 A. Just answering questions that he had and then
20 anything else that he had, helped him look up people in
21 the DMV, find addresses.

22 Q. But no -- no substantive, substantive
23 investigation of this matter prior to the arrest of
24 these folks? It was his investigation, correct?

25 A. Correct.

1 MS. KENNEDY: Court's indulgence.

2 THE COURT: Yes, ma'am.

3 (Ms. Kennedy and Mr. Schwacke confer.)

4 MS. KENNEDY: Nothing further, Your Honor.

5 THE COURT: Mr. Alfaro.

6 MR. ALFARO: Nothing further.

7 THE COURT: Detective, you may step down.

8 You may stay with us or you may head off to lunch. Your
9 preference.

10 (The witness leaves the witness stand.)

11 THE COURT: I'll be happy to hear from you,
12 Ms. Kennedy, further.

13 MS. KENNEDY: Thank you, Your Honor. One
14 second.

15 (Ms. Kennedy and Mr. Schwacke confer.)

16 MS. KENNEDY: Your Honor, for purposes of
17 this hearing, I would submit to the Court that the
18 statement that Mr. Michaelson gave was not voluntary
19 because of the circumstances under which he was
20 arrested.

21 He was -- a SWAT team descended upon him. He
22 was not advised at that point in time why he was being
23 arrested. When he gave the -- when he gave the
24 videotaped statement which the Court has reviewed, he
25 also gave a written statement which -- which

1 substantially reflects the information that was given in
2 the videotaped statement. It was subject to a detective
3 clarification by questions that she asked.

4 And I will just submit, Your Honor, the
5 totality of the circumstances that which the statement
6 was given, either video or written, is involuntary.

7 THE COURT: Mr. Alfaro.

8 MR. ALFARO: Your Honor, the state's position
9 is that the statements were freely and voluntarily
10 given.

11 The defendant knowingly, intelligently, and
12 voluntarily waived the rights that were provided to him
13 on two separate occasions during the course of the
14 interaction.

15 Detective Crumley's testimony was when the
16 defendant was taken into custody that he was Mirandized
17 at that time.

18 And the testimony of Detective Freeman and
19 Detective Crumley -- from Detective Freeman was that
20 when the defendant was initially brought to the
21 sheriff's office, he was asked and acknowledged that
22 they had provided -- that he'd been provided his Miranda
23 rights previously. Therefore, at no time after that
24 interview started did he ask for an attorney or did he
25 ask to terminate the interrogation. He voluntarily

1 agreed to give the statement.

2 In addition, prior to the written statement
3 being done, he was again advised of his Miranda rights
4 in writing, which state's exhibit one shows he signed,
5 initialled by each right and signed each page, as well
6 as signing the statement itself, showing that he freely
7 and voluntarily waived his right.

8 The testimony was there was no coercion,
9 force, or threats or promises made to him at any point
10 during his contact with either Detective Crumley or
11 Detective Freeman.

12 Based on those facts, Your Honor, the state
13 would submit that the statement -- his Miranda rights
14 were provided to him as required, he did knowingly and
15 voluntarily waive those rights and agree to give a
16 statement that was videotaped as well as the written
17 statement.

18 THE COURT: Any response to that,
19 Ms. Kennedy?

20 MS. KENNEDY: No, Your Honor.

21 THE COURT: Based upon the totality of the
22 circumstances, as I indicated previously the Court has
23 viewed state's exhibit one -- excuse me -- reviewed
24 state's exhibit one which is the written statement of
25 Mr. Michaelson, as well as state's two which is Court's

1 one.

2 I find that Mr. Michaelson is 27 years of age
3 when he gave the statement. He indicated he completed
4 the twelfth grade at Berkeley. He indicated that he
5 understood his rights, that he had been given his
6 Miranda rights before by -- he did not indicate on the
7 video but he did indicate that he had been given his
8 rights and that he understood them when he began talking
9 to Detective Merrithew.

10 I've considered the -- the length of the
11 detention which was not long in the interview room.
12 Detective Merrithew went over, he in fact asked
13 Mr. Michaelson if he wished to have ice in his water,
14 and that he was not deprived of food.

15 There was no use of physical punishment or
16 repeated detention during the time nor police coercion
17 that the Court could observe in the interview room.
18 There were no threats or promises.

19 The defendant appeared to be in good mental
20 health, did not appear to be under the influence of any
21 drugs or alcohol that the Court could ascertain during
22 the video interview.

23 Based upon the totality of the circumstances,
24 I do find that Mr. Michaelson was advised of his Miranda
25 rights twice and that the statement given on the video

1 and the written statement were freely, voluntarily
2 given, and Mr. Michaelson was advised of his rights so
3 that they were knowingly given, as well.

4 And that would be state's one and two.

5 Anything further? I know we still have one
6 motion in limine regarding the -- anything further
7 regarding the two statements from the defendant?

8 MS. KENNEDY: No, Your Honor. Thank you.

9 MR. ALFARO: No, Your Honor.

10 THE COURT: And I understand we have a motion
11 in limine outstanding. Do I need to address that? I'd
12 like to take our lunch break. We need to address that
13 regarding -- before opening statements.

14 MS. KENNEDY: Your Honor, most probably,
15 because the things that the assistant solicitor -- as I
16 understand, the thrust of the motion in limine would
17 affect my opening.

18 THE COURT: All right. And specifically are
19 there -- Ms. Williams, are there specific instances of
20 the victim's character that you believe that Ms. Kennedy
21 will be using in her opening?

22 MS. WILLIAMS: I don't know what she's going
23 to use in her opening. I do know that -- and I don't
24 know -- with reference to Mr. Feaster, there were times
25 when he on the tape, the jail tapes, where he tries to

1 persuade other witnesses to make it look like it was a
2 drug deal gone bad, and so we would just ask that there
3 be no reference to the victim whether or not he used
4 drugs or not.

5 There was also a statement by one of the
6 other defendants that he had made improper sexual
7 advances toward her. She is not going to be called as a
8 witness. And that's just not true, there's no evidence
9 of that, and Mr. Michaelson never alleges that. In
10 fact, I think he was asked during the interview was she
11 talking about that he touched her inappropriately, and
12 he said, no, that's not what she was talking about.

13 So we would just ask that none of that be
14 mentioned. There is no evidence that that occurred.

15 THE COURT: Ms. Kennedy, were you planning on
16 discussing any of those incidents?

17 MS. KENNEDY: Yes, Your Honor.

18 THE COURT: All right. I'll be happy to hear
19 from you. We're going to take our lunch break. We'll
20 be back at 2:00. And so if it needs to be briefed, if
21 there is any case law that you wish for the Court to
22 review, you may slide that under my door during the
23 lunch hour.

24 Yes, ma'am.

25 MS. KENNEDY: Your Honor, if I may. I think

1 it's the -- I think it's the state's burden to show by
2 case law why I should be deprived of the opportunity to
3 use it. That is the gist of their -- of their case in
4 terms of -- the whole issue is the reason and the
5 circumstances under which Mr. Reeves came to his
6 unfortunate end. It goes to the issue of -- of how he
7 became involved with the other codefendants and the
8 circumstances that led up to his -- as I said, his
9 involvement in this case.

10 Your Honor, a motion in limine, as I
11 understand, is addressed to the sound discretion of the
12 Court. It is usually couched in terms of -- of
13 relevancy. And I will submit to the Court that to
14 deprive me of the opportunity, once again, to fully
15 develop my theory of the case by restricting my ability
16 to present information that's contained in the discovery
17 materials provided by the state and also information
18 that is provided by -- or was provided by one of the
19 witnesses that they intend to call in this case is -- is
20 very relevant and -- and I should not be deprived of the
21 opportunity to do that.

22 THE COURT: All right. We'll address
23 everything after our break. We'll be back at 2:00.
24 Thank you.

25 MS. KENNEDY: Thank you, Your Honor.

1 (A lunch break is taken at approximately
2 1:00 p.m.)

3 (State's Exhibits No. 1 through 29, photos of
4 location and recovery of barrel, are marked for
5 identification.)

6 (State's Exhibits No. 30, 31, and 32, photos
7 of victim's truck, are marked for identification.)

8 (State's Exhibits No. 33 through 48, photos
9 of storage shed, are marked for identification.)

10 (State's Exhibit No. 49, autopsy photo of
11 paper currency, is marked for identification.)

12 (State's Exhibits No. 50 through 68, autopsy
13 photos, are marked for identification.)

14 (State's Exhibit No. 69, autopsy photo of
15 comforter, is marked for identification.)

16 (State's Exhibits No. 70, 71, 72, and 73,
17 autopsy photos, are marked for identification.)

18 (State's Exhibits No. 74 and 75, autopsy
19 photos of paper currency, are marked for
20 identification.)

21 (State's Exhibits No. 76, 77, 78, and 79,
22 autopsy photos, are marked for identification.)

23 (State's Exhibit No. 80, autopsy photo of
24 paper currency, is marked for identification.)

25 (State's Exhibit No. 81, photo of victim's

1 truck, is marked for identification.)

2 (State's Exhibits No. 82, 83, 84, and 85,
3 autopsy photos, are marked for identification.)

4 (State's Exhibits No. 86, 87, 88, 89, and 90,
5 autopsy photos, are marked for identification.)

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1 AFTERNOON SESSION

2 (The trial reconvenes at approximately
3 2:00 p.m., the defendant being present with counsel,
4 Ms. Kennedy and Mr. Schwacke, and the following
5 proceedings were had:)

6 THE COURT: Please be seated. All right.
7 There is a motion in limine as to the victim's
8 character?

9 MS. WILLIAMS: Yes, Your Honor.

10 THE COURT: Counsel, do I need to make a
11 ruling that we abide by the Rules of Evidence, or do you
12 believe that this is -- that there are issues that prior
13 -- prior convictions that I need to make a ruling on?

14 MS. KENNEDY: No, Your Honor. I'm a little
15 bit confused as to what the state is attempting to do by
16 this motion. I've already been precluded from calling
17 my witness. I have no objection -- I have no intention
18 of mentioning any possible drug deal, but there are no
19 witnesses on the state's list and the statement of --
20 the statements, both of whom or each of whom address the
21 issue of certain aspects of sexual overtures by the
22 victim. That's the whole rationale and motive for this
23 happening. It has nothing to do with placing the
24 victim's character into evidence. It is simply an
25 explanation of what happened and what the circumstances

1 and the events were that led to my client being charged.

2 It is also imperative that I be able to
3 explore that and at least allude to it in my opening
4 statement so that they understand, the jury understands,
5 what actually brought us here.

6 It's not a 404 issue as stated in the state's
7 motion. Character, we're not talking about a character
8 trait. We are talking about particular instances of
9 conduct, as opposed to character, that created this
10 whole situation, and it goes to the issue of motive
11 which then goes to the issue of my -- my theory of the
12 case in terms of being able to request an accessory
13 after the fact charge.

14 But the case law that the solicitor provided,
15 you know, indicates that there was some hearing outside
16 of the presence of the jury for the -- the Court to
17 determine the relevancy of that based on in camera
18 testimony from the prospective witnesses who are going
19 to testify.

20 Like I said, I have no objection whatsoever
21 to the drug deal; but the allegation is and the evidence
22 would show, as provided by the state, that there were
23 instances of alleged sexual abuse and alleged physical
24 abuse of Katherine Feaster and Jeremiah Scharer by their
25 stepfather. That ongoing relationship and the nature,

1 the volatility of that relationship explains why all the
2 people involved in this went, other than my client, went
3 to his house that night.

4 And it's relevant, it's pertinent to my
5 presentation of my case, and it's also I need to be able
6 to explain how it is that my client got where we are.

7 It's not character evidence, Your Honor.
8 It's simply evidence of a fact at issue in the case to
9 explain conduct, not character.

10 THE COURT: All right. And, Ms. Kennedy, so
11 you agree that any mention of the drug deal or
12 anything ---

13 MS. KENNEDY: I've got no problem with the
14 drug deal. It was the issue of the physical abuse, the
15 alleged sexual abuse.

16 THE COURT: And I recall, and I may be
17 stepping on what the state wishes to tell me, but I
18 recall in the video of Mr. Michaelson's statement he
19 indicated that there were some issues between
20 Ms. Feaster's mother and her step dad and that there was
21 also an indication that he had touched her. I don't
22 know that there was -- that it was a sexual reference.

23 MS. KENNEDY: Your Honor, in Katherine
24 Feaster's statement she makes a reference to the fact
25 that he touched her breast.

1 And Jeremiah Scharer's statement, the video
2 statement, he asserts: I was beaten every day. I got
3 nothing bad to say about the man. He took care of my
4 mother, but I got a whooping every day.

5 And my client's statement even reflects, Your
6 Honor, that when he was there at the Feasters' residence
7 that night there was some discussion and disagreement
8 and some issue that caused Mr. Feaster and his wife to
9 argue, and it's all related to instances involving
10 Mr. Reeves.

11 THE COURT: But wouldn't it -- wouldn't the
12 analysis then be whether he -- what the defendant
13 thought about and what he believed and not necessarily
14 what the statements of the other codefendants believed?

15 MS. KENNEDY: No, Your Honor. Because it
16 allows me and I'm allowed to explore motive. My client
17 had no motive to do any of this. He has no motive, no
18 -- no animus toward Mr. Reeves, didn't know the man, and
19 I'm entitled to explain the circumstances under which he
20 found himself that night as it relates to all of the
21 issues concerning the codefendants.

22 THE COURT: And, Ms. Kennedy, you believe
23 that it -- that would be conduct and it would not be
24 anything along the lines of any sort of character or
25 reputation?

1 MS. KENNEDY: Yes, Your Honor, I do. Because
2 it's not -- it's not a general thing. I mean, it's
3 something -- it's evidence that would show it is
4 something uniquely known by the other three individuals
5 involved in this case. It is not character evidence.
6 It is simply conduct which explains, again, why we are
7 here today and why my client is on trial.

8 THE COURT: All right. Briefly,
9 Ms. Williams.

10 MS. WILLIAMS: Your Honor, we would concede
11 -- we might be able to shorten this a little bit. We
12 would concede that it is permissible for Ms. Kennedy to
13 go into the fact that Mr. Reeves allegedly physically
14 abused the kids and the mom.

15 But, specifically, Mr. Michaelson was asked
16 specifically, well, didn't Mr. Reeves -- didn't,
17 whatever, the victim, touch Katherine inappropriately.

18 He says: No. What she was saying was that
19 he had beat her mother.

20 The only evidence in this case at all that
21 any inappropriate sexual touching took place was in
22 Katherine Feaster's original statement, and in the
23 jail tape she goes on and on about how she lied about
24 that.

25 Now, not even withstanding the rules of

1 hearsay, which I'm not really sure if there's an
2 understanding what that is here, but we can't get into
3 the other people's statements.

4 The Court is correct in asserting that it is
5 what Mr. Michaelson knew. And he says in the videotape
6 statement, specifically, he corrects the detective and
7 says: It wasn't sexual abuse with Katherine. She was
8 going on and on and on and yelling at Trey, saying
9 Parrish was beating her mother, and that's what he was
10 so upset about.

11 THE COURT: And, Ms. Williams, do you agree
12 that Mr. Michaelson in his statement indicated that he
13 -- he believed that Katherine was touched?

14 MS. WILLIAMS: No. He said that she wasn't,
15 she never said that.

16 They asked him. And, obviously, they had
17 spoken with Katherine. And Merrithew specifically asked
18 Michaelson: Did Parrish Reeves touch -- was there some
19 inappropriate sexual conduct or did he touch them
20 inappropriately?

21 And, actually, Your Honor, I can find exactly
22 where it is on the tape.

23 Mr. Michaelson corrects the detective and
24 says: No, that's not what she was saying. What she was
25 saying was that he was beating her mother, and she was

1 yelling and going on and on and on and she got Trey all
2 upset about it.

3 So we would concede that if Ms. Kennedy wants
4 to go into any, in her opening, physical abuse, but
5 sexual abuse is such a prejudicial issue and there just
6 is no basis. There's no factual basis for it here
7 except for Katherine Feaster's statement, who is not on
8 trial and who negates it in the jail tape. She just
9 blatantly admits that she made it up.

10 THE COURT: Thank you, Ms. Williams.

11 Ms. Kennedy, would there be -- other than
12 Ms. Feaster's statement, is there any other evidence of
13 a sexual -- touching of sexual nature that your client
14 knew of?

15 MS. KENNEDY: That my client knew of ---

16 THE COURT: Yes, ma'am.

17 MS. KENNEDY: --- or that is supported in the
18 evidence, Your Honor?

19 THE COURT: That your client knew of.

20 MS. KENNEDY: No, Your Honor. But I would
21 simply point out to the Court there are two witnesses on
22 the state's witness list, George Novak and Jeremiah
23 Scharer, both of whom alluded to the sexual abuse in
24 their statement. And as such, I think I'm entitled to
25 -- to explore that issue, because we feel there are two

1 witnesses who are going to say ---

2 THE COURT: Ms. Kennedy, if -- if it becomes
3 appropriate, my understanding of what your client has --
4 has made statements regarding is that he knew of the
5 beating, for the lack of a better term, the physical
6 abuse of the stepmother at the hands of the victim.

7 I believe that that is appropriate for you to
8 inquire and to make reference to the statement as to --
9 in your opening. I do not know that -- well, as to
10 that, any questions about the Court's ruling as to that?

11 MS. KENNEDY: Your Honor, I just want to make
12 sure I'm clear in understanding, because what I intended
13 to say was that there are other codefendants in this
14 case who had a prior relationship with the victim and
15 that those relationships were volatile and abusive at
16 the hands of the victim.

17 THE COURT: Ms. Williams, I think the Court's
18 inclined to allow that unless there's -- there's
19 something that you think that is -- well, I'm going to
20 allow that.

21 MS. WILLIAMS: There is no reference in what
22 she just said to sex? Could you repeat that? I'm
23 sorry, Your Honor.

24 THE COURT: There is no reference to sex.

25 Ms. Kennedy, you may -- that is, I believe,

1 based upon the evidence and the facts as the Court has
2 heard them and my understanding of that, that there --
3 that that is an appropriate statement.

4 MS. KENNEDY: And, Your Honor, for purposes
5 of -- at the appropriate time, if I am going to be
6 restricted from exploring that in cross-examination of
7 the witnesses, if we could just take care of that issue
8 prior to my examination?

9 THE COURT: Yes, ma'am.

10 MS. KENNEDY: Thank you.

11 THE COURT: And as always, just as I
12 indicated the motion for continuance, a motion in limine
13 is subject to change based upon the information that is
14 presented throughout the trial.

15 MS. KENNEDY: Thank you, Your Honor.

16 THE COURT: Anything before we bring in the
17 jury?

18 MS. WILLIAMS: Nothing from the state, Your
19 Honor.

20 THE COURT: All right. And I'm not going to
21 limit you on your openings, and we will go...

22 Ms. Evelyn, the one juror who is the
23 student, is that correct that she needs to leave by
24 5:15?

25 THE BAILIFF: I'm not sure. I'll check.

1 THE COURT: If you could just check, check
2 with that and just make sure that that's fine.

3 So the state needs to plan accordingly for
4 your witnesses.

5 All right. Let's bring in the jury.

6 THE BAILLIFF: 5:15.

7 THE COURT: 5:15. Thank you.

8 (Whereupon, the jury enters the courtroom at
9 approximately 2:15 p.m.)

10 THE COURT: Thank you. Please be seated.

11 Good afternoon, ladies and gentlemen. We
12 will now listen to opening statements on behalf of the
13 solicitor, and as I indicated, the defendant may make an
14 opening statement although he is not required to do so
15 at this time.

16 As I indicated before, what counsel says in
17 their opening statements is not to be considered as
18 evidence. And once again, after the close of arguments
19 on behalf of counsel, I will instruct you on the law
20 applicable to this case.

21 Please give your attention.

22 Ms. Williams.

23 MS. WILLIAMS: Thank you, Your Honor. May it
24 please the Court. Counsel.

25 OPENING STATEMENT

1 BY MS. WILLIAMS:

2 How long should justice wait? How long is
3 too long for the truth to come out? How long is too
4 long for a family to wait for justice? A year? Two
5 years? Three years? How about six and a half years?
6 Six and a half years the victim's mother in this case,
7 Frances Reeves, waited to find out what happened to her
8 son.

9 Frances Reeves, day in and day out, searched
10 for her missing son, Parrish Reeves. She put up flyers.
11 She called newspapers. She went back and forth to the
12 Berkeley County Sheriff's Department, hoping for a break
13 in the case. She talked to anyone she could find,
14 trying to find out what happened to her son.

15 He had disappeared in January of 2001. The
16 whole time, that whole six and a half years, he was
17 buried in this man's front yard. When she pleaded day
18 in and day out for an answer, he knew exactly where he
19 was.

20 Now, ladies and gentlemen, common sense is
21 the most important thing that you bring with you here
22 today, the most important thing, and it begs the
23 question why, and that question was asked of
24 Mr. Michaelson by the police. Why is there a dead body
25 in your yard?

1 His answer makes no sense, and you will see
2 what his answer is, because the truth of the matter is
3 that Mr. Michaelson along with his friend Trey Feaster
4 killed Parrish Reeves in cold blood and dumped his body
5 in a barrel and buried him in Mr. Michaelson's front
6 yard. That's how they treated Ms. Reeves's son. You're
7 going to hear all that.

8 In Mr. Michaelson's own statement, he admits
9 he was there before, during, and after the murder. The
10 only thing he doesn't admit is that he pulled the
11 trigger. The only thing he doesn't admit, but he did
12 pull the trigger.

13 Now, you're going to hear witnesses and see
14 testimony during this week about how this case unfolded,
15 what happened during that time in January, and you'll be
16 able to evaluate the witnesses from the witness stand
17 and look at the evidence in this case.

18 And what happened was: Sometime in January
19 of 2001, Kat Feaster and her husband Trey Feaster, who
20 Kat Feaster was the stepdaughter of the victim, they
21 were living in Bonneau. They had Mr. Michaelson over at
22 their home one night, and they were expecting Kat's
23 younger brother who had just turned 18. He was visiting
24 from Walterboro. His name is Jeremiah Scharer, and you
25 are going to hear him testify from that seat right over

1 there.

2 Jeremiah gets there from Walterboro, goes
3 into the living room. He's visiting with his sister and
4 his sister's young son. And Mr. Michaelson and
5 Mr. Feaster come out of the room, I don't know what they
6 were doing back there, but eventually they tell
7 Jeremiah: We're going to get Parrish. And you're going
8 to come with us because he won't come out of the house
9 for us. We want you to come with us so you can get him
10 out of the house.

11 So he goes, to his stepfather's address, and
12 he's going to tell you that.

13 They go over there in Mr. Michaelson's truck,
14 but notice Mr. Michaelson doesn't drive the truck. And
15 this is something that Mr. Michaelson will admit to.
16 Mr. Feaster drives the truck.

17 Mr. Feaster drives the truck. He dropped
18 Mr. Michaelson and Jeremiah off a little ways down from
19 the house, and they walk up to the house.

20 When they get there, Mr. Reeves is in his
21 home. Jeremiah knocks on the door, tells his step dad
22 to come out, and they made up a story about their truck
23 being stuck in a ditch or something, that the truck --
24 that they needed help in some way with their vehicle.

25 They get into Mr. Reeves' vehicle, Jeremiah

1 is in the bed of the truck, Mr. Michaelson is in the
2 passenger seat, and they start to drive down the
3 driveway on the long dirt road.

4 At some point during that ride, Jeremiah
5 who's in the bed of the truck feels it go into neutral
6 and he feels a slight thrust. The truck kind of rolls
7 to a stop at McKnight and Forest Road which is near
8 Cordesville, and Jeremiah gets out of the truck and
9 looks in, and he sees the body of his stepfather slumped
10 over on the seat, partially on the floor and partially
11 on the seat.

12 At that point, the car goes flying.
13 Mr. Michaelson starts to panic. They get back to
14 Mr. Reeves' house in Mr. Reeves' truck. Then they go
15 into covering up.

16 The first thing they do is get rid of
17 Jeremiah, take him back to Kat's house.

18 The defendant, Mr. Michaelson, goes into the
19 home, gets a comforter, and covers the body up.

20 Trey Feaster was there in a matter of
21 minutes. They get rid of the truck. They hook up
22 Mr. Reeves' trailer with all of his tools, because he --
23 he works on woodwork at home. They put Mr. Reeves'
24 trailer on his own truck, and they go and hide the
25 truck.

1 A couple of days later, they dump his body in
2 a barrel and rent a backhoe, and they buried it in
3 Mr. Michaelson's front yard. And that's where the
4 police found the body.

5 Now, you're going to hear testimony from the
6 individual whose house they hid the truck at. Of
7 course, they didn't tell him the truth.

8 You're going to hear from Mr. Michaelson's
9 own statement that he provided the gun and that he got
10 rid of the gun.

11 You're also going to hear that Mr. Michaelson
12 took the trailer, Mr. Reeves' trailer, took it somewhere
13 to get it painted and then either sold it or --
14 disposing of the evidence.

15 You're going to hear a lot about Mr. Feaster
16 in this case, too. Mr. Feaster and Mr. Michaelson are
17 equally responsible for this crime. Mr. Michaelson
18 pulled the trigger; but even if he didn't, that doesn't
19 matter. Because at the conclusion of this case, the
20 judge is going to instruct you on the law. In this
21 state, the hand of one is the hand of all. And even if
22 you believe Mr. Michaelson didn't actually pull the
23 trigger, he's just as guilty of murder. Just like
24 Mr. Feaster, just as guilty of murder even though
25 Mr. Michaelson pulled the trigger. Mr. Feaster will

1 have his day in court; it is not this week.

2 To add insult to injury, after they do all
3 this, they go back to the victim's house. They break
4 into his house, and they take his things, break into his
5 safe. He collected old coins and he had some jewelry.
6 They take items from his home after they've murdered
7 him. Some of these items are found in Mr. Michaelson's
8 possession later when he was arrested.

9 Now, the state has the burden of proof in
10 this case, and we are prepared to meet it. The state
11 has to prove murder. That's what Mr. Michaelson is
12 charged with.

13 Murder is the killing of any person with
14 malice aforethought either express or implied. That
15 means anything that someone says "I'm going to kill you"
16 or that you can imply that from the circumstances
17 surrounding the murder.

18 The definition of malice is an act committed
19 with no just cause or excuse or an act committed with a
20 general and malignant recklessness of the lives and
21 safety of others or a condition of the mind which shows
22 a heart without social duty and fatally bent on
23 mischief. In plain English, it's a wicked heart.
24 That's what malice is.

25 And, again, the judge will instruct you on

1 the law at the end of the case.

2 The state also has to prove burglary in the
3 second degree. A person guilty of burglary in the
4 second degree -- is guilty of burglary in the second
5 degree if the person enters a dwelling -- we will prove
6 they entered Parrish Reeves' dwelling -- without consent
7 and with the intent to commit a crime therein.

8 Now, in addition to the witnesses that will
9 lay the story out for you, you are also going to hear
10 from the pathologist in this case that did the autopsy
11 on Mr. Reeves' body. And you are going to see some
12 disturbing images because of the condition of the body,
13 and I apologize for that to you in advance. It can't be
14 avoided.

15 It's a disturbing case, but it is a case that
16 has finally, finally, come to this day where you can do
17 justice. You can look at the facts, and you can find
18 the truth, and when you do that, you can find
19 Mr. Michaelson guilty of murder and burglary in the
20 second degree.

21 Thank you.

22 THE COURT: Ms. Kennedy.

23 MS. KENNEDY: Thank you, Your Honor. May it
24 please the Court. Ms. Williams.

25 OPENING STATEMENT

1 BY MS. KENNEDY:

2 Good afternoon, ladies and gentlemen. As you
3 heard, my name is Patti Kennedy. I'm with the Public
4 Defender's Office. I and along with Mr. Schwacke,
5 Ms. Williams, and Mr. Alfaro, and The Honorable Judge
6 Harrington are charged with the responsibility of trying
7 this case. The thing that you have to do in this matter
8 is: You are the triers of the facts.

9 And above all else, a jury trial is what we
10 call a quest for the truth where it's your job and your
11 responsibility to listen to all the evidence, listen to
12 the facts, and you decide who you believe and what you
13 believe, because then and only then can you make a
14 determination of guilt or innocence.

15 And at the end of this case, I mean, the
16 burden you have to have in order to find my client
17 guilty, you have to be sure beyond a reasonable doubt,
18 and I emphasize that, beyond a reasonable doubt that
19 he's guilty of all the things that the assistant
20 solicitor told you that she believes that he did.
21 Because at this point, that's her theory of the case.
22 It's your decision. It's your job to decide what
23 Mr. Michaelson may or may not have done, and I will
24 submit to you that the evidence in this case is not
25 going to support all of what was just said.

1 Now, how long do you wait for justice? I
2 don't really know. What I do know is this. This
3 started in 2001 with a missing person's report that was
4 filed by the victim's wife. It was filed as a missing
5 person-slash-suspicious activity. In 2000 -- and
6 nothing was done. And Mr. Reeves was not reported
7 missing until two weeks after the fact, after when his
8 family members determined and decided that he -- that we
9 don't know where he is. The Berkeley County Sheriff's
10 Office, for whatever reason, just chose to treat it as a
11 missing person's report.

12 In 2005 another report was filed, and it says
13 the same thing, missing person, suspicious activity,
14 possible burglary.

15 In 2006 there is a detective named Gerald
16 Merrithew who picked this case up as -- and I'm sure
17 y'all have heard this on TV -- a cold case. He's
18 looking at it. He's trying to find out what's going on.

19 He goes to Frances Reeves, the victim's
20 mother. And I'd like to -- I'm sorry she has to be here
21 today. But Ms. Reeves gives him a list of people that
22 were either who she believed were -- may have been
23 living in the area at the time, and in that list of
24 people -- or may have been in some way involved. And on
25 that list are the names of Katherine Feaster, Jeremiah

1 Feaster (sic), and Trey Feaster.

2 Katherine Feaster is the stepdaughter-in-law
3 of the victim, Parrish Reeves. Jeremiah Scharer, her
4 brother, obviously then is the stepson of the victim,
5 Parrish Reeves. And Trey Feaster is the stepson-in-law.
6 All of these people had a prior relationship with
7 Mr. Reeves.

8 And I would submit to you, ladies and
9 gentlemen, that that -- that relationship was volatile.
10 It was always somewhat argumentative. There were
11 allegations of different kinds of things that went on
12 between Ms. Feaster and Mr. Feaster and Mr. Scharer, and
13 the evidence supports all that.

14 Now, Detective Merrithew, based on the fact
15 that there was an alleged burglary, starts searching in
16 the pawnshops and comes across some pawnshop tickets
17 that Katherine Feaster -- which reflected that Katherine
18 Feaster had pawned some jewelry.

19 He recovered that jewelry, as most of it --
20 as most of it he could. He takes it to Ms. Reeves, and
21 Ms. Reeves is asked to identify it. And he says: Do
22 you know anything about this? You know, are these some
23 of the pieces that might have -- might have been stolen
24 from your son's house? She says yes.

25 Detective Merrithew then goes and finds where

1 Katherine Feaster is. By this time we're in August of
2 2007. He goes to where Katherine Feaster is living in
3 Pelzer. He tells her -- asked her about the items that
4 she pawned. He brings her back to Berkeley County where
5 she is interrogated, where she acknowledged that she
6 pawned stuff, the jewelry. None of the coins, just the
7 jewelry. She then proceeds to give a statement that
8 implicates her brother and her husband.

9 Katherine Feaster is the first person
10 arrested. Katherine Feaster is the first -- first
11 person interrogated.

12 She implicates her brother who then comes
13 from Walterboro who also -- is also interrogated, who
14 gives a statement. And you'll hear Mr. Scharer testify,
15 as the state has promised. He gives a statement that
16 implicates himself and implicates his brother-in-law.

17 And then the next morning, Treze Feaster is
18 allowed to drive down from Pelzer, and he gives a
19 statement in which he acknowledges that this incident
20 occurs. And he, of course, as do the others, blame my
21 client. They all say Jeffrey did it, it was Jeffrey who
22 shot him, it was Jeffrey's idea.

23 My client is the last one arrested. Within a
24 24-hour time frame, all these people are arrested. Four
25 o'clock on August the 7th, my client gets arrested.

1 Everybody has already given their version of the story.

2 He gets interrogated. He's asked by the
3 detective, well, tell me about this, tell me about that.
4 He makes no effort whatsoever to say, I'm sorry,
5 Detective Merrithew, I didn't participate in it, it
6 wasn't me, I didn't do it. He gives a -- he gives a
7 statement. He gives a statement acknowledging his
8 involvement.

9 He also gives a statement saying that he --
10 he was afraid, that he participated in all this and he
11 did not tell anybody because his life had been
12 threatened by the very same people, Mr. Feaster,
13 Mr. Scharer, by the very same people who are involved in
14 all of this.

15 My client was the last one arrested. My
16 client was the last one to be interrogated. He is, as
17 the state has already advised you, the only one to be on
18 trial, the only one to go to trial.

19 And I remind you, ladies and gentlemen, pay
20 close attention. He is the only one who is not related
21 to the victim. He is the only one that had no prior
22 relationship with the victim. He is the only one that
23 had no contact. In fact, he had never met the victim at
24 all. At all.

25 Matter of fact, when the police -- when

1 Detective Merrithew showed him a picture of Parrish
2 Reeves and said do you know who this person is, he said:
3 No. I have no idea who it is. No idea.

4 Now, it's -- it's fine to say all of these --
5 these things, buried in Mr. Michaelson's front yard, the
6 body is there, that he did all those things. I will
7 just remind you, ladies and gentlemen, that that's the
8 state's theory of the case. Just like I have my theory,
9 I get to tell a story; they get to tell a story.

10 You, in your capacity as jurors, get to
11 decide what story you believe. You can believe all of
12 it, you can believe none of it, you can believe parts of
13 it, but you have the obligation and the duty to decide
14 what you believe and why you believe it in order to find
15 my client guilty.

16 Now, reasonable doubt is not any kind of
17 doubt. It sounds like a fancy legal term, and most
18 people believe it is, but I submit to you it's real
19 simple. Reasonable doubt is a doubt that causes you to
20 have hesitation, a doubt that gives you pause, a doubt
21 that maybe -- it kind of like makes you uncertain, gives
22 you a funny feeling.

23 It's the kind of doubt that if you have a
24 child and the doctor says, you know, your child needs
25 surgery, but it's not imperative that you have it, it's

1 elective, then you stop and think about that. Is that
2 the right thing for me to do?

3 It's the kind of thing if you have an aging
4 parent where somebody says perhaps your mother and your
5 father would be better cared for if they were placed in
6 a nursing home or an assisted living facility. And as
7 the child, you think is that the right thing for my
8 mother or my father? Is that the right thing for me to
9 do?

10 And that's the kind -- it's uncomfortable,
11 but it really is not all that complicated. You just
12 have to be assured beyond a reasonable doubt that
13 Jeffrey Michaelson is guilty of this crime, and I will
14 submit to you, ladies and gentlemen, at the end of this
15 trial you'll have that doubt and you will find
16 Mr. Michaelson not guilty.

17 Thank you.

18 THE COURT: Call your first witness.

19 MS. WILLIAMS: Thank you, Your Honor. The
20 state calls Frances Reeves.

21 FRANCES REEVES,
22 being first duly sworn by the clerk, is examined and
23 testifies as follows:

24 THE CLERK: Please be seated. State your
25 name and spell your last name for the record.

1 THE WITNESS: (There was no response.)

2 THE COURT: I need you to state your full
3 name for the record and spell your last name.

4 THE WITNESS: Frances Reeves, R-E-E-V-E-S.

5 THE COURT: Ms. Williams, your witness.

6 MS. WILLIAMS: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. WILLIAMS:

9 Q. Ms. Reeves, where do you live?

10 A. [REDACTED] Wesley Avenue (phonetic), North Charleston.

11 Q. How long have you lived in North Charleston?

12 A. Almost 39 years.

13 Q. How old are you, ma'am?

14 A. Seventy-eight.

15 Q. And how many children have you had?

16 A. Nine children.

17 Q. Tell the jury who Parrish Reeves was to you.

18 A. He was my son.

19 Q. Where did he fall in the order of the nine?

20 A. He was the third from the last.

21 Q. What was your relationship like with Parrish?

22 A. It was good. It was good with all my children.

23 Q. How often did the two of you speak to each other?

24 A. Quite often. Because he did flea marketing and I
25 do, too, and he was always there.

1 Q. What did he do at the flea market?

2 A. He sold stuff. He was a collector of many dolls
3 and Barbie dolls and coins and stuff like that.

4 Q. How long had he been collecting coins?

5 A. A good while.

6 Q. And what did he do for a living?

7 A. He was a carpenter, specialized in staircases.
8 You know, inside trim mostly.

9 Q. How often did he work?

10 A. Six days a week.

11 Q. Okay. And did he have any pets?

12 A. He had a lot of dogs. Especially Kippy, that was
13 his baby. Kippy went everywhere with him, even to bed.
14 I mean, he slept with the dog. I mean, it was all the
15 time.

16 Q. Kippy go to work with him?

17 A. Every day. Every day. He never went nowhere
18 without the dog.

19 Q. Did Parrish have any children?

20 A. Not of his own. He had his stepchildren. He
21 raised them for twelve years.

22 Q. Okay. And who were his stepchildren?

23 A. Dennis, Kat -- Katherine, and Jeremiah.

24 Q. And what was Katherine's married name?

25 A. I don't remember her name, her last name now.

1 Q. Is it Feaster?

2 A. Yeah, that's right.

3 Q. Ms. Reeves, do you remember who she was married
4 to?

5 A. Trey.

6 Q. And when, if you remember, about when did you get
7 concerned about your son being missing?

8 A. The day that Brenda called me the next day. She
9 went out looking for him that night when she come home
10 from work. And she called me and told me that he was
11 missing, and we went looking for him and stuff like
12 that. And she had turned him in about the taxes thing.
13 And we looked and looked and looked for him, and that's
14 when I started going to the detectives and stuff.

15 Q. Okay. And when you say Brenda, who is Brenda?

16 A. Brenda is my daughter-in-law, my
17 ex-daughter-in-law now. She was married to my son at
18 the time.

19 Q. She was married to him?

20 A. She was at that time.

21 Q. And is her last name Ahrenholz?

22 A. Yeah.

23 Q. And had you ever met Jeffrey Michaelson?

24 A. No, I didn't know him. I still don't know him.

25 Q. What were some of the things you did? How long

1 -- how long did you look for your son? How long?

2 A. Six and a half years. Well, over six and a half
3 years before they found his body. I went in to
4 everybody. The FBI. I went to "Unsolved Mysteries."
5 You name it, I did it. And I could not get no help from
6 anybody to help me.

7 Q. Okay. When did you find out that there had --
8 that they had found your son's body?

9 A. When?

10 Q. Yes, if you remember, generally. How did you
11 find out?

12 A. Through the jewelry that Kat pawned the day after
13 they robbed him. And through the jewelry when they
14 traced it, and then she confessed to some of the stuff,
15 and that's how they found the body buried in his yard.

16 Q. Did you get a call from somebody, or how did you
17 actually get contacted?

18 A. From the sheriff's office.

19 Q. And what else was missing when Parrish went
20 missing? Were any of his belongings missing?

21 A. His truck, his trailer with all his tools. And
22 then they -- also, they tried to break into the safe. I
23 guess they figured -- you know, because it was bent.
24 And I guess they figured the key was on the key ring of
25 his truck. And they went back and opened it.

1 Q. So the truck and the trailer. Do you remember
2 what the trailer looked like?

3 A. It was a big white closed-in trailer. And then
4 that's the trailer -- I mean, that truck.

5 Q. Now, did you try to look for the truck?

6 A. Yeah.

7 Q. Did you have any luck with that endeavor?

8 A. Yeah. Because Brenda finally found the title,
9 but she couldn't do nothing with it, so she gave it to
10 me. And the Highway Department wouldn't help me because
11 they couldn't, and I went to -- finally went on to the
12 police station and asked them to trace it to see if my
13 son was still alive. If he had renewed it or whatever,
14 then I would know he was all right. And found out that
15 it was in this other lady's name. She kept it in her
16 name for one year and then put it in her daughter's
17 name, and she got it for one dollar from a magistrate.

18 Q. Okay. And how did -- who was arrested for the
19 murder of Mr. Reeves if you know?

20 A. Who was what? I'm sorry.

21 Q. Who was arrested for his murder?

22 A. Who, I don't know.

23 Q. Who -- who did the police arrest for murdering
24 your son?

25 A. Jeff and Trey, from burying him in the ground...

1 Q. Okay.

2 A. --- you know.

3 Q. And how -- was Jeremiah Scharer involved in that,
4 too?

5 A. He was there at the house, you know, and when he
6 got shot.

7 Q. How did Brenda take the news that her children
8 were involved?

9 A. Very, very hard.

10 MS. KENNEDY: Your Honor.

11 THE COURT: Hold on one second, Ms. Reeves.

12 MS. KENNEDY: Your Honor, I'm loathe to do
13 this, because I appreciate Ms. Reeves...

14 THE COURT: All right. Do you have an
15 objection?

16 MS. KENNEDY: Yes, Your Honor. Hearsay.

17 THE COURT: And it's hearsay?

18 MS. KENNEDY: Yes, Your Honor.

19 THE COURT: Is there an exception,
20 Ms. Williams?

21 MS. WILLIAMS: I can't remember the last --
22 which question?

23 MS. KENNEDY: It's the whole line of
24 questioning about, you know...

25 THE COURT: All right. Counsel approach.

1 (There was an off-the-record bench conference
2 in the presence of the jury but out of the hearing of
3 the jury.)

4 (Said bench conference being concluded, the
5 following proceedings were had:)

6 THE COURT: All right. Ms. Williams.

7 BY MS. WILLIAMS:

8 Q. If you know, how did Brenda take it that her
9 children had been arrested for being involved in this at
10 all?

11 MS. KENNEDY: Your Honor, objection.

12 THE WITNESS: She took it very hard.

13 THE COURT: Hold on one second, Ms. Reeves.
14 If this witness knows, you may answer.

15 THE WITNESS: She took it very hard. At
16 first she didn't believe Parrish was -- that our kids
17 was involved in it, and then all of a sudden it hit her.
18 She took it very hard. As I did, you know.

19 BY MS. WILLIAMS:

20 Q. Did you observe personally any changes in her
21 emotional state?

22 A. Yeah. Well ---

23 MS. KENNEDY: Your Honor, again, I would
24 object. This is -- it's not relevant to anything that
25 we're doing here today.

1 THE COURT: I'm going to allow it as to her
2 personal observation.

3 You may answer, Ms. Reeves.

4 THE WITNESS: Say it again?

5 BY MS. WILLIAMS:

6 Q. The question was: From your observation did you
7 observe any changes in her emotional state?

8 A. Yeah. At first she was hurt because it was her
9 kids, and she was terrified, and she couldn't even look
10 at me. She wouldn't speak to me because she was ashamed
11 that her kids did it, because it hurt me. Because I was
12 the grandmother for twelve years, you know? And I
13 couldn't believe that they were involved in it, either.
14 It -- it changed us.

15 Q. Did you ever hear from any of the defendants?
16 Did any of the defendants ever send you anything or give
17 you any statements, communicate with you at all after
18 the murder?

19 A. Yeah. Jeremiah did.

20 MS. KENNEDY: Your Honor, I would object,
21 again, on relevance. It's after -- unless it pertains
22 to after what was produced and that's what she says is
23 in fact what she received. And it, again, goes to the
24 issue of relevance.

25 MS. WILLIAMS: Your Honor, may we approach?

1 THE COURT: You may.

2 (There was an off-the-record bench conference
3 in the presence of the jury but out of the hearing of
4 the jury.)

5 (Said bench conference being concluded, the
6 following proceedings were had:)

7 THE COURT: All right, Ladies and gentlemen
8 of the jury, please disregard the last question.

9 Ms. Williams.

10 MS. WILLIAMS: Court's indulgence for just a
11 moment.

12 THE COURT: Yes, ma'am.

13 BY MS. WILLIAMS:

14 Q. How are you doing, Ms. Reeves?

15 A. I'm doing all right. Okay.

16 MS. WILLIAMS: Thank you. Please answer any
17 questions the defense might have.

18 THE COURT: Ms. Kennedy.

19 MS. KENNEDY: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MS. KENNEDY:

22 Q. How are you, Ms. Reeves? I'm sorry we're having
23 to meet under these circumstances.

24 A. Okay.

25 Q. And I offer you my condolences.

- 1 A. Thank you.
- 2 Q. But as to the testimony that you just provided
3 based on the assistant solicitor's questions to you, you
4 do not have personal knowledge of any of these things,
5 do you?
- 6 A. Just what I've seen. I have a record of the --
7 the digging up the body and everything.
- 8 Q. But, well, I understand that. I assume you've
9 been able to review the evidence. But what I'm trying
10 to establish, Ms. Reeves, is all the things that you
11 testified to about the burglary and -- and who did what,
12 you have no personal knowledge of that. Correct?
- 13 A. Just what I've seen in the house afterwards.
- 14 Q. From what you saw in the house afterwards?
- 15 A. Yeah.
- 16 Q. And when was that, Ms. Reeves?
- 17 A. The next morning.
- 18 Q. The next morning?
- 19 A. Yeah.
- 20 Q. Now, it's your testimony ---
- 21 A. And another thing, my son would have never left
22 his dog. He would take that with him.
- 23 Q. Yes, ma'am, I understand that, but -- but my --
24 you indicated that Ms. Ahrenholz, your former
25 daughter-in-law, contacted your -- contacted you about

- 1 him being missing?
- 2 A. Yeah. And we went looking for him.
- 3 Q. Okay. Do you know what date that was?
- 4 A. The next day.
- 5 Q. The next day was ---
- 6 A. On the 20th.
- 7 Q. The 20th of?
- 8 A. January.
- 9 Q. Of January?
- 10 A. Yes, ma'am.
- 11 Q. Okay. Are you aware that the allegation is that
- 12 all of this took place on the 17th of January?
- 13 A. The 19th. He died on the 19th. They got the
- 14 number wrong, but he died on the 19th. Because he went
- 15 to work.
- 16 Q. Okay. Who got the number wrong, Ms. Reeves?
- 17 A. I don't know, but it was done on the 19th.
- 18 Q. So you're unaware that your former
- 19 daughter-in-law didn't report your son being missing
- 20 until two weeks after the fact?
- 21 A. We went looking for him.
- 22 Q. I understand that. But are you or are you not
- 23 aware that your son was not reported missing?
- 24 A. I know.
- 25 Q. Okay. But you didn't report him missing, either,

1 did you?

2 A. Not until we started giving up. Then I was --
3 reported him missing. Somebody, maybe -- and I think he
4 was a detective. He said my son wasn't missing, he was
5 just -- didn't want to be found. That's what I got from
6 the detective at first.

7 Q. And when you say you got it from the detective,
8 you're talking about another detective from ---

9 A. I'm talking about the first detective I talked
10 to.

11 Q. Okay.

12 A. I think I had five.

13 Q. I'm sorry?

14 A. I think I had five.

15 Q. Okay. Five over the course of 2001, 2002, 2003,
16 2004 ---

17 A. All the way up until he was found.

18 Q. --- 2005, 2006. Correct?

19 A. Yeah.

20 Q. Okay. And in that five, does that five include
21 Detective Gerald Merrithew?

22 A. Yeah.

23 Q. Okay. And was Detective Merrithew the last
24 person or the last detective that you were involved with
25 who was investigating this case?

- 1 A. Yes, ma'am.
- 2 Q. Okay. And did Detective Merrithew come to you
3 and ask you for a list of people that you thought lived
4 in the area or might know something about this incident?
- 5 A. I was talking to Rick Ollic, and I was all upset,
6 and he found me in the hallway, all upset and crying,
7 and asked Rick Ollic if he would look into the case.
- 8 Q. Detective Ollic asked Detective Merrithew to look
9 into the case?
- 10 A. Rick -- no. Gerry asked Rick if he could take
11 the case.
- 12 Q. Oh, okay.
- 13 A. And check it.
- 14 Q. Okay.
- 15 A. Since I was so upset and stuff and I wasn't
16 getting any help.
- 17 Q. All right. So, just so I understand,
18 Ms. Reeves -- and if you need any water or anything I
19 can do to help you, please let me know.
- 20 A. Yes, ma'am.
- 21 Q. You made yet another one of your many trips to
22 the Berkeley County Sheriff's Office, seeking assistance
23 in this matter?
- 24 A. Yes.
- 25 Q. And you encountered Detective Rick Ollic?

- 1 A. Uh-huh.
- 2 Q. Okay.
- 3 A. I think about seven times.
- 4 Q. And Detective Ollic was the captain or the major,
5 whatever? He's head of the detective's unit?
- 6 A. Yes. He was a captain.
- 7 Q. Okay. And you went to Detective Ollic, and you
8 were upset and you were crying, as anybody would be,
9 given all you've been through, and Detective Ollic got
10 Detective Merrithew?
- 11 A. No. He was in the hallway, and he seen me all
12 upset trying to get some help. I guess I was really
13 talking and carrying on.
- 14 Q. When you say he, Ms. Reeves, who are you talking
15 about?
- 16 A. Gerry.
- 17 Q. Okay.
- 18 A. Gerry ---
- 19 Q. Okay.
- 20 A. --- seen me and asked, and Detective Ollic said
21 he could look into the case and help me.
- 22 Q. So the case was started as a result of Detective
23 Merrithew volunteering ---
- 24 A. Uh-huh.
- 25 Q. --- to look into the case?

1 A. Yes.

2 Q. All right. And then after that did you have
3 conversations with Detective Merrithew about the list
4 and who -- who you thought could be involved in this?

5 A. And who everybody I talked to, "Unsolved
6 Mysteries," FBI, everybody.

7 Q. Okay.

8 A. I just told him what I did.

9 Q. Yes, ma'am. And bless you for doing all your
10 work. But in terms of the list of people that you
11 thought might be involved, do you remember whose --
12 whose names you gave him?

13 A. No, I don't remember all of the names I wrote
14 down.

15 Q. Okay.

16 A. But it wasn't none of these people here. This
17 was a big surprise.

18 Q. Okay. So in the list of possible people who
19 could -- could have been involved in it, you didn't give
20 him Katherine Feaster, Jeremiah Scharer, and Trey
21 Feaster?

22 A. No. We didn't know until we found out the
23 jewelry and stuff was ---

24 Q. Okay. Well, that brings me to another question
25 that I have. Detective Merrithew at some point

- 1 recovered some of the jewelry? Correct?
- 2 A. Yeah.
- 3 Q. And he brought the jewelry to you and asked you
4 to identify it?
- 5 A. It was Brenda's jewelry.
- 6 Q. Brenda's jewelry?
- 7 A. The mother.
- 8 Q. Yes, yes, ma'am, I understand that. But did you
9 ever have an opportunity to look at the jewelry?
- 10 A. Yeah.
- 11 Q. Okay.
- 12 A. She looked at it, too.
- 13 Q. Okay. Were the two of you together with ---
- 14 A. Yeah.
- 15 Q. --- Detective Merrithew?
- 16 A. Uh-huh, yeah.
- 17 Q. So Detective Merrithew came and made arrangements
18 with Mrs. Ahrenholz to ---
- 19 A. With her. I just happened to have been there.
- 20 Q. Okay.
- 21 A. And we identified the jewelry.
- 22 Q. Okay.
- 23 A. It was just one piece.
- 24 Q. Just one piece?
- 25 A. Uh-huh.

1 Q. And Ms. Ahrenholz says that that's -- that's a
2 piece that belonged to her?

3 A. Yeah.

4 Q. And but you, yourself, were not able to identify
5 it?

6 A. Oh, yes. It was a piece that my son specially
7 had made.

8 Q. Okay, okay. But it was a single piece of
9 jewelry?

10 A. Uh-huh.

11 Q. No coins?

12 A. Just -- no.

13 Q. No -- no money?

14 A. No, no coins. But he was a coin collector. And
15 he had \$300 wrote down on a piece of paper. But the
16 jewelry, gave that to her.

17 Q. Yes, ma'am, I understand that. I'm just trying
18 to clarify in terms of the -- how the -- how the
19 investigation evolved, the specific things. All right?

20 A. Yes.

21 Q. So you were there when Detective Merrithew showed
22 Ms. Ahrenholz the one piece of jewelry. Do you recall
23 what that piece of jewelry was?

24 A. It was a necklace with a stone in it.

25 Q. All right. At the time that Detective Merrithew

1 showed it to you and Ms. Ahrenholz, did he tell you that
2 the jewelry had been pawned by Katherine Feaster?

3 A. Well, he had the pawn ticket.

4 Q. He had the pawn ticket?

5 A. Yeah.

6 Q. All right. So at that point in time you were
7 aware that Katherine Feaster had done -- had pawned
8 that?

9 A. Yes, ma'am.

10 Q. That piece, at least that piece of jewelry?

11 A. Yes, ma'am.

12 MS. KENNEDY: Court's indulgence.

13 THE COURT: Yes, ma'am.

14 (Ms. Kennedy and Mr. Schwacke confer.)

15 BY MS. KENNEDY:

16 Q. All right. Ms. Reeves, you testified -- and,
17 again, I'm going to ask you about personal knowledge,
18 because I don't really remember and part of that's my
19 fault because I kept objecting. Do you know when the
20 trailer was removed from your son's property?

21 A. The 19th of January.

22 Q. And how do you know that?

23 A. Because that's when he was murdered and
24 everything was taken that night. I was there the next
25 morning, and it was gone. She went to work, she had to

1 unload a truck, and all this happened while she was
2 gone.

3 Q. Yes, ma'am. And so it's your belief this
4 happened -- that it was taken that same night?

5 A. Well, it was gone, I mean, as soon as I got
6 there. I mean, all of his tools were in there.

7 Q. Well, let me ask you this. Let me ask it a
8 different way. When did you -- when was the last time
9 you were at his house prior to the time that he
10 disappeared?

11 A. The next morning.

12 Q. No.

13 A. And every day after that.

14 Q. No, Ms. Reeves. Prior to the time he
15 disappeared, when were you at the house before that?
16 Two days before that? Three days before that? A week
17 before that?

18 A. I would say about five days.

19 Q. Five days?

20 A. Yeah.

21 Q. And the trailer was there?

22 A. Yeah.

23 Q. And it's your belief that it was taken that same
24 night?

25 A. Yeah.

1 MS. KENNEDY: Okay. That will be all I'd
2 have, Your Honor.

3 Thank you so much, Ms. Reeves. I appreciate
4 it.

5 THE WITNESS: Thank you.

6 THE COURT: Ms. Williams.

7 MS. WILLIAMS: Nothing further, Your Honor.

8 THE COURT: Ms. Reeves, you may step down.

9 Any objection to her being excused?

10 Ms. Williams?

11 MS. WILLIAMS: No objection, Your Honor.

12 THE COURT: Any objection to her being
13 excused?

14 MS. KENNEDY: No, Your Honor. Thank you.

15 THE COURT: Ms. Reeves, you may remain in the
16 courtroom with us, but you're also free to leave. Thank
17 you.

18 (The witness is excused from the witness
19 stand.)

20 THE COURT: Call your next witness.

21 MS. WILLIAMS: Brenda Ahrenholz.

22 (Ms. Ahrenholz enters the courtroom.)

23 BRENDA AHRENHOLZ,
24 being first duly sworn by the clerk, is examined and
25 testifies as follows:

1 THE CLERK: Please be seated. State your
2 full name and spell your last name for the record.

3 THE WITNESS: Brenda Lee Ahrenholz,
4 A-H-R-E-N-H-O-L-Z.

5 DIRECT EXAMINATION

6 BY MS. WILLIAMS:

7 Q. Good afternoon, Ms. Ahrenholz. Where do you live
8 now?

9 A. In Summerville.

10 Q. And where were you living back in January of
11 2001?

12 A. In Cordesville.

13 Q. And what was your address, Ms. Ahrenholz?

14 A. [REDACTED] Alan Park Lane.

15 Q. Who did you live with there?

16 A. Parrish Reeves.

17 THE COURT: Ma'am, I'm going to need you to
18 sit forward and speak into the microphone. Thank you.

19 MS. WILLIAMS: May I approach? I think I can
20 move that, move it back.

21 (The microphone is relocated.)

22 MS. WILLIAMS: There we go. Is that better?

23 BY MS. WILLIAMS:

24 Q. Is that address in Berkeley County?

25 A. Yes, it is.

1 Q. And what was your relationship with Mr. Reeves?

2 A. Parrish was my ex-husband.

3 Q. Who are your children?

4 A. Dennis Scharer, Katherine Feaster, and Jeremiah
5 Scharer.

6 Q. And at the time that you were living at the Alan
7 Park address, where were you working?

8 A. At Central Hardware in Moncks Corner.

9 Q. And what was your schedule that evening, the last
10 -- when was the last evening that you saw Mr. Reeves
11 alive?

12 A. January 19th.

13 Q. Do you remember what day of the week that was?

14 A. Friday.

15 Q. And what was your schedule on Friday night?

16 A. Friday during the day I -- I worked, and then I
17 got off at 4:00 and came home, and I left again at 6:30
18 to be at work by 7:00. I unloaded the truck on Friday
19 night.

20 Q. And who else knew what your schedule would be on
21 Friday night?

22 A. The whole family, the neighborhood.

23 Q. What time did you leave for work that night?

24 A. It was around 6:30 because I had to be there at
25 7:00.

1 Q. And what time did you return?

2 A. That night I came home a little after 9:00.

3 Normally I would have come home at 10:00, but it was a
4 small truck so I got off early.

5 Q. And when you returned was Mr. Reeves at home?

6 A. No.

7 Q. Was his truck there?

8 A. No.

9 Q. Was his trailer there?

10 A. No.

11 Q. Did you -- what efforts did you undertake to look
12 for him?

13 A. Well, at first I started driving. All night I
14 drove. I went to the hospitals. I called his friends,
15 couldn't find him. So I started calling his friends
16 after work.

17 When I got some money raised up, I bought a
18 computer, and I started doing people searches, research
19 on all his friends, everybody that came in contact with
20 me.

21 Q. And did you -- the evening that he went missing,
22 did anyone else help you look for him that night?

23 A. Jeremiah did.

24 Q. When you say Jeremiah, you're talking about
25 Jeremiah Scharer?

1 A. Yes.

2 Q. Your son?

3 A. (There was no response.)

4 Q. At some point in time were some of your items
5 recovered?

6 A. Yes.

7 Q. And let me take a step back. Was your home ever
8 broken into after Mr. Reeves went missing?

9 A. Yes.

10 Q. And what items were missing after this break-in?

11 A. There was a safe was broken into that had -- had
12 my jewelry in it and his coin collection.

13 Q. Did Parrish ever carry anything with him
14 regularly in his truck?

15 A. When he would buy a new coin, he would leave it
16 in this little glove compartment until he remembered it
17 and took it in the house.

18 Q. Did he ever carry any other personal items
19 regularly with him in the truck?

20 A. Yeah. He carried a black bag with his razor and
21 his personal items in it.

22 MS. WILLIAMS: Your Honor, I'm going to show
23 defense counsel what we have previously marked as
24 state's 30, 31, 32, and 81.

25 (Ms. Kennedy reviews exhibits.)

1 MS. WILLIAMS: May I approach the witness?

2 THE COURT: You may.

3 BY MS. WILLIAMS:

4 Q. Ms. Ahrenholz, can you just look through these
5 pictures and tell me if you can tell me what they are.
6 Don't tell me what they are, but just tell me if you
7 know what they are.

8 A. That's Parrish's truck.

9 Q. And what are those pictures of?

10 A. Pictures of Parrish's truck with a different
11 license plate.

12 Q. And do those pictures fairly and accurately show
13 what his truck looked like?

14 A. Yeah.

15 MS. WILLIAMS: Your Honor, at this time we
16 would move to admit state's 30, 31, 32, and 81 into
17 evidence.

18 MS. KENNEDY: No objection, Your Honor.

19 THE COURT: 30, 31, 32 and 81 into evidence
20 without objection.

21 (State's Exhibits No. 30, 31, 32, and 81,
22 previously marked for identification, are received in
23 evidence.)

24 THE COURT: You may publish.

25 MS. WILLIAMS: Thank you, Your Honor.

1 (State's Exhibits No. 30, 31, 32, and 81 are
2 published to the jury.)

3 BY MS. WILLIAMS:

4 Q. And, Ms. Ahrenholz, when was the last time that
5 you saw this truck?

6 A. January 19th.

7 Q. And where was it?

8 A. At the house when I left to go to work.

9 Q. At some point in time were you ever shown any
10 other evidence that was stolen from your home?

11 A. Yes.

12 Q. And what was that?

13 A. A necklace Parrish bought me for my birthday that
14 was in the safe.

15 MS. WILLIAMS: Your Honor, at this time I am
16 going to mark this item as state's exhibit 91.

17 (State's Exhibit No. 91, necklace - in
18 envelope, is marked for identification.)

19 MS. WILLIAMS: I'm going to show defense
20 counsel what I have marked as state's 91.

21 (Ms. Kennedy reviews exhibit.)

22 MS. WILLIAMS: May I approach, Your Honor?

23 THE COURT: You may.

24 BY MS. WILLIAMS:

25 Q. Can you tell us what this is?

1 A. It's my necklace.

2 Q. And where was that necklace the last time you saw
3 it before you were shown it by the police?

4 A. It was in the safe.

5 Q. And was this one of the items stolen from your
6 home?

7 A. Yes.

8 MS. WILLIAMS: Your Honor, at this time we
9 would move state's 91 into evidence.

10 THE COURT: Any objection?

11 MS. KENNEDY: No, Your Honor.

12 THE COURT: State's 91 into evidence without
13 objection.

14 (State's Exhibit No. 91, previously marked
15 for identification, is received in evidence.)

16 MS. WILLIAMS: Your Honor, I'm going to show
17 defense counsel what's been marked as state's 69.

18 (Ms. Kennedy reviews exhibit.)

19 MS. WILLIAMS: May I approach?

20 THE COURT: You may.

21 BY MS. WILLIAMS:

22 Q. Brenda, can you look at this picture and tell us
23 what that is?

24 A. The comforter from my bed.

25 Q. And when was the last time you saw that

1 comforter?

2 A. When I left for work.

3 Q. Does this picture accurately and fairly depict
4 what the comforter looked like?

5 A. Yeah. I bought it.

6 MS. WILLIAMS: Your Honor, at this time we
7 would move state's 69 into evidence.

8 MS. KENNEDY: No objection, Your Honor.

9 THE COURT: State's 69 into evidence without
10 objection.

11 (State's Exhibit No. 69, previously marked
12 for identification, is received in evidence.)

13 BY MS. WILLIAMS:

14 Q. You never saw the comforter again after the night
15 he disappeared?

16 A. No.

17 Q. And lastly, did you ever help your husband pick
18 out coins for his collection?

19 A. Every weekend.

20 MS. WILLIAMS: The Court's indulgence for
21 just a second.

22 THE COURT: Yes, ma'am.

23 MS. WILLIAMS: Your Honor, I'm going to mark
24 this as state's 92 and show it to defense counsel.

25 (State's Exhibit No. 92, coin - in velvet

1 box, is marked for identification.)

2 (Ms. Kennedy reviews exhibit.)

3 MS. WILLIAMS: May I approach?

4 THE COURT: You may.

5 BY MS. WILLIAMS:

6 Q. Can you please tell us what this is?

7 A. It's a painted Liberty coin.

8 Q. Now, whose coin was this?

9 A. It was in Parrish's truck. I helped him pick it
10 out.

11 THE COURT: Ma'am, I'm going to need you to
12 speak directly into that microphone.

13 THE WITNESS: It was in Parrish's truck. I
14 was with him when he picked it out.

15 MS. WILLIAMS: Your Honor, at this time we
16 would move state's 92 into evidence.

17 THE COURT: Any objection?

18 MS. KENNEDY: No, Your Honor.

19 THE COURT: State's 92 into evidence without
20 objection.

21 (State's Exhibit No. 92, previously marked
22 for identification, is received in evidence.)

23 MS. WILLIAMS: Court's indulgence for just a
24 moment.

25 THE COURT: Yes, ma'am.

1 MS. WILLIAMS: I have no further questions.
2 Thank you, Ms. Ahrenholz. Please answer any questions
3 the defense might have.

4 THE COURT: Ms. Kennedy.

5 MS. KENNEDY: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MS. KENNEDY:

8 Q. Ms. Ahrenholz, good afternoon. How are you?

9 A. Hi.

10 Q. You indicated that -- that you went looking for
11 Mr. Reeves. When did you start doing that?

12 A. That night.

13 Q. That night? And how many days did you search for
14 him?

15 A. Well, it started out I drove that night till
16 about 3:00 in the morning. Then the next couple of days
17 I spent on the telephone, calling all his friends
18 because I thought that's where he had taken off to. And
19 then over the next probably two or three weeks, I just
20 waited and waited. I sent a letter that came back from
21 the Post Office box, closed, never got no answer.
22 That's when I started saving money and I got the
23 computer.

24 Q. Do you recall, Ms. Ahrenholz, calling the
25 Berkeley County Sheriff's Office on February the 1st,

1 2001, to report your husband missing?

2 A. I called about when the safe was popped open.

3 Q. I'm sorry?

4 A. I called about the safe being popped open.

5 Q. So you don't recall calling the sheriff's
6 department and saying that you're reporting him missing
7 and that you had been looking for him and that -- that
8 you had talked to some people in the neighborhood and
9 they saw him get in a red truck and ---

10 A. That was in the incident report, yes.

11 Q. Yes. So you did that on -- in February?

12 A. I don't...

13 Q. 2001?

14 A. No. It was right when the safe was popped,
15 because it was the same day.

16 Q. Okay. Would you disagree with me if I told you
17 that the incident report is dated February 1st, 2001?

18 A. Now, I don't know when it was dated.

19 Q. Okay. And you did -- and you did tell them that
20 same time that somebody saw him leave with ---

21 A. Right.

22 Q. --- with someone in a red Honda Civic?

23 A. My neighbors said that they had saw a girl with a
24 red Honda Civic come up there.

25 Q. Okay. And do you recall telling them that --

1 reporting -- you never reported him missing; you called
2 them because there was a burglary?

3 A. Yeah, I called because of that, and I explained
4 to them that I had thought Parrish had run from his
5 taxes. I wasn't sure if he was missing or not. So the
6 police department told me to file an incident report
7 with the sheriff's department.

8 Q. He had run from his taxes?

9 A. Well, Parrish had some tax problems.

10 Q. Okay.

11 A. So at first that's what I thought, he had run
12 from his taxes.

13 Q. Okay. And that somehow this person in the red
14 Honda Civic had something to do with his taxes?

15 A. Well, the girl with the red Honda Civic was
16 somebody he knew from North Charleston. So at that
17 point in time I thought he was running.

18 Q. All right. Were you still living at the
19 residence after he disappeared?

20 A. Yeah.

21 Q. Okay. And when you returned to the residence
22 whatever night it was that you were working, did you
23 notice anything amiss then?

24 A. Just the truck and the trailer was gone, and the
25 front door was left wide open, and his dog was there.

1 And the bedspread was gone.

2 Q. And the bedspread was gone?

3 A. Oh, yeah.

4 Q. But there was nothing -- anything of value from
5 the safe?

6 A. No.

7 Q. Okay.

8 A. As a matter of fact, I checked the safe that
9 night. It was locked up tight.

10 Q. Okay. And at that point in time, all the
11 contents of the safe were -- were there. Do you
12 remember telling the police that -- that -- and you
13 mentioned the dog. The dog's name is ---

14 A. Kippy.

15 Q. --- Kippy? That Kippy was very protective of
16 Mr. Reeves and he wouldn't let anybody come on the
17 property that he didn't know?

18 A. Not Kippy but the rest of the dogs.

19 Q. Right, right. There were dogs there, and the
20 dogs, I guess, would get riled up and ---

21 A. Yeah.

22 Q. --- be aggressive. And so you told the police
23 that -- that nobody would come on that property that
24 didn't -- that the dogs would have created a disturbance
25 if somebody had come on that property that they didn't

- 1 know, that he didn't know?
- 2 A. Right.
- 3 Q. Okay. Do you recall telling the police that?
- 4 A. Yeah.
- 5 Q. Okay. And do you recall -- well, let me ask you
6 this way. So you -- you reported all this. Do you
7 remember when you reported the burglary?
- 8 A. The day that it was popped opened, I called
9 family first and his friends because I thought he did
10 it.
- 11 Q. "He" meaning?
- 12 A. Parrish.
- 13 Q. Okay. You thought he had broken back into your
14 house?
- 15 A. Right.
- 16 Q. Okay.
- 17 A. So I called them first, and they said, no, no,
18 Parrish wouldn't do that, call the police. So that's
19 when I called the police.
- 20 Q. You called family, meaning Mrs. Reeves?
- 21 A. I called family, and I called his friends.
- 22 Q. Okay.
- 23 A. And his friends was like, no, he wouldn't do
24 something like that, call the police, something's wrong.
- 25 Q. Okay. I kind of don't understand about that,

1 because if y'all lived there together and -- he
2 obviously would have had a key. Correct?

3 A. Yeah. He had a key to the safe.

4 Q. Okay. Did you have the lock changed after he
5 disappeared?

6 A. Because I could -- yes, then I had the lock
7 changed.

8 Q. You had the lock changed. So then you assumed
9 that because you had the lock changed he came in and
10 popped -- as you say, popped the door?

11 A. Right. At the time that this happened, I thought
12 Parrish was doing all this. So I thought he was the one
13 that come back in. The side of the house where there's
14 no windows, you can get in and out through that side.

15 Q. Okay. And it was that point in time that you
16 noticed that the safe had been disturbed?

17 A. Yeah.

18 Q. Okay.

19 A. And I even thought, like I said, I thought it was
20 Parrish.

21 Q. Okay. So then if you thought it was Parrish,
22 then it really wasn't a burglary to you initially?

23 A. No.

24 Q. Okay. And then you, I assume, at some point got
25 on the phone and called all these people and they said,

1 oh, no, no, that he wouldn't have done that?

2 A. Right.

3 Q. And it was at that point in time that you decided
4 to call the police?

5 A. Right, call the police and tell them. And I told
6 the police officer right at the start that I didn't know
7 if he was missing or if he would do this, the one that
8 was doing this or what. And the police officer advised
9 me just to do an incident report. That way at least
10 it's on file.

11 Q. Okay. And there was never -- as I understand it,
12 no further investigation done at that point in time?

13 A. No.

14 Q. And did you pursue your own -- you indicated that
15 you went on the computer and did all these things?

16 A. Yes, I did.

17 Q. And that was your own separate investigation?

18 A. Right.

19 Q. And did you have additional contact with the
20 police after that?

21 A. Yeah. We had been going back and forth with the
22 police. They were doing what they could do to look for
23 him, and then Frances and I were doing what we could. I
24 was on the computer, and we were hanging flyers.

25 Q. Okay. So you were conducting your own

1 investigation, Ms. Reeves was conducting her own
2 investigation, and the police were doing what?

3 A. And they were looking, too.

4 Q. I'm sorry?

5 A. And they were looking, too.

6 Q. They were looking?

7 A. Uh-huh.

8 Q. All right. And did you receive any kind of
9 periodic update or reports from police about the success
10 or lack of success of their efforts?

11 A. Just that they hadn't found any leads at all.

12 Q. Okay. And what kind of contacts did you have
13 with the Berkeley County Sheriff's Office from the
14 period of 2001, 2002, 2003, 2004, and then 2005?

15 A. Really wasn't much until they found the truck.
16 That's when ---

17 Q. And when was what?

18 A. '04, I think it was. Either '03 or '04.

19 Q. They found the truck in '03 or '04, all right,
20 and the truck was recovered, but did that give you any
21 information or any whatsoever about where he might be or
22 what had happened to him?

23 A. No. That made me think that maybe something
24 really did happen to him. Up till that point, I thought
25 Parrish was -- I thought Parrish was with some other.

1 girl, carrying on. Until they found the truck, then I
2 got a little concerned.

3 Q. Okay. And let me backtrack a minute. When did
4 you and Mr. Reeves get married?

5 A. We got married in '93.

6 Q. And during that, from 1993 to 2001, did the two
7 of you ever have occasion to separate or live apart?

8 A. Yes.

9 Q. When? And how many times?

10 A. It was several times.

11 Q. Okay. And during that time, your children, as
12 you indicated, Dennis and Jeremiah and Katherine, were
13 all living at the home?

14 A. When we were separated?

15 Q. During those periods of time.

16 A. Well, when we were separated, yes, my children
17 were with me.

18 Q. Okay. But those times that you were together,
19 your children were with you in that home?

20 A. This last time, no.

21 Q. Okay. Please explain this last time.

22 A. When I went back to Parrish this time, it was
23 just me and Parrish in the home.

24 Q. And that would have been when, 1999?

25 A. Yeah.

1 Q. Okay. And your children had already moved out by
2 then?

3 A. Yeah. They were living in a trailer.

4 Q. Okay. And then they were living in a trailer, do
5 you mean Katherine and Trey and Jeremiah?

6 A. They kind of took turns on the trailer. Dennis
7 stayed there for a little while until he moved. Then
8 Jeremiah stayed there for a little till he moved. Then
9 Kat stayed there and Trey kind of on and off.

10 Q. Okay. And I assume this was before they were
11 married?

12 A. No, no.

13 Q. Okay.

14 A. No. This was when they were married.

15 Q. Okay. And did Kat, as you say, and Jeremiah and
16 Trey ever all live together?

17 A. They stayed in the trailer together a couple of
18 times.

19 Q. Okay. And do you know, can you tell me if you
20 know when Jeremiah moved to Walterboro?

21 A. When he was 16. And then he came back about a
22 month before all this happened, and then he went back to
23 Walterboro.

24 Q. And when you say he came back about a month
25 before all this happened, when he came back was he

1 living with -- with Trey and Kat?

2 A. Yeah.

3 Q. Okay. So at the point when all this happened,
4 the three of them were living together and Jeremiah was
5 not living in Walterboro. Correct?

6 A. Jerry was living in Walterboro. He came down to
7 visit. They weren't living -- he wasn't living there.
8 He was visiting there.

9 Q. Okay. But you said a month before this happened
10 he had moved back?

11 A. Jeremiah moved back and forth.

12 Q. Okay.

13 A. When I say visit, it's usually a week or two.

14 Q. Okay. But as I understand your prior testimony,
15 you indicated that he was actually living with Trey and
16 Kat at the time this occurred?

17 A. He was staying with them.

18 Q. Okay. And he had been staying there at least a
19 little while?

20 A. No. It was probably about two weeks at least.

21 Q. Two weeks? Okay. So let me just clarify this.
22 And so while he may have been spending some time in
23 Walterboro, at the time that we're talking about he was
24 actually visiting, living, staying, whatever, with Kat
25 and Trey in -- in Bonneau?

1 A. Right.

2 Q. Okay. Now, you -- you indicated that you -- you
3 had had continuous involvement and the police would --
4 would keep you up to date. When was your first contact
5 with Detective Merrithew?

6 A. I don't remember a date.

7 Q. How about the year?

8 A. I know when we found the truck, we got -- I had
9 more contact with him.

10 Q. And it's your testimony that the truck was found,
11 essentially, in 2004?

12 A. Yeah. 2003, 2004, somewhere in that area.

13 Q. Okay. And it's your testimony that Detective
14 Merrithew was the one who in fact found the truck?

15 A. No. Frances found the truck.

16 Q. Okay. All right. All right. Well, perhaps I'm
17 a little -- and forgive me if I -- when did you first
18 encounter Detective Merrithew?

19 A. He took it over as soon as the truck was found,
20 and he introduced himself that he was taking over a cold
21 case. And he called me -- me and Frances in a couple of
22 times. And then he had asked me about my jewelry, had
23 me draw a picture of my necklace, and then he went and
24 searched through some pawnshops and found it.

25 Q. Okay. So your recollection is that the truck was

1 found around 2003 or 2004 and that was your initial
2 contact with Detective Merrithew?

3 A. Yes. That's when I first started meeting him.

4 Q. Okay. And then he developed the pawnshop leads
5 which -- in which they found your jewelry?

6 A. They found one piece.

7 Q. One piece of your jewelry. And he met with you
8 where?

9 A. He brought it to my home.

10 Q. Okay. And Ms. Reeves happened to be there, or he
11 said 'could y'all -- could y'all please be there
12 together?

13 A. No. He was going to bring it to my job, and
14 Frances told him not to do that, to take it over to the
15 house, and then she came over, too.

16 Q. Okay. So it was a prearranged meeting?

17 A. Right.

18 Q. And he had the one piece of jewelry, and you
19 said, yes, that's my piece of jewelry?

20 A. Right.

21 Q. At that point in time did he advise you how he
22 had come in possession of the jewelry?

23 A. He didn't tell me who. He just said he traced it
24 through a pawn ticket and found it in the Money Man Pawn
25 Shop.

1 Q. He did not tell you that that particular piece of
2 jewelry had been pawned by your daughter?

3 A. No.

4 Q. Okay. And did you have any subsequent contact
5 with Detective Merrithew about this case?

6 A. What do you mean?

7 Q. Well, after he came and showed you the pawnshop
8 ticket -- when did you find out that your daughter had
9 been the one that actually pawned the jewelry?

10 A. When I got a phone call that they had just
11 arrested Katherine.

12 Q. Okay. And that would have been on August
13 the 6th?

14 A. Right.

15 Q. 2006 (sic)?

16 A. Right.

17 Q. Okay. And who made that phone call to you,
18 Ms. Ahrenholz?

19 A. I think it was one of the other kids -- no. I
20 think it was Trey that called me and told me.

21 Q. Okay. Trey called you and told you that your
22 daughter had been arrested?

23 A. And was on the way back here.

24 Q. Okay. So on the way back here, what do you mean
25 by that?

1 A. On the way back to South Carolina -- to Berkeley
2 County.

3 Q. Okay. So is it your understanding that she had
4 been arrested?

5 A. Yeah.

6 Q. And was being brought back?

7 A. That was my understanding.

8 Q. Okay. Do you know who was bringing her back?

9 A. No.

10 Q. Did you know why she was being brought back?

11 A. They said about receiving stolen goods.

12 Q. Okay. But you didn't know -- but you didn't know
13 specifically if that related to the pawning of your
14 necklace?

15 A. I was starting to piece it together.

16 Q. Okay. All right. Do you recall what time of the
17 day or night that you got the call from your son-in-law?

18 A. No.

19 Q. But your daughter was in custody at that point in
20 time?

21 A. Right.

22 Q. Can you recall whether or not it was the day she
23 got arrested or the morning after?

24 A. That I got the call?

25 Q. Yes, from your son-in-law.

1 A. It was before she made it back here to Berkeley
2 County.

3 Q. Okay. So at that point in time Mr. Feaster was
4 aware that she had been arrested, and he was calling
5 you, and you were then made aware that she had been
6 arrested?

7 A. Right.

8 Q. And did you at that point in time make any effort
9 to contact Detective Merrithew?

10 A. Yes, I did.

11 Q. And did you do that?

12 A. Yes, I did.

13 Q. And were you successful in that?

14 A. Of reaching him? Yeah.

15 Q. And what if anything did Detective Merrithew tell
16 you about your daughter's arrest?

17 A. He told me ---

18 MS. WILLIAMS: Objection, hearsay.

19 THE COURT: Do you have an exception?

20 MS. KENNEDY: Your Honor, can we approach?

21 THE COURT: You may.

22 (There was an off-the-record bench conference
23 in the presence of the jury but out of the hearing of
24 the jury.)

25 (Said bench conference being concluded, the

1 following proceedings were had:)

2 THE COURT: Ladies and gentlemen, there is a
3 matter of law that I must take up outside of your
4 presence. Do not begin your deliberations. Do not
5 discuss this case amongst yourselves.

6 It's also an appropriate time for us to take
7 our midafternoon break.

8 Ladies and gentlemen, we will go until 5:15.
9 So if you need to use the phones, please let the
10 bailiffs know for arrangements. But we will stop
11 promptly at 5:15 this afternoon in case any of you have
12 child care arrangements that need to be made.

13 Please rise for the jury.

14 (Whereupon, the jury goes to the jury room at
15 approximately 3:30 p.m.)

16 THE COURT: Please be seated.

17 Ms. Ahrenholz, you are free to remain there.
18 You may also take a break when we take our midafternoon
19 break. Do not discuss this case with anyone. That
20 includes the attorneys for the state or the attorneys
21 for the defendant. Do you understand that?

22 THE WITNESS: Yes.

23 THE COURT: All right. You may step down, or
24 you may remain there. We'll take a ten-minute recess.

25 And, Ms. Kennedy, I understand that you have

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1 some -- that you wish to proffer some testimony?

2 MS. KENNEDY: Yes, Your Honor.

3 THE COURT: Thank you.

4 (A break is taken at approximately 3:30 p.m.)

5 (The trial reconvenes at approximately
6 3:45 p.m., the defendant being present with counsel,
7 Ms. Kennedy and Mr. Schwacke, and the following
8 proceedings were had:)

9 THE COURT: Ma'am, please come forward.

10 BRENDA AHRENHOLZ,
11 previously duly sworn, resumes the witness stand and
12 is examined and testifies further as follows:

13 THE COURT: Outside of the presence of the
14 jury, you may inquire, Ms. Kennedy.

15 MS. KENNEDY: Thank you, Your Honor.

16 CROSS-EXAMINATION (IN CAMERA)

17 BY MS. KENNEDY:

18 Q. Ms. Ahrenholz, you indicated in your earlier
19 testimony that you had some conversation with Detective
20 Gerald Merrithew on August the 6th, 2007?

21 A. Yes.

22 Q. Did he contact you?

23 A. No. I called there when I -- when Trey had
24 called to let me know Katherine had been arrested, I
25 called Gerald to find out what was going on.

1 Q. Okay. And what did Detective Merrithew tell you?

2 A. He said he picked Katherine up under receiving
3 stolen goods.

4 Q. Did he share anything else with you?

5 A. That ---

6 MS. WILLIAMS: Again, Your Honor, we would
7 object. Just so we're renewing our objection that all
8 of this is hearsay, and just the fact that it was
9 Detective Merrithew doesn't make it non-hearsay. So we
10 would just object again.

11 THE COURT: It's noted for the record.

12 MS. WILLIAMS: Thank you, Your Honor.

13 THE WITNESS: He asked me to go pick up my
14 other son, Jeremiah, and bring him up to the police
15 station. They wanted to speak with him.

16 BY MS. KENNEDY:

17 Q. Okay. So do you recall what time of day that
18 was?

19 A. It was getting into the evening. It was probably
20 around 6:00.

21 Q. So he -- he more or less -- so he had called you
22 and said for you to go pick up Jeremiah. Did he tell
23 you why he wanted you to do that?

24 A. He said they needed to talk to him.

25 Q. Okay. But no other reason other than...

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1 A. (The witness shakes head from side to side.)

2 Q. Okay. So at that point in time Detective
3 Merrithew had already told you that your daughter was
4 under arrest. Did you have -- and you had reason to
5 believe that your son, Jeremiah, might be in some
6 trouble. Correct?

7 A. Right.

8 Q. And you drove to Waltherboro to pick him up?

9 A. Yes, I did.

10 Q. And were you able to -- well, what did you tell
11 your son?

12 A. That Katherine had been arrested and that
13 Detective Merrithew would like to speak with him.

14 MS. WILLIAMS: Objection, hearsay. Are we
15 going to talk about everyone's hearsay or just Detective
16 Merrithew?

17 THE COURT: But could we -- what is it -- are
18 you going to go through with the witness as to her
19 entire involvement with Detective Merrithew?

20 MS. KENNEDY: No, Your Honor. Just as to her
21 conversations with Detective Merrithew. Because based
22 on the Court's ruling and his unavailability, I cannot
23 ask him any of these questions, and this is the only way
24 I can elicit the information to preserve the record.
25 Because Detective Merrithew's testimony, again, at the

1 preliminary hearing was none of this communication was
2 taking place.

3 MS. WILLIAMS: Your Honor, Detective
4 Merrithew, he couldn't -- Detective Merrithew could not
5 sit on that witness stand and say what he said. It's
6 still hearsay. It's an out of state -- it's an out of
7 court statement made by somebody. Even Detective
8 Merrithew if he were here in this courtroom could not
9 testify to what he said outside of this courtroom. That
10 is hearsay. So I'm not sure I understand.

11 MS. KENNEDY: Your Honor, just for purposes
12 of preserving the record. As I noted earlier, that the
13 assistant solicitor said -- you know, had some comment
14 to make about hearsay, I was -- Detective Merrithew gave
15 prior testimony under oath, and admittedly in a
16 subordinate court, but I would be allowed to
17 cross-examine him if he were here on that testimony,
18 that preliminary hearing testimony.

19 THE COURT: What does that have to do with
20 this witness here?

21 MS. KENNEDY: Your Honor, because if he -- he
22 indicated that there was no prior communication between
23 anybody, between Mr. Feaster, Ms. Feaster, Mr. Scharer,
24 and that there was no opportunity for them to -- to get
25 together to discuss what needed to be said in relation

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1 to the statements that were given. I just respectfully
2 request to be able to proffer that, Your Honor.

3 THE COURT: All right. And are you -- I
4 guess that then the Court needs some -- what is it that
5 you are attempting to obtain from this witness?

6 MS. KENNEDY: The information that there was
7 a continuous line of communication between Detective
8 Merrithew and the various people involved in the
9 incident, with the other defendants, which culminated in
10 my client's arrest based on information that they had
11 and that they had provided to Detective Merrithew. And
12 that's -- I mean, it's not hearsay, Your Honor. As I
13 said, if Detective Merrithew were available and here for
14 me to cross-examine, I could ask him about that.

15 THE COURT: But you may ask this witness --
16 just for the record, you may ask this witness what --
17 how many times she talked to Detective Merrithew. Is
18 that what you're attempting to elicit?

19 MS. KENNEDY: And what the essence of that
20 communication was, Your Honor, in regard to the other
21 defendants.

22 THE COURT: All right. You may ask her how
23 many times she spoke to Detective Merrithew during the
24 course of this investigation and the nature of that
25 conversation, but for the purposes of this proffer.

1 MS. KENNEDY: Thank you, Your Honor.

2 BY MS. KENNEDY:

3 Q. Ms. Ahrenholz, how many times beginning on August
4 the 6th after you had received your phone call from your
5 son-in-law through August the 7th, how many
6 conversations did you have with Detective Merrithew?

7 A. The one over the phone about bringing Jeremiah
8 down there.

9 Q. Okay.

10 A. Then he took the kids to the back, and I was left
11 in the lobby out front.

12 Q. So he left -- when you say your kids, you're
13 talking about your son, Jeremiah?

14 A. Yeah, Jeremiah and Katherine. He had them in the
15 back, and he asked me to stay out front in the lobby.

16 Q. Okay. And what other conversations did you have
17 with Detective Merrithew about that?

18 A. After he pulled me in and allowed the kids to
19 tell me what happened.

20 Q. So he brought you in at some point, and they were
21 permitted, allowed, whatever, to tell you what had
22 actually happened with -- with Mr. Reeves?

23 A. Yes.

24 Q. Okay.

25 A. Well, not what happened but that he was dead.

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1 Q. That he was dead?

2 A. (The witness nods head up and down.)

3 Q. But you weren't given any information as to the
4 circumstances of his death?

5 A. No.

6 MS. KENNEDY: Your Honor, Court's indulgence.

7 THE COURT: Yes, ma'am.

8 MS. KENNEDY: Your Honor, that would be all I
9 would have in regard to the proffer.

10 THE COURT: All right. Thank you.

11 Let's bring in our jury.

12 THE WITNESS: I can get down?

13 THE COURT: No, ma'am. You have to stay
14 right there. And I remind you you've been under oath
15 the entire time, but the jury is coming back and you are
16 still under oath. All right? And Ms. Kennedy will be
17 questioning you, as well. And, ma'am, I really need for
18 you to speak very loudly into that microphone. All
19 right?

20 THE WITNESS: Okay.

21 THE COURT: It may seem that you're yelling,
22 but I can hardly hear you.

23 (Whereupon, the jury enters the courtroom at
24 approximately 3:55 a.m.)

25 THE COURT: Please be seated.

1 Ms. Kennedy.

2 MS. KENNEDY: Thank you, Your Honor.

3 CROSS-EXAMINATION (CONTINUED)

4 BY MS. KENNEDY:

5 Q. Ms. Ahrenholz, forgive me if I'm being a little
6 repetitive here. We had a break, and I'm not sure where
7 we left off. You indicated earlier that the truck was
8 recovered in 2003, 2004, and that you believe that your
9 first encounter with Detective Merrithew occurred during
10 that time. Correct?

11 A. Yes.

12 MS. KENNEDY: Your Honor, may I approach the
13 witness?

14 THE COURT: You may.

15 BY MS. KENNEDY:

16 Q. Would you be kind enough to identify that
17 document for me?

18 A. That is a statement that I think it was Detective
19 Lee wrote out with me.

20 Q. Okay. And if you'd be kind enough to tell me
21 what name is listed on the statement?

22 A. It's Brenda Ahrenholz. That was my married name
23 at the time.

24 THE COURT: Ma'am, you are going to have to
25 speak up.

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1 And, Ms. Kennedy, I know that -- you are just
2 going to have to speak up.

3 THE WITNESS: It's Brenda Ahrenholz, and I
4 was remarried at that time.

5 THE COURT: Thank you.

6 BY MS. KENNEDY:

7 Q. And the date of the statement ---

8 MS. WILLIAMS: Your Honor, may we approach?

9 THE COURT: You may.

10 Hold on one second.

11 (There was an off-the-record bench conference
12 in the presence of the jury but out of the hearing of
13 the jury.)

14 (Said bench conference being concluded, the
15 following proceedings were had:)

16 THE COURT: Thank you.

17 BY MS. KENNEDY:

18 Q. Ms. Ahrenholz, do you recall giving a statement
19 to Detective Lee about this matter?

20 A. Yes, I do.

21 Q. And do you recall when, the date, what the date
22 of that statement was?

23 A. (The witness shakes head from side to side.)

24 MS. KENNEDY: Your Honor, may I approach the
25 witness?

1 THE COURT: You may.

2 BY MS. KENNEDY:

3 Q. Looking at that document, Ms. Ahrenholz, does it
4 refresh your recollection to see what time -- what date
5 it was given?

6 A. July '05.

7 Q. July 15th, 2005?

8 A. (The witness nods head up and down.)

9 Q. And that -- that was before Detective Merrithew
10 became involved in the case. Correct?

11 A. Yes. Because he took over when Detective Lee
12 quit.

13 Q. So Detective Lee quit. So your earlier
14 recollection about 2003, 2004, regarding Detective
15 Merrithew's involvement is mistaken?

16 A. Yeah.

17 Q. Okay. Thank you. Now, you indicated earlier
18 that on the night that your husband went missing you and
19 Jeremiah rode -- rode around looking for him?

20 A. Right.

21 Q. And did you continue with Jeremiah to look for
22 him?

23 A. That night we did. We looked -- looked till like
24 3:00 in the morning.

25 Q. And I assume that over between 2001 and 2006

1 there were a number of family gatherings with all your
2 children?

3 A. Not really.

4 Q. Ma'am?

5 A. Not really. Christmastime, that's about it.

6 Q. Well, you had other opportunities to get together
7 with Mr. Feaster and Ms. Feaster ---

8 A. Oh. Yes.

9 Q. --- and Jeremiah?

10 A. (The witness nods head up and down.)

11 Q. At no time did anybody, either any of these
12 individuals, share with you what happened to Mr. Reeves
13 that night?

14 A. No.

15 Q. Now, when Detective Merrithew came to talk to
16 you, you gave -- you indicated that you had given him a
17 list of things that were missing?

18 A. Yes.

19 Q. Do you recall what was on that list?

20 A. The necklace. There was a gold watch, tennis
21 bracelet, half-carat earrings. Then there was Parrish's
22 coin collection. I would probably estimate 10, \$15,000
23 worth of coins, but that's an estimate. I don't know
24 the value of the coins.

25 Q. Okay. And those are all of the things you

1 indicated to Detective Merrithew that those -- all of
2 those things were in the safe?

3 A. So far as I know. I don't know what was in the
4 safe. I couldn't get in it.

5 Q. Okay. So if you don't know what's in the safe,
6 how do you know what was missing?

7 A. I only know what was in there, what Parrish had
8 told me he had in there.

9 Q. Okay. But you didn't see it yourself?

10 A. I had seen a few of the things when he'd take
11 them out a little at a time and show them to me.

12 Q. All right. So your -- your comment regarding the
13 value is just based on pure supposition on your part?

14 A. It's because of going with him to buy these
15 coins. I knew what he was spending like on a weekly
16 basis.

17 Q. But you don't know that they were in there?

18 A. No, I don't.

19 MS. KENNEDY: Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. KENNEDY:

22 Q. And the only thing that Detective Merrithew ever
23 showed you that was recovered was the necklace?

24 A. The necklace and then later a coin.

25 Q. A coin? One coin?

- 1 A. (The witness nods head up and down.)
- 2 Q. All right. Were you ever shown any of the items
- 3 and asked to identify any of the items that were
- 4 recovered from the storage shed?
- 5 A. Yeah.
- 6 Q. When?
- 7 A. I don't know how long ago. A few months.
- 8 Q. But that was after everybody got arrested?
- 9 A. Yeah.
- 10 Q. Not -- not prior to?
- 11 A. No. No.
- 12 Q. And were those items shown to you -- to you as
- 13 part of the review of the evidence or to keep you
- 14 informed of what was going on with this case?
- 15 A. Just to see if I recognized it.
- 16 Q. And who -- who asked you to look at them?
- 17 A. Gerry Merrithew asked me to look at the necklace.
- 18 That was the only thing I identified before the arrest.
- 19 Q. Okay. And after the arrest and the items were
- 20 recovered from the storage shed, when were you asked to
- 21 identify those items?
- 22 A. It was a few months back.
- 23 Q. Within the past five or six months?
- 24 A. Yeah.
- 25 Q. And who asked you to identify them?

- 1 A. The sheriff's office.
- 2 Q. The sheriff's office. And which detective?
- 3 A. I don't know his name.
- 4 Q. Was it Detective Merrithew?
- 5 A. That asked me to identify?
- 6 Q. Yes.
- 7 A. No.
- 8 Q. And when you are identifying these items, could
- 9 you positively say that any of the items that you were
- 10 asked to review or look at were items that were actually
- 11 taken from the safe?
- 12 A. Just my necklace.
- 13 MS. KENNEDY: Just your necklace. Thank you.
- 14 THE COURT: Ms. Williams.
- 15 REDIRECT EXAMINATION
- 16 BY MS. WILLIAMS:
- 17 Q. And you identified the coin from his truck?
- 18 A. Yes. That was the coin in the truck.
- 19 Q. And this was a long time ago, Ms. Ahrenholz?
- 20 A. Yes.
- 21 Q. And you don't remember all of the dates, do you?
- 22 A. No.
- 23 Q. It's been emotionally difficult for you, too?
- 24 A. Yes, it has.
- 25 Q. How old was Jeremiah when he was out of your

1 home?

2 MS. KENNEDY: Your Honor ---

3 THE WITNESS: He was 16.

4 MS. KENNEDY: --- I object. May we approach?

5 MS. WILLIAMS: This is the last question.

6 THE COURT: You may approach.

7 (There was an off-the-record bench conference
8 in the presence of the jury but out of the hearing of
9 the jury.)

10 (Said bench conference being concluded, the
11 following proceedings were had:)

12 THE COURT: Overruled. You may answer.

13 BY MS. WILLIAMS:

14 Q. How old was your son, Jeremiah, when he moved out
15 of your home?

16 A. The first time, 16.

17 MS. WILLIAMS: Thank you.

18 Nothing further.

19 THE COURT: Ms. Kennedy.

20 MS. KENNEDY: Nothing further, Your Honor.

21 Thank you.

22 THE COURT: Thank you.

23 You may step down.

24 (The witness is excused from the witness
25 stand.)

1 THE COURT: Call your next witness.

2 MR. ALFARO: Michael Crumley.

3 (Detective Crumley enters the courtroom.)

4 DETECTIVE MICHAEL CRUMLEY,
5 being first duly sworn by the clerk, is examined and
6 testifies as follows:

7 THE CLERK: Please be seated. State your
8 full name and spell your last name for the record.

9 THE WITNESS: Michael Thomas Crumley,
10 C-R-U-M-L-E-Y.

11 DIRECT EXAMINATION

12 BY MR. ALFARO:

13 Q. Detective Crumley, would you please tell the jury
14 where you currently work?

15 A. The Berkeley County Sheriff's Office.

16 Q. And how long have you been working for the
17 sheriff's office?

18 A. Approximately four years.

19 Q. And prior to coming to work for the sheriff's
20 office, did you have any prior law enforcement
21 experience?

22 A. Yes. I've been employed as a law enforcement
23 officer for about twelve years, first at Dorchester
24 County Sheriff's Office and then at Goose Creek Police
25 Department.

1 Q. And were you working for the sheriff's office in
2 August of 2007?

3 A. Yes, I was.

4 Q. And in what capacity were you working for the
5 sheriff's office at that time?

6 A. I was assigned as a detective in the criminal
7 investigations division.

8 Q. And could you tell us what your duties were at
9 that time?

10 A. Duties consisted of taking initial incident
11 reports and following up on -- on those with whatever
12 was necessary to clear the case; interviewing witnesses,
13 defendants; collecting evidence; things of that nature.

14 Q. And in your capacity as a detective in August of
15 2007, did you have the opportunity to assist in the
16 investigation into the disappearance and death of
17 Parrish Reeves?

18 A. Yes, I did.

19 Q. And could you tell the jury what your initial
20 involvement in the case was?

21 A. My initial involvement in the case was the arrest
22 of Jeffrey Michaelson.

23 Q. And do you recall when you came into contact with
24 the defendant?

25 A. Yes. It was on August 7th, 2007, at

1 approximately 3:00 p.m.

2 Q. And where did that take place?

3 A. In the Wilmor Acres subdivision off of College
4 Park Road in the Ladson area of Berkeley County.

5 Q. And at the time that you took him into custody,
6 were there other officers present with you at that time?

7 A. There were.

8 Q. And who were they?

9 A. Let's see. Detective Muckelvaney, Sergeant
10 Alteri. Those two at least, I'm sure.

11 Q. And when you came in contact with the defendant,
12 you stated he was arrested at that time?

13 A. Yes.

14 Q. And at the time of arrest did you provide him
15 with his Miranda rights?

16 A. I did.

17 Q. And do you recall how you went about doing that?

18 A. Yes. I read them from a card that I keep in my
19 wallet.

20 Q. And do you recall what rights were read to him
21 that night?

22 A. I do.

23 Q. And what were they?

24 A. (The witness removes card from wallet.) I read
25 to him that you have the right to remain silent;

1 anything you say can and will be used against you in a
2 court of law; you have the right to speak to an attorney
3 and to have an attorney present during any questioning;
4 if you cannot afford a lawyer, one will be provided for
5 you at government expense.

6 Q. And it appears that you are reading those off of
7 a card. Is that the same card you would have used on
8 August the 7th, 2007?

9 A. Yes.

10 Q. Those were the same rights -- were those the same
11 rights that were provided to him on that day?

12 A. Yes.

13 Q. And after reading him his rights, did he indicate
14 that he understood those rights?

15 A. He did.

16 Q. And at that time did you ask him any questions?

17 A. No.

18 Q. What did you do with him after that?

19 A. He was placed in handcuffs, placed into a police
20 vehicle, and transported here to Moncks Corner to the
21 Berkeley County Sheriff's Office.

22 Q. And during the ride from Wilmor Acres to the
23 sheriff's office, how long would you say that took
24 approximately?

25 A. Approximately 20 minutes.

1 Q. During that ride was he asked any questions?

2 A. No.

3 Q. Was he threatened in any way?

4 A. No.

5 Q. During your time with him, did you promise him
6 anything in exchange for him cooperating or giving a
7 statement?

8 A. No.

9 Q. And what did you do with the defendant when you
10 arrived at the sheriff's office?

11 A. When we arrived at the sheriff's office, I met
12 with Sergeant Freeman and Sergeant Merrithew, and I
13 transferred Mr. Michaelson into their custody.

14 Q. Did you have any further contact with
15 Mr. Michaelson after that?

16 A. I did not.

17 Q. And what else did you -- or did you have any
18 other role in this investigation other than arresting
19 and transporting Mr. Michaelson?

20 A. Yes, I did.

21 Q. And could you tell the jury what you did?

22 A. Sure. Later that evening at about 6:15 p.m., I
23 met with other detectives, Sergeant Alteri, Sergeant
24 Shuler, and Detective Murphy, at the Ladson Self Storage
25 located at 9678 Highway 78 in Ladson. We met there with

1 Christine Thomas who had a storage unit there, unit
2 number H-14, and she provided us with a consent to
3 search that unit.

4 Q. Who was Christine Thomas?

5 A. She identified herself as a girlfriend of
6 Mr. Michaelson.

7 Q. And were you able to determine whose storage unit
8 that was?

9 A. Yes. Christine Thomas stated that that was her
10 unit and she shared it with Jeffrey Michaelson. During
11 the search of that storage unit, we did locate mail
12 items that had been addressed to each one of them within
13 the storage unit.

14 Q. So you saw items that were addressed to the
15 defendant, as well as Ms. Thomas?

16 A. Yes.

17 Q. I'm going to show you some photographs which have
18 been previously marked as state's exhibits, photographs,
19 state's exhibits 33 through and including 48. If you
20 can take a look at exhibits 33 through 48 briefly and
21 then I'll ask you a few questions.

22 A. (The witness reviews exhibits.)

23 Q. Do you recognize what's contained in those
24 photographs?

25 A. Yes, I do.

1 Q. And can you tell us what -- where these pictures
2 were taken or what they're pictures of?

3 A. These photographs were taken at the Ladson Self
4 Storage, the "H" Building, unit number 14, and they are
5 photographs of what was located inside that storage
6 unit.

7 Q. And do each of the photographs that you looked at
8 fairly and accurately depict the contents of that
9 storage unit on the day that you searched it on August
10 the 7th, 2007?

11 A. Yes.

12 MR. ALFARO: Your Honor, at this time the
13 state would ask that exhibits 33 through 48 be admitted
14 into evidence.

15 THE COURT: Any objection?

16 MS. KENNEDY: Yes, Your Honor.

17 THE COURT: All right. You may approach.

18 (There was an off-the-record bench conference
19 in the presence of the jury but out of the hearing of
20 the jury.)

21 (Said bench conference being concluded, the
22 following proceedings were had:)

23 THE COURT: All right. State's 33 through 48
24 will be admitted over defendant's objection.

25 (State's Exhibits No. 33 through 48,

1 previously marked for identification, are received in
2 evidence.)

3 THE COURT: And, Mr. Alfaro, you may publish
4 those at this time.

5 MR. ALFARO: Thank you, Your Honor.

6 BY MR. ALFARO:

7 Q. I'm going to show you state's exhibit 48 on the
8 screen. Can you tell the jury what that's a photograph
9 of?

10 A. That's the sign identifying Ladson Self Storage,
11 the address location 9678 Highway 78.

12 Q. And state's exhibit 47?

13 A. This would be the "H" storage building.

14 Q. And exhibit 45?

15 A. Unit number 14 of the "H" building.

16 Q. And was the unit closed when you arrived?

17 A. Yes.

18 Q. And was Ms. Thomas present when you performed the
19 search?

20 A. Yes.

21 Q. And upon being -- I'm showing you state's exhibit
22 44. Is that the condition of the storage shed when the
23 unit was first opened?

24 A. Yes.

25 Q. State's exhibit 40. Do you recall if that item

1 was located inside the storage shed, as well?

2 A. Yes, it was. It was a U.S. silver dollar,
3 painted. I believe it was a 2000 year.

4 Q. I show you what's previously been entered into
5 evidence as state's exhibit 92. Do you recognize that
6 item?

7 A. Yes, I do.

8 Q. Is that the same item that's in photograph
9 state's exhibit 40?

10 A. Yes, it is.

11 Q. And that was located in the storage shed?

12 A. It was.

13 Q. And state's exhibit 33, was this item also
14 recovered in the storage shed?

15 A. Yes. The Sentry file safe.

16 Q. And exhibit 41, was that certificate of
17 authenticity and the coin also in the storage shed?

18 A. May I have a closer up photo of the coin?

19 Q. I'll show you 41.

20 A. Yes. U.S. quarter dollar, 1999 year, Delaware,
21 painted.

22 Q. Were there other painted coins? The pictures
23 that have been shown of coins, were there other coins
24 located inside the storage unit?

25 A. Yes.

1 Q. And were those reflected in the pictures that I
2 showed you?

3 A. (The witness further reviews exhibits.) Yes.

4 Q. Thank you. Detective Crumley, you also said that
5 Christine Thomas was present during the search?

6 A. Yes, she was.

7 Q. Did you obtain her permission to enter into the
8 storage unit?

9 A. I did.

10 Q. And did you -- was she forced or threatened in
11 any way to give that permission?

12 A. No.

13 Q. And did you execute or did you obtain any kind of
14 documentation related to her giving you consent to
15 search?

16 A. I did.

17 Q. And what did you -- what type of documentation
18 did you collect?

19 A. It was a written Berkeley County Sheriff's Office
20 Consent to Search form.

21 MR. ALFARO: If I could have these marked, as
22 well, Consent to Search and a Consent to Search Return.

23 (State's Exhibit No. 93, Berkeley County
24 Sheriff's Office Consent to Search form, signed by
25 Christine Thomas, dated 8/7/07, is marked for

1 identification.)

2 (State's Exhibit No. 94, Consent to Search
3 Return, signed by Christine Thomas, dated 8/7/07, is
4 marked for identification.)

5 BY MR. ALFARO:

6 Q. I show you what has been marked as state's
7 exhibit 93. If you would review that document, then
8 I'll ask you some questions.

9 A. (The witness reviews exhibit.)

10 Q. Could you tell the jury what -- the process that
11 you used when explaining the form to Ms. Thomas?

12 A. I filled in, first of all, the name of one of the
13 detectives that would be conducting the search. After
14 that, I put in "et. al" since there were multiple
15 detectives present. Then I wrote in the location,
16 Ladson Self Storage, Unit H-14, 9678 Highway 78, Ladson,
17 South Carolina 29456. I wrote in the time, 6:15 p.m.,
18 the 7th day of August 2007, and then I laid it down so
19 that Ms. Thomas could read along with me as I read the
20 form along with her. And after reading, me reading it
21 verbally and she reading it to herself, she then signed
22 this form.

23 Q. So was she informed that she had the right to
24 refuse a consent to the search?

25 A. Yes. The form goes over and says: That I -- and

1 she filled in her name -- Christine Thomas, having been
2 informed of my constitutional right not to have a search
3 made of my person or the premises hereinafter mentioned
4 without a warrant and of my right to refuse to consent
5 to such a search, hereby authorize Sergeant Alteri --
6 and then the other detectives -- et. al, of the Berkeley
7 County Sheriff's Office, State of South Carolina, to
8 conduct a complete search of my person or premise.

9 Knowing my lawful right to refuse to consent to
10 such a search, I willingly give my permission to the
11 above named officer, or officers, to conduct a search of
12 the premise and property, including all buildings and
13 vehicles, both inside and outside of the property
14 located at -- and we listed that storage address.

15 The above named officers have my permission to
16 take from my premise and property any letters, papers,
17 materials or any other property or things which they may
18 desire as evidence for criminal prosecution in the case
19 or cases under investigation or which may be fruits of a
20 crime.

21 This written permission to search without a
22 warrant is given by me to the above named officers
23 voluntarily and without threats or promises of any kind
24 at 6:15 p.m., the 7th day of August 2007. And it's
25 signed by Christine Thomas.

1 Q. Did you also sign that document?

2 A. I did.

3 Q. And I'm going to ask you to review state's
4 exhibit 94. Do you recognize that document?

5 A. I do.

6 Q. And could you tell us what type of document it is
7 and when it was completed?

8 A. This is a Consent to Search Return form. It
9 provides a written inventory of any property removed by
10 law enforcement, us officers. It is completed after the
11 search was conducted before we left the scene. I wrote
12 my name on it, and Christine Thomas signed the bottom of
13 it for a receipt, and we provided a copy to Christine
14 Thomas before we left.

15 Q. And did you personally list the items on the
16 Consent to Search Return?

17 A. Yes, I did.

18 Q. And those were the items that were taken from the
19 storage unit that day. Is that correct?

20 A. That is correct.

21 MR. ALFARO: Your Honor, at this time the
22 state would ask that state's exhibits 93 and 94 be
23 admitted into evidence.

24 MS. KENNEDY: No objection, Your Honor.

25 THE COURT: State's 93 and 94 into evidence

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1 without objection.

2 (State's Exhibits No. 93 and 94, previously
3 marked for identification, are received in evidence.)

4 BY MR. ALFARO:

5 Q. Detective Crumley, if you could publish to the
6 jury what is contained on exhibit 94?

7 A. All right. Consent to Search Return, the
8 following is an inventory of the property taken pursuant
9 to the Consent to Search:

10 Number one: U.S. quarter dollar, 1999,
11 Pennsylvania, painted;

12 Number two: U.S. quarter dollar, 1999,
13 Connecticut, painted;

14 Number three: U.S. quarter dollar, 1999, New
15 Jersey, painted;

16 Number four: U.S. quarter dollar, 1999, Georgia,
17 painted;

18 Number five: U.S. silver dollar, 2000, painted;

19 Number six: U.S. quarter dollar, 1999, Delaware,
20 painted;

21 Number seven: Ten Deutsche Mark, one of those;

22 Number eight: A white metal bracelet;

23 Number nine: A Bulova watch, no band and missing
24 a hand;

25 Number ten: South Carolina tag [REDACTED];

1 expiration 5 of 2001;

2 Eleven: Sentry file safe, model 1100;

3 Twelve: A black vinyl bag;

4 Number 13: A red glass smoking pipe;

5 Number 14: A black Phillip's screwdriver;

6 Fifteen: A butane lighter;

7 Sixteen: Yellow ballpoint pen;

8 Seventeen: A section of drinking straw;

9 Number 18: Green closable baggies, four of

10 those;

11 Number 19: A plastic vial;

12 Number 20: A black plastic fitting.

13 And it goes on to say: A copy of this consent
14 and inventory has been given to me this 7th day of
15 August 2007, signed Christine Thomas.

16 Q. And is state's exhibit 92 the coin that you were
17 previously shown? Is that listed and described on this
18 return?

19 A. That's the item number five, U.S. silver dollar,
20 year 2000, painted. Listed item number five.

21 Q. You made reference earlier to some mail addressed
22 to the defendant which was located in the storage shed.
23 Were those items seized on that day?

24 A. No.

25 Q. Is that why they were -- that's why they would

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1 not be listed on the return. Is that correct?

2 A. That's correct.

3 MR. ALFARO: Thank you. Please answer any
4 questions the defense has for you.

5 THE COURT: Ms. Kennedy.

6 MS. KENNEDY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. KENNEDY:

9 Q. Detective Crumley, we'll start you indicated
10 earlier that you and -- you and a number of officers
11 went to I believe you said Wilmor Acres to take
12 Mr. Michaelson into custody. Correct?

13 A. That's right.

14 Q. And do you have -- do you know how that was
15 accomplished or why you were sent there?

16 A. I was sent there because there was an active
17 arrest warrant for Jeffrey Michaelson.

18 Q. And who directed you to go there?

19 A. I believe that was Sergeant Merrithew.

20 Q. Do you know why he told you to go there?

21 A. Other than there was an active arrest warrant,
22 no.

23 Q. And you and how many other officers were involved
24 in that?

25 A. It was me, Detective Muckelvaney, Sergeant

1 Shuler, and Sergeant Alteri.

2 Q. And how many patrol cars or unmarked cars were
3 involved in that?

4 A. There were at -- at least two unmarked Crown
5 Vics, detective-style cars, and possibly three.

6 Q. So as I understand it, he, Jeffrey Michaelson,
7 was coming into Wilmor Acres, and you all like a SWAT
8 team descended upon him, or you stopped him, or how did
9 you accomplish his arrest?

10 A. It was accomplished more like a traffic stop but
11 with one car from the rear with blue lights and one car
12 approaching from the front with blue lights.

13 Q. So there was -- was no way for him to leave?

14 A. Not without driving all around us.

15 Q. And do you know how it is or under what
16 circumstances Jeffrey Michaelson was directed to come to
17 Wilmor Acres?

18 A. I don't.

19 Q. All right. And you put him in your patrol car?

20 A. That's correct.

21 Q. And you Mirandized him?

22 A. I Mirandized him before we got in the car.

23 Q. Okay. Outside of the car?

24 A. Right.

25 Q. Was he in cuffs?

- 1 A. Yes.
- 2 Q. Okay. And what did you tell him?
- 3 A. I read to him the card that I carry in my wallet.
- 4 Q. I understand that, but did you explain to him why
- 5 he was being taken into custody?
- 6 A. I told him that he had an active arrest warrant
- 7 and that he would be explained what that warrant was for
- 8 when we arrived at the sheriff's office.
- 9 Q. And given -- who gave you those instructions for
- 10 Mr. Michaelson?
- 11 A. Sergeant Merrithew.
- 12 Q. And do you know why he gave you those
- 13 instructions?
- 14 A. I assumed that he wanted to talk to him about the
- 15 matter there at the sheriff's office.
- 16 Q. So you were clueless and he was clueless about
- 17 why he was being arrested?
- 18 A. Yes.
- 19 Q. Okay. You were unaware of what the active
- 20 warrant was for?
- 21 A. No idea.
- 22 Q. Okay. And you took him in to the detective unit.
- 23 Correct?
- 24 A. I took him in the...
- 25 Q. To the detective unit?

1 A. Yes.

2 Q. You transported him in your car and took him to
3 the detective unit?

4 A. Yes.

5 Q. At which point in time you turned him over to
6 Detective Merrithew?

7 A. Detective Merrithew and Detective Freeman.

8 Q. But Detective Merrithew was the one who
9 instructed you to bring him there, correct?

10 A. That's correct.

11 Q. And Detective Merrithew was the lead investigator
12 in this case, correct?

13 A. I don't know who the lead investigator assigned
14 the case was.

15 Q. But at that point in time was it your
16 understanding that he was the person in charge of the
17 investigation?

18 A. Again, I'm not sure who was in charge. The
19 sergeant asked me to do something, so I went and did it.

20 Q. "Sergeant" meaning Sergeant Detective Merrithew?

21 A. Yes. Yes.

22 Q. And it was under his instruction?

23 A. That I went to Wilmor Acres, yes.

24 Q. Okay. Now, proceeding on, at what point -- what
25 time of day was that?

1 A. Let's see. The -- the arrest occurred at
2 approximately 3:00 p.m.

3 Q. And he was in custody with Detective Merrithew at
4 what point in time?

5 A. I would say somewhere in the neighborhood
6 of 3:30.

7 Q. And once you took him to the detective unit at
8 the office, were you given further instruction?

9 A. I know that I was given -- I was told about the
10 storage unit and -- and to go there with Sergeant Alteri
11 and Sergeant Shuler.

12 Q. You were told to go to the storage unit?

13 A. Right.

14 Q. Who directed you to do that?

15 A. I don't remember. I know that I was -- I was
16 told to go there with them.

17 Q. Could it have been Detective Merrithew?

18 A. It sure could have been.

19 Q. And you were directed to go to the storage unit
20 for what reason? Why were you instructed to go there?

21 A. To meet with the -- Christine Thomas to search
22 the unit to look for any items that were there that
23 might be pertinent.

24 Q. Do you have any idea how Christine Thomas's name
25 came in or as a potential witness or a contact person

1 for you?

2 A. No. I was just told that that was Michaelson's
3 girlfriend and that she would be there to allow us entry
4 into the storage unit.

5 Q. But, again, you don't remember who told you that?

6 A. No.

7 Q. Okay. Now, as to the items or the contents of
8 the storage shed, do you have any knowledge whatsoever
9 that any of these items were items that were involved in
10 the burglary that occurred in 2001?

11 A. I don't.

12 Q. Have any information whatsoever that would
13 indicate that the safe that was recovered from the
14 storage unit was the same safe that was -- that was
15 broken into in 2001?

16 A. No, I don't.

17 Q. Okay. Do you have any indication whatsoever that
18 any of the coins or the items on your Consent to Search
19 were related to -- in any way to the alleged burglary,
20 burglary that occurred in sometime between January and
21 February of 2001?

22 A. No.

23 Q. You took these items into custody, and what did
24 you do with them afterwards?

25 A. I submitted them into evidence at the Berkeley

1 County Sheriff's Office.

2 Q. And did you report to anyone after you did that?

3 A. Yes. I completed a report, and I turned that in
4 to I believe it would have been Sergeant Freeman who was
5 my supervisor at the time for approval.

6 Q. Are you sure it was Sergeant Freeman, or was it
7 Detective Merrithew?

8 A. Let me see. (The witness reviews document.) It
9 was Detective Sergeant Freeman, yes.

10 Q. Do you have a time? Is there a time or a day on
11 the information that you have when you gave that to
12 Detective Freeman?

13 A. It says August 7th, 2007.

14 Q. Because if you executed a search warrant at 6:15,
15 how long did it take you to remove the items or the
16 contents from the storage unit?

17 A. I believe it was probably close to an hour and a
18 half, something of that nature.

19 Q. So an hour and a half would mean pretty close to
20 7:30 or eight o'clock, giving some time on that?

21 A. Right.

22 Q. Okay. And at that point in time were you aware
23 of -- aware of the whereabouts of Jeffrey Michaelson?

24 A. No.

25 Q. Did you have to interrupt Detective Freeman when

1 she was in any interrogation at this point in time?

2 A. No.

3 Q. Well, where was she when you gave this
4 information?

5 A. This report was probably submitted on a
6 subsequent day.

7 Q. Okay.

8 A. So it would have been after the 7th.

9 Q. So as I understand what you're telling me, when
10 you gave her the report and you submitted it, it was
11 part of the process that you would have done in your
12 investigation?

13 A. Correct.

14 Q. Okay. And it was done the day after, you
15 think?

16 A. Most -- most likely, yes.

17 Q. And you simply just turned it in?

18 A. Right.

19 Q. According to your procedure?

20 A. That's correct.

21 Q. And you don't know what happened to it after
22 that?

23 A. No.

24 MS. KENNEDY: Court's indulgence.

25 THE COURT: Yes, ma'am.

1 (Ms. Kennedy and Mr. Schwacke confer.)

2 MS. KENNEDY: Thank you for your patience,
3 Your Honor.

4 BY MS. KENNEDY:

5 Q. And just so I understand, Detective Crumley, all
6 you did was a consent to search, you executed it, you
7 removed things from the storage shed, but you have no
8 idea what if any was in connection to the alleged
9 burglary or Mr. Reeves' death?

10 A. That's correct.

11 MS. KENNEDY: That's all I have, Your Honor.
12 Thank you.

13 MR. ALFARO: Briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. ALFARO:

16 Q. Detective Crumley, Ms. Kennedy asked you about
17 who approved your report. You appeared to refresh your
18 recollection with some document that you have. Is that
19 correct?

20 A. Yes.

21 Q. Could I see which document you refreshed your
22 recollection off of?

23 A. (The witness tenders document to Mr Alfaro.)

24 Q. And what kind of document is that?

25 A. It's a supplementary report.

1 Q. And at the bottom of that report, does it list
2 who the reporting officer is?

3 A. Yes.

4 Q. And would that be -- who would the reporting
5 officer be on the bottom of the incident report?

6 A. Whoever is writing the report.

7 Q. So in this case would you be the reporting
8 officer?

9 A. Yes.

10 Q. And does it also list who the -- which officer or
11 superior officer, I assume, would approve the contents
12 of that report?

13 A. Yes.

14 Q. And does the report that you refreshed your
15 recollection off of tell you who the approving officer
16 was?

17 A. Yes.

18 Q. And who was that?

19 A. That's Detective Sergeant D. Freeman.

20 MR. ALFARO: Thank you.

21 RECROSS-EXAMINATION

22 BY MS. KENNEDY:

23 Q. Detective Crumley, again, the process that you
24 have in submitting the report and having the approval of
25 the report, that's just routine. Correct?

1 A. Right. When you complete a report, right.

2 Q. And there is no -- when that -- that report, you
3 submit it and your superior officer, whoever it might
4 be, reads it?

5 A. Correct.

6 Q. Okay. And that's all they do. They just read
7 it. Correct?

8 A. Read it and then make sure there's -- there's no
9 errors.

10 Q. Okay. Make sure that all the I's are dotted and
11 the T's are crossed?

12 A. Right.

13 Q. And that's just a part of the procedure? That's
14 really -- other than submitting the form, it has no
15 bearing on the investigation whatsoever. Correct?

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

17 MS. KENNEDY: Thank you.

18 THE COURT: Detective, you may step down.

19 (The witness is excused from the witness
20 stand.)

21 MR. ALFARO: Your Honor, could we approach?

22 THE COURT: You may.

23 (There was an off-the-record bench conference
24 in the presence of the jury but out of the hearing of
25 the jury.)

1 (Said bench conference being concluded, the
2 following proceedings were had:)

3 THE COURT: All right. Ladies and gentlemen,
4 I indicated to you that we would break no later than
5 5:15. And because it's just a little bit before 5:00
6 now, so we're not going to be able to have a witness on
7 the stand without interrupting that witness's testimony,
8 so we're going to go ahead and break for the evening.

9 Ladies and gentlemen, please remember my
10 admonition. Do not discuss this case amongst
11 yourselves. You're going to go home and your friends or
12 family members, significant others, are going to wonder
13 what you are doing. You tell that person that the judge
14 says I cannot talk about the case.

15 After the conclusion of this case, you are
16 free to talk about the case; but until I advise you that
17 you are free to talk about this case, you must not
18 discuss this case with anyone. And as I indicated to
19 you, that includes face-to-face discussions. It also
20 includes any blogging, e-mailing, twittering, texting,
21 anything of that nature. Do not talk about this case.

22 Please do not read, watch, listen to any news
23 accounts regarding this case should there be any.

24 And, ladies and gentlemen, finally, do not do
25 any independent investigations regarding this matter.

1 Why don't you just take the evening, go home,
2 turn off your cell phones, don't talk to anyone else,
3 and enjoy the beautiful day outside.

4 I will see you back. We will begin hopefully
5 promptly at 9:00 a.m., and so please have a wonderful
6 and restful evening.

7 The bailiffs will collect your notebooks, and
8 we will give those back to you in the morning.

9 Please rise for the jury.

10 (Whereupon, the jury leaves the courtroom at
11 approximately 4:50 p.m.)

12 THE COURT: Thank you. Please be seated.

13 Any motions, matters, anything before we
14 break for the evening?

15 MR. ALFARO: Your Honor, briefly. We had
16 neglected to ask if Detective Crumley could be relieved
17 and excused so he can go out of town. So we'd like to
18 get that formally done.

19 THE COURT: All right. Any objection to
20 Detective Crumley being excused?

21 MS. KENNEDY: No, Your Honor.

22 THE COURT: And he is -- so he is now
23 released from his subpoena. Is that correct?

24 MR. ALFARO: We would ask that, Your Honor,
25 yes.

1 MS. KENNEDY: Yes, Your Honor.

2 THE COURT: All right. And, Detective
3 Crumley, just as I -- just after the *Jackson v. Denno*
4 hearing, I cautioned you the rule of sequestration has
5 been invoked. You've indicated to the Court you know --
6 you know what that means, so I request that you follow
7 the Court's admonition and not discuss this case with
8 anyone, either your previous or anticipated testimony or
9 anyone else's testimony. Do you understand, and do you
10 have any questions?

11 DETECTIVE CRUMLEY: I understand, Your Honor.
12 No questions.

13 THE COURT: All right. Thank you, Detective.
14 You are excused.

15 DETECTIVE CRUMLEY: Thank you, Your Honor.

16 (The witness, Detective Crumley, is excused.)

17 THE COURT: All right. And with that, is
18 there anything further?

19 MR. ALFARO: Your Honor, since the next
20 witness will be Detective Freeman in the morning, I
21 would just like to get some clarification as to the
22 videotape whether we're going to need to stop it prior
23 to polygraph reference or whether we're allowed to play
24 it straight through.

25 THE COURT: All right.

1 MS. KENNEDY: Your Honor, if I may.

2 THE COURT: Yes, ma'am.

3 MS. KENNEDY: Court's indulgence.

4 THE COURT: Yes, ma'am.

5 MS. KENNEDY: Your Honor, I don't want to
6 prolong this. I would just like the opportunity, if I
7 can, to look at it again tonight before I give you --
8 before I'll be able to advise the Court. My inclination
9 at this point in time, just for purposes of scheduling,
10 is to have the whole thing played. If I don't do that,
11 then I'll advise the Court, and that will obviously
12 shorten the time.

13 THE COURT: It's not going to shorten it by
14 that much.

15 What is the state's preference?

16 MR. ALFARO: Your Honor, our position is that
17 normally case law has shown that reference to a
18 polygraph, mere reference to a polygraph, you know,
19 requires at the very least a curative instruction. We
20 would normally stop it before the reference to the
21 polygraph.

22 Ms. Kennedy had indicated earlier that she
23 would be relying on the rule of completeness to require
24 us to play the entire tape. We wouldn't necessarily
25 have an objection to that if it was put on the record

1 that that's a tactical decision by her that she wants
2 that portion played.

3 We would object to any kind of position that
4 the mentioning of a polygraph would thereby open the
5 door to polygraph results. We believe that a reference
6 to a polygraph is different than actually mentioning
7 what the polygraph results were, whether someone passed
8 it or failed it. As stated earlier in the previous
9 argument regarding that motion, a hearing would have to
10 be conducted before results could be admitted into
11 evidence.

12 THE COURT: All right.

13 MR. ALFARO: We wouldn't object, as we said,
14 if it's her decision and if it's on the record that her
15 decision is to allow that portion to be played. We
16 wouldn't object to that, but we would disagree with her
17 that it opens the door. If that's the case, we would
18 prefer to just stop it before any mention of it.

19 THE COURT: And, Ms. Kennedy, if it's your
20 position that you wish to have the entire tape played,
21 is it then your position that that opens the door to
22 results?

23 MS. KENNEDY: Your Honor, I think we're
24 talking about two different animals. The polygraph that
25 we're talking about here is the one that's referenced in

1 the videotaped statement. The polygraph I believe that
2 the deputy solicitor is referring to is the one that --
3 that I conducted for my client's benefit, and I think --
4 which obviously would be subject to something that if I
5 decided to do that, that it would be -- it would be in
6 my case in chief, and I think it's premature for us to
7 address that issue and for me to commit to, you know,
8 opening the door at the present time.

9 THE COURT: All right. What I heard the
10 state's position is, is that if that's the -- if you're
11 going to -- if you are going to request that the entire
12 video be played and there is some reference to the
13 polygraph then that then will give you an argument that
14 the door is open to all of your polygraph tests and test
15 results?

16 MS. KENNEDY: No, Your Honor. I realize that
17 there are certain evidentiary standards that I would
18 have to meet before -- before, if and when and before
19 that evidence could be introduced.

20 THE COURT: All right.

21 MS. KENNEDY: I'm not arguing that that opens
22 the door for me to have any other result.

23 THE COURT: All right. Thank you.

24 Then, Counsel, I need y'all here at ten till
25 9:00 so that we can go place that on the record before

1 Detective Freeman testifies.

2 Anything before we break for the evening?

3 MS. WILLIAMS: Your Honor, just a
4 housekeeping issue. We gave defense counsel a lot of
5 tapes from the jail. And at this point in time, the
6 only tape-recorded conversation that we are planning to
7 introduce would be Christine Thomas. It is a
8 conversation between the defendant and Ms. Thomas, and I
9 just wanted to let defense counsel know exactly what
10 track that is if they want to review it tonight since we
11 did give them a copy of the tape. It is Jeffrey
12 Michaelson Tape B, and it is track five. And that was,
13 I believe, a call on August 15th, 2007, to number
14 832-4985. So hopefully that will help them reference
15 that particular call, and they will know exactly which
16 one it is.

17 MS. KENNEDY: Your Honor, may I ask the
18 assistant solicitor to state those numbers again?

19 MS. WILLIAMS: Oh, sure.

20 (Ms. Williams and Ms. Kennedy confer.)

21 MS. KENNEDY: Thank you.

22 THE COURT: All right. Counsel, with that,
23 is there anything further for the evening?

24 MS. KENNEDY: Yes, Your Honor. Just for
25 housekeeping purposes, the two -- we had two side bars.

1 One concerns -- concerns my objection to the assistant
2 solicitor's particular question that the Court
3 overruled. My assertion -- my objection was that it
4 exceeded the scope of cross-examination.

5 THE COURT REPORTER: I'm sorry, Ms. Kennedy.
6 Please speak up.

7 MS. KENNEDY: My objection was that it
8 exceeded the scope of cross-examination.

9 And the second one was to -- was to the
10 admissibility of the photos from the storage shed, and
11 my objection was based on relevancy. And, Your Honor,
12 the argument was from the state that it was
13 circumstantial evidence, and that's how it was tied
14 together; and my position, obviously, was in opposition
15 to that. I have no objection to the particular one
16 about the Eagle ---

17 THE COURT: With the coin?

18 MS. KENNEDY: Yes.

19 THE COURT: The rare coin that was already in
20 evidence?

21 MS. KENNEDY: Yes. That Ms. Ahrenholz
22 testified that it was recovered from the truck. It's --
23 and I'm assuming the assertion is that it was -- that
24 it's the same one that was in the storage shed.

25 THE COURT: All right. And Detective Crumley

1 testified that that -- there was a photograph that was
2 taken during his execution of the search warrant, and
3 based upon that, due to the fact that those photographs,
4 according to him, fairly and accurately depicted the
5 scene as he -- when he -- the storage shed, and I
6 relied, then, based upon that. And your objection is
7 noted for the record.

8 Anything further?

9 MS. WILLIAMS: Nothing from the state, Your
10 Honor.

11 THE COURT: All right. I'll see y'all at ten
12 till 9:00 in the morning, and I just want to see counsel
13 in chambers just for scheduling. Thank you.

14 (Whereupon, at approximately 5:00 p.m., the
15 trial is recessed to the following day, Wednesday,
16 June 30, 2010, at 8:50 a.m.)

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1 (On Wednesday, June 30, 2010, the trial is
2 scheduled to reconvene at 8:50 a.m.)

3 (At approximately 9:00 a.m., there was an
4 off-the-record chambers conference by the Court,
5 Ms. Williams, Mr. Alfaro, and Mr. Schwacke, Ms. Kennedy
6 not being present.)

7 (Said chambers conference being concluded,
8 the following proceedings were had:)

9 (The trial reconvenes at approximately
10 9:25 a.m., the defendant being present with counsel,
11 Mr. Schwacke, and the following proceedings were had:)

12 THE COURT: All right. We're back on the
13 record in State vs. Jeffrey Michaelson.

14 Based upon a phone call and an in-chambers
15 conference, the Court has determined that today we will
16 release the jury, and we will have a status conference
17 at 4:00 p.m. to determine the scheduling for this case
18 for the remainder of the week, and I will bring the jury
19 in just to instruct them and remind them of the
20 admonition.

21 Anything further from the state?

22 MS. WILLIAMS: Nothing, Your Honor. Thank
23 you.

24 THE COURT: Anything further, Mr. Schwacke?

25 MR. SCHWACKE: No, Your Honor.

1 THE COURT: All right. Let's bring in the
2 jury.

3 (Whereupon, the jury enters the courtroom at
4 approximately 9:28 a.m.)

5 THE COURT: Thank you. Please be seated.
6 Good morning, ladies and gentlemen.

7 (Members of the jury reply good morning.)

8 THE COURT: I hope everybody had a restful
9 evening.

10 Ladies and gentlemen, due to circumstances
11 unrelated at all to this case, we will be unable to
12 proceed with this case here today. Ladies and
13 gentlemen, I do not want you to infer from the fact that
14 I'm going to excuse you for the remainder of the day
15 that it has anything to do whatsoever with this case.
16 You are not to even consider when I give this case to
17 you for your deliberations that it is either the
18 defendant or the state's fault or the Court's fault or
19 anything. It's just a matter of procedure that we will
20 be unable to go forward here today.

21 Ladies and gentlemen, I brought you in to
22 remind you on the record of the Court's admonition.
23 Please do not discuss this case amongst yourselves.
24 Please do not begin your deliberations. Please do not
25 read, watch, listen to any news accounts regarding this

1 case should there be any. Do not do any independent
2 investigation.

3 Ladies and gentlemen, we have your cell
4 numbers.

5 Is that correct, Madam Bailiff?

6 We will call you by 6:00 p.m. today. So if
7 you have not received a phone call or received a message
8 on your voice mail, you will need to make -- make sure
9 that you call back, and we will put the message after
10 6:00 p.m., as well, as to what time you will need to
11 report back tomorrow.

12 Ladies and gentlemen, please have a wonderful
13 day, and we will see you back in the courtroom at the
14 time that we instruct you to return. Have a wonderful
15 afternoon.

16 Please rise for the jury.

17 (Whereupon, the jury leaves the courtroom at
18 approximately 9:30 a.m.)

19 THE COURT: Thank you. Please be seated.

20 Anything before we recess in this matter?

21 MS. WILLIAMS: Nothing from the state, Your
22 Honor.

23 MR. SCHWACKE: Nothing, Your Honor.

24 THE COURT: Mr. Michaelson, again, please
25 rise.

1 (The defendant complies.)

2 THE COURT: You are currently out on bond.
3 As I instructed you before, we are progressing forward
4 with this trial. You may remain on bond. However, if
5 you decide not to appear we will proceed with the trial
6 in your absence. Do you understand that, sir?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And there may be other
9 consequences, such as a bench warrant issuing for your
10 arrest. Do you understand that, sir?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Any questions for the Court
13 concerning that issue?

14 THE DEFENDANT: No, ma'am.

15 THE COURT: All right. Thank you.

16 All right. Counsel, we will maintain --
17 we'll plan for a 4:00 p.m. status conference which is
18 when we will resume the trial in this matter, and we'll
19 be at ease in this case.

20 Anything -- and we've got the evidence under
21 control? Thank you.

22 All right. Thank you.

23 MS. WILLIAMS: Thank you, Your Honor.

24 MR. ALFARO: Thank you.

25 THE COURT: All right. Mr. Alfaro, I

1 understand it's 9:30, and this was unanticipated, so if
2 you will just let the Court know if there's any pleas,
3 and we will make arrangements accordingly. If you do
4 not anticipate any pleas this morning, if you will just
5 let me know so I can let the staff go for the morning.

6 MR. ALFARO: Yes, Your Honor.

7 THE COURT: All right. Thank you.

8 (Whereupon, at approximately 9:35 a.m., the
9 trial is in recess.)

10 (At approximately 3:35 p.m., the following
11 proceedings were had:)

12 THE COURT: All right. So I need counsel on
13 the Michaelson matter. We'll go ahead and let's start
14 in chambers.

15 (At approximately 3:35 p.m., there was an
16 off-the-record chambers conference by the Court,
17 Ms. Williams, Mr. Alfaro, and Mr. Schwacke, Ms. Kennedy
18 not being present.)

19 (At approximately 5:00 p.m., the trial is
20 recessed to the following day, Thursday, July 1, 2010,
21 at 9:30 a.m.)

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1 (On Thursday, July 1, 2010, the trial is
2 scheduled to reconvene at 9:30 a.m.)

3 (At approximately 10:18 a.m., the following
4 on-the-record chambers conference was had by the Court,
5 Ms. Williams, Mr. Alfaro, Mr. Schwacke:)

6 THE COURT: All right. Let me state for the
7 record we're in chambers on State v. Michaelson.

8 The Court is in receipt of a fax from
9 Dr. Frank Harper indicating that Patricia Kennedy is out
10 of court today 7/1/10 for medical reasons, and that was
11 filed on July 1st, 2010, 8:48 a.m.

12 For the record, the Court has not had any
13 contact with Ms. Kennedy regarding this matter since
14 approximately 9:30 yesterday morning. There was no
15 granting of a continuance or no indication that
16 Ms. Kennedy was allowed to be out today.

17 And, Mr. Schwacke, are you prepared to go
18 forward at this time on the fact witnesses that we
19 discussed yesterday?

20 MR. SCHWACKE: On the nonfact witnesses.

21 THE COURT: I mean, I'm sorry, the chain
22 witnesses that we discussed yesterday, as well as
23 Dr. Presnell?

24 MR. SCHWACKE: There was one you can't.

25 MR. ALFARO: We are not -- Dr. Presnell is

1 not available today. The only other non -- pure chain
2 witness was Detective Drennon.

3 MR. SCHWACKE: I thought at one point y'all
4 were talking about saving him because he had other
5 matters to cover.

6 THE COURT: And, Mr. Schwacke, I'm very
7 sorry.

8 MR. SCHWACKE: Sorry.

9 THE COURT: It's louder. You're speaking
10 over. Thank you.

11 MR. SCHWACKE: It was my understanding as far
12 as Officer Drennon was concerned, I thought I was told
13 that there was a decision not to do it because he might
14 have to be called a second time on a fact portion.

15 MR. ALFARO: Drennon is the one that's
16 present at the dig when the body is recovered. He was
17 the shortest witness we could find that would allow us
18 to present to the jury that a body had been found,
19 because we haven't made it to that point in the
20 testimony yet.

21 MS. WILLIAMS: Otherwise, nothing really
22 makes sense, you know, if they just hear, like, about
23 things being carted around. And he is a very limited --
24 he just went there, he followed the body to MUSC, he's
25 at the dig and...

1 MR. ALFARO: And he also recovered the
2 victim's truck. We can recall him if need be and
3 correct that.

4 MS. WILLIAMS: And we're happy to do that.

5 MR. SCHWACKE: I'm going to have to put on
6 the record, obviously, because we had discussions in
7 chambers yesterday, my comfort level in going forward
8 with certain aspects of the case, and I told Your Honor
9 then and I say it again in open court -- I guess we've
10 got a court reporter now -- that my familiarity with the
11 facts in this case didn't start until Saturday morning
12 at my house with certain parts of the discovery. I had
13 no prior contact with the client until when he walked in
14 the courtroom Monday afternoon.

15 I felt comfortable going forward on the chain
16 of custody witnesses because that's basically a process
17 of connecting dots. It doesn't require a lot of skill
18 on my -- my part or preparation and that I felt like I
19 could certainly handle those aspects of the case.

20 From what they're describing what Officer
21 Drennon's testimony is, it's a little bit where I didn't
22 want to go in terms of handling witnesses. If it's
23 simply going to be I was dispatched to a certain
24 location, I was told to observe, there was mechanical
25 equipment brought there, there was a dig, there was a

1 barrel dug up, it was immediately transported to MUSC
2 and I went there, then I think I'm happy in -- in
3 handling that testimony. I'm guessing that's where
4 they're going. I'm not sure.

5 MR. ALFARO: Detective Drennon is essentially
6 a chain witness. He's present at the dig. He's not the
7 primary officer there. He's present at the dig. He's
8 one of the ones who just had a shovel thrown at him. So
9 he's there when the barrel is recovered and the body is
10 recovered. He followed the barrel to MUSC. He's
11 present in the viewing room when the barrel is opened at
12 autopsy, and then after that is done he is provided with
13 the projectile, head hairs, and some other evidence
14 that's recovered at autopsy, transports that back to the
15 sheriff's office to be logged into evidence. And that's
16 his involvement:

17 The only other issue, as I said, was he's --
18 he's the one that tows the victim's truck from a
19 separate location the day before. We can recall him for
20 that purpose.

21 MR. SCHWACKE: And as long as we're not
22 getting into much beyond the chain issues...

23 MR. ALFARO: He's not. He's not going to
24 testify in any way as to how the barrel was located at
25 that location. His testimony is strictly that he went

1 to that address, was present and participated in the dig
2 with the other officers, and followed the barrel to
3 MUSC, and then the subsequent chain after that.

4 THE COURT: All right. And you are
5 comfortable with those witnesses?

6 MR. SCHWACKE: In the spirit of cooperation,
7 I'm willing to do that.

8 THE COURT: And we will place it -- and the
9 reason why I wanted to do this in chambers is just out
10 of respect and courtesy to Ms. Kennedy that we're not
11 going to be discussing the nature of her illness and the
12 -- whatever condition that she is in today or her
13 prognosis for the future. So I just wanted out of
14 courtesy and respect not to put -- but I do believe that
15 based upon the way the chain of events has been, the
16 procedural history of this case, that every conversation
17 concerning this matter does need to be on the record.

18 With that being said, Mr. Schwacke, have you
19 had conversations with Ms. Kennedy? Do we know what her
20 prognosis is for either the remainder of the week or
21 next week?

22 MR. SCHWACKE: She has an appointment this
23 afternoon that they'll tell her. And I think if we get
24 her on the phone, what she had said was that the
25 medication level that she was initially given doesn't

1 seem to be effective, but they're going to up -- up the
2 dose, and it would require moving from kind of oral
3 tablets to injection-type medicine. So I don't know
4 what that means.

5 THE COURT: And, Mr. Schwacke, have you
6 discussed with Mr. Michaelson the fact that you will be
7 handling the chain witnesses today?

8 MR. SCHWACKE: He is -- he is a little bit
9 antsy about it, but he understands how and what those
10 witnesses are, and that's why as long as I think we can
11 confine it to the dot-to-dot types of testimony I think
12 he'll be fine with me handling it today.

13 THE COURT: And so I'm going to call
14 Ms. Kennedy. Mr. Schwacke, do you have the phone number
15 for Ms. Kennedy? And we'll call Ms. Kennedy and -- but
16 it sounds like we won't really even know her prognosis
17 until she returns to the doctor this afternoon. Is that
18 correct? All right.

19 And the one witness that you indicated,
20 Ms. Williams, was only -- who will not be available next
21 week was the SLED witness?

22 MS. WILLIAMS: Ms. Leisy, and she is here.

23 THE COURT: And she will be here today?

24 MS. WILLIAMS: Yes, Your Honor.

25 THE COURT: All right. So as far as

1 scheduling for next week, all of your witnesses will be
2 available for next week just as a matter of course?

3 MS. WILLIAMS: Absolutely.

4 THE COURT: All right. And, Mr. Schwacke,
5 you and Mr. Michaelson and any of your anticipated
6 witnesses will, of course, be available next week. Is
7 that correct?

8 MR. SCHWACKE: My understanding --
9 Mr. Michaelson obviously is available, so...

10 THE COURT: All right. And I had just signed
11 some protection orders for you, and I think they're in
12 August.

13 MR. SCHWACKE: August, right.

14 THE COURT: All right.

15 (A telephone number for Ms. Kennedy is
16 dialed.)

17 (Ms. Kennedy being present via telephone, the
18 following proceedings were had:)

19 THE COURT: Ms. Kennedy, it's Judge
20 Harrington. How are you? I'm good. We're going to do
21 a conference call. We are in the visiting chambers, and
22 I have brought the court reporter in. Mr. Schwacke is
23 present, Ms. Williams, and Mr. Alfaro. I have done this
24 out of courtesy and respect for your medical condition
25 so that we can just discuss scheduling and -- and your

1 prognosis. I'm going to place you on speaker and so
2 that we may discuss how to proceed for the remainder of
3 the week in this matter.

4 (Ms. Kennedy being present via speakerphone,
5 the following proceedings were had:)

6 MS. KENNEDY: All right.

7 THE COURT: All right. Ms. Kennedy, can you
8 hear us?

9 MS. KENNEDY: Yes.

10 THE COURT: All right. Ms. Kennedy, I have
11 received a -- I'm assuming it's to be in the nature of a
12 doctor's excuse that patient out of court today.

13 MS. KENNEDY: Yes.

14 THE COURT: I am assuming that that is a
15 recommendation from the doctor and that you and the
16 doctor both know that I am the one, the only one, that
17 can excuse you from court here today. Is that correct?

18 MS. KENNEDY: That's correct.

19 THE COURT: All right. Thank you,
20 Ms. Kennedy. Well, I understand that you will be going
21 to a doctor's visit this afternoon. Is that correct?

22 MS. KENNEDY: Yes.

23 THE COURT: And what is your prognosis or
24 when do you believe that you could make it back to
25 court?

1 MS. KENNEDY: It depends on -- on what he
2 says this afternoon. I guess that I honestly don't
3 know. I don't know.

4 THE COURT: All right.

5 MS. KENNEDY: Because I couldn't see him
6 yesterday, and this is the earliest I could see him
7 today.

8 THE COURT: All right. What time is your
9 appointment?

10 MS. KENNEDY: 2:45.

11 THE COURT: All right. And about how long,
12 and I know doctors don't keep a very tight schedule, but
13 do you -- do you have any idea what a typical
14 appointment length is so that we would have some
15 indication of when you will be done or have some -- some
16 word from the doctor?

17 MS. KENNEDY: I see him every two weeks, and
18 when I have an appointment at 2:45, given the volume of
19 his practice, I seldom get in to see -- to his office to
20 see him before 3:30 or four o'clock.

21 THE COURT: All right. Well, we will -- we
22 will make -- depending on how the -- how the day flows,
23 Mr. Schwacke has agreed to go forward on the chain
24 witnesses and, in his words, the witnesses that just
25 connect the dots. Have you discussed that matter with

1 Mr. Schwacke?

2 MS. KENNEDY: The witnesses that he is going
3 to do?

4 THE COURT: Yes.

5 MS. KENNEDY: He explained to me that -- that
6 he had been asked to do that or that he had agreed to do
7 the chain of custody witnesses, the ones that were
8 nonfact witnesses, yeah.

9 THE COURT: All right. Well, that is our
10 plan for today. We will go with the nonfact chain
11 witnesses today since Mr. Schwacke has agreed and that
12 matter has been discussed with you. It appears that
13 Mr. Michaelson has also been advised of that matter, as
14 well. And so that is our plan here today.

15 We will make a determination on how to
16 proceed after we hear from you, Ms. Kennedy. And so if
17 you would please call the -- call my chambers or call
18 Mr. Schwacke, and we can again set up another conference
19 call, whatever is easier for you. And it may be that
20 you will need to step outside of your doctor's office
21 and -- or whatever is convenient after that time, but if
22 you will just make sure you stay in touch with
23 Mr. Schwacke.

24 I don't anticipate that the witnesses will go
25 -- take us till 4:00 p.m. today, do you? And everyone

1 was shaking their head no, Ms. Kennedy, just so -- since
2 there was no response.

3 Ms. Kennedy, is there anything just on a
4 personal note that -- that we can assist you in?

5 MS. KENNEDY: No. Thank you.

6 THE COURT: All right. Well, Ms. Kennedy,
7 good luck to you, and we'll hear from you this afternoon
8 after your doctor visit.

9 MS. KENNEDY: All right. Thank you.

10 THE COURT: Thank you.

11 MS. KENNEDY: Bye.

12 (The telephone call concludes, and the
13 following proceedings were had:)

14 THE COURT: All right. All right.
15 Mr. Schwacke, is there anything that you need to place
16 upon the record in open court in front of
17 Mr. Michaelson?

18 MR. SCHWACKE: I believe what I went into
19 yesterday and briefly in here in terms of my level of
20 involvement in this case and understanding of what's in
21 the case file, the fact that I was provided last night
22 with specific information that they intend to use with
23 these witnesses today, I have had ample opportunity to
24 review it. Based on my experience, I feel fully capable
25 and competent going forward on those types of witnesses

1 today.

2 THE COURT: All right.

3 MR. SCHWACKE: I don't know whether we need
4 to revisit any of the things we discussed in here
5 without the court reporter yesterday and whether that
6 just needs to go forward at another time depending upon
7 Ms. Kennedy's own availability. After we met, I did
8 speak with Mr. Pennington, and he does have a position
9 that he might want to express at some point, depending
10 upon the Court's view of things, but other than that,
11 today I think we just need to put on the record that I'm
12 limiting my involvement to these types of witnesses
13 based upon my conversations with my client and my view
14 of my ability to handle those types of witnesses.

15 THE COURT: All right. Based upon that, I do
16 not feel that we need to articulate what happened. I
17 believe that yesterday's conference was pretty much
18 memorialized by your statement and -- and just getting
19 us here today to proceed with the trial. So I feel
20 comfortable that the record is clear that you have been
21 given ample opportunity to review the material, your --
22 your role here today, and the witnesses that you will be
23 handling is limited and clearly defined.

24 And, Mr. Schwacke, if at any time you feel
25 uncomfortable, if you would just ask to approach the

1 bench, I will give you any break that you need. And if
2 there are some documents or anything that you feel you
3 have not been given, then we will break and you will be
4 given as much time as necessary to accomplish the
5 testimony of these witnesses.

6 MR. SCHWACKE: Well, unfortunately, since
7 Drennon is testifying, I don't know if he's done a
8 supplemental or not. I mean, I don't remember, so if
9 the state can get me a copy.

10 MS. WILLIAMS: Absolutely.

11 THE COURT: All right. And will Drennon need
12 to be first?

13 MS. WILLIAMS: Yes. Unfortunately, Your
14 Honor, just because now that we're taking some witnesses
15 out of order, we're just trying to salvage some
16 semblance of...

17 MR. SCHWACKE: A narrative?

18 MS. WILLIAMS: Yeah. And I think it's fine.
19 And we can renew our offer to Mr. Schwacke that we can
20 have this whole case file copied this morning again for
21 him.

22 THE COURT: Mr. Schwacke says no.

23 MS. WILLIAMS: Okay. Whatever he needs, you
24 know, we can make that happen.

25 THE COURT: And with all due candor, where I

1 am inclined to be going, based upon the announcement
2 from Ms. Kennedy, is to complete today's testimony,
3 break tomorrow, and that will -- again, as we indicated,
4 between you and Ms. Kennedy, will give you four or five
5 additional days of preparation and return and resume the
6 trial of this matter with or without Ms. Kennedy. And,
7 of course, this is just to give you some idea of where
8 we're going for scheduling so that you may begin to
9 indicate to the state what you need to do.

10 I will -- you know, if there is anything that
11 Mr. Pennington wishes to tell me, he is free to come up
12 here today. We will place that on the record, as well.

13 But you indicated your involvement started on
14 Monday. And we've already had, you know, an entire day
15 yesterday that was free. We will have an entire day
16 Friday, Saturday, Sunday, and Monday that will be free.
17 And based upon those factors, as well as your
18 experience, I feel that that would be sufficient time.

19 But, again, just -- just for scheduling, I
20 want everyone to be clear that that is my intention.

21 And, Mr. Schwacke, I understand, and with all
22 due candor and respect, I understand the position that
23 it puts you in, but my position will be that most cases
24 are called within a ten-day window and within ten days'
25 notice and really you have been given almost that much

1 time to prepare.

2 MS. WILLIAMS: And, Your Honor, at some point
3 I know Mr. Schwacke will want to make a complete record.
4 We would want to put on the record that Mr. Schwacke was
5 present at pretrial meetings in Judge Dennis's chambers
6 way back in October.

7 MR. SCHWACKE: I stated ---

8 MS. WILLIAMS: Well, he did say it on the
9 record, but I ---

10 MR. SCHWACKE: I was not present for the one
11 with Your Honor.

12 THE COURT: And we -- Mr. Schwacke, we will
13 -- I will allow you and it may be at 4:00 p.m. or
14 whenever Ms. Kennedy or the doctor indicates that she
15 will be able to complete next week, but I just want
16 everyone to know where -- where the Court is making a
17 determination where we're going with this trial.

18 Of course, that is all going to be -- I'm
19 going to have to inquire of the jury as to whether or
20 not they are able to remain with us, and that will also
21 make a determination because we did not voir dire them
22 on -- if all fourteen are leaving for a cruise starting
23 Monday, we're not -- we're not going to be able to try
24 to finish this case, realistically, but with all that
25 being said, this will -- it all depends.

1 So with all due candor, I do believe that
2 tomorrow will be a day of preparation for Mr. Schwacke
3 or at least a day of rest for Ms. Kennedy, or both, and
4 so just for your scheduling so that no one is caught by
5 surprise at 4:00 p.m. today.

6 All right. Do you need a few moments?

7 MR. SCHWACKE: I would need to see if they
8 can find the ---

9 MR. ALFARO: I'll give it to you, and we'll
10 go over what the expected testimony is.

11 THE COURT: Hold on just one second. All
12 right. Anything else? We'll let Ms. Cooley get set up.
13 All right. We're done, and so...

14 (The chambers conference is concluded at
15 approximately 10:20 a.m.)

16 (The trial reconvenes at approximately
17 10:30 a.m., the defendant being present with counsel,
18 Mr. Schwacke, and the following proceedings were had:)

19 THE COURT: Mr. Schwacke, do you need any
20 additional time, or are you prepared to go forward at
21 this time?

22 MR. SCHWACKE: Your Honor, I just was given a
23 supplementary report, and I haven't finished reading it
24 yet. I do need some additional time.

25 THE COURT: All right. And, Mr. Schwacke,

1 about how long do you think you'll need?

2 MR. SCHWACKE: Fifteen minutes.

3 THE COURT: All right. We'll be at ease for
4 15 minutes. Mr. Schwacke, if you do need any additional
5 time, if you'll just let the Court know.

6 MR. SCHWACKE: Yes, ma'am.

7 THE COURT: So we'll be at ease for 15
8 minutes so that you may prepare.

9 My understanding is Detective Drennon is the
10 first witness up. Is that correct?

11 MR. ALFARO: Yes, Your Honor.

12 THE COURT: And the scope of Detective
13 Drennon's testimony today is just to begin the
14 establishment of chain. Is that correct?

15 MR. ALFARO: Yes, Your Honor. His testimony
16 will reflect that he was present when the barrel
17 containing the body and some other evidence was
18 recovered. I've discussed with Mr. Schwacke there will
19 be some photos shown of that, photos shown of that
20 process.

21 THE COURT: And, Mr. Alfaro, just out of an
22 abundance of caution, if you would indicate to
23 Mr. Schwacke once I leave the bench which photos that
24 you plan to introduce for Detective Drennon for this
25 limited purpose of his testimony. And then before we

1 bring in the jury, before we take Mr. Drennon's
2 testimony, I'll inquire as to whether or not there are
3 any objections to the photographs so that we can
4 articulate that.

5 MR. ALFARO: We've already shown those to
6 Mr. Schwacke. We will -- if we need to review those
7 again, we can before we begin.

8 THE COURT: We'll be at ease.

9 MR. SCHWACKE: It looks like -- I'm sorry. I
10 believe they are the same photos that Officer Hallman
11 was going to testify to, and so that was already
12 published.

13 THE COURT: All right. We'll be at ease for
14 15 minutes or until you indicate to the Court,
15 Mr. Schwacke, that you're prepared.

16 And, Mr. Michaelson, please stand.

17 THE DEFENDANT: Yes, ma'am.

18 (The defendant complies.)

19 THE COURT: And I believe that I have placed
20 you under oath at a previous time, but I'm going to go
21 ahead. There has been -- as you're aware, Ms. Kennedy
22 is -- is not with us here today. Are you prepared to go
23 forward? Did you discuss with Mr. Schwacke what -- what
24 will be happening today?

25 THE DEFENDANT: Just briefly.

1 THE COURT: All right. And, Mr. Michaelson,
2 what Mr. Schwacke will be doing are what's called chain
3 witnesses, basically, to establish that evidence was
4 taken from Point A to Point B, Point B to Point C. Have
5 you gone over that with Mr. Schwacke?

6 THE DEFENDANT: I mean, he has discussed with
7 me what the witnesses were going to testify to, and
8 that's fine.

9 THE COURT: And, Mr. Michaelson, are you
10 comfortable going forward with Mr. Schwacke here today?

11 THE DEFENDANT: Today and...

12 THE COURT REPORTER: Could he please speak up
13 for me?

14 THE COURT: He said today and today only.

15 But, Mr. Michaelson, if you'll, again, speak
16 up loudly so my court reporter can take this.

17 THE DEFENDANT: Yes, ma'am. Today and today
18 only, yes.

19 THE COURT: And as I indicated,
20 Mr. Michaelson, just so you know, I've indicated to
21 Mr. Schwacke during our in-chambers conference
22 concerning scheduling that if at any time Mr. Schwacke
23 needs additional information or additional time to go
24 over the testimony that is proposed from the chain
25 witnesses that the Court will grant him generous time to

1 do so, Mr. Michaelson. With all of that, are you still
2 prepared to go forward with Mr. Schwacke on the chain
3 witnesses here today?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: All right. Thank you,
6 Mr. Michaelson.

7 MR. SCHWACKE: Your Honor, should I put the
8 matters on the record again that I previously stated so
9 that he has the benefit of hearing what I stated, as
10 well?

11 THE COURT: Mr. Schwacke, if you're -- if you
12 feel that that is necessary. I want Mr. Michaelson to
13 understand what we -- and, again, Mr. Michaelson, it has
14 not been an attempt to hide anything from you, but there
15 were some delicate matters that the Court felt that we
16 needed to address in chambers.

17 And, Mr. Schwacke, you may discuss anything
18 that we discussed in chambers with Mr. Michaelson, but
19 for the record in front of Mr. Michaelson if you wish to
20 reiterate.

21 MR. SCHWACKE: And, Your Honor, I'll keep
22 this to the short version because if we get to next week
23 and there's another issue then I'll have to make a
24 longer version. But for purposes of this trial and
25 going forward, to cooperate with the Court in trying to

1 continue as much of the case as we can, I have agreed
2 that there are certain chain of custody witnesses that
3 don't contain essential facts that might affect the
4 defense as developed by my client and -- or our client
5 and Ms. Kennedy. I have indicated to him that I don't
6 feel prepared to go forward on those aspects of the
7 case. However, based upon my experience, training, and
8 ability to review the limited documents relating to
9 today's witnesses that I did feel more than competent
10 and capable and able to go forward and that I could very
11 much handle his case.

12 Mr. Michaelson and I, as indicated, we in
13 fact met for the first time on Monday. Our
14 conversations have been limited, but we have covered the
15 topic dealing with today's testimony. He understands my
16 feelings that I'm fully capable of going forward.
17 That's why he stated to Your Honor "today and today
18 only." But if we get beyond that, I may have another
19 comment or two for the record to make upon what other
20 involvement I previously had in this case.

21 But as far as today is concerned, because of
22 the nature of the type of testimony and essentially
23 making the state connect dot to dot to dot, that I feel
24 capable with the case going forward.

25 THE COURT: Thank you.

1 And just for the record, prior to taking the
2 bench, I went in and inquired of the jury. We will have
3 sufficient jurors to proceed with the trial of this case
4 into next week with no -- with no problems. So just for
5 scheduling, that was a concern that we had had in
6 chambers, but all of the jurors have indicated that they
7 will be able to continue into next week.

8 The Court will take a recess until 11:00,
9 Mr. Schwacke. That will give you a little more than 15
10 minutes.

11 MR. SCHWACKE: I think quarter till 10:00.

12 THE COURT: I'm going to go ahead and let the
13 jury -- we have some smokers. I'm going to go ahead and
14 let them smoke and take their break, and then we're just
15 going to continue.

16 MR. SCHWACKE: Yes, ma'am.

17 THE COURT: Thank you. We'll be at ease
18 until 11:00.

19 (A break is taken at approximately
20 10:35 a.m.)

21 (The trial reconvenes at approximately
22 11:00 a.m., the defendant being present with counsel,
23 Mr. Schwacke, and the following proceedings were had:)

24 THE COURT: Thank you. Please be seated.

25 Mr. Schwacke, have you had sufficient time?

1 MR. SCHWACKE: Yes, ma'am, Your Honor.

2 THE COURT: Are you prepared to go forward
3 with the testimony at this time?

4 MR. SCHWACKE: Yes, ma'am.

5 THE COURT: Thank you.

6 All right. Let's bring in the jury.

7 (Whereupon, the jury enters the courtroom at
8 approximately 11:00 a.m.)

9 THE COURT: Thank you. Please be seated.
10 Call your next witness.

11 MR. ALFARO: The state calls Frank Drennon.

12 CORPORAL BOBBY FRANK DRENNON,
13 being first duly sworn by the clerk, is examined and
14 testifies as follows:

15 THE CLERK: Please be seated. State your
16 full name and spell your last name for the record.

17 THE WITNESS: Bobby Frank Drennon. The last
18 name is D-R-E-N-N-O-N.

19 DIRECT EXAMINATION

20 BY MR. ALFARO:

21 Q. Could you please tell the jury where you work?

22 A. I work for the Berkeley County Sheriff's Office.

23 Q. And how long have you been with the sheriff's
24 office?

25 A. I've been with the sheriff's office five years

1 with 18 years prior experience.

2 Q. And in that prior experience, what agencies did
3 you work for?

4 A. I worked for the Goose Creek Police Department.

5 Q. And what are your current duties at the sheriff's
6 office?

7 A. I'm currently with the patrol division.

8 Q. And what is your rank?

9 A. Corporal.

10 Q. And in August of 2007 in what capacity were you
11 working at the sheriff's office?

12 A. I was working in the detective division, assigned
13 to crimes against persons.

14 Q. In your capacity as a detective in August of
15 2007, did you have the opportunity to assist in the
16 investigation into the disappearance and death of
17 Parrish Reeves?

18 A. Yes, sir, I was.

19 Q. And as part of that investigation, did you have
20 the opportunity to assist in the recovery of the remains
21 of the victim, Parrish Reeves?

22 A. Yes, sir, I was.

23 Q. And did you have the opportunity to respond to
24 [REDACTED] Starbright Lane?

25 A. Yes, I did.

1 Q. And what did you do at that -- or what was done
2 at that location?

3 A. It was a recovery and a dig in search of a
4 remains.

5 Q. And did you participate in that dig or that
6 search?

7 A. Yes, I did.

8 Q. And what did you personally do at that location?

9 A. I pretty much assisted in digging, the manual
10 labor of shoveling.

11 Q. And was anything recovered during that dig?

12 A. Yes, there was.

13 Q. What was recovered?

14 A. It was -- a 55-gallon drum was recovered. It was
15 with a lid, and there was a rubber tarp that was taped
16 on top of it.

17 Q. I'm going to show you what's been previously
18 marked as state's exhibits one through 29 for
19 identification. If you could briefly look through those
20 photos, and then I'll ask you some questions about them.

21 A. (The witness reviews exhibits.)

22 Q. Did you have an opportunity to review each of
23 those photographs?

24 A. Yes, I did.

25 Q. And do you recognize what's depicted in those

1 photographs?

2 A. Yes, I do.

3 Q. Do each of those photographs fairly and
4 accurately depict the scene at [REDACTED] Starbright Lane on
5 August the 8th, 2007?

6 A. Yes, they do.

7 Q. I show you what has been...

8 MR. ALFARO: At this time, Your Honor, the
9 state would ask that exhibits one through 29 be admitted
10 into evidence.

11 MR. SCHWACKE: No objection.

12 THE COURT: State's one through 29 admitted
13 into evidence without objection.

14 (State's Exhibits No. 1 through 29,
15 previously marked for identification, are received in
16 evidence.)

17 THE COURT: You may publish.

18 MR. ALFARO: Thank you, Your Honor.

19 BY MR. ALFARO:

20 Q. State's exhibit two. Can you tell the jury what
21 is -- what's shown in that picture?

22 A. That's the mobile home that is located at [REDACTED]
23 Starbright.

24 Q. And state's exhibit four?

25 A. That's the front yard of the same address.

1 Q. And you said you assisted in the dig. How was
2 the -- what kind of -- was there any type of equipment
3 used in the course of that procedure?

4 A. Yes. There was a backhoe that was used to pretty
5 much do the majority of the dig.

6 Q. All right. State's exhibit 13. Is that the
7 machine that you were -- backhoe that you were referring
8 to?

9 A. Yes, it is.

10 Q. And you're one of the ones in that photograph?

11 A. Yes, sir. That would be me holding the shovel.

12 Q. That's the manual labor you were referring to?

13 A. That's correct.

14 Q. State's exhibit eight. Can you describe,
15 describe that, that scene for the jury, please?

16 A. That's pretty much into the dig. It has me
17 standing there with a shovel. Also, Lieutenant Kokinda.
18 And that's when we got close to the recovery of when the
19 barrel was actually located.

20 Q. And state's exhibit number ten. And what's in
21 that picture?

22 A. That's the first indicator we had of the barrel
23 that was buried at that -- at that location.

24 Q. And state's exhibit 18. Is that further along in
25 the process?

1 A. Yes, that's further along.

2 Q. And state's exhibit 23?

3 A. That's pretty much the barrel itself.

4 Q. And is that the condition under which the barrel
5 -- the condition the barrel was in when it was uncovered
6 that day?

7 A. Yes, it is.

8 Q. And state's exhibit 27?

9 A. That's the barrel as it was being removed from
10 the hole.

11 Q. And after the barrel was removed from the hole,
12 what was done with the barrel?

13 A. The barrel was -- it was wrapped in -- actually
14 contained with a red bag and loaded on the back of a
15 pickup truck.

16 Q. And state's exhibit 29. Is that a picture of
17 what you just described as what was done with the
18 barrel?

19 A. Yes, sir. After the barrel was wrapped in a red
20 container or bag and then it was loaded in the back of a
21 pickup truck.

22 Q. And after it was loaded into the pickup truck,
23 what was done with it at that point?

24 A. The pickup truck was driven to MUSC where I
25 followed it and for the purpose of autopsy.

1 Q. And is that MUSC downtown or one of the other
2 branches?

3 A. That's the main downtown Medical University of
4 South Carolina.

5 Q. Prior to transporting it to MUSC, was the barrel
6 opened at the scene?

7 A. No, it was not.

8 Q. Were any attempts made to open the barrel at the
9 scene?

10 A. No, there was not.

11 Q. And was the barrel tampered with in any way at
12 the scene prior to being placed in that red bag and
13 transported?

14 A. No.

15 Q. And when you -- you said the barrel was taken to
16 MUSC. Did you go along, go down there, as well?

17 A. Yes. I followed the truck in my vehicle.

18 Q. And you said it was turned over to -- for
19 purposes of autopsy. Do you recall who took custody of
20 the barrel at MUSC?

21 A. It was Dr. Presnell.

22 Q. And what is Dr. Presnell's position down there?

23 A. She is a medical examiner for the Medical
24 University of South Carolina.

25 Q. Were you present or did you remain at the Medical

1 University until the barrel was opened in autopsy?

2 A. Yes, sir, I was.

3 Q. And do you recall who opened it?

4 A. Dr. Presnell opened it.

5 Q. Were you actually in the room when the barrel was
6 opened, or were you somewhere else?

7 A. I was actually in a viewing area where I can
8 observe the actions that were taken with the barrel. I
9 was not physically inside the room, but I could see it.

10 Q. And was the barrel in substantially the same
11 condition when it was removed from the yard at
12 Starbright Lane as to when Dr. Presnell opened it at
13 MUSC autopsy?

14 A. Yes, it was.

15 Q. Did you observe the entire process of them
16 opening the barrel in -- at autopsy?

17 A. Yes.

18 Q. Were they able to recover any contents from
19 inside the barrel?

20 A. Yes, they were.

21 Q. And do you recall what was inside the barrel?

22 A. The -- inside the barrel was a decomposed
23 deceased human body that was wrapped in a comforter and
24 also had some other items in the barrel along with the
25 deceased.

1 Q. And were the items that were recovered from
2 inside the barrel, were those collected into evidence?

3 A. Yes, they were.

4 Q. I assume the body was not. Is that correct?

5 A. Everything except the body, correct.

6 Q. And when the items that were recovered were --
7 did they -- did you take custody of those items at MUSC?

8 A. Yes, I did.

9 Q. And were they packaged when you received them?

10 A. Yes. They were actually triple packaged when I
11 received them.

12 THE COURT: Officer, please speak into the
13 microphone.

14 THE WITNESS: Okay.

15 THE COURT: Thank you.

16 BY MR. ALFARO:

17 Q. Do you recall if a -- well, of the evidence that
18 you recovered that was seized into evidence, do you
19 recall any type of bullets or projectile?

20 A. Yes. Basically, there was a projectile that was
21 recovered. Also, along with the projectile in the case
22 was a dog collar and stuffed animal. There was also
23 some currency that was removed from the pockets of the
24 deceased, and also his clothing.

25 (State's Exhibit No. 95, projectile recovered

1 at autopsy, is marked for identification.)

2 (Mr. Schwacke reviews exhibit.)

3 BY MR. ALFARO:

4 Q. I show you what's been marked as state's
5 exhibit 95 for identification. If you could look at
6 state's exhibit 95 and tell us if you recognize what
7 that item is.

8 A. (The witness reviews exhibit.) That would be a
9 projectile.

10 Q. And how do you recognize that item?

11 A. That item is packaged. It was actually packaged
12 in the container that is inside. It had -- the bullet
13 was inside the plastic container that's in evidence.

14 Q. Is that the projectile that you received on that
15 day at autopsy recovered from the victim?

16 A. Yes, it is.

17 Q. Detective Drennon, or Officer Drennon, what did
18 you do with the projectile along with the other evidence
19 that you recovered provided to you at MUSC?

20 A. It was transported from MUSC to the forensics
21 lab, Berkeley County Sheriff's Office.

22 Q. And you testified that the items were packaged
23 before they were given to you?

24 A. Yes, they were.

25 Q. And did you tamper with that packaging in any

1 way?

2 A. No, I did not.

3 Q. And what did you do with the items when you got
4 to the sheriff's office?

5 A. They were turned over to the forensic personnel,
6 Ms. Spence.

7 Q. And were they in substantially the same condition
8 when you turned them in to Ms. Spence on August the 8th
9 that they were when you received them from Dr. Presnell
10 the same day?

11 A. Yes, they were.

12 MR. ALFARO: Thank you. Please answer any
13 questions the defense has for you.

14 THE WITNESS: Yes.

15 THE COURT: Mr. Schwacke.

16 MR. SCHWACKE: Thank you.

17 CROSS-EXAMINATION

18 BY MR. SCHWACKE:

19 Q. Corporal Drennon, you indicated that you were on
20 the scene of the dig that the photographs were
21 presented?

22 A. Yes, I was.

23 Q. And it looked like from the photograph we can
24 identify you. You indicated Dean Kokinda was there. It
25 looks to me like Detective Ollic was another person out

1 there. Who all -- who all else was out there?

2 A. I believe it was -- Sergeant Freeman was there.

3 And there were several other investigators who were on
4 the scene, also. And also SLED was there, also.

5 Q. So SLED was contacted about this -- this barrel
6 discovery?

7 A. I assume so. They were there when I -- when I
8 got there.

9 Q. And you didn't contact them?

10 A. No, sir, I didn't.

11 Q. Were any of the people charged with this offense
12 out there at that location or brought to that location?

13 A. Not that I'm aware of. Not at the time of the
14 dig.

15 Q. Prior to that, did you bring someone to that
16 location?

17 A. Yes. Yes, I did.

18 Q. And who was that?

19 A. That was Treze Feaster.

20 Q. Treze Feaster?

21 A. Yes.

22 Q. And why did you -- why did you bring him there?

23 A. I was asked to pick him up at the jail to bring
24 him back to the location to identify the location of the
25 barrel.

1 Q. So y'all knew to dig -- where to dig based on
2 Mr. Feaster?

3 A. I wasn't involved in that part of the
4 investigation.

5 Q. But he had marked the location for you?

6 A. Not for me. I actually turned him over to
7 investigators on the scene.

8 Q. Oh, okay. And you indicated that you then --
9 after having to do some of the manual labor, you then
10 went down to the Medical University?

11 A. Yes.

12 Q. And were present during the time of the autopsy?

13 A. Yes, I was.

14 Q. You said that Dr. Presnell was the one who
15 actually removed the cover off the barrel?

16 A. It was Dr. Presnell and her staff.

17 Q. And in addition to the -- you were given the
18 projectile or this -- this piece of metal by -- was it
19 by Dr. Presnell or was it someone else?

20 A. Actually, it was turned over to me from the
21 staff. And Dr. Presnell, she explained to me what she
22 had.

23 Q. Okay. And were any other items from the autopsy
24 given to you, such as hair or any of those other items?

25 A. There was -- there was hair from the -- the

1 deceased. There was a projectile. There was grass.
2 There was a green short-sleeved shirt worn by the
3 deceased. There was a pair of dark jeans, a pair of
4 shoes. There was also a stuffed animal and a dog
5 collar.

6 Q. What kind of dog collar?

7 A. I think it was a purple dog collar.

8 Q. Have any tag on it?

9 A. I didn't -- I didn't actually look to see if
10 there were any tags or not.

11 Q. What kind of stuffed animal?

12 A. It was just a stuffed animal. I'm not sure what
13 kind it was.

14 Q. The records, the record, you indicated a Taz?

15 A. Yeah. That's the way it was identified. I
16 didn't actually see the word "Taz" on it, but that's the
17 way it was identified to me.

18 Q. Are we talking like the Tasmanian devil character
19 in cartoons? Is that the type of...

20 A. It was hard for me to tell. It was a stuffed
21 animal that had been in -- soaked for awhile.

22 Q. And at no point did you open up any of the
23 containers that you were given from the medical
24 personnel?

25 A. No, I did not.

1 Q. And you turned those over to Crystal Spence?

2 A. Yes, I did.

3 MR. SCHWACKE: I don't have anything further.

4 THE COURT: Any redirect?

5 MR. ALFARO: I have no redirect, Your Honor.

6 THE COURT: Corporal Drennon, you may step
7 down.

8 THE WITNESS: Thank you, ma'am.

9 THE COURT: Thank you.

10 MR. ALFARO: Your Honor, we would ask that
11 Detective Drennon be excused subject to recall.

12 THE COURT: Any objection, Mr. Schwacke?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: You are free to leave the
15 courtroom. Thank you.

16 (The witness is excused from the witness
17 stand.)

18 THE COURT: Call your next witness.

19 MR. ALFARO: The state calls Tabitha
20 Thomas-Harding.

21 (Ms. Harding enters the courtroom.)

22 (State's Exhibit No. 96, buccal swabs -
23 Frances Reeves, is marked for identification.)

24 TABITHA HARDING,
25 being first duly sworn by the clerk, is examined and

1 testifies as follows:

2 THE CLERK: Please be seated. State your
3 full name and spell your last name for the record.

4 THE WITNESS: Tabitha Harding, H-A-R-D-I-N-G.

5 DIRECT EXAMINATION

6 BY MR. ALFARO:

7 Q. Good morning.

8 A. Good morning.

9 Q. Please tell the jury where you work.

10 A. The Berkeley County Sheriff's Office.

11 Q. And how long have you been with the sheriff's
12 office?

13 A. Approximately seven years.

14 Q. What are your current duties with the sheriff's
15 office?

16 A. Patrol deputy.

17 Q. Were you working for the sheriff's office in
18 August of 2007?

19 A. No, sir.

20 Q. I show you -- where were you working in August of
21 2007?

22 A. Summerville (phonetic) police department.

23 Q. And when did you come back to the sheriff's
24 office?

25 A. January 2008.

1 Q. And did you -- were you working for the sheriff's
2 office in August 2008?

3 A. Yes.

4 Q. Okay. And did you have the opportunity to assist
5 in the investigation of the disappearance and death of
6 Parrish Reeves?

7 A. Yes, I did.

8 Q. And what role did you play in that investigation?

9 A. I took four buccal swabs from Frances Reeves and
10 submitted them into evidence.

11 Q. And do you recall where you met with Ms. Reeves?

12 A. The forensic building.

13 Q. And where is that located?

14 A. 300 California Avenue, Moncks Corner.

15 Q. And do you recall approximately what time you met
16 with Ms. Reeves?

17 A. 9:35 in the morning.

18 Q. And could you describe for the jury what process
19 you used? You said you collected swabs from
20 Ms. Reeves?

21 A. Yes.

22 Q. Could you describe to the jury what process you
23 used to do that?

24 A. We have standard sterilized swabs that we receive
25 to our forensic building. They come in two in each

1 package. There were two removed from a sealed package,
2 swabbed on the inside of Ms. Reeves' mouth, one set on
3 the left side and one set on the right side, and they
4 were placed into a box that has holes in it so that it
5 can properly dry. They are then placed in a manilla
6 envelope and sent to the evidence facility.

7 Q. I show you what has been marked as state's
8 exhibit 96 for identification. Can you look in that
9 and see if you recognize what's contained in that
10 package?

11 A. (The witness reviews exhibit.) Yes. It does
12 look familiar.

13 Q. Were any -- any indicators of whether that's the
14 packaging that you used to package the swabs the day you
15 took them from Ms. Reeves?

16 A. This manila envelope is, yes.

17 Q. And what is on that manilla envelope that
18 indicates to you that those are the swabs?

19 A. It has my name, it has the victim's name on it,
20 and the case number, as well as what it is which is
21 swabs.

22 Q. And after you took the swabs, you said those were
23 packaged at the time of taking the swabs from
24 Ms. Reeves?

25 A. Yes, sir.

1 Q. And are those when they're packaged, are those --
2 is that packaging sealed?

3 A. Yes, sir.

4 Q. And after sealing the packaging, did you tamper
5 with it in any way?

6 A. No, sir.

7 Q. And you said you turned it in to the evidence
8 facility?

9 A. Yes, sir.

10 Q. And where is that located?

11 A. The same building, 300 California Avenue.

12 Q. And other than the taking of the buccal swabs
13 from Ms. Reeves, did you have any other involvement in
14 this case?

15 A. No, sir.

16 MR. ALFARO: Thank you. Please answer any
17 questions defense has.

18 CROSS-EXAMINATION

19 BY MR. SCHWACKE:

20 Q. Just so we understand, buccal swab, really it
21 sort of looks like a Q-Tip?

22 A. Yes, sir.

23 Q. And that's just rubbed on the inside of the
24 mouth to try to get cells for genetic testing and
25 comparison?

1 A. Yes, sir.

2 MR. SCHWACKE: I don't have anything further.

3 THE COURT: Any redirect?

4 MR. ALFARO: No, Your Honor.

5 THE COURT: Ms. Harding, you may step down.

6 Thank you.

7 (The witness is excused from the witness
8 stand.)

9 THE COURT: Call your next witness.

10 MR. ALFARO: The state calls Crystal Spence.

11 (Ms. Spence enters the courtroom.)

12 CRYSTAL SPENCE,

13 being first duly sworn by the clerk, is examined and
14 testifies as follows:

15 THE CLERK: Please be seated. State your
16 full name for the record and spell your last name for
17 the record.

18 THE WITNESS: Crystal Spence, S-P-E-N-C-E.

19 DIRECT EXAMINATION

20 BY MR. ALFARO:

21 Q. Ms. Spence, could you please tell the jury where
22 you work?

23 A. Berkeley County Sheriff's Office in the forensic
24 service unit.

25 Q. And how long have you been with the sheriff's

1 office?

2 A. Since 1997.

3 Q. And what are your current duties at the sheriff's
4 office?

5 A. Process crime scenes, process evidence turned in,
6 and transport evidence to other facilities such as SLED.

7 Q. And were you working in that same capacity in
8 August of 2007?

9 A. Yes, I was.

10 Q. And in that capacity did you have the opportunity
11 to handle any evidence related to the investigation into
12 -- into the death and disappearance of Parrish Reeves?

13 A. Yes, I did.

14 Q. And could you describe for the jury what your
15 role was in that evidence handling?

16 A. To log in evidence that other detectives and
17 officers turned in.

18 Q. And did you have the opportunity to transport any
19 of that evidence to another location?

20 A. Yes, I did.

21 Q. Do you recall what type of evidence you
22 transported?

23 A. Three teeth.

24 Q. Do you recall where those teeth were taken from
25 or the significance of those?

1 A. I'm sorry. Could you repeat that?

2 Q. I said do you recall where the teeth were taken
3 from or what the significance of those were?

4 A. They were taken from the victim, Parrish Reeves.
5 (State's Exhibit No. 97, teeth recovered at
6 autopsy, is marked for identification.)

7 BY MR. ALFARO:

8 Q. And do you recall when you transported those,
9 that item to SLED?

10 A. On August 14th, 2007.

11 Q. I'm going to show you what has been marked as
12 state's exhibit 97 for identification. If you could
13 look at that item and see if you recognize what that
14 item is?

15 A. Yes, I do. It's the teeth.

16 Q. And how do you recognize those?

17 A. The label that's printed on it and also our
18 evidence label that's on the outside of the envelope.

19 Q. And where did you get custody of those, of those
20 items from?

21 A. Dean Kokinda turned them in to evidence.

22 Q. And do you recall when those were turned in to
23 evidence?

24 A. I believe it was August 10th of 2007.

25 Q. And when you got those evidence to transport them

1 to SLED, where were they located?

2 A. In our locked evidence facility.

3 Q. And were the -- how were they packaged at the
4 time you took custody of them on August the 14th?

5 A. In this envelope (indicating).

6 Q. And was the packaging sealed or intact?

7 A. Yes, it was.

8 Q. Did you take those items directly to SLED?

9 A. Yes, I did.

10 Q. And where is that located?

11 A. In Columbia, South Carolina.

12 Q. Did you take any other items to SLED on that day?

13 A. No, I did not.

14 Q. What did you do with the items when you got to
15 Columbia, when you got to SLED?

16 A. I went to log-in and I turned them over to
17 forensic technician Amy Stephens.

18 Q. And when you turned those items over to Amy
19 Stephens, were they in packaging substantially the same
20 way and condition as when you took custody of them that
21 morning?

22 A. Yes, they were.

23 Q. And did you tamper with the items in any way
24 while they were in your custody?

25 A. No, I did not.

1 Q. I'm going to show you what has been marked as
2 state's exhibit 95. Do you recognize what that item is?

3 A. Yes, I do.

4 Q. And what is that item?

5 A. It is a projectile.

6 Q. And did you have the opportunity to come in
7 contact with that item during the course of your
8 handling of evidence in this case?

9 A. Yes, I did.

10 Q. And what were the circumstances under which you
11 came in contact with that?

12 A. Detective Frank Drennon went to the autopsy and
13 then brought everything back that was evidence to the
14 evidence department for log-in.

15 Q. Was it packaged already, or did you have to put
16 it in some sort of additional package?

17 A. It was packaged in a little plastic container,
18 and then we put it in this envelope.

19 Q. And when you placed it into that envelope, was it
20 sealed at that time?

21 A. Yes, it was.

22 Q. And what was done with that envelope or the
23 projectile contained in that envelope?

24 A. It was also placed into evidence, waiting for
25 transfer to another department.

- 1 Q. And was it eventually transferred, transferred to
2 another department?
- 3 A. Yes, it was.
- 4 Q. And who was it transferred to?
- 5 A. SLED Agent Vicki Hallman.
- 6 Q. And do you recall when that took place?
- 7 A. On August 8th of '07.
- 8 Q. Do you recall what time that was?
- 9 A. Can I refer to my chain of custody?
- 10 Q. If it will -- could you tell us what a chain of
11 custody is?
- 12 A. It is the form that's filled out for every piece
13 of evidence. It shows who has contact with that piece
14 of evidence.
- 15 Q. And did you fill one out in relation to your
16 handling of the exhibit in front of you?
- 17 A. Yes, I did.
- 18 Q. And would it refresh your recollection to refer
19 to that exhibit to determine the time at which it was
20 given to Ms. Hallman?
- 21 A. Yes, it would.
- 22 Q. If it will refresh your recollection, you can do
23 that.
- 24 A. (The witness reviews document). The time was
25 at 1800.

1 Q. After referring to your chain of custody form,
2 you're able to refresh your recollection as to the time?

3 A. Correct.

4 Q. And when you turned it over to Ms. Hallman, had
5 you tampered with the packaging in any way?

6 A. No, I did not.

7 Q. Was it in the same condition when you turned it
8 over to her as when you packaged it after receiving it
9 from Detective Drennon?

10 A. Yes, it was.

11 Q. And did Agent Hallman tamper with the packaging
12 in any way in your presence?

13 A. No, she did not.

14 Q. Now, did you handle any other evidence related to
15 the investigation, this investigation?

16 A. Yes, I did.

17 Q. And what items were those?

18 A. On the same day the projectile was turned over,
19 head hairs from the victim was also turned over to Agent
20 Hallman and buccal swabs from the victim's mother,
21 Ms. Reeves.

22 Q. And regarding the buccal swabs, do you recall
23 when you came in contact with those items?

24 A. The day that they were turned over to Agent
25 Hallman.

1 Q. Do you recall what day that was?

2 A. That was also on August 8th of '07.

3 Q. I'm going to show you what has been marked as
4 state's exhibit 96. Do you recognize that item?

5 A. Yes, I do.

6 Q. And what is that item?

7 A. The buccal swabs from Ms. Reeves.

8 Q. And do you recognize that as those -- do you
9 recognize that item as the item that was turned over to
10 Agent Hallman on August the 8th, 2007?

11 A. Yes, it was.

12 Q. And when you turned those over to her, how were
13 they packaged?

14 A. In this envelope.

15 Q. Were they sealed in that envelope at that time?

16 A. Yes, they were.

17 Q. And did the packaging appear to have been
18 tampered with in any way?

19 A. No.

20 Q. And do you recall or are you able to determine
21 who turned the buccal swabs in to evidence?

22 A. That was Tabitha Thomas.

23 Q. And when you -- before you turned them over to
24 Agent Hallman, were they in the same condition as they
25 were when they were secured into evidence?

1 A. Yes, they were.

2 Q. And did you tamper with the packaging in any way?

3 A. No, I did not.

4 Q. And did Agent Hallman tamper with the packaging
5 in any way in your presence?

6 A. No, she did not.

7 MR. ALFARO: Thank you. Please answer any
8 questions the defense has.

9 CROSS-EXAMINATION

10 BY MR. SCHWACKE:

11 Q. Ms. Spence, part of what we were given, I was
12 given a copy of the chain of custody form it looks like
13 from your department. Is that standard?

14 A. Yes.

15 Q. And I notice when you were talking about the
16 projectile, for instance, that you said you received it
17 from Crystal Spence on August 8th, '07?

18 A. I'm sorry?

19 Q. I'm sorry. You're ---

20 A. Right.

21 Q. Okay. At the bottom of the page, it says the
22 above evidence was transferred from you to Agent
23 Hallman, and it's got a date and time of 8/8/07 at 1800
24 hours. So that would be 6:00 p.m. on August the 8th?

25 A. Right.

1 Q. Part of what the state also gave us is the SLED
2 document for that same item. Actually, they say it was
3 submitted from you, and let me make sure I've got the
4 right one, and they have the date as 8/9/07 at 9:18 in
5 the morning. So when you turned it over, did you turn
6 it over to a person or does it go into a box?

7 A. No. She was at our facility that day, and she
8 took it from me that day, and I can't say what happened
9 to it after it left my facility.

10 Q. So I need to ask her about that?

11 A. Yes. So she could have turned that in --

12 Q. Because the same thing applies to -- to the
13 projectile and to the buccal swabs. Because the buccal
14 swabs, they're indicating that it was received from you
15 on -- also on August the 9th at 9:18 in the morning?

16 A. May I see that form that you're referring to?

17 Q. Yes, ma'am.

18 A. I'm not quite sure what you're...

19 Q. I kind of marked it up, so... (Counsel tenders
20 document to the witness.)

21 A. (The witness reviews document.) This right here,
22 I've never seen before. It's obviously when she turned
23 the stuff in, because she took it from me on the 8th,
24 and she turned it in on the 9th.

25 Q. But she -- we'll be able to ask her.

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1 A. Okay.

2 Q. But that's who you turned it in to?

3 A. Yes. I turned it in to Vicki Hallman.

4 MR. SCHWACKE: I have no further questions.

5 THE COURT: Mr. Alfaro.

6 MR. ALFARO: I have no questions, Your Honor.

7 THE COURT: Ms. Spence, you may step down.

8 You're excused. Thank you.

9 (The witness is excused from the witness
10 stand.)

11 THE COURT: Call your next witness.

12 MR. ALFARO: Amy Stephens.

13 (Ms. Stephens enters the courtroom.)

14 AMY STEPHENS,

15 being first duly sworn by the clerk, is examined and
16 testifies as follows:

17 THE CLERK: Please be seated. State your
18 name and spell your last name for the record.

19 THE WITNESS: Amy Stephens, S-T-E-P-H-E-N-S.

20 DIRECT EXAMINATION

21 BY MR. ALFARO:

22 Q. Would you please tell the jury where you
23 currently work?

24 A. I'm employed with the South Carolina Law
25 Enforcement Division which is also known as SLED.

1 Q. And how long have you been with SLED?

2 A. I've been employed with SLED since March 2nd
3 of 2006.

4 Q. And could you tell the jury what your current
5 duties and position are at SLED?

6 A. I'm a forensic technician in the evidence control
7 department. Our duties are to package and log in
8 evidence for forensic analysis.

9 Q. And were you working in that capacity -- strike
10 that question. Have you had the opportunity to handle
11 evidence related to SLED lab number L-0711592?

12 A. Yes, I have.

13 Q. And are you aware what the nature of that
14 investigation is?

15 A. According to our paperwork, it's a homicide.

16 Q. And could you tell the jury if you've had the
17 opportunity -- what type of evidence you handled as part
18 of that investigation under that lab number?

19 A. (The witness reviews document.) I handled SLED
20 item number four which are the known head hair from
21 Parrish Reeves, and I also handled SLED item number five
22 which were the teeth from the victim, Parrish Reeves.

23 Q. And regarding the teeth from the victim, Parrish
24 Reeves, when did you come in contact with that evidence?

25 A. On August 14th of 2007 at 11:24 a.m.

1 Q. And do you recall how that item was packaged when
2 it came -- when you came in contact with it?

3 A. I do not.

4 Q. I'm going to show you state's exhibit 97. If you
5 could look at that exhibit and tell the jury if you
6 recognize what's contained in that packaging?

7 A. I can only identify the lab number that was
8 written on here. It would be L-0711592.

9 Q. And inside that envelope can you see if there's
10 any items in there that you recognize as being part of
11 your investigation?

12 A. We don't open the packaging when we receive it.
13 We just log it in based on the paperwork. So according
14 to the label on the outside of the packaging, it says
15 teeth.

16 Q. Okay. And could you describe for the jury what
17 you did with that item when it came into your custody?

18 A. When I would have received that item from Crystal
19 Spence of the Berkeley County Sheriff's Office, it would
20 have been in that envelope and placed into a heat-sealed
21 pouch which we would have then sealed. I would have
22 Crystal initial and date the heat-seal, as well as sign
23 and date the front of the package, and then we would
24 have placed the label that was generated on that
25 package.

1 Q. And did you do that in this case?

2 A. Yes, I did.

3 Q. And other than sealing it into a heat-sealed
4 package, did you tamper with the item in any way?

5 A. No, I did not.

6 Q. Did you open the item while it was in your
7 custody?

8 A. No, I did not.

9 Q. Would you say that the item was in the same
10 condition and packaging when you received it as when you
11 sealed it in the heat-sealed envelope?

12 A. Yes, I would.

13 Q. And what did you do with the item after you put
14 it in the heat-sealed package?

15 A. Once I put it in a heat-sealed package, we enter
16 the information into our computer system. I then would
17 place it into our DNA intake refrigerator in our
18 evidence room.

19 Q. And did you do that in this case?

20 A. Yes, I did.

21 Q. And do you recall when you secured it in that
22 location?

23 A. According to the chain of custody, I placed it in
24 our DNA refrigerator at 11:28 a.m.

25 Q. So according to your chain of custody, how long

1 was that item actually in your possession?

2 A. A total of four minutes.

3 Q. And did you perform, personally perform, any
4 analysis or examination of the item?

5 A. No, I did not.

6 Q. So your involvement, fair to say, was just
7 moving it from -- taking it and putting it in the
8 heat-sealed package and then transferring it to the DNA
9 intake?

10 A. That's correct.

11 MR. ALFARO: Thank you. Please answer any
12 questions the defense has for you.

13 THE COURT: Mr. Schwacke.

14 MR. SCHWACKE: I don't have any questions.

15 THE COURT: Ms. Stephens, you may step down.

16 THE WITNESS: Thank you.

17 (The witness is excused from the witness
18 stand.)

19 THE COURT: Call your next witness.

20 MR. ALFARO: The state calls Selena Kinard.

21 (Ms. Kinard enters the courtroom.)

22 SELENA KINARD,

23 being first duly sworn by the clerk, is examined and
24 testifies as follows:

25 THE CLERK: Please be seated. State your

1 full name for the record and spell your last name.

2 THE WITNESS: My name is Selena Kinard,
3 K-I-N-A-R-D.

4 DIRECT EXAMINATION

5 BY MR. ALFARO:

6 Q. Ms. Kinard, good morning.

7 A. Good morning.

8 Q. Could you please tell the jury where you
9 currently work?

10 A. Yes. I work for SLED, South Carolina Law
11 Enforcement Division.

12 Q. And how long have you been with SLED?

13 A. Three years.

14 Q. And what are your current -- what's your current
15 position and what are your current duties?

16 A. I am a forensic technician within the evidence
17 control department, and we log in evidence from police
18 departments and sheriffs' offices across the state.

19 Q. And could you please describe your training and
20 educational background related to that position?

21 A. Yes. I have gone to Miami Dade Police Academy
22 for a forensic evidence class which is a week, and also
23 with the IAPE, International Association of Property and
24 Evidence, class which is a one-day class.

25 Q. And in your capacity with SLED, did you have the

1 opportunity to handle evidence related to lab number
2 L-0711592?

3 A. I did.

4 Q. Could you tell us what type of items you handled
5 in relationship to that lab number?

6 A. I can. Item number three which is described as a
7 fired bullet or projectile recovered from Parrish
8 Reeves. I handled the evidence on July the 18th of
9 2008.

10 Q. And could you describe for the jury what you did
11 with that item?

12 A. Yes. On that day I was -- that evidence was
13 transferred to me from Suzanne Cromer who is a forensic
14 scientist in the firearms department, and on that same
15 day I put it on a shelf within our evidence room for
16 return.

17 Q. Okay. And so you received that, you came into
18 contact with that item after Dr. Cromer -- or Suzanne
19 Cromer had already examined the item?

20 A. That's correct.

21 Q. Did you have any contact with that item prior to
22 the analysis by or examination by Ms. Cromer?

23 A. No, I did not.

24 Q. And did you have the opportunity to handle any
25 other evidence related to this lab number of this

1 investigation?

2 A. I did. Item number four which was -- is listed
3 as known head hair, described as sample of head hair
4 from Parrish Reeves. I handled that on August the 14th
5 of 2007.

6 Q. And any other evidence that you came -- did you
7 have the opportunity to come into contact with teeth
8 belonging to the victim, Parrish Reeves?

9 A. Yes, I did.

10 Q. And when did that happen?

11 A. That was on August the 15th of 2007.

12 Q. And could you tell the jury what you did with
13 that item when it came into your custody?

14 A. Yes, I can. On that day I removed it from the
15 refrigerator that was in our evidence room and I
16 transferred that evidence to Sharee Brown who is a
17 forensic technician within the DNA department.

18 Q. And do you recall how that item was packaged when
19 you took custody of it?

20 A. I'm sure it would be in -- for it to be in a
21 heat-sealed pouch and for it to be sealed and the
22 sealing officer to initial and date it on the seal and
23 also sign the front of the bag and date it.

24 Q. And do you recall if the item was packaged
25 properly at that time in accordance with standard

1 procedures?

2 A. Yes, it was.

3 Q. And when it was in your custody, did you have the
4 opportunity to remove anything from that package?

5 A. No, I did not.

6 Q. And you said you transferred that item to
7 Ms. Brown?

8 A. That is correct.

9 Q. And when you transferred it to her, was it in the
10 same condition and packaging as when you retrieved it
11 from the refrigerator in the DNA evidence intake storage
12 room?

13 A. Yes.

14 Q. Did you perform any analysis on the item,
15 yourself?

16 A. No, I did not.

17 Q. Did you have any other involvement in handling
18 that item other than transferring it from the
19 refrigerator to Ms. Brown?

20 A. No, I did not.

21 Q. And did you tamper with the items inside or the
22 packaging at any time while it was in your custody and
23 control?

24 A. No, I did not.

25 MR. ALFARO: Thank you. Please answer any

1 questions the defense has.

2 THE WITNESS: Thank you.

3 THE COURT: Mr. Schwacke.

4 MR. SCHWACKE: No questions, Your Honor.

5 THE COURT: Ms. Kinard, you may step down.

6 You are excused.

7 THE WITNESS: Thank you.

8 (The witness is excused from the witness
9 stand.)

10 THE COURT: Call your next witness.

11 MR. ALFARO: Sharee Brown.

12 (Ms. Brown enters the courtroom.)

13 SHAREE BROWN,

14 being first duly sworn by the clerk, is examined and
15 testifies as follows:

16 THE CLERK: Please be seated. State your
17 full name and spell your last name for the record.

18 THE WITNESS: Sharee Brown, B-R-O-W-N.

19 DIRECT EXAMINATION

20 BY MR. ALFARO:

21 Q. Ms. Brown, could you please tell the jury where
22 you currently work?

23 A. South Carolina Law Enforcement Division, also
24 known as SLED.

25 Q. And how long have you been with them?

1 A. Sixteen years.

2 Q. And what do you do at SLED?

3 A. Currently I work in the DNA department as a
4 forensic technician.

5 Q. And could you tell us what type of duties you
6 have as a forensic technician?

7 A. One of my duties in -- in the DNA department is
8 go down to the evidence control area and pick up
9 evidence that's been submitted to our agency for DNA
10 testing.

11 Q. I'm going to show you what has been marked as
12 state's exhibit number 96. If you could look at that
13 item and see if you recognize that as having been in
14 your custody at any time?

15 A. (The witness reviews exhibit.) Yes.

16 Q. And could you tell the jury what the lab number
17 is on that item, the SLED lab number?

18 A. The SLED lab number is L-0711592, item number
19 two.

20 Q. And can you tell us what that item is?

21 A. It's a buccal swab described as four swabs from
22 Frances Reeves.

23 Q. And did you have the opportunity to come in
24 contact with those items in your capacity as a
25 technician at SLED?

1 A. Yes, I did.

2 Q. And could you tell the jury what you did with
3 those items when they were in your custody?

4 A. I received it from Agent Vicki Hallman. She gave
5 it to me. Our system, it goes from person-to-person
6 transfer. And once I took it in my custody and placed
7 it in the computer, I would transfer it. Normally, the
8 case is going to be assigned to a DNA analyst, and so I
9 just assigned it to a secure location in our walk-in
10 freezer.

11 Q. And does your chain indicate when you received
12 custody of that item?

13 A. On August the 9th, 2007, at 1443. It was in my
14 custody until August the 20th, '07, 1325. I transferred
15 it to the DNA freezer. During that time span, it was in
16 my custody in a secure area where I kept my evidence.

17 Q. And when you received it on August the 9th, 2007,
18 would it have been packaged and secured at that time?

19 A. Yes.

20 Q. And until you turned it over to the freezer in
21 the DNA department on August the 20th, 2007, did you
22 tamper with the packaging in any way?

23 A. No, I did not.

24 Q. Did you tamper with any of the items contained
25 inside the packaging in any way?

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1 A. No.

2 Q. Were the items in the same -- so the items were
3 in the same condition when you received them on August
4 the 9th, 2007, as when you placed them in the DNA
5 freezer on August the 20th, 2007. Is that correct?

6 A. Yes.

7 Q. And did you also have the opportunity to come
8 into contact with any teeth belonging to Parrish Reeves?

9 A. Yes, I did.

10 Q. And when did you come into contact with those
11 items?

12 A. I got them from Amy Stephens, Forensic Technician
13 Amy Stephens, on August the 14th, '07 -- no. Excuse me.
14 I got it from -- I was reading two lines up -- from
15 Selena Kinard on August the 15th, 2007, at 8:47 a.m.

16 Q. And do you recall how those items were packaged
17 when they were in your custody?

18 A. According to my chain of custody, they were in a
19 heat-sealed container labeled L-0711592, item number
20 five.

21 Q. And what did you do with the item while it was in
22 your custody?

23 A. It was immediately transferred to our freezer in
24 the area that I work in, and it stayed in my custody
25 until the 20th of August, August the 20th, '07, and

1 that's when I physically entered it in the computer,
2 transferred it into the DNA freezer on August the 20th,
3 2007, at 1345.

4 Q. And while the item was in your custody from
5 August 15th, 2007, through August 20th, 2007, did you
6 tamper with the packaging in any way?

7 A. No, I did not.

8 Q. Did you tamper with the items contained inside,
9 contained inside in any way?

10 A. No.

11 Q. And did you personally perform any analysis on
12 the teeth that were in your custody?

13 A. No.

14 Q. And did you personally perform any analysis on
15 the swabs that were in your custody?

16 A. No. No, I didn't.

17 MR. ALFARO: Thank you. Please answer any
18 questions the defense may have.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Schwacke.

21 MR. SCHWACKE: Thank you. No questions, Your
22 Honor.

23 THE COURT: Ms. Brown, you may step down.

24 THE WITNESS: Thank you.

25 (The witness is excused from the witness

1 stand.)

2 THE COURT: Call your next witness.

3 MR. ALFARO: Suzanne Cromer.

4 (Ms. Cromer enters the courtroom.)

5 SUZANNE CROMER,

6 being first duly sworn by the clerk, is examined and
7 testifies further as follows:

8 THE CLERK: Please be seated. State your
9 full name and spell your last name for the record.

10 THE WITNESS: My name is Suzanne Cromer,
11 C-R-O-M-E-R.

12 DIRECT EXAMINATION.

13 BY MR. ALFARO:

14 Q. Could you please tell the jury where you
15 currently work?

16 A. I work at the South Carolina Law Enforcement
17 Division, commonly referred to as SLED.

18 Q. And how long have you been with SLED?

19 A. I've been with SLED about eleven and a half
20 years.

21 Q. What are your current -- what's your current
22 position at SLED?

23 A. I am a firearms and tool mark examiner in the
24 firearms identification department.

25 Q. And could you please describe for the jury your

1 educational background?

2 A. I have a bachelor's degree from Clemson
3 University, and I did some graduate work at the
4 University of South Carolina.

5 I have completed the SLED in-house training
6 program for firearms and tool mark examiners which is a
7 three-to-five year more of an apprenticeship, if you
8 will, where you study under qualified firearm examiners.
9 We take written tests, oral tests, practical exercises,
10 and then upon completion we go to testify in court about
11 our casework.

12 I have attended numerous seminars through the
13 South Carolina chapter of the International Association
14 for Identification. I've also attended classes through
15 the Bureau of Alcohol, Tobacco, and Firearms and
16 Explosives, and attended courses at Integrated Ballistic
17 Identification System and serial restoration. I've also
18 taken courses through the Association of Firearm and
19 Tool Mark Examiners.

20 Q. And have you had the opportunity to testify in
21 courts of record in this state in these areas?

22 A. Yes, sir, I have.

23 Q. And how many times have you had that opportunity?

24 A. Thirty-six times.

25 Q. And have you previously been qualified as an

1 expert during those, in any of those opportunities to
2 testify?

3 A. Yes, sir, all.

4 Q. All 36?

5 A. Yes, sir.

6 Q. And in what field have you been previously
7 qualified as an expert?

8 A. Firearm and tool mark identification.

9 MR. ALFARO: Your Honor, at this time the
10 state would ask that Ms. Cromer be qualified as an
11 expert in the field of firearm and tool mark
12 examination.

13 MR. SCHWACKE: Congratulations, you just made
14 it to 37. No objection.

15 THE COURT: Thank you.

16 Firearm and tool mark examination and
17 identification, Mr. Alfaro?

18 MR. ALFARO: Yes, Your Honor.

19 THE COURT: All right. Ladies and gentlemen,
20 normally a person cannot give opinion testimony.
21 Normally when a person testifies they must testify as to
22 what they either heard or saw or sensed by smell or
23 something of that nature. However, an exception does
24 exist. When someone is qualified because of experience
25 or education, they may then be permitted to give their

1 opinion in certain areas if the Court qualifies them in
2 that way.

3 This witness will be qualified in the area of
4 firearm and tool mark examination and identification to
5 give opinion testimony in those areas. That does not
6 mean that you must accept the opinion. It is evidence
7 for you to use in any way that you see fit.

8 Mr. Alfaro.

9 MR. ALFARO: Thank you, Your Honor.

10 BY MR. ALFARO:

11 Q. Ms. Cromer, did you have the opportunity to
12 handle any evidence related to SLED lab number
13 L-0711592?

14 A. Yes, sir, I did.

15 Q. And could you tell us what type of evidence that
16 was that you came in contact with?

17 A. I received one fired bullet.

18 Q. I'm going to show you what has been marked as
19 state's exhibit 95.

20 A. This is what I examined. It's still in a sealed
21 container. It's my initials and seal date and an
22 internal container, my lab number, my item number, and
23 my initials.

24 Q. And could you describe how the item was packaged
25 when you received it for examination?

1 A. Let me check my notes. I received it in -- it
2 was wrapped in a white paper towel in this kind of
3 snap-top plastic container inside a heat-sealed pouch.

4 Q. And when did you come into contact with that
5 item?

6 A. I received this item 8/9/07.

7 Q. And did you have the opportunity to perform any
8 type of examination regarding the item that was
9 submitted?

10 A. Yes, sir, I did.

11 Q. And what type of examination was done?

12 A. What I did is, whenever I receive such a
13 projectile, I measure it, I weigh it, I notice its
14 physical characteristics, and I try to determine its
15 caliber and if it's suitable for identification versus a
16 specific firearm.

17 Q. And after making that -- did you make that type
18 of examination in this case?

19 A. Yes, sir, I did.

20 Q. And after making that type of examination, were
21 you able to reach any conclusions or opinions about the
22 item that you examined?

23 A. I determined that this was most consistent with a
24 .25 auto bullet and that it was not suitable for
25 identification versus a specific firearm.

1 Q. And can you explain to the jury what that means?

2 A. When we look at something for identification, it
3 will have striations on it very similar to scratches.
4 When a bullet is fired by a gun, the inside of that gun
5 barrel has what we call lands and grooves, raised areas
6 and depressed areas, and they're placed in there by the
7 manufacturer to put rotary motion on the bullet. Very
8 similar to when a quarterback throws a football, he also
9 throws it in a tight spiral.

10 So that's the premise behind having a rifling in
11 the gun barrel. It will twist and make that bullet
12 spiral in a different direction. So that's what marks
13 the bullet when it comes out, and that's what we're
14 looking for.

15 In this case, the bullet was degraded or
16 corroded, if you will, so the markings were eaten away.

17 Q. Based on your examination, if there was a firearm
18 to compare it to, would you have been able to -- be able
19 to tell whether that projectile would have come from
20 that gun?

21 A. No, sir, I could not.

22 Q. And why is that?

23 A. Because of the markings that I needed were --
24 were gone.

25 Q. And was any type of weapon submitted to you for

1 comparison purposes?

2 A. No, sir, there was not.

3 Q. And your conclusion was that it was most
4 consistent with a .25 auto caliber?

5 A. Yes, sir.

6 Q. And were you able to make any other type of
7 conclusions or opinions based off what was provided to
8 you and what you were able to examine?

9 A. No, sir.

10 MR. ALFARO: Thank you. Please answer any
11 questions defense may have.

12 THE COURT: Mr. Schwacke.

13 CROSS-EXAMINATION

14 BY MR. SCHWACKE:

15 Q. Ms. Cromer, when you say it was most consistent,
16 that would indicate consistent with other things other
17 than .25 auto?

18 A. Well, considering that it was .251 of an inch
19 which is exactly what .25 auto is, it weighed 49.6
20 grains which most -- a full metal jacketed .25 auto
21 weighs 50 grains. So we never say it is this, just in
22 case.

23 Q. So is it consistent with could have been fired
24 from any other type of gun?

25 A. I don't believe so, no, sir.

1 Q. In terms of the compound itself, the type of
2 metal that you were identifying, do you know what the
3 makeup of that would be?

4 A. No, sir. It's -- like I said, it was degraded or
5 corroded. Sometimes when we receive a bullet from
6 autopsy, depending on what type of a body it had come in
7 contact with, the actual outer material will turn black
8 and eat away at our markings. So that's what happened
9 in this case.

10 Q. So other than it's a .25 automatic, nothing else?

11 A. That's correct.

12 MR. SCHWACKE: That's all the questions.

13 THE COURT: Mr. Alfaro, redirect?

14 MR. ALFARO: No redirect, Your Honor.

15 THE COURT: You may step down, Ms. Cromer.

16 Thank you.

17 (The witness is excused from the witness
18 stand.)

19 THE COURT: Counsel, please approach just for
20 scheduling purposes.

21 (There was an off-the-record bench conference
22 in the presence of the jury but out of the hearing of
23 the jury.)

24 (Said bench conference being concluded, the
25 following proceedings were had:)

1 THE COURT: Call your next witness.

2 MS. WILLIAMS: The state would call Eowyn
3 Corcrain.

4 (Ms. Corcrain enters the courtroom.)

5 MS. WILLIAMS: Your Honor, may we approach
6 just to take the evidence from the witness chair?

7 THE COURT: You may.

8 MR. SCHWACKE: Your Honor, may we approach?

9 THE COURT: You may.

10 Ma'am, please come forward and have a seat on
11 the witness stand.

12 Just one moment.

13 You may have a seat on the witness stand.

14 EWOYN CORCRAIN,

15 being first duly sworn by the clerk, is examined and
16 testifies as follows:

17 THE CLERK: Please be seated. State your
18 full name and spell your last name for the record.

19 THE WITNESS: Eowyn Corcrain, last name
20 C-O-R-C-R-A-I-N.

21 THE COURT: Ladies and gentlemen of the jury,
22 we're going to take a short recess. Please do not begin
23 your deliberations. Do not discuss this case amongst
24 yourselves. We're going to take a short -- short break.
25 I believe there are two witnesses left for today's

1 testimony, and then we will break for the afternoon.

2 All right. Please rise for the jury.

3 (Whereupon, the jury goes to the jury room at
4 approximately 12:13 p.m.)

5 THE COURT: Thank you. Please be seated.

6 Mr. Schwacke, you indicated you wanted a few
7 moments to review the testimony of Ms. Corcrain. Is
8 that correct?

9 MR. SCHWACKE: That's correct, Your Honor.
10 Actually, I had been provided a copy of the evidence
11 transfer sheet last night, but I didn't make the
12 connection with the name, so...

13 THE COURT: And, Mr. Schwacke, will 15
14 minutes be sufficient for our break?

15 And then this will be our final witness
16 before we break for the day, Ms. Williams?

17 MS. WILLIAMS: Catherine Leisy is our next
18 witness, Your Honor.

19 THE COURT: All right. And then we'll break
20 testimony for today. Is that correct?

21 MS. WILLIAMS: Yes, Your Honor.

22 THE COURT: Mr. Schwacke, there are two
23 additional witnesses. We're going to take 15 minutes to
24 allow you to review the next two witnesses that are
25 coming up, and we'll take our break, as well.

1 Ms. Corcrain, you are free to remain. We're
2 going to take a 15-minute break. It has nothing to do
3 with -- it's just a matter of timing, nothing to do with
4 -- but you are free to step down or remain there. I'll
5 need you to please stay close to the courtroom and be
6 back at 12:30.

7 THE WITNESS: Okay. Thank you.

8 THE COURT: Thank you.

9 We're at ease.

10 (A break is taken at approximately
11 12:15 p.m.)

12 (The trial reconvenes at approximately
13 12:30 p.m., the defendant being present with counsel,
14 Mr. Schwacke, and the following proceedings were had:)

15 (The witness, Ms. Corcrain, previously duly
16 sworn, resumes the witness stand.)

17 THE COURT: Please be seated.

18 Mr. Schwacke, do you need any additional
19 time?

20 MR. SCHWACKE: I'm ready, Your Honor.

21 THE COURT: The state ready?

22 MS. WILLIAMS: The state is ready, Your
23 Honor.

24 THE COURT: All right. Please bring in the
25 jury.

1 (Whereupon, the jury enters the courtroom at
2 approximately 12:30 p.m.)

3 THE COURT: Please be seated.

4 Ms. Williams, your witness.

5 MS. WILLIAMS: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. WILLIAMS:

8 Q. Just to remind the jury, can you state your name
9 and your occupation?

10 A. My name is Eowyn Corcrain, and I'm a pathologist
11 assistant.

12 Q. And where do you work?

13 A. I work in the forensic pathology department at
14 the Medical University of South Carolina.

15 Q. Is that here in Charleston?

16 A. In Charleston.

17 Q. And how long have you worked there?

18 A. I've been employed in that position in the
19 forensic pathology department for three years.

20 Q. Did you work anywhere else before that in this
21 field?

22 A. In this field? I worked for the decedent affairs
23 department which is connected to that department for
24 about a year and a half prior to that.

25 Q. Okay. What are your job duties in that

1 department?

2 A. I assist the pathologist in conducting autopsies
3 and collecting evidence. I document, store, and
4 transfer evidence and specimens collected from autopsy.
5 I am also responsible for instructing resident
6 physicians and students in autopsy techniques.

7 Q. Okay. And what kind of education and training do
8 you have to have for that type of position?

9 A. Well, most pathologist assistants have master's
10 degrees. For my training, I did a bachelor's degree in
11 biology. I did a master's degree in medical
12 parasitology where I studied with a forensic
13 entomologist to identify different kinds of insects. I
14 did that at the University of London in England. And
15 then I did a postgraduate dissertation in clinical
16 histopathology at the Medical University of South
17 Carolina. That was a yearlong program. And then I also
18 completed the medicolegal death investigators training
19 program at St. Louis University.

20 Q. Okay. Did you work on this case, the case
21 involving the victim, Parrish Reeves?

22 A. Yes, I did.

23 Q. And what was your role? What did you do in this
24 case?

25 A. Well, I assisted Dr. Presnell who is the forensic

1 pathologist that did this autopsy, in documenting and
2 collecting some of the evidence from autopsy. And then
3 at the end of the autopsy when she finished her
4 examination, I also removed the jaws from the victim and
5 packaged them.

6 Q. Okay. And were there any teeth in the jaws when
7 you removed them from the body?

8 A. Yes, there were teeth in the jaws when I removed
9 them.

10 Q. And if you know, what would the purpose of doing
11 that be?

12 A. Usually when we remove the jaws, it's from a
13 victim who may have some question as to their identity
14 or may be difficult to identify visually, and the
15 purpose is so they would be available in case they were
16 needed to help determine the identity of the victim
17 later on.

18 Q. So is it fair to say that in this case it wasn't
19 easy to tell who it was just by looking at him?

20 A. I would say I wouldn't have been able to
21 recognize the person very easily.

22 Q. Was the body decomposed?

23 A. Yes.

24 Q. What did you do with the items that you removed
25 after you removed them?

1 A. After I removed the jaws, I sealed them into a
2 plastic container which was labeled with the victim's
3 name and the case number from the autopsy, and I stored
4 that with our other specimens.

5 MS. WILLIAMS: Court's indulgence for just a
6 second.

7 THE COURT: Yes, ma'am.

8 MS. WILLIAMS: Your Honor, I'm going to
9 show Mr. Schwacke what's been previously marked as
10 state's 97.

11 (Mr. Schwacke reviews exhibit.)

12 MS. WILLIAMS: May I approach the witness,
13 Your Honor?

14 THE COURT: You may.

15 BY MS. WILLIAMS:

16 Q. Ms. Corcrain, what is this item?

17 A. This is the envelope with the teeth. After I
18 stored the jaws, then they were -- Dr. Presnell asked me
19 to remove some of the teeth from the jaws, and I signed
20 them over to Berkeley County investigators.

21 Q. And how do you know that that's the envelope that
22 you put the teeth in?

23 A. This is my handwriting, and I sealed it with a
24 sticker that has the decedent's name and case number and
25 also my initials and the name of the pathologist who

1 worked on this case, and then I labeled it "teeth"
2 myself.

3 MS. WILLIAMS: Court's indulgence for just a
4 second.

5 Nothing further for this witness.

6 Please answer any questions that the defense
7 might have.

8 CROSS-EXAMINATION

9 BY MR. SCHWACKE:

10 Q. You did that two days after the autopsy?

11 A. That's correct.

12 Q. And I would guess normally one of the things that
13 you would want to keep the teeth intact with the jaws is
14 for dental records that might be found to compare to?

15 A. Yes. It's common that we'll compare the dental
16 records from before a person died with x-rays that we
17 take actually after they've died.

18 Q. And in this case there were no dental records
19 available?

20 A. I don't have that information.

21 Q. But you weren't asked to do any comparison?

22 A. No, I was not.

23 Q. And the jaws, were they marked somehow or
24 labeled? How would that be done when they were removed
25 at the autopsy?

1 A. Well, after I remove the jaws, then I seal them
2 into a plastic container which is about this size
3 (indicating), and I put a lid on that, and then I put
4 labels on it that have the decedent's or the victim's
5 name and also the case number from that case. So that's
6 how they are identified.

7 Q. And who did you turn these over to?

8 A. They stayed within my care.

9 Q. Okay.

10 A. I kept them in the area where we store the
11 specimens from autopsy cases.

12 Q. And did you ultimately remove molars?

13 A. Dr. Presnell, the forensic pathologist, asked me
14 a few days after the autopsy to remove the molars, and
15 my understanding is that the molars were expected to
16 have more material that could be used for genetic
17 identification as opposed to the front teeth.

18 Q. And then who did you turn those over to?

19 A. I signed the teeth over to Investigator Dean
20 Kokinda from Berkeley County.

21 MR. SCHWACKE: Thank you. That's all the
22 questions I have.

23 MS. WILLIAMS: Nothing further, Your Honor,
24 for this witness.

25 THE COURT: Thank you.

1 Ms. Corcrain, you may step down. Thank you.

2 THE WITNESS: Thank you.

3 (The witness is excused from the witness
4 stand.)

5 THE COURT: Call your next witness.

6 MS. WILLIAMS: The state calls Catherine
7 Leisy.

8 (Ms. Leisy enters the courtroom.)

9 CATHERINE LEISY,
10 being first duly sworn by the clerk, is examined and
11 testifies as follows:

12 THE CLERK: Please be seated. State your
13 full name and spell your last name for the record.

14 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

15 DIRECT EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Ms. Leisy, who do you work for?

18 A. I'm employed by the South Carolina State Law
19 Enforcement Division, also known as SLED.

20 Q. And how long have you worked there?

21 A. A little over four years.

22 Q. What department do you work in?

23 A. I am a forensic scientist assigned to the DNA and
24 serology unit.

25 Q. How long have you worked in the field of forensic

1 science?

2 A. Prior to my employment at SLED, I spent four
3 years as a forensic DNA analyst at a private testing
4 facility in Maryland, performing basically the same
5 tests that I do at SLED.

6 Q. Okay. And what are your duties day in and day
7 out?

8 A. My responsibilities include processing forensic
9 specimens, writing reports based on the conclusions
10 drawn, and testifying to those reports if necessary.

11 Q. What is your training and experience in your
12 field?

13 A. I have a bachelor of science degree in genetic
14 engineering from Cedar Crest College in Allentown,
15 Pennsylvania. I have completed in-house training in all
16 of the types of testing and analysis which I perform on
17 a daily basis. I'm also required to attend conferences
18 and training specific to new -- new techniques and
19 testing processes in DNA testing.

20 Q. Have you testified as an expert before and been
21 qualified as an expert before in General Sessions court?

22 A. Yes, I have.

23 Q. Do you know roughly how many times?

24 A. Roughly ten times here in South Carolina.

25 MS. WILLIAMS: Your Honor, at this time the

1 state would move for Ms. Leisy to be qualified as an
2 expert in the field of forensic science and DNA
3 analysis.

4 MR. SCHWACKE: No objection.

5 THE COURT: This witness will be qualified in
6 the area of forensic science and DNA analysis.

7 MS. WILLIAMS: Thank you, Your Honor.

8 BY MS. WILLIAMS:

9 Q. In the course of your work, did you receive any
10 items of evidence from this case involving the victim,
11 Parrish Reeves?

12 A. Yes, I did.

13 Q. And did you receive any items of evidence from
14 his mother, Frances Reeves?

15 A. I did.

16 Q. What items of evidence did you receive?

17 A. I received what is marked as SLED item two which
18 was buccal swabs identified as being a standard from
19 Frances Reeves. A buccal swab just means that it's
20 taken from the inside of the cheek to use as a standard
21 for that individual. I also received what is marked as
22 SLED item five which were teeth.

23 MS. WILLIAMS: Your Honor, I'm showing
24 defense counsel what has been previously marked as
25 state's 96 and 97.

1 (Mr. Schwacke reviews exhibits.)

2 MS. WILLIAMS: May I approach?

3 THE COURT: You may.

4 BY MS. WILLIAMS:

5 Q. Ms. Leisy, I'm going to show you state's 96 and
6 state's 97 and ask you if you recognize these items.

7 You can open them up and look at the packaging.

8 A. (The witness reviews exhibits.) Yes, I recognize
9 the items.

10 Q. Okay. And how do you recognize them?

11 A. To be specific, it has a case number as well as
12 the item number located on the packaging as well as my
13 initials.

14 Q. And what condition were those items in when you
15 received them?

16 A. When I picked up these items, they were in a
17 sealed pouch, heat-sealed plastic pouch that had been
18 initialed by the individual who sealed them. They were
19 stored in a freezer in the locked DNA facility.

20 Q. And had they been tampered with in any way?

21 A. No, they were not.

22 Q. And who did you receive those items from?

23 A. I picked up the items from the freezer in the
24 DNA lab. They had been transferred by a technician.

25 Q. Do you know which technician?

1 A. According to the chain of custody, Sharee Brown
2 transferred them to the freezer.

3 Q. And what are those items?

4 A. This particular item is SLED item number two
5 which was the cheek swabs from Frances Reeves. And this
6 is SLED item number five, teeth identified as being that
7 of Parrish Reeves.

8 Q. And did you do any testing on those items?

9 A. Yes, I did.

10 Q. Can you explain to the jury what type of testing
11 you did on each of those items?

12 A. I developed a DNA profile, both from one of the
13 three teeth as well as the buccal swabs from Frances
14 Reeves. I tested 15 different DNA locations and
15 compared the locations of the teeth to the locations of
16 the buccal swabs from Frances Reeves to try and
17 determine whether or not Ms. Reeves could be the
18 biological parent of the individual from whom the teeth
19 were taken.

20 Q. Okay. And how do you actually do that? How do
21 you extract DNA from the teeth?

22 A. We have to pulverize the tooth. We're actually
23 testing DNA that's found in cells within the pulp at the
24 center of the tooth. That DNA is protected by the hard
25 outer enamel. So we would use the tooth and then crush

1 it, and once it's pulverized, it's sort of a granular
2 material, almost like sand. We then add chemicals to
3 that material that will break open the cells, allowing
4 us to extract the DNA and develop a DNA profile.

5 Q. Okay. And did you also receive any hair from the
6 victim in this case?

7 A. There was hair submitted. I never took custody
8 of it, and to my knowledge no testing was performed on
9 the hair before it was returned.

10 Q. And why would you not do testing on the hair if
11 you know?

12 A. With hair what you're really testing is the skin
13 or tissue that's attached to it. As a body decomposes,
14 the DNA and the tissue is exposed to many factors that
15 can cause degradation, meaning when the DNA breaks down
16 which will prevent us from developing a DNA profile. So
17 the bacteria and enzymes present are -- are not able to
18 reach the DNA within the tooth because of the hard outer
19 enamel, making the tooth a much better choice for us as
20 far as developing a DNA profile from a decomposing body.

21 Q. So is it fair to say that the teeth are just a
22 better source of DNA than the hair?

23 A. In this type of cases, you know, in a situation
24 with a decomposing body, we find that we are much more
25 successful in obtaining profiles from teeth than we are

1 from tissue samples, yes.

2 Q. And was there -- did you reach a conclusion
3 after all of the testing that you did on Parrish Reeves'
4 teeth and comparing that to Frances Reeves' buccal
5 swabs?

6 A. I was able to determine that the DNA profile
7 developed from the teeth is consistent with being a
8 biological offspring of Frances Reeves.

9 Q. So the teeth you received, consistent with that
10 is Parrish Reeves -- that that's Frances Reeves' son?

11 A. Yes, correct, the buccal swabs.

12 MS. WILLIAMS: Court's indulgence.

13 THE COURT: Yes, ma'am.

14 (Ms. Williams and Mr. Alfaro confer.)

15 MS. WILLIAMS: Your Honor, at this time state
16 would move state's 97, the teeth of Parrish Reeves, into
17 evidence.

18 THE COURT: Mr. Schwacke.

19 MR. SCHWACKE: No objection.

20 THE COURT: State's 97 into evidence without
21 objection.

22 (State's Exhibit No. 97, previously marked
23 for identification, is received in evidence.)

24 BY MS. WILLIAMS:

25 Q. And so, again, the result is that it's consistent

1 with him being her son?

2 A. That's correct.

3 MS. WILLIAMS: Thank you. Please answer any
4 questions the defense may have.

5 THE COURT: Mr. Schwacke.

6 CROSS-EXAMINATION

7 BY MR. SCHWACKE:

8 Q. Your report uses the word "offspring," and that's
9 actually the same as son and daughter, and how far down
10 can you go?

11 A. The comparison that we do with the 15 DNA
12 locations that are tested, you have two DNA sets at each
13 location. One DNA set came from mom; one DNA set came
14 from dad. So what I do is compare the DNA types at each
15 location from the tooth to the types of those locations
16 from the parent or potential parent.

17 At each location on the tooth there was one DNA
18 type consistent with the swab from Ms. Reeves, making it
19 possible that Ms. Reeves is the biological parent of
20 these particular remains. I can't necessarily determine
21 how far along, the grandchildren or great grandchildren.
22 All I can say is based on the comparison it's possible
23 that Ms. Reeves is the parent of this individual.

24 Q. It's possible?

25 A. Correct.

1 Q. And when you developed the profile from the
2 teeth, did you, apart from making comparison to the
3 buccal swab profile, did you make any comparison to any
4 database sample, as well?

5 A. No, I did not.

6 Q. Could you do it?

7 A. As far as I know, that's not a common practice
8 unless it is specifically requested that it be entered
9 in the missing persons. The -- it would depend on what
10 type of database request was made. In this particular
11 case, I did not make a comparison.

12 Q. And you were dealing with Detective Gerald
13 Merrithew of the Berkeley County Sheriff's Office?

14 A. That is who made the request, and it's in my
15 report. Yes, sir.

16 MR. SCHWACKE: That's all the questions I
17 have.

18 THE COURT: Ms. Williams.

19 MS. WILLIAMS: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. WILLIAMS:

22 Q. So if the investigative office that sends you the
23 stuff has knowledge of whose teeth they are, would that
24 be one reason why you would only test it against the
25 person whom they believe that the mother is, rather than

1 running it through the database, I mean, if they already
2 have knowledge of who might -- who it might be?

3 A. Typically with a database, as far as missing --
4 missing persons goes, that's used when parents have
5 already submitted a sample or some relative has already
6 submitted a sample that's entered in the database. To
7 my knowledge, that did not happen in this case. These
8 items were directed to us, and a direct comparison was
9 requested. Again, without a request to compare it to a
10 missing persons database, there's nothing else I can do
11 with that.

12 MS. WILLIAMS: Okay. Thank you, Ms. Leisy.

13 THE COURT: Mr. Schwacke.

14 MR. SCHWACKE: No further questions.

15 THE COURT: Ms. Leisy, you may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: Thank you.

18 (The witness is excused from the witness
19 stand.)

20 THE COURT: And, Ms. Williams, does that
21 conclude your witnesses for today?

22 MS. WILLIAMS: Yes, Your Honor, it does.

23 THE COURT: All right. And, Counsel, just
24 for scheduling if you will approach.

25 (There was an off-the-record bench conference

1 in the presence of the jury but out of the hearing of
2 the jury.)

3 (Said bench conference being concluded, the
4 following proceedings were had:)

5 THE COURT: All right. Ladies and gentlemen,
6 that concludes the testimony that you will hear for
7 today. As I had indicated to you previously, we will be
8 in recess in this matter until Tuesday, July 6th.
9 Please be back in your jury room at 9:30.

10 Ladies and gentlemen, there was some
11 indication that there may be a conflict. I will be in
12 the jury room just for -- just for scheduling purposes
13 so that we can go over any conflicts that may arise as
14 to returning back Tuesday morning at 9:30.

15 Ladies and gentlemen, you will not need to
16 appear tomorrow.

17 And as always, please remember the Court's
18 admonition. Do not read, watch, listen to any news
19 accounts regarding this case should there be any.
20 Please do not begin your deliberations. Do not discuss
21 this case amongst yourselves.

22 Ladies and gentlemen, I will be in the jury
23 room in just a few moments, but you are excused until
24 9:30 July 6th which is a Tuesday.

25 Please rise for the jury.

1 (Whereupon, the jury leaves the courtroom at
2 approximately 12:50 p.m.)

3 THE COURT: All right. Please be seated.
4 Anything before we recess until Tuesday
5 morning?

6 MS. WILLIAMS: Nothing from the state, Your
7 Honor.

8 THE COURT: Anything, Mr. Schwacke?

9 MR. SCHWACKE: No, Your Honor.

10 THE COURT: Mr. Michaelson, I'm going to --
11 please stand.

12 (The defendant complies.)

13 THE COURT: I'm just going to remind you
14 again that you are -- you may continue out on bond. If
15 you do not appear -- we are going to be in recess until
16 Tuesday morning. If you do not appear, the trial will
17 continue in your absence. Do you understand that, sir?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. And, Mr. Michaelson,
20 do you have any questions for the Court at this time
21 concerning that or any other matter?

22 THE DEFENDANT: No, ma'am.

23 THE COURT: Thank you.

24 You all have a wonderful weekend. We are in
25 recess in this case.

1 (Whereupon, at approximately 12:50 p.m., the
2 trial is recessed to the following Tuesday, July 6,
3 2010, at 9:30 a.m.)

4 (At approximately 5:30 p.m., the following
5 on-the-record chambers conference was had by the Court,
6 Ms. Williams, Mr. Alfaro, and Mr. Schwacke:)

7 THE COURT: We're back in chambers conference
8 with The State vs. Michaelson.

9 All right. Mr. Schwacke, that phone number
10 again?

11 (A telephone number for Ms. Kennedy is
12 dialed.)

13 (Ms. Kennedy being present via telephone, the
14 following proceedings were had:)

15 THE COURT: Ms. Kennedy? And how are you?
16 Okay. I'm going to put you on speakerphone. We're
17 again in the visiting chambers. So I'm going to put you
18 on speakerphone with Mr. Schwacke, Ms. Williams, and
19 Mr. Alfaro, along with Ms. Cooley, our court reporter.
20 Hold on.

21 (Ms. Kennedy being present via speakerphone,
22 the following proceedings were had:)

23 THE COURT: All right. Ms. Kennedy, so true
24 to form, I guess your doctor visit took about as long as
25 you thought it would. Is that correct?

1 MS. KENNEDY: That's true, Your Honor, yes.

2 THE COURT: All right. Well, it's good to
3 hear from you, and I'm sure Mr. Schwacke has filled you
4 in as to what was accomplished today during the trial.
5 I have released the jury to come back at 9:30 Tuesday
6 morning. All of the jurors have indicated that they
7 will be able to return. So we are not going to have any
8 testimony tomorrow.

9 What is your prognosis? Do you believe that
10 you will be able to continue on Tuesday?

11 MS. KENNEDY: Yes.

12 THE COURT: All right. Do you need any --
13 any assistance from the Court?

14 MS. KENNEDY: I don't think so. I've got an
15 injection and -- and hopefully that will take care of
16 it.

17 THE COURT: All right. Well, Mr. Schwacke
18 will fill you in on the status, and so please rest
19 during the weekend. And when we resume on Tuesday you
20 and I can talk, either to discuss if there's any
21 personal arrangements, we need to take longer breaks, or
22 do anything in order to accommodate you, if you'll just
23 let me know. If there's -- whatever I can do to
24 accommodate you, if you need to remain seated or
25 anything like that, we'll -- we'll do whatever we can to

1 accommodate you in that manner.

2 MS. KENNEDY: Thank you.

3 THE COURT: Anything further as related to --
4 to this? Ms. Kennedy?

5 MS. KENNEDY: Related to -- related to this?
6 I'm not sure what you mean, Judge.

7 THE COURT: Related -- related to the trial,
8 are there any additional ---

9 MS. KENNEDY: Oh. No. Thank you.

10 THE COURT: Okay. And I am going to instruct
11 Mr. Schwacke to call you at the -- at the end as soon as
12 we're off the record and kind of update you and -- as to
13 what happened. If there is any further -- I will be in
14 Charleston doing bonds in the morning. So if there's
15 any need -- I will only have a court reporter until
16 about noon-ish. So if there's any need for any -- any
17 matters to be placed on the record, I request that you
18 do so before noon. Otherwise, we will not have a court
19 reporter.

20 MS. KENNEDY: All right.

21 THE COURT: All right. Have a wonderful and
22 restful holiday weekend, and I will see you Tuesday
23 morning, and we will begin promptly at 9:30.

24 MS. KENNEDY: Thank you.

25 THE COURT: Thank you.

1 (The telephone call concludes, and the
2 following proceedings were had:)

3 THE COURT: All right then. Mr. Schwacke, I
4 just want you to be clear. All right?

5 MR. SCHWACKE: You're talking -- I'm going to
6 be working on my homework.

7 THE COURT: I do want you to be working on
8 your homework because -- just out of an abundance of
9 caution. She's indicated that she is ready, but if --
10 if there's some witnesses that you feel you could assist
11 with, some nonessential -- I know Detective Freeman is
12 probably the big witness. So if there's any burden you
13 can take off Ms. Kennedy, if there's any -- and, you
14 know, I don't know, the Money Man Pawn, just an example,
15 just thinking of what's on the -- on the witness list
16 that you can help over the long holiday weekend.

17 MR. SCHWACKE: She's had it for three years.
18 So I would believe she knows it forwards and backwards.

19 THE COURT: All right. Again, I wish to
20 thank all three of you for your professionalism. I know
21 this has been especially for you, Mr. Schwacke, kind of
22 dumped in your lap, but I appreciate it. It seems like
23 the three of you were able to pull together and
24 accomplish what I considered a productive day,
25 considering, and so I look forward to working with you

1 next week to get this matter resolved.

2 With that being said, I think we're -- we're
3 fine as far as time. How much -- how long do you think
4 we're going to go into next week realistically?

5 MS. WILLIAMS: I think we have a day, maybe
6 two witnesses.

7 MR. ALFARO: We have a full day and three
8 witnesses planned.

9 THE COURT: Okay.

10 MR. ALFARO: One of those, one of those three
11 testified today. So I would assume we should be able to
12 get done if not Tuesday then at least Wednesday morning.

13 THE COURT: There was some indication that a
14 juror needed to be done by Thursday p.m. So I -- just
15 out of an abundance of caution, because we might lose
16 one early next week, to lose another one that is going
17 to be cutting it very close. So I want, with all --
18 with all due respect, I want us to get as much done
19 Tuesday as we can.

20 So, please, with that in mind, make sure
21 everybody packs your lunch. I may even talk to -- to
22 them about bringing -- having lunch for the jurors and
23 let's just almost work through lunch. And I know that's
24 going to make for a very long day, but we're not going
25 to be able to hold these jurors into the following week.

1 All right. So we will -- I'll see y'all
2 Tuesday.

3 And, again, if there's any motions or matters
4 that we need to put on the record, please call me or
5 e-mail me as soon as you know, because I'm going to let
6 Ms. Cooley go after bonds and we're not -- I'll come
7 back here, but I won't have a court reporter and likely
8 not access to -- to a court reporter. So, again, keep
9 that in mind if something should come up. And y'all
10 have a wonderful, wonderful evening.

11 MS. WILLIAMS: Thank you, Your Honor.

12 MR. SCHWACKE: Thank you, Judge.

13 MR. ALFARO: Thank you.

14 THE COURT: If you'll just mark that as the
15 Court's exhibit whatever, whatever it should be.

16 (Court's Exhibit No. 2, faxed medical excuse
17 for Ms. Kennedy, is marked for identification.)

18 (The chambers conference is concluded at
19 approximately 5:35 p.m.)

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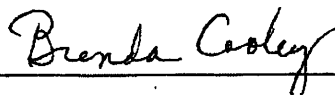
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CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Circuit Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, Volume I of II, pages 3 through 470, inclusive, relative to appeal, in the Court of General Sessions for Berkeley County, Moncks Corner, South Carolina, on the 28th, 29th, and 30th days of June 2010 and the 1st day of July 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 18, 2010



Brenda Cooley

Circuit Court Reporter

State of South Carolina)	Court of General Sessions
)	
County of Berkeley)	Ninth Judicial Circuit
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 2009-GS-08-2295
)	2008-GS-08-1699
Jeffrey A. Michaelson,)	
)	
Defendant.)	
)	

VOLUME II of II

TRANSCRIPT OF RECORD

July 6, 7, and 8, 2010

Moncks Corner, South Carolina

B E F O R E:

The Hon. Kristi Lea Harrington, Judge, and a Jury

A P P E A R A N C E S:

Anne Williams, Esq.
 Bryan A. Alfaro, Esq.
 Attorneys for the State

Patricia A. Kennedy, Esq.
 David P. Schwacke, Esq.
 Attorneys for the Defendant

Brenda Cooley
 Circuit Court Reporter

PAGES 472 - 941

1 (On Tuesday, July 6, 2010, the trial
2 reconvenes at approximately 9:40 a.m., the defendant
3 being present with counsel, Ms. Kennedy and
4 Mr. Schwacke, and the following proceedings were had:)

5 THE COURT: Thank you. Please be seated.

6 All right. Juror 85 has been replaced with
7 Juror 64. I have a copy of Juror 85's summer schedule.
8 Summer school begins today. I have released Juror 85,
9 and her schedule will become part of the Court's record.

10 Anything further required or with that
11 matter, Ms. Williams?

12 MS. WILLIAMS: Nothing from the state, Your
13 Honor.

14 THE COURT: Ms. Kennedy.

15 MS. KENNEDY: No, your Honor.

16 THE COURT: Thank you.

17 (Court's Exhibit No. 3, Juror No. 85 - school
18 schedule, is marked for identification.)

19 (Juror No. 85, Dona Inthaxoum, is excused
20 from the jury.)

21 (Alternate Juror No. 64, Carlise Golden, is
22 seated on the jury.)

23 THE COURT: All right. Any other matters
24 before we bring in the jury? From the state?

25 MS. WILLIAMS: Court's indulgence.

1 Your Honor, Mr. Schwacke and Mr. Alfaro have
2 been trying to come up with a redacted version of the
3 tape that's acceptable to both. Because we just got
4 Mr. Schwacke's redacted version, through no fault of
5 his, this morning, Mr. Alfaro looked at it rather
6 quickly, and our position would be that it's fine.

7 I don't think the Court wants to take another
8 hour for us to look at it, but as it plays there is a
9 portion of the tape that we feel is admissible that
10 Mr. Schwacke has redacted out.

11 We would just ask that after the tape is
12 played that we argue that issue of law outside the
13 presence of the jury so that the Court can consider
14 whether we can go ahead and put that back in.

15 THE COURT: All right.

16 MS. WILLIAMS: I think it would be -- you
17 know, in terms of time, it makes more sense, and we can
18 hopefully protect both sides for the issue.

19 THE COURT: And with that being said, we have
20 all week. So I do not want you to feel like you are
21 taking -- or shortchanging your case in any way. And
22 the same as to Mr. Michaelson's case. We have all week,
23 so -- and we will take time. So please do not feel that
24 we are rushing through anything this week.

25 Ms. Kennedy, any objection to handling, or

1 Mr. Schwacke, any objection to handling the playing of
2 the tape in that manner?

3 MR. SCHWACKE: That's fine, Your Honor. And
4 I've explained to Mr. Alfaro where the cuts were.

5 And also there is a large amount of silent
6 time where the client is writing out a statement and
7 there's no conversation going on, and just for brevity's
8 sake we did edit those portions out. We may have to
9 explain that to the jury because it's a noticeable edit.

10 THE COURT: All right. And at that point if
11 you wish for the Court to give an instruction to the
12 jury as to what's going on, I will be happy to do so.

13 With that, Ms. Williams, anything additional
14 before we bring in the jury?

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: Ms. Kennedy.

17 MS. KENNEDY: Your Honor, for purposes of the
18 record, I would like to renew the motion for a
19 continuance in this matter. All the witnesses that have
20 testified so far...

21 THE COURT REPORTER: I'm sorry, Ms. Kennedy,
22 I can't hear you.

23 MS. KENNEDY: I'm sorry.

24 For purposes of the record, Your Honor, I
25 would like to renew my motion for a continuance in this

1 case. All the witnesses that have testified so far,
2 with the exception of, I believe, some of the chain of
3 custody witnesses that testified on Thursday, have
4 referenced directives from Detective Gerry Merrithew as
5 to their participation in this case.

6 Detective Crumley testified about how he was
7 directed to pick Mr. Michaelson up. He also testified
8 about how -- the manner in which he was directed to go
9 to the storage shed.

10 Frances Reeves testified about her contact
11 with Detective Merrithew and how he volunteered to take
12 this case, and everything thereafter she testified to
13 was information that, as I understand it, she learned
14 after the fact from Detective Merrithew except the most
15 recent things in anticipation of the case.

16 Brenda Ahrenholz testified, Your Honor, about
17 certain matters that were inconsistent with the
18 testimony Detective Merrithew provided at the
19 preliminary hearing, most notably the contact that took
20 place between Katherine Feaster and Brenda Ahrenholz and
21 Jeremiah Scharer who I understand is going to be
22 testifying at some point after this. Detective
23 Merrithew testified that there was no contact.
24 Obviously, Ms. Ahrenholz testified to the contrary.

25 And while I wasn't present for Detective

1 Bobby Frank Drennon's testimony, my understanding is he
2 testified about doing a number of things for -- at the
3 direction and under the -- under the guidance of
4 Detective Merrithew.

5 I would renew my motion for continuance
6 because based on all of this and, again, I would stress,
7 Your Honor, there's no opportunity because of Detective
8 Merrithew's absence for me to refute or to rebut any of
9 the testimony that -- that I've just alluded to.

10 You know, a jury trial and part of a defense,
11 the defense's ability to put up a case and to -- the
12 requirement that I be allowed to attack the perception
13 and the recollection and the knowledge of particular
14 witnesses versus what other witnesses have testified to.

15 And under the circumstances of the case, and
16 fully understanding the Court's ruling, I just
17 respectfully request again a continuance because the
18 farther we go, the farther we go into it, the more
19 prejudicial it becomes to my client.

20 Thank you.

21 THE COURT: Any response, Ms. Williams?

22 MS. WILLIAMS: Your Honor, we would just
23 defer to the Court's earlier ruling, Rule 7(b), and all
24 the case law that -- that the state has already cited,
25 that Mr. Merrithew is not material and that all of the

1 witnesses that the state has called and intends to call,
2 Ms. Kennedy has ample opportunity to cross-examine them,
3 but I think they did it in Detective Merrithew's
4 presence.

5 THE COURT: Any response to that,
6 Ms. Kennedy?

7 MS. KENNEDY: Your Honor, my only response is
8 I'm not so concerned about what they did in Detective
9 Merrithew's presence. I am concerned about what they
10 did outside of his presence as far as given the
11 directives he was giving, giving to them, and also my
12 inability to fully explore the investigative process.

13 The state continuously asserts that all the
14 evidence that they have can be gotten through -- gotten
15 into the -- the transfer of the evidence through other
16 witnesses. My point continues to be that there is other
17 evidence that I am precluded -- precluded from offering
18 that would, again, rebut or refute that. I can't do it
19 without Detective Merrithew.

20 Thank you, Your Honor.

21 THE COURT: All right. For the reasons
22 articulated in the Court's previous order, as well as
23 prior to the beginning of this trial, I deny your motion
24 for a continuance at this time.

25 Anything further before we bring in the jury?

1 MS. WILLIAMS: Nothing from the state, Your
2 Honor.

3 THE COURT: Ms. Kennedy.

4 MS. KENNEDY: No, Your Honor. Thank you.

5 THE COURT: Let's bring in the jury.

6 (Whereupon, the jury enters the courtroom at
7 approximately 9:50 a.m.)

8 THE COURT: Thank you. Please be seated.

9 Good morning, Mr. Foreman, ladies and
10 gentlemen of the jury.

11 Juror 64, you are now a member of the jury
12 panel.

13 Juror 183, you are the remaining alternate.
14 As such, you may have a seat there or the seat in front
15 or behind you, but I need you remaining in one of those
16 two seats that are designated for the alternate.

17 Ladies and gentlemen of the jury, I remind
18 you that you are still under the oath that you took as
19 jurors when we began this case. As such, ladies and
20 gentlemen, I need to inquire has every member of the
21 jury followed the Court's admonition by not reading,
22 watching, listening to any news accounts if there were
23 any regarding this case. If you have abided by that
24 admonition and have not discussed this case with anyone,
25 please signify by raising your right hand.

1 (Whereupon, each member of the jury raises
2 their right hand.)

3 THE COURT: Let the record reflect that all
4 the jurors have indicated that they have followed the
5 Court's admonition.

6 Ms. Williams, please call your next witness.

7 MR. ALFARO: Your Honor, the state calls
8 Diane Freeman.

9 SERGEANT DIANA FREEMAN,
10 being first duly sworn by the clerk, is examined and
11 testifies as follows:

12 THE CLERK: Please be seated. State your
13 full name and spell your last for the record.

14 THE WITNESS: Diana Bernard Freeman,
15 F-R-E-E-M-A-N.

16 DIRECT EXAMINATION

17 BY MR. ALFARO:

18 Q. Good morning.

19 A. Good morning.

20 Q. Please tell the jury where you currently work.

21 A. Berkeley County Sheriff's Office.

22 Q. And how long have you been with the sheriff's
23 office?

24 A. Approximately 14 years.

25 Q. What are your current duties at the sheriff's

1 office?

2 A. Civil process and judgments.

3 Q. And prior to that position what other positions
4 have you held within the sheriff's office?

5 A. I've worked narcotics. I've worked selective
6 enforcement, worked in criminal investigations.

7 Q. And were you working in criminal investigations
8 -- when did you work in criminal investigations?

9 A. From 2000 till the end of 2007.

10 Q. And in that capacity did you have the opportunity
11 to become involved in the investigation into the
12 disappearance and death of Parrish Reeves?

13 A. Yes.

14 Q. And in what capacity did you become involved in
15 that investigation?

16 A. I was supervisor in criminal investigations, and
17 I assisted Detective Gerald Merrithew in the -- the
18 processing of this case and the investigation of this
19 case.

20 Q. And when you became involved in that
21 investigation, what -- what type of case was it
22 classified as?

23 A. It was a missing person, burglary, and larceny.

24 Q. And when was the last time the victim had been
25 seen?

SERGEANT FREEMAN - DIRECT BY MR. ALFARO

1 A. The -- between the 17th-19th of January of '01.

2 Q. And do you recall where he was living at that
3 time?

4 A. He was living on Alan Park Lane in Cordesville.

5 Q. And is that -- what county is that located in?

6 A. Berkeley.

7 Q. And who was the last person that reported seeing
8 him alive?

9 A. His wife.

10 Q. And when was his initial appearance -- or initial
11 disappearance reported to the sheriff's office?

12 A. The initial disappearance was several days after
13 he became missing. She had called and gave information,
14 and then she actually filed a report on February 1st of
15 2001.

16 Q. And at that time in 2001 were you involved in the
17 initial missing person investigation?

18 A. No, sir.

19 Q. Do you recall who was handling that portion of
20 the investigation?

21 A. I think it was Detective Alteri.

22 Q. And when did you become involved in the case?

23 A. In 2006, approximately August 2006.

24 Q. And at that time what did you do in that
25 investigation?

1 A. Looked in the pawnshop records. We were trying
2 to locate items that had been reported stolen. Just
3 various things to try to find Mr. Reeves.

4 Q. And you said you checked the pawnshops. Could
5 you describe for the jury how you went about doing that?

6 A. Berkeley County has a pawnshop record.
7 Everything that's taken to the pawnshop or sold is
8 entered into a database at the pawnshop. Now, keep in
9 mind there's only -- it's only as good as the person who
10 enters the information. So as long as the information
11 is correct, we're able to see it.

12 And they list the name of the person, their
13 identification, the type of items that were pawned, and
14 then we download once a week, and we're able to go back
15 and check any items that were listed. And we can check
16 it by a description of the item. We can check it by
17 name. We can check it by pawn. We can check it by
18 individual dates. So there's a lot of different ways we
19 can check it.

20 Unfortunately, some of the items that were listed
21 are rather difficult. They don't have serial numbers.
22 They don't have model numbers. You know, pieces like
23 jewelry and things like that don't.

24 Q. And in using that, utilizing that program in this
25 investigation, did you attempt to locate any items that

SERGEANT FREEMAN - DIRECT BY MR. ALFARO

1 were connected to the victim, Parrish Reeves?

2 A. Yes.

3 Q. And were you successful in doing that?

4 A. Yes, I was.

5 Q. And do you recall what items were recovered or
6 were located during that search related to Mr. Reeves?

7 A. There were -- there was a necklace which was a
8 lady's yellow in color chain. It had a charm on the end
9 with sixteen .08 carat round diamonds. There were
10 several other pieces that were identified as possible,
11 but this one we definitely had an idea.

12 Q. And with that, were you able to connect that to
13 the victim?

14 A. Yes.

15 Q. And how were you able to do that?

16 A. We were able to recover that item, and it was
17 positively identified by both the wife, Brenda
18 Ahrenholz, and by the mother, Frances Reeves.

19 Q. And where did you recover those items? How were
20 those items recovered?

21 A. We were able to go back through the pawnshop
22 records with the assistance of Gary Bowman which was the
23 manager of Money Man, and we found that that piece had
24 been sold, and we contacted the person that purchased it
25 and were able to get it back.

1 Q. And do you recall who pawned that item
2 originally?

3 A. That item was pawned by Katherine Feaster.

4 Q. And at some point in your investigation did you
5 determine that this was more than just a missing person
6 case?

7 A. Yes.

8 Q. And what did you do next in your investigation?

9 A. We -- we actually -- when we started, we had a
10 definite I.D. Then a warrant was obtained for -- for,
11 you know, the item, for the possession of stolen
12 property at that time because we couldn't say that she
13 stole it. We were sure that she had the necklace in her
14 possession. And we went to where she was located upper
15 state and -- in Anderson County, and got the warrant
16 countersigned and actually took her into custody.

17 Q. And did you have the opportunity -- that was
18 Katherine Feaster you're referring to?

19 A. Correct.

20 Q. And did you have the opportunity to speak with
21 her about the disappearance of the victim?

22 A. Yes, we did.

23 Q. And what was the nature of her relationship with
24 Mr. Reeves?

25 A. Stepdaughter.