VOLUME II OF III

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM HORRY COUNTY
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No: 2018-000117

JIMMY L. SESSIONS, RESPONDENT,

v.

STATE OF SOUTH CAROLINA, PETITIONER.

APPENDIX

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and place it over the gel lift, and in this case it was the heel area of the shoe that I found to be consistent. In other words, it corresponded in physical design, size and shape with the left shoe of State's 88.

But the transparent overlay is a very common practice that is used when conducting footwear examinations. It just enables me to better see, and to better line up the different lines and the different circles of the shoe.

Q. Now the gel lift that you compared it to, is that marked as a particular item number?

A. Yes Ma'am.

Q. And what is that marked as?

A. It would be -- my item is Item 78.

Q. And do you have an indication of where that gel lift came from?

A. It was indicated as being lifted from a bathroom floor.

Q. And I would like to show you State's Exhibit 61 that has been entered into evidence. Is that your Item 78?

A. It is. State's 61 is my Item 78, and it bears the S.L.E.D. laboratory number, as well as my initials, on both the back and the front. And State's 61 is a photograph of the questioned impression that is on this chart.

Q. Now you said you received other shoes as well; is that correct?

A. Yes Ma'am.

Q. And did you process those in the same manner?
A. I did.
Q. And did you compare them to this gel lift here that you got the match on for State's Exhibit 88? Did you compare that to 61 as well?
A. Yes Ma'am, I did.
Q. And what were your findings in relation to those other shoes?
A. The other shoes I found did not make the impression represented on State's 61.
Q. So they were excluded?
A. That's correct.
Q. I want to show you State's Exhibit 17, 87, 85, and 86.
A. Yes Ma'am. Each exhibit just mentioned are -- they all bear my initials, as well as the laboratory number, as well as the item number, and these are, in fact, the -- the other four pairs of shoes that I examined.
Q. And these were not consistent with State's Exhibit 61; is that correct?
A. That is correct.
Q. Did you indicate sizes on these as well, in your Report?
A. I did. In the report I have, my Item 68 is a -- I had one pair of Nike shoes at size 8. My Item 69 is a pair of Nike shoes, size 12, and then I have a -- my item 70 is

another pair of Nike shoes, size 8, and then I have another -- my Item 71 is a pair of Nike shoes, size 7.

Q. And did you look at any other impressions from the scene that you matched these shoes with, other than what we've been talking about in State's Exhibit 61?

A. Yes Ma'am, I did.

Q. And what other impressions did you look at?

A. I looked at a total of six gel lifts, and I also looked at a total of two taped lifts, and I compared each of those to the five pairs of shoes.

Q. And of those items did you find any others consistent, or exclude it in any of those items?

A. I found -- my Item 73, as well as my Item 74, 75, 76, were not identified with either of the pairs of shoes that I was asked to look at, to include all five pairs of shoes.

And then I had one -- one gel lift, which was my Item 77, was actually two partial to render any sort of a conclusion. And then I had -- I had -- my Item 79 on one of the tape lifts, the impressions were not identified with either of the five pairs of shoes. And then I had -- on the second tape lift, which was my Item 80, there was one impression that corresponded in physical design with four of the pairs of shoes, which had the same outsole design.

And I might add that, in that particular impression it was extremely partial, which means that all I could say about

that particular impression was that the -- it was -- it corresponded in physical design, and I couldn't go into anything further, such as the size or the shape or anything such as that, just because of the amount of impression was so limited.

Q. All right. Let me go back to Item 79. You said that was one Pro-Lift that you compared to; is that correct?

A. That's correct.

Q. And where is that indicated from?

A. It was marked, "Lifted from kitchen floor".

Q. And you indicated the results of that were what?

A. They -- that particular impression was not identified with either of the pairs of shoes that I had.

Q. With these that we have -- that we've just talked about?

A. That's correct.

Q. Now Item 80 is identified as a Pro-Lifter as well; is that correct?

A. That's correct.

Q. And where is that identified from?

A. Same as the other. It's marked "Lifted from kitchen floor".

Q. And you indicated that you did find some that were consistent, but it was very partial; is that correct?

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF **HORRY**)	**(07-GS-26-2961)(2962)(2963)**
)	**(07-GS-26-2974)(2975)(2976)**
STATE)	**(08-GS-26-2698)**
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)	
VERSUS)	TRANSCRIPT OF RECORD
)	
)	
JIMMY LEE SESSIONS)	February 2, 3, 4, 5, 6, 2009
and)	Conway, S. C.
CHRISTOPHER STEPHENS)	
)	
)	

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

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A. I did.
Q. And which shoe -- or let me ask you this, were one of the pair of shoes that you found consistent with that Pro-Lifter from the kitchen, also State's Exhibit 88, shoes belonging to Jimmy Lee Sessions?
A. Yes, it was.
Q. And they were also consistent with a few other pairs; is that correct?
A. That's right.
Q. And those are from the kitchen?
A. Yes Ma'am.
Q. Any other items you compared?
A. That was all that I had at the time.
Q. And just so I understand, the only shoes that you received that matched any of the prints in the bathroom ---
MR. GARDNER: Objection to the term matched.
Q. That were compared to State's Exhibit 66, were the shoes, State's Exhibit 88, identified as Jimmy Lee Sessions'; is that correct?
A. That's correct.
MS. ELDER: One moment, Your Honor.
Q. Agent Darnell ---
THE COURT: Just a second.
Q. Agent Darnell, you indicated that you could give an opinion of consistent.

A. That is correct.
Q. Explain to me why that opinion.
A. When -- when I conduct a footwear examination, one of the first things I look for is to see if it's the same physical design, then I look to see if it's the same size and shape. That -- those characteristics fall under the class characteristics. The next category of characteristics is what we refer to as random identifying characteristics which makes a particular shoe unique, nicks, cuts on the bottoms of your shoes, things that have been taken away from the shoe, so to speak, or in some cases, things that have been added. If you have a nail on the bottom of your shoe, or a rock or so forth, those types of characteristics are called random identifying characteristics which, like I said, would make a particular shoe unique.

In this particular case I was unable to find any random identifying characteristics to where I could positively identify the shoe, however, I could determine that it did consist in that it had the same physical design, same size and the same shape when compared to the questioned impression that I was asked to look at, so therefore my result would be that this shoe certainly could have made this impression, or any other shoe with the same physical size, design and shape.
Q. Tell me about wear pattern. How does that affect your examination?

A. Wear patterns would actually somewhat fall under the class characteristics to a degree. You know, everyone walks differently on their shoes, and you know -- but one of the most common areas of the shoe that wears would be the heel. You know, most of us will drag our heels somewhat, and cause that heel to wear. Some of us may walk on the sides of our shoes and cause the balls of the shoes to wear, but wear characteristics are taken into consideration whenever I do a comparison, and if I can find wear characteristics, I can't always -- I can't positively identify it with just wear alone, because it's so common, but that does help me, in some cases, to be able to eliminate or include certain shoes when doing a comparison.

Q. And did you take into account, when making your comparison on State's Exhibit 88, the Jimmy Lee Sessions shoes', wear pattern?

A. I did.

Q. And tell me how that factored into your opinion that they were consistent.

A. In this particular case, when I made the test impression, and of course -- and then when I could look at the shoe itself, before I even made the test impressions, I did see that there was some wear on the heel. Now, that particular wear pattern is not visible in the questioned impression, which that can be attributed to a number of

factors. You have to consider the time frame from when the incident took place, and the time that the shoes were collected or turned in for examination, and you also have to consider the fact that this questioned impression is an accidental impression. In other words, my test impression was made in a controlled environment. The questioned impression at the crime scene was just from normal walking and normal stepping, but in this case I did have some wear in the shoes that I couldn't particularly see in this questioned impression, so because of that I could not really go any further in saying that this shoe, and this shoe only, made the impression, so my result is simply that it could have made **(sic)** this shoe, or another shoe just like it, with the same design, size and shape.

Q. And wear pattern, if that impression was made in June of '06, and these shoes marked as State's Exhibit 88 were being worn until April of May of 2007, would you expect some wear?

A. Absolutely, and in fact, the -- whenever I do a footwear comparison, the sooner I get the shoes the greater chance I have of being able to make a positive identified, so, in essence, the longer that the shoes are being worn, or the longer that the shoes are out there, certainly has an affect on whether or not I can make a positive comparison as in this case.

Q. And even considering all of that, the wear pattern, you were still able to say consistent the Jimmy Lee Sessions, State's Exhibit 88, shoes, were consistent with the gel imprint, 61, State's Exhibit, from the bathroom at the crime scene?

A. Absolutely.

MS. ELDER: We have no further questions, Your Honor.

THE COURT: All right, Mr. Gardner.

MR. GARDNER: Thank you, Judge.

CROSS-EXAMINATION BY MR. GARDNER:

Q. Agent Darnell, I've just got a couple of questions I wasn't real sure about.

A. Yes sir.

Q. We have five shoes?

A. Yes sir, five pair of shoes.

Q. And we have -- is it two prints that had similar characteristics ---

A. Yes sir.

Q. ---Or consistency?

A. That's correct. Of all the ones I looked at there were two that were -- had some sort of correspondence.

Q. Okay. I'm not trying to trick you. I really don't know myself, but we've got -- it's two prints taken from the crime scene and five shoes compared ---

A. It's ---

Q. ---Or a bunch taken from the crime scene, compared, if two are the ones we are talking about?
A. Yes sir, there were a number of impressions that were submitted, to include the two that we are talking about, and then there were several pairs of shoes that were submitted.
Q. Got you. Okay. And the prints -- one print, if I understood it, is consistent with Exhibit Number -- State's Exhibit Number 88, and the other print is consistent with 88, plus three other sets of shoes ---
A. That would be correct, yes sir.
Q. ---That we've got here?
A. Correct.
Q. All right. So that second print is consistent with those shoes, that means it could have been those shoes that made it, could have not been?
A. That would be correct. I would have to say that that particular impression that was lifted from the -- I believe it was the kitchen floor, could have been made by either of those four pairs of shoes.
Q. Okay All right. And when you talk about general characteristics of a shoe, not the individualized parts of the shoe, size, that doesn't -- when you talk about the size of the shoe, you are not talking about the size that you buy at the store, size eleven, size twelve, size eight; you are talking about the size of the impression it makes, right?

A. For this purpose -- for the purpose of this examination that would be correct. I'm talking about the -- just the overall size of the impression of -- would -- corresponded to that shoe. I'm not referring to whether it's a size twelve or eleven or ---

Q. Yes, that you might go to a shoe store. Say, I wear a size eleven, so I need a size eleven; we are talking about ---

COURT REPORTER: Excuse me, Mr. Gardner.

Q. We are talking about something different ---

MR. GARDNER: I apologize, Ma'am.

Q. That's something totally different. That's the impression it makes?

A. That's correct, because one has to understand that the outsoles of shoes -- you could have a size -- it generally goes up a half a size either way. In other words, you can have the -- you can have the outsole on the bottom of a size twelve, and could also be on the bottom of a size eleven and a half, so -- but in this case, I'm not concerning myself with whether the shoe is a size twelve, or whether it's a size eight. I'm simply looking at the size of the impression.

Q. That's right, and that's what I thought, so that's what we are looking at. Okay.

A. Correct.

Q. The other thing is, the imprints taken from the crime scene, some of them -- the majority of them were gel lifters.

Is that them right there?
A. That was one, yes sir.
Q. Okay. That's the gel lifter, and the other ones were tapes. Tape lifters, is that the right nomenclature?
A. Yes sir. The manufacturer's name is actually a Pro-Lifter, but it's -- essentially what it -- it's an adhesive tape that was applied to the floor and lifted up.
Q. All right. But we can't -- we can't date that to the crime scene? These prints that were lifted with the Pro-Lifters and with the tape, they could have been lift -- they could have been placed at the crime scene way before the actual crime occurred?
A. I could certainly -- you know, I would certainly think so. I mean, I have no way of knowing -- I can't look at the questioned impression and tell you when they were put there, or anything such as that, so, yes sir, I would have to agree with you, there. Yes sir.

MR. GARDNER: Thank you, sir.

THE COURT: All right, Mr. Frederick.

MR. FREDERICK: I have no questions. Thank you.

THE COURT: All right. Redirect.

MS. ELDER: No, Your Honor. We would ask that this witness be excused.

MR. GARDNER: No objection, Your Honor.

THE COURT: Any objection?

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MR. FREDERICK: No objection.

THE COURT: All right. Very good.

All right, sir, you are released from your Subpoena. You may go back to your regular duties.

A. Thank you, sir.

MR. FREDERICK: Judge, can we approach for ---

THE COURT: Absolutely. Y'all come up.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen of the jury, we are going to take ---

FOREMAN: Some of us are still having a problem hearing.

THE COURT: Hearing. All right. So, I'll talk to them in just a minute.

Y'all go ahead and take a short break. There's a matter I need to take up with the lawyers outside your presence, so we'll take a break at this time.

Thank you.

Thank you, sir.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Why don't we just take a short break for about five minutes or so, then we will come back and we will deal with the issue that we need to before the jury comes back in. All right.

THE COURT: All right, Solicitor.

MS. ELDER: Yes, Your Honor. Before we bring out the jury we have a matter of the N.C.I.C., Your Honor, we want to review on the -- a potential witness that's scheduled to be called this afternoon.

THE COURT: All right, Ma'am.

MS. ELDER: I have provided that to the Defense attorneys. It's on Craig Burris.

Mr. Taylor is also present, Your Honor. He currently represents Mr. Burris on his pending charges.

THE COURT: Okay. And what is the record that the State has identified?

MS. ELDER: Your Honor, it's my understanding that -- going straight his convictions, there is a 2002 conviction in Federal Court for felony possession of a fire -- felon in possession of a firearm that would fall within the ten years. It would fall in the plus one category, Your Honor.

THE COURT: When was that?

MS. ELDER: It's a 2003 -- I'm sorry, pled guilty -- he was sentenced February 26, '05. He was sentenced to thirty-six months. I think that is on page -- these are very difficult to read, Your Honor. Page seven, I believe counting from the copy I gave the Court.

MR. FREDERICK: Page one of the second group, I think, at page one, two ---

MS. ELDER: Would you rather me go down all of them,

Your Honor? Would that be easier?

THE COURT: No Ma'am. No, it's -- this one is -- I'm looking at it.

MR. FREDERICK: It's about six or seven pages in it.

THE COURT: All right. Felon in possession of a firearm and that was 2/26/05.

MS. ELDER: That's when he was sentenced, yes sir, Your Honor.

THE COURT: All right. Go ahead.

MS. ELDER: Thank you.

MR. FREDERICK: Was he not convicted of the conspiracy to distribute cocaine?

MS. ELDER: I believe those are indicated as dismissed.

MR. FREDERICK: It says unknown.

THE COURT: I don't know. I -- what I have in front of me, under conspiracy to distribute crack cocaine greater than five hundred grams, says disposition, 8/28/02, dismissed, conspiracy to distribute cocaine, 8/28/02, dismissed.

MR. FREDERICK: I see it.

THE COURT: All right. Go ahead.

MS. ELDER: Thank you, Your Honor.

Continuing on, there is a -- I'm trying to make sure I don't miss any of them, Your Honor. There -- Your Honor, there is a 1996 conviction, toward the back. It's a weapon violation. He received a thirty-three month prison sentence

with three years supervised release. We believe that would fall within the Rule as well.

THE COURT: All right. Go to the one that's -- the one that's page one-oh-four ---

MS. ELDER: Yes sir.

THE COURT: ---And it says Davis Craig, on the front page.

MS. ELDER: Yes. That -- it's Craig Davis, Your Honor.

THE COURT: Craig Davis. Okay.

MS. ELDER: Yes sir.

THE COURT: All right. Go to the second page.

MS. ELDER: Yes sir.

THE COURT: And -- All right. So you are saying that burglary -- or is it -- I'm sorry, was it the second page or was it the third page?

MS. ELDER: I believe there's -- page two of four there is indicated a ---

THE COURT: I'm sorry. On page -- '84, that was the -- okay, so you are saying without the -- without the ten years then. All right. Those convictions. All right.

All right, so you went to what page now?

MS. ELDER: It's indicated as four of six.

MR. FREDERICK: Judge ---

THE COURT: Yes sir.

MR. FREDERICK: ---Back to the page you were looking

at, I just wanted to make sure -- page two of four of the second you were just referring to, it says a bench warrant was issued, disposition pending. That was '92, and I understand if he went to prison on that at some point, then the time would run from the time he was released or the time his parole was done. I'm trying to ---

THE COURT: I don't see that. If you would point that. You have to point that out to me. I don't see that in -- on there.

MR. FREDERICK: Page two of four ---

THE COURT: Yes sir.

MR. FREDERICK: ---In the last section you were looking at.

THE COURT: The last -- the bottom of that.

MR. FREDERICK: It's -- you said Craig Davis. At the bottom of the page, robbery second, murder two, attempted murder ---

THE COURT: I must be looking at a completely different page than you are looking at.

MR. FREDERICK: Bench Warrant issued.

THE COURT: All right. I must be -- page two of four that I have here is from 1984, 3/20/84, robbery first, Class (B) felony, convicted upon plea of guilty.

MS. ELDER: Your Honor, if you go past that, that page four -- those four pages, there's another, I believe ---

THE COURT: Another set of four?

MS. ELDER: Yes sir, Your Honor.

THE COURT: All right. So it's a different set of four pages.

MS. ELDER: Yes sir. They divided from Federal convictions, out-of-state convictions, South Carolina convictions.

THE COURT: All right. So you are talking about page two now, of that one?

MR. FREDERICK: It's page two of four. It must be the one after -- after that. At the bottom of the page I'm looking at it says "Attempted murder two, robbery first, robbery second". The date on that is August 27th, 1992. I says, "Bench warrant issued, disposition pending".

THE COURT: And then right after that it says, "Bench warrant vacated" on the next page?

MS. ELDER: Yes sir. And I believe he was committed --

THE COURT: 3/25/93, bench warrant vacated.

MR. FREDERICK: Yes sir. Yes sir.

MS. ELDER: And he was committed following that, for 5/21/93 he was committed for a weapons offense, Your Honor, that we would say would be outside of the period.

THE COURT: So I would -- that is my understanding of that -- which would bring you up as a bench warrant, and then

it was -- bench warrant was vacated the next year.

MR. FREDERICK: What was the disposition of the murder and armed robbery charges?

THE COURT: Don't see it. But those are from 1993. I'm not going to have them question him from 1993, when there is no indication that he was convicted of those.

Continue on.

MS. ELDER: I believe the one I was talking about, Your Honor, was in that next group of one through six. It's on page ---

THE COURT: One through six.

MS. ELDER: Yes sir.

THE COURT: Hold on a second. What page are you on?

MS. ELDER: Page four.

THE COURT: That was the ---

MR. FREDERICK: Weapon violation.

THE COURT: Well, at the top of the page it's possession of cocaine, sentence two years.

MS. ELDER: That was the 1986 conviction, Your Honor.

THE COURT: All right. Very good. All right.

MR. FREDERICK: The weapon violation was 1996.

MS. ELDER: Yes sir, and his sentence would have been thirty-three active months, with three years supervised release. We would recognize ---

THE COURT: So that would -- that would come in. All

right.

MS. ELDER: Yes sir.

THE COURT: All right. Good.

MR. FREDERICK: That would count, is that right?

THE COURT: Yes sir.

MS. ELDER: Yes sir.

THE COURT: Yes sir.

MS. ELDER: And Your Honor, there's another possession of a weapon in 1995.

THE COURT: Fifty-seven months custody, three years supervised release, so that would qualify also then.

MS. ELDER: Yes, on page -- that would be page five, Your Honor?

THE COURT: On the top of page five.

MS. ELDER: Yes.

THE COURT: All right.

MS. ELDER: And Your Honor -- Your Honor, we would -- we would say that would be the extent of those two -- those three convictions would be the extent of what is permissible under the Rule.

THE COURT: All right. What's your position, Mr. Gardner?

MR. GARDNER: We've been looking at it, Judge, and that's all we see.

THE COURT: All right, sir.

Mr. Frederick.

MR. FREDERICK: That's all I see.

THE COURT: All right. Very good.

MS. ELDER: Your Honor, there is -- I want to make sure that we are clear. He is under current charges, that those would not be addressed.

THE COURT: Okay. What current charges does he have now?

MS. ELDER: He's got a pending murder, Your Honor.

THE COURT: I'm sorry.

MS. ELDER: He's got a pending murder charge.

THE COURT: Okay. In the State of South Carolina or where?

MS. ELDER: Here, yes sir.

THE COURT: Okay.

MS. ELDER: He's actually incarcerated right now for that. That murder charge came about this year in -- I'm sorry -- in '08. He gave a statement to police prior to that charge, or that -- him being charged with that offense. He gave us a statement -- statement to the police regarding this case, and what he's going to testify today, in April of '07.

THE COURT: All right. What's your position, Mr. Gardner?

MR. GARDNER: I think we should be able to impeach him on -- as part of the motivation impeachment that Mr. Frederick

has talked about all week, because he's obviously testifying in hopes of favorable treatment today at ---

THE COURT: Well, I don't know if he is or not, but I understand your position.

Mr. Frederick.

MR. FREDERICK: I don't think there's any doubt about it, Judge.

THE COURT: All right. Solicitor, I'm going to allow them to ask -- or you can ask, and certainly they can ask, if he is currently facing murder charges, and then obviously y'all are welcome, or anyone is welcome to point out when he gave the statement, when he was charged, and any differences between the prior statement that he gave before he was charged, and his statement today, whatever testimony he may give today. All right.

MS. ELDER: Yes sir.

MR. FREDERICK: And Judge, this -- also point out, when he gave the statement he was in jail, and it was not on this charge. It was on another charge. What charge was that that he was being held on?

MS. ELDER: He was -- those were the A.B.W.I.K., kidnapping charges that were dismissed.

MR. FREDERICK: It was on -- well, A.B.W.I.K. and kidnapping.

THE COURT: Wait a minute. What -- where is that in

his -- in the ---

MS. ELDER: Your Honor, that -- I believe that is on page -- I don't see -- he may have had it expunged, Your Honor, and taken off. It was -- I know that it was a kidnapping charge. It's referenced in the Report, and it's also referenced in the Report that those charges were dismissed because he passed the polygraph, and he had -- I believe he had an alibi, and he passed the polygraph, Your Honor.

MR. FREDERICK: Judge ---

THE COURT: Yes sir.

MR. FREDERICK: ---She sent a letter to Investigator DiLorenzo in April of 2007, specifically saying that he wanted to talk to him because he wanted help on his kidnapping charge. He said that ---

THE COURT: I'm going to allow you to bring that up.

MR. FREDERICK: Okay. Just ---

MS. ELDER: Are we going to be allowed to get into why that charge was dismissed, and him passing the polygraph?

THE COURT: That he has an alibi -- no, not that he passed the polygraph, no. You are not going to mention the word polygraph. He had an alibi, and based upon the evidence the police determined that he was not the person that committed the crime, and therefore the charges were dropped, but you will not mention the word polygraph to this jury.

All right. Ask the jury to come in, please.

MS. ELDER: Can Mr. Taylor, who is here, have an opportunity to caution him on the use of that, Your Honor? I have not done so at this time.

THE COURT: Well, y'all do it real quick, because the jury is coming in.

MR. FREDERICK: Judge, we have a ---

MR. GARDNER: If he's the next witness we have a matter of law to be taken up, we alluded to in chambers.

Is he the next witness?

MR. FREDERICK: Question, Judge, is, if they plan on eliciting ---

THE COURT: Go tell them -- go stop the jury.

I'm sorry. Go ahead.

MR. FREDERICK: If they plan on eliciting testimony about statements made at the Jet Age Night Club, I think it needs to be addressed in limine, because they can tell us if they intend on eliciting those statements or not. If they are just going to ask him about ---

THE COURT: Shut the door.

Go ahead.

MR. FREDERICK: If they are just going to ask him about what he said regarding an alleged conversation at the jail, then we have no problem. If they intend to elicit testimony from him regarding a conversation with Jimmy Lee Sessions at

the Jet Age Nightclub, then as we addressed prior to trial, we have a rather serious issue because ---

THE COURT: What is that issue?

MR. FREDERICK: In his original statement he told them that Jimmy Lee Sessions told him all about the Friendly's robbery at the Jet Age Nightclub. Later, from our understanding -- our investigator has gone and spoken with him -- he's now telling the prosecutors that Jimmy Lee Sessions told him about this murder at the Jet Age Nightclub. His story changed, and if he is to testify as to -- if he were to testify as to what happened, or any alleged conversation at the Jet Age Nightclub, Mr. Gardner and myself have to impeach him with the substance of what he said the first time, because it is clearly an inconsistent statement.

THE COURT: Okay.

MR. FREDERICK: That would bring in the issue of the Friendly's robbery, Judge, and that puts us in a dilemma that we have no way out of. We either are going to have to impeach his testimony, and tell the jury that there was a discussion about a friendly's robbery that he says that Jimmy Lee Sessions confessed to, or we are going to have to not impeach his testimony, so we are looking at a choice between violating one or the other of two rights.

THE COURT: Well, I don't see -- I don't see that, because you would be able to then ask -- and there is no

question from the State that these individuals were not charged with that offense, correct ---

MS. ELDER: That's correct, Your Honor.

THE COURT: ---And they have not been charged by the State, and that -- that's clearly the case, so you will be able to elicit that testimony, but I don't see that as being -- putting you in a position where you cannot cross-examine the witness.

MR. FREDERICK: Just to make sure I'm clear for the record, Judge. We are going to be forced to elicit testimony regarding a prior uncharged robbery.

THE COURT: I'm not going to force you to do anything.

MR. FREDERICK: If that witness takes the stand, and testifies as to a conversation at the Jet Age Nightclub, then we either have to not cross-examine that witness, and let his testimony stand without challenging it, which violates both of our clients' Fourteen Amendment Right to Confrontation, or we have to challenge that testimony and introduce evidence of a prior uncharged robbery ---

THE COURT: Well, not challenging it doesn't violate their rights. That's your decision. That's a tactical decision that you make. You have all the ability, and the right to challenge it in any way you deem proper. That is your choice. I'm not having you make any choice. I'm going to allow the witness to testify, and you can challenge him or

not challenge him, based upon your decision, and your tactical decisions as to what you decide to do or not to do, but that's your choice.

MR. FREDERICK: And I would ask the Court, outside the presence of the jury, to allow us to make a record of what we have to impeach that witness with.

THE COURT: We can do that when we are done with the testimony today and we have let the jury go. All right.

Let's call the jury in.

MS. ELDER: Could we bring him out, Your Honor, and have him sit ---

THE COURT: I mean, you are going to be asking him that he's currently incarcerated, correct?

MS. ELDER: Yes sir, Your Honor. Just like we had with Antwann Higgins. That's ---

THE COURT: All right.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, your next witness, please.

MS. ELDER: Your Honor, the State would call Craig Burris.

THE COURT: Please come around and be sworn, sir.

CRAIG BURRIS, being first duly sworn, testifies as follows:

THE COURT: Go ahead, Solicitor.

MS. ELDER: Thank you, Your Honor.

DIRECT-EXAMINATION BY MS. ELDER:

Q. Your name is Craig Burris; is that correct?

A. Yes Ma'am.

Q. Where are you currently at?

A. J. Reuben Long Detention Center.

Q. Is that the Detention Center?

A. Yes Ma'am.

Q. Now, I want to get a few things out of the way first about your record. You have a conviction for a felon in possession of firearm back -- looks like you were sentenced in 2005; is that correct?

A. Yes Ma'am.

Q. You have another weapon violation, looks like you received the sentence for in 1994; is that correct?

A. Yes Ma'am.

Q. And another weapon violation in 1995; is that correct?

A. Yes Ma'am.

Q. And right now you are currently incarcerated for a very serious offense; is that correct?

A. Yes Ma'am.

Q. And that's murder?

A. Yes Ma'am.

Q. You were arrested for that August 6, of 2008; is that

right ---

A. Yes Ma'am.

Q. ---For an offense that occurred around that time?

A. Yes Ma'am.

Q. I want to take you -- well, let me ask you this first. Did you know Jamilla Hightower and Monica Wall?

A. Yes Ma'am.

Q. Do you know who they were?

A. Yes Ma'am.

Q. Did you live in the Myrtle Beach area, or grow up in the Myrtle Beach area?

A. I lived in the Myrtle Beach area.

Q. So did you know them just in passing?

A. Yes Ma'am.

Q. Do you recall hearing about their deaths ---

A. Yes Ma'am.

Q. ---Sometime in '06 ---

A. Yes Ma'am.

Q. ---In June; is that correct?

A. Yes Ma'am.

Q. And do you know Jimmy Lee Sessions and Christopher Stephens?

A. Yes Ma'am.

Q. How well do you know them?

A. Socialize with them.

Q. Party with them?
A. Somewhat.
Q. I want to take you back to June of 2006. At some point in time after hearing -- shortly hearing the death of Jamilla Hightower and Monica Wall, did you have a conversation with Jimmy Lee Sessions at the Jet Age?
A. Yes Ma'am.
Q. What is the Jet Age?
A. A little social club.
Q. And what kind of things do you do at the Jet Age?
A. Listen to music, drink, hang out.
Q. And do you recall being there?
A. Yes Ma'am.
Q. Anything jog your memory about June of '06, that you recall being there at that particular time?
A. Well, it was a regular night, just hanging out in there, drinking, socializing.
Q. Were you in there -- were you incarcerated thereafter?
A. '06?
Q. Yes.
A. Yes Ma'am.
Q. So let me take you to the Jet Age that night, and you had a conversation with Jimmy Lee Sessions.
A. Yes Ma'am.
Q. What was the general gist of that conversation?

A. Hanging out.
Q. Y'all hanging out together at Jet Age?
A. Yes, for a few minutes, for a little while. He came through, stopped. Like I said, it's just a -- like a pit stop. You just come through and hang out, have a couple of beers, or whatever.
Q. And did you see him later that evening?
A. Yes Ma'am.
Q. Where did you see him at?
A. "LeeLee's" house.
Q. And who is "LeeLee"? Is he associate/friend?
A. Yes.
Q. Where does he live?
A. Sandy Gate, in Myrtle Beach.
Q. And how did you go -- how did you come to be at "LeeLee's" house that night?
A. I was invited.
Q. By who?
A. "Snagger".
Q. Do you remember if this was a Thursday, Friday?
A. Thursday night.
Q. Thursday night, after midnight?
A. Yes Ma'am. Friday morning.
Q. That would be Friday morning?
A. Yes Ma'am.

Q. And why did Jimmy Lee tell you to come over there?
A. So we could party, get high together.
Q. And did you go?
A. Yes Ma'am.
Q. Did you do drugs at that time?
A. Yes Ma'am.
Q. What kind of drugs did you do?
A. Cocaine, Marijuana.
Q. And did you, in fact, leave Jet Age and go to "LeeLee's" house?
A. Yes Ma'am.
Q. When you got there who was there?
A. Jimmy Lee, "LeeLee", I think his girlfriend, somebody else, and Chris.
Q. And Chris Stephens, the Defendant?
A. Yes Ma'am.
Q. Do you recall, or do you remember anything about what Jimmy Lee Sessions had on that night?
A. No Ma'am.
Q. What about Chris Stephens, do you remember any of that?
A. No Ma'am.
Q. Okay. You went over to "LeeLee's" house. Did you party there?
A. Yes Ma'am, for a little while.
Q. What kind of things did you do there?

A. Sniff cocaine and smoke weed.
Q. Whose cocaine were you sniffing?
A. "Snagger's", Jimmy Lee.
THE COURT: You need to speak up just a little bit.
A. Jimmy Lee.
Q. All right. Did Jimmy Lee Sessions give you the cocaine?
A. Yes Ma'am.
Q. Did he tell you where he got it from?
A. No Ma'am.
Q. Tell me about the amount of cocaine he was letting you share with him.
A. He gave me about a gram or two, equivalent in the industry about -- about a Hundred Dollars worth.
Q. Now, you've got to tell us, is that -- is that normal? Is that abnormal? Do you usually share with your friends like that, and share a Hundred Dollars worth at a time?
A. Not really, unless you've got it like that, I mean, a Hundred Dollars, I mean, you don't just throw away a Hundred Dollars unless ---
Q. What were you thinking at the time, when he gave you that?
A. He was partying, celebrating.
Q. Did he tell you what he was celebrating?
A. He said he just came off, like, hit a lick, just like a

robbery or something.
Q. And what's a lick?
A. A robbery.
Q. Is it a particular kind of robbery?
A. Yes Ma'am.
Q. Is it a drug robbery?
A. Could be.
Q. And what was he doing while -- he gave you the cocaine; is that right?
A. Yes Ma'am.
Q. And what was he doing while you were in there partying?
A. Just partying, moving around, talking to the other people that was there.
Q. And did you have any other conversation about this lick that he just hit?
A. No Ma'am.
Q. After y'all got through partying what did you do?
A. Time to go home.
Q. Was Jimmy Lee and Chris Stephens talking to each other there?
A. Yes Ma'am.
Q. Do you know what they were talking about?
A. No Ma'am.
Q. Where were they in connection with you? If you were in one room, where were they?

A. In the bedroom, bathroom.
Q. What were they doing back there; do you know?
A. No Ma'am.
Q. How long did you stay there?
A. Couple of hours.
Q. Was Jimmy Lee and Chris there with you during that time?
A. Yes Ma'am.
Q. Were there other people coming out and in?
A. Chris was going in and out.
MS. ELDER: One moment, Your Honor.
THE COURT: Yes Ma'am.
Q. Before we leave that particular evening, just a general question. Why would Jimmy Lee offer to give you cocaine? What was y'all's relationship?
A. That was basically what it was based on.
Q. Drugs?
A. Yes Ma'am.
Q. Had that been going on for a while between you two?
A. Well, occasionally.
Q. All right. Y'all hung out. Y'all did stuff like that?
A. Yes Ma'am.
Q. All right. So that wasn't the first time?
A. It wasn't that abnormal.
Q. All right. Was it the first time he gave you that

much?
A. Yes Ma'am.
Q. All right. Moving on from that night, after that, did you have an occasion to talk, to have a conversation with Jimmy Lee Sessions about Jamilla Hightower and Monica Wall's deaths?
A. Briefly.
Q. All right. Tell me about that. Tell me about what that conversation -- how that -- what -- what was that conversation?
A. You mean how did it come about?
Q. Yes. Let's start there. How did it come about?
A. Okay. Well, first of all, me and Jimmy Lee, we have the same nickname. They also call me "Snagger" too. It's a nickname from when I was a child. I used to like watching the cartoon, so ---
Q. What cartoon is that?
A. "Snagger Puss".
Q. Okay. And you have had that since you were a child?
A. Yes Ma'am, about four or five years old.
Q. And -- all right, so you have a similar nick -- street name, nickname, as Jimmy Lee Sessions?
A. Yes Ma'am.
Q. All right. So what happened next?
A. Well, the word was going around that "Snagger" was

alleged ---

MR. GARDNER: I'm going to object to the word "going around" as hearsay, Your Honor.

THE COURT: Sustained.

Q. All right. Don't tell me what other people said; just tell me why you approached, if you did approach Jimmy Lee Sessions.

A. Well ---

Q. Did you initiate a conversation with him?

A. Yes Ma'am.

Q. Why did you initiate that conversation?a

A. Because I wanted ---

THE COURT: That's -- don't ask that question. Let's go further, because that will go into the same area that I just sustained.

MS. ELDER: Yes sir.

Q. When you initiated that conversation, tell me what y'all talked about.

A. Well, I was trying to find out a little bit about what happened with Jamilla, you know, the killing.

Q. Okay. And what did you find out?

A. Well, he said, briefly -- he didn't -- he didn't get into much of it, but he just said it just got out of hand, it was something -- it wasn't meant to happen the way it happened, it got out of hand.

Q. What got out of hand?
A. The robbery.
Q. Of Jamilla Hightower?
A. Yes Ma'am.
Q. And what was he talking about, it got out of hand?
A. I guess they probably resisted.
Q. All right. Did he say what he did to them when they -- if they resisted or what they ---
A. No Ma'am.
Q. Do you have any idea what he meant by saying it got out of hand?
A. Yes, I ---

THE COURT: Sustained.

Q. Tell me again what he said to you.

MR. GARDNER: Objection. Asked and answered, Your Honor.

THE COURT: I'll allow that. You may ask it.

A. Well, he said he went on the robbery, the lick, and it got out of hand, that's all.
Q. And the robbery I believe he was referring to, was that Jamilla and Monica?
A. Yes Ma'am.
Q. Did he use their names?
A. He just said the girls.
Q. Okay. You knew who he was talking about?

A. Yes. Yes Ma'am.
Q. After that conversation with Jimmy Lee, did you make contact with Myrtle Beach Police Department?
A. Yes Ma'am.
Q. And do you recall how you made that contact?
A. Yes Ma'am.
Q. Did you send a letter ---
A. Yes Ma'am.
Q. ---To one of the investigators?
A. Yes Ma'am.
Q. And on April 5th, 2007, do you recall talking to Investigator Eric DiLorenzo?
A. Yes Ma'am.
Q. Did you tell him what you just testified to?
A. Yes Ma'am.
Q. And when you talked to him in April of 2007, you had charges pending?
A. Yes Ma'am.
Q. And they were dismissed?
A. Yes Ma'am.
Q. Was that because you provided an alibi for those charges?
A. Yes Ma'am.
Q. Did it have anything to do with you giving the statement on April 5th, 2007?

A. No Ma'am.
Q. And the statement that you gave Detective DiLorenzo back in April of '07, was that prior to you getting your current murder charge in August of '08?
A. Yes Ma'am.
Q. You didn't have that charge pending then, did you?
A. No Ma'am.
Q. And the State certainly has made no promise to help you with that charge?
A. No Ma'am. No Ma'am.
Q. And I believe we even brought you here today?
A. Yes Ma'am.
Q. Your lawyer is here with you; is that correct?
A. Yes Ma'am.

MS. ELDER: Just a moment, Your Honor.

That's all the questions we have for this witness, Your Honor.

THE COURT: Mr. Gardner.

MR. GARDNER: Thank you, Judge.

CROSS-EXAMINATION BY MR. GARDNER:

Q. Mr. Burris, that letter that the Solicitor has talked about, you wrote that to Myrtle Beach -- you were in the jail when you wrote that, correct?
A. Yes sir.
Q. And in that letter you asked for help on your pending

charges in exchange for this information, correct?
A. No sir.
Q. You deny referring to having information and wanting help for your charges?
A. Not -- not in those words though.
Q. All right. I'll break it down for you. You sent a letter to the Myrtle Beach Police Department ---
A. Yes sir.
Q. ---Asking for help on your pending charges?
A. Yes sir.
Q. Okay. And you told them that you had information about this case?
A. Yes sir.
Q. All right. And you -- those charges ultimately were dismissed?
A. Yes sir.
Q. And you've been in the system for a while now, right?
A. Yes sir.
Q. And you've got this murder charge pending right now?
A. Yes sir.
Q. And you know how the system works. You help the State, the State helps you, right?
A. I guess.
Q. Well, we just talked ---
A. I never experienced that before, so ---

Q. Well, we just went through one, right?
A. No sir.
Q. Okay.
MR. GARDNER: I don't have anything else.
THE COURT: Mr. Frederick.
MR. FREDERICK: Yes sir. Beg the Court's indulgence. Judge, if you don't mind, just going to move some of this around.
THE COURT: Certainly.
MR. FREDERICK: Thank you.
THE COURT: How about -- and then move the microphone closer to you too.
MR. FREDERICK: That was the idea.
THE COURT: Very good, sir.
CROSS-EXAMINATION BY MR. FREDERICK:
Q. Craig ---
A. Yes sir.
Q. ---So you -- you did know Jamilla, right?
A. Yes sir.
Q. Did her cocaine taste like cucumbers?
A. No sir. I don't -- no sir.
Q. Have you ever tasted cocaine like cucumbers?
A. No sir.
Q. Never?
A. No sir.

Q. Does that sound pretty crazy?
A. Yes sir.
Q. Okay. Thank you. I've got to go through a few things. I mean, you -- you've got a record, right?
A. Yes sir.
Q. We touched on that already. There was a felony in possession. That was in Federal Court, right?
A. Yes sir.
Q. 2005?
A. Yes sir.
Q. Weapons violation, 1996, sound right?
A. '96.
Q. Federal Court again.
A. Yes sir.
Q. 2005 -- actually let me back up. That felony in possession, 2005 -- 1995, was just a possession of a weapon.
A. Yes sir.
Q. Does that sound right?
A. Yes sir.
Q. Okay. The time that you said you were at "LeeLee's" house, that was after these murders were suppose to have happened?
A. I'm not sure.
Q. Well, you said there was cocaine.
A. Yes sir.

Q. I mean, the idea was, the cocaine came from the murderers, right?
A. I believe so.
Q. Okay.
A. Yes sir.
Q. So it would have been afterwards, right?
A. Yes sir.
Q. Okay. In April of 2007, you sent a letter to Investigator DiLorenzo, saying that you wanted to talk to him?
A. Yes sir.
Q. Okay. And you told him that you wanted to talk to him because you wanted help on your kidnapping charge?
A. Yes sir.
Q. Okay. And your interview with him was recorded, right?
A. Yes sir.
Q. Okay. At the time you were charge with kidnapping?
A. Yes sir.
Q. What other charges did you have pending at the time?
A. Parole violation.
Q. Okay. Was there anything else?
A. I was being -- I was a suspect in the murder of -- of Jamilla.

MS. ELDER: Objection, Your Honor.

THE COURT: Sustained. Ask the question you need to ask, Mr. Frederick.

Q. Kidnapping, it carries thirty years, doesn't it?
A. Yes, I guess.
Q. Okay. You don't want to go to prison for thirty years, did you?
A. I don't want to go to prison for something I didn't do, period.
Q. But you don't want to go to prison for thirty years regardless, do you?
A. No sir. No sir.
Q. Okay. And you were in jail at the time?
A. Yes sir.
Q. Fair to say that, at that time you were thinking as hard as you could about how you could get out of that place?
A. No, I was just trying to fight my case, that's all.
Q. Did you want to get out of jail?
A. Of course.
Q. Okay. Now, everybody down at the jail at that time was talking about this case, weren't they?
A. I can't speak for everybody. I don't know.
Q. Just -- I mean, you were there. You were around.
MS. ELDER: Objection, Your Honor.
THE COURT: Sustained. Rephrase your question.
Q. "LeeLee" Washington was talking about this case.
MS. ELDER: Objection, Your Honor.
THE COURT: I'll allow that question. It's a yes or a

no answer.
A. I don't know.
Q. Okay. Fair enough. Hubert Washington had been down there talking about this case?
A. I don't know.
Q. Okay. And that's a fair answer. If you don't know just say you don't know. That's fair.
Now, you also told Investigator DiLorenzo if he could get rid of your kidnapping charge you would give him information about this murder, didn't you?
A. Yes sir. Actually my words was, if they could investigate and look into it, because I was in falsely accused, because I wasn't even in the State of South Carolina when the charge -- when the kidnapping happened. I was in New York.
Q. Okay.
A. I just wanted somebody to look into the matter.
Q. And you also said to him, if he could look into your kidnapping charge, and get the Solicitor's Office to listen to you, you would talk to them about what you knew about the Pridgen Road homicide? Fair enough?
A. Fair.
Q. You wanted them to listen to you?
A. Yes sir.
Q. Okay. That kidnapping charge got dismissed, didn't it?

A. Yes sir.
Q. It was dismissed four days after you talked to Investigator DiLorenzo?
A. Around thereabout.
Q. Thereabouts. Okay. And you were released from jail after it was dismissed?
A. No. I went to Florence, supervised release, violation, parole violation.
Q. But at some point you got out of jail?
A. Yes Ma'am. Yes sir.
Q. Okay. Is your attorney present in the courtroom today?
A. Yes sir.
Q. That's Paul Taylor?
A. Yes sir.
Q. All right. And now you are charged with murder?
A. Yes sir.
Q. In August of 2008, you were arrested and charged with murder?
A. Yes sir.
Q. So you are back in jail again?
A. Yes sir.
Q. And you don't like being in jail still, right?
A. I don't think anybody likes to be in the jail.
Q. Fair enough.
A. Yes sir.

Q. Can you describe what jail is like?
A. Can I describe. It's hard to say. It's hell.
Q. Okay.
A. Hell. Like hell.
Q. It's like hell.
A. Not being able to do anything you want to do, have to listen to, you know, the officers.
Q. I understand. It's lonely?
A. Can be.
Q. Concrete floors?
A. Yes sir.
Q. Steel bars?
A. Steel doors.
Q. Meals aren't too good?
A. No sir.
Q. Separated from your family?
MR. RICHARDSON: Your Honor, objection. It's kind of repetitious at this point.
THE COURT: Sustained.
Q. Bottom line is, you do want to be free?
A. Of course.
Q. Okay. And you would do just about anything at this point to have your freedom, wouldn't you?
A. No sir.
Q. You are facing a life sentence in prison, aren't you?

A. I believe so.
Q. So if you don't get some help on your charges you may never be free again?
A. Actually I don't need any help on my charges.
Q. Okay. Do you consider yourself to be a violent person?
A. No sir.
Q. Do you use drugs when you are not in jail?
A. Yes sir.
Q. But you've been charged with kidnapping, you are charged with murder ---
A. Yes sir.
Q. ---But you are not a violent person?
A. No sir.
Q. Did you tell Investigator DiLorenzo that if you had known what kind of money those people had that you would have killed them?
A. No. I don't remember that.
Q. Are you sure?
A. I'm positive. I might have. But I don't remember.
Q. Yes or no.
A. I don't remember.
Q. Craig Burris' interview with Investigator DiLorenzo in June.

MR. RICHARDSON: June or April?

MR. FREDERICK: April. You are right.

Beg the Court's indulgence.

THE COURT: Yes sir.

(MR. FREDERICK PLAYED A PORTION OF A TAPED INTERVIEW GIVEN PREVIOUSLY BY CRAIG BURRIS.)

Q. Was that you?

A. Yes sir.

Q. Okay.

A. You said I was -- I would have killed her, or killed them, for the money. I didn't say that. I didn't hear that.

Q. I'm sorry. So what you said was more like, if you had had your god damn gun on you you would have damn sure got that money?

A. From them, not from Jamilla and them.

Q. Okay.

A. But ---

Q. You would have killed them, you wouldn't have killed Jamilla?

A. I didn't say kill anybody.

Q. You would have got the money from them?

A. Yes.

Q. Okay. Fair enough. Did you ever tell Investigator DiLorenzo that you saw a gun, that Jimmy Lee had a gun?

A. Not -- not in those words.

Q. Let's walk through this, break it down. At first you told them that Jimmy Lee had a gun; is that right, at first --

-

A. I believe so.

Q. ---In the recorded interview?

A. I believe so.

Q. Okay. And he did -- kept questioning you about that; you talked to him about it for a while, right?

A. Yes sir.

Q. You told him you thought it was an automatic gun, sound right?

A. Yes sir.

Q. All right.

A. I said I had never seen him with a revolver before.

Q. And you said you never saw him with a chrome gun?

A. Yes sir.

Q. All right. A little bit after that you told him you couldn't pick the gun out of a line-up. He asked you if he lined up some ---

A. Yes sir.

Q. ---Guns could you pick it up and you said, no, I couldn't pick it out of a line-up; is that right?

A. Yes sir.

Q. All right. A little bit further, after he questioned you some more, you finally admitted that you never saw a gun? Do you remember that?

A. Yes sir.

Q. Okay. Then you said, well, you just kind of expected a gun?
A. Yes sir.
Q. And then you said you had a vibe that he had a gun?
A. Yes sir.
Q. So you lied to the investigator about the gun?
A. No, I didn't lie to him. I ---
Q. Well, let's go back to the beginning, Craig. When you said he had a gun, was that a lie?
A. No sir.
Q. Was it the truth?
A. Yes sir.
Q. So then when he said, you never saw a gun, is that the truth?
A. Yes, at the particular time.
Q. Okay. You knew that they wanted to hear that Jimmy Lee had a gun, didn't you?
A. Not really.
Q. You didn't know that that's what they wanted to hear?
A. At that time it didn't matter to them, I guess.
Q. All right. Let me ask you this, if you think it will help them, you know that will help you; is that right? Fair?
A. Yes sir.
Q. All right. When you talked to Investigator DiLorenzo, and on direct-examination today, you said you went to "LeeLee"

Washington's house the night of the murders, right?
A. Yes sir.
Q. You told DiLorenzo that you were there all night, and you left sometime before seven in the morning?
A. Yes sir.
Q. You told him you were there, all there, getting high and partying?
A. Yes sir.
Q. You know "LeeLee" Washington, right?
A. Yes sir.
Q. You know Hubert Washington?
A. Yes sir.
Q. Okay. And you knew at the time that this was a story that "LeeLee" was suppose to tell to the police?
A. A story that ---
Q. That "LeeLee" was suppose to tell to the police?
A. What story?
Q. What you told the police, about "LeeLee" Washington's house?
A. No sir.
Q. You knew at the time there was reward money being offered also?a
A. No.
Q. Did you know that "LeeLee" has testified in prior proceedings ---

MR. RICHARDSON: Your Honor, objection.

MS. ELDER: Objection.

THE COURT: Sustained.

The jury will disregard that comment by the Defense counsel. Thank you.

Move along.

Q. Back in 2007, you discussed all this with "LeeLee", didn't you?

A. No sir.

Q. You were first interviewed in this case in April of 2007, right?

A. I believe so.

Q. And who all was present at that interview?

A. Sergeant DiLorenzo.

Q. Was it just him?

A. Yes sir.

Q. Okay. How long, roughly, how long was that interview?

A. I'm not sure.

Q. Longer than an hour?

A. I'm not sure.

Q. Okay. When were you next interviewed by the police?

A. I'm not sure. A little while ago.

Q. All right.

A. But I know I -- I was -- shortly after.

Q. Shortly after then?

A. Probably.
Q. Okay. And did you talk to the police again since then?
A. Since then?
Q. Yes.
A. Now?
Q. Well, between then and now.
A. Talk to the police?
Q. Police, prosecutors, law enforcement?
A. Yes, yes, yes sir.
Q. Okay. When was that, roughly?
A. Prosecution, about a week, month, about -- in this -- about a couple of weeks ago.
Q. Recently ---
A. Yes sir, recently.
Q. ---They came and talked to you?
A. Yes sir.
Q. You also talked to Defense attorneys?
A. Yes sir.
Q. Okay. And an investigator?
A. Yes sir.
Q. That was my investigator, right?
A. I believe so.
Q. Okay. Last time you talked to the Prosecutor who was present at that interview?
A. Prosecutor, both Prosecutors at the table right there.

Q. Both of these Prosecutors?
A. Yes sir.
Q. Okay. Was it just them?
A. The Detective right there.
Q. Detective that's sitting in the chair behind them?
A. Yes sir.
Q. How long did that interview take, roughly?
A. I'm not sure.
Q. More than an hour?
A. I'm not sure.
Q. Okay. Was that interview recorded?
A. I'm not sure about that either.
Q. Did they tell you they were recording it? Usually they will tell you.
A. I don't think so.
Q. Okay. Back when you first spoke to the police, April of 2007, you were in a cell with Belal Harris, weren't you?
A. Yes sir.
Q. Did you tell Belal Harris that you knew for a fact that Jimmy Lee Sessions was not responsible for this murder?
A. No sir.
Q. Did you tell him that the police would never know that?
A. No sir.
Q. Did Belal, or anyone around there, tell you what was going on with this case?

A. No sir.
Q. Did you ask Belal to try and get Jimmy Lee to say he had committed the crime?
A. No sir.
Q. Were you arguing and fighting with Jimmy Lee at the jail at that time?
A. No sir.
Q. Did you try to get Belal Harris to help you write a statement on Jimmy Lee, so that he would be charged with the crime?
A. No sir.
Q. Never asked him for help?
A. No sir.
Q. Did you go through Belal's paperwork to get Detective DiLorenzo's address?
A. No sir.

MR. FREDERICK: No further questions.

THE COURT: Redirect.

MS. ELDER: Thank you, Your Honor.

REDIRECT-EXAMINATION BY MS. ELDER:

Q. Just a few, Mr. Burris.

When you try to help yourself with charges -- you've been in the system ---

A. Yes sir. Yes Ma'am.

Q. ---And you give bad information to the Prosecutor, or

to the police, what happens if the information is bad?
A. You will be held accountable.
Q. Do you get any help for that?
A. No Ma'am.
Q. And the help you got back in April of '07, was that officers investigating your alibi you gave them?
A. That's all it was.
Q. And that's all you asked for, isn't it?
A. That's it, just somebody to look into the charges that I was being charged with.
Q. And you got cleared?
A. Yes Ma'am.
Q. You were in another state?
A. Yes Ma'am.
Q. So, also in April of '07, you weren't talking to the police to try to -- there's no way you could predict that you were going to be charged with murder some fourteen months -- months later, did you ---
A. No Ma'am.
Q. All right. ---For a murder that happened fourteen months later?
A. No Ma'am.
Q. So you didn't even know about what you are facing now?
A. No Ma'am.
Q. And it wasn't even pending at the time?

A. Right.
Q. Did you get any money for giving information?a
A. No Ma'am.
Q. And you talked to me, and Mr. Richardson?
A. Yes Ma'am.
Q. You talked to the Defense attorneys?
A. Yes Ma'am.
Q. And you voluntarily did all of that?
A. Yes Ma'am.
Q. Both sides?
A. Yes Ma'am.

MS. ELDER: No other questions, Your Honor.

THE COURT: Anything on those questions, Mr. Gardner?

MR. GARDNER: I would like to explore his prediction about murder, his pending murder charges, whether or not he could predict that, based on the testimony that's in the record.

THE COURT: Ladies and gentlemen, go to your jury, please, I mean, go to your jury room, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, ask your questions.

MR. GARDNER: Thanks, Judge.

RECROSS-EXAMINATION BY MR. GARDNER:

Q. You've been in and out of the system for, basically

your whole life; is that right?
A. Pretty much.
MS. ELDER: Objection, Your Honor. We ---
THE COURT: I understand. You can raise your objections after he gets done. Let him ask his questions.
MR. GARDNER: I didn't hear the answer.
Q. Did you answer?
A. I said pretty much.
Q. Yes sir. And you've had many charges, and you've dealt with many prosecutors; is that correct?
A. I wouldn't say I've dealt with them, but I've had many charges.
Q. All right. And you had another murder charge many -- you were charged with murder about -- in 1995, '96, somewhere around there?
A. No sir.
Q. Other than the pending murder charge you have against you today, how many other murder charges have you had against you?
A. None.
Q. All right. I thought there was -- when we were going through your N.C.I.C. I thought that you had a prior murder charge that was showing an unknown disposition.
MS. ELDER: Attempted.
MR. GARDNER: Huh?

MS. ELDER: It was an attempt.

Q. Attempted murder. Okay. Any other attempted murders?

A. Any other attempt ---

Q. Well, no murders, only this one. You had another attempt, or had a attempted murder before?

A. Yes sir.

Q. All right. And you've had many gun charges, and you've had -- you were sus -- you brought out on your own earlier that you were a suspect for a murder, so when the Solicitor asked you, you couldn't predict that you would be charged with murder, wasn't it inevitable that sooner or later you would get charged with murder?

A. How you figure that?

Q. It's the life style, sir. You got charged with this attempted murder, and you've got many gun charges, you've been in prison most of your life. It's the life style you live. Sooner or later you are going to get charged with murder, correct?

A. I don't think so.

Q. Well, you are now?

A. True.

MR. GARDNER: I was going to go into that line of questioning.

THE COURT: All right, sir, I'm not going to allow that. Thank you very much.

All right. Now, do you have any questions that you wanted to -- and Mr. Frederick, do you have any questions that y'all wanted to ask of this witness that you had brought up that issue before, about the Jet Age Cafe, and the Friendly murders, and you wanted to proffer some testimony?

MR. FREDERICK: Yes sir.

THE COURT: It didn't appear to me that it ever came up as an issue in this case, but do you still want to do that?

MR. FREDERICK: Just a moment.

THE COURT: Yes sir.

MR. FREDERICK: Judge, it would only take a minute, just to be ---

THE COURT: Well, you go ahead and proffer it, but I'm just saying, I don't know what your objection is, because what you were objecting to never came up in his direct-examination, in any shape, manner or form.

MR. FREDERICK: I'm trying to -- I'm trying to remember what he said. I heard the Jet Age, but I didn't hear what he said about it.

THE COURT: What he said was that -- that at the Jet Age he saw the Defendant, passing, beers, and then later on, at "LeeLee's" house they had the conversation. He didn't say anything about any conversations at the Jet Age, didn't even say they spoke. He said that he saw him, but he didn't even say anything about speaking, talking, anything that the

Defendant told him, not a thing.

MR. FREDERICK: Yes sir. Then, without looking at transcript, and operating on that assumption, then I don't think we even need to proffer it, because that avoids the problem that we had, that we would have had.

THE COURT: He just said he -- that he -- that the Defendant went through the Jet Age Cafe. I mean, he recognized him, but I don't -- do you remember any -- any testimony he said at all about having a conversation, even hi, hello? I didn't hear anything, any kind of conversation, just that, you know, he saw him, and he went through the Jet Age, and talked about drinking beer, and that was -- that was it.

MR. FREDERICK: I don't. Your Honor, I think that fixes the problem.

THE COURT: All right. Very good. I was going to -- it just seemed to me that the issue just never arose.

MR. GARDNER: I agree with you, Your Honor. Thank you.

THE COURT: All right. Very good.

All right. So, Mr. Gardner, do you have other questions, other than the ones I wouldn't allow, that you want to ask?

MR. GARDNER: I had one, but I don't have any more. I'm going -- I don't need it.

THE COURT: All right.

Are you ready with your next witness, Solicitor?

MS. ELDER: Yes sir, Your Honor.

THE COURT: All right. Do y'all want to take a short break, for about five minutes, before we call that next witness in?

All right. Hold on. Okay. We'll take a break for about five minutes.

And gentlemen, we are going to have -- you can secure the witness, but when we come back he'll have to be back there so that I can ask Mr. Gardner if he has any questions, and ask Mr. Frederick if he has any questions before we excuse him, all right.

But we'll take a break for about five minutes. Okay.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, do you have any further questions of Mr. Burris?

MR. GARDNER: I do not, Your Honor.

THE COURT: Mr. Frederick?

MR. FREDERICK: None, Your Honor.

THE COURT: All right. Very good, gentlemen. Thank you.

MS. ELDER: We would ask that he be released, Your Honor, excused from -- and released back to the ---

THE COURT: Is there any objection to him being released from his Subpoena?

MR. GARDNER: No sir.

MR. FREDERICK: No objection.

THE COURT: Very good. Your next witness, please Ma'am.

MS. ELDER: Your Honor, we would call Agent Mike Prodan.

THE COURT: Please come around to be sworn, sir.

MICHAEL JOHN PRODAN, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MS. ELDER:

Q. Agent Prodan, where are you currently employed?

A. I'm a Lieutenant with the State Law Enforcement Division, assigned to, and as a Supervisor of the Behavioral Sciences Unit.

Q. They commonly refer to that as S.L.E.D.?a

A. Yes Ma'am.

Q. How long have you been with S.L.E.D.?

A. Ten years.

Q. And in what capacity have you been there with them?

A. As a lead agent with the Behavioral Sciences Unit.

Q. Prior to that time, where were you employed?

A. I was employed with the California Attorney General's Office, Bureau of Investigation. I was the lead agent and the supervisor of the Violent Crime Analysis Unit.

Q. And what did you do in that unit?

A. I'm sorry.

Q. What did you do in that -- some of your general responsibilities and duties in that Unit.

A. Both for California and for S.L.E.D., involving crime scene analyses, consultation on violent crime, investigative techniques and strategies, threat assessment, interviews and interrogation, and what is generally referred to in the media as psychological profiling.

Q. Have you had any professional training in those regards to what you do at S.L.E.D. and in California?

A. Yes Ma'am.

Q. Would you go through some of that training for us, please?

A. First started in violent crime training, of course, with the Las Angeles County Sheriff's Department and Police Academy in Violent Crime Investigation, but as a agent for the California Department of Justice, Bureau of Investigation, was a specialized six months program, with the advanced training center in the California Criminalistic Institute, involving crime scene analyses and criminalistic, if you would, that include courses in firearms trajectory, blood spatter interpretation, and forensic pathology.

During that time I was selected and spent a one-year Fellowship at the F.B.I. Academy in Quantico, Virginia, at the National Center for the Analyses of Violent Crime. That one-

year Fellowship also included courses at the Armed Forces Institute of Pathology on basic and advanced Forensic Pathology courses in Psychiatry in the Law, in the University of Virginia at Charlottesville. There were also courses at the Clark Institute of the Psychology of Aggression in Ottawa, Ontario, Canada.

There has been training over a varied of time involving the California Homicide Investigators Association, California Sexual Assault Investigators' Association, the Association of Threat Assessment Professionals.

Q. Do you belong to any associations or agencies?

A. Yes Ma'am.

Q. Tell me some of those.

A. Currently I am a member of the International Criminal Investigative Analyst Fellowship, which is a organization, a worldwide organization that standardizes and provides training on criminal investigative analyses profiling.

I'm also a member of the Association of Threat Assessment Professionals. I am no longer a member because of my status in South Carolina, but for -- I was, at one time, members of the California Homicide Investigators Association, and California Sexual Assault Investigators' Association.

Q. And do you maintain your education, so to speak, or with continuing type education classes?

A. Yes Ma'am. The training education is ongoing,

involving, more often than not, in-service training, if you would, with the International Criminal Investigative Analyst Fellowship, certain training programs with the Federal Bureau of Investigation, yearly training and updates with the Association of the Threat Assessment Professionals.

There's also -- not formal training, but self-initiated education involving keeping abreast of the literature involving homicide and sexual assault, and violent crime in general, and involving the literature and the texts that are available, not only to law enforcement but the general public.

Q. And you've been brought in on cases by law enforcement before; is that correct?

A. Yes Ma'am, many times.

Q. And have you been qualified as an expert in a court for -- as a Behavioral Science expert, and a Crime Scene Analyst?

A. Well, the qualify involving crime scene analysis of specific violent crimes, or criminal sexual behavior, when the term is used crime analyst, that generally refers to a statistical probability, and that's not what my expertise is involved, but I have qualified as a crime scene analyst, or a violent crimes specialists in a number of Superior Courts.

Q. And that would include South Carolina as well; is that correct?

A. Yes Ma'am.

MS. ELDER: Your Honor, at this time I would offer

Agent Prodan as an expert in the field of Crime Scene Interpretation and Analyses.

THE COURT: All right. Mr. Gardner, do you wish to question the witness as to his qualifications?

MR. GARDNER: Judge, I -- I need to take up a matter with you. I don't know if you want -- if we might be able to handle it here, before we pursue or go forward.

THE COURT: All right. Well, I'll be glad to listen to you and we will see what we need to do. Certainly.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen of the jury, I need to take up something outside your presence. I'm sorry. Go to your jury room. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: For my general information, is there another witness that the State proposes to put up today?

MS. ELDER: No sir, Your Honor.

THE COURT: All right. Very good.

All right. Just hold on a second.

All right. Mr. Gardner, you had some objections as to this particular witness.

MR. GARDNER: I did, Judge. I didn't know anything about an expert in the field that she has announced for this, and I don't know what he's going to testify. I don't know --

I haven't seen any reports. I haven't seen any interpretations. I don't know anything about this witness. It's a shock to me. It's a surprise to me, and I would just put that on the record.

THE COURT: All right. Mr. Frederick.

MR. FREDERICK: Judge, yes, more specifically, in all of the voluminous discovery that was provided to us there was a mention in one report that Mr. Prodan met with Salena Mann, Bertang, Hall, Iannone and Caldwell at one point, but no mention of what they discussed or what the result was, no notes, no reports, no anything from that meeting.

On August the 22nd, 2006, Investigator DiLorenzo met with S.L.E.D. profilers Caldwell, Prodan and Bodine, and they suggested that they put an informant in Christopher Stephens' cell. This was before he was charged. They -- and that's it, Judge.

THE COURT: All right, sir.

MR. FREDERICK: I think that they've got a bit more of a discovery obligation than that.

THE COURT: In what way?

MR. FREDERICK: Judge, I would be shocked if there are no notes, reports, notations of any kind that Mr. Prodan, who sounds very distinguished, has taken during the course of this case. If there is anything that is impeachment material that is **Brady** material. If there are reports that would tell us

the substance of his testimony, or what his conclusions are, that is **Brady** material. We have received nothing, Judge.

THE COURT: All right, Solicitor, what did y'all do to comply with **Brady** and Rule Five?

MS. ELDER: Your Honor, it is actually -- the ones I can just quickly look at, it is mentioned on page thirteen of Salena Mann's Report, that they were talking with Mike Prodan at S.L.E.D.. That was in reference to one of the co-defen -- or, I'm sorry, Marshall Stephens, and what they did with him, and the interview they had with him, giving the background information, the Intel information. There was another notation in Eric DiLorenzo's Report from 6/20/06 indicating they met with S.L.E.D., Mike Prodan, Criminal Profilers. There was some information in reference to Antwann and Melissa at that time, and J.B. -- I believe that's Johnathon Best ---

MR. RICHARDSON: Joshua Best.

MS. ELDER: ---Joshua Best. Also there was -- Perris was mentioned. There was some victimization, I believe, information that was giving -- given, so S.L.E.D. requested additional information about the buying habits of Jamilla, and when she re-uped. There was also another notation in page eleven of Eric DiLorenzo's Report from 8/18/06 that they -- I'm sorry, 8/22/06, they met again with S.L.E.D. Profilers, Caldwell, Prodan, Bodine. That was the reference that Mr. Frederick was referring to. Your Honor, there was no report

made.

The discovery -- the **Brady** material requires that, if any scientific report or expert report is made that we provide that report. A report is not made in this case, Your Honor. He has met with them. There is no impeachment information. He did not receive the statements of the Defendants in this case. He is not being offered to use, or to say that either one of these Defendants committed this crime. He is being offered to interpretate -- interpret what has already been admitted into evidence, Your Honor.

THE COURT: All right. Would you inquire of him as to whether or not he has generated any reports or other written documentation regarding this particular matter?

MS. ELDER: I will, Your Honor.

BY MR. ELDER CONTINUED:

Q. Have you generated -- have you generated any reports and provided those to Myrtle Beach Police Department in this particular case?

A. No Ma'am.

Q. And did you generate, or provide them with reports during the course of this investigation?

A. No.

Q. And you, I believe, have -- you -- I contacted you in regards to this investigation, and I met with you about a month ago; is that correct -- or, I'm sorry -- about three

weeks ago?
A. I would say closer to two weeks, but yes Ma'am.
Q. Okay. And at that time were you provided a copy of the crime scene photos, by disk?
A. Yes Ma'am, I was.
Q. And the Autopsy?
A. Yes Ma'am.
Q. And have you had a chance to review those?a
A. I did.
Q. And is that what you were here to testify in regards -- in reference to those materials?
A. To the materials pertaining to how the crime occurred, yes Ma'am.
Q. And did you issue a report to me in regards to that?
A. No Ma'am, I did not.

MS. ELDER: Does that satisfy the Court's inquiry, Your Honor?

THE COURT: Sir, did you generate for your own use any type of written report of any kind, or written statement of any kind of your own use, when you were going through the information?
A. I have what I refer to as case notes, as far as an outline or a bullet format, for my own edification, to keep my thoughts on track.

THE COURT: All right, sir. Do you have those with

you?

A. Yes sir.

THE COURT: All right, sir. Will you -- can you pull those out for me, please?

If you would hand those to the Solicitor, please.

And approximately when did you generate those notes and/or documents?

A. Within the last week, primarily last Wednesday, Thursday, and partial Friday.

THE COURT: All right. Was that in anticipation of you testifying here today?

A. Yes, Your Honor.

THE COURT: As I understand it, to organize your thoughts regarding testimony?

A. Yes sir.

THE COURT: All right. Do you have someone from your office here, Solicitor?

MR. RICHARDSON: Your Honor, I can actually run over to our ---

THE COURT: All right. Go over there and make a copy, two copies of those, please.

MR. FREDERICK: Judge -- and I don't want to push it, but he's been working on this case since 2006. The notes that she was referencing are the case notes from DiLorenzo and Salena Mann that say each time they've met with Mr. Prodan,

and I find it hard to believe that he did not write down anything in that entire time.

THE COURT: I'll be glad for you to ask him.

BY MR. FREDERICK:

Q. Did you?

A. I'm sorry, sir.

Q. Did you not keep any notes at all?

A. There were some original consultation notes, involving when we first met with the investigators, again, information that they had provided to us.

Q. That was in 2006?

A. Yes sir.

Q. Since then have you been consulted in the case?

A. Not really, until the Solicitor's Office contacted me within the last two weeks.

Q. Okay. But initially, when you met with the Myrtle Beach Police Investigators, you did keep notes at that time?

A. Yes sir.

MR. FREDERICK: That's all the questions I have, Judge ---

THE COURT: All right, sir. Did you have any on those questions, any questions like that?

MR. FREDERICK: ---And we would like to ---

MR. GARDNER: No sir, not on that issue.

THE COURT: All right, sir. Well, just hold on a

second. I'm -- before y'all have any -- I mean, I just want to make sure you've asked the questions you want to ask of this witness regarding that issue. Have you done that, Mr. Gardner?

MR. GARDNER: I'm not quite sure. I think that Bobby covered it, Judge. I've been doing this since 1992, and I've never heard of an -- in a criminal case -- having an expert pop up on the witness stand like this. I've never heard of that before.

THE COURT: Well, I appreciate that, and I understand that. My question to you is, regarding the issue at hand, do you have some questions you want to ask this witness now?

MR. GARDNER: If the issue at hand is whether or not he has notes, or reports, or anything like that prepared as part of his investigation and consultation with the police, I believe that's been asked.

THE COURT: All right. Very good.

BY MR. GARDNER:

Q. There is no other material or paperwork out there, is there?

A. I'm afraid I don't know what you mean by other material out there. I'm sure there are police reports from the Myrtle Beach Police Department and laboratory ---

THE COURT: Just be a little bit more specific, Mr. Gardner.

MR. GARDNER: Yes sir.

BY MR. GARDNER:

Q. See, I don't know the history behind this. You are an expert, and they are trying to call you as a witness in this case. You understand that, right?

A. Yes sir.

Q. Okay. And they have consulted with you over the course of the last, I don't know, two and a half years, or how long?

A. Well -- okay, go, sir.

Q. Some time?

A. Yes sir.

Q. And did you generate any work product or reports as a result of any of those meetings or investigations?

A. No sir. During the course of an ongoing investigation, what typically occurs is, there is a consultation, an original consultation about the crime with the investigators, a -- an analysis is done, if you would, right there, to kind of give an idea of what of what direction the investigation is suggested to go. Depending on the investigation, and the Department, and the investigators, they may contact us as the investigation progresses, with new information. In other words, we found this out, what do you think, and then we offer an opinion. That information is very fluid, back and forth kind of a consultation effort. It's only up until the time when -- when an agency actually asks for a formal analysis

report do we provide one, and in this particular case no formal analysis was asked for until I was contacted by the Solicitor's Office.

Q. And that was a couple weeks ago?

A. Yes sir.

Q. And was a formal analysis prepared?

A. No sir, no formal analysis report was prepared, because of the time constraint.

Q. Just come on down and say it, or testify to is, basically; is that right?

A. It was to -- a certain amount of materials I re-evaluated, reconsidered, if you would, and those are my notes to myself, if you would, to -- as to my thoughts and analysis of what happened.

MR. GARDNER: Thank you, sir.

THE COURT: All right. Anything else, Mr. Frederick?

MR. FREDERICK: No questions.

THE COURT: All right. Very good.

Now, Solicitor, you have given to Mr. Gardner and Mr. Frederick a copy of those notes that the witness just identified; is that correct?

MS. ELDER: That's correct, Your Honor.

THE COURT: All right. Very good.

All right. All right. What objections to the testimony or any matters you want to bring to the Court's attention at

this time, Mr. Gardner, regarding the testimony of Mr. Prodan?

MR. GARDNER: He's going to -- he's not going to testify as to guilt; he's going to testify -- I didn't quite understand why he's here. She said -- I know she said it.

THE COURT: Can you put it in a nutshell, Solicitor, the essence of the testimony, the essence as to the reason Mr. Prodan is here.

MS. ELDER: My -- the process of my direct-examination of Agent Prodan is going to be, show him some of the State's exhibits, tell -- ask him if he has had an opportunity to review them, based on his expert opinion, what do these crime scene photos tell us in reference to victimology, method of operation, motive, things like that, Your Honor. It has nothing to do specifically with the Defendants. He has not reviewed the Defendants, he has not talked with the Defendants, he has not got the Defendants' statements.

THE COURT: All right.

MR. GARDNER: Now the objection is relevance.

THE COURT: All right. Very good.

And Mr. Frederick.

MR. FREDERICK: Judge, I just ask that we would be able to review the original notes in the case as well. In the interest of allowing our clients to present a complete defense a large part of our defense is impeaching the quality of this investigation, and here we have an expert on the stand, that

was consulted, that had written materials, and they've called him as a witness, and we still have not been provided with the complete discovery.

THE COURT: And what have you not gotten?

MR. FREDERICK: The original notes that were taken in 2006.

THE COURT: All right, sir. And that's the essence of your objection?

MR. FREDERICK: That, and we would ask to exclude his testimony, because nothing was provided to us prior to five minutes ago.

THE COURT: All right. Very good. I find that the dictates of **Brady versus Maryland** and Rule Five have been complied with by the State of South Carolina in notification to the defense of this matter. The Defense had more than ample opportunity and awareness, based upon the documents that were provided to the Defense a long time ago. This witness's name was in the information. The Defense, if it so had chosen to do, could have investigated this matter. If they did not do so then that is not the fault of the State.

Now, regarding the notes that the witness made at the end of last week, I have obviously had those provided to the Defense counsel. We are going to go through the cross-examination of the witness. We will take a short break, and then we will go on to the cross-examination.

Ask the jury to come back in, please.

MR. FREDERICK: Judge ---

THE COURT: Yes sir.

MR. FREDERICK: ---Just for the record, Judge, under **Kyles versus Whitley**, we are not required to go to their witnesses and get **Brady** materials.

THE COURT: No sir. But I'm saying, they have complied with it by giving you all the information that was required. What you did with it is up to you, but they have given to you the information. Now, whatever you choose to do with it is whatever you choose to do with it, but they gave you the information. They complied with **Brady versus Maryland** and Rule Five, no question about that.

MR. RICHARDSON: Your Honor, Mr. Gardner has indicated the copies that were made were a bit light.

MR. GARDNER: One page through -- they are all light, but this one I ---

MR. RICHARDSON: I can run downstairs to a better copier, Your Honor.

THE COURT: Don't you have somebody else from your staff here and present in the courtroom that can handle that kind of stuff?

MS. ELDER: Yes. Yes, Your Honor.

MR. RICHARDSON: Yes, we do, Your Honor.

THE COURT: Very good.

MR. FREDERICK: And Judge, were we going to take a break before this witness, because we need to review the materials.

THE COURT: We are going to take a break after the direct-examination, so you will have the benefit of his direct-examination, and then you can look at the notes, so you will have both of them when you are looking at the notes.

MR. FREDERICK: Yes sir.

THE COURT: All right.

Ask the jury to come back in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, you had presented this witness, and then you had presented to the Court a request to allow the witness to be qualified to give his opinion; is that correct?

MS. ELDER: That is correct, Your Honor.

THE COURT: And as I understand it, there is an objection to that by both Defendants; is that correct, gentlemen?

MR. GARDNER: Yes sir.

MR. FREDERICK: That's correct.

THE COURT: All right. The Court is going to allow the witness to -- and is going to qualify the witness to give his opinion in the areas of Behavioral Science, Violent Crime,

Methodology, Motive Behavior.

You may proceed, Solicitor.

MS. ELDER: Thank you, Your Honor.

DIRECT-EXAMINATION BY MS. ELDER CONTINUED:

Q. Agent Prodan, could you tell me -- when you receive a call from an investigative agency to assist them with a violent crime, tell me how you start in any analyses that you do.

A. The first thing that we ask for is background information on the victim, or victims. It is referred to in certain literatures and on television as a Victimology, the study of the victim. The question that is to be asked is, why was this particular person selected to be the victim of a violent crime, whether that violent crime is a murder, a sexual assault, stalking, whatever. At the same time we insist that the agency does not give us any information at this point about any suspects that they may have developed, desire, suspect, or whatever, because we don't want to have any type of contamination, if you would, on suspect information as to what actually happened during the commission of the violent crime, so the victimology as to why was this person selected, what we are trying to do is an access of risk, of whether a person either has low or no risk of becoming a violent -- of being the victim of a violent crime, and in this particular case would have been murder, a moderate

risk, or at a high risk, and the risk level is based upon the individual victim's circumstances. High risk victims are individuals whose life styles are such that put them at a huge risk of becoming the victim of violent crime. These would be individuals who are involved in criminal organizations and enterprises, criminal gangs, high value, if you would, trafficking in narcotics or dangerous drugs, you know, those types of things, but they would also include people who may not be involved in criminal enterprises, but whose life styles put them at highly risk, individuals who are exceedingly sexual promiscuous, people who are involved in prostitution, where they come in contact with a lot of people who are basically unknown to them, we would consider at a high risk. In other words, they -- they put themselves in a position that they are more susceptible of becoming victims of violence than anyone else.

At the other end of the scale you have individuals in low risk, people who were not involved in criminal enterprises, they are not selling drugs, they are not involved in sexual affairs or promiscuity or prostitution. Our experience, and the experience backed up by the research and -- is that the lower the risk of a victim, the more likely it is that a person's -- is a victim because of a person cause, in other words, it's not involving drugs. It's not involving a criminal enterprise. It's involving a personal issue, that

the victim of the murder poses a problem to the individual, and the individual decides, either over a long period of time, or a very short period of time, that this obstacle has to get out of my way, and murder is the result. Now in between are what we refer to as moderate risk victims, victims who don't have a high risky life style, nor a low, but certain circumstances, people whose employment put them at risk, people who work at a convenience store, people who are cab drivers. You can imagine in the criminal statis -- the justice statistics that those are very risky jobs to have, because of the susceptibility of armed robbery, and individuals will fall prey to that, people who find themselves stranded on the highway late at night, no cell phone. You are literally at the mercy of the person who pulls up behind you. You hope it's a State Trooper. It may not be. You also have people who are into what I refer to as maybe dabbling in criminal enterprises. They are not part of some organized crime or outlaw motorcycle group, or you know, Columbian drug cartel, but they are selling drugs, they are committing robberies, they are involved in forgeries and scams, and those types of things. It's not correct to say that because of those things that they are a high risk, but they -- but they do elevate their risks somewhat. In this particular case the background information that was provided to us was that one of the victims was involved in some reasonably moderate illicit

drug sales. Illicit drug sales, by it's very nature, is a risky enterprise. People will, on occasion, try to steal from you, people will, on occasion, will try to rob you. In this particular case it was given to us, and it was confirmed by some of the crime scene photographs, that even the victim considered herself at risk, because she had at least availed herself some type of physical protection, that she had -- had access to a shotgun, so when you have an individual engaged in drug sales, and then arm themselves, you can assume that the person thinks, well, maybe someone is going to try to take away my product or my money, so I will, in some way, try to defend myself from that.

MS. ELDER: Your Honor, if I can approach and return these items.

THE COURT: Yes Ma'am.

Q. And Agent Prodan, when you received the information in reference to the victim, Jamilla Hightower in this case, did you assess a risk level based on those -- that information?

A. Yes. Also -- for Jamilla Hightower and also for Monica Wall, because we had two victims in this particular case. Jamilla Hightower's risk we would elevate to a moderate risk level because of her -- her drug trafficking. Again, it was not -- it doesn't rise to the level of multi-national cartels, but it's not a college student selling Five Dollar baggies of marijuana to their dorm mates either, so it has to kind of

fall in the middle.

Monica's risk level, with the exception of living with Ms. Hightower, was exceedingly low risk. Her risk level was elevated due to her proximity, and living with Ms. Hightower who was involved in this mid to low level drug trafficking.

Q. Now once you establish the victimology, as you did in this case, what's the next step?

A. The next step is to look at how the crime occurs, and try to discern, based on how the crime occurred, what is the motive for the murder to be committed. The misconception that a lot of folks, perpetuated by some of the media, is that there is such a -- there is a -- there are crimes of murder without motives that -- crimes of violence just happen, that they are just random events. Our experience and our training indicates that that is not the case. There is a motive for murder. There are victims who are selected by the offender for that reason. It is not the type of thing where an individual will just wander -- would just pick a community at random, close their eyes and go, that house, I think I'll rob them for drugs. You have to have some information beforehand, before you can start developing your plan.

Q. In reference to this particular case, what did you determine?

A. Well, in this particular case, again, the low level drug levels elevates the risk. You look at in how the crimes

were committed, and in this particular case you have a victim, Ms. Hightower, who was a mid-level drug dealer. The murder occurred indoors, at her residence, which the information provided to us was, that was primarily where she would engage in her transactions. She was not a street dealer, if you would. She was not transported, if you like, so they occurred at her residence. The individual, or individuals, brought a weapon to the scene. In other words ---

Q. What does that mean?

A. Well, it has a sense to do with pre-planning, if you would. You don't -- if you are going to -- somebody had -- if you are going to rob somebody, or you are going to kill somebody, and you already have that plan in your mind, you don't rely on the victim to provide the weapon to kill them, you bring the weapon with you, as opposed to, you go over to an individual's house, there's a confrontation which escalates into a fight, which escalates into someone picking up a table leg and hitting them over the head, so the bringing the weapon to the scene and leaving with the weapon. The victims were killed with what we typically see in a quote, unquote, drug-related murder, a small to medium caliber handgun. Now this is not to say that we don't have individuals killed with large caliber, but most often we see the -- the small or medium caliber handguns used. There was no effort to move or display, or interact with the bodies after they were dead. In

other words, they were killed and left where they were killed. There was minimal effort to destroy or conceal any physical evidence. The only physical evidence that was taken from the scene was the weapon used to commit the murders. The shell casings were left at the scene, the bullets were left in the victims, so there was no -- and there was no evidence, at least from the crime scene reports, that anyone had tried to wash bodies, or wipe down surfaces for fingerprints, or those types of things, so having all of those factors leads us to conclude that this was what we refer to as a primary drug-related murder, and the motive for drug-related murders have to do with discipline of the individual. In other words, they are part of an organization and they are breaking the rules, the person is stealing another drug dealer's customers, in other words, you are eliminating your competition, you believe that the individual is cutting in on your territory, which again, is leaning the competition, or the primary factor of, they've ripped you off, they owe you money, you've given them drugs to sell, they are to give you money, they haven't, so that it's kind of a retaliation idea of, well, you owe me money, you haven't don it, and then, of course, you do have individuals who target drug dealers for robbery of their drugs and their money, for the primary purpose is that, unlike robbing a convenience store or a bank, drug dealers, no matter what level, don't report those crimes to the police. If I'm

selling -- no matter what I'm selling, if it's an illegal substance, and I'm robbed, we searched and we can't find one documented report where an individual goes to a police department or a sheriff's department and says, let me tell you about the robbery that I suffered; someone came in and stole my, you know, fourteen pounds of marijuana, at gunpoint; I want you to find this robber, because the person is admitting that they are involved in an illegal enterprise.

Now, there's two other reasons for people to be killed in drug-related murders which don't apply in this particular case, and that has to do with an informant, and there was no information provided to us that either of these women were involved in being a documented informant to any law enforcement agency, and then we do have, on rare occasions, what we refer to as an anti-drug advocate, usually a citizen who lives in a particular neighborhood that are -- they are just -- they are just going to -- they are going to beat the drug dealers off the street themselves, they harass drug dealers, they take license plate numbers, they do everything they can to get these people out of their neighborhoods, and the drug dealers just go, this is just bad for business.

Neither one of those two factors apply in this particular case.

Q. What's the next step in this process?

A. So then, if that is the underlying cause, then you try

to look at, how did this particular crime occur. You will look at pre-offense behavior, and then you look at offense behavior. The pre-offense behavior is -- someone has to come up with a plan. Someone has to come up with an idea, if you would, of -- to go to this particular location, at this particular time, at this particular place. They actually have to think about bringing a weapon with them. Of course they have to get ammunition for the weapon. They have to approach the location at a time that they perceive is most opportune for them, and then they have to -- in this particular case you have to get inside the residence. The murders occurred inside the residence, so you start at the very beginning, how did they get inside.

Q. Well, let me -- before we go to that part, so -- are you saying there has to be some type of premeditation to do this type of a robbery?

A. In this particular case, because of how the victims were killed, there had to have been some idea that was conceived outside of the residence. Now, whether that idea was conceived minutes, hours, days, weeks, years, there is no way of knowing, but it -- because this individual brought the weapon to the scene -- it was not a weapon of opportunity from the residence -- this germ, if you would, developed outside the residence, not inside. How long that takes, no one really can tell you.

Q. And you were going into -- getting into the -- getting into the house.

A. Yes Ma'am. You have to ask yourself, how did this -- how did the person get from outside the house inside the house where the murder occurred. The reports tell us that there was no forced entry, in other words, no one broke down a door or broke down a window and forced their way in. There was no evidence of any struggle at the front door, so you ask yourself, well, how did the door become open. The person had a key, the door was just left unlocked and the person just walked in, or the person approached the front door, knocked or rang a bell and the door was opened by someone on the inside.

Q. And we don't know that in this particular case, do we?

A. Well, the -- some of the background information given to us was that Ms. Hightower only did her drug sellings if there was previous notification. In other words, her routine was, you make a phone call, you make -- in essence, drug sales by appointment, and then you come over, and that anyone who just knocked on the door would be turned away, but even so, someone would knock on the door, so we don't know. We do know from the crime scene photographs, and from the -- in the Officers' investigation, that no one broke down a door, no one broke in a window to get inside.

Q. Now, once you have the offender inside, what is the next step in that analysis?

A. The offender has to get control of the victim. You have to gain and maintain control of the victim, and there are various ways to do that. You can -- you can control some victims just by your mere presence, just the fact that you are there. Now this requires a certain type of victim, but there are occasions where just the mere presence of an individual is enough to gain and maintain control. Sometimes you have to make a threat, a verbal threat, sometimes you have to display a weapon and combine it with a verbal threat, sometimes you have to use physical force. In this particular case there was nothing in the autopsy reports, or the photographs, that suggested that either Ms. Wall or Ms. Hightower were the victim of blunt-force trauma, as if they were beaten into submission. There was no injuries to the face, there were no defensive injuries on the hands, there was nothing to suggest that there was a physical struggle. The fact that both were shot strongly suggests that, at some point the offender presents a weapon, and uses the weapon, the fear of injury or death, to gain and maintain control of the two victims.

Q. Once -- in this case, when you looked at the crime scene photographs, were you able to make an opinion about, if these two victims were, at some point, under control by the offender?

A. Yes Ma'am. The -- again, the fact that there was nothing to suggest that there was a struggle, there was no

overturned furniture, there was cell phones on the floor that did not appear to be disturbed, there was nothing knocked off of tables, and again, there was nothing in the examination of the victims by the prosector of injuries to their hands, or their fingers, or evidence that they had been subjected to any type of blunt-force trauma. Also, there was no indication that either one of these individual -- either one of the victims were bound in any way, so they weren't rendered unconscious by blunt-force trauma, they weren't bound and made compliant through bindings, so the only thing left, if you would, is that the offender presented a weapon, and the threat of that weapon was sufficient to maintain control of these two women.

Q. Once you establish that the offender got to this point, that he was able to control Jamilla and Monica, what is the next step in your analysis of this particular case?

A. Well, then you would look at what else had happened during the course of the event. Now what was interesting is that in the crime scene photographs there is some clothing on the hallway floor that was reportedly last seen -- Monica was last seen wearing, and it's now in the hallway.

Q. If you will take a look at State's Exhibit 6, is that the photograph you are referring to?

A. Yes Ma'am. So at this -- it would appear -- and then the fact that Ms. Wall was found nude when she was discovered,

at some point the -- Ms. Wall disrobed. She become -- she takes her clothes off, she becomes -- she becomes nude. Ms. Hightower, there is no other type of interaction like that at all. She's fully clothed. The question you ask yourself is, while the individual is having Ms. Wall disrobe, what's Ms. Hightower doing.

MR. FREDERICK: Judge -- and I've got to object to this part of this testimony. This is fascinating, but his speculating as to what may or may not have happened ---

THE COURT: I sustain that part of it.

Continue on, Solicitor.

MS. ELDER: Thank you, Your Honor.

Q. Let's go -- once we get past that point let's go to the particular scene involving where the victims were located, and in what condition.

A. Yes Ma'am.

Q. If you will take a look at State's Exhibits 2 and 5, the photographs of Jamilla Hightower, in her bedroom.

A. Yes Ma'am.

Q. Did you have an opportunity to review those?

A. I did.

Q. What were your conclusions about those?

A. Again, it appears, based on these photographs, that most likely, at gunpoint, she was ordered to lie flat on the floor, the individual put a pillow over her head, and then

fired one shot through the pillow at relatively close range, into her head.

Q. What does that method of murder suggest?

A. There's two parallel reasons, if you would. One is more emotional, in that it is easier to shoot a pillow than it is to shoot the back of an individual's head. It makes the killing easier, if you would. Some people may refer to the term of de-personalizing someone. It is always easier to kill a thing, or an object, as opposed to it is to a person, so there is an emotional reason for the pillow being over the person's head.

There is also practical aspect, depending on the sophistication of the person doing the shooting. You may put the pillow over the person's head and fire through the pillow in an attempt that you believe that you are going to reduce the sound of the recoil, and also it prevents any blow-back of blood onto you, or to your weapon, because the blood, of course, is stopped by the position of the pillow. Both -- after that -- after the shooting of Ms. Hightower the individuals just walks away.

Q. And that method of killing, would that, in your opinion, involve some prior thinking, or thought process?

A. Well, you break it down into, what does the individual -- what choices does the individual have to do. The individual, of course, has to -- as I said already before,

pick this particular place, this particular time, this particular location, this particular victim. You have to gain and maintain control of the victim, you have to get them into another room, you have to find the pillow, you have to have the person lie down on the floor, you have to put the pillow over the person's head, then you have to approach the person, extent your arm, and put that pistol in very close proximity of the pillow, and pull the trigger. Those are all the things that the person has to do to get this result.

Q. Now, I want to briefly touch back. You indicated, when we were talking about motive, there has to be some motive other than just a drug robbery; is that -- is that correct?

A. Well, again, if this was -- if the motive -- if the singular motive is to steal a person's drugs and money because they are a drug dealer you have to ask the question, if drug dealers don't typically go to the police to report those robberies, then why bother killing them at all.

Q. Would the perception that the victim drug dealer was not going to give it up, would that be a position?

A. If the person committing the robbery -- in other words, whether it be a drug dealer or whether it be a resident of, you know, a person just in their home, or even a bank that has arm guards, if the idea is in the offender's mind that, for us, or me to commit this particular offense we are going to have to kill people because they are not going to, as you say,

give it up, they are not going to surrender, then that thought is already in the person's mind. Again, in this particular case, there is nothing to suggest, in the crime scene photos, or in the autopsy photographs, that either of these two women resisted anybody. If there was any resistance at all it was verbal.

Q. Now you indicate there is presence of the gun in the house.

A. Yes Ma'am.

Q. If somebody knew, or an offender knew that their potential victim was armed, would that be, in your opinion, motivation to carry out the murder?

A. Well, definitely it would be a motivation to get control over people very quickly. If you are aware that your target has the capacity, or the ability to arm themselves, then if you are going to continue with -- if you are going to continue with your enterprise your only alternative is to do it very, very quickly, and with enough force to gain -- gain that control as quickly as possible, because you don't want to get into -- as dramatic as it may sound, you don't want to get into a gunfight with someone.

Q. Right, and that, be it control in some offender's minds, based on the perception they are not going to give it up, that they are armed, would be the ultimate, murder; is that correct?

A. That -- it could lead to that, yes Ma'am.
Q. I want you to take a look at what's been marked into evidence State's Exhibit 32, 41, 10, 4, 51, 50 and 49.
MR. FREDERICK: Judge, and ---
THE COURT: Yes sir.
MR. FREDERICK: ---Just for the record, I'm going to renew our objection. This is -- I don't see where this will assist the jury in the facts of this case.
THE COURT: Your objection is relevance?
MR. FREDERICK: Yes sir. Yes sir.
THE COURT: All right. I would overrule the objection and allow it ---
MS. ELDER: Thank you, Your Honor.
THE COURT: ---The objection of relevance.
Q. Would you look through those pictures, Agent Prodan.
MR. FREDERICK: Judge, and speculation as well.
THE COURT: All right, sir. I overrule the objection on speculation as well.
MR. FREDERICK: Thank you.
A. Yes Ma'am.
Q. You've had an opportunity to review those pictures prior to today; is that correct?
A. Yes Ma'am.
Q. And I believe all those, in some way or fashion, are the second victim, Monica Wall's room; is that correct ---

A. Yes Ma'am.
Q. ---Or that's what you've been told?
A. Yes, I have.
Q. Now, looking at, specifically, State's Exhibits 10 and 49, what opinion do you form based on the manner in which Ms. Wall was murdered?
A. Well, the -- there is one -- I should say, there's two striking differences with Ms. Wall, based on the crime scene photographs, in that she is killed in a similar manner. In other words, a person put her down on the floor, put a pillow over her head, extended their arm, put the gun relatively close to the pillow, and fired one shot into her head. The difference -- the significant differences are, there's evidence that she was in another room, her bedroom, and she --
-
Q. What type of evidence?
A. There's -- there was -- there was some -- some feces in the bedroom, and there was reported feces on her person, in her anal area and her buttocks. There was also some notation of feces on her foot, and you can see in the crime scene, in one of the photos, that there is -- there is what was identified as feces on the floor, so it appears that she was moved from the bedroom, where she had defecated, to the bathroom. The person could have shot her in the bedroom, but she was moved to the bathroom for a reason, and then the

person then put her down on the bathroom floor and shot her.
Q. And what would be the motive in a drug robbery, as we have already talked about, for the murder of this victim?
A. She's a witness to the first murder. What is -- what has to be asked is, why is this particular victim nude. It's different.
Q. Okay. Are there -- are there any other processes that you went through in looking at these photographs and forming opinion about this particular case?
A. It -- again, it was not only just the crime scene photographs, but also referencing the information that was offered in the autopsy protocols.
Q. If the prior photos I showed you indicated one shot to Jamilla, one shot to Monica, is that your finding?
A. That's my understanding, is that each victim suffered one gunshot wound.
Q. And what is the significance of that, if those two shots were fired from the same weapon, if any?
A. The real significance is that one gun was used, or I should say, the same gun was used.
MR. FREDERICK: Judge, he has not been qualified as an expert in ballistics.
THE COURT: Sustained.
MS. ELDER: Just a few more questions, Agent.
Q. You look through all the crime scene photos. Did you

observe the presence of other personal property that would commonly be subject to, like a burglary or something like that?

A. Yes Ma'am.

Q. Things like -- such as what?

A. Well, there were the cell phones, there was the shotgun in the cupboard, there were some electronics, stereos, videos, if you would, televisions, and the like, and if theft is the ultimate, and the only motive, once the two victims are incapacitated by their death there really isn't anything to stop you from taking whatever you want. Those items were in plain view and they were untouched.

Q. What is the significance of finding no drugs, no money, in a house of the mid-level drug dealer?a

A. It's a reasonable conclusion that the motive was the tak -- the forcibly taking of the money and the drugs, and that the individual was willing to kill to do that.

MS. ELDER: One moment, Your Honor.

Your Honor, that's all the questions I have for this witness.

THE COURT: All right. Mr. Gardner, Mr. Frederick, y'all want some time at this point in time? Gentlemen.

MR. GARDNER: I thought that's what we were going to do.

THE COURT: All right. Very good.

All right, ladies and gentlemen, go to your jury room. I'm going to give the Defense some time before we do the cross-examination, and we will resume when they are ready for cross-examination. Go to your jury room, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, gentlemen, I'm going to take a break for about -- for fifteen minutes,. and then we will see where you are at that point in time.

Thank you.

MS. ELDER: Thank you, Your Honor.

MR. RICHARDSON: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Is the State ready?

MS. ELDER: Yes sir, Your Honor.

THE COURT: Mr. Gardner.

MR. GARDNER: Yes sir.

THE COURT: Mr. Frederick.

MR. FREDERICK: Yes, Your Honor.

THE COURT: Very good. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Gardner.

MR. GARDNER: Thank you, Your Honor.

We have no questions at this time.

THE COURT: Very good.

Mr. Frederick.

MR. FREDERICK: Yes sir.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Agent Prodan, if nothing was taken from a house in a situation like this, then in your opinion the murders would not be theft?

A. If absolutely nothing was taken, then there is no personal gain, if you would, theft motive, so then you would have to ask yourself, why -- why were these individuals killed, so the motive is likely something other than monetary gain, if no property is stolen.

Q. Right. So what would your opinion be if you knew that the following day a briefcase full of drugs was found at Jamilla's head? How would that change your ---

A. I'm sorry.

Q. If, on the following day ---

A. Yes sir.

Q. ---If the police told you -- and they didn't tell you this, I don't think -- but if they did tell you that a briefcase of drugs had been found ---

A. Found where, sir?

Q. By Jamilla's head ---

A. Okay.
Q. ---The body, how would that change your opinion?
A. Well, it -- it would change my opinion very little, because no other property was taken, still nothing was taken, so the question you have to ask yourself is, why wasn't this particular item taken, this brief -- as you describe it, a briefcase full of drugs. You can -- there are other explanations, but it still wasn't taken.
Q. So, in short, there is always some motive?
A. I beg your pardon?
Q. You are saying there is always -- in general, there's always a motive?
A. There is always a motive. The concept of murder without a motive is a ---
Q. Fiction?
A. ---A media myth, if you would.
Q. Okay. And so, in that scenario that we just described, there would be a motive. It would be something other than robbery, obviously. Is that an accurate statement?
A. I mean, the person who conducted, or who committed the crime, their motive would not have been to still drugs if they left drugs sitting there, would it?
A. That's -- that's an assumption that they knew that case contained drugs and they didn't take it.
Q. Okay. Assuming that.

A. Yes. Assuming that they knew that that particular case had drugs, and they -- in other words, they had knowledge that, if I took this box, it has in it, and they didn't take it, then yes, you would have to say that then there was another motive.

Q. And then you would start looking at other factors, other things that could help you identify what the motive was?

A. Yes sir.

Q. Okay. What would your opinion be if you had information that Jamilla had testified in court against people?

A. The question is that, is this a retaliation, based on that testimony. You would have to ask, who was she testifying against, the circumstances, the level of criminality of those individuals, whether her testimony was instrumental in their convictions, and presumably imprisonment. Again, the -- and I'll use the term media myth, the media stories, or the fictional, if you would, is that, because an individual testifies against another individual that somehow it will come back on them and they will be murdered for their testimony. That does happen, but it, more often than not, happens where the victim's testimony is instrumental in a fairly sophisticated organized crime type of venue.

Q. Or in the movies?

A. It happens much more often in the movies. It does

happen in real life, but again, the circumstances require that the testimony is involving, you know, a classic organized crime venue, the classic Mafia type of venue, maybe high level international drug cartels, definitely organized outlaw motorcycle gangs, and some of the more sophisticated street gangs, whether they be African American, Latino, or even Asian, but the mere fact that a person testifies in court -- and again, you have to understand, what are the specifics of their testimony. Just the fact that someone testifies in court, and they are killed, it -- more often it happens in stories and fiction.

Q. But that's something if, early on in the investigation, if that was information that law enforcement was aware of, it would shape their investigation?

A. It could very well shape their investigation, but if we were asked that in a particular case -- it's the same thing as we ask, well, the person -- this is -- the person was killed because they are a police informant. I say, okay, well, what kind of an informant are they, at what level of criminal enterprises are they informing against, and does that enterprise have the capability, and the will to escalate their problems by killing people.

Q. It's a starting point.

A. That's the starting point.

Q. Okay. Thank you.

MR. FREDERICK: I have no other questions.

THE COURT: Very good. Redirect.

MS. ELDER: No questions, Your Honor.

Your Honor, we have no further questions of this witness. We would ask the Court to excuse him from his Subpoena at this time.

THE COURT: All right. Mr. Gardner, any objection to that?

MR. GARDNER: No sir.

THE COURT: Mr. Frederick?

MR. FREDERICK: No objection.

THE COURT: All right, sir, you are released from your Subpoena, and you may go back to your regular duties.

A. Thank you, Your Honor.

THE COURT: Thank you.

All right, ladies and gentlemen of the jury, that will conclude our work for today. We are going to resume tomorrow morning at nine o'clock. I would like for you to be back in your jury room tomorrow morning at 9 o'clock. We will resume the testimony again.

Again I remind you, don't talk about the case, don't allow anybody to talk to you about it. Don't look at it on T.V., newspaper, radio, remembering, your job is to decide this case solely on the facts and evidence presented in the courtroom, and from no other source.

I'll see you back tomorrow morning, nine o'clock. Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, is there any matters we need to cover from your perspective at this point in time?

MS. ELDER: No sir, Your Honor.

THE COURT: Mr. Gardner.

MR. GARDNER: I -- would it be proper to inquire how long you think the State might go tomorrow?

THE COURT: Do you have any idea, Solicitor, approximation?

MS. ELDER: We would ---

THE COURT: Do you think by lunch you will be done?

MS. ELDER: Yes sir, Your Honor. We should be rested by lunch.

MR. GARDNER: The Defense can start at 2:15 tomorrow?

THE COURT: Well, I'm not going to say that. I mean, if they come in tomorrow morning and say, we've decided over night that we are done with our case, and we rest, then I'm going to turn to y'all and expect y'all to go forward.

MR. GARDNER: All right. Can I anticipate -- are there any more -- I would ask the Court to inquire, or please, if there are any more things that are going to happen tomorrow like this last witness, so I can prepare for it.

THE COURT: All right. Let me just ask the question, the witnesses that you have left, did they testify in the previous trial already, or are they new witnesses?

MS. ELDER: One of them, obviously, Your Honor, will be the Pathologist. Now that is a different person, but it's the same material.

THE COURT: All right.

MS. ELDER: The only other new witness tomorrow that is scheduled is Tracey Thrower, Your Honor. He is the firearms expert.

THE COURT: Okay.

MS. ELDER: He's the only new person, Your Honor.

THE COURT: All right.

MS. ELDER: Other than, obviously, Dr. Presnell, but that will be the same matter that the other doctor testified to.

THE COURT: All right.

MR. GARDNER: Thank you, Judge.

THE COURT: All right. Mr. Frederick, anything you need to cover at this point in time?

MR. FREDERICK: Nothing further.

THE COURT: Very good. I'll see y'all back tomorrow morning, nine o'clock.

Obviously y'all be here earlier. If y'all have some issues, please let me know before that. Okay.

MS. ELDER: Thank you.

THE COURT: Thank you.

Now please remember, members of the audience, y'all got to stay here for ten minutes, tell the jury exits the building.

Thank you very much.

MS. ELDER: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE ON THE NEXT DAY, FEBRUARY 5, 2009, OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, are you ready for the jury?

MS. ELDER: Yes sir, Your Honor. We have our first witness in the courtroom.

THE COURT: Very good. Mr. Gardner.

MR. GARDNER: Yes sir, Judge.

THE COURT: And Mr. Frederick.

MR. FREDERICK: Yes sir.

THE COURT: Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, your first witness, please Ma'am.

MS. ELDER: Your Honor, at this time the State would call Agent Tracey Thrower.

THE COURT: All right. Please come around to be sworn,

sir.

TRACEY J. THROWER, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MS. ELDER:

Q. Agent Thrower, where are you currently employed?

A. I am employed by the South Carolina Law Enforcement Division, also known as S.L.E.D., in the Forensic Services Building, in the Firearms Department.

Q. And what do you do in the Firearms Department?

A. I am a firearm and tool mark examiner.

Q. And tell me briefly how you examine firearm, projectiles, casings, things like that? What is the process of that?

A. If a firearm comes in I visually examine it. I look for any kind of trace materials, if necessary collect those, look at the various aspects of the gun, try to find out if I see anything obviously wrong with it, or damaged, something not safe. I take various measurements and observations, filling out departmental worksheets to document the condition of the firearm, test fire it, same thing with any sort of fired bullet or cartridge case, you know, visual examination, various measurements, and documentation using department worksheets.

Q. And do you have any specialized training to do this?

A. I do.

Q. Could you tell me about that training?

MR. GARDNER: Excuse me, Your Honor. If she's offering him for an expert I don't object and I would be willing to stipulate to it.

THE COURT: Do you have any objections? Do you wish to question the witness, Mr. Frederick?

MR. FREDERICK: No sir. No sir. Thank you.

THE COURT: All right. So do you have any objection? You have no objections to the ---

MR. FREDERICK: No -- no objection.

THE COURT: All right, sir. In what field are you offering Mr. Thrower?

MS. ELDER: Your Honor, we are offering Agent Thrower in the field as an expert in Forensic Firearm Analysis.

THE COURT: Firearms Analysis; is that correct?

MS. ELDER: Firearms, Projectiles, Casings, Your Honor.

THE COURT: I'm going to qualify him then to give his opinion in that field of Firearms, Projectiles, Casings, and that area of expertise.

MS. ELDER: Thank you, Your Honor.

Q. Agent Thrower, did you have an opportunity to examine, in regards to this particular case, State's Exhibit 56, 93, 92, and 55?

A. Yes, I did. I did examine State's Exhibit 56, 55, 92, and 93.

Q. And what were you looking for in trying to determine if you have examined those?
A. One, I was insuring that the plastic bag still had my heat seal that I placed on them, with the date that I sealed it, and my initials. I was also verifying -- on each of these cartridge cases, I took an electric pencil, or a scriber, and scratched into them my case number, my item number, and my initials, for identification.
Q. And what is that to insure?
A. To insure that I can recognize this piece of ammunition, or this cartridge case, from any other cartridge case later -- at a later time.
Q. And these were presented to you for examination; is that correct?
A. That is correct.
Q. What type of examination did you perform on them?
A. For the cartridge cases, State's Exhibits 55 and 56, visual comparison, using a comparison microscope, in which I -- with a comparison microscope it's -- basically it's two microscopes that are placed side by side that are connected by an ocular bridge, and on this bridge there is a set of eyepieces, so that when I'm looking through these eyepieces I can literally, under the same magnification, visually place these two items side by side, and even overlap them, so that when I -- whatever markings I'm seeing on the primer of the

item that's on my left-hand stage, I can place directly visually next to the -- the item that's on my right-hand stage, and compare the markings side by side.

Q. And with those two particular cartridge cases, the cases that you have in those exhibits, what were your findings?

A. My findings were that State's Exhibit 55 and State's Exhibit 56 were fired by the same firearm.

Q. Now, did you also examine two projectiles?

A. I did.

Q. And those, I believe, I've also handed to you; is that correct?

A. Yes. State's Exhibit 92 and State's Exhibit 93.

Q. What type of testing did you do on those?

A. Similar testing, visual comparison of the microscopic markings that were placed on these two bullets or projectiles as they passed through the barrel of the firearm, placing them side by side visually, under the same magnification, and comparing the striated marks or scratches that were placed on the outside of these bullets as they passed through the barrel of a firearm.

Q. And did you draw some conclusions based on your analyses of those two particular exhibits?

A. I did.

Q. And what was that?

A. That State's Exhibit 92 and State's Exhibit 93 were also both fired by a single firearm.

Q. And did you determine what type of caliber?

A. The projectiles I found were most consistent with bullets that are loaded into some forty Smith and Wesson caliber cartridges.

Q. And did you issue a report in this particular case?

A. I did.

Q. And in that Report did you also indicate possible firearms that could have possibly fired those particular exhibits?

A. Yes Ma'am, I did.

Q. And could you tell us what those are?

A. Excuse me while I refer to my notes. The list of possible firearms that could have fired State's Exhibit 92 and 93, based on the measurements I took, were Astra, Baretta, Fabrique Nationale, or F.N., Browning, Heckler and Coe, or H & K, Republic Arms, Rugger, Smith and Wesson, Springfield, Incorporated, or Taurus.

MS. ELDER: One moment, Your Honor.

Your Honor, we have no other questions for this witness.

THE COURT: All right. Mr. Gardner.

MR. GARDNER: No questions, Your Honor.

THE COURT: Mr. Frederick.

MR. FREDERICK: No questions.

THE COURT: All right, sir.

Do you wish this witness to be excused, Ma'am?

MS. ELDER: Yes sir, Your Honor.

THE COURT: Any objection?

MR. GARDNER: No objection.

MR. FREDERICK: No objection.

THE COURT: All right, sir. You are excused and released to go back to your regular duties.

A. Thank you very much.

THE COURT: And did you give the exhibits back to the Court Reporter?

MR. RICHARDSON: Your Honor, may I approach?

THE COURT: Sure. Y'all come up.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MR. RICHARDSON: She's here, Judge.

THE COURT: Very good. All right, your next witness, please, then.

MR. RICHARDSON: The State would call Dr. Erin Presnell.

THE COURT: All right. Please come around to be sworn, Ma'am.

SUSAN ERIN PRESNELL, M.D., being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. RICHARDSON:

Q. Good morning, Dr. Presnell.

A. Good morning.
Q. Thank you for coming up to see us today. Please tell us about your work, where, specifically, and in what capacity?
A. I am a Forensic Pathologist. I work at the Medical University of South Carolina in Charleston.
Q. In Forensic Pathology, would you educate us a little bit about what Forensic Pathology is?
A. Okay. Well, most people are becoming more familiar with what a Forensic Pathologist is with all the T.V. shows and all, but just to back up a little. A Forensic Pathologist is a physician, so to get to that position you go through high school, then college, and then you go to med school. After med school you decide what specialty you are going into, like Pathology, or Family Medicine, or Pediatrics. I chose Pathology, and Pathology, itself, is a broad general field. It means the study of disease, and most pathologists, or many of them, are surgical pathologists, meaning that if you go to your doctor and you get a biopsy, or the women, a pap smear, or you go to your surgeon and they remove, like some cancer, that tissue goes to the pathologist. They examine it, they look at it in a microscope, and they come up with a diagnosis.

Forensic Pathology is a sub-specialty of that field, so you train in General Pathology, and then you can sub-specialize, and that's what I did. I did my Pathology training, and then Forensic Pathology, and Forensic Pathology

is kind of similar in that we are studying disease processes that might end in somebody's death, but we also examine traumas that might end in somebody's death, and interpret those traumatic injuries, and of course, we are not just looking at a piece of tissue, or a biopsy, we are looking at the whole body, and of course, the procedure that we use to do that is called the autopsy, where we do the full external and internal, all the organ examination. It's an ancillary procedure. It's like Toxicology studies and all. Ultimately the autopsy is used to come up with the cause and manner of death.

Q. Well, Doctor, you've gone through all that schooling, correct?

A. Yes.

Q. Okay. And I think you stated that Forensic Pathologists perform autopsies. That's what you do?

A. Yes.

Q. Tell us about any associations or groups with respect to Forensic Pathology to which you belong.

A. Well, I'm a member of the Medical Examiner, the Forensic Pathology, the main Forensic Pathology groups, including N.A.M.E., which is the National Association of Medical Examiners, the American Academy of Forensic Sciences, the College of American Pathologists, some of the main national organizations.

Q. And any lectures, articles, or awards given or received?
A. Well, I'm at the University, so we teach a fair amount, so there's quite a number of lectures and all, and I have a few papers published, but not too many.
Q. What's the purpose in autopsy examination?
A. Ultimately to come up with the cause and manner of death, but also, not just the cause, and meaning if somebody has a gunshot it's not really rocket science how they died, but the interpretation of those injuries.
Q. And during the course of your duties as a medical examiner, approximately how many autopsies have you performed?
A. I would estimate about two thousand.
Q. About two -- okay, two thousand. And have you previously testified as an expert in the field of Forensic Pathology?
A. Yes.
Q. How many times? In the past year how many times?
A. Probably a couple of times -- probably twice a month, one to two times a month, for the last ten years.
MR. RICHARDSON: Your Honor, at this time the State would seek to have Dr. Presnell admitted as an expert witness in the field of Medical Examination and Cause of Death.
THE COURT: Any wish by your client, Mr. Gardner, to voir dire the witness as to her qualifications?

MR. GARDNER: No sir.

THE COURT: And do you have any objection as to her qualification to give her opinion in this particular case?

MR. GARDNER: No sir.

THE COURT: And Mr. Frederick, do you wish to voir dire the witness as to her qualifications?

MR. FREDERICK: No sir.

THE COURT: And do you have any objection as to her qualification to give her opinion?

MR. FREDERICK: No objection.

THE COURT: All right. Very good. She is qualified to give her opinion in the field of Forensic Pathology and also regarding any autopsy work, and the cause and manner of death that she did in this particular case.

MR. RICHARDSON: Thank you, Your Honor.

Q. Dr. Presnell, on or about June 10th, 2006, did you have the opportunity to perform autopsies on Jamilla Hightower and Monica Wall?

A. Yes, I did. The Coroner of Horry County referred these two cases to us and transported them from Horry County to M.U.S.C. for autopsy.

Q. And the purpose of those autopsies were -- was what?

A. To find the cause and manner of death, and interpret the injuries.

Q. Dr. Presnell, I'm going to show you photographs that

have been marked for identification as State's 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126. If you will take a moment and look through these photographs and diagrams. Tell me if you recognize those items, Doctor. Take your time, please.

A. Okay. These are two groups of photographs taken at the time of autopsy, one on Ms. Hightower and the other on Ms. Wall.

Q. Doctor, these photographs and diagrams, do they fairly and accurately depict diagrams you did, or observations you made?

A. Yes.

MR. RICHARDSON: Your Honor, at this time, I believe without objection, the State would seek to introduce those photographs and diagrams previously identified.

THE COURT: All right, State's 99 through 126, is there any objection, Mr. Gardner?

MR. GARDNER: No objection, Your Honor.

THE COURT: Mr. Frederick.

MR. FREDERICK: No objection to any of the exhibits, and they may be published.

THE COURT: All right, sir, very good. So 99 through 126 are in evidence without objection.

(PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT

NUMBERS 99 THROUGH 126.)

MR. RICHARDSON: Court's indulgence, Your Honor.

THE COURT: Yes sir.

Q. Doctor, first of all, what's the first thing you did? Let's take Jamilla Hightower first. What's the first thing you did in performing the autopsy of Jamilla Hightower?

A. Well, we pretty much follow a standard procedure on all of our cases. They arrive to the autopsy room. We photograph them as is. You know, if they are clothed we have to remove the clothing, look for injuries. In cases of gunshot wounds we take x-rays and -- for the purpose of locating the bullet, so we can find out where it is in the body, so we can retrieve it, so we would do x-rays on her, and then after we do the external documentation we would do the "Y" incision and look again in all the organs, including the brain, dissect the organs, take samples, and obtain samples for toxicology, and then that would be the end of the gross autopsy.

A couple weeks later the toxicology results would come back, and also the samples that we took to look under the microscope, and we kind of put every -- we put everything together in the autopsy report, and that would be finalized.

Q. Dr. Presnell, I'm going to show you what's been previously marked and entered into evidence as State's 99 and 100. I believe you indicated you could recognize those. Could you tell the jury what those are?

A. These are diagrams, or copies of diagrams that I did at the time of autopsy, these two, in particular, on Ms. Hightower.

Q. Let's look at State's 99 first. What does 99 show, if anything?

A. Am I showing this to anybody?

Q. You can just review it.

A. Okay. It shows her scars any marks on her. She had kind of skin problem as well, which it just depicts that, but the major thing it depicts is the entrance gunshot wound to the back of her head.

Q. And let's see, on State's 99, would you show where the gunshot wound is indicated? I'm sorry.

A. You want me to go up there? It's on the back of the -- the right back of the head, right here.

Q. And the purpose of Diagram 100.

A. Diagram 100 is just the -- one is a front and back view, and one is a view of each side, and then we mark on that according to where the injury is, or the -- whatever we find is.

And the second one, Number 100, also shows the gunshot wound from a side view, which is, again, on the back of the right side of the head.

MR. RICHARDSON: Thank you, Doctor.

Q. Dr. Presnell, I'm going to show you now what you have

already identified, what's been entered into evidence, State's 101, 102, 103 and 104. Now, in State's 101, if you could tell us what this photograph depicts.

A. That photograph depicts the back of Ms. Hightower's head prior to us do -- any cleaning it up at all.

Q. And Dr. Presnell, would it assist you in coming down so you can show the jury?

A. Yes.

Q. Okay.

MR. RICHARDSON: Your Honor's permission to have the witness ---

THE COURT: Any objection?

MR. GARDNER: No sir.

MR. FREDERICK: No objection.

THE COURT: You may do so. Make sure she stands right in front of that microphone, please.

Q. Dr. Presnell, right here.

A. All right.

Q. 101.

A. All right. Just for orientation purposes, this is the top of her head. He face would be -- her face would be right around here. Here you can see her right ear, and there's kind of a bloody spot in her hair right there. That's where the entrance gunshot wound is going to be located. We'll -- shaved out and look at it closer in the next couple of

photographs.
Q. Dr. Presnell, 102.
A. That's a really close-up picture of the wound before it's cleaned up. You really can't appreciate, you know, the characteristics of the wound yet, because you see a bunch of hair and blood, and that's about it.
Q. And what's the ruler looking thing right here?
A. This is -- the police investigator who attended the autopsy, this would be his ruler that he used to take the picture with.
Q. And State's 103.
A. This is a photograph of Ms. Hightower. We have cleaned up the wound. We now have our marker, our autopsy marker in it, which has a ruler on it so, you know, you can get -- if you had a question of sizes and all you could get approximation from that, but again, you kind of see the location of it. Here is her face, her ear, and the wound is right at the top of the back of the right part of the head.
Q. And State's 104. Just a closer view of that?
A. This is a close-up of the entrance wound. It has the characteristics of the entrance wound, entrance gunshot wound. We are not seeing any other marks around the wound, which is significant in trying to determine range of fire, which I suspect we will discuss in a moment.
Q. And you state that's an entrance wound. Is there any

way you can tell that's an entrance wound?

A. Well, I can tell that's an entrance wound because of it's characteristics. It's a defect in the skin, and there's a couple of other things, like abrasion borders and all, but in particular, there is -- in this case, in Ms. Hightower, there is a hole in her head, and there's a bullet in her head, and so there's no other hole, so that really has to be the entrance wound.

MR. RICHARDSON: Thank you.

Q. And Doctor, I believe we discussed -- I'm sorry, if you will just stay down we will just go through the photographs, if that will assist you.

I believe you discussed that there was a bullet in her head. I'm going to hand you State's 105, 106, 107, 108, 109. Just briefly, if you can explain to the jury what each one is. Let's start with this. I believe that's 105.

A. Its -- 105. These are all photographs of the x-rays that we took at the time of autopsy. Remember I said we were trying to locate the bullet. It helps us pinpoint where it is. So this is an x-ray of her head, and it shows that round dark -- or excuse me -- lighter object right there, is the bullet, and that's just a front-on x-ray of her head.

This is a close-up of the label of x-ray, down at the bottom of the x-ray.

Q. That helps identify who the x-ray is of?

A. Right. Yes, the x-ray comes back and it has her name on it.

This is a closer picture of the head, front-on, again, showing where the bullet is located.

And then we have two side views. That's puts it into perspective. We know that -- you know, where the bullet is in the head from the front view, and now we look at the side view, and we see that it's back toward to back.

That's a closer up of the same view. You can also appreciate some skull fractures in here, the separation of the skull, that darker area between the top of the -- at the top of the photograph.

Q. And Dr. Presnell, if you would just stay here we'll just keep going through.

Finally, with regard to Jamilla, for right now, State's 110 and 111, if you could just tell us what these are, and what they depict.

A. Well, we'll look at 111 first, and to understand kind of what the diagram is about I need to explain the way that we get into the head, and get to the brain, is we make an incision from behind one ear to behind the other, and then we reflect that scalp forward, so the scalp is covering the face, and then at that point we would cut a little triangle out of the top of the skull, and then take the brain out, so this first photograph is a picture of just the scalp reflected

forward. We haven't done anything else except that one incision, and the scalp is forward, so that, in this picture we are looking straight at the person, up here, and these two pictures we are looking at the side, and of course that's the back of her head. The little squiggle marks that we made on there depict areas of hemorrhage. They are primarily associated with the gunshot wound. The little circle, the hole right there -- circle right there is the hole, or the entrance gunshot wound corresponding to the one that was on her scalp, but it's just areas of scalp hemorrhage.

Then, remember I said we reflect the scalp forward, and then we take the -- what we call the calvarium, or the top of the skull off, take the brain out, and then we can look at the bottom of the skull, so this part, this part of your skull. We are looking down into it, so this picture right here is looking straight down into it. The teeth would be up here, so we would be looking right up from this direction.

And here it's a little difficult to appreciate. It's -- but the hatch marks here are areas of skull fractures associated with the gunshot wound, these hatch marks here, along her, up on the front of the head, down on the back of the head, so the back, middle and front of the head has associated skull fractures.

Q. And upon -- upon having to do that work, the removal of the piece of skull, you went into the skull, what, if

anything, did you find?

A. Well, that kind of goes along with what is the pathway of the bullet. The bullet goes into the head, obviously through the scalp and the skull, into the right side of the brain, through the brain stem, which is what connects your brain to your spinal cord, so through the brain stem, and into the left side of the head, where there it hits part of the bone and kind of bounces back into the brain, and that's where we retrieved the bullet, and of course, along the bullet pathway is -- the brain is disrupted. There is hemorrhage associated with it, and so that would be -- that's the primary finding inside the head.

Q. And with regard to Jamilla Hightower, were you able to determine cause of death?

A. Yes, it was the gunshot wound to the head.

MR. RICHARDSON: Thank you.

Q. Dr. Presnell, let's look at State's 112. You have already identified that you recognize this item. If you could just explain that to us.

A. All right. This is -- we've moved on to the next victim, Ms. Wall, and then again, this is a diagram that we would do at the time that she gets to autopsy, documenting any marks or injuries on her.

In this diagram we've noted that she has some abrasions, or what -- or scratches, we call abrasions, on the knees, on

both the right and left knees, a couple of abrasions, and I believe that's all. Most of the other -- all the other things on here are just moles and scars and things like that, but the injuries are the two abrasions on her knees.

MR. RICHARDSON: Thank you, Doctor.

Q. Let's look at State's 113, 114, and 115. You've identified those as being fair and accurate depictions. If you could just explain to the jury what they are.

A. Okay. What you didn -- the diagram you didn't see is a closer-up of the head, depicting a gunshot wound to the back of the right head, not quite as high as Ms. Hightower, down a little bit lower, and so on these photographs -- of course you have to clean up her hair area -- you can see her face is down -- she's facing down on the autopsy table here. The gunshot wound is, again, in the back of the right side of the head.

Q. Dr. Presnell, if you will, look at 116 real quick. Would that assist you?a

A. No.

Q. It would not. Okay.

A. So again, you can see the location at -- probably a lot better on the photograph than you can on the diagram. It's on the back of the right side of the head.

This is just a close-up of this entrance wound. Again, a circular defect. It has abrasion borders. Another characteristic we would look at is beveling, which, anyhow,

all these things indicate that this is an entrance wound.

Now what's different with Ms. Wall versus Ms. Hightower is that the bullet exited on Ms. Wall, and so the bullet went into the right side of the head, traveled through the brain, again the brain stem, along the bottom of the left side of the brain, and exited out her -- her front of her face, right under her eyebrow. This is showing you the exit wound.

Q. No doubt about it, this is an exit wound?

A. Yes.

Q. And the other wound is an entrance wound?

A. Yes.

Q. Dr. Presnell, State's 116.

A. This is that diagram of when we were taking the calvarium off the top of the skull, and we are looking down into the base of the brain. Same diagram, different injuries that -- she has a number of skull fractures also associated with her gunshot wound. They are just in a little bit different location, but also we involve all three parts of the base of the skull, including the back, the middle and the front. These lines along here are fractures.

MR. RICHARDSON: Thank you.

Q. State's 117, 118, 119, and 120, Doctor.

A. These are x-rays that were taken of Ms. Wall at the time of autopsy. This is the front head-on x-ray of the head. We are not seeing any of the projectiles. We are not seeing

any bullet, and of course that's because it exited.

That's a closer view. Someone got a little closer with the camera on this picture, but it's the same x-ray.

This is the side view, and you can -- you see that there's no bullets. You can also see the fractures on a lot of her skull area here, see the darker lines are fractures, and that's a closer-up, somebody got closer with the camera. On the front part here, that big dark spot there, is associated with the exit wound. It's a defect in the bone from when the bullet went out.

Q. Dr. Presnell, I believe you indicated earlier, on that earlier chart of Monica Wall, that you noticed abrasions on the knees.

A. Yes.

Q. I'm going to show you State's 121. See if you recognize that.

A. This is a closer-up of her right knee, and it's just demonstrating the abrasions, the darker areas, there, there, and there, right around her knee, here, here and here, are scratches, or abraded areas of skin.

Q. Doctor, is there any way to date that abrasion?

A. This -- what we call this is just a recent abrasion. It happened around the time of death, you know. Whether it's an hour before, or at the time of death we can't really differentiate that with that, but it's not showing any

evidence of healing at this time.

Q. And that's how you can tell it's a recent ---

A. Yes.

Q. Dr. Presnell, I'm going to show you State's 122. I believe you have already identified that. If you could explain it to the jury.

A. This is a copy of the diagram that we did, a close-up on Ms. Wall, of -- a closer-up diagram of the head area, depicting the entrance gunshot wound on the back of the head, and the exit gunshot wound on the front of the head, under the left eyebrow.

And we actua -- there is also another little finding here, which was the circle that's drawn on the back of her head, is an area of what we would call alopecia, where her hair is missing, in the back, about a four-inch area of missing hair on the back of her head.

Q. And Doctor, I'm see right here, a line on the neck. Does that indicate anything?

A. Yes. We actually had a couple more findings with Ms. Wall. She had another abrasion. It's on the right side of the neck, and it's depicted by this line on the right side of the neck. It appears -- and we believe we have a photograph of it -- it appears pinched, kind of raised a little bit, but a raised area of abrasion.

There are also some internal findings which I -- well,

we have some internal findings, and we have that pinched area of abrasion on the neck. We also have some hemorrhage inside the soft tissue of the neck, on the left side.

Also, in association with these two injuries are some hemorrhages inside the -- or on the whites of the eyes, and what we would call petechial, or purpura contusions. I think we will see that, and then I can kind of explain what that means -- what we interpret that to mean.

Q. Doctor, I'm going to hand you 123, 126, 124, and 125, if these will assist you.

A. All right, this ---

Q. Just identify each one as you ---

A. I'm sorry. This is 124. This is a photograph of the side of her neck. Her head is up this way, her chest is down here, and here we see that darkened red area, on the side of her right neck.

125 is a closer-up of that, depicting that kind of pinched abraded area on the right side of her neck.

And then the next two are photographs of her eyes. Remember I said there were some little pinpoint hemorrhages and some -- actually some bigger hemorrhages. In the right eye -- and I really don't think that you guys can see this very well on this photograph. They are very, very fine, fine little pinpoint hemorrhages on the right eye. Nothing -- this right here is just the normal red color, very difficult to

appreciate here, but the left eye you can see a little bit better. Those dark maroon areas are areas of hemorrhage, hemorrhage in the eye, the dark maroon areas.

Q. Dr. Presnell, the abrasion on the neck, I believe you said these are petechia in the eye.

A. Well, the petechia are pinpoint ones, and then when they get bigger they are called puerperae, so these are larger hemorrhages, and pinpoint, petechia, in the right side.

Q. But these injuries and hemorrhage, does that indicate anything to you.

A. The injuries to the neck, on both the right and left side, and the petechiae, or hemorrhages in the eyeballs, indicate to me some degree of strangulation. Lay terms may say choking, but choking to us is really if you occlude your airway, like you choked on a piece of meat or something, so we would call this a strangulation, not necessarily with your hands or a ligature, but some type of compression on the neck. The whole -- the mechanism, the way that this happens, and it results in the hemorrhages in the eyes, are when there is compression on the neck you press down on the blood vessels.

You have two types of blood vessels in your neck, the arteries and the veins, and the arteries take -- go from the heart and take the oxygenated blood to all your organs. The veins, of course, they are the purple ones. They bring the deoxygenated blood back to your heart so it can go to your

lungs and get some oxygen. The arteries that are taking blood to -- and we are going to use the head, for example, are much thicker, and more elastic than the veins, which are much thinner, more compressible, that are come -- the veins coming back, so when you put compression on the neck the veins compress first, so if you put enough pressure to compress to veins, but you don't compress the arteries, then the blood is still going to your head, but it can't get out, and that pressure builds, and when that pressure builds, over a period of time, then the little small capillaries in your face can burst, and where you see it best is where your eyes are white. So these hemorrhages, this little hemorrhages in her eyes are indicative that there is compression on her neck, blood is going up, the pressure builds, and she's having bursting of her smaller vessels in her eyes.

Q. And you said a period of time, does it have to be a long time?

A. No, no, it doesn't have to be a long time.

Q. Doctor, I'm going to show you what's been previously admitted into evidence as State's Number 40. This is a picture. It's been identified as being Monica Wall. Now the -- was it a ligature mark or an abrasion, I think you ---

A. An abraded area on the side of the -- I mean, it's non-specific, it doesn't really match up with anything.

Q. Hypothetically, that straight line, could it have been

caused by the lip of this shower?
A. Yes.
Q. And hypothetically, if Ms. Wall was forced down on that shower lip, for a short period of time, would that be consistent with your findings as to the petechia and the abrasion?
A. Yes, that could explain it.
MR. RICHARDSON: Dr. Presnell, thank you. If you will take the stand.
Court's indulgence, Your Honor.
THE COURT: Yes sir.
MR. RICHARDSON: Your Honor, I apologize. I indicated Number 40 was in evidence. Actually it's Number 10 that is in evidence.
Q. Is that the same picture you just saw?
A. It appears to be the same, very -- maybe a different orientation.
Q. And your hypothesis would be the same on that?
A. Yes.
Q. Dr. Presnell, finally, I don't it seems like a simple question, but could you tell us the manner and cause of death of Monica Wall?
A. Well, with Monica Wall she had the single gunshot wound to her head, and the manner of death is homicide.
Q. The homicide being the gunshot wound?

A. Homicide being the manner of the death. It's not accident, not suicide, not natural. The cause of death is the single gunshot wound to the back of her head.

Q. No doubt about it, Monica Wall had fresh injuries to her neck ---

A. Yes.

Q. ---Fresh injury to her knee ---

A. Yes.

Q. ---And a mortal gunshot wound to the back of her head?

A. Fatal gunshot wound, yes.

Q. And Doctor, I believe I asked you this earlier, but the manner and cause of death for Jamilla Hightower.

A. She also had a single gunshot wound to the back of her head. Manner of death is homicide.

MR. RICHARDSON: Thank you, Dr. Presnell. If you would, answer any questions the defense may have.

THE COURT: All right. Mr. Gardner.

MR. GARDNER: Judge, I have no questions.

THE COURT: All right. And Mr. Frederick.

MR. FREDERICK: No questions, Your Honor.

THE COURT: All right. Do you wish this witness to be excused?

MR. RICHARDSON: I do, Your Honor, so she can return to her work.

THE COURT: Any objection?

MR. GARDNER: No sir.

MR. FREDERICK: No objection.

THE COURT: All right, Ma'am, you are released from your Subpoena. You may go back to your regular duties.

A. Thank you.

THE COURT: All right, Solicitor, your next witness, please Ma'am.

MS. ELDER: Your Honor, at this time the State of South Carolina would rest.

THE COURT: All right. Very good.

All right, Mr. Gardner, and Mr. Frederick, do y'all have some matters for the Court at this point in time?

MR. GARDNER: We need to take up a matter of law, Your Honor.

MR. FREDERICK: Yes, we do.

THE COURT: All right. Very good.

All right, ladies and gentlemen, the State has finished it's presentation. There are matters of law I need to take up now, so if you would go to your jury room, and I'll call you back out as quick as I can. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, counsel, one thing before we get started into the motions. In looking at the indictments, all of the indictments that bear the name of Monica Wall have her

last name spelled W.a.l.l., except one indictment, and that one is **(07-GS-26-2975)**, accessory before the fact of a felony, and that's regarding Mr. Christopher Stephens, and it has the name of Monica Walls. There is an "S" at the end of Wall. That appears to be a typographical error in that particular indictment. Is there any motion from the State at this point in time?

MR. RICHARDSON: Your Honor, the State would move to amend the indictment to conform to the facts presented in the case, and with the other indictment.

THE COURT: And so as to correct the spelling of the name to be W.a.l.l.; is that correct?

MR. RICHARDSON: Yes sir, no "S" on the end.

THE COURT: All right.

MR. FREDERICK: No objection.

THE COURT: All right, Mr. Frederick.

There is no objection to that?

MR. GARDNER: No sir.

THE COURT: All right. Very good. Thank you very much.

All right. Mr. Gardner, be glad to hear from you, sir.

MR. GARDNER: Thank you, Judge. With respect to the burglary charge, we would move for a directed verdict. I don't believe there was any evidence to address the elements, any evidence that should go to the jury that addresses the

elements of burglary. They went into great detail to establish that you couldn't get into this house without the victim's consent. If in -- whoever went in there obviously had the victims' consent. There is nothing that ties Jimmy Lee to that.

I would offer up **State versus Hill**, 361 S.C. 297, is just one case that addresses that. That case went on to talk about -- distinguish about buildings, but it also talked about consent. That -- there is just no evidence that ties him going into that house without the owner's consent, and I would move that that case -- that we get a directed verdict on that one.

THE COURT: All right, Solicitor, be glad to hear from you.

MR. RICHARDSON: Your Honor, first of all, the element of intent on a burglary first can be formed once someone is in the house, whether they get in by trickery or ruse. Expert witness yesterday stated that the only way for a defendant to get in was if he had somebody to let him in. There was circumstantial evidence that he went and got the victim's cousin to allow him entry. There was testimony that they would need a door man to get them in the house. And the entering the house with intent to commit a crime there in is clearly established that it can be by ruse, by force. It doesn't need to be proved by kicking of the door in, Your

Honor, and the State would submit that there has been sufficient evidence, or there is competent evidence to support the indictment.

THE COURT: All right. As to that particular motion, Mr. Gardner, part of the law of burglary first degree is that, if a person enters a building by using deception, artifice, trick or misrepresentation to get consent to enter this is an entry without consent, and also the intent can be shown by acts and conduct of the defendant, or other circumstances from which you could naturally infer, or reasonably infer intent.

It's not my job to weigh the evidence in this case. I'm concerned with the existence of evidence. There is evidence contained in this case as to the victim's habit as to entry into the home, what was required to gain entrance into the home. There is evidence that would -- that I believe there is substantial circumstantial evidence that would indicate, from the facts and evidence of this case, that there was either deception, artifice, trick, or misrepresentation used to gain entrance, and that is a reasonable conclusion from the facts and evidence of this case, and once again, it not being my job to weigh the evidence, but only with the existence of evidence, therefore I respectfully decline to grant your motion.

Next motion, sir.

MR. GARDNER: The other are just proformer motions on

all the other charges, Judge. The burglary motion was the one that I wanted to make for the record. We don't see any evidence of the trickery there, but for the record, Judge, we would move for a directed verdict as to all remaining charges.

THE COURT: All right. Very good. And so the other remaining charges would be as to your client, Mr. Sessions, that being the -- accused with the murder of Jamilla Hightower, the murder of Monica Wall, and the armed robbery of Jamilla Hightower. Again, as I indicated, regarding a directed verdict motion, in general a defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. Again, as I indicated, I am to look at the existence of evidence, not with it's weight. If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused then the case is properly submitted to the jury. A Judge would grant a directed verdict motion when the evidence merely raises a suspicion of guilt by the accused.

In this particular case I find -- again, I'm not concerned with weighing the evidence, the credibility or the believability of the witnesses. That is for the jury. It's not my job to judge their credibility or believability, just whether or not the evidence exists. The Court finds that there is more than sufficient evidence that exists in this case, if so believed by the jury, to support a conviction of

the Defendant, Jimmy Lee Sessions, on all of the crimes charged against him in this particular matter. Again, that is not a statement as to the weight of the evidence, just the existence of the evidence.

Thank you very much.

All right. Mr. Frederick.

MR. FREDERICK: Judge, we move for a directed verdict on Christopher's charges of accessory before the fact, all of the charges. Judge, the only testimony in the last three days that could even been considered would be James Pearl's testimony that he overheard Christopher and Jimmy Lee talking about robbing the girls the day before, or a few days before the murders happened. There was no testimony that he aided, counseled, procured, assisted, handed him a gun, did anything to assist in setting up or preparing for the robbery, only that they had a conversation about it. The fact that they discussed a robbery does not make him guilty of accessory before the fact, and it's not something that's sufficient for the jury to consider.

THE COURT: All right, sir. State.

MR. RICHARDSON: Your Honor, I'm going to pass up to you **State v. Buckman**. I would preface this by saying, once again, this motion should be considered in the light most favorable to the State, and as you have stated time and again, the Court should be concerned with the existence of evidence,

and not judge the weight of it.

As to this, the Defendant was charged with accessory before the fact. There was testimony that they were going to hit a lick. They were discussing robberies, and they came up with the name Jamilla, and it was actually Chris Stephens idea to rob Jamilla, and there was some argument over a drug debt. We had testimony. That is testimony, that's evidence that is in the record, that he counseled, aided and abetted, actually told Jimmy Lee Sessions, gotta watch out, she ain't going to give it up easy. Jimmy Lee said, I'll do the robbery, I'll kill her if I have to. There was testimony yesterday that -- and while he's not charged with accessory after the fact at this time, there was evidence that he was with Jimmy Lee Sessions, sharing the proceeds after the sale **(sic)**, further showing the -- his involvement in it.

The case that I passed up, **State vs. Buckman**, I believe is pretty much directly on point. While it's not an accessory charge it is a -- it's a ---

MR. FREDERICK: Conspiracy.

MR. RICHARDSON: It's a conspiracy charge, Your Honor, which is analogous to the -- to the -- to this accessory charge. In that case they basically threw out the murder conviction they had on Mr. Buckman because the State failed to prove that the Defendant was there. If I would have charged Chris Stephens with murder I have to prove that he was there

at the time. If I could prove he was there I would have had him indicted for murder, burg first, armed robbery, but instead, I can prove that he was in the car planning.

In this case one witness testified that he heard they, meaning all the Defendants, including Buckman, discussing getting some cheese, meaning money. That's on page six of the case, Your Honor -- and number -- number twelve. The evidence indicated the appellate was -- is involved in a discussion about getting some cheese, meaning money, in front of Demetrius. Appellate was also involved in a discussion about getting a lick, meaning a burglary or robbery. That's exactly on point of what we had today, and the Court indicated the case should go forward on the conspiracy charge.

Your Honor, in addition, Rodney Turner, the victim's cousin, knows it was Wednesday when he saw Chris Stephens in an S.U.V., or truck. Consistent, James Pearl said that they were in a Jeep Cherokee. That's an S.U.V.. Rodney Turner puts Chris Stephens at Jamilla's house that same Wednesday night. He's dressed in black, but as Lieutenant Prodan said, time wasn't appropriate, they had too many people there, don't know if he was casing the joint, don't know what happened, but they had another heated discussion because when Jamilla came back inside she was upset. Don't know who else was out in the car, don't know if it was Jimmy Lee Sessions or some other conspirators, but Judge, we have produced sufficient evidence

to send to the jury.

THE COURT: All right, sir.

Yes sir, Mr. Frederick.

MR. FREDERICK: Just, Judge, the case the Solicitor is quoting from is a conspiracy charge. It's not an accessory before the fact charge. It is conspiracy.

THE COURT: Yes sir.

MR. FREDERICK: And also, on page five of that case, paragraph eight, there was evidence of a -- there was an eyewitness in the case, there was a written statement, in addition to the testimony of the conversation that they had. Rodney Turner did not testify to anything. There was evidence of accessory before the fact, and the mere fact that a conversation was testified to, without more that showed that he assisted, aided, counseled, procured, all the language of the statute, Judge, is not sufficient to go to the jury.

THE COURT: All right, sir. I'll just make it clear, I'm not using the case submitted by the Solicitor, the **State vs. Buckman** in any way. I'm not considering that. What I'm looking at is the law of accessory before the fact, and in essence, regarding accessory before the fact, the State has to prove, beyond a reasonable doubt, that the defendant either advised, agreed, urged, counseled, hired, or in some way aided or abetted another person to commit a crime, and that the defendant was not present when the offense was committed. Aid

means to help, to promote the course, or accomplishment of, to give support to, or give assistance to. Abet means to encourage or appear to favor or support.

Regarding this particular matter, I do find that there is direct-evidence and substantial circumstantial evidence, reasonably tending to prove that the Defendant, Christopher Stephens, abetted the crime in this particular matter. And again, I am not looking at the weight of the evidence. I am looking at the existence of evidence. The evidence exists. Whether or not it's credible or believable, that is, again, the jury's job. That is not my job. But the evidence does exist in this particular case regarding accessory before the fact of a felony, regarding all three counts, the murder of Jamilla Hightower, the armed robbery of Jamilla Hightower, and the murder of Monica Wall, therefore, in using the directed verdict standard that I just reviewed earlier, I do find that there is direct-evidence and substantial circumstantial evidence reasonably tending to prove the guilt of the accused, and therefore I would respectfully decline to grant your motion in this particular matter.

Further motions from the Defendant?

MR. FREDERICK: Nothing further, Judge.

THE COURT: All right. Is the Defense ready to proceed with witnesses in this case? Mr. Gardner.

MR. GARDNER: Judge, I would like a short break to find

my witness and go through a couple of things. I didn't anticipate the State resting this early, but if the Court would indulge me with a short recess.

MR. FREDERICK: Judge, if we could have a little bit of time we would appreciate it.

THE COURT: Okay. Well, I'll give you a little bit of time, but you know I told you yesterday, if the State came this morning at 8:30, or 9:00 o'clock and said they are resting, I expected you to go forward, and I'm expecting y'all to go forward, so I'll see you shortly.

Thank you very much.

MR. GARDNER: Thank you, Judge.

MR. FREDERICK: Judge ---

THE COURT: Yes sir.

MR. FREDERICK: How long is shortly?

THE COURT: Ten minutes.

Thank you.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Is the State ready to go forward?

MS. ELDER: Yes sir, Your Honor. We would go on record -- I'm sorry. We are missing, looks like, Mr. Frederick.

(MR. FREDERICK ENTERS THE COURTROOM.)

THE COURT: Yes, Solicitor.

MS. ELDER: Your Honor, we would make a continuing motion in limine that, prior to -- I don't even know if it's going to come up, but prior to the offering of testimony in regards to third-party guilt, that that testimony be proffered outside the presence of the jury prior to it being eliciting -- elicited, in response to **Gregory**, and the cases that have cited it.

THE COURT: All right.

MR. FREDERICK: Judge, that would require us to proffer the testimony of almost every witness.

THE COURT: All right. Well, ---

MR. FREDERICK: I think, if the Solicitor wanted to make an objection at the appropriate time. We've already had evidence of third-party guilt that has come in through the prosecution witnesses.

MS. ELDER: I disagree, Your Honor.

THE COURT: Well, I think probably before you call each witness we are just going to have to have at least a very short hearing as to the essence of that particular person's testimony.

MR. FREDERICK: And I guess I have a question about specifically what they are referring to. And does this mean, if we are going to ask the question, did this person commit the crime, you want us to bring that up beforehand?

THE COURT: Yes sir.

MR. FREDERICK: Okay.

THE COURT: Well ---

MR. FREDERICK: Also, if we have a witness, and if we point at him and say, you committed the crime, we want to bring that up beforehand?

THE COURT: Yes sir.

MR. FREDERICK: No problem with that.

MS. ELDER: Your Honor, my understanding is, offering of any evidence that somebody else may be -- or point the finger, speculative, that somebody else did the crime, it's under **Gregory** and third-party guilt, so if somebody takes the stand and says, yeah, I heard Joe was involved in ---

MR. FREDERICK: That would be hearsay anyway. We are not going to do that, Judge.

THE COURT: Well, let me -- and I had it just a second ago, and I don't know where I put my notes. Tell me the cite again of **Gregory**, because I wrote it down and now ---

MS. ELDER: Yes sir, Your Honor.

MR. FREDERICK: And Judge, I think the appropriate case to look at would be **Holmes**, which limited **Gregory**.

THE COURT: How about give me both of them.

MS. ELDER: Your Honor, **Gregory** is 198 S.C. 98.

THE COURT: How about the Southeast cite; do you have that?

MS. ELDER: I'm sorry, yes sir. 16 S.E. 2d 532.

Also, Your Honor, in reference to that, **Gregory** has been cited multiple times. I would ask the Court to specifically -- we believe it's directly on point.

THE COURT: What's the **Holmes** cite, Mr. Frederick?

MR. FREDERICK: Judge, I'm about to pass the case up to you ---

THE COURT: All right.

MR. FREDERICK: ---As well as ---

MS. ELDER: Your Honor, also they cite, inside of **State versus Manfield**, that referred to the **Southerland** case. We believe this is going to be more so, in the -- I would assume what they are going to be offering as evidence. The **Southerland** case is at 447 S.E. 2d and 866 through 67 is the portions that deal with third-party guilt.

THE COURT: Okay. What is the ---

MS. ELDER: Your Honor, that ---

THE COURT: What is the first page of that particular Decision though? You said it's 447 S.E. 2d. The first page of the Decision would be?

MS. ELDER: I'm sorry, Your Honor. I don't know that I have that printed out. I have it documented inside of the **Mansfield** case. Here it is, Your Honor. It's 862.

THE COURT: 862?

MS. ELDER: Yes sir. 447 S.E. 2d 862.

THE COURT: All right. Very good.

MS. ELDER: And it deals with motive, Your Honor. It's not -- showing that others may have had a motive is inappropriate testimony under third-party guilt, Your Honor.

THE COURT: Thank you, sir.

MR. FREDERICK: Judge, that is **State versus Holmes**, **State versus Tindall**, **State versus Mitchell**, **State vs. Rice** --

THE COURT: All right.

MR. FREDERICK: ---Which are -- I think those are the cases that follow after **Holmes**. If you recall, **Holmes** went to the U.S. Supreme Court, and was remanded back to the South Carolina Supreme Court. There have been a few cases after **Holmes** that interpreted it.

State versus Holmes, Judge, overturned previous South Carolina law which excluded third-party guilt based on the strength of the State's evidence. **Holmes** made third-party guilt admissible based on the strength of the defense's evidence. It ruled based on the guarantee of a meaningful opportunity to present a complete defense based on due process and the Fourteenth and Sixth Amendments. Any evidence rule that infringed upon a right of the accused, and was arbitrary or disproportionate to the purpose it was designed to serve, was invalid, which is what **Holmes** said that the prior South Carolina law was.

State versus Rice was in October, 2007, basically said,

the evidence offered by the defendant as to third-party guilt is limited to facts which are inconsistent with the defenses -- the defendant's guilt. If there is testimony that is inadmissible as substantive evidence of third-party guilt it may, nevertheless, be admissible for impeachment.

State vs. Mitchell, in May of 2008, gave an example of something that is not admissible as third-party guilt, which was the defendant going through the telephone book to show that there were other people with the same name.

THE COURT: All right. Let's be clear about what we have as far as the issue of third-party guilt, and looking at **Gregory**, and the number of times that it's been cited, it basically states that evidence offered by an accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence. Evidence which can have no other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another is not admissible.

And it says -- goes on and talks about, before such testimony can be received there must be such proof of connection with it, such a train of facts or circumstances as tends clearly to point out such other person as the guilty party, so I don't see any other way but to have a hearing

every time you intend to produce a witness, so that I can make a decision. As the -- **Gregory** says, before such testimony can be received there has to be this proof of connection, so I don't know any other way around it.

MR. FREDERICK: And Judge, just for the record, part of the language that you read is -- the last part, is no longer valid, the "clearly" language, Judge, but ---

THE COURT: Okay. Well, I was reading that more to the point that, before the testimony can be received you've got to make a determination is what -- that's more my point, is what I was trying to get to. I mean, do you disagree that that's the threshold?

MR. FREDERICK: No sir, and as far as third-party guilt, I mean, we can talk now about the only people I think that it would be relevant to, and they have already called Antwann Higgins as a witness.

THE COURT: Okay.

MR. FREDERICK: Melissa Gomez will testify that she took a briefcase full of drugs out of the house. Roy Grant will testify that he was also in the house with Antwann Higgins and Melissa Gomez.

THE COURT: Okay.

MR. FREDERICK: Investigator DiLorenzo would testify that those individuals lied to him about what happened, and that they took a briefcase out of the house with drugs in it.

THE COURT: Okay. That's -- and that would be the essence of presenting Ms. Gomez ---

MR. FREDERICK: Antwann Higgins.

THE COURT: Antwann ---

MS. ELDER: He was already ---

THE COURT: No. I mean, he's already testified. The other fellow that ---

MR. FREDERICK: Best.

THE COURT: ---That was in there, the fellow that was in there with him ---

MR. FREDERICK: Roy Grant.

MR. GARDNER: Roy Grant.

THE COURT: ---Do you intend -- do you intend -- yes, do you intend to present him?

MR. FREDERICK: Yes sir.

THE COURT: Okay. So that would be the reason to present Ms. Gomez, Mr. Best?

MR. GARDNER: No sir, Grant. I'm sorry.

MR. FREDERICK: Roy Grant.

THE COURT: Grant. I'm sorry. Grant. Mr. Grant, and then the investigator?

MR. FREDERICK: Yes sir.

THE COURT: Okay.

MR. FREDERICK: Possibly some impeachment witnesses.

THE COURT: Okay. Well, what's your position then,

Solicitor, about the fact that they would present testimony or evidence that would show that there were other individuals certainly at the crime scene before police arrived, and that there were things that were removed. I mean ---

MS. ELDER: Your Honor, what -- what Mr. Frederick has outlined to the Court, I don't think would violate **Gregory**, Your Honor, if that's what they are going to testify to, if we are not going any further than that.

THE COURT: Okay. It seems to me then, if that's the point of it, then I don't know that I need to have a hearing, but if -- if you anticipate, or you see that you are going beyond that, Mr. Frederick, or Mr. Gardner, that y'all are going beyond that, y'all need to alert me and let me know.

MR. FREDERICK: Judge, that -- I think that's it. Now ---

THE COURT: Okay. Well, and I appreciate that, and you may get an unexpected answer. I understand that. But if you do get an unexpected answer, then we may have to stop the proceedings at that point in time, or you may see, from a response that you got, well, now I have to ask this question --

MR. FREDERICK: We would just approach if that happened.

THE COURT: ---And if you see that then you need to let me know so that we can discuss whether or not we then have to

have a hearing or not, all right. What I would like to do is, if we don't have to, if we -- if it seems to be that -- and I certainly agree that what you are telling me is proper under **Gregory**. I don't see any problem with it, but if we go beyond that, I don't know what that is, and so I need for you to alert me to that.

MR. FREDERICK: And Judge, it sounded like part of the concern was that I would be eliciting testimony about what people have heard, what the word on the street was, and I'm certainly not going to do that with any witness.

THE COURT: Okay. Very good.

MS. ELDER: Your Honor -- and I apolo -- just so the Court will know, that is -- that is our concern, as well as motive of others, Your Honor.

THE COURT: All right. Well, and I appreciate that, but ---

MS. ELDER: Those are my two **Gregory** concerns.

THE COURT: ---Let's -- let's -- let's just leave it that, from what I've heard so far, Mr. Gardner, Mr. Frederick, I think it comports with **Gregory** that you are certainly welcome, and it's proper to do that, but if you see that it's going beyond that please alert me and let me know. All right.

MR. FREDERICK: Yes sir.

THE COURT: Thank you.

All right, then is the Defense ready to go forward, Mr.

Gardner, and Mr. Frederick?

MR. GARDNER: Yes sir.

THE COURT: All right. Very good.

MR. FREDERICK: Judge, we had some ground rules we wanted to bring up with the Court.

THE COURT: All right.

MR. FREDERICK: Mr. Gardner is presenting his case first, and we just wanted to -- Mr. Gardner calls his witness, the order of things, and then I will cross that witness, and then the Prosecutor will cross that witness?

THE COURT: That's correct.

MR. FREDERICK: Okay.

THE COURT: Yes sir.

MR. FREDERICK: When Mr. Gardner rests, then I will call witnesses, if I have any, at that time?

THE COURT: Yes sir. Now, before you rest, Mr. Gardner, and before you make a decision, or -- I'm not asking you right now whether your client is going to call -- be called or not, but what I'm going to give you is the opportunity to call all your other witnesses, and then you need to let me know you have basically exhausted all those witnesses and now we've come to the point where you've got to make a decision as to whether or not your client is going to testify, and you need to tell me you need to break, because then we will discuss with him, obviously outside the presence

of the jury, about his Constitutional Rights and testifying, so if you will just make sure you do that for me, then we can operate in that manner, all right.

MR. GARDNER: Yes sir.

THE COURT: And Mr. Frederick, we'll do the same thing with your client, if that's agreeable with you, that you can call the witnesses that you intend to call, exhaust those, and then when you get to the point where you had to make a decision whether or not your client is going to testify you let me know that we need to take a break and cover that particular issue.

MR. FREDERICK: Yes sir.

THE COURT: All right. Very good.

All right, ask the jury to come in then, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

MR. FREDERICK: Judge, can we approach?

THE COURT: Yes, absolutely. Y'all come forward.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, Mr. Gardner, your first witness, please sir.

MR. GARDNER: Thank you, Judge.

We would call Donald C. Girndt.

THE COURT: All right. Please come around to be sworn, sir.

DONALD C. GIRNDT, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Good morning, sir. Would you please tell the jury where you are employed?

A. Yes. I'm self-employed as a Forensic Consultant. I specialize in areas of footwear identification, fingerprint identification, crime scene analysis, and blood stain pattern interpretation.

Q. And prior to this consultation business, where were you employed, sir?

A. I was employed as an agent with State Law Enforcement Division in the Crime Scene and Latent Print Unit. I retired from there in December of 1994, and since 1995, I've had my own business. I consult primarily -- excuse me -- with defense attorneys throughout the Southeast, North Carolina, South Carolina and Georgia.

Q. All right. And in that capacity at S.L.E.D., can you give the jury the benefit of your educational background, and tell us if you took any specialized training in the area of latent prints and footwear impression?

A. Yes. I have an Associate and Bachelor's Degree from the University of South Carolina. I have attended the Criminal Justice Academy for basic police, and fingerprint and crime scene. I have attended numerous other courses over the

years, and as an agent at State Law Enforcement Division. I was also training officer there for new agents that came in, so ---

Q. You were the training officer at S.L.E.D.?

A. Well, what happens is, in the Unit we -- when a person comes in, for the first two years they are assigned to an agent to train them. It takes two years to be competent as a latent print examiner, and in crime scenes, and that's what I did. That's part of the duties.

Q. All right. Have you ever testified as an expert witness in the area of footwear identification, or footwear impressions?

A. Yes.

Q. And in what court, and approximately how many times?

A. Well, not in just that area, but in the -- all the areas, because what happens is, when you process a crime scene you may end up doing the fingerprints, the footwear, blood stain pattern, that sort of thing, so over the years I've testified approximately a hundred and thirty times in North Carolina, South Carolina and Georgia, Maryland, and in Federal District Court, in one or more of those areas.

Q. All right. Yes sir.

MR. GARDNER: Your Honor, at this time I would offer Mr. Girndt as an expert witness in the area of footwear identification and impressions.

MS. ELDER: Your Honor, we have no objection that Mr. Girndt would be qualified to give his opinion in reference to those areas.

THE COURT: All right. I'm going to give -- I'm going to qualify him to give his opinion in the area of footwear impressions and identification.

MR. GARDNER: Thank you, Your Honor.

Q. Mr. Girndt, did you have the opportunity to review the Report made by Agent Darnell?

A. Yes, I did.

Q. All right. And did you have the opportunity to review the five pairs of tennis shoes that are in evidence?

A. Yes, I did.

Q. All right. Is there any way to date the prints referred to in his Report, date them to the crime scene?

A. No, not the ones that are in the black powder, no.

Q. All right. Did you have the opportunity to review other photos of prints taken at the crime scene?a

A. Yes, I did.

Q. And is there any way to date any of those to the crime scene?

A. May I see the photo?

Q. I'm going to show you what's been marked as State's 16.

COURT REPORTER: Stephens, Defendant.

Q. Defendant, Stephens', Exhibit 16, in evidence, and ask

you, based on your investigation of this case, do you recognize that?

A. Yes sir.

Q. All right. Can you tell us what that is, sir?

A. Yes. This is a photograph that was taken in the bathroom, and it appears to be a footwear impression in fecal material ---

Q. All right.

A. ---And this was taken prior to the floor being processed.

Q. All right. And is there any way to date that exhibit to the crime scene?

A. I would say, as a Crime Scene Analyst, and in viewing this, and knowing some of the facts of the case, I would say that this footwear impression would be contemporaneous to the crime scene. That would be at or near the time of the crime.

Q. This footwear impression would be contemporaneous to the crime scene, and how did you come up with that, based on the fecal matter?

A. Well, based on the information that I reviewed, in that one of the victims had defecated, and that -- down the hallway, and was drug down the hallway into the bathroom, and this impression -- there's one impression right inside the door, and there's another one right near the body.

Q. Yes sir. So the print that you have there that's

contemporaneous with the crime scene, did you compare that to State's 88, the shoes that they say are Jimmy Lee Sessions'?
A. Yes sir.
Q. And do you have an opinion as to whether or not that print matches, or what is your opinion on that, if you have one?
A. My opinion would be that the Sessions' shoes are excluded from producing this print.
Q. Jimmy Lee Sessions' shoes are excluded as producing the print that's contemporaneous with the crime scene, based on your investigation?
A. In my opinion, yes.

MR. GARDNER: That's all I have. Please answer any questions that Mr. Frederick has.

THE COURT: Mr. Frederick.

MR. FREDERICK: Just a couple, Mr. Girndt.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Just to be clear, there was footprint impressions that were taken from different locations; is that right?
A. Yes.
Q. Okay. And the State's expert, he had found one that was -- could have been consistent with, but didn't match, but could have been consistent with a footprint impression that was taken; is that correct?
A. Yes.

Q. That one, based on your review of the evidence, was not in the fecal matter; is that right?
A. No, not that I'm aware of, no.
Q. Okay. But there were some that were in the fecal matter?
A. Yes.
Q. And those -- you can exclude the footprint that they attribute to Jimmy Lee Sessions' shoe from the ones that were in the fecal matter?
A. Yes. All five pairs of the shoes that were submitted are excluded from making this print. Just not -- not the same design.

MR. FREDERICK: None of the shoes?

A. None of the shoes.
Q. Okay.

MR. FREDERICK: No more questions. Thank you.

THE COURT: Solicitor.

MS. ELDER: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. ELDER:

Q. Did you have an opportunity to review -- you said, I think, Agent Darnell's report; is that correct?
A. Report. Yes.
Q. And you indicated that -- upon reviewing that, did you also get a chance to review the shoes?
A. Yes.

Q. And the State also provided you an opportunity to review the gel lifts, and the Pro-Lifters from the kitchen; is that correct?

A. Yes.

Q. And I believe Agent Darnell cooperated with you about his findings as well; is that correct?

A. Yes.

Q. And in reviewing his report, you obviously noticed that Agent Darnell found a consistent print with that of Jimmy Lee Sessions' shoes, State's Exhibit 88, in the bathroom?

A. Yes.

Q. And are you disagreeing that that print was consistent?

A. No.

MS. ELDER: No further questions, Your Honor.

THE COURT: All right. Follow up?

MR. GARDNER: No, Your Honor.

MR. FREDERICK: Briefly.

THE COURT: Yes sir.

RECROSS-EXAMINATION BY MR. FREDERICK:

Q. In your examination of those five pair of shoes, were there similarities or differences between ---

MS. ELDER: Objection, Your Honor.

MR. FREDERICK: It goes directly to what she asked.

THE COURT: I'm going to allow the question. You go ahead.

Q. Were there similarities or differences between any of those five pair of shoes?

A. Were there similarity? Yes, four of the pair of shoes have basically the same design, pattern.

Q. Didn't you actually measure those -- the circles on the bottom of the shoe; is that right, circular pattern?

A. I did. I did.

Q. Didn't you actually measure those on each of the shoes?

A. I did. I found that the circles were basically the same size in each of the shoes.

Q. Okay. And also, there was a small star pattern around the edge of them?

MR. RICHARDSON: Your Honor, objection. He's gone a little bit further now.

THE COURT: I'm going to sustain that objection.

MR. GARDNER: I would impose an objection here. I would ask that the State have one -- the same lawyer object that's doing the examination.

THE COURT: All right. Let's -- counsel, whoever is going to cross-examination ---

MS. ELDER: Yes sir.

THE COURT: ---That attorney will be charged with making objections to the Court. All right.

MR. RICHARDSON: Yes sir, Your Honor.

THE COURT: All right.

Q. So four of the five shoes that you looked at, that you examined, had identical patterns?
A. Yes sir.
MR. FREDERICK: Okay. No more questions.
THE COURT: Anything on those questions?
RECROSS-EXAMINATION BY MS. ELDER:
Q. Are you saying -- he said identical patterns, of those same shoes, four of the same pairs of shoes?
A. Oh no, just the same -- the same basic pattern.
Q. But -- and again, you are not in disagreement with Tom Darnell's finding?
A. Not at all.
MS. ELDER: Thank you, Your Honor.
THE COURT: All right. Do you wish this witness to be excused?
MR. GARDNER: Yes sir.
THE COURT: Any objection?
MR. FREDERICK: No objection.
THE COURT: Any objection, Ma'am?
MS. ELDER: No, Your Honor.
THE COURT: All right. Sir, you are released from your Subpoena. You may go back to your regular duties.
A. Thank you.
THE COURT: All right. Your next witness, Mr. Gardner.
MR. GARDNER: Officer DiLorenzo, Your Honor.

THE COURT: All right.

All right, sir, if you would come around to be sworn, please. Thank you.

ERIC DiLORENZO, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Good morning, sir.

A. Good morning.

Q. Officer -- do you prefer Sergeant, or Officer, or ---

A. Either one is fine.

Q. Sergeant though, right?

A. Yes sir.

Q. Okay. Sergeant DiLorenzo, you are employed with Myrtle Beach Police Department?

A. I am.

Q. And in what capacity, sir?

A. Currently I am a Sergeant in charge of the Training Unit.

Q. Back in June of '06 were you so employed in -- by Myrtle Beach Police Department?

A. I was.

Q. All right. And in fact, you had -- or tell me, did you have anything to do with this investigation?

A. Yes sir. I was an investigator assigned to this investigation.

Q. All right. Were you the lead investigator?
A. At one point in time, yes, I was.
Q. Lead investigator of the whole investigation?
A. At one point in time I was.
Q. Yes sir. Okay. And during the investigation you interviewed James Pearl; is that right?
A. Yes.
Q. Do you remember how many times you interviewed him?
A. At least once.
Q. At least once. During your interview with James Pearl, he -- did he tell you that Jimmy Lee Sessions told him ---

MS. ELDER: Objection, Your Honor.

MR. GARDNER: Judge, that's ---

THE COURT: I'm -- y'all come up here and talk to me for just a second.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MR. GARDNER: Judge, at this time I would ask that Sergeant DiLorenzo be declared a hostile witness as to the Defendant, Jimmy ---

THE COURT: Under the Rules it's no longer necessary. We have changed those rules some time ago. You can question him as you deem necessary. Thank you.

MR. GARDNER: Thank you, Judge.

Q. All right. At least one time you interviewed Jimmy Lee -- or James Pearl, right?

A. Yes, from what I can recall.
Q. All right. And you recall that James Pearl gave you a statement about Jimmy Lee Sessions?
A. Yes.
Q. All right. And do you remember if he told you how many times that Ms. Hightower was shot?
A. I would hate to speculate. I can't remember that exact information off the top of my head. If you provided me with a transcript of the interview I ---
Q. Well, does three times -- does that sound familiar?
A. Again, I -- I -- sorry, but I can't recite the exact wording of that interview off the top of my head. It was some time ago.
Q. Okay. And then he also -- did he talk to you about Monica Wall? This is James Pearl now.
A. Specifically ---
Q. Let me try -- you interviewed James Pearl ---
A. I did.
Q. ---About this case?
A. I did.
Q. Was James Pearl a suspect at the time ---
A. Suspect in this ---
Q. ---In this crime?
A. No, he was not.
Q. Okay. He had contacted -- or at some -- some way he

was talking to y'all about information about this case?
A. Yes sir.
Q. And the information he gave you, he talked about Jimmy Lee Sessions, and he told you that Jimmy Lee Sessions ---
COURT REPORTER: Excuse me. Excuse me.
THE COURT: I'm sorry. Sir, ---
A. I'm sorry.
THE COURT: ---You are going to have to answer out loud, yes or no. You can't shake your head.
A. I'm sorry.
THE COURT: That's all right.
Q. All right. And he told you that Jimmy Lee Sessions said he shot Ms. Hightower three times. Remember that?
A. I remember him saying that he shot, but I -- again, I can't say the exact amount of times, but ---
Q. And he said -- or do you remember him saying that he went to -- that he was leaving, and that Monica stepped out of the bathroom door -- you remember that part ---
A. Yes sir.
Q. ---Or opened the bathroom door ---
A. Yes.
Q. ---And that Jimmy Lee immediately pushed her back into the bathroom, and shot her? Do you remember that part?
A. Yes. I remember something in the interview. Again, the exact wording I can't recall, but yes, I can remember me

getting that information from that interview.
Q. All right.
MR. GARDNER: Thank you, sir.
A. Okay.
THE COURT: All right. Mr. Frederick.
MR. FREDERICK: Yes sir.
CROSS-EXAMINATION BY MR. FREDERICK:
Q. Good morning.
A. Good morning.
Q. Jamilla Hightower, she was a drug dealer, right?
A. From information that I gathered during the investigation, yes, I learned that she sold drugs.
Q. Okay. What level drug dealer would you say that she was?
A. That's hard for me to exactly answer, as far as levels.
Q. Street level dealer? Was she selling dime bags on the corner?
A. Yes, as far as I knew. I -- as far as exact weights, I was never able to pinpoint that information.
Q. Nobody gave you information on what type of weight that she had?
A. People were giving me information. I don't know -- without me seeing with my own eyes, and stuff like that, it would be hard, but yes, I got information that she was selling street level, maybe one step up from street level. Again, I

don't know.
Q. You had information she was selling kilos at a time, didn't you, or buying kilos at a time, breaking them up and selling them?
A. At least half-kilos, I would -- I think I recall.
Q. As far as drug dealers go, I mean, that's a pretty good size amount of drugs?
A. It is.
Q. Okay. Who is Monica Wall?
A. I learned that that was Jamilla's live-in girlfriend, or partner.
Q. Okay. When this crime first happened, you were under a lot of pressure to solve this murder, weren't you?
A. No.
Q. No pressure?
A. No more than any other murder investigation that I've worked.
Q. No more than any other murder?
A. Yes. I was a Violent Crime Investigator, so primarily that's what I -- I worked, was violent crimes, and ---
Q. There was a lot of media attention given to it?
A. There was a lot. Most murders get a lot of media attention.
Q. Okay. And on July 12th, 2006, yourself and Salena Mann went to a candlelight vidual on Carver Street?

A. I went to a candlelight vidual. Again, off the top of my head I can't say the exact date, but yes, I -- we did go to a candle vidual.
Q. Okay. In August, 2006, reward money was offered for information on the murder?
A. Yes. There was money given to Crime Stoppers.
Q. Okay. There was also a press release announcing the reward money?
A. Yes.
Q. When was the first warrant signed in this case? When was Jimmy Lee Sessions charged?
A. Without looking at my notes, or seeing a copy of the warrant, I wouldn't be able to state off the top of my head.
Q. Did you bring your notes with you today?
A. I brought a copy of my follow-up Report. I did not bring copies of my handwritten notes.
Q. Okay. Does it say, in your follow-up Report?
A. Is it okay if I look at my copy of it?
Q. Yes. Yes, please.
A. I'm sorry, but I don't see that in my file, the exact date, the -- you are speaking about the arrest warrant being signed?
Q. Yes. Does May of 2007, sound right?
A. That sounds close, if not exact.
Q. Okay.

A. My follow-up goes up until December 31st of '07.
Q. Okay. When you are investigating a murder ultimately you have to charge someone, don't you?
A. You have to charge someone at the point you develop probable cause.
Q. Well, someone has to be held accountable?
A. The guilty party ---
Q. Okay.
A. ---Or -- excuse me -- the accused party.
Q. During your interviews, do you recall telling anyone that you had to charge someone, someone had to be held accountable?
A. I don't remember saying that off the top of my head. I'm not saying I didn't say it, but ---
Q. Fair enough.
Q. Without getting into any specifics, right, early on in this investigation you received a lot of information from many different people, didn't you?
A. Yes.
Q. Okay. Many of those people had pending charges and were looking for help; is that fair to say?
A. There were several people, yes.
Q. Okay. There were some other people that probably just wanted to be involved, and honestly wanted to help ---
A. Yes.

Q. ---Also. Okay.
A. Yes.
Q. Early on in this case you had to choose from many different theories about how this murder happened; would that be fair to say?
A. That would be fair to say.
Q. Without getting into specifics, early on in this investigation would you say roughly a total of twenty-three different people were accused of the crime?
A. Twenty-three sounds like a high number to me, but it was definitely multiple.
Q. Roughly?
A. Roughly.
Q. Yes. Okay. And we discussed this at a preliminary hearing in this case, didn't we? Do you recall that?
A. Yes. Yes.
Q. Okay. And it actually turned out to be more than twenty-three, didn't it?
A. I never counted.
Q. Okay. You had information that Gregory Wilson, a drug dealer, was ripped off by Jamilla?
MS. ELDER: Objection.
THE COURT: Sustained.
MR. FREDERICK: Judge, at this point I think we have a matter of law that we need to take up.

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THE COURT: Ladies and gentlemen, go to your jury, please -- go to your jury room.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Yes, Solicitor.

MS. ELDER: Your Honor, this is -- that is exactly what my motion in limine was about. Mr. Frederick indicated that that was not the purpose of this witness. Now he has already asked the question in front of the jury. Motive that other people, to have hurt or killed Jamilla, are not proper under **Gregory**, and the line of cases that follow **Gregory**, and that's exactly what this question elicits.

MR. FREDERICK: Judge, we have the right to impeach the quality of the investigation. It's essential that we do so in this case. That is, in large part, our theory of the case, that our case, and defense, rests upon.

Judge, we are not going to say, this person committed the crime, that person committed the crime. We may do that with Antwann Higgins and Melissa Gomez, but that's the only people. What I intend to do is walk him through his investigation, and we can proffer the testimony ---

THE COURT: Yes. Why don't you go ahead and do that. You might as well go ahead and get started.

MR. FREDERICK: Okay.

BY MR. FREDERICK CONTINUED:

Q. Investigator DiLorenzo, you had information that Gregory Wilson, a drug dealer, was ripped off by Jamilla, and he ordered a hit on her?

A. Yes.

Q. You had information that Moses, in Pawleys Island, was involved, along with some hit men?

A. Yes.

Q. You had information that Jamilla was killed because she was suppose to be testifying in a trial against someone?

A. Yes.

Q. Early on Christopher West was accused of the crime, wasn't he?

A. Christopher West was -- if we are speaking about the same person, was a potential witness. I'm not sure where you are ---

Q. We will move on. We will ---

A. Okay.

THE COURT: Well, let's -- you are going to have to deal with these, it sounds like, one by one. The previous ones, before you get to Mr. West ---

MR. FREDERICK: Okay.

THE COURT: ---Those questions that you've just asked, I think those clearly fall within the main import of **Gregory**, and all the cases that have followed behind it, and that is,

it's evidence which can have no other effect than to cast a bare suspicion on another, or raises a conjectural inference as to the commission of the crime by another. That's clearly what those are, and I will not allow that.

Now, I don't know if you are going to rephrase your question about Mr. West and -- regarding the answer that was given, that he investigated some -- Mr. West, or he received some information from Mr. West. That -- seems that that would be proper. You could ask that, but you can continue on.

MR. FREDERICK: Yes sir. And Judge, this -- for the record, our argument is that, what we need to do here is impeach the quality of the investigation.

THE COURT: Well, I appreciate that, but the -- what you are actually doing is suggesting to the jury, these are the responsible parties, these are the people that committed the crime, and the way you are asking the questions, and the way you are presenting it, falls clearly within the scope of **Gregory**, as I just quoted. It's just throwing something out there that casts a bare suspicion upon another, and that's why I will not allow you to ask the questions that preceded the question about Mr. West.

All right, sir. Continue on.

MR. FREDERICK: Okay. And Judge, I think your ruling would be the same on many of these. To save some time, instead of doing them one at a time do you want me to stop

when I ---

THE COURT: Well, I don't know what the question is, so I can't give you a ruling that says, no, you can't ask these questions, because I don't know what the questions are. You know, I would -- I think you understand my position about **Gregory**, but I don't know if that deals with your particular question or not, so I just can't tell you, no, you can't ask those questions. I'm not going to prevent you from asking them, I just -- I can't do that, and wouldn't do that, so you are just going to have to continue on.

MR. FREDERICK: Okay. Can I just run through them and ---

THE COURT: Yes sir.

MR. FREDERICK: Thank you.

Q. Phonetia Hightower was a suspect?

A. Suspect to the point of having involvement.

THE COURT: I would allow that. And I told you, if you wanted to rephrase the question in some way about Mr. West I was going to allow that also.

MR. FREDERICK: Okay.

Q. Christopher West was a suspect?

A. The information I had on Christopher West is that he had information, not as being a suspect.

Q. Okay. Did -- based on your investigation, at some point did Jamilla testify in a trial against individuals?

A. I didn't understand that question.
Q. During the course of your investigation did you receive information that Jamilla had testified against someone in a trial?
A. Yes.
Q. Okay.
THE COURT: I'll allow that particular question.
Q. Was there an individual named Moses, in Pawleys Island, that was a suspect? I'm going backwards now.
A. Okay. Yes.
THE COURT: I'll allow that question.
Q. Was there an individual named Gregory Wilson who was a suspect in this case?
A. Yes.
THE COURT: I'll allow that.
Q. Did you have information that Jamilla had stolen drugs from him?
THE COURT: I'm not going to allow that.
Q. Were Frankie and Johnathon Oxendine suspects in this case?
A. Yes.
THE COURT: I'll allow that.
Q. Did you, during the course of your investigation, receive information that some unidentified Mexican individuals were involved in this in some way?

A. Yes.

THE COURT: I'll allow that.

Q. Was there an individual named Brandon that was a suspect in this case?

A. I'm sorry. You said the name Brandon?

Q. Brandon.

A. The name Brandon is someone -- I'm sorry.

MR. FREDERICK: I'm going to refer you to this. I only had one copy, but they are getting me another one.

A. That's fine.

COURT REPORTER: Excuse me. I have to hear you.

MR. FREDERICK: I'm sorry.

Q. Page fourteen, line twenty-four. Do not -- don't read that to the jury. Just ---

MS. ELDER: What -- could we have what that is, Your Honor?

MR. FREDERICK: Preliminary hearing, Judge.

THE COURT: Can you answer the question, sir?

A. The answer, according to the preliminary hearing, is -- the question was asked, "Teresa Williams told you a guy named Brandon was there on the night of the murder." I answered "Yes". According the my notes Teresa said that she had no knowledge that he was suppose to be there the night of murder.

MR. FREDERICK: Would that be a fair answer?

THE COURT: Yes sir.

A. Okay.

THE COURT: You would have to bring out both of them though.

MR. FREDERICK: Okay. Yes sir.

THE COURT: All right.

Q. Floyd Lowe was a suspect in this case?

A. Floyd Lowe was an associate of the Oxendine brothers who were, at one point, named as suspects, according to witnesses.

THE COURT: I'll allow that.

Q. And two individuals identified as "Showcase" and "Capone" were suspects in this case?

A. Those were names given to me as potential suspects, yes.

THE COURT: I'll allow it.

Q. "Showcase" is Adam Lee Jarrett?

A. No. "Capone" is Adam Lee Jarrett. "Showcase" is Adrian Best.

Q. Okay. Antwann Higgins was certainly a suspect, wasn't he?

A. Yes.

Q. Did you receive information in your investigation that there were people from Arkansas that were involved in this crime?

A. Yes.

THE COURT: Yes sir, I'll allow that.

MR. FREDERICK: Okay.

Q. For a brief period, Felicia, Jamilla's ex-girlfriend, was a suspect in the case?

A. It was a fear she may have had involvement.

Q. Okay.

THE COURT: I'll allow it.

Q. Josh Best was a suspect in this case?

A. Yes.

Q. And Josh Best was at Jamilla's house from ten-thirty to ten-forty-five on the night of the murder, based on your investigation, wasn't he?

A. I'm not sure of the exact timing but that sounds close.

Q. Okay. Last phone call made to Jamilla's phone was from Josh Best?

A. From what I can recall, yes. Again, I don't want to supersede phone records, but what I can recall off the top of my head.

MR. FREDERICK: And did you want me to stop after each?

THE COURT: Well, I haven't heard anything that I was going to -- that I would say violates **Gregory**. It was those initial questions that you asked, so if you can take that as a guideline, I think probably we can proceed along.

MR. FREDERICK: Okay.

THE COURT: All right. So, I mean, do you anticipate

further questions that would -- that will be of the same nature that I have allowed, or are there any that you see ---

MR. FREDERICK: That was it. That was just about -- that was just about all of them. They are all basically identical.

THE COURT: Then I don't -- then I do not see those as violating **Gregory**. I was the ones that you had asked right prior to mentioning Mr. West that I would not allow those particular questions.

MR. FREDERICK: Yes sir.

THE COURT: All right. Very good.

Ask the jury to come back in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Frederick, you may continue, sir.

MR. FREDERICK: Thank you, Your Honor.

THE COURT: Yes sir.

CROSS-EXAMINATION BY MR. FREDERICK CONTINUED:

Q. Investigator DiLorenzo, was an individual named Gregory Wilson a suspect in this case?

A. Yes.

Q. Was there an individual named Moses in Pawleys Island that was a suspect in this case?

A. Yes.

Q. Let me do this, just in case we need it. I'm going to hand up this and this, which I may refer you to.
A. Okay.
Q. Did you have information that Jamilla had testified in a trial against some individuals?
A. Yes.
Q. Christopher West was a suspect in this case at one point?
A. Christopher West was a gentleman who potentially had some information regarding this case.
Q. Okay. Not a suspect?
A. Not that I can recall, no.
Q. Okay. Phonetia Hightower was a suspect in this case?
A. She was a suspect as having involvement in the case, yes.
Q. Okay. Frankie and Johnathon Oxendine were suspects in this case?
A. Yes.
Q. Early on in the investigation you had some information that some unidentified Mexican individuals were involved in this crime?
A. Yes. That's correct.
Q. You received information that an individual named Brandon was potentially a suspect in this case? Brandon was there on the night of the murder, is the information you

received? And I refer you to the transcript in front of you, on page fourteen, line twenty-one.

Q. Okay. It was there in the preliminary hearing where I stated that yes, he was there on the night of the murder, however, in my investigation notes I have that, according to the witness I spoke about, Brandon was not there.

Q. Okay. So you followed up on it?

A. Yes.

Q. Okay. Floyd Lowe was a suspect in this case?

A. Floyd Lowe was a name I was given to being an associate of the -- Johnathon and Frankie Oxendine.

Q. Okay. There were two individuals named "Showcase" and "Capone" that were suspects in this case; is that right?

A. Yes. Those were names given to me as suspects.

Q. "Capone" is Adam Lee Jarrett?

A. That is correct.

Q. And "Showcase" is Adrian Best?

A. That's correct.

Q. Antwann Higgins was certainly a suspect, wasn't he?a

A. At one point he was.

Q. Okay. During your investigation you received information that some people from Arkansas were involved in the crime?

A. I did receive that information.

Q. Felicia, Jamilla's ex-girlfriend, at some point was a

suspect?
A. There was, at one point, a theory she may have had involvement.
Q. Okay. Josh Best was a suspect in this case?
A. He was, yes.
Q. And Josh Best, he was at Jamilla's house from 10:30 to 10:45 on the night of the murder, wasn't he?
A. He was -- we certainly had information he was there that evening. I couldn't say exactly what time, but that sounds approximate.
Q. Let's look at page sixteen, line thirteen.
A. Of the preliminary hearing transcript?
Q. Yes sir.
A. You said line thirteen?
Q. Yes.
A. Okay.
Q. The question asked was, were -- Josh Best was at Jamilla's house from 10:30 to 10:45 on the night that this happened, and the response was?
A. Yes, I believe it was that time frame.
Q. Okay. Josh Best was not there by himself, based on your information, was he?
A. That is correct.
Q. Okay. "Q" and "E" were identified as being there?
A. "Q" and "E" were names that were given to me as being

there, yes.
Q. Okay. "Q" is Quinson Kilgore?
A. That was one of several "Q"s that were identified in this.
Q. I think another one is Quinton Fulmer; is that right?
A. Yes.
Q. Okay. "E", would that be Ernie Mitchum?
A. Again, I believe that's one of multiple "E"s that were given to us throughout the investigation.
Q. There's different people that go by the name "E"?
A. That is correct.
Q. Okay. Lamont Garner was identified as being at her house on the night of the murders?
A. If you will -- I just don't want to give you the wrong information. If you can bear with me for one second.
MR. FREDERICK: Of course.
Q. If it would help, on page seventeen, line nineteen.
A. Yes. I had gotten information that Lamont Garner was -- was at the house that evening.
Q. Okay. And James Pearl was a suspect, was he not?
A. James Pearl was given to me as having information or knowledge about the investigation.
Q. Was he also a suspect?
A. He -- to the point he had knowledge of what had occurred.

Q. Okay. Fair enough. So you had a large volume of information going into this investigation; fair to say?
A. Yes.
Q. A lot of different people coming forward, pointing -- pointing the finger this way, that way?
A. Yes.
Q. Okay. Ultimately you had to charge someone, right?
A. I believe that's fair to say.
Q. Okay. You met with Matthew Campbell regarding this case, didn't you?
A. I did.
Q. Okay. That was on June the 19th?
A. Yes, it was.
Q. When you met with him his attorney, Billy Monckton, was with him?
A. That's correct.
Q. Okay. Matthew was turning himself in on a pending drug warrant?
A. That is correct.
Q. During the -- I don't want to go into specifics.
A. Okay.
Q. I'm just going to ask you one narrow question, okay?
A. Sure.
Q. During the course of your conversations with him did he ask you to call his probation officer and tell them -- let

them know he had cooperated?
A. No. I don't remember that.
Q. It's not in your notes. It's in the recorded interview.
A. I don't recall that.
Q. Fair enough. Fair enough.
You interviewed "LeeLee" Washington regarding this case, didn't you?
A. I did.
Q. That would have been December 15th?
A. Yes. It was December 15th.
Q. Salena Mann, was she present?
A. She was.
Q. Okay. Was she present during most of your interviews, and vice-versa?
A. Yes, that's fair to say, not every, but ---
Q. Most of them?
A. ---Certainly the majority, yes.
Q. Okay. "LeeLee" was under the influence during that interview; isn't that true?
A. He had said he smoked marijuana prior to the interview.
Q. And did he also say he drank alcohol prior to the interview?
A. He did.
Q. Okay. Now I'm not going to ask you -- just to be

clear, I'm not going to ask you about what "LeeLee" said.
A. Okay.
Q. Okay. What I'm talking about, what you did or said.
A. Okay.
Q. Okay. During this interview, when "LeeLee" didn't tell you what you wanted to hear you threatened to charge him, didn't you?
A. I didn't threaten to charge him because he didn't tell me what I wanted to hear, it's because he -- I believed that he wasn't telling me the truth.
Q. But you did threaten to charge him?
A. I threatened to charge him if he was lying to me, or withholding information, yes.
Q. This was after he initially told you what had happened, correct?
A. That's correct.
Q. All right. You also threatened to charge his wife?
A. Yes, but that was for a case outside of this one.
Q. Unrelated?
A. Unrelated.
Q. Understood. But you did threaten to charge her?
A. Yes.
Q. And that was contemporaneous, at the same time as you threatened to charge "LeeLee"? The order of events, if you will ---

A. Sure.

Q. ---"LeeLee" told you what happened, you told him, I need you to be honest with me, I need you to tell me the truth, you told him that he would much prefer, paraphrasing, to be sitting in the witness chair than the defendant's chair, wouldn't he?

A. Yes, paraphrasing, that sounds -- sounds right.

Q. Then you told him that he had to think about his wife, his wife may get charged also, in an unrelated matter, and told him he needed to be thinking about his kids; does that sound about right?

A. That sounds about right.

Q. Okay. After that point "LeeLee" told you something different, no specifics, but he told you something different than he told you when he first sat down with them?

A. Yes. He expanded on what he had first told me ---

Q. Okay.

A. ---Gave more information, I guess would ---

Q. Provided you with more information?

A. Provided me with more information, yes.

Q. Okay. Isn't it true that you told "LeeLee" what you wanted him to say, this new information, before he said it back to you? You told him you knew what had happened. You told him, I already know what happened, this is what happened, and then he repeated it back to you?

A. Yes. I was challenging him on him -- challenging him on information that I had been told that he knew, and I was making it clear to him, this is what I had known and, you know, and he recited what I had said.
Q. Fair enough. You interviewed "LeeLee" father, Hubert Washington, as well, didn't you?
A. I did.
Q. That was in November of 2006?
A. It was November.
Q. Okay. Hubert had pending charges?
A. He did.
Q. Hubert -- based on your recollection, he didn't have any personal knowledge about the murder, did he?
A. No, he did not have any personal knowledge as far as speaking to anyone firsthand who was involved.
Q. Okay. You agreed to get Hubert out of jail?
A. I did.
Q. You told him you were going to give him forty-eight hours after his release before you contacted "LeeLee"?
A. Yes.
Q. After you spoke to Hubert the Prosecutor, Brad Richardson, gave Hubert a P.R. bond?
A. He was given a P.R. bond on a pending charge, yes.
Q. Based on a phone call from you to Brad Richardson?
A. That is correct.

Q. Okay. And Hubert was released from jail on December 13th?
A. I can't recite the exact date, but that's ---
Q. Let's refer to the preliminary hearing transcript ---
A. Okay.
Q. ---Page thirty-one ---
A. Okay.
Q. ---Line eight. The question was, you didn't make contact with "LeeLee" until December 15th, correct?
A. I answered, correct.
Q. Okay. Forty-eight hours after Hubert was released?
A. If he was released on the 13th, without seeing his release date, but I know there was some time after I had talked with him that he had been released, so the 13th sounds ---
Q. Sounds right?
A. Sounds right.
Q. Okay. Fair enough. And just to go back for one second, you had agreed to give Hubert forty-eight hours to speak to "LeeLee" before you contacted him?
A. That is correct.
Q. Now we've already established you are familiar with Josh Best?
A. Yes.
Q. It was determined that Josh Best was at Jamilla's house

on Thursday night?
A. Yes.
Q. And that was approximately -- no exact time, but approximately ten-thirty, ten-forty-five?
A. Yes.
Q. And that last call made to her phone was from Josh Best?
A. Again, off the top of my head I believe that was the last phone call. I don't want to supersede phone records, but from what I can recall, yes.
Q. Okay. Without getting into specific details, okay, did he give you an accurate description of what happened that night, when he was there, the first time you talked to him?
A. He had given us a detailed statement.
Q. Okay. Did you have to go back and re-interview him several times?
A. Yes.
Q. Okay. And each time you did that you got some conflicting information; is that fair to say?a
A. Yes. There was one point where he wouldn't even speak to me.
Q. Okay. But you learned there was also a girl named Ashley, and a girl named Kristen, that were there, and they were there with him?
A. Yes. There was actually in Kris -- we had information

that they were with -- there with him.
Q. Okay. So now we've got 10:30 to 10:45ish, we've got Josh Best, Ashley, Kristen, "E", whoever that is, and "Q", whoever that is, at least five people that are at the house?
A. That's correct.
Q. Okay. And another short stocky guy? Not sure if you ever figured out who that was.
A. That's correct. Yes, we never figured out who that was.
Q. So six people, at least?
A. Potentially, yes.
Q. Okay. Leon McCrary was there at some point that evening; is that correct?
A. Leon McCray is a name I don't ---
Q. Leon McCrary.
A. That's a name that doesn't stick out in my head.
Q. That's okay. Okay. On April the 5th you went down to J. Reuben Long and talked to Craig Burris?
A. Yes.
Q. Okay. That was April 5th, 2007?
A. Yes, 2007, yes.
Q. Okay. He was in jail at the time?
A. Yes, he was.
Q. Okay. And he sent a request form, it was to you, or it was to Salena, asking to speak to you?

A. Yes. It was either to me or Investigator Salena Mann.
Q. Okay. And when inmates are in the jail, if they have information on a case is that how you usually hear from them?
A. That's one of many ways, but -- yes, that's one of the ways we hear from them.
Q. Is there -- I mean, do they write you a letter, or do they actually have a request form that they can fill out to get sent to you?
A. I have never seen a request form. Usually it's a handwritten letter.
Q. They just write a note to you ---
A. Yes.
Q. ---And then the staff at the jail will get it to you?
A. Yes. They just mail it to us.
Q. Okay. Now, when you talked to Craig Burris did he tell you that, if he could get rid of his kidnapping charge he would give you information about this murder?
A. He had given us information on the murder, and that's one of the things he wanted, was his kidnapping charge to be dismissed.
Q. So the answer is yes?
A. I don't know that -- if it was an exchange, but ---
Q. This -- what he said to you, all right. I'm not talking about tit for tat.
A. Okay.

Q. What he said to you was, if you can get rid of his kidnapping charge he would give you information about the murder?
A. Yes. I believe that's fair to say.
Q. Okay. And he requested, more specifically, that you look into it for him, get the Solicitor's Office to listen to him ---
A. Uh huh **(indicating positive)** That's correct.
THE COURT: Yes. Yes sir.
A. I'm sorry.
THE COURT: That's all right.
Q. Okay. Now, Craig's kidnapping charge was dismissed, wasn't it ---
A. Yes, it was.
Q. ---Four days after you spoke with him?
A. I don't know exactly if it was four days, but it was a short time after I spoke with him.
Q. Okay. Fair enough. You are aware that Craig Burris was fighting with Jimmy Lee Sessions at the jail right before that interview?
A. I had no information about ---
Q. At any time did you interview an inmate named Belal Harris in reference to this murder, not talking about any other cases?
A. I certainly interviewed Belal Harris. I think it was a

combined interview, to speak about several things with him.
Q. Okay. Fair enough. Craig Burris, they call him "Snagger"? "Snagger"?
A. Yes, "Snagger".
Q. All right. Now, back to the beginning, Antwann Higgins and Melissa Gomez, they found the bodies on Friday, June the 9th?
A. That is correct.
Q. Later you find out that there was a third person there, that went in the house also?
A. Yes. We had received information there was a third party that ran in before the police arrived.
Q. And who was he? Was that Roy Grant?
A. Yes.
Q. As far as determining the time of death, you did determine that someone had hear fireworks around twelve o'clock that night?
A. Yes. That was based on information I learned from another detective.
Q. Okay. That was pretty much the best you had to go on though, right, fireworks?
A. Yes. That and -- at the time -- oh yes.
Q. The autopsy had been done since then, but at the time?
A. Sure. Yes. At the time, yes.
Q. Okay. About twelve o'clock?

A. Yes.
Q. Okay. When you were fairly along in this case James Pearl was the only witness to talk to you regarding Christopher's charges of accessory before the fact; isn't that true?
A. That is true.
Q. There was no other witness to corroborate what he said, was there?
A. You are speaking prior to my interview with James Pearl or ---
Q. Since you talked to James Pearl, but I understand Christy Pearl has attempted to corroborate his information, and the jury heard from her.
A. Okay.
Q. Before that time, was there anyone that -- and heck, really, including her, is there anyone that has said anything about Christopher regarding the accessory before the fact charges?
A. No.
Q. Okay. On December 13th you talked with James Pearl, and that was at the Police Department Annex; is that right?
A. That is correct.
Q. That's on the old Air Force Base?
A. It is.
Q. He was brought over there for the interview by Tony

Allen; is that right?
A. That's correct.
Q. Okay. Pearl had just been arrested on some drug charges?
A. He had been arrested on charges. I'm -- I believe they were drug charges.
Q. Okay. That was the same day that he talked to you about this case; is that right?
A. The same day he was arrested he talked to us about the case, yes.
Q. And the fact that he wanted help on his charges, that came up, not only on the way there, but it came up during your interview with him, didn't it?
A. There was some talk about his charges. I can't specifically remember what we spoke about in regards to help, per se.
Q. But you remember that he brought it up?a
A. He brought it up, yes.
Q. Okay. When a witness has pending charges -- and I understand that y'all, or whoever, doesn't give them promises, right?
A. Certainly.
Q. I understand -- I understand that, but how does their cooperation affect their charges, typically?
A. That's not determined by we, as the police department.

Typically it's a decision that is made by the prosecution. There is some sort of ---

Q. What do you tell people when you are interviewing them?

A. When I tell them -- excuse me -- about ---

Q. When you are interviewing witnesses ---

A. Okay.

Q. ---Regarding a pending case, something they have information on, they have pending charges, what is your approach? What do you tell them as far as their pending charges? You tell them you are not going to promise them anything?

A. Certainly.

Q. What else do you tell them?

A. I tell them that it would be looked at by all parties involved, the prosecution, could be the Judge, could be different people, could be the witness, or excuse me, the victim, and then it would be favorable for them to give us information and may share -- put a better light on them or their charges.

Q. And you know, and they know, that's just how the system works?

A. It is.

Q. Okay. And it varies from case to case; that's fair to say, right?

A. It is.

Q. All right. I mean, I'm not trying to lock you into a specific answer on that.
A. Okay.
Q. It's not possible. But sometimes they will do less time in prison if they help; is that fair to say?
A. That is fair to say.
Q. All right, sometimes, depending on the case and the circumstances, and how much they help, they may not go to prison at all?
A. That's correct.
Q. Okay. Prison is a fairly powerful motivator, would you say?
A. It certainly could be.
Q. Yes. After you talked to James Pearl, and he talked about going to a hotel with Jimmy Lee, right ---
A. Yes.
Q. ---You went and checked that out, didn't you?
A. I did.
Q. Okay. You went to the Days Inn on 501?
A. I did.
Q. You talked with the manager then?
A. I did.
Q. You looked at the registration records for room 301?
A. That is correct.
Q. You showed them a picture of James Pearl, didn't you?

A. I did.
Q. They didn't recognize it, did they?
A. They did not.
Q. Did you find that a Mr. Lloyd Lawsland from Altamont, New York was registered to that room?
A. I did find that out.
Q. Okay. Later you also went to the Knights Inn to make sure?
A. That's correct.
Q. Looked at the same stuff there?
A. I did. Actually, I don't know if the Knights Inn was able to furnish us with those records. We weren't able to corroborate that.
Q. Okay. You were not able to corroborate what he had told you?
A. Correct.
Q. Okay. When you first talked to James Pearl, that day that he came to the annex ---
A. Okay.
Q. ---Could you describe his demeanor on that day?
A. His demeanor, to me, was that he had wanted to get this -- the information he gave us off his chest, he was waiting for the opportunity to do it. He was very ---
Q. How did he appear to you, not what was he thinking?
A. Okay.

THE COURT: I appreciate it, Mr. Frederick. He was answering your question. I'll be glad for you to answer -- to ask the question, but if you have a problem as to the answer then you need to address it to the court, otherwise, he gets to fully explain his answer.

MR. FREDERICK: Well, Judge, I would ask the witness not go into his -- his suppositions about what James Pearl was thinking.

THE COURT: I think he was directly responding to your question.

You are allowed to answer the question.

MR. FREDERICK: The question was demeanor, Judge.

THE COURT: I appreciate that. I believe he is directly answering your question.

You may continue to answer the question if you so choose.

A. Thank you.

Q. If you would answer the question for us. What was your observations as to his demeanor?

A. His demeanor, to me, was that he had information that he had wanted to get off his chest, and was waiting for the right time, place to do so.

Q. Okay. Now would you tell me, what were your observations as to his physical demeanor?

A. His physical demeanor, from what I can recall, was that

he was, I guess, excited.
Q. Kind of jumpy?
A. Yes.
Q. Talked real fast, didn't he?
A. He talked very fast ---
Q. Yes.
A. ---At certain -- certain times.
Q. Okay. Now, during that interview, I mean he pretty much acted out the crime for you. He got up out of his chair, in an excited manner, and acted things out, didn't he?
A. There was one point in the interview, yes, he started acting things out for us.
Q. During that interview he told you that Jimmy Lee had, on his way out of the house, heard the door knob, and then pushed Monica back into the bathroom and shot her? Do you recall that?
A. Yes, something to that effect, I do recall.
Q. To the best of your knowledge, there was no physical evidence whatsoever connecting these defendants to the crime scene, was there?
A. To the best of my knowledge, at the point I had gotten promoted there was no physical evidence. What's been developed since I'm not really up to speed on.
Q. Fair enough. No gun was recovered?
A. There were guns recovered but they didn't link back.

Q. They didn't match?
A. Right.
Q. Okay. No ballistics matched to any gun?
A. Again, up until the point -- I guess to say, up until 2007, no.
Q. No fingerprints were matched?
A. No.
Q. D.N.A. evidence was collected, but not matched to these people?
A. Again, to my knowledge, no.
Q. Okay. During the course of this investigation you spoke with Melissa Gomez and Antwann Higgins, right?
A. I did.
Q. Both of them?
A. I did.
Q. Okay. You talked to them several times?
A. Yes.
Q. You talked to them, I think at least three interviews apiece; is that fair to say?
A. That's fair to say.
Q. Okay. This was not your first meeting with them, was it?
A. It was with Melissa, not Antwann.
Q. Okay. Did you have a prior relationship with Melissa Gomez?

A. Prior relationship?
Q. With Melissa Gomez, based on her mom? Do you remember that?
A. No, I don't recall that.
Q. I don't want to get into the details, but did you not investigate a case in which her mother was the victim of an assault?
A. It is -- it's certainly possible. I was involved in a case. I don't recall being, for lack of a better word, lead on that, but I certainly could have been involved in an investigation involving her mother, certainly.
Q. Do you recall, during your first interview with Melissa, stating that you had a special bond with Melissa as a result of that prosecution, and reminding her of it?
A. I don't -- would it be -- I can't recall the mother's name, and I don't know if it would be inappropriate for you to ---
Q. I don't know her name off the top of my head.
A. Okay. If I -- if you have that in a transcript that I said that, then, yes.
Q. Okay. It's just not fresh in your mind ---
A. It's just not fresh in my mind, that's all.
Q. Okay. Fair enough. You also had a prior relationship with Antwann Higgins before this investigation?
A. Yes. I -- he had been a -- I had known him prior to

this.
Q. He was a victim in a case?
A. He was a victim in a separate incident.
Q. Okay. And you were the investigator in that case ---
A. I was.
Q. ---Helping him?
A. Helping him, yes, as a victim.
Q. Okay. Correct. And you talked about this with Antwann also, on the scene. That first time you talked to him you kind of cleared the are, got that out of the way?
A. I did.
Q. Okay. And you were at the crime scene, of course, on -- was it June 9th?
A. On the 9th, yes, I was there.
Q. Okay. And you saw Antwann and Melissa there, right?
A. Yes.
Q. All right. You spoke to them?
A. I did.
Q. You saw what they were driving?
A. What I -- what they were driving?
Q. Yes, what they were driving?
A. Yes.
Q. That was a white Ford Thunderbird?
A. Yes, it was.
Q. Do you recall who that car belonged to?

A. A white female. I can't recall the name.
A. Jill Holland, was it?
A. Yes. That sounds familiar.
Q. Okay. Did you search that car on Friday, at the crime scene?
A. I did not, no.
Q. Do you know if it was ever searched?
A. Yes, it -- we had gone back and searched it.
Q. Did you find a briefcase in it?
A. Yes. There was something located in the trunk. To say it was a briefcase or ---
Q. Safe.
A. ---Safe.
Q. Did you open it?
A. I did not.
Q. The reason that you had to question Melissa multiple times though was because she lied to you; is that fair to say?
A. Yes. Her stories were inconsistent the different times we had spoken with her.
Q. Okay. Even during the same interview sometimes ---
A. Sometimes, yes, she would change ---
Q. ---They were inconsistent?
A. Yes.
Q. Okay. That was a yes, right?
A. To say lie, more confused about the facts. I don't

know -- I can't say she was intentionally ---
Q. She gave you conflicting information ---
A. She gave us conflicting information.
Q. No judgment on her intentions, but she gave you conflicting information?
A. Yes.
Q. Okay. When you first talked to her did she provide you an alibi for herself and Antwann?
A. I can't recall.
Q. Did she tell you that her and Antwann were together all day Thursday and Friday?
A. Yes.
Q. Okay. Did she tell you that they were with ---
MS. ELDER: Objection, Your Honor, hearsay.
THE COURT: Rephrase your question.
Q. Do you recall here giving you an alibi?
A. I recall her giving me information on their whereabouts.
Q. So basically they provided a place that they were, and witnesses that could put them there;
A. That is correct.
Q. ---Would that be accurate?
A. That would be accurate.
Q. Okay. And did she not change her story during the course of the interview?

A. She had given us some information to conflict what she had first told us, so yes.
Q. She was confronted with information that didn't match what she said; fair to say ---
A. Fair to say.
Q. ---And then she would give you a different version?
A. That's fair to say.
Q. Fair to say. Then she would be confronted with information that didn't match what she said, and then she would give you a different version?
A. That is correct.
Q. This is pretty much a fair description of how those interviews went, isn't it?
A. Yes, that's pretty accurate.
Q. Okay. In the end, there was -- to paraphrase, there was no full alibi for Antwann? Was Melissa and Antwann at home together that entire night?
A. They were together -- some point of the night there was some point where we couldn't exactly pinpoint -- we couldn't be a hundred percent definitive that they were together the amount of time that they said they were.
Q. But she wanted you to believe that they were ---
A. Yes.
Q. ---Early on in the interview?
A. Uh huh **(indicating positive)** That's correct.

Q. And over the course of the interview she was not able to convince you of that; is that fair to say? She changed her story?
A. Her information changed, and there was also -- yes, that's fair to say.
Q. I mean, Antwann was not at the house. He was out dealing drugs, for example?
A. That I don't know, where -- what his whereabouts were.
Q. At some point a Search Warrant was executed on Antwann's apartment, wasn't it?
A. It was.
Q. And who provided the information that led to that Search Warrant?
A. I'm not sure. I did not. I wasn't the affiant on the Search Warrant.
Q. Okay. Do you recall Melissa drawing a map of the apartment for you?
A. No. She didn't draw a map for me.
Q. Who did she draw it for?
A. Whoever the -- if she did draw a map it would have been for the detective or crime scene investigator who was ---
Q. Did you see the map?
A. I remember there would be -- talk about a map being drawn. I don't remember ---
Q. Did you not discuss it with her during your interview

with her?
A. It's possible. Again, without seeing the transcripts I can't recall if we spoke about it or not. I know at one point there was a map drawn.
Q. Do you recognize this?
A. Yes. I do.
Q. What do you recognize it as?
A. This would have been the -- a map of "PoPo", what was the tenant occupant of the apartment.
Q. Devon Harris?
A. Yes, Devon Harris. That would have been a drawing of their apartment.
Q. Okay. And who drew it?
A. I'm assuming Melissa. Again, I can't recall sitting down with her and watching her draw it.
Q. Okay. Y'all were looking for Antwann's gun in the apartment, weren't you?
A. Yes.
Q. The point in the map was to show you where the gun was?
A. Again, I can't tell you exactly what the point of the map was.
Q. Okay. You had information that Antwann was carrying guns, didn't you?
A. Yes.
Q. And that Antwann was a drug dealer?

A. Yes.
Q. Okay. As a result of that Search Warrant guns were found in his apartment, not matched to this crime, but guns were found in his apartment?
A. That is correct.
Q. Okay. Ammunition was found in his apartment?
A. Yes.
Q. Shotgun shells?
A. I can't recall shotgun shells, but it's possible.
Q. Okay.
A. I can't you a definitive yes, no, without seeing crime scene photos and things like that.
Q. Well, that's fair, if you don't remember ---
A. Okay.
Q. ---And if it's not some place you can easily flip to, that's a fair answer.
A. Okay.
Q. Okay. Some drugs were found in his apartment, not a lot though, right?
A. From what I can recall.
Q. Okay. Was he charged with anything?
A. Not by me.
Q. Okay. Ultimately y'all learned that a briefcase with drugs in it had been taken out of that house, didn't you?
A. We had learned that there was a briefcase, or I guess a

safe, that was removed from the house. What it's contents were, I don't remember.
Q. You don't recall the specific information that came to y'all, that there were drugs in that briefcase?
A. Oh, yes. I thought you were asking what was ultimately discovered from it.
Q. No, talking about the information that you had when you learned about the briefcase. But do you remember when y'all learned about the briefcase?
A. I don't specifically remember when we learned about it.
Q. But you did learn that there were drugs in the briefcase; you just didn't find drugs in the briefcase later, when the briefcase was discovered at Jill Holland's? That's a long question. Do you follow me?
A. If I -- had we received information that there was a briefcase removed from there, that potentially contained, I believe it was either drugs or money, and then it was later recovered out of Jill Holland's car.
Q. Okay. Did y'all finally open it up after you got it from Jill Holland's car?
A. As far I remember it was. Again, it wouldn't have been me who opened it, or necessarily even directed it to be opened.
Q. Let me ask you this, when you recovered it from Jill Holland's car it wasn't at the police station, was it, Jill

Holland's car?
A. No, it was not.
Q. It was at Jill Holland's apartment, wasn't it?
A. From what I can recall, yes.
Q. Okay. Roy Grant was never charged with anything, was he?
A. You said Roy Grant?
Q. Yes.
A. No.
Q. As far as you know?
A. As far as I know.
Q. Okay.
MR. FREDERICK: That's all the questions I have. Thank you.
A. Thank you.
THE COURT: All right. Solicitor, any questions, please Ma'am.
MS. ELDER: Thank you, Your Honor.
CROSS-EXAMINATION BY MS. ELDER:
Q. Sergeant DiLorenzo, how long did you indicate that you had worked in Violent Crimes?
A. I had worked in Violent Crimes approximately three years, up until the time I got promoted.
Q. How long have you been a police officer?
A. I'm working on my twelfth year.

Q. And during your twelve years on the Police Department, and the years that you've spent in Violent Crimes, is it common for someone who commits murder to leave a business card with their name, address and phone number so that you can go find them?

A. Absolutely not.

Q. How do you usually solve crimes like that?

A. We solve them by speaking to witnesses. We could be talking to informants, physical evidence, a myriad of different ways.

Q. You use anonymous tips, don't you?

A. We certainly do.

Q. You use people who, in the community, might know something?

A. Certainly.

Q. You encourage people who think they even hear something to call in, don't you?

A. Absolutely. Every little bit of information could be the bit of information we are missing, and everything is important.

Q. And you publish unsolved crimes, and you put news after news media to get that information out to the community, don't you?

A. We do.

Q. And you are doing that in an attempt to find who the

person is; is that correct?
A. That is correct.
Q. Who -- the one that is responsible?
A. Yes Ma'am.
Q. And did you, in fact, do that in this case?
A. Yes. We put money out on Crime Stoppers, basically we -- anyone who we came in contact with got a business card, please call us if you have any information.
Q. So you were taking all kinds of information in, weren't you ---
A. Certainly.
Q. ---In an effort to solve this crime?
A. Yes Ma'am.
Q. So that includes people who may or may not have been credible, or had credible information, right?
A. Yes Ma'am.
Q. And you took that information anyway?
A. We did.
Q. And did you follow up on those things?
A. To the best we could.
Q. All right. And there were a bunch of investigators assigned to this case, correct?
A. Multiple.
Q. And you had assistance of detectives, investigators, patrol officers, crime scene, all trying to assist in tracking

down this leads; is that correct?
A. Yes Ma'am, it is.
Q. So all these people that Mr. Frederick went through, Moses, Greg Wilson, Frankie, the Oxendine brothers, these unidentified Hispanics, Brandon, who -- Floyd Lowe, who is an associate, Adriana Breze, Garrett, all of those you received information about?
A. Yes, and -- we did.
Q. And it wasn't credible information; is that correct?
A. That is correct.
Q. But through your investigation, through your interviews, you were able to exclude all these people?
A. To the best of our ability, sure.
Q. You didn't charge any of them?
A. We didn't charge any of them, so ---
Q. And were there a lot of interviews conducted in this case?
A. Yes. Yes, there were. I couldn't count the hours of interviews we did.
Q. Unbelievable amount of energy?
A. Yes.
Q. And those interviews were y'all following up on these phone calls and these people who would just call in with street information; is that correct?
A. Yes Ma'am.

Q. Tell me how that works. Tell me about what I say, street information? You get that quite a bit?
A. Sure. We get street information, people -- anything from leaving voice mails to people who just have information that they hear on the streets and report it to the police.
Q. And that information is oftentimes, I heard somebody say that somebody, that somebody, somebody, somebody?
A. Certainly. If it was only that amount of people that would be useful to us. Usually it's more than that.
Q. "LeeLee" Washington wasn't a suspect, was he?
A. No.
Q. And during all of these interviews, and phone calls, and informants, and information, the course of this investigation, didn't it all culminate and point to, after you weeded out all the mess, it pointed to two people; is that correct ---
A. It did.
Q. ---And that is Chris Stephens and Jimmy Lee Sessions?
A. Yes Ma'am.
Q. And that's who you charged?
A. Yes. That's who was charged.
Q. And Mr. Frederick asked you about, did you get information that Jamilla -- didn't you say -- Jamilla testified in a trial against somebody. He asked you about that?

A. He did.
Q. Would you be surprised to know that she never testified against anybody in a trial ---
A. That would not surprise me.
Q. ---And that a Jamilla Washington testified against somebody in a trial?
A. Yes.
Q. You have pending unsolved crimes in the City of Myrtle Beach, do you not?
A. We do.
Q. Some of those are homicides?
A. Yes Ma'am.
Q. And some of those are old cases; is that correct?
A. Yes Ma'am.
Q. So there is no pressure to charge someone who is not guilty of these offenses?
A. No, there's -- to say pressure, no, it's doing your job, doing what you swore you said you would do.
Q. And, in fact, in this case, y'all didn't make an arrest till almost a year later; is that right?
A. That is right.
Q. So that's not rushing?
A. No Ma'am.
Q. Let's talk a little bit about Antwann Higgins and Melissa Gomez. You didn't charge Antwann Higgins, did you?

A. No Ma'am, I didn't.
Q. You never have?
A. No, I have never ---
Q. Never charged him and then later dismissed the charges involving in this case, have you?
A. No.
Q. Never charged Melissa Gomez?
A. No.
Q. And she came and talked with you, I believe you and Detective Mann -- y'all talked with her; is that correct?
A. Yes.
Q. And when Mr. Frederick was asking you about inconsistent statements, she wasn't inconsistent about the fact that she and Antwann were over there and they found those bodies, was she?
A. No. She was certainly not inconsistent about that.
Q. And the issue that appears to be inconsistent is one item; is that right?
A. Yes.
Q. The briefcase?
A. Yes Ma'am.
Q. Did she ever explain to you why she took the briefcase -- I'm not asking you what she said -- did she give you an explanation as to why she took the briefcase out of the house?

A. I believe because she was scared.
Q. And did you ever have any credible information that Melissa and Antwann Higgins, or Roy Grant, took drugs or money from Jamilla Hightower's house after finding her and Monica dead?
A. No, no credible information.
Q. And, in fact, when you opened the briefcase there was no money; there was no drugs?
A. No Ma'am.
Q. And the car they were driving in was, in fact, towed from the scene that night?
A. Yes, it was.
Q. And it was later released to it's owner, Jill Holland?
A. That's correct.
Q. And it was Jill Holland that called you, or called the Myrtle Beach Police Department, and said, there's something in the trunk that's not normally here ---
A. Yes.
Q. ---And then you went and retrieved that from Jill Holland; is that correct?
A. Yes.
Q. So after you arrived on the scene Antwann Higgins, Melissa Gomez, Roy Grant, never had access to that car again, did they?
A. No.

Q. Let's talk a little bit about James Pearl. You interviewed James Pearl; is that correct?
A. I did.
Q. I believe that was December 16th, '06; is that also correct?
A. That is correct.
Q. And you interviewed him at the Myrtle Beach Police Department Annex?
A. Yes Ma'am.
Q. And do you recall what you said to him prior to initiating your interview with him, regarding any assistance with his charges?
A. Yes. I can't be verbatim, but I -- I would have told him that he's down here giving us a voluntary statement, and we couldn't do anything with his pending charges; that's not a decision that we, as the Police Department, can make.
Q. In fact, do you recall saying, "I'm going to advise you that you are giving this information here as a good samaritan."
A. Yes.
Q. Do you recall him saying, I'm going to take these -- I'm going to take off these handcuffs, and that's simply for your comfort?
A. Yes.
Q. And do you recall telling him, "As soon as we are done

those handcuffs are going back on and you go back to the jail cell"?
A. Yes Ma'am.
Q. And that's prior to him giving you any information; isn't that right?
A. That is right.
Q. And when he was describing to you, in that interview, and acting out during that interview how Jamilla Hightower and Monica Wall were executed, he was conveying what Jimmy Lee Sessions told him about the murders; is that correct?
A. That is correct.
Q. Phonetia Hightower. Mr. Frederick asked you a Phonetia Hightower. Is she related to Jamilla; do you know?
A. I believe it's her cousin.
Q. And she was actually charged in connection with this crime, wasn't she?
A. She was.
Q. Do you remember what she's charged with?
A. I believe it's misprision of a felon -- felony.
Q. Why was she charged?
A. Charged because she was giving a -- giving us false information to protect one of the Defendants.
Q. She was giving you a false alibi for Jimmy Lee Sessions?
MR. FREDERICK: Objection, to speculation.

THE COURT: I'll overrule the objection.

You may continue.

A. That was exactly what she was doing, was giving a false alibi for Jimmy Lee Sessions.

Q. About where he was the night of Jamilla's murder; is that correct?

A. That is correct.

Q. And you charged her for that?

A. Yes Ma'am.

Q. And that's still pending, as far as you know?

A. It is still pending as far as I know.

Q. Craig Burris, he came and talked with you, I believe in April of '07?

A. That sounds right.

Q. Okay. And Defense asked you about, he wanted you to look into his pending charge; is that correct?

A. That is correct.

Q. And that charge was, in fact, dismissed, because he provided an alibi; is that correct?

A. That is correct.

Q. It was not in favor or exchange for what he gave you?

A. No. He had an alibi, which was later corroborated, and the charges were dropped.

Q. Reference to the hotel, you indicated, or testified, that you went to the hotel; that's correct, Days Inn, I

believe?
A. Days Inn and the Knights Inn.
Q. Okay. And you got some records?
A. I did.
Q. And none of them were in James Pearl or Jimmy Lee Sessions' name, were they?
A. They were not.
Q. How many hotels are in the Myrtle Beach area?
A. Too many to count.
Q. And there's more than one Days Inn; is that correct?
A. There is.
Q. And from your experience on the Police Department, when somebody rents a hotel room for drugs or prostitution they usually pay cash?
A. They are always paying cash.
Q. And do they ever provide their real name?
A. No.
Q. In reference to the time of death that you were asked about you indicated that, at one time all you had to do around the time of death was, I believe the neighbor, Teresa Greene indicated she heard something about midnight; is that correct?
A. Yes. That was our initial, I guess, time line, to try to get the sequence of events down.
Q. And once you got the autopsy results back was that consistent with the time line that you had?

A. Not really. I mean, it was -- well, let me take that back. It was within reason, I guess.

Q. Was it from midnight on? Do you recall what the autopsy said?

A. I don't recall what the autopsy said.

Q. All right. Joshua Best, Mr. Frederick asked you about that, that you had some information that he was there from 10:30 to 10:45, on Thursday night, which would have been prior to Jamilla and Monica's death; is that correct?

A. Yes Ma'am.

Q. And he also asked you about, did you know that Joshua Best was the last person to call Jamilla. Well, would it be -- surprise you that, after Joshua Best supposedly left Jamilla's house at 10:45, there were actually three other phone calls? There's a voice mail call, there was a call from somebody in Virginia, and there was a call from somebody named "Black".

A. No, that doesn't surprise me.

Q. So it doesn't surprise you that Joshua Best was not the last person to talk to Jamilla Hightower?

A. No.

Q. Were you also aware that, based on the phone records, that Chris Stephens called Jamilla the day before she died?

MR. GARDNER: I'm going to object. This is evidence not in the -- facts not in evidence. I don't know about phone

records in evidence.

MS. ELDER: Your Honor, they ---

THE COURT: I'm going to sustain the -- that particular question, and let's move along.

MS. ELDER: Thank you, Your Honor.

One moment, Your Honor.

Q. Just two more quick questions.

A. Yes Ma'am.

Q. I picked up -- you said the Days Inn, and you also went to the Knights Inn. Why did you go to the Knights Inn?

A. Because they are within the same -- they are on the same frontage road, off of 501. They are ---

Q. Did you talk to a witness that said -- gave you information about she, in fact, picked up James Pearl, dropped James Pearl off at the Knights Inn, not the Days Inn?

A. Yes Ma'am.

Q. And they are very close?

A. They are right next door.

Q. Okay. And how did you discover that Phonetia had lied and given Jimmy Lee Sessions a false alibi? How did you discover that information?

A. Throughout the course of my investigation I learned that from Phonetia.

Q. Did she come in and tell you?

A. She did. She -- we did a follow-up interview with her,

and she told us that she was giving wrong information.

Q. That she lied?

A. That she lied.

MS. ELDER: Your Honor, we have no further questions.

THE COURT: All right, Mr. Gardner, re-direct.

MR. GARDNER: Yes, Your Honor. Briefly.

REDIRECT-EXAMINATION BY MR. GARDNER:

Q. Sergeant DiLorenzo, when Ms. Elder asked you about James Pearl acting out the scenario, or the story, it seemed like your memory was refreshed a little bit. Do you remember it now, the story he was acting out?

A. I remember him acting it out.

Q. He was hyped up, wasn't he?

A. I remember him being excited, yes.

Q. He was talking real, real fast?

A. He was excited.

Q. Moving? he was moving? Okay. All right. None of that evidence, or none of his story matches the crime scene evidence, does it?

MS. ELDER: Objection, Your Honor. This is not consis ---

THE COURT: I'm going to allow the question.

Go ahead.

A. I don't remember specifically what he was acting out versus what we were able to pinpoint at the crime scene.

That's -- probably be a better question for ---

Q. Okay. He told you about how many times that Ms. Hightower was shot, and that was nowhere close to the truth?

MS. ELDER: Objection, Your Honor. This is what he covered in direct.

THE COURT: I appreciate that, but I'm going to allow him to ask it again.

Go ahead.

A. I don't think -- from what I can recall I don't think the exact number that he told us was what we found.

Q. Okay. All right. And then he told you that Jimmy Lee was leaving and he heard the shower turn off. Remember that part?

A. It was either the shower water or the bedroom door or the bathroom door, or a door knob or ---

Q. Door knob turned ---

A. Yes.

Q. ---And opened ---

A. Yes.

Q. ---And looked at each other eye into eye, and he pushed her right into the bathroom?

COURT REPORTER: Excuse me. Your answer.

A. I'm sorry.

That is correct.

Q. And he pushed her right into the bathroom ---

A. Yes.
Q. ---And shot her?
A. Correct.
MR. GARDNER: Nothing further.
THE COURT: All right. Mr. Frederick, on those questions asked by Mr. Gardner.
MR. FREDERICK: I have no questions.
THE COURT: All right. Solicitor, on the questions asked by Mr. Gardner.
MS. ELDER: No further questions, Your Honor.
THE COURT: All right. Do you wish the witness to be excused, Mr. Gardner?
MR. GARDNER: Yes sir, please.
THE COURT: Mr. Frederick.
MR. FREDERICK: Yes, Your Honor.
THE COURT: And any objection -- I'm sorry. You have an objection or you ---
MR. FREDERICK: No objection.
THE COURT: All right. Very good. Do you have an objection to the witness being excused?
MS. ELDER: No sir, Your Honor.
THE COURT: All right, sir, you are released from your Subpoena and you may go back to your regular duties.
A. Thank you, sir.
THE COURT: All right, sir.

All right, ladies and gentlemen, at this point in time we are going to take a lunch break. I'm going to have you back in your jury room at 2:30. One of the reasons for that is, I have to conduct a short hearing prior to resuming this trial, so I have to have -- give enough time for that to be concluded, so for you -- y'all to be back in your jury room at 2:30. Please remember to wear your badges. Don't talk about the case, don't allow anybody to talk to you about it. See you back at 2:30 in your jury room, please.

Thank you very much.

Everyone else remain seated.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Solicitor, is there anything we need to cover before we break?

MS. ELDER: No sir, Your Honor, not that I'm aware of.

THE COURT: Mr. Gardner.

MR. GARDNER: Not that I'm aware of, Your Honor.

THE COURT: Mr. Frederick.

MR. FREDERICK: No sir.

THE COURT: All right. Very good. We will resume back at 2:30. I've got a hearing on a death penalty case at two o'clock, so I've got to -- just for a status conference, so I've got to cover that at 2 o'clock.

Spectators in the courtroom, remain in the courtroom for

ten minutes, please, before you can leave.

Thank you.

(THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, are y'all ready to go forward?

MS. ELDER: Yes sir, Your Honor.

THE COURT: All right. Mr. Gardner.

MR. GARDNER: I am, Judge. I have received news during the lunch break about a witness on -- one of my potential witnesses. I need to talk with you about it. I don't know -- it might be better if we did it up there.

THE COURT: All right. Well, y'all come on up here.

MR. GARDNER: I want to do it before we get the jury back in. The witness isn't coming up for a while ---

THE COURT: All right.

MR. GARDNER: ---But we've got them right here.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MR. GARDNER: The Defense is ready to go, Judge.

THE COURT: All right. Very good.

And Mr. Frederick, you are ready to go, sir?

MR. FREDERICK: Yes sir.

THE COURT: All right. Good.

Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE

JURY.)

THE COURT: All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Officer James Kerns.

THE COURT: All right.

Please come around to be sworn, sir.

JAMES KERNS, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

A. My name is Patrolman First Class James Kerns. Last name, K.e.r.n.s., and I'm with the City of Myrtle Beach Police Department in Myrtle Beach, South Carolina.

THE COURT: Yes sir.

MR. GARDNER: Thank you, Judge.

Q. Officer Kerns, you just answered my first question. You work for the Myrtle Beach Police Department, and in the capacity as patrolman; is that right?

A. Daytime Patrol Division, sir.

Q. All right. And how long have you worked there, sir?

A. Seven and a half years, sir.

Q. So you were working there back in June of '06?

A. Yes sir.

Q. Do you recall receiving a Report, in that capacity, about this case?

A. Yes sir.

Q. And as a result of receiving that Report, tell the jury what, if anything, did you do?

A. All right. On June 12th of 2006, around 3:40 P.M., I was given a radio call to go to Willow Run Apartments, located at 2000 Greens Boulevard, City of Myrtle Beach, South Carolina, and I was to attempt to locate a Ms. Jill Holland, in Apartment [redacted] and also attempt to find a white in color Ford Thunderbird, with a South Carolina license plate of [redacted] which is [redacted] in the parking lot.

Q. Did you do so?

A. Yes sir, I did.

Q. And tell us what, if anything, happened next?

A. All right. After arriving on the scene, finding the vehicle parked in the parking lot matching the registration, I went to the unit, [redacted], knocked on the door, and spoke with a female who identified herself as a Ms. Jill Holland. I was -- I remember seeing on the call screen -- our patrol vehicles have a laptop in most of the patrol cars, and we get our calls a lot by the radio, and then additional information comes over the screen, and on the screen it was telling me that I needed to -- if I could make contact with this -- this young lady that I needed to have her call Detective Salena Mann, which is -- she was a Detective with our City of Myrtle Beach Police Department.

After -- I'm sorry, sir.

Q. That's okay. Detective Salena Mann, a Detective with the Myrtle Beach Police Department?
A. Yes.
Q. Okay. And then what, if anything, happened next?
A. At that time I gave my cell phone to Ms. Holland to speak to Detective Mann. After she spoke with Detective Mann I got back on the phone. Detective Mann asked me if I would mind doing a Departmental Consent to Search Form, and collecting a written statement from Ms. Holland.
Q. Okay. Did you collect that statement?
A. Yes sir.
Q. All right. And did you inventory the car?
A. No sir.
Q. Did you look in the trunk of the car?
A. No sir.
Q. Did you see the safe?
A. No sir.
Q. Based on your knowledge, do you know if the safe was there?
A. No sir.
Q. All right.

MR. GARDNER: Please answer any questions that Mr. Frederick has for you.

THE COURT: Mr. Frederick.

MR. FREDERICK: Yes sir, Your Honor.

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CROSS-EXAMINATION BY MR. FREDERICK:

Q. The reason for the call was because she had found a safe in her trunk; is that right?

A. Yes sir.

MR. FREDERICK: Okay. No more questions.

THE COURT: Solicitor.

CROSS-EXAMINATION BY MS. ELDER:

Q. Did Ms. Holland indicate, or do you know that she picked up her car from the police annex that -- earlier that morning at 9 o'clock?

A. Yes Ma'am, she did say so.

Q. So this was -- you said the same day, after she picked up her car, about 15:40 when she called the safe in?

A. I don't know if she called it in. I just received the call from Dispatch, and from Detective Mann.

Q. But that was at 15:40. What time would that be?

A. That would be 3:40 P.M., Ma'am.

Q. All right.

MS. ELDER: Thank you. No further questions, Your Honor.

THE COURT: Anything on those questions, Mr. Gardner?

MR. GARDNER: No sir.

THE COURT: Do you wish this witness to be excused?

MR. GARDNER: Yes sir.

THE COURT: Any objection?

MR. FREDERICK: No objection.

THE COURT: Any objection, Solicitor?

MS. ELDER: No sir, Your Honor.

THE COURT: All right, sir, you are released from your Subpoena and you may go back to your regular duties.

A. Thank you, Your Honor.

THE COURT: All right. Who is your next witness?

MR. GARDNER: Liz Dunmore, Your Honor.

THE COURT: All right.

Please come around to be sworn, Ma'am.

ELIZABETH DUNMORE, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Ms. Dunmore, where do you live?

A. [redacted] Ninth Avenue South.

Q. And that's in Myrtle Beach?

A. Yes sir.

Q. How long have you lived in Myrtle Beach?

A. Going on five years, right, sir.

Q. All right. Back in June of 2006, where were you living?

A. In Sandy Gate.

Q. All right. And who lived with you in Sandy Gate?

A. My two daughters and fiance.

Q. And what was your fiance's name?

A. Edward Washington.
Q. Edward Lee Washington?
A. Yes sir.
Q. Okay. And back in June do you remember your fiance -- did there come a time -- well, let me ask you this. Did you hear about these murders back in June?
A. Yes sir.
Q. All right. And did you and your husband -- you don't have to tell me what he said, but did y'all ever have a conversation about them?
A. Yes sir.
Q. Was that before or after the police started interviewing everybody?a
A. Before and after.
Q. Before and after. All right. Are you familiar with Craig Burris?
A. That name don't ring a bell.
Q. Okay. All right. Did he ever go to your house?
A. Okay. Who -- does he have a nickname or ---
Q. He does, but let me just stick with his name for now. Craig Burris, do you have any knowledge of him ever going to your house in June of 2006?
A. No sir.
Q. Ever going to your house at any time in 2006?
A. No sir.

Q. And that's the house that you lived in with Edward Lee Washington ---

A. Yes sir.

Q. ---And your children?

A. Yes sir..

MR. GARDNER: All right. Please answer any questions that Mr. Bobby Frederick has for you.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Liz, you are familiar with someone named "Snaggers", correct, "Snags"?

A. Say that again.

Q. "Snags".

A. "Snags"?

Q. Yes.

A. I know a "Snag" and a "Snagger".

Q. "Snagger"?

A. Uh huh **(indicating positive)**

Q. Okay. When we talked just a little while ago outside you had said that you didn't know Craig Burris as Craig Burris back in June of 2006, right?

A. Yes sir.

Q. You knew him as "Snagger"?

A. Yes sir.

Q. You know who we are talking about?

A. Yes sir.

Q. Not this guy, is it?
A. No sir.
Q. Craig Burris, a/k/a/, "Snagger". In June of 2006 -- are you familiar with the night that we are talking about, and the morning we are talking about? You have been questioned about this before, haven't you?
A. Yes sir.
Q. Okay. Did Craig Burris, or "Snagger", ever come to your house?
A. No sir.
Q. Never came into your house?
A. No sir.
Q. On the night before that morning, were people partying at your house?
A. Some people did come to my house that night.
Q. Was Craig Burris there partying ---
A. No sir.
Q. ---Doing cocaine?
A. No sir.
Q. Okay. Was this guy, Jimmy Lee Sessions, at your house doing bunches of cocaine?
A. Well, I can't say what they were doing, but I do know that he was at the house that night.
Q. Okay. Did he go into your back bedrooms?
A. No sir.

Q. Okay. Did you hear anybody talking about hitting a "Lick"?
A. No sir.
Q. Did you hear anybody -- did you see anybody dividing up large amounts of cash and drugs?
A. No sir.
Q. Okay. Are you positive you never saw "Snagger" at your house that night or the next morning?
A. I'm positive.
Q. Okay. The bedrooms in your house, how many are there?
A. Three.
Q. Okay. Who sleeps in them?
A. Say that again.
Q. Who sleeps in them?
A. I sleep in the back bedroom. My daughter -- my youngest daughter slept in the one right beside me, and then my oldest daughter slept in the front bedroom.
Q. So were people going into those bedrooms doing drugs where your daughters were sleeping?
A. No sir.
Q. In your bedroom?
A. No sir.
Q. Okay.
MR. FREDERICK: Beg the Court's indulgence.
Q. Did you see Craig Burris, or "Snagger", at all that

Thursday, that Friday, early that morning?
A. No sir.
MR. FREDERICK: Thank you. I have no more questions.
THE COURT: Solicitor.
MR. RICHARDSON: Yes. Thank you.
CROSS-EXAMINATION BY MR. RICHARDSON:
Q. Ms. Dunmore ---
A. Yes sir.
Q. ---Do you remember giving prior sworn testimony you didn't know who came over to your house that morning?
A. As far as what Edward told me, there was only two people in my house.
Q. We can't get into what Edward told you. Now, in a prior sworn statement, under oath, you said you didn't know was there, you had no personal knowledge. Is that correct?
A. I mean, I did not see them, but as far as -- like I said, as far as what "Lee-Lee" said ---
Q. Ma'am, I'm just asking you, did you see people at your house that morning?
A. No, I didn't see them.
Q. And let's see. Edward Lee Washington, "Lee-Lee", where is he right now?
A. I have no idea.
Q. You have no idea. Do you remember telling Detective Salena Mann after you were awakened you went back to sleep?

A. Say that again.
Q. Do you remember telling Detective Salena Mann you went back to sleep?
A. Yes.
Q. Do you remember a few days after that you told Salena Mann that "Snag" -- not "Snagger", "Snag", came to the house asking to use your phone?
A. I don't remember that.
Q. Do you remember telling Salena Mann that you told him you would let him use the phone, but you didn't want him around your house?
A. I do remember telling her that I didn't like them being at the house, yes.
Q. Now, are you familiar with the name Nancy Gause?
A. Yes.
Q. Who is that?
A. Christopher's baby's mama.
Q. Christopher -- Christopher who?
A. I don't know his last name.
Q. Is he in the courtroom today?
A. Yes sir.
Q. Where?
A. Sitting at the end table.
Q. Chris Stephens. And where -- now you live at [redacted] Oceola Street, Apartment[redacted]. That's Sandy Gate Village,

right?

A. Uh huh **(indicating positive)**

THE COURT: You need to say yes or no.

A. Yes sir.

Q. Nancy Gause, where does she live?

A. I believe building [redacted].

Q. Kind of caty-corner from yours?

A. Yes sir.

Q. You wouldn't want any static around your neighborhood, would you?

A. Say that again.

Q. You wouldn't want any troubles with Nancy, would you?

A. No sir.

Q. It would be a bad thing to admit to allowing people to do cocaine in your house, correct?

A. Yes, it would be a bad thing.

Q. But it's real bad with the children in the house?

A. Yes.

MR. RICHARDSON: Nothing further.

THE COURT: Redirect.

REDIRECT-EXAMINATION BY MR. GARDNER:

Q. How big is this house? You've said there's three bedrooms there. It's a -- how big is the house?

A. Well, it's fairly large.

Q. The night that you were -- talked about, the night

before the murder, the night of the murder, the following morning after the murder, is it conceivable that somebody could have been in your house and you wouldn't know about it?

A. It is possible.

Q. And it's possible they would be in there and you wouldn't know that?

A. I mean, I was in the back. I was in my back room.

Q. Okay. But if they had gone back to the back room you would know about it?

A. Yes sir.

Q. All right. And if they had come back there doing drugs you would have known about it, right?

A. Yes sir.

Q. And were you doing drugs?

A. No sir.

Q. And do you live there now?

A. No sir.

MR. GARDNER: All right. Thank you.

THE COURT: Mr. Frederick.

RECROSS-EXAMINATION BY MR. FREDERICK:

Q. Liz, you don't live caty-corner from Nancy Gause, do you?

A. Not any more, no sir.

Q. You moved, didn't you?

A. Yes sir.

MR. FREDERICK: Thank you.

THE COURT: Solicitor.

MR. RICHARDSON: Nothing further, Your Honor.

THE COURT: Do you wish this witness to be excused?

MR. GARDNER: Yes sir, please.

THE COURT: Any objection?

MR. FREDERICK: No objection.

THE COURT: Any objection from the State?

MS. ELDER: No sir, Your Honor.

THE COURT: All right, Ma'am, you are released from your Subpoena. You can go back to your regular activities.

Solicitor, gentlemen, y'all -- y'all come talk to me for just one second.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, Mr. Gardner, your next witness, please.

MR. GARDNER: Joshua Best, Your Honor.

THE COURT: All right.

JOSHUA O'NEAL BEST, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Mr. Best, back in June of 2006, you were in Myrtle Beach; is that right?

A. Yes sir.

Q. All right. Are you familiar with the two murders that

occurred on Pridgen Road, back in June ---
A. Yes sir.
Q. ---Of 2006. All right. And did you go into the home the night that they were murd -- or the day that they were discovered?
A. I went there that day, yes sir.
Q. The day they were discovered.
A. **(NODS HEAD AFFIRMATIVE)**
Q. All right. Was there anybody with you when you went in there?
A. Me and this girl named Ashley.
Q. I didn't hear what the girl's was.
A. Me and this girl named Ashley.
Q. Ashley?
A. Yes.
Q. Okay. Do you know the rest of her name?
A. Ashley Morgan.
Q. All right. The two of y'all went inside the house?
A. Yes.
Q. All right. Was there anybody else in -- the ladies were dead, Ms. Hightower and Ms. Wall were dead at the time?
A. No. I went there -- when I went there -- they was alive when I went there. I went there earlier that day.
Q. Earlier that day?
A. Yes.

STATE OF SOUTH CAROLINA COUNTY OF **HORRY** STATE VERSUS **JIMMY LEE SESSIONS** and **CHRISTOPHER STEPHENS**	COURT OF GENERAL SESSIONS **(07-GS-26-2961)(2962)(2963)** **(07-GS-26-2974)(2975)(2976)** **(08-GS-26-2698)** TRANSCRIPT OF RECORD February 2, 3, 4, 5, 6, 2009 Conway, S. C.

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

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DIXIE COX EUBANK
CIRCUIT COURT REPORTER
FIFTEENTH JUDICIAL CIRCUIT

VOLUME 4 OF 4
(SEE VOLUME 1 FOR INDEX)

Q. The next day did you go in there?
A. No, I didn't.
Q. Okay. All right. So the last time you were there they were alive?
A. The last time I went there they was alive.
Q. And you had Ashley with you?
A. Yes, Ashley Morgan.
Q. All right. And what time was it that y'all went in?
A. I probably went there earlier that day, probably about -- I'm going to say around -- probably around three, but I went back that night, probably about ten-twenty.
Q. About ten-twenty?
A. Yes.
Q. All right. Don't tell me what they said, but did you talk to anybody while you were there?
A. I just talked to Jamilla.
Q. You talked to Jamilla?
A. Yes.
Q. And that was about 10:20?
A. Yes, about 10:20, between 10:20 and 10:30.
Q. All right.

MR. GARDNER: Thank you, sir.

Please answer any questions Mr. Frederick has for you.

THE COURT: All right, Mr. Frederick.

MR. FREDERICK: Thank you, Judge.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Josh, were you interviewed by the police regarding this murder?

A. Yes sir.

Q. How many times?

A. I would say at least five.

Q. A lot of times?

A. Uh huh **(indicating positive)**

Q. Okay.

THE COURT: You need to say yes or no, please.

A. Yes sir.

Q. Why were you interviewed so many times?

A. They said -- from what they said -- they said I was the last person to see her alive.

Q. And did you lie to the investigators about what happened that night?

A. There wasn't nothing to lie about. I told them I went there and that was it.

Q. Did you tell them who else was there at the house?

A. There was quite a few people there.

Q. All right.

A. Yes.

Q. Is part of why they kept bringing you back because they kept finding new information you hadn't told them?

A. I don't know -- I don't have any earthly idea about

that.
Q. Okay.
A. Okay.
Q. Is it true that you said Ashley was with you?
A. Yes sir.
Q. Is it true there was a girl named Kristen there also?
A. Kristen?
Q. Kristen, yes.
A. Was with Ashley and them -- was with me and Ashley?
Q. Yes.
A. Crystal was there.
Q. Okay. And you also told the investigators you got there around 10:30?
A. Uh huh **(indicating positive)**
Q. Didn't you tell the investigators there was at least three other men that came to the house also?
A. Yes sir.
Q. Okay. You said there was "Que" ---
A. Yes sir.
Q. ---And "Yee" ---
A. Yes sir.
Q. ---And a short stocky guy?
A. Yes sir.
Q. Okay. Who is "Que"?
A. Some guy, he stay around there. Well, I don't really

know him personally, but he -- she said he stay around the way -- around there, somewhere in the Westwind area, or somewhere like that.

Q. You don't know his real name?

A. No. I don't know his real name.

Q. What about "Yee"?

A. I don't know "E"'s real name either.

Q. Okay. This guy, "Yee", you know him long enough that you could tell the investigators he carries a gun; is that right?

A. Who?

Q. "Yee".

A. I don't know if "E" carries a gun or not.

Q. Didn't you tell the investigators?

A. No, I did not.

MR. FREDERICK: Beg the Court's indulgence.

THE COURT: Yes sir.

MR. FREDERICK: Donna, June 12th interview with Josh Best.

MS. ELDER: Your Honor, I'm objecting. If we could approach.

THE COURT: All right. Y'all come forward, please.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

MR. FREDERICK: June 12th interview.

(AT THIS TIME MR. FREDERICK PLAYS A PORTION OF A JUNE

12TH INTERVIEW WITH JOSHUA BEST.)

Q. Is that you?

A. I don't think that's me there.

Q. That's not you?

A. Uh uh **(NODS NEGATIVE)**

Q. Okay. Fair enough. That's not you.

MR. FREDERICK: I have no other questions, Judge.

THE COURT: All right. Very good.

Solicitor.

MS. ELDER: One moment, Your Honor.

Your Honor, we have no questions of this witness.

THE COURT: All right. Very good.

Any redirect?

MR. GARDNER: Nothing, Your Honor, from me.

THE COURT: All right, sir.

All right. You are excused, sir. Thank you very much.

MR. GARDNER: "Lee-Lee" Washington, Your Honor.

THE COURT: All right.

EDWARD LEE JOSEPH WASHINGTON, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Mr. Washington, back in June of 2006, where were you living?

A. Sandy Hill Apartments, Myrtle Beach.

Q. And who was living there with you?

A. My fiance and my two kids.
Q. What's your fiance's name?
A. Elizabeth Dunmore.
Q. Okay. And you have given statements before about this case; is that right?
A. Yes sir.
Q. Do you recall talking about a night, the night of the murders, or the morning after the murders, talking to the police and giving a statement about where you were, and who you were with?
A. Yes sir.
Q. You do. All right. Where were you?
A. The night of -- night of the murder?
Q. Yes sir.
A. I was home.
Q. Home. And who all was there in the home with you?
A. My two kids and my fiance.
Q. All right. Are you familiar with a fellow by the name of Craig Burris?
A. No sir.
Q. All right. Well, did Craig Burris come to your house during that night of the murder, or the morning of the murder?
A. I don't even know who Craig Burris is.
Q. Okay. Did anybody come to your house during that time frame?

A. No sir.
Q. Okay. This is the time frame about the mur -- it would have been the Thursday, or the Friday when the murders took place.
A. After the murders?
Q. Yes sir, Thursday or Friday.
A. The only people came to my house was Marshall and Jimmy Lee Sessions.
Q. Okay. And about what time was that?
A. Between the hours of quarter to eight and eight-thirty.
Q. Okay. All right. Anyone else with them?
A. Chris, Christopher Stephens.
Q. Okay. All right. Anybody else with them?
A. No sir.
Q. All right. And you never heard of the name Craig Burris?
A. No sir.
Q. All right.

MR. GARDNER: That's all I have, Your Honor.

Please answer any questions Mr. Frederick ---

THE COURT: Mr. Frederick.

CROSS-EXAMINATION BY MR. FREDERICK:

MR. FREDERICK: Hi "Lee-Lee".

Q. Over time, since this case started, you have given several different statements; is that right?

A. Yes sir.
Q. Okay. And I'm going to walk you through some of those, okay?
A. Okay.
Q. Let's start with this. Where did Christopher live?
A. At the building caty-corner from me, across from me.
Q. Same apartment complex?
A. Yes sir.
Q. Pretty close to your apartment?
A. Yes sir.
Q. Okay. In none of the statements that you gave, or testimony that you gave, have you ever said that Christopher came into your apartment; is that true?
A. Yes sir.
Q. Okay. And you never saw Christopher with drugs or money on the morning of Friday, June the 9th, did you?
A. No sir.
Q. Okay. Liz, your fiance, she was home on that Friday morning, wasn't she?
A. Yes sir.
Q. Okay. I'm going to back up for a minute, okay. Who is Hubert Washington?
A. That's my father.
Q. Okay. Did your father tell you what to say to the investigators in this case?

A. In somewhat -- somewhat point he did kind of try to like coach me into what to say.
Q. Okay. Your father, he didn't have any personal knowledge of this murder, as far as you knew, did he?
A. Not that I know of.
Q. Was he in jail before he talked to you?
A. From my knowledge, yes.
Q. And he talked to you before the investigators did, didn't he?
A. Yes sir.
Q. Do you recall if there was a reward offered for information in this case?
A. From what was told to me, yes.
Q. Did your father know about that reward?
A. That's who told me.
Q. Okay. When you first met with Investigator DiLorenzo, this was in December, 2006?
A. Yes sir.
Q. Did you try to tell him the truth when you first met with him, at first?
A. No sir.
Q. Well, I'm going to walk you through it, okay. When you first sat down with him the first thing that he asked you about was whether you were intoxicated. Do you remember that?
A. Yes sir.

Q. And what did you tell him?
A. Yes.
Q. Okay. You told him that you had been smoking weed?
A. And drinking.
Q. And drinking. Okay. You told him you didn't know who committed the murders, didn't you?
A. Yes sir.
Q. Okay. And after you told him that did DiLorenzo threaten to charge you?
A. He said that I can go from the witness chair to the Defendant's chair. If that's threatening then I guess so.
Q. Okay. Did he threaten to charge your wife, arrest her?
A. He told me that I needed to think about my family.
Q. Told you you needed to think about your kids?
A. Yes. So basically that's what I got from it, you know, that he was trying to threaten me.
Q. Okay. So what he did was, he explained to you the difference between the witness chair and the defendant chair, right?
A. Yes sir.
Q. And he told you that you were going to be sitting in the defendant chair if you didn't change your story; is that fair?
A. Yes sir.
Q. Okay. After he did that you told him what he wanted to

hear?
A. Basically, yes.
Q. Okay. And you were in a pretty touch spot right then, weren't you?
A. Yes sir.
Q. You even told him, at one point, that what you were doing was saving your own behind?
A. Yes sir.
Q. Okay. Later in this case you talked to our investigator and Mr. Gardner. Do you remember that?
A. Yes sir.
Q. Okay. And you told them that you had lied to the investigators?
A. Yes sir.
Q. You told them your father had told you what to say?
A. Yes sir.
Q. Okay. Did Mr. Gardner or Bill Beam -- that's him, right, Mr. Beam?
A. Yes sir.
Q. Did they threaten you in any kind of way?
A. No sir.
Q. Were they mean to you?
A. No sir.
Q. Okay. Didn't threaten to lock you up?
A. No sir.

Q. They didn't threaten your family?
A. No sir.
Q. You told them the truth?
A. No, not all the way.
Q. Tell me the difference.
A. About some -- something about the drugs, and something about who came to the -- who came to the house.
Q. Then, when testifying in a prior proceeding in this case, after that interview, did you tell the truth, under oath, in court that day?
A. Yes sir.
Q. Okay. Before that testimony, did the police go back out and interview you again?
A. Yes sir.
Q. And that time it was different investigators, right?
A. Yes sir.
Q. First time it was Investigator DiLorenzo ---
A. Yes sir.
Q. ---And this time it was Investigator Howling and Mr. Holt?
A. Yes sir.
Q. Who else was with them?
A. Solicitor.
Q. The Prosecutor?
A. Yes sir.

Q. The one sitting at the table behind me?
A. Yes sir.
Q. Okay. When they came out there to talk to you this time you told them the truth too, didn't you?
A. Yes sir.
Q. You told them what you testified to in court, right?
A. Yes sir.
Q. Okay. But they tried to get you to say something different, didn't they?
A. Sometimes I felt like that, yes.
Q. They wanted you to go back to what Investigator DiLorenzo had you saying?
A. Yes, they kept bringing that up.
Q. Okay. How does that make you feel?
A. Make me feel confused.
Q. Like you are between a rock and a hard place, ain't it?
A. Yes sir.
Q. So the truth is -- and we are talking about Friday morning, right, June 9th?
A. Yes sir.
Q. Okay. And the truth is that Jimmy Lee and another person -- Jimmy Lee and Marshall were at your house?
A. Yes sir.
Q. Okay. But they weren't splitting up drugs or money, were they?

A. No sir.
Q. The truth is that they got to your house about 8:30 in the morning?
A. Yes sir.
Q. The truth is that they had a bag of weed ---
A. Yes sir.
Q. ---That y'all smoked two blunts ---
A. Yes sir.
Q. ---That you drank some beer ---
A. Yes sir.
Q. ---That you watched part of a movie?
A. Yes sir.
Q. What movie was it?
A. Mr. and Mrs. Smith.
Q. Okay. Did you even watch the whole thing?
A. No sir.
Q. Okay. The truth is, the only money that you saw that morning was a Dollar bill that you used to break up some weed on to roll a blunt; is that the truth?
A. That's the only bills I seen face to face, like was handed to me. That's the only bills -- that's the only bills I could tell that it was a Dollar bill.
Q. But you didn't see a bunch of money getting split up?
A. Not a bunch of money, no.
Q. And you told the investigators that there was Dollar

bills that you were rolling weed with, right?
A. Yes sir.
Q. And they tried to take that and run with it?
A. I guess so.
Q. I mean, there wasn't a bunch of money that was getting split up?
A. No sir.
Q. Okay. The truth is that those guys never said anything about hitting a lick, did they?
A. No sir.
Q. No they didn't?
A. No sir.
Q. Okay. The truth is that those words came from the investigators?
A. Yes sir.
Q. And you never said it till Investigator DiLorenzo said it to you?
A. Yes sir.
Q. The truth is that you told them that the only drugs that you saw them with was that weed that they gave you?
A. Yes sir.
Q. How much weed was that?
A. Like little over a gram, maybe two.
Q. About two grams? That's about Forty Dollars worth?
A. Not even that. Like Twenty Dollars worth.

Q. Okay. Enough to smoke a blunt or two?
A. Yes sir.
Q. You rolled two dime bags out of it?
A. Yes sir.
Q. All right. That's not a lot of weed, is it?
A. No sir.
Q. Okay. And even though that last time they went down there to talk to you they were pressuring you, you still told them the truth, didn't you?
A. Yes sir.
Q. And when Jimmy Lee and Marshall were at your apartment they never once mentioned hitting a lick, did they?
A. No sir.
Q. Who suggested that they did?
A. The police.
Q. When you were down at the jail, at least one time you talked to Jimmy Lee, didn't you?
A. Yes sir.
Q. And what did he say to you?
A. Not much. He just told me, you know, to tell the truth.
Q. He told you to tell the truth?
A. Yes sir.
Q. No other interactions with him beside that? He hasn't threatened you?

A. No sir.
Q. Okay. The truth is that you really don't have any information on whether Jimmy Lee robbed Jamilla; is that true?
A. Yes sir.
Q. And that Christopher never came into your apartment that morning?
A. No sir.
Q. But Christopher was outside?
A. Yes sir.
Q. All right. I mean, you saw him, he just didn't come into your apartment?
A. Yes sir.
Q. Okay. Nobody split up drugs or money?
A. No sir.
Q. Nobody talked about hitting a lick?
A. No sir.

MR. FREDERICK: Thank you, "Lee-Lee".

I have no further questions.

THE COURT: All right, Solicitor.

MR. RICHARDSON: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. RICHARDSON:

Q. Mr. Washington, when you gave that statement to Detective DiLorenzo, then Detective, now Sergeant, what kind of squad car did they take you over to the annex in?
A. They ain't -- they ain't take me there. Well, I met

them, and then they took me in the squad car to wherever I met them at, to the station.

Q. But you voluntarily went?

A. Yes sir.

Q. Were you in handcuffs?

A. No sir.

Q. Were you told you would be free to leave?

A. Yes sir.

Q. Did they try and give you something to drink, make you comfortable?

A. Yes sir.

Q. Did they threaten you in any other way? Did they threaten to beat you up?

A. No sir.

Q. You gave a statement then, right?

A. Yes sir.

Q. Now, Mr. Gardner and that Investigator, when they went to talk to you, where were you?

A. At the jailhouse.

Q. That's J. Reuben Long, right?

A. Yes sir.

Q. Now the first statement was in December, '06, right?

A. Yes sir.

Q. The next time you talked to them -- to Johnny Gardner, and to the Investigator for the Defense was when, in August?

A. Yes, middle of August, middle, beginning of August.
Q. 2008?
A. Yes sir.
Q. And now you are in jail?
A. Yes sir.
Q. Do you remember making a statement to Detective Allen and Detective Hull. Detective Allen says, "I mean, be straight up with me, man." You indicated, "Man, I'm scared. I don't want -- I don't want no dude come after me, like, they are going to kill me, you know." Do you remember making that statement?
A. Yes.
Q. Who were you referring to at that time?
A. The suspects.
Q. The suspects. Who is that?
A. Jimmy Lee and Christopher.
Q. Okay. So you are scared of them?
A. Not really scared of them, just scared of the situation.
Q. Where are you housed right now?
A. Georgetown County.
Q. Okay. So you are far away from them now?
A. Yes sir.
Q. You ain't got no reason to be scared of them now?
A. Yes. Yes, you're right.

Q. Do you remember telling the Detectives, "When I first got here they were going to put me in the pod with Jimmy Lee, and he was looking at me like he was wanting to do something to me, so I refused to go into the pod."

A. Yes sir.

Q. And I believe Detective Hull stated, "All right, so he's giving you looks that make you feel like you are threatened?" You said, "Yes, sir." Do you remember that?

A. Yes sir.

MR. FREDERICK: Judge, just for the record, I'm going to object to dirty looks being threatening.

THE COURT: I'm going to allow it. They are in direct response to questions you asked.

MR. FREDERICK: Thank you.

Q. Mr. Washington, I'm going to ask you if you remember this statement too, and it's long. Detective Allen had asked, "So basically you mentioned discovery earlier. Am I to understand that, through discovery, they got your name and came to talk to you about what happened?" Do you remember him asking you that question?

A. Yes sir.

Q. Do you remember stating to Detective Hull, Detective Allen, "Well, basically, like when I first came, and when I first got locked up for my charge back in October, I went on P.C., and Chris, he came to P.C., you know what I'm saying, I

was death scared. I heard him asking, like, where that boy at. I already knew who he was talking about, you know. They were like, he's in room 240. I'm the only person in room 240 he knows about, you know. I heard him talking about kicking that door, and what he was going to do to me, and stuff like that, and he tried to get me to talk to him, and I would never talk to him, but something -- he -- he -- when I did start talking to him he switched it up, like he was going to get on my side, like he was going to do something and did nothing, and stuff like that, you know what I'm saying. I didn't know what to believe then, you know. My head was confused."

Do you remember saying that?

A. Yes sir.

MR. RICHARDSON: Thank you, Mr. Washington.

THE COURT: Mr. Gardner, redirect.

REDIRECT-EXAMINATION BY MR. GARDNER:

Q. Craig Burris wasn't at your house the night we are talking about, the morning we are talking about?

MR. RICHARDSON: Objection. Your Honor, objection. That goes beyond scope of redirect.

THE COURT: I'm going -- I'm going to allow it. Go ahead.

Q. Just tell us the -- what was the truth?

A. I don't even know who Craig Burris is.

MR. GARDNER: Okay. Thank you, sir.

THE COURT: Mr. Frederick.

MR. FREDERICK: Briefly, Judge.

RECROSS-EXAMINATION BY MR. FREDERICK:

Q. "Lee-Lee", didn't you also tell Detective Allen, in that same interview, that you were wrong about Christopher wanting to -- you felt -- you expected that they would be mad at you because you were going to be a witness?

A. Anybody expects somebody is going to be mad at them if they are named in their motion in discovery.

Q. But then you found out these guys weren't coming after you, right?

A. Yes.

Q. And that's what you were telling Detective Allen, isn't it?

A. Somewhat, yes.

Q. All right. And during that last interview, when you talked to Detective Allen, and you told him you weren't changing your story again for them, didn't you?

A. Yes sir.

Q. And then he tried to feed the story to you again, didn't he?

A. Yes sir.

Q. He kept telling you what to say, and trying to get you to agree with him?

A. Yes sir.

MR. FREDERICK: That's all the questions.

THE COURT: Solicitor.

MR. RICHARDSON: Your Honor, I have no further questions of this witness.

THE COURT: All right. Very good.

All right, sir, you may step down.

Your next witness.

MR. GARDNER: Your Honor, I -- if we may approach for a minute to talk about the next witness.

THE COURT: All right.

Go ahead, sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen of the jury, you need to go to your jury room for a little bit, please. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. We'll take a short break.

Thank you very much.

MR. RICHARDSON: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

MR. FREDERICK: Judge, can we approach?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, Mr. Gardner, who is the next witness that you are going to have?

MR. GARDNER: I've got two, Judge, if you can give me one second.

THE COURT: All right.

MR. GARDNER: We've got the lawyer here for Belal Harris, Your Honor.

THE COURT: All right. Why don't you go ahead and let's just move a chair over, and get Mr. Harris and have him sit down over here.

Counsel, come up here and talk to me.

Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. The next witness you are going to call is Mr. Harris; is that correct?

MR. GARDNER: Yes, Judge.

THE COURT: Do we need to cover any issue regarding cross-examination of Mr. Harris about any prior record, or pending charges that Mr. Harris might have?

MR. RICHARDSON: Yes sir.

THE COURT: All right. And what -- what is it that -- I don't know, Mr. Frederick might -- but the State would want to cross-examine Mr. Harris about?

MR. RICHARDSON: Your Honor, currently Mr. Harris went straight into the big leagues. He was housed at D.J.J., after

being charged with murder, until he moved up to J. Reuben whenever he hit seventeen. He's also got an armed robbery charge pending right now. My office is prosecuting him. Myrtle Beach Police Department arrested him. Definitely goes to bias.

THE COURT: All right. So you want to be able to ---

MR. RICHARDSON: He's scheduled for trial next month as well.

THE COURT: All right. So you want to be able to question him on the fact that he is currently facing murder charges, a murder charge, and an armed robbery charge, ---

MR. RICHARDSON: That's correct, Your Honor.

THE COURT: ---That your office is prosecuting him for that ---

MR. RICHARDSON: That's correct.

THE COURT: ---And he was arrested on those offenses by the Myrtle Beach Police Department?

MR. RICHARDSON: Yes sir.

One second, Your Honor.

Your Honor, I'm sorry, one of the cases -- the murder case, I believe, is actually a County case, but the armed robbery is Myrtle Beach ---

THE COURT: Okay. So on the armed robbery charge, that he was arrested for those by the Myrtle Beach Police Department?

MR. RICHARDSON: That's correct.

THE COURT: All right. Your intention would not to be -- to go any further than that?

MR. RICHARDSON: No sir.

THE COURT: All right.

Gentlemen, y'all got any response to that? I think that's in keeping as far as -- Mr. Gardner and Mr. Frederick, I think that's in keeping with what I allowed y'all to do with the State's witnesses.

MR. FREDERICK: I agree, Judge.

THE COURT: All right.

MR. GARDNER: I agree too. Fair is fair.

MR. FREDERICK: I would just say that it's -- in our questioning, of course, we are going to be very cautious in what we ask this witness, but my understanding is that, at some point the Prosecutor's Office, or some investigators had tried to get him to finger our clients for the robbery he is charged with, and that never happened. I would just want to caution the Court and co-counsel that that issue is out there, and there should be no reason to go into that.

THE COURT: Okay. All right. Very good.

All right. Let's bring the jury back in, please.

MR. BAILEY: Your Honor, if I may ---

THE COURT: Yes sir, I'm sorry. Go ahead.

MR. BAILEY: If I may briefly ---

THE COURT: Why don't you go ahead and bring them to the door, and just keep the door closed for a second, okay. Just bring them -- bring them down the hall.

Yes sir.

MR. BAILEY: Your Honor, my client ---

THE COURT: I'm sorry, just for the record, since we are on the record, if you would state your name and who you represent, please sir.

MR. BAILEY: My name is Joshua Bailey. I'm here to represent Mr. Belal Harris.

THE COURT: Yes sir.

MR. BAILEY: Your Honor, in discussing with my client, and based on the -- what the State has said, if the State is going to elicit specifically what Mr. Harris is charged with my client does not wish to testify.

THE COURT: All right, sir. Well, I am going to allow the State of South Carolina to ask him if he is currently facing the charge of murder, if he is currently facing the charge of armed robbery, and regarding the matter of the armed robbery, that he was arrested on that charge by the Myrtle Beach Police Department, and I'm using as a basis for that Rule 608, the third part regarding bias, the same grounding and foundation I used to allow the Defense Attorneys to question State witnesses, and in keeping that consistent, I believe it's proper for the State to be able to allow that,

and I would allow that in this particular case.

MR. BAILEY: Your Honor, my client wishes not to testify.

THE COURT: All right, Mr. Gardner, what's your position? What do you intend to do?

MR. GARDNER: That's a matter of public record that he has those charges, and ---

THE COURT: I appreciate that, sir.

MR. GARDNER: ---I intend to call him as a witness to go into the limited questions that I want ---

THE COURT: Other than answering the question as to his name, as to other questions that you ask, if he invokes his Fifth Amendment privilege, I am not going to require him to answer those questions. If he invokes the Fifth Amendment, pursuant to advice given to him by his attorney that the responses to those questions would tend to incriminate him, that I will not allow you to go any further, and I will not require him -- you can ask your questions, but I will not require him to answer your questions.

MR. GARDNER: I just -- I'm sorry to the Court. I just talked to him and I anticipated that my two or three short questions would be answered. If I can have a moment to consult with the ---

THE COURT: Yes sir.

(MR. GARDNER CONSULTS WITH HIS CLIENT.)

MR. GARDNER: Judge, I believe that justice requires me to call him. He's under Subpoena. It's part of my case, and I think I'm going to call him as a witness.

THE COURT: All right. Very good.

Bring the jury in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Belal Harris, Your Honor.

THE COURT: All right.

Please come around, Mr. Harris.

BELAL HARRIS, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Good afternoon, Mr. Harris.

Mr. Harris, you were in the same jail cell as Craig Burris; is that correct?

A. Yes sir.

Q. And did Craig Burris tell you about the testimony that he was going to talk in this case?

A. Yes sir.

Q. Did he tell you whether or not it would be truthful or not?

A. Yes sir.

Q. And what did he tell you it would be?

MR. RICHARDSON: I object, Your Honor. That would be hearsay.

THE COURT: I'm going to allow it.

A. Before -- before they came here?

Q. Yes sir.

A. About the testimony, they came at me, telling me ---

THE COURT: All right, sir. You can respond to the question asked by the counsel, sir. Respond directly to the question he asked.

Q. Craig Burris told you he was going to give a statement in this case.

A. Yes sir.

Q. Did he tell you it was going to be the truth or a lie?

A. A lie.

Q. Told you he was going to lie to this jury; is that right?

A. Yes sir.

Q. Said he was going to say that Jimmy Lee Sessions made a statement to him about this case?

A. Yes sir.

Q. And that never happened?

A. No sir.

MR. GARDNER: Please answer any questions Mr. Frederick has.

THE COURT: Mr. Frederick.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Did Craig Burris get Investigator DiLorenzo's contact information from your discovery?

A. Yes sir.

Q. He went through your stuff?

A. Yes sir.

Q. Tried to get you to help him write a statement on Mr. Sessions, didn't he?

A. Yes sir.

Q. You wouldn't do it, would you?

A. No sir.

Q. Jimmy Lee never said to you that he committed this crime, did he?

A. No sir.

Q. Okay. At the time, back when all this was going on with Craig Burris down at the jail, was Craig Burris fighting with Jimmy Lee?

A. Daily arguments.

MR. FREDERICK: Thank you. No more questions.

THE COURT: Solicitor.

CROSS-EXAMINATION BY MR. RICHARDSON:

Q. Mr. Harris, I know you've got a pending murder charge, right?

A. (NODS HEAD NEGATIVE)

Q. You don't have a pending murder charge?
A. I don't feel like I have to answer that question.
THE COURT: Sir, that is a matter of public record. You need to respond to that question.
A. Well, yes sir, I do.
Q. And you've got a pending armed robbery charge, correct?
A. Yes sir, I do.
Q. Who is prosecuting you on those charges?
A. Sanford Graves, I guess.
Q. And he works for my office, don't he?
A. I don't know where he work at.
Q. Fifteenth Circuit Solicitor's Office.
Let's see. I think you just said that the police talked to Craig Burris right after they talked to you?
A. He wrote them.
Q. Was it right after they talked -- right after the police talked to you?
A. Yes.
Q. So he wrote them right after the police talked to you?
THE COURT: You need to answer the question, sir.
A. Yes sir.
Q. Do you remember the time you spoke to the police was July 27th, 2006?
A. Yes sir.
Q. And you said at this time y'all were in the same cell,

right?
A. No sir, I did not say at the same time we was at the cell. They brung -- they brung me warrants July 27th, 2006.
Q. I'm sorry. I couldn't understand you.
A. They brought me warrants July 27th, 2006. I didn't get to J. Reuben Long Detention Center till November 1st. Me and Craig Burris was roommates during the -- during the late -- the late month of November, beginning month of December.
Q. And Mr. Burris didn't make any statements until April?
A. That's because that's when DiLorenzo came and talked to him. He wrote him when we was roommates.
Q. When did you tell the police that Craig Burris was lying?
A. When did I tell them?
Q. Uh huh **(indicating positive)**
A. April, 2000 -- 2000 and ---
Q. Did you tell us in April?
A. 2008, when they came and asked me.
Q. April -- this past April you told them?
A. 2008.
Q. Who did you tell?
A. Public Defender's Office.
Q. I asked you when you talked to the police about this. When did you run out and say, man, you are prosecuting the wrong guy; Craig Burris is lying?

A. I didn't run out the next -- I didn't run out and tell them nothing. They came and asked me. I ain't run out and tell them nothing.
Q. So it wasn't -- you didn't tell the police?
A. I told some guy named Corey from the Public Defender's Office.
Q. My office is prosecuting you, right, and you don't like that, do you?
A. Not for something I ain't do.
Q. You don't like following the rules, do you?
A. Huh. When it's necessary.
Q. You follow rules when it's necessary? Well, are there certain rules that you have to follow out at J. Reuben Long?
A. Lots of them.
Q. And what happens when you don't follow the rules out there?
A. You end up in a red uniform.
Q. Like you've got on right now? How many different cells have you been assigned to out at J. Reuben?
A. I don't know.
Q. Would it surprise you to find it's over fifty cells?
A. No.
Q. Why do you keep having to jump around cells, sir?
A. Because I don't get comfortable around too many people.
Q. December, 2008, until just last week, you were in the

same pod with Jimmy Lee Sessions, weren't you?
A. Yes.
Q. And as of January 25th, 2009, not just the same pod, who is your cell mate?
A. Christopher Stephens.
MR. RICHARDSON: Your Honor, I have no further questions for this witness.
THE COURT: Mr. Gardner, redirect.
MR. GARDNER: Redirect on the time line, Your Honor.
MR. RICHARDSON: Your Honor, if I may have time to review that statement. I have not seen it before.
THE COURT: Yes sir.
REDIRECT-EXAMINATION BY MR. GARDNER:
Q. The Solicitor asked you some questions about some dates. I just want to briefly talk about that.
(HANDWRITTEN LETTER DATED APRIL 23, 2008, MARKED DEFENDANT, SESSIONS, EXHIBIT NUMBER 1, FOR IDENTIFICATION ONLY.)
Let me show you something that has been marked as Defendant's Exhibit 1, for Sessions, and ask you not to read from it, but tell me if you recognize it, and what is it?
A. December.
THE COURT: You need to speak up, sir.
Q. What is this sheet of paper?
A. A statement.

Q. And who wrote that?
A. I did.
Q. And what is the date that you wrote that?
A. April 24th, 2008.
Q. All right. Is that the time frame that you were talking with the Solicitor about, when you told the Public Defender's Office.
A. **(NODS HEAD AFFIRMATIVE)**
THE COURT: There wasn't a verbal response. Was that a yes?
A. Yes sir.
THE COURT: All right.
MR. GARDNER: All right. That's -- that's all, Your Honor.
THE COURT: All right. Mr. Frederick.
CROSS-EXAMINATION BY MR. FREDERICK:
MR. FREDERICK: Just a moment, Your Honor.
THE COURT: Yes sir.
Q. So just -- what he just showed you, you did recognize that? That was ---
COURT REPORTER: Excuse me.
A. Yes sir.
MR. FREDERICK: I'm sorry.
Q. That was your statement, and it was written on April 24th, 2008?

A. Yes sir.

Q. And this is marked as Defendant's Exhibit 1, Sessions, for identification.

COURT REPORTER: Defendant's 20 for I.D., Stephens.

THE COURT: All right.

(HANDWRITTEN LETTER DATED APRIL 24, 2008, SAME AS DEFENDANT, SESSIONS, ONE, FOR IDENTIFICATION ONLY, MARKED DEFENDANT, STEPHENS, EXHIBIT NUMBER 20, FOR IDENTIFICATION ONLY.)

Q. And it's now marked Defendant's Exhibit Number 20.

MR. FREDERICK: Your Honor, I would move to admit this as Defendant's Exhibit Number 20. Move to admit this into evidence, Judge.

MR. RICHARDSON: Your Honor, the State would object. It moves beyond the content of redirect.

THE COURT: Sustained.

MR. FREDERICK: Judge, they questioned him on the date.

THE COURT: I understand that. I'm not going to allow it into evidence. You can further question him about it if you want to.

MR. FREDERICK: Beg the Court's indulgence.

THE COURT: Yes sir.

MR. FREDERICK: Thank you.

Q. And Belal, at that same time Craig Burris told you that he knew for a fact Christopher Stephens and Jimmy Sessions was

not responsible for the murders?
A. Yes sir.
MR. RICHARDSON: Your Honor, once again, I don't believe this covers ---
MR. FREDERICK: It's impeachment, Judge. We directly asked Craig Burris this question.
THE COURT: You don't need to give me the argument. Just -- your grounds for doing it is impeachment; is that correct?
MR. FREDERICK: Yes sir.
THE COURT: I'm going to allow it.
Q. He said the police would never know?
A. Yes sir.
Q. He asked you to get Jimmy to tell you that he had committed the crime?
A. Yes sir.
Q. But at no time did Jimmy state to you that he had committed the crime?
A. No sir.
Q. At that time Craig and Jimmy were fighting in the pod?
A. Yes sir.
Q. Craig Burris tried to get you to help him write his statement ---
A. Yes sir.
Q. ---So that Jimmy would be charged with the murders ---

A. Yes sir.
Q. ---And you told him you wouldn't do it ---
A. Yeah, yeah.
Q. ---Because it's not true?
A. Told him I couldn't do it.
Q. Okay. And he went through your paperwork and got Detective DiLorenzo's address?
A. Went through my whole motion of discovery.

MR. FREDERICK: Okay. No more questions.

THE COURT: Solicitor.

MR. RICHARDSON: Very, very briefly. Court's indulgence.

THE COURT: Yes sir.

RECROSS-EXAMINATION BY MR. RICHARDSON:

Q. Trying to figure this out, you put in here the date of December 2nd, 2006. Is that when you say you were in the cell with Craig Burris?
A. Yes sir.
Q. Would it surprise you to find out you weren't placed in a cell with Craig Burris until December 19th, 2006?
A. I said that could have been the date. I know we was in the room together in the month of December.
Q. No, it says, I was placed in cell number 118 on December 2nd, 2006. It doesn't say could have been. Right before you wrote this letter you were housed with Chris

Stephens in the same pod, A-1, right?
A. No sir, I wasn't.
Q. You are saying you wrote this April of 2008?
A. Yes.
Q. You were housed in A-1 with Chris Stephens from, looks like March 26, 2008, till March 31st, 2008.
A. Pod A-1 is segregated. The top floor come out with the top floor, the bottom floor come out with the bottom floor.
Q. Y'all don't have any interaction?
A. No interaction.
Q. Y'all don't have any interaction. How do you know everything that goes on out there?
A. I don't try to find out everything that's going on.
Q. Well, you said you know about the argument going on.
A. That's cause we all was on the same floor.
Q. When was that?
A. In the month of December.
Q. In the month of December?
A. 2006. Christopher Stephens wasn't even in the jail yet.
Q. By the time you wrote this Jimmy Lee Sessions had already been arrested on the murder, right?
A. Yes.
Q. Chris Stephens had already been arrested on the murder ---

A. Yes.
Q. ---Or the accessory charges. I apologize.
And you've moved around so much it would be hard to keep up with dates, right?
A. Yes.
Q. You don't like the police?
A. No.
Q. You don't like the Prosecutors?
A. No.
Q. You don't like following rules?
A. When it's necessary I follow them.
Q. You are wearing red today?
A. Yes.
Q. Your roommate is Chris Stephens?
A. Yes.
MR. RICHARDSON: Your Honor, I have no further questions for him.
THE COURT: Do you wish the witness to be excused, Mr. Gardner?
MR. GARDNER: Yes sir.
THE COURT: All right, sir.
All right, gentlemen.
All right, Mr. Gardner, your next witness, please sir.
MR. GARDNER: If I may have the Court's indulgence, Your Honor.

THE COURT: Yes sir.

MR. GARDNER: Can we approach?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen, y'all -- why don't you go to your jury room and be at ease for a few moments. When we get done with this witness I'm going to have to send you out again, but why don't you go -- go to your jury room for a little bit and be at ease.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Mr. Gardner, let me understand where you are. You've got one more witness. Who is that now?

MR. GARDNER: Judge, that's Corey Sparkman. He's an inmate at the jail.

THE COURT: Okay. All right. So, Corey Sparkman.

MR. GARDNER: I'm told he's in the building.

THE COURT: All right, sir. Now, after that, what is your intention as far as witnesses in this case?

MR. GARDNER: It's ---

MR. FREDERICK: No more for the second here, Judge.

THE COURT: Okay. But you have other witnesses that you intend to call?

MR. GARDNER: Yes sir. Four -- four witnesses, Judge.

THE COURT: All right. How many witnesses will you

then call, Mr. Frederick?

MR. FREDERICK: None.

THE COURT: All right, sir. When those four witnesses are over with, does the State anticipate reply testimony?

MS. ELDER: Your Honor, obviously we know Mr. Sparkman is coming up. We don't know who he is. He was a surprise. He wasn't read out on the witness list, so I don't know what he's going to testify to.

As far as Roy Grant, who they've indicated is one of the other witnesses, Melissa Gomez. I don't know who the other two are. We don't anticipate reply on the witnesses that we are aware of, as far as Melissa Gomez and Roy Turner. Again, not knowing what Sparkman is going to testify to, and not knowing who the other two witnesses are it's difficult for the Court -- for the State to say that at this point.

THE COURT: All right. Well, I was just trying to get some idea of where we might be.

Do y'all have any -- have you anticipated giving to the Court any requests to charge, or not? I'm not saying that you have to, but I'm saying, did you anticipate there was something that you wanted to give to me?

MS. ELDER: No, Your Honor, other than the standard charges.

THE COURT: All right. Well, we'll review all that. How about you, Mr. Gardner?

MR. GARDNER: I believe, at this point in time, just the standard.

THE COURT: All right. Well, okay, we'll talk about that, and we will -- before we leave here today we will talk about that and see what it is that y'all expect the Court to charge, and if there are some other issues then before we get started tomorrow morning y'all can give to me whatever it is that you would like to add to what I might anticipate charging in this particular case.

Assuming we get done with Mr. Sparkman today, you don't have anybody else today; is that right?

MR. GARDNER: No sir.

THE COURT: All right. So those other four witnesses, your best estimate as to how long that will take.

MR. GARDNER: I believe -- my best estimate of -- three of them are short and sweet, just like these last few witnesses we had, beginning with the couple of fellows from the jail and that one Myrtle Beach Police Officer, short, sweet, less than an hour, probably.

The other one is -- I don't know how long it will take. The State may cross-examine a while. It may go an hour or more.

THE COURT: Okay. All right. Well, we'll just see where we are at that point in time, see what time it is, and where we are.

I'll just tell you, it's -- I may be guided by the jury as to whether they want to stay Friday until they are done, or they want to come back Monday. We are not working Saturday and Sunday. So we will just see how long that takes, and see where we are, and we will talk to the -- talk to the jury at that point in time and see what they might wish at that point in time. All right.

MS. ELDER: Thank you, Your Honor.

THE COURT: Is he here? Is he ready to go?

MR. GARDNER: Yes sir.

THE COURT: All right. Why don't you have him come in and sit down.

All right. Ask the jury to come back in, please sir.

Did we need to cover -- this is Mr. Sparkman, correct?

MR. GARDNER: Yes sir, and I ---

THE COURT: Do we need to cover pending charges?

MR. GARDNER: I don't know what they are.

MR. RICHARDSON: Your Honor, I think right now he's serving a -- he got a twenty year sentence on armed robbery.

MR. SPARKMAN: It was twenty years, but I got it returned back to the Supreme Court.

THE COURT: So you are awaiting a new trial?

MR. SPARKMAN: Yes.

THE COURT: All right.

MR. RICHARDSON: Who is prosecuting?

MR. SPARKMAN: I don't know. I don't know the prosecutor.

MR. GARDNER: Do you have a lawyer?

MR. SPARKMAN: Yes, my lawyer is Natasha Hanna with Morgan Martin's law firm.

THE COURT: All right.

MR. GARDNER: It's going to be very short testimony, I anticipate.

THE COURT: Well, I understand that, but ---

MR. GARDNER: I know. I -- I didn't know he had a lawyer. I apologize to the Court.

THE COURT: Turn them around. Turn them around. Send them back to the jury room.

MR. FREDERICK: Judge, we could -- we could call ---

THE COURT: Yes. We need to call right now. Anybody got an idea what ---

MR. GARDNER: I know the number here is 3172, but I don't know the Beach number.

THE COURT: Is that where she is at?

MS. ELDER: She's at the Beach, Your Honor. Her office is at the Beach.

THE COURT: All right.

MR. FREDERICK: Well, we could call this witness in the morning and try to contact her tonight.

THE COURT: Yes. I -- now, so Mr. Sparkman is being

prosecuted by y'all's office; is that ---

MS. ELDER: We are finding out right now, Your Honor. The N.C.I.C. we ran does not indicate that his sentence was set aside, so we sent somebody out to find out.

THE COURT: Okay. But originally, no question y'all prosecuted him, or you don't know that?

MR. RICHARDSON: Looks like it was in Horry County, Judge.

MS. ELDER: Yes sir, Your Honor.

THE COURT: All right. Y'all are going to have to go ahead and talk Mr. Sparkman back to the J. Reuben Long Detention Center. Make sure that he's back here tomorrow morning, 8:30, by 8:30. All right.

So y'all go ahead and take him on back, and have him back here by -- by 8:30, please.

DEPUTY SHERIFF: Yes sir, Your Honor.

THE COURT: And you want to send your Investigator out to go start communicating with his lawyer right now?

MR. FREDERICK: Yes sir.

THE COURT: And alert -- alert the lawyer that they need to be over here tomorrow morning at 8:30.

MR. FREDERICK: Yes sir.

THE COURT: All right.

Yes, Solicitor.

MS. ELDER: Your Honor, I obviously don't really care

who they are going to call, but we've got, obviously, a lot of issues with transport, and where these people are. I don't know if they are even aware of where their witnesses are. If they have any other witnesses, other than Corey Sparkman and Roy Grant, that are incarcerated, that we need to assist with in transportation ---

THE COURT: Is there anybody else?

MR. GARDNER: That's all I've got.

THE COURT: So it's just Corey Sparkman and Mr. Grant, are the two remaining witnesses that you have that are incarcerated, that you know about?

MR. GARDNER: That's right.

THE COURT: All right. Okay. So, you have a total of five witnesses to come, correct, counting Mr. Sparkman?

MR. FREDERICK: That's correct, Judge.

THE COURT: All right. So you have five witnesses. Those two are incarcerated. The other three, when do you expect that they will be here tomorrow?

MR. GARDNER: The airplane lady, I don't know. My brief witness ---

MR. FREDERICK: The lady that's coming on the airplane will be here at 10:30. My secretary is picking her up from the airport.

THE COURT: Okay.

MR. FREDERICK: The other three will be here at nine

o'clock in the morning.

THE COURT: Okay. All right.

MR. RICHARDSON: How about Wilbur Green? Is he incarcerated right now?

MR. GARDNER: Wilbur said he's not going to testify, and I just left it alone.

MR. FREDERICK: We sent him back.

MR. GARDNER: Sent him back.

THE COURT: All right.

MR. RICHARDSON: And we need the information on the others so we can run the N.C.I.C.s if you don't ---

THE COURT: So they -- you will need to -- who are the others, because they -- the State does -- is allowed to run the N.C.I.C. so they can be prepared for cross-examination, so we've got -- we've got Corey Sparkman, we've got Roy Grant ---

MR. GARDNER: Melissa Gomez.

THE COURT: ---Melissa Gomez. All right.

MR. FREDERICK: Manuel Ortuno.

THE COURT: Emanuel Ortuno. How do we spell his last name?

MR. FREDERICK: He's a S.L.E.D. agent. They've got that.

THE COURT: Okay. Well, great.

MR. FREDERICK: Billy Lewis.

THE COURT: And I'm sorry, the last one?

MR. FREDERICK: Billy Lewis.

THE COURT: Billy Lewis. Is that a male or a female?

MR. FREDERICK: Male.

THE COURT: Male. And Mr. Lewis, is he here, or not here or ---

MR. FREDERICK: Not here this afternoon.

THE COURT: But I mean ---

MR. FREDERICK: He's local.

THE COURT: A local person?

MR. FREDERICK: Yes sir.

THE COURT: All right. And the other -- and the last one is?

MR. FREDERICK: Mayur Patel, P.a.t.e.l..

THE COURT: Okay.

MR. RICHARDSON: That would be six, Your Honor.

THE COURT: Okay. Corey Sparkman, Roy Grant, trying to find these names here.

MR. GARDNER: Ortuno.

MR. FREDERICK: That is six. We mis-counted.

THE COURT: All right. Let me -- okay, Ortuno is a S.L.E.D. agent; is that right?

MR. GARDNER: That's correct.

THE COURT: And then the other ones are, again?

MR. GARDNER: Corey Sparkman from the jail, Roy Grant from the prison, Billy Lewis and Patel, local ---

THE COURT: Okay.

MR. GARDNER: ---And then Melissa Gomez.

THE COURT: Melissa Gomez.

MS. ELDER: And, Your Honor, we can run N.C.I.C.s on Mr. Sparkman and Mr. Grant. Ms. Gomez, we do not -- we need at least identifying information on Billy Lewis and Mr. Patel.

THE COURT: All right. When those people get here in the morning, if you will get their birthdays, and their social security numbers, and give those to the State, please. As soon as they get here in the morning you will get their birthdays and their social security numbers.

I assume y'all don't have that right now.

MR. GARDNER: No sir.

MR. FREDERICK: No sir.

THE COURT: All right. So, just as soon as they get here in the morning y'all get that and give that to the State, okay.

MS. ELDER: And Your Honor, I -- just tell Your Honor,e I don't know -- Ortuno is the D.N.A. analyst in this matter. We have not put up any evidence for Mr. Ortuno in our case, and none has put up so far that would have to have chain witnesses, Your Honor, because it is D.N.A. evidence.

MR. FREDERICK: Judge, the purpose of establishing the chain of custody is to protect the rights of the defendant and insure that the State did not tamper with the evidence. I

think it would be more than fair to expect the State to consent to their own chain.

If they would like us to establish the chain, then I'm sure we could do that, and we could go ahead and get a subpoena for every person in their chain of custody, if they want us to do that, but we'll have to get the subpoenas, serve them in the morning, and then make that chain of custody tomorrow afternoon, or whenever we can get here Monday,but ---

THE COURT: Solicitor.

MS. ELDER: Your Honor, I don't have a problem, necessarily, the chain, from where it went to (A), to (B), to (C), to (D). I do have a problem with Mr. Ortuno taking the stand, because he is a S.L.E.D. analyst, he received what was given to him, and he cannot testify as to where these things were drawn by crime scene. They had everybody from crime scene up there. They asked absolutely no questions from any of those individuals about where this D.N.A. was pulled from. They had that opportunity and didn't do that. I have a problem with that, Your Honor. I have ---

THE COURT: I'm going to allow you to explore that on cross-examination. I'm going to allow him to testify.

MR. FREDERICK: And Judge, I would point out that they consented and stipulated to the chain at the last trial.

THE COURT: Well, be that as it may, I'm going to allow y'all to call him. You can raise whatever objections you

would like to during his testimony.

Solicitor, I'll rule on them at the time. There may be something that I may disallow, but my anticipated answer is going to be, I'm going to allow him to testify, but we will see, because I don't know the questions that are going to be asked, nor the objections that you are going to raise, so we'll just have to cover it when he shows up, and we will go from there.

MR. GARDNER: Now that we know what the rest of the witnesses are, does the State know now whether or not they anticipate reply?

MS. ELDER: Again, Your Honor, Corey Sparkman, I have no idea why he's being called. He wasn't on the witness list read to the jury, so I have no idea what he's testifying to.

MR. GARDNER: I can tell you, if it will help. It's impeachment that we learned about today, after one of your witnesses.

THE COURT: Well, we'll just -- just hear it. Just from what you know now -- I understand that may change, depending upon what actual testimony comes out. All right. Understanding that, do you now anticipate that you will have reply testimony?

MS. ELDER: Possibly one, Your Honor.

THE COURT: All right. Very good.

All right. Let me call the jury out and send them home,

and I'll have them here, back by nine o'clock in the morning. Y'all -- we'll continue to discuss this after they leave.

Have them come in.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, ladies and gentlemen of the jury, we have encountered some difficulties in getting the remaining witnesses here. It's not necessary -- no reason to go into all that, just need -- needless to say, they are not here right now, and it might be some period of time before they arrived, and I'm not sure all of them would arrive so we could conclude the testimony tonight sometime, so with that I'm going to send y'all home, and we are going to come back tomorrow morning, start again at 9 o'clock, and we will resume the testimony of the remaining witnesses in this case, hopefully, from what I've been told, that we will have everybody here tomorrow, and we will be able to go into those and continue on, and finish the testimony and evidence in this case.

I will discuss with you when we get done -- because right now I don't know when we will are going to get done tomorrow. We will get done with the testimony and evidence in this case sometime tomorrow. Obviously you understand that doesn't end the case. We've got the closing arguments, the charge on the law, and the submission to you for your

deliberations and your unanimous decision in this matter, however long that might take, and obviously that's completely and totally, and solely up to y'all, so just anticipate that tomorrow, when we get done with the testimony and evidence in this case, I will be talking to you about staying tomorrow until this matter is completely and totally finished, that is, you have come back with a unanimous decision on all the matters facing you, for however long that might take, or we might conclude tomorrow when the testimony and evidence is done, and come back Monday morning and finish the case, with the arguments, the charge on the law, and then the submission to you for your unanimous decision in this matter on all the charges facing the Defendants, so anticipate, be thinking about that, because I'm going to be asking you that question sometime tomorrow, so y'all just think about that.

Usual caution, don't talk about the case, don't allow anybody to talk to you about it.

I'll see you back tomorrow morning nine o'clock.

Obviously, don't read the newspaper, T.V., radio. I'll see you back tomorrow, nine o'clock.

Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Why don't we talk about, counsel, the anticipated charge on the law that you would

expect the Court to give in this particular matter. I mean, in general, obviously we will be talking to the jury about credibility and believability. We will talk to them, give them the general law about direct and circumstantial evidence, following the **State versus** -- I've never know if it's **Grippon** or **Grippon**. I have no idea, but it's G.r.i.p.p.o.n., that case that the Supreme Court has set out direct and circumstantial evidence, the presumption of innocence. I would say to you -- and obviously we will go over it. If your clients decline to testify obviously I'll talk to the jury about that. We will cover that before -- obviously before y'all finish, but I would talk about that, and tell them that it's not part of the case, if they decided not to testify in the case, the basic charge about expert witnesses, that you evaluate all the evidence in the case, you don't afford them any special status, reasonable doubt, the kind of doubt that would cause an ordinary, reasonable person to hesitate to act, a charge on third-party guilt, and let me just read that to you, and y'all can give me your comments about that, either now or in the morning, and that would be, evidence offered by an accused as to the commission of a crime by another person must be limited to facts that are inconsistent with the accused's guilt, and to such facts which raise a reasonable inference or presumption of his innocence. There must be such connection with the crime, such facts or circumstances which

tend to point out the other person, or another person, as the guilty person, which tend to point out the other person as the guilty party.

Also, we would have a charge -- where did I put that -- as to multiple defendants, basically indicating that there are two Defendants in the case, obviously explaining what each of them is charged with, that the case -- each Defendant, and the evidence law concerning that Defendant, and regarding each charge, should be considered separately and individually, the verdict does not have to be the same for both Defendants, could find one Defendant guilty or not guilty, should not control your verdict as to the other Defendant, you can convict one, acquit the other, acquit both, you may convict both, depends upon your view of the testimony and evidence, you take each Defendant, consider the evidence as to that Defendant, and my instructions to you on the law, and then you will write a separate verdict for each Defendant on each charge. So I would do that.

Also, the -- obviously the basic law regarding murder, armed robbery, burglary in the first degree, and accessory before the fact.

And if y'all remember, I think I read that accessory before the fact charge to you earlier when we were talking about a directed verdict motion, at the end of the State's case.

What else does the State require?

MS. ELDER: Your Honor, I don't know that we would have any other additional ---

THE COURT: Well, y'all think about it, and whatever you believe that you might have in addition to that, if you can have me something in writing in the morning, please.

MS. ELDER: Thank you, Your Honor.

THE COURT: Mr. Gardner, anything that you know of right now?

MR. GARDNER: No sir.

THE COURT: All right. The same. Obviously if you think of something you can have something to me in writing in the morning.

And Mr. Frederick, anything that you can think of right now?

MR. FREDERICK: I believe I will, but Your Honor, I can bring that in the morning.

THE COURT: Very good.

MR. RICHARDSON: We prefer to, Your Honor.

THE COURT: All right. Good. Yes, that would be fine. I mean, obviously, if you have something now I'll be glad to start looking at it, but I'll be glad for you to give it to me in the morning.

MR. FREDERICK: Yes sir.

THE COURT: All right.

All right. Anything else from the State at this point in time?

MR. RICHARDSON: No, Your Honor.

THE COURT: From your client, Mr. Gardner?

MR. GARDNER: No, Your Honor.

THE COURT: From your client, Mr. Frederick?

MR. FREDERICK: No sir.

THE COURT: All right. Very good.

All right. I will -- now, we are going to have that one witness, hopefully, the one inmate here by 8:30, and if we can -- and that's the only person coming from J. Reuben Long, was Mr. Sparkman, correct?

MR. GARDNER: That other fellow is coming from Columbia, I imagine.

THE COURT: Right. Right.

MR. FREDERICK: S.C.D.C..

THE COURT: Yes, I mean, but the only one coming from J. Reuben Long was Mr. Sparkman, okay.

All right.

MR. FREDERICK: We will talk to Natasha tonight.

THE COURT: All right. Very good.

All right. I'll see y'all back tomorrow morning, and -- so y'all be ready to get going right at nine o'clock, please, okay.

MS. ELDER: Thank you, Your Honor.

MR. RICHARDSON: Thank you, Your Honor.

THE COURT: Thank you very much.

(THE FOLLOWING TAKES PLACE ON THE NEXT DAY, FEBRUARY 6th 2009, OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor, are you ready for the jury?

MR. RICHARDSON: We are, Your Honor.

THE COURT: All right. Mr. Gardner.

MR. GARDNER: Judge, I have a problem with one of my witnesses. I briefly talked to Natasha downstairs.

THE COURT: Yes sir.

MR. GARDNER: She's on -- enroute, I understand, and the witness is enroute, I understand, but as a result of a conversation with the Solicitor's Office this morning he may not be willing to testify. I'm waiting on the final answer on that.

THE COURT: Okay.

MR. GARDNER: Evidently the Solicitor, or somebody from the Solicitor's Office, went out to the jail and interviewed him without his lawyer. My understanding. I don't know if that's true or not.

MS. ELDER: That's not correct, Your Honor.

MR. GARDNER: Okay. Well, the truth is what it is.

THE COURT: All right. Well, anyway, so, where is Mr. Sparkman at?

DEPUTY SHERIFF: On his way up.

THE COURT: He's on his way up now?

DEPUTY SHERIFF: On his way up.

THE COURT: Okay. Great. Good deal.

Well, soon as he gets up here let's bring him in, and then we'll figure out what's -- what's going on.

MR. RICHARDSON: Your Honor, I don't know if you want them right now, but I do have two requests on the charge.

THE COURT: Yes sir. If you've got them I'll be glad to hear those.

Mr. Gardner, anything you've got to add to what we talked about?

MR. GARDNER: No sir.

THE COURT: And Mr. Frederick, you have something to add?

If y'all want to just hand them to me that would be great.

MR. RICHARDSON: Yes sir.

MR. FREDERICK: Judge, what charge did you say you were going to give on reasonable doubt?

THE COURT: Standard ---

MR. GARDNER: Hesitate to act.

THE COURT: Yes.

MR. RICHARDSON: **Victor v. Nebraska** is what we are requesting, Your Honor.

THE COURT: Victor -- I mean, I'll be glad to read it to y'all.

MR. FREDERICK: That's fine.

MR. RICHARDSON: Firmly convinced, is the language we would ask.

THE COURT: Yes. That's -- I'll be glad to read it to you. Okay.

MR. FREDERICK: It's the last charge given ---

THE COURT: Well, I've got something -- and I'll go over that with you, because I went back and I've added -- added a couple of things that ---

MR. FREDERICK: And those are all that we have.

THE COURT: Okay. ---Added a couple of things -- in looking in it last night I did add the thing about note-taking. Since we allowed them to -- allowed them to take notes I was going to make a comment about that to them. I think at one point in time I had told them to disregard a statement, so I will just remind them they have to disregard them and they can't use those. I was going to state that the testimony of a witness may be discredited or impeached by showing that they previously made a statement that is inconsistent with their present testimony, earlier contradictory statements are admissible only to impeach the credibility of the witness, and not to establish the truth of the statements, the usual thing -- y'all have had witnesses,

obviously, that have had prior records, and that provides, the testimony of a witness may be discredited or impeached by showing the witness has been convicted of a crime for which they could have been imprisoned for more than one year, a crime that involves dishonesty, as to this evidence, is offered only on the issue of credibility and for no other purpose.

Let me see. I don't know that I'm going to say that -- that there is an informer or who has been granted immunity, but I will certainly tell the jury that they can consider, as far as any, any witness, whether that witness has exhibited to them any kind of interest, bias, prejudice, or any other motive that they might have in giving their testimony. I will certainly explain it to them in that way, that those -- that is part of what they would consider, so I believe that covers the essence, but I don't believe I would couch it in the terms that you have set forth in your Requests to Charge, but ---

MR. FREDERICK: Judge, it says -- and it does, it say immunity. That was extra language that wasn't intended, the immunity part.

THE COURT: Right. Yes, it says, or a witness who has been granted immunity from punishment, and that really hasn't been part of this case, so -- but --

MR. FREDERICK: That's ---

THE COURT: ---But I will certainly, you know, talk to

them about, you know, interest, bias, prejudice, motive that they have in giving their testimony. That's certainly part for them -- for the jury to consider.

MR. RICHARDSON: And, Your Honor, the only ---

THE COURT: Yes sir.

MR. RICHARDSON: On the armed robbery charge I just ask that you add in the language that the property can be illegal narcotics, pursuant to **State v. Gentry**, and that is a case in which someone moved for a directed verdict because what was stolen was narcotics.

THE COURT: Well, I don't -- I don't know that I'm going to indicate that, but I'm going to -- it's certainly somebody's personal property, whether it's legal or illegal.

MR. RICHARDSON: Yes sir.

THE COURT: It's somebody's personal property, so that's not an issue, and I certainly don't expect the Defense to argue that, just because somebody has illegal property it's not their property, I mean, if they say that then obviously I'll probably expand on my armed robbery charge, but I just intend to say that -- that the State has to prove, beyond a reasonable doubt, that a person took the personal property from the person or presence of another, and I may add whether it's legal or illegal property, but I'm not going to say drugs or ---

MR. RICHARDSON: Yes sir.

THE COURT: ---Or that. I might say legal or illegal property.

MR. RICHARDSON: I just went with the straight language from the case, Your Honor.

THE COURT: And I appreciate that.

MR. RICHARDSON: Yes sir.

THE COURT: All right.

MR. FREDERICK: Judge ---

THE COURT: Yes sir.

MR. FREDERICK: ---Our only other issue on the jury instruction is, we would object to the instruction on third-party guilt. The instruction that the Court read yesterday, I think is the test of admissibility, and I believe that, once evidence is admitted, the jury may consider it for any purpose that they see fit, and I don't think that a jury instruction outlining the test of admissibility from the cases would be appropriate, Judge.

THE COURT: All right. What -- what would you say that I should tell them about third-party guilt?

MR. FREDERICK: Nothing.

THE COURT: All right. Well, I respectfully disagree about that.

MS. ELDER: And Your Honor, in reference to the third-party guilt -- and I can't recall exactly how you read it yesterday -- but I believe there was some language in the end

of that charge dealing with a presumptive level, and I believe that needs to be also -- I believe the **Mayfield** case indicated that that needs to be an inference level, instead of presumptive.

THE COURT: And I'm sorry. Say that again, Solicitor. I was thinking about something else.

MS. ELDER: No problem. The language that Your Honor read yesterday -- I can't recall exactly -- I know that the word -- some presumptive level was in there, I think, toward the end of that charge that Your Honor read yesterday.

THE COURT: All right.

MS. ELDER: And I believe that needs to be changed, pursuant to the cases, I believe in **May** -- I believe it's **Mayfield**, Your Honor, that came after **Gregory** -- and change that from a presumptive level to an inference level.

THE COURT: All right. Let me look at this and see.

MR. FREDERICK: I have no problem with that.

THE COURT: All right. All right. Do we know if the --

MR. FREDERICK: Judge, could we run through some -- and they may have already done it, but ---

THE COURT: Sure.

MR. FREDERICK: ---But need to make the Court aware of where we are with our witnesses.

THE COURT: Okay.

MR. FREDERICK: Ms. Hanna is talking to Mr. Sparkman right now.

THE COURT: Okay.

MR. FREDERICK: Manuel Ortuno is here, and he's ready to go forward, and we will probably go ahead and call him first so he can get back to his job.

THE COURT: All right, sir.

MR. FREDERICK: We have Ms. Gomez, who missed her plane yesterday, called this morning, said that -- her mother called, actually, and said she missed her plane again, and they have put her on the very next plane. Apparently she had some kind of a problem getting through security, and they've put her on the very next plane, and she is going to be at the airport at 12:30. My secretary is still going to be waiting on her at the airport.

THE COURT: Okay.

MR. FREDERICK: We have two witnesses that are under Subpoena that we subpoenaed -- we actually subpoenaed one of them twice. They are reluctant witnesses. This is Billy Lewis and Mayur Patel, and I don't see him here this morning, Judge. We were very clear they didn't have to sit here the entire week, if they were here when we called them. We called them yesterday and told them to be here at 9 o'clock this morning. We are going to need to check and make sure they are not out there, try to call them one more time. If they are

not here I would ask for a deputy to go and get them. They are local.

THE COURT: All right. You've got a copy of your Subpoenas?

MR. FREDERICK: Yes sir.

THE COURT: All right, sir.

MR. FREDERICK: But I would like to check and give them the benefit of the doubt first.

THE COURT: All right, sir. Why don't you have them check and ---

MR. FREDERICK: There are two of them that the State has ---

THE COURT: All right. You want to go out there, Mr. Frederick, and check real quick?

MR. FREDERICK: If I could.

THE COURT: Yes sir.

MR. FREDERICK: Thank you.

MS. ELDER: Can we ask the deputies about the status of Roy Grant? Is he downstairs? Did he get here yet?

THE COURT: Mr. Grant is not going to get here until -- that's the fellow that's coming from Columbia, so he's not -- he won't be here until like ten-thirty or something like that, correct?

DEPUTY SHERIFF: I don't know about that, but I know he's not down there right now.

THE COURT: Okay. I don't expect that he's going to get here until about 10:30, but if we got Mr. -- if Mr. Sparkman is ready then ---

DEPUTY SHERIFF: He's back there talking with his lawyer.

THE COURT: Okay. So they are not done yet?

DEPUTY SHERIFF: No sir.

THE COURT: Will you check and see, just see if they are done yet.

MR. GARDNER: Whoever that was that was out there is not there anymore. They called and checked the waiting room, looked in our waiting room.

DEPUTY SHERIFF: She said he's ready, Your Honor, if you want to ---

THE COURT: All right. That's Mr. Sparkman.

MR. GARDNER: Natasha is back there?

DEPUTY SHERIFF: Yes sir.

THE COURT: Do you want to go talk to them for a second?

MR. GARDNER: Yes sir.

(MR. GARDNER LEAVES THE COURTROOM FOR A FEW MINUTES THEN REAPPEARS.)

MR. GARDNER: She asked for two more minutes.

THE COURT: All right. So -- but you have somebody that you are ready to go forward with right now?

MR. GARDNER: Mr. Ortuno.

THE COURT: Mr. Ortuno?

MR. GARDNER: Yes sir.

THE COURT: All right. Very good.

Why don't we ask the jury to come in. We will take his testimony then we'll go to Mr. Sparkman.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Good morning, ladies and gentlemen.

All right. Mr. Gardner, your next witness, please sir.

MR. GARDNER: Yes sir. Agent Ortuno.

THE COURT: All right, sir. Please come around to be sworn, sir.

MANUEL JOHN ORTUNO, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Agent Ortuno, where are you employed, sir?

A. The South Carolina Law Enforcement Division, commonly referred to as S.L.E.D..

Q. Yes sir. In what capacity?

A. I'm a Forensic D.N.A. Analyst.

Q. Yes sir.

MR. GARDNER: I'm going to skip down and try to save some time, Judge. We are going to offer him as an expert

witness in the field of Forensic D.N.A..

MS. ELDER: Your Honor, we have no objection to Mr. Ortuno. We believe he is qualified to provide his opinion in the area of D.N.A. analysis and forensic testing.

THE COURT: All right. And Mr. Frederick?

MR. FREDERICK: No objection.

THE COURT: All right, sir. He's qualified to give his opinion in the field of D.N.A. analysis, or forensic D.N.A. analysis.

All right, Mr. Gardner.

MR. GARDNER: Thank you.

Q. Agent Ortuno, were you provided with samples for the purpose of testing relative to this case?

A. Yes sir, I was.

Q. And those were D.N.A. samples taken from the crime scene on Pridgen Road here in Horry County?

A. These were samples that were submitted for the -- for analysis to identify, first, as human body fluids, and then if they are human body fluids, to be further analyzed to develop D.N.A. profiles, yes.

Q. And you got these items from the Myrtle Beach Police Department?

A. That's correct.

Q. Did you have an opportunity to examine these items?

A. Yes sir, I did.

Q. And did you compare those items with the -- I'm sorry, let me ask this. Did you get D.N.A. samples from Jimmy Lee Sessions and Christopher Stephens?

A. Yes sir, I did.

Q. And did you do a comparison of the D.N.A. between the samples from Jimmy Lee and Christopher and the items provided to you by Myrtle Beach Police Department?

A. Yes sir, I did.

Q. And did you form an opinion about that comparison?

A. Yes sir.

Q. And would you please tell the jury what the results were?

A. Which particular items would you like for me to -- there are quite a few items.

Q. I'll narrow it down -- I'll just narrow it down and go for the end result, the three items, as I understand it, are two -- were taken from the feet of Monica Wall. I believe one might have been the big toe.

A. Among the items submitted was a swab collected from the right big toe of Monica Wall. Is that what you are referring to?

MR. GARDNER: Yes sir.

A. And there was a swab also collected from the left foot of Monica Wall. For those two items, which were S.L.E.D.'s Items 47 and 48, the D.N.A. that was found from Item 47,

which, once again, is the right big toe of Monica Wall, was found to be a mixture, so we identified at least two individuals. In this particular case we have what appears to be one male and one female individual. Both Jimmy Sessions and Christopher Stephens are excluded as possible contributors to this mixture, in other words, their D.N.A. does not match the D.N.A. that was found in the mixture.

Q. Yes sir. And that was the sample from the big toe ---

A. That was from the big toe.

Q. And the other sample was ---

A. The second sample was a swab collected from the left foot of Monica Wall. This was also found to be a mixture of at least two individuals. Both Jimmy Sessions and Christopher Stephens are excluded as possible contributors to that mixture as well.

Q. Yes sir. Was there a third item involving fingernail clippings?

A. Yes. There is S.L.E.D.'s Item Number 53, was identified as fingernail clippings from a right hand of Monica Wall.

Q. And ---

A. For that item it was also determined to be a mixture. Jimmy Sessions and Christopher Stephens are also excluded as possible contributors to this mixture.

MR. GARDNER: Thank you, Agent Ortuno. Please answer

any questions that Mr. Frederick has for you.

THE COURT: Mr. Frederick.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Good morning.

A. Good morning.

Q. I would just like to go into a little bit more detail.

A. Certainly.

Q. Do you have -- do you have your reports with you?

A. I do.

Q. Okay. And there are at least two D.N.A. reports in this case, aren't there?

A. As I understand it there are two, one dated January the 28th, the second one dated -- actually January 28th of 2008. The second one is January 22nd of 2009.

Q. Okay. So there was one report that was January of last year?

A. That's correct.

Q. Okay. And then the second report is from January, last month?

A. Yes sir.

Q. Okay. Now, the reason for the second report is that D.N.A. samples were taken from Jimmy Lee and Christopher; is that right?

A. That's correct.

Q. All right. And that's happened two months ago?

A. Approximately, yes sir.
Q. Okay. And the D.N.A. was collected from the scene of the crime in June of 2006, correct?
A. That's correct.
Q. All right. And in January of 2008, that D.N.A. was analyzed, and a report was issued?
A. That's correct.
Q. But then in December, two months ago, after the D.N.A. was taken from these two, last month you were asked to re-analyze the D.N.A. again, and this time compare it with these Defendants; is that accurate?
A. Not so much re-analyze as simply compare the profiled developed from the standards from the individuals to the previous profiles developed from the evidence, as well as a swab from a left shoe that was also analyzed at this time.
Q. Okay. And so it had already been analyzed. Just this time you are specifically comparing it to these guys?
A. That's exactly right.
Q. Okay. Let's look at some of the specific results. You mentioned Monica's right toe. That was Item 47?
A. S.L.E.D.'s Item Number 47 is the right big toe.
Q. Okay. And in January of 2008, you were able to determine that the D.N.A. from that sample was consistent with a mixture of at least one male and one female; is that right?
A. In the original report dated January the 28th of 2008,

Item 47 is consistent with a mixture of at least one male and one female individual.

Q. Okay.

A. At that point the only standards I had were from Hightower and Wall, and they were deemed to -- they could not be excluded as contributors to this mixture.

Q. Jamilla and Monica, from that sample they could not be excluded?

A. Correct.

Q. So it could have been their D.N.A.; it could have been somebody else's?

A. That's correct.

Q. But it was one male and one female?

A. From the analysis of the D.N.A. that's what it appeared to be, yes sir.

Q. So one of them was somebody else's at least, the male?

A. That's a good point, yes.

Q. And then the same sample, last month it was compared with Jimmy Lee and Christopher's D.N.A.?

A. Yes sir.

Q. And they were excluded?

A. That's correct.

Q. So the male whose D.N.A. was found on the foot or the toe was not these guys?

A. That's correct.

Q. Okay. And as far as you know at least one person, maybe two, but at least one person that left D.N.A. there is still, as of yet, unidentified?
A. That's correct.
Q. Okay. Now, Item 48, that would be Monica's left foot?
A. Yes sir.
Q. And in January of 2008, last year, you were able to determine that that D.N.A. was consistent with a mixture of at least two individuals?
A. That's correct.
Q. Again, Jamilla and Monica could not be excluded from that one, right?
A. That's correct.
Q. Could have been them, could have been somebody else?
A. Yes.
Q. Okay. Last month you were able to exclude Jimmy Lee and Christopher as contributors to that sample?
A. That's correct.
Q. Okay. So that D.N.A. may have come from Jamilla. It could have come from Monica. It could have come from somebody as of yet unidentified, but it did not come from these guys?
A. That's correct.
Q. Let's look at Item 53. That's the fingernail clippings from the right hand?
A. Yes sir.

Q. In January of 2008, again, you were able to determine that the D.N.A. obtained from the fingernail clippings was a mixture?
A. Yes sir.
Q. That Jamilla and Monica could not be excluded from this one as contributors?
A. That's also correct.
Q. Okay. And last month you were able to exclude Jimmy Lee and Christopher as contributors?
A. That's correct.
Q. So could have been Jamilla, could have been Monica, could have been somebody else unidentified, but not these guys?
A. That's correct.
Q. Okay. And you did -- y'all did analyze more D.N.A. than just that, right?
A. Yes sir, we did.
Q. Okay. And there was -- let's look at Item 61.2, and 61.3, and that was a cigarette filter; is that right?
A. 61.2 and S.L.E.D.'s 61.3 are both cigarette filters, yes.
Q. Okay. Orange cigarette filters, and those were taken from Jamilla's house?
A. Yes. As I understand it they were.
Q. And this particular sample was not compared to Jimmy

Lee and Christopher, was it?
A. 61.2, 61.3 were not, no sir.
Q. Okay. But in last year, in January, you were able to determine that the D.N.A. on those filters was from unidentified females? Does that sound right?
A. That -- yes, that's from the original report, and that's why they were not compared, since they are unidentified females. They would not match ---
Q. Right.
A. ---Any male subjects.
Q. Right. And those profiles though did not match Jamilla or Monica?
A. That's also correct.
Q. So it was an unidentified person, female?
A. Females, yes.
Q. Okay. Items 12.1 is another cigarette filter?
A. Yes.
Q. And in January, 2008, last year, you were able to determine that the D.N.A. obtained from that cigarette butt is consistent with a mixture of at least one male and one female?
A. That's correct.
Q. Okay. Jamilla could not be excluded, so it could have been her?
A. Yes.
Q. But Monica was excluded?

A. That's correct.
Q. All right. And last month that was compared to Jimmy Lee and Christopher, and they were excluded?
A. That's correct.
Q. Okay. So it could have been Jamilla, definitely was not Monica. There was also D.N.A. from one male on it, but definitely not these guys?
A. That's correct.
Q. Okay. Let's look at Items 13.1 and 13.2. Those were cigarette butts also; is that right?
A. That's correct.
Q. Okay. Those were cigarette butts from the living room?
A. They are cigarette butts from the living room, yes sir.
Q. And in January of '08, last year, you were able to determine that that D.N.A. was consistent with a mixture of at least two persons?
A. That's correct.
Q. Okay. Jamilla could not be excluded, but Monica could be excluded?
A. That's also correct.
Q. Okay. And that was also compared to Jimmy Lee and Christopher, and they are excluded?
A. That's correct.
Q. Okay. So there is at least two persons -- could have been Jamilla, could have not been Jamilla, was at least one

other person, but not these Defendants?
A. That's correct.
Q. Okay. Item 29.1, that was a swab from the pillow in the bathroom; is that right?
A. Yes sir.
Q. In January of 2008, last year, you were able to determine that Monica could not be excluded, but Jamilla could been excluded; is that right?
A. That's correct.
Q. So that very well may have been D.N.A. from Monica?
A. That's correct ---
Q. Okay.
A. ---At least in part, since it's a mixture.
Q. It is a mixture?
A. It is a mix -- twenty-nine point one ---
Q. Yes.
A. ---Is a mixture, so at least, in part, it could be Monica.
Q. Some of it could have been?
A. Right.
Q. Okay. But last month you were able to exclude Jimmy Lee and Christopher, right?
A. That's correct.
Q. Okay. So could have been Monica's D.N.A. on it. Was a mixture, so there was at least one unidentified person whose

D.N.A. was on that pillow?
A. That's correct.
Q. Okay. Item 61.6. That's also ---
A. That is also an orange cigarette filter.
Q. Okay. And in January, last year, there was a partial profile that was developed from that filter that was a male?
A. That's correct.
Q. Ultimately that one matched a guy named Leon McCrary, or Leon McClary?
A. I do not have that in my report. I don't have his standard. If you have it matching it could have either been from the D.N.A. database or some other source, perhaps some other lab.
Q. Okay. That wasn't ---
A. I don't -- I don't have that standard, so I can't ---
Q. It wasn't you that made that match?
A. That's correct.
Q. Okay.
MR. FREDERICK: Say no more.
Q. But that was compared to Jimmy Lee's and Christopher's, and they were excluded?
A. 61.6 was, and they were excluded.
Q. Okay. And just in fairness, when we are talking about cigarette filters, that's not necessarily indicative of anybody that committed a crime, that just says somebody smoked

a cigarette, right?
A. That's exactly right.
Q. Okay. But let's look at 61.7 ---
A. Yes sir.
Q. ---Also a cigarette filter.
A. Also cigarette filter, yes.
Q. And in January of last year you were able to determine that that D.N.A. was consistent with a mixture, one male and one female; is that right?
A. Yes sir.
Q. Okay. Both Jamilla and Monica were excluded as contributors?
A. Can be excluded as contributors, yes.
Q. Okay. Last month it was compared with Jimmy Lee and Christopher, and they are also excluded as possible contributors?
A. That's correct.
Q. So we have, on this cigarette filter, D.N.A. from an unknown male, and an unknown female; is that accurate?
A. From Item 67? Yes, it's one male and one female. It's consistent with a mixture of one male and one female.
Q. Okay. Item 61.1, another cigarette filter?
A. Yes sir.
Q. Okay. And a profile was developed from that filter, didn't match Jimmy Lee or Christopher?

A. That's correct.
Q. Okay. What was Item 67? I wasn't able to find where that was identified.
A. Oh. Item 67, S.L.E.D.'s 67 is from the second report, dated January of this year. It is a swab from the left shoe.
Q. Okay. That's what that was, the swab from the shoe?
A. Yes sir.
Q. Profile from a shoe was a mixture of two individuals?
A. At least two individuals, yes.
Q. At least two individuals. But Jamilla, Monica, Jimmy Lee and Christopher were excluded as possible contributors; is that right?
A. That's correct.
Q. Okay. So at least two -- at least two unidentified individuals?
A. That's correct.
Q. Okay. So of all of the D.N.A. that was collected from this crime scene in June, 2006, none of that matched Jimmy Lee or Christopher, did it?
A. That's correct.
Q. Okay. In fact, they were excluded as possible contributors to every piece of D.N.A. that they were compared to?
A. That's correct.
Q. Okay. And on several pieces of the D.N.A. there was at

least one male, at least one female that were unidentified?

A. On several pieces, yes.

Q. Okay.

MR. FREDERICK: That's all the questions I have. Thank you.

A. Thank you.

THE COURT: All right, Solicitor.

MS. ELDER: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. ELDER:

Q. Agent Ortuno, I want to refer -- if you can refer to your report, I'm going to ask you about a couple of things that you did analyze. The Defense asked you about Items 40, 41. I believe those are fingernail clippings from Jamilla Hightower; is that correct?

A. Yes.

Q. One is from the right hand, one is from the left hand?

A. That's correct.

Q. And what were your findings on that?

A. There was no D.N.A. profile foreign to Jamilla Hightower from either Item 40 or 41.

Q. And you've been doing D.N.A. analyses for a while, haven't you?

A. Over ten years.

Q. And it involves, usually, things that are submitted to you by the police department; is that correct?

A. That's correct.
Q. And it -- dealing with crimes that happened; is that correct?
A. Yes Ma'am.
Q. And what do you -- how do you -- normally would you get somebody else's D.N.A. under your fingernails? Would it be from fighting, or striking? Could you get it if you were trying to scratch somebody?
A. That would be the easiest way to get it. You can just -- any contact, just by casual incidental contact, as well as more aggressive contacts. This is what you are referring to?
Q. If somebody was fighting or scratching you would tend to believe there would be somebody's D.N.A. under their fingernails; is that correct?
A. If you are scratching you are most definitely going to have -- I mean, it's very unlikely you would not have, if you were actually scratching, D.N.A. collected from underneath the fingernails.
Q. Now, I want to also ask you about Items 52 and 53.
A. Yes Ma'am.
Q. 52 were -- 52 and 53 were fingernail clippings from Monica Wall; is that correct?
A. That's correct.
Q. Was there any male D.N.A. found in those two clippings?

A. 52, which is the -- which are the fingernail clippings from the left hand of Monica, there was no D.N.A. other than that of Monica, which you would expect.

In 53, which is the right hand of Monica, I found a mixture. Jamilla and Monica cannot be excluded as contributors to this mixture.

Q. So under Monica's fingernails that D.N.A. found could be her's; is that correct?

A. That's correct.

Q. And it's another female; is that correct?

A. Yes. There is only an indication of a female profile in Item 53.

Q. And if she had had some recent contact with her roommate, Jamilla, could she have gotten D.N.A. from Jamilla under that nail as well?

A. It's possible.

Q. I want to refer you to two items regarding, I believe Item 47, and 48. One, 47, is the swab from the right toe of Monica Wall, and 48 is the swab from the left foot of Monica Wall; is that correct?

A. That's correct.

Q. And 47, you have indicated, is a mixture of at least one male and one female?

A. That's correct.

Q. And Jamilla and Monica cannot be excluded; is that

correct?
A. Yes.
Q. And there is an unidentified male?
A. That's correct, at least one.
Q. Tell me how -- well, let me just ask you this. Can -- if I was walking through my house, and there had been some males living there prior to that time, on the carpet, on the tile in the bathroom, could I have picked up their D.N.A. on my feet?
A. It's possible.
Q. All right. And can D.N.A. stay in a house for six months, twelve months?
A. Yes.
Q. So if a male had been living there it's possible that he could have left some D.N.A. behind on the carpet, in the fibers, and things like that?
A. That's possible.
Q. There were some other things that Defense counsel asked you about, I believe some cigarette butts; is that correct?
A. Yes Ma'am.
Q. And they were taken from various places in the house, according to your notations?
A. Yes Ma'am.
Q. I believe Item 12.1 was from the kitchen table, a cigarette butt from the kitchen table?

A. That's correct.
Q. And that was a mixture of male/female; is that right?
A. That's correct.
Q. 13.2, that was a cigarette butt from the living room; is that correct?
A. Yes.
Q. And that was also a mixture of male and female?
A. That's correct.
Q. 61.1 is an orange cigarette filter?
A. Yes Ma'am.
Q. And that's a mixture of male and female?
A. 61.1?
Q. Yes.
A. Yes. It could be male and a female.
Q. 61.6 and 61.7, are those also mix -- those are also cigarette filters, and they could be male and female?
A. That is also possible. One moment. Well, 61.6, which is a cigarette filter, it's a partial D.N.A. profile, and it's identified as from an unidentified male, so it appears to be from a male.
Q. Okay. And 61.7?
A. 61.7 is a mixture which is consistent with one male and one female.
Q. And these are all cigarette filters; is that correct?
A. Yes Ma'am.

Q. And all the other samples, other than the ones I've just asked you about, all those were female contributors; is that correct?

A. There were many female contributor profiles, yes, mostly female contributors, other than the ones that you've identified.

Q. Other than the ones that I've just mentioned.

A. Yes.

Q. Is it possible, Agent Ortuno, for someone who is clothed completely, has shoes on, has gloves on, has a hoodie, is it possible that they would have left no D.N.A. on the items that we have submitted to you?

A. It's possible that anyone, other than the cigarette -- if you were smoking a cigarette I would imagine you should leave saliva, continuing skin cells, but other than the cigarettes no one has to leave D.N.A. anywhere. It's possible, and it's possible they did not.

Q. So I could go into somebody's house and not leave any D.N.A. at all?

A. It's possible.

MS. ELDER: One moment, Your Honor.

Q. He asked you if -- I assume anybody can leave D.N.A., correct?

A. That's correct.

Q. Even a child?

A. Oh yes.
Q. So if a male child was in this home the night before, and was in that bathroom where Monica was, could she have gotten his D.N.A. under her foot, or on her foot?
A. The child's? I'm sorry. I don't understand.
Q. You tested Monica Wall -- samples from her feet; is that correct?
A. That's correct.
Q. And is it possible, if she was babysitting a male child, she could have picked up his D.N.A.?
A. It's -- it's possible.

MS. ELDER: No further questions, Your Honor.

THE COURT: Redirect, Mr. Gardner.

MR. GARDNER: Your Honor, I would ask that Agent Ortuno be excused so he can get back to his regular duties.

THE COURT: Any objection, Mr. Frederick?

MR. FREDERICK: No objection.

THE COURT: Solicitor.

MS. ELDER: No objection, Your Honor.

THE COURT: All right. Sir, you are released from your Subpoena. You may go back to your regular duties.

A. Thank you, Your Honor.

MR. FREDERICK: Judge, can we approach for a moment?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen, you need to go to your jury room for a minute, please.

Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. The next witness, Mr. Gardner, that you would be calling, I believe would be Mr. Sparkman; is that right, Corey Sparkman?

MR. GARDNER: Yes sir. That's my understanding.

THE COURT: All right. Ms. Hanna, you had some matter you wanted to bring to the Court's attention at this time.

MS. HANNA: Yes, Your Honor. There is one issue that I would like to put on the record, by way of background, if I may do so at this time.

THE COURT: Yes Ma'am, please.

MS. HANNA: I represent Corey Sparkman. I was appointed to represent him on three pending charges that are currently being prosecuted in this particular Solicitor's Office. I met with Mr. Sparkman just last week, so this is a relatively new case for me. I was contacted yesterday at five P.M., and then found out the specific details about why Mr. Sparkman may appear here today. Mr. Gardner was kind enough to call me and share with me the details.

THE COURT: Yes Ma'am.

MS. HANNA: I arrived at the courthouse this morning,

spoke to my client, and I have learned that the Solicitor's Office had already spoken to Mr. Sparkman this morning, so I think that they are aware of what his particular testimony may be.

My specific concern, Your Honor, is that Mr. Sparkman does have three pending charges, and while he is here simply today to tell the truth, because it is weighing on his heart, he us greatly concerned about the particular consequences this may have on his pending charges. In light of that Mr. Sparkman does intend to plead the Fifth Amendment on any discussion about those three pending charges. I am aware that the jury may be entitled to know that he is currently incarcerated for those pending charges without any conviction, but I just wanted to put that on the record and express to Your Honor that he does want to testify, to do the right thing and tell the truth here today.

THE COURT: All right. Very good.

All right. Why don't we -- I certainly understand, and I don't expect the State nor the Defense to inquire of Mr. Sparkman was the details of anything for which he may be charged. I will allow it to be presented that Mr. Sparkman is currently facing charges ---

And those charges are what?

MS. HANNA: There's two drug charges, and a possession of a stolen vehicle.

THE COURT: All right. I'll allow them to present those, and that he is currently being prosecuted by the Fifteenth Circuit Solicitor's Office regarding those three offenses.

Now, does Mr. Sparkman have a prior record, convictions of anything?

MS. ELDER: Well, Your Honor, there is also an armed robbery that we are prosecuting as well.

THE COURT: Okay. So there's armed robbery, possession of a stolen vehicle, and what else?

MS. ELDER: Drug charges.

THE COURT: Well, what -- okay, drug charges.

MS. ELDER: They are possession -- I believe they are possession of cocaine second, Your Honor.

THE COURT: Well, we need the know exactly, because they are not going to say, are you facing drug charges. I want specifics, okay, so we need to know the things that he is facing specifically.

MS. ELDER: Your Honor, it is my understanding he is facing an armed robbery charge that has come back, and been reversed on appeal ---

THE COURT: All right.

MS. ELDER: ---A possession of crack, second ---

THE COURT: Okay.

MS. ELDER: That's all I'm aware of, Your Honor.

THE COURT: All right. Armed robbery, and a possession of crack. Is that your understanding, Mr. Hanna?

MS. HANNA: Actually I am fully aware that his armed robbery charge -- he spent seven years in prison and the Supreme Court reversed that decision. I have not been made aware that that charge is pending against him, or that charge has been brought against him again. That decision, to my knowledge, has never been made, and Mr. Sparkman has certainly not ever been informed of that.

MS. ELDER: Your Honor, he received a bond -- he was actually out on bond for that armed robbery when it was reversed, when he got these new drug charges that he's actually incarcerated for now.

When his conviction was reversed, Your Honor, it was reversed on P.C.R.. It wasn't thrown out or dismissed, so it wasn't like the charge ceased to exist.

THE COURT: Okay. So the Supreme -- it wasn't on direct appeal. It was on a P.C.R. where the Supreme Court granted his Post-Conviction Relief for a new trial?

MS. ELDER: Correct, Your Honor, and then he got a bond for that when it was reversed.

THE COURT: All right. So then he was -- and he then received bond. Okay. So -- all right, so I am going to allow them to -- the -- ask him if he is currently facing the offense of armed robbery and the possession of -- is it

cocaine second ---

MS. ELDER: Possession of crack second, Your Honor.

THE COURT: ---Possession of crack cocaine second, all right, and obviously that he's being prosecuted by the Solicitor's Office for that offense.

Now, is there any other prior record or anything else that we are going to be -- you are going to be asking him about?

MS. ELDER: Your Honor, there's -- I don't think that's going to be an issue, Your Honor, what his testimony is going to be.

THE COURT: All right. Very good. All right.

And we are not going to be asking him about the details of the armed robbery nor the crack charge, correct?

MR. RICHARDSON: That's correct, Your Honor.

THE COURT: All right. Very good.

All right. Yes sir, Mr. Gardner.

MR. GARDNER: While the jury is out, can I have two minutes to walk across the hall?

THE COURT: Yes sir.

Who else do y'all have as a witness that is here?

MR. FREDERICK: We have one here. We have one that is ignoring our Subpoena, and we would ask that someone from the Sheriff's Department pick him up.

THE COURT: All right. Let me have the Subpoena of the

person that you are having difficulties with.

MR. FREDERICK: And that would be everybody that's here right now.

THE COURT: All right. And then we have one on the way from the Department of Corrections.

MR. FREDERICK: Yes sir. They said they think he'll be here about ten-thirty, eleven. And we've got one that should be in the air right now. We are expecting her at 12:30.

THE COURT: All right.

MR. FREDERICK: I'm going to pass up to the Court the first Subpoena we send to him, along with the letter he mailed back to us with the Subpoena ---

THE COURT: All right.

MR. FREDERICK: ---And then the second Subpoena that we served on him.

THE COURT: All right. Now, who served these Subpoenas on him?

MR. FREDERICK: Our investigator.

THE COURT: All right. And he's not here right now.

MR. FREDERICK: He is not.

THE COURT: All right, sir.

MR. FREDERICK: I'm sorry. Ms. Hiller served the second Subpoena, that's right.

THE COURT: I'm sorry. What did?

MR. FREDERICK: Laura.

LAURA HILLER: I served the second Subpoena.

THE COURT: All right. And could you tell me your name, please Ma'am.

LAURA HILLER: My name is Laura Hiller.

THE COURT: Laura Hiller. All right, Ma'am. If you would raise your right hand, please.

Solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God.

LAURA HILLER: I do.

THE COURT: All right. It has been presented to the Court a Subpoena to the records custodian of the -- it's the Knight's Inn, slash, America's Best Value Inn; is that correct?

LAURA HILLER: Yes, Your Honor.

THE COURT: And that individual's name actually is what?

LAURA HILLER: His name is Billy Lewis.

THE COURT: Billy Lewis. All right. And you personally delivered this Subpoena in the criminal case to him?

LAURA HILLER: I did, Your Honor.

THE COURT: And it was a Subpoena obviously issued in this case, and signed by the Clerk of Court; is that correct?

LAURA HILLER: That is correct.

THE COURT: All right. And when did the service of

this Subpoena take place?

LAURA HILLER: It's on the back of the Subpoena, Your Honor.

THE COURT: I'm sorry. All right. I'm sorry. It's on 1/29/09, and -- and that you did hand-deliver that Subpoena to him, correct?

LAURA HILLER: That is correct, Your Honor.

THE COURT: Very good.

All right. And you are telling me, Mr. Frederick, that this individual, Billy Lewis, whose name appears on the back of the Subpoena, is not here, and has not responded to the Subpoena; is that correct?

LAURA HILLER: That is correct.

THE COURT: All right, Mr. Frederick, you are asking the Court's assistance in having Mr. Lewis delivered to the Court; is that correct?

MR. FREDERICK: Yes, Your Honor.

THE COURT: All right.

MR. FREDERICK: Along with the records that are identified in the Subpoena.

THE COURT: All right. All right. And the individual's name is Billy Lewis, the address -- and these are the records, so, if you will give us your assistance, sir, I appreciate it very much.

All right. Where -- did Ms. Hanna come back from

talking to Mr. Sparkman?

MR. FREDERICK: Also, Your Honor, the -- Johnny Gardner.

THE COURT: All right. Mr. Frederick, let me give you that other document back.

MR. FREDERICK: Thank you.

THE COURT: Tell them to come on up.

All right. Ask the jury to come back in, please sir.

And Mr. Gardner, who is your next witness after Mr. Sparkman?

MR. GARDNER: From what I hear -- is -- Mayur Patel is here?

MR. FREDERICK: Yes.

THE COURT: All right. And basically out in the conference room outside?

MR. FREDERICK: He's right outside.

THE COURT: Very good.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Thank you, Judge. Corey Sparkman.

THE COURT: All right, Mr. Sparkman, if you would come around, please sir, be sworn. Thank you.

COREY LEVAR SPARKMAN, being first

duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Mr. Sparkman, good morning. You are out at J. Reuben Long. That's where you are staying now; is that right?

A. Yes sir.

Q. All right. What is your position out there?

A. My position is inside of the B-3 living area, I'm the spiritual leader as far as the Islam and the group on that side over there, on B-3.

Q. What does that entail?

A. Dealing with the deed of Islam I'm the leader as far as advising -- the spiritual advisor for some of the mission brothers and things like that, so whatever problems that they have, or situations or things, whatever is on their mind, they come to me and we talk about the problem or the situation.

Q. Do y'all have regularly scheduled meetings?

A. Yes sir. We pray five times a day, and whenever our site or our quarters are out, that's when we actually make congregational salat, which means prayer.

Q. And do you know Craig Burris?

A. Yes sir, Mr. Burris, yes sir.

Q. All right. And how do you know him, sir?

A. He is also inside of the congregation, the prayer circle, so whenever we come out to pray all of us meet up together and we discuss, and congregate, and things like that.

Q. Have you had a conversation with Mr. Burris about his testimony in this case?

A. Yes sir. It was one of the days that we came out and he looked kind of distorted, and I asked him what was his problem, because that's my duty. Whenever I see a brother that's distorted, or either something is on his mind I actually go to him and ask him what's wrong, if he want to talk about the situation, and he stated to me, he said, something which was dealing with the past, something -- that he was in a situation and he had to do what he had to do, and he told me about his situation as far as him being in J. Reuben Long now, and he said that he was going to have to do what he had to do to get out of the situation.

Q. What did he mean by that?

A. As far as -- I put two and two together, which what that means, either lie, or tell the truth about something, or whatever, but as far as him talking about the past, he basically lied to get up out of his situation.

Q. All right. I just met you this morning. Is that fair?

A. Yes sir.

Q. All right. I can't help you -- is there any way I can help you out?

A. No sir.

Q. I don't have the key to the jail, right?

A. No.

Q. Okay. Did I promise you anything for your testimony?
A. No sir.
MR. GARDNER: All right. Please answer any questions Mr. Frederick has.
THE COURT: All right, Mr. Frederick.
MR. FREDERICK: I have no questions, Your Honor.
THE COURT: Solicitor.
MR. RICHARDSON: Good morning, Mr. Sparkman.
A. How are you doing?
CROSS-EXAMINATION BY MR. RICHARDSON:
Q. This information that you received, did you contact the Solicitor's Office to let us know?
A. No sir.
Q. And you said that Mr. Burris -- you saw him looking ---
A. Disturbed.
Q. Distorted -- disturbed?
A. Yes sir.
Q. He actually told you he couldn't focus on his prayer, right?
A. Couldn't focus on -- yes, you are right.
Q. And he just said he was in a bad situation?
A. Well, he just stated that something was on his mind, and also, basically, I could tell by his facial expression.
Q. And facing a murder charge is a bad situation, correct?
A. Yes sir.

Q. He didn't go any further than that though, did he?
A. Naw, no, he didn't. He didn't.
Q. He said that he would have to do what he had to do?
A. Yes.
Q. That could have been telling the truth, couldn't it?
A. Possibly. But a majority of the time, when he stated his first situation, he basically told what he -- what he was going to do, what he had to do, as far as whether it be a lie or tell the truth, like you say.
Q. But he never said that he was going to lie?
A. No.
Q. Never said he was going to tell the truth?
A. No.
Q. He asked -- told you, there are some things in mind about the situation, and what I have to do?
COURT REPORTER: Excuse me.
THE COURT: You have to answer out loud, sir.
A. Yes sir.
Q. Mr. Sparkman, Mr. Burris wasn't charged with that time until August of this past year, right?
A. I don't know.
Q. Would it surprise you to learn that he originally gave a statement in this case back in April of 2007 ---
A. Yes, it would surprise me.
Q. ---Before his murder charge?

A. Yes.
Q. Now, Craig Burris is in your prayer group, or was in your prayer group, right?
A. Yes, he was.
Q. He's not in your pod any more, is he?
A. No sir.
Q. Anybody in this courtroom that is in your prayer group?
A. Yes sir.
Q. Who would that be?
A. Sakim.
Q. Sakim?
A. Sakim.
Q. Sakim?
A. Sakim?
Q. Okay. And I'm sorry if I mispronounced it.
A. No.
Q. And who would that be?
A. Brother right there, Mr. Sessions.
Q. Mr. Sessions. Now, what's the rule on snitching?
A. What's the rule on snitching? A snitch is a snitch. That's how I look at it.
Q. Good thing or a bad thing?
A. It's a bad thing.
Q. So it's bad to have to snitch, right?
A. Yes.

Q. You are not suppose to tell on a fellow brother?
A. You are not suppose to tell on a fellow brother. You are not.
Q. So that could be what was disturbing Mr. Burris?
A. Possibly. I don't know.
MR. RICHARDSON: Thank you. Thank you, Mr. Sparkman. I have no further questions, Your Honor.
A. You are welcome.
THE COURT: All right. Any redirect?
MR. GARDNER: No, Your Honor.
THE COURT: Mr. Frederick, anything?
MR. FREDERICK: No, Your Honor.
THE COURT: All right, sir.
Solicitor, anything else?
MR. RICHARDSON: No sir, Your Honor.
THE COURT: All right, sir.
All right. Y'all can -- Mr. Sparkman, go back then. Thank you very much.
All right, Mr. Gardner, your next witness is.
MR. GARDNER: Billy Lewis, Your Honor.
Oh, I'm sorry. Mayur Patel, Your Honor.
THE COURT: Mayur Patel. All right.
Come around to be sworn, sir. Come on up here. I'm sorry. Come on up here. Thank you.

MAYUR PATEL, being first duly

sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Good morning, sir.

A. Good morning.

Q. Thank you for coming.

Do you live in Myrtle Beach?

A. Actually I live in Pennsylvania, but I just got the hotel now, so I came here for a few days. I was going to stay here.

Q. All right. What is the name of your hotel?

A. Days Inn.

Q. Days Inn, and where is that located?

A. It's located on 3650 Waccamaw Boulevard.

Q. Can you say that one more time, please. I'm sorry.

A. 3650 Waccamaw Boulevard.

Q. Waccamaw. The one right -- okay. All right. The Days Inn right over here off of 501?

A. Uh huh **(indicating positive)**

Q. All right. And did you bring any records with you today?

A. Yes.

Q. All right.

A. I did bring from the June 6.

Q. Sir?

A. I bring the record for the June 6.

Q. June 6. Okay. Any others, or just June 6?
A. No. I've got the 6th, 7th, 8th, 9th, 10th.
Q. 6th, 7th, 8th, 9th, 10th. Okay. Can you show those to me, please?
A. Sure.
Q. Is that what they are? Is that ---
A. Yes.
Q. All right. Is this your only copy?
A. Yes. This is the only copy we have.
Q. Do you have other copies ---
A. We can print out ---
Q. Those are the ones you brought for court?
A. Yes. Yes.
Q. Okay. All right.
A. This is just for one day.
Q. This is one day. What day?
A. June 6th.
Q. June 6?
A. Yes.
Q. Okay.
A. This is the 9th.
MR. GARDNER: I would like to have this marked as ---
A. That is June 8, 9, 10, 11th and 12th.
Q. Okay. Start with this again. This is the 6th. We've got ---

A. 6/8, 6/8.
Q. 6/8?
A. Yes.
Q. I'm going to put it back in the envelope.
This is ---
A. 6/9.
Q. 6/9.
A. 6/10.
Q. 6/10.
A. 6/11, and 6/12.
Q. All right. I don't think we need the whole -- all of them, but I tell you what I'm going to do. I'm going to put them back in the envelope ---
A. Okay.
Q. ---And get them marked as Exhibit for identification.
A. That's fine.
COURT REPORTER: Defendant, Sessions, Two through Six for I.D..
THE COURT: All right. Do you intend to introduce those in ---
MR. GARDNER: Yes sir.
THE COURT: Is there -- well, go ahead and ask your -- ask your questions.
Q. Mr. Patel, I'm going to hand you back these same things. Now they have been marked for exhibits for the Court,

for identification, Two through Six.

(DAYS INN RECORDS MARKED DEFENDANT, SESSIONS, EXHIBIT NUMBERS 2 THROUGH 6, FOR IDENTIFICATION ONLY.)

Q. Look at that. I'm going to ask you if you can identify those. All right.

A. All right.

Q. The same thing?

A. Sure.

Q. All right. These are records -- were they made with your knowledge, information, and transmitted about the acts or events appearing and contained therein?

A. Yes.

Q. Okay. All right.

A. Actually I was not the owner at that time, so I don't have any idea about it.

Q. But it evolved from your company?

A. What you say?

Q. It is from your locale?

A. Yes. It's from my hotel, but it was the old record before I got the hotel.

Q. Right. When you got them -- well, let me ask you this question. Did these come out of the records, in fact, are these records kept in the regular course -- of the ordinary course of the regular business?

A. Yes sir.

Q. And are they made at the time they are entered into?
A. Yes sir.
Q. And what are they?
A. Those are the night audit track when the whole system night audit, at night, with how many people was in the hotel.
Q. Okay.
A. They did the process on that. Those are the original records for it.
Q. And that's the way it's done?
A. It's done every day.
Q. And these were done that way too?
A. Yes.
Q. Okay. All right. And that's for the Days Inn?
A. That's for the Days Inn.

MR. GARDNER: At this time I would offer these as Defendant's Exhibits into evidence, Your Honor.

THE COURT: Any objection from the Defendant, Stephens?

MR. RICHARDSON: Your Honor, no objection.

THE COURT: All right. Any -- from the Solicitor?

MR. RICHARDSON: We have an objection, Your Honor.

THE COURT: All right. Very good.

All right. Do you need to ---

All right, ladies and gentlemen, go to your jury room.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Solicitor.

MR. RICHARDSON: Your Honor, under the Rule for business records the application -- the Rule requiring authentication: A witness who does not know the manner in which the records were prepared is not a proper authenticating witness. That's **State vs. Sarvis**, 317 S.C. 102, 450 S.E. 2d 606. It's a Court of Appeals case from 1994.

Mr. Patel is the present owner of the hotel since he just bought it, didn't own it back in 2006, so he would not know how these records were kept back then, and it's just not a proper authenticating witness in this instance, Your Honor.

THE COURT: All right, Mr. Gardner.

MR. GARDNER: Thank you, Judge. He testified that the record was made by the person with knowledge, and the information transmitted by that person with knowledge, and the facts appearing thereon. The documents themselves are self-authenticating. He says it was done in the normal course of operation in his hotel, and even went into how that's done.

That is -- we have business custodians, and we have people that can introduce business custodians (sic). All they have to do is tell that they recognize it, they know it was done, and it was done within the ordinary course of business.

THE COURT: All right. Can you ask Mr. Patel a couple of questions, please. You have identified them as June 6, 7, 8, 9, and 10, but not the year. What year?

Also, if you could get his exact relationship to the Days Inn, what his position is, if he just purchased it, that -- did he rely upon the previous records of the corporation to buy the business, and did he rely on these types of records to enter into his agreement to buy the -- buy the hotel.

MR. GARDNER: Thank you, Your Honor.

BY MR. GARDNER CONTINUED:

Q. Mr. Patel, what year -- I may not have asked you the year for these.

A. Uh huh **(indicating positive)**

Q. What year, do you know?

A. It's 2006.

Q. 2006. Okay. And what is your position with the hotel?

A. I am the General Manager and part partner.

Q. General Manager and part partner. As General Manager and part partner, when did you become that, or start to have anything to do with the Days Inn?

A. I bought that in 14 November, 2008.

Q. 2008. All right. And when you bought it were these records there?

A. Yes.

Q. All right. And prior to buying this did you have negotiations with the people that were selling it to you?

A. For the price?

Q. Yes, or for anything.
A. Yes.
Q. And did you review information as far as the transaction?
A. No. I did not review all this information about the card documentation ---
Q. Okay.
A. ---But when I got that, the old previous manager, he told me that we've got those kind of the issues.
Q. Oh, he did?
A. Yes. And he introduced me for that case, and I just started that case during that period.
Q. Was he the one that was doing it back in June of 2006?
A. Yes.
Q. And he told you how it was done?
A. He was tell -- he has told me all the history about it, and he says that is the case, and he is going to now -- playing from here. He said you have to go into court sometimes, he said it requires that. I said, okay.
Q. And is he still -- I mean, are you still doing it the same way?
A. Yes.
Q. And so you are doing it the same way based on your conversation with the previous General Manager?
A. Uh huh **(indicating positive)**

Q. Is that right?
A. Yes.
Q. And based on that conversation with him that's the way he was doing it back in June ---
A. Correct.
Q. ---So back to my question. That would be -- would that be the regular course of the business?
A. It's regular course of the business because it was the same systems, whatever computer system we are using now, and on that time the software and computer, both are the same thing.
Q. And when the information is generated and entered into it's done the same way?
A. Uh huh **(indicating positive)** Yes.

THE COURT: All right, Solicitor, if you have some questions I'll be glad for you to ask them.

BY MR. RICHARDSON:

Q. These documents aren't under a domestic seal, are they?
A. No. It was not in seal.
Q. Okay. They don't have the -- they don't have the significant of any official from ---

THE COURT: They are not self-authenticating documents, and they -- they cannot be introduced under that Rule.

MR. RICHARDSON: Mr. Gardner made that argument, Your Honor.

THE COURT: I understand that. These are not self-authenticating documents. They cannot fall within that Rule. It has to to fall within the business Rule.

MR. RICHARDSON: Yes sir, Your Honor.

BY MR. RICHARDSON:

Q. You are relying on what the prior General Manager told you?

A. I knew it had a lot of complications, but I can provide them because he was the Manager, and he was Manager for two or three years, so ---

Q. He could have doctored the documents?

A. What, sir?

Q. He could have altered the documents in some way.

A. No. He has only the night audit backup.

Q. You don't have any idea about the truthfulness of what he told you?

A. I don't have any idea about that.

MR. RICHARDSON: Your Honor, I still say that the witness does not have knowledge to the manner in which the records were prepared. He's relying on hearsay from the prior Manager, and that Manager, while yes, would be a perfectly good witness at that point, to lay the foundation for these, but at this time the State would maintain it's objection.

And further, Your Honor, hearsay evidence cannot be used to prove a signature. I would go forward with that. It's not

to prove a signature, but hearsay evidence can't be used to lay that foundation for these are the proper documents; this is the way they were kept back then.

THE COURT: All right. Let me -- can you tell me, Mr. Gardner, what it is that you are expecting to ask of this witness, or to show later on, the jury, from these particular records?

MR. GARDNER: I Subpoenaed these records, Your Honor, more correctly Bobby had, to -- for the dates June 8 through 11, 2006, and it contains the names of the registered guests for those dates, and I plan on asking him if the names Jimmy Lee Sessions, Christopher Stephens, James Pearl or James Davis are contained in any of those dates.

THE COURT: All right. And that is the sole purpose for which you are asking to introduce these documents; is that correct?

MR. GARDNER: Yes sir.

THE COURT: All right, sir. Not as to any signatures contained therein, or identification of a particular person through signature or anything like that?

MR. GARDNER: No sir, not -- not in -- and also, not about any specific individual other than the ones that are involved in this case.

THE COURT: To see if their names are contained in those records?

MR. GARDNER: Yes sir.

THE COURT: All right. I'm going to allow the records into evidence under Rule 803-6 regarding records of regularly conducted activity. I do believe that they fall within that particular exception to the hearsay rule, and I'm going to allow them into evidence under that particular exception. as -

Just to make sure regarding the previous issue that I stated, these are not self-authenticating documents, cannot be placed in under that Rule. I am not allowing them in under that Rule, but I am allowing them under 803-6.

MR. RICHARDSON: Yes sir, Your Honor.

THE COURT: All right.

All right. Ask the jury to come back in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, you may continue, sir.

MR. GARDNER: Thank you, Your Honor.

DIRECT BY MR. GARDNER CONTINUED:

Q. And Mr. Patel, these were previously marked for identification, now moving them in for exhibits.

THE COURT: All right. So these are Defendant, Sessions, Exhibits 2 through 6, and they are in evidence over the objection of the State.

MR. GARDNER: Thank you, Your Honor.

THE COURT: All right, sir.

(DAYS INN RECORDS PREVIOUSLY MARKED DEFENDANT, SESSIONS, EXHIBITS 2 THROUGH 6 FOR IDENTIFICATION NOW ADMITTED INTO EVIDENCE AS DEFENDANT, SESSIONS, EXHIBITS 2 THROUGH 6.)

Q. All right, Mr. Patel, you have a Subpoena for these documents; is that right?

A. Yes sir.

Q. All right. And these contain the registry, the guests for the hotel, for the dates of June 8, 9, 10, and 11?

A. Eleven, yes.

Q. Is that right?

A. Yes.

Q. All right. Have you reviewed those documents, and do they contain the names -- any of the following names? Jimmy Lee Sessions?

A. No.

Q. Christopher Stephens?

A. No.

Q. James Pearl?

A. No.

Q. James Davis?

A. No. Not on -- in that list.

Q. All right. And when you are saying that list you are talking about all these lists?

A. All of these dates.

MR. GARDNER: Thank you, sir. Please answer any questions Mr. Frederick has.

THE COURT: Mr. Frederick.

MR. FREDERICK: Yes sir.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. And you did say you weren't working at the motel in 2006, right?

A. Yes.

Q. You started in November of ---

A. November 14, 2008.

Q. Okay. Is it your practice to check people's I.D.s when they check into the hotel?

A. Yes. We always check the I.D.. If somebody else makes the registrations we check the I.D., get his name, and put it in the record.

Q. You always do that?

A. We will always do that.

MR. FREDERICK: No more questions.

THE COURT: All right, Solicitor.

MR. RICHARDSON: Your Honor, if we may have just one moment to look at these real quick.

THE COURT: Yes sir.

MR. RICHARDSON: Thank you, Mr. Patel.

CROSS-EXAMINATION BY MR. RICHARDSON:

Q. You said you just bought the Days Inn, right ?

A. Right.
Q. That was November 14, 2008?
A. Yes.
Q. Well, congratulations. Thank you for doing business here in Horry County.
A. Thank you.
Q. Prior to that you had no association whatsoever with this Days Inn?
A. No.
Q. And these documents, you got them from the prior General Manager, right?
A. Right.
Q. Based solely off what he told you?
A. He just told me about that case, like if you need to go somewhere we have all kinds of records in the upstairs records room.
Q. But other than that, you weren't there when these records were made?
A. And he bring the record to me, like, okay, those, they are basically taken out for you.
Q. So we are relying on his work?
A. Right.
Q. You would have no idea if someone used a false name to check into a room, would you?
A. I don't have any clue for that.

Q. And the Days Inn, does it have hard keys, or does it have key cards or ---

A. It's a key card.

Q. Do you have maintenance staff there?

A. Yes, we do.

Q. Do they have a master key card to get in the rooms?

A. But they have to sign the key, like key log book, what time they got the key, what time they returned the key.

Q. How about the maids? Do they have a key card?

A. They have a key card too.

Q. So they could get into a room?

A. They can get in the rooms.

Q. And who was the Desk Manager back on June 9th, 2006, do you know that?

A. No.

Q. This General Manager you spoke to, was he the Desk Manager back at that night?

A. I don't have any idea about that.

Q. So we don't know who the Desk Manager was?

A. No.

Q. We don't know who he might have handed keys out to ---

A. No.

Q. ---Be it room -- be any of the rooms?

A. No.

Q. 301, 302, 303. We don't know. 801. We just don't

know?
A. We don't know that.
Q. A lot of people have access to those rooms, right?
A. Might be maintenance person, housekeeper, or somebody else, because I was not owner at that time, so I don't have any record for that.
Q. Right. You aren't -- you weren't there then. You don't know what quality of employees they had back then?
A. No.
Q. Would you expect a killer to register under his name?
A. I don't have any idea been it.
MR. GARDNER: I don't know if he's qualified to answer that, Judge.
THE COURT: Sustained. Sustained.
Q. And you have no idea -- you weren't even in Myrtle Beach back in June of 2006?
A. No.
MR. RICHARDSON: Mr. Patel, thank you. Have a good trip back.
MR. GARDNER: I just want to follow up one of those questions.
THE COURT: Yes sir.
RE-REDIRECT-EXAMINATION BY MR. GARDNER:
Q. He asked you about conversations, relying on the former General Manager. Do you do your record-keeping the same way?

A. Yes. We do keep the same way. And he also keep everything same way in the upstairs, in sixth floor room.
Q. So there's no doubt in your mind that that's an accurate record?
A. No. It's accurate record, because the system and computer system, everything is the same thing way. I am using the same computer system, same software which is offered by the Days Inn franchise.
Q. You don't doubt that yours is accurate today, the ones y'all are doing today?
A. Right.
Q. Conversely, do you have any doubt whether or not the ones that he was doing back in June of '06 are accurate?
A. It should be the same way. We have to be the same way. That's right.

MR. GARDNER: Thank you, sir.

THE COURT: Do you wish this witness to be excused?

MR. GARDNER: Yes sir. Thank you, Judge.

THE COURT: All right. Any objection? Any objection?

MR. RICHARDSON: No, Your Honor.

THE COURT: All right, sir.

You may step down, sir. You are released from your Subpoena. You may go back to your business, sir.

A. Thank you.

THE COURT: All right, gentlemen, y'all come and talk

to me for a second.

MR. RICHARDSON: Thank you, Mr. Patel.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. Thank y'all

All right, ladies and gentlemen, we are going to have some delay. I don't know that I can go into all the aspects of it, but needless to say, on one of them, or on all of them, that the parties have done everything they were suppose to do. There are other entities or agencies involved and there is some delay on their part, not on the part of the parties in the courtroom.

So, we have three witnesses left on behalf of the Defense, and rather than having you sit there, back in the jury room, for an extended period of time while those come to us I'm going to excuse y'all until 12:30. You will be on your own until 12:30. Be back in your jury room at 12:30, and hopefully at that point in time those three witnesses will be present here and we'll go forward with the testimony of those three witnesses. All right.

Please remember, don't talk about the case. Don't allow anybody to talk to you about it. Keep your badges on when you are outside the courtroom.

Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. We'll be at ease until 12:30, and hopefully -- I would expect, Mr. Gardner and Mr. Frederick, y'all will monitor those three witnesses with the necessary parties, and try and make sure everybody gets here. All right.

MR. GARDNER: Yes sir. Thank you.

MR. RICHARDSON: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: What is the status of those three witnesses that we've been awaiting?

MR. GARDNER: I have one standing outside the door, one in lock-up.

MR. FREDERICK: The other one is in the courthouse parking lot, will be up by the time we finish.

THE COURT: Very good.

All right. Ask the jury to come in then.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Mr. Patel.

THE COURT: All right, sir. Please come around and be sworn, sir.

MRUGESH PATEL, being first duly

sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Mr. Patel, are you here today under Subpoena?

A. Yes, I am.

Q. Okay. And do you own a hotel here in Horry County?

A. Yes, I do.

Q. What's the name of that hotel?

A. America's Best Value Inn.

Q. Okay. Did you own that back in June of 2006?

A. Yes, I did.

Q. What was the name of it back in 2006?

A. It was Best Value Inn.

Q. Okay. All right. In your Subpoena did it ask for you to bring any records with you today?

A. Yes, they did.

Q. Did you bring those records?

A. Yes, I did.

Q. Do you have them with you?

A. I'm sorry. It's in the office there.

THE COURT: Where are they at, sir?

A. In the waiting area. They left it over there, I think.

Q. Where the Deputy had you over there?

A. Yes. Uh huh **(indicating positive)**

Q. And do you off the top of your head what these records will reflect?

A. It's basically a night audit of the hotel.
Q. All right. All right. I'm just going to pass it up to you, ask you if you recognize it.
A. Yes, these are my records.
Q. And what dates do they reflect?
A. They are from June the 8th, 2006, June the 9th, June 7th -- I mean, June the 10th, and June the 11th, 2006.
Q. All right. Of 2006.
MR. GARDNER: Going to mark all these together as one exhibit.
(NIGHT AUDITS FOR JUNE 8, 9, 10, 11, 2006 MARKED DEFENDANT, SESSIONS, EXHIBIT NUMBER 7, FOR IDENTIFICATION ONLY.)
Q. All right. Now, I hand it back to you with this mark on it, and these are the records -- all right, these records -- is it the regular practice of your hotel to make these type of records?
A. It is.
Q. And were these records kept in the ordinary course of your regularly conducted business?
A. It is.
Q. Have you had an opportunity to review these records?
A. Yes, I did.
Q. And do they accurately and correctly reflect -- let me ask you, what do they -- are they reported to reflect, records

of ---

A. It's basically the names of the guests who stayed on those nights.

Q. Okay. Without telling me anything further, is it an accurate and correct reflection of that?

A. It is.

MR. GARDNER: At this time, Your Honor, I would move to introduce it as Defendant, Sessions, Exhibit 7.

THE COURT: All right. Any objection, Mr. Frederick?

MR. FREDERICK: No, Your Honor.

THE COURT: Solicitor.

MR. RICHARDSON: Yes, Your Honor. If we may approach briefly.

THE COURT: Yes sir.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

Q. I've still got them, Mr. Patel. Your hotel, in June of 2006, the name of it was the Knights Inn?

A. No, it wasn't. It wasn't. Uh uh **(NODS NEGATIVE)**

Q. Was the name ---

A. It was called Best Value Inn, and due to franchise problems they put America's in the front.

Q. All right.

A. But it was Knights Inn, I'm guessing before 2000 sometime. I wasn't there.

Q. Okay. Let me ask you, when did you start -- you said

you weren't there before. When did you start being there?
A. We bought it in 2003, January, and every since then it's been America's Best Value Inn, Best Value Inn.
Q. Okay. Did it ever have a sign out front that has the name of it?
A. Not ever since I've been there, no.
Q. All right. Can you tell the Court the address is for it?
A. 3622 Highway 501, Myrtle Beach, South Carolina.
Q. Can you give me the general area that it's in? Can you describe it for me?
A. It's across from that new park. It's about two miles south of Tanger's Outlet Mall.
Q. Okay. Are you aware of any Days Inn out there?
A. Yes, I am.
Q. Is it in the general area?
A. It's about a block from us, yes, right next to us.
Q. About a block from you?
A. Yes.
Q. All right. Is there a Knights Inn out there?
A. No.
Q. Do you know of any Knights Inn?
A. No.
Q. Has anybody ever referred to your hotel as the Knights Inn?

A. They have.
Q. Do you recall any police officers coming and talk to you, and ask about any cases ever before?
A. You mean in regards to Knights Inn?
Q. Yes sir.
A. No. No.
Q. Did anybody ever refer to it as the ---
A. No.
Q. ---Knights Inn ---
A. Not the police officer.
Q. ---When they came ---
A. I don't think so, no.
Q. Okay. Did anybody else refer to it as the Knights Inn?
A. Some of the guests do from previous stays, yes sir.
Q. All right. And there is no Knights Inn in the area?
A. Ever since I've been there, no.
Q. All right.

MR. GARDNER: Your Honor, I would move to offer these records.

THE COURT: Objection, Solicitor?

MR. RICHARDSON: Judge, the same.

THE COURT: All right. I'm going to allow the records in over the objection of the State.

(NIGHT AUDIT RECORDS PREVIOUSLY MARKED DEFENDANT, SESSIONS, EXHIBIT NUMBER 7 FOR IDENTIFICATION NOW ADMITTED

INTO EVIDENCE AS DEFENDANT, SESSIONS, EXHIBIT NUMBER 7.)

MR. GARDNER: Okay. So they are in evidence.

Q. All right, sir, ---

MR. RICHARDSON: Your Honor, if we may have a moment to review those records.

THE COURT: Certainly.

MR. GARDNER: Do you need these for me to ask you a couple of questions about them?

A. No, that's fine.

Q. Okay. Your Subpoena asked you if you would look it over and see if it had a list of names on it. Did you have a chance to do that?

A. Uh huh **(indicating positive)** We did.

Q. And the names include Jimmy Lee Sessions -- was that one of them ---

A. Yes, it was.

Q. ---For you to look for.

A. Uh huh **(indicating positive)**

Q. Was his name on any of those records?

A. No, not on the records, no.

Q. All right. Christopher Stephens?

A. No, it wasn't.

Q. All right. How about James Pearl?

A. It wasn't.

Q. How about James Davis?

A. It wasn't.
Q. These records are kept in the normal course of -- of your operation?
A. From the last six years, uh huh **(indicating positive)**
Q. They accurately and correctly reflect who was staying there?
A. It does.
Q. All right. And is there a procedure when people check in at your hotel?a
A. We normally check driver's license, we put down the address, I.D. number, driver's license number and all that stuff on there. Everything is there.

MR. GARDNER: All right. Thank you, sir, and please answer any questions that Mr. Frederick has.

THE COURT: Mr. Frederick.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Just a couple. So you do check driver's license?
A. Yes, we do.
Q. Always?
A. All of it.
Q. Okay. And although the motel is not, at this time, called the Knights Inn, it has been referred to as the Knights Inn?
A. Sometimes.
Q. Okay. And there is no other motel in that area that's

called the Knights Inn, is there?

A. No.

Q. Okay.

MR. FREDERICK: Thank you.

THE COURT: Solicitor, any questions?

MR. RICHARDSON: Just a few.

CROSS-EXAMINATION BY MR. RICHARDSON:

Q. Mr. Patel, if I may show you, on Defense Exhibit 7, Sessions, this is Room 301, correct?

A. Uh huh **(indicating positive)**

Q. There is no I.D. number on here, correct?

A. No. Well, we put it in the computer. This is just a registrar of the guests we log, you know.

Q. So you don't have a copy of that now? You don't have --

A. We don't make the copies of the I.D.s, no sir, we don't. We just punch it in.

Q. That was cash?

A. Excuse me.

THE COURT: Show it to him.

Q. That was paid for in cash, right?

A. Yes, uh huh **(indicating positive)**

Q. Did you work the front desk the night of June 9th?

A. I don't believe I did, no.Q. Do you know who worked the desk the night of June 9th?

A. I don't remember. I can check it out.
Q. Would it be on here?
A. I don't know. Let me see the initials on there.
There is a scribbling on there, but I can't make out who the -- there's suppose to be a clerk's initials on there, but I can't make out who it is. It was so long ago and I can't tell.
Q. Okay. So basically you don't know who was working that night?
A. No sir.
Q. Who they let in, other than whatever their records reflect?
A. Well, they will check the I.D.s before they check anybody in.
Q. But you don't keep records of those I.D.s, right?
A. No, we don't.
Q. There have been numerous drug arrests at that hotel, correct?
A. There has been one that I know of.
Q. Do you have maintenance workers?
A. Yes, I do.
Q. And you have, I assume, a cleaning crew?
A. Cleaning crew, uh huh.
Q. Does the hotel have the little plastic cards, or a hard key?

A. The card key, plastic card.
Q. Plastic card?
A. Uh huh **(indicating positive)**
Q. And there's maintenance workers and cleaning crews. Do they have those cards too?
A. Yes, master keys to get in, uh huh **(indicating positive)**
Q. And there were vacant rooms the night of June 9th, 2006, correct?
A. Probably, more -- I guess. I'm not sure. Yes.
Q. The master key would have got anybody into any of them?
A. It would, but all the master keys are left in the office at night, before the day is out
Q. Do you know for a fact that all master keys ---
A. I do. I do. It's in my office locked up. Uh huh **(indicating positive)**
Q. But the -- whoever is working the front desk, they could have put somebody in that room for cash, right?
A. They wouldn't, because I'm there every morning, not -- and not in my knowledge. They would never do that. I've got cameras there. They would not do that.
Q. But what time were you there on the morning of June 10th, 2006?
A. I'm not sure. That was a long time ago, but ---
Q. So you don't know for a fact whether you were there or

not?
A. At night, when they check them in, in the evening, whenever, I'm not sure, you know, but ---
Q. You don't remember the night of June 9th, or the morning of June 10th, 2006?
A. I don't remember it, no. That's not -- not exactly, no.
Q. So we are depending on whatever records ---
A. That's it.
Q. ---Of whatever clerk, that we don't have testifying?
A. I -- I mean, if you are looking for a particular person I can get the record, but if the person didn't stay there there's no way I can get a record of him, you know.
Q. If a clerk would take a false name?
A. They wouldn't be checked in, because the I.D. has to match, and no I.D. hasn't matched the picture.
Q. But that's assuming that this clerk, that you can't make out their initial, that you can't remember who it was ---
A. Uh huh **(indicating positive)**
Q. ---Wasn't taking cash under the table?
A. I mean, I don't know what you are trying to say, that people are stealing from me. If they are I would usually catch them, but I haven't seen that happen in six years.
Q. Well, would you allow drug dealers to check into your hotel?

A. No, I don't.
Q. But there have been drug arrests at your hotel?
A. They might have check it in. We don't screen people, but we kick them out. You can ask the deputies. I mean, that hotel was a mess when I got in. It has been cleaned up in the last six years. That is a fact.

MR. RICHARDSON: Thank you, Mr. Patel. No further questions.

THE COURT: Any redirect?

MR. GARDNER: I would ask that he be excused at this time.

THE COURT: Any objection?

MR. FREDERICK: No objection.

THE COURT: Any objection? Solicitor, any objection?

MR. RICHARDSON: None, Your Honor.

THE COURT: All right, sir. You are released from your Subpoena to go back to your regular activities, sir.

Thank you.

All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Roy Grant, Your Honor.

THE COURT: All right.

ROY GRANT, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Mr. Grant, on June 9th of the year 2006, did you go to

the house on Pridgen Street that was the scene of these murders involved in this case?

A. Yes.

Q. All right. Do you remember what time you went there? Early afternoon?

A. No. Yes, it was around like six, six o'clock, something like that.

Q. Okay. And did you meet anyone when you were there?

A. Yes. I obviously met Antwann and -- Antwann and Melissa was there before me, so ---

Q. All right. Did you meet -- meet up with them? Did you see them?

A. They was there before I got there.

Q. They were still there when you got there?

A. Yes.

Q. All right. So the three of y'all were there?

A. Yes.

Q. All right. Did y'all go into the house?

A. Yes.

Q. All right. And how many times did you go in the house?

A. Just once.

Q. Just once?

A. Yes.

Q. Okay. Did you get a chance to see -- or let me ask you this. Did you take anything out of the house?

A. Naw, no sir.
Q. All right. Did you see anybody else take anything out of the house?
A. No sir.
MR. GARDNER: That's all I have. Please answer any questions Mr. Frederick has for you.
THE COURT: All right, Mr. Frederick.
MR. FREDERICK: No questions, Your Honor.
THE COURT: All right. Solicitor.
MS. ELDER: One moment, Your Honor.
CROSS-EXAMINATION BY MS. ELDER:
Q. Mr. Grant, how did you get to Pridgen Road that night?
A. On my mo-ped.
Q. On your mo-ped?
A. Uh huh **(indicating positive)**
Q. And when you went to Pridgen Road on your mo-ped, did you go in -- do you know whose house that was?
A. Yes.
Q. Jamilla Hightower and Monica Wall lived there?
A. Yes. Uh huh **(indicating positive)**
Q. Okay.
THE COURT: You need to say yes or no, please sir. Was that an answer -- yes or a no?
A. Yes. Yes Ma'am.
Q. Okay. And you know what Jamilla did for her -- for

business, right?
A. Yes Ma'am.
Q. She sold drugs?
A. Yes Ma'am.
Q. All right. And were you a client of her's in the past?
A. Say that again.
Q. Were you a client? Did you do business with her every once in a while?
A. No Ma'am. Uh uh **(NODS NEGATIVE)**
Q. All right. Well, when you went to Pridgen Road that night on your mo-ped, you didn't go in that house nineteen hours later -- nineteen hours before that, did you?
A. No Ma'am.
Q. You didn't execute Melissa -- I'm sorry. You didn't execute Monica Wall and Jamilla Hightower, did you?
A. No.
Q. You didn't come back nineteen hours later and take anything out of the house, and then escape on your mo-ped, did you?
A. No Ma'am.

MS. ELDER: No further questions, Your Honor.

THE COURT: Mr. Gardner, any redirect?

MR. GARDNER: No, Your Honor.

THE COURT: Mr. Frederick.

MR. FREDERICK: Nothing.

THE COURT: All right, sir.

Gentlemen.

You can step down, sir. Thank you.

A. All right.

THE COURT: All right, Mr. Gardner, your next witness, please sir.

MR. GARDNER: Melissa Gomez, Your Honor.

THE COURT: All right.

THE COURT: And is she in the back? Where ---

MR. GARDNER: I believe she's coming in through that door there. Melissa Gomez.

THE COURT: Gentlemen, there is no reason that Mr. Grant cannot be returned ---

MS. ELDER: No, Your Honor.

MR. GARDNER: No reason, Judge.

THE COURT: Very good. Thank you.

MELISSA GOMEZ, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. GARDNER:

Q. Good afternoon, Ms. Gomez.

Do you -- tell us where you live.

A. In Pennsylvania.

Q. All right. Back in June of 2006, were you living in Horry County?

A. Yes.

Q. Are you familiar with Pridgen Road, the house of Jamilla Hightower?
A. Yes.
Q. All right. Were you there on June 9th, Friday, the year 2006?
A. I -- yes. Was it the day that they was found?
Q. Yes, the day they were found.
A. Yes.
Q. All right. And do you know how they were found?
A. I found them laying -- Jamilla was laying on the floor and Monica was in the bathroom in my shower.
Q. Okay. I guess that's how I should have said it. Who found them. It was you, so ---
A. Me, and then -- yes.
Q. And that was Friday ---
A. Yes.
Q. ---June 9th, 2006. Who was with you, if anybody?
A. Antwann.
Q. Antwann Higgins?
A. Uh huh **(indicating positive)**
Q. All right. And you went into the house. Did you go in the house by yourself?
A. Yes.
Q. All right. And did you come out, or did you stay in the house?

A. I came out and told Antwann to come into the house.
Q. All right. And did he go in the house?
A. Well, he was asking me why, and I told him that he just needs to get into the house because something is wrong.
Q. Okay. Did he go into the house?
A. Yes, he did.
Q. All right. And at some point in time did anybody else go into the house?
A. Yes.
Q. And who was that?
A. Roy Grant.
Q. All right. What time did you get there?
A. I don't know.
Q. Early afternoon, late afternoon, dark time?
A. It wasn't dark yet. Later in the afternoon, but it wasn't dark.
Q. All right. Okay. How long do you think that you and Roy and Antwann were there?
A. Me and Antwann got there first, and Roy stopped by and asked Antwann if Jamilla was there, and he said, no, she's gone, and he came into the house briefly, and then he left.
Q. All right. I didn't understand part of what you said, but my question was, how long were you there?
A. I was there pretty much the whole night. When -- after the cops were called we was there. I'm not sure what time we

left, but we was there pretty much the rest of the night.
Q. All right. I'll try to ask it a different way. How long were the three of y'all there when the two of you -- how long were you there before any police officers came?
A. About ten minutes, maybe five. I'm not really sure, just long enough for the police to get there. After I told Antwann to call the cops I think my neighbor called the cops, and then they came.
Q. You think that's what happened?
A. That's what happened.
Q. Okay. Did y'all take anything out of the house?
A. I took a briefcase out of the house, yes.
Q. And was it a safe briefcase?
A. A regu ---
Q. Was it a safe or was it a briefcase?
A. A briefcase.
Q. Does it have similar characteristics of a safe?
A. I don't know.
Q. Okay. All right. Did it have dope in it?
A. I don't know what was in it.
Q. You didn't look in it?
A. No.
Q. Did you take anything else out of the house, other than the safe?
A. No.

Q. All right.

MR. GARDNER: Please answer any questions Mr. Frederick has for you.

THE COURT: Mr. Frederick.

MR. FREDERICK: Yes, Your Honor. Beg the Court's indulgence.

THE COURT: Yes sir.

CROSS-EXAMINATION BY MR. FREDERICK:

Q. Hey, Melissa.

A. Hi.

Q. When you went into the house did you move any furniture around?

A. Yes. Whenever I walked into the house I walked down the hallway, and I realized my nightstand was knocked over so I picked it up and sat it upright.

Q. Was there a dresser also?

A. No, just the nightstand.

Q. Just the nightstand. Okay. Antwann didn't go into the house with you at first?

A. Right.

Q. Okay. And was that because he was fighting with Jamilla at the time?

A. They was arguing. They didn't get along at the time.

Q. And so he didn't want to go into the house?

A. Right.

Q. Okay. Before all of this happened, before the investigation and everything, had you ever met Investigator DiLorenzo?

A. No.

Q. Okay. In your interviews with Investigator DiLorenzo regarding this case, do you remember him asking you about your mom's case? I don't want to go into detail ---

A. Yes.

Q. ---About that, but do you remember that?

A. Uh huh **(indicating positive)** Yes.

Q. And did he work on your mom's case?

A. I'm not sure.

Q. Okay. You don't remember him talking to you about it?

A. He talked to me about it, but I don't know if he's the one that worked the case or not.

Q. Okay. At one point -- and I understand this was a long time ago, I mean, it was a couple of years ago. But in one of the early times when he talked to you do you remember him saying that -- and I think he was just trying to clear the air -- saying that y'all had a special bond because of what he did to help your mother. Do you remember that?

A. No, I don't.

Q. Okay. Was Salena Mann involved in that case?

A. I don't know.

Q. You don't know. Okay. When you and Antwann went to

Jamilla's house on Friday, June the 9th, what car were you driving?

A. It was a white car, one of his friend's car, I believe. He name was Jill. I don't know what kind of car it was.

Q. Okay. White Ford Thunderbird?

A. It might have been.

Q. Okay. And was that Jill Holland?

A. Yes.

Q. Antwann borrowed the car from her that day?

A. Yes.

Q. Okay. When you arrived at the house, were the lights on?

A. No.

Q. Okay. Was the T.V. on?

A. I don't believe so.

Q. Was there music playing, a radio?

A. No.

Q. And you also told the investigators that -- to -- you told them you thought it was weird that the lights and T.V. were off, and no music playing.

A. Right.

Q. Does that sound right?

A. Right.

Q. Okay. Did the police, at any point after this, search your's and Antwann's apartment?

A. What was the question?
Q. After this ---
A. Okay.
Q. ---After June the 9th ---
A. Uh huh **(indicating positive)**
Q. ---At some point did the police search your's and Antwann's apartment?
A. Yes.
Q. Okay. And you remember drawing a map for them of the apartment?
A. Yes. Uh huh **(indicating positive)**
Q. And then they got a Search Warrant?
A. Yes.
Q. Okay. Does this look like the map?
A. Yes.
Q. Better question would be, is this the map?
A. Yes.

(MAP MARKED DEFENDANT, STEPHENS, EXHIBIT NUMBER 21, FOR IDENTIFICATION.)

COURT REPORTER: Defendant, Stephens, 21, for identification.

Q. And who did you draw the map for?
A. Either DiLor ---
Q. DiLorenzo?
A. DiLorenzo or Mann. I'm not sure. One of them.

Q. One of the two?
A. Yes.
Q. Okay. And you gave that to them, right?
A. Yes.
Q. Okay. This is Defendant's Exhibit, Stephens, 21. We would move to have this admitted into evidence.

THE COURT: Any objection, Mr. Gardner?

MR. GARDNER: No, Your Honor.

THE COURT: Solicitor.

MS. ELDER: If we could just take a look at what he's --

THE COURT: Yes, absolutely.

MS. ELDER: No objection, Your Honor.

THE COURT: All right. Defendant, Stephens, 21 is in evidence without objection.

(DEFENDANT, STEPHENS, 21 FOR IDENTIFICATION NOW ADMITTED INTO EVIDENCE AS DEFENDANT, STEPHENS, 21.)

MR. FREDERICK: Move to publish this to the jury.

THE COURT: Any objection to publication?

MR. GARDNER: No, Your Honor.

MS. ELDER: No sir, Your Honor.

THE COURT: You may do so.

Q. When you drew the map for them the purpose of the map was to show them where Antwann's guns was ---

A. Yes.
Q. ---So they could find the guns when they went into the apartment?
A. Yes.
Q. Okay. And did they find guns in the apartment?
A. Yes.
Q. Okay. Did Antwann carry guns?
A. On him?
Q. Yes.
A. Sometimes he did.
Q. Okay. And they found some drugs in the apartment, but not a whole lot?
A. Right.
Q. Were you charged with anything ---
A. No.
Q. ---As a result?
A. No.
Q. Was Antwann?
A. I'm not sure.
Q. Okay. How did you know Jamilla?
A. Through Antwann.
Q. Okay. How long had you know her?
A. Me and Antwann was together for about three years, so I knew her maybe about two. I wasn't real close with her before she moved in, but felt to.

Q. At the time you were dating Antwann.
A. Right.
Q. You are not dating him now, are you?
A. No.
Q. Okay. You lived in that house for a period of time, right?
A. Yes.
Q. Okay. But you had moved out right before this happened?
A. Right.
Q. Okay. Was it your house at the time?
A. Yes. My -- most of my stuff was still there, but I was just staying with Antwann, but I took my clothes.
Q. And your name was still on the utilities ---
A. Right.
Q. ---But you were going to change that?
A. Right.
Q. Okay. Did you have a key to the house?
A. Yes.
Q. Antwann, did he also stay at the house for a period of time?
A. He did until him and Jamilla got into an argument.
Q. Okay. What were they fighting about?a
A. Me and Antwann was fighting, and he hit me and I was upset about it, and Jamilla asked me why I was crying, and I

told her why, and then she went to Antwann and said, boy, if you want to fight somebody fight me, because I'll put my hands on you; don't fight nobody that's not going to put their hands on you, and that's what they was arguing about.

Q. She was upset about it?

A. Yes.

Q. Okay. Understandably. When you first talked to the investigators -- and you remember you had several interviews with the investigators, right?

A. Right.

Q. Do you remember how many?

A. No.

Q. Three, four, does that sound about right?

A. I'm not sure.

Q. Okay. When you first met with the investigators did you tell them the complete truth about Antwann, the first time?

A. About ---

Q. Everything, about Antwann.

A. I don't think that I told them, at first, that him and Jamilla was arguing ---

Q. Okay.

Q. ---Didn't get along at the time.

Q. And when you first met with them -- and I understand this remembering is from a few years back, and having several

interviews, one after the other, may be hard, okay. Do the best that you can. When you first met with them do you remember telling them that Antwann was with you all day Thursday, Thursday night, and Friday?

A. Yes.

Q. Okay. And you told them that Antwann didn't deal drugs?

A. Right.

Q. Okay. Later on, after you were confronted with some information, did you tell the investigators that you weren't sure if he was with you that whole time after all, in a later interview?

A. I said that he -- whenever I sleep I sleep hard. I said he might have left while I was sleeping.

Q. Okay. And so in the later interview you told them it was possible ---

A. Right.

Q. ---You really couldn't say.

A. Right.

Q. Okay. Do you remember telling them also, in the later interview, that you weren't sure what days he was with you, and maybe he left you while you were sleeping on Thursday night?

A. Right.

Q. On Friday, June the 9th -- that's the day after, and

the day that you found the bodies -- was Antwann with you that whole day?

A. Yes.

Q. Okay. What time did he get up?

A. I don't know.

Q. Was he in the bed still when you got up?

A. Yes.

Q. Okay. Do you know Roy Grant?

A. Yes. I went to school with him, and I worked with him for a brief period of time.

Q. Okay. He's not -- he's not out here. I have to ask you a couple of questions. When you saw him at the house on Friday, did he say anything to you?

A. No. He was talking to Antwann.

Q. Okay. When you first talked to the police, back to the first interview, okay, did you tell the police the truth about what happened on Friday, in the first interview?

A. No.

Q. Okay. Do you remember what you told them that first time?

A. I'm not exactly sure.

Q. Okay. Fair enough. On the first time that you spoke with them, do you remember that you told them you went into the house just that one time?

A. Right.

Q. Okay. And in a later interview do you remember telling them that you went into the house at least three times?
A. No.
Q. Okay. You told the police that you took -- in the later interview you told them that you took the briefcase out of the house?
A. Yes.
Q. Okay. And ---
MR. FREDERICK: Beg the Court's indulgence.
THE COURT: Yes sir.
Q. Does this look like the car?
A. Yes.
Q. And that's the same car?
A. Yes.
Q. Do you recognize the apartments where it is?
A. Uh huh **(indicating positive)**
Q. Where is that?
A. Devon's apartment. That's where we stayed at. I forget what it was called.
Q. Is that where Jill Holland lives?
A. Who?
Q. Jill. Jill Holland.
A. No. We -- that looks like Devon's apartment.
Q. Okay.
THE COURT: Can you identify the ---

MR. FREDERICK: Sorry. This was Defendant's Exhibit 12, Defendant, Stephens, Exhibit 12.

Q. I'm going to show you Defendant, Stephens, Exhibit 14. Is that the briefcase?

A. I don't remember.

Q. Not sure?

A. I'm not sure.

Q. You put the briefcase in the trunk of the car, right?

A. Right.

Q. Okay. And it was this car?

A. Yes.

Q. Okay. Fair enough.

You never told the police that you took drugs out of the house that Friday, did you?

A. No. I never told them ---

Q. Just the briefcase?

A. Right.

Q. Okay. You told them -- didn't tell the police that you took a briefcase out of the house with drugs in it?

A. Right. I told them later on that I did take a briefcase out the house, but I didn't know what was in it.

Q. Okay. And when the police found out about the briefcase, in a later interview -- and they confronted you with it, right?

A. Uh huh **(indicating positive)**

Q. At that time you told them that you took the briefcase so you could take it to Jamilla's family, right?
A. Right.
Q. Okay. But you still told them you didn't know what was in the briefcase?
A. Right.
Q. Okay. Do you know who Alice Alston is?
A. Who?
Q. Alice Alston.
A. No.
Q. You don't know anyone named Alice?
A. I know an Alice, but I don't know her last name.
Q. Okay. Do you know an Alice that's related to Jamilla's family?
A. Yes.
Q. Okay. After the murder, didn't you tell Alice Alston, Alice related to Jamilla's family, that you took a briefcase from the house with drugs in it?
A. No, I did not.
Q. Okay. Did the police, did they ever confront you with drugs being taken out of the house?
A. He just asked me what was in the briefcase, and I told him I don't know.
Q. Okay. You were never charged with anything in connection with this case, were you?

A. No.
Q. Okay. On June the 14th, one of the later interviews, you told the investigators that Antwann went back into the house with Roy Grant, but without you. Do you remember that?
A. Yes.
Q. Okay. You stayed outside?
A. Yes.
Q. Okay. Did you tell the police that Roy Grant was at Jamilla's house, in the later interview?
A. Yes.
Q. Okay. Did you tell the police that he went inside the house and helped to take out the drugs?
A. No.

MR. FREDERICK: That's all the questions I have for this witness.

Thank you, Melissa.

A. You are welcome.

THE COURT: All right, Solicitor.

MS. ELDER: Thank you, Your Honor.

CROSS-EXAMINATION BY MS. ELDER:

Q. Ms. Gomez, tell me again why you went over to that house that night.
A. I was going over to tell Jamilla that I was going to switch the electric bill from my name to -- she -- that she could switch it over to her name because me and Antwann was

going to put it in our apartment, in our name.
Q. How long had you been living out of Pridgen Road, with Antwann? How long had it been since you lived there?
A. I'm not sure.
Q. Was it days, weeks, months?
A. It was a couple of months.
Q. You and Antwann hadn't lived there in a couple of months?
A. Right.
Q. And this argument that supposedly happened between Antwann and Jamilla about Antwann's interaction with you, that was a couple of months back as well, prior to her death?
A. Right. Yes.
Q. And when Jamilla would stand up for you Antwann didn't take her up on it now, did he?
A. No.
Q. They didn't get into a physical ---
A. No.
Q. ---Brawl right there at the house?
A. No.
Q. And he didn't pull any kind of weapon on her or anything, did he?
A. No.
Q. And isn't it true that, either the night that you went over there to get your stuff out of the house, to avoid any

controversy with Jamilla he stayed outside?
A. Right.
Q. And when you went in the house Jamilla and Monica were dead? You found them; is that right?
A. Right. But I didn't go there to get my stuff that night. I went to tell her about the electric bill.
Q. Right. I understand. I apologize. When you went in the house though they were already dead?
A. Yes. Yes.
Q. And you are the one who found them?
A. Yes.
Q. And you called Antwann in to the house; is that correct?
A. Yes.
Q. And when he came into the house did he go -- were you with him when he went back in the house?
A. Yes.
Q. What was his reaction to seeing Jamilla and Monica?
A. He started crying, I believe, and he was holding his head saying, oh my God, who would have did this, and why would they have done that, and he was ---
Q. And he went outside to call 911?
A. Yes, I believe so.
Q. And he didn't try to take off before the police got there, did he?

A. No.
Q. Did he appear to be upset about their deaths?
A. Yes.
Q. And you just said a moment ago when you were testifying, Antwann told Roy, she's gone.
A. Yes.
Q. Does that mean that she's dead?
A. Yes.
Q. And is that why Roy went inside to look himself?
A. I believe so, yes.
Q. Did you see any drugs in that house when you were in there?
A. No.
Q. Did you see anybody take any drugs out?
A. No.
Q. You knew what business Jamilla was in?
A. Yes.
Q. She did drugs -- she sold drugs?
A. Yes.
Q. And I know that initially when you talked to police you didn't mention the safe that you took out.
A. Right.
Q. It was a little hand -- you could carry it out with you, by yourself, right?
A. It was what?

Q. It was a small safe; is that correct?
A. Right.
Q. A little fire box thing?
A. I'm not sure approximately how big it was, but I carried it out by myself.
Q. So you could carry it out by yourself. And it was locked, wasn't it?
A. I believe so.
Q. When you picked it up it didn't fall open or anything?
A. No. It didn't fall open.
Q. Did it have a key in it?
A. Not that I know of.
Q. All right. Did you try to open it?
A. No.
Q. And when you took it out of the house you put it in that white car that belonged to Jill Holland; is that correct?
A. Yes.
Q. And you didn't take it out again, right?
A. Right.
Q. Nobody else, to your knowledge?
A. No.
Q. You locked it in the trunk?
A. I shut the trunk.
Q. Okay. And the trunk locked behind it, right?
A. Yes.

Q. And when you left that night from Pridgen Road you didn't leave in that car, did you?
A. No.
Q. And you never went back in that car. As a matter of fact, the police took it that night, correct?
A. Correct.
Q. And did you see that car again?
A. No, I didn't.
Q. Did you see that white safe again?
A. No, I didn't.
Q. I'm going to take you to Thursday night, before you found Jamilla and Monica, okay.
A. Okay.
Q. You told police that, I believe you were at your house at Sandy -- is it Sandy Gate? Is that where you were living at the time?
A. I believe so.
Q. Okay. And you, in fact, told them that y'all had ordered some food that night, right?
A. Yes.
Q. Do you remember where you ordered it from?
A. No, I don't.
Q. Okay. Willow Run. I'm sorry. Is that where you were living? Was it Willow Run?
A. I think that might have -- I'm not sure.

Q. And you also told police that y'all ordered food, and the food was delivered, and part of your order was missing; is that right?
A. I don't remember on that.
Q. Okay. If you told police that would -- does that sound right?
A. I don't know.
Q. When you went to bed that Thursday night was Antwann with you?
A. Yes.
Q. Did he go to bed also?
A. Yes.
Q. Do you remember what time that was?
A. No, I don't.
Q. And do you remember if it was early, late?
A. Probably later. We was playing ---
Q. Like maybe after midnight?
A. No. It wasn't -- it was before midnight, because we was playing the Play Station for a while, and then we laid down. Probably around ten, maybe. I'm not really sure. Maybe nine. I don't know.
Q. And if y'all had food delivered, and it indicated it was delivered at 9:52, would you have gone to bed after that?
A. Yes.
Q. After y'all ate?

A. Uh huh **(indicating positive)** Yes.
Q. And I believe the police asked you, and the Defense asked you about, didn't -- what -- maybe Antwann left after you were asleep. I believe they asked you, you didn't wake up and see him gone; is that correct?
A. Correct.
Q. And you weren't aware that he left at any point in time that evening, were you?
A. No.
Q. And, in fact, when police -- when y'all -- when Antwann actually called the police to come to Pridgen Road, after you found the bodies of Monica and Jamilla, he cooperated with the police there, didn't he?
A. Uh huh **(indicating positive)** Yes.
Q. And you did too?
A. Yes.
Q. And they took pictures of y'all?
A. Yes.
Q. And they took pictures of your shoes?
A. Yes.
Q. And they even processed your hands for gunshot residue, didn't they?
A. Yes.
Q. And y'all all voluntarily did that; is that correct?
A. Yes.

Q. Okay.

MS. ELDER: One moment, Your Honor.

THE COURT: Yes Ma'am.

MS. ELDER: No other questions for this witness, Your Honor.

THE COURT: All right. Any redirect?

MR. GARDNER: I want to follow up -- yes sir. The answer is yes.

THE COURT: All right. Very good.

MR. GARDNER: I just have one question. Thank you.

REDIRECT-EXAMINATION BY MR. GARDNER:

Q. I want to follow up this thing about the night before. You ordered some food and went to bed at some point in time; is that right?

A. I'm not sure. We might have. I can't remember.

Q. Is that what she was asking you about?

A. The food that we ordered, yes.

Q. Yes. Ring any bells?

A. I'm not sure if we did. I can't remember if we did order pizza, but if we did I don't ---

Q. You were agreeing with her. I didn't know -- do you have any independent recollection of what time you went to bed the night before?

A. I'm not sure.

Q. Do you have ---

A. Sometimes -- it would have been sometime later, because like I said, we was playing the game for a while and then we lay down and went to bed.

Q. And you are a heavy sleeper?

A. Yes.

Q. So once you were asleep you wouldn't know if Antwann left or not, would you?

A. No.

MR. GARDNER: Nothing further.

THE COURT: All right. Mr. Frederick.

RECROSS-EXAMINATION BY MR. FREDERICK:

Q. Didn't the police confront you with the fact that they saw Antwann out dealing drugs on the corner; do you recall?

A. Yes.

Q. And that was when you told them maybe he left after you fell asleep?

A. Yes.

MR. FREDERICK: No more questions. Thank you.

THE COURT: Anything on those questions, Solicitor?

MS. ELDER: One moment, Your Honor.

No further questions, Your Honor.

THE COURT: All right. Do you wish the witness to be excused?

MR. GARDNER: Yes sir.

THE COURT: Any objection?

MR. RICHARDSON: No objection, Your Honor.

MR. FREDERICK: No objection, Your Honor.

THE COURT: All right. Very good. Ma'am, you are released from your Subpoena and you may go back to your regular activities.

All right. Is there an issue we need to take up at this point in time?

MR. GARDNER: Yes, sir, I think we need to discuss that thing ---

MR. FREDERICK: Can we approach?

THE COURT: Absolutely.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right, ladies and gentlemen of the jury, if you would go to your jury room for a few moments, please.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Mr. Gardner, regarding your client, Jimmy Lee Sessions, are there -- is there any other matters that you have for the Defense, except for the issue of whether or not Mr. Sessions is going to testify?

MR. GARDNER: That is exactly correct, Judge. You've said it correctly.

THE COURT: All right.

All right, Mr. Sessions, if you don't mind, if you would

raise your right hand, please sir.

JIMMY LEE SESSIONS, being first duly sworn, testifies as follows:

THE COURT: All right. You can put your hand down.

At this point in time I am going to explain to you certain of your Constitutional Rights. If, at any point in time you don't understand what I'm talking about, you have any question about what we are talking about, I want you to stop me. You can raise your hand, tell your attorney, but in some way indicate to me that we need to go over that. Are we in agreement there?

A. Yes sir.

THE COURT: All right, sir. We have reached the stage of the trial where you may present your defense, and obviously we've been doing that, and as I understand from your attorney, we have called all the other witnesses that can be called on your behalf, or that y'all want to call in your behalf, except for yourself.

You have the right to claim the protection given to you by the Fifth Amendment to the Constitution of the United States of America. Now, that Amendment states, in part, that no person shall be compelled, in any criminal case, to be a witness against themselves. That means nobody can make you testify; you can't be forced to testify. Obviously you can testify if you want to. that's your right, but nobody can make

you. You understand that?a
A. Yes sir.
THE COURT: If you decide to testify you are going to be subject to the same rules that you've seen all the other witnesses that have testified in this particular case, that is, you would be examined, or questioned by your attorney, then you would be cross-examined, or asked questions by Mr. Frederick and from the Solicitor; you understand that?
A. Yes sir.
THE COURT: And if you have any convictions on your record ---
And Solicitor, would there be any convictions that y'all would be asking Mr. Sessions about on cross-examination?
MR. RICHARDSON: I believe so, Your Honor. I just need to take a moment to look through.
THE COURT: All right.
MR. RICHARDSON: Yes sir, there will be.
MR. GARDNER: There will be, Judge, and the Solicitor and I have talked about that, and I believe that we are aware of that, or do you want him to put it on ---
THE COURT: Well, I think we need to put it on the record, so that Mr. Sessions knows exactly what it is that the State would -- would ask about, and then I can tell him the things that I allow them to ask about, so ---
MR. GARDNER: Fair enough.

THE COURT: ---Solicitor, if would just let me know what the matters are that you would want to question Mr. Sessions about.

MR. RICHARDSON: Your Honor, he's got 2002 conviction, verdict date on, looks like sell of hallucinogenic or narcotic drugs. He got a six year suspended to three years and three years probation out of New Haven, Connecticut.

THE COURT: All right, sir.

MR. RICHARDSON: It looks like he got a larceny one, and possession of drugs, marijuana, conditional discharge, one year in jail, suspended on one year -- one year suspended, two years conditional discharge. I don't know how that comes in.

He's got a sale of controlled substance, and sell of illegal drugs. He got a probation revocation on that, two years jail concurrent. That is in 2002 as well.

He's got a 1996 guilty plea on possession of a weapon. He got served with eighty-four months, so that would push him ---

THE COURT: All right, sir, so that would fall within -- the eighty-four months after 1996 then would fall within the ten years.

MR. RICHARDSON: All right. It looks like he's got, 2000, possession of a firearm by a convicted felon, unknown -- disposition unknown, 2006, 7/17/96, sixty months ---

Is that the same time?

Thirty-six months, looks like.

THE COURT: That was in 2000?

MR. RICHARDSON: Yes sir. Looks like he got a probation violation in 2003, sentenced to twelve months jail time.

THE COURT: Now the probation violations we would not ask about, because those go back to the sentence for which he was originally convicted.

MR. RICHARDSON: Your Honor, he's got a 1987 receiving stolen goods. That would be a crime of dishonesty.

THE COURT: All right, sir.

MR. GARDNER: '87?

MS. ELDER: That's correct.

THE COURT: But it's a crime of dishonesty, is what he is asking, that it be under -- not under the -- not under the statute as far as the ten years, but crime of dishonesty.

MR. RICHARDSON: '87, shoplifting, which would also be dishonesty.

It looks like an '88 burg second and grand larceny. He got a Y.O.A., but of course, that being a crime of dishonesty.

The 1994 possession of crack is out.

I know presently he has got -- pending he's got a drug trafficking charge as well, Your Honor ---

THE COURT: All right.

MR. RICHARDSON: ---For which he was brought back on a

bench warrant.

THE COURT: All right. Very good.

All right. Mr. Sessions, the Solicitor has gone over those particular matters, and as to the ones -- except for the probation violations, I would allow the State to ask you about those, to the extent that, were you convicted of those particular crimes, and that would be only on the issue of attacking your credibility, believability as with all the other witnesses that have testified in this particular case.

Now, if you decide to testify it's got to be your decision. It's your decision to make. You can certainly ask the advice of your attorney. If there happened to be a close family member that was present that you wanted to ask, I would allow you to do that, but you understand it's your decision, and you have to make it knowingly and intelligently, and with knowledge of what we have talked about, and your rights in this particular matter. Do you understand that?

A. Yes sir.

Q. Now, if you decide to testify I will have, as part of my charge to the jury, that they cannot give that fact any consideration whatsoever. I will tell them that they can't even talk about it in the jury room, that it is not part of this case in any way. Do you understand that?

A. Yes sir.

THE COURT: Now, it being left up entirely to you to

make the decision as to whether or not you want to testify, let me ask you a couple of questions. One, do you understand everything we have talked about?

A. Yes sir.

THE COURT: Do you have any questions that you need to ask at this time?

A. No sir.

THE COURT: Do you want to talk to your attorney?

A. Yes sir.

THE COURT: All right, sir. Very good.

(MR. SESSIONS CONSULTS WITH HIS COUNSEL.)

A. I'm ready.

THE COURT: All right, sir. Now, do you want to testify in this particular case?

A. No sir.

THE COURT: All right, sir. Very good. Thank you very much.

Y'all can have a seat.

All right. Now, Mr. Frederick, are there other witnesses that you would intend to call, or you intend to call.

I'm sorry, Mr. Gardner.

MR. GARDNER: No. I was going to suggest that I may -- may we approach on that issue, Judge?

THE COURT: All right. Very good. Y'all come around.

(BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

THE COURT: All right. Go ahead. Yeah. We'll take a short break, for about five minutes. Thank you.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Frederick, are you ready for me to question Mr. Stephens under oath about his right to testify?

MR. FREDERICK: Yes, Your Honor.

THE COURT: All right. Mr. Stephens, if you would stand, please sir.

And if you would raise your right hand, please sir.

Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes sir.

THE COURT: All right, sir. At this point in time I'm going to explain to you certain of your Constitutional Rights. If, at any point in time you don't understand anything we are talking about, you've got a question about what we are talking about, I want you to indicate to me. You can raise your hand, tell your attorney, but in some way you indicate that to me. All right.

A. Yes sir.

THE COURT: All right, sir. We have reached the stage of the trial where you can present your defense. Now, you

have the right to claim the protection given to you by the Fifth Amendment to the Constitution of the United States of America which says, in part, that no person shall be compelled, in any criminal case, to be a witness against themselves. That means nobody can force you to testify. Nobody can make you testify, but you can testify if you want to. Do you understand that?

A. Yes sir.

THE COURT: All right, sir. Now, in this particular trial, if you decide to testify, you are going to be subject to the same rules that govern all the other witnesses that have testified in this case, that is, you would be asked some questions by your attorney, then you would be cross-examined by Mr. Gardner, and cross-examined by the State. Do you understand that?

A. Yes sir.

THE COURT: All right, sir. Now, does Mr. Stephens have a record that the State would expect to inquire about?

MR. RICHARDSON: Yes sir, he does. He's got a -- let me get the actual date. June, 1997, sentence for distribution, sale, etcetera, of drugs other than crack cocaine, scheduled. He got a G.O.A., six years suspended to probation for eighteen months. That would ---

THE COURT: All right.

MR. RICHARDSON: Let's see. He's got a -- looks like

he's got another one from October of '97, for manufacturing and distribution of drugs, cocaine, marijuana, whatever it was, Your Honor, drug distribution charge. He got two years on that.

THE COURT: All right, sir.

MR. RICHARDSON: And let's see, he's got sale, or possession of a pistol by a certain person, prohibited person under the law. I believe that's under the five year statute, and he got three hundred forty-five day sentence on that. That was in 2001.

THE COURT: All right.

MR. RICHARDSON: He got an assault and battery high and aggravated nature February 14th, 2001, and let's see, he got a sentence in 2004, so a receipt by South Carolina Department of Corrections on manufacturing, possession with intent, crime -- looks like he got five years suspended to one year, and three years probation.

THE COURT: All right, sir.

MR. RICHARDSON: He also had an unlawful carrying of a weapon charge. Of course that only carries one year, so that would not be subject, Your Honor.

THE COURT: All right, sir.

MR. RICHARDSON: And I think that's it, Your Honor.

THE COURT: All right, sir. Very good.

All right. Now, Mr. Stephens, from those ones that the

Solicitor has covered, those would fall within the statute and the Rule, and I would allow the State to ask you about those, limiting them to the year and the offense for which you were convicted. Do you understand that?

A. Yes sir.

THE COURT: All right, sir. And in doing so I do find that it's probative value -- as I did with Mr. Sessions -- that the probative value of admitting the evidence outweighs the prejudicial effect to you, as it would with all the other witnesses. It's judging credibility and believability.

Now, if you decide to testify it's got to be your decision. You can certainly talk to your attorney. If you've got a close family member that you want to ask, or have a question, talk to, I'll be glad to let you do that, but you understand you have to make your decision, and it's got to be -- knowing everything we've talked about, along with the protection given to you by the Fifth Amendment. Do you understand that?

A. Yes sir.

THE COURT: All right, sir. If you decide not to testify, as I've told Mr. Sessions, I will tell the jury they cannot give that fact any consideration whatsoever. They can't talk about it in the jury room. It's not a part of this case; do you understand that?

A. Yes sir.

THE COURT: It being entirely your decision as to whether or not you want to testify -- first, have you understood everything we've talked about?

A. Yes sir.

THE COURT: Do you want to ask your attorney any questions at this time?

A. I understand.

THE COURT: All right, sir. But do you have any questions that you want to ask?

A. No sir.

THE COURT: All right, sir. Do you want to testify in this particular case?

A. No sir.

THE COURT: All right, sir. Very good. Thank you.

All right. What we are going to do is, I'm going to call the jury back in. I will ask you, Mr. Gardner, if you have anything further on behalf of the Defendant, Sessions. You can tell me that the Defendant, Sessions, rests, and then I will turn to you, Mr. Frederick, and you can call your witness. After that then I will ask if there's anything further, and I will understand, apparently, that the Defendant, Stephens, at that point in time, would rest. I will then turn to the State to see if you have any reply testimony at that point in time. All right.

MR. FREDERICK: And Judge, I have a question.

THE COURT: Yes sir.

MR. FREDERICK: For purposes of the record, we both would renew our motions for a directed verdict at the close --

THE COURT: Well, right, after the State says that they have no reply testimony, then y'all would renew your motions, or make any motions that you have at that point in time, yes sir.

MR. FREDERICK: Okay.

THE COURT: Very good.

All right. Ask the jury to come back in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, anything further on behalf of the Defendant, Sessions?

MR. GARDNER: Defendant, Jimmy Lee Sessions, rests, Your Honor.

THE COURT: Very good.

All right, Mr. Frederick.

MR. FREDERICK: The Defense would call Alice Alston to the stand.

THE COURT: Alice -- Ms. Alston, if you would come forward to be sworn, please Ma'am.

ALICE ANN ALSTON, being first duly sworn, testifies as follows:

DIRECT-EXAMINATION BY MR. FREDERICK:

Q. Hello, Alice.

A. Hello.

Q. Did you speak to Melissa Gomez after these murders took place, in June, 2006?

A. Yes, I did.

Q. Did Melissa tell you anything about the briefcase that was taken out of the house?

A. Yes, she did.

Q. Did she tell you that there were drugs in that briefcase?

A. No. She said she didn't know what was in there, she just didn't want to leave them in there with Jamilla, or get herself in trouble if it was drugs, but she didn't say what was in the briefcase.

Q. Never said what was in the briefcase?a

A. No.

Q. Did you tell Investigator Salena Mann that there was drugs in the briefcase?

A. No, I didn't. I said she said that she didn't know if it was drugs or not; she didn't want to leave it in the house because it was in her name.

MR. FREDERICK: Okay. Fair enough.

(AT THIS TIME MR. FREDERICK PLAYED BACK A PORTION OF A PREVIOUSLY TAPED INTERVIEW WITH THIS WITNESS.)

Q. Was that you?
A. Yes, it was.
MR. FREDERICK: No more questions. Thank you, Alice.
THE COURT: All right. Cross-examination, Mr. Gardner.
MR. GARDNER: No, Your Honor.
THE COURT: Cross-examination, Solicitor.
MR. RICHARDSON: No sir, Your Honor. I would just ask if Ms. Alston could take her seat back.
THE COURT: All right. Any objection to the witness being excused?
MR. GARDNER: None, Judge.
THE COURT: All right.
MR. FREDERICK: No sir. We would ask that this witness be excused.
THE COURT: Very good.
All right. Further witnesses on behalf of the Defendant, Christopher Stephens?
MR. FREDERICK: None, Your Honor. The Defendant, Christopher Stephens, rests.
THE COURT: All right, Solicitor, is there any reply testimony on behalf of the State?
MS. ELDER: No sir, Your Honor.
THE COURT: All right. Very good.
All right, gentlemen, Mr. Gardner, Mr. Frederick, y'all have matters of law that you need to speak to the Court about

at this point in time?

MR. GARDNER: I believe so, Judge.

THE COURT: Very good.

All right, ladies and gentlemen, we have concluded the evidentiary portion of this trial. There will be no more testimony or evidence introduced in this case. We are at the stage I do have to speak with the lawyers outside your presence, and I will do that now, but in the interim, when you are back in your jury room I want y'all to discuss one thing for me about this particular case, and that is, what we have left are the closing arguments of the attorneys. Obviously there would be a closing argument from each lawyer, and then you have the charge on the law from the Court, that I would give to you to apply to the facts as you so find them to be in this particular case.

After that is done, at that point in time then the case would be submitted to you for your deliberations, discussions, and your unanimous decision on every charge as against each Defendant, remembering, as you heard at the very beginning, there are multiple charges on each Defendant, and you would have to make a unanimous decision on each and every one of them.

Once the case is given to you it is yours until you reach a unanimous decision on every single one of those charges. That means you are here until that happens, for

whatever time period that may take, and I am not suggesting to you what time period that may take because obviously that's completely and totally up to y'all, but that -- you -- with the understanding that it takes as long as y'all deem necessary, but you are here for that period of time. We will -- you will have the opportunity to give me your opinion as to whether or not you want to continue on today or come back Monday morning. I will take that under advisement, and then I will decide what we are going to do, but I will be glad to hear from you, as I will hear from the attorneys in this matter, and then I will make a decision as to what we are going to do, but understanding that to be the procedure, that would be left for today, or to be faced Monday morning, because I'm not going to break up the closing arguments, the charge, and in sending the case to you. That's going to happen at one point in time. It's either going to happen this afternoon and into the evening, or it's going to happen starting first thing Monday morning, so Mr. Foreman, want you to go back and talk to your jury about that, and see if you can reach a consensus, and if you can't reach a consensus, you can tell me that. All right.

Thank you very much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Gardner, I'll be glad to

hear from you, sir.

MR. GARDNER: Your Honor, I would move for a directed verdict as -- on -- to all charges for the Defendant, Jimmy Lee Sessions.

THE COURT: All right, sir, as to the charges being faced by Mr. Sessions, that being -- he being charged with the murder of Jamilla Hightower, the murder of Monica Wall, the armed robbery of Jamilla Hightower, and burglary in the first degree, as involving both Ms. Wall and Ms. Hightower, as to those particular matters I would respectfully decline to grant your motion for a directed verdict.

As I indicated at the end of the State's case, it's my job to be concerned with the existence of evidence, and not with it's weight, or not with it's credibility or believability. That's going to be the jury's job, to weigh credibility, believability, who do they believe, what do they believe, but I specifically do find that there is more than sufficient direct evidence and substantial circumstantial evidence which reasonably tend to prove the guilt of the accused, and in this matter, and finding that there being -- there is, in the Court's mind, more than sufficient evidence that would sustain a conviction should the Defendant be found guilty of all or any of those charges, then I would respectfully decline to grant your motion for a directed verdict.

Further motions on behalf of the Defendant, Jimmy Lee Sessions? Mr. Gardner, anything else?

MR. GARDNER: Oh, I'm sorry, Judge, I thought you -- I apologize.

THE COURT: No, I said, any other motions?

MR. GARDNER: Yes. No others. That's all I have.

THE COURT: All right. Very good, sir. All right.

All right, Mr. Frederick, motions on behalf of Mr. Christopher Stephens.

MR. FREDERICK: Judge, we just renew our motion for a directed verdict on the grounds that it's a fine distinction, but, I mean, I think the test is not whether there is any evidence, but whether there is sufficient evidence to go to the jury, Judge, and again, we just renew our motion on the grounds that a conversation, with nothing more, does not rise to the level of evidence that is sufficient for the jury to consider on the charges of accessory before the fact.

THE COURT: All right, sir. Incorporating the definition of accessory before the fact that I talked about at the end of the State's case, and understanding that the three charges against Mr. Christopher Stephens are accessory before the fact of a felony regarding the murder of Jamilla Hightower, the armed robbery of Jamilla Hightower, and the murder of Monica Wall, I find that -- again, looking only at the existence of evidence, and not looking at the weight or --

weight of the evidence, not judging it's credibility or believability, I find that there is more than sufficient direct evidence, and substantial circumstantial evidence that would support a conviction of the Defendant on those three charges, any of those three charges should the jury, in it's mind, in judging the credibility and believability, find the Defendant guilty of all or any one of those three charges, and therefore, finding that sufficient evidence, I would respectfully decline to grant your motion for a directed verdict.

Any other motions that you would have at this point in time on behalf of Mr. Stephens?

MR. FREDERICK: No other motions.

THE COURT: All right. Very good.

All right. What we'll -- what we'll do is, I'm going to give the jury about five minutes, and then I'll ask the bailiff to see if they have -- what their opinion is as far as staying the rest of the night, and I will just tell you that my expectation would be -- I would be fairly shocked if a jury went in and came out immediately with a decision. I think this is a case, with all the evidence, that they will need to weigh, and look at for some extended period of time before they reach a decision, so I'm going to keep that in mind when I make the decision as to what we are going to do. All right.

Be at ease for about five minutes.

Thank you.

(THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, gentlemen, we are going to proceed with the closing arguments and the charge on the law, and we are going to submit the case to the jury for their deliberations.

As I understand it the Defense is not going to require the State to open on the law, so Mr. Gardner, you would be charged with having the first argument, then I'll turn to you, Mr. Frederick, for the second argument, and then -- which Solicitor is going to be giving the closing?

MR. RICHARDSON: I will, Your Honor.

THE COURT: All right, Mr. Richardson, you will be giving the last argument, on behalf of the State.

MR. FREDERICK: Judge, could we have just a moment?

THE COURT: Okay.

All right, gentlemen, are y'all ready to go?

MR. FREDERICK: We are, Judge.

THE COURT: Very good. Ask the jury to come in, please.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, ladies and gentlemen, we are going to proceed on to the conclusion of this case this

afternoon and this evening.

The first thing that's going to happen, now that the evidentiary portion of the case has ended, we are going to have the closing arguments of the attorneys. As I told you at the beginning now, these closing arguments are not evidence. They cannot be considered by you as evidence in the case -- that has already happened -- but they are important. They are each side's summation to you of what they believe the evidence has shown to you during the course of the trial, remembering, of course, that collectively, you are the judges of the facts of this facts of this particular case.

After that I will give you the law that you will apply to the facts as you so find them to be in this case, and then I will submit the case to you for your deliberations and your unanimous decision on each and every one of the charges.

With that I'm going to turn it over to the attorneys for their closing arguments.

Mr. Gardner.

MR. GARDNER: Thank you, Judge.

THE COURT: Yes sir.

MR. GARDNER: If it please the Court, Mr. Foreman, ladies and gentlemen of the jury, first I commend you for your service. It's been a long trial, a long week. We've seen a lot of evidence here. I told you that's what we would do on Monday. Soon you will go back and do your deliberations. I

will point out a few things for you, like the Judge said, that I think are important.

One thing as a tool that you can consider using during your deliberation is to look at what the lawyers said at the beginning of the case in their opening statement; did they promise you anything; did they talk about what was important? Look at that, and then compare that with what the evidence was, and then ask them if they've sufficient covered it in their closing. All right.

Remember the Solicitor's opening, his power. It was a good opening, but you know what spoke volumes, what rang louder than anything that the Solicitor said in his opening, is what he didn't say. What did he not say? He didn't say anything about D.N.A. evidence, and there's a reason he didn't say anything about D.N.A. evidence. He's wants to get a conviction, and D.N.A. evidence, out of all the evidence we've heard, is the most credible, believable, and absolutely the most reliable evidence that has been put on, and it was put on in the Defense's case, and the D.N.A. evidence excludes Jimmy Lee, and excludes Christopher. What that means is, it was not them. What that means is that the only verdict, based on that, is not guilty. That is the most credible, most believable, the most reliable evidence we have, and the only verdict that you could have with that evidence is not guilty. That, alone, will support your decision for not guilty. That

evidence was put on by the Defense.

The Defense also put on a shoeprint expert. We had heard previously from the State's shoeprint expert, and I won't talk about that, but the Defense's shoeprint expert talked about a print that he identified contemporaneous with the crime, and he could do that because it was in fecal matter, and that print excludes, excludes all of the shoes. You may want to look at these if you deliberate -- you may not. That is solely up to you. But the Nike Aire shoe is a popular shoe, and the print format on the bottom of it, it's all -- they are all the same thing. It's circles and circles, and some stars.

There is a print in that bathroom, left in fecal matter, contemporaneous with the crime, and it excludes these shoes. The shoes they say are Jimmy Lee Sessions' did not make that print. That is good evidence. That is credible evidence, that's believable evidence, that's reliable evidence, and the only verdict you could support with that evidence is not guilty. That is evidence that somebody was there when it occurred. That's evidence in the bathroom. I suspect that the Solicitor, in his closing, will get up here and will tell you how -- his theory of how it happened in the bathroom, the shooting, and that's fine, but there's a footprint right there near the body, and that footprint is somebody we don't know, and that's evidence of not guilty.

If you don't think it's evidence of not guilty look at that D.N.A. evidence. If they had the match, if they knew who matched that D.N.A. they would be sitting in that chair over there, they would be charged with murder, and the Solicitor would be saying, that D.N.A. evidence alone will convict them; you could only bring back a guilty verdict. Well, the Defense doesn't have to prove anything, but you've got the only evidence you need to bring your -- the only verdict you can bring.

I'll talk about the State's shoe expert. He testified he had identified the two prints and it was consistent, consistent, not a match, consistent. Well, I told you you could look at these shoes and there's going to be a lot of shoes that are consistent. I asked him. That means could be, could not be. Okay. That is evidence of reasonable doubt. The other two are reasons -- are evidence of not guilty. This one, to be fair, is evidence of reasonable doubt, could be, could not be. Okay. Reasonable doubt supports only one verdict. The only verdict you can bring back is not guilty.

Remember I told you at the beginning about the scales of justice, when we are talking about a civil case. Put the State's shoeprint evidence in there. Could be, couldn't be on those scales. The scales don't move. You don't even get a verdict in a civil case. And we all know, we all agree, that the burden of proof in a criminal case is much higher than it

is in a civil case. What we have there is a verdict of not guilty.

Put on top of that that the print that the State's expert talked about could not be dated to the crime scene, could not be dated to the crime, could have been left anytime before that, week before, a day before. We don't know when it was left. Put that on top of it and the only verdict you can bring back is not guilty. That's clear and convincing evidence of not guilty. That's the only verdict you've got to do. That's it. That is your evidence.

I had hoped to have the boards, the imaginary boards that I talked about in my opening. We got to the closing quicker than I anticipated. I don't have them. I don't think I need them to illustrate the point, but that is your hard evidence, and your hard evidence supports only one verdict. The truth is the truth, and the truth doesn't change. Science doesn't lie. That's what we've got.

Now, I also told you in my opening that you would be asked to decide, or a normal jury, a normal case, asked to decide two questions, whether or not it was a murder, and then decide guilt or not guilt, guilty or not guilty. I went ahead and told you that question number one was already decided. The State will prove, the evidence will show, that the two young ladies were murdered. There is no doubt about that. But the evidence will also show, beyond a reasonable doubt,

that Jimmy Lee, Christopher, did not do it. So, I told you the State would put up a lot of evidence, you would see a lot of pictures, see the video, you would hear from a doctor, but none of that would convict the Defendants, none of that would prove to us who did it. It would show us where they were killed, when they were killed, how they were killed, but not who the killer was.

The Doctor, I believe everybody would agree, was credible, believable, and reliable, but she has no idea who killed them. She can't. Just added up to the point that it's a murder, answering question one, the answer to question one the first day we got here, so why do we have the majority of the evidence going to question one? I believe you probably know that.

So what is the evidence that goes to question two, the other evidence? We want to evaluate it on that plan that I laid out for you, and the Judge will confirm this with you, credibility means nothing more than believability, and you want reliable evidence, because you are going to make a big decision, an important decision. It's important for the State, important for the Defendants. We want to have informed decisions, and we want to base it on what we think is credible, believable and reliable evidence. If it's not, don't consider it.

You put these jailhouse witnesses up there, they don't

pass any credible, believable, reliable tests that you could imagine. All right. If you've got evidence that you think is worthy of consideration in making this kind of decision, it passes your test, it's credible, it's believable and reliable, I ask you to simply -- ask you simply to consider, what question does it answer. If it answers whether or not there was a murder, we know that doesn't help us make the decision we need to.

If it answers or addresses question two, guilty or not guilty, the next question is, does it prove, beyond a reasonable doubt, murder. I submit to you it doesn't. I'll give you a clear example of that. S.L.E.D. Agent Darnell, the State's shoeprint expert, okay, not going to disagree with you, in fact, my expert and he agree on that, the -- that the prints that the State took was consistent, not a match, couldn't be time dated to the crime. That they agree on. That's credible, reliable, and it's scientific, believable, and it addresses question two, but it's nowhere near proof beyond a reasonable doubt, nowhere near it. It proves that that shoe could have been a -- if not -- we talked about that. Those are the hard science cases. Those are the hard science facts, information that you've got to go on here, on all of it, you can only bring back a not guilty verdict.

I don't want to belabor the point about these snitches, these jailhouse informants and their testimony. I just told

you that that's things that you could use in evaluating. The Judge will tell you at the end, one of the things that you looked at is a witness's prior criminal history, prior criminal record. You can use that in determining whether or not you want to accept his testimony or reject it.

Another thing the Judge will tell you is bias. Motive, bias, or interest in the case, does the witness have any of that? If he does, it will affect his credibility. It just makes sense, and you can use that. I ask you to use your good common sense, the sense that you use in your everyday affairs, before you came in here. Just because you had a seat in the jury box doesn't mean that you can't use your common sense. Everybody makes decisions, important decisions, and not so important decisions, every day of their lives, and you use your common sense making that decision, and I ask you, if you had to rely on these jailhouse snitches to make a decision that was important to you, something that affected your business, or your work, or your family, and you had to rely on James Pearl to make the decision, would you think it was credible? I think we all know the answer to that. It's the same principle in this case. James Pearl's story is a true, classic tale of fiction. It is beyond repair. And the problem that you have with all of these jailhouse snitches, in this case especially, can be traced back to the photo -- you may look at it if you want to -- all this stuff goes back to

your jury room with you -- you may not. It's completely up to you. But there is a photo outside the house, with a gang of people out there watching, spectators.

Excuse me. I apologize.

Officer Arroyo, a Myrtle Beach Police Officer, testified he was the first one on the crime scene. He said it was fifty to a hundred people out there, okay. They had cell phones. They were taking pictures and calling people. That's a big problem with this case. At that time we knew -- the police say it -- knew that they had at least two people that had been in that room that afternoon, that house that afternoon. No doubt about that. We find out, or the Myrtle Beach Police Department find out sometime later, it was at least three people, all right. We've got somebody that's rummaging through the house, by their own admission, although they may tell you they didn't take anything, or maybe they did take something, or yes, I took something but I didn't want to -- you know. No doubt they went in the house. No doubt they rummaged through the house. No doubt that they saw the women's bodies where they were laid, what they looked like, and there is no doubt that they filtered back into the community, these people in the house, and there is no doubt that they talked to the interested onlookers, and there is no doubt that these interested on-lookers talked to their friends and relatives and loved ones that are incarcerated in the

jail, or soon to be incarcerated, or may be incarcerated six months later, and there is no doubt that we have a basic framework of information of what happened at the house, and they put -- some of them put it in their hip pocket for future use, some of them play on it immediately. All you've got to do, if you are out at the jail, tell a guard, I've got information on a double-homicide. That gets you a trip to the Myrtle Beach Air Force Base. That's a day out of jail, and that's fraüen for the people that live out at J. Reuben Long. If you've got a bail hearing coming up, you get a little bit of that information, you get a low bail. Can't get out of jail till you make your bail. You've got a pending charge when you get arrested, you've got some good information. We've got the gold-rush of information for them. Hell, I've got this information that will get you a low bail, some help on your pending charge, and help on your new charge, and a trip out to the Air Force Base. Everybody wants that. Everybody wants that, and they get it. That's the way the system works. Does it make them any more credible? No, they are still the same person they were. Just because they've been called by the State doesn't make them any more credible, doesn't make them any more believable, doesn't make them any more reliable. You can dress them up. You can do whatever you want to with them, but the question remains, would you rely on their information, or their advice for you to make a

decision affecting your family, your business? I think we know the answer to that is no.

I would like for one time, one of these jailhouse snitches to get up on the stand and the very first thing he would say is, yes, the Solicitor didn't promise me anything, but I know he's going to give me something, or he may not, I don't know, but I'm looking forward to it, I want it, that's the reason I'm here, or just be honest about that part. He would catch everybody's attention, everybody might listen to him a little more attentively, at least give him a little bit of a benefit of a doubt, but they won't even tell the truth on that. Can you imagine? You call somebody in there and you ask them a question about anything that you want to know about, and they are going to give you a detailed report, and they say, if just stand by, I've got to tell you this one little bit of information first that's a complete lie, and you know it's a lie, and I know it's a lie, but I've got to tell you that before I start talking about the information that you want. Let me just say that to you. You've got to want to listen to that stuff. You may listen to it, but you are not going to use it for making an important decision. Start off with a lie? That is good enough reason to disregard everything.

These witnesses -- what was his actual name? Matthew Campbell. Drug dealer. He -- no credibility on him, and I

won't waste your time talking about. He doesn't pass the test. He's got information. We know where he got it from. None of the information is reliable.

Craig Burris, the last witness. It's remarkable the stories they come up with, but you know where they got it from? They got it from the rumor myth generated from people walking through the crime scene, having that information, trading all that information, trying to get good stuff about it.

I had some information for you to consider about this case that goes to police investigation techniques, not the best in this case, shoty police work, arguably, and that's just -- it is what it is. The lead Detective on the case, the guy in charge of the whole case when it was going on, he didn't even get called in the case-in-chief. He didn't get called at all by the State. We called him, to talk about these things. We talked to him to find out about these things.

And Pearl, his statement. I had to talk to the police officer myself. I had to call him to the witness stand to talk about that statement. That statement has no credibility whatsoever. It doesn't match the forensic evidence, but the police didn't care, they put him up there anyway. It's unbelievable. You know what I mean by it doesn't match. It doesn't match the forensic evidence.

There was talk early, and in Pearl's statement himself. The first thing he said -- one of the first things he said while the Solicitor was talking to him was that, Jimmy said that he killed those girls. The Solicitor said, what about Monica, and Pearl said, Jimmy didn't say anything about Monica. I'm sure somebody caught that when James Pearl was testifying. That's a problem. That's a big problem. Then it gets compounded, because the Solicitor, she said, well, you said them girls, or girls. Pearl said, yeah, that's me, plural; I used the plural, Jimmy didn't use the plural. That's a big problem. Compound that with, he didn't say anything about Monica, the Solicitor has got a big problem.

Now, that's Donna Elder, a very good lawyer. She goes on, she doesn't forget that she's got a big problem, goes back into it. Tell me about Monica, and you see Pearl hesitate for a second, and then says -- talks about the bathroom, oh yeah, the bathroom. All right. Where -- and I -- whatever it was that he said, the door opened and he pushed her inside and he shot her. That is not what happened based on the crime scene evidence. The crime scene evidence is the reliable evidence. Whoever shot her had -- dragging her down the hallway. We know that. We know that Pearl was lying about that part. There's no doubt about it.

Pearl makes up this story about the -- this confession happened at a hotel room. Well, when the Defense called the

police officer in charge, the head guy, yeah, he went out there. There's two hotel rooms out there -- two hotels out there, one that Pearl says, absolutely they were not staying at, but he may have meant the other one. I think that's the Knights Inn. They went out there, for whatever reason. They can't substantiate his case, can't verify it, but they are going to put him up to testify anyway. They've got to have some kind of evidence, got to have something to connect the crimes to somebody, so that's what they went with. The evidence is not reliable, so I ask that you reject all of it.

We put up -- the Defense put up some evidence in this case. Now, at the beginning of the case I wasn't convinced either way what we were going to do, and that's the way these cases work sometimes, because the defense doesn't have to put up anything, but we decided to put up some evidence. We decided to put up these police officers so we could show you everything that we have to consider, and show you how inconsistent some of these police -- these informants were, and how shoty this work was, and how none of this that they had would support a conviction in this case, that the only evidence would support not guilty or reasonable doubt, which is the same thing. We put that up there. As the witnesses from the State started to testify we put up some other witnesses for the credibility, okay. Somebody on the witness -- I mean, on the jury, maybe talking about witnesses,

and they say, Gardner, he's just as bad as the State, he put up jailhouse people too. Well, I did. I anticipate that the Solicitor somewhat -- may say, may not say, but he may say that, he didn't choose the witnesses, but the case chose the witnesses, or something like that. Well, no, he chooses witnesses just like I choose witnesses, and I chose some jailhouse people. The difference between his jailhouse people and the ones that I put up, I'm not trying to prove, beyond a reasonable doubt, two people should be convicted of murder, I'm putting them up there -- what these other jailhouse people said, all right. You know, for example, Belal Harris. I put him up there to impeach Craig Burris. Craig Burris said that Jimmy Lee told him he did this. All right. Belal Harris said Craig Burris told him he was lying. One of those people were lying. What is that about? So we look at our credibility guide, how we figure it out, and that's y'all's decision to do it. I just simply offer some advice to do it. One of the things that I think would ring home the loudest is, Craig Burris is doing it to get help. He has just recently got help. I don't know if it was because of an alibi, or because of whatever, but he reached out to the police, his charge went away. His charge could have went away because he was not guilty, could have went -- I don't know, and it's not important. What is important is the motivation. What motivated him to reach out to the police with this story was

for him to get help, for him to get somebody to look into his case. That's the motivation. That's the bias. So, is his story the truth? Hardly. He wants to get help from the State.

What infuriated me was we had -- when I was talking with him -- we had just talked about that, and I thought I was going to get him to admit that he was getting some help here, certainly looking for some help here. That's the way the system works here. He agreed to that, and then he said the most profound thing, the craziest thing, I guess, would be a better way to say it, I don't have any experience with that. Well, you just -- and that's when I just got frustrated and went and sat down. He's got plenty of experience in that, and that's the way the system works, so, judge his credibility based on that.

Belal Harris, he's getting nothing for his testimony. I don't have the keys to the jail. I called him to go against the State. Belal Harris says his pending murder charge, or his criminal charges, he's got his stuff, he's getting no help for that. He's getting nothing from me, he's getting nothing from the Defense. That's just something that was important for him to testify to, so I put him up there, and that's what he said, so based on the believability, credibility, reliability, he is much more credible than somebody that's getting favors from the State in exchange for information, in

exchange for information.

So we continued to put people up, some of whom may have given you information to help you decide your case, some of whom may not have. I just thought we would put these up there to show a big picture so you have as much information as you could to decide what happened, or, you know, help you decide your decision. We -- we may not know what happened, okay. I submit to you that nobody in this room, this building, knows what happened. Some murder cases are clear, and easy, and open, shut, some murder cases are mysteries. They turn and they move, and they grow, and they expand, and contract, and nobody knows what happened, and sometimes you never know what happened. You have unsolved mysteries. They've got all kinds of T.V. shows nowadays. They've got unsolved myths, and crime scene map, and innocent project this, and all that stuff for those type cases.

The Defense doesn't have to prove what happened that night out at Pridgen. The Defense can't prove it. That's why the State has to prove it. I tell you it wasn't these guys. I can't tell you who it was, but I can tell you that there is somebody that Monica scratched when she was being drug down the hallway, when she was defecating on herself. She scratched somebody. She got that D.N.A. under her fingers, and that D.N.A. has been testified, the State's expert witness, the S.L.E.D. agent, that D.N.A. excludes these two

boys. That's not -- what that means is, that's not them. What that means from the science, from the science, that's not them. What that means to y'all is that you have to vote not guilty.

I want to talk about the burden of proof for a minute. The burden of proof is always on the State. Just because the Defense elects to put up some evidence should not be confused -- do not let the State confuse you into thinking that the Defense has to prove something. The Defense doesn't have to prove something because, in some cases they can't prove something.

Remember another thing that you can look at when you are trying to figure out the credibility of the witnesses. It's the demeanor on the witness stand. How did they act when they got the hard questions. And you know who acted the same, no matter who was asking them the questions, told or gave his information? That was Ortuno, the D.N.A. guy. We don't know who did that. The State doesn't -- and the State has to prove, but don't get confused because someone -- cross-examination from the State to the S.L.E.D. agent about that plug, couldn't it have been this, couldn't it have been walking across the carpet, could that do it? Is it possible that something else might have done something else? Could a baby have done it. That is wild and far out how this stuff has nothing to do with this case. Those are the kind of

questions that looks like that they are looking for reasonable doubt, and an out for them, the State, for the D.N.A. evidence.

Reasonable doubt does not go to the State. They don't get reasonable doubt. They have proof beyond a reasonable doubt. They have to do that. Don't be confused about that when they start second-guessing their own State witnesses about it. The truth is the truth, and the truth won't change. Witnesses' testimony, they will change. Human beings are all the same, relatively speaking, when it comes to memory reception. We all know that. The older something is in time the less you may remember it. That's fine. I'm not talking about that stuff, but that's the stuff that will come up in a case. I'm talking about the flat out story telling. Those people will change. What won't change is the truth.

One thing that came out, and we put up DiLorenzo. The Defense put up DiLorenzo, not the State. It is -- and it came out on cross-examination by the State, the State cross-examining their own lead investigator, talking about Phonetia Hightower. Now, I'm sure everybody picks up on that, but he was -- got really -- you could tell his demeanor changed. He was excited to tell you that because he was going to tell you that Phonetia had been arrested for giving false information in connection with this case, all right, and went on to describe what it was about, said that it was for giving an

alibi for Jimmy, that's why she was arrested. That's all the evidence in the record we have about that. That isolated, alone, the State could probably use as some type of evidence to try to persuade you that -- well, try to persuade you of guilt, but that's not going to prove guilt. It's going to prove that maybe -- that Phonetia was trying to manufacture an alibi. They arrested her for it.

Well, if it's isolated alone, that's the way it looks, but you play it into the middle of this case, it's got reasonable doubt all over it. Plug that little tidbit of information into this case, and it's reasonable doubt. Why do I say that? Because every case, even a complicated one, has a theory, all right, and the theory -- I told you Brad did -- Mr. Richardson did a good, powerful opening statement. He's got a good theory of this case. It's got holes in it. It's not his fault. That's the evidence that he was dealt with, okay, but the standard remains the same. We don't adjust the standard, which is beyond a reasonable doubt, based on what we've got. We just don't do that. Okay. But the theory, all right, we've got these two fellows arrested. How are we going to prove they did it? Well, we've got these people coming forward. We know why they are coming forward. We know about the gold rush of evidence. We know about the people wanting to go to the Air Force Base. We know all about the get out of jail free cards.

We've got all that, and that's good, but there is no jury going to believe just a bunch of jailhouse snitches. We've got to have some other stuff. We got anything else? How am I going to get them connected to Pridgen Road? I know what we can do. We can get Phonetia Hightower. That's the theory of the case, that Phonetia is a cousin of the decedent, the victim, Jamilla. The theory of their case, they want you to believe, that she -- that Jimmy came over and picked her up while they were playing cards at Mildred Brown's house, and that they want you to think that Jimmy and Phonetia went over there, and that Phonetia somehow persuaded her cousin to open the door so that Jimmy could go in and take them out, or rob them, or both, or whatever that the State wants you to think. The problem with that is, if the State really believed that Phonetia did that, if they really believed that that was the case, that was the truth, that was what happened, what do you think they would have done?

See that man sitting over there to your left of Jimmy, that's Chris, that's Christopher Stephens. He's not charged with murder. He's charged with accessory. What do you think they would have done with Phonetia if they had thought that she drove the car over there? What do you think they would have done with Phonetia if they thought that she helped Jimmy get in the house? She would be charged with murder. She would be sitting over there at the Defense table, charged with

murder, and she's not. She is charged with giving false information. Why do you think that is? Squeeze a little leverage out of her? Maybe. Fits right in there, doesn't it? I don't know. The State didn't call her, probably one of their key witnesses.

The State didn't call Mildred Brown, did they? They called Christy Pearl, Christy Pearl, the cousin of James Pearl. One of the things that Christy Pearl said that probably is credible, believable and reliable, one of the things she said, that she cares for her cousin, James, but she don't want nothing bad to happen to him. Well, I bet she doesn't, and nothing bad may happen to him because based on his lies that he told up here in this trial.

Put all that information together -- oh, Christy, if I heard the testimony right we've got Ms. Greene, Ms. Greene, I think testified, the lady next door -- I'm not sure how next door -- but she's the one that heard the gunshots or firecrackers, or whatever. She's credible. She's reliable. She's believable, and she's got no dog in the fight. She don't know any of these people, I presume. She's certainly not working off charges. She just heard something and she was talked to talk about it. And she was called by the State for one reason. Y'all know what that was, right? Time of death, twelve o'clock, midnight. That's what I got out of it. If I got it wrong, when y'all go back there y'all do it the way

y'all want to, what I got out of it was the time of death, midnight by the neighbor heard what she thought was fireworks, but it was the wrong night for fireworks; it had to be gunshots.

Despite the fact that James Pearl said that Jamilla was shot three times, she was only shot once. If we go with the time of death as midnight, if I remember right I think that Christy said she was partying, they were smoking, there was drinking going on, nobody was really looking at their watches, so nobody knew what time anything was going on. But I think Christy's mother called for her to go get the young'uns, something like that, and she looked at her cell phone and everybody know what most cell phones have on them when you look at it, and that was 4:30, so I don't think Phonetia left. I don't even know if Phonetia was there, just don't know, but if she left, don't you think she left at 4:30, and if she left at 4:30 that's four and a half hours after the gunshots, and if she left with Jimmy Lee to go do the crime, they are late, but if the police really thought that they did all that she would be charged with murder.

The Judge is in charge of the law. He rules. Like he said at the beginning of the trial, he's going to conduct the trial. The lawyers do their roles in it, now it's time for you to do your roles in it. Y'all are twelve, fourteen -- twelve judges of the facts, that's it. There's a fact, the

Judge is going to give it to you to decide. This credible, believable, and reliable, that's y'all, only y'all are the only ones that do that. He's going to give you the facts for y'all to decide. Now if it's a law issue you've got to let him do that. Okay. He's going to charge y'all on the law, and under your sworn duty, your oath that you took, you follow that law, you apply these facts, and when you come back here your verdict will be not guilty. Why will it be not guilty? It will be not guilty because the science says they are not guilty, the D.N.A.. There's somebody out there with Monica's fingernails on them, while she is being drug. That tells you not guilty. There's somebody's footprint in that bathroom in that fecal matter. That tells you they are not guilty. All the rest of the evidence is reasonable doubt, and reasonable doubt is not guilty.

Commend you for your service. Thank you for your time, and I -- that is the verdict we will be asking for you to bring back, not guilty.

THE COURT: All right, Mr. Frederick.

MR. FREDERICK: May it please the Court.

THE COURT: Yes sir.

MR. FREDERICK: Can everybody see that?

Well, I want to tell you that every time I walk up here I'm nervous, I'm a little bit afraid, shaking just a little bit, and I imagine that they feel the same way, but, I mean, I

just felt the need to tell y'all that so you know. Mr. Gardner and I, I mean, we've got these men's lives in our hands.

I have been told over the years that good lawyers never rely on notes. You don't see Mr. Gardner do it. I promise you you won't see Mr. Richardson do it, but as I give this closing argument -- this has been a long week, and it's been a lot of information, and I very well may turn to my notes as I'm talking to you.

You only have the testimony of one single witness to consider in this case regarding Christopher's accessory before the fact charges, and that's the jailhouse snitch, James Pearl. This entire week no other snitch that they put in that stand said anything regarding Christopher Stephens and accessory before the fact.

And you are going to have to ask yourself the question, can I convict a person based on weighing the testimony of one witness, and depending on your beliefs the answer to that question may be no, not under any circumstances. The answer to that question could be, it depends on who the witness is, and it depends on what kind of evidence there is to corroborate that witness. The answer to that question has to be no in a case where there is no reliable evidence to corroborate that witness, in a case where we know that the police were telling witnesses what to say, in a case where all

of the credible, believable and reliable evidence pointed elsewhere. The answer to that question has to be no. They can take and pick any person in our community, they could pick me, they could pick you, and make a case against you with jailhouse snitches. When that man came in here three days ago and testified to you we all saw, and we all heard what happens. He was lying to us. He came in here and he put his hand on the Bible, and he swore under oath, and then he lied to us, and I'm going to tell you, I need to tell you, that I don't blame him, and I don't think that you should blame him, because he's only doing what he has to do. He's only trying to survive. He was lying to us, but lying is the least of his problems right now.

The other day I read a story about a man, a good man, a strong man, who heard the cries, the desperate cries of a drowning man out in the middle of a lake. Immediately he jumped into the water and he swam out to the drowning man to save him. And this story does not have a happy ending. You see, the drowning man grabbed onto the good man, and in his desperation he dragged him down, and both of them died in the lake. That snitch is the drowning man, and he will grab onto anything to save himself. He's like a man out in the middle of the ocean with no life raft, no boat, no life vest, and he is just flailing around, he is just trying to keep his head above water. He will grab onto anything, he will do anything

to save himself. The drowning man has no conscience. The drowning man has no sense of morality or decency. The drowning man is a dangerous man. You ask any lifeguard and they will tell you that the most dangerous part of a rescue of a drowning man is the drowning man himself, because he will grab onto the lifeguard and he will drag him down to his death in a matter of seconds. Lifeguards are trained in what to expect, and how to deal with a drowning man. The training of the lifeguards before they go onto duty can help us here in this case, because James Pearl is the drowning man. He has been to prison, he is going back to prison, and he knows it, and he feels it, and it's as if his life is about to end and he knows it, and he is grasping for any help that he can find. He was sitting in his jail cell and the water was about to close over his head for the last time, and the Prosecutor and the Investigators swam up to him, swam up to him and they offered him hope, and of course he grabbed onto it, and he would do anything, and he would say anything to grab onto it. The Prosecutor and the Investigator swam up to that drowning man and they offered him a hand, and a rescue, and that desperate soul grabbed that hand wildly, and he dragged them under, and now they have lost their moral compass. The Prosecutor and the Investigator got too close to that drowning man, and they offered him something he could not refuse, and now he has dragged them down.

The drowning man is grasping one last time to save himself, and he's grasping at you. You see, the drowning man has to convince all of you that he is telling the truth. He has not gotten his deal yet, and he feels that, if he doesn't get his deal that he's going to go down, and he's going to drown in prison, away from his family, and away from his freedom. Remember, the drowning man will grab at anything. He will say anything to save himself. He is the drowning man. Lying is the least of his problems now. Do not let him drag you down, and do not let him make you lose your moral compass.

Let's talk about reasonable doubt. You've heard some of this before, but in different courtrooms, and in different types of cases we use different standards of proof. To understand reasonable doubt and what it means I think that we need to place it into context, and so I'm going to talk about some of those standards of proof.

The lowest standard of proof would be a scintilla of evidence. It's not enough evidence to prove anything. It's nothing more than a mere suspicion, and it's certainly not enough to convict a person of a crime. A reasonable suspicion is enough evidence for an officer to stop a car on a highway and briefly detain the people in the car just long enough to write them a ticket, to run a computer check and then to let them go. The reasonable suspicion is enough evidence for an officer to pat somebody down if they suspect that they have a

weapon on them. It's not enough evidence to search a person. It's just enough to pat them down, for reasonable suspicion is not enough to convict a person of a crime.

Probable cause is enough evidence for an officer to actually search a person, or to search a car. When the Grand Jury indicts the case, just like the indictments you heard read to you at the very beginning of this case, when a Grand Jury indicts a case they have found that there is enough probable cause for a case to go forward to trial. It's enough to get you here, but it's not enough to convict a person of a crime.

The standard of proof that most people are familiar with is a standard of proof that we use in civil cases, that's presumption of innocence. A presumption of innocence means that, if one side of the evidence weighs even slightly more than the other side, fifty-one percent, then you can find in that person's favor. If all we were fighting about here today was money, a presumption of innocence would be the standard of proof. Presumption of innocence is not enough to convict a person of a crime.

Clear and convincing evidence is the standard of proof that we use in termination of parental rights cases in Family Court. If the State wants to permanently take your children away from you then they have to prove by clear and convincing evidence that you are an unfit parent. Even clear and

convincing evidence is not enough to convict a person of a crime.

And the last, and the highest standard of proof in our justice system is beyond all reasonable doubt, and this is the standard of proof that we have to use in every criminal case. A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. It is a doubt for which you could give a reason. Reasonable doubt is a safeguard that is given to all citizens in our Country. It protects all of us. It prevents the conviction of innocent people. Why do we have that safeguard? Why is it that we have a presumption of the innocence in civil cases and reasonable doubt in all criminal cases? The Founding Fathers, in our Constitution, said that the prosecutor has to prove his case beyond a reasonable doubt because they knew, they knew from their own experience way back then with the Crown, they knew that the prosecutors had all of the power, they knew that an innocent person can never prove a negative. They knew that seldom can anyone prove their innocence. Because the prosecutor has all the power he can compel testimony through the threat of prosecution and the promise of freedom. We can't do that, and so the prosecutor has to prove his case beyond a reasonable doubt, because the prosecutor has all of the power. We have the right to a trial by jury, so that you are here to stand between Christopher and the awesome power of the government.

The Founding Fathers said, in the Constitution, that they must prove their case until all doubts are removed from your mind. They have to prove their case until you do not hesitate before reaching a verdict.

Reasonable doubt. If you will, imagine that we have a box here. I put a cat into the box, and then I put a mouse into the box with the cat, close the box up tight. I tie it with a string, and we leave. After a few hours we come back, we untie the string, we open the lid, we look into the box, and we see a cat, but we don't see a mouse. Is there any doubt what happened to the mouse? Now just imagine we have a box. Into the box I put a cat, into the box with the cat I put a mouse. We close the box up tight, tie it up with a string, and we leave. We come back in a couple of hours, I untie the string, we open the lid, we look into the box and we see a cat, but we don't see a mouse, but we see a small little mouse size hole in the corner of the box. That hole is reasonable doubt.

This case, when we look at the facts in this case, there's not just one hole in the corner, this box is full of holes. The reason that they must have credible, believable and reliable evidence, and they have to give that to you is because we cannot just guess a person into the penitentiary.

Fingerprints were taken from the scene, and they didn't match either of these Defendants. Investigator Carol Allen

said that she took -- lifted ten fingerprints from the scene, she compared them to Jimmy Lee, she compared them to Christopher, she compared them to Monica's, and she compared them to Jamilla's, and they did not match any of them. That is credible, believable and reliable evidence that someone was in that house.

Footwear impressions were taken from the scene, and just last month when they compared them they said that part of the footprint from the shoe that they think is Jimmy Lee Sessions' was consistent with the impression, a partial impression, from the crime scene. He explains that what that means is they don't match, and besides that, the shoe that they think is Jimmy Lee Sessions' has wear marks on it that were not found in the impression.

They want him to say, yes, there is a match between these footprints and the shoes that we know, without a doubt, are Jimmy Lee Sessions', but he won't say that because it's not true. That, coming from the State's own expert, during their own case, is credible, believable and reliable evidence.

As Mr. Gardner said, you are going to be able to look at the shoes if you choose to, you are going to be able to look at the photos. When you look at those shoes -- there's five pairs of them -- four pairs of them, as our expert testified to, are identical. He measured them. You are going to see the same pattern in them. You are going to see the same stars

going around the outside edge, Nike shoes.

I'm not going to look for it right now but there is a photo of the bathroom that shoes two footprints pretty much standing in the position that you found Mr. Richardson in during his opening statement. Those footprints, aptly placed, are in, forgive me, the fecal matter. Their expert testified that there was no way he could date those footwear impressions.

Common sense -- we didn't need our expert to tell us this. Common sense tells us that when there is fecal matter at the crime scene it's going to dry at some point, and the footprints that were found in the fecal matter were contemporaneous with the crime. What their expert did not tell you is that there were two footprints in the fecal matter that did not match, and were not even consistent with any of those shoes.

There was D.N.A. collected from the crime scene. It was compared with both of their D.N.A.. They didn't take their D.N.A. until two months ago. Last month they compared the D.N.A. that they had to both of these guys and he didn't say it's not consistent with, he said it absolutely excluded them, it absolutely excluded them. They were able to say with certainty that there was one unidentified male, and one unidentified female at the crime scene, and it was not either of these two.

"LeeLee" Washington, his testimony had no bearing on Christopher's accessory before the fact charge, but we put him up here so that you could see the police's conduct during the investigation of this case. The fact that you heard testimony that the investigators were threatening witnesses and telling them what to say, telling them what to say to you in court, is reasonable doubt.

The fact that the testimony of witnesses like James Pearl was bought and paid for by the Prosecution is reasonable doubt. James Pearl, on the day he was arrested, he was interviewed by the police and he repeatedly, repeatedly told them, he admitted to you that he repeatedly told them, when he did not know he was being recorded, that he was going to tell them whatever they wanted to hear, so long as they helped him with his drug charge. In his testimony he learned about the murders by a phone call at 1 o'clock P.M. on Friday, he learned about the murders by a phone call at a cookout Friday night. He went by Jamilla's house to give her money that he owed her at 1 o'clock P.M. Friday. He was with Christy Pearl when he went to the house, but Christy did not mention to him that Jamilla was dead.

He says that Jimmy Lee confessed to him in a motel room, Room Vicit at the Days Inn, and yet you have the records from the Days Inn. I don't remember the man's name, but there was someone staying in the room who was visiting from New York.

The investigators knew that he had not stayed at the Days Inn. Investigator DiLorenzo told you, after they heard this story from this guy they went and they tried to check it out, they went to the Days Inn, they checked the records, they showed the night manager a photo of James Pearl and they said, no, we've never seen him. James Pearl says, without a doubt it was Days Inn. The investigator says, maybe he was wrong, maybe it was the motel over here cause it's nearby, maybe it was the Knights Inn. You've got those records too.

James Pearl is facing drug charges. He's facing charges of threatening the life of a public official. He has a daily drug habit, by his own admission, and he is the drowning man.

Christy Pearl came forward, two years later she came forward, in August of 2008, in an attempt to corroborate her cousin's story, and she says they were partying all night at Mildred's house, they were doing cocaine and drinking, but not Christy; she smoked one blunt, but she stayed up all night long, she went down on a serious mission with Mildred and Jamilla late Thursday night, after dark, to the Super 8 Motel, they dropped Jamilla back off at her house and they left her there. No one was at Jamilla's house except for Monica. Of course Josh Best says that he was at Jamilla's house, and no less than six other people were at Jamilla's house.

They are saying that the time of death was around twelve o'clock midnight. I have to agree with Mr. Gardner, why else

did they put Teresa Greene on the stand, other than to establish the time of death, but Christy saw Jimmy Lee at Mildred's house late Thursday night she says. She doesn't know what time it was, but then she admitted she told the investigator that she did look at her clock on her cell phone, it was around 4:30, it was sometime before then.

Christy is told that Jamilla is dead around eight o'clock the next morning, but then she goes by Jamilla's house around one o'clock P.M. with her cousin, James Pearl, who she forgets to mention to Jamilla is dead. Why are we knocking on her door? She says that James Pearl was at Mildred's house Thursday night partying with them, doing coke and drinking, but James Pearl did not mention anything to the investigators about being there.

Matthew Campbell, he was on probation, he had charges pending for armed robbery, lynching, pointing and presenting a firearm. He got arrested again on a drug charge, showed up with his lawyer to turn himself in on the drug charge, and talked to the investigators about this case, and because they have the wrong guy his charges were dismissed the following month. Now he has more charges, and here he is.

Craig Burris sent a note to the investigator, told him, I'll give you information you talk to the Solicitor's Office, and you get them to listen to me because they have the wrong guy. Four days later his kidnapping charge is dismissed. He

gets charged with murder, and he's back in jail. Now he's looking at life in prison, and they are allowing him to testify in this case. What could be Craig Burris' motive for testifying in this case, other than trying to shave some years off of his life sentence? He told you himself he was under investigation for this murder and I didn't even ask him that question. He told you he's called "Snagger", the same name they've attributed to Jimmy Lee over here. His rap sheet includes multiple gun charges, violent crimes and drug convictions.

You remember at the beginning I told you, I'm not going to point the finger at any one person, and I still can't. I can't tell you this person, without a doubt, committed this crime, because the evidence points to a lot of different people, and a lot of different scenarios.

The Prosecutor tells you that greed motivated this killing, greed and lust for drugs, and yet, as I said, they took a briefcase full of drugs out of the house. They got a Search Warrant for Antwann Higgins' apartment, they were looking for guns with a map drawn by Melissa Gomez to show them where the guns were. They found the wrong guns, and they found shotgun shells but no shotgun. They did find a shotgun in Jamilla's house, and they found a small amount of drugs. Nobody got arrested. Melissa has never been charged with tampering with evidence. She was never charged with

obstruction of justice, never charged with a drug offense.

Most of these witnesses, they've got nothing to do with Christopher. Why do I keep talking about them? Why am I cross-examining them? Because what they are trying to do here is wrong. It's wrong, and this is not justice.

Let me ask you a question. If I presented a witness to you, and before that witness testified I told you that I have paid him off, One Thousand Dollars for his testimony, would that change your opinion of that witness, would that make him more or less reliable? Does money change a person's sense of morality, can it change a person's definition of honesty? If I told you I had paid off the witness One Thousand Dollars I think then you would not, and you should not, trust or believe that witness. If I told you I had paid off a witness One Thousand Dollars I think that you would not, and you should not trust me for putting that witness on the stand, because the price that you pay when you pay off a witness is not only that witness's credibility, but your own credibility. And the Prosecutor would say that, I didn't pay off any witnesses, I didn't do that, and let me ask you this, if I offered you Ten Thousand Dollars to go to prison for a year would you take it? And the answer is no, because your freedom is so much more important than your money, and so it is with the snitch, and what we've learned in this courtroom this week is, unfortunately, the currency of the realm here is freedom, and

it's so much more valuable than money.

Let's talk about power for a minute. We are conditioned to believe, our entire lives, that power over our lives is always vested in someone else, our parents, and our teachers, our bosses, politicians, but I can't think of any better example of the power of the individual in America than a person sitting on a jury. Your verdict has to be unanimous in this case. Each of you has to vote to send Christopher away, or set him free, and that gives each of you a huge power, because if any one of you says no, I don't agree to send Christopher away, then you can stop it, any one of you can stop it. What happens to Christopher is each juror's personal responsibility, and when you go back to the jury room to deliberate you listen to each other's arguments, but no one has to do violence to their personal convictions in reaching a verdict.

When I sit down that's -- this is the last that you are going to hear from me. When the Prosecutor is making his argument I can't get back up and I can't rip up anything that he says, I can't argue any more, and the logic behind this is because they do have the burden of proof, and we did put on a case, then they have the right to rebut what we have said to you, and so leave you with the words of the Prosecutor ringing in your ears as you retire to the jury room. I won't be able to get back up no matter how bad I want to, but I know that

all of you have been listening this entire trial. I have watched all of you, and I know that you have been paying attention, and you have been taking this so seriously, and I appreciate that, and I know -- I'll ask you this, when you hear the Prosecutor's argument, know that I can respond to every point that he raises, every one, and when you go back into the jury room, because I cannot respond to them and answer those points, I ask that you do it for me.

In a few minutes after you hear the Prosecutor's argument, after you hear the Judge's charge on the law y'all are all going to get up, you are going to walk back through the door again, you are going to go back in the jury room and you are going to make your decision about what justice is in this case. This is the hardest part in this trial for me, because I have to entrust this case, and I have to entrust Christopher into your hands, and I can only hope that I've done the best that I could, and I've done everything I could, I've said everything that needed to be said, because this is it.

Before I finish I want to share with you the story that you've probably heard before, but that I think is more than appropriate for this time in this case, and it's about transferring the responsibility of this case from us, on behalf of Christopher, to you. It's a story about a wise old man, and a young boy who wanted to show up the wise old man as

a fool, and one day the young boy, he found a small bird in the forest, and he had a plan. He was going to take the bird to the old man, cupped in his hands, and he would say to the old man, old man, what do I have in my hands, to which the old man would reply, you have a bird, my son, and then the boy would say, old man, is the bird alive or is it dead, and if the old man said the bird was dead, then the boy would open up his hands and the bird would fly freely back to the forest, if the old man said the bird is alive, then the boy would crush the bird, and crush it, and crush it, until it was dead, and so the boy sauntered up to the old man, with the bird in his hands and he said, old man, what do I have in my hands, and the old man said, you have a bird, my son, and with a malevolent grin the boy said, old man, is the bird alive or is it dead, and the old man, with said eyes said, the bird is in your hands, my son, and so, ladies and gentlemen, Christopher is in yours.

Thank you.

THE COURT: All right. Solicitor.

MR. RICHARDSON: Greed. Cold, calculated, malevolent and murderous, greed. I began this case by telling you that's what this case was about, the lust of these two Defendants for drugs and money. That's what drove them to the crime. That's what drove them to plan, scheme, and orchestrate this brutal armed robbery that turned into cruel and terrible murder.

They got what they wanted that night. Today they must get what they deserve, justice.

Folks, in just a few moments Judge John is going to give you the law, and he's going to first start by telling you you, each of you, are the judges of the facts, y'all will take everything you've heard from the witness stand, the hundred and some odd exhibits the State put in, whatever the Defense put in, you will take all that and you will weigh those facts, but first he's going to give you the law which you are to apply to those facts. He's going to tell you about the law of first degree burglary, plain and simple. He's going to tell you that it's entering in a dwelling, a house, with the intent to commit a crime therein, and while therein you injure somebody, you have a weapon, or it occurs at night, folks, we are hitting on all three of those. Two girls were murdered, it was at nighttime. We know a forty caliber handgun was used. No brainer. He will tell you that armed robbery is taking of another's property, and it doesn't matter if it's legal property or illegal property, the mere taking of their property, by force, and using a weapon, it's armed robbery. Once again, we had the forty caliber handgun. The property was taken, the drugs, the money, the cookie jars were gone. There are no drugs in the briefcase. It went to the police, so we know the murderers and the robbers took the drugs out of the house.

And the Judge is going to tell you what murder is. He's going to tell you that's the unlawful killing of another, with malice aforethought, and that malice can be implied in this case because it occurred during the commission of a crime, because a forty caliber Smith & Wesson handgun was used. There can be no other reason to use that. Once you take that handgun in for an armed robbery and death occurs it's murder. So, folks, it's cut and dry.

Now where it gets a little more confusing the Judge is going to have to instruct you on what accessory before the fact of a felony is. And all that is, if you help, aid, assist or counsel, in any way, another with the commission of a crime prior to that crime, and you are not there, then you are an accessory before a fact. That's what we have here with Chris Stephens. I can't put him in there. If I had evidence to put him in the house with Jimmy Lee Sessions he would have a murder indictment, he would have a burglary in the first degree indictment, he would have an armed robbery indictment. All I can prove, and all that I have proved is that he planned it, told Jimmy Lee, you need to be careful, let's rob her, but I can't go in, and so that's why he sits here today with an accessory before the fact to murder, to murder, and to that armed robbery indictment. Folks, that's the law.

The Judge is also going to charge you on what the Defense has already talked about, reasonable doubt. That's

always a good question for jurors, because even my grandmother listening to the radio when she was a little girl heard all these courtroom dramas on the radio talking about reasonable doubt. What is it? What is it? Judge John will tell you, to prove somebody guilty beyond a reasonable doubt the State must give you evidence that leaves you firmly convinced of their guilt. That's what I did, because my job, my responsibility, as an organ of the State, is to give you the relevant, competent, and admissible evidence, that will help you reach a true and just verdict. It's not the slap up on the stand stuff that has no place in this courtroom, no meaning in this courtroom. It's not to have a police officer read off a list of names of, I heard somebody said so and so, wrote it down that they read that so and so did it. That -- that's ridiculous. That's not my job. My job is to give you the confident, relevant, and admissible evidence, to lead you to a true and just verdict, and that's what we've done.

Folks, your job is made a little bit easier, because I believe even the Defense almost consents as to what happened, where it happened, when it happened. Jamilla Hightower and Monica Wall, they were murdered, execution style, right in the house, their house at Vicit Pridgen Road, Myrtle Beach, South Carolina, about midnight, June 8th, 2006, so we know what happened, we know where it happened, when it happened. You have a couple of ultimate questions left, why did it happen,

who did it? I've told you, it was for greed, for the lust of drugs and money, and I've proven, who? Chris Stephens planned it, Jimmy Lee Sessions did it. You've got the brains and the braun, the accessory and the murder.

You looked at a mountain of evidence. The State called seventeen, eighteen witnesses, and hundred and some exhibits, and I've got to do that, because I have to prove those elements. I can't just say, we know it's murder, let's just jump on to something else. I have to prove every element. That's what I've done. You have learned during the past four days of testimony, Wednesday, June 7th, 2006, three individuals sit in a car, Jimmy Lee Sessions, he's up in the driver's seat, Christopher Stephens, he's in the back, his car, his blue S.U.V., James Pearl -- and James Pearl, unabashedly told you, they were talking about robberies, who they could rob, they needed money for drugs. They had that greed going. They discussed old man Braze, can't do him because he might have a heart attack, how about "Ropper", Matthew Campbell, no, can't do him because, as you saw, he is a snitch, he'll tell on somebody, and then that's when Jamilla Hightower has some of the worse luck in the world. She picks that moment, that June the 7th, in the afternoon to say, there's Chris Stephens, and she rides over to the car on her mo-ped and gets off, and gets to the window and they to arguing, you owe me money, pay me. James Pearl told you that,

it was a heated argument, and it ends with Chris Stephens saying all right, fine, I'll pay you, and Jamilla says, fine, gets back on her mo-ped, goes away. Man, Chris Stephens just got called down by a woman, in front of his boys, I know who we'll rob, Jamilla Hightower, soft target, female drug dealer, and she just called me down, let's rob Jamilla, but I can't go in, James, why don't you be the door man, let us in. James says, uh uh, uh uh, I can't do that, Jamilla is my girl, I can't go in there. Jimmy Lee Sessions, he's not so shy. He says, I'll do it, I'll do it. Chris Stephens says, man, you are going to have to be careful, she ain't going to give it up. Jimmy Lee Sessions, that's all right, I'll rob her, and the money is right, and I'll put her down if I have to. I guess he carried out on his promise.

Go on forward to that night. James Pearl gets out the car. He doesn't want to hear anymore about it, this planning, this scheming, this orchestrating this robbery that turns into a murder. Chris Stephens knows it can turn into a murder, knows it will turn into a murder because he just said, you are going to have to put her down. Jimmy Lee said, I will.

We got on to that night. Rodney Turner, Jamilla's first cousin, goes up to his house -- goes over to her house, [redacted] Pridgen Road. He knows it's that night. He remembers the last time he saw his cousin alive. And he goes over there, says, what's up, girl. He's got his little baby boy with him.

Who else is over there, Lamont Garner, Perris, Devon Harris, one of Jamilla's other cousins. I believe Rodney said there was another young man over there, and while they are there laughing, having a good time, who shows up? Chris Stephens. He's dressed in all black. He's driving an S.U.V. with highbeams on it. We don't know if Jimmy Lee is in that car or not. We -- we don't know who is in the car, don't know how many are in the car, but we know, we know that Chris Stephens is there, and when he comes in and sees all those people he kind of freezes. That's what Rodney said, he kind of freezes. Whoa. That's important because you heard Lieutenant Prodan tell you how the crime occurred, how it was pre-planned, how the robbers were going to pick a time that's appropriate. Folks, that's a myth. It's not appropriate when you've got all that muscle in the house. You've got four guys, two girls, and a little boy. This just ain't the right time to do the robbery, and so he's a little frozen. Got to have some reason to be there, and he calls Jamilla out. Rodney doesn't tell us what goes -- what the conversation is out there. The door was closed. He can't. He's telling the truth, he doesn't know, but he can tell you that whenever Jamilla comes back in the house she's in a different mood, she's disturbed. Maybe she got a vibe, maybe she got a threat, maybe she just noticed that Chris Stephens was wearing all black that night, maybe she saw somebody in the car, but she's scared.

We move on to the next day, June 8, 2006. Matthew Campbell took the stand and he told you he's got cameras at the house. Folks, y'all know why Matthew's got cameras at the house. He told you he had been robbed before, and he sees somebody outside in a black hoodie. Whoa, let's go see who this is, don't want to be robbed again, and he goes out and he runs into Jimmy Lee Sessions, "Snags", a guy he knows, a guy he says he would not get confused with anybody else in the world, he knows him, says he's got a black hoodie and he's strapped, got a gun on his side, and he said he's geeked up, got somebody else with him. It's not Chris Stephens because Matthew said he knew him, but he's got somebody else with him, and he says, man, we are about to pull a rib, Jimmy Lee is geeked up and he says he's about the pull a rib, got to get light, going to pull a lick, a drug robbery. Matthew says, man, whatever. He doesn't want to get involved. He told you that in June, he didn't want to get involved. So he goes on back in his house, leaves well enough alone. Jimmy Lee is just a short distance from Pridgen Road. Can't go over there yet though. You've heard testimony about other people being over there right now. Maybe Jamilla is not back yet, but can't go over there. It's not appropriate yet, and he doesn't have his key, so that same night -- this occurred sometime around ten o'clock, Jimmy Lee goes over to Dunbar Street. They get a knock at the door. Christy Pearl is sitting at the

table playing cards. Jimmy Lee comes in. He's got that black hoodie on. What else does he have on? Gloves. He's got gloves on. It's June, 2006, in Myrtle Beach, South Carolina. It's first week. There are kids out there laying out on the beach, taking midnight swims, but Jimmy Lee Sessions feels the need to wear a hoodie, have it pulled up, wear gloves. Folks, there's only one reason for that, and we know why, he doesn't want to leave evidence behind. But he gets Phonetia, she goes right with him, she falls right in line with him, Phonetia, who tries to give him an alibi, and then, as Eric DiLorenzo said, wasn't the sense of her memory serving -- him saying it or not, but charged her with misprision because she admitted to lying about that alibi. She gave a false alibi for one and only -- one and only reason, but she goes with them, and that is important, folks, because as Lieutenant Prodan said, the only way you are getting in Jamilla's house -- and there's no sign of forced entry -- you've got to have a key. Phonetia is that key. Phonetia gets them in. James Pearl told you what a door man does. Jamilla ain't letting just anybody in her house. She lets her cousins in. She will let Rodney in. She will let Phonetia in. We know how Jimmy Lee got in there.

Go on to midnight. Those fireworks popped off. It's not fireworks. Those are shots. Don't know -- Ms. Greene heard the echo, and that's why she heard the multiple shots. She thought -- she knows she's hearing shots and that's not

usual. We know those girls die around midnight, June 8, 2006.

And we go on into the morning time, the one time, the one time that Christy Pearl is sure of is 8:05 in the morning. Why? Folks, she's got to get her mama to the bus stop, that same bus stop she had to take to work. She knows that bus schedule. She knows what time she's got to have mama there, because mama will cut your tail if you don't get her where she needs to be. So she drops her off at the bus stop at 8:05 and decides she's going to pull past Dunbar one more time on her way home. She's been up all night. She's tired, but she still wants to see what's happening, so she pulls down Dunbar between eight and nine A.M. in the morning. Now mind you, Jamilla is not found till 6:30 in the evening, dead. Monica is not found till 6:30 in the evening, murdered. But she runs into Phonetia. Mildred Brown walks off and Phonetia walks up and says, girl, they killed Jamilla. Christy said, stop playing. She didn't take her seriously. Phonetia is known to spread rumors, to lie. She's like the little boy who cried wolf. Like the little boy that cried wolf, there's one time that she's told the truth. She knew Jamilla was dead. There's only one reason she would know Jamilla is dead. She took Jimmy Lee over there.

And folks, they are trying to point out that, why isn't Phonetia sitting at the table today, and rightfully, y'all are probably wondering the same thing. Folks, I've got the brains

and the braun. I don't have the silly little key girl at this time. That's for another jury, for another day.

We go on later in the evening, folks. Christy, she doesn't take Phonetia. She takes James over to the house, rings the bell. No answer. Six-thirty that evening Antwann shows up and finds them. You heard the shock in his voice on the 911. You heard Delwyn Smith and Officer Arroyo tell how he was shocked when he found his cousin murdered, Monica murdered, and you saw the crowd going out. Calls started going out, out to graduation, out to people at Futrell Park. James Pearl gets a call, you know Jamilla got killed. He thought it was another Jamilla, that Jamilla Washington that had testified in another trial, but they tell him, no man, it's your Jamilla, Jamilla Hightower. He's shook up. But he does get one more call that night, one more, Jimmy Lee Sessions. Jimmy said, yo, man, you my boy, come on, I've got a party for you. This is a boy who he was trying to plan robberies with before, so yeah, they are cool and sit tight at this point. And so James Pearl says, okay, I'll take a ride. He knows what a party means. He's a coke feign. He told you, back then, nineteen years as a drug addict, nineteen years using cocaine, so yeah, that cocaine is calling, he's going, and he gets to the room. Was it Room [redacted]? Don't know. Was it the Days Inn, the Knights Inn? You heard Officer DiLorenzo tell you they checked out the Knights Inn because the

information that Phonetia gave them about where she picked James up on that Saturday, June 10th, so it' s one of those, those records. Don't know what room they were in actually. He knows the place. He over at a hotel across the waterway. When he gets to the door he walks in and there's a hooker there, whatever you call them, and there's Jimmy Lee Sessions, with his gun, and he's got a plate of cocaine, dinner plate of cocaine, never seen Jimmy Lee Sessions with that much cocaine before. But he's got a dinner plate, and he's letting -- he's letting James Pearl just take it up in a McDonald's straw. He told you how big that McDonald's straw is. That's unusual, but he's just letting him hit it. James Pearl notices, man, that tastes like cucumbers; there's only one place I know of that has cucumber-tasting cocaine -- it must be a cutting agent or something -- but one place it -- man, this is Jamilla's. Naw, man, it ain't Jamilla, naw. He sayed, no man, this is Jamilla's. At that point Jimmy Lee knows the gig is up. He sat there playing the thing right in front of James Pearl. He just made the mistake of giving a cocaine connoisseur stuff that he would know, because James was a customer of Jamilla. And so he pulls him aside, he's got to unburden, and he tells James Pearl, man, I went in to rob them, I had to do them, I had to kill them, had to kill Jamilla. Does Jimmy Lee tell him, one shot, two shots, did he get some of the story wrong? James was high. He remembers

Jimmy Lee telling him, I killed her, I killed her, had to put her down. Maybe Jimmy Lee is mitigating things a little bit, doesn't want to think about being a brutal executioner of women, but no doubt about it, you ain't bragging about killing women unless you did it. And he said, as he got up to leave after killing Jamilla he heard a noise from the bathroom -- and I don't know what they were talking about being drug down a hall, because the testimony was that he went into the bedroom, caught Monica Wall, and drug her into the bathroom. Now, folks, you saw the diagram. The door is here, the bathroom is here. You saw the abrasion. She is drug, and that's where he puts her down, and executes her.

And James Pearl calls his cousin, Phonetia, and she comes to pick him up, and Phonetia was trying to alibi Jimmy Lee Sessions, so she lied about that, voluntarily said she picked up James Pearl. She remembers that.

And finally, folks, you've got Craig Burris, Craig Burris, "Snaggle" "Snagger", has a similar name so he confronts Jimmy Lee Sessions and he tells him, Jimmy Lee Sessions says, it just happened so fast, I didn't want to do it, same story he told James Pearl. He's trying to mitigate things, I didn't want to do it. He went prepared to do it, carried that forty caliber handgun in, carried those gloves in, very careful not to leave any forensic evidence. He's got long sleeves, hoodie, gloves. He was ready to do it and he

did it.

At the beginning of the trial I told you were going to be introduced to a world with which you were not familiar, and I think every so aptly that was stated, because you have been introduced this week. You saw the drug users, drug dealer, drug thief, you heard about prostitutes, cash for motel rooms. Folks, this is not your world, this is not your world. In your world you keep up with the time. You knew you had to be here at 9:30 this morning, you know you had a doctor's appointment at 2 o'clock, you know you had to be at work at 8 o'clock probably tomorrow because you've been out all week. Folks, that's not in the world. The citizens that live in this world, they keep up with events. It's night. It's day. It's the day mama got paid and I'm getting a piece of the check. It's the day that I last saw my cousin alive. It's the day I'm sitting in a car planning a robbery, when they called out my girl's name and I had to get out, and then she got killed the next day, the day of graduation and my little cousin was graduating, and I got a call about Jamilla being executed. Folks, that's how these witnesses keep up with time.

And yes, they are right, I am going to tell you, the State did not choose these witnesses. The two Defendants chose these witnesses. They chose to live in that world. They chose who to deal drugs with. They chose who to steal drugs with. They chose who to plan in front of. They chose

who to go pick people up in front of. They chose their father confessors, both of them. You have the brains and you have the braun. Now one of them, yes, he ran his mouth a little bit more. Chris Stephens, no, he didn't talk about his part in it. He's the brains. Jimmy Lee Sessions had to unburden a little bit, had to tell people, and that's what he did.

Folks, as I told you, may job is to give you the competent, admissible evidence that will help you lay out a straight path. June 7th, they planned the robbery. June 7th, Chris Stephens comes over to Jamilla's house dressed in all black. June 8, Matthew Campbell sees Jimmy Lee Sessions in all black, with a gun, talking about a rip. Later on he goes and picks up Phonetia, his door girl, his key. Twelve midnight, bamb. Eight o'clock the next morning, one person knows about it, Phonetia, who left with Jimmy Lee before. Six-thirty they find the bodies. Later on James Pearl gets a call. Sometime before midnight Jimmy Lee is letting loose, I killed them.

Folks, the Defense knows that that is a straight path that leads to the guilt of their Defendants, and so it's their jobs ---

MR. FREDERICK: Objection, Your Honor.

MR. RICHARDSON: Your Honor ---

MR. FREDERICK: I mean, I strongly disagree with his --

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