

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

William H. Seals, Circuit Court Judge

MOKEIA HAMMOND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-000074

APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY)

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	07-GS-26-3362
	)	08-GS-26-4118, 4119
Mokeia Hammond,	)	
	)	
Defendant.	)	

The State,	)	
	)	
Plaintiff,	)	Transcript of Record
	)	
vs.	)	07-GS-26-3363
	)	08-GS-26-4116, 4117
Richard Bill Niles, Jr.,	)	
	)	
Defendant.	)	

B E F O R E :

Honorable Benjamin H. Culbertson
Horry County Courthouse
Conway, South Carolina

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

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Circuit Court Reporter

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22			
23			
24			
25			

Wikes/ Hammond

Horry County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME :

Sorted by: Random Nbr

TRIAL TYPE : Criminal

PANEL ID : CULBERSON 1

DESCRIPTION : CULBERSON 1

COURTROOM JAR

Pearl Hammond Trial

1	Rivers, Linda L	329	W	F	(✓)	(✓)	(✓)	•
2	Hardwick, Kelly W	160	W	M	(✓)	(X)	()	
3	Webster, Leanora A	406	W	F	(✓)	(✓)	(✓)	•
4	Espinal, Sandy	113	H	F	(✓)	(✓)	(✓)	•
5	Shriver, Bryan S	360	W	M	(✓)	(✓)	(✓)	•
6	Shelley, Anthony R	358	W	M	(✓)	(✓)	(X)	
7	Boatwright, Kevin E	28	W	M	(✓)	(✓)	(✓)	•
8	Marinacci, Meghan M	243	W	F	(✓)	(✓)	(✓)	•
9	Mercurio, Nancy R	260	W	F	(✓)	(✓)	(X)	
10	Corum, Cecilia R	81	B	F	(✓)	(X)	()	
11	~~Neta, Richard G~~	~~287~~	~~W~~	~~M~~	~~()~~	~~()~~	~~()~~	~~exc.~~
12	Butler, Chellen M	56	B	F	(✓)	(✓)	(✓)	•
13	Way, Charles W JR	405	W	M	(✓)	(✓)	(X)	
14	~~Herring, Sharon D~~	~~175~~	~~W~~	~~F~~	~~()~~	~~()~~	~~()~~	
15	Lagore, Donna L	222	W	F	(✓)	(✓)	(✓)	•
16	Carter, Kenneth W	64	W	M	(✓)	(X)	()	
17	Brockmeier, Mary M	41	W	F	(✓)	(✓)	(✓)	•
18	Risher, Glinda K	328	W	F	(X)	()	()	
19	Scholl, John M	351	W	M	(✓)	(✓)	(X)	
20	Smith, Heyward D	368	W	M	(✓)	(X)	()	
21	Kemp, Warren L	206	W	M	(✓)	(✓)	(✓)	•
22	Mishoe, Ricky C	271	W	M	(✓)	(✓)	(X)	
23	Kahanamoku, David P	201	W	M	(✓)	(✓)	(✓)	•

Horry County Courthouse RANDOM STRIKE SHEET

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : CULBERSON 1

COURTROOM JAR

DESCRIPTION : CULBERSON 1

Sorted by: Random Nbr

Trial

24	Chamberlain, Le Olin E	69	W	M	()	(X)	()	
25	Edelman, Ann S	106	W	F	()	()	()	By Ct.
26	Lewis, Martyce D	233	W	F	()	()	()	
27	Causey, Bobby L	67	W	M	()	()	(X)	
28	Brock, Roger D	40	W	M	()	(X)	()	
29	Todd, Jerome D JR	383	W	M	()	()	(X)	
30	Harris, Carl R	165	W	M	()	(X)	()	
31	Swanson, Theodore A	379	W	M	()	()	()	
32	Conrad, Randolph P	76	W	M	()	()	()	
33	Livingston, Annie I	237	B	F	()	()	()	
34	Swain, Michael S	378	W	M	()	()	()	
35	Morant, Marvis A	274	B	M	()	()	()	
36	Cox, Marke A	83	B	M	()	()	()	
37	Johnson, Lori R	197	W	F	()	()	()	
38	Simmons, Sherlyn D	363	B	F	()	()	()	
39	Oliver, William M	289	W	M	()	()	()	
40	Marks, John	244	W	M	()	()	()	
41	Barrios, Lillian E	14	W	F	()	()	()	
42	Newkirk, Elizabeth J	282	W	F	()	()	()	
43	Simmons, Frederick	362	B	M	()	()	()	
44	Kemble, Harold E	204	W	M	()	()	()	
45	Bohannon, Janet F	29	W	F	()	()	()	
46	Howell, Joseph W	185	W	M	()	()	()	

**Horry County Courthouse
RANDOM STRIKE SHEET**

15

JUDGE NAME :

TRIAL TYPE : Criminal

PANEL ID : CULBERSON 1

COURTROOM JAR

Sorted by: Random Nbr

Trial

DESCRIPTION : CULBERSON 1

47	Williams, Barbara L	413	W	F	()	()	()	_____
48	Crosby, Reginald D	86	B	M	()	()	()	_____
49	Ostrow, Eugene D	291	W	M	()	()	()	_____
50	Graves, Edsel D	140	B	M	()	()	()	_____
51	Olson, Gunnar D	290	W	M	()	()	()	_____
52	Robbins, Deborah L	330	W	F	()	()	()	_____
53	Hatoway, Bradley E	168	W	M	()	()	()	_____
54	Heathcote, Martha A	172	W	F	()	()	()	_____
55	Richardson, Barry E	325	W	M	()	()	()	_____
56	Richardson, Laura Y	326	B	F	()	()	()	_____
57	Beebe, Jennifer L	17	W	F	()	()	()	_____
58	Miller, Polly G	270	W	F	()	()	()	_____
59	Robbins, Gayle N	331	W	F	()	()	()	_____
60	Vetrino, Sandra L	396	W	F	()	()	()	_____

Total Number of Jurors:

60

**** END OF REPORT ****

1 (On the record, March 9, 2009.)

2 THE COURT: Thank you very much. Please be seated.

3 All right, ladies and gentlemen, we are getting ready to
4 select a jury. So, we'll start the case in the case of the
5 State of South Carolina versus Richard Bill Niles, Jr., and
6 Mokeia Hammond. Is that how you pronounce it?

7 MR. RICHARDSON: Yes sir, Your Honor.

8 MR. HAZZARD: That's correct, Your Honor.

9 THE COURT: Mokeia Hammond, and I've got a series of
10 questions to go over with you. You've all been found
11 qualified to serve as jurors this week. However, the next
12 series of questions I have to go over with you are voir dire
13 questions or these are questions to determine whether or not
14 you're qualified to serve as jurors on this particular case
15 and it also gives the attorneys some information about you
16 that will assist in their jury selection process. So, as I
17 go over these questions with you I will need you to answer up
18 on any of those. Have we put this jury panel under oath?

19 THE CLERK: Yes, sir.

20 THE COURT: Okay, all right, the - as I said, the
21 Defendants in this case, the Defendants are Richard Bill
22 Niles, Jr. Is Mr. Niles here?

23 All right, if you'd please stand and face the jury
24 panel.

25 (Complies with request.)

Voir Dire

2

1 THE COURT: And Mokeia Hammond, if you'd stand and
2 face the jury panel.

3 (Complies with request.)

4 THE COURT: All right, you can be seated now. Thank
5 you.

6 Is there any member of the jury panel who is related by
7 blood or marriage, have a close personal relationship, a
8 social relationship, a business relationship or any other
9 type of relationship with either of these Defendants; if so,
10 please stand?

11 (No response.)

12 THE COURT: All right, the possible witnesses in this
13 case, I'll need you to listen carefully because there are a
14 number of them: Carol Allen of the Myrtle Beach Police
15 Department; Jeremiah Beam of the Myrtle Beach Police
16 Department; Chad Brown; Danielle Brown; Marty Brown of the
17 Myrtle Beach Police Department; Willie Brown of Williamsburg
18 County Sheriff's Office; Brandon Carter; Kevin Cast of the
19 Myrtle Beach Police Department; Richard Charles of the State
20 Law Enforcement Division; Brenda Christy of the Myrtle Beach
21 Police Department; Amanda Corbin; Erica Corbin; Joseph Crosby
22 of the Myrtle Beach Police Department; Michael Curry of the
23 Myrtle Beach Police Department; Raul Denis of the Myrtle - of
24 the Horry County Police Department; Keith Deverell of the
25 Myrtle Beach Police Department; Karen Dobbins; Vincent Dorio

1 of the Myrtle Beach Police Department; Sue Gibson; Joe Graham
2 of the Myrtle Beach Police Department; Vickie Hallman of the
3 State Law Enforcement Division; Angie Hooper; Michael Hollis;
4 John Iannone, I-A-N-N-O-N-E of the Myrtle Beach Police
5 Department; Bobby Jordan of the Myrtle Beach Police
6 Department; Catherine Leighsey, L-E-I-G-H-S-E-Y of the State
7 Law Enforcement Division; Sean Lundy; Rhonda Nobles of the
8 Myrtle Beach Police Department; Michelle McSpadden of the
9 Myrtle Beach Police Department; Tony Mitchell of the Myrtle
10 Beach Police Department; Ervin Junior Moore; Erin Presnell of
11 the Medical University of South Carolina; Marcos Rosado;
12 Tremayne Spivey of the Myrtle Beach Police Department;
13 Christina VanHouten of the Myrtle Beach Police Department;
14 Angela Watts; Gene Watts; Kenneth Whitner, Whitler, W-H-I-T-
15 L-E-R of the State Law Enforcement Division; Ryan Wood; Bryan
16 D. Yarbrough; Nicole Shelton; Michael Butler; Salina Mann;
17 Julian King; a Rachel Ramlochan, R-A-M-L-O-C-H-A-N.

18 MR. HAZZARD: I believe it's pronounced Ramlochan, Your
19 Honor.

20 THE COURT: Ramlochan; a Robert Williams. Now, I
21 know that was extensive but hopefully you made a mental note.
22 Is there any member of the jury panel related by blood or
23 marriage, have a business relationship, a social relationship
24 or any other type of relationship with any of these potential
25 witnesses; if so, please stand.

Voir Dire

4

1 All right, starting here, sir, your name and jury
2 number.

3 MR. NOTA: My name is Richard Nota, Jury Number 287.

4 THE COURT: All right, Mr. Nota, what witness?

5 MR. NOTA: Brenda Christy from the Myrtle Beach
6 Police Department.

7 THE COURT: All right, and what is the relationship?

8 MR. NOTA: She is a patron of my business as well as
9 I'm an instructor in a class that she attends.

10 THE COURT: Okay, would that relationship prohibit
11 you from giving both the State and the Defendants in this
12 case a fair and impartial trial? I guess the major question
13 is is would you be able to put that relationship aside and be
14 able to base your verdict in this case exclusively on the
15 testimony and evidence presented at trial?

16 MR. NOTA: Probably not.

17 THE COURT: Okay, I appreciate you bringing that to
18 our attention. I'll excuse Mr. Nota from presiding over
19 this particular case, okay?

20 MR. NOTA: Thank you, Your Honor.

21 THE COURT: Thank you very much.

22 MR. NOTA: You're welcome.

23 THE COURT: All right, sir, your name and number.

24 MR. OLIVER: 289.

25 THE COURT: Hold for a - he'll need to wait for just

1 a minute. Okay, thank you, yeah, if you want to wait out
2 there or wherever if you'll just wait for just a minute.

3 Yes, sir, your name and number?

4 MR. OLIVER: William Oliver, 289.

5 THE COURT: Okay, 289, Mr. William Oliver, which
6 witness do you know?

7 MR. OLIVER: Just about every one of them with the
8 Myrtle Beach Police Department. I've been employed with the
9 City of Myrtle Beach 34 years.

10 THE COURT: Okay.

11 MR. OLIVER: Just about every one of them.

12 THE COURT: All right, how, I know you know them.
13 How well do you know them?

14 MR. OLIVER: Several of them quite well. Again, I see
15 them often when they're bringing - I'm with the public works
16 and when they bring in their Crown Vics, etcetera, to get
17 serviced they're all going through one of the departments
18 that I manage.

19 THE COURT: Okay, would that relationship prohibit
20 you from giving both the State and the Defendants a fair and
21 impartial trial?

22 MR. OLIVER: I think it possibly could, yes.

23 THE COURT: All right, thank you, Mr. Oliver, for
24 bringing that to our attention. I'll excuse you from
25 presiding over this or from serving as a juror in this case.

Voir Dire

6

1 Now, if they are excused when do the - do they need to -
2 - all, I'll excuse the two of you since we're just pulling a
3 jury for this particular case and for any of you who might be
4 excused you are directed - you can go ahead and go about your
5 business for the remainder of the day but you are directed to
6 call that number that the Clerk of Court gave you after
7 6:00 p.m. today; okay?

8 All right, thank you very much. Thank you.

9 All right, the attorneys representing the State of South
10 Carolina in this case are Brad Richardson and Donna Elder,
11 15th Circuit Solicitor's Office. The attorney for Mr. Niles
12 is Mr. Verdell Barr. The attorney for Ms. Hammond is Mr. Ron
13 Hazzard.

14 MR. HAZZARD: Good afternoon.

15 THE COURT: Is there any member of the jury panel
16 related by blood or marriage, have a close personal
17 relationship, business relationship, social relationship or
18 any other type of relationship with any of these attorneys;
19 if so, please stand?

20 (No response.)

21 THE COURT: Is there any member of the jury panel
22 ever been represented by any of these attorneys, please
23 stand.

24 (No response.)

25 THE COURT: Is there any member of the jury panel

1 ever been involved in a legal matter in which these attorneys
2 or one of these attorneys represented the other party to that
3 legal action; if so, please stand?

4 (No response.)

5 THE COURT: Is there any member of the jury panel who
6 either personally or has a family member employed by the
7 office of the 15th Circuit Solicitor's Office or the law
8 firms of Mr. Hazzard or the law firm of Mr. Barr; if so
9 please stand.

10 (No response.)

11 THE COURT: Is there any member of the jury panel who
12 has formed or expressed an opinion about any issue or matter
13 involved in this case; if so, please stand.

14 (No response.)

15 THE COURT: All right, in this case both of the
16 Defendants, Mr. Niles and Ms. Hammond, are charged with
17 murder, armed robbery and possession of a weapon during the
18 commission of a violent crime. The allegations against these
19 Defendants arose out of a result - out of an incident that
20 occurred on or about April the 9th of 2007, alleged that they
21 robbed and killed a victim by the name of James Salter. Is
22 there any member of the jury panel who has heard anything,
23 read anything, knows anything or discussed anything about
24 this case with anyone else; if so, please stand.

25 (No response.)

Voir Dire

8

1 THE COURT: Is there any member of the jury panel, as
2 I said the alleged victim in this case was James Salter. Any
3 member of the jury panel related by blood or marriage, have a
4 personal, business relationship, social relationship or any
5 other type of relationship with the alleged victim; if so,
6 please stand.

7 (No response.)

8 THE COURT: Is there any member of the jury panel
9 aware of any bias or prejudice towards either the State of
10 South Carolina or either of the Defendants in this case; if
11 so, please stand.

12 (No response.)

13 THE COURT: Is there any member of the jury panel
14 that was a member of the grand jury which issued the
15 indictments in this case; if so, please stand.

16 (No response.)

17 THE COURT: Is there any member of the jury panel who
18 is a member of or a contributor to any group which has as its
19 primary concern the promotion of law enforcement or victims'
20 rights? Some examples are Mothers Against Drunk Driving,
21 Students Against Drunk Driving, Citizens Against Spousal
22 Abuse and various other victims' rights and law enforcement
23 organizations. Any contributors to or members of those
24 organizations; if so, please stand.

25 (No response.)

1 THE COURT: Is there any member of the jury panel
2 aware of any reason whatsoever as to why he or she should not
3 serve as a juror in this case with particular emphasis being
4 placed on your ability to give both the State of South
5 Carolina and both of these Defendants a fair and impartial
6 trial and base your decision exclusively on the testimony
7 and evidence presented in this case; if so, please stand.

8 (No response.)

9 THE COURT: Any additional questions from the State?

10 MR. RICHARDSON: None from the State, Your Honor.

11 THE COURT: Any from either of the Defendants?

12 MR. BARR: Yes, Your Honor, if Your Honor, please,
13 would you inquire of the panel whether or not there are any
14 members of the jury panel who themselves or have close
15 personal relatives who may have been assaulted.

16 THE COURT: Is there any member of the jury panel who
17 either personally or has a family member or a close personal
18 friend who has ever been the victim of a crime; if so, please
19 stand.

20 All right, starting here over on the right, ma'am, your
21 name and number?

22 MS. CORUM: Cecilia Corum, 81.

23 THE COURT: All right, Ms. Corum, were you or a
24 family member, who was the victim of the crime?

25 MS. CORUM: My first husband, Warren Heath.

Voir Dire

10

1 THE COURT: Warren Heath?

2 MS. CORUM: Yes.

3 THE COURT: All right, and what kind of crime was

4 that?

5 MS. CORUM: He was murdered.

6 THE COURT: He was murdered.

7 MS. CORUM: Yes.

8 THE COURT: Would that incident prohibit you from

9 giving both the State and the Defendants in this case a fair

10 and impartial trial?

11 MS. CORUM: No.

12 THE COURT: All right, would you be able to presume

13 these Defendants innocent of this crime and base any decision

14 exclusively on the testimony and evidence presented at the

15 trial of this case?

16 MS. CORUM: Yes.

17 THE COURT: Okay, thank you for bringing that to our

18 attention..

19 All right, ma'am, your name and number.

20 MS. HERRING: Sharon Herring, 175.

21 THE COURT: Okay, Ms. Herring, were you or was it a

22 family member that was a victim or a friend?

23 MS. HERRING: I was.

24 THE COURT: You were?

25 All right, and what kind of crime was that?

1 MS. HERRING: Someone broke into my home and beat me
2 up.

3 THE COURT: All right, would that incident prohibit
4 you from giving both the State and the Defendants in this
5 case a fair and impartial trial?

6 MS. HERRING: I would like to say that it wouldn't but
7 I'm terrified just being here. I'm still traumatized.

8 THE COURT: Okay, based upon that response, Ms.
9 Herring, I will excuse you from presiding over this case,
10 okay?

11 MS. HERRING: Thank you.

12 THE COURT: Thank you very much. You will need to
13 call back after 6:00 o'clock today; okay?

14 All right, sir, your name and number?

15 MR. COX: Marke Cox, 83.

16 THE COURT: All right, Mr. Cox, was it you or a
17 friend or a family member?

18 MR. COX: My son.

19 THE COURT: Your son, all right, and what was the
20 crime?

21 MR. COX: Unlawful entry, kidnapping.

22 THE COURT: Okay, would that incident prohibit you
23 from giving the State and both of these Defendants a fair and
24 impartial trial?

25 MR. COX: I think so, Your Honor, because I'm

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1 getting emotional now. It's been nine months.

2 THE COURT: Okay, thank you for bringing that to our
3 attention. I'll excuse you from presiding over this
4 particular jury, but you'll need to call back after
5 6:00 o'clock today; okay? Thank you very much, Mr. Cox.

6 All right, right behind Mr. Cox, your name and number.

7 MR. KEMBLE: Harold Kemble, 204.

8 THE COURT: All right, Mr. Kemble, was you or a
9 family member?

10 MR. KEMBLE: It was me.

11 THE COURT: All right, and what kind of crime was
12 that?

13 MR. KEMBLE: My house was broken into.

14 THE COURT: All right, would that incident prohibit
15 you from giving both the State and the Defendants in this
16 case a fair and impartial trial?

17 MR. KEMBLE: No.

18 THE COURT: Would you be able to put that incident
19 aside, presume both Defendants in this case innocent of these
20 charges and base your verdict exclusively on the testimony
21 and evidence presented at trial?

22 MR. KEMBLE: Yes, I would.

23 THE COURT: Thank you for bringing that to our
24 attention.

25 All right, sir, starting here, the lady.

1 MS. ROBBINS: Deborah Robbins, 330.

2 THE COURT: All right, Ms. Robbins, was it you or a
3 family member or whom?

4 MS. ROBBINS: My house was broken into.

5 THE COURT: All right, would that incident prohibit
6 you from giving both the State and the Defendants in this
7 case a fair and impartial trial?

8 MS. ROBBINS: No.

9 THE COURT: All right, would you be able to put that
10 incident aside, presume these Defendants innocent of these
11 charges and base your decision exclusively on the testimony
12 and evidence presented at trial?

13 MS. ROBBINS: Yes.

14 THE COURT: All right, thank you for bringing that
15 our attention. I'm going to leave, let you stay. Thank you.

16 All right, right next to her, sir, your name.

17 MR. TODD: Jerome Todd, 383.

18 THE COURT: All right, Mr. Todd, was it you or a
19 family member?

20 MR. TODD: It was me, Your Honor.

21 THE COURT: All right, what was the crime?

22 MR. TODD: I was mugged and beat outside my house
23 and robbed.

24 THE COURT: All right, would that incident prohibit
25 you from giving both the State and these Defendants a fair

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1 and impartial trial?

2 MR. TODD: I don't think so, Your Honor.

3 THE COURT: All right, and I appreciate your
4 sincerity in saying I don't think so. However, I've got to
5 caution you what I have to prevent against is someone being
6 placed on a jury under the belief that they could give
7 everyone a fair and impartial trial and then once you're
8 seated finding out you can't. So, even though you - I have
9 to really know whether or not it affects you one way or not.
10 Would you be able to presume these Defendants innocent of
11 these crimes and base any verdict exclusively on the
12 testimony and evidence presented at trial without considering
13 the crime that you were a victim of in any way, shape or
14 form?

15 MR. TODD: Yes, sir.

16 THE COURT: Okay, thank you very much for bringing
17 that to our attention.

18 All right, sir, your name and number.

19 MR. HOWELL: Joseph Howell, 185.

20 THE COURT: All right, Mr. Howell, was it you or a
21 family member?

22 MR. HOWELL: Relative, family member.

23 THE COURT: A relative.

24 MR. HOWELL: A double murder.

25 THE COURT: All right, would that incident prohibit

1 you from giving both the State and these Defendants a fair
2 and impartial trial?

3 MR. HOWELL: I'd like to say no but I can't say it.

4 THE COURT: All right, sir, I appreciate you bringing
5 that to our attention. I'll excuse you from presiding over
6 this trial, okay. Thank you very much.

7 Yes, ma'am, you're free to go. You'll need to call back
8 after 6:00 p.m. today.

9 Yes, ma'am, your name and number?

10 MS. JOHNSON: Lori Johnson, juror 197, robbery,
11 kidnapping, assault and battery with intent to kill.

12 THE COURT: All right, Ms. Johnson, it was you?

13 MS. JOHNSON: Yes, sir.

14 THE COURT: All right, would that incident prohibit
15 you from giving both the State and the Defendants in this
16 case a fair and impartial trial?

17 MS. JOHNSON: I don't think so.

18 THE COURT: Would you be able to put what happened to
19 you aside and base any verdict in this case exclusively on
20 the testimony and evidence presented in the trial of this
21 case?

22 MS. JOHNSON: Yes, sir.

23 THE COURT: And would you have a problem presuming
24 these Defendants innocent of these charges?

25 MS. JOHNSON: I wouldn't have a problem.

Voir Dire

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1 THE COURT: All right, thank you very much for
2 bringing that to our attention.

3 Yes, ma'am, your name and number?

4 MS. MERCURIO: 260, Nancy Mercurio.

5 THE COURT: All right, hold for one second, Mercurio,
6 all right, Ms. Mercurio, was it you or a family member?

7 MS. MERCURIO: It was my daughter. When she was 14 she
8 was assaulted, kidnapped, raped. She was the victim.

9 THE COURT: Would that incident prohibit you from
10 giving both the State and the Defendants in this case a fair
11 and impartial trial?

12 MS. MERCURIO: No.

13 THE COURT: Would you be able to put that incident
14 aside and not consider it at all, presume the Defendants in
15 this case innocent of these charges and base your verdict
16 exclusively on the testimony and evidence presented in the
17 trial of this case?

18 MS. MERCURIO: Yes.

19 THE COURT: All right, thank you for bringing that to
20 our attention.

21 Anyone else?

22 (No response.)

23 THE COURT: Any additional voir dire by the
24 Defendants?

25 MR. BARR: None from Mr. Niles.

1 THE COURT: All right, all right, Mr. Hammond [sic]?

2 MR. HAZZARD: None on behalf of Mokeia Hammond.

3 THE COURT: All right, all right, if I could get
4 those that are seated in the jury box I think we've had a
5 couple of people excused and I apologize for the
6 inconvenience but if I could get you to assume some seats out
7 there and then the rest of you will need to - let me see how
8 many seats.

9 We got one, two - yeah, we've got those last couple of
10 seats. How many have we got, four?

11 BAILIFF: I think there's four or five seats there.

12 THE COURT: All right, how many - yeah, if we can
13 just use four of them that'll be fine. If you could scoot
14 all the way down to the end. There you go. That'll be
15 good.

16 All right, ladies and gentlemen, what happens now is
17 your names will be selected at random. Before automation
18 everybody's name would've been put in a big canister and it
19 would have been rolled and your name would have been pulled
20 out one at a time but we're automated now; and so, what
21 happens is the computer spits your name out one at a time and
22 you'll be called forward. Your names are selected at random;
23 and when you're called forward the solicitors, they'll take a
24 look at you and then they'll look at their notes a little
25 while and then they'll take another look at you and then

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1 they'll discuss something among themselves and then they'll
2 take another look at you and decide whether they want you and
3 then after they do that then the Defendants' attorneys will
4 look at you and look at their notes and discuss with their
5 clients and look back at you and talk to each other and then
6 they'll decide if they want you and we go through this
7 process until we select 12 jurors. Now, in addition to your
8 names being selected at random you've also been assigned new
9 numbers that you don't know. So, when you hear, you know,
10 that a certain number is called up - it's - well, no, we
11 won't be doing that since this is General Sessions. You'll
12 be called forward. So, you'll know when you're struck, but
13 if you are struck from this particular case don't take it as
14 an insult or anything of that nature. It just means for
15 whatever reason the attorney that struck you from this
16 particular case feels that your profile or for whatever
17 reason is just not suited for the case that they're going to
18 present at this trial. So, if you'd listen carefully when
19 your name is called, please come forward, bring with you any
20 pocketbooks, umbrellas, coats, whatever you might have with
21 you and stand in front. If you are chosen you will be seated
22 in the jury box. If you are not chosen, unlike the others, I
23 will need you to stick around for a little while longer so
24 that we can determine if there is any challenges or anything
25 to the jury selection process.

1 All right, Madam Clerk, if you'd call the names.

2 THE CLERK: When I call your name please come up here

3 and stand facing back that way.

4 THE COURT: All right, excuse me, before we get

5 started the State will have ten strikes.

6 MR. RICHARDSON: That's correct, Your Honor.

7 THE COURT: Mr. Barr will have ten and Mr. Hammond

8 [sic] will have ten.

9 MR. BARR: Thank you.

10 THE COURT: All right.

11 THE CLERK: 329, Linda Rivers, Linda Rivers.

12 THE COURT: Juror Number 329. You can stand right

13 over here. There you go and face the attorneys.

14 THE CLERK: What say the State?

15 MR. RICHARDSON: Please present Ms. Rivers.

16 THE CLERK: Defense?

17 THE COURT: Mr. Barr, we'll go Mr. Barr first and

18 then Mr. Hammond [sic] or however you all choose.

19 MR. BARR: Please seat Ms. Rivers.

20 THE COURT: All right.

21 MR. HAZZARD: Please swear the juror.

22 THE CLERK: Have a seat in the jury box, please.

23 160, Kelly Hardwick.

24 MR. RICHARDSON: Please present Mr. Hardwick.

25 MR. BARR: Please excuse this juror in this trial.

Jury Selection

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1 THE CLERK: You're excused in this particular trial.
2 406, Leanora Webster.
3 What say the State?
4 MR. RICHARDSON: Please present Ms. Webster.
5 THE CLERK: Mr. Barr?
6 MR. BARR: Please seat Ms. Webster.
7 THE CLERK: Have a seat in the jury box.
8 THE COURT: No, wait a minute. We still have Mr.
9 Hammond [sic].
10 THE CLERK: Oh.
11 MR. HAZZARD: Hazzard, Your Honor.
12 THE CLERK: Hazzard.
13 THE COURT: I mean, Hazzard, I'm sorry.
14 THE CLERK: Okay, Mr. Hazzard.
15 MR. HAZZARD: Please swear the juror, Your Honor.
16 THE COURT: Okay.
17 THE CLERK: Have a seat in the jury box.
18 THE COURT: I apologize, Mr. Hazzard.
19 MR. HAZZARD: That's all right.
20 THE CLERK: 113, Sandy Espinal.
21 What say the State?
22 MR. RICHARDSON: Please present Ms. Espinal, thank you.
23 THE CLERK: Mr. Barr?
24 MR. BARR: Please seat Ms. Espinal.
25 THE CLERK: Mr. Hazzard?

1 MR. HAZZARD: Please swear Ms. Espinal.
2 THE CLERK: Have a seat in the jury box, please.
3 360, Bryan Shriver.
4 What say the State?
5 MR. RICHARDSON: Please present Mr. Shriver.
6 THE CLERK: Mr. Barr?
7 MR. BARR: Please seat Mr. Shriver.
8 THE CLERK: Mr. Hazzard?
9 MR. HAZZARD: Please swear the juror.
10 THE CLERK: Have a seat in the jury box, please.
11 358, Anthony Shelley.
12 What say the State?
13 MR. RICHARDSON: Please present Mr. Shelley.
14 THE CLERK: Mr. Barr?
15 MR. BARR: Please seat Mr. Shelley.
16 THE CLERK: Mr. Hazzard?
17 MR. HAZZARD: Please excuse Mr. Shelley from the trial
18 of this particular case.
19 THE CLERK: You're excused in this particular case.
20 28, Kevin Boatwright.
21 What say the State?
22 MR. RICHARDSON: Please present Mr. Boatwright.
23 THE COURT: Mr. Barr?
24 MR. HAZZARD: The Court's indulgence, Your Honor.
25 THE COURT: Excuse me?

Jury Selection

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1 MR. HAZZARD: I said Court's indulgence.
2 THE COURT: Oh, okay, I'm sorry.
3 MR. BARR: Please seat Mr. Boatwright.
4 THE CLERK: Mr. Hazzard?
5 MR. HAZZARD: Please swear Mr. Boatwright.
6 THE CLERK: Have a seat in the jury box, please.
7 243, Meghan Marinacci.
8 THE COURT: How do you pronounce your name?
9 MS. MARINACCI: Marinacci.
10 THE COURT: Marinacci, all right, thank you, Ms.
11 Marinacci.
12 THE CLERK: What say the State?
13 MR. RICHARDSON: Please present Ms. Marinacci.
14 THE CLERK: Mr. Barr?
15 MR. BARR: Please seat Ms. Marinacci, if I'm
16 pronouncing that right.
17 MS. MARINACCI: Okay.
18 THE CLERK: Mr. Hazzard?
19 MR. HAZZARD: Please swear Ms. Marinacci.
20 THE CLERK: Have a seat in the jury box, please.
21 260, Nancy Mercurio.
22 What say the State?
23 MR. RICHARDSON: Please present Ms. Mercurio.
24 THE CLERK: Mr. Barr?
25 MR. BARR: Please seat the juror, please.

1 THE CLERK: Mr. Hazzard?

2 MR. HAZZARD: Please excuse Ms. Mercurio from this

3 trial.

4 THE CLERK: You're excused in this particular case.

5 81, Cecilia Corum.

6 What says the State?

7 MR. RICHARDSON: Please present Ms. Corum.

8 THE CLERK: Mr. Barr?

9 MR. BARR: Please excuse this juror in this trial.

10 THE CLERK: You're excused in this particular case.

11 56, Chellen Butler.

12 What say the State?

13 MR. RICHARDSON: Please present Ms. Butler.

14 THE CLERK: Mr. Barr?

15 MR. BARR: Please seat Ms. Butler.

16 THE CLERK: Mr. Hazzard?

17 MR. HAZZARD: Please swear Ms. Butler.

18 THE CLERK: Have a seat in the jury box, please.

19 405, Charles Way, Jr.

20 What say the State?

21 MR. RICHARDSON: Please present Mr. Way.

22 THE CLERK: Mr. Barr?

23 MR. HAZZARD: The Court's indulgence.

24 MR. BARR: Please seat Mr. Way.

25 THE CLERK: Mr. Hazzard?

Jury Selection

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1 MR. HAZZARD: Please excuse Mr. Way from this
2 particular trial.

3 THE CLERK: You're excused in this particular case.
4 222, Donna Lagore.
5 What say the State?

6 MR. RICHARDSON: Please present Ms. Lagore.

7 THE CLERK: Mr. Barr?

8 MR. BARR: Please seat Ms. Lagore.

9 THE CLERK: Mr. Hazzard?

10 MR. HAZZARD: Please swear the juror.

11 THE CLERK: Have a seat in the jury box, please.
12 64, Kenneth Carter.
13 What say the State?

14 MR. RICHARDSON: Please present Mr. Carter.

15 THE CLERK: Mr. Barr?

16 MR. BARR: Please excuse this juror in this trial.

17 THE CLERK: You're excused in this particular case.
18 41, Mary Brockmeier.
19 What say the State?

20 MR. RICHARDSON: Please present Ms. Brockmeier.

21 THE CLERK: Mr. Barr?

22 MR. BARR: Please seat Ms. Brockmeier.

23 THE CLERK: Mr. Hazzard?

24 MR. HAZZARD: Please swear the juror.

25 THE CLERK: Have a seat in the jury box, please.

1 328, Glinda Risher.
2 What say the State?
3 MR. RICHARDSON: Please excuse Ms. Risher.
4 THE CLERK: You're excused in this particular case.
5 351, John Scholl.
6 What say the State?
7 MR. RICHARDSON: Please present Mr. Scholl.
8 THE CLERK: Mr. Barr?
9 MR. BARR: Please seat Mr. Scholl.
10 THE CLERK: Mr. Hazzard?
11 MR. HAZZARD: Please excuse Mr. Scholl from this
12 particular trial.
13 THE CLERK: You're excused in this particular case.
14 368, Heyward Smith.
15 What say the State?
16 MR. RICHARDSON: Please present Mr. Smith.
17 THE CLERK: Mr. Barr?
18 MR. BARR: Please excuse Mr. Smith from this trial.
19 THE CLERK: You're excused in this particular case.
20 206, Warren Kemp.
21 What say the State?
22 MR. RICHARDSON: Please present Mr. Kemp.
23 THE CLERK: Mr. Barr?
24 MR. BARR: Please seat Mr. Kemp.
25 THE CLERK: Mr. Hazzard?

Jury Selection

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1 MR. HAZZARD: Please swear Mr. Kemp.
2 THE CLERK: Have a seat in the juror box, please.
3 271, Ricky Mishoe.
4 MR. HAZZARD: I'm sorry, Madam Clerk, what was that
5 juror again?
6 THE CLERK: 271, Ricky Mishoe.
7 MR. HAZZARD: Thank you very much.
8 THE CLERK: What say the State?
9 MR. RICHARDSON: Please present Mr. Mishoe.
10 THE CLERK: Mr. Barr?
11 MR. BARR: Please present Mr. Mishoe.
12 THE CLERK: Mr. Hazzard?
13 MR. HAZZARD: Please excuse Mr. Mishoe from this trial.
14 THE CLERK: You're excused in this particular case.
15 201, David Kahanamoku.
16 What say the State?
17 MR. RICHARDSON: Please present Mr. Kahanamoku.
18 THE CLERK: Mr. Barr?
19 MR. BARR: Please seat Mr. Kahanamoku.
20 THE CLERK: Mr. Hazzard?
21 MR. HAZZARD: I don't even want to try. Please swear
22 the juror.
23 THE CLERK: 69, Le Olin Chamberlain.
24 What say the State?
25 MR. RICHARDSON: Please present Mr. Chamberlain.

1 THE CLERK: Mr. Barr?

2 MR. BARR: Please excuse Mr. Chamberlain in this
3 trial.

4 THE CLERK: You're excused in this particular case.
5 106, Ann Edelman.

6 THE COURT: Excuse me. Hold for one second.

7 (Whereupon, a bench conference was held with Juror
8 Number 106, Ann Edelman, in the presence but out of the
9 hearing of the jury venire.)

10 THE COURT: Okay, this Public Defender's Office?
11 Okay.

12 MS. EDELMAN: Of Public Defender's Dekalb County,
13 murder trial, death penalty, I just thought I should have
14 informed the Court.

15 THE COURT: You're employed there now?

16 MS. EDELMAN: No, I'm not.

17 THE COURT: But you were in the past?

18 MS. EDELMAN: I was. I worked for the Public
19 Defender's Office.

20 THE COURT: All right, would that prior
21 representation prohibit you from giving both the State and
22 the Defendants a fair and impartial trial?

23 MS. EDELMAN: It might. I thought I'd be asked about
24 it during voir dire. I'm sorry.

25 THE COURT: Okay, all right.

Jury Selection

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1 (Whereupon, the following takes place in open court.)

2 THE COURT: I'm going to excuse Ms. - how do you
3 pronounce it? Ms. Edelman. She, she said her prior
4 employment was with the Public Defender's Office and that
5 would prohibit her from being fair to both the State and the
6 Defendants in this case. So, I will excuse you. Thank you
7 very much.

8 THE CLERK: 233, Martyce Lewis.

9 What say the State?

10 MR. RICHARDSON: Please present Ms. Lewis.

11 THE CLERK: Mr. Barr?

12 MR. BARR: Please seat Ms. Lewis.

13 THE CLERK: Mr. Hazzard?

14 MR. HAZZARD: Please swear the juror.

15 THE CLERK: Have a seat in the jury box, please.

16 THE COURT: We're going to need two. So, that is the
17 12th juror, one strike and two strikes. We'll - that's per
18 thing. So, we'll choose the first alternate now. You'll get
19 one strike, each one will get two strikes and then we'll do
20 the second alternate. You get one strike and they'll get two
21 strikes.

22 MR. RICHARDSON: Yes, Your Honor.

23 THE COURT: All right, all right, this is for the
24 first alternate.

25 THE CLERK: 67, Bobby Causey.

1 What say the State?

2 MR. RICHARDSON: Please present Mr. Causey.

3 THE CLERK: Mr. Barr?

4 MR. BARR: Please seat Mr. Causey.

5 THE CLERK: Mr. Hazzard?

6 MR. HAZZARD: Please excuse Mr. Causey from the trial

7 of this particular case.

8 THE CLERK: You're excused in this particular case.

9 Number 40, Roger Brock.

10 What say the State?

11 MR. RICHARDSON: Please present Mr. Brock.

12 THE CLERK: Mr. Barr?

13 MR. BARR: Please excuse Mr. Brock from this trial.

14 THE CLERK: You're excused in this particular case.

15 383, Jerome Todd.

16 What say the State?

17 MR. RICHARDSON: Please present Mr. Todd.

18 THE CLERK: Mr. Barr?

19 MR. BARR: Please seat Mr. Todd.

20 THE CLERK: Mr. Hazzard?

21 MR. HAZZARD: Please excuse Mr. Todd from this

22 particular trial.

23 THE CLERK: You're excused in this particular case.

24 THE CLERK: 165, Carl Harris.

25 What say the State?

Jury Selection

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1 MR. RICHARDSON: What was that number, ma'am, I'm sorry?
2 THE CLERK: 165.
3 MR. RICHARDSON: Thank you, Madam Clerk.
4 Please present Mr. Harris.
5 THE CLERK: Mr. Barr?
6 MR. BARR: Please excuse Mr. Harris from this trial.
7 THE CLERK: You're excused in this particular case.
8 379, Theodore Swanson.
9 What say the State?
10 MR. RICHARDSON: Please present Mr. Swanson.
11 THE CLERK: Mr. Barr?
12 MR. BARR: Please seat Mr. Swanson.
13 THE CLERK: Mr. Hazzard?
14 MR. HAZZARD: Please swear this juror.
15 THE CLERK: Have a seat in the jury box, please.
16 THE COURT: All right, now, our second alternate.
17 Doesn't necessarily mean this is the way they'll serve if
18 they're needed as alternates, but for the selection it will
19 still be one strike, two strikes, two strikes.
20 THE CLERK: 76, Randolph Conrad.
21 What say the State?
22 MR. RICHARDSON: Please present Mr. Conrad.
23 THE CLERK: Mr. Barr?
24 MR. BARR: Please seat Mr. Conrad.
25 THE CLERK: Mr. Hazzard?

1 MR. HAZZARD: Please swear the juror.

2 THE CLERK: Have a seat in the jury box.

3 THE COURT: All right, ladies and gentlemen, this is
4 the jury that will comprise this case. I'm going to excuse
5 you back to the jury room for just a moment and I'll bring
6 you back out for some preliminary instructions in just a
7 second but I've got some matters that I need to go over with
8 the attorneys at this point in time. So, I'll excuse you
9 back to the jury room, give you an opportunity to stretch
10 your legs and we'll bring you back out for some preliminary
11 instructions in just a moment. Thank you very much.
12 Everyone else please remain seated while the jury is excused.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, any challenges to the
16 selection or composition of the jury by the State?

17 MS. ELDER: Just a few moments, Your Honor.

18 MR. RICHARDSON: A few moments, Judge.

19 THE COURT: All right.

20 MR. RICHARDSON: Your Honor, we do have a matter to take
21 up.

22 THE COURT: All right, let me see the attorneys up
23 here for a second.

24 (Whereupon, a bench conference was held in the presence,
25 but out of the hearing of the jury venire.)

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1 THE COURT: All right, ladies and gentlemen, those of
2 you remaining in the jury panel I have a matter of law that I
3 need to discuss with the attorneys, which you'll need to be
4 excused for probably the next 15 minutes. I understand there
5 is a couple of waiting rooms out there. So, if I could have
6 you have a seat out there in the outside waiting room for
7 just a couple of minutes and then we'll be with you with some
8 further instructions in just a minute. Thank you very much.

9 (Whereupon, the jury venire exits courtroom.)

10 THE COURT: All right, Ms. Elder or Mr. Richardson.

11 MR. RICHARDSON: Your Honor, the State does challenge
12 the composition of the strikes from the Defense. It would
13 appear that out of the 12 juror members or the initial jury
14 members it looks like out of ten strikes nine of them were
15 all white, of that it was one, two, three, four, five, six,
16 seven, eight, eight white males, one white female, one black
17 female. When it came to alternates they were all white males
18 that were stricken.

19 THE COURT: Okay, but you do know that out of the
20 whole ---

21 MR. RICHARDSON: There are white male jurors.

22 THE COURT: There were white male jurors -- oh, so,
23 you're doing it because of the race or because of the sex or
24 both? Let's see, I've got - put it this way, I've got that
25 there was one Hispanic called that was placed on the jury,

1 two African-Americans called, one of which was struck and one
2 was placed on the jury, and then everyone else was white.

3 MR. RICHARDSON: Yes, sir, Your Honor.

4 THE COURT: All right.

5 MR. RICHARDSON: It would be for race and sex, Your
6 Honor.

7 THE COURT: Okay, all right, well, let me check and
8 see. All right, Mr. Barr, I've got that you struck first
9 Juror 160, Kelly Hardwick, a white male and what was the
10 reason for that?

11 MR. BARR: The Court's indulgence, Your Honor, 160.

12 THE COURT: Well, first, hold it for a minute. Let
13 me, let - have a seat. Let me see something here.

14 All right, let me, let me go check something. Let me
15 just - let's just stand in recess for about five minutes.
16 I'll be right back; okay?

17 MR. RICHARDSON: Yes, sir, Your Honor.

18 OFF THE RECORD

19 (On the record.)

20 (Whereupon, the following takes place outside the
21 presence of the jury and jury venire.)

22 THE COURT: Thank you very much. Please be seated.

23 All right, I show that, just for the record, first
24 juror, Linda Rivers, a white female was seated, then Mr. Barr
25 struck Kelly Hardwick, a white male. Mr. Hazzard, then the

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1 next three were seated, a white female, a Hispanic female and
2 a white male and Anthony Shelley, white male, was struck by
3 Mr. Hazzard, then Mr. Boatwright, a white male, Marinacci, a
4 white female was seated, Mr. Hazzard struck Nancy Mercurio, a
5 white female, and Mr. Barr struck Cecilia Corum, a black
6 female. Then we seated Chellen Butler, a black female. Then
7 Mr. Hazzard struck Charles W. Way, a white male. Then we
8 seated Ms. Lagore, a white female. Then Mr. Barr struck
9 Kenneth Carter, a white male. Then we seated Mary
10 Brockmeier, a white female. Then the Plaintiff struck Glinda
11 Risher, a white female, and Mr. Hazzard struck John Scholl, a
12 white male. Mr. Barr struck Heyward Smith, a white male.
13 Then we seated Warren Kemp, a white male. Then Mr. Hazzard
14 struck Ricky Mishoe, a white male. Then we seated David
15 Kahanamoku, however you pronounce that, who was a white male.
16 Then Mr. Barr struck Le Olin Chamberlain, a white male. Then
17 I excused Ms. Edelman for being previously employed with the
18 public defender's office and then we struck or and then we
19 seated Ms. Lewis, a white female. Then the Defendant struck
20 the next four white males on the alternate. Then we seated
21 the next two white males as alternates; is that correct?
22 That's what I have.

23 MR. RICHARDSON: That's what I have, Your Honor.

24 THE COURT: All right, all right, Mr. Barr, your
25 reasoning for striking Kelly Hardwick, a white male, Juror

1 Number 160?

2 MR. BARR: Your Honor, if I may I would like to
3 first say that I'd ask the Court to consider the actual
4 composition of the jury as well as the call. Based on the
5 call as to - with regard to race I can't rig the call. So,
6 you know, if all white males and females are called I only
7 can strike among them. I could, I could understand the
8 State's objection if we had a jury which was somewhat tilted
9 toward black females or black males. The objection to
10 striking white males when there are five on the jury, and as
11 well as, you know, there is only one black female on the
12 entire jury panel, even considering the alternates. There
13 are two white, white male alternates. Quite frankly, I just,
14 I don't quite understand the State's position but I will
15 address individually race neutral reasons for the persons I
16 struck, but at the same time I'd ask the Court to consider
17 denying the State's motion just based on the composition of
18 the jury.

19 THE COURT: Well, and I understand. That's what I
20 went to check on. I went to check the law to see what
21 happens because you're right, out of the first, including the
22 alternates, out of 32 called there was one Hispanic and two
23 African-Americans; and so, that's what I went to check on to
24 see what the law said and all basically what the law said or
25 what I did from a quick cursory review of my legal research

1 was that when one party's strikes seem geared towards a
2 specific race or gender then it can be challenged and it
3 doesn't say what happens if all of the potential jurors are
4 of one particular race or gender. So, just reading the
5 letter of the law, I understand out of these 32 if you struck
6 any of them there was a 99 percent chance it was going to be
7 a white or I guess there are some more of a diversity in
8 gender than there is in race, but I can certainly see out of
9 the 32 if you exercised any strikes, you know, there were
10 two, one Hispanic and two African-Americans, but being the
11 law what it is, as it is I think you can, you know, as I
12 understand you could challenge them because even though they
13 only exercised one strike it was of a white female, but be
14 that as it may I think we have to go through the process and
15 have you identify or give your gender or race neutral reason
16 for striking who you struck. So, let's go ahead and put that
17 on the record. Mr. - first, Mr. Hardwick, white male.

18 MR. BARR: I think Mr. Hardwick's jury number, Your
19 Honor, was 160.

20 THE COURT: Right.

21 MR. BARR: Based on the qualifications of the
22 jurors, Your Honor, Mr. Hardwick, I believe, works at
23 Wal-Mart. If the Court would, Your Honor, we tried or I
24 tried specifically to get a more educated jury panel and most
25 of the persons that I impaneled on the jury are, that I

1 seated as witnesses [sic] were more educated than Mr.
2 Hardwick.

3 THE COURT: All right, Juror Number 81 was a black
4 female. Are you challenging that strike?

5 MR. RICHARDSON: No, sir, Your Honor.

6 THE COURT: All right, Juror Number 64, Kenneth
7 Carter.

8 MR. BARR: Your Honor, based on the information I
9 got, Your Honor, I believe Mr. Carter's wife is employed with
10 the Workers' Compensation Commission and for that reason we
11 felt that she would not, that there could be some bias and we
12 didn't - for that reason we struck her.

13 THE COURT: All right, Juror Number 368, Heyward
14 Smith.

15 MR. BARR: Your Honor, in Mr. Smith's case it was
16 age, his disability, and I think he indicated that his wife
17 was a factory worker. So, again, it would be based on the
18 education level.

19 THE COURT: All right, Juror Number 69, Le Olin
20 Chamberlain.

21 MR. BARR: Your Honor, again, 1945, date of birth,
22 as well as a construction worker.

23 THE COURT: All right, Juror Number 40, Roger Brock.

24 MR. BARR: Your Honor, age, Your Honor, 1938 his
25 date of birth.

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1 THE COURT: Juror Number 165, Carl Harris.

2 MR. BARR: Your Honor, I struck Mr. Harris because
3 he indicates he's a fire worker, that he's a firefighter and
4 because of the close association between fire and police that
5 was the reason we struck that juror.

6 THE COURT: All right, sir.

7 All right, I think that covers Mr. Barr. Mr. Hazzard,
8 I've got you striking Juror Number 358, Anthony Shelley.

9 MR. HAZZARD: Okay, Your Honor, the records indicate or
10 at least what I wrote down was that Mr. Shelley works for UPS
11 and his wife is a bank teller. Again, wanted a little bit of
12 higher education level for the jurors because obviously I
13 want them to understand the concept that mere presence does
14 not make one necessarily guilty of a crime. I don't want
15 people in the jury room saying that if it walks like a duck
16 and talks like a duck it must be a duck.

17 THE COURT: All right, Juror Number 260, Nancy
18 Mercurio, a white female.

19 MR. HAZZARD: Ms. Mercurio indicated that either she or
20 a family member was a victim of a violent crime, Your Honor.

21 THE COURT: All right, Juror Number 405, Charles W.
22 Way, Jr.

23 THE COURT: Mr. Way also is an individual with regard
24 to the question of education level. He indicated that he is
25 a driver for the casino and his wife is a pit boss for the

1 casino. Going based purely on their, on what jobs they hold
2 it was my impression that maybe their education level or his
3 education level wasn't quite as high as I would want.

4 THE COURT: All right, Juror Number 351, John Scholl.

5 MR. HAZZARD: Mr. Scholl indicated I believe that he
6 was employed by the United States Postal Service. As the
7 Court more likely than not knows a large number of the
8 individuals employed by the Postal Service are war veterans,
9 many of them suffering from posttraumatic stress disorder.
10 Quite frankly, I didn't want somebody had the possibility of
11 going postal in the jury room, Your Honor.

12 THE COURT: Juror Number 271, Ricky Mishoe.

13 MR. HAZZARD: I believe Mr. Mishoe indicated that he
14 was an armored car driver, Your Honor and didn't want someone
15 who might feel in some tangential way that they were involved
16 in law enforcement having too close of an ideation or a
17 fixation with the police point of view in this case. I felt
18 that as an armored car driver he might have some sense or
19 feeling that he is in some tangential way involved in law
20 enforcement, and as a result might not give the Defendant a
21 fair and impartial trial.

22 THE COURT: All right, Juror Number 67, Bobby Causey.

23 MR. HAZZARD: I believe Mr. Causey indicated that he
24 was a farmer. Again, this one goes to educational level,
25 looking for, definitely was looking for jurors that had at

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1 least a college education, Your Honor, if not possibly get
2 some folks with some masters degrees. So, based on the
3 profile that comes normally with being a farmer I figured or
4 took the educated gamble that Mr. Causey, Juror Number 67,
5 might not have an educational level as high as I was looking
6 for on the profile for a jury, Your Honor.

7 THE COURT: All right, Juror Number 383, Jerome D.
8 Todd, Jr.

9 MR. HAZZARD: Jerome Todd indicated that either he or a
10 family member was the victim of a violent crime.

11 THE COURT: All right, thank you very much.

12 All right, Mr. Richardson, any arguments challenging
13 those reasons?

14 MR. RICHARDSON: Your Honor, I believe Juror Number 41
15 they cited or I know Mr. Barr did, cited age. However, we
16 chose to seat Juror Number 41, Ms. Brockmeier, who happens to
17 be 72 years old.

18 They cited, I believe there was a citation about while
19 somebody else was employed, their wife is unemployed. We
20 seated Juror Number 360, a white male, whose wife is a
21 housewife, and I agree that housewives are workers.

22 MR. HAZZARD: Your Honor, I don't recall anyone citing
23 the unemployment of a spouse as being ---

24 MR. RICHARDSON: Mr. Barr cited unemployment of a
25 spouse.

1 MR. BARR: I don't. I don't think I did. I may
2 have.

3 THE COURT: Let me see. Mr. Barr, I've got - which
4 one was it because I've got 160 works at Wal-Mart.

5 MR. RICHARDSON: It was Number 368, he cited the wife's
6 education. Let's see, number 368.

7 THE COURT: 368, I've got that he ---

8 MR. RICHARDSON: Stated that he's - I'm sorry.

9 THE COURT: His age and disability.

10 MR. RICHARDSON: I'm sorry, Your Honor, I had that down
11 wrong. Let me look real quick.

12 MR. BARR: Your Honor, I think Number 368 the
13 husband was disabled and the wife was - worked for Workers'
14 Compensation Commission.

15 MR. RICHARDSON: Okay, I apologize, Your Honor. They
16 cited lack of education. They seated several jurors that
17 have high school educations. They tried to differentiate
18 between farmers, construction workers. We - they seated
19 persons I believe that worked for AVX, worked in other mills.
20 They cite lack of education. They chose to put
21 administrative assistant on there. They chose to put
22 teachers aid on there. These are not occupations that
23 require college degree, a master degree, require no more of
24 a degree than construction worker or carpenter, mill worker,
25 Wal-Mart worker. I don't recall asking any questions about.

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1 education on this, Your Honor. So, anything that they're
2 putting out there at that is just nothing more than a guess.

3 THE COURT: All right.

4 MR. RICHARDSON: And the going postal, Your Honor, there
5 is no statistics that has been sided with regard to that. I
6 understand what Mr. Hazzard is saying there, but I find it
7 highly offensive citing that many UPS or United States postal
8 office workers tend to be psychotic.

9 THE COURT: All right, I understand. I'm going to go
10 ahead and seat this jury. I think - I'll note your challenge
11 I think - I don't - I think they have given adequate racially
12 and I was looking more for gender-neutral because, like I
13 say, there's so many whites on this jury list, pretty much
14 anybody that struck you could challenge it, but I was looking
15 more for the gender. So, I'm going to go ahead and allow the
16 jury to seat as it was.

17 MR. RICHARDSON: Thank you, Your Honor.

18 THE COURT: Any further challenges to the selection
19 or composition by the State?

20 MR. RICHARDSON: None from the State, Your Honor.

21 THE COURT: Any challenges to the selection or
22 composition of the jury by the Defense?

23 MR. HAZZARD: The Court's indulgence, Your Honor.

24 Your Honor, Mr. Barr and I have discussed this and I
25 believe that he will join in on this motion and I'm sure the

1 Court will ask him for clarification, but in looking at the
2 composition of the jury panel as a whole, the Defense has
3 some major concerns, Your Honor, considering the fact that we
4 started out today with 129 seated or 129 impaneled jurors.
5 Of that 19 were black. Of those 19, three were struck.
6 Number 83 was struck or released by the Court upon their
7 request as a violent crime victim. Number 120 was released
8 by the Court and number 133 was released by the Court for
9 medical reasons which meant that when it was all said and
10 done out of the possible panel of 129 there were only 16
11 possible African-American jurors from which to choose, and I
12 feel that I would be remiss if I did not bring that to the
13 Court's attention and question and object to the composition
14 of the panel as a whole. I place that on the record for the
15 protection of my client.

16 MR. BARR: Your Honor, I would join in Mr. Hazzard's
17 motion. The spirit of the law here is that a person gets a
18 jury of their peers, and the State's argument seems to be
19 because you struck one group of white males as opposed to
20 another group of white males that they have the right to
21 challenge the jury composition based on having struck white
22 males when white males were, in fact, impaneled almost in a
23 majority situation I guess or whites in general, and again,
24 our, you know, position would be that if there is any - if it
25 is anything out of the ordinary is the fact that Mr. Niles

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1 and Ms. Hammond are not getting a jury of their peers because
2 the jury is almost all white.

3 THE COURT: All right, what was that number? How
4 many in the full panel? I saw where there was ten out of the
5 60 on this panel were African-American, and out of the
6 original jury panel of 129 there was how many you had? I
7 didn't check it.

8 MR. HAZZARD: Sixteen after the, after the three were
9 taken, after the three were taken out. I believe number 83,
10 the violent crime victim, was taken out of the petit panel of
11 60. I believe numbers 120 and 133 were released when the
12 overall panel of 129 was being formulated. So, as a result,
13 we started out with a total of 19 out of the 129, and then
14 you take those three out that leaves only 16 out of the 129
15 that were possible and also as the Court has already alluded
16 to, Your Honor, out of the 31 or 32 individuals called to be
17 considered as jurors 30 of those 32 are white.

18 THE COURT: Does anybody know what the racial
19 composition is of Horry County?

20 MR. RICHARDSON: Your Honor, I'm sure we can find
21 that out, but the procedure they use to draw a jury panel
22 here in Horry County is the same they use all over the State
23 and ---

24 THE COURT: Yeah, but still, if that, if that
25 procedure produced every single person of one particular

1 race.

2 MR. RICHARDSON: Your Honor, it didn't.

3 THE COURT: I know it didn't, but it certainly, you
4 know, and granted, if the racial composition of Horry County
5 is ten percent African-American and 90 percent white then
6 we've got no problem. We pretty much fit this thing, but if
7 you've got a racial mix of 50/50 but less than 10 percent are
8 chosen for jury service then there might - we might need to
9 investigate the way that jury panel is selected.

10 MR. RICHARDSON: And Your Honor, it would be the
11 composition of registered drivers, ID holders or voters.

12 THE COURT: That's right.

13 MR. RICHARDSON: Not necessarily the demographics of the
14 county itself but that's not a function of the solicitor's
15 office. That would be something the clerk, maybe the clerk's
16 office may be able to address.

17 THE COURT: That's right, but the - but what I have
18 to ensure is that these Defendants their right to a jury
19 trial of their peers is not violated. That's what we've got
20 to check. Now, granted ---

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: --- peers doesn't mean that it has to be
23 the same age, same race, same sex, but I think the jury panel
24 that you choose from can't be exclusively one race or one
25 gender or one age group. I think - and so, that's what I -

1 I'm going to take that under advisement and check into it.

2 MR. HAZZARD: Thank you, Your Honor.

3 THE COURT: Any other challenges?

4 MR. HAZZARD: No other challenges on behalf of the
5 Defendant Hammond with regard to the composition of the jury,
6 Your Honor.

7 THE COURT: All right, let's go ahead and bring the
8 other panel back in. It's 2:00 o'clock. I've got to let
9 these people get some lunch and let's go ahead and bring them
10 back in.

11 (Whereupon, the following takes place in the presence of
12 the jury venire.)

13 THE COURT: All right, ladies and gentlemen, welcome
14 back. I apologize for keeping you so long. I know it's past
15 lunchtime and I'm starving, too, and I know you were starving
16 but I wanted to keep you around until such time as I could
17 release you for the remainder of the day rather than making
18 you come back at 2:00 o'clock or 3:00 o'clock or whatever the
19 case may be today. So, we are - no longer need your services
20 for the remainder of today. You're free to go about your
21 business for the remainder of the day and please call that
22 number that the clerk gave you after 6:00 p.m. today and that
23 will direct you as to when you need to return and if you need
24 to return. So, at this point in time I will go ahead and
25 excuse you and please call that number after 6:00 p.m. today.

1 Thank you very much.

2 (Whereupon the following takes place outside the
3 presence of the jury.)

4 THE COURT: All right, let's go ahead and bring the
5 other jury in and I can cut them loose until tomorrow
6 morning.

7 (Whereupon called, the following takes place in the
8 presence of the jury.)

9 THE COURT: Ladies and gentlemen, welcome back.
10 Sorry to keep you so long. I know it's way past lunch and
11 everybody is hungry and ready to get something to eat but I
12 wanted to hold you here a little while longer so that when I
13 released you I could release you for the remainder of the
14 day. We've got enough matters of law to take up that I can
15 let you go for today but I'll need you back in the jury room
16 at 9:30 tomorrow morning. Now, when you get back at 9:30
17 tomorrow morning I'll bring you out and give you some
18 preliminary instructions at that time, but before you go I
19 wanted to give you very brief instructions.

20 Number one, I wanted to introduce to you the people that
21 will be here in court with you this week and what their
22 duties are. From the clerk's office we have Ms. Donna
23 Williams, and Ms. Williams works with the clerk of court's
24 office and they're responsible for taking care of all of the
25 administrative duties involved in a trial, the filing of

1 papers, the summonings of jurors and things of that nature
2 and we thank Ms. Williams for her service. My court
3 reporter, Ms. Grace Hurley, she is responsible for taking
4 down everything that happens in court this week. If anybody
5 wants to know what happened she can provide them with a
6 verbatim transcript of what has transpired.

7 Our deputies from the sheriff's department is Mr. Brooks
8 James and Mr. Doug Hyman. They are here - Mr. James over
9 here. They are here for your and my and the other parties'
10 protection. They're in charge of courtroom security and
11 they're here to make sure that you're safe and to make sure
12 I'm safe and the parties and the witnesses are safe.

13 Our bailiffs are Ms. Dana Sarvis and Ms. Gloria Bell.
14 They are here to take care of your needs. If you have any
15 questions, if you have any needs, if you have any concerns
16 let one of the bailiffs know and they will let the Court know
17 and they're here to take care of you.

18 My law clerk, Mr. James Moore, he's here to assist me.
19 He's an attorney licensed to practice law here in the State
20 of South Carolina and he's been with me a while and be with
21 me a while longer and I thank him for his service. He takes
22 care of some research matters and things for me in that
23 regard.

24 Now, I'm going to release you for remainder of the
25 day and I ask that you be back in your jury room at 9:30

1 tomorrow morning. Now, when you get back in your jury room
2 the first thing I would ask that you do is to select a
3 foreperson. Now, a foreperson I like to give the jury the
4 opportunity to choose one among themselves if they're able to
5 do so. If you can't, don't worry about it. I can certainly
6 appoint someone as foreperson and many judges appoint their
7 own foreperson. I like to give the jury the opportunity to
8 choose one themselves first. So, if you get - when you get
9 back tomorrow morning, select a foreperson, write the
10 foreperson's name on a sheet of paper, give it to the bailiff
11 and they'll bring it into the court. Now, the foreperson has
12 absolutely no more authority than any other juror. The
13 foreperson simply is the liaison between the Court and the
14 jury. If the jury has a question the foreperson lets the
15 Court know. If the jury has a need the foreperson lets the
16 Court know, and if the jury when they render a verdict then
17 the foreperson is the one that writes the verdict down and
18 presides over the deliberations. Other than that the
19 foreperson has no more authority or no more importance than
20 any other juror. The only disqualification is our alternate
21 jurors at this point in time, Mr. Swanson and Mr. Conrad.
22 You would not be eligible to serve as foreperson because at
23 this point in time you're simply alternates to this jury and
24 you're not a part that would take place - that would not
25 participate in the deliberations at this time. You may at a

1 later time, but at this time you're not. So, you would not
2 serve as foreperson but anybody else is eligible to serve as
3 foreperson. When you come back into the courtroom I'll ask
4 that Mr. Swanson and Mr. Conrad one of you will need to sit
5 in this first seat here and the other one will sit in that
6 last seat on the back row. The foreperson will always occupy
7 this first seat here. The rest of you are at liberty to sit
8 wherever you like. You can sit in the same seat throughout
9 the trial. You can alternate seats throughout the trial.
10 The only requirement is that we have the foreperson in the
11 first seat and the alternates on the two end seats.

12 As I excuse you for the evening, please, please, please
13 do not conduct any independent investigation into this case.
14 Don't go watching any news reports. Don't read any newspaper
15 accounts. Don't listen to any radio accounts. Don't call
16 anybody, ask anybody or do anything investigative regarding
17 this case. As jurors your decision is to be based
18 exclusively on testimony and evidence presented during the
19 trial without any influence from any outside source. Please
20 do not discuss this case with anyone. Do not speak with the
21 attorneys. Do not speak with the witnesses. Do not even
22 speak among yourselves at this point in time. It is vitally
23 important that everyone keep an open mind and not have any
24 influence from any outside source until it comes time for you
25 to render your - for you to conduct your deliberations and

1 I'll let you know when that occurs. So, at this point in
2 time you can't even talk about this case among yourselves. I
3 thank you -- also, when you come back tomorrow, please be
4 prompt so that we don't have to wait on any juror members.
5 We recognize that emergencies crop up from time to time. If
6 an emergency comes up, please call and let us know and we can
7 certainly work with you. Don't just leave us in the dark as
8 to why you didn't show up. If there is an illness, a flat
9 tire, whatever the case may be, if there's an emergency and
10 you're not going to be on time, please call and let us know
11 as to why you won't be here on time.

12 When you come into the courtroom if you have any cell
13 phones, pager devices, whatever communication device you
14 might use, please turn it off. I'll give you plenty of
15 opportunities to return phone calls, to check your messages
16 and things like that, but during the trial of this case we
17 will certainly need your undivided attention. So, at this
18 point in time I'll excuse you for the remainder of the day.
19 I thank you for your service and I'll give you some more
20 instructions tomorrow morning when you return. Thank you
21 very much.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, let's go ahead and break for
25 lunch. Say be back at 3:30? Because I've got it's 2:15 now.

1 MR. RICHARDSON: Yes, sir. We'll fix that in the
2 meantime.

3 THE COURT: We'll need to fix that clock, that's
4 right. All right, and I'm going to take your motion under
5 advisement. I need to do a little bit of research on it and
6 let you know. All right, thank you very much

7 MR. RICHARDSON: Thank you, Your Honor.

8 OFF THE RECORD

9 (On the record.)

10 THE COURT: All right, back on the record, this is
11 the case of the State versus Niles and Hammond. Mr. Barr,
12 Mr. Hazzard, I've taken your motion to disqualify this
13 particular jury on the grounds of racial inequality, and
14 based upon my research even though there is not a racially
15 mixed jury, there's been no showing of a systematic exclusion
16 of a particular race or a particular gender, and I think to
17 qualify in this case a race you have to show also that
18 there's been a systematic exclusion of a particular race and
19 because there is no showing of that I'm going to deny your
20 motion and let this jury sit in place.

21 MR. BARR: Thank you, Your Honor.

22 THE COURT: Thank you. All right, what have we got
23 now as far as pretrial - not pretrial matters but I guess
24 pending motions?

25 MS. ELDER: Your Honor, I have just provided copies

1 of the proffer that we entered into with the third Co-
2 Defendant Ervin Moore. He is present. We have - he is going
3 to testify for the State in this case. His attorney
4 Mr. Truslow is here. I do not know with that information if
5 - Mr. Truslow is here with his client to plead according to
6 our proffer. However, we don't want to get to that plea
7 until motions obviously for continuances, if any, are made.
8 So, we need to probably address that issue first and then
9 take up the issue of his plea.

10 THE COURT: All right, any, any motions regarding Mr.
11 Moore's proffered testimony from Mr. Barr or Mr. Hazzard?

12 MR. BARR: The Court's indulgence. I was just
13 handed this. I'll have to read it.

14 THE COURT: All right, that'll be fine. Oh, so,
15 you've given them a copy of the proffered testimony?

16 MS. ELDER: No, no, Your Honor, I've given them a
17 copy of the proffer agreement.

18 THE COURT: Oh, the agreement, okay.

19 MS. ELDER: Yes, sir; yes, sir.

20 THE COURT: All right.

21 MS. ELDER: No, sir, we wouldn't give them proffered
22 testimony.

23 MR. HAZZARD: There are no motions regarding the
24 proffer of Ervin Junior Moore from the Defendant Mokeia
25 Hammond.

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1 THE COURT: All right.

2 MR. BARR: There is none from the Defendant Richard
3 Niles at this point.

4 THE COURT: All right, all right, what we got next?

5 MS. ELDER: Your Honor, the only thing that I can
6 foresee from the State is the Jackson versus Denno hearing in
7 regards to the statement of Richard Niles and Mokeia Hammond.
8 Your Honor, I'll pass up, this is a copy of the sealed
9 deposition that Your Honor ordered and we all agreed to, I
10 believe, back in January.

11 THE COURT: All right.

12 MS. ELDER: That deals with the statements, Your
13 Honor. In that deposition we did cover with Sergeant Crosby
14 the things in dealing with the Jackson Denno requirements,
15 Your Honor, about the voluntariness, going through Miranda
16 and things of that nature. We have today Investigator Curry
17 who was also present during those interviews. We can put him
18 up on the stand in regards to making the determination based
19 on the deposition before Your Honor and Investigator Curry's
20 testimony that the appropriateness of having those statements
21 admitted, Your Honor.

22 THE COURT: All right, I'm going to go ahead and open
23 the deposition of Officer Joey Crosby taken on Thursday
24 January 22, 2009. You say you have Officer Crosby here?
25 Officer ---

1 MS. ELDER: No, Your Honor, I have Investigator
2 Curry.

3 THE COURT: Curry.

4 MS. ELDER: He was present during the interview but
5 Investigator Crosby was the primary investigator on this
6 case.

7 THE COURT: All right, well, if you want to call
8 Officer Curry I'll allow you to go ahead and call him now.

9 MS. ELDER: Thank you, Your Honor.

10 THE COURT: And in the deposition where is the
11 Jackson v. Denno?

12 MS. ELDER: I'll get Mr. Richardson to find that,
13 Your Honor, if we - you want to go ahead and start the
14 testimony.

15 THE COURT: All right, if you want to go ahead and
16 start that'll be fine.

17 MS. ELDER: Thank you, Your Honor. The State would
18 call Investigator Crosby - I mean, Investigator Curry.

19 Whereupon, Michael Lee Curry was called to the stand,
20 duly sworn by the clerk and testified as follows:

21 THE CLERK: Please be seated and state your full
22 name, spell your last name for the Court?

23 MR. CURRY: Michael Lee Curry, C-U-R-R-Y.

24 EXAMINATION

25 BY MS. ELDER:

1 Q You are an investigator with the Myrtle Beach Police
2 Department?

3 A Yes, ma'am.

4 Q And in that capacity do you have an opportunity to
5 conduct interviews or be present during interviews?

6 A Yes, ma'am.

7 Q And were you, in fact, present at some point in time in
8 2007 for the interview of Defendants, Richard Niles and
9 Mokeia Hammond?

10 A Yes, ma'am.

11 Q And do you recall the dates of those interviews?

12 A Mr. Niles was April 13th and Ms. Hammond's was April
13 14th.

14 Q And those were 2007?

15 A Yes, ma'am.

16 Q And could you tell me how those interviews came to be?

17 A Throughout our investigation we had determined phone
18 records, vehicle registration for a rental vehicle, witness
19 statements and fingerprints. Based on our investigation at
20 that time Mr. Hammonds and - or I mean, Ms. Hammonds and
21 Mr. Niles were suspects in the incident or possible suspects.

22 Q Were they taken into custody?

23 A Yes, ma'am.

24 Q And did you, after being placed into custody, did you
25 and another investigator, Investigator Crosby approach them

1 for a statement?

2 A Yes, ma'am.

3 Q And do you recall, let's take the Defendant Richard
4 Niles first, where do you recall approaching him at?

5 A We interviewed Mr. Niles at the Myrtle Beach Police
6 Department in one of the jury rooms that's attached to the
7 courtroom that's all in one building with the police
8 department.

9 Q And this was after he was placed into custody?

10 A Yes, ma'am.

11 Q And he appeared before you and Investigator Crosby at
12 that time?

13 A Yes, ma'am.

14 Q And what took place at that initial interview?

15 A The initial interview he was first read his Miranda
16 rights. We made sure that he understood each of the rights.
17 We then clarified that he did want to speak with us. At that
18 point after he said yes that he understood his rights and yes
19 he wanted to talk with us we conducted an interview that
20 started, the first one roughly 8, 8:15 at night. That
21 interview didn't, much did not come out of that interview and
22 then at a certain point he said he wanted to talk to his
23 lawyer at which time we stopped the interview roughly
24 10 o'clock, 10 p.m.

25 Q And during that initial interview with Mr. Niles were

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1 you present for that the entire time?

2 A Yes, I was.

3 Q And in your presence during the duration of this
4 interview did anybody appear to force, coerce or threaten him
5 in any manner to get him to speak to the police?

6 A No, ma'am.

7 Q And once he did invoke his right to counsel you stopped
8 the interview?

9 A Yes, ma'am.

10 Q And when you say you read him his Miranda rights do you
11 go down a form to read him his Miranda rights?

12 A Yes, ma'am.

13 Q And that's what you commonly do?

14 A Yes, ma'am.

15 Q And was that done in your presence?

16 A Yes, ma'am.

17 Q And did he appear to understand each and every right as
18 you outlined them ---

19 A Yes, ma'am.

20 Q --- Investigator Crosby outlined them?

21 A Yes, ma'am.

22 Q Did he appear to be under the influence of any drugs or
23 alcohol?

24 A No, ma'am.

25 Q Did he appear to understand and respond appropriately to

1 the questions that you asked?

2 A Yes, ma'am.

3 Q Now, at the point that he invoked one of his Miranda
4 rights and you stopped the interview did you come to speak to
5 him again?

6 A Yes, ma'am.

7 Q And how did that come to be?

8 A After he invoked his rights we had an officer, a jailer
9 take him back to the holding or the jail area. Sergeant
10 Crosby, who was Investigator Crosby at the time, and myself
11 were speaking with our supervisors outside of the jury room
12 that we had been in. We were discussing the case, and as we
13 were discussing the case a jailer came back and said that
14 Mr. Niles wanted to talk to us again, at which time Sergeant
15 Crosby went back in the jail and spoke with him. After
16 Sergeant Crosby came back he told me that Mr. Niles wanted to
17 speak with us. We went back into the jury room. Mr. Niles
18 was then brought back into the jury room where we conducted a
19 second interview that started roughly about 10:15 p.m.

20 Q And did you also - I didn't ask you about the first part
21 of that interview. Was that recorded?

22 A Yes, ma'am.

23 Q So, did you record the second part of this interview?

24 A Yes, ma'am.

25 Q And did you or did Investigator Crosby in the course of

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1 that interview go back over his desire to speak with you?

2 A You're referring to the second interview?

3 Q Yes.

4 A Yes, ma'am. When he came back into the room Sergeant
5 Crosby asked him if he had requested to speak with us. He
6 had told them again that he had been given his Miranda
7 rights. Asked him if he understood those rights, which he
8 said he did, asked him if he wanted to talk to us and he said
9 he did. So, we conducted a second interview.

10 Q The second interview he initiated?

11 A Yes, ma'am.

12 Q And when he reinitiated it you start the tape back. You
13 went back over his understanding that he initiated this and
14 wanted to talk with you?

15 A Yes, ma'am.

16 Q And at that time did you take a second statement from
17 him?

18 A Yes, ma'am.

19 Q And I don't want to get into the facts of the statement,
20 but did he have information about the case that we're trying
21 here today?

22 A Yes, ma'am.

23 Q And did he place himself there at the day and time that
24 the murder occurred?

25 A Yes, ma'am.

1 Q Did he also place himself in the vehicle that was being
2 driven that day?

3 A Yes, ma'am.

4 MR. HAZZARD: Okay, Your Honor, at this point I'm going
5 to object. I don't see what this has to do with the issue of
6 Jackson v. Denno, which is voluntary, willful and knowing
7 giving of a statement. They seem to be getting into the
8 actual substance of the statement itself.

9 THE COURT: All right, I'll sustain that.

10 MS. ELDER: That's all I was going to ask, Your
11 Honor, and make it relevant to this case.

12 THE COURT: All right.

13 MS. ELDER: That was the only purpose for that.

14 BY MS. ELDER:

15 Q Did you also have an opportunity to interview the second
16 Defendant in this case, Mokeia Hammond?

17 A Yes, ma'am.

18 Q And tell me how that came about.

19 A Sergeant Crosby contacted me, advised me that Ms.
20 Hammond had been arrested and said we were requested to go
21 down, both him and myself to see if she would let us
22 interview her.

23 Q Okay, and what did you do?

24 A I met Sergeant Crosby. Again, we were at the Myrtle
25 Beach Police Department. We had Ms. Hammond come into the

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1 jury room, the same room that we interviewed Mr. Niles at.
2 Once she was in there we ascertained or we determined that
3 she had wanted to speak with us and we read her her Miranda
4 rights, made sure that she understood them, and once she
5 acknowledged that she understood her rights we confirmed that
6 she did want to talk to us again and then we interviewed her.

7 Q And did she appear while you were present to understand
8 those rights that she was given?

9 A Yes, ma'am.

10 Q And did she respond to you in an appropriate manner?

11 A Yes, ma'am.

12 Q Did she appear to be under the influence of any drugs or
13 alcohol?

14 A No, ma'am.

15 Q And while in your presence - were you there during the
16 entire course of her interview?

17 A Yes, ma'am.

18 Q A while in your presence and during the course of this
19 interview did you observe anybody force, threaten, coerce her
20 to talk with you about this incident?

21 A No, ma'am.

22 Q And did she do so freely?

23 A Yes, ma'am.

24 Q And at any point in time during the interview did she
25 request that the interview be concluded?

1 A No, ma'am.

2 Q And do you recall, I know it's been a long time, about
3 the duration of that particular interview?

4 A That interview started roughly about 12:03 p.m. and
5 ended at 1:05 p.m.

6 Q And at any time was she in need of anything? Did you
7 withhold any kind of needs from her, water, bathroom,
8 anything like that during the course of the interview?

9 A No, ma'am.

10 Q The same with Richard Niles, did he - did you all deny
11 request that he made for beverages, anything like that?

12 A No, ma'am.

13 MS. ELDER: Just one moment, Your Honor?

14 Your Honor, that's all the questions I have for
15 Investigator Curry. For Your Honor as far as the transcript
16 is concerned, I would point in reference to Defendant Mokeia
17 Hammond, page nine of the transcript, it starts with line 13.
18 It goes through page 13, line 11.

19 THE COURT: All right.

20 MR. RICHARDSON: And then in reference to Richard Niles
21 he is page 13, line seven through page 16, line 12.

22 THE COURT: All right, with regard to this witness
23 any questions, Mr. Barr?

24 EXAMINATION

25 BY MR. BARR:

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1 Q Officer Curry, as a part of the interview with Mr. Niles
2 and Miranda rights, do you use as a standard practice a form,
3 a waiver form?

4 A Yes, sir, the Myrtle Beach Police Department has a
5 Miranda rights form; yes, sir.

6 Q Okay, was that form signed as a part of this interview?

7 A No, he said he did not want to sign the form.

8 Q Did he say he didn't want to sign it or he was not going
9 to sign it?

10 A No, he said he didn't want to sign it until his attorney
11 was there and said it was okay.

12 Q All right, and did you then proceed with the interview
13 anyway?

14 A Yes, sir, he agreed to talk with us. He just didn't
15 want to sign the form.

16 Q Okay, and after the break between the first interview
17 and the second interview I believe you said the first part of
18 the interview was terminated because he requested to see his
19 attorney?

20 A Yes, sir.

21 Q Okay, was he allowed in any way to contact an attorney?

22 A He was taken back to the jail. So, if he had wanted to
23 contact his attorney he would have had an opportunity.

24 Q Do you know this of your own personal knowledge do you
25 know that he was given the opportunity to contact his

1 attorney?

2 A He was taken back to the jail.

3 Q So, basically your testimony is all you know is he was
4 taken back to the jail?

5 A Yes, sir.

6 Q Okay, so, you don't know of your own personal knowledge
7 that between the time he terminated the interview and
8 specifically asked to see his attorney that he was ever
9 allowed to speak with his attorney?

10 A No, I wasn't back in the jail. That's correct, sir.

11 Q Okay, all right, and again, as far as the - him waving
12 his Miranda rights he never signed the form?

13 A No, sir.

14 Q And said as a part of the interview that he was not
15 going to sign the form?

16 A Said he didn't want to sign it but he agreed to talk
17 with us.

18 Q Okay, all right.

19 MR. BARR: No further questions.

20 THE COURT: All right, Mr. Hazzard, any questions?

21 MR. HAZZARD: No questions for this witness, Your
22 Honor.

23 THE COURT: All right, anything on redirect?

24 MS. ELDER: Just a moment, Your Honor. That's all
25 the questions I have, Your Honor.

1 THE COURT: All right.

2 EXAMINATION (By Court)

3 Q Let me ask you, with regard to Mr. Niles, he agreed to
4 be questioned.

5 A Yes, sir.

6 Q Then he requested an attorney?

7 A Yes, sir.

8 Q So, he left the interview room?

9 A Yes, sir.

10 Q And he was - was he taken back to a jail cell or did
11 they make it that far or what was the break between
12 requesting an attorney and him being brought back to continue
13 an interview?

14 A When he requested to speak with his attorney we stopped
15 the interview immediately.

16 Q All right.

17 A We then had him escorted back into the jail. At that
18 point Sergeant Crosby and I were talking with our supervisors
19 and some other detectives in the - we call it the main
20 courtroom area.

21 Q Right.

22 A And then shortly after a jailer came in and said that he
23 had requested to talk with us again, at which time Sergeant
24 Crosby then went back into the jail.

25 Q All right, but what was the timeframe between the jailer

1 coming out saying he wanted to talk to you?

2 A The interview ended roughly 10:00 o'clock and we started
3 the new interview at roughly 10:15 p.m. So, just, you know,
4 five minutes, less than ten minutes.

5 Q Do you - okay, so, it was less than a ten-minute break
6 or about a ten-minute break.

7 A Roughly.

8 Q Do you know what the or who initiated the contact
9 between Mr. Niles and the jailer about giving a statement?
10 In other words, you said the jailer came back and said,
11 "Mr. Niles wants to talk to you all"?

12 A Yes, sir.

13 Q Was there any action between, interaction between that
14 jailer and Mr. Niles?

15 A I wasn't back in the jail. So, there's no way for me to
16 know.

17 Q You don't know, okay.

18 THE COURT: Any questions in response to my questioning?

19 MS. ELDER: Yes, sir, Your Honor, just briefly.

20 EXAMINATION (BY MS. ELDER)

21 Q You've read a copy of your interview. You've had an
22 opportunity to listen to your interview with Mr. Niles, the
23 first and second part?

24 A Yes, ma'am.

25 Q And we've provided you transcripts of those interviews;

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1 is that correct?

2 A Yes, ma'am.

3 Q Do you have those with you?

4 A Yes, ma'am.

5 Q All right, if you could look on the back page, page 52

6 of part 1. Do you put the time that your interview

7 concluded?

8 A Page 52 you said?

9 Q Yes, the last page.

10 A Yes, ma'am.

11 Q At what is the time that the first part concluded?

12 A It'd actually be ten minutes to ten.

13 Q And do you have a copy of part two?

14 A Yes, ma'am.

15 Q And did you note the time that you began that interview,

16 page one, I believe, line eight?

17 A That interview began at 10:15 p.m.

18 Q All right, so that's about 25 minutes?

19 A Yes, ma'am.

20 Q And in response to the Court's questions if you will

21 look at the second part of that interview on that transcript

22 on line 11, I believe, is that Investigator Crosby?

23 A Yes, ma'am.

24 Q And could you read that where it starts with did?

25 MR. HAZZARD: Okay, I would object at this point, Your

1 Honor, unless he is going to testify specifically from his
2 independent recollection because the copies of the interview
3 transcripts that I have been provided with are not an
4 accurate transcription and the reason I know that is there
5 are several instances where certain parts of the apparent
6 conversation or the apparent investigation or interrogation
7 are repeated in the same transcript but not repeated
8 verbatim. There are certain word changes throughout here and
9 I'll be more than happy to point those out to the Court if
10 assuming the documents I have received from the Solicitor's
11 Office are the same ones that Ms. Elder is referring to. So,
12 I would object to him testifying verbatim from any
13 transcript.

14 THE COURT: All right, so, what you're referring to
15 now is what?

16 MS. ELDER: I was referring to the interview itself.
17 We've got - actually we've got the tapes. I can, I can
18 certainly play the tapes. Mr. - Investigator Curry was
19 there. He can certainly testify to the tapes. That would be
20 just - obviously be easier.

21 THE COURT: Okay, well, you know, I can tell you what
22 - I think what I was looking to is I understand when a person
23 requests an attorney you have to sever all contacts at that
24 or not contacts but stop all questioning and you cannot
25 resume questioning unless it is initiated by the Defendant

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1 and I think what I was looking to see is was the, I guess,
2 any further contact was it initiated by the jailer or was it
3 initiated by the Defendant and that's what I'm looking for.

4 MS. ELDER: Yes, sir, and the first page of the
5 second part I was going to question Investigator Curry about
6 specifically Mr. Niles was asked, ``Did anybody make you
7 speak to me again and is this your choice, is this your own
8 free will. So, you're doing this on your own," to establish
9 that, Your Honor.

10 THE COURT: Okay, well, I think you've covered that.
11 My question is is did the jailer initiate the contact, even
12 though there's free and voluntary, as I understand there
13 could be no further questioning regarding giving a statement
14 at all unless it is initiated by the Defendant
15 himself.

16 MS. ELDER: Well, and that's what we were trying, we
17 were covering, Your Honor, is that he did reinitiate this
18 contact. I think that they can have, the jailer and the
19 Defendant can have contact obviously going back to the jail.
20 It's not necessarily has to be a completely mute walk back to
21 the jail, but from the transcripts of the interview
22 indicating that Mr. Niles certainly initiated the contact of
23 his own free will I believe covers Denno.

24 THE COURT: All right, well, that's what I - I'm
25 going to allow you to get anything but let's make sure you

1 keep in mind that I am looking to establish the initial
2 contact for that second interview.

3 MS. ELDER: Yes, sir.

4 THE COURT: Well, I think you're right. I think
5 reading the transcript of his testimony and stuff like that
6 there's certainly enough in here to indicate that he wanted
7 to speak but I'm looking more than a desire to speak as to
8 who initiated the contact prior to that second interview.

9 MS. EDLER: Your Honor, I would also point out in
10 that vein page 15 in the transcript that you've got from
11 Investigator Crosby starting with line 11 it deals
12 specifically with him, Investigator Crosby going back to the
13 jail cell. He asked Mr. Niles did he in fact ask to talk to
14 me again. He said yes.

15 THE COURT: All right.

16 MS. ELDER: And that would be our showing, Your
17 Honor.

18 THE COURT: Any further questioning or any ---

19 MR. BARR: Your Honor, it would be the Defense
20 position that as with regard to Mr. Niles that Officer Curry
21 testified today in court that he doesn't know what happened
22 first of all to Mr. Niles's request to meet with his attorney
23 and I was his attorney at that time. I got no contact from
24 them. Beyond that, I don't think it's clear that Mr. Niles
25 initiated the follow-up meeting with the investigators. I

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1 think if you read the transcript the first investigation
2 ended by a promise that, "We'll let you see your mother,"
3 and what the circumstances were surrounding her, and then
4 that, in my opinion, led to Mr. Niles or led to the second
5 part of the interview, but I think that was a false promise,
6 and along with being denied the opportunity to see his
7 attorney, which was his constitutional right, and for those
8 reasons I would ask that Jackson v. Denno, Your Honor, that
9 both statements be suppressed.

10 THE COURT: All right, any further questions of
11 Officer Curry?

12 MR. HAZZARD: None on behalf of Defendant Hammond, Your
13 Honor.

14 THE COURT: Mr. Barr?

15 MR. BARR: Nothing further, Your Honor.

16 THE COURT: All right, sir, you can step down.

17 All right, it's going to take me a while. Let me read
18 this.

19 All right, anything further from the State?

20 MS. ELDER: No, sir, Your Honor.

21 THE COURT: All right.

22 Mr. Barr, anything further?

23 MR. BARR: Nothing, Your Honor, just like to
24 reiterate that under the Fifth Amendment and under Jackson
25 Denno in this situation, we have a situation where the police

1 standardly use a waiver form for Miranda. There is no signed
2 waiver form. The officer clearly indicates that the
3 Defendant refused to sign a waiver form. The Defendant stops
4 the interview and requests to see his attorney, no contact
5 with the attorney. There's no opportunity, as shown by the
6 testimony here, that the Defendant was given his rights,
7 given any right to see his attorney, and then he proceeds
8 with a second part of the interview, Your Honor. Again, we
9 would just ask that the Court consider suppressing any
10 statement given under this circumstance.

11 THE COURT: All right, Mr. Hazzard.

12 MR. HAZZARD: Your Honor, I would call Mokeia Hammond
13 to the stand.

14 THE COURT: All right.

15 Whereupon, Mokeia Hammond was called to the stand, duly
16 sworn by the clerk and testified as follows:

17 THE CLERK: Please be seated. Please state your full
18 name and spell your last name for the Court and talk loud
19 into that microphone.

20 MS. HAMMOND: My name is Mokeia Hammond, H-A-M-M-O-N-D.

21 EXAMINATION

22 BY MR. HAZZARD:

23 Q And could you spell your first name for the record,
24 please, ma'am?

25 A . Mokeia, M-O-K-E-I-A.

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1 Q Now, Ms. Hammond at some point following your arrest on
2 the charges that bring us here today you had the opportunity
3 to speak with representatives of the Myrtle Beach Police
4 Department; is that correct?

5 A Yes, sir.

6 Q Okay, when you spoke with these representatives was that
7 by your choice?

8 A Yes, sir.

9 Q Okay, during any time during this discussion, this
10 interview process did anyone from the Myrtle Beach Police
11 Department or any other state agency or government agency
12 threaten you?

13 A No, sir.

14 Q Did anyone from any governmental or state agency coerce
15 you ---

16 A No, sir.

17 Q --- to make a statement?

18 A No, sir.

19 Q Did anyone from any government or state agency promise
20 you anything in exchange for your statement?

21 A No, sir.

22 Q Okay, thank you.

23 MR. HAZZARD: No further questions.

24 THE COURT: All right, Mr. Barr, any questions?

25 MR. BARR: No, no questions.

1 THE COURT: All right, Ms. Elder.

2 MS. ELDER: No, Your Honor.

3 THE COURT: All right, you may step down.

4 A Thank you, Your Honor.

5 THE COURT: All right, Mr. Hazzard, anything further?

6 MR. HAZZARD: Nothing further on this point, Your
7 Honor.

8 THE COURT: All right, anything in reply?

9 MS. ELDER: No, sir, Your Honor.

10 THE COURT: All right.

11 All right, Mr. Barr, your motion is noted. I'm going to
12 deny it. I'm going to find that the statements were
13 voluntarily given, and therefore, is admissible. You can
14 still make your argument to the jury though as - for - to let
15 them determine whether or not it was a voluntarily given
16 statement but for the purposes of Jackson v. Denno I am going
17 to allow the statements.

18 MR. BARR: Thank you, Your Honor.

19 MS. ELDER: Thank you, Your Honor.

20 THE COURT: All right, anything further?

21 MS. ELDER: Your Honor, the State is not aware. I
22 think there was a - we received a motion for severance from
23 Mr. Hazzard. I don't know if Mr. Barr made that motion as
24 well, but I think Mr. Hazzard, I think we did receive one of
25 those.

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1 THE COURT: All right, any - there are no further
2 motions from the State at this time?

3 MS. ELDER: Not to our knowledge, Your Honor.

4 THE COURT: All right, any motions from the Defendant
5 or matters before?

6 MR. BARR: Your Honor, we would ask that the Court
7 considers sequestering the courtroom with regard to witnesses
8 other than the State's chief investigator during the course
9 of the, during the course of the trial.

10 THE COURT: All right, Mr. Hazzard.

11 MR. HAZZARD: The Defense would agree with that motion
12 and go along with that motion.

13 THE COURT: All right, Ms. Elder.

14 MS. ELDER: We certainly wouldn't have any objection
15 as long as that's reciprocal, Your Honor. The victim's
16 family, of course, we do not expect them to testify. They'll
17 be in the courtroom and Investigator Mike Curry is here as
18 our chief investigator, officer for the purpose of the trial.

19 THE COURT: All right, well, I'll grant your motion
20 then to sequester all witnesses with the exception of Officer
21 Curry as chief investigating officer and the Defendants will
22 be sequestered, anybody testifying; okay?

23 MR. BARR: Thank you.

24 THE COURT: As you said the victim's family is not
25 testifying.

1 MS. ELDER: No, Your Honor.

2 THE COURT: So, that would not affect them, okay.

3 MR. BARR: And we would certainly respect that.

4 THE COURT: All right, any ---

5 MR. BARR: Your Honor, may we approach the bench.

6 THE COURT: Yeah, that'll be fine.

7 (Whereupon, a bench conference was held.)

8 THE COURT: All right, Mr. Barr, any further motions?

9 MR. BARR: None on behalf of Defendant Richard

10 Niles, Your Honor.

11 THE COURT: All right, Mr. Hazzard, any motions on

12 behalf of your client?

13 MR. BARR: Okay, Your Honor, with regard to

14 Defendant Hammond as Ms. Elder did indicate I had previously

15 filed a motion for a severance. That was not addressed prior

16 to the selection of the jury. The basis of that motion,

17 which should be in the file, is that the applicable case law

18 indicates that a severance should be granted when there is

19 serious risk that the joint trial would, A, compromise the

20 specific trial right of the Defendant or, B, prevent the

21 jury from making a reliable judgment regarding the Co-

22 Defendant's guilt, and the case law with regard to that would

23 be State versus Walker, 366 SC 643, 623 SE2d 122. It's a

24 2005 case, also State versus Dennis which is 337 SC 275, 523

25 SE2d 173, and that is a 1999 case.

1 In this instance, Your Honor, it is my understanding
2 that the evidence and testimony will all indicate that Mokeia
3 Hammond played absolute no direct part in the death of James
4 Salter, specifically no one will testify that she held a gun,
5 fired a gun or had anything to do with the death of James
6 Salter. However, in trying her along with Mr. Niles, who
7 there will be some conflicting testimony as to his part or
8 possible part in that death, I would submit that that
9 commingling would prevent the jury from making a reliable
10 judgment about Ms. Hammond's guilt, and that is the reason
11 why the motion for severance was initially filed prior to the
12 beginning of these proceedings.

13 THE COURT: All right, Mr. Barr, any motion - I mean,
14 any comment on that motion?

15 MR. BARR: None, Your Honor.

16 THE COURT: All right, who wants to argue for the
17 State, Mr. Richardson?

18 MR. RICHARDSON: I will, Your Honor.

19 Your Honor, specifically with regard to State v. Walker,
20 which is an Appellate Court case Mr. Hazzard has cited, in
21 that case there were antagonistic defenses and they did not
22 mandate separate trials, and I'll pass up to the Court right
23 now a copy of that case.

24 Your Honor, specifically, it states there's no clearly
25 defined rule for that, must be due to just and proper

1 consideration, particular circumstances, should only be
2 granted when there's serious risk a joint trial will
3 compromise specific trial right of the Defendant. This
4 doesn't change any, any case law with regard to Dennis, Your
5 Honor, the Supreme Court held that as long as you do a
6 proper instruction to the jury joint trials are not only
7 allowed, they're approved of by our Supreme Court and that's
8 found - the jury instruction is actually found at - on page
9 five that I'll hand up at this time.

10 Your Honor, it's not been a specific trial right that
11 has been addressed or cited in this motion for severance.
12 Antagonistic defenses do not mandate separate trials.
13 Separate trials are not a matter of right. Defendants are
14 not entitled to separate trials so a Codefendant can testify
15 and should only be granted when there's serious risk of
16 jeopardy attaching, Your Honor. There have been cases, I'd
17 cite State v. Prince in South Carolina where an accessory
18 before the fact was tried conjointly with the actual murder
19 Defendant. Here we've not alleged that the Defendant
20 actually fired a weapon. This is under the felony murder
21 doctrine. She's an active participant. She's there during
22 the crime. She's the getaway driver, as the charge states
23 the hand of one hand of all, the classic case is that of the
24 getaway driver, Your Honor, and in this case it is proper for
25 the cases to be tried together; and the State would,

1 therefore, oppose the motion for severance.

2 THE COURT: All right, Mr. Hazzard, anything in
3 reply?

4 MR. HAZZARD: No, Your Honor.

5 THE COURT: All right.

6 All right, your motion is noted. I'm going to deny it.
7 I don't think it - I think I'm going to just go ahead and
8 leave these trials together. All right, any further motions?

9 MR. HAZZARD: Yes, sir, Your Honor. The next motion in
10 order, we would move to exclude the use of the term
11 conspiracy by the prosecution or by prosecution witnesses.
12 The Defendants in this case are not charged with criminal
13 conspiracy, and we would submit that the use of the term
14 conspiracy would be misleading and prejudicial and improper.
15 Therefore, we would move to exclude the use of that term
16 whether it is in opening statement, whether it is during
17 questioning, whether it is during closing argument, Your
18 Honor, because that is not a charged crime. She is not
19 charged with criminal conspiracy. Therefore, we submit the
20 term conspiracy would not be proper to be used and if it were
21 to be used it would be used out of its proper context, which
22 would be extremely prejudicial to the Defendant.

23 THE COURT: All right, Mr. Barr, any comment
24 regarding that motion?

25 MR. BARR: Your Honor, we would join in that motion.

1 THE COURT: All right, Mr. Richardson or Ms. Elder.

2 MR. RICHARDSON: Your Honor, very succinctly, conspiracy
3 need not be indicted or charged for the State to argue that
4 fact, to argue it in an accessory before the fact, to argue
5 during cases in which there is a conspiracy when people act
6 together, hand of one, hand of all. It is common knowledge
7 and just because it has a legal term, that's joined to it as
8 well it does not preclude us from being able to use it at
9 trial.

10 THE COURT: All right, Mr. Hazzard, anything in
11 reply?

12 MR. HAZZARD: Specifically, Your Honor, the indictments
13 indicate 2008-GS-26-04118, State versus Mokeia Hammond,
14 possession of weapon during the commission of a violent crime
15 states specifically that Mokeia Hammond, not Mokeia Hammond
16 and others, that Mokeia Hammond did in Horry County on or
17 about April 9th, 2007, possess, singularly, a firearm or
18 visibly display what appeared to be a firearm or visibly
19 displayed a knife during the commission or attempted
20 commission of a violent crime in violation of Section 16-23-
21 490. Indictment 2007-GS-26-3362, State versus Mokeia
22 Hammond, charged with murder, says that Mokeia Hammond did in
23 Horry County on or about April 9th, 2007, along with
24 Codefendants. So, in this one they may have some form of an
25 argument but in the third one with regard to armed robbery

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1 specifies that Mokeia Hammond, not Mokeia Hammond and others
2 did in Horry County on or about April 9th, 2007, while armed
3 with a deadly weapon, to wit, and it doesn't say what the
4 deadly weapon is. It just says to wit, take and carry away
5 personal property of James Salter from or in the immediate
6 presence of James Salter with intent to deprive James Salter
7 of possession by the use of force, threats or intimidation in
8 violation of Section 16-11-330(A), and obviously as you can
9 tell, Your Honor, where we're heading there's going to be
10 another motion with regard to the indictment for armed
11 robbery.

12 THE COURT: All right, unless you can show me
13 something I'm not aware of any, like Mr. Richardson said,
14 any, anything that says you have to be indicted before the
15 term can be used. So, I am going to deny your motion.
16 However, I am going to ensure that if she has not been
17 indicted on a - for conspiracy I don't want a - we're going
18 to have - be sure that a jury does not find her guilty of
19 these charges - well, in other words, she hasn't been
20 indicted on conspiracy.

21 MR. RICHARDSON: That's correct, Your Honor.

22 THE COURT: All right, all right, well, I'm going to
23 deny your motion, but let me check and see if there's any
24 additional precautions we need to make. I'm going to think
25 over that overnight, but for right now I'm going to deny your

1 motion because I think, I think they can use it. I don't
2 know of anything that says she has to be indicted for
3 conspiracy before they can use that term conspire or
4 conspiracy. All right, any additional motions?

5 MR. HAZZARD: Your Honor, we would move to prohibit the
6 use of the term victim and I notice that the Court used that
7 term in the qualification process because we did not have an
8 opportunity to have a pretrial conference this morning. The
9 reason that the Defense moves to prohibit the use of the term
10 victim by the State or by any State witness, in opening
11 statement, direct or cross-examination or closing argument in
12 this case is because the term victim presupposes the
13 commission of a crime, and the only folks standing charged
14 with a crime in this action are Ms. Hammond and Mr. Niles.
15 Therefore, it would be our position that the presupposition
16 that a crime occurred impermissibly shifts the burden from
17 the State to Ms. Hammond.

18 THE COURT: All right.

19 MR. HAZZARD: Specifically, in this case, Your Honor,
20 this also becomes a big issue because I'm - it is my
21 understanding evidence and testimony will show that the
22 decedent in this case actually fired more rounds of
23 ammunition than whoever the alleged gunman was. So, to
24 characterize this individual, the decedent as a victim we
25 would submit does indicate or presuppose that a crime

1 occurred as opposed to a consensual affray between two
2 individuals where one of them just happened to end up dead
3 unfortunately and the other one happened to end up alive.

4 THE COURT: All right, Mr. Richardson.

5 MR. RICHARDSON: Your Honor, the term victim actually
6 appears in the indictment. I'm not aware of any case law
7 that prohibits us from using the term victim during the
8 course of the trial. That's what we have. We have victims'
9 advocates. We have the victim in the case. We have
10 Defendants alleged to have committed the crime, Your Honor,
11 and if - we do call him a victim because he is a victim.

12 THE COURT: Okay, all right, I'm going to deny your
13 motion. I think the instructions of the burden of proof and
14 that will be given to the jury will sufficiently keep them
15 from convicting your people, your clients simply because the
16 term victim is used. I mean, it's - I think the instructions
17 on the law certainly clear up any inference that can be drawn
18 from someone being called a victim, and as I recall during
19 the voir dire I think I referred to them as alleged victim,
20 but be that as it may, I'm going to deny your motion.

21 Any other motions?

22 MR. HAZZARD: Yes, sir, Your Honor, 9:30 a.m. on this
23 preceding Friday, March 6th, I received a call from a woman
24 by the name of Sarah who works for the Solicitor's Office and
25 she indicated that there was a DVD of some sort that was

1 suddenly magically available in evidence in this case. Now,
2 when we had our conference back in January in your chambers
3 as the Court may recall there was actually an oral order made
4 that was never reduced to writing which indicated that any
5 and all evidence to be used in the trial of this case by the
6 State would be turned over no later than February 20th.
7 Now, I've not tried to hold their feet to the fire, that
8 being the State's feet to the fire with regard to that.
9 However, Your Honor, on a case that is nearly two years old
10 on an incident that occurred almost two years ago, 19 months
11 or 23 months ago to be exact, it, quite frankly, shocks the
12 conscience that there would be an indication from the State
13 that they are trying to provide discoverable evidence at the
14 11th or nearly the 12th hour. So, I don't even know what this
15 disk is.

16 THE COURT: I mean, have you been - have they told
17 you that there is a disk that is going to be used in the
18 trial of this case?

19 MR. HAZZARD: I don't know if it's going to be used or
20 not, Your Honor. All I know is that a call was received by
21 me from a representative of the Solicitor's Office on Friday
22 March 6th at 9:30 a.m. saying that, "Oh, by the way, there is
23 a DVD in this case, State versus Hammond," that I assume
24 they perceive to be discoverable since they were calling and
25 telling me about it. Now, I didn't go pick up the disk.

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1 They did not deliver the disk. I don't know if Mr. Barr was
2 ever made aware of this disk. I don't know what the disk is,
3 but if it - if by the indication of them calling me it
4 indicates that it is some form of discoverable material that
5 should've been turned over quite before that, and as a result
6 I have concerns as to whether there is other discoverable
7 material that should've been turned over sometime long before
8 now that they intend to use in their case in chief.

9 THE COURT: All right.

10 MR. HAZZARD: And I would ask that the Court inquire
11 into those matters, Your Honor.

12 THE COURT: All right, Ms. Elder.

13 MS. ELDER: Your Honor, that discovery has previously
14 been provided. What Mr. Hazzard is talking about is the
15 taped statement of Ervin Moore. As Your Honor recalls back
16 in January we set depositions on this case because the audio
17 portion of Mr. Moore was incomprehensible. We could not hear
18 it on the disk. In effort to try to enhance that we took
19 those disks up to SLED to the fusion center there, not once
20 but twice last week to see if they could enhance it any more
21 than what we had. That's what, that's what the phone call
22 was. We received one tape, the first part of Mr. Moore's
23 statement I believe the first part of last week. We took the
24 second portion up there to see if they can enhance that and
25 we've received that on Friday, which is when Mr. Hazzard got

1 the call and all of the attorneys, in fact, got the call
2 about whether or not they wanted to come pick up the tape.
3 It's still very garbled. It's difficult to hear, but we
4 wanted, obviously, to provide them everything we could
5 possibly provide them. The extent of that statement, based
6 on everyone's agreement before Your Honor, was outlined in
7 that deposition. That's why we did those depositions. So,
8 this is not new material. That is what that DVD is. We have
9 provided everything pursuant to Your Honor's order in regards
10 to discovery.

11 THE COURT: All right.

12 MR. BARR: Your Honor, if I may.

13 THE COURT: Yes, sir.

14 MR. BARR: I did get the tape on Saturday morning,
15 but it is, for some reason, formatted differently than the
16 previous DVD and I could not actually play it. I don't know,
17 but I would ask the Court to, as Mr. Hazzard has said, to
18 address the issue of whether or not there is any additional
19 information or whether or not the formatting on this
20 particular tape has changed. I don't know whether or not
21 it's an improvement over the earlier tape because I haven't
22 been able to play it.

23 THE COURT: All right, is there any additional
24 discoverable material?

25 MS. ELDER: No, Your Honor, and in reference to that,

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1 Mr. Moore, at this point in time, is expected to testify for
2 the State. Those DVDs will not be introduced unless under a
3 reply case for the State, Your Honor.

4 THE COURT: All right.

5 MR. HAZZARD: Very quickly, Your Honor, with regard to
6 this specific, what's referred to as a WAV file DVD it would
7 be our position that it is not eligible to be introduced into
8 evidence under any circumstances because the document itself
9 is in such a format and fashion that it is not something that
10 is easy to be used by the Defense. As Mr. Barr indicated
11 everything else is in one format. This media transmission is
12 in a separate format. Also, they're talking about what
13 they've done is cleaned up or tried to clean up what amounts
14 to one half of his statement, not the entire statement. So,
15 the situation then is obviously as the Court well knows under
16 Rule 106 if one party enters a portion of a statement into
17 evidence the other party or parties have the right to enter
18 other parts or the statement in its entirety so it may be
19 considered in its appropriate context. Here, you have
20 approximately an hour, I believe, I was informed by Ms. Elder
21 of what's a little bit over a two-hour statement and we have
22 absolutely no way of entering the remainder of that statement
23 so that it may be considered in context.

24 THE COURT: Any objection to suppressing the DVD?

25 MS. ELDER: Your Honor, there may be some issue on

1 reply that we'll have to take up with. We don't intend to
2 put it in our case in chief obviously because Mr. Moore is
3 going to be testifying to what, in fact, he is using on that
4 DVD, and I will say that Mr. Hazzard received the first tape,
5 which was an hour and eight minutes. The second tape, the
6 second DVD that he is talking about from Friday is the
7 remainder of that because we wanted to make every attempt to
8 make it, the entire statement as audible as possible. That
9 is what the second DVD is, the remainder of that statement.

10 THE COURT: All right, what I'm going to do I'll just
11 go ahead and if, if the State tenders to use that DVD or
12 introduce it into evidence or refer to it you can renew your
13 objection at that time and I'll take it at that time to see
14 if it fits.

15 MR. BARR: Your Honor, may we have a sidebar?

16 THE COURT: Yes, sir, yeah.

17 (Whereupon, a bench conference was held.)

18 THE COURT: All right, on the issue of the DVD I'll
19 just address that issue when and if it comes into play; okay?

20 MR. HAZZARD: Very well, Your Honor.

21 THE COURT: All right, anything further, Mr. Hazzard?

22 MR. HAZZARD: Your Honor, I've received a letter
23 previously from Mr. Richardson with regard to the order of
24 bond and I wanted to address that. His letter indicated that
25 at the call of the case for trial Ms. Hammond's bond would

1 expire. I know that this is a matter that is solely to the
2 discretion of the Court. Knowing this, I spoke with
3 Ms. Hammond's, I had her speak with her bondsman. She
4 indicates the bondsman is willing to stay on the bond. I
5 wanted the Court to know that Ms. Hammond has not only
6 appeared every time for court as requested, she has appeared
7 in my office every time we have requested that she come,
8 oftentimes on very short notice all the way from Salters,
9 South Carolina. As the Court sees she is here today. She is
10 someone who is not a flight risk. She was in Williamsburg
11 County at the time of her arrest. She spoke with the police
12 immediately after her arrest at her insistence, not theirs.
13 Once she was released on bond she has stayed out of trouble,
14 hasn't been in any trouble whatsoever, and as previously
15 indicated, has appeared at every time she's been requested to
16 come to court and has appeared any time a representative of
17 my office has called. We would, therefore, respectfully
18 request that Ms. Hammond's bond be continued throughout the
19 course of this trial.

20 THE COURT: All right, Mr. Richardson.

21 MR. RICHARDSON: Your Honor, first and foremost, there
22 has been a change in circumstances since even that letter was
23 drafted, certainly since the inception of this case and the
24 service of the arrest warrants and service of that bond, but
25 I do want to address that, one, under the bond form and the

1 bond contracts that are given a bond - any and all duties by
2 any bondsman are exhausted once they've delivered a Defendant
3 to court for the trial of the case. I know that intimately
4 because we've had to address that before during bond
5 estreatments, Your Honor, but there has been a severe change
6 in circumstances. One, there is a certainty the case is
7 going forward now. Two, motions have been heard. Motions
8 for continuance, motions for severance have been denied.
9 The biggest change has been Ervin Moore is going to testify
10 and cooperate with the State, Your Honor. With all that, Ms.
11 Hammond is facing 30 years to life on a murder charge alone,
12 an additional 10 to 30 on the armed robbery and an additional
13 five on the use of a weapon, Your Honor. Our witnesses are
14 known. I would have concern for their safety and the State
15 would just ask that as is custom once this case is called the
16 Defendant's bond be terminated and she be remanded over to
17 the custody of the Sheriff's Office.

18 THE COURT: All right.

19 MR. HAZZARD: Your Honor, with regard to the witnesses
20 being known, the witnesses have been known for quite some
21 time. The vast majority of their witnesses are law
22 enforcement officers. The remaining non-law-enforcement
23 officer witnesses have been known to us from the inception of
24 this case. Any witnesses who were in the parking lot of the
25 Best Buy we have known them for quite some time, their names,

1 their identities, where they live. That's not an issue.

2 The question of whether or not, you know, whether this
3 is real now or serious this has always been real and serious,
4 no question about it. She has been charged with murder since
5 April 12th of 2007, and if she were going to abscond she
6 would have had more than ample opportunity to do that.
7 Thirdly, he says that the bondsman's responsibility is
8 exhausted. It is my understanding, again, that the bondsman
9 has indicated his specific willingness to stay on the bond
10 and to be responsible for the bond from this day through the
11 pendency of the completion of the trial.

12 THE COURT: All right, well, at this point in time
13 I'm going to need to - I'm going to deny your motion. I will
14 allow you to renew it if you bring the bondsman in and let me
15 question the bondsman, but at this point in time I'm going to
16 deny it, but I'll allow you to renew that as I said. All
17 right, anything further?

18 MR. HAZZARD: Nothing further on behalf of Defendant
19 Hammond at this time, Your Honor.

20 THE COURT: All right, anything?

21 MR. BARR: Nothing further on behalf of Defendant
22 Niles, Your Honor.

23 THE COURT: Anything further from the State?

24 MS. ELDER: We've got the plea of Mr. Moore, Your
25 Honor.

1 THE COURT: All right, do we want to go ahead and do
2 that now?

3 MS. ELDER: Yes, sir, Your Honor, we're asking that
4 he submit his plea under the written proffer, that we have
5 indicated we are negotiating a range, but we would ask the
6 Court to withhold sentencing until the end of Mr. Moore's
7 testimony.

8 THE COURT: All right.
9 (Guilty plea taken of Ervin Junior Moore.)

10 MR. HAZZARD: Your Honor, may Mr. Barr and I approach
11 ex parte?

12 THE COURT: Any objections? I know you don't know.
13 They ---

14 MR. HAZZARD: This has, specifically, Your Honor, this
15 has to do with the logistics of possibly the two Defendants
16 being able to meet with counsel with one Defendant being a
17 female, the other one being a male. It makes it a little
18 more difficult.

19 THE COURT: Okay, all right, let me ---

20 MR. RICHARDSON: You want both Defendants at the same
21 place for you all both to meet with them.

22 MR. HAZZARD: Correct.

23 MR. RICHARDSON: We'd have no objection to them, if it's
24 all right with the Sheriff's Department, to use the
25 multipurpose room, but they'd have to contact the detention

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1 center on that matter.

2 MR. HAZZARD: No, we wanted to do it the 30 minutes
3 between the time we adjourn, the 30 minutes after that before
4 we leave this courthouse facility.

5 THE COURT: In other words you want to meet with them
6 - say that again now.

7 MR. HAZZARD: I want to meet with them, we want to meet
8 with the two Defendants here in the courthouse facility.
9 Does the Court or the Sheriff's Department have any objection
10 basically to securing this courtroom after court adjourns.
11 We can stay right where we are, talk with them. It'll take
12 approximately 30 minutes and then they can go wherever they
13 need to go after that.

14 THE COURT: I got you. Do you need to check on that
15 or can we - all right, how about just have somebody check to
16 see if whether it'd be in here or whether it would be in a
17 jury room or anywhere if there's a secure facility. Okay.
18 They're wondering if they - what we need is a secure area
19 where attorneys can speak with their clients without any
20 intervention from someone else but it's going to be ---

21 MR. HAZZARD: We're only talking about approximately
22 15, 20 minutes, Your Honor.

23 THE COURT: Okay, and it would be Mr. Hazzard, Mr.
24 Barr and their two clients.

25 OFFICER: We can arrange that.

1 THE COURT: You do that? Any objection?

2 MS. ELDER: No, sir.

3 MR. RICHARDSON: None from the State, Your Honor.

4 THE COURT: All right, thank you very much.

5 (Officer and the Court confer.)

6 THE COURT: Any problem with a deputy being present?

7 MR. HAZZARD: No, sir.

8 THE COURT: Yeah, you need to have somebody within

9 viewing distance, but by the same token they have some

10 privacy they need to go on, but you do not object if the

11 officer ---

12 MR. HAZZARD: Well, is an option using one of the

13 conference rooms and the deputy would stand right outside.

14 There's no other way out of those conference rooms.

15 THE COURT: Is that ---

16 MR. BARR: Or if they prefer we could use the

17 interview room in the holding area.

18 THE COURT: There's an interview room in there?

19 MR. HAZZARD: It's a small one.

20 MR. BARR: Yes, sir.

21 MR. HAZZARD: Because my only concern was, the only

22 issue I had was whether they would allow a female to go back

23 there. If they will allow the female to go back there then,

24 fine, we can meet in there.

25 THE COURT: Is there any problem with that?

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1 MR. BARR: It is secure and it's also private.

2 THE COURT: Is that okay?

3 OFFICER: That's not a problem.

4 THE COURT: All right, that'll be good. All right,

5 thank you. I'll grant that.

6 Anything further?

7 MR. RICHARDSON: Nothing from the State, Your Honor.

8 MS. ELDER: No, Your Honor.

9 THE COURT: All right, then we'll show back up 9:30

10 tomorrow morning ready to go.

11 MS. ELDER: Thank you.

12 MR. RICHARDSON: Thank you.

13 THE COURT: All right, do we need to meet prior to

14 9:30 for anything? What I'd like to do I want to make sure

15 we get this in. I'd like to bring the jury out and start our

16 opening arguments, preliminary instructions right at 9:30.

17 So, I'll be - if we want to meet earlier we can, but that's

18 my thought process is when we show back up at 9:30 to go

19 ahead and start the trial. Do you all want to meet anything

20 pretrial before 9:30?

21 MR. HAZZARD: There's never any, there's never anything

22 wrong with touching base just to make sure.

23 THE COURT: Okay. All right, well, I'll certainly be

24 here probably by about 9 o'clock and you be here at least by

25 - all right, well, we'll be here at nine if there's anything

1 that we need before the jury gets here at 9:30; okay?

2 MR. RICHARDSON: Thank you, Judge.

3 MS. ELDER: Thank you, Your Honor.

4 THE COURT: All right, thank you very much.

5 OFF THE RECORD

6 (On the record, Tuesday, March 10, 2009.)

7 (Whereupon, the following takes place outside the
8 presence of the jury.)

9 THE COURT: Thank you very much. Please be seated.

10 MR. HAZZARD: All right, anything from the State before
11 we bring in the jury?

12 MR. RICHARDSON: Nothing from the State, Your Honor.

13 THE COURT: Anything from the Defendant, Richard Bill
14 Niles?

15 MR. BARR: Nothing, Your Honor.

16 THE COURT: All right, for Ms. Mokeia Hammond.

17 MR. HAZZARD: Your Honor, we did not review any
18 pictures or anything of that nature and I have a question
19 regarding one picture. There was a picture that was given in
20 discovery of a shirt that was allegedly seized from the home
21 of Mr. Niles and it's a red shirt, a Georgia shirt and it has
22 splotches on it that appear to be red in nature and perhaps
23 blood. However, there is, to my knowledge, I've never
24 received any indication that it was typed as the blood of
25 James Salter, and as a result I don't know if the Prosecution

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1 intends to use that picture, but I would think that it would
2 be misleading if they do intend to.

3 THE COURT: All right, misleading in what respect?

4 MR. HAZZARD: If it is just placed in as a picture
5 taken from his home showing what appears to be blood on it
6 the jury could draw the inference that it's the James - the
7 blood of James Salter, when, again, I've not been provided
8 any discovery indicating that that is, in fact, the case.

9 THE COURT: All right, are you all aware of the
10 picture he's talking about?

11 MS. ELDER: I think I am, Your Honor, but we're not
12 even getting - we shouldn't be even on that issue today. So,
13 I would ask the Court just to hold that in abeyance until we
14 get to that. That came from a search warrant that was
15 conducted in Williamsburg County. We shouldn't get into any
16 of that testimony at least until tomorrow, Your Honor. I
17 don't foresee us using that at this point but I need to get -
18 those pictures are downstairs from that search warrant and I
19 can bring those up ---

20 THE COURT: Okay.

21 MS. ELDER: --- after lunch or something but we won't
22 even get to that today.

23 THE COURT: All right, well, I'll reserve ruling on
24 that issue when it arises. Okay, all right, anything
25 further?

1 MR. HAZZARD: Nothing further on behalf of Defendant
2 Hammond, Your Honor.

3 THE COURT: All right, the bailiff has brought me the
4 handwritten election results for the foreperson. David
5 Kahanamoku has been chosen as the foreperson for this jury.
6 So, I'm going to mark this as Court's Exhibit Number One and
7 put it in the record which is the jury's decision on the
8 selection of their foreperson.

9 All right, I'm going to go ahead and give them the
10 preliminary instructions. Who wants to give the opening
11 statements for the State?

12 MR. RICHARDSON: I will, Your Honor.

13 THE COURT: Mr. Richardson. Do the Defendants plan
14 on giving opening statements?

15 MR. BARR: Yes, Your Honor.

16 MR. HAZZARD: Yes, Your Honor.

17 THE COURT: All right, what order do you all want to
18 proceed as far as giving opening statements, cross-examining
19 witnesses, whatever the case may be. I'd like to kind of to
20 make sure I don't overlook anything on the State's case.
21 Certainly it will be the direct examination. Who will be
22 doing the direct examination for the State?

23 MS. ELDER: We've got different witnesses, Your
24 Honor.

25 THE COURT: Different witnesses.

Motions

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1 MS. ELDER: Yes, Sir.

2 THE COURT: Different people.

3 MS. ELDER: Yes, sir.

4 THE COURT: Okay, and then on the cross-examination

5 I'd kind of like to keep the same routine, whether it's

6 Mr. Barr and then Mr. Hazzard or Mr. Hazzard and then

7 Mr. Barr. Do you all have a preference one way or the other?

8 MR. BARR: I will go first, Your Honor.

9 THE COURT: Okay, all right, all right, so, we'll go

10 the State direct examination; Mr. Barr cross; Mr. Hazzard

11 cross; then the State redirect. All right, that sound good?

12 MR. HAZZARD: Yes, sir.

13 MR. BARR: Yes.

14 THE COURT: All right, the only and I'll rule on this

15 on a witness by witness matter, but generally I don't allow

16 re-cross simply because redirect is not supposed to bring up

17 any new or additional issues, only those issues that are

18 addressed on cross-examination. I can, however, see a

19 situation where possibly, let's see, if you, if Mr. Barr

20 brings up something on cross.

21 MR. HAZZARD: If I bring up something, if I'm going to

22 ---

23 THE COURT: Yeah, if you bring up something new on

24 cross examination then I may have to allow Mr. Barr re-cross

25 as to the new matter brought up by Mr. Hazzard if we keep

1 following in that order, but we'll have to take that on a
2 witness by witness basis; okay?

3 MS. ELDER: Yes, sir.

4 MR. HAZZARD: Yes, Sir.

5 THE COURT: All right, all right, let's bring the
6 jury in.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: Ladies and gentlemen, welcome back. Hope
10 everyone had a nice and restful evening. I understand and
11 Mr. Kahanamoku.

12 MR. KAHANAMOKU: Very good.

13 THE COURT: Is that all right?

14 MR. KAHANAMOKU: That's very good.

15 THE COURT: All right, Mr. Kahanamoku, you have been
16 chosen as the foreperson of this jury and I appreciate you
17 serving in that capacity. You will always occupy that seat
18 where you are right now. Our alternates will always occupy
19 the seats where they are, and the rest of you are at liberty
20 to choose whichever seat you like. You can remain in your
21 seat that you are in now throughout the trial of the case.
22 You can alternate seats, whichever you'd feel more
23 comfortable doing.

24 Now, we are getting ready to start the case of the State
25 of South Carolina versus Richards Richard Bill Niles, Jr. and

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1 the State of South Carolina versus Mokeia Hammond. Now,
2 before we begin this trial I want to tell you that this trial
3 will probably be different from what you might expect. Many
4 people do not have a chance to attend actual court sessions
5 as you are doing now and may think from watching television
6 and the movies that trials are often full of action and high
7 anxiety and a lot of excitement and things of that nature,
8 and while that may be the case, it probably will not be the
9 case in this trial. Searching for the truth and making sure
10 that justice is done is often a slow, deliberate and
11 repetitive process, the opposite of what you may have been
12 subjected to for entertainment purposes. The attorneys
13 appearing before you are advocates for the parties they
14 represent, but first and foremost they are officers of the
15 court. They're sworn to uphold the integrity and fairness of
16 our judicial system and to help you in the search for the
17 truth. You should expect them to be professional, competent
18 and ethical in the representation of their client's
19 interest.

20 Now, what I will now say is intended to serve as an
21 introduction to the trial of this case. These remarks are
22 not a charge on the law of this case and I will instruct you
23 on the law applicable to this case at the end of the trial
24 before you retire to consider your verdict. This is merely
25 an explanation of the procedure that we'll follow in the

1 trial of this case so that you may understand what might be
2 happening.

3 Now, the Defendants are charged by indictments filed in
4 the court with three crimes. They are charged with the crime
5 of murder. They're charged with the crime of armed robbery
6 and they are charged with the crime of possession of a weapon
7 during the commission of a violent crime. Now, these
8 indictments are simply the charges by which the case is
9 brought into court and the indictments are not in any sense
10 evidence of any of the allegations contained in the
11 indictments. The Defendants have pled not guilty to these
12 indictments and the State, therefore, has the burden of
13 proving each element of each indictment beyond a reasonable
14 doubt. It will be your duty, ladies and gentlemen, to decide
15 whether the State has met that burden of proof. Your purpose
16 as jurors is to find and determine the facts. You are the
17 sole judge of the facts. If at any time I make any comment
18 regarding the facts you are to disregard my comments. You
19 are to determine the facts from the testimony you hear and
20 the other evidence introduced into court, and it is up to you
21 to determine the inferences which you feel may properly be
22 drawn from that evidence. It is especially important that
23 you perform your duty of determining the facts diligently and
24 conscientiously because ordinarily there's no way to correct
25 an error in the determination of a fact made by a jury. On

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1 the other hand and with equal emphasis, the same law that
2 makes you the judges of the facts makes me the judge of the
3 law. The law is given by the court as the only law that you
4 may consider. You must accept and follow it even though you
5 may disagree with the law as I give it to you. Just as I
6 cannot tell you what the facts of this case are, you cannot
7 disagree with me about what the law is. Your job is to take
8 the law as I give it to you and apply it to the facts as you
9 find from the testimony of the witnesses and any other
10 evidence that is introduced at trial. After doing that you
11 will render a verdict, a true and just verdict under the
12 solemn oath that you will be taking as jurors. Until I
13 advise you to begin your deliberations you must not discuss
14 this case with anyone, including your fellow jurors, do not
15 discuss it with any friends, family members or anyone
16 involved in the case. After the case is submitted to you,
17 you must discuss it only in the jury room with your fellow
18 jurors. The attorneys and parties in this case have been
19 advised that they are not to talk to you at all. So, if you
20 see anyone involved in the case and they do not even say
21 hello, they're not being rude. They're just following the
22 Court's instructions.

23 During the trial you are not to read, listen to, watch
24 any news reports about the case. This includes anything that
25 may be in the newspapers or on the Internet, radio or

1 television. You are not to consider anything you have read
2 or heard about the case outside of the courtroom, whether
3 before or during the trial. It is important that you keep an
4 open mind and not decide any issue in the case until all of
5 the evidence has been presented. The parties will then make
6 their closing arguments and I will then instruct you on the
7 law in the case. It is your solemn responsibility to
8 determine the guilt or innocence of each Defendant and your
9 verdict must be based solely on the evidence as it is
10 presented to you in this trial and on the law as I instruct
11 you at the close of the trial.

12 Now, in just a moment the Solicitor will make what is
13 called an opening statement in which the Solicitor will
14 explain to you the issues in this case or at least what the
15 Solicitor feels the issues in this case are. The attorneys
16 for the Defendants may, if they choose, make opening
17 statements, although they're not required to do so. What
18 the attorneys tell you during their opening statements is
19 not evidence. It is simply their contention as to what
20 they feel the issues of the case are. The evidence in
21 this case will be presented to you by testimony from sworn
22 witnesses, from the witness that will take the witness
23 stand or any other exhibits that may be introduced into
24 evidence.

25 Now, periodically we'll take breaks and I'll advise you

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1 if you need any explanation as to why we're taking the
2 breaks. Often we'll take breaks just to give you the
3 opportunity to stretch your legs, get something to drink or
4 that matter, things of that nature.

5 Now, in determining what the true facts are in this case
6 you must decide whether or not the testimony of a witness is
7 believable. It will be my responsibility to rule as a matter
8 of law as to whether certain testimony is admissible at all
9 or not, but once the testimony is admitted, whether or not
10 you believe it, is solely for you to determine. In deciding
11 whether to believe a witness you have the right to consider
12 the interest of any witness, the bias of any witness, the
13 prejudice of any witness, the opportunity for the witness to
14 have seen the matters and things about which the witness may
15 testify and the way the witness acts on the witness stand.
16 You have a right to consider anything that is in the record
17 that will help you evaluate the testimony of the witness.
18 That means that it is your duty to pay close attention to the
19 witnesses, to observe them, to listen to their testimony and
20 to pay close attention to the attorneys and to the Court.
21 Don't let your thoughts wander, but give strict attention to
22 the testimony in this case so at the end of all the testimony
23 after the arguments of counsel and a charge on the law by the
24 Court you will then be in a position to determine what the
25 facts are and to apply the law to those facts and thus render

1 a just and true verdict. It is your added duty, Mr. Foreman,
2 to preside over the deliberations when you are instructed to
3 preside over those deliberations. Likewise, you are the
4 spokesperson for the Court. So, if the - I mean for the
5 jury. So, if the jury has a need, if the jury has a question
6 or whatever the case may be, you are to inform the bailiffs
7 and the bailiffs will let the Court know what the jury's need
8 is.

9 Now, as I told you in qualifications and as I told you
10 during voir dire, juries always have to take oaths just like
11 witnesses. So, before we began the trial of this case you'll
12 be required to take an oath to serve as jurors on this
13 particular case. Ms. Clerk, if you would please swear the
14 jury.

15 (Whereupon, the jury was sworn by the clerk.)

16 THE COURT: All right, now, was there any member of
17 the jury that did not respond to that question by saying I
18 do, if you would please stand.

19 (No response.)

20 THE COURT: All right, no one has stood. So, I will
21 assume everyone has taken the oath. At this time we will
22 begin with opening statements. As I instructed, the
23 statements are not evidence but it is simply the attorneys'
24 contention as to what the evidence in this case is. All
25 right, sir.

Opening Statement by Mr. Richardson

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1 MR. RICHARDSON: Bonnie and Clyde, folks, that's what we
2 have here, Bonnie and Clyde. Sure, you heard the names on
3 the indictments. It's Richard Niles and Mokeia Hammond, but
4 back in April of 2007, that's not who they sought to be, not
5 who they longed to be, who they yearned to be. They wanted
6 the fast life, life on the edge, robbing, stealing, and if
7 need be, killing. They wanted to be Bonnie and Clyde, but
8 the fatal flaw in their error, the fatal flaw in their plan
9 on April 7th, 2007, they didn't just choose to be Bonnie and
10 Clyde, but they took one for the ride, Bonnie and Clyde plus
11 one for the ride, and that one, Ervin Moore, he'll take the
12 stand and he will tell you the part he took in this crime.
13 He will tell you about the planning of Richard Niles and
14 Mokeia Hammond, as Mokeia was the getaway driver, Richard
15 Niles the gunman, modern-day Bonnie and Clyde.

16 Folks, as we began this trial, I want you to keep the
17 story in mind. Imagine if you will, a young man, we'll call
18 him Jay. He gets a telephone call, picks it up. It's old
19 Clyde on the other side and Clyde tells him, "Hey, Jay, I
20 know you've got some speakers to sell. How about meet me? I
21 want to buy those speakers," and Jay says, "Sure enough,
22 you know, I'll sell you my speakers. I'll meet you. Where
23 you need to be? Let's go to Best Buy parking lot," and Jay,
24 well, he takes off and he goes to Best Buy parking lot.
25 Little does he know that old Clyde and Bonnie they're not

1 going to buy those speakers. They're going to rob him.
2 They're going to rip him; and so, when they arrive Bonnie
3 behind the wheel ready to make a getaway, Old Clyde he jumps
4 out and he comes around the car and he gets in with Jay, and
5 at this point Clyde he's got a gun and Jay realizes the gig
6 is up. Old Clyde here he's not here to buy the speakers,
7 he's here to rob him. Jay's life is in danger. He's got a
8 gun pointed on him. Old Clyde he's got the drop on him. I
9 want you to keep that story in mind because you know the
10 State recognizes that Jay has every right to defend himself,
11 every right to try to protect himself from this lethal force
12 that is being used on him, a gun pointed at him. He has
13 every right to protect himself, whether it's with his hand,
14 some weapon or a firearm, every right to try and protect
15 himself, and I want you all to keep that story in mind
16 because while the facts of the case began on April 9th, 2007,
17 are similar, there are key differences. See, Jay in this
18 story, James Salter, he agreed to meet Richard Niles at Best
19 Buy, no doubt about it and went up there and it wasn't to
20 sell stereo speakers. You're going to hear testimony. The
21 State is not going to hide it from you. James Salter was
22 riding to the Best Buy parking lot to sell some marijuana.
23 That's what Richard Niles called him for. That's what Mokeia
24 overheard on the telephone. He said, "Yeah, man, I want to
25 buy some marijuana." You'll hear testimony to that effect,

Opening Statement by Mr. Richardson

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1 but when Richard Niles hung up that phone he said, "I'm not
2 going to buy it. I'm going to rob him. I'm going to rip
3 him."

4 Folks, I want to keep - I want you to keep that story in
5 mind because every right to defend oneself, every right to
6 protect oneself that Jay had when he was selling those
7 speakers, the same rights, the same defenses apply to James
8 Salter and we must recognize that.

9 Now, I told you you're going to hear from that one for
10 the ride. You're going to hear from Ervin Moore and he's
11 going to take the stand and he's going to tell you that he
12 was in Trio, South Carolina. That's over in Williamsburg
13 County at a convenience store when Richard Niles, Mokeia
14 Hammond drove up in a car and they said, "Hey, man, come on,
15 let's go, let's go for a ride." Mr. Moore said okay, and as
16 they drove from Williamsburg County to do their business here
17 at the beach, Ervin says there were phone conversations and
18 Ervin will tell you Richard makes that call. He calls James
19 Salter, says, "Yo, man, I want to buy about a pound of
20 marijuana." James says okay, agrees to meet him at the Best
21 Buy parking lot because he believes he's going to sell that,
22 but as Richard hangs up the phone he tells everybody in that
23 car, "Buy it, ha, no, no, sir. I'm going to rip him off.
24 I'm going to rob him, pull a lick."

25 Ervin will tell you as they arrive at the Best Buy

1 parking lot James Salter is backed in into a parking spot in
2 a white Mustang. Mokeia Hammond the wheelman, the getaway
3 driver, she backs in right beside him, and at this point
4 Richard Niles directs Ervin Moore to get out of the vehicle,
5 get out of the Ford Fusion in which they are traveling.
6 ``Hey, man, you need to go check to make sure the marijuana
7 is there," because, folks, got to have something to rob, you
8 got to have something worth stealing, something worth killing
9 for, but he tells Ervin Moore, ``Get out the car, go check
10 him." Ervin does just as he is directed. Ervin is going to
11 tell you his part in the crime. He'll tell you he got out
12 and he got in the white Mustang, sat beside James Salter and
13 saw the marijuana, talked to him for a minute and got back
14 out, walks right back around that Ford Fusion. As he's
15 getting back in the car he encounters Richard Niles and
16 Richard Niles gets out. He's ready to do it, ready to do his
17 business, ready to complete his plan, and Ervin will tell you
18 he gets right back in the backseat, sits down, watches
19 Richard Niles, walks around the back of that Ford Fusion on
20 to the Mustang, and we know Richard Niles gets to that
21 Mustang because he leaves his evidence there, he leaves his
22 fingerprint on the door of that Mustang.

23 He gets in, and Ervin is in the back seat at this point
24 in the Ford Fusion, doesn't know what's going on. He knows a
25 robbery has been planned. He's just in the back waiting and

Opening Statement by Mr. Richardson

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1 at that point he hears bam, bam, and it all breaks loose,
2 mass confusion. You're going to hear several witnesses that
3 will tell you they were in the Best Buy parking lot and they
4 hear bam, bam, bam. They hear gunfire. At first they think
5 it's fireworks but it's gunfire and Ervin will tell you he's
6 just as shocked as everybody else. He knows there's going to
7 be a robbery, but he'll tell you he didn't know a gun was
8 going to be involved, and he'll tell you about how Richard
9 Niles dives in the backseat in that Mustang and he says,
10 "Go, go, go," and Mokeia Hammond takes off. For all she's
11 worth, she's driving that car for all she's worth. She's got
12 to get away from the murder scene and as she's fleeing James
13 tried to defend himself. He's already been shot. He's been
14 mortally wounded. He's been shot up under his arm, the kill
15 shot, but he does have a weapon. He does try to get some
16 defense up and he takes that weapon and he fires some shots.
17 He breaks out the windows of the Ford fusion, the car that
18 contains his killers, shot in the door, to no avail. Old
19 Richard Niles he had the drop on him. He got the first shot
20 off. He's killing him, but it's important that James got
21 those shots off because he marks that Ford Fusion the killers
22 are in. He distinctly marks it so that they will have to get
23 rid of it, and you will hear the witnesses say they see the
24 car speed away in different directions. That Ford Fusion
25 that Mokeia Hammond and Richard Niles are in they've got to

1 speed away. They've got to get away from the scene of the
2 crime. They've got to escape and flee so they don't get
3 caught and James Salter he will tell you he takes off in the
4 opposite direction, still trying to protect himself, trying
5 to get away from his killers, but he doesn't make it far.
6 James didn't even travel a half a mile before he succumbs to
7 the blood loss and that fatal injury and the car pulls up on
8 a curb and comes to a rest. You will hear testimony from
9 officers that will tell you that whenever they come up to
10 James to the car, they knock on the window, pull him back
11 from the steering wheel and they see the gunshot wound and
12 he's unconscious and he comes in and out, in and out, ragged
13 breathing, and they try to help him. They extract him from
14 that white Mustang. They lay him on the ground. They get
15 down. They talk to him, struggling. He's been mortally
16 wounded, but he is able to identify his killers.

17 Folks, you're going to hear from Ervin Moore and from
18 other witnesses that flight from the scene by the Defendants,
19 Mokeia Hammond driving for all she's worth, she rips it on
20 out of the parking lot of Best Buy over to Logan's
21 Restaurant, looks around Logan's Restaurant, comes on out,
22 and you'll hear witnesses that, Ervin Moore and the witnesses
23 and Ervin will tell you he's in shock at this point. He's in
24 the back of the car, and he says, ``What happened,'' and
25 that's when Richard Niles tells him, ``I had to shoot him. I

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1 had the gun on him. I think he was going for one. So, I had
2 to shoot him."

3 Folks, this is felony murder. Any killing that takes
4 place during the commission of a robbery is felony murder.
5 He'll tell you how they whip around Logan's Restaurant and as
6 I told you that car has been particularly marked now. It's
7 got the windows busted out. It's got a bullet hole in it.
8 They've got to get rid of it, too easy to track it back to
9 them. So, they go a short distance away. They speed down
10 the highway before the police can get there and they end up
11 at a mobile home park and that's where they get out. They
12 just abandon the car right there. You're going to hear how
13 Richard Niles has the car reported stolen. Call his mamma
14 and says, "Mamma, you've got to report this car stolen."
15 You've got to hide the evidence; if it was stolen, of course
16 they couldn't have done it.

17 They get to that trailer park they abandon the car.
18 They take what's stolen. They call a taxi, gets them to a
19 hotel. They've tried to flee. They've tried to hide the
20 evidence. They've tried to escape their guilt. They've ran
21 from the murder scene and they're trying to escape their
22 guilt, and that taxi takes them to a hotel. That's where
23 Ervin Moore splits off from them, but old Bonnie and Clyde
24 they stay together. They're two sides of the same coin.
25 They don't operate alone. They're always together.

1 Folks, you will hear how all of the evidence points in
2 one direction, points right back to their guilt, and
3 eventually within one week leads to their arrest, their
4 capture, and now they stand before you today charged, charged
5 with the armed robbery of James Salter, charged with the use
6 of a weapon during the commission of a violent crime and
7 charged with the felony murder of James Salter. That's what
8 you sit in judgment of today.

9 The original Bonnie and Clyde back in the thirties they
10 found justice on the side of some back road in Louisiana at
11 the hands of a posse. Today we're doing this the right way,
12 we're presenting you with evidence and testimony that removes
13 all reasonable doubt. We're presenting you with all of the
14 exhibits and testimony that will lead you to one direction,
15 that this modern-day Bonnie and Clyde is guilty, guilty of
16 the armed robbery of James Salter, guilty of the use of a
17 weapon during the commission of a violent crime and guilty of
18 the felony murder of James Salter and today Bonnie and Clyde
19 face justice.

20 THE COURT: Mr. Barr.

21 MR. BARR: Thank you, Your Honor, . . .

22 May it please the Court, Mr. Richardson, Ms. Elder.

23 Some of us sometimes have to use props. Again, I'm
24 Verdell Barr and I practice law in Kingstree under the firm
25 name of Barr and Barr with my brother, Charles Barr. I'm

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1 here today and I represent Richard Niles. He's the young man
2 seated right beside me at the table there, and I would like
3 to begin by again offering condolences to the Salter family.
4 They've faced the death of a child, a son, a family member,
5 and now they are facing a grueling trial. Yours is not an
6 easy job here today. You're faced with balancing and
7 consideration of a grieving family, a judicial system that
8 seeks justice, and I'm asking you to offer my client a fair
9 trial.

10 Most of us who are trial attorneys, and I've been doing
11 this for 30 years brag on the American judicial system
12 because this is the one chance that a criminal Defendant gets
13 to face a jury of his peers and to get judgment based on the
14 evidence that's presented, not a Bonnie and Clyde story but
15 the actual evidence that's presented at his trial and we brag
16 about it because it levels the playing field. It gives
17 everybody a chance to be heard and everybody a chance to have
18 their view of the situation heard.

19 Now, you heard what the State said about what happened.
20 We've been very careful and very painstaking in selecting you
21 as jurors because as the Judge has told you already you are
22 the triers of fact. It is your job to seek the truth in this
23 case and we are relying on you, Mr. Niles is relying on you
24 to seek the truth. I would ask you to examine every piece of
25 the evidence that goes on the evidence stand, every

1 photograph, every transcript of statement, every piece of
2 evidence, and you'll have the opportunity to take these
3 things, these material things to the jury room with you as
4 you deliberate, but I'm going to ask you to examine these
5 things very carefully because if you do you will find that
6 Ervin Moore didn't say what the State says that he said. I
7 want you to look at the videotape of Ervin Moore's statement
8 very carefully and you will find that most of what the State
9 says that Ervin Moore said they suggested to him to say it.

10 Ladies and gentlemen, a part of why we wanted jurors,
11 you as jurors in this case is that language is a tricky
12 thing. Some languages have six words or seven words that
13 says the same thing in a different context. If I was to say
14 hello to you in French I might say bonjour in the morning,
15 bonsoir in the afternoon and à bientôt if I'm saying I'm
16 going to see you a little bit later. In some cultures if a
17 person says, "I'm going to hit a lick," that doesn't mean
18 I'm going to rob anybody, but if I don't understand what
19 you're saying I may take that to mean you intend to rob
20 someone. I submit to you, ladies and gentlemen, that the
21 evidence as it unfolds in this case will be very, very
22 plain. It will be clear, yes, that both Richard Niles and
23 James Salter sold drugs, an ongoing relationship for eight or
24 nine months. Richard Niles had no reason to rob James Salter
25 or to invite James Salter into a public place and rob him and

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1 the evidence will show that after any contact between Richard
2 Niles and Richard Niles and Ervin Moore and Ms. Hammond that
3 Mr. Salter was probably in possession of nearly \$3,000.

4 The evidence will show, the evidence will show that
5 Richard Niles was in Salters, Williamsburg County with his
6 girlfriend Mokeia Hammond when they encountered Ervin Moore
7 and Ervin Moore says that, "I want some marijuana," and he
8 asks Richard Niles, "Can you help me get some marijuana,"
9 and Richard Niles says, "Yes, I have a friend in Myrtle
10 Beach who will sell us some marijuana."

11 Now, I ask you to consider not whether or not this is
12 Bonnie and Clyde but to listen to the taped interview of
13 Ervin Moore when he says, "When we traveled in route to
14 Myrtle Beach I didn't hear a single thing about a drug deal
15 or a robbery. They were talking on the phone." I want you
16 to listen to the statement given by Ervin Moore at that time
17 that says, "No," and the police that are interviewing him
18 are asking him, you know, "Did you see, did you see Richard
19 Niles shoot James Salter." "No." "Well, who made the
20 plan and when was the discussion?" They asked him
21 specifically, "After - you were in the car after the
22 shooting. What discussion was there about what happened?"
23 He said, "We didn't talk," but now, the State would have
24 you to believe that this is a Bonnie and Clyde in a ride
25 along. I ask you to consider the facts and the evidence as

1 they come before you piece by piece. The Judge will tell you
2 when he gives you instruction on the law, murder, the
3 unlawful killing of a person with malice aforethought. I ask
4 you to look for every single element of an unlawful killing
5 of malice aforethought because the State will not be able to
6 prove to you, not just beyond a reasonable doubt but at all
7 that there was ever any malice between James Salter and
8 Richard Niles. The evidence will show that Richard Niles and
9 James Salter considered themselves businessmen, and they had
10 been doing business for quite some time. The change element,
11 the change element in this case is Ervin Moore. Yes, Ervin
12 Moore knows about a robbery because he intended to commit a
13 robbery. He intended to take the marijuana. You'll hear
14 evidence that says that Richard Niles had been selling
15 marijuana and James Salter had been selling marijuana for
16 months, years, even to each other. They never had a problem.
17 They never had a problem. You will hear evidence that says
18 that James Salter has been robbed of some \$6,000 several
19 weeks prior to this incident and did - not only did James
20 Salter come to the Best Buy mall but he brought others with
21 him. It wasn't one vehicle. It wasn't just the white
22 Mustang. It was also the Explorer and roommates. James
23 Salter did not intend to have Ervin Moore take anything from
24 him and that's justifiable and that's understandable. Why
25 should he? He didn't owe Ervin Moore anything. Richard

Opening Statement by Mr. Barr

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1 Niles doesn't owe Ervin Moore anything. Said, ``Well, yes,
2 I'll take you to the beach. Yes, I'll introduce you to
3 someone who will sell you some marijuana," but other than
4 the police and the State's version of oversimplifying and
5 wanting to believe, ``Okay, this is just Bonnie and Clyde and
6 they're going to rob him," you got to have the felony to
7 support the murder or the shooting, the unlawful use of a
8 weapon during a felony, but you're not supposed to create it.

9 I'm going to ask you not only to look for the elements
10 of this crime but I'm going to ask you to consider the
11 Judge's instructions regarding burden of proof, whether or
12 not the State has met the burden of proving that Richard
13 Niles, Mokeia Hammond committed murder, armed robbery, used a
14 gun in the commission of a felony. The evidence is going to
15 show that there were five shots fired from the white Mustang.
16 You will hear witnesses who were in the parking lot say that
17 five shots were fired at the white Mustang. They were not
18 only fired and they weren't fired after the departure as the
19 State would have you believe, but they were fired directly
20 into the car, the Ford, that the Defendants were driving and
21 the blood in the car, the evidence will show, was Ervin
22 Moore's. So, if you're going to imagine something maybe
23 imagine that James Salter did get a chance for some measure
24 of revenge for what Ervin Moore did, but if Ervin Moore
25 decides to rob James Salter of drugs, that's not a plan by a

1 19 year old young woman who is driving a car. You won't hear
2 that Mokeia, you won't hear any credible witnesses and the
3 Judge has explained to you credibility of witnesses. As a
4 juror you can believe all of what a witness says, none of
5 what a witness says, part of what a witness says. It's up to
6 you to assign credibility of the witnesses but you won't hear
7 any credible testimony that this lady is some Bonnie, they
8 were raiding through the countryside, robbing people and
9 shooting at people and that sort of thing. You won't hear
10 that at all. That won't be presented. The State wants you
11 to imagine that. Look at the video statements because if you
12 consider the video statements carefully the police officer
13 says to the witnesses, "We know everything, we've got
14 everything, we're just going to see whether or not you're
15 going to lie," and most of the information given is
16 suggested. It's not voluntary. It's suggested by the
17 police. The police suggest this same theme that the
18 Solicitor is offering you today because they want to solve
19 this simply. This is not simple. The use of drugs in our
20 society is not a simple thing and I'm not going to point any
21 fingers but it's not a simple matter. It's a violent process
22 and there are guns and weapons and money, part and parcel of
23 this kind of arrangement, but now, what I want you to do
24 today is to search for the truth of what happened, consider
25 every witness as they testify, consider every piece of paper

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1 as it comes in to search for the truth. I want you to look
2 to see whether or not you see any malice, any forethought,
3 any plan to do anything other than buy some marijuana. I
4 want you to consider every word that comes out of Ervin
5 Moore's mouth and see whether or not there is anything
6 beyond, "I want to get me some marijuana and go back to
7 North Carolina, and no, I don't intend to pay for it."

8 I want you to consider why Richard Niles would take or
9 invite - they invited each other. You'll hear the phone
10 call. "Let's meet at the Best Way parking lot, and let's do
11 this transaction," a transaction done many, many times
12 before. Everybody has got money. There's no need to rob
13 anybody of a small quantity of marijuana unless you need a
14 small quantity of marijuana.

15 I want you to consider the scenario. James Salter died.
16 That's tragic, but James Salter may have died as a result of
17 gunfire between two automobiles, drug transaction gone afoul.
18 Richard Niles has a right to defend himself and to defend his
19 girlfriend. He didn't decide to rob James Salter, his
20 long-term business partner, and Ervin Moore decided to rob
21 James Salter. He didn't unlawfully with malice and
22 aforethought take the life of James Salter. This is not
23 simple. It's not Bonnie and Clyde. It's complicated. You
24 have a difficult task. It's going to be a long case but I
25 will ask you to pay attention. The Judge has asked you to

1 pay attention. Weigh every single piece of evidence, and in
2 the end as the trier of the facts I'll ask you as best you
3 can to find the truth in this matter. Thank you so much for
4 your consideration.

5 THE COURT: Mr. Hazzard.

6 MR. HAZZARD: May it please the Court.

7 THE COURT: Yes, sir.

8 MR. HAZZARD: On April 9th of 2007 Mokeia Hammond was
9 indeed 19 years old and this young lady was one of the
10 happiest women in the world. She had just been proposed to
11 by the man that she loves, Richard Niles. So, she was
12 affiant to the man that she loved, and as Mr. Richardson
13 indicates, she also enjoyed the fast lifestyle or as fast as
14 life can get when you're from Salters, South Carolina, that
15 comes with being a drug dealer because, yes, this young man
16 is a drug dealer. This young man is a businessman, and he
17 was in business with James Salter.

18 Now, the Prosecution wants you to believe that for some
19 reason this man who had been doing business with the deceased
20 for a period of at least a year would suddenly one day decide
21 to rob him and not only just rob him mind you because that's
22 their story. This is what Mr. Richardson has told you but do
23 not leave your common sense at home. I'm going to rob
24 somebody but where am I going to do it? I'm going to do it
25 in the most public place possible, in a Best Buy parking lot

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1 at 6:30 in the afternoon. That doesn't make any sense to you
2 all. You know it doesn't make any sense. Every time you
3 hear of a situation where one of these drug deals goes bad
4 and a robbery occurs or there's a home invasion of a drug
5 house to rob the drugs, when does that happen? It happens in
6 the middle of the night. It happens up under a bridge
7 somewhere. Nobody goes to a parking lot of a store in the
8 middle of the afternoon to commit a crime, but that's the
9 story that Mr. Richardson and the prosecution have brought
10 you. Okay?

11 Now, I have a great deal of respect for the attorneys
12 involved in this case, but there are certain things that they
13 have said that I disagree with. The first thing is my
14 esteemed co-counsel, Mr. Barr, has said, quote, "Everybody
15 has got money, everybody has got money. So, there's no need
16 to rob him." No, everybody didn't have money. Richard
17 Niles had money. James Salter had money, but the one person
18 who didn't have any money is their witness Ervin Moore.

19 Now, getting back to the agreement and the arrangement
20 between these two men, Richard Niles and James Salter, it is
21 like - the drug business is kind of a funny business because
22 sometimes you're kind of up, sometimes you're kind of down as
23 far as the amount of weight or drugs that you have. So, that
24 is why this man here, who's basically a mid-level manager,
25 he's not a regular street guy. He's a mid-level manager.

1 James Salter was more the street guy, the guy who went out
2 and sold. However, everybody has got different connections,
3 everybody gets their shipments or what's referred to as a re-
4 up at different times. So, as a result, even though he's the
5 mid-level manager there may be days where he doesn't have any
6 marijuana for sale, but on this particular day, April 9th
7 2007, that wasn't an issue. He wasn't looking for marijuana.
8 He wasn't looking to sell any. He wasn't looking to buy any,
9 okay. In fact, evidence and testimony will show that a week
10 or so prior to this incident Richard Niles had entrusted a
11 fairly large amount of marijuana to James Salter for sale and
12 just as they had always done James Salter sold it and James
13 Salter had his money because the State again wants to tell
14 you that this was some kind of huge robbery but what Mr.
15 Richardson did not mention and what Mr. Barr touched on is
16 that the car that James Salter was driving had \$2,650 in cash
17 in the car, wasn't stolen, wasn't taken. Whose money was
18 that? James Salter had the money to pay up to the chain to
19 Richard Niles. Basically what they want you, what the State
20 wants you to believe is that an Amway salesman or an Amway
21 manager has an incredibly good salesman under him who is
22 making him money hand over fist day after day, week after
23 week, month after month but then one day he's just going to
24 go fire the guy for no reason or in this case kill the guy.
25 For you to believe the State's case that's what you have to

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1 believe that happened here, that this man, mid-level
2 management for reasons unbeknownst to anyone in the world
3 would get rid of someone who was making him money every
4 single day because evidence and testimony will also show that
5 Mr. Salter and Mr. Niles were very successful because they
6 traveled in different circles. Mr. Niles traveled more in
7 the Williamsburg County area where he lives but he also came
8 up to the beach to do his business because he is a
9 businessman, Mr. Salter, a slightly younger, has college
10 roommates, so he's got the in to that college crowd. So,
11 there you have your branch off, just like any other business,
12 any other sales business, you've got people who have their
13 certain zones where they work, but there will be absolutely
14 no evidence first and foremost that this young lady here ever
15 held a gun, possessed a gun, fired a gun, planned to hold a
16 gun, possess a gun, fire a gun, rob anyone or kill anyone.
17 So, the State in order to try to convict Mokeia has to come
18 up with a fanciful story of a plan, a plan to rob James
19 Salter, and again, there is no plan because without a plan
20 since she didn't shoot anyone, what did Mr. Richardson tell
21 you? It's the felony murder rule. The hand of one is the
22 hand of all. If we combine and conspire to commit a crime
23 then any one of us is as guilty as anyone else involved.
24 Let me give you an example. I call my brother up and I
25 say, "Brother, my car is in the shop. I need to go to the

1 bank, cash a check.'" He says, "No problem, I'll come down
2 and get you.'" Okay, he comes and gets me. He's going to
3 wait outside. He sits outside at the curb. I go in the
4 bank. Unbeknownst to him I walk in the bank. I whip out a
5 gun. I say, "Everybody on the floor.'" I try to rob the
6 place and the process of committing the robbery someone gets
7 shot, someone dies. Now, I run back out to the car. He
8 looks at me with the bag and the gun, says, "What in the
9 world, good Lord.'" He is not guilty of that murder. He's
10 not guilty of that death. He's not guilty of that robbery
11 because he had no idea what was behind it.

12 Now, if I call my brother and I say, "Hey, look here,
13 you know, I'm going to go down. I need a wheel man to go
14 down to the bank and rob it," yes, if he does that with me
15 then, yes, he's as guilty as I am. So, you can see where the
16 State is going with this. They're trying to pull Mokeia
17 Hammond into this by saying there was this grand plan, but
18 think about it, if there was indeed this plan and if for some
19 reason Richard Niles was going to kill his best seller and he
20 had his wheel person with him what in the world would they
21 need Ervin Moore along for, what would they need him along
22 for? They wouldn't.

23 Here's what happened. Richard and Mokeia are in Salters
24 minding their own business. They are at a convenience store,
25 and Ervin Moore, who has been in and out of the state a lot

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1 because what you will hear from their star witness is this is
2 a man who at the time this occurred was 34 years old and had
3 been in trouble with the law since he was 19, okay. So, he
4 had been in and out of jail. The last time he was in jail
5 was in July of 2005 before this occurred, but you will hear
6 that he had - that people hadn't seen him for about six
7 months. He had been off the grid. Some people thought he
8 was in Atlanta. Other people thought he was in North
9 Carolina where all of his previous convictions stemmed from
10 but he just shows up. Ervin Moore shows up and he and
11 Richard Niles have known each other for a long time, you
12 know, in passing, family members know each other, and Ervin
13 Moore says, "I've got a - basically I've got to get back in
14 the game. I've got to, I've got to get some marijuana.
15 Where can I buy some marijuana so I can get started again?"
16 Richard says, "Well, look, you know, I'm kind of tapped
17 right now," but at that time his coworker, his underling
18 James Salter calls and says, "Hey," and what does James
19 Salter say, "I've got your money, you know, the drugs you
20 fronted me a week or so ago as I always do, sold them, got
21 your money. Richard figures, "Cool, go to the beach, get my
22 money, hook you up with James Salter, hook you up with Ervin,
23 Ervin Moore and James Salter together, they can do their
24 deal, everybody will be happy, just as those two men, Richard
25 Niles and James Salter always did, never any drama, never any

1 problems until this day, until this day. You've got to ask
2 yourself why this day?

3 So, they get in the car. They throw Ervin Moore in the
4 backseat. They drive to the beach, and as was said, you
5 listen to that tape of Ervin Moore talking, and he'll say,
6 ``No, I mean, we didn't talk about anything. We didn't talk
7 about anything. There wasn't anything to talk about.'' They
8 get to the Best Buy parking lot.

9 Now, other important point the State wants you to
10 believe, what did Mr. Richardson tell you? The State wants
11 you to believe that this grand scheme to rob James Salter
12 involved Ervin Moore getting out and going to the car for the
13 purpose of scoping it out. Again, if I'm going to rob
14 somebody I don't think I'm going to do it by sending a
15 stranger to them. I don't think I'm going to do it by
16 sending a stranger to them because that's what Ervin Moore is
17 to James Salter. He is a stranger. Isn't it more believable
18 and credible because it's true, you will find evidence and
19 testimony will show, that the conversation was had on the
20 phone between Mr. Salter and Mr. Niles, discussion was had
21 with regard to, ``Yeah, a guy is coming with me. He wants to
22 buy some drugs. I'll get my money. You can sell him the
23 drugs, whatever you all work out is between you all.''

24 So, of course, they get there and what did the State
25 say? Ervin Moore goes to James Salter's car. Again,

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1 because he's going to buy drugs, but Ervin Moore doesn't have
2 any money. So, he's the one that has the plan in his head
3 that, "I'm just going to take what I want. I think the boy
4 is soft. I'm just going to take because," see, Ervin Moore
5 has done time. He isn't scared. You will see he's been in
6 and out of jail, in and out of jail, in and out. He ain't
7 scared. This boy ain't got nothing for him so he thinks. He
8 just thinks he's going to snatch it.

9 Well, as Mr. Richardson mentioned, as Mr. Barr mentions
10 Mr. Salter had had the unhappy situation some I think four to
11 six weeks prior of being held up during a drug deal in Conway
12 and he told his friends that he had been taken for \$6,000.
13 So, he wasn't going to let that happen again. So, he had his
14 40 caliber gun with him and evidence and testimony from all
15 of the witnesses you will hear different things, different
16 people saw things from different ways but there's no question
17 that Ervin Moore was in Salter's car. You will hear certain
18 witnesses say that they saw Ervin Moore and James Salter
19 tussle in the car but that then Ervin Moore tries to run and
20 that's when the gunshots begin. That's when the gunshots
21 begin, but again, Mokeia Hammond is sitting there. Richard
22 Niles is sitting there thinking, "I'm going to let my boy
23 finish his business with this Ervin Moore character. Then I
24 can get my money," but it never got to that point for him or
25 them because Ervin Moore decided that he was going to do what

1 he thought was in his best interest I would submit evidence
2 and testimony will show. You will find that the only
3 credible and believable scenario is the one that I have
4 outlined because that is the truth and that's the thing about
5 the truth. It's never a hard thing. All you got to do is
6 say it. All you have to do is say it. As Mr. Barr has
7 already pointed out three's blood in that fusion, the fusion
8 that Mokeia Hammond was driving. Richard Niles was a
9 passenger in the front seat. Ervin Moore was in the backseat
10 and that blood belongs to Ervin Moore, not Mokeia Hammond,
11 not Richard Niles and they want to make a big deal about this
12 fingerprint, this fingerprint, this fingerprint of Richard
13 Niles that you're going to hear about. This fingerprint,
14 again, this is his businessman, this businessman and this is
15 the underling, been dealing together for a year. I'm sure
16 there are a whole lot of Richard Niles' fingerprints you will
17 see before it is all said and done, but what Mr. Richardson
18 said that I take some umbrage at is he says repeatedly,
19 "Remember the story, remember the story of Bonnie and
20 Clyde." Ladies and gentlemen, I don't want you to remember
21 the story. I want you to listen to the testimony, and I want
22 you to remember the truth. Thank you.

23 THE COURT: All right, ladies and gentlemen, we'll
24 now begin the trial of the case with the calling of the
25 witnesses. However, before we do we've been going for a

1 while with my preliminary instructions and with the opening
2 statement. I'm going to go ahead and give you a break, let
3 you get something to drink, use the restroom, plus it will
4 give me a good opportunity to see if there is any legal
5 matters we need to take up before we begin the trial of the
6 case. So, I'll excuse you back to the jury room. We'll take
7 about a 10, 15-minute break and then I'll bring you back.
8 Thank you very much. Please do not discuss this case even
9 among yourselves at this time. Thank you.

10 (Whereupon, the following takes place outside the
11 presence of the jury.)

12 THE COURT: All right, anything before we start the
13 witnesses?

14 MS. ELDER: No, sir, Your Honor.

15 THE COURT: Anything from the Defense?

16 MR. BARR: Nothing from Niles.

17 MR. HAZZARD: Nothing from Defendant Hammond, Your
18 Honor.

19 THE COURT: All right, I know that I had granted the
20 motion yesterday to be sequestered. All the witnesses are
21 sequestered? Is that correct?

22 MR. RICHARDSON: All of ours are sequestered, Your
23 Honor.

24 THE COURT: Is that correct?

25 MR. BARR: Yes, Your Honor.

1 MR. HAZZARD: Yes, Your Honor.

2 THE COURT: All right, let's take about a 10-minute
3 break and then we'll come back and get started. All right?

4 OFF THE RECORD

5 (On the record.)

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: Thank you very much. Please be seated.

9 All right, the bailiff has advised me that the jury
10 has asked whether or not they can take notes. Given the
11 length of this trial I think I am going to let them take
12 notes but I'm going to give them some curative instructions
13 that they are to keep them private to themselves, not to
14 share them with any other jurors and instruct them, you know,
15 not to let it interfere with their paying attention to the
16 witnesses and things of that nature, just some general
17 curative instructions I have regarding note-taking. All
18 right, any objections by the State?

19 MS. ELDER: No, no, Your Honor.

20 MR. RICHARDSON: No, sir, Your Honor.

21 THE COURT: Any by the Defendant?

22 MR. BARR: None by the Defense.

23 THE COURT: Any by Ms. Hammond?

24 MR. HAZZARD: None on behalf of Defendant Hammond, Your
25 Honor.

1 THE COURT: All right, let's go ahead and bring -
2 have we got - I know she was checking to get some pads and
3 pencils.

4 BAILIFF: She's got them.

5 THE COURT: She's got them ready, okay. Let's go
6 ahead and bring the jury in then, please.

7 (Whereupon, the following takes place in the presence of
8 the jury.)

9 THE COURT: All right, ladies and gentlemen, welcome
10 back. We're getting ready to start the trial of this case -
11 well, we've begun the trial, start the witness portion of
12 this case and I understand there are some jurors who have
13 asked to be allowed to take notes. I will allow you to take
14 notes during the trial of this case. However, I must
15 instruct you on the purpose and the manner in which you can
16 take notes. First of all, you must recognize that some
17 people take notes better than other people. Some people do
18 not need to take notes. They can recall from memory better
19 than other people. So, the fact that you choose or choose
20 not to take notes should not influence any other juror during
21 your deliberations. Your note-taking will be personally or a
22 personal option to each individual juror. If you decide to
23 take notes you cannot share your notes with any other juror.
24 You do not use the fact that you have taken down a note to
25 support your argument against any other juror because the

1 taking of notes is simply for each individual juror to
2 personally remind themselves of a fact or a matter about
3 which he or she feels is important and it is to refresh your
4 memory. Some jurors need to refresh their memory by taking
5 the notes. Other jurors do not need to refresh their memory.
6 So, the point I'm trying to make is just because juror A
7 takes down a note doesn't mean that he recalls the facts any
8 better than juror B who did not take down the notes. So,
9 your note-taking, number one, is for you personally to
10 refresh your memory personally. It is not to be shared with
11 any other juror. You will write your name on the pad. When
12 you leave the courtroom you will leave the pads in the
13 courtroom with the pencils. You will not take them back with
14 you until it's time for deliberation and then at that time
15 we'll decide whether or not the notes are needed in the jury
16 room during deliberations. So, they will be left in the
17 courtroom in your seat and taken up by the clerk at the close
18 of each day. Also, please do not let your note-taking
19 interfere with your listening to a witness. The problem with
20 taking notes often means that a person becomes more concerned
21 with the note they're taking than listening to the testimony
22 of the witness. Well, you need to be very cognizant of
23 everything that a witness says. So, don't let - if you take
24 a note jot it down quickly to joggle your memory, to remind
25 you and then listen to the witness. Much of the

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1 believability of a witness may be determined by the way the
2 witness acts on the witness stand. So, I don't want your
3 note-taking to interfere with your observation of a witness
4 when he or she testifies. So, note-taking will be permitted
5 but it will not be allowed to be shared with any other juror.
6 It is to be each individual person's own choice, and I ask if
7 you take notes do it quickly to just joggle your memory. All
8 right?

9 Is the State ready to call their first witness?

10 MR. RICHARDSON: The State is prepared, Your Honor.

11 THE COURT: All right, you can call your first
12 witness.

13 MR. RICHARDSON: The State would call Officer Ryan Wood.

14 THE COURT: All right, Mr. Wood, if you'd come
15 forward, please.

16 Whereupon, Ryan C. Wood was called to the stand, duly
17 sworn by the Clerk and testified as follows:

18 THE CLERK: Thank you. Please be seated. Please
19 state your full name and spell your last name for the Court.

20 MR. WOOD: Full name is Ryan C. Wood, and the
21 spelling of the last name is W-O-O-D.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Good morning, Officer Wood.

25 A Good morning.

1 Q Could you please tell us a little bit about your place
2 of employment, how long and in what capacity?

3 A Yes, sir, I've been employed through the City of Myrtle
4 Beach Police Department for the last going on nine years now.
5 I was hired back in September of 2000. I'm currently
6 assigned to the narcotics division and where I'm also
7 assigned to the 15th Circuit Drug Enforcement Unit here in
8 Horry County.

9 Q So, you've been in law enforcement for a total of nine
10 years?

11 A Going on nine years, yes, sir.

12 Q Back in April 2007, were you employed with the City of
13 Myrtle Beach Police Department?

14 A Yes, I was.

15 Q And in what capacity was that?

16 A I was in the Street Crimes Unit at that time. It's a
17 plainclothes unit, just a small unit that targets different
18 crimes throughout the city, any pattern crimes.

19 Q In addition to targeting pattern crimes in the community
20 did Street Crimes do any other duties?

21 A Yes, we did. We were kind of a proactive unit where we
22 made our own cases. We were constantly patrolling around
23 different areas of the city looking for things illegal, and
24 you know, if things came about we would take, take our
25 responsibilities upon us and make a case if we needed to. We

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1 were more or less a proactive unit. We did respond to calls
2 if needed.

3 Q And back on April 9th of 2007, did you have the
4 opportunity to respond to Coastal Grand Mall area with
5 response to your duties with the Myrtle Beach Police
6 Department?

7 A Yes, sir, I did.

8 Q And for what purpose was that?

9 A There was a shots fired call I believe at the Best Buy
10 parking lot. We responded, of course.

11 Q And on your way to the Best Buy did you receive any
12 other calls?

13 A Yes, sir, as we were approaching the area of Wal-Mart we
14 initially came up Highway 501 from the City or from Kings
15 Highway direction traveling west on 501, I think, turned left
16 onto Seaboard. We made our way. We were going in between
17 Wal-Mart and Home Depot approaching Pine Island Road, which
18 is the road that runs right beside the mall, and it would
19 subsequently run behind Best Buy. When we approached Pine
20 Island Road there was another call almost simultaneously, you
21 know, as we were getting into that area that there was a
22 white Mustang, possibly a suspect and the shots fired call.
23 At that same time or right around that same timeframe
24 another officer, I think it was, I don't know if it was
25 dispatch or a supervisor said, ``I believe there's another

1 call of a vehicle accident involving a white Mustang in the
2 Coastal Grand parking lot."

3 Q And so, you got a call on the radio about shots being
4 fired at Best Buy?

5 A Yes, sir.

6 Q About the same time you got a call about a possible DUI
7 over at Coastal Grand?

8 A Yeah, DUI or accident, a vehicle was hit a box,
9 transformer box and is on the perimeter road, was supposed to
10 be beside the Belk.

11 Q And those areas are in close proximity?

12 A Within a quarter of a mile or half a mile easily.

13 Q And so, you responded over to the Coastal Grand area?

14 A Yes, because we have a vehicle accident. I knew the
15 other units were already coming on scene at Best Buy. So, we
16 didn't know if there was any injuries over there. So, of
17 course, I saw the white Mustang actually from Pine Island
18 Road. You could see it kind of sitting up on a curb over on
19 that perimeter road that runs by Belk.

20 Q And were you alone in the car or did you have a partner?

21 A I was with a partner. He was driving.

22 Q And he - what's his name?

23 A It was Officer Deverell, Keith Deverell.

24 Q Officer Wood, I'm going to show you what's been
25 previously marked as State's Exhibit One. Do you recognize

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1 this item?

2 A Yes, I do.

3 Q And how do you recognize this item?

4 A That is the in-car videotapes that we use in our patrol
5 vehicles.

6 Q And is this video a true and accurate depiction of your
7 response to the Coastal Grand Mall area?

8 A Yes, it is.

9 MR. RICHARDSON: Your Honor, at this time the State
10 would seek to introduce State's Exhibit One for
11 identification into evidence as State's Exhibit One.

12 THE COURT: All right.

13 MR. BARR: Without objection regarding Defendant
14 Niles.

15 MR. HAZZARD: No objection regarding Defendant Hammond,
16 Your Honor.

17 THE COURT: All right.

18 MR. RICHARDSON: The State would seek to publish this at
19 this time, Your Honor.

20 THE COURT: All right, State's Exhibit One admitted
21 into evidence without objection. I will allow it to be
22 published. Go ahead.

23 (Whereupon, State's Exhibit Number One [Video]
24 introduced into evidence and appropriately marked.)

25 MR. RICHARDSON: Thank you, Your Honor.

1 Folks, if you all would bear with me for just a minute.

2 BY MR. RICHARDSON:

3 Q Officer Wood, if you could come down off the stand. I
4 just want you to be able to view this at the same time if
5 there's any explanation needed. Can everyone see? Do I need
6 to back this up a little bit?

7 Officer Wood, who's driving the patrol car at this time?

8 A Officer Deverell. I am in the front passenger seat.

9 (Whereupon, State's Exhibit Number One played in open
10 court.).

11 Q Can everyone see all right?

12 Officer Wood, this clock here that's the, that's the
13 time?

14 A Yes, it is.

15 Q And 19-32, that's military time. So, it'd be 7:32?

16 A Yes, P.M.

17 Q P.M. A little frustrated. Officer Deverell, I mean,
18 Officer Wood, this is the turn right here at Wal-Mart?

19 A Yes, sir, Seaboard Street.

20 Q And if you could identify the man in the hat.

21 A That is myself.

22 Q Officer Wood, what are you all doing here?

23 A We had just - when we approached the gentleman in the
24 driver seat, Mr. Salter was slumped over. We couldn't see
25 anything at that time. He was just slumped over, called his

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1 name, we helped him out of the car. When we were bringing
2 him out of the car he said he had been shot. That's when I
3 walked, so, we just walked back, I was calling EMS at that
4 time.

5 Q Okay.

6 A Wound to his - a wound in the front part of his body, it
7 was on the right side.

8 Q Now, you're bent down here. What are you doing?

9 A I am talking to Mr. Salter at that time. He - we had
10 asked him his name at that time. He was able to give us his
11 name. Said his name was James Salter. So, then I kept
12 saying his name. I told him to stay with us. He was kind of
13 going in and out of consciousness, but he was mainly
14 conscious with us, I mean, I asked him who shot him. I mean,
15 it's part of my job to help out and asked him who shot him.
16 He stated a couple of black guys, it may have been quoted a
17 couple of black dudes. From then on I just stated his name
18 back to him, told him, "James, stay with us, stay with us,"
19 until EMS arrived.

20 Q And that's what's happening here?

21 A Yes.

22 Q You're just questioning him trying to keep him
23 conscious?

24 A That's, that's all we're - we're basically just standing
25 right there over him and just kind to keep him alert and

1 conscious the best we can. We're just trained to talk to
2 them and keep them awake. We're not doctors.

3 Q And that gentleman is Investigator Curry?

4 A Yes, it is.

5 Q And you all remained at this location until EMS arrived?

6 A Yes, we did.

7 Q Now, you're just backing the car up to get out of the
8 way?

9 A Right, I believe we made - might have made room for the
10 EMS vehicle or we could've been blocking some other. I'm not
11 sure why we moved, but we moved the vehicle but it was
12 probably due to the traffic flow and to let the emergency
13 vehicles come in.

14 Q Okay, Officer Wood, if you'll - you may stay, stay down.

15 A Excuse me? Stay standing?

16 Q Yes.

17 If you could stand right here facing Ms. Hurley?

18 A Okay.

19 Q Let me get this out of the way. Officer Wood, I'm not
20 sure how familiar the jury is with that area.

21 A Okay.

22 Q So, I'm going to show to you what has been
23 previously marked as State's Exhibit Two and if you'll step
24 on this side. I don't want to publish it before you have an
25 opportunity to - if you'll step right here. Oh, sorry.

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1 MR. HAZZARD: Okay, Your Honor, this is an exhibit that
2 has not been disclosed to the defense. I don't know if this
3 is supposed to be to scale or what the dynamics of it
4 are.

5 THE COURT: Okay.

6 MR. RICHARDSON: If you'd like to view it.

7 MR. HAZZARD: Until such time, I don't want it
8 published to the jury until such time as the Defense gets to
9 see it.

10 THE COURT: All right.

11 MR. RICHARDSON: If I may ask my questions on it, Your
12 Honor. I'm not asking to publish it at this time.

13 MR. HAZZARD: Well, so long as he doesn't show it to
14 the jury, if he's going to have it facing in the other
15 direction he can ---

16 THE COURT: Yeah, if you're going to show it to the
17 jury it's going to be published.

18 MR. RICHARDSON: Yes, sir.

19 THE COURT: But let's go ahead and lay a foundation
20 before we do that.

21 MR. RICHARDSON: That's, that's what I'm attempting to
22 do right now.

23 THE COURT: All right.

24 BY MR. RICHARDSON:

25 Q Officer Wood, if you'll take a look at State's Number

1 Two. Do you recognize this diagram?

2 A Yes, I do.

3 Q And how do you recognize it?

4 A It's the whole area of the north side of Coastal Grand
5 Mall and Belk coming into Best Buy, the restaurants
6 surrounding those areas, Pine Island Road, a portion of 17
7 bypass, Highway 17 bypass, little retail stores, Coastal
8 Grand Circle.

9 Q Is this a true and accurate depiction of that area?

10 A Yes, it is.

11 Q And this is relevant to this case, this is where the
12 incident scenes were?

13 A Yes.

14 MR. RICHARDSON: Your Honor, at this time the State
15 would seek to introduce State's Exhibit Two into evidence and
16 publish it.

17 THE COURT: All right, any objection?

18 MR. BARR: Your Honor, might we have a sidebar?

19 THE COURT: All right.

20 (Whereupon, a bench conference was held in the presence
21 but out of the hearing of the jury.)

22 THE COURT: All right, any objection to State's
23 Exhibit Number Two?

24 MR. BARR: Without objection, Your Honor.

25 MR. HAZZARD: No objection.

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1 THE COURT: All right, State's Exhibit Number Two.
2 admitted into evidence without objection.

3 (Whereupon, State's Exhibit Number Two [Aerial
4 Photograph - Poster] admitted into evidence and appropriately
5 marked.)

6 BY MR. RICHARDSON:

7 Q Officer Wood, if you'll step up here to this map,
8 State's Exhibit Two, and Your Honor, permission to publish?

9 THE COURT: Yes.

10 Q Now, if you could direct your attention, Officer Wood,
11 show us the direction - first of all, you all ended up at the
12 white Mustang over in the Coastal Grand Mall can you identify
13 where that area is on the map?

14 A Yes, I can. That, right in that area right there, right
15 beside that green box you see there. It's kind of hard to
16 see, but that is the transformer box. The white Mustang was
17 on this side of it when we pulled up.

18 Q And Officer Wood, which direction of travel did you and
19 Officer Deverell come?

20 A We were traveling this route along this way on Pine
21 Island Road. We made a left turn here into - it would lead
22 you into Coastal Grand Mall and also Coastal Grand Circle.
23 We then made another left and pulled in behind the white
24 Mustang which was parked right there.

25 MR. RICHARDSON: This has been provided in discovery.

1 Q Officer Wood, I'm going to show you now State's Three,
2 Four and Five for identification purposes only. If you'll
3 take a look at those, take your time?

4 A (Complies with request.)

5 Q Do you recognize these photographs?

6 A Yes, I do.

7 Q And how do you recognize these photographs?

8 A That is the - the first one is a picture of the vehicle
9 that I was out with, the white Mustang. You see the
10 transformer box right there on the corner sitting right
11 beside it and the next two are just different angles of the
12 same. It's the rear portion of the vehicle.

13 Q And this is after you have been cleared from the scene?

14 A No, we, we stayed on scene until that vehicle was towed.
15 So, we had to - Officer Deverell and I followed the vehicle
16 once it was towed and put on a wrecker back to the Myrtle
17 Beach annex into the crime scene bay, the garage.

18 Q And these are true and inaccurate depictions of the
19 vehicle you all encountered that day?

20 A Yes, it is.

21 MR. RICHARDSON: Your Honor, at this time the State
22 would seek to introduce State's Three, Four and Five for ID
23 into evidence.

24 THE COURT: Any objection?

25 MR. BARR: No objection.

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1 MR. HAZZARD: No objection from Defendant Hammond, Your
2 Honor.

3 THE COURT: All right, State's Exhibits Three, Four
4 and Five admitted into evidence without objection.

5 (Whereupon, State's Exhibit Numbers Three, Four and Five
6 [Photographs of Mustang] admitted into evidence and
7 appropriately marked.)

8 MR. RICHARDSON: And we would seek to publish at the
9 appropriate time.

10 THE COURT: All right.

11 BY MR. RICHARDSON:

12 Q Officer Wood, if you'll just resume the stand?

13 A (Complies with request.)

14 Q Now, we saw the video. That was a fair and accurate
15 depiction of what you all did?

16 A Yes, it was.

17 Q And you all approached James Salter's car; correct?

18 A Yes, we did.

19 Q And that was on which side?

20 A The driver's side.

21 Q And as you approached the car what was going through
22 your mind at the time?

23 A I wasn't real - I was just approaching with caution, I
24 mean, like I do any, any vehicle. When we approached there
25 was, I believe, a couple of female witnesses maybe or people

1 that had seen the wreck. I think they actually called it in.
2 They were standing on, I'd say, the rear passenger side of
3 that vehicle when we arrived and they were talking as we were
4 approaching just stating that the driver was - looked like he
5 was slumped over. They thought he was hurt.

6 Q And as you approached the vehicle what did you all
7 actually find?

8 A We walked up. Deverell was ahead of me. He walked up
9 to - we both walked to the driver's side door. I stopped
10 basically right before you get to the driver's side door at
11 the back pillar. He moved on up and positioned himself kind
12 of at the front of the driver's side door, right in that
13 crease. Then we both observed Mr. Salter slumped over in the
14 vehicle. We made attempts to wake him. I think he was
15 unconscious at that moment. He, he then became conscious,
16 was just making groans and sounds. You could tell he was
17 hurt. So, we decided to get him out of the vehicle because
18 the vehicle I think, I think it was still running at the
19 time. So, we wanted it - we opened the door, got him out.
20 We didn't know he was injured until he told us that he had
21 been shot. When we heard that we laid him down gently. I
22 immediately called EMS and from then we just stayed around
23 him talking to him like I'd said before.

24 Q He had been in and out of consciousness?

25 A Uh-huh, yes, sir.

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1 Q He - did - how did his breathing appear?

2 A Hard to breathe if you could say and he was just - it
3 was just hard to breathe. You could hear him breathing. I
4 mean, you know, normally, you can't hear many people
5 breathing, but you could really hear him grasping or gasping
6 for air.

7 Q And he told you all he had been shot?

8 A Yes, he did.

9 Q Did he tell you who had shot him?

10 A He just said two, two black guys.

11 Q And after this you said you called EMS?

12 A Yes, I did.

13 Q Waited for their arrival?

14 A Yes.

15 Q And after they had cleared the scene what did you and
16 Officer Deverell do?

17 A Once EMS arrived and cleared, they treated Mr. Salter,
18 we then waited for crime scene. We just secured that
19 vehicle, didn't touch anything, waited for crime scene.
20 Crime scene came out. They processed the scene. The vehicle
21 while I was there, I believe, I'm not, not sure what all they
22 do. I was just there to make sure no one enters that crime
23 scene. Once they were done, Officer Deverell and I watched
24 the tow driver tow the vehicle and put it onto the rollback
25 and it was Auto Body Towing. That's who we always use.

1 We followed. Then we then followed that vehicle and that tow
2 truck to the Myrtle Beach Police annex where it was placed
3 into the garage in the crime scene bay.

4 Q Officer Wood, thank you.

5 A Uh-huh.

6 Q Please answer any questions the Defense may have.

7 A Yes, sir.

8 THE COURT: Mr. Barr.

9 MR. BARR: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. BARR:

12 Q Officer Wood, you - I believe you testified that you
13 have been in law enforcement for nine years?

14 A Going on nine years, September of 2000 was hired.

15 Q Okay, was there anything extraordinary about this crime
16 scene or the circumstances of this accident?

17 A Nothing too extraordinary except for a man said he had
18 been shot but nothing out of the - no.

19 Q Did you consider James Salter to be conscious when you
20 asked him that question?

21 A I did.

22 Q You did, and again, his response was two black dudes?

23 A Yes, two black guys or two black dudes is what he said,
24 yes, sir.

25 Q Do you recall which he said?

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1 A I do not recall exactly.

2 Q Okay, and he didn't identify them?

3 A No, sir.

4 Q Did he give you any other information?

5 A Just his name but nothing else pertaining to how he was
6 shot.

7 Q Was - there were no - there was no processing of the car
8 there at the mall?

9 A I can't testify to that. I don't know what crime scene
10 did when they arrived. I just - I was just securing the -
11 around the vehicle. Once crime scene arrived they might
12 have, but I can't testify to that.

13 Q Thank you, sir.

14 A Uh-huh.

15 Q I have no further questions.

16 THE COURT: All right, Mr. Hazzard.

17 MR. HAZZARD: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. HAZZARD:

20 Q Officer Wood, so, he said maybe a couple of black dudes
21 or he might have said two black guys or he might have said
22 two black dudes because you've testified to all three and you
23 don't know which is accurate?

24 A Well, he said two black guys or two black dudes. I just
25 can't remember if it was guys that he said at the, at the end

1 or dudes but he did say two black guys or two black dudes. I
2 can't recall the exact wordage.

3 Q You believe that's what he said?

4 A I know that's what he said.

5 Q You know that's what he said, and you're sure, you could
6 hear him?

7 A Yes, I remember.

8 Q Okay, but he never said Richard Niles shot him; did he?

9 A No, sir.

10 Q He never said Rich Boy shot him; did he?

11 A No, sir.

12 Q He never said, "Mokeia Hammond shot me"; did he?

13 A No, sir.

14 Q Now, as a part of your investigation on this you got any
15 information that indicates that at any point in time Mokeia
16 Hammond possessed a gun, fired a gun?

17 A Are you done with your question?

18 Q Yes.

19 A Okay, no.

20 Q Any information indicating that Mokeia Hammond robbed
21 anybody?

22 A None of my information, no, sir.

23 Q Any information indicating Mokeia Hammond killed
24 anybody?

25 A None of my information, no, sir.

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1 Q Thank you. No further questions.

2 THE COURT: All right, redirect.

3 MR. RICHARDSON: No, sir, Your Honor. I'd just ask that
4 Officer Wood be excused to return to his duties.

5 THE COURT: All right, any objection?

6 MR. BARR: No objection.

7 MR. HAZZARD: No objection from Defendant Hammond.

8 THE COURT: All right, you may step down. You're
9 excused to go. Thank you very much.

10 You may call your next witness.

11 MR. RICHARDSON: The State would call Officer Keith
12 Deverell.

13 Whereupon, Keith Deverell was called to the stand, duly
14 sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated. Please state your full
16 name, spell your last name for the Court.

17 MR. DEVERELL: Keith Deverell, D-E-V-E-R-E-L-L.

18 DIRECT EXAMINATION

19 BY MR. RICHARDSON:

20 Q Good morning, Officer Deverell.

21 A Good morning.

22 Q Still morning. Tell us about your place of employment,
23 how long and in what capacity.

24 A I work for the Myrtle Beach Police Department. I've
25 been there for a little bit over ten years as a police

1 officer.

2 Q And how are you employed now?

3 A As a uniform patrol officer.

4 Q How about back in April, on April 9th, 2007?

5 A I was a plainclothes, street crimes officer.

6 Q And as part of the duties as a street crime officer did
7 you respond to calls?

8 A Yes, on hot calls, yes.

9 Q Now, in your duties with the Myrtle Beach Police
10 Department back on April 9th, 2009 [sic] did you have the
11 opportunity to respond to the Coastal Grand Mall area in
12 Myrtle Beach?

13 A Yes, I did.

14 Q And what, what county is that in?

15 A Horry County.

16 Q It's in Horry County, in the city limits of Myrtle
17 Beach?

18 A Yes, sir.

19 Q And what was the purpose of responding to the Coastal
20 Grand Mall on that day?

21 A On a shots fired call.

22 Q Tell us, tell us a little more about that. Tell us how
23 that occurred?

24 A Officer Wood and I were on patrol and a shots fired call
25 came out in the area of Best Buy. So, we activated blue

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1 lights, siren, started heading down 501 getting towards the
2 mall or getting closer to Seaboard Street, turned down
3 Seaboard Street like you're heading towards Wal-Mart and I
4 believe one of the officers was on scene, radioed that there,
5 you know, there was a suspect vehicle was supposed to be a
6 white Ford Mustang heading towards Wal-Mart. So, I think we
7 killed the blue lights and just kept heading down the road
8 trying to look for the white Mustang. A little bit of time
9 passed and I think it was Investigator Baker radioed that a
10 white Mustang was supposed to be involved in an accident over
11 towards Coastal Grand Mall. So, Wood and I passed Wal-Mart,
12 make a right-hand turn onto Pine Island Road and over in the
13 distance you could see a white Mustang parked halfway on the
14 grass, halfway on the road. So, we pull up, kind of get
15 behind it to the side of it, to the driver's side and Wood
16 and I both get out. I approach closer to the front of the
17 car. Woods comes from the back and you could see a white guy
18 sitting there, kind of slumped over, knock on the window and
19 then I think he just kind of bounced around a little bit.
20 So, I open up the door and I start tapping him on the
21 shoulder. I'm like, "Hey, dude, wake up," and you know, he
22 just looked like he was drunk. So, I'm like, "Hey, you
23 know, come on, get up, wake up." So, he wouldn't wake up or
24 anything. So, I grab him. I start dragging him out of the
25 car just to see what was up and I'm pulling him out the car

1 he goes, "I've been shot." I was like, "Whoa," you know,
2 lay him down the ground. We start talking to him trying to
3 figure out what's going on. He, he, I think he - we were
4 able to get his name, James Salter. We asked him what
5 happened. He said he was shot over by Best Buy and I think
6 we asked him, you know, "Who shot you," and all he said
7 was, "A couple of black dudes." Once he's, you know,
8 actually Wood was at this time radioing for EMS. EMS comes.
9 While, while we're waiting for EMS, you know, we're just
10 trying to keep him alert and conscience. You can see him.
11 He starts going into shock, you know, the eyes and just the
12 facial expression, just someone in that state and you could
13 see look like a wound on the right side of him, I believe,
14 and then EMS showed up. We let them do their thing. We kind
15 of backed off, let them take care of him and once EMS was
16 able to transport we just locked down that crime scene,
17 secured it. I think a couple of female witnesses were there.
18 I got some written statements from them and basically we just
19 secured the crime scene till crime scene came and then when
20 crime scene was done with whatever they were doing Detective
21 Curry radioed and asked us to follow Auto Body down to the
22 annex and secure the vehicle in the crime scene work bay.

23 Q And that's what you all did?

24 A Yes, sir.

25 Q Officer Deverell, thank you for your assistance. If

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1 you'd just answer any questions that the defense may have?

2 A Yes, sir.

3 CROSS EXAMINATION

4 BY MR. BARR:

5 Q Officer Deverell, you said, I believe on direct
6 examination that you asked Mr. Salter what happened. Again,
7 what specifically did he say to you?

8 A I believe he said that he was shot over at Best Buy and
9 that a couple of black dudes did it.

10 Q Did he use those same words, "I was shot over by Best
11 Buy?"

12 A I quoted, I believe I quoted in my report. "The subject
13 stated, 'I've been shot,'" and then later on the only
14 information we could obtain was the man stating he was shot
15 outside of Best Buy by quote, "a couple of black dudes."
16 So, I, I just remember the quote a couple of black dudes.

17 Q So, the information regarding, "I was shot over by Best
18 Buy," that, that, that wouldn't be a direct quote from
19 Mr. Salter or would it be?

20 A The quote, "I've been shot," was a direct quote but I
21 think because the guy is going into shock and it was kind of
22 broken. So, we could kind of make out that he was saying he
23 was shot over by Best Buy but I didn't, I didn't in my report
24 quote exactly what he said at that point.

25 Q Okay, who asked him what happened? Was that you or

1 Officer Wood?

2 A We were both asking him.

3 Q Okay, so, you both asked him the same question?

4 A I believe so, yeah.

5 Q Now, you said you interviewed a couple of women that
6 were there. Exactly who all did you interview?

7 A I didn't interview. I just got written statements from
8 them.

9 Q You got written statements?

10 A From an Erica and Amanda Corbin.

11 Q Okay, did you also get a written statement from Gabriel
12 Fitter [spelled phonetically]?

13 A The name doesn't ring a bell to me.

14 Q Did you get a written statement from Angie Hooper?

15 A No, I did not.

16 Q Just Amanda Corbin and Erica Corbin?

17 A Yes, sir.

18 Q Okay, was there any other officer there taking
19 statements?

20 A I don't recall. I know I took witness statements from
21 those two.

22 Q Okay.

23 MR. BARR: Your Honor, permission to approach the
24 witness?

25 THE COURT: Yes.

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1 BY MR. BARR:

2 Q I'd like to show you those statements. Do you recognize
3 all of those as being statements that were taken that day or
4 some of them taken?

5 A These two.

6 Q Those two?

7 A Yes, sir.

8 Q Can you identify the other two for me of the four?

9 A No, I cannot, sir.

10 Q Do you know who took those statements?

11 A I do not.

12 Q Okay, and you did not take those statements?

13 A No, when I take a statement, sir, I put my name up here
14 Deverell and Deverell.

15 Q Okay, so, these were the only two statements you took
16 that day?

17 A That I recall taking, yes.

18 Q All right, do you recall the content of those two
19 statements?

20 A I do not.

21 Q I will pass them to you again. From your investigation
22 do you remember whether or not Ms. Corbin, either mother or
23 daughter was personally called in and said that Mr. Salter
24 was ---

25 A On Erica Corbin's statement she has on there that she

1 called 911.

2 MR. RICHARDSON: Your Honor, I'd just object on hearsay
3 grounds if he's going to be reading the statements.

4 THE COURT: All right, sustained.

5 Q Now, on that day did anyone tell you in the parking lot
6 they saw what happened?

7 A Now, the witnesses just stated they saw the car. They
8 didn't say - I don't believe they saw the actual accident or
9 what happened at Best Buy, no.

10 Q You don't?

11 A No, no one.

12 Q Okay, okay, now, did you conduct this complete
13 investigation, was this investigation assigned to you or were
14 you working jointly with someone else on this investigation?

15 A I was rendering aid to the victim and then we called for
16 EMS and then we secured crime scene. I, as far as the
17 investigation that's detectives did the investigation.

18 Q So, you didn't do any of the follow-up ---

19 A No, sir.

20 Q --- on this?

21 A No, sir.

22 Q Okay, so you don't have any information about what
23 actually happened on the scene other than ---

24 A No, sir.

25 Q --- you had - you took statements from Corbin and

Keith Deverell - Cross by Mr. Hazzard

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1 Corbin?

2 A Yes, sir.

3 Q And from the statements you took from Corbin and Corbin
4 they didn't know other than reporting that there had been an
5 accident?

6 A That's what their statements say.

7 Q Okay, no further questions.

8 THE COURT: Mr. Hazzard?

9 MR. HAZZARD: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. HAZZARD:

12 Q Good afternoon, Deverell. How are you, sir?

13 A Good. How are you?

14 Q I'm all right. Now, did you do one incident report,
15 sir, or two incident reports in this matter?

16 A I have one supplemental report that I did. I believe
17 it's a few pages long.

18 Q Okay, now, on either report - do you have them with you?

19 A Yes, sir.

20 Q Okay, please take a look at them and tell the jury what
21 you have listed as the total stolen property value?

22 A Looks like a zero.

23 Q It was zero?

24 A Yes, sir.

25 Q All right, now, as part of your investigation, your

1 investigation was basically with regard to securing

2 Mr. Salter's vehicle; right?

3 A Yes, sir.

4 Q Okay, did you - but you didn't inventory his vehicle?

5 A I believe we did a tow sheet but we didn't enter the
6 vehicle to inventory what was in it.

7 Q Okay, all right, and you have no knowledge, information
8 regarding Mokeia Hammond; is that correct?

9 A I don't know her.

10 Q All right, thank you.

11 MR. HAZZARD: No further questions.

12 THE COURT: All right, redirect.

13 REDIRECT EXAMINATION

14 BY MR. RICHARDSON:

15 Q Officer Deverell, you all followed the vehicle to the
16 police annex?

17 A Yes, sir.

18 Q Anybody throw anything in the car on the way?

19 A No, sir.

20 Q Anybody add anything to the car?

21 A No, sir.

22 Q Take anything away?

23 A No, sir.

24 Q You didn't respond for a theft?

25 A No, I did not.

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1 Q And you didn't interview anybody else that would respond
2 to these Defendants?

3 A I've never seen them.

4 Q You were more concerned with our victim?

5 A Yes, sir.

6 Q Thank you.

7 THE COURT: All right, you may step down.

8 MS. ELDER: Your Honor, I'd ask that Officer Deverell
9 be excused so he can return to his duties.

10 THE COURT: Any objection?

11 MR. BARR: No objection.

12 MR. HAZZARD: No objection, Your Honor.

13 THE COURT: All right, you're free to go. Thank you
14 very much. All right, you can call your next witness.

15 MR. RICHARDSON: The State would call Officer Kevin
16 Cast.

17 Whereupon, Kevin Cast was called to the stand, duly
18 sworn by the Clerk and testified as follows:

19 THE CLERK: Please state your name, spell your last
20 name for the Court.

21 MR. CAST: It's Kevin Cast, last name is C-A-S-T.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Officer Cast, if you could tell us about your place of
25 employment, how long and in what capacity.

1 A I work for the City of Myrtle Beach Police Department.
2 I've been employed with them since June of 2004.

3 Q Okay, and what are your duties at the Myrtle Beach
4 Police Department?

5 A Patrol officer.

6 Q And as - so, you were employed as a patrol officer back
7 April 9th, 2007?

8 A Yes, sir.

9 Q And were you on duty that day?

10 A Yes, I was.

11 Q Do you recall responding to the Best Buy Department
12 Store on April 9th, 2007?

13 A Yes.

14 Q Okay, and what was the reason for your response there?

15 A I was dispatched to a shots fired call.

16 Q Okay, where were you whenever you got this call?

17 A I was actually in Circuit City.

18 Q And how close is that to the Best Buy?

19 A Less than a half-mile.

20 Q Now, the Best Buy parking lot or the Best Buy Store
21 where is that located?

22 A It's located in the city limits of Myrtle Beach right
23 off of Oak Forest Lane.

24 Q And what county is that?

25 A In Horry County.

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1 Q Now, upon arrival at the Best Buy parking lot you got a
2 call over there for shots fired?

3 A Yes, sir.

4 Q What's the first thing you did?

5 A Immediately I was, you know, kind of scanning the area
6 looking for any kind of indicators, saw a lady had flagged me
7 down and kind of, you know, waved me over to where she was
8 at.

9 Q And did you do anything to protect the scene or
10 anything?

11 A Yeah, I actually once, you know, through the course of
12 my investigation it was determined where the incident took
13 place in the parking lot, I actually secured the crime scene,
14 made sure that no one walked through the area.

15 Q Let's take a look at State's Number Six for
16 identification. Do you recognize this diagram?

17 A Yes, I do.

18 Q And how do you recognize it?

19 A It's an overhead picture of the parking lot of Best Buy.

20 Q Is it a fair and accurate depiction of the Best Buy
21 parking lot and the Best Buy Store?

22 A Yes, it is.

23 MR. RICHARDSON: Your Honor, at this time the State
24 would seek to introduce State's Number Six into evidence and
25 publish it.

1 THE COURT: Any objection?

2 MR. BARR: No objection.

3 MR. HAZZARD: No objection on behalf of Defendant
4 Hammond, Your Honor.

5 THE COURT: All right, State's Exhibit Number Six
6 admitted into evidence without objection.

7 (Whereupon, State's Exhibit Number Six [Aerial
8 Photograph of Best Buy parking lot - poster] admitted into
9 evidence and appropriately marked.)

10 BY MR. RICHARDSON:

11 Q Officer Cast, if you'll come down off the stand. If
12 you'll stand over here, right here. Officer Cast, if you
13 could direct everyone's attention. Where is the front of the
14 store first?

15 A It's right here.

16 Q Okay, and if you could direct everyone's attention to
17 where you went when you first arrived.

18 A I pulled in, actually I came in off of Oak Forest Lane.
19 There's an entrance over here, kind of hard to see, but I
20 came in, I came right down this aisle right here and actually
21 parked my car somewhere right around in here.

22 Q Now, Officer Cast, if you'll open yourself up a little
23 bit so all these jurors can see you, too.

24 A Sorry.

25 Q And let me move this microphone over so Ms. Hurley can

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1 take down what you say.

2 A But - right in here, in this area, but down at the end
3 there, the entrance is kind of cut off. This pathway is
4 shared by Costco and Best Buy and I came right down there on
5 the right and then made a left down this aisle and came all
6 the way down in here.

7 Q And why did you choose to go down that particular aisle?

8 A I mean, I can't recall why I picked that one. I just
9 ---

10 Q You indicated there were some witnesses flagging you
11 down.

12 A Right.

13 Q Where were they located?

14 A Right around in this area.

15 Q So, that's where the witnesses were?

16 A Yeah.

17 Q Now, tell us what your initial observations were upon
18 arrival.

19 A Well, like I said, I saw the, you know, a lady actually
20 waving like when she saw my patrol car, and when I pulled up
21 she, you know, pointed and I got out of the car, and you
22 know, like I said earlier through the course of my
23 investigation once I talked to her and everything, you know,
24 learned that the incident had taken place, you know, in that
25 aisle where -- somewhere right in here.

1 Q So, about in that approximate location that's where the
2 - and when you say incident you're talking about the
3 shooting?
4 A Correct.
5 Q Now, I'm going to show you what's been also marked as
6 State's 17.
7 MR. HAZZARD: No problem, no objection.
8 Q Tell us if you recognize State's Number 17. Don't show
9 it to the jury yet. Just tell us if you recognize it.
10 A Yes, I do.
11 Q And how do you recognize that photograph?
12 A It's a picture of the parking lot of Best Buy and where
13 the shooting took place.
14 Q Is it a fair and accurate depiction of what you
15 encountered on April 9th, 2007?
16 A It is.
17 MR. RICHARDSON: Your Honor, at this time the State
18 would seek to introduce State's Number 17 into evidence and
19 publish it at this time.
20 THE COURT: Any objection?
21 MR. BARR: No objection.
22 MR. HAZZARD: No objection on behalf of Defendant
23 Hammond, Your Honor.
24 THE COURT: All right, State's Exhibit Number 17
25 admitted into evidence without objection.

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1 (Whereupon, State's Exhibit Number 17 [Photograph of
2 Best Buy Parking Lot] admitted into evidence and
3 appropriately marked.)

4 BY MR. RICHARDSON:

5 Q Officer Cast, now, on that picture who's the fellow in
6 uniform there?

7 A That would be me.

8 Q Okay, and on that particular photograph did any of the
9 witnesses draw your attention to any certain area?

10 A Yeah.

11 Q Go ahead and show us.

12 A Right in here in this area these two parking spots is
13 where they pointed.

14 Q And what was the significance of their pointing to that
15 area?

16 A That's where they said that the shooting took place they
17 pointed.

18 Q Did they indicate how many cars were involved?

19 A Two.

20 Q Two cars. Did they indicate what kind of cars?

21 A Yes, they did.

22 Q And you took down any witness statements?

23 A Yes.

24 Q All consistent?

25 A Uh-huh.

1 Q So, you had a pretty good idea of what had happened -
2 what happened that day?

3 A Yes, sir.

4 Q Now, let's take Number 17 back down. I believe that
5 shows us right around here?

6 A Uh-huh.

7 Q Officer Cast, we see Best Buy parking lot there. Are
8 you familiar with the restaurant called Logan's Roadhouse?

9 A Yes.

10 Q And could you tell us where that is located?

11 A Let's see, sorry, it would be right in this area because
12 they have two entrances. They have one here. This is
13 actually their overflow, but I guess it would be right there
14 in this area which is ---

15 Q What restaurant is here? Are there two restaurants in
16 that general area?

17 A Yes. Okay, actually this, I'm sorry. That - this isn't
18 Logan's. This is Longhorn, the other one.

19 Q Okay.

20 A So, yeah, that would be Logan's.

21 Q So, that would be Logan's parking lot to the jury's
22 right, to the far end of the Best Buy parking lot?

23 A It's hard looking at it upside down.

24 Q And you have a pretty clear shot from Best Buy over to
25 Logan's.

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1 A Uh-huh.

2 Q How long did you stay on the crime scene?

3 A I mean, I don't remember exactly how long. I was there
4 for a while, at least an hour.

5 Q Did you maintain the scene or did there ever come a time
6 when you turned it over to anyone else?

7 A Well, as soon as the crime scene officers came, I, you
8 know, turned the scene over to them.

9 Q And your primary responsibility was it for the complete
10 investigation of this killing?

11 A No.

12 Q You're the first responder?

13 A Yep.

14 Q During the course of your investigation were you able to
15 determine what type of cars were involved in this shooting?

16 A Yes.

17 Q And what were they?

18 A One was described as a white Mustang and the other one
19 was described as a four-door sedan.

20 Q Sedan?

21 A Yes.

22 Q Not an SUV.

23 A No.

24 Q Did any witness mention anything about any kind of SUV
25 speeding away?

1 A No.

2 Q Any kind of gunfire coming from any kind of SUV?

3 A No, nothing about an SUV.

4 Q Just a Mustang and a sedan?

5 A Correct.

6 Q Officer Cast, thank you for your testimony. If you'll
7 just answer any questions Mr. Hazzard, Mr. Barr might have.

8 CROSS EXAMINATION

9 BY MR. BARR:

10 Q Officer Cast, I will ask you if you would to stay where
11 you are for just a minute if that's okay with you.

12 MR. RICHARDSON: Would you like this map up?

13 MR. BARR: Yes, sir, thank you, sir.

14 BY MR. BARR:

15 Q Officer Cast, I believe you identified, and I'll try to
16 get out of the way, this area in here I believe as being
17 where the witnesses flagged you down, is that, or if you
18 would please point to where.

19 A In this area right in here.

20 Q In this area right in here?

21 A This row.

22 Q Okay, approximately how far is that from the front door
23 of the store, just approximately?

24 A I mean, I don't know exactly how far it is.

25 Q If we considered the dimensions of this building would

1 it be further than say from here to the front street out
2 there, in front of the building or from here to the wall in
3 front of the building?

4 Q Honestly, I'm not - this is a first time in this
5 building. So, I can't tell you for sure.

6 Q Okay, I understand.

7 A You know, in relation.

8 Q Could you approximate the distance from this location to
9 the front of the store?

10 A Well, I mean, if I could count parking spots, then you
11 have your little grass median, so ---

12 Q Okay, so, so, as best you know the vehicles were nine
13 parking spaces from the front door of the store?

14 A Yeah.

15 Q Okay, now, is all of this Best Buy's parking lot?

16 A Yeah.

17 Q Okay.

18 A From here to here all the way to that point.

19 Q Okay, and there are no barricades - were there any
20 barricades that day or anything that would prevent a person
21 say from parking right here?

22 A As in?

23 Q , As best you know.

24 A Yeah, as best as I know there wasn't any barricades.

25 Q Okay, so, nine car spaces down from the front door of

1 the store.

2 A Roughly, yes.

3 Q Okay, all right, thank you. Now, let me ask you, you

4 said that someone waved you down.

5 A Uh-huh.

6 Q Do you recall who that was?

7 A Yes.

8 Q Who was it?

9 A Ms. Hooper.

10 Q Ms. Hooper?

11 A Uh-huh.

12 Q Okay, did - you also said you took statements. Did you

13 take a statement from Ms. Hooper?

14 A Yes, a written statement.

15 Q A written statement?

16 A Uh-huh.

17 Q Do you recall the content of that statement?

18 A I mean, without reading, I mean, without reading it it's

19 kind of hard to remember exactly what's in it.

20 Q Okay.

21 MR. BARR: Please review the report, Your Honor?

22 THE COURT: All right.

23 MR. RICHARDSON: Your Honor, of course, the State would

24 have any objection to this officer reading Ms. Hooper's

25 statement. She's available to testify.

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1 THE COURT: All right.

2 MR. BARR: That's fine.

3 BY MR. BARR:

4 Q Do you have any, do you have any recollection of what
5 she told you?

6 A Yes.

7 Q What did she tell you?

8 A She told me that she heard ---

9 MR. RICHARDSON: Your Honor, objection. Once again ---

10 THE COURT: Sustained.

11 MR. RICHARDSON: --- we're getting into hearsay.

12 THE COURT: Sustained.

13 MR. BARR: Okay, all right, okay. That's fine.

14 BY MR. BARR:

15 Q Okay, other than Ms. Hooper did you take statements from
16 anyone else there?

17 A Yes.

18 Q Who did you take statements from?

19 A Mr. Watts.

20 Q Watts?

21 A Uh-huh.

22 Q Did you take a statement from Mr. Fitter?

23 A No, I did not.

24 Q You did not, okay. All right, okay. Did you do any
25 follow-up investigation with this?

1 A No.

2 Q None, none whatsoever?

3 A Huh-uh.

4 Q Okay, so, after you left that day the Best Buy parking
5 lot that's the last thing you had to do with ---

6 A Yeah, once I completed my report that day that's the
7 last.

8 Q Okay, and as best you recall you took statements from?

9 A Ms. Hooper and a Mr. Watts.

10 Q Ms. Hooper and Mr. Watts. Was there anything visible
11 to you on the ground or in the area that you identified as
12 being the crime scene?

13 A Yes.

14 Q What was it?

15 A Broken glass.

16 Q Uh-huh.

17 A And I found a piece of metal like a, well, I mean, I'm
18 not an expert but, you know, with five, almost five years on
19 the job as a police officer, you know, one would be able to
20 infer that it was a slug from a weapon.

21 Q Okay, just a slug that's lying on the ---

22 A Yes.

23 Q --- on the ground?

24 A Yes, sir.

25 Q Okay, I have no further questions. Thank you, sir.

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1 THE COURT: Mr. Hazzard.

2 MR. HAZZARD: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. HAZZARD:

5 Q Patrolman Cast, you can retake the stand.

6 A Thank you.

7 Q Do you have your incident reports that you filed in this
8 case in your possession today?

9 A Yes, I do, sir.

10 Q Okay, if you would please look at your incident reports
11 and these incident reports were filled out after you spoke
12 with the witnesses on the scene; is that correct?

13 A Correct.

14 Q Okay, and please state what you list as the total stolen
15 property value on these reports.

16 A If you'll just give me a second to look.

17 Q Yes, sir, take your time.

18 A Zero dollars.

19 Q Okay, now, when you - I'll put it this way. How long
20 have you been - how long had you been a police officer as of
21 April 9th of 2007?

22 A Just shy of four years.

23 Q Just shy of four years and where did you receive your
24 training?

25 A Through the South Carolina Criminal Justice Academy.

- 1 Q Okay, and that's located in Columbia, South Carolina?
- 2 A Yes, sir.
- 3 Q Correct, that's SLED?
- 4 A Uh-huh.
- 5 Q Okay, did you do good in your classes?
- 6 A Yeah.
- 7 Q All right, now, did they teach you about crime scene
- 8 investigation?
- 9 A Yeah.
- 10 Q Give you some classes on taking witness statements?
- 11 A Yes, sir.
- 12 Q Okay, teach you about securing a crime scene?
- 13 A Yes.
- 14 Q Okay, with regard to that training you received, on
- 15 April 9th of 2007 did you follow the procedures and the
- 16 protocol?
- 17 A To the best of my knowledge, yes.
- 18 Q Okay, so, you secured the crime scene; correct?
- 19 A Uh-huh.
- 20 Q And you talked with the available witnesses; correct?
- 21 A Correct.
- 22 Q Individuals who indicated that they had seen what had
- 23 occurred; correct?
- 24 A Correct.
- 25 Q Okay, now, as a result of that conversation with those

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1 witnesses who said that they saw what had occurred did any
2 witness at any point in time indicate that they saw this
3 woman, Mokeia Hammond, with a gun?

4 A No.

5 Q Did any witness indicate at anytime that they saw Mokeia
6 Hammond shoot anyone?

7 A No.

8 Q Any witness indicate at any time that they saw Mokeia
9 Hammond rob anyone?

10 A No.

11 Q Thank you, no further questions.

12 THE COURT: Excuse me. You need to give a verbal
13 response.

14 A No.

15 THE COURT: All right.

16 MR. HAZZARD: Thank you, sir.

17 THE COURT: All right, redirect?

18 REDIRECT EXAMINATION

19 BY MR. RICHARDSON:

20 Q You didn't get a chance to speak with the murder victim;
21 did you?

22 A No, I did not.

23 MR. RICHARDSON: No, sir, Your Honor. I'd just ask this
24 witness be excused.

25 THE COURT: Any objection?

1 MR. BARR: No objection.

2 MR. HAZZARD: No objections, Your Honor.

3 THE COURT: All right, you may step down.

4 A Thank you.

5 THE COURT: You're excused and free to go. Thank you
6 very much.

7 All right, you want to call your next witness?

8 MR. RICHARDSON: The State would call Angie Hooper.

9 Whereupon, Angie Hooper was called to the stand, duly
10 sworn by the clerk and testified as follows:

11 THE CLERK: Thank you. Please be seated. Please
12 talk into the microphone, state your full name, spell your
13 last name for the Court.

14 MS. HOOPER: My name is Angie Hooper, last name
15 spelled H-O-O-P-E-R.

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q Good afternoon, now, Ms. Hooper. How are you doing?

19 A Hi, good.

20 Q Could you tell us a little bit about yourself, where
21 you're from, so on and so forth?

22 A I live here in Socastee, and I am a dental hygienist and
23 I work in Conway, and I also work at Nibel's Restaurant in
24 Surfside as a waitress.

25 Q And back in April of 2007 were you residing here in

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1 Horry County?

2 A Yes.

3 Q And you continue to reside in Horry County?

4 A Yes.

5 Q You married?

6 A Yes.

7 Q And your husband, what does he do for a living?

8 A He works for the City of Myrtle Beach and he's a police
9 officer.

10 Q And a police officer. Let's go a little bit in time,
11 almost two years ago. Do you recall giving police a
12 statement related to a murder investigation back on April 9th
13 of 2007.

14 A Yes.

15 Q And if you could tell us a little bit about that day,
16 what the day you witnessed this murder. Who were you with?
17 Where had you been? What were you all doing?

18 A Okay, I was a student at Horry Tech and we were going to
19 different stores looking at their resume paper and we ended
20 up at Best Buy and I was with my sister and my stepmother and
21 when we left we came out. We got in my van and I looked over
22 my left shoulder and we heard gunshots fired and I saw the
23 flash from a gunshot and they thought somebody had set off
24 fireworks and I was like, ``No, I hear it. That's
25 gunshots'', and so, I put it back in drive to pull back in my

1 parking spot. So, had I had to turn away from it and about
2 the time I got back in the parking spot it was over with and
3 the dark car pulled out to the right and pulled behind me
4 taking when they left and they almost hit my van because it
5 was that fast and then the white Mustang had - they went to
6 the left and went the opposite direction, and then I called
7 my husband immediately and told him that there was gunshots
8 fired and that, you know, two cars had left the scene and
9 then he called it in.

10 Q Now, you said you were in your car. What kind of car
11 was it?

12 A A blue Dodge Caravan.

13 Q So, it was a van?

14 A Yes.

15 Q And you were in the parking lot of the Best Buy parking
16 lot?

17 A Yes.

18 Q And when you parked there to go into Best Buy were you
19 pulled facing in or with your bumper facing to the back or
20 with your nose facing to the back? Did you pull in the
21 parking spot or park, back in?

22 A Yes, I pulled, I pulled in.

23 Q You pulled in?

24 A Straight, uh-huh.

25 Q And I believe you said you were attempting to back it

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- 1 back out?
- 2 A Uh-huh.
- 3 Q And a van is a big thing. So, you got to be careful and
- 4 that's when you heard pop, pop, pop, pop, pop?
- 5 A Yes.
- 6 Q And that drew your attention?
- 7 A Yes.
- 8 Q You thought it was gunfire?
- 9 A Uh-huh.
- 10 Q And you ---
- 11 THE COURT: Excuse me.
- 12 A Yes.
- 13 THE COURT: I don't mean to interrupt you but you
- 14 need to answer yes or no so that the court reporter can pick
- 15 up; okay?
- 16 A Okay, okay.
- 17 Q And you're familiar with the sound of gunfire?
- 18 A Yes.
- 19 Q And I believe you had indicated there were about four or
- 20 five shots?
- 21 A Yes.
- 22 Q Now, at this point you realize it's gunfire?
- 23 A Yes.
- 24 Q You pull back in your parking spot?
- 25 A Yes.

1 Q For safety?

2 A Yes.

3 MR. HAZZARD: Your Honor, at this point I'm going to
4 ask that the Prosecutor stop leading the witness. If he
5 wants to ask her a question he can ask her but at this point
6 this is just a long-running leading narrative.

7 MR. RICHARDSON: Your Honor, just making sure I
8 understand her testimony.

9 THE COURT: All right.

10 MR. RICHARDSON: Restating what she told ---

11 THE COURT: I'm going to allow it at this point in
12 time but let's don't lead too much.

13 MR. RICHARDSON: Yes, sir, Your Honor.

14 THE COURT: All right.

15 BY MR. RICHARDSON:

16 Q You indicated that you saw the dark sedan pull out and
17 go to the right?

18 A Yes.

19 Q And as you're sitting in the vehicle that's off to your
20 right; correct?

21 A Yes, behind my van.

22 Q Did you see anyone in that vehicle?

23 A I saw in the back seat it looked like a dark male and he
24 was leaned across the back seat diagonal to the passenger
25 side of the white Mustang and they were both backed into

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1 their parking spots, which I was pulled in with my nose in
2 and they were backed in this way behind me off to the left
3 and there was a white male in the white Mustang and he was
4 leaned toward the passenger side of his car.

5 Q Did you see any kind of weapons?

6 A I don't, I don't know. I heard the gunfire and I saw
7 the flash from a gun coming from the Mustang but I heard
8 multiple shots but I cannot tell you who fired first.

9 Q Did you have the opportunity to see the driver of the
10 sedan?

11 A No.

12 Q Ms. Hooper, I'm going to show you - I'm going to get
13 something marked real quick. You said you saw a, you said a
14 black male across the back of the sedan?

15 A Yes.

16 Q Could you describe him?

17 A No.

18 Q I'm going to show you what has been marked for
19 identification as State's Exhibit 18. Do you recognize this
20 document?

21 A Yes.

22 Q How do you recognize this document?

23 A It's my writing.

24 Q So, that's your handwriting?

25 A Yes.

1 Q And do you recall giving this writing?

2 A Yes.

3 MR. HAZZARD: Your Honor, at this time we have a matter
4 to take up outside the presence of the jury.

5 THE COURT: All right, ladies and gentlemen of the
6 jury, I'm going to excuse you back to the jury room while we
7 take up this matter of law. When I excuse you back to the
8 jury room I don't want you to think that we're hiding
9 anything from you or keeping anything from you, but as I told
10 you at the initial instructions, you and you alone decide the
11 facts of this case. Nothing I say, nothing that the
12 attorneys say is to influence you on your decision as to what
13 the facts of this case are. You're to draw your conclusions
14 exclusively from the testimony and evidence presented at
15 trial. However, when we deal with matters of law it often
16 requires us to discuss factual matters and in discussing
17 these factual matters we do not want what we say in deciding
18 these issues of law to influence you in any way when you
19 decide what the facts of the case are. So, that's why we
20 excuse you from the courtroom, not that we're trying to hide
21 anything from you. It's just that we do not want you to be
22 influenced by what we say during these legal arguments and
23 that's why we excuse you. Plus, it will give you an
24 opportunity to stretch your legs, maybe get something to
25 drink, use the restroom, whatever the case may be. Please do

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1 not discuss this case and we'll call you back out in just a
2 minute. Thank you very much.

3 If you've been taking notes or even if you have not been
4 taking notes please leave your pads and pencils in the
5 courtroom. Thank you.

6 (Whereupon, the following takes place outside the
7 presence of the jury.)

8 THE COURT: All right, sir.

9 MR. HAZZARD: Thank you, Your Honor. I get the
10 impression that the Prosecution is getting ready to basically
11 attempt to publish the contents of a prior statement by this
12 witness. My understanding is that would only be appropriate,
13 she has testified to what occurred on the incident. That is
14 her testimony. She has not indicated that she doesn't
15 remember what happened. She has not indicated that she needs
16 her recollection refreshed. Therefore, I would submit that
17 having her publish the contents of a prior statement given is
18 inappropriate.

19 THE COURT: All right, Mr. Richardson.

20 MR. RICHARDSON: Your Honor, if Mr. Hazzard would have
21 been so kind to allow me to go into my question a little bit
22 or we could have done this at a sidebar instead of excusing
23 the jury but there were some prior inconsistencies in the
24 statement. As such, I'd be allowed to get into those
25 inconsistencies, at the very least I'd be allowed to ask

1 Ms. Hooper if she would take a look at her statement and
2 refresh her recollection.

3 MR. HAZZARD: No, sir, not unless she indicates that
4 she does not remember. A prior inconsistent statement unless
5 he's going to consider her to be a hostile witness and he's
6 impeaching her would be inappropriate.

7 MR. RICHARDSON: That is not the rule, Your Honor.

8 THE COURT: Yeah, he can impeach her at anytime but
9 let me - hold for one second.

10 All right, as I can tell the matter is covered by
11 Rule 803-5 says a memorandum or record concerning a matter
12 about which a witness once had knowledge but now has
13 insufficient recollection to enable the witness to testify
14 fully and accurately shown to have been made or adopted by
15 the witness when the matter was fresh in the witness' memory
16 and to reflect that knowledge correctly. If admitted the
17 memorandum or record may be read into evidence but may not
18 itself be received as an exhibit unless offered by an adverse
19 party. So, it is not admissible for purposes of recollection
20 because one of the elements is the witness must have an
21 insufficient memory of the facts in the record to testify.
22 She hasn't said that she could not recall.

23 Now, let me hear your argument as to whether or not you
24 want to use it for impeachment purposes.

25 MR. BARR: Your Honor, might we approach?

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1 THE COURT: Yes. Hold for a second. All right, come
2 forward.

3 (Whereupon, a bench conference was held.)

4 THE COURT: All right, back on the record.

5 MR. HAZZARD: Thank you, Your Honor, after, after
6 having thought about the matter very carefully the Defendant
7 Hammond wishes to withdraw the objection last in order.

8 THE COURT: All right, all right, let's bring the
9 jury back in.

10 (Whereupon, the following takes place in the presence of
11 the jury.)

12 THE COURT: All right, ladies and gentlemen, welcome
13 back. Mr. Richardson, you can continue with your direct
14 examination.

15 MR. RICHARDSON: Thank you.

16 BY MR. RICHARDSON:

17 Q Sorry about it, Ms. Hooper. Do you recall giving a
18 statement to Officer Cast?

19 A Uh-huh, yes.

20 Q Do recall if you identified the driver of that darker
21 sedan in any way, shape or manner?

22 A I did not see the driver when all the gunfire was going
23 on. When the car went behind me when the gunfire was going
24 on I was looking forward because I had pulled my car back up.
25 When the car went behind me I turned around to look

1 and I saw a dark figure.

2 Q You saw a dark figure?

3 A Yes.

4 Q Could you identify the gender of the driver?

5 A I think it was female but I saw like the backside view.

6 Q And I believe you stated you heard four or five shots?

7 A Yes, I saw - I heard multiple shots.

8 Q And then you turned around; correct?

9 A Well, I was already looking to the left because I was
10 backing up and then I heard the gunfires and then I looked
11 more to the left and noticed where it was coming from; and
12 so, then I turned around to pull back in.

13 Q So, you didn't see the initial shots?

14 A No.

15 Q You heard the follow-ups?

16 A Yes.

17 Q All right, Ms. Hooper, thank you for your time today.

18 If you'll answer any questions Mr. Barr or Mr. Hazzard might
19 have?

20 THE COURT: Mr. Barr.

21 MR. BARR: The Court's indulgence, Your Honor.

22 CROSS EXAMINATION

23 BY MR. BARR:

24 Q Ms. Hooper, I'm going to ask you to come down if you
25 would.

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1 A Yes.

2 Q And help us a little bit. I want the jury to be able
3 to, be able to see this.

4 REPORTER: I need her to face me, please?

5 THE COURT: Yes, you need to - there's a microphone
6 there on the ledge and you'll need to face the court reporter
7 and speak into that microphone, please.

8 Q Now, Ms. Hooper, I'm going to ask you to take a second
9 or two and try and familiarize yourself with the parking lot.
10 Do you recall this parking lot?

11 A Yes.

12 Q The Best Buy Store?

13 A Yes.

14 Q Now, you said that there were two vehicles backed in; is
15 that correct?

16 A Yes.

17 Q Okay, can you point to the - out to the jury and the
18 Court where those two vehicles were backed in at?

19 A Yes, it was approximately.

20 Q Would you point to it, please?

21 A There.

22 Q Approximately right here?

23 A Yes.

24 Q And that would be in ---

25 A Would be right there.

1 Q That - those two parking lots; correct?

2 A Well, approximately, yes.

3 Q Approximately, now, in relations to where those two

4 vehicles were where was - where were you parked?

5 A Approximately right, right through here.

6 Q Right through here?

7 A Yes.

8 Q Okay, so ---

9 A Very - yeah.

10 Q You're very close?

11 A Yes.

12 Q You can see from here to there; is that right?

13 A Yes.

14 Q Okay.

15 A Especially when I was backing up.

16 Q Okay, all right, all right, all right, thank you.

17 A You're welcome.

18 Q Would you please, now, Ms. Hooper, Ms. Hooper, I believe

19 you testified that you gave one of the officers a written

20 statement?

21 A Yes.

22 Q On that same day; is that correct?

23 A Yes.

24 Q Okay, I'm going to pass you this document and ask you

25 whether or not you can identify it.

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1 A Yes, that's my writing.

2 Q That's your writing?

3 A Yes.

4 Q Would you take a minute or two and look at it?

5 A Sure. Yes.

6 Q Can you clearly identify that as being the statement you
7 gave?

8 A Yes.

9 Q Okay.

10 MR. BARR: Your Honor, we would like to offer this
11 Defense One.

12 THE COURT: All right, let's, let's mark it for
13 identification as Defendant Niles Exhibit One.

14 Any objection by the State?

15 MR. RICHARDSON: Just for identification or evidence,
16 Your Honor?

17 THE COURT: He's introducing it into evidence.

18 MR. RICHARDSON: No objection, Your Honor.

19 THE COURT: All right, any?

20 MR. HAZZARD: No objection by Defendant Hammond, Your
21 Honor.

22 THE COURT: All right, Defendant, Richard Niles
23 Exhibit One admitted into evidence without objection.

24 (Whereupon, Defendant, Richard Niles, Exhibit One
25 [Statement of Angie Hooper] admitted into evidence and

1 appropriately marked.)

2 BY MR. BARR:

3 Q Ms. Hooper, I'll ask you, if you would, please read that
4 statement?

5 A Okay, ``Heard shots, looked up, man in white Mustang was
6 leaning over passenger seat and fired approximately five
7 shots at the black man and woman in the grayish Malibu.
8 Black woman was driving and both cars were backed in parking
9 side by side. Both cars pulled out. Gray car went right.
10 White Mustang went to left. Black male was in the back.
11 Approximately 25 year old, white, short brown hair, white
12 T-shirt.'' Now, I heard approximately five shots fired but I
13 don't know where they came from.

14 Q I'm going to point to line two ---

15 A Yes.

16 Q --- of your statement?

17 A Yes.

18 Q Did you clearly or did you clearly say on that date that
19 you gave the statement that you saw a white male leaning over
20 the seat and fired five times?

21 A I ---

22 Q Is that what your statement says?

23 MR. RICHARDSON: Your Honor, she has already read the
24 statement. Therefore, I would say it's asked and answered.

25 THE COURT: Well, but then she gave some testimony.

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1 I'm going to allow it. Go ahead and answer the question.

2 A That's what I wrote, but like I said I did not see where
3 the shots came from.

4 Q But in your statement you said you did and you wrote the
5 statement the same day; is that right?

6 A Yes.

7 Q Okay, now, have you talked with the police or the
8 investigators or anyone in law enforcement since that time?

9 A Yes.

10 Q Who have you talked to?

11 A Well, I'm married to a policeman. So, I've talked with
12 him but we've not discussed the case.

13 Q Okay, now, were you impaired in any way on that day when
14 you were asked to give the statement, asked to give this
15 statement that would affect your ability to give a clear and
16 concise statement as to what you saw, what you heard?

17 A I was -- sorry, I was probably nervous.

18 Q Okay.

19 A Just because we just got hit by the car where shots were
20 being fired.

21 Q Did, did, did the car actually - did any of the cars
22 coming out of the parking lot actually hit you?

23 A No, it was very close.

24 Q Okay, did any shots actually hit you?

25 A No, it hit the car behind me.

1 Q Okay, okay, so, your testimony today is that you only
2 heard shots but the statement you gave said you heard shots
3 and you saw gunfire coming from the car on that day and
4 that's what, that's ---

5 A Yes, I heard, I heard gunshots and then I saw a flash
6 from a gun in the white car but I don't know who fired first
7 and I don't know, like I said, it was about five, about five
8 rounds, it sounded like went off.

9 Q Did you recognize, well, did you recognize any of the
10 black males or the black female in the car? Could you
11 describe them?

12 A No.

13 Q Did you see anyone from the gray blue sedan fire a shot
14 at the white Mustang?

15 A I just saw a man lean over in the back and I just heard
16 multiple shots but I don't know which vehicle they were
17 coming from.

18 Q The statement you gave clearly says that you saw the
19 white male lean over the seat and started firing five shots,
20 the statement you gave?

21 A That's, that's what I gave.

22 Q Thank you, ma'am.

23 THE COURT: All right, Mr. Hazzard, anything on
24 cross?

25 MR. HAZZARD: Thank you, Your Honor. Very, very

1 briefly.

2 CROSS EXAMINATION

3 BY MR. HAZZARD:

4 Q Good afternoon, Ms. Hooper. How are you?

5 A I'm good.

6 Q Okay, a lot has been made of this statement you gave.
7 The description at the bottom where it says approximately 25
8 years old, white, short brown hair, white T-shirt, who was
9 that referring to?

10 A That was the white male in the white Mustang.

11 Q Okay, so, you gave a description of him but you weren't
12 really able to give a description of anyone in the other car;
13 is that right, I mean, you just kind of saw figures?

14 A Right.

15 Q Okay, so, then would it be safe to say that your
16 attention because of the flashes was more focused on the
17 white Mustang; correct?

18 A Yes.

19 Q Okay, and that you, more likely than not, according to
20 your statement did see this person in the white Mustang
21 leaned over from the driver's seat out of the passenger side
22 window and fired the gun five times as you state here;
23 correct?

24 A I could see better into the white Mustang from when I
25 pulled out because he had his window down. The other car I

1 could see but with the time of the day it was and I think
2 there was tint on the window, too.

3 Q All right, thank you so much.

4 A You're welcome.

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

6 THE COURT: Thank you. Redirect?

7 MR. RICHARDSON: Briefly.

8 REDIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 A Ms. Hooper, you gave the written statement short and
11 concise; right?

12 A Yes.

13 Q You also gave a recorded audio statement; correct?

14 A Yes.

15 Q And you're testifying here today?

16 A Yes.

17 MR. RICHARDSON: Your Honor, I have no further
18 questions of Ms. Hooper. I'd just ask that she be excused so
19 she, so she can return to her work?

20 THE COURT: Any objection?

21 MR. BARR: No objection.

22 MR. HAZZARD: No objections, Your Honor.

23 THE COURT: All right, you may step down. You're
24 free to go. Thank you very much.

25 A Thank you.

1 THE COURT: Lunch, we can go ahead and break.

2 MR. RICHARDSON: It's up to you, Your Honor.

3 THE COURT: Yeah, it's ten to one.

4 All right, ladies and gentlemen, it's ten till one. Now
5 is a good time for us to go ahead and break for lunch. I'm
6 going to excuse you to go to lunch. Please be back in the
7 jury room by two o'clock. We'll try to get started. That'll
8 give you an hour and ten minutes to eat lunch and to get
9 back.

10 Do not discuss the case even among yourselves. It's
11 still too premature to begin any type of deliberations. So,
12 do not discuss the case among yourselves. Do not conduct any
13 independent investigation. Don't go searching for any
14 additional information about this case. If you have pads and
15 your pencils please leave them in the courtroom. I'll have
16 the bailiff take them up and redistribute them after we get
17 back from lunch. So, write your name on the front of them so
18 that we'll know whose pad belongs to whom.

19 I hope everyone has a great lunch and we'll see you back
20 in the jury room at two o'clock. Everyone else please remain
21 seated while the jury is excused.

22 (Whereupon, the following takes place outside the
23 presence of the jury.)

24 THE COURT: All right, anything from the State before
25 we break for lunch?

1 MR. RICHARDSON: Your Honor, what time did you say we
2 would resume?

3 THE COURT: Let's, let's try to get back as close to
4 two o'clock. I'd say two o'clock. Now, the jury comes back
5 at two. So, that'll probably put us 2:15 resuming, but
6 please be back at two o'clock.

7 MR. RICHARDSON: Yes, sir.

8 THE COURT: All right, anything from the Defense?

9 MR. BARR: Nothing from the Defense Niles, Your
10 Honor.

11 MR. HAZZARD: Nothing on behalf of Defendant Hammond.

12 THE COURT: All right, we'll stand in recess until
13 two o'clock.

14 MR. RICHARDSON: Thank you, Your Honor.

15 OFF THE RECORD

16 (On the record.)

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Thank you very much. Please be seated.

20 All right, anything to take up before we bring the jury
21 in?

22 MR. RICHARDSON: Your Honor, there were a couple of
23 witnesses that we had on our list that just approached me,
24 Bryan Yarborough and Sean Lundy, and I told them I'd - it is
25 now our intention not to call them as witnesses. They

1 instructed me that they were under subpoena by the Defense,
2 too, and they were told by the Defense to be here today at
3 11:30 and they've been here. I would just ask that they be
4 excused to return at the call of the Defense instead of
5 having to wait here at the courthouse, just out of courtesy.
6 Your Honor, they've both indicated that they could be
7 contacted within a short notice.

8 THE COURT: All right, Mr. Barr.

9 MR. BARR: We would have no objections to that, Your
10 Honor.

11 THE COURT: All right, Mr. Hazzard.

12 MR. HAZZARD: Your Honor, they're my witnesses. I
13 called them and I've spoken with them and handled the matter.

14 THE COURT: All right, so, we can excuse them?

15 MR. HAZZARD: Yes.

16 THE COURT: All right, do you want them excused still
17 subject to your subpoena, that they'll have to return upon
18 being called or just release them from the subpoena
19 altogether?

20 MR. HAZZARD: No, sir, they are still subject to my
21 subpoena. I released them and obtained contact information
22 for them.

23 THE COURT: Okay, all right, well, they're excused to
24 go ahead and they can be excused for the remainder of today
25 or until such time as Mr. Hazzard contacts them, that they

1 would still would be subject to that subpoena. All right.

2 MS. ELDER: Thank you, Your Honor.

3 There's one other matter. We foresee calling the Co-
4 Defendant Ervin Moore in short order this afternoon.

5 THE COURT: All right.

6 MS. ELDER: So, if Your Honor wants to go ahead and
7 take over or look at his record, his NCIC and go over that so
8 we don't have to send the jury back out to do that.

9 THE COURT: Okay.

10 MS. ELDER: I've provided the NCIC to the Defense.

11 THE COURT: All right.

12 MR. BARR: Your Honor, may we have a sidebar?

13 THE COURT: All right, come on up.

14 (Whereupon, a bench conference was held.)

15 THE COURT: All right, back on the record. All
16 right, the State has given me the NCIC report and I'm going
17 to have to have somebody explain it to me. Tell me what he
18 was charged with, when he was convicted, what the crime was,
19 what the sentence was. I'm assuming the issue is whether or
20 not the Defense can bring out his prior record ---

21 MS. ELDER: Yes, sir, Your Honor.

22 THE COURT: --- to impeach him. All right, as I
23 understand the rules, if he was convicted of any crime that
24 involves trustworthiness or moral turpitude it's admissible.

25 MS. ELDER: Correct, Your Honor.

1 THE COURT: If it was another crime that he was
2 convicted of or that he finished his sentence less than ten
3 years ago and it was a crime that was punishable by a year or
4 longer in prison then it's admissible.

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

6 THE COURT: All right, so, have we got anything - so,
7 let's go ahead and tell us what the crimes are.

8 MS. ELDER: Your Honor, reading the NCIC there are so
9 many different sections. I'm looking on page three of nine.
10 They're numbered at the top. There's four pages to begin
11 with that don't have anything on it by identifying
12 information.

13 THE COURT: All right, I'm going to be honest with
14 you. This is all Greek to me. I don't even know what I'm
15 looking at.

16 MS. ELDER: Yes, sir.

17 THE COURT: You're going to have to tell me ---

18 MS. ELDER: On page three of nine, Your Honor, there
19 is a possession of a schedule two. It's indicated as a
20 felony. That was - conviction was in 1991. He received a
21 two-year sentence. It would fall outside the ten years, Your
22 Honor. That is not a crime of dishonesty.

23 THE COURT: All right, so, that's possession of a
24 controlled substance from '91.

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

1 THE COURT: All right, what else has he got?

2 MS. ELDER: On the next page, Your Honor, he has a
3 misdemeanor conviction for possession of marijuana. That was
4 a 1998 conviction.

5 THE COURT: And when - what kind of sentence?

6 MS. ELDER: He had a five-month incarceration
7 sentence, Your Honor.

8 THE COURT: All right.

9 MS. ELDER: We would ask, we would hold, we would ask
10 that would be withheld as well.

11 THE COURT: When did he complete his sentence on
12 that?

13 MS. ELDER: I don't know, Your Honor. The
14 disposition date of that was May 3rd, 1999.

15 THE COURT: All right, so, a possession of marijuana.

16 MS. ELDER: Less than an ounce.

17 THE COURT: Okay, what else have we got?

18 MS. ELDER: We have a 2000 conviction for a felony
19 possession of cocaine. We would consent to that as
20 admissible. That was a 2000 conviction. It is a felony. It
21 would be within the ten years.

22 THE COURT: All right.

23 MS. ELDER: He received a 2003 conviction for
24 possession of a schedule four. We'd argue that that is
25 excludable because it is not, does not carry a year or more.

1 THE COURT: All right.

2 MS. ELDER: He has a 2003 conviction for maintaining
3 a - any place for controlled substance.

4 THE COURT: Maintain - say that again now.

5 MS. ELDER: It's called maintaining any place
6 controlled substance is how it's listed. It is a North
7 Carolina charge, Your Honor.

8 THE COURT: That was a felony?

9 MS. ELDER: Yes, sir.

10 THE COURT: All right.

11 MS. ELDER: He's got a 2005 conviction for resisting
12 arrest. That was a misdemeanor. That does not carry more
13 than a year. We would say that that would be excluded.

14 THE COURT: All right.

15 MS. ELDER: He has a simple possession of marijuana
16 in '05. Again, that does not carry more than a year, that
17 that be excluded.

18 THE COURT: That would be - was it possession of
19 marijuana first offense or second offense?

20 MS. ELDER: Your Honor, it's listed as a possession
21 of marijuana up to half an ounce misdemeanor.

22 THE COURT: All right.

23 MS. ELDER: And he has a 2005 conviction for carrying
24 a concealed weapon. That is a - listed as a misdemeanor as
25 well, would indicate that would not be appropriate carrying

1 less than a year.

2 THE COURT: What is the maximum sentence you can get
3 for carrying a concealed weapon?

4 MS. ELDER: Your Honor, in his case he got 45 days.

5 THE COURT: It doesn't matter what he got. I think
6 it's what the possible sentence is.

7 MS. ELDER: It is a North Carolina charge, Your
8 Honor. I would indicate, I would indicate that that would be
9 equivalent to our unlawful possession.

10 THE COURT: Well, you've got several classifications
11 of carrying concealed weapons. Some of which are 30 to 90
12 days, some of which are a year, some of which carry up to ten
13 years.

14 MS. ELDER: But it is listed as a misdemeanor, Your
15 Honor. This charge is listed on the NCIC as a misdemeanor.

16 THE COURT: All right, what else have we got?

17 MS. ELDER: And his current charges, Your Honor, that
18 he pled to on Monday.

19 THE COURT: All right, so, you're saying those are
20 all of his convictions?

21 MS. ELDER: Yes, sir.

22 THE COURT: And I see where the carrying a concealed
23 weapon he was placed on 12 months probation.

24 MS. ELDER: Yes, sir.

25 THE COURT: So, you're thinking that still carries

1 less than a year sentence?

2 MS. ELDER: Yes, sir, Your Honor, I do. It's - I
3 think the requirement is that it be more than a year and I
4 would argue that that is only a year.

5 THE COURT: I think we're going to have to check the
6 North Carolina statutes and let's see what it says.

7 MR. BARR: Your Honor, my thinking that he's a
8 convicted felon in possession of a weapon. I don't know that
9 that's necessarily going to carry less than a year.

10 MS. ELDER: That's not what he's charged with, Your
11 Honor. He's not charged with a convicted felon.

12 MR. BARR: I understand that, Your Honor, but even
13 if with regard to the, with regard to the two, I think it's
14 the 2-0-1, 2-0-3 drug charge, what was the last drug charge?
15 He had two or three previous drug charges. There's also the
16 possibility of enhancement. I don't know how North Carolina
17 would treat that, but in South Carolina if he consistently
18 piles up drug charges even though the statute would say he
19 could get less, he would also get enhanced.

20 THE COURT: All right, all right, let me check one
21 thing. All right, well, we're going to have to check into
22 that. I'm going to - I know definitely they can get in the
23 felony possession of cocaine 2000 conviction, 2003
24 maintaining a place conviction and then on the resisting
25 arrest, the possession of marijuana, carrying a concealed

1 weapon we're going to need to check the North Carolina
2 statutes to see what the possible penalties for those are
3 before I can rule on those.

4 MS. ELDER: Yes, sir.

5 THE COURT: All right.

6 MR. BARR: Your Honor, with regard to the current
7 charges he pled guilty to those already.

8 MS. ELDER: Yes, sir. I'll indicate that those were
9 certainly within the ---

10 THE COURT: Yeah, okay.

11 MS. ELDER: Yes, sir.

12 THE COURT: So, yeah, so, then - and then you've got
13 the armed robbery that he pled guilty to and the voluntary
14 manslaughter that he pled guilty to.

15 MS. ELDER: Yes, sir.

16 THE COURT: So, you've got those also. All right.

17 MS. ELDER: Thank you, Your Honor.

18 THE COURT: Anything else?

19 MS. ELDER: No, sir.

20 THE COURT: All right, anything from the Defendants
21 before we bring in the jury?

22 MR. BARR: Nothing from the Defendant: Niles.

23 THE COURT: All right, let's go ahead and bring the
24 jury in.

25 (Whereupon, the following takes place in the presence of

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1 the jury.)

2 THE COURT: All right, ladies and gentlemen, welcome
3 back. I apologize for taking so long to get you back into
4 the courtroom. We're getting ready to resume the testimony
5 in this case. We did have some matters of law that we
6 anticipated coming up. So, rather than bringing you in and
7 sending you out and bringing you in and sending you out we
8 tried to take care of as much of it prior to bringing you
9 back in as we could, but we're ready to resume the case at
10 this time. The State can call its next witness.

11 MR. RICHARDSON: Thank you, Your Honor. At this time
12 the State calls Mr. Gene Watts.

13 Whereupon, Harold Eugene Watts was called to the stand,
14 duly sworn by the clerk and testified as follows:

15 THE CLERK: Please be seated. State your full name,
16 spell your last name for the Court.

17 MR. WATTS: Full name is Harold Eugene Watts,
18 W-A-T-T-S.

19 DIRECT EXAMINATION

20 BY MR. RICHARDSON:

21 Q Good afternoon, Mr. Watts.

22 A Good evening, sir.

23 Q Thank you for coming down to see us today.

24 Could you tell us a little bit about yourself, where
25 you're from, what kind of work you do?

1 A I live in Darlington, South Carolina, at 310 Dogwood
2 Avenue. I work with HD Supply Waterworks out of Florence.
3 I'm an outside salesman, been employed with them for 17 years
4 now.

5 Q And you and your family are from Darlington?

6 A Yes, sir.

7 Q And did there ever come a time when you vacationed down
8 here in Myrtle Beach?

9 A Oh, yeah, we have a - I have a residence at Garden City,
10 also.

11 Q Okay, vacation home?

12 A Yes, sir.

13 Q All right, do you recall back in April of 2007 coming
14 down to Myrtle Beach for a vacation?

15 A Yes, sir.

16 Q And during the course of that vacation do you recall
17 becoming a witness to a shooting here in Myrtle Beach?

18 A Well, we became a witness to - what we heard was
19 gunshots.

20 Q Okay, well, is that an unusual thing?

21 A Yes, sir.

22 Q Okay, I'm sure it sticks out in your mind then?

23 A Yes, sir.

24 Q Could you take us back to that day, tell us what you
25 remember. Let's just start at dinnertime.

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- 1 A Well, my wife and myself and my grandson had gone to
2 Logan's for supper and we were coming out of Logan's
3 approaching our car when all of a sudden we heard five or six
4 sounded like shots, but we originally thought they were just
5 fireworks, but, you know, we couldn't figure out where it
6 was. Then my wife looked over to Best Buy parking lot and
7 saw a heavysset black male running from a white car jumping
8 into a late-model gray sedan.
- 9 Q And you said you were at Logan's, Logan's Roadhouse?
- 10 A Yes, sir, Logan's Roadhouse, I'm sorry.
- 11 Q And that's a restaurant?
- 12 A Yes, sir.
- 13 Q And are you familiar with the Best Buy Department Store?
- 14 A Yes, sir.
- 15 Q Where is that situated with regard to Logan's?
- 16 A It's probably a hundred, hundred feet or maybe a little
17 more across the parking lot right in front of Logan's and our
18 car happened to be facing the Best Buy parking lot.
- 19 Q You said that you all were facing the Best Buy parking
20 lot.
- 21 A Yes, sir.
- 22 Q And you were about a hundred, 150 feet away?
- 23 A Yes, sir.
- 24 Q What kind of view do you have?
- 25 A Well, it was beginning to get dusk dark but we could

1 still, you know, see what was going on, and the main thing I
2 was concerned with was getting my wife and my grandson out of
3 sight in case something happened, something else, a scattered
4 shot or whatever it was was going on would come our way.

5 Q You were trying to protect your family?

6 A Yes, sir.

7 Q You hear these fireworks?

8 A Yes, sir.

9 Q And over at Best Buy?

10 A Yes, sir.

11 Q You were trying to protect your family, what do you
12 observe next, what happens next?

13 A Well, we saw a heavysset black male running from a white
14 looked like Mustang jumping into a gray sedan and both
15 vehicles speeding off. One, one going toward Best Buy and
16 coming out of Best Buy parking lot shooting across the road
17 into Logan's parking lot, around the back door and out the
18 other end, parking lot at a rapid rate of speed.

19 Q You said one, one car. Was that - do you remember what
20 kind of car it was?

21 A Yes, sir, a gray sedan.

22 Q That gray sedan goes over to Logan's Restaurant where
23 you all are?

24 A Yes, sir.

25 Q Did you see anybody in that vehicle?

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1 A Yes, sir. There was a female driver and a heavyset
2 black male in the car, too.

3 Q Now, you say a female driver. Did you identify a
4 particular race?

5 A No, sir. It was dusk dark. They was going so fast I
6 could not honestly say what race.

7 Q But no doubt about it it was a female driver?

8 A Oh, there's no doubt about that, no, sir.

9 Q Heavyset black male in the back?

10 A Yes, sir.

11 Q Was there - was car distinct in any way?

12 A Well, the back windows was shot out of the gray sedan.

13 Q And you said you saw, I believe you said a white Mustang
14 speed away one direction?

15 A Yes, sir.

16 Q Gray sedan go the other way?

17 A Yes, sir.

18 Q They're both speeding off?

19 A Yes, sir.

20 Q Did you see any magical SUVs or anything speed off?

21 A Any what, sir, I'm sorry?

22 Q Did you see any type of SUV, jeep?

23 A No, sir, huh-uh.

24 Q Explorer, anything else speed off?

25 A No, sir; no, sir.

1 Q And that's pretty much the extent of your involvement in
2 this murder investigation?

3 A Yes, sir.

4 Q Mr. Watts, thank you for coming to be with us today. If
5 you'll answer any questions that Mr. Hazzard or Mr. Barr
6 might have of you.

7 CROSS EXAMINATION

8 BY MR. BARR:

9 Q Thank you, Mr. Watts.

10 A Yes, sir.

11 Q I believe you gave a written statement?

12 A Yes, sir.

13 Q You did. Okay, now, do you recall who you gave that
14 statement to?

15 A No, sir, it was one of the officers at the
16 investigation.

17 Q Thank you. As best you recall how many shots you heard?

18 A Five or six.

19 Q Five or six.

20 A I couldn't, I couldn't tell you five or six. It just
21 sounded like five or six times.

22 Q Did you observe where the cars were parked in relation
23 to one another?

24 A Yes, sir, they were backed in side by side.

25 Q Side by side. So, how far then would you say the

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1 heavyset black male ran?

2 A I don't know exactly how far. I know when we looked he
3 was, he was leaving running away from the white car towards
4 the gray car.

5 Q Okay, do you remember whether he ran around the car or
6 ---

7 A No, sir. I can't, I can't honestly.

8 Q Okay, did you observe any shooting at all?

9 A No, sir.

10 Q So, you did not see the shooting?

11 A No, sir, did not see the shooting, no, sir. We heard
12 the shots.

13 Q Okay, I have no further questions. Thank you.

14 THE COURT: Mr. Hazzard.

15 MR. HAZZARD: No questions.

16 THE COURT: All right, anything on redirect?

17 MR. RICHARDSON: No, sir, Your Honor. I'd just ask that
18 Mr. Watts be excused so he can return to his home.

19 THE COURT: Any objection?

20 MR. BARR: No objection from the Defendant Niles.

21 MR. HAZZARD: Without objection, Your Honor.

22 THE COURT: All right, Mr. Watts, you're excused.

23 Thank you very much.

24 A Thank you.

25 THE COURT: You can call your next witness.

1 MR. RICHARDSON: The State would call Officer
2 Jeremiah Beam.

3 Whereupon, Jeremiah Beam was called to the stand, duly
4 sworn by the clerk and testified as follows:

5 THE CLERK: Please be seated. Please state your full
6 name and spell your last for the Court.

7 MR. BEAM: Officer Jeremiah Beam, B-E-A-M.

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Good evening, Officer Beam. How are you doing today?

11 A Good, sir.

12 Q Could you please tell us a little bit about yourself,
13 where you're employed, in what capacity and what your duties
14 are?

15 A I'm employed at the City of Myrtle Beach Police
16 Department. I'm currently in the Street Crimes Division. We
17 work prostitution, narcotic stuff, anything in between.

18 Q How long have you been with the City of Myrtle Beach
19 Police Department?

20 A Approximately four and a half years.

21 Q Okay, so, four and a half years. So, you were employed
22 with the Myrtle Beach Police Department back in April of
23 2007?

24 A Yes, sir.

25 Q And what were your duties back then?

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1 A In '07 I was on daytime patrol.

2 Q Now, on daytime patrol as a patrolman what were your
3 duties?

4 A Primarily to answer calls for service, anything from
5 assaults to shopliftings to alarms. It could be anything
6 just whatever we were dispatched to.

7 Q And what time did you normally go to work as a daytime
8 patrolman?

9 A Seven o'clock, sir.

10 Q And prior to actually going out on patrol did you all
11 receive any kind of briefings or any type thing?

12 A Yes, sir, every morning before our shift we would have a
13 briefing to go over any, you know, any crimes that occurred
14 that we needed to be aware of, any spot that was getting, you
15 know, hit hard with anything, just so we were aware of it.

16 Q And with regard to - you were on duty back April 10th,
17 2007?

18 A Yes, sir.

19 Q Do you recall anything specific with regard to what you
20 were advised at your morning meeting that day?

21 A We were advised of the shooting at the Best Buy and we
22 were also advised we were possibly looking for a gray in
23 color vehicle possibly with some damage to it, maybe busted
24 out windows or something of that nature.

25 Q On April 10th, 2007, did you have the opportunity to

1 respond to Patrick's Mobile Home Park?

2 A Yes, sir, I did.

3 Q What generated your response to that park?

4 A We had a call for service. Somebody called, you know,
5 Myrtle Beach dispatch and reported a suspicious vehicle
6 backed into one of the lots there. The caller thought it was
7 suspicious, called our dispatch and it was the area that I
8 was assigned to work. So, I was dispatched or assigned to
9 respond to that location.

10 Q And you responded to Patrick's Mobile Home Park?

11 A Yes, sir.

12 Q And I believe before you said you had a be on the
13 lookout that ---

14 A Yes, sir, we had a BOLO which means be on the lookout
15 for. Obviously, we were, you know, possibly looking for a
16 vehicle involved in the shooting the previous evening.

17 Q Okay, now, Patrick's Mobile Home Park where is that
18 located with respect to the Best Buy?

19 A It's off of Pine Island or Highway 15. So, it's, you
20 know, relatively close proximity.

21 Q Short drive?

22 A Yes, sir.

23 Q And you say close proximity. Could you guesstimate?

24 A I would say you go maybe two or three miles down Highway
25 15 or Pine Island down to Highway 15. You go south on

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1 Highway 15 and then it's off of Highway 15. I would say
2 maybe four or five miles, maybe.

3 Q Total of about six, seven?

4 A Possibly, sir, yes, sir.

5 Q You respond to Patrick's Mobile Home Park. What time do
6 you arrive? Do you recall?

7 A I arrived approximately 9:48.

8 Q And that's a.m. or p.m.?

9 A A.M.

10 Q And upon arrival what if anything did you notice?

11 A Upon my arrival there?

12 Q Yes.

13 A Nothing out of the ordinary until I got down into the
14 actual mobile home park.

15 Q Okay, once you got down into the mobile home park did
16 you find the property you were looking for?

17 A Yes, sir, I found a lot that was described to me in our
18 dispatch call and I noticed a gray in color sedan, you know,
19 backed into the lot in question.

20 Q And that gray in color sedan did it generate any kind of
21 response from you?

22 A Yes, sir, I could see from the roadway that what
23 appeared to be broken glass, busted out windows. At that
24 point, you know, I continued on. I didn't want to stop and,
25 you know, wait in front of the residence to investigate. I

1 continued on down the roadway.

2 Q Now, you went on down the roadway. Why did you do that?

3 A For several reasons, again, for officer safety. If it
4 was the vehicle involved in the shooting I didn't want to
5 stop, you know, directly in front of the residence. I wanted
6 to get out, you know, obviously in a marked unit. I didn't
7 want to draw any attention if the car or the residence there
8 was occupied. So, I continued on down and I notified my
9 immediate supervisor of what I had and then to see how he
10 wanted me to continue on with the situation.

11 Q And after you notified your supervisor what happened?

12 A He notified Detective Curry who was working on the case.
13 Detective Curry responded out as well as my immediate
14 supervisor.

15 Q Any other officers come in?

16 A Not initially, no, sir.

17 Q But while you were there, while you're on scene did any
18 other officers?

19 A While I was on scene we had officers in and out, yes,
20 sir.

21 Q Now, after the other Myrtle Beach PD officers appeared
22 on scene did you have an opportunity to take a little closer
23 visual inspection of the vehicle?

24 A Yes, sir, I did.

25 Q Let me show you - let me see if I can get these back in

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1 order. Officer Beam, I'm going to show you what's been
2 previously marked for identification as State's Seven through
3 15, numbered sequentially. That's for identification. If
4 you'll just take a moment to take a look at those pictures
5 and tell me if you recognize those photographs?

6 A Yes, sir, I do.

7 Q Do they fairly and accurately depict the gray sedan that
8 you observed on April 10th, 2007?

9 A Yes, sir.

10 MR. RICHARDSON: Your Honor, at this time the State
11 would seek to introduce State's Seven, Eight, Nine, Ten, 11,
12 12, 13, 14 and 15 into evidence.

13 THE COURT: Any objection?

14 MR. BARR: None from the Defendant Niles, Your
15 Honor.

16 MR. HAZZARD: No objection, Your Honor.

17 THE COURT: All right, State's Exhibits Seven, Eight,
18 Nine, Ten, 11, 12, 13, 14 and 15 are admitted into evidence
19 without objection.

20 (Whereupon, State's Exhibits Seven through 15
21 [Photographs] admitted into evidence and appropriately
22 marked.)

23 BY MR. RICHARDSON:

24 Q Now, Officer Beam, were you able to determine the make
25 and model of this vehicle?

1 A Yes, sir, it was a Ford Fusion.
2 Q 2007?
3 A Yes, sir.
4 Q Okay.
5 MR. RICHARDSON: Now I believe I requested permission to
6 publish.
7 THE COURT: All right.
8 BY MR. RICHARDSON:
9 Q Now, Officer Beam, I'm going to show you State's Number
10 Seven. Is this the sedan you saw?
11 A Yes, sir.
12 Q Okay, and the damage or describe what we're seeing here,
13 describe for the jury.
14 A You see the back window busted out, sir, on this
15 picture, clearly you can see that.
16 Q And that's the view you got as you went by?
17 A Yes, sir.
18 Q Now, how about State's Number Eight?
19 A You can clearly see the back passenger side window
20 busted out on that one of the sedan.
21 Q That's the back passenger side?
22 A Yes, sir.
23 Q Okay, so, opposite and caddy corner from the driver?
24 A Correct.
25 Q How about on State's Number Nine, what are we seeing

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1 here?

2 A Looks like the driver's side back windshield is busted
3 out and what appears possibly to be a, a bullet hole or some
4 type of hole up above there in the ---

5 Q And is that driver's side rear?

6 A Looks like passenger side.

7 Q Passenger side rear.

8 A Yes, sir.

9 Q Okay, appears to be some kind of hole?

10 A Yes, sir.

11 Q How about State's Ten, which side of the car are we
12 looking at here?

13 A Looks like it's going to be the driver's rear and you
14 can also see the back windshield busted out in that one as
15 well.

16 Q And here?

17 A Yes, sir.

18 Q More busted glass?

19 A Yes, sir, in the vent window there, the back one.

20 Q And State's Number 11?

21 A The driver's side door, obviously you can see the window
22 appears to be busted out and, again, another small hole
23 possibly a bullet hole or something of that affect.

24 Q Keep on going, State's Number 12?

25 A Looks like the driver's side window again fragments of

1 glass there in the bottom of the frame.

2 Q State's Number 13?

3 A That's a - you can see the back windshield busted out as

4 well as the make and model of it.

5 Q State's 14?

6 A You can see the passenger-side back window busted out as

7 well as the back windshield and the glass inside of the

8 vehicle.

9 Q All that glass is down in the seat down in the back?

10 A Yes, sir.

11 Q The same thing a little different view on Number 15?

12 A Yes, sir, just more glass in the inside of the vehicle.

13 Q And all this is, is this exactly how you saw, first

14 observed the vehicle?

15 A Yes, sir.

16 Q Did anybody do anything to add to or take away from the

17 vehicle while you were there?

18 A No, sir.

19 Q And are you familiar with the term crime scene unit?

20 A Yes, sir.

21 Q Does Myrtle Beach have one of those?

22 A Yes, sir, we do.

23 Q To your recollections did they respond to there?

24 A They did and basically just maintained the scene

25 knowing that they would be in route due to, you know, the

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1 possible crime scene. So, I just wanted to secure the scene
2 until they arrived.

3 Q And once they arrived what did you do?

4 A I basically backed off. There was enough units there,
5 enough, you know, investigators and detectives on scene.
6 Basically, you know, my job was done. Basically, at that
7 point I went back on the road and answered, you know, calls
8 for service and other calls.

9 Q All right, Officer Beam, thank you for your testimony.
10 If you'll answer any questions that Mr. Barr or Mr. Hazzard
11 might have.

12 CROSS EXAMINATION

13 BY MR. BARR:

14 Q Officer Beam, what was the date that you took these
15 photographs?

16 A Sir, I did not take those photographs.

17 Q You did not?

18 A No, sir.

19 Q Do you know who actually took them?

20 A No, sir, I'm not sure who actually took the photographs.

21 Q So, was that the way the car appeared on the day that
22 you were there?

23 A Yes, sir, it was.

24 Q Okay, and what date were you actually there?

25 A That was the 10th of April.

1 Q April 10.
2 A Yes, sir.
3 Q And what day did you - did your department get the call?
4 A That day, sir.
5 Q That same day?
6 A Yes, sir.
7 Q So, you went by the same day ---
8 A Yes, sir, that morning.
9 Q --- you got the call?
10 A Yes, sir.
11 Q And that, this is how the car appeared to you on
12 April 10.
13 A Yes, sir.
14 Q Thank you, sir.
15 THE COURT: Mr. Hazzard.
16 MR. HAZZARD: Thank you, Your Honor.
17 CROSS EXAMINATION
18 BY MR. HAZZARD:
19 Q Good afternoon, sir, how are you?
20 A Very well, how are you?
21 Q I'm good. Thank you for asking. Did you prepare an
22 incident report in this matter?
23 A Yes, sir, I did a supplemental report to the original.
24 Q Okay, do you have that report with you?
25 A Yes, sir, I do.

1 Q Okay, if you would, I'll direct your attention to that
2 report and before we go any farther with that I believe Mr.
3 Richardson asked you about whether you'd received some
4 information during your morning briefing?

5 A Yeah, yes, sir.

6 Q Okay, and that information basically was something about
7 be on the look out for a car that might have been involved in
8 an incident in the Best Buy parking lot; correct?

9 A Yes, sir.

10 Q Okay, and so, later on that day you actually did come
11 across the car in Patrick's Mobile Home Park; is that
12 correct?

13 A Yes, sir.

14 Q Okay, now, subsequent to that, subsequent to you seeing
15 the car, securing the crime scene and then going on about
16 your day, being relieved from that scene did you prepare that
17 supplemental report?

18 A Yes, sir, I did.

19 Q Okay, on that supplemental report please tell us and
20 tell the jury what you have listed as the total stolen
21 property value for this case?

22 A I just estimated approximately \$500. It was just an
23 estimation.

24 Q Okay, and which report are you looking at?

25 A I am looking at my supplemental report, sir.

- 1 Q Okay, may I review that, please?
- 2 A Yes, sir.
- 3 Q Okay, maybe we're looking at two different things. What
- 4 I'm looking at is right there where it says total stolen
- 5 property value and what does that say?
- 6 A It says no dollars.
- 7 Q So, zero; correct?
- 8 A Yes, sir.
- 9 Q Okay.
- 10 A It says \$500 down here, sir.
- 11 Q Oh, that's stolen or ---
- 12 A Stolen, damaged.
- 13 Q --- or damaged.
- 14 A Yes, sir. It's kind of confusing but ---
- 15 Q Okay, so, your thing was the damage to the car was
- 16 approximately \$500.
- 17 A Yes, just a ballpark figure, yes, sir.
- 18 Q Okay, but not anything stolen?
- 19 A I didn't know, you know.
- 20 Q Got you.
- 21 A Didn't do an inventory, didn't know what was in the
- 22 vehicle or if anything was taken out.
- 23 Q Got you. Now, the pictures that Mr. Richardson showed
- 24 you basically indicate that somebody shot up that car pretty
- 25 good; correct?

1 A I don't know if they shot or not but it appears there's
2 damage and broken glass and what appears possibly to be
3 bullet holes.

4 Q Okay, now, when you looked at the scene, the area, walk
5 me through that if you would. You, I believe you testified
6 that you saw the car while you were in your cruiser and you
7 drove on past so as not be too obvious; correct?

8 A Yes, sir.

9 Q Okay, you radioed your superiors to find out what they
10 wanted you to do?

11 A I gave him a phone call.

12 Q Okay, or a phone, you gave him a phone call and they
13 indicated that specifically what did they wish for you to do?

14 A Just hang tight where I was, keep an eye on it, make
15 sure no one exits or enters, you know, the area.

16 Q So, just stay down the street basically?

17 A Stay put, yes, sir.

18 Q Okay, now, at what point did you actually come up to the
19 car or did you ever?

20 A Yes, sir, once Detective Curry and my supervisor
21 Corporal Blane [spelled phonetically] were on scene there
22 were other units on scene. We - Detective Curry got
23 permission from the, I guess, the owner, property manager but
24 the actual tenet or owner of the mobile home lot that we
25 could clear it to make sure there was no occupants inside.

- 1 Q Okay, so, we're talking about actually going into the
2 mobile home itself; right?
- 3 A Yes, sir, at one point we did clear it to make sure that
4 it was - there was no one inside.
- 5 Q Okay, and when you say clear it, you mean you and some
6 other officers actually went through it?
- 7 A Yes, sir, we made sure there was no one hiding in there.
- 8 Q And, of course, as you indicated the owner gave his
9 consent; correct?
- 10 A Yes, sir.
- 11 Q And you entered through, I believe, an unlocked back
12 door?
- 13 A That's correct, sir.
- 14 Q Okay, now, so, about how long were you on that scene?
- 15 A I arrived approximately 9:48 and cleared approximately
16 11:43, sir.
- 17 Q Okay, so, that was about 9:48 in the morning and then
18 you left about 11:43 in the - in that morning?
- 19 A Yes, sir.
- 20 Q So, you're there a little less than two hours?
- 21 A Correct, sir.
- 22 Q Okay, and you were inside the mobile home at some point;
23 correct?
- 24 A Yes, sir.
- 25 Q And you were around the mobile home during that two-hour

- 1 period; correct?
- 2 A Yes, sir.
- 3 Q At any point did you see any footsteps or drag marks or
4 any other signs of something having been placed or placed
5 under the trailer?
- 6 A Not to my knowledge, no, sir.
- 7 Q Okay, you were trained to first observe - let's - you
8 were trained to first observe a crime scene; correct?
- 9 A Yes, sir.
- 10 Q Okay, and your training stems back to the South Carolina
11 Law Enforcement Division; correct?
- 12 A Yes, sir.
- 13 Q And you are a graduate of that Academy?
- 14 A Yes, sir.
- 15 Q Okay, and at this point, April 9th of 2007, how long had
16 you been a police officer?
- 17 A About two and a half years, sir.
- 18 Q About two and a half years, okay, and gotten high marks,
19 I take it?
- 20 A Yes, sir.
- 21 Q Because obviously you had moved on from patrol to street
22 crimes?
- 23 A Yes, sir.
- 24 Q Is that correct? Okay, so, you're pretty good with your
25 job; right?

- 1 A I'd like to think so, but ---
- 2 Q All right, so, with your training and observation you
- 3 observed the broken glass around the car itself; correct?
- 4 A Yes, sir.
- 5 Q Okay, did you observe the trail of broken glass - was
- 6 there any broken glass leading from the car up to the front
- 7 door of the trailer?
- 8 A No, sir, not that I observed.
- 9 Q Not that you observed.
- 10 A Also on scene I tried to not get too close other than
- 11 observe. Obviously I knew that we had a crime scene, knew
- 12 that we had crime scene coming, tried to be careful of
- 13 contaminating the crime scene or going into too much detail
- 14 there. Never once got close to the car, didn't go through
- 15 the car, anything of that that would, would jeopardize what
- 16 possibly they may do, you know, when they arrived.
- 17 Q Yes, sir, very good. Was the car parked beside the
- 18 house, behind the house?
- 19 A It was in the front of the house, sir, backed in.
- 20 Q So, it was backed in but it was in front of the unit?
- 21 A Yes, sir, when I came down the road it was backed in on,
- 22 on, you know, on the left side if you're coming down the road
- 23 from the mobile home park.
- 24 Q Okay, and so, when you entered the trailer from the rear
- 25 of the trailer then you would have had to make a berth around

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1 the car or gone between the car and the trailer?

2 A We came on - I came on the back side from the right side
3 or from the - yes, sir.

4 Q Okay, so, you came in from the side opposite to the car.

5 A Correct, sir.

6 Q Okay, so, at some point then you made a complete 360
7 degree circle of the, of the trailer?

8 A When I exited I went out the same way. I never went
9 back around that front side.

10 Q Okay, so, you never came around that side?

11 A No, sir, my activity was mainly on the back side of the,
12 of the trailer and that's also when we did the initial
13 approach I was parked on the back side there.

14 Q Okay, all right, thank you, sir. No further questions.

15 THE COURT: Redirect?

16 MR. RICHARDSON: The Court's indulgence.

17 MS. ELDER: One moment, Your Honor.

18 MR. RICHARDSON: Your Honor, no further questions. I'd
19 just ask that Officer Beam be allowed to return to duties.

20 THE COURT: Any objection?

21 MR. BARR: No objection.

22 MR. HAZZARD: No objection, Your Honor.

23 THE COURT: All right, sir, you're excused. Thank
24 you for being with us. You're free to go.

25 MS. ELDER: The State would call Marcos Rosado.

1 Whereupon, Marcos Rosado was called to the stand, duly
2 sworn by the clerk and testified as follows:

3 THE CLERK: Please be seated. Please state your full
4 name and spell your last name for the Court.

5 MR. ROSADO: Full name is Marcos.

6 THE CLERK: Speak into the microphone, please.

7 MR. ROSADO: My name is Marcos, last name Rosado,
8 R-O-S-A-D-O.

9 THE COURT: All right.

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Mr. Rosado, good afternoon. Could you tell us where you
13 live currently, what city?

14 A I live on - Myrtle Beach.

15 Q And where are you employed currently?

16 A Not, I'm not employed, no.

17 Q Not employed. How about back on April 10th, 2007 where
18 were you employed?

19 A Auto Bodyworks.

20 Q And what did you do for Auto Bodyworks?

21 A I was the towing manager.

22 Q You were, I'm sorry?

23 A The towing manager.

24 Q You were the towing manager?

25 A Yes, sir.

- 1 Q Drove a tow truck?
- 2 A Yes, sir.
- 3 Q And in the course of your duties as a tow truck driver,
- 4 towing manager did you ever have the opportunity to work with
- 5 the Myrtle Beach Police Department?
- 6 A Yes, sir.
- 7 Q Was it common?
- 8 A Yes, sir.
- 9 Q Do you recall being called to Patrick's Mobile Home Park
- 10 on April 10th, 2007?
- 11 A Yes, sir.
- 12 Q And who called you to that scene?
- 13 A Myrtle Beach dispatch.
- 14 Q Myrtle Beach dispatch?
- 15 A Myrtle Beach dispatch called our dispatch, you know.
- 16 Q And they sent you out?
- 17 A They sent me out to that car.
- 18 Q Do you remember what the purpose of that was?
- 19 A They said it particularly was a 10-95. I don't know
- 20 what was the purposes.
- 21 Q What's a 10-95?
- 22 A When somebody go to jail.
- 23 Q Okay, and were you there, were you there to help them
- 24 plant flowers, tow a car or what?
- 25 A No, I went over there to pick up the car. When I got to

1 the scene they told me basically the car was going to the
2 police annex.

3 Q Okay, and what kind of car was it; do you recall?

4 A I think it was Nissan, a Nissan Altima, Maxima.

5 Q A small sedan?

6 A Yeah, small one like four-door.

7 Q Let me show you, let me show you what's been previously
8 marked as if I can flip through here, been previously
9 admitted into evidence as State's Exhibit Seven. Do you
10 recognize that picture?

11 A Yes, sir.

12 Q And is that indeed the car that you picked up?

13 A Yes, sir.

14 Q That little gray sedan, you picked it up and you were
15 directed to take it where?

16 A To the Myrtle Beach Police Annex.

17 Q And where is the Myrtle Beach Police Annex located?

18 A They located on Shine and Mustang, Mustang Street.

19 Q What's that area commonly known as?

20 A Huh?

21 Q What, what do most people ---

22 A On the Air Force Base.

23 Q The old Air Force Base?

24 A Yes, sir.

25 Q And you delivered the vehicle there?

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1 A Yes, sir.

2 Q You towed it the whole way from Patrick's Mobile Home
3 Park to the annex?

4 A To the police annex. I got, also I got a police officer
5 behind me from the scene to the police, Myrtle Beach Police
6 Annex.

7 Q About how long of a trip was that?

8 A Maybe five, six minutes.

9 Q Five or six minutes?

10 A Ten minutes max.

11 Q Okay, and on the way to the Myrtle Beach Police Annex do
12 you recall if anyone added to or took anything away from the
13 car?

14 A No, sir.

15 Q Did anyone modify the car in any way?

16 A No, sir.

17 Q Did you stop anywhere along the way?

18 A No, sir.

19 Q Did you drop the car anywhere along the way?

20 A I just dropped the car on the, on the police annex.

21 Q So, you went from Patrick's Mobile Home Park to the
22 Annex?

23 A Yes, sir.

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

25 THE COURT: All right.

1 MR. RICHARDSON: No further questions of this witness,
2 Your Honor.

3 THE COURT: All right, Mr. Barr.

4 MR. BARR: Your Honor, I have no questions of this
5 witness.

6 THE COURT: Mr. Hazzard.

7 MR. HAZZARD: No questions on behalf of Defendant
8 Hammond, Your Honor.

9 THE COURT: All right, sir, you may step down. Thank
10 you very much.

11 A Thank you.

12 MR. RICHARDSON: And Your Honor, I would ask that Mr.
13 Rosado be excused ---

14 THE COURT: Any objections?

15 MR. RICHARDSON: --- so that he may return to his ---

16 MR. BARR: No objections.

17 MR. HAZZARD: Without objection, Your Honor.

18 THE COURT: All right, you're excused. Thank you
19 very much.

20 MS. ELDER: Your Honor, can we approach for a moment?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held in the presence
23 but out up of the hearing of the jury.)

24 THE COURT: All right, ladies and gentlemen, we're
25 going to take a break. This next witness might take a little

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1 bit of time. There is some preparation for the witness. I
2 don't know that, but I think it may, but let's go ahead and
3 take about a 15-minute break and we'll bring you back in just
4 a minute. Thank you very much.

5 Yeah, let's make sure that if you - your notepads are
6 left here and that any exhibits, pictures are left in the
7 courtroom.

8 (Whereupon, the following takes place outside the
9 presence of the jury.)

10 THE COURT: All right, we'll stand in recess for
11 about 15 minutes.

12 MS. ELDER: Thank you, Your Honor.

13 OFF THE RECORD

14 (On the record.)

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Thank you very much. All right,
18 anything from the State before we bring the jury back in?

19 MS. ELDER: No, sir, Your Honor.

20 THE COURT: Anything from the Defense?

21 MR. BARR: Your Honor, might we have a minute?

22 THE COURT: All right.

23 MR. BARR: Mr. Hazzard just walked.

24 THE COURT: Oh, okay, he stepped out, all right.

25 MR. BARR: Yes, sir. Thank you, sir.

1 THE COURT: All right, anything from the Defense
2 before we bring the jury back in?

3 MR. BARR: Nothing from the Defense.

4 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
5 Your Honor.

6 THE COURT: All right, let's bring the jury back,
7 please.

8 (Whereupon, the following takes place in the presence of
9 the jury.)

10 THE COURT: All right, ladies and gentlemen, welcome
11 back. The State can call its next witness.

12 MS. ELDER: Thank you, Your Honor. The State would
13 call Officer John Iannone.

14 Whereupon, John Iannone was called to the stand, duly
15 sworn by the clerk and testified as follows:

16 THE CLERK: Thank you. Please be seated. Please
17 State your full name, spell your last name for the Court.

18 MR. IANNONE: Full name is John Iannone, Jr., last name
19 is I-A-N-N-O-N-E.

20 DIRECT EXAMINATION

21 BY MS. ELDER:

22 Q Officer Iannone, where are you employed?

23 A I'm employed with the City of Myrtle Beach Police
24 Department and I'm in the crime scene unit.

25 Q And how long have you been in the crime scene unit?

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1 A About five and a half years.

2 Q So, you were employed as a crime scene specialist back
3 April the 9th, 2007?

4 A Yes, ma'am.

5 Q And in general what are your duties in the crime scene
6 unit?

7 A We do everything from calls from B and E autos to
8 homicides. We take photographs, collect evidence that's on
9 scene. We'll do fingerprinting. Any evidence that we
10 collect we'll send some of them off to SLED and have them
11 test anything that we don't have the capability of doing
12 so.

13 Q Now, I want to take you to the day of or the evening of
14 April 9th, 2007. Did you have an opportunity to respond to
15 the Best Buy parking lot in Myrtle Beach?

16 A Yes, ma'am.

17 Q And what prompted that response?

18 A I received a call from the patrol supervisor,
19 Investigator Baker, that there was a shooting at the Best Buy
20 parking lot. Things were kind of chaotic when - before I got
21 there. So, I got a little bit more information when I, when
22 I got on scene and she told me a little bit more what was
23 going on.

24 Q Okay, and when you got on scene tell me when you arrived
25 what did you do?

1 A I arrived around 7:30 and I first got briefed by
2 Investigator Baker and then I began to, after it was secured,
3 when I - it was secure when I got there. I began to take
4 overall shots of the parking lot, of a vehicle that was
5 parked. I located a spent bullet next to a Caravan and with
6 some broken glass. There really wasn't much other things in
7 the parking lot other than those two items.

8 Q I want you to take a look at what has been marked
9 State's Exhibits for identification 52, 52 through 57. Can
10 you take a look at those items, please?

11 A (Complies with request.)

12 Okay, do you want me to describe each one?

13 Q Well, first, do you recognize them?

14 A Yes, I do.

15 Q And were those photographs that you took?

16 A Yes, ma'am.

17 Q And what are those photographs of?

18 A That would have been the Caravan that was parked in
19 the Best Buy parking lot along with the bullet hole in
20 the Caravan and the bullet that was found, the spent
21 bullet.

22 MS. ELDER: Your Honor, at this time the State would
23 move Exhibits 52, 53, 54, 55, 56 and 57 into evidence.

24 THE COURT: Any objection?

25 MR. BARR: That would be without objection, Your

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1 Honor, on behalf of Defendant Niles.

2 THE COURT: All right.

3 Any objection?

4 MR. HAZZARD: No objection to 52 through 57. In fact,
5 Defendant Hammond has no objection to the photos on the table
6 which I think go back to number 30. So, 30 through 57 we
7 have no objection.

8 THE COURT: All right, well, at this point in time
9 Plaintiff or, excuse me, State's Exhibits 52, 53, 54, 55
10 and 56 and 57 are admitted into evidence without
11 objection.

12 (Whereupon, State's Exhibit Numbers 52 through 57
13 [photographs] admitted into evidence and appropriately
14 marked.)

15 BY MS. ELDER:

16 Q All right, now, if you could take me through each one of
17 those photographs. If you could start with State's
18 Exhibit 52.

19 A Okay, 52 is the - a bullet, spent bullet that was found
20 right underneath the bullet hole from the Caravan. It was
21 approximately maybe a foot away from the vehicle.

22 Q Okay, and if you will look at what has been marked as
23 State's Exhibit 27 for identification.

24 A Yes, this is, this is the bullet that was - that's in
25 that picture.

1 Q And did you package this?

2 A Yes, ma'am.

3 Q And is that your packaging?

4 A Yes.

5 MS. ELDER: Your Honor, we would move State's
6 Exhibit 27 into evidence at this time.

7 THE COURT: Any objection?

8 MR. BARR: No objection.

9 MR. HAZZARD: The Court's indulgence, Your Honor.

10 THE COURT: All right.

11 MR. HAZZARD: No objection from Defendant Hammond, Your
12 Honor.

13 THE COURT: All right, State's Exhibit 27 admitted
14 into evidence without objection.

15 (Whereupon, State's Exhibit Number 27 [Bullet from
16 parking lot] admitted into evidence and appropriately
17 marked.)

18 BY MS. ELDER:

19 Q All right, if you could take a look at State's Exhibit
20 55 and 56. Can you tell me what that is?

21 A Yes, this is another photo of the Caravan. I put a -
22 the number one indicator next to the bullet just to show how
23 close it was to the Caravan, crime scene.

24 Q And when you say number one indicator on State's Exhibit
25 55 is that, what does that indicate?

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1 A I just put those down just to give me an idea where
2 the evidence is and it's easy to label after I'm done with
3 it.

4 Q All right, and that one indicator does that correspond
5 with State's Exhibit 27?

6 A Yes, ma'am.

7 Q Okay, could you take a look at State's Exhibit 53 and
8 54.

9 A 53 is a scale, a close-up shot of the bullet hole in the
10 Caravan and 54 is just a further shot of a scale photo of the
11 distance from the bullet hole to the ground.

12 Q Okay, could you take a look at State's Exhibit 57.
13 Could you tell me what that is?

14 A This was a vehicle that we, we saw a crack in the
15 windshield but at first we weren't sure what it was. So, we
16 just took a photo of it but a lady determined that it was -
17 had nothing to do with the incident.

18 Q Okay.

19 MS. ELDER: Your Honor, I'd like a moment to allow
20 the jury to review these and publish these to the jury.

21 THE COURT: All right.

22 BY MS. ELDER:

23 Q While the jury is reviewing those if you could take a
24 look at what's been marked State's Exhibit 29 through 51
25 for identification. If you could flip through those for

1 me.

2 A Okay.

3 - MS. ELDER: Your Honor, I want to go ahead and move
4 these into evidence. My understanding is they're without
5 objection.

6 MR. BARR: That's correct.

7 MR. HAZZARD: That's correct.

8 MS. ELDER: That would be State's ID 29 through 51.

9 THE COURT: All right, State's Exhibits 29 through 51
10 admitted into evidence without objection.

11 (Whereupon, State's Exhibit Numbers 29 through 51
12 [Photographs] admitted into evidence and appropriately
13 marked.)

14 BY MS. ELDER:

15 Q Now, Officer Iannone, did - what else did you do in
16 regards to this investigation?

17 A After we were done on scene we went to another location
18 where the Ford Mustang was located which was about a block
19 away from the incident. We took initial photos of the
20 vehicle on scene, a few clothing, we collected some blood and
21 then after - while that was done we had the vehicle towed to
22 a crime scene garage and waited until we got a search warrant
23 to search the vehicle and process it.

24 Q And did you, in fact, process that white Mustang?

25 A Yes, ma'am.

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1 Q And when you said you took blood that was from the scene
2 of where the Mustang came to rest; is that correct?

3 A That's correct.

4 Q That was not in the Best Buy parking lot?

5 A No, it was not.

6 Q Would you take a look at what's been marked State's
7 Exhibits Three, Four and Five in evidence. Do you recognize
8 that?

9 A Yes, ma'am; yes, ma'am.

10 Q And is that, is that the scene that you're indicating
11 that you took some swabs from?

12 A That's correct.

13 Q Now, tell me what you did in regards to processing that
14 white Mustang?

15 A Okay, first after I received the search warrant I went
16 ahead and took overall photos of the vehicle from the outside
17 area and then began to go inside the vehicle and collect
18 evidence that, pretty much everything that was in the car.
19 We took photos of bullet casings. There was, there was - I
20 believe there was six brass casings that was located, four
21 bullet fragments, a spent bullet. I collected some blood
22 samples and some numerous clothing that I've got in there.
23 After we - I also collected two cell phones, collected some
24 money that was in a duffel bag that was located in there and
25 then after we processed everything, took everything out, I

1 began to process the car with black silk powder and black
2 magnetic powder to try to get some fingerprints out of the
3 vehicle.

4 Q And this vehicle was it identified as the vehicle that
5 James Salter had been operating?

6 A Yes, ma'am.

7 Q Before I get to that, let's look through these pictures
8 that are identified as State's Exhibit 29. Your Honor, I'd
9 like to publish these as we go along with the testimony to
10 the jury.

11 THE COURT: All right.

12 Q If you could hold that up facing to the jury so they
13 can see what you're talking about. What is that picture
14 of?

15 A This is one of the bullet casings that was located.
16 This was number two that was found in the cup holder. It was
17 - yeah, located in the cup holder in the front area.

18 Q And you have got a little identifier marker there,
19 number two, is that for your purposes?

20 A Right.

21 Q When you collect evidence?

22 A That's correct, yeah.

23 Q And could you point out that, that casing that you
24 picked up out of there?

25 A Yeah. It's right there. It - that kind of matches with

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1 all the pennies that were in there but you can find it.

2 Q Okay, let's take a look at State's Exhibit 32?

3 A Okay, this is a photo of a handgun. It actually
4 came out to be a 40-caliber Smith & Wesson, yeah, Smith &
5 Wesson 40 caliber. This was located on the - let me just get
6 my - it was located under the floor mat of the driver's
7 side.

8 Q And could you point that out so they can see what you're
9 identifying as the butt of that gun?

10 A That's, that's the butt of the gun right there.

11 Q Okay, would you take a look at State's Exhibit 33?

12 A Okay, 33 is another casing that was located in the
13 vehicle next to a black Boston Red Sox cap, baseball cap.

14 Q Could you point that out for us, please?

15 A And that's located right there.

16 Q State's Exhibits 34 and 35?

17 A Okay, 34 is the passenger rear seatbelt latch and this
18 is an actual close-up - excuse me, a close-up photo of it
19 with the bullet holes. It's right, sitting right there and
20 then there's also a crack right here as well and you can see
21 a little hole right there.

22 Q Okay, if you'll look at State's Exhibit 36.

23 A 36 is another photo of a bullet casing in the cup
24 holder.

25 Q Could you point that casing?

- 1 A And here's the casing sitting right there.
- 2 Q I believe that's a faraway shot of the previous
3 exhibit?
- 4 A That's correct.
- 5 Q Is that correct?
- 6 A Yeah.
- 7 Q Number 29?
- 8 A Yes, ma'am.
- 9 Q And that's one that you collected as well?
- 10 A Yes, ma'am.
- 11 Q State's Exhibit 37?
- 12 A This is the driver's-side, this is the driver seat with
13 some blood in the corner near the seatbelt latch and with
14 some glass, broken glass on it.
- 15 Q And this is still the same vehicle that Mr. Salter was
16 in; is that correct?
- 17 A That's correct, yes.
- 18 Q Okay, if you'll look at State's Exhibit 38.
- 19 A 38 is the handgun that was located under the mat on the
20 driver's side. I just took out the mat to show a better
21 picture of the, of the, of the weapon.
- 22 Q Okay, and you collected that weapon; is that
23 correct?
- 24 A Yes, ma'am, yes.
- 25 Q State's Exhibit 39 and 40?

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1 A 39 and 40 are both bullet fragments that were located in
2 the backseat of the vehicle.

3 Q And did - you have an identifier as number eight what
4 does that mean?

5 A That's just showing, just to organize it for myself I
6 just put different numbers on there so I don't get them mixed
7 up when I have to put them on the property sheet.

8 Q And did you collect those as well?

9 A Yes, ma'am.

10 Q State's Exhibit 41.

11 A 41 I indicated as number ten and that's a bullet
12 fragment as well in the backseat of the vehicle.

13 Q Could you point that out for us?

14 A And it's right there, this is an actual penny right
15 here.

16 Q State's Exhibit 42?

17 A Okay, number two - number 42 is I labeled as number
18 seven and that was located behind the passenger front seat on
19 the floor and that's right there.

20 Q And if you will take a look at Exhibit 49 and 31.

21 A 49 is another bullet casing and that was located on the
22 passenger front floor and here's the bullet, oh, it's upside
23 down. The bullet casing is right there, and this is just
24 another scale photo of it, of number one.

25 Q State's Exhibit 45?

- 1 A 45 is another bullet casing. I couldn't put a little
2 indicator in there because it was in there so deep I couldn't
3 - every time I'd put the card in there I was blocking the
4 shadow and I couldn't actually get the photo of it. So, but
5 that was actually located between the cup holder and the
6 passenger front seat and it's right here.
- 7 Q State's Exhibit 46?
- 8 A 46 is a bullet casing located right here and a bullet,
9 a spent bullet which I indicated as number four. They
10 were both located, located on the passenger front, front
11 floor.
- 12 Q State's Exhibits 47 and 48.
- 13 A 47 was located behind the passenger front seat on the
14 floor and this is, this is just another wide view at the back
15 seat.
- 16 Q And could you show us the casing?
- 17 A The casing is located right there. As you can see there
18 is actually a French fry right there. That's easy to locate
19 over there.
- 20 Q And you took all these items into evidence and collected
21 them; is that correct?
- 22 A Yes, ma'am.
- 23 Q If you would take a look at what has been marked as
24 State's Exhibit for identification Number 28?
- 25 A You want me to describe it?

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1 Q Yes.

2 A Okay, yeah, this is the glass that was - that I picked
3 up from the parking lot of Best Buy that was near the spent
4 bullet in the Caravan.

5 Q And can you take a look at State's for identification
6 Number 19. Can you just tell me if you recognize those?

7 A Yes, ma'am, this is what was taken out of the vehicle of
8 the Mustang.

9 Q And okay, State's Exhibit identification Number 20 do
10 you recognize that?

11 A Yes, ma'am, this is blood from the driver's seat of the
12 victim's vehicle.

13 Q And if you will look at State's Exhibit 25 for
14 identification 23 and 24. Could you tell me if you recognize
15 those?

16 A Okay, 25 are four bullets that were taken out of the
17 magazine that was inside the weapon inside the vehicle that I
18 located.

19 Q And those were not spent, they were ---

20 A No, they were still in, in the, in the magazine. This
21 is the actual magazine that was in the, in the gun.

22 I believe I put down that three of them were inside the
23 magazine and one was located in the chamber.

24 Q Number 23?

25 A 23 would be all the casings that were located inside the

1 vehicle.

2 Q And what's been marked State's Exhibit 26 for
3 identification?

4 A 26 is the weapon that was located in the vehicle in the
5 front.

6 MS. ELDER: Your Honor, at this time the State would
7 move into evidence 19, 20, 23, 24, 25, 26 and 28.

8 THE COURT: Any objection?

9 MR. BARR: The Court's indulgence, Your Honor, if I
10 could see them.

11 MR. HAZZARD: If the Court doesn't mind we'd like to
12 take a look at the evidence first.

13 THE COURT: All right.

14 MR. HAZZARD: No objection on behalf of Defendant
15 Hammond, Your Honor.

16 MR. BARR: No objection on behalf of Defendant
17 Richard Niles, Your Honor.

18 THE COURT: All right, State's Exhibits 19, 20, 23,
19 24, 25, 26 and 28 admitted into evidence without
20 objection.

21 (Whereupon, State's Exhibit Number 19 [Bullets], 20
22 [Blood], 23 [Cartridges], 24 [Magazines], 25 [Bullets], 26
23 [Gun] and 28 [Glass] admitted into evidence and appropriately
24 marked.)

25 BY MS. ELDER:

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1 Q Now, tell me about how you found the gun itself. Was
2 the magazine still in it?

3 A It was, it was in it but it wasn't locked in it. It was
4 ---

5 Q Well, tell me, explain that to me what that means.

6 A Okay, basically, when you have a gun loaded the magazine
7 is in and you snap it in there. When I looked at it you
8 could tell that the part of the silver magazine was sticking
9 out. So, I knew it wasn't locked into the gun which I was
10 just able just to slide it right out and take the bullets out
11 of the magazine and then I had to slide the gun back to eject
12 the bullet that was in the chamber.

13 Q Now, did you also collect some other items from the
14 Salter's vehicle, the vehicle he was actually operating?

15 A Yes, ma'am, I collected a backpack containing a Bible,
16 shirts, keys, a green Top-Flight notebook, a phone charger,
17 two cell phones, a couple of bank and credit card
18 statements, the Boston Red Sox hat, the black dew rag. What
19 else?

20 Q Did you collect money?

21 A Yes, ma'am. I collected quite a bit out of the Nautica
22 backpack that was inside the vehicle.

23 Q Where was that located, where was that backpack
24 located?

25 A That was located on the floor on the driver-side.

1 Q Front or back?

2 A I would have to look at the picture to make sure.

3 Q Well, let me show you State's Exhibit 43 that's been
4 moved into evidence.

5 A Okay, this is, this was money that was taken out of the
6 Wachovia bank sleeve.

7 Q Did you find any drugs in the car?

8 A No, ma'am.

9 Q None at all?

10 A No, ma'am.

11 Q You indicated that you also located two cell phones

12 ---

13 A Yes.

14 Q --- in the car that the victim was operating. Did -
15 what did you do with those cell phones? Did you give them to
16 anybody?

17 A After I just photographed them I gave them to
18 Investigator Mitchell.

19 Q Now, you indicated, you started indicating about some
20 kind of powder that you use, black magnetic powder and
21 something else. Could you go into a little bit more detail
22 about that?

23 A Sure. Whenever I process a vehicle I use basically - I
24 personally use two different powders. I like to use black
25 silk magnetic powder which what I like to tell people is it's

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1 basically when you're a kid you used to make the little
2 mustache with the guy with the little magnetic pin. That's
3 basically what it is with some black powder in it. That's
4 good for things like inside the vehicle like doors that kind
5 of have like a not such a - it's got like a porous surface
6 meaning it's got holes in it, tiny little holes and using
7 that magnetic powder it's easy to lift a print, to actually
8 show a print. When I use regular silk powder,
9 which is basically volcanic ash I like to use that on
10 smooth surfaces like the outside of a door, the outside of a
11 car, a mirror, anything that's really, really smooth
12 basically.

13 Q And how long have you been collecting prints?

14 A Ever since I started in crime scene. I was - I ended up
15 getting certified for AFIS in January of 2004.

16 Q What is AFIS?

17 A That's a computer system called the automatic
18 identification - finger identification system and whenever we
19 lift a print I put it through the computer. The computer
20 helps me out a little bit and then I - whenever a result
21 comes back as a match I personally have to match both of them
22 together and make a match of it.

23 Q And you pulled some prints from this particular vehicle;
24 is that correct?

25 A Yes, ma'am.

1 Q And before I get to those specific prints, in general
2 can you pull a print from any surface?

3 A Well, it depends on, you know, the circumstances. You
4 know, in a perfect environment if I put my fingerprint on
5 this table right here I would be able to lift it, but
6 environment like weather, you know, rain, heat, time, it gets
7 a little bit trickier.

8 Q And if a fingerprint is on an outside surface can you
9 tell how long it's been there?

10 A No, just from experience you kind of know when you -
11 when there's a fresh fingerprint and when there's not. When
12 I mean fresh I don't mean - I don't know if it's there - been
13 there for two days, three days, a week but when you get a
14 partial print and it comes out kind of - it's very hard to
15 see sometimes you can indicate that it's been there for a
16 really long time. It just depends on weather, like, you
17 know, just the environment basically.

18 Q And if it's a fresh print does it show any
19 differently?

20 A When it's fresh it - you kind of - you can naturally
21 tell from experience basically. If I put down, if I put my
22 fingerprint on there right now and I wiped it I'd be like,
23 wow, that - you know, and I did that yesterday that would
24 come back just the same as it did today most of the time. It
25 just depends and just from experience you kind of just get

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- 1 that feeling that it's fresh or it's not fresh, and it just
2 comes from time.
- 3 Q So, is it more visible when it's fresher?
- 4 A Yes.
- 5 Q More detailed?
- 6 A And more detailed, yes.
- 7 Q But that, that's pretty much the significant thing that
8 you look at?
- 9 A Right.
- 10 Q The detail and to tell whether it's been a long time ago
11 print or recent?
- 12 A Right, and I don't have a - and I can't, you know,
13 process something and say it's been there for a week. It's
14 just from experience you can tell that if it was there from a
15 day or from a week or so like that.
- 16 Q And is it possible for people to be in a car and not
17 leave a print?
- 18 A Of course.
- 19 Q And you pulled two prints from the vehicle Mr. Salter
20 was riding in; is that correct, driving?
- 21 A Yes, ma'am.
- 22 Q And I want you to look at State's Exhibit for
23 identification 21 and State's Exhibit for identification 22.
24 Just tell me if you recognize those?
- 25 A Yes, ma'am.

- 1 Q And what are those?
- 2 A These are two prints that I lifted off the passenger
3 side door of the Mustang on the outside portion.
- 4 Q And what's on the back of those?
- 5 A They're just some information that I write down from my
6 notes just basically the date, the type of crime, the victim,
7 the prints where I lifted them from and there's a little box
8 for a sketch that I sketch on just to show and put an X where
9 the print was located from.
- 10 Q And that sketch is for your purposes?
- 11 A Just for my purpose, yeah. It's just to remind me where
12 I found it.
- 13 Q And the back of those items is that what you pull up, is
14 that the print that you pull off?
- 15 A Yes, ma'am, these are both actual prints that were taken
16 off the, off the vehicle.
- 17 Q And tell me how they get on those cards. How did you
18 lift it off of the car itself?
- 19 A Basically, it's real simple. After you put the powder
20 on it just comes up and I just take fingerprint tape and just
21 roll it over the print, you peel the tape off and the print
22 comes off on the print, on the tape and I put it on a white
23 card.
- 24 Q Is that the normal process for this?
- 25 A Yes, ma'am.

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1 MS. ELDER: Your Honor, at this time the State would
2 move into evidence State's Exhibit 21 and 22.

3 MR. BARR: The Court's indulgence, Your Honor.

4 THE COURT: All right.

5 MR. HAZZARD: No objection on behalf of Defendant
6 Mokeia Hammond.

7 MR. BARR: No objection on behalf of Richard
8 Niles.

9 THE COURT: All right, State's Exhibits 21 and 22
10 admitted into evidence without objection.

11 (Whereupon, State's Exhibit Numbers 21 and 22
12 [Fingerprints Cards] admitted into evidence and appropriately
13 marked.)

14 BY MS. ELDER:

15 Q If you will take a look at State's Exhibit 22 could you
16 tell me where that print was pulled from?

17 A Yes, ma'am, this was taken out of the passenger's side
18 door on the outside portion. It was pretty much at the
19 corner of the door below the handle.

20 Q Okay, and do you know if that contains sufficient detail
21 to have a match made?

22 A No, ma'am, this is, no, there's no ridge detail at all
23 on here.

24 Q So, that one would not be used for comparison?

25 A No, ma'am.

1 Q If you'll look at State's Exhibit 21 could you tell me
2 where that print was lifted from?

3 A This was also taken out of the passenger side door on
4 the outside. This was a little bit to the right of that
5 first one below that door handle above the window and, yeah,
6 then that was on the outside portion and this has got pretty
7 good ridge detail on it.

8 Q All right, and do you recall lifting that print?

9 A Yes, ma'am.

10 Q Did it appear to be fresh to you when you pulled it?

11 A Yes, in fact, you can really tell pretty good - I don't
12 want to get into the science of it but just looking at it you
13 can tell by the Delta and seeing all the ridge detail inside
14 that, just that little area right there that shows quite a
15 bit of detail in there.

16 Q And without telling me who it was matched to do you know
17 if it contains sufficient detail for it to have made a
18 positive identification?

19 A Absolutely.

20 MS. ELDER: One moment, Your Honor.

21 THE COURT: All right.

22 MS. ELDER: No further questions of this witness,
23 Your Honor.

24 THE COURT: All right, Mr. Barr.

25 MR. BARR: Thank you, Your Honor.

John Iannone - Cross by Mr. Barr

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1 CROSS EXAMINATION

2 BY MR. BARR:

3 Q Officer Iannone, did I get your name right, Iannone?

4 A Yes, sir, Iannone.

5 Q Iannone.

6 A It's a tough one.

7 Q Okay, now, you say that you have been doing crime scene
8 investigations for how long now?

9 A About five and a half years.

10 Q About five and a half years. How long have you been in
11 police work?

12 A Will be 11 years in June.

13 Q Eleven years in June, okay. Okay, now, the - you talked
14 about certification with AFIS?

15 A AFIS.

16 Q AFIS.

17 A Uh-huh.

18 Q Would you explain a little more about that?

19 A Sure, whenever you get a print off any surface a couple
20 of us in the crime scene unit are certified to use the AFIS
21 machine, the computer. When we get a print we put it in the
22 computer. We actually blow it up in a camera. We take a
23 picture of it. That's altogether with the computer system.
24 You take a picture of it and you have to go ahead and
25 indicate any kind of bifurcations, any ridge detail that you

1 see in the print and that's just basically pointing them.
2 You've got to just put an arrow on it and show each kind of
3 ridge or bifurcation or ridge endings that are in the print,
4 which you only need a couple of them, but I like to get, you
5 know, probably about six or seven of them to really get a
6 good result. After you go ahead and indicate the ridge
7 detail basically you hit enter. The computer circulates and
8 says, figures out what kind of looks like it. The computer
9 takes out the 30 best prints they think it is that matches
10 this - that print and then they'll give you a score of, you
11 know, if it's 5000 that means like, "Oh, wow, we probably
12 have a match," or it can go down to 1500 which isn't really
13 a good score. Most of the time if it's the top I look at the
14 top ten prints. I look at all of them but I really
15 concentrate on the top ten of them because those are the most
16 ones, biggest chances that they're going to be it and then
17 you have to, you have to indicate, you have to match the
18 print that they show you and the print that you lifted. So,
19 it is very time-consuming. I can only do like three at a
20 time or my eyes go nuts, but you really got to - you can't
21 get it wrong. You've got to make sure that you - each ridge
22 detail matches the print that was lifted.

23 Q Okay, now, so, your certification is it in the use of
24 the computer or lifting the print or both?

25 A To use the machine.

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1 Q To use the machine.

2 A Yes, sir.

3 Q So, you're certified to use the machine but you don't
4 have any special training with regard to lifting the print?

5 A Well, I have five and a half years of lifting prints and
6 over 88 hours of training on fingerprints.

7 Q Okay, but your certification is on the use of the
8 machine and not the lifting of the print.

9 A Yes, sir.

10 Q Okay, let me ask you this, did you lift any other prints
11 from either outside or inside this vehicle?

12 A Just the outside.

13 Q Just the outside?

14 A Uh-huh.

15 Q Did you check the inside?

16 A Yes.

17 Q Okay, and you found no fingerprints on the inside of the
18 vehicle?

19 A There was no good ridge detail, no, nothing.

20 Q Okay, not even Mr. Salter's?

21 A No, sir.

22 Q So, what you're saying is the steering wheel, the dash,
23 the console, there's nothing inside the vehicle that would
24 have produced a good print on the inside of the vehicle?

25 A I didn't get any.

1 Q You didn't get any?

2 A Huh-uh.

3 Q Now, this certification how does it work? How often do
4 you have to recertify?

5 A You don't.

6 Q You don't?

7 A No, once you get certified - well, let me take that
8 back. I'm not sure if you get recertified. I - if - I don't
9 know if you're away from it for that long you need to find
10 out if you need to do it again, but I mean, I do - I use the
11 AFIS print probably three times a week. So, I'm in there
12 quite a bit.

13 Q What you're saying is there's no regulation in terms of
14 how often you have to certify that you can actually do this
15 properly?

16 A That's right.

17 Q You don't have a card stating to say I'm AFIS certified?

18 A I do have a certificate, yes, but it doesn't have an
19 expiration date on it.

20 Q But it doesn't have an expiration date on it?

21 A No, sir.

22 Q So, if I asked you now what is your - for your current
23 AFIS card it would just say you once took this training and
24 there are no regulations as to how often you have to do it,
25 when that you have to do it or whether or not you are even

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1 keeping current or taking courses involving doing this?

2 Q Well, when I say when I got the certificate you actually
3 have to pass a test to, to operate the machine, which is
4 basically they give you 30 prints and you have to get every
5 single one right within a couple of hours.

6 Q And you took this test one time?

7 A In January.

8 Q What year?

9 A 2004.

10 Q 2004 and you have not taken the test since, there's been
11 no follow-up certification and there's actually no follow-up
12 certification in terms of being able to do this test
13 properly?

14 A There is no test, but I mean, I use the machine a couple
15 of times a week.

16 Q Okay, do you keep a log on how often you use the
17 machine?

18 A It's on the machine.

19 Q It's on the machine. Is it - do you have anything that
20 would print that out or do you have anything here that says
21 that you, in fact ---

22 A I don't personally have anything on me, no.

23 Q All right, all right, now, regarding the money that you
24 said you got out of the vehicle, how much money did you get?

25 A I got 20 20-dollar bills that was located in a Wachovia

1 envelope. I got 7 50-dollar bills, 18 100-dollar bills and
2 that's about it. They were - the 20 20-dollar bills was in
3 the Wachovia envelope and the rest were in a brown paper bag.

4 Q And where was the money located in the vehicle?

5 A It was in the backpack.

6 Q In the backpack you said was on the driver's side?

7 A It was located on the floor on the driver's side.

8 Q On the floor, so, it was under ---

9 A I would have to look at the photo and find out where it
10 was if you don't mind me looking real quick.

11 Q Go ahead, take your time.

12 A It was definitely in the back, in the backseat because I
13 took a photo of the front before I took anything out and it
14 wasn't in the, in the front, in the front area. So, it was
15 in the back.

16 Q So, your testimony now is it was in the back and not in
17 the front?

18 A Right, I didn't - yeah.

19 Q Okay, was there anything obstructing it or it was just
20 there?

21 A It was, yeah, it was -- I have it in parentheses that it
22 was located on the floor on the driver's side.

23 Q Okay.

24 A So.

25 Q Okay, okay, now, on direct examination you said you did

John Iannone - Cross by Mr. Barr

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1 not get any drugs. Did you get any drug paraphernalia?

2 A It doesn't say in my notes. So, I don't, I don't think
3 I did.

4 Q You don't - you all haven't gotten any kind of drug
5 paraphernalia, okay, and got two cell phones?

6 A Yes, sir.

7 Q Now, would you have processed those cell phones or would
8 they have gone to Officer Mitchell?

9 A I gave them right to Officer Mitchell.

10 Q Okay, and so, any processing of the cell phones or
11 numbers or that type of thing, contacts?

12 A Right, they would have ---

13 Q Recent contacts ---

14 A --- they would have taken care of that, yes, sir, uh-
15 huh.

16 Q Okay, all right, now, Exhibit 23 that's spent
17 cartridges?

18 A Uh-huh.

19 Q Okay, and how many were there?

20 A I got, I collected six altogether.

21 Q Six, okay.

22 A Yeah.

23 Q All right, all right, and you testified ---

24 A When you're saying, I'm sorry, when you're saying number
25 23 you're just saying the photo number 23?

1 Q No, I think there was a - actually a - I think State's
2 Exhibit Number 23.

3 A Okay, okay, the bag that's filled with all of them in
4 there.

5 Q If you give me a minute I'll try to locate it here.
6 We've got a lot of stuff. This is 24. I think this is 23.
7 I may be wrong in numbering. I believe it's 25.

8 A Okay, I just wasn't sure if you meant the picture.
9 That's all.

10 Q Okay, okay.

11 A Yeah.

12 Q Is that ---

13 A Okay, you're talking about the bullets or the casings?

14 Q Right, the casings.

15 A Yeah, these are bullets.

16 Q Those are bullets. The - you testified that there were
17 I believe we had casings and I believe these are the casings?

18 A Okay.

19 Q I believe that is 23?

20 A Okay, you're right, all right.

21 Q Okay, Exhibit 23. How many casings?

22 A There is six casings.

23 Q Six casings, so, spent cartridges six?

24 A Yes, sir.

25 Q Okay, now, can you actually look at the fingerprint and

John Iannone - Cross by Mr. Hazzard

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1 determine the age, the actual age of the fingerprint?

2 A No.

3 Q Thank you, sir. Thank you.

4 THE COURT: All right.

5 MR. BARR: Thank you.

6 THE COURT: Thank you. Mr. Hazzard.

7 MR. HAZZARD: The Court's indulgence, Your Honor.

8 THE COURT: All right.

9 CROSS EXAMINATION

10 BY MR. HAZZARD:

11 Q, Good afternoon, Officer.

12 A How you doing?

13 Q Now, you're listed as a CSS. That would be, what, a
14 crime scene specialist?

15 A Yes, sir.

16 Q Okay, and you processed the parking lot at the Best Buy;
17 is that correct?

18 A Yes, sir.

19 Q And you processed the white Mustang?

20 A Yes.

21 Q Okay, now, you've been a police officer for 11 years and
22 been a crime scene specialist for approximately five years;
23 is that correct?

24 A Yes, sir.

25 Q Okay, and you processed all of this stuff. Now, in that

1 processing any evidence you come across indicating that
2 Mokeia Hammond held a gun?

3 A No, sir.

4 Q Any evidence you come across indicating that Mokeia
5 Hammond pointed a gun at anybody and fired?

6 A No, sir.

7 Q Any evidence indicating that Mokeia Hammond killed
8 anyone?

9 A No, sir.

10 Q Any evidence Mokeia Hammond robbed anyone?

11 A No, sir.

12 Q All right, thank you. Now that we got that out of the
13 way, with regard to the money found in the backpack you've
14 got it broken down by denomination; correct?

15 A Yes, sir.

16 Q Okay, and if you would I'd direct your attention to that
17 portion of your incident report. Do you see where you have
18 it broken down by denomination?

19 A Yes, sir.

20 Q Because I want us to be very clear on this amount. What
21 is the first denomination you have, sir?

22 A I have 20 20-dollar bills in a Wachovia envelope.

23 Q Okay, 20 20-dollar bills. So, that would be \$400;
24 correct?

25 A Yes.

John Iannone - Cross by Mr. Hazzard

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- 1 Q Okay, and the next denomination, please?
- 2 A We've got one brown paper bag containing - wait a
3 minute. Okay, yeah, the 20 20-dollar bills again was in the
4 Wachovia envelope, okay.
- 5 Q Okay.
- 6 A In the brown paper bag contained one 20-dollar bill.
- 7 Q Okay.
- 8 A 7 10-dollar bills.
- 9 Q Okay.
- 10 A 2 5-dollar bills.
- 11 Q Okay.
- 12 A And then I have in parentheses inside Nautica backpack.
13 Okay.
- 14 Q Okay.
- 15 A Okay, and then ---
- 16 Q Okay, hold on a second. 1 20-dollar bill, 7 10-dollar
17 bills, 2 5-dollar bills, that's a total of a hundred;
18 correct? Twenty plus 70 plus ten.
- 19 A Okay.
- 20 Q Okay, is that correct, sir? I'm not trying to put words
21 in your mouth. I want to make sure we're on the same page.
22 Take your time.
- 23 A I got you. Yeah, we're - okay, a hundred, yeah.
- 24 Q Okay, so, that's 400 first and then that hundred, okay,
25 now, what are the other denominations, please?

- 1 A We've got 7 50-dollar bills.
- 2 Q 7 50-dollar bills. So, that would be 350; is that
- 3 correct?
- 4 A Right.
- 5 Q Okay, and on from there?
- 6 A Then we've got 18 100-dollar bills.
- 7 Q 18 100-dollar bills. So that would be \$1,800; correct?
- 8 A Right.
- 9 Q Okay, so, we've got 400 and then 100, add that together
- 10 that's 500, then add the 350 to that, that's 850, and then
- 11 add the 1800 on top of that, 1800 plus 850 would be 2650;
- 12 right?
- 13 A Okay.
- 14 Q Okay, all right, so, that's the amount - is that the
- 15 amount of money that was found inside Mr. Salter's car when
- 16 you processed it?
- 17 A Yes, sir.
- 18 Q Okay, now, do you have - in your, in your experience in
- 19 your 11 years as a law-enforcement officer were you ever in
- 20 the military, sir?
- 21 A No.
- 22 Q Okay, so, in your 11 year experience as a
- 23 law-enforcement I take it that you have had some training
- 24 with regard to firearms; correct?
- 25 A Yes, sir.

John Iannone - Cross by Mr. Hazzard

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- 1 Q Okay, and that's something that does require
2 recertification every now and then; correct?
- 3 A Yes, sir, on my own weapon.
- 4 Q Okay, now, the 40 caliber weapon that you found in
5 Mr. Salter's car ---
- 6 A That's correct.
- 7 Q --- can you tell us how many bullets would fit in the
8 clip in the magazine?
- 9 A I believe there was - I'm not sure exactly how much. I
10 think it was ---
- 11 Q Well, let me stop you right there then.
- 12 A Okay.
- 13 Q Because I don't want you to guess or speculate.
- 14 A Right.
- 15 Q If you can't tell by the make and model and by looking
16 at the clip then that's fine.
- 17 A Okay.
- 18 Q I'll withdraw the question.
- 19 A That's fine.
- 20 Q So, you're not, you're not exactly sure.
- 21 A I'm not exactly sure how many were in that magazine,
22 that could hold that magazine. I can say though most of the
23 magazines will have a number on the magazine ---
- 24 Q Uh-huh.
- 25 A --- and will tell you what the limit is for that

1 magazine.

2 Q Okay, if you look at this one can you check and see if
3 it says or if you can make out on there and, I'm sorry, hold
4 that back for me just one second.

5 MR. HAZZARD: We're referring to State's Exhibit Number
6 24, Your Honor ---

7 THE COURT: All right.

8 MR. HAZZARD: --- that I've handed the witness.

9 A Can I open it up just so I can - I mean, I can ---

10 THE COURT: Any objections?

11 MS. ELDER: No, Your Honor, it's not fungible.

12 THE COURT: All right.

13 A Okay, it's got the number ten on there. So, when you
14 actually see the bullet in the hole next to the number ten
15 that means that it shows that it will hold ten.

16 Q Okay, so, it's your understanding that that clip or that
17 magazine would hold ten bullets.

18 A Ten, plus one in the chamber. So ---

19 Q Plus one in the chamber.

20 A Right.

21 Q So, a total of 11?

22 A Right.

23 Q All right, thank you so much. Now, I believe your
24 report indicated that there were six 40-caliber shell casings
25 recovered inside the Mustang; is that correct?

John Iannone - Cross by Mr. Hazzard

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1 A Yes, sir.

2 Q Okay, now, help me out because I don't own a gun. For
3 the shell casing to be in the car would that indicate that a
4 round had been fired and the gun had ejected the shell
5 casing?

6 A Yes, sir.

7 Q Okay, so, then we have at least six shots and six shell
8 casings and then I believe you also indicated that you found
9 four bullets, three in the clip and one in the chamber for a
10 total of four?

11 A Yes, sir.

12 Q Okay, so, we know we've got six shots fired at least;
13 right?

14 A Right.

15 Q And possibly a seventh?

16 A Right, it could have, anything could have happened with
17 that, yeah.

18 Q Could have been, maybe not. Might have only been ten in
19 there.

20 A Right, right.

21 Q Okay, now, you indicated you found two cell phones and
22 one is a tracfone. Do you know what a tracfone is, sir?

23 A I believe it's one of those you just buy; right?

24 Q Okay, the kind that where you buy it like you can buy it
25 at a convenience store?

- 1 A Right.
- 2 Q And then you pay for the minutes as you go?
- 3 A Right, correct.
- 4 Q Okay, and that's in your experience as a police officer
- 5 that would be the type of phone that somebody would have and
- 6 they have no contract with Verizon or AT&T or anybody else
- 7 and basically it's the type of phone that could not be
- 8 traced; right?
- 9 A That I'm not sure if it was traced or not.
- 10 Q Okay, well, I mean, could it be traced? I mean, if I
- 11 buy it from the Costco and then I'm going and getting cards
- 12 and putting minutes on it I've not entered into a contract;
- 13 right?
- 14 A I'm not sure.
- 15 Q Not sure.
- 16 A I have no ---
- 17 Q Okay, and the other phone was a Verizon phone?
- 18 A Yes, sir.
- 19 Q More of a standard phone like you would have a contract
- 20 that could be traced to you; right?
- 21 A Yes, sir.
- 22 Q Thank you.
- 23 A I'm supposing, yeah.
- 24 Q Okay, now, you indicated that - your pictures indicate
- 25 that Mr. Salter's gun was found under the floor mat; correct?

John Iannone - Redirect by Ms. Elder

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1 A Yes, sir.

2 Q Okay, now, that's not something where based on your
3 knowledge, training and experience and observation, that's
4 not somewhere it fell under the floor mat. It had to have
5 been placed there; correct?

6 A Most likely, yes, sir.

7 Q And is it your testimony to this jury, sir, that there
8 was only one recoverable fingerprint on that entire car?

9 A Yes, sir.

10 Q All right, no further questions.

11 THE COURT: Anything on redirect?

12 MS. ELDER: Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. ELDER:

15 Q Officer Iannone, they were - the attorneys were asking
16 you on cross about the location of the Nautica bag?

17 A Right.

18 Q And you've been referring to your notes; is that
19 correct?

20 A Yes, sir.

21 Q And why are you referring to them ---

22 A Just so I can remember what - I mean, it was two years,
23 three years ago, so.

24 Q And does it help you to do that?

25 A Yes.

1 Q And did you in addition to doing your crime scene report
2 also prepare an incident report?

3 A Yes, if - the only time I do an incident report is if I
4 collect any kind of drugs or anything like that.

5 Q Do you know if you prepared an incident report in this
6 case?

7 A I don't recall.

8 Q Okay, if I showed you one would it help you remember?

9 A Yes.

10 MS. ELDER: I'd mark this, Your Honor, just for
11 identification.

12 (Whereupon, State's Exhibit Number 58 [Incident Report]
13 marked for identification.)

14 BY MS. ELDER:

15 Q If you'll look at what's been marked State's
16 identification Number 28 [sic].

17 A Yes, okay, it's coming back.

18 Q And I believe there's two pages; is that correct?

19 A Yes; do you want me to read this or ---

20 Q No, I'm just going to ask you some questions.

21 A Okay, let me ---

22 Q Let me just ask you ---

23 A Okay.

24 Q --- would it help you to look at that to refresh your
25 memory?

- 1 A Absolutely.
- 2 Q Looking at that, did you identify where the black
- 3 Nautica bag was located?
- 4 A Yes, ma'am.
- 5 Q Where was that located?
- 6 A It was located in the back floor on the driver's side.
- 7 Q So, it was located behind the driver's seat?
- 8 A Yes, ma'am.
- 9 Q In the back?
- 10 A Yes, ma'am.
- 11 Q And what was in the Nautica bag in the back seat behind
- 12 the driver?
- 13 A A large amount of money.
- 14 Q Okay, and when you - you're talking about some of the
- 15 money was in a Wachovia envelope?
- 16 A Yes.
- 17 Q And some of it was in a brown paper bag?
- 18 A Yes, ma'am.
- 19 Q Was it all in that Nautica bag?
- 20 A Yes.
- 21 Q Okay, and just one quick follow-up question about the
- 22 fingerprint, do fabric materials affect being able to pull a
- 23 fingerprint?
- 24 A Yeah, absolutely.
- 25 Q So, if you have cloth seats can you pull a fingerprint

1 off of cloth seats?

2 A No, I have never been able to do that.

3 Q And steering wheels?

4 A Steering wheels is, again, in the five and a half years
5 I've done it I was never able to get something off a steering
6 wheel. You know, people watch that show CSI and people get
7 so involved in it and it's just not the real world, trust me.

8 Q And let me ask you, if I am constantly touching
9 something how does that affect that ability to identify that
10 print?

11 A Well, each time you hit, hit the same area your ridges
12 on your fingerprints are going to go over the other one. So,
13 it's just going to look like a grid table basically. You're
14 not going to be able to indicate where the ridge endings end,
15 where the bifurcation start, where the Delta begins and all
16 that.

17 MS. ELDER: No further questions, Your Honor.

18 THE COURT: All right.

19 RE CROSS EXAMINATION

20 BY MR. BARR:

21 Q Officer Iannone, now, let's, let's be clear. You said
22 you got this fingerprint from the door handle?

23 A Above the door handle.

24 Q Above the door handle?

25 A Just below the window, just where the window and the

- 1 actual metal of the door meet, so, just underneath that.
- 2 Q And it's a single print?
- 3 A Yes.
- 4 Q Do you know whether it's thumb or index finger?
- 5 MS. ELDER: Your Honor, I'm objecting. This exceeds
- 6 the scope of recross.
- 7 THE COURT: I think this was an issue brought up by
- 8 Mr. Hazzard. So I'm going to allow Mr. Barr.
- 9 A Can you just repeat it?
- 10 Q Is it just a single print?
- 11 A It's a partial print. Exactly what finger it is I'm not
- 12 sure. After I lifted the print I gave it to another officer,
- 13 Corporal Allen, my supervisor, who actually used the AFIS
- 14 machine that day. So, I didn't actually use the AFIS
- 15 machine.
- 16 Q Do you know anything about your supervisor's ability to
- 17 use AFIS?
- 18 A She taught me.
- 19 Q Okay, okay, so, what, in fact, is you didn't actually
- 20 process this print?
- 21 A I processed it by using the powder, lifted it, put it on
- 22 a card. Then I was done with it. Then I just write my
- 23 report and then she went ahead and did the prints.
- 24 Q But you said your certification was in use of the
- 25 machine?

1 A Right, there's like four of us that are certified.
2 Q And you're vouching for the print ---
3 A Not that particular print.
4 Q So, you didn't process this print?
5 A Not on the machine, no, I did not.
6 MR. BARR: Thank you, Sir.
7 THE COURT: All right, you may step down.
8 MS. ELDER: Your Honor, we would ask this witness be
9 excused.
10 THE COURT: Any objection?
11 MR. BARR: No objection, Your Honor.
12 MR. HAZZARD: No objection on behalf of Defendant
13 Hammond, Your Honor.
14 A I'm sorry. I thought you meant me to go.
15 THE COURT: No, no, I did.
16 A Okay, okay. I'm sorry.
17 THE COURT: And you're excused to leave if you wish.
18 Thank you.
19 MS. ELDER: Your Honor, can we approach for
20 scheduling?
21 THE COURT: Yes.
22 (Whereupon, a bench conference was held in the presence
23 but out of the hearing of the jury.)
24 THE COURT: All right, ladies and gentlemen it's five
25 till five. It's a good time for us to break for today. We -

1 I'll ask that you be back tomorrow morning, be in the jury
2 room by 9:30. Hopefully, we can get started right at 9:30.
3 So, please be back in the jury room by 9:30. I caution you
4 again do not discuss this case with anyone, conduct any
5 independent investigations, do not even discuss the case
6 among yourselves. Do not watch any newspaper accounts, read
7 any newspaper accounts, watch any TV accounts or anything
8 about this case. If you have taken notes please leave all
9 pads and pencils there in the jury box and we'll redistribute
10 them to you tomorrow when you return. Hope everyone has a
11 nice evening and thank you. You're excused for the remainder
12 of the day.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: All right, anything before we recess for
16 the evening?

17 MR. RICHARDSON: Nothing from the State, Your Honor.

18 MR. BARR: Nothing from the Defendant Niles, Your
19 Honor.

20 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
21 Your Honor.

22 THE COURT: All right, we'll stand in recess,
23 reconvene at 9:30 tomorrow morning.

24 OFF THE RECORD

25 (On the record, March 11, 2009.)

26

1 THE COURT: Thank you very much. Please be seated.

2 All right, as we discussed in chambers Juror Number 243,
3 Meghan Marinacci, she has a very ill aunt who I understand
4 was taken off, according to the bailiff, she came in very
5 upset this morning. They took her aunt off life support last
6 night and according to the bailiff she doesn't feel like she
7 can proceed. So, I'm inclined to believe that we're going to
8 need to seat one of the alternates. Do you all want me to
9 bring Ms. Marinacci in or do you want me to just allow her to
10 be excused and we go ahead and seat an alternate? I'll do
11 whatever you all want.

12 MR. RICHARDSON: Your Honor, of course, the State would
13 waive her presence.

14 THE COURT: Okay, now, I just want to make sure
15 everybody knows I haven't spoken with her and I'm relying on
16 the bailiff as to the condition but understand that you say
17 she's pretty upset.

18 BAILIFF: Yes, sir, she's very upset.

19 THE COURT: Okay.

20 MR. RICHARDSON: Certainly, Your Honor.

21 THE COURT: Any objection?

22 MR. BARR: Your Honor, on behalf of Defendant Niles
23 we would not require her to be present, ask she simply be
24 excused, one of the alternates placed.

25 THE COURT: All right, sir.

1 MR. HAZZARD: Your Honor, on behalf of Defendant
2 Hammond in order to protect the record and make sure there's
3 absolutely no issue I would request that the Court speak with
4 her briefly in chambers, make the verification directly ---

5 THE COURT: Okay.

6 MR. HAZZARD: --- so that there's no question for the
7 alternate - for the bailiff whatsoever.

8 THE COURT: All right, and I understand that.

9 MR. HAZZARD: But as far as having her brought in open
10 court, no, sir.

11 THE COURT: All right, all right, well, I'll step
12 back in chambers. It'll take me about five minutes. Let me
13 step back in chambers and speak with Ms. Marinacci right
14 quick. Okay?

15 MR. HAZZARD: Thank you, Your Honor.

16 THE COURT: All right, thank you very much. We'll
17 stand in recess for about five or ten minutes.

18 OFF THE RECORD

19 (On the record.)

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Thank you very much. Please be seated.
23 All right, I have spoken in chambers with Ms. Marinacci,
24 Juror Number 243 and she seemed to be doing remarkably well
25 but you could certainly tell anytime a mention of her aunt

1 came up she started getting pretty emotional and having
2 trouble and as she said it was one of these right now she
3 feels fine but all of a sudden in the middle of someone's
4 testimony or, you know, she didn't know how long she could
5 maintain her composure even though she was doing fine now.
6 So, I think it'd probably be best to go ahead and relieve her
7 from any further duties for jury service and seat her with an
8 alternate. Now, I understand - let's see, our two
9 alternates, Mr. Swanson, Juror Number 379, and Mr. Conrad,
10 Juror Number 76, we need to have a - do you all do that by
11 the computer or just put names in a hat and pull it. We've
12 got to do it by ballot rather than ---

13 THE CLERK: Usually we just take them in the order
14 they were pulled.

15 THE COURT: Okay, I think for General Sessions we /
16 have to do it by ballot is my understanding. In other words,
17 it's not in the order they were chosen but by a random
18 selection between the two is the way they've told us. I'll
19 do it however you all want to do it.

20 MS. ELDER: We've always done it one and two.

21 MR. HAZZARD: But if it's got to be random, the clerk
22 can write them down on a piece of paper and your law clerk or
23 anyone you designate can reach in, pull one out, Judge.

24 THE COURT: Okay, we had this issue come up. It was
25 a question among a lot of the circuit judges earlier and I

1 think by statute in a Common Pleas case, civil case it's in
2 the order they're chosen. In General Sessions you put the
3 alternates in a hat and you draw it at random is my
4 understanding. Let's write Mr. Swanson, Juror Number 379,
5 Mr. Conrad, Juror Number 76.

6 THE CLERK: You want me to read it out loud? Mr.
7 Conrad.

8 THE COURT: All right, when we bring in the jury
9 we'll seat Juror Number 76, Mr. Conrad, in place of
10 Ms. Marinacci; okay. You found something that said I was
11 wrong?

12 MS. ELDER: Oh, no, no, sir.

13 THE COURT: Okay.

14 MS. ELDER: I'm sorry.

15 THE COURT: All right, anything before, from the
16 State before we bring in the jury?

17 MS. ELDER: No, sir, Your Honor.

18 THE COURT: All right, anything from the Defense?

19 MR. HAZZARD: Okay, on behalf of the Defense, Your
20 Honor, we want to be, we want to be very clear as to the
21 charges that can be used for impeachment purposes in case Mr.
22 Moore takes the stand. So, I wanted to verify that with the
23 Court.

24 THE COURT: All right, I have felony possession of
25 cocaine is admissible and I don't know the proper name,

1 maintaining a place of.

2 MR. HAZZARD: Maintaining a drug house.

3 THE COURT: Is that the name of it, well, what is the
4 name of the crime, maintaining a place where drugs are used
5 or something.

6 MS. ELDER: A controlled substance.

7 MR. BARR: Maintaining a place for controlled
8 substance.

9 THE COURT: Maintaining a ---

10 MS. ELDER: Maintaining a place for controlled
11 substance.

12 THE COURT: All right, maintaining a place for
13 controlled substances and then the present armed robbery and
14 involuntary [sic] manslaughter. Those are the ones that I've
15 got.

16 MS. ELDER: Yes, sir, Your Honor. The felony
17 possession of cocaine, just for records clarification, the
18 conviction date is July 13th, 2000. The maintaining any
19 place for a controlled substance the conviction date is
20 June 25th, 2003, and then the offenses for which he pled on
21 the 9th of this month armed robbery and voluntary
22 manslaughter.

23 THE COURT: All right, anything else before we bring
24 in the jury?

25 MS. ELDER: No, sir, Your Honor.

1 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
2 Your Honor.

3 MR. BARR: Nothing on behalf of Defendant Niles.

4 THE COURT: All right, let's bring the jury in.

5 BAILIFF: Judge, may I approach?

6 THE COURT: Yes.

7 (Bailiff and Court confer.)

8 THE COURT: All right, apparently the foreman has
9 asked to speak with me. So, I've asked the bailiff to go
10 have either the foreperson to write down what he needs on a
11 sheet of paper or let the bailiff know so she can let me know
12 what it's regarding.

13 (Bailiff and Court confer.)

14 THE COURT: The foreman had some concerns about and
15 hopefully it won't be an issue, the second alternate,
16 Mr. Swanson. Mr. Swanson had just made mention back in the
17 jury room talking about that he, can't remember who it was, a
18 friend or someone that was the victim of a shooting a couple
19 of years ago. Why he didn't bring that to the Court's
20 attention I don't know, but at this point in time he is still
21 just an alternate, and that was - that seemed to be the
22 foreperson's concern was that Mr. Swanson had more or less
23 inclined that this, kind of insinuated that he couldn't put
24 that event aside and be fair in this trial. So, he's just an
25 alternate at this point in time. Hopefully it won't be an

1 issue. If it comes time that we need to seat him we'll just
2 deal with it at that time. Anything from the State on that
3 matter or, well, we'll just hold off for right now (Jury
4 begins to enter courtroom.)

5 (Whereupon, the following takes place in the presence of
6 the jury.)

7 THE COURT: All right, ladies and gentlemen, welcome
8 back. As I'm sure you may have gathered by now, Ms.
9 Marinacci, her aunt has been extremely ill and I think had a
10 turn for the worse last night; and so, even though she wanted
11 to proceed we have excused her from further jury service in
12 this case, and as a result, Mr. Conrad, as the alternate, and
13 to let you know how that transpires. In General Sessions
14 Court what happens is whenever we need to use an alternate or
15 we need to replace a juror all of the alternate names are
16 just thrown into a hat and they are drawn at random; and so,
17 Mr. Conrad, you got the luck of the draw to be placed on the
18 jury. At this point in time, Mr. Swanson, you still are an
19 alternate in this case; okay? But we'll proceed. Mr.
20 Conrad, you are now part of the jury that will be deciding
21 this case and deliberating on this case at this time; okay?

22 All right, sir, the State can call their next witness.

23 MS. ELDER: Thank you, Your Honor, the State would
24 call Sergeant Tony Mitchell.

25 Whereupon, Anthony Mitchell was called to the stand,

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1 duly sworn by the clerk and testified as follows:

2 THE CLERK: Thank you. Please be seated. Please
3 state your full name and spell your last name for the Court.

4 MR. MITCHELL: My name is Anthony Mitchell, spelling of
5 last name is M-I-T-C-H-E-L-L.

6 DIRECT EXAMINATION

7 BY MS. ELDER:

8 Q Sergeant Mitchell, where are you employed?

9 A The Myrtle Beach Police Department.

10 Q And in what capacity?

11 A At this time a sergeant.

12 Q And back in April of 2007, were you employed at Myrtle
13 Beach?

14 A Yes, ma'am.

15 Q How long have you been there?

16 A At that time or now?

17 Q Now.

18 A Now, November will be 17 years, about 16 and a half.

19 Q Let's go back to 2007, what capacity were you serving at
20 that time?

21 A I was a violent crimes detective at that time.

22 Q And did you have an opportunity to participate in the
23 investigation involving the death of James Salter?

24 A I did.

25 Q And did you receive any items that were taken from his

1 vehicle?

2 A Yes, I did, a cell ---

3 Q What items were those?

4 A A cell phone.

5 Q And who did you receive those from?

6 A Officer Iannone.

7 Q He is in your crime scene?

8 A That's correct.

9 Q And what did you do when you received those phones from
10 the victim's vehicle?

11 A I examined the phone.

12 Q And what in particular did you examine?

13 A Incoming, outgoing phone calls.

14 Q And did you note or did you prepare a report in regards
15 to your, your part of the investigation?

16 A Yes, I did.

17 Q In particular dealing with this phone?

18 A In particular, yes, ma'am. I noticed in looking at the
19 phone, examining the phone that at 7:10 p.m. the victim made
20 a phone call that lasted about 30 seconds. Excuse me, could
21 I refer to my notes?

22 Q If it - will it help you refresh? Sure.

23 A Just want to make sure that I don't want to mistake the
24 incoming and outgoing phone calls. He received a phone call,
25 the victim received a phone call at 7:10 p.m. from someone

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1 that he had noted in his phone, listed in his phone as Rich
2 Boy Good.

3 Q Any other notations that you made?

4 A Yes, ma'am, from that time there was a 13-minute span
5 in between phone calls. He made another phone call. At that
6 time he made the phone call to this Rich Boy Good. That
7 phone call lasted about nine seconds.

8 Q And what time was that?

9 A That would have been about 7:23 p.m.

10 Q And that was the night just prior to his death; is that
11 correct?

12 A That, yes, ma'am.

13 Q Okay, and what did you do, did you do anything further
14 in conjunction with that cell phone?

15 A I, I took the victim's phone at that time and attempted
16 to call this Rich Boy Good at which time I didn't get an
17 answer from anyone but I did receive a recorded voice message
18 and that individual was a Rich Niles is the recorded, person
19 that recorded the message.

20 MS. ELDER: Your Honor, I have no further questions.

21 THE COURT: All right, Mr. Barr.

22 MR. BARR: I don't have any questions of this
23 witness, Your Honor.

24 THE COURT: All right, Mr. Hazzard.

25 MR. HAZZARD: Thank you, Your Honor.

1 CROSS EXAMINATION

2 BY MR. HAZZARD:

3 Q Sergeant Mitchell, whose name is the phone in that James
4 Salter had in his possession?

5 A Whose phone is the name, I, I could not tell you, sir. I
6 didn't, I didn't handle any of that part of the
7 investigation.

8 Q To your knowledge was that checked on by the police?

9 A I couldn't say for sure and I don't want to just assume
10 anything.

11 Q Fair enough, all right, then, but there's no question
12 then that Richard Niles' phone number was in James Salter's
13 phone?

14 A In the phone that I examined, yes, sir.

15 Q Yes, sir, as if they knew each other; correct?

16 A That's correct, sir.

17 Q Okay.

18 MR. HAZZARD: No further questions.

19 THE COURT: Anything on redirect?

20 MS. ELDER: No, sir, Your Honor. We would ask that
21 Sergeant Mitchell be excused.

22 THE COURT: Any objection?

23 MR. HAZZARD: No objections on behalf of Defendant
24 Hammond.

25 MR. BARR: No objection on behalf of Defendant

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1 Niles.

2 THE COURT: All right, sir, you're excused, free to
3 go. Thank you very much.

4 A Thank you, sir.

5 MS. ELDER: Officer Carol Allen.

6 THE COURT: All right, your next witness?

7 MS. ELDER: It's Officer Allen, Your Honor, Carol
8 Allen.

9 Whereupon, Carol Ann Allen was called to the stand, duly
10 sworn by the Clerk and testified as follows:

11 THE CLERK: Please be seated, state your full name,
12 spell your last name for the Court.

13 MS. ALLEN: Carol Ann Allen, A-L-L-E-N.

14 DIRECT EXAMINATION

15 BY MS. ELDER:

16 Q Officer Allen, where are you employed?

17 A With the Myrtle Beach Police Department.

18 Q How long have you been there?

19 A Approximately 15 years.

20 Q And were you - what capacity do you serve now?

21 A I am assigned to the investigations division as a
22 detective.

23 Q Back in April of 2007 what were you assigned to at that
24 time?

25 A I was assigned again in the investigations division. I

1 was supervisor over the crime scene unit.

2 Q And did you have an opportunity to participate in the
3 homicide investigation in relation to the death of James
4 Salter?

5 A Yes, ma'am.

6 Q And could you tell me what you did in regards to your
7 investigation?

8 A Yes, ma'am, the night of the incident I was called at
9 home by a crime scene officer that was already on scene. He
10 briefed me on what was going on and what he would be doing
11 and I stood by my residence until I got an update. There was
12 already a crime scene officer on duty and we knew there would
13 be an autopsy the next morning which I would be attending. I
14 attended the autopsy of the victim at which time I took
15 photographs. I recovered a bullet from the victim's person,
16 brought it back.

17 Q Let me stop you right there if I can. Now, is it common
18 for someone from crime scene to go to an autopsy involving a
19 homicide victim?

20 A Yes, ma'am.

21 Q Okay, and what is the general purpose for you doing
22 that?

23 A To collect any type of evidence from the victim's
24 person.

25 Q You don't perform the autopsy.

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1 A No, ma'am.

2 Q You just - you watch and photograph; is that correct?

3 A That's correct.

4 Q If you will take a look at what's been marked for
5 identification State's 102, 103, 104 and 105 and just tell me
6 if you can identify those.

7 A Yes, ma'am, I can identify these.

8 Q And what are those?

9 A These are photographs of a bullet that was removed from
10 the victim's person during the autopsy.

11 Q Okay, and could you take a look at what's been marked
12 State's Exhibit 106; can you identify that?

13 A Yes, this is - resembles the bullet that was removed
14 from the victim's person during the autopsy.

15 Q Okay, is that, in fact, the bullet that was removed?

16 A Yes, ma'am.

17 Q Okay, and did you package it or was it packaged in your
18 presence?

19 A It was packaged in my presence.

20 Q Okay, and then you took possession of it?

21 A Yes, I did.

22 MS. ELDER: Your Honor, at this time the State would
23 move into evidence State's 102, 103, 104, 105, and 106.

24 THE COURT: Any objections?

25 MR. BARR: Without objection with regard to

1 Defendant Niles.

2 MR. HAZZARD: No objection, Your Honor.

3 THE COURT: All right State's Exhibits 102, 103, 104,
4 105, and 106 are admitted into evidence without objection.

5 (Whereupon, State's Exhibits 102 through 106
6 [Photographs] admitted into evidence and appropriately
7 marked.)

8 BY MS. ELDER:

9 Q All right, I apologize for interrupting you,
10 Detective Allen. What did you do after you attended the
11 autopsy?

12 A Okay, once I returned to the annex I secured all the
13 evidence that I collected from the autopsy in the evidence
14 room. Some of the items would be sent to SLED for analysis
15 in days to come, and once I returned I assisted another crime
16 scene officer with processing the suspect vehicle. It was at
17 - towed to the annex from the location of where it was found.
18 I believe I started processing the outside of the vehicle
19 once the vehicle was already photographed and I was able to
20 recover several latent fingerprints from the vehicle.

21 Q All right, let's talk about the latent prints that you
22 discovered from the vehicle. How did you go about recovering
23 those prints?

24 A Okay, like I said, once the vehicle was photographed I
25 applied black silk powder. What that is is like ground up

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1 charcoal. I took a camel hair brush, applied a little bit of
2 powder and it made the fingerprint come out to be visible.
3 Once I observed the fingerprint I took some lifting tape,
4 which is like scotch tape except for it's more pliable. I
5 applied the tape over top of the fingerprint and lifted it
6 right off and I applied it to a backing card and once I
7 lifted the fingerprint I marked the back of the backing card
8 with the location where the fingerprint was lifted so there
9 wouldn't be any question of exactly where the fingerprint was
10 lifted from the vehicle.

11 Q And what did you do once you obtained the print?

12 A Okay, I transported them to our Myrtle Beach Police
13 Department. We have an AFIS system set up there. Basically
14 what AFIS is is an automated fingerprint identification
15 system. It's a very large database that houses fingerprints,
16 and what I did is I scanned each fingerprint card that had
17 sufficient detail through our scanner and what I mean by
18 sufficient ridge detail if you'll look at your fingers you'll
19 see like loops and whorls and lines. Okay, I have to have at
20 least five visible points to be able to search through AFIS.
21 Okay, and the ones that I could search what I do is I scan
22 them. Then I have to manually mark all the minutiae which is
23 like all the lines and loops and all that stuff and I send it
24 to the SLED database. SLED is where the large database is
25 housed and once that fingerprint goes to SLED the computer

1 automatically will pick out the like 20 fingerprints that
2 resemble the one that I sent and it'll send the fingerprint
3 back to me with all the similar fingerprints, and then I
4 would have to manually compare each of the fingerprints to
5 the latent that I have searched, and at that point I searched
6 all the visibly good fingerprints through AFIS and I wasn't
7 able to get any matches at that point.

8 Q And let me, let me - let's go back to your lifting of
9 the latents on the vehicle. I want to show you what's been
10 marked exhibits 107, 108, 109, 110 and 111. Do you recognize
11 those?

12 A Yes, these are fingerprints that I lifted from the Ford
13 Fusion, the suspect vehicle.

14 Q And how many times - tell me a little bit about your
15 experience with lifting prints.

16 A Okay, being assigned to the crime scene unit I took
17 several different classes on how to actually lift a
18 fingerprint, how to do comparisons, what to look for and I've
19 also had training running the AFIS system. I've been
20 certified through the South Carolina Law Enforcement Division
21 to actually be an AFIS operator.

22 Q Have you received - what kind of special training have
23 you received in regards to being an AFIS operator?

24 A Okay, I've had several basic fingerprint courses
25 teaching me the different patterns of fingerprints. You have

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1 loops, left and right loop. You have different kinds of
2 whorls and you have arches and then I went from there to
3 advance fingerprint courses, which mainly deals with the
4 comparison of fingerprints, and through the AFIS I was
5 trained, actual AFIS trainer came down and trained me on how
6 to use the AFIS machine and I've also been certified through
7 SLED to actually operate the AFIS machine.

8 Q And how long have you been analyzing fingerprints?

9 A Approximately five years.

10 Q And have you testified before in analysis of
11 fingerprints?

12 A Yes, ma'am, I have.

13 Q And have you been qualified as an expert in that area?

14 A Yes, I have.

15 MS. ELDER: Your Honor, at this time we would move
16 Investigator Allen to -- as an expert in latent print
17 analysis.

18 THE COURT: Any objections or questions?

19 MR. BARR: Your Honor, just some questions.

20 THE COURT: All right.

21 EXAMINATION (RE: QUALIFICATIONS)

22 BY MR. BARR:

23 Q I think it's Officer Allen; is that correct?

24 A That's correct.

25 Q How many times have you testified in the past as a

1 fingerprint expert?

2 A Three times, sir.

3 Q Just three times?

4 A Yes, sir.

5 Q And where did you testify those three times? Where was

6 that?

7 A Right here in General Sessions Court.

8 Q In General Sessions Court. Have you ever testified

9 before in a murder trial?

10 A Yes, I have.

11 Q How many times?

12 A Twice before.

13 Q Just twice, okay, when, when were those?

14 A The most recent one was approximately a month ago and

15 then the one before that was a couple of years ago.

16 Q So, all of those would be in the last two years?

17 A That's correct.

18 Q Okay, are there any requirements as far as maintaining

19 the certification you have either with AFIS or with SLED?

20 A No, there is no requirements. Once you're ---

21 Q No requirements at all?

22 A --- certified the first time's all they require.

23 Q The basic course that you took as well as the advanced

24 course you took how many classroom hours would they, would

25 that consist of?

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- 1 A Probably all total probably over 200 hours.
- 2 Q That's 200 hours of actually being in class or ---
- 3 A Yes, and actually doing comparisons.
- 4 Q And you said that the AFIS trainer came to Conway and
- 5 trained you personally?
- 6 A Yeah, Myrtle Beach where I work.
- 7 Q Myrtle Beach?
- 8 A Yes.
- 9 Q Okay, how long did that last approximately, what, what,
- 10 what was the length of that training?
- 11 A Approximately three days.
- 12 Q Three.
- 13 A Eight hours a day.
- 14 Q Okay, okay, and, and is there any objective tests that
- 15 you have to pass or anything to certify?
- 16 A Yes, SLED has a three-prong test that you must pass all
- 17 three prongs, basically pattern identification and then you
- 18 actually have to compare and match approximately 30 different
- 19 fingerprints.
- 20 Q Is there any differentiation between a person who is
- 21 certified to train and a person who is certified to actually
- 22 do this work?
- 23 A No, sir.
- 24 Q Okay, so, are you certified to train others to do this?
- 25 A Yes.

1 Q Okay, and did you have to do anything to qualify to
2 certify someone else to do this?

3 A No, once I was trained professionally by an actual
4 trainer that's all that I need to be able to train somebody
5 else.

6 Q Are these requirements written down anywhere?

7 A Not to my knowledge.

8 Q Okay, okay, so, we would have to accept on face value
9 whatever you said the training was for another individual?

10 A Correct.

11 MR. BARR: I have no further questions of this
12 witness.

13 THE COURT: All right, Mr. Hazzard.

14 MR. HAZZARD: No questions, Your Honor.

15 THE COURT: All right, I will find Investigator Carol
16 Allen to be qualified as an expert in the field of latent
17 print analysis.

18 Ladies and gentlemen of the jury, normally a person
19 cannot give an opinion testimony but can only testify as to
20 those matters that the witness personally saw, heard or
21 sensed by smell or something of that nature. However, an
22 exception to this restriction is provided for those witnesses
23 who are qualified as experts. Because of a person's
24 education or experience, they may be deemed to be an expert
25 in a given area, and in that regard, they are permitted to

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1 give an opinion or give their opinion in that area. Now,
2 this witness has been qualified as an expert in the field of
3 latent print analysis; and therefore, she will be entitled to
4 give an opinion in her testimony. Now, that does not mean
5 that you must accept the opinion but it is simply evidence
6 for you to use in any way you see fit. All right, Ms. Elder.

7 MS. ELDER: Thank you, Your Honor.

8 BY MS. ELDER:

9 Q All right, I want you to take a look also at State's
10 Exhibit 112 and do you recognize that?

11 A Yes, I do. That's another fingerprint that was lifted
12 from the Ford Fusion, the suspect vehicle.

13 Q And you did that?

14 A Yes, ma'am.

15 Q Okay.

16 MS. ELDER: Your Honor, at this time, I don't think I
17 have, I would like to introduce Exhibits 107, 108, 109, 110,
18 111 and 112.

19 THE COURT: Any objections?

20 MR. HAZZARD: Opportunity to review, please, Your
21 Honor.

22 THE COURT: All right.

23 MR. HAZZARD: Your Honor, the Defendant Hammond does
24 not stipulate to authenticity or correctness but we do not
25 question their admissibility as the witness can testify to.

1 THE COURT: All right.

2 MR. BARR: No objection.

3 THE COURT: All right, State's Exhibits 107, 108,
4 109, 110, 111 and 112 admitted into evidence without
5 objection.

6 (Whereupon, State's Exhibit Numbers 107 through 112
7 [Fingerprint Cards] admitted into evidence and appropriately
8 marked.)

9 BY MS. ELDER:

10 Q If you could take a look at those exhibits that we just
11 introduced and could you go through each one and tell me
12 where you lifted it from?

13 A Okay, all right, Exhibit Number 107 was lifted from the
14 front passenger door frame of the Ford Fusion. Exhibit
15 Number 108 was lifted from the driver's door frame by the
16 windshield. Exhibit Number 110 was lifted from the front
17 passenger door frame above the mirror. Exhibit Number 109
18 was lifted from the frame above the front passenger door.
19 Exhibit Number 112 was lifted from the rear door frame of the
20 driver side, rear door frame of the driver's side and Exhibit
21 Number 111 was actually lifted from a Tropicana bottle with
22 red liquid on the label.

23 Q And did you perform an analysis on any of those?

24 A Yes, I did.

25 Q And which ones did you analyze and compare?

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- 1 A Actually I analyzed all of them.
- 2 Q Okay, and could you also take a look at State's Exhibit
- 3 21. Did you also analyze that one?
- 4 A Yes, I did.
- 5 Q If you will look at what's been marked State's Exhibit
- 6 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101 and tell me if
- 7 you recognize those.
- 8 A Yes, these are actually those latents that I just talked
- 9 to you about except this is the blown up version.
- 10 Q Okay, and what's beside it?
- 11 A I'm sorry?
- 12 Q What are the two pictures of?
- 13 A Oh, these are the finger, actual fingerprint. Well,
- 14 these larger cards are the comparisons between the
- 15 fingerprint itself and a subject fingerprint that the
- 16 comparison was done to.
- 17 Q And matched?
- 18 A Yes.
- 19 Q And did you, did you prepare these?
- 20 A I prepared the matches themselves but I did not blow
- 21 them up.
- 22 Q Okay, are those accurate of what you analyzed?
- 23 A Yes, they ---
- 24 Q An accurate depiction of what you analyzed?
- 25 A Yes, they are.

1 MS. ELDER: Your Honor, I'd like to introduce State's
2 Exhibit 92 through 101 into evidence at this time.

3 THE COURT: Any objections?

4 MR. BARR: No objection on behalf of Defendant
5 Niles.

6 MR. HAZZARD: No objection, Your Honor.

7 THE COURT: All right, State's Exhibits 92, 93, 94,
8 95, 96, 97, 98, 99, 100, 101 admitted into evidence without
9 objection.

10 MS. ELDER: Thank you, Your Honor.

11 (Whereupon, State's Exhibit Numbers 92 through 101
12 [Fingerprint Photographs] admitted into evidence and
13 appropriately marked.)

14 BY MS. ELDER:

15 Q Now, if - Officer Allen, if you'll take a look at those
16 exhibits that we've just introduced and I would like for you
17 - permission to publish, Your Honor.

18 THE COURT: All right.

19 Q --- to go through each one of those exhibits and if you
20 could hold it up so the jury could see it as you're going
21 through and tell us what those are.

22 A Okay, can I step down or ---

23 Q Yeah.

24 THE COURT: All right, she'll need to face the court
25 reporter, get on the other side of the microphone and face

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1 the court reporter and speak into that microphone so the
2 court reporter can take everything down.

3 BY MS. ELDER:

4 Q The first one is State's Exhibit 92.

5 A Okay, all right, this is the fingerprint - I'm sorry,
6 the fingerprint that was lifted from the outside of the
7 passenger side door of the victim's vehicle. Crime Scene
8 Officer John Iannone was the one that lifted it and I
9 compared this fingerprint to a fingerprint of subject Richard
10 Niles, okay.

11 Q That's the Defendant in this case?

12 A Yes.

13 Q Okay.

14 A Okay, what I did is the pattern - I observed the pattern
15 to be a left loop. So, I compared this fingerprint with all
16 the fingerprints that Mr. Niles had that had left loops and I
17 happened to find this particular one and what I'm doing is
18 I'm trying to match up any of the points from this
19 fingerprint to points that match in this fingerprint and as
20 you can see I was able to find seven points that matched up
21 perfectly. This area right here had - is where all the
22 points were. They're very specific but not only am I looking
23 for points that match I'm also looking for points that may
24 not match and I was unable to find any points that did not
25 match up.

1 Q So, your opinion is that latent print that was lifted by
2 Investigator Iannone in State's Exhibit 21 from the passenger
3 side door of the victim's car matches that of Richard Niles?

4 A Yes, and this is Richard Niles' left ring finger.

5 Q So, you're able to identify the finger specifically.

6 A Yes, ma'am.

7 Q All right, let's go on to State's Exhibit 93.

8 A Yes, this is the fingerprint that I lifted from the
9 front passenger door frame of the Ford Fusion.

10 Q Is that the suspect's vehicle?

11 A Yes, ma'am.

12 Q Okay.

13 A And they, again, I was able to determine that that was a
14 whorl pattern. So, I compared this latent to all the whorl
15 patterns for Mr. Niles, and again, I was actually able to
16 identify five points from each print that matched up. So, I
17 was able to determine that this fingerprint lifted from the
18 front passenger door frame was a positive match to Mr. Niles'
19 left middle finger.

20 Q And would that correspond with State's Exhibit 107?

21 A Yes, ma'am.

22 Q Take a look at State's Exhibit 94.

23 A All right, this fingerprint was lifted from the front
24 passenger door below the window of the Ford Fusion in the
25 suspect vehicle and I was able to match up six points from

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1 each fingerprint that perfectly matched. I was unable to
2 find any points that did not match up and I was able to
3 determine that this latent removed from the vehicle was a
4 positive match to Mr. Niles' right middle finger.

5 Q And could you show me which latent that corresponds to,
6 please?

7 A Oops, no problem.

8 Q Could you identify it for me? Is it listed as a number,
9 an identifying number?

10 A Yes, this would have been item number four that I
11 lifted. What I do is when I begin searching all the
12 fingerprints through the AFIS, before I even start anything
13 I'll mark the back of the latent with an item number so when
14 it comes time to do the results I'll have the item number.
15 So, this would have been item number for.

16 Q And that was from the vehicle?

17 A Yes.

18 Q The suspect vehicle?

19 A Yes.

20 Q All right, what about State's Exhibit 95?

21 A Okay, this was the fingerprint that I lifted from the
22 front passenger door frame above the mirror. I was able to
23 match six points with Mr. Niles' left little finger, and
24 again, I was unable to find any points that did not match.

25 Q And again, which vehicle was this taken from?

- 1 A The suspect vehicle, the Ford Fusion.
- 2 Q And that corresponds, what item number is that?
- 3 A Item number six.
- 4 Q Okay, let me make sure. That corresponds with State's
- 5 Exhibit Ten ---
- 6 A That's correct.
- 7 Q 110, excuse me?
- 8 A That's correct.
- 9 Q Take a look at State's Exhibit 96.
- 10 A This fingerprint I lifted from the frame above the front
- 11 passenger door of the suspect vehicle and I was able to match
- 12 six points from the latent to six points to Mr. Niles' right
- 13 index finger.
- 14 Q And where did this one come from again?
- 15 A That came from right above the frame of the front
- 16 passenger door.
- 17 Q And what item number is that?
- 18 A That would have been item number 9A.
- 19 Q That?
- 20 A Yes, there's actually two fingerprints on this one, and
- 21 whenever there's more than one fingerprint on a card I always
- 22 label them like 9A, B, C, just to keep them apart.
- 23 Q And that was - you're referring to State's Exhibit 109.
- 24 that corresponds with State's Exhibit 96?
- 25 A That's correct.

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1 Q State's Exhibit 97?

2 A It looks like this is upside down but it's not. Okay,
3 this actually it's a partial palm print. That print was
4 lifted from just above the front passenger door on the
5 suspect vehicle. This was fingerprint number two of that
6 latent card and I was able to match seven points to each
7 print. Actually, this was not a palm. My mistake. It just
8 looked like it. Actually it's - this is Mr. Niles' right
9 middle finger that I was able to match both points and I was
10 unable to locate any points that did not match.

11 Q And where did you receive this print from?

12 A That was the frame just above the front passenger door.

13 Q And what item did that correspond to?

14 A Item 9B.

15 Q The one we - second print on the card we just looked at?

16 A Yes, ma'am.

17 Q Okay, take a look at State Exhibit 98.

18 A Okay. This is the partial palm print that was lifted
19 from the driver's door frame by the windshield and I was able
20 to match five points from the latent to five points on
21 Mr. Niles' palm and that's going to be his left palm as you
22 can kind of see the way it goes.

23 Q And where was this taken from?

24 A That was taken from the driver's door frame by the
25 windshield.

- 1 Q Okay, of the suspect's vehicle?
- 2 A Yes, ma'am.
- 3 Q What item number is that?
- 4 A Item number 14.
- 5 Q That correspond with State's Exhibit 108?
- 6 A Yes, it does.
- 7 Q Is that outside or inside?
- 8 A Inside.
- 9 Q Take a look at State's Exhibit 99.
- 10 A That fingerprint I lifted from a Bud Light Beer box that
- 11 was found inside the Ford Fusion, the suspect vehicle, and I
- 12 was able to match that fingerprint to Mr. Niles' right ring
- 13 finger, five points matched up and I was unable to find any
- 14 points that did not match up.
- 15 Q Take a look at State's Exhibit 100.
- 16 A That fingerprint was lifted from a Tropicana Fruit Punch
- 17 bottle that was found inside the Ford Fusion, the suspect
- 18 vehicle, and I was able to match this fingerprint to Mr.
- 19 Niles' left ring finger. Unfortunately I was unable to
- 20 provide the minutiae points on here because unfortunately
- 21 when this was blown up it just distorted the fingerprint.
- 22 So, I would have really not been able to show you that
- 23 unfortunately.
- 24 Q And where was this located?
- 25 A That was located on a Tropicana Fruit Punch bottle that

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1 was removed from the suspect vehicle.

2 Q And State's Exhibit 101?

3 A And this fingerprint, actually this was another one
4 where there was two fingerprints lifted on one card. This is
5 going to be the second one. This fingerprint was also lifted
6 from the Tropicana Fruit Punch bottle and I was able to match
7 up six points from the latent to six points on Mr. Niles'
8 left ring finger.

9 Q If you'll return to the stand, please.

10 A Yes, ma'am.

11 Q Now, when you blow those up does that distort to a
12 certain extent?

13 A Yes, ma'am.

14 Q Okay, so, when you analyze them you don't analyze them
15 that large?

16 A No, ma'am.

17 Q Now, Officer Allen, can you age a print? Can you tell
18 how old a print is?

19 A No, I can't. Due to my experience what I have found is
20 ---

21 MR. HAZZARD: Objection. Your Honor, the answer is no,
22 she cannot.

23 THE COURT: All right.

24 MR. HAZZARD: Where she's going from here would be
25 inadmissible and improper.

1 THE COURT: All right.

2 MS. ELDER: She can explain her answer, Your Honor.

3 MR. HAZZARD: Her answer is no, she can't.

4 THE COURT: If she wants to explain her answer, but
5 she did say she could not tell the age of one. I'll sustain
6 the objection.

7 BY MS. ELDER:

8 Q Are you able to tell if a print is fresh or if it has
9 been there a while?

10 MR. BARR: Objection. Asked and answered, the same
11 question.

12 THE COURT: It's a little bit different than the age.
13 I'm going to allow that question.

14 A It has been my experience the fresher a fingerprint is
15 on an item the faster it can be developed and it can be
16 visible with very little processing and the older a
17 fingerprint is it takes much more longer to bring it up to
18 where it's visible.

19 Q And what type of things affect the ability to lift and
20 analyze a print? Are there factors that affect that?

21 A Yes, such factors such as weather conditions, I mean, if
22 I'm processing an item outdoors, if it had rained recently,
23 humidity, the salt in the air, you know, we live by the
24 ocean, the salt in air will affect how a fingerprint looks
25 when it's processed.

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1 MS. ELDER: One moment, Your Honor.

2 THE COURT: All right.

3 BY MS. ELDER:

4 Q Investigator Allen, did you have an opportunity to - you
5 were assisting, I believe, another crime scene person in
6 processing the suspect vehicle?

7 A That's correct.

8 Q And when he collected some items from that vehicle in
9 regards to swabs did you transport those up to SLED?

10 A I believe I prepared all the evidence to go to SLED.

11 Q Let me show you what I'm referring to. You do evidence
12 sheets and chains?

13 A Correct.

14 Q Okay, and if I showed you an evidence sheet would it
15 help you and assist you indicating what you've done?

16 A Yes, ma'am.

17 (Whereupon, State's Exhibit Number 113 [Evidence Sheet]
18 marked for identification.)

19 Q All right, if you'll look at what's been marked State's
20 for identification only 113?

21 A Yes, ma'am.

22 Q And did you transport some items to a location from the
23 processing of the vehicle?

24 A Yes, I did.

25 Q Okay, what items did you transport?

1 A When I was processing the evidence removed from the
2 suspect vehicle I obtained several swabs, collecting possible
3 DNA from the items. Those are the items that I transported
4 to the South Carolina Law Enforcement Division for analysis.

5 Q If you could take a look at State's Exhibit
6 identification 85 and 86, do those correspond? I apologize,
7 Investigator Allen. I wanted you to take a look at another
8 evidence sheet. I'd like to have that marked, please.

9 (Whereupon, State's Exhibit Number 114 [Evidence Sheet]
10 marked for identification.)

11 Q What's been marked for identification only State's
12 Exhibit 114 is that an evidence sheet?

13 A Yes, it is.

14 Q And are those items that were also taken from the
15 processing of that Ford Fusion?

16 A Correct.

17 Q And are those items identified in State's identification
18 85 and 86?

19 A Yes, they are.

20 Q And what was your part in handling these particular --
21 those two particular identification exhibits?

22 A I was responsible for transporting these items to the
23 South Carolina Law Enforcement Division for analysis.

24 Q And while they were in your possession did anyone tamper
25 with them, mess with them, touch them in any way, shape or

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1 form?

2 A No, ma'am.

3 Q And would you have noted that had that happened?

4 A Yes, ma'am.

5 MS. ELDER: One moment, Your Honor.

6 THE COURT: All right.

7 Q Just a few more quick questions regarding fingerprints.

8 Do things like weather affect fingerprints on the outside of

9 vehicles, things like that?

10 A Yes, ma'am.

11 Q And if I walked by here and do this and then I walk by

12 and do this is it possible that I don't leave a print?

13 A It's very possible, yes.

14 Q And why is that?

15 A Well, some surfaces, some surfaces are better than

16 others to actually be able to see visible prints once a print

17 is left. Normally, nonporous, smooth, flat surfaces are very

18 good to be able to visibly observe fingerprints or process

19 and be able to lift good fingerprints, but there's other

20 surfaces such as this wall it's very grainy. There's

21 several different types of surfaces that is very difficult to

22 be able to lift a fingerprint from.

23 Q And what happens if I touch like for example my steering

24 wheel several times, is it going to cause a problem with

25 trying to lift a print off of that?

1 A Yes, the more times you actually touch an object your
2 fingerprints tend to - will overlap. So it's very hard to
3 see ridge detail and most of the time if somebody touches an
4 item they don't actually roll their fingerprints on it.
5 It's, you know, maybe a swipe or, you know, just a split
6 second. So, I mean, you're not going to get very good prints
7 a hundred percent of the time.

8 MS. ELDER: Thank you, Your Honor. I have no further
9 questions.

10 THE COURT: All right, Mr. Barr.

11 MR. BARR: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. BARR:

14 Q How are you today, Officer Allen?

15 A Good, thank you.

16 Q Officer Allen, just as a matter of common sense, I have
17 a ring on my left ring finger, my little finger is shorter
18 than my ring finger. The next finger is longer. If I walk
19 up to this Bible and touched it with my hand is there any
20 reason that you can think of why only a part of a partial
21 print of my ring finger would show up on that Bible?

22 A It depends on how your fingers were placed on an object.
23 I mean, I could touch, go like that, maybe two of the
24 fingerprints would show up, maybe two of them wouldn't. I
25 mean, sometimes if you place more pressure on one finger

Carol Allen - Cross by Mr. Barr

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1 than the other one finger could turn out better than the
2 other.

3 Q But again, just as a matter of common sense unless I did
4 this why would only a part of this finger show up and nothing
5 else to do with my hand?

6 A I can't answer that.

7 Q You can't because unless I walked up to the car and said
8 [indicating] and walked away there's no logical explanation,
9 either in science or common sense, that only this part of my
10 fingerprint, a portion of my fingerprint would show up; is
11 there?

12 A I can't answer that.

13 Q Okay, well, thank you. Now, in terms of discernible
14 differences between surfaces is there - to your knowledge
15 would there be any difference between the metal outer casing
16 of a Ford Fusion and a Ford Mustang?

17 A I can't answer that. I'm not a vehicle expert.

18 Q You can't answer that. Okay, now, the print lifted from
19 the Ford Mustang, did you lift that print?

20 A No, sir, I did not.

21 Q Officer Iannone lifted the print; is that right?

22 A That's right.

23 Q And you didn't see him lift it; did you?

24 A No, I did not.

25 Q Okay, you didn't see him transport it to your office;

1 did you?

2 A No, I did not.

3 Q So, that fingerprint could very well have come from
4 someplace else; right?

5 A I would have to say no.

6 Q Okay, you would have to say no. Well, answer this for
7 me. Could you offer us any - in all of your experience as a
8 fingerprint expert, could you answer, could you offer us any
9 kind of resolution as to why no prints could be lifted from
10 the white Mustang other than the partial fingerprint of a
11 left index finger?

12 A No, I can't answer that.

13 Q Now, you trained, Officer Iannone, you testified today
14 that you trained, and he's well trained and he's certified.
15 Now, you've testified today and I listened, you listed six or
16 seven items from the Ford Fusion. You can take a print from
17 the beer box and you can define six common points and exclude
18 any unusual points, beer box, Tropicana Fruit Punch, inside
19 metal frame, inside window, every point you gave you
20 identified every possible finger that Richard Niles had on
21 the, in the car that they were riding in, but now, you and
22 your staff don't lift one single print from the Ford Mustang
23 that can be identified as anybody's fingerprint other than a
24 partial print from the outside.

25 Now, you say you were there when the autopsy was done on

Carol Allen - Cross by Mr. Barr

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1 Mr. Salter. Was he wearing gloves?

2 A No, I don't - no, he was not.

3 Q You don't have any knowledge that Mr. Salter was wearing
4 gloves at any point in this process; do you?

5 A No, I do not.

6 Q Well, can you explain to this jury how it is that
7 Mr. Salter drove his car to the Best Buy parking lot, opened
8 the door to his car, you can't get his fingerprints off the
9 car, on the inside of the car, nowhere can you and your staff
10 find this man's fingerprint in his own car.

11 A Well, through my experience it's very difficult to lift
12 fingerprints from the inside of the car unless it's from the
13 glass. The dashboard, the steering wheel, the center console
14 it's made out of a material that is very difficult to lift
15 prints.

16 Q Now, I suggested the steering wheel thing and Ms. Elder
17 has covered that with you, the steering wheel may have gotten
18 smudged up, but now, do you really expect the jury to believe
19 that nothing in the car, in the Salter's car that you can
20 lift a fingerprint from but you can lift a fingerprint from
21 almost everything in the Ford Fusion and both of them are
22 just automobiles?

23 A I can't answer that. I wouldn't ---

24 Q I know you can't answer that. Doesn't make any sense
25 but now you all expect - want the jury to believe that my

1 client Richard Niles went up to the Salter's car, did this
2 and got a partial fingerprint and you want to talk about
3 weather conditions, surfaces, that type of thing and then --
4 well, let me ask you. What day was it that you took the
5 prints from the Ford Fusion?

6 A That I actually lifted the prints?

7 Q That you actually lifted the prints.

8 A Bear with me a second. April 11 ---

9 Q April 11 ---

10 A --- 2007.

11 Q --- 2007, so that's nine, I mean, two days, well, the
12 incident was the 9th. It was two days after the, after the
13 incident?

14 A Correct.

15 Q Okay, do you recall what day that Officer Iannone lifted
16 the print from the Ford Mustang?

17 A That would be in his crime scene report.

18 Q Okay, so, you don't have any recollection of that?

19 A No, sir.

20 Q Okay, now, the - State's Exhibit 21, which is the -
21 which is what has been identified as the print lifted from
22 the surface just above the door latch between the window on
23 the white Mustang and I think item 107 I believe you prepared
24 those, 107 is the blown up version; is that correct?

25 A I'd have to look at the exhibit again.

Carol Allen - Cross by Mr. Barr

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1 Q If that is the blown up version of the fingerprint from
2 the latent print on, on the Ford Mustang, I think you said
3 that item, State's Exhibit 98, if you would please refer to
4 your notes. Again, State's Exhibit 98 you testified on
5 direct examination that that was a latent print lifted,
6 identified as being the fingerprint of Richard Niles that was
7 taken from the metal surface on the Ford Fusion; is that
8 right?

9 A Correct.

10 Q Okay, so, now, I believe you testified and if I misquote
11 you please correct me that you identified six points that
12 corresponded to the other prints, right, that you were using
13 as a sample?

14 A On this particular match?

15 Q Yes, ma'am.

16 A Five.

17 Q In terms of matching, you matched five points.

18 A Correct.

19 Q From a metal surface on that, on - from that car.

20 A That's correct.

21 Q Can you offer us any explanation, scientific or
22 otherwise, why it would be so easy and that you could do that
23 with so much clarity regarding the Ford Fusion but not the
24 white Mustang?

25 MS. ELDER: Your Honor, I'm going to object at this

1 point, this line of questioning for improper pitting.

2 MR. BARR: I'm not pitting anything against anything
3 else. I'm talking about automobiles.

4 THE COURT: I'm going to overrule. I'll allow it.
5 Go ahead.

6 A Well, scientifically, I mean, the vehicles were at
7 different locations. I don't know if one vehicle was in a
8 garage, if one vehicle was left out in the open, if one
9 vehicle was located closer to the ocean. There are several
10 different variants why fingerprints would be left on one
11 object and not another object.

12 Q Okay, well, let's presuppose that the Ford Mustang was
13 taken directly into police impound and it was put in a
14 shelter and preserved and then the Ford Fusion somehow wound
15 up in a trailer park out in the weather in a trailer park and
16 it's just sitting out there, as a fingerprint expert which
17 would you have the opportunity to lift the best print from?

18 A Well, it would be my opinion the one that was enclosed,
19 sheltered.

20 Q Right, so, if that is indeed true then I'll ask you
21 again can you offer any kind of scientific explanation for
22 why it would be so much easier to lift a print from the
23 sheltered vehicle than the other?

24 A No, I cannot.

25 Q Is there any reason why Officer Iannone does the

Carol Allen - Cross by Mr. Barr

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1 fingerprinting on one vehicle and you do the other?

2 A Well, we, being that it was a violent crime, we want to
3 collect evidence as quick as possible. So, me being the
4 supervisor I delegated, I put Iannone because he was the
5 first responder and he was the one that got the victim
6 vehicle and then me and Crime Investigator Bobby Jordan
7 assisted by processing the Ford Fusion.

8 Q Okay, can you think of any logical way that either
9 Richard Niles or a third person or even Mr. Salter himself
10 could get in a white Mustang, drive it around or have a
11 discussion in it, be in it, have a tussling match or whatever
12 and there not be a single fingerprint from any of those
13 individuals that you could lift?

14 A Well, again, through my experience if one's in a
15 vehicle, if they're tussling, if they're flailing around or
16 even sitting in there they normally don't roll their
17 fingerprints, okay, and they probably wouldn't.

18 Q If Mr. Salter got in his car and drove his car, opened
19 the door to his car just to get in, handled either a backpack
20 or handled the gear stick, gearshift or a beverage or
21 anything and then he was just impromptu ejected from the
22 vehicle, didn't have the time to wipe down the surfaces or
23 clean up or anything else, can you offer us any reason why
24 not even his print would appear in the white Mustang?

25 A Well, like I mentioned earlier the inside of vehicles is

1 very, very hard to be able to lift a fingerprint due to the
2 kind of surface, okay. I mean, I could be sitting in my own
3 vehicle and get out, process the inside of the vehicle.
4 Chances are I might not get one either.

5 Q But now, 107, 108, 110, 109, 111, 112 all items that you
6 processed from the Ford Fusion, the motor vehicle you
7 testified 15 minutes on every single point of the contacts
8 within the hand, how is that? Is it magic?

9 A It's science.

10 Q Thank you, ma'am.

11 THE COURT: Mr. Hazzard.

12 MR. HAZZARD: Thank you, Your Honor. Very briefly.

13 CROSS EXAMINATION (By Mr. Hazzard)

14 Q Good morning. How are you?

15 A Good morning, good.

16 Q First of all, your investigation and your part in this
17 no evidence, information, anything you can tell this jury
18 indicating that Mokeia Hammond ever handled a gun; right?

19 A Correct.

20 Q And there's nothing you can tell them indicating that
21 Mokeia Hammond ever shot anybody or murdered anybody;
22 correct?

23 A Correct.

24 Q Nothing you can tell them indicating Mokeia Hammond ever
25 robbed anybody; correct?

Carol Allen - Cross by Mr. Hazzard

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1 A Correct.

2 Q All right, now, you did a report on this, at least it
3 has your name at the top dated April 13th of 2007. Do you
4 have that report with you?

5 A Yes, sir.

6 Q Okay, take your time.

7 A Okay.

8 Q Okay, and I'm going to show you the top sheet of the one
9 that was provided to me by the Prosecutor to see if we
10 literally are on the same page. Is that your report?

11 A Yes, we are.

12 Q Okay, now, on page five of that report because as I have
13 it here I'm going to show you paragraph about halfway down,
14 this paragraph, are we still on the same page?

15 A Yes.

16 Q We're still good. Okay, just want to ask you, it says I
17 think the last complete sentence says, "Since the subject's
18 arrest palm prints were available on the AFIS database for
19 Richard Niles and Mokeia Hammond. I was now able to compare
20 the palm prints collected during this investigation to those
21 subjects"; correct?

22 A Correct.

23 Q Okay, so, it's not like Mokeia Hammond had been in
24 trouble before, been arrested?

25 MS. ELDER: Objection, Your Honor. That, that's -

1 can we approach?

2 THE COURT: All right.

3 (Whereupon, a bench conference was held in the presence
4 but out of the hearing of the jury.)

5 Q Carol, to your knowledge, how did you all obtain Mokeia
6 Hammond's prints for the purposes of comparison, and if you
7 don't know that's fine but if you know, please tell the jury?

8 A They were obtained at the time of arrest.

9 Q All right, thank you, ma'am. No further questions.

10 THE COURT: Anything on redirect?

11 MS. ELDER: Yes, Your Honor, just briefly.

12 REDIRECT EXAMINATION

13 BY MS. ELDER:

14 Q Investigator Allen, in your years of experience lifting
15 prints how many times have you lifted all five fingers from
16 the same area?

17 A Maybe once.

18 Q So, that's not normal to get five usable fingers from
19 one area surface; is it?

20 A No.

21 Q So, when I lay my hand down you may only be able to get
22 one of my fingers; is that correct?

23 A That's correct.

24 Q It doesn't mean I went and did this [indicating]; does
25 it?

Carol Allen - Recross by Mr. Barr

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1 A No, ma'am.

2 Q And when we're talking about lifting prints and when the
3 Defense attorneys asked you about not being able to lift any
4 print from the Mustang we're talking about usable
5 identifiable prints; is that correct?

6 A That's correct.

7 Q And in fact, you actually received a print I believe
8 from Crime Scene Specialist Iannone to analyze that didn't
9 have sufficient ridge detail to analyze; is that correct?

10 A That's correct.

11 Q So, it is possible that there were some prints in the
12 car just not usable prints for analysis?

13 A Correct.

14 MS. ELDER: That's all I have, Your Honor.

15 THE COURT: All right.

16 RECROSS EXAMINATION

17 BY MR. BARR:

18 Q Officer Allen ---

19 A Yes.

20 Q --- on your direct testimony you testified that on four
21 surfaces that you lifted two fingerprints on one card?

22 A Yes.

23 Q From Mr. Niles from the Ford Fusion?

24 A Correct.

25 MS. ELDER: Your Honor, I object. I don't know that

1 that is in the scope of ---

2 THE COURT: I will sustain the objection, only as to
3 new matters that were brought up by Mr. Hazzard.

4 MR. BARR: Do I have latitude as to matters that Ms.
5 -- I would think that if she asked about the ability to lift
6 five fingerprints at one time.

7 THE COURT: I think we've covered that good enough.
8 That's not nothing new.

9 MR. BARR: Thank you.

10 THE COURT: All right, sir. You may step down.

11 MS. ELDER: I would ask this witness be excused, Your
12 Honor.

13 THE COURT: Any objection?

14 MR. HAZZARD: No objection on behalf of Defendant
15 Hammond.

16 MR. BARR: No objection on behalf of Defendant
17 Niles.

18 THE COURT: All right, you may step down. You're
19 excused. Thank you very much.

20 Let's take a short break.

21 MS. ELDER: Yes, sir.

22 THE COURT: That was a fairly long witness. I'm
23 going to go ahead and give you a break, about a 10, 15
24 minutes break, let you stretch your legs. Please do not
25 discuss this case, do not discuss it even among yourselves at

Bobby Jordan - Direct by Ms. Elder

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1 this point in time, deliberations are still premature. Thank
2 you very much. If you have - been taking notes leave those
3 right where we are.

4 (Whereupon, the following takes place outside the
5 presence of the jury.)

6 THE COURT: All right, anything before we recess or
7 not recess but take a break?

8 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
9 Your Honor.

10 MR. BARR: Nothing on behalf of Defendant Niles.

11 THE COURT: All right, just for scheduling purposes,
12 we need to get them some lunch. Do you know about how long
13 our next witness and I know you don't know with cross
14 examination but as far as direct about how long would it ---

15 MS. ELDER: Your Honor, it's the last crime scene
16 person. She won't be testifying as an expert in anything,
17 just the collection of evidence. So, it shouldn't be that
18 long.

19 THE COURT: All right, well, let's go ahead. You
20 said it would take about an hour to get them lunch?

21 CLERK: Yes, sir.

22 THE COURT: All right, let's go ahead during this
23 break and maybe go ahead and get their order so we can go
24 ahead and order them lunch. It'll be here whenever we take
25 the next, next break. All right.

1 MR. RICHARDSON: Your Honor, I'm not sure which
2 notebook was Ms. Marinacci's. You may just want to collect
3 that.

4 MS. ELDER: They've got it.

5 THE COURT: Yeah, that's right. I'll have the
6 bailiff pick that up. Thank you for bringing that to my
7 attention.

8 All right, we'll stand in recess for about 10 minutes.

9 OFF THE RECORD

10 (On the record.)

11 (Whereupon, the following takes place outside the
12 presence of the jury.)

13 THE COURT: All right, please be seated.

14 Anything from the State before we bring the jury back
15 in?

16 MS. ELDER: No, sir, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. BARR: Nothing, Your Honor.

19 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
20 Your Honor.

21 THE COURT: All right, if we could get one of the
22 bailiffs to bring the jury back.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: All right, ladies and gentlemen, welcome

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1 back. We're ready to resume the trial of this case. You can
2 call your next witness.

3 MS. ELDER: Your Honor, the State would call Crime
4 Scene Specialist Bobby Jordan.

5 THE COURT: All right.

6 Whereupon, Bobby Wayne Jordan was called to the stand,
7 duly sworn by the clerk and testified as follows:

8 THE CLERK: Please state your full name, spell your
9 last name for the Court.

10 MR. JORDAN: My name is Bobby Wayne Jordan. My last
11 name is J-O-R-D-A-N.

12 DIRECT EXAMINATION

13 BY MS. ELDER:

14 Q Officer Jordan, where are you employed?

15 A I'm employed with the Myrtle Beach Police Department.

16 Q In what capacity?

17 A I'm a crime scene specialist.

18 Q And how long have you been employed with the Myrtle
19 Beach Police Department?

20 A A total of 12 years.

21 Q And how long have you been in crime scene?

22 A A little over three.

23 Q And back in April of 2007 were you a crime scene officer
24 at that time?

25 A Yes, I was.

1 Q And did you have an opportunity to participate in the
2 investigation on the homicide of James Salter?

3 A I did.

4 Q And could you tell me what parts you played in that
5 investigation?

6 A Yes, ma'am. I responded to execute a search warrant at
7 2000 Highway 15, which is Patrick's Mobile Home Park, unit B
8 16. We -- they located a vehicle that had possibly been
9 involved in the incident and appeared to have bullet holes or
10 defects in the vehicle.

11 Q And what did you do when you arrived there?

12 A I began just basically securing the area until the
13 search warrant was forthcoming and just stood by.

14 Q And did you collect any evidence there?

15 A Yes, I collected some glass fragments that were on the
16 ground and a cigarette butt and to - including the vehicle
17 after the search warrant was forthcoming.

18 Q Okay, and you didn't process the - what vehicle - well,
19 let me ask you, what vehicle was located at that Patrick's
20 Mobile Home Park?

21 A It was a gray in color Ford Fusion.

22 Q And you didn't process that at that particular location;
23 did you?

24 A Other than taking some photographs I did not.

25 Q Okay, and did you process it at a different location?

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1 A I did.

2 Q I'm going to show you what's been marked State's Exhibit
3 for identification 66. I just want you to take a look at
4 that. Do you recognize that?

5 A Yes, I do.

6 Q And what is that a picture of?

7 A That is photographs of glass fragments leading from the
8 area of the vehicle to the front porch of the mobile home.

9 Q And did you take that picture?

10 A Yes, I did.

11 Q Could you also take a look at what's been marked as
12 State's Exhibit for identification 84. Do you recognize
13 those?

14 A Yes, I do.

15 Q And are those the items that you took from this
16 location?

17 A The packaging appears to be the same, yes.

18 MS. ELDER: Your Honor, at this time I'd like to
19 introduce State's Exhibit 66 and State's Exhibit 84.

20 THE COURT: Any objections?

21 MR. HAZZARD: Your Honor, we're not sure what was in
22 the bag. So, if we can get a chance to look at it.

23 THE COURT: All right.

24 MR. HAZZARD: No objection to the picture.

25 THE COURT: All right.

1 MR. HAZZARD: No objection from Defendant Hammond, Your
2 Honor.

3 MR. BARR: No objection by Defendant Niles.

4 THE COURT: All right, State's Exhibit 66 and State's
5 Exhibit 84 admitted into evidence without objection.

6 MS. ELDER: Thank you, Your Honor.

7 (Whereupon, State's Exhibit Number 66 [Photograph] and
8 State's Exhibit Number 84 [Glass Fragments] admitted into
9 evidence and appropriately marked.)

10 BY MS. ELDER:

11 Q If you'll take a look at State's Exhibit 66, that
12 photograph, there are some indicators in that picture. What
13 is that?

14 A Are you referring to the yellow markers?

15 Q Yes.

16 A The yellow markers are evidence placards. These are
17 numeric. They can - they give perspective when you're taking
18 photographs especially something as minute as some of the
19 glass fragments. When I'm taking an overall photo you can
20 see the location of the glass fragments, where you can't
21 really see them until I take close-up photos.

22 Q And do those correspond, those indicators, they
23 correspond with the numbers you collect?

24 A Yes, yes, they do.

25 Q And what is that, when you arrived and you located those

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1 items, where did the glass fragments start and where do they
2 trail to?

3 A They appear to have started by the left rear quarter
4 panel of the question vehicle that appeared to be leading
5 from that location to the location of the porch.

6 Q And was that vehicle towed then to your department?

7 A It was.

8 Q And did you have an opportunity to analyze it there,
9 process it there?

10 A Yes, I did.

11 Q If you'll take a look at what's been marked, what's been
12 marked State's Exhibits 60 through, 60, 61, 62, 63, 64 and
13 65, if you'd take a look at those and just tell me if you
14 recognize those.

15 A Yes, I do. Yes, I do.

16 Q And -- I'm sorry?

17 A Yes, I do.

18 Q And do you recognize those, did you take those?

19 A Yes, I did.

20 Q And is that a result from your processing of the Ford
21 Fusion?

22 A Yes, it was.

23 Q Could you also take a look at what's been marked for
24 identification 67 through 83.

25 A (Complies with request.)

1 Q Do you recognize those?

2 A I do.

3 Q And did you take those photographs?

4 A Yes.

5 Q And were those results from your processing of the same
6 vehicle, the Ford Fusion?

7 A They were.

8 MS. ELDER: Your Honor, at this time I'd like to move
9 into evidence 60 through 65 and 67 through 83.

10 THE COURT: Any objections?

11 MR. BARR: No objections.

12 MR. HAZZARD: No objections on behalf of Defendant
13 Hammond, Your Honor.

14 THE COURT: All right, State's Exhibits 60, 61, 62,
15 63, 64, 65 and 67 through 83 admitted into evidence without
16 objection.

17 MS. ELDER: Thank you, Your Honor.

18 (Whereupon, State's Exhibits 60 through 65 [Photographs]
19 and 67 through 83 [Photographs] admitted into evidence and
20 appropriately marked.)

21 BY MS. ELDER:

22 Q If you could take a look, start with State's Exhibit 60,
23 61, 62 and 63. Could you tell me what those pictures depict?

24 A Those were, those were swab samples I took from red
25 staining in the vehicle in various locations?

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1 MS. ELDER: And I'd like to publish these as we go
2 along, Your Honor.

3 THE COURT: All right.

4 BY MS. ELDER:

5 Q If you'll just hold up 60 for the jury, please. Tell me
6 how you go about that process of swabbing.

7 A May I have number 63 first? Would that be a problem?

8 Q Sure, 63?

9 A Yes. During the process we use a clean sterile cotton
10 swab and I'll use a clean distilled water to make my sample
11 or to obtain my sample from the location. In this particular
12 case I will, I will test the sample with a presumptive test
13 to determine whether it's blood or not.

14 Q And when you determine it's blood what do you do?

15 A We collect it using the aforementioned method for future
16 analysis.

17 Q Okay, and did you, in fact, collect some standards from
18 this vehicle that indicated blood?

19 A Yes.

20 MS. ELDER: One moment, Your Honor.

21 THE COURT: All right.

22 BY MS. ELDER:

23 Q And what did you do with those standards?

24 A I placed them into evidence.

25 Q And are they then processed in some way?

1 A There was a request made to send in to the South
2 Carolina law-enforcement, Law Enforcement Division forensic
3 laboratory.

4 Q And when you process them, especially the ones that
5 you've indicated the three swabs you took that were blood,
6 do you preserve those in some specific manner?

7 A Yes.

8 Q And could you explain that process?

9 A We will put them in paper packaging so that they do not
10 degrade while they're awaiting analysis.

11 Q Did you also collect samples from other items in the
12 vehicle?

13 A Yes, we did select collect samples from several items
14 located within the vehicle.

15 Q And did you follow the same type of processing?

16 A I did.

17 Q Let me show you what's been marked State's Exhibit 86
18 for identification. Do you recognize that?

19 A Yes, appears to be familiar.

20 Q All right, and well, can you identify it? If you need
21 to open it or look in the packaging.

22 A Yes, this is my handwriting.

23 Q Okay, and are those the swabs that you took from the
24 vehicle?

25 A They appear to be.

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1 Q Can you identify that they are the swabs from the
2 vehicle?

3 A Yes, because they are still, they are marked.

4 Q Do you, do you put your initials on them? How do you
5 mark them?

6 A These were sealed with evidence tape and initialed.

7 Q And the purpose of that is what?

8 A To prevent any possible tampering. Would you like me to
9 put them back in here?

10 Q And there are, I believe, six total swabs in what's
11 been marked State's Exhibit 86; is that correct?

12 A Yes.

13 Q And could you identify where each of those swabs came
14 from?

15 A Yes, actually let me pull it out here. Swab which is
16 agency item 15 was obtained from the rim of a red plastic cup
17 in the center console of the vehicle.

18 Q All right, could you go through each one of those for me
19 and identify them?

20 A I can.

21 Item number 16 was obtained from the rim of a red
22 plastic cup by the left front seat of the vehicle. Swab 17
23 was from the left front of the backseat, left front backseat
24 of the vehicle, 17. Eighteen was from the headrest of the
25 right front seat. Nineteen was obtained from the left rear

1 seat and 20 was obtained from the, from a red plastic straw
2 located in the left rear floorboard.

3 MS. ELDER: Your Honor, at this time the State would
4 move in State's Exhibit 86.

5 MR. HAZZARD: No objection from Defendant Hammond, Your
6 Honor.

7 MR. BARR: No objection, Your Honor.

8 THE COURT: All right, State's Exhibit 86 admitted
9 into evidence without objection.

10 (Whereupon, State's Exhibit Number 86 [Swabs] admitted
11 into evidence and appropriately marked.)

12 BY MS. ELDER:

13 Q Did you also collect cigarette filters of any kind from
14 the vehicle?

15 A Yes.

16 Q And let me hand you State's Exhibit 85 for
17 identification. Can you identify that?

18 A It's identified as four cigarette filters.

19 Q Okay, and those are the filters that you took from
20 processing the suspect's vehicle; is that correct?

21 A That is correct.

22 MS. ELDER: Your Honor, at this time I would move
23 State's Exhibit 85 into evidence.

24 MR. HAZZARD: No objection from Defendant Hammond, Your
25 Honor.

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1 MR. BARR: No objection.

2 THE COURT: All right, State's Exhibit Number 85
3 admitted into evidence without objection.

4 MS. ELDER: Thank you, Your Honor.

5 (Whereupon, State's Exhibit Number 85 [Cigarette
6 Filters] admitted into evidence and appropriately marked.)

7 BY MS. ELDER:

8 Q Now, I would like to go through some of the crime scene
9 photos that you took of this particular vehicle. Now, we're
10 still talking about the Ford, the suspect's vehicle the Ford
11 Fusion; is that correct?

12 A That is correct.

13 Q Okay, if you'll look at State's Exhibit 71 if you would
14 hold it up for the jury as you're describing it. Could you
15 tell me what that is?

16 A Appears to be, appears to be a round in color defect or
17 hole in the - it's in the forward front part of exterior side
18 of the left rear door and there's also an indentation in the
19 center post.

20 Q At what's that two for?

21 A Just to indicate it for identification purposes.

22 Q Okay, so, you put that there so you could see it?

23 A Correct.

24 Q If you will take a look at State's Exhibit 69. What
25 does that depict?

1 A That is a round hole or defect in the right rear back of
2 the seat of the vehicle.

3 Q And could you point that out what you're talking about
4 when you say defect?

5 A Yes, is a round hole located in this location of the
6 right rear seat.

7 Q State's Exhibit 65?

8 A That is what appears to be a defect and tearing in the
9 overhead area of the vehicle in the right side.

10 Q State's Exhibit 62?

11 A It's a red staining on the right front seat.

12 Q And State's Exhibit 73?

13 A It's a close-up of the defect in the left rear door.

14 Q And could you point that out?

15 A (Complies with request.)

16 Q State's Exhibit 77?

17 A Shows a defect over the right rear door. The way the
18 metal is positioned it appears to be caused by an exit.

19 Q And could you point that out?

20 A (Complies with request.)

21 Q I'm going to show you State's Exhibit 81. Could you
22 tell me what that is?

23 A It appears to be a brass bullet fragment which was
24 obtained from inside the right rear seat back.

25 Q And State's Exhibit 82?

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1 A It is a - what appears to be a bullet projectile that
2 was - that I located from the window post of the left rear
3 door.

4 Q And did you write that down?

5 A I did.

6 Q State's Exhibit 83?

7 A Appears to be a bullet fragment that was obtained, that
8 I obtained from the interior of the above right rear door.

9 Q And did you collect those fragments and projectiles?

10 A Yes, I did.

11 Q Now, I'd like for you to take a look at what's been
12 marked as State's exhibit for identification Number 91. Do
13 you recognize that?

14 A Yes.

15 Q And is that the packaging that you put those items in
16 and labeled?

17 A I do not recognize the outer package, just the inner
18 package.

19 Q The brown packaging in there?

20 A Yes.

21 Q And this was sent for processing to SLED?

22 A It was.

23 Q Okay, but these are the items that you obtained?

24 A Yes.

25 MS. ELDER: Your Honor, the State would move State's

1 Exhibit 91 into evidence at this time.

2 MR. BARR: The Court's indulgence, Your Honor.

3 MR. HAZZARD: No objection from Defendant Hammond, Your
4 Honor.

5 MR. BARR: No objection from Defendant Niles.

6 THE COURT: All right, State's Exhibit Number 91
7 admitted into evidence without objection.

8 (Whereupon, State's Exhibit Number 91 [Projectiles]
9 entered into evidence and appropriately marked.)

10 BY MS. ELDER:

11 Q Did you also collect some glass items from the vehicle?

12 A Yes, I did.

13 Q Would you take a look at what's been marked as for
14 identification State's Exhibit 89?

15 A (Complies with request.)

16 Q Those fragments you took from the vehicle?

17 A Yes, they appear to be.

18 MS. ELDER: Your Honor, we would move State's Exhibit
19 89 into evidence at this time.

20 THE COURT: Any objection?

21 MR. HAZZARD: No objection on behalf of Defendant
22 Hammond, Your Honor.

23 MR. BARR: No objections, Your Honor..

24 THE COURT: State's Exhibit 89 admitted into evidence
25 without objection.

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1 (Whereupon, State's Exhibit Number 89 [Glass Fragments]
2 admitted into evidence and appropriately marked.)

3 BY MS. ELDER:

4 Q Going back to the pictures, the photographs, State's
5 Exhibit 78, what does that show us?

6 A Items that were removed from the vehicle.

7 Q Okay, the suspect vehicle?

8 A Correct.

9 Q And did you all line them out here like that?

10 A Yes.

11 Q Was that for processing purposes?

12 A It was.

13 Q State's Exhibit 70 did you collect that from inside the
14 vehicle?

15 A Let me check just to refresh my memory here. Yes.

16 Q And what does that appears to be?

17 A A dollar bill.

18 Q Items 74 and 76, those items you also took as well?

19 A Yes.

20 Q And item 74, I'm sorry, 75, whose name appears on that
21 envelope?

22 A Mokeia Hammond.

23 Q And on item 76 what is that?

24 A May I?

25 Q Yes?

- 1 A It is a receipt from the Bermuda Sands Motel.
- 2 Q And whose name is on that receipt?
- 3 A Mokeia Hammond.
- 4 Q And what is the date on that?
- 5 A Check-in is 4-9-07 and check out is 4-10-07.
- 6 Q Now, in addition to processing the pictures and the
- 7 Ford Fusion did you also receive notification to go take what
- 8 we call buccal swabs?
- 9 A From?
- 10 Q From, I'm sorry, from the Defendants Mokeia Hammond and
- 11 Richard Niles?
- 12 A To my knowledge we collected blood.
- 13 Q I'm sorry, blood. I apologize. You collected blood
- 14 from them?
- 15 A I collected - I didn't collect it. I visually observed
- 16 it but I did not collect it.
- 17 Q Okay, tell me about that process. Where was that at?
- 18 A It was at Conway Hospital.
- 19 Q And the Defendants were there and blood was drawn from
- 20 each one?
- 21 A Yes.
- 22 Q And then it was packaged; is that correct?
- 23 A That is correct.
- 24 Q And you took it at that point; is that, is that correct?
- 25 A Yes.

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1 Q All right, and what did you do with the blood samples
2 once you received them?

3 A I placed them into evidence.

4 Q And they went somewhere else for processing; is that
5 correct?

6 A That is correct.

7 MS. ELDER: Your Honor, the State at this time would
8 move State's Exhibit 90 into evidence.

9 THE COURT: Any objection?

10 MR. BARR: Without objection regarding Niles.

11 MR. HAZZARD: No objection, Your Honor.

12 THE COURT: All right, State's Exhibit Number 90
13 admitted into evidence without objection.

14 (Whereupon, State's Exhibit Number 90 [Blood Samples]
15 admitted into evidence and appropriately marked.)

16 MS. ELDER: The Court's indulgence, Your Honor.

17 THE COURT: All right.

18 MS. ELDER: No further questions at this time, Your
19 Honor.

20 THE COURT: All right, Mr. Barr.

21 CROSS EXAMINATION

22 BY MR. BARR:

23 Q Officer Jordan, essentially what we're talking about
24 here is DNA samples; is that correct?

25 A Yes, that is correct.

1 Q Okay, were you asked to collect any DNA samples from any
2 other sources?

3 A To my recollection, no.

4 Q So, all of these samples would have been items taken
5 from the Ford Focus; is that correct?

6 A Yes.

7 Q Thank you.

8 THE COURT: All right, Mr. Hazzard.

9 MR. HAZZARD: Thank you, Your Honor.

10 CROSS EXAMINATION

11 BY MR. HAZZARD:

12 Q Good afternoon, Bobby. How are you?

13 A Pretty good, counselor. How are you?

14 Q I'm pretty good. Let's see, now, you did a couple of
15 reports in this, a couple of supplemental reports in this
16 case; is that correct?

17 A Yes, sir.

18 Q Okay, do you have those reports with you?

19 A Yes, sir.

20 Q All right, now, I'm going to point your attention to the
21 report dated April 10th of 2007.

22 A Okay, sir, I have it.

23 Q All right, and in that report on the second paragraph,
24 the last sentence in the second paragraph I believe it says,
25 "There appear to be four entrance holes on the left side of

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1 the vehicle. The holes were in the following locations."

2 You see that part?

3 A Yes, sir.

4 Q Okay, and tell the jury if you would those four
5 locations:

6 A I've got the left front door, the left window frame, the
7 left rear door, the headliner, the left rear door and the
8 small window of the left rear door.

9 Q Okay, so, when you say the left front door you're
10 talking about the driver's side door; correct?

11 A Yes, sir, that is correct.

12 Q Okay, and that's the driver's side door of the Ford
13 Fusion; correct?

14 A Yes, sir.

15 Q Now, let's see, did you also do - let's see, I've been
16 provided a document that's a part of a report that you
17 allegedly did. Let me see if we can't match this up. Mine
18 says page two. Do you recognize this document as being part
19 of a report that you've done? That may be page one.

20 A Yes, sir, it appears that way.

21 Q Okay, I'm going to direct your attention to the entry
22 date of April 11th of 2007. I assume that's 12:45 in the
23 afternoon; is that correct?

24 A Yes, sir, that is correct.

25 Q Okay, now, according to this document you indicate, "I

1 had to forcefully remove the interior section of the left
2 front door to locate the bullet projectile inside the left
3 front door''; is that correct? Is that what the document
4 says?

5 A Yes, sir.

6 Q And do you recall doing that?

7 A Yes, sir.

8 Q So, basically, then based on this document and your
9 recollection whoever was in the driver's seat of the Ford
10 fusion at the time that shot was fired there was a bullet
11 that virtually almost hit them, that went into the door right
12 where they were sitting; would that be correct, if someone
13 was seated in the driver's seat?

14 A It would appear that way, yes.

15 Q Okay, thank you. Just a couple of more questions,
16 please, sir.

17 A Yes, sir.

18 Q Now, when you went to take a look at the Ford Fusion it
19 was - was it still at the trailer or had it already been
20 brought in?

21 A It was at the trailer ---

22 Q Okay.

23 A --- when I first observed it.

24 Q Okay, and when you went to the trailer did you walk all
25 the way around the trailer at any point in time while you

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1 were there?

2 A I may have. I don't recall.

3 Q Okay, you don't recall. That's fine. Now, you noticed
4 and took pictures of the glass trail and things of that
5 nature; correct?

6 A Correct.

7 Q Okay, so, obviously you were observing what was in and
8 around the car; right?

9 A That's correct.

10 Q And what was around the trailer itself; correct?

11 A Yes.

12 Q Because some of the glass fragments literally lead up to
13 the door of the trailer; is that right?

14 A Yes.

15 Q Okay, at any point did you notice or take any
16 photographs of any footsteps, footprints, drag marks,
17 anything that would lead from the car to under the trailer?

18 A No.

19 Q Okay, okay, and you, I believe, obtained some blood
20 samples, some swabs of blood from the back, the rear, well,
21 let's see how to put this, the back of the headrest of the
22 driver's seat; right, the driver's seat?

23 A Lets me confirm that. Yes, left rear seat, that is
24 correct.

25 Q Okay, so, not the front of the headrest where the

1 driver's head would be but the back of the headrest; correct?

2 A Let me correct - check my photos just to make sure.

3 Q Check the photos.

4 A Refresh my memory.

5 Q Okay.

6 A It was taken from the left front seat back.

7 Q Left front seat back meaning ---

8 A Yes.

9 Q --- behind?

10 A Yes.

11 Q Okay.

12 A Well, the back, well, the back meaning that you would

13 put your back, lean your back onto.

14 Q Okay, now, let's see. Let's see if we can find that

15 picture because I want to be really clear about that.

16 A Yes, sir.

17 Q Okay, I'm showing you State's Exhibit 63 and that shows

18 where you took some blood; correct?

19 A That's correct.

20 Q And where was that blood found?

21 A That particular stain was found on the right headrest,

22 right front headrest.

23 Q Okay, all right, the right front headrest, okay, and

24 then there's 60 and 61. So, would 61 - is that the - do you

25 have any idea, can you tell where that blood was found?

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- 1 A Let me check mine.
- 2 Q Sure. I apologize.
- 3 A I have to take - yeah, no problem. I have to take a
- 4 series of photos to, for identification.
- 5 Q Okay.
- 6 A Appears to be, yes, from the left front seat back.
- 7 Q Okay, now, you indicated I think item number 75 was an
- 8 envelope and an answer sheet for a school?
- 9 A Yes.
- 10 Q Okay, let's see if we can find it. There it is.
- 11 A That is correct.
- 12 Q Okay, and that's found in the Ford Fusion as well;
- 13 right?
- 14 A Yes.
- 15 Q Okay, and so, basically you're saying basically this
- 16 picture that Ms. Hammond's fingerprints were taken from this
- 17 school admissions envelope that was found in the Ford Fusion;
- 18 right?
- 19 A Yes.
- 20 Q Okay.
- 21 A Well, there were fingerprints taken.
- 22 Q Okay, there were fingerprints taken?
- 23 A Taken.
- 24 Q Might not have been hers but there were fingerprints
- 25 were taken off of it?

1 A Yes.

2 Q Okay, got you, and I believe you told Ms. Elder that you
3 obtained a blood sample from Ms. Hammond by consent on
4 April 20th of 2007; is that correct?

5 A Let me check the date but ---

6 Q Yes, sir, take your time.

7 A What time was that?

8 Q April 20th of 2007.

9 A That is correct.

10 Q Okay, and Ms. Elder asked you, one other thing, sir,
11 about State's Exhibit Number, I believe that's 76. Does that
12 look like 76 to you?

13 A Yes, sir, it is 76.

14 Q Okay, about State's Exhibit Number 76 and is your
15 testimony that that receipt from the Bermuda Sands was found
16 inside the vehicle?

17 A To the best of my recollection, yes.

18 Q Okay, thank you, no further questions.

19 THE COURT: Redirect?

20 MS. ELDER: One moment, Your Honor, I'm sorry.

21 REDIRECT EXAMINATION

22 BY MS. ELDER:

23 Q Officer Jordan, Mr. Hazzard directed you to your report
24 dated April 10th, 2007.

25 A Yes.

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1 Q Could you take a look at that again on page one?

2 A Yes, ma'am.

3 Q I believe they asked you about footprints and could you
4 look at the bottom paragraph of your report?

5 A Yes, ma'am.

6 Q Did you all attempt to take footprints?

7 A We didn't notice, we didn't notice any footprints
8 directly around the trailer or I didn't. I did see, locate
9 one in sand on the outer perimeter of the lawn by the road.

10 Q And were you able to successfully cast that and take
11 that print?

12 A I photographed it but I was unable to do a successful
13 cast based on the fact that the sand was too soft even after
14 applying a hardener.

15 MS. ELDER: I'm sorry, Your Honor, one moment.

16 THE COURT: All right.

17 BY MS. ELDER:

18 Q Do you keep an evidence log of the items that you
19 collected?

20 A Yes, one is maintained.

21 Q All right, do you have a list of the items that you
22 collected in this particular case?

23 A I have the ones from 4-10.

24 Q And let me show you - I believe this was my error,
25 State's Exhibit 76.

1 A Okay.

2 Q That's not actually listed on your collection list; is
3 it?

4 A Not the one I have, no.

5 Q Okay, so, this may not have been taken from the vehicle
6 you processed?

7 A May not have.

8 MS. ELDER: No further questions, Your
9 Honor.

10 MR. BARR: The Court's indulgence, Your
11 Honor.

12 I have no questions.

13 THE COURT: All right, you may step down.

14 A Thank you, Your Honor.

15 MS. ELDER: Your Honor, I would ask that this witness
16 be excused.

17 THE COURT: Any objections?

18 MR. HAZZARD: No objection.

19 MR. BARR: No objection.

20 THE COURT: All right, sir, you're free to go. Thank
21 you very much.

22 A Thank you, Your Honor.

23 MS. ELDER: Your Honor, may we approach for
24 scheduling?

25 THE COURT: Yes.

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1 (Whereupon a bench conference was held in the presence
2 but out of the hearing of the jury.)

3 THE COURT: All right, ladies and gentlemen, we're
4 going to break for lunch. I understand that the clerk and
5 the bailiffs have gotten lunch for you back in the jury room,
6 also give you an opportunity to stretch your legs, whatever
7 the case may be. Let's have somebody available in case
8 somebody wants to step outside and stretch their legs or
9 whatever. We can do that also. Please do not discuss this
10 case even among yourselves at this point in time. If you
11 have taken any notes leave those in the jury box when you
12 exit the courtroom. Thank you very much. Everyone else
13 please remain seated while the jury is excused.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Anything from the State before we recess
17 for lunch?

18 MS. ELDER: No, sir, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BARR: Nothing, Your Honor.

21 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
22 Your Honor.

23 THE COURT: All right, we'll stand in recess until
24 1:30. Thank you very much.

25 MS. ELDER: Thank you, Your Honor.

1 OFF THE RECORD

2 (On the record.)

3 (Whereupon, the following takes place outside the
4 presence of the jury.)

5 THE COURT: Thank you very much. Please be seated.
6 Anything from the State before we bring in the jury?

7 MS. ELDER: Yes sir, a couple of things. Your Honor,
8 this morning - I just want to for clarification purposes, the
9 issue that we had with the remaining alternate I just wanted
10 to make sure that the record was clear. I don't think the
11 Defense had a chance to respond on record because the jury
12 was actually coming in, and I believe you indicated we'll get
13 to it later.

14 THE COURT: Oh, okay.

15 MS. ELDER: I just don't want to get to the end of
16 this case and that be an issue. So, if we could just clear
17 the record on that particular matter.

18 THE COURT: All right, and I don't know what if anything
19 was said. I can tell you that the bailiff came to me and
20 said the foreperson wanted to speak with me in private. I
21 sent the bailiff and said, "Have him write down what he
22 needs to talk about on a sheet of paper and bring it to me or
23 just find out what he wants to talk about," and he said that
24 the alternate juror, Mr., is it Swanson, had made some
25 mention of having a friend that was a victim of a crime

1 in years past, and the foreperson asked him why didn't he
2 bring it up during voir dire, and he said, well, he had
3 already approached me during qualifications about being
4 excused and I would not excuse him and he didn't want to
5 stand up again and that's the extent of it. Now, whether or
6 not that means he feels uncomfortable serving on the jury, he
7 cannot give both the State and the Defendant a fair and
8 impartial trial, I don't know. That's the extent of it.
9 I'll bring him in and question him further if you want me to.
10 Do you want me to do that?

11 MR. HAZZARD: The Defendant Hammond requests that, Your
12 Honor.

13 THE COURT: All right, if I could get the - yes, sir.

14 MR. BARR: Your Honor, as far as we're concerned,
15 Defendant Niles, from, from the initial qualification of
16 jurors Mr. Swanson did everything he could to get out of
17 jury service.

18 THE COURT: Well, during qualifications what happened
19 is he came up to me and told me that he was in charge of - he
20 was a painter and he was in charge of a crew and they were
21 painting some high end houses.

22 MR. BARR: Yes, sir; yes, sir.

23 THE COURT: And that they could not operate if he was
24 not there this week.

25 MR. BARR: Yes, sir.

1 THE COURT: And I said, well, and I gave him the
2 option. I did not refuse to let him go. I just gave him the
3 option.

4 MR. BARR: Yes, sir.

5 THE COURT: I said, ``I can transfer you to another
6 term of court,'' and he said, well, any term was going to be
7 just like this one, and I said, I told him then, ``Well,
8 everybody has jobs. Everybody has to miss work. There's
9 nothing unique about your situation than anybody else that
10 heads up a crew in building a house or whatever the case may
11 be,'' and so, he chose - he said, ``Well, I'll go ahead and
12 stay for this term then.''

13 MR. BARR: My concern, Your Honor, is that Mr.
14 Swanson made his appeal both when the call was made as well
15 as got in the line and came up and asked you a second time.
16 I don't think he would have been reluctant to come up and
17 talk with you. The conversation in the jury room would have
18 been against your instructions about discussing the case in
19 the jury room.

20 THE COURT: Well, now, excuse me, I have gotten no
21 indication at all that they discussed this case in the jury
22 room. The foreperson, according to the bailiff, the
23 foreperson wanted to talk to me because Mr. Swanson had
24 stated that he had a friend involved in a crime and now he
25 had some concerns because he did not respond to my

1 questioning during voir dire, was there anybody who was a
2 victim of a crime or who had a family member that was a
3 victim of a crime.

4 MR. BARR: Well, Judge, that would be my concern
5 that he sat through the voir dire process and didn't raise
6 that issue but then raised it with the jury foreman in the,
7 in the - or at least alluded to it in the, in the, in the
8 jury room, not so much discussing this particular case but
9 the issue of whether or not his background was such that he
10 would have a problem giving a fair trial. I'd ask that he be
11 released as a juror.

12 THE COURT: All right, any objections to releasing
13 him as an alternate juror?

14 MS. ELDER: Your Honor, that - that certainly would
15 be in the discretion of the Court. My - obviously, the
16 State's concern is that we just protect the record on this
17 matter. I didn't want us to get back to a verdict and the
18 issue be raised that an alternate was back there enticing or,
19 you know, appealing to emotions of the jury and that cause,
20 request to have a new trial, Your Honor. So, I would leave
21 that to the Court's discretion. If you want to question him
22 and then determine from that point or ---

23 THE COURT: Yes, I think probably the best
24 alternative is for me to question him to see because there
25 are some jurors who had family members that were victims of

1 crimes but said they could still be fair and impartial. I
2 noticed over looking at my jury list that, yeah, at the time
3 Mr. Swanson was selected you had already exhausted both of
4 your alternate strikes. So, you could not have exercised a
5 strike ---

6 MR. BARR: Yes, sir.

7 THE COURT: --- to strike him at that point in time
8 because you had already used both of yours. So, if I could
9 get the bailiff to bring in Juror Number 379, Theodore
10 Swanson.

11 MR. BARR: Your Honor, again, and just out of an
12 abundance of caution if this is an attempt again by
13 Mr. Swanson to get out of jury service then I, you know, I
14 wouldn't want him as a juror.

15 THE COURT: Well, yeah, and if you had had - if he's
16 trying to get out of jury service and I find that he's still
17 qualified then I think he still sits. I mean, you could have
18 struck him if you still had a strike left but you didn't have
19 a strike left. So, let's find - let's say, suppose that
20 during the voir dire he had answered the question, responded,
21 I had found that he was still suitable to sit on the this
22 jury then he would still be in the same posture he is now
23 because when his name was called you were out of strikes.

24 MR. BARR: Well, Your Honor, I would ask that the
25 Court considers the possibility of finding on his own motion

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1 that if he had this discussion with even the jury foreman
2 that he is violating the instructions of the Court.

3 THE COURT: Let me see. I'll check and see.

4 (Whereupon, Juror Number 379, Theodore Swanson, enters
5 courtroom.)

6 THE COURT: All right, Mr. Swanson if you would just
7 come forward, please.

8 MR. SWANSON: All right.

9 THE COURT: No, you can just stand right there. It
10 has come to the Court's attention that either you or a family
11 member or a friend or someone to you may have been a victim
12 of a crime at sometime in the past and that you did not
13 respond at the time of questioning; is that correct?

14 MR. SWANSON: Yes, sir.

15 THE COURT: All right, was it you or was it a family
16 member ---

17 MR. SWANSON: It was one of my very, very, very good
18 friends but it happened a year and a half ago and everybody
19 was standing up. You were asking them if it was going to
20 hurt the case, if they could proceed with this case.

21 THE COURT: Right.

22 MR. SWANSON: And at the time I had no problem with it.
23 I didn't think it, you know, but then it just got to me a
24 little bit when we were passing around bullets and stuff, you
25 know.

1 THE COURT: Well, let me ask you, at this point in
2 time does the fact that you had a close friend that was a
3 victim of a crime - what was the crime?

4 MR. SWANSON: He got shot in the Jaws parking lot in
5 Murrells Inlet, Bradley Pope.

6 THE COURT: All right.

7 MR. SWANSON: It happened about a year and a half ago.

8 THE COURT: All right, would that occurrence, you're
9 an alternate at this point in time, but in the event you were
10 seated as a juror, would that occurrence prohibit you from
11 giving both the State and the Defendant in this case a fair
12 and impartial trial?

13 MR. SWANSON: I would like to say no but then there's
14 other times when that's all that I'm thinking about because
15 of what, you know, that the evidence and the passing around
16 stuff, and then after, like after we passed around the
17 bullets and stuff like that yesterday that's like all I could
18 think about.

19 THE COURT: Okay.

20 MR. SWANSON: I didn't think, you know, in the
21 beginning like even the guy that got mugged or whatever he
22 said that he could proceed with the trial. Well, I thought I
23 was, you know, I thought no problem because that has nothing
24 to do with this.

25 THE COURT: Okay, I understand. I understand.

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1 MS. ELDER: Your Honor, for the record that case is
2 being prosecuted by Mr. Richardson.

3 THE COURT: Okay, all right, I'm going to go ahead
4 and excuse you from any further service on this jury; okay?

5 MR. SWANSON: Well, I apologize, sir.

6 THE COURT: All right, that's understandable. I
7 understand. That'll be fine. I'll go ahead and excuse -
8 excuse you from this jury; okay?

9 MR. SWANSON: Well, I apologize, sir.

10 THE COURT: Now, you need - do you know what the
11 other jurors are doing? Are they calling back after
12 6:00 p.m. tonight or do you know ---

13 BAILIFF: The other jurors?

14 THE COURT: The remaining jury panel that's not on
15 this jury.

16 BAILIFF: Donna would know.

17 THE COURT: Oh, that's right. I'm asking the wrong
18 person. Do you know what you all have been ---

19 CLERK: Sandra hasn't told me but I think they -
20 that case settled.

21 THE COURT: Okay.

22 (Clerk and Court confer.)

23 THE COURT: All right, all right, I'm going, okay,
24 I'm going to go ahead and excuse you from this jury, from
25 serving as an alternate on this jury but you'll need to call

1 that number that the Clerk of Court gave you after 6:00 p.m.
2 tonight for further instructions, okay?

3 MR. SWANSON: Yes, sir, and my deep apologies to
4 everybody.

5 THE COURT: All right, all right, thank you very
6 much.

7 MR. SWANSON: Thank you, sir, and you have a great day.

8 THE COURT: You, too.

9 (Juror Number 379, Theodore Swanson, exits courtroom.)

10 THE COURT: Anything further from the State?

11 MS. ELDER: Yes, sir, Your Honor, it's - I think this
12 is a positive actually. The Defense, both on behalf of
13 Defendant Richard Niles and on behalf of Mokeia Hammond have
14 agreed to waive any additional chain witnesses to the
15 evidence that we have in evidence relating to the evidence
16 that Mr. Jordan put in in relation to the three, I believe it
17 was three blood swabs that he took and three other swabs that
18 were analyzed that have already been introduced into evidence
19 and four cigarette butts. Of course, we will have the DNA
20 analyst here tomorrow to present her findings in relation to
21 that but they have agreed to waive presentment of witness
22 Marty Brown and Christina VanHouten who were transport
23 witnesses, Your Honor.

24 THE COURT: All right, Mr. Barr, is that correct?

25 MR. BARR: That is correct, Your Honor.

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1 THE COURT: All right, Mr. Hazzard, is that correct?

2 MR. HAZZARD: That is correct, Your Honor.

3 THE COURT: All right, all right, we'll stipulate -
4 so you can stipulate - let's put it down in the form of a
5 stipulation. That's a stipulation as to the chain?

6 MS. ELDER: And I can - maybe we just need to
7 identify the - if I can have it just ---

8 THE COURT: It's a stipulation as to the chain of -
9 or a sufficient chain of custody?

10 MS. ELDER: On items, State's Exhibit 85 and 86 that
11 are already in evidence and also State's Exhibit 90 that's
12 already in evidence.

13 THE COURT: All right, all right, Mr. Barr, is that
14 correct?

15 MR. BARR: That's correct.

16 THE COURT: All right, Mr. Hazzard, is that correct?

17 MR. HAZZARD: Yes, sir, Your Honor.

18 THE COURT: All right, all right, before we go any
19 further with regard to Mr. Swanson, the alternate juror, is
20 there anything else we need to put on the record from the
21 Defense? I didn't give you an opportunity.

22 MR. BARR: Nothing from Defendant Niles, Your Honor.

23 THE COURT: All right, Mr. Hazzard?

24 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
25 Your Honor.

1 THE COURT: All right, anything else before we bring
2 the jury in?

3 MS. ELDER: No, Your Honor, thank you for taking up
4 that matter and we are ready to proceed with our next witness
5 who is going to be Mr. Moore, Your Honor. We can bring him
6 out of lockup before the jury.

7 THE COURT: All right, anything further from the
8 Defendant before we bring in the jury?

9 MR. BARR: No, sir, not now.

10 MR. HAZZARD: Nothing from Defendant Hammond, Your
11 Honor.

12 THE COURT: All right, do we want to go ahead and get
13 Mr. Moore in here before we bring the jury in or we can ---

14 MS. ELDER: I'd like to, Your Honor.

15 THE COURT: All right. Let's go ahead and bring Mr.
16 Moore in. All right, let's bring in the jury.

17 MR. HAZZARD: Your Honor, respectfully request that Mr.
18 Moore sit over there if possible.

19 THE COURT: Well, we're going to need him near a
20 deputy right now. If you will - yeah, if you will accompany
21 him over there.

22 (Whereupon, the following takes place in the presence of
23 the jury.)

24 THE COURT: Ladies and gentlemen, welcome back. I
25 hope everyone had a good lunch. We're now ready to proceed

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1 with the trial. The State can call its next witness.

2 MS. ELDER: Thank you, Your Honor. The State would
3 call Ervin Moore.

4 THE COURT: All right, Mr. Moore, if you could please
5 come forward.

6 Whereupon, Ervin Junior Moore was called to the stand,
7 duly sworn by the clerk, and testified as follows:

8 THE CLERK: Please be seated. State your full name
9 spell your last name for the Court.

10 MR. MOORE: Ervin Junior Moore, M-O-O-R-E.

11 DIRECT EXAMINATION

12 BY MS. ELDER:

13 Q And Mr. Moore, where are you residing right now?

14 A Greenville, North Carolina.

15 Q Okay, is that your home?

16 A Yes, ma'am.

17 Q Okay, and before we get into anything regarding your
18 testimony I want to touch base on a few things. On Monday of
19 this week did you plead guilty to some charges?

20 A Yes, ma'am.

21 Q And what did you plead guilty to?

22 A Manslaughter and robbery and gun possession.

23 Q And that was in relation to this case. So, you were Co-
24 Defendants with Richard Niles and Mokeia Hammond; is that
25 correct?

- 1 A Yes, ma'am.
- 2 Q And you pled to those charges which were - you were
- 3 originally charged with something higher; right?
- 4 A Yes, ma'am.
- 5 Q What were you charged with?
- 6 A Murder.
- 7 Q Murder and armed robbery?
- 8 A Yes, ma'am.
- 9 Q And I believe a weapons charge?
- 10 A Yes, ma'am.
- 11 Q And in agreement for the State allowing you to plead to
- 12 a lesser offense did you agree to testify here today?
- 13 A Yes, ma'am.
- 14 Q And in promise of your testimony here today you received
- 15 that deal from the State; is that correct?
- 16 A Yes, ma'am.
- 17 Q And you have not been sentenced yet; have you?
- 18 A No, ma'am.
- 19 Q Part of the agreement did that include you being here
- 20 today to testify to the truth?
- 21 A Yes, ma'am.
- 22 Q As you know it?
- 23 A Yes, ma'am.
- 24 Q The State offered you anything else to induce you to
- 25 testify here today?

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- 1 A No, ma'am.
- 2 Q And so we can get this out of the way, you had a prior
3 conviction in North Carolina in 2000 for felony possession of
4 cocaine; is that correct?
- 5 A Yes, ma'am.
- 6 Q You also had a North Carolina conviction in 2003 for
7 maintaining any place for controlled substance; isn't that
8 correct?
- 9 A Yes, ma'am.
- 10 Q And then the charges you pled to Monday?
- 11 A Yes, ma'am.
- 12 Q And you were scheduled to go to trial this week prior
13 to your guilty plea; is that correct?
- 14 A Yes, ma'am.
- 15 Q Now, Mr. Moore, I want to take you back to December of
16 2007. Do you recall meeting with investigators with the
17 Myrtle Beach Police Department?
- 18 A Yes, ma'am.
- 19 Q And what was the purpose of you meeting with them at
20 that time?
- 21 A To give a statement.
- 22 Q And were you read your rights?
- 23 A Yes, ma'am.
- 24 Q Did you agree to talk to them?
- 25 A Yes, ma'am.

1 Q And you gave them a pretty lengthy statement; didn't
2 you?

3 A Yes, ma'am.

4 Q You remember how long it was? Was it a couple of hours?

5 A Yes, ma'am.

6 Q All right, and were you in custody at the time?

7 A Yes, ma'am.

8 Q On April 9th, 2007, do you remember that day?

9 A Yes, ma'am.

10 Q I want you to tell me from the time - did you have any
11 interaction with Richard Niles and Mokeia Hammond that day?

12 A Yes, ma'am.

13 Q All right, I want you to go back to that day. I want
14 you to tell me from the time you met with them where and when
15 and then what you did from there.

16 A All right, well, I was standing at the, at the store in
17 Trio, South Carolina. It's called Trio Mini-Mart, and they
18 pulled up and said they was on, on their way to the beach.
19 So, it was a little boring little town from where my family
20 from. So, I got in the car with them, came to the beach.

21 Q Okay, what did you do when you got to the beach?

22 A Richard made a couple of drug sales at a couple of
23 motels. Prior to, I mean, while we was on our way down here
24 we was smoking blunts in the car and while we was riding on
25 the beach we were smoking blunts and we ran out of weed and

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- 1 we said we wanted to get some more weed.
- 2 Q And what did you do to get some more weed?
- 3 A He, he made a couple of phone calls.
- 4 Q And as a result of that what happened?
- 5 A Ended up in the Best Buy parking lot.
- 6 Q Okay, do you know who he was calling?
- 7 A No, ma'am.
- 8 Q Did you hear his conversation?
- 9 A No, because he had the radio up.
- 10 Q Okay, but you knew he was calling somebody?
- 11 A Yes, ma'am.
- 12 Q And did you know why you were going to the Best Buy
- 13 parking lot?
- 14 A To go get some weed.
- 15 Q From somebody?
- 16 A Yes, ma'am.
- 17 Q That Mr. Niles knew?
- 18 A Yes, ma'am.
- 19 Q Now, during the course of riding to the Best Buy parking
- 20 lot after he made arrangements for somebody to meet you all
- 21 there ---
- 22 A Yes, ma'am.
- 23 Q --- what did he say if anything?
- 24 A He said that we was going - he was going to do a lick.
- 25 Q What does do a lick mean?

- 1 A Rob somebody.
- 2 Q Did he say why he was going to rob the victim?
- 3 A No, he ain't, he ain't say nothing.
- 4 Q He just said, ``We're going to do a lick''?
- 5 A Yes, ma'am.
- 6 Q And you knew that to mean robbery?
- 7 A Yes, ma'am.
- 8 Q All right, and who was driving the vehicle at this time?
- 9 A Mokeia.
- 10 Q Okay, and where were you sitting?
- 11 A Behind Richard, behind the passenger side.
- 12 Q In the backseat?
- 13 A Yes, ma'am.
- 14 Q And he was in the ---
- 15 A Front seat.
- 16 Q Okay, and when he was telling you he's hitting this
- 17 lick, going to rob this victim was he in the front seat?
- 18 A Yes, ma'am.
- 19 Q And was Mokeia Hammond beside him driving?
- 20 A Yes, ma'am.
- 21 Q And you were in the backseat?
- 22 A Yes, ma'am.
- 23 Q And even with the radio were you able to hear that?
- 24 A I heard a little bit of it.
- 25 Q Okay, you heard enough that you knew what you were going

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1 there for?

2 A Yeah.

3 Q When you got to the Best Buy parking lot what did you
4 do?

5 A I got out the car and got in the other car, the white
6 Mustang.

7 Q And why did you do that?

8 A To identify the weed.

9 Q And who told you to do that?

10 A Richard.

11 Q All right, so, that was your job in this?

12 A Yes, ma'am.

13 Q To get out and check the weed?

14 A Yes, ma'am.

15 Q And did you, in fact, do that?

16 A Yes, ma'am.

17 Q And what did you do when you got into the victim's
18 vehicle?

19 A I just looking to see was the weed there.

20 Q And where was it?

21 A He had it up under his seat and he pulled it out so I
22 can see it.

23 Q Okay, was that the driver side front?

24 A Yes, ma'am.

25 Q So, it would have been kind of under his legs?

- 1 A Yes, ma'am.
- 2 Q And you saw it?
- 3 A Yes, ma'am.
- 4 Q How much did he have; do you know?
- 5 A A pound, looked like a pound.
- 6 Q Was it in a bag?
- 7 A A big Ziploc bag.
- 8 Q What did you do after that?
- 9 A I got out his car and got back in the car that she was
10 driving.
- 11 Q That who was driving?
- 12 A Mokeia.
- 13 Q She was still in the driver's seat?
- 14 A Yes, ma'am.
- 15 Q Where was Richard Niles?
- 16 A By the time I got back in the car he was out the
17 car.
- 18 Q Okay, and did you all pass?
- 19 A Yes, ma'am.
- 20 Q Okay, so, you were getting back in the car and he
21 was headed towards where you were at the victim's
22 car?
- 23 A Yes, ma'am.
- 24 Q Did you tell him that you saw the drugs?
- 25 A Yes, ma'am.

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- 1 Q What did he do after that?
- 2 A Well, I got back in the car and the next thing I know I
- 3 just heard two shots and I seen Richard he jumped back in the
- 4 backseat behind Mokeia. He didn't go in the front seat. He
- 5 jumped in the backseat where I was at.
- 6 Q Was that the closest to where he was?
- 7 A Yes, ma'am, because we had, we backed in and he pulled
- 8 in.
- 9 Q Okay, so, that was the closest door for Richard Niles
- 10 to jump in?
- 11 A Yes, ma'am.
- 12 Q Did you see him at the car, the victim's car that you
- 13 had just been at?
- 14 A Yes, ma'am.
- 15 Q And where was he when you saw him at the car?
- 16 A He was standing up by the passenger front seat, I mean,
- 17 the passenger door.
- 18 Q Okay, he wasn't in the car?
- 19 A No, ma'am.
- 20 Q He was standing at the door?
- 21 A Yes, ma'am.
- 22 Q Okay, was he leaning in? Could you tell?
- 23 A I couldn't tell.
- 24 Q And you said you heard two shots.
- 25 A Yes, ma'am.

- 1 Q And Richard Niles jumped in?
- 2 A Yes, ma'am.
- 3 Q What happens next?
- 4 A After he jumped in, after them two shots then the other
- 5 guy fired a shot and he fired a shot between, I mean, through
- 6 the driver door on Mokeia car.
- 7 Q Okay, and did you all just sit in the parking lot?
- 8 A For a minute because everybody - he - everybody was
- 9 shook up.
- 10 Q Okay.
- 11 A Stunned. Then after that Richard shot some more and
- 12 then he shot some more, I mean, by the, by the victim
- 13 shooting he shot the back window out where I was sitting at
- 14 and glass went, a piece of glass flew in my eye.
- 15 Q Now, how did he shoot the, how did he shoot the back
- 16 window out? Did you all leave the parking lot?
- 17 A No, ma'am, they were shooting - they was side-by-side
- 18 shooting in - shooting through cars.
- 19 Q Okay, and did you all at some point in time pull out of
- 20 the parking lot?
- 21 A Yes, ma'am.
- 22 Q And who was driving?
- 23 A Mokeia.
- 24 Q And did anybody tell her to drive out or to go?
- 25 A Yeah, Richard tell her go.

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- 1 Q When the shooting happened?
- 2 A Yes, ma'am.
- 3 Q And where did she go, where did she drive to?
- 4 A We ended up at some trailer park but on our way to the
- 5 trailer park he had called his mom and told her to report the
- 6 car stolen.
- 7 Q Okay, and you all went to a trailer park?
- 8 A Yes, ma'am.
- 9 Q What did you do at the trailer park?
- 10 A They got clothes out the car, got a green bag and then
- 11 he had a Nike shoe box. That's where he had the gun at, the
- 12 gun at the whole time.
- 13 Q Okay, and what did he do with that stuff?
- 14 A He put the gun, he stashed the gun up under the trailer
- 15 and the clothes and stuff, what, what he had in the green
- 16 book bag he got it out and we left walking, called a cab, got
- 17 in the cab.
- 18 Q Did he take the clothes and stuff with him?
- 19 A Yes, ma'am.
- 20 Q But he put the gun under the trailer?
- 21 A Yes, ma'am.
- 22 Q Did he tell you anything about the gun?
- 23 A No, ma'am.
- 24 Q When did you - you said it was in a Nike shoe box?
- 25 A Yes, ma'am.

- 1 Q Were did you first see that Nike shoe box?
- 2 A When he jumped back - I mean, I seen the shoe, the shoe
- 3 box when I first got in the car.
- 4 Q And where was that box that?
- 5 A Between, at the, the bottom of his chair, up under the
- 6 seat where he was at.
- 7 Q Okay, in the front?
- 8 A Yes, ma'am.
- 9 Q On the passenger side?
- 10 A Yes, ma'am.
- 11 Q When did you first see the gun?
- 12 A After he shot, had the shootout with the guy.
- 13 Q Okay, and he jumped back in the car?
- 14 A Yes, ma'am.
- 15 Q Did he have the gun with him?
- 16 A Yes, ma'am.
- 17 Q When you all were driving away after he jumped in the
- 18 car and heard the two shots did you ask him anything?
- 19 A Yes, ma'am, I cussed him out.
- 20 Q And did he tell you anything about what happened?
- 21 A He said that he seen the guy reach up under his seat and
- 22 then that's when he shot two times.
- 23 Q He said he saw him reach?
- 24 A Yes, ma'am.
- 25 Q Who shot first?

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- 1 A Richard.
- 2 Q How do you know that?
- 3 A Because the other guy didn't shoot until after Richard
- 4 shot.
- 5 Q Was Richard in the car before the other guy shot?
- 6 A Yes, ma'am.
- 7 Q And you all were - how close were you all together these
- 8 two cars?
- 9 A Like a parking space, not even a parking space.
- 10 Q Okay, were you all side-by-side in the parking space?
- 11 A Yes, ma'am, uh-huh.
- 12 Q When you got into the victim's car and you were looking
- 13 at the drugs on the floorboard underneath him did you see a
- 14 weapon on him?
- 15 A No, ma'am.
- 16 Q The marijuana, and you say weed, you're referring to
- 17 marijuana?
- 18 A Yes, ma'am.
- 19 Q Okay, the drugs that you saw or that you checked out for
- 20 Richard in the victim's car did you see those drugs again?
- 21 A Yes, ma'am.
- 22 Q Who had them?
- 23 A When he got back in the car.
- 24 Q Who is he?
- 25 A Richard.

- 1 Q He had the bag in his hand?
- 2 A Yes, ma'am.
- 3 Q What did he do with the bag?
- 4 A He put it in that green bag with the clothes when we got
- 5 to the trailer park.
- 6 Q Okay, and he took that bag with him?
- 7 A Yes, ma'am.
- 8 Q How did you leave the trailer park?
- 9 A We left the trailer park walking and then we called a
- 10 cab.
- 11 Q Okay, when you pulled up at the trailer park did anybody
- 12 get out?
- 13 A Everybody got out.
- 14 Q Okay, what did you do?
- 15 A I ain't know what, what - where I was at because I ain't
- 16 from down here. So, I just had to stay with them till I can
- 17 get where I can call somebody to come get me or something.
- 18 Q Okay, what did Mokeia do?
- 19 A She stayed with Richard.
- 20 Q All right, did she try to knock on any doors or
- 21 anything?
- 22 A Yeah, they knocked on that trailer door when they was -
- 23 when we first pulled up at where the car was found.
- 24 Q Where they left the car?
- 25 A Yes, ma'am.

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- 1 Q Did they get anybody at the door?
- 2 A No, ma'am.
- 3 Q And they left with you in the cab?
- 4 A Yes, ma'am.
- 5 Q After Richard ditched the gun under the trailer did he
- 6 say anything else about it?
- 7 A No, ma'am.
- 8 Q Do you know if he came back to get it?
- 9 A I think he did went back and got it.
- 10 Q Did he tell you that?
- 11 A I'm pretty sure because I think he called a cab and took
- 12 the bag to a different motel. He went to a motel.
- 13 Q With Mokeia?
- 14 A Yes, ma'am.
- 15 Q And just for the jury's understanding when you say we
- 16 were smoking blunts tell me what that means?
- 17 A Marijuana rolled up in a cigar, take all the tobacco out
- 18 out the cigar and put the weed in it and roll it up.
- 19 Q And is there any question in your mind when you went to
- 20 Best Buy that you all were going there for a robbery?
- 21 A No, ma'am, but that's what happened.
- 22 Q So, that's what you went there for?
- 23 A Yes, ma'am.
- 24 Q You didn't - did you know that Richard was going to
- 25 shoot and kill the victim?

- 1 A No, ma'am, because I didn't even see no gun until he got
2 back in the car.
- 3 Q But you saw the Nike box?
- 4 A Yes, ma'am.
- 5 Q And that you later realized that's where the gun had
6 been?
- 7 A Yes, ma'am, when they put the gun back in and put it up
8 under the trailer.
- 9 Q Do you happen to know what kind of gun it was?
- 10 A Like a 357.
- 11 Q Okay, when Richard jumped in the back seat was he on
12 you, how - were you on one side and he was on the other? Did
13 you all kind of hit together or tell me about that.
- 14 A No, I was - when he jumped in the back seat I was on the
15 driver's door. Then when the other guy shot the glass went
16 in my eye I was down in the seat holding my eye because my
17 eye was bleeding and ---
- 18 Q Okay, so, you were down?
- 19 A Yes, ma'am.
- 20 Q Okay.
- 21 A Because I was bleeding.
- 22 Q And was Richard sitting up?
- 23 A He was, he was sitting up and he started back shooting
24 at the guy.
- 25 Q Okay, so, Mokeia Hammond was driving, you were bent down

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1 in the backseat.

2 A Uh-huh.

3 Q And Richard was in the backseat with you sitting up?

4 A Shooting.

5 Q Shooting. Do you remember how many shots you heard?

6 A Total?

7 Q Yes.

8 A Probably about ten.

9 Q Okay, now, I want to take you back to December of '07,
10 when you gave your statement to Myrtle Beach Police. You
11 said you were in custody for this offense; is that
12 right?

13 A Yes, ma'am.

14 Q And when you started that interview is this the story
15 you told them?

16 A No, ma'am.

17 Q You weren't initially this forthcoming; were you?

18 A No, ma'am.

19 Q By the time you concluded that interview ---

20 A Yes, ma'am.

21 Q --- had you told them what you're telling this jury here
22 today?

23 A Yes, ma'am.

24 Q And at that time when you gave that statement you had
25 not made any deals with the State; had you?

- 1 A No, ma'am.
- 2 Q And the police didn't promise you anything in
3 conjunction with your statement; did they?
- 4 A No, ma'am.
- 5 Q And in fact, you were charged with murder and armed
6 robbery?
- 7 A Yes, ma'am.
- 8 Q And you were arrested?
- 9 A Yes, ma'am.
- 10 Q Were you placed in custody?
- 11 A Yes, ma'am.
- 12 Q And have you been in custody since you gave your
13 statement?
- 14 A Yes, ma'am.
- 15 Q So they didn't help you get out of jail?
- 16 A No, ma'am.
- 17 Q And they didn't reduce your charges?
- 18 A No, ma'am.
- 19 MS. ELDER: One moment, Your Honor.
- 20 THE COURT: All right.
- 21 MS. ELDER: That's all the questions I have, Your
22 Honor.
- 23 THE COURT: All right, Mr. Barr.
- 24 MR. BARR: The Court's indulgence, Your
25 Honor.

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1 CROSS EXAMINATION

2 BY MR. BARR:

3 Q Mr. Moore, how old are you, sir?

4 A 37.

5 Q 37 years old?

6 A Yes, sir.

7 Q Okay, now, the Solicitor just asked you - well, let me
8 ask you, do you know what it is to tell the truth?

9 A Yes, sir.

10 Q Solicitor just asked you when you ended your last
11 interview, not the first part, but the second part of your
12 interview with the detectives, I believe you were speaking
13 with Detective Curry, he asked you how did you know that
14 Richard Niles shot Mr. James Salter first?

15 A Yeah.

16 Q What was your response?

17 A He told me he shot him.

18 Q And that's the response you gave; right? You told him
19 that the only way you knew that was because he told you he
20 shot him after you got to the mobile home park. Now, you're
21 testifying today that you knew that back at the location, at
22 Best Buy; is that correct?23 A I'm testifying about it because I heard the two shots
24 and the other guy didn't shoot his gun.

25 Q But, now, he -- the detectives asked you that day what

1 you heard and you said you heard bang, bang, and they asked
2 you did you know at that time who shot first and you couldn't
3 answer their question; could you, and that's on tape; isn't
4 it?

5 A I told him he shot first because he told me that.

6 Q You told them that he shot first because he told you
7 that after you got to the mobile home park; is that right?

8 A No.

9 Q Well, then, you please explain then. Which is it? Do
10 you know that he shot first because you saw it or do you know
11 that he shot first only because you're saying that's what he
12 told at the mobile home park?

13 A I know he shot first because that's what he told me in
14 the car after he shot, after we left from the victim.

15 Q Mr. Moore, did Detective Curry ask you three times was
16 there any discussion between you, Mr. Moore and Ms. Hammond
17 after the shooting at Best Buy, and did you say no three
18 times? You said there was no discussion; is that right or
19 wrong?

20 A Nah, huh-uh.

21 Q So, it's your testimony today that you didn't tell
22 Detective Curry that there was no discussion between you and
23 Mr. Niles and Ms. Hammond on the way back to the mobile home
24 park and Detective Curry, didn't he tell you, Mr. Moore, that
25 that was just virtually impossible? That there was just no

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1 way that much stuff could happen and you all ride to the
2 mobile home park and not discuss it?

3 A That's what happened.

4 Q He pounded you with that and pounded you with it?

5 MS. ELDER: Your Honor, if he could allow the witness to
6 answer the question.

7 THE COURT: All right.

8 MR. BARR: I have no objection to the witness answering.

9 THE COURT: All right, so, answer his question, please,
10 sir.

11 A That's what happened.

12 THE COURT: Excuse me, sir, you need - I'll get you
13 to ask the question again, listen to his question.

14 A Yeah.

15 THE COURT: And answer the question that he asks.
16 All right.

17 BY MR. BARR:

18 Q Did you specifically tell both detectives including the
19 gentleman seated right here behind the Solicitor that you had
20 no discussion whatsoever with Mr. Niles or Ms. Hammond from
21 the Best Buy parking lot to the mobile home park?

22 A Yeah.

23 Q That's what you told them?

24 A Yeah.

25 Q And so, what you're telling here today is false.

- 1 A It ain't false.
- 2 Q It's directly, it's directly contradictory. So, you're
- 3 saying it's not false, well, which is it?
- 4 A I'm telling you what, what your client told me.
- 5 Q Did Detective Curry tell you that, "Mr. Moore, you
- 6 can't possibly be telling us the truth today because if my
- 7 partner, my friend, Richard Niles had taken me into this kind
- 8 of circumstance and shot somebody I would be cussing him out
- 9 back and forth"; aren't those his words and not yours?
- 10 A No, that's what I told him. I cussed him out.
- 11 Q Mr. Moore, we have a tape. Are those Detective Curry's
- 12 words or yours? Be truthful, those are Detective Curry's
- 13 words; aren't they?
- 14 A No.
- 15 Q Mr. Moore, what kind of educational background do you
- 16 have?
- 17 A Who, me?
- 18 Q You, yes, sir.
- 19 A 11th grade.
- 20 Q 11th grade?
- 21 A Yeah.
- 22 Q Okay, what kind of job do you now work?
- 23 A I was a door hanger and I worked at - I was working at a
- 24 restaurant before I got locked up.
- 25 Q Okay, now, on the day that you were in Trio, South

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1 Carolina, and you encountered Mr. Niles and Ms. Hammond and
2 you were coming to the beach did you tell Detective Curry
3 that you all were coming to the beach to have some fun?

4 A Yeah.

5 Q Okay, did you later on tell Detective Curry that you all
6 were coming to the beach to hit a lick?

7 A Yeah.

8 Q Okay, now, did you tell Detective Curry in the interview
9 that Richard Niles talked with someone on the phone from Trio
10 and on the way to Myrtle Beach?

11 A Yeah.

12 Q During that interview and that's what you told them;
13 right?

14 A Yeah.

15 Q Now, when Attorney Elder just asked you when does the
16 call get made about the discussion and the meeting with Mr.
17 Salter, you told her that that was after you all had gotten
18 to the beach and after you were smoking several blunts and
19 after you ran out of drugs. That's not what you told
20 Detective Curry; is it? That's the first time you've ever
21 said that in your life; isn't it?

22 A Nah, you're putting words, you're trying to put words in
23 my mouth, man.

24 Q No, I'm asking you simply, sir, what did you tell the
25 two detectives. Now, with regard to the trip down here if we

1 played the tape would you have said on the tape that the
2 purpose for coming down here is to have some fun?

3 A Uh-huh.

4 Q Okay.

5 THE COURT: Excuse me, you need to say yes or no.

6 A Oh, yes.

7 Q Okay, and that's, and that's what you told them?

8 A Yeah.

9 Q Okay, now, in your initial interview with the detectives
10 did you tell them that you were asleep in the back of the
11 car, you had no idea what was going on, you never got out of
12 the car?

13 A Yeah.

14 Q And that's what you told them; isn't it?

15 A Yeah.

16 Q Okay, and then after they told you that they already
17 know what happened and they were in possession of big
18 brother's kind of apparatuses and they knew exactly what
19 happened and that, the interview was just your opportunity to
20 help yourself; right?

21 A Uh-huh, yes.

22 Q Yes, sir, and they told you that you were in a deep
23 hole; right?

24 A Yes, sir.

25 Q And the only way you could get yourself out of that deep

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- 1 hole was to explain to them what happened; is that right?
- 2 A Yeah.
- 3 Q They told you were a good man; right?
- 4 A Yeah.
- 5 Q And they told you that you had shown respect for them
- 6 and they respected you and they wanted you to tell them what
- 7 happened; right?
- 8 A Yes, sir.
- 9 Q And for an hour you told them things that did happen;
- 10 right or you wouldn't say nothing; right?
- 11 A I told them what happened.
- 12 Q Now, Detective Curry probably spent at least a half an
- 13 hour trying to tell you about crossroads and the crossroads
- 14 that you all kept coming to and the crossroads that you were
- 15 telling him a little bit of the truth and then you would tell
- 16 him something he completely couldn't believe; is that right?
- 17 A Yes, sir.
- 18 Q Okay, now, later on then he told you - he asked you how
- 19 many children you had; right?
- 20 A Yes, sir.
- 21 Q And you told him you had five children; right?
- 22 A Yes, sir.
- 23 Q And he told you it was Christmas; right?
- 24 A Yes, sir.
- 25 Q You could help yourself and be with your children if you

1 would be more forthcoming and he told you, slapped down two
2 big books on the table; right, and said, "We've got
3 everything. We're just seeing whether or not you're going to
4 tell a lie"; is that right?

5 A Yes, sir.

6 Q Okay, and then he told you that he didn't know why you
7 were being so reluctant to tell the truth because Richard
8 Niles and Mokeia Hammond had already thrown you under the
9 bus; is that right?

10 A Yes, sir.

11 Q And he told you just that; didn't he?

12 A Yes, sir.

13 Q That they had already thrown you under the bus and if
14 you were a smart fellow that what you would do would be to
15 look out for yourself; right?

16 A Yes, sir.

17 Q Okay, they gave a cigarette and left you in a room. You
18 waited a long time; is that right?

19 A Yes, sir.

20 Q And then little by little you told virtually different
21 stories; is that right, totally different stories than you
22 told in the first part of the interview; is that right?

23 A Yes, sir.

24 Q Okay, now, let me ask you, in terms of what you're
25 telling us here today, you pled guilty to manslaughter and

Ervin Moore - Cross by Mr. Barr

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1 pled guilty to armed robbery on Monday; is that right?

2 A Yes, sir.

3 Q And if - and that's in a direct plea deal with the
4 Solicitor's Office; right?

5 A Yes, sir.

6 Q For your testimony, in exchange for your testimony here
7 today; right?

8 A Yes, sir.

9 Q And what that means in real terms is that you're no
10 longer facing 30 years to life; are you?

11 A No, sir.

12 Q You could get ten to 15 for what you're up here saying
13 today.

14 A Yes, sir.

15 Q Which is totally different from what you've always said
16 in the past. Okay, now, let me ask you something, while you
17 were sitting there in that jail cell May 25th, did you write
18 Richard Niles a letter?

19 A Yes, sir.

20 Q And you told him that standup kind of guys do stand up
21 kind of things; right, didn't you?

22 A No, sir, he wrote me first.

23 Q Okay, let me ask you then, let's just stay with what
24 we're talking about right now. Did you tell him that that
25 bitch of his was cooperating with their people; right?

- 1 A Yes, sir.
- 2 Q And that they were trying to roll you; right?
- 3 A Yes, sir.
- 4 Q And that as far as you were concerned he needed to man
5 up; right?
- 6 A Yes, sir, to his responsibility.
- 7 Q Because you were going to man up; is that right?
- 8 A Confess to what he did.
- 9 Q Okay, now, let me ask you this, now, so, you're leading
10 them to believe that you're operating on some kind of code of
11 the street; is that right; whereby nobody cooperates with the
12 police; right, that's the page you want them on; isn't it?
- 13 A Who - no, sir.
- 14 Q She's 19 and he's 25; is that right?
- 15 A I don't know how old she is and how old he is.
- 16 Q And you're 37 years old?
- 17 A Yes, sir.
- 18 Q Is that true?
- 19 A Yes, sir.
- 20 Q Okay, and as the Solicitor read your record you got this
21 conviction for, you got this felony conviction for drugs in
22 June of 2003 for cocaine; is that right?
- 23 A Yes, sir.
- 24 Q And then you've got a conviction of 2003 for maintaining
25 a drug house; right?

1 A Yes, sir.

2 Q And you were found guilty of all of those things; right?

3 A I pleaded guilty.

4 Q You pleaded guilty and you're 37 years old.

5 A Yes, sir.

6 Q And you want to mislead these people into believing that
7 they ought to be operating on some code whereby everybody in
8 the street looks out for everybody in the street, nobody
9 tells the police the truth and that's what you expected them
10 to do and that's what you told him in May of 2008, May 25th;
11 right?

12 A Yes, sir.

13 Q And the ending salutation was ``death rather than
14 dishonor.'' So, they're supposed to be operating off of a
15 code of some sort, some kind of foolishness where you're
16 leading them to believe that they should never say anything
17 at all about the role you played or what was done here
18 because you're keeping quiet?

19 A I'm not keeping quiet.

20 Q You're definitely not. You certainly aren't but you
21 wanted them to believe that; isn't that true?

22 A No, sir.

23 Q Mr. Moore, did you tell the police that on the way to
24 the mall that there was no discussion about what was to take
25 place?

1 A Yes, sir.

2 Q And you told them that. So, now, you're here today
3 saying that someone told you or that Richard Niles told you
4 that there was going to be a robbery. Now, the only thing
5 that you discussed with the police I believe in the interview
6 was that you interpreted that Richard Niles told you that you
7 all were going to hit a lick; right?

8 A Yes, sir.

9 Q Now, the translation of that is a translation that you
10 put on that that you gave the police; is that right? Richard
11 Niles never told you that he was going to the mall to rob
12 anybody; did he? I mean, he can speak English. Did he tell
13 you that?

14 A Well, I mean, what happened at the mall?

15 Q No, no, I'm not asking you that. I'm asking you did
16 Richard Niles tell you that he was going to rob anybody?

17 A Yeah.

18 Q What did he say?

19 A That he was going to do a lick.

20 Q He's going to do a lick?

21 A Yeah.

22 Q Okay, did he tell you, "Mr. Moore, or Ervin, let's go
23 to the mall and rob somebody"?

24 A It was the Best Buy.

25 Q Okay, or Best Buy and rob somebody? Now, again, did you

Ervin Moore - Cross by Mr. Barr

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1 tell both detectives, including the gentleman sitting right
2 there, that you couldn't hear what was being said between
3 Niles and Salter on the phone?

4 A I said I couldn't hear all of it, pieces of it.

5 Q Did you tell them and it's on tape, did you clearly tell
6 them that you couldn't hear what was being said. You said
7 that; didn't you? Yes or no?

8 A I told - yeah.

9 Q Yeah, you did, you absolutely did, but now you come
10 here today and testify that you heard what was being said.
11 Now, which is it?

12 A Like I told you, man, I heard some of it.

13 Q You heard some of it?

14 A Yeah.

15 Q You told both detectives that day that you heard two
16 gunshots?

17 A Yes, sir.

18 Q And they asked you, they asked you at least five times
19 how many gunshots you heard and you said you heard bang,
20 bang.

21 A Bang, bang.

22 Q And that's what you said?

23 A Yeah.

24 Q And that's what's in your, in your statement; isn't it?

25 A Yes, sir.

1 Q You come here today and you testify that you heard ten
2 shots?

3 A Altogether.

4 Q Did you tell the police when they were asking you about
5 this on the statement that, "I heard two shots and then I
6 heard ten shots altogether," or is this ten shot thing
7 nowhere near your statement? It isn't; is it?

8 A No, sir.

9 Q You never said that; did you?

10 A No, sir.

11 Q So, now, you want the jury to believe that when you're
12 in jeopardy of going to jail that all the facts change, but
13 now when you're testifying to the police or when you're
14 giving a sworn statement you can't remember nothing; none of
15 this is clear to you. You testified, you gave a statement
16 that when you left the mobile home that you got away from
17 Mr. Niles and Ms. Mokeia the first chance you got; didn't you
18 tell them that?

19 A Yes, ma'am - I mean, yes, sir.

20 Q But now you come here today and you testify that you
21 know he went back to the mobile home and you know how - where
22 he got the gun and you know what happened and you know - how
23 do you know that?

24 A Because I know where he put the gun when he got out the
25 car.

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1 Q How do you know whether or not he went back? Did you
2 see him go back?

3 A No, sir.

4 Q So this is part of a made up testimony again on behalf
5 of, in the interest of and to save Ervin Moore.

6 Mr. Moore, did, did the officers tell you that they
7 could completely make this case without your testimony and
8 that the only reason you were in that room was just to
9 verify, they just wanted to verify whether or not you were
10 going to tell the truth; is that right?

11 A Yes, sir.

12 Q And you told three different versions of the truth that
13 same day; is that right?

14 A Yes, sir.

15 Q And then you want Mokeia Hammond and Richard Niles to
16 believe some kind of foolishness that you tell them that
17 everybody ought to be - I'm trying to think how you put it,
18 they ought to be real you said. Is that what you said?

19 A Yes, sir, I was just responding to what he wrote me
20 back.

21 Q And you told him that they had to be, that real people
22 do real things; right and that you wouldn't cooperate with
23 them people, that that woman he had was cooperating with
24 people and you wanted to know whether or not he was
25 cooperating with people; is that right?

1 A Yes, sir.

2 Q Okay, now, all of this in an attempt to mislead; is that
3 correct and you're trying to mislead people today; aren't
4 you?

5 A No, sir; no, sir.

6 Q Well, now, Officer Curry asked you three or four times,
7 ``Mr. Moore, how do you know who shot first at the parking
8 lot?'' You said, you tried to offer him an explanation and
9 you couldn't figure up anything and you said, ``Well, the
10 reason I know is because he told me that back at the trailer
11 park.'' Is that what you told them?

12 A Yes, sir.

13 Q Okay, you come to court today to testify as far as this
14 deal with the Solicitor's Office and you tell them and you
15 tell the Court and you tell the jury and everybody in here
16 that you know exactly what the sequencing of the shooting
17 was. You been practicing this for the last couple of days?

18 A No, sir.

19 Q What changed between the interview and now?

20 A Ain't nothing changed.

21 Q You got this plea deal in your pocket; right? You got
22 the plea deal in your pocket.

23 MR. BARR: Judge, on the basis of prior inconsistent
24 statement we would like to ask the jury be allowed to view
25 the tape.

Ervin Moore - Cross by Mr. Barr

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1 THE COURT: Well, let me see. We've got a matter of
2 law we need to take up before we proceed. So, I'm going to
3 excuse the jury back to the jury room for just a moment.
4 Thank you very much.

5 (Whereupon, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right, Mr. Barr, what statement did
8 he deny making that's on the tape?

9 MR. BARR: Your Honor, I think he has denied
10 stating what he told the police officer at least four or five
11 different times. He's denied ---

12 THE COURT: No, I mean, I've heard him - that's what
13 I was paying close attention to. You said, "Now, during
14 your interview isn't it true you told the police that you
15 heard two shots," and he said, "Yes, that's what I told
16 them." "And now, you're changing your story today," and
17 he's more or less admitting that he's made a prior
18 inconsistent statement. What specifically inconsistent
19 statement did he make on the tape that he is denying that he
20 made because I don't recall any.

21 MR. BARR: Your Honor, I think if I recall properly
22 that he is denying the number of bullets, the shooting
23 itself, the number of shots that were made. I think he's
24 denying the discussions that he had with, alleged discussions
25 that he had with Niles and Hammond. I think he's saying that

1 those discussions, in fact, took place. I think he's, in
2 essence, denying, like I said, several things that are
3 material with regard to actual facts about going to the
4 parking lot, the phone calls.

5 THE COURT: Yeah, but, I mean, he, under your cross
6 examination he admitted that in his prior interview he told
7 the police something different than what he's testifying to
8 now.

9 MR. BARR: Your Honor, he's also saying at this
10 point that he heard conversations between Niles and Salter.

11 THE COURT: Yes, but he also, but he admitted that in
12 the interview with the police that he did not, that he told
13 them.

14 MR. BARR: Your Honor, he is still saying that he
15 heard those conversations.

16 THE COURT: But the question is not whether or not he
17 is now saying he heard those conversations. The question is
18 whether or not he admits to making a prior inconsistent
19 statement. As I understand if he made a prior inconsistent
20 statement and he admits in his testimony that what he told
21 the police in that prior inconsistent statement is different
22 than what he is saying now then you don't bring in the prior
23 inconsistent statement. You only bring it in when he denies
24 having made the statement in the first place.

25 MR. BARR: Your Honor, I think he's still denying

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1 the conversations with regard to what went on with phone
2 calls, Your Honor, and that's crucial, that's crucial to my
3 client's ---

4 THE COURT: Well, you're going to have to lay a
5 little bit more foundation. I mean, I will allow you to go
6 back in your cross examination and specifically question him
7 on that point but as far as I can determine thus far he has
8 admitted to the prior inconsistent statements. Now, I'll
9 allow you to continue your cross-examination and if he made a
10 prior inconsistent statement and if in his testimony now he
11 denies having made that statement at any point in time then
12 you can bring it in but I think at this point in time he has
13 admitted to the - in other words with the ten shots and the
14 two shots, you said, "Didn't you tell the police that you
15 only heard two shots," and he says, "Yes, that's what I
16 told the police," and now you're - and he's admitting that
17 he's making a different statement now, but I think the only
18 way you get in the prior inconsistent statement if he denies
19 ever having made that prior inconsistent statement, but I'll
20 allow you to continue with your cross-examination.

21 MR. BARR: The Court's indulgence, Your Honor.

22 THE COURT: All right.

23 MR. BARR: Thank you, Your Honor.

24 THE COURT: All right.

25 MS. ELDER: And Your Honor, can we approach for a

1 moment, please?

2 THE COURT: All right.

3 (Whereupon a bench conference was held.)

4 THE COURT: All right, ladies and gentlemen, those of
5 you who are in the, in the audience, before we bring the jury
6 back in there has been some rumblings, some disagreements
7 when certain things are said, some giggling when other things
8 are said. I'm not pointing any fingers, but if in the future
9 I hear anything coming out of the audience we will clear the
10 courtroom from everybody.

11 All right, anything before we bring the jury back in?

12 MS. ELDER: No, sir, Your Honor.

13 THE COURT: Anything from the Defense before we bring
14 the jury back in?

15 MR. BARR: Nothing.

16 MR. HAZZARD: Not on behalf of Defendant Hammond, Your
17 Honor.

18 THE COURT: All right, and not only in my prior
19 warning, if I hear anything else, whoever is deemed to have
20 caused the disruption will be held in contempt. All right,
21 let's bring the jury back in.

22 MS. ELDER: Thank you, Your Honor.

23 (Whereupon, the following takes place in the presence of
24 the jury.)

25 THE COURT: Ladies and gentlemen of the jury, we

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1 appreciate your patience. We are ready now to resume the
2 trial of the case. Mr. Barr, you can continue with your
3 cross examination.

4 MR. BARR: Thank you, Your Honor.

5 BY MR. BARR:

6 Q Mr. Moore, did you tell Detective Curry and the other
7 detectives that you didn't know who shot first at the Best
8 Way [sic] Store?

9 A I told them I didn't, I didn't see Richard shoot first
10 but.

11 Q Did you tell them that you do not know, you did not know
12 or you do not now, you did not know at that time who shot
13 first at the Best Way [sic] parking lot?

14 A Say it again.

15 Q Did you tell the detectives in the interview that you
16 did not know of your own personal knowledge, did not see who
17 shot first at the parking lot?

18 A Yeah.

19 Q You told them that.

20 A Yeah.

21 Q Do you know today who shot first?

22 A Yeah.

23 Q What puts you in a position to know today better than
24 you knew then?

25 A Because Richard told me he shot first when he jumped

1 back in the car.

2 Q Did you tell the detectives that day that you didn't
3 have a conversation with Richard on either coming up or on
4 the way back to the mobile home park?

5 A No.

6 Q You did not tell them that?

7 A No.

8 Q Let's be very clear, you did not tell the detectives
9 that you did not have a conversation with Richard Niles going
10 back to the mobile or going to the mobile home park?

11 A Yeah, I told them.

12 Q You just said no and now you're saying yes. Are you
13 getting hand signals or something from somebody on the floor?

14 A No.

15 Q Okay, did you tell the detectives during the interview
16 that you never saw a handgun?

17 A Yeah.

18 Q Are you testifying here today that you did see a
19 handgun?

20 A Yes.

21 Q What makes - how do you come about now saying that you
22 saw a handgun when you told them that you did not?

23 A I seen it when he got back in the car.

24 Q Did you tell the detectives that you saw a handgun
25 during the interview either the first part or second part at

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1 the mall?

2 A I told them I seen the handgun when he, when he jumped
3 back in the car.

4 Q Do you deny telling the officers that what you heard was
5 bang, bang, and there was glass in your eye and you fell back
6 in the car under the seat and that that's all you saw?

7 A Yep.

8 Q So, you're denying having told them that?

9 A I mean, look ---

10 Q Just answer yes or no, please?

11 A No..

12 MS. ELDER: Objection, Your Honor. He has a right to
13 explain.

14 THE COURT: Yes, answer the question first. After he
15 answers the question then he can explain.

16 A Say your question again.

17 Q Do you deny telling the officers both parts of the
18 interview, did you see an actual, did you deny telling them
19 that you did not see an actual handgun when, in fact, it was
20 your recollection was that you heard bang, bang and that
21 there was glass in your eye and you fell under the seat?

22 A Yeah.

23 Q Sir?

24 A Yeah.

25 Q Yes meaning?

1 A Yes meaning I told them.

2 Q You told them what?

3 A That I seen the handgun when he jumped back in the car.

4 Q Okay, is that going to be in your statement?

5 A Yeah.

6 Q It's going to be in your statement that you said that
7 you saw a handgun in Mr. Niles' hand when he got back in the
8 car at the Best Way - Best Buy parking lot?

9 A Yeah.

10 Q And you're here today denying that what you told the
11 police officers was that what you heard was bang, bang and
12 there was glass in your eyes and you were under the seat?

13 A Yeah.

14 THE COURT: Your Honor, I think it's totally
15 inconsistent.

16 THE COURT: All right, let me see the attorneys up
17 here.

18 (Whereupon, a bench conference was held in the presence
19 but out of the hearing of the jury.)

20 Q Mr. Moore, I'll try to be clear. In your statement to
21 the police, the statement you made in the room you and two
22 detectives, including this gentleman here, did you tell them
23 based on what you saw at the scene in the car or out of the
24 car at Best Way [sic] parking lot, did you tell them that you
25 didn't see a gun, that you did not see a gun?

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1 A I told them I didn't see a gun till he got back in the
2 car.

3 Q Now, I'll try to be as clear as I can. Are you saying
4 that you told them that you saw a gun when he got back in the
5 car?

6 A Yes, sir.

7 Q And are you saying that you told them you saw a 357 ---

8 A Yes, sir.

9 Q --- caliber gun?

10 A Yes, sir.

11 Q And is that in your statement?

12 A Yes, sir.

13 Q Or is that what you're saying here today?

14 A Yes, sir.

15 Q At what point in your statement did you tell them that?

16 A I don't know what point but I know I told them.

17 MR. BARR: Your Honor, might I take it up outside
18 the presence ---

19 THE COURT: All right, I think - no, let's just bring
20 them back up.

21 (Whereupon, a bench conference was held in the presence
22 but out of the hearing of the jury.)

23 MR. BARR: The Court's indulgence, Your Honor.

24 THE COURT: All right.

25 BY MR. BARR:

1 Q Mr. Moore, moving along, did you tell the police in your
2 interview that there was drugs under the driver's seat in
3 Mr. Salter's car and that he got those drugs out and showed
4 them to you?

5 A Yes, sir.

6 Q And you told them that?

7 A Yes, sir.

8 Q Did you tell the police that those drugs went into a bag
9 with Richard Niles?

10 A When?

11 Q I'm asking you. On direct examination you told Ms.
12 Elder that Mr. Salter showed you the drugs and they came from
13 under the driver's seat?

14 A Yes, sir.

15 Q In a bag?

16 A Yes, sir.

17 Q Did you tell the police that in your interview?

18 A Yes, sir, a Ziploc sandwich bag.

19 Q Okay, so, you're saying today that you told the police
20 that Mr. Salter showed you some drugs, came out of a Ziploc
21 sandwich bag in the car?

22 A Yes, sir.

23 Q And did you tell the police then after he showed you the
24 drugs that you got out of the car and then passed Richard
25 Niles on the way to the car?

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- 1 A Yes, sir.
- 2 Q And you're saying that that's in your statement?
- 3 A Yes, sir.
- 4 Q To the police?
- 5 A Yes, sir.
- 6 Q And you're saying that you told the police that Richard
- 7 Niles got drugs from Mr. Salter?
- 8 A Yes, sir.
- 9 Q And that's in your statement?
- 10 A Yes, sir.
- 11 Q And you know that absolutely?
- 12 A Yes, sir.
- 13 Q Okay, did you tell the police that Richard Niles put a
- 14 gun under - in a Nike shoe box and put it under a mobile home
- 15 park ---
- 16 A A trailer.
- 17 Q --- in a mobile home, in a mobile home park?
- 18 A Yes, sir.
- 19 Q Okay, did you tell the police that he later went back
- 20 and got that weapon?
- 21 A Yes, sir.
- 22 Q And all that's in your statement?
- 23 A Yes, sir.
- 24 Q Okay, and you're saying today under oath that you told
- 25 all of those things to the police in that statement that you

1 made to the police?

2 A Yes, sir.

3 Q Okay, I have no further questions of this witness,
4 again, just the motion.

5 THE COURT: All right, sir. I'm going to go ahead
6 and deny it at this time. We'll continue with the cross
7 examination. Mr. Hazzard.

8 MR. HAZZARD: Thank you, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HAZZARD:

11 Q Ervin Junior Moore, I believe you told Ms. Elder that
12 you're from Greensboro?

13 A Yes, sir.

14 Q She asked you where you lived; right?

15 A Yeah.

16 Q Okay, so, you drove down here for this hearing today?

17 A No, I'm a resident at J. Reuben Long.

18 Q Oh, you're a resident at the detention center?

19 A Yes, sir.

20 Q And those clothes you're wearing you wore those into the
21 detention center when you were arrested?

22 A No, sir.

23 Q You bought them after you were at the detention center?

24 A No, sir.

25 Q Someone brought them to the detention center for you?

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- 1 A Yes, sir.
- 2 Q Your mother, your wife?
- 3 A No, sir.
- 4 Q Family member?
- 5 A Yes, sir.
- 6 Q What family member, sir?
- 7 A Cousin.
- 8 Q Your cousin, what's your cousin's name?
- 9 A Tyrone Moore.
- 10 Q Tyrone Moore, he brought, bought that for you, brought
- 11 it to you so you could look good in court; right?
- 12 A Yes, sir.
- 13 Q Okay, now, are you an addict or a user?
- 14 A No, sir.
- 15 Q You're not an addict?
- 16 A No, sir.
- 17 Q Not a user?
- 18 A No, sir, of what?
- 19 Q Are you a dealer?
- 20 A Yes, sir.
- 21 Q You're a drug dealer, okay. Now we're getting
- 22 somewhere. Because you were dealing back in June of 2000
- 23 when you were convicted of felony cocaine possession; right?
- 24 A Yes, sir.
- 25 Q Okay, and you were dealing in June of 2003 when you were

1 maintaining the crack house; right?

2 A Yes, sir.

3 Q Okay, tell me what all goes into maintaining a crack
4 house if you would.

5 MS. ELDER: Objection, Your Honor, relevancy.

6 THE COURT: All right, what's the relevance?

7 MR. HAZZARD: What is the relevance?

8 THE COURT: Uh-huh.

9 MR. HAZZARD: I think it goes to his believability and
10 credibility, Your Honor.

11 THE COURT: Okay, I sustain their motion - the
12 objection.

13 MR. HAZZARD: Okay.

14 BY MR. HAZZARD:

15 Q But in 2003 you were maintaining a crack house as part
16 of your job as a drug dealer; correct?

17 A Yes, sir.

18 Q Okay, and then you drop off the grid for four years.
19 What were you doing for a living between June of 2003 and
20 April of 2007?

21 A Working.

22 Q Working where, sir?

23 A Different jobs.

24 Q Tell me what they are, tell me what they were.

25 A Restaurant.

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- 1 Q Which one?
- 2 A Bojangles'.
- 3 Q Where located, sir?
- 4 A South Elm Eugene Street, Greensboro, North Carolina.
- 5 Q In Greenville, North Carolina?
- 6 A Greensboro.
- 7 Q Greensboro, North Carolina, and how long did you hold
- 8 that job, sir?
- 9 A Until I got - I was off and on.
- 10 Q Off and on?
- 11 A Yeah.
- 12 Q At that job?
- 13 A Yes, sir.
- 14 Q What, they lay you off?
- 15 A No, sir.
- 16 Q So, you'd quit and come back?
- 17 A Yes, sir.
- 18 Q Did you work anywhere else between June of 2003 and
- 19 April of 2007?
- 20 A Yes, sir.
- 21 Q Where, sir, please?
- 22 A A door hanger.
- 23 Q A door hanger?
- 24 A Advertising.
- 25 Q For advertising?

- 1 A Yeah.
- 2 Q Advertising for whom, sir?
- 3 A Passing out flyers.
- 4 Q Passing out flyers?
- 5 A Yes, sir.
- 6 Q For whom, sir?
- 7 A A dude named John.
- 8 Q A dude named John. Does John have a last name or a
9 business?
- 10 A Yeah, he's got a business. His name is John Watson.
- 11 Q John Watson, and what's the name of John Watson's
12 business, sir.
- 13 A Door advertising, that's the name of it.
- 14 Q Door advertising?
- 15 A Yeah.
- 16 Q And where was this, sir?
- 17 A He was out of Raleigh, North Carolina.
- 18 Q Out of Raleigh, North Carolina?
- 19 A Yes, sir.
- 20 Q Okay, so, then at some point you moved to Raleigh?
- 21 A No, sir.
- 22 Q So you were driving from Greensboro to Raleigh to work?
- 23 A No, sir, he was coming from Raleigh to Greensboro.
- 24 Q He would come from Raleigh to Greensboro?
- 25 A Yes, sir.

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1 Q Okay, so, you were working for John, and at this point I
2 take it that you had stopped doing drugs; is that correct or
3 were you still ---

4 A I wasn't never on drugs.

5 Q You weren't ever on drugs?

6 A Marijuana.

7 Q Okay, when were you on marijuana, sir?

8 A When?

9 Q Yes.

10 A It was about '91.

11 Q From '91 until when?

12 A Got locked up.

13 Q From '91 until - and when were you locked up, December
14 of 2007?

15 A Yeah, when I was working at Bojangles'.

16 Q When you were working at Bojangles'?

17 A Yeah.

18 Q And that was in?

19 A '07.

20 Q That was where, in Greensboro?

21 A Greensboro.

22 Q Okay.

23 A That's where I got arrested at. That's where the police
24 came and got me off my job.

25 Q Yes, sir. So, you had a marijuana problem or issue for

- 1 16 years; correct?
- 2 A No, sir.
- 3 Q So, it's not a problem?
- 4 A No, sir.
- 5 Q Getting it and doing it then is not a problem?
- 6 A It wasn't the whole 16 years I was smoking weed every
- 7 day.
- 8 Q You were or were not, sir?
- 9 A I wasn't.
- 10 Q Okay, you weren't, but much like your jobs off and on
- 11 over 16 years then obtaining, using marijuana; correct?
- 12 A Yes, sir.
- 13 Q Were you selling marijuana or just using it?
- 14 A Using.
- 15 Q Just using. So, you were selling cocaine and
- 16 maintaining a crack house but you used marijuana?
- 17 A Yes, sir.
- 18 Q Okay, and that's the smart way to do it, right, don't
- 19 get high on your own supply; correct?
- 20 A Yes, sir.
- 21 Q Okay, now, what caused you to get out of the crack and
- 22 cocaine business?
- 23 A What caused me to get out of it?
- 24 Q Yes, sir.
- 25 MS. ELDER: Your Honor, I'm going to object again for

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1 relevancy at this point. He's impeached him with prior
2 record. That's what the rules provide.

3 MR. HAZZARD: Your Honor ---

4 THE COURT: All right, overruled. I'm going to allow
5 him to go forward. Go ahead.

6 MR. HAZZARD: Thank you, Your Honor.

7 A Say - repeat the question again.

8 Q Yes, sir, sure. What caused you - you were convicted of
9 maintaining the crack house in 2003. I'm trying to figure
10 out what caused you - I mean, because you can make money
11 doing that; right?

12 A Made money.

13 Q Yes, yes, more money than you made working at
14 Bojangles'; right?

15 A Yes, sir.

16 Q Okay, so, I'm trying to figure out what caused an
17 entrepreneur such as yourself to get out of the lucrative
18 crack house business in 2003 such that you ended up working
19 at Bojangles' in 2007?

20 A I couldn't get caught with, with another charge, another
21 drug charge.

22 Q You couldn't get caught with another charge?

23 A Another crack charge, cocaine charge.

24 Q You couldn't get caught with another crack or a cocaine
25 charge; is that what you're saying?

- 1 A Yes, sir.
- 2 Q Okay, fair enough, fair enough. Now, June 2003 you're
3 convicted of maintaining the crack house. At what point were
4 you free of the justice system from this charge?
- 5 A It was a couple of years.
- 6 Q So, a couple of years after this charge until you were
7 totally free of the justice system?
- 8 A Yes, sir.
- 9 Q Okay, so, now, we're up around maybe June of '05; is
10 that correct?
- 11 A Yes, sir.
- 12 Q I mean, I'm not trying to put words in your mouth. I
13 want you to tell the jury the truth as you know it. So, does
14 it seem like '05 would be right as far as when you were
15 finished with all your legal obligations stemming from these
16 two charges?
- 17 A Yes, sir.
- 18 Q Okay, okay, now, after you finished all your obligations
19 and this is in North Carolina; right?
- 20 A Yes, sir.
- 21 Q Okay, so, you're not in South Carolina. You're not in
22 Trio. You're not in Salters; correct?
- 23 A No, sir.
- 24 Q Okay, and you're living up there in North Carolina. You
25 are now free of your obligations, okay, in '05. What did you

Ervin Moore - Cross by Mr. Hazzard

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- 1 do for a living between '05 and April of '07?
- 2 A Went back to work at Bojangles'.
- 3 Q Okay, so, you worked at Bojangles' for that one and a
- 4 half to two year period; correct?
- 5 A Yeah.
- 6 Q Okay, now, how did you find yourself in Trio, South
- 7 Carolina, on April 9th of 2007?
- 8 A I got family down there.
- 9 Q You have family down there. So, you were visiting?
- 10 A Yes, sir.
- 11 Q Okay, and at what point had you come down to visit? How
- 12 long before April 8th, 2007, did you arrive in Trio?
- 13 A About a day.
- 14 Q About a day. So, around April 7th or April 8th you came
- 15 down to visit family; right?
- 16 A Yes, sir.
- 17 Q Okay, okay, then on April 9th - I'll put it this way.
- 18 On April 9th that's when you run into Richard and Mokeia;
- 19 right?
- 20 A Yes, sir.
- 21 Q Okay, now, they're driving a car. What were you
- 22 driving?
- 23 A I was at the store that's right by my house.
- 24 Q You was on - you were at the store right by your house.
- 25 So, you were on foot?

- 1 A Yes, sir.
- 2 Q Okay, did you drive down from Greensboro?
- 3 A No, sir.
- 4 Q Did you walk down from Greensboro?
- 5 A No, sir.
- 6 Q How did you get from Greensboro to Trio?
- 7 A Somebody brought me down there.
- 8 Q Somebody brought you down?
- 9 A Yes, sir.
- 10 Q Who brought you down, sir?
- 11 A A friend.
- 12 Q And does this friend have a name, sir?
- 13 A Kim Reardon.
- 14 Q Kim Reardon brought you down.
- 15 A Yes, sir.
- 16 Q Okay, and this is a female?
- 17 A Yes, sir.
- 18 Q She live in Trio?
- 19 A No, sir.
- 20 Q Where does she live?
- 21 A Greensboro.
- 22 Q Okay, she have family in Trio?
- 23 A No, sir.
- 24 Q So, she just out of the goodness of her heart gave you a
- 25 ride?

Ervin Moore - Cross by Mr. Hazzard

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- 1 A Yes, sir.
- 2 Q To a place where she doesn't know anybody?
- 3 A She done been down there before.
- 4 Q Okay, so, can we say this is your girlfriend,
5 significant other?
- 6 A Baby mama.
- 7 Q Baby mama, baby mama, there we go. Okay, so, you come
8 down with your baby mama and you go walk to the store near
9 your house.
- 10 A Near my aunt house.
- 11 Q Near your aunt's house. That's right. That's not the
12 house you grew up in.
- 13 A No, sir.
- 14 Q All right, you run into Rich Boy here and his girlfriend
15 and it's your testimony to this jury that they just said,
16 "Okay, come on with us." I mean, how did you - just tell
17 me, how did you end up getting in the car?
- 18 A They pulled up and said they was going to the beach.
- 19 Q And you asked to go I take it?
- 20 A Yeah, because it was boring, it's country.
- 21 Q Okay, so, you asked to go. They didn't ask you to go;
22 did they?
- 23 A Yeah.
- 24 Q Which is it, sir?
- 25 A Yeah, they asked me, man.

- 1 Q Did they ask you to go or did you ask to go?
- 2 A Richard, yeah.
- 3 Q Excuse me?
- 4 A Yeah, Richard asked me to come.
- 5 Q He asked you to go?
- 6 A Yeah.
- 7 Q Okay, okay, so, even though they're going and you've
- 8 testified that you asked to go because it was boring ---
- 9 A It was boring.
- 10 Q --- now he asked you to go?
- 11 A He asked me did I want to ride and I said yeah.
- 12 Q Okay, no problem, sir. So, now, you get in the car.
- 13 You ride up here and it's your testimony - well, let me ask
- 14 you, what time was that?
- 15 A I'm going to say about, probably about in the afternoon.
- 16 Q Okay, what time was that? Can you be more specific?
- 17 A About two something.
- 18 Q About two something in the afternoon, okay, and I
- 19 believe you testified to Ms. Elder that you all got to the
- 20 beach. How far a ride is it from Trio to the beach roughly
- 21 because I've never been to Trio. I don't know.
- 22 A Probably about 50 some miles I think.
- 23 Q About 50 something miles. About how long does that
- 24 normally take driving at a moderate rate?
- 25 A Probably about a hour.

Ervin Moore - Cross by Mr. Hazzard

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1 Q About an hour, okay. So, two something in the afternoon
2 you get in the car; is that correct?

3 A I don't know what time it was but I know I got in the
4 car with them.

5 Q You don't know what time it was. Do you own a watch?

6 A No.

7 Q So, sometime that afternoon, you don't know when?

8 A Sometime in the afternoon.

9 Q But you don't know when?

10 A No.

11 Q Okay, and your testimony, your story before this jury is
12 that at some point you all are riding around the beach or
13 you're riding in the backseat. You're a passenger because
14 you ain't in the game no more; right?

15 A No, sir.

16 Q No, you're not in the game. You work at Bojangles'.

17 A I was working at Bojangles'.

18 Q That's right, but sometime in the afternoon you're
19 watching Richard go around and make his deals; right?

20 A Yes, sir.

21 Q And what were his deals? Was he buying weed or selling
22 weed or buying or whatever? What was he, what was he doing?

23 A He was selling crack.

24 Q He was selling crack, okay. That's what your testimony
25 is?

1 A Yeah.

2 Q And I'm am sure that you told Officer Curry and Officer
3 Crosby all about that, that he was riding around making drug
4 deals, right, and selling crack?

5 A Yes, sir.

6 Q Okay, and that was back in December of '07; right, that
7 you told them that?

8 A Yes, sir

9 Q Okay, and so, he's giving out drugs and receiving money;
10 correct?

11 A Yes, sir.

12 Q Okay, how many deals did you see him do, how many times
13 did the car stop?

14 A I don't know because when we started in motion I ain't
15 even get out the car.

16 Q Okay, well, how many times did the car stop with you in
17 it?

18 A Went to about five, about four or five motels.

19 Q About four or five motels and how do you know he's
20 making sales?

21 A That we would - he would - we were talking about it.

22 Q You were talking about it. Okay, and what were you
23 talking about, the fact that he was making sales; is that, is
24 that correct?

25 A Yeah, we were just talking.

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- 1 Q You were just talking and what was he telling you about
2 these sales?
- 3 A He wasn't telling me nothing. He was just like he was
4 making money, man.
- 5 Q And did you see the money he was making?
- 6 A Yeah.
- 7 Q How much money?
- 8 A I'd say a couple of hundreds.
- 9 Q Couple of hundreds?
- 10 A Yeah.
- 11 Q So, he was - so, he had some hundred dollar bills on
12 him, no question about it.
- 13 A Twenties, whatever.
- 14 Q He had twenties on up; right?
- 15 A Money is money.
- 16 Q Money is money, that's right, and he a businessman and
17 he making his money; right?
- 18 A That's what he been doing.
- 19 Q That what he been doing but you ain't in the game no
20 more; right?
- 21 A No.
- 22 Q That's right. Now, after this four or five or could've
23 possibly have been more stops?
- 24 A It was - that was about it.
- 25 Q I'm sorry?

- 1 A That was about it, about five.
- 2 Q It was about five stops?
- 3 A Yeah.
- 4 Q And he's picking up money on every one?
- 5 A Yeah, might be 20 here or 30 there or 20 here or ten,
- 6 whatever. Whoever wanted some he was going to serve them.
- 7 Q Uh-huh, and he got hundreds on him by the time he was
- 8 done; right?
- 9 A Yeah.
- 10 Q Right, but yet, it's your testimony to this jury that he
- 11 runs out of weed and he going to have to go steal it from
- 12 somebody. How much money did you have on you that day?
- 13 A I ain't bring no money out with me that day.
- 14 Q You didn't bring a dime; did you?
- 15 A No.
- 16 Q Why were you going to the store without any money, back
- 17 in Trio you were going to the store by your aunt's house.
- 18 A It's a little store where everybody go to.
- 19 Q Where everybody, I don't care. What you just going to
- 20 sit around the store and watch other people buy stuff?
- 21 A Nah.
- 22 Q Okay, so, what were you going to do at the store? Were
- 23 you going to rob that?
- 24 A I ain't rob nobody.
- 25 Q Okay, I'll ask you as simply and plainly as I can. What

Ervin Moore - Cross by Mr. Hazzard

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- 1 | were you going to do at the store with no money?
- 2 | A I was just hanging out.
- 3 | Q You were just going to hang out, watch other people
- 4 | live?
- 5 | A I could have went in that store and got anything I
- 6 | wanted.
- 7 | Q Really, with no money?
- 8 | A With no money.
- 9 | Q I bet you could have. I bet you could have because
- 10 | that's how you roll; isn't it?
- 11 | A Because everybody like me.
- 12 | Q Because everybody likes you. That's right. So, what
- 13 | time did, after, after all the weed allegedly has been smoked
- 14 | because you're such a good buddy that they hadn't seen in so
- 15 | long, after all this weed has been smoked and it's time to
- 16 | find some more, you say Rich Boy calls someone on the phone;
- 17 | right?
- 18 | A Yep.
- 19 | Q But you can't really hear the conversation; correct?
- 20 | A Yes, sir.
- 21 | Q Because the music is up; right?
- 22 | A Yes, sir.
- 23 | Q The music is bumping; right?
- 24 | A Yes, sir.
- 25 | Q Because you all are in - you all ain't in Trio now. You

1 all, you all at the beach. It's April. It's warm. You
2 ain't in Trio. You having a good time; aren't you?

3 A Nope.

4 Q You weren't having a good time?

5 A Nah.

6 Q You were miserable sitting in that backseat; weren't
7 you?

8 A Yes, sir.

9 Q Yeah, because you ain't had no money, you wasn't in the
10 life anymore, you weren't in the game. It was miserable;
11 wasn't it?

12 A Wasn't that miserable.

13 Q Wasn't that miserable, okay. So, what time was this
14 phone call to pick up some more drugs?

15 A I don't know what time it was.

16 Q You don't know, got no idea; do you?

17 A I know he called about five or six people though.

18 Q He called about five or six people about drugs or just
19 five or six phone conversations?

20 A About drugs, about whatever.

21 Q Okay, so, you could hear that? Yes or no could you hear
22 that?

23 A I heard some of it.

24 Q You heard some of it. Always, always just enough to be
25 helpful to the Prosecution; right?

Ervin Moore - Cross by Mr. Hazzard

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- 1 A You wasn't there, man.
- 2 Q You're right. I wasn't. I wasn't, wasn't there and
3 wouldn't have been there. You're absolutely right about
4 that. So, anyway, you don't know what time the Rich Boy
5 called Mr. Salter; do you?
- 6 A Nope.
- 7 Q No, so, you can't tell and you can't help the jury with
8 that so that we can match up the phone records from the phone
9 because that would be a little too simple; wouldn't it?
- 10 A But he called him back.
- 11 Q But he called him back, okay, and how many times did you
12 say in your truth that Rich Boy called Salter or Salter
13 called him?
- 14 A Probably, I know he called him probably about four or
15 five times.
- 16 Q You think so?
- 17 A Yeah.
- 18 Q The Rich Boy called Salter four or five times?
- 19 A Yes, sir.
- 20 Q Okay. Let me make sure I make a note of that.
- 21 MR. HAZZARD: The Court's indulgence, Your Honor.
- 22 THE COURT: All right.
- 23 BY MR. HAZZARD:
- 24 Q And do you have any idea how many times that Salter,
25 Mr. Salter would have called Rich Boy?

1 A I think just one time.

2 Q You think just one time?

3 A Yes, sir.

4 Q And around what time was that?

5 A Right before it got dark.

6 Q Right before it got dark, okay, all right, now, you have

7 an agreement with the State in this case; right?

8 A Yes, sir.

9 Q Okay, and let me make sure I got this right because what

10 you are saying to this jury is that the statement that you're

11 giving today is consistent with what you told the police,

12 Detective Curry, Detective Crosby and whoever else back in

13 December of '07; right?

14 A Yes, sir.

15 Q But no changes, no modifications; right?

16 A No, sir.

17 Q No, okay, now, I'm a little confused because your deal

18 now, you were facing 30 to life on murder; right?

19 A Yes, sir.

20 Q And you were facing time for armed robbery. You were

21 facing time for unlawful possession of a firearm during the

22 commission of a felony; is that right?

23 A Yes, sir.

24 Q Okay, and now they've taken that 30 to life off the

25 table and all you're facing is ten to 15, wrap everything up

Ervin Moore - Cross by Mr. Hazzard

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- 1 in one big bow; right?
- 2 A Yes, sir.
- 3 Q You sound like you got a question. You might want to -
- 4 your attorney right back there you need to talk to him about
- 5 it for a second? Are you sure?
- 6 A I said yes, sir.
- 7 Q So you know?
- 8 A Yeah.
- 9 Q You're facing ten to 15?
- 10 A Yes, sir.
- 11 Q So, by your testimony here today you bought at least 15
- 12 to 20 years of your life back; right?
- 13 A Yes, sir.
- 14 Q All right, now, and your testimony is the same now as it
- 15 was in the statement you gave back in December; right,
- 16 according to you?
- 17 A Yes, sir
- 18 Q Yes, is that a yes?
- 19 A Yeah, sure.
- 20 Q Okay, well, then tell me this, when did you all reach
- 21 this agreement, you and the Prosecution?
- 22 A Last week.
- 23 Q Last week. Last week, today is March, March 11th, I
- 24 believe, 2009, and you're saying you all reached this
- 25 agreement last week. What day last week, sir? Today is

- 1 Wednesday. I know time gets away from you when you're in
2 jail. Today is Wednesday. What day last week?
- 3 A Sunday, I think.
- 4 Q Sunday, four days ago, the day before this trial was
5 scheduled to start; right?
- 6 A Yes, sir.
- 7 Q Yes, sir. Now, if your testimony was the same today as
8 the statement you gave in December of '07 how come nobody
9 offered you ten years back in December of '07 when you gave a
10 statement? You telling the truth now like you were then;
11 right, right, aren't you?
- 12 A Yes, sir.
- 13 Q And yet, there wasn't nothing out there for you in
14 December of '07; was there?
- 15 A No, sir.
- 16 Q But now one day before trial, oh, buddy, all of a sudden
17 we got us a new best friend; right?
- 18 A Yes, sir.
- 19 Q I mean, did you go to the Prosecution and tell them that
20 you wanted to help them or did they come to you?
- 21 A I don't know who did what. My lawyer worked it out.
- 22 Q You don't know who did what? Did you call the
23 Prosecution?
- 24 A No, sir.
- 25 Q So, you didn't go to them; right?

Ervin Moore - Cross by Mr. Hazzard

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- 1 A No, sir.
- 2 Q They came looking to you for help; right?
- 3 A I went through my lawyer.
- 4 Q You went through your lawyer. So, you told your lawyer
- 5 you wanted some help; is that correct?
- 6 A No, sir.
- 7 Q So, you didn't tell Mr. - who is your lawyer? This your
- 8 lawyer back here, Mr. Truslow?
- 9 A Yes, sir.
- 10 Q This man right here?
- 11 A Yes, sir.
- 12 Q So, you didn't tell him you wanted any help?
- 13 A No, sir.
- 14 Q Okay, well, you said you went through your lawyer. I
- 15 mean, help me out here. Explain it to me. How did you hook
- 16 up with the Prosecution? How did you all become new best
- 17 friends. Tell me that.
- 18 A They came and see me.
- 19 Q Who came to see you, sir?
- 20 A The Prosecution.
- 21 Q Who, which one, both of them?
- 22 A Yes, sir.
- 23 Q These two folks right there?
- 24 A Yes, sir.
- 25 Q Yes?

- 1 A Yes, sir.
- 2 Q When did they come to see you, on Sunday?
- 3 A Yes, sir.
- 4 Q They came out to the jail to talk to you on Sunday; is
- 5 that right?
- 6 A Yes, sir.
- 7 Q Okay, now we're getting somewhere, and you didn't call
- 8 them and ask them to come; did you?
- 9 A No, sir.
- 10 Q No, but now all this time these charges are pending and
- 11 according to you your story is exactly the same. You're
- 12 telling them your truth but yet nobody got any love for you;
- 13 do they? Was Mr. Richardson out at the jail helping you out
- 14 in December of '07?
- 15 A No, sir.
- 16 Q Was Ms. Elder out at the jail helping you January of
- 17 '08?
- 18 A No, sir.
- 19 Q Anybody from the Prosecutor's office come and see you
- 20 between December of '07 up until, what's that, March 8th ---
- 21 A No.
- 22 Q --- of 2009?
- 23 A No, sir.
- 24 Q Yeah, they needed some help; didn't they. Is that what
- 25 they told you that they needed some help?

Ervin Moore - Cross by Mr. Hazzard

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- 1 A No, sir.
- 2 Q What did they tell you?
- 3 A They wanted the facts.
- 4 Q They wanted the facts. You already gave the facts
- 5 according to you. They already had the facts according to
- 6 you; right, right?
- 7 A Yes, sir.
- 8 Q Because you're saying you told them the truth back in
- 9 December of '07. Speaking of which, how is it that you were
- 10 just footloose and fancy free from April 9th of '07 till
- 11 sometime in December of '07. Where did you go?
- 12 A I was locked up.
- 13 Q You were locked up between April 9th of '07 and December
- 14 of '07?
- 15 A I was in Greensboro.
- 16 Q You were in Greensboro locked up?
- 17 A Yes, sir. No, I was in Greensboro working.
- 18 Q You were in Greensboro working.
- 19 A Yes, sir.
- 20 Q So, you got out of this area as quick as you could;
- 21 didn't you?
- 22 A The same day, I mean, the next day.
- 23 Q You didn't go back, you didn't go back to Trio where
- 24 everybody knows your name; did you?
- 25 A Yes, sir.

1 Q You did, and stayed for how long?

2 A About two days.

3 Q About two days?

4 A Yes, sir.

5 Q And then the block was hot. You had to go; didn't you?

6 A No, sir.

7 Q No, no. Now, I'm a little confused. Nobody, no family,
8 no friends ever called you in Greensboro and said there's
9 some concern about this shooting that occurred, police are
10 asking questions, nobody said that.

11 A Yes, sir

12 Q They did? Well, did you come back and talk to the
13 police in May of '07?

14 A No, sir.

15 Q June of '07?

16 A No, sir, I was working.

17 Q You were working?

18 A That's where they pick me up off my job. I wasn't
19 running. If I was running I wouldn't even went to Greensboro.

20 Q Uh-huh.

21 A I would have been somewhere else.

22 Q You would've been somewhere else. How were you going to
23 go somewhere else? You ain't had no money. Was Kim Reardon
24 going to give you money to go somewhere else, your baby's
25 mama?

Ervin Moore - Cross by Mr. Hazzard

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1 A Probably would if I would've asked her.

2 Q Probably would because that's how you roll, isn't it,
3 living off ---

4 A If I was running from anything I wouldn't have went back
5 to Greensboro.

6 THE COURT: All right, excuse me, make sure you don't
7 speak at the same time. The court reporter can only pick up
8 one at a time. All right?

9 MR. HAZZARD: Yes, sir.

10 THE COURT: All right.

11 BY MR. HAZZARD:

12 Q Even though you knew that there were questions and issues
13 regarding this case you weren't in the interview room or you
14 weren't out in the hall waiting to give your statement to the
15 police on April 12th of '07 like these two were; were you?

16 A No, sir.

17 Q No, and you were in Greensboro ---

18 A Working.

19 Q --- living with your baby's mama?

20 A I was living with my aunt, 300 Milburn.

21 Q Got you. Got you, okay. All right, what do you hope
22 to get out of your testimony here today, sir?

23 A I mean, I'm just trying to get back to my family.

24 Q And you'll do whatever it takes to do that; won't you?

25 A Yes, sir.

1 Q All right, thank you.

2 MR. HAZZARD: No further questions.

3 THE COURT: All right, redirect.

4 MS. ELDER: Thank you, Your Honor.

5 REDIRECT EXAMINATION (By Ms. Elder)

6 Q Mr. Moore, I want to ask you about the letter that
7 Mr. Barr was asking you about. You indicated that you wrote
8 Richard Niles while you were incarcerated?

9 A Yes, ma'am.

10 Q What was that in response to?

11 A He had wrote me.

12 Q What did he tell you?

13 A I forgot what it said. I threw it away.

14 Q Did he initiate contact with you?

15 A Yeah, talking about his brother wanted to talk to me or
16 something.

17 Q Okay, and did he talk about this? Did he talk - ask you
18 if you cooperated or talked to the police?

19 A No, we ain't talk about this. He just talked about his
20 brother wanted to talk to me and then he had something,
21 ``Real niggers do real things, '' and that's what I wrote on
22 the note back to him.

23 Q Okay, is that a phrase he used that you wrote back?

24 A Yes, yes, ma'am.

25 Q In reaching this agreement with us to testify were you

Ervin Moore - Redirect by Ms. Elder

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1 preparing with Mr. Truslow to come to trial this week?

2 A Yes, ma'am.

3 Q And prior to Sunday you were coming to trial?

4 A Yes, ma'am.

5 Q And in the course of that preparation did your lawyer
6 tell you you wouldn't have to testify, you didn't have to
7 take the stand if you were on trial; did you?

8 A No, ma'am.

9 Q And you've been in jail; correct?

10 A Yes, ma'am.

11 Q So, you don't know if I called Mr. Truslow or if Mr.
12 Truslow called me; do you?

13 A I don't know who called who, no, ma'am.

14 Q Okay, you just know we came out there to talk to you
15 Sunday?

16 A Yes, ma'am, and I was happy.

17 Q Okay, and the statements that we went over before and
18 your testimony ---

19 A Yes, ma'am.

20 Q --- you signed a written agreement with us about your
21 deal here today; right?

22 A Yes, ma'am.

23 Q Part of that written agreement it deals with what
24 happens if you get on the stand and lie; doesn't it?

25 A Yes, ma'am.

1 Q And if you get up on the stand and you lie what happens
2 to that agreement?

3 A It ain't no good.

4 Q It goes out the window?

5 A Yes, ma'am.

6 Q And what you facing?

7 A Thirty.

8 Q Facing murder, aren't you?

9 A Yes, ma'am.

10 MS. ELDER: No further questions, Your Honor.

11 THE COURT: All right, sir.

12 MR. BARR: Just a, just a couple, Your Honor.

13 RECROSS EXAMINATION

14 BY MR. BARR:

15 Q Mr. Moore, I believe Attorney Hazzard asked you about
16 the drug business, being in the drug business, being out of
17 the drug business. What is the street value of a pound of
18 marijuana?

19 A Where I'm from?

20 Q Just in the general, in the drug trade?

21 A I don't know about down here but in North Carolina it
22 was about 650, 675.

23 Q And based on your dealings with Mr. Niles just on that
24 one day, one afternoon and all of these drug sales that he
25 had met and done would you estimate that he had probably

Ervin Moore - Recross by Mr. Barr

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1 twice, three times of that in his pocket that afternoon?

2 A I don't know how much he had in his pockets. I know he
3 had some money.

4 Q He had a lot of money; didn't he?

5 A Yeah.

6 Q Okay, and you had no money at all?

7 A I had a couple of dollars. I ain't going to say I ain't
8 had no money at all.

9 Q Can you offer us any reason why you think that Mr. Niles
10 would want to rob somebody for \$675 of street marijuana, then
11 have to go out and sell it and he's got a pocket full of
12 money?

13 A I don't know what happened.

14 Q You don't know what happened. You were there but you
15 don't know what happened. Let me suggest this to you. Would
16 it be fair to say that you asked Mr. Niles to help you get
17 some marijuana; didn't you?

18 A Yeah, but not to ---

19 Q Didn't you ask Mr. ---

20 MS. ELDER: Your Honor, if he could explain his
21 answer. He just cut him off.

22 THE COURT: Yeah, I'm going to allow him to explain
23 his answer if he wants to.

24 MR. BARR: Yes, sir?

25 A Yeah, we wanted some weed to smoke.

1 Q Now, you said you wanted some weed to smoke, but now,
2 didn't you ask Mr. Niles before you all ever even left
3 Salters you asked Mr. Niles to help you get some marijuana;
4 didn't you?

5 A Yeah.

6 Q As a matter of a fact, you asked for a specific type of
7 marijuana; didn't you?

8 A I don't even know what Mr. Salter was selling.

9 Q Sir?

10 A How did I ask for some type of marijuana?

11 Q Did you ask for a specific type of marijuana?

12 A No, sir.

13 Q But you asked for some marijuana?

14 A Yes.

15 Q Okay, now, isn't it true, Mr. Moore, that you asked for
16 marijuana because you intended to sell the marijuana, you
17 intended to sell the marijuana back in North Carolina; isn't
18 that true?

19 MS. ELDER: Objection, Your Honor.

20 A Why would I come down here and pay higher.

21 THE COURT: Hold for a second. We have an objection.

22 MS. ELDER: Your Honor, I think we're going beyond
23 recross.

24 MR. BARR: I don't think it's beyond recross, Your
25 Honor. We were asking him about being a drug dealer and drug

Ervin Moore - Recross by Mr. Barr

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1 sales and he talked specifically about this being a deal for
2 marijuana.

3 THE COURT: Okay, I'm going to allow it. Go ahead.

4 MR. BARR: All right. The Court's indulgence, Your
5 Honor.

6 BY MR. BARR:

7 Q So, before you left Salters you asked him to help you
8 get some marijuana?

9 A Yeah.

10 Q You did. And did he tell you then that he knew someone
11 who could get you some marijuana?

12 A Yeah.

13 Q And point in fact is he then made a call before you left
14 Salters; isn't that true?

15 A Before he left Salters?

16 Q Before he left Salters.

17 A He ---

18 Q Did you not tell Officer Curry and Officer Crosby that
19 Mr. Salter made a - I mean, Mr. Niles made a phone call
20 before he left Trio?

21 A Before we left Trio?

22 Q Yes, and on the way to the beach?

23 A No, that was riding on the beach.

24 Q Okay, but Mr. Niles made these phone calls in response
25 to your request for help in getting some marijuana?

1 A Yeah.

2 Q Okay, so, in this whole process of getting the marijuana
3 did Mr. Niles ever tell you that Mr. Salter was going to give
4 you the marijuana on credit?

5 A No, I wasn't looking for no credit, wasn't nobody
6 looking for no credit. We were going to ---

7 Q Well, let me ask you something. Mr. Niles has a pocket
8 full of money and you need some marijuana and he's going to
9 make you - a connection for you and you don't have any money
10 ---

11 A Why would I come down here and get some marijuana for a
12 higher price when I can stay in Greensboro and get it
13 cheaper?

14 Q Well, I don't know. I can't answer those kinds of
15 questions but I just want to keep it straight so that the
16 jury will understand that if you're going to be truthful in
17 your testimony that the truth of the matter is you asked to
18 come to the beach and asked for a connection to get some
19 marijuana; is that true?

20 A Nah, that's you putting words, you're trying to put
21 words in my mouth, man.

22 Q No, no, I asked you earlier and I'll ask you again,
23 didn't you ask Mr. Niles to help you get some marijuana?

24 A Yeah, to smoke.

25 Q Did you have any money to pay for it?

1 A Yeah, I had a - I told you I had a couple of dollars in
2 my pocket. It wasn't like I was broke.

3 Q You testified earlier, you know, when you were
4 testifying when Mr. Hazzard was asking you questions, you
5 didn't have any money. So, now you're going to change
6 again?

7 A Now, you're just twisting your, you're just twisting
8 your questions around, man.

9 Q I don't think there's any twisting about that,
10 Mr. Moore. You were trying to buy something and you didn't
11 have any money. So, what's your next option? Mr. Moore, how
12 long did the Prosecution spent talking to you on Sunday?

13 A An hour and a half.

14 Q Hour and a half, and then it was decided that you were
15 going to do this deal?

16 A Yes, sir.

17 Q And all those street rules went out the window?

18 A Yes, sir.

19 Q It's time now to save Ervin Moore; is that right?

20 A Your client the one that man up.

21 Q Thank you.

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

24 THE COURT: All right, any objection?

25 MR. BARR: Your Honor, I would simply renew an

1 earlier motion.

2 THE COURT: All right, the motion is denied. All
3 right, you're excused. You may step down.

4 MR. HAZZARD: No objection on behalf of Defendant
5 Hammond.

6 THE COURT: All right, thank you very much.

7 All right, let's go ahead and take about a ten-minute
8 break. That was kind of a long witness. It'll give us an
9 opportunity to stretch our legs, use the restroom, whatever
10 the case may be. So, I'll excuse you back to the jury room,
11 let you rest for a little while. We'll bring you back out in
12 about ten minutes.

13 (Whereupon, the following takes place outside the
14 presence of jury.)

15 THE COURT: All right, anything before we break?

16 MS. ELDER: No, sir, Your Honor.

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

18 THE COURT: All right.

19 MR. HAZZARD: Your Honor ---

20 THE COURT: We'll stand in recess about - yes, sir,
21 I'm sorry.

22 MR. HAZZARD: It is my - my client has brought to my
23 attention if you recall I asked the Court about letting her
24 stay out on bond. You said you would reconsider the matter
25 if the bondsman made an appearance. It is my understanding

1 at this point at this late time the bondsman has made an
2 appearance. As a result I want to bring the matter back for
3 the Court's attention.

4 THE COURT: Okay, given where we are in the point of
5 the case, I was considering it if he came in before we had
6 even started the case. Now, that we've started the case I'm
7 not going to allow her to stay out on bond.

8 MR. HAZZARD: Thank you for your consideration, Your
9 Honor.

10 THE COURT: All right, thank you very much. All
11 right, let's stand in recess for about ten minutes.

12 OFF THE RECORD

13 (On the record.)

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: Thank you, very much. Please be seated.
17 Anything from the State before we bring the jury back in?

18 MS. ELDER: No, sir, Your Honor.

19 THE COURT: Anything from the Defense?

20 MR. BARR: Nothing from Defendant Niles, Your Honor.

21 MR. HAZZARD: Nothing on behalf of Defendant Hammond,
22 Your Honor.

23 THE COURT: All right, let's bring the jury back in.

24 (Whereupon, the following takes place in the presence of
25 the jury.)

1 THE COURT: All right, ladies and gentlemen, welcome
2 back. The State can call its next witness.

3 MS. ELDER: Your Honor, the State would call
4 Investigator Willie Brown.

5 THE COURT: All right.

6 Whereupon, Willie Brown was called to the stand, duly
7 sworn by the clerk and testified as follows:

8 THE CLERK: Thank you. Please be seated. Please
9 state your full name, spell your last name for the Court.

10 MR. BROWN: All right, Willie Brown.

11 MS. ELDER: Excuse me, Your Honor.

12 THE COURT: All right.

13 DIRECT EXAMINATION

14 BY MS. ELDER:

15 Q Investigator Brown, where are you employed?

16 A I'm employed at the Williamsburg County Sheriff's Office.

17 Q In what capacity?

18 A An investigator.

19 Q And what are some of your duties there?

20 A We investigate anywhere from petty crimes to major crimes
21 such as murder, homicide, anything dealing criminal.

22 Q And do you assist other agencies ---

23 A That's ---

24 Q --- in items that may happen in your jurisdiction?

25 A That's correct.

Willie Brown - Direct by Ms. Elder

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1 Q And did you have an opportunity to assist Horry County
2 or Myrtle Beach, particularly Myrtle Beach Police Department,
3 in executing a search warrant on April 13th, 2007?

4 A Yes, ma'am, I did.

5 Q And was that in Williamsburg County?

6 A Yes, ma'am.

7 Q Do you know that to be the home of Martha Niles?

8 A That's correct.

9 Q And did you execute that search warrant?

10 A Yes, ma'am.

11 Q And you went along with investigators from Myrtle Beach
12 Police Department; is that correct?

13 A That's correct.

14 Q And were pictures and things taken while you all were
15 executing the search warrant?

16 A Yes, ma'am, it was.

17 Q If you could take a look at what's been marked for
18 identification as State's Exhibit 115, 116, 117, 118, 119,
19 121, 122, 124, 125, 126, 127 and 128. Could you just look
20 at those items, please?

21 A (Complies with request.) Yes, ma'am.

22 Q Are those from the search warrant that you executed in
23 Williamsburg County?

24 A Yes, ma'am, it was.

25 MS. ELDER: Your Honor, at this time I'd like to move

1 those exhibits I specifically enumerated into evidence.

2 MR. BARR: That would be without objection, Your
3 Honor, with regard to Defendant Niles.

4 MR. HAZZARD: Without objection with regard to Mokeia
5 Hammond.

6 THE COURT: All right, you're going to need to give
7 me those numbers again.

8 MS. ELDER: Yes, sir, that would be State's Exhibit
9 115, 116, 117, 118, 119, 121, 122, 124, 125, 126, 127 and
10 128.

11 THE COURT: All right, State's Exhibits 115, 116,
12 117, 118, 119, 121, 122, 124, 125, 126, 127 and 128 admitted
13 into evidence without objection.

14 MS. ELDER: Thank you, Your Honor.

15 (Whereupon, State's Exhibit Numbers 115, 116, 117, 118,
16 119, 121, 122, 124, 125, 126, 127 and 128 [Photographs]
17 admitted into evidence and appropriately marked.)

18 BY MS. ELDER:

19 Q And if you'll take a look at what's been marked State's
20 Exhibit 129. Do you recall also having the collection of
21 four shell casings from that search warrant?

22 A Yes, ma'am.

23 Q And is that the shell casings that were identified as
24 being taken from that residence?

25 A That's correct.

Willie Brown - Direct by Ms. Elder

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1 MS. ELDER: Your Honor, at this time I'd like to
2 introduce State's Exhibit 129.

3 THE COURT: Any objection?

4 MR. BARR: Without objection.

5 MR. HAZZARD: Without objection.

6 THE COURT: State's Exhibit 129 admitted into
7 evidence without objection.

8 (Whereupon, State's Exhibit Number 129 [Shell Casings]
9 admitted into evidence and appropriately marked.)

10 BY MS. ELDER:

11 Q And just briefly through some of these pictures, State's
12 Exhibit 115 if you'd identify what that appears to be.

13 A It's a letter from Suncom to the - Mr. Richard Niles.

14 Q And 116 what does that appear to be?

15 A This is a room key that have the label of 105 on it
16 which we assume was a hotel room key.

17 Q And 117 can you identify what that is?

18 A Yes, ma'am, the square, what this is is a digital scale
19 that was located inside this bag and has some type of residue
20 across the top of it.

21 Q And what kind of - do you know what that scale, what
22 those scales may be for?

23 A Commonly used for narcotics to weigh different types of
24 narcotics.

25 Q And 119?

1 A This is a Hertz receipt in reference to a vehicle which
2 was a Ford, the date it was rented out and the mileage on,
3 for the vehicle that was recently purchased for them.

4 Q And whose name was that rented out in?

5 A Mrs. Martha Niles.

6 Q 121?

7 A This was a - what it is is a scented candle and it had
8 paraphernalia and also marijuana seeds located in the little
9 baggies.

10 Q And those little baggies, have you seen items like that
11 before?

12 A Yes.

13 Q And from your experience what are they used for?

14 A To contain drugs, different types of drug, marijuana,
15 cocaine, crack.

16 Q And 122?

17 A This is a container containing shell casing and also a
18 nickel and a penny.

19 Q 124?

20 A That was money that was recovered from the vehicle that
21 the subject was in. I'm sorry, and we were able to seize
22 that from them also.

23 Q And 126?

24 A Which is another digital scale commonly known to be used
25 to weigh drugs, different types of drugs and stuff.

Willie Brown - Cross by Mr. Barr

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1 Q Now, Investigator Brown, after you executed the search
2 warrant did you have any involvement, any other involvement
3 in this case?

4 A Yes, ma'am, we received information that we needed to
5 respond to Mr. Verdell Barr's office where one of the
6 suspects or both, two suspects may be at and we responded
7 there and to try to make contact with them to execute the
8 warrant on them.

9 Q And did you, in fact, do that?

10 A Yes, ma'am.

11 Q And do you - are you on a task force of any sort or were
12 you just responding?

13 A Yes, I'm with the U.S. Marshals Special Task Force.

14 Q All right, so, the U.S. Marshals Task Force responded?

15 A That's, that's correct.

16 MS. ELDER: No further questions, Your Honor.

17 THE COURT: All right, Mr. Barr.

18 CROSS EXAMINATION

19 BY MR. BARR:

20 Q Officer Brown, I believe that's what's been marked
21 State's Exhibit Number 124, the money, excuse me. Let me
22 find it. How much money was actually seized from the
23 residence?

24 A I believe it was right at \$700, a little over \$700.

25 Q Over \$700.

1 A Yes, sir.

2 Q That was there just lying, lying there; is that right?
3 That's what you photographed?

4 A That's correct.

5 Q A little over \$700?

6 A Yes, sir.

7 Q Okay, all right, now, you said that you searched the
8 entire, the entire residence; is that right, and the items
9 listed there are the only things that you actually, that you
10 actually seized; is that correct?

11 A That's correct.

12 Q Other than the drug paraphernalia and the seeds, the
13 marijuana seeds did you seize any other form of narcotics?

14 A Not to my knowledge.

15 Q Not to your knowledge?

16 A No, sir.

17 Q Do you have any knowledge of a pound of marijuana being
18 seized or anything like that?

19 A During the execution of the search warrant once we
20 executed the search warrant and secured the premises then we
21 got the tip to leave, Officer Jeff Scott continued to search
22 and I'm not aware of a pound of marijuana being seized.

23 Q Okay, okay, all right, now, you said you got this tip
24 and that tip came from the U.S. Marshals you said?

25 A I believe so.

Willie Brown - Cross by Mr. Hazzard

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1 Q Okay, did you all have Mr. Niles under surveillance at
2 that time?

3 A Not far as I know of, no, sir.

4 Q Okay, all right, okay, nothing further, Your Honor.

5 THE COURT: All right, Mr. Hazzard.

6 MR. HAZZARD: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. HAZZARD:

9 Q Good afternoon, Officer Brown, that's the - what's the
10 proper title, sir?

11 A Investigator.

12 Q Investigator Brown, now, you executed or were present
13 when the search warrant was executed on Mrs. Martha Niles'
14 home?

15 A That's correct.

16 Q Okay, did you find anything in the execution of that
17 search warrant that indicated that Mokeia Hammond ever owned
18 or possessed a pistol?

19 A No, sir.

20 Q Find anything that indicated that Mokeia Hammond ever
21 fired a pistol at anyone?

22 A No, sir.

23 Q Found anything that indicated that Mokeia Hammond ever
24 shot and killed anyone?

25 A No, sir.

1 Q Found anything that indicated that Mokeia Hammond ever
2 robbed anyone?

3 A No, sir.

4 Q All right, thank you.

5 MR. HAZZARD: No further questions.

6 THE COURT: Redirect.

7 MS. ELDER: Your Honor, I would ask that Investigator
8 Brown be excused.

9 THE COURT: All right, any objection?

10 MR. HAZZARD: No objection.

11 MR. BARR: No objection from us.

12 THE COURT: All right, sir, you may step down.

13 You're excused, free to go. Thank you.

14 Call your next witness.

15 MS. ELDER: Your Honor, the State would call Agent
16 Whitler.

17 THE COURT: All right.

18 Whereupon, Kenneth H. Whitler was called to the stand,
19 duly sworn by the clerk and testified as follows:

20 THE CLERK: Thank you. Please be seated. Please
21 state your name and spell your last name for the Court.

22 MR. WHITLEY My name is Kenneth H. Whitler and the
23 last name is spelled W-H-I-T-L-E-R.

24 DIRECT EXAMINATION

25 BY MS. ELDER:

Kenneth Whitler - Direct by Ms. Elder

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1 Q Agent Whitler, where are you employed?

2 A I'm employed by the South Carolina Law Enforcement
3 Division. That's also known as SLED. I'm in the
4 forensic services department, which is the laboratory
5 section, and I'm a firearms, tool mark examiner in the
6 lab.

7 Q And do you have any special certification in firearms,
8 tool markings?

9 A There's no degree in firearms identification. You have
10 to learn it from other qualified examiners. When I was
11 employed by the FBI laboratory I underwent their training
12 period which takes about two years and successfully
13 completed, you know, their requirements and was certified
14 by the lab. I'll call it a certification. They have a
15 test, series of tests they give you and if you pass them all
16 then they give you a piece of paper that says you're
17 authorized to conduct examinations for the FBI. In 1997
18 I retired and came to work for SLED doing basically the
19 same job, examining bullets and cartridge cases and
20 firearms.

21 Q And have you testified before in court?

22 A Yes, I have. I've testified approximately 200 times in
23 various state, federal and territorial courts.

24 Q And have you been qualified as an expert in the area of
25 firearms and tool marking identification?

1 A Yes.

2 Q And has that been in courts of General Sessions?

3 A Yes.

4 Q And do you maintain your certification or your training
5 on a regular basis?

6 A Well, we have proficiency tests yearly, a couple of them
7 and we also have our work is also 100 percent peer review
8 which means another qualified examiner has to agree with your
9 conclusion, actually look at the evidence and come up with
10 the same conclusion.

11 Q Okay, and that's before you can even issue a report; is
12 that correct?

13 A That's correct.

14 Q And did you have an opportunity to examine some items
15 for - that were submitted by the Myrtle Beach Police
16 Department in reference to suspects Richard Niles and Mokeia
17 Hammond?

18 A I had evidence that was submitted by Myrtle Beach, and
19 yes, it was in connection with Niles, Hammond and a - and
20 Salter.

21 Q As a victim; is that correct?

22 A As a victim, yes.

23 MS. ELDER: Your Honor, at this time I would ask
24 that Mr. Whitler be designated an expert in the area of
25 forensic examination of firearm and tool marking

Kenneth Whitler - Direct by Ms. Elder

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1 identification.

2 THE COURT: Any questioning?

3 MR. BARR: Your Honor, the Defendant Niles
4 would stipulate to Mr. Whitler's qualifications as an
5 expert.

6 THE COURT: All right.

7 MR. HAZZARD: The Defendant Hammond so stipulates
8 to his eminent qualifications as an expert, Your
9 Honor.

10 THE COURT: All right, I find Mr. Whitler qualified
11 and is an expert in the field of forensic examination of what
12 was it?

13 MS. ELDER: Firearms.

14 THE COURT: Firearms.

15 MS. ELDER: And tool markings, Your Honor.

16 BY MS. ELDER:

17 Q Agent Whitler, I'm going to hand you a series of
18 items. If you could take a look at those for me, please.
19 State's Exhibit 29, State's Exhibit 27, State's Exhibit 10,
20 State's Exhibit 25, State's Exhibit 24, State's Exhibit 23,
21 State's Exhibit 19, State's Exhibit 91 and State's Exhibit
22 26, if you'd just take your time and look at those items,
23 please.

24 A Yes, I have. I've seen all of this.

25 Q And were those submitted to you for analysis?

1 A Yes, ma'am.

2 Q And did you, in fact, conduct an analysis on those
3 items?

4 A Yes, I did.

5 Q And did you make certain findings in relation to those
6 exhibits?

7 A Yes.

8 Q And I want to go through. Did you prepare a
9 report?

10 A Yes, I did.

11 Q Have you got that with you?

12 A Yes, ma'am.

13 Q And will that assist you in recalling what your analysis
14 was?

15 A Yes, my memory is not good enough to remember all
16 this.

17 Q Could you take me through the items that you analyzed
18 and what your findings were?

19 A Okay, Item 18, I'll just start at the beginning, which
20 is State's Exhibit 26 is a Smith & Wesson 40 caliber pistol
21 and it was test fired in order to obtain test-fired bullets
22 and cartridge cases so that I could compare it to the
23 submitted bullets and cartridge cases that were submitted by
24 the police department. The items that - let's see, State's
25 Exhibit 23 consists of six fired 40 S and W cartridges,

Kenneth Whitler - Direct by Ms. Elder

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1 cartridge cases, excuse me. This pistol, State's Exhibit 26
2 pistol, is a 40 S and W caliber pistol. I compared those
3 cartridge cases or these cartridge cases to test-fired
4 cartridge cases from this pistol and determined that these
5 cartridge cases were fired by this pistol. So, that would be
6 the State's Exhibit 23 cartridge cases were fired by the
7 State's Exhibit 26 pistol.

8 Q And tell me a little bit about how you made that
9 determination.

10 A Basically, we have a - what is called a comparison
11 microscope which allows you to look at two objects at the
12 same time and what you can do is when you look in the
13 microscope the objects look like they're side by side and
14 what you look for are the striated markings on your test
15 cartridge cases to see if they're reproduced on the submitted
16 cartridge cases. In this case they were. There was
17 sufficient agreement and I was able to say those cartridge
18 cases were fired by that gun.

19 Q So, just for the jury clarification State's Exhibit 23
20 that has been identified as removed from the victim's vehicle
21 matches or were fired from State's Exhibit 26, the weapon
22 that has been previously identified as the victim, in the
23 victim's car; is that correct?

24 A That's correct.

25 Q And could you continue with that, your analysis,

1 please?

2 A Okay, then, okay, this, State's Exhibit 27 is a 40
3 caliber fired bullet. State's Exhibit 91, I think that's 91,
4 has four items in it which are - consists of a bullet jacket
5 fragment, a second bullet jacket, bullet, fired bullet jacket
6 and two fired bullets that are 40 caliber bullets. The
7 State's Exhibit 27 bullet, fired bullet and two of the
8 bullets in this State's Exhibit 91 package were identified as
9 being fired by this pistol and they're the ones that, like I
10 said, two of the bullets are 40 caliber bullets and they are
11 put in my report, they're noted as Items 50 and 51 as being
12 fired by this pistol.

13 Q And again, for the jury's clarification you've
14 identified State's Exhibit 27 which is - has been previously
15 identified as the bullet from the parking lot as matching or
16 being fired from State's Exhibit 26; correct?

17 A That's correct.

18 Q And you've also identified two projectiles in State's
19 Exhibit 91?

20 A That's correct.

21 Q As being also fired from State's Exhibit 26?

22 A And the other two items that were in here I said two of
23 these items were bullets. The other two items which were a
24 bullet jacket fragment and a fired bullet jacket were not
25 fired by this pistol. They had different rifling

Kenneth Whitler - Direct by Ms. Elder

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1 characteristics.

2 Q And tell me about that, what does that mean, different
3 rifling characteristics?

4 A When a firearm barrel is made it has grooves cut in the
5 barrel and this is called rifling and its purpose is to make
6 the bullet spin so it will stabilize and be more accurate.
7 Different manufacturers use different rifling in their
8 barrels. Some - the rifling will either go right or left and
9 then there's a number of them. They can be anywhere from two
10 to some barrels have 22 grooves in them. So, for our
11 purposes, if you have a pistol barrel that has six grooves in
12 it and your bullet has - was fired from a firearm that had
13 five grooves then that bullet could not have been fired by
14 that gun. That's what we call a class characteristic. It
15 has the wrong rifling characteristics. In this case these
16 two jacket, the jacket fragment and the jacket have different
17 rifling characteristics or class characteristics, meaning the
18 caliber may be wrong, also. So, they were not - it indicates
19 that due to their class characteristics being wrong they
20 could not have been fired by this pistol.

21 Q And again, for the jury's clarification, you're
22 referring to State's Exhibit 91 and those are four
23 projectiles that have been previously, and a bullet fragment
24 that have been previously identified as coming from the
25 suspect's vehicle?

1 A Okay, and then - and that's all of the items - excuse me,
2 let me back up. I've looked at the wrong - those two jacket
3 fragments were inconclusive with the - wait a minute. Let's
4 see what we've got here. Usually they have these out, 48
5 through 51.

6 Q Would it help you to take those out, open the package?

7 A Let's see 48, 48 - yes, let me correct that. I was
8 looking at the, the two - two of the bullets - let me rephrase
9 all this so we - two of the bullets that I previously said
10 were fired by the gun were fired by the gun. The other two
11 which I called a bullet jacket fragment and a bullet jacket
12 this is just part of the bullet was inconclusive, meaning it
13 could have been fired by this gun or by another gun barrel
14 with similar rifling characteristics. They had the same
15 rifling characteristics but they didn't have enough individual
16 characteristics that were sufficient to allow me to say they
17 were fired by that gun and not another one. So, that's what
18 we call inconclusive means it could have been fired by that
19 gun or it could have been fired by another gun.

20 Q So, State's Exhibit 91, two of those items were fired by
21 State's Exhibit 26 and two were inclusive.

22 A That's correct.

23 Q And those have been previously identified as coming from
24 the suspect's vehicle.

25 A Okay, the - okay, in State's Exhibit 19 it consists of

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1 five containers and the easiest way I guess to do this is
2 going to be that they contain my items 42 through 46. Item 42
3 is a fired bullet which is most consistent with being a 38
4 special or 357 magnum caliber bullet used in those cartridges.
5 It could not have been fired by this pistol due to differences
6 in class characteristics. The item 43 is a fired bullet
7 jacket fragment, and again, it had - it was inconclusive with
8 the pistol meaning it had the same general class
9 characteristics but they weren't sufficient enough to allow me
10 to identify the bullet jacket as being fired by this pistol.

11 Item 45 or 44 and 45 are two lead fragments and this
12 inside a jacket bullet the core is usually made of lead and
13 when the bullet if it breaks up you get pieces of jacket and
14 you can have pieces of lead found. The lead never comes in
15 contact with the barrel of a firearm. So, it will not have
16 any marks of value for identifying it to a particular firearm.
17 So, these pieces of lead had no marks of value and they were
18 unsuitable for identification, and because they were torn up
19 there's no way to determine what kind of bullet they could
20 have come from.

21 The last item is item 46 and it is a fired bullet jacket,
22 and again it was inconclusive with the State's Exhibit 26
23 pistol, the 40 S and W pistol.

24 Q So, in item - State's Exhibit 19 that has been
25 previously identified as being collected from the victim's

1 vehicle you were able to identify one item that was
2 consistent with a 38.

3 A That's right.

4 Q And not being fired from item 26?

5 A Yes. That's 46 and then item 47 is also or is a fired
6 bullet and it's consistent with being the bullet from a 38
7 special, 357 magnum cartridge. Again, it is not - couldn't
8 have been fired by the State's Exhibit 26 pistol due to
9 differences in caliber. 38 caliber is smaller than a 40.

10 Q And that was State's Exhibit 106 that has been
11 previously identified as the projectile removed from the
12 victim, Salter, during the autopsy?

13 A Okay, and then I also, inter-compared the State's
14 Exhibit 106 bullet and the other 38 special or 357 caliber
15 bullet that I told you about before. I compared them to each
16 other and again there was insufficient agreement to allow me
17 to say they were fired by the same gun but they could have
18 been fired by the same gun. Again, it was an inconclusive
19 result, just because the bullets just did not mark that well.

20 State's Exhibit 129 consists of my items 52 through 55,
21 and these are fired cartridge cases and they are 38 special
22 caliber cartridge cases. So, again, I compared them to each
23 other and again they didn't mark enough - give me enough
24 agreement of the marks to enable me to say they were all
25 fired by the same gun, but they could have been fired by the

Kenneth Whitler - Direct by Ms. Elder

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1 same gun. They were not fired by the State's Exhibit 26 40
2 caliber pistol because due to differences in caliber. These
3 cartridges will not even - you put them in the gun they would
4 slide down the barrel.

5 Q And you're referring to what's been marked as State's
6 Exhibit 129 having been previously identified as being
7 obtained from a search warrant in Williamsburg County and
8 these are - let me make sure I understand, these are fired
9 casings?

10 A Fired cartridge cases, that's correct.

11 Q And that means it's already somebody has shot them out
12 of a weapon?

13 A Yes, and the last thing we have - well, State's Exhibit
14 24 is a magazine, a Smith and Wesson magazine for a 40 S and
15 W caliber. It's the kind of magazine you would use in this
16 pistol and the last thing is State's Exhibit 25 are four
17 unfired 40 S and W caliber cartridges and these - the State's
18 Exhibit 25 and these are the caliber of cartridge that you
19 would use in the State's Exhibit 26 pistol.

20 Q And those are unfired.

21 A These are unfired.

22 MS. ELDER: One moment, Your Honor.

23 THE COURT: All right.

24 BY MS. ELDER:

25 Q Do different firearms leave different casings, maybe and

1 let me reword my question. When I fire a weapon will casings
2 sometimes expel in certain weapons and stay in certain
3 weapons?

4 A A pistol is designed such as State's Exhibit 26 is
5 designed to eject the fired cartridge case when it is fired
6 and reload the chamber with another unfired cartridge. A
7 revolver on the other hand has a cylinder which until you
8 continue shooting and the cartridge case stays in the gun
9 until you stop shooting and open up the cylinder and
10 physically remove the cartridge case from it. With a pistol
11 you -- it's done automatically for you. You pull the trigger,
12 if the gun is functioning properly the cartridge case is
13 thrown out of the gun and a new cartridge inserted in the
14 chamber. With a revolver you put the cartridges in, you
15 close it up, you pull the trigger and you can continue
16 pulling the trigger as long as you want. Eventually you'll
17 stop shooting because the ammunition will be used up, but the
18 cartridge cases will remain in the gun until you open it up
19 and physically remove them.

20 Q So, if I was standing here shooting State's Exhibit 26
21 those casings would expel as I shoot or eject?

22 A They should be ejected from the gun ---

23 Q If it's working properly.

24 A If it's working properly, nothing's blocking the
25 ejection port, yes.

Kenneth Whitler - Cross by Mr. Barr

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1 Q And if I were standing here shooting a 38 revolver those
2 casings would remain in it till I physically removed them.

3 A That's correct.

4 MS. ELDER: That's all the questions I have, Your
5 Honor.

6 THE COURT: All right, Mr. Barr.

7 MR. BARR: I have a few.

8 CROSS EXAMINATION

9 BY MR. BARR:

10 Q So, Mr. Whitler, I suppose a best summary of your
11 testimony would be with regard to State's Exhibit 26, which
12 would be the 40 caliber Smith and Wesson, there were at least
13 two positive matches for ejected, I guess it would be, shell
14 casings or cartridges or spent bullets I suppose and then two
15 others that would be inconclusive?

16 A Not quite. Actually there were three bullets and six
17 cartridge cases I believe.

18 Q Three bullets and six cartridge cases that would be
19 consistent with being either fired by or ammunition that
20 would be compatible with State's Exhibit 26.

21 A Well, yeah, there were three bullets and six cartridge
22 cases were fired. The fired components were fired by the
23 gun.

24 Q Okay.

25 A Then there were the four unfired cartridges, I think it

1 was the last exhibit, Exhibit 25, which are the correct
2 caliber for use in that pistol.

3 Q Okay, all right, so, the possibility of six rounds spent
4 and four not, four available, I guess?

5 A Right.

6 Q Okay.

7 A Yes, and then we had the two bullet, the bullet jacket
8 fragment and the other bullet jacket ---

9 Q That are inconclusive.

10 A Yeah, so, that would be another two shots.

11 Q Yes, sir, okay, okay, and then we had, as I understand
12 your testimony, the bullet removed from the deceased would
13 have been fired by a 38 caliber weapon?

14 A Two of the bullets were, were 38 caliber and they
15 couldn't have been fired by the pistol. The State's Exhibit
16 ---

17 Q They could have been fired by the ---

18 A Exhibit ---

19 Q --- Smith and Wesson.

20 A --- 26 pistol.

21 Q Yeah, the 26 pistol. So, they would have been fired by
22 another?

23 A They had to be fired by another firearm.

24 Q Now, as I understand your report you're saying that it
25 would have been fired or could have been fired by what or

Kenneth Whitler - Cross by Mr. Barr

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1 what caliber bullet?

2 A There were two bullets. They were my items 42 and 47 if
3 you have a copy of the report ---

4 Q Yes.

5 A --- that I said were consistent with bullets loaded in
6 some 38 specials.

7 Q Some 38s.

8 A 357 magnum caliber cartridges.

9 Q Cartridges.

10 A A 357 magnum is really just a 38, a 38 special with a
11 longer cartridge case. The bullet diameters are the same.

12 Q Okay.

13 A So, it's very hard to differentiate whether it was
14 strictly a 38 special or 357 because the cartridges are just
15 basically the same cartridge but one is longer in order to
16 keep from putting the higher powered 357 magnum cartridge
17 into a lower pressure 38 special firearm.

18 Q Okay, okay.

19 A But we have two of those bullets that we couldn't
20 identify to each other but we could definitely say they
21 weren't fired by the Smith and Wesson 40 caliber pistol.

22 Q Okay, all right.

23 MR. BARR: I have no further questions. Thank you.

24 THE COURT: All right.

25 Mr. Hazzard.

1 MR. HAZZARD: Thank you, Your Honor.

2 CROSS EXAMINATION

3 BY MR. HAZZARD:

4 Q Good afternoon, Agent Whitler. How are you, sir?

5 A Pretty good, sir.

6 Q All right, now, all this evidence you got there and all
7 the stuff you looked through up there, do you have any
8 evidence based on your examination that would indicate that
9 Mokeia Hammond ever possessed a firearm?

10 A Are you asking me if I can look at fired components and
11 tell who held the gun? No, I can't, sir.

12 Q Do you have any information based on your investigation
13 and analysis that indicates that Mokeia Hammond ever shot
14 anyone with a firearm?

15 A No, sir, all I have are the fired components that I
16 examined. That's all I know.

17 Q Okay, do you have any information and evidence based on
18 your investigation that indicates that Mokeia Hammond ever
19 robbed anybody, sir?

20 A No, sir, I don't. Like I said all I've done is
21 examined the fired bullets and cartridge cases in this case
22 and I've done no other investigation. I'm strictly in the
23 lab.

24 Q Yes, sir. Thank you very much, Agent Whitler.

25 MR. HAZZARD: No further questions, Your Honor.

1 THE COURT: Thank you. Redirect?

2 MS. ELDER: No, sir, Your Honor. We would ask that
3 Agent Whitler be excused.

4 THE COURT: Any objection?

5 MR. BARR: No objection, Your Honor.

6 MR. HAZZARD: No objection, Your Honor.

7 THE COURT: All right, Mr. Whitler, you're free to
8 go. Thank you very much.

9 How long is your next one?

10 MR. RICHARDSON: Your Honor, we have two more.

11 MR. HAZZARD: Your Honor, may we approach?

12 THE COURT: Yeah, come on up.

13 (Whereupon, a bench conference was held in the presence
14 but out of the hearing of the jury.)

15 THE COURT: You can call your next witness.

16 MR. RICHARDSON: Officer Rhonda Nobles.

17 Whereupon, Rhonda Nobles was called to the stand, duly
18 sworn by the clerk and testified as follows:

19 THE CLERK: Thank you. Please be seated. Please
20 state your full name, spell your last name for the Court.

21 MS. NOBLES: My name is Rhonda Nobles, N-O-B-L-E-S.

22 DIRECT EXAMINATION

23 BY MR. RICHARDSON:

24 Q Thank you, Officer Nobles. I'm going to try and be
25 brief. If you could tell us where you're employed, how long

1 and in what capacity.

2 A I'm with the Myrtle Beach Police Department, the
3 communications supervisor. I've been there 25 years.

4 Q And as communications supervisor are you a records
5 custodian for the City of Myrtle Beach Police Department,
6 their call center?

7 A I am.

8 Q And the call center what kind of calls come in there?

9 A All calls, 911 are transferred to us from the county 911
10 center and we get regular calls.

11 Q And in the normal course of business at the Myrtle Beach
12 Police Department do you record incoming calls?

13 A We record all incoming calls.

14 Q And was that the practice back on April 9th of 2007?

15 A It was.

16 Q And how are those recordings made?

17 A They recorded on the system that's called New Freedom
18 and it archives the calls and we can get the calls from the
19 archives.

20 Q And what is - is that what's done to preserve the phone
21 conversations?

22 A They are.

23 Q And is it typical to record the entire phone
24 conversation?

25 A It is, sir.