

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Horry County

Honorable William H. Seals, Circuit Court Judge

BRADLEY GERALD MULLINS,

RECEIVED

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S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000518

APPENDIX

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STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

COUNTY OF HORRY) CASE NO: 2013-GS-26-04042
04043

December 2nd - 5th, 2013

BEFORE: The Honorable Larry B. Hyman

STATE OF SOUTH CAROLINA,

Plaintiff,

vs.

BRADLEY GERALD MULLINS,

Defendant.

 **ORIGINAL**

APPEARANCES:

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George DeBusk, Esq.
Attorneys for the State.

William I. Diggs, Esq.
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1	1	Colored photo	8	
2	2	Colored photo	8	
3	3	Colored photo	8	
4	4	Colored photo	8	240
5	5	Colored photo	8	189
6	6	Colored photo	8	
7	7	Colored photo	8	326
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11	11	Colored photo	8	
12	12	Colored photo	8	
13	13	Colored photo	8	
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18	18	Colored photo	8	
19	19	B&W photo	8	
20	20	B&W photo	8	
21	21	B&W photo	8	
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43	43	Colored photo	8	125
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	NO.		MARKED	ADMITTED
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17 **IN PRETRIAL MOTIONS****

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1 (State's Exhibits 1 through 92 marked.)

2 P R O C E E D I N G S

3 (The following took place on December 2, 2013.)

4 MR. DeBUSK: This is State versus Bradley Mullins.
5 We're ready for motions. May we proceed with State V.
6 Denno?

7 THE COURT: Certainly.

8 MR. DeBUSK: State calls Alan Jones.

9 (ALAN JONES, having been duly sworn, testified as
10 follows:)

11 THE CLERK: State your name for the Court.

12 THE WITNESS: Alan Jones.

13 DIRECT-EXAMINATION

14 BY MR. DeBUSK:

15 Q Forgive me for questioning over here, but I need
16 to be by a microphone. Who is your employer?

17 A I'm employed with the Horry County Police
18 Department.

19 Q How long have you been with them?

20 A About 12 years.

21 Q What is the nature of your work now?

22 A I'm currently assigned to the narcotics unit.

23 Q How about in 2010?

24 A In 2010 I was assigned to the violent crimes unit
25 and homicide investigations.

PRE-TRIAL MOTIONS

1 Q During the course of your work with violent
2 crimes, did you work on the case where Kelly Joe
3 Elliott was killed?

4 A Yes, sir.

5 Q During the course of that investigation, did you
6 encounter the defendant, Bradley Mullins?

7 A Yes, I did.

8 Q Where did you encounter him?

9 A I encountered Mr. Mullins in the Red Onion State
10 Prison in Virginia.

11 Q What kind of prison is that?

12 A Supermax prison.

13 Q What was the purpose for going over there?

14 A We were following up on leads into the Kelly Joe
15 Elliott homicide wherein Mr. Mullins was a suspect in
16 it. We located him in the Red Onion State Prison and
17 went out there to interview him.

18 THE COURT: You are saying "Red Onion"? R-E-D,
19 O-N-I-O-N?

20 THE WITNESS: Yes, sir.

21 Q (MR. DeBUSK) Did you take any recording devices?

22 A No, sir. They allowed me a pen and piece of
23 paper and my photo ID.

24 Q That's it?

25 A That's it.

PRE-TRIAL MOTION

1 Q Did you -- did they bring you Mr. Mullins to
2 speak to?

3 A Yes.

4 Q Did you inform him of his Miranda rights?

5 A I did. I verbally advised him of his Miranda
6 rights before the interview took place.

7 Q Were you able to do a Miranda form like you
8 normally do in a police department?

9 A No, sir.

10 Q Why not?

11 A I was allowed a pen and piece of paper in the
12 prison, quite literally.

13 Q So you advised him of his Miranda rights. Did
14 you threaten him or coerce him in any way to get a
15 statement in any way?

16 A No, sir.

17 Q Did you offer him any reward for a statement?

18 A No, sir.

19 Q Did you deny necessities like food and drink?

20 A No, sir. We were accompanied by prison guards
21 the whole time.

22 Q Was he under the influence of drugs or alcohol?

23 A No, sir.

24 Q He was in a secured facility?

25 A Correct.

PRE-TRIAL MOTION

1 Q How long did the interview last?

2 A 15, maybe 20 minutes.

3 Q Did you ask during the course of your interview
4 if he knew Kelly Joe Elliott?

5 A I did.

6 Q What was his answer?

7 A He advised that he was familiar with Mr. Elliott,
8 the fact that he had some years in the past rented a
9 residence from Mr. Elliott.

10 Q What else did you ask him?

11 A I asked him was he aware of Mr. Elliott's death
12 or anything like that, and he became agitated.

13 Q How do you mean?

14 A He was wearing a T-shirt, and I could literally
15 see his heart start beating through the T-shirt.

16 Q Did he --

17 MR. DIGGS: I object to the characterization as
18 aggravated. I don't know if he's qualified to make
19 that assessment. He can probably testify what he saw.

20 THE COURT: I will grant -- sustain your motion as
21 to whether he determined he was agitated, but I'll take
22 into consideration the fact that he did see his heart
23 beating.

24 MR. DIGGS: Thank you.

25 Q (MR. DeBUSK) Did you get any more information from

PRE-TRIAL MOTION

1 Mr. Mullins?

2 A After I mentioned the fact that Mr. Elliott had
3 been killed and that we were looking at Mr. Mullins as
4 a suspect, he immediately requested his attorney.

5 Q So he basically took advantage of the rights you
6 informed him of?

7 A Yes, sir.

8 Q Did you determine that the --

9 A At the point in time he invoked his rights to an
10 attorney, we ended the interview.

11 Q Okay.

12 MR. DeBUSK: Please answer any questions defense
13 may have.

14 THE COURT: My understanding -- and I looked away
15 for a moment -- but the only thing he said was that he
16 knew -- did he say he knew -- did he say he knew --

17 MR. DeBUSK: Yes, Your Honor.

18 THE COURT: That's all? That's it?

19 MR. DIGGS: Yes, sir. I assume he's going to
20 testify at trial.

21 MR. DeBUSK: And that he rented a house from him.

22 THE COURT: Okay.

23 CROSS-EXAMINATION

24 BY MR. DIGGS:

25 Q So it doesn't become an issue at trial, but

PRE-TRIAL MOTION

1 didn't Mr. Mullins offer to take a polygraph at that
2 time?

3 A As standard part of my interview, most of the
4 time I would ask someone if they would be willing to
5 take a polygraph, so probably so.

6 Q And he indicated he would; is that correct?

7 A Yeah, I believe he did.

8 Q And just for the record, his heart was beating
9 before you mentioned Mr. Elliott, correct?

10 A Yes, sir. I'm quite sure his heart was beating
11 before I mentioned Mr. Elliott.

12 Q And it continued to beat after you mentioned
13 Mr. Elliott?

14 A But I only seen it once I mentioned Mr. Elliott,
15 I could physically see it beating in his shirt.

16 Q Do you remember how many years in the past that
17 that rental arrangement had occurred?

18 A No, sir, I do not recall how many years in the
19 past it was. I can't recall exactly what he said. For
20 some reason, I think it was two-and-a-half, three
21 years, maybe longer.

22 Q And he was in the supermax setting because he was
23 working there; isn't that correct?

24 A He was a trustee there.

25 Q Wasn't a resident there?

PRE-TRIAL MOTION

1 A He was in prison, but --

2 Q Right, but not a supermax prisoner?

3 A He was not considered a supermax prisoner at that
4 time. He was lower level security as a trustee.

5 Q Cadray (phonetic). So there is no doubt in your
6 mind that you informed Mr. Mullins about why you were
7 there?

8 A Yes.

9 Q For Kelly Joe Elliott's case?

10 A Yes, sir.

11 Q And he understood you were asking him about what
12 he knew about that case?

13 A Yes.

14 Q And he indicated he was willing to speak with you
15 and did so relaying to you the information that you
16 recounted basically this morning?

17 A Yes. Correct.

18 MR. DIGGS: I don't think we have anything further.

19 MR. DeBUSK: That is our showing for the
20 determination of the Jackson V. Denno hearing. I think
21 if we present him at trial, of course we would have to
22 admit that he was at Red Onion State Prison and that he
23 invoked his Miranda rights, but the remainder --

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PRE-TRIAL MOTION

EXAMINATION

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BY THE COURT:

Q Do you know how old he was at the time.

A Who, sir?

Q The defendant.

A No, sir, I do not recall how old he was at that time.

Q Was he a minor?

A No, sir, he was not a minor.

Q All right. Did he seem to have his mental faculties about him?

A Yes, sir. He seemed to be quite intelligent.

THE COURT: That's all I have. Do you want to cross?

MR. DIGGS: No.

THE COURT: Okay. Thank you.

MR. DeBUSK: That is our showing, Your Honor.

THE COURT: You may step down. I'll hear from you, Mr. Diggs.

MR. DIGGS: Your Honor, inherently, it would be under those circumstances we are not -- I don't think any individual would be in a position to make a voluntary statement. You know, even the police detective couldn't bring any recording device or anything like that in, and just because of the totality

PRE-TRIAL MOTION

1 of the circumstances at that particular interview, and
2 because it wasn't recorded, we would --

3 THE COURT: Will you call any witnesses in this
4 hearing?

5 MR. DIGGS: No.

6 THE COURT: Okay. All right.

7 MR. DIGGS: So that is our position.

8 THE COURT: All right. Mr. DeBusk.

9 MR. DeBUSK: Your Honor, although he was a
10 custodian, we don't deny that. Clearly, he was in
11 prison. The officer informed him of his Miranda
12 rights, understood his Miranda rights because at the
13 end he invoked his Miranda rights, and he was not
14 coerced in any way. It was a very short interview, 15
15 minutes. He voluntarily said that he knew the victim
16 and he rented a house from him and he terminated the
17 interview.

18 THE COURT: Based on the totality of the
19 circumstances, I find that this was a voluntary
20 statement. I've considered things such as the
21 characteristics of the accused, and the evidence would
22 indicate that he appeared to be intelligent, he was not
23 under the influence of any substance that would have
24 affected his ability to make a voluntary statement. He
25 is, by my observation here in the courtroom today and

PRE-TRIAL MOTION

1 the officer's testimony, was not a minor. I've heard
2 no evidence of lack of education or low intelligence.

3 Obviously, he was given his Miranda rights as
4 testified to by the interviewing officer. Also, he
5 invoked those rights, so there is no question that he
6 did understand his right to remain silent. The details
7 of the interrogation would indicate to me an absence of
8 any coercion by law enforcement. There is no evidence
9 or anything to indicate that there was any physical
10 coercion or deprivation of food or sleep, in fact, the
11 evidence is to the contrary. It was a very short
12 detention for the purpose of this interrogation, and I
13 find that under the totality of these circumstances it
14 was a voluntary statement made by the defendant. I
15 would admit it to the extent that simply him saying
16 that he knew the decedent and at sometime in the past
17 rented -- I would assume it is a residence -- a
18 residence from him. Okay.

19 MR. HUCKS: As to another statement by the
20 defendant, we would need another Jackson V. Denno, and
21 for those purposes we call Investigator Ginger Pop to
22 the stand.

23 (GINGER POP, having been previously sworn,
24 testified as follows:)

25 THE CLERK: State your name for the Court.

PRE-TRIAL MOTION

1 THE WITNESS: Ginger Pop, P-O-P.

2 DIRECT-EXAMINATION

3 BY MR. HUCKS:

4 Q What do you do for a living?

5 A Investigator at the Solicitor's office.

6 Q Is that how you came to work on this particular
7 case with the defendant, Mr. Mullins.

8 A It is.

9 Q And how long would you say you've worked on this
10 particular case?

11 A Close to a year.

12 Q And over the course of your investigation in this
13 case and in your employment with the Solicitor's
14 office, did you have an occasion to come into contact
15 personally and take a statement from Mr. Mullins?

16 A I did.

17 Q How did that come about?

18 A I went to the J. Reuben Long Detention Center on
19 June 25, 2013 to speak with Mr. Mullins.

20 Q And why did you do that?

21 A He had been transferred from another facility to
22 our facility for these proceedings.

23 Q And was he represented by an attorney to your
24 knowledge at that time?

25 A He was not.

PRE-TRIAL MOTION

1 Q He was not. He didn't have a lawyer?

2 A He did not.

3 Q Now, when you went to meet with Mr. Mullins, did
4 you read him his Miranda rights?

5 A Yes, I did.

6 Q And did you do anything else in reference to his
7 Miranda rights?

8 A I verbally read his Miranda rights and also had
9 him sign a Miranda form advising him of his rights.

10 Q Do you recognize what I'm showing you?

11 A I do.

12 Q What is that?

13 A Miranda rights that Mr. Mullins signed that day.

14 Q And is that his signature at the bottom?

15 A It is.

16 Q And your signature next to it?

17 A Yes, sir.

18 Q Indicating that he waived each of those rights?

19 A Yes. He initialed beside each one.

20 MR. HUCKS: I believe it is appropriate to make it
21 a --

22 MR. DIGGS: No objection.

23 THE COURT: Without objection.

24 (State's Exhibit 92 admitted.)

25 Q (MR. HUCKS) Now, tell us the crux of this

PRE-TRIAL MOTION

1 interview. Whenever you spoke with the defendant,
2 what did he tell you?

3 A He was basically asked if he had information
4 about the Kelly Joe Elliott homicide, and he advised me
5 he did.

6 Q Now, what did he tell you in reference to any
7 prior relationship he had with Mr. Elliott?

8 A He advised me in the early 2000s, in the year
9 2000s, he rented a home from Mr. Kelly Joe Elliott for
10 approximately three to four months.

11 Q Now, when you spoke with him, aside from signing
12 that, did you put him in any kind of discomfort, hit
13 him in the hand with a hammer, poke him with a stick,
14 do anything that would make him uncomfortable or do
15 anything to impede his freedom to give you this
16 statement?

17 A I did not.

18 Q Did you deprive him of food or drink?

19 A I did not.

20 Q Did he appear to be an adult?

21 A He did.

22 Q Did he appear to have his faculties and
23 understand the questions you were asking him and the
24 answers he was giving?

25 A I asked if he was under the influence of any

PRE-TRIAL MOTION

1 drugs or alcohol at that time as well, and he said, no.

2 Q Now, I'll show you what is marked as Exhibit No.

3 91, State's Exhibit 91. Do you recognize that disk?

4 A Yes, sir.

5 Q And how long would you -- what is it?

6 A The interview with Mr. Mullins was audio
7 recorded, and so this is a disk of that interview.

8 Q And about how long did you sit and talk with
9 Mr. Mullins?

10 A Approximately 30 minutes.

11 Q Did he appear to be in any discomfort or have to
12 go to the bathroom, eat lunch or anything during that
13 time you talked with him?

14 A No. He seemed very comfortable.

15 MR. HUCKS: Your Honor, we would move the audio
16 recording --

17 THE COURT: Mr. Diggs, earlier I think because of
18 the time constraints here, we agreed that you had
19 reviewed it?

20 MR. DIGGS: Yes, sir.

21 THE COURT: And you would be satisfied to allow me
22 over the lunch hour to actually listen to the tape?

23 MR. DIGGS: Or at the Court's pleasure.

24 THE COURT: Okay. All right. Submitted without
25 objection.

PRE-TRIAL MOTION

1 (State's Exhibit 91 admitted.)

2 MR. DIGGS: No objection.

3 Q (BY MR. HUCKS) At any time did you do anything to
4 place him in any type of discomfort or agony of any
5 sort during the time you spoke with him?

6 A I did not.

7 MR. HUCKS: Nothing further, Your Honor.

8 THE COURT: Mr. Diggs.

9 CROSS-EXAMINATION

10 BY MR. DIGGS:

11 Q Investigator Pop, did you indicate to Mr. Mullins
12 that this was possibly a critical stage in the
13 proceeding against him?

14 A I don't know -- I don't recall.

15 Q You knew he was a murder suspect at that time?

16 A Yes, he was.

17 Q In fact, he was incarcerated because we were
18 formally, as a state, accusing him of a murder?

19 THE COURT: Had he been charged?

20 MR. DIGGS: Your Honor, he had been transported
21 down here.

22 THE COURT: And that usually involves some sort of
23 warrant issue, doesn't it? I mean, had there been a
24 warrant issued?

25 MR. HUCKS: There was a warrant issued that was not

PRE-TRIAL MOTION

1 served on him until after he was brought down here. We
2 had him on an NCIC and, actually, he was down here
3 under an interstate detainer from the State of
4 Virginia.

5 MR. DIGGS: But he was a suspect.

6 THE COURT: Was he aware of that?

7 MR. DIGGS: I think he -- I can put him on the
8 stand, but I believe he was.

9 THE COURT: All right. You don't have to put him
10 on the stand, I just wanted to know your position.

11 Q (MR. DIGGS) But you don't have any recollection of
12 discussing that with him?

13 A That this was a critical stage?

14 Q Yes.

15 A No, I don't, not that type of phrasing.

16 Q So you were concerned about the Miranda warnings?

17 A Is that the only thing?

18 Q Yeah, in terms of explaining to him
19 Constitutional --

20 A Yes. I wanted to be sure that he was speaking
21 freely and voluntarily and he wasn't threatened or
22 promised or under the drugs or alcohol at the time.

23 Q Did it occur to you he might be relinquishing
24 other Constitutional rights other than the right to
25 remain silent?

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1 A No.

2 Q And, nevertheless, did you discuss that
3 possibility with him?

4 A Which possibility?

5 Q That he might be relinquishing other rights other
6 than the one -- the right to remain silent?

7 A I informed him of his Miranda rights, and that
8 was it.

9 Q Now, you were in the courtroom earlier, were you
10 not, when the prior testimony was given by Detective
11 Jones?

12 A I was present.

13 Q And did you hear him or any discussion between
14 him and/or the solicitor about him invoking the right
15 to counsel?

16 A Are you asking if I overheard a conversation?

17 Q Yes.

18 A Um...

19 Q I mean, you heard that conversation today in the
20 courtroom, did you not?

21 A I saw the testimony, yes. If you are asking if I
22 overheard a testimony before that, I did not.

23 Q No. You heard the one in the courtroom today?

24 A Correct.

25 Q And you heard the statement that he invoked the

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1 right to counsel?

2 A I heard that.

3 Q And were you aware of that at the time that you
4 interviewed him in -- on this occasion, June 25, 2013?

5 A I don't recall if I was aware of that. I know I
6 did speak to him that I would be speaking to him as a
7 pro se person.

8 Q Had you had an opportunity to review any of the
9 notes generated by either of the detectives prior to
10 your interview?

11 A I reviewed this case file, which is fairly
12 lengthy.

13 Q Do you recall there being anything in there about
14 him invoking the right to counsel?

15 A As I said earlier, I don't recall.

16 Q Okay.

17 A I know I heard it today.

18 Q Would it be accurate to say that you were in your
19 meeting with Mr. Mullins for about two hours, as
20 opposed to 30 minutes?

21 A No. I wouldn't know -- it wasn't two hours, at
22 all.

23 Q But weren't there times when the recording was
24 turned off and other things were discussed or done?

25 A Prior to turning on the recorder, I advised him

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1 who I was, where I worked, rapport building, and would
2 he be willing to give me a statement about that, and he
3 said, yes.

4 Q At any time, did you ever make a statement to him
5 that under certain conditions you would -- you could
6 see him receiving probation in this case?

7 A No.

8 Q Nothing even remotely similar to that occurred?

9 A I would never tell him he could receive probation
10 in this case.

11 Q Could that have occurred with certain
12 qualifications; for example, if he cooperated and could
13 identify the killer in this case, if he knew? Was
14 anything like that ever discussed?

15 A No, I don't make it a habit of discussing what
16 outcomes may be.

17 Q And you don't think you did so on this occasion?

18 A I did not offer him probation or anything in
19 exchange for or --

20 Q And I understand there was no offer, but you are
21 pretty certain there was not even a discussion about
22 it?

23 A If you could tell me exactly what you are asking
24 me, I might could answer that, but at the moment, no, I
25 did not -- I did not offer that.

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1 Q All right.

2 MR. DIGGS: Thank you very much. I think that is
3 all I have, Your Honor, at this time.

4 THE COURT: Anything else?

5 MR. HUCKS: No.

6 THE COURT: You may step down, Ms. Pop.

7 MR. HUCKS: That is the extent of what we would
8 have for purposes of the Jackson V. Denno.

9 THE COURT: Mr. Diggs.

10 MR. DIGGS: Your Honor, I would exclude -- I would
11 urge the Court to exclude the testimony because,
12 clearly, there was an indication of counsel -- right to
13 counsel, and the State admitted that in a prior
14 hearing. No mention of that right was made at this
15 point, and it is a different standard of waiver, I
16 would submit, than under the Miranda case and the
17 Fifth Amendment. We would require something here of a
18 voluntary relinquishment of a right or privilege, and I
19 don't think there is any evidence that any kind of
20 instruction was given to Mr. Mullins like that prior to
21 the statement that was made in the case.

22 Now, he might have made a voluntary statement under
23 those circumstances as well, but we don't know because
24 that was --

25 THE COURT: How much time passed between the two

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1 statements?

2 MR. DIGGS: Your Honor, I think it was...

3 THE COURT: Days, weeks or months?

4 MR. DIGGS: Months.

5 MR. HUCKS: Approximately a year-and-a-half to two
6 years, Your Honor.

7 THE COURT: And there is no question that the
8 defendant was advised of his rights at this hearing?

9 MR. DIGGS: He was advised of the standard Miranda
10 rights.

11 THE COURT: Do you have anything that would suggest
12 that there was any physical coercion or mistreatment
13 during this interview?

14 MR. DIGGS: Certainly not any physical abuse or
15 anything of that nature, no, sir.

16 THE COURT: Let me -- are you going to put up the
17 defendant or any witnesses in this hearing?

18 MR. DIGGS: Your Honor, I don't want to do that.

19 THE COURT: All right.

20 MR. HUCKS: Your Honor, the State's position is --
21 and I neglected to bring up my case law file I had on
22 this particular issue, I left it in my office, but a
23 substantial period of time, a cooling off period, had
24 elapsed. There is several cases on point that would
25 say he hadn't had a lawyer appointed. It had been two

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1 years since the previous statement he had given. He
2 recently came into the jurisdiction where --

3 THE COURT: That is why I was interested in knowing
4 where he -- whether or not he had been charged.

5 MR. HUCKS: His warrants were served prior to
6 Ms. Pop going to see him.

7 THE COURT: Or was he aware of this offense?

8 MR. HUCKS: Yes, sir. He would have been aware of
9 it, I believe, after Detective Jones left from Virginia
10 and came down, because at that point in time they
11 entered him in the NCIC program and as an -- where we
12 would extradite him. When he finished serving his time
13 in Virginia, we brought him down on an interstate
14 detainer.

15 It's the State's position that such a lengthy
16 period of time and cooling off period happened between
17 Detective Jones and his indication of wanting an
18 attorney prior to him being brought down here a
19 year-and-a-half to two years later and Ms. Pop speaking
20 to him. We believe that is sufficient for him to make
21 a free and voluntary waiver at this time.

22 MR. DIGGS: Our position is that he was brought
23 down before his time expired in Virginia. In fact,
24 that ran just a couple of months ago in September, so
25 he was incarcerated here waiting to be charged.

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1 THE COURT: All right. Let me take the opportunity
2 over lunch to listen to the tape. Is this tape going
3 to be 30 minutes, or an hour or two hours?

4 MR. HUCKS: Right at 30 minutes, Judge.

5 THE COURT: All right. I wasn't sure. Mr. Diggs
6 sort of indicated it might be longer. Is it 30
7 minutes?

8 MR. DIGGS: I think it is more like 30 minutes. I
9 was just making an inquiry as to how long it was --

10 THE COURT: All right. I'll listen to it before I
11 rule.

12 Now, what else do we need to clean up before we
13 come back?

14 MR. DIGGS: Your Honor, I would ask the detective
15 if my client offered to take a polygraph. Of course,
16 we're not offering any results or anything, just the
17 offer. Before I even mention the word "polygraph," I
18 wanted to run it by the State.

19 THE COURT: We're not going to talk about polygraph
20 in this trial.

21 MR. DIGGS: Even an offer to take one?

22 THE COURT: I have been through that. I've had a
23 three-day counsel hearing in the past, and we're not
24 going to talk about polygraph. I mean, we're just not
25 going to talk about polygraph, period. I don't think

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1 it has any evidentiary value, at all. I think that it
2 is far more prejudicial to either side than it -- it
3 would outweigh any value it would have.

4 MR. DIGGS: Just for the record, and I'll hush
5 about it, but from my perspective, it shows the state
6 of mind at the time and his willingness to cooperate.

7 THE COURT: I understand, but we're not going to
8 talk about it.

9 MR. DeBUSK: It is the State's position -- same as
10 the Court's ruling -- that it would be -- is not
11 admissible and not competent evidence, and just as
12 admitting the fact that he invoked his rights, it would
13 be prejudicial.

14 THE COURT: All right. Is that it for this
15 morning?

16 MR. HUCKS: Yes, sir, as far as I know.

17 THE COURT: Okay. I'll see you back at
18 2 o'clock.

19 (A lunch recess was taken.)

20 THE COURT: I've had an opportunity to review and
21 listen to the audio recordings of the interview. I'll
22 hear from you, Mr. Hucks.

23 MR. HUCKS: Yes, sir, Your Honor. I took the
24 liberty on sitting up on your bench, Maryland versus
25 Shatzer, United States Supreme Court case. From my

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1 perspective, it's directly in line, and actually falls
2 in comparison with the facts that we have here today.
3 In Shatzer, he was interviewed about a crime, invoked
4 his right to counsel, and once he invoked his right to
5 counsel, he was put back in general population, went
6 into general population and was there for 14 days.
7 They came back. He hadn't had an attorney appointed to
8 him yet, and the supreme court said that 14 days is a
9 requisite amount of cooling off time to come back and
10 reinitiate contact with the defendant. We believe it
11 is on point.

12 Here we're talking about a period of two years and
13 a half a dozen states in between them -- well, four
14 states in between them. I believe, Your Honor, that
15 under the Shatzer analysis that Investigator Pop was
16 absolutely in line with what she did in initiating
17 contact with Mr. Mullins.

18 THE COURT: Let me hear from Mr. Diggs.

19 MR. DIGGS: Your Honor, that case, I would argue,
20 is not the critical stage for the 6th Amendment, and
21 so it wouldn't be applicable.

22 THE COURT: I've had an opportunity to review, as I
23 said, the audio recording, as well as I listened to the
24 investigator's testimony. I have considered such
25 things as the defendant's age and his intelligence and

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1 education. We discussed that in the last hearing that
2 we did. I don't think there is any question that he
3 was intoxicated or under the influence of any substance
4 that might have affected his ability to make a detailed
5 and voluntary statement. He was advised of his rights.
6 The detention appeared to be a relatively short period
7 of time. There is no evidence of the use of physical
8 punishment or withholding food or sleep.

9 I also considered the fact that this statement, the
10 nature of it, seemed to be such that the defendant
11 wanted to discuss the involvement of other people --
12 not himself -- in making this statement. I believe
13 under the totality of the circumstances surrounding
14 this defendant's statement, that it was made freely and
15 voluntarily and would be, therefore, admissible.

16 Okay. Now, let's look at what we have here. I
17 believe that we have a jury panel outside. We have
18 discussed already the strikes. Mr. Diggs, do you agree
19 that it is five to the State, ten for the defense?

20 MR. DIGGS: Yes, sir.

21 THE COURT: You, as well, Mr. Hucks, you agree with
22 that?

23 MR. HUCKS: Yes, sir.

24 THE COURT: Is there any matter we need to take up
25 prior to bringing in the jury and proceeding with jury

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1 selection?

2 MR. HUCKS: None from the State.

3 THE COURT: Mr. Diggs?

4 MR. DIGGS: No, sir, Your Honor.

5 THE COURT: Okay. It is my understanding,
6 Mr. Hucks, that the State will go forward on all
7 indictments, being burglary in the first degree, armed
8 robbery and murder; is that correct?

9 MR. HUCKS: No, sir, Your Honor. I didn't mean to
10 indicate that earlier. The State will be going forward
11 on the charge of burglary in the first degree and
12 murder, not on the armed robbery charge at this time.

13 THE COURT: Very well.

14 (Court's Exhibit 1 marked.)

15 MR. DIGGS: Could I ask if the State sometime this
16 afternoon could prepare a copy of that indictment so I
17 can have it in the file?

18 MR. HUCKS: You want all of them, or a particular
19 one?

20 MR. DIGGS: The two you are proceeding on.

21 MR. HUCKS: Yes, sir, I'll have it to you directly.

22 THE COURT: Are we ready for the jury panel?

23 MR. HUCKS: Yes, sir.

24 THE COURT: Bring them in. I was going to do my
25 standard voir dire.

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1 MR. DIGGS: I want to know -- and you may already
2 plan to do this -- what the knowledge might be with
3 respect to this particular incident.

4 THE COURT: Absolutely. Absolutely. Certainly.

5 (A brief pause in the proceedings.)

6 THE COURT: Do you have a witness list?

7 MR. DIGGS: I only have -- about half of these are
8 the State's witnesses.

9 MR. HUCKS: May I approach and look at it?

10 THE COURT: Certainly.

11 (Whereupon, a bench conference was had.)

12 (A brief pause in the proceedings, and the
13 following is had in the presence of the potential jury
14 panel.)

15 THE COURT: Do we have everyone?

16 THE BAILIFF: Yes.

17 THE COURT: Ladies and gentlemen of the jury, let
18 me introduce myself to you. I'm Larry Hyman, and I'm a
19 circuit court judge here in South Carolina. I have the
20 pleasure of serving throughout the state, just as Judge
21 McIntosh does, who you met earlier this morning, but
22 this is my home circuit. I spend most of my time here
23 in Horry County. This is where I live, this is where I
24 grew up. It is a pleasure seeing you all this morning.

25 Normally, I qualify the jury, but I was unable to

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1 do so this morning and Judge McIntosh was good enough
2 to do it for me, so you haven't had an opportunity to
3 meet me, and I haven't had an opportunity to meet you.

4 As Judge McIntosh told you this morning, his
5 purpose was to qualify you as jurors to determine
6 whether or not you met the statutory qualifications as
7 jurors in this state. We are about to begin a case,
8 State of South Carolina versus Bradley Gerald Mullins.
9 For that purpose, we need to qualify you as to any
10 knowledge or any problems you might have serving on
11 this particular case, so we're going to get a little
12 more specific about it.

13 Before we begin to do that, let me tell you how we
14 go about selecting a jury here in the court of general
15 sessions. During the week, some of the jurors -- some
16 of you maybe, even -- might be called upon to serve as
17 jurors in a civil case, and that is what we call a
18 "common pleas case." That is where there is a dispute
19 between individuals. In the court of general sessions,
20 which we have here this afternoon, cases involving
21 criminal charges that have been levied or made against
22 individuals are tried.

23 Let me tell you from the very outset that the fact
24 that a person has been charged with a crime, indicted
25 for a crime, is not evidence that that person is guilty

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1 of that crime. There is a burden placed upon the State
2 in all criminal cases, and we call it the "burden of
3 proof." That burden requires the State to convince
4 those of you who may serve on the jury that the
5 defendant committed this offense beyond a reasonable
6 doubt. That is the burden and the level of proof that
7 the State must establish.

8 I'm going to tell you what this defendant is
9 charged with, and let me stress upon you again, what is
10 said or what I tell you may be in an indictment, but it
11 is not evidence, not to be considered by you as
12 evidence. The person that has been charged with a
13 crime is not evidence in any case. It is just
14 necessary, and the law requires that anyone who is
15 charged with a crime to be presented with an indictment
16 that describes what the State believes or intends to
17 prove, or must prove, that that person did.

18 Although I'm going to tell you what is in this
19 indictment, remember, it's not evidence because I said
20 it. You will determine this case solely from the
21 evidence that comes from the witness stand and not
22 something that I say. In this particular case, the
23 defendant is charged with the offense of burglary in
24 the first degree, in that it is alleged that Bradley
25 Gerald Mullins did in Horry County on or about

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1 September 11, 2008 enter the dwelling of one, Kelly Joe
2 Elliott, located at [REDACTED] Drew Lane -- Dew Lane, excuse
3 me, Loris, South Carolina without consent and with the
4 intent to commit a crime therein, and the defendant did
5 so in the nighttime in violation of the South Carolina
6 code of laws.

7 It is further alleged in the second indictment,
8 that indictment being one for murder, that Brad Gerald
9 Mullins did in Horry County on or about that same day
10 willfully and maliciously and intentionally killed the
11 victim, Kelly Joe Elliott, with malice aforethought,
12 either expressed or implied, by means of a gunshot
13 wound, and that the victim did die as a proximate
14 result of that gunshot wound on that day. Those are
15 the charges. Again, let me stress, those are the
16 charges that are made against the defendant.

17 Now, it is necessary, as I said earlier, that I
18 determine whether or not there is any reason why you
19 should not serve as jurors in this case. The
20 cornerstone, the jurisprudence in this state, is a
21 right to a trial by a jury, a fair and impartial and
22 unbiased jury. There is nothing more important that we
23 would do here today than determine whether or not we
24 have a fair, impartial and unbiased jury, because that
25 is a right, not only of the State, but of the defendant

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1 as well.

2 If this were a civil case, we would proceed by
3 simply asking the attorneys to strike jurors from a
4 list similar to what I have right here (indicates), and
5 we are very kind in our process for doing that, and the
6 way we go about it is we give you all a new number, a
7 number you won't even know about, and you are struck by
8 those new numbers and you don't even know if you were a
9 person who was even considered to sit on the jury.

10 On the general sessions or criminal side, our
11 tradition is that we follow another process. We will
12 be calling your names one at a time after I go through
13 the qualifications. You will be required to come
14 forward and stand here in front of the bench, turn
15 around and face the prosecutors and the defendant and
16 his attorney and the other perspective jurors. At that
17 time, the State will first say either present the
18 juror, or excuse the juror. If the State were to say
19 excuse the juror, then you would return to your seat.
20 If the State would say present the juror, then the
21 defense would have an opportunity to either say swear
22 that juror, in which case you would come around and
23 have a seat in the jury box and you would be on the
24 jury, or the defense might say excuse the juror on this
25 case, and in that case you would return to your seat.

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1 Now, a lot of people find that to be embarrassing
2 and they feel uncomfortable with that process. Let me
3 tell you, I practiced law for a long time with many of
4 these fellows right here. I think Mr. Diggs is the
5 only one about as old as I am. How long have we've
6 been practicing together, Mr. Diggs?

7 MR. DIGGS: Judge, long enough.

8 THE COURT: Long enough, that's right. But I
9 practiced law for quite sometime, and one thing I
10 learned is this: When you come up here and you turn
11 around and you see these lawyers making all kinds of
12 faces and notes, they'll think and study on you awhile,
13 and they'll either sit you or might even strike you.
14 If they strike you, please don't take it personally,
15 because I can tell you, they don't have a clue what
16 they are doing. They don't know what they are doing.
17 That is the hardest thing in the world to do, to select
18 a jury, because they know little or nothing about you.
19 They see you on those forms, and that is all the
20 information they have, so don't take it personally.

21 I tell every juror that, every jury panel that.
22 You are probably out there thinking, You know, he's
23 worried about hurting my feelings, and I'm worried
24 about getting off this jury, I hope they will strike
25 me. I believe that if you are selected to be on this

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1 jury, you will be like many jurors that I have had an
2 opportunity to talk to, you will find this to be, at
3 the very least, an enlightening experience, perhaps a
4 rewarding experience, and you will certainly appreciate
5 how difficult it is to sit in judgment. I hope you
6 will leave this courtroom, if you are selected, with a
7 better idea of what we do here today.

8 So that is the process we'll follow in selecting
9 this jury. Now, before we begin that, I want to ask
10 you some questions. I'm sure you remember this morning
11 being placed under oath when you answered questions for
12 me by Judge McIntosh. There is an awful lot of
13 swearing that goes on just to get on a jury. So I'll
14 ask you, if you will, stand and have the -- I'll have
15 the clerk administer an oath, because it is important
16 you answer all of my questions truthfully. If you
17 will, stand and raise your right hand.

18 (Whereupon, the prospective jury panel was duly
19 sworn.)

20 THE COURT: Was there any one of you that did not
21 take that oath either by affirmation or by swearing?

22 Let the record reflect there was no response to
23 that inquiry.

24 Let me begin by asking you, has any one of you ever
25 been related by blood or marriage to either the

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1 defendant, Mr. Mullins -- and, Mr. Mullins, will you
2 stand and face the jury so they can see you? Thank you
3 very much, Mr. Mullins -- or the victim, alleged victim
4 in this case, Mr. Kelly Joe Elliott?

5 Let the record reflect there was no response.

6 Have any of you ever had a close personal or social
7 relationship with either Mr. Mullins or Mr. Elliott?

8 And there is no response.

9 I'm going to read to you a list of potential
10 witnesses who might possibly testify in this case.
11 There are quite a few, please do not be concerned about
12 the number of witnesses. I ask the attorneys to
13 provide me with the names of any person that they think
14 they might possibly call to testify in this case, and
15 it may not be necessary that all of these witnesses are
16 called. If a witness whose name you hear is not called
17 in this trial, don't place any emphasis on that one
18 bit, it doesn't mean anything other than the fact that
19 that witness or that potential witness' testimony is
20 covered in some other form or fashion, so please do not
21 consider the absence of any of these witnesses that I'm
22 going to read to you.

23 Those witnesses or potential witnesses would be
24 Gene Elliott, Dale Stevens, Tim Fike, F-I-K-E, Peter J.
25 Cestare, C-E-S-T-A-R-E, Robert Deal, Amy Stephens David

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1 Black, Dr. Lee Proctor, Francis M. Knight, Dr. Brian
2 Fortman, Delilah Mullins, Verne Allen Ray, Charles
3 Mullins, Senior, Charles Henderson Mullins, Arlie
4 Mullins, Anthony Ray, Rusty Crocker, Terry Fowler, Neil
5 Freibowitz, F-R-E-I-B-O-W-I-T-Z, Alan Jones, Susan
6 Safford, Mike Lynch, Ginger Pop, Kelly Elliott Delk,
7 D-E-L-K, McKinnon "Kinn" Elliott, Latonya Ray, Barbara
8 Jernigan, James Anderson, Carlene Merk or Merck,
9 M-E-R-K or M-E-R-C-K.

10 MR. DIGGS: Judge, I wasn't sure if it was C-K or
11 M-E-R-K.

12 THE COURT: Okay. Thomas Mullins, William Stevens,
13 Keeta, K-E-E-T-A, Stanley, Jeremy Crawford, Ronald
14 Legg, and Daniel Keith Mullins.

15 Is there anyone of you who is related by blood or
16 marriage, or do you have a close personal or social
17 relationship with any of these potential witnesses in
18 this case? Yes, ma'am? Will you please stand.

19 JUROR NO. 194: I'm friends with Pete Cestare.

20 THE COURT: Sorry?

21 JUROR NO. 194: Pete Cestare. He's a family friend.

22 THE COURT: Would the fact that you know -- he's a
23 friend?

24 JUROR NO. 194: I was at his house last week.

25 THE COURT: Would the fact that you know him and

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1 that he is a friend of yours affect your ability to be
2 fair and impartial in this trial?

3 JUROR NO. 194: Yes.

4 THE COURT: Could you give both the State and the
5 defense a fair trial?

6 JUROR NO. 194: Yes.

7 THE COURT: Have you had an opportunity discuss
8 this case with him?

9 JUROR NO. 194: No.

10 THE COURT: Give me your name and address, please.

11 JUROR NO. 194: Kathryn Lewis, [REDACTED] --

12 THE COURT: Your jury number, I'm sorry.

13 JUROR NO. 194: 194.

14 THE COURT: Thank you very much. Anyone else?

15 JUROR NO. 47: Yes, sir I went to high school with
16 Kelly Elliott Delk. I don't know if that qualifies for
17 social.

18 THE COURT: That would have been last year?

19 JUROR NO. 47: Thank you. No. About 20 years ago.

20 THE COURT: Would the fact that you know Ms. Delk
21 affect your ability to be fair and impartial in this
22 trial?

23 JUROR NO. 47: I do consider her a friend and know
24 of her family.

25 THE COURT: Well, would the fact that she might

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1 testify in this trial cause you some difficulty in
2 placing her testimony on the same key that you would
3 any other stranger?

4 JUROR NO. 47: I think I could be impartial, yes,
5 sir.

6 THE COURT: Could you give the State and the
7 defense a fair trial?

8 JUROR NO. 47: Yes, sir.

9 THE COURT: Again, you don't need to give me your
10 address, but your name and jury number.

11 JUROR NO. 47: 47, Amy Cannon.

12 THE COURT: Thank you. Was there anyone else?
13 Thank you very much.

14 Now, the attorneys in this case are Mr. George
15 DeBusk and Mr. Scott Hucks, stand and let them see you.
16 Is anyone on the jury panel related by blood or
17 marriage, have you ever had any professional
18 relationship or any other relationship, social
19 relationship with either Mr. DeBusk or Mr. Hucks? You
20 may be seated. And there was no response.

21 Representing Mr. Mullins is Mr. Bill Diggs. Mr.
22 Diggs is a private attorney here in Horry County, has
23 been for -- as we discussed a moment ago -- a number of
24 years, long enough, I think he said. Is anyone related
25 by blood or marriage, or are you a client of, do you

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1 have a professional relationship, do you have a social
2 relationship with Mr. Diggs? And there is no response.
3 Thank you, Mr. Diggs.

4 Has any member of the jury panel formed or
5 expressed an opinion about any issue or matter involved
6 in this case? I know that is a difficult question to
7 answer. What I want to know is do you know anything
8 about this case? Do you recall reading anything about
9 this case? Do you have any recollection? It may or
10 may not have been reported in the media, I don't know.
11 Do any of you have any recollection? Have you had an
12 opportunity to discuss this case with your friends or
13 family or anyone else? Do you know anything at all
14 about this case?

15 Yes, ma'am, why don't you come around here.

16 (Whereupon, the following was had at a bench
17 conference.)

18 JUROR NO. 293: I remember the case being in the
19 media, seeing it on TV and reading the newspaper
20 articles.

21 THE COURT: Do you know anything specific about
22 this case?

23 JUROR NO. 293: No, sir.

24 THE COURT: Do you recall anything? Did you know
25 any of the people?

JURY SELECTION

1 JUROR NO. 293: No, sir. No, sir.

2 THE COURT: Anything at all about this case?

3 JUROR NO. 293: No, sir, just what I heard.

4 THE COURT: And you just recalled it?

5 JUROR NO. 293: Yes.

6 THE COURT: What did you hear?

7 JUROR NO. 293: I just heard about the shooting
8 happening and everything that came on the news,
9 breaking news, or whatever, and I read it in the Sun
10 News.

11 THE COURT: And your number?

12 JUROR NO. 293: 293.

13 THE COURT: And your name?

14 JUROR NO. 293: Darla Stike.

15 THE COURT: Could you be fair and impartial, give
16 both the State and the defense a fair trial in this
17 matter?

18 JUROR NO. 293: Yes, sir.

19 MR. DIGGS: Nothing further.

20 (Whereupon, the following is had in the presence of
21 the prospective jury panel.)

22 THE COURT: Is any member of the jury panel aware
23 of any bias or prejudice that you may have either
24 against the State or the defendant in this case?

25 And there is no response.

JURY SELECTION

1 Is any member of the jury panel -- or was any
2 member of the jury panel -- a member of the Grand Jury,
3 which issued this indictment? I know that Judge
4 McIntosh probably asked you about the Grand Jury
5 service. I look at the indictments and I see that this
6 was issued back in September of this year. If any of
7 you were on the Grand Jury -- and you may not know what
8 the Grand Jury is, but you would certainly know it if
9 you were on it. Is anyone a member of the Horry County
10 Grand Jury?

11 And there is no response.

12 Is there any member of the jury panel who is a
13 member or contributes to any group which has as its
14 primary concern the promotion of law enforcement,
15 victims' rights like MADD, SAD, Citizens Against
16 Violent Crimes, things of that nature?

17 And there is no response.

18 Finally, is there any member of this jury panel who
19 knows any reason, whatsoever, why he or she should not
20 serve as a juror in this case with a particular
21 emphasis being placed on your abilities to be fair and
22 impartial to both the State and the defendant?

23 And there is no response.

24 Anything further from the defense?

25 MR. DIGGS: No, sir.

JURY SELECTION

1 THE COURT: Anything further from the State?

2 MR. HUCKS: No, sir.

3 THE COURT: All right. Let's have a jury.

4 THE CLERK: When I call your name and jury number,
5 please come up front, turn around and face the back of
6 the courtroom. Bring all of your belongings with you.

7 Robert Turkall, Juror 311. What say the State?

8 MR. HUCKS: Please present the juror.

9 MR. DIGGS: Swear the juror.

10 THE COURT: You may have a seat in the jury box.
11 Do you see what a good job Mr. Turkall did.

12 THE CLERK: Deadra Stewart. What is your juror
13 number?

14 JUROR NO. 343: 343.

15 THE CLERK: What says the State?

16 MR. HUCKS: Please present the juror.

17 THE CLERK: Defense?

18 MR. DIGGS: Swear the juror.

19 THE CLERK: Bradley Schenk, Juror 269. What says
20 the State?

21 MR. HUCKS: Please present the juror.

22 THE CLERK: Defense?

23 MR. DIGGS: We'll excuse the juror for this
24 particular case.

25 THE CLERK: Nicholas Garcia, Juror 111. What says

JURY SELECTION

1 the State?

2 MR. HUCKS: Please present the juror.

3 THE CLERK: Defense?

4 MR. DIGGS: Your Honor, please excuse the juror
5 from the trial of this case.

6 THE CLERK: Hurie Turner, 312. What says the
7 State?

8 MR. HUCKS: Please present the juror.

9 THE CLERK: Defense?

10 MR. DIGGS: Swear the juror.

11 THE CLERK: Matthew Richardson, 256. What says the
12 State?

13 MR. HUCKS: Please excuse the juror from the trial
14 of this particular case.

15 THE CLERK: Amy Cannon, Juror 47. What says the
16 State?

17 MR. HUCKS: Please present the juror.

18 THE CLERK: Defense?

19 MR. DIGGS: Excuse the juror for this particular
20 case.

21 THE CLERK: Sandra Nelson, 231. What say the
22 State?

23 MR. HUCKS: Please present the juror.

24 THE CLERK: Defense?

25 MR. DIGGS: Swear the juror.

JURY SELECTION

1 THE CLERK: Akemi Williams, 338. What say the
2 State?

3 MR. HUCKS: Please present the juror.

4 THE CLERK: Defense?

5 MR. DIGGS: Swear the juror.

6 THE CLERK: Kelly Mason, 210. What say the State?

7 MR. HUCKS: Please present the juror.

8 THE CLERK: Defense?

9 MR. DIGGS: Excuse the juror from this particular
10 case.

11 THE CLERK: Donna Ciacciullo, 58. What say the
12 State?

13 MR. HUCKS: Please present the juror.

14 THE CLERK: Defense?

15 MR. DIGGS: Excuse the juror from the trial of this
16 case.

17 THE CLERK: Delores Herdman, 140. What say the
18 State?

19 MR. HUCKS: Please present the juror.

20 THE CLERK: Defense?

21 MR. DIGGS: Swear the juror.

22 THE CLERK: Donald Provance, 248. What say the
23 State?

24 MR. HUCKS: Please present the juror.

25 THE CLERK: Defense?

JURY SELECTION

1 MR. DIGGS: Excuse the juror from the trial of this
2 case.

3 THE CLERK: Wayne Mummert, 228. What say the
4 State?

5 MR. HUCKS: Please present the juror.

6 THE CLERK: Defense?

7 MR. DIGGS: Swear the juror from the trial of the
8 case.

9 THE CLERK: Joann Leary, 191. What say the State?

10 MR. HUCKS: Please present the juror.

11 THE CLERK: Defense?

12 MR. DIGGS: Swear the juror.

13 THE CLERK: Rosemarie Hatcher, 135. What say the
14 State?

15 MR. HUCKS: Please excuse the juror from the trial
16 of this particular case.

17 THE CLERK: Karl Gurrere, 129. What say the State?

18 MR. HUCKS: Please present the juror.

19 THE CLERK: Defense?

20 MR. DIGGS: Swear the juror.

21 THE CLERK: Craig Gasque, 113. What say the State?

22 MR. HUCKS: Please excuse the juror from the trial
23 of this case.

24 THE CLERK: Darla Stike, 293. What say the State?

25 MR. HUCKS: Please present the juror.

JURY SELECTION

1 THE CLERK: Defense?

2 MR. DIGGS: Swear the juror.

3 THE CLERK: Wanda Lilly, 196. What say the State?

4 MR. HUCKS: Please present the juror.

5 THE CLERK: Defense?

6 MR. DIGGS: I'm sorry, what was the number?

7 THE CLERK: 196.

8 MR. DIGGS: Swear the juror.

9 THE CLERK: Michael Hawley, 137. What say the
10 State?

11 MR. HUCKS: Please present the juror.

12 THE CLERK: Defense?

13 MR. DIGGS: Swear the juror.

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

15 THE COURT: We'll pick two alternates. Pick the
16 first alternate from 22, 23, 24 and 25. I will give
17 the State one strike, defense two.

18 THE CLERK: Kathryn Lewis, Juror 194. What say the
19 State?

20 MR. HUCKS: Please present the juror.

21 THE CLERK: Defense?

22 MR. DIGGS: Excuse the juror.

23 THE CLERK: Terry Jenkins, 163. What say the
24 State?

25 MR. HUCKS: Please present the juror.

JURY SELECTION

1 THE CLERK: Defense?

2 MR. DIGGS: Swear the juror.

3 THE COURT: Your next alternate will be 26, 27, 28
4 and 29, one strike.

5 THE CLERK: Krystle Mall, 203. What say the State?

6 MR. HUCKS: Please present the juror.

7 MR. DIGGS: Excuse the juror for the trial of this
8 case.

9 THE CLERK: Michael Floyd, Juror 100. What say the
10 State?

11 MR. HUCKS: Please present Mr. Floyd.

12 MR. DIGGS: I'm sorry, the number?

13 THE CLERK: 100.

14 MR. DIGGS: We would excuse the juror for this
15 case.

16 THE CLERK: Cleo Taulk, 92. What say the State?

17 MR. HUCKS: Please present Mr. Taulk.

18 MR. DIGGS: Swear the juror.

19 THE CLERK: Please have a seat.

20 THE COURT: All right. Mr. Ropp, if you would take
21 this jury panel into the jury room, familiarize them
22 with the surroundings, and my two alternates will
23 always occupy those seats. Mr. Hawley, always occupy
24 that seat.

25 (Whereupon, the selected jury exits the courtroom

JURY SELECTION

1 at 2:55 p.m., and the following was had out of the
2 presence of the jury, but in the presence of the
3 prospective jury panel.)

4 THE COURT: Counsel, please.

5 (Whereupon, a bench conference was had.)

6 THE COURT: For the record, any challenge to the
7 panel from the State?

8 MR. HUCKS: None, whatsoever.

9 THE COURT: Defense?

10 MR. DIGGS: No.

11 THE COURT: Ladies and gentlemen, you are released
12 for the balance of the day. Please call back after
13 6 o'clock and we'll have instructions as to whether or
14 not we'll need you tomorrow. Thank you.

15 All right, let's be at ease for a few minutes.

16 (A recess was taken.)

17 (Whereupon, the jury enters at 3:12 p.m., and the
18 following was had in the presence of the jury.)

19 THE COURT: As I said, Mr. Hawley, if you will
20 always occupy that seat. I saw someone was trying to
21 get it from you. You will be the foreperson for the
22 jury. That is important because you are the liaison
23 between the Court. If there are any problems that
24 arise, if you need to convey any information to the
25 Court, tell Mr. Ropp, who is my bailiff, and Mr. Ropp

JURY SELECTION

1 will let me know of your concerns, he will convey it to
2 me. You'll preside over the jury during any
3 deliberations or during deliberations.

4 Ms. Jenkins and Mr. Taulk, you are our alternates,
5 so if we can always identify you, I ask that you take
6 those two seats, either one of them, but I need you in
7 those two seats.

8 Let me tell you a little bit about how I like to
9 try a case. Please understand that everything we do in
10 this courtroom is for you. These attorneys told me all
11 about the evidence and what they propose to do. I
12 know -- and they know -- the presentation of evidence
13 is for you, the jury. It is so important that you be
14 able to hear and see and understand what is going on in
15 the courtroom. If at any time you can't see or you
16 can't hear, remember, this is all being done for you,
17 so raise your hand. Raise your hand, signal to me that
18 there is a problem and we will straighten it out.

19 Also, should you become uncomfortable during the
20 trial of this case, if you need a break, please, again,
21 just raise your hand. I promise you that we will take
22 a break. I don't want you distracted or thinking about
23 something else. Let me know and we'll take a break. I
24 try not to keep a jury in the jury box more than an
25 hour, hour-and-a-half at a time anyway. I figure if

JURY SELECTION

1 you can make it through preaching, you can make it
2 through one of my sessions of court. If I do go over,
3 and as I said, you need to refresh yourselves or
4 whatever, signal me, let me know that you need a break
5 and we'll certainly take a break.

6 At the end of this trial I'll instruct the law.
7 What I'm about to tell you is not a complete charge of
8 the law, by any means, just some preliminary
9 instructions, kind of give you an idea as to how we
10 will proceed in this trial and what would be expected
11 of you and what you can expect of these attorneys and
12 me during the trial of the case.

13 As the trial progresses, you're probably going to
14 see that this is not like what you -- probably won't be
15 like what you see on TV. Every time you turn on the TV
16 they have some type of trial going on. They have
17 channels on TV, I understand, that have trials going on
18 all the time. Those always seem to be action-packed
19 and something happening every minute. I will tell you
20 that it is probably not what you are going to
21 experience here, because the quest or the search for
22 the truth is often very slow and repetitive. These
23 attorneys are bound by rules of evidence as to the way
24 they present evidence and the way they proceed with the
25 trial, and they have to follow those rules. Sometimes

JURY SELECTION

1 that process is slow and repetitive.

2 So I'll ask you to keep in mind that this trial --
3 and no trial -- is for entertainment. It is the
4 defendant exercising his Constitutional right to be
5 tried by a jury of his peers and to put the State to
6 the test to require the State to prove allegations
7 against him beyond a reasonable doubt.

8 Now, these attorneys are experienced attorneys. I
9 know all three of them very well, and I can tell you
10 that they are going to conduct themselves ethically and
11 professionally during the trial of this case. I expect
12 that of them, and you should expect that of them as
13 well. I'm sure that that is what you will see here.
14 I've known these attorneys, as I said, for a long time.

15 I have to take an oath as well that I will conduct
16 myself professionally and ethically, and I do my very
17 best to do that, but, you know, you, as jurors, in a
18 few minutes will take an oath as well. We all expect
19 you to conduct yourselves ethically and professionally,
20 because this is a very important trial to both the
21 State and to the defense.

22 Now, at the end of this case, you are going to be
23 asked to deliberate on the charges, and I have already
24 told you what these charges are, they are murder and
25 burglary in the first degree. Again, I want to stress

JURY SELECTION

1 upon you that there have been indictments issued in
2 this case, and those indictments are not evidence to be
3 considered by you, should not be considered by you as
4 evidence in this trial. The fact that someone is
5 charged creates no inference or presumption against
6 that person, and you should not even discuss it in that
7 context. You should only consider the evidence that is
8 presented to you from this witness stand during the
9 course of this trial.

10 As I said, you'll be required to deliberate. In
11 the deliberation process, most people will tell you it
12 is a two-part process, and I'm telling you it is a
13 three-part process. The first part falls to you, as
14 jurors, to determine what the facts are. Jurors are
15 the sole and exclusive judges of the facts in a case,
16 only you can determine what happens. I'm not even
17 allowed to have an opinion as to what occurred. You
18 will determine the facts in the case from the evidence.

19 Sometimes it is hard to make that distinction
20 between evidence and facts. Facts are what you gleam
21 from the evidence. There is always conflicting
22 evidence in every trial, at least to some degree. In
23 determining what the facts are, you, as a jury, can use
24 just about any method that you, in your experience,
25 have determined to be a reasonable way of determining

JURY SELECTION

1 the truth. You can consider a witness' demeanor on the
2 stand, you can consider whether a witness has any
3 interest or prejudice, bias or motive in that witness'
4 testimony. You can consider whether that witness was
5 in a position to actually hear or see what the witness
6 claims to have seen or heard or perceived that he's
7 testifying about or she's testifying about. You can
8 believe part of a witness' testimony, and reject the
9 rest of it. You can believe all of the testimony, or
10 you can believe nothing that a witness says, but it
11 ultimately falls upon you, as a jury, to determine what
12 the facts are. That is the first part of the
13 deliberation process.

14 The second part of the deliberation process is
15 determining what the law is, and that it is the easiest
16 part for you because I'm going to tell you what the law
17 is, what laws you must apply in your deliberations.
18 You have to be guided by the law as I give it to you.
19 You might not agree with it, you might not think it is
20 correct, you might think the law is or should be
21 something else, but you have to be guided by what I
22 tell you what the law is under your oath. That is the
23 second part.

24 The third part is the important part of the
25 deliberation process. The third part is bringing

JURY SELECTION

1 together the facts as you find them and the law as I
2 give them, and see if they fit. Think about a great
3 big mill that has big gears in it. One gear is the
4 facts, one gear is the law. When you bring it
5 together, you must determine where the law and facts
6 fit, whether or not the State has met its burden of
7 proof, that burden being able to convince you beyond a
8 reasonable doubt that it fits perfect, okay.

9 Now, sometime during this trial you may hear one of
10 these lawyers say something like, Your Honor, we have a
11 matter that we need to take up, or, I have an
12 objection, Your Honor, something along those lines.
13 When that occurs I may very well send you out of the
14 courtroom. It is not because we are trying to keep
15 anything from you. That usually occurs when there is a
16 question about the way the evidence is presented or
17 where evidence should be presented, a particular piece
18 of evidence. We send you out of the courtroom because
19 in ruling on those matters, the trial judge is often
20 required to express an opinion about a piece of
21 evidence or about what is relevant or not relevant
22 about the evidence. We send you out of the courtroom
23 because I don't want you to hear my opinion about it.
24 What I think about it is not important in your
25 deliberation process. You have to judge the evidence.

JURY SELECTION

1 So, please, don't feel that we're trying to keep things
2 from you or hide things from you during the trial of
3 this case.

4 Now, I'm going to ask you not to begin your
5 deliberations in this case until after you have heard
6 all of the evidence that has been presented by the
7 State, all of the evidence presented by the defense,
8 and you have heard my charge on the law. There is two
9 sides to every story. The defense does not, and is
10 not, required and does not have to produce any
11 evidence. The burden is 100 percent on the State.
12 Should they do so, you should consider that with the
13 same or equal basis as you do every evidence that the
14 State might have.

15 If you begin your deliberation process, if you hear
16 a witness and you go back in the witness -- in the jury
17 room and you start talking about that witness, you have
18 begun to deliberate this case. Please wait until you
19 hear everything before you do so.

20 I also would ask you that during this trial not to
21 engage in any extracurricular investigation. In this
22 day and time when everybody has smart phones and access
23 to a computer -- and I imagine this case will go over,
24 but I won't lock you up for the evenings, I'll let you
25 go home -- but don't go home and do any investigation

JURY SELECTION

1 on your own. Don't look up and try to find old
2 newspaper articles or things of that nature. I don't
3 know if they are out there, but it is improper for you
4 to even engage in that. Don't try to look up where it
5 occurred or try to find any Google maps or aerial
6 photographs or anything like that, because you are
7 going to have to determine this case solely from what
8 you have heard from this witness stand.

9 I'll ask you not to discuss it with anyone,
10 including your wives, husbands or your boyfriends or
11 girlfriends. I know it is hard to go home and they ask
12 you, Well, what did you do today, and you say, Well,
13 I'm on a trial, and they want to know what kind of
14 trial. My wife does it to me. I'm going to ask you to
15 tell them that you'll tell them all about it as soon as
16 you finish, because that is in a way pre-deliberations.

17 Don't ask anyone about information about this case.
18 It is important that you determine this case solely
19 from what you hear from this witness stand, and this
20 witness stand alone.

21 I'm going to tell you a little bit how we'll
22 proceed in the case. In just a moment I'm going to
23 allow the State to give you an opening remark, that is
24 not evidence. Mr. Hucks or Mr. DeBusk, one or the
25 other, is going to lay out this case for you from the

JURY SELECTION

1 State's perspective. They are going to tell you what
2 they think that they can show, what their evidence may
3 show, what witnesses they may have, they may even
4 discuss the laws with you, and it is proper they do
5 that as long as you keep in mind that what they are
6 doing is simply telling you what they believe they can
7 show in this case. What they are saying is not
8 evidence. The evidence only comes from the witness
9 stand.

10 Following that, Mr. Diggs is going to have an
11 opportunity to do the same thing, and he's going to lay
12 the case out for you, or he will at least have the
13 opportunity to do so. He doesn't even have to do that,
14 but he has the opportunity to tell you about the case
15 from his client's perspective. Again, what Mr. Diggs
16 says is not evidence, and his comments, if he makes
17 any, about the law will not override what I will tell
18 you what the law is at the end of this case.

19 Following that, the State has the burden of
20 presenting evidence to convince you of the defendant's
21 guilt beyond a reasonable doubt. The state must meet
22 its burden. Mr. Diggs will have an opportunity to
23 cross-examine witnesses as they are presented by the
24 State.

25 Following that, the defense has the opportunity,

JURY SELECTION

1 but does not have to. They are under no obligation.
2 The defense does not have to prove anything. They have
3 the opportunity, if they choose, to put up witnesses.
4 If they believe they need to put up witnesses, they may
5 do so.

6 Following that, there will be closing arguments.
7 Again, the State will have an opportunity to tell you
8 about what it is that they presented and why they have
9 met their burden. Mr. Diggs will have an opportunity
10 to rebut that and tell you why they have not. Again,
11 closing arguments are not evidence. They summarize
12 what they think they have shown, but if they haven't
13 shown it to your satisfaction, just ignore it.

14 Now, following closing arguments, I will charge you
15 on the law. I will give you a complete charge as to
16 the law that you will apply in this case. I do
17 something that I don't know any other judge is doing,
18 but it has been approved by our appellate courts. I
19 always make a transcript of my charge on the law in
20 advance. I will provide for your use, during your
21 deliberations, with a copy of my charge on the law.
22 You will note that I will read my charge on the law,
23 and it is required to do that if I'm going to give you
24 a copy of it, but I will do that so that you will have
25 that with you. It doesn't mean you can ignore me while

OPENING STATEMENTS - MR. DeBUSK

1 I'm doing it. I want you to listen carefully, but
2 you'll have an opportunity to have the charge on the
3 law with you, and then you'll begin your deliberation
4 process.

5 Anything further from the State?

6 MR. HUCKS: No, sir.

7 MR. DIGGS: No, Your Honor.

8 THE COURT: All right. We're ready to proceed. We
9 need to swear the jury.

10 (Whereupon, the jury was sworn.)

11 THE COURT: State, you may proceed.

12 MR. DeBUSK: If you go to Loris, you find Red Bluff
13 Road and you head out of town towards the Waccamaw
14 River, pretty soon you'll pass a Hot Spot gas station,
15 and then to your right comes Heritage Road, turn right
16 and go down just a little bit, and you might have to
17 look carefully, but you'll find a little road called
18 Dew Lane. On Dew Lane, about half way down, is a house
19 way back in the woods. It's the kind of place you are
20 not going to go there unless you are going there. You
21 can't see it from the paved road, barely see it. It is
22 like a farm road.

23 In September 2008, that was the home of Kelly Joe
24 Elliott. He was retired. He was in his late 60s. He
25 didn't do much. He was an avid outdoorsman, loved to

OPENING STATEMENTS - MR. DeBUSK

1 hunt and fish. He lived in that house and he spent
2 most of his time nearby at, like, a hunt camp with his
3 buddies. But every night he would come up to the house
4 to sleep. A collection he kept, and what turned out to
5 be his downfall, a collection of guns, long guns,
6 sporting guns, shotguns, pistols, like many outdoorsmen
7 who is a gun collector.

8 One night in early September, something happened to
9 Kelly Joe Elliott. None of his friends knew what
10 happened. Two of his friends, Gene Elliott, his
11 cousin, and Dale Stevens got worried about Kelly Joe
12 when they didn't hear from him for awhile. They went
13 over one Sunday afternoon to check on Kelly Joe. The
14 door was ajar. They walked in there, and they took in
15 a smell that, to a veteran, only meant one thing, the
16 smell of death in the house. They backed out, called
17 911.

18 The police came and secured the scene. The crime
19 scene experts came in and started assessing that scene.
20 They found on the room of the living room Kelly Joe
21 Elliott dead, covered with a comforter. They started
22 looking around and checking the crime scene carefully.
23 That gun collection was gone. A few of them were left,
24 but the bulk of them, all valuable guns, gone.

25 There were bullet holes in the wall where there was

OPENING STATEMENTS - MR. DeBUSK

1 shots fired inside the house. Two bullet holes in
2 Kelly Joe Elliott. One came in on the right side,
3 around the armpit area, and one right over his left ear
4 execution style right through his brain. No gun where
5 he was shot, just Kelly Joe Elliott covered by a
6 comforter. Clearly, fowl play.

7 They investigated, took many pictures, took
8 measurements, made diagrams, hunted for witnesses, but
9 they didn't have any luck, and it became a cold case.
10 You watch TV, you've heard those cold cases unsolved.

11 A couple years passed and they got a lead.
12 Statement from one witness led to another witness and
13 another witness, flushed out all of these witnesses.
14 They were all part of an extended family, most of them
15 named Mullins, some Rays. Each had a little bit of
16 recollection of this case, each had a little knowledge,
17 each heard something. They started putting it
18 altogether, and a story emerged.

19 The defendant, Bradley Mullins, and his cousin,
20 Anthony Ray, decided to get the gun collection from
21 Kelly Joe Elliott. Brad Mullins rented a house from
22 Kelly Joe Elliott. He had prior knowledge where his
23 house was and knew he was a gun collector. They go
24 over there, go in the house and start stealing guns.
25 They clean out everything they find in the house, but

OPENING STATEMENTS - MR. DeBUSK

1 there was one door that was locked. They had to be
2 greedy, get that one last mile. Brad Mullins kicks
3 that door in. Behind that door is a place where Kelly
4 Joe Elliott sleeps, no clothes on, he's asleep. When
5 they bust down the door, he grabs one of his guns and
6 he comes out to defend himself and property, fires a
7 couple of shots. Through the struggle, Anthony Ray
8 shoots Mr. Elliott knocking him down, shoots him in the
9 right side. He loses his gun. Brad Mullins picks up
10 that gun, and execution style, right at the right side
11 of the head (indicates).

12 That is the story that comes out from all of these
13 witnesses. The interesting thing about that story is
14 all of those things that the crime scene went in there
15 and measured and looked at, photographed, all the facts
16 of the crime scene weren't released to the public, but
17 they all fit exactly with that story, corroborated
18 exactly what the Mullins family told them, and that is
19 the story you'll hear today.

20 The judge told you who I am. I'm George DeBusk,
21 I'm an assistant solicitor. My co-counsel Scott Hucks
22 with the solicitor's office. "Solicitor" means we
23 represent the State. The judge says the State has the
24 burden, Mr. Hucks and I have that burden. Because it
25 is our burden, and it is one of the most important

OPENING STATEMENTS - MR. DeBUSK

1 Constitutional protections that anyone in this country
2 has, to be proven guilty rather than being assumed
3 guilty, because that is our burden, it is very
4 important for you to know exactly what that burden is.
5 We have to prove the elements of the crimes charged
6 beyond a reasonable doubt.

7 The crimes charged here are murder, killing of
8 another with malice aforethought, and burglary in the
9 first degree, entering someone else's residency without
10 consent, with the intent to commit a crime, and having
11 some aggravating factor, being in the nighttime, that
12 is one aggravating factor. Another possible
13 aggravating factor is becoming armed while you are in
14 the course of the burglary. Another is committing an
15 act of violence in the residence. Just one of those
16 will do. You don't need more than one.

17 So it is murder, killing of another with malice
18 aforethought, and that doesn't mean premeditated, it
19 means when the fatal blow was struck, that person had
20 malice towards the victim, and then the burglary first.
21 You'll hear testimony from the stand, from the officers
22 who looked at that crime scene and from the people who
23 learned the facts of the crime later. You'll hear from
24 the other person in that house when Kelly Joe Elliott
25 was killed, Anthony Ray.

OPENING STATEMENTS - MR. DeBUSK

1 You'll determine at the end if we've proven our
2 case beyond a reasonable doubt. The judge will tell
3 you about a reasonable doubt, just like the law, and
4 that is his instruction and that is what the law is,
5 and that is what you follow. He won't be able to tell
6 you exactly what reasonable doubt is. He can't draw a
7 picture of reasonable doubt. Reasonable doubt is proof
8 that leaves you firmly convinced. It is a value of a
9 community. That is why we have this cross-section of
10 the community. You have to decide if we've proven our
11 chase sufficiently to punish Bradley Mullins.

12 I ask you for your careful attention to the facts
13 that will come from that stand. Carefully remember
14 what you hear. Learn the facts. Look at the exhibits,
15 and in the end, come back and render a just verdict. I
16 thank you in advance for your attention.

17 MR. DIGGS: May it please the Court.

18 THE COURT: Yes.

19 MR. DIGGS: Notwithstanding what you were just
20 told, His Honor will tell you this man is an innocent
21 individual, presumed to be innocent, and nothing that
22 the solicitor said right now changes that, nothing they
23 said. It is a tragic and sad case. We wouldn't be
24 civil human beings if we didn't acknowledge that. It
25 is not my place -- I don't know the family. My client

OPENING STATEMENT - MR. DIGGS

1 doesn't know the family. It wouldn't be my place right
2 now to make an apology to them for the loss of a loved
3 one or express condolences. I don't think an "apology"
4 would be the right word. My client has pled not
5 guilty.

6 I think at the end of this trial, and I would
7 submit to you, we'll know who did do the shooting. We
8 can't prove a negative, that is why the burden of proof
9 is on the State. The evidence is going to show that
10 these alleged witnesses that came forward year after
11 year made many different conflicting statements. It
12 wasn't until the State begins to focus in and say,
13 okay, we'll prosecute this young man, and if you help
14 us do that, we'll make concessions to you so that you
15 don't get prosecuted for murder. There were three
16 other people charged with this murder, but now there is
17 only one. Concessions have been made to all the
18 others. Concessions, and by that I mean we're not
19 going to charge you with murder if you get in and help
20 us convict Bradley Mullins, we're not going to charge
21 you with the murder.

22 I'm not a solicitor. I don't make those decisions,
23 but when you're looking at a witness -- every witness
24 that gets up here claims to know anything about the
25 case -- not law enforcement, I'm talking about lay

OPENING STATEMENT - MR. DIGGS

1 witnesses -- every one has given an inconsistent
2 statement. It is contrary to what their testimony will
3 be, so how are you going to weigh in that circumstance
4 beyond a reasonable doubt that this man, who didn't get
5 any concessions, is the one who committed the murder?

6 My job, and it's going to be fairly simple,
7 although it is important, is to show you why when they
8 bring those witnesses in and say it was Brad that did
9 it, why you can't believe that, you can't trust that.
10 There is a glaring hole in every statement that they've
11 made. If somehow they are smart enough or they've been
12 coached enough by whomever -- not saying these guys did
13 it -- but whomever. If they were able to get together
14 and get their stories straight so there are not any
15 holes -- I want you to think about this. Let's see how
16 well they do in explaining away the holes that occurred
17 a year ago or two years ago when they were supposedly
18 fresher, their memories were fresher than now --
19 certainly than in 2013 -- about what happened. Oh, all
20 of a sudden for trial we can get everything straight so
21 it falls in line with what the theory of the case is.
22 Two years ago in 2011, they couldn't do that.

23 So it is a sad case and tragic case, and I extend
24 my condolences to this family of Kelly Joe Elliott. I
25 don't know them. I don't have a right to console them.

OPENING STATEMENT - MR. DIGGS

1 Right now it is not my job, or yours. Our job is to
2 get to the truth, which means verdict, the truth of
3 what happened in this case. It is a tragic, sad case.
4 I would submit to you that the State is largely relying
5 on that fact alone to convict my client. It is so
6 tragic and so sad, they are hoping you'll look past the
7 problem with the facts and say, okay, he must be guilty
8 because somebody had to do this, you know, these two,
9 three witnesses said it was Brad, so maybe we'll go
10 with that, notwithstanding the holes in their stories
11 previously given and made.

12 So there are two things that I want to stress.
13 Imagine -- I mean, we can imagine sitting with the
14 Elliott family and having lost a loved one in our
15 family in that manner, we can imagine that. Then I
16 want you to try to imagine what it is like to be
17 Bradley Mullins now sitting in this courtroom with the
18 State of South Carolina pointing at him saying, Okay,
19 Mr. Mullins, we think you did this.

20 It is just a sad, tragic, horrible case. It is
21 probably going to be pretty easy to convict, but that
22 is not the way our system works completely. You are
23 part of the process, and you -- and only you
24 collectively as a jury -- can put the brakes on the
25 State's process here and say, Wait a minute, there is a

OPENING STATEMENT - MR. DIGGS

1 burden of proof here. Your proof goes beyond simply
2 proving a sad and tragic case, you have to prove who
3 the guilty party is, or at minimum in this case, you
4 have to prove that Brad Mullins did it.

5 Your job -- think about that, your job is to look
6 at the prosecution and say, Yep, we think you are
7 right, we're satisfied beyond a reasonable doubt, go
8 ahead, deal with this man. Or you can say, Wait a
9 minute, notwithstanding the fact it is a tragic and sad
10 and terrible case, we don't have enough evidence to get
11 over the reasonable doubt, burden of proof. Listen and
12 think about this when you hear the evidence.

13 Let's go back a moment. I want you to think about
14 it as it unfolds. This is why it is important not to
15 make up any minds right now early on in the case about
16 guilt or innocence. I'm asking you to wait until the
17 whole case is over. If you hear anything striking
18 saying he must be guilty, hold off on drawing that
19 conclusion until everything was presented to you.

20 The question I want you to think about during the
21 course of the trial, and it is probably going to be
22 true, is that evidence is going to be presented that my
23 client knew Mr. Elliott, knew he had a gun collection,
24 knew he kept it in his house. Ask yourselves, Why
25 would that be the person you would choose to burglarize

OPENING STATEMENT - MR. DIGGS

1 in the middle of the night knowing that the man in
2 there had an arsenal, probably armed and probably would
3 shoot you when you went in. Why would Brad do that?
4 I'll suggest that at the end of this case if Bradley
5 Mullins was there -- and I suggest and my position is
6 that he wasn't -- but if he was there, this gentleman
7 was already dead, okay.

8 The bottom line is that it is an extremely
9 important job that you do. My client, and this is
10 certainly the most important day in his life, to be
11 accused of murder in the fashion that the prosecutor
12 just accused my client, it is a horrible and terrible
13 thing for that accusation to be made against you, and
14 what we're doing is asking you to make sure you do that
15 duty that you swore to do, hold him to his burden of
16 proof and say, okay, here is what the facts are as we
17 determine base on all of the evidence.

18 We appreciate your involvement here. Certainly it
19 is the most important time of my client's life. He's
20 never gone through anything of this significance in his
21 entire life, and I'm sure you can understand why I'm
22 saying that. We just appreciate you. We appreciate
23 the system. The fact that we have a system that allows
24 an accused to have a trial that is open to the public
25 and fair and under the law that has been established in

OPENING STATEMENT - MR. DIGGS

1 this nation. We thank you very much. We'll try not to
2 take any more time as needed in the case to properly
3 represent Mr. Mullins, but I would submit to you at the
4 end of this case you'll have a lot of doubt about what
5 happened. You'll have a lot of doubt about what
6 happened. If I do my job, I'm going to be able to show
7 you why you should have that doubt.

8 Again, if you knew a man was the owner of an
9 arsenal of weapons and known for carrying a gun, is
10 that who you would pick to burglarize in the middle of
11 the night? No. It is a good story, but doesn't make
12 logical sense. Their case won't make logical sense,
13 but we'll see how this goes. Again, Mr. Mullins and I
14 very much thank you and appreciate your service.

15 MR. HUCKS: At this time the State will call Gene
16 Elliott to the stand.

17 (GENE ELLIOTT, having been duly sworn, testified as
18 follows:)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Talmadge Elliott. Gene is a
21 nickname.

22 DIRECT-EXAMINATION

23 BY MR. HUCKS:

24 Q Why does everyone call you Gene?

25 A No one in the family knows. We never figured it

OPENING STATEMENT - MR. DIGGS

1 out. I've just always had that name.

2 Q What do you go for a living?

3 A I'm retired. I retired two years ago. I owned
4 and managed an NAPA parts store in Loris.

5 Q How long did you own the NAPA store in Loris?

6 A Partially since '72; 100 percent since '88.

7 Q Now, I want to ask you, how did you know Kelly
8 Joe or Kelly? What did you call him?

9 A Joe.

10 Q Joe. How long did you know Kelly Joe?

11 A Known him all my life. We were cousins.

12 Q Is he younger or older than you?

13 A He was about two years older than I am.

14 Q Safe to say you've known him all your life?

15 A Oh, yeah.

16 Q How would you describe your relationship with
17 Mr. Elliott personally, or Joe?

18 A Joe was a cousin, he was a good friend. He was a
19 pal. We hung out a good bit together. He was just a
20 good friend and a relative.

21 Q Had he always lived -- I guess you lived near one
22 another?

23 A Yeah.

24 Q Had you always lived near one another?

25 A No, sir. Joe, at some point after graduating

GENE ELLIOTT - DIRECT EXAMINATION

1 school, went to work with Agrico Chemical Company and
2 traveled. He traveled over the east coast, midwest,
3 out in that section. Larry on, somewhere around 1982,
4 three, around in there, he moved back to Loris and
5 built a house that he had on Dew Lane.

6 Q Is that the same house that we're here about
7 today?

8 A Yes, sir. Yes, sir, it is.

9 Q Now, how often -- from the time Joe moved back
10 into town, how often, would you say, that you and Joe
11 hung out together?

12 A Two, three, four times, maybe, a week.

13 Q And over how many years?

14 A Ever since he moved back to Loris, from '82,
15 three, in there.

16 Q And so not only would you consider him your
17 family, you considered him a very good friend?

18 A Correct.

19 Q And you had been hanging out with him how many
20 days a week, would you say?

21 A Two, three to four.

22 Q For 30 years?

23 A Correct.

24 Q Now, did you ever know Mr. Elliott or Joe to own
25 any guns?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Yes, sir. He had probably 30, 35. I don't know
2 exactly, but I would say about that many.

3 Q Now, you're saying over the whole course of his
4 life he had 35, or what do you mean he had 35 or so?

5 A In the later years, like in the '90s, 2000's.

6 Q At any given time, he would have 30, or he only
7 owned 30 over the whole course of time that you knew
8 him?

9 A At any given time he would have 30.

10 Q Was it common knowledge that Joe had guns?

11 A Yes, sir.

12 Q Now, did you and Joe shoot with one another?

13 A Yes, sir.

14 Q How often would you say you shot guns together?

15 A Maybe once, twice a week. We would skip two,
16 three weeks and get a new gun, shoot that for awhile,
17 put it up, get another, shoot it for awhile, put it up.
18 It was just off and on.

19 Q I'm going to ask you a question to explain to the
20 jury. What is E-Camp?

21 A E-Camp is a little shack type of thing that we
22 sort of put together. It is made out of poles, has a
23 tin top. We would get together over there. About a
24 hundred yards from it we have a dirt bank that we
25 usually would use for a target. We would get together

GENE ELLIOTT - DIRECT EXAMINATION

1 over there about all the time. We just named it
2 E-Camp, "E" for "Elliott." Just a hangout place.

3 Q When you say all shot guns together, is that
4 where you would shoot guns?

5 A Correct.

6 Q How close is E-Camp to Joe Elliott's house?

7 A Across a little branch. I would say 200, maybe
8 300 yards, 250.

9 Q So if you are coming down Dew Lane and
10 Mr. Elliott's house is on the right -- and I'll show
11 you pictures in a minute -- E-Camp, the shooting range,
12 is the next thing you see on that road?

13 A Correct. Yes, sir.

14 Q His last name was Elliott, just like yours?

15 A Yes, sir.

16 Q Big sign that says "E-Camp"?

17 A On the building, yes, sir.

18 Q Now, I'll show you a few pictures. Do you know
19 what Joe's address was?

20 A Dew Lane, I don't know the number. [REDACTED]?
21 Something like that. I don't know the correct number
22 of it.

23 Q I'll show you a couple of pictures, three it
24 looks like.

25 MR. HUCKS: May I approach?

GENE ELLIOTT - DIRECT EXAMINATION

1 THE COURT: Certainly.

2 Q (MR. HUCKS) I'll show you State's 71. Can you tell
3 me what that is?

4 A That is Kelly Joe Elliott.

5 Q Is that a picture within the time frame of when
6 Mr. Elliott would have died, pretty close?

7 A I would say so, within a year.

8 Q That would be a decent physical representation of
9 Mr. Elliott?

10 A Yes, sir.

11 Q That is about the same size and build he would
12 have been at the time of his death?

13 A Yes, sir.

14 MR. HUCKS: Your Honor, the State would move
15 State's Exhibit No. 71 into evidence.

16 MR. DIGGS: No objection.

17 THE COURT: Without objection.

18 (State's Exhibit 71 admitted.)

19 MR. HUCKS: May I publish it to the jury?

20 THE COURT: You may.

21 (Whereupon, Exhibit 71 is published.)

22 Q (MR. HUCKS) What is that?

23 A That is Dew Lane that goes down past Joe's house
24 and down past E-Camp.

25 Q Is that on the paved road, or the other end of

GENE ELLIOTT - DIRECT EXAMINATION

1 the road?

2 A Going to be by the paved road.

3 Q That is Heritage Road?

4 A Yes, sir.

5 Q And is that a true and accurate reflection of the
6 intersection where Heritage cuts off at Dew?

7 A Yes, sir.

8 Q Is this a rural area, or in town?

9 A Rural, country.

10 MR. HUCKS: Your Honor, we would move State's No.
11 70 into evidence.

12 THE COURT: Any objection?

13 MR. DIGGS: No.

14 THE COURT: Without objection, 70.

15 (State's Exhibit 70 was admitted.)

16 THE COURT: Have you given the court reporter an
17 opportunity mark it?

18 MR. HUCKS: They've been previously marked, yes,
19 sir.

20 THE COURT: Okay. Thank you.

21 Q (MR. HUCKS) I'll show you State's 73. Tell me what
22 that is.

23 A The front of Joe's house. You would be standing
24 on Dew Lane looking towards the front of it.

25 Q If somebody were driving by Joe's house, that is

GENE ELLIOTT - DIRECT EXAMINATION

1 the view they would see?

2 A Yes, sir.

3 Q Now, I noticed the grass is a little disheveled
4 there. Is that about what that yard would have looked
5 like at the time Mr. Elliott was killed?

6 A Yes, sir.

7 Q How far would you say -- and if you don't know,
8 tell me you don't know -- that his house sits from Dew
9 Lane, the dirt road?

10 A I would say 60 yards.

11 Q In there a fair amount of vegetation and trees
12 around the house?

13 A Yes, sir.

14 Q Is it easy to see what is going on -- can you see
15 it from the paved road at all?

16 A Not from the paved road, no, sir.

17 Q Is it easy to see from the dirt road?

18 A Yes, sir. Driving by, that is what it would look
19 like.

20 Q But that is how far away it would be from the
21 dirt road?

22 A About 60, 70 yards.

23 MR. HUCKS: At this time we would move State's
24 Exhibit 73 into evidence.

25 MR. DIGGS: No objection.

GENE ELLIOTT - DIRECT EXAMINATION

1 THE COURT: Without objection.

2 (State's Exhibit 73 admitted.)

3 MR. DIGGS: Could we approach for just a second?

4 THE COURT: Certainly.

5 (Whereupon, a bench conference was had.)

6 MR. HUCKS: May I publish it to the jury?

7 THE COURT: You may.

8 Q (MR. HUCKS) Now, there is a lot of trees and
9 vegetation and bushes growing around Joe's house, even
10 when he lived there?

11 A That's right.

12 Q From where Joe's vehicle was usually parked,
13 could you see if his truck was home from the dirt road?

14 A No, sir, you could not.

15 Q Now, do you remember the last time that you spoke
16 to, met with or had a conversation with Joe Elliott?

17 A It was either on Monday or maybe Sunday, one or
18 the other, I can't remember for sure.

19 Q Which Sunday or Monday?

20 A Like the 7th. I don't recall the dates.

21 Q How long would you say it was before you realized
22 he was deceased?

23 A From that Monday to that next following Sunday
24 afternoon.

25 Q Six, seven days?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Correct. Yes, sir.

2 Q Now, you talked -- what was -- don't tell me
3 anything he would have told you, but tell me what you
4 talked about with Joe and when? How did that last
5 meeting go that you had with Joe?

6 A Might have talked about guns, maybe going to a
7 gun show, just regular every day talking. I can't
8 remember for sure what we talked about.

9 Q That's fine. But without a doubt you spoke with
10 him six, seven days prior to when you discovered he was
11 deceased?

12 A Yes, sir. Yes, sir.

13 Q Do you remember the day that you went to Joe's
14 house and went into the house?

15 A That was a following Sunday. I think it was
16 September 14th.

17 Q September the 14th. Do you remember
18 September 14th clearly?

19 A Yes, sir.

20 Q Walks us through what you did the day of
21 September 14th in relation to Joe.

22 A Well, if I wanted to get up with Joe, I would go
23 by E-Camp. Joe stayed there the bigger portion of the
24 day just hanging out there. I went by, didn't see him.
25 I went by E-Camp two, three days that week and didn't

GENE ELLIOTT - DIRECT EXAMINATION

1 see him. Sunday afternoon I was like, Well, I haven't
2 seen Joe, maybe he is at the house, maybe he's sick. I
3 pulled up behind his Blazer at the house. It rained
4 like Thursday, Friday, somewhere in there. There was
5 no tire tracks leaving where he had backed the Blazer
6 out of the driveway.

7 Q Hang on for me. Why would that have struck you
8 as funny?

9 A Because Joe was in and out every day, two times a
10 day. I've never known him to stay in, you know, and
11 not be out within two, three days.

12 Q So you notice there is not any tire tracks in the
13 driveway. What do you do then?

14 A I'm wondering what is wrong, so I said maybe he's
15 gone -- we have a friend, Dale Stevens, that he would
16 hunt or fish with a lot, so maybe they went on a
17 fishing trip. I backed out and called Dale. He said,
18 no, he hadn't gone for a fishing trip with him, he
19 didn't know anything about it. I said, Well, Dale,
20 something I think is wrong. I said we need to see what
21 we can find out here. So Dale meets me at E-Camp, and
22 we drive over to Joe's house.

23 Q What happens when you get to Joe's house?

24 A Well, the Blazer is still sitting there. We get
25 out and walk up to the back door. We're going to see

GENE ELLIOTT - DIRECT EXAMINATION

1 what we can find, if Joe is inside sick or whatever.

2 We go up to the back door and the storm door, I think,
3 was closed. We opened the storm door. The back wooden
4 door was partially opened, and the pane closer to the
5 lock was broken out.

6 Q I'll stop you for just one second. I hate to
7 interrupt you.

8 MR. HUCKS: If I may approach?

9 THE COURT: You may.

10 Q (MR. HUCKS) This is State's No. 75. What is that?

11 A That is the back door to Joe's house.

12 Q When you went up to the back door, is that the
13 view you would have had?

14 A Yes, sir.

15 Q What is different about that picture?

16 A The door is opened here and the wood door is
17 completely opened.

18 Q But this is a true and accurate reflection of the
19 back door of Joe Elliott's house?

20 A Yes, sir.

21 Q As it would have looked when you left the house?

22 A That's right.

23 Q And State's 78, what is that?

24 A That was the pane that was broken out of the back
25 of the wooden door, back door.

GENE ELLIOTT - DIRECT EXAMINATION

1 Q When you talked about the pane on the knob side
2 being broken out, is that the pane you are talking
3 about?

4 A Yes, sir.

5 Q That is what you saw when you approached the
6 house?

7 A That's right.

8 MR. HUCKS: Your Honor, at this time we move
9 State's Exhibits 75 and 78 into evidence.

10 MR. DIGGS: No objection.

11 THE COURT: Without objection, 75 and 78.

12 (State's Exhibits 75 and 78 admitted.)

13 Q (MR. HUCKS) What did you do when you got there and
14 saw the door ajar?

15 A We pushed it opened and started to walk in. The
16 first room in the house is a little wash room, then you
17 turn and go into the kitchen. We got to the edge of
18 the kitchen, and the smell was terrible. I looked at
19 Dale, and I can't remember what I said exactly, but
20 something to the effect of, Vietnam all over again.

21 Q Why would you have said that?

22 A Because of the smell.

23 Q What did that smell lead you to believe?

24 A That Joe was inside, that he was dead.

25 Q It was a smell you smelled before?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Correct.

2 Q Did you recognize that smell?

3 A Correct.

4 Q I'll show you something. Do you recognize this
5 at all?

6 A Yes, sir. That is the inside of Joe's house.

7 Q Had you been inside Joe's house before?

8 A Yes, I have.

9 Q This is not a photograph. It is a digital
10 recreation, but is it true and accurate?

11 A Yes, sir. Looks to be.

12 Q And it looks to be a reflection on what the
13 inside of Joe's house would look like?

14 A Yes, sir.

15 Q Is it a true and accurate reflection, to the best
16 of your knowledge, of the inside of Joe Elliott's
17 house?

18 A Yes, sir.

19 MR. HUCKS: At this time we would move State's 69
20 into evidence.

21 MR. DIGGS: No objection.

22 THE COURT: Without objection, 69.

23 (State's Exhibit 69 was admitted.)

24 Q (MR. HUCKS) Show them where you would have come in
25 from? First of all, where was your vehicle parked at?

GENE ELLIOTT - DIRECT EXAMINATION

1 A We parked in the driveway.

2 THE COURT: If Mr. Hucks gets in your way, let me
3 know.

4 A This is the back door that we started up here.
5 This is a little wash room here. There is a door into
6 the kitchen, so we come up and go in the back door,
7 turn and start getting about right there (indicates),
8 just barely through the doorway, that is when we
9 smelled the odor in there. We thought something was
10 wrong and we better call the police or whatever.

11 THE COURT: Yes, sir.

12 JUROR: I was just wondering if --

13 THE COURT: You can't ask questions. Can you see
14 what he is testifying to?

15 JUROR: Yeah, I'm looking at this picture, but I'm
16 trying to make sure I'm not upside down.

17 THE COURT: You may not ask any questions,
18 unfortunately. In this state, you can't.

19 Q (MR. HUCKS) What did you do once you smelled that
20 smell in the house, Mr. Elliott?

21 A Where -- I'm sorry?

22 Q What did you do after you smelled the smell?

23 A We backed out and decided that we better call the
24 police.

25 Q Did you?

GENE ELLIOTT - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Who called the police?

3 A I can't remember.

4 Q Either you or Mr. Stevens?

5 A I think Dale did.

6 MR. HUCKS: Nothing further. Answer any questions
7 that Mr. Diggs might have for you.

8 CROSS-EXAMINATION

9 BY MR. DIGGS:

10 Q Do you have the photograph up there of the view
11 of the home? Let me ask, if you would, look at State's
12 73. That is the view from the dirt road, I understand,
13 of the house?

14 A Yes, sir. Standing in the road in Dew Lane
15 looking towards to the front of the house.

16 Q And where did Mr. Joe Elliott park his vehicle
17 when he was at home?

18 A Behind the house.

19 Q Now, the glass that was broken in the door --

20 A Yes, sir.

21 Q -- you, of course, don't know when that was
22 broken?

23 A No, sir.

24 Q Do you remember the last time you were at the
25 house and saw the door intact?

GENE ELLIOTT - CROSS-EXAMINATION

1 A Probably a year.

2 Q So while it could have been on the night of the
3 shooting, it wasn't necessarily that night?

4 A Sorry?

5 Q In other words, that glass door could have been
6 broken on the night of the shooting, but you don't know
7 if that is the case?

8 A No, sir.

9 Q Now, if you were breaking in the back of the
10 house, committing a burglary, would you be able to see
11 the car at home then?

12 A Yes, sir.

13 Q So the person who broke in the house definitely
14 would have been able to see Mr. Joe Elliott's vehicle
15 prior to that break-in?

16 A Yes, sir.

17 Q So the fact that you can't see the vehicle from
18 the road, Dew Lane, that is really of no consequence;
19 wouldn't you agree with that?

20 A Right. That's right.

21 Q Okay.

22 MR. DIGGS: Beg the Court's indulgence.

23 THE COURT: Certainly.

24 (A brief pause in the proceedings.)

25 MR. DIGGS: That is all I have. Thank you.

GENE ELLIOTT - CROSS-EXAMINATION

REDIRECT-EXAMINATION

1
2 BY MR. HUCKS:

3 Q Just two things to verify. This side faces Dew
4 Lane?

5 A Here (indicates).

6 Q So the truck would be here?

7 A Yes, sir.

8 Q So could you have seen the truck from the dirt
9 road?

10 A No, sir. No, sir. There was a big bush in this
11 corner right there (indicates).

12 Q Okay. One more question. Was Joe ever known to
13 leave and go somewhere and leave the truck at home?

14 A Not normally.

15 Q If he were to go fishing with somebody, would he
16 ride with that person?

17 A If he would have gone fishing, he probably would
18 have left it at E-Camp or with that person.

19 Q But he could have left his vehicle somewhere and
20 ridden with someone else?

21 A Yes, sir.

22 Q When you saw his truck, you thought that he rode
23 somewhere with Dale?

24 A After I saw there was no tire tracks coming out,
25 yes.

GENE ELLIOTT - REDIRECT-EXAMINATION

1 MR. HUCKS: Nothing further.

2 MR. DIGGS: Nothing further. Can we address the
3 issue of sequestering of witnesses?

4 THE COURT: Certainly, we may. Mr. Ropp, will you
5 take the jury out for a moment, please.

6 (The jury exits at 4:04 p.m., and the following is
7 heard out of the presence of the jury.)

8 THE COURT: I think at pretrial we discussed it,
9 and I granted the motion.

10 MR. HUCKS: The State's witnesses have been
11 sequestered since we got here.

12 THE COURT: All right.

13 (A recess was taken.)

14 (The jury enters at 4:10 p.m., and the following is
15 heard in the presence of the jury.)

16 THE COURT: Mr. Hucks.

17 MR. HUCKS: Your Honor, at this time we ask Mr.
18 Elliott to be released from his subpoena so he can sit
19 in the courtroom.

20 THE COURT: Any objection?

21 MR. DIGGS: No.

22 MR. HUCKS: We're going to release Mr. Elliott from
23 his subpoena and call Mr. Dale Stevens to the stand.

24 THE COURT: Okay.

25 (DALE STEVENS, having been duly sworn, testified as

GENE ELLIOTT - REDIRECT-EXAMINATION

1 follows:)

2 THE WITNESS: Roger Dale Stevens.

3 DIRECT-EXAMINATION

4 BY MR. HUCKS:

5 Q Good to see you this afternoon. What do you do
6 for a living?

7 A Retired.

8 Q Retired from?

9 A AT&T Communications.

10 Q Now, how long did you work at AT&T?

11 A 29 years.

12 Q When did you retire?

13 A 2002.

14 Q And how did you know Joe Elliott?

15 A Joe and I met in, I think, about 2003 and became
16 really good friends.

17 Q How did you meet?

18 A He came to our house for a cookout by a mutual
19 friend.

20 Q How close a friend would you consider Joe
21 Elliott?

22 A I would say Joe and I were very good friends.

23 Q Now, how many times a week would you say that
24 since 2002 or three that you and Joe Elliott hung out?

25 A Probably two -- twice a week.

DALE STEVENS - DIRECT EXAMINATION

1 Q And was it a weekly routine, or something that
2 just happened?

3 A It was -- it got to be a routine. Joe would come
4 to our house every Monday afternoon and then I would
5 usually call Joe the latter part of the week, and I
6 would go by his place.

7 Q And when you say you went by his place, did you
8 go by his house, or where did you go?

9 A No. Over to the farm, past his house to the
10 E-Camp, to the cookout.

11 Q Tell the jury about E-Camp. What is E-Camp?

12 A E-Camp has been called a glorified lean-to, okay.
13 It is just a shed, small shed, a cookout station that
14 Joe had and Gene Elliott. They had a shooting range
15 there. It was on Joe's farm. Just a hangout place.

16 Q So you three retired fellows would get together
17 and hang out at E-Camp?

18 A Yeah.

19 Q What did you do there?

20 A Cook.

21 Q Cook?

22 A Cook.

23 Q Now, are you into guns like the other two?

24 A No, I'm not.

25 Q What is your hobby?

DALE STEVENS - DIRECT EXAMINATION

1 A Well, I was in racing.

2 Q What did you and Joe do together?

3 A I got Joe involved in the Waccamaw River program,
4 which I'm a member of. By the way, Joe was an active
5 member and he was the 2008 volunteer of the year for
6 the River Keeping Program, which we take care of the
7 Waccamaw River, do clean-ups and river sweeps.

8 Q Now, when was the last time that you saw Joe
9 Elliott alive? When did you see him alive?

10 A The Monday afternoon of the week that we lost
11 Joe.

12 Q Now, that would have been September the 9th?

13 A I don't know.

14 Q You don't know that. That's fair. Now, what day
15 did you guys discover Joe?

16 A On a Sunday.

17 Q And the Monday before -- so six days prior?

18 A Six days prior, right.

19 Q What was that interaction with Joe like? What
20 happened?

21 A On Monday he came over to our house, our home,
22 and stayed probably 30 minutes, maybe 4 o'clock in the
23 afternoon. We just chatted, and he left.

24 Q What was the purpose of the visit?

25 A Just a friendly visit.

DALE STEVENS - DIRECT EXAMINATION

1 Q Did you have a regular Monday afternoon meeting?

2 A Mostly, yeah. Yeah.

3 Q Trying to get cooking or something while he was
4 there?

5 A Oh, yeah. Yeah.

6 Q Now, when was the last time you tried to contact
7 Joe?

8 A Well, as I told you, Joe would come over on a
9 Monday afternoon. I would usually call Joe Thursday,
10 Friday, call his cell phone. Joe would say come over,
11 and I would. I would stay 30 minute, 45 or an hour, if
12 we didn't cook something. I called Joe that Thursday
13 or Friday afternoon. I didn't get an answer. I didn't
14 think anything big. I just let it go.

15 Q Now, when did Gene Elliott call about Joe?

16 A Gene called me on that Sunday afternoon,
17 mid-afternoon.

18 Q What was the substance -- what did you do as a
19 result of the conversation? Don't talk about what you
20 talked about, but what did you do after you got off the
21 phone with him?

22 A I met Gene over at Joe's farm, at the camp.

23 Q What did you all do?

24 A We went to check on Joe.

25 Q What happened? Walk this jury through what you

DALE STEVENS - DIRECT EXAMINATION

1 did from the time you got to Dew Lane until you called
2 the police.

3 A Gene and I both had our vehicles. We drove back
4 to Joe's house, which is back up towards the highway
5 from the farm. We went into the driveway, got out of
6 our vehicles, walked around. Joe's black truck, we
7 called it the Blazer, the Jimmy was in the driveway
8 around behind the house, sort of. It had rained that
9 weakened, I'm thinking Friday night or Saturday
10 morning, and you could tell Joe's vehicle hadn't been
11 moved.

12 So when Gene and I walked to the front of the
13 vehicle, we noticed the back door, the first back door
14 that went into the house into the laundry room, the
15 lower pane was broken. The glass was removed or broken
16 out. The door was ajar like this (indicates). Gene
17 and I walked up the steps. I opened the storm door,
18 and this door was ajar. You could see the glass on the
19 floor, which looked awful fresh, to me. I went in the
20 wash room --

21 MR. DIGGS: With all due respect, I move to
22 strike -- I don't think that is an appropriate
23 characterization of the evidence by this witness. He
24 would not be in a position to know if it was a fresh
25 break, and so I would object to it.

DALE STEVENS - DIRECT EXAMINATION

1 THE COURT: I'll sustain it. I'll ask the jury to
2 disregard the remark of "fresh." Glass on the floor is
3 fine, but "fresh" would be an opinion.

4 Q (MR. HUCKS) Let me stop you there for a minute.

5 I'll show you a few exhibits, if I may approach.

6 First of all, just to clear up this glass thing. Was
7 the glass inside the door, or outside?

8 A Inside the door on the floor.

9 Q If you were walking in and out of your house,
10 would you step across glass for a long time before you
11 cleaned it up?

12 A No. No. No.

13 Q I'll show you what is entered into evidence as
14 State's Exhibit No. 70. Can you recognize that at all?

15 A That's turning off of Heritage Road, the paved
16 road, going down Dew Lane.

17 Q That is the -- what is the significance of Dew
18 Lane? Where does Joe live?

19 A Dew Lane. He stays there on Dew Lane along the
20 right.

21 Q Now, I'll show you a picture here. State's
22 No. 71, already in evidence. What is that?

23 A That is Joe Elliott.

24 Q Whose boat is that?

25 A That's my boat.

DALE STEVENS -- DIRECT EXAMINATION

1 Q And is that a true and accurate reflection of
2 what Joe Elliott would have looked like on or about the
3 time he was killed?

4 A That's correct.

5 Q Is that his similar physical stature? That is
6 what he would have looked like size, weight, all of
7 that?

8 A Stance, exactly.

9 Q I'll show you what has previously been entered as
10 State's 75. What is that?

11 A That is the back storm door and the wood door
12 here that opens up that we went into.

13 Q Is that where you would have entered into Joe's
14 house?

15 A Yes.

16 Q I'll show you State's 78. What is that?

17 A That is the wood door going into the laundry room
18 with the broken glass.

19 Q When you talk about a broken window, is that the
20 window you are talking about?

21 A Yeah.

22 Q Where was the glass from that window?

23 A It was inside of the house on the wash room
24 floor.

25 Q I'll ask you for the next portion of your

DALE STEVENS - DIRECT EXAMINATION

1 testimony to look at what is previously entered into
2 evidence as State's Exhibit 69. I'll come around this
3 side to show the jury. When you get to Joe's house,
4 where do you pull up to Joe's house at? Where is the
5 highway?

6 A It is over here (indicates). Dew Lane coming
7 here.

8 Q So this is the dirt road?

9 A Up here. This is the driveway here of paved
10 concrete, driveway besides Joe's house coming from Dew
11 Lane, the dirt road.

12 Q All right, sir. When you guys drove over there,
13 what happened?

14 A We parked here (indicates). Gene and I walked --
15 and this is the steps and the door that we went into
16 (indicates), this door here.

17 Q What happened once you went through that?

18 A I pushed the wood door open with the back of my
19 hand. We walked into the wash room, and then the wash
20 room -- there was a doorway that made a turn where you
21 would go into the kitchen and then the den area. When
22 Gene and I got almost in the doorway to make that turn,
23 I was starting to make the turn. I was in front. I
24 could smell the smell that you would recognize as a
25 smell of death.

DALE STEVENS - DIRECT EXAMINATION

1 Q Why would you recognize that?

2 A Well, can I tell you, Gene looked at me and said,
3 Vietnam. That is exactly what he said. And I said,
4 Yes.

5 Q Why would that smell have been familiar to you?

6 A Both Gene and I had smelled that in Vietnam.

7 Q What did that smell lead you to believe?

8 A That somebody was in the house. I told Gene that
9 there was something very bad wrong in the house. I had
10 a feeling Joe was there.

11 Q What did you do after that?

12 A We went straight back outside.

13 Q What did you do after you got out there?

14 A We called 911.

15 Q Who did?

16 A I did.

17 Q Whose phone did you use?

18 A Gene's.

19 Q Do you own a cell phone?

20 A No. No.

21 Q Why not?

22 A I don't need one.

23 Q If I worked for AT&T, I wouldn't want one either.

24 A You're right.

25 MR. HUCKS: Nothing further.

DALE STEVENS - CROSS-EXAMINATION

1 CROSS-EXAMINATION

2 BY MR. DIGGS:

3 Q Out of curiosity, Mr. Stevens, why didn't you go
4 to the front door?

5 A We just don't go to the front doors here in Horry
6 County.

7 Q So you never went to the front door when you
8 would go over to Mr. Elliott's?

9 A No, I never have.

10 Q Which bedroom did he use?

11 A I don't know that.

12 Q Had you ever seen Mr. Elliott use the front door?

13 A No.

14 Q You had been friends with him since 2003?

15 A I'm thinking 2003. It was about five years.

16 Q So you would go over there a couple of times a
17 week, but never use the front?

18 A Not to his house, sir. I didn't go to his home.
19 We went to the farm, E-Camp.

20 Q Where they would shoot?

21 A The shooting range.

22 Q Was there a pond?

23 A Joe had like three, four ponds. There was.

24 Q Had you ever been inside his home over the course
25 of your friendship?

DALE STEVENS - CROSS-EXAMINATION

1 A I had on two occasions.

2 Q So you just didn't go in there often?

3 A No, I did not.

4 Q You are pretty sure that you saw him alive on
5 Monday afternoon?

6 A Yes, sir. I know that.

7 Q So we could pinpoint that date by getting a
8 calendar from 2008?

9 A Yes.

10 Q You saw him Monday afternoon?

11 A Correct.

12 Q Now, have you spoken with anyone else that saw
13 him after that time?

14 A That week?

15 Q Yes.

16 A No. No.

17 Q You understand my question? Since that time,
18 over the last five years, have you spoken with anyone
19 who said, Oh, you know, I saw him after Monday?

20 A No.

21 Q I saw him on Tuesday, Wednesday?

22 A No. Not to my knowledge, I have not.

23 MR. DIGGS: Thank you. That is all I have.

24 MR. HUCKS: We ask that he be released from the
25 subpoena so he can remain in the courtroom.

TIM FIKE - DIRECT EXAMINATION

1 THE COURT: Any objection?

2 MR. DIGGS: No, sir.

3 MR. DeBUSK: State calls Corporal Tim Fike of the
4 Horry County Police Department.

5 (TIM FIKE, having been duly sworn, testified as
6 follows:)

7 THE CLERK: State your name and spell your last
8 name.

9 THE WITNESS: Timothy James Fike, F-I-K-E.

10 DIRECT-EXAMINATION

11 BY MR. DeBUSK:

12 Q Who is your employer?

13 A Horry County Police Department.

14 Q How long have you been with them?

15 A Ten years.

16 Q What is the name of your work?

17 A I operate under uniform patrol, answer calls for
18 the service of the public for the county.

19 Q How about in September of 2008, what were your
20 duties then?

21 A Same duties, patrolled the Loris area, Horry
22 County, answering calls of service.

23 Q Were you on duty September 14th?

24 A Yes.

25 Q Did you respond to Dew Lane?

TIM FIKE - DIRECT EXAMINATION

1 A Yes.

2 Q Do you remember what address?

3 A [REDACTED], I believe, Dew Lane.

4 Q I hate to ask the obvious, what county is that?

5 A Horry County.

6 Q Thank you. What were the circumstances of that
7 call?

8 A It was given as a welfare check on the residence.
9 I believe a friend of the person that lived there went
10 to check on him and was unable to make contact, and so
11 he called to have us come out just to check the
12 residence and make sure he was okay, or if he was okay.

13 Q What did you do when you arrived at [REDACTED] Dew
14 Lane?

15 A When I arrived I spoke briefly with the
16 complainant that called, I believe it was Gene. He
17 kind of told me they went there and found the back door
18 of the residence opened. So I went up to the residence
19 and announced who I was, officer of the Horry County
20 Police. I went inside to check on the residence, and
21 that is whenever I found the victim deceased in the
22 living room area of the residence. I continued to
23 check the residence to make sure nobody else was in
24 there.

25 Q Clearing to make sure no one else was there?

TIM FIKE - DIRECT EXAMINATION

1 A Yes.

2 Q Did you find anybody else?

3 A No, sir. Once I did that, I came out and secured
4 the crime scene and called my supervisor to get
5 everything else rolling.

6 Q What happened at the house next, as far as the
7 police were concerned?

8 A It was secured. Nobody else was to enter the
9 house, and then crime scene and supervisors and
10 everybody else started to arrive.

11 Q I don't know how to ask this. When you walked
12 in, was there an obvious smell?

13 A Yes.

14 Q So it was pretty clear something was wrong when
15 you went in there?

16 A Yes.

17 Q Did you take any further part in the
18 investigation after you secured the scene?

19 A No, sir.

20 Q I'll show you what is marked as State's Exhibit
21 68 and ask if you recognize this?

22 A Yes.

23 Q What is that?

24 A A map of the area of Horry County going from
25 Loris over towards Galvant's Ferry.

TIM FIKE - DIRECT EXAMINATION

1 Q There are two locations marked. Are you familiar
2 with those?

3 A Yes.

4 Q Is one of them [REDACTED] Dew Lane?

5 A Yes.

6 Q Is that a true and accurate representation of
7 that location?

8 A Yes, sir.

9 Q What is the other address?

10 A [REDACTED] Jones Brothers Road.

11 Q Are you familiar with that area?

12 A Yes, sir.

13 Q Is that located on the map?

14 A Yes, sir.

15 MR. DeBUSK: At this time we submit 68 into
16 evidence.

17 MR. DIGGS: No objection.

18 THE COURT: Without objection, 68.

19 (State's Exhibit 68 was admitted.)

20 MR. DeBUSK: Thank you. Answer any questions
21 defense may have.

22 CROSS-EXAMINATION

23 BY MR. DIGGS:

24 Q Is this a record you generated?

25 A Yes, sir.

TIM FIKE - CROSS-EXAMINATION

1 Q Do you need to refresh your memory about dates
2 and stuff like that?

3 A I might need to.

4 Q What day did you get -- or what day according to
5 your information did the 911 call come in?

6 A September 14th, 2008.

7 Q All right. September 14th, do you know what
8 day that was?

9 A Not off the top of my head. I don't recall the
10 actual day.

11 Q And how long after that call came in was it
12 before you responded to that residence?

13 A Just going by memory, probably around ten
14 minutes, five to ten minutes.

15 Q Now, did you observe anything about the body in
16 particular, or was that left up to someone else?

17 A The initial observance, I could see what appeared
18 to be blood around him.

19 Q The body was actually covered up with some kind
20 of material?

21 A Yes, sir. I believe it was a rug or something of
22 that nature.

23 Q A blanket?

24 A Possibly.

25 Q Did you remove the blanket to look at the body?

TIM FIKE - CROSS-EXAMINATION

1 A No, sir.

2 Q So is that basically the extent of the reporting
3 you do on the case?

4 A Yes.

5 Q I'm not going to introduce it into evidence at
6 this point, but maybe we could mark it for
7 identification.

8 (Defendant's Exhibit 1 marked.)

9 MR. DIGGS: Nothing else.

10 MR. DeBUSK: Nothing from the State. We ask that
11 he be released from the subpoena.

12 THE COURT: There is no objection?

13 MR. DIGGS: No objection.

14 THE COURT: You are released.

15 MR. DeBUSK: May we approach briefly?

16 THE COURT: Yes.

17 (Whereupon, a bench conference was had.)

18 THE COURT: Ladies and gentlemen, I'm informed that
19 the next witness will be a rather lengthy witness, it
20 is a witness with Crime Scene, and it is after 4:30
21 now. I don't want to keep you late, and I don't want
22 to break up his testimony. It could go on for an hour,
23 maybe two hours, I don't know. So what I'm going to do
24 is let you go home. I'll ask you to be back in your
25 jury room at 9:30 in the morning. Mr. Ropp, you are

THE COURT TO THE JURY

1 going to have biscuits, or donuts?

2 MR. ROPP: Yes, sir.

3 THE COURT: I'll tell you what we'll do, we'll let
4 Mr. Hawley decide what we'll have in the morning. You
5 tell Bobby what your jury wants, and I'll look forward
6 to seeing you at 9:30. If you could, try to be here
7 about 9:15 so that we can get you up in time for
8 refreshments. Where do you want them, Bobby?
9 Downstairs in the jury room, assembly room?

10 MR. ROPP: Yes, sir.

11 THE COURT: If we do it that way, the bailiffs
12 won't eat all of the donuts. Okay. Bobby, if you
13 would, take this jury out and make sure they have their
14 belongings, show them how to get out of the courtroom,
15 if you don't mind.

16 Please don't discuss the case with anyone or let
17 anyone discuss it with you.

18 (The jury exits at 4:35 p.m., and the following is
19 heard out of the presence of the jury.)

20 THE COURT: We will be at ease until tomorrow
21 morning. Be ready to go at 9:30.

22 MR. DIGGS: Yes, sir.

23 MR. HUCKS: Thank you, Judge.

24 (Whereupon, the proceedings for December 2, 2013
25 concluded. The following was had on December 3, 2013

THE COURT TO THE JURY

1 at 9:30 a.m., out of the presence of the jury.)

2 THE COURT: Before we bring in the jury, I have had
3 an opportunity to review my previous ruling concerning
4 the admissibility of the second statement -- we don't
5 have a defendant, do we? Let's get him.

6 (Whereupon, Bradley Mullins enters courtroom, and
7 the following is had in his presence.)

8 THE COURT: As I said, I have had an opportunity to
9 review my previous ruling on the second Jackson V.
10 Denno hearing we held on the second statement, the one
11 recorded. I want to place on the record further that I
12 think my ruling was correct. I had an opportunity to
13 review Justice Scalia's (phonetic) opinion in Maryland
14 versus Shatzer. I'm aware of the line of cases which
15 have been referred to as the Edwards, I think, cases.
16 I am further aware of the fact that there was an
17 implication on the part of the defendant of his right
18 to counsel during a previous interrogation, and the
19 Edwards case stands for the proposition that if there
20 is a situation where the defendant has invoked his
21 right to counsel, that no further attempts to
22 interrogate would be proper unless there was a break in
23 the custody or the defendant has initiated further
24 contact with law enforcement.

25 Edwards V. Arizona certainly stands for that

THE COURT

1 proposition in Shatzer, however, Justice gentleman
2 Scalia adopted a different -- or I think he clarified
3 the holding in Edwards where he determined that, as in
4 this case, the defendant had been previously
5 incarcerated for another offense, and after the initial
6 attempt to interrogate, he was returned to custody
7 resulting from that initial incarceration from -- for
8 another offense. Essentially, he was in prison, as was
9 the defendant here.

10 The court determined that when the defendant was
11 returned to his normal status, which was custodial in
12 that case, that he had an opportunity to have visitors,
13 he had an opportunity to have the law library available
14 to him, and things of that nature, and that that
15 constituted or was paramount to a break in custody.

16 The testimony that we heard in this case was that
17 this particular defendant, Mr. Mullins, was at a super
18 max facility, but he was there certainly as a trustee
19 and had that status while there. The Court seems to
20 say that that is a return to his normal status, and
21 although it was a custody status, it was different from
22 an Edwards situation where they talked in terms of
23 there needing to be a break in the -- in interrogation
24 custody.

25 I believe that the ruling was appropriate, and that

THE COURT

1 based on Maryland versus Shatzer, the ruling was
2 proper, and I am going to find that the statement was
3 voluntary.

4 Okay. I just wanted that on the record. Are we
5 ready to proceed?

6 MR. DeBUSK: Yes, sir.

7 THE COURT: Mr. Diggs?

8 MR. DIGGS: Yes, sir.

9 THE COURT: Let's bring in the jury.

10 (The jury enters at 9:42 a.m., and the following is
11 heard in the presence of the jury.)

12 THE COURT: Are we missing someone?

13 MR. ROPP: Someone must have stepped into the
14 restroom.

15 (A brief pause in the proceedings.)

16 THE COURT: There she is. Call your next witness.

17 MR. DeBUSK: State calls Peter Cestare.

18 (PETER CESTARE, having been duly sworn, testified
19 as follows:)

20 THE CLERK: State your name and spell your last
21 name for the Court.

22 THE WITNESS: Peter Cestare, C-E-S-T-A-R-E.

23 DIRECT-EXAMINATION

24 BY MR. DeBUSK:

25 Q Who are you employed by?

PETER CESTARE - DIRECT EXAMINATION

1 A The Horry County Police Department.

2 Q How long have you been with them?

3 A I've been with Horry County Police since 2003.

4 I'm a lieutenant and commanding officer of the Crime
5 Scene Investigation Unit.

6 Q Describe what Crime Scene Investigation Unit does
7 to the jury.

8 A We do the forensic side of the investigation.
9 Most people can equate to TV and CSI. It is nothing
10 like what you see on TV. It is quite different. They
11 make things dramatic and pretty looking. We do the
12 science side of the investigation to see if the
13 evidence presents itself in any investigation.

14 Q Now, you have been with Horry County for ten
15 years. How long have you been in law enforcement?

16 A Since 1981. I'm formally employed by the New
17 York City Police Department, New York City Housing
18 Police Department where I was commander of the Major
19 Case Investigations Unit.

20 Q How long have you been do crime scene analysis?

21 A Probably for the better portion of my career,
22 about 1987 to present.

23 Q About 25 years?

24 A Yes, sir.

25 Q You told us how long you were employed, but what

PETER CESTARE - DIRECT EXAMINATION

1 is your training and background specifically in crime
2 scene reconstruction?

3 A New York Police Academy. I've been trained by
4 South Carolina Police Academy. I've been trained by
5 the federal government, Glenco Law Enforcement Academy
6 in Georgia. I've attended probably 50 different
7 schools throughout the country, most recently through
8 the New York City medical examiner's office.

9 Q Have you been ever qualified as an expert in the
10 area of crime scene reconstruction before?

11 A Yes, sir, I have, several times.

12 Q Approximately how many?

13 A I would think at least seven or eight.

14 MR. DeBUSK: Your Honor, at this time the State
15 would proffer Lieutenant Cestare as an expert in crime
16 scene investigation.

17 MR. DIGGS: Your Honor, just brief voir dire.

18 VOIR DIRE

19 BY MR. DIGGS:

20 Q You are employed full time by Horry County?

21 A Yes, sir.

22 Q Do you have any income from any our source?

23 A Pension from New York City.

24 Q Is that pension sufficient to sustain your
25 lifestyle if you were not to be employed in Horry

VOIR DIRE - MR. DIGGS

1 County?

2 A Yes, sir, it is.

3 Q Do you earn a salary in Horry County?

4 A Yes, sir, I do.

5 Q Is it equal to, or more or less? How does it
6 compare with your pension?

7 A I would say it is about --

8 MR. DeBUSK: I'll object as to relevance.

9 MR. DIGGS: It's whether he has a financial
10 interest in the case.

11 THE COURT: I'll let you pursue it a little bit
12 further, but I hope you can tie it together.

13 MR. DIGGS: Pardon?

14 THE COURT: I hope you can tie this into something.

15 Q (MR. DIGGS) You were on the payroll when you did
16 your investigation in this case?

17 A Yes, sir, I was.

18 Q And you received regular paychecks from Horry
19 County at the time of the work you did on the case?

20 A Yes, sir.

21 Q And it was equivalent to the regular amount of
22 pay you received from your full-time employment?

23 A I don't know if I understand that.

24 Q Do you receive a regular paycheck?

25 A Yes, sir.

VOIR DIRE - MR. DIGGS

1 Q On a weekly, (monthly basis?

2 A Biweekly, yes.

3 Q That is what you were receiving from Horry County
4 at the time you did your work on this case?

5 A Yes, sir.

6 Q Okay.

7 MR. DIGGS: That is all I have.

8 THE COURT: All right. I find that he is qualified
9 as an expert in the field of crime scene
10 reconstruction.

11 MR. DIGGS: And, Your Honor, would you note my
12 objection for the record, certainly not based on his
13 qualifications, but simply the financial connection?

14 THE COURT: All right. Thank you.

15 DIRECT EXAMINATION (CONT.)

16 Q (MR. DeBUSK) Let me ask you to clarify. Are you
17 receiving any extra compensation for testifying or
18 testifying as an expert?

19 A No, sir.

20 Q Will you receive any pay other than your regular
21 salary whether you testify or not?

22 A No, sir.

23 Q Were you on duty September 14, 2008?

24 A Yes, sir, I was.

25 Q Did you respond to Dew Lane that day?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A Yes, I did.

2 Q Do you recall what address you went to?

3 A Yes, sir. I responded to --

4 Q What are you consulting?

5 A These are notes that I comprised from the
6 investigation. I responded to [REDACTED] Dew Lane, [REDACTED].

7 Q A what county is that in?

8 A Horry County.

9 Q Let me show you what is State's Exhibit 83 and
10 ask if you recognize that?

11 A Yes, sir, I do recognize it.

12 Q What does that show?

13 A An aerial photograph or an aerial picture.

14 Q It is not in evidence, so don't show it.

15 A It is an aerial photograph looking over the top
16 of Dew Lane and the Kelly Joe Elliott house.

17 Q There is an orange sticker with the initials
18 "K-J-E," could you place that sticker in the area of
19 Mr. Elliott's house?

20 A Yes, sir. (Witness complied.) I've done that.

21 Q Thank you.

22 MR. DeBUSK: We offer this into evidence at this
23 time.

24 MR. DIGGS: No objection.

25 THE COURT: Without objection, 83.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 (State's Exhibit 83 was admitted.)

2 MR. DeBUSK: We'll publish it by PowerPoint in a
3 few minutes, Your Honor.

4 THE COURT: Very well.

5 Q What was your role at that scene when you
6 responded?

7 A I was requested to come to that scene in a crime
8 scene capacity and to supervise the operations of crime
9 scene investigation at that location.

10 Q Were any other crime scene officers working with
11 you?

12 A Yes, sir, Investigator Robert Deal.

13 Q Do you know the location of Robert Deal?

14 A Yes, sir. He is out of the country on military
15 duty.

16 Q When you went there, what did you see?

17 A I'm sorry?

18 Q What did you see when you went to [REDACTED] Dew Lane?

19 A I responded to that address. It was somewhat
20 difficult to see the house as I was coming in --

21 Q Just a moment. State's exhibit 70 and 73, do
22 those give an idea of the location of the house and how
23 hard it was to see?

24 A Yes, sir, they do.

25 Q Please proceed.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A As I came into Dew Lane, I traveled down a short
2 distance, and on the right-hand side is where the
3 address is, but the patrol units on the scene had to
4 give me directions into it because it is not easily
5 seen from the roadway. I turned into the driveway, and
6 you could barely see the front of the house from the
7 driveway. I made my way with the my vehicle up the
8 driveway almost to end of the driveway, towards the
9 back of the residence.

10 Q Okay. While you were there as part of the crime
11 scene investigation, did you and/or Officer Deal take
12 any photos?

13 A Yes, sir, we did.

14 Q I would like you to look at photos and ask if you
15 can identify those and place the numbers on the record,
16 State's Exhibits 10, 11, 12, 13, 14, 15, 16, 34, 41,
17 42, 45, 47, 49, 51, 52, 53, 54, 55, 56, 58, 59, 60, 61,
18 62, 63, 64, 65, 66, 72, 76, 80 and 81. I'll ask if you
19 recognize these?

20 A (Witness examines documents.)

21 (A brief pause in the proceedings.)

22 A Yes, I recognize every one these photographs.

23 Q What are they?

24 A They were taken by myself or Robert Deal at
25 Dew Lane.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Are they fair and accurate representations of the
2 state of the crime scene when you and Investigator Deal
3 examined them?

4 A Yes, sir.

5 MR. DeBUSK: We would like to offer these as
6 authenticated at this time, and we may admit them with
7 future witnesses.

8 THE COURT: They are marked for identification.

9 MR. DeBUSK: Thank you, Your Honor.

10 Q State's 17, 35, 36, 43, 44, 48, 50, 57, 79 and 84
11 to 90 inclusive, I'll ask if you recognize these?

12 A (Witness examines documents.)

13 (A brief pause in the proceedings.)

14 A Yes, sir, I recognize them.

15 Q What are they?

16 A They are taken by myself or Officer Deal.

17 THE COURT: These are all crime scene photographs,
18 and you are marking them for identification?

19 MR. DeBUSK: We're going to admit these.

20 THE COURT: Go on, but let me review them if they
21 are crime scene.

22 MR. DIGGS: May I approach and look at them at the
23 same time?

24 MR. DeBUSK: We reviewed these yesterday.

25 MR. DIGGS: I have, but if it is okay.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 THE COURT: Go ahead.

2 Q (MR. DeBUSK) Are they fair and accurate
3 representations of the crime scene when you and Officer
4 Deal examined it?

5 A Yes, sir.

6 Q Would they help you in aiding you in explaining
7 to the jury what happened at the crime scene?

8 A Yes, they would.

9 MR. DeBUSK: We would move to admit these into
10 evidence.

11 THE COURT: Without objection, they are admitted.
12 And, again, that was -- please put it in the record so
13 we have no questions as to what you are admitting.

14 MR. DeBUSK: 90, 89, 88, 87, 86, 85, 84, 79, 57,
15 50, 48, 44, 43, 36 and 35, and also 17.

16 (State's Exhibits 90, 89, 88, 87, 86, 85, 84, 79,
17 57, 50, 48, 44, 43, 36, 35, 17 admitted.)

18 THE COURT: You had another group?

19 MR. DeBUSK: These are marked, but not admitted.

20 THE COURT: Let me peruse those while you are
21 questioning. Admitted without objection?

22 MR. DIGGS: Yes, sir.

23 Q (MR. DeBUSK) We also did a PowerPoint presentation,
24 did you review that PowerPoint presentation?

25 A Yes, I did.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Did it include the photographs we just went
2 through?

3 A Yes, they did.

4 Q And it includes a diagram; is that right?

5 A Yes, it does.

6 Q Is this a fair and accurate representation of
7 that diagram?

8 A Yes, sir, it is.

9 MR. DeBUSK: For the record, I'm referring to
10 State's 69, which I had upside down. Is that better?

11 A That's fine.

12 Q (MR. DeBUSK) State's 69 is the fair and accurate
13 representation?

14 A Yes, sir.

15 Q Now, I want to ask you about items collected at
16 the scene. Did you collect any projectiles at the
17 scene, you and Officer Deal?

18 A Yes, we did.

19 Q What -- where did you collect them?

20 A We collected two projectiles, one was on the
21 floor in the kitchen/dining area, the second was on a
22 bookshelf in the living room area.

23 Q State's Exhibit 90 and State's Exhibit 57, do
24 those reflect the place you collected those
25 projectiles?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A May I show these to the jury?

2 Q Yes, they are in evidence.

3 A State's Exhibit 90 depicts a projectile laying on
4 a tile floor in the kitchen/dining area of the
5 residence. It was marked with an evidence marker, No.
6 1. That is how we mark our pieces of evidence as we go
7 through the residence.

8 State's Exhibit 57 indicates a projectile on the
9 bookcase in the living room area of the residency, and
10 you'll see that is marked with a "No. 2" indicating
11 that was a second piece of evidence collected.

12 Q Lieutenant Cestare, sometimes we slip in jargon.
13 Can you be specific about what "projectiles" are?

14 A It is a fired bullet. It is the portion of the
15 bullet that comes out when you fire a gun.

16 Q So these were already fired bullets?

17 A Yes, sir, that is correct.

18 Q Okay. What was done with those projectiles when
19 they were collected from the house?

20 A They were collected and sent to our state crime
21 lab, state law enforcement crime lab, to be analyzed to
22 see if they were consistent with each other and any of
23 the evidence on them, markings or debris, was
24 consistent with the scene.

25 Q Let me ask you. Who actually took them,

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 collected them into evidence and preserved them to take
2 them to SLED, as we call it, state law enforcement?

3 A They were collected by Officer Robert Deal,
4 packaged and marked by Officer Deal, transferred to
5 SLED by him as well, and transferred back after
6 testing.

7 Q When a piece of evidence is collected, do you --

8 MR. DIGGS: I would object to the testimony unless
9 he has personal knowledge of Officer Deal --

10 MR. DeBUSK: I was going to get to that.

11 THE COURT: Establish your foundation.

12 MR. DeBUSK: Yes, sir, still establishing
13 foundation.

14 Q (MR. DeBUSK) As the supervisor of the crime scene
15 investigation, do you have responsibility for the
16 caretaking of evidence and caretaking of the records?

17 A Yes, sir. I have overall control of all evidence
18 that the county maintains, and I direct personnel as to
19 what gets taken to SLED and how it is -- should be
20 proceeded.

21 Q And you are what is called a records custodian
22 for the evidence department?

23 A Yes, sir.

24 Q Examining the records pertaining to this
25 evidence, can you testify that that is what

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Investigator Deal did with his evidence?

2 A Yes, sir, I can. I directed Robert Deal to take
3 these to SLED, and I have the chains of custody.

4 Q And you were present at the scene when they were
5 collected, and directed the activities; is that
6 correct?

7 A Yes, sir.

8 Q So you had direct oversight of the actions and a
9 paper trail?

10 A Yes, sir, that is correct.

11 Q So you could testify what Officer Deal with those
12 items?

13 A Yes, sir, I can.

14 Q And, again, this is the same Officer Deal that is
15 in Afghanistan?

16 A Yes, sir, that is correct.

17 Q Or overseas with the military.

18 A Overseas, yes, sir.

19 Q During the course of this investigation, were any
20 other projectiles collected?

21 A Yes, sir. A third one was collected during
22 autopsy.

23 Q Who did the autopsy?

24 A The autopsy was performed at Grand Strand
25 Regional Medical Center by Edward Lee Proctor. He is

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 our resident forensic pathologist and performs a
2 majority of the autopsies in this county.

3 Q Did you or someone in your supervision attend
4 that autopsy?

5 A Yes, sir.

6 Q Who collected that projectile?

7 A That was collected by Officer Robert Deal.

8 Q What did he do with that, based on your
9 supervisory position?

10 A Again, it was collected into evidence by
11 Investigator Deal, carried back to the police
12 department. It was entered into our evidence
13 inventory, and it was then transported to SLED for a
14 comparison against the two projectiles that were
15 recovered from the residence.

16 Q Now, what is this item I'm showing you?

17 A That is packaging from SLED that contains three
18 fired projectiles.

19 Q It is sealed now, but would you open it in the
20 presence of the Court, please?

21 A Yes, sir. (Witness complied.)

22 Q What are the two items you took out?

23 A The two items -- actually three items -- I took
24 out is -- one is a clear package containing three
25 transport tubes, each tube with a fired projectile in

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 it.

2 Q Is that the kind of packaging that Horry County
3 uses when they collect a projectile?

4 A Yes, sir, it is. This is the packaging that came
5 back from SLED. It has the state law enforcement seals
6 on it.

7 Q How many tubes, I should be specific --

8 A Yes.

9 Q -- the plastic bag is from SLED?

10 A The plastic bag is from SLED as well. It has
11 Investigator Robert Deal's initials and name on it and
12 a case number.

13 MR. DeBUSK: Since they are packaged, we asked to
14 mark this as a single exhibit.

15 THE COURT: You don't intend to open it?

16 MR. DeBUSK: I don't see any reason to open it.

17 MR. DIGGS: I agree with that.

18 THE COURT: All right. Mr. Diggs has no objection.

19 MR. DeBUSK: I'll let Mr. Diggs examine them.

20 MR. DIGGS: No objection.

21 Q (MR. DeBUSK) Now, at this point would you --

22 MR. DeBUSK: What is our number?

23 COURT REPORTER: We are going on to 96.

24 (State's Exhibit 96 marked.)

25 Q (MR. DeBUSK) Would you look at State's Exhibit 96

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 and explain what those are to the jury?

2 A Okay. In this sealed package is three tubes.
3 Again, each tube containing a fired projectile. The
4 tubes are numbered No. 1, No. 2 and, again, No. 2. No.
5 1 is a projectile that was recovered from the residence
6 and corresponds with Photograph No. 1 here, which would
7 have been the projectile recovered off of the
8 kitchen/dining room floor.

9 The first No. 2 is a projectile also collected from
10 the residence, and it corresponds with State's
11 Exhibit 57, which is a photograph showing that
12 projectile and the bookcase along with an evidence
13 marker. The second one marked No. 2 indicates it was
14 covered -- recovered at autopsy. This is a projectile
15 that was recovered from the head of the Kelly Joe
16 Elliott.

17 Q And just to be completely clear, where would
18 those have been stored prior to be taking to the State
19 Law Enforcement Division?

20 A Secured in an evidence facility in the Horry
21 County Police building.

22 Q Does that have limited access?

23 A Yes, sir. It is limited to myself and my staff.

24 Q Okay. And, again, it was Investigator Deal who
25 carried those to the state law enforcement?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A Yes, sir. Also in that envelope from SLED is two
2 separate envelopes marked Item 1 and Item 2. Item 1,
3 again, corresponds with Projectile No. 1 that was
4 recovered from the kitchen/dining room floor, marked in
5 State's Exhibit 90, marked evidence Item 1. This is
6 debris collected from the nose of the projectile, which
7 they found consistent with sheetrock.

8 Item No. 2, which corresponds to Projectile No. 2,
9 the first one recovered from the residence as shown
10 here in the photo, the bookcase, there's debris with
11 wood embedded -- that was embedded in the tip of the
12 bullet consistent with the bookshelf where the bullet
13 was recovered from.

14 Q Just to keep things straight, the last one you
15 talked about was the one -- first one, I'm sorry, the
16 drywall --

17 A Yes, sir.

18 (State's Exhibit 97 marked.)

19 Q (MR. DeBUSK) Were you able --

20 MR. DIGGS: Sorry to interrupt. Those were 96, 97,
21 were they entered into evidence?

22 MR. DeBUSK: They are not yet because there is
23 further chain to be proven.

24 Q (MR. DeBUSK) One more thing, Lieutenant. At the
25 autopsy, were any other items collected by Officer

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Deal?

2 A Yes, sir. He also collected some x-rays from --
3 that were taken of Kelly Joe Elliott.

4 (State's Exhibits 98 and 99 marked.)

5 Q (MR. DeBUSK) I'll ask you if you recognize State's
6 Exhibit 99?

7 A Yes, sir. It is two x-rays, the first one is a
8 chest x-ray taken of Kelly Joe Elliott. The second one
9 is an x-ray of the head of Kelly Joe Elliott.

10 Q Were those in Horry County evidence?

11 A Yes, sir, they have been.

12 Q Are they the x-rays that were collected at the
13 autopsy?

14 A Yes, sir, they are.

15 (State's Exhibits 93 - 95 marked.)

16 Q I'll show you State's Exhibits 93, 94 and 95 and
17 ask if you recognize these?

18 THE COURT: Are you marking x-rays for
19 identification.

20 MR. DeBUSK: We'll offer them into evidence later.

21 THE COURT: He's identified those documents, but
22 let's go ahead, before we move on to anything else, and
23 have them at least marked for ID.

24 MR. DeBUSK: I believe we did. They are Composite
25 Exhibit 99, State's 99.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 THE COURT: Thank you.

2 MR. DeBUSK: Place them together in the envelope.

3 A Can I show them to the jury?

4 Q Not yet.

5 A 93 is a photograph rendition of the chest x-ray
6 from Kelly Joe Elliott. 94 and 95 are photographs
7 renditions of the head x-ray of Kelly Joe Elliott.

8 Q Are they fair and accurate representations of
9 what was on those x-rays taken at autopsy?

10 A Yes, sir, they are.

11 MR. DeBUSK: At this time, the State would offer
12 94, 95, 96 and 99.

13 MR. DIGGS: We don't object to it.

14 THE COURT: Without objection.

15 (Whereupon, Exhibits 94, 95, 96 and 99 admitted.)

16 MR. DeBUSK: Can I get the screen, please?

17 Q (MR. DeBUSK) You've reviewed this PowerPoint?

18 A Yes, sir.

19 Q And the items, the photo and diagrams on it, they
20 were the items already in evidence; is that correct?

21 A Yes, sir. The photos that were looked at
22 earlier, yes.

23 Q Does it contain certain ovals and circles
24 indicating where the photographs were taken?

25 A Yes, sir. They were placed into the PowerPoint

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 to help the viewer to see it.

2 Q Are they fair and accurate?

3 A Yes, they are.

4 Q If you would, I'm going to give you a laser
5 pointer to aid you. If we could go through the crime
6 scene with the jury and explain what you did and what
7 you saw.

8 A This is an image of an overview of the -- of Dew
9 Lane showing Kelly Joe Elliott's residence. As you can
10 see, this would be the start of Dew Lane here coming
11 up, and the driveway to the Elliott residence is right
12 here. This is the residence here. It is kind of tough
13 to see because of the brush around it. The house is
14 pretty well secluded from the roadway. You wouldn't
15 know it was there unless you were accustomed to the
16 area and know the area to some degree. As I said, I
17 had trouble finding it and I knew where I was
18 responding to.

19 Q Does that correspond to State's Exhibit 83?

20 A Yes, sir, that is the same as State's Exhibit 83.

21 Q Once again, the sticker of 83 indicates the
22 sticker of the house?

23 A Yes, sir.

24 Q I'll ask about this area right here. What is
25 this?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A That is the start of Dew Lane. As you can see,
2 it is a dirt road. I don't know the direction of
3 travel on it, but as you travel down that, the Elliott
4 residence will be on the right side some distance down
5 the road.

6 Q What is that large sort of greenish thing to the
7 house?

8 A There is a pond right here next to the driveway.
9 The pond is on one side of the driveway, the residence
10 is on the other side. Looking at the picture as you
11 see it, the pond is to the right of the driveway, being
12 right here (indicates), and the house is to the left of
13 the driveway.

14 Q Let's look at that specifically where the oval
15 is. What is that?

16 A That is a view of the front of the house on the
17 day that we responded there. That shows the residence
18 from Dew Lane.

19 Q This is on September 14, 2008?

20 A Yes, sir, that is correct.

21 Q And that is the state of the growth around the
22 house at that time?

23 A Yes, sir. And as you can see, the house is set
24 back off the roadway and somewhat difficult to see if
25 you are not accustomed to the area.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q For the jury's edification, what are the yellow
2 strip things?

3 A The yellow is crime scene tape that was placed
4 surrounding the residence by the responding patrol
5 officers. Once they responded and realized they had a
6 crime scene, they surrounded the perimeter to keep any
7 on-lookers and stuff away from the scene and preserve
8 any potential evidence within that barrier.

9 Q Okay. Let's move on. What is this?

10 A That is a CAD overview of what the residence
11 looked like on the day in question. Looking here, the
12 driveway that you saw, if we could almost flip the
13 house, you would understand it a little better. The
14 driveway comes in this way, the pond being over here,
15 so we're looking at a reverse image of what we just
16 saw.

17 The driveway comes in, circles into the back of the
18 house. There is an entrance door here. There is a
19 screened-in porch here, living room here, master
20 bedroom here, kitchen and dining area here, laundry
21 room, and so forth. There is bedrooms and a dining
22 area up here. This is the front door of the residence,
23 which is what you saw in that photograph before, which
24 you would have seen from Dew Lane from the dirt road
25 side of the house.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q I'll ask you about this area here. What would we
2 see here (indicates)?

3 A Okay. That is the driveway, comes in here and it
4 actually makes like a --

5 MR. DeBUSK: Can we bring the light down just a
6 little bit to make it easier to see. Thank you.

7 A The driveway comes in from here and kind of makes
8 a sharp turn to the left to the rear of the residence.
9 The vehicle you see here, that is Mr. Elliott's vehicle
10 parked behind the residence where he would generally
11 park it. This is the screen porch that I just
12 explained to you from the prior photo, and then the
13 door to the back of the residence is in here. As you
14 can see, the house is pretty well surrounded by
15 overgrown brush and so forth. It is quite difficult to
16 see anything in and around the house.

17 MR. DeBUSK: Court's indulgence one moment.

18 (A brief pause in the proceedings.)

19 MR. DeBUSK: Thank you, Your Honor.

20 Q (MR. DeBUSK) Was that vehicle there when you
21 arrived?

22 A Yes, sir, it was. It shows the vehicle you just
23 saw in the previous photograph. It was parked nose in,
24 or front in, so it is obvious that the vehicle was
25 pulled straight in and parked.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Look at this area specifically, what do we see
2 here?

3 A This is the door, the vehicle would be parked
4 right here, this is the screen porch. This is the door
5 leading into the back of the residence that comes into
6 somewhat of like a laundry room leading into the
7 kitchen/dining room and further on into the residence.

8 Q Let's look closer at that door. Do you notice
9 anything unusual about the door?

10 A Yes, sir. Right here you'll see this is what is
11 referred to as a nine panel door. It has nine
12 individual glass panels in it. It is a wood frame
13 door. There is two locking mechanisms, a door knob,
14 lock and a dead bolt, which is pretty much standard on
15 many doors today. This pane of glass closest to the
16 locks was broken, and it was broken from the outside
17 in. The glass was scattered about on the inside of the
18 residence with no -- or minimal glass on the outside,
19 which would indicate that the glass was broken from the
20 outside to inside. It is closest to the door locks,
21 both locks, which would indicate that that glass was
22 broken to access the locks on the residence.

23 Q Based on your expertise as a crime scene
24 reconstructionist, what does that indicate to you?

25 A That is generally an indication --

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 MR. DIGGS: We would renew our objection and ask
2 that it continues.

3 THE COURT: All right. I'll allow him to testify.
4 Overrule the objection.

5 A That generally would indicate a forced entry into
6 the house commonly found in a burglary.

7 Q (MR. DeBUSK) Move on a little bit to this area
8 here. What is that?

9 A That is a gun cabinet that is in the living room
10 of the residence leading towards the master bedroom,
11 but it is in the living room of the residence, and as
12 you can see, that, too, has glass doors in it and a
13 cabinet underneath it.

14 Q Were there any intact firearms in that cabinet
15 when you arrived?

16 A No, sir, there were not.

17 Q What is that item at the bottom of the cabinet?

18 A Stock, just a wood portion of a rifle. The
19 mechanisms and so forth for the rifle are not there,
20 just the wood portion of the -- what is referred to as
21 the stock.

22 Q But there were no intact firearms?

23 A No, sir, there were not.

24 Q I'll take you to the master bedroom. Is this the
25 state it was in when you arrived?

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 A No, sir. The mattress was slightly towards the
2 bed more. We moved it a little bit to be able to view
3 the complete underside of it, but that is the master
4 bedroom of the residence. That is the bedroom that
5 Kelly Joe Elliott slept in.

6 Q You knocked the mattress entirely off?

7 A It was partially off.

8 Q Does that indicate anything to you?

9 A Yes, sir. And going further in some of the
10 pictures you'll see most of the rooms were found in
11 this state, and, again, that would indicate that
12 someone was looking for something in the residence
13 commonly found in burglaries.

14 Q I'll ask you about this spot here. What was
15 that?

16 A This is the master closet in the master bedroom
17 and as you can see, there are a number of items
18 scattered about the floor and items that are somewhat
19 disheveled or displaced on the shelving. There is also
20 some empty boxes that contain -- that are believed to
21 have contained firearms in them, and those boxes were
22 found empty.

23 Q How about on the left hanging from the rod, what
24 looks like handles on them?

25 A Those are gun cases, typical of what you would

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 store or carry a firearm in. Those also were empty.

2 Q And the yellow and green boxes on the top of
3 those four shelves?

4 A Those are boxes of ammo. We found a considerable
5 amount of ammunition in the house or boxes of
6 ammunition, generally consistent with someone who owns
7 firearms and has ammunition for them.

8 Q Now, you found boxes and cases. Did you find any
9 intact firearms in that closet?

10 A No, sir, I don't believe we did.

11 Q Let me look at the living room view here for a
12 moment. What is that under the comforter on the floor?

13 A This is the condition we walked into the living
14 room as we found it. This is Mr. Elliott lying under a
15 comforter, that is how we found him as we entered the
16 residence.

17 Q What was his position when you took the comforter
18 off?

19 A He was lying with his head this way, he is on his
20 right side and somewhat on a side position laying on
21 his right side with his hands or arms intertwined with
22 one another. So his head is here, feet extend this way
23 back towards what would be the master bedroom door.
24 You can see that the house has a number of items in it,
25 clothing and so forth, strewn about. The house is

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 somewhat unkempt, and seeing the totality of the house
2 and knowing that Mr. Elliott lived there alone, it is
3 kind of common on how you might find things.

4 He appeared to be not one of the neatest people,
5 but looking through -- as you go back to the photo that
6 we just left with the closet and so forth -- it is
7 consistent with someone having gone through the closet
8 looking for something.

9 Q Just to make clear, Mr. Elliott was found lying
10 on his right side; is that correct?

11 A Yes, sir.

12 Q So his right side of the chest was against the
13 floor?

14 A Yes, sir.

15 Q Just to orient that discolored thing sticking
16 from under the comforter --

17 MR. DIGGS: Your Honor, may we approach?

18 THE COURT: Yes.

19 (Whereupon, a bench conference was had.)

20 THE COURT: Let's send the jury out for a moment.
21 Brings up the light.

22 (The jury exits at 10:30 a.m., and the following is
23 heard out of the presence of the jury.)

24 THE COURT: Mr. Diggs.

25 MR. DIGGS: I understand this witness has been

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 qualified as an expert in crime scene reconstruction,
2 but there is no evidence that he had any first-hand
3 knowledge of the condition of the house, and what he's
4 just testified to is that the condition of the house is
5 consistent with having been rummaged through by
6 burglars and whatever.

7 Now, I am basing this objection on the pretrial
8 discovery that has been provided to me by the State. I
9 understand counsel for the State is saying we don't
10 know what the testimony is going to be yet, but there
11 is no evidence that has been made in any pretrial
12 statement that shows that this house was rummaged
13 through after the shooting.

14 The bedroom, if it was rummaged through, had to be
15 done after the shooting. Under all of the discovery
16 material that was provided, there was nothing done
17 after the shooting occurred, everybody left, that is
18 what Anthony Ray is going to testify to, or at least
19 that is what he said in his statements.

20 So what we object to is the expert's opinion, not
21 with respect to the crime scene reconstruction, but to
22 the condition of the house and how it might have been
23 affected by people rummaging through the house. The
24 witness -- you know, the witness acknowledges the house
25 is somewhat unkempt, but I would suggest and submit

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 that the witness not be permitted to testify about
2 opinions with respect to when the house -- that the
3 house was rummaged through and when that rummaging
4 might have occurred.

5 I mean, that is what -- I would submit that the
6 testimony and the line of testimony that the witness is
7 providing is prejudicial, and improperly so, because it
8 is not based on anything that is in the record. We
9 don't have any testimony about any, you know, personal
10 knowledge testimony about the condition of the house
11 and what guns were there and that kind of thing. The
12 witness is not really testifying about crime
13 reconstruction, but he's offering an opinion about
14 things not in evidence and not supported by any
15 pretrial --

16 THE COURT: His testimony is evidence, and he's
17 testifying that based on his experience in crime scene
18 reconstruction, that this residence appeared to have
19 been rummaged through or ransacked. He's giving
20 reasons for his opinion. Now, isn't he permitted based
21 upon his qualifications and the fact that he's giving
22 reasons for it -- the jury may decide to reject his
23 reasons or give it -- or conclusions absolutely no
24 weight. I will charge them in that regard. I will
25 tell them they do not have to accept his opinion, but

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 he's entitled, I believe, to give an opinion. The only
2 thing I've heard him say is that in his opinion he gets
3 there, broken glass, appeared to have been some sort of
4 a forceful entry, the house -- there's a homicide, the
5 house appears to be ransacked or rummaged through. I
6 think he can testify to that.

7 I mean, I don't understand -- I agree with you, I
8 don't think he can testify as to when it occurred,
9 before or after the homicide. I don't think he's tried
10 to testify that it happened before or after, has he,
11 Mr. DeBusk?

12 MR. DeBUSK: No, sir, he hasn't said anything about
13 timing.

14 THE COURT: And I think you may have a point there.
15 This witness may be able to give a reason why he would
16 say it happened before or after the shooting. I don't
17 know. I haven't heard anything, but I haven't heard
18 him say yet that he intends to give an opinion as to
19 whether or not, if it makes any difference, and I don't
20 know whether it does or not, whether it occurred before
21 or after the shooting. I don't know. I mean, is that
22 your primary objection?

23 MR. DIGGS: The primary objection is that he's
24 testifying to a conclusion based on points that are not
25 really in the record and may not ever be in the record.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 THE COURT: What is the conclusion that you are
2 objecting to?

3 MR. DIGGS: That it was rummaged through, rummaging
4 through the bedroom, that it appears that they rummaged
5 through the bedroom.

6 THE COURT: And that is something more than his
7 opinion. I mean, he has a basis for it. He's giving
8 his basis and has been qualified as an expert. I think
9 he can testify that that house appeared to be rummaged
10 through.

11 MR. DIGGS: Well, specifically at this point we're
12 talking about the bedroom. My objection really goes --
13 I don't know who is going to provide any testimony to
14 support that, and I understand he's an expert and can
15 testify about conclusions, but I submit that those
16 opinions and conclusions have to be based on what the
17 facts are of this case.

18 I mean, he can say, Well, you know, in other cases
19 I have seen bedrooms rummaged through before. I'm
20 familiar with what the other witnesses are going to
21 say, and they don't say anything about rummaging
22 through the bedroom after the shooting.

23 THE COURT: I think he's saying that I went into
24 this residence, there was glass on the floor, broken
25 window, appeared to have been forcible entry, I go in

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 there, cabinets, closets are opened, empty, disheveled,
2 appeared to have been rummaged through, mattresses are
3 pushed off the beds, and in his opinion, based on his
4 experience, he's saying that that would appear to him
5 that it has been burglarized or rummaged through. I
6 haven't heard him say or try to give an opinion that it
7 occurred before or after the shooting, and I don't know
8 if he can. I'll allow the testimony.

9 If you would, bring the jury in if they are ready.

10 MR. DIGGS: Could we take a brief recess?

11 THE COURT: Certainly. Roy, tell them to hold up
12 on the jury, or Allison. We'll take a quick break.

13 (A recess was taken.)

14 THE COURT: Bobby, if you would, bring the jury
15 back in.

16 (The jury enters at 10:48 a.m., and the following
17 is heard in the presence of the jury.)

18 THE COURT: You may continue.

19 MR. DeBUSK: Quick piece of housekeeping. When I
20 entered the prior exhibits, I forgot to enter on the
21 record State's Exhibit 93, one of the photos.

22 THE COURT: Have you shown it to Mr. Diggs? Any
23 objection?

24 MR. DIGGS: No objection.

25 (State's Exhibit 93 was admitted.)

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q (MR. DeBUSK) You testified that Mr. Elliott's body
2 was found with his right side against the ground. Was
3 it covered as it is in this picture?

4 A Yes, sir. That is exactly the way we found it.
5 This is Mr. Elliott laying here. His head would be
6 here. What you see sticking out of the blanket here is
7 his hand, some blood here and his body extends back
8 with his feet closest towards back here, which is the
9 master bedroom. The gun cabinet from the earlier
10 photograph, this item right here --

11 Q I'll ask you, the hand that's visible, that is
12 not the normal color of a hand, is it?

13 A No, sir, it is not. As you can see, the state
14 that we found Mr. Elliott's body in was in
15 decomposition, which means he had been deceased for
16 some period of time.

17 Q I hate to go into something unpleasant, but it
18 kind of smelled, too?

19 A Yes, sir, it did.

20 Q Were you present when they transported the body,
21 Mr. Elliott?

22 A Yes, sir, I was.

23 Q Where was Mr. Elliott's body taken?

24 A He was removed from the scene after we were done
25 documenting everything with photographs and notes. He

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 was then transported to Grand Strand Regional Medical
2 Center for forensic autopsy.

3 Q When you were examining the body before it was
4 taken out, did you notice any external wounds?

5 A Yes, sir, I did. When we uncovered the body,
6 removed the blanket or comforter that was on top of
7 him, the entire body was in a state of decomposition.
8 There was bug activity and so forth, discoloration.
9 However, part of our investigation entails moving or
10 manipulating the body to get an overview to see if
11 there is any obvious causes of death or signs to
12 indicate what may have happened. In doing that, I
13 observed what appeared to be a gunshot wound on the
14 right side of Mr. Elliott in the chest region.

15 Q Is that the portion against the ground?

16 A Yes, sir. That was the portion against the
17 ground. I also observed what appeared to be a gunshot
18 wound to the head of Mr. Elliott. Those were the only
19 two obvious signs of traumatic wounds that I could see
20 at that time.

21 Q Just to be clear, you could not see that chest
22 wound until you rolled the body?

23 A That's correct. The chest wound was not visible
24 until we physically rolled the body over where I saw
25 the right side. At the state you see it in, the right

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 side was against the carpeting or flooring of the
2 residence of the living room.

3 Q I'll bring your attention to this door between
4 the living room and the bedroom. What was the state of
5 that door?

6 A All right. What you see here, this is the
7 bedroom door. It swings inward from the living room.
8 This doorway leads into a closet further in, the bed,
9 arm chair and night stand and so forth. On the lower
10 portion of this door you'll see broken paneling. It is
11 a solid wood core door. The paneling on the bottom is
12 broken and you can see pieces of it lying here, and
13 you'll see pieces of it lying at the entrance of the
14 doorway as well.

15 Q Like that (indicates)?

16 A Yes, sir. These are panels from that lower panel
17 of the door on the locking side. It is the hinged
18 side, and it swings inward into the bedroom. This is
19 the door knob, or locking side. Those are the panels
20 looking at the door from the living room, it would be
21 the lower right side of the door.

22 Q Based on your training and experience in crime
23 scene reconstruction, what does that indicate to you?

24 A That is generally a forced entry type of thing.
25 The panel was kicked in in an attempt to gain entry

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 into the room.

2 Q I want to bring your attention to the projectiles
3 and the locations they were recovered. Did you do
4 anything to reconstruct the trajectories of those?

5 A Yes, sir. It is common in any type of
6 investigation involving bullets and paths that bullets
7 travel -- we refer to them as trajectory. We did so in
8 this case, and we placed two bullet trajectories in
9 these residence.

10 Q Explain what you see in this picture.

11 A This is -- if we could -- can you go back to the
12 overview of the residence for a minute? Are we close
13 enough we can get back to that? Okay. This wall right
14 here separates the kitchen from the living room. There
15 is like a hallway or walk-around here that brings you
16 from the kitchen, slash, dining room into the living
17 room and then continues into the room. Okay.

18 Back now to that picture. All right. So this is
19 standing against that walkway looking up at the wall,
20 kitchen/dining room is here, the bookcase and living
21 room is on this side. What you see here is two
22 different trajectory rods. The first one is showing a
23 bullet hole through the top of the wall near the
24 ceiling which then strikes the kitchen, slash, dining
25 room ceiling, and you see the sheetrock. When I

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 mentioned earlier in the particles obtained from the
2 nose of the projectile from the kitchen, slash, dining
3 room where they mentioned sheetrock, that is where it
4 came from. The bullet went through the wall here,
5 which is a sheetrock here, struck the ceiling, dragged
6 it across the ceiling for a couple of inches and then
7 dropped onto the floor in that dining room/kitchen.

8 Q Let's talk about that one for a moment. What is
9 the purpose of the trajectory rod?

10 A The trajectory rod shows the path of travel. In
11 any type of incident where you -- where we've got
12 projectiles or bullets fired, we try to determine the
13 point of origin, which is where the initial firing of
14 the gun occurred, and the final rest. The final rest
15 in this case was the ceiling, that is what stopped it.
16 As you can see, it is hard to tell from the photograph,
17 but the angle is slightly upward.

18 Q Let's move to the next photograph. There you go,
19 that might help.

20 A You can see this is the kitchen/dining room side,
21 living room side on the other side of the wall. As you
22 can see, the trajectory comes upward through the wall
23 and strikes the ceiling here. That projectile, or
24 bullet, drops to the floor. That is the one you saw in
25 the earlier photo under -- this is just beneath that

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 mark in the ceiling. There is like a dinette table,
2 and what you see here is the leg of the chair. That
3 was our Evidence Marker No. 1. You can see in the
4 projectile what appears to be some white debris, that
5 is the sheetrock that was found at the state lab in the
6 nose of the bullet.

7 Q Were you able to reconstruct the point of origin
8 of that particular shot?

9 A Yes, sir. We were able to tell with a fair
10 amount of certainty that that bullet was fired from the
11 area of the bedroom door, or what lined up to be the
12 bedroom door. The trajectory of that round is fired
13 from somewhere in this area here, and it is upward --
14 slightly upward where it goes through the top portion
15 of this wall and strikes the ceiling.

16 Q Look at this view. Would you indicate what the
17 point of origin was?

18 A Based on the trajectory angle of that ballistic
19 rod, we were able to tell that that shot was fired from
20 somewhere in the area of right here near this doorway.
21 That is the doorway leading into the bedroom. That is
22 the wood you saw on the floor where the panel was
23 broken on the door, and the angle or trajectory of the
24 bullet is upward from this angle through that wall and
25 into the ceiling.

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 Q Let's move on to the other bullet collected from
2 the bookshelf area. What is this?

3 A Okay. This is -- there is a lot to see in this
4 photo. This is that wall operating the kitchen/dining
5 room on this side, living room this side. This mark is
6 the trajectory of the angle we were just talking about.
7 You can see the portion of the rod. We use two
8 different color rods to indicate two different
9 trajectories. The black is the trajectory coming from
10 somewhere in the area of the bedroom door going through
11 the wall and striking the ceiling. The second one, it
12 is hard to tell from the photo, but you can see that
13 this angle is sharply upward, and it comes from the
14 area of -- just adjacent to this is almost like, I
15 guess, a wet bar or cabinetry that had some type of a
16 bifold -- vented bifold doors over the top of it. In
17 one of the coming photos you should be able to see
18 that.

19 But this trajectory is sharply upward. You know,
20 it indicates that the bullet was fired from somewhere
21 down here near the doorway, fired almost what looks
22 like a 45-degree angle upward, penetrates the outer
23 skin of the bookcase, strikes the top of the bookcase,
24 it stops and drops onto the shelf here.

25 Q We'll move to the other photos. Is this a

PETER CESTARE - DIRECT EXAMINATION (CONT.)

1 different view of the same thing?

2 A Yes, sir. It is looking from the wet bar or
3 vented closet area, and you can see it rounded sharply
4 directing upward.

5 Q Again, you've explained this?

6 A Yes. That is -- the bullet came through the
7 bookcase on the side, struck the top and dropped down.

8 Q And on this photo could you indicate the area
9 where you believe the point of origin of that shot --

10 A You'll see that vented door, there is a second
11 vented door that is down on the ground and busted, to
12 some degree. The angle is this way coming from the
13 door upward through the skin of the bookshelf and
14 strikes the top, and the bullet is found right up here.

15 Q Just to orient with the photos, can you indicate
16 where the body was recovered?

17 A The body is right behind the couch, head this
18 way, feet this way. The bookcase is here. The vented
19 closet door is right here. The mark in the ceiling
20 through the wall is about here.

21 Q Thank you.

22 MR. DeBUSK: If we could get the lights back up.

23 We'll talk about the second bullet trajectory.

24 One of the doors was broken down, and one was still
25 hanging?

PETER CESTARE - CROSS-EXAMINATION

1 A Yes, sir. One was on the ground and one was in
2 the opened position and pushed back.

3 Q And was that door lying in the zone of travel
4 between the kitchen and the living room?

5 A Yes, sir, it was.

6 MR. DeBUSK: No further questions.

7 CROSS-EXAMINATION

8 BY MR. DIGGS:

9 Q I'm sorry, I forgot your rank.

10 A Lieutenant.

11 Q Lieutenant. Okay. Did you have anything to do
12 with collecting telephone records?

13 A No, sir, I personally did not.

14 Q So you weren't involved in that aspect of the
15 investigation?

16 A No, sir.

17 Q Now, let me ask you a little bit about the
18 discoloration of Mr. Elliott's arm. Do you have any
19 familiarity with the decomposition process of a human
20 body?

21 A Yes, sir, I do.

22 Q And are you familiar with the State's theory as
23 to when the shooting occurred?

24 A No, sir, I don't believe I know what you are
25 talking about there.

PETER CESTARE - CROSS-EXAMINATION

1 Q You don't know what the state is claiming the
2 date was that this shooting took place?

3 A No, sir, I do not.

4 Q But when you went out there -- and a lot of the
5 evidence that you base your opinions on -- was
6 collected on the 14th of September; do you agree with
7 that?

8 A Yes, sir. That is correct.

9 Q Okay. So the death of Mr. Elliott and that type
10 of discoloration of his arm, which you indicated a
11 certain degree of decomposition at that time, do you
12 have any opinion about when the death would have
13 occurred based on your experience and the exposure you
14 have to decomposition?

15 A The only thing I can tell you is that it occurred
16 sometime obviously before the 14th. Any number of
17 things can affect how quickly decomposition occurs,
18 obviously, weather, temperature --

19 Q We know this body was in the home, it was inside
20 a house?

21 A Yes, sir.

22 Q And that house had air conditioning?

23 A No, sir, it did not.

24 Q It had no air conditioning?

25 A There was air conditioning on in the master

PETER CESTARE - CROSS-EXAMINATION

1 bedroom only. The rest of the house did not have air.

2 Q Okay. Do you know that of your own knowledge, or
3 explain to us how you know that?

4 A Part of our investigation involves, obviously,
5 detailing everything about the house that will help us
6 in any way make a determination. We found a window
7 unit in the master bedroom was on and powdered on when
8 we arrived. No other unit in the house was on or
9 powdered on.

10 Q He was laying there in front of the bedroom door?

11 A A good distance from it, several feet.

12 Q And that door was open?

13 A Yes, sir.

14 Q And the cool air would have then flowed in that
15 direction?

16 A Yes, sir. That would be correct.

17 Q Now, let me ask you something. Why would you
18 testify to a drawing of this floor plan that was not to
19 scale?

20 A We don't do any of our drawings to scale. They
21 are basically for recollection purposes.

22 Q Did you tell us before your testimony that it was
23 not to scale?

24 A No, sir, I don't think anyone asked me that
25 question.

PETER CESTARE - CROSS-EXAMINATION

1 Q All right. Is it your intent to draw the diagram
2 to best fit with your testimony?

3 A No, sir, we draw a diagram based on the way we
4 observe the location that we are --

5 Q But it is not to scale?

6 A No, sir.

7 Q So it is not intended to give us the best
8 depiction you can with respect to where the various
9 important items of evidence are located in the house?

10 A No, sir, that is the purpose of photographs.

11 Q But you just testified in your testimony that it
12 was difficult to see from the photograph. Didn't you
13 say those words, "it is difficult to see from the
14 photograph," but this is --

15 A From that individual photograph. That is why we
16 take a collage of photographs of the entire residence
17 and the outside of the residence.

18 Q Did you take any other photographs to make a
19 collage to illustrate for us where that was coming
20 from, the direction of the trajectory was in?

21 A Yes, sir. There was a number of photographs
22 taken. I don't know the exact number, but not all of
23 them have been entered here today.

24 Q And you didn't tell us about those, you didn't
25 show us when you were talking about the trajectories?

PETER CESTARE - CROSS-EXAMINATION

1 A No, sir. I can only talk about the photographs
2 you entered into evidence.

3 Q I haven't entered any.

4 A Or the State enters.

5 Q When you saw that body, how many days do you
6 think it had been dead?

7 A I don't think I could give you an opinion other
8 than to say more than one.

9 Q All right. And in your opinion -- let's go back.
10 You were talking about where the car was located at the
11 back door. Could you -- it would be unreasonable,
12 wouldn't you agree with me in this respect, for someone
13 to break in the back door, as you testified to in your
14 opinion, to be able to break in the back door without
15 seeing the car parked there?

16 A That's correct, you would have had to see the
17 vehicle.

18 Q So whoever went in the house knew the vehicle was
19 there?

20 A Yes, sir.

21 Q Now, isn't it true that there was a light on in
22 that bedroom?

23 A I don't recall right now without looking back.

24 Q Could you look at something and answer that, if
25 you can reasonably access that information? I don't

PETER CESTARE - CROSS-EXAMINATION

1 want you to spend hours, but if you could look at that
2 and confirm that the bedroom light was on.

3 A (Witness examines documents.)

4 (A brief pause in the proceedings.)

5 A I can't confirm that for you, no, I'm sorry.

6 Q (MR. DIGGS) Okay. Now, you didn't know
7 Mr. Elliott; isn't that true?

8 A No, sir, I did not.

9 Q Of course, you never had been in that home prior
10 to your work on this case?

11 A Correct.

12 Q And you can't testify about what the condition of
13 the home was or was not in prior to your visit on the
14 14th?

15 A No, sir, I have no knowledge of the house prior
16 to that day.

17 Q And your opinion about the home having been
18 rummaged through is not based on anything other than
19 what you saw there that day?

20 A No, sir. It is based on 30-some odd years of law
21 enforcement and having been to well over a thousand
22 death investigations and various types of
23 investigations. That was an opinion I was able to
24 render based on my observations in that house that day.

25 Q All right. But those 30 years of experience

PETER CESTARE - CROSS-EXAMINATION

1 didn't include any exposure to Joe Elliott?

2 A No, sir.

3 Q Or his home?

4 A No, sir, not until that day.

5 Q Now, you don't know -- you showed us a photo of a
6 gun cabinet. You don't know what was in that cabinet
7 prior to that occasion?

8 A I do not.

9 Q And I think you testified that something appeared
10 to have been taken from the closet shelves. I
11 apologize if I'm misquoting you, but what was your
12 testimony about the closet shelves?

13 A There were empty gun boxes and cases throughout
14 the residence.

15 Q But you don't know what was there before
16 Mr. Elliott was killed?

17 A No, sir, I have no knowledge.

18 Q You are in a position to testify about what was
19 taken?

20 A No, sir.

21 Q When you were looking at the photographs, did you
22 see a photograph of the home's front door that had the
23 spider cobweb on it?

24 A Yes, sir, I did.

25 Q So do you remember where those cobwebs were?

PETER CESTARE - CROSS-EXAMINATION

1 A Yes, sir. Both inside and outside. There were
2 cobwebs all around the edges of the door.

3 Q So that door didn't get used a lot?

4 A I believe it would not, correct.

5 Q All right. Again, you testified as to a
6 statement that this scene appeared, to you, to be one
7 in which someone was looking for something and, again,
8 you base that on your 30 years of experience?

9 A Yes, sir.

10 Q Which doesn't include, though, any knowledge of
11 Mr. Elliott's home?

12 A Prior to that day, yes, sir.

13 Q Prior to that day. All right. Now, when you
14 were doing your investigation, did you have access to
15 any statements about witnesses?

16 A No, sir, I don't believe I did. As I stated,
17 mine is the forensic side.

18 Q So you didn't have a need to go and look at any
19 statements any witnesses had made in this
20 investigation?

21 A No, sir. But commonly in any investigation there
22 is a dialogue between the detectives doing the
23 interviewing portion and the crime scene personnel
24 doing the science side of it.

25 Q Did you have such a conversation in this case?

PETER CESTARE - CROSS-EXAMINATION

1 A There was several times when we spoke back and
2 forth, yes, sir.

3 Q All right. Do you remember who it was that you
4 spoke with?

5 A The case agent at the time was Detective Rusty
6 Crocker. I know we spoke with him, and I know we spoke
7 with several other detectives at the scene that day.

8 Q And this is Detective Crocker in the courtroom,
9 is it not?

10 A Yes, sir. He's in the courtroom today.

11 Q And he relayed to you general information about
12 the case, which you relied upon in terms of your
13 investigation and the conclusions you reached, a
14 combination of both of those?

15 A No, sir. His information has no correlation to
16 the conclusions we reach in science. Science is what
17 tells us what we find.

18 Q Sure. But if you don't -- if there is no
19 correlation, why do you bother to talk to him?

20 A We basically bring forward information to them
21 that may be helpful to them as far as what we're
22 finding evidence wise on a scene.

23 You have to understand, initially we don't allow
24 anybody else in the scene until we've documented it.

25 Q So I thought you were telling me that the

PETER CESTARE - CROSS-EXAMINATION

1 detectives had conveyed certain information to you, and
2 then you began to undertake your work?

3 A They did from a standpoint of name and so forth
4 of who the victim was.

5 Q But not any evidentiary type of stuff about this
6 happened, this happened?

7 A No, sir.

8 Q To give you sort of an over -- again, an
9 overview, and that's it?

10 A No, sir. Evidence in the scene or in the
11 residence was our determination to make, and then to
12 bring that information forward to the detectives.

13 Q Did the detectives ever tell you that certain
14 witnesses made certain statements?

15 A Not that I can recall, no, sir.

16 Q And is that unusual, or is that something that
17 you generally don't rely on?

18 A That has no bearing on what I do.

19 Q And you don't have any interest in it, really?

20 A No, sir. Any investigation involves two
21 entities, the science side of it and the investigative
22 side of it.

23 Q Okay.

24 MR. DIGGS: Thank you. That is all.

25

PETER CESTARE - REDIRECT EXAMINATION

REDIRECT-EXAMINATION

1

2

BY MR. DeBUSK:

3

Q State's 69, is this the diagram we used in the

4

PowerPoint?

5

A Yes, sir. That is the diagram from the

6

PowerPoint.

7

Q What does the last line say?

8

A "Not to scale."

9

Q So you are not trying to hide that, are you?

10

A No, sir. We did not do complete measurement

11

calculations of the entire house, it is just to show an

12

overview of what the house would look like.

13

Q To orient the jury. And used in combination with

14

the crime scene photos, is that an effective way to

15

present --

16

A Yes, sir. The photos are an accurate version of

17

what we saw that day, and it kind of sets the basis for

18

how we do a drawing or a sketch of an incident

19

location, in this case [REDACTED] Dew Lane.

20

MR. DeBUSK: Thank you. Your Honor, we move to

21

have him released from the subpoena.

22

MR. DIGGS: I don't think we have any objection.

23

THE COURT: You are released from your subpoena.

24

Please raise the screen, if you would, Tammy.

25

MR. DeBUSK: State calls Amy Stephens, South

AMY STEPHENS - DIRECT EXAMINATION

1 Carolina Law Enforcement Division.

2 (AMY STEPHENS, having been duly sworn, testified as
3 follows:)

4 THE CLERK: State your name and spell your last
5 name for the Court.

6 THE WITNESS: Amy Elizabeth Stephens,
7 S-T-E-P-H-E-N-S.

8 DIRECT-EXAMINATION

9 BY MR. DeBUSK:

10 Q Who is your employer?

11 A South Carolina Law Enforcement Division, also
12 known as SLED.

13 Q How long have you been with them?

14 A Approximately eight years.

15 Q What are your duties?

16 A I work in the evidence control department as a
17 forensic technician. Our daily responsibilities are to
18 log in, package and transfer evidence for forensic
19 analysis.

20 Q I take it you handle a lot of evidence?

21 A Yes, I do.

22 Q You would have no way of recognizing this by just
23 remembering, would you (indicates)?

24 A No.

25 Q Do you keep records?

AMY STEPHENS - DIRECT EXAMINATION

1 A We do.

2 Q Do you mark evidence?

3 A We do.

4 Q If I show you these items in this package and ask
5 if you recognize these, how would you recognize it?

6 A The SLED lab number on the label on this physical
7 piece of evidence corresponds with the chain of custody
8 for this case.

9 Q And specifically three items in the plastic bag,
10 did you receive those in the course of your duties?

11 A Yes, I did.

12 Q And when and from whom did you receive those?

13 A I received these items on September 26, 2008 at
14 10:35 a.m. from Robert Deal with the Horry County
15 Police Department.

16 Q What did you do with them?

17 A When I receive them, I would have placed them in
18 this envelope here, logged the information into our
19 computer system and affixed this label to the outside
20 of the document documenting the lab number assigned to
21 this case.

22 Q Since you've identified that envelope, let's get
23 it marked.

24 (State's Exhibit 100 marked.)

25 MR. DIGGS: That is just the envelope?

AMY STEPHENS - DIRECT EXAMINATION

1 MR. DeBUSK: Yes.

2 THE COURT: Are you offering it?

3 MR. DeBUSK: Yes.

4 MR. DIGGS: No objection.

5 THE COURT: Okay. Without objection, 100.

6 (State's Exhibit 100 was admitted.)

7 Q (MR. DeBUSK) What did you do with these after you
8 logged them?

9 A I transferred them to the firearm intake storage
10 area, evidence room.

11 Q For whose attention?

12 A Whoever is assigned to the case, and in this
13 particular case it was David Black of the firearms
14 department.

15 Q Did you receive it back at some point?

16 A I returned it out of the firearms intake and
17 physically transferred it to David Black; after that, I
18 had no contact with it.

19 Q Let me ask about the two envelopes in front of
20 you, State's Exhibits 97 and 98. What are those?

21 A They appear to be -- they are related to SLED Lab
22 No. 814598, Item No. 1.1 and 2.1.

23 Q When you see a number like that, 1.1 and 2.1,
24 what does that mean?

25 A It is a subitem. It is basically a piece of

AMY STEPHENS - CROSS-EXAMINATION

1 evidence taken from the parent item that is submitted
2 to us from the submitting agency.

3 Q But 2.1 and 1.1 did not exist when you gave it to
4 firearms?

5 A Correct.

6 Q Did you alter those items or change them in any
7 way while they were in your custody?

8 A No, I did not.

9 MR. DeBUSK: Thank you. Answer any questions Mr.
10 Diggs may have.

11 CROSS-EXAMINATION

12 BY MR. DIGGS:

13 Q You got the packet from whom?

14 A Robert Deal with the Horry County Police
15 Department.

16 Q And you don't know where he got it?

17 A No, sir.

18 MR. DeBUSK: We ask that she be released from her
19 subpoena.

20 THE COURT: Any objections?

21 MR. DIGGS: No, sir.

22 THE COURT: You are released. Thank you.

23 MR. DeBUSK: Frank Knight.

24 (FRANCIS (FRANK) KNIGHT, having been duly sworn,
25 testified as follows:)

FRANCIS (FRANK) KNIGHT - DIRECT EXAMINATION

1 THE CLERK: State your name and spell your last
2 name for the record.

3 THE WITNESS: Frank Knight, K-N-I-G-H-T -- Francis
4 Marion Knight, Junior, K-N-I-G-H-T.

5 DIRECT-EXAMINATION

6 BY MR. DeBUSK:

7 Q Who is your employer?

8 A Grand Strand Regional Medical Center.

9 Q What are your duties?

10 A Imaging service director.

11 Q Do you help maintain the records of images taken
12 at Grand Strand?

13 A Yes.

14 Q That includes x-rays?

15 A Yes.

16 Q Let me show you what is marked as State's
17 Exhibits 93, 94 and 95. I'll ask if you can recognize
18 these?

19 A Yes, I do.

20 Q What allows you to recognize those?

21 A Speaking with a radiologist, Dr. Fortman, I think
22 he's the one that read these radiographs.

23 Q Were they maintained in the records of Grand
24 Strand Regional Center?

25 A Yes.

FRANCIS (FRANK) KNIGHT - DIRECT EXAMINATION

1 Q Do you know when they were taken?

2 A I do not right offhand, no.

3 Q Do you know who ordered them?

4 A Dr. Proctor, I believe, pathologist.

5 Q So these are images that were taken by Grand
6 Strand, stored at Grand Strand, and taken at the
7 request of Dr. Proctor of whom?

8 A I'm sorry?

9 Q Who was the patient?

10 A I'm not sure. I don't know the name.

11 Q Okay.

12 A Is the name on here? Elliott, Kelly Joe Elliott.

13 Q That is part of the records of --

14 A Correct.

15 Q So those are images of Kelly Joe Elliott ordered
16 by Dr. Proctor?

17 A Yes.

18 Q Thank you.

19 Let me ask you, there is a date where it says
20 "portable skull" of the top item, is that the date the
21 images were taken?

22 A Yes, that is correct.

23 Q What is that?

24 A 9/15/2008.

25 Q September 15, 2008?

FRANCIS (FRANK) KNIGHT - CROSS-EXAMINATION

1 A Yes.

2 MR. DeBUSK: I believe these are in evidence.

3 Answer any questions defense might have.

4 CROSS-EXAMINATION

5 BY MR. DIGGS:

6 Q Mr. Knight, did you have any involvement with
7 these particular images at any point prior to this
8 morning?

9 A I did not. I did not have any involvement, no.

10 Q When was the first time you saw them?

11 A About two weeks ago.

12 Q Okay. And what was the purpose for looking at
13 them at that time?

14 A The solicitor's office came by and spoke to us,
15 and that is when I looked at them with the radiologist.

16 Q What did they ask you to do?

17 A Possibly explain the process of how the images
18 are taken at the hospital and kept and stored.

19 Q Who did take those images?

20 A One of the technologists.

21 Q Is that done during the autopsy, or when is that
22 done?

23 A During the autopsy. The pathologist will request
24 the films we take, and they go and take the x-rays.

25 Q So Dr. Proctor asked that those two images be

FRANCIS (FRANK) KNIGHT - REDIRECT EXAMINATION

1 taken in this particular case?

2 A Correct.

3 Q And the obvious reason -- and I don't want you to
4 speculate -- would be because these two images show
5 projectiles or bullet in some fashion?

6 A I don't know.

7 Q All right.

8 MR. DIGGS: Mr. Knight, I appreciate it, but I
9 don't think I have any additional questions for you at
10 this time.

11 MR. DeBUSK: Just one.

12 REDIRECT-EXAMINATION

13 BY MR. DeBUSK:

14 Q You are the custodian of the images?

15 A That's right.

16 Q Did you take the images?

17 A No.

18 MR. DeBUSK: We ask him to be excused.

19 THE COURT: You are excused.

20 MR. DeBUSK: State calls Detective Alan Jones of
21 the Horry County police department. Alan Jones.

22 (ALAN JONES, having been duly sworn, testified as
23 follows:)

24 THE CLERK: State your name and spell your last
25 name for the Court.

FRANCIS (FRANK) KNIGHT - REDIRECT EXAMINATION

1 THE WITNESS: Alan Jones, J-O-N-E-S.

2 DIRECT-EXAMINATION

3 BY MR. DeBUSK:

4 Q Who is your employer?

5 A I am employed with Horry County Police
6 Department.

7 Q How long have you been with them?

8 A Approximately 13 years.

9 Q What is the nature of your work at this time?

10 A At this time, I'm assigned to the narcotics unit
11 as a detective.

12 Q How about back in March of 2011?

13 A March of 2011, I was a detective with the violent
14 crimes unit.

15 Q Were you involved in the investigation of the
16 death of Kelly Joe Elliott?

17 A Yes, I was.

18 Q In the course of your work in that case, did you
19 encounter the defendant, Brad Mullins?

20 A Yes.

21 Q Where did you locate him?

22 A I traveled up to the Red Onion City in Virginia.

23 Q What is the name of the city?

24 MR. DIGGS: Can we approach for a second?

25 THE COURT: Yes.

ALAN JONES - DIRECT EXAMINATION

1 (Whereupon, a bench conference was had.)

2 Q (MR. DeBUSK) What was the name of the town where
3 you saw --

4 A The name of the town was Red Onion.

5 Q You went to Red Onion, Virginia. What did you do
6 with Mr. --

7 A I interviewed him there in relation to the Kelly
8 Joe Elliott homicide.

9 Q Why did you do that?

10 A We received information that he was a suspect --

11 Q You received information by others?

12 A Yes, sir.

13 Q And based on the information of others, that is
14 why --

15 A Yes, sir. That is correct.

16 Q Before you interviewed him, did you inform him of
17 his Miranda legal rights?

18 A Yes, sir. I advised him of his legal Miranda
19 rights.

20 Q How do you do that normally? Do you read them
21 off of a form?

22 A We have a form that we read it off.

23 Q Were you able to have him sign the form at this
24 location?

25 A No, sir. I did not have the ability to do that

ALAN JONES - DIRECT EXAMINATION

1 at that time.

2 Q Were you able to record it at that time?

3 A No, sir. At that point in time, we were not able
4 to use any type of recording device.

5 Q But you did inform him of his rights?

6 A Yes, sir. Correct.

7 Q Did he appear to understand?

8 A Yes.

9 Q Did you threaten or coerce him to get a statement
10 from him?

11 A No, sir.

12 Q Did you deprive him of anything that he wanted,
13 drinks, rest, anything like that?

14 A No, sir, not at all.

15 Q Did you offer any reward if he made a statement?

16 A No, sir.

17 Q Did he appear to be under the influence of drugs
18 or alcohol or anything during the interviews?

19 A No, sir, he did not appear to be under the
20 influence of any type of drugs or alcohol.

21 Q Did he appear to be willing and of sound mind?

22 A Correct.

23 Q How long did you interview him for?

24 A The interview lasted approximately 15, 20
25 minutes.

ALAN JONES - DIRECT EXAMINATION

1 Q Did you bring up the name of "Kelly Joe Elliott"?

2 A Yes, I did.

3 Q Okay.

4 A The interview started off, you know, advising who
5 I was and where I was from and that I was assigned to
6 the homicide investigation unit.

7 Q Did you ask him if he knew Kelly Joe Elliott?

8 A I did. I asked Mr. Mullins if he was familiar
9 with Kelly Joe Elliott, and he advised me that at
10 sometime in the past he rented a residence from
11 Mr. Elliott.

12 Q Did he say where that residence was?

13 A Yeah, it was in Horry County. I further advised
14 him I was there investigating the death of Mr. Elliott,
15 at which time I could physically see Mr. Mullins' heart
16 beating in his shirt.

17 Q So you are saying his demeanor changed?

18 A Yes, sir. And you could see physically his heart
19 beating harder.

20 Q What happened next?

21 A Mr. Mullins requested counsel.

22 Q Did you continue to question him?

23 A No.

24 Q Did you terminate the interview?

25 A Yes, sir, I did.

ALAN JONES - CROSS-EXAMINATION

1 Q Thank you?

2 MR. DeBUSK: Answer any questions defense may have.

3 CROSS-EXAMINATION

4 BY MR. DIGGS:

5 Q Now, do you have the report that you wrote about
6 this interview?

7 A My standard report is a case activity report
8 written. I type it up when it takes place.

9 Q Do you have access to it?

10 A Yes, I do.

11 Q In front of you? Can you pull it up and read it?

12 A I have it in my back pocket.

13 Q Not the whole report, but I want to look at your
14 statement, your comment about the heart beating. Tell
15 us what you said specifically?

16 A In my report of investigation, specifically
17 written in here, Upon advising Bradley we're
18 investigating Mr. Elliott's death, I could visibly see
19 Bradley's heart beating.

20 Q That is the extent of it?

21 A Yes, sir.

22 Q That is what you chose to put in your report at
23 that time when interviewing my client?

24 A Yes, sir.

25 Q You noticed his heart beating?

ALAN JONES - CROSS-EXAMINATION

1 A Yes, sir.

2 Q Now, have you ever been accused of murder?

3 A No, sir.

4 Q But don't you imagine, or is it pretty common,
5 when you speak to defendants and approach a subject of
6 a murder, potential defendants, they become -- the
7 heart speeds up a little bit?

8 A I would assume it would.

9 Q I mean, that's something that is going to get
10 your attention and your excitement peaked, isn't it,
11 your interest?

12 A It would to most people, I would assume.

13 Q That is going to -- anyone, that you, being a
14 detective and working for the police force, you go in
15 and accuse them of being -- investigating them for a
16 murder, that is going to cause their heart to beat and
17 raise? It is not uncommon, you agree?

18 A Yeah. In certain situations, yes. I've seen it
19 affect different people differently.

20 Q And so did you offer that observation for its
21 evidentiary value?

22 A I offered that observation because during the
23 course of the interview with Mr. Mullins, I didn't
24 physically see that until I said that we were
25 specifically there for the investigation of

ALAN JONES - CROSS-EXAMINATION

1 Mr. Elliott's death.

2 Q And that was the first time that he -- it
3 occurred to him, Wait a minute, this man is
4 investigating me for a murder; wouldn't that be fair to
5 say?

6 A Yeah. Because if I recall correctly, at the time
7 I actually said that he was a suspect in the murder,
8 and that is why I was there to speak with him.

9 Q That didn't cause his heart to race?

10 A Yes, sir. That is when I actually saw --
11 physically saw it.

12 Q So when he learned that information, that is when
13 you noticed the increase in the heart rate?

14 A Yes. When I advised him I was there because he
15 was a suspect of a homicide, I could physically see his
16 heart beating.

17 Q And that would -- that is not necessarily
18 indicative of guilt, wouldn't you agree? That is
19 indicative of a flight-or-fight stimulus?

20 A Yes, sir.

21 MR. DIGGS: I think that is all I have.

22 REDIRECT-EXAMINATION

23 BY MR. DeBUSK:

24 Q If you had nothing to do with a murder, do you
25 think that would make your heart --

ALAN JONES - CROSS-EXAMINATION

1 A I have never seen it in someone that didn't have
2 some type of guilt or guilty conscious.

3 MR. DeBUSK: Thank you. We ask that Detective
4 Jones be excused.

5 MR. DIGGS: We may need him, and I don't want to
6 release him.

7 MR. DeBUSK: We won't release him.

8 MR. DIGGS: If he can just be available.

9 MR. DeBUSK: Is he remaining sequestered
10 or --

11 THE COURT: He'll remain sequestered. You may step
12 down.

13 MR. DeBUSK: May we approach for scheduling?

14 THE COURT: Yes.

15 (Whereupon, a bench conference was had.)

16 MR. HUCKS: At this time the State calls Delilah
17 Mullins to the stand.

18 (A brief pause in the proceedings.)

19 MR. HUCKS: May we take a five-minute recess just
20 to be able to grab the witness?

21 THE COURT: All right.

22 (The jury exits at 11:39 a.m., and a recess is
23 taken.)

24 (The jury enters at 11:55 a.m., and the following
25 is heard in the presence of the jury.)

DELILAH MULLINS - DIRECT EXAMINATION

1 THE COURT: All right. Mr. Hucks.

2 MR. HUCKS: We call Delilah Mullins to the stand.

3 (DELILAH MULLINS, having been duly sworn, testified
4 as follows:)

5 THE CLERK: State your name and spell your last
6 name for the record.

7 THE WITNESS: Delilah Mullins, M-U-L-L-I-N-S.

8 MR. HUCKS: You are soft spoken.

9 DIRECT-EXAMINATION

10 BY MR. HUCKS:

11 Q What do you do for a living, Delilah?

12 A I waitress.

13 Q Where do you waitress?

14 A Orangeland Seafood, Florence, South Carolina.

15 Q So you live about an hour from here?

16 A Yeah, somewhere in there.

17 Q I'm going to ask you a bunch of stuff, because
18 you are kind of the person I need to talk with about
19 some stuff. I don't want you to be uncomfortable. If
20 you don't know, just say you don't know. How are you
21 related to Brad Mullins?

22 A I was married to -- I'm still married to Charles
23 Mullins.

24 Q I'll give you a list of names and tell me how you
25 are related to each of these. I want to try to line it

DELILAH MULLINS - DIRECT EXAMINATION

1 up as well as I can. Who is Charles Mullins, Senior?

2 A It is my husband.

3 Q How is he related to Brad?

4 A It is his brother's son.

5 Q So Brad is his nephew?

6 A Yes.

7 Q And who is Charles Mullins, Junior?

8 A It is his son.

9 Q And that is your?

10 A Husband's -- my stepson.

11 Q How about Arlie Mullins?

12 A It is his nephew as well.

13 Q So how about Anthony Ray?

14 A It is his nephew as well.

15 Q So would you consider your family -- or that
16 family -- you and Charles are separated now?

17 A We are.

18 Q But would you consider that family a close-knit
19 family?

20 A Oh, yeah. Tight.

21 Q What do you mean, "Oh, yeah"?

22 A They are tight.

23 Q What is the Mullins clan -- I'll call them the
24 "Mullins clan," it is easier, what does the Mullins
25 clan do for a living?

DELILAH MULLINS - DIRECT EXAMINATION

1 MR. DIGGS: I object.

2 THE COURT: Call it the "Mullins family."

3 MR. DIGGS: And casting the whole character of the
4 family into question, I would object to that line of
5 questioning and characterization.

6 THE COURT: Well, I don't know where he's going
7 yet. So far he's identified them as a family.

8 Q (MR. HUCKS) This whole crowd works together?

9 A Absolutely.

10 Q They spend a lot of time together?

11 A Yes, sir.

12 Q What does the crowd that hangs around and spends
13 a lot of time together do for a living?

14 A Construction.

15 Q Now, is that how you came into acquaintance with
16 Brad Mullins? Is that how you got to know him, through
17 your husband, Charles?

18 A Through the marriage of him, yes.

19 Q What does everyone call Charles Senior?

20 A Moon.

21 Q So if I call him "Moon," you feel comfortable
22 talking about him --

23 A Yes.

24 Q So if the jury hears us talking about "Moon," I'm
25 talking about who?

DELILAH MULLINS - DIRECT EXAMINATION

1 A Charles.

2 Q That is your husband?

3 A Yeah, my husband.

4 Q Estranged husband, you are separated?

5 A Yes, sir.

6 Q Where did you live on or about September 11,

7 2008? Did you live in Horry County?

8 A I did.

9 Q Do you know the address of where you lived?

10 A [REDACTED] Johnson Brothers Road.

11 Q That is within the confines of this county?

12 A It is Aynor.

13 Q I'll show you what is marked as State's 5. Do
14 you recognize that?

15 A That is my house -- or used to be my house.

16 Q That is where you lived in 2008?

17 A Yes, sir.

18 Q Who lived there with you?

19 A My husband, me and my children and Allen Ray.

20 Q How many children do you have?

21 A Five.

22 Q And one on the way?

23 A Actually, I have more than that, but with Charles
24 I have five.

25 Q With Charles you have five. How many total do

DELILAH MULLINS - DIRECT EXAMINATION

1 you have?

2 A This is nine.

3 Q Wow. You recognize that as the residence you
4 were in 2008?

5 A I do.

6 MR. HUCKS: The State would move State's Exhibit 5
7 into evidence?

8 THE COURT: Mr. Diggs?

9 MR. DIGGS: No objection.

10 THE COURT: Without objection, 5.

11 (State's Exhibit 5 was admitted.)

12 Q (MR. HUCKS) Did you ever have an occasion -- you
13 say this family is close knit, did you ever have an
14 occasion to overhear or speak with Brad Mullins about
15 what happened on or about September 11, 2008?

16 A I did.

17 Q And how did that come about? What -- tell us the
18 environment in which you heard him say something?

19 A We were having a cookout, the family. There was
20 several of us.

21 Q Would that cookout have been at this house?

22 A Yes, sir.

23 Q All right.

24 MR. HUCKS: I'll request to publish the evidence,
25 State's 5?

DELILAH MULLINS - DIRECT EXAMINATION

1 THE COURT: You may.

2 Q (MR. HUCKS) Spin this way for me. The jury can't
3 quite see it. It is a little small. I should have
4 blown it up. What is this area here?

5 A Where we had the picnic tables.

6 Q What is it?

7 A This is my carport.

8 Q What was under the carport?

9 A The picnic tables.

10 Q And when you had family gatherings, where did
11 everyone sit?

12 A At the picnic tables.

13 Q What would you do when the family came over?
14 What was your deal? What did you do when all of the
15 people came over?

16 A Cooked and cleaned, dishes, wait on everybody.

17 Q Wow. Now, when you were having a cookout, what
18 we're about to talk about, would it have happened under
19 this carport here?

20 A Yes, sir.

21 Q Now, I'll publish this to the jury so they can
22 see what we're talking about. So you are having a
23 cookout. What happens at the cookout? You are
24 cleaning and cooking and bringing stuff out, what
25 happens? What do you overhear?

DELILAH MULLINS - DIRECT EXAMINATION

1 A Um...

2 Q Give us details. I know it was a long time ago.

3 A It has. Sorry.

4 Q Who is sitting around this picnic table?

5 A There's Brad, there's Anthony, there's -- there's
6 Brad, Anthony, Robin, Robin's daughter.

7 Q Who is Robin and Robin's daughter?

8 A Robin was a lady that Brad was dating.

9 Q And her daughter?

10 A And her daughter.

11 Q Who else?

12 A There was Arlie, Charles Junior, Charles, there
13 was Thomas, there was Bubba or Jason. I'm sorry, there
14 was several.

15 Q That is a pile of Mullins.

16 A It is.

17 Q What, if anything, did you hear Brad Mullins say
18 around that table? I know you are nervous, just
19 breathe.

20 A I am. That they had went to a house.

21 Q Who went to a house? Who did he say?

22 A That him, Little Charlie, which is Charles
23 Junior, Arlie and Anthony went to a house to rob it.
24 The man wasn't supposed to be there. The man ended up
25 being there. Him and Anthony had went in, and during

DELILAH MULLINS - DIRECT EXAMINATION

1 robbing the house --

2 Q Who and Anthony?

3 A Brad and Anthony.

4 Q Went into where?

5 A Into the home. During robbing the home, the man
6 woke up, and after being woke up, started shooting.

7 Q What was he wearing? What did he say the man was
8 wearing?

9 MR. DIGGS: Your Honor, I object to what they said.
10 Listen, she has to be -- my client has to be --

11 THE COURT: Wait a minute. Let's take the jury
12 out. Take the jury out.

13 (The jury exits at 12:06 p.m., and the following is
14 heard out of the presence of the jury.)

15 THE COURT: All right.

16 MR. DIGGS: We object to hearsay. She can't
17 testify to what they said, and the only thing that she
18 can testify to is what supposedly my client said that
19 she heard.

20 THE COURT: I think that you are correct. I
21 believe that Rule 801 contains an exception for
22 statements made by a party. I believe that anything
23 she heard him say would be admissible, not only
24 Rule 801, but also under Rule 803 -- excuse me, 804,
25 possibly, depending on what she may say, is a statement

DELILAH MULLINS - DIRECT EXAMINATION

1 against -- I think under either rule on what she heard
2 him say, 804 if it is against his interest, or 801 if
3 it is his statement, a statement that she heard him
4 say. I believe that Mr. Diggs' objection is well
5 taken, if the objection is against something someone
6 else said.

7 MR. DIGGS: Correct. That is the objection. What
8 the State is trying to do is wrap all of this crowd
9 together and whatever statements that were made by
10 anyone in that crowd be attributable to my client,
11 which I would submit is improper.

12 THE COURT: I think he probably could do that if he
13 were to show where he had adopted it as his own or made
14 by a person authorized by him to make a direct
15 statement.

16 MR. HUCKS: My question was what exactly did you
17 hear Brad Mullins say out of his mouth.

18 MR. DIGGS: Your question was, What did they say.

19 THE COURT: All right. Well, we understand the
20 rule, right? We understand that 801 and 803?

21 MR. HUCKS: Yes, sir.

22 THE COURT: Bring the jury in.

23 I would add that 804 is applicable when the
24 claimant would not be available for trial, one of those
25 exceptions is where he could not be required to

DELILAH MULLINS - DIRECT EXAMINATION

1 testify, okay..

2 (The jury enters at 12:11 p.m., and the following
3 is heard in the presence of the jury.)

4 THE COURT: Go ahead.

5 Q (MR. HUCKS) Delilah, I'll get back to it. Just
6 take a deep breath. I know it is nerve racking. It
7 will be okay, I promise.

8 What exactly, just to clarify for purposes of the
9 record, just to clarify, what exactly -- and you may
10 have to go back a little in your testimony -- what
11 exactly did you hear Brad Mullins say happened on or
12 about September 11, 2008? What did you hear him say?

13 A That him and Anthony, Arlie and Charles Junior
14 had went to a house to rob it. Little Charlie and
15 Arlie dropped them off. They went into the house to
16 rob it. The man wasn't supposed to be there. During
17 robbing it, Anthony fired and missed when the man woke
18 up shooting, and then Brad, therefore, took place and
19 killed him.

20 Q Did Brad tell you or say what the man was
21 wearing?

22 A He didn't. None of that.

23 Q Now, did he say what they did from there?

24 A No, sir.

25 Q You don't remember, or he didn't say?

DELILAH MULLINS - DIRECT EXAMINATION

1 A No, sir.

2 Q I'm going to come over here one more time. What
3 were you doing while he was saying all of this? What
4 were you doing?

5 A I was actually back here at the grill cooking.

6 Q Were you a part of this conversation, or you just
7 overheard him say it?

8 A I guess I could -- you could say I was a part of
9 it.

10 MR. DIGGS: Objection. What she guesses, I would
11 object to characterization, the speculative nature of
12 her testimony, and move to strike it.

13 THE COURT: Reask the question.

14 Q (MR. HUCKS) Were you actually participating in this
15 conversation, or just overhearing this conversation?
16 Were you saying things too, or --

17 A I was hearing the conversation.

18 Q That is a fair answer. Okay.

19 MR. HUCKS: Nothing further.

20 CROSS-EXAMINATION

21 BY MR. DIGGS:

22 Q You are married to Moon Mullins?

23 A Yes, sir.

24 Q He has a son named Charles?

25 A Yes.

DELILAH MULLINS - CROSS EXAMINATION

1 Q And Moon beats you, doesn't he? I don't want to
2 embarrass you, but didn't he beat you?

3 A He did.

4 Q And that is one of the reasons you are separated
5 from him?

6 A It is.

7 Q And isn't his son charged with this murder?

8 A I have no knowledge.

9 Q All right. Well, have you ever talked to anybody
10 about it?

11 A I do not.

12 Q Okay. Has Moon ever told you what to say?

13 A He has not..

14 Q Are you -- do you have any fear of him if you
15 testified in a way that did anything but exonerate his
16 son?

17 A I'm misunderstanding that one.

18 Q Are you afraid of what Moon, your husband, would
19 do to you if you testified against his son?

20 A Yes, sir.

21 Q Isn't your grill located on the back porch,
22 behind your porch?

23 A It was.

24 Q It was at that time, too, wasn't it?

25 A Yes, sir.

DELILAH MULLINS - CROSS EXAMINATION

1 Q And you were at the grill, grilling?

2 A Yes, sir.

3 Q And where did you say this conference took place?

4 A At the picnic table.

5 Q Picnic tables located where?

6 A Right by the deck.

7 Q In the back?

8 A Uh-huh, in the carport.

9 Q Because when I was looking at the picture that
10 you were testifying about, that appeared to be from the
11 front of the house; do you follow me?

12 A They are connected. If you peek around the
13 corner, they are connected, I promise.

14 Q You mean the front and the back?

15 A I mean you can look right around the corner and
16 it is right there. Everything was right there.

17 Q Now, on this occasion, approximately what was the
18 time frame that this conversation allegedly took place?
19 When did it take place?

20 A Right before they went to -- it was after the
21 hurricane in September, because they were actually
22 fixing to be on their way for the hurricane.

23 Q All right. So you heard my client relay in
24 detail, up to the point of who did what, tell the
25 entire family about how this murder had occurred?

DELILAH MULLINS - CROSS EXAMINATION

1 A I did.

2 Q And, again, let me ask you, in connection with a
3 time line, when did you hear this conversation take
4 place?

5 A Right after the hurricane in September.

6 Q All right. In relation to the murder?

7 A What was the question again?

8 Q How long after the murder did this conversation
9 take place?

10 A I don't understand the question, I'm sorry.

11 Q Okay. Now, did there come a time when everybody,
12 or most of the individuals in that group, left to go to
13 Louisiana to do construction work?

14 A Yes, they did.

15 Q Do you remember when that was?

16 A It was right after the cookout. It was in
17 September.

18 Q So, now, can you tell me when the conversation
19 took place about the murder where they discussed it and
20 where Mr. Mullins discussed all of the details about
21 the murder in your presence?

22 A It was in September right after the hurricane.

23 Q How many cookouts did you attend there at your
24 house during that time frame wherein all of the family
25 or most of the family members were present?

DELILAH MULLINS - CROSS EXAMINATION

1 A Several.

2 Q Several of them. This was a cookout that took
3 place, obviously, after the murder?

4 A Obviously, yes.

5 Q But before they went to Louisiana?

6 A Yes, sir. This was right before Louisiana.

7 Q Is your husband here today?

8 A I'm unaware.

9 Q You don't know?

10 A I don't know.

11 Q Now, when you were at -- let me back up. You
12 were interviewed by some police officers?

13 A I was.

14 Q And you went to the police to report this, did
15 you not?

16 A I did.

17 Q And that was on March 24th of 2011?

18 A Yes, sir.

19 Q You went down to the Pamplico Police Department,
20 and that is when you started to tell this story?

21 A Yes, sir.

22 Q You are talking about -- you went down there to
23 tell them about a conversation you heard in September
24 of 2008?

25 A Yes, sir.

DELILAH MULLINS - CROSS EXAMINATION

1 Q Concerning a murder?

2 A Yes, sir.

3 Q Why did it take you that long from 2008, nine,
4 ten, 11 -- two-and-a-half years to decide to go and
5 talk to somebody about it?

6 A Because once you are in with the family, you are
7 pretty much like being monitored. The family is a
8 little bit crazy -- not a little bit, but a whole lot,
9 so once you are in the family, you are stuck.

10 Q Didn't you tell those officers that you got your
11 information from Anthony Ray's wife, Latonya?

12 A Yes, sir. She did call on an occasion one time,
13 yes, she did.

14 Q So what you are telling -- let me back up.
15 Didn't you do more than just calling? Didn't you tell
16 the officers, quote, Anthony Ray's wife, Latonya, gave
17 me this information about the murder?

18 A Yes, sir.

19 Q Now, that was, roughly, when you went to the
20 police?

21 A Yes, sir.

22 Q So you learned about the murder on two occasions?

23 A Yes, sir.

24 Q One, when you heard it from my client's mouth,
25 and then later when you decided to go to the police

DELILAH MULLINS - CROSS EXAMINATION

1 after Latonya, who is Anthony Ray's wife, told you
2 about it?

3 A Yes, sir.

4 Q During that interview, you also showed the
5 officers, what, bruises where your husband had beaten
6 you?

7 A Yes, sir.

8 MR. DIGGS: I beg the Court's indulgence just a
9 moment.

10 (A brief pause in the proceedings.)

11 MR. DIGGS: I appreciate it. That is all I have at
12 this time.

13 MR. HUCKS: Nothing further.

14 THE COURT: Ms. Mullins, you may step down.

15 MR. HUCKS: We ask that she be released from her
16 subpoena.

17 MR. DIGGS: No objection.

18 THE COURT: Without objection, you are free to go.

19 MR. HUCKS: May we approach?

20 THE COURT: Yes.

21 (Whereupon, a bench conference was had.)

22 THE COURT: Ladies and gentlemen, we're going to
23 take lunch now and give you a little longer than what
24 we normally do, but I'll ask you to be back in your
25 jury room at 2 o'clock. Thank you. That is a little

DELILAH MULLINS - CROSS EXAMINATION

1 over an hour.

2 (The jury exits at 12:23 p.m., and the following is
3 heard out of the presence of the jury.)

4 THE COURT: We're at ease until 2 o'clock. Thank
5 you.

6 (Whereupon, a lunch recess was taken.)

7 THE COURT: Are we ready?

8 MR. DeBUSK: Yes, sir.

9 THE COURT: Bring in the jury if they are ready.

10 (The jury enters at 2:02 p.m., and the following is
11 heard in the presence of the jury.)

12 THE COURT: We have our jurors and alternates back.
13 Mr. Hucks, Mr. DeBusk, call your next witness.

14 MR. DeBUSK: State calls David Black.

15 (DAVID BLACK, having been duly sworn, testified as
16 follows:)

17 THE CLERK: State your name and spell your last
18 name for the Court.

19 THE WITNESS: Yes, ma'am. My name is David Warren
20 Black, last name is B-L-A-C-K.

21 DIRECT-EXAMINATION

22 BY MR. DeBUSK:

23 Q Where do you work now, Mr. Black?

24 A I retired with 30 years of law enforcement. My
25 last assignment was with the State Law Enforcement

DAVID BLACK - DIRECT EXAMINATION

1 Division. I'm currently employed with a UPS store in
2 Lexington, South Carolina.

3 Q Before you retired, you were with SLED. What was
4 your position at SLED?

5 A I held -- I was a senior agent at SLED. I spent
6 16 years in the Latent Print Crime Scene Department as
7 a latent print examiner, crime scene investigator. I
8 then spent over six years in the firearms and tool mark
9 department as a firearms examiner.

10 Q Could you tell the jury about your training and
11 experience in the area of specifically firearms
12 identification?

13 A Yes, sir. As little I stated earlier, I had 16
14 years as a latent print examiner and crime scene
15 investigator reconstructionist. In that time period, I
16 became very familiar with firearms, how they function,
17 how they operate working the various crime scenes and
18 evidence that I had to process for latent prints. I
19 became very similar with ammunition and ammunition
20 components from the different crime scenes I had to
21 work, specifically in that transition made into a
22 firearms examiner.

23 At SLED, there is an in-house, three-year training
24 program. During that three-year training program, at
25 least 50 percent of the time is spent on a comparison

DAVID BLACK - DIRECT EXAMINATION

1 microscope. The comparison microscope is used to
2 actually examine the marks, the striations on the fired
3 bullets and fired shot shells.

4 Also during that three-year period I'm working
5 cases under the guidance of a court qualified tenure
6 firearms examiner. Also during the three years I'm
7 taking various subjects, each subject matter is broken
8 down. At the end of each subject area, you have to
9 take a written test, a practical test and an oral test.
10 At the end of the three years, you do an accumulative
11 testing, both oral, written and practical exams.

12 Also during that time period you go through various
13 courtroom testimonies where that examiner is with you,
14 because every case you work at SLED, it is also
15 verified by another examiner, and that examiner will go
16 with you to court to insure that you do the proper job
17 while in court.

18 Also, I went to several different schools, armor
19 schools with Smith and Wesson, with Glock, High Point,
20 Remington and Colt. I've been to different
21 manufacturers to see firearms made, ammunition made.
22 I've been to schools with the FBI and ATF with serial
23 number restoration, working with the IB system, which
24 is a computer system, dealing with the identification
25 of fired bullets and cartridge cases, and other schools

DAVID BLACK - DIRECT EXAMINATION

1 through the Association of Firearms and Toolmark
2 Examiners, which does various courses and seminars in
3 the area of firearms identification.

4 Q You talked a little bit about your court
5 experience. How many times have you been qualified as
6 an expert in the field of firearms identification?

7 A In firearms identification, the six -- the over
8 six years I worked firearm cases in both federal courts
9 in the United States of America and in the state courts
10 of South Carolina, 15 times.

11 MR. DeBUSK: We proffer former Agent Black as an
12 expert in firearms identification.

13 MR. DIGGS: No objection. No questions.

14 THE COURT: He is so qualified.

15 MR. DeBUSK: Thank you.

16 Q (MR. DeBUSK) Now, I'll show you three items,
17 State's 96 in evidence, State's 97 and 98 for
18 identification. I ask you to identify those.

19 A Yes, sir. State's Exhibit 96 are three fired
20 bullets, each of the fired bullets have a SLED lab
21 number of L081-4598. Each bears an individual item
22 number, Item 1, Item 2 or Item 3, and my initials,
23 D-W-B. State's Exhibit for Identification 97 and 98
24 are debris which I collected from respective bullets
25 that were submitted to me in this case.

DAVID BLACK - DIRECT EXAMINATION

1 Q Let me ask you, I guess all of these weren't
2 combined as a single -- the two envelopes were part of
3 the bullets where you got them; is that correct? They
4 were together with the bullets?

5 A The debris was on the respective bullets. When I
6 removed that debris from the bullet, I gave it a
7 subitem from that particular item.

8 Q And you put it into these envelopes?

9 A Yes, sir, I put it inside the envelopes.

10 Q So you created those two envelopes?

11 A Yes, I did.

12 MR. DeBUSK: We would proffer those at this time,
13 97 and 98.

14 MR. DIGGS: No objection.

15 THE COURT: Without objection, 97 and 98.

16 (State's Exhibits 97 and 98 admitted.)

17 Q (MR. DeBUSK) When did you receive the projectiles?

18 A I received the three fired bullets --

19 Q What are you consulting, so the jury knows?

20 A I'm sorry. I have a copy of my case file which
21 includes my report, the notes I've taken and it also
22 has a chain of custody report.

23 Pardon me one second. Chain of custody is in a
24 separate file.

25 I received the three fired bullets from our

DAVID BLACK - DIRECT EXAMINATION

1 evidence log-in, intake area. I specifically received
2 them from Ms. Amy Stephens, the forensic technician, on
3 October 2, 2008.

4 Q When you got the bullets, did you alter them in
5 some way to make them identifiable?

6 A Yes, sir, I did. Once I removed the bullets from
7 their sealed containers, and after I did my
8 examination, initial examination, of the bullets, using
9 a stereoscope, which is a magnifying device, I was able
10 to engrave on the bottom of each bullet, at the base of
11 the bullet, the SLED lab number that I referred to
12 earlier, their specific item number and my initials,
13 D-W-B.

14 The reason why I scribed them on the base of the
15 bullet is they are away from any identifying marks,
16 they wouldn't hamper the evidence itself.

17 Q Are these the bullets that you so marked?

18 A Yes, they are. Also, when I was finished with my
19 examination of the bullets, I put the respective
20 bullets -- I, myself -- put them in another heat-sealed
21 pouch and returned them to and sealed the tube they
22 originally came in in the pouch, which I sealed also.

23 MR. DeBUSK: Your Honor, we ask to move them into
24 evidence, if not already in evidence.

25 MR. DIGGS: I thought they were; if not, I have no

DAVID BLACK - DIRECT EXAMINATION

1 objection.

2 THE COURT: Admitted without objection.

3 Q (MR. DeBUSK) Referring to the two envelopes, what
4 conclusion did you draw?

5 A State's Exhibit 97, in my report it is Item 1.1,
6 was debris that was consistent with wood and sheetrock.
7 It was on the nose of the bullet. I reviewed that
8 debris and put it in the sealed envelope. It appeared
9 to be wood and sheetrock visually.

10 On State's Exhibit 98, which I have marked as Item
11 2.1, was debris consistent with wood collected from the
12 nose, which was my Item 2 bullet.

13 Q Let's get to the fun part. What did you do with
14 the bullets, what kind of examination?

15 A The first thing when we receive the bullet is we
16 document the condition they were in, the containers
17 that they were in, that is on my worksheets. I also
18 photographed this information for my file. Once that
19 was done, I marked them, removed any debris. I also in
20 the process, because there was -- with the use of water
21 and acetone, I was able to remove some of the debris
22 from the lands and grooves. These are the areas of the
23 bullets that would have the marks that I'm looking for
24 to conduct my examination. With the water and acetone,
25 it will not affect those marks, it will just take away

DAVID BLACK - DIRECT EXAMINATION

1 any dirt or debris that may be present.

2 Once that is done, I'll use what is called a
3 comparison microscope. A comparison microscope has two
4 eye pieces or oculars, and there is an ocular bridge
5 between the two. I can look at two items at the same
6 time and place them in the same orientation. By doing
7 this, I was able to look at each of the bullets,
8 compare them to each other, and from that comparison I
9 was able to determine that there were marks of
10 identification on each bullet. I was also able to
11 determine by comparing the bullets to each other that
12 they were all fired by the same firearm. All three
13 bullets were fired by the same firearm, they were fired
14 by one firearm.

15 Q Were you able to draw any conclusion about what
16 type of firearm that was?

17 A Yes, sir. Also part of the examination process I
18 was able to measure the base of the bullets. By using
19 a micrometer, I was able to determine a range. It is
20 not exactly -- in this case I'll use an example. It is
21 not exactly .35 inches, you'll have a range, and in
22 this case it went from .357 inches to .359 inches.

23 With that information, also with the information of
24 the weight of the bullets, and by putting some
25 information into -- by measuring with the micrometer

DAVID BLACK - DIRECT EXAMINATION

1 and measuring the width of the lands and grooves, I'm
2 able to put this information into a computer with a
3 program that is provided us by the FBI, Federal Bureau
4 of Investigation, and from that I was able to determine
5 that the bullets were consistent with bullets loaded in
6 either a .38 special and/or a .357 magnum caliber
7 cartridges. I was also able to produce the list of
8 possible firearms manufacturers that may have produced
9 those firearms that could have fired the bullets.

10 Q How narrow did you get the list?

11 A In the .38 special, there were a total of ten
12 different manufacturers. For the .357 magnum, there
13 was a total of five different manufacturers. In both
14 the .38 special and .357 magnum, there were three
15 manufacturers that made both, both the .38 special and
16 .357 magnum.

17 Q But you can't settle upon that list which
18 manufacturer specifically made the gun that fired those
19 bullets?

20 A That's correct. I would need the firearm to do
21 tests, fire the firearm and compare the test from that
22 firearm to make that determination.

23 Q So you could determine they were fired from the
24 same gun?

25 A Correct.

DAVID BLACK - DIRECT EXAMINATION

1 Q Could you determine whether it was a revolver or
2 semi-automatic?

3 A Yes, sir. In my examination, based also on some
4 structure items of the bullets that I noted, all three
5 bullets had a copper jacket, but the lead nose was
6 exposed to some degree. On two of those bullets, I
7 could see what appeared to be a hollow point cavity.
8 On the other bullet, because of the damage, I could not
9 determine that. It could either be a semi-jacket
10 hollow point or semi-jacket soft point bullet. Both of
11 these are consistent and made in those two calibers.

12 Also, the cantilever that was present on the
13 bullet, the cantilever is used to secure the bullet in
14 the cartridge case when it is seated in the hull, but
15 also in these particular rounds, when they hit a
16 object, it controls how far back that mushroom will
17 occur.

18 To me, probably the thing that was taken into
19 consideration, the weight and the size, what I did
20 notice on all three bullets on the land, where the
21 lands initially engaged the rifling in the barrel, they
22 were wider. That is consistent with being fired
23 through a rifle barrel of a revolver. The reason for
24 this, a revolver is a handgun that has a cylinder.
25 With the cylinder there are individual chambers that

DAVID BLACK - DIRECT EXAMINATION

1 contains a live round or live cartridge of ammunition.
2 When the firing pin strikes the base or the primer of
3 the cartridge and the bullet leaves the cartridge to go
4 into the barrel, before it can engage the rifling in
5 the barrel, it goes to a forcing cone. If you can
6 imagine the bullet jumping through, what is happening
7 is it is going through the forcing cone and at that
8 initial engagement of the rifling in the barrel, it's
9 catching, and because of that catching, it is causing
10 the land digging into the bullet and causing that land
11 space to widen, and that is consistent with a revolver
12 over a pistol or another firearm.

13 Q So because of the shape of the rifling on there
14 you could tell they were fired by the same gun, and
15 they are consistent with being fired by a revolver?

16 A In particular with the latter, that it was fired
17 by a revolver. The identification part has to do with
18 the striations of the marks that are individually
19 unique to each land and groove that I was able to see
20 through the comparison microscope.

21 Q So they are all fired by the same gun, consistent
22 with a revolver?

23 A Correct, and in the .38 special/.357 caliber
24 range.

25 Q These particular projectiles, are they designed

DAVID BLACK - DIRECT EXAMINATION

1 to expand upon impact to maximize...

2 A Yes, sir. The two that I mentioned, the
3 semi-jacket hollow point and the semi-jacket soft
4 point, they are designed -- whether as a hunting load
5 or defensive load -- when they strike the tissue, an
6 object, they will expand creating a larger cavity, and
7 that helps with creating more damage, opening up the
8 wound where there is more blood letting.

9 Q Thank you.

10 CROSS-EXAMINATION

11 BY MR. DIGGS:

12 Q When you looked at the debris on the bullets, the
13 two bullets that you looked at -- there were two?

14 A There were two that I took debris from, yes, sir.

15 Q You're certain there was no blood or skin or body
16 tissue connected with either of those bullets?

17 A During the examination, I did not see any blood
18 or skin or tissue on those two bullets. I did not, but
19 it was during the visual exam, that is correct.

20 Q Had any such debris had been there, do you think
21 your examination should have caught that?

22 A Yes, sir.

23 Q And so you are pretty certain that that didn't
24 exist, there was no debris from a body, a human body,
25 connected with either of those two bullets?

DAVID BLACK - CROSS-EXAMINATION

1 A With those two particular bullets that had the
2 wood and sheetrock, or appeared to be wood or
3 sheetrock, I did not see any blood or tissue. But if
4 there had been some present, the fact they may have
5 gone through another object or hit another object, what
6 may have been there, may have been removed.

7 Q I see. And you can't speak to whether that
8 occurred?

9 A I don't know. No, sir.

10 MR. DIGGS: I don't think we have anything
11 additional.

12 MR. DeBUSK: Nothing further from the State. We
13 ask that Mr. Black be excused from the subpoena.

14 MR. DIGGS: No objection.

15 THE COURT: Thank you for coming. You are excused
16 and released from your subpoena.

17 MR. BLACK: Thank you.

18 MR. HUCKS: The State would call Allen Ray to the
19 stand.

20 (VERNE ALLEN RAY, having been duly sworn, testified
21 as follows:)

22 THE CLERK: State your name and spell your last
23 name for the Court.

24 THE WITNESS: Verne Allen Ray, R-A-Y.
25

DAVID BLACK - CROSS-EXAMINATION

DIRECT-EXAMINATION

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BY MR. HUCKS:

Q Do me a favor, pull that microphone closer to your face. You are soft spoken, I'm not, and I have a hard time hearing because I'm so loud.

What do you do for a living, Mr. Ray?

A Construction, mostly.

Q Speak into the microphone.

A Construction, mostly.

Q What kind of construction do you do?

A Framing.

Q Build houses or buildings or walls?

A Walls, sheds.

Q Now, what did you do on or about -- back in September of 2008, what did you do then for a living?

A Then, we were painting.

Q And who were you working for then?

A Charles Mullins.

Q And what else would you call him?

A Moon.

Q Moon. Is that what you normally would call him?

MR. DIGGS: Could we get him closer to the microphone?

MR. HUCKS: Yeah. Slide up a little bit.

THE COURT: Slide your chair up there so you are

VERNE ALLEN RAY - DIRECT EXAMINATION

1 close to the microphone.

2 Q (MR. HUCKS) What did you do working for Moon?

3 A I went and got the paint, mixed it up, strained
4 it and got it ready for sprayers.

5 Q Was that in the construction field as well?

6 A Yes.

7 Q Now, where did you live at this time,
8 September 2008?

9 A Let's see. We went from Durham, North Carolina
10 to down here in Horry County.

11 Q Now, would it be fair to say you lived with Moon
12 for some period of time?

13 A Yes.

14 Q In both of those locations would you have lived
15 with Moon?

16 A I lived in a trailer when I was in North
17 Carolina, and then I lived in a shed in back of the
18 house at Moon's place.

19 Q I'll ask you just a couple of questions about the
20 people involved here just to help the jury get their
21 bearings. How do you know Brad Mullins?

22 A He's my sister-in-laws's nephew.

23 Q So would you -- so are you blood related to him
24 at all?

25 A Not by blood, no.

VERNE ALLEN RAY - DIRECT EXAMINATION

1 Q How long did you work together or have you worked
2 together?

3 A Well, I worked a little bit here and there.

4 Q How about Charles Mullins, Senior, how long have
5 you known him, Moon?

6 A Over 40 years.

7 Q And how would you describe your relationship with
8 Charles Senior?

9 A Pretty good, I guess.

10 Q Would you consider you guys friends?

11 A Yes, we were pretty good friends.

12 Q How about Charles Junior, how are you related to
13 him, or are you?

14 A I'm not really related to him, but he was my
15 sister-in-laws's nephew.

16 Q Would you consider Charles Junior a friend? How
17 long have you known him?

18 A Since he was a baby.

19 Q As long as you've known his daddy, right?

20 A Yes.

21 Q How about Anthony Ray, are you related to Anthony
22 Ray?

23 A Yes.

24 Q How are you related to Anthony Ray?

25 A He's my brother's son.

VERNE ALLEN RAY - DIRECT EXAMINATION

1 Q How about Arlie Mullins, how are you related to
2 him?

3 A He's my sister-in-law's nephew.

4 Q So the only person out of all the people I asked,
5 but that you are related to is, who, blood related?

6 A Anthony.

7 Q Do you consider the rest of the crowd family, or
8 just friends?

9 A Family.

10 Q Now, I'll show you a picture and I want you to
11 describe it for me if you recognize it. Do you
12 recognize this right here?

13 A Yes, that's the shed I was living in.

14 Q That is State's No. 8.

15 MR. DIGGS: No objection.

16 MR. HUCKS: I'll authenticate it a little more.

17 Q (MR. HUCKS) You were living in it, when?

18 A In September.

19 Q Of?

20 A September/October of eight.

21 Q 2008?

22 A Yep.

23 Q Now, there is two doors on the front of the
24 shed --

25 MR. HUCKS: We would like to move it into evidence

VERNE ALLEN RAY - DIRECT EXAMINATION

1 at this time.)

2 MR. DIGGS: No objection.

3 THE COURT: Without objection.

4 MR. HUCKS: And we would request permission to
5 publish it to the jury.

6 THE COURT: Very well.

7 (State's Exhibit 8 admitted.)

8 Q (MR. HUCKS) I'll come up beside you, and if you
9 could, turn for the jury. They'll see it in a minute,
10 but there is two different doors on the front of the
11 shed, right?

12 A Yes.

13 Q Now, you say you were staying in the shed?

14 A Yes, sir. I was staying in the left side.

15 Q So the brown color door?

16 A Yes.

17 Q And what was the dark color door?

18 A Storage.

19 Q Is there some kind of partition?

20 A There was a wall right through where the post is.

21 Q So you were -- if we're looking at the picture,
22 on the left-hand side?

23 A Yes, sir.

24 Q What did you have set up in there? Did you have
25 an apartment set up, air conditioner?

VERNE ALLEN RAY - DIRECT EXAMINATION

1 A I had an air conditioner and bed.

2 Q Did you stay in there exclusively, or did you
3 stay in the house, too?

4 A I stayed there exclusively, until it got cold.

5 Q Now, the right-hand side, what would you keep in
6 there? You are in construction, so what did you keep
7 in there?

8 A Sometimes tools, mostly stuff, furniture and
9 stuff.

10 Q Okay. Now, is that where you were on or about
11 September the 11th of 2008?

12 A Yes, sir.

13 Q Do you remember that night?

14 A Yes, I do.

15 Q Did you have an occasion to either overhear Brad
16 Mullins have a conversation that night or be involved
17 in a conversation that night?

18 A Yes.

19 Q Please tell the jury what you overheard Brad
20 Mullins say that night.

21 A After they pulled up and started unloading
22 things, Brad said he killed an old man, and if I came
23 out, he'd kill me too.

24 Q Now, where were you when you overheard this?

25 A In the left-hand side of the shed.

VERNE ALLEN RAY - DIRECT EXAMINATION

1 Q If you are on your side of the shed, where would
2 Brad Mullins have been?

3 A Five, six feet from the door.

4 Q Was he outside or inside the shed with you?

5 A Outside of the shed.

6 Q So who was with Brad Mullins when you overheard
7 him make this statement?

8 A Anthony, Little Charlie and Brad.

9 Q The three other fellows I asked you about
10 earlier?

11 A Yes.

12 Q Did you -- who did you hear -- don't tell me what
13 they said, but who did you hear in that conversation
14 with Brad? Who did you hear talking as well?

15 A Anthony and a few moments later, Charles Edgar.

16 Q You've known -- how long have you known all of
17 these boys, all four of them?

18 A Their whole lives.

19 Q Did you know them well enough to recognize their
20 voices through that wall?

21 A Yes.

22 Q And what did you hear Brad Mullins say about that
23 night?

24 A That he killed an old man.

25 Q What happened after you heard that?

VERNE ALLEN RAY - DIRECT EXAMINATION

1 A Shortly after that, Anthony was talking to
2 Charlie, Charles Edgar.

3 Q Don't tell me what everybody else said except
4 Brad, because they are not here, just legal stuff, but
5 what else -- what happened after this? Did anybody
6 come talk to you?

7 A They walked off for awhile, and then they came
8 back and unloaded and --

9 Q What did they unload?

10 A I didn't see them unload at that point.

11 Q How do you know somebody was unloading something?

12 A I could hear them.

13 Q What was the next thing you saw or heard with
14 your own two eyes and two ears?

15 A That is when I was asked to clean and oil the
16 guns.

17 Q How many guns did someone bring to you to have
18 cleaned and oiled?

19 A Six or eight.

20 Q Did you do that?

21 A Yes.

22 Q Where did you put them?

23 A I cleaned them, set them on my bed and oiled them
24 and stood them up, and Charles came and got them.

25 Q Do you have any idea where they went or what

VERNE ALLEN RAY - DIRECT EXAMINATION

1 happened to them from there, not what you heard
2 somebody say, but your own personal knowledge?

3 A No.

4 Q Now, where did this whole crowd go after that?

5 A I don't know, they just left.

6 Q Did you ever see or hear anything else with your
7 own two eyes and ears about this day?

8 A No.

9 Q Now, what kinds of guns did you see? What kinds
10 of guns were unloaded?

11 A Lever actions.

12 Q Do you know what calibers?

13 A 30-30, 25-6 and .22 caliber.

14 Q And that is the ones you remember?

15 A Yes.

16 Q Any doubt in your mind what you heard that night?

17 A No.

18 Q Has your testimony here been the truth?

19 A Yes.

20 MR. HUCKS: Nothing further.

21 CROSS-EXAMINATION

22 BY MR. DIGGS:

23 Q You were interviewed by detectives in this case
24 in March of 2011?

25 A Yes.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 Q Do you remember saying, I don't know if Brad was
2 with them or not? Do you remember saying that at about
3 eight minutes and ten seconds into the interview?

4 A No.

5 Q You don't remember saying it? If we played it
6 back for you at some point, do you think that would
7 refresh your memory?

8 A Yes.

9 Q Let me ask you this. Did you intend to tell
10 those detectives the truth at that time, to the best of
11 your recollection?

12 A Yes.

13 Q And you were telling them the truth; isn't that
14 true?

15 A Yeah.

16 Q You know Delilah, do you not?

17 A Yes.

18 Q And I'm not implying anything romantic, but she's
19 a friend of yours, you used to babysit her children;
20 isn't that true?

21 A Yes.

22 Q And you know that Charles beat her up, her
23 husband?

24 A Yes.

25 Q And you wouldn't -- you know Little Charlie who

VERNE ALLEN RAY - CROSS-EXAMINATION

1 was Moon's son, Delilah's son-in-law -- stepson, he's
2 charged with murder in this case, or he was at one
3 point; are you aware of that?

4 A Yes.

5 Q And you don't want to see Delilah beaten anymore
6 by her husband, do you?

7 A No.

8 Q You don't want to -- you want to help her get out
9 of that situation; isn't that true?

10 A Yes.

11 Q Yeah. And big Charlie, Senior Charlie, would be
12 -- Charlie Senior would be happy to see his son not
13 prosecuted for any murder, he'd be happy about that,
14 wouldn't he?

15 A I assume, yes.

16 Q Say again?

17 A I assume, yes.

18 Q Now, had you been at the home, Delilah's home,
19 earlier that day?

20 A Yes.

21 Q Or the next day? I'll put it that way, the next
22 day?

23 A Yes.

24 Q Was there a barbecue or anything like that going
25 on?

VERNE ALLEN RAY - CROSS-EXAMINATION

1 A It was about a week later. About a week later.

2 Q Did you hear Brad say at that time that he killed
3 a man?

4 A No.

5 Q Did Delilah tell you that she had heard that?

6 A No.

7 Q And was your relationship with her such that if
8 she had heard a comment like that coming from Brad, do
9 you think she would have come --

10 MR. HUCKS: He's asking him to speculate about what
11 someone else might have been thinking at another time.

12 MR. DIGGS: I'm asking based on his relationship
13 with her.

14 THE COURT: I'll allow it.

15 Q (MR. DIGGS) If Delilah heard Brad make a statement
16 that he had murdered a man, was your relationship with
17 her such that you would have expected her to come and
18 mention that to you?

19 A At that time, no.

20 Q At that time, she would not have?

21 A No.

22 Q Okay. But, you, yourself, upon hearing Brad --
23 by the way, do you have any idea why he was making the
24 statement to these guys, who you would assume were with
25 him when he killed the old man, why he had to be

VERNE ALLEN RAY - CROSS-EXAMINATION

1 telling them that when he was there at the shed next to
2 you?

3 A I just...

4 Q He just happened to say it again, whether he knew
5 it or not, that is your testimony?

6 A Yeah.

7 Q Anthony Ray is your -- he's a blood relative?

8 A Yes.

9 Q Have you had any conversations with him about his
10 involvement in the murder?

11 A Yes.

12 Q He's confessed to it, hasn't he?

13 A He said he was part of it.

14 MR. HUCKS: Objection, hearsay, Your Honor. This
15 is direct hearsay.

16 THE COURT: Let's take the jury out a moment.

17 (The jury exits at 2:38 p.m., and the following is
18 heard out of the presence of the jury.)

19 THE COURT: Are we headed down the road of 804, is
20 that where we're going, Mr. Diggs?

21 MR. DIGGS: Can I look at it? I don't have my
22 book. Yes.

23 THE COURT: All right. A statement tending to
24 expose or declare criminal liability in an offer to
25 exculpate the accused is not admissible unless it

VERNE ALLEN RAY - CROSS-EXAMINATION

1 corroborates circumstances clearly indicating --

2 MR. DIGGS: Well, the corroboration that we have is
3 the charges that have been filed against him, the
4 numerous statements he's made to other witnesses,
5 including this witness, I mean, Charles Senior, all of
6 the letters he wrote from jail.

7 THE COURT: First don't we have to determine that
8 Anthony is unavailable?

9 MR. DIGGS: Well...

10 THE COURT: That statement would not be excluded by
11 the hearsay rule if it meets -- it is not excluded by
12 the hearsay rule if the declarant is an unavailable
13 witness. Now...

14 MR. HUCKS: He's available, and we intend to call
15 him.

16 THE COURT: He's available?

17 MR. HUCKS: Yes, sir. He's in lockup at J. Reuben
18 Long waiting to come over here.

19 THE COURT: Then he would not be coming under
20 804(b), would he?

21 MR. DIGGS: No, not in that circumstance. He would
22 be an unavailable declarant -- it would be against
23 penal interest that he made in the presence of this
24 witness.

25 THE COURT: That is 801, I believe?

VERNE ALLEN RAY - CROSS-EXAMINATION

1 MR. HUCKS: 801 or 803.

2 THE COURT: 803. I believe it might be 801.

3 MR. HUCKS: Maybe. That is what happens when I
4 open my mouth.

5 THE COURT: Well, is that an admission by a party
6 open --

7 MR. HUCKS: And he's not.

8 MR. DIGGS: In this respect, he's charged with this
9 murder. Simply because he is not in trial in this
10 particular proceeding doesn't --

11 THE COURT: But he's not a party to this particular
12 proceeding. I don't believe it comes under either one.
13 I don't see any exception, or can you point me to an
14 exception? Under 803 -- it would have to be under 801,
15 which involves -- says that that hearsay is not -- that
16 statement is not hearsay if, and it is an admission by
17 a party component.

18 MR. HUCKS: If that were so, it would be
19 non-hearsay, but he's not a party component, so it is
20 hearsay, which would require to call under the
21 exception, and it doesn't, is the State's position.

22 THE COURT: I think the controlling rule is
23 804(b)3, which applies where a declarant is
24 unavailable, and in this case, he's not unavailable.
25 My understanding is that he certainly is going to be

VERNE ALLEN RAY - CROSS-EXAMINATION

1 available, and 804(b) specifically says the following
2 are not excluded by the hearsay rule, if the declarant
3 is unavailable. One thing being a statement against
4 interest, but it clearly states at the end, Subsection
5 3, a statement tending to expose the declarant to
6 criminal liability and offer to exculpate the accused
7 is not admissible unless corroborating circumstances
8 indicate trustworthiness of the statement.

9 Number one, Mr. Diggs, you may be getting -- has
10 there been any statement by that declarant made
11 admissible at this point, that being Charlie --

12 MR. HUCKS: Anthony Ray.

13 THE COURT: -- Anthony Ray? I believe Mr. Diggs
14 was asking if Anthony made a statement; is that
15 correct?

16 MR. HUCKS: He was asking him as to the details of
17 the statement that Anthony -- that he would have heard
18 Anthony say, that the witness would have heard Anthony
19 say. We're steering completely shy of anything that
20 Anthony said, because that is why we intend to call him
21 later on in the case.

22 THE COURT: Okay. And your objection is under
23 803(b)4?

24 MR. HUCKS: Well, yes, sir, that it is hearsay and
25 not subject to any exceptions listed.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 THE COURT: Okay. Anything that Anthony may have
2 said?

3 MR. HUCKS: Yes, sir.

4 THE COURT: All right. I'll sustain that
5 objection.

6 MR. DIGGS: Can I put a couple of things on the
7 record? One is the rule doesn't state the negative, in
8 other words, it doesn't expressly state a overruling of
9 common law with respect to that issue. Two, the rule
10 actually does affirm the common law rule on the
11 declaration against penal -- as long as it is reliable
12 by -- shown to be reliable by corroboration. We do
13 have that corroboration in this case, I would argue,
14 because we have all of these letters written by Anthony
15 Ray from jail confessing that he was involved in this
16 killing, and many statements by many other witnesses
17 that can confirm.

18 THE COURT: We'll have to have that before me
19 before -- I mean, there is nothing on the record at
20 this point. What do we have to show that that
21 statement -- I don't even know what he's going to say.
22 If we need to have an in-camera examination of what
23 this witness is going to say -- what he's going to say.

24 MR. HUCKS: I'll tell you what he'll say, and I'm
25 sure Mr. Diggs will agree, that he overheard Anthony in

VERNE ALLEN RAY - CROSS-EXAMINATION

1 this same conversation talk about the fact that the man
2 got killed while he was at their house, and he shot him
3 too.

4 MR. DIGGS: What I would ask him to get away from
5 this alleged conversation that took place in the shed,
6 I would submit that Anthony Ray has made a statement to
7 this witness on a number of occasions that he killed a
8 man. I mean, I would like to ask him that.

9 THE COURT: Well, ask him. Let's find out what
10 he's going to say. Ask him.

11 Q (BY MR. DIGGS) Have you ever heard Anthony Ray
12 make a statement in another setting, other than in this
13 shed on that night, have you ever heard him make a
14 statement that he's killed this gentleman, been
15 involved in this murder?

16 A He said he was involved.

17 Q He was involved? And how many times did you hear
18 him make that statement?

19 A At least twice.

20 THE COURT: Have you ever heard him say that he
21 killed him?

22 THE WITNESS: No.

23 THE COURT: Mr. Diggs, I think the State concedes
24 that Anthony was involved, does it not?

25 MR. HUCKS: He's going to get on the witness stand

VERNE ALLEN RAY - CROSS-EXAMINATION

1 and say it.

2 THE COURT: So you concede that. But, Mr. Diggs,
3 you may be going down a slippery slope here if you ask
4 this witness much more than that.

5 MR. HUCKS: The rule, Your Honor --

6 THE COURT: You are opening the door up for
7 Mr. Hucks. If you open it up --

8 MR. DIGGS: Do you mean with other witnesses?

9 THE COURT: No, with this witness. If you ask him
10 questions about that, I'm sure that I'm going to let
11 Mr. Hucks explore it.

12 MR. HUCKS: Your Honor, just for purposes --

13 THE COURT: You are saying it is hearsay and it
14 should come in, and I let it in, if you say you can
15 substantiate it, there is other corroborating
16 circumstances, I want to hear about them, we'll see.
17 If I let it in, you have to understand that Mr. -- if I
18 rule it is not hearsay, and it is not hearsay --

19 MR. DIGGS: Your Honor, why --

20 THE COURT: Mr. Hucks will go at it.

21 MR. DIGGS: I'll withdraw the question and not
22 pursue it, and reserve it for a later time if need be.

23 THE COURT: That is your choice. I think you
24 better be asking Anthony about it. Okay.

25 Bring the jury in.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 MR. DIGGS: Before we do, can I get about where we
2 were on the cross-examination?

3 (Last question read.)

4 MR. DIGGS: I'll withdraw that, and I have one or
5 two more questions.

6 THE COURT: Let's bring them back in.

7 MR. HUCKS: We ask that you inform the jury to
8 strike the response.

9 THE COURT: He said he was involved in it.

10 (The jury enters at 2:54 p.m., and the following is
11 heard in the presence of the jury.)

12 THE COURT: Ladies and gentlemen, just before I
13 sent you out there was a question posed to this witness
14 speaking of when Anthony Ray -- something like he
15 confessed to it, and the response said he was involved
16 in it, something very similar to that. Please put that
17 question and that response out of your minds. I'm
18 striking it from this record. You will not consider
19 it. You may hear that testimony or you may not hear
20 that testimony later in the trial, and that will be for
21 you to consider depending whether it is offered or not,
22 or whether there is any testimony later in the trial.

23 As to the question that was asked just before I
24 sent you out and the response, strike it from your
25 memory, it is no longer a part of this record.

VERNE ALLEN RAY - CROSS-EXAMINATION

1 Mr. Diggs.

2 Q (MR. DIGGS) Mr. Ray, when you heard this statement
3 in the shed that evening, did you go and advise law
4 enforcement, anybody, about what you overheard?

5 A No.

6 Q Why didn't you do that?

7 A Because I didn't believe it at first.

8 Q You didn't believe it?

9 A No.

10 Q And why did you not believe it?

11 A The boy was drunk.

12 Q I'm sorry?

13 A The boy was drunk when he made the statement.

14 Q My client?

15 A No.

16 Q Who was drunk?

17 A Anthony.

18 MR. DIGGS: I don't think I have any additional
19 questions. I appreciate it very much, thank you.

20 THE COURT: Mr. Hucks, anything further?

21 REDIRECT-EXAMINATION

22 BY MR. HUCKS:

23 Q Allen, you still hang out with Moon, live with
24 Moon?

25 A No.

VERNE ALLEN RAY - REDIRECT EXAMINATION

1 Q Do you even know where Moon lives?

2 A No, sir.

3 Q And what state do you live in?

4 A Virginia.

5 Q And do you still hang out with Delilah?

6 A No.

7 Q And do you know what state she lives in?

8 A I believe she's here in South Carolina somewhere.

9 Q So you are at least two states away from them?

10 A Yes.

11 Q So do you have any dog in this fight, whatsoever,
12 at this stage?

13 A No.

14 MR. HUCKS: Nothing further, Your Honor.

15 THE COURT: You may step down, thank you.

16 MR. HUCKS: Your Honor, may we approach very
17 briefly?

18 (Whereupon, a bench conference was had.)

19 MR. HUCKS: The State calls Charles Mullins Senior
20 to the stand.

21 (CHARLES MULLINS SENIOR, having been duly sworn,
22 testified as follows:)

23 THE CLERK: State your full name and spell your
24 last name for the record.

25 THE WITNESS: Charles Edgar Mullins, M-U-L-L-I-N-S.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 MR. HUCKS: Before we get started, I neglected to
2 ask for purposes of the record if Mr. Ray could be
3 released from his subpoena at this time so he could go
4 home.

5 THE COURT: Any objection?

6 MR. DIGGS: I don't think we have any objection.

7 THE COURT: All right. He's released from his
8 subpoena.

9 DIRECT EXAMINATION

10 BY MR. HUCKS.

11 Q Mr. Mullins, before we get started, what nickname
12 do you go by?

13 A Moon.

14 Q How did you get that nickname?

15 A That nickname was gave to me years ago. My
16 favorite color is green, my birthday falls between
17 Christmas and the first of the year, and I wanted a new
18 motorcycle helmet, and I got one with a half moon on
19 each side and the name "Moon" engraved on the back of
20 it.

21 Q Why did you pick that name?

22 A I didn't pick it. Actually, my ex-wife did.

23 Q What do you do for a living?

24 A Carpenter, and I was a truck driver for a long
25 time, but I do remodeling, renovations, commercial,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 residential, industrial, it doesn't matter.

2 Q And what do you call yourself when people ask
3 what you do for a living? You have a business name?

4 A C.E. Mullins Construction.

5 Q So you build stuff?

6 A I do.

7 Q Or tear stuff down, or something?

8 A Yes, sir.

9 Q Let me ask you before we get started, how are you
10 related to the defendant in this case, Brad Mullins?

11 A Brad is my nephew, my brother's son.

12 Q How many siblings do you have?

13 A I have 15 biological children, but two
14 step-children.

15 Q Siblings.

16 A Oh, brothers and sisters. Six brothers, besides
17 myself, and two sisters that are deceased, and two
18 brothers that are deceased, so nine of us.

19 Q Now, whose child is Brad?

20 A My brother's child, Thomas Earl Mullins.

21 Q How about Charles Henderson Mullins?

22 A He is my son.

23 Q If I say "Little Charlie" or "Charles Junior,"
24 does that make sense to you?

25 A That makes sense. Little Charlie is what we've

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 called him all his life.

2 Q And Anthony Ray, how he is related?

3 A Oldest sister's third child.

4 Q Now, how about --

5 A Fourth child, I'm sorry.

6 Q How about Arlie Mullins, how are you related to
7 him?

8 A Arlie is my brother's son, Tony Eugene Mullins.

9 Q Would that be "Gene," if someone says "Gene"?

10 A Everyone calls him Gene, yes, sir.

11 Q Except you?

12 A I call him Gene.

13 Q Now, where did you live on or about September 11,
14 2008?

15 A I'm sorry?

16 Q September 11, 2008, whereabouts would you have
17 lived?

18 A In Aynor.

19 Q Let's see if we can refresh your memory with
20 State's 68, [REDACTED] Johnson Brothers Road?

21 A Galivants Ferry, yes, sir.

22 Q Is that the road you lived on?

23 A Yes, sir.

24 Q Is that the address at the time?

25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q This picture is not in evidence yet, so I won't
2 show it to you, but State's Exhibit 5, which is in
3 evidence, do you recognize that?

4 A That was my home.

5 Q That is where you lived on or about that date?

6 A That is where I lived.

7 Q Now, how about State's Exhibit No. 4, is that
8 just a different view of the same place?

9 A That is the same home, yes.

10 Q Is that where you lived?

11 A That is where I lived.

12 MR. HUCKS: We move State's Exhibit No. 4 into
13 evidence?

14 THE COURT: Mr. Diggs?

15 MR. DIGGS: No objection.

16 THE COURT: Without objection, 4.

17 (State's Exhibit 4 admitted.)

18 Q (MR. HUCKS) I'll show you one more thing that was
19 admitted into evidence. I'll show you what is entered
20 as State's 8.

21 A That was the building behind my house on
22 Galivants Ferry, [REDACTED].

23 Q So that was your backyard?

24 A Yes, sir.

25 Q That is the front yard, backyard (indicates)?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A Yes, sir.

2 Q Is this where you lived on or about September 11,
3 2008?

4 A It is.

5 Q Now, on or about September 11, 2008, do you
6 remember when you had a bunch of folks come into town?

7 A Yes, sir.

8 Q What was everybody in town for?

9 A We were actually finishing a job in Durham, North
10 Carolina. I renovated a shopping center there, been
11 there for five-and-a-half months. We brought my
12 campers and work trucks and tools and different stuff
13 home and was getting ready to go to Louisiana for some
14 -- I don't remember which hurricane it was, but it came
15 through, and I was going to go do repair work in
16 Louisiana at that time.

17 Q So I just want to clarify. You were coming from
18 where?

19 A Durham, North Carolina.

20 Q And you were in Galivants Ferry?

21 A Galivants Ferry.

22 Q And you were getting ready to go to?

23 A Louisiana.

24 Q What were you going there for?

25 A I'm sorry?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q What were you going to Louisiana for?

2 A Work hurricane damage.

3 Q Make some money?

4 A Yes, sir, make money.

5 Q Now, walk us through what happened that day.

6 What do you remember from that day?

7 A Well, I mean, I had a lot of people at my house.

8 Q Give us a list. How many people would you say

9 was at your house and who would you remember?

10 A My brother, Thomas, was there. My brother, Gene,
11 was there. Brad was there, Anthony was there. My son,
12 Charles, was there. Arlie was there, my wife, children
13 who were younger, Savannah, AC, Teavis (phonetic) and
14 Charlene.

15 We were doing karaoke, drinking a few beers,
16 cooking out, just doing a family thing, basically.

17 Q I'll show you one of these exhibits we just
18 looked at with you here, No. 4, State's 4. Now, I'll
19 walk around the other side, if that's all right?

20 A Yes, sir.

21 Q Look at this photograph with me. The jury might
22 not be able to see all of it. Where would everybody
23 have been hanging out? You said you were hanging
24 around the house, where?

25 A Well, I mean, my vehicles were here, my karaoke

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 system was set up underneath the carport. I had a
2 large picnic table back in this area and, you know,
3 speakers were in this area, singing, having fun, you
4 know, everybody just scattered about throughout the
5 area.

6 Q Mostly under the shed and in the yard?

7 A Mostly. It was warm, a nice, warm evening.

8 MR. HUCKS: May I publish these to the jury?

9 THE COURT: They are in?

10 MR. HUCKS: Yes, sir.

11 THE COURT: You may.

12 Q (MR. HUCKS) Walk us through what you remember from
13 that evening. You are out there hanging out, singing
14 karaoke, having beers?

15 A Everybody just enjoying themselves. It got into
16 the night, I don't recall exactly what time, but kind
17 of cleaning up things. I'm just going to be plain
18 spoken about this. The boys decided they were going to
19 go for a ride.

20 Q Which boys? You said "the boys," what do you
21 mean?

22 A Brad, Anthony, Charles and Arlie.

23 Q Why do you call them "the boys"?

24 A They all seemed like my children, I called them
25 my boys.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q Why would you consider them your children?

2 A Brad and Anthony, Arlie, they've all lived with
3 me in and out for many years, you know. Stayed with me
4 probably as much as they stayed with their parents, I
5 guess. I love them like my own children. They worked
6 with me for the longest time. From the time they were
7 young teenagers, they've worked with me on different
8 jobs. I paid them by the hour, split jobs with them,
9 whatever it took to try to keep everybody going. I've
10 tried to treat all of my nephews and nieces as I treat
11 my own children.

12 Q How many children do you have? We had Delilah.

13 A I have 17, 15 biological, two step, nine girls,
14 eight boys, two sets of twins.

15 Q The boys went for a ride. What did you do after
16 boys went for a ride?

17 A My wife and kids and I, we went into the house
18 and relaxed for a few minutes and went to bed. Me, my
19 wife and our children, when they were babies they slept
20 with us. My baby, Charlene, was about -- she was
21 young, I don't know exactly how old she was, three
22 months old, five months, she was very young. We went
23 to bed. I was married to a woman 21 years my junior,
24 you know.

25 Q Who were you married to?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A I was married to Delilah Mullins.

2 Q Are you still married?

3 A Delilah and I are married, but going through a
4 separation. We've been separated for close to three
5 years now.

6 Q And do you live in the same state?

7 A No, sir.

8 Q You live within four hours of each other?

9 A Four-and-a-half, something like that.

10 Q Just clarifying. Now, what happens? You go to
11 bed, what happens?

12 A I went to sleep. Now, I don't mean to talk loud,
13 I'm deaf in my left ear and 30 percent deaf in my right
14 ear, and that is why I say "what" or "huh."

15 I was woke up late in the night, over into the
16 morning maybe.

17 Q Who woke you up?

18 A My son.

19 Q Before we get into what happened, because I know
20 that is coming up, don't say what anybody told you in
21 the world except whatever you heard come out of Brad
22 Mullins' mouth. You can say you talked to your son
23 about something, but you can't say he told me this,
24 that or the other.

25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q You get woke up by your son, which one?

2 A Charles.

3 Q You have 15 of them.

4 A Charles.

5 Q What do you do as a result of him waking you up?

6 What happens?

7 A I got up and followed him outside to the building
8 at the back of my property.

9 Q When you say the building at the back of your
10 property, is that what you are talking about
11 (indicates)?

12 A Yes.

13 Q State's 8?

14 A Yes, sir.

15 Q Now, what side of that building would you walk up
16 to?

17 A The gray doors, double doors. Not the single,
18 just on the tool side of the building.

19 THE COURT: Just for a moment, turn towards the
20 jury. I don't think they know what you are talking
21 about.

22 MR. HUCKS: I was just getting ready to hand it
23 over to them.

24 Q (MR. HUCKS) When you walked up there, what
25 happened? You walked over there with Charles Junior,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Charlie?

2 A Guns. There was guns everywhere in my building.

3 There was rifles and shotguns and pistols.

4 Q How many guns did you see?

5 A A number. I couldn't say. Several.

6 Q More than five, less than five?

7 A More than five.

8 Q More than ten, less than ten?

9 A Twelve, 15 maybe.

10 Q Just to the best of your recollection, that is
11 all I'll ask you. When you go over there, what happens
12 when you see all of these guns?

13 A I freaked out.

14 Q Why would you freak out?

15 A Because I'm a convicted felon, I'm not supposed
16 to be around any firearms at all. I don't own
17 firearms, I'm not supposed to be around any. My words
18 was, I don't know where they come from, don't care, get
19 them the hell off my property, get them away from here,
20 I don't want them here. They were loaded -- started
21 being loaded into the Blazer.

22 Q Whose Blazer was it?

23 A Charles, my son.

24 Q Keep going. They loaded -- who did you see
25 loading?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A It was Allen Ray, Anthony Ray, Brad. There were
2 pistols, handguns put into a pillow case, larger guns
3 in the back of the Blazer, I walked away. I didn't
4 want to be around them or near them, and the Blazer
5 left.

6 Q Now, at any time during the conversation that you
7 had up there, did you have an occasion to talk to Brad
8 Mullins?

9 A I did talk with my nephew, but it really wasn't
10 about things, but it really wasn't that night. We
11 later --

12 Q Let me rephrase. What did you do after that
13 night?

14 A Did I talk to him that night? Nothing other than
15 get the guns off of my property.

16 Q What did you do after they were off your
17 property? Did you make your trip to Louisiana?

18 A Yeah. The next day I had bought a larger tool
19 trailer going to Louisiana. There was no electricity,
20 so I was carrying four, five generators. I was
21 carrying several miter saws, two, three air
22 compressors, nail guns, enough to run two, three crews
23 if I needed to, enough to supply us energy for lights
24 or whatever we needed, several 5-gallon cans to tote
25 gas for the generators.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 We pulled out. After my son came back -- he left,
2 this was on a Thursday or Friday, my son left, Charles,
3 went home to his wife and children for the weekend as
4 he always does, and he comes back on Sunday. The
5 trailer had been loaded with tools, it was hooked to
6 the Chevrolet truck I bought for my son. I bought five
7 trucks that year. Actually, one work truck and one
8 pleasure truck for myself and one Ford truck, four
9 door, for my wife and children, and an extended cab for
10 my son, John, and a four-door Chevrolet for my son,
11 Charles. 7

12 Q So you all go and leave to Louisiana?

13 A We left and went to Louisiana.

14 Q What happens when you get to Louisiana, if
15 anything?

16 A Guns come out of my trailer. No pistols, no
17 handguns, just six or eight long guns. Three of them
18 were Remington shotguns, I couldn't tell you what the
19 rest were.

20 Q What happened to those guns in Louisiana?

21 A They were sold.

22 Q Who sold them?

23 A Anthony Ray.

24 Q Now, what happens on your trip? Do you get rich,
25 clean up and get rich?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A No, sir. When you go to do -- I wasn't real
2 experienced in this. You have to go through FEMA on
3 these jobs, and they can cause you a lot of troubles.
4 I couldn't get the work like I thought, not enough to
5 keep us going. We left Louisiana, and I went on into
6 Texas above Orange County, Texas. The hurricane came
7 through there, and I still couldn't suffice enough work
8 to get the money I was spending, so I just brought
9 everybody and the tools and the trailer, and came back
10 to South Carolina.

11 Q How long was this trip from the time you pulled
12 out of Galivants Ferry to the time you pulled back in,
13 how long would you say you were gone?

14 A Less than two weeks.

15 Q At what point in time would those guns have been
16 sold?

17 A Um....

18 Q Just an estimation is fine.

19 A Within the third day of being in Louisiana.

20 Q Now, once you got home, what, if anything,
21 happened in reference to a conversation with this
22 fellow over here, Mr. Mullins, Brad?

23 A I was watching the evening news in the bedroom of
24 my home and my smaller children watch the bigger TV in
25 the living room. During the evening news, the news

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 flash of a murder, homicide, in Horry County came up,
2 and the reflection of the guns and the time of the --
3 that they were stating, it got into my mind, and I
4 decided to talk to my nephews about it.

5 Q When you talked to your nephews, which two did
6 you talk to?

7 A With Anthony Ray and Brad.

8 Q Well, just tell us for purposes of why we're here
9 today, tell us what you talked to Brad about. Did you
10 talk to Brad?

11 A I did.

12 Q What did you talk with Brad about? Tell the jury
13 about that conversation.

14 A I asked Brad did they have anything to do with
15 the -- with the breaking and entering and stealing of
16 those guns and the murder.

17 Q What did he tell you?

18 A This is family, and this is hard, I want you to
19 understand this. What I was told is they had went to
20 the...

21 Q I know it is tough, but what did he tell you?
22 You said "they."

23 A They went to the man's property, and they went
24 into his cabin by the pond and had taken two, three
25 guns out of the cabin. During the course of those

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 guns, I suppose one was a .22 rifle.

2 Q Don't suppose nothing, just tell us what he said.

3 A One was a .22 rifle. They found shells to it.

4 When they left the cabin, they went to the main house,
5 went inside of it and searched the rooms and gathered
6 several guns, all but one, and when they tried to enter
7 the room, the room was locked. By rattling the door,
8 the man hollered, came out of the door naked with a
9 handgun. He said they were running through the house,
10 and they separated. He had my nephew, Brad, pinned in
11 the living room and was going to shoot him with a
12 handgun.

13 Q Brad told you this?

14 A Yes. My nephew, Anthony Ray, was standing in the
15 kitchen area of the house, I believe they said, with a
16 .22 rifle.

17 Q Don't tell me what they said, tell me what he
18 said.

19 A Anthony was standing in the other end of the
20 house somewhere, and shot the man with a .22 rifle in
21 the shoulder area. The man turned the gun on Anthony,
22 when he turned the gun on Anthony, Brad said he took
23 him to the floor and took the pistol away from him, the
24 man begged him not to kill him, Brad said you were
25 going to kill me, good night, and pulled the trigger,

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 he said, shot him in the head.

2 Q I'll ask you a series of questions here. Do you
3 know Joe Elliott, ever met him?

4 A I met him one time. I didn't know the man
5 personally. I only have spoken to him one time in my
6 life and his. My brother and I, Brad's daddy, Thomas,
7 was together. I do a lot of pond fishing, and I had
8 been over to my nephew's, James, house, me and my
9 brother. Me and Tom were talking about fishing, and
10 Tom told me about Joe having a pond. We rode down
11 there to see Mr. Elliott, and he did have a pond, and
12 Mr. Elliott --

13 Q Don't tell us anything Mr. Elliott told you. You
14 had a chance to meet with him?

15 A I did.

16 Q Did you have a beer with him or something?

17 A He offered us a beer, he did, but I didn't drink
18 anything.

19 Q Did Brad Mullins ever tell you how he knew Joe
20 Elliott during your conversations you had with him?

21 A Brad used to rent from Joe Elliott.

22 Q Is there something that Brad told you over the
23 course of some time that you knew him?

24 A Brad said he lived in one of Joe's houses.

25 Q At some time prior?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 A Yes.

2 Q I will talk with you about something I have to,
3 and I don't mean to embarrass you, and you need to
4 know, and the jury needs to know, I'm going to have to
5 ask you, Mr. Mullins, you have a pretty substantial
6 criminal record?

7 A I do.

8 Q I mean, I'm going to go through it with you just
9 a little bit. For the purpose of making sure the jury
10 knows, and because any criminal convictions are
11 admissible against you. In 2004 you got convicted of
12 giving a false name or address to the police?

13 A Guilty of it.

14 Q Now, don't try to explain, I'll just ask you
15 about them. You were convicted and charged in 2004 and
16 convicted in 2006?

17 A Yes, sir. Guilty of it.

18 Q In 2009, you were convicted of conversion of
19 payments for real estate property improvements?

20 A Plain out guilty, yes.

21 Q In 2001, you were charged and convicted of
22 failing to perform construction after being paid?

23 A Yes, sir. Convicted and plead to it, yes.

24 Q 2002, you were convicted of using threatening
25 language over a telephone; is that correct?

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

- 1 A I plead to it. I don't remember it, but I plead
2 to it.
- 3 Q You were convicted of it?
- 4 A Yes, sir.
- 5 Q In 1983 you were convicted of fraud; is that
6 right?
- 7 A Yes, sir.
- 8 Q 1990, felony, uttering a bad check?
- 9 A Guilty.
- 10 Q 2001, convicted of grand larceny?
- 11 A Guilty.
- 12 Q 2003, convicted of a bad check?
- 13 A Yes, sir. Guilty.
- 14 Q In Tennessee. 2006, convicted of felony theft in
15 Tennessee?
- 16 A Guilty.
- 17 Q 2007, bad check in Tennessee?
- 18 A Guilty.
- 19 Q 2007, convicted of a felony bad check in
20 Tennessee?
- 21 A You just asked me that, guilty, yes, sir.
- 22 Q That's in there twice, then.
- 23 A Okay.
- 24 Q 1993, six counts of bad checks?
- 25 A Yes, sir.

CHARLES MULLINS SENIOR - DIRECT EXAMINATION

1 Q 2007, arrested as a fugitive in Kentucky?

2 A Yes, sir.

3 Q 2011, petty larceny in South Carolina?

4 A Yes, sir.

5 Q Is that a fair and accurate representation of
6 your criminal history?

7 A Yes, sir.

8 Q You said on every one of these I was guilty,
9 plead guilty, why did you plead guilty of all of them?

10 A I was guilty of them.

11 Q Does any of that, whatsoever, have anything to do
12 with why you are here today?

13 A No, sir. My record won't reflect anything to
14 me -- if I'm wrong, I'm wrong. If I'm right, I'm
15 right. I argue with the devil a bit, but that has
16 nothing to do with me telling the truth today.

17 MR. HUCKS: Nothing further.

18 CROSS-EXAMINATION

19 BY MR. DIGGS:

20 Q How are you?

21 A I'm sorry? I can't hear good.

22 Q How are you?

23 A Doing fine. How are you.

24 MR. DIGGS: Your Honor, may I pull the podium over?

25 THE COURT: Certainly.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q (MR. DIGGS) Mr. Mullins, are you incarcerated right
2 now?

3 A No, sir.

4 Q But for your testimony here today, though, you
5 would be; isn't that true?

6 A Do what now?

7 Q But for your testimony here today, you would be
8 incarcerated?

9 A No, sir.

10 Q Let me ask you this. Do you remember when you
11 were locked up down in Cartersville, Georgia?

12 A Sure do.

13 Q A couple of detectives came down and talked to
14 you about this case?

15 A Sure do.

16 Q What year was that?

17 A What year?

18 Q Yes, sir.

19 A 2011.

20 Q 2011. All right. Now, do you remember at that
21 time when you were in trouble with Georgia, the State
22 of Georgia, and your probation agents were there at the
23 interview?

24 A They were.

25 Q And depending how truthful you were to the

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 detectives here, they were going to try to help you out
2 in Georgia?

3 A They had said something about two years, but that
4 didn't happen.

5 Q But before you made the statement, they were
6 telling you We're going to try to help you out if
7 you'll just tell the truth to these guys from Horry
8 County, correct?

9 A I didn't have no other choice but to tell the
10 truth.

11 Q And then you were looking at a possible accessory
12 after the fact charge here in Horry County, remember
13 that?

14 A I do.

15 Q And remember when they told you that they were
16 going to drop that if you cooperated and just told them
17 the truth, do you remember that?

18 A No, sir, I don't remember that.

19 Q Do you want to read the transcript of your
20 conversation?

21 A If it is there, I guess I'll have to recall back
22 on it, but I've had a lot happen to me in five years.

23 Q And do you remember when the charges were pending
24 against you in Florence County, South Carolina?

25 A I do.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q And they promised they would drop those?

2 A It wasn't dropped.

3 Q Were you prosecuted?

4 A It is right there in my record, 2011.

5 Q All right. You got prosecuted for what in
6 Florence County?

7 A Something over some scrap metal. I don't
8 remember what it was. I can't remember.

9 Q All right. Couple of things I want to ask you
10 about before we get into the substance of your
11 testimony. Your son, Charlie, was charged with this
12 murder as well, wasn't he?

13 A He was, and he is.

14 Q And you didn't -- you don't want to see him
15 prosecuted for the murder?

16 A I hate to see either one of them prosecuted for
17 murder.

18 Q But your preference would be if one could be
19 saved, it would be Charlie?

20 A I would say if you are man enough to do the
21 crime, you are man enough to pull the time; I did.

22 Q Didn't you tell the investigators that you had a
23 relationship with Anthony such that sometimes you felt
24 like he was your own son?

25 A Not only Anthony, but Brad, his brother James,

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 all of them.

2 Q I didn't see that in the transcript, but that may
3 be the case.

4 A That is like writing a biography on the Mullins,
5 that would take probably five years.

6 Q Specifically, you mentioned Anthony?

7 A Anthony is like one of my children, and so is
8 Brad.

9 Q Let's go back to that 2011 interview. You told
10 the officers there in 2011 basically the same thing you
11 told us here today in court; isn't that true?

12 A Sure did.

13 Q Except for one difference.

14 A That was?

15 Q It was Anthony who told you this, not Brad. Do
16 you remember that?

17 A I'm not here on Anthony's murder case, I'm here
18 on Brad's.

19 Q That doesn't affect who it was that told you the
20 story back in 2011; isn't that true? Why did you come
21 in today and say it was Brad that told you?

22 A I'm questioned on Brad, not on Anthony, but
23 Anthony told me the same thing, if you want to hear
24 that.

25 Q When did Brad tell you this? After your 2011

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 interview?

2 A No, sir.

3 Q It was before the interview?

4 A It was long before.

5 Q And you forgot to tell the police that when they
6 were down there in 2011?

7 A Sir, these boys drink a lot. These boys use a
8 lot of drugs, and I've caught them in so many lies I
9 didn't know what to believe.

10 Q But you were clearheaded?

11 A I'm very clearheaded, and an intelligent man.

12 Q Especially at the 2011 interview in Cartersville,
13 Georgia. You weren't foggy from drugs and alcohol.
14 You would have known as that time, would you not, that
15 Brad, my client, had confessed the murder to you, and
16 my question to you simply is, Why didn't you tell the
17 officers at that time?

18 A I did tell the officers at that time.

19 Q You told them what Anthony confessed to you.

20 A And Brad.

21 Q All right. That is your testimony?

22 A (Deponent nods head.)

23 MR. DIGGS: Your Honor, we have a transcript that
24 was prepared of this 2011 interview. Just for the
25 record, I would like to have it marked for

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 identification.

2 THE COURT: Show it to the State.

3 MR. HUCKS: It's mine. I've given it to him.

4 THE COURT: You agree it is an accurate transcript,
5 and you want it marked for identification?

6 MR. HUCKS: Yes, sir. I have no problem marking it
7 for identification purposes. If he intends to put it
8 into evidence, I have an objection.

9 MR. DIGGS: I wouldn't need to do that if the State
10 stipulates that what this witness says is this
11 statement was made by Anthony.

12 MR. HUCKS: If he wants to put it in evidence and
13 cross-examine him, he's more than welcome, but I won't
14 stipulate to it.

15 MR. DIGGS: Could we approach?

16 THE COURT: Sounds like he just gave you what you
17 were asking for. He said if you want to cross-examine
18 this witness with that transcript, that he agrees to
19 its authenticity, essentially; is that right?

20 MR. HUCKS: If we can approach for a second.

21 THE COURT: Certainly.

22 (Whereupon, a bench conference was had.)

23 Q (MR. DIGGS) Let me go about it this way,

24 Mr. Mullins?

25 A I didn't hear you.

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 Q Let me go about it this way.

2 A Okay.

3 Q I'm holding your transcript that was prepared for
4 this trial, and it was given to me. A copy was
5 provided to me as one of the attorneys in the case. I
6 want to look at Page 49 where you are being interviewed
7 by Detective Jones. If you would, please, sir, let me
8 ask you -- can you read this? Do you need glasses?

9 A Yes.

10 THE COURT: Read the question and ask him.

11 Q (MR. DIGGS) Here is the question: So you told us
12 then that they -- what Anthony -- what Anthony had
13 told you was that they went in the house, kind of went
14 through there, and they got to the last bedroom and
15 the door was locked. You said: Well, he said they
16 went into the cottage first thing.

17 Now, I'm asking you if that's the way you remember
18 the conversation taking place?

19 A The conversation taking place was that they went
20 into the cottage, is where the first guns came out of.

21 Q So you dispute the accuracy of the facts
22 contained in the question that this is what Anthony
23 told you?

24 A I'm sorry, I don't understand the question.

25 Q Do you dispute the accuracy of this transcript

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 with respect to that particular factual matter written?

2 It says that Anthony told you, and you are saying that

3 is not correct, that it was Brad that told you?

4 A They both told me. I was asked what Brad told

5 me, I wasn't asked what Anthony told me.

6 Q But in 2011 you didn't tell the detectives,

7 correct?

8 A What now?

9 Q You didn't tell the detectives that?

10 A The detectives didn't ask me what Brad said, they

11 asked me what Anthony said.

12 Q And, basically, your response was he said they

13 separated, he ended up at the kitchen door, Brad ended

14 up in the living room, so I'm assuming they came -- the

15 kitchen and living room has got to be there

16 comparatively together somewhere, in the area, and he

17 said the man had a gun and had it leveled out on Brad.

18 Basically, it's the same story. I'm not quoting

19 anymore from your transcript, but that is basically the

20 same testimony you gave this afternoon in court,

21 correct?

22 A Correct.

23 Q And at least in this transcript you attribute

24 that information to what Anthony told you?

25 A What Anthony told me, correct. If you are asking

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 the question -- Anthony was the first one that I spoke
2 with, and then I spoke with Brad later.

3 Q Let me ask you this. When did you speak to Brad?

4 A When I did speak with Brad?

5 Q Yes, sir. About this case specifically?

6 A To give you an exact date, I can't, but I can
7 tell you it was within a day or two after we came back
8 from our trip.

9 Q All right. So it was after your return from
10 Louisiana?

11 A That's correct.

12 Q And not before you went down there?

13 A No, sir.

14 Q And not before -- let me ask you this. Strike
15 that last -- when -- on the day that the guns showed up
16 at the shed, had there been a barbecue or cookout at
17 the home?

18 A That evening before, yes.

19 Q And was -- how long thereafter was it before you
20 went down to Louisiana?

21 A The following Monday.

22 Q All right. Were any other barbecues or cookouts
23 or anything held at your home before you left?

24 A No, sir.

25 Q Now, would there have been an opportunity at that

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 time for Brad to have said, By the way, guys, I killed
2 a guy the other day?

3 A At that time?

4 Q Yeah, before you went down to Louisiana.

5 A Nope. Brad or anybody else had not spoken on the
6 issue.

7 Q And there wasn't -- there wasn't an opportunity
8 for everybody to get together and have that kind of
9 conversation; isn't that true?

10 A These boys hung around together all the time.
11 I'm a family man, I stay at home with my family.

12 Q But you don't recall there being any cookouts or
13 anything of that nature after the guns showed up and
14 you ordered them off your property, after that?

15 A No, sir. I'm not going to say none of them
16 wasn't over for dinner because I always keep somebody
17 at my house for dinner.

18 Q But you don't recall specifically such an
19 occasion?

20 A No, sir.

21 Q And, typically -- and I apologize, but I'll get
22 it straight in my head. I know I've asked, but how
23 many days before you left to go to Louisiana after that
24 night that the guns showed up?

25 A It was within a four- to five-day range. I'm

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 thinking this particular night was on a Thursday, I'm
2 thinking. It's been five years, I can't remember
3 exactly the night, but I can tell you it was towards
4 the end of the week. I left that Monday going -- that
5 Monday morning going to Louisiana.

6 Q Monday morning?

7 A Yes, sir.

8 Q So if the guns showed up on a Saturday?

9 A What now?

10 Q Do you remember when the guns showed up? That is
11 what you said you can't remember?

12 A I said the night of the barbecue or grill-out --
13 not necessarily a barbecue, but a grill-out. They left
14 supposedly to get some marijuana, coke. Whatever they
15 were going to get to smoke or do, I don't know. I was
16 woke up late that night, early over in the morning,
17 sometime after midnight, that is when the guns showed
18 up on my property.

19 (A brief pause in the proceedings.)

20 MR. DIGGS: Bear with me, please, sir.

21 (A brief pause in the proceedings.)

22 MR. DIGGS: I beg the Court's indulgence just a
23 second.

24 Q Mr. Mullins, one last question. Did you recently
25 sell your son a couple of guns?

CHARLES MULLINS SENIOR - CROSS-EXAMINATION

1 A Do what?

2 Q Did you recently sell Little Charlie a couple of
3 guns?

4 A My son?

5 Q Yes.

6 A I don't own no guns.

7 Q Did you sell him any?

8 A No, sir.

9 MR. DIGGS: Your Honor, thank you, that is all I
10 have.

11 REDIRECT EXAMINATION

12 BY MR. HUCKS:

13 Q Who did you talk to about this night? When you
14 got back from Louisiana and Texas, who did you talk to
15 about what happened at Mr. Elliott's house?

16 A On the first occasion, I spoke with Anthony Ray.

17 Q Don't say what he told you, but you talked to
18 Anthony?

19 A Yes, sir.

20 Q Now, who did you talk to after you talked to
21 Anthony?

22 A With my nephew, Brad.

23 Q Is everything you have testified to here today
24 about what Brad told you, what Brad told you?

25 A Yes, sir.

CHARLES MULLINS SENIOR - REDIRECT EXAMINATION

1 MR. HUCKS: Nothing further.

2 RECROSS-EXAMINATION

3 BY MR. DIGGS:

4 Q You didn't mention that to the police in 2011?

5 A Do what now?

6 Q Did you not mention Brad's alleged confession to
7 the police in the year 2011?

8 A No, sir, I didn't.

9 MR. DIGGS: Thank you.

10 MR. HUCKS: Nothing further. We ask that he be
11 excused.

12 MR. DIGGS: We may ask -- if we could ask him to
13 stay around for a day or so.

14 THE COURT: He's not released under the subpoena,
15 then.

16 Mr. Mullins, you may step down, but I ask you not
17 to leave until excused by the Court.

18 MR. DIGGS: Thank you.

19 MR. HUCKS: I think Dr. Proctor is here.

20 THE COURT: Bobby, take them to the jury room. I
21 see some heads nodding that they need a break.

22 (The jury exits at 3:48 p.m., and a recess is
23 taken.)

24 THE COURT: Bring them in.

25 (The jury enters at 4:01 p.m., and the following is

EDWARD PROCTOR - DIRECT EXAMINATION

1 heard in the presence of the jury.)

2 THE COURT: We have all the jurors back.

3 Mr. Hucks.

4 MR. DeBUSK: I call Dr. Edward Lee Proctor.

5 (EDWARD PROCTOR, having been duly sworn, testified
6 as follows:)

7 THE CLERK: Please state your full name for the
8 record and spell your last.

9 THE WITNESS: Edward Proctor, Junior, P-R-O-C-T-O-R.

10 DIRECT-EXAMINATION

11 BY MR. DeBUSK:

12 Q Where do you practice?

13 A I practice medicine in Myrtle Beach.

14 Q Where is your office?

15 A My office is actually in the hospital, Grand
16 Strand.

17 Q What is your role there?

18 A I'm a pathologist engaged in the anatomic
19 pathology, clinical pathology, and forensic.

20 Q You are a duly licensed physician?

21 A Yes, sir.

22 Q And surgeon?

23 A Not a surgeon.

24 Q Just a physician?

25 A Physician.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q In any state other than South Carolina?

2 A North Carolina.

3 Q How long have you been practicing as a physician
4 -- licensed physician?

5 A Licensed physician, since 1980 or '81.

6 Q Where did you receive your medical training?

7 A Went to Medical University of South Carolina in
8 Charleston and did my pathology residency at Walter
9 Reed Army Medical Center, Washington DC.

10 Q Does your work include the performance of
11 autopsies?

12 A Yes.

13 Q How many autopsies do you reckon you've done?

14 A Probably five or six now.

15 Q You told us your area of specialty, and that
16 includes forensic pathology?

17 A Correct.

18 Q Could you tell the jury what forensic pathology
19 involves?

20 A Forensic pathology is the field of pathology
21 engaged in the medicolegal investigation of death. We
22 get a request from a coroner, investigative authorities
23 and we take the deceased and do an external exam,
24 internal exam, microscopic exam when necessary,
25 toxicological, and based upon the information we get as

EDWARD PROCTOR - DIRECT EXAMINATION

1 a result of that examination and any information we can
2 get from investigative authorities, we perform a cause
3 and manner of death.

4 Q Are you a member of any specialized medical
5 groups or associations?

6 A I'm the member of the College of American
7 Pathologists and the American Society of Clinical
8 Pathologists, and board certified by the American Board
9 of Pathology.

10 Q What are the requirements for such
11 certifications?

12 A Requirements for certification is to complete a
13 residency program in pathology, and complete either a
14 training or experience in the subspecialty, such as
15 forensic pathology, acceptable to the Board of
16 Pathologists, and then you have to sit for a prolonged
17 examination.

18 Q Have you ever been qualified in the court of law
19 as an expert in pathology?

20 A Yes, sir, I have.

21 Q Can you guess how many times?

22 A A number.

23 Q Several?

24 A Yes.

25 MR. DIGGS: We stipulate.

EDWARD PROCTOR - DIRECT EXAMINATION

1 THE COURT: He would stipulate that he's an expert
2 in the field of forensic pathology.

3 MR. DeBUSK: Thank you.

4 Q (MR. DeBUSK) Did you have an occasion to do an
5 autopsy on Kelly Joe Elliott?

6 A Yes, sir, I did.

7 Q Where was it done? Where was it performed?

8 A In my facility at Grand Strand in Myrtle Beach.

9 Q When you have a person come for an autopsy, do
10 you often request x-rays?

11 A We use x-rays at times when we deem it necessary
12 to locate foreign objects, bullets, or to determine the
13 number of fractures or anything like that.

14 Q I'll show you what is in evidence as State's
15 Exhibits 93, 94 and 95 and ask if those are familiar to
16 you?

17 A Yes, sir.

18 Q What are they?

19 A These are x-rays taken at the time of this
20 autopsy.

21 Q And, again, you would take those to help locate
22 the foreign objects?

23 A Yes, sir. Yes, sir.

24 Q Let me ask you, when you received Mr. Elliott's
25 body, what was its condition?

EDWARD PROCTOR - DIRECT EXAMINATION

1 A The condition of this body was in a fairly
2 advanced degree of decomposition, about three, four
3 days postmortem.

4 Q Are you able to put a more precise number?

5 A I cannot.

6 Q Why is that?

7 A There are a lot of factors that enter into
8 determining decomposition, was the body outside in the
9 open air, was the body in a house, was it air
10 conditioned, non-air conditioned. Decomposition is
11 either accelerated by heat or slowed down by cool, and
12 it is very, very subjective.

13 Q So the range of three to four days?

14 A That is as good as I can do, yes, sir.

15 Q Thank you. Were you still able to determine the
16 cause of death in these injuries?

17 A Yes, sir.

18 Q What external injuries did you find on
19 Mr. Elliott?

20 A Really, truly, found lots of, you know,
21 postmortem changes, but the most significant findings
22 were two gunshot wounds, one gunshot wound to the left
23 head just above the ear, and a gunshot wound to the
24 right chest in the posterior axillary line towards the
25 back area.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q Were you able to tell how many bullets caused
2 these two injuries?

3 A Two.

4 Q Was there any indication on the body of the
5 distance which these were fired, close or far, or can
6 you tell?

7 A I could not tell.

8 Q Was that because of the state of decomposition?

9 A Yes, sir.

10 Q Thank you. What internal injuries were
11 associated with those wounds?

12 A The head wound caused extensive fractures to the
13 bones of the skull. It passed through the brain
14 causing extensive damage to the brain tissue itself.
15 There was a fracture of the right skull, and the
16 projectile was recovered from just under the skin on
17 the right side.

18 Q So is it true it exited the skull on the right
19 side, but not the skin?

20 A Passed through the bone, but not the skin.

21 Q What would the results of that injury have been?

22 A That injury would have been lots of blood and
23 just destruction of the tissue.

24 Q Would it have been fatal?

25 A Yes, sir, that would have been fatal.

EDWARD PROCTOR - DIRECT EXAMINATION

1 Q Would it have caused instant unconsciousness?

2 A It would have caused rapid loss of consciousness,
3 yes, sir.

4 Q How about the shot to the torso?

5 A The torso shot passed in a left to right
6 direction. It penetrated the lungs and was within the
7 vertebral column, thoracic area.

8 Q Would that be immediately fatal?

9 A It would have been a significant wound,
10 particularly penetrating the lungs, and without rapid
11 intervention, it could be fatal.

12 Q But not immediately?

13 A Not immediately, no, sir.

14 Q What would the consequence be of it hitting the
15 spine?

16 A I did not completely disarticulate everything.
17 It was difficult to find the bullet, so we left it
18 there. I cannot tell you whether it hit the cord
19 structures itself. It was found within the vertebral
20 body adjacent to the spinal cord.

21 Q Would it have been an injury that would have
22 knocked the victim down?

23 A In all likelihood, it would have, yes, sir.

24 Q Did you determine a probable cause of death?

25 A My cause of death was multiple gunshots wounds

EDWARD PROCTOR - DIRECT EXAMINATION

1 with extensive trauma.

2 Q Finally, would you be able to indicate for the
3 jury using this rod and my body the trajectories?

4 A I can.

5 MR. DeBUSK: Your Honor, may the witness --

6 THE COURT: Yes, he may.

7 A The head wound was left head, above the ear, left
8 to right and anterior towards this direction, found
9 under the skin on the right side over here. The chest
10 wound was what we call the posterior axillary line, the
11 back half of the chest, left to right direction,
12 slightly and superior, and entered the vertebral
13 column, the bony part of the spine, at the T-4 level of
14 the chest up in here.

15 MR. DeBUSK: Please answer any questions defense
16 may have..

17 CROSS-EXAMINATION

18 BY MR. DIGGS

19 Q Since we are talking about the wound to the head
20 you just demonstrated, could you talk about the
21 trajectory of the bullet as it went into the skull and
22 how it traversed through the brain?

23 A Right. It penetrated the bony skull just above
24 -- make sure I have it -- left ear. It passed in a
25 left to right direction, slightly anterior. So it came

EDWARD PROCTOR - CROSS-EXAMINATION

1 sort of above the ear, slightly anterior and was
2 removed from the soft tissue on the right side.

3 Q Was the trajectory itself horizontally level?

4 A It was relatively level, more angled from
5 posterior to anterior (indicates).

6 Q Okay. On the decomposition question, I wanted
7 to -- and I heard your testimony on direct, but do you
8 have your report there with you?

9 A I do.

10 Q You say in your report in the front, I think it
11 is the front, "External Description," The decomposition
12 changes are greater than three to four days.

13 A At least three to four, possibly longer.

14 Q So at least. At that point, you were indicating
15 possibly longer?

16 A It could be. At least three to four days.

17 Q There is a photo of Mr. Elliott that's been
18 admitted into evidence. It shows him under a blanket
19 in a position where he was found by his friends. This
20 is State's Exhibit No. 17, and I want to show you this.
21 It's been testified that that is the depiction of the
22 scene, that that is how Mr. Elliott was found.

23 I want you to focus on the front portion where
24 Mr. Elliott's arm is sticking out from underneath the
25 blanket. We had it on projection this morning, and it

EDWARD PROCTOR - CROSS-EXAMINATION

1 was much larger and you could see it. Do you see what
2 I'm talking about, the gentleman's arm sticking out
3 (indicates)?

4 A Okay. Okay.

5 Q In particular, Dr. Proctor, I want to have you --
6 if you can make it out from that picture, look at the
7 black discoloration of the arm.

8 A Uh-huh.

9 Q Is that something that is typical with the
10 decomposition of change?

11 A Yes, sir.

12 Q And is that identified within any particular
13 stage of decomposition?

14 A Again, it is very difficult. Seeing this in the
15 confines of that house, it was un-air conditioned and
16 80 to 90 degrees in that house over a period of time,
17 those changes can occur in a rapid fashion, and
18 certainly could be less than three to four days. If it
19 is like 72 degrees in here, using that as a standard,
20 three, four days, possibly, plus or minus a little bit.
21 All in all, without knowing exact temperatures, it is
22 very difficult to give you more exact.

23 Q Did anyone make any effort to give you that
24 additional information?

25 A No, sir, they did not. No. My autopsy is

EDWARD PROCTOR - CROSS-EXAMINATION

1 strictly based upon my experience in the number I've
2 seen, which is why I say it is variable.

3 Q And for his skin to turn to the dark color, it
4 definitely is going to require some passage of time?

5 A It will require time. If it was in the bright
6 sunshine, outside, it could happen in less than 24
7 hours, but in the cold or an air conditioned area, it
8 could take longer.

9 Q Ten or 20 days?

10 A Sometimes it can. Sometimes, yes.

11 MR. DIGGS: I appreciate it --

12 Q (MR. DIGGS) Oh, the holes in the body were
13 basically the same size?

14 A Yes, sir.

15 Q One was round, one was oval?

16 A Sort of depends. If it is a straight shot, it is
17 more round. If it is at more of an angle, it is what
18 they call an abrasion collar, and it bevels the skin.

19 Q But those definitely, per your examination and
20 measurements, were the same size?

21 A Pretty much, yes, sir.

22 MR. DIGGS: That is all I have.

23 REDIRECT-EXAMINATION

24 BY MR. DeBUSK:

25 Q Would the size of the holes necessarily correlate

EDWARD PROCTOR - REDIRECT EXAMINATION

1 with the size of the caliber of the bullet?

2 A Usually the size of the hole correlates with the
3 power of the round. Like a low velocity round or
4 smaller bullet, such as a .22, has a smaller hole.
5 When you get to the larger rounds, .58, .357, .40
6 calibers, the holes are similar, but they can vary
7 based on slight deflections in the skin, or if it is
8 tight against a bone, it makes a larger hole.

9 Q So it is hard to tell?

10 A Hard to tell. Without having the projectile
11 itself, I would be very reticent to tell you whether or
12 not I knew the caliber. I could say it is large versus
13 small caliber.

14 Q And as to the time of death, do I take it that it
15 could be anywhere from 24 to ten days, depending on
16 conditions?

17 A Depending on conditions. It is very variable. I
18 have had no other information from investigative
19 authorities as to when this man was last seen alive, no
20 information as to when was the last time that house had
21 been checked, those things. So it is strictly going
22 on --

23 Q It is an educated guess?

24 A For lack of a better term, yes, sir.

25 Q Educated guess?

EDWARD PROCTOR - REDIRECT EXAMINATION

1 A Yes, and with lots of variation.

2 Q You said the round went by the ear and recovered
3 from the head?

4 A Yes, sir.

5 Q So you got the round?

6 A The round was recovered and it was given to
7 investigative authorities.

8 MR. DeBUSK: Thank you. No further questions.

9 THE COURT: You may step down.

10 MR. DeBUSK: Could he be excused?

11 MR. DIGGS: We have no objection.

12 THE COURT: Doctor, you are released from your
13 subpoena.

14 MR. HUCKS: May we approach for scheduling matters?

15 THE COURT: Yes.

16 (Whereupon, a bench conference was had.)

17 THE COURT: We had a conference with the attorneys,
18 and what we have left -- and we have made a lot of
19 progress, but rather than keeping you over, I know you
20 have obligations with children and things, I'll go
21 ahead and let you go. It is almost 4:30. I'll ask you
22 to be back in your jury room in the morning at 9:30.
23 Did Bobby have something for you this morning? He will
24 in the morning as well, okay. Bobby, if you would,
25 take the jury to the jury room and make sure they get

BY THE COURT

1 out safely.

2 (The jury exits at 4:22 p.m., and the following is
3 heard out of the presence of the jury.)

4 THE COURT: All right. We will be at ease. Do you
5 have anything that I can help you with before we
6 adjourn for the evening?

7 (Whereupon, a bench conference was had.)

8 THE COURT: Mr. Mullins will be released from his
9 subpoena, Mr. Charles Mullins.

10 (Whereupon, the proceedings for December 3, 2013
11 concluded, and the following was had on December 4,
12 2013 at 9:44 a.m. out of the presence of the jury.)

13 MR. DeBUSK: I didn't put the numbers of some
14 exhibits on the record yesterday.

15 THE COURT: Okay.

16 MR. HUCKS: May we approach?

17 THE COURT: Yes.

18 (Whereupon, a bench conference was had.)

19 MR. DeBUSK: While we're waiting for the jury, when
20 Officer Cestare testified, he authenticated a number of
21 photos. I forgot to put three photos on the record,
22 the numbers of them, that he authenticated, State's
23 Exhibit 46, 77 and 82.

24 THE COURT: Is that right, Mr. Diggs?

25 MR. DIGGS: I didn't hear.

BY THE COURT

1 MR. DeBUSK: State's 46, 77, 82 were authenticated,
2 but not yet admitted.

3 MR. DIGGS: Could I look at them again? That's
4 fine.

5 (State's Exhibits 46, 77, 82, were admitted.)

6 (The jury enters at 9:57 a.m., and the following is
7 heard in the presence of the jury.)

8 THE COURT: We have our jury and alternates here in
9 the courtroom. Mr. Hucks.

10 MR. HUCKS: Thank you, Your Honor. The State would
11 call Charles Mullins.

12 (CHARLES MULLINS, having been duly sworn, testified
13 as follows:)

14 THE CLERK: State your name and spell your last
15 name for the Court.

16 THE WITNESS: Charles Henderson Mullins,
17 M-U-L-L-I-N-S.

18 DIRECT-EXAMINATION

19 BY MR. HUCKS:

20 Q Do you mind if I call you Charlie?

21 A Sure.

22 Q Now, Charlie, what do you do for a living?

23 A Construction.

24 Q And how long have you done construction?

25 A My whole life.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Q And how old are you?

2 A Twenty-nine.

3 Q Now, I'm going to ask you a couple of drawn out
4 questions, and I need you to explain for the jury some
5 stuff. Tell me how you are related to these people.
6 How are you related to Charles Edgar Mullins?

7 A That's my father.

8 Q How are you related to Arlie Mullins?

9 A He is my cousin.

10 Q First cousin?

11 A First cousin.

12 Q Now, how are you related to Anthony Ray?

13 A He's also my first cousin.

14 Q How are you related to Brad Mullins?

15 A My first cousin as well.

16 Q Now, how well would you say you know Arlie and
17 Anthony and Brad? How would you describe your
18 relationship with those three fellows?

19 A I semi-know them. I know of them. The
20 relationship is really distant. Not that I've been
21 raised up with them.

22 Q Okay. Now, explain to me what is your
23 relationship with your father, Charles Edgar, explain
24 that for the jury?

25 A I don't have a real relationship with my father.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Him and my mother divorced when I was little. They
2 split up. He went on his way. I seen him
3 periodically, that is how I got to know the majority
4 side of his family, when I would see him here and
5 there, but as far as having a real together
6 relationship with that side, I never had one, not until
7 after I got up in age, 19, 20, somewhere in there.

8 Q What did you do when you were 19 or 20 to get a
9 relationship with your dad's side of the family?

10 A Doing the line of work I do, I become pretty good
11 at what I do.

12 Q What is that line of work?

13 A Construction, reading blueprints, framing,
14 painting, remodeling, that has become my trade.

15 Q Is that the same thing your daddy does?

16 A Semi. It is what he tries to do.

17 Q Is that how you gained a relationship with your
18 father?

19 A Yes.

20 Q And how did that come about, explain that a
21 little bit? You are 19, 20 years old, and what
22 happens?

23 A My father is really good at getting work. He's
24 always -- when I first was getting together with him,
25 he would -- he offered to pay me really well, when I

CHARLES H. MULLINS -DIRECT EXAMINATION

1 wasn't working my full-time job. So I would take off
2 -- when he got something good, he paid me good, asked
3 me to come help him, and that is pretty much what I
4 done. I went and ran his jobs for him.

5 Q Is that the relationship you had with your father
6 back in September of 2008?

7 A Yeah.

8 Q Now, tell us how you came to be in or about Horry
9 County in September of 2008.

10 A Well, we had been -- prior to that, we had been
11 doing work in Durham on some shopping centers.
12 Everything kind of dried up, work got slow and my
13 father had me come to his place in South Carolina and
14 said we were going to meet him, me, him, some more of
15 the other family members, go to Louisiana to do some
16 storm damage. There was a hurricane coming through.

17 Q Let me stop you. When you said there was other
18 family members, does that include the defendant, Brad
19 Mullins?

20 A Yes.

21 Q And Anthony Ray?

22 A Yes.

23 Q And Arlie Mullins?

24 A Yes.

25 Q Did you have a chance to become close with those

CHARLES H. MULLINS -DIRECT EXAMINATION

1 fellows over the time you worked with them?

2 A Semi. Not as close as every day walking, talking
3 right beside them, just distant close, I guess.

4 Q Distant close?

5 A Yeah. Knowing of them. I can't tell you in
6 detail what they do, how they act, all of that.

7 Q Do you remember the week on or about
8 September 11, 2008? Do you remember that week?

9 A Yes, sir.

10 Q I want you to tell the jury about what you
11 remember from that week.

12 A Okay. Like I said before, I come in. My father
13 had asked me about coming in, going to Louisiana to do
14 some work. It was me and several other family members
15 were going to meet at his place. We all met up, all of
16 my cousins came in, a couple of my uncles, father's
17 family. The day of whenever everyone got in town, or
18 everyone was there, we were sitting out back just
19 hanging out, you know, all of the guys sitting around,
20 talking and carrying on, drinking.

21 Q Was this some sort of a cookout environment? You
22 had a bunch of people around, or what would you call
23 it?

24 A Just a gathering. I mean, all the guys were just
25 shooting shit out back, excuse me. Anyway, we are

CHARLES H. MULLINS -DIRECT EXAMINATION

1 talking and carrying on, just everything, really. We
2 got talking about guns, hunting. A lot of the people
3 in my family, cousins, their fathers, they collect, buy
4 and sell, they are fans of guns. In this conversation,
5 Brad called me over to the side and asked me -- kind of
6 whispered if I would be interested in getting rid of
7 guns for him, if I knew where I could. I told him, no,
8 I didn't have any idea, so he kind of shrugged it off,
9 and we went back to the conversation.

10 Q Let me stop you for a minute. Why would you say
11 no? Anything about that question raise your eye?

12 A I mean, it did to the point -- I mean, spur of
13 the moment, he just -- just knowing that side of my
14 family, you know, knowing they stay in and out of
15 trouble, it is kind of odd he called me to the side and
16 whispered instead of everybody, so I didn't feel that
17 it was the right thing.

18 Q So what happened after you told him no?

19 A He just kind of shrugged if off and went back to
20 carrying on with everybody else, as well as myself.

21 Q Okay.

22 A This time, before we were getting ready to head
23 out of town, I went back in the house to speak to my
24 father to talk to him about me going home and spending
25 time with my kids before we left, but he said he didn't

CHARLES H. MULLINS -DIRECT EXAMINATION

1 know how long we were going to be gone or what we would
2 get into.

3 MR. HUCKS: Hold on.

4 Q (MR. HUCKS) All of these conversations that you
5 guys would have had, I want to show you and ask you if
6 you recognize it, if I can find it. We have a pile of
7 exhibits here.

8 (A brief pause in the proceedings.)

9 Q (MR. HUCKS) State's Exhibit No. 4, what is that?

10 A That's my father's house.

11 Q When you say you guys had all of these
12 interactions over the course of the afternoon or
13 evening, is this where it would have happened?

14 A Yeah.

15 Q I'm walking to the other side of you here. Point
16 out for the jury -- and I know it is small --
17 whereabouts would these conversations have taken place?

18 A Back over here on the back side of this carport.

19 Q So here in the carport, under it or behind it?

20 A Yeah. Yeah.

21 Q When you said you were having these
22 conversations, who all was involved in these
23 conversations?

24 A Me, Brad, Anthony, Arlie, Anthony's uncle Allen
25 may have been standing there, I'm not sure, but I know

CHARLES H. MULLINS -DIRECT EXAMINATION

1 the four of us was there.

2 Q All right. Would anybody else have been in a
3 position to overhear the conversation you and Brad had
4 about the guns?

5 A I wouldn't think so, not unless they are really
6 good listeners.

7 Q So what happened after you had that discussion?

8 A I went in, spoke to my father about leaving. I
9 was going to go home with my kids. When I came back
10 out after being with him to find out when we would
11 leave and all of that, Brad approached me again and
12 asked if I cared to take him over to a buddy's house to
13 pick up a bag of pot.

14 Q Were you guys pot smokers, the whole crowd?

15 A Yeah, on occasion -- not...

16 Q That evening, as everything was going on, were
17 you all drinking?

18 A Yeah. They were all drinking, I hadn't drank
19 anything.

20 Q Smoked a little pot?

21 A Yeah.

22 Q Was the whole crowd smoking pot?

23 A Yeah, I believe.

24 Q So was it unusual when he said he wanted pot for
25 the trip, was that an unreasonable request?

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A No.

2 Q What did you do?

3 A Sure. I don't care. He was just going up the
4 road. So we got in the vehicle, me, Brad, Arlie,
5 Anthony. I had a four-door Chevy Blazer. We got in.

6 Q A four-door Blazer, is that a big size vehicle?

7 A No, it is small size. It is not the full size.

8 Q Four door. Where was everybody sitting in this
9 thing?

10 A I was driving. Arlie, my cousin, got in the
11 passenger's seat, Brad was directly behind him and
12 Anthony was behind me.

13 Q What did you do after you got in the truck?

14 A We got in the truck and Brad started giving me
15 directions, the way to go. We took off up the road,
16 and on the way, I asked him -- turned and asked where
17 exactly are we going, and he said we're going to go get
18 them guns. I hit my brake and I said, no, I told you,
19 I'm not going to do that, that's not going to happen.
20 No, I'm just messing with you, we're going to get a bag
21 of pot before we leave. I said, Okay. So I kept
22 going.

23 Q Who told you how to get to where you were?

24 A Brad.

25 Q And tell the jury how that would have happened,

CHARLES H. MULLINS -DIRECT EXAMINATION

1 how did he tell you?

2 A He just told me where to turn, you know. I don't
3 have any idea where I'm going, make a left here, right
4 here as we come to turns.

5 Q How long would you say you drove for?

6 A Thirty minutes or so.

7 Q Pretty good distance?

8 A Yeah.

9 Q Where did you end up?

10 A I ended up on Dew Lane.

11 MR. HUCKS: If I may approach, Your Honor.

12 Q I'll show you something, Charlie. This is
13 already entered as State's 68. I'll ask you if you
14 recognize -- you might not recognize the addresses, but
15 do you recognize [REDACTED] Johnson --

16 A That is my father's house.

17 Q Is that where you would have left from that day?

18 A Yes, sir.

19 Q [REDACTED] Dew Lane, Dew Lane, that would have been
20 where you ended up?

21 A Yeah.

22 Q And how long did you say it took you to get from
23 there to driving the whole way?

24 A Thirty minutes, give or take, not a hundred
25 percent sure.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 Q What happens when you get to Dew Lane?

2 A Well, as we turn into Dew Lane, before I get to
3 where I stopped at, Brad told me to pull up out front.
4 He said, Don't pull in, just drop me and Anthony off,
5 the guy don't care for people coming in, so drop us
6 here at the front, you guys run up the road, give me a
7 few minutes, come back and I'll be done. Which is a
8 given if you are going to get a bag of pot, I don't
9 think that the guy would want somebody he didn't know
10 in his house.

11 Q Who got out of the car?

12 A Brad and Anthony.

13 Q What did you do then?

14 A When they stepped out, Arlie and myself kept
15 going down Dew Lane, just a little dirt road. When we
16 got to the end, it is like a gait there, you can't go
17 any further. We turned around and came back out. It
18 is not very long. When I got to the hard top road, I
19 went to the left, opposite of the way we came in, there
20 was nothing but back roads. So we rode a little bit,
21 and I came up to a store. We figured we would stop and
22 get a drink since we were out, but they were closed, so
23 we turned around. Few more minutes we come back by.
24 When I pulled in, Anthony and Arlie were standing
25 beside the road waiting. I pulled up, didn't even

CHARLES H. MULLINS -DIRECT EXAMINATION

1 park, I just -- as soon as I pulled up, they walked
2 around to the back of my vehicle and popped opened my
3 hatch.

4 Q SUV?

5 A Yeah.

6 Q There is the glass that opens, or the whole
7 hatch?

8 A No. You can do both, hit the button on the back
9 of the tailgate and the glass will open, or turn it and
10 let the other half down.

11 Q Which did they do?

12 A Just popped the glass.

13 Q Did the interior lights come on?

14 A The interior light, the only one I had was above
15 me, it didn't work. The only lights I had was the dash
16 inside.

17 Q Now, what did they do when they popped your
18 hatch?

19 A They set something in the back of my truck. They
20 shut the hatch, came back around, got in the vehicle
21 the same way they got in, Brad got in on the
22 passenger's side, Anthony behind me. They got in, shut
23 the door. As Brad sat down, he had a little white sack
24 with him.. He sat down with it.

25 Q What do you mean? Describe this.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A Well, I didn't get a chance to focus in on it, he
2 just had --

3 Q Like a zip-lock bag?

4 A Kind of like a sack, maybe a pillow case. It was
5 whitish color. Anyhow, he sat down with it. When I
6 turned to look, Anthony leaned forward and he just had
7 a weird look, kind of like he saw a ghost, and I asked
8 him what is wrong with you, and when I asked Anthony,
9 Brad answered for him, and he said, Nothing is wrong
10 with him, he's good. Let's go. Keep going. Okay. So
11 I pulled off, went back to the end of Dew Lane, turned
12 around the same way I did before, but when I came back
13 to the hard top, we went left instead of the way we
14 came in, the opposite way.

15 Q Who told you to do that?

16 A Brad.

17 Q Who gave you directions from there on out back to
18 your father's?

19 A Brad.

20 Q Did you know how to get there?

21 A No.

22 Q Did you know how to get back?

23 A No, sir.

24 Q Tell us about the trip back.

25 A We rode for a little ways, not a whole lot of

CHARLES H. MULLINS -DIRECT EXAMINATION

1 talking going on at this point. We turned down a long
2 two-lane road. On the way down the road, Brad pointed
3 at a spot on side of the road and said, Stop right
4 here, I need to get out. So when I stopped the
5 vehicle, we stopped. I was right in front of a bridge.
6 Beside it, there was an old abandoned building. I'm
7 assuming he's getting out to use the bathroom. As I
8 went to exit my side to use the bathroom, when he got
9 out, the baggy came out with him, and he threwed it as
10 he stepped out. I assume he used the bathroom, I did.
11 I got back in the vehicle, and we proceeded back to my
12 father's house.

13 Q What happened when you got to your Daddy's house?

14 A I pulled in, went beside the building, the
15 carport in the picture. I pulled aside of it, and
16 there is a building in the backyard, I parked in front
17 of it.

18 Q Hang on a second. I'll show you another exhibit.
19 It is entered as State's Exhibit 8. What is that?

20 A That's the building.

21 Q Tell us anything you know about this building.
22 Tell the jury what is the difference in the gray door
23 side and the wood door side, if any?

24 A There is not really a difference in the doors.

25 Q I mean, on that side of the shed.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A There is three parts to the shed. This is the
2 shed in my daddy's backyard. This side they kept tools
3 and stuff for construction, this side he kept his
4 motorcycles in, and in the middle part Anthony's uncle
5 made a bedroom in there.

6 Q Who are you talking about "Anthony's uncle"?

7 A Allen. He had a bed, little stereo, air
8 conditioner in the back wall, what have you.

9 Q Now, when you pulled up there, what happened?

10 A When I pulled back into my father's house, we
11 pulled around the building. Everybody gets out of the
12 vehicle. I walk into my dad's house. I'm nervous, and
13 I'm ready to go home.

14 Q What are you nervous about?

15 A Just kind of putting everything together that
16 just happened, you know, the mentioning of guns, then
17 not mentioning of guns, and then Anthony's face and
18 Brad throwing a bag into the river. I was ready to go
19 home. I didn't feel like staying no more.

20 I went in. As soon as I got in there, I spoke to
21 my father to say I was going home, call me, let me know
22 when he was ready to pull out and go to Louisiana. He
23 said that is fine, and grabbed my two bags. I walked
24 back out to the shed. When I walked out, Anthony,
25 Arlie, Brad and Allen were all standing out there.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 They had the tailgate down on my truck. There was a
2 couple of shotguns, I think, laying on my tailgate.
3 Anthony and Brad were standing there holding the gun,
4 and when I walked up, I asked who they belonged to, and
5 Brad said -- he just shrugged and said, They are mine.
6 I said okay, and left it at that.

7 I told him I was leaving, whatever. I would be
8 back whenever. As I walked away, Brad asked me what I
9 was driving home, and I said I'm going to take my
10 truck, and he said can I use your Blazer while you are
11 gone, and I said the keys are in the house, and I drove
12 home.

13 Q Where is home at?

14 A Bristol, Virginia.

15 Q So you drive back to Bristol?

16 A Yes, sir.

17 Q How long do you stay at Bristol for?

18 A A couple of days, just spent time with my kids.

19 Q How many kids do you have? We've heard about all
20 of the kids everybody else has.

21 A I have four.

22 Q What do you do -- how long do you stay in
23 Bristol?

24 A Couple of days.

25 Q What do you do?

CHARLES H. MULLINS -DIRECT EXAMINATION

1 A Construction work -- oh, I'm sorry.

2 Q Time wise.

3 A Nothing. I came in and spent time with my kids,
4 hung out, just playing, being a father, you know.

5 Q When do you come back to Horry County?

6 A A couple of days after that. After I had gotten
7 home, my dad called me and said, you know, if I was
8 ready, come on, he was ready to pull out and go to
9 Louisiana.

10 Q What were you going to go to Louisiana for?

11 A We were going to go for storm damage. There was
12 a hurricane coming through, and he thought since
13 everything kind of dried up around there, we could go
14 make some money. I told him that is fine, I'll be
15 ready. He asked if I cared on the way back if I would
16 swing through Durham and pick up a couple of guys
17 working with us.

18 Q Did you do that?

19 A Yes, sir. I told him I had no problem. I picked
20 them up as extra hands.

21 Q So you swing by there and go back to Horry County
22 at that point in time?

23 A Yes, sir.

24 Q What happens when you get back here?

25 A When I get to my dad's, everybody is pretty much

CHARLES H. MULLINS -DIRECT EXAMINATION

1 ready to go except I have to haul the trailer. That
2 was the main reason my father called, no one had a
3 truck big enough to haul the trailer but me.

4 So I get back, the trailer is loaded. I hook it up
5 to the truck, changed a few things. Not long after
6 that, we pulled out and headed back towards Louisiana.

7 Q What happens when you get to Louisiana, if
8 anything?

9 A On our way, in the mix of everyone changing out
10 vehicles, it is a long drive, everybody is taking
11 turns, you know. My father and I got in a conversation
12 and he asked me --

13 Q Don't tell us what your father asked you. You
14 can say what you told him to any question your dad
15 asked you, but not what he told you.

16 A I explained to my father that I didn't have any
17 involvement in anything in a question I was asked, that
18 I didn't have any knowledge of it. He was just curious
19 and wanted to know because of something he heard, and
20 that was it, you know. We went on kind of bond time,
21 chatting, carrying on.

22 When we got down to Louisiana, we didn't stay long.
23 Nothing wasn't going on. It wasn't as bad as, I guess,
24 it was anticipated as being. For the amount of people
25 and stuff that we had, we figured if we couldn't get

CHARLES H. MULLINS -DIRECT EXAMINATION

1 work, funds were short, everybody was getting hairy
2 wanting to figure it out, what we were going to do. We
3 decided we were going to head back.

4 As a result of a question I was asked, I called
5 Brad off to the side and asked Brad if it was true if
6 he had killed a man, and he said he did. At first I
7 didn't know how to take it. I said, no, he didn't, and
8 he chuckled and said, All right, I didn't. I said, If
9 you did, when? He said, The night you took me to my
10 buddy's house, he said, I shot a man. Boy, where is
11 the gun at if you did, and he said, I threw it in the
12 river. At this time, everything kind of circled around
13 me, and I was ready to go. I didn't say anything more
14 about it.

15 I talked to my father and said we needed to head
16 back home, I wanted to go home. We started heading
17 back. On the way back, the fuel pump went out of my
18 truck. We had to stop and fix it. There was a truck
19 stop somewhere. We stopped, got the parts, got working
20 on it. In the middle of all of this, my dad met people
21 at the truck stop and talked with them about us staying
22 at their house for a couple of days to kind of get
23 everything together and figured out what we were going
24 to do, where we were going.

25 While we were there, everybody was trying to figure

CHARLES H. MULLINS -DIRECT EXAMINATION

1 out their money, how much we had, if we had enough to
2 get back home to do what we needed to do. I overheard
3 Brad tell my daddy if he would help him sell his guns,
4 he would have enough money for everybody to get back
5 home. So my father went in, spoke with the lady at the
6 house, and she had a couple of guys that she knew, I
7 guess, come over and look at them. They came over and
8 looked at them, and they took them. After that, we all
9 loaded up the vehicles and the trailers, and we started
10 heading back home.

11 On my way back, my mother contacted me. I had been
12 putting applications through the union. I was a member
13 of the UBC, and they called and wanted me to come to a
14 job they had for me at a power plant in Carbo. So when
15 we got back to my daddy's house, everybody got all of
16 their crap out, I unloaded the tools, trailers, took my
17 truck and I headed home. That is pretty much the last
18 time...

19 Q Over two years after all of this stuff took
20 place, the police come to see you, right?

21 A (Deponent nods head.)

22 Q Why did two years lapse before you told anybody
23 this?

24 A One, I didn't want to believe it; two, I was
25 scared to say anything.

CHARLES H. MULLINS -DIRECT EXAMINATION

1 MR. HUCKS: Nothing further.

2 CROSS-EXAMINATION

3 BY MR. DIGGS:

4 Q Do you remember when you were interviewed this
5 year by the solicitor and his investigator? That was
6 you?

7 A Yes.

8 Q And did you lie to them?

9 A No, sir.

10 Q You were truthful?

11 A Yes, sir.

12 Q All right. So you found out about this murder
13 because Brad admitted it to you?

14 A Yes, sir.

15 Q Did you tell them that earlier this year?

16 A Tell who?

17 Q The investigator.

18 A Yes, sir.

19 Q Didn't you tell them that your dad talked to you
20 about that and told you about it?

21 A That my father mentioned it.

22 Q When did he mention it?

23 A On our trip to Louisiana.

24 Q Let me ask you this. Do you remember when you
25 told them that on the way to Louisiana you and your dad

CHARLES H. MULLINS - CROSS-EXAMINATION

1 had a conversation, and your dad asked you what
2 occurred that night; do you remember that?

3 A Yes, sir.

4 Q Do you remember what you told him?

5 A Yes, sir.

6 Q What did you tell him?

7 A I told him that I didn't know.

8 Q You told him you didn't know?

9 A Yeah.

10 Q Let me get you to look at the transcript of your
11 alleged statement at that time.

12 (A brief pause in the proceedings.)

13 Q (MR. DIGGS) What did you tell your dad in the
14 conversation you had with him about that particular
15 incident?

16 A I can't recall word for word. When my father
17 asked about my involvement and I said I didn't have any
18 involvement in it, if I knew what took place, I told
19 him didn't know.

20 Q Now, I'm confused, because the conversation that
21 you had with the solicitor and your testimony given
22 here, as to given here (indicates). I want to back up,
23 and kind of bear with me. I apologize. I want to go
24 through this again.

25 On your direct -- tell me how you learned of the

CHARLES H. MULLINS - CROSS-EXAMINATION

1 murder, what did you testify to in your direct
2 examination about the murder and your learning about
3 it?

4 A Which time?

5 Q What do you mean?

6 A My trip with my father?

7 THE COURT: Mr. Diggs, I think you need to explain
8 what "direct" means.

9 Q (MR. DIGGS) In your testimony you just gave when
10 the solicitor was asking you questions, you told us
11 about how you learned about the shooting. I want you
12 to repeat that for me at this point. Tell me when you
13 first found out that Brad supposedly had committed the
14 murder.

15 A On our trip to Louisiana, my father asked me
16 about the night that I took them to their buddy's
17 house, he said Brad told him that he killed a man.

18 Q So your dad tells you that Brad had told your dad
19 that he killed a man?

20 A Yes, sir.

21 Q And then after that, you went to Brad and asked
22 him about it?

23 A Yes, sir.

24 Q All right. Now, that's a little bit different
25 from your testimony a minute ago, correct, because it

CHARLES H. MULLINS - CROSS-EXAMINATION

1 interjects your father into the scenario whereby you
2 learned about the shooting, does it not?

3 MR. HUCKS: Objection, Your Honor. He's asking him
4 to testify to hearsay, and I specifically asked him not
5 to testify to hearsay when I was direct examining him.

6 MR. DIGGS: Your Honor, I'm asking him questions if
7 I want to --

8 THE COURT: I'll let him go forward.

9 MR. HUCKS: Thank you.

10 Q (MR. DIGGS) So at this point --

11 MR. DIGGS: Bear with me just a second, Judge.

12 (A brief pause in the proceedings.)

13 Q (MR. DIGGS) All right. Now, in your testimony --
14 let's go back again. Tell me when it was that Brad
15 confessed that murder to you, when did that occur?

16 A When we were in Louisiana.

17 Q When you were in Louisiana, all right. All
18 right.

19 Do you realize that in your direct examination,
20 when the solicitor was talking to you about the case,
21 that you said when you arrived back at the house, that
22 you picked up Anthony and Arlie.

23 A No, sir.

24 Q You said that. Do you want the court reporter to
25 read it back?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 A When I arrived at the house? No, sir, I picked
2 up Anthony and Brad.

3 Q But you testified initially that you picked up
4 Anthony and Arlie, that is in the record.

5 A That I said -- no, sir, and if I did, I
6 apologize.

7 Q Because you are here to testify against Brad,
8 that is your purpose for being here today?

9 A My purpose is to tell the truth of what happened.

10 Q Like you did in -- when did you first talk to the
11 police about this case?

12 A I'm not sure of the date.

13 Q Where were you when that conversation occurred
14 when they came to talk to you?

15 A When I first got picked up on this?

16 Q Yeah.

17 A I was at work.

18 Q Where was that?

19 A Bristol, Virginia.

20 Q Bristol, Virginia?

21 A Yes, sir.

22 Q And the police came there and talked to you about
23 the case, and what did you tell them?

24 A I didn't say anything to the police at that time.

25 Q You said you didn't do anything wrong, correct?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 A Correct. I haven't done anything wrong.

2 Q Did you volunteer any information about the case?

3 A No, sir.

4 Q Did you know about the case?

5 A Now knowing what I know --

6 Q No. I mean when the police were there talking to
7 you about the case, did you know about it?

8 A No.

9 Q But Brad confessed to you?

10 A Yes, sir.

11 Q And you discussed it with your dad?

12 A Yes, sir.

13 Q Why didn't you tell the police that?

14 A Because I didn't believe it. I was scared. I
15 didn't know if it was true and if it were --

16 Q Okay. Okay. You had an opportunity at that
17 point to tell them the truth, and you didn't?

18 A No, sir. I was scared.

19 Q Of the police?

20 A Of my cousin.

21 Q You are scared of your cousin?

22 A Yes, sir.

23 Q When you talked -- bear with me, please.

24 (A brief pause in the proceedings.)

25 Q (MR. DIGGS) Was there a time when your dad sold you

CHARLES H. MULLINS - CROSS-EXAMINATION

1 a couple of guns?

2 A Yes, sir.

3 Q When was that?

4 A That was while I was there at his house.

5 Q During the same time frame?

6 A I'm not sure -- within. I was visiting him.

7 Q So sometime in September of 2008, in that time
8 frame?

9 A Yes, sir.

10 Q What kind of guns were those?

11 A Couple of shotguns.

12 Q Now, let's talk a minute about the car that you
13 all drove that night.

14 A Yes, sir.

15 Q Tell us, if you would, what model it was, make
16 and model?

17 A '96 or '97 Chevy Blazer.

18 Q How does the hatch on the back of the car work?

19 A It had a push button on the back, or you could
20 open it from inside, either way.

21 Q From the back? Didn't the car have to be in
22 park?

23 A No.

24 Q It didn't?

25 A No.

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Now, when you were coming back to pick up Anthony
2 and Arlie, or Anthony and Brad, your testimony was that
3 you saw them put something in the back of the vehicle,
4 repeat that for me.

5 A When I pulled back up to pick up Anthony and
6 Bradley, they walked to the back of my vehicle. I
7 didn't witness them setting anything in my vehicle. I
8 know they set something in it, but I didn't see it.

9 Q How did they do that? How was it done? Do you
10 know who did it, both of them, does one of them do it
11 without the assistance of the other?

12 A Don't know. I don't know.

13 Q And did you notice an effect that it had on your
14 vehicle when they put whatever it was in the back of
15 the car?

16 A No, sir.

17 Q Do you know what it was? Was it a bag?

18 A I didn't see.

19 Q Was there a time you ever saw it?

20 A No, sir.

21 Q Moving on. When you saw Brad throw something
22 into the water off the bridge, tell me again where he
23 was seated in the car?

24 A He was seated on the passenger's side, rear.

25 Q And the bag, pillow case, whatever, was

CHARLES H. MULLINS - CROSS-EXAMINATION

1 positioned between his legs?

2 A Yes, sir.

3 Q That's your testimony. And he got out, and when
4 he got out, he took that bag and threw it over the
5 bridge?

6 A Yes, sir.

7 Q Just a couple more things. Did you know -- how
8 long had Brad lived in this area prior to September of
9 2008, if you know?

10 A I don't know.

11 Q Didn't you help him unload a truck when he moved
12 here?

13 A No, sir.

14 Q You didn't?

15 A No, sir.

16 Q You don't have any recollection of that?

17 A No, sir.

18 Q One more area. When you came down again, will
19 you tell me what day it was that you came into town to
20 your dad's house?

21 A I don't remember what day. I didn't drive
22 straight in. I was already in town with my father
23 between Durham and his house.

24 Q What was going on that day when you were at the
25 house in the afternoon before the evening that you

CHARLES H. MULLINS - CROSS-EXAMINATION

1 testified about going over to this place out in the
2 country?

3 A I don't understand what you mean.

4 Q I'm asking you to describe for me what was going
5 on earlier that day, you know, the day when this murder
6 supposedly occurred?

7 A Nothing that I can recall. Just talking about
8 our trip.

9 Q All right. Was there a cookout going on?

10 A Not that I recall.

11 Q Was there any women out there mingling among the
12 cousins?

13 A No, not at that time. During the day, of course
14 my father lives there, so.

15 Q After that day, was there ever another cookout
16 that took place, to your knowledge?

17 A Not to my knowledge.

18 Q So you went on back to Bristol that night or the
19 next day?

20 A No. I -- the night that all of this took place
21 is the night I went back home.

22 Q Right. And you got back home, and then how long
23 was it before you came back to this area to go to
24 Louisiana?

25 A Couple of days.

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Not very long?

2 A No, sir.

3 Q Do you have any idea at this point about how many
4 guns supposedly were stolen?

5 A No.

6 Q You haven't discussed that with the solicitor's
7 office or anybody?

8 A I mean, I discussed that there were several
9 taken, but as far as a direct number, I don't know.

10 Q Have you seen the list that the solicitor's
11 office or the -- not the solicitor's office, but that
12 the investigators prepared listing all of the items
13 that were -- all of the weapons taken from the home
14 supposedly that night?

15 A No, sir.

16 Q You haven't seen that?

17 A No, sir.

18 Q Has the charge of murder been dropped against
19 you?

20 A No, sir.

21 Q Still pending?

22 A Yes, sir.

23 Q And the outcome of that charge is based on what
24 you say today and the outcome of this trial?

25 A What do you mean?

CHARLES H. MULLINS - CROSS-EXAMINATION

1 Q Do you agree that that is a correct statement?

2 A I don't understand. Can you --

3 Q Do you hope that the charge of murder against you
4 is dropped?

5 A Well, I certainly hope it is taken into
6 consideration.

7 Q What is your understanding on how that charge is
8 going to be dismissed?

9 A I have not had an understanding of anything being
10 dismissed.

11 Q So you are going to stand trial for murder?

12 A Yes, sir.

13 MR. DIGGS: That is all I have. Thank you very
14 much.

15 REDIRECT EXAMINATION

16 BY MR. HUCKS:

17 Q What are you charged with today?

18 A Murder, burglary and robbery.

19 Q Have any of those cases been disposed of?

20 A No, sir.

21 Q Are you aware of the potential penalties you are
22 looking at?

23 A Yes, sir.

24 Q Now, we're talking about your daddy's place in
25 the picture we showed you, the house your daddy lived

CHARLES H. MULLINS - REDIRECT EXAMINATION

1 in. Was it common to have a bunch of people around
2 there?

3 A My father is -- like everybody huddles around him
4 everywhere he goes, people all the time.

5 Q So is it unusual for him to have a pile of people
6 around his house cooking out, any of that stuff?

7 A No, sir. No, sir.

8 Q So it wouldn't -- so if somebody called something
9 "a cookout," would it have to be sending out
10 invitations and fry chicken and people start --

11 A No.

12 Q It is a common occurrence?

13 A My dad is a country guy. He eats all the time.
14 There is always food cooking, and everybody is welcome.

15 MR. HUCKS: Nothing further.

16 MR. DIGGS: Nothing.

17 THE COURT: You may step down.

18 MR. HUCKS: We ask that Mr. Mullins be excused from
19 his subpoena.

20 MR. DIGGS: We don't object.

21 THE COURT: You are released from your subpoena.

22 Thank you very much.

23 MR. HUCKS: State calls Arlie Mullins.

24 (ARLIE MULLINS, having been duly sworn, testified
25 as follows:)

CHARLES H. MULLINS - REDIRECT EXAMINATION

1 THE CLERK: State your full name and spell your
2 last name for the Court.

3 THE WITNESS: Arlie Gene Mullins, M-U-L-L-I-N-S.

4 DIRECT-EXAMINATION

5 BY MR. HUCKS:

6 Q Slide up a little bit and get closer to that
7 microphone so we can hear you so you don't have to bend
8 over.

9 Arlie, what do you do for a living?

10 A Carpenter.

11 Q And don't tell us your address, but where do you
12 live?

13 A West Virginia.

14 Q Now, how long have you been a carpenter?

15 A Most of my life. I would say 20 years.

16 Q Now, I'm going to ask you a couple of things
17 here. How are you related to Charles Senior Mullins?

18 A He's my uncle.

19 Q Your daddy's brother?

20 A Father's brother, yes.

21 Q And how about Anthony Ray, how are you related to
22 him?

23 A His mother was my father's sister, and she's
24 passed.

25 Q How about Charles Henderson Mullins?

ARLIE MULLINS - DIRECT EXAMINATION

1 A That is my uncle Charlie's son.

2 Q And Brad Mullins?

3 A That is my uncle Tommy's boy, my dad and all of
4 them are brothers.

5 Q So all of these people we're talking about, they
6 are all your first cousins?

7 A That is correct.

8 Q I'm going to jump into it. Do you remember on or
9 about September 11, 2008, do you remember the week of
10 September of 2008?

11 A Yes.

12 Q You know what we're here for?

13 A Yes, sir.

14 Q Do you remember the day on or about September 11
15 of 2008 when you got in the car with Charlie?

16 MR. DIGGS: Object to the leading.

17 MR. HUCKS: I'll withdraw.

18 THE COURT: Rephrase.

19 Q (MR. HUCKS) Please explain to this jury what you
20 remember on or about September 11, 2008.

21 A The day in question, I guess, we were all hanging
22 out at my uncle Moon's house, Charles Senior.

23 Q When you say all of you, how many people were at
24 Moon's house?

25 A There was several of us. Of course my father,

ARLIE MULLINS - DIRECT EXAMINATION

1 myself, Tommy, which is Brad's father, Brad, Anthony,
2 Little Charlie, and there may have been a couple
3 others. Allen Ray may have been around there, and
4 Delilah was there, which is Big Charlie, Moon's, wife.
5 I think that was it.

6 Q So walk us through that day. What is going on?

7 A Everybody is just hanging out. We had a cookout,
8 drinking some beer. It started to get late, so somehow
9 or another Brad and Anthony, they asked Little Charlie
10 to take them --

11 Q I'll stop you for a second. We're -- you can't
12 tell us anything that Anthony may have said. Tell us
13 anything that you heard Brad. What anybody in the
14 world said, don't tell us, but anything that you heard
15 Brad say, tell us, okay, but nothing about what anybody
16 else said.

17 A Okay. So Brad asked Little Charlie for a ride to
18 one of his friend's house.

19 Q Do you know what the purpose of that trip was?

20 A Yes. They were going to pick up a bag of
21 marijuana.

22 Q Keep going.

23 A So, anyhow, I told Little Charlie I would ride
24 with him to give Brad a ride to his friend's so he
25 didn't have to ride by himself.

ARLIE MULLINS - DIRECT EXAMINATION

1 Q What kind of vehicle did you ride in?

2 A It was a green Blazer, small SUV Blazer.

3 Q How many doors did it have on it?

4 A Four.

5 Q And tell me where everybody was sitting inside
6 this Blazer.

7 A Let's see. Charlie was driving, I was in the
8 right-front passenger's seat and Brad and Anthony --
9 sorry, Brad was in the back.

10 Q And Anthony?

11 A He was in the rear -- the passenger's seat in the
12 back.

13 Q Do you know who was sitting behind who?

14 A No, I don't.

15 Q Okay. That is fine. Now, you get in a car, and
16 what happened -- SUV?

17 A From that point, we started to his friend's
18 house, and we drove for quite a while.

19 Q How long would you say you drove for?

20 A I would say probably 20, 30 minutes.

21 Q Who gave directions on how to get to this
22 friend's house?

23 A Brad did.

24 Q Explain how that kind of went.

25 A He was just giving directions from the rear of

ARLIE MULLINS - DIRECT EXAMINATION

1 the vehicle to Charles, Little Charlie, on how to get
2 to where they were going, where they wanted to go,
3 their destination. He kept giving him directions
4 pretty much turn by turn until we got to where they
5 wanted to be dropped off.

6 Q How long did you say the drive took?

7 A I would estimate 20 to 30 minutes.

8 Q And do you know where you ended up?

9 A On a dirt road.

10 Q What happened when you got to the dirt road?

11 A Little Charlie -- we went down the dirt road.
12 Little Charlie pulled up, and it was to a driveway,
13 didn't go into the driveway. Brad and Anthony exited
14 the vehicle and they went up to the driveway. From
15 that point, Little Charlie and I left and we drove up
16 the road for a few minutes. I don't know, it was
17 probably 15, 20 minutes we were gone.

18 Q Do you remember where you went?

19 A I believe we went to the store up the road, I'm
20 not sure.

21 Q After you drove around for 15, 20 minutes, what
22 did you do?

23 A After we did that, we came back to roughly the
24 same spot, and they got -- to pick them up.

25 Q And who did you all pick up?

ARLIE MULLINS - DIRECT EXAMINATION

1 A Brad and Anthony.

2 Q And what happened when you went to pick them up,
3 what did you do?

4 A When we stopped to pick them up, they popped the
5 rear hatch of the SUV and they put in -- they had a
6 large -- looked to be -- sleeping bag in their hands,
7 and they loaded that into the back of the vehicle and
8 shut the vehicle and got back in.

9 Q Hang on for me. When you say they popped the
10 hatch, I guess this thing would have had a glass hatch
11 or tailgate or something?

12 A Yes, sir, something like that. It would have
13 been -- I think you could either push button the glass
14 and let it up and then open the rear. Like a tailgate.

15 Q The tailgate went down?

16 A I believe it swung to the right -- I mean the
17 left of the vehicle. It was on a hinge.

18 Q So what did you see him put back there?

19 A It was a -- looked to be a sleeping bag to the
20 best of my...

21 Q Did you see what was in it?

22 A Not at that time, no.

23 Q What happens after they got back in the vehicle?

24 A There we started back towards my uncle Charlie's
25 house. We drove for a few minutes, and Charlie had to

ARLIE MULLINS - DIRECT EXAMINATION

1 pee, so he pulled over. We were on a paved road,
2 pulled over at the side of a bridge right there and got
3 out of the vehicle and took a pee, got back in. Brad
4 exited the vehicle, and they threw something over the
5 -- he threw something over the side of the rail, which
6 appeared to be a pillow case.

7 Q Now, was he -- I'm confused, so explain it. You
8 all were parked on a bridge?

9 A Yes. We stopped on the side of the bridge.

10 Q So he would have gotten out and slung
11 something -- he would have been slinging it over the
12 bridge?

13 A Yes, sir. He threw it over the railing of the
14 bridge.

15 Q You saw that?

16 A Excuse me?

17 Q Did you see that?

18 A Yes.

19 Q So then what happened?

20 A From there, he got back in the vehicle and we
21 went back to my uncle Charlie's house, Moon.

22 Q What happened when you got back to Moon's house?

23 A When we got back to Moon's, we pulled around the
24 back of the house. There was a little road, I think,
25 beside the breezeway or carport to the right. We

ARLIE MULLINS - DIRECT EXAMINATION

1 pulled back there, that is where they told him to go
2 park.

3 From there, they opened the hatch and took out --
4 which at that time you could plainly see, it was a
5 sleeping bag. Both of them unloaded it and put it into
6 the building, and from there they opened the bag which
7 was full of long guns.

8 Q Do you know the difference between a long gun and
9 pistol?

10 A Yes. It was rifles or shotguns.

11 Q How many would you say you saw?

12 A I would say approximately 10 to 15.

13 Q I'll show you a few things, if I may approach.

14 THE COURT: Certainly.

15 Q (MR. HUCKS) What was entered into evidence as
16 State's 8. Is that where you would have parked the
17 car?

18 A Yes, sir.

19 Q What is that, explain to the jury.

20 A This here was a tool shed that they kept the
21 tools in, and I think Moon used to keep a motorcycle
22 under the opened part back there.

23 Q What is significant, if anything, about the brown
24 wooden door?

25 A To my knowledge, nothing. I think Allen Ray may

ARLIE MULLINS - DIRECT EXAMINATION

1 have stayed in there.

2 Q I'll show you State's No. 4, which is not entered
3 into evidence -- which has been entered. State's 4,
4 what is this?

5 A That is Moon Mullins' house.

6 Q And that is where you would have been cooking out
7 all afternoon?

8 A Yes.

9 MR. DIGGS: Are they talking about things that have
10 been introduced into evidence?

11 MR. HUCKS: Yes, they are in evidence already.

12 MR. DIGGS: He was talking about Exhibit 4?

13 THE COURT: I think they are in.

14 MR. HUCKS: Yes, they are in. And No. 7, I'm
15 working on that in a minute.

16 MR. DIGGS: Thank you, Your Honor.

17 Q (MR. HUCKS) What happens once you get back to
18 Moon's house and you see this thing come out of the
19 back of the Blazer?

20 A At that time, they took it out and set it in the
21 building.

22 Q Who is "they"?

23 A They being Anthony and Brad.

24 Q What did they do with it?

25 A They put it inside the building and unfolded

ARLIE MULLINS - DIRECT EXAMINATION

1 it -- or unzipped it, I'm sorry -- and then you could
2 see the guns. From that point, I said I don't want
3 anything to do with this, and walked away.

4 Q Where did you go?

5 A I went in the house.

6 Q Now, what happened once you went into the house?
7 Who did you talk to?

8 A I talked to my father and got something to drink,
9 water, talking to my father. After that, I walked back
10 out on the back porch.

11 Q I'll stop you for a second. I'll show you what
12 is marked as State's Exhibit No. 7?

13 MR. DIGGS: We don't object.

14 THE COURT: Without objection.

15 (State's Exhibit 7 admitted.)

16 Q (MR. HUCKS) What is that?

17 A The back porch of Moon's home.

18 Q Is that where you would have went?

19 A I was standing over here (indicates).

20 Q I'll walk to the side. I know this is tough for
21 the jury, but point out where you were standing.

22 A Around this rail.

23 Q And this shed, is that the same shed we looked at
24 in the other picture?

25 A Yes, sir.

ARLIE MULLINS - DIRECT EXAMINATION

1 Q So what, if anything, did you see or hear while
2 you were in the back porch?

3 A I was standing there smoking a cigarette. Brad
4 and Anthony, they were standing over there talking to
5 my uncle Moon. They were kind of whispering amongst
6 themselves, and I heard them say that they may have
7 killed somebody, so --

8 MR. HUCKS: Your Honor, the State would move to
9 republish all of these, the new exhibit and exhibits.

10 THE COURT: They are all in?

11 MR. HUCKS: Yes, sir.

12 Q (MR. HUCKS) What happened after you overheard this
13 conversation?

14 A From that point, I went back in the house and sat
15 around with my father for a bit, and we went to bed.

16 Q Did you stay at Moon's?

17 A Yes. That's about it.

18 Q Did you ever see any of these guns again?

19 A Did I ever -- no, sir.

20 Q Did you ever touch one, pick one up, anything
21 like that?

22 A No.

23 Q Did you have an occasion -- if ever, did you have
24 occasion to go to Louisiana with this crowd?

25 A About, I guess, after the night in question, it

ARLIE MULLINS - DIRECT EXAMINATION

1 was probably, I would say, five days, three, five days
2 later we left to go to Louisiana to do hurricane
3 relief.

4 Q How long did you stay there?

5 A My father and I, we stayed approximately three
6 days to -- three to five days, and we left. He and I
7 and Brad's father, Tommy, he left with us as well, we
8 went to Mississippi, Macon, Mississippi.

9 Q Now, I'll ask you, what are you sitting in this
10 courtroom charged with here today?

11 A I'm charged with murder, burglary and I believe
12 theft.

13 Q Have you been promised anything for your
14 testimony?

15 A No, sir.

16 MR. HUCKS: Thank you. No further questions.

17 CROSS-EXAMINATION

18 BY MR. DIGGS:

19 Q Arlie, if I may call you that?

20 A That's fine.

21 Q Mr. Mullins, do you remember when you were
22 interviewed back up in West Virginia, April the 2nd,
23 2011?

24 A Yes.

25 Q Do you remember the detectives coming up there

ARLIE MULLINS - DIRECT EXAMINATION

1 and talking to you about this case?

2 A I do.

3 Q You were pretty upset about it in terms of you
4 didn't want to get in trouble for this stuff?

5 A That's correct.

6 Q You made it clear to them you didn't want to have
7 anything to do with it, you didn't want to get in
8 trouble for something you didn't do?

9 A Exactly right.

10 Q And do you remember at about 13 minutes and 30
11 seconds into your interview where you said I didn't
12 have any idea about what these guys were doing?

13 A I do.

14 Q Now, did you follow that up by saying that later
15 I learned -- I heard Brad say he was killing somebody?

16 A No, I didn't say Brad.

17 Q You didn't say anything, did you?

18 A Excuse me?

19 Q You didn't say anything?

20 A I said "they." I overheard they.

21 Q At that time you overheard them?

22 A I overheard they, them, Brad and Anthony.

23 Q Did you tell the police that you heard Brad and
24 Anthony discussing a murder back in April 2, 2011?

25 A Yes, I did.

ARLIE MULLINS - CROSS-EXAMINATION

1 Q Did anybody ever come and ask you to point out
2 where the gun or the bag had been thrown over the
3 bridge?

4 A Yes.

5 Q Did you help them do that?

6 A Did I help them do what?

7 Q Did you help the law enforcement authorities?

8 A Yes, I went with them.

9 Q And did they find the gun?

10 A No, sir.

11 Q Did they find anything remotely similar to what
12 you said you saw him throw over the bridge?

13 A Not to my knowledge.

14 Q Did you have any trouble remembering where it
15 was?

16 A I didn't know where it was exactly, because I'm
17 not from the area. I knew it was on a bridge.

18 Q Did it look like the one you saw Brad throw the
19 bag over?

20 A I couldn't tell you that. It was dark.

21 Q Well, why did they select that bridge to do the
22 search?

23 A They didn't select just one bridge. We went to
24 many bridges.

25 Q Even in that situation, they never found anything

ARLIE MULLINS - CROSS-EXAMINATION

1 that fit the description of what you said you saw --

2 A Not to my knowledge.

3 Q -- thrown over the side? Did you ever in the
4 presence of Charles, Moon -- Charles Senior, a/k/a
5 Moon, did you ever try and tell him that they had
6 admitted killing somebody?

7 A No.

8 Q Mr. Mullins, I appreciate it.

9 MR. DIGGS: Nothing further.

10 THE COURT: Redirect?

11 MR. HUCKS: Nothing, Your Honor.

12 THE COURT: You may step down.

13 MR. HUCKS: If I could have the Court's indulgence
14 to speak with the bailiffs?

15 MR. DeBUSK: May Mr. Arlie Mullins be excused from
16 his subpoena?

17 MR. DIGGS: No objection.

18 THE COURT: We've been at it for an hour and 20
19 minutes. Let's give the jury a break.

20 (The jury exits at 11:07 a.m., and the following is
21 heard out of the presence of the jury.)

22 THE COURT: We'll be at ease for about ten minutes.

23 (Whereupon, a recess was taken.)

24 THE COURT: Bring in the jury.

25 (The jury enters at 11:24 a.m., and the following

ARLIE MULLINS - CROSS-EXAMINATION

1 is heard in the presence of the jury.)

2 THE COURT: Come around, sir, if you would.

3 (ANTHONY RAY, having been duly sworn, testified as
4 follows:)

5 THE CLERK: State your full name and spell your
6 last for the Court.

7 THE WITNESS: Anthony Earl Ray, R-A-Y.

8 DIRECT-EXAMINATION

9 BY MR. HUCKS:

10 Q Good morning. Where do you live?

11 A I think it is Ridgeland, South Carolina.

12 Q Where do you live?

13 A Leiber Correctional Institution.

14 Q What are you doing at Leiber?

15 A Fifteen years.

16 Q For why?

17 A Because we committed a first degree burglary.

18 Q Are you in prison -- or why are you in prison
19 right now?

20 A First degree -- I got convicted of first degree
21 burglary.

22 Q And is that why we're here today?

23 A Yeah.

24 Q Is it the same thing we're here for today?

25 A Yes, sir.

ANTHONY RAY - DIRECT EXAMINATION

- 1 Q Are you still charged with any crimes at this
2 point in time?
- 3 A Yes, sir.
- 4 Q What are you charged with?
- 5 A Armed robbery and murder.
- 6 Q Are these in relation to these exact same sets of
7 circumstances we're here for today?
- 8 A Yes, sir.
- 9 Q How are you related to Charles Edgar Mullins, or
10 Moon?
- 11 A That is my uncle.
- 12 Q That would be your --
- 13 A Mama's brother.
- 14 Q How are you related to Little Charlie?
- 15 A First cousin.
- 16 Q That would be?
- 17 A Moon's son.
- 18 Q How about Arlie Mullins?
- 19 A That is my first cousin.
- 20 Q How would that be related?
- 21 A Another one of my mother's brothers.
- 22 Q How are you related as you sit here today to Brad
23 Mullins?
- 24 A My first cousin.
- 25 Q Same relationship across the board?

ANTHONY RAY - DIRECT EXAMINATION

1 A Yeah.

2 Q Now, do you remember the day of September 11,
3 2008?

4 A Yes, sir.

5 Q I'm going to ask you to walk this jury through
6 the events that happened that day from your
7 perspective; can you do that?

8 A Yes, sir.

9 Q So what happened that day? Let's talk about the
10 daytime, what happened?

11 A Well, me and two other gentlemen drove from North
12 Carolina to South Carolina to Moon's house. We had a
13 few beers, few hours later, the four of us left.

14 Q The four -- what did you all do at Moon's house
15 during the day?

16 A We were drinking, hanging out.

17 Q I know you are nervous. Calm down a little bit.
18 I'll ask you to tell the story a little bit as we talk,
19 okay?

20 A Yeah.

21 Q What did you all do during the day? Was it a
22 cookout, cook --

23 A We cooked on the grill, drank a few beers.

24 Q How many people would you say were there?

25 A I would say eight, ten people.

ANTHONY RAY - DIRECT EXAMINATION

1 Q A fair amount?

2 A Yeah.

3 Q They weren't all Moon's young'uns, were they?

4 A Not all of them.

5 Q So you cook and eat and have beers. What
6 happened?

7 A Well, the four of us -- I don't know how the
8 conversation came up, but along with Moon we got on the
9 subject of going to Mr. Elliott's house for a robbery
10 of his guns.

11 Q The four of you is who?

12 A Me, Little Charlie, Arlie Mullins and Bradley
13 Mullins.

14 Q And where do you all have this conversation at?

15 A I think right under the carport.

16 Q I'll approach you and show you a couple of
17 things. I want you to tell me if you recognize them.

18 MR. HUCKS: They are all in evidence, Your Honor.

19 Q This is entered into evidence as State's 4. What
20 is that?

21 A Moon's trailer.

22 Q Is this the house you had been at all day?

23 A Yes, sir.

24 Q Let me ask you to go back a little ways. While
25 you were in town, why were you in Horry County or

ANTHONY RAY - DIRECT EXAMINATION

1 Galivants Ferry?

2 A We came down to meet up to go to Louisiana,
3 because there was hurricane, to do some storm relief.

4 Q So what kind of work did you do prior to being
5 incarcerated?

6 A A carpenter.

7 Q What kind, build cabinets?

8 A Anything, yeah. I mean, roofing work, siding,
9 framing, paint.

10 Q So you guys are at Moon's, start talking. What
11 do you talk about?

12 A Well, we had been there all day and -- well, a
13 good part of the day, and the subject came up about
14 going to rob this house for guns.

15 Q Now, did anybody at the group indicate that they
16 knew Mr. Elliott?

17 A I'm not sure, because his name never came up.
18 I'm not sure. I mean, right then, no.

19 Q So did you know the gentleman's name whose home
20 you were going to?

21 A No. No.

22 Q So what happens once this conversation starts
23 about going to his house?

24 A Well --

25 Q Who starts the conversation?

ANTHONY RAY - DIRECT EXAMINATION

1 A I'm not sure who started it. I'm not sure. But
2 the five of us were there talking about it.

3 Q All of you, together?

4 A Yeah.

5 Q You said five instead of four. Who is the
6 fifth person?

7 A Moon Mullins.

8 Q Moon Mullins?

9 A Yes, sir.

10 Q Now, what is this conversation about?

11 A Well, the subject came up about this house had a
12 large amount of guns in it.

13 Q And what did you all decide to do?

14 A We decided to go get them.

15 Q What did you do then?

16 A Well, it got about twilight. It wasn't dark when
17 we left.

18 Q When you say "twilight," what do you mean?
19 Before dark?

20 A It is just approaching dark, you know, not quite
21 dark yet, but it wasn't -- daylight was falling down.

22 Q What do you all get into when you leave?

23 A Little Charlie's Blazer.

24 Q Where is everybody sitting in the Blazer?

25 A Little Charlie is driving, Arlie is sitting in

ANTHONY RAY - DIRECT EXAMINATION

1 the passenger's seat, Bradley sitting behind Little
2 Charlie and I'm sitting behind the passenger's seat,
3 behind Arlie.

4 Q Where do you all go?

5 A I'm not exactly sure.

6 Q Let me rephrase. Who told you where to go?

7 A Bradley Mullins.

8 Q How did he do that?

9 A Well, he was sitting in the back seat and
10 pointing the way.

11 Q So he's in the back seat. Who is driving?

12 A Little Charlie.

13 Q So --

14 A He's directly behind Little Charlie.

15 Q And this man is telling him how to go?

16 A Yes, sir.

17 Q How is he doing it like, Take a left, take a
18 right?

19 A Yes, sir.

20 Q Now, what happens when you get to where you are
21 going?

22 A Well, we get out and --

23 Q Who gets out? Explain it for me.

24 A All four of us got out, because like I said, me
25 and Brad were in the back seat, so it was a small

ANTHONY RAY - DIRECT EXAMINATION

1 truck, you know. All four of us got out. I approached
2 the front door, he approached the back door. I beat on
3 the front door, no answer. No answer. I hear the back
4 door window break. I go around to the back, and he's
5 gained access to the house through the back glass
6 window on the back porch.

7 Q Hold on a moment. I'm going to show you
8 something. I'll show you a couple of things, if I can
9 find them. This is State's 73 already in evidence. Do
10 you recognize that?

11 A Yeah, it was dark when we got there.

12 Q What is that?

13 A That is Mr. Elliott's house.

14 Q Is that the house you went to that night?

15 A Yes, sir. I think. I mean, it is all covered
16 up. I mean, we weren't that far off.

17 Q Does that look to be it?

18 A Yeah, it looks to be it.

19 MR. HUCKS: This is already in evidence, I'm just
20 publishing it to the jury.

21 THE COURT: All right.

22 Q (MR. HUCKS) I'll show you State's No. 78, which is
23 already entered. Do you recognize that?

24 A That is the back door.

25 Q And who broke that window out?

ANTHONY RAY - DIRECT EXAMINATION

1 A Bradley Mullins.

2 Q Why was that window broken out?

3 A To gain access to the house.

4 Q Why were you gaining access to the house?

5 A To rob it, commit first degree burglary.

6 Q When you pulled up to the man's house, was it
7 dark or light outside?

8 A It was dark.

9 Q Nighttime?

10 A Yes, sir.

11 Q And how long did you say you beat on that door?

12 A I would say a good five minutes.

13 Q What was the purpose?

14 A To see if he was home.

15 Q Why was that important?

16 A Because, I mean, we wouldn't have went in if he
17 was home.

18 Q What was your intention when you pulled up at
19 that house that I just showed you a picture of?

20 A To rob the guns.

21 Q To steal?

22 A Yeah.

23 Q At night?

24 A At night. It is not something you do in the
25 daytime.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What happens when you get in the house?

2 A Well, there is -- Brad comes first, I come around
3 to the back. There is guns there. Start putting the
4 guns on a blanket, pulling them out to the back, longs
5 guns, shotguns and rifles.

6 Q How many guns would you say you took out of that
7 house?

8 A Shotguns and rifles?

9 Q Yeah.

10 A Probably anywhere from 15 to 20.

11 Q All right.

12 A It was quite a bit, around 15, 20 or so.

13 Q How long would you say you guys drove in that
14 truck going to that house?

15 A Fifteen, 20 minutes.

16 Q I'm going to show you what has previously been
17 entered as State's Exhibit 69. Do you recognize this?

18 A Yeah.

19 Q What is this?

20 A The inside of the house.

21 Q Is that the house you were in?

22 A Yes, sir.

23 Q The house you all were robbing?

24 A Yes, sir.

25 Q Is that the house you were there intending to rob

ANTHONY RAY - DIRECT EXAMINATION

1 at nighttime?

2 A Yes, sir.

3 Q I'll walk around over here. I'm going to ask you
4 to point some stuff out to the jury.

5 Is this a true and accurate reflection of what the
6 house looked like?

7 A Yeah.

8 Q Where did you come in the house at?

9 A Right here.

10 Q Where did you go once you came in the house?

11 A We came in --

12 Q Pull the microphone --

13 A We went in all of the rooms.

14 Q Where did you collect guns from?

15 A There was guns in every room.

16 Q Kind of point it out.

17 A There was guns here, gun cabinet here, guns
18 behind closet doors, dining room, I mean guns and
19 bullets scattered throughout the whole house.

20 Q How many guns did you see in the house?

21 A Shotguns and rifles?

22 Q Yeah.

23 A Fifteen, 20.

24 Q How many handguns?

25 A Probably just as many.

ANTHONY RAY - DIRECT EXAMINATION

1 Q As you are coming through the house, walk us
2 through what happened. You and Brad are in this man's
3 house stealing his stuff; what do you do with it?

4 A Pulling it out the back door and sticking them on
5 the blanket.

6 Q Where is the blanket at that you are talking
7 about?

8 A Laying there (indicates).

9 Q Who is putting the blanket in the backyard to put
10 the stuff on?

11 A I did.

12 Q While you are in there taking stuff, what are you
13 doing? Making trips? How does this work?

14 A Yeah, making trips, opening cabinet doors,
15 opening closets. We weren't trashing the -- trashing
16 the house.

17 Q Did you open drawers?

18 A Yeah, cabinets, drawers.

19 Q What is this here?

20 A That is a gun cabinet.

21 Q Now, what was in that gun cabinet?

22 A Rifles, shotguns and pistols.

23 Q Now, at some point in time you get to a locked
24 door. Show me which door was locked?

25 A This door here.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What was that door to?

2 A To the bedroom.

3 Q What did you think that door was to?

4 A We had been there probably 20, 25 minutes, a good
5 bit, and we figured that is probably where most of the
6 guns were.

7 Q Hang on for me. You were in this house 25
8 minutes?

9 A 20, 25 minutes, yeah. A good while.

10 Q And while you were there, what happens when you
11 get to that door?

12 A It is locked. Big wooden door, and it is locked.

13 Q So what happens?

14 A Brad Mullins kicked the bottom panel in with his
15 foot.

16 Q What happens when he kicks the door?

17 A His foot gets stuck, he fell down and he went to
18 pull the foot out, and seconds later Mr. Elliott comes
19 out shooting.

20 Q When you say "Mr. Elliott," you are talking about
21 the man living in the house?

22 A I didn't know his name, but, yeah.

23 Q What was the man wearing that came out of the
24 bedroom?

25 A Absolutely nothing.

ANTHONY RAY - DIRECT EXAMINATION

1 Q He was naked?

2 A Naked.

3 Q What did he have in his hand?

4 A A pistol.

5 Q What kind?

6 A Revolver.

7 Q A revolver?

8 A Yeah.

9 Q He comes out. What is he doing?

10 A He was shooting.

11 Q What happens when he starts shooting?

12 A I tried to run for the door.

13 Q Let me show it to the jury again. Keep this up a

14 few more minutes.

15 A Right here, I ran for the door.

16 Q Where were you at when you started hearing

17 shooting?

18 A I was here at the gun cabinet.

19 Q So he was --

20 A Coming out the door. Brad was there, and we took

21 off running.

22 Q So when you saw the gun --

23 A Ran.

24 Q Which way did you go?

25 A Through here, trying to come out that door.

ANTHONY RAY - DIRECT EXAMINATION

1 Q Could you get out that door?

2 A No, it was locked.

3 Q Then what is the next thing you see?

4 A Brad runs over here in this corner here, and
5 Mr. Elliott comes out and has a gun pointed on him.

6 Q Put that microphone closer to your face, I can
7 hardly hear you and I'm next to you.

8 A Brad was here. Mr. Elliott was here with a gun
9 turned on him. I turned around. As we had been
10 collecting guns, I had a little .22 rifle in my hand.
11 I hold it up, screamed at him to put the gun down, put
12 the gun down. When he points the gun at me, I shot
13 him. He fell down, and Bradley goes on top of him.
14 This is kind of behind the couch, but Brad -- by the
15 time I got up there, Brad shot him in the head.

16 Q How did Brad shoot him in the head?

17 A It was with a pistol.

18 Q Was he standing at his feet or head?

19 A At his head.

20 Q What did you see when he shot him in the head
21 with his own gun?

22 A His head exploded.

23 Q Now, where did you shoot Mr. Elliott?

24 A In the shoulder, side area.

25 Q Why did you shoot him?

ANTHONY RAY - DIRECT EXAMINATION

1 A Because he pointed his gun at me.

2 Q You were robbing his house, he had a right to

3 point a gun at you, didn't he?

4 A Yeah.

5 Q So you are sitting in front of this jury

6 admitting that you shot this man?

7 A Yes, I did.

8 Q Where did you shoot him?

9 A In the side area. I thought it was the shoulder.

10 Q And where did this man here (indicates) shoot

11 him?

12 A In the head.

13 Q I'll show you a few things and I'll ask you to

14 identify them. If you can't, that is all right.

15 State's No. 36, what is that?

16 A The bedroom door. That is where Brad kicked it

17 out.

18 Q What bedroom door?

19 A Mr. Elliott's.

20 Q The bedroom the man came out of?

21 A Yes, sir.

22 Q What is that hole in it?

23 A That is where Brad kicked it out.

24 Q That is where his foot got stuck?

25 A Yeah.

ANTHONY RAY - DIRECT EXAMINATION

- 1 Q I'll show you State's 17, what is that?
- 2 A That's the living room.
- 3 Q What living room?
- 4 A Mr. Elliott's living room.
- 5 Q What is that blanket there?
- 6 A That is Mr. Elliott.
- 7 Q I'll show you State's No. 43, what is that?
- 8 A That is one of the closets in the house.
- 9 Q What was in that closet?
- 10 A Guns and bullets. Guns and bullets.
- 11 Q Did you steal any guns out of there?
- 12 A Yeah.
- 13 Q Did Brad steal any guns?
- 14 A Yeah.
- 15 Q Were you acting in concert together the entire
- 16 time you were in that man's house?
- 17 A Yes, sir.
- 18 Q I'll show you State's No. 35, what is that?
- 19 A His living room and the gun cabinet.
- 20 Q What gun cabinet?
- 21 A The one in the living room. It had rifles and
- 22 pistols in it.
- 23 Q The one you pointed out on the diagram?
- 24 A Yes, sir.
- 25 Q State's No. 86, what is that?

ANTHONY RAY - DIRECT EXAMINATION

1 A Mr. Elliott's bedroom.

2 Q What is that at the bottom?

3 A The door that was kicked out. That is the door,
4 the pieces of the door.

5 Q Where someone's foot went through it?

6 A Yes.

7 Q Whose foot went through it?

8 A Bradley Mullins'.

9 Q What did you all do after you shot Joe Elliott?

10 A When I shoot him in the shoulder, he fell down.
11 Bradley shoots him in the head. I exit out of the back
12 of the house. Brad stays in there a minute. I run to
13 the truck. Brad eventually comes out with a sack of
14 pistols.

15 Q What kind of sack?

16 A Like a pillow case full of pistols.

17 Q What happens?

18 A We get in the truck and leave.

19 Q Did you have any conversation once you get in the
20 truck?

21 A It was pretty heated.

22 Q What do you mean?

23 A Well, everybody was yelling at each other and it
24 was -- I don't remember what we said, but, you know.

25 Q What would you have said?

ANTHONY RAY - DIRECT EXAMINATION

1 A I mean, apparently -- I mean, we shot him and
2 Brad killed him and, I mean, I don't remember exactly
3 everything that was said.

4 Q You don't remember? That is fine. Where did you
5 go?

6 A Went back to Moon's house.

7 Q What did you do at Moon's house?

8 A We go to the back of the shed, guns get pulled
9 out of the truck and in the shed.

10 Q I'll show you something.

11 A That is the shed.

12 Q State's 8. What is significant about that shed?

13 A That's where we went to and took the guns in.

14 Q Where did you put the guns in the shed?

15 A In this area.

16 Q Blue side or --

17 A Blue side.

18 Q Where did you put them in there?

19 A There was an opening, and I think there was a
20 bench, and we were setting them around.

21 Q How many guns were there?

22 A It was quite a bit.

23 Q Who helped unload them? Who unloaded them out of
24 the Blazer and stuffed them in that shed?

25 A I'm not sure who got them out.

ANTHONY RAY - DIRECT EXAMINATION

1 Q Did you do it?

2 A No, sir.

3 Q Did Brad do it?

4 A I'm not sure.

5 Q That's fair. And No. 4?

6 A That is Moon's house.

7 Q That is the house you guys returned to?

8 A Yes, sir.

9 Q What happens once you get back to Moon's house
10 and unload the guns?

11 A The pistols are out, rifles are out. Moon comes
12 out, and everybody is talking and holding a pistol and
13 keeping it. Everything decided not to keep the
14 pistols, put them back in the sack and take them and
15 dispose them.

16 Q Where did you dispose of them?

17 A A swamp.

18 Q Drove to a swamp and threw them out?

19 A Yeah.

20 Q I'll show you -- to get back to your story --
21 state's 88.

22 A The gun cabinet.

23 Q What gun cabinet?

24 A In Mr. Elliott's living room.

25 Q What is that cabinet at the bottom opened for?

ANTHONY RAY - DIRECT EXAMINATION

1 A That is where a large part of the pistols were.

2 Q And in the upper half?

3 A Rifles, shotguns. There was guns everywhere.

4 Q You thought you hit the mother load, huh?

5 A Yeah.

6 Q What happened after Moon came out and you started
7 talking and you disposed of the pistols, what happened
8 after?

9 A Bradley left before we disposed of the pistols.
10 Me and Little Charlie and Brad got in Little Charlie's
11 other truck, full-size truck, and drove to the swamp
12 and disposed of them, got thrown in the swamp.

13 Q Were they still --

14 A Still in the same bag.

15 Q Where did you all go?

16 A I'm not -- back to Moon's house.

17 Q Then what happened?

18 A Went to bed.

19 Q Went to bed?

20 A Uh-huh.

21 Q How about Monday, what did you do then, following
22 Monday?

23 A I'm not sure exactly what day -- it was a few
24 days later we left to go to Louisiana.

25 Q What did you go to Louisiana for?

ANTHONY RAY - DIRECT EXAMINATION

1 A Storm damage, to help with a hurricane.

2 Q Is that why you went there, to steal the guns to
3 get money, or what?

4 A No. We had money to go on. I'm not sure why we
5 did it.

6 MR. HUCKS: All of the exhibits I showed the
7 witness are already in evidence, if I can publish them
8 to the jury?

9 THE COURT: All right.

10 Q (MR. HUCKS) What did you do when you got to
11 Louisiana?

12 A We were working, did roofing work, mostly roofing
13 work.

14 Q How long did you stay in Louisiana?

15 A I think about a week or two.

16 Q And then did you see any of those guns again?

17 A Yeah.

18 Q How? Tell me about it. What happened to those
19 guns from Mr. Elliott's house?

20 A That night, after we were out there in the shed,
21 my Uncle Verne, Allen Ray, ended up putting the rifles
22 back in the tool trailer sitting out there.

23 Q Was that tool trailer supposed to go with you all
24 to Louisiana?

25 A Yeah. Yeah. We get down there, and after a

ANTHONY RAY - DIRECT EXAMINATION

1 couple of weeks, we were staying at this woman's house
2 and my uncle Moon sold all the guns to another
3 gentleman. I'm not sure if she introduced him or -- I
4 don't know remember how that gentleman came over, I'm
5 not sure.

6 Q Somebody came and bought the guns?

7 A Yeah.

8 Q Did you all come back?

9 A No. Before the guns were stolen, my cousin,
10 Arlie, and his dad --

11 Q Before the guns were stolen?

12 A Before they were sold I mean. Arlie, his dad and
13 my uncle Tommy --

14 Q Who is Tommy?

15 A That is his dad, Brad's dad. They left to go to
16 Mississippi, I believe. That was before the guns were
17 sold. And then after the guns were sold, we went to
18 Texas.

19 Q How long did you stay in Texas?

20 A We didn't stay there long. A week, I would say,
21 a few days.

22 Q Then what happened? Where did you go?

23 A We came back to Moon's house.

24 Q And that was back to Horry County?

25 A Yeah.

ANTHONY RAY - DIRECT EXAMINATION

1 Q What did you do once you got back to Horry
2 County? Did you hang around?

3 A We hung around for a day or, so and then Moon
4 took me home, Moon and Brad.

5 Q Where is home?

6 A North Carolina.

7 Q What part?

8 A Johnson County, Smithfield.

9 Q Near Raleigh?

10 A 40 miles east of Raleigh.

11 Q Did you ever tell anybody about what happened
12 that night?

13 A My wife asked me about it.

14 Q You say your wife, who is that?

15 A Latonya Ray.

16 Q When was this?

17 A I'm not sure.

18 Q Before you were arrested?

19 A Oh, yeah. Yeah. Way before.

20 Q You are talking about a two-year window?

21 A Yeah. I would say about seven, eight months
22 after it happened. She heard about it.

23 Q She asked you about it?

24 A Well, yeah.

25 Q What did you tell her?

ANTHONY RAY - DIRECT EXAMINATION

1 A I told her some of it. I didn't tell her all of
2 it, but the basics, that I shot him and Brad killed
3 him.

4 Q Why did you tell her, of all people?

5 A That's my wife. I don't keep many secrets.

6 MR. HUCKS: Nothing further.

7 CROSS-EXAMINATION

8 BY MR. DIGGS:

9 Q That is curious. Did you -- were you aware that
10 Latonya, after you talked to Latonya about it, she
11 called Delilah?

12 A I'm pretty sure she didn't. I don't know. I've
13 seen the statements, but I don't know.

14 Q You don't know if she did or not?

15 A She never spoke to me about it. I don't think
16 she even had Delilah's number. I'm not sure.

17 Q Okay. Let's go back and talk to you a little bit
18 more about what happened as the four of you were going
19 over to the residence. Your testimony is that you
20 didn't know it was Mr. Elliott, per se, you just knew
21 it was a place?

22 A Uh-huh.

23 Q A guy lived there with a lot of guns?

24 A Yeah.

25 Q And when you, in fact, arrived in town that day,

ANTHONY RAY - CROSS-EXAMINATION

1 the other four of them, that being Arlie, Charlie,
2 Charlie Senior, or Mr. Moon, and Brad were already
3 talking about this?

4 A I'm not sure.

5 Q But at least that is the --

6 A The impression, yeah.

7 Q -- impression you had? And that is what you told
8 the investigators back in July of this year?

9 A Yes, sir.

10 Q And Moon knew the guy?

11 A I'm not sure.

12 Q He rented from him before?

13 A I don't think Moon did.

14 Q But you told investigators that he had?

15 A No. Bradley had.

16 Q Yeah, but you told investigators that Brad and
17 Moon rented --

18 A I don't know if Moon rented off of him or not.

19 Q Brad and Moon rented off the guy before. That is
20 at 6:34, six minutes and 34 seconds into your
21 interview.

22 Now, did you have the impression that Moon had been
23 by there earlier in the day?

24 A Yeah. Yeah. That was the impression, that he
25 wasn't home.

ANTHONY RAY - CROSS-EXAMINATION

1 Q That is how you learned or assumed that
2 Mr. Elliott -- or no one would be home that evening?

3 A Yeah. Yeah. We was told he wasn't home.

4 Q How much did moon/figure into the planning, if
5 you know, about the burglary?

6 A I mean, he didn't say, You boys go down. He knew
7 we was going to do it beforehand.

8 Q You have a pretty close relationship with Moon?

9 A Sometimes. We all have.

10 Q But you and he had probably a special
11 relationship as opposed to the other cousins?

12 A I don't know about that.

13 Q But it was a good relationship?

14 A At times, yeah. At times.

15 Q It was agreed that the four of you would go and
16 break in and take the guns?

17 A Yeah.

18 Q The four of you guys, who were eventually the
19 ones who got in the Blazer and drove over there?

20 A Yeah.

21 Q And that was Little Charlie, and we met him. I
22 know you weren't in the courtroom, but he's testified.
23 Arlie?

24 A Yes, sir.

25 Q He's testified, too. And then you and Brad?

ANTHONY RAY - CROSS-EXAMINATION

1 A Yes, sir.

2 Q The four of you were --

3 A Only me and Brad entered the house.

4 Q I understand that. But the four of you
5 understood there was going to be a burglary?

6 A Oh, yeah. Oh, yeah.

7 Q You all took gloves?

8 A Yeah. I was wearing cotton gloves.

9 Q So you wouldn't leave any prints?

10 A Yeah.

11 Q It was your understanding that all four of you
12 would go in the house and take whatever valuables you
13 could find, but especially the guns?

14 A Yeah.

15 Q Now, in your statement, prior statement, Charlie
16 was the driver and Arlie was in the front?

17 A Yes, sir.

18 Q And where were the other two seated?

19 A Brad is directly behind Little Charlie, and I'm
20 directly behind Arlie.

21 Q Okay. Now, who goes to the front door?

22 A I do.

23 Q You notice there was a pickup or something in the
24 front yard?

25 A Yeah.

ANTHONY RAY - CROSS-EXAMINATION

- 1 Q Now, have you looked at the photos of the house?
2 I was sitting back there and I didn't see specifically.
3 Did the solicitor show you any photographs of
4 Mr. Elliott's house?
- 5 A Yeah.
- 6 Q You saw a pickup in the front yard?
- 7 A I'm not sure if it was front or side.
- 8 Q You saw a vehicle there?
- 9 A Yeah.
- 10 Q Would that be the vehicle we're looking at, this
11 Exhibit 69, is that the vehicle?
- 12 A Yeah.
- 13 Q That you saw?
- 14 A It is kind of on the side.
- 15 Q So when you said you saw a pickup in the front,
16 you meant that vehicle, wherever it was located?
- 17 A Yeah. When you are coming down the driveway it
18 is kind of....
- 19 Q So you all -- everybody saw that?
- 20 A Yeah.
- 21 Q When did you first see that?
- 22 A When we first came down the drive.
- 23 Q Now, you are standing there at the front door
24 banging on the door?
- 25 A Pretty good, yeah.

ANTHONY RAY - CROSS-EXAMINATION

1 Q In an attempt to wake up or arouse whoever was
2 there so they would come to the door?

3 A Yeah.

4 Q Were you banging on the door before you saw the
5 vehicle, or afterwards?

6 A After. We come up and you could see the vehicle
7 when you got out.

8 Q So you got out and walked back around to the
9 front?

10 A I don't...

11 Q You tell me what happened.

12 A We got out and went straight to the front. You
13 don't walk around. I mean, you went straight to the
14 front.

15 Q If I'm not mistaken, in your interview you said
16 you saw the pickup in the front yard and you went over
17 to the front door?

18 A Uh-huh.

19 Q But isn't it true you can't see that pickup from
20 the front?

21 A You can see it when you come in the driveway.

22 Q Up here is the front door, where my thumb is,
23 correct?

24 A Yeah.

25 Q How were you able to see?

ANTHONY RAY - CROSS-EXAMINATION

1 A When we came around.

2 Q Where did you all drive to?

3 A They stopped the truck about a hundred yards
4 before we got to the house.

5 Q Yeah, but then what did you do? You walked
6 around to the back?

7 A No, I didn't walk around to the back.

8 Q But you --

9 A You saw the back end of the truck.

10 Q You could see it from where you all were coming
11 from, from whatever direction? You were on the way to
12 the front door, but you saw this car parked here?

13 A Yeah.

14 Q So you felt -- banged on the door, and you said
15 for five minutes. That is pretty long.

16 A It was a couple of minutes. I was beating on the
17 door long enough time for Brad to go to the back.

18 Q Any reasonable person would have thought if
19 anybody was in there, they would have --

20 A He would have come up, yeah.

21 Q What time was it?

22 A It was dark when we got there. It wasn't dark
23 when we left, so a period between twilight.

24 Q And this being in September?

25 A Between 6:00, 8 o'clock. It was dark when we got

ANTHONY RAY - CROSS-EXAMINATION

1 there.

2 Q Then Arlie and Brad --

3 A They were out of the truck.

4 Q They got out of the truck and went to the back?

5 A I don't know where they went.

6 Q In your statement in July you told the
7 investigator, quote, Arlie and Brad went to the back.

8 A They did after the shooting started, yeah.

9 Q This indicates to me, the way I read your
10 statement, that they went to the back before they went
11 in the house.

12 A Them two never went in the house, and I didn't
13 know -- I was at the front.

14 Q You said Arlie and Brad --

15 A They were out of the vehicle, I'm not sure where
16 exactly they went.

17 Q You told them, though, in July, that that is
18 where they went?

19 A I said --

20 Q Arlie and Brad?

21 A No. Brad went around to the back. Arlie and
22 Little Charlie were out.

23 Q Why did you tell them in July that Arlie went to
24 the back?

25 A I don't know where they went. I don't know if

ANTHONY RAY - CROSS-EXAMINATION

1 they went to the back. I didn't see them, I was at the
2 front.

3 Q Arlie and Brad went somewhere?

4 A Arlie and Little Charlie. Brad went to the back.

5 Q But you gave a statement to the officers back in
6 July of this year?

7 A Yeah.

8 Q And you deny you made the statement that Arlie
9 and Brad went to the back?

10 A I'm not sure.

11 Q You could have made it?

12 A It is possible.

13 Q During that interview?

14 A It's possible.

15 Q When you went around to the back, what did you
16 observe at that point?

17 A I stood at the front when I heard the back window
18 break, and that is when I went to the back. When I got
19 around to the back, Brad already gained access to the
20 inside of the house, and I went in after him.

21 Q Then what did you see at that point, if anything?
22 What happened at that time?

23 A We started robbing the house.

24 Q Who -- did you see Brad after you came around to
25 the back to go in?

ANTHONY RAY - CROSS-EXAMINATION

- 1 A He was already in the house.
- 2 Q What was he doing when you got there?
- 3 A Grabbing guns.
- 4 Q Didn't you tell the officers he was coming out of
- 5 the house with -- carrying a bunch of guns?
- 6 A He was in there getting the guns.
- 7 Q Was he in the house or bringing them out?
- 8 A He never came out the door with them yet.
- 9 Q But do you deny telling the detectives or
- 10 investigators that he was coming out of the door with
- 11 the guns?
- 12 A He was coming back out, but I don't know if he
- 13 came out the door.
- 14 Q You were there looking at him?
- 15 A He hadn't come out of the door yet, but he was
- 16 coming out, yeah.
- 17 Q And you were there about ten minutes?
- 18 A Probably there a little longer than that.
- 19 Q But you said ten minutes this summer in July?
- 20 A I might have.
- 21 Q You all were putting the guns on a blanket?
- 22 A Yeah.
- 23 Q You testified you put the blanket down there.
- 24 Where did you get the blanket?
- 25 A I think Brad handed it to me.

ANTHONY RAY - CROSS-EXAMINATION

1 Q You don't recall?

2 A No, sir. It was kind of....

3 Q But it was Mr. Elliott's, nothing you all
4 brought?

5 A No. It wasn't nothing we brought, no.

6 Q Now, you heard gunshots. Where were you when you
7 heard the gunshots?

8 A In the living room at the gun cabinet.

9 Q Didn't you tell the detectives or the
10 investigator that when you were outside you heard the
11 gunshots?

12 A I'm not sure.

13 Q Do you deny you said that?

14 A I'm not sure.

15 Q Do you deny you said you went running in the
16 house once you heard the gunshots?

17 A I'm not sure.

18 Q Are you sure about your testimony that you were
19 standing there in the kitchen when he came out firing?

20 A I was in the living room.

21 Q All right. And you ran to the kitchen?

22 A No, I ran to the front door.

23 Q Where were you when you shot Mr. Elliott?

24 A By the front door.

25 Q By the front door?

ANTHONY RAY - CROSS-EXAMINATION

- 1 A Yes, sir.
- 2 Q I stand corrected. I thought that you said you
- 3 ran over to the kitchen area?
- 4 A No. I was at the front door trying to get out.
- 5 Q Now, you shot him with a .22?
- 6 A Yeah.
- 7 Q When Mr. Elliott came out, did you see him
- 8 firing?
- 9 A Oh, yeah.
- 10 Q Now, did you tell the investigator that?
- 11 A I'm not sure. I mean, I didn't see him.
- 12 Q Because that was another story you told --
- 13 A I heard the gunshots, and I knew Bradley didn't
- 14 have a gun.
- 15 Q Brad went in and he wasn't armed?
- 16 A Nobody was armed.
- 17 Q You were armed.
- 18 A I grabbed the gun from inside the house that was
- 19 one of Mr. Either's gun.
- 20 Q Didn't you say you went to a shed and got a gun?
- 21 A No.
- 22 Q Maybe I'm mistaken.
- 23 A Yeah, maybe.
- 24 Q But what kind of gun was it?
- 25 A I think it was a 22. rifle.

ANTHONY RAY - CROSS-EXAMINATION

1 Q That is what you used to shoot Mr. Elliott?

2 A In the side area, yeah.

3 Q In the side. Okay. You were -- shows us again
4 where you were when Mr. Elliott came out of the
5 bedroom?

6 A When he came out of the bedroom, I was right
7 there by the gun cabinet (indicates).

8 Q So he comes running out of the bedroom and he's
9 like right in your face?

10 A Well, Brad comes out first.

11 Q Out of the bedroom?

12 A No, he comes off the floor and Mr. Elliott is
13 behind him.

14 Q Wait a minute. Mr. Elliott -- what happened?

15 A Brad kicks in the door, falls on the ground,
16 starts to get up and Mr. Elliott opens the door and
17 comes out.

18 Q All right. Where are you when he comes out?

19 A By the gun cabinet. I went around the couch and
20 by the front door.

21 Q I'm pointing to where you were?

22 A Yeah.

23 Q When Mr. Elliott comes out of the door, so you
24 guys were like right on top of each other?

25 A Yes, sir.

ANTHONY RAY - CROSS-EXAMINATION

- 1 Q And you ran away?
- 2 A Oh, you better believe it.
- 3 Q And Mr. Elliott was shooting his gun?
- 4 A Yeah.
- 5 Q Was he firing warning shots?
- 6 A I'm not sure. I think he was firing at Brad.
- 7 Q But you know -- or do you know of --
- 8 A My back was turned, I'm not sure if he was --
- 9 Q You knew this man had a lot of guns, right?
- 10 A Yeah.
- 11 Q Wouldn't you assume he knew how to use them?
- 12 A I assumed he wasn't there at all.
- 13 Q I know, but wouldn't it be reasonable to assume
- 14 that Mr. Elliott, having all of these guns --
- 15 A You would think so.
- 16 Q Coming out firing with a loaded pistol, 30
- 17 something?
- 18 A I don't know what it was.
- 19 Q But you would assume he knew how to use the gun?
- 20 A It is good to assume that.
- 21 Q Especially somebody who was 2, 3 feet away from
- 22 him?
- 23 A That is a good assumption.
- 24 Q But he missed?
- 25 A He didn't hit me. I guess he didn't hit Brad

ANTHONY RAY - CROSS-EXAMINATION

1 neither.

2 Q There is Brad, he didn't get shot.

3 A Hitting a moving target.

4 Q I thought he was laying on the floor?

5 A He wasn't on the floor for long. He got up and
6 was moving. He didn't stay there. He was right there.
7 The door opened, he didn't lay there on the floor and
8 let Elliott go over top of him, he got up and ran too.

9 Q Brad did?

10 A Oh, yeah, ran to the corner.

11 Q Did you see a bookshelf, anything of that nature
12 in the house?

13 A I'm not sure.

14 Q You don't remember.

15 A There was a lot of stuff in the house, it was
16 pretty trashy.

17 Q But you agree with me, at least on this diagram,
18 this is marked the kitchen area?

19 A Yeah.

20 Q It says "kitchen" right there. All right. And
21 he was over here in front of the bedroom door?

22 A Yeah.

23 Q Brad was on the floor here, and you were over
24 here in the foyer?

25 A No. No. No.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Let's go -- correct me, then.

2 A Yeah. The door is right there, Brad kicked in
3 the door, fell on the floor. I guess he was in here,
4 the man. When he came moving -- I don't know where he
5 was at, but when Brad gets in that way, I run around
6 here at that door.

7 Q That is the back door?

8 A That is the front door. He corners Brad in this
9 area. I'm screaming, Putting the gun down, put the gun
10 down. I had the .22 pointed directly at him. When he
11 turned and point that gun at me, I shot him, he fell
12 down. Brad went over there, behind the couch. There
13 was moving around to get him, and I saw him blow his
14 brains out.

15 Q You were going -- you were helping Brad when you
16 were collecting the guns?

17 A Yeah.

18 Q And how did you collect the guns when you were
19 carrying the .22?

20 A The .22 came out of the gun cabinet, I believe.

21 Q You don't remember where you got it?

22 A There was guns everywhere at that moment.

23 Q So it happened to be loaded?

24 A Every gun in that house was loaded.

25 Q But you don't remember where you picked up the

ANTHONY RAY - CROSS-EXAMINATION

1 .22?

2 A At one point in time, in that house, the whole
3 time we was there, I had a gun in my hand, and so did
4 Brad, a different gun.

5 Q When were you walking out and putting them on the
6 blanket?

7 A In between. I mean, you can't carry 20 guns in
8 one arm.

9 Q I understand that, but you would go out, put the
10 guns on the blanket?

11 A Oh, yeah.

12 Q And go back --

13 A And get more, look for more.

14 Q He kicks in the door?

15 A Huh?

16 Q At that point, Brad kicks in the door?

17 A At one point in time, yeah.

18 Q But you are still holding guns?

19 A I was at the gun cabinet when he kicked in the
20 door.

21 Q Okay. So that is when you grabbed a gun?

22 A I don't know if I had it in my hand then or --
23 like I said, there was guns everywhere, loaded guns,
24 every gun in the house was loaded.

25 Q Whenever Brad kicked the door in, you had a gun,

ANTHONY RAY - CROSS-EXAMINATION

1 just happened to have it, and ran across the room with
2 it?

3 A You better believe it.

4 Q And this was already after Mr. Elliott fired two
5 shots, at least two?

6 A It happened pretty fast after the door was kicked
7 in. It happened pretty quick.

8 Q So he turns and looks at you, and tell us what
9 happened.

10 A Well, he had Brad in the corner pointed at him.
11 I was screaming at him, Put the gun down, put the gun
12 down. When he trained the gun on me, I shot him in the
13 -- I thought I shot him in the shoulder area, but
14 apparently I shot him in the side.

15 Q What side did you shoot him in?

16 A I'm not sure. I think it was this side.

17 Q Right.

18 A I think, I'm not sure on that.

19 Q Did he turn around and point it?

20 A He turned it on me.

21 Q I wonder how you got access to his right side?

22 A It happened pretty quick. I thought I got his
23 shoulder.

24 Q When you shot him, what happened?

25 A He fell down, and he was down.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Fell down on the floor. Did he go down on his
2 knees?

3 A I don't know. He was behind the couch, I
4 couldn't see that part.

5 Q Could you see him at all?

6 A Not after he fell to the ground. He fell to the
7 ground. Brad jumps over on him. I come around,
8 because I had to go around the couch to get out of the
9 house.

10 Q You went around to the back of the sofa?

11 A I was closer than me to you when Brad blew his
12 brains out. I mean, his head exploded. I have to live
13 with that for the rest of my life.

14 Q What did you do with the gun you had?

15 A Apparently I still had it in my hand. I kept
16 running.

17 Q Ran where?

18 A Out the back door into the truck.

19 Q What are you calling the "back door"?

20 A The door we went in.

21 Q You came and ran out this door?

22 A Yes, sir.

23 Q Which is right beside the front door?

24 A No -- yeah. It is the side. That is what I call
25 the back door. It was dark when we got there, dark

ANTHONY RAY - CROSS-EXAMINATION

1 when we left.

2 Q So where were Arlie and Charlie at this time?

3 A When I came out the back door, they were right
4 there, grabbed the rifles carried them.

5 Q Picked up the blankets with the rifle?

6 A Yes, sir.

7 Q And did what?

8 A Carried them to the truck.

9 Q Okay. And what -- was any conversation taking
10 place?

11 A Yeah. They were like, What happened? What
12 happened? We were like, We shot him. We shot him. It
13 seemed like forever, but I'm pretty sure it wasn't.
14 Brad came out, threw something in the back, found later
15 it was a bag of pistols. We left, still arguing.
16 There was a lot going on, I mean.

17 MR. DIGGS: Bear with me for a second.

18 (A brief pause in the proceedings.)

19 Q (MR. DIGGS) In the interview you had with the
20 investigator, didn't you tell him that Brad was
21 struggling with the man on the ground -- we mean the
22 floor -- and the pistol went off?

23 A I might have.

24 Q Why did you tell him that?

25 A As I said, I don't know if the gun hit the ground

ANTHONY RAY - CROSS-EXAMINATION

1 or he took it away from him.

2 Q Just went off?

3 A Brad was in control of that gun when it went off.

4 Q How could you tell?

5 A Because I was behind him.

6 Q You already ran behind?

7 A Oh, yeah. I seen when he pulled the trigger.

8 Yeah, he was in control.

9 Q You saw him pull the trigger?

10 A Yes, I did, and he was in full control of the
11 pistol.

12 Q Where were you standing -- let me show you one
13 more time on the diagram of the house. Where were you
14 standing when you saw him pull the trigger?

15 A In this area. I was about as far as from me to
16 you from him.

17 Q You were right behind him?

18 A Yeah.

19 Q And Mr. Elliott was facing in your direction?

20 A His head was, yeah, towards that way.

21 Q And, again, where were you standing before you
22 ran over there?

23 A Right here.

24 Q Okay. Then all of you piled back in the car,
25 four of you. Where did you go?

ANTHONY RAY - CROSS-EXAMINATION

- 1 A Back to Moon's house.
- 2 Q You didn't go anywhere to dispose of any weapons?
- 3 A No, not at that time we didn't.
- 4 Q Went back to Moon's house?
- 5 A Yeah.
- 6 Q Did you meet with Moon there?
- 7 A Yeah. He came out the door.
- 8 Q Tell me about that.
- 9 A We were all out there.
- 10 Q You can't tell me what Moon said?
- 11 A I don't remember what everybody said.
- 12 Q What was going on?
- 13 A All the guns are laid out.
- 14 Q Of course the four of you guys knew the shooting
- 15 occurred?
- 16 A Yeah.
- 17 Q Charlie, Arlie and you?
- 18 A Yeah. Yeah. They are not -- the other two
- 19 didn't know what was going on in the house because they
- 20 never went inside the house.
- 21 Q But they certainly heard the shots?
- 22 A Oh, yeah.
- 23 Q And what happened at that point. You got the
- 24 guns unloaded, put them in the shed.
- 25 A We were all talking, talking about, I'm going to

ANTHONY RAY - CROSS-EXAMINATION

1 keep this pistol and keep that. The subject came up
2 about not being able to keep the pistols. They were
3 stolen handguns, no value to anybody. I mean, they are
4 about worthless. Most handguns are registered,
5 especially in the state I'm from. So being stolen
6 handguns, the only person that wants to buy it is
7 another convicted felon to do a crime with.

8 Q So what happened?

9 A Well, Brad left. He took little Charlie's truck.
10 I don't know if he went to his sister's house,
11 girlfriend's I'm not sure. I wasn't with him. About
12 an hour, hour-and-a-half later, the three of us, me,
13 Little Charlie and Arlie, get in Little Charlie's
14 full-size pickup truck.

15 Q Not the one you drove to --

16 A No. Brad had that little vehicle.

17 Q And what happened at that point?

18 A Well, we drove to -- I don't remember where we
19 drove. I'm not from down here.

20 Q A house in the woods, country?

21 A It was a swamp area.

22 Q And what happened?

23 A Little Charlie and Arlie grabbed the pillow case,
24 and the .22 rifle I shot Mr. Elliott with was with the
25 pistols.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Did you make sure that that was going to be
2 disposed of?

3 A Oh, yeah. Yes, sir.

4 Q Now, after the disposal of the weapons, the three
5 of you went back to Moon's house?

6 A Yes, sir.

7 Q And I believe you indicated you spent the night
8 there, or did you?

9 A We all did, yes, sir.

10 Q Did anybody, to your knowledge -- let me ask it
11 this way. Did you have any discussions with Moon about
12 what had happened that night?

13 A I believe -- I mean -- I believe the subject came
14 out while we were out in the barn about what happened.

15 Q Did Delilah know about it?

16 A She came out. I don't know if she knew about the
17 murder, but she saw the guns there.

18 Q She knew the guns was there?

19 A Yeah. The next day I believe the talk --
20 everybody knew the guns were there. I mean, they
21 didn't know exactly what happened, but everybody there
22 was just about family.

23 Q Isn't it true -- and I'm sorry if I missed this
24 earlier, but in your July interview with the
25 investigator you said you didn't know if Brad kicked in

ANTHONY RAY - CROSS-EXAMINATION

1 the door?

2 A I didn't say -- I'm pretty sure I didn't say
3 that. I knew Brad kicked in the door.

4 Q Do you remember saying, I don't know if Brad
5 kicked the door in? The man came out of the bedroom, I
6 don't know if Brad kicked the door in?

7 A I'm not sure about that.

8 Q You could have said that?

9 A Maybe.

10 Q Did you hear Brad say anything when the shooting
11 took place?

12 A No.

13 Q Did he say --

14 A No. No.

15 Q Did he say, Good night, Sucker, or something?

16 A No. I've seen all the statements, and the man
17 didn't say nothing. I didn't know it at the time, but
18 after reading the autopsy report, apparently I shot
19 him. His lung was shot. I've been a deer hunter all
20 my life. I've shot animals and deer, and they don't
21 make much of a sound after that. The man didn't beg
22 for his life. It happened really quick, but it wasn't
23 like that.

24 Q And you sold the guns down in Louisiana?

25 A Moon did, yeah.

ANTHONY RAY - CROSS-EXAMINATION

1 Q Moon sold them?

2 A I was present, yeah. Me and Charlie.

3 Q You saw him selling them?

4 A Yeah.

5 Q And you split up the money, and Moon got his
6 share?

7 A Moon got his share, Little Charlie. Arlie, when
8 he left -- Brad got his share. Arlie, he took a double
9 barrel shotgun made in the 1800s, probably worth quite
10 a little bit of money for his part.

11 Q Who took it?

12 A Arlie did. Everybody took their part in this.

13 Q Do you have any knowledge about what ultimately
14 happened to that particular gun?

15 A I've heard rumors.

16 Q But you don't have any direct knowledge?

17 A I wasn't there. I've never been in this city.

18 Q Now, with respect to the gloves you had, what
19 happened to those?

20 A I think we probably carried them to work with us.
21 You know, they were cheap gloves, \$1.20 cotton gloves.

22 Q You're charged with the murder presently?

23 A Yeah.

24 Q You're hoping, am I not correct, to get rid of
25 that charge?

ANTHONY RAY - CROSS-EXAMINATION

1 A Well, I'm not -- I haven't been promised
2 anything.

3 Q I'm not asking you that.

4 A I shot the man.

5 Q Did they promise you that they would revisit the
6 issue after the trial?

7 A No, they didn't.

8 Q Nobody said anything about that?

9 A Yeah, it is going to be handled after the trial.
10 I am hoping with my testimony I might get a little
11 reduced sentencing.

12 Q Aren't you looking for like 15 years?

13 A I'm looking for whatever they give me.

14 Q Haven't you made that statement? That is a long
15 time, but less than 30.

16 A I'm doing 15 years for first degree burglary,
17 that is the statement I made.

18 Q And you don't have to worry about the murder
19 case?

20 A Armed robbery carries up to 30 years. I mean --
21 I'm not sure if I don't have to worry about that
22 murder. I believe in South Carolina it's
23 the-hand-of-one-is-the-hand-of-all.

24 Q Well, that is what the detectives told you, isn't
25 it?

ANTHONY RAY - CROSS-EXAMINATION

1 A I've heard it from a lot of people.

2 Q Don't you think mental intent and knowledge and
3 understanding figures into the mix, too?

4 A I'm not sure how it works. I'm a carpenter.

5 Q I can strike the question. I'm sorry I brought
6 that up.

7 MR. DIGGS: Bear with me for a second.

8 (A brief pause in the proceedings.)

9 Q (MR. DIGGS) You've written a lot of letters since
10 you were locked up?

11 A Yeah. I stayed at J. Reuben Long for almost
12 two-and-a-half years.

13 Q And that is one way to relieve tension or get
14 your mind off of stuff?

15 MR. DIGGS: Your Honor, can he look at this?

16 THE COURT: Pardon?

17 MR. DIGGS: Can I hand it to him so he can review
18 it?

19 THE COURT: Certainly.

20 Q (MR. DIGGS) I want to ask you to take a minute to
21 see if you recognize --

22 A That is my handwriting.

23 Q And those are letters you wrote?

24 A To my wife.

25 Q To your wife, for the most part. In those

ANTHONY RAY - CROSS-EXAMINATION

1 letters, a lot of times, wouldn't be fair to say, that
2 you express remorse about it?

3 A Of course I do.

4 Q Have you made any statements to any of the other
5 detainees at J. Reuben Long that you were going to come
6 in here and lie?

7 A No.

8 Q So you haven't made any statements like that?

9 A I've been in Leiber for the last few months.

10 Q Okay. Point taken. You have been. But before
11 you went there, did you say you were going to take your
12 deal and go in here and lie in court?

13 A No, I never said that.

14 Q Never made any statement like that?

15 A No.

16 Q Ronald Legg, do you know him?

17 A Yeah.

18 Q Did you make a statement like that to him at J.
19 Reuben Long?

20 A No.

21 Q Or Mr. Jeremy Crawford?

22 A I don't think I know a Jeremy Crawford.

23 Q You deny making a statement to him?

24 A Yeah.

25 Q That you're going to take a deal, come in here

ANTHONY RAY - CROSS-EXAMINATION

1 and lie?

2 A No, I never said nothing like that.

3 Q We may bring them in here and impeach your
4 testimony.

5 MR. HUCKS: Objection, Your Honor.

6 THE COURT: All right. Let's move on to something
7 else.

8 THE WITNESS: I mean, Mr. Legg, I believe, is in
9 jail for sexually molesting little kids.

10 Q (MR. DIGGS) He hasn't been convicted, has he?

11 MR. HUCKS: Objection, Your Honor.

12 THE COURT: Mr. Diggs, let's go on now.

13 MR. DIGGS: Thank you. I believe that is all I
14 have of this witness. Thank you.

15 THE COURT: Mr. Hucks.

16 REDIRECT-EXAMINATION

17 BY MR. HUCKS:

18 Q I want to hit a couple of things with you. Are
19 you and Moon close anymore?

20 A I'm not close with anybody anymore.

21 Q Why don't you hang out with Moon?

22 A I'm in jail.

23 Q You've been in jail for how long?

24 A Two-and-a-half years now. A little over
25 two-and-a-half years now.

ANTHONY RAY - CROSS-EXAMINATION

1 Q If you weren't in jail, would you be hanging out
2 with Moon anymore?

3 A No. I mean, everybody in the family, even his
4 own kids, use Moon just when they need money. One way
5 or another, he's going to cheat you out of most of it.

6 Q Who went in that man's house?

7 A Me and Bradley.

8 Q Anybody else?

9 A No, nobody else went inside.

10 Q Was that man breathing when you went in the
11 house?

12 A Yes.

13 Q And was it nighttime when you went in there?

14 A Yes, sir.

15 Q And was he breathing when you left the house?

16 A No, he wasn't.

17 Q Show us -- I missed part of what Mr. Diggs went
18 over with you -- when the man comes out of the bedroom,
19 where are you standing?

20 A Right here.

21 Q Where is Brad?

22 A Right there in the floor. I mean he got up. I
23 mean he fell down, but it wasn't like he broke his
24 neck, I mean he got up. The door was still shut.

25 Q Seeing a gun will do that to you.

ANTHONY RAY - REDIRECT EXAMINATION

1 A Yes, it will.

2 Q Now, where do you go when you see Brad come out
3 and the man with the gun?

4 A Around here.

5 Q What door do you go to?

6 A That door.

7 Q You kept saying "front door," but is this the
8 door you're talking about?

9 A Yeah. I don't know what it is.

10 Q That's fine. Where are you standing when you
11 shoot Mr. Elliott?

12 A Standing at the door.

13 Q Where did you shoot him on his body?

14 A In the side. I think it is this side, I'm not
15 sure. I was aiming for his shoulder.

16 Q Now, where was Brad at when you shot him?

17 A In this area here.

18 Q And Mr. Elliott, what was Mr. Elliott doing to
19 Brad?

20 A He had the gun pointed at Brad over in that area.
21 I'm over here. I could not get the door opened. I
22 turned around, and he is pointing the gun. I'm
23 screaming, Put the gun down, put the gun down. He
24 turned the gun towards me, I shot him. I did not want
25 the man to die.

ANTHONY RAY - REDIRECT EXAMINATION

1 Q Was Joe Elliott a threat to anybody after you
2 shot him?

3 A He was no threat after I shot him. He was on the
4 ground. We could have left. He fell on the floor. He
5 was not a threat.

6 Q Now, the .22 rifle you say you shot Mr. Elliott
7 with, where did you get it from, do you remember?

8 A I'm not sure. I think I got it from the gun
9 cabinet.

10 Q In his house?

11 A Inside the house.

12 Q Did you bring it in the house?

13 A No, we didn't carry no guns in there. We were
14 not armed when we went to the house.

15 Q You were going to get guns?

16 A Yeah. I mean, none of us had a gun to begin
17 with.

18 Q Now, when Mr. Diggs was cross-examining you,
19 quite a few times when he asked you about Mr. Elliott
20 coming out, he asked if you tried to run, and you said,
21 You better believe it; what do you mean?

22 A Somebody has a gun. I mean, I'm not going to
23 stand there and get shot intentionally. I mean, I went
24 to moving. I mean, he had a gun in his hand.

25 MR. HUCKS: Nothing further.

ANTHONY RAY - REDIRECT EXAMINATION

1 MR. DIGGS: May we approach for a second?

2 (Whereupon, a bench conference was had.)

3 MR. DIGGS: Nothing further.

4 THE COURT: You may step down.

5 MR. HUCKS: Mr. Diggs and, Judge, can we approach
6 one more moment?

7 (Whereupon, a bench conference was had.)

8 THE COURT: Ladies and gentlemen, we're going to
9 break for lunch. I'll ask you to be back here about 2
10 o'clock. That will give you an hour-and-a-half. Mr.
11 Ropp, will you take the jury out? Do not discuss the
12 case with anyone or allow anyone to discuss it with
13 you.

14 (The jury exits at 12:31 p.m., and the following is
15 heard out of the presence of the jury.)

16 THE COURT: We'll be back at 2 o'clock.

17 (Whereupon, a lunch recess was taken.)

18 THE COURT: Okay. Let's bring them in.

19 (The jury enters at 2:05 p.m., and the following is
20 heard in the presence of the jury.)

21 THE COURT: We have our jurors and alternates.

22 Mr. Hucks, call your witness.

23 MR. HUCKS: At this time, that is the extent of the
24 State's case and we rest.

25 THE COURT: State rests. Well, it was nice to have

STATE RESTS - MOTION

1 you back in the courtroom. Mr. Ropp, take them back in
2 the jury room.

3 (Whereupon, the jury exits at 2:06 p.m., and the
4 following is had out of the presence of the courtroom.)

5 THE COURT: Mr. Diggs.

6 MR. DIGGS: We move for a directed verdict on the
7 murder charge because the evidence doesn't support the
8 presence of malice. Even if the two were on the floor
9 struggling and it went off and killed Mr. Elliott, it
10 wouldn't justify or satisfy the necessary element of
11 malicious killing. It would be an accidental killing
12 in that situation, and technically we don't have a
13 felony murder, so the State can't rely on the felony in
14 progress to supply the malicious element that's
15 necessary for the murder. It is need to be a specific
16 finding of malice, and I submit that the evidence
17 doesn't support that element, presence of that element
18 in the case.

19 THE COURT: Mr. Hucks. Are you done on that part?
20 Let's do it in parts.

21 MR. DIGGS: Yes. Yes.

22 MR. HUCKS: Your Honor, while the State doesn't
23 have a felony murder rule, it is well stated in the law
24 of South Carolina that during a commission of a violent
25 felony, in the mist in the light most favorable to the

MOTION

1 State, the facts reflect from the witnesses and
2 evidence presented that they were participating in a
3 burglary in the first degree and that the victim in
4 this case was only exercising a legal right in this
5 particular case, which would allow a jury to affirm
6 malice in the light most favorable to the State, not
7 counting the testimony from Anthony Ray that this
8 defendant stood directly over the man and shot him in
9 the head.

10 THE COURT: After testifying that there was plenty
11 of opportunity for them to leave.

12 MR. HUCKS: Yes, sir.

13 THE COURT: Mr. Diggs, do you want to respond?

14 MR. DIGGS: Briefly. The witness did say that
15 Mr. Elliott held them at gunpoint, so that would -- I
16 would submit that would have prevented them from
17 leaving temporarily, and so the Court should discount
18 the fact that they could have left.

19 THE COURT: I think I'm required to look at the
20 evidence in the light most favorable to the State, and
21 I think there is substantial direct and circumstantial
22 evidence -- circumstantial evidence or any direct
23 evidence that would support the charge, and I believe
24 that there is certainly, in this case, no question
25 there was a homicide. There is evidence that it was at

MOTION

1 the hands of this defendant's -- direct evidence to
2 that extent, and we have the commission of a violent
3 crime going on. We have an execution type of style --
4 or evidence of an execution-style murder. I think that
5 the evidence certainly is sufficient taking in
6 everything in the light most favorable to the State who
7 submits it to the jury, and that is what I'll do.

8 As to the charge of burglary.

9 MR. DIGGS: Your Honor, with respect to the
10 burglary, I would have to argue that the witness -- the
11 lack of credibility of the witness in establishing
12 that. Your Honor, he waffles on the identity of the
13 people that he puts at the back of the back door.

14 THE COURT: Isn't credibility a matter for the
15 jury?

16 MR. DIGGS: Ordinarily it is, but I would submit it
17 has to be a rational trier of fact and, you know, the
18 credibility -- I would submit there is a threshold
19 requirement, credibility requirement, even on the issue
20 of whether or not the charge to be submitted to the
21 jury when the evidence is waffling, and it is not --

22 THE COURT: There's just a wealth of evidence, Mr.
23 Diggs, from a number of witnesses concerning the fact
24 that these gentlemen -- or it is alleged that the
25 defendant entered the dwelling. The entry was in the

MOTION

1 nighttime. They became armed while they were in there.
2 There was an assault, violent assault, on a person in
3 the house. There is so much evidence, in my view, to
4 support the charge that it certainly rises beyond the
5 threshold required of the State in submitting this to
6 the jury, and I'm going to submit it to the jury.

7 All right. Now, Mr. Diggs, I believe that puts the
8 ball back in your court. Have you discussed with your
9 client --

10 MR. DIGGS: We've discussed it briefly, but I would
11 submit that maybe we should spend a few minutes now, my
12 client and I, discussing this in private at this time.

13 THE COURT: I will give you some time to do that.
14 You may retire with your client.

15 MR. DIGGS: Thank you.

16 (A recess was taken.)

17 MR. DIGGS: We've had a chance to discuss it in
18 some depth, and my recommendation -- and I think
19 Mr. Mullins is going to follow my recommendation -- is
20 that he will not testify.

21 THE COURT: All right. Let me ask Mr. Mullins a
22 few questions.

23 MR. DIGGS: Yes, sir.

24 THE COURT: Mr. Mullins, if you would stand and
25 I'll have the clerk place you under oath, because it is

BRADLEY MULLINS - BY THE COURT

1 important that you understand what I'm asking you and
2 you answer me truthfully.

3 (BRADLEY MULLINS, having been duly sworn, testified
4 as follows:)

5 EXAMINATION

6 BY THE COURT

7 Q I'm going to explain your rights, and if you do
8 not understand anything I say, please let me know. If
9 you want me to explain anything in a more detailed
10 fashion, let me know that. Do you understand what I'm
11 saying?

12 A Yes, sir.

13 Q We've now reached the stage of the trial where
14 you may present your defense. You have the right to
15 claim the protections given you by the Fifth Amendment
16 to the Constitution of the United States and that
17 amendment says in part that no person shall be
18 compelled in any criminal case to be a witness against
19 himself, and this means that you cannot be required to
20 testify in this case. You have the right to testify on
21 your own behalf, however, no one can make you testify.
22 This is a personal right, and no one can waive this
23 right except you. If you decide to testify, you will
24 be subject to the same rules that govern other
25 witnesses, and you may be examined and cross-examined

BRADLEY MULLINS - BY THE COURT

1 on any relevant issue in the case.

2 In addition, if you had any convictions involving
3 dishonesty or false statements or crimes punishable
4 more than one year and this court finds that the
5 probative value of admitting that evidence outweighs
6 its prejudicial effect to you, the solicitor will be
7 able to introduce your record to attack your
8 credibility.

9 If you decide to testify, the decision must be
10 freely, voluntarily and intelligently made with
11 knowledge of protections given you by the
12 Fifth Amendment and the consequences of your decision
13 to testify.

14 If you decide not to testify, I will instruct the
15 jurors they cannot give the fact that you did not
16 testify any consideration whatsoever, and that there is
17 to be absolutely no prejudice to you because you did
18 not testify. It is left entirely up to you whether or
19 not you wish to testify. You may talk with your
20 attorney, your family, friends or anyone else, but the
21 final decision is left entirely up to you. Do you
22 understand what I've explained?

23 A Yes, Your Honor.

24 Q Do you have any questions about what I've
25 explained to you?

BRADLEY MULLINS - BY THE COURT

1 A No, sir.

2 Q Have you discussed with your lawyer whether you
3 should or should not testify?

4 A I have.

5 Q And do you wish to talk with your lawyer further
6 about that issue?

7 A No, sir.

8 Q Do you wish to testify?

9 A No, sir.

10 Q All right. Let me tell you, Mr. Mullins, that I
11 believe you understand your rights under the Fifth
12 Amendment and you have told me that you do not wish to
13 testify?

14 A I have.

15 Q If you -- before this trial concludes, if you
16 change your mind, please understand you may do so. You
17 may change your mind and decide you want to testify.
18 Up until the time we close testimony, I will let you
19 change your mind.

20 A Yes, sir.

21 Q I'm not saying this to encourage you to do it or
22 change your mind, just letting you know that I won't
23 hold you to what you say here and that if at some time
24 during -- before this trial closes you wish -- or the
25 evidence closes, if you wish to testify, you may do so.

BRADLEY MULLINS - BY THE COURT

1 Do you understand that?

2 A Yes, sir.

3 THE COURT: Mr. Diggs, do you believe I adequately
4 explained your client's rights under the Fifth
5 Amendment of the Constitution?

6 MR. DIGGS: Yes, sir.

7 THE COURT: Very well. Now, thank you,
8 Mr. Mullins, you may be seated.

9 Mr. Diggs, will you present other witnesses in the
10 defense?

11 MR. DIGGS: Your Honor, we plan to do that.

12 THE COURT: Very well. Are you prepared to go
13 forward?

14 MR. DIGGS: Yes, sir.

15 THE COURT: Let's bring in the jury. Mr. Diggs,
16 Mr. Hucks.

17 (Whereupon, a bench conference was had.)

18 MR. DIGGS: We had the court reporter go back and
19 look at the testimony of Charles Henderson Mullins and
20 prepare a printout of that page of his testimony where
21 he states that he --

22 THE COURT: Roy, hold them up just a second.

23 MR. DIGGS: Let me make sure I have the right one.

24 "When I pulled in Anthony and Arlie were standing
25 beside the road waiting," could I make that a court

THE COURT

1 exhibit?

2 THE COURT: Certainly. I mean, it is part of the
3 record anyway.

4 MR. DIGGS: I don't know what witness I would use
5 to introduce it, and I don't want to call the court
6 reporter.

7 THE COURT: All right.

8 MR. HUCKS: It is not admissible -- I mean, a
9 court's exhibit is a court's exhibit, but it is not
10 admissible under the rules.

11 THE COURT: I don't know that it would, but.

12 MR. HUCKS: Even if it is a prior inconsistent
13 statement, he admitted -- he said, If I said that, I
14 misspoke, which equivocates that --

15 MR. DIGGS: But it is a jury issue.

16 THE COURT: But that witness is not on the stand.
17 Were you going to use it for some other reason?

18 MR. DIGGS: No. What I want to do is -- he said he
19 didn't make that statement, and I simply -- besides the
20 court reporter reading it back, what was said, I don't
21 want there to be any question -- I don't want it to be
22 lingering as to whether or not he said it when he was
23 testifying here in court.

24 It may be that we don't have to send it back there
25 during the deliberations, but I think it would be

THE COURT

1 proper for there to be some documented proof --

2 THE COURT: I think what you can do is call that to
3 the court -- well, what are you going to compare it to?
4 Do you have another document?

5 MR. DIGGS: No. I'm going to compare it to his
6 testimony initially where he denied making that
7 statement.

8 MR. HUCKS: My recollection is that he said, If I
9 said that, I misspoke.

10 THE COURT: You can point that out to the jury.
11 The jury heard all of the testimony, and if the jury
12 wants to hear it, you can invite the jury to ask that
13 it be played back.

14 MR. DIGGS: Could I mark it for identification?

15 THE COURT: Certainly, but I don't think you can
16 hand it up.

17 MR. DIGGS: I don't want the prosecution -- and I
18 know they wouldn't mischaracterize it, but I don't want
19 it to be out there, Well, he didn't say that, Mr. Diggs
20 just misheard that, or his assistant heard what was
21 spoken.

22 MR. HUCKS: My recollection is that he clarified
23 when Mr. Diggs pressed him on it, If I said that, that
24 is not what I meant.

25 THE COURT: Both of you are able to point it out to

THE COURT

1 the jury, and the jury may say let's resolve it by
2 hearing the testimony.

3 (Court's Exhibit 1 marked.)

4 (The jury enters at 2:27 p.m., and the following is
5 heard in the presence of the jury.)

6 THE COURT: We have all of our jurors back. Ladies
7 and gentlemen of the jury, the State has, as you heard,
8 rested. We will begin with the defense.

9 MR. DIGGS: Thank you, Your Honor. We would call
10 Investigator Pop back to the stand.

11 THE CLERK: Ginger Pop.

12 (GINGER POP, having been duly sworn, testified as
13 follows:)

14 DIRECT-EXAMINATION

15 BY MR. DIGGS:

16 Q You remember when you testified earlier in this
17 trial?

18 A Yes, sir.

19 Q And you were part of the investigative team that
20 investigated this particular case?

21 A I have been.

22 Q I want to ask you if you had an opportunity back
23 on July 15th of this year, 2013, to go and interview
24 Anthony Ray with respect to this case?

25 A I did.

GINGER POP - DIRECT EXAMINATION

1 Q And at that time, during the course of the
2 interview, did he make a statement to you to the effect
3 that he heard some gunshots and so he ran into the
4 house?

5 A Yes. Would you like me to say basically what he
6 said?

7 Q Yes, if you have it.

8 A I do. Without reading it verbatim, he says that
9 he was tying up a blanket when he heard a shot from
10 inside the house. He couldn't remember how many shots
11 he heard. He states he went to the back door and he
12 could see Brad and this man wrestling over a gun, the
13 gun goes off, he said he shot him in the head, and the
14 man's head exploded.

15 Q Now, I'm sorry I had to bring you up on the stand
16 for that purpose, but thank you for doing that.

17 MR. DIGGS: Answer any questions that counsel may
18 have.

19 CROSS-EXAMINATION

20 BY MR. HUCKS:

21 Q You had an occasion to interview him after that
22 interview?

23 A Yes, sir.

24 Q What day is that?

25 A July 23.

GINGER POP - CROSS-EXAMINATION

1 Q How many days after the interview Mr. Diggs asked
2 you about?

3 A It was the 15th for my first interview, and the
4 second was the 23rd.

5 Q So eight days? Ten minus two, there you go. So
6 eight days you interviewed Anthony Ray?

7 A Correct.

8 Q Was the statement he gave you that day consistent
9 with the statement he gave you --

10 A The statement on the 23rd was consistent with the
11 statement he made today.

12 Q And there were inconsistencies between that
13 initial statement and the statement on the 23rd?

14 A Yes.

15 Q The 15th and 23rd had differences?

16 A Yes.

17 Q But the 23rd and today were consistent with one
18 another?

19 A They were.

20 MR. DIGGS: That is all I have.

21 THE COURT: You can step down.

22 MR. DIGGS: We came car Carlene Merck.

23 (CARLENE MERCK, having been duly sworn, testified
24 as follows:)

25 THE CLERK: State your full name and spell your

CARLENE MERCK - DIRECT EXAMINATION

1 last for the Court.

2 THE WITNESS: Carlene Merck, M-E-R-C-K.

3 DIRECT-EXAMINATION

4 BY MR. DIGGS:

5 Q You are here because we've subpoenaed you to come
6 and testify; is that correct?

7 A That's correct.

8 Q And would you tell us what, if any, your
9 relationship to Bradley Mullins would be?

10 A He's my brother.

11 Q All right. What kind of relationship do you have
12 with him? Have you -- would you say it's a typical
13 brother/sister relationship? Have you been estranged?
14 Could you describe that?

15 A No. We have a very loving, close connection
16 relationship.

17 Q Okay. Now, if he had something important to
18 occur in his life, would it be in keeping with his
19 habit, or does he have any habit, would you say, of
20 disclosing or confiding in you of certain things going
21 on in his life?

22 A Absolutely.

23 MR. HUCKS: Objection. He's asking her to
24 speculate as to what is going on in this man's mind at
25 any given time and if he would come to her if he knew

CARLENE MERCK - DIRECT EXAMINATION

1 something.

2 MR. DIGGS: I'll rephrase.

3 THE COURT: I think he was merely asking her about
4 habits. If you will, rephrase it in such a fashion was
5 it his habit to confide in her, I think that is okay,
6 but any further we're getting out of the realm --

7 Q (MR. DIGGS) Has he had the habit of confiding in
8 you over the course of your lifetime as brother and
9 sister?

10 A Absolutely. We've been very close growing up.

11 Q Now, has Brad Mullins ever confided in you that
12 he committed a murder?

13 A No.

14 Q Now, if he had done so and had made statements to
15 the general public that he had done so, would you be
16 surprised that he did not discuss that with you?

17 A Absolutely.

18 Q So based on your relationship with him and the
19 habits and conduct that he has engaged in over the
20 course of your lifetime, you would have expected him to
21 at least mention this to you?

22 A I would have thought so, yes.

23 Q Before he goes out and discusses it with a number
24 of different people?

25 A Yeah. Yes, sir.

CARLENE MERCK - DIRECT EXAMINATION

1 Q Did you have occasion to of go over to
2 Mr. Mullins Senior, his home, a fellow named Moon?

3 A Yes, sir. We used to gather every once in
4 awhile, have barbecues, set up karaoke, just good
5 family time.

6 Q Do you remember a time when the group of the
7 Mullins, the individuals, including Brad, who worked in
8 construction, do you remember them going on a trip to
9 Louisiana?

10 A I do.

11 Q You have an independent recollection of that time
12 frame?

13 A Yes, sir.

14 Q And of course you've known about this case
15 pending against your brother now for sometime?

16 A Absolutely. Yes, sir.

17 Q And you've been out to the jail, for example, to
18 meet with him? At least you can communicate on the
19 telephone.

20 A Oh, yes.

21 Q And talk with him. So have you thought about
22 that time frame?

23 A I've ran that time frame many a times.

24 Q Was there a time when the family would gather at
25 Moon's home and have a cookout or socialize, that kind

CARLENE MERCK - DIRECT EXAMINATION

1 of thing?

2 A Yes.

3 Q Would that occur often, or can you tell us how
4 frequently things like that would happen?

5 A Well, we would try to do something. During that
6 time frame we would do something generally, if not
7 every weekend, every other weekend, every couple of
8 weeks.

9 Q Now, do you think that was basically how things
10 were going back in September of 2008?

11 A Oh, yeah, because our whole family was kind of
12 around.

13 Q All right. Do you recall specifically any outing
14 that you were in attendance at at the Mullins'
15 residence, Mr. Mullins Senior, wherein Charlie, Arlie,
16 Brad and the other members of the family might have
17 been in attendance?

18 A Yeah. We went one night. We all went to one of
19 the local places to play some pool. It was me and my
20 husband at the time, Brad and Robin, Boone, which is
21 Daniel Mullins, my baby brother and his girlfriend
22 Jennifer. We were all there, Little Charlie, Arlie.

23 Q And you said Brad was there as well?

24 A Oh, yes, Brad was absolutely with us.

25 Q Do you remember any occasion on that occasion

CARLENE MERCK - DIRECT EXAMINATION

1 wherein Brad and Charlie and Arlie and Anthony left
2 together?

3 A No.

4 Q You don't recall any such situation?

5 A No, sir.

6 Q All right. Now, on the occasion that you can
7 recall in that time frame, do you remember spending any
8 time with your brother and/or any other people in that
9 evening, in the evening hours?

10 A Well, yes.

11 Q Tell us about that.

12 A The night we all got together and went out.
13 There was an altercation at the bar with Charles Senior,
14 and two women, and it started a fuss. Brad, Robin,
15 myself, my ex-husband, my baby brother and his
16 girlfriend, we left. We got, as you can say, out of
17 Dodge. We went home. We spent the rest of the evening
18 there.

19 Q Okay. Brad was with you in that situation?

20 A Yes.

21 Q Now, was there ever a time on that occasion when
22 he left and went out for some period of time and then
23 returned?

24 A Not that I can ever recall.

25 Q He stayed -- would it be your testimony he stayed

CARLENE MERCK - DIRECT EXAMINATION

1 in the home that night?

2 A Yes, sir.

3 Q All right. Now, in any situation like that, and
4 I want to be sure that the time you are describing to
5 the best of your recollection fits closest with the
6 alleged incident in this case; is that your testimony?

7 MR. HUCKS: May we approach, briefly?

8 THE COURT: I'll send the jury out.

9 (The jury exits at 2:39 p.m., and the following is
10 heard out of the presence of the jury.)

11 THE COURT: All right. Let's hear it.

12 MR. HUCKS: Yes, Your Honor, she's getting directly
13 into alibi, and I don't know if it is strategy. If you
14 don't say what day it is, it is not an alibi, but we've
15 never been put on notice of an alibi. Mr. Diggs and I
16 spoke last week, and I even told him I won't go to the
17 rule if you put me on notice of an alibi, just put me
18 on notice of an alibi, and he said specifically we do
19 not have an alibi.

20 THE COURT: Mr. Diggs, you are getting into alibi.

21 MR. DIGGS: That's as close as I'm going to get. I
22 don't know a date. The only thing I can do is -- let
23 me back up and phrase it this way.

24 THE COURT: And neither does the state.

25 MR. DIGGS: An alibi is not an alibi unless it

CARLENE MERCK - DIRECT EXAMINATION

1 states the defendant was somewhere else at that time in
2 another physical location to make it physically
3 impossible for the defendant to have committed the
4 offense. I'm not saying that that is the case here,
5 I'm just saying we are involved in a situation where we
6 were out there on this one occasion that kind of fits
7 in the time frame, and this is what we saw.

8 THE COURT: Mr. Diggs, I believe you are trying to
9 step around the rule. I mean, the rule is there for a
10 purpose so that the State may be put on fair notice of
11 your attempt to show that the defendant was not where
12 this offense occurred.

13 MR. DIGGS: At the time it occurred.

14 THE COURT: Well, then, are you telling me that
15 she's not testifying to that?

16 MR. DIGGS: She's testifying to one occasion when
17 she was present. We're not saying that it is
18 necessarily the one --

19 THE COURT: You've identified it specifically, Mr.
20 Diggs. You said that they had the barbecue.

21 MR. DIGGS: No. She said they had those, Your
22 Honor, every week or two. The one that she was --

23 THE COURT: Mr. Hucks, this is where I think you
24 have a problem. The rule says -- under Rule 5 -- Upon
25 written requests of the prosecutor stating the time,

CARLENE MERCK - DIRECT EXAMINATION

1 date and place which the alleged offense occurred, the
2 defendant shall serve within ten days or such time as
3 the court made upon the prosecution a written notice of
4 his intent to offer an alibi defense. The notice shall
5 state the specific place or places in which the
6 defendant claims to have been at the time of the
7 alleged offense, and the names and addresses of the
8 witnesses upon which he intends to rely to establish
9 such alibi.

10 Now --

11 MR. HUCKS: I can satisfy that requirement.

12 THE COURT: That is what I want to know, can you --

13 MR. HUCKS: I'll pass forward the mutual reciprocal
14 discovery agreement that was mailed to Mr. Diggs with
15 the discovery in this case.

16 THE COURT: But does the written request state the
17 time, date and place at which the alleged offense
18 occurred?

19 MR. DIGGS: No.

20 MR. HUCKS: Yes, Your Honor. The State requests
21 written notice of the defendant's intention to offer an
22 alibi defense after the charges noted allegedly
23 occurring on or about September 11, 2008 at [REDACTED] Dew
24 Lane in the Loris section of Horry County, South
25 Carolina.

CARLENE MERCK - DIRECT EXAMINATION

1 THE COURT: Mr. Diggs, what about that?

2 MR. DIGGS: There is no time listed there.

3 MR. HUCKS: "On or about."

4 MR. DIGGS: That is the problem we've always had,
5 Your Honor. If I might, there has always been a window
6 here. That is why I haven't alleged technically that
7 we have an alibi in this case, because we don't. We
8 don't know particularly when it occurred. "On or
9 about" could be the 12th or the 10th.

10 THE COURT: Mr. Diggs, now, we talked about this
11 earlier in the week about this alibi defense or whether
12 or not you were going to tender an alibi defense, and
13 this sounds like an alibi defense.

14 MR. HUCKS: Could I be heard for purposes of the
15 record?

16 THE COURT: It is irrelevant if it is not an alibi
17 defense.

18 MR. HUCKS: That is my argument. Under Rule 401 --

19 MR. DIGGS: No. No. It goes to his state of mind,
20 because he spent the night at her house. I have to
21 pinpoint --

22 THE COURT: Mr. Diggs. Mr. Diggs.

23 MR. DIGGS: If I can't go there, I have to proffer
24 what the evidence --

25 THE COURT: Well, the Court is allowed discretion.

CARLENE MERCK - DIRECT EXAMINATION

1 If either party fails to comply with the requirements
2 of this rule, the Court may exclude the testimony of
3 any undisclosed witness offered by either party.
4 Nothing in this rule shall limit the right of the
5 defendant testifying on his own behalf.

6 Now, what day is she talking about? I can hear you
7 arguing before the jury right now. She testified on
8 the day this was supposed to have occurred when they
9 all went out, he was at her house; is that what you
10 intend to do?

11 MR. DIGGS: Judge, I never intended to do that, and
12 I never intended to tell the jury we had an alibi. I'm
13 just saying the best we can piece things together, here
14 is what we remember. That is not an alibi offense, and
15 that is all they would have found.

16 THE COURT: Yes, it is. You are saying he was
17 somewhere else.

18 MR. DIGGS: No, with all due respect.

19 THE COURT: What is the purpose of her testimony?

20 MR. DIGGS: To show what his frame of mind was.

21 THE COURT: On what date?

22 MR. DIGGS: On the date that she was -- Judge, that
23 is not part of an alibi.

24 THE COURT: The day?

25 MR. DIGGS: The day she was at the picnic, cookout,

CARLENE MERCK - DIRECT EXAMINATION

1 later when she saw him at her home -- we'll negate the
2 time that he spent with her, okay. I won't go to that
3 time frame. I'll leave open the possibility that he
4 left with the other three and committed a murder, but I
5 want her to testify about what she saw in his conduct
6 and his demeanor when he came to spend the night.

7 THE COURT: To that extent, I'll let you go. I'm
8 not going to strike the testimony, but tread lightly.

9 MR. DIGGS: Absolutely I will.

10 THE COURT: All right. Bring in the jury.

11 (Whereupon, the jury enters at 3:48 p.m. and the
12 following is heard in the presence of the jury.)

13 Q (MR. DIGGS) Where I want to focus right now is the
14 day of the picnic cookout. Was Bradley spending the
15 night at your house on those occasions, during that
16 time frame?

17 A Most of the time. We would get together, play
18 cards on the weekends. We all cooked together, go
19 back, play cards. I couldn't do a whole lot because I
20 was pregnant with my daughter so, you know, I was
21 around and about. I was on bedrest, and his girlfriend
22 at the time was helping me with my children.

23 Q I want you to think back. When he would spend
24 the night -- on those occasions when you would play
25 cards, was there times that he spent the night and just

CARLENE MERCK - DIRECT EXAMINATION

1 didn't go home, or was he living there actually?

2 A Until he moved into his trailer, yes, he was
3 living with me; him, his girlfriend, her daughter and
4 her baby.

5 Q This is the time frame of the calendar year of
6 2008?

7 A Yes, sir.

8 Q Now, I want to specifically ask you if ever there
9 was an occasion when you saw him when he appeared to be
10 in an estranged state of mind, by that, I mean
11 something other than normal?

12 A No. Never.

13 Q I want you to imagine maybe a hypothetical that
14 included a situation where an individual in the
15 community had been murdered and that your brother had
16 actually --

17 MR. HUCKS: Objection.

18 THE COURT: It calls for pure speculation.

19 MR. DIGGS: It is a hypothetical.

20 MR. HUCKS: It is improper.

21 THE COURT: Send the jury back out.

22 (The jury exits at 2:50 p.m., and the following is
23 heard out of the presence of the jury.)

24 MR. HUCKS: First of all, he's asking her to
25 speculate as to what his state of mind might have been

CARLENE MERCK - DIRECT EXAMINATION

1 should a crime have been committed in this community.
2 Secondarily, it is a complete hypothetical that
3 directly relates to the facts and circumstances, and
4 she has no knowledge of, which makes it improper on its
5 face.

6 MR. DIGGS: To ask a hypothetical I have to include
7 elements supported by the evidence.

8 THE COURT: Mr. Diggs, you are asking her to
9 speculate. You have not qualified her as to be able to
10 even give an opinion as to what his state of mind might
11 have been.

12 MR. DIGGS: I'll ask her, Your Honor, with all due
13 respect, did she ever see him in an altered state of
14 mind that might be --

15 THE COURT: If you want to ask her, Did he appear
16 to be upset that evening, that's fine. But that is
17 where it is going to stop. We're not going to craft a
18 hypothetical that goes into the facts of this case.
19 We're not going to do that. No. That is highly
20 speculative on her part. If you want to ask her, Did
21 he appear to be upset, I'll let you do that, but that
22 is --

23 MR. DIGGS: I'll limit it to that.

24 THE COURT: All right.

25 MR. HUCKS: My only request from here is -- should

CARLENE MERCK - DIRECT EXAMINATION

1 we proffer some of the testimony so we don't have the
2 jury running in and out like school kids?

3 THE COURT: Let's do that.

4 MR. DIGGS: I want to know if she ever saw her
5 brother --

6 THE COURT: Ask her.

7 Q (MR. DIGGS) Did you ever see your brother in an
8 unusual state, mental state, where he might have been
9 aggravated or upset or overly worried, nervous, in any
10 reasonable state that you might imagine one to be in
11 after they just committed a murder?

12 A No, sir.

13 Q Have you ever seen anything like that?

14 A No. Absolutely not.

15 MR. DIGGS: That is the extent of where I want to
16 go.

17 Q (MR. DIGGS) Did you ever see him in any state of
18 mind that was unusual or out of the ordinary?

19 A No. And can I answer back to that one as to what
20 I would say? Just flat out I'll tell you that my
21 brother is the most gentle soul you will ever meet.

22 THE COURT: That is not a response.

23 MR. DIGGS: And I won't ask her about it, but we
24 appreciate it. I won't ask you, ma'am, that, so don't
25 go into that.

CARLENE MERCK - DIRECT EXAMINATION

1 THE COURT: I will allow you, Mr. Diggs, to ask
2 her, as I stated earlier, if on that evening she saw
3 him any time when he appeared to be upset or agitated,
4 that is what I'm going to let you ask her. I hope she
5 would not know how he would have acted if he committed
6 a murder.

7 MR. DIGGS: That occurred to me a moment ago,
8 exactly.

9 (The jury enters at 2:55 p.m., and the following is
10 heard in the presence of the jury.)

11 THE COURT: Mr. Diggs.

12 Q (MR. DIGGS) Ms. Merck, let me ask you if on any
13 occasion during that time frame when your brother was
14 in your home, did you ever see him in any state of
15 being upset or agitated?

16 A No, sir, never.

17 Q Now, have you ever had an opportunity to observe
18 your brother's relationship with his mom?

19 A Oh, yes. We all have a very close connection.

20 Q And you maybe don't know this, and I don't want
21 you to guess, but has he had the type of relationship
22 with his mother that he also would confide in her about
23 certain things?

24 A I would think so, yes.

25 MR. DIGGS: Thank you very much. I apologize for

CARLENE MERCK - DIRECT EXAMINATION

1 the delay here, but thank you. That is all I have.

2 CROSS-EXAMINATION

3 BY MR. HUCKS:

4 Q I want to summarize your testimony, and if I get
5 it wrong, correct me. So sometime in some month in the
6 year --

7 MR. DIGGS: I object. If we could approach. We
8 don't --

9 (Whereupon, a bench conference was had.)

10 Q (MR. HUCKS) Just to summarize your testimony,
11 sometime in some month in 2008 you saw your brother
12 after a cookout, you all went to a bar while you were
13 pregnant and he stayed the night with you and he
14 didn't act funny afterwards?

15 A First of all, I wasn't drinking. It wasn't just
16 a bar, we went to play pool. Last I checked, there was
17 nothing wrong with that. What I was saying is right
18 around in September, August, end of August, September,
19 first part of October, we all were very close knit. We
20 did lots of family events together.

21 Q When were you on bedrest while you were pregnant?

22 A I went on bedrest in -- it was around the second
23 week of September, third week. I had a fibroid tumor
24 attached to the placenta, and I was being sent back and
25 forth to Charleston because it was affecting the blood

CARLENE MERCK - CROSS-EXAMINATION

1 supply to my daughter.

2 Q So the second week of September, would you agree
3 with me, the second week of September would be
4 somewhere between, let's say, the 7th and the 14th of
5 September, if September would have started on a Monday?

6 A I can't give you exact dates because it has been
7 so long ago, but what I'm telling you is I spent a lot
8 of time in my home with my children, with my brother
9 and his girlfriend.

10 MR. HUCKS: Nothing further.

11 MR. DIGGS: Nothing further.

12 THE COURT: You may step down. Thank you.

13 MR. DIGGS: We would call Keena Stanley.

14 (KEENA STANLEY, having been duly sworn, testified
15 as follows:)

16 THE CLERK: State your full name and spell your
17 last name for the record. THE WITNESS: Keena Stanley.

18 DIRECT-EXAMINATION

19 BY MR. DIGGS:

20 Q Where do you live?

21 A Virginia.

22 Q Do you know Brad Mullins?

23 A Yes, sir.

24 Q How do you know him?

25 A He's my son.

KEENA STANLEY - DIRECT EXAMINATION

1 Q All right. Let me ask you this. What kind of
2 relationship have you had with him and do you have with
3 him right now? Would you say it is a good
4 relationship?

5 A Definitely. I've always had a good relationship
6 with my son.

7 Q So there is not any estrangement or any problems
8 like that between you and your son?

9 A No.

10 Q And to your knowledge, has there ever been?

11 A No.

12 Q You've always been, would it be fair to say,
13 close and stayed in contact?

14 A Always. Always.

15 Q And you know your son, correct?

16 A Yes, sir.

17 Q Has he had a habit in his life in confiding in
18 you?

19 A Bradley always confides in me. If he had
20 girlfriend problems or anything, it was, Hey, Mom, what
21 can I do or what should I do. Yeah, we always had
22 talks.

23 Q Let me ask you this. Was there ever a time when
24 Bradley came to you and confessed he committed a
25 murder?

KEENA STANLEY - DIRECT EXAMINATION

1 A No. Never.

2 Q And would it be in keeping with his conduct and
3 habit to confess such a thing to people in general, but
4 not to his own family and yourself specifically?

5 A No.

6 Q It would be inconsistent?

7 A Bradley would never -- I mean, he would surely
8 tell me first, Hey, Mom, I've done this or that.
9 Bradley has never told me anything like that, never.

10 Q And I appreciate your coming, and I know it was
11 very brief, but I appreciate you coming and testifying
12 to that point.

13 MR. DIGGS: The solicitor may have questions.

14 CROSS-EXAMINATION

15 BY MR. HUCKS:

16 Q I won't keep you real long. You know your son
17 worked with his uncle, Moon, for some period of time,
18 right?

19 A Some, yeah.

20 Q And they worked on something in Durham together;
21 is that right?

22 A I don't know where they worked at.

23 Q But he worked for Moon for some period of time?

24 A I don't know if he worked for him or with him, I
25 just know, you know, that.

KEENA STANLEY - CROSS-EXAMINATION

1 Q That they were working together in some fashion?

2 A Yeah. They did painting and drywall and stuff, I
3 think.

4 Q And they did that in several different states,
5 are you aware of that?

6 A Yeah.

7 Q Over the course of that, he spent a lot of time
8 with his cousins who also worked for Moon?

9 A I don't know how much time he spent with his
10 cousins. I wasn't there. I live in Virginia.

11 Q But he tells you everything?

12 A Well, yeah, but...

13 MR. HUCKS: Nothing further.

14 MR. DIGGS: Nothing further.

15 THE COURT: You may step down.

16 MR. DIGGS: Your Honor, I don't think we are going
17 to call additional witnesses at this point.

18 THE COURT: That's it?

19 MR. DIGGS: So the defense will rest.

20 THE COURT: Very well.

21 MR. HUCKS: We have a quick matter of law.

22 THE COURT: Yes. If you would, take the jury out.

23 (The jury exits at 3:04 p.m., and the following is
24 heard out of the presence of the jury.)

25 MR. HUCKS: Your Honor, just to clarify before we

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1 get into any of it in front of the jury, under 801 the
2 State has a right to call a rebuttal witness for
3 purposes of bringing in a prior consistent statement if
4 there is an allegation by the defense of --

5 THE COURT: And if the statement was made prior to
6 the allegations of fabrication.

7 MR. HUCKS: Yes, sir. And it is our intention to
8 call a witness based on the questions Mr. Diggs asked
9 Ms. Pop about recent fabrication. I wanted to clarify
10 that for purposes of the record to make sure that
11 wouldn't cause heartburn and handle any legal issues.

12 MR. DIGGS: He already did that, he brought out
13 another statement when Ms. Pop was on the stand.

14 THE COURT: Well, I don't know who made the
15 inconsistent statement or whom -- what statement we are
16 talking about, but, Mr. Diggs, doesn't he have the
17 right to do so?

18 MR. DIGGS: Well, I would submit --

19 THE COURT: You call Ms. Pop, and he wants to call
20 a reply witness.

21 MR. DIGGS: He asked Ms. Pop if that -- is that
22 area of the testimony?

23 MR. HUCKS: That's what I'm talking about.

24 MR. DIGGS: He's already gotten that out of Ms. Pop
25 when she was on the stand, and it's over --

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1 MR. HUCKS: We intend to call Anthony Ray's wife,
2 who is prepared to testify, to the best of my
3 knowledge, that just after this happened he confessed
4 to her the details and how it happened, and that would
5 be a prior consistent statement which predates any of
6 the things that Mr. Diggs asked Ms. Pop about, which is
7 a prior consistent statement under the rule.

8 THE COURT: I think it is admissible.

9 MR. DIGGS: It is absolutely an improper gold
10 string of that witness' testimony, and I would submit
11 that is not what the rule is designed to do. He wants
12 to go into an entire story that transpired over maybe a
13 half an hour's time. That witness can't possibly
14 testify -- I would submit it is improper.

15 THE COURT: I think we have two issues. First of
16 all, a statement is not hearsay if it is a prior
17 statement by a witness, and the declarant testifies at
18 the time of trial or hearing and is subject to
19 cross-examination concerning the statement, and the
20 statement is, A, inconsistent the declarant's testimony
21 or, B -- which we have here -- is consistent with the
22 declarant's testimony and is offered to rebut an
23 implied or expressed charge against the declarant's
24 recent fabrication or improper influence or motive
25 provided, however, the statement must have been made

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1 before the alleged fabrication or before the alleged
2 improper influence or motive.

3 Have you not challenged Mr. Ray's testimony?

4 MR. DIGGS: I challenged him with respect to where
5 he was when the shots were fired, and I would submit
6 that is what is going -- that should be the proper
7 limitation.

8 THE COURT: Wasn't that it, Mr. Hucks?

9 MR. HUCKS: He questioned him on several details,
10 Your Honor, about wrestling around, that was brought up
11 by Ms. Pop when she brought out the prior statement.

12 THE COURT: Why do we need to discuss Ms. Pop?
13 Just so you can call --

14 MR. HUCKS: He called Ms. Pop specifically to bring
15 in a prior inconsistent statement of Anthony Ray, which
16 brings his testimony into question and says that his
17 testimony is fabricated. He brought her specifically
18 for the point of showing that his testimony was
19 recently fabricated and gave the dates and the
20 statements.

21 THE COURT: I'll allow it.

22 MR. DIGGS: Your Honor, I would also submit there
23 has to be some showing of liability and trust.

24 THE COURT: That is not in the rule. I mean, that
25 is the purpose of having a prior consistent or

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1 inconsistent statement, to challenge credibility in and
2 of itself, that is why it is there.

3 MR. DIGGS: He's using this to bolster the
4 testimony as this was the ultimate truth of the matter
5 at issue. You can't use -- I would submit -- the rule
6 for that purpose.

7 THE COURT: Didn't you put up Ms. Pop to challenge
8 his testimony?

9 MR. DIGGS: With respect to where he was when the
10 shots were fired, and the fact that they were rolling
11 around and the gun went off. I would submit that is
12 the limitation.

13 THE COURT: Mr. Hucks, do you just want to put
14 someone up to testify generally as to what he --

15 MR. HUCKS: My understanding of her testimony is
16 that while they were living together, Your Honor, prior
17 to anyone being arrested on this charge, making it a
18 prior statement, that he did not sleep one night, she
19 asked him why, and he said because he and Bradley went
20 into a man's house to rob him, he shot him and Brad
21 shot him in the head.

22 MR. DIGGS: That is not admissible under the rule.

23 THE COURT: What rule?

24 MR. DIGGS: The one he's relying on now to get the
25 statement in.

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1 MR. HUCKS: If there is an expressed or implied --

2 THE COURT: I don't think there is any question
3 that it is admissible. It is an exception to hearsay.
4 The question that I have is whether or not it is proper
5 rebuttal, that is the issue. I'll give you each ten
6 minutes while we take a quick break, and I'll hear from
7 you when we return.

8 (A recess was taken.)

9 MR. HUCKS: I have met with the witness and
10 reviewed the rules. The inconsistency that Mr. Diggs
11 brought up was in his prior testimony he says he was
12 outside of the house, heard a shot, came into the house
13 where he had a .22 rifle, saw the defendant fighting
14 with Mr. Elliott, pulled out a gun --

15 THE COURT: I remember his testimony as being he
16 was outside when he first heard shots, he ran in -- or
17 the inference is there that he was hearing Mr. Elliott
18 shoot, when he comes back in he shoots Mr. Elliott, and
19 then he sees the defendant shoot Mr. Elliott in the
20 head.

21 MR. HUCKS: That is the inconsistent statement that
22 Mr. Diggs crossed him with and asked Ms. Pop about.
23 His testimony was that he was in the house at the gun
24 cabinet when Mr. Elliott came out with the gun, and he
25 attempted to run away, and that would be the

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1 inconsistency we believe opens the door to call the
2 rebuttal witness, the fact that the statement -- the
3 statement he asked Ms. Pop about and --

4 THE COURT: But this lady's testimony is not going
5 to resolve that inconsistency. You're telling me that
6 this lady's testimony or witness' testimony is simply
7 going to be that he told her at a prior time that he
8 and the defendant killed Mr. Elliott.

9 MR. HUCKS: He has detail in Ms. Pop's testimony,
10 Investigator Pop's testimony, Mr. Diggs had her testify
11 that they were -- that the defendant and Mr. Elliott
12 were wrestling around when the gun went off, and that
13 is how Mr. Elliott died. What Ms. Ray is going to
14 testify to is that in the prior consistent statement
15 that Anthony gave her is that they were wrestling
16 around, and at that time, Anthony pulled out the .22,
17 shot him in the shoulder, while he was down, Bradley
18 got the gun and executed him.

19 THE COURT: That's been the story in both
20 scenarios, this defendant took the firearm from the
21 victim.

22 MR. HUCKS: The inconsistency is the statement that
23 Ms. Pop testified to, and that Mr. Diggs cross-examined
24 Mr. Ray on, and that statement that he brought up said
25 they were wrestling over the gun when it went off,

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1 versus the statement that Mr. Ray testified to today,
2 which is that this defendant took the gun from him and
3 executed him, that is the inconsistency that would give
4 rise to us calling --

5 THE COURT: How is this witness going to resolve
6 this?

7 MR. HUCKS: She's going to say -- this is a summary
8 of what Ms. Pop's testimony is. At the bottom you see
9 where it says they wrestled around and the gun went
10 off, the last couple of lines. That was the testimony
11 that Ms. Pop gave. The testimony Mr. Ray gave in
12 cross-examining him was that this defendant stood over
13 him and shot him in the head. The statement that the
14 rebuttal witness will have is in line with Mr. Ray's
15 testimony today and not Ms. Pop's testimony, which is a
16 prior consistent statement --

17 THE COURT: All right. Well, first of all, there
18 must be strict compliance with the rule to avoid this
19 being hearsay, you understand that?

20 MR. HUCKS: Yes, sir.

21 THE COURT: And, first of all, I want to make sure
22 of the State's position. This was a statement that is
23 consistent with his testimony here today?

24 MR. HUCKS: Yes, Your Honor.

25 THE COURT: And it was made prior to any motive to

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1 fabricate a lie arose, before charges were made?

2 MR. HUCKS: Before charges were filed and before he
3 was taken into custody.

4 THE COURT: All right. And, of course, there must
5 have been an expressed or implied charge of recent
6 fabrication or motive?

7 MR. HUCKS: Mr. Diggs cross-examined Mr. Ray and
8 asked specifically that question and called Ms. Pop in
9 front in the presence of the jury.

10 THE COURT: Let me hear from Mr. Diggs.

11 MR. DIGGS: Your Honor, the problem we have with
12 this particular witness is he wants to call -- has made
13 other statements inconsistent with what Mr. Ray
14 testified to this morning. For example, she says on
15 Page 9, and I assume this is the transcript that the
16 State wants to use, portions of, to reintroduce the
17 original statement that was made by Mr. Ray with
18 respect to the shooting. She says on Page 9 of the
19 transcript that Mr. Elliott made the statement, Please
20 don't kill me. Well, Mr. Ray said that wasn't true
21 this morning. He specifically testified that
22 Mr. Elliott didn't say anything, none of that took
23 place.

24 THE COURT: That certainly would be a prior
25 inconsistent statement you could use.

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1 MR. DIGGS: Yeah. But I think, Your Honor, I don't
2 want to consent to this, but, I mean, maybe we wouldn't
3 object as strenuously if we limited it to that shooting
4 time frame.

5 THE COURT: I mean, I'm not going to let you throw
6 the doors open.

7 MR. HUCKS: Yes, sir.

8 THE COURT: I mean, you are offering this as a
9 rebuttal witness for rebuttal purposes limited to what
10 we've discussed.

11 MR. HUCKS: Yes, sir.

12 THE COURT: All right.

13 MR. DIGGS: Your Honor, my cross-examination would
14 be limited to that narrow focus.

15 THE COURT: All right. Okay.

16 MR. DIGGS: You're not going --

17 THE COURT: You can go into prior inconsistent
18 statements. If they are going to put her up to bolster
19 or as a source of a prior consistent statement, then
20 I'm going to let you examine her as to prior -- examine
21 him -- or her as to the prior inconsistencies.

22 MR. DIGGS: It will be very brief.

23 MR. HUCKS: On my part, too.

24 THE COURT: Okay. We've got all day.

25 MR. HUCKS: And we can proffer the testimony if

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1 that helps the Court out.

2 THE COURT: I'll let you do it here in court. You
3 know the parameters. Bring in the jury.

4 MR. HUCKS: Would the Court like to make that page
5 I passed up as a Court's exhibit, or you don't believe
6 it should be, which is just the notes consistent with
7 Ms. Pop's testimony?

8 THE COURT: Yes.

9 (The jury enters at 3:33 p.m., and the following is
10 heard in the presence of the jury.)

11 MR. HUCKS: We call Latonya Ray to the stand.

12 (LATONYA RAY, having been duly sworn, testified as
13 follows:)

14 THE CLERK: Please state your full name and spell
15 your last for the Court.

16 THE WITNESS: Latonya Ray, R-A-Y.

17 DIRECT-EXAMINATION

18 BY MR. HUCKS:

19 Q How are you this afternoon?

20 A Fine.

21 Q I'm going -- what do you do for a living?

22 A House clean.

23 Q Housecleaning. And you don't have to tell
24 everybody where exactly you live, but what state do you
25 live in?

LATONYA RAY - DIRECT EXAMINATION

1 A North Carolina.

2 Q Who is your husband?

3 A Anthony Ray.

4 Q Are you guys together or estranged?

5 A We're separated.

6 Q How long did you -- were you guys married or were
7 you married?

8 A Fifteen years.

9 Q Now, without trying to lead you too far along
10 here, did you ever have occasion to talk with Anthony
11 Ray about what happened in Joe Elliott's house on or
12 about September 11, 2008?

13 A Yes, sir.

14 Q Now, don't tell me a whole story, okay, but tell
15 me what -- first, tell me how did you hear about it?
16 What was going on? What did Anthony talk to you about?

17 A Anthony was having nightmares real bad, and one
18 night he had a bad nightmare and it woke me up, and
19 that is when he told me.

20 Q Now, I don't need you to get in a big long story,
21 but I want you to tell me what Anthony told you
22 happened inside the house between him and Brad Mullins
23 and the man there, okay, just that.

24 A He said that him and Brad was in the house
25 getting the guns. They went and robbed the man, got

LATONYA RAY - DIRECT EXAMINATION

1 his guns. They went to this door, it was locked, Brad
2 kicked the door in. The man got out of bed naked and
3 shooting at them. Anthony shot the man in the chest
4 and it knocked the gun out of his hand. Brad came
5 around, went over there, I don't know where he came
6 from, but he got the gun that the man was shooting at
7 them with and told the man to say good night, and shot
8 him in the head.

9 Q Don't say who said what, but what actions did he
10 do?

11 A He shot the man in the head and killed him.

12 Q Now, at -- when did Anthony tell you all of this?
13 When did he wake you up with the nightmares and --

14 A Around September/October of 2008.

15 Q Had he already been arrested or charged with this
16 crime?

17 A No.

18 Q Had anybody been arrested or charged with this
19 crime at all?

20 A No, sir.

21 Q Has your testimony here been the truth?

22 A Yes, sir.

23 MR. HUCKS: Nothing further, Your Honor.

24 CROSS-EXAMINATION

25

LATONYA RAY - CROSS-EXAMINATION

1 BY MR. DIGGS:

2 Q He told you in September or October of 2008 this
3 statement?

4 A Yes, sir.

5 Q And he also, did he not, tell you in that
6 statement that it was Mr. Kelly Elliott that was the
7 victim?

8 A He didn't say no names.

9 Q When did you learn the name that it was Kelly
10 Elliott?

11 A Whenever I got brought here.

12 Q And in April of 2013 you were interviewed by the
13 investigators in this case?

14 A Yes, sir.

15 Q And you told them this statement you just made
16 about Anthony relaying to you the homicide of Kelly
17 Elliott. Now, are you sure you are supplying that
18 name, or did Anthony supply that name in 2008?

19 A The investigators told me what his name was.

20 Q All right. At this point you are repeating what
21 the investigators told you?

22 A No, sir.

23 Q Who told you "Kelly Elliott"?

24 A Whoever came down and questioned me told me that
25 Kelly Elliott had died and asked me.

LATONYA RAY - CROSS-EXAMINATION

1 Q See if you remember your part of the interview
2 making this statement. The investigator says, Okay.
3 Do you know why we're here today? And your answer is,
4 Yes, ma'am --

5 MR. HUCKS: Your Honor, object. I don't know if
6 this is an appropriate transcript or not. My secretary
7 typed it up.

8 MR. DIGGS: All right.

9 Q (MR. DIGGS) Let me ask you this. Do you remember
10 the first time you learned the name of Kelly Elliott?

11 A Yeah.

12 Q When was that?

13 A The investigators.

14 Q And was that this year?

15 A Yeah.

16 Q Or could it have been 2011?

17 A No. It was this year.

18 Q Let me ask you, in this conversation or
19 statement, did Anthony tell you where the guns had been
20 disposed of?

21 A In every room. There was a gun in every room.

22 Q No. No. No. Did he tell you anything about a
23 swamp?

24 A Yeah. He said that the murder weapon was in the
25 swamp.

LATONYA RAY - CROSS-EXAMINATION

1 Q Do you remember what he said, what he told you in
2 terms of where that swamp was located?

3 A I can't remember.

4 Q Did he say it was somewhere in either Tennessee,
5 Kentucky or Mississippi?

6 A I can't remember.

7 Q Do you want to see a transcript of your
8 interview?

9 A Yeah, that's mine. Can't remember.

10 Q So if the investigator said that is a statement
11 that you gave earlier this year, you wouldn't dispute
12 that?

13 A Huh-huh.

14 MR. DIGGS: That is all I have.

15 MR. HUCKS: Nothing, whatsoever.

16 THE COURT: You may step down. Thank you.

17 MR. HUCKS: We ask that she be excused.

18 THE COURT: Without objection, she's excused.

19 MR. HUCKS: The State rests its rebuttal case.

20 THE COURT: Ladies and gentlemen of the jury, it is
21 almost 4:00. A charge on the law and argument in this
22 case will be rather lengthy. There, again, I don't
23 want to keep you over into the evening and begin your
24 deliberations. We could be here late into the night,
25 and I don't want to do that. So we'll be back at 9:30.

THE COURT TO THE JURY

1 The case ended as far as the evidence is concerned.

2 When we come back, I'll allow the attorneys to make
3 final arguments and I'll charge you on the law and you
4 can deliberate this case. Again, remember, do not
5 discuss this case with anyone, don't do any independent
6 research, don't Facebook, YouTube or anything like
7 that. Mr. Ropp, take them to their jury room.

8 MR. ROPP: Certainly.

9 (The jury exits at 3:43 p.m., and the following is
10 heard out of the presence of the jury.)

11 THE COURT: All right, gentlemen. Drew has
12 prepared my charge. It has been E-mailed to each of
13 you. Also E-mailed is the verdict forms, which I have
14 prepared. Please review and be here at 9:00 in the
15 morning with any suggested charges or changes. Please
16 have them reduced to writing. It would be greatly
17 appreciated if as soon as you have it done, E-mail them
18 back to Drew so he can look over them and bring them to
19 my attention. I want to be here about
20 9 o'clock in the morning so we can have a charge
21 conference, make sure we are on the same page of the
22 charges, and we'll then let you argue and I'll charge
23 the jury and we'll submit it to them. Thank you
24 gentlemen -- wait a minute. Let's have you renew your
25 motions.

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1 MR. DIGGS: Your Honor, we would renew the motion
2 for directed verdict with respect to the murder. Now
3 that we've heard additional testimony, it shows that a
4 rational trier of fact would be unable to conclude the
5 presence of malice in the case. The additional
6 testimony beyond that that existed in the record at the
7 time previously when the motion was made comes from
8 family members who were sworn to tell the truth and
9 indicated that having evidenced throughout the lives of
10 the witness would show that the witness would have --
11 that the defendant would have confided in them before
12 he would have gone out and made some kind of quasi
13 public statement in front of a number of people that he
14 committed a murder.

15 Even if we go back to the evidence at the time the
16 State rested, there's not consistent evidence that
17 would reasonably support guilt beyond a reasonable
18 doubt with respect to the element of malice, so we
19 would make the motion for a directed verdict.

20 THE COURT: As to the murder?

21 MR. DIGGS: With respect to the murder, Your Honor.

22 MR. HUCKS: Your Honor, we would renew our
23 arguments and ask that it is saved for the record the
24 arguments made earlier. In the light most favorable to
25 the State, several codefendants, along with family

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1 members of the defendant, have more than established in
2 the light more favorable to the State that the
3 defendant be convicted of murder at this time.

4 THE COURT: And I would agree with the State that
5 there is substantial circumstantial evidence and ample
6 direct evidence when taken in the light most favorable
7 to the State for a verdict, should the jury return one
8 in this matter, and I would respectively deny your
9 motion.

10 Now, as to the burglary, I'm assuming you are
11 making the same motion?

12 MR. DIGGS: Same motion, although we argue that it
13 is stronger now because we've heard evidence from
14 family members who have known the defendant all of his
15 life, and we submit the verdict of guilty beyond a
16 reasonable doubt is not supported by the evidence in
17 the case and need not be submitted to the jury because
18 it doesn't arise to the threshold that the credibility
19 and reliability of the evidence needs to meet in order
20 to be submitted to the jury.

21 THE COURT: All right. And I would, again, deny
22 your motion. The issue before me is whether or not
23 there is any evidence, direct or circumstantial
24 evidence, and taken all the evidence in the light most
25 favorable to the State, which would support a verdict

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1 against your client. I certainly think there is enough
2 to send it to the jury, and I will send it to the jury.

3 Okay. Let's be in here at 9 o'clock in the
4 morning, gentlemen.

5 (Whereupon, the proceedings for December 4, 2013
6 concluded, and the following took place on December 5,
7 2013 at 9:06 a.m. out of the presence of the jury.)

8 THE COURT: Gentlemen, yesterday I provided both of
9 you a copy of my proposed charge electronically, and I
10 have been with you this morning discussing additions to
11 my charge. I think that there are a couple of issues
12 that we need to place on the record, one being the
13 State's request for a charge on felony murder. I'll
14 hear you on that, Mr. Hucks.

15 MR. HUCKS: Yes, sir. Your Honor, the felony
16 murder charge we passed up and asked to have it added
17 to the Court's standard charges is the charge set forth
18 in State versus Norris. Norris subsequently has been
19 overruled by State V. Torrence on a completely
20 different issue, but in Lowery V. State, Your Honor,
21 which is -- I don't have the citation, Opinion
22 No. 26436 from South Carolina Supreme Court, decided on
23 February 11, 2008, it holds that -- in Footnote No.
24 4 -- that the proper charge on the applied malice is
25 the Norris charge.

THE COURT AND ATTORNEYS- MOTIONS

1 In that particular case, the judge gave a charge in
2 line with the Norris. The jury went out, came back
3 with a question, he gave a different charge on felony
4 murder to the jury at that time. When he did that, the
5 Court ruled that the subsequent charge was an improper
6 charge --

7 THE COURT: It is my understanding that that charge
8 essentially -- the supplemental charge -- told the jury
9 that if they determined that -- if the murder was
10 committed during the commission of a felony, they must
11 find malice.

12 MR. HUCKS: Yes, sir, Your Honor.

13 THE COURT: And that was a burden shifting charge.
14 The supreme court, of course, reversed and remanded for
15 that reason.

16 The charge that you have proposed, I believe, is
17 the standard Norris charge, and correct me if I'm
18 wrong, and that charge is if one intentionally kills
19 another during the commission of a felony, then
20 implication of malice may arise -- may arise. If facts
21 are proved beyond a reasonable doubt sufficient to
22 raise an inference of malice, this inference is an
23 evidentiary fact to be taken into consideration by the
24 jury along with other evidence in the case. I further
25 charge you that the offense of first degree burglary is

THE COURT AND ATTORNEYS- MOTIONS

1 a felony. That is the requested charge?

2 MR. HUCKS: Yes, sir.

3 THE COURT: Mr. Diggs, I'll hear you.

4 MR. DIGGS: We object to it. With all due respect,
5 it undermines the requirements that the State has in
6 proving murder itself. It is confusing, I would
7 submit, and it need not be because the Court's charge
8 sufficiently covers the elements of murder elsewhere in
9 the charge.

10 More importantly, this speaks to a different degree
11 of malice. I understand malice -- some might view as
12 malice, but when a man walks in a home to steal a gun
13 and he's not even armed, and under the State's theory
14 of the case didn't know the man was there, didn't know
15 Mr. Elliott was in the home, it requires a big step
16 from that degree of criminal intent to the one of
17 committing a murder. So we would -- we object to the
18 charge on that ground, because it is just not
19 sufficient. They don't equate equally in the law. We
20 object to it on that ground.

21 Also, I would argue, again, with all due respect,
22 that in order to get this charge the State has to show
23 through some evidence that my client is only guilty
24 under a scenario where that inference would come into
25 play, like he's rummaging through the house, not armed,

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1 he is stealing a few guns and that all of the sudden he
2 is confronted by Mr. Elliott and they struggle, it
3 becomes a life-and-death struggle. All the sudden it
4 becomes elevated from simple house breaking, depending
5 on the time of the day, to one of murder. That is not
6 what the State is claiming. They are claiming that my
7 client cold bloodedly shot this man in the head and
8 killed him. So the inference would not be applicable
9 in that situation. Unless they want to abandoned that
10 and stipulate there was a struggle and that is why the
11 shooting ended up happening.

12 Lastly, if they get that charge, then we ought to
13 get a counter charge that says voluntary manslaughter
14 is a possible verdict.

15 THE COURT: Well, I have considered a charge of
16 voluntary manslaughter, however, I have read carefully
17 State versus Schuler, which is a 2001 case, I believe.
18 That case seems to be -- at least in my opinion --
19 pretty much on all fours with the case that we have
20 here. Of course, voluntary manslaughter requires the
21 showing that the -- the killing took place in the heat
22 of passion and that there was sufficient justifiable
23 provocation on the part of the victim.

24 In the Schuler case, the defense counsel made a
25 very interesting argument. In that case, of course, we

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1 had three individuals -- or there were three
2 individuals who were robbing an armed -- or an armored
3 car. A shoot-out ensued, and one of the guards was
4 killed. The Court rejected -- the trial court -- and I
5 think rightfully so -- the argument that this was heat
6 of passion with provocation because the defendant's
7 action had brought about the difficulty.

8 The defense then argued, interestingly, that the
9 provocation was that the victim was attempting to
10 complete a citizen's arrest of the defendant, and he
11 was using more force than would have been allowed in
12 that circumstance. Again, the Court rejected that
13 argument -- the supreme court rejected it -- stating
14 that the problem with that is that there was no
15 evidence that the victim was trying to complete a
16 citizen's arrest of the defendant, first of all.
17 Again, that the defendant had brought on the difficulty
18 himself.

19 So I don't think this is a situation where there is
20 any evidence to support a charge to the jury on
21 voluntary manslaughter. There is certainly no
22 provocation that would have justified a shooting.
23 Maybe there is some evidence of heat of passion. There
24 was a struggle, but there is no provocation, so I
25 respectively deny your request for a charge on

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1 voluntary manslaughter.

2 MR. DIGGS: I assume you've overruled our objection
3 to actually giving the charge as requested by the State
4 on that issue?

5 THE COURT: I will.

6 Now, gentlemen, you have received copies of the
7 charge, and you understand what is in the charge. I
8 believe we all know how I'm going to charge. I will,
9 though, give you another opportunity to renew your
10 objections after the jury has been charged in this
11 matter, but for all intents and purposes, you have been
12 protected on the record at this point, okay.

13 MR. DIGGS: Thank you, Your Honor.

14 MR. HUCKS: Thank you.

15 THE COURT: Let's bring the jury in.

16 MR. HUCKS: We intend to open on the law.

17 (Whereupon, the jury enters at 9:42 a.m., and the
18 following is heard in the presence of the jury.)

19 THE COURT: Ladies and gentlemen of the jury, as I
20 informed you yesterday, all of the evidence is in this
21 case and we're at that point where the attorneys will
22 be giving you their final summations or final
23 arguments. I want to remind you, as I told you at the
24 beginning of this trial, that summations or arguments
25 are not evidence. You are to only consider the

CLOSING ARGUMENT - MR. HUCKS

1 evidence that you heard from the witness stand. These
2 attorneys are going to point out to you or stress upon
3 you what their positions are in the case and will speak
4 to you about the evidence that you have heard, as well
5 as the law that is applicable in this case. Remember,
6 you, as a jury, are the ultimate judges of the facts in
7 the case. You will determine what the facts are, and
8 only from the evidence you have heard from the witness
9 stand. You will apply only the law as I give it to
10 you. If the lawyers tell you something -- and I don't
11 expect them to do so -- if they tell you something that
12 would vary from the law as I instruct you, you must
13 follow the law as I give it to you. All right, Mr.
14 Hucks.

15 MR. HUCKS: I didn't get a chance to introduce
16 myself. I'm Scott Hucks. I'm an assistant solicitor
17 with the Horry County Solicitor's Office. I have a job
18 today and over the course of this week to prove to you
19 12 folks beyond a reasonable doubt through the evidence
20 that we put up, through what you saw on the witness
21 stand and the papers and pictures, and all of the stuff
22 we handed you to prove to you --

23 THE COURT: Excuse me. I don't want to interrupt
24 you. I think we have feedback. I want the jury, of
25 course, to be able to hear you and not be distracted,

CLOSING ARGUMENT - MR. HUCKS

1 and Mr. Diggs.

2 MR. HUCKS: I can slide it away, if you don't mind.

3 THE COURT: Whatever works. All right. Thank you.

4 MR. HUCKS: My job is to prove to the 12 of you
5 that will be left over at the end of the case that Brad
6 Mullins, seated over there with his attorney, committed
7 a crime, two crimes. He's charged with two crimes in
8 front of you. He's charged with burglary in the first
9 degree, and he's charged with murder.

10 I'll talk to you about what the law says about
11 burglary and murder. We'll talk about what a
12 reasonable doubt is. The job that I have here, and the
13 job that Mr. Diggs has and the job the judge has, they
14 are all very clearly defined. You have seen it on TV,
15 you know what we do. You sat through it, you know what
16 we do. Your job is the most important one in the
17 courtroom, and it is the most unpleasant, because no
18 one wants to sit here in a courtroom in judgment of a
19 fellow man. But we picked you, all of us, we picked
20 you because nobody could do a better job in finding the
21 truth, finding justice in this particular case.

22 So in order to prove to you that Brad Mullins
23 committed these crimes, we are going to have to prove
24 some elements to you.

25 Can I get the screen, please, Madam Clerk?

CLOSING ARGUMENT - MR. HUCKS

1 Murder. He's charged with murder sitting right
2 here in this courtroom. He's charged with murder.
3 What is a murder? We think we know what a murder is.
4 We have all seen TV and heard about murder, but what is
5 it under the law? The Judge will tell you at the
6 end -- when I'm done talking and Mr. Diggs -- and
7 whatever he tells you, that is the law.

8 I'll tell you what I believe the law to be, so if I
9 say anything that disagrees, go with him, because he's
10 the judge, I'm the lawyer. It is always good to follow
11 the judge whenever he disagrees with a lawyer.

12 What is murder? Murder is a killing. It is a
13 killing, an unlawful killing when you take the life of
14 another person -- of a person -- with malice
15 aforethought. Malice is a lot of things. Malice is
16 the key to murder. Just taking someone's life is not
17 always murder. It requires malice, an element of
18 malice. Malice could be expressed or implied.

19 Now, what is malice? Malice, under the law, means
20 that you have the wrongful intent to injure a person
21 when you kill him, that you meant to strike the fatal
22 blow. "Aforethought" means that when you struck the
23 fatal blow, you meant to do it. Malice is a wrongful
24 intent, and "aforethought" means you meant to do it.
25 It means you had a wrongful intent and you meant to

CLOSING ARGUMENT - MR. HUCKS

1 commit the wrongful intent. You meant to do the action
2 you did that took the life of another person.

3 Murder is one of the shortest statutes we have in
4 South Carolina because it is really that simple. Did
5 you kill someone and mean to do the action you did when
6 you killed them? Don't need premeditation. I don't
7 need to get into my car and drive over to your house
8 intending to kill you for it to be a murder. It is not
9 premeditation.

10 "Aforethought" does not mean you -- that Brad
11 Mullins went to Joe Elliott's house and intended to
12 kill him. It means that at the time Brad Mullins
13 killed Joe Elliott, he intended to do the action that
14 took his life.

15 He also sits before you charged with burglary in
16 the first degree. First degree burglary, this is one
17 of those laws that South Carolina adopted from the old
18 time common law, and it is not much different than 200
19 years ago. It means you entered a dwelling, a place a
20 person lives is a dwelling, a place where someone
21 stays -- in this case, you know what you got. You've
22 heard it, you've seen it -- without consent. He went
23 into somebody's house without permission. A place
24 someone was staying without permission, and with the
25 intent to commit a crime when you went in there. He

CLOSING ARGUMENT - MR. HUCKS

1 walked in there intending to commit a crime, and it is
2 accompanied by an aggravating factor.

3 In south Carolina we have a litany of aggravating
4 factors. You go into a dwelling with the intent to
5 commit a crime without permission to be there, and one
6 of these things has to be true. The ones that we're
7 going to talk about here are: What is an aggravating
8 factor? Entering or remaining in the nighttime. You
9 heard the evidence. You heard the evidence. They left
10 at twilight, got there after dark. You go into
11 someone's house to commit a crime after dark, or you
12 are there when it gets dark, then it is burglary in the
13 first degree.

14 Or, if you go into someone's house with the intent
15 to commit a crime, and while you are there, you come in
16 armed, or you become armed. You either bring a gun, or
17 you get a gun while there. That is burglary first
18 degree.

19 Or, if you go into someone house with the intent to
20 commit a crime, and while you there you cause physical
21 injury to a person that is not involved in your crime,
22 a person in the residence. While you are there, you
23 physically injure somebody, you hurt somebody, you
24 shoot somebody in the head.

25 Any of those, any one of those, is enough for

CLOSING ARGUMENT - MR. HUCKS

1 burglary in the first degree. We have three. We have
2 three. We showed you these three because they are the
3 ones that apply directly to this case.

4 I'm going to come back and talk to you in a few
5 minutes after Mr. Diggs speaks, and we'll worry about
6 this in a minute. I thank you for your time, look
7 forward to have a chance to talk about the facts with
8 you a little bit more in a few minutes.

9 THE COURT: Mr. Diggs.

10 MR. DIGGS: Good morning. I guess we need to turn
11 the lights back.

12 The State gets to address you twice at the end of
13 the case, in part, because they have the burden of
14 proof because they get the last argument if there are
15 certain things I didn't do, present evidence or
16 something like that. So under our procedure, the State
17 gets to open on the law, and then you'll hear from the
18 defense attorney, and then you hear from the State
19 again, and that is what is going to happen today. This
20 will be the last time that you get to hear anything
21 from me -- or you have to hear anything from me -- in
22 this case.

23 Yesterday afternoon we had a chance to put on a
24 couple of family members, immediate family members,
25 sister and mother. And I know initially you think that

CLOSING ARGUMENT - MR. DIGGS

1 it is a hokey thing. Why do you pull in that? But you
2 got people that Brad grew up with, sister and his
3 mother, who both testified, and I would submit they
4 were believable, they didn't come in and try to side
5 step, you know, spin things. I would submit they were
6 straightforward, believable, saying I think that if
7 Brad committed a murder and he wanted to talk about it,
8 he would have come and said, Look, I've done something
9 and I need to talk about it. I want to talk about it.
10 But in all of the years since 2008, all of the years
11 that he's kept in communication with his family, that
12 hadn't happened. We had a chance to hear from those
13 two ladies yesterday that that hasn't happened. Yet,
14 the State's theory is that my client was out, in
15 effect, broadcasting it to whomever within hearing shot
16 that he made this statement. I would submit that that
17 is kind of weird and kind of strange. You would
18 question whether or not that sounds like something that
19 would happen.

20 On a number of occasions you had witness after
21 witness come up and say, Oh, yeah, I heard him say
22 this. What I want to do is spend a little bit of time
23 analyzing those witnesses and the circumstances under
24 which those -- that testimony was made.

25 One thing I want to talk about just briefly, and it

CLOSING ARGUMENT - MR. DIGGS

1 is kind of interesting, psychologically speaking,
2 maybe, everybody refers to this case as "Anthony and
3 Brad." Anthony and Brad did this, Anthony and Brad did
4 that. Yet, Brad was the man -- he supposedly knew the
5 man, knew he had the guns, knew where he lived, planned
6 the whole thing and committed the murder and, yet, it
7 is never "Brad and Anthony," it is "Anthony and Brad."
8 I submit that Anthony did this, and we'll get into it
9 in a minute why the other members of the Mullins
10 extended family began to come around Brad (sic) and try
11 to help him, dump this off on Brad and kind of save
12 Anthony, to the extent that we can.

13 I would submit that plan is working so far, because
14 I would submit commonsense tells you at this point that
15 Brad (sic) has some kind of deal going with the State
16 in the event -- that Anthony has a deal going with the
17 State in the event that Brad is convicted here. There
18 is plenty of reasons in the evidence -- holes in the
19 State's case, I would say, to show initially that
20 wasn't what was happening. As the years went on, it
21 began to congeal. The opportunity presented itself to
22 pull another person in here, shift the blame off on
23 that person, Brad, and we'll help Anthony.

24 Anthony is the son of Moon's sister. I don't
25 remember if she is still alive or not. You may recall.

CLOSING ARGUMENT - MR. DIGGS

1 I don't know if it was asked, but I think his dad
2 passed away, I think he went to a funeral or something.
3 So for whatever reason, Moon had a special relationship
4 with Anthony that he didn't have with the other boys.
5 The reason for that is understandable, given Anthony
6 was his sister's child. The other boys were -- Arlie
7 and Charlie and Brad, they were children of his
8 brothers or himself, you know, but Anthony was the
9 sister's child. Moon took him under his wing, and he
10 helped him out more because of that situation. I don't
11 know of any other way to explain it.

12 If you look at the evidence that was presented in
13 this case, begin to ask yourself, Beyond a reasonable
14 doubt, do I have a reasonable doubt about this case.
15 You know, you wouldn't be human if you didn't have a
16 reasonable doubt in this case. We know Anthony fired a
17 shot. He said -- he told you. Dr. Proctor said, Yeah,
18 that shot would have been fatal, maybe not immediately,
19 but it would have killed him. Mr. Elliott would have
20 died from that shot. Anthony tells you he shot him.
21 So we know Anthony is qualified to be charged with
22 murder as just defined by the State. We know at least
23 who is partly responsible, if not completely, wholly
24 responsible. We know that.

25 The only question now is, okay, is Anthony right

CLOSING ARGUMENT - MR. DIGGS

1 here -- is he telling the truth when he brings in
2 another person to take the fall so that he can get a
3 better deal? He'll have to do some time in prison, but
4 a little -- less time is better than more time, and
5 that is where we are. We see Moon's influence, okay,
6 on his son Charlie, his nephew Arlie. Arlie's dad
7 lives up in Pennsylvania somewhere. I don't know if
8 you remember that, but they coalesce a little bit and
9 begin to help.

10 Think about it. Here is why I say that. All of
11 them heard Brad confess to murder almost immediately,
12 right? Almost immediately. All of them testified to
13 that. Even Delilah, all of them. Not one person went
14 to the police. Not even after they saw -- I didn't
15 believe it, you know. I thought he was BSing, and I
16 didn't believe he really killed him. But then it was
17 on the TV news. At that point, you put one and one
18 together and you think, A murder occurred here, I have
19 a responsibility to check it out.

20 Now, I know there is certain things of family
21 loyalty, but, my goodness, all of these people and not
22 one goes to the police? Think about it. Not one
23 person in 2008, all of whom heard a man confess to
24 murder, all of them who saw it on TV or were told
25 directly that a murder had happened, and none of the

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1 people, none of them, go to the police and report it
2 and say, Look, I might know a lead that would help you
3 solve this case. Not one person did it. Does that
4 cause a reasonable doubt in this case? Of course it
5 does.

6 I would suggest to you that they didn't go, because
7 that never happened. Somebody is working an influence
8 here about -- well, I mean, look, we talked about it,
9 and I'll get into it a little more detail, but all of
10 these people -- let's move on to 2011 when, finally,
11 Delilah goes to the police. Think about this. Why
12 does she go to the police? Was it to talk about a
13 murder, or was it to report the fact that Moon was
14 beating her? She's being beaten, okay, and she's got
15 her husband, she knows who is somehow connected to this
16 thing, so it is a way for her to get out. So she goes
17 to the police and ultimately tells them about this
18 murder and how some of Moon's family were involved in
19 it.

20 Now, for the State, that is a problem. They want
21 to get evidence in directly from Delilah against Brad,
22 and there is a thing called "hearsay." So she can't
23 tell what other people have told her, so she's got to
24 have some direct knowledge herself. So she comes in
25 and she sits on that stand and she says, you know, I

CLOSING ARGUMENT - MR. DIGGS

1 was at a cookout and I heard Brad say he killed a man.
2 Then I said, Well, didn't you tell the police that
3 Latonya -- you know, Anthony's wife -- didn't you say
4 she called you not too long ago and told you about it,
5 and she says, Yes.

6 All right. For two years Delilah sits on the fact
7 that Brad confessed to everybody in the yard that he
8 committed a murder. Brad keeps it from his mom and
9 sister, he doesn't want them to know he's a bad boy,
10 but he's willing to tell everybody out at the cookout?
11 A cookout that probably was attended by his sister, but
12 she doesn't hear that. She doesn't know anything about
13 it.

14 You see the influence of Moon Mullins on her
15 testimony. I would respectfully submit that is what is
16 happening here. She's married to what she perceives to
17 be a horrible man. She is in a horrible situation.
18 He's beating her. She told you -- she showed the
19 bruises on her body to the detectives that day. Help
20 me, she says, and she sees an opportunity to tell the
21 truth about Moon. He knows about this murder, he's
22 beating me, I need out of the situation. What does she
23 say on the stand? They are separated.

24 Is that a reason to have a doubt about what her
25 believability and creditability of her testimony is?

CLOSING ARGUMENT - MR. DIGGS

1 There is a reason to doubt it. Is that a situation
2 that we trust, or do we hesitate to act in that
3 situation? Are we going to say this man is a murderer
4 because of what Delilah said? No. We are going to
5 have a doubt about that.

6 She might be telling the truth, but the Judge is
7 going to tell you that is not going to be sufficient to
8 convict my client of murder, or any other person. It
9 is beyond a reasonable doubt. I have no reasonable
10 doubt about Delilah's honesty? Of course we have a
11 doubt about it, and that is a reasonable position to be
12 in this case. She has a reason to fudge on the facts a
13 little bit. It doesn't match with what her conduct has
14 been for the last five years, but, you know, it fits
15 good enough for the government to work it, I heard Brad
16 say this. Although, she didn't tell the police that in
17 2011, or ever, to my knowledge. I mean, if I'm wrong
18 about it, I'm sure they can and will correct me.

19 I didn't talk about Mr. Elliott or Mr. Stephens
20 because I have no doubt they were up there telling the
21 truth. They were trying to help get to the bottom of
22 this case for their friend and the friend's family.
23 One thing we learned is that Mr. Elliott owned what, in
24 effect, was a homemade firing range. That man owned
25 guns, according to the testimony, more than 30 weapons

CLOSING ARGUMENT - MR. DIGGS

1 in that house, and the reason we know that, there was
2 as many as 15 pistols, as many as 15 rifles in that
3 house that were taken, supposedly. I assume they were
4 from Mr. Elliott's home that night.

5 So he knew how to fire. He knew what a gun was.
6 He knew how to operate it and fire it. If someone was
7 within feet of him breaking into his house, he would
8 know how to shoot and kill them. He's not going to be
9 wildly firing off through the house, through ceilings
10 and walls missing the burglars, and we'll come back to
11 that in a minute. If he had confronted a burglar, he
12 was quite capable of handling the situation right then,
13 but he didn't.

14 We got -- and I would submit we have knowledge from
15 those two witnesses that Mr. Elliott not only owned
16 these guns, he probably had one around him most of the
17 time, had one that night. Everybody admits he came out
18 with the gun in his hand, okay. That puts us in a
19 position of this: My client who rented from
20 Mr. Elliott years before, my client who knew about
21 Mr. Elliott's reputation for being a gun owner
22 enthusiast, we come to a situation where in the
23 nighttime, where he won't be able to look at the
24 driveway to see if there is any tracks or not, my
25 client supposedly, unarmed, didn't have -- he wasn't

CLOSING ARGUMENT - MR. DIGGS

1 armed, breaks in a house of a man he knows is a gun
2 enthusiast who is going to be armed and knows how to
3 use a weapon for defense. He breaks in and strolled
4 through the house and took out the guns knowing that
5 his car is there.

6 My question would be, at the minimum, even if you
7 thought he was gone, okay, let's say for some reason
8 you thought that Mr. Elliott wasn't home that night --
9 although it certainly would be his habit to be there --
10 wouldn't you -- first of all, would you break in? The
11 answer would be, no. Does that cause you to have a
12 reasonable doubt about my client's guilt? Yes. If he
13 knows the man, and, heavens, wouldn't you be sure you
14 went in there sometime when Mr. Elliott -- when you
15 knew he was gone? Aren't you going to have a backup
16 plan? Well, what if by some chance he's at home, what
17 am I going to do? At least you are going to carry a
18 gun. But, no, under this fantasy that we're being told
19 this week is that didn't happen. My client breaks into
20 the door -- not Anthony, by the way, it is Brad --
21 breaks in the door, strolls through the house unarmed.
22 That is a stupid decision, not just because it is a
23 criminal act and it is stupid to do, but he's putting
24 himself in real danger, possibly, you know, getting
25 confronted and shot. You wouldn't do that. That is a

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1 reason to have a doubt about this case. Wouldn't he
2 arm himself to break in, you know, to kill the man,
3 protect himself? He didn't do that in this case,
4 because it didn't happen. Anthony, went in the house,
5 Anthony was around. He shot Mr. Elliott. I would
6 submit that that is a reason to have a doubt about this
7 case and my client's guilt.

8 Peter Cestare was the crime scene -- I think he was
9 a corporal or lieutenant, I don't remember, but he was
10 a crime scene investigator, reconstruction expert. He
11 showed us a lot of -- maybe not a lot, but some
12 photographs of the bullet trajectory. Just a couple of
13 these I wanted to address. There was another one that
14 showed this better, but remember these trajectories?
15 Look at that one. There is another photograph that
16 shows -- look where that trajectory is coming from. It
17 is coming from the floor, I would submit. Whoever
18 fired that shot was on the floor, okay. It wasn't
19 firing warning shots running out of the bedroom, that
20 was on the floor.

21 You know why the detective didn't mention it,
22 because that doesn't fit in with the State's theory of
23 the case. We are left here to try to figure out what
24 happened. It is not our responsibility to do that, it
25 is the State's responsibility to prove my client is

CLOSING ARGUMENT - MR. DIGGS

1 guilty of murder beyond a reasonable doubt. But that
2 shot was fired by someone on the floor. That is why we
3 have a jury, to bring collective commonsense from the
4 community into the courtroom to help us make these
5 factual determinations. I would submit that that is
6 what -- State's Exhibit 44, I would submit -- and to a
7 certain extent No. 48 -- I would submit that that
8 causes a reasonable doubt, at least, with respect to
9 Anthony's description of, well, he heard a couple of
10 shots as Mr. Elliott came out of the bedroom
11 (indicates). On one occasion, he said I was outside
12 and ran in. On the other occasion he says, Well, I was
13 over here -- I think he said he was near the gun rack,
14 and when the gentleman, Mr. Elliott, comes out of the
15 bedroom, he runs over here to the corner of the living
16 room adjacent to the kitchen. Right? Do you remember
17 when he said that?

18 I would submit that that didn't happen. That would
19 cause me to have a doubt, reasonable doubt, about the
20 State's theory, that aspect of the State's theory of
21 the case. They'll fall back and say there are other
22 ways this could happen, and try to address those too,
23 but that aspect of Anthony's testimony, I would submit
24 to you, we can reject because Mr. Elliott was -- if he
25 had the gun, Mr. Elliott was on the floor, he fired a

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1 shot, gun is up into the cabinets and into the ceiling,
2 near the ceiling. We see the State's proven that with
3 the trajectory.

4 So with this witness, Cestare, he's got a lot of
5 years experience, 25 years, and he worked up in New
6 York, worked for Horry County for 10 years, but notice
7 what he's doing -- and if he could have tied Brad
8 Mullins to this case, he would have done it, but he
9 didn't because he couldn't.

10 It is almost like, Okay, here's what I got. He's a
11 crime scene expert. This is a murder case. It is like
12 he comes up here and says, Okay, this case stinks, but
13 I have to do my job, so here is what I found, and,
14 there, we're going to drop it in your lap. What does
15 he explain to you? Nothing. He hadn't given you
16 anything, really, that is going to help you decide this
17 case. You are going to have a reasonable doubt,
18 because their most qualified technical person, the
19 crime scene investigator, just kind of washes his
20 hands and says, Beyond me, I'll leave it to the jury.

21 You know what, you work within parameters. If that
22 causes you to have a doubt about the case, you have to
23 exercise that doubt and find him not guilty. Anthony
24 is going to prison. Anthony is the one who is at
25 least, if not wholly, responsible for this death. It

CLOSING ARGUMENT - MR. DIGGS

1 is not going to make that family feel better if an
2 innocent man goes to prison. They wouldn't ask you to
3 do that. Anthony is not innocent. Anthony should pay
4 the price, because beyond a reasonable doubt we know he
5 did it, at least in part. That is what the legal
6 system is for. Better that a hundred guilty men goes
7 free than one innocent goes to prison. Remember that
8 old saying? It was a certain number. Ten? I don't
9 know.

10 We don't gain anything by guessing and speculating
11 that Brad Mullins is guilty because Anthony says he is.
12 Delilah -- and I think it was Moon, and we'll get to
13 him -- said we overheard him say this. That is not our
14 job. Our job and your job, a juror's job, is to put
15 the brakes on this. Wait a minute, this case doesn't
16 measure up. There are reasonable doubts here for
17 several reasons. We can't convict this man of murder.

18 This is the most heinous crime we have in our
19 society, and it requires a higher degree of liability.
20 The Court has a responsibility. Let me tell you, they
21 have done the best they could, but the evidence is not
22 here. I would submit the evidence is not here, because
23 it should be the easiest thing in the world to prove an
24 assassination killing of a man in his own home, but we
25 don't have that. We're left to guess and look at the

CLOSING ARGUMENT - MR. DIGGS

(1 creditability of every single lay witness that got on
2 the stand, except these first two gentlemen that
3 testified, Mr. Stevens and Mr. Elliott.

4 Amy Stevens testified and talked about the chain of
5 custody of the bullets, to some extent. Then we have
6 the gentleman from the hospital that came and testified
7 about the x-rays.

8 Bear with me. Sorry. All right.

9 There is supposed to be competent forensic evidence
10 that the State has introduced here. We know that the
11 bullet -- Dr. Proctor was right here and described the
12 bullet as coming in on the left side of the skull.
13 Remember how Anthony said, Blew his head open? Well,
14 there is the bullet, you know. His head didn't get
15 blown open. It goes through and -- goes through the
16 skull, but caught underneath the skin, so the head
17 didn't explode. The hole wasn't big enough for the
18 bullet to come out. The skin was intact and caught it.
19 You heard the doctor testify about that.

20 This bullet was the same -- a bullet that was fired
21 from the same weapon that the other two bullets fired
22 from. You know, the bullets that were shot up into the
23 living room and fell on the kitchen floor and fell on
24 the shelf, remember those? So there is a total of
25 three bullets that were found that came from the same

CLOSING ARGUMENT - MR. DIGGS

1 weapon. It was like a .38 caliber, and the gentleman,
2 Mr. Black, testified, I think yesterday or the day
3 before, in the afternoon about what types of guns would
4 have made those -- fired that bullet. They were all
5 the same gun.

6 There was one more bullet that was fired, there
7 were four shots fired, that we know of and the evidence
8 shows, and here is the fourth bullet. Okay? This is
9 the x-ray of Mr. Elliott showing where that bullet is
10 in his body during the autopsy. That is the
11 fourth bullet.

12 Now, what did Dr. Proctor say about that bullet?
13 He said the hole in the skull and the hole in the chest
14 were the same diameter. The one in the chest was
15 slightly oval, but it could be because of the angle,
16 but it was basically the same caliber.

17 Now, he left some leeway there. Could have been
18 another caliber, but I remember him saying you wouldn't
19 see that with a .22. Do you remember when he said
20 that? You wouldn't see that hole if a .22 bullet had
21 made it. It is more like the other three. Doesn't
22 that make sense, they were fighting over the gun? He
23 just couldn't retrieve this bullet in the autopsy, so
24 we're left not to know about what the caliber of that
25 bullet was. Could it have been from the same weapon?

CLOSING ARGUMENT, - MR. DIGGS

1 Yeah. Could it have been because the diameter of the
2 wounds were the same? They were the same. Does that
3 have a basis for causing you to have a reasonable doubt
4 here about the State's theory of the case? I submit it
5 does.

6 If it was a .22 bullet, it would have been a lot
7 smaller and the doctor would have noted that. Dr.
8 Proctor has been testifying for a long time. It is
9 just about impossible to catch him in anything, okay.
10 And the reason you can't is because he's so straight
11 forward. He's not going to spin it one way or the
12 other. He'll agree with you if you said, yeah, it
13 could be that way. I tried to push him on the length
14 of the decomposition time, and he wouldn't go there.
15 So the best I could do was, Well, you said in your
16 report it extends beyond three or four days. Yeah, he
17 said that, but he just stuck to that number. He
18 thought it was three, four days, which kind of fits
19 with the State's time line, but it he wasn't sure.

20 He was sure about the diameter of those holes in
21 Mr. -- the wounds in Mr. Elliott's body, they were the
22 same, .22 and .38. Do you think they make the same
23 wound? No. One is going to be almost twice as big as
24 the other. Did Anthony shoot with him a .22? No.
25 There is no -- other than his testimony, there was

CLOSING ARGUMENT - MR. DIGGS

1 nothing that suggests that happened. I submit it is a
2 doubt in this case that is a reasonable doubt about my
3 client's guilt. You have to return a verdict of not
4 guilty in that situation.

5 But we're not through. I want to talk about Moon
6 and Little Charlie. Moon -- he's the one I started off
7 saying, Look, in my opinion, put all of this thing
8 together. He's pulling the strings. I know where you
9 guys can get some guns, I went by there and I don't
10 think he's going to be home on such-and-such time, so
11 you might want to break in there and get the guns.
12 That is what Anthony said. That part could be true, we
13 don't know, but what we do know is that when Moon gave
14 his statement -- remember now, he's in Georgia and has
15 charges in Cartersville, Georgia, charges in Florence,
16 potentially charges here for this case. He wants to go
17 home to his family, and he's willing to tell those guys
18 everything he can to work a deal out. The detectives,
19 they want to solve a murder. They don't think Moon did
20 it, okay, so they are willing to bargain and make
21 concessions with him.

22 He's supposed to do nine years in Georgia over a
23 number of years. He has charges in Florence. He said,
24 Well, it is on my record, but he's not in prison. So
25 whatever the penalty was didn't include any jail time,

CLOSING ARGUMENT - MR. DIGGS

1 and he's charged here. But you know what he said in
2 Georgia? Anthony confessed to me. Anthony committed a
3 murder. He does not say Brad and Anthony, or Anthony
4 and Brad. He does not say Brad confessed. He said
5 Anthony committed a murder. I can get it on wire.
6 He's willing to do anything.

7 Why didn't he tell them then that Brad had
8 confessed? He said, Well, we were talking about
9 Anthony at that time, so I didn't bring it up. Please.
10 The plan hadn't fully solidified at that point to shift
11 the burden away from his favorite nephew, and certainly
12 not from his son, Little Charlie. You know what, he's
13 thinking, I wish I could help the boy, Anthony. So
14 maybe if we bring somebody down with him, put the blame
15 on somebody else, we can help him a little bit. And he
16 has. At that time, it hadn't solidified enough in his
17 brain, in his mind, to say -- come out with that plan,
18 so he neglects to tell them about Brad.

19 Then, all of a sudden, we get to the latest
20 interview -- bear with me for a second. Down in
21 Pamplico, I believe, he indicated it was in March 2011.
22 2011 was a pivotal year, because that is when people
23 began to understand about this case. The detectives
24 are on the scent now, and they begin to pull a string
25 that is unraveling.

CLOSING ARGUMENT - MR. DIGGS

1 Bear with me just a second.

2 He's down in Cartersville, Georgia with Detective
3 Jones and another detective, and I don't if his name
4 came out in the testimony. He acknowledges in that
5 interview that Anthony confessed. So it brings us up
6 to March of 2013 when the investigator from the
7 solicitor's office has him in Florence, South Carolina
8 and he does an interview at that time. He says, for
9 the first time, Brad is involved in this case. Brad
10 confessed to him. Finally, after five years, he comes
11 up with the story that Brad did this, Brad goes in and
12 Brad shoots the man. I know Anthony might have shot
13 him, but Brad shot him in the head. His delay in
14 reporting that, his delay where he neglects to mention
15 that in Cartersville, Georgia earlier to the detectives
16 is neglected. His failure to disclose that two years
17 ago, and now just this year, year of the trial, he
18 comes in with Brad.

19 Is that a reason to have a doubt about this case?
20 It is a reasonable doubt to believe that part of the
21 State's case, and it is another doubt -- another
22 justification for a doubt not to convict my client of
23 this murder that Anthony Ray acknowledges that he did,
24 at least in part.

25 Charlie is interesting. Charlie is Moon's son, we

CLOSING ARGUMENT - MR. DIGGS

1 remember that from the testimony. Charlie says, We
2 dropped them off, I didn't have anything to do with it.
3 I didn't know anything about it. That is not what
4 Anthony says. Anthony says all of them knew about it.
5 Charlie and Arlie, remember him saying that? Moon knew
6 about it. Moon is the one that sent us up there. We
7 all went together. We were going to break in and steal
8 the stuff, that is what Anthony said.

9 You might say, You know what, that is bull.
10 Because these other two witnesses, Charlie and Arlie,
11 said they didn't have anything to do with it, they just
12 rode down the street and back. Until Charlie was
13 testifying in this courtroom -- and I had the court
14 reporter prepare what he said, and what he later
15 said --

16 MR. HUCKS: Objection, Your Honor. If we may
17 approach, Your Honor?

18 THE COURT: Okay.

19 (Whereupon, a bench conference was had.)

20 MR. DIGGS: I just wanted to make sure that what we
21 heard over here was what was actually said from the
22 witness stand, because the witness didn't realize he
23 said it. I pulled in -- he's talking about he was at
24 the store and he was coming back to the house, remember
25 that part of the testimony, this is Little Charlie.

CLOSING ARGUMENT - MR. DIGGS

1 This is the son -- Moon's son. When I -- when I pulled
2 in -- not "when we pulled in." When I pulled in,
3 Anthony and Arlie were standing beside the road
4 waiting.

5 If you don't believe me or if you want to honor the
6 State's objection to that, you have the right to ask
7 the court reporter to play it back for you so you can
8 hear it too, and maybe you don't need to because you
9 heard it at the time. This is telling -- this is, with
10 all due respect, damaging to the State's case.

11 When I pulled in, Anthony and Arlie were standing
12 beside the road waiting. That is what that man said
13 from the stand. You can say, Oh, it was a slip of the
14 tongue, I meant to say Brad. Or it could be he was
15 telling the truth and it just slipped out before he
16 caught himself to get Brad -- no. No. No. No, not
17 Arlie, Brad. It was Anthony and Brad, not Anthony and
18 Arlie like I said. That is a reason to have a doubt.

19 If you were riding around with your cousin and you
20 said, My cousin -- and it was true, your cousin -- my
21 cousin and I went to the store, and my cousin and I was
22 coming back and I saw my cousin was standing there
23 waiting on me. You are not going to make that kind of
24 mistake. That is not a reasonable mistake to have in
25 terms of a slip of the tongue. The truth came out of

CLOSING ARGUMENT - MR. DIGGS

1 him for a second when he wasn't aware of it. It is a
2 subconscious slip. Freudian slip. You don't make that
3 kind of mistake in a murder prosecution unless you are
4 lying about what happened, unless you forget, Wait a
5 minute, he's the fall guy. I meant the Patsy and
6 Anthony were there, not Arlie. It was Brad and Arlie
7 -- Brad and Anthony. You know, it is not the kind of
8 mistake he's going to make, and it is a reason to have
9 a reasonable doubt about this case in who killed
10 Mr. Elliott.

11 Notwithstanding all of the stuff, notwithstanding
12 the fact that Anthony admits he shot him, and the
13 doctor says, Yeah, that was a fatal shot. We want to
14 go further and prosecute this man, because after all,
15 we're going to put him in jail for a long, long time,
16 and Anthony gets a deal. That is not why we are here.

17 Arlie, you know, when he testified -- why in 2011,
18 or whenever it was when they talked to him, why didn't
19 he say "Anthony and Brad" or "Brad and Anthony"? Why
20 did he say "they"? He couldn't even -- not even Arlie.
21 He couldn't say at that time "they" because he probably
22 didn't know specifically what the final story was going
23 to be. I don't know. But if some detectives were
24 talking to you about a murder, would you just say
25 "they"? Wouldn't you use names? But by this year, Oh,

CLOSING ARGUMENT - MR. DIGGS

1 yeah, put Brad in there, it was Brad.

2 Now, we all went out and threw the guns in the
3 swamp, and the Horry County people went out there and
4 tried to find them. All of these guns, all of these
5 bridges, nothing. Latonya says they threw them in the
6 swamp down in Mississippi or Louisiana or Kentucky,
7 somewhere. Well, all of the witnesses say, Oh, no,
8 that was in Horry County. But they didn't find them.
9 So all we have to do is rely on them, which is not
10 credible, and certainly not credible when you are
11 talking about reasonable doubt in a murder case.

12 I want to talk to you just a minute about the
13 shooting of Mr. Elliott. What did happen? We know he
14 was shot in the chest -- brain, chest. When
15 Mr. Elliott comes out of this room firing the guns like
16 Anthony said, Anthony runs over here, right? Somehow,
17 miraculously, he becomes armed with a .22.
18 Mr. Elliott, he's pointing the gun, supposedly, at
19 Brad, and then Charlie -- excuse me, Anthony shoots.
20 Mr. Elliott notices him, turns around, faces him,
21 right? Anthony supposedly starts yelling, Put the gun
22 down, put the gun down, and then shoots him, right?
23 But you know what is odd about it? He shoots him in
24 the right chest over here. How in the heck did Anthony
25 have that angle at Mr. Elliott to shoot him in the

CLOSING ARGUMENT - MR. DIGGS

1 right chest? He would have shot him straight in the
2 chest -- or in the left chest, had he not completely
3 turned around. I promise you, Mr. Elliott didn't go,
4 Oh, okay. That is not what he would have done. That
5 is unreasonable, and it is a justification for a
6 reasonable doubt in this case. It is absurd to suggest
7 that from this standpoint in the room, okay.

8 You make a shot across the living room floor into
9 the man's right chest? How is that going to happen?
10 It didn't happen. When this man came out of his
11 bedroom, why was he wildly firing through the air? It
12 didn't happen. What Anthony said was Brad kicked in
13 the door, not Anthony. Brad kicked in the door, and
14 Mr. Elliott comes out firing or confronts him, and we
15 break it.

16 It could have been a struggle, because on one
17 occasion Anthony says they struggled. On another
18 occasion, he says, Oh, Mr. Elliott had the gun trained
19 on him, holding him at bay up against the wall. That
20 is the two versions that Anthony told. I would submit
21 what makes equally as much sense and fits better with
22 the physical evidence is that when Anthony kicked the
23 door in, Mr. Elliott came out and they struggled.
24 Mr. Elliott was armed, and they struggled and fell down
25 on the floor. There were shots fired from that angle

CLOSING ARGUMENT - MR. DIGGS

1 on the floor that went up into the ceiling over there
2 near the kitchen, a struggle (indicates). The gun goes
3 off, and it shoots him in the right chest, which puts
4 Mr. Elliott in a very vulnerable position, and it
5 allows Anthony to finish him off with a shot to the
6 head on the left side.

7 Anthony -- do you remember the photograph of the
8 body under the blanket? The man who killed Mr. Elliott
9 put a blanket over him. The man who killed Mr. Elliott
10 had nightmares about it. The man who killed
11 Mr. Elliott confessed to his wife about it. The man
12 who killed Mr. Elliott was the favorite nephew of Moon
13 Mullins. The man who killed Mr. Elliott was acting
14 probably on information, if not instruction, of
15 Mr. Mullins, Moon Mullins, to go in there and see what
16 you can steal.

17 Moon is a liar. I'm a convicted felon and I don't
18 have anything to do with guns, but his son says, Yeah,
19 he sold two guns right before we went to Louisiana.
20 Anthony killed Mr. Elliott. Maybe he didn't mean to,
21 but he went in the home, he put all the guns on the
22 blanket outside on the ground, and the other three put
23 them in the truck. Then, Anthony says when we got back
24 to Moon's house, Brad left. After Brad had just
25 murdered Mr. Elliott, according to Anthony, he leaves

CLOSING ARGUMENT - MR. DIGGS

1 and then all the guns stay with the other three? The
2 other three go off and throw them in the swamp,
3 remember when he testified to that? All of that is a
4 reason to have a doubt about this case.

5 There is no way a rational finder of fact could
6 return a guilty verdict as to murder against my client,
7 Brad Mullins, in this case. I think we pretty much
8 went through the evidence that we have. I don't know
9 of anything else that the State can bring up, you know,
10 other than those witnesses to satisfy their burden of
11 proof in the case. The question is not could Brad have
12 done this with Anthony, yeah, he could have. But is it
13 so beyond a reasonable doubt? No. It is a long way.

14 Listen, I talked a long time, and I know it is
15 boring and hard, but it's important. You guys swore to
16 uphold the responsibilities and follow the law as
17 jurors in the case, and we appreciate it, because if
18 you weren't here as a check over the government, Brad
19 Mullins would be in a different place.

20 Let's go back to his mom and his sister. Were they
21 credible? Did they try to spin things? Do they have
22 -- I mean, it is family, they would have known these
23 things. I submit that had they known, they would have
24 forced him to go to the police. I submit to you that
25 those two women wouldn't have sat on that information.

CLOSING ARGUMENT - MR. DIGGS

1 They would have expected more out of their family
2 member, their son, their brother. As I said, this is
3 the last time I get to speak about it. You've been
4 very attentive, and I appreciate your help. I know
5 Mr. Mullins appreciates it. If not for the system, if
6 not for you agreeing to participate in this process at
7 this time, he would be in a very different place, I
8 think we all would.

9 I would argue that a not guilty verdict is required
10 in this case because the evidence just doesn't satisfy
11 the burden of proof of guilty beyond a reasonable
12 doubt. Thank you.

13 MR. HUCKS: Thank you, Your Honor. Just a minute
14 here, guys. We've talked a little bit and you heard
15 Mr. Diggs get into all of these statements and
16 codefendants and the State's witnesses, but I want to
17 talk to you, to start with, about what does the
18 evidence show. If you take out all of the
19 discrepancies, every little thing that Mr. Diggs asked
20 you to take out, take that stuff out, and I'm going to
21 tell you a few things. I'll tell you what I think the
22 evidence shows.

23 You heard Moon Mullins, and I believe you heard
24 either Mr. -- one of Mr. Elliott's two friends who
25 testified towards the beginning, Mr. Stephens or

CLOSING ARGUMENT - MR. HUCKS

1 Mr. Elliott, I think you heard at least one or two of
2 them when they talked that he was a drinker. He had
3 drinks. I like a few drinks myself. So let's talk
4 about the last night of Mr. Elliott's. Let's talk
5 about it for a minute.

6 Mr. Elliott is in his bedroom, comes home, takes
7 his clothes off. He comes from wherever he was that
8 day, he comes home, takes his clothes off, climbs in
9 his bed, shuts the door, turns on the air conditioner.
10 You heard Lieutenant Cestare talk about there was one
11 unit running in his bedroom, and that was the only air
12 conditioner in his house. He goes to his bed, air
13 conditioner humming right next to his head. He's
14 sleeping, probably sleeping one off, maybe,
15 potentially. I've done it. He is laying in his bed
16 here (indicates), air conditioner by his head, humming
17 air conditioner, sleeping deep because maybe he had a
18 couple of drinks, naked in his bed in a place that is
19 absolutely okay. It is okay to be naked in your bed,
20 in your house, the one place he has a right to be
21 protected from the entire rest of the world.

22 He's there, and while he's snoring in his bed, Brad
23 Mullins and Anthony Ray, and maybe the rest of the
24 crowd, are planning on taking advantage of him. They
25 are planning on going to his house. They are sitting

CLOSING ARGUMENT - MR. HUCKS

1 under a carport at this house discussing what they are
2 going to do to steal this man's guns. Why? Why would
3 they steal his guns? Think about it for a minute. Why
4 were they stealing the guns? What were they doing on
5 Monday? They were here, but going to Louisiana. They
6 needed traveling money. They needed to get out of
7 town. They needed to get out of town and pay for hotel
8 rooms or campground, or wherever it is this crowd stays
9 when they are out of town.

10 They get in the car. Brad Mullins, what do we know
11 about Brad? Who is the only person that had a personal
12 relationship with Mr. Elliott? Who was it? We all
13 know who it was, that guy sitting at that table sitting
14 there. He had a personal relationship with Mr. Elliot.
15 So while he is asleep in his bed with his air
16 conditioner going by his head in his house, these guys
17 are planning. They plan.

18 They go over, and they don't go in -- think about
19 it. You heard Anthony testify, We pulled up this long
20 driveway, went up this driveway. One more quick point.
21 Joe Elliott is a 70-year-old man. He is 70 years old,
22 sleeping in his own bed while a bunch of 20-somethings
23 or 30-somethings come into his house. You hear Anthony
24 say, I went to the front door, Brad went to the back.
25 I beat on the front door for a few minutes.

CLOSING ARGUMENT - MR. HUCKS

1 Joe Elliott is laying in his bed, maybe he has a
2 headache, maybe he has just the air conditioner buzzing
3 in his ear, but he's asleep. Anthony beats on the
4 front door and beats on it and beats on it, but Joe
5 Elliott doesn't wake up. He's under all of this noise.
6 I'm sure you guys in your life experience know how loud
7 they can be. Where does Brad come into the house at?
8 He comes back here, right? What is the furthest point
9 in this entire house from Joe Elliott? It is right
10 there, it is the back door.

11 Anthony tells you that he hears glass breaking. He
12 hears glass break, bang, crack. What does he tell you
13 that means? That means Brad made entry. I beat on the
14 door, he must not be home because I've been beating and
15 he won't answer. He's not home. The truck is in the
16 drive, and you heard his dear friend and cousin say he
17 thought he went fishing with Dale, which leads to a
18 reasonable assumption that it wasn't uncommon for his
19 truck to be home if he wasn't there.

20 They go in. There is no need to be in a hurry,
21 none, the man isn't home. The man is not there. But
22 at some point in time, Joe Elliott figures out what is
23 going on, that is what the evidence shows you. What do
24 they say happened when they get to this bedroom door?
25 Was that door sitting wide opened, or shut to keep the

CLOSING ARGUMENT - MR. HUCKS

1 air conditioning from the window unit? It was shut.
2 What else was it? It was locked. They couldn't open
3 it.

4 When they got to it, they couldn't open it. So
5 Brad Mullins rears back and kicks the bottom panel of
6 that door in. There is that bottom panel kicked out,
7 and there is that window air conditioner still blowing,
8 not a big one either (indicates).

9 Let's talk about the location of the house before
10 we get into what happens after the door gets kicked in.
11 Joe Elliott had at some point in time figured out what
12 was going on and locked that door. We're talking about
13 the country, folks. I don't know if you guys know
14 where this road is, but I live out in that general
15 direction. You have to pump some light into that
16 place. Look at the aerial, we are talking way out in
17 the country in a house that sits off of the road and
18 completely surrounded by foliage to the point you can
19 barely see the front door. Perfect victim. Perfect
20 house to go to and burglarize.

21 The man ain't going to be home. Just in case, we
22 will knock on his door. They go to his house, beat on
23 the door, he don't answer. They go around, break in
24 the back door. Why? Because they are burglars, they
25 don't want anyone to see them from the road.

CLOSING ARGUMENT - MR. HUCKS

1 What did Anthony say? We weren't in any hurry, no
2 hurry at all. Brad and I were cleaning that man out.
3 He said there were guns everywhere. We went through
4 every room, and there were guns leaning in the corners,
5 in closets, opening doors, a big gun cabinet slammed
6 full, bottom cabinet with pistols.

7 So that door gets kicked in. When that door gets
8 kicked in, Joe Elliott's last line of defense to
9 protect his life, his liberty, his property, to protect
10 himself from these people ransacking his house is to do
11 what? To do what? Grab a gun and come out fighting.
12 He just wants -- at this point in time he just don't
13 want them in the house. He don't want to die.

14 He comes out of his bedroom at that point in time
15 with a gun, and when he does, Brad is on the floor. He
16 sees a big naked fellow coming at him with a gun, so he
17 starts scrambling. Anthony is over here at the gun
18 cabinet. He sees a big naked fellow at him, so what
19 does he do? He starts scrambling, too. They separate.
20 Anthony says he runs over here, tries to get out of the
21 door that is right here to get on the back deck. The
22 door is locked, can't get out.

23 I can contend that the evidence in this case -- you
24 heard Lieutenant Cestare, and it may be in one of these
25 pictures, but you heard from the crime scene fellow --

CLOSING ARGUMENT - MR. HUCKS

1 there you go, State's No. 35. There is a set of louver
2 doors in front of a bar or cabinet area, and one of
3 those is knocked down on the ground, knocked down. You
4 get these to look at yourself in the back when you get
5 there.

6 So what happens? Brad Mullins gets in a struggle
7 with Mr. Elliott. They get in a struggle. Mr. Elliott
8 comes out, comes through his door, goes from sleeping
9 soundly, maybe got a headache, comes out naked with his
10 last line of defense, a handgun that he had, comes out
11 and he fires, boom. When he fires, it goes up straight
12 from his bedroom. You can see the view in these
13 pictures. Straight out his bedroom door into the
14 ceiling above this bookcase, straight shot into the
15 ceiling. Fires a little high. There is a struggle.
16 This struggle comes in here somewhere where, at that
17 time, they bounce off of that set of louver doors. You
18 see them? It is broke down, they hit that. When he
19 does, that door is right across from the magic bullet
20 that Mr. Diggs has talked to you about. He has a gun
21 in his hand. He is struggling with this fellow, boom,
22 they are into these louver doors. The gun goes off and
23 shot into the side of the bookshelf from right here.
24 The bar doesn't show up right here, you have to look at
25 them better in these pictures. Boom, that magic bullet

CLOSING ARGUMENT - MR. HUCKS

1 is up through there.

2 Mr. Elliott -- because Brad Mullins is fighting for
3 stuff so he can take something that he didn't work for
4 and he didn't earn, Mr. Elliott is not fighting for
5 stuff, he is fighting for his life. He is fighting for
6 his life, he gets the best of Brad Mullins. He takes
7 that gun and trains it on Brad Mullins, but he didn't
8 shoot him, did he? He didn't shoot Brad Mullins. He
9 don't want to shoot his tenant, someone that he
10 personally knew. At this point, he just woke up. He
11 tried to hide in his bedroom. People came in, and he
12 had to defend himself. So he has Brad Mullins trained
13 right here. Here is Brad Mullins. He doesn't even
14 know Anthony Ray is even there. He's been so worried
15 about Brad Mullins. He doesn't want to shoot Brad
16 Mullins. He knows Brad Mullins.

17 A fellow with a gun range in his backyard and 30
18 guns, you reckon he doesn't know how to shoot someone?
19 He doesn't want to shoot Brad Mullins, he knows him, so
20 he has him trained.

21 Anthony Ray, what does he say? I pulled up the .22
22 rifle because I didn't want him to kill my cousin. I
23 did that so he wouldn't kill my cousin. I put it up
24 and I said, Put down the gun. I don't think that is
25 what he said, but he did something, because at that

CLOSING ARGUMENT - MR. HUCKS

1 point in time Joe Elliott goes from here, to here.
2 When he goes to here, what happens? He is fully opened
3 up, and Anthony Ray is standing there with a .22 rifle
4 and shoots him. Where is that going to go? Exactly
5 where Dr. Proctor showed you where that hole is. Boom,
6 right under his arm towards the back past the
7 centerline of his body. It goes through and hits him
8 in the lung.

9 At that time he's choking on his own breath. It
10 goes through and hits him in the spine. When it hits
11 him in the spine, he falls like a sack of bricks.
12 There is nothing he can do. He falls like a sack of
13 bricks. What side does he fall on? He falls on his
14 right side, on top of the bullet wound. You can see it
15 in this picture here. You have a cardboard copy to
16 take back with you. But he falls on his right side,
17 boom.

18 At that point in time the fellow who he had the gun
19 on, the fellow who he knew and probably didn't have the
20 heart to shoot him, comes over, and out of sheer anger
21 and frustration, picks up Mr. Elliott's gun and shoots
22 him in the left side of the head, opposite side of
23 where he is laying.

24 That gets us into a neat discussion about bullets.
25 I was going to put it off, but I'll talk to you about

CLOSING ARGUMENT - MR. HUCKS

1 the expert, Mr. Black, who knows a lot more about
2 bullets than anyone. These bullets, there is three
3 different versions of these x-rays that you will get to
4 take back with you to the jury room. State's No. 95
5 and 93 are on scale with each other. You can tell,
6 because if you laid it one another, the jaw line
7 matches. There is a couple other ones, and they are
8 not to the same scale because they are blown up and
9 shrunk. But you can lay these two over each and tell
10 they are to scale.

11 You heard Mr. Black say that he tested three
12 bullets, one from the kitchen floor that went above the
13 bookshelf through the wall and fell on the floor. You
14 heard him say he tested one that went this way through
15 the bookshelf, an upper angle, hit the bookshelf and
16 rolled down and landed on one of the shelves, you heard
17 him say that. He tested the one that came out of Joe
18 Elliott's head. All three of those were what? All the
19 same caliber, same projectile. He called them a
20 jacketed soft point, or a non-jacket hollow point
21 bullet, which he said, up here, were designed to expand
22 on impact and increase the amount of damage that is
23 imparted on a body. They are designed for personal
24 defense to shoot at people or animals with, that is
25 what they are designed for.

CLOSING ARGUMENT - MR. HUCKS

1 He also said they have what is called a cannellure.
2 Anyone who is into reloading knows about cannellure.
3 The cannellure, which he testified to, is a part of the
4 bullet, of an expanding bullet, that when that bullet
5 expands, it makes a mushroom and expands out and gets
6 as big as it can. I believe he said something to the
7 effect of it keeps it from pulling all the way apart,
8 it stops the expansion. It gets it to expand to a
9 certain point, and it stops, which makes an interesting
10 thing. You heard Dr. Proctor that the bullet holes
11 were close to the same size. He can't say they were
12 exact. He wouldn't say anything was exact, if you have
13 ever heard Dr. Proctor testify before. Also, while the
14 holes were close to the same size, he equivocated, I
15 don't know what calibers they were. He said they could
16 be different. Some holes are ovular depending where
17 they go in, some are square on. It depends what they
18 hit.

19 Look at these x-rays. This bullet went in, you see
20 the piece of the skull missing? It went in, comes
21 across, hits the bone on the other side of the skull
22 and stops in the skin here. You can see it. You can
23 see the light colors that are the bullet in Mr.
24 Elliott's head, right across. You see a couple of
25 pieces shear off of it as it went through, that is it,

CLOSING ARGUMENT - MR. HUCKS

1 which would be directly in line with Mr. Black's
2 testimony.

3 That bullet was designed to expand and go through,
4 cause damage and stop. It hit both sides of the skull.
5 It went into two pieces of bone. Now, this bullet was
6 so powerful -- the bullet in his head was so powerful
7 it managed to go through two pieces of skull, all of
8 his brain matter and end up under his skin on the side
9 of his head.

10 Look at the bullet wound in the chest. Now, when
11 you look at it to scale, look at this. Here is what is
12 left of the .38 or .357, and here is what is left of
13 the .22. No cannellure on that bullet. You see that
14 bullet expand and stop? Do you see it hit any bones,
15 anything? You heard Dr. Proctor said it went through,
16 nicked along and lodged in his spine. It is a
17 substantially smaller bullet, and a bullet not to
18 expand or have a cannellure to keep it from expanding.
19 It is a bullet that fragmented a lot on the way in. I
20 contend to you that that goes directly in line with the
21 State's case as opposed to some
22 magic-bullet-wrestling-around theory.

23 What happens after Joe Elliott is killed? Think
24 about it. Joe Elliott is dead. He is laying on his
25 floor, dead. Only one person that anybody puts in this

CLOSING ARGUMENT - MR. HUCKS

1 place, and he even knows Joe Elliott. Who is that?
2 That guy right there. That fellow. He is the only one
3 that knows Joe Elliott. He can't stand -- he cannot
4 stand for Joe Elliott to be laying on that floor with
5 his head blown off staring at him while he cleans him
6 out. So what does he do? This is a man he rented
7 from, so what does he do? He covers him up. Takes the
8 blanket off of Joe Elliott's bed and he goes back out
9 and he covers Joe Elliott up on the floor of the living
10 room.

11 I'll show you a closet that Lieutenant Cestare said
12 was off of Joe Elliott's bedroom. You can see this is
13 State's No. 43. You can see when you look here that
14 pistol ammo, rifle ammo, pistol boxes. What did
15 Anthony say Brad came out of the house with? A pillow
16 case with pistols in it. So Brad went in Joe Elliott's
17 bedroom, got that blanket, covered him up and went back
18 in his bedroom, opened his bedroom closet and cleaned
19 him out some more. He wasn't a threat anymore. He
20 wasn't a threat the minute Anthony shot him. He wasn't
21 a threat when his spine was shot and laying on the
22 ground helpless. He wasn't a threat anymore.

23 It took more than one person to haul of these guns
24 out of here. You are talking about a gun cabinet, that
25 by all accounts, would have had a pile of guns in it.

CLOSING ARGUMENT - MR. HUCKS

1 We don't know the exact number. We know there was a
2 pile of them. Everybody kept saying there was a pile
3 of them. There was a number of them. Some said seven,
4 eight. Somebody said 15, 18. There is a pile of guns
5 in this house that came out. He is a gun collector.
6 His buddies like to go shooting with him at his range.
7 He is retired trying to live his life, and his life was
8 stolen.

9 Here is what I was looking for earlier, State's 44.
10 There is that angle Mr. Diggs showed to you. There is
11 that angle. Does that go to the floor? No. It goes
12 to the broken louver door. You can see in this picture
13 here. You can see in State's 35 this is a broken
14 louver door under that rod. That is a struggle. That
15 is a man fighting for his life.

16 Now, Joe Elliott died. It took years for there to
17 be a break in this case, whatsoever. Madam Clerk, can
18 we turn the lights up a little bit? My eyes aren't
19 good enough to read in the dark. Excuse me one minute.

20 After Joe Elliott was executed on his floor, these
21 boys go back to Moon's house, Moon's house, Moon's
22 house. You have seen this 40 times, Moon's house.
23 They go there. Where do the guns go? Moon's house.
24 Where do the guns go? Moon's shed. Allen's shed where
25 Allen lived.

CLOSING ARGUMENT - MR. HUCKS

1 I'll try to take it -- I don't want to talk about
2 the defendants, because we'll get into that. I want to
3 talk to you a little bit about punishment and reward,
4 all right. There is a thing when you are a jury and
5 you have to decide who is telling you the truth and who
6 may not be telling the truth, and who is telling part
7 of the truth. The Judge will tell you what you can do
8 and what you can't do.

9 Who has no friends to reward and no enemies to
10 punish in this case? Three people in this case have no
11 friends to reward anymore or enemies to punish anymore.
12 Think about it now. Delilah. Delilah. You heard her
13 say Moon and her separated years ago because he beat
14 the tar out of her. They have 19 kids, or something.
15 He beat the tar out of her. She couldn't take it no
16 more, so she left. She lives at least two states away
17 from where he lives, doesn't want nothing to do with
18 him. What does she do? She came in here and testified
19 openly and honestly, and if you saw the look in her
20 eyes, she came in here and she testified, and you hear
21 what she said, and it made sense. We were at Moon's
22 house, my old house, while there, we were having a
23 cookout. We always had cookouts. Some of the other
24 people said, We always had people around. Little
25 Charlie said, My daddy always has pots cooking and

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1 people around him, right? There is always pots cooking
2 and people around, so we're cooking. Delilah says, I
3 have to do all of the cooking and wrangling 40
4 young'uns. They are at Moon's house cooking and Brad
5 and Anthony and a couple other people are sitting
6 around the picnic table. She overhears a conversation
7 involving Brad and Anthony talking to everybody at the
8 picnic table. You heard me tell her, Don't tell us
9 anything Anthony said, just what came out of Brad's
10 mouth. She told a story, didn't she? She told a
11 story. Not one friend left to reward, and not one
12 enemy left to punish. She told the story.

13 Allen Ray, that is number two. That is the fellow
14 who has no one to reward or punish. What is Allen Ray?
15 You saw him, he's dog gone near a bum, right? You
16 heard him testify or talk and saw his demeanor when he
17 was in here. You heard a couple other witnesses say
18 Allen lives wherever he lives, kind of gets around and
19 does his thing, works construction and makes due. You
20 heard he was living in a shed with a bed and air
21 conditioner. Now, what did Allen say? Allen said, I'm
22 laying in bed when I hear the truck pull up. When the
23 truck pulls up, I overhear the boys getting out of the
24 truck talking, and I can distinctly make out Brad and
25 Anthony's voices. I distinctly recognized their

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1 voices, and they are talking about killing somebody,
2 how they killed somebody. How they killed somebody.
3 Then I heard Moon's voice in there with them, and I
4 heard Brad tell Moon, We killed somebody, and then they
5 walk away.

6 He doesn't hear anything for awhile. Then they
7 walk back and he hears a little bit of talking, but not
8 related to that. Then they open the door to his side
9 of the shed where he lived, wooden side, and they show
10 him a bunch of guns. I need you to clean them so we
11 can sell them. Allen Ray doesn't have anybody. You
12 heard, he isn't close with anybody in the crowd. He
13 lives somewhere else a long, long ways away and want
14 nothing to do with them because they killed somebody.

15 Who is left that is out of people to reward or
16 punish? Anthony. All three of the codefendants in
17 this case, Arlie, Charlie and Anthony, sat in the this
18 witness stand and they told you, We're sitting up here
19 charged with burglary and murder, that is what we're
20 charged with now. Anthony didn't say that. He said,
21 I'm still charged with murder, but I took the
22 responsibility for my burglary, and not only did I do
23 it, Brad did it with me.

24 Think about what Anthony told you a little bit.
25 This is interesting. Who did Anthony put in it? Every

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1 single person that told a story told a story that
2 minimized their part, except for the three people that
3 have nobody left to reward or punish, Anthony, Delilah
4 and Allen. Everybody else kind of minimized their
5 part. We see this a lot, everybody sees is a lot.

6 When you are a kid and you're caught breaking a
7 window and you try to blame it on your cousin, right,
8 or say, I only held the rock and he threw it. That
9 stuff happens, I got it. These three folks got nobody
10 left. Did you see Anthony Ray up here? Did you see
11 his shoulders slumped down the way he was looking at
12 you all? What did he tell you? I, with Brad, planned
13 a burglary of this man's house. I didn't know who the
14 man was. Moon told us he didn't think the man would be
15 home, and Brad knew the man, so we got in the car, and
16 the entire way there, Brad said left turn here, right
17 turn. He's the Garmin, right, teaching them how to get
18 there.

19 When they get there, what does Anthony say? I beat
20 on the door. I beat on the door. This guy went to the
21 back door. He broke the window. We went in. We stole
22 everything but the fillings out of his teeth while we
23 was there, because he wasn't supposed to be home.
24 While we were there, Joe Elliott woke up, came out,
25 held Brad at gunpoint. I killed Joe Elliott, that is

CLOSING ARGUMENT - MR. HUCKS

1 what Anthony said. I shot him, and I didn't know it at
2 the time, but I know it now since my case is further
3 along, my shot would have killed Joe Elliott. Joe
4 Elliott was harmless. He was harmless on the floor
5 choking on his own breath, and Brad Mullins in sheer
6 anger grabbed the revolver, boom, left side of the
7 head. That is what Anthony says.

8 Why would Anthony have to lie at this stage? Think
9 about it. He's here broken. He's here broken. He's
10 in here in prison telling you what happened in that
11 house while he was there. Telling you not only did
12 Brad kill him, I killed him too. We killed him. Think
13 about that. That should be, from my perspective, the
14 most compelling testimony in the whole case, we killed
15 him. We killed him together. We robbed him. We
16 planned the robbing. We went to his house. We broke
17 into the house as a team. They are a team, folks.

18 If you haven't learned anything about this crowd so
19 far through this trial, you learned that they are
20 family, tight knit group. You heard Brad's mama
21 testify she didn't know where he worked, what he did,
22 but he tells her everything, right? You heard the
23 sister say they went out while she was pregnant and
24 played pool at a bar, or something, and he would have
25 told us these things. I contend to you that your mama

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1 and sister aren't the people you talk to about this
2 stuff, right? You talk about it with the people that
3 you don't think are going to think less of you for
4 blowing a man's head off in his house. If you learned
5 anything from the Mullins family, they are the kind of
6 folks you can talk that way around.

7 It took years before this came to light. That is
8 honest. It is what it is. Delilah, when Delilah came
9 forward, finally, after one punch too many, she came
10 forward and had details of this case. She had intimate
11 details. How would she know that the man was shot on
12 the side of the head and once in the chest? How would
13 she know that? She heard it out of this man and
14 Anthony Ray's mouth, because they are a team. They are
15 a team.

16 I'll talk with you about Charlie and Arlie.
17 Charlie and Arlie's statement, there is no doubt they
18 are trying to minimize anything they had to do with it.
19 They are minimizing it, right? They don't want nobody
20 -- if they helped plan it, they don't want anybody to
21 know they helped plan it. But they came in here and
22 testified, and everything single one of these witness
23 have a common theme. If you strip away the
24 inconsistencies between any of the stories, what is
25 consistent? What is consistent? What is consistent is

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1 Charlie drove the car, Arlie is in the passenger's
2 seat, other two boys in the back. Brad gave directions
3 to get there. We got there. Brad and Anthony got out
4 of the car. Brad and Anthony went in the house,
5 everybody agrees on that.

6 When Brad and Anthony got back in the car, they had
7 a comforter full of guns -- or sleeping bags, whatever.
8 So bam, bam, bam. Moon, who is minimizing his role, as
9 natural to do, Moon's story is exactly the same thing.
10 He told me boom, boom, boom. The common core here --
11 if there wasn't differences in it, you would have to
12 think they were lying because everybody sees things
13 differently. I might look at that door swing open and
14 somebody walk through it and we'll talk about different
15 hair styles or gait differently or different watch.

16 So let's look at what is consistent across the
17 board. What is also consistent? This guy cannot keep
18 his trap shut. There's an old saying in law that a
19 fish wouldn't get caught if he kept his mouth shut,
20 right? But he didn't. He came back. He's a thug, got
21 in with the thug crowd and bragged about what he did.

22 Now, as a jury you have to ask yourself a lot of
23 questions --

24 MR. DIGGS: I object to the characterization. It
25 is outside the evidence to "thug."

CLOSING ARGUMENT - MR. HUCKS

1 THE COURT: We're in closing arguments. Go ahead,
2 Mr. Hucks.

3 MR. HUCKS: Thank you, Your Honor.

4 He comes back and can't keep his trap shut, mouth
5 shut. He has to tell somebody. That is street credit,
6 man. He's going to get points with the crowd. Nobody
7 is going to bother him no more. So he tells the people
8 he thinks he can tell to get the most out of it.

9 Another thing you notice out of the Mullins family
10 and Ray family is when they testify they try to spin it
11 to make them look the best they can, all of them, every
12 one of them. So he does the same thing, the exact same
13 thing. He spins this murder tale to get all of the
14 credibility he can get to make himself look as bad as
15 he can. He wants to tell people that will respect that
16 kind of story.

17 As cliché as it is to say, if you want to prosecute
18 the devil, you have to go to hell for your witnesses.
19 That is where they come from. These are all people
20 eating out of the same bowl. These are all people cut
21 out of the same cloth.

22 Now, I want to talk to you about something Arlie
23 said, and I'm looking to get into his statement. You
24 heard it, and it is a lot like Charlie and what you
25 heard all of these people say. What, 15, 18 witnesses