

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable J. Cordell Maddox, Circuit Court Judge

GENE TONY COOPER,

RECEIVED

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S.C. SUPREME COURT

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001149

APPENDIX

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INDEX

INDEX	i
RECORD ON APPEAL VOL 1	1
RECORD ON APPEAL VOL 2	507
RECORD ON APPEAL VOL 3	1013
RECORD ON APPEAL VOL 4	1519
APPLICATION FOR POST-CONVICTION RELIEF	1595
RETURN.....	1604
AMENDED APPLICATION FOR POST CONVICTION RELIEF	1611
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	1614
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated December 11, 2017).....	1620
ORDER OF DISMISSAL.....	1710
INDICTMENTS	1783

1 Q What was the weather like that day; do you
2 recall?

3 A It was very nice that day.

4 Q And do you recall the date that you saw these
5 people?

6 A Yes, sir. I'd come to work that morning and
7 had, you know, a lot to do that day in the apartment
8 and clean, but, you know, things kind of took my
9 mind off of that a little bit, so.

10 Q What was the date, if you can remember it?

11 A It was a Thursday, the 5th of October I
12 believe.

13 Q 1989?

14 A Yes, sir, in '89, maybe the 4th. I can't
15 remember.

16 MR. BELL: Your Honor, if I may approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. BELL:

20 Q Mr. Harley, I want to show you this picture and
21 ask if you can identify that?

22 A Yes, sir. That's the car that was backing in
23 in front of me at the apartment complex that day..

24 Q And that's the same license tag?

25 A That's it, yes, sir, with the Clemson sticker

1 here.

2 Q And I want to show you another picture from a
3 different angle and ask if that's --

4 A That's the same car, yes, sir.

5 Q And that's the sticker?

6 A That's correct, yes, sir, that's it.

7 MR. BELL: Your Honor, we'd offer these into
8 evidence. We have not previously. I don't think
9 they have any objection.

10 THE COURT: Any objection?

11 MR. DUNCAN: No, sir, Your Honor.

12 THE COURT: What are those numbers?

13 MR. BELL: It will be 16 and 17, Your Honor.

14 THE COURT: State's 16 and 17 in evidence
15 without objection.

16 (State's Exhibit Numbers 16 and 17,
17 photographs, admitted into evidence.)

18 BY MR. BELL:

19 Q Now, Mr. Harley, you stated that during that
20 afternoon between the third and the fourth visit of
21 that vehicle, you talked with Sharon Freeman?

22 A Yes, sir, that's correct.

23 Q What was the substance of the conversation, not
24 what exactly everybody said?

25 A She had young children and, of course, she was

1 concerned about what may be going on around. So we
2 spoke and I told her then that, you know, I was
3 watching the situation also just to reassure her
4 that, you know, somebody was there with her. And
5 she said she had observed the same --

6 **MR. DUNCAN:** Objection, Your Honor.

7 **THE COURT:** Yes, sir.

8 **MR. DUNCAN:** I object on the basis of hearsay.
9 He's reporting a direct conversation he indicates he
10 heard.

11 **THE COURT:** Do you wish to respond?

12 **MR. BELL:** I'll withdraw that part of it.

13 **THE COURT:** All right. Go ahead.

14 **BY MR. BELL:**

15 **Q** Now, you stated that you gave the license
16 number. What did you do with that? Did you write
17 that down on another piece of paper or what did you
18 do?

19 **A** Yes, sir. I wrote it down on the window sill
20 until the next morning whenever the policemen were
21 across the street. Then I wrote it down for them.

22 **Q** Did you ever tell -- did you tell your uncle
23 about it?

24 **A** Yes, sir. I reported to my uncle about the --
25 what was going on. And I gave him a piece of paper

1 with the tag number, I believe, that day. And he
2 was going to call West Columbia Police Department to
3 have them come down there and see if there was some
4 suspicious stuff going on. And I don't know if they
5 ever came down there or not.

6 Q Okay. Now, the next day, which would have been
7 October the 6th, did you notice anything -- excuse
8 me -- did you go back to the apartments that day?

9 A Yes, sir. I went back that day. And when I
10 got to work that morning, there was a big commotion
11 on Platt Springs Road at a house. I saw multiple
12 policemen and all over there, so.

13 Q And what did you do when you saw that?

14 A Well, I knew something had, undoubtedly, had
15 gone down that night, so I went ahead and walked

16 across the street and spoke to detective -- well, at
17 that time, Lieutenant Tyndal.

18 Q And what did you tell him?

19 A I had told him about the suspicious characters
20 at the house -- at the apartments the day before.
21 And I told him that I had taken down the tag number.
22 So he asked me to go back across the street, write
23 the tag number down and bring it to him.

24 Q And you did that?

25 A Yes, sir, and I did that.

1 Q Okay. Did you do anything else with the police
2 that day?

3 A Yes, sir. I believe later on, it was a little
4 while later when I went down and gave them a
5 statement. I'm not sure if it was that day or the
6 next. I'm not clear on that. I think it was that
7 day.

8 Q And some time after that, they -- or however
9 long it was, did the police come see you again?

10 A Yes, sir. They brought a lineup of people on a
11 piece of folder.

12 Q Did they come one time or did they come more
13 than one time?

14 A They came twice that day, about three or four
15 hours apart I believe.

16 Q When they came the first time, do you recall
17 that?

18 A Yes, sir. They came the first time and had a
19 picture, a lineup of six different men on a piece of
20 folder of pictures. All of them, you know, kind of
21 looked a little alike. And they asked me to pick
22 them out of there. So I went ahead and picked the
23 first suspect out.

24 Q Okay. Do you recall -- was that the driver or
25 the passenger?

1 **A** It was the passenger the first time.

2 **Q** Okay. And which officers came to see you?

3 **A** Detective Hall or -- I believe he was Chief
4 Hall at that time, and Fred -- I can't remember
5 Fred's last name.

6 **MR. BELL:** Your Honor, may I approach the
7 witness?

8 **Q** Mr. Harley, I want to show you this. There's a
9 cardboard part and a piece of paper stapled to it
10 and ask if you recognize these items?

11 **A** Yes, sir. This is the first lineup sheet they
12 brought to me.

13 **Q** Okay. And how did they present that to you?

14 **A** They presented -- just presented it to me and
15 asked if there was anything on there I saw was
16 familiar or had seen the day before.

17 **Q** Did they indicate that any of these men could
18 be on that?

19 **A** No, sir, they did not.

20 **Q** Okay. Did they tell you which picture to pick
21 on that?

22 **A** No, sir. After I did pick the picture, they
23 didn't even indicate whether I'd picked the one that
24 they thought was right.

25 **Q** And which picture did you pick on that?

VOLUME TWO OF FOUR

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE TONY COOPER, JR.,

APPELLANT

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INDEX

INDEX	i
DEFENDANT'S MOTION 1 (DEFENDANT'S AMENDED DEMAND FOR SPEEDY TRIAL)	1
PRE-TRIAL TRANSCRIPT DATED AUGUST 18, 2008	4
DEFENDANT'S MOTION 2 (DEFENDANT'S RENEWED DEMAND FOR SPEEDY TRIAL)	18
PRE-TRIAL TRANSCRIPT DATED FEBRUARY 15, 2005	22
ORDER FOR SPEEDY TRIAL	29
DEFENDANT'S MOTION 3 (NOTICE OF MOTION AND MOTION TO DISMISS ALL CHARGES FOR LACK OF SPEEDY TRIAL)	30
MOTIONS HEARING DATED JULY 12, 2005	37
MOTION TO DISQUALIFY AND RECUSE DEFENDANT'S ATTORNEYS AND AGENTS	68
ORDER REGARDING MOTIONS AND DENYING MOTION TO DISQUALIFY	76
DEFENDANT'S MOTION 4 (NOTICE OF MOTION AND RENEWED MOTION TO DISMISS ALL CHARGES FOR LACK OF SPEEDY TRIAL)	80
STATE'S RESPONSE TO DEFENDANT'S MOTION FOR SPEEDY TRIAL AND/OR GRANTING BAIL	86
DEFENDANT'S REPLY TO STATE'S RESPONSE TO RENEWED MOTION TO DISMISS FOR LACK OF SPEEDY TRIAL	91
TRANSCRIPT DATED FEBRUARY 8, 2006	101
DEFENDANT'S EXHIBIT 1 (FILE OF DOCUMENTS OF SOLICITOR MYERS)	267
DEFENDANT'S EXHIBIT 2 (ROSTER OF PENDING CASES)	296
ORDER OF JUDGE PIEPER DATED APRIL 21, 2006	328

TRIAL TRANSCRIPT DATED MAY 22, 2006	345
OPENING STATEMENTS BY MR. BELL	405
OPENING STATEMENTS BY MR. BRUCK	413
TESTIMONY	

AMANDA K. VAUGHN	
Direct Examination by Mr. Bell	424
Cross Examination by Mr. Bruck	430

SHIRLEY LOUISE POWELL	
Direct Examination by Mr. Bell	433
Cross Examination by Mr. Bruck	437
Redirect Examination by Mr. Bell	440

ELIZABETH LOUISE GRIFFIN	
Direct Examination by Mr. Bell	441
Cross Examination by Mr. Bruck	454

MIKE HUTCHINS	
Direct Examination by Mr. Lupton	457
Cross Examination by Mr. Bruck	466

ANDREW SCOTT BALDWIN	
Direct Examination by Mr. Bell	467

ROBERT DENNIS TURNER	
Direct Examination by Mr. Bell	476

DANA HARLEY	
Direct Examination by Mr. Bell	481

VOLUME TWO

DANA HARLEY	
Cross Examination by Mr. Duncan	506
Redirect Examination by Mr. Bell	512
Recross Examination by Mr. Duncan	513

LARRY HALL	
Direct Examination by Mr. Bell	535
Cross Examination by Mr. Duncan	545
Redirect Examination by Mr. Bell	547

CLARK H. ROWE

Direct Examination by Mr. Lupton	549
Cross Examination by Mr. Duncan	572

DR. JOEL STEVEN SEXTON

Direct Examination by Mr. Bell	574
Cross Examination by Mr. Bruck	594

RICHARD MCDERMOTT

Direct Examination by Mr. Bell	604
Cross Examination by Mr. Bruck	614
Direct Examination by Mr. Bell	636

NANCY SKRABA

Direct Examination by Mr. Bell	645
Cross Examination by Mr. Bruck	654
Redirect Examination by Mr. Bell	663

JEFFREY MORRIS HOLLIFIELD

Direct Examination by Mr. Bell	667
Cross Examination by Mr. Duncan	679

ROBERT SOUTHERLAND

Direct Examination by Mr. Bell	681
Cross Examination by Mr. Bruck	715
Redirect Examination by Mr. Bell	816

MARSHA BURROUGHS CRANE

Direct Examination by Mr. Bell	880
Cross Examination by Mr. Andrews	885
Redirect Examination by Mr. Bell	895
Recross Examination by Mr. Andrews	899
Redirect Examination by Mr. Bell	900

TERESA SHUMPERT DUNN

Direct Examination by Mr. Lupton	901
Cross Examination by Mr. Andrews	909
Redirect Examination by Mr. Lupton	913

BUSTER LEE CHAVIS

Direct Examination by Mr. Bell	914
Cross Examination by Mr. Andrews	919
Redirect Examination by Mr. Bell	923

GERALD O'NEIL LEGRAND

Direct Examination by Mr. Bell	925
Cross Examination by Mr. Duncan	926

VOLUME THREE

BLAKE E. TAYLOR, JR.

Direct Examination by Mr. Bell	1014
Cross Examination by Mr. Bruck	1019
Redirect Examination by Mr. Bell	1023

NORMAN EDWIN STARNES

Direct Examination by Mr. Bruck	1036
Cross Examination by Mr. Bell	1047
Redirect Examination by Mr. Bruck	1049

BESSIE W. DAVIS

Direct Examination by Mr. Andrews	1050
Cross Examination by Mr. Lupton	1059

NAIDA KNOTTS

Direct Examination by Mr. Andrews	1063
Cross Examination by Mr. Lupton	1069

LORI R. VAN WALLENDael

Direct Examination by Mr. Duncan	1074
Cross Examination by Mr. Bell	1092
Redirect Examination by Mr. Duncan	1098

KIMBERLY ERIN TURNER

Direct Examination by Mr. Bruck (In Camera)	1114
Cross Examination by Mr. Lupton (In Camera)	1119
Direct Examination by Mr. Bruck	1127
Cross Examination by Mr. Lupton	1136

GENE COOPER, SR.

Direct Examination by Mr. Andrew	1168
Cross Examination by Mr. Lupton	1176
Redirect Examination by Mr. Andrews	1181
Recross Examination by Mr. Lupton	1182

GENE COOPER, JR.

Direct Examination by Mr. Bruck	1185
Cross Examination by Mr. Bell	1252

EDWARD VERNON HITE

Direct Examination by Mr. Lupton	1275
Direct Examination by Mr. Lupton (In Camera)	1279
Cross Examination by Mr. Bruck (In Camera)	1283
Direct Examination by Mr. Lupton	1302
Redirect Examination by Mr. Lupton	1321
Recross Examination by Mr. Bruck	1324

CLOSING ARGUMENT BY MR. LUPTON	1341
CLOSING ARGUMENT BY MR. BRUCK.....	1354
CLOSING ARGUMENT BY MR. BELL.....	1446
CHARGE OF THE COURT.....	1486

VOLUME FOUR

VERDICT OF THE JURY.....	1521
SENTENCING OF THE COURT	1535
COURT'S EXHIBIT 3 (AFFIDAVIT OF JAMES M. FRAZIER, III)	1539
COURT'S EXHIBIT 4 (AFFIDAVIT OF B. HARRISON BELL)	1541
DEFENDANT'S EXHIBIT 3 (LETTER FROM ROBERT SOUTHERLAND).....	1542
COURT'S EXHIBIT 5 (STIPULATION).....	1543
COURT'S EXHIBIT 6 (STIPULATION).....	1544
COURT'S EXHIBIT 7 (STIPULATION).....	1545
COURT'S EXHIBIT 8 (STIPULATION).....	1546
COURT'S EXHIBIT 10 (STIPULATION).....	1547
COURT'S EXHIBIT 11 (STIPULATION).....	1548
STATE'S MOTION TO STRIKE ALL GUILT PHASE ISSUES FROM THE INITIAL BRIEF OF APPELLANT SOUTHERLAND AND SUPPLEMENT RECORD ON APPEAL ..	1549
APRIL 11, 1992 STATEMENT OF ROBERT SOUTHERLAND ADMITTING GUILT AND EXONERATING APPELLANT	1557
INDICTMENTS	1561
SENTENCING SHEETS	1566
CERTIFICATE OF COUNSEL.....	1570

1 **A** Number four.

2 **Q** And who was that?

3 **A** I believe Cooper.

4 **Q** I mean, which -- the driver or the passenger?

5 **A** It was the passenger.

6 **Q** And there's a sheet of paper with that. Do you

7 recognize that sheet of paper?

8 **A** Yes, sir.

9 **Q** What is that?

10 **A** That's my signature and my address at the time.

11 **Q** And what does it state?

12 **A** That I picked out picture number four.

13 **Q** And what's the date on that?

14 **A** 17th of October, 1989.

15 **Q** Was that the day that you were shown those?

16 **A** Yes, sir, that's correct.

17 **MR. BELL:** Okay. Your Honor, we'd offer this

18 into evidence as State's Exhibit 18.

19 **MR. DUNCAN:** No objection.

20 **THE COURT:** State's 18 in evidence without

21 objection.

22 (State's Exhibit Number 18, photo lineup,

23 admitted into evidence.)

24 (COURT REPORTER'S NOTE: State's Exhibit

25 Number 18 was previously marked as Court's Exhibit

1 Number 1.)

2 BY MR. BELL:

3 Q Now, did the police come back again that day?

4 A Yes, sir. They came later that evening with
5 another set of photos.

6 Q And who was that? Which officer came?

7 A I believe it was the same two, Officer Hall and
8 Fred.

9 Q And what did they do that time?

10 A Asked me to pick out a, you know, see if I
11 could -- saw anybody I recognized in this lineup.

12 MR. BELL: And, Your Honor, may I approach the
13 witness?

14 THE COURT: Yes, sir.

15 BY MR. BELL:

16 Q Let me show you this. Again, it's another
17 folder with a sheet of paper attached to it. If
18 you'd look at that and state what that is.

19 A This is the folder they brought me that night
20 and that's the photos I had to pick from.

21 Q Okay. Did they tell you that there was -- one
22 of the individuals was in that lineup?

23 A No, sir.

24 Q Did they tell you which picture to point out?

25 A No, sir.

1 Q Did they indicate in any way that there was
2 anybody of significance in that lineup?

3 A No, sir.

4 Q And when they -- when they showed it to you and
5 opened it up, did you see somebody you recognized?

6 A Immediately I went to picture number two, yes,
7 sir.

8 Q And what's that a picture of? Is that the
9 passenger or the driver?

10 A That was the driver that day.

11 Q That's the one you described with white or
12 blondish hair?

13 A Yes, sir, with the round face and kind of high
14 cheeks.

15 Q Okay. And what's this piece of paper that's
16 attached to it?

17 A That's the paper saying I picked out picture
18 number two, that's my signature and the place I
19 lived at that time.

20 Q And what's the date on that?

21 A 17th of October.

22 Q 1989?

23 A 1989, yes, sir.

24 MR. BELL: Your Honor, we'd offer this as
25 State's 19 I believe.

1 **THE COURT:** Any objection?

2 **MR. DUNCAN:** No objection.

3 **THE COURT:** State's 19 in evidence without
4 objection.

5 (State's Exhibit Number 19, photo lineup,
6 admitted into evidence.)

7 (COURT REPORTER'S NOTE: State's Exhibit
8 Number 19 was previously marked as Court's Exhibit
9 Number 2.)

10 **BY MR. BELL:**

11 **Q** Now, referring you back to State's 18 and I'll
12 put it back up here again. Now, when they opened
13 that, how long did it take you to recognize anybody
14 in that when they first showed it to you?

15 **A** I immediately picked out picture number four.

16 **Q** No hesitation?

17 **A** No hesitation, no, sir.

18 **Q** You saw these individuals four times on October
19 5th, 1989?

20 **A** Yes, sir, that's correct.

21 **Q** And I don't know -- the first time you said was
22 about ten or 15 minutes?

23 **A** Yes, sir. They parked for about ten or 15
24 minutes there.

25 **Q** And the second time, how long did you get to

1 observe these --

2 **A** About the same amount of time the second time
3 and -- no, the second time they drove through. He
4 drove and let the passenger out and that's when he
5 sat down on the steps.

6 **Q** So you got to see the passenger for how long?

7 **A** That was a good 15 minutes, yes, sir.

8 **Q** And you just saw the driver when they drove in
9 and out?

10 **A** Right. He basically drove in and let him out
11 and then he came and sat down.

12 **Q** And then the third time, how long did you --
13 how long did they remain there that time?

14 **A** The third time they were there about 15 minutes
15 the third time.

16 **Q** And then the fourth time when you said they
17 drove through, how --

18 **A** They drove through, you know, they drove
19 through and I saw the driver and then I saw the
20 passenger. And then when they parked up towards
21 Platt Springs for about five to ten minutes or so.

22 **Q** Where did they park?

23 **A** They actually stayed right in the middle of the
24 driveway because nobody was coming in or out. So
25 they were parked right there at the driveway looking

1 both ways.

2 Q The driveway to...

3 A Of the Lyngate Apartments.

4 Q So were they blocking the entrance or --

5 A Pretty much, yes, sir, they were blocking the
6 entrance.

7 Q Okay. But they were parked on Platt Springs
8 Road?

9 A Yes, sir, right on -- the nose of the car was
10 basically on Platt Springs Road.

11 Q And your attention was focused every time you
12 saw this vehicle?

13 A That's correct. Yes, sir, I was focused.

14 MR. BELL: Thank you, Mr. Harley. Please
15 answer any questions that Mr. Duncan has for you.

16 CROSS-EXAMINATION

17 BY MR. DUNCAN:

18 Q Good afternoon, Mr. Harley.

19 A Good afternoon.

20 Q Mr. Harley, you just testified that the
21 passenger, the dark-haired passenger you saw was
22 five eight to six foot, correct?

23 A Yes, sir.

24 Q All right. In the statement you gave to the
25 police officers that same day or the day after, you

1 did not say five eight, did you?

2 A No, sir.

3 Q You said six foot one, did you not?

4 A Yes, sir, around six foot one.

5 Q Okay. But you didn't give any range. You just
6 said a tall person, six foot one?

7 A Okay. Yes, sir.

8 Q I mean, that was your testimony then?

9 A Right.

10 Q Five eight is your testimony now 17 years
11 later?

12 A Right.

13 MR. DUNCAN: Could I approach, Your Honor, the
14 witness?

15 Q I'm handing you, I guess, State's Exhibit 18.
16 Those six folks, that's the only photos you were
17 shown?

18 A Yes, sir.

19 Q You weren't shown them sequentially, one at a
20 time by themselves?

21 A No, sir. They were all presented to me just as
22 they are in the folder there.

23 Q Okay. Now, number one has a round face, does
24 he not?

25 A Yes, sir.

1 Q All right. And number two has a long face,
2 correct?

3 A Long and thin, yes, sir.

4 Q All right. And number three is a Latino,
5 perhaps a Mexican, a Hispanic person, correct?

6 A I wouldn't know that looking at him, no, sir.

7 Q But you could see that, could you not?

8 A I could see it with about anybody. I don't
9 know his nationality. So, I mean, he looks just
10 dark haired with a mustache and goatee.

11 Q But you said in the past, he could be a Mexican
12 or Spanish type person is what you said, did you
13 not?

14 A Right. That's correct.

15 Q Okay. So Latino, Spanish, just not an
16 Anglo-Saxon person, correct?

17 A Yes, sir. I'll agree there.

18 Q And then number five and number six both have
19 round faces also, don't they?

20 A Yes, sir.

21 Q All right. So the number four, which you've
22 identified as the passenger, was the only person in
23 those six who had the shaped face of the person you
24 say you saw, correct?

25 A Yes, sir.

1 Q Okay. Now, you also said that as the state's
2 exhibit for the second lineup, that you went
3 immediately to Mr. Sutherland, correct?

4 A That's correct.

5 Q Okay. Did the officers tell you that the
6 person that they suspected might not be in the
7 lineup?

8 A No, sir, they didn't tell me that.

9 Q And while you were there in the apartment, is
10 it fair to say that the great majority of the time
11 you were looking at these folks was through the
12 peephole in the door?

13 A No. The majority of the time I was looking out
14 the four-by-four window.

15 Q Okay. And when you were looking out the
16 four-by-four window when they were backed up to you,
17 your -- what could you see at that time?

18 A Well, you could see -- sometimes you could see
19 their profile both sides. You could see, you know,
20 basically hair color, you know, see which way
21 they're observing, which way they're watching.

22 Q Okay. And you also, though, looked for a
23 considerable length of time through the peephole,
24 correct?

25 A Yes, sir, that's correct.

1 Q Now, the peephole is what I would call a
2 fisheye lens?

3 A Pretty much so, yes, sir.

4 Q And that fisheye lens distorts what you see;
5 isn't that correct?

6 A Yes, sir.

7 Q Kind of a fun house or just a very distorted
8 view of what you're seeing, correct?

9 A Yes, sir.

10 Q All right. Mr. Harley, the Solicitor took you
11 through -- Mr. Bell took you through these various
12 lengths of time, 45 minutes to an hour in total?

13 A Of the time they were there?

14 Q Yes, sir.

15 A Yes, sir. I'd say 45 minutes to an hour they
16 were there total, yes, sir.

17 Q All right, sir. But isn't it accurate that the
18 actual length of time that you used to make this
19 identification was much, much smaller?

20 A I wouldn't say -- I mean, I observed them the
21 whole time so I would pick up little bits and pieces
22 each time I was observing them.

23 Q All right. But you said you saw the
24 passenger's face, the front of his face for five to
25 six seconds?

1 **A** That's correct walking directly towards me, so
2 I was able to pick up his direct features in front
3 of him.

4 **Q** Now, this is the first time today, 17 years
5 later, that you've used that five to six seconds,
6 isn't it?

7 **A** That's not correct, no, sir.

8 **Q** Didn't you testify 17 -- 16 years ago that it
9 was only three seconds?

10 **A** Three to five, I believe.

11 **MR. DUNCAN:** Begging the Court's indulgence.

12 (Pause.)

13 **Q** Now, Mr. Harley, on February -- during the term
14 of Court in February of 1991, I'm going to read a
15 question and an answer and ask you if you said that.

16 **A** Okay.

17 **Q** And it comes from page 1506 of the transcript:
18 So is it -- or it is fair to say that you viewed him
19 for a total of about three seconds?

20 And the answer was: Three seconds, yes, sir.

21 Was that your answer then?

22 **A** I said that, yes, sir.

23 **Q** Okay. But you changed your answer now 17 years
24 later?

25 **A** Yeah, maybe a couple seconds, yeah.

1 **MR. DUNCAN:** That's all. Thank you.

2 **THE COURT:** Any follow-up?

3 **MR. BELL:** Yes, Your Honor.

4 REDIRECT EXAMINATION

5 **BY MR. BELL:**

6 **Q** Mr. Harley, referring back to...

7 **A** The pictures?

8 **Q** Yes. State's 18. I'm just looking at -- what
9 did you base picking picture number -- was it number
10 four out of that one?

11 **A** Yes, sir.

12 **Q** What did you base picking picture number four
13 out of?

14 **A** That I observed him the previous week at the
15 apartment complex. I knew right off the bat who it
16 was.

17 **Q** That was the person?

18 **A** Yes, sir.

19 **Q** Not because he had a smaller face than the
20 others?

21 **A** No, sir.

22 **Q** Not because he might have looked a little
23 different than the others?

24 **A** No, sir.

25 **Q** You went straight to that picture?

1 **A** Straight to it, yes, sir.

2 **Q** Because of why?

3 **A** Because I knew that was the guy who had been
4 there. He was -- that's who it was.

5 **MR. BELL:** Thank you, Mr. Harley. That's all I
6 have.

7 RECROSS-EXAMINATION

8 **BY MR. DUNCAN:**

9 **Q** Mr. Harley, did you, in February of 1991, say
10 the following in response to this question, question
11 -- page 1443 -- 1434: You are basing your
12 identification on the three seconds you saw him walk
13 in front of this window, and your answer was, Right?

14 **A** Yes, sir, I said that.

15 **Q** Okay. That was your testimony then. And was
16 it your testimony then in this passage from 1433:
17 Okay, and it is correct to say, though, isn't it,
18 that you could not base your identification on
19 seeing him out of the peephole eye; is that right?

20 **A** That's correct.

21 **Q** And your answer was: No, sir, I couldn't have,
22 no?

23 **A** Right.

24 **MR. DUNCAN:** Thank you.

25 **MR. BELL:** Nothing further, Your Honor.

1 **THE COURT:** You may step down, sir. Thank you.

2 **MR. BELL:** Your Honor, may we approach?

3 (Whereupon, a bench conference was held off
4 the record, in the presence of the jury, but out of
5 the hearing of the jury.)

6 **THE COURT:** Ladies and gentlemen, I'm going to
7 go ahead and send you to lunch. Write your names on
8 the front of your pads please and give them to the
9 bailiff on your way out and they'll secure them
10 during the lunch break. Do not discuss this case in
11 any way whatsoever. We'll see you back at 1:30.
12 Have a good lunch.

13 (The jury was excused for lunch.)

14 **THE COURT:** What were you asking me?

15 **MR. BELL:** Your Honor, our next witness would
16 be Ms. Sharon Freeman Clonts who is deceased. And
17 we would use the transcript of her testimony from Bo
18 Sutherland. And I really hadn't done one before so
19 I was probably going to use my assistant here to
20 question and answer. And I didn't know if the
21 defense wanted to do the cross-examination part.
22 And I just kind of wanted to make sure the mechanics
23 were right before I got into it.

24 **THE COURT:** You have someone that's going to
25 read it?

1 **MR. BELL:** Can we just read it or can we go
2 back and forth?

3 **THE COURT:** It doesn't matter to me if you want
4 to read your part and they read their part. If
5 y'all arrange for someone to do the reading.

6 **MR. BELL:** Okay.

7 **THE COURT:** All right. Thank you. See y'all
8 back then.

9 **MR. DUNCAN:** I'm sorry, Your Honor. What time
10 did you say to return?

11 **THE COURT:** 1:30.

12 (Whereupon, there was a luncheon recess.)

13 (State's Exhibit Numbers 20 through 22 and
14 32 through 36 and 38 were marked for identification
15 purposes.)

16 **THE COURT:** Are y'all ready to proceed?

17 **MR. LUPTON:** Yes, Your Honor.

18 **THE COURT:** Bring the jury in, please.

19 (The jury returns to the courtroom.)

20 **THE COURT:** All right. Ladies and gentlemen, I
21 hope you had a good lunch. We're ready to proceed
22 at this time.

23 Go ahead.

24 **MR. BELL:** Please the Court, Your Honor. Next
25 would be the testimony of Sharon Freeman Clonts.

1 Unfortunately, Ms. Clonts has died since her last
2 testimony and I would be reading her testimony from
3 the Bo Sutherland trial, I believe, in 1990 -- from
4 1992.

5 **THE COURT:** All right. Ladies and gentlemen,
6 this was testimony that was given under oath and
7 subject to cross-examination. You should consider
8 that testimony as you would any other testimony in
9 the case.

10 Go ahead.

11 **MR. BELL:** Thank you, Your Honor.

12 Please state your name for the record please,
13 ma'am.

14 Sharon Clonts.

15 And, Ms. Clonts, where do you work?

16 Petroleum Gas Service.

17 Where is that located?

18 4702 Augusta Road, which is Highway Number 1.

19 How long have you been working there?

20 Six years.

21 Ms. Clonts, back in October of '89, where were
22 you living at that time?

23 [REDACTED] Lyngate Apartments on Platt Springs Road.

24 All right. What apartment were you living in?

25 [REDACTED].

1 I think I -- if you could, I think that little
2 pointer might still be up there.

3 She -- answer: She laid it over there.

4 Referring to State's Exhibit Number 1, have you
5 seen this diagram before, haven't you?

6 Yes, sir.

7 Please show the jury which apartment you were
8 living in in October of 1989. This one, right?

9 The apartment right here (indicating).

10 Now, the apartment that you were living in, if
11 you pull into the apartment complex, that would have
12 been on the right?

13 Answer: Right.

14 In that building, how many apartments were
15 downstairs?

16 The building that I lived in?

17 Yes, ma'am.

18 They were townhouses. It was two apartments
19 upstairs and downstairs.

20 Now, which part of that building would you have
21 been living in, the back part of the apartment
22 complex or the front part?

23 The front.

24 Can you see on any one of those photographs
25 where your apartment would have been?

1 Right here, that would have been my kitchen
2 window.

3 That's the front or the back?

4 The front.

5 Okay. Do you see on any of those photographs
6 the back of your apartment complex?

7 Right here.

8 Now, you don't live there anymore, do you?

9 No, sir.

10 Since then you have gotten married?

11 Right.

12 I am used to calling you by another name
13 because I'm not familiar with your married name.
14 What was your name back then?

15 Sharon Freeman.

16 Ms. Freeman, do you mind if I call you Ms.
17 Freeman?

18 That's fine.

19 I get confused. Do you have any children
20 living with you when you were there?

21 Yes, sir. My daughter Kristina was then 12 and
22 my son Wes, which was ten.

23 Did they go to school?

24 Yes, sir.

25 And where did they go to school?

1 Kristy went to R.H. Fulmer Middle School and
2 Wesley attended George I. Pair.

3 Now, when they would get home in the afternoon,
4 would you have to be involved in any way with them
5 when they got home from school?

6 Yes, sir. The school bus would drop Kristy
7 off. I had no problem with her. But we lived just
8 about three tenths of a mile too close to the school
9 for Wesley to ride the bus, so I had to arrange to
10 have my lunch hour between 2:30 and 3:30 where I
11 could pick him up from school and take him home.

12 That was your son?

13 Yes, sir.

14 On Thursday, October the 5th of 1989, did you
15 bring your son home from school that day?

16 Yes, sir.

17 And you said between 2:30 and 3:30?

18 Right.

19 Now, if we just take half of that and round it
20 off at three o'clock, give or take some, of course.

21 Right.

22 Did you have an occasion to go back to your
23 apartment complex and bring your son home from
24 school?

25 Yes, sir.

1 Would you show the jury which direction you
2 would have been coming down Platt Springs Road and
3 turning in the apartment complex?

4 (Indicating) like that.

5 Okay, when you were coming down Platt Springs
6 Road on the diagram and pulling into the apartment
7 complex, what, if anything, unusual attracted your
8 attention?

9 Because a car was backed in the parking lot
10 just sitting there with two white males in it,
11 backed in, just sitting there.

12 Where was that car backed in?

13 They were right there.

14 This would have been approximately three
15 o'clock, give or take some minutes or so?

16 Correct.

17 Where on that photograph or in any one of those
18 photographs, could you demonstrate to the jury where
19 the car would have been backed in?

20 The car would have been right here or either
21 space right beside it, right there right by my
22 window.

23 I think that photograph is pretty much --
24 there's a little walkway in there. Show them on the
25 diagram where that photograph is.

1 The breezeway?

2 Yes.

3 Right here is the breezeway where the picture
4 was taken from really.

5 On the drawing, where would that breezeway be
6 on the drawing?

7 I'm sorry. Right here (indicating).

8 Now, you said there was two men in the vehicle?

9 Right.

10 Did you get an opportunity to look at the two
11 men?

12 Yes, sir, I did. I stared at both of them when
13 I pulled up as I was talking to my son about them
14 because I said, I wonder who that is. They don't
15 belong here. They don't live here. Then I became
16 real aware of them. When I got in the apartment, I
17 kept looking out the window at them. I even opened
18 my curtains and stared at them because I felt very
19 uncomfortable about them because I left my children
20 at home for two hours by their selves. I was
21 thinking that they might be trying to kidnap my kids
22 or Cindy next door.

23 Defense attorney: Your Honor, I would object
24 to speculation and supposition, things about what is
25 going on.

1 And the Court said: I'm letting that in in
2 regard to her sense of observation and her feelings
3 at that time not for the truth of the matter
4 asserted.

5 Because of the children, you paid a little more
6 attention to these two men?

7 Yes, sir.

8 Okay. Now, the first time you saw them was
9 when you pulled in the parking lot?

10 Right.

11 Then you said something about seeing them out
12 the window?

13 Yeah.

14 Tell the jury about that.

15 I opened up my living room window, which was
16 downstairs, and I kept looking at them because I
17 kept trying to think what kind of car they were in,
18 the make of the car. The passenger side I focused
19 in on because he was leaning out the window just
20 staring back at me as I was staring at him. They
21 were just bold. So I went upstairs to use the
22 restroom, I stared out my bedroom window. I came
23 back downstairs and I told the kids to please be
24 careful. I was going straight to work and I would
25 call them. I was going to call the police when I

1 got to work' if they were still there. So I stared
2 out the window again and kept looking. Then when I
3 went to my apartment, turned around and locked my
4 dead bolt on the door, I stepped down and I went to
5 walk to their car.

6 Where would you have been on the diagram on the
7 drawing when you walked out of your apartment?

8 There's a little step right where you see at
9 the end that goes all the way in front of our
10 apartment.

11 Yes, ma'am.

12 I stepped out on to that. I went to come
13 across the parking lot, but I stopped because I
14 said, No, I better not, use your head. I just
15 stared at them. I let them know that I was really
16 checking them out in case they were up to something,
17 you know, she saw something. I got in my car and I
18 stared even as I drove off.

19 When you drove off, where were they parked?

20 In the same place.

21 Now, tell the jury something about the two men
22 in the car since you looked at them in this matter,
23 describe them for the jury.

24 Well, the driver, I really I glanced at him.
25 All I could tell he was slender and very dark hair

1 and just -- but the passenger, he was bold. He was
2 just cocked out there. He kept staring at me as I
3 was staring at him. Usually if you stare at
4 somebody, they may look down or something, but he
5 was like checking me out and I was checking him out.
6 I noticed he was scraggly looking. He had grayish,
7 blondish hair, mustache and kind of healthy looking
8 compared to the driver, but he just didn't take his
9 eyes off of me and I didn't take mine off him. I
10 was letting him know I was staring, but he just
11 watched me go to my car the whole time. I was very
12 uncomfortable with them there.

13 You said one of them has dark hair?

14 The driver at that time.

15 The other one on the passenger side had what?

16 The grayish, blondish hair.

17 You said one of them even leaned out the car,
18 which one leaned out the car?

19 The passenger, the guy that I kept staring at.

20 Of the two of the ones in the car, which one
21 did you get a better look at, the dark-headed one or
22 the grayish, blond-headed one?

23 Blond-headed one -- the grayish, blond-headed
24 one.

25 All right. Now, when you went on back to work

1 that afternoon, what time did you come back to the
2 apartment after work?

3 I got home about 5:15.

4 Was that car there then?

5 No, sir.

6 Now, I think on the next day, were you around
7 your apartment that day?

8 Yes, sir. When I came home from work, I
9 noticed Dana was there, the maintenance guy, and I
10 spoke.

11 Who was that?

12 Dana, the maintenance guy that cleaned up the
13 apartments.

14 Did you see any police officers around that
15 day?

16 No, sir.

17 Did you talk with any police officers on
18 Saturday?

19 No, sir.

20 On Sunday?

21 On Sunday, for some reason, I bought the
22 Sunday's paper, which I never do, but I did that
23 day. I was reading an article about a girl missing
24 on Platt Springs Road. I said, I wonder what part
25 of Platt Springs Road? Which -- once I read it, I

1 realized where it was. I said, I wonder if that car
2 had anything to do with it the other day?

3 Let me stop you right there. There was an
4 article about Platt Springs Road that involved a
5 lady?

6 Being kidnapped.

7 Was that near your apartment complex?

8 Yes, sir. It was right across the street.

9 Do you know about where right across the
10 street?

11 It was at that house. It was that house right
12 there. And on the diagram, about where that house
13 would have been, one of these two (indicating).

14 One of these two?

15 Yes, sir.

16 The red one with the R or the blue one with the
17 R?

18 Yes, sir.

19 When you saw that car parked in here on
20 Thursday, did it have a view of these houses?

21 Yes, sir, it did.

22 Now, as a result, Ms. Freeman, of reading that
23 article in the paper on Sunday, what did you do?

24 I called West Columbia and I told the
25 dispatcher what I had seen and he sent someone out

1 to take a statement.

2 Okay. Now, did you have an occasion to talk
3 with some police officers that week and did you have
4 an occasion to give them a statement?

5 Yes, sir.

6 I think later on, I'm handing you State's
7 Exhibit 3, on October 11th, did you have an occasion
8 to give a description to the police officers, talk
9 with them particularly about the blondish,
10 gray-headed, heavy-set fellow that you talked about?

11 Yes, sir.

12 Did they ask you whether or not you could
13 identify the person?

14 Yes, sir.

15 And did they show you some photographs to see
16 if you could identify him?

17 Yes, sir.

18 I hand you what's been marked as State's
19 Exhibit 2 and ask if you recognize this.

20 Yes, sir.

21 Is that the array of six photographs that they
22 showed you, I think, on October the 11th?

23 Yes, sir.

24 October the 11th would have been, let's see, it
25 would have been, I think, on a Wednesday; is that

1 right?

2 Yes, sir.

3 Now, did you identify or did you recognize any
4 one of those photographs in the six they showed you?

5 Yes, sir.

6 Which one?

7 Number two.

8 Number two on this array of photographs, this
9 man (indicating)?

10 Yes, sir.

11 Where had you seen that man previously?

12 On the passenger side of that car that day in
13 my parking lot.

14 Having what type of hair?

15 Grayish, blondish.

16 Did you fill out this State's Exhibit Number 3
17 saying that you picked out number two?

18 Yes, sir.

19 Now, Ms. Freeman, that person, number two, the
20 one with the grayish and blondish hair, do you
21 remember what he looks like?

22 Yes, sir.

23 If you saw him, do you think you would
24 recognize him again?

25 Yes, sir.

1 Any doubt in your mind?

2 None whatsoever.

3 How about pick him out in the courtroom, if you
4 can, please, ma'am.

5 It's that gentleman with the light green shirt
6 on.

7 Seated at the table over there?

8 Yes, sir.

9 Let the record reflect she has pointed to
10 Robert Haskell Sutherland. That being the same man
11 in State's Exhibit Number 2?

12 Yes, sir.

13 Now, since Thursday, October the 5th, when you
14 saw him in that vehicle, what kind of vehicle was he
15 in? What was the name of it?

16 A Cougar.

17 Since Thursday, October the 5th, when you saw
18 him in the Cougar up until today, have you seen him
19 at any time in between?

20 No, sir.

21 Any doubt in your mind that Robert Haskell "Bo"
22 Sutherland was the man in that Cougar in that
23 parking lot that you looked at that day?

24 No doubt.

25 That he had his arm out with the same grayish,

1 blondish hair?

2 That's him.

3 Is this a fair and adequate statement, your
4 name being Freeman at the time around three o'clock,
5 you see the Cougar?

6 Yes, sir.

7 And the State's direct ends there. I'm sorry,
8 Your Honor, we would offer this. That's all we have
9 for her, please.

10 Okay. Then cross-examination --

11 **MR. BRUCK:** May we approach?

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 that conference is just they're trying to figure out
17 which testimony to read. So I'm going to give them
18 a minute to pull that prior testimony out.

19 (Pause.)

20 **MR. BRUCK:** Please the Court.

21 **THE COURT:** Go ahead.

22 **MR. BRUCK:** Mr. Foreman and ladies and
23 gentlemen, I'm going to read you now a portion of
24 this same witness' testimony from Mr. Cooper's trial
25 in 1991.

1 Question: The next day, which would have been
2 a Friday, did you have occasion to mention this,
3 this is -- of this to Dana about the suspicious
4 looking car with the two people in it?

5 Answer: Yes, because I saw Dana, is the
6 cleaning guy, outside of the apartment the same day.
7 So the next day I saw Dana and I said, Dana, did you
8 check that car out yesterday, did you see it and
9 blah, blah, blah? And he said, Yeah. I said, Well,
10 I got a real good look at the passenger and I looked
11 at the driver good, but I didn't get the license
12 plate or nothing -- that's a quote, she's quoting
13 herself -- I almost walked over to the car. He
14 said, Well, I got the license plate number and I got
15 a real good look at both of them. And I said, Well,
16 good in case something comes up. And I said, I
17 wonder why they were watching these apartments.

18 Cross-examination.

19 Hello, Ms. Freeman, how are you?

20 Answer: Fine.

21 Question: I believe that you said there was a
22 brown-headed fellow and a gray-headed fellow; is
23 that correct?

24 That is correct.

25 And you picked out the gray-headed fellow from

1 a photo lineup, didn't you?

2 Yes, sir.

3 Question: And that gray-headed fellow is --
4 did you recognize him?

5 Answer: No response.

6 Question: Do you remember which one you picked
7 out?

8 Answer: I am trying to think.

9 Question: It's a long time.

10 Answer: Yes. Yes, sir.

11 Question: Do you -- which one did you pick
12 out?

13 Answer: Number two.

14 Question: Did they tell you what his name was
15 after you picked it out?

16 Answer: No, sir.

17 Question: So you don't know that fellow's
18 name?

19 Answer: I know it because on my subpoena that
20 y'all gave me, I saw it on there.

21 Question: And you saw it on a subpoena you got
22 in this case?

23 Answer: Uh-huh.

24 Question: Now, the other fellow had brown
25 hair; is that right?

1 Answer: Yes, sir.

2 And had shoulder length hair?

3 Answer: The way he was leaning, it looked like
4 it was right along in here (indicating).

5 Question: Shoulder length? That is just what
6 you are -- I am just trying to say what you are
7 indicating.

8 Answer: Well, yes, sir.

9 Question: And I believe that you indicated
10 that he was wearing some form of glasses that were
11 not sunglasses.

12 Answer: It looked like it was some kind of
13 glasses that really wasn't dark glasses. They could
14 have been tinted glasses.

15 Question: Well, you signed a statement, didn't
16 you, on October 18th, 1989?

17 Answer: Uh-huh.

18 Question: About 13 days after this happened?

19 Answer: I guess it was. It was a Sunday I
20 thought is when I signed it.

21 Question: And the statement, I want to be fair
22 with you, says the driver had dark hair and I think
23 he had glasses of some kind, but not sunglasses, is
24 that what the statement says?

25 Yeah.

1 Question: So they weren't sunglasses.

2 Answer: It's possible they weren't, yeah.

3 Question: What time of day did you see these
4 people?

5 Answer: Between 2:40 and three o'clock.

6 Question: And the brown-headed person you
7 could not identify; is that right?

8 Answer: No, sir, that's correct.

9 That's all. Thank you.

10 THE COURT: Anything else?

11 MR. BELL: Your Honor, I would just ask if we
12 can do the redirect from that particular
13 cross-examination?

14 THE COURT: Go ahead.

15 MR. BELL: I know it was inadvertent, but he
16 referred to your statement as you saying that the
17 fellow had brown hair. What did you say in your
18 statement?

19 Dark hair.

20 Was it darker than mine?

21 Very much.

22 Almost black?

23 Uh-huh.

24 No further questions.

25 THE COURT: Anything else?

1 **MR. BRUCK:** That's it.

2 **THE COURT:** All right. Call your next witness.

3 **MR. BELL:** The State would call Larry Hall.

4 LARRY HALL,

5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat and state your full
7 name for the record, please.

8 **THE WITNESS:** Larry Hall.

9 DIRECT EXAMINATION

10 BY MR. BELL:

11 **Q** Mr. Hall, where are you employed?

12 **A** I'm employed now with the Department of Labor,
13 License and Regulations.

14 **Q** Back in 1989, where were you employed?

15 **A** West Columbia Police Department.

16 **Q** And what was your position at the West Columbia
17 Police Department?

18 **A** I was an investigator, lieutenant.

19 **Q** And, at that time, how long had you been in law
20 enforcement?

21 **A** Approximately, I'd say close to 18, 19 years.

22 **Q** And did you work on the case of the
23 disappearance and eventual murder of Kimberly Quinn?

24 **A** Yes, sir, I did.

25 **Q** When did you start working on that case; do you

1 recall?

2 A The morning that she was missing.

3 Q And, in this case, I'm sure you did many
4 things; is that correct?

5 A Yes, sir.

6 Q Just generally what did you do?

7 A Well, we talked to neighbors trying to get an
8 idea of where she was at to see if she had left the
9 child at the house. We didn't have any leads or
10 anything to go on at first. So we started
11 developing leads in the case.

12 Q Did you develop many leads in this case?

13 A Yes, sir.

14 Q And tracked them all down?

15 A Yes, sir.

16 Q Did you have an occasion during the course of
17 your investigation, number one, to talk with a woman
18 named Sharon Freeman?

19 A Yes, sir, I did.

20 Q Do you recall when that was?

21 A I don't know the exact dates, but I talked with
22 her, I think, several times over so many days to get
23 different information from her.

24 Q Did you ever take a statement from her?

25 A I didn't take a statement from her. I did do a

1 photo lineup with her and another gentleman. I did
2 talk to her. She did give me information.
3 Eventually, she did write a statement out.

4 Q Okay. Now, in the photo lineup, did you use
5 that -- the photo lineup that you showed her, did
6 you use that with any other individuals?

7 A Yes, I did with Mr. Harley.

8 Q Okay. Let me show you now what's been marked
9 as State's 19 and ask if you recognize that?

10 A Yes, sir, I do.

11 Q And is that the lineup that you showed Ms.
12 Freeman?

13 A Yes, sir, it is.

14 Q And also Mr. Harley?

15 A Yes, sir.

16 MR. BELL: May I approach, Your Honor?

17 THE COURT: Yes.

18 BY MR. BELL:

19 Q Mr. Hall, let me also show you this paper and
20 ask you if you can read it. I know it's kind of a
21 bad copy.

22 A Yes, sir, I can read it.

23 Q Okay. What is that?

24 A This is a document that we used to verify that
25 the number that she or he would pick and let her

1 sign it. And I notarized it with the date that she
2 picked that person on the photo lineup.

3 Q Okay. And is this in regards to Sharon
4 Freeman?

5 A Yes, sir, it is.

6 Q And what is the date on that?

7 A The date on that, I believe, if I'm not
8 mistaken, is the 11th.

9 Q I know it's a bad copy.

10 A It could be the 17th, possibly the 17th.

11 Q Okay. And does that have her signature on it?

12 A Yes, sir, it is.

13 Q And it has your name on it?

14 A Yes, sir.

15 MR. BELL: Your Honor, I would offer this into
16 evidence.

17 MR. DUNCAN: No objection.

18 THE COURT: State's 24 in evidence without
19 objection.

20 (State's Exhibit Number 24, photo lineup
21 form, admitted into evidence.)

22 BY MR. BELL:

23 Q Mr. Hall, I'm just going to hand this up to you
24 so you can refer to it.

25 A Okay, sir.

1 Q Now, do you recall where you talked to Ms.
2 Freeman?

3 A I believe when we did the photo lineup, we were
4 at her apartment off of Platt Springs Road.

5 Q And you brought, I believe, that's State's 19,
6 the lineup?

7 A Yes, sir.

8 Q Okay. And how did you present that to her?

9 A I just opened it up and asked her to look at
10 the lineup.

11 Q Okay. Did you indicate that she should pick
12 any of the six pictures?

13 A No, sir, I did not.

14 Q Did you tell her that there's somebody that you
15 should pick, there's somebody involved that's in
16 that lineup?

17 A No, sir, I did not.

18 Q Did you suggest in any way which picture she
19 should have picked out?

20 A No, sir.

21 Q You just opened it up and said look at it?

22 A Yes, sir.

23 Q And what did she do when you did that?

24 A She picked number two from the photo lineup.

25 Q And did you indicate that on State's 24?

1 A Yes, sir, I did.

2 Q Okay. And who was that a picture of?

3 A Bo Sutherland.

4 Q Do you know his full name?

5 A I've always known him as Bo Sutherland.

6 Q Okay. And did she have any hesitation?

7 A No, sir.

8 Q Now, when did you go talk to Mr. Harley, Dana
9 Harley?

10 A I believe we talked with him on the 17th of
11 October.

12 Q Okay. Did you go to him one time or --

13 A We talked to him twice. When we went the
14 second time, it was with a photo lineup.

15 Q Let me go back. Was anybody with you when you
16 went to talk with Ms. Freeman?

17 A Yes, sir.

18 Q Who was that?

19 A Freddie Hamer with the Lexington County
20 Sheriff's Department was with me both times.

21 Q Okay. And when you went to see Mr. Harley, do
22 you recall on the 17th, what time of day did you
23 first go see him?

24 A I believe, if I'm not mistaken, it was in the
25 evening, in the afternoon.

1 Q Okay. And do you recall -- did you show him
2 the lineup in your hand or another lineup at that
3 time?

4 A We showed him the other lineup.

5 Q And that's going to be State's 18. I show you
6 State's 18 and ask if you recognize that?

7 A Yes, sir, I do.

8 Q Is that the lineup you showed him first?

9 A Yes, sir.

10 Q And how did you present that to Mr. -- first of
11 all, where did you go?

12 A He was at the apartment complex. I believe he
13 was working in an apartment there.

14 Q Okay. And what did you do when you and
15 Mr. Hamer got there?

16 A We walked up, identified our self and asked him
17 would he look at a photo lineup.

18 Q Did you suggest in any way that there's anybody
19 of significance in that lineup?

20 A No, sir.

21 Q Did you suggest to him which picture he should
22 pick out?

23 A No, sir.

24 Q Did you indicate that there's anybody involved
25 in anything in that lineup?

1 A No, sir, I did not.

2 Q State's 18. How did you present it to him?

3 A Opened it up and asked him just to look at it.

4 Q Okay. And did he pick a picture out on that
5 one?

6 A Yes, sir.

7 Q Which one did he pick out?

8 A He immediately picked number four.

9 Q And did he indicate on the sheet that's
10 attached to that document?

11 A Yes, sir, he did.

12 Q And he signed it?

13 A Yes, sir.

14 Q And whose picture is picture number four?

15 A Tony Cooper.

16 Q That's the defendant in this case?

17 A Yes, sir.

18 Q The man sitting at the table over there?

19 A Yes, sir.

20 Q Now, did you go see Mr. Harley anymore that
21 day?

22 A We did go back and show him the other photo
23 lineup.

24 Q Let me go back to this lineup. Did he have any
25 hesitation when he picked out that photograph?

1 A None whatsoever.

2 Q He just went right to it?

3 A Yes, sir.

4 Q Did he glance over anything?

5 A He looked at it and immediately picked number
6 four.

7 Q Now, the second time you went to see him on
8 October 17th, 1989, do you recall what time of day
9 that was?

10 A I think it was maybe a couple hours later,
11 maybe right before dark.

12 Q Did you go to the same place?

13 A Yes, sir.

14 Q Okay. And you had, I believe, it's State's 19?

15 A Yes, sir.

16 Q You had that one with you at that time?

17 A Yes, sir.

18 Q Okay. And when you gave it to him, did you
19 tell him which picture he should pick out?

20 A No, sir.

21 Q Did you suggest in any way which picture he
22 should pick out?

23 A No, sir.

24 Q Did you tell him that somebody involved in
25 something was in that lineup?

1 A No, sir.

2 Q How did you hand it to him?

3 A I opened it up and asked him to look at it.

4 Q And did he do that?

5 A Yes, sir, he did.

6 Q Did he pick a picture out of that lineup?

7 A Yes, sir, he did.

8 Q Which one did he pick?

9 A Number two.

10 Q And did he write that on that paper attached to

11 State's 19?

12 A Yes, sir, he did.

13 Q And signed his name?

14 A Yes, sir.

15 Q Okay. And who was picture number two?

16 A Bo Sutherland.

17 Q Okay. And how did he -- I mean, how did he

18 look at the pictures that time?

19 A He opened it up and almost immediately went to

20 number two.

21 Q And did you show -- and, at that time, you

22 left?

23 A Yes, sir. We didn't say anything. We did our

24 paperwork and we left.

25 Q Okay. Either time did you say that's the

1 person or anything indicating --

2 A No, sir, we did not.

3 Q You just wrote it down and left?

4 A Yes, sir.

5 Q Indicating that there was no significance to
6 what they -- he had done?

7 A Correct.

8 Q Did you do that with Ms. Freeman as well?

9 A Yes, sir.

10 Q And, again, indicating there was no
11 significance to what she had picked?

12 A Yes, sir.

13 MR. BELL: Thank you, Mr. Hall. Please answer
14 any questions the defense has for you.

15 CROSS-EXAMINATION

16 BY MR. DUNCAN:

17 Q Good afternoon, Mr. Hall.

18 A How are you doing, sir?

19 Q Did you tell Mr. Harley that that was a
20 ten-year-old picture of Tony Cooper in that folder?

21 A No, sir.

22 Q Did you tell Mr. Harley that the person that
23 you were interested in might not be in those six
24 photos?

25 A No, sir.

1 Q Did you show him those pictures all at once or
2 sequentially, one at a time?

3 A We showed them in a photo lineup, which would
4 have been, I believe, six people in a lineup.

5 Q So all at once at the same time?

6 A Yes, sir.

7 Q So Mr. Harley had the opportunity to look at
8 number two which had the long face. He had the
9 opportunity to compare that to the only person who
10 didn't have either a fat face, a long face or looked
11 Latino and that only left Mr. Cooper's ten-year-old
12 picture, correct?

13 A I wouldn't know. He looked at it. He picked
14 him out. I don't know who was Latino or anything.

15 Q Okay. So he had the opportunity to compare
16 that to three people with fat faces, one person with
17 a long face and one Latino and only one person with
18 a shaped face that turned out to be Tony Cooper?

19 A All I can say, he picked that picture out.
20 They were all as close as possible as they could be
21 to the photo lineup. Everybody was as close as they
22 could get.

23 Q But you didn't pick those photos, did you?

24 A No, sir.

25 Q So you don't know how they were picked?

1 A No, sir.

2 Q Now, Cynthia Roof didn't identify Tony Cooper,
3 but she identified Bo, didn't she?

4 A I believe so.

5 Q And Sharon Freeman identified Bo, Sharon
6 Freeman Clonts, but she couldn't identify Tony?

7 A Correct.

8 Q Okay. So Mr. Harley, who was shown the six
9 photos that we just talked about, was the only one
10 of the three that identified Tony Cooper?

11 A Yes, sir.

12 MR. DUNCAN: Thank you.

13 REDIRECT EXAMINATION

14 BY MR. BELL:

15 Q Mr. Hall, as an investigator back then -- or
16 how long were you an investigator?

17 A Approximately, maybe two years.

18 Q Was that the normal course of business when you
19 were doing a photo lineup?

20 A Yes, sir.

21 Q You would hand a six photo array?

22 A Yes, sir.

23 Q Trying to get people looking as close as they
24 can?

25 A Yes, sir.

1 Q And did Ms. Freeman indicate that she could
2 identify the other person in the car other than Bo?

3 MR. DUNCAN: Judge, this is -- we object on the
4 basis of hearsay.

5 THE COURT: Counsel, do you wish to respond?

6 MR. BELL: Yes, Your Honor. He asked --

7 THE COURT: Approach.

8 (Whereupon, a bench conference was held off
9 the record, in the presence of the jury, but out of
10 the hearing of the jury.)

11 THE COURT: Sustained.

12 BY MR. BELL:

13 Q Mr. Hall, finally, how long did it take
14 Mr. Harley to pick the picture out of that photo,
15 State's Number 19?

16 A Almost immediately.

17 MR. BELL: Thank you.

18 MR. DUNCAN: Nothing further, Your Honor.

19 THE COURT: You may step down, sir.

20 MR. DUNCAN: We have no objection to this
21 witness being dismissed.

22 MR. BELL: Yeah. We would ask that he be
23 excused, Your Honor.

24 THE COURT: You may be excused.

25 MR. LUPTON: Your Honor, the State calls Clark

1 Rowe.

2 CLARK H. ROWE,
3 having been duly sworn, testified as follows:

4 THE CLERK: Have a seat, state your full name
5 for the record, please.

6 DIRECT EXAMINATION

7 BY MR. LUPTON:

8 Q Good afternoon. Tell the jury who you are,
9 please?

10 A Captain Clark H. Rowe.

11 Q Where are you employed?

12 A Pardon me, sir?

13 Q Where are you employed?

14 A Lexington County Sheriff's Office.

15 Q And how long have you been with the Lexington
16 County Sheriff's Office?

17 A Should be about 30 years now.

18 Q And can you tell the jury briefly about your
19 law enforcement background and your law enforcement
20 training?

21 A I come up through the ranks as a shift
22 supervisor mainly with investigations, shift
23 supervisor on the streets. And I presently am the
24 night watch commander at the sheriff's office. In
25 other words, I control the sheriff's department at

1 night.

2 Q So you're in charge of the entire sheriff's
3 department for Lexington County during the
4 nighttime?

5 A That is correct. That's my present duties.

6 Q Now, what were your duties back in October of
7 1989?

8 A I was a lieutenant shift supervisor, also as a
9 diver with the sheriff's office, which I still am.

10 Q Now, taking you back to 1984, was there a --
11 did the Lexington County Sheriff's Department have a
12 dive team back in '84?

13 A It did not, sir. I started it in 1984.

14 Q So you set up the dive team?

15 A Yes, sir, that's correct.

16 Q Can you tell the jury a little bit about your
17 law enforcement dive training?

18 A In the beginning, we started with your regular
19 civilian-type training through an international dive
20 training organization. Mine was the Professional
21 Association of Diving Instruction. After completing
22 that training, which was the basics, then I was
23 trained by the State of South Carolina in the area
24 of law enforcement diving in two phases, phases one
25 and two.

1 **MR. DUNCAN:** Your Honor, just to save a little
2 time, we'll stipulate he's a certified diver and we
3 have no problems with his qualifications.

4 **MR. LUPTON:** Your Honor, if I can briefly
5 continue and then I'll ask to qualify him.

6 **THE COURT:** All right. Go ahead.

7 BY MR. LUPTON:

8 **Q** And with regards to that, approximately, how
9 many dives do you do per year as a law enforcement
10 diver?

11 **A** Well, it's slacked off here recently, but on
12 the average, it will be anywhere from 75 or a
13 hundred dives just depending on how the year goes.

14 **Q** Have you ever been qualified as an expert in
15 law enforcement diving and law enforcement search
16 and rescue diving?

17 **A** Yes, I have.

18 **MR. LUPTON:** Your Honor, at this time, I move
19 to qualify him as an expert in those fields.

20 **THE COURT:** Any objection?

21 **MR. DUNCAN:** No, sir.

22 **THE COURT:** The Court finds him to be qualified
23 in those areas without objection from counsel.

24 BY MR. LUPTON:

25 **Q** Now, did you have occasion to dive in two

1 bodies of water related to this case?

2 A Yes, sir, I did.

3 Q And the first place that you dove -- if I can
4 get you to step down for a second.

5 A (Witness leaves the witness stand.)

6 Q If I can get you to look at State's Exhibit 4.
7 Do you recognize that?

8 A Yes, sir.

9 Q Now, this diagram, what does it represent?

10 A It's a pond with a dock going out into the pond
11 and a house.

12 Q And does that accurately reflect the first body
13 of water that you dove in this case?

14 A Best of my memory it does, yes, sir.

15 Q Now, what's the significance in this particular
16 body of water to this case?

17 A This is where I was sent out to conduct a dive
18 in this pond for any evidence related to the
19 homicide.

20 Q Is this the pond where the body was found?

21 A I believe so, yes, sir. I was not there at the
22 time the body was found.

23 Q All right. But when you dove it, you were
24 instructed -- you were informed that that was where
25 the body was found; is that correct?

1 A Yes, sir.

2 Q Now, is there a procedure for actions for the
3 dive team when a crime occurs next to a body of
4 water, such as, a murder occurring next to a pond in
5 this case?

6 A Well, we always look in the bodies of water
7 around any type of crime scene, missing people,
8 children, anything like this we'll dive the area
9 where a body of water is fairly close.

10 Q So it would be standard procedure in a case
11 like this to dive that body of water where there was
12 a murder that apparently occurred right by the body
13 of water?

14 A That is correct.

15 Q Now, in this case, did you dive that pond based
16 on this homicide occurring there?

17 A I did.

18 Q And do you recall what you were searching for?

19 A We were looking for anything that would be
20 related to this particular homicide, body parts,
21 axes, hatchets, anything of this nature.

22 Q All right. And personal items of the --

23 A Clothing, anything.

24 Q All right. Now, what day were you first called
25 to dive in that pond?

1 A I believe it was the 9th of October.

2 Q The Monday following --

3 A If I'm not mistaken, yes, sir.

4 Q So it was the day after the body was
5 discovered?

6 A I believe so, yes, sir.

7 Q Now, how did you start the search? What did
8 you do when you first started?

9 A The pond is a fairly clear water of pond, but
10 what the problem would be is the body composition of
11 the pond. If we were just to get into the water,
12 what would occur we would silt out the whole area
13 and, therefore, if there was any evidence, anything
14 that we were looking for, we wouldn't be able to see
15 it or find it without a lot of -- going through a
16 lot of trouble. So what we initially did is search
17 the banks of the pond in a small boat so we could
18 see and we could maneuver around in the water
19 without stirring up the bottom of it. Once we done
20 that and we were satisfied --

21 Q Let me stop you. You took the boat in the
22 areas that you were able to see the bottom from the
23 -- the bottom of the pond from the boat, you
24 searched those areas that way?

25 A Yes, sir.

1 Q What did you do next?

2 A Next thing we did is we wanted to enter the
3 water to search the areas that we could not see from
4 the boat, the bottom. And that would be areas a
5 good little distance off from the bank. We would
6 actually suit up, get in the mid-water or just below
7 the surface, that way our fin actions and any
8 actions that we do still would not kick up the
9 bottom and stir up the silt. So we searched this --
10 that's the method we used to search in this area
11 right in here.

12 Q So you swam around above the bottom, but close
13 enough to the bottom to see the bottom; is that
14 correct?

15 A Correct.

16 Q But not close enough to stir up silt, right?

17 A That would be correct.

18 Q Now, did you find anything during that search?

19 A We found a pair of blue jeans.

20 Q And I'd like to show you what's already been
21 admitted into evidence as State's Exhibit 15. Is
22 this the pair of blue jeans that you found?

23 A Yes, sir.

24 Q Now, with regards to the blue jeans where you
25 found them, I think that this patch that's cut out

1 around the crotch was done later at SLED for
2 testing?

3 A That is correct.

4 Q So that was not the condition when you found
5 them, correct?

6 A Correct.

7 Q Other than that, what was the condition of
8 those pants when you found those in the pond that
9 day?

10 A They were like you would take them off, pull
11 them down. They were half inside out, half -- and
12 half regular. In other words, the waist was pulled
13 down, you just didn't have the whole pair of jeans,
14 they were inside out, but not the whole pair just
15 half of them. And they were laying on top of the
16 silt.

17 Q And can you show, approximately, how much of
18 the pants were turned inside out, about what point
19 it was that the...

20 A Just about halfway, just like the top of the
21 waist just pulled down about halfway until all of
22 the jeans were able to slide off.

23 Q All right. Now, the damage at the bottom of
24 the pants, was that present when you found them; do
25 you recall?

1 A Yes. As far as I can recall, I believe so,
2 yes, sir.

3 Q All right. So then you searched this pond that
4 way. You can take a seat if you want.

5 A (Witness resumes the witness stand.)

6 Q Now, once you did that, you said you found
7 those pants. Approximately, how far --
8 approximately, where were those pants?

9 A About 20 feet in front of the dock.

10 Q So showing you this diagram, approximately,
11 where the red X is in the water?

12 A Yes, sir. They were just directly in front of
13 the dock.

14 Q About 20 feet out you said?

15 A Yes, sir.

16 Q Do you recall how deep they were?

17 A Eight to ten feet.

18 Q And about ten feet of water you said?

19 A Yes, sir.

20 Q And that would be reflected in your report?

21 A Pardon me?

22 Q That would be reflected in your report?

23 A Yes, sir.

24 Q What depth they were found at. Now, the --
25 during this dive, did you check the entire pond in

1 that manner?

2 **A** Yes, sir, as much as possible. I mainly
3 focused, since we found the jeans around the dock,
4 we searched that area of the pond. The next day
5 when we set up blind search, we did not search --

6 **Q** Let me stop you there briefly. On -- during
7 that search where you were midway up and searching
8 on the Monday, did you find anything else other than
9 the pants?

10 **A** No, sir, we did not.

11 **Q** And did you go back again the next day?

12 **A** The next day we set the lines up where we could
13 do a more systematic search. By then, we were in
14 the mud. And that's where we actually dive into the
15 mud and feel around and see what we can't find.

16 **Q** And you said you set up lines. Could you
17 explain that briefly for the jury?

18 **A** I'm sorry?

19 **Q** You testified that you set up lines and did a
20 systematic search. Could you explain that briefly
21 for the jury, please?

22 **A** What we do is set up a long line about a
23 hundred feet long. You've got an anchor on each end
24 of it, float which comes to the surface. This way
25 we could see where we're searching at. And as we

1 move down the line, we actually search into the
2 ground, the silt. When we get to the one end of the
3 anchor, then we move it over just as far as
4 visibility or the area we're searching, like arm's
5 length. Then we come back down the line. The
6 area's actually searched twice using this method.

7 Q And you searched the pond that way as well?

8 A Yes, sir, out from the dock.

9 Q And did you find anything on that occasion?

10 A I'm sorry?

11 Q And did you find anything on that second
12 search?

13 A No, sir.

14 Q Now, did you get called to a different body of
15 water, a second body of water, in regards to this
16 case?

17 A Yes, sir, we did.

18 Q And that body of water, can you tell the jury
19 where that was, please?

20 A This was the Congaree Creek, located at Highway
21 302 in South Congaree.

22 Q I ask you to come down and look at this
23 diagram, if you could, please.

24 A (Witness leaves the witness stand.)

25 Q First of all, can you --

1 **MR. LUPTON:** And, Your Honor, I believe this is
2 without objection, we'd ask that this be entered
3 into evidence State's Exhibit 20.

4 **MR. DUNCAN:** That's correct.

5 **THE COURT:** All right. State's 20 is in
6 evidence without objection; is that correct?

7 **MR. DUNCAN:** Yes, sir, Your Honor.

8 (State's Exhibit Number 20, chart, admitted
9 into evidence.)

10 BY MR. LUPTON:

11 **Q** And if you could please orient the jury as to
12 what that is, what that diagram shows.

13 **A** This is Highway 302, Edmund Highway. The South
14 Congaree area here. Coming this way, you run into
15 the airport, Columbia Metropolitan Airport. Going
16 south, you would run into the community of Pelion.
17 This is our first dive site, which is the pond. And
18 Highway 302 where it crossed the Congaree Creek is
19 located right here and this is where we conducted
20 our dive.

21 **Q** And all of this is in Lexington County,
22 correct?

23 **A** Yes, sir.

24 **Q** Now, with regards to this dive site, and I show
25 you State's Exhibit 5, which has already been

1 admitted into evidence, can you explain to the jury
2 what this is?

3 A A closer view of the area that we dove. This
4 would be the Edmund Highway or actually Highway 302.
5 The airport or West Columbia would be in this area,
6 in this direction. Pelion would be down here. The
7 current would be flowing this way (indicating).

8 Q Now, you got a call to dive this on what day?

9 A I believe the 11th.

10 Q And, actually, I believe it occurred -- about
11 what time did it occur?

12 A We got a call about 3:30 in the morning.

13 Q And do you know who it was that was calling
14 you?

15 A Not the first phone call. The second phone
16 call, it was my boss, Chief McCarty.

17 Q And did you respond to that second phone call
18 at 3:30 in the morning?

19 A I did respond to that one, yes, sir. I was
20 instructed to proceed to this location and conduct a
21 search.

22 Q Now, were you told why you needed to search
23 there or who gave the information?

24 A No, sir. I just assumed it was in reference to
25 what I was searching for the other two days before.

1 Q All you know is -- all you knew is that you
2 were a diver and you were told to dive; is that
3 correct?

4 A That is correct.

5 Q Now, could you describe this dive site, this
6 location for the jury, please?

7 A It's a very small creek, not too wide, probably
8 average depth would be just a couple of feet. Maybe
9 if you get in a bend somewhere where there's a lot
10 of current, you might get ten feet or so. It's a
11 very sandy bottom. The water is a blackish color,
12 probably about a little bit darker than the rails
13 right here. The side areas, it's really grown up, a
14 lot of trees, a lot of brush and the bridge over it.
15 And the current, a nice little swift current.

16 Q Now, what were you looking for at this dive
17 location?

18 A The same thing in the other one, hatchets, any
19 body parts, machetes, anything to do with this
20 homicide.

21 Q And could you explain what search method you
22 used to search this creek?

23 A Well, what I normally call it would be a
24 pendulum search. That's where we just let the
25 current do the work for us. We'll attach a line in

1 the center of the creek. And, in this case, there
2 was a bridge pile in the general area of the center
3 of the creek, so I tied a rope to it and let the
4 rope go down the current. And I would just hang on
5 to the rope. And the way I would lay my body and
6 the current, it would just sweep me back and forth.
7 And I would just come down the creek using that
8 method.

9 Q All right.

10 A Called a pendulum search.

11 Q And that's how you searched this creek?

12 A That's how I searched the creek.

13 Q Now, did you also search up river?

14 A We did. We went up river probably about a
15 hundred feet.

16 Q And what would the purpose of searching up
17 river be?

18 A Well, again, we were sent there to conduct a
19 search at the bridge. We got both sides of the
20 bridge, everything needs to be searched.

21 Q It's possible somebody -- if you're looking for
22 something in the water, it's possible somebody could
23 throw it up river; is that correct?

24 A Yes, sir. Evidence could be thrown in the
25 water on either side, either up the creek or down

1 the creek. We just simply did the same thing. We
2 attached a line up river, let it come down. We just
3 searched it.

4 Q And did you search far enough up it to be
5 satisfied that no one could have thrown anything up
6 river?

7 A That was my opinion. We went up about a
8 hundred feet.

9 Q And did you find anything up river?

10 A We did not.

11 Q Now, the current -- anything that was not on
12 the bottom, would it be fair to say the current
13 would take it down river rather than up river?

14 A Correct.

15 Q So you concentrated your search down river?

16 A Right.

17 Q Now, with regards to the search down river,
18 could you describe what you found on that search?

19 A The first thing we found was an ax in the
20 center of the creek.

21 Q And I show you what's been marked as State's
22 Exhibit 22 and ask you to look at that. Is that the
23 ax that you found?

24 A Yes, sir.

25 MR. LUPTON: Your Honor, I offer State's 22

1 into evidence at this time.

2 **THE COURT:** Any objection?

3 **MR. DUNCAN:** No, Your Honor.

4 **THE COURT:** State's 22 in evidence without
5 objection.

6 (State's Exhibit Number 22, ax, admitted
7 into evidence.)

8 BY MR. LUPTON:

9 **Q** And that was the ax that you found; is that
10 correct?

11 **A** That is correct.

12 **Q** Now, when you found it, would you describe the
13 condition, how you found it?

14 **A** The head of the ax or the metal part of the ax
15 was in the sand buried. The handle of the ax was
16 going down stream. In other words, it would be
17 floating up and laid over in some manner like this
18 (indicating).

19 **Q** Show you what's been marked as State's Exhibit
20 21. Do you recognize that?

21 **A** That is the ax in the water.

22 **Q** And is that what you found and the condition
23 you found it in?

24 **A** Yes, sir.

25 **MR. LUPTON:** Your Honor, I ask that this be

1 admitted into evidence.

2 MR. DUNCAN: No objection, Your Honor.

3 THE COURT: State's 21 in evidence without
4 objection.

5 (State's Exhibit Number 21, photograph,
6 admitted into evidence.)

7 BY MR. LUPTON:

8 Q So that's a picture of the ax in the water as
9 you found it?

10 A Yes, sir.

11 Q Approximately, how far from the bridge was
12 that?

13 A Twenty-eight feet -- 38 feet, excuse me.

14 Q And that's reflected on State's Exhibit 5?

15 A Right.

16 Q And that's where you found it at, marked on
17 that diagram?

18 A That is correct.

19 Q Now, what did you do once you found the ax?

20 A I had a container constructed out of PVC pipe,
21 took the PVC pipe under water with me where we
22 scooped up the ax, sand and everything, sealed the
23 pipe under water, brought it to the surface, turned
24 it over to the I.D. person.

25 Q Did you continue searching after that?

1 **A** We did.

2 **Q** And as you continued searching, how far down
3 did you go?

4 **A** That day we went on down probably 350 feet.
5 And when we got to our first bend in the creek, tied
6 another rope, let the rope go on down. Sergeant
7 Howard Baker was a diver in the water with me. We
8 both conducted the search. And a foot was located
9 basically in the bend, just right there in the bend.

10 **Q** And that was 350 feet from bridge to tree; is
11 that correct?

12 **A** Correct.

13 **Q** And then how far from the --

14 **A** Just about 35 feet, located the foot right here
15 (indicating).

16 **MR. LUPTON:** Your Honor, I believe at this time
17 it would be appropriate to publish a stipulation
18 that the State and the defense have stipulated that
19 the feet and hand found in this case belonged to the
20 victim.

21 **THE COURT:** Do you have a stipulation you wish
22 -- is that it or do you wish to read something
23 specifically? Is that the agreed upon stipulation?

24 **MR. LUPTON:** That is the agreed upon
25 stipulation.

1 **MR. DUNCAN:** Yes, sir.

2 **THE COURT:** Again, ladies and gentlemen, those
3 stipulations are just factual agreements between the
4 parties. You should accept by that stipulation in
5 any way you deem appropriate in your consideration
6 of issues.

7 Go ahead.

8 **BY MR. LUPTON:**

9 **Q** And you continued searching; is that correct?

10 **A** That is correct.

11 **Q** And what did you find next?

12 **A** We finished up for, I believe, that day. The
13 next day we continued to search down the creek. And
14 I located the hand, approximately, 75 feet from
15 where we tied off at the tree the side of the bend.

16 **Q** And was that -- which hand was that?

17 **A** The left hand.

18 **Q** And were there any rings on that hand?

19 **A** No, sir.

20 **Q** Did you continue searching after that?

21 **A** We did. We continued on down and later found
22 another foot at a log jam, in other words, where a
23 bunch of debris has fallen across the creek and it
24 was floating at the dam.

25 **Q** Let me back up a bit. Before you got to the

1 foot, did you find that foot the same day as you
2 found the other objects?

3 A That was found the next day on the 13th.

4 Q So is it fair to say that you searched until
5 what point? That first day, how long did you
6 search? Did you search until lunchtime? Did you
7 search until dark?

8 A It was getting close to dark.

9 Q And were you -- would you have been able to
10 search at night?

11 A We would have, but we would have had to bring
12 lights down there. It was too growed (sic) up. It
13 was just not, safety wise, worth it. So we elected
14 to do it the next morning.

15 Q And you came back and you continued searching;
16 is that correct?

17 A That is correct.

18 Q And you continued searching, did you ultimately
19 find a second foot?

20 A We did.

21 Q And where was that found?

22 A It was found at the log jam down river, that's
23 what we call a log jam, a lot of debris falls across
24 the creek. It was floating on the surface just up
25 against the log jam.

1 Q Approximately, how far down was that from the
2 bridge?

3 A From the bridge?

4 Q Yes, sir.

5 A Approximately, 600 feet, 75 -- probably about
6 six from the bridge.

7 Q Would it help you to refer to your notes, the
8 diagrams from this case, from the time you -- when
9 the dive first occurred?

10 A Eight hundred from the bridge.

11 Q All right. And is that accurate?

12 A Yes, sir.

13 Q And did you find anything else?

14 A No, sir, that would have been it.

15 Q Thank you. Please go back to the stand.

16 A (Witness resumes the witness stand.)

17 Q And at this point, did you go back and search
18 any place else a second time, do a thorough search
19 some place along this dive?

20 A Did we search anymore?

21 Q Did you do a second search covering part of the
22 area of this dive?

23 A Yeah. We went back to the bridge to where we
24 did a more fine-tooth type searching, if you will,
25 where we actually got into the sand. We would rake

1 it through our fingertips or a small rake, if you
2 will, use metal detectors, just going into the sandy
3 area on that side of the bridge.

4 **Q** And did you find anything?

5 **A** We did not.

6 **Q** Now, with regards -- well, did you find any
7 rings?

8 **A** Sir?

9 **Q** Did you find any rings specifically?

10 **A** No, sir, we didn't find anything else.

11 **Q** Now, rings being small objects, would those
12 be -- can you find rings in a search such as this?

13 **A** Oh, yeah, we've found them before, things of
14 that size. We use metal detectors, but depending on
15 the area, depending on exactly what you're looking
16 for, there's a lot of metal in the water, then the
17 metal detector is just going to really slow you down
18 a lot. We just dig around in the search area until
19 we find something. We found them numerous times
20 before, items that we were looking for like this.

21 **MR. LUPTON:** Beg the Court's indulgence.

22 (Pause.)

23 **Q** Now, you testified that the left hand was the
24 hand you found, correct?

25 **A** Correct.

1 **MR. LUPTON:** Your Honor, at this time, we'd ask
2 to publish the stipulation between the State and
3 defense that the victim normally wore her rings on
4 her left hand.

5 **THE COURT:** Is that correct? Is that your
6 stipulation?

7 **MR. DUNCAN:** Yes, sir, Your Honor.

8 **THE COURT:** All right. Again, ladies and
9 gentlemen, you have to accept that stipulation as
10 being true and consider it in any way you deem
11 appropriate.

12 **MR. LUPTON:** Your Honor, no further questions.

13 CROSS-EXAMINATION

14 BY MR. DUNCAN:

15 **Q** Officer Rowe, the ax, the body parts and all of
16 that were located because Bo Sutherland indicated
17 where they were?

18 **MR. LUPTON:** Objection, Your Honor.

19 **THE COURT:** Yes, sir.

20 **MR. LUPTON:** Your Honor, lack of foundation.
21 He's already testified that he doesn't know where
22 that information came from.

23 **THE COURT:** Rephrase your question.

24 BY MR. DUNCAN:

25 **Q** Do you know -- were you aware of

1 Mr. Sutherland's statement?

2 MR. LUPTON: Objection, Your Honor, unless they
3 want the whole statement to come in.

4 THE COURT: Pardon?

5 MR. LUPTON: Your Honor, we're willing to
6 publish the entire statement, but unless they want
7 that, we believe that it is inappropriate at this
8 time to go into that statement.

9 MR. DUNCAN: No questions, Your Honor.

10 THE COURT: All right. Anything else?

11 MR. LUPTON: Nothing, Your Honor. Your Honor,
12 the State would ask that this witness be excused.

13 THE COURT: Any objection?

14 MR. DUNCAN: No, Your Honor.

15 THE COURT: You may step down, sir. Thank you.
16 Do any of -- does anyone need a break?

17 (There was no response.)

18 MR. BELL: The State would call Doctor Sexton.

19 JOEL STEVEN SEXTON,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat and state your name,
22 please.

23 THE WITNESS: Doctor Joel Steven Sexton.

24 *****

25 *****

DIRECT EXAMINATION

1

2

BY MR. BELL:

3

Q Doctor Sexton, where are you employed?

4

A In Newberry, South Carolina.

5

Q And how are you employed?

6

A I'm the director of pathology at the Newberry County Memorial Hospital. I'm also a consulting, or at least our private practice is a consulting practice for, approximately, 26 of the 46 county coroners in the upper part of South Carolina.

10

11

Q And were you so employed back in October of 1989?

12

13

A Yes, that's correct.

14

15

Q Would you please state your medical background or your educational background for the jury?

16

17

18

MR. BRUCK: If Your Honor please, we would stipulate to Doctor Sexton's very imminent qualifications as a forensic pathologist.

19

20

MR. BELL: And we would move him as an expert witness in the area of forensic pathology.

21

22

23

THE COURT: All right. The Court finds him to be so qualified in the area without objection of counsel.

24

Go ahead.

25

MR. BELL: I do want to touch on a couple...

1 BY MR. BELL:

2 Q Doctor Sexton, how long have you been
3 practicing as a forensic pathologist?

4 A Since 1968.

5 Q So that's now some 38 years almost, if my math
6 is correct?

7 A That's correct.

8 Q And you were called upon back in October, and
9 you probably have the exact date, to examine a body
10 found in Lexington County, South Carolina?

11 A That's correct, on October 9th of 1989.

12 Q And the Lexington County Coroner asked you that
13 to...

14 A That's correct.

15 Q Okay. Tell me what you found when you went to
16 examine the body.

17 A We ask that bodies be brought to us as they are
18 found once they are pronounced dead. In this case,
19 this young lady was not at a hospital when she was
20 pronounced because it was obvious at the scene she
21 was dead. The most striking characteristic we noted
22 when we first observed the body was the body was
23 nude and that the hands and feet had been removed.
24 There was a lot of burning on the body. A portion
25 of the front and back of the body had been burned.

1 And there was -- there were three shotgun wounds
2 that we found and on further examination were able
3 to retrieve pellets from each of these three.

4 Q And what did you do when you do an examination
5 or forensic examination?

6 A We start by photographing the body as it is
7 when we first see it both on the front and on the
8 back. And then we would remove any clothing or, in
9 this case, some cloth that was on the front of the
10 body and on the back, looked like material that had
11 been covering the body, part of which had been
12 burned away and part had not, and then cleaned the
13 body to look carefully to make sure we are seeing
14 all of the evidence that might be on the exterior of
15 the body. Then we do a complete internal
16 examination looking for any disease or illness, as
17 well as whatever trauma might be present and what of
18 these injuries might have caused the death. And we
19 also collect various fluids, blood, urine if it's
20 present, and some tissue. And then we do a written
21 report. And we take additional photographs of the
22 evidence that's retrieved.

23 Q And let me step back a second, I didn't go into
24 that. You said you're a forensic pathologist. Can
25 you explain to the jury what a forensic pathologist

1 actually is?

2 **A** A forensic pathologist is first a physician, as
3 we're licensed to practice medicine. Then we study
4 the area of pathology. And pathology deals with
5 diagnosing illness and disease from looking at
6 tissue. We don't examine patients in the field of
7 pathology as it deals with hospital pathology.

8 Hospital pathologists supervise the laboratory
9 where urine and spinal fluid and blood might be
10 examined and make sure that it's done properly with
11 the proper controls to make sure the results are
12 accurate and they help your physician interpret
13 those results. But pathologists also examines
14 tissue removed at surgery to determine if the person
15 has cancer and to what extent and what type to help
16 your physician better treat you.

17 Pathologists in the hospital setting do
18 autopsies on persons dying in the hospital to learn
19 more about that disease or illness. Forensic
20 pathologists with that background and training take
21 additional training in trauma pathology, toxicology
22 as it affects the body and what it takes to cause
23 somebody to die from certain drugs or chemicals and
24 scene examination so that we're able to go to a
25 scene of death or examine photographs from the scene

1 and evaluate those to help understand something more
2 about not just the cause of death, which generally
3 is obvious if somebody's shot or stabbed or
4 sometimes even it's obvious when they're beaten, but
5 to learn more about the circumstances, in other
6 words, how it occurred if they shoot themselves or
7 they're shot by someone else and this sort of thing.

8 So a forensic pathologist is a physician with
9 specialized training in examining tissues or bodies
10 and further training in that pertaining to trauma or
11 various types of sudden deaths as they occur.

12 Q Now, going back to this particular case, what
13 did you do when the body was brought? First, I
14 think you stated you x-rayed the body; is that
15 correct?

16 A We photographed and x-rayed the body.

17 Q And then what was the next step in the
18 examination of the body?

19 A After we finished all of our distant and
20 close-up photographs and x-rays, then we did an
21 internal examination to see how much damage was done
22 by the shotgun wounds and to collect any pellets or
23 other material from each of those shotgun wounds.

24 Q How many shotgun wounds did you observe on this
25 body that was brought to you?

1 A There were three. We arbitrarily designated
2 them one, two, three as we examined them not as they
3 occurred. The first one was on the front of the
4 body here in the neck, on the left side of the neck,
5 pretty much went straight to the rear. A hole about
6 an inch and a quarter or inch and a half in diameter
7 here in the front. And four of the buckshot were
8 still in the neck along with two of the plastic wads
9 that separate the buckshot from the powder.

10 In addition, there was a wound behind and above
11 the right ear and it was a smaller shotgun wound and
12 it essentially exploded the top of the head. The
13 brain was not present. The bones were fractured as
14 a hard boiled egg might be if you dropped it. In
15 other words, what we call comminuted fractures where
16 there are multiple small fractures and that occurred
17 again behind and above the right ear. That wound,
18 in my opinion, was a contact wound meaning the
19 muzzle was against the skin.

20 A person can actually shoot themself and kill
21 themself with a round that's not a complete round,
22 but is a blank, having no bullet in it. The powder
23 charge, if it cannot escape, particularly in the
24 thin part of the skull, can cause death because it
25 penetrates. And when you have a shotgun right

1 against the skull so all of those gases go in as
2 well as the pellets, you generally get the result as
3 we had here where the top of the head is exploded.

4 There was also a shotgun wound of the upper
5 right back that was larger, it was two inches in
6 diameter. And it went straight into the body
7 damaging the heart and the right lung and the spinal
8 column.

9 When a shotgun fires, the pellets spread
10 similar to what you would see if you had a hose with
11 a nozzle on it. Right close to the nozzle the water
12 is very close together and it spreads apart as it
13 gets further from the nozzle. Pellets do the same.

14 But all of these were anywhere from two inches
15 in diameter down to about a little less than one
16 inch in diameter, approximately, an inch. And none
17 of them had individual pellet holes around them,
18 meaning that they were, as in this case, contact.
19 In the case of the other two, at fairly, what we
20 call, closer, intermediate range meaning the pellets
21 had not spread far enough to get individual pellet
22 holes.

23 And the wadding here and in the back was in the
24 body, the plastic wad that separates the pellets
25 from the powder. And in the case of the one in the

1 back, it's a petal type wad that fully encases the
2 pellets to try to keep them from getting flattened
3 as they go down the barrel so they fly more troop
4 and the wad generally going up to 15 feet would go
5 into the body with the hole. So these were at a
6 reasonably intermediate range somewhere between as
7 close as three feet as far as the one in the back
8 simply because of the size of the hole being two
9 inches.

10 Birdshot generally spread about one inch per
11 yard. And the fact that we don't know the -- I do
12 not know the type of gun that was used as far as
13 whether it was an open cylinder or whether the end
14 of the barrel was choked down to keep the pellets
15 together further, a full choke gun that has the most
16 choke will sometimes give you a round hole like that
17 up to about 12 feet, but it was at least
18 approximately three feet away most probably in my
19 opinion.

20 Q What other injuries did you observe on the body
21 other than the three shotgun wounds?

22 A The other injuries were after death, what we
23 refer to as postmortem, the hands and feet. The
24 left hand and both feet were brought to me on the
25 16th, approximately, seven days after we did the

1 autopsy.

2 In examining those structures as we had
3 examined the stubs of the ankles and the wrists, all
4 of these supported that there was no bruising of the
5 skin or the muscle underneath which occurs if a
6 person is injured during life.

7 Even if you fall and skin your knee, instead of
8 seeing the yellow fat that's under all of our skin,
9 you see redness because your heart's pumping and it
10 pumps out blood into those areas of damaged blood
11 vessels. We refer to this as an abrasion. If it's
12 in the deeper part of the body and it's from a blow,
13 we generally see a bruise.

14 There was no bruising or braiding of that skin
15 either on the body or on the two feet or the left
16 hand that was brought to me. So, in my opinion,
17 this occurred after the heart was no longer pumping.

18 The burns on the body, in my opinion, were
19 after death. When you breathe in the soot that's
20 present at a fire, you get carbon monoxide in your
21 system. And often times in a slow burning house
22 fire, that's what kills people before the flames
23 gets to them. But in those cases, you have a cherry
24 red lividity of the body internally, you have a
25 change in the material that we put -- the samples we

1 put in to formaldehyde, to preserve and to evaluate
2 under the microscope, they turn a redder color and
3 chemically, the blood or any blood like material we
4 can get will have a carbon monoxide in it and you'll
5 see soot in the airway. None of these were present,
6 so, in my opinion, the burning of the body was also
7 after death or postmortem.

8 Q Have you seen the diagram that's been prepared
9 to help explain those wounds of the body?

10 A I did prepare a diagram at the time of autopsy
11 and a blowup with the help of the artist.

12 MR. BELL: Your Honor, we'd offer this in
13 evidence as State's 23.

14 THE COURT: Any objection?

15 MR. BRUCK: No, sir.

16 THE COURT: State's 23 in evidence without
17 objection.

18 (State's Exhibit Number 23, diagram,
19 admitted into evidence.)

20 BY MR. BELL:

21 Q Doctor Sexton, if you would step down and to
22 the side.

23 A (Witness leaves the witness stand.)

24 Q On this side so the court reporter can hear you
25 talk. Could you point out the wounds and all that

1 you were talking about from the stand?

2 **A** The wounds are illustrated here. In the case
3 of the one on the neck, there's a blue circle with
4 the pellets entering. In fact, part of the pellet
5 wad hit the bottom side of the chin at that point
6 and was embedded in that tissue. But the pellets
7 entered at this point.

8 These were buckshot. And a few of those were
9 found in the back of the neck on that side. Four of
10 them were retrieved.

11 Here on the back side of the head, and what we
12 tried to illustrate here, the orange areas are areas
13 where the skin and soft tissue has been burned down
14 to the muscle or bone. The areas that are white are
15 areas of skin that were preserved.

16 The body was lying on its back when found and
17 so a lot of this was preserved for that reason
18 because oxygen couldn't get to that part of the
19 body. There was a piece of cloth over some of that
20 portion of the body that tended to preserve it.

21 Here on the back side of the head was some
22 preserved skin. And here is a portion of the bone
23 that remained where the entrance occurred. And it's
24 about a -- I want to say about a third -- I'm sorry
25 -- about a fourth or less of the bone was there, but

1 from the curvature, it was consistent with it being
2 a small hole. And there was charring of the edge of
3 that even though that skin was not charred in that
4 area.

5 And when a shotgun fires, in addition to the
6 powder and pellets coming out, flames come out. If
7 you've ever seen one shot at night, sometimes the
8 flames will be a foot long and the flames will
9 actually char the edge of the skin, which was noted
10 here.

11 And then above that the yellow is to indicate
12 that the brain was actually missing. And the
13 portion of the scalp and the bone was flared out in
14 that area so that it was all absent.

15 Here on the upper right back, this larger blue
16 circle is to represent the wound that entered from
17 the back and passed to the front injuring the right
18 lung and a portion of the heart.

19 Q And then you have where the extremities were
20 cut off as well?

21 A Right. The yellow represents portions that are
22 missing as I mentioned up here as far as the scalp
23 and it's still there, but spread out, but the brain
24 is missing. Both hands were off the body and both
25 feet, that's why they're illustrated in yellow. And

1 you can see multiple lines here at the point of
2 separation to illustrate the fact that there were
3 multiple cuts. And the bone, particularly in the
4 leg and the ankle region, which are larger bones,
5 were fractured at that point as opposed to sawed
6 into.

7 Q Okay. Thank you, Doctor Sexton. Have a seat
8 back up there.

9 A (Witness resumes the witness stand.)

10 Q Doctor Sexton, as to the three shotgun wounds,
11 can you classify them as whether they would be fatal
12 or nonfatal?

13 A All of the shotgun wounds had the potential of
14 being fatal. The one in the neck did not strike the
15 major vessels of the neck, which was sort of
16 amazing, but they tended to miss the major vessel,
17 but they did strike smaller vessels and with time,
18 that wound could have been fatal.

19 The wound of the back certainly did extensive
20 damage to the right lung and damage to the heart and
21 with time, it would have been fatal, in fact,
22 probably a matter of minutes.

23 But the shotgun wound to the head -- I'm sorry
24 -- to the right side of the head was immediately
25 fatal in the sense that the brain was completely

1 blown out of the skull, the heart would have stopped
2 and there would have been no way of salvaging the
3 person. So we call that one the fatal wound, the
4 other two potentially fatal.

5 **Q** Can you put them in any type of order in how
6 they happened, how they occurred?

7 **A** All I can say is that because there was
8 bleeding and bruising and contusion from the shot in
9 the back and the shot in the neck, they had to occur
10 before the shot in the head because the shot in the
11 head would have stopped the heart and, therefore,
12 you would not have seen any contusion around the
13 other two. But other than that, I cannot say
14 whether the one in the back preceded the one in the
15 neck. The only thing I can say is the one in the
16 head was last.

17 **Q** And an individual could survive those shots for
18 a matter of time, the shot in the neck and the shot
19 in the back?

20 **A** Yes, that's true. In the case of the shot in
21 the back, it may have been less than a minute or two
22 because of the damage that it did to the lung.

23 **Q** Now, Doctor Sexton, next I would ask if you
24 were brought some items to help you identify the
25 body by law enforcement? Were you brought some

1 records?

2 A Yes, that's correct. They brought us some
3 premortem medical records and dental records.

4 Q And who were those records for?

5 A They were for Kimberly Quinn.

6 Q And did you compare those records to the body?

7 A Yes, we did.

8 Q And what did you determine based on that
9 comparison?

10 A By comparing the x-ray records that indicated
11 that she had scoliosis with concavity to the right
12 and that she had -- and the dental records that we
13 had, we were able to conclusively identify her based
14 on those two sets of records.

15 Q So you identified that body as Kimberly Quinn?

16 A Yes, that's correct.

17 MR. BELL: May I approach, Your Honor?

18 Q Doctor Sexton, first off, let me show you one
19 vial and ask if you can identify that?

20 A This is one of the vials that we use that has
21 the name on it, Kimberly Quinn, has my initials on
22 it. In the vial, are four pieces of lead and these
23 are buckshot. And they match the photograph I took
24 of the four pieces -- four buckshot that I removed
25 from the neck. So this vial contains the four

1 buckshot that I removed from the neck of Kimberly
2 Quinn, which was the wound I arbitrarily designated
3 number one in front of the neck.

4 **MR. BELL:** Your Honor, we'd offer that into
5 evidence.

6 **MR. BRUCK:** No objection.

7 **THE COURT:** 25's in evidence without objection.

8 (State's Exhibit Number 25, vial of
9 buckshot, admitted into evidence.)

10 BY MR. BELL:

11 **Q** And, Doctor Sexton, I show you a second vial
12 and ask if you recognize that?

13 **A** Yes. This is another vial that again bears her
14 name, Kimberly Quinn, indicates it's birdshot
15 pellets, has my initials. And the two birdshot that
16 were recovered from the head, only two of those
17 remaining after the head was exploded and these do
18 match the photographs that I have here of those two
19 birdshot. So these are the two birdshot removed
20 from the head of Kimberly Quinn.

21 **MR. BELL:** We'd offer that in evidence.

22 **MR. BRUCK:** No objection.

23 **THE COURT:** All right. It's in evidence
24 without objection.

25 (State's Exhibit Number 26, vial of birdshot

1 pellets, admitted into evidence.)

2 BY MR. BELL:

3 Q Doctor Sexton, let me show you a couple more
4 containers. Show you that and ask if you can
5 identify that, please?

6 A Again, this is a container with my initials on
7 it, labeled birdshot and the wadding from the back
8 of Kimberly Quinn, or as it entered the back. It
9 matches the photographs that I have. So these are
10 the birdshot and the plastic wad, which is the type
11 that sort of contains the individual pellets, and it
12 was from the gunshot wound of the back, which I
13 arbitrarily designated number three.

14 MR. BELL: And we'd offer that in evidence,
15 Your Honor.

16 MR. BRUCK: No objection.

17 THE COURT: It's in evidence without objection.

18 MR. BELL: That will be State's 27, Your Honor.

19 THE COURT: State's 27.

20 (State's Exhibit Number 27, vial of birdshot
21 and wadding, admitted into evidence.)

22 BY MR. BELL:

23 Q Let me show you another plastic container,
24 Doctor.

25 A This is another container that has a label

1 wadding from the left side of the neck, matches the
2 photographs that I took of these two pieces of
3 wadding, one plastic and one fiber wad from the left
4 side of the neck. It was found in the same wound
5 that the four buckshot were in.

6 **MR. BELL:** And we'd offer that in evidence,
7 Your Honor.

8 **MR. BRUCK:** No objection.

9 **THE COURT:** State's 28 in evidence without
10 objection.

11 (State's Exhibit Number 28, vial of wadding,
12 admitted into evidence.)

13 BY MR. BELL:

14 **Q** Doctor Sexton, let me show you this empty paint
15 can and ask if you can identify the contents inside?

16 **A** Yes. This is the sort of corduroy material
17 that was found on the body that we collected, put in
18 this empty -- new empty paint can so it can be
19 examined by an arson group, is characterized by
20 having some nails in it that were there from
21 whatever was burned on top of her, the nails fell
22 off and were seen in the x-rays and there's some
23 here.

24 **MR. BELL:** We'd offer this evidence into
25 evidence, Your Honor.

1 **MR. BRUCK:** Without objection.

2 **THE COURT:** It's in evidence without objection,
3 State's 29.

4 (State's Exhibit Number 29, paint can,
5 admitted into evidence.)

6 **BY MR. BELL:**

7 **Q** Now, Doctor Sexton, I think you testified that
8 at some point after the autopsy, you received some
9 other items from law enforcement?

10 **A** Right. A set of pants, two feet and a left
11 hand.

12 **Q** Okay. And did you receive some other items,
13 potential weapons? I think you received an ax and a
14 knife or two?

15 **A** Right. There was an ax and a knife, both of
16 which came with those other items.

17 **Q** And did you compare the two feet and the hand
18 with the wounds that you had seen on the body from
19 the autopsy?

20 **A** Right. We looked back at our photographs and
21 compared the feet and hands and they were consistent
22 with being the missing feet and hands -- or feet and
23 left hand of Kimberly Quinn. They had multiple cuts
24 that tended to match up.

25 **Q** And how would you characterize the wounds and

1 the severing of these extremities?

2 **A** As I mentioned earlier, there were multiple
3 cuts on both sides and the bones were not sawn into,
4 but were actually chopped into, which to me indicate
5 it was probably the ax that at least cut the bones
6 into and it would certainly be consistent with using
7 an ax for both.

8 I can't say that that knife or one like it
9 wasn't used as well, particularly on the skin, but
10 there were cuts in the pants at the point where the
11 ankles were cut that were consistent with some
12 heavier object perhaps cutting through it because a
13 knife normally cuts cleanly on cloth, whereas these
14 were more like chops through the pant material just
15 as they were through the ankles themselves.

16 **Q** Let me show you what's been marked as State's
17 22 and ask if you recognize that?

18 **A** Yes. This is consistent with the ax that I saw
19 earlier and it's the type that could do the injuries
20 that I saw.

21 **Q** And, Doctor, let me show you what's been marked
22 as State's 15 that's in evidence and ask if you
23 examined those?

24 **A** Yes. These are consistent with the pants that
25 I saw earlier with the cuts here on the left ankle.

1 Q Okay. And those are the cuts that gave you the
2 indication about the ax?

3 A Correct. And there's -- as you can see,
4 they're not clean cuts, there's a lot of fibers
5 going across these cuts. In the human body, we
6 refer to that as bridging fibers because when you're
7 cut with something heavy more like a tear, you get
8 this sort of appearance. When it's a sharp knife,
9 you just see the clean edges.

10 Q Now, Doctor Sexton, based on all of this
11 information that you had, how did you classify this
12 death?

13 A As at the hands of another, which we refer to
14 as homicide. It doesn't indicate any intent. It
15 just means that it's not suicide, it's not
16 accidental, it's not natural, it's not undetermined,
17 it's death at the hands of another person referred
18 to it as homicide.

19 MR. BELL: Thank you, Doctor Sexton. Please
20 answer any questions, I believe, Mr. Bruck has for
21 you.

22 CROSS-EXAMINATION

23 BY MR. BRUCK:

24 Q Good afternoon, Doctor Sexton.

25 A Good afternoon.

1 **Q** I just have one thing to ask you about. The --
2 of course, you examined this entire body very
3 closely?

4 **A** Yes, that's correct.

5 **Q** And you file a report and you do a report in
6 every case and you did a report in this case
7 reflecting all of your findings, correct?

8 **A** Yes, that's correct.

9 **Q** In your report, is there any notation, did you
10 make any finding consistent with handcuff marks or
11 handcuff bruising on the left hand that was brought
12 to you?

13 **A** I did not see anything on the hands, nor do I
14 in the photographs here that conclusively would
15 indicate that anything was binding her hands either
16 handcuffs or some other structure. But I should
17 mention that some handcuffs are very smooth and
18 depending on what the person does, they may not
19 leave any marks, but there were no marks to indicate
20 use of any sort of ligatures or handcuffs around the
21 wrist.

22 **MR. BRUCK:** That's all I have. Thank you.

23 **MR. BELL:** Nothing further, Your Honor.

24 **THE COURT:** You may step down, sir. Thank you.

25 **MR. BRUCK:** Excuse me. I'm sorry. I have one

1 more question for Doctor Sexton.

2 THE COURT: Go ahead.

3 BY MR. BRUCK:

4 Q Before today, has anyone asked you about the
5 handcuffs on the wrist, any other lawyer in this
6 case?

7 A No, they have not.

8 Q Before I did?

9 A No, not before you did.

10 MR. BRUCK: All right. Thanks.

11 THE COURT: You may step down, sir.

12 MR. BELL: We'd ask he be excused.

13 MR. BRUCK: No objection.

14 THE COURT: You may be excused, sir.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: All right. Ladies and gentlemen,
17 I'll send you for your afternoon break. Do not
18 discuss the case in any way. Thank you very much.

19 (The jury retires to the jury room.)

20 MR. BELL: Your Honor, I just kind of wanted to
21 look before, and I apologize, we're kind of looking
22 at maybe two more live witnesses this afternoon and
23 some stipulations just because we've kind of gone a
24 little faster than I anticipated. So I just wanted
25 to alert the Court to that fact.

1 just so everybody knows where it is.

2 THE COURT: All right.

3 MR. BELL: And then, Your Honor, on our next
4 witness, we would offer a photograph that the
~~5 defense would not stipulate to or agree to. It's a~~
6 photo of the crime scene of the body. I'll pass it
7 up.

8 THE COURT: One photo?

9 MR. BELL: That photo. And, Your Honor, I mean
10 we'd only put in the one photo. We'd have testimony
11 that accurately reflects how it appeared. And the
12 main thing that we're looking to show are the items
13 on top, the log and the remains of the chair that
14 are in there to show kind of as circumstantial
15 evidence that it would seem that it would take two
16 people because of the length and the girth of the
17 log and the chair just as that's how it sat.

18 THE COURT: There's no other evidence about the
19 log?

20 MR. BELL: We have from the crime scene, Jim
21 Springs. He testifies about the length of it, but
22 that's the only thing that I have to show and I just
23 thought that showing that in the picture frame,
24 unfortunately, the body's there, so I'd just like to
25 show that.

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1 **THE COURT:** I mean, you have testimony about
2 the log and there's no dispute about the
3 circumstances of the death, correct? What's your
4 position?

5 **MR. BRUCK:** We object to that. And I think the
6 Court should know that that was only offered by
7 Solicitor Myers in the penalty phase last time, that
8 was kept back from the guilt phase for exactly the
9 reason that we object to it, which is that it's
10 inflammatory.

11 **THE COURT:** Yeah. I have some concerns about
12 this photo and the lack of -- I mean, you've got
13 other ways to say that the log was so big it would
14 have required two people to carry it if that's the
15 only point of introduction.

16 **MR. BELL:** That would be all the matters we
17 have.

18 **THE COURT:** All right. Are you ready for the
19 jury?

20 Bring the jury in, please.

21 **MR. BELL:** Your Honor, we might be able to take
22 up another matter while we're here. It was crossing
23 my mind, I was going to do it later.

24 Your Honor, we would -- our other live witness,
25 for lack of a better term, this afternoon would be

1 Gail Heath from SLED. Just she would testify about,
2 once we put the check in, she would testify as to,
3 number one, that it wasn't the victim's signature on
4 the back of the check. And, number two, she would
5 give her opinion as to what it is. We understand
6 that Mr. Cooper was found guilty of forgery --

7 MR. BRUCK: Excuse me?

8 MR. BELL: Not guilty of forgery. And we're
9 not putting it in for that. We're putting it in for
10 two reasons, one, mainly to show that that check was
11 cashed by somebody other than -- or signed and
12 offered by persons other than the victim to show
13 that it was taken from her.

14 And, two, in the course of the investigation --
15 and in the course of the investigation before Ms.
16 Heath did anything towards examining the item, she
17 got handwriting standards from the victim, from Bo
18 Sutherland. And she attempted to get Mr. Cooper and
19 he would only give his signature. He wouldn't
20 cooperate any further, which in my mind goes to
21 being uncooperative as towards the investigation
22 going toward some type of guilt, not necessarily
23 towards the forgery, but the case in total.

24 And, you know, we'd be willing to put her
25 testimony up and I think they weren't agreeable to

1 us offering her testimony and the items that go with
2 it.

3 **THE COURT:** You want her to testify that it
4 wasn't the victim's signature on that check?

5 **MR. BELL:** That's correct.

6 **THE COURT:** All right. Well, what would be
7 your objection to that?

8 **MR. BRUCK:** We have no objection to that. Our
9 objection, it goes to the -- in effect, they want to
10 relitigate the charge for which he's been acquitted,
11 which is the forgery.

12 Mr. Cooper was given his Miranda rights. A
13 little while later without his lawyer being present,
14 he's asked to do handwriting exemplars. He agrees
15 to provide his own name, but not the name of the
16 victim. And this was testified to -- for no purpose
17 other than to show guilty knowledge with respect to
18 the forgery, that's all it was for.

19 **THE COURT:** Was he found not guilty of forgery?

20 **MR. BELL:** Yes, Your Honor. He was found not
21 guilty. And I think even Ms. Heath would testify,
22 either on direct or indirect, that the writing
23 somewhat favored Bo Sutherland, but she can't say
24 who -- she can't say who forged the instrument, she
25 just says it's similarity to matrix, but she can't

1 say who did that.

2 THE COURT: Well, I mean, if she can't say who
3 did it, the defense doesn't object to her saying
4 it's not the victim's signature, but if she can't
5 say who did it, what is she going to offer?

6 MR. BELL: Well, number one, to offer that it
7 was not -- the victim didn't do that.

8 THE COURT: That's fine. They don't object to
9 that part.

10 MR. BELL: And then just the general
11 uncooperativeness of the defendant in this
12 investigation.

13 THE COURT: Well, I mean, if he was willing to
14 give a signature and/or if he were ordered to give a
15 signature, what more would he have to do that you'd
16 be able to introduce?

17 MR. BELL: Well, all he did was sign his name.
18 He did not cooperate into what she needed as to
19 writing the victim's name or just their generic
20 writing certain words in there. All he would do was
21 sign his name and that was the extent of his
22 cooperation.

23 THE COURT: Was there a court order to direct
24 him to give a handwriting exemplar?

25 MR. BELL: I don't believe there's a court

1 order, Your Honor. I think he was just asked to and
2 that's as far as he went.

3 MR. BRUCK: He didn't have a chance to consult
4 with counsel about it. If he had, he would have
5 given the name. It doesn't prove anything, it's
6 just -- it's prejudicial.

7 THE COURT: I'm not going to allow that.

8 MR. BRUCK: We have no objection --

9 THE COURT: Except for the part that they
10 didn't object to about it's not the victim's
11 signature.

12 MR. BRUCK: And if they want to stipulate to
13 that, that's fine. Then we'll stipulate to that,
14 however they want to handle it.

15 THE COURT: Do you wish to stipulate to that so
16 that the agent doesn't have to testify?

17 MR. BELL: Yeah, I believe we'll do that, Your
18 Honor. Let me think about that.

19 MR. BRUCK: Well, on second thought, it occurs
20 to me, we'd also like to bring out that she did do a
21 comparison on Sutherland. Although she couldn't do
22 a identification, she noted similarities.

23 THE COURT: Well, I mean, that starts to get to
24 where he wanted to go anyway if you start asking
25 about that.

1 **MR. BRUCK:** We'll withdraw it.

2 **THE COURT:** All right. Bring the jury in.

3 (The jury returns to the courtroom.)

4 **THE COURT:** We're ready to proceed, ladies and
5 gentlemen.

6 Call your witness.

7 **MR. BELL:** The State would call Richard
8 McDermott to the stand.

9 RICHARD MCDERMOTT,
10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat and state your name for
12 the record.

13 **THE WITNESS:** My name is Richard McDermott,
14 M-C-D-E-R-M-O-T-T.

15 DIRECT EXAMINATION

16 BY MR. BELL:

17 **Q** Where are you employed, sir?

18 **A** With the South Carolina Law Enforcement
19 Division.

20 **Q** And how long have you been with the South
21 Carolina Law Enforcement Division?

22 **A** I'm approaching 30 years in November.

23 **Q** And let me direct you back to October of 1989.
24 Were you employed with the State Law Enforcement
25 Division at that time?

1 A Yes, sir, that's correct.

2 Q And how were you employed at that time? What
3 was your -- what were your duties back then?

4 A I was a criminal investigator assigned to the
5 midlands region which covers 11 counties throughout
6 the midlands of South Carolina.

7 Q And is Lexington one of those counties?

8 A Yes, sir, it is.

9 Q And did you have an occasion during October to
10 be called to West Columbia?

11 A Yes, sir, I did.

12 Q And why was that?

13 A To assist in an investigation that was being
14 conducted at that point by West Columbia.

15 Q Okay. And where did you go to?

16 A I believe I was assigned to come to the West
17 Columbia Police Department on Center Street at that
18 time.

19 Q And what date was that?

20 A I want to say it was late Friday afternoon
21 after lunch, midafternoon.

22 Q Do you know the exact date of that?

23 A I want to say 4th or 5th, sir, to the best of
24 my recollection.

25 Q Would it be an error if it was the 6th of

1 October?

2 **A** Probably so, yes, sir.

3 **Q** And when you got to the West Columbia Police
4 Station, what did you do or what did you find?

5 **A** Basically, we were told there was a missing
6 individual. The senior agent that was assigned to
7 the case at that time was updating me as to what was
8 what. And we were trying to compile a photograph of
9 the individual and get out a missing persons flyer
10 on this person to the news media, to the printed
11 press and so forth.

12 **Q** And an individual, you mean a missing person?

13 **A** Yes, sir.

14 **Q** And did you have the name of the missing
15 individual?

16 **A** Yes, sir, we did. It was Kimberly Quinn.

17 **Q** What else went on that day?

18 **A** Just ran down various leads that were coming
19 in. Numerous agents that were assigned to it, as
20 well as investigators from the West Columbia Police
21 Department, we teamed up and just ran down on leads
22 that came in by phone call, whatever.

23 **Q** Was one of the leads that came in at that time
24 a license plate number?

25 **A** Yes, sir, it was.

1 Q Did you know that that came from Dana Harley?

2 A Yes, sir, I believe I did, was informed about
3 that tag.

4 Q And did you or someone else run that tag number
5 that you were given?

6 A Yes, sir. I believe somebody in the
7 investigation ran that tag. I personally didn't run
8 it, no, sir.

9 Q Let me show you what's been marked as State's
10 13 that's in evidence. And ask if you can identify
11 that?

12 A Yes, sir. That's a copy of a Teletype where a
13 tag was ran from the West Columbia Police
14 Department.

15 Q And what was the tag number?

16 A It was UGD 865.

17 Q And who did it come back to?

18 A It come back to a Gene Tony Cooper.

19 Q And what's the address?

20 A [REDACTED] in West Columbia,
21 Lexington County.

22 Q Now, agent McDermott, how many leads were --
23 how many people were working on this case at the
24 time?

25 A Honestly, I couldn't tell you how many. We

1 were just assigned partners and we would team up and
2 run down various leads. So, at any given time, you
3 could have six or eight teams working together.

4 Q Okay. Were there numerous leads that were run
5 down?

6 A Yes, sir, there were.

7 Q Okay. Now, what was the next thing that went
8 on in regards to you personally in this case that
9 you recall?

10 A I believe it was just basically compiling that
11 flyer on Friday, getting it to the news media, to
12 the press the best we could. We worked late Friday
13 night up into Saturday morning exhausting leads at
14 that point. And I think, at that point, we came to,
15 not a standstill, but we just -- we'd been working
16 12, 14 hours so we took a break. And I think the
17 next call I got was on Sunday afternoon.

18 Q And that would have been the 8th of October?

19 A Yes, sir, it was.

20 Q Of 1989?

21 A Yes, sir.

22 Q And as a result of that call, what did you do?

23 A I received a call at my residence from
24 headquarters to respond to a location in -- outside
25 of South Congaree off of Beckman Road and was told

1 that they may have found the body of the person that
2 we were looking for.

3 Q And did you respond to that location?

4 A Yes, sir, I did.

5 Q And what did you find when you arrived there?

6 A A crime scene which had been charred, fire had
7 been set in the area. From a distance, you could
8 see a partially burned, decomposed body like on a
9 trash pile, if that's what you want to call it, but
10 there was some debris stacked on top of that body.

11 Q And were there any other SLED agents that went
12 out there?

13 A Yes, sir. There were several of us that went
14 out there.

15 Q Do you recall were there any specialized agents
16 that were called out there?

17 A Yes, sir. When we got to the scene and we saw
18 what we had, we called back and asked for our crime
19 scene unit to respond to our location.

20 Q Did the crime scene respond?

21 A Yes, sir, they did.

22 Q Do you recall who, by name, who responded?

23 A I think it was Jim Springs that responded to
24 our location on Beckman Road.

25 Q Was he alone or were there other agents with

1 him?

2 A No. There were some other people assigned with
3 him. I think he had an assistant with him from one
4 of the specialized departments, Lori Johnson. Lori
5 Medlin Johnson is her name now.

6 Q And at that time, I guess you backed off and
7 let them do their job?

8 A Yes, sir. We roped off the area as best we
9 could, kept everybody out of it and preserved the
10 scene for the crime scene people to come in and do
11 their job.

12 Q And when you first got there, how close did you
13 get to this area?

14 A Probably as soon as we got out of the car
15 because there was already officers or investigators
16 there from the sheriff's department had gotten there
17 earlier and we basically -- probably 15 to 20 yards
18 from it.

19 Q Now, besides the body, did you observe anything
20 else around or on the body?

21 A Yes, sir. It looked like when I pulled up and
22 saw what I, you know, I just glanced across at it,
23 and it burns an image in your mind you don't forget,
24 okay, it's been some time, but you see an arm
25 sticking up with a hand missing off of it. There's

1 a large log laying across the torso of the body,
2 fire has burned all around the body. It looked like
3 a fire break had been cut, you know, to keep the
4 fire from spreading at the time. Some material,
5 something had been also stacked on the body at that
6 time.

7 Q And how big a log would you say that you
8 observed?

9 A It was a pretty good size log, pretty good size
10 log, but I couldn't speculate as far as how big it
11 was, but it was a pretty good size log. I think one
12 person couldn't move it.

13 Q Now, was -- now, let me ask you this. Let me
14 show you a couple of items -- first of all, were you
15 aware of the location of where Ms. Quinn had gone
16 missing?

17 A Yes, sir, off of Platt Springs Road. Yes, sir,
18 I was familiar with the area.

19 Q Are you still familiar with the area?

20 A Yes, sir. I travel by it pretty regular.

21 Q And are you familiar with the area of West
22 Columbia, South Congaree, that area?

23 A Yes, sir.

24 Q And let me go back and -- where you went to
25 with the body, you said that was located in South

1 Congaree?

2 A Yes, sir, on the other side of South Congaree
3 away from the airport, off of Highway 302.

4 Q And what county is that in?

5 A It's in Lexington County, sir.

6 Q Let me first hold this up. If you could step
7 down, Agent McDermott. This is State's 6 that's in
8 evidence.

9 A (The witness leaves the witness stand.)

10 Q And if you could just orient the jury kind of
11 the general area.

12 A This is Platt Springs Road that comes into Tri
13 Angle City. Knox Abbott Drive is where Love
14 Chevrolet is. If you're familiar with any part of
15 Lexington County, Zesto's, Tri Angle City is located
16 right in this area. If you travel out Platt Springs
17 Road, this is going through Springdale out towards
18 the airport and so forth. This will go back over
19 toward Jarvis Klapman Boulevard. If you travel
20 through Tri Angle City, it will take you back into
21 Columbia across the river.

22 Q And I notice there's a bank that's on the
23 corner there?

24 A Yes, sir. This is a, I believe, a BB&T Bank.

25 Q What is that the corner of?

1 **A** I want to say it's the corner of 12th Street.
2 It's not really at the corner, it seems like it's
3 further down Knox Abbott Drive and 12th Street.

4 **Q** Let me do this, let me pull down State's 6 and
5 put up State's 7 that's in evidence. It's kind of a
6 larger map. And if you can kind of show the jury
7 the general area between...

8 **A** This is basically Platt Springs Road that goes
9 down through Springdale back toward the airport.
10 This is Highway 302 that comes out of the Cayce,
11 West Columbia area traveling down towards South
12 Congaree. This is down toward Beckman Road, which
13 is the area that we traveled to to where the body
14 was found back up in here. This takes you back over
15 to Columbia and Riverbanks Zoo is back over this way
16 here.

17 **Q** And around where the body was, what are those
18 roads that are marked there?

19 **A** Beckman Road, Scenic Drive, Greenwood Drive,
20 which is on the other side of 302 through here. And
21 this all has been wiped since then. It's a four
22 lane road now down through there.

23 **Q** Thank you, Agent.

24 **A** (Witness resumes the witness stand.)

25 **Q** Let me ask you, back then there was a South

1 Carolina National Bank around the area?

2 **A** Yes, sir, that's correct. I stand corrected on
3 that. It's on the corner of 12th Street and Knox
4 Abbott Drive is an NBSC, I believe, or a Wachovia.

5 **Q** But it's now -- it's changed hands I'm sure
6 many times?

7 **A** There's several banks right down through there
8 and I'm just trying to get my bearings straight
9 because I think there's an SCN and then a new
10 Carolina First or something down through there, too,
11 so.

12 **Q** Going back to the victim's house, you said that
13 was on Platt Springs Road?

14 **A** Yes, sir, Platt Springs Road.

15 **Q** That's in West Columbia?

16 **A** Yes, sir, it is.

17 **Q** And which county is that in?

18 **A** It's in Lexington County, sir.

19 **MR. BELL:** Thank you, Agent McDermott. Please
20 answer any questions that the defense may have of
21 you.

22 **CROSS-EXAMINATION**

23 **BY MR. BRUCK:**

24 **Q** Agent McDermott, you said it was a big log?

25 **A** Yes, sir.

1 Q Did you lift it?

2 A No, sir, I didn't touch it.

3 Q You didn't touch it?

4 A No, sir.

5 Q Did you see anyone else lift it?

6 A I can't swear to it, no, sir. I can't say that

7 I did.

8 Q How much did it weigh?

9 A I couldn't tell you that.

10 Q You don't know?

11 A No, sir.

12 Q And this map of the area, the pond where the

13 body was found.

14 A Yes, sir.

15 Q Can you see what I'm pointing to? Do you know

16 where Bo Sutherland lives?

17 A No, sir.

18 Q Lived?

19 A No, sir.

20 Q In this whole investigation --

21 A Yeah, I knew about where he lived, but that was

22 not one of the leads that I followed up on, sir, no,

23 sir.

24 Q Was it on Greenwood Circle?

25 A Greenwood Circle, somewhere in that area, yes,

1 sir.

2 **Q** Right over here?

3 **A** Yes, sir, I believe so.

4 **Q** About a mile to the pond, correct?

5 **A** Yes, sir, give or take, yes, sir.

6 **Q** Bo Sutherland's neighborhood?

7 **A** Yes, sir.

8 **MR. BRUCK:** That's all. Nothing further.

9 **THE COURT:** Anything else?

10 **MR. BELL:** Nothing, Your Honor.

11 **THE COURT:** You may step down, sir. Thank you.

12 **MR. BELL:** Your Honor, at this time, we have
13 another individual who was -- this individual was
14 ill, not able to attend the trial and I think it's
15 agreed, Agent Springs, that we can read his
16 testimony in as well -- as best I can to follow the
17 transcript.

18 **THE COURT:** Is that correct?

19 **MR. BRUCK:** That's correct.

20 **THE COURT:** All right. Again, they're going to
21 read some prior testimony to you, ladies and
22 gentlemen.

23 **MR. BELL:** They called James A. Springs,
24 Junior. He's sworn by the Court.

25 Would you introduce yourself to the jury,

1 please?

2 I'm Lieutenant James A. Springs, Junior.

3 By whom are you employed?

4 I'm employed by the South Carolina Law
5 Enforcement Division.

6 How long have you been so employed?

7 Eighteen years.

8 What division are you currently assigned?

9 I'm assigned as supervisor to the fingerprint
10 and crime scene department.

11 What are your duties in that capacity,
12 Lieutenant Springs?

13 To supervise the overall activities of that
14 particular laboratory and staff and their statewide
15 responsibilities as they relate to fingerprint
16 identification and crime scene investigation.

17 Lieutenant, what particular training,
18 experience and education do you have?

19 Upon becoming commissioned by the State Law
20 Enforcement Division in June of 1973, I started an
21 internship which lasted approximately two years.
22 During which I received a great deal of specialized
23 training, as well as on the job training. My
24 training has continued through the years. I have
25 attended numerous courses by the FBI, by Valencia

1 College, Orlando, Florida, other institutions of
2 higher learning. I am, as I said earlier, a
3 supervisor of that.

4 At that time, I believe that the defense
5 attorney accepted him as a qualified crime scene
6 analyst as an expert.

7 Lieutenant Springs, over the course of how many
8 years?

9 Eighteen.

10 Yes -- years?

11 Yes.

12 You have testified in courts before on numerous
13 occasions?

14 Well over 400 times, yes.

15 And been qualified as an expert on this
16 numerous occasions, also?

17 Yes, sir, I have.

18 Now, as a part of your duties, Lieutenant
19 Springs, did you have an occasion to be called to a
20 particular location in Lexington County on Sunday,
21 October 8th of '89?

22 Yes, sir, as a result of a call for assistance
23 we received from the Lexington County Sheriff's
24 Department at about one o'clock p.m. that afternoon.

25 When a crime scene technician, if you will, if

1 I can use that term, is called, how many of y'all
2 would go to this particular scene?

3 It would depend upon the scene itself. We
4 would normally respond with a core group of
5 individuals based upon the information given to us
6 in the telephone request. At this particular point
7 in time, I believe we responded with an initial
8 number of four individuals.

9 And to what location?

10 I would call it a recreational area just
11 outside of the town of South Congaree.

12 In Lexington County?

13 That is correct, yes.

14 What are your duties and functions upon arrival
15 at any scene and at this scene particularly?

16 The first thing would be to take a look at the
17 total scope of the scene and see just what type of
18 job we had ahead of us in an effort to allocate our
19 resources and manpower toward trying to preserve,
20 collect and document what we see at the scene.

21 Would you describe this area that you responded
22 to for the jury?

23 Speaking of the scene proper itself, sir?

24 Yes, sir, the scene itself.

25 As I said, it appeared to me to be somewhat of

1 a recreational area that had not been in current use
2 for any period of time that I could see. It was a
3 small lake with a large pond, depending upon what
4 criteria you might be using to describe the body of
5 water, with a rather large house, a recreational
6 building behind the pond. As you would approach
7 from the main populated area of the South Congaree
8 area, there was a dock on the premises and, as I
9 said, a recreational area which contained a
10 fireplace, several rooms. All of this was right
11 smack dab in the center of a wooded area.

12 Now, I'm going to refer to you State's Exhibit
13 Number 20, I believe. You have seen this diagram
14 before?

15 Yes, sir, I have.

16 And the area photographs attached to it; is
17 that correct?

18 Yes, sir, I have.

19 When y'all arrived, in your overview of that
20 scene, specifically what do you find? What steps do
21 you then have to take to process that scene?

22 Photographic documentation. Then once we
23 photograph, we document the area both generally and
24 specifically. Then we decide where our next point
25 of attack might be. In other words, we determine

1 the important sites on the scene, at which time we
2 will start collecting evidence from those areas.

3 Were there different areas of concern to you on
4 this particular scene?

5 Yes, sir, there were.

6 What are those different areas that were of
7 concern?

8 The initial areas which were of concern were,
9 of course, the dwelling itself or the building, for
10 lack of a better term, and the site of a body which
11 appeared in a small area of charred ground.

12 What was the condition of that building?

13 I mentioned earlier that it apparently hadn't
14 been used at any regular intervals for a period of
15 time. It was, for lack of a better term, unkept
16 (sic).

17 Did y'all observe that area, photograph certain
18 items in that area and collect those items and
19 preserve them?

20 Yes. One of the agents with me did do that,
21 yes.

22 Now, in the area where you say the body is,
23 where is that in relation to the hand -- the house
24 itself?

25 May I stand to show?

1 Yes. There is a pointer up there.

2 Again, the house, which I was speaking of, is
3 this structure here depicted in yellow. When
4 entering the scene, we entered from this dirt road
5 here, went in front of the pond, came down the side
6 of the pond in this parking area as indicated on the
7 display. The body of which I spoke of is located
8 just across this fire break which apparently had
9 been freshly dug. But, approximately, 25 feet from
10 the nearest side toward the house and fire break was
11 a body.

12 Now, the body was within this burned area here,
13 the charred area?

14 Yes, it was.

15 Right there, if you would look at that, right
16 there at this fire break, what did you locate right
17 in that area there, Lieutenant Springs, right at the
18 edge of that fire break?

19 There were several things that were located, a
20 piece of bone fragment on the opposite side of the
21 fire break away from the body, a massive brain
22 tissue.

23 Where was that brain tissue located in
24 relationship to where the body was located? What
25 was the distance between those two points?

1 Approximately, 25 feet.

2 Now, could you describe where the brain tissue
3 was in relation to the fire break as far as any dirt
4 from the fire break over or around it?

5 There was some dirt that had been thrown out of
6 the fire break area apparently from the plowing
7 process over toward the brain and it tended to lay
8 around the brain itself. It wasn't covered.

9 What was the condition of it otherwise?

10 Of course, it was bloody and it was darkened
11 much as most of the ground within this area was
12 darkened and also the small area just to the other
13 side of the fire break. It appeared that the fire
14 break had been dug through maybe the corner of the
15 burned area.

16 When you say darkened --

17 **THE COURT:** Slow down, counsel.

18 **MR. BELL:** I'm sorry.

19 When you say darkened, was that as if -- as a
20 result of some burning?

21 My initial impression was it was from soot.

22 Now, you say the body is a distance of 15 to 20
23 feet, I believe you said?

24 Approximately, 25 feet from the brains.

25 Twenty-five feet over there? Now, what was on

1 or around the body itself?

2 There were a number of articles which were
3 around and on the body. There was a rotted wood
4 log, which was approximately, I would say, somewhere
5 between seven and eight feet long sort of diagonally
6 across the chest and the abdomen area. There were
7 the frames of some upholstery of some chairs and
8 other material such as that over the lower portion
9 of the body. Upon removing the log off the abdomen
10 and stomach area, we found some yellowish cloth
11 material similar to yellowish corduroy. There were
12 also some pieces of fragments of burned and charred
13 cloth, which were found very close to around the
14 body itself, which were also collected.

15 So now the body is on the back or on the
16 stomach?

17 The individual would be laying on their back
18 with the head pointed in the direction of the front
19 of the house and with the right hand up, left hand
20 down and the right knee sort of slightly cocked
21 upward.

22 So now I want to ask you about the various
23 items that you gathered and preserved for evidence.
24 I want to go back to the area where the brain matter
25 was. Lieutenant Springs, I want to show you two

1 items, State's, for identification, Number 32, I
2 believe. Do you recognize those items? If so,
3 could you identify them for the jury please and show
4 where they were recovered from?

5 First, Solicitor, I have a question. Both of
6 these are State's Number 32?

7 No, sir.

8 Okay. State's Exhibit 32 is a round, slightly
9 cylindrical article found near the brain mass. In
10 the earth and area around the brain mass, this
11 particular bag, which contains my items number E-26,
12 27 and 28, are three round, apparently, lead pellets
13 which were taken from the earth in that same general
14 area.

15 Of the brain matter?

16 Right, adjacent to the brain matter.

17 And, Your Honor, we would offer in State's 32.

18 **MR. BRUCK:** No objection.

19 **THE COURT:** State's 32 in evidence without
20 objection.

21 (State's Exhibit Number 32, fiber wadding,
22 admitted into evidence.)

23 **MR. BELL:** Were those collected and preserved
24 by you?

25 They were.

1 Thereafter turned over to the firearms examiner
2 at the State Law Enforcement Division?

3 That is also correct, yes, sir.

4 And he offers it, subject to -- lieutenant, I
5 want to refer you to what has been marked State's
6 32, 34 and 35 -- I think that's supposed to be 33 --
7 and ask if you can look at those and identify them
8 for us.

9 Yes, sir. State's Exhibit 33, 34 and 35, yes,
10 sir, I can identify them.

11 What are those items?

12 State's Exhibits 34 and -- 33 and 34 are two
13 masses of material that I collected from immediately
14 around the body of the deceased. State's Exhibit
15 Number 35 are fragments of what appeared to be
16 charred cloth and other types of foreign matter,
17 which are not common to plant matter, which were
18 found in the debris which I scraped up from under
19 the body after the body was removed.

20 And we would offer State's 33, 34 and 35 into
21 evidence, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. BRUCK:** No objection.

24 **THE COURT:** State's 33, 34 and 35 in evidence
25 without objection.

1 (State's Exhibit Numbers 33 through 35,
2 burned cloth, admitted into evidence.)

3 **MR. BELL:** What is your purpose in doing that?
4 How much of that material did you actually get
5 around the scene?

6 There was a large, orange plastic bag that we
7 had, it was a rather large bundle. This is what we
8 sifted out of it along with what one of our other
9 examiners also took into custody.

10 What was the purpose of the other examiner at
11 SLED looking at that debris?

12 We made an observation with our sense of smell
13 and called the other examiner in to do an analysis
14 on the material to see whether or not she could
15 confirm the information which we had given her.

16 So she had sifted through this large mass that
17 you brought back and conducted other examinations;
18 is that correct?

19 That is correct, yes.

20 What was your impression as far as the smell
21 was concerned? Would you relate that to the jury,
22 please?

23 I smelled fumes, which to me as a layperson,
24 smelled as if they were a derivative of some kind of
25 petroleum product.

1 And that was in and around the area of the
2 body; is that correct?

3 It was evident once we had opened up the bag,
4 which had been closed for an hour or so, in the
5 laboratory and that is what drew me to call the
6 other examiner in.

7 I understand. Now, I want to refer back to
8 State's 38, which you previously testified that was
9 there in and around where the brain matter was.
10 What steps did you have to go through to recover
11 those items?

12 Two of these items as I said -- there were
13 three in this bag. Two of the items in State's
14 Exhibit Number 38 were in the earth and area right
15 adjacent to the brain mass.

16 And, Your Honor, we'd offer State's 38 into
17 evidence.

18 **MR. BRUCK:** No objection.

19 **THE COURT:** State's 38 in evidence without
20 objection.

21 (State's Exhibit Number 38, pellets,
22 admitted into evidence.)

23 **MR. BELL:** And the third was buried in the pine
24 where all of these were within inches of each other.

25 What did you have to do to recover that one out

1 of the pine root?

2 I actually had to go in with a machete and cut
3 out segments of it breaking the pine root away based
4 upon the way in which the grain of the root ran and
5 finally worked my way down to the lead fragment, the
6 pellet.

7 Did that cause any scarring on any of those
8 pellets?

9 With respect to the one that came out of the
10 root, yes.

11 Now, did you observe what has been described as
12 cloth like material on the body?

13 Yes, sir. As a matter of fact, I mentioned
14 that in my earlier testimony.

15 You also had the opportunity to observe the
16 interior of the house?

17 No, sir, not in its original state. I've seen
18 pictures of the interior, but I did not observe the
19 interior in its original state.

20 That was one of the officers that was involved
21 in examining the interior of the house?

22 That is correct, along with other officers from
23 Lexington.

24 I want to ask you, could you describe the cloth
25 material that you observed on the body?

1 The cloth material on the body, as I described
2 it earlier, was sort of a yellowish material, medium
3 to heavy in weight and appeared to me to have the
4 texture of corduroy.

5 Let me ask you one other question. Did you
6 observe any beer cans in and around this area?

7 Yes, sir. There were several noted by me,
8 which was brought to the attention of myself, as
9 well as the other agent assisting me who put his
10 expertise to work on those items.

11 And that would be the end of the State's
12 portion. Do you want to read the cross-examination?

13 **MR. BRUCK:** You can read it.

14 **MR. BELL:** This is the cross-examination by the
15 defense attorney.

16 Mr. Springs, did you have an occasion at any
17 time to go out to the creek?

18 No, sir, I did not.

19 Let's talk just a little bit about your SLED
20 laboratory if we could. What you do is you gather
21 up things, don't you, stuff like this?

22 We collect evidence, yes.

23 You collect evidence?

24 That is correct.

25 And you take that evidence back to SLED?

1 Correct.

2 And SLED is the South Carolina Law Enforcement
3 Division?

4 That is correct, it is.

5 And at the South Carolina Law Enforcement
6 Division, you have a large laboratory, don't you?

7 Relatively speaking, yes, we do.

8 By laboratory, we don't mean one room, we mean
9 lots of rooms, don't we?

10 That is correct.

11 How much does your lab cost?

12 Sir, I have heard prices, although the price
13 would be hearsay on my part, but it would be in the
14 millions.

15 Millions of dollars?

16 Yes.

17 Y'all have all types of forensic machines out
18 there, don't you?

19 You say all types, a lot of different types,
20 not all.

21 What types do you have?

22 With respect to my own particular expertise?

23 No. I really would like the jury to get a feel
24 for what capabilities y'all have out at SLED for
25 analyzing different types of evidence.

1 For me to give the jury or anyone else,
2 including yourself, an idea of that, would take
3 quite a while, but we have an extensive laboratory
4 with a number of technical items and
5 instrumentation, which I would not even attempt to
6 pronounce outside of my own laboratory.

7 But, briefly, y'all can compare hairs. I mean,
8 you can take a hair from somebody and say that hair
9 more than likely is similar to that person's hair,
10 can't you?

11 I can tell you we can examine hair. As far as
12 what the range would be, you would have to ask a
13 hair examiner.

14 And you can do fiber analysis, can't you?

15 We have an analyst which does fiber analysis
16 also, yeah.

17 And y'all do blood analysis, don't you?

18 You say we, another section, yes. We
19 specialize in each of the areas. We normally work
20 in one or two of the very related areas and don't go
21 out of those particular areas.

22 How many different experts do you have at SLED;
23 do you know?

24 We have got something in excess of 50
25 examiners. We have added quite a few people in the

1 near past, so an accurate count would not be
2 available right now from me.

3 So you have 50 experts and they're not all in
4 different areas from each other, but you have 50
5 experts out there in all of these scientific areas
6 that are used by law enforcement; is that right?

7 Our facilities are available and our services
8 are available to law enforcement, yes.

9 And y'all are even sophisticated enough to
10 where you can do this new DNA testing, can't you,
11 where you match people's genes?

12 The DNA, which is the makeup of human gene
13 line, yes.

14 Right. So y'all are very sophisticated out at
15 SLED?

16 We have some sophistication about the
17 instrumentation we use and the techniques, yes.

18 A lot of your experts were involved in this
19 case, weren't they?

20 We had several experts involved in examining
21 different types of evidence in this case from
22 different laboratories that I am aware of.

23 So, in other words, in this case, there was a
24 lot of work done out there at SLED. There were a
25 lot of people out there at SLED that have analyzed

1 stuff about this case; isn't that right?

2 You keep saying a lot, relative to how many?
3 Relative to five? Relative to a thousand? There
4 were several examiners which examined various pieces
5 of evidence which related to accelerants, very
6 possibly body fluid, latent prints in my particular
7 area and other related areas.

8 There were about ten people working on this
9 case, weren't they, ten different examiners?

10 I would say that being that is not my
11 particular case and one of my own men worked it and
12 being that you have reviewed the case and have
13 gotten all of the copies of everything we had, you
14 are probably more aware of that than I am, sir.

15 Okay. But it's fair to say that given the
16 million dollars worth of laboratory that you have,
17 SLED gave it its best shot on this case, didn't
18 they, to come up with whatever they could from all
19 of the evidence that was gathered?

20 We always try our best to get whatever evidence
21 we can, sir.

22 Thank you. I don't have any other questions.

23 And that would be the testimony of Mr. Springs.

24 **MR. BRUCK:** If I may, there was one part that
25 was not read by counsel. I'd like to read right

1 before the cross-examination on direct examination.

2 I'll repeat the question leading in.

3 Let me ask you one other question -- this is
4 the Solicitor asking this -- did you observe any
5 beer cans in and around this area?

6 Answer: Yes, sir. There were several noted by
7 me which were drawn to the attention of myself, as
8 well as the other agent assisting me to put his
9 expertise to work on those items.

10 Question: Were some of them even there in and
11 around the fire or the burned area where they had
12 been sooted or smoked?

13 I know there was at least one in that area that
14 I saw, yes.

15 Of the beer cans you observed, what brands were
16 they?

17 Answer: The vast majority, if not all of them,
18 were Budweiser.

19 **MR. BELL:** Your Honor, may I confer with
20 counsel for one brief moment?

21 (Pause.)

22 **MR. BELL:** Your Honor, I need to recall Agent
23 McDermott. I forgot something. And there's no
24 objection by the defense.

25 **THE COURT:** All right. Go ahead.

1 You'll just remain under oath, sir.

2 **THE WITNESS:** Yes, sir.

3 RICHARD MCDERMOTT,

4 having been previously duly sworn, resumed the
5 witness stand and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. BELL:

8 **Q** Agent McDermott, I apologize. There's
9 something else I forgot to cover with you in the
10 course of the investigation. After that, were you
11 involved in the use of a search warrant in relation
12 to a vehicle?

13 **A** Yes, sir, I was.

14 **Q** And how did that come about?

15 **A** Some time during the course of the
16 investigation, we became interested in a pick-up
17 truck that was owned by the defendant, I believe, at
18 the time. We obtained a search warrant to stop that
19 vehicle and seize it. And it seemed like it was a
20 week or so later in the investigation, wee hours of
21 the morning, Friday night, early Saturday morning, I
22 think we stopped and seized the vehicle.

23 **Q** Do you know what kind of vehicle it was or do
24 you recall?

25 **A** Just a green pick-up truck is the best of my

1 recollection.

2 Q Do you know how that came about?

3 A It was a lead in the investigation that we --
4 that materialized and so we felt it was a vehicle of
5 interest during the course of this investigation.

6 Q Did you obtain the search warrant?

7 A No, sir, I did not. I believe it was
8 Investigator Hite with the Lexington County
9 Sheriff's Department did.

10 Q And you were involved in the actual stopping of
11 the vehicle?

12 A Yes, sir, that's correct.

13 Q And what happened once you stopped the vehicle?

14 A We stopped the vehicle outside of Pelion, South
15 Carolina, which is in Lexington County. And there
16 was an individual driving it that I can't recall who
17 it was, but it was not Mr. Cooper or Mr. Sutherland
18 at the time.

19 Q And what was done with that vehicle?

20 A Sir?

21 Q What was done with the vehicle?

22 A We seized that vehicle and I believe it was
23 impounded and carried to SLED headquarters for
24 processing by crime scene.

25 Q Let me show you this picture and ask if you can

1 identify it?

2 A Yes, sir. That's the vehicle.

3 Q That's the vehicle that you seized back then in
4 October of '89?

5 A Yes, sir.

6 MR. BELL: Your Honor, we'd offer this as --

7 MR. BRUCK: No objection.

8 MR. BELL: It's State's 30.

9 THE COURT: State's 30 in evidence without
10 objection.

11 (State's Exhibit Number 30, photograph,
12 admitted into evidence.)

13 MR. BELL: Thank you, Agent McDermott.

14 MR. BRUCK: No questions.

15 THE COURT: You may step down, sir.

16 MR. BELL: Your Honor, we have a couple
17 stipulations that we would like to read into the
18 record.

19 THE COURT: Again, ladies and gentlemen, the
20 same instruction as before about stipulations in
21 accepting those statements to be true and using them
22 for whatever purposes you deem appropriate in your
23 consideration of the issues.

24 Go ahead.

25 MR. BELL: The first is -- reads as follows:

1 The State and the defendant have agreed that
2 Attorney Jonathan Harvey represented the victim,
3 Kimberly Quinn, in a personal injury case arising
4 out of an automobile accident during the time period
5 involved in this case.

6 Mr. Harvey had negotiated a settlement in that
7 case for \$7,750 and had informed her prior to
8 October 4th, 1989 that she was to receive \$2,837.18
9 as her portion of this settlement after all fees and
10 expenses were deducted. However, Mr. Harvey had
11 deposited the settlement check from the insurance
12 company in his trust account, the bank had placed a
13 ten day hold on this money. Therefore, it was not
14 available to be paid to Kimberly Quinn until
15 Tuesday, October 10th, 1989. As a result, she had
16 not been given her portion of the settlement money
17 prior to her death.

18 And I would offer that as a Court's Exhibit.

19 (Court's Exhibit Number 7, stipulation, was
20 marked for identification purposes.)

21 **MR. BELL:** The next stipulation, Your Honor,
22 would be: The State and the defendant have agreed
23 that Kimberly Quinn was sent a check by the South
24 Carolina State Treasurer's office in the amount of
25 \$149 for Aid to Families with Dependent Children,

1 AFDC, to which she was entitled. This check was
2 mailed to her so that she received it on October
3 1st, 1989.

4 Bank records show that this check was cashed at
5 the South Carolina National Bank, now Wachovia,
6 located at the corner of Knox Abbott Drive and 12th
7 Street in Cayce at 9:17 a.m. on Friday, October 6th,
8 1989. The check was cashed at the drive-thru teller
9 from one of the two fartherest (sic) outside lanes.
10 The check was sent through the drive-thru, too,
11 along with the victim's South Carolina
12 identification card.

13 If called to testify, the teller who cashed the
14 check would say that she had no independent memory
15 of the transaction, she did not see who cashed the
16 check, what type of vehicle was used, how many
17 people were in the vehicle or what sex the person or
18 persons were. However, she would testify that it
19 was her policy to cash AFDC checks that were sent
20 through the tube with a valid driver's license or
21 identification card if the card was in the same name
22 as the check regardless of who presented the check.

23 (Court's Exhibit Number 8, stipulation, was
24 marked for identification purposes.)

25 **MR. BELL:** And, Your Honor, we do not have a

1 written one, but on the availability of Gail Heath
2 from SLED, who's the questioned documents expert,
3 she would testify that she identified, and I would
4 put in State's 14, which is the check that was
5 aforementioned in the other stipulation, and that
6 she would testify that the victim, Kimberly Quinn,
7 did not sign the check, that it was a simulation of
8 her name as if somebody was looking at it while
9 trying to sign her name.

10 **THE COURT:** That's an additional stipulation
11 you're offering?

12 **MR. BELL:** Yes, Your Honor.

13 **THE COURT:** Is that correct?

14 **MR. BRUCK:** The stipulation is that Ms. Quinn
15 did not sign the check.

16 **THE COURT:** Is that correct?

17 **MR. BELL:** That's correct, Your Honor.

18 **THE COURT:** All right. Ladies and gentlemen,
19 that's an additional stipulation that Ms. Quinn did
20 not sign the check.

21 **MR. BELL:** And, Your Honor, we would offer
22 State's 14, which is the check, State's 12, which is
23 the teller's machine tape at that time. And we
24 would also offer State's 11 which goes to the number
25 of the I.D. that was written on the check, that

1 would be Kimberly Quinn's state I.D. number.

2 **THE COURT:** Any objection?

3 **MR. BRUCK:** No objection to any of those.

4 **THE COURT:** State's 11, 12 and 14 in evidence
5 without objection.

6 (COURT REPORTER'S NOTE: State's Exhibit
7 Numbers 11, 12 and 14 were previously admitted in
8 evidence.)

9 **MR. BELL:** One moment, Your Honor.

10 (Pause.)

11 **MR. BELL:** Your Honor, I think that's all of
12 the witnesses that we had scheduled here today, Your
13 Honor. We ran pretty fast, but we still have more
14 tomorrow.

15 **THE COURT:** All right. Ladies and gentlemen,
16 I'll go ahead and send you home. Again, if you'll
17 give you note pads to the bailiff on the way out.
18 Please report back, be ready to go for trial
19 tomorrow at 9:30. Do not discuss this case in any
20 way. Thank you very much. Have a good night.

21 (The jury was excused for the day.)

22 **THE COURT:** All right. See y'all tomorrow.
23 Thank you.

24 **MR. BELL:** Your Honor, can we take up just a
25 matter of housekeeping for tomorrow? We will have

1 -- I know we'll have at least two witnesses ready to
2 go at 9:30.

3 We would, at some point, as soon as we could,
4 I'd like to put up Mr. Sutherland in the morning.
5 One of his attorneys, Ms. Holt, is present. She had
6 a commitment at eight o'clock, I think, with her
7 son's graduation and we were trying to be as nice to
8 try to schedule around that. So I don't know what
9 time -- how long that will last or whatever.

10 **THE COURT:** Do you have any clue?

11 **MS. HOLT:** Your Honor, it's a big high school.

12 **THE COURT:** It's 8:00 in the morning?

13 **MS. HOLT:** It's A.C. Flora.

14 **THE COURT:** We'll do what we can.

15 **MR. BELL:** I just didn't know how fast we were
16 going, Your Honor.

17 **THE COURT:** If we end up taking a break, that's
18 okay.

19 **MR. BELL:** I just wanted to alert the Court
20 where we were going.

21 **THE COURT:** All right. See y'all tomorrow.
22 Thank you.

23 (Whereupon, the proceedings were concluded
24 for May 23, 2006.)

25 (The following proceedings were held on May

1 24, 2006.)

2 (State's Exhibit Numbers 31, 37 and 39 were
3 marked for identification purposes.)

4 **THE COURT:** Are y'all ready to proceed?

5 **MR. BELL:** Yes, sir, Your Honor.

6 **THE COURT:** Bring the jury in, please.

7 (The jury enters the courtroom at 9:35 a.m.)

8 **THE COURT:** Good morning, ladies and gentlemen.
9 We're ready to proceed at this time.

10 **MR. BELL:** Your Honor, the first thing I'd like
11 to do is, I've discussed with counsel, I neglected
12 to put in an exhibit during Mr. Springs' testimony
13 that we read. It's exhibit 36. I don't believe
14 they have an objection.

15 **MR. DUNCAN:** None, Your Honor.

16 **THE COURT:** All right. State's 36 in evidence
17 without objection.

18 (State's Exhibit Number 36, paint can,
19 admitted into evidence.)

20 **MR. BELL:** And the State will call Nancy Skraba
21 to the stand.

22 **NANCY SKRABA,**

23 having been duly sworn, testified as follows:

24 **THE CLERK:** If you'll have a seat and state
25 your full name and spell your last for the record,

1 please.

2 **THE WITNESS:** My name is Nancy Skraba. Skraba
3 is spelled S-K-R-A-B-A.

4 DIRECT EXAMINATION

5 BY MR. BELL:

6 **Q** Ms. Skraba, where are you employed?

7 **A** I work for the South Carolina Law Enforcement
8 Division. I'm a forensic DNA analyst.

9 **Q** And what's your training and background in
10 regards to that?

11 **A** I have a Bachelor of Science degree in Medical
12 Technology from the University of South Carolina.
13 I'm board certified by the American Society of
14 Clinical Pathologists. In addition to my DNA
15 training at SLED, I've also attended several
16 schools, seminars and workshops in the field of
17 forensic DNA analysis, including the FBI DNA typing
18 methods school in Quantico, Virginia where I
19 received graduate credit from the University of
20 Virginia. I've also received graduate credit from
21 the University of South Carolina for a statistics
22 course as it applies to DNA analysis.

23 **Q** And have you ever been qualified to testify in
24 the courts of the State of South Carolina as a
25 serologist or a DNA expert?

1 **A** Yes, I have. I've testified 20 times in DNA
2 and over 150 times in forensic serology.

3 **Q** And back -- let me ask you before we get to
4 that. Back in 1989, what were your main duties?

5 **A** Serology. We didn't have DNA available in
6 1989, so we analyzed for body fluids, we identified
7 them. And the only test we had back then was A/B/O
8 blood group and some other genetic markers, but
9 A/B/O was the main genetic marker that we did in
10 1989.

11 **MR. BELL:** If it please the Court, Your Honor,
12 we'd offer her as an expert in serology and anything
13 else that she's an expert, I don't know if they want
14 to touch on or not.

15 **THE COURT:** What areas, counsel? You can't
16 just say anything else that she's an expert in.

17 **MR. BELL:** Mainly serology from the State's
18 perspective.

19 **MR. BRUCK:** We're happy to stipulate that Ms.
20 Skraba is an expert in the field of serology.

21 **THE COURT:** All right. The Court finds her to
22 be qualified in that area without objection. Go
23 ahead.

24 BY MR. BELL:

25 **Q** Ms. Skraba, back in 1989 or 1990, were you

1 asked to look into some evidence from a murder case
2 involving a victim, Kimberly Quinn?

3 A Yes, I was.

4 Q When about were you asked to look at this
5 evidence?

6 A In October of 1989.

7 Q And, first of all, how did you get involved in
8 this case; do you recall?

9 A I received evidence in this case.

10 Q Did you also have an occasion to look at or try
11 to process some evidence as well, specifically a
12 vehicle?

13 A Yes.

14 Q What kind of vehicle?

15 A It was a 1984 Chevrolet pick-up truck.

16 Q And do you recall the dates that you looked at
17 the evidence or looked at the truck, number one?

18 A October 11th.

19 Q Okay. And when you looked at the other
20 evidence that you processed as well?

21 A The date? Different days. October 9th was my
22 first exposure to the evidence.

23 Q Let me show you, first of all, what's been
24 marked as State's Exhibit 15.

25 MR. BELL: Your Honor, may I approach the

1 witness?

2 **THE COURT:** Yes, sir.

3 BY MR. BELL:

4 **Q** And ask if you observed this. Is this a piece
5 of evidence that you looked at?

6 **A** Blue jeans, yes.

7 **Q** Okay. And how can you tell that you looked at
8 these?

9 **A** I believe my initials are on there, yes, N.S.

10 **Q** And what did you do in regards to these?

11 **A** I found a stain in the crotch area that had
12 human blood.

13 **Q** Okay. And what kind of testing did you do on
14 that stain?

15 **A** The initial test that we do for blood
16 identification is just a visual exam. We look for
17 blood. If we see blood, the next test that we do is
18 a screening test called phenolphthalein. The
19 screening test is a very sensitive test, but it's
20 not a confirming test for blood. If the screening
21 test is positive, then we do another test called
22 human species to determine if, in fact, the blood is
23 human. In this case, the blood was human. There
24 was not enough sample to do additional analysis. I
25 could not do the A/B/O blood typing on that.

1 Q Were you aware of the condition that these
2 jeans were found?

3 A I believe they were found in water.

4 Q Would that affect any testing that you did on
5 these jeans?

6 A Water can certainly dilute the stain to a level
7 where I would not be able to continue the analysis.

8 Q And there would be no way to further test this
9 particular area that you found?

10 A Not if it's an insufficient amount.

11 Q Now, were you -- let me show you what's been
12 marked State's 22.

13 MR. BELL: Your Honor, may I approach the
14 witness?

15 Q And ask if you've seen this piece of evidence?

16 A I should have my initials on it, but I don't
17 see them. But I believe this was the ax in this
18 case.

19 Q Did you perform any test on this?

20 A Yes, I did. Again, I looked for evidence of
21 blood visually. I did not see any blood on the ax.
22 I did a screening test on several areas,
23 phenolphthalein test, which was positive. However,
24 that's not a confirming test for blood. The other
25 tests that I did were inconclusive, so no blood was

1 identified on the ax.

2 Q Were you aware of the circumstances where this
3 ax was found?

4 A No.

5 Q If you were, based on your expertise, told that
6 it was found in water, would that surprise you that
7 you found nothing on it?

8 A Well, again, water can certainly dilute any
9 body fluid stain to a level that's undetectable.

10 Q Ms. Skraba, let me show you 22 and ask you to
11 look at the bottom of the handle and ask if that's
12 your mark?

13 A Oh, yes, it is. I see it.

14 Q Okay. So this is the ax that you tested?

15 A Yes, sir.

16 Q Ms. Skraba, let me show you this.

17 MR. BELL: Your Honor, may I approach the
18 witness again?

19 THE COURT: Yes.

20 BY MR. BELL:

21 Q I'll show you State's 30 and ask if you
22 recognize that?

23 A No, I don't remember the truck. I know it was
24 a green 1984 pick-up truck.

25 Q Okay. Now, the truck that you examined that

1 was brought to you, was it brought to SLED?

2 A Yes. We processed the truck in the SLED
3 garage.

4 Q And what were you looking for? What did you do
5 in regards to processing --

6 A I, specifically, was looking for blood. I did
7 not find any blood in the truck.

8 Q Okay. Did you notice something peculiar in the
9 truck that caught your attention?

10 A The only thing that I noticed about the truck
11 is that it appeared to have been freshly painted.
12 The inside of the truck, the floorboard, behind the
13 seat and the back window were all painted black.
14 And we noticed that because the paint was still
15 tacky to the touch.

16 Q Would that affect your ability to recover any
17 evidence inside the truck?

18 A I would not expect to identify blood on a
19 surface that had been freshly painted.

20 Q How about a surface that had been painted over?

21 A That's what I was referring to.

22 Q All right. And you may have said this. How
23 did you tell that it was freshly painted?

24 A It was tacky to the touch.

25 Q Okay. And that was on October 11th, 1989?

1 **A** Yes, sir.

2 **Q** Do you recall finding anything else in the
3 vehicle anywhere?

4 **A** I found two levels, one was a wooden one, one
5 was a metal one. There was a tool box in the back
6 of the truck that was painted black, a tire, a
7 ladder, some cans and there was an orange can.

8 **Q** What type of orange can?

9 **A** Looked like a gas can.

10 **MR. BELL:** May I approach the witness, Your
11 Honor?

12 **THE COURT:** Yes, sir.

13 **BY MR. BELL:**

14 **Q** I show you what's been marked as State's 37 and
15 ask if you recognize that?

16 **A** I don't recall it specifically.

17 **Q** Did that appear to be the interior of the
18 truck?

19 **A** Yes.

20 **Q** That you saw on October 11th, 1989?

21 **A** Yes.

22 **Q** And that's how you saw it that day?

23 **A** As far as I can remember.

24 **MR. BELL:** Your Honor, I think this has been
25 offered as State's 37.

1 **MR. DUNCAN:** No objection.

2 **THE COURT:** All right. State's 37 in evidence
3 without objection.

4 (State's Exhibit Number 37, photograph,
5 admitted into evidence.)

6 **BY MR. BELL:**

7 **Q** Let me show you what's been marked as State's
8 39 and ask you if you recognize that?

9 **A** Yes, the ladder, tire, cans, gas can.

10 **Q** And that's how it appeared the day that you
11 observed the vehicle?

12 **A** As far as I can remember.

13 **Q** And this was 16 and a half years ago?

14 **A** Yes.

15 **MR. BELL:** Your Honor, I think we'd offer this
16 as State's 39.

17 **MR. BRUCK:** No objection.

18 **THE COURT:** All right. 39 in evidence without
19 objection.

20 (State's Exhibit Number 39, photograph,
21 admitted into evidence.)

22 **MR. BELL:** Thank you, Ms. Skraba. Please
23 answer any questions the defense may have for you.

24 ****

25 ****

1 CROSS-EXAMINATION

2 BY MR. BRUCK:

3 Q Good morning, Ms. Skraba.

4 A Good morning.

5 Q Nice to see you again. You said you first
6 examined the truck on the 11th of October?

7 A That's correct.

8 Q Before doing that, were you informed that the
9 truck had already been examined by law enforcement
10 on the 9th?

11 A I don't recall that.

12 Q You don't remember whether you knew that or
13 not?

14 A No.

15 Q Okay. The tackiness of the paint, you said
16 that the back window had been painted?

17 A Yes.

18 Q And the floorboard had been painted?

19 A Yes, and behind the seat.

20 Q Okay. And did you notice that both -- was the
21 window tacky, too, or just the floorboard?

22 A I don't recall.

23 Q So it's possible that the floorboard was tacky,
24 but the window was dry?

25 A It's possible, yes.

1 Q As far as you remember?

2 A I don't recall.

3 Q Now, before 2006, did you do any DNA testing --
4 I should put it differently. Were you asked by the
5 State to do any DNA testing in this case?

6 A No.

7 Q Not in 1989, not in 1990, '91, at any time,
8 until this year, right?

9 A That's correct.

10 Q And then in March of this year, specifically, I
11 think, beginning March 20th, you were requested to
12 do DNA testing on all of the evidence that you could
13 test, essentially; is that correct?

14 A That's correct.

15 Q And the request came from who?

16 A The defense.

17 Q From the defense not from the prosecution?

18 A That's correct.

19 Q Okay. So you worked with us and with the
20 Lexington County authorities to gather whatever
21 evidence could be tested at this late date?

22 A That's correct.

23 Q And you ran the tests that you could on the
24 evidence that you found, right?

25 A Yes, I did.

1 Q All right. And that included beer cans?

2 A Yes.

3 Q Just tell the jury everything you tested.

4 A I analyzed 13 beer cans.

5 Q And from the information you received, you
6 analyzed beer cans found at the house where the
7 victim lived, correct?

8 A They were found in different areas.

9 Q Okay. Why don't you tell us?

10 A A beer can found in front of the house. There
11 was one found under the roof supports of the dock
12 shed, one found at the front of the house left of
13 the steps, front of the house right of the steps,
14 one was found in the dirt road leading to the pond,
15 the left corner of the house, by the kitchen back
16 door, the living room floor, the kitchen floor, two
17 beer cans from the victim's house and two beer cans
18 from the left of the front porch.

19 Q Okay. And did you get any partial DNA results
20 from any of that evidence and if so, from what
21 evidence?

22 A Yes, I did. Just the beer cans is that what
23 you're interested in or all of the evidence that I
24 examined?

25 Q All of the evidence?

1 **A** All of the evidence. I got partial profiles on
2 a swab from the living room, on a swab from the wall
3 by the stove, a hair from the ceiling. There was a
4 swab from the living room wall, another hair from
5 the ceiling, blue jeans, blue jean shorts, and then
6 the beer cans at the front of the house, dock shed,
7 another one from the front of the house -- well,
8 actually, three from the front of the house, one
9 from the dirt road to the pond, one from the
10 victim's house, all partial profiles.

11 **Q** All partial, all right. And were you then
12 asked -- when you got these profiles, did the State
13 ask you to compare those to anyone's profile, to
14 anyone's DNA?

15 **A** Did the State, no. I did request a sample from
16 the defendant in my report.

17 **Q** Okay. And that has not been provided to you?

18 **A** No.

19 **Q** Okay. And, of course, that would have to be
20 done in some -- law enforcement would have to take
21 the sample and bring it to you, right?

22 **A** Yes.

23 **Q** That's the way that's done?

24 **A** Yes.

25 **Q** Okay. And did anyone ask you to provide a

1 sample of Mr. Sutherland's DNA after you got these
2 partial profiles?

3 A No.

4 Q Now, let me ask you this. You say these are
5 partial DNA profiles?

6 A Yes.

7 Q In other words, all of the genes that you look
8 for in a DNA test could not be identified, correct?

9 A Yes. We actually look at 13 different areas on
10 the DNA molecule, 14 if you include amelogenin,
11 which is the sex chromosome that determines whether
12 the profile is from a male or a female. So we look
13 at 13 core low sides, what we call them, locations
14 and attempt to identify the profile at those 13
15 locations.

16 Q Okay. And what -- and you say there's a sex
17 indicator, so you're able -- some of these results,
18 you were able to find were female?

19 A Yes. On some of these results, that's all I
20 had was the amelogenin result.

21 Q Okay. I should have narrowed it down a little
22 bit. How much male DNA did you find?

23 A How many samples were contributed by a male?

24 Q Yes.

25 A Just one moment.

1 Q And where do they come from?

2 A There were eight samples that were contributed
3 by a male. The first one was the living room sample
4 and then the one by the -- collected by the wall, or
5 the wall by the stove.

6 Q In the victim's house -- well, in a house?

7 A I'm not sure. I need to look at that, at the
8 report, the original report. No, those swabs were
9 from a trailer, from Neece's Enterprise Repo Center.
10 I don't believe that was the victim's house.

11 Q All right. Would you keep going?

12 A Living room wall, hair from the ceiling, blue
13 jeans, I believe those were Tony Cooper's blue
14 jeans.

15 Q These were blue jeans that were taken from Tony
16 Cooper's house?

17 A Right.

18 Q So you would expect to find male DNA on that?

19 A Yes. Blue jean shorts, the dirt road leading
20 to the pond and one beer can from the victim's house
21 showed a male profile.

22 Q All right. And you still don't know who those
23 are. You haven't been provided --

24 A No.

25 Q -- Sutherland's DNA and law enforcement hasn't

1 brought you Cooper's DNA?

2 A No.

3 Q The picture speaks for itself, but the gas can
4 was just sitting out where anyone could see it in
5 the truck, wasn't it?

6 A Yes.

7 Q It wasn't hidden or covered up or anything?

8 A No.

9 Q And just so I'm clear, the initial request from
10 the defense for you to do DNA testing came on or
11 about March 20th of this year?

12 A That is correct.

13 Q Now, over the course of 16 years, does the
14 ability to get DNA results go down from biological
15 material like blood?

16 A Oh, absolutely. All of the stains in this case
17 were very degraded.

18 Q So had testing been requested many years ago,
19 no telling what you would have found?

20 A That's true with some of the stains, however,
21 not from all of the stains, particularly the
22 victim's blood standard was degraded when I received
23 it in 1989.

24 Q Okay. But as far as, say, saliva on a beer
25 can, that's the kind of thing that degrades over

1 time, correct?

2 A That's correct.

3 Q So it -- if it had been tested earlier, you
4 might have gotten a full profile?

5 A It's possible. It depends on the quantity on
6 the can to begin with.

7 Q Okay. You don't know, but you do know that
8 time is your enemy?

9 A That's true.

10 MR. BRUCK: Bear with me just a moment, Ms.
11 Skraba. I think that's it.

12 (Pause.)

13 Q With modern DNA techniques, extremely small
14 amounts of biological material can give a DNA
15 result; isn't that true?

16 A That's correct.

17 Q In fact, the instrumentality you have now is so
18 sensitive that you always wear gloves to handle
19 material because your own cells could come off on
20 evidence if you handle them with your bare hands?

21 A That's correct. We wear gloves to prevent
22 contamination of a sample.

23 Q Contamination just by your hands, for example?

24 A Yes.

25 Q Or contamination by touching one sample and

1 carrying DNA and touching another sample and you
2 could transfer a tiny amount of biological material
3 from one sample to the other?

4 A Yes, that's true.

5 Q So those small amounts can be tested if they're
6 in adequate condition --

7 A Yes.

8 Q -- if they haven't rotted?

9 A That's correct.

10 Q And you always change your gloves each time
11 when you're handling a new piece evidence precisely
12 for that reason?

13 A Yes.

14 Q Isn't there a data base of all of the inmates
15 or at least anybody associated with a violent crime
16 in the department of corrections where you can look
17 up DNA profiles?

18 A Yes. It's called CODIS. CODIS is an acronym
19 for Combined DNA Index System. It's a computer
20 software program developed by the FBI that allows
21 law enforcement agencies throughout the nation to
22 compare DNA profiles developed from evidence stains
23 and from convicted offenders. CODIS is used as an
24 investigative tool by law enforcement to help solve
25 crime.

1 Q And so Mr. Sutherland, he's been convicted of
2 murder, would be in that data base?

3 A It should be, yes.

4 Q And so should Mr. Cooper because of his
5 involvement in this offense, correct?

6 A If he has an offense, yes, he should be in the
7 data base.

8 MR. BRUCK: That's all I have. Thank you.

9 REDIRECT EXAMINATION

10 BY MR. BELL:

11 Q Ms. Skraba, let me just get clear what you were
12 asked to do. How many items of evidence did you
13 look through at the request of the defense?

14 A About 28.

15 Q And you found how many -- how many did you find
16 a profile on?

17 A Fourteen.

18 Q And some of those were from you said a trailer
19 at -- or at Neece's Trailer Park?

20 A Yes.

21 Q How many of those items were there?

22 A Five.

23 Q And that doesn't say a house at [REDACTED]

24 [REDACTED], right?

25 A No.

1 Q Or a pond house or a pond?

2 A No.

3 Q Now, you found two beer cans, a partial profile
4 of two beer cans?

5 A No, more than that.

6 Q Oh, I'm sorry.

7 A Six.

8 Q And where did it indicate those beer cans came
9 from?

10 A That I found the partial profile from?

11 Q Yes, ma'am.

12 A The front of the house, the dock shed, another
13 one from the front of the house, another from the
14 front of the house, one from the dirt road leading
15 to the pond and one from the victim's house.

16 Q So, apparently, there's a differentiation
17 between house and victim's house?

18 A Yes... These descriptions were the way it was
19 logged in to me.

20 Q And what are the possibilities of finding a
21 match on these, number one?

22 A Finding a match? Well, there are only three
23 that I would consider comparing and --

24 Q Why is that?

25 A Because of the amount of information that I

1 have on these profiles. And I would use them more
2 for exclusion probably than a match. I don't think
3 I could calculate a statistic for a match, but I
4 could use them for exclusion.

5 Q And you said something about a pair of blue
6 jeans or blue jean shorts?

7 A Yes. I had a pair of blue jeans and blue jean
8 shorts.

9 Q Where did those come from?

10 A Just one moment. Those were from Tony Cooper's
11 residence.

12 Q Okay. Did you, back in 1989, test those --
13 those particular shorts?

14 A Yes, I did.

15 Q And what did you find?

16 A I did A/B/O on those shorts. And I found group
17 A, A/B/O blood typing, human blood group A.

18 Q And did you type the victim's blood, Kimberly
19 Quinn's blood back in 1989?

20 A Yes, I did.

21 Q What type does she have?

22 A She has group O.

23 Q So that wouldn't be her blood?

24 A No.

25 Q What are the three items that you would

1 consider on an exclusion?

2 **A** Item four point three, which was from the blue
3 jean shorts; item five point one, which was a beer
4 can from the front of the house; and item five point
5 five, which was a beer can from the dirt road
6 leading to the pond.

7 **Q** So is the front of the house is not -- which
8 house -- is it the front of the victim's house or
9 just says front of house?

10 **A** I don't know. That's how it was logged in is
11 front of the house.

12 **Q** Okay. So, I mean, you listed where all you
13 found the beer cans that you found stuff on and two
14 of them said from victim's house and then one just
15 said front of house, right?

16 **A** That's how it was described when it was logged
17 in.

18 **MR. BELL:** Thank you, Ms. Skraba.

19 **MR. BRUCK:** Nothing further.

20 **THE COURT:** You may step down, ma'am. Thank
21 you.

22 **MR. BELL:** Your Honor, we'd ask that she be
23 excused. I think she's a witness in another case.

24 **MR. BRUCK:** That's fine.

25 **THE COURT:** You may be excused, ma'am.

1 **MR. BELL:** Let me get my next witness, Your
2 Honor.

3 (Pause.)

4 **MR. BELL:** The State would call Jeff Hollifield
5 to the stand.

6 JEFFREY MORRIS HOLLIFIELD,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat and state your name,
9 please.

10 **THE WITNESS:** My name is Jeffrey Morris
11 Hollifield, H-O-L-L-I-F-I-E-L-D.

12 DIRECT EXAMINATION

13 BY MR. BELL:

14 **Q** Mr. Hollifield, how are you employed?

15 **A** I own and operate Microanalytical, which is a
16 private forensics lab in Greenville. And I also
17 teach chemistry and forensic science at Greenville
18 Technical College as an adjunct instructor.

19 **Q** And how long have you been doing that?

20 **A** Nine years.

21 **Q** Where were you employed before that?

22 **A** Prior to that, I was employed in the trace
23 evidence department at the SLED laboratory from '86
24 to '96.

25 **Q** And, first of all, what does trace mean?

1 **A** Trace or trace evidence includes very small,
2 tiny pieces of evidence, such as, paint, glass,
3 insulation, building materials, explosive residues,
4 that are analyzed through the use of microscopy and
5 chemistry.

6 **Q** And what is your educational background and
7 training in regards to trace?

8 **A** I received a bachelors degree in chemistry from
9 Furman University in '84, masters in chemistry also
10 from Furman in '86, and a degree from McCrone
11 Research Institute in chemical microscopy in '97.

12 **Q** And have you been qualified as an expert in the
13 field of trace analysis in the courts of the State
14 of South Carolina?

15 **A** I have.

16 **Q** Approximately, how many times?

17 **A** 150, 152.

18 **Q** And that's in the courts of general sessions or
19 common pleas?

20 **A** Magistrates, general sessions and federal
21 courts.

22 **MR. BELL:** Your Honor, we'd offer
23 Mr. Hollifield in the field of trace analysis --
24 trace evidence analysis.

25 **MR. DUNCAN:** No objection, Your Honor.

1 **THE COURT:** The Court finds him to be qualified
2 in that area of trace evidence analysis without
3 objection.

4 BY MR. BELL:

5 **Q** Mr. Hollifield, I want to direct your attention
6 back in 1989, you were working with the State Law
7 Enforcement Division then?

8 **A** I was.

9 **Q** As a trace analyst?

10 **A** Yes, sir.

11 **Q** Did you have an occasion to be, I want to use
12 the term, to process a vehicle at SLED headquarter
13 -- or at your lab? I'm sorry.

14 **A** I did. Part of my responsibility as an analyst
15 was to process crime scenes. And it was fairly
16 common to process vehicles. There was a garage
17 located at the SLED lab where we processed vehicles
18 routinely. And I did have the opportunity to
19 process a green Chevrolet pick-up truck in October
20 of '89.

21 **Q** And what does process mean?

22 **A** To process a vehicle includes, first of all,
23 photographing the vehicle, dusting the vehicle for
24 fingerprints and then going into the vehicle and
25 looking for any type of evidence, whether it be

1 blood, paint, glass, gunshot residue, et cetera.

2 Q And, first of all, let me show you a
3 photograph.

4 MR. BELL: May I approach the witness, Your
5 Honor.

6 THE COURT: Yes, sir.

7 BY MR. BELL:

8 Q Let me show you what's marked as state's 30 and
9 ask you if you recognize that?

10 A Yes, sir. I've had the opportunity to review
11 the photographs from processing the incident and
12 this appears to be the same green Chevrolet pick-up
13 truck.

14 Q And in regards to this case, what did you do in
15 processing this truck?

16 A My specific task was to look for any trace
17 evidence, specifically paint in this case, to see if
18 there was any paint flakes or paint chips or paint
19 smears in the inside of the vehicle, in the cab of
20 the vehicle that could potentially be matched back
21 up to a potential murder weapon, an ax.

22 Q And what did you do in regards to that?

23 A When processing the truck, I collected -- I
24 physically removed from the cab of the truck an
25 alluminum metal carpenters level and also a wooden

1 carpenters level and two gun racks that were mounted
2 in the -- against the back panel window in the cab
3 of the truck. And I also collected flakes of paint
4 that looked as if they were foreign. In other
5 words, they were not paint from the truck itself,
6 but foreign paint from inside the cab of the truck
7 in various locations.

8 **MR. BELL:** May I approach the witness again,
9 Your Honor?

10 **THE COURT:** Yes, sir.

11 BY MR. BELL:

12 **Q** Let me show you what's been marked as State's
13 37 and ask if you recognize that?

14 **A** I do. Again, from reviewing the photographs
15 that were taken at the crime scene, this appears to
16 be the gun racks that were mounted in the back of
17 the cab and then the two carpenters levels that are
18 located in the gun racks.

19 **Q** Did anything else catch your attention while
20 you were looking inside the vehicle or processing
21 inside the vehicle?

22 **A** The paint flakes that I collected were from the
23 levels, as I mentioned, and also from the back panel
24 and behind the seat in two or three different
25 locations. And there also was some paint that was

1 collected from a piece of cardboard that was behind
2 the seat. The one other thing that I recall that
3 was a little unusual was that the back window of the
4 truck looked like it had recently been painted and
5 I'm basing that on the fact that the paint felt
6 sticky when you touched it.

7 Q Now, let me ask you, specifically, you said you
8 got paint flakes from both of the levels, the wooden
9 and the aluminum level?

10 A Yes, sir.

11 Q And where in the truck did you get paint
12 flakes?

13 A I removed one from the base of the window
14 panel, the back window panel directly behind the gun
15 rack and that was on the driver's side. And then I
16 also removed a paint flake or a paint chip from top
17 of the gun rack on the passenger side. Then I got
18 the samples from both of the levels. And then I
19 removed paint flakes from behind the seat and then
20 another paint flake from the cardboard, which was
21 behind the seat.

22 Q And let me ask you this. When you are
23 comparing paints, what are you comparing?

24 A When you do the analysis on paint, typically in
25 forensics you're comparing an unknown paint to a

1 known paint. In this case, I had a paint standard
2 that I took from the ax itself and then I compared
3 that to the unknown paints. In doing the
4 comparison, the routine is to compare five different
5 things.

6 Q Let me interrupt you. I'm sorry. You were
7 talking about the ax. Let me show you what's been
8 marked as State's 22 and ask if you recognize that?

9 A The head of the ax bears my initials, J.M.H.

10 Q And you were given that just from evidence to
11 look at?

12 A Yes, uh-huh.

13 Q Okay. Mr. Hollifield, let me ask you this.
14 I'm going to show you what's been marked as State's
15 31, I believe there's no objection, and ask if that
16 would aid you in explaining about paint?

17 MR. DUNCAN: No objection.

18 THE COURT: It's without objection.

19 (State's Exhibit Number 31, diagram,
20 admitted into evidence.)

21 BY MR. BELL:

22 Q Would that help you to explain about the paint?

23 A Yeah, it would.

24 Q I'm going to put it up here on this easel. You
25 want to step down and you can explain what you're

1 talking about when you're comparing paints?

2 **A** Well, it's fairly simple. The poster there
3 simply indicates that there are five characteristics
4 that are compared when you look at a standard paint
5 versus an unknown or a foreign paint. And those are
6 color, the texture, some paints are glossy, some are
7 not, some are metallic, have metallic flakes, some
8 don't, some are fibrous, some are chalky, some are
9 pitted, they have various textures.

10 The third thing is the layer structure. The
11 layer structure would include the numbers of layers
12 in a paint chip, the sequence of those layers and
13 also the thickness of each layer. Those can be
14 measured microscopically.

15 The fourth thing would be the binder. The
16 binder is an organic material in the paint which
17 binds the color portion of the paint to the
18 substrate, whether it be metal, wood or what have
19 you.

20 And then the fifth thing is the elemental
21 composition. The pigments that are in the paint are
22 made of various elements and there are x-ray
23 techniques where we can x-ray the paints and
24 determine exactly what elements make up that
25 particular paint. And those five things are

1 compared between the known and the unknown.

2 Q And you did this in comparing the known that
3 you found on the two levels and the back -- around
4 the back window of the pick-up?

5 A Yes, sir.

6 Q Okay. And with the ax that you were asked to
7 look at, State's 22?

8 A Yes, sir. In fact, there were two different
9 paints that were taken from the ax as standards and
10 those were taken on different occasions. Initially,
11 I just took the paint from the handle of the ax.
12 And my initial report and initial analysis was a
13 comparison between the handle paint -- standard
14 handle paint and the unknowns. And it matched one
15 of the unknowns, but none of the others.

16 At a later date, I was asked specifically by
17 the investigators to take a sample from the head of
18 the ax, which I did, and then it was compared to the
19 other samples and matched for those samples.

20 So the handle -- the standard handle paint
21 matched one paint from the truck. The head of the
22 ax paint matched four of the foreign unknown paints
23 from the truck. And then there was one paint, the
24 one from the cardboard, which was inconclusive.

25 Q So let me get this straight. On the ax itself,

1 there are two different paints?

2 **A** Correct.

3 **Q** One on the handle?

4 **A** Right.

5 **Q** And then one on the head of the ax?

6 **A** Yes, sir.

7 **Q** And you matched how many of the samples from
8 the truck to the handle of the ax?

9 **A** Only one -- only one from the truck matched the
10 handle of the ax.

11 **Q** Okay. And which one was that?

12 **A** That was the one that was found at the base of
13 the window panel behind the gun rack on the driver's
14 side.

15 **Q** Mr. Hollifield, could you step down, and using
16 what's been marked as State's 37, kind of
17 illustrate, as best you can, and point out where
18 these flakes came from, if it would help you?

19 **A** (The witness leaves the witness stand.)

20 One of the foreign unknown paints was found
21 from the base of that window behind the gun rack on
22 the driver's side, on this side, right there
23 (indicating). Then I got other foreign paint from
24 the two levels. There was another one that was
25 taken at the top of the left gun rack, in other

1 words, on the passenger side. And then the other
2 two were taken behind the seat, one was against the
3 truck behind the seat and one was on a piece of
4 cardboard behind the seat.

5 (Witness resumes the witness stand.)

6 Q Did any of the paint from the handle match any
7 of the level -- the samples taken from the levels?

8 A No, they didn't.

9 Q Okay. And what matched the head of the ax?
10 What paint samples matched the head of the ax?

11 A The head of the ax was consistent with the
12 paint from the aluminum level. It matched the paint
13 from the wooden level. It matched the paint from
14 the top of the gun rack on the passenger side and it
15 matched the paint from behind the seat that was
16 against the truck or the window.

17 Q So that was from the head of the ax?

18 A Right. That's correct.

19 Q As if the ax rode on the gun rack with the head
20 on the passenger side?

21 A It would be consistent with the head being,
22 yes, toward the passenger side and the handle toward
23 the driver's side, right.

24 Q And just so I'm straight on this. You matched
25 two different types of paint from the -- two

1 different types of paint from the ax?

2 A That's right.

3 Q So there's one that matches the head and
4 another -- one that -- a group that matches the head
5 and one that matches the handle?

6 A One that matches the handle, that's right.

7 Q Based on your analysis and your expertise and
8 training, do you have an opinion as to whether that
9 ax was in the truck?

10 A The match between the standard paints and the
11 foreign paints is considered a class match. It is
12 not -- it is not a specific, definitive match like a
13 fingerprint or DNA, it is a class match. What that
14 means is that those two paints, the foreign and the
15 standard, have the same formulations, manufactured
16 by the same company. They could have come from the
17 same source, but I cannot say that definitively.
18 They're consistent in every way. There are no
19 differences in the paints, but they could come from
20 multiple sources, the ax being one of them.

21 Q But having two different types of paint match
22 from the truck, does that help your opinion any?

23 A Well, that's less likely, obviously, for two
24 different paints to coincidentally be in the same
25 location from one object. There's no statistical

1 analysis on that like there is on a DNA match, for
2 instance, but, of course, it would be less likely to
3 have both the paints contributed from the same
4 source than it would one paint. But, again, it's a
5 class match. They are consistent in every way, but
6 it is -- I cannot definitively say that it came from
7 that ax or that tool.

8 MR. BELL: Thank you, Mr. Hollifield. Please
9 answer any questions the defense has.

10 CROSS-EXAMINATION

11 BY MR. DUNCAN:

12 Q Mr. Hollifield, is there anything in the
13 literature, to your knowledge, that can date when
14 paint has been deposited in particular areas?

15 A The only thing I'm aware of with respect to
16 that would be the changes in the formulations with
17 certain manufacturers. If they discontinue a
18 certain element or a certain binder material in a
19 paint, then it would have had to have been deposited
20 prior to that date. Unfortunately, a lot of that
21 information is proprietary and is not published, but
22 that's the only way I know of. There's no inherent
23 feature or characteristic of a paint chip itself
24 that would -- that would tell you when it was there.

25 Q And paint chips can endure for years, decades?

1 **A** Indefinitely, yes, sir. Unless they're exposed
2 to the weather and that sort of thing, they would
3 remain intact indefinitely.

4 **MR. DUNCAN:** Thank you, sir.

5 **THE COURT:** Anything else?

6 **MR. BELL:** Nothing further.

7 **THE COURT:** You may step down, sir.

8 **MR. BELL:** We'd ask that he be excused.

9 **MR. DUNCAN:** No objection.

10 **THE COURT:** You may be excused, sir. Thank
11 you.

12 **MR. BELL:** Your Honor, may we approach?

13 **THE COURT:** Yes.

14 (Whereupon, a bench conference was held off
15 the record, in the presence of the jury, but out of
16 the hearing of the jury.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 I'll send you to the jury room. Do not discuss this
19 case in any way. Thank you very much.

20 (The jury retires to the jury room.)

21 (Brief Recess.)

22 **THE COURT:** Bring the jury in, please.

23 (The jury returns to the courtroom.)

24 **MR. BELL:** The State would call Robert
25 Sutherland to the stand.

1 ROBERT SUTHERLAND,
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat and state your name for
4 the record, please.

5 THE WITNESS: Robert Sutherland.

6 DIRECT EXAMINATION

7 BY MR. BELL:

8 Q Mr. Sutherland, do you go by any other names?

9 A Bo.

10 Q Where are you currently housed, Mr. Sutherland?

11 A Death row, Lieber.

12 Q You've been convicted for the murder, armed
13 robbery, kidnapping of Kimberly Quinn?

14 A No, sir. Armed robbery -- murder, armed
15 robbery, forgery and conspiracy to commit robbery.

16 Q I'm sorry. Did you do that by yourself?

17 A No, sir.

18 Q Who was with you?

19 A Tony Cooper.

20 Q Can you tell the jury how this came about?

21 A Tony come by my house.

22 Q Can you back up from the microphone so
23 everybody can hear you?

24 A Tony came by my trailer and woke me up Thursday
25 morning about 8:30 or so and asked me if I'd help

1 him rob this gal, kill her.

2 Q Did he say which girl?

3 A He didn't -- not right then. He -- after I
4 told him, yeah, then he got into explaining it to
5 me.

6 Q What did he explain to you?

7 A That Red Farmer had called him and told him
8 that she was getting an insurance check for \$2800
9 and she wanted to buy a half pound of reefer.

10 THE COURT: Can I bring y'all up to the bench
11 for a minute?

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 THE COURT: Ladies and gentlemen, I need to
16 send you out a moment. We'll be right with you. Do
17 not discuss the case in any way. Thank you.

18 (The jury retires to the jury room.)

19 THE COURT: Mr. Sutherland.

20 THE WITNESS: Yes, sir.

21 THE COURT: I didn't put it on the record
22 before you started to testify. I explained it fully
23 to you at the last proceeding. If you recall, I
24 explained to you about your right to not testify.
25 Do you remember all of that?

1 **THE WITNESS:** Yes, sir.

2 **THE COURT:** I just want to make sure you do
3 understand that you have a right -- a Fifth
4 Amendment right not to testify or incriminate
5 yourself in any way.

6 **THE WITNESS:** Yes, sir.

7 **THE COURT:** And your attorney has indicated to
8 me that she fully explained those rights to you; is
9 that correct?

10 **THE WITNESS:** Yes, sir.

11 **THE COURT:** And you were fully informed about
12 that right before you came here today and chose to
13 testify?

14 **THE WITNESS:** Yes, sir.

15 **THE COURT:** And you understand that anything
16 you say here today could be used against you; do you
17 understand that?

18 **THE WITNESS:** Yes, sir.

19 **THE COURT:** And your attorney explained all of
20 that to you here today before you testified?

21 **THE WITNESS:** Yes, sir.

22 **THE COURT:** And knowing all of that, you still
23 wish to testify?

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** All right. I had not put it on the

1 record, but I want to make sure the record reflects
2 that he freely, voluntarily, knowingly and
3 intelligently waives his Fifth Amendment right in
4 this proceeding.

5 Counsel, you fully explained that to him?

6 **MS. HOLT:** Yes, Your Honor, and Mr. Floyd, who
7 is second counsel, also did.

8 **THE COURT:** Let the record reflect that
9 Mr. Sutherland has two attorneys present who both
10 have gone over those rights with him also and he
11 still chooses to testify here today.

12 **MR. BRUCK:** I have a matter, Your Honor. We
13 didn't object to Mr. Sutherland referring to death
14 row since that's part of the story. However, we
15 think it's prejudicial to be continually referring
16 to the fact that Mr. Cooper is also on death row.
17 The jury doesn't need to know that everybody in this
18 unit is on a death sentence.

19 I propose to refer to the units, there are two
20 different physical units where these two men have
21 been together, and I propose to refer to them by
22 their names in the department of corrections. One
23 is the Edisto unit and the other one is the Special
24 Management Housing Unit at Lieber. And I would ask
25 that the State be instructed and that the witness be

1 instructed when they're talking about Tony Cooper
2 not to be dropping back to death row. And I'm using
3 that --

4 **THE COURT:** What did you refer to in your
5 openings? I mean, you talked all about them being
6 in jail and everything, so.

7 **MR. BRUCK:** I think I used prison. I don't
8 believe that I said they were on death row together.
9 I tried to avoid that.

10 **THE COURT:** Do you have a problem not
11 referencing death row?

12 **MR. BELL:** I wasn't planning on it, Your Honor.
13 The only, I think, reference, of course, is where he
14 was housed. Can I say prison?

15 **THE COURT:** Yes.

16 **MR. BRUCK:** Fine.

17 **THE COURT:** Mr. Sutherland, please don't
18 reference death row, all right?

19 **THE WITNESS:** What do you want me to call it?

20 **THE COURT:** Just prison.

21 Is that okay with you?

22 **MR. BRUCK:** Yes, sir.

23 **THE COURT:** All right. Bring the jury back in.

24 **MR. BRUCK:** I may be more specific, but I won't
25 say death row either.

1 (The jury returns to the courtroom.)

2 THE COURT: You may proceed.

3 BY MR. BELL:

4 Q Mr. Sutherland, I believe where we left off,
5 Tony came by your trailer?

6 A Yes, about 8:30 that morning. We had a job we
7 were supposed to do, painting inside of a house, but
8 he told me that, like I said, Red Farmer had called
9 him up the night before and told him about Kimberly
10 Quinn getting a check for \$2800 and wanting a pound
11 of reefer.

12 Q Did you know Red Farmer?

13 A No, sir.

14 Q Did you know Kimberly Quinn?

15 A No, sir.

16 Q What did y'all do after he came by and told you
17 about that, what did you do next?

18 A We rode down to where his niece, Brenda
19 McLauren, was working. I think it was the Crown
20 Station on 378. And he went down there because he
21 didn't know where she lived, so he went down there.
22 And when he walked in, she told him that Red wanted
23 him to call her -- to call him, so she gave him a
24 phone number. And he called Red and was talking to
25 him about something. And then he come back -- went

1 to the store and Brenda wrote down the instructions
2 where she lived. And then we left from there and
3 went down to Platt Springs Road.

4 And she said it was a white -- a house with
5 white siding, which to me white siding is that
6 aluminum strip. And there was only one house that
7 had aluminum strips on it and it was right across
8 from some apartments.

9 Q Let me stop you there and kind of go back for a
10 second. What kind of vehicle were y'all in?

11 A Tony Cooper's Mercury Cougar.

12 Q And who was driving at that time?

13 A Tony Cooper.

14 Q Did you use that particular vehicle?

15 A Yes. I'd been using it for a couple of weeks.

16 Q Okay. Let me show you what's been marked as
17 State's 16 and 17 in evidence and ask if you
18 recognize that?

19 A That's a back shot.

20 Q Let me show you State's 17 and ask if you
21 recognize that?

22 A Yeah, yellow rims, that's it, Clemson.

23 Q That's the vehicle you were in?

24 A Yes, sir.

25 THE COURT: You can't hear something, ma'am?

1 **JUROR:** Right. He was over modulating and now
2 I can't hear.

3 **THE COURT:** Can you repeat your question, sir?

4 **BY MR. BELL:**

5 **Q** I showed you 17. Was that the vehicle?

6 **A** Yes, sir.

7 **Q** Okay. So y'all went down to Platt Springs
8 Road?

9 **A** Yes, sir.

10 **Q** What did you do on Platt Springs Road?

11 **A** We was trying -- going to try to find the
12 house. Like I said, Brenda had gave the
13 instructions that it was a house with white siding,
14 which to me is, you know, the aluminum strips. And
15 there was one house that had that and it was right
16 across from an apartment complex. Tony kept riding
17 back and forth, driving, you know, back and forth,
18 back and forth. And I told him, I said, Man,
19 somebody's going to notice the car. So he turned
20 into the apartment complex and parked, sit there a
21 while --

22 **Q** How did he park?

23 **A** I think he -- first time I think he pulled in,
24 you know, front. And he sit there for a while and
25 then left, went down to Napa -- I believe it was a

1 Napa Auto Parts place right off Charleston Highway
2 and used the phone to call her, call her house.

3 Q Now, was that -- which direction was that when
4 you went out of the apartment? Was that towards Tri
5 Angle City or wherever in West Columbia?

6 A It was towards -- no, it's going back from Tri
7 Angle City. It would be like going towards the
8 airport. There used to be an A&P food store right
9 up from K-Mart.

10 Q Let me show you what's been marked as State's
11 Number 1 and ask if that area looks familiar to you?

12 A Okay. Yeah.

13 Q What is that picture up at the top right?

14 A That's the parking lot right there for the
15 apartment complex.

16 Q And were these the houses that you were looking
17 at, the middle picture?

18 A No, sir. The house we was looking at was right
19 -- from the parking lot right there, it's right
20 across the street.

21 Q Okay. That's the one that you were looking at
22 with the aluminum frame siding?

23 A Yes, sir.

24 Q Okay. How long did you stay -- how long did
25 y'all stay in the parking lot at that time?

1 **A** Not long. Like I said, we just pulled up in
2 there. We didn't stay there that long any. Like I
3 said, he went and used the phone to call, he got an
4 answering machine. Then he came back, started
5 riding back and forth again, back and forth. And he
6 pulled back into the parking lot and he got out the
7 car and told me to drive back over to the pay phone
8 and call her, call her house.

9 So I left him there. Then I went back to the
10 pay phone and called her and she answered the phone
11 and I asked for somebody else like it was the wrong
12 number. Then I drove back over to the apartments
13 where he was at and he got back in. I told him she
14 answered the phone.

15 Then I think -- I guess he got back out -- he
16 got in the car and started driving and going back up
17 and down the road again. And then he pulled back
18 into the apartment complex and sat there for a
19 while. And he just left back out, went and used the
20 phone again and called her and got the answering
21 machine.

22 **Q** What time of day are we talking about now?

23 **A** It's before three o'clock. And then he used
24 the phone, he got the answering machine. He come
25 back, this is when he parked, you know, pulled

1 backwards up into the parking slot, backed the car
2 up into the parking slot and was sitting there. And
3 that's when the blond-headed lady that lived right
4 across from where we was out come out and was
5 looking at the car.

6 Q Okay. What was she looking at?

7 A At us in the car and evèrything.

8 Q And which seat were you in at that time?

9 A Passenger side.

10 Q Were you looking at her?

11 A Yes, sir.

12 Q And what did she do?

13 A She was, you know, like she was concerned. She
14 was looking, staring. You could see her children
15 looking out the windows.

16 Q And did she stay there or where did she go?

17 A I believe she left. I mean, it was so long
18 ago. I believe she left. Either she left or we
19 pulled out and went to the store where Brenda
20 worked.

21 Q What happened next?

22 A Well, we got to the store where Brenda worked
23 and Tony told her to go down to Kimberly's house and
24 see if she had the money and if she was still
25 wanting the reefer. So we followed her -- well, she

1 went to Kim's house. We stopped maybe a half block
2 away and watched her pull up to the driveway, you
3 know, of that house that was right there beside the
4 one with the van in it. And she got out, went in
5 the house probably about 15 minutes or so.

6 Q Was that the house that y'all had been looking
7 at?

8 A No, sir.

9 Q So y'all had been looking at the wrong house
10 based on her direction?

11 A Yes, sir. Well, she said with white siding on
12 it.

13 Q Who is Brenda?

14 A Tony Cooper's niece.

15 Q Let me show you what's been marked as State's 8
16 and ask if you recognize that person?

17 A Yeah, that's her.

18 Q That's Brenda?

19 A Yes, sir.

20 Q Tony's niece?

21 A Yes, sir.

22 Q So what happened after that?

23 A Well, like I say, when she went down there and
24 we saw which house she went to, she may have been in
25 there 15 minutes, she came back out and turned --

1 well, went back up the road. We fell in behind her
2 and pulled in at the West Columbia Post Office.
3 Tony got out and was asking her about it. And
4 Brenda told him that she didn't have the money, that
5 she wouldn't get the check until that Tuesday and he
6 blew up. He said, you know, y'all lied to me and
7 all that stuff.

8 Q Who blew up?

9 A Cooper, Tony Cooper. Then she told her -- she
10 said it was only for \$2400. And I mean, he just --
11 he got mad. He said, You lied to me -- you and Red
12 lied to me and everything. Then he leaned in beside
13 the car window -- he was out, Brenda was still
14 sitting in her car. He leaned in and said something
15 to her. And then he come back out and said, Damn
16 the money, I'm going to kill the bitch.

17 Q What happened next -- what time of day is this?

18 A It was at 3:00, 3:30 or so, maybe something to
19 4:00.

20 Q What happened next?

21 A Brenda left and went home or somewhere. And
22 then Tony took me back to where I was living, my
23 trailer.

24 Q Where were you living exactly at that time?

25 A A trailer park. I done forgot the name of it,

1 but it was in South Congaree.

2 Q Do you remember what road or street it was on?

3 A Scenic.

4 Q Is that near Beckman Road?

5 A Yes, sir. It's probably half a mile up the
6 road from there.

7 Q Did you know any people around that area?

8 A Yes, sir.

9 Q Who did you know?

10 A A couple people in the trailer park and then
11 some people that lived on Greenwood Drive, which is
12 in between the trailer park and Beckman Drive. I
13 knew Mr. Cooper. He lived right across the street
14 from Beckman Drive.

15 Q Who is Mr. Cooper?

16 A Tony Cooper's daddy.

17 Q Is that Greenwood Drive?

18 A Yes, sir.

19 Q Okay. And that's right across from Beckman?

20 A Yes, sir.

21 Q Okay. How long did you stay at your trailer?
22 What happened after that when you went back to your
23 trailer?

24 A Tony told me -- see, there's a little beer like
25 joint on Platt Springs Road right up from Kim's

1 house and that's where I used to go. And Tony said,
2 Well, how about -- he would come by about eight
3 o'clock that night and pick me up and we'd go there
4 and, you know, drink some beer. So I said, Okay. I
5 told him I would probably be at Donnie Shumpert's
6 house. I went up to my house, I don't know for how
7 long or whatever. I went over to Donnie's.

8 Q How did you go over to Donnie's?

9 A I went over there -- the car was at the
10 trailer. Tony's car was at the trailer.

11 Q The Cougar?

12 A Yes, sir. I rode over there.

13 Q You drove the Cougar over to Donnie Shumpert's?

14 A Yes, sir.

15 Q Tony left it there with you?

16 A Well, I was driving it. I had the keys to it.

17 Q Okay. What time was that when you went over to
18 Donnie Shumpert's?

19 A Probably 6:30, maybe seven o'clock later on
20 that night.

21 Q Who was over there when you got there?

22 A Donnie Shumpert, his wife, nieces, nephew.

23 Q And what did you do over there?

24 A I smoked reefer and just waited on Cooper.

25 Q Okay. Where did you wait for him there?

1 A In Donnie's nephew's trailer, which is behind
2 the shop that Donnie had.

3 Q Okay. Did Tony ever come to where you were?

4 A Excuse me. When Tony took me back to the
5 trailer, we were in the Cougar. His truck was
6 parked at the trailer.

7 Q What kind of truck did he have?

8 A Chevrolet.

9 Q Do you remember what color it was?

10 A Green.

11 Q Let me show you what's been marked as State's
12 30 and ask if you recognize that?

13 A Yes, sir, that's it.

14 Q So what happened when -- what happened when you
15 were waiting for Tony? Did Tony ever come when you
16 were at the Shumperts?

17 A Yes. Well, when we pulled up, I figured it was
18 eight o'clock or something after. So I was coming
19 out of Donnie's nephew's trailer when I seen him
20 pull up behind Donnie's trailer. So I just walked
21 on and got to the truck. And he said, You ready to
22 go? I said, Yeah. So -- well, I had gotten an
23 ounce of reefer, too, because he was wanting to, you
24 know, let her smoke it and see if she wanted to buy
25 a half pound of it.

1 Q Where did y'all go?

2 A We went down to the beer joint, place called
3 Park and Place on Platt Springs Road.

4 Q What was the name of it?

5 A Park and Place.

6 Q Park and Place?

7 A Yes, sir.

8 Q And what did y'all do there?

9 A Sit around, had a couple beers.

10 Q Did y'all leave?

11 A Yes, sir.

12 Q Do you know what time that was?

13 A About nine o'clock because he had to call his
14 wife at nine o'clock. And we went to the store --
15 when you come into Tri Angle City off of Platt
16 Springs Road, there's a little convenience store
17 right there, that's where he used the telephone. He
18 called his wife. I don't really know what he said.

19 But when we had went to the store, we had
20 passed Kim's house and there was a pick-up truck
21 with a flatbed body on the back of it. So she
22 had -- Red had told Tony something about that she
23 had a boyfriend living with her. So he was figuring
24 that was him, you know.

25 But, anyhow, he called his wife. And then we

1 rode back up to the beer joint and the truck was
2 still sitting there and I think we shot a game of
3 pool. And then we rode back down past her house and
4 the guy that was -- had the truck, him and Quinn
5 were standing in the door saying goodbye to each
6 other. And so I think he rode back down, turned
7 around and come back, went to the club and we sat
8 there just a little bit. And we rode back down
9 there and the truck was gone.

10 So he went to the little store right there and
11 bought a six pack of Bud and come back up there and
12 pulled in Kim's driveway. He got out. He went up
13 to the door and Kim came up to the door and he went
14 in with her.

15 Q What time was this as best you can remember?

16 A I cannot tell you. It was possibly after 10:00
17 or so I guess. But he was in there for a few
18 minutes and then he come to the screen door and
19 motioned for me to come in. So I came in, brought
20 the beer with me. And he had -- he had told her
21 that I had some reefer, that he had heard she was
22 wanting to buy some reefer and I had some, you know,
23 for her to sample. And he didn't smoke reefer. So
24 I rolled up a joint, me and her smoked it. And, you
25 know, after we got the buzz on, she said it was

1 good, that she wanted it because she had been doing
2 morphine for a couple of days and she had felt bad,
3 but that reefer, you know, sort of calmed her out a
4 little bit.

5 Q Was anybody else in the house? When you went
6 in, was Kim by herself?

7 A No, sir. Her daughter was asleep on the bed.

8 Q And where was the bed?

9 A In the front part of the house. When you walk
10 in the house -- when you walk in the front door, you
11 can see the little bed where she was sleeping on.

12 Q And what happened after you smoked the reefer?

13 A She had said -- well, Tony asked her if she
14 wanted a beer and she said, no, she wanted a Coke
15 and she wanted something to eat because she was
16 feeling better after smoking the weed. And Tony
17 said that he would take her, you know, and he said I
18 would baby-sit. And she said -- she asked me if I
19 minded, you know. I said, No, I don't mind. So him
20 and her went and got into the truck and they was
21 gone, I don't know, I drank three beers, the one
22 that I had and two more. And then I didn't hear the
23 truck pull in, but Tony come through the door and
24 said, We got to go, we got to go. I said, Where is
25 Kim? He said, She's out at the pond. And I knew

1 something was happening then.

2 Q Did you know what pond he was talking about?

3 A One pond that we had been to a couple of times
4 was one in South Congaree off Beckman Drive. And he
5 told me -- I asked him where the truck was. He said
6 it was parked in the front yard of a house, the yard
7 was grown up, it was an empty house. It was just
8 about the third house up from Kim's house. He said
9 that's where he was parked.

10 Q So he didn't park in Kim's driveway?

11 A No, sir.

12 Q When he came back?

13 A Yes, sir. I went up there. And I sat there
14 probably, I don't know, maybe ten minutes. And he
15 come walking up, he had a black plastic bag in his
16 hand. And I asked him what was in there and he said
17 a leather jacket. And then we went out to the pond,
18 I asked him what was he doing. And he said -- he
19 said he -- he said he was going to kill her.

20 So we get out there to the pond and pulled the
21 truck around behind the house and he got out and he
22 pulled the pump shotgun with him. And she was
23 inside the house. He had her tied up to the door.
24 He had handcuffs on her behind her back, but he had
25 her arms back behind her with a stick run through it

1 and had it tied off.

2 Q Where did he get the shotgun from?

3 A We picked it up out of a house -- a trailer
4 that we broke into a couple weeks before.

5 Q Did you -- between that time, a couple days
6 before, did you have that shotgun out somewhere?

7 A Yes. I fired off a round at Donnie Shumpert's
8 house that Wednesday night the night before.

9 Q Now, you said he had her -- how did he have her
10 bound up?

11 A She was cuffed behind -- her hands behind her
12 back. And the door -- the window -- the window
13 frame had been knocked out and probably a
14 two-by-five or something like that on the side. And
15 he had her elbows pulled back with a big ol' curtain
16 rod stuck through her elbows, she was tied in.

17 Q What happened next?

18 A He untied her. Well, he had a gag in her
19 mouth. When he pulled that out, she asked -- she
20 asked me to help her please. He had the shotgun,
21 there wasn't -- there wasn't nothing I could do.

22 Q Did he undo her from the door?

23 A Yes, sir. He untied her. He had a piece of
24 curtain. A long curtain had been hanging in the
25 window. I guess, he tore it down and made strips

1 and tied her with it. But he untied her and then
2 she told me that he had beat her with a stick and I
3 asked him why. He said he wanted -- he wanted to
4 know the people that she worked for, the people that
5 she knew if they had drugs or money. And he pulled
6 her pants down and had his flashlight and you could
7 see the stripes on her bottom where he had beat her.

8 Q What happened next?

9 A He pulled her outside and told her he was going
10 to kill her. And I was standing right there in
11 front of the steps. He was probably from here to
12 those cans, him and her. She had her back to him
13 and he was behind her with the shotgun. And she
14 said -- she told him, she said she don't -- she said
15 she didn't want to die. And I turned my head and I
16 heard the shotgun go. And then I turned and looked
17 and she was laying on her left side and she was
18 breathing deep. And he said, She ain't dead. And
19 he popped -- he shot her again in the neck. Then he
20 shot her again. Then he shot her again and that was
21 all of the shells.

22 Q Then what happened?

23 A He said he had to get the cuffs off of her
24 because if they found the cuffs, they could connect
25 him to it because he had stole the cuffs from CCI

1 when he was over there in prison. So he got the ax
2 out the truck and he had --

3 Q Where was the ax in the truck?

4 A Sir?

5 Q Where was the ax in the truck?

6 A In the gun rack in the cab.

7 Q Let me show you State's 22. Is that it?

8 A It's been a long time, but it looks like it,
9 yes, sir.

10 Q What did he do with the ax?

11 A He had to sort of turn it so he could get her
12 wrist out. And then he chopped off one wrist and --
13 well, one hand and then chopped off the other hand.
14 He said he had -- he said he had to get those cuffs
15 because they could connect him with them. And then
16 he gave the ax to me and told me to chop her feet
17 off.

18 Q Did he say why, why to chop the feet off?

19 A No, sir. But I started chopping and the blade,
20 you can see the cutting edge is flat, but I took a
21 swing. And she had her -- her pants legs was down
22 on her ankle and it just wasn't cutting.

23 Q Let me show you State's 15. Are those the
24 pants?

25 A A pair of blue jeans.

1 Q Looking down at the leg?

2 A I know it cut, but it wasn't cutting that good,
3 so he pulled the pants off of her and threw them in
4 the pond.

5 Q Who did that?

6 A Tony. And I finished chopping her feet off.
7 And he grabbed her by her legs and pulled her over
8 to the side of the pond and started putting limbs
9 and stuff like that. And there was a chair up by
10 the steps and he told me to go and bring that -- get
11 that chair. I brought the chair over there and sat
12 it on her and he said that's her seat in hell. Then
13 he got the gas can and poured gas on her.

14 Q Where did he get the gas can from?

15 A Out of his truck. Then he threw the match on
16 it and it started burning. It started burning up
17 into the bush around her and everything, you know,
18 and said, Let's go, and started gathering her hands
19 and feet up and the handcuffs. And I got the ax and
20 the shotgun and gas can. We got in the truck.

21 Q Did she have anything on her hands?

22 A She had some rings on her hands. He had took
23 the rings off and threw them into the pond. I tried
24 to show SLED where they was at, but they couldn't
25 find them.

1 Q What did y'all do after you gathered everything
2 up?

3 A He had put the hands and feet into one of those
4 plastic shopping bags. And we went down to Congaree
5 Creek right there at the bridge on 302. And he got
6 out and got the ax and the hands and the feet in the
7 plastic bag and walked down to the bridge and threw
8 all of that in and came back, got in the truck and
9 went to the store, I think it was a Crown Store, and
10 went inside there. He got two hot dogs and ate
11 those. And then we went out to his house -- his
12 trailer. We came in, washed clothes that we had on.
13 I took a shower. His wife's son was asleep on the
14 couch when we got there. So he woke him up and told
15 him to go to his room and I slept on the couch that
16 night. Tony went in his bedroom and slept there.

17 Q Did y'all do anything in regards to the truck
18 when y'all were leaving the pond or there
19 afterwards?

20 A Tony spray painted, I think, the back window.
21 And he had a white tool box, you know, sitting
22 behind the cab and he spray painted that black and
23 then the tailgate, inside the tailgate.

24 Q Was that that night?

25 A No, sir.

1 Q I'm talking about that night, the same night,
2 did y'all do anything or did he do anything with the
3 truck?

4 A No, sir, I don't believe so.

5 Q Okay. What did y'all do the next day?

6 A That morning he had to take his wife's two twin
7 sons to the baby-sitter. And then we left from
8 there and came back to the trailer and buried the
9 shotgun.

10 Q Where did you bury the shotgun?

11 A In the woods right across from his trailer
12 where the rain had run off, it was sort of like a
13 little path. The SLED agent said he remembered
14 seeing it, the little path. We buried it there
15 because there was the platform of a tree house, you
16 know, right across from it and that's where we
17 buried it.

18 Q Where was his trailer?

19 A Off of -- it was in Pelion. I can't remember
20 the highway number.

21 Q But it wasn't around where the pond was?

22 A Oh, no, sir. No, sir. No, the pond was in
23 South Congaree.

24 Q And he lived in Pelion?

25 A Yes, sir.

1 Q Did y'all go anywhere that morning?

2 A Yes, sir. After we came back, like I say, he
3 took his sons -- his wife's twin sons to the
4 baby-sitter. Then we came back, buried the shotgun
5 and then went into Cayce at a bank. He said he'd
6 been cashing checks there before, so, you know, it
7 was pretty easy. So he pulled into the last place
8 outside where you cash them and signed her check. I
9 think all he had was the highway I.D.

10 Q Whose check did he sign?

11 A Kimberly Quinn's.

12 Q Where did that come from?

13 A Out of her purse. I think it was a blue denim,
14 dungaree-type bag. There was that check, \$130 in
15 cash and probably, I don't know, 12 generic Valiums.

16 Q And where did you see that?

17 A In the cab of the truck in the seat.

18 Q So the check was cashed at the bank in Cayce?

19 A Yes, sir.

20 Q What did y'all do next?

21 A We rode around. We went to Lexington -- well,
22 no, he went to the car wash right there on 302 and
23 he washed out the back of the truck -- well, he
24 washed the truck and vacuumed it. Then we left from
25 there and then to -- up [REDACTED] some apartments

1 just before you get to [REDACTED] -- well, before you
2 get into Lexington. We had -- we were trying to do
3 some work, hurricane work, shingles, roofing. And
4 he knew the dude that was a manager. So he stopped
5 by and asked him about it and the dude must have
6 told him no. Then we rode over to Columbia to a
7 place called Landlord Associates or something like
8 that that we did work for. And we just rode around
9 I believe.

10 Q Did you do anything with Tony that weekend?

11 A That Saturday?

12 Q You said he painted the inside of his truck.
13 How did you know that?

14 A Because he was painting it whenever I pulled up
15 to his house, that might have been on Saturday.
16 Whenever I was pulling in his driveway, I think he
17 was finishing up painting the back of the tailgate,
18 the inside of the tailgate, but I noticed that the
19 tool box, because it was white, he done spray
20 painted it black. And then the window, he had spray
21 painted the inside of the back window in the cab.

22 Q Did you do anything with him on Sunday that you
23 remember?

24 A I was pulling -- going down 302 and like going
25 into West Columbia and he was at his daddy's house,

1 which is right there on the corner of Greenwood. He
2 was getting his camper. He had a little Champion
3 Camper or something like that. And I pulled up
4 there and he said they must have found the body
5 because you could see the cars going down the dirt
6 road. And then he was taking his camper back to
7 Pelion and I followed him.

8 He stopped at some little flea market up there
9 where Number 6 and 302 comes together. Him and his
10 wife had bought a clock and some other stuff. Then
11 we went on to Pelion.

12 I believe he parked his camper down in the
13 driveway instead of where it was parked and was
14 setting it up and everything and said I could start
15 staying there for 50 bucks a week. And I don't
16 really remember -- I know he was wanting to find
17 out, because he had a T.V. in there, he was wanting
18 to watch the news and see if anything had come on
19 about it. Then he was wanting to get a newspaper to
20 see if it was in the newspaper.

21 Q Did the authorities catch up with you at some
22 point, law enforcement?

23 A Yes, sir, on the 10th I believe. I had just
24 rode into South Congaree from Wagener with Tony
25 Cooper 's sister and his niece, Brenda. And I'd

1 asked them to let me out on Greenwood Drive because
2 I was going to Donnie Shumpert's house. And Donnie
3 wasn't home. He did part-time work for a dude
4 laying carpet. So I walked across the street to
5 this other dude that I knew. And I was -- he had
6 went to the store. So I was standing out front of
7 his yard when the officers pulled up over, you know,
8 at Donnie's house. And then they saw me across the
9 street, they come over there and got me.

10 Q Did they arrest you at that time or they just
11 go talk to you?

12 A Well, they pulled the guns, I believe, and put
13 me in the car. They didn't cuff me. They put me in
14 the car and took me down to West Columbia and talked
15 to me.

16 Q Did you talk to them at that time?

17 A No, sir.

18 Q At some point, did you give them --

19 A I told them I didn't know nothing.

20 Q Did you give them a statement some time after
21 that?

22 A Yes, sir, after I had went to SLED later on
23 that night.

24 Q Okay. What was -- what did you tell them?

25 A That Tony had come by at about five o'clock

1 that morning and woke me up and told me that he had
2 killed her, chopped her up and burned her and shot
3 her. I really can't remember what I told them in
4 that first statement.

5 Q Did you tell them anything about the creek and
6 the hands and the feet?

7 A Oh, yeah. I told them that we had rode across
8 the creek and Tony said, The fish are eating good,
9 when they was asking me if I knew what he did with
10 the hands and the feet.

11 Q And you were minimizing your involvement at
12 that time?

13 A Yes, sir.

14 Q Mr. Sutherland, the person that you were along
15 with in the murder of Kimberly Quinn, who was that?

16 A Sir?

17 Q Who was that? Who was with you?

18 A Gene Tony Cooper.

19 Q Do you see him in the courtroom today?

20 A Yes, sir.

21 Q Could you point him out for the jury?

22 A Right over there (indicating).

23 MR. BELL: Your Honor, I would ask the record
24 to reflect that he's pointed out the defendant.

25 THE COURT: The witness' comments will be noted

1 for the record.

2 BY MR. BELL:

3 Q Now, since that time, I think you've given two
4 statements over the years?

5 A Yes, sir. When I came on in prison in April of
6 '92 at Edisto unit at Broad River, Tony Cooper, the
7 first couple of days, he didn't say nothing to me,
8 but I could see him, you know, circling down on the
9 rock. I was on the second tier and I could see him
10 on the rock, you know. And then maybe four or five
11 days I had been there, him and Cecil Lucas, Sammy
12 Roberts and Robert South hollered at me and I looked
13 out the window and Cecil Lucas said, You ain't going
14 to live on death row. He said, You're going to have
15 to take the heat off Tony. You're going to have to
16 confess, take the rap for everything. He said,
17 We'll kill you.

18 Q So did you?

19 A Yes, sir, I did.

20 Q You gave a statement saying that you were the
21 only one involved?

22 A Yes, sir.

23 Q And then I think at a hearing some time in
24 1994, '5 or '6, you stood up in court and said the
25 same thing that you were the only one involved?

1 A Yes, sir. It was at a PCR, I believe, PCR
2 hearing, '96 and '97 I believe.

3 Q Were those the truth?

4 A No, sir.

5 Q Is today what you told the truth?

6 A Yes, sir.

7 Q How long have you known Tony Cooper?

8 A Since he was about six years old. The first
9 time I ever saw him, his sister was pulling him
10 across the schoolyard.

11 Q You're older than he is, aren't you?

12 A Yes, sir, about nine years.

13 Q Now, is there an agreement for your testimony
14 here today with the State of South Carolina? Has
15 the State agreed to do anything in return for your
16 truthful testimony today?

17 A No, sir.

18 Q They haven't?

19 A No, sir.

20 Q We haven't agreed at least not to seek the
21 death penalty further in your case?

22 A You're not seeking the death penalty.

23 Q In your case?

24 A Well, I don't know about my case now. I know
25 Tony's, you're not seeking the death penalty. Mine,

1 I don't know nothing about what is going to happen
2 to me or whatever.

3 Q As you sit now, however, you're waiting
4 resentencing on your convictions; is that correct?

5 A Yes, sir. I got it overturned in December of
6 '99.

7 Q That's your sentence?

8 A Yes, sir, just the sentencing part.

9 Q You're still convicted of murder and what you
10 said at the beginning of your testimony?

11 A Murder, armed robbery, forgery and conspiracy
12 to commit robbery.

13 Q And that -- your sentence was overturned by the
14 courts; is that correct?

15 A South Carolina Supreme Court.

16 MR. BELL: Thank you, Mr. Sutherland. Please
17 answer any questions the defense has for you.

18 MR. BRUCK: Cross is going to be quite
19 extensive. I just thought you might check with the
20 jury and see if everyone's comfortable.

21 THE COURT: Y'all approach.

22 (Whereupon, a bench conference was held off
23 the record, in the presence of the jury, but out of
24 the hearing of the jury.)

25 THE COURT: We'll go ahead and start the cross,

1 ladies and gentlemen. Then we'll stop for lunch and
2 he'll resume the cross-examination after lunch.

3 Go ahead.

4 CROSS-EXAMINATION

5 BY MR. BRUCK:

6 Q Mr. Sutherland, before today, when is the last
7 time you cried about the murder of Kimberly Quinn,
8 if ever?

9 A That day, David.

10 Q What's that now?

11 A Several times.

12 Q Several times?

13 A Yes, sir.

14 Q Anybody ever see you do it before today that we
15 can bring to this courtroom and tell how you cried
16 about Ms. Quinn's death? Who should we ask?

17 A I cannot tell you, David.

18 Q You could not tell me?

19 A If anyone saw me or not.

20 Q All right. So this is a new experience for
21 you, isn't it?

22 A No, David. I've cried before when my mother
23 died, my father died.

24 Q That's not what I asked you, is it? I asked
25 you whether anyone has ever seen you cry about the

1 death of Kimberly Quinn before you just did it on
2 the witness stand, yes or no?

3 A I believe so.

4 Q Who?

5 A Ms. Holt.

6 Q Your lawyer?

7 A Uh-huh.

8 Q I'd like to start with some of the other
9 versions of this crime you've told over the years.

10 A Sir?

11 Q You're having trouble hearing me? I'm sorry.
12 I'm going to start and talk to you a little bit,
13 we're not going to get finished before lunch time,
14 but I want to start and ask you about some of the
15 other versions that you've told about your
16 involvement in this crime, okay?

17 A I did what I was supposed to do, that's what
18 you're talking about.

19 Q Would you answer my questions? Is it okay with
20 you if we just go through the different versions?

21 A Yes, sir.

22 Q All right. The first time you're brought to
23 SLED just a few days after this happens and all you
24 know about it -- about Ms. Quinn's murder is that
25 Tony came and said he had done it, you weren't even

1 there, right?

2 **A** Yes, sir. I was trying to keep myself out of
3 it.

4 **Q** Okay. But, at that point, law enforcement told
5 you that you'd been identified in the car outside
6 the apartment, didn't they?

7 **A** Yes, sir. I told Tony Cooper we were going to
8 be noticed.

9 **Q** No, that's not what I asked you. You're being
10 questioned on October the 9th, something like that,
11 right, at SLED?

12 **A** October the 10th.

13 **Q** At SLED?

14 **A** Was it -- 9th or the 10th.

15 **Q** All right. Whenever it was. 1989, right?

16 **A** Yes, sir.

17 **Q** And you are told by law enforcement that you're
18 being -- that you are being identified by witnesses,
19 correct, at being at the apartment? No?

20 **A** I don't really remember.

21 **Q** All right. You knew you were going to be
22 identified because some people had seen you?

23 **A** I told Tony Cooper that people's going to
24 notice the car and everything, yes, sir.

25 **MR. BRUCK:** Indulge me for a moment, Your

1 Honor.

2 (Pause.)

3 Q You see yourself in this picture in State's
4 Exhibit Number 2?

5 A Yeah, that was a long time ago.

6 Q Yes?

7 A Yes.

8 Q What picture are you?

9 A Two.

10 Q Not that many people looked like you then, did
11 they, with your hair and your face and all that?
12 You were an unusual looking man, weren't you?

13 A Long hair.

14 MR. BRUCK: If I may publish this to the jury,
15 Your Honor?

16 THE COURT: Yes, sir.

17 (Pause.)

18 BY MR. BRUCK:

19 Q Mr. Sutherland, you knew you were going to be
20 identified, if you hadn't already been, as the long
21 haired guy with the white face and the high cheek
22 bones that was sitting out in front of the car, in
23 the Cougar, right?

24 A Sitting in the Cougar.

25 Q Sitting in the Cougar, that's right. And you

1 knew or you knew it was likely that they'd taken the
2 license number, right?

3 A Well, I didn't know until we went to court that
4 somebody had took the license tag number.

5 Q Okay. But you knew enough that you figured
6 that back on -- on the first time you talked to
7 SLED, you better admit that you were one of the
8 people in the apartment that afternoon, you just
9 didn't have anything to do with the killing; isn't
10 that true?

11 A Yes, sir.

12 Q All right. So you told them the part that you
13 were already caught for and you just left out the
14 part you thought you could get away with, right?
15 Isn't that a fair statement?

16 A I wasn't going to put myself in it.

17 Q Yeah, but you had to put yourself at the
18 apartment because you knew that you either were
19 going to be identified or you already had been, that
20 they knew you were there, right?

21 A I knew the lady that come out the apartment
22 right across from us had identified us.

23 Q You knew the lady --

24 A I mean, she was looking right -- I mean, she
25 was staring and looking and...

1 Q So when you first talked to law enforcement,
2 you didn't say, I don't know nothing about this, you
3 didn't tell them that. You said, I don't know
4 anything about the killing, right?

5 A I told them, yeah, that I didn't know anything
6 about a killing.

7 Q And, of course, that was a lie?

8 A Yes, sir.

9 Q But you told them it was the truth, right? You
10 told law enforcement that it was the truth?

11 A That I didn't know anything about the killing?

12 Q Yeah.

13 A Yes, sir.

14 Q Mr. Sutherland, when you lie, do you look any
15 different than when you tell the truth?

16 A You would have to tell me, David, I don't know.

17 Q You don't know?

18 A No, sir.

19 Q You try to look the same all the time whether
20 you're lying or telling the truth, don't you?

21 A Well, you've known me a while, Dave. Have I
22 changed that much?

23 Q I'll ask the questions and you answer them, if
24 you don't mind, Mr. Sutherland, okay?

25 A Uh-huh.

1 Q All right. My question is, you try to look the
2 same when you're lying and when you're telling the
3 truth, don't you? Because when you're lying, you
4 want people to think you're telling the truth,
5 right?

6 A When I'm telling the truth, I'm looking like I
7 look now.

8 Q And when you're lying, you're looking like you
9 look now, right?

10 A No. When I'm lying, I'm probably joking with
11 somebody.

12 Q What did you look like when you were lying to
13 SLED?

14 A About not knowing about the murder?

15 Q Right.

16 A You'll have to ask the SLED agent.

17 Q Do you twitch? Do you do little things with
18 your hands so people can tell you're lying?

19 A You would have to ask the SLED agent.

20 Q Then you had your trial in 1992 and you went to
21 prison. You were sentenced to death and you were
22 put on Edisto unit, right?

23 A Yes, sir.

24 Q And that was in February, late February of
25 1992, right?

- 1 A Started March 2nd, 1992.
- 2 Q 1992?
- 3 A Yes, sir.
- 4 Q Okay. And, at that time -- you didn't testify
5 at your trial?
- 6 A No, sir.
- 7 Q Your testimony is that Cecil Lucas hollered at
8 you?
- 9 A Yes, sir.
- 10 Q And scared you, right, made you afraid?
- 11 A Well, he just hollered at me. He hollered at
12 me. I didn't know him.
- 13 Q Uh-huh.
- 14 A But when he hollered up there and told me I
15 wasn't going to live on death row if I didn't take
16 the blame for everything because they would kill me,
17 yeah, I was scared.
- 18 Q How much of your adult life have you spent in
19 the penitentiary?
- 20 A Over half of it --
- 21 Q Just about all of it. I'm sorry?
- 22 A Over half of it.
- 23 Q A lot more than half of it, right?
- 24 A Maybe 30 something years.
- 25 Q And you are one tough convict, aren't you?

1 A No, sir.

2 Q You're not?

3 A No, sir.

4 Q When someone hollers at you, you get all
5 fluttered?

6 A When you've got four people hollering at you
7 and they're all convicted murderers.

8 Q Like you?

9 A Yes, sir, I'm a convicted murderer by the jury.

10 Q Okay. But that scared you?

11 A Yes, sir, it did. I'd just came on the unit.

12 Q Uh-huh. Okay. So -- now, he hollered where a
13 lot of people could hear that, right?

14 A Well, not really. This was morning time, rec
15 was out.

16 Q My question was --

17 A Safe keepers, I was on the same side where the
18 safe keepers was at on A side.

19 Q Safe keepers are --

20 A The ones that hadn't been --

21 Q -- people awaiting trial who have to be in
22 special confinement and they send them up to that
23 same Edisto unit, right?

24 A Yes.

25 Q Which is over on Broad River Road in Columbia,

1 right?

2 A Yes, sir.

3 Q Okay. And what in the world did that have to
4 do with the question I just asked you? He hollered
5 where a lot of people could hear you, right, and the
6 answer to that is yes or no?

7 A Well, yeah, the ones that was listening could
8 hear it.

9 Q All right. Who heard him holler at you?

10 A I heard him.

11 Q Who besides you?

12 A Tony Cooper.

13 Q And who besides --

14 A Sam Roberts, Robert South.

15 Q Okay. Let me ask you about them. Where is
16 Cecil Lucas today?

17 A They're all -- those three dudes are dead. The
18 only surviving ones is Tony Cooper and me.

19 Q Well, now isn't that a coincidence?

20 A Yes, sir.

21 Q And why are they all dead?

22 A Cecil and Robert gave up their appeals and
23 Sam's appeals run out.

24 Q Which is another way of saying they were all
25 executed?

1 A Yes, sir.

2 Q Okay. And when was the last one -- what year
3 was the last one of those executed?

4 A I think Sam was executed after we'd come down
5 to Lieber.

6 Q 1997, correct?

7 A '98, '97, '98.

8 Q If I told you the move to Lieber was in March
9 of 1997, is that about when Sammy Roberts was there?

10 A April of '97.

11 Q Excuse me. April of '97, that was when Sammy
12 Roberts was executed, right?

13 A I don't know -- I don't remember what year he
14 was. It might have been '97.

15 Q But it was around the time of the move to
16 Lieber, right?

17 A I don't --

18 Q Isn't that what you just said?

19 A '97 or '98. I've seen about 30 something dudes
20 get executed.

21 Q I'm sorry?

22 A I said, probably about 30 something dudes I've
23 seen get executed.

24 Q A lot of people have been executed that you've
25 known, right?

1 A Yes, sir.

2 Q Okay. And it just so happens that all three of
3 the people who threatened you have been executed so
4 we can't call them as witnesses to find out if
5 there's a thing in the world to this story you're
6 telling, can we?

7 A Yes, sir.

8 Q Too bad, isn't it?

9 A (Indicating sound.)

10 Q Okay. So Cecil hollered at you and nobody
11 heard it except you say Tony Cooper and you. And as
12 a result of him hollering at you, what did you do?

13 A I told him okay. He said, Give a statement to
14 Tony Cooper's attorney, you.

15 Q But Cecil said, Give a statement to Tony
16 Cooper's attorney?

17 A Yeah.

18 Q Those were your instructions from Cecil Lucas,
19 the executed inmate, right?

20 A Yes, sir, confessing that I did it and Tony
21 wasn't involved.

22 Q Now, everyone has single cells in this unit,
23 don't they?

24 A Yes, sir.

25 Q And so you reported this to the authorities.

1 You said, I'm being threatened and someone's trying
2 to make me give a statement?

3 **A** No, sir.

4 **Q** You didn't do that. Now, why didn't you do
5 that, Mr. Sutherland?

6 **A** Because I wanted to walk. I wanted to come off
7 observation and in population.

8 **Q** I see. So instead of that, what did you do?
9 Instead of reporting this to the officers at the
10 Edisto unit in Broad River Correctional Institution
11 so that you would be protected, what did you do
12 instead?

13 **A** Tony Cooper -- I got moved to the other side
14 across from the safe keepers in the same building,
15 but on the other side of the tier, second tier.

16 **Q** You got moved?

17 **A** Yes, sir. They moved me from the safe keepers
18 over to where people that had been convicted of
19 murder and sentenced to Edisto unit, supposed to be.
20 And there were stairwells, you know, the steps
21 that's right in front of the cell I was put in.

22 **Q** Right.

23 **A** So Tony Cooper would climb up, you know, would
24 walk up the steps and sit on the top step and would
25 tell me what we were going to say, what I was going

1 to say.

2 Q Okay. And then after that, what did you do?

3 A They got in touch with you -- well, no, they
4 told me, David Bruck is here. So I asked the
5 officer to tell you to come see me.

6 Q Okay. This is one time you involved the
7 authorities. You asked an officer -- I was there
8 visiting someone else in prison, right?

9 A I done what I was told to do.

10 Q I'm sorry?

11 A I was doing what I was told to do.

12 Q All right. But that's not the question I asked
13 you. Can you listen and we'll get through this a
14 lot faster. I asked you whether it was true that I
15 was visiting another inmate at the prison at the
16 time?

17 A They said you were there visiting.

18 Q Right.

19 A So.

20 Q Okay. I didn't come to see you?

21 A No, sir.

22 Q But you got -- someone indicated, you heard
23 that I was there in the building, right?

24 A Cecil Lucas told me.

25 Q Cecil Lucas. And by the way, as we're talking,

1 if you can think of one living person who can
2 corroborate or who can back up your story about
3 this, just interrupt me and tell me who it is
4 because that will help us a lot, okay?

5 A Tony Cooper --

6 Q Will you do that for me?

7 A Tony Cooper can tell you --

8 Q All right. Okay. I mean, besides Tony Cooper.

9 A Me.

10 Q And you?

11 A Yes, sir.

12 Q If you can think of anybody else, you let us
13 know, okay, one other inmate, anybody, an officer,
14 anyone, would you do that so we can get him in here?
15 Would you?

16 A The only ones I know for sure is Tony Cooper
17 and me.

18 Q Okay. And the three guys that have been
19 executed?

20 A Yes, sir.

21 Q Okay. So --

22 A One of them was your client, Cecil Lucas,
23 right?

24 Q Uh-huh, must not had a very good lawyer?

25 A Must not.

1 Q Okay.

2 A Well, no, no, he gave up his appeal.

3 Q Okay. So you heard I was there and you, what,
4 what did you do?

5 A Got one of the officers to ask you to come see
6 me.

7 Q Okay. And did I?

8 A Yes, sir.

9 Q Okay. And what did you tell me, if anything?

10 A That I was going to give you a statement saying
11 that, that I did the killing and everything and Tony
12 Cooper wasn't involved.

13 Q You wanted to tell me. Now, did you tell me
14 that this was just a statement that wasn't true or
15 were you telling me that this was what really
16 happened and you wanted to tell me what had
17 happened?

18 A Well, you asked me if it was true and I said,
19 yes.

20 Q And I told you I wanted you to tell me the
21 truth, right?

22 A Yes, sir.

23 Q Okay. And so I then told you, did I not, that
24 you needed to talk to your own lawyers?

25 A Yes, sir, you did.

1 Q And that I was not your lawyer and never going
2 to be your lawyer?

3 A Yes, sir.

4 Q And that this was going to hurt your case and
5 you needed to get with your lawyers and see about --

6 A Yes, sir.

7 Q And what did you tell me about that?

8 A I told them -- I believe I told, I didn't care
9 about, you know, the appeal or my attorneys or
10 whatever. I wasn't going to get in touch with my
11 attorneys about it.

12 Q You were insisting on making this statement?

13 A Yes, sir.

14 Q Did you ever tell your own attorneys that you
15 were supposedly being threatened?

16 A Huh...

17 Q You didn't, did you?

18 A I don't believe so. I'm not sure.

19 Q Okay. You didn't tell the authorities, you
20 didn't tell your own lawyers?

21 A No, sir.

22 Q Okay. So I told you -- I warned you against
23 doing this, didn't I?

24 A Yes, sir.

25 Q All right. And you were insistent, you were

1 going to do it no matter what?

2 A Yes, sir.

3 Q So I sat down with you and took a statement,
4 right?

5 A Yes, sir.

6 Q And we went back and forth about the details
7 and you were telling me it was all the truth?

8 A Yes, sir.

9 Q Okay. And once again, just like when you're
10 talking to SLED, you don't twitch or tremble or turn
11 red in the face when you tell a lie, do you?

12 A I was talking to you then, David, you'll have
13 to tell me if I did.

14 Q Okay. There's no easy way to tell, as far as
15 you're aware, when you're lying, is there?

16 A I'm not lying, David.

17 Q All right. So I took notes, came back, sent
18 you a statement in the mail and you signed it,
19 notarized it, right?

20 A That's the first one? The first statement that
21 you took from me.

22 Q Go ahead.

23 A There was a second statement when you come back
24 where -- have you got the statement?

25 Q Yeah.

1 **A** You can read the first line where it says, Red
2 called Tony Cooper that Wednesday night and told
3 him -- told Tony about Kim having the money, that
4 was on that first statement that I gave you.

5 **Q** Uh-huh.

6 **A** When you come back the second time, you said, I
7 don't want Tony Cooper's name involved with Red
8 telling him about any money.

9 **Q** But that's not really what the first statement
10 said, was it? What it actually said, you tell me if
11 you even remember this, what it actually said was
12 you didn't know what Red said to Tony about --

13 **A** No, sir, that is on the second statement I gave
14 you after you told me you didn't want Tony Cooper --
15 you didn't want his name involved knowing about
16 money from Red or Kimberly Quinn getting a check.

17 **MR. BRUCK:** Indulge me for a moment.

18 (Pause.)

19 **Q** Okay. Now, you think hard. The first
20 statement you said, I'm not positive about what Red
21 said to Tony about the check, but I do know he was
22 looking for some reefer when he called Tony, that's
23 the first statement, isn't it?

24 **A** That's on the second statement.

25 **Q** That's the statement you signed? Okay, here's

1 what really happened, you tell me if this is right.

2 **A** Can I see the statement?

3 **MR. BELL:** Your Honor, I would ask if the
4 witness can see the statements.

5 **THE COURT:** You wish to see the statement? Go
6 ahead, show him the statement.

7 **THE WITNESS:** I know the first statement I gave
8 you was --

9 **THE COURT:** Hold on, sir. Do you wish to see
10 the statement, sir?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** All right.

13 BY MR. BRUCK:

14 **Q** Look at that --

15 **A** Thank you, sir.

16 **Q** -- April 6th and read out loud the sentence
17 you're talking about.

18 **A** This is the second statement. That's the
19 second statement. I mean, this might be the first
20 statement I gave you, but I told you Red called Tony
21 and told him that Kimberly Quinn was getting a check
22 for \$2800.

23 **Q** Okay. I'm going to show you --

24 **A** You said that you didn't want that in there
25 about Tony knowing about any money.

1 Q We'll get to that. I'm going to show you a
2 document labeled, Statement of Robert Sutherland
3 April 11th, 1992, bearing a signature and ask if you
4 can identify that. Take your time.

5 A Okay. This is the one where -- this is the way
6 you wanted it.

7 Q That's the second statement, right?

8 A (Witness reviewing document.)

9 Q Right?

10 A This is the one signed and notarized.

11 Q Uh-huh. And a moment ago I handed you a first
12 page of another statement dated April 6th, which was
13 a draft, right? And you read out loud what's in
14 that first one about, I'm not positive.

15 A Well, anyhow, you said you didn't want to
16 know --

17 Q No. Answer my question now. Have you looked
18 at the --

19 A I don't know if this is --

20 **THE COURT:** Hold on a second.

21 Restate your question, counsel.

22 **THE WITNESS:** Did I sign this?

23 **THE COURT:** Hold on, sir.

24 Restate your question, counsel.

25 BY MR. BRUCK:

1 Q That is a draft dated April 6th, correct, that
2 you hold in your hand, right?

3 A Yes, sir, April 6th.

4 Q And isn't that the first, what you call, the
5 first statement?

6 A This is the statement I gave you where I said,
7 Yeah, I can arrange to get whatever she wants.

8 Q All right. I'm asking you about the check
9 part?

10 A Red told Tony Cooper that Kim was getting a
11 check.

12 Q Isn't what really happened was, at first, you
13 told me you weren't positive what Red said about a
14 check, and that's what's in the first draft. And I
15 wrote that up and thought about it and came back and
16 said, Well, what do you mean you're not positive?
17 And you told me, Well, you don't know whether he
18 knew about the check or not. And so that's what I
19 put in your statement. Now, that's the way it went,
20 isn't it?

21 A You told me you didn't want me putting anything
22 about Tony Cooper -- Red telling Tony Cooper about
23 the check. You didn't want it. If I wouldn't have
24 gave to you, you would have went and told Tony
25 Cooper and I would have been dead on that rock.

1 Q I see. Okay. But it's true that the two
2 statements are simply one time you said you weren't
3 positive and the other time you said you didn't know
4 whether he knew it or not, that's the difference?

5 A The first time I gave a statement you didn't
6 like it because it was about Tony knowing about the
7 check, so you wanted something different about Tony
8 not knowing about the check.

9 Q So what you're telling me --

10 A So you got that one. That's the one I signed.
11 The second one here April 11th, it was notarized
12 April 13th.

13 Q All right. And what you're telling me now --
14 I've shown you the two versions, right? And the
15 first one you didn't sign --

16 A You've shown me two versions, yes, sir.

17 Q What?

18 A I remember this one.

19 Q Uh-huh. The first one was you weren't positive
20 about the check and the second one was you didn't
21 know whether he knew about the check or not, which
22 is pretty close to the same thing, isn't it?

23 A The first one I said, Red called Tony, told him
24 about the check.

25 Q And it's your testimony that I told you to lie

1 about that?

2 **A** You told me you didn't want Tony's name in the
3 statement about knowing about a check, about Red
4 telling him about a check.

5 **Q** Your --

6 **A** No, you didn't tell me, you know -- what was it
7 you said?

8 **Q** The question, are you saying that I told you to
9 lie about Tony's knowledge about the check?

10 **A** You asked me not to put his name in it about
11 the check.

12 **Q** Isn't the truth is I asked you what you knew
13 and you said you didn't know and that's how they
14 ended up because that's what you told me?

15 **A** At the time, I would have told you anything you
16 wanted to know, anything.

17 **Q** So that's how the exchange went, isn't it? I
18 asked you, are you certain, and because you were so
19 frightened and so afraid of Cecil Lucas, the late
20 Cecil Lucas --

21 **A** Sammy Roberts.

22 **Q** And the late Sammy Roberts and --

23 **A** And Tony Cooper.

24 **Q** Right. You would have told me anything. So
25 when I said are you sure --

1 **A** Anything you wanted me to put in that
2 statement, I would have put in there.

3 **Q** I see. Okay.

4 **THE COURT:** Is this a good stopping point, Mr.
5 Bruck?

6 **MR. BRUCK:** We're going to offer --

7 **BY MR. BRUCK:**

8 **Q** You say you signed the statement of April
9 11th --

10 **A** That's the one you okayed.

11 **Q** My question is, you signed this and you had it
12 notarized, correct?

13 **A** Yes, sir. You was there.

14 **Q** I'm sorry?

15 **A** You were there.

16 **Q** I was there when you signed it?

17 **A** No. You was there when that was notarized.

18 **Q** Are you sure about that?

19 **A** I believe you were. I'm not sure now.

20 **Q** All right. Isn't it possible I just sent it to
21 you in the mail and you sent it back to me?

22 **A** You might have. I'm not sure.

23 **MR. BRUCK:** Okay. We offer this.

24 **MR. BELL:** No objection.

25 **THE COURT:** All right. Defendant's 1 in

1 evidence without objection.

2 (Defendant's Exhibit Number 1, statement,
3 admitted into evidence.)

4 **THE COURT:** Is this a good stopping point, Mr.
5 Bruck?

6 **MR. BRUCK:** Yeah. Publishing is next and it
7 might be a little long, so it would be a good time.

8 **THE COURT:** All right. Ladies and gentlemen,
9 I'll send you to your lunch break. If you'll please
10 report back at 1:30. Do not discuss this case in
11 any way whatsoever. Thank you very much.

12 (The jury was excused for lunch.)

13 **THE COURT:** Sir, during this break, you may not
14 discuss your testimony with anyone; do you
15 understand?

16 **THE WITNESS:** Huh...

17 **THE COURT:** During the lunch break, you may not
18 discuss your testimony with anyone; do you
19 understand?

20 **THE WITNESS:** Nobody.

21 **THE COURT:** No one.

22 **THE WITNESS:** Okay.

23 **THE COURT:** Do you understand that?

24 **THE WITNESS:** Yes, sir.

25 **THE COURT:** All right. You may step down.

1 See y'all then. Thank you.

2 (Whereupon, there was a luncheon recess.)

3 (Defendant's Exhibit Number 2, statement,
4 was marked for identification purposes.)

5 (Witness resumes the witness stand.)

6 **THE COURT:** All right. Are y'all ready to
7 proceed?

8 **MR. BELL:** The State's ready, Your Honor.

9 **MR. BRUCK:** The defense is ready.

10 **THE COURT:** Bring the jury in, please.

11 (The jury returns to the courtroom.)

12 **THE COURT:** All right. Ladies and gentlemen,
13 we're ready to proceed at this time.

14 **MR. BRUCK:** Thank you, Your Honor.

15 BY MR. BRUCK:

16 **Q** Mr. Sutherland, after the jury left before
17 lunch, the Judge informed you that you weren't to
18 talk to anyone during the break, correct?

19 **A** Not to talk anything about the case, right.

20 **Q** Right. And you said to him, Anyone, didn't
21 you?

22 **A** Yeah, anyone.

23 **Q** You were a little shocked by that, weren't you,
24 surprised?

25 **A** Well, I just asked anyone, I mean, you know.

1 Q Right. Like you had wanted to talk to somebody
2 during the break?

3 MR. BELL: Your Honor, I'm going to object this
4 is irrelevant.

5 THE COURT: Counsel approach.

6 (Whereupon, a bench conference was held off
7 the record, in the presence of the jury, but out of
8 the hearing of the jury.)

9 BY MR. BRUCK:

10 Q Mr. Sutherland, you had expected to be able to
11 talk to your lawyer during the lunch break, hadn't
12 you, about your testimony? Honestly?

13 A Not really.

14 Q But that's what you meant when you asked the
15 Judge, you were surprised and you said, I can't talk
16 to anyone?

17 A Uh-huh.

18 Q All right. And he said no one, right?

19 A He said no one, yeah.

20 Q Okay. And you didn't know that before, did
21 you?

22 A Well, no. I mean, I thought you could discuss
23 it with your attorneys, but he said, no, so.

24 Q Right. And you had wanted to discuss it with
25 your attorney?

1 **A** If they would -- if, if they would have
2 discussed it with me, yeah.

3 **Q** Okay. I would like to begin --

4 **MR. BRUCK:** If it please the Court, we have
5 admitted without objection Defense Exhibit 2, which
6 is the page of the April 6th, the draft of
7 Mr. Sutherland's statement that he and I discussed
8 before --

9 **THE COURT:** Defendant's 2?

10 **MR. BRUCK:** Defendant's 2, yes.

11 **MR. BELL:** That's correct, Your Honor, without
12 objection.

13 **THE COURT:** All right. It's in evidence.

14 (Defendant's Exhibit Number 2, statement,
15 admitted into evidence.)

16 **MR. BRUCK:** At this time, it is almost
17 identical to Defendant's 1, which I'm about to
18 publish, I'd like to begin by publishing the first
19 two sentences of Defendant's 2, if I might. And
20 we'll put it up on the screen so the jury can follow
21 as I publish the statement.

22 Statement of Robert Sutherland April 6, 1992.
23 The Wednesday before Kim Quinn was killed, Red
24 Farmer called Tony to say that she was getting a
25 check. I'm not positive about what Red said to Tony

1 about the check, but I do know that he was looking
2 for some reefer when he called Tony's. I was at
3 Tony's house at the time and Tony gave the phone to
4 me.

5 That is in evidence. Of course, the jury will
6 be able to examine the whole document.

7 At this time, take that down, I would like to
8 publish to the jury, in its entirety, Defendant's 1.

9 Statement of Robert Sutherland, April 11th,
10 1992. The Wednesday before Kim Quinn was killed,
11 Red Farmer called Tony. I was at Tony's house when
12 Red called. I don't know whether Red said anything
13 to Tony about a check, but I do know that he was
14 looking for some reefer when he called Tony. Tony
15 gave the phone to me. Red told me that this girl
16 was getting a check and that she wanted to buy a
17 half pound of reefer. I said, Yeah, I can arrange
18 to get whatever she wants. I was under the
19 impression that she was going to have cash. We were
20 talking around the price. I told them that I'd have
21 to get back with him. He said he'd call back and I
22 told him that I would let him know something for
23 sure.

24 After talking to Red that Wednesday night, I
25 met up with Gerald LeGrand at the McDonalds near

1 Dutch Square around nine o'clock or 10:00 p.m. He
2 wanted me to do it the next day. I was driving
3 Tony's car at that time. I'd been driving it for a
4 long time. LeGrand had a dude with him named Chico
5 when I met him at McDonalds. This guy looked like
6 Tony. He wasn't quite as heavy set as Tony, but he
7 looked almost like him. Chico was someone that
8 farmer and LeGrand knew. They were all mad at Tony
9 because he wouldn't lend them any more money after
10 he got married. I guess he needed his money because
11 he had four young'uns children to support. LeGrand
12 said that Chico knew where she lived. He said to
13 meet up the next day and Chico would show me where
14 he was.

15 On Thursday morning, I met Chico at the Shire
16 Poolroom in Tri Angle City. Chico said that Red
17 wanted me to call him. I called Red on the phone
18 from the Fastfare on Leaphart Road where Brenda
19 works. I guess it was at the schoolhouse number.
20 It was the number that Brenda gave me. I told Red
21 that I could get the reefer. I told him the price
22 was 800 bucks. Then he said that she's been F'ing
23 up a lot of people's dope. A lot of people didn't
24 feel too good about her. She'd been stepping in
25 people's cocaine, according to Red. That means

1 she'd been cutting the cocaine. Red said, You could
2 kill her. I said, I could just take the money and
3 -- he said I could just take the money and
4 everything. He told me that she'd killed her
5 young'un where it was supposed to be an accident.
6 She did it to get the insurance money so that she
7 could buy more drugs.

8 After I called Red, Chico showed me where the
9 house was. This was around 11:00 a.m., maybe 11:30.
10 I was still driving Tony's car. We smoked reefer.
11 I looked at all the possible ways to go into her
12 house, around the back and so on. I called her
13 three times. The first and last time I got her
14 answering machine. The middle time she picked up
15 the phone and I'd acted like I got a wrong number.

16 After watching the house for a while, we rode
17 off and went down to Piggy Park to get something to
18 eat. We came back and looked at her house again.
19 Red had said that she had a boyfriend who might be
20 living there with her, so I wanted to check it out
21 to be sure he wasn't around. I told Chico to tell
22 LeGrand that I would do it. Red was supposed to get
23 \$500 for the information.

24 After watching her house, I waited around. I
25 went to a bar and I sat around my trailer for a

1 while. Brenda already went down to her house that
2 day and had found out that Kim didn't have any big
3 check. Brenda got off a little after three o'clock
4 that day. Me and Chico went down to the Fastfare
5 and told Brenda to go and see if she had the money.
6 We followed Brenda down there and parked. Brenda
7 went down to the girl's house. She was there about
8 15 or 20 minutes.

9 We met Brenda in the post office parking lot.
10 She said that she didn't have the check cashed. She
11 was getting the big money the next Tuesday. Brenda
12 said she did have the money for the reefer. After
13 she told me that, she left -- I'm sorry -- Brenda
14 said she did have the money for the reefer. After
15 she told me that, she left and went on home or
16 wherever she went. I took Chico back to the Shire.
17 He was driving a dirty white Volkswagon. I didn't
18 see him again after that.

19 I went back over there to Kim Quinn's house at
20 2:30 (sic) or one o'clock a.m. that night. The
21 front porch light was on and the door was open. I
22 just walked up there. I guess Red had already
23 talked to her. She invited me in. We started
24 smoking reefer that I had brought with me. Then I
25 hit her in the chin with my fist. She went down.

1 Brenda had told me that Kim had been doing morphine
2 for a few days. I guess that's why she went down
3 pretty easy. I hit her again. Her daughter was
4 sleeping right in the next room. She didn't wake
5 up, thank God. I was by myself when I did this.

6 Kim was unconscious. I picked her up and put
7 her in the front seat of the car. Why someone
8 didn't see me I don't know. Then I drove out to the
9 pond. She started moaning. I had her pocketbook.
10 There was \$800 in cash in the pocketbook, some 600
11 -- 60 Xanax and about 12 of them generic Valiums,
12 also a welfare check. The welfare check was folded.
13 There was a highway department I.D. There wasn't
14 any wallet, though. If she had a wallet, it must
15 have fallen out of her pocket.

16 First, I was going to drown her, but I had a
17 shotgun in the car. It was my shotgun. I thought
18 about how she killed her young'un to get money for
19 drugs. She deserved it. I shot her in the back.
20 She was laying on the ground on her left side. She
21 was breathing heavy. I was about six feet away and
22 I popped another one. I hit her in the back of the
23 neck. Joel Sexton doesn't know anything about
24 gunshot wounds. I stood back and pumped two more
25 rounds in her head. These were not close wounds. I

1 stood back to do it. The last gunshot probably just
2 hit the top of the head. I can produce the rings
3 and the shotgun.

4 Why I chopped her hands and feet off I'll never
5 know. I tried to chop off her head. That blood and
6 liquid looking kind of stuff started slinging so I
7 stopped. I hit her once in the back of the neck
8 with the ax. The blade was dull and it didn't do
9 anything. I was having trouble chopping the leg
10 because of the pants, so I pulled the pants off,
11 then chopped the other foot off. Then when I done
12 that, I grabbed the stumps and pulled her, put the
13 branches and the log on her and then the chair that
14 was up by the steps of the cabin, put all that on
15 top of her. I got a plastic gas can out of the
16 trunk of the car. I felt like she had burned her
17 son so she should burn, too. I poured the gas on
18 her and put a match to it. The fire started going
19 up there into the bush, so I gathered everything up
20 and got out of there.

21 The deal was that if anything came down over
22 this, they, Red and LeGrand, were going to blame
23 Tony. They were mad at Tony because he wouldn't
24 lend them any more money. That's what they told me,
25 anyway. Their reason I don't know. When I was

1 arrested, I made a statement putting this on Tony
2 because that's what everyone had planned to do. The
3 statement that I made to the police was not true. I
4 knew where everything was because I had thrown them
5 there myself, not because Tony had told me anything.

6 Anyway, that Friday morning I went over to
7 Tony's around six o'clock or 7:00 a.m. I left
8 Tony's around 8:00 or 8:30. I told him I had
9 something to do. I told him that I'd meet him at my
10 trailer at South Congaree. I went on down to the
11 bank in Cayce and cashed the welfare check. I was
12 by myself when I cashed the check. I was still
13 driving Tony's Cougar.

14 After I cashed the check, I went back to the
15 trailer. Tony came over and we went over to
16 Lexington and talked to the manager of the apartment
17 where we had a bid on repairing some damage from
18 Hugo. Then we drove around. We went to the office
19 where we usually worked out of. That afternoon Tony
20 went on home.

21 That night around 8:30 or nine o'clock, I went
22 to McDonalds at Dutch Square. I met LeGrand there.
23 I gave him \$200. They asked about some reefer. I
24 told them that she was dead.

25 All together I got about \$1200 worth of money,

1 Valium and Xanax. I ate the pills myself.

2 I put her hands and feet in a bag and threw
3 them in the creek. I know where the rings and the
4 shotgun are. I am willing to take the police to
5 find them, but I want to have someone with us when
6 we go.

7 Tony Cooper didn't have anything to do with
8 this. I have made this statement because this is
9 the truth. No one contacted me or asked me to make
10 it. Tony Cooper has not pressured or forced me to
11 make this statement and neither has anyone else.

12 After I decided to make this statement, I sent
13 word to Tony Cooper's lawyer, David Bruck, that I
14 wanted to talk to him. When he was here seeing
15 another client, I asked one of the officers to get
16 him to come and talk with me. David Bruck told me
17 that I needed to discuss this statement with my own
18 lawyers because this could hurt my own case.
19 However, I don't want to talk to my lawyers about
20 it. I want to handle this situation myself.

21 I understand that everything in this statement
22 could be used against me in my own case. I still
23 have decided to go through with this statement. I
24 have read over this statement carefully before
25 signing it and everything in it is true.

1 End of statement. Signed, Robert Sutherland.
2 Sworn to and subscribed before me this 13th day of
3 April 1992, Kim Wardley, Notary Public of South
4 Carolina. My commission expires 03/13/1996.

5 Thank you.

6 BY MR. BRUCK:

7 Q That's the statement that you signed and had
8 notarized on April 13th, correct?

9 A Yes, sir.

10 Q When someone notarizes a statement, what does
11 it mean?

12 A It's legal.

13 Q It means you're swearing that it's true, right?

14 A I believe you know more about that than I do.

15 Q I'm asking if you know?

16 A If you say so, yeah.

17 Q All right.

18 A It's legal.

19 Q All right. Now, the Cougar was yours to use
20 during this time period, correct?

21 A Yes, sir, but until the day that I got
22 arrested, his niece and sister were going to use it.

23 Q Okay. But you were using it for several weeks
24 before this time?

25 A Yes, sir, two or three weeks.

1 Q Everyday you'd drive it to your house. It
2 wasn't in Tony's possession?

3 A Yes, sir.

4 Q All right. And you had possession of this ax
5 that's in evidence, hadn't you, at various times
6 after Hurricane Hugo, hadn't you?

7 A We used it on an inside job we was doing at a
8 house, you know, to straighten walls, hit bottom of
9 the walls to straighten them up.

10 Q You're talking about contracting work?

11 A An inside bathroom job he had set up. I never
12 had -- I never carried the ax and -- I never used it
13 outside of work.

14 Q Right. But you had it in the Cougar at various
15 times, didn't you?

16 A Not that I know of.

17 Q Are you sure about that?

18 A Yes, sir. I say not that I know of now. I
19 don't remember.

20 Q Around the time of Hurricane Hugo, you didn't
21 come over to Tony's house and say you needed to
22 borrow the ax and you took it off in the Cougar?
23 Think hard.

24 A Hugo in September?

25 Q September 21st, 22nd I think, 1989?

1 A I cannot remember.

2 Q You don't remember. Might have, might not have
3 is that what you're saying?

4 A Might, might not.

5 Q You don't remember having Tony's family or his
6 mother-in-law asking for the ax back around
7 September 30th because they had a tree that they had
8 to clear around their property and you brought it
9 back and then took it off again in the Cougar?

10 A Well, I know they used the tree to -- the ax to
11 chop down a hickory tree.

12 Q And then you took the ax back, didn't you,
13 because you had thought --

14 A No.

15 Q You didn't?

16 A No, sir.

17 Q Or you don't remember?

18 A I'm sure they were using the ax to chop down
19 the tree. No, I didn't take it.

20 Q You're sure about that?

21 A Yes, sir.

22 Q So if Tony's wife, Marsha Cooper, didn't see
23 the ax around anymore, you don't know where it went
24 after September 30th, right?

25 A After September 3rd.

1 Q 30th?

2 A No, the last I -- the ax was in the cab of the
3 truck.

4 Q Uh-huh. And then you don't remember if you
5 ever had it in the Cougar?

6 A I honestly don't believe something about --
7 it's if it's to do a job with. But I gave the ax,
8 if I had it, I gave it back to Tony whenever they
9 was cutting down that tree and he was keeping it.

10 Q And you didn't get it back after that?

11 A No, sir.

12 Q Now, you would go over to Tony and Marsha's
13 house quite often, didn't you?

14 A They lived right across the street from a beer
15 joint that I went to.

16 Q Right. You would hang out at that beer joint
17 with Melvin Burroughs a lot, right?

18 A Yes, sir, and another fellow that we worked
19 with, a couple of fellows that we worked with.

20 Q Okay. And you didn't have a phone at your
21 trailer, did you?

22 A No, sir.

23 Q So when you needed to use the phone a lot of
24 times, you would go on over to Tony and Marsha's
25 house, right?

1 A No, sir.

2 Q You never used the phone?

3 A No, sir.

4 Q Never?

5 A No, sir.

6 Q Not one time?

7 A Never.

8 Q Whose phone did you use?

9 A There was a phone, I don't know, halfway
10 between Edmund and Pelion, there was a pay phone.
11 It was local. I mean, you know, I could call
12 Columbia, West Columbia, Cayce, whatever, if I was
13 going to call somebody.

14 Q So it's more convenient to do that than walk
15 right over from the beer joint right over Tony and
16 Marsha's?

17 A Tony Cooper wasn't going to let me make no long
18 distance phone calls from his house.

19 Q Okay. Now --

20 A Wait, I did make a phone call from Tony
21 Cooper's house one night when Tony Cooper's wife,
22 she left him and went to Sister Care.

23 Q Okay. And you called --

24 A Her ex-husband, David somebody, and Detective
25 Johnson, Lexington County, trying to find out where

1 she was at. Tony Cooper asked me to do that for
2 him.

3 Q I see. So you have used the phone, you just
4 remembered. It's some way that you could say
5 something negative.

6 A I remember that, yes, sir.

7 Q And that's the only time you ever remember
8 using their phone, correct?

9 A Yes, sir.

10 Q Or talking on the phone, did you ever talk on
11 the phone when Tony was on the phone and handed it
12 to you?

13 A No, sir.

14 Q Never, not once?

15 A I've never talked to Red. If that's what
16 you're getting around to, I've never talked to Red.

17 Q All right. Now, Red -- you've talked about --
18 you've talked about Brenda as being Tony's niece,
19 correct?

20 A Yes, sir.

21 Q But Brenda is also what to Red Farmer?

22 A Girlfriend, I believe.

23 Q Okay. Red Farmer, who is in the penitentiary,
24 was dating, I guess you'd say, or was boyfriend --

25 A Well, she was coming to visit him.

1 Q Boyfriend, girlfriend with Brenda McLauren
2 who's Tony's niece, right?

3 A Yes, sir.

4 Q And they would talk on the phone as far as you
5 knew, right?

6 A I don't know about -- well, I guess they would.
7 I don't know for sure, but I know that she was going
8 to visit him.

9 Q She would visit him at CCI, at the penitentiary
10 in Columbia?

11 A Yes, sir.

12 Q You knew Eugene Carter when you were in prison?

13 A No, sir.

14 Q You didn't?

15 A I believe I knew his brother, James, that was
16 at Kirkland.

17 Q The shotgun, do you remember going to the
18 Shumpert's house about two or three days before the
19 death of Ms. Quinn and waving that shotgun around,
20 firing it off? I think you mentioned that, right?

21 A We put the compressor back into the garage.

22 Q Right.

23 A Donnie Shumpert's compressor. And Donnie was
24 sitting on his back porch steps. He looked all
25 depressed. And I said, How about if we fire off a

1 round and see if I can shake him up, and I did.

2 Q Uh-huh. And you said, How do you like my new
3 toy? That's what you said to Donnie Shumpert,
4 right?

5 A Probably so.

6 Q Probably so. And that wasn't Tony holding the
7 shotgun, it was you?

8 A That was me.

9 Q Okay. We've talked about the first statement
10 that you made to SLED in 1989. That was mostly
11 lies, wasn't it?

12 A (No response.)

13 Q The first statement that you made to law
14 enforcement on October 10th and 11th, 1989 was
15 mostly lies. You already told us that before lunch,
16 right?

17 A Yeah. I was trying to keep me out of it.

18 Q Trying to keep you out of it by telling a bunch
19 of lies, correct?

20 A No, sir, half truth.

21 Q All right. We'll call it half truths. The
22 next statement you made was the one we've just read,
23 correct?

24 A Well, that's the one that you were satisfied
25 with.

1 Q Uh-huh, okay. We've talked about that already,
2 too, and we've gone through the differences and so
3 on. Now, after you signed that statement, you went
4 ahead and led a search to look for the gun and the
5 jewelry in Lexington County, right?

6 A Yes, sir, you were there.

7 Q And that part at least, your information about
8 where those items were, was all true, wasn't it?

9 A I saw about where he threw the rings when he
10 took them off the fingers. I know where we buried
11 the shotgun that morning.

12 Q Okay. So you were doing the best to actually
13 find those items. You weren't leading the police on
14 a wild goose chase, were you?

15 A They had metal detectors.

16 Q The fact they couldn't find it is not because
17 they weren't there, to the best of your knowledge,
18 right?

19 A They were supposed to have been there.

20 Q As far as you knew, they were there, right?

21 A Yes, sir.

22 Q By the way, the -- let me go further. The
23 Solicitor neglected to ask you about your prior
24 record. Do you mind if I ask you about it?

25 A Go ahead.

1 Q All right. I'm going to give you an original
2 copy and you can follow along. I'm going to ask you
3 about --

4 MR. BELL: Your Honor, may we approach?

5 THE COURT: Yes, sir.

6 (Whereupon, a bench conference was held off
7 the record, in the presence of the jury, but out of
8 the hearing of the jury.)

9 BY MR. BRUCK:

10 Q Mr. Sutherland, back on --

11 A Is this a copy?

12 Q Yes, sir.

13 A Be all right if I keep it?

14 Q Do you need it?

15 A Well, yeah, if it's all right if I keep it.

16 Q Maybe what we'll do after, we'll give you a
17 copy. That's an original copy, I may need it for
18 court.

19 A I appreciate it.

20 Q All right. On February -- I'm sorry -- on
21 March 13th, 19 -- February 25th, 1969, you were
22 convicted of the offense of burglary, housebreaking
23 and grand larceny, correct?

24 A Yes, sir.

25 Q And you received a sentence 18 months,

1 suspended three years probation, correct?

2 **A** Yes, sir.

3 **Q** All right. Then on 3/13/1974, March 13th,
4 1974, you were convicted of burglary and
5 housebreaking and convicted and sentenced to 27
6 months, correct?

7 **A** Yes, sir.

8 **Q** Went to prison. On May 31st, 1976, you were
9 convicted of a marijuana charge and received two
10 months confinement, correct?

11 **A** Simple possession charge, yes, sir.

12 **Q** You got two months for simple possession?

13 **A** Simple possession, yes. I think it carried
14 about 90 days max.

15 **Q** And then on November 22nd, 1976, you were
16 convicted of armed robbery and received an 18 year
17 sentence, correct?

18 **A** Which county?

19 **Q** That would be -- well, that's not Clarendon
20 County and it's not Richland County?

21 **A** It was Fairfield County.

22 **Q** So that would be Fairfield County?

23 **A** Yes, sir.

24 **Q** And you were also convicted of armed robbery on
25 January 17th, 1977 in Clarendon County?

1 **A** Yes, sir.

2 **Q** You got a 15 year sentence for that?

3 **A** In that first one, Fairfield County, I was
4 acquitted.

5 **Q** So if the records show that you were convicted
6 and got an 18 year sentence, the records must be
7 wrong?

8 **A** I caught, let's see, 15 -- 15, 18 and 18,
9 Dorchester, Berkeley and Clarendon County, 15, 18
10 and 18. That's all the --

11 **Q** All armed robberies?

12 **A** Yes, sir.

13 **Q** You were committed and convicted of three
14 separate armed robberies in three separate counties?

15 **A** Yes, sir. Your client, Tony Cooper, was my
16 codefendant.

17 **Q** Excuse me, I'm asking about your record, if you
18 don't mind.

19 **A** Yes, sir. Well, I'm explaining to you who my
20 codefendant was.

21 **MR. BELL:** Your Honor, he's allowed to explain
22 his answer.

23 **THE COURT:** No. He's asking a question about
24 his record.

25 Go ahead.

1 BY MR. BRUCK:

2 Q You're very anxious, aren't you,
3 Mr. Sutherland?

4 A What?

5 Q To do everything, to say everything you can to
6 hurt Tony Cooper, aren't you, today?

7 A No.

8 Q You're not. Okay. I misunderstood. All
9 right. And then you were convicted of -- you got
10 three armed robbery convictions, you got 15 years,
11 15 years and 18 years?

12 A Oh, 15, 15 and 18, okay. Excuse me.

13 Q And then you were convicted of murder in this
14 case in 1992?

15 A Sir?

16 Q You were convicted of murder in this case,
17 correct?

18 A Murder, armed robbery, forgery.

19 Q And you were convicted of forgery, correct?

20 A Yes, sir.

21 Q And conspiracy?

22 A Yes, sir.

23 Q Now, the day after you took law enforcement to
24 try to find the shotgun and the jewelry or within a
25 couple of days, you spoke to a reporter for the

1 State newspaper, correct?

2 A Yes, sir, a friend of Cecil Lucas's, Twila
3 Decker.

4 Q You're saying that the newspaper reporter was a
5 friend of the -- of Cecil Lucas, correct?

6 A Yes, sir. He thought it was a good idea. Him
7 and his committee thought it was a good idea if I
8 spread the word to anybody and everybody about the
9 confession, statement that I gave to you.

10 Q I see. So you called the newspaper because
11 these people who have threatened you instructed you
12 to do that, correct?

13 A Yes, sir.

14 Q Did they write a script for what you should say
15 to the State newspaper reporter, Twila Decker, or
16 did you make it up yourself?

17 A They told me it would be a good idea to call
18 her and let her know.

19 Q Okay. And you follow along, you tell me if
20 this is what you told her. He, meaning Tony Cooper,
21 he's innocent of this. I don't want him to go to
22 hell for this. Did you tell her that?

23 A I believe I did, yes.

24 Q You said, I don't give a damn where I go, I did
25 it. That's what you told her, isn't it?

- 1 A (Witness reviewing document.)
- 2 Q It's right after the yellow marking.
- 3 A (Witness reviewing document.)
- 4 Q Look at the beginning of the second page.
- 5 A Oh, yeah, okay. Well, it's not marked, I see
- 6 it.
- 7 Q No, I didn't mark it. I'm sorry. I don't give
- 8 a damn where I go, I did it. Are those your words?
- 9 A Yes, sir, I guess.
- 10 Q You told the State newspaper reporter that?
- 11 A Yes, sir.
- 12 Q And then after talking about the killing at the
- 13 end, you said, It was messy, but it got the job
- 14 done, Sutherland said?
- 15 A Yes, sir.
- 16 Q Adding that he's prepared to die for it. Is
- 17 that what you said?
- 18 A Yes, sir.
- 19 Q And then you said, As soon as my first appeal
- 20 gets turned down, I'm going to tell them to crank up
- 21 the machine because I'm ready to get out of this old
- 22 life and start a new one. Is that what you said?
- 23 A Yes, sir.
- 24 Q But then you had some second thoughts, didn't
- 25 you?

1 A (Witness reviewing the document.)

2 Q I'll withdraw that question. Let me move
3 along.

4 A What was it?

5 Q That's okay. Well, yeah, what I said was, you
6 had some second thoughts about telling them to crank
7 up the machine, didn't you, because you went on and
8 appealed, right?

9 A The reason I didn't drop my appeals is because
10 Tony's told me he was going to need me in court, you
11 know.

12 Q I see. So you just kept --

13 A To testify for him.

14 Q Okay. Now, that's very interesting. Let me
15 talk to you about that a little bit. You told this
16 story because you were afraid of being killed.
17 That's what you've told this jury, you were afraid
18 of Cecil Lucas and his committee, as you call it,
19 right?

20 A Yes, sir.

21 Q All right. But now what you're telling us is
22 that you would have gone ahead and volunteered to be
23 executed and not file anymore appeals of your death
24 sentence except for the fact that Tony Cooper said
25 he needed you in court. Well, were you --

1 A I said as soon as my appeal gets turned down, I
2 was going to tell them to crank up the machine.
3 Tony Cooper and the committee, you know, figured it
4 would be better if I went to court for him, you
5 know, in person.

6 Q Well, there's something that doesn't quite add
7 up, you're going to agree with that, aren't you, Mr.
8 Sutherland? How many times can one man get killed?
9 Were you afraid they were going to kill you a second
10 time after you were executed?

11 A Who, the State?

12 Q Never mind. All right --

13 A No, ask me again, David. I was just --

14 Q That's all right. These folks have gotten
15 better places to be. We need to --

16 A No, you said something about how many times can
17 they kill -- they can only kill you one time.

18 Q That's right. So Cecil Lucas' committee wasn't
19 going to get to kill you a second time. If you
20 dropped your appeals like you said you wanted to do,
21 then they couldn't do anything more to you?

22 A I didn't want them to kill me the first time,
23 David.

24 Q All right. Now, in addition to the State
25 newspaper and the statement that the jury's just

1 heard that you swore was true in 1992, you also told
2 just about anyone who would listen --

3 A Anybody and everybody. Spread the word that
4 was what I was supposed to do.

5 Q Do you know an inmate named Norman Starnes?

6 A Yes, I do.

7 Q Is he an enemy of yours?

8 A No, sir.

9 Q Is he a mean guy to you? Did he ever threaten
10 you?

11 A No. I really didn't know Norman. We knew
12 somebody on the street, but I didn't know him until
13 we got to the unit. And he lived on one side, I
14 lived on the other.

15 Q All right. And, in fact, you would talk freely
16 about this crime to people, other inmates and staff
17 and everybody on -- down in Lieber at the unit there
18 where you were, right?

19 A Most possibly, spread the word, get it out.

20 Q Do you know a lady named Betts Davis?

21 A Yes, sir. She's sitting right back there.

22 MR. BRUCK: Ms. Davis, will you stand, please?

23 Q Tell us who Betts Davis is.

24 A She's one of those church volunteers.

25 MR. BRUCK: Thank you, ma'am.

1 Q Ms. Davis is a church volunteer that visits the
2 inmates down at Lieber Correctional Institution,
3 correct?

4 A Uh-huh.

5 Q And you told Ms. Davis that you had committed
6 this crime by yourself and that Tony wasn't involved
7 in it, didn't you?

8 A Yes, sir.

9 Q Let me ask you whether Ms. Davis was part of
10 Cecil Lucas' committee that threatened you?

11 A No, David.

12 Q No?

13 A No.

14 Q Okay. I'll ask you about a lady named Naida
15 Knotts?

16 MR. BRUCK: Can you stand up please, Ms.
17 Knotts?

18 Q Did you tell Ms. Naida Knotts that Tony Cooper
19 had not committed this crime and that you had done
20 it by yourself?

21 A I probably told them at the same time because
22 both used to come to my door.

23 Q All right. And Ms. Knotts is -- why would she
24 come to your door, in what capacity?

25 A As one of those church volunteers.

1 Q She's a Christian lady who visits the
2 prisoners?

3 A Yeah. Well, she knows Tony and me.

4 Q She knows Tony and you?

5 A Both of them is from Cayce and we're from
6 Cayce.

7 Q Uh-huh. And by that, do you mean to tell the
8 jury that Ms. Naida Knotts came to you to pressure
9 you on Tony's behalf to tell a lie?

10 A No.

11 Q She wasn't threatening you, was she?

12 A No, sir.

13 Q And would she talk to you privately when no one
14 else was listening?

15 A Ms. Naida -- Betts was with her.

16 Q But you had talked to the two of them
17 privately, no one else was around, right? No one
18 else was listening, could hear your conversation
19 correct?

20 A If anybody wanted to hear it. The plan was
21 spread the word. Betts and Naida are with the
22 church. They can go out there and tell the
23 congregation, Tony Cooper's innocent, Bo Sutherland
24 did it. They can spread the word. And that's what
25 I did.

1 Q And this went on for year after year after
2 year, didn't it?

3 A What was it, 14 years ago?

4 Q Yeah.

5 A Yeah.

6 Q And at no time, did you tell the authorities
7 that anyone was threatening you to make a false
8 statement until, and we'll get to this in a moment,
9 until this year, correct?

10 A In, what was it, April?

11 Q Right, in April of 2006.

12 A Yes, sir.

13 Q So from 1992, 1993, 1994, 1995, 1996, right,
14 you didn't say anything to any person, any authority
15 about this conspiracy to pressure you to give a
16 false statement?

17 A I done gave the statement and went to court.
18 Any time that you would ask me, I would say, yeah.
19 They would ask me say, Why are you wanting to do
20 this? And I would have to tell them to clear my
21 conscience before I die.

22 Q That's what you would tell people. The truth
23 is you don't have a conscience, do you,
24 Mr. Sutherland?

25 A Yes, sir, I do.

1 Q Matter of fact, whenever you would see me when
2 I would be visiting another inmate or in the prison
3 for some reason, you would always greet me with a
4 big smile and say, When are we going to court; isn't
5 that true?

6 A Yes, I did.

7 Q And that went on for years?

8 A Yes, sir.

9 Q And I said, I can't talk to you. I'm not your
10 lawyer. I'm not allowed to talk to you. Right?

11 A (Indicating sound.)

12 Q Then you would call me sometimes in my office?

13 A Yes, sir.

14 Q And I'd say, I can't talk to you. You have to
15 talk to your lawyers. Correct?

16 A Yes, sir.

17 Q But you were calling me with the same question,
18 When are we going to court, when we going to court,
19 right?

20 A Uh-huh.

21 Q And in 1997, the -- a hearing was held. Tony
22 filed an appeal. And a hearing was going to be held
23 here in Lexington County before Circuit Judge
24 Keesley, correct? Do you remember that?

25 A Was that '97?

1 Q Yeah.

2 A I was thinking it was '98.

3 Q Okay. Whenever it was. And we wanted you to
4 finally be a witness and go to court, correct?

5 A Yes, sir.

6 Q I wanted you to. And you told me, or you
7 indicated that you were willing to, right?

8 A Yes, sir.

9 Q Okay. And had you taken the witness stand --
10 and your own lawyers objected and Judge Keesley
11 said, Well, we'll leave that for now and not allow
12 you to be put on the stand. Do you recall that?

13 A I didn't go in front of the judge. The words I
14 was getting was coming from you and my attorney.

15 Q And the word you got was that your lawyers
16 objected to our calling you as a witness. And the
17 judge said, Well, we'll put that off for now. We
18 don't have to get there yet. We'll do the rest of
19 the case. Right?

20 A I believe that was it, but I asked you to take
21 me up in front of the judge and you wouldn't do it.

22 Q I couldn't do it, could I, because I couldn't
23 talk to you?

24 A You was in the cell, holding cell at the old
25 Lexington County Jail with me. I begged you to go

1 down there and talk to that judge about letting me
2 get up in front of him.

3 Q Okay. And you don't know what happened when I
4 talked to the judge because you weren't in the
5 courtroom?

6 A No, sir, because I only talked to you that one
7 time.

8 Q Okay. But what happened was for whatever
9 reason, you were not called in as a witness, right?

10 A Because my attorney told me something about my
11 appeals then.

12 Q Okay. I'm going to show you a letter to Judge
13 Keesley dated December 11th --

14 A It's the one from --

15 Q -- 1997 and ask you if you can tell us what
16 that is?

17 A Yeah. This is the same one you showed me in
18 April.

19 Q Okay.

20 A I believe Norman Starnes typed it.

21 Q That's your signature on this letter?

22 A Yes.

23 MR. BRUCK: We offer it.

24 MR. BELL: No objection.

25 THE COURT: Defendant's 3 in evidence without

1 objection.

2 (Defendant's Exhibit Number 3, letter,
3 admitted into evidence.)

4 MR. BRUCK: May I publish the letter?

5 THE COURT: Yes, sir.

6 MR. BRUCK: Defendant's 3 is a letter signed by
7 Bo Sutherland dated -- regarding restraining order,
8 December 11th, 1997, addressed to Judge Keesley here
9 in Lexington. And the text of the letter is:

10 Dear Mr. Keesley, on Wednesday December 10th,
11 1997, I telephoned David Bruck, attorney, to speak
12 with him. Mr. Bruck advised me he was unable to
13 talk with me due to a motion for a restraining order
14 being filed by my attorneys, Wayne Floyd, Bill Rast
15 and Diana Holt. Please be advised that I do not
16 agree with my attorneys actions on this issue and I
17 pray the Court not to grant this motion. If the
18 Court has granted the motion, I request for it to be
19 dismissed as soon as the Court can do so. Thank you
20 for your time and consideration in this matter.
21 Respectfully submitted, Robert "Bo" Sutherland, and
22 an address.

23 BY MR. BRUCK:

24 Q You sent that letter to Judge Keesley, correct?

25 A Yes, sir.

1 Q And what the point of all that was that no
2 matter what your lawyers wanted, you wanted to
3 testify?

4 A Well, Tony Cooper thought it would be a good
5 idea if I send that letter to Judge Keesley.

6 Q I see. And you had to do what he did because
7 you were still, six years and a half after you
8 signed Defendant's Exhibit 1, you were still so
9 terrified -- five years and a half, you were still
10 so terrified of these inmates?

11 A Maybe not terrified, but still going along with
12 the plan.

13 Q Even though the committee had all been executed
14 by then or just about?

15 A I think -- well, Sammy -- I think -- when did
16 Sammy get executed, in '98?

17 Q You don't remember?

18 A No, sir.

19 Q All right. Now, what were you going to say if
20 you had managed to get onto the witness stand before
21 Judge Keesley at that hearing that the letter was
22 concerned with?

23 A I would have said the same thing that I'd been
24 saying when I went up for my PCR's.

25 Q And that makes me want to ask you something

1 else. A year or two before that letter to Judge
2 Keesley, you appeared at a hearing for yourself
3 before Judge Westbrook, correct?

4 **A** Yes, sir, PCR.

5 **Q** In Lexington County, in the old courthouse.
6 Now, PCR is one of the stages of an appeal for
7 someone who's been convicted of a crime or sentenced
8 to death or whatever, right?

9 **A** Yes, sir.

10 **Q** And you have a hearing in front of a judge in
11 which you can, if there's any evidence that's been
12 overlooked, you get a chance to present, right,
13 basically what it is?

14 **A** Yes, sir.

15 **Q** And that was -- you had a hearing -- you had a,
16 what's called a status conference, right, before
17 where the judge just gets to see how the case is
18 moving along and when there's going to be a hearing
19 and so on, right, with your lawyers and Judge
20 Westbrook, correct?

21 **A** Yes, sir, I believe.

22 **Q** I'm going to hand you -- I'm going to hand you
23 a transcript of a hearing on May 24th, 1996.

24 **A** That's the first PCR I had?

25 **Q** That's the status conference where you spoke to

1 Judge Westbrook.. I'm going to ask you to turn to
2 page five. One of your lawyers, who's here today,
3 Mr. Floyd -- Mr. Floyd is present in the courtroom
4 today, isn't he?

5 A (No response.)

6 Q Mr. Sutherland?

7 A Yes, sir.

8 Q Is he here now?

9 A Who's that?

10 Q Mr. Floyd?

11 A Yes, sir, sitting right over there.

12 MR. BRUCK: Would you stand, Mr. Floyd. Thank
13 you.

14 Q He was present with you at that time, right?

15 A Yes, sir, all of my attorneys.

16 Q He was talking to the judge and you
17 interrupted, middle of page five, didn't you, and
18 said, Well, Your Honor, can I say something,
19 correct?

20 A Yes, sir.

21 Q And then there was some back and forth and
22 finally on the bottom of page six -- the middle of
23 page six, the judge says, this is Judge Keesley --
24 Judge Westbrook says, Mr. Sutherland, let me hear
25 what you want to say. Madame clerk, would you put

1 Mr. Sutherland under oath please.

2 Right? And you were sworn to tell the truth,
3 correct?

4 A Yes, sir.

5 Q Okay. And then you said, No, I was just -- if
6 he was wanting to take -- like I just told him, I've
7 got a confession I'm going to read. And the Court
8 said, I'm sorry, you have a what? And you said, A
9 confession. The Court, Yes, sir.

10 Is that what -- that's what happened?

11 A (No response.)

12 Q Yes? Am I reading that accurately?

13 A Did I have the confession with me? I don't
14 remember. I mean, I just --

15 Q I'm just reading what's in the transcript,
16 Mr. Sutherland. I don't know, I wasn't there. Why
17 don't you just skip down three lines and read to the
18 jury the next -- to line seven what you -- what you
19 told under oath --

20 A You can read it to the jury.

21 Q You don't want to read it?

22 A No, you can read it to the jury.

23 Q You go ahead.

24 A You can read it to the jury.

25 Q Mr. Sutherland, I'm asking you to do it, would

1 you mind?

2 **A** You asked --

3 **THE COURT:** Mr. Sutherland, he's asking you to
4 do it, if you'll go ahead and do it, please.

5 **THE WITNESS:** Line seven, Involving me and
6 Kimberly Quinn -- how far down?

7 BY MR. BRUCK:

8 **Q** Well, wait a minute. Would you start at line
9 three, please, and read the whole statement?

10 **A** I'm going to read, I mean, I killed the girl.
11 I did it myself. I mean, there was no help. There
12 was no witnesses, but, I mean, you know, I'd just
13 like to say that I killed her by myself. There was
14 nobody else involved but me and Kimberly Quinn. How
15 far down?

16 **Q** Well, maybe, I should have read it myself. I
17 don't know if anybody could hear that. You tell me
18 if this is correct. Mr. Sutherland: That I'm going
19 to read, I mean I killed the girl. I did it by
20 myself. I mean, there was no help. There was no
21 witnesses, but, I mean, you know, I'd just like to
22 say that I did kill her by myself. There was nobody
23 else involved but me and Kimberly Quinn. Is that
24 what you said that day under oath in a court of law
25 to Judge Westbrook?

1 **A** Yes, sir.

2 **Q** All right. And that was after you had put your
3 hand on the Bible and sworn to tell the truth,
4 correct?

5 **A** Yes, sir.

6 **Q** And had you been called in 1998 when Mr. Cooper
7 had his hearing, you would have testified to the
8 same thing is that what you're saying?

9 **A** Yes, sir.

10 **MR. BRUCK:** I've got a little while longer,
11 Your Honor, if you just want to be sure the jury is
12 comfortable. I don't want this to wear anybody out.

13 **THE COURT:** Is everyone okay? Does anyone need
14 a break?

15 (There was no response.)

16 **THE COURT:** Go ahead.

17 **BY MR. BRUCK:**

18 **Q** And by the way, the transcript reflects that
19 you had already told your lawyers privately that you
20 were going to make that statement that day, didn't
21 you?

22 **A** Yes, sir.

23 **Q** Right. Because Mr. Floyd's told the judge you
24 were going to do that?

25 **A** Well, like I said in there, they were just

1 there to make it legal.

2 **Q** You wanted to make it legal?

3 **A** Yes, sir.

4 **Q** Okay. Now, you don't only know what you
5 actually saw and what you did, but you know all of
6 the evidence that the State has in this case, don't
7 you? You know all of the evidence that the State
8 has in this case, don't you?

9 **A** Yes. I've been tried before.

10 **Q** Yeah. You've not only been tried before, but
11 your trial was put into a transcript, right?

12 **A** Yes, sir.

13 **Q** And you've got all of the evidence, it's called
14 discovery, evidence that the State gives to your
15 lawyers, the lab reports, if there are any, and
16 witness statements and so on, you also had all of
17 those, didn't you?

18 **A** I had the transcripts.

19 **Q** Okay. And you've had that for years and years
20 and years, haven't you?

21 **A** No, sir. I gave them to Tony Cooper.

22 **Q** You gave your transcript to Tony Cooper?

23 **A** Yes, sir.

24 **Q** After you -- I see.

25 **A** Well, he figured they had had them, so.

1 Q There's a lot of stuff in these transcripts,
2 right? And you had all the time you wanted to look
3 at them, didn't you?

4 A Like I said, I done been through it one time.

5 Q You went through it one time and then it's
6 confiscated by Tony Cooper?

7 A No, I went through court one time. I didn't
8 need anymore of it.

9 Q And, of course, you had been out there at the
10 pond and you knew what really happened?

11 A Sir?

12 Q You'd been out there at the pond and you knew
13 what really happened?

14 A Yes, sir, with Tony Cooper.

15 Q Right. So we've gone through from 1992 to
16 about 1998 and then you mentioned that something
17 happened in 1999 that changed your situation and
18 what was that?

19 A The only thing that happened to me in '99 was I
20 got a resentencing.

21 Q You got a resentencing?

22 A Yes, sir.

23 Q And what that means is that the South Carolina
24 Supreme Court said there was something wrong in the
25 way you were sentenced to death, right?

1 A Yes, sir.

2 Q And a legal error had been made and the case
3 had to be sent back so that you could have a new
4 sentencing trial, right?

5 A Yes, sir.

6 Q And a sentencing trial allows the jury to
7 choose between the death penalty or life
8 imprisonment, right?

9 A Yes, sir.

10 Q But you've since learned that by 1999, the law
11 had changed a little bit so that if the State
12 doesn't ask for the death penalty, you can get as
13 little as 30 years in prison for murder, correct?

14 A No, sir, not in '99, I didn't.

15 Q You didn't know that in '99?

16 A No, sir.

17 Q But you know it now?

18 A You just told me. No, David, I believe they
19 changed the -- in '96, where if the State wasn't
20 seeking the death penalty, you could get from a 30
21 year maximum, minimum to a life without.

22 Q Right. Well, let's break that down in ordinary
23 language. The State doesn't -- when you were tried
24 and convicted of murder, the only punishments for
25 murder were life or death, correct? Those were the

1 only options?

2 **A** Yes, I believe so.

3 **Q** And because of your prior record, life for you
4 meant life without parole, right?

5 **A** Yes, sir.

6 **Q** Or, as you call it, life without. That's kind
7 of conflict slang, right?

8 **A** Well, I've heard attorneys use it before.

9 **Q** All right. And -- but in 1996, they changed
10 the law so that there is a window for someone
11 convicted of murder to get out after only 30 years,
12 right?

13 **A** Yes, sir.

14 **Q** But in order for that to happen, the State has
15 got to not seek the death penalty, right?

16 **A** Yes.

17 **Q** And who is it up to whether the death penalty
18 gets sought?

19 **A** Donnie Myers.

20 **Q** The prosecution, whoever is prosecuting you,
21 right?

22 **A** Yes.

23 **Q** In your case, it used to be Donnie Myers and
24 now it's Mr. Bell and his office, correct?

25 **A** I believe.

1 Q Right. So then after 1999, for the first time,
2 there was a chance that you could not only not get
3 the death penalty, but you could get back out on the
4 street, right? Thirty year sentence, right, a
5 chance legally?

6 A I wish.

7 Q You wish, right. Okay.

8 A But that's 30 years day for day.

9 Q Right. Okay, so what happened was, and you
10 tell me if this is right, that about 16 and a half
11 years after Kimberly Quinn's murder in March,
12 February or March of this year, your lawyer
13 contacted the prosecution and said, for the very
14 first time, that you would like to be a witness for
15 the State, right?

16 A That was what year?

17 Q This year?

18 A What was the date?

19 Q Well, let's take it one at a time. Was it this
20 year?

21 A I'm just asking you. You said it was this
22 year.

23 Q What do you know? When did you first make an
24 offer to be a witness for the State in this case?

25 A After Tony Cooper and his buddies threatened to

1 kill me.

2 Q Well, that was in 1992 according to you?

3 A Yes, sir.

4 Q Okay. And you offered to be a witness for the
5 State when? What year?

6 A This year.

7 Q Okay. It's like pulling teeth. You know we
8 can get through this a lot sooner.

9 A All you had to do was say it was April of this
10 year.

11 Q So April is the first time you made that offer?

12 A Yes, sir.

13 Q Oh, all right, a month ago?

14 A Yes, sir.

15 Q And before that, you were never willing to
16 cooperate or you never expressed any willingness to
17 cooperate with the prosecution and testify against
18 Tony Cooper, did you?

19 A Oh, I would have come up -- if you'd called me
20 as a witness, I would have came up here and I would
21 have testified to Tony Cooper killing Kimberly
22 Quinn.

23 Q Okay. Well, let's ask about that for a little
24 bit. You told me a few minutes ago and you told the
25 jury that when you were in court in 1997, when we

1 got you to court and you were asking me when you
2 could testify, when you could testify, if you had
3 been able to testify, you would have said that Tony
4 Cooper wasn't involved and that you did it by
5 yourself, right?

6 A (No response.)

7 Q Isn't that what you just said a few minutes
8 ago?

9 A Say it again. My ears are sort of stopped up,
10 David. Say it again.

11 Q Just a few minutes ago when I was asking you
12 about being in court with Judge Keesley in Lexington
13 in 1997, remember, you were telling us when you got
14 brought to the courthouse, but you didn't testify,
15 remember?

16 A Uh-huh.

17 Q And when I asked you about that, you said that
18 you would have told the same version of the events
19 if you had been called to the witness stand as is in
20 your statement from 1992. In other words, you would
21 have said that you did it by yourself, right?

22 A Yes, sir. He was going to get -- see about
23 getting a new trial -- getting a retrial.

24 Q I'm having trouble hearing you now. Can you
25 say that again?

1 A Yeah. I said that hearing was -- y'all were
2 deciding -- Keesley was going to decide whether he
3 got a new trial, drop the charges or whatever for a
4 new trial.

5 Q Yeah.

6 A Oh, I would have told them. I would have said
7 it.

8 Q You would have said what?

9 A What I said in '97.

10 Q You mean '92?

11 A Well, yeah, '92, '97.

12 Q All right. And then once -- and then
13 Mr. Cooper did get a new trial. They found his
14 first trial was unfair under the law and he got a
15 new trial, right?

16 A Something about they didn't let him talk to the
17 jury.

18 Q And now you're saying that you had planned all
19 along that once he had a new trial, if you were
20 called to the stand in front of a jury, you were
21 going to tell a completely different version of
22 events; is that what you're saying?

23 A I was going to let them know Tony Cooper killed
24 Kimberly Quinn.

25 Q All right. Well, Mr. Sutherland, at what point

1 did you stop being so terrified of the people that
2 were going to kill you if you didn't go along with
3 this plan?

4 A Last month, April.

5 Q Last month you stopped being so scared?

6 A Yeah. See, I'm on PC now.

7 Q You're what?

8 A I'm on protective custody now.

9 Q You're on protective custody?

10 A Yes, sir, since --

11 Q You could have been on protective custody any
12 ol' time. All you had to do is say something.

13 A I could have, but I didn't want to be, but I am
14 now.

15 Q Okay. And that's at your request?

16 A Yes, sir.

17 Q And in all of your prison records, we can
18 search them all we want, but we'll never find a
19 letter from you after 1992 asking to be put on
20 protective custody or just asking to be protected in
21 any way at all, right?

22 A Well, we had to sign an agreement at Edisto
23 unit to be separated.

24 Q Right. And that's something that they do with
25 codefendants a lot, don't they?

- 1 A I don't think so.
- 2 Q Mr. Cooper signed an agreement to be separated
3 from you, didn't he?
- 4 A I signed the same agreement --
- 5 Q The same thing.
- 6 A -- to be, you know, if it's the same thing, we
7 both had to sign it.
- 8 Q Right. And that was in 1992?
- 9 A Yes, sir.
- 10 Q And, in fact, you really weren't separated,
11 were you, very much?
- 12 A Yes, sir.
- 13 Q You really weren't separated that much, were
14 you?
- 15 A Yes, sir.
- 16 Q You were?
- 17 A To start off with, I would come out in the
18 mornings and -- after rec in the mornings and he'd
19 come out in the afternoon. I could never be out
20 while he was out and he would never be out while I
21 was out.
- 22 Q Okay. And the whole reason that you were going
23 to tell one version one day and a different version
24 some other day and you were going to say one thing
25 to the judge and a different thing to the jury is

1 that you were afraid you might be inconvenienced by
2 being put on protective custody lockup, right?
3 That's what you're telling the jury now? That was
4 your whole concern?

5 **A** I'm on protective custody now and I'm
6 testifying against Tony Cooper.

7 **Q** Right. And so because of the fact that you
8 didn't want your custody to be affected, you are
9 willing to put your hand on the Bible and say
10 absolutely anything at any time; isn't that true?

11 **A** I was going along with the plan.

12 **THE COURT:** Can you repeat your answer, sir?

13 **THE WITNESS:** I said, I was going along with
14 the plan.

15 BY MR. BRUCK:

16 **Q** And you were going along with the plan on
17 October 11th, 1989, when you put this off on Tony,
18 weren't you? That was the plan then, wasn't it?

19 **A** No, sir. I just wasn't involving myself.

20 **Q** Okay.

21 **THE COURT:** This may be a good time for a
22 break, Mr. Bruck.

23 All right. Ladies and gentlemen, I'll send you
24 to the jury room. Do not discuss this case in any
25 way. Thank you very much.

1 (The jury retires to the jury room.)

2 THE COURT: All right, we'll see y'all after
3 the break. Thank you.

4 Sir, again, you may step down, same
5 instructions.

6 THE WITNESS: All right. Thank you, sir.

7 (Brief recess.)

8 THE COURT: All right. Ready now?

9 MR. BELL: Yes, Your Honor.

10 THE COURT: Bring the jury in, please.

11 (The jury returns to the courtroom.)

12 THE COURT: We're ready to proceed, ladies and
13 gentlemen.

14 Go ahead, sir.

15 BY MR. BRUCK:

16 Q Mr. Sutherland?

17 A Yes, sir.

18 Q Just so we're clear, when was the first time
19 that you ever told anyone in a position of
20 authority, judge, law enforcement, anybody, any of
21 the names of this so-called committee of people that
22 intimidated you?

23 A April 3rd of this year.

24 Q April 3rd, 2006?

25 A Yes, sir.

1 Q And the last of these three guys, Cecil Lucas
2 and Sammy Roberts, Robert South, was executed either
3 in 1997 or 1998, right?

4 A Well, Tony Cooper is the last of them.

5 Q Tony Cooper is the last of them?

6 A Yes.

7 Q But other than Tony Cooper --

8 A They're all gone.

9 Q -- they'd all been dead for eight years before
10 you ever gave up anybody's name, seven and a half
11 years, right?

12 A Yes, sir.

13 Q And some of them longer than that?

14 A I don't know what --

15 Q Cecil in '96?

16 A -- Cecil and Robert went in '96. Is that when
17 they was executed?

18 Q A long time, right?

19 A Yeah.

20 Q And I asked you before lunch, I think it was,
21 that if you could think of anyone else, and I don't
22 mean Tony Cooper, but anybody else that was in on
23 this conspiracy to intimidate you who's still among
24 the living, would you be sure to let us know. Have
25 you been able to think of anybody?

1 **A** I've never asked anybody else if they had heard
2 it. I never asked anybody.

3 **Q** Yeah. But how about some people coming up to
4 you, anybody else threaten you?

5 **A** No.

6 **Q** Just the day --

7 **A** I mean, a lot of people come up and told me I
8 was stupid for taking the fall for Tony Cooper. I
9 got a lot of that.

10 **Q** Yeah. And so those must not have been people
11 who were threatening you, right? They weren't
12 threatening you?

13 **A** No, sir, but whenever --

14 **Q** They must not have heard about the conspiracy
15 to say that to you, right?

16 **A** No. This was after I had made that statement
17 to you, after they had heard about it, after I had
18 done told everybody that would listen, they would
19 tell me, Well, you stupid to take the fall for him.

20 **Q** Okay. So people who came up to you didn't know
21 that you had no choice. They hadn't gotten a word
22 about the conspiracy?

23 **A** I didn't tell them.

24 **Q** You didn't tell them and they didn't hear about
25 it any other way?

1 A If they knew about it, they didn't say nothing.

2 Q The reason they hadn't heard about it is that
3 it's an absurd, ridiculous lie, isn't it,
4 Mr. Sutherland?

5 A Only because you want it to be.

6 Q So on April the 21st of this year, 16 and a
7 half years after Kimberly Quinn's death, you, for
8 the first time, told law enforcement and the
9 prosecution the story that you have just told the
10 jury, correct?

11 A It was April the 3rd, wasn't it?

12 Q No, as a matter of fact, it wasn't and let's
13 remember that. You were on the witness stand and
14 you testified about the threats for the first time
15 April 3rd?

16 A Okay.

17 Q But you were refusing to testify to anything
18 about the facts of what happened at the pond that
19 night, weren't you?

20 A What it was was about the confession that I
21 made, that's what the hearing was about.

22 Q Right. But as far as what your new version
23 was, you were taking the Fifth Amendment. You
24 weren't willing to testify about what you now say is
25 the real story. As late as April the 3rd of this

1 year, you still weren't willing to, were you?

2 A I wasn't asked about it.

3 Q You took the witness stand on condition that
4 you couldn't be asked, right, at that hearing that
5 we had in Moncks Corner, in Berkeley County,
6 correct?

7 A All right if I ask the judge, he --

8 Q I'm just asking you what you remember?

9 A I know what we were talking about was the --
10 the hearing was about the confession, how I was
11 coerced into it and how you told me to reword it,
12 that's what the hearing was about. It wasn't about
13 anything else.

14 Q And when I tried to ask you a question that had
15 anything to do with what you now say the real
16 version was, you didn't want to answer and the
17 ground rules were you didn't have to, right?

18 A The questions you were to ask was about
19 coercion, called coercion, whatever, on the
20 confession and you wanting me to reword the
21 statement.

22 Q Okay.

23 A That's the questions that you were supposed to
24 ask me. Anything else I didn't have to answer.

25 Q Anything else you didn't have to answer, that's

1 what I'm saying. And you didn't want to talk about
2 anything else --

3 A I was advised by my attorney.

4 Q You were advised by your attorney to take the
5 Fifth, right?

6 A I didn't take the Fifth.

7 Q That means to not incriminate yourself, to not
8 talk about --

9 A I didn't answer.

10 Q Not to answer. And you didn't answer. And at
11 one point, the question was asked and you turned to
12 the judge and you didn't answer, correct?

13 A I believe.

14 Q All right. So as late as April 3rd of this
15 year, you still were not willing to testify under
16 oath to this version that this jury has just
17 listened to today, right?

18 A The hearing was about the --

19 Q That's not what I asked you, Mr. Sutherland.
20 These folks have places to go. We are never going
21 to get out of here if you don't answer my questions.
22 Now, come on. The question was -- do you want me to
23 repeat it?

24 A Yeah.

25 Q The question was that on April 3rd, 2006, you

1 were still not willing to testify about the version
2 of events that you've told this jury about in a
3 courtroom?

4 **A** The hearing was about how they got the
5 statement from me and how he wanted me to reword the
6 statement, that's all that was about.

7 **Q** And you were refusing to answer questions about
8 anything else, right?

9 **A** I was just asking -- all I was supposed to
10 answer was questions about the statement and him
11 wanting me to change -- reword it.

12 **Q** And you've testified that your lawyers advised
13 you that you didn't have to talk about anything else
14 and that you shouldn't, right?

15 **A** Yes, sir.

16 **Q** Okay. And part of the reason you didn't want
17 to is that you didn't have your story straight yet,
18 did you, your new story?

19 **A** The reason for the hearing was for the
20 confession and for you to get me --

21 **Q** The question I asked you, Mr. Sutherland, you
22 can answer yes or no.

23 **THE COURT:** Hold on a second. If you have a
24 problem getting an answer, Mr. Bruck, you'll direct
25 that to me, all right? Restate your question.

1 BY MR. BRUCK:

2 Q If you can answer this yes or no, please do and
3 then you can explain. The question is, the reason
4 that you were not willing, on April 3rd of this
5 year, to talk about the version of the events that
6 you've testified to in this trial is you hadn't
7 gotten your story straight yet about exactly what
8 you were going to say; isn't that true?

9 A No, sir, that's not right. I wasn't asked
10 about anything except the confession, how it was got
11 and how you wanted me to reword it.

12 Q Okay. Now, I've asked you about how the law
13 changed after you got your sentence overturned. And
14 you've explained to us that it used to be life or
15 death and, for you, that was life without parole or
16 death were the only choices. But now if the State
17 doesn't ask for the death penalty, you can get 30
18 years or life or death for murder, right?

19 A You've looked at my record.

20 Q I'm sorry?

21 A I said, you've looked at my record. I don't
22 believe I can get very much.

23 Q But the Judge does have the authority when
24 you're resentenced, if the State doesn't ask for the
25 death penalty, to give you less than life, doesn't

1 he, has that power?

2 A The Judge rules the courthouse.

3 Q I'm asking you whether you're aware that the
4 Judge under the law now can give you as little as 30
5 years if the State agrees not to seek the death
6 penalty; do you know that or do you not know that?

7 A Well, I know it now since you've told me.

8 Q Your lawyer has never told that to you? Come
9 on now.

10 A No, sir. They've got several dudes on the unit
11 that do a lot of legal work and, you know, have
12 sentencing guidelines, stuff like that.

13 Q All right. So you know it, whether your
14 lawyers overlooked to tell you or not, you know
15 that, that you can get 30 years?

16 A Well, I know it now because a dude that lives
17 right down from me showed it to me.

18 Q So you know it?

19 A Well, he was showing it to me, saying, This is
20 what Tony Cooper can get.

21 Q All right.

22 A But, yes, I know it now that you done told me.
23 Thank you.

24 Q Okay. But if the State asks for the death
25 penalty, then all you can get is life or death; is

1 that right?

2 **A** Yes, sir, whatever the jury gives you.

3 **Q** And until a few days ago, your case was still
4 being handled by Solicitor Myers, right?

5 **A** Yes, sir.

6 **Q** And Solicitor Myers has quite a record on
7 getting people sentenced to death in this county,
8 doesn't he?

9 **A** Yes, sir.

10 **Q** About 30 something people and he almost never
11 fails, doesn't he? You know that.

12 **A** I've seen several of his people go.

13 **Q** Okay. So what happened on April 21st is that
14 you had the Solicitor, Mr. Bell, and his
15 investigator and I think both of your lawyers and
16 you had a meeting, right?

17 **A** Yes, sir.

18 **Q** And that's what is known as a proffered
19 meeting; is that right?

20 **A** A what?

21 **Q** That's known as a proffer; did you know that?

22 **A** You'd have to explain that.

23 **Q** Well, I won't explain. I'll just ask you what
24 happened. What that was about was that your lawyer
25 had called the State and said, you know, Bo

1 Sutherland's ready to testify for you if -- maybe
2 and start a plea bargain, right? Isn't that what
3 happened?

4 A I know -- I believe Ms. Holt told him that I
5 would talk to him, but as far as plea bargains,
6 there was nothing ever mentioned.

7 Q Right. And, of course, in the end, you did get
8 a plea bargain, right? You've got one now?

9 A Well, they're not seeking the death penalty.

10 Q They're not seeking the death penalty?

11 A Well, that's a bargain there.

12 Q You say that's not a bargain?

13 A Yeah, it's a bargain since they're not seeking
14 the death penalty.

15 Q Right. That was the end of the process that
16 I'm asking you about, right?

17 A Sir?

18 Q And that's the end of the process that I'm
19 asking you about, right? That's what happened, you
20 came to that agreement, you and your lawyers and the
21 State, right?

22 A I've --

23 Q Never mind. Let's get back to April 21st. You
24 had a meeting down at the prison at Lieber, correct?

25 A Yes, sir.

1 Q And Mr. Bell was present, both of your
2 attorneys, Ms. Holt and Mr. Floyd, were both there?

3 A Yes, sir.

4 Q And Mr. Bell, representing the State, wanted to
5 hear what you would testify to?

6 A Yes, sir.

7 Q If you testified for the State, right?

8 A Yes, sir.

9 Q And, at that point, you didn't have a deal, did
10 you?

11 A I don't have a deal now except they're not
12 seeking the death penalty on either one of us.

13 Q Let me -- I'll put my question more carefully.
14 At that point, they had not agreed not to seek the
15 death penalty, right?

16 A They haven't agreed anything to me because I
17 haven't heard anybody tell me except you that
18 they're not seeking the death penalty again.

19 Q We'll get to that in a minute. On April 21st
20 at the beginning of that meeting, you hadn't been
21 promised anything, right?

22 A No, sir.

23 Q The State naturally wanted to hear what you had
24 to say, right?

25 A Yes, sir.

1 Q And they weren't going to make any deals with
2 you until you told your story about what you would
3 testify to, correct?

4 A When I told them I would testify in front of
5 them, there was nothing mentioned about deals.
6 There's no deal that's been mentioned now. You're
7 the only one talking about deals.

8 Q You don't consider it a deal for the State to
9 say, We'll let you live, we'll withdraw the death
10 penalty, that's not a deal to you?

11 A David, like I said, he hasn't told me he's not
12 seeking the death penalty yet.

13 Q I beg your pardon?

14 A Mr. Bell hasn't told me.

15 Q I know, but he's told your lawyer and she's
16 told you, correct? Now, this is important,
17 Mr. Sutherland. This is important. Please tell the
18 truth.

19 A If they talked, they haven't told me nothing.
20 When Mr. Bell tells me that they're not seeking the
21 death penalty, that's when I'll believe it. Anybody
22 else tell me something, I don't believe them.

23 THE COURT: His question, sir, was did your
24 attorney tell you that was a deal that the State
25 offered?

1 **THE WITNESS:** No, sir.

2 **THE COURT:** That was his question to you.

3 Was that your question, Mr. Bruck?

4 **MR. BRUCK:** Yes.

5 **THE COURT:** Do you wish to answer that
6 question, sir?

7 **THE WITNESS:** Sir?

8 **THE COURT:** Did you wish to answer that
9 question?

10 **THE WITNESS:** My attorney has told me no deals.

11 BY MR. BRUCK:

12 **Q** Your attorney has told you what?

13 **A** No deals.

14 **Q** No deal?

15 **A** Yeah.

16 **Q** No deal for anything? They're going to seek
17 the death penalty against you?

18 **A** Mr. Bell hasn't offered any deals. No deals --

19 **Q** I didn't ask about Mr. Bell. Now, come on,
20 answer the question. Has your lawyer told you that
21 the State is not going to seek the death penalty in
22 view of the fact that you have testified for the
23 State, yes or no?

24 **A** No, Mr. Bell has not told me.

25 **Q** Is Mr. Bell your lawyer?

1 **A** Mr. Bell is the only one I'll believe. He's
2 the Solicitor.

3 **Q** Is Mr. Bell your lawyer?

4 **A** He's the Solicitor, I'll believe him.

5 **Q** Mr. Sutherland, why are you playing games with
6 me about who your lawyer is? Who is your lawyer?

7 **A** Mr. Floyd and Ms. Holt.

8 **Q** All right. Have either Mr. Floyd or Ms. Holt
9 told you that the State has agreed not to seek the
10 death penalty in view of your cooperation and your
11 testimony here today, yes or no?

12 **A** No.

13 **Q** Neither one?

14 **A** No.

15 **Q** You're completely in the dark about this?

16 **A** Well, I know now because you keep telling me.

17 **Q** If I hadn't told you, it came as news to you?

18 **A** I'd be in the dark, but you done run on it a
19 couple of times, so, yes, I know they're not seeking
20 the death penalty on me. They're not seeking it on
21 Tony. Mr. Bell hasn't told me yet that he's not
22 seeking it.

23 **Q** And your lawyers haven't told you anything
24 either?

25 **A** Nothing.

1 Q And that's under oath, too?

2 A Yes, sir.

3 Q Your lawyers did tell you that you should
4 testify, right?

5 A I've told my attorney I would testify.

6 Q Okay. So April 21st you have a meeting. And
7 for the first time, you reveal this new story to the
8 State, to Mr. Bell and his staff, correct?

9 A The straight story of it.

10 Q What?

11 A The story of how me and Tony Cooper went out --

12 Q The story that you've testified --

13 A I robbed, he killed her.

14 Q -- to today?

15 A We were together, he killed her.

16 Q Right, that story, yeah. That's for -- April
17 21st, a month ago, you revealed this story for the
18 first time, correct?

19 A Yes, sir.

20 Q To the State. And, at that time, we can all
21 agree you didn't have a deal. They were waiting to
22 find out what you had to say, correct?

23 A I don't have a deal yet that I know of.

24 Q All right. Ms. Holt and Mr. Floyd prepared you
25 for that meeting and said you needed to do your

1 best, right?

2 A They just told me to tell the truth.

3 Q And so you told -- you told them more or less
4 the story you've told today, correct?

5 A I told Mr. Bell, yes, sir.

6 Q All right. No one was taking notes at that
7 meeting, were they?

8 A I don't believe so.

9 Q They were just listening to you?

10 A I believe so.

11 Q The investigator, the gentleman right there was
12 there, the gentleman in the yellow tie was present,
13 correct?

14 A Yes.

15 Q And, of course, Mr. Bell was present?

16 A Yes, sir.

17 Q Neither of them were taking notes as you were
18 talking, were they?

19 A I don't believe so.

20 Q And no one with the State or law enforcement
21 prepared a statement for you to sign after this
22 meeting, did they?

23 A No, sir.

24 Q Or you certainly haven't seen one. You
25 certainly haven't signed one, have you?

1 **A** No, sir.

2 **Q** So if there's anything different from what
3 you've said on April 21st to what you said today,
4 there's no statement that would show that, is there,
5 no statement that you have signed?

6 **A** Not unless they were taking notes. I cannot
7 tell you.

8 **Q** And you said they weren't taking notes?

9 **A** No, as far as I can remember.

10 **Q** All right. Of course, you've sat through this
11 trial and you knew what evidence the State had.
12 You've known it for many, many years, right?

13 **A** Oh, yeah, because -- I mean, you know.

14 **Q** You've known this evidence very, very well.
15 But one detail that you didn't know is that Doctor
16 Sexton found no evidence that Kim Quinn was in
17 handcuffs?

18 **A** What?

19 **Q** You didn't know, did you, on April 21st and you
20 didn't know this morning that Doctor Sexton found no
21 evidence of handcuffs on the hand that was
22 recovered?

23 **MR. BELL:** Your Honor, I'm going to object.
24 He's pitting a witness against another.

25 **MR. BRUCK:** It's to show timing, Judge. It's

1 not pitting.

2 THE COURT: You're asking if he knew whether or
3 not --

4 MR. BRUCK: That's right.

5 THE COURT: Evidence of handcuffs on the hand
6 was recovered or just that --

7 MR. BRUCK: Right, at autopsy.

8 THE COURT: -- that Doctor Sexton --

9 MR. BRUCK: This is a new detail in the case
10 that he didn't know. And, of course, he's testified
11 that handcuffs were used and this woman was left
12 there for hours or a long time, I don't know, in
13 handcuffs.

14 THE WITNESS: It wasn't for hours.

15 MR. BRUCK: A long time.

16 THE COURT: Approach.

17 (Whereupon, a bench conference was held off
18 the record, in the presence of the jury, but out of
19 the hearing of the jury.)

20 THE COURT: It's withdrawn?

21 MR. BRUCK: Yes, sir.

22 THE COURT: All right.

23 MR. BRUCK: Bear with me just a moment.

24 (Pause.)

25 BY MR. BRUCK:

1 **Q** Mr. Sutherland, on April 21st when the
2 prosecution came down to Lieber and went through
3 this story with you or you went through this story
4 with them, you told them about what happened at the
5 pond, right?

6 **A** Yes, sir.

7 **Q** About how Kimberly Quinn died, right?

8 **A** Yes, sir.

9 **Q** Did you cry?

10 **A** A little bit.

11 **Q** A little bit?

12 **A** Yes.

13 **Q** You cried while you were talking to them?

14 **A** A little bit.

15 **Q** So that anyone would notice?

16 **A** I cried.

17 **Q** Okay. And then you cried a little more today,
18 right?

19 **A** Yes, sir.

20 **Q** Threw in a little extra?

21 **A** I cried.

22 **MR. BELL:** Objection, Your Honor, that's not a
23 question.

24 **THE COURT:** I sustain that. Anything else,
25 Mr. Bruck?

1 MR. BRUCK: No, sir.

2 MR. BELL: Thank you, Your Honor. Hopefully,
3 I'll be brief.

4 REDIRECT EXAMINATION

5 BY MR. BELL:

6 Q Mr. Sutherland, first of all, let me ask you,
7 in the department of corrections, bad things happen
8 to people sometimes, don't they?

9 A Yes, sir.

10 Q People are stabbed or whatever in the
11 department of corrections?

12 A Yes.

13 Q Inmates stab one another, don't they?

14 A Yes, sir.

15 Q That's present danger in that world?

16 A Yes, sir.

17 Q Let me ask you this. Back on April 6th, 1992
18 when you called Mr. Bruck and y'all got talking
19 about this statement and the statement that he
20 presented, which I believe are Defendant's 1 and 2,
21 he had no problem talking with you at that time; is
22 that correct?

23 A No, sir.

24 Q And then I think the testimony on
25 cross-examination was that after that, you would

1 call him or his office or talk to him when he came
2 on the unit; is that correct?

3 A Yes, sir.

4 Q And what would he say then? Would he talk with
5 you then?

6 A I've talked to him on the phone before.

7 Q Okay. What would he tell you?

8 A I can't remember.

9 Q Didn't he testify that he'd tell you he
10 couldn't talk to you?

11 A Yes, sir.

12 Q I mean, didn't he say during cross-examination
13 when he was asking you that, that he couldn't talk
14 to you at those times?

15 A Yes, sir.

16 Q How many times did you talk to him after the
17 time you gave these two statements?

18 A Well, like you said when he would come on the
19 unit, I would talk to him.

20 MR. BRUCK: I have a matter that I need to take
21 up if I could.

22 THE COURT: All right. Ladies and gentlemen,
23 I'll send you to the jury room. Do not discuss this
24 case in any way. Thank you very much.

25 (The jury retires to the jury room.)

1 **MR. BRUCK:** What this concerns, the reason I
2 did not speak with Mr. Sutherland thereafter
3 concerns the ethical rule against contacting a
4 represented party. And, in fact, a grievance was
5 filed against me for contacting Mr. Sutherland, or
6 at least for agreeing to talk to Mr. Sutherland when
7 he contacted me in the first instance. Although no
8 disciplinary action was ultimately taken, I did
9 receive a letter of caution about this whole
10 episode. That's the reason.

11 And the fact that the lawyers objected and I
12 did some belated research and discovered that it
13 made no difference that the contact was initiated by
14 Mr. Sutherland and that he was nine ways to Sunday
15 trying to make sure his lawyers didn't find out, I
16 still could not ethically speak to him.

17 I made a mistake. I didn't make it twice and
18 that's why I told him that I couldn't talk to him
19 anymore. And it's very unfair to create the
20 impression that I was avoiding him for reasons like
21 I didn't want to hear what he had to say, which is
22 exactly the purpose of this line of redirect. So I
23 object to that. I think it's irrelevant and
24 prejudicial under 403.

25 **THE COURT:** Do you wish to respond?

1 **MR. BELL:** Your Honor, I mean, he was asked
2 about it on cross-examination. I think I have a
3 chance to explore that. I don't know what the
4 reason is. I'm sorry what the reason is, that's not
5 my concern.

6 **THE COURT:** Well, maybe the best way to do it
7 would be to explain it. I mean, it's kind of
8 already out in that regard.

9 **MR. BRUCK:** Well --

10 **THE COURT:** I mean, you wish to just say that
11 he stopped talking to him?

12 **MR. BELL:** Certainly, Your Honor. I mean, I
13 don't know what the reason was for. I was exploring
14 that.

15 **THE COURT:** I mean, but if that were the
16 reason, it would seem to me that perhaps I should
17 tell them that under the rules, he could no longer
18 do that.

19 **MR. BELL:** Well, as long as you tell them that
20 under the rules he couldn't do it in the beginning.
21 I want to make it clear that one way or the other
22 something was violated, if we're taking this tact.
23 I mean, he shouldn't have been approaching him in
24 the first place.

25 **MR. BRUCK:** I don't think it goes to

1 Mr. Sutherland's credibility and it certainly
2 doesn't go to Mr. Cooper's guilt or innocence that I
3 made this error. And it would be very unfair for
4 the jury to be given the impression that there was
5 something underhanded in a way when it goes -- it
6 has no relationship to the merits of anything
7 involved in this lawsuit.

8 I should add that Mr. Sutherland's lawyers also
9 obtained a court order from Judge Keesley and so I
10 was actually under an injunction. And I think the
11 only fair thing to say is that --

12 **THE COURT:** State that last part about it.

13 **MR. BRUCK:** Around in '97 when we were trying
14 to actually call Mr. Sutherland at post-conviction,
15 at Mr. Cooper's post-conviction, Mr. Sutherland's
16 lawyers, in an effort to protect him from any
17 contact with us, requested that Judge Keesley order
18 that we have no contact. And he issued an order
19 saying, in effect, putting that -- sort of putting
20 everything in abeyance, saying we were to have no
21 contact with him without further order of the court.
22 And then the whole issue became moot during the
23 post-conviction because relief was granted on
24 another ground. He actually put the whole issue of
25 after discovered evidence off and granted relief on

1 another ground.

2 So you get into quite a tangle and none of it
3 has anything to do with Tony Cooper's guilt or
4 innocence or this man's credibility. So, in effect,
5 it just sort of besmirches me and, vicariously, my
6 client, but it doesn't tell the jury anything they
7 need to know.

8 I think it would be fine to say that for legal
9 reasons, I was not able to carry on any further
10 discussions with Mr. Sutherland. That doesn't
11 reflect on him, it doesn't reflect on Mr. Cooper, it
12 doesn't reflect on me and it's accurate.

13 **MR. BELL:** When he's acting on behalf of
14 Mr. Cooper, it does reflect on him.

15 **THE COURT:** You know, in a way, Mr. Sutherland
16 seems to suggest at times that you alluded to what
17 he should say.

18 **MR. BRUCK:** I'm sorry?

19 **THE COURT:** At times, it just seemed like
20 Mr. Sutherland indicated that you had somehow,
21 whether directly or indirectly, led him to say
22 certain things.

23 **MR. BRUCK:** Right, he did do that.

24 **THE COURT:** And...

25 **MR. BRUCK:** But that ended with the State --

1 there's no evidence that I was continuing to try to
2 do that or make him say anything else. I think
3 we're through that. And I need to decide now
4 whether to get into this awkward situation of
5 testifying about it, but assuming I don't -- if I
6 do, of course, I guess, you know, we'll cross that
7 bridge when we come to it.

8 **THE COURT:** Well, if he asked -- all you want
9 to ask is did Mr. Bruck stop talking to him?

10 **MR. BELL:** I was asking him did he tell him he
11 couldn't talk to him all of a sudden, yes.

12 **THE COURT:** I mean, that's nothing more than a
13 confirmation that you actually did that. I don't
14 see how that hurts you.

15 **MR. BRUCK:** But it's me claiming that I
16 couldn't. And the inference that the State really
17 wishes the jury to draw is that I didn't want to. I
18 had what I wanted --

19 **THE COURT:** If they ask that question, I mean,
20 I think, to some extent, your talking to him or not
21 talking to him has been thrown out there by the line
22 of questioning, but I'm happy to say under our court
23 rules an attorney cannot speak to an individual
24 represented by counsel without consent of that
25 counsel.

1 **MR. BRUCK:** Okay. Let's do that.

2 **THE COURT:** I don't suggest you go any further
3 than that question you intend to ask and then move
4 on. This case is not going to turn on that.

5 Bring the jury in.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Go ahead.

8 **MR. BELL:** Thank you, Your Honor.

9 BY MR. BELL:

10 **Q** All right. Mr. Sutherland, let me go on. You
11 were asked about you would tell various individuals
12 around the unit about, you know, how you were the
13 only one that did it; is that correct?

14 **A** Yes, sir, and visitors.

15 **Q** Why did you continue to tell them that?

16 **A** As part of the plan.

17 **Q** Would they go talk to Tony?

18 **A** I believe they would, yes, sir.

19 **Q** And --

20 **A** I'm sure they would.

21 **Q** And, for instance, these two ladies that they
22 pointed out, I mean they weren't part of it, were
23 they?

24 **A** Part of the committee?

25 **Q** Yes, sir.

1 A Oh, no, sir.

2 Q But they might say something; is that correct?

3 A To people on the street?

4 Q Or to Tony or to anybody?

5 A Well, they talked to Tony.

6 Q And they might say what you would say; is that
7 correct?

8 A Yes, sir.

9 **THE COURT:** Approach the bench, please.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 BY MR. BELL:

14 Q And I know I'm kind of jumping around,
15 Mr. Sutherland, but it's just things that popped
16 out. Now, you testified on cross-examination as
17 well that you took some SLED agents back to try to
18 find the rings and the shotgun; is that correct?

19 A Yes, sir.

20 Q Where did you take them to try to find the
21 rings?

22 A The pond off of Beckman Road, South Congaree.

23 Q And did they look -- where did they look?

24 A Along the edge of the pond.

25 Q Did they find anything?

1 **A** No, sir.

2 **Q** Where did you take them to try to find the
3 shotgun?

4 **A** To the trailer where Tony was living at the
5 time.

6 **Q** And where was that?

7 **A** Road 78, Pelion.

8 **Q** And was that in Pelion?

9 **A** Yes, sir.

10 **Q** And did you show them where you thought the
11 shotgun was buried?

12 **A** Yes, sir.

13 **Q** And did they find that?

14 **A** No, sir, it wasn't there.

15 **Q** When did you -- do you recall what year this
16 was?

17 **A** Was it '92?

18 **Q** I don't know. I'm just asking if you know
19 that?

20 **A** I believe it was in '92.

21 **Q** Okay. So that was two and a half, three years
22 after this occurred?

23 **A** David --

24 **Q** The murder occurred?

25 **A** Mr. Bruck would know what year it was.

1 Q Okay. Now, finally, Mr. Sutherland, let me ask
2 you this. You said -- you mentioned something,
3 while you were being cross-examination, you said
4 something about your conscience bothering you; is
5 that correct?

6 A That's when Tony would ask me why I was doing
7 that, you know, taking the blame.

8 Q Uh-huh.

9 A And I would tell him because I wanted to clear
10 my conscience before I die.

11 Q And is that why you're here today to testify?

12 A Setting it straight.

13 Q I mean, you're here to clear your conscience?

14 A I'm here to clear up between who killed her.

15 Q Okay. Mr. Sutherland, let me ask you this. Do
16 you have some health concerns?

17 A Yes, sir.

18 Q Are you in bad health?

19 A Not yet.

20 Q Are you heading that way?

21 A Yes, sir.

22 Q What are your health problems?

23 A Hepatitis C.

24 Q And do you know how far advanced it is?

25 A I'm waiting on the state to make their decision

1 to find out.

2 Q When did you find out about this?

3 A I found out December of '05.

4 Q Is this a serious matter?

5 A Yes, sir.

6 Q Is it life threatening?

7 A They say it messes up your liver, kidneys.

8 Q And they told you your prognosis?

9 A They took -- they said they could find out what
10 level it was by taking a blood sample, but it would
11 take six weeks.

12 Q They haven't done that yet?

13 A They haven't told me what it was. See, they
14 knew I had hepatitis a year before they told me.
15 They found out in November of '04. They didn't tell
16 me until December of '05. And I had to go see a
17 nurse because my legs were swole (sic) up and I
18 broke out with a rash and I was having problems
19 urinating.

20 MR. BELL: Thank you, Mr. Sutherland.

21 THE WITNESS: Yes, sir.

22 MR. BRUCK: That's it. Nothing more.

23 THE COURT: You may step down, sir.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Ladies and gentlemen, as a matter

1 of law, under our court rules, an attorney cannot
2 speak with an individual represented by counsel
3 without consent of that counsel.

4 Call your next witness.

5 **MR. BELL:** Your Honor, may we approach?

6 **THE COURT:** Yes.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 **THE COURT:** All right. Ladies and gentlemen, I
11 need to send you to the jury room. Do not discuss
12 this case in any way. Thank you very much.

13 (The jury retires to the jury room.)

14 **THE COURT:** All right. You have a matter for
15 the Court?

16 **MR. BELL:** Your Honor, at this time, the State
17 would move to call Marsha Crane to the stand.

18 **MR. BRUCK:** Your Honor, as a scheduling matter,
19 Mr. Duncan has pointed out to me that there is also
20 an evidentiary issue or there may be an evidentiary
21 issue concerning the next witness, Mr. LeGrand, and
22 that depends on what the State intends to do, but
23 there's a chance, if they intend to bring out
24 hearsay statements from Red Farmer, which is what
25 I'm wondering about, then we have another legal

1 issue to resolve which raises the possibility that
2 we might ought to quit with the jury today and start
3 first thing in the morning. I don't know, I just
4 mentioned it.

5 **THE COURT:** That's fine with me if you think
6 that the rest of the day will be spent on these
7 issues.

8 **MR. LUPTON:** Your Honor --

9 **THE COURT:** We'll just go ahead and take --
10 yes, sir.

11 **MR. LUPTON:** Your Honor, I think that part of
12 the issues regarding Mr. LeGrand will hinge on the
13 Court's ruling on the matter of the unavailability
14 of Mr. Farmer.

15 **THE COURT:** Well, I'll need to hear more
16 specific information about that. We'll have to have
17 a hearing on that. I mean, a lot of Mr. Farmer's
18 statements have come in at this point, so I really
19 need to know, specifically, what statements we're
20 talking about remain from his prior testimony.

21 **MR. BRUCK:** Well, I gather -- there's quite a
22 lot. I gather from Mr. Lupton that --

23 **THE COURT:** Well, let's not jump to that one
24 first. Let's go to the gentleman that's been
25 waiting as far as his client's concerned. But

1 either way do you think that will take us the rest
2 of the day? If we're going to have to go through
3 his testimony, will that take the rest of the day?
4 Because, specifically, I want to know what is in
5 Mr. Farmer's testimony that hasn't been brought out
6 already.

7 (Pause.)

8 **MR. BELL:** Apparently, there's going to be some
9 other issues in the testimony besides the spousal.

10 **MR. ANDREWS:** I think we'll probably need most
11 of the hour, Your Honor.

12 **THE COURT:** All right, bring the jury in. I
13 don't like them to wait if we're not going to get to
14 them.

15 (The jury returns to the courtroom.)

16 **THE COURT:** Ladies and gentlemen, I've got a
17 few matters that I have to resolve, things that will
18 make the case flow a little smoother. So by the
19 time we get done with that, it's probably going to
20 be about the time that I would let you go for the
21 day. So I'm just going to go ahead and let you go
22 rather than keep you waiting. We will see you back
23 tomorrow at 9:30.

24 Now, I don't know if I neglected to ask you
25 this this morning as is customary. Did anyone get

1 supposed to be in federal court at 10:00, but I will
2 get on the phone and see if I can move that back a
3 little bit. 9:30 in the morning? We'll be here.

4 Thank you.

5 **MR. BRUCK:** The other matter concerns
6 Mr. LeGrand. I'm not sure if he's in the courtroom.
7 There is some testimony from Mr. LeGrand regarding
8 statements made by Red Farmer, which I gather, from
9 conferring with counsel, they do not contend are
10 admissible unless Mr. Farmer is produced for
11 cross-examination. We don't think they're
12 admissible at all through Mr. LeGrand. It's hearsay
13 any way you slice it. He's not a coconspirator.
14 But if the State -- it doesn't come within a
15 coconspirator exception, but if the State is not
16 agreeing, maybe we should take Mr. LeGrand's
17 testimony or else have a proffer and get that
18 resolved today.

19 **THE COURT:** Well, are you intending to use
20 Mr. LeGrand to say what Mr. Farmer said?

21 **MR. LUPTON:** Your Honor, I think that a more
22 accurate way to characterize it is, I think, that
23 what is admissible through Mr. LeGrand is contingent
24 upon whether or not the Court rules that Red Farmer
25 is an unavailable witness under Rule 804.

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1 **THE COURT:** How would that change its status as
2 hearsay through Mr. LeGrand?

3 **MR. LUPTON:** Because if his former testimony
4 comes in, which obviously the cross-examination
5 would be part of that, it would come in as well, the
6 defense alleges things that are addressed through
7 Farmer that would make the testimony of Gerald
8 LeGrand on other topics -- would make it relevant
9 and admissible -- it would not be relevant and
10 admissible.

11 **THE COURT:** Well, other topics is not
12 necessarily the same as statements by Mr. Farmer.
13 Y'all are not being specific. For example, just
14 because hearsay is admitted in one context doesn't
15 mean the objection is not valid in another.

16 **MR. LUPTON:** Your Honor, I think to be more
17 specific and more clear about it, there are
18 allegations with Red Farmer as to recent
19 fabrication. If his testimony is ruled -- is read
20 into the record, if Your Honor rules that he is
21 unavailable under 804, his testimony is put in, then
22 the attack of his credibility as recent fabrication
23 would make prior consistent statements relevant and
24 admissible under the rules. The State would concede
25 that without that attack on his prior -- on his

1 credibility as recent fabrication, that it could not
2 be -- the prior consistent statements could not be
3 put in.

4 **THE COURT:** If that came in, is there going to
5 be some attack on his...

6 **MR. BRUCK:** Well, this is a new theory. We had
7 assumed they were going on conspirator liability.
8 It gets a little complicated. Mr. LeGrand never
9 testified in Mr. Cooper's case before. So he's
10 never been -- his statements about Mr. Farmer have
11 never been tested. Probably what we should do is --

12 **MR. LUPTON:** Well, Your Honor, he's here.
13 Mr. LeGrand is here. He is subject to being placed
14 on the stand and cross-examined live in the
15 courtroom.

16 **MR. BELL:** Plus, he's testified before.

17 **MR. LUPTON:** Your Honor, the fact that -- I
18 would concede that we couldn't read his prior
19 testimony from Bo Sutherland into the record, that
20 is, Mr. LeGrand's prior testimony. The issue is
21 that if the Court finds Red Farmer's testimony
22 admissible through 804, if we put that into the
23 record, he has been previously attacked as having
24 fabricated his story to gain benefit from the State,
25 I believe that they would continue that allegation,

1 that they would continue to say that he fabricated
2 to get benefit from the State, they would not
3 concede anything as far as that, and that would make
4 the prior consistent statements relevant and
5 admissible to show a consistency to rebut the attack
6 of recent fabrication. And on that basis, he would
7 be allowed to take the stand and be allowed to
8 testify. And his statements supporting the
9 testimony of Red Farmer could be cross-examined in
10 the courtroom.

11 **MR. BRUCK:** Okay. I think I understand now
12 where they're coming from. I think the problem is
13 that under the evidence before the Court now, and
14 I'm specifically referring to Mr. Sutherland's 1992
15 statement that the plan all along had been to put
16 the blame on Cooper, that the motive to fabricate
17 did not -- preexisted any communication with Mr.
18 LeGrand.

19 I need more time to think about it, but for
20 starters, it is not true that Mr. LeGrand's
21 conversation with Red Farmer about Tony Cooper
22 occurred prior to the creation of this plan. On the
23 contrary, if it occurred at all, occurred after the
24 motion to be -- the motive to fabricate developed.
25 And so we don't think that's -- that the prior

1 consistent statement hearsay exception is
2 applicable.

3 MR. LUPTON: Your Honor, that would -- Your
4 Honor, that would, of course, be something that they
5 would be entitled to argue to the jury, but the --
6 it is without dispute, I believe, that Mr. Farmer
7 was attacked during his prior testimony as having
8 made up the statements that he was testifying to get
9 a benefit from the State after he was charged.

10 THE COURT: Maybe before I deal with
11 Mr. LeGrand, I should deal with Mr. Farmer. What
12 did y'all find out about any emergency procedures
13 for accessing some judge in the state?

14 MR. LUPTON: Your Honor, I believe what we've
15 communicated to you at the bench, I believe, Tuesday
16 morning --

17 THE COURT: Well, that was just about the
18 availability of a judge. I had never heard back --
19 I asked y'all to find out about any emergency
20 procedures that they might have.

21 MR. LUPTON: That's the earliest that Texas
22 says that they can get a hearing done.

23 THE COURT: Did y'all specifically inquire if
24 there's some type of emergency procedure?

25 MR. LUPTON: Specifically inquired, yes, sir,

1 that has been covered. They have said this is the
2 earliest we can do it.

3 **MR. BELL:** Your Honor, if I may, I don't mean
4 to be double teaming, but I can answer that
5 question. When I found out that there were no
6 judges available, I inquired into all of the options
7 that were available and there were none. I mean, I
8 sent -- I think I said this the other day, can
9 another judge hear it, you know, can we waive it and
10 just have a judge sign off on it or something like
11 that and they said, no, only these two judges.

12 **THE COURT:** What do you wish to get in insofar
13 as Mr. Farmer is concerned that's not in already?

14 **MR. LUPTON:** Your Honor, specifically, he would
15 testify, and he would put a lot more meat on these
16 bones, but, specifically, he would testify that he
17 initiated a conspiracy between himself and the
18 Defendant Cooper through a phone call where he
19 called Defendant Cooper and told him about the
20 existence of this money. He would explain how he
21 knew about it, that sort of thing. He would talk
22 about their plan to rob the victim. There's been no
23 testimony directly on that point.

24 There was some testimony through Bo Sutherland
25 that he was told by the defendant that -- Bo was

1 told by the defendant about this phone call, but
2 there's been no direct testimony from a participant
3 in the phone call or a person with direct firsthand
4 knowledge of the phone call. There's also been
5 considerable impeachment on --

6 **THE COURT:** But the conspiracy -- was the
7 conspiracy to rob?

8 **MR. LUPTON:** Your Honor, that was Mr. Farmer's
9 testimony that it was just to rob.

10 **THE COURT:** The conspiracy at issue in this
11 case is the conspiracy to rob.

12 **MR. LUPTON:** That is one of the charges that is
13 being tried in this case, conspiracy.

14 **THE COURT:** What other conspiracy is there that
15 you did not -- that you plan to claim in this case?
16 The indictments for conspiracy to armed robbery is
17 what y'all told us at the beginning, that's what my
18 understanding is.

19 **MR. LUPTON:** Your Honor, that's the only
20 indictment. And, obviously, there's a hand of one,
21 hand of all element to all of the charges.

22 **THE COURT:** That's different. The indictment
23 for a conspiracy to commit armed robbery, that's the
24 indictment.

25 **MR. LUPTON:** Yes, Your Honor, that's the only

1 one that's --

2 **THE COURT:** And Mr. Sutherland testified that
3 Mr. Cooper asked him to assist with this robbery, so
4 that's in the record.

5 **MR. LUPTON:** Yes, Your Honor.

6 **THE COURT:** And the statements that Red Farmer
7 told Cooper about this check, et cetera, is in the
8 record.

9 **MR. LUPTON:** Your Honor -- yes, Your Honor,
10 indirectly, though. There's no direct testimony
11 from a participant as to that conversation.

12 **THE COURT:** The indictment charges
13 Mr. Sutherland with participating in that
14 conspiracy.

15 **MR. LUPTON:** I understand that, Your Honor.

16 **THE COURT:** All right. That's direct testimony
17 of a participant, is it not?

18 **MR. LUPTON:** Yes, Your Honor, as to that
19 charge, but the -- with regards to the conversation
20 between Red Farmer and Tony Cooper, Farmer is the
21 only participant in that conversation that we can
22 have testify that is available. Obviously, we
23 cannot call the defendant to the stand. Mr. Farmer
24 has testified. That testimony, I believe, is
25 relevant.

1 It's important for the jury to hear a
2 participant of that conversation, especially when
3 there's been impeachment of Mr. Sutherland saying
4 that the statements that were placed by the
5 defendant in the record saying he didn't know for
6 certain what that conversation was. I believe
7 State's 2 and State's 1, which were emphasized
8 heavily by Mr. Bruck -- Defendant's 1 and
9 Defendant's 2, I apologize, which were emphasized
10 heavily, published to the jury, read over and over
11 again which impeached the issue of whether or not
12 Mr. Sutherland knew what Farmer told Cooper and I
13 think that having that testimony from Cooper to show
14 what was said is very important.

15 **THE COURT:** You mean from Farmer.

16 **MR. LUPTON:** I apologize. From Farmer, his
17 testimony from the first trial saying what was said
18 in that conversation is very critical.

19 Additionally, of course, there's the confession
20 where Tony Cooper calls Red Farmer at the
21 schoolhouse at CCI. And Mr. Farmer testified that
22 the defendant told him, as best I can remember the
23 quote, that Farmer's intelligence was wrong, that
24 she didn't have the 2800, that he did get paid, but
25 it just wasn't as much as expected, that he had

1 completed the project and burned the excess
2 material. The testimony of Mr. Farmer that he
3 understood that in the context of their code that
4 they spoke in as being he had killed the victim and
5 burned her body.

6 And the statement by the defendant that he
7 didn't perceive any complications, that he was
8 pleased with the -- pleased with the results, that
9 he was satisfied with the results, I think that that
10 amounts to a confession. And, in fact, it's the
11 only confession in this case.

12 I think that a confession by the defendant is
13 extremely critical and very relevant and important
14 for the jury to hear, important for them to know
15 about, especially in light of the fact that
16 Mr. Sutherland, the only other person who's
17 testified about the actual killing itself, was
18 impeached so thoroughly with so many statements, I
19 think that that confession is of great importance to
20 the jury.

21 **THE COURT:** All right.

22 **MR. BRUCK:** Well, are we still on -- are we
23 back to Mr. Farmer or --

24 **THE COURT:** Mr. Farmer. Do you think it's
25 easier to resolve Mr. LeGrand?

1 **MR. BRUCK:** Well, I don't want to repeat things
2 that we've canvassed before. The Court, of course,
3 should keep in mind the extraordinary amount of
4 impeachment of Mr. Farmer that much of which can't
5 be done very effectively on a paper record.

6 **THE COURT:** I was trying to figure out, I was
7 thinking about this, Mr. Bruck, I don't necessarily
8 see any specificity in what you would be trying to
9 accomplish other than the face-to-face
10 confrontation.

11 **MR. BRUCK:** With the impeachment.

12 **THE COURT:** With the impeachment. Obviously --
13 there doesn't seem to be a big argument that he was
14 subject to a full and fair cross-examination at the
15 time of the earlier testimony.

16 **MR. BRUCK:** He was -- well, that's actually not
17 true. He was not -- he was erroneously not
18 impeached with his criminal conspiracy within the
19 department of corrections. The Supreme Court said
20 that was harmless error.

21 Now, I grant there was a proffer made and I
22 guess we can read the proffer, but the jury wasn't
23 there and it wasn't the same sort of encounter that
24 there should have been.

25 **THE COURT:** Well, I mean, you're saying it did

1 not come out --

2 MR. LUPTON: And the State's willing to concede
3 that that would be admissible and that we could read
4 the proffer.

5 THE COURT: So that would solve that issue. I
6 mean, it should be noted for the record, too, that
7 your cocounsel was at that trial for which you had
8 -- which appears to have granted a full and fair
9 opportunity to cross-examine that witness. I'm just
10 struggling with wondering whether or not this is
11 turning purely on the availability issue. It's hard
12 for me to say that he was called as a witness at
13 that prior trial and counsel was given the
14 opportunity to cross-examine that witness and
15 especially since counsel, at that time, as cocounsel
16 in this case --

17 MR. BRUCK: We don't dispute that if the
18 witness is unavailable and that carries in
19 constitutionally the requirement of due diligence
20 and everything else and not waiting until the last
21 minute or almost the last minute to get him here, we
22 don't dispute that, the opportunity for
23 cross-examination, that's not our argument.

24 THE COURT: So the only argument is whether
25 they can appropriately claim the witness'

1 unavailability.

2 **MR. BRUCK:** That's right with all of the
3 requirements under the case law that that involves.
4 And if they can't, then we have a confrontation
5 claim, which is absolutely -- which wins under
6 Barber versus Page and Crawford.

7 **THE COURT:** Well, no dispute that if the
8 government did not act reasonably in its efforts to
9 procure the attendance of this witness, that you
10 would have a winning argument.

11 **MR. BRUCK:** That's right.

12 **THE COURT:** They don't disagree with that.

13 **MR. LUPTON:** The State concedes. That if the
14 Court finds that we acted in bad faith or
15 unreasonably, then, obviously, we would not be
16 entitled to this.

17 **THE COURT:** So let's just address that one
18 aspect of it, I mean, because those are the two
19 prongs, whether or not the witness truly is
20 unavailable and the necessary considerations that go
21 along with that as far as the government's efforts
22 to procure the attendance of that witness or whether
23 they acted in good faith or bad faith or whatever
24 label you wish to place on it in that regard and --
25 because the second prong has been met that there was

1 the opportunity to cross-examine that witness at the
2 prior trial.

3 The thing that I've been struggling with is
4 what we touched on the other day. It's hard to say
5 that the government should have anticipated that
6 these judges would just leave and there would be no
7 mechanism to get these petitions ruled on. That's
8 what's troubling to me.

9 MR. BRUCK: Well, the paperwork arrived in
10 Texas on May the 10th for a trial that was -- and it
11 was at that point that it turned out that they
12 couldn't get him here by -- that's what troubles us.

13 THE COURT: How soon in advance did you
14 subpoena your witnesses?

15 MR. BRUCK: Well, we had no out-of-state
16 witnesses to subpoena. And if we had, we would have
17 done it a lot sooner than this, especially if we had
18 had a prison witness from Texas that we needed that
19 we thought was important, we would have gotten
20 working on it right when this date was pencilled in.
21 The first thing we would have done is to contact
22 Texas and find out what's involved. We would have
23 done that before in February, early February when
24 you first indicated the likely trial dates.

25 Now, you know, everybody makes mistakes. I

1 mean, Lord knows I've made mistakes, too, but I and
2 my clients bear the responsibility for it and so
3 should the State and especially --

4 **THE COURT:** Go ahead.

5 **MR. BRUCK:** --/especially in the context of the
6 speedy trial issues in this case. That's what makes
7 it unconscionable that this was handled in the way
8 it was. And I don't mean to imply bad faith and
9 most of the problems with speedy trial was not of
10 these lawyers making, but as I mentioned the other
11 day, Judge Keesley ordered this case tried by last
12 New Years, so we are in overtime. And for -- all of
13 this is borrowed time to begin with as far as the
14 State and the Sixth Amendment speedy trial right are
15 concerned.

16 **THE COURT:** Well, if you don't mean to imply
17 bad faith, does the opposite apply that there's no
18 showing that they acted -- they did not act in good
19 faith?

20 **MR. BRUCK:** As I said the other day, when I use
21 the term bad faith, and maybe I'm misusing it and
22 should stop using it, I mean a deliberate effort to
23 so arrange things as to keep Mr. Farmer from being
24 available so that they could use his transcript. We
25 don't allege that. We simply allege lack of

1 reasonable and timely effort under all of the
2 circumstances and the outrageous untimeliness of
3 this trial from 2002 to the present is one of the
4 circumstances.

5 **MR. LUPTON:** Your Honor, I think that they have
6 conceded that we did not act in bad faith. Bad
7 faith is lack of good faith. We have acted in good
8 faith. They concede that. They're only questioning
9 whether or not the actions were reasonable.

10 I think that despite the blurring of the issues
11 periodically, the issue has to focus on whether or
12 not the State acted reasonably in this case in its
13 actions to get Mr. Farmer here. And in looking at
14 that, in evaluating that question, the relevant
15 inquiry is once we started the process of trying to
16 get him here, did we act reasonably.

17 The fact that they may have -- that they made a
18 speedy trial motion that they're entitled to
19 litigate on appeal is not relevant to the issue of
20 whether or not the actions in trying to get this
21 subpoena served, or trying to get this rendition
22 process served and heard are reasonable.

23 **THE COURT:** Well, I don't necessarily agree
24 with that. I mean, the fact of the matter is if, as
25 you claim, all along that everyone felt the sense of

1 urgency with proceeding with the trial, then that
2 same urgency would apply to your actions in
3 obtaining your witnesses. I don't necessarily agree
4 with that.

5 And, secondly, it is somewhat relevant because
6 it goes to -- a State cannot -- the State cannot
7 just, for example, a day before a trial try to
8 obtain a witness in like these same circumstances.
9 You wouldn't say that that would be reasonable,
10 would you?

11 **MR. LUPTON:** No, Your Honor, I wouldn't
12 regardless of whether the trial was being held 90
13 days after the commission of the crime or 17 years.
14 That would be unreasonable waiting until the day
15 before trial to attempt to serve subpoenas.

16 The State didn't do that in this case. The
17 State began this process back in March. Paperwork
18 was forwarded through the governor's -- through the
19 Court, through the Clerk of Court, through the
20 Governor's office, Secretary of State's office,
21 Texas Governor's office, Texas Secretary of State's
22 office to their prison. That process was commenced
23 in April more than a month before trial.

24 The State of Texas Governor's office had the
25 paperwork on May 5th. I believe that there were

1 some statements about May 10th, that's not correct.
2 That was the end recipient in Texas got it May 10th.
3 The Governor had it on May 5th.

4 The process was commenced more than a month
5 ahead, two months ahead, as far as the beginning of
6 the process. And the paperwork was put into the
7 channels, if you will, more than a month in advance
8 to do a process that normally is done in a week.
9 And that process began almost immediately after the
10 court date was set in stone in March.

11 Your Honor, I think that under the
12 circumstances, the State has shown that it acted in
13 good faith and that its efforts were not
14 unreasonable. The fact that efforts failed does not
15 show that they were unreasonable.

16 I think that the standard would be, would a
17 reasonable person in the legal profession have acted
18 that way? And I think that starting the subpoena
19 process two months in advance to do something that
20 takes one to two weeks or less is not unreasonable.

21 And I think that the rest of the periphery
22 issues about cross-examination and that sort of
23 thing sort of get off the track of whether or not
24 the State acted in good faith, which it did, and
25 whether or not the State's actions were reasonable,

1 which I contend they were.

2 **MR. BRUCK:** The last point that I want to put
3 much greater emphasis on, we put a great deal of
4 stress on Monday and I want to do it again today,
5 the point at which any claim of reasonableness
6 disappeared was when the State had notice 12 days
7 before trial that they didn't have their witness and
8 they did not alert the Court and they did not move
9 for a continuance. In effect, they jammed the court
10 by allowing this problem to go under the radar until
11 it was too late to do anything about it on Monday
12 morning and that, whether you call it bad faith,
13 whether you call it unreasonableness, whatever you
14 call it, was unforgivable as far as their request
15 for relief. They made it so that the only remedy
16 would be use of this transcript on such an important
17 witness and on such an unreliable witness.

18 Had they moved for a continuance and faced the
19 music in -- and there prob -- might not have been
20 that much music, the Court might have said, well,
21 you know, whatever, but you could have ruled on it,
22 there would have been a series of options available
23 to protect this man's right to a fair trial. But,
24 no, they just left it alone, I think perhaps relying
25 on the fact that once they made it too late to do

1 anything else, you would feel too much pressure to
2 keep their evidence out that they keep telling you
3 is so important.

4 Well, this is a problem of their making, Texas
5 or no Texas. And they made it by failing to move
6 for a continuance and the Court should not bail them
7 out for that mistake.

8 **THE COURT:** Well, they did it about a month in
9 advance, that's a little bit -- normally, there
10 wouldn't have been a problem if someone had been
11 available.

12 **MR. BRUCK:** Well, it depends what you mean by
13 it. We keep having different dates tossed around.

14 **THE COURT:** They had me sign the paperwork, for
15 example, in, what, late April, April 17th, the
16 paperwork I had to sign.

17 **MR. BRUCK:** Right.

18 **THE COURT:** Now, granted perhaps that ten day
19 period that SLED was taking, I'm not sure you had to
20 wait ten days for me to sign the paperwork, but it
21 still is a month in advance. I'm having a little
22 trouble thinking that there was any kind of bad
23 faith involved or unreasonableness there. If it
24 had -- but for these judges just not being there, it
25 would have been processed I assume. I don't know if

1 I can assume that or not, but...

2 MR. BRUCK: Well, I think part of their job was
3 to find out how the process worked. But even if we,
4 for the sake of argument, assume all of that, when
5 they found out that the witness couldn't be here, it
6 was incumbent on the State to alert the Court in
7 time to have done something about it rather than to
8 wait until the day of trial and then say, Oh, well,
9 no problem, we have a transcript, we'll just use
10 that. That was --

11 THE COURT: Well, I agree -- I think I made my
12 position clear to them early on this week that I do
13 not approve of them not bringing that to my
14 attention because, as you argued, there's been no
15 request for a continuance, but with all due respect
16 to both sides, there's been no request for a
17 continuance to get this witness here.

18 MR. BRUCK: Right. As Your Honor noted in your
19 order on the speedy trial, it is not the obligation
20 of the defendant to try to secure his own
21 prosecution.

22 THE COURT: I agree with that.

23 MR. BRUCK: It wasn't our job. We thought the
24 witness isn't going to be here, so be it.

25 THE COURT: I agree with that part of it, but

1 that raises a separate question if the witness is
2 found to be unavailable, what you want to do with
3 that issue, but absent -- is there any indication if
4 you -- do you have any information from the State --
5 who talked to these people?

6 **MR. LUPTON:** We all have, Your Honor.

7 **THE COURT:** Was there any indication if you had
8 got it in by another date -- when did all of this
9 take place that they couldn't get the rule until
10 June? Do you understand my question? Would the ten
11 days have made a difference is what I'm asking; do
12 you know? Can we find that out?

13 **MR. BELL:** That I don't know. I know it was
14 the month of May, Your Honor. I mean, they weren't
15 available for the month of May is what was my
16 understanding.

17 **THE COURT:** So there was no physical way to get
18 that paperwork to them before May in late April?

19 **MR. BELL:** I mean, there may have been a couple
20 of days here and there in delays that could have
21 gotten there. I'll be honest there, Your Honor.

22 **THE COURT:** After you got the paperwork to me,
23 what did you do with it?

24 **MR. BELL:** I gave it to my investigator to come
25 up here and have the Clerk of Court of Lexington

1 County sign it and then get it over to the
2 governor's office. I will tell you --

3 **THE COURT:** And how long did that process take?

4 **MR. BELL:** Well, I can continue this, Your
5 Honor. And for what it's worth, I'll be honest.

6 There was a couple of days delay from after we
7 got it to the Governor's office, I took ill on the
8 weekend of the 23rd, which was a Sunday, and I was
9 out of court for two days. When I came back, the
10 person from the Governor's office called me, said
11 there was a scrivener's error. I immediately got
12 that forwarded up because it didn't require a
13 signature.

14 And then the next thing I heard from him at the
15 Governor's office, which was about a week later, is
16 he said it's still sitting in the Secretary of
17 State's office because they needed a duplicate,
18 original copy that I had not been informed of. And
19 I was trying to move Heaven and earth because I
20 think I e-mailed your law clerk to have another
21 signature to try to get this thing moved. And from
22 there on, that's when it went on. So that's what
23 occurred.

24 And as soon as they got -- the Governor's
25 office called the Secretary of State's office, they

1 got a copy of it, they faxed a copy of it to Texas
2 and they overnighted the original. That's the
3 sequence of events, Your Honor.

4 **THE COURT:** Anything else?

5 **MR. LUPTON:** Your Honor, I think you've heard
6 everything. I think that we're ready for your
7 ruling.

8 **THE COURT:** Just for the record, not that it
9 matters, but -- well, it could matter. When they
10 made that request for the duplicate, I was on
11 vacation. Actually, I did come in during vacation
12 to finally sign something, but -- anything else from
13 the defense?

14 **MR. BRUCK:** Well, just to point out that any
15 delay of the Secretary of State's office is
16 attributable to the State not to these lawyers, but
17 certainly not Mr. Cooper.

18 **THE COURT:** Well, I mean, we're not talking
19 about delay in the same sense there. We're talking
20 as a speedy trial delay. We're talking about delay
21 in the sense of bad faith or not using reasonable
22 efforts.

23 **MR. BRUCK:** Right. But I think if the State of
24 South Carolina as a whole delayed this so that the
25 State as a party did not get the paperwork to Texas

1 when they should have, the fact that it was done by
2 one agency of the government rather than another
3 doesn't help the prosecution.

4 I'd also just like to say that all of these
5 dates that have been tossed around, they are really
6 quite bewildering. And I'm wondering what the
7 record looks like. I wonder if the State has a set
8 of documents that are signed and dated that can show
9 each of these steps in the process so that there
10 won't be --

11 **THE COURT:** Do you want to look at them?

12 **MR. LUPTON:** Your Honor, that's what I have. I
13 don't know if that's all of it, that is what I
14 pulled out of the file.

15 **MR. BELL:** That's what I received back when I
16 received a copy --

17 **THE COURT:** Probably a good idea to make the
18 record clear.

19 **MR. LUPTON:** And what I can do with the Court's
20 permission is make a photo copy. If we can mark
21 these and then I'll make a photo copy -- or I guess
22 we should make a photo copy first because once
23 they're marked, we don't want to take them out of
24 the courtroom.

25 **THE COURT:** We'll make it a Court's Exhibit.

1 Is there anything you wish to say about the
2 dates in there?

3 **MR. BRUCK:** Well, yes. I mean, what it shows
4 is that with all of the back and forth --

5 **THE COURT:** When was the first date anything
6 was started?

7 **MR. BRUCK:** The earliest date in all of this
8 paperwork appears to be April the 20th, which is a
9 certificate of the County Clerk of Court of
10 Lexington County certifying that you are the circuit
11 judge. And, thereafter, there is an undated summons
12 signed by Your Honor. I don't know when that was
13 signed from what's in my hand. There is also --
14 there is also a Certificate of Judge signed by you
15 on the 17th of April. So it appears that the very
16 first scrap of paper is the 17th of April and that's
17 five weeks before trial. And we don't know --

18 **THE COURT:** Actually, your actions -- actually,
19 by not knowing the process, you precluded it from
20 being considered because by not knowing that you
21 needed a duplicate copy, you didn't get that
22 duplicate to me until May 4th.

23 **MR. BELL:** That's when I found out.

24 **THE COURT:** I came in off of break to sign that
25 on May 5th.

1 **MR. BELL:** Yes, sir. I signed that
2 duplicate --

3 **THE COURT:** But what I'm saying, I'm not trying
4 to point a finger per se, what I'm saying is there
5 was no way for it to be considered even at that
6 date. It was already too late.

7 **MR. BELL:** I agree, Your Honor.

8 **THE COURT:** Based on what you're telling me,
9 there was nobody available in May so it was too
10 late.

11 **MR. BELL:** I agree.

12 **THE COURT:** If the duplicates had been there on
13 the 17th, it may not have been too late; is that
14 correct?

15 **MR. BELL:** It may or may not. I mean, it may
16 have gotten there May 1st. It may have gotten there
17 the end of April. I just don't know. I can't
18 answer that question.

19 **THE COURT:** Well, if you're telling me you
20 don't know that it would have gotten there, then
21 you're telling me you weren't acting reasonably.
22 What you need to be telling me is I know that if I
23 had processed it, it would have been handled but for
24 these judges not being there.

25 **MR. BELL:** Yes, Your Honor. I mean, I would

1 have gotten the paperwork there much sooner but for
2 that duplicate copy and I agree with that, probably
3 a week or sooner because it would have been signed
4 and gone out.

5 **MR. LUPTON:** Your Honor, I would note that as
6 it processed through the system in Texas and got to
7 the person that ultimately would have had to have
8 made the scheduling arrangements even after the
9 delay, the ten days delay that we're talking about
10 or the several days delay, how much ever, it still
11 didn't get to him until May 10th. So even if there
12 had been -- even if the process had been completed
13 ten days sooner and didn't get to him until the --
14 and got to him ten days sooner, that would have
15 still been the first of May which would have still
16 been too late.

17 **THE COURT:** That means you waited too long to
18 start the whole process then.

19 **MR. LUPTON:** Your Honor, I think that we're
20 talking about whether or not it was reasonable not
21 whether or not it would have --

22 **THE COURT:** Well, you can't be reasonable by
23 just saying, I don't know the process and I just did
24 it.

25 **MR. LUPTON:** No, Your Honor. I believe that

1 the explanation was that the State did know the
2 process, had done what we were told by Texas was
3 necessary, Texas stated --

4 **THE COURT:** Let's just stop there. Who handled
5 this because we're getting conflicting stories here
6 and I just think that it's not a good idea, all
7 right?

8 That is not what he told me. He told me that
9 our office, our Secretary of State's office, not
10 Texas, said you need duplicates. Is that what you
11 told me?

12 **MR. BELL:** That's correct.

13 **THE COURT:** Not Texas. Y'all are arguing
14 different things. Now, get your stories together
15 and let's deal with this. I'm not trying to point
16 fingers. I want the absolute facts when we're
17 talking about this, the record needs to be clear.
18 If I'm wrong, I want someone to be able to know how
19 to decide whether I'm wrong or not, that's all.

20 **MR. BELL:** The State of South Carolina's
21 Secretary of State's office.

22 **THE COURT:** So it wasn't Texas that told you
23 the procedure that turned out to be wrong. It was
24 delayed because a duplicate copy was not submitted
25 to the Secretary of State.

1 **MR. BELL:** That's correct, Your Honor. And
2 that is after, I'll say this, too, Your Honor, I
3 consulted with Texas on the process for them. I
4 consulted with the Governor's office if this was the
5 proper way and was told it was. And then after I
6 sent it to the Governor's office, after I was told
7 how to do it, then it came back and the Secretary of
8 State's office needed this duplicate. That's how I
9 recall it and how it happened.

10 **MR. LUPTON:** I don't think --

11 **THE COURT:** I only want one of y'all to argue.
12 Decide which one is going to argue. Y'all can
13 confer if you need to confer, all of the time you
14 need to discuss your thoughts, that's fine, but I'm
15 not getting anymore inconsistent statements. Y'all
16 can sit down to discuss it and when you're ready to
17 discuss it, let me know.

18 (Pause.)

19 **MR. LUPTON:** Your Honor, I think, at this
20 point, we're ready for you to rule.

21 **THE COURT:** Pardon?

22 **MR. LUPTON:** Unless you want to hear something
23 else, I think, at this point, we're ready for you to
24 rule.

25 **THE COURT:** Is there anything else you wish to

1 say on this?

2 MR. LUPTON: I believe that --

3 MR. BELL: No, sir, Your Honor, unless you want
4 to ask about dates and the process, I'll be glad to
5 answer.

6 THE COURT: So at the time that you initiated
7 this procedure by not knowing that South Carolina
8 required two copies, it delayed the procedure beyond
9 the point that Texas could rule on it in a timely
10 manner.

11 MR. BELL: Yes, sir, I believe so.

12 THE COURT: All right. Now, why should I not
13 attribute that -- why should I not say that's
14 unreasonable? You should be charged with knowing
15 the procedure, should you not?

16 MR. BELL: That's true, Your Honor. And I will
17 say that I was under the impression at the time that
18 that was the procedure. That came up after the
19 fact. I tried to call the Governor's office to find
20 out do we submit it, is there anything else that we
21 need to submit and I was told nothing. And then I
22 found out through the delay that I needed this. So
23 if it's up to the State, then attribute it to the
24 State, Your Honor.

25 THE COURT: Again, Mr. Bell, I'm not trying to

1 say you're a bad person or anything, understand
2 that.

3 **MR. BELL:** I understand, Your Honor.

4 **THE COURT:** It's just a question of, you know,
5 whether -- it's hard to say that it was reasonable
6 if you didn't start out with the right understanding
7 of what needed to be done and it seems that should
8 be attributed to the State. I'm going to take a
9 five minute break. I want to think about it.

10 **MR. LUPTON:** Your Honor, I will say that the
11 originals of what we were looking through have been
12 handed up to the Court to be marked as a Court's
13 Exhibit. And I did provide a copy to the defense.

14 (Court's Exhibit Number 9, correspondence,
15 was marked for identification purposes.)

16 (Brief Recess.)

17 **THE COURT:** All right. I've thought about this
18 long and hard. And I've reviewed the record. I've
19 reviewed the testimony at issue. I've reviewed the
20 State's presentation, as well as the
21 cross-examination of Mr. Farmer. A few things need
22 to be said, I think, for the record.

23 Both sides have claimed at various times,
24 whether it be through communications with the Court
25 or in court, that there was some uncertainty as to

1 whether the Court had actually selected the May
2 trial date or the June trial dates, although I think
3 it's undisputed that those were the only trial times
4 being considered for this case. Each side has at
5 some point claimed to one extent or another that
6 that uncertainty, if any, was clarified at least by
7 March.

8 The paperwork for the witness at issue was
9 initiated in April. It appears that delay in part
10 was caused because no copy -- a duplicate copy had
11 not been submitted to the Secretary of State.

12 I did take the time to review pertinent
13 procedures and statutory requirements. I would say,
14 for the record, I don't ascertain any requirement to
15 do that so I'm not so sure I should attribute that
16 to the State that the Secretary of State held that
17 paperwork.

18 But having said that, both the Governor of
19 South Carolina and the Governor of Texas signed that
20 paperwork in early May and then it turned out that
21 no hearing judge was available in Texas to hear the
22 matter. And Texas law apparently requires that
23 since South Carolina is not a reciprocal state or a
24 signatory state or whatever the proper word is in
25 that regard, that these hearings have to be held.

1 And one of the things that have bothered me the
2 most all along was whether or not the State should
3 be held to some standard of accountability for the
4 fact that Texas did not make any judges available.
5 And it's difficult for me to say that the State
6 acted unreasonably in that regard. Therefore, I do
7 find that the witness is unavailable for these
8 purposes.

9 The second aspect of the rule has been met by
10 agreement that he has -- he was under oath at the
11 prior proceeding and there was the full right of
12 confrontation at that prior proceeding. And I've
13 asked twice and nothing more has been indicated to
14 me what would be different other than the
15 face-to-face confrontation and the presentation of
16 this record. And the parties have both indicated a
17 stipulation is going to be presented as to the
18 record at issue for impeachment purposes of Mr.
19 Farmer. Therefore, I do think that the prior
20 testimony can come in.

21 However, having said that, as I have made clear
22 from the beginning of this week to now, I have never
23 prevented either side from requesting a postponement
24 or a delay in order to allow these proceedings to be
25 completed to get the witness here. And I'll leave

1 it at that. I still have not heard that request.

2 So unless there is such a request, I'm prepared to
3 proceed.

4 Anything further from either side?

5 **MR. BRUCK:** We were not going to make that
6 request until the Court ruled. Obviously, now we've
7 got a decision to make. This changes the situation
8 completely.

9 **THE COURT:** And I agree. And while I disagree
10 with the position made that the speedy trial
11 implications don't come into play in this analysis,
12 they do to some extent one way or another and -- but
13 that's there for you in the event that you make that
14 request to the Court. Like I said, I've not been
15 presented with that request by either the State or
16 the defense.

17 **MR. BRUCK:** Would you give us until the morning
18 to decide whether we wish to move for a continuance?

19 **THE COURT:** I'll be happy to do that. If y'all
20 need to talk further, you can talk further about it,
21 too. But from the State's perspective, I would be
22 -- I will let it in under that reasoning, but I've
23 never precluded either side from making that request
24 and so I'll repeat that at this point.

25 What else do we have to resolve before --

1 anything else?

2 MR. BRUCK: There actually is one matter and
3 maybe it won't be in dispute, but I think we have a
4 Brady problem respecting Mr. Sutherland's --

5 THE COURT: Well, first, before you get to
6 that, this moots out any issues about Mr. LeGrand?

7 MR. LUPTON: Your Honor, I would -- I think
8 that that -- from my perspective, I believe it does
9 because I believe that since the attack on
10 Mr. LeGrand is basically a two-prong attack that he
11 was in a conspiracy with people other than Tony
12 Farmer (sic) and that Tony Farmer was the -- I
13 apologize, Your Honor, it is late and I am
14 misspeaking -- but Mr. Farmer's impeachment was
15 basically two prong.

16 The defense alleged or tried to argue that Mr.
17 Farmer was in a conspiracy with someone other than
18 Tony Cooper and that Tony Cooper was the planned
19 scapegoat, if you will. And they also alleged and
20 argued that Mr. Farmer was making up his statements
21 as a result of inducement by the State that the
22 State was going to treat him favorably in his
23 criminal charges in exchange for the statement.

24 THE COURT: Well, all of that was part of the
25 prior cross.

1 **MR. LUPTON:** Exactly, and that's why I'm saying
2 that because there was that two-prong attack. One
3 of the allegations from the defense is that the
4 statements Mr. Farmer made were fabricated to get
5 this deal by the State on his criminal charges and
6 that would be an accusation of recent fabrication.
7 And under that attack, the State would be entitled
8 to show prior consistent statements before that
9 motive arose, before the criminal charges were made
10 against him. And I think that because there was
11 that two-prong attack --

12 **THE COURT:** Well, why didn't they do that
13 originally?

14 **MR. LUPTON:** I don't think that Mr. LeGrand was
15 called as a witness in the first Tony Cooper trial
16 so that never came up, but since we intend to call
17 him in this trial, it would come up in this trial.
18 And Mr. Bruck had stated that because their position
19 was that there was this conspiracy and that
20 Mr. Cooper, their client, was the scapegoat planned
21 into this conspiracy before the criminal charges --

22 **THE COURT:** I mean, was it really a charge of
23 recent fabrication or just that he changed his
24 statement to get a deal?

25 **MR. LUPTON:** I think that it can be viewed

1 as -- I think that would be a charge of recent
2 fabrication. The fact that they say he made up his
3 statement or changed his statement to get the deal
4 is a charge that the statements were fabricated
5 based on an inducement of the deal. So I think that
6 based on that, that would --

7 **THE COURT:** Did he actually sign a written
8 statement and then change it later?

9 **MR. LUPTON:** Yes, Your Honor. He signed the
10 written statement -- actually, he made statements to
11 police after his arrest in October. And then, I
12 believe, three or four months or so later, he made
13 statements recanting that initial October statement
14 in saying that he did it based on that he was beaten
15 and that he was told that if he didn't give the
16 statement, that they were going to imprison him for
17 life or give him the electric chair or something of
18 that nature or both.

19 **MR. BRUCK:** I don't mean to interrupt, but I
20 think we have a procedural fact. This is a very,
21 very fact intensive issue and I think that the Court
22 will probably be in a much better position after Mr.
23 Farmer's testimony is before you.

24 **THE COURT:** You mean Mr. LeGrand's testimony?

25 **MR. BRUCK:** No, I mean Mr. Farmer's testimony.

1 **THE COURT:** Well, by Mr. LeGrand or by
2 Mr. Farmer? I've just reviewed Mr. Farmer's
3 testimony. That's why I said -- I just told my
4 clerk that we need to re-review that as to whether
5 or not this is recent fabrication or not, but I'm
6 not sure what you're telling me. That's what I just
7 took the break to do.

8 **MR. BRUCK:** I'll let counsel finish.

9 **THE COURT:** All right.

10 **MR. LUPTON:** I think, as you're aware, the
11 witness, Mr. Farmer, initially gave the statements
12 inculcating the defendant. He then --

13 **THE COURT:** Well, actually -- hold on, let me
14 stop you. Maybe I should wait until the morning to
15 address this because if there's going to be some
16 request to postpone to get Mr. Farmer here, then
17 that would change completely this whole line of
18 discussion and so that is -- I think I would prefer
19 to do it that way.

20 Now, insofar as your request is concerned, you
21 know, the...

22 **MR. BRUCK:** The reason I thought this was more
23 complicated than is being set out is that
24 Mr. LeGrand's testimony includes the statement that
25 Mr. Farmer knew about the murder in advance.

1 **THE COURT:** Well, Mr. Farmer never said that at
2 trial.

3 **MR. BRUCK:** That's right.

4 **MR. LUPTON:** That's correct, Your Honor.

5 **MR. BRUCK:** That's my point.

6 **THE COURT:** And that's -- just to be quite
7 frank with you, and maybe this is something y'all
8 need to think about, too, one of the reasons I give
9 you that option of getting Mr. Farmer here is
10 because this case should not come down to everyone
11 else telling us what Mr. Farmer says, if that's
12 going to be the State's approach. And, you know, I
13 like cases decided based on fairness.

14 And if we're going to start fighting over
15 Mr. LeGrand is saying Mr. Farmer said this or that
16 and someone else saying Mr. Farmer said this or
17 that, then maybe we should get Mr. Farmer here, you
18 know. If the State's case is all about Mr. Farmer,
19 then, you know, I'm going to seriously consider
20 that. And so y'all need to find out the exact time
21 you can get that hearing date if we have to deal
22 with this tomorrow morning, all right?

23 **MR. BELL:** Yes, sir.

24 **THE COURT:** I'll let you think about that
25 overnight, but I know that had some implications as

1 far as your strategy is concerned in the speedy
2 trial and all of that stuff, too. We'll see you
3 tomorrow morning. Thank you.

4 Just so you know because I can't remember who
5 all was involved in the discussion, you indicated
6 the earliest hearing date you can get in Texas would
7 be what date?

8 MR. LUPTON: Friday, June 2nd.

9 THE COURT: So do you know you can get that
10 date?

11 MR. LUPTON: That was the date that we were
12 told, so assuming that that hasn't changed.

13 THE COURT: And then how long thereafter -- he
14 can be here by that Monday?

15 MR. BELL: I would hope so. We would arrange
16 that if we get to that point.

17 THE COURT: Monday would be the...

18 MR. DUNCAN: 5th.

19 THE COURT: So we'll be running into week three
20 with that if he was available for Monday. Now, how
21 would we do that strategically as far as would you
22 be amenable to just proceeding and then reopening?

23 MR. BRUCK: You mean for us to put up our case
24 and then Farmer to come in? I think maybe what we
25 should do is decide tonight whether we want to just

1 forge ahead, in which case, we'll finish up this
2 week. If we decide we'd rather move for a
3 continuance to get Farmer here, then we can address
4 those issues and we'll decide --

5 **THE COURT:** Well, the State, when were you
6 planning on introducing Mr. Farmer's testimony?

7 **MR. LUPTON:** Your Honor, I think that it would
8 be fair to say that the State should rest tomorrow.
9 I think we're down to the end. And if we end up
10 just reading in testimony, we will probably complete
11 the State's case before lunch or immediately after.

12 **THE COURT:** All right. How many witnesses did
13 you have?

14 **MR. BRUCK:** Between half a day, three quarters
15 of a day depending obviously on who we call. I
16 think we can be through either by the end of the day
17 tomorrow or early on Friday. So we can argue and
18 charge on Friday.

19 **THE COURT:** I wouldn't do that.

20 **MR. BRUCK:** You don't intend to do that?

21 **THE COURT:** Huh-huh.

22 **MR. BRUCK:** So we should plan on coming back
23 Monday.

24 **THE COURT:** Tuesday.

25 **MR. BRUCK:** Right, unless we move for a

1 continuance.

2 **THE COURT:** Yes. Like I say, that's the best
3 solution I could offer if you think that -- if
4 either side thinks that they would really like him
5 here as opposed to his prior testimony. I don't
6 know what else to do other than to offer that, but
7 I'll give you that opportunity.

8 **MR. BRUCK:** Thank you.

9 **THE COURT:** All right. See y'all then. Thank
10 you.

11 (Whereupon, the proceedings were concluded
12 for May 24, 2006.)

13 (The following proceedings were held on May
14 25, 2006.)

15 (Defendant's Exhibit Numbers 4 and 5,
16 photographs, were marked for identification
17 purposes.)

18 **THE COURT:** I understand the State and the
19 defense has agreed to excuse Juror Kean based on the
20 death in the family; is that correct?

21 **MR. BELL:** Yes, sir, Your Honor.

22 **THE COURT:** Is that correct, Mr. Bruck?

23 **MR. BRUCK:** Yes, sir, that is correct.

24 (Juror Number 78, Lawrence Kean, enters the
25 courtroom.)

1 **THE COURT:** Mr. Kean, I'm sorry to hear about
2 the death in your family. I want to thank you for
3 your service. I'm going to go ahead and excuse you
4 so you can attend to that matter. Again, I'm sorry
5 to hear about that. Thank you very much you're
6 excused.

7 **JUROR:** Thank you.

8 (The juror was excused.)

9 **THE COURT:** All right. The next order of
10 business is that we need to draw randomly from the
11 two alternates, the alternate that will take the
12 place of Juror Kean.

13 **THE CLERK:** Susan Steele, Your Honor.

14 **THE COURT:** The alternate randomly drawn from
15 the two would be Alternate Susan Steele. So we'll
16 notify her, she'll sit as a regular juror at this
17 point.

18 Do y'all want to talk -- now, just for the
19 record, I understand that the Court gave everyone
20 the opportunity to reflect on whether I should
21 postpone these proceedings in order to obtain the
22 presence of Mr. Farmer through the proceedings in
23 Texas. I understand that that's no longer -- excuse
24 me -- that no one is going to request that, no one
25 desires to have the case postponed; is that correct?

1 **MR. BELL:** That's correct, Your Honor.

2 **MR. BRUCK:** That's correct. I should state for
3 the record that while, of course, we wanted to be
4 able to confront Mr. Farmer, faced with the prospect
5 of adjourning the trial for more than a week, we
6 felt that -- at least a week because we still don't
7 know for certain when Mr. Farmer would be here, we
8 felt that that would be more prejudicial given the
9 affect on the jury, their tendency to forget the
10 testimony, the risk of contamination of publicity,
11 the jury not being sequestered and under all of the
12 circumstances, we felt that that was an even worse
13 alternative than the alternative with which we're
14 confronted. We do so, of course, reserving our
15 rights under the -- under our objection to the use
16 of Mr. Farmer's transcript.

17 **THE COURT:** And your objection was noted for
18 the record. Just let the record reflect I gave
19 everyone an opportunity to postpone these
20 proceedings. Obviously, the strategy call is yours
21 to make and you never know what the jury will do
22 because of that break, but I couldn't think of any
23 other alternative other than to make him be here.

24 Do y'all want to talk -- did y'all not
25 reference something that y'all could get together

1 and agree on about using something for impeachment
2 purposes?

3 MR. LUPTON: Your Honor, we're certainly
4 willing to --

5 THE COURT: Why don't y'all do that before we
6 get started.

7 MR. LUPTON: Your Honor, also there was some
8 concern both on -- I think the Court expressed some
9 concerns about Gerald LeGrand's prior consistent
10 statement testimony. After reflection and after
11 discussion with lead counsel, I think that there is
12 some legitimate concerns that at the first trial, it
13 was known that Mr. LeGrand wasn't going to be
14 testifying, so it was known that the prior
15 consistents weren't going to come in, that would
16 change the complexion of it somewhat.

17 If the defense is willing to agree not to jam
18 us for not doing it, in lay terms, either through
19 testimony or through argument, then we would agree
20 to forego those questions.

21 THE COURT: What you mean by that is the
22 defense saying they didn't bring Mr. LeGrand in?

23 MR. LUPTON: That we had him here and we didn't
24 present testimony through him about those
25 statements. If they were to come up in argument and

1 make an argument or an implication in the argument
2 that Mr. LeGrand was here, Mr. LeGrand testified,
3 they could have asked him about these statements and
4 didn't or he didn't verify the statements, something
5 of that nature, I think that that would be -- if
6 we're agreeing not to go into it, I think it would
7 be unfair for them to take advantage of that.

8 **THE COURT:** All right. Any problem, Mr. Bruck?

9 **MR. BRUCK:** Well, that's fine. That's rather
10 narrow.

11 Mr. LeGrand will be a witness against
12 Mr. Cooper, we intend to attack him, but we're
13 certainly not going to attack him for not having
14 mentioned prejudicial statements that the jury
15 doesn't know anything about.

16 **THE COURT:** No. What the State is talking
17 about is like in your closing argument, getting up
18 there and saying, the State should have brought
19 Mr. LeGrand in to testify.

20 **MR. LUPTON:** Well, he will testify, Your Honor,
21 but he's not going to testify to the prior
22 consistent statements.

23 **THE COURT:** Okay. I understand now.

24 **MR. LUPTON:** And we just want to make sure that
25 they don't --

1 **MR. BRUCK:** We're sneaky, but we're not crazy.

2 **THE COURT:** So that's fine with you, Mr. Bruck?

3 **MR. BRUCK:** Yes.

4 **THE COURT:** All right. Are y'all ready to
5 proceed?

6 **MR. BELL:** The State's ready, Your Honor.

7 **THE COURT:** Is defense ready to proceed?

8 **MR. ANDREWS:** Yes, sir.

9 **THE COURT:** All right. Bring the jury in,
10 please.

11 (The jury enters the courtroom at 9:30 a.m.)

12 **THE COURT:** Good morning, ladies and gentlemen.

13 Ms. Steele, I'm designating you now to sit as a
14 regular juror. One of the jurors had to be excused
15 due to some family situation, so you'll sit as a
16 regular juror.

17 **JUROR:** Okay.

18 **THE COURT:** All right. Go ahead.

19 **MR. BELL:** The State would call Marsha Crane to
20 the stand.

21 MARSHA BURROUGHS CRANE,

22 having been duly sworn, testified as follows:

23 **THE CLERK:** Have a seat up there please, ma'am.
24 Speak up loud and clear and state your full name for
25 the record, please.

1 **THE WITNESS:** Marsha Burroughs Crane.

2 DIRECT EXAMINATION

3 BY MR. BELL:

4 **Q** Ms. Crane, do you know the defendant?

5 **A** Yes, I do.

6 **Q** How do you know him?

7 **A** He's my ex-husband.

8 **Q** When were you married to him?

9 **A** In 1989.

10 **Q** Now, do you know Bo Sutherland?

11 **A** Yes, I do.

12 **Q** How do you know him?

13 **A** He was just a business acquaintance with Tony.

14 **Q** Did they do a lot together?

15 **A** They did some work together.

16 **Q** Did they do anything else together?

17 **A** Not a whole lot, just mostly work that I know
18 of. I really didn't know what they did.

19 **Q** Okay. During this time, you -- where were you
20 working?

21 **A** I had a job working as a housekeeper and I did
22 a nursing job.

23 **Q** And when would you generally work? What time
24 of the day?

25 **A** I worked during the day, mostly mornings. And

1 then I worked three days a week -- well, three
2 nights a week nursing.

3 Q And how long would you work during the nights?
4 When would you like go to work and how long would
5 you stay?

6 A My night job was I'd leave at 7:00 and be off
7 at 7:00 the next -- well, eight o'clock the next
8 morning. My job was from 8:00 to 8:00. And I'd
9 leave, it would take me an hour to get there, and
10 then my day job.

11 Q Where did you and Tony live during this time?

12 A We lived in Pelion.

13 Q And back then, what was your telephone number?

14 A [REDACTED].

15 Q And whose name was the phone bill and all in?

16 A Mine.

17 Q Your name?

18 A Uh-huh.

19 Q Do you know where Tony's father lived?

20 A Yes, I do.

21 Q Where was that?

22 A Greenwood Drive.

23 Q And is that near Beckman Road?

24 A Yes.

25 Q Are you familiar with the pond that's down

1 there off of Beckman Road?

2 A Yes.

3 Q Did you and Tony ever go down there?

4 A Yes.

5 Q Now, back -- do you remember when all of this
6 happened, the murder of Kimberly Quinn?

7 A Yes.

8 Q It was October of 1989?

9 A Yeah.

10 Q Okay. Do you remember the Sunday after that
11 happened?

12 A Yeah.

13 Q Where were y'all that Sunday?

14 A At Tony's dads.

15 Q On Greenwood Drive?

16 A Yeah.

17 Q Why were you there?

18 A We were picking up a camper at his dad's house,
19 R.V.

20 Q And who all was there?

21 A Tony's family.

22 Q Okay. Did Bo ever show up?

23 A No, not at that time, no.

24 Q What happened once y'all picked up the camper,
25 where did y'all go?

1 **A** We went to my house.

2 **Q** Okay. Did something happen along the way?

3 **A** Yeah.

4 **Q** What?

5 **A** We pulled off beside the road and -- because Bo
6 was kind of waving us down and we pulled off the
7 side of the road and Bo got out of his car and came
8 up to the camper.

9 **Q** Do you know why you pulled off the side of the
10 road?

11 **MR. ANDREWS:** Objection, Your Honor, leading.

12 **THE COURT:** Rephrase -- excuse me -- I overrule
13 that. Go ahead.

14 **BY MR. BELL:**

15 **Q** Do you know why you pulled off the side of the
16 road?

17 **A** No, just that Bo was waving us side the road
18 and we'd seen -- we'd seen like police cars going
19 down the road.

20 **Q** What happened when Bo waved you off the side of
21 the road?

22 **A** Bo got out the car and came up to the camper
23 and was talking to Tony.

24 **Q** And what happened then?

25 **A** Then we got -- we just left and went home.

- 1 Q Did they talk right there at the car or did
2 they go off?
- 3 A No, they talked right there.
- 4 Q Okay. Now, later that day, that Sunday, did
5 y'all go anywhere else?
- 6 A Yeah, later that evening.
- 7 Q Where did you go?
- 8 A We went to his sister's house.
- 9 Q And where did she live?
- 10 A Wagener.
- 11 Q Did you go to her house often?
- 12 A No.
- 13 Q Was that kind of rare?
- 14 A I guess. I mean, we went -- that's the only...
- 15 Q Who went to his sister's house?
- 16 A Well, Bo went down there and then Tony and I
17 and the boys went.
- 18 Q Okay. How do you know that Bo went down there?
- 19 A He went in his -- in Tony's Cougar.
- 20 Q Did y'all -- I mean, traveling together or did
21 he leave first? I mean, how do you know that he
22 went down there?
- 23 A Well, I seen him there.
- 24 Q When y'all got there, what happened?
- 25 A Just they were talk -- everybody was talking.

1 I wasn't talking with them. They were just all
2 talking together.

3 Q Who was all talking together?

4 A Bo and Tony and Brenda and Dillon.

5 Q Who's Brenda?

6 A Tony's niece.

7 Q Is her name Brenda McLauren?

8 A Yes.

9 Q Were they talking in front of you?

10 A No.

11 Q Where were they talking?

12 A In another room.

13 Q You didn't hear what they were saying?

14 A No.

15 MR. BELL: Thank you, Ms. Crane. Please answer
16 any questions the defense has for you.

17 CROSS-EXAMINATION

18 BY MR. ANDREWS:

19 Q Good morning, Ms. Crane. I'm Stuart Andrews I
20 don't think we've met before, have we?

21 A No.

22 Q Ms. Crane, do you remember the date you were
23 married to Mr. Cooper?

24 A Yes, I do.

25 Q What was that date?

1 **A** June 30th.

2 **Q** 1989?

3 **A** 1989.

4 **MR. ANDREWS:** Your Honor, if I may approach.

5 **THE COURT:** Yes, sir.

6 **BY MR. ANDREWS:**

7 **Q** Ms. Crane, I'm going to show you two pictures
8 that have been previously marked as Defendant's
9 Exhibits 4 and 5. Do you recognize them?

10 **A** Yeah.

11 **Q** What are they?

12 **A** It's when we were married and Tony and my boys.

13 **MR. ANDREWS:** Okay. Your Honor, if I may
14 publish these to the jury.

15 **THE COURT:** You can hold them up and walk them
16 down the jury box, sir.

17 (Pause.)

18 **MR. ANDREWS:** These are Defendant's 4 and 5.

19 **THE COURT:** Are those in evidence?

20 **MR. BELL:** No objection, Your Honor.

21 **MR. ANDREWS:** They've been previously agreed in
22 evidence.

23 **THE COURT:** All right. Defendant's 4 and 5 in
24 evidence without objection.

25 (Defendant's Exhibit Numbers 4 and 5,

1 photographs, admitted into evidence.)

2 BY MR. ANDREWS:

3 Q Ms. Crane, let me leave those with you. There
4 are two pictures there. One is a group of
5 individuals. Do you remember when that picture was
6 taken that shows you and Tony and members of your
7 family together?

8 A Yeah.

9 Q That was the day of your wedding, wasn't it?

10 A Yeah.

11 Q Now, if you'll take a look at that picture, in
12 both pictures of Tony, he's -- is his hair short?

13 A Yes.

14 Q Does he have a goatee?

15 A Yes -- no, he's just got the mustache.

16 Q Well, look at the picture, if you would.

17 A Oh, yeah, he does.

18 Q So there's hair covering his chin, as well as a
19 mustache; is that right?

20 A Uh-huh.

21 Q Now, Tony didn't wear glasses, did he?

22 A No.

23 Q And during the time of your marriage, Tony
24 never had anything other than short hair, did he?

25 A Never -- nothing but short.

- 1 Q Okay. Never had shoulder length hair?
- 2 A No.
- 3 Q Never had hair covering down to his ears even?
- 4 A No.
- 5 Q Tony also had, from the time you met him, a
6 twitch, a blinking of his eyes, didn't he?
- 7 A Always has.
- 8 Q Is that pretty noticeable?
- 9 A Yes.
- 10 Q He does it frequently?
- 11 A Yes.
- 12 Q All the time, constantly?
- 13 A Uh-huh.
- 14 Q Now, the -- when the crime occurred that's been
15 described, Tony looked the same then as he did when
16 these pictures were taken back at the time that you
17 two were married, didn't he?
- 18 A Yes.
- 19 Q Now, Mr. Bell has asked you about your
20 telephone number. And you have three phones, isn't
21 that right, in your home?
- 22 A Yes, I do.
- 23 Q Do you remember that?
- 24 A Uh-huh.
- 25 Q And those who would use the phone in your home

1 included you and Tony and your son, David; isn't
2 that right?

3 A That's correct.

4 Q In addition to that, weren't there -- wasn't it
5 common for people in the community, your friends and
6 those who visited you to use your phone as well?

7 A At times, yes.

8 Q And that included Bo Sutherland, didn't it?

9 A Yeah.

10 Q That included Brenda McLauren, didn't it?

11 A Yes.

12 Q Now, on the evening of October 4th, you were
13 home, weren't you? The night before you left and
14 the crime that's been described occurred?

15 A Yes.

16 Q Bo visited the house that night, didn't he? Do
17 you remember that?

18 A I don't remember.

19 Q Now, you have previously testified in this
20 concerning these events, haven't you?

21 A Yes.

22 Q Okay. I'm going to show you a transcript and
23 you testified in matters concerning your phones and
24 other events related to this case, haven't you?

25 A Yeah.

1 Q I'm going to hand you what's identified as a
2 transcript of record for the trial in which you have
3 previously testified and put that in front of you.
4 I'm going to ask you to turn to some pages in a
5 minute. If you'll turn to page 1731 in that
6 document.

7 A (Witness complies.)

8 Q Are you with me?

9 A Yeah.

10 Q Okay. Now, Ms. Crane, isn't it true that, at
11 that time, you testified that Bo Sutherland did not
12 have a phone; do you remember that?

13 A Yes, he did not.

14 Q Okay. And if you'll turn to the next page,
15 you'll see -- if you'll take a look at that down at
16 -- toward the bottom of the page line 21. Do you
17 recall that Bo came over to your house that evening?

18 A Yes, that's --

19 Q Pardon me?

20 A It says around nine o'clock.

21 Q And he could have used the phone that evening
22 when he was there; isn't that right?

23 A Yeah, very possible.

24 Q Now, Brenda McLauren came over to your house
25 from time to time, as you said earlier, too, right?

1 A Yes.

2 Q And she used the phone as well from time to
3 time when she came, didn't she?

4 A Yes.

5 Q Okay. Now, during the time that you testified,
6 there was also testimony concerning an ax that was
7 involved in this crime; isn't that right?

8 A Yes.

9 Q Do you remember who owned the ax?

10 A My mother.

11 Q Do you remember that, from time to time, your
12 brother, Melvin, and your husband, Tony, would use
13 the ax in their work?

14 A Yes.

15 Q Do you also recall that Bo Sutherland borrowed
16 the ax?

17 A Yes, he did.

18 Q Do you remember that? And do you recall,
19 specifically, that he kept the ax for some period of
20 time?

21 A Yes.

22 Q Now, isn't it true that the reason that Bo had
23 kept the ax, but you at some point after Hurricane
24 Hugo in late September of 1989, you asked Tony and
25 Melvin to get the ax so they could help chop -- they

1 could chop down the tree that you were concerned
2 about in your yard; is that right?

3 **A** That's correct.

4 **Q** And they did that, didn't they? They got the
5 ax back from Bo so they could take care of the work
6 you wanted done?

7 **A** Uh-huh.

8 **Q** Now, isn't it also true that Bo came back and
9 got the ax and took it back away from your house?

10 **A** Because I don't remember seeing it after that.

11 **Q** Okay. But do you remember when Bo came and got
12 the ax from Tony and from Melvin?

13 **A** I remember when he came and got it, but I don't
14 remember him bringing it back. I just don't
15 remember.

16 **Q** But he came back and got it after Tony and
17 Melvin had borrowed it back from him, is that right?

18 **A** Correct.

19 **Q** And you never saw that ax with Tony again, did
20 you?

21 **A** No.

22 **Q** Did you ever see the ax in Tony's truck again?

23 **A** No.

24 **Q** Did you ever see Tony with the ax at all after
25 that time that Bo took it back?

1 A No.

2 Q I'm sorry, your answer was?

3 A No.

4 Q Thank you. No, in your prior testimony, you
5 also testified that it wasn't uncommon at all for
6 Tony to take special care of his vehicles, his cars
7 and his trucks that he had; is that true?

8 A That's true.

9 Q Tell the jury what he would do to care for his
10 vehicles.

11 A He had to wash it every week, every week he
12 washed it. He kept all his vehicles clean and mine.

13 Q Sometimes he'd wash them several times a week;
14 isn't that right?

15 A Uh-huh. That's correct.

16 Q He really was very careful with how his car and
17 his truck were maintained?

18 A Yeah.

19 Q Now, we're talking about not the Cougar but
20 another car y'all had. You had a Mustang; isn't
21 that right?

22 A We had a Mustang and then my Cavalier.

23 Q He took care of all of them, immaculately?

24 A Yes.

25 Q All right. Now, in fact, he washed the cars

1 and his trucks so often that, I believe, your mother
2 complained about it?

3 A Yes, she did.

4 Q Why was that?

5 A Because she didn't like us using her water.

6 Q He was using water all the time to keep those
7 cars clean. Now, he also had a history of painting
8 his vehicles, didn't he?

9 A Yes.

10 Q And what did he do to the Mustang specifically
11 after y'all were married?

12 A He painted the seats in the Mustang.

13 Q And he also painted the floorboards, too,
14 didn't he?

15 A And the floorboards.

16 Q And why did he do that?

17 A He just wanted to make it look good. It looked
18 better he thought.

19 Q Okay. Now, before he painted the truck, did
20 y'all talk about his interest in doing that?

21 A Yes, we did.

22 Q And did -- and what do you remember about his
23 painting of the truck?

24 A Well, he had a Rebel flag in the back of the
25 windshield in the back of the truck. And we talked

1 about taking it down. And when he did, it left some
2 stuff on the back of the window, so he spray painted
3 it and he spray painted the floor.

4 Q Why would he spray paint the floor?

5 A Just to let it look better because it looked
6 better, because he liked it nice and he thought it
7 looked better.

8 Q Now, do you remember that before he painted the
9 truck, that this crime had occurred and your home
10 was searched by authorities; do you remember that?

11 A That's correct.

12 Q And do you remember that the truck also was
13 searched?

14 A Yeah.

15 Q Okay. And that was searched before the
16 painting of it not after; isn't that right?

17 A Yeah.

18 MR. ANDREWS: I don't have any further
19 questions. Thank you very much.

20 REDIRECT EXAMINATION

21 BY MR. BELL:

22 Q Ms. Crane, when you were shown those pictures,
23 you started to tear up, may I ask why?

24 A Because I cared a lot about my husband and it
25 just brought back memories of our wedding day.

1 Q Just the wedding day, though?

2 A Mostly, yes.

3 Q I mean, things weren't all roses during your
4 marriage, were they?

5 A No.

6 MR. ANDREWS: Objection, Your Honor.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 THE COURT: Sustained.

11 BY MR. BELL:

12 Q Now, Ms. Crane, do you still have the
13 transcript that Mr. Andrews handed you up there?

14 A Yes.

15 Q Can you please turn to page 1741?

16 A (Witness complies.)

17 Q Do you have that?

18 A Uh-huh.

19 Q Can you look down at -- starting with line ten,
20 says, I misunderstood -- question: I misunderstood.

21 A Uh-huh.

22 Q And this is from your prior testimony, correct?

23 A Yeah.

24 Q Could you start reading there and read the next
25 couple of questions down to line 24?

1 **A** Says, I misunderstood then. I thought you said
2 Tony got the ax back from Bo who had been using the
3 ax to help the Shumperts clear some land because you
4 were concerned about a rotten tree falling after
5 Hugo.

6 That is correct.

7 Well, who had the ax September 30th?

8 The ax was at my house.

9 At your house. And you requested the ax be
10 returned so Tony could chop down the tree that had
11 been damaged by Hugo?

12 That is correct.

13 So that the last place you saw the ax was at
14 your house and it had been returned by Bo or at
15 least gotten back from Bo?

16 That is correct.

17 **Q** Thank you. So that testimony says that the
18 last time you saw the ax was on September 30th after
19 Bo had returned it; is that correct?

20 **A** That's what it says here.

21 **Q** Is that the truth?

22 **A** I don't remember.

23 **Q** Okay. Now, you testified that Bo, or you read
24 from the testimony that Bo Sutherland came over your
25 house on the night of October 4th; is that correct?

1 A Yeah.

2 Q Do you remember about what time he came over
3 there? Or, if you want to look at the transcript,
4 what time he came over?

5 A It says around nine o'clock.

6 Q Okay. Do you recall who was at home that
7 evening at your house?

8 A No, I don't.

9 Q Okay. Ma'am, could you look at page 1749?

10 A (Witness complies.)

11 Q And starting with line one, go down to line 15.

12 A Yeah.

13 Q Would you please read that?

14 A Tony and my four children and I.

15 Q Were at home?

16 A Yeah.

17 Q And I think during that, it also says that Bo
18 couldn't have come earlier than nine o'clock; is
19 that correct?

20 A That's correct.

21 Q The next night, October 5th, do you recall what
22 you were doing?

23 A I don't.

24 Q The next night?

25 A Is that a Thursday?

1 Q It's a Thursday, yes, ma'am.

2 A At night?

3 Q Yes, ma'am.

4 A I went to work.

5 Q So you were working during the night?

6 A Yeah.

7 Q Now, you said he had a Confederate flag in the
8 back of his window?

9 A Yes.

10 Q Why did he take it out?

11 A Because we thought it would hurt his business.
12 And he and my brother were in business together and
13 we didn't want that conflict to come up, so we took
14 it out. And we had discussed that before -- months
15 before that before he ever took it out.

16 MR. BELL: Thank you, Ms. Crane. I have
17 nothing further.

18 RECROSS-EXAMINATION

19 BY MR. ANDREWS:

20 Q Ms. Crane, isn't it true that Tony bought that
21 truck around the time y'all were married?

22 A Yes.

23 Q And the decal was on it?

24 A That's correct.

25 Q And he took it off because he thought that was

1 the right thing to do?

2 A Yes.

3 Q Now, isn't it also true that you remember Bo
4 coming and getting the ax after Tony and Melvin were
5 using it at work around the home?

6 A Yeah.

7 Q And he picked it up in the Cougar, didn't he,
8 when he was driving that?

9 A Yeah.

10 Q And Tony was planning on selling the Cougar to
11 him, wasn't he?

12 A That's correct.

13 MR. ANDREWS: Thank you. No further questions.

14 REDIRECT EXAMINATION

15 BY MR. BELL:

16 Q Ma'am, you testified that you don't remember
17 seeing the ax after September 30th; is that correct?

18 A That's what I had said in these papers because
19 I don't remember.

20 Q You don't remember where the ax was after
21 September 30th?

22 A No, I don't remember.

23 MR. BELL: Thank you.

24 THE COURT: You may step down, ma'am. Thank
25 you.

1 **MR. BELL:** Your Honor, we ask that the witness
2 be excused.

3 **THE COURT:** Any objection?

4 **MR. ANDREWS:** No objection.

5 **THE COURT:** You may be excused, ma'am.

6 **MR. LUPTON:** Your Honor, the State calls Teresa
7 Shumpert.

8 TERESA SHUMPERT DUNN,
9 having been duly sworn, testified as follows:

10 **THE CLERK:** I need you to speak up loud and
11 clear. Please state your full name on the record
12 once you sit down.

13 **THE WITNESS:** Teresa Lynn Shumpert Dunn.

14 DIRECT EXAMINATION

15 BY MR. LUPTON:

16 **Q** Ms. Shumpert, could you tell the jury a little
17 bit about yourself, please?

18 **A** Like what?

19 **Q** Did you used to live off of Greenwood Road?

20 **A** Yes, sir, [REDACTED].

21 **Q** When was that?

22 **A** We moved from there like in 1992.

23 **Q** So prior to 1992, you lived there?

24 **A** Yes, sir.

25 **Q** And did you live there back in October of 1989?

1 **A** Yes, sir.

2 **Q** And who did you live with at the time?

3 **A** My husband.

4 **Q** Who is he?

5 **A** Donald Shumpert.

6 **Q** And back then in October of '89, did you know
7 the defendant in this trial?

8 **A** Yes, sir, I did.

9 **Q** Did you also know Bo Sutherland?

10 **A** Yes, sir, I did.

11 **Q** And we've talked about a trailer. I'd like to
12 show you this diagram. Do you recognize what this
13 depicts?

14 **A** Yes, sir, that was where we lived.

15 **Q** Is that a reasonably accurate representation of
16 where you lived?

17 **A** Yes, sir.

18 **MR. LUPTON:** Your Honor, offer this into
19 evidence at this time.

20 **MR. ANDREWS:** No objection.

21 **THE COURT:** State's 40 in evidence without
22 objection.

23 (State's Exhibit Number 40, diagram,
24 admitted into evidence.)

25 **BY MR. LUPTON:**

1 Q Now, Ms. Shumpert, if I could get you to
2 explain a little bit about this area where you
3 lived. Now, what is this here?

4 A That was our trailer. That's where I lived.

5 Q Could you step down, please?

6 A (The witness leaves the witness stand.)

7 Q Could you come over here and explain what is
8 shown on this diagram?

9 A Yes. This is where we lived. This is our
10 driveway. And this was a shop that we had in the
11 back with a pool table. And my nephew lived over
12 here in this trailer, which was all on the same
13 land.

14 Q And your nephew was who?

15 A Lee Chavis.

16 Q All right. Please go back.

17 A (Witness resumes the witness stand.)

18 Q Thank you. Now, you said you lived in that
19 area back in October of 1989; is that correct?

20 A Yes, sir.

21 Q And you knew Bo Sutherland?

22 A Yes, sir.

23 Q How well did you know him?

24 A We knew Bo pretty good. He used to come over
25 to the house all the time.

1 Q Did you invite him into your house?

2 A Yes, sir, I did.

3 Q Did he ever watch your children?

4 A Yes, sir, he did.

5 Q And you knew Tony Cooper?

6 A Yes, sir.

7 Q How well did you know him?

8 A I didn't know Tony all that well.

9 Q And would he come over?

10 A He would come over when Bo was there.

11 Q So he would only be there when Bo was there?

12 A Yes, sir.

13 Q Now, did you have a chance to observe Bo

14 Sutherland and Tony Cooper together?

15 A Yes, sir.

16 Q As between those two, who was the leader?

17 A Tony.

18 Q Tony Cooper was the leader?

19 A Yes, sir.

20 Q Did Bo act differently around Tony than he did

21 when he was on his own?

22 A He was more quiet. He just wasn't real

23 friendly, you know, jokingly when Tony was around.

24 Q He acted differently?

25 A Yes, sir.

1 Q Now, what kind of car did Bo drive at the time?

2 A A white Cougar with a green top.

3 Q I show you State's Exhibit 17. Is that the --

4 A That's it.

5 Q And do you know what kind of vehicle Mr. Cooper
6 drove?

7 A It was a green pick-up truck.

8 Q I show you State's 30.

9 A That's it.

10 Q Now, who owned the Cougar?

11 A Tony did as far as I knew. Bo was just driving
12 it because Bo didn't have a vehicle.

13 Q Do you remember seeing Bo Sutherland and Tony
14 Cooper on Tuesday, October 3rd, 1989?

15 A I --

16 Q Well, do you remember a day when they came over
17 and borrowed a compressor?

18 A Yes, sir.

19 Q And was that -- what time of day was it,
20 approximately?

21 A It was during the day, my husband was at work,
22 because I had to open up the shop.

23 Q And you say you don't recall now what day it
24 was?

25 A No, sir, I don't.

1 Q If you'd testified previously that it was the
2 3rd when --

3 A Then that's when it would have been.

4 Q When it was fresh on your mind?

5 A Yeah.

6 Q Now, did Tony Cooper and Bo Sutherland return
7 the air compressor later that day?

8 A Yes, sir, that evening.

9 Q And when they returned it, what happened?

10 A They backed the truck up against the shop to
11 unload it and Bo got out of the pick-up truck and he
12 pointed a gun up in the air and he said, Look at my
13 new toy, and he shot it. And then that's when my
14 husband, Donnie, told him to put it up because the
15 kids was outside. And he put it back in the
16 vehicle.

17 Q All right. And that was a truck you said?

18 A Yeah. They were in the truck because they was
19 bringing back the air compressor.

20 Q Whose truck?

21 A Tony's truck.

22 Q And was Tony driving that truck?

23 A Yes, sir.

24 Q And did you ever see the shotgun again after
25 that afternoon?

1 A No, sir.

2 Q And where was the last place you saw that
3 shotgun?

4 A In Bo's hand when he put it into the truck.

5 Q Now, did you also see Bo Sutherland on
6 Thursday, October 5th, 1989?

7 A That was the evening that he came into the
8 garage and asked what time it was and --

9 Q Well, let's back up a little bit. He was over
10 at your house that night?

11 A That evening, yeah.

12 Q That evening?

13 A Yes, sir.

14 Q And where were y'all?

15 A In the shop playing pool.

16 Q And, at some point, did he come up and ask you
17 a question?

18 A He asked -- he didn't ask me.

19 Q Or did he ask somebody --

20 A He asked what time it was and someone said
21 10:30. And he said he had to be somewhere at 10:30.
22 And then he walked out the door and I didn't see him
23 no more after that.

24 Q Now, at that point, you say that the shop,
25 that's this yellow building here?

1 A Yes, sir.

2 Q And you were inside?

3 A Yes, sir.

4 Q Did you see who, if anyone, picked him up?

5 A No, sir, I didn't.

6 Q Do you have any knowledge of your own whether
7 or not anybody was waiting outside for him or
8 whether he waited and was picked up?

9 A No, I don't. I have no idea.

10 Q So all you can testify to is that he left the
11 shop and, thereafter, you didn't see him again?

12 A That's right.

13 Q And if you know, do you know if his vehicle --
14 well, let me back up. Do you know how he got to the
15 shop that night?

16 A No, I don't. I was in the shop when he got
17 there, so I know the car was there. The Cougar was
18 parked outside that night after they left so I
19 assumed he came in the Cougar.

20 Q So you know that -- you know that after Bo
21 Sutherland left, the Cougar was still at your
22 property?

23 A Yes, sir, it was on -- yeah.

24 MR. LUPTON: Beg the Court's indulgence.

25 (Pause.)

1 Q And did you see the Cougar at your property the
2 next morning?

3 A Yes, sir.

4 MR. LUPTON: Nothing further, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. ANDREWS:

7 Q Ms. Shumpert, it was true that Bo spent a lot
8 of time in the shop; isn't that right?

9 A Yes, sir.

10 Q And most of that time Tony wasn't there; isn't
11 that right?

12 A Yes, sir.

13 Q Isn't there a bar in the area that he spent a
14 lot of time at as well?

15 A Not that I know of.

16 Q So when he came over to the shop, that's where
17 he drank a lot of beer there; is that right?

18 A Yeah.

19 Q Now, isn't it true that that night he and
20 Donnie were drinking a lot of beer together?

21 A I couldn't tell --

22 Q Do you remember that?

23 A I couldn't tell you. I mean, they would drink.
24 I mean, I couldn't tell you that he was there
25 drinking with him, I don't know.

1 Q Okay. But you remember pretty clearly that he
2 left around 10:30 that night; isn't that right?

3 A Yes, sir.

4 Q He came in and he asked, he said he had
5 something to do, had some place to go?

6 A Somewhere to be from what I remember.

7 Q And he didn't leave at eight o'clock that
8 night, did he?

9 A Not that I -- no, I don't even know what time
10 it was he got there.

11 Q Now, isn't it true that right after this crime
12 occurred, you gave a statement to the investigators
13 who were investigating the case? Do you remember
14 that?

15 A Yes, sir.

16 Q Do you remember that -- that you recall telling
17 them that Bo came to your house in his Cougar?

18 A I guess. I mean, if I made the statement --

19 Q You don't remember?

20 A I don't. It's been -- and I'm under a lot
21 right now so y'all have to excuse me. My brother
22 passed away yesterday, so.

23 Q I'm sorry to hear about that. Our condolences.
24 I'm sorry about that. Let me ask you to please take
25 a look at that. Do you recognize this document I've

1 just handed you?

2 A Yes, sir.

3 Q And what is it?

4 A It's my statement that I gave to one of the
5 officers.

6 Q Is it a statement that you signed too, took an
7 oath?

8 A Yes, sir. That's my initials right there.

9 Q Okay. And if you'll look at the last page, did
10 you sign and swear that what you were -- the
11 statements you were giving there and the contents of
12 it were true?

13 A Yes, sir.

14 Q All right. Now, let me draw your attention to
15 the first page when the question is, How did Bo get
16 to your house, and you said, It was in a big white
17 two-door car with a green vinyl top. You're
18 referring to the Cougar there, aren't you?

19 A Yes, sir.

20 Q Now, let me ask you to turn to the back page of
21 that.

22 A The last page?

23 Q The last page of it, yes, ma'am.

24 A Okay.

25 Q Now -- and if you'll look at the second set of

1 questions, it says, When he left on that Thursday
2 night, October 5th, did he leave by himself in the
3 green and white car, and you said, Yes, didn't you?

4 A Yeah, that's what I said, yeah.

5 Q And your memory back then, when was that,
6 October 10th, just a few days after the crime
7 occurred, was a whole lot better than it is now,
8 wasn't it?

9 A Oh, yeah.

10 Q Now, isn't it also true, Ms. Shumpert, that
11 when Tony and Bo arrived at your place, I think, on
12 October 3rd, you said it was when they were bringing
13 back the compressor, it was Bo who pulled out the
14 shotgun; isn't that right?

15 A Yes, sir.

16 Q And it was Bo who fired it; isn't that right?

17 A Yes, sir.

18 Q And it was Bo who put it back in the truck;
19 isn't that true?

20 A Yes, sir.

21 Q Tony never touched that shotgun, did he?

22 A I didn't see Tony touch it, no.

23 Q And didn't Bo say, This is my new toy?

24 A How do you like my new toy.

25 Q And Tony never touched, never said anything

1 about the gun?

2 A Not that I seen, No, sir.

3 MR. ANDREWS: Thank you. No further questions.

4 REDIRECT EXAMINATION

5 BY MR. LUPTON:

6 Q But the last place you saw it was in Tony's
7 truck, correct?

8 A Yes, sir. It was put in the cab of the truck.

9 Q And they were together?

10 A They were together.

11 Q Now, when Bo left the shop -- well, back up.
12 When Bo got there, did you see him drive up in the
13 Cougar?

14 A Are you talking about that night?

15 Q That night.

16 A No, I didn't. I was inside the shop when Bo
17 got there.

18 Q Did you make an assumption that he had driven
19 up in the Cougar?

20 A I probably did because that's usually how he
21 did come, he drove Tony's car.

22 Q And when he left, did you physically see how it
23 is he left?

24 A No, sir, I didn't.

25 Q Did you make an assumption about how he left?

1 **A** I could have made the assumption back then that
2 he did leave in the truck, but the car was still
3 sitting outside, so.

4 **MR. LUPTON:** Nothing further.

5 **MR. ANDREWS:** Just a moment, Your Honor.

6 (Pause.)

7 **MR. ANDREWS:** Thank you, Your Honor.

8 No further questions, Ms. Shumpert.

9 **THE COURT:** You may step down, ma'am. Thank
10 you.

11 **MR. BELL:** The State would call Lee Chavis.

12 Your Honor, can Ms. Shumpert be excused?

13 **MR. ANDREWS:** No objection.

14 **THE COURT:** You may be excused.

15 BUSTER LEE CHAVIS,

16 having been duly sworn, testified as follows:

17 **THE CLERK:** Once you have a seat, state your
18 full name for the record. Speak up loud and clear,
19 please.

20 **THE WITNESS:** Buster Lee Chavis.

21 DIRECT EXAMINATION

22 BY MR. BELL:

23 **Q** Mr. Chavis, are you employed?

24 **A** Yes, sir.

25 **Q** What do you do?

- 1 A I'm a painter.
- 2 Q And back -- I want to take you back to 1989,
3 October 1989. Where were you living then?
- 4 A Greenwood Drive.
- 5 Q And where is that -- Greenwood Drive located?
- 6 A Right off of 302 outside of South Congaree.
- 7 Q And who were you living with at that time?
- 8 A My wife.
- 9 Q Were there any other people that lived around
10 where you did?
- 11 A Yeah, my aunt and my uncle lived on the same
12 property.
- 13 Q And who are your aunt and uncle?
- 14 A Terry and Donnie Shumpert.
- 15 Q And if I can show you what's been marked as
16 State's Number 40. Does that appear to be how the
17 property was?
- 18 A Exactly.
- 19 Q Okay. Can you point out where you lived?
- 20 A In the back.
- 21 Q This trailer right here where I'm pointing?
- 22 A Yes, sir.
- 23 Q It says Chavis trailer?
- 24 A Yeah.
- 25 Q And the Shumperts lived in Shumpert trailer?

1 A Exactly.

2 Q And what's this yellow thing?

3 A That was a shop.

4 Q Is that where the pool table was?

5 A Exactly.

6 Q Did you know Bo Sutherland?

7 A Yes, sir.

8 Q How did you know him?

9 A Through Terry and Donnie.

10 Q Okay. Would he come over to their house?

11 A Yes, sir.

12 Q What would he do there?

13 A Just shoot pool, drink beer, just hang out.

14 Q Did he come over there a lot?

15 A Yeah, uh-huh.

16 Q And did you know Tony Cooper?

17 A Just through Bo.

18 Q And how would you -- I mean, how would you see

19 Tony Cooper?

20 A He would come pick Bo up or either drop Bo off.

21 Q What would he be in?

22 A A pick-up truck, a green truck.

23 Q Did Bo have a car?

24 A Yeah.

25 Q What kind of car?

1 A White Ford Cougar, Mercury or something like
2 that.
3 Q And would Tony hang out with y'all?
4 A No, huh-huh, very seldom, just occasionally,
5 few minutes and gone.
6 Q Would Bo drive off with him or what happened?
7 A Yeah.
8 Q How would they leave?
9 A Usually in the truck.
10 Q Did you notice what kind of -- did they seem to
11 be close?
12 A Yeah, good friends.
13 Q Did you notice anything about their
14 relationship?
15 A Not right off hand.
16 Q Let me take you back and if you remember the
17 late afternoon or early evening of October 5th of
18 1989. Do you remember that?
19 A Yes, sir.
20 Q What had you done that day?
21 A Worked and come home, got my wife, we went out
22 to dinner.
23 Q What time was that?
24 A Probably 5:30 when we went. I think it was
25 like 7:30 when we got back home.

1 Q Okay. And was anybody at the trailer on the
2 property when you got back?

3 A Yeah. They was in the shop shooting pool. I
4 think it was Terry, Donnie Shumpert and Bo was
5 there.

6 Q Did you see Bo?

7 A Yeah, he was there.

8 Q Did you see his vehicle?

9 A Yeah, it was there.

10 Q Where was it parked?

11 A Right under the oak tree.

12 Q Can you come down here and point out the oak
13 tree that you're talking about on State's 40 as best
14 you can?

15 A (Witness leaves the witness stand.)

16 Right here (indicating).

17 Q Can you put it on the side so all of the jurors
18 can see?

19 A Right here (indicating).

20 Q Thank you. You can take the stand.

21 A (Witness resumes the witness stand.)

22 Q Did you hang out with those people in the shop?

23 A Not that night I didn't, no, sir. I went on
24 home because I was tired, just eat dinner and me and
25 my wife went on back down to my trailer and that's

1 where I spent the rest of the evening.

2 Q And you saw Bo's Cougar under that tree?

3 A Oh, it was there, yes, sir.

4 Q Did you go to work the next day?

5 A Yes, sir.

6 Q That would have been Friday?

7 A That was Friday morning.

8 Q What time did you go to work?

9 A I usually left around seven o'clock.

10 Q Did you see the vehicle again?

11 A Yes, sir. It was in the same spot.

12 Q Did it appear to have been moved?

13 A No, not that I could tell.

14 Q It was in the exact same spot?

15 A Same spot.

16 Q Who's Terry?

17 A Terry is my aunt.

18 Q Is her name Teresa?

19 A Teresa.

20 MR. BELL: Okay. Thank you. Please answer any
21 questions they have.

22 CROSS-EXAMINATION

23 BY MR. ANDREWS:

24 Q Mr. Chavis, now you got home after dinner that
25 night, you didn't hang out with the others --

1 A No, sir.

2 Q -- in the shop; isn't that right?

3 A Exactly.

4 Q You went to bed around eight o'clock, if I
5 understood you correctly?

6 A Well, I don't know what time I went to bed, but
7 I went home.

8 Q When you went home, Bo was still there, wasn't
9 he?

10 A Bo was still there.

11 Q You don't know what time he left?

12 A I haven't the slightest idea.

13 Q You don't know whether he left in the Cougar or
14 not?

15 A I don't know, not at all.

16 Q And isn't it possible that he left in the
17 Cougar, came back and parked it where he usually did
18 under the oak tree?

19 A Might have, I couldn't tell you.

20 Q You just don't know?

21 A I don't know.

22 Q Isn't it also true that Bo had approached you
23 one time about buying a shotgun from him?

24 A Yes, sir, uh-huh.

25 Q And he, in fact, gave you a 15 dollar deposit

1 for that shotgun?

2 A No, sir.

3 Q Did he offer to do that?

4 A I don't think so.

5 Q Do you remember that?

6 A No, sir, I sure don't.

7 Q Do you remember him telling you at one point
8 that he didn't need a shotgun because he already got
9 one?

10 A I don't remember.

11 Q You gave a statement to the investigators in
12 this case, didn't you, Mr. Shumpert -- I'm sorry --
13 Mr. Chavis?

14 A I could have. I don't remember.

15 MR. ANDREWS: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. ANDREWS:

18 Q Let me ask you if you recognize this. Is this
19 a statement that you gave to the officers
20 investigating this crime?

21 A Yes, sir.

22 Q Do you recognize your signature on it?

23 A Yes, sir.

24 Q Now, this was a statement you gave to an
25 officer of the Lexington County Sheriff's Department

1 on October 11th, 1989; isn't that true, Mr. Chavis?

2 A Yes, sir.

3 Q Have you had a chance to read it?

4 A Yes, sir.

5 Q Now, doesn't it say that Bo asked you about
6 buying a shotgun, your shotgun?

7 A Yes, sir.

8 Q Doesn't it say that he gave you a 15 dollar
9 deposit?

10 A Yes, sir, sure did.

11 Q Okay. Good. Now, isn't it also true that --
12 and Bo didn't have anything to do with that
13 request -- Tony didn't, did he?

14 A Not that I can remember, no.

15 Q That was Bo who asked you about buying the
16 shotgun, right?

17 A Yeah. This was before I even knew Tony. This
18 was before I even lived on Greenwood Drive.

19 Q And isn't it true later, as the statement says,
20 that Bo said, Never mind, I won't need to buy your
21 shotgun because I already have one?

22 A Exactly.

23 Q And Tony wasn't a part of that conversation,
24 was he?

25 A No, sir.

1 **MR. ANDREWS:** I don't have any further
2 questions. Thank you very much.

3 REDIRECT EXAMINATION

4 **BY MR. BELL:**

5 **Q** When did you move to Greenwood Drive?

6 **A** I don't remember dates, but when this here --
7 about the shotgun, that's when I lived out closer to
8 Pelion when I was renting a trailer off of Old
9 Charleston Highway, I believe.

10 **Q** Was that a month, two months, a week?

11 **A** No, it was longer than that. I would say eight
12 months, seven or eight months.

13 **MR. BELL:** Thank you, Mr. Chavis.

14 **MR. ANDREWS:** No further questions, Your Honor.

15 **THE COURT:** You may step down, sir.

16 **MR. BELL:** Your Honor, we'd ask Mr. Chavis be
17 excused.

18 **MR. ANDREWS:** No objection.

19 **THE COURT:** Let's take a short break. Ladies
20 and gentlemen, do not discuss this case in any way.
21 Thank you very much.

22 (The jury retires to the jury room.)

23 **THE COURT:** All right. Thank you.

24 (Brief recess.)

25 **MR. BELL:** One witness before we have the

1 Farmer testimony.

2 MR. BRUCK: We have some matters to settle as
3 to the documentary cross-examination, or instead of
4 cross-examination of Mr. Farmer, but we don't need
5 to do it now.

6 THE COURT: Is this next witness long or
7 something?

8 MR. BELL: He's going to be fairly short.

9 THE COURT: We might be better taking it up so
10 I don't have to send the jury right back out. I
11 mean -- it doesn't matter. We'll just send the jury
12 out if that's what y'all want to do.

13 MR. BRUCK: It's the Court's pleasure.

14 THE COURT: All right. Bring the jury in.

15 (The jury returns to the courtroom.)

16 THE COURT: We're ready to proceed, ladies and
17 gentlemen.

18 Go ahead.

19 MR. BELL: The State would call Gerald LeGrand.

20 GERALD O'NEIL LEGRAND,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat up there please, sir.
23 Speak up loud and clear and state your full name for
24 the record please.

25 THE WITNESS: My name is Gerald O'Neil LeGrand.

1 DIRECT EXAMINATION

2 BY MR. BELL:

3 Q Mr. LeGrand, do you know Tony Cooper?

4 A Yes, I do.

5 Q How long have you known him?

6 A Known him for about -- maybe about a year.

7 Q From when?

8 A Going back into '89.

9 Q Okay. Do you know Bo Sutherland, Robert "Bo"

10 Sutherland?

11 A I know of him.

12 Q Okay. Did you have an occasion some time in

13 1989 to meet with Tony Cooper?

14 A Yes, I did.

15 Q Where did that occur?

16 A It occurred at the Hardees out at Dutch Square.

17 Q Do you recall what time of year in 1989?

18 A It was during the summer. I remember it being
19 a hot day.

20 Q And where did y'all meet?

21 A We met inside. We had lunch together. I paid
22 for our lunch.

23 Q Okay. Do you recall what he was driving there?

24 A He was driving a pick-up truck.

25 Q Was he alone?

1 **A** No, sir, he was not.

2 **Q** Do you know who was with him?

3 **A** Like I say, after we had lunch, we went outside
4 and there was a gentleman sitting in the pick-up
5 truck, but I -- there was no introductory of who the
6 person was.

7 **Q** Okay. You said you know of Bo Sutherland.
8 Have you ever met him knowingly?

9 **A** Seen his picture in the newspaper.

10 **Q** Other than that, you've never seen him as far
11 as you know?

12 **A** No, sir.

13 **Q** Do you know anybody named Chico?

14 **A** No, sir. I'm not affiliated with a person
15 named Chico, no, sir, not at all.

16 **MR. BELL:** Thank you, Mr. LeGrand.

17 **THE WITNESS:** You're welcome, sir.

18 **CROSS-EXAMINATION**

19 **BY MR. DUNCAN:**

20 **Q** Mr. LeGrand --

21 **A** Yes, sir.

22 **Q** -- would it be fair to say that you have a bias
23 in favor of Red Farmer?

24 **A** A bias in favor...

25 **Q** A bias in favor of...

1 **A** Could you be a little more specific?

2 **Q** Okay. Let's talk a little history, if we can.

3 **MR. BELL:** Your Honor, I'm going to object.

4 **THE COURT:** What's your objection?

5 **MR. BELL:** Do you want us to approach?

6 **THE COURT:** Yes, that's fine.

7 (Whereupon, a bench conference was held off
8 the record, in the presence of the jury, but out of
9 the hearing of the jury.)

10 BY MR. DUNCAN:

11 **Q** When did you meet Red Farmer?

12 **A** I met Mr. Farmer, first of all, through phone
13 contact.

14 **Q** From phone contact?

15 **A** Yes, sir, from his roommate, Mr. Daniel Tetter.

16 **Q** Mr. Daniel Tetter?

17 **A** Yes, sir. And this was like --

18 **Q** And this was his roommate where?

19 **A** At CCI.

20 **Q** Central Correctional Institution --

21 **A** That's correct.

22 **Q** -- known as prison?

23 **A** Yes, sir.

24 **Q** Okay. And when did that phone contact begin?

25 **A** It began the second week of April of '89.

1 Q Okay. And how long did that -- the telephone
2 contacts go on?

3 A They transpired for a month. And then after
4 the telephone conversations for about a month is
5 when next I went to go visit Mr. Farmer at the
6 Central Correctional Institution.

7 Q And why did you go visit him?

8 A I had asked his roommate if he had someone that
9 would like to have come visit him and that's when
10 Mr. Tetter told me about Phillip Farmer.

11 Q And how old were you at the time?

12 A At the time, I was 41 almost 42.

13 Q And Mr. Farmer was?

14 A I'll say he was probably in his early 30's.

15 Q Okay. Would it surprise you to know that he
16 was 26?

17 A That sounds about right, yes, sir.

18 Q Over the course of your contacts with Mr.
19 Farmer, could you tell us how many times you spoke
20 to him on the phone over the entire course of your
21 relationship with him?

22 A The entire course? It would vary, like
23 sometimes he would call me in one day like three or
24 four times during the day. And I guess you could
25 say it would vary, we'd have a phone contact like

1 every week of the month.

2 Q Okay. So would it be fair to say that it was
3 too many conversations to count?

4 A I'll say this, it was too many collect calls.

5 Q And what was your interest in Mr. Farmer?

6 A The interest was, like I say again, was just
7 going to visit someone at CCI. There was not any
8 interest in him. I was just going to visit with
9 him.

10 Q Okay. So you're denying that it was a romantic
11 interest?

12 A Correct.

13 Q Okay. Did you give Mr. Farmer any expensive
14 gifts?

15 A Did I give him any expensive gifts?

16 Q Yes, sir.

17 A No, sir, I did not.

18 Q Okay. Did you give him any gifts?

19 A The only thing I took in is like just some, you
20 know, cash money.

21 Q But you also gave him some expensive Nike
22 tennis shoes, did you not?

23 A Yes, I did buy him a pair of Nike tennis shoes.

24 Q All right, sir. And that was more than once,
25 wasn't it?

1 A Yes, sir.

2 Q In fact, it was at least three pairs of Nike
3 tennis shoes that you bought Mr. Farmer during your
4 relationship with him?

5 A Yes, sir.

6 Q What else did you give him? What other
7 presents?

8 A Mostly I gave him either cash or either like,
9 you know, send money orders through the mail.

10 Q Okay. Did you give him anything else?

11 A Not that I recall.

12 Q All right, sir. Did he give you a ring?

13 A Did he give me a ring?

14 Q Yes, sir.

15 A Not that I recall, no, sir.

16 Q Okay. But you don't deny it?

17 A No, sir.

18 Q Okay. Now, did you come to visit Mr. Farmer?

19 A Yes, sir, and that was in -- started in May of
20 '89.

21 Q Did you -- would you tell us about the
22 procedure for visiting someone at CCI, what you went
23 through?

24 A Okay. The procedure is once you go across the
25 crosswalk, you have to check in there at the desk,

1 show you driver's license and then you have to be
2 checked by the wand they use, they run up your --
3 front and back of the body.

4 Q You mean the electronic metal detectors?

5 A Yes, sir, metal detector, yes, sir. And then
6 after that, once you get your visiting pass, you
7 just then make your way on into the -- go in the
8 institution and go into the visiting room and sit
9 down and wait until the inmate comes into the
10 visiting room.

11 Q And this would be what's called a contact
12 visit, there would be no glass in between you?

13 A No, sir, sitting directly at the table.

14 Q So it's what would be called a contact visit?

15 A Yes, sir.

16 Q All right. Did you ever have any difficulties
17 in visiting Mr. Farmer?

18 A Such as? Or if you can be --

19 Q I'm sorry?

20 A If you can be a little more specific.

21 Q Did anything ever interfere with your visits
22 with Mr. Farmer?

23 A Yes, sir, it did.

24 Q Would you tell us about those, please?

25 A I was talked into taking drugs into the Central

1 Correctional Institution by Mr. Farmer.

2 Q Okay. Did anyone else talk to you or assist
3 you in smuggling these drugs into CCI?

4 A When I was called by Mr. Farmer, I was told to
5 go over to Ms. Quinn's home.

6 Q Kimberly Quinn?

7 A Yes, that she had something for me to pick up,
8 you know, before I would go to the institution to
9 see him. I was called at home.

10 Q And you said you were talked into smuggling
11 drugs. That's plural, is it not, drugs?

12 A Yes, sir.

13 Q Because it was more than one kind of drugs?

14 A Yes, sir. Now, what it was I do not know
15 because it was already wrapped up with black masking
16 tape.

17 Q You're saying that you were given a package by
18 Ms. Quinn to take into Mr. Farmer?

19 A Yes, sir. It wasn't a package, it was just --
20 I guess, it was -- what it was -- when I got to the
21 house, it was already wrapped up.

22 Q And you had no idea what was in that package?

23 A No, sir.

24 Q You did not know it was drugs?

25 A I knew it was drugs, but I didn't know what

1 kind it was. I didn't ask any --

2 Q Okay.

3 A -- any questions.

4 Q I'm sorry. I didn't mean to interrupt you.

5 A That's okay.

6 Q You were aware that it was more than one kind
7 of drugs?

8 A I assumed so, yes, sir.

9 Q All right. Did you -- are you saying -- are
10 you telling this jury today that you never knew what
11 sort of drugs, illegal drugs, these were?

12 A No, sir.

13 Q Okay. Do you remember giving a statement,
14 Mr. LeGrand?

15 A Yes.

16 Q What is -- what does the term reefer mean?

17 A I do not know.

18 Q So you don't know that --

19 A I don't know anything about these illegal
20 drugs. I'm being honest with you.

21 Q You don't have any knowledge of what the term
22 reefer means?

23 A No, sir.

24 Q You never heard of the movie Reefer Madness?

25 A No, sir.

1 Q You're telling this jury that you don't know
2 that reefer is marijuana?

3 MR. BELL: Objection, Your Honor. It's asked
4 and answered.

5 MR. DUNCAN: I hadn't used the term marijuana,
6 Judge.

7 THE COURT: Ask your question.

8 BY MR. DUNCAN:

9 Q Are you telling this jury that you do not and
10 have never known that reefer means marijuana?

11 A No, sir.

12 Q You're not telling the jury that?

13 A No, sir. I'm just aware -- I can tell you
14 again, I'm not familiar with these, you know, with
15 illegal drugs. Like I know it's -- if it was
16 something put before me, I couldn't tell you one
17 from the other what it was.

18 Q So you're saying you do not now or have never
19 known that reefer means marijuana?

20 A No, sir.

21 Q What other drugs did you smuggle in?

22 A There was one I want to say was possibly Xanax.

23 Q Possibly Xanax?

24 A Yes, sir.

25 Q And why do you say possibly? What is the doubt

1 in your mind?

2 A Because like I say again, it was already --
3 again, the drugs I took in was already wrapped up,
4 so, therefore, you know, I'm just assuming that one
5 of those drugs was possibly Xanax.

6 Q Okay. So -- you don't have any idea how it
7 might have been Xanax, you're saying it just kind of
8 popped into your mind or what?

9 A Popped into my mind, yes, sir.

10 Q Okay. Mr. LeGrand, did you ever, for any
11 reason, go to Lexington Area Mental Health?

12 A Lexington Mental Health.

13 Q Or a mental health facility anywhere?

14 A Not Lexington Mental Health, no, sir.

15 Q Columbia Mental Health?

16 A Columbia Area Mental Health.

17 Q Okay. And were you given any prescriptions
18 there?

19 A For me.

20 Q And what were those prescriptions for?

21 A They're for, I have bipolar disorder and manic
22 depressive.

23 Q And what were the drugs that you were given --
24 prescribed?

25 A Prescribed to me was Xanax and Restoril.

1 Q Okay. And you're aware of the contraband
2 policy at CCI?

3 A Yes, I am.

4 Q And you're aware that even giving those Xanax
5 to someone else is considered distribution of drugs?

6 A I understand that, yes, sir.

7 Q All right, sir. And so you had a prescription
8 for Xanax, but you're saying you don't know --
9 you're telling this jury, you don't know what it was
10 that you were smuggling into CCI?

11 A Yes, sir, that's correct.

12 Q Were there any other drugs besides marijuana
13 and Xanax?

14 A Not to my knowing, no, sir.

15 Q Okay. And so the three people that were
16 involved in the Xanax and marijuana smuggling were
17 you, Kimberly Quinn and Red Farmer?

18 A Correct.

19 Q And you told the police this, correct?

20 A Yes, sir, that's correct. Yes, sir.

21 Q Has anyone with the prosecution or the police
22 read you your Miranda rights at any time?

23 MR. BELL: Objection, Your Honor.

24 THE COURT: Yes, sir.

25 MR. DUNCAN: I'm sorry. I'll withdraw the

1 question.

2 THE COURT: The question's withdrawn.

3 BY MR. DUNCAN:

4 Q Have you ever been arrested for drug smuggling?

5 A No, sir.

6 Q But you told the prosecution this?

7 A Yes, sir.

8 Q And you told the police this?

9 A Yes, sir, correct.

10 Q Tell me --

11 A If I --

12 Q I'm sorry. I believe I interrupted you when
13 you were telling us about the difficulties you had
14 in visitation. Tell us -- start --

15 A Okay. In the visits with Mr. Farmer, there
16 come a time that I was taking something in to the
17 institution.

18 Q And when you say taking something in, you're
19 talking about illegal drugs?

20 A And if I may go ahead and if the Court will
21 allow me to say this, I placed it down in -- under
22 my underwear taking it in. And when I was going
23 into the visiting room, one of the correctional
24 officers noticed that there was something that was
25 moving around in the underwear of my clothing. So I

1 was wondering why that Mr. Farmer hadn't come into
2 the visiting room. So when the correctional officer
3 come to me, he said, Mr. LeGrand, may I see you for
4 a minute, please? They took me into a room and they
5 wanted to strip search me and I refused that, so
6 that way the visitation rights were suspended.

7 Q And you refused because you knew you had drugs
8 on you?

9 A Yes, sir. I refused the strip search.

10 Q And you knew that was illegal?

11 A Yes, sir.

12 Q You knew it violated all kinds of contraband
13 laws?

14 A Correct, yes, sir.

15 Q Now, I'll ask you again, would it be fair to
16 say you have a bias in favor of Red Farmer?

17 A There -- just a short period of time, I did,
18 but then I got over that.

19 Q So you're saying this was not a romantic
20 interest?

21 A No.

22 Q But it was a bias in favor of Mr. Farmer?

23 A Yes.

24 MR. DUNCAN: Thank you, Mr. LeGrand.

25 THE COURT: You're certainly welcome, sir.

1 **MR. BELL:** Nothing further, Your Honor.

2 **THE COURT:** You may step down.

3 **MR. BELL:** We'd ask that the witness be
4 excused.

5 **THE COURT:** Any objection?

6 **MR. DUNCAN:** No objection.

7 **THE COURT:** You may be excused, sir.

8 **THE WITNESS:** Thank you, sir.

9 **MR. BELL:** One moment, Your Honor.

10 (Pause.)

11 **MR. BELL:** Your Honor, at this time, I have a
12 stipulation to tell the jury in regards to a witness
13 to speed things up. The State would propose to call
14 Carlotta Stackhouse, who is with the State Law
15 Enforcement Division. Back in 1989, she was a
16 lieutenant who examined -- and we would -- she would
17 be an expert, lieutenant who examined the results in
18 arson investigations, that is she would chemically
19 examine those results. And that items, State's
20 items 29 and 36 were submitted to her and then she
21 found that they contained gasoline as part of her
22 examination.

23 **THE COURT:** All right. And that's your
24 stipulation?

25 **MR. BRUCK:** Yes, sir.

1 **THE COURT:** All right. Ladies and gentlemen,
2 they've stipulated to those facts. And you should
3 accept those facts as being true, consider them any
4 way you deem appropriate during your deliberations.

5 **MR. BELL:** And another stipulation that both
6 the State and the defense has agreed to: The State
7 and Robert Sutherland reached an agreement prior to
8 his testimony in this trial. Mr. Sutherland agreed
9 to testify for the State. For its part, the State
10 agreed not to seek the death penalty when
11 Mr. Sutherland is resentenced for the murder of
12 Kimberly Quinn.

13 The effect of this agreement is that Mr.
14 Sutherland will not be sentenced to death and could
15 receive a sentence of not less than 30 years in the
16 discretion of the sentencing judge. If the State
17 had not agreed to withdraw its request for the death
18 penalty, Mr. Sutherland could not have received any
19 sentence other than death or life imprisonment
20 without parole.

21 And I'll mark this as a court's exhibit, Your
22 Honor.

23 **THE COURT:** All right. Is that your
24 stipulation?

25 **MR. BRUCK:** Yes, sir, that's it.

1 **THE COURT:** All right.

2 (Court's Exhibit Number 10, stipulation, was
3 marked for identification purposes.)

4 **MR. LUPTON:** Your Honor, the next witness would
5 be the testimony of Phillip Gary Farmer. I believe
6 that there are some issues that we need to take up
7 about that issue.

8 **MR. BRUCK:** Maybe what we could do is proceed
9 through the direct and the part of the cross that we
10 intend to read and then break for a moment, just --
11 it's the Court's pleasure, whichever would be
12 better.

13 **THE COURT:** Whatever y'all prefer. Will that
14 take us through to about lunch, a little bit before
15 lunch and we can take that up before lunch?

16 **MR. LUPTON:** That would be fine, Your Honor,
17 however the Court wants to do it.

18 **THE COURT:** All right. They're going to read
19 to you, ladies and gentlemen, the testimony. You
20 want to state his full name?

21 **MR. LUPTON:** My full name?

22 **THE COURT:** No, the person you're reading --

23 **MR. LUPTON:** The full name of the witness is
24 Phillip Gary Farmer called by the State in the prior
25 proceeding, read from the direct examination on the

1 transcript.

2 **THE COURT:** Ladies and gentlemen, again, this
3 is testimony that was given under oath with each
4 side present to ask questions, hear the answers and
5 to ask -- cross-examination, so you should consider
6 this testimony as you would the testimony of any
7 other witness and give it such weight as you may
8 deem it to be entitled to your consideration of the
9 issues. They're just going to read to you that
10 testimony.

11 **MR. LUPTON:** Thank you. May it please the
12 Court.

13 Phillip Red Farmer, being first duly sworn,
14 testified as follows: Would you tell the jury your
15 name, please.

16 Phillip Farmer.

17 Phillip, what are you known as? What is your
18 nickname?

19 Red.

20 I want you to speak up some. I want all
21 members of this jury to hear you. What is your
22 present status? Where are you at right now as to
23 where you live?

24 I'm incarcerated with the South Carolina
25 Department of Corrections at Allendale Correctional

1 Institute.

2 You're a state penitentiary inmate; is that
3 correct?

4 Yes, sir.

5 How long have you been in the penitentiary?

6 Since April 1st, 1990 -- excuse me -- 1985.

7 Now, you are here today and I guess to begin
8 with, there are some charges pending against you in
9 this particular case. You understand that, don't
10 you, Mr. Farmer?

11 Yes, sir.

12 And you know that you are charged -- with what
13 you are charged with?

14 Yes, sir.

15 What are you charged with?

16 Criminal conspiracy.

17 Are you pleading guilty to criminal conspiracy?

18 Yes, sir.

19 What is the potential punishment that you can
20 receive for a criminal conspiracy?

21 Five years.

22 Is there any fine involved?

23 Yes, sir, \$5,000.

24 The maximum you could receive, as you
25 understand it, is five years or \$5,000; is that

1 right?

2 Or both.

3 Have I or any officers or Solicitor Myers or
4 anyone made any promises to you except that you may
5 get five years?

6 No, sir.

7 Who have we told -- who have we told you it
8 would be up to of whatever sentence you get?

9 The judge.

10 Judge Long right here?

11 Yes, sir.

12 At that point, the Court said: I don't know
13 whether it's before me or not. Anyhow, if it is, so
14 be it.

15 Question: But you could get five years
16 consecutive, additional time for pleading to
17 criminal conspiracy; is that right?

18 Yes, sir.

19 Why are you pleading guilty to criminal
20 conspiracy?

21 Because I am guilty.

22 You are guilty of criminal conspiracy to do
23 what? What did you conspire to do?

24 Rob Kim Quinn.

25 Who did you conspire with to rob Kim Quinn?

1 Answer: Tony Cooper.

2 And are you guilty?

3 Yes, sir.

4 And are you pleading guilty freely and
5 voluntarily?

6 Yes, sir.

7 Have I coerced you or promised you anything or
8 forced you to plead guilty?

9 No, sir.

10 Red, so that the jury is very clear, of course,
11 me and you talked on several occasions; is that
12 right?

13 Yes, sir.

14 So that the jury is very clear, you also had a
15 charge of conspiracy to kidnap; is that right?

16 Yes, sir.

17 What kind of sentence does conspiracy to kidnap
18 carry?

19 A life sentence.

20 And you are pleading guilty to conspiracy to
21 kidnap?

22 No, sir.

23 Are you guilty of conspiracy to kidnap?

24 No, sir.

25 Have I told you that you are not pleading

1 guilty and I am not prosecuting you for conspiracy
2 to kidnap; is that correct?

3 The defense at that time objects. Your Honor,
4 we object to that. What he tells him now --

5 MR. BRUCK: Why don't we just go ahead --

6 THE COURT: Why don't y'all approach for a
7 minute?

8 (Whereupon, a bench conference was held off
9 the record, in the presence of the jury, but out of
10 the hearing of the jury.)

11 MR. LUPTON: I am not prosecuting you for
12 conspiracy to kidnap; isn't that right?

13 Yes, sir.

14 You have been told then what is the maximum
15 potential sentence you can get, Red?

16 Five years.

17 That is your understanding and that is what you
18 have been told; is that right.

19 Yes, sir.

20 You have an attorney in this matter?

21 Yes, sir.

22 That attorney was appointed to represent you?

23 Yes, sir.

24 And he's appointed by the court to represent
25 you, right?

1 Yes, sir.

2 And you have had a discussion with him about
3 this?

4 Yes, sir.

5 Red, you testified you have been in the
6 penitentiary since '85. I won't go back before '85.
7 Do you have a 1982 conviction for housebreaking and
8 grand larceny?

9 Yes, sir.

10 Did you plead guilty?

11 Yes, sir.

12 Do you have a 1984 conviction for forgery?

13 Yes, sir.

14 Pled guilty?

15 Yes, sir.

16 1985, two counts of housebreaking and grand
17 larceny?

18 Yes, sir.

19 Also in September of 1990, were you charged by
20 the department of corrections administratively with
21 possession of marijuana?

22 Yes, sir.

23 And you pled guilty before an administrative
24 hearing or something of that nature for that?

25 Yes, sir.

1 At that time, the court advises the jury: Mr.
2 Foreman and ladies and gentlemen of the jury, let me
3 point out at this point, the law says that anyone
4 who has been convicted of a felony, that may be
5 brought out in the trial of a case not as to the
6 charges for which a person is being charged with,
7 but it is brought for the purpose -- there is no
8 evidence as to that charge, but it is brought and
9 permitted under the law in order to tell you. The
10 jury, may consider the believability and credibility
11 of the witness.

12 As in all cases, of course, as I told you
13 earlier on, you are concerned with believability and
14 credibility. You may consider, therefore, that
15 along with other evidence, of course, that's up to
16 you, as to the believability and credibility only,
17 it has nothing to do with the trial of this
18 particular case other than for that purpose.

19 **THE COURT:** You're just going to read the
20 actual trial testimony, counsel. Go ahead.

21 **MR. LUPTON:** Red, I want to make sure that I
22 have been absolutely clear with you and the jury.
23 Is it your understanding that you can or cannot be
24 prosecuted for any other charges for crimes coming
25 out of this incident?

1 Cannot.

2 Cannot?

3 Right.

4 Only that you are pleading guilty to the
5 criminal conspiracy; is that correct?

6 Right.

7 Now, back in October of 1989, where were you an
8 inmate at?

9 CCI.

10 In Columbia?

11 Yes, sir.

12 How long had you been an inmate at CCI?

13 Since late May or early June 1987.

14 I want to ask you if you know a few people.

15 Did you know Kimberly Quinn?

16 Yes, sir.

17 Did you know Eugene Carter?

18 Yes, sir.

19 Did you know Brenda McLauren?

20 Yes, sir.

21 Did you know the defendant, Tony Cooper?

22 Yes, sir.

23 Now, as an inmate at CCI, can y'all receive
24 visits?

25 Yes, sir.

1 How often can y'all receive visits?

2 Eight visits a month, one every week and every
3 other weekend.

4 When you say one every week, is that a weekday?

5 Right.

6 And every other weekend?

7 Right.

8 Does it have to be just family members?

9 No, sir. You have family members and I think
10 it's three friends.

11 And they are listed on a visitation chart?

12 Yes.

13 Do you recognize State's Exhibit Number 8?

14 Yes, sir.

15 Who is that a photograph of?

16 Brenda McLauren.

17 Brenda McLauren, did she visit you?

18 Sure.

19 Over what period of time did Brenda visit you?

20 I have known her almost two years. We visited
21 together for almost two years.

22 Do you know what relationship or kinship there
23 is between Brenda McLauren and the defendant, Tony
24 Cooper?

25 She is his niece.

1 Tony is her uncle?
2 Right.
3 Tony Cooper is her uncle. Now, Eugene Carter,
4 also an inmate at CCI?
5 Yes, sir.
6 Did he also receive visits?
7 Yes, sir.
8 Do all inmates at CCI receive visits, Mr.
9 Farmer?
10 All are eligible to, but not all do.
11 Among his friends, was there a Kim Quinn?
12 Yes, sir.
13 You knew Kim Quinn through her visiting Eugene
14 Carter?
15 Yes, sir.
16 Did you also know her phone number?
17 Yes, sir.
18 Do you recall it sitting here today?
19 Not right off hand.
20 But you knew it?
21 Yes, sir.
22 Knew it was a local number?
23 Yes, sir.
24 Now, let me ask you a couple of other things.
25 Do y'all have telephones down at CCI?

1 Yes, sir.

2 Can you call the outside world? Can you go to
3 the phone and just call outside the penitentiary any
4 time you want?

5 Yes, sir.

6 What type of phones did they have available for
7 inmates?

8 They have pay phones for local calls and
9 collect phones for long distance calls.

10 Can you put a quarter in the phone and make a
11 local call?

12 You used to could, you can't anymore, but you
13 used to could.

14 What do you have to do?

15 They are all collect phones now.

16 Even if you call locally in the Columbia area
17 is that a collect call?

18 Yes, sir.

19 Besides having access to pay phones and phones
20 which you can make collect calls on, is it possible
21 for inmates to have access to state phones?

22 In certain situations, yes, sir.

23 What did you do, if anything, as far as a job
24 assignment at CCI back in October of '89?

25 I was assigned to the education department as a

1 literacy supervisor.

2 Let me back up a minute. How old are you?

3 Twenty-six.

4 How old were you in 1982, 17; is that right?

5 Eighteen.

6 Between the two of us, we couldn't figure that
7 out, could we, Mr. Farmer?

8 Eighteen.

9 In 1982, was your housebreaking and grand
10 larceny conviction. You have been in jail since
11 '85. How old were you in '85?

12 Twenty-one.

13 How much education did you have in 1985?

14 High school education, a GED.

15 You had gotten a GED by that time?

16 Yes, sir. I got it in 1984 when I done a
17 youthful offender sentence at Aiken.

18 You got your GED when you were previously
19 incarcerated under the youthful offender division,
20 right?

21 Yes.

22 When did you originally drop out of school?

23 Christmas of 1981.

24 What grade would that have been?

25 Eleventh grade.

1 Now, you said you were assigned to a particular
2 position or job at CCI in October of '89, where were
3 you assigned? What were your duties, your job
4 functions down there?

5 I kept the records of approximately 40 tutors
6 who taught other people how to read and write.

7 Did you do any tutoring?

8 Yes, sir, that is how I got the job that I had.

9 How did you get that job?

10 Whenever I first started working in the
11 education department, I was given a test which
12 showed that I had enough sense to do it. The
13 principal of the school offered me the opportunity
14 with level two work credits, which is the best that
15 you can get in the department of corrections. CCI
16 did not have a literacy program at the time. He
17 told me that he would like for me to start it. When
18 we started out, there was about four tutors, myself
19 included. By the time I left CCI, we had
20 approximately 40 to 45 tutors and about 150
21 students.

22 Now, would that give you access to the school
23 as known -- as is known as the schoolhouse?

24 Yes, sir.

25 The education department?

1 Yes, sir.

2 And that is separate from where you lived, the
3 cell block you lived in; is that right?

4 Yes, sir.

5 What cell block were you living in back then?

6 Three.

7 The schoolhouse is under what building?

8 The Stoney building.

9 Being assigned there, did you have access to
10 and take advantage of the state telephones?

11 Sure.

12 So you can make calls on the state telephone
13 and they necessarily wouldn't be recorded just like
14 a state employee could?

15 Yes, sir, I could make calls out and receive
16 calls, also.

17 If people knew how to call you there?

18 Yes, sir.

19 Tuesday, October 3rd of '89, and you said you
20 knew Eugene Carter, did you have a conversation with
21 Eugene Carter?

22 Yes, sir.

23 And on Wednesday, October 4th of '89, did you
24 have a visit?

25 Yes, sir.

1 Who was that visit from?

2 Brenda McLauren.

3 And that is Brenda that I showed you in the
4 photograph -- showed you the photograph of; is that
5 right?

6 Yes, sir.

7 Now, among other things, what did you tell
8 Brenda McLauren on the phone?

9 To tell Tony Cooper to get in touch with me.

10 Tony Cooper, are you referring to her uncle?

11 Yes, sir.

12 The defendant?

13 Yes, sir.

14 Later on that day, did you have the opportunity
15 to talk with Tony Cooper?

16 Yes, sir.

17 Was that in person or by phone?

18 By phone.

19 Who called whom?

20 I called him.

21 You called him from what phone?

22 CB three, I believe.

23 Not a state employee phone?

24 No, sir.

25 Where did you call him at?

1 His home.

2 About what time was it that you called him?

3 Approximately, 7:30 in -- approximately, 7:30.

4 In the evening?

5 Yes, sir.

6 We are talking, Mr. Farmer, Wednesday, October
7 4th?

8 Yes, sir.

9 What was the conversation that you had with
10 Tony Cooper at 7:30 on Wednesday, October 4th?

11 I told him that me and Eugene Carter had had a
12 conversation about Kim Quinn receiving an insurance
13 check for \$2800. I also told him that it would be a
14 good opportunity to rob her.

15 What did Mr. Cooper say?

16 He said he didn't see any problem with it.

17 He said what now?

18 He said he didn't see any problem.

19 Did he know Kim Quinn?

20 Yes, sir.

21 What else did he say about that?

22 He told me that he didn't have any respect for
23 the bitch.

24 Referring to Kim Quinn?

25 Yes, sir.

1 And this was a long distance phone call; is
2 that right?

3 Yes, sir.

4 Now, what were you going to get out of this?
5 Tell the jury what Red Farmer was going to get out
6 of this.

7 Five hundred dollars.

8 So you were going to share in the proceeds of
9 the robbery?

10 Yes, sir.

11 Let me ask you, after that 7:30 call on that
12 Wednesday evening, which was long distance, did you
13 have any other conversations with Tony that evening,
14 if you recall?

15 No, sir.

16 Between then and Friday morning, the 6th of
17 October, did you have any conversations with
18 Mr. Cooper?

19 No, sir.

20 Now, did you have an opportunity to be out on
21 the yard in CCI on Friday, October 6th?

22 Yes, sir.

23 Did you see or run into another inmate at that
24 time?

25 Yes, sir.

1 Who was that?
2 Eugene Carter.
3 Did you have a conversation with Mr. Carter?
4 Yes, sir.
5 About what time are we talking about Friday
6 morning?
7 9:30, 10:00 a.m.
8 As a result of that conversation with Mr.
9 Carter, where did you go?
10 To the education department.
11 Why did you want to go to the education
12 department? What did you want access to?
13 The telephone.
14 While there at the education department, did
15 you receive a phone call?
16 Yes, sir.
17 Who was that phone call from?
18 Tony Cooper.
19 Sitting here right now, do you remember the
20 state phone number coming into the education
21 department?
22 Yes, sir. It's two lines.
23 What are they?
24 [REDACTED] and [REDACTED].
25 Question: [REDACTED].

1 And -- answer: And 737-1888.

2 Now, about what time is it that Tony Cooper
3 called you?

4 Ten o'clock.

5 This is ten o'clock Friday, October 6th; is
6 that right?

7 Nods head.

8 When y'all talked on the state line, is that
9 different than when y'all talked on -- do you -- do
10 y'all, as inmates, do anything different than when
11 y'all talk on a pay phone or a collect phone?

12 In certain situations, yes, sir.

13 Why?

14 Because state phones go through a computer and
15 are monitored on certain occasions.

16 What does that mean?

17 We talk in riddles round and round in circles
18 so that nobody else would know what we was talking
19 about.

20 And what was the conversation you had with
21 Mr. Cooper that morning, what did he say? What did
22 you say?

23 Answer: That my intelligence was wrong that
24 she did not have the 2800, that he completed the
25 construction job that he was working on and that he

1 had burned excess material and was real pleased with
2 the job and didn't see any complications.

3 Question: What construction job were you and
4 Tony Cooper involved in on Friday, October 6th?

5 The robbery of Kim Quinn.

6 That's the only thing you and him were involved
7 in on Friday, October 6th?

8 Yes, sir.

9 What was your understanding of that
10 conversation?

11 That the robbery had been completed and that he
12 had killed Kim Quinn.

13 And what else?

14 That he had burned the body.

15 Now, you didn't immediately, after that
16 conversation, pick up the phone and dial 911?

17 No, sir.

18 And you didn't report this, did you?

19 No, sir.

20 Let me back up one minute, Mr. Farmer. On the
21 conversation on Friday morning, what was that
22 conversation as far as the amount involved?

23 Twenty-eight hundred dollars.

24 And then on Friday morning, what was that
25 conversation?

1 He said that my intelligence was wrong that she
2 did not have the 2800, that the construction job --
3 he had finished the construction job and had burned
4 the excess material. He also said that he did get
5 paid, but it wasn't what he expected.

6 So the 2800 -- so the 28 wasn't there, the
7 2800, it was less?

8 Yes, sir.

9 Now, later on, did you talk to the police?

10 Yes, sir.

11 In the first time or two, I'm not sure how
12 many, you didn't tell them this?

13 No, sir.

14 And then you made a statement; is that correct?

15 Yes, sir, on November 15th.

16 Mr. Farmer, what you are telling this jury
17 today is that the truth?

18 Yes, sir.

19 Why are you pleading guilty?

20 Because I am guilty.

21 And you are guilty of what?

22 Conspiracy to commit robbery.

23 To rob who?

24 Kim Quinn.

25 And who did you conspire to rob Kim Quinn with?

1 Tony Cooper.

2 No doubt?

3 Answer: No doubt.

4 I don't have any further questions.

5 MR. BRUCK: Your Honor, there are only a few
6 pages that aren't exchanges with the Court, so I'll
7 keep counsel apprised of what other matter that's
8 not relevant, so I'll let counsel know where I'm
9 reading.

10 THE COURT: All right.

11 MR. BRUCK: Page 1339: Mr. Farmer, you have
12 college credits, don't you?

13 Answer: Yes.

14 So you have got the equivalent, as I understand
15 it, of two years of college?

16 Just about, yes, sir.

17 Mr. Farmer, do you remember making several
18 telephone calls to the Cooper residence from
19 Allendale Prison?

20 Yes, sir.

21 Do you remember speaking to Mr. Cooper, Senior,
22 Gene Tony Cooper, Senior?

23 Yes, sir.

24 And you remember talking to Ms. Cooper, Tony's
25 mother, and father?

1 Yes, sir.

2 Line 15: Mr. Farmer, you first went to the
3 West Columbia Police Department on October 9th,
4 didn't you?

5 Yes, sir.

6 And you stayed until the next day, the 10th?

7 Yes, sir.

8 And you talked to the police those two days?

9 Yes, sir.

10 You then went back to the police, West Columbia
11 Police Department, on the 13th of October, didn't
12 you?

13 Yes, sir.

14 And you stayed for the next six days, didn't
15 you?

16 Answer: Something like that.

17 Question: And you were talking to the police
18 the whole time?

19 Answer: On and off, yes, sir.

20 Question: Then you went back to the police
21 department some several weeks later, November 15th;
22 isn't that correct?

23 Answer: Yes, sir.

24 And you were talking to the police during that
25 time, too?

1 Answer: Yes, sir, that is when the warrants
2 were served.

3 Question: Then on the 16th after some ten days
4 of getting your story straight, is that when you
5 gave the signed statement, isn't it?

6 Answer: I gave the signed statement on
7 November 15th, November 16th.

8 Question: You signed the statement on the
9 16th?

10 Yes, sir.

11 Question: During this time period, the reason
12 why you didn't sign anything up until that time is
13 you were getting your story straight, weren't you?

14 Answer: No, sir. I just didn't feel like I
15 needed to say anything at all.

16 Page 1334 line 19. Question: Now, tell me
17 again exactly what was it you were promised in order
18 to get you to testify here today?

19 Answer: I wasn't promised anything.

20 Question: Mr. Farmer, you were looking at a
21 life sentence; isn't that correct?

22 Answer; Yes, sir.

23 Question: And because of the promises, you are
24 facing a max of a five year cap; isn't that true?

25 Answer: No, sir. I would plead guilty to

1 criminal conspiracy if they'd drop the charges of
2 conspiracy to commit kidnapping and conspiracy to
3 commit robbery.

4 Question: And you were charged with conspiracy
5 to kidnap which carries a life sentence?

6 Answer: At that time, yes, sir.

7 Question: So you are saying that is not a
8 promise?

9 Answer: No, sir. I just told them that I
10 would plead guilty to criminal conspiracy if they
11 would drop the other two and we agreed to that.

12 Question: And you certainly want less than
13 five years, don't you?

14 Answer: Certainly.

15 Question: And you want probation out of this
16 and that is what you expect, isn't it?

17 Answer: No, sir. I expect five years to be
18 honest.

19 Question: Well, you have got a lot of
20 incentive to tell the prosecution and this jury a
21 whopper of a story, don't you?

22 Answer: No, sir. I just feel like if I go to
23 lying, it's just going to get that much worse.

24 Question: So you are worried about lying?

25 Answer: In this courtroom, yes, sir.

1 Question: Mr. Farmer, you said that Tony
2 Cooper called you on October 6th; isn't that true?

3 Answer: Yes, sir.

4 Question: From -- you were at [REDACTED]?

5 Answer: Yes, sir.

6 Tony Cooper lives in Pelion, doesn't he?

7 Answer: Yes, sir.

8 Question: Mr. Farmer, isn't it true that that
9 call took place on the 5th before Kim Quinn was
10 murdered?

11 Answer: No, sir.

12 That is not true?

13 Answer: I did not talk to Tony Cooper. I
14 talked to him on the 4th and then I talked to him
15 again on the 6th.

16 Question: And you are sure of that, that it's
17 the 6th and not the 5th?

18 Answer: Yes, sir.

19 Question: Now, who is Richard Snipes?

20 Answer: Tony's brother-in-law.

21 Question: Where is Richard Snipes?

22 Answer: At CCI.

23 Question: He was in prison with you?

24 Answer: Yes, sir.

25 Question: So all of his family out there, Tony

1 Cooper is Richard Snipes' family too, isn't it?

2 Answer: Yes, sir.

3 And were you aware that Richard Snipes was
4 making phone calls back and forth to his family?

5 Answer: I am quite sure he has, yes, sir.

6 Question: You are saying you were not promised
7 anything other than that they weren't going to ask
8 for a life sentence for you and that's all, nothing
9 else?

10 Answer: Yes, sir.

11 Page 15 -- 1351 line five. Question: Mr.
12 Farmer, have you ever had any money taken from you
13 by the West Columbia Police Department?

14 Answer: Not actually by the West Columbia
15 Police Department, but by the department of
16 corrections.

17 Question: Mr. Farmer, you have made
18 allegations against the West Columbia Police
19 Department, haven't you?

20 Answer: Two of the West Columbia Police
21 Department officers were there, but they are not the
22 ones that actually took the money.

23 Question: How much money was involved?

24 Answer: Twenty-two hundred 50 dollars and two
25 diamond rings.

1 Question: And you made complaints about the
2 West Columbia Police Department, didn't you?

3 Answer: I told them, yes. They were there,
4 yes.

5 Okay. You got a prior complaint against them
6 and you have got a complaint here now, but you are
7 telling us that this second complaint is not true?

8 Answer: Right.

9 Page 1379 line 22. Mr. Farmer, have you
10 admitted to several people that you accepted a
11 bribe?

12 MR. LUPTON: Objection -- I'll withdraw it.

13 THE COURT: All right. Go ahead.

14 MR. LUPTON: Yes, Your Honor, I will object. I
15 object to that question. I do not object to the
16 part where he's asked if he's ever accepted a bribe.

17 THE COURT: Which line?

18 MR. BRUCK: That's what I was asking.

19 THE COURT: He's reading line 22.

20 MR. BRUCK: Line 22.

21 THE COURT: On page 1379.

22 MR. BRUCK: Just to 25, that's it.

23 MR. LUPTON: Your Honor, this is not --

24 THE COURT: Approach.

25 (Whereupon, a bench conference was held off

1 the record, in the presence of the jury, but out of
2 the hearing of the jury.)

3 THE COURT: Let me send you out, ladies and
4 gentlemen. Please do not discuss the case in any
5 way.

6 (The jury retires to the jury room.)

7 THE COURT: I thought y'all had agreed on what
8 can be read before we had to send the jury out.

9 MR. LUPTON: Your Honor, I apologize. I
10 thought that we were doing the whole thing. When we
11 started was the first I'd heard that --

12 THE COURT: Y'all get together and figure out
13 what y'all are going to read that doesn't require
14 the Court's resolution. What do you need for me to
15 rule on before we bring this jury back?

16 MR. LUPTON: Your Honor, if I can --

17 THE COURT: Y'all go over exactly what's going
18 to be read first.

19 (Pause.)

20 THE COURT: Do y'all need to go over this
21 during lunch?

22 MR. BRUCK: I think we're --

23 MR. LUPTON: I think that we can probably get
24 the rest of this in prior to lunch.

25 THE COURT: So there are no objections for me

1 to resolve?

2 **MR. LUPTON:** I'm going to withdraw because upon
3 looking at it closer, there was two separate areas
4 where the bribery allegations were discussed. And
5 this particular one was in front of the jury and
6 based on that, I'll withdraw the objection. There
7 was some stuff that took place outside the presence
8 that was more extensive and -- but I have no problem
9 with this particular -- few lines coming in.

10 **MR. BRUCK:** I'm sorry. There's one other very
11 small disagreement. Going into the proffer that the
12 Supreme Court said should have been admitted that
13 I'm going to now read to the jury, the first
14 question is, Is it correct that you --

15 **THE COURT:** What page and all are you reading
16 from?

17 **MR. BRUCK:** I'm sorry. 1407 line nine.

18 **THE COURT:** 1407 line nine?

19 **MR. BRUCK:** Right.

20 The first question: Is it correct that you
21 were engaged in an ongoing drug distribution
22 conspiracy with Eugene Carter, Kimberly Quinn, Norma
23 Campbell, Gerald LeGrand?

24 Answer: Yes, sir.

25 Then I'm going to read the rest of it. I

1 understand the State has no objection to the rest of
2 it or to that first question except for the
3 inclusion of the names Eugene Carter and Norma
4 Campbell.

5 Unfortunately, those are just -- now, the Court
6 did say on direct appeal on the record they had
7 before them when there was no mention of any drug
8 conspiracies involving Ms. Quinn, that it was
9 correct to exclude the names of the conspirators.

10 However, Ms. Quinn's name, Mr. LeGrand has
11 admitted to the drug conspiracy involving Mr.
12 Farmer. It's not the most important thing in the
13 world, but it just seems like the evidence is in now
14 nine ways to Sunday and Mr. Sutherland's statement
15 includes it and we're not going to make anything out
16 of it. It's just this is the answer. I don't know
17 how to clean it up.

18 **THE COURT:** Well, why do you think that should
19 come out?

20 **MR. LUPTON:** I think that the part -- the
21 Supreme Court said that the identities of the other
22 conspirators should not be included. I agree that
23 in this trial, the identity of Ms. Quinn and Gerald
24 LeGrand as coconspirators has already been brought
25 out and have no objection to that part of the

1 answer, but the stuff about Eugene Carter and Norma
2 Campbell, I think is not relevant and I think
3 under the Court's ruling --

4 **THE COURT:** The Supreme Court said that Eugene
5 Carter and Norma Campbell should not have been
6 mentioned?

7 **MR. LUPTON:** The evidence of prior bad acts
8 which are not the subject of conviction which go to
9 the witness' credibility are subject to
10 cross-examination. However, the cross-examine must
11 take the witnesses --

12 **THE COURT:** Where are you reading from please?
13 And slow down for the court reporter.

14 **MR. LUPTON:** I apologize. This is the direct
15 appeal on Mr. Cooper's case.

16 **THE COURT:** Which page are you reading from?

17 **MR. LUPTON:** It's the next to the last
18 paragraph or third to last paragraph. The next to
19 last paragraph prior to the conclusion states, Error
20 in excluding evidence of a witness' prior bad acts
21 is harmless where the witness is thoroughly
22 impeached by admission of other numerous, previous
23 convictions and acknowledged it in his testimony
24 given in exchange for favorable treatment.

25 Then the last paragraph prior to conclusion is,

1 The record is abundant with evidence tending to
2 impeach Farmer. The drug smuggling was harmless.

3 I'm sorry. Impeachment of State's witnesses
4 the first paragraph of that section, the court says,
5 the Trial court erred in refusing to permit his
6 cross-examination of State's witness, Red Farmer
7 regarding --

8 **THE COURT:** Where are you reading that from?

9 **MR. LUPTON:** I'll just allow the -- footnote
10 three of the opinion is the relevant one. I've been
11 dancing around it and I'll just hand it up for the
12 Court to read.

13 **THE COURT:** The court said the identities of
14 the other smugglers should be -- was properly
15 excluded, why not just skip those two if y'all don't
16 have any objection to doing that.

17 **MR. BRUCK:** May I say and two other individuals
18 just so that it doesn't appear -- if it's the
19 identity they're worried about. I don't want to
20 change the facts and make them different from what
21 Mr. Farmer actually said.

22 **MR. LUPTON:** Your Honor, I don't have a problem
23 if he says two other individuals.

24 **THE COURT:** Okay.

25 **MR. BRUCK:** And I think we've agreed to skip

1 the redirect because it was all responsive to cross
2 that we have admitted.

3 **MR. LUPTON:** Your Honor, I would like to review
4 that quickly to make sure.

5 (Pause.)

6 **MR. LUPTON:** Your Honor, I do believe that
7 there is one part that is relevant.

8 **THE COURT:** Y'all go over that first with each
9 other and let's see if we can get it resolved.

10 (Pause.)

11 **THE COURT:** Y'all have agreed on everything or
12 do you need me to resolve anything?

13 **MR. BRUCK:** We're ready to go.

14 **THE COURT:** Bring the jury back in.

15 (The jury returns to the courtroom.)

16 **THE COURT:** Go ahead, please.

17 **MR. BRUCK:** Mr. Foreman, ladies and gentlemen,
18 the cross-examination of Mr. Farmer continued with
19 this question: Mr. Farmer, have you admitted to
20 several people that you accepted a bribe from Eugene
21 Carter's family to testify in this case against Tony
22 Cooper?

23 Answer: Yes, I did say that.

24 Question: Is it correct that you were engaged
25 in an ongoing drug conspiracy -- I'm sorry -- in an

1 ongoing drug distribution conspiracy with Kimberly
2 Quinn -- with Eugene -- I'm sorry -- with Kimberly
3 Quinn, Gerald LeGrand and two other individuals?

4 Answer: Yes, sir.

5 And it is also true that you were involved in
6 the distribution of drugs in prison outside of that
7 conspiracy? You also freelanced with anybody else
8 that you could do a drug deal with?

9 Answer: That's how I made my living, yes, sir.

10 Question: And that is how you made your living
11 in prison?

12 Answer: Yes, sir.

13 And these drug conspiracies ran -- what is the
14 time period that these drug conspiracies ran
15 through?

16 Answer: Off and on since I have been locked
17 up.

18 Question: The entire time you have been locked
19 up?

20 Not so -- answer: Not so much the first year
21 probably.

22 Question: So that would be from 1986 until the
23 present?

24 Answer: Yes, sir.

25 Question: And this is February 16th of 1991?

1 Answer: Yes, sir.

2 Question: Thank you.

3 That's all I have.

4 **THE COURT:** Anything else?

5 **MR. LUPTON:** Yes, Your Honor. The relevant
6 parts begin on page 1396 line 13.

7 Question: Now, you talked to Bo Sutherland?

8 One time, yes, sir.

9 Tell the jury how you came -- how you come to
10 talk to Bo Sutherland and the extent of that
11 conversation, not what was said, but how you --

12 I called Tony Cooper one day and he was there.

13 Was Tony there?

14 Yes, sir. And, undoubtedly, he had to go to
15 the bathroom or something, he said, Here, talk to
16 Bo.

17 You called Tony Cooper to talk to who?

18 Tony.

19 While talking to Tony Cooper, undoubtedly, he
20 had to go do what?

21 Use the restroom or something.

22 So who got on the phone while Tony went to the
23 restroom?

24 Bo Sutherland.

25 And you talked with Tony for what time and

1 length?

2 Usually an average of 15 or 20 minutes.

3 How long did you talk to Bo?

4 Approximately, two to three minutes.

5 The only time in your life you talked to Bo?

6 The only time.

7 While Tony was in the bathroom?

8 Yes, sir.

9 As far as you knew the answers you gave this
10 jury today to the questions you were asked today is
11 that the truth?

12 Yes, sir.

13 Is what you are telling the jur -- is what
14 you're telling the jury?

15 Yes, sir.

16 You are guilty of conspiracy?

17 Yes, sir.

18 To do what?

19 To rob Kim Quinn.

20 With who?

21 Tony Cooper.

22 Is who you conspired with?

23 Yes, sir.

24 I don't have any further questions.

25 **MR. BRUCK:** Nothing further.

1 **THE COURT:** All right. Ladies and gentlemen,
2 I'm going to go ahead and send you to lunch. Please
3 report back at 1:30. Do not discuss this case in
4 any way. Thank you very much.

5 (The jury retires to the jury room.)

6 **THE COURT:** We'll see y'all after lunch. Thank
7 you.

8 (Whereupon, there was a luncheon recess.)

9 (State's Exhibit Number 41, visitors log,
10 was marked for identification purposes.)

11 **THE COURT:** Are y'all about ready to proceed?

12 **MR. LUPTON:** Yes, Your Honor.

13 **THE COURT:** Are y'all ready?

14 **MR. BRUCK:** Not for the jury, Your Honor.

15 We've narrowed our disagreements to the extent
16 possible regarding documentary impeachment. What
17 I'd like to do, if I may -- or maybe I should
18 describe what we disagree about and if the Court
19 needs to review the actual testimony, I have it here
20 marked.

21 The first area of disagreement, the State has
22 no objection to my reading -- what I propose to
23 introduce from the Texas conviction is the two
24 charges that Mr. Farmer was convicted of and the two
25 life sentences and fines that he received and then

1 to introduce a very small -- several very short
2 parts of his own testimony at his sentencing
3 hearing, which was before the jury in Texas in which
4 he discusses this case in a very, very different
5 way. And his own prior record in various ways
6 reveals his credibility.

7 **THE COURT:** That's at a sentencing hearing?

8 **MR. BRUCK:** At his hearing, yes.

9 The State doesn't object to some of what we
10 propose to do, but I would like to introduce both
11 his own counsel's discussion of his prior record,
12 which the State does not object to, that is, his own
13 direct examination about his prior record, and his
14 cross-examination on his prior record which does go
15 into the same offenses, but it does it obviously in
16 a different way.

17 **THE COURT:** Is there some dispute about his
18 prior record?

19 **MR. BRUCK:** No. It's going into basically the
20 story of his life and it shows him -- the theme that
21 comes out, and it's very hard to reproduce without
22 his being here, is that this is a man who constantly
23 minimizes, shifts blame, lies about everything he's
24 done in the past and it's a subtle thing. And it
25 has to be shown by letting the jury really hear how

1 the guy talks about what he has done and what he's
2 done together with other people.

3 **THE COURT:** Well, what part is objected to?

4 **MR. BRUCK:** They object to seven pages,
5 transcript pages -- six, actually less than that --
6 of cross-examination, I can hand them up to the
7 Court, on the grounds that it's cumulative to a few
8 pages on direct. We just think in his absence -- if
9 the Court would like to see the cross.

10 **THE COURT:** Well, is it cumulative in any way?
11 Then why don't you just read the second part instead
12 of the first part?

13 **MR. LUPTON:** Your Honor, I think the first part
14 is important because it talks about the charges in
15 South Carolina.

16 **MR. BRUCK:** Right.

17 **MR. LUPTON:** And I think that that -- so I
18 think that the first part is what should be read in,
19 which is his direct testimony. I think that the
20 whole thing is cumulative to a certain extent in
21 that most of his prior record has already been
22 brought out through the trial testimony that's read
23 into the record. So then we're now talking about a
24 cumulative reading on direct of Mr. Farmer in Texas.
25 And then they want to do a third version -- a third

1 reading on the Texas state's cross and I think that
2 that gets to be cumulative. I certainly agree that
3 he has a right to go into the first one.

4 **THE COURT:** Well, I mean, substantively, none
5 of it is objectionable. It's just cumulative in
6 your opinion?

7 **MR. LUPTON:** I think it's cumulative and I
8 think that it...

9 **MR. BRUCK:** I should say one more thing about
10 it. On cross, he becomes very, very vague about
11 what year any of these events involving Kim Quinn
12 occurred in. It takes a long, long time for him to
13 even acknowledge that it wasn't '92 or '91.

14 **THE COURT:** So there was some confusion in the
15 direct about something happening in '89 versus '90
16 or something like that?

17 **MR. BRUCK:** Not in the direct. It is revealed
18 on cross that he just seems to have a very hard time
19 remembering the date of a murder that, according to
20 his testimony in South Carolina, he instigated.

21 **THE COURT:** Well, on direct, they didn't
22 introduce certified records of the dates and all?

23 **MR. BRUCK:** Only of the date of his conviction,
24 but I'm talking about the witness himself. There
25 was no, you know, the state finally had to pin him

1 down using the certified records and getting him to
2 admit that the conviction was on a certain day and
3 the crime was before that. He professed not to
4 remember any of that. And it is clearly evasive, he
5 really remembers everything and it's just some of
6 the quality of this guy.

7 **MR. LUPTON:** Your Honor, I would ask that the
8 date of this be told, too, so that does explain some
9 of the trouble recollecting after --

10 **MR. BRUCK:** Oh, sure, I'll tell them the date
11 of this. It's 2001.

12 **MR. LUPTON:** That would be the first point that
13 there's some --

14 **THE COURT:** Well, to the extent that there's
15 some overlap and it's cumulative, I'll allow it. Go
16 ahead. Next.

17 **MR. BRUCK:** Then the last thing is just one
18 brief exchange. The prosecutor on cross asks him
19 near the end of his cross, What do you think that a
20 person with your criminal case with one -- with your
21 criminal record with one case, the jury has just
22 convicted you of two cases, who gets out of jail
23 after being there three or eight months and then
24 three weeks is busted in the car with another lab
25 when you're looking at ten to 99 or life --

1 **COURT REPORTER:** Can you slow down?

2 **MR. BRUCK:** I'm sorry. Ten to 99 or life, 15
3 to --

4 **THE COURT:** Stop for a second.

5 **MR. BRUCK:** Shall I hand it up?

6 **THE COURT:** Just start after being there three
7 or eight months.

8 **MR. BRUCK:** Okay. Is busted in a car with
9 another lab, when you're looking at ten to 99 or
10 life, 15 to 99 or life, what do you think you
11 deserve?

12 **Answer:** I don't think I deserve 99 or a life
13 sentence.

14 **Question:** What do you think you deserve?

15 **Answer:** I deserve a lot of help is what I
16 deserve.

17 **THE COURT:** Why does that go to impeachment?

18 **MR. BRUCK:** It is part of a piece, which is
19 that he considers himself an innocent victim no
20 matter what he does. And after this -- and after
21 all of these years, he's just irresponsible,
22 antisocial and self-pitying and narcissistic and I
23 think it comes through there.

24 **THE COURT:** I'm not so sure I see that on that
25 second part. I'll sustain the objection to that

1 part. I'll allow in the first part, though.

2 MR. BRUCK: There's two other matters.

3 MR. LUPTON: There's one other objection.

4 MR. BRUCK: I'll hand up to the Court something
5 that in Texas was marked as State's Exhibit A. This
6 is a statement that he made to the police when he
7 was arrested in Texas. It's only two pages long and
8 it's being offered because -- it concerns -- it's
9 self-explanatory. He was caught more or less red
10 handed running a meth lab at his house and claimed
11 that he didn't know anything about it and blamed
12 somebody else and tells the police that he just
13 stumbled across this meth lab and names the person
14 who must be the guilty party.

15 And, again, because he's not here, we think --
16 I realize that it's collateral, but it's his M.O.
17 And I think in the absence of this man being able to
18 confront this witness, I think it's only fair to
19 take this two page statement and let the jury just
20 see what the guy does when he gets caught so many
21 years later after he got caught with this crime.

22 THE COURT: Was he convicted of that?

23 MR. BRUCK: Yes. This is the offense of which
24 he was convicted.

25 THE COURT: The meth?

1 **MR. BRUCK:** Yes. And this is his exculpatory
2 story. I can pass it up if the Court would like to
3 see it, but that's what it is. And I'm not going to
4 publish the whole thing, I'm just going to publish
5 the last paragraph and say what it is and let the
6 jury, you know, we don't make a huge deal about it,
7 but I think it is very probative of his credibility.

8 **MR. LUPTON:** Your Honor, I think it has
9 absolutely nothing to do with the matter at hand.
10 It doesn't reference the South Carolina case, this
11 particular case at all. It has to do with facts
12 surrounding his conviction.

13 They're entitled to go into the conviction
14 itself. They're not entitled to go into the
15 circumstances of the conviction or the facts of the
16 case.

17 **THE COURT:** I'm not going to allow it. I'm not
18 going to allow that part. The conviction's coming
19 in. I'm not going to allow those circumstances to
20 come in.

21 **MR. BRUCK:** I'd like to have that marked in a
22 moment.

23 **THE COURT:** Yes, sir, you can mark that.

24 **MR. BRUCK:** On the Aiken charges, I'm going to
25 pass up to the Court all of the court records --

1 what happened in Aiken not long after -- much less
2 than two years after he was released on the
3 conspiracy charge in this case, he was arrested in
4 Aiken selling marijuana and then was arrested twice
5 more in '95 and in '98. All three of the charges
6 are reflected in the papers. I've summarized the
7 contents of these so that the jury can understand
8 what they mean.

9 Again, because this witness is not here and I
10 can't confront him -- I should say that he made no
11 mention of any of this in his testimony in Texas.
12 The jury was left in the dark about all of it. And
13 he jumped bond.

14 It is inferable, I think if you look closely at
15 these papers, that he was cooperating for a while
16 with a two year delay in bringing anything to court.
17 And he was released per narcotics at Aiken County
18 and then jumps bond and then tells his life story in
19 Texas, but leaves this whole episode out.

20 I would like to introduce -- the State has no
21 objection, as I understand it, to my publishing our
22 three paragraph summary of this, but I would like
23 the document to go in along with the court papers.
24 Again, we don't have a real witness to
25 cross-examine, I think we should at least have real

1 documents that the jury can hold and see. If I may,
2 I'll pass them up to the Court if you'd like to see
3 them.

4 **MR. LUPTON:** Your Honor, if I can respond to
5 that. Your Honor, under Rule 609, I don't believe
6 that any of that would be admissible if Mr. Farmer
7 were in the courtroom testifying.

8 Now, in light of the fact that the Court's
9 ruling was done in order to give fairness to both
10 sides and in that spirit, I have agreed to waive
11 that objection and allow him to publish to the jury
12 by reading aloud the three paragraphs. I agreed to
13 that out of an abundance of caution towards the --

14 **THE COURT:** The three paragraphs on this page?

15 **MR. LUPTON:** Yes, Your Honor, those three
16 paragraphs. I would object to the material going
17 in. If he was on the stand and cross-examined, they
18 wouldn't have the documents, they wouldn't even have
19 the information much less the documents. I would
20 also object to any arguments that he was obviously
21 cooperating, any attempts to argue that this shows
22 he was cooperating with narcotics and that this is
23 some pattern -- narcotics officers -- and this is
24 some pattern.

25 If they're going to do that, then I would have