

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Perry Gravely, Circuit Court Judge

Appellate Case 2016-000902

Jeffrey Hermann

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX VOLUME II

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HETTICH -- REDIRECT

1 hearsay --

2 THE COURT: Rephrase
3 your question, Mr. Simpson.

4 Q As we discussed
5 previously, what did Jeffrey do
6 with the body in the trunk
7 finally?

8 A He pushed, he pushed
9 the car or put in it neutral --
10 I'm not sure exactly what the
11 process was, but in some way he
12 let the car roll down the boat
13 ramp into the water, into the
14 river.

15 Q And who did he tell
16 you was with him when he did that?

17 A Jason Cumbee.

18 Q And you told the
19 police that information?

20 A Yes, sir.

21 Q And as you mentioned
22 earlier, too, you aren't here
23 being untruthful to protect Jason
24 Cumbee:

25 A In no way, shape, or

HETTICH -- REDIRECT

1 he shot him in the head?

2 A Yes, sir. He put the
3 body in the trunk.

4 MR. SIMPSON: No
5 further questions, your Honor.

6 THE COURT: Mr. Davis.

7 MR. DAVIS: I believe
8 just one, your Honor.

9

10

11

12

13

14

15 RECROSS-EXAMINATION

16 BY MR. DAVIS:

17 Q Despite or two, your
18 Honor. The rift with Jason was in
19 2000 as well. Correct?

20 A Yes, sir.

21 Q And you've talked to
22 Jason since he bonded out for
23 arrest for accessory after the
24 fact of murder. Correct?

25 A Yes.

1 at two p. m.

2 Please rise for the
3 jury.

4 (Whereupon, the jury
5 leaves the courtroom at
6 12:06.)

7 THE COURT: Please be
8 seated. Are there any matters
9 that we need to take up before
10 our lunch recess? From the
11 State?

12 MR. SIMPSON: No, your
13 Honor.

14 THE COURT: Mr. Davis?

15 MR. DAVIS: Your Honor,
16 the, the -- again, I'm not
17 sure. It's been a while since
18 I had a trial in front of your
19 Honor. How much we approach
20 you and what is on the record.
21 The one thing I would simply
22 ask or the biggest concern I
23 have on the record is
24 obviously I renew my Lyle
25 objection and, and I would

1 any motions we bring in the
2 jury? Just trying for
3 scheduling.

4 MR. DAVIS: Well, your
5 Honor, other than the motions
6 we mentioned at the bench we
7 will ask you prior to Mr.
8 Cumbee's testimony to consider
9 our request to have a pretrial
10 reliability hearing towards
11 any of his testimony. We will
12 also ask you to allow an in
13 camera questioning by me as to
14 his understanding of any
15 proffered agreements with the
16 police, et cetera.

17 THE COURT: Mr.
18 Simpson, Mr. Cumbee is your
19 next witness. Is that
20 correct?

21 MR. SIMPSON: I believe
22 so, your Honor.

23 THE COURT: Okay. And
24 will he be available so that
25 we may do the in camera

1

2

3

AFTERNOON SESSION.

4

(Whereupon, the judge

5

enters the courtroom at 1:49

6

p.m.)

7

THE COURT: All right,

8

Mr. Davis.

9

MR. DAVIS: Thank you,

10

your Honor. I believe we're

11

ready. We appreciate the

12

extra time over lunch to do

13

that. We will be ready

14

assuming they're calling Mr.

15

Cumbee next. We're ready for

16

that. If now is a good time

17

for us to make our argument on

18

the reliability motion.

19

THE COURT: Certainly.

20

MR. DAVIS: Your Honor,

21

we, we visited briefly in

22

chambers at the beginning on

23

Monday and briefly on the

24

record. It is a unique

25

motion. I'll grant you that.

1 I've cited the motion about
2 when there's several factors
3 that are listed that could be
4 considered by the Court in
5 determining reliability as a
6 threshold matter prior to
7 testimony in front of a jury.
8 We respectfully ask you to
9 consider holding that in
10 camera hearing to determine
11 reliability and consider the
12 factors listed in our brief in
13 determining whether the
14 testimony would be allowed.

15 MR. SIMPSON: Thank
16 you, your Honor. The defense
17 couched this as a unique
18 situation. I'll submit to the
19 Court it is not at all a
20 unique situation where a
21 co-defendant testifies and
22 even in this case we have a
23 true co-defendant, a person
24 charged with a lesser offense,
25 accessory after the fact. He

1 to defense counsel, I don't
2 think there's any legal
3 precedent for that but I
4 can -- if he'd like to ask a
5 couple of questions prior to
6 the jury coming in regarding
7 the witness's understanding of
8 any deals that have been made
9 I would, I would consent to
10 that in deference to defense
11 counsel. But this
12 determination they're asking
13 for you to judge what you
14 think about the witness's
15 credibility and exclude
16 testimony is just not a remedy
17 that's recognized in law and
18 then bootstrapping into photo
19 I.D. police procedures is not
20 proper and I would rely on my
21 am I written motion for that
22 point, your Honor.

23 THE COURT: And, Mr.
24 Simpson, is Mr. Cumbee
25 available?

J. CUMBEE -- DIRECT VOIR DIRE

1 THE COURT: All right.

2 MR. SIMPSON: Thank

3 you, your Honor.

4 THE COURT: Thank you.

5 MR. SIMPSON: State

6 calls Jason Cumbee.

7

8

9

10

11

JASON WARD CUMBEE,

12

having been called as a

13

witness, is duly sworn and

14

testifies as follows:

15

VOIR DIRE EXAMINATION

16

BY MR. SIMPSON:

17

Q Mr. Cumbee, how are

18

you?

19

A Fine.

20

Q We have a short

21

series of questions for you prior

22

to the jury coming in, if you'll

23

indulge us. You currently have a

24

pending charge. Correct?

25

A Yes.

J. CUMBEE -- DIRECT VOIR DIRE

1 pending criminal matter, correct,
2 the accessory charge?

3 A Yes.

4 Q In discussions with
5 the solicitor involving your
6 testimony here today that you've
7 been communicating through counsel
8 is it your understanding that we
9 have made any promises to you in
10 exchange for your testimony?

11 A No.

12 Q You executed a
13 proffer agreement. Correct?

14 A Yes.

15 Q What's your
16 understanding of the proffer
17 agreement?

18 A That anything I say
19 after I sign it, as long as it's
20 honest and truthful, can't be used
21 against me.

22 Q Okay. Just to be
23 careful, do you recall any
24 statements from the
25 representatives of the State to

J. CUMBEE -- DIRECT VOIR DIRE

1 currently the type of language
2 used, you know, come in and
3 tell the jury and we'll
4 consider it. I don't know --
5 I -- it's been a lot of time
6 since I listened to the tape
7 recorded interview but perhaps
8 that might have been said at
9 some point, to be truthful to
10 the Court, but I don't
11 consider that a deal. That's
12 just how we explain to someone
13 that they don't have a deal.

14 Thank you, your
15 Honor.

16 THE COURT: Thank you.

17 Mr. Davis.

18 MR. DAVIS: Thank you,
19 your Honor.

20

21

22

23 CROSS VOIR DIRE

24 EXAMINATION BY MR. DAVIS:

25 Q Mr. Cumbee, do you

J. CUMBEE -- CROSS VOIR DIRE

1 Q Okay. Was that
2 proffer agreed to before you gave
3 the statements to Detectives
4 Casale and Magwood?

5 A Yes.

6 Q So you -- what did
7 you understand about that written
8 agreement before you talked to the
9 two detectives?

10 A That it was the same
11 as I have now, just be honest and
12 truthful and anything I said in
13 the statements couldn't be used
14 against me.

15 Q Okay. Solicitor
16 Simpson just talked about another
17 proffer, right, a different one?
18 And you need to answer out loud
19 because the court reporter --

20 A Yes.

21 Q Okay. That was
22 December fourth of '09, about a
23 month ago?

24 A Yes.

25 Q And that was handled

J. CUMBEE -- CROSS VOIR DIRE

1 against me.

2 MR. DAVIS: Your Honor,

3 I'll beg the Court's
4 indulgence just to lay a
5 little foundation for the next
6 potential offer or, or
7 inducement.

8 Q Before you signed the
9 July '08 proffer you'd been
10 arrested for -- on a bench
11 warrant. Correct?

12 A Yes.

13 Q You knew it was
14 unlikely you were going to get out
15 on the bench warrant and get
16 released. Correct?

17 A Yes.

18 Q Detective Magwood let
19 you know you'd get in front of a
20 judge --

21 A Yes.

22 Q -- after you gave the
23 statement? Meaning you -- you're
24 going to go to jail. You give a
25 statement, you're going to go to

J. CUMBEE -- CROSS VOIR DIRE

1 A Yes.

2 Q And in fact the bench
3 warrant was removed and you were
4 released a day or two later?

5 A I think it was four.
6 I'm not sure. I can't remember
7 that.

8 Q Okay. The bench
9 warrant was removed, the case was
10 reopened, and you were released.

11 A Yes.

12 Q Correct?

13 A Yes.

14 Q On -- and in August
15 of 2008 you were arrested for the
16 charge that Mr. Simpson was asking
17 you about, accessory after the
18 fact to murder. Correct?

19 A I believe so.

20 Q What part do you
21 not --

22 A I'm not sure about
23 the specific date.

24 Q I said in August of
25 '08.

J. CUMBEE -- CROSS VOIR DIRE

1 A No. I got out on a
2 P. R. That's all I know. I don't
3 know anything else about it.

4 Q Okay. You had -- you
5 have no knowledge as far as what
6 anybody from the Solicitor's
7 Office did to get you out?

8 A Un-un. All I know is
9 I left on a P. R.

10 MR. DAVIS: Judge, just
11 for identification, may I
12 approach the court reporter?

13 THE COURT: You may.

14 MR. DAVIS: I'm sorry,
15 your Honor. I believe you may
16 have the -- thank you. May I
17 approach the witness, your
18 Honor?

19 THE COURT: You may.

20 Q Mr. Cumbee, I'm going
21 to show you what's been marked as
22 Court's exhibit number one and
23 number two for identification.
24 Just take a look at both of them
25 and tell me when you've had enough

J. CUMBEE -- CROSS VOIR DIRE

1 lawyers in a proffer agreement
2 is -- goes beyond the scope of
3 this, the purpose of this
4 particular hearing.

5 THE COURT: Mr. Davis.

6 MR. DAVIS: I'm going
7 to ask him if that's the end
8 of it and that's it, judge.

9 THE COURT: All right.
10 Mr. Simpson, I'm going to
11 allow Mr. Cumbee to, to answer
12 the questions from Mr. Davis
13 regarding those proffered
14 agreements.

15 A You'd like me to
16 answer?

17 Q Briefly. Have you
18 reviewed them?

19 A Yeah.

20 Q Okay.

21 A I haven't read both
22 of them, all of them.

23 Q Do they look
24 familiar?

25 A It's hard to say. I

J. CUMBEE -- CROSS VOIR DIRE

1 A I'm not a very good
2 speller.

3 Q Okay. Well, can
4 you -- you, you don't understand
5 the first word or what --

6 MR. SIMPSON: State
7 would stipulate those are the
8 two proffer agreements that
9 Mr. Cumbee can entered into
10 with our office.

11 THE COURT: All right.

12 A Yeah. I signed it
13 and --

14 THE COURT: Hold on
15 one second, Mr. Cumbee. Mr.
16 Davis, do you have any
17 additional questions for Mr.
18 Cumbee regarding the,
19 regarding those proffer
20 agreements?

21 MR. DAVIS: I
22 understand the State would say
23 these are those documents.
24 Obviously if Mr. Cumbee now
25 has concerns about whether

J. CUMBEE -- CROSS VOIR DIRE

1 based upon the Court's
2 clarification of that, whether
3 or not that's the signature,
4 you may continue.

5 Q I'm simply asking if
6 this says it's a proffer -- does
7 this document say proffer
8 agreement?

9 A Yes.

10 Q Okay. And on the
11 third page of that document is
12 your signature?

13 A Yes. That's my
14 signature. Sure.

15 Q Okay. And it's dated
16 December fourth, '09. Correct?

17 A Yes.

18 Q And that is one of
19 the dates or that's the date you
20 went in with your attorney and met
21 with these attorneys at the
22 solicitor table. Correct?

23 A I believe so.

24 Q Now, on -- in July at
25 some point you met with a

1 your anticipated testimony
2 with any of the witnesses in
3 this case.

4 THE WITNESS: Yes,
5 ma'am. I understand.

6 THE COURT: You may
7 step down and please wait
8 outside. Thank you.

9 All right. Mr.
10 Davis, I'd be happy to hear
11 from you regarding argument.

12 MR. DAVIS: Thank you,
13 your Honor. I'd simply be
14 asked to be able to discuss
15 the two proffers that are
16 written between -- which we've
17 mentioned in quite detail. I
18 would also to be asked to talk
19 about the rescinding of the
20 bench warrant and the
21 reopening of his driving under
22 suspension arrest which
23 appears from the testimony to
24 have been done by law
25 enforcement in return for the

1 understanding of a proffer
2 agreement? He was very
3 direct. I need to tell the
4 truth and anything I say, as
5 long as I still tell the
6 truth, can't be used against
7 me.

8 I'm just sort of
9 getting ahead of myself but I
10 don't think we need fifteen
11 minutes of, of, where we
12 started to go there, of
13 flipping through a proffer
14 agreement's terms and having,
15 having a, a non-lawyer witness
16 testify to what those terms
17 mean. He, he testified very
18 frankly about what his
19 understanding of the proffer
20 agreement was and I just ask
21 that that be limited in front
22 of the jury to that
23 understanding.

24 THE COURT: Mr.
25 Simpson, Mr. Davis will be

1 which indicates obviously the
2 pending charge which would
3 connect him with the proffers.
4 He also -- and forgive me,
5 Judge. Well, obviously it's
6 like this. He's also been
7 rearrested. He was arrested
8 October twelfth, 1999 in
9 Georgetown.

10 I'll, I'll ask if
11 there's been any contact
12 between this Solicitor's
13 Office and that. I don't know
14 what circuit that is.

15 MR. SIMPSON: Lack of
16 personal knowledge, your
17 Honor. He doesn't have any
18 personal knowledge about the
19 contact between us and another
20 circuit. I'll answer -- I
21 have --

22 THE COURT: I think
23 Mr. Davis is asking you,
24 Mr. Simpson, if you have
25 any --

1 THE COURT: Is that
2 your understanding, Mr.
3 Simpson?

4 MR. SIMPSON: It is,
5 your Honor.

6 THE COURT: All right.
7 Anything before we bring in
8 the jury, Mr. Simpson?

9 MR. SIMPSON: Nothing
10 from the State, your Honor.

11 MR. DAVIS: Your Honor,
12 can I have just one moment?

13 THE COURT: Yes, sir.

14 MR. DAVIS: Ma'am, I
15 don't have anything right now.
16 Thank you.

17 THE COURT: Let's
18 bring in the jury.

19 (Whereupon, the jury
20 enters the courtroom at 2:14
21 p.m.)

22 THE COURT: Mr.
23 Simpson, please call your next
24 witness.

25 MR. SIMPSON: Thank

J. CUMBEE -- DIRECT

- 1 A Yes.
- 2 Q I want to lay a
- 3 little background. Where do you
- 4 live currently?
- 5 A McClellanville.
- 6 Q What's your address
- 7 out there?
- 8 A 10744 Old Georgetown
- 9 Road.
- 10 Q And who do you live
- 11 with?
- 12 A My parents, my sister
- 13 and her boyfriend.
- 14 Q And what is your
- 15 sister's name?
- 16 A Shanna Cumbee.
- 17 Q How long have you
- 18 lived in McClellanville?
- 19 A Pretty much my whole
- 20 life.
- 21 Q Okay. Getting right
- 22 to the point, Jason, do you
- 23 recognize this individual at the
- 24 table here?
- 25 A Yes, I do.

J. CUMBEE -- DIRECT

1 A Nine, ten years ago.

2 Q Okay. Were you, back
3 in 2000, did you use drugs?

4 A Yes, I did.

5 Q And what kind of
6 drugs are you talking about?

7 A Whatever I could. I
8 was young and I tried it all.

9 Q Cocaine?

10 A Yes.

11 Q Okay. Did you know
12 the defendant to also be involved
13 in any way with cocaine?

14 MR. DAVIS: Objection,
15 your Honor, as previously
16 made.

17 THE COURT: Overruled.

18 Q Did you know at the
19 time of the defendant also using
20 cocaine?

21 A Yes.

22 Q Did you ever have the
23 opportunity throughout your
24 relationship with the defendant to
25 see where he got the cocaine?

J. CUMBEE -- DIRECT

1 A A man named Ali.

2 Q After taking Jeff to
3 the gas station, did Jeff return
4 later?

5 A Yes.

6 Q Did he tell you
7 anything about what happened while
8 he was gone with Ali?

9 A Yes.

10 Q And what did he tell
11 you?

12 A Well, I asked him
13 what, what he did and all and he
14 told me that him and Ali rode
15 around McClellanville to several
16 different places over the course
17 of a couple hours and sold
18 cocaine.

19 Q Did he mention to you
20 anything about the amount of
21 cocaine or cash?

22 A It was later
23 discussed that Ali had a cooler, a
24 little styrofoam cooler in the
25 back of the car, and at some point

J. CUMBEE -- DIRECT

1 A Well, he told me that
2 a couple different places that
3 he'd gone and that they had gone
4 in houses and different trailers
5 and he watched cocaine being
6 weighed and sold and all.

7 Q Did he ever mention
8 to you robbing Ali?

9 A It was brought up.

10 Q Did he ever change
11 his mind about that plan to rob
12 Ali?

13 A Well, it wasn't
14 really a plan. It was just kind
15 of, you know, that's a lot of
16 money. That's a lot of drugs. We
17 could rob him. Stuff like that.
18 Just general discussion.

19 Q Did he ever discuss
20 with you ending Ali's life?

21 A I'm not sure about
22 that.

23 Q Jason, you know the
24 incident that we're here today to
25 discuss?

J. CUMBEE -- DIRECT

1 in there I saw him first. The end
2 of my dirt road connects with
3 Highway 45 somewhere in there.

4 Q Okay.

5 A And I think we
6 just --

7 Q I'm sorry. Actually,
8 Jason, I'm sorry. Can I stop you
9 for one second?

10 MR. SIMPSON: Your
11 Honor, may I approach the
12 witness?

13 THE COURT: You may.

14 Q Showing the witness
15 what's previously been entered
16 into evidence as State's exhibit
17 two. Now, Jason, as you described
18 it, if you could just sort of move
19 around.

20 A Describe where we
21 were?

22 Q We see marked on the
23 map here, is that Old Georgetown
24 Road?

25 A Yeah.

J. CUMBEE -- DIRECT

1 A The day I dropped him
2 off at the gas station.

3 MR. SIMPSON: Your
4 Honor, may I approach the
5 witness?

6 THE COURT: You may.

7 Q Handing the witness
8 what's been marked for I. D. only
9 as State's seven and eight.
10 Jason, do you recognize that
11 automobile?

12 A I do.

13 Q Is that consistent
14 with how you remember the car that
15 you saw Jeffrey Herrmann driving
16 on this day that we're talking
17 about?

18 A Yeah.

19 MR. SIMPSON: May I
20 approach, your Honor?

21 THE COURT: You may.

22 MR. SIMPSON: Your
23 Honor, at this time I would
24 ask to enter State's seven and
25 eight.

J. CUMBEE -- DIRECT

1 he rode past it a couple times
2 between gas stations, and I could
3 see through the passenger side
4 window because it was not there
5 and all the other windows were up
6 and tinted. He went right up the
7 road where he lived between the --
8 what's now the Kangaroo and Exxon.

9 Q Do you remember who
10 he lived with at the time?

11 A Yes.

12 Q Who was that?

13 A My sister and a
14 friend of mine.

15 Q And the friend,
16 what's his name?

17 A Justin Hettich.

18 Q Okay. Continue.

19 A And I followed him to
20 his house and I pulled up in the
21 back yard and he got out of the
22 car and he seemed kind of
23 distraught, moving from the car to
24 the back of the house, back and
25 forth, and he asked me to come

J. CUMBEE -- DIRECT

1 wanted to get rid of the car. He
2 wanted to take it out to my road
3 and light it on fire and I
4 suggested that if he wanted to get
5 rid of the car he should put it in
6 a body of water somewhere.

7 Q Did you notice
8 anything on Jeffrey Herrmann's
9 person while you were having this
10 conversation?

11 A I think there was
12 something on his pant leg at the
13 very bottom, but I can't be
14 positive.

15 Q Could you describe
16 what it was to the jury?

17 A It looked like blood.
18 Like I said, I can't be sure.

19 Q You're not a
20 scientist.

21 A Right. And it's been
22 a long time ago.

23 Q Okay. Did you
24 suggest to Mr. Herrmann to get rid
25 of a car you may have a better

J. CUMBEE -- DIRECT

1 THE COURT: Yes.

2 Q I'm showing the
3 witness what's been premarked for
4 I. D. only as State's four --
5 three, four, five, and six.
6 Jason, if you could take a minute
7 and flip through those. Finished?

8 A Yeah.

9 Q Did those photographs
10 depict the boat landing where you
11 went to with Jeffrey Herrmann?

12 A Yes, they do.

13 Q How'd you get there?
14 What car were you driving?

15 A A red '95 Chevrolet
16 pick-up truck.

17 Q And what car was Jeff
18 driving?

19 A The one in that
20 photo. The Chevy, black Chevy.

21 Q At any time did you
22 get into the black Chevy with
23 Jeff?

24 A No.

25 Q I'm assuming he

J. CUMBEE -- DIRECT

1 A Yeah.

2 MR. SIMPSON: Your
3 Honor, at this time I'd like
4 to move three, four, five, and
5 six into evidence.

6 THE COURT: Mr. Davis.

7 MR. DAVIS: No
8 objection, your Honor.

9 THE COURT: State's
10 three, four, five, and six
11 into evidence without
12 objection.

13 (Whereupon, the
14 following items are marked as
15 State's exhibits in evidence:

16 No. 3, photo of top
17 of boat ramp;

18 No. 4, photo of boat
19 ramp from bridge;

20 No. 5, photo of boat
21 ramp;

22 No. 6, aerial photo
23 of ramp area.)

24 Q Now, Jason, we're
25 going to in just a moment have

J. CUMBEE - - DIRECT

1 evidence as State's three. What
2 are we looking at here?

3 A A view down the ramp
4 and the bridge that's beside it.

5 Q From the opposite
6 side?

7 A Yes.

8 Q Earlier you indicated
9 that when you pulled you stayed in
10 your truck at the top of the ramp.
11 Is that correct?

12 A Yes.

13 Q Would you point to
14 the jury where you were.

15 A Probably in this area
16 right here at a diagonal slant.
17 (The witness indicates.)

18 Q Now, do you happen to
19 know, is this, is this a tidal
20 creek if you know.

21 A I'm not sure.

22 Q Okay. Showing you
23 State's five. What are we looking
24 at here?

25 A The ramp.

J. CUMBEE -- DIRECT

1 that he was -- the car accelerated
2 as if someone was pushing the gas?

3 A Yes.

4 Q Okay. Which would --
5 one would think the car would be
6 in drive?

7 A Yes.

8 MR. DAVIS: Objection,
9 your Honor. Leading the
10 witness.

11 THE COURT: Sustained
12 as to leading. Rephrase your
13 question, Mr. Simpson.

14 MR. SIMPSON: Yes,
15 ma'am.

16 Q Did the car have
17 velocity when it hit the water?

18 A Yes.

19 Q And what did that
20 lead you to conclude?

21 A Someone was driving
22 it.

23 Q Okay. And was that
24 person sitting at the table here?

25 A Yes.

J. CUMBEE - - DIRECT

1 we're going to back up a little
2 bit and prior to this day that
3 this incident occurred did you and
4 Mr. Herrmann have any
5 conversations about a gun or a
6 firearm?

7 A Yes.

8 Q And explain to the
9 jury this conversation and what
10 those conversations led to?

11 A I, I can't remember
12 the specific conversation but I
13 remembered that he wanted to get a
14 gun.

15 Q Did he tell you why
16 he wanted to get a gun?

17 A Not specifically.

18 Q Okay. And what
19 happened next? What did you do
20 after discussing that?

21 A Well, since I lived
22 in McClellanville I knew somebody
23 that might be wanting to sell one
24 and I made a phone call.

25 Q And who was this

J. CUMBEE -- DIRECT

1 millimeter I believe.

2 Q Now nine millimeter.

3 That's the caliber weapon it was?

4 A Yes.

5 Q And nickel plated, is
6 that a silvery --

7 A Chrome, heavy.

8 Q Chrome?

9 A Yes.

10 Q Okay. Did Jeffrey
11 Herrmann ever tell you how he came
12 about driving Ali's car?

13 A I don't recall
14 specifics, no.

15 Q Did Jeffrey Herrmann
16 ever tell you that he had killed
17 Ali?

18 A At some point, yes.

19 Q Did he indicate where
20 he was when he killed Ali?

21 A Yes.

22 Q And where was that?

23 A It was somewhere on
24 my dirt road, I believe. I wasn't
25 positive.

J. CUMBEE -- DIRECT

1 outside and here I am?

2 A No.

3 Q Because you know they
4 were looking for you first of all?

5 A After she came back,
6 yeah.

7 Q Did the police
8 officers leave?

9 A Yes.

10 Q And do you have any
11 idea -- this is in 008. Correct?

12 A Yes.

13 Q Give or take eight
14 years after the incident we were
15 just discussing?

16 A Yes.

17 Q Did the police come
18 back to your house?

19 A Yes.

20 Q At that point did you
21 talk to them?

22 A Who did I talk to?

23 Q Did you talk to the
24 police when they came the second
25 time?

J. CUMBEE -- DIRECT

1 A Yes.

2 Q Did you want to go to
3 jail that day?

4 A No.

5 Q Were you trying to
6 think of ways of perhaps you could
7 avoid going to jail?

8 A Yes.

9 Q And what did you tell
10 the police?

11 A I told them I might
12 have some information on a person
13 that had gone missing.

14 Q Did those police --
15 and they were in their uniforms.
16 Correct?

17 A Yes. Mount Pleasant
18 police.

19 Q Okay. Did they,
20 given what you were telling them,
21 take you to talk to another police
22 officer?

23 A Well, they took me to
24 the police station.

25 Q Okay. Can you just

J. CUMBEE -- DIRECT

1 Something with a C.

2 Q If you heard his name
3 would you be able to recognize it?

4 A Yes.

5 Q Casale?

6 A Casale. Yes.

7 Q And let's cut right
8 to the chase. What did you tell
9 Detective Casale and Detective
10 Magwood in 2000?

11 A Specifically?

12 Q Where did you take
13 Detective Casale and Magwood?

14 A Well, we sat at the
15 Mount Pleasant Police Department
16 for a while and they asked me some
17 questions and all and I believe I
18 filled out a statement or two.
19 I'm not sure.

20 Q Okay. Did you take
21 the police to the boat ramp that
22 we've all seen in the photographs?

23 A I did but not, not
24 them.

25 Q Where did you take

J. CUMBEE -- DIRECT

1 that was your understanding?

2 A Yes. But at some
3 point I did take them, yes.

4 Q Okay. And that again
5 was a warrant for traffic?

6 A Yes.

7 Q Driving under
8 suspension?

9 A Yes.

10 Q So in order for you
11 to assist the officers it was your
12 understanding that they saw to it
13 that you were processed through
14 the jail and released?

15 A Well, they told me
16 that since I was picked up on a
17 warrant that I had to be processed
18 into the jail at some point in
19 time, you know, because that's
20 what they came and picked me up
21 for.

22 Q Okay. Now did that
23 processing through the jail happen
24 after you took them out to Moncks
25 Corner or before or do you

J. CUMBEE -- DIRECT

1 Correct?

2 A Yes.

3 Q Not all of them are
4 the truth, are they?

5 A No.

6 Q What -- is it fair to
7 say you gave small answers as you
8 felt needed to be given?

9 MR. DAVIS: Objection,
10 your Honor. Leading the
11 witness.

12 MR. SIMPSON: Why is
13 it -- I'll rephrase it.

14 THE COURT: Thank you.

15 Q Mr. Cumbee, why is it
16 that you weren't completely
17 truthful with the police from day
18 one?

19 A I didn't want to
20 involve my family and I didn't
21 want to get in trouble.

22 Q So you didn't want to
23 get in trouble?

24 A Yes.

25 Q You've told -- you

J. CUMBEE -- DIRECT

1 A I believe so. It
2 seems like more than that.

3 Q I may have my number
4 wrong.

5 Okay. After giving
6 the statements did you hire an
7 attorney?

8 A Yes.

9 Q Okay. Who was that
10 attorney?

11 A Jim Smiley.

12 Q After speaking with
13 your attorney did you make the
14 decision -- for lack of a better
15 word -- that it was time to let
16 everything out?

17 A Yes.

18 Q Time to tell the
19 truth, time to tell the whole
20 story. Is that correct?

21 A I believe so.

22 Q And this was done
23 through your attorney and the
24 attorneys for the State, myself
25 and Julie, through what we call a

J. CUMBEE -- DIRECT

1 entirely truthful after that?

2 A Right.

3 Q Is your testimony
4 today the truth, the whole truth?

5 A Yes.

6 Q And earlier you
7 failed to tell the truth because
8 you were afraid to get in trouble?

9 A Yes.

10 MR. DAVIS: Objection.

11 Leading, your Honor.

12 THE COURT: Overruled.

13 You may answer.

14 A Yes.

15 Q Jason, did you kill
16 Ali Sarhan?

17 A No.

18 Q Jason, did you
19 witness the man sitting at this
20 table push the car you've
21 identified into Wadmalaw Creek?

22 A Yes.

23 Q Thank you very much.
24 Please answer any questions that
25 Mr. Davis has for you.

J. CUMBEE -- CROSS

1 A Yes.

2 Q And you signed the
3 proffer agreement we just heard
4 about. Right?

5 A Yes.

6 Q That was your second
7 one. Right?

8 A Yes.

9 Q And you understand it
10 to mean that whatever you told
11 them they can't now use against
12 you and the charges you're facing.
13 Right?

14 A That was my
15 understanding.

16 Q And you knew that
17 they were recording everything you
18 said on December fourth, '09 at
19 your lawyer's office. Right?

20 A Yes.

21 Q And that was what
22 you're going to tell the jury here
23 today?

24 A Yes.

25 Q At the beginning Mr.

J. CUMBEE - - CROSS

- 1 Q And they have a child
2 in common?
- 3 A Yes.
- 4 Q The Eric that you
5 were talking about, that's Eric
6 Thigpen?
- 7 A Yes.
- 8 Q And you knew - - it's
9 now his ex-wife, but Christina
10 Thigpen?
- 11 A Yes.
- 12 Q She's now Hattaway.
13 Do you know that?
- 14 A Well, she was
15 Hattaway but - -
- 16 Q She was.
- 17 A Yes.
- 18 Q Do you know Melissa
19 Hollander?
- 20 A I don't believe so.
- 21 Q Justin Hettich?
- 22 A Yes.
- 23 Q Aaron Bellenger or
24 Bellenger?
- 25 A No.

J. CUMBEE -- CROSS

1 invite them in, they leave.

2 A Right.

3 Q But they come back.

4 Right?

5 A Along with Charleston

6 County.

7 Q Several officers

8 come. Right?

9 A Yes.

10 Q Because you'd been

11 there the whole time?

12 A Yep.

13 Q And they come in and

14 arrest you on a bench warrant.

15 Correct?

16 A Yep.

17 Q And you recall that

18 that was -- I'll ask you. Do you

19 recall whether that was for

20 missing that court date or for not

21 paying the fine on that charge?

22 A I don't know what the

23 warrant was for specifically.

24 Q You knew it was one

25 or the other? You knew that?

J. CUMBEE -- CROSS

1 jail. Right?

2 A Yep.

3 Q And you were
4 originally asked if you knew
5 anything about thefts, air
6 conditioning copper, anything
7 about that. Right?

8 A Uh-huh.

9 Q In fact later you do
10 give a statement about some copper
11 thefts that you say you knew
12 about?

13 A That I heard about.
14 Yes.

15 Q Okay. But during the
16 drive that didn't seem to be --
17 you're asking if there's anything
18 I can do. That officer asked
19 about knowledge about thefts, but
20 you were still on the way to get
21 locked up. Right?

22 A Yes.

23 Q They took you
24 originally to Mount Pleasant
25 Police Department. Correct?

J. CUMBEE -- CROSS

1 A I'm not sure of the
2 date. That's the problem. That
3 sounds about right. Somewhere in
4 there.

5 Q Now, you, you said
6 just a moment ago that the Mount
7 Pleasant officer had to call
8 Charleston County because it was
9 out of the Mount Pleasant
10 jurisdiction. Right?

11 A Yes.

12 Q And in fact two
13 Charleston County Sheriff's
14 Deputies came and spoke to you.
15 Right?

16 A Yes.

17 Q But you did talk to
18 Mount Pleasant detectives about
19 the copper theft that you knew
20 about?

21 A I might have.

22 Q Well, I need you to
23 tell them whether you talked to
24 them about a cooper theft or not.

25 A I did talk to them

487

J. CUMBEE -- CROSS

1 MR. DAVIS: May I
2 approach the witness, your
3 Honor?

4 (Whereupon, Jason
5 Cumbee's statement dated July
6 2, 2008, previously referred
7 to, is received and marked as
8 Defense Exhibit No. 3 for
9 identification.)

10 THE COURT: You may.

11 Q I'm going to you
12 what's been marked as defense
13 exhibit number three for
14 identification purposes. I'd ask
15 if that's your signature at the
16 bottom?

17 A Yes.

18 Q And I'd ask if that's
19 July second, '08 at the top?

20 A Yes.

21 Q And at the top this
22 says Mount Pleasant Police
23 Department?

24 A Yes, it does.

25 Q And is that a witness

489

J. CUMBEE -- CROSS

1 Q And you lied to
2 Detective Cheney in that
3 statement, didn't you?

4 A I guess.

5 MR. DAVIS: May I
6 approach the witness, your
7 Honor?

8 THE COURT: You may.

9 A Well, I'll, I'll read
10 the whole thing.

11 Q Well, I've got a
12 question for you. Did you lie to
13 Detective Casale in this
14 statement? I don't want you to
15 guess.

16 A I don't think so.

17 MR. DAVIS: May I
18 approach the witness, your
19 Honor, just to -- I need to --

20 THE COURT: You may.

21 Q "I heard about this
22 from Jeff H. I do not really know
23 his name." Isn't that what it
24 says?

25 A His last name.

J. CUMBEE -- CROSS

1 A Yes, I did.

2 MR. DAVIS: May I
3 approach the witness again,
4 your Honor?

5 THE COURT: You may.

6 Q It says: "Q. What
7 was Jeff's last name?" Right?
8 Isn't that what it says?

9 A Yes.

10 Q "Answer: I want to
11 say Herman or Harold." Isn't that
12 what it says?

13 A Yes. That's what it
14 says.

15 Q And that's what you
16 told Detective Cheney?

17 A Yes.

18 Q So you lied to
19 Detective Cheney?

20 A Yes.

21 Q And in fact when you
22 talked to Detective Cheney you
23 lied about knowing where the car
24 was at, said you didn't know where
25 it was at?

J. CUMBEE -- CROSS

1 Detective Magwood. Right?

2 A Yes.

3 Q and you lied about
4 who supposedly picked up Jeff at
5 the boat landing. Right?

6 A Yes.

7 Q You told him Aaron
8 picked him up at the boat landing,
9 didn't you?

10 A Yes.

11 Q And you just told the
12 jury a moment ago that you don't
13 know who Aaron is it when I asked
14 you. Right?

15 A Right.

16 Q So it was just made
17 up. Right? I'm sorry?

18 A Yes.

19 Q When you talked to
20 Detective Magwood you, you
21 indicate that you met a guy named
22 Ali at a gas station. Right?

23 A Yes.

24 Q And you described Ali
25 to Detective Magwood, didn't you?

J. CUMBEE -- CROSS

- 1 brown haired. Right?
- 2 A Yes.
- 3 Q Heavy set. Right?
- 4 A Yes.
- 5 Q About six foot.
- 6 Right?
- 7 A Yes.
- 8 Q That's totally
- 9 fabricated, isn't it?
- 10 A Yes.
- 11 Q You also told
- 12 Detective Magwood that Jeff
- 13 somebody sold a gun to Mike
- 14 Legett. Right?
- 15 A Yes.
- 16 Q And you're telling
- 17 all this to have Detective Magwood
- 18 not take you to jail. Right?
- 19 A Yes.
- 20 Q When was it that
- 21 Detective Magwood was throwing
- 22 threats around?
- 23 A It was Casale, I
- 24 believe. I'm not --
- 25 Q When was that?

497

J. CUMBEE -- CROSS

1 Q That's

2 Detective Casale?

3 A Yes. And he

4 thought --

5 Q It was the white
6 gentleman?

7 A Yes.

8 Q Let's stay with
9 Detective Magwood for a second.
10 Didn't he threaten or try to tazz
11 you?

12 A No, he didn't. It
13 was -- no. It was Casale, and he
14 didn't say that to me.

15 Q Who'd he say it in
16 front of?

17 A He said it in front
18 of Jeremy.

19 Q All right. Correct
20 me on this if I'm wrong. Is
21 Detective Magwood the one that was
22 threatening your mom about a bench
23 warrant?

24 A Yes.

25 Q So you're worried

499

J. CUMBEE -- CROSS

1 A Again?

2 Q He's right there with
3 Detective Magwood. Right?

4 A Yes.

5 Q You were -- you told
6 them you were concerned, he didn't
7 want drug dealers coming around
8 your house. Right?

9 A I was concerned what?

10 Q You didn't want drug
11 dealers coming around your house.

12 A I don't believe I
13 ever said that. I said at some
14 point my father didn't like drugs
15 or any drug dealings going on
16 around the house.

17 MR. DAVIS: May I
18 approach and have this marked,
19 your Honor?

20 THE COURT: Yes, sir.
21 (Whereupon, Jason
22 Cumbee's statement on July 3,
23 2008 previously referred to is
24 received and marked Defense
25 Exhibit No. 4 for

501

J. CUMBEE -- CROSS

1 A Yes.

2 Q I direct you down
3 here. This is your answer then.
4 Right? "I didn't want strange
5 people or known dealers to come
6 around my house." Isn't that what
7 it says?

8 A Yes.

9 Q You lied to Detective
10 Magwood about how much this Ali
11 guy and Jeff communicated since
12 you said it was by cell phones
13 only?

14 A I don't believe I
15 ever said that. This is -- I mean
16 I made a lot of statements and
17 some of them --

18 Q It's hard to keep
19 them straight, isn't it?

20 A Yes. Not that
21 they're all --

22 Q Go ahead.

23 A Not that they're all
24 lies. I'm just saying it's been a
25 long time, and it's been a long

503

J. CUMBEE -- CROSS

1 Leggett guy, you know him. Right?

2 A Yes.

3 Q He claimed Jeff sold

4 him the gun. Right?

5 A Yes.

6 Q You sold dope to Mike

7 Leggett?

8 A Yes.

9 Q And you told

10 Detective Casale that?

11 A Yes.

12 Q And Osborne.

13 A I told them I sold

14 dope to a lot of people.

15 Q Now all this

16 statement to Casale, again you

17 were telling him, and again this

18 is before you made it to Leeds

19 Avenue, to, to go to jail on that

20 bench warrant. Right?

21 A I'm not sure. After

22 I was released I came down there

23 three, at least three times to

24 cooperate with statements and

25 offered to take a polygraph.

505

J. CUMBEE -- CROSS

1 Q Trying to get ahold
2 of somebody. Right?

3 A Yeah.

4 Q But when you're
5 having trouble -- it's tough to
6 get ahold of somebody from the
7 county jail, isn't it?

8 A Yes.

9 Q But you were able to
10 call Detective Magwood, weren't
11 you?

12 A Yes.

13 Q He gave you his card,
14 didn't he?

15 A Yes.

16 Q And you called him
17 from the jail?

18 A Yes.

19 Q And you knew there
20 was a range that on this bench
21 warrant -- let me back up. You
22 knew on the bench warrant you were
23 likely going up the road?

24 A Yes. Six months.

25 Q So to you what does

507

J. CUMBEE -- CROSS

1 released?

2 A Yes.

3 Q And you got to reopen
4 that case, didn't you?

5 A Yes.

6 Q Driving under
7 suspension arrest?

8 A Yes.

9 Q So you are, you are
10 able to reopen the case, didn't
11 you?

12 A They brought me a
13 piece of paper signed by the judge
14 that said yes, he would reopen it.

15 Q And once you were out
16 you led Detective Casale and
17 Detective Magwood to boat landings
18 in the -- up in McClellanville?

19 A Yes.

20 Q Up in the Francis
21 Marion forest. Right?

22 A Yes. I, I wasn't
23 released. I was still, I was in
24 custody so I remember being
25 shackled.

509

J. CUMBEE -- CROSS

1 them several places. Right?

2 A Yes..

3 Q Had you found it at
4 the first place they would have
5 stopped looking. Right?

6 A Yes.

7 Q So you took them to
8 several places --

9 A Yes --

10 Q That you knew the car
11 wasn't at. Right?

12 A Yes.

13 Q I think when Mr.
14 Simpson was asking you about that
15 I believe that it was during the
16 questioning that you said that you
17 were fearful.

18 A Yes.

19 Q You said, you said
20 you felt a little guilty.

21 A Yes.

22 Q Did -- you talked to
23 Detective Magwood and Casale after
24 going to the boat landing. Right?

25 A Yes. Several times.

511

J. CUMBEE -- CROSS

1 Q And it appears to be
2 one, two, three, four, five, six,
3 seven, eight, nine pages with your
4 signature at the end. Correct?

5 A Yes.

6 Q Charleston County
7 Sheriff's Office at the top.
8 Correct.

9 A Yup.

10 Q So that's with
11 Detective Casale and Detective
12 Magwood. Right?

13 A Yep.

14 Q Do you remember
15 telling them in this statement
16 that you saw Aaron in
17 McClellanville?

18 A Yes.

19 Q Aaron doesn't exist,
20 does he?

21 A No.

22 Q You claim -- who's
23 Justin Hettich?

24 A He's a friend of
25 mine.

J. CUMBEE -- CROSS

1 statement you repeated knowing
2 Jeff in 1999 and 2000 simply
3 because you partied with him.
4 Right?

5 A Yes.

6 Q This statement you
7 indicate that Ali, the very first
8 we're talking about, called your
9 house looking for Jeff supposedly.
10 Right?

11 A Yes.

12 Q Was it your
13 understanding that Ali was a drug
14 dealer?

15 A Yes..

16 Q And he's got your
17 home phone number?

18 A Yes.

19 Q You said that when
20 Ali, in this statement you said
21 that when Ali called you he
22 sounded hostile when he called
23 your parents's house?

24 A Yes.

25 Q You told the police

515

J. CUMBEE -- CROSS

1 the car when Ali's body was in the
2 trunk. Right?

3 A I denied being in the
4 car?

5 Q Uh-hum.

6 A I was never in the
7 car.

8 Q You told the police
9 in this statement you didn't know
10 who put Ali's body in the trunk?

11 A Correct.

12 Q And you told the
13 police in this statement you
14 didn't know who shot Ali?

15 A Right.

16 Q You denied in this
17 statement ever getting rid of Ali
18 with Jeff?

19 A Right.

20 Q And you denied in
21 this statement knowing ahead of
22 time what Jeff was planning on
23 doing?

24 A Right.

25 Q And then you got

517

J. CUMBEE -- CROSS

1 A Yes.

2 Q Were you upset when
3 you got arrested?

4 A Yeah. Every time I
5 get arrested I'm upset.

6 Q Well, in this case
7 you thought you weren't going to
8 be arrested. Right?

9 A What do you mean?

10 Q Well, like -- you
11 thought this time you weren't
12 going to be arrested. Right?

13 A Right, because of the
14 proffer. I thought that was
15 supposed -- is that what you're
16 saying?

17 Q Okay. I just want
18 you to tell the jury if you
19 thought you were going to be
20 arrested or not?

21 A No, I didn't.

22 Q And then you had
23 signed a proffer with an attorney,
24 not one of these attorneys, but
25 attorneys with the solicitor's

J. CUMBEE -- CROSS

- 1 A Yes.
- 2 Q But you told her they
- 3 ain't going to mess with you.
- 4 Right?
- 5 A Yes.
- 6 Q Meaning the Sheriff's
- 7 Office? Meaning the police.
- 8 Right?
- 9 A They weren't going to
- 10 mess with her? I told her that.
- 11 Q And you wanted your
- 12 family to call Detective Magwood
- 13 to help you out. Right?
- 14 A I don't remember that
- 15 but it's possible. I believe I
- 16 only called him that one time.
- 17 Q I'm sorry. You
- 18 didn't call Detective Magwood.
- 19 You wanted your family to call
- 20 Detective Magwood.
- 21 A Oh. Possibly.
- 22 Q Well, do you recall
- 23 that?
- 24 A Like you said, it's
- 25 hard to get in touch with people

521

J. CUMBEE -- CROSS

1 Q Especially after they
2 went down and hired Mr. Smiley?

3 A Right.

4 Q Basically they hired
5 him right after you got that bond
6 set. Right?

7 A Well, they were -- we
8 were trying to hire him before.

9 Q All right. But that
10 didn't happen?

11 A No.

12 Q But three days later
13 you get out on your own
14 recognizance. A P. R. bond.
15 Right?

16 A Yeah.

17 Q You know what that
18 means, a P. R. bond?

19 A Not exactly.

20 Q Okay. You know your
21 family didn't have to pay anything
22 for that?

23 A Right.

24 Q And that was after
25 you had hired, your family had

523

J. CUMBEE -- CROSS

1 Q I'm going to show you
2 what's been marked as defendant's
3 exhibit number six for
4 identification purposes. Is that
5 your signature?

6 A Yes.

7 Q Does that say eight
8 one oh eight?

9 A Yes.

10 Q Charleston County
11 Sheriff's Office?

12 A Yes.

13 Q Is this first page a,
14 a warning of your Miranda rights,
15 your right to remain silent and
16 all that?

17 A Yes.

18 Q And it appears to be
19 a one, two, three, four, five,
20 six, seven, eight, nine, ten page
21 statement with your signature at
22 the bottom. Correct?

23 A Yes.

24 Q So you did give a
25 statement to the Charleston County

J. CUMBEE -- CROSS

1 and so they had to go there and
2 get it. Right?

3 A You said Jason said?

4 Q I'm sorry. That's
5 when you tell the detectives that
6 Jeff tells Ali the money is at
7 your parents's house and they got
8 to go over there to get it?

9 A Yes.

10 Q But you still tell
11 them Aaron and Jeff talked about
12 dumping Ali's body?

13 A Yes.

14 Q And Aaron doesn't
15 exist?

16 A Right.

17 Q This is when you
18 apologize to the detectives for
19 lying. Right?

20 A I believe so.

21 Q "For the record, my
22 family means the most to me so I
23 my failure to tell the whole truth
24 was to protect me and my family."
25 Right?

527

J. CUMBEE -- CROSS

1 A Yes.

2 Q Let me finish.

3 A Yes.

4 Q "So my failure to
5 tell the whole" --

6 MR. SIMPSON: Objection.

7 Asked and answered.

8 THE COURT: Overruled.

9 Q "to tell the whole
10 truth was to protect me and my
11 family." Right?

12 A That's written in my
13 handwriting. Yes.

14 Q Okay. So that's what
15 you told the --

16 A Yes.

17 Q -- detectives. From
18 getting arrested?

19 A Excuse me?

20 Q From getting
21 arrested.

22 A Excuse me?

23 Q Protect you from
24 getting arrested?

25 A Yes.

J. CUMBEE -- CROSS

1 family?

2 A I guess so.

3 Q And you admitted to
4 the police that on July fifth you
5 talked to Jeremy about this whole
6 thing. Right?

7 A July fifth?

8 Q Uh-huh.

9 A I'm not sure. Like I
10 said, I'm not good with
11 remembering dates and all.

12 MR. DAVIS: Your Honor,
13 may I have another moment?

14 THE COURT: Yes, sir.

15 MR. DAVIS: Your Honor,
16 may I approach the witness?

17 THE COURT: You may.

18 Q Mr. Cumbee, I'm going
19 to show you what's been marked as
20 defendant's exhibit number six
21 again. This is on page nine and
22 ten. The question is: "Q. What
23 a Jeremy's full name? Where does
24 he live and what's his
25 relationship to you?" Correct?

J. CUMBEE -- CROSS

1 about the fifth but I mean yes.

2 I'm sure I discussed it with him.

3 Q Do you need to see
4 this again?

5 A No.

6 Q That says July fifth.
7 Right?

8 A Yes. And when they
9 were asking me about dates they
10 were just saying just give as
11 close to it as you possibly can,
12 the best you can remember and
13 stuff like that so if that's what
14 it says, that's the best that I
15 can remember.

16 Q But that's your
17 handwriting. Right?

18 A Yes.

19 Q So that's what you
20 told the detectives. Right?

21 A Yes.

22 Q Certainly you talked
23 to him after you got the bench
24 warrant removed with Mount
25 Pleasant Police's help. You

J. CUMBEE -- CROSS

1 and you gave him a statement.

2 Right?

3 A Yes.

4 Q And you knew that
5 they were recording it. Right?

6 A Yes.

7 Q But before you did
8 that you signed another proffer
9 agreement. Right?

10 A Yes.

11 Q But you'd already
12 signed one in July --

13 A Yes.

14 Q 2008. Right?

15 A Yes.

16 Q And that's when you
17 were in for the driving under
18 suspension, you get out, you get
19 the bench warrant lifted. Right?

20 A Yeah.

21 Q Basically in that
22 recorded statement, the, the gist
23 of it, I guess the gist of it is
24 what you told the jury when Mr.
25 Simpson was asking you questions.

J. CUMBEE -- CROSS

1 MR. SIMPSON: Your
2 Honor, I believe the witness
3 should be granted an
4 opportunity to answer the
5 question and explain his
6 answer to the question.

7 THE COURT: All right,
8 Mr. Simpson.

9 A Are you finished?

10 Q I believe the
11 question has been answered.

12 A Oh, okay.

13 THE COURT: Counsel,
14 approach.

15 (Whereupon, there was
16 an off-the-record discussion
17 at side bar.)

18 Q You told that group
19 of people at your lawyer's office
20 you never really did like Jeff?

21 A Correct.

22 Q You told the people
23 at your lawyer's office that Jeff
24 looked like the type of person who
25 would hurt a girl?

J. CUMBEE -- CROSS

1 speak to him, you never got out of
2 the car at the gas station?

3 A No.

4 Q All right. You told
5 that whole group of people, the
6 lawyers and the investigator, that
7 you weren't friends with Jeff, you
8 just kept an eye on him.

9 A I guess so.

10 Q I don't want you to
11 guess, Mr. Cumbee.

12 A I'm not sure what I
13 said in regards to that.

14 Q Well, he was dating
15 your sister. Right?

16 A Yes.

17 Q You didn't really
18 like him. Right?

19 A Right.

20 Q He looked like the
21 type that would hurt a girl?

22 A Right.

23 Q And you'd bust his
24 ass, you'd do everything in your
25 power to bust his ass if he hurt

539

J. CUMBEE - CROSS

1 you told them about how that --
2 how he would -- how he got in
3 debt. Right?

4 A Yes.

5 Q You told them that
6 he'd buy like half an ounce of
7 cocaine and sell a quarter ounce,
8 get behind, try to make it up.
9 That kind of thing. Right?

10 A Basically, yes.

11 Q You knew how that was
12 happening. Right?

13 A Yes.

14 Q Well, you were
15 selling it, too. Right?

16 A Yes. As well as
17 using.

18 Q You told them that
19 Ali was the most frequent caller
20 to your house for Jeff. Right?

21 A Yes.

22 Q And you'd take those
23 calls. That's how you knew that.
24 Right?

25 A Occasionally I would

J. CUMBEE - - CROSS

1 drugs. Right?

2 A Yes.

3 Q And that's the drugs
4 he got from Ali. Right?

5 A Yes.

6 Q And you didn't get
7 charged because you were helping
8 sell. Right?

9 A I didn't get charged?
10 What did you do mean?

11 Q For your drugs that
12 you using.

13 A Oh, yeah.

14 Q So you're
15 contributing to Jeff's debt
16 problem.

17 A I suppose.

18 Q You bought
19 occasionally from Ali. Right?

20 A Me?

21 Q Yes.

22 A No.

23 Q Well, you sold his
24 cocaine, though. Right?

25 A Yes.

543

J. CUMBEE -- CROSS

1 asking you questions. You knew
2 who this was. Right?

3 A Yeah. I still don't
4 know how you pronounce his name.
5 Jazz is how I --

6 Q Okay.

7 A Every conversation
8 I've had, Jazz is how it is.

9 Q Okay. Just a few
10 more questions, Mr. Cumbee.
11 Supposedly when you saw --
12 remember the time when Jeff was
13 driving frantically around and you
14 went back to go back to the house.
15 Right?

16 A Yes.

17 Q He was driving around
18 in a vehicle like the one you saw
19 the picture of. Right?

20 A Yes.

21 Q And the passenger
22 window was blown out. Right?

23 A Yes.

24 Q The other windows
25 were tinted. Right?

545

J. CUMBEE -- CROSS

1 you or did you follow him?

2 A Like I said before I
3 can't really remember
4 specifically. All I know is we
5 were going together, two vehicles
6 so. . . it's been a long time.

7 Q If he wasn't
8 following you, why were you going?

9 A To pick him up I
10 guess.

11 Q Well when I --

12 A I mean I was, you
13 know, taking him to the landing.
14 There's plenty of places he could
15 have taken it, I guess.

16 Q Okay. Well, if he
17 wasn't following you, why did you
18 follow him?

19 A I don't know that I
20 was following him. I know -- he
21 might have been following me.
22 Like I said, I can't remember
23 years and many drugs later I've
24 got a bad memory.

25 Q You, you said you saw

547

J. CUMBEE - - CROSS

1 A No.

2 Q You never sunk cars
3 for -- to get insurance?

4 A Nope. Never had one
5 to sink.

6 Q You know that happens
7 a lot out in McClellanville?

8 A I've heard about it
9 happening several times, yes.

10 Q You told the
11 detectives about it sometimes,
12 right, that it happens, right, but
13 you didn't do it?

14 A Correct.

15 Q You also told those
16 attorneys and that investigator
17 that it was because of Jeff that
18 this guy Ali, this drug dealer was
19 involved in the Cumbees lives,
20 your family's lives. Is that
21 right?

22 A Yes.

23 Q And you told an
24 investigator, Investigator Osborne
25 with the attorneys there that if

J. CUMBEE -- CROSS

1 landing watching Jeff push the car
2 in. Right?

3 A Yes.

4 Q You don't do
5 anything.

6 A No.

7 Q You didn't help?

8 A No.

9 Q You didn't get out?

10 A No.

11 Q You didn't put him in
12 the trunk?

13 A No.

14 Q You just, you just --
15 your only involvement is you
16 happen to be the tour guide taking
17 him out to where the car is.
18 Right?

19 A Yep.

20 MR. DAVIS: Judge, if I
21 can have just one moment.

22 THE COURT: Yes, sir.

23 MR. DAVIS: Mr. Cumbee,
24 I don't have any questions for
25 you.

551

J. CUMBEE -- REDIRECT

1 A Nor did I want to get
2 my family in trouble.

3 Q You led right to my
4 next question. Nor did you want
5 to get your family in trouble, did
6 you?

7 A Yeah.

8 Q And so when you
9 initially told the story you
10 minimized your role. Correct?

11 A Yes, as well as my
12 sister's.

13 Q You didn't even want
14 to get Jeff Herrmann in trouble,
15 did you?

16 A No.

17 Q So you told them,
18 even though you knew it was Jeff
19 Herrmann, you told them Jeff H.
20 Jeff H. That's as far as I can
21 go. Right?

22 A Yes.

23 Q And then they said
24 well, can you remember H and you
25 said vaguely. I forget the names.

J. CUMBEE - - REDIRECT

1 didn't want to go to jail on that
2 warrant.

3 A Right.

4 Q But even at that
5 point you're protecting the guy
6 sitting right there. You're not
7 telling the police his name.

8 Correct?

9 A Correct.

10 Q But then things start
11 to unfold. We talk about the
12 first proffer agreement where you
13 promised to tell the truth?

14 A Yes.

15 Q I believe you
16 testified that that was voided
17 because you admit you did - -

18 MR. DAVIS: Object,
19 your Honor. Calls for legal
20 spec - - legal conclusion.

21 MR. SIMPSON: I am
22 basing that on - -

23 THE COURT: Mr.
24 Simpson - - overruled.

25 Q You testified during

555

J. CUMBEE -- REDIRECT

1 Q And all these phrases
2 that you talked about with Mr.
3 Davis on cross, bust his ass --

4 A Yes.

5 Q If someone were to
6 kill my family it would be
7 trouble, was, was in the context
8 of discussing your strong feelings
9 for your sister.

10 MR. DAVIS: Objection,
11 your Honor. Leading.

12 A Family as well. Yes.

13 THE COURT: Hold on
14 one second, Mr. Cumbee.

15 THE WITNESS: Okay.

16 THE COURT: Please
17 rephrase your question.
18 Sustained as to leading.

19 MR. SIMPSON: I'll
20 withdraw it, your Honor.

21 THE COURT: Thank you.

22 Q Very briefly. You
23 did receive phone calls. Correct?

24 A Yes.

25 Q From Ali?

557

J. CUMBEE -- RECROSS

1 Q You didn't say you
2 thought Jeff was dead to protect
3 him. You hadn't seen him in eight
4 years when you said that. Right?

5 A Correct.

6 Q You thought maybe he
7 was dead?

8 A It's a good
9 possibility.

10 MR. DAVIS: Thank you,
11 Mr. Cumbee.

12 No other questions,
13 your Honor.

14 THE COURT: Any
15 objection to this witness
16 being excused?

17 MR. SIMPSON: None from
18 the State, your Honor.

19 THE COURT: Mr. Davis,
20 any objection?

21 MR. DAVIS: None.

22 THE COURT: Mr.
23 Cumbee, you may step down.
24 You're excused from the
25 courtroom.

1 as this witness. We would
2 really love to get to all
3 three if possible, but I would
4 just leave that up to you,
5 your Honor. But we have
6 witnesses available to carry
7 the afternoon for certain.

8 THE COURT: Do you
9 anticipate that we would be
10 done by six?

11 MR. SIMPSON: Yes. I
12 think we certainly would.

13 THE COURT: Any
14 objection going till six p.m.
15 this evening to get the three
16 witnesses?

17 MR. SIMPSON: No, your
18 Honor.

19 THE COURT: If you
20 would please alert the jury,
21 we have three witnesses
22 proposed for this afternoon
23 and we anticipate we'll be
24 done by six p.m. if they need
25 to use their cell phones.

1 So would you all enter into a
2 written stipulation or do you
3 just want, wish to read in a
4 stipulation to the, to the
5 jury?

6 **MR. DAVIS:** Normally
7 it's been a written
8 stipulation which I'll be
9 prepared to -- happy to
10 prepare for the State to look
11 at and to present.

12 **THE COURT:** All right.
13 We'll take a recess, Mr.
14 Simpson. Ten minutes.

15 **MR. SIMPSON:** Thank
16 you, your Honor.

17 (Whereupon, a recess
18 was called at 3:53 p.m.)

19 (Whereupon, the judge
20 enters the courtroom at 4:04
21 p.m.)

22 **THE COURT:** All right.
23 Mr. Simpson, we had a bench
24 conference. You indicated
25 that there was an emergency

1 that way.

2 THE COURT: All right.

3 MR. DAVIS: No

4 objection.

5 THE COURT: All right.

6 Thank you. And any other
7 matters? We're waiting on the
8 stipulation. Please let me
9 know when that is here. And
10 with that we'll bring in the
11 jury.

12 MR. SIMPSON: Thank
13 you.

14 MR. DAVIS: Yes, ma'am.
15 Thank you.

16 THE COURT: All right.
17 Please bring in the jury.

18 Is that the
19 stipulation?

20 MR. DAVIS: It is. Do
21 you want to take a look?

22 MR. SIMPSON: No
23 objection to that being
24 entered.

25 MR. DAVIS: I'll show

1 your Honor.

2 MR. DAVIS: May we have
3 it marked, your Honor?

4 THE COURT: You may.
5 Court's four.

6 Ladies and gentlemen
7 of the jury, a stipulation is
8 simply an agreement between
9 the, the parties and the
10 attorneys do that so that it
11 saves time. We don't have to
12 then call that particular
13 witness. Mr. Davis is going
14 to mark that as a Court's
15 exhibit and then Mr. Simpson
16 is going to read it into the
17 record.

18 MR. DAVIS: Thank you,
19 your Honor.

20 (Whereupon, the
21 stipulation previously
22 referred to is received and
23 marked as Court's Exhibit No.
24 4 for purposes of the record.)

25 MR. DAVIS: Your Honor, 568

1 housekeeping matters, Mr.
2 Simpson, if you'll please call
3 your next witness.

4 MR. SIMPSON: Thank
5 you, your Honor. The State
6 calls Shanna Cumbee.

7
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25

SHANNA LYNN CUMBEE,
having been called as a
witness, is duly sworn and
testifies as follows:

DIRECT EXAMINATION BY
MR. SIMPSON:

THE COURT: Mr.
Simpson.

MR. SIMPSON: Thank
you, your Honor.

Q Shanna, how are you
today?

A I'm okay.

S. CUMBEE -- DIRECT

1 THE COURT: Okay.
2 Thank you.
3 Sorry to interrupt,
4 Mr. Simpson.
5 MR. SIMPSON: Thank
6 you.
7 Q Are you currently
8 romantically involved with anyone?
9 A Jeremy Casselman.
10 Q Do you two share a
11 child?
12 A Share what?
13 Q A child?
14 A Oh, yes. Yes, sir.
15 Q How long have you and
16 Mr. Casselman been together?
17 A About three years.
18 Q About three years.
19 A Uh-huh.
20 Q Going back to the
21 year 2000 I believe you said you
22 would have been around sixteen at
23 that time. Correct?
24 A Uh-hum. Yes, sir.
25 Q Were you romantically

571

S. CUMBEE -- DIRECT

1 some personal questions about your
2 life back in 2000.

3 A Okay.

4 Q Did you -- were you
5 involved in drugs in any way in
6 2000?

7 A Yes. I think at that
8 point I'd done it maybe once
9 before and all of us hanging out,
10 we started doing cocaine because
11 the main thing I remember we may
12 have smoked marijuana, I'm not
13 sure about but I do remember doing
14 cocaine quite frequently.

15 Q And when you say all
16 of us were hanging out and we
17 started doing that, who do you
18 mean by all of us?

19 A Jeff, Justin, my
20 brother. I mean there was people
21 that would come from Mount
22 Pleasant and stuff. They had
23 parties out in the woods I mean.

24 Q Okay. So over the
25 course of that relationship did

573

S. CUMBEE -- DIRECT

1 much about quantity and stuff. It
2 was -- it just seemed like a chunk
3 that would probably fit into your
4 hand. So I mean that's all that I
5 can recall. Just that once.

6 Q Did Jeffrey Herrmann
7 ever discuss with you where he got
8 the cocaine?

9 A Not in really great
10 detail. The only thing I, I think
11 I remember him mentioning Ali, a
12 man named Ali maybe once and I
13 think he said he was of Arabian
14 decent, but he didn't really
15 discuss that with me a whole lot.

16 Q Okay. But you do
17 recall the name being mentioned of
18 Ali --

19 A Yes.

20 Q -- and the fact that
21 he would be of middle eastern
22 decent?

23 A Yes.

24 Q Did you ever meet
25 Ali?

575

S. CUMBEE -- DIRECT

1 doing that and I just, you know,
2 feel like a little married couple
3 and I didn't want him doing that
4 any more and I guess that was a
5 problem for Ali because I guess
6 Jeff knew too much about his deals
7 and stuff.

8 Q And did Jeff tell you
9 it was a problem?

10 A Yes.

11 Q And he told you it
12 was a problem why?

13 A Well, he said that a
14 guy called him and told him that
15 Ali --

16 MR. DAVIS: Objection,
17 your Honor.

18 A -- was coming --

19 THE COURT: Hold on
20 one second, Miss Cumbee.

21 MR. SIMPSON: I'll
22 rephrase the question.

23 Q Without going into
24 the particulars --

25 A Okay.

577

S. CUMBEE -- DIRECT

1 conversation.

2 A -- strange and when,
3 you know, I asked him what was
4 going on because I could tell
5 there was something wrong and he,
6 you know, finally came forward and
7 told me what had happened.

8 Q And what did he tell
9 you had happened?

10 A He told me that an
11 associate from work I guess had
12 called him and told him that Ali
13 was coming --

14 MR. DAVIS: Objection,
15 your Honor.

16 THE COURT: Basis?

17 MR. DAVIS: Hearsay.

18 THE COURT: Sustained
19 as to hearsay.

20 MR. SIMPSON: I'll
21 rephrase.

22 THE COURT: Thank you.

23 Q Without talking about
24 anything someone else told Jeff,
25 if you can, explain to him what he

579

S. CUMBEE -- DIRECT

- 1 Q And where was that?
- 2 A The ear.
- 3 Q That was in the ear?
- 4 A Uh-huh.
- 5 Q These discussions
- 6 that we're talking about, did
- 7 these take place in the summer?
- 8 A I really can't tell
- 9 you.
- 10 Q Around the year 2000
- 11 would correspond --
- 12 A Uh-huh. Yeah.
- 13 Probably toward the end of or
- 14 maybe the beginning of 2001. I'm
- 15 not sure.
- 16 Q When the -- when he
- 17 admits to you happens towards of
- 18 end of 2000, 2001?
- 19 A I'm not sure. I mean
- 20 we started dating in 2000 and I
- 21 know he, he lived at my parents's
- 22 for about a year before we moved
- 23 out, so it, it might have been
- 24 toward 2001. I'm really not sure.
- 25 Q Okay. Did there come

S. CUMBEE -- DIRECT

1 approach, your Honor?

2 THE COURT: You may.

3 Q So, Shanna, I'll get
4 back to where we left off. Do you
5 recall receiving some letters from
6 the defendant after the break-up?

7 A Yes.

8 Q Is it fair to say --
9 do you recall the general content
10 of the letters?

11 A Just I think maybe
12 mistakes that he made. Things,
13 you know, that he lied to me
14 about. I wanted closure, answers.

15 Q And, and so there was
16 a series of letters. Is it fair
17 to say you responded to these, to
18 these letters?

19 A A few. Yeah.

20 Q That they were
21 exchanged.

22 A Yeah.

23 Q And they discussed I
24 think as you said details of your
25 relationship and lies that were

S. CUMBEE - - DIRECT

1 Q And these are the
2 letters we were just discussing?

3 A Yes.

4 Q And you exchanged
5 letters. Correct?

6 A Yes.

7 Q Looking at that
8 handwriting, is it consistent with
9 the handwriting you know to be
10 Jeff Herrmann's?

11 A As far as I can tell.
12 I know the contents are from him.

13 Q And the contents, to
14 be honest, are fairly personal to
15 your relationship with Jeff
16 Herrmann?

17 A Yes.

18 MR. SIMPSON: Your
19 Honor, at this point I'd like
20 to proceed as we discussed at
21 the bench.

22 THE COURT: Yes, sir.

23 MR. SIMPSON: Thank
24 you. May I approach the
25 witness?

585

S. CUMBEE -- DIRECT

1 do it, all the shit with Ali. I
2 swear I wasn't smoking crack when
3 you --

4 Q Shanna, I think that
5 will be enough. Thank you.

6 A Okay.

7 Q Shanna, at this point
8 I have no further questions for
9 you on direct. If you please pay
10 attention and answer any questions
11 Mr. Davis has for you.

12 THE COURT: Mr. Davis.

13 MR. DAVIS: Thank you,
14 your Honor.

15

16

17

18 CROSS-EXAMINATION BY

19 MR. DAVIS:

20 Q Miss Cumbee, you
21 currently live with your brother,
22 Jason?

23 A Yes.

24 Q That's your only
25 brother. Right?

587

S. CUMBEE -- CROSS

1 school with Christina and Eric
2 hung out in the same crowd.

3 Q They were married for
4 a while?

5 A Yes.

6 Q Okay. Your
7 recollection is that your
8 relationship, your romantic
9 relationship with, with Jeff
10 lasted for about a year and a
11 half, about?

12 A I'd say, I mean give
13 or take. I know it was a little
14 less than two years with him.

15 Q Started back in 2000.
16 Right?

17 A Uh-huh.

18 Q And your family
19 didn't particularly like that you
20 dating Jeff?

21 A No, they did not.

22 Q Now just here a
23 moment, the, the part of the
24 letter the solicitor had you read.

25 A Uh-huh.

589

S. CUMBEE -- CROSS

1 Defendant's Exhibit No. 7 for
2 identification.)

3 MR. DAVIS: May I
4 approach the witness, your
5 Honor?

6 THE COURT: You may.

7 Q Miss Cumbee, I'm
8 going to show you what's been
9 marked as defense exhibit number
10 seven for identification purposes.
11 Is that your signature?

12 A Yes, it is.

13 Q Okay. And is this
14 what appears -- well, the first
15 page is a waiver of rights and
16 your signature is at the bottom.

17 A Yes.

18 Q Correct?

19 A Yes.

20 Q And can you tell the
21 two detectives, the names?

22 A Casale and Magwood.

23 Q And do you remember
24 those gentlemen?

25 A Yes.

S. CUMBEE -- CROSS

1 the, the warnings. They went over
2 those with you?

3 A Yes.

4 Q And you initialed to
5 the side that you understood them?

6 A Yes.

7 Q Were you scared about
8 being arrested?

9 A No.

10 Q You weren't scared?

11 A No.

12 Q Now, during that time
13 is when you would have provided so
14 that the State has the letter you
15 just talked about.

16 A Yes.

17 Q Right?

18 A Yes.

19 Q Now didn't you tell
20 the detectives, didn't you tell
21 the detectives that Jeff admitted
22 in letters to you that he killed
23 Ali? Did you tell them that?

24 A I told them I
25 believed I had somewhere, I wasn't

S. CUMBEE -- CROSS

1 Smiley?

2 A Not, not me.

3 Q Well, forgive me.

4 Did you speak with him.

5 A I don't think I spoke
6 with him while he was in jail. I
7 think my mother is the one that
8 took him -- hired Jim. I never
9 had anything to do with his
10 attorney.

11 Q I understand. But
12 you remember when the attorney was
13 hired. Right?

14 A I believe it was
15 after he got arrested but I know I
16 didn't have anything to do with
17 that.

18 MR. DAVIS: Your Honor,
19 if I could have just a moment.

20 THE COURT: Yes, sir.

21 Q Sorry, Miss Cumbee.
22 Forgive me.

23 A Yes, sir.

24 Q I believe I asked
25 you -- forgive me. I believe I

S. CUMBEE -- CROSS

1 Q You had no knowledge
2 of that?

3 A No.

4 Q You have knowledge
5 that Justin who you grew up with
6 is indicating your brother was
7 involved. Correct?

8 A I guess. I mean I
9 don't know.

10 Q I don't want you to
11 guess. Do you know whether Justin
12 is claiming your brother was
13 involved in this or not?

14 A No.

15 Q You saw your
16 brother's arrest warrant for
17 accessory after the fact of
18 murder. Right?

19 A No. He didn't -- he
20 didn't have any of that stuff.

21 Q You didn't know that
22 in his paper someone was
23 claiming --

24 A He never brought any
25 papers. I don't think he wanted

597

S. CUMBEE -- CROSS

1 bear with us while we attempt
2 to play the audio recording.

3 Mr. Davis, let me
4 know when you are ready.

5 MR. DAVIS: Thank you,
6 your Honor.

7 Q Miss Cumbee, I'm
8 going to have my co-counsel play a
9 recording. If you can
10 recognize -- if you recognize the
11 voice if you'll let us know and
12 we'll pause and, and we'll pause
13 it.

14 (Whereupon, a portion
15 of an audio recording is played.)

16 A My brother. And that
17 was me.

18 Q Okay. That's you.
19 But you can identify the two
20 people in the phone call.
21 Correct?

22 A Yes.

23 Q Miss Cumbee, I'm
24 not -- do you recall getting calls
25 from the jail from your brother?

599

S. CUMBEE -- CROSS

1 intimidate people. With having my
2 child, you know, it was --

3 Q You're, you were
4 pregnant at the time or did you
5 have your child already?

6 A I already had her.

7 Q Okay. Mary Ellen.

8 Right?

9 A I didn't want to --
10 yeah. And I just didn't want them
11 to threaten me. And it was also
12 the right thing to do and I just
13 wanted to do what I had to do to
14 get it behind me.

15 Q Okay. At the time of
16 giving this statement where they
17 read you the warnings you weren't
18 concerned that they were warning
19 you and they might arrest you?

20 A They never made any
21 threats.

22 Q I'm asking if you
23 were concerned.

24 A It was probably a,
25 you know, mild concern. I didn't

601

S. CUMBEE -- REDIRECT

1 acknowledged to the defendant that
2 there was a concern?

3 A Yes.

4 Q When Mr. Davis asked
5 you about this phone
6 conversation --

7 A Yes.

8 Q You didn't remember
9 having that conversation?

10 A No.

11 Q Okay. Were you
12 trying to mislead him?

13 A No. I honestly
14 didn't remember it.

15 Q Okay. Mr. Davis
16 referenced the letters that we
17 discussed on direct and you're a
18 little soft spoken. You read the
19 number ten and you read it as "I
20 was selling coke to him. I hid it
21 from you because I knew you would
22 be pissed but it was making money.
23 I promised you I wouldn't do it,
24 of the shit with Ali."

25 Is that the correct

CASSELMAN -- DIRECT

1

2

3

JEREMY BOYD

4

CASSELMAN, having been called

5

as a witness, is duly sworn

6

and testifies as follows:

7

DIRECT EXAMINATION BY

8

MR. SIMPSON:

9

Q Jeremy, good

10 afternoon.

11

A How you doing?

12

Q Okay. How you doing

13

today?

14

A I'm tired.

15

Q Is this where you

16

want to be today?

17

A No.

18

Q Okay. How old are

19

you?

20

A I'm thirty-three

21

years old.

22

Q And where do you

23

live?

24

A I live in

25

McClellanville.

CASSELMAN -- DIRECT

1 anyone sitting at this table here?

2 A Yes, sir. Mr.

3 Herrmann.

4 Q And by Mr. Herrmann
5 you mean Jeffrey Herrmann, the
6 defendant?

7 A Yes.

8 Q How do you recognize
9 him?

10 A Jeffrey was employed
11 at the same company. He worked on
12 the duct work, too. He installed
13 duct work.

14 Q Were you in any way
15 involved with any drug use back in
16 2000?

17 A Yes, sir.

18 Q And in fact, if you
19 could, you've been in some trouble
20 before. Correct?

21 A Yes, sir.

22 Q Could you tell the
23 jury a little bit about that.

24 A I got a charge for
25 manufacturing marijuana back in I

CASSELMAN - - DIRECT

1 defendant back in 2000. Correct?

2 A Yes, sir.

3 Q And would you say you

4 guys were really goods friends?

5 A No, sir.

6 Q Just - -

7 A Work acquaintances.

8 Q Work acquaintances?

9 A I seen him once in a

10 while around. McClellanville is a

11 small town. I seen him around

12 once in a while. We bumped into

13 one another a couple times at the

14 shop.

15 Q Okay. Did the

16 defendant - - you say you were work

17 acquaintances.

18 A Yes.

19 Q Let me back up a

20 little bit. What about Shanna

21 back in 2000? You obviously

22 weren't involved romantically

23 then.

24 A No, sir.

25 Q Did you know her back

CASSELMAN -- DIRECT

1 courtroom I don't believe. Just
2 tell me a little bit about your
3 relation with Jason Cumbee now.

4 A I put up with it for
5 now. I mean I say personally
6 Jason is, Jason is -- I never met
7 anybody like him. He's in his own
8 little world, you know.

9 Q He's your fiancée's
10 brother?

11 A Yes, sir.

12 Q But personally you
13 guys aren't close friends. Is
14 that correct?

15 A No. No.

16 Q Going back to 2000,
17 the defendant Jeffrey Herrmann,
18 did there ever come a time where
19 Jeffrey Herrmann said anything to
20 you or asked you anything in
21 relation to narcotics?

22 A Yes, sir. He's
23 questioned me about the
24 availability of I guess you'd say
25 of cocaine.

CASSELMAN -- DIRECT

1 Q Okay. Were you close
2 friends with the defendant back in
3 2000?

4 A No, sir.

5 Q When's the last time
6 you saw the defendant?

7 A Probably back in
8 2000. It was about a week or two
9 weeks after that that he was no
10 longer employed with the company
11 so I didn't have -- like I said I
12 didn't associate with nobody in
13 the area at the time so I didn't
14 see him after that.

15 Q The defendant mention
16 having a gun?

17 A Yes, sir.

18 Q And he mentioned the
19 reason why he had the gun?

20 A Yes, sir.

21 MR. SIMPSON: Okay. I
22 have no further questions.
23 Please answer any questions
24 Mr. Davis has for you.

25 A Yes, sir.

CASSELMAN -- CROSS

1 Q Okay. Let me just
2 back up for a second. This may
3 have been covered. You have a
4 child with Shanna, right, Shanna
5 Cumbee?

6 A Yes, sir.

7 Q You, she, and Jason
8 live together now. Right?

9 A Unfortunately for me.
10 Yes, sir.

11 Q Okay. All right. So
12 you remember when the police came
13 and got him around the Fourth of
14 July weekend in 2008. Right?

15 A Yes, sir.

16 Q Okay. All right.
17 And he bonded out a day or two
18 later or got out somehow a day or
19 two later?

20 A Yes, sir.

21 Q After he got out of
22 jail you all kind of talked about
23 the matter we're here for today.
24 Right?

25 A Yes, sir.

CASSELMAN -- CROSS

1 again, just that -- you worked
2 with Jeff there for a little
3 while. Right?

4 A Yes, sir.

5 Q Not close, just kind
6 of acquaintances?

7 A No, sir. Like I
8 said, I did service tech, service
9 work and built duct work and they
10 installed it.

11 Q Okay. Okay. Now,
12 move ahead about a month later.
13 We just talking about when Jason
14 got out of jail and talked to you
15 all.

16 A Yes, sir.

17 Q A month later,
18 August -- do you remember giving a
19 statement to the Sheriff's
20 detectives August fourth of 2008?

21 A Yes, sir.

22 Q Do you remember that
23 date?

24 A Dates I'm not very
25 good with.

617

CASSELMAN -- CROSS

1 A Yes, sir.

2 Q And actually I
3 apologize. Eight -- can you make
4 out --

5 A I can't even read it.

6 Q Four or nine.

7 A Four or nine. I'm
8 not sure.

9 Q All right. August
10 something, 2008. Is that right?

11 A Yes.

12 Q And it appears to be
13 a multi-page statement with your
14 signature on the end page.

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

18 Q Okay. So early part
19 of August, 2008?

20 A Yes, sir.

21 Q That's the best we
22 can figure out. Right?

23 A Yes, sir.

24 Q But that first page,
25 did you recognize that, the first

619

CASSELMAN -- CROSS

1 me if I knew -- if I had any
2 outstanding warrants or anything
3 and I told them yes, sir, I had a
4 situation that I was trying to get
5 corrected.

6 Q Okay. You didn't go
7 to jail that day?

8 A No, sir.

9 Q Okay. We're talking
10 about -- do you remember the two
11 detectives? Do you remember the
12 names?

13 A Yes, sir. Detective
14 Casale and Detective Maybank.

15 Q Magwood.

16 A Magwood.

17 Q Is that right?

18 A Yes, sir.

19 Q Is that right?

20 A Yes, sir.

21 MR. DAVIS: Your Honor,
22 if I could have just a moment.

23 THE COURT: Yes, sir.

24 Q Mr. Casselman, let me
25 go -- let me apologize just a

621

CASSELMAN -- CROSS

1 Q I'm going to show you
2 the same exhibit, exhibit number
3 eight.

4 A Yes, sir.

5 Q Okay. I'm going to
6 turn back here to next to the last
7 page. Okay?

8 A Yes.

9 Q He has tried to tell
10 me -- all right. Yes. His own
11 version of what happened and tried
12 to get me to his version. That
13 much you remember?

14 A Jason. Yes, sir.

15 Q Okay. For court
16 reasons I need to skip a little
17 bit.

18 A Okay. Yes, sir.

19 Q I needed to tell the
20 police that Jeff told me that he
21 killed the fellow.

22 A Yeah.

23 Q Is that what it says?

24 A Yes, sir.

25 Q Okay. And that's

CASSELMAN - - CROSS

1 Leading the witness, your
2 Honor.

3 Q According to you
4 testimony moments ago, Jason said
5 the statement that Mr. Davis read.

6 A Yes, sir.

7 Q And your
8 understanding was that it was to
9 get you to come around to his
10 story?

11 MR. DAVIS: Objection.

12 Leading the witness, your
13 Honor.

14 THE COURT: Mr. Davis,
15 let Mr. Simpson finish his
16 question.

17 Q According to your
18 testimony moments ago when Mr.
19 Davis was asking you this, did you
20 go to Jason's story?

21 A No, sir.

22 Q Are you here today
23 being untruthful to protect
24 anyone?

25 A No, sir.

CASSELMAN - - CROSS

1 involvement in this case.

2 Correct?

3 A That's it.

4 MR. SIMPSON: No

5 further questions, your Honor.

6 THE COURT: Mr. Davis.

7

8

9

10

11

12

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RECROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q You never saw the
16 gun?

17 A No, sir.

18 MR. DAVIS: Thank you.

19 That's all I have, your Honor.

20 THE COURT: Mr.

21 Casselman, you may step down
22 and you may be excused.

23 THE WITNESS: Thank
24 you, your Honor.

25 THE COURT: Call your

HOLLANDER -- DIRECT

1 you, your Honor. Court's
2 indulgence. If you'd just
3 give me one moment.

4 May I approach, your
5 Honor?

6 THE COURT: You may.
7 (Whereupon, there was
8 an off-the-record bench
9 conference.)

10 MR. SIMPSON: I
11 apologize for that.

12 Q Melissa, how are you
13 today?

14 A Good.

15 Q Is this where you
16 want to be this afternoon?

17 A Not really.

18 Q Okay. Were you a bit
19 nervous to be, to come testify
20 today?

21 A Not as much as I was
22 yesterday.

23 Q Okay. But there were
24 some nerves involved, obviously?

25 A Yes.

HOLLANDER -- DIRECT

1 A Let's see. I've
2 known him, he's a little, a little
3 bit older than me but, but through
4 like high school we had mutual
5 friends and then after, as adults,
6 we dated for a little under a
7 year.

8 Q And to the best that
9 you can about when did you start
10 dating?

11 A September of 2007.

12 Q And were -- prior to
13 September of 2007 were you really
14 close friends with the defendant?

15 A No. I hadn't seen
16 him in years prior to the, prior
17 to that September.

18 Q And you had said
19 earlier that you, you had met him
20 a few times in high school, mutual
21 friends. So when you reunited
22 so-to-speak for lack of a better
23 word in September of 2007, that's
24 really when you became close to
25 him. Correct?

631

HOLLANDER - - DIRECT

1 Maybe less. Maybe a little bit
2 less. Maybe like three months.

3 Q And did there come a
4 time that you moved together from
5 James Island?

6 A Yes. We moved to
7 Fort Lauderdale, Florida.

8 Q Okay. And why
9 Florida? Why that location?

10 A Jeff had gotten a job
11 offer to do welding and just a
12 change of pace, a change of
13 scenery.

14 Q What about your
15 residence in Florida? Was there
16 something about that?

17 A The place that we
18 moved to was my own grandmother's
19 condo. She had passed away a
20 couple months before that and it
21 needed to be sold. There were
22 improvements that needed to be
23 done to the condo to sell it.

24 Q Do you remember when
25 approximately you moved to Fort

HOLLANDER -- DIRECT

1 A Yes.

2 Q Okay. Did you and
3 Mr. Herrmann have plans then to
4 visit Charleston?

5 A Yes. We woke up and
6 started packing the car.

7 Q On July twenty-first?

8 A Yes.

9 Q Did these plans to
10 come back to Charleston have
11 anything to do with what we're
12 here today about?

13 A No.

14 Q Okay. While
15 preparing to come back to the
16 Charleston, do you recall the
17 defendant receiving a phone call?

18 A Yes.

19 MR. DAVIS: Your Honor,
20 as previously noted, this line
21 of questioning I would object
22 to.

23 THE COURT: The record
24 will reflect that.

25 You may continue, Mr.

HOLLANDER -- DIRECT

1 Q And so what, what
2 kind of questions did you ask Mr.
3 Herrmann?

4 A He was very upset so
5 I asked what was wrong. He said
6 that he had gotten a phone call
7 that the police were looking for
8 him about a missing person and he
9 was very upset and said that, that
10 he thinks he might be going to
11 jail.

12 Q Okay. Did you
13 continue with the plan to come
14 back to Charleston?

15 A Yes.

16 Q And what -- that's a
17 pretty good drive, isn't it?

18 A Like thirteen hours.

19 Q Okay. Did you
20 continue to act -- ask the
21 defendant what this was all about?

22 A Yes.

23 Q What did the
24 defendant tell you this was all
25 about?

637

HOLLANDER -- DIRECT

1 himself. He shot, shot the man
2 several times and got rid of any
3 evidence. He did not give me any
4 details about where a gun or the
5 bullets or anything like that.

6 Q Did he tell you what
7 he did with the body?

8 A He was put in a car
9 and pushed into a creek.

10 Q Did he indicate to
11 you where in the car he put the
12 body?

13 A I believe the trunk.

14 Q Okay. And he
15 indicated to you that he then
16 pushed the car into the creek?

17 A Yes.

18 Q Okay. Did he discuss
19 anything with you about a camp
20 ground?

21 MR. DAVIS: Objection,
22 your Honor.

23 A A camp ground?

24 THE COURT: Hold on
25 one second.

639

HOLLANDER -- DIRECT

1 living or staying or a caravan, a
2 trailer, something like that in
3 the middle of McClellanville, and
4 got rid of some evidence of who he
5 was, maybe some paperwork, maybe a
6 passport, so it wouldn't have been
7 any evidence of a person. And --

8 Q Okay. And you said
9 earlier that you didn't know any
10 names. He didn't give you any
11 names about who this was.

12 A No.

13 Q Did he give you any
14 information about who this was,
15 any tidbit or anything?

16 A Just that he was a
17 foreigner and, and dangerous and
18 had prior charges for like violent
19 charges and all.

20 Q Okay. So that's what
21 he indicated to you?

22 A Yes.

23 Q Okay. And did he
24 mention any other purpose to go
25 into this camper or R. V. other

HOLLANDER -- CROSS

1 Q All right. Miss
2 Hollander, you met Jeff at Wild
3 Wings in Mount Pleasant?

4 A Yes, sir. I had been
5 in there before that but that's
6 when I saw him.

7 Q That's where you met
8 him?

9 A Right.

10 Q His brother, Zack,
11 works there?

12 A Yes, sir.

13 Q Okay. And within two
14 months of meeting him you moved in
15 with him. Right?

16 A Three months. It
17 was, it was a very short period of
18 time. Yes, sir.

19 Q All right. And
20 this -- I think you -- I believe
21 you testified approximately the
22 fall time, September of 2007,
23 right, is when you began dating?

24 A Yes.

25 Q Okay. When you moved

HOLLANDER -- CROSS

1 Q And you all were able
2 to move into there.

3 A Yes.

4 Q Right?

5 A Yes.

6 Q And Jeff got a job
7 down there for a while. Right?

8 A Yes.

9 Q He gets laid off.
10 Right?

11 A Yes.

12 Q And then it's coming
13 up to your birthday on the
14 twenty-first of July. Right?

15 A Yes.

16 Q Okay. 2008. It's
17 not appropriate to ask what your
18 age -- but what age were you
19 turning July twenty-first, '08?

20 A Twenty-three.

21 Q And it was that day
22 that you wanted to come back home
23 and see family and friends and
24 that kind of thing and that's why
25 you all were packing and coming

HOLLANDER -- CROSS

1 asking you, you testified Jason
2 told you that. Right?

3 A That -- that --

4 Q You testified that
5 Jason told you that. Right?

6 A That --

7 Q You testified that
8 Jason told you he shot him several
9 times. Right?

10 A Yes.

11 Q Okay. And he also --
12 you're claiming Jason also told
13 you he removed the bullets?

14 A That, that, that --
15 Jeff --

16 Q I'm sorry. Jeff.
17 I'm sorry.

18 A Yes.

19 Q Jeff also told you he
20 removed the bullets?

21 A Yes. All except for
22 maybe one.

23 Q Okay. And then he,
24 Jeff, told he dumped the car?

25 A Yes.

647

HOLLANDER -- CROSS

1 A I'm sorry?

2 Q The night before
3 you'd been out all night partying?

4 A For my birthday?

5 Q Yes.

6 A No. When we got back
7 into Charleston we stayed at my
8 house.

9 Q No. I'm asking down
10 in Florida the night before you
11 came back you were out all night
12 without Jeff.

13 A Oh. Yes.

14 Q He didn't take that
15 too well.

16 A No.

17 Q He was going to break
18 up with you on the twenty-first.

19 A Okay.

20 Q I want you to, I want
21 you to tell the jury if that's
22 accurate or not.

23 A I didn't know
24 anything about that, but if he was
25 then --

649

HOLLANDER -- CROSS

1 A Possibly.

2 Q Okay. Did you
3 believe the story or not?

4 A I -- not that story.

5 Q Okay. Now, at some
6 point Mount Pleasant Sheriff's
7 detectives come to talk to you.
8 Right?

9 A Yes.

10 Q I'm sorry.
11 Charleston County Sheriff's
12 detectives come to talk to you.
13 Right?

14 A Yes.

15 Q Okay. And that was
16 on August the eleventh of 2008.
17 Do you recall?

18 A I'm sorry. I don't
19 know the exact day. If that's
20 what it says then --

21 Q You do remember
22 giving a written statement
23 however. Right?

24 A Yes, sir.

25 MR. DAVIS: If I may

651

HOLLANDER -- CROSS

1 is at the top below where it says
2 Charleston County Sheriff's Office
3 statement?

4 A That's also my
5 handwriting. I mean that's not my
6 handwriting.

7 Q All right. What I'm
8 asking is, is does it say
9 Charleston County Sheriff's Office
10 statement at the top?

11 A Yes.

12 Q Okay. Eight eleven
13 '08. Correct?

14 A Yes.

15 Q Okay. And it appears
16 to be in multi-page statement with
17 your signature at the end as well?

18 A Yes, sir.

19 Q Okay. So this would
20 be a statement that you gave the
21 Charleston County Sheriff's
22 Office. Correct?

23 A Yes, sir.

24 Q Do you remember the
25 detectives that you talked to?

653

HOLLANDER -- CROSS

1 A Yes.

2 Q Okay. And it
3 involves what you told the jury
4 about today. Right?

5 A Yes, sir.

6 Q And you knew it was
7 important to tell them everything
8 that you knew about what was going
9 on. Right?

10 A Yes.

11 Q Okay. And in fact
12 and you did that. You told them
13 everything that you knew about
14 what was going to your knowledge.
15 Right?

16 A Yes.

17 Q And that's basically
18 what you told the jury today.
19 Right? About what Jeff supposedly
20 told you in the car ride, that's
21 what you told the jury today.
22 Right?

23 A Yes.

24 Q Okay. But you didn't
25 tell them everything, did you?

655

HOLLANDER -- CROSS

1 Q Correct?
2 A Yes, sir.
3 Q Eight twelve '08.
4 Right?
5 A Yes.
6 Q So you gave another
7 statement?
8 A Yes.
9 Q To the same person or
10 people?
11 A Yes.
12 Q And you contacted,
13 you contacted them on that
14 occasion to go back and tell them
15 some more information. Right?
16 A Yes.
17 Q Some stuff you'd
18 forgotten to mention before.
19 Right?
20 A Yes.
21 Q You forgot to mention
22 that he goes to the guy's trailer
23 and took ten to fifteen thousand
24 dollars?
25 A I found that to be a

657

HOLLANDER -- CROSS

1 sober person now and I work four
2 jobs and I apologize if I, if I am
3 not as clear as you want me to be.
4 I'm doing my best to remember.
5 That's -- that was the situation.
6 I.

7 Q Thank you.

8 A I told Jeff, not that
9 I disliked him and never wanted to
10 see him again, but that he needed
11 to, when we got back into
12 Charleston stay away from me
13 because I could not deal with it.
14 Emotionally I just couldn't do it.

15 Q Okay. You were
16 scared about this whole thing.
17 Right?

18 A Yes.

19 Q Okay. Are you
20 currently on any medications?

21 A No. I have several
22 prescriptions but I don't take
23 them on a regular basis.

24 Q Is that for
25 schizophrenia?

659

HOLLANDER -- CROSS

1 to pay people off. Correct? I
2 need you to answer out loud.

3 A I'm sorry.

4 Q I'm sorry.

5 A I didn't even know.

6 What was the question? I
7 apologize.

8 Q In the second
9 statement you indicate that the
10 money was used to keep people
11 quiet. Is that right?

12 A That's what I was
13 told. Yes, sir.

14 Q My question is, in
15 your second statement?

16 A Yes, sir.

17 Q And again that's not
18 mentioned in the first statement.
19 Correct?

20 A Yes.

21 Q One of your oldest
22 friends is Lauren Hutchinson.
23 Right?

24 A Yes, sir.

25 Q And you've spoken

661

HOLLANDER -- REDIRECT

1 BY MR. SIMPSON:

2 MR. SIMPSON: Thank
3 you, your Honor. Just
4 briefly.

5 Q Melissa, in your
6 cross you mentioned the name Keith
7 Hair. Is that a gentleman who
8 works for our office?

9 A Yes.

10 Q And when was the
11 first time you and him spoke?

12 A Oh...

13 Q Was it recently?

14 A I thought it was
15 recently but he told me over the
16 phone that we had met I guess a
17 year and a half ago which would
18 have been --

19 Q Socially.

20 A Oh, is that right?

21 Is that right what he was
22 referring to?

23 Q All right. Did you
24 meet before in reference to this
25 case?

663

HOLLANDER -- REDIRECT

1 good as it had been previously.

2 Is that correct?

3 A Not exactly. I don't
4 know where all this is coming from
5 because Jeff had asked me if he
6 goes to prison if I will come and
7 visit him there so I did not know
8 he was breaking up with me and
9 wanting me to visit him in prison.

10 Q Okay. But is it fair
11 to say that -- I mean I guess I'll
12 get right to the point. Is your
13 testimony here today to settle
14 some grudge you have against
15 Jeffrey Herrmann?

16 A I'm about to get
17 married. I moved on. I have no
18 grudge. I'm not spiteful at all.

19 Q Okay. And Jeffrey
20 Herrmann told you that he had shot
21 a person?

22 A Yes, sir.

23 Q Put him in the trunk?

24 A Yes, sir.

25 Q That he went to his

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HOLLANDER -- RECROSS

1 BY MR. DAVIS:

2 Q You tell the jury you
3 never met Jason Cumbee before?

4 A No. I haven't met
5 him.

6 Q You met Shanna Cumbee
7 yesterday. Right?

8 A Yes, sir.

9 Q You guys hung out in
10 the room for while. Is that
11 right?

12 A Yes.

13 Q Okay. Prior to
14 testimony in this case you met
15 with or you spoke with Mr. Hair of
16 the Solicitor's Office. Right?

17 A Yes, sir.

18 Q You also met with
19 folks from the Solicitor's Office.
20 Right?

21 A Yes, sir.

22 Q To prepare you for
23 the testimony today. Right?

24 A Yes, sir.

25 MR. DAVIS: Miss

1 investigation. Please have a
2 wonderful and restful evening.
3 Please return to your jury
4 room at 9:15 in the morning.

5 Please rise for the
6 jury.

7 (Whereupon, the jury
8 leaves the courtroom at 5:43
9 p.m.)

10 THE COURT: Thank you.
11 Be seated.

12 Mr. Davis, we had
13 several or the last bit of
14 conversations that we had to
15 do with Miss -- the last
16 witness's testimony, Miss
17 Hollander and Mr. Hair,
18 whether or not there was some
19 discovery issues. Just let's
20 put that on the record so that
21 Miss Hollander may be excused
22 from the courthouse.

23 MR. DAVIS: Yes, ma'am.
24 Just obviously again, one of
25 the kudos for the solicitors

1 our office.

2 When we began
3 preparing for this trial two
4 or three months ago, in
5 earnest preparing for the
6 trial it was he who I had
7 asked to, to try to locate the
8 witnesses and bring them in
9 for an interview. We had some
10 bad contact information on
11 Miss Hollander. He did track
12 her down and we provided the
13 defense with the most current
14 contact information we had as
15 was our duty as to discovery.
16 I vaguely remember Keith
17 saying something to the effect
18 of oh, I spoke with Miss
19 Hollander. I think I met her
20 socially. And I know Miss
21 Hollander got confused but had
22 met her a few years prior or
23 what I propose to do is talk
24 to Mr. Hair tomorrow morning.
25 It is not, it is not a

1 any connection. I doubt --
2 and I take the solicitor's
3 word -- I doubt even if they
4 ran into each other in a, in a
5 social setting, I'm not
6 suggesting that there's any
7 involvement there. Certainly
8 I'd ask if there was we'd be
9 given notice of it and I take
10 the solicitor's word that,
11 that it was simply contacting
12 her and she is mistaken as
13 opposed to the State having --
14 if there is any statement or
15 relationship that we should be
16 made aware of, of course, I'm
17 asking for that now.

18 THE COURT: All right.
19 Mr. Simpson, if you could over
20 the evening hour address that
21 with Mr. Hair and if we need
22 to address that matter on the
23 record in the morning we will
24 do so.

25 MR. SIMPSON: Absolute-

1 her from her subpoena but she
2 certainly can, can leave the
3 courthouse, leave and go home
4 because I will say as an
5 officer of the Court, I think
6 it's highly unlikely we'll be
7 recalling her.

8 THE COURT: All right.
9 Mr. Simpson, if you will let
10 your investigator know that
11 Miss Hollander may leave the
12 courthouse immediately.

13 MR. SIMPSON: Okay.
14 Thank you.

15 THE COURT: Thank you.
16 And just for scheduling
17 purposes, I show that we have
18 called six witnesses. I have
19 a more lengthy list than that.
20 Just for scheduling for the
21 remainder of the week, could
22 you be of some guidance as to
23 how many -- and I certainly
24 won't hold you to this, Mr.
25 Simpson, but how many more

1 Mr. Davis, just for
2 scheduling, if the State rests
3 tomorrow, do you anticipate
4 calling witnesses?

5 MR. DAVIS: Half a
6 day --

7 THE COURT: Will it go
8 into Thursday, into Friday?

9 MR. DAVIS: Depending
10 on the case, I would think it
11 would be a couple hours at the
12 most, so depending on when we
13 would finish. For example, if
14 it takes a day for the State
15 to finish, I have no reason to
16 think we'd go past lunch on
17 Thursday. If it doesn't take
18 the State's -- the full day
19 for the State's case we may be
20 able to finish sometime late
21 tomorrow. Obviously that's if
22 we put up a defense. I have
23 to talk to my client.

24 THE COURT: Over the
25 evening hours, Mr. Simpson,

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1 address. The jury will be
2 back at 9:15. I'll see you
3 back at 9:15.

4 MR. SIMPSON: State
5 will be prepared to proceed.

6 (Whereupon, this
7 matter was adjourned at
8 5:50 p.m.)
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
CASE NO. 2009-GS-10-09048

STATE OF SOUTH CAROLINA,

VS

TRANSCRIPT OF PROCEEDINGS
January 6, 2010
Charleston, South Carolina

JEFFREY HERRMANN,

Defendant.

VOLUME THREE
Page 682 - 1115

BEFORE:

THE HONORABLE CHRISTI L. HARRINGTON, Judge

APPEARANCES:

BENJAMIN CHAD SIMPSON, ESQ.
JULIE CARDILLO, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR STATE

RODNEY D. DAVIS, ESQ.
CODY GROEBER, ESQ
PUBLIC DEFENDERS

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

NICHOLAS I. BATALIS

By Mr. Simpson	1050	1077
By Mr. Davis	1067	

EXHIBITS

IDENT.	EVD.
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State's 7	Photo	
State's 8	Photo	
State's 9	Letter	
State's 10	Letter	
State's 11	Notes	
State's 12	DVD video	
State's 13	Photo	733
State's 14	Photo	733
State's 15	Photo	733
State's 16	Photo	
State's 17	Photo	
State's 18	Photo	
State's 19	Photo	
State's 20	Photo	
State's 21	N.C. tag	
State's 22		
State's 23	Photo	
State's 24	Photo	
State's 25	Photo	
State's 26	Photo	
State's 27	Photo	
State's 28	Photo	
State's 29	Photo	
State's 30	Photo	
State's 31	Photo	
State's 32	Photo	
State's 33	Hardhat	
State's 34	Photo	
State's 35	Photo	
State's 36	Photo	
State's 37	Prosthetic leg	
State's 38	Photo	
State's 39	Hollander statement	318

1 (Whereupon, the judge
2 enters the courtroom at 9:17
3 a.m.)

4 MR. SIMPSON: Your
5 Honor, for scheduling
6 purposes, we told our first
7 witness to be here at 9:30
8 however we have another
9 witness if need be that we can
10 bide the time on. A short
11 witness.

12 THE COURT: All right.
13 Are there any matters before
14 we bring in the jury? Mr.
15 Simpson?

16 MR. SIMPSON: None from
17 the State.

18 THE COURT: Mr. Davis?

19 MR. DAVIS: Judge, I
20 believe the one matter is
21 obviously when Miss Hollander
22 testified I was talking about
23 sheriff's deputies. She threw
24 out a name if you remember
25 which was Mr. Hair who's with

1 investigator, Assistant
2 Solicitor Mr. Simpson, and Mr.
3 Hair and myself.

4 From what all three
5 have told me, I don't believe
6 there are any issues for the
7 defense to be concerned about
8 but I just, I wasn't sure the
9 posture it had been left in by
10 the Court. And so everybody
11 is -- everybody is here if, if
12 the Court has any further --

13 THE COURT: Mr. Davis,
14 as long as you are satisfied
15 and you don't need to inquire
16 of Mr. Hair, may Mr. Hair be
17 excused?

18 MR. DAVIS: Certainly.
19 No objection, your Honor. I
20 just wanted to get that
21 concluded on the record.

22 THE COURT: Thank you,
23 Mr. Davis.

24 MR. DAVIS: Thank you,
25 your Honor.

RICHARDSON -- DIRECT

1 HENRY L. RICHARDSON,
2 having been called as a
3 witness, is duly sworn as
4 follows:

5 DIRECT EXAMINATION BY
6 MR. SIMPSON:

7 Q Good morning, Mr.
8 Richardson. What agency are you
9 employed by?

10 A Mount Pleasant Police
11 Department.

12 Q And what is your rank
13 in that agency?

14 A I'm a sergeant.

15 Q And is one of your
16 duties from time to time as a
17 sergeant with Mount Pleasant to
18 serve bench warrants?

19 A Yes, sir.

20 Q What does that mean,
21 serve a bench warrant?

22 A We have a bench
23 warrant from a Clerk of Court and
24 we got out and actually find the
25 individual and serve them with the

RICHARDSON -- DIRECT

1 A Yes.

2 Q -- ring a bell?

3 Could you describe a
4 little bit to the jury the process
5 on this particular bench warrant
6 service that you went through?

7 A We, we took several
8 warrants out of the clerk of court
9 on that particular day and we went
10 out to serve them, myself and
11 another gentleman. We went to --

12 Q If I could just
13 interrupt you for a second. You
14 say several warrants on different
15 individuals?

16 A On different
17 individuals.

18 Q Correct?

19 A Correct.

20 Q And the warrant on
21 Jason Cumbee was just a single
22 warrant?

23 A Just a single
24 warrant.

25 Q Okay.

RICHARDSON - - DIRECT

1 requested from the female if the
2 subject is in the house. And she
3 right away said yes, he's in the
4 rear bedroom. Went into the
5 bedroom. He was there and the
6 statement that I recall - -

7 Q We can't get into
8 statements that were made.

9 A Okay.

10 Q What was the
11 subject's demeanor?

12 A Panic. He's scared.

13 Q Did it appear to you
14 from that demeanor he wasn't too
15 crazy about the idea of going to
16 jail?

17 A Not at all. Not at
18 all.

19 Q Did you transport Mr.
20 Cumbee from McClellanville to
21 Mount Pleasant?

22 A Yes, I did.

23 Q About approximately
24 how long of a drive is that?

25 A I would say about

RICHARDSON -- DIRECT

1 with him. I think it's Detective
2 Cheney is who he actually spoke
3 with.

4 Q Okay. And that's
5 Detective Josh Cheney?

6 A Yes.

7 Q And he works with
8 the -- I forget the phrase you
9 used. It's the detective
10 division?

11 A It's the detective
12 division. Yes. Investigation.

13 MR. SIMPSON: Okay.
14 Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. SIMPSON: Thank
17 you, Sergeant Richardson.
18 Please answer any questions
19 that the defense may have for
20 you.

21

22

23

24

25

RICHARDSON -- CROSS

1 warrant previously referred to
2 is received and marked as
3 Defendant's Exhibit No. 11 for
4 identification.)

5 MR. DAVIS: May I
6 approach the witness, your
7 Honor?

8 THE COURT: You may.

9 Q Sergeant Richardson,
10 I'm going to show you what's been
11 marked as defendant's exhibit
12 number eleven for identification
13 purposes only. Does that appear
14 to be the bench warrant that we're
15 talking about?

16 A Yes.

17 Q Can you speak up just
18 a little bit?

19 A I'm sorry. Yes.
20 Uh-huh.

21 Q Okay. And this is
22 a -- this is from the town of
23 Mount Pleasant. It was a single
24 charge. Correct?

25 A Correct.

RICHARDSON - - CROSS

1 Q Because you believed
2 that he may have been there you
3 called the Charleston County
4 Sheriff's Office to help you
5 because of the location?

6 A Correct.

7 Q Correct?

8 A Correct.

9 Q It may have been
10 outside Mount Pleasant's
11 jurisdiction?

12 A Correct.

13 Q Okay. And in fact
14 yourself and Sheriff's deputies
15 arrived?

16 A Correct.

17 Q Approached the house
18 again and that time you were told
19 yes, he is here?

20 A Right.

21 Q And you affect the
22 arrest based on this bench
23 warrant?

24 A Exactly.

25 Q Now, a bench warrant

RICHARDSON -- CROSS

1 A State?

2 Q Date. I'm sorry. Do
3 you recall the issuance date?

4 A No. I don't recall
5 the date.

6 Q Would it indicate on
7 the, on the --

8 A It should be on the
9 form.

10 MR. DAVIS: May I
11 approach, your Honor?

12 THE COURT: You may.

13 Q And does that
14 indicate June of 2006. June
15 twenty-sixth of 2006?

16 A Yes.

17 Q Okay. And you recall
18 back then Judge Peter Shahid?

19 A Yes.

20 Q Okay. And you're
21 serving this in July of '08.
22 Right?

23 A In '08. Correct.

24 Q Just briefly tell the
25 jurors why it might be that the

RICHARDSON -- REDIRECT

1 briefly, your Honor.

2

3

4

5

6 REDIRECT EXAMINATION

7 BY MR. SIMPSON:

8 Q Now, Sergeant

9 Richardson, I'm going to show you
10 again what the defendant marked as
11 defendant's exhibit number eleven.
12 Refreshing your recollection with
13 that document, can you explain to
14 the jury for what offense that
15 this bench warrant arises of.

16 A It was a D. U. S.
17 third.

18 Q And D. U. S. That is
19 essentially driving while your
20 license is suspended?

21 A Suspended. Correct.

22 Q Okay. And in your
23 twenty years of law enforcement
24 experience, knowing what you know
25 about a wide range of criminal

RICHARDSON -- RECROSS

1 Honor.

2 THE COURT: Mr. Davis.

3

4

5

6

7

8

9 RECROSS-EXAMINATION

10 BY MR. DAVIS:

11 Q Officer, just
12 briefly. That's a D. U. S. third
13 offense?

14 A Third offense.

15 Q Six months or a
16 twenty-one hundred dollar fine?

17 A I believe that's what
18 it is.

19 Q Isn't that's what's
20 indicated?

21 A Yes. That's what I
22 believe it is.

23 MR. DAVIS: Thank you,

24 Sergeant.

25 THE COURT: Sergeant,

CHENEY -- DIRECT

1 what's your occupation?

2 A I'm a detective with
3 Mount Pleasant Police Department.

4 Q All right. And how
5 long have you been with that
6 agency?

7 A Approximately six
8 years.

9 Q And generally
10 speaking what is, what are the
11 duties of the detectives agency as
12 opposed to a patrol officer?

13 A Usually we're
14 assigned to follow up on the
15 initial investigation that's done
16 by the patrol officers. We'll
17 follow up and make phone calls and
18 chase down leads and stuff like
19 that.

20 Q And in a general
21 sense, I know that you have a lot
22 of cases, but does the level of
23 cases that a detective would be
24 assigned to, is it more severe
25 than what a patrol officer would

CHENEY -- DIRECT

1 Cumbee?

2 A I did.

3 Q A written statement?

4 A I did.

5 MR. SIMPSON: Court's
6 indulgence. Approach the
7 evidence table?

8 THE COURT: You may.

9 Q Mr. Cheney, I'm
10 handing you what's been marked for
11 I. D. only as defendant's exhibit
12 three. Do you recognize that
13 document?

14 A I do.

15 Q And is that the
16 written statement you took from
17 Jason Cumbee?

18 A That is correct.

19 Q On July second, 2008?

20 A That's correct.

21 Q Without getting into
22 the substance of that statement,
23 did the information you gleaned
24 from speaking with Mr. Cumbee lead
25 you to call another agency?

CHENEY -- CROSS

1 Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. SIMPSON: Thank
4 you, Detective Cheney. Please
5 answer any questions Mr. Davis
6 has for you.

7 THE COURT: Mr. Davis.

8

9

10

11

12

13 CROSS-EXAMINATION BY

14 MR. DAVIS:

15 Q I believe just one
16 question, Detective. In that
17 statement you not only talked
18 about what you've already
19 testified to, he also gave you
20 information about some copper
21 thefts as well. Correct?

22 A That's correct.

23 MR. DAVIS: Thank you,
24 Detective.

25 MR. SIMPSON: State has

SCARBOROUGH -- DIRECT

1 this witness's testimony, any
2 objection to it will be noted
3 for the record.

4 MR. DAVIS: Thank you,
5 your Honor.

6
7
8
9
10

11 JOHN L. SCARBOROUGH,
12 having been called as a
13 witness, is duly sworn and
14 testifies as follows:

15 DIRECT EXAMINATION BY
16 MS. CARDILLO:

17 Q Good morning,
18 Lieutenant Scarborough.

19 A Good morning.

20 Q That better?

21 A Yes. Thank you.

22 Q You're welcome.

23 Lieutenant

24 Scarborough, where are you
25 employed?

SCARBOROUGH -- DIRECT

1 I went back to the road and before
2 that I was a sergeant over
3 detectives. I went back to the
4 detective office for a brief
5 period.

6 Q Now, during your time
7 in the detective bureau did you
8 ever conduct missing persons
9 investigations?

10 A Yes, ma'am, I did.

11 Q What is the general
12 procedure that you go about to, to
13 investigate a missing person's
14 complaint, if you will?

15 A A missing person's
16 complaint starts off with a field
17 report taken usually by the road
18 deputies. They do what they call
19 a missing person's affidavit which
20 is where a person, either a
21 relative or a loved one, fills out
22 the form and signs that that, that
23 they're stating that's an actual
24 fact that this person is missing.
25 And then it goes through the

SCARBOROUGH -- DIRECT

1 from that person still after, you
2 know, usually it's about a week's
3 time by the time it gets to the
4 detective office, we, we follow up
5 from there. We have certain
6 avenues that we do which is,
7 consists of naturally going to the
8 place where the person was last
9 seen. We also go to their
10 address. We try to interview as
11 many people as we can that may
12 have seen them or heard from them.
13 And then we do search warrants on
14 phone records and anything of that
15 nature to see if there's any
16 activity and then we actually do
17 search warrants on financial
18 records to find out if there's any
19 activity on their financial, their
20 bank cards, anything like that.
21 It usually gives you the
22 information that you need that
23 says they're either transient,
24 they're either moving around or
25 possibly somebody's stolen their

SCARBOROUGH -- DIRECT

1 years?

2 A Yes, ma'am.

3 Q And you were with
4 them in the year 2000?

5 A Yes, ma'am.

6 Q Were you with the
7 detective division at that time?

8 A Yes, ma'am.

9 Q Now are you familiar
10 with the name of Ali Sarhan or Ala
11 Sarhan?

12 A Yes, ma'am.

13 Q And how are you
14 familiar with that name?

15 A He was a missing
16 person case that I handled as a
17 detective.

18 Q And you were assigned
19 this case?

20 A Yes, ma'am.

21 Q And what did you do
22 as a result of being assigned this
23 case?

24 A Basically exactly
25 what I stated previously. I

SCARBOROUGH -- DIR

1 Q Now I'm going to turn
2 your attention to July second of
3 2008. What division in the
4 Sheriff's Office were you working
5 at at that time?

6 A On July the second?

7 Q Of 2008.

8 A I was, I was assigned
9 to the, to the traffic division as
10 a lieutenant, which also under my
11 umbrella is the, the school
12 crossing guards and also the
13 animal control unit, but one of my
14 busiest areas is the underwater
15 recovery team. I was the team
16 commander of the underwater
17 recovery team.

18 Q Explain a little bit
19 for the jury what the
20 undercover -- I'm sorry. What the
21 underwater recovery team actually
22 does.

23 A Anything that has to
24 do with any tributaries or
25 anything that has to do with any

SCARBOROUGH -- DIRECT

1 that had some information in
2 reference to a possible missing
3 person case and they wanted me to
4 meet with them and look at several
5 locations that this individual had
6 taken them to up in the Germantown
7 area, which is up on the other
8 side of McClellanville, up towards
9 Georgetown, which is also in the
10 Francis Marion National Forest.
11 It's a very desolate area. I met
12 with them up there and, and they
13 showed me several waterways up
14 there and that this gentleman had
15 some information on a vehicle that
16 had possible been placed in a
17 waterway.

18 Q Now where -- it's not
19 just you going out to these
20 waterways, is it? Is it several
21 people, equipment? What is --
22 what do you actually have to do to
23 go searching for an item in a body
24 of water?

25 A Well, naturally it's

SCARBOROUGH -- DIRECT

1 two smaller areas after I got all
2 my assets in place.

3 Q So at this point you
4 called in all of your, I guess for
5 lack of a better term, assets or
6 team members?

7 A Yes.

8 Q Machinery, equipment?

9 A Well, initially what
10 I did was I called in, I did an
11 "all call" which is a page out to
12 all my divers, which we have a
13 ten-man team. All the divers
14 responded. I met them at 45 and
15 17 and gave them a briefing what
16 we were doing. I also requested
17 Charleston County rescue respond.
18 We worked very closely with them
19 because they have a lot of
20 equipment that we don't have and
21 especially the boats that they
22 use, a lot of time they're used to
23 transport us out to where we need
24 to dive at.

25 Charleston County

SCARBOROUGH -- DIRECT

1 article under the water. It has
2 to be a certain size. Naturally
3 we don't -- we can't find a knife
4 or a gun using side-scan. For
5 larger objects such as vehicles,
6 bodies, anything like that we use
7 side-scan. Basically what it
8 does, there's a transducer which
9 is a, a piece of equipment that's
10 now on the bottom of the boat, and
11 it basically sends down a sound
12 wave down to the bottom of the
13 ocean floor or the, or the sea bed
14 and that is reverberated back up
15 and then it's read onto the screen
16 and you have to basically know
17 what you're looking at. We go
18 through a lot of intensive
19 training on the side-scan sonar to
20 be able to determine that that's a
21 log or that's an arm or a person,
22 and most of my guys are very well
23 versed on that.

24 Q Now in the case at
25 hand, you went out to Francis

SCARBOROUGH -- DIRECT

1 that we needed to be at, so we
2 packed up at that point because we
3 were burning down, attempted to
4 move back towards Highway 17 to
5 the other two locations.

6 Q What kind of -- you
7 said you were looking for a
8 vehicle. What type of vehicle
9 were you looking for?

10 A I don't remember
11 exactly the -- whether or not the
12 suspect told them whether or not
13 what type of vehicle it was. I
14 know that they said it was a small
15 sedan but I don't believe they
16 went into make and model and all
17 that.

18 Q All right. So you
19 said that you moved closer back
20 towards 17. What happened --
21 where did you go at that point?

22 A The second location
23 ended up to be a very small
24 tributary which actually ended up
25 to be hardly deep enough to put a

SCARBOROUGH -- DIRECT

1 you know when the tide comes in,
2 that's where the waterline is
3 going to be, and basically in, in
4 waterways you can tell it by
5 looking at the marsh, the marsh
6 usually is dark in color up to a
7 certain point and that tells you
8 where the waterline usually will
9 reach at high tide.

10 Q Does the work
11 brackish sound familiar?

12 A Brackish water is, is
13 any type of water that's mixed
14 with salt. Salt and fresh water,
15 we refer to it as brackish water.
16 I don't know if that's a chemical
17 term or if that's just a
18 good-old-boy term. I have no
19 idea, but it's something we've
20 used forever. Brackish water is
21 usually up at the Cooper River
22 where it's closes to the ocean,
23 it's very salty. As you get
24 further up the Cooper River, up
25 towards the locks and up in that

SCARBOROUGH -- DIRECT

1 is maintained by the state. It
2 actually travels over a, the tidal
3 creek that we were at. And as you
4 go over this bridge to the right
5 was a boat ramp which was a, it
6 was a paved boat ramp so it's
7 maintained by someone, either the
8 state or -- I don't know who would
9 maintain it but it was -- a lot of
10 duck hunters and people of that
11 nature use those type of very
12 desolate areas to put, you know,
13 boats in the water.

14 Q Is this -- well, you
15 mentioned hunters and that -- is
16 it well-travelled just by the
17 everyday person?

18 A I would say not
19 because the reason why I would say
20 that, we were there for all night
21 basically once we located this
22 vehicle in question. We were
23 there all night and at no poi
24 did we have to turn anybody a
25 and send them back on 17. So

SCARBOROUGH -- DIRECT

1 Q And how are you
2 familiar with that photograph?

3 A That's the location
4 where the actual dock mission took
5 place for recovery of the vehicle.

6 Q And do these
7 photographs accurately or fairly
8 and accurately depict the area
9 where the recovery of the car
10 occurred on July second of, July
11 third of 2008?

12 A Yes, ma'am.

13 MS. CARDILLO: Your
14 Honor, the State would move at
15 this time to move into
16 admission State's proposed
17 exhibits thirteen, fourteen,
18 and fifteen.

19 THE COURT: Mr. Davis?

20 MR. DAVIS: No
21 objection, your Honor.

22 THE COURT: State's
23 thirteen, fourteen, and
24 fifteen admitted into evidence
25 without objection.

SCARBOROUGH -- DIRECT

1 that I referred to right here.

2 And beyond this, this is a dirt
3 road that leads way into the
4 forest.

5 Q Is this just another
6 picture of the same area, further
7 out?

8 A This, the best I can
9 tell from here, this would be, 17
10 would be back here. This would be
11 the boat ramp. This would be the
12 road over the bridge right here.
13 I can't really -- (Indicating.)

14 Q Okay. Let's move it
15 a little bit.

16 A It's a whole lot of
17 trees.

18 Q And this one. This
19 is a better one.

20 A Okay. Again this is,
21 this is a much better photo. This
22 is the bridge in question. This
23 is the boat ramp in question. And
24 this is the roadway. This would
25 be 17 like this right here.

SCARBOROUGH - - DIRECT

1 looking for anything out of the
2 ordinary that would be in the
3 picture, at which time they did
4 that for probably thirty minutes.
5 They notified me, which I was on
6 land at that point, notified me
7 that they found an anomaly, which
8 is, you know, something that
9 shouldn't have been in the
10 waterway, and they have me meet
11 them at the ramp. I got on board
12 the boat and they showed me on the
13 side-scan a picture which is very
14 similar to a very small TV, what
15 they identified as an anomaly. So
16 we decided at that point, we knew
17 exactly where it was because of
18 them taking a picture where it
19 was. I handed them a down buoy
20 which is basically just an orange
21 large float with a magnet on board
22 and a, and a piece of rope. They
23 went, they located that exact
24 location where it was. They
25 placed the magnet on something

SCARBOROUGH - - DIRECT

1 It's a, it's a mask that basically
2 to transmit you push a button on
3 the outside of it and we can talk
4 to each other effortlessly or we
5 can talk to the topside unit which
6 is usually a diver that's in a
7 boat and he's got a line dropped
8 down which is a transducer and he
9 can hear our entire conversation
10 about what we're talking about and
11 what we're doing, because this is,
12 this is because we need to talk a
13 lot of times, especially when
14 we're trying rig something up, we
15 need to know what each other is
16 doing because most of the time
17 with the water, it's black and we
18 can't see each other. All we know
19 is what we're feeling.

20 Q Was that the case
21 here?

22 A The case was -- yes.
23 It was black water.

24 Q What time of day or
25 night was it when you were in the

SCARBOROUGH -- DIRECT

1 things on that. There was mud in
2 the vehicle all the way up to the
3 door. When the windows go down,
4 all the way up to where the window
5 was open there was mud all the way
6 across. It was just like a big
7 square area of mud inside this
8 vehicle. And so once we
9 determined that, we actually
10 couldn't determine if anything was
11 in there because of the mud. We
12 did the best we could as far as
13 feeling around inside the vehicle.
14 Went back and tried to identify
15 the vehicle. We could not see the
16 VIN plate which is the VIN plate
17 which is located on your dashboard
18 of your car. It's a number
19 that's specific to every vehicle
20 within the United States. We
21 could not locate it because of
22 the, the darkness of the water. I
23 went back and located the tag. I
24 could not read it because of the
25 darkness of the water.

SCARBOROUGH -- DIRECT

1 ahead and pried it off the
2 vehicle.

3 MS. CARDILLO: Your
4 Honor, may I approach?

5 THE COURT: You may.

6 MS. CARDILLO: I'm
7 sorry, your Honor. Can I get
8 this marked as State's
9 twenty-one?

10 (Whereupon, the North
11 Carolina vehicle tag
12 previously referred to is
13 received as State's Exhibit
14 No. 21 for identification.)

15 Q I'm going to hand you
16 what's been marked as State's
17 exhibit twenty-one.

18 A Yes, ma'am.

19 Q Would you look at
20 that and then tell the jury if you
21 recognize it?

22 A Yes, ma'am. This
23 appears to be the same tag that I
24 removed from the vehicle.

25 Q And does it fairly

SCARBOROUGH -- DIRECT

1 you, your Honor.

2 THE COURT: Without
3 objection.

4 MR. DAVIS: Your Honor,
5 would that be with no --

6 THE COURT: No new
7 objections. Thank you.

8 (Whereupon, the North
9 Carolina vehicle tag
10 previously referred to is
11 received and marked as State's
12 Exhibit No. 21 in evidence.)

13 THE COURT: No knew
14 objections. Thank you.

15 Q Now, Lieutenant, let
16 me ask you a few more questions
17 about this tag.

18 A Yes, ma'am.

19 Q So you pulled this
20 tag off for what purpose?

21 A To identify the
22 vehicle and see if the vehicle had
23 been involved in any type of crime
24 or if it was actually stolen or
25 what the scenario was with this

SCARBOROUGH -- DIRECT

1 the name of that missing person?

2 A Just happens to be
3 the same one that I had been
4 assigned prior to this, which was
5 my missing person case when I was
6 a detective in the detective
7 office.

8 Q From eight years
9 before?

10 A I'm not sure the
11 amount of time, but yes.

12 MS. CARDILLO: May I
13 approach, your Honor?

14 THE COURT: You may.

15 Q All right. Now if
16 you could explain to the jury now
17 you're underwater and you're going
18 through this vehicle or trying to.
19 Where exactly in the waterway --
20 now, lieutenant, where exactly in
21 the waterway were -- where did you
22 enter, I mean I guess where did
23 you enter is a bad question.
24 Where exactly did you put your
25 boat in and where did you dive and

SCARBOROUGH -- DIRECT

1 A Our objective at that
2 point was to, we, we swept around
3 the vehicle which meant we did a
4 cursory check around the vehicle
5 to make sure there was nothing
6 from the vehicle there. A body,
7 clothing, anything that has to do
8 with that vehicle. We usually do
9 a perimeter check around it. We
10 determined there was nothing
11 there. There was, there was
12 wildlife in the area. There was a
13 lot of alligators. They were very
14 inquisitive as to what we were
15 doing there and they kept coming
16 around the boats, kept trying to
17 keep them off us, and that was one
18 of our concerns, naturally, but we
19 were able to do the cursory check,
20 then when I surfaced I told them
21 that we needed a crane because of
22 the fact that the mud inside the
23 vehicle, the vehicle's weight is,
24 is bad enough, but once you put
25 mud in the water and inside the

SCARBOROUGH -- DIRECT

1 A Well, McClellanville
2 alone from Charleston, from where,
3 where they're located on
4 Dorchester Road. Like 526 is
5 where rescue headquarters is. And
6 from there to where we were at,
7 driving a large truck, it took
8 them a while to get there.

9 Q So once they arrived,
10 what -- you're trying to pull the
11 car out. Could you explain that
12 process of what you did in the
13 case.

14 A Well, due to the
15 weight and due to the, the fact
16 that it was not right underneath
17 the bridge, it was away from the
18 bridge which meant that anybody
19 that's familiar with the crane
20 basically, the further out they
21 put their arm the, the less
22 strength they have. So they had
23 to extend the arm of the crane way
24 out, which meant that it was maxed
25 out and it also had their cable

SCARBOROUGH -- DIRECT

1 Q Well, let me show you
2 what's been previously marked as
3 State's proposed exhibit sixteen.

4 A Yes, ma'am.

5 MS. CARDILLO: May I
6 approach, your Honor?

7 THE COURT: You may.

8 Q Lieutenant
9 Scarborough, do you recognize that
10 photo?

11 A Yes, ma'am.

12 Q And why do you
13 recognize that phot?

14 A That is the --
15 there's a lift back. There's
16 myself and another diver. I
17 recognize myself. I'm not sure
18 who the other diver, I'm not sure
19 who that was exactly because there
20 was a lot of people involved in
21 this, and there's a strap going
22 under the vehicle and, which goes
23 straight up. It doesn't depict
24 that here, but that would be
25 connected to the crane.

SCARBOROUGH -- DIRECT

1 photograph of the dive team
2 previously referred to is
3 received and marked as State's
4 Exhibit No. 16 in evidence.)

5 MS. CARDILLO: Your
6 Honor, may I publish?

7 THE COURT: You may
8 publish.

9 MS. CARDILLO: Thank
10 you, your Honor.

11 Q Now, this is really
12 dark I know. It's really hard.
13 I'm sorry.

14 A Is it darker now
15 or --

16 Q No. It's my fault.

17 A These are the divers.
18 (The witness indicates.) This is
19 myself right here. (The witness
20 indicates.) And I'm not sure
21 which diver this was. (The
22 witness indicates.) This is the
23 lift bags that I was referring to.
24 This is one. This is another lift
25 bag that's actually protruding out

SCARBOROUGH -- DIRECT

1 A It would be where
2 you're standing. It would --
3 there -- it would be behind it.
4 This being the woods I referred to
5 where the detective was that I
6 had, that I yelled to, the
7 information on the tag. That's
8 how close we were to the exact
9 opposite -- we were exactly the
10 opposite of the boat ramp. So the
11 vehicle went in, apparently got
12 caught up in the current and ended
13 up directly across from it.

14 Q Thank you,
15 Lieutenant.

16 A Yes, ma'am.

17 Q Now, you talked a
18 lot, or I asked you a lot of
19 questions about, about the process
20 of pulling up the car.

21 A Yes.

22 Q You said it was very
23 heavy, weighing it down. Did it
24 come to a point where you were
25 able to get the car closer to the

SCARBOROUGH -- DIRECT

1 basically what happened was it
2 was -- floated. We deflated the
3 bags. It came to rest and then it
4 gave us a position just to pull it
5 up the boat ramp.

6 Q And did you pull it
7 up at that point?

8 A Yes, ma'am.

9 Q What, what happened
10 next? What was your objective at
11 that point once the car was up?

12 A We -- our job was
13 completed. We, we did what we
14 were called to do. We basically
15 preserved the crime scene and
16 we --

17 Q I'm sorry. You said
18 a crime scene. This was not a
19 recovery at this point? It was a
20 crime scene?

21 A Well, it was a
22 recovery up to the point where we
23 pulled the tag off and it was
24 identified as a, as a missing
25 person's vehicle. Then it would

SCARBOROUGH -- DIRECT

1 it was basically the, the vehicle
2 was sitting on top of the tires.
3 Unlike most vehicles, you know,
4 your suspension and everything
5 keep you, you know, from doing
6 that, and that was all due to
7 weight. That wasn't --

8 Q The mud?

9 A The mud. Yes, ma'am.

10 Q Any other
11 observations you made about the
12 car, the condition of the --

13 A There was a key in
14 the ignition and the vehicle was,
15 the best I remember, was in drive.

16 Q Let me show you
17 what's been marked as State's
18 proposed exhibit seventeen,
19 eighteen, nineteen, twenty,
20 twenty-two, and twenty-three. Let
21 me ask you now. Did you leave the
22 scene immediately once the car was
23 up or did you actually stay
24 observe the car and all the
25 officers and the crime scene?

SCARBOROUGH -- DIRECT

1 accurately depict the car as it
2 was -- after it was removed from
3 the water?

4 A Yes, ma'am.

5 MS. CARDILLO: Your
6 Honor, at this time the State
7 would move to admit seventeen,
8 eighteen, nineteen, twenty,
9 twenty-two, and twenty-three.

10 MR. DAVIS: With no new
11 objections.

12 THE COURT: State's
13 seventeen, eighteen, nineteen,
14 twenty, twenty-two, and
15 twenty-three into evidence
16 with no new objections. Note
17 your previous objections, Mr.
18 Davis.

19 MR. DAVIS: Thank you,
20 your Honor.

21 (Whereupon, the
22 photograph of the Chevrolet
23 Lumina at the top of the boat
24 ramp, previously referred to,
25 is received and marked as

SCARBOROUGH -- DIRECT

1 Lumina's open trunk at the
2 crime scene, previously
3 referred to, is received and
4 marked as State's Exhibit No.
5 22 in evidence.)

6 (Whereupon, the
7 photograph of the Chevrolet
8 Lumina's trunk at the scene,
9 with mud layer removed, is
10 received and marked as State's
11 Exhibit No. 23 in evidence.)

12 THE COURT: You may
13 publish.

14 MS. CARDILLO: Thank
15 you, your Honor.

16 Q Lieutenant
17 Scarborough, what is that image
18 of?

19 A That's the vehicle in
20 question, pulled out. This would
21 be the vehicle. (The witness
22 indicates.) That would be one of
23 the rescue trucks. (The witness
24 indicates.) And that would be one
25 of their hydraulics, referred to

SCARBOROUGH - - DIRECT

1 was. It was full of mud, with
2 the, the seat being reclined as it
3 was. Not reclined but forward and
4 the, that's what it looked like,
5 the interior.

6 Q Thank you. That's a
7 little bit better. And that's
8 similar to the mud being under the
9 top of what you were talking
10 about?

11 A Yes. These are the
12 seats. (The witness indicates.)
13 This is all the mud and the
14 steering wheel, and this is the
15 door frame. And this is how high
16 the mud got. (The witness
17 indicates.) It's all the way up
18 the door frame on either side.

19 Q That is a similar
20 picture of the other side, the
21 passenger's side?

22 A Yes, ma'am.

23 Q Lieutenant
24 Scarborough, did there come a
25 point where you guys were trying

SCARBOROUGH -- DIRECT

1 which is basically it's a, it's a
2 mechanism that's, when it goes in
3 it's flat. As they press the
4 hydraulics it basically just opens
5 up and uses its force to pry open
6 whatever it's trying to pry open.

7 Q And you indicated
8 that was done in this case?

9 A Yes, ma'am.

10 Q Were you present when
11 that happened?

12 A Yes, ma'am.

13 Q Did you -- did there
14 come a point where the trunk
15 eventually opened?

16 A Yes, ma'am.

17 Q And did you observe
18 what was inside?

19 A Yes, ma'am.

20 Q Is this familiar to
21 you?

22 A Yes, ma'am.

23 Q And with the mud,
24 it's pretty obvious, but explain
25 for the Court and jury.

SCARBOROUGH -- DIRECT

1 one there.

2 Q Now did you observe
3 anything that she did?

4 A I was -- yeah. She
5 was photographing the sergeant,
6 CID. I was talking to her in
7 reference to the missing person
8 case up until we left.

9 Q Was there ever a
10 point where mud was skimmed off in
11 the trunk?

12 A I, I don't recall it
13 being skimmed off. I believe what
14 happened was, was the vehicle
15 itself kind of leaked out. The
16 water, the mud and the water kind
17 of separated and the water was
18 leaking out of the vehicle and
19 therefore making the mud come
20 lower and lower and lower.

21 Q And did you make any
22 observations of the trunk?

23 A Yes, ma'am.
24 Eventually as the mud dissipated I
25 believe there was a, a bone

SCARBOROUGH - - DIRECT

1 THE COURT: Yes, ma'am.

2 Q A couple more
3 questions, Lieutenant.

4 A Yes, ma'am.

5 MS. CARDILLO: May I
6 approach the court reporter,
7 your Honor?

8 THE COURT: Yes, ma'am.

9 MS. CARDILLO: May I
10 approach the witness, your
11 Honor?

12 THE COURT: You may.

13 Q I'm going to show you
14 what's already been admitted as
15 State's number two. Let me show
16 this to counsel first.

17 Do you recognize
18 that?

19 A I do. It's a -- it
20 looks like something from Google
21 Earth. I mean I really can't --

22 Q That's okay. Is it a
23 map?

24 A Yes. It's a map of
25 Google Earth it appears.

SCARBOROUGH - - CROSS

1 THE WITNESS: Yes,

2 ma'am.

3 THE COURT: Mr. Davis.

4 MR. DAVIS: Thank you
5 very much, your Honor.

6

7

8

9

10

11 CROSS-EXAMINATION BY

12 MR. DAVIS:

13 Q Is, is it lieutenant?

14 A Yes.

15 Q Lieutenant

16 Scarborough. Correct?

17 A Yes, sir.

18 Q Okay. Lieutenant

19 Scarborough, let me get -- let me

20 go way back to the first part of

21 your testimony just for a second.

22 Okay?

23 A Okay.

24 Q Back in 2000 I think

25 you said you were with the

SCARBOROUGH - - CROSS

1 checking with financial records.

2 Correct?

3 A Yes, sir.

4 Q Phone records, that
5 kind of thing. Correct?

6 A Yes, sir.

7 Q You also would have
8 talked to other law enforcement
9 officers?

10 A Yes, sir.

11 Q And that's how you
12 knew that this missing person, it
13 was Ali Sarhan?

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q That's how you knew
18 that he had a pending assault and
19 battery with intent to kill
20 charge?

21 A Yes, sir.

22 Q You also were aware
23 by talking to other law
24 enforcement that he was alleging
25 during that incident that his

SCARBOROUGH - - CROSS

1 one North Charleston officer that
2 I spoke to.

3 Q Would that have been
4 Officer Thomas or Officer Harris
5 perhaps?

6 A If I may refer back?
7 Detective C. Johnson.

8 MR. DAVIS: May I
9 approach and have this marked,
10 your Honor?

11 THE COURT: You may.

12 (Whereupon, an
13 incident report is received
14 and marked as Defendant's
15 Exhibit No. 12 for
16 identification.)

17 MR. DAVIS: May I
18 approach the witness, your
19 Honor?

20 THE COURT: You may.

21 Q Officer, I'm going to
22 show you what's been marked for
23 identification purposes as
24 defendant's exhibit number twelve.

25 A Yes, sir.

SCARBOROUGH -- CROSS

1 A Yes. I guess it's --
2 yes. It's North Charleston Police
3 Department.

4 MR. DAVIS: May I
5 approach the witness again,
6 your Honor?

7 THE COURT: Yes.

8 Q All right. So, so
9 you recall talking to North
10 Charleston. You simply don't
11 recall about a missing wallet or
12 something to that effect?

13 A I don't -- I actually
14 don't recall that. I actually
15 been referring back to my notes.
16 I don't actually remember the
17 phone call or -- as a detective
18 you handle numerous, numerous
19 cases.

20 Q You completed a
21 one-page report when you initially
22 got the case. Is that accurate?

23 A According to this,
24 yes, but it was not during the
25 initial -- this would have been

SCARBOROUGH - - CROSS

1 bodies of water. You do that type
2 of recovery in, in your experience
3 in law enforcement? You've done
4 that several times.

5 A Oh, yes, sir. Yes,
6 sir.

7 Q Okay. Now you
8 have -- obviously getting the
9 location of this machine we're
10 talking about, we have a bridge
11 and a boat ramp. Correct?

12 A Yes, sir.

13 Q The boat ramp is, is
14 concrete or some other way, wise a
15 structure that's maintained and
16 what you testified about?

17 A Yes. It appeared to
18 be. Yes, sir.

19 Q Certainly that's
20 apparent at the scene and
21 certainly you've had years of, of
22 doing this, but as far as how that
23 car actually got there you're just
24 speculating on how it ended up
25 where you recovered it?

SCARBOROUGH - - CROSS

1 off the, the back of the vehicle,
2 the license plate?

3 A Yes, sir.

4 Q Correct?

5 A Yes, sir.

6 Q You recall that
7 license plate. Correct?

8 A Yes, sir.

9 Q In your years of
10 experience as a law enforcement
11 officer, you're aware that if you
12 change state residency you're
13 supposed to replace your plate
14 immediately or at least you have a
15 forty-five grace -- days grace
16 period to do that. You're aware
17 of that?

18 A Yes, sir.

19 Q Okay. Finally, just
20 one last issue. I think when you
21 first were called out, was it a
22 Charleston County detective that,
23 that called you out? Do you
24 recall?

25 A I was notified by

SCARBOROUGH -- CROSS

1 A Not that I recall.
2 No, sir.
3 Q Okay.
4 A I was in my vehicle.
5 Side-by-side.
6 Q Is it fair to say
7 that you followed where they led?
8 A That would be fair to
9 say. Yes, sir.
10 Q And you're talking
11 about three locations. Right?
12 A Yes, sir.
13 Q The first one being
14 in North Santee rear view --
15 river. Right?
16 A Yes, sir.
17 Q Connoll's Landing.
18 Correct?
19 A I believe so. Yes,
20 sir.
21 Q That's in the forest.
22 Right?
23 A Yes, sir.
24 Q That's all the way up
25 the Santee. Right?