

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Paul M. Burch, Circuit Court Judge

ROBERT J. PHIPPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001548

APPENDIX

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2 COUNTY OF SPARTANBURG } COURT OF GENERAL SESSIONS
3
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6 vs. } RECORD
7 ROBERT PHIPPS, JR. } 07-GS-42-2902
8 DEFENDANT. }
9
10 April 13th, 2009
11 Spartanburg, South Carolina
12
13 B E F O R E :
14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.
15
16 A P P E A R A N C E S :
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P R O C E E D I N G S

1
2
3 THE COURT: Can I ask the attorneys to approach
4 briefly?

5 MR. BRANNON: Yes, Your Honor.

6 THE COURT: Thank you.

7 (Whereupon, a bench conference was held at this time.)

8 THE COURT: All right. Is everyone present, ready to
9 bring the jury in?

10 State?

11 SOLICITOR BULSA: Yes, sir.

12 THE COURT: Defense?

13 MR. BRANNON: Yes, sir.

14 THE COURT: Let's bring the jury in, Mr. Bailiff.

15 Mr. Brannon, have you seen the proposed voir dire?

16 MR. BRANNON: Yes, Your Honor.

17 THE COURT: Any objections?

18 MR. BRANNON: No, Your Honor. But I might add, I think
19 I might add to you anyway, Mr. Turnipseed is second chair
20 and his name's not on the list.

21 THE COURT: I'm going to be asking those questions
22 generally. The State did ask -- I'll amend number six which
23 stated would the presence of alcohol and/or drugs in the
24 circumstances involved in this case cause any juror to be
25 unable to render -- so, I'm gonna exclude those, that.

1 MR. BRANNON: Have no objection to that, Your Honor.

2 THE COURT: All right.

3 MR. BRANNON: Your Honor, I have some family members of
4 my client who may want to be present.

5 would the court object to bringing the---

6 THE COURT: No.

7 MR. BRANNON: Thank you.

8 THE COURT: I will ask you seat them, if you would, I
9 guess, behind your counsel table rather than among the
10 jurors.

11 MR. BRANNON: Yes, Your Honor. Yes.

12 THE COURT: Thank you.

13 Mr. Hipp, hold the door just one minute.

14 One thing, Mr. Brannon, I do need to inquire if your
15 client has been arraigned on these charges?

16 MR. BRANNON: I believe he has, Your Honor.

17 THE COURT: So, you're telling the court he is already
18 been arraigned?

19 MR. BRANNON: Yes, sir, Your Honor. I have.

20 THE COURT: And he is requesting trial by jury?

21 MR. BRANNON: Yes, Your Honor. He does.

22 THE COURT: And pleading not guilty?

23 MR. BRANNON: Yes, Your Honor.

24 THE COURT: Thank you very much.

25 All right. Mr. Hipp.

1 (Whereupon, the following takes place within the
2 presence of the jury.)

3 THE COURT: Mr. Hipp, are all jurors present?

4 BAILIFF: Yes, sir.

5 THE COURT: All right. Ladies and gentlemen of the
6 jury panel, we're about to begin the trial of the case of
7 the State of South Carolina against Robert Phipps. Now,
8 before we select a jury in the case it is necessary that I
9 ask you some questions that would apply to this case
10 concerning your service on this jury. I know that you took
11 an oath earlier concerning the qualification process. But,
12 again, it is necessary that you take an oath concerning the
13 answers to the questions that I'm about to ask that apply to
14 this case in particular.

15 Madam Clerk, therefore, I'd ask that you please swear
16 the prospective jury panel for me.

17 (Whereupon, the jury panel was placed under oath at
18 this time.)

19 THE COURT: Now, if there was any member of the jury
20 panel who either failed or refused take the oath just
21 administered by the clerk, please stand.

22 (No response.)

23 THE COURT: The record will reflect that all
24 prospective jurors have now been sworn concerning the
25 questions that I'm about to ask.

1 Before I begin my questioning I'm going to ask that the
2 attorneys that are involved in the trial of this case
3 introduce themselves to you. And in the case of the
4 defense, I'd ask that you also introduce the defendant to
5 the jury panel.

6 First of all for the State.

7 SOLICITOR BULSA: Thank you, Your Honor.

8 My name is Derrick Bulsa. I'm Deputy Solicitor with
9 Spartanburg County Solicitor's Office and seated with me is
10 Bryan Kelly, assistant solicitor.

11 THE COURT: Thank you, sir.

12 For the defense.

13 MR. BRANNON: My name is Doug Brannon. I'm a local
14 attorney here today. My partner and I, Mr. Brac Turnipseed,
15 have the pleasure of representing Mr. Robert Phipps.

16 THE COURT: Mr. Phipps, if you'll turn all the way
17 around so the jury panel can place a face with a name.

18 (Defendant complies.)

19 THE COURT: Thank you very much.

20 Now, ladies and gentlemen, I'm also going to go over
21 with you a document that I have been presented. This
22 document is an indictment.

23 Let me explain to you that an indictment is a document
24 issued by the Grand Jury here in Spartanburg County. Now,
25 an indictment is simply the document that brings this case

1 before this Court. It represents the charges that have been
2 lodged in this case. An indictment can not be used by a
3 jury in any fashion in determining the guilt or the
4 innocence of a defendant against whom that indictment has
5 been brought, and I'll explain that to you in more detail
6 later on should you be selected on the jury.

7 I am going to go over the indictment with you because
8 it does state the charge that's before this Court, and
9 perhaps it will aid you in answering the questions later on
10 as to whether or not you have some knowledge of this
11 particular matter that's before the Court.

12 The indictment in this case is in Case Number
13 07-GS-42-2902. The indictment is for the crime of murder.

14 The indictment states that Robert Phipps did, in
15 Spartanburg County, on or about April 4th of 2004,
16 feloniously, willfully, and with malice aforethought, kill
17 Samuel Gossett by stabbing him in the head, neck, and/or
18 body with a knife and that the victim died as a proximate
19 result thereof in violation of Code Section 16-3-10 and 20
20 of the Code of Laws of South Carolina, 1976 as amended,
21 against the peace and dignity of, of the State and contrary
22 to the statute in such case made and provided.

23 Again, an indictment can not be used in any fashion in
24 determining the guilt or the innocence of a defendant. It
25 simply sets forth the charge that has been presented to this

1 Court for trial. It informs the defendant of the charge
2 which has been lodged against him.

3 Now, we're going to follow the same procedure as I ask
4 you questions that we did during qualification. That is, if
5 you have a response to any of the questions that I ask, I'll
6 ask that you stand. I'll need to get your name, and your
7 number before I get your response to the question so that we
8 can identify on the record to whom I am speaking at this
9 time.

10 My first question is is there any member of the jury
11 panel who has ever been related by marriage or are you
12 related by blood to the defendant, Robert Phipps, and the
13 alleged victim, Samuel Gossett, if that's true, please
14 stand.

15 (No response.)

16 THE COURT: Has any member of the prospective jury
17 panel ever had a close personal or a social relationship
18 with either the defendant, Robert Phipps, or the alleged
19 victim, Samuel Gossett, if that is true, please stand.

20 (No response.)

21 THE COURT: Now, has any member of the jury panel ever
22 been represented by any of the attorneys who are involved in
23 the trial of this case or have they ever appeared on the
24 other side of some legal matter from you, if that is true,
25 please stand.

1 (No response.)

2 THE COURT: Is there any member of the jury panel who
3 has ever been related by marriage or related by blood or you
4 have, or have you had a close personal or a social
5 relationship with any of the attorneys that are involved in
6 the trial of this case, if that is true, please stand.

7 (Juror responds.)

8 THE COURT: Yes, sir, your name and number.

9 JUROR: I'm 102, Joe Maddox. I practice on a daily
10 basis with Mr. Brannon and Mr. Turnipseed.

11 THE COURT: All right, sir. Would that fact affect
12 your ability to be fair and impartial in the trial of this
13 matter?

14 JUROR: I don't think so.

15 THE COURT: Thank you, sir. You can be seated.
16 Anyone else?

17 (No response.)

18 THE COURT: Now, I'm going to go over a list of
19 individuals who have been identified to me as potential
20 witnesses in the trial of this case. That does not mean
21 that each and every one of them will, in fact, testify, but
22 that there, there is a possibility that these individuals
23 could testify in the trial of the case.

24 Now, if any of these individuals are present in the
25 courtroom, when their name is called, I'll ask that they

1 stand and face the jury panel so that you could get a look
2 at their face and place that face with the name.

3 First of all -- and there's quite, quite a list. So,
4 listen carefully as I go along.

5 Harold Bailey.

6 Marcella Bailey.

7 Ken Bogan with South Carolina Law Enforcement Division.

8 Cecil Bradstreet with South Carolina Law Enforcement
9 Division.

10 John Burgess with the Spartanburg Public Safety
11 Department.

12 Jeff Carroll with the Spartanburg EMS.

13 Shannon Evins or Evins.

14 Rosylind Garrett.

15 Veronica or -- excuse me. Verona Gibson with South
16 Carolina Law Enforcement Division.

17 Hattie Gossett.

18 Ed Guthro with the Spartanburg Public Safety
19 Department.

20 (Witness stands.)

21 THE COURT: You are, ma'am?

22 WITNESS: Hattie Gossett.

23 THE COURT: Okay, ma'am. Turn and face the jury panel
24 for me.

25 (Witness complies.)

1 THE COURT: Thank you very much. You can be seated.
2 I think I'd finished Mr. Guthro.
3 Next is David Hearst with the Spartanburg Public Safety
4 Department.
5 David Hogsed with the Spartanburg County Sheriff's
6 Department.
7 Steven Hughes.
8 Chad Ingle with the Spartanburg Public Safety
9 Department.
10 Gary Geter.
11 Lou Jones with the Spartanburg Public Safety
12 Department.
13 Sheila Mills.
14 Anthony Munoz.
15 Russell Porter.
16 Roger Ravan with Spartanburg EMS.
17 David Reeves with Spartanburg Public Safety Department.
18 Dustin Smith with South Carolina Law Enforcement
19 Division.
20 Leslie Smith with Spartanburg Public Safety Department.
21 Robert Talanges, Talanges -- or excuse me. Talanges
22 with Spartanburg County Sheriff's Department.
23 Chris Taylor with Spartanburg Public Safety Department.
24 (Witness stands.)
25 THE COURT: Freddie Thompson with -- excuse me. That

1 gentleman is in the back.

2 Your name is?

3 WITNESS: Chris Taylor.

4 THE COURT: Sir?

5 WITNESS: Chris Taylor.

6 THE COURT: All right. You can have a seat back there,
7 sir. Thank you.

8 (Witness complies.)

9 THE COURT: Freddie Thompson with Spartanburg
10 Communications.

11 Brenda Urquhart.

12 Scott Watts with the Spartanburg County Public Safety
13 Department.

14 Courtney Westfall with Spartanburg Public Safety
15 Department.

16 Ramona Wood.

17 (Witness stands.)

18 THE COURT: Thank you, ma'am.

19 Doctor David Wren with Spartanburg Regional Medical
20 Center.

21 Now, as to the individuals that I just named as
22 potential witnesses in the trial of this case, has any
23 member of the jury panel ever been related by marriage or
24 are you related by blood or have you ever had a close
25 personal or a social relationship with any of the

1 individuals that I just named as potential witnesses in the
2 trial of this case, if that is true, please stand.

3 (Juror responds.)

4 THE COURT: Yes, sir, I need your name and number.

5 JUROR: Number 76.. My wife's sister is a Gossett.

6 THE COURT: I need your name as well, sir.

7 JUROR: Oh, Roy Hunter.

8 THE COURT: Thank you. And you're -- and I'm sorry.

9 You said?

10 JUROR: My wife's sister was married to a Gossett. I
11 don't know if they're any kin to any of them or not.

12 THE COURT: All right. You're not familiar though with
13 any of the names that, in particular that I've called?

14 JUROR: No, sir.

15 THE COURT: Would the fact that that had occurred,
16 would that affect your ability to be fair and impartial in
17 this trial?

18 JUROR: I suppose not.

19 THE COURT: Thank you, sir. Have a seat.

20 Anyone else?

21 (No response.)

22 THE COURT: Has any member of the jury panel or a
23 member of your immediate family or a close friend of yours
24 ever been prosecuted by the Seventh Judicial Circuit
25 Solicitor's Office or any other prosecution agency, state or

1 federal, if that's true, please stand.

2 (No response.)

3 THE COURT: Has any member of the jury panel or a
4 member of your family or an acquaintance ever been
5 investigated by law enforcement for a criminal violation to
6 your knowledge, if that's true, please stand.

7 (Juror responds.)

8 THE COURT: Yes, sir, I need your name and number.

9 JUROR: Steven Boiter. It's Number 13.

10 THE COURT: Yes, sir, your situation?

11 JUROR: My brother, he was, been put in prison for
12 shooting a man.

13 THE COURT: All right. So, he is incarcerated at this
14 time?

15 JUROR: No, he's out.

16 THE COURT: He's out.

17 So, that's been completed?

18 JUROR: Yes, sir.

19 THE COURT: Would the fact that you had had a relative
20 that was prosecuted in the past affect your ability to be
21 fair and impartial?

22 JUROR: No, sir.

23 THE COURT: And I wanted to be sure I got your name and
24 number again.

25 It is?

1 JUROR: It's Steven Boiter.
2 THE COURT: And the number.
3 JUROR: Thirteen.
4 THE COURT: Thank you, sir. You can be seated.
5 Yes, ma'am, your name and number.
6 JUROR: Seventy-five, Peggy Sue Huckaby.
7 THE COURT: Yes, ma'am.
8 JUROR: My father was, back in October of '90, was
9 convicted of vehicular homicide. Sentenced to 15 years. He
10 served five. He's now deceased.
11 THE COURT: All right. Ma'am, would that fact affect
12 your ability to be fair and impartial in this trial?
13 JUROR: No, sir.
14 THE COURT: Thank you, ma'am. You can be seated,
15 ma'am.
16 Anyone else?
17 (Juror responds.)
18 THE COURT: Yes, sir, your name and number.
19 JUROR: Timothy Hampton, 62.
20 THE COURT: Yes, sir.
21 JUROR: My father was investigated for trafficking and
22 distribution of different drugs.
23 THE COURT: And did that ever result in a prosecution?
24 JUROR: He was, he was sentenced to serve time in jail.
25 THE COURT: All right. Would that fact affect your

1 ability to be fair and impartial in this trial?

2 JUROR: No, sir.

3 THE COURT: Thank you. You can be seated.

4 Anyone else?

5 (Juror responds.)

6 THE COURT: I'm sorry. Yes, ma'am, your name and
7 number.

8 JUROR: Is this only Spartanburg County or the state?

9 THE COURT: Is it -- the question is has they, have
10 they ever been prosecuted by a law enforcement agency---

11 JUROR: My father was.

12 THE COURT: ---investigated---

13 I'm sorry. I couldn't hear you.

14 JUROR: I'm Irene Carman, Number 143.

15 THE COURT: Yes, sir.

16 JUROR: My father was being prosecuted in Columbia
17 under a federal case.

18 THE COURT: All right. That's going on at the present
19 time?

20 JUROR: He committed suicide in prison.

21 THE COURT: Okay. Ma'am, would that affect your
22 ability to be fair and impartial in this trial?

23 JUROR: Absolutely not.

24 THE COURT: Thank you. You can be seated.

25 Anyone else?

1 (No response.)

2 THE COURT: Now, would, would it, would the presence or
3 testimony concerning the use of drugs and/or alcohol by
4 anyone in this case cause any juror to be, to be unable to
5 be fair and impartial to either the State or the defense, if
6 that's true, please stand.

7 (No response.)

8 THE COURT: Has any member of the jury panel gathered
9 any information outside of this court, courthouse from news
10 media or from any other source such that it is caused you to
11 form or express an opinion about any issue or matter that
12 might be involved in the trial of this case, if that's true,
13 please stand.

14 (No response.)

15 THE COURT: Is there any member of the jury panel who
16 is aware of any bias or prejudice that you might have either
17 for or against the State or the defense in this case, if
18 that's true, please stand.

19 (No response.)

20 THE COURT: Is there any member of the jury panel who
21 is a member of or a contributor to any group which as its
22 primary concern the promotion of law enforcement or victim's
23 rights?

24 These groups would include, but not be limited to, such
25 groups as Mothers Against Drunk Driving, Students Against

1 Drunk Driving, the South Carolina Troopers Association, the
2 South Carolina Sheriff's Association, or similarly organized
3 organizations, if that's true, please stand.

4 JUROR: Your question was are you a member of one of
5 those?

6 THE COURT: Or a contributor to.

7 JUROR: I am.

8 THE COURT: I need to get your name and number first
9 please, sir.

10 JUROR: Keith Burgess, 18.

11 THE COURT: And, sir, you are a member of some
12 organization?

13 JUROR: South Carolina Sheriff's Association with
14 honorary.

15 THE COURT: All right. Would that fact affect your
16 ability to be fair and impartial in this trial?

17 JUROR: No, sir.

18 THE COURT: You can be seated. Thank you, sir.
19 I need your name and number please, sir.

20 JUROR: Amad Patel, 92.

21 THE COURT: Yes, sir.

22 JUROR: I contribute to the Sheriff's Association.

23 THE COURT: Would that fact affect your ability to be
24 fair and impartial in this matter?

25 JUROR: No, sir.

1 THE COURT: Thank you. You can be seated.

2 Yes, ma'am, your name and number.

3 JUROR: Regina Barber, Juror 5.

4 THE COURT: Yes, ma'am.

5 JUROR: I contribute to the Spartanburg County
6 Sheriff's Association.

7 THE COURT: Okay. Would that affect your impartiality,
8 ma'am?

9 JUROR: No.

10 THE COURT: Thank you. You can be seated.

11 Yes, ma'am, your name and number.

12 JUROR: Irene Carmen, 143.

13 THE COURT: Yes, ma'am.

14 JUROR: State patrol and Sheriff's Association.

15 THE COURT: All right. Would that affect your
16 impartiality in this case?

17 JUROR: No.

18 THE COURT: Thank you. You can be seated.

19 Anyone else?

20 (No response.)

21 THE COURT: Does any member of the jury panel know of
22 any reason whatsoever why he or she should not serve as a
23 juror in this case with particular emphasis being placed
24 upon your ability to be both fair and impartial to both the
25 State and the defense, if that's true, please stand.

1 (No response.)

2 THE COURT: Any further questioning from the State?

3 SOLICITOR BULSA: No, Your Honor.

4 THE COURT: Any further from the defense?

5 MR. BRANNON: None. Thank you.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, I'm going to declare then that the remaining members
8 of the jury panel are qualified to serve as jurors in this
9 case.

10 Now, what we're going to do at this point in time is
11 the clerk, the lady seated right in front of me, is going to
12 use a computer program that randomly selects names from your
13 numbers. She will generate a list that is, again, been
14 randomly selected by the computer. She'll supply that list
15 to me and to the law clerk and to the, the court reporter
16 and from that list we'll be calling names in the order in
17 which they were selected on that, that printout. We will be
18 then going through a process of striking the jury. And in
19 criminal court we do that in the following fashion.

20 When your name is called, you'll be asked to step
21 forward and come down to the bar right in front of the
22 clerk, turn and face the back of the courtroom. At that
23 point in time the State and the defense will be in a
24 position to exercise any potential strikes that they may
25 have in this matter.

1 The -- bring with you any personal belongings that you
2 might have in your possession because if you're selected to
3 serve you'll be asked to take a seat in the jury box over
4 here. So, if you have a purse and other things, please be
5 sure you bring that with you.

6 I'll ask the attorneys to approach please.

7 (Whereupon, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: All right. In this case the State will
10 have five strikes. The defense will have ten strikes. We
11 will be selecting one alternate with the State having one
12 strike, the defense having two strikes. We will do that in
13 the order of, that they were selected. Once the jury has
14 been filled, filled we will select the alternate.

15 All right. Madam Clerk, at this time you can begin to
16 call the jurors.

17 (Whereupon, a jury panel was selected at this time.)

18 THE COURT: All right. We are now selecting the
19 alternate.

20 (Whereupon, an alternate juror was selected at this
21 time.)

22 THE COURT: Thank you, Madam Clerk.

23 Any objection to the jury selection process from the
24 State?

25 SOLICITOR BULSA: No, Your Honor.

1 THE COURT: Any from the defense?

2 MR. BRANNON: None. Thank you.

3 (Pause.)

4 THE COURT: All right. Ladies and gentlemen, you have
5 been selected to serve in this case. And at this point in
6 time, however, it's about 12:30 and I've also got some
7 matters that I have to take up with the lawyers before we
8 actually begin the trial of this case. So, there's gonna be
9 a little break before we get started and then I'm gonna
10 allow you to go on to lunch at this point in time.

11 I will advise you that you've been selected, very
12 carefully, that, to be fair and impartial jurors with no
13 knowledge of this case or the people who are participating
14 in the trial. I'm going to urge you to keep an open mind
15 and a blank slate in this case until such time as I advise
16 you to begin your deliberations.

17 For that reason, it would be highly improper for you to
18 listen to, watch, or read any media reports concerning this
19 case at this time. Also, it would be highly improper for
20 you to try to gather any information outside of the
21 courtroom such as on the Internet or from any other source
22 concerning this case. I will advise you of the appropriate
23 time when you should begin your deliberations. But when you
24 come back to this courtroom, you'll be taking an oath
25 concerning this case. I know you've been sworn a couple of

1 times already. But this will be an oath concerning your
2 duties as jurors in this case. And when you come back,
3 you'll find that that oath is that you will be swearing to
4 decide the case solely upon the evidence that's presented
5 during this trial and the law as I give it to you at the
6 close of the trial.

7 Now, the only evidence that you're gonna hear in this
8 case is the testimony of witnesses who are sworn to tell the
9 truth who will testify from this witness stand and whatever
10 documents or other evidence comes into the record through
11 that testimony. So, again, it would be highly improper for
12 you and a violation of your oath to consider any information
13 about this matter from any other source other than from the
14 witnesses who will be testifying during this trial and from
15 the evidence that's allowed into the record.

16 So, I'll caution you, don't attempt to gather any
17 information outside of the courtroom concerning this case.
18 Also, it would be improper for you to begin any discussions
19 concerning this matter even though you know very little
20 about it. Because you'll find that when you begin to
21 discuss even the nature of the trial or what it's about with
22 other individuals, they may, that discussion may lead to
23 you, for, for you to begin to make up your mind about this
24 case without ever having heard any evidence in the case.
25 That would be unfair to either side in this matter.

1 So, again, keep that open mind. Don't gather any
2 information other than what you gather in this courtroom
3 during the trial of this case. And at the close of the
4 trial, you'll be in a position to honor your oath and decide
5 the case solely upon the evidence and the law as I give it
6 to you during the trial.

7 By the same token, should anyone attempt to contact
8 you, any of you concerning your service on this jury during
9 any of our breaks, I'm going to ask that you report that to
10 this Court. I've already told you that jury tampering in
11 this State is a felony and I take that matter very
12 seriously. I can assure you, should that occur, I'll see
13 that the appropriate investigations are begun and that the
14 matter is looked into. So, again, it would be highly
15 improper for you to discuss this case or have anyone discuss
16 this case with you during our breaks.

17 It's okay to tell your spouse or your important other
18 that I've been selected on a jury and I'm gonna be involved
19 in it for a while and when it's all over I'll tell you
20 everything I know about it if you want to. You don't have
21 to. So, so, just tell them that, that you're involved in a
22 trial and they'll find out about it when it's been finished
23 and we give, you can talk to them about it at that point in
24 time.

25 Now, on your way out the bailiffs are gonna show you

1 the jury room that's in use for this trial. You're going to
2 be reporting back to that jury room. Don't go back to the
3 assembly room. Come to the jury room that's in use for this
4 trial when you report back to the courthouse.

5 As I told you, there's some preliminary matters
6 concerning evidence and some other issues that I have to
7 take up with the attorneys outside of your presence before
8 the trial begins. For that reason, I'm going to give you
9 quite a long lunch break. I'm gonna ask you to be back here
10 at three o'clock this afternoon in the jury room. At that
11 point in time I hope that we've taken care of those matters
12 and we'll be in a position to begin the case.

13 So, again, have a good lunch. You're free to go. The
14 bailiffs will show you where to report back to.

15 Thank you.

16 (Whereupon, the following takes place outside the
17 presence of the jury.)

18 THE COURT: All right. Any objection to my
19 instructions to the jury from the State?

20 SOLICITOR BULSA: No, Your Honor.

21 THE COURT: From the defense?

22 MR. BRANNON: No, thank you.

23 THE COURT: All right. Now, I believe there are some
24 motions that the Court is to consider and I'll be happy to
25 hear what those are.

1 MR. BRANNON: Well, Your Honor, the first is a, is a---

2 THE COURT: Before we begin that, Mr. Brannon, before
3 the jury was selected, we had a bench conference concerning
4 some jurors. I believe the State informed the defense of
5 one juror in particular. Let's put that on the record.

6 SOLICITOR KELLEY: Yes, Your Honor.

7 THE COURT: What's the juror that you informed the
8 defense of?

9 SOLICITOR KELLEY: If I could just have a moment to
10 pull out my list.

11 THE COURT: Sure.

12 MR. TURNIPSEED: I believe it was Juror Number 158,
13 Your Honor.

14 THE COURT: 158?

15 SOLICITOR KELLEY: That's correct, Your Honor.

16 THE COURT: I believe you indicated that person had
17 been interviewed as a witness in a case?

18 SOLICITOR KELLEY: That's correct. We, we spoke over
19 the telephone, but never met face-to-face.

20 THE COURT: All right. And you informed the defense of
21 a juror.

22 MR. BRANNON: Of Juror Number 49, Juror Gary B. Fowler.
23 I, I knew him from a previous life.

24 THE COURT: All right. And I informed you that a juror
25 in the pool was my sister-in-law, Sara Couch. But she

1 wasn't on the list anyway.

2 All right. Now, that's been placed on the record.

3 Now, Mr. Brannon.

4 MR. BRANNON: Your Honor, two motions that I'd like to
5 bring, to bring before the Court. First being a Jackson v.
6 Denno motion.

7 Your Honor, at, at some point I believe in 2005 two
8 officers from the Spartanburg County, excuse me, the
9 Spartanburg City Police Department traveled to a federal
10 penitentiary in West Virginia and interviewed my client.
11 There was never a waiver of, of rights or any, any
12 discussion of Miranda with my client.

13 I learned this morning that it is, in fact, Mr. Bulsa's
14 intent to discuss, through testimony, some of the
15 conversations that those officers may of had with my client,
16 and I will certainly be moving to, to eliminate that
17 possibility.

18 The next motion, Your Honor, has to do with a discovery
19 matter, and, and I would ask the Court to consider allowing
20 us to break now and come back at two o'clock.

21 THE COURT: I was just gonna put on the record the, the
22 motions so I could determine about how long we're gonna need
23 for them. So, that's the reason I was going through that
24 first, and we will break before we do the motions.

25 MR. BRANNON: Okay. So, the motion, Your Honor, has to

1 do with an audio cassette of a phone call that came into the
2 Spartanburg City Police Department. Not through 9-1-1. I,
3 I believe it may of come through Crime Stoppers or something
4 to that effect. But, Your Honor, on that phone, on that
5 tape recording, the caller identifies an individual as being
6 the actual killer of Mr. Samuel Gossett. It's somebody
7 other than my client.

8 Your Honor, the problem is what I have is a videotape
9 of an interview of a potential witness. And during that
10 interview, the investigator with the City Police Department
11 takes a cassette tape out of his pocket, he puts it in a
12 recorder and he plays a portion of that tape. I've not
13 heard the entire tape. I don't have a copy of that tape.
14 And before I'm prepared to go forward, I need to have that
15 tape because it brings up an---

16 THE COURT: Now, as a point of clarification, the
17 individual that was being interviewed is on the list of
18 potential witnesses?

19 MR. BRANNON: He is not.

20 THE COURT: Okay.

21 MR. BRANNON: He is not. I, I mean I can, I can name
22 him for you if you would like.

23 THE COURT: well, I would like to know who that person
24 was.

25 MR. BRANNON: His name is O'Neal Sibert or Siebert.

1 THE COURT: Okay.

2 MR. BRANNON: But anyways, they were interviewing this
3 man---

4 THE COURT: All right. In our pretrial -- you
5 mentioned that just before the jury came in, and I indicated
6 that I was gonna ask the State to inquire as to whether that
7 tape was available. And if it is, it will be turned over to
8 you. That would still be my order at this point in time,
9 that it be turned over.

10 Have you been able to inquire concerning the tape,
11 Mr. Bulsa?

12 SOLICITOR BULSA: Detective Porter is out looking for
13 it.

14 THE COURT: Okay. All right. Well, what we'll do is,
15 at this point in time, we'll break until quarter till, get
16 this right, quarter till 2:00. That should give us time to
17 do the hearings after that.

18 MR. BRANNON: Thank you.

19 THE COURT: That should give you time to listen to the
20 tape if you need to listen to it if they can get it for you.

21 MR. BRANNON: And Mr. Bulsa, will you call me as soon
22 as it's made available to you?

23 SOLICITOR BULSA: Yes, sir.

24 THE COURT: All right. Court will be in recess until
25 that time.

1 Defendant remains in custody.

2 Thank you very much.

3 MR. BRANNON: Your Honor, may we leave, we leave our
4 possessions?

5 THE COURT: That's all that's going on here. So, they
6 should lock it up.

7 MR. BRANNON: Thank you.

8 (Whereupon, Court was in recess for the lunch break.)

9 THE COURT: All right. First of all, Mr. Brannon,
10 have, have y'all been able to work out the tape situation?

11 MR. BRANNON: It's our understanding they do not have
12 the tape. Don't know where it is.

13 THE COURT: So, can you tell me, Mr. Bulsa, what your
14 search revealed?

15 SOLICITOR BULSA: Detective Porter's here. He's the
16 one who was conducting the interview and would of had the
17 tape. It's my understanding he doesn't know where it is.

18 WITNESS: I was actually---

19 SOLICITOR BULSA: You want to stand up?

20 THE COURT: what I'm going to do is I'm gonna allow Mr.
21 Bulsa to put him on the stand, and let him testify
22 concerning their efforts to locate it. And obviously if the
23 state no longer has it, I can't make them produce something
24 they don't have. Now, whether or not that constitutes some
25 kind of Rule 5 violation, we'll talk about that once I hear

1 what happened.

2 MR. BRANNON: Well, I would ask the Court to also
3 consider the fact that it may be a violation of this Court's
4 standing order -- well, it's actually Justice Toal's
5 standing order, but Paragraph 8 requires that law
6 enforcement agencies to turn over all of the discovery---

7 THE COURT: Well, now, that order was issued after this
8 case was brung, brought. So---

9 MR. BRANNON: Well---

10 THE COURT: ---the application during that period of
11 time I have my doubts about.

12 MR. BRANNON: Well---

13 THE COURT: I'm not sure that's a ex post facto order
14 is what I'm saying.

15 MR. BRANNON: Well, I understand. But I, I wasn't
16 retained in this Court until after this Court's---

17 THE COURT: Oh, I understand that. But I mean, again,
18 that order didn't exist at the time this case was brought
19 and it would of gone through the first and second appearance
20 situation if I'm reading the dates on it right.

21 MR. BRANNON: All right. Well, Your Honor, we can make
22 this real simple, if the State will let me, during the
23 trial, question this, this law enforcement officer about
24 this tape and the name that is identified on that tape,
25 then, then my motion's done.

1 THE COURT: Well, I don't know what purpose -- I don't
2 know enough about the case to be able to tell you whether --
3 I can't rule on that. I don't know if they'll stipulate to
4 that or not. You'll have to talk to Mr. Bulsa about that.

5 SOLICITOR BULSA: Can we proffer the testimony, Your
6 Honor?

7 THE COURT: All right.

8 SOLICITOR BULSA: I prefer to do it that way right now.

9 THE COURT: All right. Come forward, officer. Be
10 sworn over here to my left.

11 RUSSELL PORTER, being first duly
12 sworn, testified as follows:

13 THE COURT: Have a seat in the witness stand, sir.

14 WITNESS: Yes, sir.

15 THE COURT: Once you're seated, I'm going to ask that
16 you state your name and your position for the record please.

17 WITNESS: Russell Porter. Investigator with
18 Spartanburg Public Safety Department.

19 THE COURT: Mr. Bulsa, your witness.

20 SOLICITOR BULSA: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY SOLICITOR BULSA:

23 Q Detective Porter, you were the lead investigator in the
24 death of Sam Gossett?

25 A That's correct.

Russell Porter - Direct examination
by Solicitor Balsa

1 Q And the -- Mr. Gossett died between the dates of
2 April 3rd and April 4th of 2004, correct?

3 A That's correct.

4 Q And this case wasn't actually solved until some time in
5 2005?

6 A That's correct.

7 Q Is that right?

8 At some time during your investigation did you receive
9 a tape recording of some sort of anonymous phone call?

10 A Yes.

11 Q Could you explain how you received that call?

12 A At the time -- my partner at the time was Investigator
13 Brewster. She was -- the, the tipster call line would come
14 into her. The call's actually given to us digitally. I had
15 to transfer that to a cassette because at the time we didn't
16 have anything to transfer that to so I could play it in the
17 interview room. So, I put it on a cassette.

18 Q I understand somebody called on the Crime Stoppers
19 line?

20 A On the Crime Stoppers line, that's correct.

21 Q And do you recall the substance of that call?

22 A According to the call, the guy stated the guy we
23 looking for had went to Atlanta. Last name was Anderson.
24 The first time I heard the name and the only time I've ever
25 heard the name before or after.

Russell Porter - Direct examination
by Solicitor Balsa

1 Q Okay. And do you recall when you would of been
2 interviewing this Mr. Siebert I believe?

3 A Exact date?

4 Q Just approximately.

5 Could it have been November of '04?

6 A It could have been.

7 Q Does that sound about right?

8 A Sounds about right. Near the end of the year.

9 Q Okay. And you didn't have a true suspect until I
10 believe you received some information from the victim's
11 family.

12 A That's correct.

13 Q That would of been in November of '04?

14 A That's correct.

15 Q And then you sought to interview Mr. Siebert why?

16 A They -- according to the family, the one name I got was
17 a, was, was a Robert Snood. I went and found Robert Snood
18 at that same site. Mr. Siebert was working there also. I
19 first interviewed Mr. Snood and then he indicated,
20 implicated this Mr. Siebert guy. So, I went back out to the
21 same site, got Mr. Siebert, brought him up, and interviewed
22 him.

23 Q And you said he implicated Mr. Siebert.

24 What do you mean?

25 A He just allude to he acting strange and he had left the

Russell Porter - Direct examination
by Solicitor Bulsa

1 site and then came back during that, during that day.

2 Q The day of the phone call?

3 A No, not, not that day.

4 Q Well, this interview of Mr. Snooddy was what day?

5 A Well, he -- well, not exactly that day. He was just
6 trying to implicate, trying to say that it was around that
7 time cause I was trying to -- I didn't want to give him an
8 exact date to say this guy went out and made this call. He
9 said just the guy around that time went out and made a phone
10 call. It was a pay phone just up the street from where they
11 were working at.

12 Q Does this help you refresh your memory as to the days?

13 Is that a copy of Robert Snooddy's---

14 A Yes.

15 Q ---statement?

16 A Yes, sir.

17 Q And that would of been November the 4th of '04?

18 A That's correct.

19 Q And I believe in that statement he talks about the
20 phone call being made October the 3rd?

21 A Yes, sir, Wednesday, October the 3rd.

22 Q Okay. Is that the day he believed that Mr. O'Neal
23 Siebert was acting strange?

24 A Yes.

25 Q So, you were interviewing Mr. Siebert as to what he

Russell Porter - Direct examination
by Solicitor Balsa

1 might of been doing on October the 3rd?

2 A That's correct.

3 Q All right. And during your interview, you showed --
4 you pulled out a tape?

5 A Yes, sir.

6 Q And played that for him?

7 A Played two tapes for him, yes, sir.

8 Q Okay. The first tape would of been the 9-1-1- call?

9 A That's correct.

10 Q And the second tape would of been this Crime Stoppers
11 call?

12 A That's correct.

13 Q And do you know what you would of done with that tape?

14 A I honestly don't, don't remember. The 9-1-1 call was
15 just a copy of, copies anyway. That tape, I, I don't know.

16 Q Okay. The 9-1-1 call was in evidence under this case
17 file.

18 A Right, it was in the, it was in the, on the -- yeah, in
19 evidence as a disk, as a CD.

20 Q Okay. And that was collected the day of the incident?

21 A That's correct.

22 Q And now this Crime Stoppers call came in months after
23 the incident?

24 A Right. That's correct.

25 Q And you -- it's your testimony you don't know what you

Russell Porter - Direct examination
by Solicitor Balsa

1 did with that?

2 A I, I do not.

3 Q Okay. Well, did Mr. Siebert ever acknowledge making
4 that phone call?

5 A I think he had mentioned that he had called his
6 daughter or somebody about picking him up or some, something
7 along that line.

8 Q Did he ever acknowledge making a call to Crime
9 Stoppers?

10 A No, he did not. No.

11 Q So, you still don't know who made that phone call?

12 A That's correct. I do not.

13 Q And as to whether it's valid or not?

14 A That's correct. I do not.

15 Q How long have you been a police officer?

16 A 17, about 17 years.

17 Q And how many times have you dealt with Crime Stopper
18 tips?

19 A We get hundreds. Get them all, in every, every case
20 from, from jay walking to, to shoplifting.

21 Q And is that often that that information pans out to
22 nothing?

23 A That's correct. Often pans out to nothing.

24 Q Okay. In fact, in this case, after you spoke with
25 Mr. Snooddy and Mr. Siebert, where did the investigation

Russell Porter - Direct examination
by Solicitor Balsa

1 lead.

2 A From, from them two, from these two guys, nothing.

3 Didn't lead to any, any other leads from them, establish any
4 other leads from two guys we interviewed.

5 Q Okay. How about the Anderson fellow that was mentioned
6 in the tape?

7 A No, didn't, didn't lead anywhere either.

8 Q Okay. In fact, wasn't it just a couple weeks later you
9 spoke with a Brenda Urquhart?

10 A That's correct.

11 Q And she's the lady that actually spoke with the family
12 member that later contacted y'all?

13 A That's correct.

14 Q And she gave you the real name of the Robert that she
15 was talking about?

16 A That's correct.

17 Q And that was Robert Phipps?

18 A Yes, that's correct.

19 Q But the information you received from the family you
20 first thought was a Robert Snody?

21 A That's correct.

22 Q Thank you. Answer any questions Mr. Brannon has.

23 CROSS-EXAMINATION

24 BY MR. BRANNON:

25 Q Investigator Porter, Maurice Andrews phone call, the

Russell Porter - Cross-examination
by Mr. Brannon

- 1 first time you ever heard his name?
- 2 A That's correct.
- 3 Q Last time you ever heard his name?
- 4 A That's correct.
- 5 Q Did you go to the motel where he was supposedly
- 6 residing to look to see if you could find him?
- 7 A Made a phone call. No, we didn't find anybody.
- 8 Q A phone call to where?
- 9 A To the hotel.
- 10 Q And you just asked to speak to Maurice Anders?
- 11 A No, I asked to see if he was registered there, that
- 12 name.
- 13 Q And that's all you did?
- 14 A That's correct.
- 15 Q Even though this caller told you that he would have
- 16 drugs in his possession when he returned from Atlanta,
- 17 didn't they?
- 18 A Yes, sir, but I'm not a narcotics investigator. So, I
- 19 didn't---
- 20 Q So, you just let that go?
- 21 A Yes, sir.
- 22 Q All right. Now, you talked to Brenda Urquhart some
- 23 time after you spoke with O'Neal Siebert or Seibert, right?
- 24 A That's correct.
- 25 Q Didn't Brenda Urquhart tell you that my client said

Russell Porter - Cross-examination
by Mr. Brannon

1 there was another man beating up the victim in this case?

2 A That's correct.

3 Q She did, didn't she?

4 A She did.

5 Q And, and didn't you have reason to believe that there
6 was a third person in this house known only as New York?

7 A He actually mentioned two other names, New York, King
8 Dirty, and a John.

9 Q Okay. So, you have evidence that there are at least
10 three people in this home at the time the victim passes,
11 correct?

12 A That's correct.

13 Q And you have a phone call that identifies Maurice
14 Andrews as the person who killed Samuel Gossett, right?

15 A It didn't say killed, no. He said was in the house
16 when the fight with the guy.

17 Q Now, now, isn't it true that on that phone call, that
18 whoever that caller is says I owed him money and Maurice
19 said if you don't want to end up like Samuel Gossett you'll
20 have the money by Saturday or something to that effect?

21 A Yes, that's correct.

22 Q Okay. And the caller also says I talked with him last
23 weekend, I was talking with Maurice Andrews last weekend,
24 right?

25 A That's correct.

Russell Porter - Cross-examination
by Mr. Brannon

1 Q That would of been the last weekend in September or the
2 first part of October, correct?

3 A Correct.

4 Q Do you know where my client was in late September and
5 early October of '04?

6 A I do not recall.

7 Q He was in a federal penitentiary.

8 A Okay.

9 Q So, it wasn't my client that that person was talking
10 to, was it?

11 A No.

12 Q It was Maurice Andrews, right?

13 A That's what he said.

14 Q And Maurice Andrews was telling him about the things he
15 had done to Samuel Gossett?

16 He says it in that tape, doesn't he?

17 A I don't -- I'd have to hear the tape again.

18 MR. BRANNON: Your Honor, do you want me to play it
19 again?

20 THE COURT: If you'd like.

21 MR. BRANNON: I don't have any way to get this over
22 there.

23 SOLICITOR BULSA: There's a plug over here.

24 MR. BRANNON: Yeah, but if I unplug the computer it
25 will go off.

Russell Porter - Cross-examination
by Mr. Brannon

1 SOLICITOR BULSA: You don't have a battery?

2 MR. BRANNON: No.

3 THE COURT: Just turn the volume up, we probably can
4 hear it.

5 (Whereupon, Mr. Brannon started playing the tape at
6 this time.)

7 Q Can you hear it?

8 A (Witness nods affirmatively.)

9 THE COURT: I can't hear it.

10 Can you hear it, sir?

11 WITNESS: I can, sir.

12 THE COURT: You can understand it?

13 WITNESS: Yes, sir.

14 MR. BRANNON: Excuse me.

15 Madam Court Reporter, do you have a way to play this?

16 WITNESS: Do you have external speakers over there?

17 External speakers?

18 THE COURT: You can hand it up to me. I can play it on
19 this one.

20 MR. BRANNON: And Your Honor, it should be marked.

21 THE COURT: Well, see if he objects to it being put
22 into evidence if we're gonna do it this way.

23 SOLICITOR BULSA: Not for this hearing, Your Honor.

24 MR. BRANNON: He said not for this hearing.

25 (Whereupon, the tape was started again.)

Russell Porter - Cross-examination
by Mr. Brannon

1 THE COURT: Okay. Is that it?

2 MR. BRANNON: Yeah, it's about 23 minutes in, Your
3 Honor.

4 THE COURT: I don't see any way I can move it other
5 than fast forward it.

6 MR. BRANNON: Yeah, that's fine. I can tell you where
7 to stop.

8 Stop.

9 THE COURT: Is that okay?

10 MR. BRANNON: Yeah.

11 Go back a little bit.

12 (Whereupon, the tape was played at this time.)

13 That's all of the tape that is there.

14 CONTINUED CROSS-EXAMINATION

15 BY MR. BRANNON:

16 Q Were you able to hear that?

17 A Yes, sir.

18 Q All right. Does that caller, in fact, identify Maurice
19 Anderson as the person that killed Samuel Gossett?

20 A He actually stated if you want to wind up face down
21 like Samuel Gossett.

22 Q But he also---

23 A We know, we know he wasn't face down.

24 Q Earlier, earlier in that tape didn't he say he was
25 telling me the things he did to him?

Russell Porter - Cross-examination
by Mr. Brannon

1 Didn't he say that?

2 A He did.

3 Q Okay. You didn't try to find out who Maurice Anderson
4 was?

5 A After he said that, I know he didn't know what he was
6 talking about cause I knew the case. I already had a print
7 hit that identified the person and it wasn't him. It wasn't
8 Maurice Anderson. So --.

9 Q You had, you had a print on a beer can, right?

10 A That's correct. Only, only beer can in the house.
11 It's only two prints.

12 Q Okay. So, it couldn't have been him?

13 A I have no, no reason to continue to find this guy.

14 Q Okay. My guy was in a, in a federal penitentiary when
15 that threat is made to whomever that caller is by Maurice
16 Anderson?

17 A Okay. But Gossett was killed before he went to prison.

18 Q Well, that's true.

19 But that man, according to that tape, correct, was
20 talking about Mr. Gossett's murder and the things he had
21 done to Mr. Gossett when my client was in prison, correct?

22 A I didn't hear him say he did anything to him besides
23 you gonna wind up face down. He didn't say anything
24 about -- he didn't say anything to me, to me on that tape
25 that would lead me to believe this guy had any other

Russell Porter - Cross-examination
by Mr. Brannon

- 1 information.
- 2 Q Okay.
- 3 A He say you wind up face down.
- 4 Q All right.
- 5 A He wasn't face down when we found him.
- 6 Q All right, sir. Do you know what the term exculpatory
- 7 means?
- 8 A I do.
- 9 Q All right. And do you understand that the State has an
- 10 obligation to produce all exculpatory evidence in a case?
- 11 A If I had it, I have no problem giving it to you.
- 12 Q Okay. Well, you clearly had it there.
- 13 It was in your shirt pocket, right?
- 14 A I had it then, but I don't know where it is now.
- 15 Q And it identifies a man named Maurice Anderson as the
- 16 killer of Samuel Gossett, correct?
- 17 A He say he wind up face down. He didn't say he killed
- 18 him.
- 19 Q Okay. He identified a man named Maurice Anderson?
- 20 A That's correct.
- 21 Q And he says Maurice Anderson had something to do with
- 22 Mr. Gossett, correct?
- 23 A That's what you got out of it I think.
- 24 Q Okay. Where's the tape?
- 25 A I don't know. That tape would of been recorded off of

Russell Porter - Cross-examination
by Mr. Brannon

1 a CD some place over at 9-1-1, and I called those folks.
2 They do not -- they have a running system, and they do not
3 have it stored. If they would of stored it, I would of got
4 it. That tape would of been recorded off of, off of a
5 digital cause we didn't have the capabilities to play it
6 then. So, it was on a cassette. But it was stored with
7 9-1-1, which their system has cleared it out.

8 Q All right. Well, where do you keep those cassettes in
9 the normal practice of your business?

10 A Those cassettes, we wouldn't -- at, at that time we
11 wouldn't have kept it any place because we didn't use
12 cassettes. We used DVD's. But I didn't have a way to place
13 that disk for him in the interview room at that time. So, I
14 just downloaded it to a, to a cassette, which I don't know
15 where it is now.

16 Q All right. So, at one point you had a cassette tape of
17 that phone call?

18 A That's correct.

19 Q It contains information about someone else having
20 something to do with Samuel Gossett, someone else other than
21 Robert Phipps, correct?

22 A That's correct.

23 Q And I don't have it today, correct?

24 A That's correct.

25 Q Nothing further. Thank you.

Russell Porter - Redirect examination
by Solicitor Bulsa

1 THE COURT: Mr. Bulsa.

2 SOLICITOR BULSA: Yes, sir.

3 REDIRECT EXAMINATION

4 BY SOLICITOR BULSA:

5 Q Just briefly, detective, to make sure the Court
6 understands the timing of this.

7 This call and your interview with Mr. Snoody and
8 Mr. Siebert took place before you even had the name of
9 Robert Phipps, is that right?

10 A November. I think so.

11 Q In November of 2004?

12 A That's correct.

13 Q Because the fingerprint actually wasn't matched until
14 March of '05, was it?

15 A That's correct.

16 Q And you didn't have the name Robert Phipps until you
17 met with Mrs. Urquhart two weeks after this interview?

18 A After this interview, that's correct.

19 Q Okay. Did you deliberately destroy that tape?

20 A I did not.

21 Q Do you know what could of happened to it?

22 A During that time we was in transition between three
23 other murder cases. So, I, I'm not sure what happened to
24 it.

25 Q And once you learned about Mr. Phipps from

Russell Porter - Redirect examination
by Solicitor Balsa

1 Mrs. Urquhart, where did the course of your investigation
2 go?

3 A Focused on Mr. Phipps.

4 Q And then you began to look for him?

5 A That's correct.

6 Q Thank you.

7 MR. BRANNON: Follow-up question.

8 THE COURT: Yes, sir.

9 RECROSS EXAMINATION

10 BY MR. BRANNON:

11 Q Didn't you just tell me that when you heard that phone
12 call you knew that guy didn't know what he was talking about
13 cause you already had a print, correct?

14 A I did say that.

15 Q The print wasn't made until March the 5th, March of
16 '05?

17 A That's correct.

18 Q That's October of '04?

19 A Correct.

20 Q Shouldn't you have been looking for Maurice Anderson?

21 A I didn't feel I needed to, no.

22 Q You didn't think you needed to?

23 A No.

24 Q Didn't think you needed to keep the tape either, did
25 you?

1 Nothing further, Your Honor. Thank you.

2 THE COURT: Mr. Bulsa -- you may step down.

3 WITNESS: Thank you, sir.

4 THE COURT: Anything further from the State?

5 SOLICITOR BULSA: Not on this issue.

6 THE COURT: I'll hear from the defense.

7 MR. BRANNON: Your Honor, the Court's heard it. I, I
8 believe that that is clearly exculpatory evidence that has
9 been lost or destroyed on the part of the State. That --
10 aside from the fact I didn't find out about it until
11 11:15 on Saturday night before the trial. Now I can't get
12 it. And clearly I don't have the whole tape. The officer
13 pressed the stop button before the tape ended.

14 Your Honor, I, I, I believe that this is grounds for a
15 dismissal in this case.

16 THE COURT: Mr. Bulsa?

17 Are you moving for dismissal?

18 MR. BRANNON: Yes.

19 SOLICITOR BULSA: Your Honor, that -- there's no,
20 there's no way to even authenticate that tape as to who made
21 it. It's not clear actually as to what was on it. There's
22 been no bad faith effort on the State's part. He, he worked
23 three murder cases. He doesn't know what he did with it.
24 The evidence in this case is about Mr. Phipps and his
25 involvement in this murder. That's clearly an attempt to

1 get third party guilt in, which is not admissible.

2 THE COURT: May not be admissible.

3 SOLICITOR BULSA: Yes, sir.

4 MR. BRANNON: Well, Your Honor, I mean under Bobbie Lee
5 Holmes versus the State of South Carolina, the Court says
6 that the Constitution guarantees criminal defendants a
7 meaningful opportunity to present a complete defense.
8 Interestingly, this case overturns the South Carolina state
9 case as to third party guilt.

10 THE COURT: Yeah, but then there's been another case
11 since then to interpret that, and it, that case, from the
12 Court of Appeals, indicated that the South Carolina rule is
13 still in effect. What it said was that the analysis in the
14 Holmes case focused on the strength of the prosecution's
15 evidence.

16 MR. BRANNON: Correct.

17 THE COURT: Not on the strength of the evidence of the
18 defendant.

19 MR. BRANNON: Correct. But, but---

20 THE COURT: So, the rule, the rule still is in effect.
21 It just wasn't properly applied in Holmes according to the
22 U.S. Supreme Court and our Court of Appeals since then.

23 MR. BRANNON: Absolutely. But what this Court is going
24 to find in the trial of this matter is there is significant
25 evidence of at least another person in the home the night

1 Mr. Gossett was killed. At least one other person. Your
2 Honor, but I, I go back to---

3 THE COURT: Well, at this point in time I'm not gonna
4 make a ruling as to whether or not third party guilt
5 evidence can come in because I'd like to hear what other
6 evidence there is of people in the house, and I'm sure,
7 through cross-examination, you'll be pointing that out as we
8 move along before we get to your case.

9 MR. BRANNON: I, I understand that. But I'm still on
10 that motion to dismiss, Your Honor. The Constitution
11 guarantees my client the right to present a full and
12 complete defense. That tape is a portion of my full and
13 complete defense and I don't have it. Can't get it.

14 THE COURT: Well, you've got a portion of it obviously
15 because we've got it -- I just played a portion of it.

16 MR. BRANNON: That's correct.

17 THE COURT: And we're not sure what's missing.

18 MR. BRANNON: That's correct.

19 THE COURT: Now, my understanding is that this is a tip
20 from an anonymous source?

21 MR. BRANNON: All right. I'm sorry?

22 THE COURT: Is this a tip from an anonymous source from
23 what you---

24 MR. BRANNON: Yes, Your Honor. But it's clear that
25 this officer believes that it was Mr. Siebert that made that

1 phone call.

2 THE COURT: Is there -- I didn't see the entire
3 interview.

4 Did Mr. Siebert ever acknowledge that that was him on
5 the phone?

6 MR. BRANNON: He never acknowledged that it was him on
7 the phone, but he declined a polygraph test and there were
8 questions about him leaving his job site on that particular
9 day, day to make phone calls.

10 THE COURT: Well, he's got a right to decline a
11 polygraph test.

12 MR. BRANNON: Absolutely.

13 THE COURT: And that's not admissible in any way in
14 this case.

15 MR. BRANNON: I, I understand that.

16 THE COURT: So, he never acknowledged having---

17 MR. BRANNON: He did not.

18 THE COURT: ---made that phone call?

19 MR. BRANNON: He did not.

20 THE COURT: So, as far as we know, it's still
21 anonymous?

22 MR. BRANNON: That would be correct.

23 THE COURT: Would it be admissible evidence from an
24 anonymous source?

25 MR. BRANNON: I think it could be, yes. It's certainly

1 got probative value, Your Honor, and I think when the Court
2 understands the other evidence of individuals other than my
3 client in that house, it then becomes even more probative.

4 THE COURT: Mr. Bulsa.

5 SOLICITOR BULSA: I would argue it's pure hearsay. I
6 mean---

7 THE COURT: Well, at this point in time I'm not gonna
8 dismiss the case at this stage or juncture of the case. I
9 don't find that there was bad faith in, in the loss or
10 destruction of the tape. I have not heard evidence that it
11 was done intentionally in any fashion. In fact, the State
12 produced what we have so far. You've received that from the
13 State. So, if there was an effort to hide it or cover it
14 up, it's been a very poor effort because you found out about
15 it, and materials that were provided to you.

16 So, I'm not gonna dismiss the case at this point in
17 time. And as to whether or not this evidence is admissible,
18 I'm gonna reserve ruling on that until we've heard a little
19 more about the case as the trial goes on. As I indicated,
20 I'm sure you'll be, through cross-examination, getting into
21 the fact that there may of been other individuals present,
22 and I'll see where leads us. I'm not sure where that will
23 lead us.

24 MR. BRANNON: Thank you, Your Honor.

25 THE COURT: So, I'll reserve my ruling on that till a

1 later time.

2 MR. BRANNON: Your Honor, I did put a copy of that case
3 on the---

4 THE COURT: I've got it and I've read, I've read it and
5 the, read the most recent one too since then. So --.

6 SOLICITOR BULSA: Your Honor, I would like to
7 introduce, as an exhibit, the statement that the officer
8 referred to in his examination.

9 THE COURT: Any objection to that being part of the
10 record of this hearing?

11 MR. BRANNON: Of this hearing, none.

12 THE COURT: All right. It's in then as well as this
13 disk. I don't know where the, the cover, cover is.

14 Do you want to put that in the record---

15 MR. BRANNON: Yes, sir.

16 THE COURT: ---of this hearing.

17 (Whereupon, the statement was marked as State's Exhibit
18 No. 1. The DVD was marked as Defendant's Exhibit No. 1.
19 Both were received into evidence for purposes of this
20 hearing only at this time.)

21 THE COURT: Now, I believe that, having reserved my
22 ruling on that, I believe that we're in a position of taking
23 up your Jackson v. Denno motion, is that correct?

24 MR. BRANNON: That is correct, Your Honor.

25 THE COURT: I'll hear from the State.

Russell Porter - Direct examination
by Solicitor Bulsa

1 SOLICITOR BULSA: The State calls Detective Porter
2 again.

3 THE COURT: Sir, you remain under oath. Have a seat in
4 the witness stand.

5 RUSSELL PORTER, having been previously
6 sworn, testified as follows:

7 THE COURT: Mr. Bulsa, your witness.

8 DIRECT EXAMINATION

9 BY SOLICITOR BULSA:

10 Q Detective, where did you locate Mr. Phipps?

11 A In the FCI at Gilmer in West Virginia.

12 Q Is that a federal correctional institution?

13 A Yes, sir, that's correct.

14 Q Okay. And do you remember about when you found him?

15 A Not off the top of my head I do not.

16 Q okay. Did you send a letter to the institution seeking
17 to interview him?

18 A I did.

19 (Whereupon, a letter was marked as State's Exhibit No.
20 2 for identification purposes only at this time.)

21 Q State's Exhibit 2 for this hearing, is that the letter
22 that you sent to that location?

23 A It is.

24 Q And that would of been April the 5th?

25 A Yes, sir.

Russell Porter - Direct examination
by Solicitor Balsa

- 1 Q 2000 and?
2 A April 5th, 2005.
3 Q Okay. And what was the purpose for going up there to
4 visit with him?
5 A We went to interview Mr. Phipps in reference to being a
6 witness, a possible witness in this case.
7 Q And why did you consider him a witness?
8 A At that time we didn't have anything else to, to link
9 him as being a suspect at that time.
10 Q Okay. So, you had his name from Brenda Urquhart?
11 A That's right.
12 Q And at that time you also had a match on a, of a
13 fingerprint off a beer can from the incident---
14 A That's correct.
15 Q ---location?
16 A That's correct.
17 Q So, those were the two informations you had and you had
18 reason to believe he may of made a 9-1-1 phone call?
19 A That's correct.
20 Q And that came from Mrs. Urquhart?
21 A That's correct.
22 Q So, tell us what process you undertook to go visit with
23 him.
24 A Had to send a request to the federal authorities to
25 allow us to come up to talk with him, and they sent us a

Russell Porter - Direct examination
by Solicitor Bulsa

1 reply back saying, you know, we, we could come up and talk
2 with him.

3 Q Okay. Who went with you?

4 A Sergeant Taylor.

5 Q And what took place when you got there?

6 A We went in, they brought him in, sat him down, we began
7 to talk to him. I, at that time, during that interview I
8 played a tape for him, the tape of the 9-1-1 call from
9 Baltimore Street. He listened to it. We talked some more.
10 He still -- he gave us a couple names and said he would get
11 back with us with a name after he contacted his family.
12 He'll call us back with a name of a suspect.

13 Q Did you have a warrant for his arrest at that time?

14 A We did not.

15 Q Did you read him his so called Miranda rights?

16 A We did not.

17 Q Why not?

18 A At that point he was a witness and not a, and not
19 considered a suspect.

20 Q And if he had said he didn't wish to talk to you, would
21 you have just let him go back to his cell?

22 A We would have.

23 Q So, while he was in federal custody, he wasn't in your
24 custody?

25 A That's correct.

Russell Porter - Direct examination
by Solicitor Balsa

1 Q And were you actually interrogating him?

2 A No, we weren't. Just, just talking, just interviewing
3 him. Asking him if he knew the victim, he knew the area.
4 Just basic questions like that.

5 Q Okay. About how long did that interview take place?

6 A Probably more than an hour I guess.

7 Q Was it audio taped or videotaped?

8 A No.

9 Q It's not.

10 what did you do -- what did you do at the conclusion of
11 your interview?

12 A Give him my business cards and tell him to give us a
13 call and we, and we left.

14 Q Did you ever hear from him?

15 A We did not.

16 Q Answer any questions Mr. Brannon may have.

17 CROSS-EXAMINATION

18 BY MR. BRANNON:

19 Q Investigator Porter, what exactly do you intend to
20 testify to that my client said during that interview?

21 A Nothing cause he didn't say anything that was relevant,
22 no.

23 Q Okay. So, when, when you're put under oath in the
24 trial of this matter, you don't intend to say that my client
25 said anything during your interview with him while he was in

Russell Porter - Cross-examination
by Mr. Brannon

1 federal custody?

2 A Like I said earlier, he gave us three names and said he
3 would call us and tell us -- he indicated that he knew who
4 did it, and he said he would call us. So, we give him my
5 business cards and we left.

6 Q All right. And is that -- is it during that interview
7 that he told you the name New York?

8 A New York, King Dirty, and John.

9 Q Okay. Will that be the only testimony that you will
10 give today that was derived during that interview with my
11 client in 2005 while in federal custody?

12 A It just depends on what, what I'm asked---

13 SOLICITOR BULSA: I'm sorry, Your Honor.

14 A ---about the interview.

15 SOLICITOR BULSA: But he's asking questions about what
16 I'm gonna ask him. I didn't go into that because that's not
17 the substance of this---

18 MR. BRANNON: Well, Your Honor, how can I tell if, if
19 what -- I mean the purpose of this is to determine if the
20 statement was given freely and voluntarily after a knowing
21 waiver of his Miranda rights.

22 THE COURT: Yes, sir.

23 MR. BRANNON: I need to know what he's gonna say.

24 WITNESS: I don't know what you're gonna ask me.

25 THE COURT: Sir, you don't get involved in this

Russell Porter - Cross-examination
by Mr. Brannon

1 discussion.

2 WITNESS: I'm sorry, sir.

3 MR. BRANNON: I, I mean there's no written statement.

4 I didn't---

5 THE COURT: Well, Mr. Bulsa, what, what is the
6 intention of, of the State as in regards to this statement?

7 SOLICITOR BULSA: Well, I didn't ask him the statement
8 because I didn't think it was pertinent to this issue, but
9 I'll be happy to go into what I intend to ask him.

10 THE COURT: Well, can you -- go ahead and ask him what
11 you intend. I'd like to know what he intends to put in.

12 SOLICITOR BULSA: Okay.

13 THE COURT: It may or may not be a confession. May or
14 may not. I don't know what he's gonna say.

15 SOLICITOR BULSA: Okay.

16 DIRECT EXAMINATION

17 BY SOLICITOR BULSA:

18 Q Did you make notes of your interview with him?

19 A I did.

20 Q Is that a copy of your notes?

21 A It is.

22 Q Okay. And what day did you meet with him?

23 A 4/11/2005 at 5:30 p.m.

24 Q April 11th or April 12th?

25 A I'm sorry. April 11th. I'm sorry. April 12th.

Russell Porter - Direct examination
by Solicitor Balsa

1 I'm sorry.

2 Q You arrived at April 11th and you met with him
3 April 12th?

4 A Right, talked to him about, I guess about 8:30 in the
5 morning.

6 Q And what, what did you ask him?

7 A We informed him of our reason for being there, and he
8 said he couldn't remember much about the time.

9 Q Did you ask him about the death of Sammy Gossett?

10 A No. Well, asked him if he knew him. Basically about
11 it. Asked him if knew him, if he knew the area. Just, you
12 know, basic questions like that.

13 Q Did you ask him if he made a 9-1-1 call?

14 A We did.

15 Q And how did he respond?

16 A He denied making it.

17 Q Did you ask him if he had been in the house?

18 A We did.

19 Q And what was his response?

20 A He couldn't remember.

21 Q Okay. And did you tell him about finding his
22 fingerprint in his, in the house?

23 A We did.

24 Q And what was his response?

25 A We still couldn't remember. Said he had too much drug

Russell Porter - Direct examination
by Solicitor Balsa

1 use during that time. He couldn't, he couldn't remember.

2 Q And did you ask him if he might know anything else
3 about what happened?

4 A We did ask him if he, if he knew, if he'd been in the
5 area or seen anybody at night. Just, you know, just basic
6 information.

7 Q Okay. And what was his response?

8 A He couldn't remember.

9 Q Okay. You said earlier that he gave you some names.
10 How did that come about?

11 A He -- near the end, he just threw a couple names out.
12 He said he did know a or give us a name of a guy named King
13 Dirty, a guy named John, and some guy named New York.

14 Q And did he say anything about whether those people
15 might be involved?

16 A He didn't. He didn't say how they were involved. He
17 just gave those names.

18 Q Okay. Thank you.

19 Is that the extent of your recollection of what y'all
20 spoke about?

21 A Yes, sir.

22 Q Sergeant Taylor was there with you?

23 A He was.

24 Q Did he do his own supplemental?

25 A He may have.

Russell Porter - Cross-examination
by Mr. Brannon

1 Q Okay. Thank you.

2 CROSS-EXAMINATION

3 BY MR. BRANNON:

4 Q Did you follow-up on any of those names, New York, King
5 Dirty, or John?

6 Did you, did you do anything to look into those?

7 A I know King Dirty from the street. New York, I never
8 heard that name. And John was actually a guy right next
9 door and we talked to him.

10 Q Okay. And who's King Dirty?

11 A Eleazor, Eleazor Rice. He's a drug user, pimp, on that
12 side of town.

13 Q All right. But you have no idea who New York is?

14 A I don't have no idea who New York is.

15 Q All right. But you did not Mirandize my client?

16 A No.

17 Q You did not have him as a suspect at that time
18 according to your testimony?

19 A That's correct.

20 Q And he could have, he could have answered none of your
21 questions, correct?

22 A That's correct.

23 MR. BRANNON: Thank you, Your Honor.

24 THE COURT: You may step down, sir.

25 WITNESS: Thank you, sir.

Chris Taylor - Direct examination
by Solicitor Bulsa

1 THE COURT: State have any other offer on this?

2 SOLICITOR BULSA: Yes, sir, we have, call Sergeant
3 Taylor.

4 THE COURT: Come forward, sir, to be sworn.

5 CHRIS TAYLOR, being first duly
6 sworn, testified as follows:

7 THE COURT: Sir, once you're seated, state your name
8 for the record.

9 WITNESS: My name is Chris Taylor.

10 THE COURT: Mr. Bulsa, it's your witness.

11 SOLICITOR BULSA: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY SOLICITOR BULSA:

14 Q Sergeant Taylor, you were working with the homicide
15 division back when this happened?

16 A Yes, sir.

17 Q And did you have occasion to go to West Virginia with
18 Investigator Porter?

19 A Yes, sir, we went on April the 11th.

20 Q Okay. And Investigator Porter was the lead
21 investigator?

22 A Yes, he was.

23 Q Were you actually his supervisor?

24 A I was.

25 Q And you chose to attend the meeting and interview of

Chris Taylor - Direct examination
by Solicitor Balsa

1 Mr. Phipps?

2 A Yes, sir.

3 Q Did you make notes of your interview with him?

4 A I did.

5 Q All right. And did you create a supplement?

6 A Yes, I did.

7 Q All right. Do you recall when the meeting began?

8 A We arrived at Gilmer Federal Correctional Institution
9 at 08:00 on April the 12th. We was placed in the inmate
10 visitation area to interview Mr. Phipps.

11 Q And do you have recollection or notes as to how long
12 the actual meeting took place?

13 A I want to think it probably took less than an hour.

14 Q Okay. So, you didn't actually document when it ended?

15 A No, sir.

16 Q And the purpose of your visiting with him was what?

17 A Because we got a lead that he was possibly the person
18 that called 9-1-1.

19 Q Okay. That led you to believe he might have some
20 information about what happened?

21 A That's the reason we went to see him, yes, sir.

22 Q And did you ask him about that phone call?

23 A Yes, sir, we did. During the interview, me and
24 Investigator Porter was talking to him, and we just more or
25 less random conversation to see if he knew the area, asked

Chris Taylor - Direct examination
by Solicitor Bulsa

1 him about various locations, and I just asked him to say
2 anonymous because that was the ironic thing about the whole
3 9-1-1 call. The person had a hard time saying it. And so,
4 I asked him to say it. And when we did, I asked
5 Investigator Porter to play the tape, the 9-1-1 tape.

6 Q So, you actually played the tape for Mr. Phipps?

7 A Yes, sir.

8 Q And how did he respond?

9 A He shrugged his shoulders after listening to the
10 recording. He became outwardly nervous, fidgeting around.
11 When I continued to tell him that we had talked to his
12 girlfriend Brenda who lived off of 221, and he added that
13 she was no longer his girlfriend because of her addictions.

14 Q All right. Did he state when he was last in
15 Spartanburg?

16 A No, he didn't.

17 Q Did you confront him with the fingerprint?

18 A Yes, sir, Investigator Porter showed his fingerprint
19 and explained how we got it. We located it on a beer can.

20 Q And in your opinion, was he a witness or a suspect?

21 A At the time we went to talk to him he was a witness,
22 hopefully a witness for us.

23 Q Did you ever consider reading him his Miranda warnings?

24 A No, sir, not to a witness.

25 Q Why not?

Chris Taylor - Direct examination
by Solicitor Balsa

1 A Normally we don't do it on -- like I say, it was not in
2 a conducive area as far as the interview in the first place.
3 We was in a visitation area.

4 Q What do you mean by that?

5 A The room we was in was noisy. You could hear roaring
6 in it. So, we couldn't tape anything anyway if we wanted
7 to.

8 Q Were there other people around?

9 A No, it was just a -- the way visitation areas, it's got
10 a lot of echos going in it. And so, we tried to tape
11 something. You couldn't tape anything anyway.

12 Q And why didn't you read him his Miranda rights?

13 A Well, like I said, he was a witness at the time we
14 thought.

15 Q Okay. Did he ever transition from being a witness to a
16 suspect during that interview?

17 A Not to me he didn't.

18 Q But he, he denied being at the house?

19 A Yes.

20 Q Denied making the 9-1-1 call?

21 A Yes.

22 Q Did he have an explanation about the fingerprint?

23 A He was a smoker. He said that he went to different
24 places and smoked with whoever had it and it's not uncommon.

25 Q A smoker, what do you mean by that?

Chris Taylor - Direct examination
by Solicitor Bulsa

1 A A smoker is a crack cocaine user.

2 Q Okay. Did you ask him whether he knew who might be
3 involved in this?

4 A Yes, we did ask that question. He became evasive, I
5 think evasive because he say his memory is vague. It was a
6 year ago and he said that he needed to talk to his family
7 first and maybe, he may be able to help us.

8 Q Did he give you any names of the people you might need
9 to look into?

10 A Yes, I record he gave the name King Dirty, John John,
11 and New York.

12 Q Does he ever acknowledge knowing Mr. Gossett?

13 A No. No.

14 Q And how did you leave the interview?

15 A We left the interview room, as far as casting our
16 business cards to us and asked him to give us a call. He
17 said he wanted to talk to his family first and then he'd be
18 in touch with us.

19 Q Thank you. Answer any questions Mr. Brannon has.

20 THE COURT: Mr. Brannon, your witness.

21 MR. BRANNON: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. BRANNON:

Chris Taylor - Cross-examination
by Mr. Brannon

1 Q Sergeant Taylor -- Sergeant Taylor, you say you
2 wouldn't of offered him his Miranda rights because he was a
3 witness?

4 A Yes, sir.

5 Q A, a lady named Sheila Mills was interviewed in this
6 case too, correct?

7 A Yes, sir.

8 Q She was given a pre-interrogation waiver form, wasn't
9 she?

10 A Yes, sir.

11 Q Okay. What about Shannon Evins, he was interviewed in
12 this case, wasn't he?

13 A I don't remember everybody else interviewed.

14 Q Okay. Well, why it is that there is a
15 pre-interrogation waiver form for everybody that was
16 interviewed at the Spartanburg City Police Department, but
17 there isn't one for a man who was interviewed in a federal
18 correctional institute in West Virginia?

19 A Well, I can tell about Mrs. Mills. That's one I can
20 recollect on.

21 Q Okay. Well, I'd like you to answer the question that I
22 asked.

23 why is there a waiver form for the people that were
24 interviewed in Spartanburg, but there wasn't one for the one
25 in West Virginia?

Chris Taylor - Cross-examination
by Mr. Brannon

1 A We didn't give one, Miranda warning, pre-interrogation
2 waiver.

3 Q But you did for the other witnesses that were
4 interviewed in Spartanburg, right?

5 A I can't say yes or no to it, sir.

6 Q Nothing further.

7 THE COURT: Mr. Bulsa, anything further?

8 SOLICITOR BULSA: No.

9 THE COURT: You may step down, sir.

10 State have any other witnesses?

11 SOLICITOR BULSA: That's the State's showing as to this
12 issue.

13 THE COURT: Defense wish to call any witnesses?

14 MR. BRANNON: No, Your Honor, and, Your Honor, I---

15 THE COURT: Since it's your motion, Mr. Brannon, I'll
16 hear from you.

17 MR. BRANNON: Thank you.

18 Your Honor, I believe what I'm gonna ask the Court to
19 do is reserve any ruling because I don't know that anything
20 that these two officers might testify to would be violative
21 of any Miranda or any constitutional rights. However, Your
22 Honor, until the question's actually asked, I would, I would
23 ask the Court to reserve its ruling and allow me to raise my
24 objection at the appropriate time, if necessary.

25 THE COURT: Mr. Bulsa, anything further?

1 SOLICITOR BULSA: I'm not quite sure -- may I -- I'm
2 not quite sure---

3 THE COURT: He's not -- what he's, I think he's saying
4 to me is that from what he's heard he's not so sure he'd
5 object to whatever you asked, but he would like to hear it
6 asked first, the manner in which you intend to present it.
7 And he has a right to reserve his objections at trial as far
8 as I know.

9 SOLICITOR BULSA: I understand that. But I don't, I
10 don't like to get into a line of questioning if I know it's
11 gonna be objected to cause it makes the jury think I'm doing
12 something underhanded. I just -- he's asking for---

13 THE COURT: Well, again, he has a right not to even ask
14 for a Jackson v. Denno at this point in time in the trial.
15 He can wait till the trial and he's asking me to reserve my
16 ruling. I'll do so.

17 MR. BRANNON: Okay.

18 THE COURT: I won't rule on it until and unless an
19 objection is made. And, of course -- I'll leave it at that.
20 I'll reserve it.

21 MR. BRANNON: Thank you, Your Honor.

22 SOLICITOR BULSA: Okay.

23 THE COURT: All right. Anything further we to need
24 take up before we bring the jury in?

25 MR. BRANNON: Not -- I, I think we need to look at some

1 pictures that you intend to admit. But---

2 THE COURT: We've got about 15 minutes before the
3 jury's suppose to report. I'll take a brief recess. And
4 then we'll, once the jury is back in, I'll check back with
5 you.

6 MR. BRANNON: Thank you, Your Honor.

7 THE COURT: Court's in recess at this time.

8 (Whereupon, a short recess was taken at this time.)

9 MR. BRANNON: May we approach, Your Honor?

10 THE COURT: You may.

11 (Whereupon, a bench conference was held at this time.)

12 THE COURT: Mr. Brannon, you indicate you had a motion.

13 MR. BRANNON: Yes, Your Honor. I'd ask the Court to
14 sequester the witnesses that may be called to testimony, to
15 testify in this matter.

16 THE COURT: All right. I'm gonna grant the motion as
17 to both sides of the case.

18 That means anyone in the courtroom who is going to be
19 or is potentially going to be called as a witness in the
20 case, they'll have to step outside. I will caution you,
21 before you leave, that you should not discuss your testimony
22 either before or after you have testified with anyone in
23 this case or out of the case. In other words, don't discuss
24 your testimony with anyone until such time as the trial has
25 ended. I will allow the State to keep the lead investigator

1 in the courtroom.

2 Is there any one particular person from the victim's
3 family that you'd like to have stay?

4 SOLICITOR BULSA: I'd like for the victim's family to
5 stay. There's only -- there's two potential witnesses.

6 THE COURT: Are there any potential witnesses in that
7 group?

8 SOLICITOR BULSA: Yes, sir, Ramona Wood is his sister
9 and Hattie Gossett is a sister-in-law.

10 THE COURT: Any objection to those individuals staying?

11 MR. BRANNON: Yes, Your Honor. I would ask, I would
12 ask that they be removed.

13 THE COURT: All right. Then I'm gonna, if they're
14 potential witnesses -- yes, sir.

15 SOLICITOR BULSA: I believe the Victim's Bill of Rights
16 allows them to be in the courtroom during proceedings.

17 THE COURT: Well, I don't know how far that extends.
18 Maybe we ought to look at the statute.

19 We got a sister-in-law, is that what I'm hearing?

20 SOLICITOR BULSA: Yes, sir, I at least would like Mrs.
21 Wood to be able to stay. She's been our main contact
22 throughout this case with the family. And if she does
23 testify, she'll be one of the first witnesses.

24 THE COURT: All right. I mean I can do the research on
25 the law and pull up---

1 MR. BRANNON: Yeah.

2 THE COURT: ---exactly because I do know the victims
3 have a right to be present in the courtroom. I'm just not
4 sure how far---

5 MR. BRANNON: Yeah, I don't know that it goes to -- I
6 think it may cover his sister. But I don't think it goes to
7 a sister-in-law, Your Honor.

8 THE COURT: All right. Take a moment and we'll look it
9 up.

10 MR. BRANNON: Thank you.

11 (Pause.)

12 THE COURT: I'll ask the attorneys to approach.

13 (Whereupon, a bench conference was held at this time.)

14 THE COURT: All right. After reviewing the, the
15 statute, it does include parents, spouse, or child, or any
16 other person who would suffer psychological, financial, or
17 emotional trauma as a result of the particular incident.

18 Now, in this particular case I believe you indicated a
19 Mrs. Wood---

20 SOLICITOR BULSA: Yes, sir.

21 THE COURT: ---has been your contact throughout the
22 case. I will allow her to stay. Anyone else in the family
23 who is not a spouse, parent, or a child would be subject to
24 the sequestration order.

25 SOLICITOR BULSA: And those, that would be -- potential

1 witnesses will just be Mrs. Gossett. I've sent her out.

2 THE COURT: All right. So, she has left?

3 SOLICITOR BULSA: Yes, sir.

4 THE COURT: Anyone for the defense?

5 MR. BRANNON: No, Your Honor.

6 THE COURT: You haven't listed any witnesses.

7 MR. BRANNON: Your Honor, they were to that, appear on
8 the State's list and we've asked them to stay out. They
9 have left the courtroom.

10 THE COURT: So, they're out.

11 Okay. All right. Now, other than that, is the State
12 ready?

13 SOLICITOR BULSA: Yes, sir.

14 THE COURT: Defense ready?

15 MR. BRANNON: Yes, Your Honor.

16 THE COURT: Let's bring the jury panel in.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 THE COURT: All right. The record will reveal that the
20 jurors have returned to the courtroom.

21 I trust everyone had a good long lunch today, and
22 you've come back ready to begin the trial of this case.

23 I indicated to you that, upon your return, that you
24 would be called upon to take an oath concerning your duties
25 as jurors in this matter. And at this time I'm going to ask

1 that the clerk administer that oath.

2 (Whereupon, the jury panel was placed under oath at
3 this time.)

4 THE COURT: Now, if any member of the jury panel failed
5 or refused to take the oath just administered by the clerk,
6 please stand.

7 (No response.)

8 THE COURT: Our record then will reveal that all jurors
9 have now been sworn for purposes of the trial.

10 Now, before we begin the actual trial of this case,
11 there's some matters that I want to go over with you to
12 explain you a little, to you a little bit about the
13 procedure that we're going to be following, also the roles
14 and responsibilities of the various people who will be
15 participating in the trial as well as your role and your
16 responsibility as a juror in this case.

17 What I'm going to tell you at this point in time is not
18 intended to be a charge concerning the law in this case. At
19 the close of the trial, once all the evidence has been
20 presented, and all the testimony's been offered, and the
21 arguments have been completed, at that time I will charge
22 you concerning the law that you're to apply in this case.

23 Probably, for most of you, this is your first
24 experience in actually serving on a jury and being selected
25 to consider a case. And for those of you, for those of you

1 for whom this is your first experience, probably most of
2 what you know about the way Courts operate and the way
3 juries function you would of probably learned from
4 television shows that you've watched or movies that you've
5 seen or books that you've read or perhaps even from your
6 educational experiences.

7 And in the case of television, and movies, and books,
8 those particular forms of information are intended primarily
9 for your entertainment. They are full of rivetting facts
10 and rivetting circumstances and good acting and they have an
11 interesting story line. They begin at a certain time. They
12 end at a certain time. In the case of television, they're
13 able to solve an entire case and try an entire case in an
14 hour and still have time for commercials. So, as you can
15 tell, those are probably designed and there's a lot of
16 license taken with what goes on in the courtroom in order to
17 make it fit and fit the story. Those are intended primarily
18 for your entertainment.

19 Now, the trial that you're engaged in at this point in
20 time is intended for anything but your entertainment. What
21 you're engaged in here is a search for the truth. It's an
22 effort to see that justice is done between the parties who
23 are appearing before the Court today. And as you would
24 expect, a search for the truth won't begin at a certain
25 time. It won't end at a certain time. It will be sometimes

1 slow. It will be repetitive just as you would expect a
2 search for the truth to be, to be slow, and deliberate.
3 That's the way this case will proceed.

4 what you're also engaged in is a fundamental part of
5 our democracy and I hope you appreciate that. When you look
6 around the world and see the Courts of other nations, you'll
7 quite often see that citizens are not allowed to have direct
8 participation in the important decisions that are made in
9 the Courts of those countries. We're in the minority in the
10 world in that regard where we do allow citizens to step out
11 of your day-to-day routine, walk into the courtroom, become
12 jurors, and make important decisions between matters in
13 controversy between, in this case, the State of South
14 Carolina and a defendant who is been charged with the
15 commission of a crime.

16 This courtroom is place of honor. It's dedicated to
17 the preservation of citizen's rights through our judicial
18 system which many think to be one of the greatest judicial
19 systems ever conceived. I didn't indicate it's a perfect
20 system because nothing invented and operated by man is ever
21 perfect. But it is an effort to see that justice is done
22 between the parties and allow for trial by jury of ones
23 peers in a Court, open Court of law.

24 Now, the attorneys that are going to appear before you
25 today are here to represent their client's interest. I'm

1 sure they'll do, do an excellent job in presenting their
2 client's position in this courtroom. But first and
3 foremost, these attorneys are also officers of the Court.
4 At some point in time they have appeared before this Court
5 or some other Court and taken an oath to assist you in your
6 search for the truth.

7 You can expect from the attorneys that they act in a
8 reasonable, ethical, and a professional manner in the
9 presentation of their client's cases before you today and
10 into tomorrow perhaps.

11 And by the same token, I will remind you that you have
12 stepped into this courtroom now and you have taken an oath.
13 You're expected to act in a reasonable, professional, and
14 ethical manner in the discharge of your duties as jurors
15 before this Court. Again, I want to thank you very much for
16 your willingness to come forward and serve. If it weren't
17 for good citizens who are willing to serve our system
18 couldn't function as it is functioning today and as it was
19 designed to function by those who wrote our Constitutions
20 and our laws.

21 As I told you, what I'm saying now is not intended to
22 be an instruction on the law. I'll give that to you later
23 on in the trial. I have also indicated to you, during the
24 jury selection process, that this case is before this Court
25 on an indictment. The indictment is a document which sets

1 forth the charge that has been lodged in this case. That
2 indictment is presented to this Court for the trial on that
3 issue. It's provided to the defendants so that the
4 defendant is aware of the charge that has been lodged
5 against him.

6 As I've told you, the fact that someone has been
7 indicted can not be used by you in any fashion whatsoever in
8 determining the guilt or innocence of a defendant. It's
9 simply the document that brings this case before this Court
10 for trial. It's an allegation. And in this particular
11 case, as I indicated to you, the indictment is for the
12 offense of murder.

13 Now, to the indictment the defendant has pled not
14 guilty and has demanded, as the Constitution allows, a trial
15 by jury. Once that plea has been entered, the State has the
16 burden of proof, under the Constitution and the laws of this
17 state, to prove the defendant's guilt by proof beyond a
18 reasonable doubt.

19 Now, I'll explain to you, in much greater detail during
20 the charge, what is meant by the concept of proof beyond a
21 reasonable doubt. But let, but suffice it to say that the
22 State now has the burden placed upon it in, and that burden
23 will be solely upon the State throughout the trial. A
24 defendant is never under any burden whatsoever to prove him,
25 himself or herself innocent of any charge before this Court.

1 Now, your purpose, as jurors in this case, is to find
2 and determine the facts of this case. I am the presiding
3 officer during this trial. It will be my responsibility to
4 conduct the trial, to rule on questions of evidence, to
5 determine the appropriateness of questions that may have
6 been asked under the rules of evidence that apply to our
7 Court and the rules of procedure that apply to our Courts.

8 I will tell you now that if you take from anything that
9 I say in the discharge of my duties that you believe that I
10 have any opinion whatsoever as to how you determine the
11 facts in this case, you should disregard that notion in its
12 entirety. The law doesn't allow me an opinion on that
13 subject and I can assure you I have no opinion as to how you
14 determine the facts in this case. It's especially important
15 that you perform your duties as the find, fact finders in
16 this case diligently and conscientiously because, under our
17 system of justice, ordinarily there is no means by which an
18 erroneous determination of facts made by a jury can be
19 corrected.

20 Now, the same law that makes you the sole judges of the
21 facts in this case makes me the sole judge of the law in
22 this case. I will tell you now that if you came into this
23 courtroom with any notion as to what the law is or what the
24 law ought to be, you should leave that notion outside of the
25 jury room when you begin your deliberations because the law

1 doesn't allow me to have an opinion or disagree with you
2 concerning the facts as you find them to be. That same law
3 does not allow you to disagree with me concerning the law
4 that's to be applied to those facts, and I will charge you
5 with that law at the close of the trial.

6 It's -- under your solemn oath, it's your
7 responsibility to determine the evidence of the case, and
8 from the law that I give you, reach a just and a true
9 verdict in this matter.

10 Now, as I told you during our break, and I'll tell you
11 every time you leave the courtroom, you should not begin any
12 discussions concerning this case until you've heard all the
13 evidence and I have charged you concerning the law to be
14 applied to that evidence. You shouldn't discuss it with
15 your fellow jurors, with friends, family, or anyone else
16 until such time as I have advised you to retire to the jury
17 room and begin your deliberations and then and only then you
18 should begin your discussions. Until that time, I'll ask
19 you before and I'll ask you again to keep an open mind
20 concerning the case.

21 You've been selected as fair and impartial jurors.
22 Keep that impartiality and fairness throughout the trial
23 until such time as I direct you to begin your deliberations
24 and then and only then begin to discuss the evidence in this
25 case and the issues that will be placed before you. Again,

1 do not read, watch, listen to any media reports or attempt
2 to gather any information from any other source other than
3 the evidence that's presented during this trial.

4 Now, at the close of the trial, it's going to be your
5 solemn responsibility to determine the guilt or the
6 innocence of the defendant. Your verdict must be based
7 solely upon the evidence as presented during the trial. In
8 a few minutes now we're going to begin the trial. I'm going
9 to allow the solicitor to begin with its opening statement
10 followed by the defense. I will tell you now that
11 statements made by lawyers during the trial of the case are
12 not evidence in the case. They are simply, at the beginning
13 of the trial, a summary of what they expect the trial to, to
14 hold for you. And then at the close of the trial they will
15 sum up the evidence from their client's prospective.

16 Statements made by attorneys, however, are not
17 evidence. The only evidence that will be in this case is
18 the testimony of witnesses sworn to tell the truth who
19 testify from the witness stand and any evidence that comes
20 in through that testimony to the record and any stipulations
21 by counsel. And when you hear me use the word stipulation,
22 that means that counsel of both sides have agreed to the
23 fact being true, and, therefore, we will simply state that
24 fact to you and there's no proof required on facts that both
25 sides agree to be true. So, that's what a stipulation might

1 be.

2 Now, the evidence will be presented to you by the
3 testimony of the witnesses during the trial. So, therefore,
4 it's your job to pay close attention to what the witnesses
5 say. Try not to let, to let your thoughts wonder during the
6 trial. Pay close attention to what they say. You have the
7 right to use anything that's in the record of the case in
8 reaching your decision.

9 So, observe the witnesses as they testify, the
10 attorneys as they present their, their case, and consider
11 anything that's properly in the record in reaching your
12 verdict in this case. I will tell you that, during the
13 trial, as I've indicated, it's my job to rule on the
14 appropriateness of questions or the admissibility of
15 evidence. I will tell you now that if it's my belief that
16 the discussions I might have with the attorneys on those
17 issues might involve a discussion of some fact or matter
18 that I consider to not be admissible or potentially not
19 admissible into evidence, I will ask you to step outside the
20 courtroom while I have those discussions with the attorneys.

21 Don't think because I've asked you to step out during
22 those discussions, again, that I have any opinion as to how
23 you determine the facts in the, the case. It's simply me
24 doing my job to see to it that you consider only properly
25 admissible evidence in reaching your verdict. And once I've

1 made the determination as to whether or not that evidence
2 might be admissible, I'll ask you to step back into the
3 courtroom, I'll announce my decision, and we'll proceed with
4 the trial. But don't take from the fact that I've asked you
5 to step out, again, that I've got any opinion on that
6 question as to how you determine the facts. That question
7 is solely for your determination.

8 Now, in determining the facts of the case, it's gonna
9 be your job, at the close of the trial, to determine the
10 credibility or the believability of the witnesses who
11 testify. Credibility simply means that, believability.
12 I'll tell you to use your own good common sense in reaching
13 those decisions about credibility or believability. You do
14 that every day in your day-to-day lives as to what you
15 choose to believe and what you choose not to believe.

16 You have the right to consider such common sense
17 matters, when listening to a witness' testimony, as to
18 whether or not the witness has a stake in the outcome of the
19 case, whether or not the witness might have a bias or
20 prejudice either for or against one side or the other,
21 whether or not the witness actually had the ability to know
22 the things about which that witness testified, and perhaps,
23 most importantly of all, you can sit and observe the
24 witnesses as they testify, the way they speak, how they
25 deliver their testimony. Take all of those factors into

1 consideration, again, such other factors as your common
2 sense tells you to use and reach a determination as to what
3 witnesses you choose to believe.

4 You have the right, as the sole judges of the facts, to
5 believe all of what a witness tells you, part of what a
6 witness tells you, or none of what a witness tells you. You
7 also have the right to believe one witness against all the
8 others or all the others against one or any other
9 combination of that, that equation. Again, you're the sole
10 judges of the facts. That makes you the sole judges of the
11 credibility or the believability of every witness who
12 testifies in this case.

13 So, again, pay close attention to what they say. Try
14 not to let your thoughts wonder. And be in a position, at
15 the close of the trial when you sit down to deliberate with
16 your other jurors, to discuss the testimony that you've
17 heard, excuse me, and to be able to discuss it and remember
18 it as it, as it was given during the trial.

19 Now, I will tell you now that, that I do not appoint a
20 foreperson of the jury in my case until such time as we have
21 reached my charge on the law. The foreperson of a jury has
22 no function other than to preside over the deliberations of
23 the jury and to communicate with the court, if necessary,
24 while you're deliberating and to write the verdict once the
25 verdict has been reached.

1 So, I'll make that appointment at the close of the
2 trial. I haven't forgotten it. And so, don't think because
3 I haven't appointed a foreperson that I've forgotten that.
4 That's just the way I like to do business in my courtroom,
5 and that's how we will handle that particular matter.

6 Now, in order to be sure I haven't violated anyone's
7 rights from what I've told you thus far, is there an
8 objection to my opening statement from the State?

9 SOLICITOR BULSA: No, Your Honor.

10 THE COURT: Any from the defense?

11 MR. BRANNON: None.

12 THE COURT: As I indicated to you, the burden of proof
13 is upon the State in this case. For that reason, we allow
14 the State to go first and that will be during the opening,
15 opening arguments, and, of course, followed by the defense.
16 Then when we start calling witnesses or presenting evidence,
17 the State, again, will go first and call its witnesses first
18 followed by any witnesses the defendant chooses to call.

19 Once all the evidence has been presented, all the
20 witnesses have been called, we'll allow the attorneys to
21 make a closing or final argument or statement. And once
22 that's finished, I'll charge you concerning the law and
23 instruct you to begin your deliberations.

24 So, that's the procedure that we'll follow, the order
25 that we'll follow as the trial goes along. Since the State

1 does have that burden, we do allow them to go first.

2 And you may proceed with your opening statement, Mr.
3 Bulsa.

4 SOLICITOR BULSA: Thank you, Your Honor.

5 Good afternoon, ladies and gentlemen.

6 As the Court stated, this is a serious matter. It's
7 not for entertainment.

8 On April the 4th of 2004, Sammy Gossett, a 45 year old
9 man, was found beaten and stabbed to death in his own
10 bedroom. Sounds like a long time ago, but there are reasons
11 for that. Some of which you will hear and some of which you
12 are not pertinent to.

13 But the fact is that he was reported to the police as
14 being injured. Someone found him and actually he was dead.
15 The police get there the morning of April the 4th, go into
16 his house, and find him in a condition of what I'll use the
17 term rigor mortis. The pathologist will describe that to
18 you. But he was basically cold to the touch and stiff.
19 He'd been dead quite some time.

20 The police cleared the house, sealed it up, got their
21 investigators in there to analyze the house, and collect
22 evidence. They collected a number of items of evidence,
23 began their forensic review of that evidence looking for
24 fingerprints and DNA evidence.

25 This case went on for some months before a suspect was

1 identified and that suspect was Mr. Robert Phipps. His
2 fingerprint was found on a beer can in the house. That was
3 determined in March of 2005.

4 why did it take so long?

5 You'll have the fingerprint expert to come testify to
6 you about why it took so long to find that.

7 But one reason why it took so long is because
8 Mr. Phipps left Spartanburg. He was found in West Virginia
9 about a year later after this incident.

10 Forensic evidence also shows the defendant was drinking
11 beer at that house. It's gonna show that his blood was on
12 the victim.

13 The defendant, ladies and gentlemen, is charged with
14 murder. Murder is the unlawful killing of another person
15 with malice aforethought. That malice being implied or
16 expressed. You look at the nature of this crime, and I'll
17 argue, at closing, that it's clear that this man was
18 murdered. He had essentially retreated to the far bedroom
19 wall of his bedroom. would appear to be trying to take
20 cover. And someone kept coming after him, beating him, and
21 stabbing him multiple times. You'll hear the pathologist
22 describe the injuries and the extent of the wounds.

23 Ladies and gentlemen, this case is about seeking the
24 truth as the Court told you. Listen closely, listen to all
25 the witnesses, look at the evidence, and the pictures,

1 diagrams, and numerous witnesses that testify. And at the
2 close of this case I'll argue the facts further in detail
3 and ask you to find him guilty of murder.

4 Thank you.

5 THE COURT: Mr. Brannon.

6 MR. BRANNON: Please the Court.

7 THE COURT: Yes, sir.

8 MR. BRANNON: Ladies and gentlemen of the jury, my name
9 is Doug Brannon. I introduced myself earlier. This is my
10 client Robert Phipps, and this is my law partner, partner,
11 Brac Turnipseed. Together we're going to try to present to
12 you what, in fact, did happen on the evening or the
13 afternoon of April the 3rd into the morning of April the
14 4th.

15 I want you to keep in mind what Mr. Bulsa just said.
16 They found a fingerprint on a beer can and a spot of blood
17 on a pair of pants.

18 Ladies and gentlemen, Mr. Bulsa and the State of South
19 Carolina have to prove, beyond a reasonable doubt, that my
20 client committed the crime of murder. The judge will tell
21 you, at the end of the trial, what the legal definition of
22 reasonable doubt is. But reasonable doubt is the kind of
23 doubt that would make a reasonable person go hmm. If it
24 would make you stop, if it would make you pause, that's
25 reasonable doubt.

1 On the early afternoon hours of April the 3rd my client
2 was driving a black Toyota Corolla that belonged to his
3 sister. He's at a gas station here in Spartanburg pumping
4 gas. He meets or runs into a man named Samuel Gossett.

5 Now, if you'll remember, one of the questions in jury
6 selection was would the presence of drugs or alcohol affect
7 your ability to render a decision in this. Almost
8 everybody, except for the law enforcement individuals that
9 will testify in this case, are drug users or they drank to
10 excess.

11 But on that day, April the 3rd, my client was pumping
12 gas. Samuel Gossett was at that gas station to buy beer.
13 Samuel Gossett was walking. Mr. Gossett approached my
14 client and said would you give me a ride. My client said
15 sure I'll give you a ride, but do you know where I can buy
16 some dope. Mr. Gossett said sure, I know where you can get
17 some.

18 On the way from that gas station to Mr. Gossett's home,
19 they stopped at a crack house. My client bought a little
20 bit of crack and they went to Mr. Gossett's house. I'm sure
21 that none of you know anything about crack or smoking crack.
22 But typically it's smoked out of a pipe.

23 Well, if you don't have a crack pipe, one of the things
24 that you can do is you can actually poke a hole in the side
25 of a beer can, a small hole inside of a beer can. You can

1 place that crack over that hole, light it on fire, and you
2 can smoke crack out of the beer can.

3 The problem with that is it's not as efficient as a
4 crack pipe. It doesn't burn as cleanly. It doesn't -- you
5 don't get the high when you're smoking off a can. But they
6 get back to Mr. Gossett's house and they smoke that crack.

7 My client smokes the crack. My client says, wait a
8 minute, I don't, I don't want to smoke, don't you, don't you
9 have a pipe or something like that. Mr. Gossett, he's
10 drinking beer. He ain't got no crack pipe. Mr. Gossett
11 says I think I can get you a pipe. My client gives him a
12 little bit of money. Mr. Gossett leaves.

13 He's gone a few minutes. And when he comes back, he's
14 got some more dope, he's got a crack pipe, and he's got
15 another person with him. And then that other person, whom
16 my client had never met, had never seen, pulls out of his
17 pocket a crack pipe. They put that new, the new drugs that
18 Mr. Gossett brought back into that pipe and my client and
19 this new fellow start smoking crack.

20 well, a few minutes into this, this getting high,
21 Mr. Gossett and this third fellow get into an argument. My
22 guy -- my client's never met that other man. Never seen him
23 before. But Sam Gossett and this other fellow, they get
24 into an argument. My client breaks them up. He says man,
25 you're killing my high, don't do that, you're killing my

1 high. They separate a little bit, take another hit off of
2 that.

3 Mr. Gossett leaves, goes back into his bedroom. That
4 third guy follows him down the hallway. My client hears a
5 tussle, walks to the end of the hallway, sees that third man
6 beating Mr. Gossett and my client leaves the house, leaves
7 the house, and never sees that third man again. He never
8 sees Mr. Gossett again. But he leaves that house.

9 When he leaves the house he goes to his girlfriend.
10 Her name is Brenda Urquhart, and she's gonna testify. My
11 client gets to Brenda's house and he tells her I just saw a
12 fight. I think somebody's hurt bad. Sister Brenda calls my
13 client's sister. Her name is Marcy. She's on the State's
14 witness list too. Marcy goes and gets my client.

15 Now, Sister Brenda lives in Chesnee. Marcy lives in
16 Spartanburg. Marcy drives to Chesnee, gets my client. They
17 go back by that house. There's no police there or anything
18 like that. They stop at a store. My client goes and uses
19 the telephone and he calls 9-1-1. I'm sure you're going to
20 hear that 9-1-1 tape.

21 He tells them I want to remain anonymous, but I saw a
22 man get beat down. I think he's hurt. That phone call
23 comes in at 7:35 p.m. on April the 3rd. 7:42, there's a
24 police officer at that house on South Center Street.
25 There's a police officer there. He walks up to the door and

1 he knocks on the door. He says he can hear a TV on, but
2 nobody comes to the door. Walks through the yard. Walks to
3 the back-door. Knocks on the back-door. Nobody comes to
4 the back-door.

5 But keep in mind, ladies and gentlemen, the police
6 officer says the door is closed. At eight o'clock the next
7 morning there's two people parked in the driveway of that
8 house, and they're there to smoke crack in the driveway. I
9 believe they're both gonna testify and what you're gonna
10 hear is that they said, when they backed their car in to
11 smoke crack, the front door to the blue house was standing
12 wide open. They smoked the crack and then this lady named
13 Sheila Mills goes into the house.

14 Sheila Mills is related to Sam somehow and she finds
15 him. But at 7:42 p.m. on the 3rd that front door was closed
16 because the police officer is knocking on it. At eight
17 o'clock in the morning, it's standing wide open. You're
18 gonna find out where my client was after he made that 9-1-1
19 call. It wasn't at the blue house. It was at Sister
20 Marcy's house. My client never went back. The door was
21 closed. Eight o'clock in the morning the door is opened.

22 What you're also gonna find is that Sheila Mills went
23 in and she found Sam. And as she backed her way out, in her
24 statement she says I was backing my way out, she robbed the
25 man blind. She picked up anything she could find. So much

1 so that she found a clothes basket. She emptied the clothes
2 basket, took the basket, and put all the stuff that she was
3 gonna steal from Sam Gossett and carried it out and had
4 somebody put it in the car for her.

5 My client didn't kill Sam Gossett. My client called
6 9-1-1 and tried to get him help. They found his fingerprint
7 on a beer can cause he was smoking crack. They found a spot
8 of his blood on Sam's pants cause when he broke him up,
9 broke the two of them up, he got scratched. And what you're
10 gonna hear from Sister Brenda is that when my client got to
11 her house, she didn't see any cuts, scratches, bruises,
12 marks, blood, or anything. My client looked the same way he
13 does right now. He didn't have blood on him anywhere.

14 My client didn't kill Sam Gossett, and they have to
15 prove beyond a reasonable doubt otherwise. Remember that,
16 reasonable doubt. If in your mind you go hmm, he's not
17 guilty.

18 Thank you.

19 THE COURT: State may call its first witness.

20 SOLICITOR BULSA: Leslie Smith.

21 THE COURT: Come forward to my left to be sworn.

22 LESLIE SMITH, being first duly
23 sworn, testified as follows:

24 THE COURT: Have a seat in the witness stand please.

25 And once seated, please state your name for the record.

Leslie Smith - Direct examination
by Solicitor Bulsa

1 WITNESS: Leslie Diane Smith.

2 THE COURT: Mr. Bulsa, it's your witness.

3 SOLICITOR BULSA: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 BY SOLICITOR BULSA:

7 Q Officer Smith, how long have you been on the Public
8 Safety Department?

9 A Fourteen years and nine months.

10 Q What are your duties with them?

11 A I'm a sergeant on patrol.

12 Q Okay. And what does patrol do?

13 A We answer calls. We go from call to call to call.

14 Q Back in April of 2004, were you on patrol?

15 A Yes, sir, I was.

16 Q Were you a sergeant back then?

17 A No, sir.

18 Q Did you get a call to go to a location on South Center
19 Street that morning?

20 A Yes, sir, I had a death call. ■ South Center Street.

21 Q Okay. About what time did you go to ■ South Center?

22 A I was dispatched at 7:58 and I arrived at eight
23 o'clock.

24 Q And is South Center Street, is that in Spartanburg
25 County?

Leslie Smith - Direct examination
by Solicitor Bulsa

1 A It is.

2 Q It's actually in the city limits of Spartanburg?

3 A It is.

4 Q And when you got to [REDACTED] South Center, what did you
5 observe?

6 A Me and Officer Burgess arrived on the scene. We went
7 inside. We went to the left down a hallway and the last
8 bedroom on the left, we walked inside, seen a body laying
9 in-between the floor and a bed, and it was covered up.

10 Q Okay. Did y'all come in separate cars?

11 A We did.

12 (Whereupon, a photograph was marked as State's Exhibit
13 No. 3. A diagram was marked as State's Exhibit No. 4. Five
14 photographs were marked as State's Exhibit Nos. 5 through 9.
15 A diagram was marked as State's Exhibit No. 10. Fifteen
16 photographs were marked as State's Exhibit Nos. 11 through
17 25. All of the above exhibits were for identification
18 purposes only at this time.)

19 SOLICITOR BULSA: Your Honor, for the record, the
20 defense has agreed to a number of photographs that we'll be
21 referring to without objection.

22 MR. BRANNON: That is correct, Your Honor.

23 THE COURT: All right. You may proceed.

24 (Whereupon, State's Exhibit Nos. 3, 5 through 9, and 11
25 through 25 were received into evidence at this time.)

Leslie Smith - Direct examination
by Solicitor Balsa

- 1 Q Let me show you State's Exhibit No. 3.
2 Does that appear to be the house you arrived at?
3 A Yes, sir.
4 Q State's Exhibit No. 4, I'm sure you recall the layout
5 of the house, was that approximately where it appeared?
6 A Yes, sir.
7 Q Okay. I show you on the overhead here.
8 What kind of neighborhood is South Center?
9 A South Center, it's a drug neighborhood basically.
10 Q It is.
11 Okay. Do you know who lived at that house?
12 A Samuel Gossett I believe.
13 Q And had you dealt with Mr. Gossett before?
14 A No, sir.
15 Q Okay. So, when you arrived there, when you went in and
16 saw his body, did you know it was him?
17 A No, sir.
18 Q You just knew it was a middle aged black man?
19 A Yes, sir.
20 Q All right. And was there anybody outside around when
21 you got there?
22 A No, sir.
23 Q Okay. Any neighbors out or anything?
24 A No, sir, they were outside waiting on us when we came
25 back outside.

Leslie Smith - Direct examination
by Solicitor Bulsa

1 Q Okay. So, when you pulled up, there weren't any cars
2 in the driveway?

3 A No.

4 Q Nobody outside around the house?

5 A (Witness nods negatively.)

6 Q Okay. And you went in because that was the --?

7 A That was the call that we were given.

8 Q Okay.

9 A Dispatched to.

10 Q Was the door opened or closed?

11 A The front door was opened and the screen door was
12 closed.

13 Q Okay. All right. And before you went in, did you
14 knock or call out for anybody?

15 A We knocked and we didn't get an answer. Due to the
16 nature of the call, we went on in to check and secure the
17 scene.

18 Q Okay. And when you went in there, you expected to find
19 somebody deceased?

20 A Yes, sir.

21 Q Cause that's the way it came over---

22 A Over the radio.

23 Q ---the call?

24 Okay. Now, State's Exhibit No. 4, is that a diagram of
25 the inside of the house?

Leslie Smith - Direct examination
by Solicitor Balsa

1 A Yes, sir.

2 Q Showing the front door up here---

3 A We came in the front door---

4 Q ---top left?

5 A ---went down the hallway to the last bedroom on the
6 left.

7 Q Okay. And Mr. Gossett was laying right here?

8 A Yes, sir.

9 Q All right. And how long were you and Officer Burgess
10 in that room?

11 A I'd say about two minutes. Long enough for Officer
12 Burgess to check for a pulse and let me know that the body
13 was cold. We backed out.

14 Q Okay. And when you backed out, what did you do?

15 A Called my supervisor, Sergeant Munoz, and let him know
16 what was going on, and Officer Burgess, Burgess roped off
17 the scene.

18 Q Okay. So, you secured the scene.

19 You did not let anybody inside?

20 A Correct.

21 Q All right. And did Sergeant Munoz arrive?

22 A He did.

23 Q Okay. And did you basically turn over the scene to
24 him?

25 A Turned over the scene, the investigations. He notified

Leslie Smith - Direct examination
by Solicitor Bulsa

1 investigations and they came.

2 Q Okay. So, you were still on scene and Sergeant Munoz
3 was on scene.

4 So, y'all were securing the scene?

5 A Yes, sir.

6 Q And then turned it over to the investigators?

7 A Right.

8 Q Okay. Who then went in the house and did what they
9 did?

10 A Right.

11 Q Okay. Did you have any other dealings outside?

12 A Yes, sir, when we started roping off, people started
13 coming out, which Shannon, Shannon Evins and a Leland Miller
14 was outside and I spoke with them.

15 Q Okay. Were they the people that called the police?

16 A Yes, sir.

17 Q Okay. All right. Thank you. Answer any questions Mr.
18 Brannon may have.

19 THE COURT: Mr. Brannon, your witness.

20 CROSS-EXAMINATION

21 BY MR. BRANNON:

22 Q Sergeant Smith, you were only in that back bedroom for
23 a couple of minutes?

24 A Yes, sir.

25 Q Did you see a lot of blood on the walls?

Leslie Smith - Cross-examination
by Mr. Brannon

1 A I looked down at the body. I really wasn't looking at
2 the walls. I, I seen blood on his face. I seen blood on
3 his shirt. When Officer Burgess told me that he was cold,
4 we just went ahead and backed out. I didn't look any
5 further.

6 MR. BRANNON: One second, Your Honor.

7 (Pause.)

8 MR. BRANNON: Nothing further, Your Honor. Thank you.

9 THE COURT: Redirect?

10 SOLICITOR BULSA: None, Your Honor.

11 THE COURT: You may step down, ma'am.

12 SOLICITOR BULSA: And we ask that she be excused.

13 THE COURT: Any objection?

14 MR. BRANNON: None.

15 THE COURT: Ma'am, you're free to go. Thank you very
16 much.

17 SOLICITOR BULSA: Sergeant Munoz.

18 THE COURT: Come forward, sir, to my left to be sworn.

19 ANTHONY MUNOZ, being first duly
20 sworn, testified as follows:

21 THE COURT: Sir, have a seat in the witness stand.
22 Once you're seated, I'll ask that you state your name for
23 the record.

24 State your name for the record.

25 WITNESS: Oh, I'm sorry. Anthony Munoz.

Anthony Munoz - Direct examination
by Solicitor Bulsa

1 THE COURT: Mr. Bulsa, it's your witness.

2 SOLICITOR BULSA: Thank you.

3 DIRECT EXAMINATION

4 BY SOLICITOR BULSA:

5 Q And you're a sergeant?

6 A Yes, I am.

7 Q How long have you been with Public Safety?

8 A Eighteen years.

9 Q And how long have you been a sergeant?

10 A For ten.

11 Q Okay. And you're a sergeant over what division?

12 A Currently I'm assigned the crime prevention unit.

13 Q Okay. Have you been a sergeant over patrol?

14 A Yes, sir, for over nine years I was a sergeant on
15 uniform patrol.

16 Q Okay. And did part of that time frame include 2004?

17 A Yes, sir, it did.

18 Q And as a sergeant on patrol, what was your duties?

19 A I would check reports for the officers to make sure
20 that they had everything they needed. I would answer
21 questions for them. I would go out on scenes if they needed
22 me for advice.

23 Q Okay. And do you recall the morning of April the 4th,
24 2004?

25 A Yes, sir.

Anthony Munoz - Direct examination
by Solicitor Bulsa

1 Q Did you get a call to go to [REDACTED] South Center Street?

2 A Yes, sir.

3 Q And do you know why you got a call out there?

4 A Yes, sir, I actually received a telephone call from
5 communications and telling me that they were sending one of
6 my officers out to that address because we had a male who
7 was unconscious and not breathing.

8 Q Okay. And believed to possibly be dead?

9 A Yes, sir.

10 Q Okay. And did you head for that location when you got
11 that call?

12 A I did. I was in the office and I left out of the
13 office and got in my patrol car and went to that address.

14 Q So, other patrol officers were on their way and then
15 you followed them?

16 A That's correct.

17 Q Do you remember about when you arrived?

18 A It was probably around eight o'clock in the morning
19 give or take a few minutes.

20 Q Do you know how long other officers had been there by
21 the time you arrived?

22 A No, sir, not exactly. It was just a few minutes.

23 Q And what was going on?

24 A When I arrived, I spoke with Officer Leslie Smith. She
25 advised me that she had gone in and she witnessed the

Anthony Munoz - Direct examination
by Solicitor Bulsa

1 condition of the victim and told me that she believed him to
2 be deceased and that she suspected foul play was involved
3 due to the condition of the body.

4 Q Okay. As a sergeant of patrol, what did you then do?

5 A I instructed my officers to secure the crime scene with
6 crime scene tape and to begin canvassing the neighborhood,
7 to talk to neighbors to see if they heard or seen anything.
8 I called investigations. I believe I called Investigator
9 Dale Winingham to notify him of what we had.

10 Q Was he the investigator on call?

11 A Yes, he was.

12 Q Did that later get turned over to Investigator Porter?

13 A I'm not sure. My, my initial response was to the scene
14 itself. And as a patrol supervisor, we handle the initial
15 call. And then once it goes to investigation, it gets
16 reassigned and that's kind of out of our realm.

17 Q Okay. Did you ever go in the house?

18 A I did not go in the house.

19 Q And did the officers begin kind of identifying possible
20 witnesses?

21 A Yes, they did.

22 Q So, that's one of the duties of a patrol officer?

23 A Correct.

24 Q And are those witnesses turned over to investigators?

25 A Yes.

Anthony Munoz - Direct examination
by Solicitor Bulsa

1 Q Did you know who lived at that house?

2 A I did not. I wasn't familiar with them.

3 Q And had no dealings with that house?

4 A Not personally, no, sir.

5 Q How long would you say you were on scene?

6 A I don't remember exactly. I'm, I'm sure it was
7 probably in the range of maybe an hour or more just making
8 sure that my officers had what that needed in and then we
9 turned it over to investigations, and, of course, they would
10 of been there much longer.

11 Q Okay. So, when you left, the house was in the hands of
12 the investigators?

13 A Yes, sir, it was in their control after that.

14 Q Okay. Thank you. Answer any questions Mr. Brannon may
15 have.

16 A Okay.

17 MR. BRANNON: No questions.

18 THE COURT: You may step down, sir.

19 WITNESS: Okay. Thank you, Your Honor.

20 SOLICITOR KELLEY: Sheila Mills.

21 SOLICITOR BULSA: Your Honor, may we approach?

22 THE COURT: Yes, you may.

23 (Whereupon, a bench conference was held out of the
24 hearing of the jury at this time.)

25 THE COURT: Ladies and gentlemen, this will be a good

1 time for us to take a brief break before this witness
2 appears. I'm going to allow you to go back to the jury
3 room. Of course, the bailiffs will take care of whatever
4 you need. If they're any smokers in the group, we'll allow
5 you to step outside with the bailiff to go smoke.

6 During your break, as I will everytime you leave the
7 courtroom, I'll caution you not to begin any discussions
8 until you've heard all the evidence and I've charged you to
9 begin your deliberations. But at this point in time you can
10 retire to the jury room. We'll call you as soon as we
11 finish the break.

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

14 THE COURT: One thing I do want to comment on, I've
15 noticed in the gallery there's been a lot of moving around,
16 and changing seats. In fact, one person came up and sat
17 down behind the defendant. If you can't sit comfortably
18 while Court's in session, take yourself outside of the
19 courtroom. We don't allow people just to get up and wonder
20 around in the courtroom while we're going on.

21 It's a distraction. The jury's suppose to be paying
22 attention to the witnesses and not watching who's getting up
23 and moving where and doing what in the courtroom. If it
24 doesn't stop, I will exclude individuals from the courtroom.

25 So, have a seat, remain seated. When we're taking a

1 break between witnesses, it would all right if you need to
2 excuse yourself to step outside the courtroom. But don't be
3 walking around and changing seats within the courtroom.
4 I'll have to take action if that doesn't stop.

5 We'll take about a ten to fifteen minute break.

6 Thank you very much.

7 MR. BRANNON: Thank you, Your Honor.

8 (Whereupon, a short recess was taken at this time.)

9 THE COURT: You got your witness available?

10 SOLICITOR KELLEY: Yes, sir, State would call Sheila
11 Mills.

12 THE COURT: Just a minute. We don't have the defendant
13 here.

14 (Whereupon, the defendant comes into the courtroom at
15 this time.)

16 SOLICITOR BULSA: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, a bench conference was held at this time.)

19 THE COURT: All right. Is the State ready for the jury
20 to come back?

21 SOLICITOR KELLEY: Yes, sir.

22 THE COURT: Defense ready?

23 MR. BRANNON: Yes, sir.

24 THE COURT: Bring the jury in.

25 (Whereupon, the following takes place within the

1 presence of the jury.)

2 THE COURT: All right. The record will reflect that
3 all jurors have returned to the courtroom.

4 And when we broke earlier the State was in the process
5 of calling its witnesses.

6 You may call your next witness, Mr. Kelley.

7 SOLICITOR KELLEY: Yes, Your Honor. Thank you.

8 State calls Sheila Mills.

9 THE COURT: Ma'am, come forward to my left please to be
10 sworn. Right up here please, ma'am. Thank you.

11 SHEILA MILLS, being first duly
12 sworn, testified as follows:

13 THE COURT: Ma'am, have a seat in the witness stand
14 please. Once you're seated I would ask that you state your
15 name please, ma'am.

16 WITNESS: Sheila Demetric Mills.

17 THE COURT: Counselor, your witness.

18 SOLICITOR KELLEY: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR KELLEY:

21 Q Good afternoon, Mrs. Mills.

22 How did you know Samuel Gossett?

23 A As far as I was concerned, Samuel Gossett was a cousin
24 of mine by marriage.

25 Q Okay.

Sheila Mills - Direct examination
by Solicitor Kelley

- 1 A He was, suppose to been married to my cousin named
2 Rosylind. Ronnie Mills was my husband.
- 3 Q Okay. And how well did you know him?
- 4 A I met him the first time in like -- that would be
5 before we moved back here back in like '89. He was at the
6 family reunion, the Mills family reunion. But when I moved
7 back here in 2002, you know, I would see him occasionally
8 every other weekend or something.
- 9 Q Okay.
- 10 A That's---
- 11 Q So, would it be fair to say you knew him pretty well?
- 12 A He was family as far as I was concerned.
- 13 Q Okay. How did y'all get along?
- 14 A We got along fine.
- 15 Q Okay. Did you ever go over to his house?
- 16 A All the time.
- 17 Q All the time?
- 18 A I just lived around the corner on Fairfax.
- 19 Q Okay.
- 20 A It was walking distance once I found out how to get
21 there.
- 22 Q Walking distance from where you lived?
- 23 A Fairfax, yeah.
- 24 Q Okay. So, you went there on a regular basis?
- 25 A Yeah, like every other weekend or so, you know.

Sheila Mills - Direct examination
by solicitor Kelley

1 Q Okay. Did you go over to Mr. Gossett's house on April
2 the 4th of 2004?

3 A If you're speaking of the day that I found him dead,
4 yes, I pulled in the driveway that morning, that, early that
5 morning around seven o'clock.

6 Q Seven o'clock in the morning?

7 A I believe it was about that early.

8 Q Okay. What was the purpose of your visit to
9 Mr. Gossett's house that morning?

10 A Well, that particular morning I didn't want to go back
11 to where I had been being all night long. I'm a smoker, you
12 know, I smoke.

13 Q Now, tell me what you mean by that.

14 A What I mean by what, a smoker?

15 Q Yes, ma'am.

16 A I smoke cocaine.

17 Q You smoke cocaine. Okay.

18 A Yeah, and---

19 Q Continue.

20 A I didn't want to go back to where I was because I buy
21 50 and have to give him \$30 worth of the dope, and all I was
22 smoking was \$25 worth and then I had a rider with me,
23 somebody riding me around. So, I know I have to give him 20
24 and I get a 20 and then the house get a ten. But the house
25 was wanting 25, a half of, a half of what I had to get high

Sheila Mills - Direct examination
by Solicitor Kelley

1 off of.

2 So, I said well, let's -- my cousin live right up the
3 street here. I'll pull in there, back up in the yard, and
4 let him know that I'm out in the yard just taking a hit.

5 Q Okay. So, forgive me for simplifying a little bit---

6 A Uh-huh. (Affirmative).

7 Q ---and correct me if I'm wrong, you say you were going
8 over to his house to smoke cocaine?

9 A Yeah.

10 Q Okay.

11 A Uh-huh. (Affirmative).

12 In the driveway, yeah.

13 Q In the driveway?

14 A Uh-huh. (Affirmative).

15 Q So, you arrived in a vehicle?

16 A Yeah, I was in the car with Geter that day, at that
17 particular time, Mr. Geter.

18 Q And Geter, Geter is a friend of yours?

19 A Yeah, the guy that I was with. Had been with all night
20 long.

21 Q Okay. So, when you arrived at Mr. Gossett's home on
22 the morning of April 4th you say about 7:00 a.m. to
23 smoke---

24 A It was earlier. Well, I -- we had just left Ingle's
25 and I went and got rid of the merchandise and got the dope.

Sheila Mills - Direct examination
by Solicitor Kelley

- 1 So, I know it was seven o'clock when I was in Ingle's. And
2 then I came on -- Ingle's on 29. And then I came on up the
3 road and got rid of my stuff, got my stuff.
- 4 Q Okay. When you pulled in, you say you pulled in to
5 Mr. Gossett's driveway?
- 6 A Uh-huh. (Affirmative).
7 He backed in. I told him to back in.
- 8 Q Backed the vehicle in?
- 9 A Yeah, back the vehicle in so we was facing out.
- 10 Q And did you start smoking cocaine at that time?
- 11 A Yeah, that's why I pulled in there for.
- 12 Q You're sitting in the, in the car---
- 13 A In the car.
- 14 Q ---in the driveway?
- 15 A I told him, I said, I told Geter, I said let me take a
16 hit, then you take a hit, and then I'll go and then -- and
17 by then, then I, I felt like Sammy would of came to the door
18 and I could of yelled at him, you know, it's just me.
- 19 Q Okay. Now, let me ask you about that. You say you
20 thought he would of come to the door.
- 21 A By that time I, I got a hit in.
- 22 Q Is that because he usually came out when you pulled in?
- 23 A Yeah, he usually came out when I, when I pulled in if I
24 didn't get out the car.
- 25 Q Okay. Was there anything unusual about the, the way

Sheila Mills - Direct examination
by Solicitor Kelley

1 the house looked that morning?

2 A Well, yeah, you know. To me the things that I had
3 asked him for about three weeks earlier was sitting on the
4 front porch. Some of the things was sitting on the front
5 porch.

6 Q Okay. Let me ask you to explain that a little bit.

7 A Huh?

8 Q Let me ask you to explain that a little bit.

9 A Uh-huh. (Affirmative).

10 Q You said the things he had given you three weeks
11 before.

12 A Right, until me, me going over there that morning,
13 yeah.

14 Q Okay.

15 A Okay.

16 Q Tell me a little bit about that.

17 A Okay. There was a Friday -- well, it's over -- me and
18 Sam Phillips went over there, which is another cousin of his
19 by marriage.

20 Q Okay.

21 A And he had this little thing, this little rack thing
22 for magazines that he was throwing out. And then he had a
23 couple of albums that he said that I could get and something
24 like soaps like from the hotel/motel or wherever, wherever,
25 little miniature soaps and stuff like that, and he say he

Sheila Mills - Direct examination
by solicitor Kelley

1 gonna give them to me. But Sam wouldn't take time for me to
2 put them in the car that night that we was over there.

3 Q The night that, that Mr. Gossett promised these items
4 to you?

5 A Yeah. So, he -- so, what Sam, Samuel Gossett said that
6 he, you know, they'll be sitting on the front porch, that I
7 could come---

8 Q So, you would pick them up later?

9 A ---get them. But the mean while I goes to jail for two
10 weeks---

11 Q Okay.

12 A ---for---

13 Q Let me, let me go back to the morning of April 4th.

14 A Okay.

15 Q Because you were describing things that, that might of
16 looked unusual when you arrived at the house that morning---

17 A Uh-huh. (Affirmative).

18 Q ---and you had mentioned that these items---

19 A Was on the front porch.

20 Q ---previously promised to you were on the front porch.

21 A Some of them.

22 Q Was there anything else that was out of place?

23 A The, the, the front door was wide open.

24 Q Okay.

25 A The screen door was like pulled up, but the front door

Sheila Mills - Direct examination
by Solicitor Kelley

1 was wide open.

2 Q Okay.

3 A And then like if the front door is wide open, I know he
4 should of came on out. I, I, I thought he would come out
5 before I even finished the hit you see.

6 Q Okay. Were the lights on inside the house?

7 A Yeah.

8 Q They were?

9 A The light was on in the kitchen. I could tell that
10 from in the car.

11 Q Okay. So, what did you do at that point when Sam
12 didn't come out?

13 A So, after I took my hit, I said well, let me go -- I
14 told Geter I'm fixing to go see what's, where he at.

15 Q You wanted, you wanted to go in the house?

16 A Yeah, I wanted -- yeah, I wanted him to come on, you
17 know, cause I didn't want to be in the middle of my next hit
18 and he come out there yelling and screaming what are you
19 doing.

20 Q Okay.

21 A Because my conscious mind, my unconscious mind won't
22 let me answer when I'm taking a hit. So, I didn't want to
23 be rude. So, I got on out the car that time.

24 Q So, your -- the purpose of you exiting the vehicle and
25 going to the house was to see if Mr. Gossett was there?

Sheila Mills - Direct examination
by Solicitor Kelley

- 1 A See, see him and let him know I was out there.
- 2 Q Okay.
- 3 A See what was up.
- 4 Q Okay. Now, did you go inside?
- 5 A Yeah.
- 6 Q Okay. Now, what happened when you went inside?
- 7 A Well, I started -- I say oh, you're in there cooking
- 8 breakfast, cook me some too. So --.
- 9 Q Okay. Now, who were you talking to?
- 10 A I'm talking -- I'm thinking I'm talking to Samuel
- 11 Gossett.
- 12 Q Okay.
- 13 A So, I walks on to the kitchen and lean around there and
- 14 don't see him. And so, I came back on out. And then looked
- 15 down the hall and then I could see a light coming out of
- 16 the, out of the bathroom. I said oh, you back there in the
- 17 bathroom washing your face first. So, I start walking
- 18 towards the, down the hallway, and I said now, cover
- 19 yourself, don't let me see nothing. And then I walked -- he
- 20 still ain't saying nothing. So, then I peeked and he wasn't
- 21 in the bathroom.
- 22 Then I noticed that the bedroom that I know that
- 23 belonged to him and my cousin, Rosylind, that they would
- 24 sleep in, it was opened and I felt like a breeze and then I
- 25 could see like the sunlight coming out through there. And

Sheila Mills - Direct examination
by solicitor Kelley

1 so, I said oh, you're back here. So, I went there and
2 stepped to the door and he laying over there on the floor
3 like on the other side of the bed next to the window and,
4 and---

5 Q Okay.

6 A ---and then---

7 Q Let me stop you just now for a second.

8 Now, was this bedroom -- was this the room that
9 Mr. Gossett usually slept in?

10 A Yeah.

11 Q Okay.

12 A Uh-huh. (Affirmative).

13 Q Now, when you looked in, you saw him, what -- how was
14 he -- you say he was laying on the floor?

15 A Yes.

16 Q Okay. And how was he laying on the floor?

17 Was he on his back?

18 Was he on his stomach?

19 A He was on his back---

20 Q Okay.

21 A ---looking very peaceful like he was drunk. And so, I
22 gets mad, you know. I said hey, oh, you had a party last
23 night and didn't invite me, and then I said, come on, get
24 your drunk ass up off that floor and get in the bed.

25 Q Uh-huh. (Affirmative).

Sheila Mills - Direct examination
by Solicitor Kelley

1 A I went over towards him and I reached down for his hand
2 to, you know, wake him up and get him in the bed---

3 Q Okay.

4 A ---and he was cold as ice.

5 Q Cold to the touch?

6 A Yes.

7 Q Okay. Mrs. Mills, did you notice anything peculiar
8 about his appearance?

9 A I didn't notice any of the, the so called 15 stab
10 wounds, nothing, no blood, no nothing. I didn't notice
11 nothing on there. All I noticed is when I touched his hand
12 to get him up, he was ice cold, hard as a rock, nothing was
13 limber, you know what I mean, and I, I'm in the nursing
14 field myself, and, you know, he was just stiff---

15 Q Okay.

16 A ---you know.

17 Q So, you didn't notice any cuts?

18 A I didn't notice none of that.

19 Q Did you notice any bruises?

20 A I didn't notice no bruises. I just noticed that his
21 face was a little swollen---

22 Q Okay.

23 A ---you know, and I'm thinking maybe he, he got them
24 swollen -- the swelling is when he rolled out the bed if,
25 if -- this is what I'm thinking.

Sheila Mills - Direct examination
by Solicitor Kelley

1 Q I understand.

2 A Cause, you know, I ain't thinking nobody come in there
3 and stabbed him like that.

4 Q I understand.

5 Now, after you touched him---

6 A Uh-huh. (Affirmative).

7 Q ---and he was cold to the touch, what did you do next?
8 Did you---

9 A I, I backed on up out of the room. I, I saw where he,
10 the, the, some things, some other things that he had for
11 me -- I went next door and, and, and got, tried to get them
12 people to call the police.

13 Q Okay.

14 A They wouldn't do it.

15 Q Okay.

16 A So, I got back in the car and went down the street,
17 went up South Center. I made it, I made it almost to
18 Williams Streets and I saw Shannon, and I told Shannon to
19 call the police.

20 Q Now, who is Shannon?

21 A One of the neighborhood thugs.

22 Q Okay.

23 A And he didn't -- he didn't want to call them on his
24 cell phone. He really didn't want to get involved he said.
25 So, I went around to Big Dogs, which is a club on Williams

Sheila Mills - Direct examination
by solicitor Kelley

1 street off of, off of Anderson to get somebody to call from
2 there, and it wasn't opened. So, I came on back around and
3 ran into Shannon again, and told Shannon, please either come
4 see if he's dead or let me use your phone to call them.

5 So, Shannon got in the car and we went back up there
6 and went in. Shannon looked at him. Shannon say Sheila,
7 he's dead. I said well, then call the police, you know.
8 So, Shannon called 9-1-1.

9 Q Okay.

10 A And he went next door and stood with those folks while
11 I left to go see if I can find Rosylind.

12 Q Okay. I want to backtrack---

13 A Okay.

14 Q ---for just a moment to the moment when you first went
15 into the house.

16 A Uh-huh. (Affirmative).

17 Q You said that the lights were on. Some of the lights
18 in the house were on.

19 A Uh-huh. (Affirmative).

20 Yeah, the kitchen and the bathroom light was on.

21 Q Okay. Do you remember whether or not the television
22 was on?

23 A I don't remember the television being on.

24 Q Okay.

25 A Okay. I don't remember it being on. It could have.

Sheila Mills - Direct examination
by Solicitor Kelley

1 But I don't remember it.

2 SOLICITOR KELLEY: Okay. Beg the Court's indulgence,
3 Your Honor.

4 THE COURT: Yes, sir.

5 (Pause.)

6 SOLICITOR KELLY: That's all the questions I have at
7 this time, Your Honor.

8 Mrs. Mills, please answer any questions Mr. Brannon may
9 have for you.

10 THE COURT: Mr. Brannon, it's your witness.

11 CROSS-EXAMINATION

12 BY MR. BRANNON:

13 Q Mrs. Mills, did you go to Sam's house and smoke crack a
14 lot?

15 A Not a lot. But at least once a month.

16 Q Okay. He smoke with you?

17 A No, but he, you know, he would allow us to smoke, smoke
18 in there.

19 Q Okay. You, you gave a couple of statements to the
20 police, didn't you?

21 A A couple of them?

22 Q Sure.

23 A I only remember writing one statement, one big long
24 statement, a couple of times, but the same statement.

25 Q Well, now, you -- I think you testified a minute ago

Sheila Mills - Cross-examination
by Mr. Brannon

1 that you had talked with Sam earlier a couple weeks before
2 or something and he had promised you a bunch of stuff?

3 A About three weeks prior to me finding him dead, yes, I
4 was over to his house, yeah.

5 Q Okay. And in your first, in the first version of your
6 statement you don't talk anything about getting stuff.

7 You remember that?

8 You just walked in, you talking to Sam, and you found
9 him, and then you left.

10 Remember that, that statement?

11 A Yeah.

12 Q And then the second time in that big long statement, in
13 this one here that's about five pages long---

14 A Uh-huh. (Affirmative).

15 Q ---you talk about backing out of his room, right?

16 A Uh-huh. (Affirmative).

17 Q You remember that?

18 A Yeah.

19 Q You looked down and you saw some lotion?

20 A Yeah.

21 Q Remember that?

22 A Uh-huh. (Affirmative).

23 Some of the lotion that he said he would get me.

24 Q Yeah.

25 And then, and then you kept backing out, and when you

Sheila Mills - Cross-examination
by Mr. Brannon

- 1 got to the bathroom I think you said you saw the shampoo on
2 the counter, right?
- 3 A Yeah.
- 4 Q Yep. You got that.
5 Remember that?
- 6 A Yeah.
- 7 Q But the first time---
- 8 A And some creamer out the kitchen.
- 9 Q Right.
- 10 A Okay.
- 11 Q And you got some beers---
- 12 A And then---
- 13 Q You got some beers too, right?
- 14 A And I got the beers out of the living room, yeah.
- 15 Q And a pair of tennis shoes I think?
- 16 A No, they were in the basket that I threw all the stuff
17 in.
- 18 Q Oh, okay. Okay. Yeah, cause you found a clothes
19 basket, right?
- 20 A Uh-huh. (Affirmative).
- 21 Q Did you empty that clothes basket out?
- 22 A I took all the clothes -- yeah, I dumped them.
- 23 Q Put them in the floor, right?
- 24 A Yeah.
- 25 Q And then you, and then you put the stuff that you were

Sheila Mills - Cross-examination
by Mr. Brannon

- 1 gonna take out of the---
- 2 A Uh-huh. (Affirmative).
- 3 The stuff that he said I could have.
- 4 Q Put that in a basket?
- 5 A Uh-huh. (Affirmative).
- 6 Q Now, what was on the front porch when you pulled in?
- 7 A It was the little book shelf thing. It's not on there.
- 8 Q Yeah, you, you didn't remember that?
- 9 A It's still at, it's still at my house, you know.
- 10 Q But you didn't, you didn't remember that when you wrote
- 11 the statement, did you?
- 12 A That about putting my---
- 13 Q About the book shelf.
- 14 A I put the, I put the stuff in my car that he said I
- 15 could have that was on the front porch.
- 16 Q Well, you didn't put it in the car though. That friend
- 17 was with you cause you sat there on the porch---
- 18 A I took it to the car myself. The friend didn't, the
- 19 friend that was doing the driving didn't want to get out.
- 20 He didn't want, he didn't want to be everyone -- he wouldn't
- 21 even go in and see if he was dead. That's why I had to go
- 22 find somebody.
- 23 Q Okay. Well, you remember telling them you, that you,
- 24 you put the basket on the porch and your friend came and
- 25 carried it?

Sheila Mills - Cross-examination
by Mr. Brannon

1 Didn't you tell the police that?

2 A Yeah, but he didn't come in the house. Yeah, I passed
3 him the basket from the front porch.

4 Q So -- may I approach the witness, Your Honor?

5 A I passed him---

6 THE COURT: You may approach the witness.

7 A I passed him my things from the front porch.

8 Q Right. See -- remember, then I put my, then put on the
9 front porch and Red took to the car for me. Remember

10 A Uh-huh. (Affirmative).

11 Q See that?

12 A Okay.

13 Q Yeah, so, you put the basket on the front porch, right?

14 A Yeah, told him to -- he was in the car, come, come get
15 it, yeah.

16 Q Okay. But you just said a minute ago he didn't want to
17 get out of the car.

18 So, you carried it to the car, right?

19 A I carried those things that was on the front porch to
20 the car.

21 Q I got you.

22 A My basket, he came and got.

23 Q But the first statement you gave you didn't talk about
24 the stuff that you got from Sam's house, did you?

25 A Yeah, I talked about it from the beginning.

Sheila Mills - Cross-examination
by Mr. Brannon

- 1 Q Oh, okay. Okay. All right.
- 2 A Yeah.
- 3 Q You sure that that---
- 4 A I---
- 5 Q The front door, when you backed in that morning---
- 6 A I said---
- 7 Q ---that front door was opened, right?
- 8 A The front door was wide opened. The screen was closed.
- 9 Q Okay.
- 10 A But the front door was wide open.
- 11 Q But the TV wasn't on?
- 12 A I don't remember the TV -- I don't remember a TV being
- 13 on.
- 14 Q Okay. Okay. All right. You've been in trouble a lot,
- 15 haven't you?
- 16 A Yes.
- 17 Q Yeah.
- 18 Been charged with giving false information to police,
- 19 right?
- 20 A No, the police felt like -- I was born [REDACTED],
- 21 1954. I don't care what nobody say. You can get my birth
- 22 certificate to tell you that. They keep saying I'm born in
- 23 '55. Okay.
- 24 Q Yeah.
- 25 A I was raised being in '54.

Sheila Mills - Cross-examination
by Mr. Brannon

1 Q Okay. And, and, and---

2 A That was the false information.

3 Q And they charged you with that twice cause of the---

4 A That's right. Because I'm gonna give my birthday [REDACTED]
5 [REDACTED], 1954.

6 Q All right.

7 A Uh-huh. (Affirmative).

8 Q All right. Been in jail a lot for shoplifting, haven't
9 you?

10 A Yes, that's what I do to get high. I'm an addict.

11 Q And that's what you were doing that night of April the
12 3rd, right?

13 You kept, you kept going someplace and, and taking
14 something and then going to trade it for drugs, didn't you?

15 A Yes.

16 Q About four or five times that night, right?

17 A Yes.

18 Q And that, and that seven o'clock in the morning, that
19 was gonna be your last high for, for the night, right?

20 A Yeah, that's why I didn't want to go back to where we
21 was smoking at because I didn't want to have to give up my
22 last that morning.

23 Q Got you.

24 A You know, he didn't need it.

25 Q And you were gonna get high and then you were gonna go

Sheila Mills - Cross-examination
by Mr. Brannon

- 1 home and go to bed, right?
- 2 A Yeah, probably so.
- 3 Q Okay. Okay. But you found Sam?
- 4 A Yeah.
- 5 Q Have you ever seen that man in the blue shirt?
- 6 A Yes, I have.
- 7 Q When did you see him?
- 8 A I've seen him around.
- 9 Q Have you?
- 10 A Uh-huh. (Affirmative).
- 11 Q Okay. Did you ever see him on April the 3rd?
- 12 A No, I didn't see him April 3rd.
- 13 Q Okay. Did you say you went next door to call the
- 14 police?
- 15 A I went next door to ask them to call the police. I, I,
- 16 I went there first before I took off and went down the
- 17 street and found what's his name. And the neighbors
- 18 wouldn't call them, you know.
- 19 Q But you didn't put any of that in your statement
- 20 either, did you?
- 21 A I don't know if I did or didn't. Read it and see. I
- 22 don't know.
- 23 Q Okay.
- 24 A I don't know.
- 25 MR. BRANNON: All right. One second, Your Honor.

Sheila Mills - Cross-examination
by Mr. Brannon

1 THE COURT: Yes, sir.

2 (Pause.)

3 SOLICITOR KELLEY: Briefly on redirect, Your Honor.

4 THE COURT: He's not through yet.

5 SOLICITOR KELLEY: I apologize.

6 THE COURT: Let me see if he's---

7 MR. BRANNON: I have nothing further, Your Honor.

8 THE COURT: All right. Now redirect.

9 SOLICITOR KELLEY: I apologize for that, Your Honor.

10 Thank you.

11 THE COURT: That's all right.

12 REDIRECT EXAMINATION

13 BY SOLICITOR KELLEY:

14 Q Mrs. Mills, you testified on cross-examination that you
15 have seen this defendant before?

16 A Yes, I have.

17 Q Do you recall when you've seen him?

18 A Oh, I can't see, tell you exactly which particular time
19 it was when I was over there whenever I seen him before.

20 Q About how many times have you seen him would you think?

21 A A couple.

22 Q Okay. Now, you also testified on cross that you did
23 not remember whether or not the television was on, is that
24 correct?

25 A I, I don't remember if the television was on or not.

Sheila Mills - Redirect examination
by Solicitor Kelley

1 Q Okay. Now, do I understand that to mean that the
2 television---

3 A But I know I---

4 Q It could have been on and---

5 A It could have, it could have been on.

6 Q Okay.

7 A Uh-huh. (Affirmative).

8 Q All right. Thank you.

9 Nothing further, Your Honor.

10 MR. BRANNON: Nothing, Your Honor.

11 THE COURT: You may step down, ma'am. Thank you very
12 much.

13 WITNESS: Okay.

14 SOLICITOR BULSA: I was gonna have another question.

15 THE COURT: Do you wish to ask another question?

16 SOLICITOR BULSA: I do.

17 THE COURT: I'll allow you to do so.

18 Have a seat, ma'am.

19 CONTINUED REDIRECT EXAMINATION

20 BY SOLICITOR KELLEY:

21 Q Mrs. Mills, you say you seen the defendant before.

22 Did see him at Sam Gossett's house before?

23 A Yeah.

24 Q You have?

25 A Uh-huh. (Affirmative).

Sheila Mills - Redirect examination
by solicitor Kelley

1 Q okay. Do you know how many times?

2 A Like I said, about a couple of times.

3 Q okay. And any idea when that might of been?

4 A Oh, no. No, no, I can't tell you when.

5 Q okay.

6 A No.

7 Q All right. Thank you.

8 A That's it?

9 THE COURT: You wish -- ma'am, keep your seat.

10 Do you wish to follow up on any of those questions, Mr.
11 Brannon?

12 MR. BRANNON: No, Your Honor.

13 THE COURT: You may step down, ma'am. Thank you.

14 The State may call its next witness.

15 SOLICITOR BULSA: Shannon Evins.

16 THE COURT: Come forward please to be sworn over here
17 to my left.

18 SHANNON EVINS, being first duly
19 sworn, testified as follows:

20 THE COURT: Have a seat, sir.

21 (Witness complies.)

22 THE COURT: State your name please.

23 WITNESS: Shannon Bernard Evins.

24 THE COURT: Mr. Bulsa, it's your witness.

25 SOLICITOR BULSA: Thank you, Your Honor.

Shannon Evins - Direct examination
by Solicitor Bulsa

1 DIRECT EXAMINATION

2 BY SOLICITOR BULSA:

3 Q Mr. Evins, where do you live?

4 A On Farley Avenue in Spartanburg.

5 Q Is that near South Center Street?

6 A Yes, sir.

7 Q About how close?

8 A One street over.

9 Q How long have you lived there?

10 A Approximately probably about six or seven years now.

11 Q Who do you live with?

12 A My wife and her mother-in-law, my mother-in-law.

13 Q Okay. So, you stay with your mother-in-law?

14 A Yes, sir.

15 Q And how long has she been living there?

16 A She -- ever since I knowed her. It's been my wife's
17 whole life.

18 Q How old are you?

19 A Twenty-six years or more. Twenty-six years or more.

20 Q Twenty-six.

21 Okay. Now, Mr. Evins, did you know Sam Gossett?

22 A Just from the neighborhood. I didn't know him
23 personally.

24 Q Okay. Did you know he lived in the blue house on South
25 Center Street?

Shannon Evins - Direct examination
by Solicitor Bulsa

1 A Not at the, not at the time until the incident
2 happened. I didn't know exactly where he lived at.

3 Q You just knew he lived in that area?

4 A Yes, sir.

5 Q Okay. Do you remember the morning of his death?

6 A I know it was a Sunday morning. I -- the actual date I
7 don't remember. Like I said, it's been like five, five, six
8 years ago.

9 Q It's been a while ago?

10 A Yes, sir.

11 Q How did you learn about his death?

12 A Well, I was -- actually I was walking -- it was Sunday
13 morning and I was walking to go get a newspaper and a female
14 and another gentleman pulled up beside me and she said her
15 cousin had been hurt or whatever and she wanted me to go
16 over with her to check him out, make sure he was all right
17 or whatever.

18 And we pulled up at the house or whatever. And we got
19 out of the car and we was walking up towards the house or
20 whatever and they merged behind me or whatever. I don't
21 know what the situation was. But they got back in the car
22 and pulled off. I didn't go in the house. I went to the
23 neighbor house that was next door to it and I told her what
24 the situation was and she told me to call 9-1-1 and we
25 called 9-1-1.

Shannon Evins - Direct examination
by Solicitor Bulsa

1 Q Okay. Now, did you know the person that stopped you
2 while you were walking?

3 A Yes, sir.

4 Q Who is that?

5 A Sheila Mills.

6 Q Okay. You rode over there with her---

7 A Yes, sir.

8 Q ---to the area?

9 And who is the lady's house you went to call 9-1-1?

10 A I don't, I don't really per se know her. I just know
11 her children, some of the grand kids that stay there.

12 Q Is she an elderly lady?

13 A Yes, sir.

14 Q Okay. So, y'all called 9-1-1 from that area, from that
15 phone?

16 A Yes, sir.

17 Q Had you seen Mr. Gossett's body by then?

18 A No, sir, not at that point in time we hadn't, we hadn't
19 seen anything yet.

20 Q Okay. So, when you made that call, what did you then
21 do?

22 A The operator instructed us to go, to go into the house
23 to see if anybody was in the house or whatever. She told us
24 not to touch anything. Just to walk in the house and see if
25 he was in there or whatever, see what was going on. And the

Shannon Evins - Direct examination
by Solicitor Balsa

1 house we was at, they didn't have a cordless phone. It was
2 still a cord phone, still had a cord.

3 So, we had to leave the phone there. We went over
4 there to check, to check the house or whatever and I was
5 calling his name as we went to enter into the house or
6 whatever. Nobody was answering. So, I went in the kitchen
7 and I looked in the kitchen and looked in the living room.
8 And when I made a left, and there to the left, he was in a
9 bedroom laying on the, laying on the floor against the air
10 conditioner.

11 Q Okay. And what did you do when you saw him lying
12 there?

13 A I reached down and I touched his arm to see if he had
14 a, a pulse or whatever. And I -- the lady that -- the older
15 lady that was with me, she was walking towards the room. I
16 told her to just stay right there where she was, where she
17 was. I didn't really think that she needed to see that.
18 And I took a covering off and I placed it over, over his,
19 over his body or whatever, and we went back and got on the
20 phone with the 9-1-1 operator, and she told us to stay there
21 until the police was, got there.

22 Q Mr. Evins, why did you cover his body?

23 A It just felt like it was the appropriate thing to do at
24 the time, you know what I'm saying, seeing the situation
25 that it was.

Shannon Evins - Direct examination
by Solicitor Bulsa

1 Q And where did you get the blanket you covered---

2 A It was, it was a bed. It was a bedroom. It was right
3 there. I mean, like I say, I had an older lady that was
4 with me, and the condition that he was in, I felt like she
5 didn't need to see that. So, I just placed it over his,
6 over his head in respect, you know what I'm saying.

7 Q Okay. And what was the condition that you saw?

8 A He had been battered really bad and there was blood,
9 and, you know, it look like he had fell, fell back and hit
10 his head on the air conditioner because his head was on the
11 corner of the air conditioner.

12 Q Did you have a clear mind that morning?

13 A Yes, sir. Yes, sir.

14 Q Okay. So, you were fully aware of what was going on?

15 A Yes, sir, after, you know what I'm saying, once I got
16 think, you know what I'm saying, seeing the situation, I
17 realize that it was a really serious, serious situation, you
18 know what I'm saying, and---

19 Q Uh-huh. (Affirmative).

20 A ---you know, I just wanted to get it over and done
21 with, you know what I'm saying. I didn't---

22 Q Okay.

23 A ---want to be called into a situation like that, you
24 know.

25 Q Okay. Did you touch anything else in the room?

Shannon Evins - Direct examination
by Solicitor Bulsa

- 1 A No, sir.
- 2 Q How long would you say you were actually in this room?
- 3 A No more than probably about five minutes at the most.
- 4 Just---
- 5 Q Okay.
- 6 A ---walking, walking through the house. You know, like
- 7 I said, we walked through the, the front of the house. We
- 8 went into the kitchen, into the living room area, and then
- 9 there's a stretch of hallway to the left-hand side. And as
- 10 you walked out the left-hand hallway, there's a room to the
- 11 left-hand and that's where he was.
- 12 Q Okay.
- 13 A And like I said, I took the measures of, you know what
- 14 I'm saying, touch him and make, see if he had a pulse or
- 15 whatever, and, you know, I took cover, I threw the cover and
- 16 placed it over his head or whatever.
- 17 Q Okay. And then what did you do after you covered him
- 18 up?
- 19 A We went back to the, to the lady's house and we got
- 20 back on the phone with 9-1 operator, 9-1-1 operator and told
- 21 her what the situation was.
- 22 Q Okay. And how long did it take the police to arrive?
- 23 A Oh, it was just a couple of minutes. It was probably
- 24 like three or four minutes at the most.
- 25 Q Okay. And did you speak with someone at the scene?

Shannon Evins - Direct examination
by Solicitor Bulsa

1 A Yes, sir, they took a report and stuff.

2 Q Okay. All right. Did you recognize the gentleman in
3 the floor when you looked at him?

4 A I mean just from, through the neighborhood I knew that
5 that was, that's who he was, Mr. Phipps.

6 Q All right. Thank you. Answer any questions Mr.
7 Brannon may have.

8 CROSS-EXAMINATION

9 BY MR. TURNIPSEED:

10 Q Mr. Evins?

11 THE COURT: Mr. Turnipseed, your witness.

12 MR. TURNIPSEED: Thank you, Your Honor.

13 Q You stated on direct that there was, there was blood?

14 A Yes, sir.

15 Q How much blood?

16 A I mean I don't, I don't recall. Like I said---

17 Q But you---

18 A ---it's been like five years ago. I know he had blood
19 on his face.

20 Q But you do recall seeing blood?

21 A Yes, sir.

22 Q Okay. And that's why you cover him, covered him up
23 with a blanket?

24 A Yes, sir.

25 Q Thank you.

Shannon Evins - Cross-examination
by Mr. Turnipseed

1 No further questions, Your Honor.

2 THE COURT: Anything on redirect?

3 SOLICITOR BULSA: No, sir, Your Honor.

4 THE COURT: You may step down, sir.

5 SOLICITOR BULSA: And we ask that he be excused.

6 MR. BRANNON: No objection.

7 THE COURT: You may step down, sir.

8 SOLICITOR BULSA: Yeah, you're finished. Thank you for
9 coming, Mr. Evins. You're free to go.

10 THE COURT: Call your next witness.

11 SOLICITOR BULSA: State calls Ramona Wood.

12 RAMONA WOOD, being first duly
13 sworn, testified as follows:

14 THE COURT: Ma'am, have a seat in the witness stand.
15 Once you're seated, please state your name for the record.

16 WITNESS: Ramona Wood.

17 THE COURT: Mr. Bulsa, your witness.

18 SOLICITOR BULSA: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY SOLICITOR BULSA:

21 Q Mrs., Mrs. Wood, are you the sister of Sammy Gossett?

22 A I am.

23 Q You live here in Spartanburg?

24 A I do.

25 Q The house that Sammy was living in, whose home was

Ramona Wood - Direct examination
by Solicitor Bulsa

- 1 that?
- 2 A Well, it was my dad's home. After my dad died, he gave
- 3 it to me and I allowed my brother to stay there.
- 4 Q Okay. How long had he lived there?
- 5 A Probably about, about four or five years.
- 6 Q Was Sammy working?
- 7 A No, not at the time of his death.
- 8 Q Did he have an addiction of any sorts?
- 9 A Excuse me?
- 10 Q Did he have an addiction of sorts?
- 11 A Well, he, he drank his beer.
- 12 Q Did he?
- 13 Okay. How about drugs?
- 14 You ever known him to use drugs?
- 15 A In the past he had a, a drug problem. But he wasn't
- 16 doing crack or anything anymore.
- 17 Q Okay. Did you stay in contact with him?
- 18 A All the time.
- 19 Q When was the last time you'd seen him before his death?
- 20 A The last time I saw him was the Wednesday before he
- 21 died. But I spoke with him that Friday.
- 22 Q Okay. And when you say you spoke with him, you spoke
- 23 with him by phone?
- 24 A By phone.
- 25 Q So, he had a phone in his house?

Ramona Wood - Direct examination
by Solicitor Balsa

1 A No, he didn't have a phone in his house. He would go
2 to the neighbor's house and call me.

3 Q Okay. All right. And did y'all do anything special
4 before you saw him, I mean before his death?

5 He came and visited you or something, didn't he?

6 A Well, he was at my house the Thursday before he, he
7 died because I was redoing my house, my blinds, and he was
8 helping my husband take down the old blinds to put new ones
9 up.

10 Q Okay. Was he married of sorts?

11 A No.

12 Q Was he seeing someone?

13 A He was living with Rosylind Garrett.

14 Q With Rosylind Garrett.

15 Is that the lady that Mrs. Mills was speaking of?

16 A Uh-huh. (Affirmative).

17 Q Okay. So, Mrs. Mills would be related to her somehow?

18 A Right.

19 Q Okay. But not technically to your, your family?

20 A No.

21 Q Okay. Do you have, your brother have any enemies?

22 A Not that I know of.

23 Q Had he discussed any problems he was having with you?

24 A No.

25 Q Do you know Mr. Phipps?

Ramona Wood - Direct examination
by Solicitor Bulsa

- 1 A Never met him.
- 2 Q So, you'd never seen him before?
- 3 A No.
- 4 Q Would you visit Sammy at his house or would he come
5 visit you?
- 6 A Both. But he knew that -- when, whenever I was around
7 he wouldn't drink cause he knew I didn't tolerate drinking.
- 8 Q Are you familiar with how well he kept house?
- 9 A He didn't keep house very well. He kept his living
10 room really neat and the kitchen. But the bedroom was in
11 awe.
- 12 Q Okay. Okay. So, you've seen the diagram, not the
13 pictures yet of a bunch of clothes on the bed, is that
14 normal?
- 15 A Probably, yeah.
- 16 Q Okay. Okay.
- 17 A Because he didn't really stay at his house. He would
18 stay at Rosylind's most of the time.
- 19 Q And where did Rosylind live?
- 20 A At that timeshe lived on Brawley, Brawley Street.
- 21 Q So, he would just come sometimes back to this house?
- 22 A Uh-huh. (Affirmative).
- 23 Q All right. When did you learn that he had passed?
- 24 A That Sunday morning about 7:30 I was getting ready to
25 go to church and I got a phone call from Rosylind's cousin

Ramona Wood - Direct examination
by Solicitor Bulsa

1 telling me that my brother needed me. And I said well --
2 she asked me would I come. She say Sam really needs you.
3 He needs you, he needs you to come to his house, and I said
4 what's going on, why didn't my brother call me. And she
5 said he just need you to come out there. I'm not going
6 anywhere till you tell me what's going on, and that's when
7 she told me he was dead.

8 Q Okay. And did you then go to the house?

9 A Immediately.

10 Q Okay. Were you allowed to see him?

11 A Not until he was in an ambulance in a body bag.

12 Q Thank you, Mrs. Wood. Answer any questions Mr. Brannon
13 may have.

14 MR. BRANNON: Thank you.

15 THE COURT: Mr. Brannon, your witness.

16 CROSS-EXAMINATION

17 BY MR. BRANNON:

18 Q Mrs. Mills, you, you say you got a call from---

19 A My name is Ramona Wood.

20 Q I'm, I'm sorry. Forgive me.

21 Mrs. Wood, you say you got a phone call that Sunday
22 morning, April the 4th, from, from whom?

23 A His girlfriend's sister.

24 Q His girlfriend's sister.

25 Can you tell me that person's name?

Ramona Wood - Cross-examination
by Mr. Brannon

- 1 A Cynthia.
- 2 Q Cynthia.
- 3 A I don't know her last name.
- 4 Q Okay. All right. You said in the past your brother
- 5 had had a drug problem?
- 6 A Yes.
- 7 Q Were you aware that he was still letting people use his
- 8 house to smoke their dope?
- 9 A No.
- 10 Q You heard Mrs. Mills testimony though, didn't you?
- 11 A I did.
- 12 Q And she testified that she would go there to use her
- 13 drugs, right?
- 14 A Yeah.
- 15 Q When you visited your brother's home, were there times
- 16 when there were other people there, Sam and others?
- 17 A Sometimes there would be guys on the porch drinking
- 18 beer with him.
- 19 Q Okay. So, it wouldn't be unusual to see others there
- 20 with Sam?
- 21 A Well, most of the time he was at Rosylind's house.
- 22 Q Okay.
- 23 A Yeah.
- 24 Q But if he was there at that blue house---
- 25 A Uh-huh. (Affirmative).

Ramona Wood - Cross-examination
by Mr. Brannon

1 Q ---would it be usual or unusual to see others there
2 with him?

3 A Well mostly he was alone. He would mainly go by to
4 check on his house.

5 Q Okay. I'm sorry for your loss, ma'am.

6 Nothing further, Your Honor.

7 SOLICITOR BULSA: No further questions.

8 THE COURT: Ma'am, you may step down.

9 You want to approach please?

10 SOLICITOR BULSA: Yes, sir.

11 (Whereupon, a bench conference was held out of the
12 hearing of the jury at this time.)

13 THE COURT: All right. Ladies and gentlemen of the
14 jury, I'm informed the next witness is gonna take a little
15 longer than the others we've had, and we're about 15 minutes
16 till five o'clock. So, this is that, that time you get to
17 stop a little before five o'clock instead of a little after
18 five o'clock. And so, we're gonna break at this time for
19 the evening.

20 Now, I will advise you, as I did at lunch, not to
21 discuss the case with anyone during our evening break.
22 Don't allow anybody to discuss it with you. Don't watch,
23 read, or otherwise take in any type of media reports
24 concerning this case, and, of course, if anyone attempts to
25 contact you about this, please report that upon your return

1 in the morning.

2 We're gonna start the trial again at nine o'clock in
3 the morning. I'll ask that you be in the jury room that's
4 in use for this trial at that point in time, and I hope
5 everyone has a good evening. You're free to go at this
6 time.

7 Everyone remain seated while the jury retires.

8 Thank you very much.

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

11 THE COURT: All right. Court will be in recess until
12 nine o'clock in the morning.

13 The defendant remains in custody.

14 Thank you very much.

15 MR. BRANNON: Thank you, Your Honor.

16 MR. TURNIPSEED: Thank you, Your Honor.

17

18 (Whereupon, Court was in recess for the evening.)

19

20

21

22

23

24

25

1 Tuesday, April 14th, 2009

2
3 (whereupon, a knife blade was marked as State's Exhibit
4 No. 26. Two kitchen knives were marked as State's Exhibit
5 Nos. 27 and 28. Some clothing was marked as State's Exhibit
6 No. 29. Some fingernail scrapings were marked as State's
7 Exhibit No. 30. Four fingerprint cards were marked as
8 State's Exhibit Nos. 31 through 34. Two photographs were
9 marked as State's Exhibit Nos. 35 and 36. A Social Security
10 card was marked as State's Exhibit No. 37. A Spring
11 Industries card was marked as State's Exhibit No. 38. All
12 of the above exhibits were for identification purposes only
13 at this time.)

14 SOLICITOR BULSA: Your Honor, if I may for the record,
15 I'm not sure it was clear, but State and defense had
16 reviewed some photographs and diagrams, State's 3 through
17 25, and they were meant to be entered without objection.

18 MR. BRANNON: That is correct, Your Honor.

19 THE COURT: They'll be made a part of the record as
20 marked.

21 SOLICITOR BULSA: Thank you.

22 (Whereupon, State's Exhibit Nos. 4 and 10 were received
23 into evidence at this time.)

24 THE COURT: Are there any other exhibits from this
25 morning or are they just being premarked?

1 SOLICITOR BULSA: Being premarked, yes, sir.

2 THE COURT: Okay. State ready to proceed?

3 SOLICITOR BULSA: Yes, sir.

4 THE COURT: Defense ready?

5 MR. BRANNON: Yes, Your Honor.

6 THE COURT: Let's bring the jury in, Mr. Bailiff.

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

9 THE COURT: All right. The record will reveal that all
10 jurors have returned to the courtroom.

11 And I trust everyone had a good evening and we're ready
12 to begin again the trial of this case. When we broke
13 yesterday afternoon the State was in the process of calling
14 its witnesses.

15 And Mr. Bulsa or Mr. Kelley, you may call your next
16 witness.

17 SOLICITOR BULSA: Thank you, Your Honor.

18 The State calls David Hogsed.

19 THE COURT: Come forward, sir, to be sworn.

20 DAVID HOGSED, being first duly sworn,
21 testified as follows:

22 THE COURT: Have a seat in the witness stand please,
23 sir, and state your name for the record.

24 WITNESS: David Hogsed.

25 THE COURT: Mr. Bulsa, it's your witness.

David Hogsed - Direct examination
by Solicitor Bulsa

1 SOLICITOR BULSA: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY SOLICITOR BULSA:

4 Q Who are you employed by, officer?

5 A With Spartanburg County Sheriff's Office.

6 Q And how long have you been with the Sheriff's Office?

7 A Three and a half years.

8 Q Did you formerly work for Spartanburg Public Safety?

9 A I did.

10 Q For how long?

11 A Almost 16 years.

12 Q And what were your duties with the City Police

13 Department when you left?

14 A The last, about the last six years I was there I was
15 assigned to the crime scene unit.

16 Q And what is the crime scene unit?

17 A We respond to and process crime scenes when called
18 upon.

19 Q And back in April of 2004, specifically April 4th, did
20 you respond to a scene at [REDACTED] South Center Street?

21 A I did. I was actually called at my residence. I was
22 off that day and called at home by one of our investigators
23 and was asked to respond and, and did so.

24 Q Okay. And what was the condition of the scene when you
25 arrived?

David Hogsed - Direct examination
by Solicitor Balsa

1 A The scene had been cornered off with crime scene tape.
2 Area -- officers on the scene were making sure no one
3 entered the home. When I arrived no one was inside the
4 home, and I was informed that a search warrant was being
5 completed for the residence before I made entry into the
6 home.

7 Q Okay. And once you gained permission, did you enter
8 the home?

9 A Yes, once the search warrant arrived, I entered the
10 residence at 10:23 a.m.

11 Q Who entered with you?

12 A Oh, excuse me. I know Investigator Willingham went in
13 with me and I want to say Coroner's Investigator Alan Mason
14 had went in with me.

15 Q Okay. And what did you do when you first arrived
16 inside?

17 A What we do when we first arrive is we do what's called
18 an initial walk through. And on that initial walk through,
19 what we do is we all, we start taking photographs at that
20 time. We take, we take photographs of the residence or the
21 scene as we see it when we arrive. So, as I'm walking
22 through the residence, I'm snapping photographs.

23 Q Let me show you what's been marked as evidence, a
24 series of photographs State's No. 3, 5 through 11, excuse
25 me, 5 through 9 and then 11 through 25.

David Hogsed - Direct examination
by Solicitor Balsa

1 Do you recognize those pictures?

2 A Yes, sir, I do.

3 Q Do those appear to be taken by you?

4 A Yes, they were.

5 Q Now, those are just a few of the many you took,
6 correct?

7 A That's correct.

8 Q Are those few a accurate representation of the house at
9 that point?

10 A Yes, first one being, of course, the outside of the
11 house taken from the roadway and then the others are the
12 residence as we observed it as we entered and some have
13 numbered placards, which was done later on. But yes,
14 that's, that's how the things work.

15 Q And in conjunction with the photographs, did you create
16 diagrams of the interior of the house?

17 A Yes, once the crime scene processing is done, the items
18 of evidence are collected, we then use a computer program,
19 which allows us to do a computer generated diagram of the,
20 of the inside of the residence or the crime scene.

21 Q All right. And let me show you State's 4 and 10.

22 Are those copies of that diagram?

23 A Yes, sir, they are.

24 Q Now, when you go through and you do your walk through
25 and take pictures, in fact, those pictures are actually

David Hogsed - Direct examination
by Solicitor Bulsa

1 taken over a series of times, right?

2 A Yes, there's actually pictures taken as we enter on our
3 initial walk through as, as we see it as we walk through.
4 we'll then exit. we'll go back in and we'll start, as we
5 start processing the crime scene and items of evidence that
6 we, that we feel that we need to take as items of evidence,
7 we'll start putting down numbered placards. Once that is
8 done, we take a whole other series of, of pictures to show
9 where the numbered placards are put throughout the crime
10 scene, and then we do individual close-ups of each item of
11 evidence.

12 And during this process, we may be moving things or so
13 forth and things are found and photographs are then taken
14 once that is found. So, it's -- photographs are taken
15 continuously through processing of the crime scene.

16 Q And the, there are numbers on your diagram.
17 would they correlate to the numbered placards?

18 A Yes, once we put an item of evidence on our crime scene
19 diagram, we put a number of site which correlates with the
20 item of evidence that we collected from the crime scene to
21 show where it was inside, in the, in the crime scene.

22 Q Now, did you examine the body at all yourself?

23 A I did a quick examination. I did not remove any
24 clothing items or anything like that. Just an initial quick
25 examination. He had already been pronounced deceased. So,

David Hogsed - Direct examination
by Solicitor Balsa

1 we did, I did a quick examination of the face, neck area,
2 and arms, and then that was basically all I did.

3 Q Do you know why he would of still been at the scene
4 when you arrived?

5 A I do not.

6 Q Okay.

7 A I know he -- well, I know he was found by one of our,
8 one of the Public Safety officers. And once he's, he was
9 found, EMS had responded, he'd been pronounced deceased, he
10 would of been left there until we arrived.

11 Q Okay. So you can process---

12 A That's correct.

13 Q ---the scene?

14 A So we can process the crime scene.

15 Q Did, did you do anything with the hands of---

16 A The room that Mr. Gossett was found in was very
17 cluttered and very tight spaced. One of the first things we
18 did, once we took our initial photographs of Mr. Gossett's
19 location, I decided at that time, in order to process the
20 rest of the room, I was gonna have to have Mr. Gossett
21 removed. We used two corners of the bedroom to triangulate
22 his position within the room and then we removed his body
23 from the residence, and then we finished processing the
24 crime scene.

25 Q Did you back---

David Hogsed - Direct examination
by Solicitor Bulsa

1 A Prior to removing him, I placed paper bags over his
2 hands and used tape to secure the bags over his hands.

3 Q What is the purpose of doing that?

4 A It was obvious, when I saw Mr. Gossett, that he had
5 been stabbed. Usually, in a stabbing incident, there are --
6 you can have a confrontation in a stabbing incident where
7 the victim is fighting back, and that was done to preserve
8 maybe any biological or trace evidence that would of been
9 under his fingernails if he was fighting his attacker while
10 the altercation took place.

11 Q Okay. Now, let's walk the jury through some of these
12 photographs.

13 Okay. We saw this photograph yesterday.

14 That's the house, is that right?

15 A Yes, that's correct. That's the -- it shows the side
16 and the front of the house. This house actually does not
17 face South Center Street. You pull up in the driveway, it
18 actually sits elongated off of South Center Street.

19 Q And I'm going to show you this view first, State's 6.
20 Is that a view of the front door?

21 A That is. That's standing in the living room over near
22 where you enter the kitchen and taking a picture back toward
23 the front door.

24 Q Okay. State's 5, where is the, where is that picture
25 taken from?

David Hogsed - Direct examination
by Solicitor Bulsa

1 A The picture is pretty much standing in the doorway,
2 front doorway into the living room.

3 Q State's No. 7.

4 A Moving in closer into the living room getting more of
5 the right side of the living room as you enter the
6 residence.

7 Q State's No. 8.

8 A That's standing down the hallway and taking a
9 photograph back toward the living room.

10 Q Okay. State's No. 9.

11 A Standing in the living room taking a photograph down
12 the hallway.

13 Q And if we're looking down this hallway, which room
14 would Mr. Gossett have been in?

15 A As you go down the hallway, there's a bedroom on the
16 left, two bedrooms on the left, a bathroom on the right and
17 a bedroom on the right. He was in the second bedroom on the
18 left.

19 Q State's No. 4, is this the diagram you created?

20 A That's correct.

21 Q So, we've seen pictures of -- let me give you a pointer
22 if you would.

23 Show us the area that we already seen the pictures of.

24 A Sir?

25 Q Can you show us the area on the diagram where the first

David Hogsted - Direct examination
by Solicitor Bulsa

1 pictures we viewed were from?

2 A The first pictures are -- this is the front door,
3 living room. That's where the first set of pictures were.
4 And then you have the pictures showing from me standing here
5 at this end of the hallway taking a photograph back up and
6 then vice versa is one of the pictures were that we just
7 looked at.

8 Q Okay. Before we entered the, the bedroom, did you
9 recover any evidence or any items from the living room area?

10 A There was items collected from the living room, but it
11 was not before I entered the bedroom. They were marked as,
12 as -- once we removed Mr. Gossett from the residence, we
13 started marking items of evidence and they were marked as
14 items of evidence within the living room.

15 Q Try to walk the jury through the house. So, let's
16 focus on the living room first.

17 What items did you recover from that area?

18 A Beer cans, an asthma inhaler. It was a torn paper bag.
19 As you entered the front door, the coffee table's here, the
20 sofa's here. I can't really see it. But I think that's
21 Item Number 30. That's an asthma inhaler that was lying on
22 the floor near the coffee table. Thank you.

23 Item 23, 24 -- 22 is actually a can of spray paint that
24 was, that was on the floor in the residence. 23, 24, beer
25 cans. 25, 26, 27 are beer cans. 28 is a torn paper bag.

David Hogsed - Direct examination
by Solicitor Balsa

1 And 29 is a, is also a beer can. All these were recovered
2 from within the living room, various locations from within
3 the living room.

4 Q And why did you collect those items?

5 A If you look at where the beer cans are, it's obvious to
6 me that, to me, it appeared that more than one person had
7 been within the house drinking beer. They're scattered
8 throughout the room on the floor and so forth.

9 Also beer cans, smooth, smooth surfaces are a good
10 source of, can be a good source for latent fingerprints and
11 also, since these, someone had consumed the alcohol in most
12 of these cans, it also could be a good source for DNA.
13 That's why they were collected.

14 Q From your prospective, did there appear to have been
15 any kind of struggle or confrontation in that room?

16 A Not in the living room, no.

17 Q Okay. Nothing seemed out of sorts?

18 A Other than just the beer cans being on the floor and
19 all that, nothing looked like it'd been turned over, kicked,
20 or disturbed.

21 Q Okay. All right. Did -- you collected those items.
22 Now let's move down the hall into the bedroom.

23 State's Exhibit No. 9 is what?

24 Is that a view of---

25 A That's a photograph standing in the hallway shooting a

David Hogsted - Direct examination
by Solicitor Balsa

1 picture showing where the bed is inside in the bedroom. But
2 I'm actually standing outside because you can actually see,
3 excuse me, the door framing of the bedroom door.

4 Q Okay. State's Exhibit No. 12.

5 A Moving a little bit more to the right getting a better
6 shot showing more of the bedroom and the contents inside.

7 Q And to the left-hand side of this, can we see the body
8 of Mr. Gossett?

9 A Actually, yes. Right here on the floor you can see the
10 outline of the wind suit, the wind suit that Mr. Gossett was
11 wearing at the time.

12 Q And is this a, is this -- would this have been one of
13 the first pictures you would of taken?

14 A Actually I started taking photographs as I entered
15 through the house. And as I worked down I would of taken
16 the photographs working down the hallway. So, as soon as I
17 got -- before I entered the bedroom, these photographs would
18 of been taken.

19 Q Okay. Cause we don't see any numbered placards?

20 A Right.

21 Q Okay. State's Exhibit No. 13.

22 A Standing in the doorway taking a picture, if you will
23 step into the doorway, the left-hand wall taking a
24 photograph of, of the dresser and of the left-hand wall, the
25 contents of the left-hand wall and you could see more of

David Hogsed - Direct examination
by Solicitor Balsa

1 Mr. Gossett here on the floor.

2 Q State's, State's Exhibit No. 14.

3 A This is working -- this is actually between where the
4 bed is. This is actually -- I worked my way across the room
5 over Mr. Gossett's body and took a picture showing his
6 location, his feet, and moving up towards his head of his
7 location between the wall and the bed.

8 Q Using the diagram, you created State's Exhibit No. 10.

9 That represents everything as you best could document
10 it?

11 A Yes, best that I documented. Now the diagram is not to
12 scale. But that's, that's what I observed when I entered
13 the room.

14 Q And we actually have a legend over to the left?

15 A That's correct. A legend over to the left, these
16 numbers correspond with these items of evidence that are
17 marked within the diagram.

18 Q Okay. You even have numbers on items on the bed?

19 A That's correct.

20 Q Okay. How did you decide what to collect from this
21 room?

22 A Once we removed -- well, I was, observed it when I
23 moved in. Two, near the area of Mr. Gossett's head and all,
24 a wallet was found and the wallet appeared to have several
25 items that men carry within their wallets that was laying

David Hogsted - Direct examination
by Solicitor Bulsa

1 all over, all over the floor and around his head. It
2 appeared that the wallet had been ransacked through.
3 Somebody had taken the time to pull those items out and put
4 them on the floor. Those were items of evidence that we
5 collected. Some -- most of them had blood on them.

6 There was also a cigarette filter on the floor beside
7 his location. Again, cigarette filters can be a very good
8 source of DNA. So, it was collected.

9 There were several items around his head. They had
10 blood on them and, and so forth. So, the rule of thumb for
11 us is, when in doubt, we take it. So not knowing if it is
12 involved or it's not involved, therefore, we take it. So,
13 pretty much everything around his head area that was strung
14 out on the floor was taken in as evidence.

15 Q Obviously when you arrived you had no idea what
16 happened?

17 A No, I had no idea what had, what had happened.

18 Q And you had no idea what might be relevant or not?

19 A No, at the time I knew, going in, that once I saw
20 Mr. Gossett that he was deceased, he had been stabbed, and
21 it appeared that an altercation had taken place in the
22 bedroom. And at that point, anything and everything goes.

23 Q Okay. To be later processed and sent to---

24 A That's correct. We'll sort through it later.

25 Q Okay. And were you in charge of the collection?

David Hogsed - Direct examination
by Solicitor Balsa

1 A I was. I was the only crime scene investigator there
2 that day. So, I collected everything out of the house.

3 Q Okay. Now let's show the jury State's Exhibit No. 15.
4 It actually shows some of the placards?

5 A Yes, that's correct. That's -- once we removed
6 Mr. Gossett from the bedroom, went back in, we started
7 numbering items of evidence that I determined we should take
8 in as, as evidence, and those numbers show the positioning
9 within the room.

10 Q Some additional items.

11 A Those are items of evidence between the bed and the
12 wall where Mr. Gossett was found.

13 Q Now, looking at this picture, that is exactly what you
14 saw absent the placards and the body?

15 A Yes.

16 Q So, the light shade was down in the floor like that?

17 A That's correct.

18 Q Let me show you a series of pictures from the bed.
19 State's 19, excuse me, State's 19 shows a Number 17.

20 What is that suppose to depict?

21 A Once we removed all the items of evidence seen in the
22 previous photograph, once those were actually collected,
23 bagged, and removed from the room, we started working the
24 bed in layers. Taking all the clothes that was on the bed,
25 we started removing it as layers and examining the items

David Hogsted - Direct examination
by Solicitor Bulsa

1 that were on it as we remove it. Generally what we do is
2 we'll clear an area, we'll search an area, make sure it's
3 clear of no other evidence, and that's where we start
4 placing the items as we remove it. While this was being
5 done, a, a knife blade with blood on it was found underneath
6 some of the clothing that was on the bed.

7 Q Okay. I guess I should of started it that way. Let me
8 come back.

9 State's No. 12, that is showing the bed as is?

10 A That's as it, as I, as before, prior to entering the
11 room, yes, sir.

12 Q Okay. And before we found 17 you found 16, which was
13 under some items?

14 A which is a, was a, like a white colored plush animal
15 that had blood on it, but it too had been covered up with
16 clothing items.

17 Q Okay. And then is when you found -- and then you
18 removed some more to find 17?

19 A That's correct.

20 Q And then you removed further more, State's 22, to find
21 Item 18?

22 A Found Item 18, yes, sir.

23 Q And what was Item 18?

24 A Sir?

25 Q What was Item 18?

David Hogsed - Direct examination
by Solicitor Balsa

1 A It's a striped shirt that had blood on it and it was
2 found underneath the clothing items as we removed them.

3 Q Now, you don't have any idea how these items got mixed
4 up in these clothes, do you?

5 A How they got mixed up?

6 Q Yeah.

7 A I don't, I don't know they got, those items got on the
8 bed. I know they were on the bed before the additional
9 items were placed on top of them.

10 Q Okay. And there's a close-up of State's Exhibit No. 17
11 on the bed.

12 Describe that, what it was.

13 A Knife blade broken near what's called the hilt or the
14 handle of the knife that was found---

15 Q Uh-huh. (Affirmative).

16 A ---as we were, as clothing items were removed.

17 Q Back to this diagram. We've gone through the items on
18 the bed. Appears up in the top portion of this diagram you
19 have arrows and a notation of blood splatter.

20 A That's correct.

21 Q Can you explain that?

22 would you explain that to the jury?

23 A Blood spatter is basically two or an individual or even
24 when an individual cuts himself, depending on how it
25 happens, it's called spatter because of the way it ejects

David Hogsed - Direct examination
by Solicitor Bulsa

1 and hits the surface. Here we found numerous drops of blood
2 on the walls and on several items between the bed and the
3 wall. Even on the leg -- if you're facing the foot of the
4 bed, the left side of the headboard had blood splatter on
5 it, the wall above the left side of the headboard had blood
6 splatter on it. This wall here had spatter on it and down
7 in this area you had spatter on the wall.

8 There's an air conditioning unit here on the floor
9 underneath the window. There was spatter there and it was
10 also spatter on the front of the dresser.

11 Q All right. And you notated them in a different way in
12 your pictures, didn't you?

13 A I did. I used -- excuse me. I used yellow placards to
14 dictate the items of evidence that we were collecting. I
15 used white adhesive numbers to place on the blood, blood
16 splatter where I would be swabbing those areas of blood for
17 collection for DNA analysis later.

18 Q And does State's Exhibit 17 show those numbers?

19 A They do. One being on the front of the dresser. I
20 don't see two. But looking at it from an angle and three,
21 four, five, six, seven, and eight.

22 Q Okay. And here's State's 18.

23 A This photograph would be the corner where the bed is
24 between the wall and the bed. Nine and ten is blood spatter
25 that's on the wall.

David Hogsed - Direct examination
by Solicitor Balsa

1 Q So, it appears that more of the blood splatter was
2 concentrated near the dresser?

3 A Yes.

4 Q All right. What did you do, if anything, with those
5 spots of blood?

6 A Using sterile cotton swabs, distilled water, we would
7 lift samples of those blood, of those areas for DNA analysis
8 for later.

9 Q Go back to this diagram. Look at the legend you
10 created.

11 Does that accurately show as to what you actually
12 collected from that one room?

13 A That's correct.

14 Q Okay. And what, what would you have done with those
15 items?

16 A Well, of course, Mr. Gossett, I didn't, I didn't do
17 anything to him other than bagging his hands prior to him
18 being transported to the Regional Medical Center. Social
19 security card, Springs card, and all of that, most of those
20 items were actually sent to SLED for them to actually
21 process for the Public Safety Department. The reason being,
22 most of those items contained biological evidence, DNA
23 evidence, and the ones that did have blood on them we sent
24 to SLED asking them not only to extract DNA, but also to
25 fingerprint them while they had it.

David Hogsted - Direct examination
by Solicitor Bulsa

1 Q Okay. Now, did you end your searching in this house
2 after you reviewed this room?

3 A No, the rest of the whole house was actually -- once
4 all the items of evidence were completed, I then processed
5 numerous areas within the house for latent prints.

6 Q Okay.

7 A And then there's also items of evidence found in the
8 restroom.

9 Q And we're gonna get to that in a minute.

10 My, my next question is when you found that piece of
11 blade on the bed, what did you believe that to be?

12 A Considering it had blood on it, it was broken, sort of
13 bent, in a, in a bent position if you looked at it close
14 enough, in my opinion that was the item or one of the items
15 used to kill Mr. Gossett.

16 Q Let me show you what's been marked for identification
17 State's No. 26.

18 Is that Item 17?

19 A Yes, it is.

20 Q And that's what you collected from the house off the
21 bed?

22 A Yes, sir, it is.

23 Q All right. What did you do with it after you collected
24 it?

25 A I placed it in a property and evidence bag. I did not

David Hogsed - Direct examination
by Solicitor Bulsa

1 do any type of analysis to it. It was secured within the
2 evidence bag, and it was later sent to SLED with a request
3 that one, DNA be extracted, and two, that it be
4 fingerprinted.

5 Q So, it was held in the Spartanburg Public Safety?

6 A Yes, once I turned it into, once all the items of
7 evidence were sealed and placed into evidence, they were
8 turned into the evidence room at the Public Safety
9 Department and that's where they would of been secured until
10 they were transported to SLED for analysis.

11 Q Now, of course, you have no idea how the knife got in
12 that condition.

13 But did you search that bedroom for the, for any handle
14 that might of went with that knife?

15 A Yes, we did. Once we found the knife, of course, we
16 concentrated on finding the other portion to the knife and
17 we never did find the handle.

18 Q Now, you made an earlier comment that you found some
19 items in the restroom.

20 State's Exhibit No. 23, is this a photograph of the
21 restroom?

22 A It is.

23 Q And the placards in that room, what do they designate?

24 A Item Number 20 is actually a knife sitting on top of,
25 it's like a floor heater and 21, of course, is a knife

David Hogsed - Direct examination
by Solicitor Balsa

1 laying on the restroom floor.

2 Q State's No. 23.

3 A That's taking a picture of the knife sitting on the
4 floor heater straight above it at an 90-degree angle.

5 Q State's 24?

6 A Close-up of 21 on the floor.

7 Q Okay. Now, did you compare these knives with the knife
8 blade that you found in the bedroom.

9 A I did not.

10 Q You didn't actually look at them to see if they were
11 similar?

12 A Well, that one's not. That's sort of like a straight
13 edge knife where the one that was on the bed was a serrated
14 edge.

15 Q Did -- look at that again.

16 Did that appear to be a kitchen knife of sorts?

17 A Yes, it appears to be the end of like a steak type
18 knife. It has sort of a serrated edge to it.

19 Q If you would, just leave it out for now.

20 Show you State's 27 for identification.

21 A This is the knife that was lying on the water heater or
22 the -- no, excuse me. The floor heater that was in the
23 restroom.

24 Q That would be Placard Number 20?

25 A Placard Number 20, yes, sir.

David Hogsed - Direct examination
by Solicitor Bulsa

1 Q Okay. Now, in looking at those two knives, are they
2 pretty similar?

3 A Sort of have the same type of edge. However, Number 20
4 is not as wide a blade as Number 17.

5 Q Okay. Let's do the same with State's 28 for
6 identification.

7 WITNESS: Can I sit this here, judge?

8 THE COURT: Beg your pardon?

9 WITNESS: Can I put my report here?

10 THE COURT: Yes, sir, that's fine.

11 A Flat edge round handle much longer and also the blade
12 width is wider.

13 Q Okay. And that would actually be the item in State's
14 24, Placard 21?

15 A That's correct.

16 Q And I don't -- so, those don't appear to be a set from
17 a set of knives?

18 A No.

19 Q But do they all appear to be knives that would commonly
20 be found in a kitchen?

21 A Yes, sir, they do.

22 Q Okay. And were any of those knives actually found in
23 the kitchen in that house?

24 A No, all, all three, the blade, of course, found in the
25 bedroom where we discovered Mr. Gossett, and 20 and 21 was

David Hogsed - Direct examination
by Solicitor Bulsa

1 in the restroom, which is pretty much, if you step outside
2 the, the, outside of the bedroom door, the restroom was at
3 an angle to the right.

4 Q And did you secure the other two knives in the same
5 fashion that you did the knife blade?

6 A I did.

7 SOLICITOR BULSA: Your Honor, the State would move
8 these items into evidence.

9 MR. BRANNON: Without objection.

10 THE COURT: Without objection, they'll be received.
11 Have they been marked?

12 SOLICITOR BULSA: Yes, sir, they have to---

13 THE COURT: As marked.

14 SOLICITOR BULSA: State's 26, 27, and 28.

15 THE COURT: Thank you.

16 (Whereupon, State's 26 through 28 were received into
17 evidence at this time.)

18 Q Would you wrap them up?

19 A (Witness complies.)

20 Q All right. Thank you, officer.

21 Let's refer back to State's Exhibit 4, your diagram of
22 the house. You actually set out furnishings in the living
23 room, which we've discussed, and the bedroom, the back
24 bedroom, which we've discussed, and the bathroom.

25 why are there no furnishings in the other two bedrooms?

David Hogsed - Direct examination
by Solicitor Balsa

1 A Actually this room here, which is the first bedroom on
2 the, on the left, was barricaded. The door was barricaded
3 and broken. We couldn't even get into the room. I was able
4 to get it open enough to stick my head in there. But it
5 didn't look like it had been involved in, in the incident
6 whatsoever.

7 The kitchen, we found no items of evidence that
8 appeared to have been involved with the incident knives
9 lying out or anything like that. So, we just put what those
10 rooms are without actually trying -- we, we concentrate on
11 what the crime scene consists of. When you do the diagram,
12 you show what was found in the crime scene.

13 Q You, you mentioned this front bedroom.

14 what about the back bedroom?

15 A No items of evidence was found on the back right
16 bedroom either.

17 Q Okay. So, from your experience and training, you
18 realized that it was concentrated in the living room and the
19 back bedroom and some items from the bathroom?

20 A That's correct.

21 Q And about how long were you at the scene?

22 A I entered at 10:23 p.m. and I exited the scene,
23 actually exited the house closing out the search warrant at
24 6:41 p.m., and I actually left the house around ten minutes
25 after 7:00 that evening, 7:10 p.m.

David Hogsed - Direct examination
by Solicitor Bulsa

1 Q You were there over eight hours?

2 A Yes.

3 Q Okay. And what did you do when you left?

4 A The house was actually turned over to Mr. Gossett,
5 Mr. Gossett's brother, Kevin, and the items that I had
6 collected as evidence were, had been taken straight to City
7 Hall or the City Police Department where I would of started,
8 you know, finishing up paperwork and so forth with the items
9 of evidence.

10 Q And did you -- I think we overlooked one thing, and you
11 started to mention it. Let me go back.

12 What kind of fingerprinting did you do in this house?

13 A Bedroom door, closet door, dresser, and, and all that.
14 Just about any surface within that room that had, was smooth
15 and not completely covered in blood was, it was
16 fingerprinted. The bathroom, we did the doors. Did the
17 bathroom door, the mirror, the toilet seat, the bathtub.
18 All that, all that was done.

19 In the kitchen, we did all the kitchen counters,
20 kitchen cabinets, washer/dryer, washer that was in the room.
21 And in the living room, we processed around the coffee
22 tables, items that was on the coffee table, the front door,
23 front storm door. Numerous smudges and what we refer to as
24 smudges were, were seen, but none that really had any ridge
25 detail to them that we could make an identification off of

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by Solicitor Balsa

1 except for one item that was in the living room.

2 We lifted, we lifted one print out of the house after,
3 after processing it for latents, and it was on a -- I can't
4 remember what it was called. But it was like a hair
5 conditioning jar that was sitting on the coffee table. I
6 lifted a latent print off of it.

7 Q And you, you don't actually do the analysis of those
8 fingerprints, do you?

9 A No, I would do the development, the lifting. I fill
10 out what's called -- what you do is when you lift it with
11 tape, put it on what's called a latent backing card, and
12 then it has information where you lifted it from. I would
13 fill out, that out.

14 The latents that were collected would be turned into
15 the evidence room and the A.F.I.S. examiner at the city
16 would sign them out of the, of the evidence room and then
17 she would do the examination on the latents.

18 Q Okay. So, you did an extensive search of the house for
19 fingerprints?

20 A Yes.

21 Q And you found one print?

22 A One print, usable print.

23 Q That could possibly be identified?

24 A That could possibly be identified.

25 Q Okay. Is that unusual?

David Hogsed - Direct examination
by Solicitor Bulsa

1 A Actually it's not. Not within a, not within a home
2 it's not.

3 Q why is that?

4 A Most people think because you touch something you leave
5 a latent print. That's not always true. You have to factor
6 in weather conditions, cleanliness of the house, and, and so
7 forth. And when -- take your front storm door, for
8 instance. If you look at it, and you clean your window, put
9 your hand up there and you move, you'll see where your
10 fingerprints are in the window. Don't clean it, keep
11 touching it and touching it and touching it, you'll see what
12 I'm talking about. They become smudged. When you, when
13 you're constantly touching stuff without cleaning it, you're
14 just putting layers on top of layers.

15 Dust, a big factor. Sweat or -- a latent fingerprint
16 is really nothing but oil and water that your body naturally
17 secretes through the pores of your fingers. If something is
18 very dusty and you touch it, the dust is actually absorbed
19 into your skin, which could hinder leaving a latent print.

20 So, there's a lot of factors that go into latent
21 fingerprints, the reason why we don't find them. We, we
22 actually -- we don't find as many latent prints as people
23 think we do when we process crime scenes.

24 Q Have we pretty much covered what you did in this house
25 before you left it?

David Hogsed - Direct examination
by Solicitor Bulsa

1 A The other thing that we haven't covered is an exterior
2 search of the home was done prior to leaving and no items of
3 evidence were found there.

4 Q And what do you mean by an exterior search?

5 A Walked around the house, the yard, and so forth just to
6 make sure that nothing that may be of evidentiary value was
7 dropped, hidden, or so forth. So, we searched the front and
8 back of the residence.

9 Q So, in your eight or nine hours of being in that home,
10 you found a knife blade, but no handle?

11 A Right.

12 Q Did you find a handle in any other place in the house?

13 A No, we never did recover the handle from the knife
14 blade that we or we never did find a broken handle or a
15 handle off a broken knife.

16 Q Okay. All right. So, we recovered the items, turned
17 the house over, took the items back to City Hall, the police
18 station, and did you personally yourself process any of the
19 items that you took?

20 A Only the -- the only items that I actually personally
21 processed were the, the beer cans, the spray can, the torn
22 paper bag that was found in the living room, and the asthma
23 inhaler. That was only the, actually the only items that I
24 actually physically processed.

25 Q And describe for the jury what you mean by processing.

David Hogsted - Direct examination
by Solicitor Balsa

1 A As I stated earlier, beer cans, soda cans, drink
2 bottles, if somebody's been drinking out of them are a great
3 source of DNA. What I did was each item -- every item had
4 its own, was given an item number. Each item has an item
5 number.

6 What I did was on the bottom of each beer we wrote a
7 corresponding number to it. The decision was made by me to
8 process those items for latent prints. But I also decided,
9 prior to that, before trying to process them for latent
10 prints, was to try to lift any DNA that may be on the mouth
11 area of the beer cans.

12 So, using distilled water and sterile cotton swabs,
13 that's what I did. I swabbed them out, the area of each
14 beer can and secured those swabs for possible DNA. Once
15 that was done, the beer cans, the spray can -- the asthma
16 inhaler, I only swabbed the mouth area of it for DNA. I
17 didn't fingerprint it. I did fingerprint the beer cans and
18 the spray can by what's called a fuming method.

19 Basically what it is, we put it in an air tight
20 container. You heat up super glue, which vaporizes. Super
21 glue attaches to the can. And if there are latent prints,
22 they're latent ridge detail, it makes it visible and it also
23 makes it easier to lift. It helps in the lifting process.
24 More durable to lift.

25 Ridge detail was lifted off of two of the cans. The

David Hogsed - Direct examination
by Solicitor Balsa

1 torn paper bag was processed with a chemical called
2 Anhydron. It's actually -- we, we spray it on there. And
3 what it does is it attaches to the amino acids that's left
4 by your body, and it actually turns the latent print purple
5 on paper products or other products. But there was nothing
6 of A.F.I.S. quality that came up on that.

7 Q But you did collect some from the beer cans?

8 A Yes, I actually lifted two areas of ridge detail off of
9 two of the beer cans and they were Items Number 24 and 25.

10 Q Okay.

11 A Here and here on the floor.

12 Q Okay.

13 A The two beer cans that were on the floor. One in front
14 of the coffee table, and one on the floor near the entrance
15 way to the hallway.

16 Q And you turned those over to the, the fingerprint
17 analyst?

18 A Right, and they would of been, latent cards been filled
19 out by me and sent to her through the evidence room.

20 Q And any swabs that you took from the beer cans, how
21 were they secured?

22 A They would of been placed into an evidence envelope and
23 secured and then they would of been sent to SLED to see if
24 DNA could be extracted from them.

25 Q would they have been sealed?

David Hogsed - Direct examination
by Solicitor Bulsa

1 A Yes. Well, with these we had plastic covers that goes
2 over each one. You use the swab, you pull the plastic cover
3 up over it, which seals it and keeps anything from touching
4 it.

5 Q Okay. And they would of been placed in the sealed
6 package?

7 A Sealed package and then placed into evidence where they
8 would of been secured until they were transported to SLED.

9 Q So, we've got the collection of all this evidence, the
10 processing of a few items by yourself, and who packages them
11 or collects them to go to SLED or the South Carolina Law
12 Enforcement Division lab?

13 A Who actually takes them?

14 Q Who actually packages them and---

15 A Well, once I package them, they stay in the package
16 that I put them in and that's how they go to SLED. The
17 seal's not broken until it gets to SLED to whomever is going
18 to do the analysis.

19 Q And it's sealed with evidence tape as we see on these
20 packages?

21 A Yes.

22 Q Okay. Who decides what to send down there?

23 A Usually we would get with the lead investigator and the
24 decision would be made what, what to send to SLED for
25 analysis.

David Hogsed - Direct examination
by Solicitor Bulsa

1 Q Would you be the one to prepare the paperwork?

2 A Yes, I would.

3 Q All right. And do you have a record of what was
4 actually prepared or actually---

5 A No, I do not.

6 Q ---sent?

7 Okay. Did the evidence officer have that?

8 A That's correct.

9 Q All right. Okay. Now, did anybody attend the autopsy
10 of Mr. Gossett?

11 A Robert Talanges, who is the other crime scene
12 investigator at the, at the city at that time, was called
13 and he came in to attend the autopsy because the autopsy was
14 actually performed that day, and, of course, I couldn't
15 leave the crime scene to go to the autopsy and come back.
16 So, we called him and he attended the autopsy.

17 Q Okay. And the purpose of going there was to, for what?

18 A Photograph the autopsy, document the wounds, condition
19 of Mr. Gossett's body, and collect anything of evidentiary
20 value found at the autopsy.

21 Q Thank you, Officer Hogsed. Answer any questions either
22 attorney may have.

23 THE COURT: Mr. Brannon, your witness.

24 MR. BRANNON: Your Honor, I have a matter that I need
25 to take up before outside the presence of the, the jury.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, I'm going to take this as our break. We'll give you,
3 at this point in time, an opportunity to stretch your legs
4 and clear your heads.

5 So, again, I will tell you, as I will every time you
6 leave the courtroom, please don't begin any discussions
7 concerning the case, even among yourselves, until I've
8 advised you to do so.

9 At this time you can retire to the jury room.

10 Thank you very much.

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

13 THE COURT: Mr. Brannon.

14 MR. BRANNON: Your Honor, during Investigator Hogsed's
15 testimony he said that he lifted a latent print from a
16 shampoo or a conditioner bottle that was on the coffee table
17 in the living room. I've got his investigative report and
18 that piece of property that a print was lifted from isn't
19 even on the list. So, it's the first time I've ever heard
20 about a latent print.

21 Now, I understand that they may not have been able to
22 trace that print. But I've asked repeatedly for fingerprint
23 information through the discovery process. It's the first
24 time I've ever heard about the shampoo bottle or a latent
25 print being listed, being lifted.

1 THE COURT: Lifted.

2 MR. BRANNON: So, before I start questioning him about
3 that, I want to know is there a result to that, and, and,
4 you know, why isn't it even on, on the list.

5 WITNESS: I, I can answer that, judge.

6 THE COURT: Well, let me, let me see if Mr. Bulsa wants
7 to respond or if you want me to allow Mr. Hogsed to respond.

8 SOLICITOR BULSA: I ask that you question the officer
9 about it. I have his report. I don't see it.

10 WITNESS: It is---

11 THE COURT: Officer Hogsed.

12 WITNESS: It is in my report, Your Honor, that I lifted
13 it. But that was not -- that was one of the smooth surface
14 items that we processed, but did not collect as evidence.
15 So, the item was actually never collected as, as evidence
16 and brought to City Hall.

17 MR. BRANNON: Where's, where's the print evidence?

18 WITNESS: It would of been turned in and forwarded to
19 our A.F.I.S. examiner. I don't, I don't have a clue where
20 her report is.

21 MR. BRANNON: Okay. Well then I have to go back to Mr.
22 Bulsa.

23 Is there a print report from that, that item of
24 evidence?

25 SOLICITOR BULSA: You should have the print report that

1 I have.

2 MR. BRANNON: Well, do you know what number it was
3 assigned, that, the print from that shampoo bottle?

4 WITNESS: I would not of assigned it a number. When
5 the A.F.I.S. operator, examiner gets it, they assign them
6 numbers. But I don't -- I have no clue what number it would
7 of been assigned, sir.

8 MR. BRANNON: I do have the same print report Mr. Bulsa
9 has, but it only identifies one follow---

10 THE COURT: Well, you can certainly cross-examine -- I
11 assume there's someone else who processed those prints. You
12 can examine that person as to what they did with that one.

13 MR. BRANNON: I understand.

14 THE COURT: Sounds like to me you've been given the
15 same information the State has.

16 MR. BRANNON: That's correct.

17 THE COURT: And I just needed to find, to find that out
18 before---

19 THE COURT: I understand.

20 MR. BRANNON: ---before we went into it.

21 THE COURT: All right. We'll take about a ten minute
22 break at this point in time.

23 I'll caution the witness, you're in the middle of your
24 testimony. You should not discuss your testimony with
25 anyone at this point in time.

1 Court will be in recess for about ten to fifteen
2 minutes.

3 MR. BRANNON: Thank you, Your Honor.

4 (Whereupon, a short recess was taken at this time.)

5 THE COURT: All right. Before we resume the trial,
6 I'm, again, experiencing people who are wondering about in
7 the courtroom during the trial. I cautioned everyone about
8 that yesterday. I will caution those who are here watching
9 and observing that if you get up and move around again in
10 the courtroom, other than to leave if you have an emergency,
11 then I'm gonna exclude you from the courtroom hereafter for
12 the remainder of the trial.

13 Security is always an issue in these courtrooms. We
14 want to keep a secure safe courtroom. And if people are up
15 wondering around during the trial, it's a distraction to the
16 witnesses, to the jurors who are trying to pay attention,
17 and I want them to pay attention and hear every word of the
18 testimony if at all possible.

19 So, I'm gonna caution the spectators one more time that
20 find a place where you are comfortable sitting. Remain in
21 that seat while Court is in recess. We'll take a break
22 every, every hour to hour and a half, and at that time
23 you're free to get up and move around if you choose to do
24 so. But if you move up while, move around within the
25 courtroom while testimony is being offered, and it's simply

1 to move to another seat for whatever purpose you're doing
2 that, I'm gonna exclude you from the courtroom for the
3 remainder of the trial. It's a security issue and I'm going
4 to see that security is maintained to the best of my ability
5 in this case.

6 So, I hope we all understand ourselves. I realize that
7 there are members of the victim's family present, and those
8 who might be supporting the defendant in this case. I would
9 prefer that you not communicate if at all possible. But, of
10 course, you have the right to talk if you care to. But I
11 don't think that's wise. I don't think that's good for
12 security and I'd urge you not to do that during the trial as
13 well.

14 That having been said, I hope my, my cautions are
15 heeded. And if they are not, then I'll take the appropriate
16 action.

17 State ready to proceed at this time?

18 SOLICITOR BULSA: Your Honor, Your Honor, yes, we are.
19 I would like to put something on the record relating to the
20 comments between Mr. Brannon and Officer Hogsed.

21 THE COURT: Yes, sir, Mr. Bulsa.

22 SOLICITOR BULSA: We reviewed, we reviewed his report
23 again and there is a notation in his report about ridge
24 detail being lifted from a Bergamon hair conditioner jar.
25 So, he was not misleading the Court or the jury. That was

1 actually in his report.

2 MR. BRANNON: And Your Honor, I agree that that comment
3 is in there. It just -- the, the jar was not listed as an
4 item collected. So, that, that---

5 THE COURT: Oh, I understand, I understand that there
6 might be some confusion. But it was mentioned in the
7 discovery material that it did exist.

8 Is that correct?

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: And apparently it's not in the report and
11 you certainly have the right to cross-examine whoever
12 generated that report as to why it's not in that report.

13 MR. BRANNON: Yes, sir. Yes, sir.

14 SOLICITOR BULSA: Well, there is a comment that he
15 dusted it in the report. He just didn't collect the item.

16 THE COURT: I, I understand.

17 MR. BRANNON: Okay. Your Honor, back to the Court's
18 comments just a moment ago, there, there was at least one,
19 and I, I didn't turn around and look, but some of the family
20 members of my client were unable to see the photographs that
21 were being played on the projection screen.

22 THE COURT: Yes, sir, I understand that and I want them
23 to be able to see, but I want them to take that seat before
24 we start.

25 MR. BRANNON: I understand that. However, they have

1 been cautioned that the Phipps family sits on this side and
2 the victim's family on that side.

3 THE COURT: Well, I've been watching the people sitting
4 on your side and though it appears that they can see the
5 screen from where they're sitting.

6 MR. BRANNON: Well, Your Honor, what I did is I
7 explained to at least one of the individuals that if there
8 was a picture they could not see, I have that picture and I
9 will be happy to show it to them.

10 THE COURT: I appreciate you doing that for them.

11 MR. BRANNON: Okay. Just, just---

12 THE COURT: Okay.

13 MR. BRANNON: ---point of explanation, Your Honor.

14 THE COURT: I understand that.

15 MR. BRANNON: Okay.

16 THE COURT: And we're going to do the best we can while
17 we maintain decorum. What I'm seeing is the lights are
18 down, there are people getting up crossing the aisles. You
19 probably don't see that. I do. And it's somewhat
20 disconcerting.

21 I see a lady back there pointing at the other side
22 right now and I'm gonna put her out of the courtroom.

23 Ma'am, if you'll stand up please.

24 Who are you gesturing to?

25 UNIDENTIFIED PERSON: No, my hand was hurting like it

1 was arthritis and I---

2 THE COURT: Ma'am, that's not what you were doing.

3 UNIDENTIFIED PERSON: I did like this. I was trying --
4 I don't know none of these people, Your Honor. I did try
5 to---

6 THE COURT: So, you, you have no connection whatsoever
7 with this your matter?

8 UNIDENTIFIED PERSON: No, the defendant is my brother.

9 THE COURT: Okay.

10 UNIDENTIFIED PERSON: But I do have arthritis, and my
11 hand was going like this. I wasn't even paying attention to
12 you.

13 THE COURT: Well, ma'am, it appears that you were
14 gesturing toward the other aisle, the other side of the
15 aisle. That's what it appeared to this Court.

16 UNIDENTIFIED PERSON: Well, no, I don't know of anybody
17 on this side.

18 THE COURT: All right, ma'am. Have a seat and I'm
19 gonna allow you to stay at this time. But if I continue to
20 see this kind of activity I'm going to have to exclude
21 people from the courtroom. Don't like doing that. Never
22 done it before. But I'll do it today if I have to.

23 Understood?

24 Mr. Brannon, you think you -- I see people behind you
25 shaking their head no. They apparently don't want to follow

1 my order. If you'd like to turn around and talk to them,
2 here's your opportunity.

3 MR. BRANNON: I'll -- please, Your Honor.

4 THE COURT: The lady in, the lady in the back right
5 there---

6 UNIDENTIFIED PERSON: Yes, sir, I---

7 THE COURT: ---is the, shaking her head.

8 No, talk to the lawyer, ma'am. Talk to the lawyer,
9 ma'am.

10 (Pause.)

11 MR. BRANNON: Thank you, Your Honor.

12 THE COURT: Thank you, Mr. Brannon. I hope we've
13 solved that problem.

14 MR. BRANNON: Defense is prepared, Your Honor.

15 THE COURT: State ready for the jury now?

16 SOLICITOR BULSA: Yes, sir.

17 THE COURT: Defense ready for the jury?

18 MR. BRANNON: Yes, sir.

19 THE COURT: Let's bring the jury back.

20 (Whereupon, the following takes place within the
21 presence of the jury.)

22 THE COURT: All right. The record will reflect the
23 jury has returned to the courtroom.

24 And we were in the process of taking this witness'
25 testimony.

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1 I believe the State had completed your direct
2 examination.

3 SOLICITOR BULSA: Yes, sir.

4 THE COURT: And now is the defense's opportunity to
5 cross-examine.

6 Mr. Brannon.

7 MR. BRANNON: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. BRANNON:

11 Q Is it Investigator Hogsed?

12 A Yes, sir.

13 Q Okay. All right. How long you been with the county
14 now?

15 A Be four years in August.

16 Q All right. And you were with the city I believe 15, 16
17 years before that?

18 A Right at 16 years.

19 Q Okay. All right. Now, you took some prints off of
20 some beer cans in the living room, right?

21 A Yes, those were done at the, actually at City Hall.
22 Those were processed at City Hall.

23 MR. BRANNON: Approach the witness, Your Honor?

24 THE COURT: Yes, you may.

25 Q Are these the cards that you prepared with the

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- 1 fingerprints on them?
- 2 A Yes, sir, they are.
- 3 Q Okay. And on the back of the card there's some,
- 4 there's some writing, correct?
- 5 A That's correct.
- 6 Q All right. Now, this one you put Item Number 24 was a
- 7 Natural Lite beer can?
- 8 A That's correct.
- 9 Q Now, would that be a beer can in it's -- obviously it
- 10 was empty or you poured the contents out, correct?
- 11 A It was empty, yes, sir.
- 12 Q But it was not malformed or anything like that,
- 13 correct?
- 14 It was just an empty beer can, right?
- 15 A Yes, 24 was just an empty beer can.
- 16 Q And, and there -- did you take two prints off of 24?
- 17 A Took two areas of ridge detail off of, yes, Item 24.
- 18 Q And that was an, an undisturbed beer can?
- 19 It hadn't been crushed or anything like that?
- 20 A That's correct.
- 21 Q All right. And then---
- 22 A Excuse me.
- 23 Q This is the print that you lifted off of the hair
- 24 conditioner or something like that, right?
- 25 A Yes, it was a jar of -- I don't know how to say the

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1 word. But it was a hair conditioner jar. It was sitting on
2 the coffee table. That's correct.

3 THE COURT: All right. Now, let me interrupt you just
4 a second.

5 Mr. Bulsa, I'll need for you to approach with Mr.
6 Brannon please. Just a second.

7 (Whereupon, a bench conference was held out of the
8 hearing of the jury at this time.)

9 THE COURT: Mr. Brannon, excuse me. You may proceed.

10 MR. BRANNON: Thank you.

11 Q Now, I would, I would ask you to -- this is your
12 handwriting, is that correct?

13 A Yes, I filled that out.

14 Q You lifted that print, correct?

15 A I did.

16 Q Okay. Please read what you've written on the back of
17 that card.

18 A Item 25, beer can, and I didn't explain it earlier, it
19 was an empty beer can. It had already been crushed in the
20 center, and it had pin holes punched in it. And through my
21 experience working narcotics three times with the City of
22 Spartanburg, also on the complex team, and on road patrol,
23 sometimes cans are used to crush and smoke crack cocaine.
24 Item 25 had actually been crushed in the center with pin
25 poles and you could see burn marks underneath where the

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- 1 lighter had, had been used for the smoking of narcotics.
- 2 Q Okay. So, Item 25 is different than Item 24, correct?
- 3 A Yes, it's two different cans.
- 4 Q Right. Two different cans.
- 5 But it's also -- 24 is a disturbed beer can, and 25 has
- 6 been manipulated?
- 7 A Manipulated, yes.
- 8 Q All right. And 25 -- now, is that your writing?
- 9 A No, that is not my writing.
- 10 Q Okay. But what does that say?
- 11 A That is only my writing at the top half.
- 12 Q Okay. What does that say?
- 13 A Number six finger of Robert -- is it Phipps?
- 14 325 -- it may be a five, and 0 something. I can't
- 15 tell. Oh, L.J. I can't tell if that's a five or a three.
- 16 Q Okay. But this is a beer can manipulated in such a
- 17 manner that you could use it to smoke crack?
- 18 A Uh-huh. (Affirmative).
- 19 Q Has a fingerprint on it?
- 20 A Uh-huh. (Affirmative).
- 21 Q And in somebody else's handwriting it identifies Robert
- 22 Phipps, correct?
- 23 A That's correct.
- 24 Q All right. Now, you found several items, a lot of
- 25 items in the bedroom, correct?

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- 1 A Yes, sir.
- 2 Q All right. You found I believe a Springs Industry card
3 like an employee identification, identification card,
4 correct?
- 5 A That's correct.
- 6 Q You also found a Social Security card belonging to
7 Mr. Gossett, correct?
- 8 A That's correct.
- 9 Q Both of those items had blood on them, didn't they?
- 10 A Yes.
- 11 Q All right. And I believe the word you used is it
12 looked as though his wallet had been ransacked.
- 13 Do you remember that?
- 14 A Yes, ransacked, gone through, disturbed.
- 15 Q Do you think that -- you, you saw Mr. Gossett in his
16 condition, correct?
- 17 You saw the stab wounds and stuff like that, right?
- 18 A I saw stab wounds to the left side of his face and his
19 neck. I did not pull his shirt up or examine the rest of
20 his body. So, I don't know -- other than the stab wounds
21 that was visible to his face and his neck area, I don't know
22 how many there were.
- 23 Q Now, didn't you say earlier though that you saw some to
24 the left side of his chest?
- 25 A No, I did not.

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- 1 Q Okay. I thought you did.
- 2 All right. Do you believe that Mr. Gossett went
- 3 through his wallet after he'd been stabbed?
- 4 A I don't know. I can't determine that.
- 5 Q Okay. But there was blood on the, the Social Security
- 6 card?
- 7 A Yes.
- 8 Q There was blood on the ID card from Springs Industries?
- 9 A That's correct.
- 10 Q His wallet had been ransacked?
- 11 A Had been gone through, ransacked, yes, sir.
- 12 Q Okay. All right. Now, you also found blood spatter,
- 13 correct?
- 14 A Spatter, yes, sir.
- 15 Q There was blood on the wall kind of in front of or
- 16 well, near Mr. Gossett's head, correct?
- 17 A That's correct.
- 18 Q So, it would of been the wall in the front door --
- 19 there would of been---
- 20 A Directly across from---
- 21 Q Directly across---
- 22 A Right.
- 23 Q From the door, correct?
- 24 A Correct.
- 25 Q But you also found some blood on the far back wall,

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1 didn't you?

2 A It was -- if you're standing in the doorway, be the far
3 right corner between the bed and the corner.

4 Q But it wouldn't of been behind his feet, correct?

5 A That's correct. It would of been at the lower end of
6 his feet.

7 MR. BRANNON: All right. Excuse me, Your Honor. Just
8 a minute.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q Now, Items 2, 3, 4, excuse me, 1, 3, and 4, that's
12 blood spatter near where Mr. Gossett's head was, correct?

13 A That's correct.

14 Q And now earlier, and maybe from your angle you can't
15 see it, but Item 2 is right down at the bottom of the
16 dresser near the floor?

17 A I can see it now, yes, sir.

18 Q Okay. That's also a blood spot or spatter, correct?

19 A All those areas are, are spatter, like a spatter
20 content.

21 Q All right. Now, this is the back wall, correct?

22 A That's the right far corner standing in the doorway.

23 Q Right.

24 This is the headboard down there at the bottom corner,
25 correct?

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- 1 A Yes.
- 2 Q All right. And, and Mr. Gossett's head was at the
3 opposite end of the bed, correct?
- 4 A That's correct.
- 5 Q All right. So, 9 and 10 are marks of blood spatter,
6 correct?
- 7 A Uh-huh. (Affirmative).
- 8 Yes, sir.
- 9 Q And, and 10, that Placard 10, that's quite a large area
10 of blood spatter, isn't it?
- 11 A That's correct.
- 12 Q All right. Now, do you have a copy of your report in
13 your hand?
- 14 A I do.
- 15 Q Will you look where you've marked Item 10 on your
16 report please?
- 17 A Talking about the blood spatter?
- 18 Q Yes, sir. Yes, sir.
- 19 A Okay.
- 20 Q Do you see that?
- 21 A Yes, I used velocity impact stain.
- 22 Q All right. Would you please describe that or define
23 that for the jury?
- 24 A What I mean by velocity impact stain, when a person is
25 struck or stabbed, when a person is struck and it causes

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1 blood, what usually happens is spatter will go out like at a
2 360-degree angle. If they're close to a wall, of course,
3 drops of blood are gonna be smaller. Farther away the
4 person is from the object where the blood ends, they're
5 gonna be bigger because the smaller drops have no density to
6 travel through the area and hit the object. Usually with
7 the smaller drops indicates more closeness to the wall when
8 the attack occurred and the blood hits the wall.

9 Q Okay. But blood often splatters off of a weapon as
10 well, correct?

11 A It does. Those are referred to as cast-off stains.

12 Q All right. Can you tell the difference between -- can
13 you tell what Item 10 is?

14 A Not by that photograph I can't.

15 Q You can not?

16 A No.

17 Q Were you able to determine if that was cast-off or,
18 or---

19 A Using the word velocity impact stain, I would say it
20 was where somebody was being beaten and, and the blood was
21 just going up more like a 360-degree. Usually when you see
22 cast-off, when a strike is being made or a beating is being
23 made, and the blood builds on the object that's being used,
24 and you, you either get cast-off coming back or going
25 forward. And usually with those, you'll see they come, they

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1 go in lines, and the lines may not be straight cause the way
2 the hand's turning and so forth. They may be somewhat
3 curved or whatever. But you'll see them in lines.

4 Q Right. Now, I believe the terms you used was 360, is
5 that correct?

6 A Sort of like a 360, a circle is what I mean.

7 Q So, anything in that circle is going to have blood
8 spatter on or potentially could have blood spatter on it,
9 correct?

10 A Could have. Now, if an object was there that caused
11 what's called a void, if something was standing or a person
12 is standing there, you would see what we refer to as a void.

13 Q Right.

14 A The blood would hit them instead of the rest of the
15 wall, and you would see the outline of whatever that object
16 was actually in the spatter.

17 Q Right.

18 But now, for -- an, an example of a void would be the
19 lamp we see in the back corner. That lamp would prevent,
20 potentially prevent blood from splattering behind it on the
21 wall, correct?

22 A That's correct.

23 Q All right. So, so, you most likely would not have
24 found blood on the wall behind the lamp, correct?

25 A Correct.

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- 1 Q Or behind the headboard, right?
- 2 A Correct.
- 3 Q But whoever or whatever is between Mr. Gossett and the
- 4 blood splatter is going to have blood on it or could have
- 5 blood on it, right?
- 6 A Could have, yes.
- 7 Q And there was blood throughout this room, right?
- 8 A All the blood that I found was from that corner to
- 9 Mr. Gossett's location.
- 10 Q Let's me rephrase that question.
- 11 There was blood spatter throughout that portion of the
- 12 room, that, that kind of front side of that room?
- 13 A That's correct.
- 14 Q Okay. So, chances are real good that whoever caused
- 15 these injuries to Mr. Gossett had blood on his or her
- 16 person, correct?
- 17 A That's correct.
- 18 Q The only fingerprints lifted were off the beer cans,
- 19 the, the hair gel, or whatever that, that stuff was, right?
- 20 A Yes, sir.
- 21 Q And -- but you found no prints on the knife blade,
- 22 correct?
- 23 A I, I did not process the knives.
- 24 Q Okay.
- 25 A Those were, were, was a request to go to SLED for them

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- 1 to do the knife blades.
- 2 Q Got you. Got you.
- 3 There was blood on a stuffed animal on the bed?
- 4 A That's correct.
- 5 Q There was blood on a shirt that was on the bed?
- 6 A That's correct.
- 7 Q You found the knife covered with blood on the bed?
- 8 A That's correct.
- 9 Q Did you -- you, you held up the three different knives
10 that were, that were taken into evidence, right?
- 11 A I did.
- 12 Q But did you go through the drawers in the kitchen to
13 see if there were any other matching knives in the kitchen
14 to the one on the bed that had the blood on it?
- 15 A I, I don't recall doing that, no, sir.
- 16 Q So, you can't tell if that knife was in the home prior
17 to Mr. Gossett's death or if it was a weapon brought into
18 the home by whomever it was that caused his death?
- 19 A That's correct.
- 20 Q Can you say, with any degree of certainty based on your
21 experience, if Mr. Gossett was robbed?
- 22 A I have no idea.
- 23 Q But you can say that his wallet was gone through?
- 24 A His wallet was gone through and it appeared that the
25 dresser drawers were gone through and the closet was gone

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by Mr. Brannon

1 through.

2 Q Thank you.

3 Did you find any money laying on the floor?

4 A No, I did not.

5 Q But you did find other contents that appeared to have
6 been in the wallet, correct?

7 A That's correct.

8 MR. BRANNON: One second, Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 Q All right. Do you have any idea what the weather was
12 in April of '04?

13 Do you remember the temperature approximately when you
14 arrived?

15 A I remember it was sunny, bright day. But the exact
16 temperature I have no clue.

17 Q Do you remember if you had on a heavy jacket or were
18 you in your short sleeve uniform?

19 A Couldn't, couldn't tell you.

20 Q All right.

21 A Well, I do know I had on a long sleeve shirt. That's
22 all we wore at the time. But I couldn't tell you if we, the
23 sleeves were rolled up or, or if they were down.

24 Q All right. And when you -- is it standard practice to
25 bag the hands of a, of a deceased individual where there is

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1 foul play believed to have occurred?

2 A In most instances, yes.

3 Q Okay. Did you notice any marks, cuts, scrapes, or
4 wounds to Mr. Gossett's hands prior to bagging them?

5 A No. But I did not examine them that well.

6 Q Okay.

7 A I went straight with the bag over their hand.

8 Q Thank you.

9 I have nothing further, Your Honor.

10 THE COURT: Mr. Bulsa.

11 SOLICITOR BULSA: Yes, sir.

12 REDIRECT EXAMINATION

13 BY SOLICITOR BULSA:

14 Q officer, let's talk first about this blood splatter.

15 By looking at that from your experience, is there any
16 conclusion you can draw from where the body was when it,
17 with that blood spatter was projected onto the wall?

18 A where he was standing?

19 Q Or lying or seated or what.

20 A There's also blood spatter on the headboard of the bed.
21 I only marked those two areas cause there was such a wide
22 range of area. In my professional opinion, Mr. Gossett was
23 attacked in that corner first and then moved down. Well, I
24 don't want to say first. He was, he was hit in that area a
25 few times. Possibly, at one time or another, his head was

David Hogsed - Redirect examination
by Solicitor Bulsa

1 on the bed or close to the bed for the blood spatter to get
2 on the headboard and then also in the standing position.

3 Just because you have that one area of blood splatter
4 in that whole range of area doesn't mean it's one strike.
5 It could be multiple strikes. And it's just the way the
6 person moves. There's no way for me to tell, for me to sit
7 here and tell you exactly how you're standing, how he was
8 laying and in all that.

9 But he was in the corner of that bed and he was low.
10 And as you see how high it goes, at one point was low and at
11 one point he was high.

12 Q All right. Can you even tell us if anybody was between
13 him and the wall?

14 A I did not see a void in the blood that day. So, no, I
15 can't say there was somebody actually between that corner
16 and Mr. Gossett when the blood hit. I don't recall at all
17 seeing a void in the blood cause if I had I would of
18 photographed it.

19 Q So, could he have been cowering in the corner and
20 someone being in front of him---

21 A Yes.

22 Q ---hitting on him?

23 A I mean that's possible.

24 Q And the spatter here on the dresser and wall --?

25 A Seeing how low they are to the ground, I mean although

David Hogsed - Redirect examination
by Solicitor Balsa

1 you have some that's going up above the, up above the
2 dresser from about that height, maybe a little bit higher or
3 lower, it all concentrates from where number three is down.
4 That puts Mr. Gossett pretty much being down in that area,
5 being down or going down in that area where he was found.

6 Q Okay. Does that suggest he was in the floor, could of
7 been in the floor while he was being struck?

8 A Could of been, yes.

9 Q Mr. Brannon asked you about the cards from the wallet,
10 State's Exhibit No. 13. Zoom in on the area near
11 Mr. Gossett.

12 Does that show us where his cards would of been?

13 A Yes, they're all -- well, actually we see the yellow.
14 That's one of the cards. They all move back in toward his
15 head starting here, and they move back in toward his head.

16 Q Okay. And you didn't do anything with those except
17 package them for---

18 A That's correct.

19 Q ---for analysis at SLED?

20 A Correct.

21 Q Mr. Brannon went over these fingerprint cards with you.
22 Did you have those?

23 There they are.

24 They been marked for identification State's 31 through
25 34.

David Hogsed - Redirect examination
by Solicitor Balsa

1 Did you actually create these cards?

2 A I did. The writing on the back of these cards -- well,
3 most of the writing on the back of these cards is my
4 handwriting with a case number, the date, the type of
5 incident, location, prints lifted by is mine, is my
6 handwriting on each of these cards, and then there's some
7 other writing on the cards that would of been done by the
8 A.F.I.S. examiner.

9 Q So, out of this whole crime scene, you were able to
10 lift four prints that you thought might be---

11 A That's correct.

12 Q Okay. That might could of been identifiable?

13 A Yes.

14 Q Okay. And you notated on the back of each card where
15 you collected them?

16 A That's correct.

17 Q I show you -- these are smaller pictures, State's 34
18 and 35 for identification.

19 Are those the beer cans in which the---

20 A Yes, they are.

21 Q Okay. And to put it into prospective, in State's
22 Exhibit No. 5, it appears each one of these beer cans was
23 found in the floor?

24 A Yes, 24 is on the floor here in front of the sofa and
25 25 is on the floor closer to the entrance to the hallway.

David Hogsted - Redirect examination
by Solicitor Bulsa

1 Q Okay. And which one of those is suppose to be the
2 crack pipe?

3 A Twenty-five.

4 SOLICITOR BULSA: I would offer these into evidence.

5 MR. BRANNON: No objection, Your Honor.

6 THE COURT: Without objection, they'll be received as
7 marked.

8 (Whereupon, State's Exhibit No. 35 and 36 were received
9 into evidence at this time.)

10 Q You said Item 25 is the one that appeared to be the
11 crack pipe?

12 A Yes, it was. I have it notated in Item 25 is made into
13 a, into paraphernalia for smoking crack cocaine.

14 Q Okay. Just so the jury can see here, it's State's 24.
15 Just a normal can?

16 A Actually it looks like it has a little bit of a bend, a
17 bend to it, but---

18 Q They actually both do, don't they?

19 A Yes, 25 is bent a little bit more than 24 at the angle
20 that I'm looking at it, yes, sir.

21 Q Okay. You got the print cards.

22 Who would of analyzed those?

23 A Our A.F.I.S. examiner at the city at the time was

24 Mrs. Lou Jones.

25 Q Okay. Finish up with this, the blood spatter that you

David Hogsed - Redirect examination
by Solicitor Balsa

1 described as cast-off, did any of that appear to be
2 cast-off?

3 A No, I didn't see any cast-off.

4 Q Okay. What was the other term you used?

5 A Velocity.

6 Q Velocity?

7 A Velocity impact stains.

8 Q So, that's when someone is struck and it spews out?

9 A Yeah, it spews out from the, from the body.

10 Q Okay. Okay. Thank you. That's all I have.

11 MR. BRANNON: A few follow-up questions, Your Honor.

12 THE COURT: Yes, sir, recross.

13 RECROSS EXAMINATION

14 BY MR. BRANNON:

15 Q Investigator Hogsed, you said that you found no void in
16 the blood or you would of photographed that area, correct?

17 A Yes, I'd of made notated of a void in, in the blood on
18 the back wall, yes, sir.

19 Q When you walked into the room, was Mr. Gossett's body
20 covered or partly covered with anything?

21 A He had a blanket on him.

22 Q Okay.

23 A Mr. Gossett was lying on his back between the bed and
24 the wall. His upper torso was more, was actually -- I'm
25 trying to figure out how to say this. His upper torso was

David Hogsed - Recross examination
by Mr. Brannon

1 not exactly between the bed and where the wall, his legs
2 were. His upper torso was more up towards the dresser and
3 laying across his body, parts of his body, not his entire
4 body, was a blanket.

5 Q All right. Now, in your opinion, would it have been
6 possible, had his body not been covered at all, for anyone
7 to have walked in that room, bent over, and touched his
8 body, and not seen blood?

9 A No, you would of seen blood.

10 Q You would of seen blood, right?

11 A Yes.

12 Q Okay. All right. And the difference in the two beer
13 cans, as you noted, was I believe 25 had holes poked in it
14 for the purpose of smoking crack, correct?

15 A Yes, it actually has like pin holes maybe from a needle
16 or an ink pen. Pin holes.

17 Q And 24 didn't have those holes?

18 A No, did not.

19 Q Okay. Thank you. I don't have any further questions.

20 THE COURT: Sir, you may step down. Thank you very
21 much.

22 Do you wish to have this witness excused?

23 SOLICITOR BULSA: Yes, sir.

24 MR. BRANNON: I have no objection to that, Your Honor.

25 THE COURT: You're free to go, sir. Thank you for

David Hogsed - Recross examination
by Mr. Brannon

1 coming.

2 State may call its next witness.

3 SOLICITOR KELLEY: State calls Robert Talanges, Your
4 Honor.

5 THE COURT: Is someone -- Robert Talanges.

6 BAILIFF: He's coming.

7 THE COURT: Thank you.

8 Sir, come forward to my left to be sworn please.

9 ROBERT TALANGES, being first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat in the witness stand please.

12 Once you're seated, state your name for the record.

13 WITNESS: Robert Charles Talanges.

14 THE COURT: Your witness, Mr. Kelley.

15 SOLICITOR KELLEY: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY SOLICITOR KELLEY:

19 Q Officer Talanges, where are you currently employed?

20 A Spartanburg County Sheriff's Office.

21 Q And how long have you been there?

22 A Going on four years.

23 Q Okay. Before your position at the Sheriff's Office,
24 where were you employed?

25 A Spartanburg Public Safety Department.

Robert Talanges - Direct examination
by Solicitor Kelley

1 Q And how long were you at the Public Safety Department?

2 A Over 15 years.

3 Q Okay. So, in April of 2004 you were with the Public
4 Safety Department at that time?

5 A Yes, sir, I was.

6 Q Okay. And what was your assignment within the Public
7 Safety Department in April of 2004?

8 A Assigned to investigations in the forensic division.

9 Q Okay. And could you describe your duties in the
10 forensics division for me a little bit?

11 A We worked all crime scenes that we are called to,
12 burglaries, assaults, rapes, murders, armed robberies.
13 whatever major crime that was, had happened, we were called
14 to those.

15 Q Okay. Were you called to investigate the homicide of
16 Samuel Gossett?

17 A I was called to attend the autopsy---

18 Q Okay.

19 A ---for Mr. Gossett.

20 Q And what's the purpose of the autopsy?

21 A Determine cause and manner of death.

22 Q And what would be the purpose of your presence at the
23 autopsy?

24 A At the autopsy, we do full documentation, notation,
25 scale any and all, if there's gunshots or stab wounds,

Robert Talanges - Direct examination
by Solicitor Kelley

1 collect any physical evidence, retrieve all physical
2 evidence, and bag it for the evidence room for testing.
3 Q Okay. So, you're not there to actually perform the
4 autopsy yourself?

5 A No, I'm not.

6 Q And who was Samuel Gossett's autopsy performed by?

7 A Doctor Wren, works at Spartanburg Regional Medical
8 Center.

9 Q Okay. And where did this autopsy take place?

10 A At 101 West Wood Street.

11 Q Okay. And when, when was the autopsy performed?

12 A Per my notes, on the fourth, 4/4/04 at approximately
13 15:00 hours.

14 Q Okay. So April 4th of 2004?

15 A Correct.

16 Q Okay. Now, when you were observing this autopsy, at
17 the beginning of the autopsy, was Mr. Gossett clothed?

18 A Yes, he was.

19 Q What was he wearing?

20 A When they brought him from the cooler where they keep
21 him stored at to the autopsy room, he was in a white body
22 bag is what they're called. He was wearing like a wind type
23 suit, shoes, and a, and a shirt.

24 Q Okay. At that time, at the beginning of the autopsy,
25 while he's still clothed, were you able to observe any

Robert Talanges - Direct examination
by Solicitor Kelley

1 injuries Mr. Gossett had?

2 A Yes, I did.

3 Q What was the nature of those injuries?

4 A Appeared to be stab wounds to, looking at the chest and
5 neck area because he was still clothed.

6 Q Okay. Were his clothes ever removed?

7 A Yes, they were.

8 Q Okay. Now, I want to go out of sequence a little bit
9 and focus on the clothes for a moment.

10 After the clothing -- well, let me ask you this.

11 How was the clothing removed from Mr. Gossett?

12 A Well, Doctor Wren---

13 Q Was it I guess is what I'm asking you.

14 A Doctor Wren, when he does -- he physically actually
15 take it off.

16 Q Okay.

17 A They remove the sleeves. They, they don't cut anything
18 off unless absolutely necessary to. But other than that,
19 they would remove it. Just like you would actually put
20 clothes on, he would take the clothes off.

21 Q I understand.

22 And after the clothing was removed, did you do anything
23 with the clothing?

24 A I collected it from Doctor Wren at the end of the
25 autopsy.

Robert Talanges - Direct examination
by Solicitor Kelley

1 Q At the end of the autopsy?

2 A Yes, sir.

3 Q And, and what did you do with the clothing after the
4 autopsy?

5 A It's taken back to, at that time, it was City Hall at
6 the Spartanburg Public Safety Department. It's dried to, to
7 dry all the -- if there's liquid blood, so you want to dry
8 it, and then it's packaged and put away.

9 Q How is it dried?

10 A You stick it in a, a drying, a drying chamber is what
11 it is. Put it in a drying chamber.

12 Q And what's the purpose of drying the clothing before
13 packaging it?

14 A Blood will, blood will actually break down and mildew
15 and it also takes out the smell is what it does.

16 Q Okay. Now, after the clothing was dried, you said it
17 was packaged.

18 Did, did you package it?

19 A Yes, I did.

20 Q Okay. How did you package it?

21 Was it sealed in any way?

22 A It's packaged in the paper bags cause you never package
23 anything in, pertaining to blood in plastic, because it
24 causes the, the enzymes in the blood to break down. So,
25 everything is packaged in paper.

Robert Talanges - Direct examination
by Solicitor Kelley

1 Q Okay. And you performed this packaging?

2 A Right.

3 Q All right. And what did you do with the clothing at
4 that point?

5 A Submitted it to evidence.

6 Q All right. At, at City Hall?

7 A At City Hall, that's correct.

8 Q Okay. I want to hand you what's been previously marked
9 for identification purposes as State's Exhibit 29. I'm
10 gonna hand you some latex gloves.

11 A I carry latex gloves on me.

12 Q Okay. I'm gonna ask you to remove the contents of that
13 bag and identify the items in the bag for the jury and for
14 me please.

15 A It's gonna be the Adidas wind suit, shirt, jacket,
16 socks, and shirt.

17 Q All right. Now, are these the same items of clothing
18 that you witnessed Doctor Wren remove from Mr. Gossett?

19 A These are the items that I did collect from the morgue,
20 that is correct.

21 Q Okay. And they're the same items that you then
22 subsequently then dried, packaged, and sealed, and placed
23 into evidence?

24 A Right.

25 SOLICITOR KELLEY: All right. Your Honor, I move to

Robert Talanges - Direct examination
by Solicitor Kelley

1 admit State's Exhibit 29 into evidence at this time.

2 MR. TURNIPSEED: Without objection, Your Honor.

3 THE COURT: No objection, they'll be received as
4 marked.

5 (Whereupon, State's Exhibit No. 29 was received into
6 evidence at this time.)

7 Q If you could, just sort of package those back up for me
8 if you would.

9 A (Witness complies.)
10 okay.

11 Q Thank you.

12 I want to go back to the autopsy itself.

13 After the clothing was, was removed, did you observe,
14 at that point, any additional injuries to Mr. Gossett that
15 you had not previously noted?

16 A There were other stab wounds found, and per my report,
17 everything was found on the left side.

18 Q The left side of his body?

19 A Correct.

20 Q Okay. And you say these were -- what was, what was the
21 type of the wound?

22 A Stab wounds.

23 Q Okay. Do you know how many stab wounds you observed at
24 that time?

25 A Referring to my report again, chest and neck area,

Robert Talanges - Direct examination
by Solicitor Kelley

1 approximately six, and there were multiple in the chest from
2 what my report says.

3 Q Okay. As part of the autopsy, did you examine
4 Mr. Gossett's hands?

5 A Yes, his hands were examined.

6 Q Let me, let me rephrase that.

7 Did Doctor Wren examine Mr. Gossett's hands?

8 A What he -- when he was brought in, he was actually, and
9 it's his normal procedure for us when we're looking for any
10 type of nail scrapings, what we'll do is we bag the hands in
11 paper and tape them until they do the autopsy. And then
12 once you get to the morgue, they're cut off and then nail
13 scrapings are taken so that way nothing, there's nothing
14 transferred from that body bag or sometimes recovered in the
15 sheets. Nothing gets transferred on the hands so we can't
16 find any different trace evidence.

17 Q Why were nail scrapings performed in this autopsy?

18 A Just in case that he was in an altercation with
19 somebody. He may have grabbed or pushed off and actually
20 got their skin from some part of their body on his hands or
21 under his nails.

22 Q Okay. Now, now, did you actually remove the paper that
23 was wrapping Mr. Gossett's hands or did you observe Doctor
24 Wren remove that paper?

25 A I believe Doctor Wren removed it.

Robert Talanges - Direct examination
by Solicitor Kelley

1 Q Okay. And at what point did Doctor Wren collect the
2 fingernail scrapings?

3 A After I requested it and some time prior to him washing
4 the body.

5 Q All right. And did you observe the process that Doctor
6 Wren followed in collecting these fingernail scrapings?

7 A Yes, I was there taking photographs.

8 Q Okay. Could you describe that process for the jury?

9 A What it is is he's using wood. I think it's the tips
10 of, Q-tips. What he'll do is split them and he'll just
11 basically scrape under each, each fingernail and wrap them
12 up in paper. Be left-hand and right-hand.

13 Q You say wrap them up in paper, are you talking about
14 the scrapings themselves?

15 A I believe the whole Q-tip was in there or the whole
16 piece of wood is in there.

17 Q Okay. And so, is there, is there paper underneath the
18 hand while this scraping is being done to collect anything
19 that might come out?

20 A I don't recall if he had paper under there or not.

21 Q Okay. But he's collecting, I'm assuming, he's
22 collecting things that are on the Q-tip and anything that
23 may possibly fall out while the scraping is taking place or
24 is that not the case?

25 A I believe that is the case.

Robert Talanges - Direct examination
by Solicitor Kelley

1 Q Okay. Now, after Doctor Wren performed the fingernail
2 scrapings that he wrapped the Q-tip into paper with, what
3 happened to the paper after that?

4 A It's basically folded up where nothing can be lost and
5 then it's sealed and then it's actually physically,
6 physically given to me at the end of the autopsy.

7 Q Okay. So, you observed Doctor Wren seal this
8 fingernail scraping and then he handed it to you?

9 A Right.

10 Q What did you do with it at that point?

11 A I take it, I put it in an evidence envelope and take it
12 back to headquarters or City Hall and then it's submitted to
13 evidence in an evidence envelope.

14 Q Okay. And do you put any identifying markings on the
15 evidence envelope of your own---

16 A Just date and time it was collected---

17 Q ---for your records?

18 A ---and case number.

19 Q I'm gonna hand you what's previously been marked for
20 identification purposes as State's Exhibit 30. Ask you to
21 identify that envelope for me please.

22 A It's got the case number. It says fingernail scrapings
23 recovered from victim left right finger, fingernails, and I
24 collected it about 18:00 hours on the 4th.

25 Q All right. So, that is the envelope that contains the

Robert Talanges - Direct examination
by Solicitor Kelley

1 scrapings that you collected for Samuel Gossett at the
2 autopsy?

3 A Yeah.

4 Q All right.

5 A That's correct.

6 SOLICITOR KELLEY: All right. At this time, Your
7 Honor, I move to admit State's Exhibit 30 into evidence.

8 MR. TURNIPSEED: Without objection, Your Honor.

9 THE COURT: Without objection it will be admitted as
10 marked.

11 (Whereupon, State's Exhibit No. 30 was received into
12 evidence at this time.)

13 Q Now, as to both the nail scrapings and the clothing,
14 you say you entered those items into evidence, is that
15 correct?

16 A That's correct.

17 Q Did you perform any type of analysis on either the
18 clothing or the nail scrapings?

19 A No, I am not a---

20 Q So, after you entered them into evidence, that was the
21 last you had anything to do with them, is that correct?

22 A That is correct. They're -- once I put them, admitted
23 them, send them to evidence, they're taken there and they're
24 gonna be sent to SLED or some other agency for analysis.

25 Q Okay. At any point during the autopsy did you observe

Robert Talanges - Direct examination
by Solicitor Kelley

1 Doctor Wren draw or collect any of the victim's blood?

2 A That's done at all autopsies.

3 Q Okay. So, you could say you did see that occurring?

4 A Yeah.

5 Q All right.

6 A That is a standard procedure at all autopsies.

7 Q And do you know what might of been done with this blood
8 after it was collected?

9 A It's usually sent to SLED for, since it's a homicide,
10 for analysis. They, they keep it there.

11 SOLICITOR KELLEY: Okay. Beg the Court's indulgence,
12 Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 SOLICITOR KELLEY: No further questions at this time.

16 THE COURT: Mr. Turnipseed.

17 MR. TURNIPSEED: Yes, sir.

18 THE COURT: Your witness.

19 CROSS-EXAMINATION

20 BY MR. TURNIPSEED:

21 Q Deputy, why do you wear those latex gloves whenever you
22 handled these items?

23 A Not to transfer any, like my skin or any, any other
24 elements to any other piece of evidence.

25 Q When you wear those gloves, do you leave finger,

Robert Talanges - Cross-examination
by Mr. Turnipseed

1 fingerprints?

2 A Do you leave fingerprints?

3 Q Yes.

4 No?

5 A Most, most of the time you don't.

6 Q Okay. Do you recall how much blood was on
7 Mr. Gossett's clothing at the time of the autopsy?

8 A From what I just seen, it looked like there was blood
9 on them. I can't---

10 Q A fair amount of blood?

11 A It appears to be.

12 Q All right. And I don't know if you answered this
13 question or not, but his hands, do you recall the appearance
14 of his, of Mr. Gossett's hands?

15 A No, I don't recall.

16 MR. TURNIPSEED: Okay. No further questions, Your
17 Honor.

18 THE COURT: Redirect?

19 SOLICITOR KELLEY: Nothing on redirect, Your Honor.

20 THE COURT: Sir, you may step down. Thank you very
21 much. You're excused if you'd like to be unless there's an
22 objection.

23 MR. TURNIPSEED: No objection, Your Honor.

24 THE COURT: All right, sir. You're free to go.

25 SOLICITOR BULSA: Lou Jones. Lou Jones.

Lou Jones - Direct examination
by Solicitor Bulsa

1 THE COURT: Come forward please to my left to be sworn.

2 LOU JONES, being first duly sworn,

3 testified as follows:

4 THE COURT: Have a seat in the witness stand please,
5 ma'am. Once seated, state your name for the record please.

6 WITNESS: Lou Mathis-Jones.

7 THE COURT: Mr. Bulsa, it's your witness.

8 SOLICITOR BULSA: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY SOLICITOR BULSA:

11 Q Mrs. Jones, who are you employed by?

12 A Spartanburg Public Safety.

13 Q And how long have you been with Public Safety?

14 A I've been employed with them for 20 years.

15 Q And what are your duties with them?

16 A I examine ink prints and latent prints. I compare ink
17 to ink prints, latents prints to latents prints, ink prints
18 to latents prints. I report my findings and I testify in
19 court to those findings whether it's positive or negative.

20 Q So, you're a fingerprint examiner?

21 A Yes, I am.

22 Q How long you been doing that?

23 A I've been examining prints for 19 years and I've been
24 operating the Automatic Fingerprint Identification System
25 for nine.

Lou Jones - Direct examination
by Solicitor Bulsa

1 Q And how were you trained?

2 A I've had training in basic fingerprinting and
3 fingerprint comparison, fingerprint classification. I have
4 a diploma from the American Institute of Applied Science for
5 Basic Forensics 101. I've had training in history of
6 fingerprinting, fingerprint ridge analysis, demystifying
7 palm prints, advance palm prints, and complex latent prints
8 comparison.

9 MR. BRANNON: Your Honor, we would stipulate to her
10 qualification as a fingerprint examiner.

11 THE COURT: Will you accept the stipulation?

12 SOLICITOR BULSA: I was gonna offer her as an expert in
13 fingerprint analysis.

14 MR. BRANNON: Yes, sir.

15 THE COURT: Then you have no objection I take it?

16 MR. BRANNON: No, no.

17 THE COURT: Ladies and gentlemen, let me explain just a
18 moment what we're doing at this point in time. The State is
19 offering this witness as what is termed or known as an
20 expert witness in, in our courts. Normally a lay witness,
21 an individual who testifies, is not allowed to give their
22 opinion as to matters. That person can testify concerning
23 things they observed, what they saw, experienced, but not
24 offer conclusions or draw conclusions from, from facts or
25 offer opinions.

Lou Jones - Direct examination
by Solicitor Bulsa

1 An exception to that general rule is made for
2 individuals who are designated as experts in some field, or
3 profession, or science. This particular witness is being
4 offered as an expert in the examination of fingerprints.
5 And without objection, she will be now certified as such.
6 That means that this witness will be allowed to give her
7 opinions concerning those matters in which she has
8 expertise, and also state the reasons for those opinions.

9 Later on, during my charge on the law, I will offer you
10 some additional explanation as to how you can consider the
11 testimony of an expert witness. But to, suffice it to say
12 at this time, the witness is now being designated as an
13 expert within that field. That means she will be allowed to
14 state her opinions within that field and also offer the
15 reasons for those opinions.

16 Mr. Bulsa, you may proceed with the witness.

17 SOLICITOR BULSA: Thank you, Your Honor.

18 Q Mrs. Jones, how do you receive the fingerprints to
19 analyze?

20 A I go downstairs to the evidence department to retrieve
21 the evidence, fingerprint evidence.

22 Q Do you go to the crime scenes?

23 A No, I do not.

24 Q So, people who process crime scenes turn it into
25 evidence and then you get it from evidence?

Lou Jones - Direct examination
by Solicitor Balsa

1 A Yes.

2 Q Okay. In this case in particular, let me show you
3 what's been marked for identification State's 31 through 34.
4 Ask you review those and tell if you can identify those.

5 A Yes.

6 Q And when you actually review fingerprints, do you even
7 know what kind of case it is?

8 A Yes, I do. I mean sometimes we do depending on the
9 evidence envelope if it's written on the evidence envelope
10 or not.

11 Q Okay. In this case, what were you examining these
12 prints for?

13 A I was, I was examining the prints for fingerprint
14 evidence. See if there were any latent prints there that I
15 can run through our Automated Fingerprint Identification
16 System.

17 Q Did you know which case it involved?

18 A At that time -- can I take a look at the evidence
19 envelope just to see if it's on here?

20 Q Yes, ma'am. Yes, ma'am.

21 A Yes, there is -- there's an offense on here and the
22 location and the, the amount of print cards that are in the
23 envelope.

24 Q Does it have the victim's name on there?

25 A Yes, it does. It has the last name, the first initial.

Lou Jones - Direct examination
by Solicitor Bulsa

1 Q Okay. So, that's the package you would of went and
2 collected from the evidence room?

3 A Yes.

4 Q And would that have been sealed?

5 A They have a clip that's on the back of it, yes, and
6 the, and the chain of command.

7 Q Okay. Now, so you went and collected this I guess at
8 somebody's insistence?

9 A No, I often go twice a week on Mondays. Over the
10 weekend, go downstairs and collect all the evidence. It's a
11 separate place where they put fingerprint evidence. So, I
12 go down twice a week on Mondays and Wednesdays to collect
13 fingerprint evidence.

14 Q Okay. So, the, the officers take it in there and it's
15 set aside for you---

16 A Yes.

17 Q ---to come get?

18 Okay. And you did that on this occasion?

19 A Yes.

20 Q And then what did you do with those items?

21 A First of all, I opened the envelopes to look in there
22 to examine the prints to see if I can actually make a
23 identification, if I, if I can submit it to our Automated
24 Fingerprint Identification System. In order to submit the
25 prints in this particular system, you have to have seven

Lou Jones - Direct examination
by Solicitor Balsa

1 points of identification, some, some type of identification
2 like a ridge ending where the ridge will stop or a
3 bifurcation where it splits up.

4 Q You're looking for at least seven specific spots?

5 A Yeah, at least seven points of identification to submit
6 it.

7 Q And if you don't have seven, what do you do?

8 A I can not submit it. There's nothing I can do with the
9 latent prints unless later the investigators or someone
10 comes up with a suspect and I can do a comparison on it if
11 there's enough ridge detail in there for me to do it this
12 way.

13 Q Okay. And in this case you had four lifts?

14 A I had four lifts.

15 Q Okay. And they were actually on those cards?

16 A Yes.

17 Q And the back of the card has a notation where each lift
18 was taken from?

19 A Yes.

20 Q Did you know when you would of first examined those
21 prints?

22 A The date on this -- I usually put the date and my
23 initials on the back of the card and on this one, on all of
24 them they have April the 5th, 2004.

25 Q All right. So, you would of examined them the day

Lou Jones - Direct examination
by Solicitor Balsa

1 after they went into evidence?

2 A Yes.

3 Q All right. And did you get any -- well, let me see.

4 Once you examined them and you compare them in a
5 automated system?

6 A Well, I try to -- if it's, if there's enough ridge
7 detail, I will mark the points of identification and submit
8 it through the system. And a lot of times if we have a
9 victim's name, I like to see if we have a, can do
10 elimination prints on them to compare the prints cause we
11 don't want to run the prints of the person the prints belong
12 to.

13 Q Okay. So, what did you do in this case?

14 A Did the same thing in this case. I pulled a, some
15 elimination prints or fingerprint card on the victim to see
16 if we had one in there and if it, and compared the
17 fingerprints with the latent prints, and we did have one for
18 the victim involved. So, the prints of him.

19 Q Okay. Which one would that be?

20 A That would be latent print card one.

21 Q And State's No. what?

22 A No. 34.

23 Q And where was that taken from?

24 A It was taken from -- I'm having a hard time reading my,
25 this handwriting on here. Bergamon hair container,

Lou Jones - Direct examination
by Solicitor Balsa

1 conditioner.

2 Q Okay. So, some conditioner bottle?

3 A Uh-huh. (Affirmative).

4 Q All right.

5 A And there were two lifts on this card. He lifted the
6 same print twice.

7 Q Okay. But -- in your expert opinion, that matches the
8 fingerprint of Samuel Gossett?

9 A I did a comparison of an ink print template card with
10 the latent print and it matched the victim.

11 Q Okay. So, we've got that one.

12 You don't submit that into the automated system?

13 A No, you don't submit, submit that. We've done a
14 comparison that matched someone already.

15 Q And did you do an actual physical comparison of
16 Mr. Gossett's fingerprints with the other three?

17 A Yes. Well, two of them, it was not enough detail
18 within the print card to do it. Latent Prints 3 and 4 did
19 not have enough ridge detail to do an analysis on it.

20 Q Okay. Not even to compare it to Mr. Gossett?

21 A Not even to compare. Some of them are really -- some
22 of them are really smeared. I did not have enough detail to
23 make a comparison for those.

24 Q What are those State's Nos. please, ma'am?

25 A No. 32 and No. 33.

Lou Jones - Direct examination
by Solicitor Balsa

1 Q Okay. So, when you're -- from your initial review, it
2 appears that you're left with one print?

3 A Yes.

4 Q What did you do with that print?

5 A There was enough detail to submit it through our
6 Automated Fingerprint Identification System and I submitted
7 it through the system. They send back possibilities. The
8 system can't make a match. It's up to the individual that's
9 actually examining the fingerprint card, and there was a
10 negative for possible match through that system.

11 Q So, you had nothing at this point?

12 A Nothing at this point.

13 Q Okay. And then what did you do with the print?

14 A I put it in an evidence envelope and filed it away.

15 Q All right.

16 A And---

17 Q Did you ever revisit this case?

18 A Yes, we have a new system called the Omni Track System
19 that was -- it's updated. Some, some things were improved
20 on the system. Some things were added to the system. And
21 one of the things that was added to the new system is the
22 camera, the camera resolution on it. The old system had a
23 500 DPI, which means dots per inch, and this system had a
24 thousands dots per inch. That made the detail in an image a
25 whole lot better.

Lou Jones - Direct examination
by Solicitor Bulsa

1 Another thing that this system did that the old system
2 didn't, you can actually search for palm prints on the
3 system, and you can also search, do an I.A.F.U.S. search or
4 an FBI fingerprint search of the new system, and the new
5 system also allowed you to do automatic minutia encoding.
6 That means that the computer system will actually encode the
7 prints itself. Of course, you have to do a lot of cleaning
8 up. But it will actually encode it itself.

9 Q Okay. So, so, the first system, is that a computer
10 system?

11 A It's an Automated Fingerprint Identification System.
12 But this is a new and improved one called Omni track.

13 Q All right. When would you have submitted this other
14 print to the system?

15 A That was March 24th, 2005.

16 Q Okay. So, almost a year later?

17 A Yes.

18 Q Okay. And what occurred?

19 A There was a, there -- I submitted the print through
20 this new system and there was a possible match for an
21 individual with a latent, with a ink print, and there's a
22 sig number also attached to that through the South Carolina
23 Law Enforcement Center. So, it looks like a possible match.
24 So, I requested a ten print card or a fingerprint card on
25 that possible suspect. And when I got the card back, I did

Lou Jones - Direct examination
by Solicitor Balsa

1 the comparison and it did match that one.

2 Q Okay. And who did it match?

3 A It matched a Robert Phipps.

4 Q P-H-I-P-P-S?

5 A Uh-huh. (Affirmative).

6 SOLICITOR BULSA: Okay. Your Honor, I would offer
7 these four prints into evidence.

8 MR. BRANNON: No objection, Your Honor.

9 THE COURT: Without objection, they'll be received as
10 marked.

11 (Whereupon, State's Exhibit Nos. 31 through 34 were
12 received into evidence at this time.)

13 Q And the fingerprint name that identified was to Mr.
14 Phipps.

15 Is that State's Exhibit 31?

16 A Yes.

17 Q And where was that lifted from according to the
18 officer's note?

19 A Item Number 25, a Natural Lite beer can made into drug
20 paraphernalia for smoking.

21 Q Okay. Okay. Thank you, ma'am. Answer any questions
22 either counsel may have.

23 THE COURT: Mr. Brannon, your witness.

24 MR. BRANNON: Thank you.

25 CROSS-EXAMINATION

Lou Jones - Cross-examination
by Mr. Brannon

1 BY MR. BRANNON:

2 Q Mrs. Jones, how are you?

3 A I'm fine.

4 Q I only have a couple of questions for you.

5 That item -- the, the Mr. Phipps fingerprint, you said
6 it matches some specific finger though, right?

7 A Yes.

8 Q Would you tell -- first off, how do you, how do you
9 know which finger is which and then if you'll tell the jury
10 which finger you matched?

11 A You request a, a ten print card from SLED. There's a
12 number attached to the search when you search through the
13 A.F.I.S. system and there's a ten print card that comes back
14 from SLED. And you examine each print card.

15 Q Okay. But which finger is what number?

16 Is it, is there a standard -- I mean is the right thumb
17 always number one or is it always number ten or I mean --?

18 A Actually, when you have the finger card, the right-hand
19 starts with number one and it goes through one that -- the
20 index finger would be number two. The middle, three. And
21 the, the ring finger will be number four, and the little
22 finger will be number five. And then the left-hand starts
23 with the number six finger until ten.

24 Q Okay. And which finger were you able to match to
25 Mr. Phipps?

Lou Jones - Cross-examination
by Mr. Brannon

1 A Number six finger.

2 Q So, that's his left thumb?

3 A Yes.

4 Q Left thumb.

5 A Yes.

6 MR. BRANNON: Okay. One second, Your Honor, please.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. BRANNON: Nothing further, Your Honor. Thank you.

10 THE COURT: Redirect?

11 SOLICITOR BULSA: No, sir.

12 THE COURT: Ma'am, you may step down. And unless
13 there's an objection, you'll be free to go.

14 Any objections?

15 MR. BRANNON: No, Your Honor.

16 THE COURT: Thank you very much for coming today,
17 ma'am. She has an exhibit. So, we need to be sure she
18 leaves that.

19 SOLICITOR BULSA: Thank you, Mrs. Jones.

20 THE COURT: You may call your next witness.

21 SOLICITOR BULSA: David Reeves.

22 THE COURT: Come forward, sir, to be sworn.

23 DAVID REEVES, being first duly
24 sworn, testified as follows:

25 THE COURT: Sir, have a seat in the witness stand

David Reeves - Direct examination
by Solicitor Bulsa

1 please. And once seated, I'll ask that you state your name
2 for the record.

3 WITNESS: My name is George David Reeves.

4 THE COURT: Mr. Bulsa, it's your witness.

5 SOLICITOR BULSA: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY SOLICITOR BULSA:

8 Q Mr. Reeves, who are you employed by?

9 A I'm employed by the City of Spartanburg Public Safety
10 Department.

11 Q In what capacity?

12 A I'm the properties and evidence technician.

13 Q Are you a law enforcement officer?

14 A I am not.

15 Q All right. How long have you been with the city?

16 A Almost ten years.

17 Q And is this been your capacity the entire time?

18 A Yes, it has.

19 Q What are your duties?

20 A My duty is to safeguard evidence, to bring in all
21 property and evidence that belongs to an officer, to make
22 sure that the chain of custody is correct, to safeguard it
23 while it's in my custody, take it to SLED or other places to
24 be analyzed, to bring it back, to continue to watch the
25 chain of custody, and to submit it to Court when necessary.

David Reeves - Direct examination
by Solicitor Balsa

- 1 Q Okay. And what kind of safety measures do you have?
- 2 A I'm sorry. Say that again.
- 3 Q What kind of safety measure do you have?
- 4 A Safety measures, when required, we wear gloves. We
- 5 also wear a mask. We also have a suit.
- 6 Q How about your security measures?
- 7 A We're, we're locked behind three locked doors and a 24
- 8 hour surveillance camera just to get into our office. Then
- 9 there's another three locked doors to get to the farthest
- 10 point. We are in a jail cell, which is a, at a minimum, a
- 11 foot and a half of steel reinforced concrete. We also have
- 12 bars on the backside.
- 13 Q Is this an old jail that's converted to an evidence
- 14 room?
- 15 A That is correct.
- 16 Q Okay. And is downstairs in the basement of City Hall?
- 17 A It on the -- it's on the middle floor---
- 18 Q Middle?
- 19 A ---of City Hall.
- 20 Q Okay. Seems like a basement.
- 21 Okay. And that's your office?
- 22 A Yes, it is.
- 23 Q And you don't actually let people back in there, do
- 24 you?
- 25 A I do not. There are only three people with keys.

David Reeves - Direct examination
by Solicitor Balsa

1 That's me, the other person that works with me, and our
2 boss.

3 Q Now, when -- how do you receive in evidence?

4 A We have a locked area right outside our office, and,
5 again, only -- we, we're the people with the keys to it.
6 Once they either drop it into a locked mailbox or our
7 lockers, we have to take our key, unlock it, get it back
8 out. Then we'll sign for it on a log in sheet. We'll sign
9 for it on an evidence sheet. We'll sign for it on the
10 evidence envelope. Then we actually log it into a computer
11 system once we bar code it.

12 Q Okay. When you actually receive the evidence in, is it
13 sealed in any fashion?

14 A It's normally sealed in an evidence envelope.

15 Q And how is it sealed usually?

16 A With a metal clip.

17 Q Okay. Is there any tape put on it?

18 A Sometimes, yes. Most of the times, no.

19 Q Okay. Let me show you an example, an example, State's
20 Exhibit No. 26. It's got that, that red tape on it.

21 When would that tape be put on it?

22 A This was actually sealed by the, by the officer before
23 it ever comes to us---

24 Q Okay.

25 A ---which makes it tamper resistant. We can not get

David Reeves - Direct examination
by Solicitor Balsa

1 inside it without breaking that seal.

2 Q Now, is there ever any occasion that you would actually
3 go into the sealed bags that are given to you for, for your
4 care and custody?

5 A There could be an occasion, but predominantly no.

6 Q Okay. Now, let's go specifically to this case.

7 How is the evidence recorded by your records in a case
8 such as this?

9 A Every item that comes in, again, has a, has -- it's
10 marked on an evidence sheet. It's also with the evidence
11 envelope. We will, we will verify that this item came in.
12 We will then, again, sign for it. At that point, we will
13 log it into the computer system.

14 Q Okay. And each case is given a case number?

15 A It is given this specific case number, which is unique
16 to this case.

17 Q And you store all the evidence to, together by case
18 number?

19 A We do.

20 Q Okay. So, in the case of the death of Samuel Gossett,
21 it -- did you even know -- do you even have an idea what the
22 case might be about?

23 A Due to what comes in, we have an idea that it is a, it
24 is a homicide. But that's all we get involved with the
25 case.

David Reeves - Direct examination
by Solicitor Bulsa

1 Q Okay. Now, are some of your duties to transport
2 evidence to SLED?

3 A It is.

4 Q And that's the South Carolina Law Enforcement Division
5 in Columbia?

6 A Yes, it is.

7 Q Okay. And their purpose is to analyze evidence?

8 A Yes.

9 Q Make findings?

10 A That is correct.

11 Q Okay. And how is it that you're designated to
12 transport property down there?

13 A What happens?

14 Q (Nods affirmatively.)

15 A The process, the officer will give me an analysis
16 request form telling us exactly what it is they want to go
17 to SLED. We will take those items and physically carry them
18 to SLED. Once we get them to SLED, we, we present it to
19 their evidence department and we have to seal it before we
20 can give it to them.

21 Q Okay. And in this case, what items were taken to
22 Columbia for analysis?

23 A Wow, we have a lot of items that were taken. I have
24 socks, pants, shirt. I have two knives. I have another
25 striped shirt. I have a Social Security card. I have a

David Reeves - Direct examination
by Solicitor Balsa

1 credit card. I have a Buccal swab from the suspect. I have
2 more Buccal swabs from other possible suspects or to be
3 eliminated from. I've got a cigarette filter. I have a
4 white cloth with blood. I have another knife. I have
5 fibers from a animal. I have nail scrapings. I also have
6 scrapings -- I also have swabs from beer cans and an
7 inhaler.

8 Q Okay. And how many trips did you take down to SLED
9 with these items?

10 A I took three.

11 Q Okay. Describe why you had to take three.

12 A When you initially take it, take the evidence to SLED,
13 they only take so many items at first. So, the items that
14 they're willing to accept for analysis, that's what we, we
15 take. The next time, if they don't get enough information
16 or we don't get the, enough analysis of what we need, the
17 officer requests that more items go down. So, we take the
18 other items down.

19 Q Okay. And in this case, you actually took how many
20 sets of items?

21 A Three.

22 Q Okay. And on the first occasion, did you have to take
23 everything back?

24 Did you---

25 A Yes, I did.

David Reeves - Direct examination
by Solicitor Balsa

1 Q Okay. Why was that?

2 A Because SLED only takes a certain amount of items to
3 analyze. Rather than getting 30 items, and they, they're
4 finding out what they need predominantly on the first ten,
5 they're not sitting there with ten items, because they've
6 done this so much, they know the items that they would like
7 to take that's most probable for analysis.

8 Q Okay. And why didn't you just leave those there the
9 first time instead of bringing everything back?

10 A Because I would not have control over the items, and I
11 have to maintain control over the evidence items.

12 Q Okay. So, you would of taken a large portion down and
13 brought all those back?

14 A Yes, sir.

15 Q And then would you have met with an officer in order to
16 identify what to take back?

17 A Yes, sir.

18 Q Okay. I don't want to confuse the jury. They just
19 need to understand this.

20 A large group was identified initially, correct?

21 A Yes, sir.

22 Q SLED said that's too much?

23 A Yes.

24 Q So, you brought it back and said officer, okay, what
25 can we whittle this down to?

David Reeves - Direct examination
by Solicitor Balsa

- 1 A Yes, sir.
- 2 Q So then you take your second trip with that number?
- 3 A Yes, sir.
- 4 Q All right. And then now do you have that document
- 5 showing what you took down there?
- 6 A Yes, sir.
- 7 Q All right. Can you let me see it?
- 8 A I have three sets of documents. Swabs.
- 9 Q I want to see the one---
- 10 A In analysis---
- 11 Q ---initially.
- 12 Okay. Is this your only copy?
- 13 A It is my only copy, yes.
- 14 Q Okay. If you would, read from that what was sent down.
- 15 A What was sent down was Buccal swabs from a Mills,
- 16 Buccal swabs from a Sullivan, Buccal swabs from a Lynch. We
- 17 have a cigarette filter, a washcloth with blood, a knife
- 18 blade, fibers from a plush animal, nail scrapings, seven
- 19 swabs off beer cans, and an inhaler.
- 20 Q Okay. Was State's Exhibit 26 in that first group of
- 21 items?
- 22 A Yes, it was.
- 23 Q Okay. Was State's No. 30 in that first group of items?
- 24 A Yes, it is.
- 25 Q Okay. And then we didn't actually introduce the swabs,

David Reeves - Direct examination
by Solicitor Balsa

1 but there were swabs off of beer cans---

2 A Yes.

3 Q ---as well as a couple of other items that you read
4 from.

5 Now, when you take those items to Columbia, to SLED,
6 are they sealed once they're received at SLED?

7 A That's correct. What happens when we get to Columbia,
8 they provide us with a bag. The bag is sealed. I date it
9 and initial it across that seal so that it, it's tamper
10 resistant.

11 Q Now, these other ones, we've broken those seals and
12 brought these bags out for Court purposes, but they would of
13 been sealed in the same fashion?

14 A That is correct.

15 Q All right. So, why are we so concerned about how
16 things are packaged and kept?

17 A We want to make sure no one is tampered with it or
18 touched it in any way except for those authorized to do so.

19 Q So they're not contaminated?

20 A That's correct.

21 Q All right. Okay. So, you would of dropped these items
22 off and you don't know what happened to them, right?

23 A Once they get in their, the SLED's custody?

24 Q Yes, sir.

25 A That is correct.

David Reeves - Direct examination
by Solicitor Balsa

1 Q Okay. Now, did you send another group items down?

2 A I did.

3 Q And what were those?

4 A Excuse me. These were socks with a stain, sweat pants
5 that belonged to the victim, a shirt that belonged to the
6 victim, two knives, a striped shirt belonging to the victim,
7 a social security card, and a credit card.

8 Q All right. And as far as what's been entered into
9 evidence, State's 20, looks like a 9, would that have been
10 the victim's clothing that you described?

11 A I didn't bring my gloves.

12 Would you -- are these good gloves?

13 Thank you.

14 A Yes.

15 Q All right. And how did SLED seal that up when you took
16 it down?

17 A This is actually the seal in the box.

18 Q Okay.

19 A When it's, when it's sealed in a box -- the purpose
20 behind sealed in a box is so that it can still receive air
21 and not damage the DNA within the blood. I take the box and
22 all openings I have to seal with tape, and then I have to
23 put evidence tape across that and initial and date it.

24 Q Okay. And we broke those seals to bring this into
25 Court, is that right?

David Reeves - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q Let's see. Now, the two knives that we referred to,
3 State's 28 and 27, were those the two knives that went down
4 that second trip?

5 A Yes, they were.

6 Q Let me show you what's been marked State's Exhibits 37
7 and 38 for identification. I'm sorry.

8 A Excuse me.

9 Q Are those the two cards that were sent down that second
10 trip?

11 A Yes, they were.

12 SOLICITOR BULSA: Okay. And, Your Honor, I would offer
13 those two into evidence.

14 MR. TURNIPSEED: Without objection, Your Honor.

15 THE COURT: Without objection, they'll be received as
16 marked.

17 (Whereupon, State's Exhibit Nos. 37 and 38 were
18 received into evidence at this time.)

19 Q All right. So the jury understands, everything was
20 taken down there and sealed by SLED in your presence?

21 A It was sealed by me.

22 Q Okay. By you?

23 A Yes.

24 Q Okay. They actually have a machine that you operate?

25 A It's visually right behind the intake, the property and

David Reeves - Direct examination
by Solicitor Bulsa

1 evidence, and they physically seal it in front of me. I
2 immediately get it back. I initial and date it right then.

3 Q okay. officer, or, excuse me, Mr. Reeves, while this
4 property was in your custody in the city evidence room, was
5 any of it tampered with prior to you taking it to SLED?

6 A No.

7 Q And when you've taken it to SLED, SLED, it was sealed
8 in a second fashion in front of you?

9 A That's correct.

10 Q And then would you have, would you or someone working
11 with you collect this evidence and bring it back to
12 spartanburg?

13 A That is correct.

14 Q And is it sealed again at SLED before it's given back
15 to you?

16 A It is sealed by the investigator at SLED so when we
17 receive it it's still in a sealed box.

18 Q All right. Thank you. Answer any questions either
19 attorney may have.

20 MR. TURNIPSEED: Your Honor, may we remove the jury
21 just for a brief moment?

22 THE COURT: Yes, sir.

23 Ladies and gentlemen, I'm gonna excuse you to the jury
24 room. I, again, ask, before you leave, instruct you not to
25 begin any discussions until I've advised you to do so.

1 You may retire to the jury room.

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

4 MR. BRANNON: Just very brief, Your Honor, we have not
5 had the opportunity to see those two cards that were marked
6 into evidence. All we want to do is look at the items.

7 THE COURT: Please do so.

8 (Pause.)

9 THE COURT: We'll take a, take about a two or three
10 minute recess. I'll stay on the bench.

11 (Pause.)

12 THE COURT: Is the State ready?

13 I know the defendant's not back.

14 MR. TURNIPSEED: We're ready.

15 THE COURT: Defense ready once we get the defendant?

16 MR. BRANNON: Yes, sir.

17 THE COURT: Okay. Ask the attorneys to approach while
18 we're waiting.

19 (Whereupon, a bench conference was held at this time.)

20 THE COURT: All right. Let's bring the jury back.

21 (Whereupon, the following takes place within the
22 presence of the jury.)

23 THE COURT: All right. The record will reveal that the
24 jury has returned to the courtroom.

25 When we broke the defense was in the position to begin

1 their cross-examination.

2 MR. TURNIPSEED: Yes, sir.

3 THE COURT: Mr. Turnipseed, you may proceed.

4 MR. TURNIPSEED: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. TURNIPSEED:

7 Q Mr. Reeves, while the jury was out I asked you to open
8 up Exhibits 37 and 38.

9 Would you be so kind as to hold I believe the Social
10 Security card, which is Exhibit 38, the back of it and, and
11 present that to the jurors, the jury?

12 Will you actually take it out and---

13 A (Witness complies.)

14 Q The Social Security card. I'm sorry. Not---

15 A The Social Security?

16 Q Yes.

17 A That's Exhibit 37.

18 Q Yes, sir.

19 A (Witness complies.)

20 Q That is the back of Exhibit 37?

21 A This is the back of Exhibit 37.

22 Q Okay. Thank you.

23 Now, how many trips did you have to make to Columbia to
24 SLED?

25 A I took -- dropping off evidence?

David Reeves - Cross-examination
by Mr. Turnipseed

1 Q Yes, sir.

2 How---

3 A I took three trips.

4 Q Three trips. You, you stated the items you took on
5 your first trip on the 26th I believe, and you stated the
6 items you, you took on the second trip.

7 But what did you take on the third trip?

8 A I took a Buccal swab from the suspect.

9 Q A Buccal swab?

10 A (Witness nods affirmatively.)

11 Q Did you take any nail scrapings on that third trip?

12 A I took that on the second trip.

13 Q You took it on the first trip on, and on the second
14 trip, correct?

15 A I took -- can you ask that question again please?

16 Q Nails scrapings, how many times were those taken down
17 to SLED, once, twice?

18 A I'm showing once.

19 Q Showing once.

20 Let me ask you a quick question or just kind of
21 reiterate what you stated on direct examination.

22 SLED will only allow you to take so many items one
23 time, correct, at, at, at one time?

24 A Initially, yes.

25 Q Initially.

David Reeves - Cross-examination
by Mr. Turnipseed

1 You also stated that if the officer doesn't like the
2 results, they'll sometimes send them back down to SLED, is
3 that correct?

4 A No, I stated that if they didn't get an analysis off of
5 what they needed, they can send, submit other items.

6 Q So, you didn't state on, on your direct examination
7 that if they didn't like the results, they, they would
8 sometimes send them back down?

9 A That's not me to decide that.

10 Q Okay.

11 A All's I do is handle the chain of custody.

12 MR. TURNIPSEED: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q Can you go over the list of items that you took down on
16 the first trip on the 26th.

17 A On the 26th?

18 Q I believe is what you stated. Just the very first
19 trip. Whatever date that may be.

20 A I'm showing my -- the first trip they actually, they
21 actually checked everything was in September 10th of '04.

22 Q What items did you take down September 10th?

23 A Okay. I took Buccal swabs from a Mills, Buccal swabs
24 from a Sullivan, Buccal swabs from a Lynch, cigarette
25 filter, white cloth with blood, knife blade, fibers from a

David Reeves - Cross-examination
by Mr. Turnipseed

1 plush animal, nails scrapings, seven swabs from beer cans,
2 and inhaler.

3 Q Okay. What did you take down the second trip?

4 A On the second trip I actually took a Buccal swab from a
5 Phipps.

6 Q And the third trip?

7 A The third trip, I took sock, pants, shirt, two knives,
8 another shirt, Social Security card, and a credit card.

9 MR. TURNIPSEED: Okay. No further questions, Your
10 Honor.

11 THE COURT: Anything further from this witness?

12 SOLICITOR BULSA: No follow-up, no, sir.

13 THE COURT: Sir, you may step down. And unless there's
14 an objection, you are free to go.

15 Any objection?

16 MR. TURNIPSEED: No objection, Your Honor.

17 SOLICITOR BULSA: He's gonna remain---

18 THE COURT: You're free to go.

19 SOLICITOR BULSA: He's gonna remain with the evidence.

20 THE COURT: Okay.

21 SOLICITOR BULSA: He's still watching over it.

22 THE COURT: He is still the custody. I understand.

23 SOLICITOR BULSA: Yes, sir.

24 THE COURT: You may call your next witness.

25 SOLICITOR BULSA: Cecil Bradstreet.

Cecil Bradstreet - Direct examination
by Solicitor Bulsa

1 THE COURT: Come forward, sir, to my left to be sworn.

2 CECIL BRADSTREET, being first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat in the witness stand. Once
5 you're seated, sir, I'd ask you state your name for the
6 record.

7 WITNESS: Cecil K. Bradstreet.

8 THE COURT: Mr. Bulsa, it's your witness.

9 SOLICITOR BULSA: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BULSA:

12 Q Mr. Bradstreet, who are you employed with?

13 A I'm employed with the South Carolina Law Enforcement
14 Division.

15 Q Commonly known as SLED?

16 A Yes, sir, that's correct.

17 Q What are your duties now?

18 A Right now I'm a statistical research analyst for the
19 intelligence department at SLED.

20 Q Okay. How long have you actually been with SLED?

21 A Fifteen years.

22 Q Did you use to work in the evidence processing
23 department?

24 A Yes, sir, that's correct.

25 Q Explain to the jury what that is.

Cecil Bradstreet - Direct examination
by Solicitor Balsa

1 A The evidence processing department examines, examines
2 various types of evidence for the presence of hairs, fibers,
3 blood, and semen. And in the case of blood and semen, we do
4 chemical tests to test for presumptive positive or negative
5 results for those exams.

6 Q You're basically looking at items to see if there's
7 anything that can be tested?

8 A Yes, sir, that's correct.

9 Q Okay. You do -- do you take samples from these items
10 or cuttings?

11 A Yes, sir, we do. If there's a presumptive positive for
12 the exam, we forward that sample to DNA for further testing.

13 Q Okay. How do you actually receive the items that you
14 examine?

15 A The items are sealed in a container and then initialed
16 with evidence tape. I, I retrieved them from a locked
17 refrigerator in, in the evidence processing department that
18 I have a key to.

19 Q Okay. Now, in this case involving the victim, Samuel
20 Gossett, did you receive any evidence from, that was logged
21 in from the Spartanburg Public Safety Department?

22 A Yes, sir, I did.

23 Q Okay. And what items did you receive?

24 A I received a white washcloth and a knife blade.

25 Q And how would those have been packaged?

Cecil Bradstreet - Direct examination
by Solicitor Balsa

1 A They would of been in a sealed container.

2 Q What did you do with these items?

3 A In the exam for blood, what I do is I do a visual exam.

4 If I note any areas that look to be positive for blood, I do

5 a chemical test called fenal faline. Fenal feline reacts,

6 excuse me, reacts with hemoglobin, which is found in blood.

7 So, what you do is you take a sample. You take a Q-tip

8 swab, drop saline on the swab, swab the area. Then you go

9 back, take the fenal faline, drop it on there. Then you

10 take hydrogen peroxide which is what produces the chemical

11 reaction. If it's presumptive positive, then it's gonna

12 turn a bright pink collar. Fenal faline is very sensitive

13 test. You could have a small minute drop of blood and maybe

14 10,000 drops of water and it's still gonna pick it up. It's

15 a very sensitive test. So, any that's found positive, then,

16 we then forward it to DNA for further analysis.

17 Q Okay. And did you collect any samples from either

18 object?

19 A Yes, sir, I did.

20 Q What did you collect?

21 A On the white washcloth, I made three cuttings. On the

22 knife blade, I took a swab and sent it, got a presumptive

23 positive for that also and forwarded that to DNA for further

24 analysis.

25 Q Now, on the knife blade, would that have been just the

Cecil Bradstreet - Direct examination
by Solicitor Bulsa

1 metal portion without a handle?

2 A Yes, sir, that's correct.

3 Q And when you collect these samples, do you seal them?

4 A I put them in a gold coin envelope. It's gonna be an
5 envelope about that big, fill out the lab number, what exam
6 needs to be requested, put tape across the back with my
7 initials on it.

8 Q So, it comes to you sealed, is that correct?

9 A Yes, sir.

10 Q And would you, would you examine the package to see if
11 it had been tampered with in anyway?

12 A That's correct. If it had, it would of been noted in
13 my case jacket.

14 Q And was either of these items tampered with?

15 A No, sir.

16 Q So, when you break the seal, and examine the items?

17 A Yes, sir, that's correct.

18 Q Then you would -- you take any samples that you deemed
19 appropriate?

20 A Yes, sir, that's correct.

21 Q And then you would seal those to be transmitted to the
22 DNA department?

23 A Yes, sir, that's correct.

24 Q Okay. What would you do with the items that you were
25 examining afterwards?

Cecil Bradstreet - Direct examination
by Solicitor Balsa

1 A Once I'm finished with the evidence, I seal it back up
2 in a, in the container that it was submitted in and route it
3 back to the evidence control department for return to the
4 submitting agency.

5 Q Okay. I got so many packages here.

6 From this packaging, State's Exhibit 26 that you
7 identified, is that the knife blade you would of processed?

8 A Yes, sir, it is and the reason I can identify it is it
9 had the lab number that's assigned by SLED, the item number,
10 these are my initials, and this is the date that it was
11 processed on.

12 Q Okay. So, from that knife blade, you took a sample and
13 forwarded it to SLED?

14 A Yes, sir.

15 Q I mean forwarded it to DNA?

16 A To the DNA department, yes, sir, that's correct.

17 Q And then you packaged the knife blade up to be
18 transported back to Spartanburg?

19 A Yes, sir, that's correct.

20 Q Thank you. Answer any questions either attorney may
21 have.

22 MR. BRANNON: No questions.

23 THE COURT: Sir, you may step down. Thank you very
24 much. Unless there's an objection---

25 MR. BRANNON: No, sir.

Verona Gibson - Direct examination
by Solicitor Bulsa

1 THE COURT: ---this witness can be excused.

2 Sir, you're excused.

3 WITNESS: Thank you.

4 THE COURT: You may call your next witness.

5 SOLICITOR BULSA: Verona Gibson.

6 THE COURT: Come forward, ma'am, to my left to be sworn
7 please.

8 VERONA GIBSON, being first duly
9 sworn, testified as follows:

10 THE COURT: Have a seat. Once you're seated, state
11 your name for the record.

12 WITNESS: Verona Gibson.

13 THE COURT: Mr. Bulsa, it's your witness.

14 DIRECT EXAMINATION

15 BY SOLICITOR BULSA:

16 Q Hello, Mrs. Gibson.

17 would you tell us who you're employed by?

18 A South Carolina Law Enforcement Division, Division
19 formerly, commonly known as SLED.

20 Q In what capacity?

21 A I'm an evidence technician in the evidence processing
22 department.

23 Q How long have you been with SLED?

24 A Approximately 11 months.

25 Q Okay. And in this case, did you receive items of

Verona Gibson - Direct examination
by Solicitor Bulsa

1 evidence?

2 A I did.

3 Q Okay. Could you describe for the jury what you
4 received?

5 A I received socks, a sweat suit, which was the jacket,
6 and the sweat pants, two knives, a shirt, and then a striped
7 Polo shirt, a Social Security card, and an item that was
8 described as a credit card.

9 Q Okay. And do you recall how these items were sealed?

10 A They were sealed in boxes in -- actually in individual
11 packages inside a box.

12 Q Okay. And had they been tampered with?

13 A They had not.

14 Q What did you do with these items when you received
15 them?

16 A I checked to see that the seal was in tact, and then we
17 take each item out individually to process it for the
18 requested processing.

19 Q Okay. And you're not doing any actual analysis, are
20 you?

21 A No, sir.

22 Q Just looking at the items to see if there's anything
23 further that can be analyzed?

24 A Correct. We do presumptive testing on them.

25 Q Okay. Now, let's just go down this list.

Verona Gibson - Direct examination
by Solicitor Balsa

- 1 The socks, what, what did you examine those for?
- 2 A For blood.
- 3 Q Did you find---
- 4 A Or possible blood. Excuse me.
- 5 Q And did you find anything suitable for analysis?
- 6 A I did not.
- 7 Q And Item 13, I believe the sweat suit, did you break
- 8 that down into two subcategories?
- 9 A I did, yes, sir.
- 10 Q why did you do that?
- 11 A Because it was two separate items. It was listed as
- 12 one item, but it was actually two articles. So, in order
- 13 to, to make it easier to understand further down the line,
- 14 we break them into, to separate items.
- 15 Q Okay. And how would you actually examine these items?
- 16 A Individually.
- 17 Q What process do you use?
- 18 A A visual examination aided by a magnification light if
- 19 needed just to determine whether the stain appears that it
- 20 could be blood and then we would test it for presumptive
- 21 testing.
- 22 Q Now, let's start with the sweat jacket.
- 23 what did you find there?
- 24 A There was nothing that appeared to be of value.
- 25 Q Okay. Now, it was bloody, wasn't it?

Verona Gibson - Direct examination
by Solicitor Balsa

1 A It was very bloody, yes, sir.

2 Q And why did you not take a sample from it?

3 A Because I was told it was the victim's clothing and
4 nothing appeared not to be in the larger staining areas. We
5 look -- if there's a major staining area, it would have to
6 be -- it would need to be something outside those areas.

7 Q Okay. I'm gonna actually ask you to pull that out of
8 this package. Show the jury what you mean about State's
9 Exhibit No 27.

10 Did you bring some gloves?

11 A I did, yes, sir.

12 with this jacket, there's large areas of staining.
13 There are no areas that aren't consistent with the larger,
14 the larger stains that would of been something that possibly
15 could have been different from the victim's blood.

16 Q Okay. How can you make that conclusion?

17 A A lot of times it's just, it's just experience.

18 MR. BRANNON: Objection, Your Honor. I don't know that
19 she's been qualified. She's only worked for SLED for 11
20 months. I don't know how she can come to a conclusion
21 without some further foundation laid for that.

22 THE COURT: I'll sustain the objection at this time.

23 Q Okay. I'll ask it a different way. Stand up, if you
24 would, and show the jury that, that jacket.

25 A (Witness complies.)

Verona Gibson - Direct examination
by Solicitor Balsa

1 Q okay. Show them both sides.

2 A (Witness complies.)

3 Q And that was identified, as it came in, as victim's
4 clothing?

5 A Yes, sir.

6 Q okay. And it's got blood all over it?

7 A Yes, sir, possible blood.

8 Q okay. Were you looking for any specific type of
9 pattern or anything?

10 A A lot of times it's swipe marks or drops that look like
11 they've fallen instead of spreading by, by absorption.

12 Q okay. All right. So, in your review of it, you didn't
13 make any cuttings?

14 A No, sir, I didn't.

15 Q okay. Package that up. Well, just set it aside. I'm
16 gonna ask you to go to the next item, the pants. Pull those
17 out if you would.

18 A (Witness complies.)

19 Q would you show those to the jury?

20 A (Witness complies.)

21 Q what did you do with these pants?

22 A With these pants, they were not as severely stained.

23 So, there were areas here and there was an area, sorry, here
24 that appeared to be a large concentration of some kind of,
25 of possible blood. It wasn't -- it was a larger area up

Verona Gibson - Direct examination
by Solicitor Bulsa

1 top.

2 Q Okay. What made you make those cuttings for---

3 A They appeared different than absorption type staining.

4 Q Okay. So, when you looked at the jacket and saw it one
5 light and you looked in the pants and they looked different?

6 A It did, yes, sir.

7 Q Okay. And then -- so, you made cuttings of those, is
8 that right?

9 A Yes, sir.

10 Q Did you actually mark on the pants?

11 A I did, yes, sir. The material makes it a little
12 difficult to look at. There's one here and there.

13 Q Okay. What would you have done?

14 You can sit down now please.

15 A (Witness returns to the stand.)

16 Q If you just set those down and I'll ask you to package
17 them up in a minute unless -- you may leave them open. They
18 may have some questions for you.

19 Now, what did you do with the cuttings you made?

20 A I packaged them in coin envelopes, sealed, sealed the
21 back of them with tape, signed and dated those, and then
22 sealed them in a heat sealed pouch, which I would also sign
23 and date before I transferred it to---

24 Q Would you identify the cuttings?

25 I mean how, how did you identify them at---

Verona Gibson - Direct examination
by Solicitor Bulsa

1 A By the numbers. They would be a sub number of the --
2 where the pants were 13.2. I would of done 13.2.1 and
3 13.2.2.

4 Q And would you describe where you cut them from?

5 A Yes, sir.

6 Q Okay. And would you note that somewhere?

7 A I do on a work sheet, yes, sir.

8 Q Okay. Do you have that work sheet?

9 A I do, yes, sir.

10 Q Okay. So, if you would, so the jury can understand the
11 numbers, what were the two cuttings you made and what
12 numbers did you give them?

13 A The two cuttings were Item 13.2.1, which is one on the
14 back of the leg at the bottom, and 13.2.2 was the one on the
15 left pocket.

16 Q And do you actually have those cuttings with you?

17 A I do, yes, sir.

18 Q Can you open them up and do you need something to open
19 them with?

20 A Yes, sir, please.

21 (Witness complies.)

22 Q You have them?

23 A Yes.

24 Q Okay. Let me get those marked.

25 (Whereupon, the cuttings were marked as State's Exhibit

Verona Gibson - Direct examination
by Solicitor Bulsa

1 Nos. 39 and 40 for identification purposes only at this
2 time.)

3 Q Okay. State's Exhibits 39 and 40 for identification,
4 are those the two cuttings you made?

5 A Yes, sir.

6 Q Okay. And those were the type -- you sealed them and
7 sent them to?

8 A I sealed and signed, signed and dated the back of them
9 when I sealed them and then placed them in the heat sealed
10 pouch for transport.

11 Q All right. Can I get you to write on that, each
12 envelope where you cut those from cause I don't see it noted
13 on that.

14 A No, sir.

15 Q You need a pen?

16 A Please. Your pen's not working, sir.

17 Q It's not working. You need a better one. Sorry.

18 A (Witness complies.)

19 SOLICITOR BULSA: Your Honor, I would now offer these
20 two items into evidence.

21 MR. BRANNON: No objection, Your Honor.

22 THE COURT: Without objection, they'll be admitted as
23 marked.

24 (Whereupon, State's Exhibit Nos. 39 and 40 were
25 received into evidence at this time.)

Verona Gibson - Direct examination
by Solicitor Bulsa

1 Q Okay. All right. So, we have 13.2.1 and 13.2.2,
2 cuttings from the sweat pants.

3 All right. Let's move on down your list.

4 The next item I believe was a shirt.

5 A Yes, sir.

6 Q And what did you do with that shirt?

7 A That one I did take a cutting from the right chest
8 area. It, it also appeared to be a different density of
9 staining and it appeared different.

10 Q Okay. And was that the shirt that was included with
11 the sweat suit?

12 A Yes, sir, it's included with the suit.

13 Q Okay. Let's see. And then Item 15 and 16, the knives.

14 A Those -- the, the blades were negative for the
15 presumptive testing for blood. The handles were swabbed for
16 possible testing.

17 Q Okay. Now, what kind of test did you determine to see
18 if there's any blood?

19 A It's a fenal faline test. We moisten a, a Q-tip or a
20 cotton swab with distilled water, swab this, the area we're
21 testing. Then we put a fenal faline solution on it, then
22 hydrogen peroxide, and then it will turn a pink if there is
23 a possibility the substance is blood.

24 Q And neither of those tested positive?

25 A No, sir, they did not.

Verona Gibson - Direct examination
by Solicitor Bulsa

1 Q And the swabbing of the handles, how did you do that?

2 A You wet a swab again with distilled water, swab the
3 entire handle, and then allow it to air dry and then package
4 it.

5 Q Okay. And you sent those to the DNA department?

6 A I did, yes, sir.

7 Q And then there was a second shirt.

8 A Yes, sir.

9 Q There was a striped shirt of some sort?

10 A It was, yes, sir.

11 Q And what did you do with it?

12 A That one, there was some, some cuttings made for the
13 positive for the fenal faline test, and then also I scraped
14 the collar and the underarms where there were no possible
15 blood stains for, to see who had worn the shirt.

16 Q Okay. We didn't actually introduce the shirt into
17 evidence, but using this State's Exhibit 22, does that
18 appear that it---

19 A That does appear to---

20 Q Is that the shirt?

21 A ---to be the shirt, yes, sir.

22 Q Okay. That's Item Number 18 in the picture?

23 A Correct.

24 Q And the remaining two items was Social Security card
25 and something noted as a credit card?

Verona Gibson - Direct examination
by Solicitor Bulsa

1 A Yes, sir.

2 Q What did you do with those items?

3 A With both those items, I swabbed the areas that were
4 coming up positive for the fenal faline test and also the
5 areas that did not have any staining. So --.

6 Q Why did you do it both ways?

7 A Because if you're looking for who may of touched the
8 cards, sometimes you can get DNA based on their finger,
9 where their fingers touched so that the blood would be very
10 strong. So, if it was the victim's blood, it would of over
11 powered that. So, we were checking those both for who
12 touched them and whose blood it was.

13 Q Okay. Trying to find out two possible answers?

14 A Yes, sir.

15 Q Let's see. Let me show you these two packages, State's
16 37 and 38.

17 Would those of been the cards that you analyzed, or
18 excuse me, that you examined?

19 A Yes, sir, they would of.

20 Q And how can you tell?

21 A We give a number to every item. I also initialed, put
22 our lab number that we assign the case, and the date that I
23 processed it on the back.

24 Q Okay. And did you seal those samples in the same
25 process as the others?

Verona Gibson - Direct examination
by Solicitor Balsa

1 A The swabs I took from these are items, yes, sir.

2 Q All right. What did you do with the items after you
3 examined them?

4 A They were placed back in the, the original box they
5 came to us in, resealed. I placed crime, it's a crime scene
6 tape like stuff across the corners, initialed, dated that,
7 and then I would of returned it to our evidence control
8 area.

9 Q Okay. So, the items themselves could be transported
10 back to Spartanburg?

11 A Correct.

12 Q And the cuttings, I believe you actually had those
13 still at SLED?

14 A Yes, sir, I transferred those to the DNA analyst.

15 Q Okay. And then they were brought back in that sealed
16 package that you opened in Court?

17 A Correct.

18 Q Okay. Thank you. Answer any questions either attorney
19 may have.

20 CROSS-EXAMINATION

21 BY MR. BRANNON:

22 Q Mrs. Gibson, just a couple.

23 You said that you held, you held up that jacket and you
24 said that somebody told you don't worry about checking that,
25 that's the victim's blood, right?

Verona Gibson - Cross-examination
by Mr. Brannon

1 A They never told me not to worry about checking it, no,
2 sir.

3 Q who told you it was the victim's blood?

4 A The incident report that I had said it was the or the
5 log in sheet, I'm sorry, said that it was the clothes from
6 the victim.

7 Q well, aren't the jacket and the pants the clothes from
8 the victim?

9 A That was what I was told, yes, sir, or the information
10 I had, yes, sir.

11 Q But you didn't check the jacket. You only checked the
12 pants?

13 A I looked at the jacket, yes, sir, I did. I examined
14 it.

15 Q Okay. All right. And you testified earlier that the
16 stain on the jacket is different then the stain on the
17 pants?

18 A It appeared different to me.

19 MR. BRANNON: Okay. That's all, Your Honor. Thank
20 you.

21 THE COURT: Any other questions, Mr. Bulsa?

22 SOLICITOR BULSA: Just briefly in reply.

23 REDIRECT EXAMINATION

24 BY SOLICITOR BULSA:

25 Q Do you receive any training before you are put in this

Verona Gibson - Redirect examination
by Solicitor Bulsa

1 position?

2 A I do.

3 MR. BRANNON: Objection, Your Honor. That's outside my
4 cross.

5 SOLICITOR BULSA: No, it's not. He went into the
6 differences between them and I'm just gonna confirm how she
7 can tell that.

8 THE COURT: I'll let him finish the question.

9 MR. BRANNON: Okay.

10 Q Do you receive any training in how to examine items?

11 A Yes, sir, I was trained under two Court certified
12 processing analysts on over 200 cases. We also have a
13 competency that we must complete, both written and
14 practical, before we are allowed to do case work on our own.

15 Q And how can you state that it appeared different?

16 A It's kind of hard to explain without an example. But
17 the way the blood is a, absorbed into the fabric or whether
18 it looks like it's on top of the fabric. It's also a degree
19 of shininess to it is one of the factors. The shape of the
20 stain can be another factor.

21 Q And those are the items that you were looking for?

22 A Yes, sir.

23 Q And in your examination of comparing the pants and the
24 sweat jacket, they appeared different?

25 A Yes, sir, they did.

Verona Gibson - Recross examination
by Mr. Brannon

1 Q Thank you.

2 RECROSS EXAMINATION

3 BY MR. BRANNON:

4 Q Ma'am, you can visualize, visually determine the
5 difference in one stain and another, correct?

6 A Yes, sir.

7 Q But you can't visually determine how long one stain's
8 been in an area and how long another stain's been in an
9 area, can you?

10 A No, sir.

11 Q There's no way to date a blood stain, is there?

12 A Not that I'm aware of.

13 Q Not that you're aware of. Thank you. Nothing further.

14 THE COURT: All right, ma'am. You may step down.

15 If there's no objection, she can be excused.

16 MR. BRANNON: None.

17 THE COURT: Any objection?

18 SOLICITOR BULSA: No objection.

19 THE COURT: You're free to go.

20 SOLICITOR BULSA: Ken Bogan.

21 Your Honor, I -- that's right.

22 I wouldn't mind if you packaged that up while you're
23 here.

24 THE COURT: Sir, come forward to my left to be sworn
25 please.

Ken Bogan - Direct examination
by solicitor Bulsa

1 KEN BOGAN, being first duly sworn,
2 testified as follows:

3 THE COURT: Have a seat in the witness stand please,
4 sir, and once you're seated, I'd ask that you state your
5 name for the record.

6 WITNESS: All right. My name is Kenneth L. Bogan. My
7 last name is spelled B-O-G-A-N.

8 THE COURT: Mr. Bulsa, it's your witness.

9 SOLICITOR BULSA: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY SOLICITOR BULSA:

12 Q Mr. Bogan, who are you employed with?

13 A I currently work for the South Carolina Law Enforcement
14 Division.

15 Q In what capacity?

16 A I am a forensic DNA analyst.

17 Q How long have you been with South Carolina Law
18 Enforcement Division?

19 A Just a little over 25 years.

20 Q what kind of training do you have as a DNA analyst?

21 A well, I go back to my college education. I'll begin
22 there. I received a Bachelor of Science Degree in Medical
23 Technology from the University of Central Florida in 1978.
24 Medical technology is a field of science which deals with
25 critical laboratory work. I worked in a hospital laboratory

Ken Bogan - Direct examination
by Solicitor Bulsa

1 performing diagnostic analysis on body fluid samples for
2 about six years.

3 In 1984 I was hired by the South Carolina Law
4 Enforcement Division in, as a forensic serologist. Serology
5 is a field of forensic science which deals with the
6 identification of body fluids. Body fluids such as blood,
7 semen, or saliva.

8 I worked from 1984 until 1990 as a forensic serologist
9 when I began my training as a forensic DNA analyst. I
10 received training from the Federal Bureau of Investigations
11 in Quantico, Virginia in forensic DNA analyst typing
12 methods. I then underwent a, approximately a year and a
13 half training at the South Carolina Law Enforcement Division
14 in DNA analyst methods.

15 In and about 1992, I began receiving cases and working
16 cases on my own. From then until now I've continued working
17 in the DNA analyst section and have continued attending
18 continuing education courses and training courses since
19 about 1992.

20 Q Have you been qualified as an expert in Court before?

21 A Yes, I have.

22 Q How many times have you testified as an expert in this
23 field?

24 A I've testified in forensic DNA analysis approximately
25 75 times. As a forensic serologist, well over 150 times.

Ken Bogan - Direct examination
by Solicitor Bulsa

1 SOLICITOR BULSA: I would offer Mr. Bogan as an expert
2 in the field of forensic DNA analyst.

3 MR. BRANNON: Without objection, Your Honor.

4 THE COURT: All right. Without objection then the
5 witness will be qualified as an expert within the field and
6 I've explained to the jury what that designation means.

7 Mr. Bulsa, you may continue.

8 SOLICITOR BULSA: Thank you, Your Honor.

9 Q Mr. Bogan, did you receive evidence relating to a case
10 involving the death of Samuel Gossett?

11 A Yes, I did.

12 Q And could you explain to the jury how you receive
13 evidence to analyze?

14 A Well, law enforcement agencies throughout the State of
15 South Carolina deliver evidence to the South Carolina Law
16 Enforcement Division forensic science building. It gets
17 logged in as evidence. By logging in, that means that they
18 actually begin to generate a computer record of the evidence
19 submitted.

20 Some of the evidence goes to an evidence processing
21 unit for technicians to perform analysis on it. That's
22 visual examinations as well as some presumptive analysis.
23 Evidence processing may make cuttings from those items of
24 evidence and then transfer them to me. Other items of
25 evidence go through evidence processing and then directly to

Ken Bogan - Direct examination
by Solicitor Balsa

1 me and are assigned to me for my analysis.

2 Q And specifically, in this case, did you receive items
3 directly from law enforcement?

4 A Well, it, it goes through, like I say, our evidence log
5 in. They, they did come in from, directly from law
6 enforcement and then made their way to me.

7 Q And would they have been in a sealed condition?

8 A Yes.

9 Q And did you also receive items from your evidence
10 processing unit?

11 A Yes.

12 Q Okay. Let's start with the evidence processing unit.
13 What items did you receive from them for testing?

14 A You want me to go through all of them?

15 Q Yes, sir.

16 A Okay.

17 Q I think the jury needs to the, understand the
18 complexity of this.

19 A Okay. Well, one of the items I received from our
20 evidence processing unit was described as a cutting, my Item
21 6.1, which was a cutting from a washcloth. Also received
22 from that same washcloth the, let me see, two additional
23 cuttings. So, three, three cuttings total from a washcloth
24 plus some hair and debris collected from that washcloth.

25 Q Would that have come from Mr. Bradstreet?

Ken Bogan - Direct examination
by Solicitor Balsa

1 A Yes, he's the, he's the forensic technician who had
2 examined those items and made the cuttings.

3 Q Okay.

4 A I received a swab, which is described as a, as a swab
5 from a knife blade, that was also prepared by
6 Mr. Bradstreet.

7 Q Okay. Was that, was that the extent of the items you
8 received from Mr. Bradstreet?

9 A Yes, sir, I think it is.

10 Q Okay. Did you receive some items from Mrs. Gibson?

11 A Yes, I did.

12 Q What were those?

13 A Okay. From an evidence technician, Verona Gibson, I
14 received what's described as a cutting from a pair of sweat
15 pants. Actually received two cuttings from that same pair
16 of sweat pants. I received a cutting as described from a
17 shirt from Verona Gibson. I received a swab from a knife
18 handle. I received a, a, another swab from a, from another
19 knife handle. I received swabs from a shirt of, reported as
20 being from Samuel Gossett. I also received one, two, three,
21 three cuttings from that same shirt. I also received swabs
22 from a Social Security card, and swab from a credit card.

23 Q So, you got a lot of items from Mrs. Gibson?

24 A Yes, I did.

25 Q Okay. And then you had the items from Mr. Bradstreet

Ken Bogan - Direct examination
by Solicitor Balsa

1 and then you also received items through the evidence log in
2 that came in directly from law enforcement?

3 A That's correct.

4 Q Okay. And I need to go through those too.

5 what all did you receive?

6 A All right. I also received a known blood standard from
7 the victim in this case, Samuel Gossett, was submitted. I
8 received some known DNA standards. They're Buccal swabs.
9 It's a swab from the inside of the mouth of an individual
10 from -- you want me to list the individuals?

11 Q Yes, sir.

12 A Okay. From Sheila Mills, Cedric Sullivan, and Calvin
13 Lynch. I also received a cigarette butt for identification.
14 I received fingernail scrapings and I received a set of
15 swabs. The swabs were from -- six of the swabs were from
16 Natural Lite beer cans, and one of the swabs was from an
17 asthma inhaler.

18 Q And did you receive a, a known standard from Robert
19 Phipps?

20 A Yes, I did. I later received a known standard, DNA
21 standard from Robert Phipps.

22 Q Okay. So, we have all this evidence and then what do
23 you do with it?

24 A The evidence is examined. I performed some test on it
25 to determine if there is potential blood on them. The items

Ken Bogan - Direct examination
by Solicitor Balsa

1 that were collected, for example, cuttings from the
2 washcloth, I probably repeated some analysis that Mrs., that
3 Mr. Bradstreet had done on those to indicate that there was
4 blood present. On the blood stains, I would extract DNA
5 from those blood stains. Extracting, it means you probably
6 all heard about going to the dentist and getting a tooth
7 extracted. That means you pull it out. Basically what I do
8 is I pull that DNA out of that blood stain that's on the
9 cloth.

10 I did the same analysis for swabs from the knife blade.
11 The swabs that were from the beer cans were for detection of
12 biological fluid. Possibly saliva. It's transferred there.
13 I extracted DNA from those as well. I extracted DNA from
14 the known standards from the individuals that I mentioned.
15 Primarily Samuel Gossett, Sheila Mills, Cedric Sullivan,
16 Calvin Lynch, and Robert Phipps.

17 Once I had developed the DNA profiles from those items,
18 I was able to compare the DNA profiles that I got from each
19 of the evidence items to those individuals.

20 Q Okay. And let's go to your results. Let me kind of
21 direct this. Let's first start with the items you received
22 from Mr. Bradstreet, the cuttings from a washcloth, and the
23 swab of the knife blade.

24 what was your results of the cutting from the
25 washcloth?

Ken Bogan - Direct examination
by Solicitor Balsa

1 A I had performed DNA analysis on two of the cuttings.
2 The DNA profile that was developed from one of the cuttings
3 was a full profile in that all of the results that I got
4 matched the DNA profile of Samuel Gossett. I calculated a
5 probability that that DNA could of come from another
6 individual chosen at random. That probability is
7 approximately one in thirty-one quintillion.

8 The other sample from that washcloth, I also developed
9 a DNA profile from it. I got what's determined as a partial
10 profile. I didn't get a full result. It means that, that
11 one or two locations some of the DNA information was not
12 present. Maybe because of the amount of sample present.
13 But that DNA profile, partial DNA profile that I did develop
14 also matched the DNA profile of Samuel Gossett.

15 Q So, would the washcloth samples, we can say that was
16 Mr. Gossett's blood---

17 A Yes, sir.

18 Q ---on the washcloth.

19 Okay. Now, the knife blade Mr. Bradstreet sent you a
20 swab of, what was that result?

21 A Okay. There was also blood indicated on that knife
22 blade. I extracted DNA. Again I developed what's known as
23 a partial profile. That partial profile matched the DNA
24 profile of Samuel Gossett.

25 Q Show you State's Exhibit No. 26.

Ken Bogan - Direct examination
by Solicitor Balsa

1 would that item correlate with the swab from Item 7 in
2 your tests?

3 A It -- this is a package that has our SLED lab number,
4 L043604. It's listed as Item 7 and it has Mr. Bradstreet's
5 initials on it, and it does correlate to a knife blade.

6 Q Okay. So Item -- so, 7.1 would come from Item 7?

7 A Yes, 7.1 was a swab taken from this sight.

8 Q And your analysis of 7.1 shows it was a match to the
9 blood of Samuel Gossett?

10 A That's correct.

11 Q Now, let's talk about the other items before we get to
12 Mrs. Gibson's submissions.

13 You received a cigarette butt?

14 A Yes, sir, I did.

15 Q Okay. What was your analysis of that?

16 A I attempted to cut an area off the filter of the
17 cigarette butt and extract DNA from that. My findings were
18 that there was just an insufficient amount of DNA present on
19 this cigarette butt for my DNA analysis and comparisons.

20 Q So, what does that mean?

21 You can't determine anything?

22 A I could not determine who the user of that cigarette
23 was.

24 Q Okay. All right. Now, let's talk, let's jump to the
25 swabs of the beer cans, 10.1 through 10.6.

Ken Bogan - Direct examination
by Solicitor Balsa

1 You had six swabs from the beer cans that law
2 enforcement provided you?

3 A Yes.

4 Q Okay. Was there anything -- what were the results of
5 those, if any significance?

6 A The -- I did the same process on those swabs. I
7 extracted DNA from them. On two of the swabs, which are my
8 Items 10.1 and 10.2, there was an insufficient amount of DNA
9 present for me to do a comparison or actually to even
10 develop a DNA profile. On -- try to do this in order.

11 On 10.3 and 10.4, no DNA profile was developed. I had
12 a small amount of DNA. I attempted to develop a profile.
13 It, it just was no DNA profile developed when I ran it
14 through the test.

15 On Swab 10.5, I did develop a DNA profile at the time.
16 It was from an unidentified individual is what my report
17 reflects. I later received a sample, a DNA sample from
18 Mr. Phipps, developed a profile from his known DNA standard,
19 compared it to the profile that I got from the beer can, and
20 that profile matched.

21 Then there was one other item. That was a beer can, my
22 swab 10.6, for I assume the sixth beer can. I developed a
23 partial DNA profile from that. That partial DNA profile
24 matched the DNA profile of Samuel Gossett.

25 Q So, of the six swabs from the beer cans, one can be

Ken Bogan - Direct examination
by Solicitor Balsa

1 identified to Mr. Phipps, one can be identified to
2 Mr. Gossett, and four were, you were not able to identify or
3 basically didn't have enough there to identify?

4 A That's correct.

5 Q Okay. Would you use the word unidentifiable for those?

6 A For which ones now?

7 Q For the four that you could not---

8 A No, sir.

9 Q ---match anybody?

10 A No, I was, I was not able to even get a DNA profile
11 from those. So, they -- absolutely no comparison could be
12 done. On one of the beer cans I did not have a, a standard
13 from Mr. Phipps at the time. I had no idea who that profile
14 belonged to. It did not belong to Samuel Gossett. It did
15 not belong to Sheila Mills, Cedric Sullivan, or Calvin
16 Lynch. I later got a DNA standard from Mr. Phipps, and
17 developed a profile, compared the profiles from that fifth
18 beer can, and it matched Robert Phipps.

19 Q And maybe a -- just as a matter of semantics, but if
20 you qualify something as unidentifiable, does that mean that
21 you can later identify it if you get a proper standard?

22 A It, it can be compared. Until I have somebody that it
23 matches, it is unidentifiable.

24 Q Okay.

25 A It is not unidentifiable, but it is from an

Ken Bogan - Direct examination
by Solicitor Balsa

1 unidentified individual---

2 Q Okay.

3 A ---at that time.

4 Q All right. Now, and then the other four items, you
5 don't use the word unidentified. You just use the word --
6 what word do you use, not enough?

7 A Yes, that -- I -- on some of them, there, there's a
8 process in developing a DNA profile. I go through the
9 extraction process, and I've described that where I pull the
10 DNA out of the stain or out of biological material. In this
11 case it was on the beer cans. The next step would be to
12 quantitate them and to see if I actually have any DNA
13 present. If there's no DNA present, then I stop right there
14 because there's no point in, in taking it further. I know I
15 won't be able to develop a profile.

16 In some instances there may be a small amount of DNA
17 present that I can attempt to get a profile from. So, on a
18 couple of these swabs I had insufficient DNA to go forward.
19 Some I had sufficient amount of DNA to go forward. But when
20 I ran an attempt to get a profile, no profile was developed,
21 which actually meant that there was probably insufficient
22 amount to begin with. But I -- at least I tried.

23 Q Okay. Now let's move to the swab of the inhaler.

24 What were your findings on that?

25 A I, again, attempted to extract DNA from that inhaler.

Ken Bogan - Direct examination
by Solicitor Balsa

- 1 I got a small amount of DNA. When I attempted to develop a
2 profile, no profile was developed, which probably indicates
3 that there was insufficient amount of DNA there.
- 4 Q Okay. Now I want to go to the nail scrapings. Your
5 Item 9.
- 6 A Yes, sir.
- 7 Q Is that the same as State's Exhibit No. 30?
- 8 A Yes, State's Exhibit No. 30, again, has my case number
9 here. It's my Item Number 9, has my initials in several
10 places on this outside container as well as on the inside.
11 This contained what is known as nail scrapings from Samuel
12 Gossett.
- 13 Q And how was it actually packaged?
- 14 A Packaged just like this.
- 15 Q Sealed up in that.
16 When you open it---
- 17 A Yes.
- 18 Q ---what did you find?
19 How was it inside?
- 20 A I, you know, I could look back because I really don't
21 remember.
- 22 Q Okay. Was -- would it have been in a white paper?
- 23 A I hate to answer that when I don't really recall.
- 24 Q Okay. Go ahead.
- 25 A Nail scrapings folded up inside this.

Ken Bogan - Direct examination
by Solicitor Balsa

1 Q Okay. So, you opened it up and what do you do with
2 that?

3 A Actually two of them in here. What I do is I collect
4 the debris. The debris would be the debris that comes from
5 underneath the nails. I, I take that debris. I perform the
6 same analysis on it. I try to pull the DNA out by
7 extracting it. I quantitate it and attempt to develop a DNA
8 profile from it.

9 Q And what were your findings on that?

10 A When I developed that DNA profile, my results indicated
11 that it was a mixture, it was a mixture of at least two
12 individuals. It was consistent with a mixture of DNA and,
13 from Samuel Gossett and also Robert Phipps.

14 Q So, you would expect it to be consistent with Samuel
15 Gossett if it came from him?

16 A I would expect to find his DNA under his own
17 fingernails, yes.

18 Q Okay. And what do you mean by consistent with Samuel
19 Gossett, or excuse me, with Mr. Phipps?

20 A It -- if you recall, I mentioned earlier in some
21 instances I get a partial profile. I don't get a full
22 profile. A full profile to me is when I get, under the
23 technology at the time, approximately 12 locations of DNA
24 that I can compare. In this particular instance I didn't
25 get a full profile, but the DNA mixture was consistent with

Ken Bogan - Direct examination
by Solicitor Balsa

1 DNA from Samuel Gossett. And when I also compared DNA that
2 was foreign to Samuel Gossett to the DNA profile of Robert
3 Phipps, it was consistent with his profile. So, it could
4 have come from Robert Phipps.

5 Q Okay. Now, let's move to the items that you received
6 from Verona Gibson.

7 Starting with the cuttings from the sweat pants.

8 A Yes, Verona Gibson had processed some clothing items
9 from Samuel Gossett. She made cuttings from, from some
10 sweat pants, from a shirt. She also produced some swabs
11 from knife handles. She produced swabs and cuttings from
12 another shirt and swabs from social Security card and swabs
13 from the credit card.

14 Q Let's see if we can speed this grouping up.

15 Did you find anything of value on any of these items?

16 A The first cutting that she had taken from the sweat
17 pants, there was blood indicated on that cutting. I
18 extracted DNA from that cutting, compared the DNA profile
19 that I developed from it, compared it to the victim and to
20 Robert Phipps. It matched the DNA profile of Robert Phipps.
21 I also calculated a probability that it could of come from
22 another individually, individual chosen at random, and the
23 probability of finding somebody else is one in two hundred
24 seventy quadrillion.

25 The second cutting that she had taken from the sweat

Ken Bogan - Direct examination
by Solicitor Balsa

1 pants, developed a DNA profile from it, compared it again to
2 Samuel Gossett and Robert Phipps. That one was also a
3 mixture and Samuel Gossett and Robert Phipps could not be
4 excluded as possible contributors to that item.

5 Q Can you explain what you mean by that?

6 A The profile -- the DNA profiles that I get, I
7 absolutely know that it's a mixture of at least two
8 individuals. I can identify characteristics that could have
9 come from Samuel Gossett, Gossett and also DNA
10 characteristics that could have come from Robert Phipps.
11 So, it's consistent with being a mixture of both their DNA.

12 Q While you can't call it a definite match, you can
13 certainly say it could be him?

14 A That's right.

15 Q And follow this up, State's Exhibits 39 and 40, those
16 have been the two cuttings that you would of received?

17 A Yes, State's Exhibit 39 and 40 are the two cuttings.
18 Again, they have case numbers at the top with my case number
19 and my initials on both of them.

20 Q Okay. So, cutting 13.2.1, actually your analysis is
21 it's the blood of Robert Phipps --.

22 A That's correct.

23 Q -- which is State's Exhibit 39.

24 Now, what did you find from the other items that you
25 received from Mrs. Gibson?

Ken Bogan - Direct examination
by Solicitor Balsa

1 A The other items included a cutting from a shirt, DNA
2 profile from that matched Samuel Gossett. Swabs from a
3 knife handle. There were two, I assume two different knife
4 handles cause I had, had two different swabs and two
5 different items numbers. There was partial DNA profile
6 developed, but they were insufficient for me to reliably
7 compare them to another individual and come to a conclusion
8 that it either matched or even didn't match. It was just
9 insufficient for reliable interpretation.

10 Other items were---

11 Q Let me let, ask you to pause right there---

12 A Sure.

13 Q ---and let me ask you a question about the swabs from
14 the knife handles.

15 So, are you telling us that we can't determine who
16 handled those knives?

17 A That's my opinion, yes.

18 Q Okay. All right. Move on to the next item please.

19 A There was a, some samples taken from a shirt reported
20 to be belonging to Samuel Gossett. There was a swab from
21 the shirt and three cuttings that there was blood indicated,
22 and the DNA profiles from those items matched the DNA
23 profile of Samuel Gossett.

24 There was a swab from a social security card that had
25 some blood on it. That DNA profile also matched Samuel

Ken Bogan - Direct examination
by Solicitor Bulsa

1 Gossett. There was another swab from the Social Security
2 card. That was collected outside the areas where blood
3 would be, and that would be an attempt to detect what we
4 call maybe touch DNA, DNA that might, might be transferred
5 when somebody touches or handles an object. DNA can be
6 transferred from skin cells on the fingers to an object.

7 So, I examined that. I was not able to develop a DNA
8 profile from that. No human DNA was actually detected from
9 that item.

10 I did the same analysis on a credit card. There was a,
11 a blood stain indicated. I attempted to develop a DNA
12 profile and was not able to get a DNA profile from that
13 blood stain. And also, again, that credit card was swabbed
14 for touch DNA, and there was no DNA or no human DNA detected
15 from that swab.

16 Q Let me ask you a couple of follow-up questions related
17 to those cards.

18 These have been the items you would of examined that
19 would of, the swabs would of come from, State's 37 and 38?

20 A Yes, State's Exhibit 37 is marked with a case number as
21 Verona Gibson's initials and Item 18. So, that would
22 contain the Social Security card.

23 Q And before you go to that.

24 From the Social Security card, you were able to
25 identify Mr. Gossett's blood on it?

Ken Bogan - Direct examination
by Solicitor Balsa

- 1 A That's correct.
- 2 Q Okay. But you couldn't identify who may of touched it?
- 3 A That's correct.
- 4 Q Okay. Now for the next card.
- 5 A State's Exhibit 38, again, bears the SLED case number,
6 Verona Gibson's initials. It indicates that it's Item 19 on
7 our report, which are swabs from the credit card. So, in
8 this container would be the credit card.
- 9 Q Okay. And from those swabs you weren't unable to
10 determine anything?
- 11 A That's basically true. I was able to determine that
12 there was human DNA present, but insufficient to develop a
13 DNA profile from it where the blood stain was. From the
14 touch area, I was not able or no human DNA was detected.
- 15 Q Now, Agent Bogan, from the number, numerous items,
16 samples that you examined, when you were able to make
17 identifications, were you able to identify everything that
18 was, that could be identified?
- 19 A If you're asking did I, of, of the profiles that I was
20 able to develop---
- 21 Q Yes, sir.
- 22 A ---was I able to determine what the source of those DNA
23 profiles were?
- 24 Q In DNA language I guess, yes, sir.
- 25 A Well, basically where I was able to develop a DNA

Ken Bogan - Direct examination
by Solicitor Balsa

1 profile I was able to compare it. The DNA profiles that I
2 did develop either, were matched DNA from Samuel Gossett or
3 they matched DNA from Robert Phipps or they were a
4 combination or consistent with a mixture of DNA from those
5 two individuals.

6 Q And your other items that you did not, were unable to
7 identify or create a profile, those can't be identified to
8 anybody?

9 A No.

10 Q Okay. Thank you. Answer any questions Mr. Brannon may
11 have.

12 CROSS-EXAMINATION

13 BY MR. BRANNON:

14 Q Good afternoon, Mr. Bogan.

15 A Good afternoon.

16 Q I want to start with the washcloth. If you'll, if
17 you'll get your, your results, your printouts and start with
18 the washcloth.

19 A Okay.

20 Q You were able to, I think you said, to find a, a sample
21 there, and I believe you found blood belonging to
22 Mr. Gossett, correct?

23 A Yes, sir, that's correct.

24 Q And you said the chance of randomly selecting another
25 donor was what?

Ken Bogan - Cross-examination
by Mr. Brannon

- 1 A One in thirty-one quintillion.
- 2 Q All right. What's the population of the earth?
- 3 A Approximately six to seven billion.
- 4 Q Okay. So, how many is a quin, quintillion?
- 5 A As far as it relates to the---
- 6 Q Like compared to a billion, how many billion are in a
- 7 quintillion?
- 8 A About, about a billion times the earth's population.
- 9 Q All right.
- 10 A At, at least a billion times it.
- 11 Q So, randomly selecting somebody with a similar DNA
- 12 pattern on this washcloth, it's just not gonna happen,
- 13 right?
- 14 A In my opinion, no.
- 15 Q Okay. Then we move down to the beer cans.
- 16 Item 10.5, you matching, you matched some DNA to Robert
- 17 Phipps, correct?
- 18 A Yes, sir.
- 19 Q What was the chance of randomly selecting another
- 20 possible donor for that DNA?
- 21 A One in two hundred and seventy quadrillion.
- 22 Q Quadrillion is not as much as a quintillion, right?
- 23 A No, it is not.
- 24 Q Okay. But you're pretty sure it's Robert Phipps DNA on
- 25 that beer can, right?

Ken Bogan - Cross-examination
by Mr. Brannon

1 A Yes, sir.

2 Q Then we move to the sweat pants.

3 You have a cutting there wherein the DNA profile
4 matched Mr. Phipps, correct?

5 A Yes, sir.

6 Q And I believe the chance of randomly selecting another
7 donor with a similar DNA profile would be one in two hundred
8 seventy quadrillion, correct?

9 A Yes, sir.

10 Q You tested a sample on a shirt. Actually, actually
11 there were two different samples from a shirt wherein the
12 blood samples matched the victim, correct?

13 A I think I had several -- I think I had at least two
14 different shirts, but I'm not -- I'd have to check that.
15 But I do have a cutting from a shirt, Item 14.1, that
16 matches the DNA profile of Samuel Gossett, yes.

17 Q And what's the chance of randomly selecting somebody
18 with a similar profile?

19 A One in thirty-one quintillion.

20 Q Quintillion.

21 So, that's, that's more than the -- that's a bigger
22 chance than off the knife blade, right?

23 A It's a more rare event.

24 Q More rare event.

25 A In other words -- I don't, I don't know what you mean

Ken Bogan - Cross-examination
by Mr. Brannon

1 by bigger chance.

2 Q Okay. More rare events. I mean a bigger number
3 than---

4 A Yeah, a bigger number.

5 Q Okay.

6 A But it's actually a fraction. So, it's a smaller, it's
7 actually a smaller number.

8 Q Okay. And what about the Social Security, the blood on
9 the Social Security card, what was the possibility for
10 randomly selecting someone other than Mr. Samuel Gossett?

11 A It's the same. The probability is one in
12 thirty-one quintillion.

13 Q Okay. All right. Then I want you to go to the nail
14 scrapings please.

15 A Yes, sir.

16 Q Your report says the DNA material found in this is a
17 mixture, correct?

18 A Yes, sir.

19 Q And there's a period right after that.

20 A Yes, sir.

21 Q And then after the period it says something to the
22 effect of Samuel Gossett and Robert Phipps can not be
23 excluded as possible contributors to this mixture, correct?

24 A Yes, sir.

25 Q Am I close?

Ken Bogan - Cross-examination
by Mr. Brannon

- 1 A Yeah, I think you're right, right on the mark.
- 2 Q And then you give a range or a possibility of selecting
- 3 somebody without, with, with a, with a similar DNA profile,
- 4 correct?
- 5 A That's very close. What I did is I calculated a
- 6 probability of an unrelated person that would have a profile
- 7 who could have contributed to that sample.
- 8 Q What's that ratio?
- 9 A It's approximately one in nine.
- 10 Q Okay. So, we went from 39 quintillion, which is, what
- 11 you say five billion times the population of the earth?
- 12 A Somewhere in that neighborhood at least, yes, sir.
- 13 Q And---
- 14 A I'm trying to do that math in my head and it's a little
- 15 bit difficult.
- 16 Q And I couldn't do it.
- 17 But to the nail scrapings where it's one in nine. Not
- 18 quintillion. Not billion. Not million. Not thousand. Not
- 19 hundred. But nine.
- 20 A That's correct.
- 21 Q I believe Mr. Bulsa said it could have come from Robert
- 22 Phipps, right?
- 23 A I don't remember if he said that or if I, I may of said
- 24 that. I just don't recall.
- 25 Q Could have come?

Ken Bogan - Redirect examination
by Solicitor Bulsa

1 A Could have come; that's correct.

2 MR. BRANNON: No further questions, Your Honor.

3 THE COURT: Redirect?

4 REDIRECT EXAMINATION

5 BY SOLICITOR BULSA:

6 Q What does the probability of one in nine mean?

7 A It basically means that if you had chosen, if you had
8 nine people in a room and you chose one at random, they also
9 could have a similar DNA profile.

10 Q Can you exclude a portion of society or mankind?

11 A Yes, basically that comes out to probably about,
12 excluding about eighty something percent of the population,
13 eight something -- eight percent of the population. Around
14 eighty percent. I'll say approximately eighty something
15 percent, between eighty and ninety percent of the population
16 would be excluded as a possible contributor. They could not
17 have contributed to this sample.

18 Q But Mr. Phipps was in that grouping that could have?

19 A Yes.

20 Q Thank you.

21 THE COURT: Mr. Brannon.

22 RECROSS EXAMINATION

23 BY MR. BRANNON:

24 Q Mr. Bogan, I, I, I don't do math.

25 But in the comparison of one to nine, that means the

Ken Bogan - Recross examination
By Mr. Brannon

1 total group includes nine people, right?

2 A No, basically what I did is I gave an analogy. For
3 example, if you had ninety people in a room, chosen at
4 random, ten of those could possibly have contributed to this
5 blood stain or if you had -- I'm, I'm not selecting it down
6 to say only nine people could.

7 Q Right.

8 A Okay.

9 Q But one out of nine means one out of nine people?

10 A Yes.

11 Q So, if you, if you extrapolate that and you get to
12 ninety people, that means nine out of ninety people could
13 have contributed to that, correct?

14 A Actually ten out of -- no, ten out of nine, ten out of
15 ninety.

16 Q All right. Well then you get to 900 isn't a hundred?

17 A Yes.

18 Q So, probably three people in this courtroom could have
19 contributed to that fingernail scraping match, right?

20 A Based on this particular calculation, and I'd have to
21 explain what I mean by this calculation, it's a very
22 conservative calculation. There is more information present
23 in the DNA profile that was developed that was not used in
24 the calculation, and it's not used because of the
25 conservative approach that the SLED laboratory uses in

Ken Bogan - Recross examination
By Mr. Brannon

1 making those calculations.

2 In other words, some of the DNA information is in such
3 a range that we, we and I approach it with caution and I
4 chose not to use some of the information in producing this
5 calculation. Although the information that's present in
6 those profiles is still consistent with the DNA profile of
7 Samuel Gossett, and a combination with Robert Phipps, but
8 those particular locations were not used in calculating this
9 statistic, and I'm not sure if I went around that question
10 or if I answered it directly or---

11 Q Well, I, I think that was a really nice two step around
12 it, but my question was, based on your analogy, looking
13 around the courtroom and counting the or considering the
14 number of people, about three of us in this courtroom could
15 have met that match, correct?

16 A Could have met the match that I used for the
17 calculation, yes.

18 Q Thank you. Nothing further.

19 SOLICITOR BULSA: Nothing further.

20 THE COURT: Sir, you may step down. Unless there's an
21 objection, you can be excused.

22 Anyone objection?

23 MR. BRANNON: No.

24 SOLICITOR BULSA: No, sir.

25 THE COURT: You're excused. Thank you very much for

1 coming today, sir.

2 All right. All right. Ladies and gentlemen of the
3 jury, it is now shortly after one o'clock, and I always told
4 you we try to take a break between 12:30 and 1:00 for lunch.
5 So, we're gonna take that break at this time.

6 Same instructions I gave you yesterday when you left
7 the courthouse. Don't listen to, watch, or read any media
8 reports. Don't discuss the case with anyone even among
9 yourselves, and don't allow anyone to discuss it with you.
10 Don't attempt to gather any information outside of the
11 courthouse concerning this case.

12 I give you a little more than an hour because some of
13 you might like to go home and then return. So, be back in
14 the jury room at 2:15. We should be in a position to resume
15 the case at that point in time.

16 So, at this point in time you can take your lunch
17 break.

18 Thank you very much.

19 Everyone remain seated while the jury retires.

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

22 THE COURT: All right. Court will be in recess until
23 2:15.

24 Defendant remains in custody.

25 Thank you.

1 (Whereupon, Court was in recess for the lunch break.)

2 THE COURT: All right. Is the State ready to proceed?

3 SOLICITOR BULSA: Yes, sir, we're -- we called for

4 Doctor Wren.

5 THE COURT: Uh-huh. (Affirmative).

6 SOLICITOR BULSA: Hopefully he'll be here shortly, but
7 we do have one witness.

8 THE COURT: All right. That will be fine.

9 And is the defense prepared to go forward?

10 MR. BRANNON: Yes, Your Honor.

11 THE COURT: Bring the jury in.

12 (Whereupon, the following takes place within the
13 presence of the jury.)

14 THE COURT: All right. The record will reflect that
15 all the jurors have returned to the courtroom.

16 I trust everyone had a good lunch. Luckily the rain
17 kind of held up for us while we had lunch so we can get out
18 and get in.

19 When we broke earlier the State was in the process of
20 presenting its witnesses.

21 And the State, at this time, can call its next witness.

22 Mr. Bulsa.

23 SOLICITOR BULSA: Thank you, Your Honor.

24 The State calls Russell Porter.

25 THE COURT: Sir, if you'll come forward to my left to

Russell Porter - Direct examination
by Solicitor Balsa

- 1 Q And what type of crimes do you investigate?
- 2 A Generally I do major crimes, homicides, assaults.
- 3 Q And back in April of 2004, were you assigned as the
- 4 lead investigator in the death of Samuel Gossett?
- 5 A I was.
- 6 Q Did you actually go to the scene of that location?
- 7 A I did.
- 8 Q And when would you have gotten there?
- 9 A Shortly after I received that call that Sunday morning.
- 10 Left at eight o'clock in the morning.
- 11 Q What did you do when you got there?
- 12 A Once I arrived on the scene, talked to several patrol
- 13 officers on scene, talked to the supervisors who had already
- 14 arrived before me. At that time, sent off to have a search
- 15 warrant drawn up for the house.
- 16 Q And why was that?
- 17 A To give us the right to go into the house to seize and
- 18 to process.
- 19 Q Okay.
- 20 A Seize any evidence and process anything in the house.
- 21 Q Did you not know who owned the house at that point?
- 22 A Had a -- well, just the victim's name at the time.
- 23 Q You weren't sure who actually owned it?
- 24 A That's correct.
- 25 Q So, you wanted to make sure you were going in legally?

Russell Porter - Direct examination
by Solicitor Balsa

- 1 A That's correct.
- 2 Q Okay. And once that search warrant came back, what,
3 what occurred?
4 what did you do?
- 5 A At that time several -- David Hogsed, forensic tech,
6 went in. Investigator Dale winningham I think may of went
7 in. I think I went in and maybe one other person.
- 8 Q Okay. And did you view pretty much what we've been
9 seeing---
- 10 A Yes.
- 11 Q ---this assault case?
- 12 A I did.
- 13 Q Okay. Did you begin to try to speak with people?
- 14 A Yes.
- 15 Q Determine what happened?
- 16 A Yes.
- 17 Q Did you speak with Sheila Mills?
- 18 A Yes, I did.
- 19 Q All right. Did you direct that a DNA swab or a swab be
20 taken from her?
- 21 A I did.
- 22 Q Why?
- 23 A For one reason, she was found there at the scene, and
24 obviously she had been in the house. So, of course, she was
25 naturally, you know, first, a first suspect.

Russell Porter - Direct examination
by Solicitor Bulsa

1 Q Okay. Did you have any reason to believe that Shannon
2 Evins might have been involved?

3 A Not at first. I, I really didn't know at the, the
4 beginning. I just know that he was one of the first people
5 in the house also.

6 Q Okay. So, he testified he went in there and just
7 checked on him and backed out?

8 A That's correct.

9 Q Okay. Now, from the DNA testimony we learned that
10 there was a swab taken from a Calvin Lynch I believe.

11 A Calvin Lynch, yes.

12 Q Do you know who that is?

13 A That is the brother of Rosylind Garrett.

14 Q Why was that taken?

15 A He was a -- normally, in these type cases, especially
16 stabbing cases, one of the first or the first people you
17 look at are the family members or friends cause usually it's
18 a personal, personal attack. So, he was the brother of the,
19 his girlfriend. And from rumors and people we talked to in
20 the neighborhood, they may of had some problems or
21 difficult, some issue between them.

22 Q So, you just wanted to rule him out?

23 A Yes, I wanted to rule him out.

24 Q Okay. And do you remember the other individual there
25 was a swab taken from?

Russell Porter - Direct examination
by Solicitor Bulsa

- 1 A A Calvin Sullivan.
2 Q Cedric Sullivan?
3 A Cedric Sullivan, yes.
4 Q Do you remember why he would of been?
5 A I do not. I don't -- I didn't direct him in. Somebody
6 else may of called him in. I don't -- I really don't know
7 who called him to actually give a sample or why.
8 Q But you're the lead investigator?
9 A That's correct.
10 Q And did that information go anywhere?
11 A It did not.
12 Q Okay. Now, this case went unsolved for a while, didn't
13 it?
14 A It did.
15 Q What was the first hit you got regarding Mr. Phipps?
16 A It was a fingerprint from a, from a can.
17 Q And that would of been March of 2005?
18 A Yes, I believe so.
19 Q That's almost a year later?
20 A Yes, sir.
21 Q What did you do when you recovered that print?
22 A When I recovered that print, then the information of
23 the person hit on, began to search for that person.
24 Q Okay. And did you locate that person?
25 A I did.

Russell Porter - Direct examination
by Solicitor Bulsa

1 Q Where did you locate him?

2 A In the -- West Virginia.

3 Q Okay. Did you receive any other information that would
4 link Mr. Phipps to this case?

5 A Later on received a DNA hit also.

6 Q Okay. And when, when do you recall getting that hit?

7 A I don't recall exact date right now. I don't have my
8 notes on me.

9 Q In the Summer of 2005?

10 A Maybe around June or so, somewhere around that time.

11 Q Okay. Did you make attempts to try to bring Mr. Phipps
12 back to Spartanburg?

13 A I did.

14 Q Did you have difficulty, difficulty doing that?

15 A A little difficulty. But just a little bit.

16 SOLICITOR BULSA: Okay. All right. Just beg the
17 Court's indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q Okay. Mr. Porter, answer any questions that Mr.
21 Brannon or Mr. Turnipseed may have.

22 THE COURT: Mr. Brannon, it's your witness.

23 MR. BRANNON: Thank you, Your Honor.

24 May it please the Court?

25 THE COURT: Yes, sir.

Russell Porter - Cross-examination
By Mr. Brannon

1 CROSS-EXAMINATION

2 BY MR. BRANNON:

3 Q Sir, I want to make sure I, I give you the, the
4 appropriate respect.

5 Is it investigator?

6 Is it detective?

7 Is it sergeant?

8 A Either title is the same. Investigator---

9 Q well, you tell me.

10 A Investigator will be fine.

11 Q Thank you.

12 You got a call some time in the early morning hours of
13 April the 4th of 2004 that let you know that this situation
14 had come up and that Mr. Gossett was deceased, correct?

15 A That's correct.

16 Q And then you went to that, the scene on South Center
17 Street, correct?

18 A That's correct.

19 Q You said that yourself and Officer Hogsed and maybe
20 Investigator Winningham?

21 A Maybe a coroner's investigator and I'm not sure who
22 else did the initial, initial walk through.

23 Q Okay. So, there were four or five of you walking
24 through the house initially, correct?

25 A That's correct.

Russell Porter - Cross-examination
By Mr. Brannon

1 Q Were you, at that point, aware that two other city
2 police officers had been in the home?

3 A I was not.

4 Q You were not?

5 A I know at least one had been in.

6 Q Okay.

7 A Original responding officer.

8 Q When did you become aware that there had been other
9 civilians in the home prior to any law enforcement in the
10 home?

11 A Subsequent interviews with those, with those people.

12 Q Okay. So, at the time that you made your initial walk
13 through you didn't know that civilians had been in?

14 A I did not.

15 Q When you went in, was Mr. Gossett covered or partially
16 covered, Mr. Gossett's body, was it partially or completely
17 covered with anything?

18 A I honestly don't remember cause I don't remember going
19 all the way back to his, his body.

20 Q Okay. All right. Now, tell me what the -- what is
21 your standard practice when the, when you are assigned as
22 the lead investigator in a homicide?

23 what, what do you direct your officers, the ones that
24 are working for you, to do?

25 A In this particular case we had at least ten other

Russell Porter - Cross-examination
By Mr. Brannon

1 investigators working. Some of them work -- most of them
2 are experienced. So, most of them were independently
3 working. Whatever they find or whatever may of happened,
4 sometimes they filter that through me and sometimes they
5 would just make their notes and put it in the book.

6 Q Okay. All right. But based on your, on your personal
7 interviews, you directed that certain DNA samples were
8 taken, correct?

9 A That's correct.

10 Q One of those individuals was Mrs. Mills, correct?

11 A That's, that's correct.

12 Q Now, did you speak to her personally or did somebody
13 else talk with her?

14 A I spoke with her personally.

15 Q And at what point in your interview with Mrs. Mills did
16 she begin to admit to you that she was taking things out of
17 the house as she was leaving?

18 A That would of been the, the -- actually it was -- the
19 second interview was conducted by Investigator Boozer and
20 she took that statement.

21 Q Okay.

22 A And then, of course, she told me what she had told her.

23 Q Right.

24 But in your first interview, in your interview with
25 her, she didn't say anything about stealing anything, did

Russell Porter - Cross-examination
By Mr. Brannon

1 she?

2 A She did not.

3 Q So, later on in an interview with Boozer, she then
4 admitted that she pocketed a few things?

5 A That's correct.

6 Q Okay. Now, did you, did you notice, immediately upon
7 your initial walk through, that Mr. Gossett's wallet was,
8 was out of his pocket or wherever he kept it?

9 A I did.

10 Q Did you notice that his wallet or the contents was in
11 disarray?

12 A I did.

13 Q Did you ever ask Mrs. Mills about her having touched
14 the wallet or pilfered the wallet or anything like that?

15 A We did.

16 Q Did she deny that she went through the wallet?

17 A Honestly, I honestly don't remember.

18 Q Okay. Now, you took the first statement, right?

19 A I did.

20 Q You know about the contents of the second statement
21 from Mrs. Mills, right?

22 A Somewhat, yes, sir.

23 Q And then you've been in here for the testimony too,
24 correct?

25 A I have, yes, sir.

Russell Porter - Cross-examination
By Mr. Brannon

1 Q You heard Mrs. Mills say she didn't see, see blood,
2 right?

3 A I did.

4 Q When you walked into that back bedroom, if you walked
5 into the back bedroom, did you notice blood?

6 A I noticed some on the, on the wall. Mr. Gossett was
7 over on the other side of the bed. I actually stopped at
8 the doorway. Just, just generally looked in, saw the
9 clothes on the bed, walls and the floor, couple spots on the
10 wall. At that time, turned it over to Investigator,
11 Investigator Hogsed. I turned around and went out.

12 Q Right.

13 So, you, you, you just went to the door?

14 A Right.

15 Q And you saw the blood on the wall?

16 A Saw a little couple spaces on the wall, yes, sir.

17 Q Mrs. Mills testified that she actually walked up and
18 touched him, right?

19 A Well, I don't know if she touched him.

20 Q Remember she said she felt his arm and it was cold?

21 A Cold to touch, yeah.

22 Q And she said no, Sam, no.

23 Remember that?

24 A Okay. Yes, sir.

25 Q But you were able to see blood on the wall standing at

Russell Porter - Cross-examination
By Mr. Brannon

1 the door, right?

2 A That's correct.

3 Q Okay. What -- other than, other than meeting somebody
4 and asking them to come to City Hall and talk with you, what
5 other types of information or what other sources of
6 information do you have at your disposal?

7 A I have Crime Stoppers, anonymous tips. Now we have
8 what's call Text-A-Tip. Just numerous, numerous ways.
9 Third party.

10 Q All right. Now, is, is 9-1-1 another source of
11 information?

12 A It is.

13 Q Okay. Do you have a copy of your, your incident report
14 or your supplemental report with you?

15 A I do not.

16 MR. BRANNON: Might I approach the witness, Your Honor?

17 THE COURT: You may approach the witness.

18 Q Is this, in fact, your supplemental?

19 A It is.

20 Q All right. Will you look through that report please
21 and I believe on about midway through the second page you
22 reference a 9-1-1 call that was received at 7:35. I believe
23 you have 19:35.

24 But it would of been 7:35 p.m. on April the 3rd,
25 correct?

Russell Porter - Cross-examination
By Mr. Brannon

1 A That's correct.

2 Q And did that 9-1-1 call reference an incident on South
3 Center Street?

4 A It did.

5 Q Did that 9-1-1 call say in the house across the street
6 from---

7 SOLICITOR BULSA: Objection, Your Honor. He's getting
8 into hearsay.

9 MR. BRANNON: I'm asking him to refer---

10 THE COURT: I'll ask you to set a foundation for him to
11 know what's in the 9-1-1 call. He's an investigator. He
12 doesn't work for communications. So, you're gonna have to
13 lay some foundation as to how he might---

14 MR. BRANNON: Withdraw the question. Withdraw the
15 question.

16 Q Was there -- do you have information that there was a
17 9-1-1 call at 19:35 on April the 3rd?

18 A I do.

19 Q Do you have information that leads you to believe that
20 Spartanburg City Police responded to a, to a house on South
21 Center Street in response to that 9-1-1 call?

22 A Yes.

23 Q Who was the -- what was the name of the officer that
24 responded?

25 A Scott Watts.

Russell Porter - Cross-examination
By Mr. Brannon

- 1 Q All right. Did you talk with Scott Watts in your
2 investigation?
- 3 A I did.
- 4 Q Did you look at his incident report?
- 5 A I did.
- 6 Q Thank you.
- 7 All right. Did, did you, later on in your
8 investigation, get some information that led you to talk
9 with a gentleman named Robert Snody?
- 10 A Yes, I did.
- 11 Q Did your discussions with Mr. Snody lead you to a
12 conversation with a man named O'Neal Siebert?
- 13 A It did.
- 14 Q Did you interview O'Neal Siebert?
- 15 A I did.
- 16 Q During your interview with O'Neal Siebert, did you play
17 an audiotape?
- 18 A I played two tapes, yes, sir.
- 19 Q All right. Was one of those audiotapes the 9-1-1 call
20 that was received at 19:35 on April the 3rd, 2004?
- 21 A Yes.
- 22 Q The other tape, do you know how it, where you got it
23 from?
- 24 A I do not.
- 25 Q Did it come from -- did the contents of that tape come

Russell Porter - Cross-examination
By Mr. Brannon

1 from a call into a tip line or something like that?

2 A At the beginning I think it said emergency. So, it
3 must of been a 9-1-1 system.

4 Q Okay. Could it, in fact, have been Crime Stoppers or
5 something like that?

6 A No, actually the operator answered emergency. So, it
7 was 9-1-1---

8 Q Okay.

9 A ---dispatcher.

10 Q All right. Did you play that tape for O'Neal Siebert?

11 A I did.

12 Q On that tape, does the caller identify an individual?

13 SOLICITOR BULSA: Objection, Your Honor. He's getting
14 into hearsay also.

15 THE COURT: At this point in time, ladies and
16 gentlemen, I'm going to have to ask you to step back to the
17 jury room while I discuss this matter with the attorneys.
18 Don't begin any discussions until I've advised you to do so.

19 You may retire.

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

22 THE COURT: All right. The question -- can you restate
23 the question that you intended to answer, Mr. Brannon, ask,
24 Mr. Brannon?

25 MR. BRANNON: Your Honor, I think it was during your

Russell Porter - Cross-examination
By Mr. Brannon

1 interview with O'Neal Siebert did you play the tape. Yes.
2 Then I said, in that tape, does the caller identify and
3 that's when the objection took place.

4 SOLICITOR BULSA: Judge, that's getting into the
5 substance of the conversation which would call for hearsay.

6 THE COURT: I guess you were gonna say identify the
7 defendant or were you gonna say someone else?

8 MR. BRANNON: I was going to ask him if the caller
9 identified an individual named Maurice Andrews as a suspect.

10 THE COURT: All right. Can you tell me why that would
11 not be considered to be hearsay, Mr. Brannon?

12 MR. BRANNON: Well, Your Honor, I can think of several
13 reasons that it would be an exception to the hearsay rule.

14 THE COURT: I'm, I'm listening.

15 MR. BRANNON: One would be declarant unavailable. I
16 don't have the tape. It was lost by the State. Had I had
17 the tape, I might have been able to identify the maker of
18 the call. But I can't. It's gone. Declarant unavailable.

19 Then I would get into the third, my opportunity to go
20 into third party guilt. Your Honor, there was DNA evidence
21 created or derived by the State of South Carolina,
22 fingernail evidence scrapings. There was a, there was DNA
23 gathered which says there's a one out of nine chance that
24 it's somebody other than my client.

25 I have the opportunity, according to the Supreme Court,

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By Mr. Brannon

1 to develop a full defense. This is the man who knows the
2 content of the tape. My only way to go into that tape is
3 through this man. I, I -- according to the Supreme Court, I
4 have the opportunity to develop a full defense. He's the
5 man who had the tape. He's the last person that we know to
6 have had the tape and now we know it's lost. I have to be
7 able to go into this through this witness. So, I think
8 declarant unavailable is one exception.

9 And the third, and the second, the second reason would
10 be the ability to develop a full and complete defense.

11 THE COURT: Be glad to hear from the State.

12 SOLICITOR BULSA: Yes, sir, Your Honor.

13 First as to his first reasoning, a declarant
14 unavailable, that is just a provision of the hearsay
15 exceptions that has certain categories under which if the
16 declarant is unavailable that you could use any statement
17 from him. And his reasoning does not fit in any of those,
18 former testimony, statement under belief of impending death,
19 statement against interest, or statement of personal family
20 history. That's clearly not an exception to the hearsay
21 rule.

22 And as far as the complete defense, this gets into the
23 third party guilt questioning. We addressed that. We
24 touched on it briefly in a pretrial motion.

25 THE COURT: I'm looking at Rule 804 as the one that

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1 he's referring to and I think that you're referring to Mr.
2 Brannon.

3 MR. BRANNON: And, Your Honor, I actually think that
4 that tape recorded conversation or tape recorded information
5 would fall under a couple of those sections in Rule 804.
6 Your Honor, in there he says the caller says Maurice Andrews
7 told me if I don't have, something to the effect if I don't
8 have the money for him by Saturday, I'm gonna end up like
9 Samuel Gossett.

10 THE COURT: Okay.

11 MR. BRANNON: That's one of, one of the exceptions,
12 threat of immanent peril. Statement under death of, under
13 belief of impending death.

14 Statement against interest, Your Honor, in there the,
15 the---

16 THE COURT: Well, wait a second. Let's talk about
17 that. Statement under belief of impending death, that, that
18 says in a prosecution for homicide or in a civil action or
19 proceeding, a statement made by declarant while believing
20 that the declarant's death was immanent. Now, the word
21 immanent would lead, would lead me to believe that there was
22 somebody present that could injure that person.

23 MR. BRANNON: Correct. Correct.

24 THE COURT: I didn't hear -- I listened to that tape as
25 it was played onto the, during the interview, what portion

Russell Porter - Cross-examination
By Mr. Brannon

1 of it was available.

2 MR. BRANNON: Right.

3 THE COURT: It didn't -- I didn't, I didn't get an
4 impression that someone was under an immediate threat of
5 immanent death while they made that statement.

6 MR. BRANNON: I, I agree. But the reason he made that
7 statement was for the purpose of protecting himself from
8 Maurice Andrews.

9 THE COURT: Well, see, if you look at those exceptions,
10 the way I look at those, those have to do with the, with
11 statements that someone would probably not, either were
12 under an oath not to lie or were in almost -- the immanent
13 death would be like the res gestae of a very serious event
14 maybe resulting in death.

15 MR. BRANNON: Right.

16 THE COURT: A statement against interest, which is a
17 statement against the person's interest that made the
18 statement, and then a statement of personal or family
19 history. But all of those have some indicia of truthfulness
20 to them.

21 The conversation I heard could possibly be from someone
22 who's just trying to get that other person in trouble, and
23 could of said that just for the purpose of implicating
24 someone else. I don't know.

25 You follow what I'm saying?

Russell Porter - Cross-examination
By Mr. Brannon

1 MR. BRANNON: I, I do, Your Honor, and---

2 THE COURT: And they didn't identify themselves and in
3 this rule generally you know who the declarant is.

4 MR. BRANNON: I understand that.

5 THE COURT: And in this case we do not know who the
6 declarant is.

7 MR. BRANNON: That is---

8 THE COURT: The person that was confronted, which was
9 the person being interviewed, denied having made the
10 statement or made the call.

11 MR. BRANNON: Right. Now -- and I also understand
12 that, that, the typical situation is somebody whose just
13 been involved in a serious car accident, and, and doesn't
14 think he or she is going to live and they make a statement.

15 THE COURT: Yes. Exactly.

16 MR. BRANNON: Right. Right.

17 THE COURT: It's part of a res gestae. They think
18 they're about to die, they're under a threat of an immanent
19 death. I didn't get that impression from what I heard on
20 that tape that that's what happened here.

21 MR. BRANNON: And, and to quote Your Honor, you said it
22 could have been made by somebody who just wanted to get this
23 other person in trouble.

24 THE COURT: Absolutely.

25 MR. BRANNON: It could been somebody who believed that

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By Mr. Brannon

1 Maurice Andrews was going to kill him---

2 THE COURT: It could of been.

3 MR. BRANNON: ---if he didn't pay his man.

4 THE COURT: Oh, I agree with that. But that's,
5 that's -- see all of these things that are exceptions that
6 we make an exception to the hearsay rule are because they
7 have some indicia or some indication that they, they would
8 be truthful when made, the statement would be truthful when
9 made. The point I was trying to make is I don't see that in
10 this particular case. Someone calling a tip line and
11 leaving a tip, I don't see how that is, is any more reliable
12 than anybody just talking on the street whereas all these
13 exceptions again, former testimony, you'd be under oath.

14 MR. BRANNON: Right.

15 THE COURT: Statement within a belief of impending
16 death, somebody thinks they're either dying or about to die.
17 Statement against interest. That's something I said it
18 hurts me.

19 MR. BRANNON: Well, and I, and I---

20 THE COURT: Which most people don't lie to get
21 themselves in trouble.

22 MR. BRANNON: No, but I can argue that the caller makes
23 a statement against interest. He admits on the tape that he
24 owes Maurice Andrews for drugs. That's clearly a statement
25 against interest. That would have the indicia of

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1 credibility necessary.

2 THE COURT: I, I -- perhaps. There's been a lot of
3 admissions about drug use in this case. So, it's a very
4 unusual situation.

5 And -- but, but do you follow what I'm saying?

6 MR. BRANNON: I, I do, Your Honor.

7 THE COURT: In all these cases though we would know who
8 the declarant was.

9 MR. BRANNON: But I would ask the Court to consider---

10 THE COURT: And here we've got an unidentified
11 declarant, somebody who we don't even know who that is.
12 Stretching the, the exceptions.

13 MR. BRANNON: It, it may be unless the Court looks at
14 the totality of the circumstances and considers the, the,
15 the Supreme Court case that says I am entitled to develop a
16 full and complete defense. My full and complete defense is
17 that there was a third person in that house.

18 THE COURT: Well, now that case goes on to say -- I've
19 read the case. But what it says is that you just don't look
20 at the strength of the State's case.

21 MR. BRANNON: Right.

22 THE COURT: You have to look at the proof that the
23 defendant has, whatever that proof is, and I don't know that
24 it, that -- it didn't do away with the rule. It just said
25 it was misapplied in that case because the Court looked at

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1 the strength of the State's case and didn't allow them to
2 get into it based on the strength of the State's case on
3 third party liability, responsibility I guess is what the
4 word is.

5 MR. BRANNON: Right. And, and I, and I would ask this
6 Court to consider the DNA evidence that's been admitted by
7 the State. Your Honor, there's no question that that drop
8 of blood on those pants belonged to my clients. But Your
9 Honor, that DNA evidence they secured from under the
10 victim's fingernails---

11 THE COURT: And we've let you go into that.

12 MR. BRANNON: With the DNA expert, but not with this
13 witness.

14 THE COURT: Well, I'll let you get into the DNA testing
15 with this witness. The question is are we gonna let this
16 evidence of this unknown person who called in and left a tip
17 on a tip line in when it -- I think it's clearly hearsay.
18 The question is does it fit within any kind of, any
19 exception that's acceptable and that's separate and apart
20 from third party liability. That's a question of whether
21 it's admissible period.

22 MR. BRANNON: Well, Your Honor, then I think it would
23 become admissible at, as being -- it would be admissible not
24 for the truth of the matter asserted.

25 THE COURT: For what purpose?

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1 MR. BRANNON: Well, I, I can ask him did he get a tip
2 that let, that identified Maurice Williams, Maurice Andrews.

3 THE COURT: I'll hear from the State on that point.

4 SOLICITOR BULSA: That sounds like he's, he's asking
5 the question to apply to the jury that that was the person
6 who could of committed this crime. It's clearly being
7 offered to --.

8 THE COURT: well, you know, he does have the right to
9 ask him about his investigation and what he followed up on
10 and why he did certain things or even why he didn't do
11 certain things.

12 SOLICITOR BULSA: Yes, sir, that's why I didn't
13 object---

14 THE COURT: And it, and it might show his state of mind
15 when it---

16 SOLICITOR BULSA: That's why I didn't object to the
17 line of questioning as to had he met with Siebert, had he
18 met with Foggy. But when he wants now to go into somebody's
19 statement and who he said did it, that is being offered to
20 prove that someone else could of committed this crime.

21 MR. BRANNON: I, I think that I should be able to ask
22 please tell me the names of all of the individuals that you
23 have been made aware of by any source that could of been
24 involved in this crime.

25 THE COURT: well, that's a different question than you

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1 proposed a while ago.

2 MR. BRANNON: Well -- but, but if, if this officer says
3 Andrews, then I think I can follow-up that question.

4 THE COURT: I have -- that's -- he hasn't objected to
5 that yet. He might when you do it.

6 SOLICITOR BULSA: Yes, sir.

7 THE COURT: But where we are is talking about the
8 question that you asked, and I'm gonna rule that it's
9 hearsay, and it doesn't fit within one of the exceptions
10 that you've enumerated.

11 So, as far as the contents of that tape, it was given
12 by someone who's unidentified who I don't find falls, falls
13 within any of the exceptions here for someone being
14 unavailable because I think that, that the, the very reason
15 that I indicated. Those exceptions are there because those
16 statements would have some indicia or indication of
17 truthfulness, and I don't find that with the statement that
18 was made in this particular case. Particularly from an
19 unidentified source, unknown person.

20 Now, if you want to ask, as a result of the playing of
21 the tape, what this gentleman did in his investigation or
22 didn't do in his investigation, I'll entertain that
23 objection. If you want to go through a proffer, if the
24 State wants me to have him proffer that testimony and make
25 his objections before I bring the jury back in, I'll offer

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1 an opportunity to do that.

2 Does the State wish to hear what he wants to go into?

3 SOLICITOR BULSA: Yes, sir.

4 THE COURT: All right. I'll allow you to question
5 along those lines. My ruling on the other question though,
6 as far as the contents of the tape, would be that it is
7 hearsay and it doesn't fall within any exceptions.

8 MR. BRANNON: I understand the, the Court's ruling.

9 THE COURT: All right.

10 CONTINUED CROSS-EXAMINATION

11 BY MR. BRANNON:

12 Q All right. Investigator Porter, would you please tell
13 me the names of all of the potential suspects that you
14 became aware of as a result of your investigation?

15 A Javan Moore, Sheila Mills, John Anderson, Eleazor Rice,
16 Maurice Anderson, Gary Geter, Javan Moore, Russell Lynch.
17 That's all I can think of off the top of my head at the
18 moment.

19 Q All right. And of those people that you've just named,
20 how many of them can you testify that you know or have
21 reason to believe were in Mr. Gossett's house at some point?

22 A All those people were except for Anderson.

23 Q well, now, my question was know or have reason to
24 believe. Isn't it true you have---

25 A Everybody except Anderson.

Russell Porter - Cross-examination
By Mr. Brannon

1 Q Well now I think you're avoiding the question though.

2 THE COURT: You can't argue with the witness. You ask
3 the question. He can answer it. I'm not gonna let you get
4 argumentative with the witness.

5 Q All right. All of those people with the one exception
6 you have, you, you know were in the house?

7 A At one point in time or another.

8 Q Okay.

9 A Yes, sir.

10 Q And what about Mr. Andrews?

11 A I have nothing to support that he had been in the house
12 or been seen.

13 Q But isn't it true that you have reason to believe that
14 he may have been in that house?

15 A I got a tip, but it wasn't a, wasn't enough to
16 follow-up and to that extent, no.

17 Q But isn't a tip, wouldn't that be qualified as a
18 reason?

19 A No, it would be just a tip. That wouldn't make it a
20 reason.

21 Q Okay.

22 A I couldn't make it a reason. So --.

23 MR. BRANNON: All right. That.

24 THE COURT: State have any objection to that line of
25 questioning?

Russell Porter - Cross-examination
By Mr. Brannon

1 SOLICITOR BULSA: Yes, sir, as far as the naming of the
2 tip, and I don't actually like him going into naming all the
3 suspects. I think that actually leads into third party
4 guilt suggesting that somebody else could of been involved.

5 THE COURT: well, I'm gonna allow him to ask those
6 questions.

7 SOLICITOR BULSA: As far as you're gonna let him go
8 into the fact he got a tip?

9 THE COURT: well, he gave, he gave that answer. He
10 didn't ask that question is the way I understood it. He
11 said how did you get the information. He said it was a tip.

12 SOLICITOR BULSA: I have one question.

13 THE COURT: And I have, I have a little bit of it --
14 now, the tape that I heard, correct me if I'm wrong, Mr.
15 Brannon, said that if you don't pay your debt you're gonna
16 end up like I didn't hear anything in that tape that put
17 Mr. Anderson in the house.

18 MR. BRANNON: Your Honor, there is, there--

19 THE COURT: Now, did I miss something?

20 MR. BRANNON: Yes, Your Honor, you did. Before, before
21 that threat, the, the caller says he, I was with a guy this
22 weekend, and he told me things he did to Samuel Gossett.
23 Then later on he says if I don't give you, if you don't pay
24 me my money, you're gonna end up like him. It's in the
25 tape. I've listened to the tape 20 times, Your Honor. It's

Russell Porter - Cross-examination
By Mr. Brannon

1 there. The caller says the man who he later identified as
2 Maurice Andrews was telling him about things he did to
3 Samuel Gossett.

4 SOLICITOR BULSA: That's not even --.

5 MR. BRANNON: Well, let's play the tape.

6 SOLICITOR BULSA: You're speculating.

7 MR. BRANNON: Let's play the tape.

8 SOLICITOR BULSA: He merely comments about Sam Gossett
9 being dead. He's not admitting that he did it. He's not
10 admitting that the guy told him that he did it.

11 MR. BRANNON: Derrick, I've, I've known you a long time
12 and I've never made anything up in a trial.

13 THE COURT: Well, let's, let's play the tape again.

14 MR. BRANNON: It's not -- it's in the Court record
15 somewhere. I don't know.

16 THE COURT: It's part of the pretrial hearing.

17 MR. BRANNON: Where do we want to play it, Your Honor?

18 THE COURT: Play it up here where I can hear it.

19 THE COURT: Mr. Bulsa, if you want to step up.

20 Mr. Kelley, listen to this, you're welcome to.

21 Mr. Turnipseed.

22 what did we decide, it's at the third break, third
23 chapter?

24 MR. BRANNON: Yes, Your Honor.

25 THE COURT: It went back to where it was.

Russell Porter - Cross-examination
By Mr. Brannon

1 (Whereupon, Defendant's Exhibit No. 1 was played again
2 at this time.)

3 THE COURT: Mr. Brannon, have you looked at the case of
4 State versus Kenlock?

5 MR. BRANNON: I looked at it yesterday, Your Honor,
6 briefly when I pulled the other case.

7 THE COURT: Yes, sir.

8 You want to comment on it?

9 MR. BRANNON: No, Your Honor. I don't, I don't have
10 enough information on it to, to comment on it. If the Court
11 would give me ten minutes I'll go read it.

12 THE COURT: well, I'm getting ready to pull it up.
13 What I know about it, it appears that it says if an
14 out-of-court, if out-of-court statements against penal
15 interest are made by an unavailable declarant, they're
16 offered to exculpate the accused in a criminal trial, they
17 are admissible only if corroborating evidence clearly
18 indicates the trustworthiness of the statements.

19 MR. BRANNON: And I, and I would have to argue, Your
20 Honor, that one in nine in DNA clearly puts somebody else in
21 that house.

22 THE COURT: I think it says that the -- I'm gonna read
23 the case. Only if corroborating evidence clearly indicates
24 the trustworthiness of the statement. I'm gonna read the
25 case and if you want to look for it you, you can. I'm

Russell Porter - Cross-examination
By Mr. Brannon

1 getting ready -- in fact, I've got it right now.

2 MR. BRANNON: And Your Honor, I have no way to pull
3 that case here in the courtroom.

4 THE COURT: Okay. Give me a minute.

5 MR. BRANNON: May I, may I approach?

6 THE COURT: Sure.

7 (Pause.)

8 THE COURT: All right. The Court's gonna take about a
9 five to ten minute recess.

10 You may step down. But please don't discuss your
11 testimony with anyone during that period of time.

12 WITNESS: Yes, sir.

13 (Whereupon, a short recess was taken at this time.)

14 THE COURT: As soon as the defendant comes back in
15 we'll be ready to start.

16 Officer, you can resume the stand.

17 (Whereupon, the defendant comes into the courtroom at
18 this time.)

19 THE COURT: All right. Mr. Brannon, anything further
20 you want to make the Court aware of?

21 MR. BRANNON: Well, yes, sir, Your Honor.

22 I mean you, you read the same case that I did and, and
23 one Court produced a, a single prong test. Another Court
24 created a two prong test. Your Honor, the unfortunate thing
25 is my client doesn't have the ability to prove a one prong

Russell Porter - Cross-examination
By Mr. Brannon

1 or a two prong test. We don't have the tape. The earliest
2 possible moment that I could of known that that tape existed
3 was about four o'clock in the afternoon last Friday. That's
4 when the disk of the interview with O'Neal Siebert was
5 produced for me.

6 Now, I'll take the blame for about a 16 hour delay in
7 actually knowing about the tape, but it took me that long to
8 go through all the disks that they gave me.

9 THE COURT: Yeah. Now, Mr. Brannon, we did have a
10 hearing before the case started though, and I had the
11 investigator on the stand and we determined, through his
12 testimony at that time, that the tape, tape no longer exists
13 as far as we can tell.

14 MR. BRANNON: I understand that.

15 THE COURT: And so, the entire tape is unavailable and
16 will be, would of been unavailable several months ago and is
17 unavailable now and will be unavailable in the future.

18 MR. BRANNON: And it's for that very reason that we can
19 never make those test prongs.

20 THE COURT: And I've already made a finding that that
21 was not done in bad faith. So, that's already on the
22 record.

23 MR. BRANNON: And I'm, I'm not arguing that he, he
24 purposely did away with evidence. What I'm arguing to the
25 Court is I, I have to have the opportunity to develop a full

Russell Porter - Cross-examination
By Mr. Brannon

1 and complete defense. That announcement of O'Neal, of, of
2 Maurice Andrews, that's part of a full and complete defense.
3 I'm don't think that this officer purposely did away with
4 evidence. But it's -- they can't find it. And he didn't do
5 anything to follow-up on the investigation. If I had those
6 pieces of information, maybe I could meet that test and this
7 would be admissible.

8 I'm asking the Court not to hold something that was
9 done inadvertently by the State against my client and
10 prevent him from, from producing a complete defense.

11 THE COURT: Okay. Anything further?

12 MR. BRANNON: No, Your Honor.

13 THE COURT: State wish to make any further argument in
14 the matter?

15 SOLICITOR BULSA: No, sir.

16 THE COURT: All right. It seems to me that what the
17 defense is attempting to use this particular tape or this
18 particular tip for is the contents of a statement made by
19 someone, allegedly made by someone, to an anonymous tipster.
20 The, the statement that's in issue is the statement made by
21 a third party who is identified by the tipster as
22 Mr. Anderson to him, that he relays then to the operator or
23 whoever that was, 9-1-1 operator that he was talking with at
24 the time that he delivered the tip.

25 So, the question is the reliability of that first

Russell Porter - Cross-examination
By Mr. Brannon

1 statement that was made to the tipster. That's the issue
2 that's before the Court today.

3 And according to Kenlock, which is a South Carolina
4 Supreme Court, Court decided in 2000, and we have not
5 located anything that overrules Kenlock, the question is the
6 reliability of that statement, whether it can be
7 corroborated in any fashion whatsoever as having been made
8 in the first place to the tipster and the accuracy of the
9 circumstances and the accuracy, accuracy of that statement
10 when made to the tipster. I've heard no corroborating
11 evidence as to that because, of course, the person who the
12 police thought was the tipster denied ever having made that
13 call or made the statement.

14 So, we don't have anybody to corroborate anything about
15 the statement. I hear, I hear little, no corroboration and
16 Kenlock says that before it becomes admissible it must be,
17 have some corroboration. One of the cases it cites is State
18 versus Doctor where several people gave the same statement
19 at different times to different people and they said that
20 would be corroboration that what was in those statements was
21 true. We have no other statements made by any other
22 witnesses that corroborate this particular statement. I
23 have heard thus far of no physical evidence that puts
24 Mr. Anderson in this house other than what might be
25 contained in the alleged statement that was made to an

Russell Porter - Cross-examination
By Mr. Brannon

1 anonymous tipster.

2 Therefore, it's my finding, under Kenlock, that it does
3 not meet the test set forth by the Supreme Court and I'm
4 gonna refuse to allow it to be admitted or discussed during
5 the case. That's the ruling on that issue.

6 Now, I will, since you proffered testimony, allow you
7 to discuss with him his investigation and who he's
8 investigated and what he's, what he's looked into. You have
9 the right to look into the sufficiency of the investigation
10 done by the police officers. But as far as mentioning of
11 the tip or the contents of the tip, I'm gonna rule that
12 inadmissible.

13 Any question about my ruling from the State?

14 SOLICITOR BULSA: No, Your Honor.

15 THE COURT: Any from the defense?

16 MR. BRANNON: No, Your Honor.

17 THE COURT: All right. Let's bring the jury back.

18 (Whereupon, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. The record will reflect that
21 the jury has returned to the courtroom, and I have made a
22 ruling ruling certain matters as inadmissible.

23 Defense may proceed.

24 MR. BRANNON: Thank you.

25 CONTINUED CROSS-EXAMINATION

Russell Porter - Cross-examination
By Mr. Brannon

1 BY MR. BRANNON:

2 Q Investigator Porter, will you please list for me the
3 names of individuals that, through your investigation, were
4 at least considered to be suspects or witnesses in this
5 case?

6 A Sheila Mills, Shannon Evins, Eleazor Rice, John
7 Anderson, Maurice Anderson, Javan Moore, Russell Lynch,
8 Sheila Mills.

9 Q All right. Do any of those people that you named go by
10 street names, nicknames, or anything like that?

11 A Only one is Eleazor Rice goes by King Dirty.

12 Q King Dirty.

13 Okay. All right. Now, how many of those people that
14 you just named do you know or have reason to believe were in
15 Mr. Gossett's house?

16 A All except one.

17 Q Okay. Well, will you just name the ones that you know.

18 A Eleazor Rice, Sheila Mills, Javan Moore, Russell Lynch,
19 John Anderson.

20 Q All right. And how many of those people did you or did
21 the law enforcement involved in this investigation request
22 DNA from?

23 A Sheila Mills. I don't know if they did Mr. Geter or
24 not. But Geter, Russell Lynch. That's all I can think of
25 at the moment off the top of my head.

Russell Porter - Cross-examination
By Mr. Brannon

1 Q You named nine people I believe. You requested DNA
2 from three or four of them, right?

3 A That's correct. Three of them I think.

4 Q Okay. So, that's either five or six people that you
5 know were in that house, but no DNA was collected from,
6 correct?

7 A I think it was nine, but only three of those folks we,
8 we did, we tested.

9 Q Right.

10 So, three of them you tested. The rest of them you
11 didn't test.

12 A That's correct.

13 Q But you know or have reason to believe were in that
14 house?

15 A That's correct.

16 MR. BRANNON: One second, Your Honor.

17 THE COURT: Yes, sir.

18 (Pause.)

19 MR. BRANNON: Nothing further, Your Honor. Thank you.

20 THE COURT: Redirect?

21 REDIRECT EXAMINATION

22 BY SOLICITOR BULSA:

23 Q Mr. Porter, that's a little misleading question.

24 Know were in the house, what time frame are you talking
25 about?

Russell Porter - Redirect examination
by Solicitor Balsa

- 1 A Unknown time frame. Just as long as you'd been there.
2 There may of been that one time or another been in and out
3 of that house.
- 4 Q would you call those people associates of Mr. Gossett?
- 5 A Some are associates. Some were family members of his,
6 of his or his wife or his girlfriend rather.
- 7 Q Okay. So, that was a list of people that you learned
8 might, might of had some kind of contact with him?
- 9 A That's correct.
- 10 Q At some point in time?
- 11 A That's correct.
- 12 Q Not specifically the morning of his death?
- 13 A That's correct.
- 14 Q And I believe you testified in direct that in cases
15 like this it seems to be a personal crime?
- 16 A Yes, sir.
- 17 Q What do you mean by that?
- 18 A Due to the nature of the close contact that, that's
19 required to stab someone, that's why.
- 20 Q And also the fact that it wasn't a burglary?
- 21 A That's correct.
- 22 Q No---
- 23 MR. BRANNON: Objection.
- 24 THE COURT: What's the objection?
- 25 MR. BRANNON: I think he, I think the question suggests

Russell Porter - Redirect examination
by Solicitor Bulsa

1 facts not in evidence. I mean, I mean that it wasn't a
2 burglary.

3 THE COURT: That was the question, and he can say
4 whether he thought it was or wasn't. What, what's the --
5 I'll hear you, whatever you---

6 MR. BRANNON: Then I would, I would object to the form
7 of the question.

8 THE COURT: I'll ask you to rephrase the question.

9 SOLICITOR BULSA: Yes, sir.

10 Q Was there any evidence that anybody broke into this
11 house?

12 A No evidence found.

13 Q Okay. So, does other evidence suggest that the
14 perpetrator possibly had been invited in?

15 A Possible, yes.

16 Q Okay. So, therefore, is it reasonable to consider
17 persons that knew Mr. Gossett?

18 A That's correct.

19 Q Who might of been invited in at some point in time?

20 A Yes.

21 Q And did your investigation lead to anything further
22 with any of these people?

23 A Did not. Just the basic background checks, and
24 basically about background, interviews.

25 Q The first real break you got in this case was the

Russell Porter - Redirect examination
by Solicitor Bulsa

1 fingerprint?

2 A Fingerprint hit, yes, sir.

3 Q And that was from Robert Phipps, and that wasn't
4 somebody you named, was it?

5 A That's correct. Robert Phipps.

6 Q Now, Mr. Brannon asked you some questions about Sheila
7 Mills and her not seeing blood.

8 Did you speak with her that morning?

9 A I did. First talking to her, they had arrived at the
10 house just before dawn. We got there, of course, overnight,
11 sun up, in the morning time.

12 Q Okay. Did she appear she had been using drugs?

13 A Yes, sir.

14 Q Okay. And did she seem fully aware of what was going
15 on?

16 A No, she was actually -- she was high. She was high on,
17 on crack, been smoking crack all night. From my experience,
18 I could tell she was still, still high.

19 Q Okay. Thank you. That's all I have.

20 THE COURT: Recross?

21 MR. BRANNON: Thank you.

22 RE CROSS EXAMINATION

23 BY MR. BRANNON:

24 Q Investigator Porter, would you please give me the legal
25 definition of burglary.

Russell Porter - Recross examination
by Mr. Brannon

- 1 A Someone entering into a house without being invited.
2 Q Well, isn't it the entering of the home with the intent
3 to commit a crime therein?
4 A It is.
5 Q Okay. Nothing that says you got to break in, right?
6 A That's correct.
7 Q Sheila Mills admitted that she stole from that home,
8 didn't she?
9 A She did.
10 Q That home was burglarized, wasn't it?
11 A No, it wasn't burglarized.
12 Q Okay. Well, let's back up.
13 Entering the home, did Sheila Mills admit she went in?
14 A Under implied consent.
15 SOLICITOR BULSA: Your Honor, I object to that line of
16 questioning. It's going---
17 THE COURT: I'm gonna allow him. You brought that up,
18 and I'll allow him to get into it.
19 A According to Mrs. Mills, she had implied consent to go
20 into the house. She had been there before and she had been
21 known -- she told us she normally goes in.
22 Q Okay. My question, didn't Sheila Mills admit that she
23 entered the home?
24 A She did.
25 Q Did she admit that she committed a crime by removing

Russell Porter - Recross examination
by Mr. Brannon

1 things from the home?

2 A She did.

3 SOLICITOR BULSA: I object to Mr. Brannon's phrasing of
4 the legal definition of burglary. He's leaving an, he's
5 leaving an element out that the officer is trying to add in,
6 which is true.

7 THE COURT: I'm gonna ask the jury to step back into
8 the jury room. Don't begin any discussions concerning the
9 case until such time as I instruct you to do so.

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

12 THE COURT: I asked the jury to step out of the room
13 because I really don't want to confuse the jury about what
14 crime is actually being, being tried here. My understanding
15 of burglary and I believe what the State's objection is is
16 there's an element requiring that the entering must be done
17 without consent, and I believe that is an element of
18 burglary.

19 SOLICITOR BULSA: Yes, sir.

20 THE COURT: Is that not right?

21 SOLICITOR BULSA: Yes, sir.

22 THE COURT: And so, when the police officer said that
23 he felt like the, the lady you're asking about had implied
24 consent because she'd been in many times before, and it
25 was -- I think she described him as a cousin-in-law or

Russell Porter - Recross examination
by Mr. Brannon

1 something is what I recall her testimony to be. That she,
2 in fact, might be family even that went in there.

3 So, I think that's what he was getting too as far as
4 you not asking him about consent, and you have the right --
5 you're on cross-examine, can, examination, can ask him about
6 anything you want to. But we're getting into a situation
7 where I think we may be confusing the jury, and that's the
8 reason I asked them out while I had this discussion with you
9 about what the actual crime is that we're discussing here.

10 Now, do you wish to pursue the line of questioning?

11 I -- you certainly have the right to ask him questions,
12 but I want to be sure that we have a clear understanding and
13 I'll be glad to read the charge on burglary if you'd like
14 for me to.

15 MR. BRANNON: Well, Your Honor, I, I, I think I'm
16 right. It's entering a dwelling of another with the intent
17 to commit a crime therein.

18 THE COURT: All right. I'll get it.

19 (Pause.)

20 THE COURT: The first paragraph on the charge is, and
21 I'll look up the elements if you want me to, State must
22 prove beyond a reasonable doubt that the defendant entered a
23 dwelling without consent.

24 MR. BRANNON: And, and, and I -- Your Honor, I'll, I'll
25 stop arguing. I, I would intend to ask the, the last

Russell Porter - Recross examination
by Mr. Brannon

1 question again, and that would be the only question on that
2 topic, did she admit she stole things from or took things
3 from the home.

4 THE COURT: Well now that may be larceny.

5 MR. BRANNON: Well, Your Honor, I don't -- this, this
6 argument isn't -- I don't think Mr. Gossett could have
7 consented at eight o'clock in the morning to her entering
8 the home. But again, my only question or follow-up question
9 will be did she admit she removed things from the home and
10 then I'll move on.

11 THE COURT: Is there gonna be an objection from the
12 State?

13 SOLICITOR BULSA: Not on that.

14 THE COURT: All right. Bring the jury back.

15 MR. BRANNON: I'm sorry, Your Honor. I'm not trying to
16 waste the Court's time.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 THE COURT: You're getting your exercise today. The
20 jury has returned to the courtroom. I've had a discussion
21 with the attorneys and make no specific ruling.

22 I will allow Mr. Brannon to continue his
23 cross-examination.

24 MR. BRANNON: Thank you.

25 CONTINUED RECROSS EXAMINATION

Russell Porter - Recross examination
by Mr. Brannon

1 BY MR. BRANNON:

2 Q Investigator Porter, I believe my last question was did
3 Mrs. Mills admit that she removed things or took things out
4 of Mr. Gossett's home?

5 A She did.

6 Q All right. Now, after my client was arrested and
7 charged with this crime, what else did you do to further
8 your investigation?

9 A Once he was arrested, just concentrated on him.

10 Q Concentrated on him and nobody else?

11 A Trying to find, trying to find anybody that knew him or
12 saw him.

13 Q Okay. Did you find anybody?

14 A I did not.

15 Q Thank you. Nothing further.

16 THE COURT: Anything further from the State?

17 SOLICITOR BULSA: No, sir.

18 THE COURT: Sir, you may step down and I will let -- I
19 think you're with the, with the---

20 WITNESS: Yes, sir.

21 THE COURT: So, you can remain with us.

22 SOLICITOR BULSA: Doctor Wren.

23 DAVID WREN, being first duly sworn,
24 testified as follows:

25 THE COURT: Sir, have a seat in the witness stand. And

David Wren - Direct examination
by Solicitor Bulsa

1 once seated, if you would, state your name for the record.

2 WITNESS: My name is John David Wren.

3 THE COURT: Mr. Bulsa, your witness.

4 SOLICITOR BULSA: Thank you, Your Honor.

5 THE COURT: And I see you're up.

6 MR. BRANNON: We stipulate to his qualifications as an,
7 as an expert, Your Honor.

8 THE COURT: Accept the stipulation.

9 SOLICITOR BULSA: Yes, sir.

10 THE COURT: All right. Ladies and gentlemen, Doctor
11 Wren is a pathologist here in the, with Spartanburg Regional
12 I believe, and has testified on several occasions in this
13 Court. The defense is stipulated to his qualifications as a
14 pathologist. The State has accepted that. And so, we're
15 gonna determine that he is qualified to give his opinion
16 within that area.

17 Mr. Bulsa, you may proceed.

18 SOLICITOR BULSA: Thank you.

19 DIRECT EXAMINATION

20 BY SOLICITOR BULSA:

21 Q Doctor Wren, I believe the judge just mentioned, but
22 where are you, where do you practice?

23 A I'm a pathologist at Spartanburg Regional Medical
24 Center. Director of the laboratory there.

25 Q And how long have you been practicing medicine?

David Wren - Direct examination
by Solicitor Balsa

1 A There?

2 Q Well, just over---

3 A I started work in Spartanburg as a pathologist in, on
4 October the 18th of 1982 after getting out of my
5 residency.

6 Q Okay. Doctor Wren, as a pathologist, do you conduct
7 autopsies?

8 A Yes, I do.

9 Q And as a result of investigations of homicides?

10 A Yes.

11 Q And April the 4th, 2004, did you have an occasion to
12 perform the autopsy on the body of Samuel Gossett?

13 A Yes, Samuel Roosevelt Gossett, I performed an autopsy
14 in the Spartanburg Regional Medical Center autopsy room on
15 April the 4th, 2004, beginning at approximately 3:00 p.m.

16 Q And Mr. Gossett was a 45 year old black male?

17 A That was -- yes, that was what he was presented as.

18 Q Okay. Was there an officer or do police officers
19 observe the autopsies and collect evidence as you give it to
20 them?

21 A There's always officers and the coroner are always sent
22 to the autopsy. I did not recall, record the names. But
23 there -- they are there and --.

24 Q And did, as part of the autopsy, did you collect some
25 of the victim's blood?

David Wren - Direct examination
by Solicitor Bulsa

1 A Yes, I did.

2 Q And give it to the coroner to be sent to SLED?

3 A Yes, I did.

4 Q And as part of the autopsy, did you collect fingernail
5 scrapings?

6 A If I was asked to. I'm not sure. I made a record that
7 I did. But at, at times they ask me to do it and I do it,
8 and then I initial the envelopes and give those to the
9 police officers.

10 Q We've heard that that was done. There was an officer
11 that testified that you scraped the fingernails.

12 Can you describe exactly how you do that?

13 A Well, the hand -- I did record it. The hands were
14 bagged with paper bags and bagged with paper bags so that
15 the hands did not sweat, which they would in plastic bags.
16 I removed the bags. I take -- I usually take a Q-tip and
17 break the, the, the cotton off, and then I divide the Q-tip
18 in half and make a sharp end with one of them. Then I take
19 a clean piece of paper and put it under the hands and then I
20 just simply scrape under the fingernails with the, the
21 wooden stick and then I fold the stick as well as any
22 scrapings that are removed up in the piece of paper, seal
23 it, and then give it to the evidence officer for the, for,
24 for the, whichever law enforcement jurisdiction comes.

25 Q Okay. You're talking about a wooden Q-stick?

David Wren - Direct examination
by Solicitor Balsa

- 1 A Yes.
- 2 Q Not the kind that we might buy in the store?
- 3 A Yeah.
- 4 Q Okay. Well, we -- mine are, mine are paper.
- 5 A Yeah, well, some of them are. We, in, in medicine, we
- 6 usually use wooden ones.
- 7 Q Okay. All right. Now, with that, has that been one of
- 8 the first things you did?
- 9 A Yes, I do that before starting the autopsy, yeah.
- 10 Q And was Mr. Gossett clothed?
- 11 A Yes, he was fully clothed. He had a black and white
- 12 Adidas sweat, hooded sweatshirt, an underlying short sleeve
- 13 pullover white shirt, and he had on a pair of white Jockey
- 14 shorts, and a pair of white low cut athletic shoes with DMX
- 15 written on those, and a pair of dirty white socks.
- 16 Q Did you examine the clothing for any defects?
- 17 A Yes, I did. There was smeared blood present over much
- 18 of the shirts. He had at least five defects present in the
- 19 left upper portion of the outer garment and several in the
- 20 lower portion. And then in the white shirt underneath he
- 21 had three defects in the collar region. One of which
- 22 actually extended to the edge of the seam itself.
- 23 Q In your expert opinion, what would you say caused those
- 24 defects?
- 25 A Those are consistent with knife defects.

David Wren - Direct examination
by Solicitor Bulsa

1 Q okay.

2 A Or at least a relatively sharp thin object.

3 Q Okay. And did you -- would you have given those
4 clothes to the officer, same officer that would of got the
5 fingernail scrapings?

6 A That's correct.

7 Q Now, describe the conditions of Mr. Gossett if you
8 would.

9 A His condition?

10 Q Yes, sir, his appearance when you examined him.

11 A well, it's -- he had a lot of injuries on him. There
12 were lacerations, abrasions, contusions, and stab wounds.
13 Most of them were about his upper torso and his head. He
14 measured 67 inches long and he weighed 145 pounds. He had
15 multiple abrasions and contusions about his eyes and cheeks
16 as well as visible swelling of the cheeks bilaterally in the
17 left around the eye. He had a superficial circular abrasion
18 along the right lower forehead approximately a half inch in
19 diameter, and he had two superficial stab type wounds or
20 lacerations between the eyebrows, but more to the right
21 side. They measured three-tenths and a half inch in length.

22 There was some swelling of the right lateral eye, and
23 he had abrasion within the eyelid and along the cheek. He
24 had abrasions and/or lacerations along the left upper eyelid
25 with hemorrhage. He had abrasions along the cheek. He had

David Wren - Direct examination
by Solicitor Balsa

1 a laceration, superficial stab defect in the left lateral
2 eye region that measured three-quarters of an inch long and
3 very thin, five one-hundredths of an inch in width, with
4 some degenerative changes from being deceased for some time
5 before he was autopsied.

6 And that wound I could probe it with a probe in
7 multiple directions. So, I couldn't tell exactly which way
8 the wound was going. But nevertheless, it did --
9 inferiorly, it probed to three-quarters of an inch long.

10 He had a, another laceration or stab type wound along
11 the left upper lip near the mid portion. It measured a half
12 inch long and about a tenth of an inch wide, and the lip,
13 the mucosal surface of the inner surface of the lip there
14 was bruised and hemorrhagic from a blow there.

15 He had some remote fractures of his teeth, which I
16 thought happened before this incident in which he died, and
17 those could of contributed to the lacerations, and, and the
18 contusions of his lip as if, because they did have a
19 relatively sharp edge on them. They were partly chipped
20 away.

21 He had a stab wound in the left neck that measured a
22 half inch long and less than three-hundredths of an inch in
23 width and they had a sharp edge inferiorly and to the right.
24 So, it was directed in that direction, the direction where
25 the blunt edge of the blade would of been up to his left and

David Wren - Direct examination
by Solicitor Balsa

1 the sharp edge down toward his chest and the right side.

2 He had a gaping stab and partial laceration separated
3 by about three-quarters of inch from there, and it measured
4 one by twenty-five hundredths of an inch or quarter of an
5 inch that I could probe inferiorly and medially in his chest
6 to a depth of one, I'm sorry, two inches. And then the
7 midline of his neck, he had another stab wound that it was
8 under-minded meaning that it was, you could lift up the skin
9 underneath it. It measured a half inch in length and a
10 tenth of an inch in width and it probed laterally and to the
11 right to a depth of 1.4 inches. That one actually passed
12 through his windpipe, through the trachea in that area, and
13 went behind it into the esophagus, which is in that area.

14 He, in the, in his chest now -- well, he had some
15 abrasions behind his left ear that were just like scratch
16 type abrasions, and in his left precordial region, that
17 means overlying the heart, he had a stab wound that measured
18 six-tenths of an inch in length and a tenth of an inch in
19 width and it was horizontally oriented. I could not tell
20 which end of the wound was sharp because both of them were
21 relatively sharp. But the wound probed medially toward the
22 middle of the body and posteriorly toward the back of the
23 body to about 2.3 inches.

24 And in the lower left chest, there was another
25 superficial stab wound there. It didn't go in very far. It

David Wren - Direct examination
by Solicitor Bulsa

1 was horizontally oriented. The length of the wound was
2 forty-five hundredths or almost a half inch long by five
3 one-hundredths of an inch width, in width. And that sharp
4 edge was laterally and to the left meaning that as these
5 injuries were obtained, there was positioning of the, of the
6 weapon to where the sharp edge started out in one direction
7 and then moved about the body into another direction because
8 of the way most people that hold a knife, if they're
9 stabbing someone, usually, not always, they'll hold the
10 sharp edge toward them and then stab, but it's not unusual
11 for people to do it the other way. And in that case, they
12 hold a handle with the knife sticking out instead of down.
13 In that case, the, the sharp edge is usually held upward
14 rather than downward. Those are general rules of thumb.
15 Not always that.

16 Then he had a, a stab wound in the left neck inferior
17 and posterior to the ear, which was about the same length.
18 It was six-tenths of an inch long, and three one-hundredths
19 of an inch wide. And that, that sharp edge was inferior
20 down toward the bottom of his body and it probed about
21 2.5 inches.

22 And then he had some old scars to his lower part of his
23 chest, and he had a stab type incision in the right
24 mid-quadrant, which was a, was a healed wound from prior
25 surgery.

David Wren - Direct examination
by Solicitor Balsa

1 Now, in his, in his back, he had some, lots of
2 lividity, which is settling of blood after one passes away
3 and is motionless. And he had a huge bruise to his right
4 back that you could see internally. You could see it a lot
5 better than, than exteriorly. But one could see that it was
6 a, a large bruise or what's commonly called a hematoma.

7 Those are his external injuries.

8 Q You described a multitude of injuries.

9 A Yes.

10 Q The lacerations, would they have been caused most
11 likely by someone -- well, what, what kind of object would
12 most likely cause those?

13 A Well, wounds from, that are not, not gunshot wounds are
14 divided into incised wounds, which is actually, or stab
15 wounds, which are, are actually from an incision whereas a
16 laceration is more like a tearing of the skin. If one hits
17 up against something very hard, hard, and the skin breaks
18 open, that's more of a laceration than it is a, an incised
19 or a stab wound.

20 In some cases, particularly after someone starts to
21 decompose, it's very difficult to tell whether something is
22 a laceration or an incised or stab wound. In this case, he
23 had some that I couldn't tell for sure with all the bruises
24 and the abrasions that some of them weren't lacerations.
25 So, I, in some cases, called these incised wounds/laceration

David Wren - Direct examination
by Solicitor Balsa

1 if, if it was indetermined as to which they were.

2 Q What type of objects---

3 A But they were from blunt, blunt trauma usually.

4 Q So, what type of objects would you surmise inflicted
5 these wounds?

6 A Well, the, the, the stab wounds were definitely by a
7 sharp, a long, not real long, but a -- more like a knife
8 that was real thin, had one sharp edge, and one more blunt
9 edge. But the, the width, the thickness of the blade would
10 of been very thin and contrast to a larger one.

11 Q Okay. Let me show you what's been marked State's
12 Exhibit No. 26. Open that up. If you need some gloves,
13 here's some gloves if you want it.

14 A This is a blade of a knife that's evidently been broken
15 off. It measures -- as a rule of thumb, I use my, the width
16 of my fingers, which I measured quite frequently as about a
17 little over two centimeters. And this, if I put off four of
18 them there, it's about probably nine centimeters long. Now,
19 it's got -- looks like it has 7.1 on here.

20 Q That's item number?

21 A An item number?

22 Q Okay.

23 A Okay. It's about nine centimeters. There's 2.54
24 centimeters in an inch. So, this thing is around three, a
25 little over three inches long.

David Wren - Direct examination
by Solicitor Balsa

1 Q Is that---

2 A Between three and a half and four inches.

3 Q Is that knife consistent with the wounds that you
4 identified on Mr. Gossett?

5 A Well, yes, it is. The, the blade itself is a little
6 serrated meaning it's got these little nicks like in it.
7 They aren't very deep. So, they would, they would
8 probably -- I mean they aren't very pronounced. They're,
9 they're -- they are -- it is slightly serrated. In some
10 cases they can leave, as it passes in and then comes back
11 out, it can leave little nicks in the skin. But this one is
12 not deep enough to do that. It could leave a little bit of
13 a hint of that and I looked at the, at the pictures that
14 were taken there, and there is a slight possible
15 irregularity to, to the edges. So, I would say that this is
16 entirely consistent with it.

17 Now, I have to qualify it slightly, slightly because I
18 don't know the exact width of this. But it looks like it's
19 about, up at the upper portion, I wasn't prepared to do any
20 measurements, but it looks like it's probably three-quarters
21 of an inch thick. If, if a break is, is inflicted in the
22 skin, since the skin stretches as everyone knows, there is a
23 rule of thumb that's used -- and we'll talk about one inch
24 because it's easier to remember that.

25 If, if you measure a stab or a gunshot wound or

David Wren - Direct examination
by Solicitor Balsa

1 whatever, a laceration, that's one inch long, it can be
2 inflicted by a weapon that is plus or minus 25 percent of
3 that weapon. In other words, if a, if a weapon is one inch
4 in width across the blade, and not thickness, but width,
5 then if it, if it's one inch, depending on how the skin is
6 when the, when the weapon goes in, the, the hole or the
7 defect that's left by that weapon can be plus or minus a
8 quarter of an inch.

9 So, if you had a one inch blade that's, that's that
10 wide, then it could leave one and a quarter inch to, to
11 three-quarters of an inch width, and it depends on whether
12 the skin stretched out when it goes in or whether it's lax
13 when it goes in as to how big, how wide that would be, and
14 the same thing goes with the sides of the weapons.

15 So, this is a single edge blade. The depth of the
16 wound can vary depending on how much pressure is put behind
17 it, and the, the maximum depth that I remember I measured,
18 as I was going through this, was like two and a half inches.
19 So, this one is certainly long enough to have caused that
20 without going up to the hilt it's called, where the handle
21 would be.

22 So, it is consistent to sum it all up.

23 Q Is there any way you can tell us how long Mr. Gossett
24 was dead prior to the autopsy?

25 A Not really. The only way, the only absolute way to

David Wren - Direct examination
by Solicitor Balsa

1 tell when someone dies is to have a, have a monitor on them.
2 Contrary to things that are presented on TV, you can get a
3 rule of thumb a little bit by measuring body temperature and
4 other things. But there's no absolute way to determine
5 exactly when a person died.

6 Q Can you give us a range?

7 A Yes, if it's necessary.

8 Q Okay. Yes.

9 A He'd been refrigerated for a while. So, that, that
10 affects it some. He did have some fixed lividity meaning that
11 the blood is settled and could not be altered by moving the
12 body, and that occurs -- generally lividity starts or settling
13 of blood to where one can see it and through the skin occurs
14 about four hours, starts about four hours after a person
15 dies. It becomes maximum at about 12 hours, and it becomes
16 fully fixed within 24 hours.

17 So, if a person dies and is lying say on their left
18 side, and they've laid, lane -- if they've laid there for a
19 sufficient length of time for it to become fixed, if you
20 move the body over to the other side, it will still be blue
21 on or that color blue from the settling of the blood will
22 stay there. But it will appear on the other side.

23 So, when I started this autopsy, he had some breakable
24 rigor mortis meaning it was, it was starting to break down,
25 and he had non-blanching livor mortis meaning that it, it

David Wren - Direct examination
by Solicitor Balsa

1 fixed. So, he had been dead at least 12 hours and probably
2 longer. Since he had some remaining rigor mortis, he -- and
3 some of it was cold fixation from being cooled off in the,
4 in the cooler. He probably had not been dead not over 30 --
5 I doubt if he'd been dead over 30 hours, but that's about
6 the closest you can, one can get.

7 Q Can you give us a range between 12 hours and 30 hours?

8 A Yeah.

9 Q Okay. And that was at the time of your autopsy?

10 A That was 3:00 p.m.

11 Q Okay. Can you backdate it?

12 A Thirty hours would of been -- thirty hours would of
13 been nine o'clock the previous morning or the day I did the
14 autopsy, and 12 hours would of been three o'clock, 3:00 a.m.
15 of the morning of the autopsy.

16 Q Okay. Now, Doctor Wren, if someone were holding a
17 knife while stabbing Mr. Gossett, would it be possible for
18 the knife to slip?

19 A Well, when, when -- if somebody's not just standing
20 there letting someone stab them, I'm sure they're, they're
21 trying to defend themselves and, and moving about and both
22 of them are moving about, it's very easy to have
23 something -- and if it's blood on the knives, and, and they
24 can become slick and hard to hold and particularly if one
25 brakes like this one did. They -- people, a person can

David Wren - Direct examination
by Solicitor Bulsa

1 inflict damage themselves. Not saying that the other person
2 could of done something to them also.

3 Q So, the person wielding the knife could of cut
4 themselves?

5 A Could of, yes.

6 Q Thank you, Doctor Wren. Answer any questions -- excuse
7 me. Wait a minute. I have one other question.

8 Did you determine which wound actually killed
9 Mr. Gossett?

10 A Yeah, the one to his chest was probably the, the final
11 blow because it passed the two main vessels coming off the
12 heart. One's the aorta, which takes the blood to the body.
13 The other one's the pulmonary artery that takes blood to the
14 lungs for, for them to exchange carbon dioxide or oxygen.

15 This wound in his chest actually passed through his
16 aorta within the pericardial sack, the, the thin tissue that
17 surrounds the heart that had, partially protects it from
18 other external influences. It passed through the aorta -- I
19 mean the pulmonary artery. And although it doesn't bleed
20 like arterial blood, it's in-between arterial and venous
21 blood. So, he basically bled to death from a stab wound to
22 the heart.

23 Q Thank you, Doctor Wren. Answer any questions either
24 counsel may have.

25 CROSS-EXAMINATION

David Wren - Cross-examination
by Mr. Brannon

1 BY MR. BRANNON:

2 Q Doctor Wren, just two short questions. You -- three.

3 You started your autopsy at three o'clock?

4 A Yes.

5 Q So, your range of possible times of death would of been

6 between 9:00 a.m. the morning before your autopsy and

7 3:00 a.m. the morning of your autopsy?

8 A Yeah, that's, that's a range. But then you, you might

9 use a, any other information you have. If somebody

10 witnessed him being alive at 6:00 p.m., then obviously my

11 estimate is, is overestimated---

12 Q I understand.

13 A ---when he could of been dead.

14 Q I understand.

15 Was there any way possible for you, during your

16 autopsy, to determine the amount of blood that Mr. Gossett

17 lost before the autopsy was performed?

18 A Well, I measured the blood that was in his, within his

19 body. He had 200 cc's in the right plural cavity meaning

20 the place between the lung and the chest, and he had a

21 thousand cc's in the left plural cavity. And he had about

22 250 cc's within his pericardial sack.

23 So, when you add all that up, that's almost 1500 cc's,

24 well, it's 1450 cc's of blood. And what people routinely

25 consider a unit of blood is about 400, about 350 to 400

David Wren - Cross-examination
by Mr. Brannon

1 cc's. When one gives blood, the bag of blood is about 350
2 to 400 cc's. So, about five units of that would of been how
3 much had accumulated in his chest.

4 Q All right. And---

5 A In and around his heart.

6 Q And how much blood -- can you estimate how much blood
7 Mr. Gossett would of had in his body before his death?

8 A One has about 11 to 13 units.

9 Q So, you measured about half of what he would of had
10 prior to these injuries being suffered then, correct?

11 A Yeah, about that was inside.

12 Q Okay. Thank you.

13 One second.

14 (Pause.)

15 MR. BRANNON: Nothing further, Your Honor. Thank you.

16 THE COURT: Redirect?

17 SOLICITOR BULSA: None, Your Honor.

18 THE COURT: Sir, you may step down. Without objection
19 I'll excuse the witness.

20 Any objection?

21 MR. BRANNON: No, Your Honor.

22 THE COURT: You're free to go, sir. Thank you for
23 coming.

24 WITNESS: I apologize for coming like this. I was off
25 today.

Rosylind Garrett - Direct examination
by Solicitor Bulsa

1 THE COURT: That's quite all right. Glad to have you,
2 doctor.

3 SOLICITOR BULSA: Rosylind Gary.

4 ROSYLIND GARRETT, being first duly
5 sworn, testified as follows:

6 THE COURT: Have a seat please. Once you're seated,
7 ma'am, state your name.

8 WITNESS: Rosylind Garrett.

9 THE COURT: Mr. Bulsa, it's your witness.

10 SOLICITOR BULSA: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY SOLICITOR BULSA:

13 Q Good afternoon, Mrs. Garrett.

14 A Afternoon..

15 Q Ma'am, how do you know Sammy Gossett?

16 A He was my fiance.

17 Q And how long had you known him?

18 A Oh, about 12 years.

19 Q Did you and he reside together?

20 A For a period of time, yes.

21 Q And when was that time?

22 A We was living together at the time of his death.

23 Q Where were y'all residing?

24 A [REDACTED] Mauldin Street.

25 Q And whose house is that?

Rosylind Garrett - Direct examination
by Solicitor Balsa

- 1 A That would of been my home.
- 2 Q Okay. Did you ever reside with him at South Center
3 Street?
- 4 A Yes, I did.
- 5 Q When would that have been?
- 6 A It was prior to, before we moved to Mauldin Street
7 cause we had moved from Beacon back to South Center and then
8 to Mauldin.
- 9 Q And South Center Street, that was a family home, right?
- 10 A Yes.
- 11 Q Okay. How long had it been or how long had you been at
12 Mauldin Street?
- 13 A About a year and a half, two years.
- 14 Q Okay. And did Mr. Gossett continue to go over to South
15 Center Street on occasion?
- 16 A Yes, he did.
- 17 Q So, he basically held two residences?
- 18 A Yes.
- 19 Q Mrs. Garrett, when was the last time you actually saw
20 him alive?
- 21 A Saturday morning, which would of been on April the 3rd.
- 22 Q And do you know where he was going?
- 23 A He had left home saying he was going to check on the
24 house on South Center Street.
- 25 Q Did you expect him to return that evening?

Rosylind Garrett - Direct examination
by Solicitor Balsa

- 1 A Yes, I did.
- 2 Q What time did you expect him?
- 3 A Well, basically between -- most of the time before dark
- 4 he would get back home.
- 5 Q Did you get concerned when he didn't come home?
- 6 A Yes.
- 7 Q Did you do anything to try to find him?
- 8 A Well, I got concerned, but basically he was a drinker.
- 9 So, I figured he just had went to the house like he some
- 10 time normally do to have a few beers, get drunk, pass out on
- 11 the couch, you know. So, that was not a big deal when he
- 12 didn't show up.
- 13 Q Okay. So, it wasn't unusual that he would leave and
- 14 not come back?
- 15 A No, it wasn't unusual.
- 16 Q Okay. Now, how did he actually get to the house?
- 17 A He walked.
- 18 Q So, Mauldin Street is within walking distance?
- 19 A Yes.
- 20 Q Okay. Would he have friends over on occasion to drink
- 21 with him?
- 22 A Yes.
- 23 Q Did you know whether he had any trouble with anybody
- 24 recently before his death?
- 25 A No, sir, I didn't.

Rosylind Garrett - Direct examination
by Solicitor Balsa

1 Q When did you actually learn that he had died?

2 A Sunday morning, that Sunday morning at about -- it was
3 about, before eight o'clock.

4 Q Who was responsible for keeping up with the home at
5 South Center?

6 A Well, we were. We would go over and clean and, you
7 know, just hang out, hang around over there sometime.
8 But --.

9 Q Okay. Now, in the bedroom, would you normally have
10 clothes in the closet in the dresser?

11 A Yeah, but we was in the process of moving some of that
12 stuff out of the household. So, the house was kind of torn
13 up just where we was, had been moving stuff back and forth
14 out of the house.

15 Q Okay. So, because the clothes were strewn about, that
16 doesn't really tell us much?

17 A No.

18 Q Okay. Were you able to go -- well, did you go to the
19 house when you learned he died?

20 A Yes, I went.

21 Q Okay. Did you ever -- were you able to go inside?

22 A No, I wasn't.

23 Q Did you go inside after?

24 A Yes, I did.

25 Q Afterwards, did you notice anything out of place?

Rosylind Garrett - Direct examination
by Solicitor Balsa

1 A No.

2 Q Do you know where he would normally keep his wallet?

3 A where he would normally keep his wallet?

4 Q (Nods affirmatively.)

5 A In his pants when he had one.

6 Q Okay. If he were wearing a, a sweat suit, where would
7 he keep his wallet?

8 A When he was wearing a sweat suit, he would have it in
9 his coat pocket if he had coat pockets. You know, he---

10 Q How about if he had pockets in his pants?

11 A Yeah, he basically kept his wallet on him.

12 Q Okay. Do you remember what he was wearing the day he
13 died?

14 A He had on a jogging suit. I'm not sure of the color
15 cause it been quite a while.

16 Q Quite a while, yes, ma'am.

17 Did he normally keep money on his person?

18 A Did he normally keep money?

19 Q Did he always keep cash in his wallet?

20 A No.

21 Q Now, the police collected a lot of stuff from the
22 house, but when you went in, did you notice anything out of
23 the ordinary?

24 A No, I was in distraught. I just didn't really look to
25 see basically whether anything was missing or not.

Rosylind Garrett - Cross-examination
By Mr. Brannon

1 Q Okay. Thank you, ma'am. Answer any questions either
2 attorney has.

3 THE COURT: Mr. Brannon, your witness.

4 MR. BRANNON: Thank you.

5 CROSS-EXAMINATION

6 BY MR. BRANNON:

7 Q Ma'am, please forgive me for this question, did you use
8 drugs?

9 A No, sir, I didn't.

10 Q Did you know that your fiance was allowing people to go
11 to the house on South Center Street to smoke drugs?

12 A No, sir, I didn't.

13 Q You didn't know that?

14 A No, sir, I didn't.

15 Q Okay. Where was Mr. Gossett working at the time?

16 A At the present time he was not working. He had just
17 put in a job application to be working at the hospital.

18 Q Okay. Do you know when the last time it was he worked?

19 A He did in and odd jobs basically all the time. But his
20 last job that I know of was at Springs in Lyman.

21 Q Okay. And how long ago was it before that?

22 How long ago was it when he had that job?

23 A Oh, he was -- prior to his death, about three to six
24 months.

25 Q Okay. So, three to six months before he died?

Rosylind Garrett - Cross-examination
By Mr. Brannon

1 A Yes.

2 Q Okay. And, and did he keep his Springs card in his
3 wallet?

4 A He didn't have a Springs card.

5 Q He didn't have a Springs card?

6 A Oh, well, to my knowledge he didn't have one. I didn't
7 go through his wallet or whatever. So, I don't know, you
8 know -- I've never, wasn't the type of person to go through
9 his wallet. So, I don't know what --.

10 Q Okay. But you are aware that he, he kept his wallet
11 in, in his, either his pants pocket or his---

12 A Yes.

13 Q ---jacket packet?

14 A Yes.

15 Q And did he carry that wallet regularly?

16 A Yes.

17 Q He did. Thank you.

18 One second, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. BRANNON: Nothing further, Your Honor. Thank you.

22 THE COURT: Redirect?

23 SOLICITOR BULSA: No, sir.

24 THE COURT: Ma'am, you may step down.

25 State may call its next witness.

1 SOLICITOR BULSA: May I confer with the court reporter
2 a moment?

3 THE COURT: Yes, sir.

4 (Pause.)

5 SOLICITOR BULSA: Your Honor, at this time the State
6 would rest.

7 THE COURT: All right. Ladies and gentlemen, that
8 completes the testimony to be offered by the State. At this
9 point in time I need to take up some matters with the
10 attorneys outside of your presence. So, again, I'm going to
11 ask you to step to the jury room. And, as always, don't
12 begin any discussions concerning this case until I advise
13 you to do so.

14 You may retire to the jury room.

15 (Whereupon, the following takes place outside the
16 presence of the jury.)

17 THE COURT: Anything from the defense?

18 MR. BRANNON: Well, yes, Your Honor.

19 First off, the witnesses that I intend, that I will
20 call in my defense are witnesses on the State's witness
21 list. There are only two of them, Your Honor. Freddie
22 Thompson from 9-1-1 and an Officer Watts. They're not here,
23 Your Honor. So, I would ask the Court to consider breaking
24 for the day and allow me to have those witnesses here in the
25 morning. And along those lines, I would ask the Court to

1 consider allowing me to make any motions that I might make
2 at that time.

3 THE COURT: Any objection from the State?

4 SOLICITOR BULSA: No, sir.

5 THE COURT: All right. I am going to go ahead and
6 inquire of your client concerning his right to testify.

7 MR. BRANNON: Well, that was going to be the next issue
8 that I wanted to---

9 THE COURT: And I will allow though to think about it
10 overnight and give an answer. But I do want to advise him
11 of that right this evening so that if he wishes to consult
12 with any he'll have the right to do so.

13 MR. BRANNON: And Your Honor, along those lines, would
14 you -- I've, I've asked this Court this question in other
15 cases. He has many family members here with him. But Your
16 Honor, I know that his mother and I believe his sister, not
17 the one on the witness list, but his sister -- I would ask
18 the Court to allow, with Officer Ennis, if we could go into
19 one of those conference, conference rooms back there to
20 discuss his---

21 THE COURT: Well, let me check with Mr., Mr., Officer
22 Ennis, what's the best location, most secure location for
23 them to confer with him?

24 OFFICER: We can do it in one of the conference rooms
25 back here.

1 THE COURT: Conference rooms.

2 That be all right with you?

3 OFFICER: That will probably be better because the jail
4 room is occupied right now.

5 THE COURT: I understand.

6 MR. BRANNON: Now, would Your Honor like to talk with
7 him about his decision before we talk?

8 THE COURT: Yes, I want to advise him of his rights
9 first. Then he can have his discussion. We'll get his
10 answer in the morning.

11 MR. BRANNON: That's fine. Your Honor, before, before
12 you do that, I have a, I have a bit of a problem.

13 THE COURT: Yes, sir.

14 MR. BRANNON: I just asked Rosylind Gary if her finance
15 had a Springs card and she said clearly no. Somebody
16 sitting over here changed her answer. I don't know who it
17 was. I turned. But Your Honor, she said no and then she
18 changed her answer based on some prompting that came from
19 this side of the courtroom.

20 THE COURT: I did not catch that, and---

21 SOLICITOR BULSA: There was a comment made behind me
22 that it was a badge, not a card. I don't know whether she
23 could hear it or not, and I shushed the person that was
24 saying it.

25 MR. BRANNON: I don't know what the Court can do. I

1 just---

2 THE COURT: I can, I can -- what I can do is allow you
3 to comment on that if you wish to during your arguments, of
4 course.

5 MR. BRANNON: Thank you very much, Your Honor.

6 THE COURT: Okay. Now, at this point in time I'll ask
7 the clerk to please swear the defendant.

8 (Whereupon, the defendant was placed under oath at this
9 time.)

10 THE COURT: All right, sir. Have a seat please.

11 Mr. Phipps, at this time I'm going to explain to you
12 certain of your rights under the Constitution. If you do
13 not understand my explanation I'll allow you, at the end of
14 my explanation, to ask any questions that you'd like to ask
15 or I will offer further explanation if that appears to be
16 necessary.

17 Now, do you understand what we're going to do at this
18 time?

19 DEFENDANT: Yes, sir.

20 THE COURT: Now, we've reached the stage of this trial
21 where you have the right to present your defense. You have
22 a right also to claim the protections which are given to you
23 by the Fifth Amendment to the United States Constitution.
24 This amendment states in part that no person shall be
25 compelled, in any criminal case, to be a witness against

1 himself.

2 Now, that particular phrase means that you can not be
3 required to testify in this case. You certainly always have
4 the right to testify if you choose to on your own behalf.
5 However, no one can make you testify. The right to remain
6 silent is a personal right. No one can waive or give up
7 that right except yourself.

8 Now, if you decide to testify, I am required to advise
9 you that you will be subject to the same rules that adhere
10 or govern the testimony of every other witness who testifies
11 in this case. What that means is that you would be examined
12 by your attorneys. You would then be cross-examined on any
13 relevant issue in the case by the, by the State. In
14 addition to that cross-examination, if you have convictions
15 involving dishonesty, false statements, or for crimes which
16 were punishable by imprisonment for more than one year and
17 this Court makes the determination that the probative value
18 of admitting that evidence outweighs its prejudicial effect
19 to you, the solicitor, in that case, would be able to
20 introduce your criminal record to attack your credibility.

21 Now, if you decide to testify, the decision on your
22 part must be made freely, voluntarily, and intelligently
23 with knowledge of the protections given to you by the Fifth
24 Amendment to the Constitution, to the Constitution and also
25 the potential consequences of your decision to testify.

1 I will advise you, in connection with this, if you, in
2 fact, decide not to testify, that I am obligated and I will
3 instruct the jurors that they can not give the fact that you
4 did not testify any consideration whatsoever and that there
5 is to be absolutely no prejudice to you because of the fact
6 that you did not testify.

7 Now, the decision as to whether or not to testify, as I
8 have indicated, is left entirely up to you. You have the
9 right to discuss that decision with your attorney, your
10 family, your friends, or anyone else that you choose to
11 discuss that decision with. But the final decision will be
12 left entirely up to you.

13 Now, do you understand what I have explained to you?

14 DEFENDANT: Yes, sir.

15 THE COURT: Do you have any questions about what I have
16 explained to you?

17 DEFENDANT: No, sir.

18 THE COURT: Now, I have indicated to your attorney that
19 I'm going to give you the opportunity to discuss this
20 decision with your attorney and with your family members or
21 whoever else you think is appropriate to discuss it with.
22 In the morning when we resume the trial, I will be, again,
23 calling upon you to get a decision as to whether or not you
24 wish to go forward and testify in this case.

25 Do you understand that, sir?

1 DEFENDANT: Yes, sir.

2 THE COURT: All right. Anything further from the State
3 before we break for the evening?

4 SOLICITOR BULSA: No, sir.

5 THE COURT: Anything further from the defense?

6 MR. BRANNON: No, Your Honor.

7 THE COURT: All right. Let's bring the jury back.
8 (Whereupon, the following takes place within the
9 presence of the jury.)

10 THE COURT: All right. The record will reflect that
11 the jury has returned to the courtroom.

12 Ladies and gentlemen, as you have heard, the State has
13 completed the presentation of its evidence in this case.
14 The defense has the right to call such witnesses as they
15 choose to call next. However, we're about 4:30 and it's
16 been a long day and I have decided that we will just go
17 ahead and break for the evening at this point in time. Give
18 you a chance to maybe stretch your legs, clear your head and
19 come back refreshed in the morning to continue the case.

20 I'm going to give you the same instructions that I give
21 you everytime you leave the courthouse while the case is
22 going forward, and this is not to gather any information
23 outside the courthouse. Don't listen to, watch, or read any
24 media reports or try to gather information from any other
25 source. Do not allow anyone to discuss the case with you,

1 and you should not discuss the case with anyone else during
2 our break. And should someone try to contact you about your
3 participation again, I'm going to ask that you report that
4 to me.

5 We're going to resume the case again in the morning at
6 nine o'clock. So, please be back in the jury room at nine
7 o'clock in the morning. We should be in a position to
8 resume at that time. I hope everyone has a good evening,
9 and you're free to go at this time.

10 Everyone remain seated while the jury retires.

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

13 THE COURT: The Court will be in recess until nine
14 o'clock in the morning.

15 The defendant remains in custody.

16 Thank you very much.

17 MR. BRANNON: Is Your Honor okay with us going across
18 the hall?

19 THE COURT: Yes, I have, I have indicated it will be
20 okay for him to confer outside of the courtroom.

21
22 (Whereupon, Court was in recess for the evening.)
23
24
25

1 Wednesday, April 15th, 2009

2
3 MR. BRANNON: May we approach, Your Honor?

4 THE COURT: You certainly may.

5 (Whereupon, a bench conference was held at this time.)

6 THE COURT: All right. Before we begin, bring the jury
7 in, there's some matters that I need to discuss with
8 Mr. Phipps.

9 Mr. Phipps, I'm going to remind you yesterday that you
10 were placed under oath to tell me the truth concerning this
11 matter. You remain under oath at this time.

12 Do you understand that, sir?

13 DEFENDANT: Yes, sir.

14 THE COURT: All right. Now, Mr. Phipps, yesterday
15 afternoon I went over with you your rights under the Fifth
16 Amendment to the United States Constitution. That is the
17 provision in the Constitution that says no one in a criminal
18 case can be compelled to be a witness against himself, which
19 means you have a right to remain silent. Yesterday
20 afternoon you indicated that you wished to discuss this
21 matter with your attorneys and perhaps with other members of
22 your families, family or other persons.

23 Have you had an opportunity to have those discussions?

24 DEFENDANT: Yes, sir.

25 THE COURT: And are you satisfied with the discussions

1 that you had?

2 DEFENDANT: Yes, sir.

3 THE COURT: Do you need to discuss this matter any
4 further with anyone else before you make a decision in this
5 matter?

6 DEFENDANT: No, sir.

7 THE COURT: Have you made a decision as to whether or
8 not to testify in this case?

9 DEFENDANT: Yes, sir.

10 THE COURT: And do you wish to testify?

11 DEFENDANT: Yes, sir.

12 THE COURT: Now, one thing I want to make you aware of.
13 I was informed at the bench conference just a moment ago by
14 your counsel that he intends to call Mr. Freddie Thompson
15 with the Spartanburg County 9-1-1 or Spartanburg County
16 Communications Center for the purpose of playing a 9-1-1
17 call, which I'm informed by counsel was a call that you made
18 to that center. Normally that, that information would be
19 received after you testify. Your counsel indicated he
20 wished to offer that witness before you testify.

21 I will advise you, that once that tape is played in
22 Court and introduced into the record, that would constitute
23 a waiver on your part of your right to remain silent. So,
24 I'm informing you that if that witness is called and if that
25 tape is introduced into the record, that would be, in

1 effect, you testifying in this case and that would
2 constitute a waiver of your right to remain silent and you
3 would be required to go forward and testify as you've
4 decided to do anyway. But I want to make you aware that you
5 can not change your mind thereafter.

6 Do you understand that, sir?

7 DEFENDANT: Yes, sir.

8 THE COURT: And does that, in any way, affect your
9 decision to go forward and testify?

10 DEFENDANT: No, sir.

11 THE COURT: So, you still wish to do so?

12 DEFENDANT: Yes, sir.

13 THE COURT: All right. Any other questions that the
14 defense would like me to ask of, of Mr. Phipps?

15 MR. BRANNON: No, Your Honor.

16 THE COURT: All right. Anything further?

17 I think you reserved motions until this period of time.

18 MR. BRANNON: Yes, Your Honor.

19 THE COURT: So, I'll be happy to hear from you, Mr.
20 Brannon.

21 MR. BRANNON: Your Honor, I would, at this point, make
22 a motion for a directed verdict. Your Honor, the State has
23 produced evidence that puts my client in the home. The
24 State has produced no evidence of any nature that my client
25 committed the acts of violence against the victim,

1 Mr. Samuel Gossett.

2 Your Honor, they, quite frankly, can't even put my
3 client into the room where the man was killed. They can put
4 him in the living room as the result of a fingerprint on a
5 beer can.

6 Your Honor, I don't believe the State has proved
7 malice. I don't believe the proof, the State has proved
8 intent. I don't believe the State has proved that my client
9 did anything to harm Samuel Gossett, and would, therefore,
10 move for a directed verdict at this time.

11 THE COURT: Mr. Bulsa, are you gonna argue the motion?

12 SOLICITOR BULSA: Yes, sir.

13 THE COURT: Be happy to hear from you, sir.

14 SOLICITOR BULSA: It's certainly clear from the
15 injuries that Mr. Gossett sustained that malice exist. The
16 jury can certainly infer this was an unlawful killing of
17 another human being with malice aforethought.

18 As far as the identity of Mr. Gossett, there's
19 substantial circumstantial evidence from the forensic
20 evidence that puts him in the house, blood on the victim's
21 clothing, as well as the fingernail scrapings of
22 Mr. Gossett. This is clearly an issue for the jury.

23 THE COURT: All right. At this point in time, it's my
24 responsibility to not determine the weight or the
25 sufficiency of the evidence, but the existence of any

1 evidence. I do find that there is circumstantial evidence.
2 I won't characterize it as substantial or otherwise. There
3 is circumstantial evidence upon which a jury could possibly
4 find that the defendant did, in fact, commit the, the act.
5 And so, for that reason, there does appear to be some
6 evidence of that, and the, the, that evidence is sufficient
7 to overcome the motion. I'll deny the motion for directed
8 verdict.

9 MR. BRANNON: Thank you, Your Honor. Nothing further
10 from the defense.

11 THE COURT: All right, sir. Is the State ready to
12 proceed at this time?

13 SOLICITOR BULSA: Yes, sir.

14 THE COURT: I assume the defense is now ready?

15 MR. BRANNON: Yes, Your Honor.

16 THE COURT: Bring the jury in.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 THE COURT: The record will reflect that all the jurors
20 have now returned to the courtroom.

21 I hope everyone had a good evening, and you're now
22 ready to continue with the trial of this case this morning.

23 When we rested yesterday afternoon the State had
24 completed the presentation of its evidence in this case, and
25 the defense had the opportunity, at this point in time, to

Freddie Thompson - Direct examination
by Mr. Brannon

1 call such witnesses as they choose to call.

2 Mr. Brannon, defense may call its first witness.

3 MR. BRANNON: First witness is Freddie Thompson, Your
4 Honor.

5 THE COURT: All right. Mr. Thompson, come forward to
6 my left to be sworn please.

7 FREDDIE THOMPSON, being first duly
8 sworn, testified as follows:

9 THE COURT: Have a seat in the witness stand. Once
10 you're seated, please state your name for the record.

11 WITNESS: Freddie Thompson.

12 THE COURT: Mr. Brannon, it's your witness.

13 MR. BRANNON: May it please the Court?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION

16 BY MR. BRANNON:

17 Q Mr. Thompson, who do you work for?

18 A Spartanburg County Communications 9-1-1 Department.

19 Q And what is your title there, sir?

20 A Assistant director.

21 Q All right. As the assistant director of 9-1-1 service,
22 is it standard practice within your organization to keep and
23 maintain records of 9-1-1 or emergency phone calls that are
24 made into your office?

25 A Yes, sir, it is.

Freddie Thompson - Direct examination
by Mr. Brannon

1 Q Sir, were you asked by the State or the prosecution in
2 this matter to pull out a recording of a 9-1-1 call that was
3 made on April the 3rd 2004 at 19:35 hours?

4 A I have two different calls. Like I said, it's been
5 five years. I've got two calls I pulled. One I know was
6 [REDACTED] South Center Street, and I can't remember the exact
7 number on the other one. One was in the evening. The next
8 one was the following morning. But I don't recall the exact
9 times.

10 Q Okay. And, and -- but there were two, one in the
11 evening of the 3rd and one in the morning of the 4th,
12 correct?

13 A Correct.

14 MR. BRANNON: All right. May I approach?

15 THE COURT: You may.

16 Q Mr. Thompson, do you typically record your, your
17 messages, your phone calls on to CD's such as this?

18 A Yes, sir.

19 Q All right. And did you, in fact, record, make a
20 recording for the State upon their request?

21 A Yes, sir.

22 Q I would ask you -- sir, I don't know if you can
23 specifically identify that CD, but is that the type of disk
24 that you would record to?

25 A Yes, sir, it is.

Freddie Thompson - Direct examination
by Mr. Brannon

1 MR. BRANNON: All right. And I will ask you, Your
2 Honor, may we play that call for---

3 THE COURT: Any objection?

4 SOLICITOR BULSA: Your Honor, I actually have a copy
5 that he gave to the police with his initials on it if we
6 could use that.

7 THE COURT: All right. Any objection to using the
8 police---

9 MR. BRANNON: None whatsoever.

10 THE COURT: All right.

11 MR. BRANNON: There you are, sir.

12 THE COURT: So, without objection, I'll allow that to
13 played.

14 A Okay. This is the one from the 3rd, 19:35 hours, and I
15 did make this one myself personally.

16 Q Thank you.

17 And Mr. Thompson, before you start, would you please
18 tell the jury what time 19:35 is?

19 A 7:35 p.m.

20 Q Thank you. And if you would, play that.

21 A (Witness complies.)

22 Do we need to go further?

23 I don't recall exactly -- recall this is, is---

24 Q would the next segment be the dispatch of a city police
25 officer to that location?

Freddie Thompson - Direct examination
by Mr. Brannon

1 A Could be, yes.

2 Q Okay. I have no further questions, and would move this
3 CD into evidence.

4 THE COURT: Any objection?

5 SOLICITOR BULSA: No, sir.

6 THE COURT: The CD will go into evidence.

7 (Whereupon, the CD was marked as Defendant's Exhibit
8 No. 2 and received into evidence at this time.)

9 THE COURT: Any questions, Mr. Bulsa?

10 SOLICITOR BULSA: Yes, sir.

11 CROSS-EXAMINATION

12 BY SOLICITOR BULSA:

13 Q Mr. Thompson, I know it's been a while, but did the
14 police have a specific time and ask you to find it or did
15 they just ask you to find whether a call was made the
16 evening of April the 3rd?

17 A To find where the call was actually made and then went
18 back and researched and found the call.

19 Q Okay. So, you didn't actually have the time at this
20 point. They just believed the call---

21 A Yes, sir.

22 Q ---may of been made?

23 A That's my understanding at this time, yes, sir.

24 Q And you did a search of the calls?

25 A Go into the, our CAD system, find out where a call --

Freddie Thompson - Cross-examination
by Solicitor Bulsa

1 CAD, Computer Aid Dispatch System, where everything's
2 entered in manually. Go in, research, find the call, and
3 then, from there, find the exact time, and then go to the
4 recording system and get the exact time that way.

5 Q And now, when you were asked to research this call, did
6 they give you a location to look such as any call on South
7 Center Street?

8 A Going back five years, I know the call started going,
9 best I can recall, started going backwards from the call on
10 the 4th.

11 Q Okay.

12 A We went back to the 3rd and found where there's a call
13 that evening and then started searching from there and found
14 the call that way. The best I can recall.

15 Q Okay. So, you knew, you knew when the, the call came
16 in and the body was found and the police were dispatched?

17 A Correct.

18 Q Okay. So, that would of been the morning of the 4th,
19 and then the police asked you to find whether there were any
20 other calls made---

21 A That's correct.

22 Q ---around this area.

23 Okay. And on your CD, do you still have it with you?

24 A Yes, sir.

25 Q You actually notated an address, didn't you?

Freddie Thompson - Cross-examination
by Solicitor Bulsa

1 A [REDACTED] South Center Street.

2 Q And that wasn't how -- you don't even know where this
3 incident location was, do you?

4 A I'm wanting to say the body was found at [REDACTED], but
5 that's just strictly by, going by memory---

6 Q Okay. [REDACTED]?

7 A ---of the other calls when I looked up.

8 Q All right. Well, let me show you the second call.

9 Q Okay.

10 (Whereupon, the CD was marked as State's Exhibit No. 41
11 for identification purposes only at this time.)

12 Q That's the one you just played, Defense Exhibit 2.
13 That's State's Exhibit 41.

14 Do you recognize that CD?

15 A That's the one from the morning of the, the 4th at
16 7:58 a.m.

17 Q And the location on that CD that you notated?

18 A [REDACTED] South Center Street.

19 Q And that would of been the first call that you would of
20 located?

21 A That's the first call located, yes.

22 SOLICITOR BULSA: Okay. Your Honor, I'd ask to offer
23 it into evidence and I believe without objection.

24 MR. BRANNON: No objection.

25 THE COURT: All right.

Freddie Thompson - Cross-examination
by Solicitor Balsa

1 SOLICITOR BULSA: Can I publish it?

2 THE COURT: It will be put into the record and you may
3 publish it.

4 (Whereupon, State's Exhibit No. 41 was received into
5 evidence at this time and published to the jury at this
6 time.)

7 Q Okay. So, you had a specific address notated on that
8 call?

9 A Correct.

10 Q And then the police asked you to see if there were any
11 more calls made to South Center Street, is that correct?

12 A I think that's correct, yes.

13 Q And the only other call you found was the one that you
14 previously played, Defense Exhibit 1?

15 A That's correct.

16 Q Okay. And what was the time of this second call?

17 A This call here?

18 Q Yes, sir.

19 A 07:58, 7:58 in the morning.

20 Q So, almost 12 hours later than the first call?

21 A Correct.

22 Q Thank you. Answer any other questions.

23 THE COURT: Mr. Brannon.

24 MR. BRANNON: Yes.

25 THE COURT: Redirect.

Freddie Thompson - Redirect examination
by Mr. Brannon

1 REDIRECT EXAMINATION

2 BY MR. BRANNON:

3 Q Mr. Thompson, would you put the first CD that you
4 played back in?

5 A Sure.

6 Q And please play, play the dispatch.

7 A Okay. I'll try to go across and get to it fairly
8 close.

9 (Whereupon, the CD was played for the jury at this
10 time.)

11 Q Thank you, sir.

12 So, the caller into 9-1-1 at 19:35 on April the 3rd of
13 2004 apparently didn't know the address of Mr. Gossett's
14 house, but said it was the house across the street from [REDACTED],
15 correct?

16 A Correct.

17 Q Thank you. I have, have nothing further.
18 Well, yes, I do.

19 The time on the Sunday call again please?

20 A 7:58 a.m.

21 Q Thank you very much. Nothing further.

22 SOLICITOR BULSA: No, sir.

23 THE COURT: Anything further from the witness?

24 SOLICITOR BULSA: No, sir.

25 THE COURT: You may step down, sir.

Robert Phipps - Direct examination
by Mr. Brannon

1 Any objection to this witness being released?

2 MR. BRANNON: No, Your Honor, I would ask that he would
3 be.

4 SOLICITOR BULSA: None from the State.

5 THE COURT: All right. You're free to go. Thank you
6 for coming, Mr. Thompson.

7 WITNESS: Thank you, sir.

8 THE COURT: You may call your next witness.

9 MR. BRANNON: Call Robert Phipps.

10 THE COURT: Mr. Phipps, if you'll come to my left to be
11 sworn.

12 ROBERT PHIPPS, being first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat in the witness stand please.
15 And, sir, once you're seated, I'd ask that you state your
16 name for the record.

17 WITNESS: My name is Robert Phipps.

18 THE COURT: You don't have to lean all the way to the
19 microphone. Just get close.

20 WITNESS: Excuse me, sir.

21 THE COURT: But if you get too close, it kind of gives
22 you back feed.

23 All right. Your witness, Mr. Brannon.

24 MR. BRANNON: May it please the Court?

25 THE COURT: Yes, sir.

Robert Phipps - Direct examination
by Mr. Brannon

1 DIRECT EXAMINATION

2 BY MR. BRANNON:

3 Q Mr. Phipps, I'm going to ask that you speak loud enough
4 for the jurors to hear you.

5 Okay?

6 A Yes, sir.

7 Q How old are you, sir?

8 A I'm 49.

9 Q Mr. Phipps, this document that I have consists of one,
10 two, three, four, five, six, seven, eight, nine pages.

11 Do you know what this is?

12 A Yeah, that's my criminal record.

13 Q Would it be fair to say, sir, that you have an
14 extensive criminal record?

15 A Yes.

16 Q You have robbed banks in your lifetime, haven't you?

17 A Yes.

18 Q You have stolen property in your lifetime, haven't you?

19 A Yes.

20 Q And you've been to prison, correct?

21 A Yes, sir.

22 Q Now, in the State's opening argument and with other
23 witnesses, through questioning, they pointed out that you
24 weren't in Spartanburg County when the police were
25 investigating this case, is that correct?

Robert Phipps - Direct examination
by Mr. Brannon

1 A No. No, I wasn't.

2 Q Where were you, sir?

3 A I was in a federal correctional institute on a
4 violation charge.

5 Q In West Virginia, correct?

6 A Yes, sir.

7 Q You weren't running from the law.

8 You were in the law's custody, weren't you?

9 A Yes, sir.

10 Q Mr. Phipps, during any of your robberies or your
11 burglaries, have you ever hurt anyone in your lifetime?

12 A No.

13 Q Mr. Phipps, would it also be fair to say that in your
14 life you have had a drug problem?

15 A Yes, sir.

16 Q Sir, do you smoke crack or did you smoke crack?

17 A Yes.

18 Q Did you smoke a lot of crack?

19 A Yes, sometimes, you know, I get -- yeah.

20 Q All right. And was it often the, the, the fact that
21 you were stealing money for the purpose of supplying your
22 drug need?

23 A Yes.

24 Q All right, sir. On the early, in the early part of the
25 day, noon, early afternoon of April the 3rd, 2004, were you,

Robert Phipps - Direct examination
by Mr. Brannon

1 in fact, in Spartanburg?

2 A Yes.

3 Q Were you driving an automobile?

4 A Yes.

5 Q What was that automobile?

6 A I believe my sister have a black Toyota Corolla,
7 something like that.

8 Q Okay. And was that the car you were driving?

9 A Yes, sir.

10 Q While in Spartanburg, did you have the occasion to stop
11 at a store?

12 A Yeah, I go to stores. I go to filling stations. I
13 think I was, probably.

14 Q All right. Did you stop at a filling station that day?

15 A Yes.

16 SOLICITOR BULSA: Your Honor, we would object to
17 leading the witness.

18 THE COURT: I'll ask you not lead quite so much. I
19 understand it's permissible in some circumstances, and I'm
20 not going to sustain. But see if you can't hold it down so
21 we don't have that coming back up.

22 Q Did you stop somewhere that day?

23 A Yes.

24 Q Can you please tell the jury where it was?

25 A A filling station.

Robert Phipps - Direct examination
by Mr. Brannon:

1 Q All right. why did you stop at the filling station?

2 A I needed some gas.

3 Q All right. Did you meet anybody while there?

4 A Yes, I met a gentleman named Sam Gossett.

5 Q All right. Had you ever met Mr. Gossett before that
6 day?

7 A No, sir.

8 Q And did Mr. Gossett ask anything of you?

9 A He asked could he get a ride.

10 Q And did -- how did you respond?

11 A I said well, where you going, how far you going, come
12 on, you know, and he came on, came -- yeah.

13 Q So, you said yes?

14 A Yeah, I said come on, man, where you going.

15 Q Did you, in fact, let Mr. Gossett into your car?

16 A Yes, sir.

17 SOLICITOR BULSA: Your Honor, now this is getting a
18 little too much leading. He can just ask him what happened.

19 THE COURT: Well, I'm not gonna tell him exactly what
20 to ask.

21 SOLICITOR BULSA: Okay.

22 THE COURT: What I tell him is not to lead the witness.
23 He's on direct testimony.

24 Q Once Mr. Gossett -- did Mr. Gossett get in your car?

25 A Yes.

Robert Phipps - Direct examination
by Mr. Brannon

1 Q Did you ask him anything after he got in your car?

2 A Yes, we maybe got about a block from the filling
3 station and I asked him, you know, you know, where we get
4 some crack at.

5 Q Did he respond?

6 A Yeah, he said, yeah, by my house they got it about all
7 around about where I live at.

8 Q All right. Did you, at any point, purchase or buy
9 drugs that day?

10 A Yes.

11 Q And then where did you go?

12 A To his house.

13 Q All right. What color is his house?

14 A Blue. Yeah, blue something.

15 Q All right.

16 A Light blue, yeah.

17 Q Had you ever been there before?

18 A No, sir.

19 Q Did you know what the address was?

20 A No, sir.

21 Q All right. When you got to his house, what did you
22 have on you, and not your clothing, but what, what did you
23 have in your pockets?

24 A I didn't have nothing but some money, my driver's
25 license, my wallet, keys for my car.

Robert Phipps - Direct examination
by Mr. Brannon

1 Q And some dope?

2 A Oh, yeah, the dope that he bought, yeah, he had.

3 Q Okay. Did you have a crack pipe?

4 A Oh, no, I don't drive that like. I don't ride with
5 that.

6 Q All right. Did you smoke crack?

7 A Yes.

8 Q How did you smoke it if you didn't have a crack pipe?

9 A Sam made, made a can, made a can or something.

10 Q Okay. How do you, how do you make a can into a crack
11 pipe?

12 A Well, you can punch some holes in it, you know what I'm
13 saying. He had this hanger. He punched some holes in it
14 for me.

15 Q Okay. And you did, in fact, then use that can to smoke
16 crack?

17 A Yes.

18 Q Did that -- how did that work out for you?

19 A Really don't get too much out of a can, you know, you
20 don't. I mean, I mean you smoke a can, you, they put ashes
21 on it and smoke it, and whoo, you don't really get too much
22 out of it.

23 Q All right. Did you ask anything of Mr. Gossett after
24 you smoked from that can?

25 A Yes, I asked him could, you know, where you can get a

Robert Phipps - Direct examination
by Mr. Brannon

- 1 pipe at, you know, so you smoke it out of a, better than a
2 can. I said can you find something better than a can, a
3 pipe or something, don't anybody got a pipe, man.
- 4 Q All right. When you smoke crack from a can, would it
5 be fair to say that you waste most of it?
- 6 A Oh, yeah, man, yes. Oh, Jesus, yes.
- 7 Q Okay. Did Mr. Gossett have a crack pipe?
- 8 A No, he didn't.
- 9 Q Did Mr. Gossett ever leave his home?
- 10 A Yes.
- 11 Q When he left his home, did he leave you there in his
12 home?
- 13 A Yes.
- 14 Q Where were you -- where were you in the home?
- 15 A Sitting on the couch.
- 16 Q All right. Did Mr. Gossett ever return?
- 17 A Yes.
- 18 Q When he returned, was he by himself?
- 19 A No, he had a gentleman with him.
- 20 Q And how was that gentleman introduced to you?
- 21 A He said here's my man, just rob, this is New York.
- 22 Q Say that a little louder please.
- 23 A Said this is New York, man.
- 24 Q Had you ever met New York before?
- 25 A Never seen him a day in my life.

Robert Phipps - Direct examination
by Mr. Brannon

1 Q Is New York his given name?

2 Is that his legal name?

3 A That's the only name he gave, he gave me, you know. I
4 don't know his last name or -- he just said this is New
5 York, his name New York.

6 Q All right. Did New York have a crack pipe?

7 A Yes.

8 Q Did you offer to buy the crack pipe from him?

9 A Yes.

10 Q Did he sell it to you?

11 A No.

12 Q Did he allow you to use it?

13 A Yes.

14 Q And did you smoke, smoke more crack?

15 A Yes.

16 Q Did New York also smoke crack?

17 A Yes.

18 Q Did something happen between New York and Mr. Gossett?

19 A Yes.

20 Q What, what happened?

21 A Well, he had a confrontation about messing with the
22 stem, pushing his pipe, pushing the stem.

23 Q Okay. Stop.

24 What does pushing mean?

25 A When you smoke crack out of a glass, the smoke goes

Robert Phipps - Direct examination
by Mr. Brannon

1 this away. Okay. It go this away, and then when you push
2 it, after you smoke your crack, you can get some more crack
3 when you turn it around and smoke it.

4 Q All right. Now, is a glass another word for a pipe?

5 A Yes.

6 Q All right. And what, what do you use to push it?

7 A A piece of hanger, a piece of wire, something that's,
8 that's metal that you can just push it and you just -- you
9 push the troy tight on it.

10 Q Okay. So, in other words, you used the hanger to push
11 the drugs up into the area of the pipe?

12 A Yes, sir.

13 Q And was there some reason -- did New York object to
14 something Mr. Gossett was doing?

15 A Yes, he was very upset about that.

16 Q What was he upset about?

17 A Him pushing his pipe.

18 Q All right. If you don't push the pipe, is there some
19 residue left in the pipe?

20 A Yes.

21 Q And then later if someone else pushes it, is there, in
22 fact, more dope to smoke?

23 A Oh, yes. Oh yes.

24 Q So, if you used Mr. New York's pipe and nobody pushed
25 it, could Mr. New York then later smoke that same dope again

Robert Phipps - Direct examination
by Mr. Brannon

1 for no money?

2 A Yes.

3 Q who was pushing the pipe?

4 A Sammy was.

5 Q And did Mr. New York get upset because of the pushing?

6 A Yes.

7 Q And did an altercation take place because of
8 Mr. Gossett pushing the pipe?

9 A Yes.

10 Q Did you do anything as a result of that altercation?

11 A I broke -- I tried to keep the trouble down. I mean,
12 you know, I just told them I said man, y'all cut it out,
13 man.

14 Q All right. Didn't you, in fact, say something more
15 than that, something about your high?

16 A Yeah, they was messing my high up. You know, when you
17 getting high, you want to sit back and enjoy yourself. You
18 don't want a whole lot of confusion.

19 Q All right.

20 A Messing your high up.

21 Q And where did this altercation take place, this, this
22 altercation?

23 A In the front room.

24 Q All right. And you said you tried to break them up.
25 what did you do?

Robert Phipps - Direct examination
by Mr. Brannon

- 1 A Well, when Sam was messing with the man pipe, New York
2 went over there and snatched, trying to snatch it from him
3 and Sam was, resisted, and I -- it's like they getting ready
4 to fight, you know, and I'm just man, y'all chill up, chill
5 out, man.
- 6 Q All right. Do you remember being struck by anyone or
7 anything while you tried to break that fight up?
- 8 A I don't remember.
- 9 Q All right. Do you remember, at any point, having,
10 having, having blood, your blood running from your body
11 anywhere?
- 12 A I don't, you know, I don't remember. I don't remember.
- 13 Q Were you high?
- 14 A Yes.
- 15 Q Could you have been struck in that altercation?
- 16 A Yes.
- 17 Q Could you have been cut by the wire that was being used
18 to push the pipe?
- 19 A Yes.
- 20 Q But you have no specific recollection of being cut or
21 hurt, correct?
- 22 A No, sir.
- 23 Q You don't have any idea how your blood got on
24 Mr. Gossett's pants, correct?
- 25 A No.

Robert Phipps - Direct examination
by Mr. Brannon

1 Q Did they -- did Mr. Gossett and Mr. New York, did they
2 stop arguing or fighting for a period of time?

3 A Yeah, for about a few minutes, you know what I mean.
4 One or two or three minutes they stopped.

5 Q All right. when, when the altercation subsided, where
6 did you go?

7 A Excuse me?

8 I didn't hear -- what you say?

9 Q After you broke up that fight---

10 A Right.

11 Q ---what did you do, where did you go?

12 A Over to Sister Brenda's house.

13 Q Okay. Now, now---

14 A What?

15 Q After you broke up that fight in the living room, did
16 you -- isn't it true that you stayed at the house?

17 A Oh, yeah, I stayed -- I sat back down after I broke it
18 up.

19 Q That -- you sat back down.

20 where?

21 A On the, on the end of that side of the couch --

22 Q You sat on the couch---

23 A -- where I was sitting at.

24 Q ---in the living room?

25 A Yeah, where I was sitting at.

Robert Phipps - Direct examination
by Mr. Brannon

- 1 Q At some point did either Mr. New York or Mr. Gossett
2 leave the living room?
- 3 A Yes.
- 4 Q who left first or did they both leave?
- 5 A Gossett left.
- 6 Q Okay. Where did he go?
- 7 A He went toward, walked back towards his bedroom.
- 8 Q Okay. Did Mr. New York ever follow him?
- 9 A He was right behind him.
- 10 Q All right. Were you still seated on the couch?
- 11 A Yes.
- 12 Q Did you hear something?
- 13 A Sound like it was fighting back there.
- 14 Q Did you get up?
- 15 A Yes.
- 16 Q where did you go?
- 17 A I went back to see what they was doing.
- 18 Q what did you see?
- 19 A I see Sam and, and New York fighting.
- 20 Q All right. Did you ever go into the bedroom?
- 21 A No, hu huh, I didn't go in there.
- 22 Q But because you walked down the hallway, is that how
23 you knew it was a bedroom?
- 24 A Yeah.
- 25 Q All right. Did you look around the room?

Robert Phipps - Direct examination
by Mr. Brannon

1 Did you see anything?

2 A I, I just seen, you know, New York like, like he was
3 standing over him or something I mean like he was knocked
4 out or something.

5 Q Okay. Did you see the condition of the room?

6 A Oh, yeah, it was filthy. It was pitiful. It was
7 nasty, boy.

8 Q Okay. Did you ever hit Mr. Gossett?

9 A No.

10 Q Did you ever walk into that room?

11 A No.

12 Q When you saw Mr. New York standing over Mr. Gossett,
13 what did you do?

14 A I left. I got up out of there.

15 Q You left the house?

16 A Yes.

17 Q Did you take the crack pipe with you?

18 A No.

19 Q Did you get in a black car?

20 A Yes.

21 Q where did you go?

22 A I went to Sister Brenda's house.

23 Q Okay. What's Brenda's name?

24 A Brenda Urquhart.

25 Q All right. And, and do you know what road she lives

Robert Phipps - Direct examination
by Mr. Brannon

- 1 on?
- 2 A She stayed somewhere off of 221.
- 3 Q Off of 221?
- 4 A Yeah.
- 5 Q All right. After you got to Sister Brenda's house, did
- 6 you ever leave again?
- 7 A Yes.
- 8 Q When you left Sister Brenda's house, did you leave with
- 9 someone?
- 10 A Yes.
- 11 Q Who was that?
- 12 A My sister, Marcella Phipps Bailey.
- 13 Q Okay. And where did you go?
- 14 A Went back to the house over by Sam's house to see if he
- 15 was all right.
- 16 Q Okay. Did you actually go to the house?
- 17 A No, I believe we went on the street.
- 18 Q But you didn't go to the house?
- 19 A No.
- 20 Q Did you see any ambulances or police cars or anything?
- 21 A No.
- 22 Q What did you do then?
- 23 A Went to a, to a store.
- 24 Q Why did you go to a store?
- 25 A Cause I wanted to make a phone call.

Robert Phipps - Direct examination
by Mr. Brannon

1 Q To who?

2 A To 9-1-1.

3 Q Did you hear that 9-1-1 tape that was played here from
4 Saturday evening at 7:35?

5 A Yes.

6 Q Was that you?

7 A Yes, sir.

8 Q Did you -- was it you that said I want to remain
9 anonymous?

10 A Yes, sir.

11 Q That was you that made that phone call?

12 A Yeah, I made that call.

13 Q After you made that call, what did you do?

14 A Went to, went to the house, went to -- me and her, we
15 went home.

16 Q Whose -- okay. When you say we went home, whose home
17 did you go to?

18 A My sister, Marcy's, Marcella Bailey.

19 Q Did you stay at Marcy's house the rest of the night?

20 A Yes, stayed there all night.

21 Q Did you, at some point, leave Marcy's house?

22 A Yes.

23 Q Where did you go?

24 A I went over to Sister Brenda's house there.

25 Q When was the next time you heard anything about Sam

Robert Phipps - Direct examination
by Mr. Brannon

1 Gossett?

2 A I mean when I was at the fed joint. That's the last
3 thing I know.

4 Q That police officer right there and another one came up
5 to West Virginia and spoke to you, didn't they?

6 A Yes.

7 Q And you gave them the name New York, didn't you?

8 A Yes.

9 Q And you gave them two other names too, right?

10 A Yes.

11 Q You didn't admit that that was you on that 9-1-1 call,
12 did you?

13 A No.

14 Q Didn't you tell them you wanted to talk to your family
15 or someone else?

16 A Yes.

17 Q But you told them New York, right?

18 A Yeah, I said -- yeah, New York. I told them about New
19 York.

20 Q Had you ever met New York before Saturday, April the
21 3rd of 2004?

22 A No.

23 Q Do you know him by any other name?

24 A No.

25 Q Did you kill Sam Gossett?

Robert Phipps - Direct examination
by Mr. Brannon

- 1 A No.
- 2 Q When you left Sam Gossett's house after you saw that
3 fight, did you have any of Sam Gossett's blood on you?
- 4 A No.
- 5 Q Been convicted of a lot of crimes, right?
- 6 A Yes.
- 7 Q Do you understand that stealing something is a crime of
8 dishonesty?
- 9 Do you understand that?
- 10 A Yes.
- 11 Q Do you understand that you took an oath today to tell
12 the truth?
- 13 A Yes.
- 14 Q Are you telling the truth today?
- 15 A Yes.
- 16 Q Did you kill Sam Gossett?
- 17 A No.
- 18 Q Did New York kill him?
- 19 A I don't know. I don't know. He must have. I don't
20 know. He might have. I don't know. He was there.
- 21 Q Mr. Phipps, I don't have anymore questions for you
22 right now. But Mr. Bulsa or somebody here is going to ask
23 you some questions.
- 24 A Yes.
- 25 Q You answer those questions.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 All right?

2 A Yes, sir.

3 THE COURT: Mr. Bulsa, your witness.

4 SOLICITOR BULSA: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY SOLICITOR BULSA:

7 Q Let me get this straight, Mr. Phipps.

8 You never met Mr. Gossett before that day?

9 A No, sir. No, sir.

10 Q Okay. I had trouble hearing you back there.

11 A Okay.

12 Q So, speak up when you answer my questions please.

13 A No problem.

14 Q So, you never met him and your testimony is you just
15 met him at a gas station?

16 A Yes.

17 Q Where was that gas station?

18 A Man, I can't think of where that filling station is,
19 man. It's been five years ago. Come on.

20 Q I may need to stand over here cause I'm not sure all
21 the jury can hear you.

22 You don't remember?

23 A No, I don't remember where the filling station was.

24 Q How close was it to South Center Street?

25 A Excuse me?

Robert Phipps - Cross-examination
by Solicitor Balsa

1 Q How close was it to South Center Street?

2 A I don't know how far it was. I don't remember how far,
3 how far it was. I couldn't -- to be truthful with you, I
4 don't remember how far it was.

5 Q You don't remember how far?

6 A No.

7 Q Okay. And this is a man you just met and he asked you,
8 you for a ride?

9 A Yes.

10 Q Okay. And he was, seemed friendly?

11 A Yes. Yeah. Yeah.

12 Q The man you never met before and you asked him, within
13 a matter of seconds, if he knew where you could get some
14 crack?

15 A Yeah, he looked like a crack head.

16 Q You say he looked like a crack head?

17 A He looked like it. I mean, eyes red.

18 Q All right. So, you took it he would know where to get
19 some crack?

20 A Yeah.

21 Q What?

22 A Yes, I took -- yeah, I took it that.

23 Q All right. And it's your testimony that he took you
24 somewhere to get some crack cocaine?

25 A Yes.

Robert Phipps - Cross-examination
by Solicitor Balsa

- 1 Q Okay. Now, where did y'all go?
- 2 A It's right before he got to his house.
- 3 Q And tell us what happened there.
- 4 A We got, you know, went to the house and he gave me, you
- 5 know, he said here, man, this is what I got. He said this
- 6 is what I got, and then we stopped.
- 7 Q Who went in, who went in the house?
- 8 A Excuse me?
- 9 Q Who went in the house to get the crack?
- 10 A He did. I gave him the money.
- 11 Q So, you gave him the money?
- 12 A Yeah, he went -- I gave him the money. He went and got
- 13 the crack.
- 14 Q How much money did you give him?
- 15 A I gave him \$20.
- 16 Q Okay. And where did you get the money?
- 17 A I had it on me.
- 18 Q And where did you get the money that you had on you?
- 19 A Man, I keep, I keep money.
- 20 Q Did you work?
- 21 A Well, I worked -- I was working at a plant.
- 22 Did I work?
- 23 Q Yes, sir.
- 24 Were you working?
- 25 A Oh, I wasn't working -- I had a job here and there, you

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 know, a little spot labor and stuff.
- 2 Q Okay. So, you don't know where you got the money that
- 3 you gave to him?
- 4 A I don't know where I got money?
- 5 Q Yes, sir.
- 6 A I got it out of my pocket.
- 7 Q Okay.
- 8 A What you talking about where I got the money?
- 9 Q You don't know where you earned the money.
- 10 A Oh, where I earned the money. Yeah, I, I did some work
- 11 with some people.
- 12 Q All right. So, he directs you to a house, and you give
- 13 him \$20 to go get some crack?
- 14 A Yeah.
- 15 Q Okay. And what did you -- what were you intending to
- 16 do with that crack?
- 17 A I was gonna smoke it.
- 18 Q Okay. And where?
- 19 A Huh?
- 20 Q Where?
- 21 A Over at his house.
- 22 Q How did that come up?
- 23 A How did that come up?
- 24 Q You were just giving him a ride home and asked him
- 25 where he could get some crack.

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 A He said I can get come crack.
- 2 Q Okay. How did it come up that you were gonna go smoke
3 it at his house?
- 4 A Cause I -- when we got in the house, I say you gave me
5 my dope, and I said dig, man, and he said -- I said man, you
6 got a pipe. He said no. He said I can make one out of a
7 can.
- 8 Q Okay. Let me understand this. This is a man you just
9 met at a gas station, seemed friendly enough, asked you for
10 a ride, you said okay.
- 11 Am I right so far?
- 12 A Yeah.
- 13 Q Okay. Y'all start down the street. You asked him
14 where he could get some crack.
- 15 Right?
- 16 A Yeah.
- 17 Q Normal conversation for crack heads?
- 18 A Yeah.
- 19 Q You were a crack head too, weren't you?
- 20 A Yeah, I was smoking.
- 21 Q You're trying to call Mr. Gossett one, but isn't it
22 true you were one?
- 23 A Yeah, I, I smoked.
- 24 Q Okay. But you were the one that brought up the
25 subject, right?

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 A Yeah, I told him did he know where to get some crack
2 at.

3 Q It's your testimony that he took you somewhere, went,
4 went inside and actually got the crack for you with your
5 money?

6 A Yeah, we stopped.

7 Q Okay. And instead of just dropping him off at his
8 house and you going about your business, you decided to go
9 in his house with him?

10 A Yeah.

11 Q Is that right?

12 A Yeah, we went, I went in the house with him.

13 Q Okay. And you're the one that asked for the crack.
14 You're the one that wanted to smoke the crack.

15 Right?

16 A Yeah, I wanted to get out.

17 Q You chose to go into his house to go smoke that crack,
18 and you didn't have the tool to smoke the crack with?

19 A I didn't have nothing to smoke no crack with.

20 Q Well, why in the world did you ask for crack cocaine
21 then, sir?

22 A Because I know good and well I get over at his house he
23 might have some. I don't know.

24 Q It sounds like you knew him, sir.

25 A I don't know him. I never met that man a day in my

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 life, sir. Never met him a day in my life.
- 2 Q So, you get to his house and you go in and he's this
3 friendly gentleman, again, invites you into his house I
4 guess, right?
- 5 A Yes.
- 6 Q He invite you in?
- 7 A Yeah, he invited me in.
- 8 Q You go in and you sit down and smoke crack cocaine?
- 9 A Yeah, I did.
- 10 Q You got to tell us about how that took place.
- 11 A Well, okay. We go to the house. We get in the house.
12 He, you know, give me dope. I said, do you got something to
13 smoke out of, you got something to smoke out of. He said
14 no, but I can make one out of a can for you.
- 15 Q Okay. Why didn't you make it out of a can?
- 16 A He, he offered to do it.
- 17 So, why should I ask him if he wanted to do it. I
18 mean---
- 19 Q Cause you're the one -- it was your crack, wasn't it?
- 20 A Yeah, it was my crack.
- 21 Q You bought it with your money, right?
- 22 A Yes.
- 23 Q And you're the one wanting to go to smoke it.
- 24 Doesn't it make sense that you wanted to make your own
25 crack can or pipe or whatever you call it?

Robert Phipps - Cross-examination
by Solicitor Balsa

1 Does that not make sense, sir?

2 A Man, listen, man, all I know, man, when we got over
3 there, I told him, I said listen, man, do you got something
4 to smoke out of. He said no, I make it out of a can.

5 Q Okay. Well, the can gets made and then what happens?

6 A And then I, I'm smoking it. I got -- put me, put me
7 some ash, got some ash, gave me an ash, an ashtray and put
8 my little piece on there, and start smoking my crack.

9 Q Had you smoked any other crack that evening before
10 this?

11 A I don't remember if I did or not, man.

12 Q Do you even remember what time of day it was?

13 A Yes, it must of been about, maybe about 1:00 or 2:00.

14 Q 1:00 or 2:00 in the afternoon?

15 A Yeah, yeah, I think it might of been 1:00 or 2:00 if,
16 if my memory serves me right.

17 Q All right. So, you're smoking the crack and what's
18 Sammy doing?

19 A Oh, he, he piddling around doing stuff, you know what
20 I'm saying. He was in the kitchen. Then he came over here
21 and he start, you know, talking to me and, you know, asking
22 me questions about things, you know what I'm saying, and
23 that's all I remember. I remember he just asking me some
24 questions about some things. I forgot what it was.

25 Q Okay. Well, what happened after you smoked that crack

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 in the crack can?

2 A Well, after I smoked it, I was like man, feel like,
3 man, I ain't get nothing off of this can. I'm not really
4 getting nothing out of this can, man. Sammy, you know where
5 you can probably get a pipe at. Do you know where you can
6 get a pipe at. He say yeah, I can go around the corner and
7 find you one if you want one. I said okay. I said that
8 will be cool. I said here's some money. I say you get a
9 piece while you're at it, you know.

10 Q Let me ask you this.

11 How much crack does \$20 buy?

12 A It, it kind of -- it varies, you know. You can, you
13 can get a little, like a little piece, a dime, for 20. It
14 depends how good the drugs are. Some people give you a big
15 piece for a 20. Some people give you a little small piece
16 for a 20.

17 Q Well, how much of a \$20 piece do you put in the can?

18 A Well, I was kind of, kind of pinched off of it, 20, you
19 know, and --.

20 Q You're telling me you don't put the whole piece in the
21 can to smoke it?

22 A No, I was trying to put little pieces of it. I was
23 trying to make it stretch a little bit just -- but I don't
24 know. It just wasn't getting -- it just wasn't doing the
25 job to me. Yeah, I, I smoked the whole 20.

Robert Phipps - Cross-examination
by Solicitor Balsa

1 Q Okay. You smoked the whole 20?

2 A Yeah.

3 Q All right. And then all of a sudden you wanted a pipe?

4 A Yeah, because I feel like I didn't, I wasn't getting
5 nothing out of it. Feels like the -- every time I smoke it
6 I wasn't getting nothing out of it, man. I said---

7 Q Well, hadn't you already smoked the whole 20 up by the
8 time you asked for a pipe?

9 A Excuse me?

10 Q Hadn't you smoked the whole \$20 piece of crack up
11 before you asked for a pipe?

12 A No, I ain't smoked the whole 20. What I did, I was
13 pinching off the 20. Okay. And I wanted another piece. I
14 smoked it and I wanted another piece. It went kind of, kind
15 of quick.

16 Q Kind of quick. Okay.

17 A I don't know how quick.

18 Q All right. Now your testimony is then you wanted some
19 more crack and you wanted a crack pipe, is that right?

20 A Yeah, I wanted something where I can feel what I'm
21 getting. I wasn't, I wasn't getting nothing out of a can.

22 Q All right. How much money did you give Sammy this
23 time?

24 A This time I gave him like -- I think I gave him like
25 40, \$40, \$40. I think I gave him \$40.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q And your testimony is that he left you in your house,
2 in his house and went out and got some more crack and a
3 crack pipe?

4 A Yeah, he said, he said stay right here, man, I'll be
5 right back. I think I gave -- yeah, he said, he said stay
6 right here, man, I'll be right back.

7 Q Sir, were you drinking any beer along this time?

8 A Yeah, yeah, you know, bring the mellow out on it from
9 the cane, from the cocaine.

10 Q So, you were drinking beer and smoking crack?

11 A Yes.

12 Q What was Sammy doing?

13 A He was, he was drinking beer too, you know.

14 Q But he didn't smoke any crack, did he?

15 A He was -- I don't, I don't remember, I don't presently
16 remember everything Sammy was doing there, man. I don't
17 remember everything.

18 Q Well, did you ever share the beer can crack pipe with
19 him?

20 A I don't, I don't think he did. Because I, I don't know
21 is he, he had -- he made it and that's all I remember. I
22 don't remember, I don't know if he smoked it or not. I
23 can't remember that far back.

24 Q All right. Here's a man that you described to the jury
25 as a crack head, would know where to buy some crack, and

Robert Phipps - Cross-examination
by Solicitor Balsa

1 went and got you some, and brought you back to his house,
2 but he didn't smoke any of that crack cocaine with you, did
3 he?

4 A I don't know if Sam did or not, man. I don't remember.
5 I forgot.

6 Q Okay. And then he leaves.

7 How long is he gone?

8 A Maybe 15, maybe 15, maybe 20 minutes or something.

9 Man, I don't know. I don't know. Maybe about 15, 20
10 minutes. I don't know, man. Something like that. He
11 wasn't gone -- he was gone about 15, about 20 minutes I'd
12 say.

13 Q Okay. All right. Did he have a car?

14 A No.

15 Q Did he borrow your car?

16 A Oh, no, I don't know him like that, no.

17 Q Any idea where he would of went for that 15 to 20
18 minutes?

19 A No, I don't know where he could of went.

20 Q Okay. So, he left out walking?

21 A Yeah, he left out walking.

22 Q Okay. And what did you do for that 15 to 20 minutes
23 while you were in his house?

24 A I was just, just kicked back, you know what I'm saying.
25 Just, you know what I'm saying, drinking beer, you know,

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 just waiting.
- 2 Q Drinking some more beer?
- 3 A I think I drank, drank some more beer, just sipping on
- 4 some beer.
- 5 Q By the way, sir, how did Mr. Gossett introduce himself
- 6 to you?
- 7 A I forgot how he, how he -- what did he say?
- 8 I think he said his name was Sam. Here, call me Sam.
- 9 Something. I think he said just call me Sam, Sam. I think
- 10 he said he called him Sam, they call me Sam.
- 11 Q called you Sam?
- 12 A Yeah, Sam Gossett.
- 13 Q He said call me Sam?
- 14 A Yeah, I think he said call me Sam.
- 15 Q Okay.
- 16 A I can't -- I don't forgot how he introduced his self,
- 17 man.
- 18 Q All right.
- 19 A I know he told me his name.
- 20 Q All right. And it's your testimony when he comes back,
- 21 that Sam comes back with another gentleman?
- 22 A Yes.
- 23 Q And that person was introduced to you as what?
- 24 A New York.
- 25 Q New York.

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 Okay. Had you ever seen that man before?
- 2 A No.
- 3 Q Had you ever been in this neighborhood before, sir?
- 4 A You know what I tell you, I might of, I might of rode
5 down Williams Street.
- 6 Q So, you've never been on South Center Street?
- 7 A No, no, I don't think I ever, I don't think I been on
8 South Center Street. No, I don't think I -- I don't
9 remember. Have I ever been on -- no, I don't remember if I
10 ever been on South Center Street.
- 11 Q Okay. So, you're there waiting and Sam's coming back
12 your testimony with this other man and what's he, what's
13 he -- what do they have with them?
- 14 A Excuse me?
- 15 Q What do they bring back with them?
- 16 A Bring back a pipe with them and the crack.
- 17 Q Okay. And how much crack this time?
- 18 A They brung about, about -- I don't know. Bring about
19 two, two nice big pieces, two nice pieces, two nice pieces,
20 two nice pieces, two nice twenties or something like that.
- 21 Q All right. And then what took place?
- 22 A Came in and he introduced his self. He said here, man,
23 this is, this is New York, man. He gonna sell the stem.
24 He -- but he said he'll take a piece or something, you know.
25 He say give him a piece he'll let you, he'll let, he'll let

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by Solicitor Bulsa

1 you use it, you know what I'm saying.

2 So, I said all right, let me see what you, what you
3 working with, what you got, you know, what you got. So, he
4 gave me, said here you go, put it on the table, looked at
5 the pieces, you know, and then he was -- the dude was still
6 standing by the door and Sam came over and sat down beside
7 me. And, and I heard Sam say let me see, give, give me,
8 give me, give that glass, give me the stem, give me the
9 pipe, give me the stem.

10 So, when he got the stem, he passed it to me. And
11 when -- as I start breaking up the little pieces of,
12 breaking some pieces up of it. I said here, you go, my man,
13 boom. I said this is for you for letting me use it, you
14 know, giving me the stem. And, and I told, I told Sam, I
15 said Sam, I said, I said you, you got it, cause he gave me
16 the pipe, I said Sam you got something I can push cause the
17 troy that was in the pipe, it was about mid, midway in the
18 glass pipe, it was about middle ways up, in the middle of
19 the pipe.

20 Okay. So, I said Sam, I said you got something around
21 here, man, I can push it, push this, this troy through, man,
22 at the other end, you know, make it, cause it's loose, you
23 know what I'm saying, the thing was real loose.

24 So, Sam said, no, no, I don't, I don't got it, I don't
25 know, and then New York said here. New York pulled

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1 something out. Boom. Gave me this, a little hanger like, a
2 little wire. So, I got that, I pushed it, and put me a
3 piece on there, boom, like that. I lit it, smoked me a
4 little bit, got a little.

5 Then I said, here, here, Sam, give it back, you know,
6 hand it to him. So, when I, when I gave it back to Sam to
7 hand it back to New York, Sam, Sam, Sam just started pushing
8 the man stuff. I don't know why. He just start pushing the
9 man like this. The man said hold on, Sam, what are you
10 doing.

11 Q All right. Wait a minute. Wait a minute.
12 who put the stuff on the table?

13 A Say what?

14 Q who put, who put the crack on the table?

15 A when I got the dope.

16 Q No, you said somebody laid it out on the table, and you
17 looked at it, picked a piece up, and gave it to New York.

18 who put the crack on the table, sir?

19 A who put the crack on -- I, I -- when I got the dope,
20 let me see.

21 what -- was it Sam?

22 I think might -- I think -- man, it was -- man, listen.
23 when we -- when he gave me the, the dope, Sam put the dope
24 on the table. Okay. And when I start breaking it, you know
25 what I'm saying, Sam told him listen, let me see the pipe.

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by Solicitor Bulsa

1 So, I think---

2 Q You separated it, you separated it and your testimony
3 was that you gave New York his piece?

4 A Yeah, I separated it.

5 Q So, New York's got his piece in his hand.

6 A Yeah, New York never had the dope at all. New York
7 didn't never have no dope.

8 Q You put some crack in the pipe and you smoked some it's
9 your testimony, right?

10 A Yeah, I put, I put some dope in the pipe and started
11 smoking it.

12 Q And you said you handed it to Sam to give to New York
13 so he could smoke his.

14 A No, no, no, no, no, no.

15 Q That's what you just said.

16 A I said -- this is what I said. You trying to -- man,
17 come on, man. This is what happened.

18 Q And then you're testifying---

19 MR. BRANNON: Objection. Argument.

20 THE COURT: Mr. Bulsa, I'm gonna let you -- let the
21 witness finish his answer and then I'll let you ask a
22 question.

23 SOLICITOR BULSA: Yes, sir.

24 THE COURT: Mr. Phipps, do you wish to offer any
25 further answer to his last question?

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by Solicitor Bulsa

1 A Okay. what?

2 Listen, he asked me about who put the dope on the
3 table. Okay. That what he just asked me, about who put the
4 dope on the table.

5 Q That was -- yeah, that's my one question that you
6 answered.

7 A Okay.

8 Q You said Sam did.

9 A Yeah, Sam, Sam---

10 THE COURT: Mr. Bulsa, let him, let him finish his
11 answer now. And when he's finished, I'm gonna let you ask
12 your next question.

13 Go ahead, Mr. Phipps, anything else you want to say as,
14 in answer to the last question that he asked.

15 WITNESS: Okay. what was his last question cause he,
16 in trying to confuse me.

17 THE COURT: Well, then you may be finished.

18 You may ask your next question, Mr. Bulsa.

19 WITNESS: There you go.

20 SOLICITOR BULSA: Thank you, Your Honor.

21 Q Okay. All right. You smoked a rock of crack, correct?

22 A Yeah, I was smoking it.

23 Q And then you were handing the pipe to Sam to give to
24 New York according to your testimony, is that right?

25 A Yeah, I was I -- and I, I told here, here, Sam, like

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by Solicitor Bulsa

1 that, give it to New York, back to New York.

2 Q Okay. And your testimony is, is that's when Sam
3 started pushing something in a, in the pipe?

4 A Yes, Sam started pushing the stuff, pushing the stem.

5 Q Okay. And then what happened?

6 A And that's when like they got to like arguing like man,
7 don't be pushing my stuff, don't be pushing my stem like
8 that, don't be messing with my stem, man. Don't, you know,
9 don't be doing that, don't push the stem, man.

10 So, when he got up, he was like he was getting up or
11 something like that, and he still had the thing, and I went
12 over to where -- I said come on y'all, man, chill out with
13 that, man, and broke them up, you know.

14 Q What were they doing?

15 A Huh?

16 Q What were they doing?

17 A They fighting. They about ready to fight.

18 Q How so?

19 A Excuse me?

20 Q How were they ready to fight?

21 A Because what it was, he went ahead and start trying,
22 tried to snatch the thing from Sam, from, cause Sam was
23 pushing the stem. Okay. When Sam started pushing his stem,
24 he got mad, he said give me my, give me my -- excuse me.
25 Give me my shit, man, give me my -- like that.

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by Solicitor Bulsa

1 So, when I got -- I said come on, man, y'all chill out
2 man. Said no, man. Don't push my damn, don't push my stem
3 like that, and --.

4 Q So, you actually touched both men and pushed them
5 apart?

6 A I got in, I got in-between them and stuff and yeah, I
7 got in-between them, like I got in-between, between them,
8 you know what I'm saying. And Sam, you know, saying,
9 wouldn't give the man his stem back, man. Sam wanted to act
10 like he wanted to hold on to it. He didn't want to give it
11 back. Man, give me my damn, give me, give me my stem, you
12 know.

13 Q Was Sam trying to smoke the crack?

14 A I don't know if Sam wanted to try to smoke it or what,
15 man. I just know he kept pushing -- he, he pushed the man's
16 thing.

17 Q Okay. And he didn't smoke any of crack out of the beer
18 can. Didn't smoke any of the crack out of the pipe.

19 A I don't remember, man. He might have. I don't
20 remember that, you know what I'm saying. I just remember
21 breaking the fight up, man.

22 Q All right. And you pushed him aside according to your
23 testimony.

24 And then what happened?

25 A And then Sam said he got, he got to get the hell out of

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by Solicitor Bulsa

1 my house. He said he got to leave. I said man, hold on,
2 man, I want to use his thing. I said let me use his thing,
3 man. Hold on, Sam, hold on, man, just go out here, man. Go
4 back in my little spot, man. Take another piece. Man,
5 y'all chill out, man. Hey, man, can I see it, can I see it
6 one more time before you leave, man. He said I ain't going
7 nowhere.

8 Sam said, shit, you getting the hell out -- excuse my
9 french. Sam said, shit, you getting the hell out of my
10 house and he start walking out in back, man. They -- I was
11 like this. I seen Sam get up from over here. I mean Sam
12 was over here and they was, and they ready to go at it again
13 cause he said he wanted to leave Sam's house.

14 Okay. When Sam say oh, he getting the hell up out of
15 here, and I remember exactly that because he said something
16 about this is my damn castle. I'm the king of this, I'm the
17 king of this damn castle. You getting the hell up out of
18 here.

19 So, when Sam went that away, he followed him. He, he,
20 you know, when Sam going, going to his home, room, he
21 followed him, and that's -- and when I seen him follow him,
22 I'm like this at the end of the couch in the hallway like
23 that. I look and I seen him going to Sam's room, and I said
24 man, what the hell.

25 Q Sir, wasn't it you that actually followed him and went

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by Solicitor Bulsa

1 into his room?

2 A Oh, no, no.

3 Q And you're the one that actually beat him up and
4 stabbed him multiple times?

5 A No, hu huh. (Negative).

6 Q And he was fighting back?

7 A No, no.

8 Q And that's how he got your DNA under his fingernails?

9 A No.

10 Q And you got cut while you were stabbing him and you
11 bled onto his pants?

12 A No, no.

13 Q In fact, he kept his wallet in his pocket. Some of
14 your blood was right there at his pockets.

15 Isn't that true?

16 A No.

17 Q And you rifled through his wallet?

18 A No.

19 Q And you left the house, isn't that true?

20 A No.

21 Q And where did you go when you left the house, sir?

22 A I went to Brenda's house, Sister Brenda's.

23 Q What time?

24 A I can't remember exactly what time it was, but it might
25 of been about, might of been about 6:30 or maybe about 6:30,

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1 something like that.

2 Q So, you'd been at Sam's house for four hours?

3 A Yeah, I think I might of been there. Yeah, but we,
4 we -- I might of been I think. Don't remember how long I
5 been there. I know I was there though. I might of been --
6 yeah, I probably was there for four hours.

7 Q Well, when I asked you the question when you arrived,
8 you said maybe 1:00 or 2:00 in the afternoon.

9 A Yeah.

10 Q Now you're saying you left and went to Brenda's house
11 about 6:30.

12 A Yeah, I was there, I was there for a few -- yeah, yeah,
13 I was there for about one, two -- I may of been there about
14 three or four hours.

15 Q You must of been smoking a lot of crack.

16 A Man, no, I don't remember how much crack I was smoking,
17 but I had know I had bought a 40, and I know that I had
18 bought a 20. So, you know.

19 Q You drinking a lot of beer?

20 A I don't know how much beer I was drinking. I don't
21 remember how many cans I might of drank.

22 Q Who is Brenda?

23 A Brenda is an ex-girlfriend of mines.

24 Q What's her full name?

25 A Brenda Urquhart.

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by Solicitor Bulsa

1 Q How did you meet her, sir?

2 A How did I meet Brenda?

3 Q Yes, sir.

4 A I met Brenda through my sister.

5 Q Through your sister cause you're not from Spartanburg,
6 are you?

7 A No, I ain't from Spartanburg. No, no.

8 Q Where are you from?

9 A I'm from Ohio.

10 Q Ohio.

11 How did you meet Brenda and you being from Ohio?

12 A How did I meet Brenda when I was---

13 MR. BRANNON: Objection, Your Honor. That's asked and
14 answered.

15 THE COURT: I don't believe that particular question
16 was asked and answered.

17 MR. BRANNON: Well, he asked how he met her. He said,
18 he responded through his sister and now he's asking the same
19 question again.

20 THE COURT: He's on cross-examination. I'm gonna let
21 him go forward.

22 A Now repeat that question again?

23 Q You just said you were from Ohio.

24 A Uh-huh. (Affirmative).

25 Q Brenda's in Spartanburg.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 How did you meet her?

2 A I met, I met, I met Brenda through her sister.

3 Q Explain that.

4 How?

5 A My sister introduced me through some mail and letters
6 and stuff.

7 Q So, you met Brenda through the mail?

8 A Yeah, through my sister, yeah.

9 Q Okay. And y'all wrote letters back and forth?

10 A Yes.

11 Q Okay. And when did you come to Spartanburg?

12 A I think I got to Spartanburg the year of my -- 2002
13 or -- no, 2003, 2003.

14 Q In fact, wasn't it around Thanksgiving of 2003?

15 A No, 2002. 2003. No, 2003 I came to -- 2003 in
16 November I think it was I came to Spartanburg.

17 Q Okay. Around Thanksgiving of 2003, is that about
18 right?

19 That's in November?

20 A Yeah, yeah, I think that might, you might be right on
21 that.

22 Q So, you'd actually only been in Spartanburg for a
23 matter of months before this incident occurred, right?

24 A No, I came to Spartanburg in November, and I stayed, I
25 stayed with my sister and then I moved in with, I moved in

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by Solicitor Balsa

1 with Brenda and I stayed with Brenda for -- that was in
2 2003. That wasn't in no, in 2000 -- I don't think it was no
3 2004 when I moved in with, in with Brenda.

4 Q Mr. Gossett died April of 2004, sir.

5 A Okay. Well, I met Brenda in 2003. I moved in with
6 Brenda in 2003.

7 Q Okay.

8 A I been living here for a while.

9 Q All right. And in fact, she -- did she kick you out of
10 the house because of your drug use?

11 A No, no.

12 Q No?

13 A No.

14 Q But you would still go over and see her?

15 A Yeah, we had a disagreement about something. But --
16 and I would go see her, you know, about off and on, you
17 know. See how she doing all right cause I didn't had no --
18 I wasn't, had no animosity towards going together no more.
19 We still friends.

20 Q Okay. So, when Mr. Gossett was killed, you weren't
21 staying at Brenda's house, were you?

22 A Excuse me?

23 Q When Mr. Gossett was killed, you were not staying at
24 Brenda's house, were you?

25 A No, no.

Robert Phipps - Cross-examination
by Solicitor Bulsa

- 1 Q Okay. Where were you staying?
- 2 A I was staying with my sister.
- 3 Q Okay. So, when you moved to Spartanburg, you stayed
- 4 with your sister, and then you moved in with Brenda?
- 5 A Then I moved back.
- 6 Q You moved back to your sister's?
- 7 A I moved back to my sister's.
- 8 Q Okay. After you saw this incident, you went to
- 9 Brenda's house?
- 10 A Yeah.
- 11 Q Straight to Brenda's house?
- 12 A Straight to Brenda's house.
- 13 Q For what reason?
- 14 A I wanted to go see, go holler at her and talk to her
- 15 and kick it with her, you know what I'm saying, and just
- 16 kick it with it, with her, to see her, talk to her about
- 17 some things with her.
- 18 Q Okay. And you had driven your sister's car I believe
- 19 you said over there?
- 20 A Yeah, I drove that.
- 21 Q How long were you over at Brenda's?
- 22 A I don't know. Maybe, maybe about a half an hour maybe.
- 23 Yeah, maybe about a half an hour.
- 24 Q And then what did you do?
- 25 A And I told Brenda about the fight that happened and,

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 and she called my sister.

2 Q All right. why did she call your sister?

3 A I don't know. I don't remember seeing her. I don't
4 remember -- I don't remember -- I don't think I remember
5 seeing -- I think I was in the front room looking at TV or
6 something. I forgot. Looking at BET or something and I
7 told her. She just called my sister.

8 Q what did you tell Brenda?

9 A I told Brenda, when I came there, I said, what's up,
10 girl, what's up, baby. She said wait now, what's up with
11 you. I told her nothing. Some old crazy stuff that went
12 down. I just left it over at this house, this crazy house,
13 they was over there fighting and stuff. And she said what,
14 who, who was fighting. I said I don't know. I said, but
15 shoot, they was fighting about some stupid petty stuff, you
16 know.

17 And Brenda said, what. I said, you know what, I ought
18 to go see if he's all right, you know what I'm saying,
19 because, you know, what -- he might of got beat up, he might
20 of got beat up kind of bad, you know, like that. She said
21 what, and then, you know, she left out the room or
22 something.

23 She left out the room?

24 Went in the kitchen and got on the phone with her -- I
25 think she got on the phone in the kitchen on the wall cause

Robert Phipps - Cross-examination
by Solicitor Balsa

1 I think she -- I don't remember. She called. I know she
2 called. She -- and my sister came. She said boy, what's
3 going on with you, something, I forgot. She said, she said
4 something and I said man, this dude was over there fighting
5 and stuff. Over at this house, they over there fighting and
6 stuff. She said what. I said I ought to go back down and
7 check it out. She said come on, let's go, I'll take you
8 back down and let's check it out.

9 Q That's what your sister said?

10 A Yes.

11 Q Your sister's name is?

12 A Marcella Phipps Bailey.

13 Q Okay. Sir, isn't it true when you went to Brenda's
14 house you'd already called 9-1-1?

15 A No, I didn't call 9-1-1 till I went, till we went back
16 that away.

17 Q Isn't it true, when you went to Brenda's house, that
18 you went straight to the bathroom?

19 A No, man. No, sir.

20 Q Cleaned up and changed your clothes?

21 A No.

22 Q And in fact, you even shaved your head?

23 A No.

24 Q And then you came out---

25 A I ain't do that.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q Then you came out telling Brenda about what had
2 happened?

3 A No.

4 Q Isn't it true you then wanted her to go back over
5 there?

6 A I might of asked Brenda did she want to go back around
7 there. I don't remember. But I might have told her did she
8 want to go check it out.

9 Q And Brenda didn't want to go over there with you. You
10 been doing crack. So, she called your sister to come get
11 you.

12 Right?

13 A No, she called my sister and without me even knowing
14 she called my sister. But I didn't -- I was sitting in the
15 front room, man, watching TV. Man, I don't -- man, I
16 don't---

17 Q Did your sister come get you?

18 A Yeah, she did.

19 Q And what did y'all do?

20 A We went back. we rolled down there by his house and I
21 showed her where he lived at and stuff and we rode past the
22 house and looked to see if the emergency squad or something
23 was out there. Any -- we just -- I, I was gonna go up there
24 and knock. But I said go on, just keep going, just keep
25 going, I'll call, I'll call.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q Okay. Your testimony is that you were so concerned
2 that you wanted to go over there and check on him, but then
3 you just drove by the house and didn't even knock on the
4 door?

5 A I -- what, you know, I was -- we pulled up. We pulled
6 on the street and I looked and I seen -- I said just go
7 ahead, I'm gonna go make this phone call. I'll make a phone
8 call for him to see if he's all right up in there because I
9 still didn't want to get involved. You know, I still didn't
10 want to get involved.

11 Q Why not, sir?

12 A Because I was on probation.

13 Q What's that got to do with it?

14 A Because I'm -- people get violated being involved in a,
15 in something that you ain't got nowhere to be involved in.
16 I was on -- I was doing drugs. Okay. And I was on
17 probation. And I was at -- I didn't want to get caught up
18 in a situation where my parole officer would say hey, you
19 doing crack, you smoking drugs, you know what I'm saying,
20 you doing drugs again, Phipps. So, I didn't -- that's one
21 reason why I didn't want to get too involved with it. But I
22 was concerned about him, you know what I'm saying.

23 Q This is a man who the, by your testimony, invited you
24 up to, to his house---

25 A Uh-huh. (Affirmative).

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q ---got crack for you, got a pipe for you, let you drink
2 his beer, let you use his house to smoke your crack, and you
3 just -- you're too concerned about what might happen with
4 your probation to go in there and see what actually happened
5 to him?

6 A Yeah, cause I just---

7 Q Make sure the police got to him and rendered aid?

8 A well, I mean I just was concerned about him. That's
9 all, man.

10 Q How come, when you went by, you didn't get the house
11 number?

12 A Cause I didn't see it on there. I didn't see the house
13 number on the, on the door or nothing. I didn't see it.

14 Q How come you didn't tell the police your name?

15 A Tell the police my name?

16 what you talking about, 9-1-1?

17 Q With 9-1-1.

18 A Because just like I told you, I wanted to remain, I
19 wanted to remain anonymous.

20 Q All right. Let's talk about the visit the, the city
21 police made with you.

22 where were you when they went to talk to you?

23 A I was in Gilmore.

24 Q Where is Gilmore?

25 A In West Virginia.

Robert Phipps - Cross-examination
by Solicitor Balsa

- 1 Q . What is that?
- 2 A That's a correctional institute.
- 3 Q Okay. Were you back serving time?
- 4 A Yeah, for violation of having a dirty urine.
- 5 Q Excuse me?
- 6 A A violation of a dirty urinal. Dirty, you know, pee.
- 7 I had pee -- my pee was dirty.
- 8 Q You tested positive for drugs?
- 9 A Yes.
- 10 Q Is that what you're trying to say?
- 11 A Yes, I am. Tested positive for drugs.
- 12 Q And Gilmore West Virginia is a federal institution?
- 13 A Yes.
- 14 Q Okay. And you were serving time for violation of
- 15 probation for what charge?
- 16 A Violation of -- I had a dirty urinal.
- 17 Q I know.
- 18 But you were on probation for what or released for
- 19 what?
- 20 What crimes, sir?
- 21 A Oh, bank robbery.
- 22 Q Bank robbery?
- 23 A Yes.
- 24 Q And that's what your original conviction was in 2001,
- 25 is that right?

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 A My original conviction was in what?

2 Q 2001 for the bank robbery.

3 A No, I was, I was, I was in a -- I was, I went to, I
4 went to, to federal, federal jail for bank robbery and I
5 went -- I did some time and I came home in 2002. I went
6 there to federal, federal prison in, in '90, '94 I think it
7 was.

8 Q And you stayed in till when?

9 A Until I got out in 2002.

10 Q Okay. And where did you go in 2002?

11 A I moved with my sister.

12 Q I thought you told us you didn't get to your sister's
13 until November of 2003?

14 A No, I didn't tell you that. I told you that I came to
15 her house, moved with her in November of 2002 and moved with
16 Brenda in 2003. That's what I told you, sir.

17 Q Okay. Well, let's move on.

18 You were in Gilmore when the police went to talk to you
19 because you violated because you tested dirty, right?

20 A Yeah, I went back for dirty.

21 Q And when did you test dirty?

22 A When was that again?

23 When was that?

24 In Gilmore for -- I don't, I don't remember, I don't --
25 that's what -- I think, I think I went back for a dirty

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 though. I think I did.

2 Q Okay.

3 A I remember -- I'm trying to remember and it's five
4 years ago. What did I -- I don't know what -- let me see.
5 What -- I forgot -- I think I went there for a dirty though.

6 Q Okay. And I'm asking you---

7 A I think I went back for violation -- I went for a
8 violation.

9 Q When did you go back?

10 A When did I go back?

11 Q Yes, sir.

12 A I went back to Gilmore in, let me see, in 2005 I think
13 it was. I went back to Gilmore in 2005 cause I was at the
14 Spartanburg County Jail and I came and saw the judge up
15 here. And he took me -- they took me for the judge and they
16 violated me for, for violation of I think it was dirty. I
17 think it was for some other -- a list of things, you know
18 what I mean. I think it was dirty. I think it was dirty or
19 something. I forgot what it all was.

20 Q Are you telling me you left Spartanburg via the federal
21 authorities?

22 A Excuse me?

23 Q Are you telling me you left Spartanburg County with the
24 federal authorities?

25 A I'm telling you that I came back to -- I was here.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 They picked me up in Ohio. I came back down here. I was in
2 Spartanburg and I saw a federal judge up here, and I was in
3 Spartanburg, and they came, and they came and took me,
4 violated me and sent me to Gilmore. That's where I was.

5 Q Okay. Yeah, but you were actually in Ohio when
6 somebody arrested you and brought you to Spartanburg to go
7 before a magistrate?

8 A Yes, sir.

9 Q Okay. So, when did you go to Ohio?

10 A I might of went to Ohio about March, late March or
11 something.

12 Was it late March?

13 Yeah, I think it might of been late, late March I think
14 it was. I think it might of been late March. I think it
15 was March. It was March something. I think it was.

16 Q Didn't you go, in 2004, after you committed this crime
17 to get out of Spartanburg?

18 Didn't you flee to Ohio for that?

19 A No, no, no. I had to go -- you know what?

20 I had to go take a -- I had to go do a dirty and my --
21 I been ducking my parole officer, right, because I knowed
22 that I was dirty, you know. I knew I had, I was gonna test
23 dirty. And he told me once before, he said, Phipps, the
24 next time that I catch you, a dirty out of you, you're going
25 back, buddy. And I said well, since, you know -- I said no,

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 I ain't gonna do it no more. I ain't gonna smoke no more
2 crack. But an addiction is like a disease.

3 So, anyway, I went back to smoking it, right. When I
4 realized that he kept coming to the house when I wasn't
5 there, and he, you know, saying you tell Phipps that I'm
6 putting, I got a warrant out on him or something. So, I
7 said shoo (phonetic) I'm going to Ohio.

8 Q Okay. So, I understand your testimony to be that you
9 fled to Ohio because you had a probation violation warrant?

10 A Yeah, yeah, I had, I had -- I don't know if he had a
11 warrant. But he told me, told somebody at my house or
12 something, to tell me that I put a warrant out for me or
13 something. I, I remember he was looking for me. Okay. I
14 can't remember exactly to pinpoint exactly. But I know he
15 was looking for me. So, when I found out he was looking for
16 me at the house, you know, kept looking for me, I said man,
17 I'm gone, man. I'm out of here.

18 Q Who took you to Ohio?

19 A Who took me to Ohio?

20 Q Yes, sir.

21 A I took my own, I took my own self to Ohio. I caught a,
22 I caught a bus.

23 Q You just caught a bus?

24 A Yeah.

25 Q And got out of town?

Robert Phipps - Cross-examination
by Solicitor Balsa

1 A If that's what you want to call going, going to
2 Columbia.

3 Q Okay. You're hiding from something, aren't you?

4 A I wasn't hiding from nothing but my parole officer.

5 Q Okay. And you wound up getting put in prison in West
6 Virginia, right?

7 A Yes.

8 Q All right. So, you're already, you're already in, back
9 in custody. You got no more concerns about violating
10 probation, testing dirty. You're in prison. So, you get
11 two nice officers come to meet with you.

12 Right?

13 A Yes.

14 Q Okay. And you told this jury a few minutes ago that
15 you were concerned about that man in the house in South
16 Center that was so nice to you, that takes you to get crack
17 cocaine, taken, got a pipe for you to smoke, let you smoke
18 it in your, in his house, drink beer, left you in his house
19 even for 20 minutes, you're so concerned that you made that
20 anonymous phone call that you wanted the police to go check
21 on him.

22 They came and talked to you about that, right?

23 A Yes.

24 Q Okay. And what was your response to the police, sir?

25 A I really didn't want to talk to them cause they talking

Robert Phipps - Cross-examination
by Solicitor Balsa

1 about---

2 Q Didn't want to talk to them?

3 A Yeah, because it was like saying some, saying -- I
4 don't know. They was just trying to somewhat, you know,
5 ain't kind of put me in, involved me in it. I ain't
6 really -- I still didn't want to get involved in it.

7 Q Didn't you, in fact, sir, you deny even know Sammy
8 Gossett?

9 A I don't remember. I don't remember. I don't remember
10 if I did that or not.

11 Q And they played that 9-1-1 tape or they asked you to
12 say the word anonymous and you even denied making that 9-1-1
13 call?

14 A I might of still been evasive because I didn't want to
15 still get involved because the way they, the way they was
16 leading -- the way they was talking to me, they was talking
17 to me in a way like, you know what I'm saying, trying to
18 like implicate me somewhat in, in it. So, I didn't want to
19 be -- I still didn't want -- I still didn't want to be
20 involved. I still don't -- I still didn't want to get
21 involved with it due to the fact that I figured if I get
22 involved with this, keep on getting involved in it, then I'm
23 gonna have to be all in court and all that, man. You know,
24 I just said, yeah, I denied it for a second, and you know---

25 Q You denied knowing Sammy. You denied knowing about the

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 incident.

2 Right?

3 A I denied about the incident?

4 What?

5 Q You denied knowing about it, didn't you?

6 A I denied that I called 9-1-1 and I don't know if I
7 denied the whole situation or not. But I know I didn't want
8 to get involved -- I still, at that point in time, I'm, I'm
9 in, I'm in correctional service doing time in the
10 correctional institution, and I, and I don't want to have to
11 come out of here and have to go into another situation where
12 I got to, you know what I'm saying, defend myself for
13 something I know that I ain't have nothing to do. So, I
14 didn't want to talk.

15 Q Wait a minute, sir,

16 Didn't they come and talk to you because they thought
17 you might be a witness to this case?

18 A Thought I was gonna be a witness for the case?

19 Q Yes, sir.

20 A They was talking to me like they kind of, that's
21 what -- they kind of talking to me like I might of had -- I
22 don't know. They talking to me in a way that made me think,
23 you know what I'm saying, that, you know what I'm saying,
24 they -- I think they was answering, saying things was, made
25 me think that they was trying to implicate me. Trying to

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 implicate, trying to indicate something else other than what
2 they was saying, was saying. That's what it made me, that's
3 what it made me think.

4 Q Well, Mr. Phipps, tell this jury what you had to hide
5 back then.

6 A I ain't had nothing to hide. I just didn't want to get
7 involved. I still didn't want to get involved. I still
8 wanted to remain -- I still didn't want to get involved
9 cause it's not, you know, I just wanted to---

10 Q And---

11 A See, I didn't want to get involved. Okay. Remember
12 that. I didn't want to get involved with that. Because I,
13 you know, I knew what it was gonna lead to. I knew it's
14 gonna end up leading to going and being sequestered and all
15 that, you know what I'm saying, and I'm not -- I didn't want
16 to get involved. I still didn't want to get involved.

17 Q Well, when did you give them three names?

18 A He kept saying something about well, we got your
19 fingerprints or something you know what, and I said well,
20 you know, he said something else or one thing. I said yeah,
21 I might of been there, you know what I'm saying, and he
22 asked me about some, somebody who might of been there, and I
23 told him, I said, I said y'all check with the guys named New
24 York and Dirty and I said the guy named New York, I said he
25 was there. I think he was, you know -- I, I mentioned New

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 York. I told them something about New York. I told them I
2 been with New York at the house. I don't remember. I
3 talked about New York---

4 Q Who else was it---

5 A Huh?

6 Q What were those other two names you told them?

7 A I told them -- I think I might mentioned it. I said---

8 Q King Dirty?

9 A Yeah, I think I said -- I think I might of said King
10 Dirty.

11 Q John John?

12 A John John, I might of said that.

13 Q Okay. Well, where did those other names come from?

14 A I was just -- you know, I don't remember, I don't
15 remember saying -- I remember saying it, but I don't
16 remember, I don't remember -- I said them names because I
17 know that they, I had been, you know what I'm saying, I know
18 that they be around Williams Street and they smoke crack
19 too, you know what I'm saying.

20 Q All right. Now, Mr. Phipps, you denied knowing
21 Mr. Gossett. You denied knowing about the incident. You
22 denied making the 9-1-1 call. Then the police said well, we
23 think you made the call, but we certainly know you were in
24 the house cause we got your fingerprint in there.

25 Is that right?

Robert Phipps - Cross-examination
by Solicitor Balsa

- 1 A Yeah, I think you might be right.
- 2 Q Okay. And it was at that point that you said well,
3 maybe you need to check on these three guys.
- 4 Sounds like it was an attempt to deceive them, wasn't
5 it?
- 6 A Oh, no, no, no.
- 7 Q Well now you're asking this jury to believe that it was
8 New York that did this.
- 9 Why give the police two other names?
- 10 A Cause I still didn't want to get involved with it, man.
11 They asked -- they just asked me about some names. I did --
12 they asked me about some names, man. I just gave them that.
13 But I started to go ahead and just talk to them and tell
14 them about the New York. But I -- man, I just -- listen,
15 man, I, at that time, particular time in, in -- I just
16 didn't want to, you know what I'm saying, to get all too --
17 I just want to throw them some names that they knew that
18 they, if they knew them. Okay.
- 19 Q When you went by the house, according to your
20 testimony, with -- your sister was in the car with you?
- 21 A Yes.
- 22 Q Okay. And what does she do?
- 23 A Excuse me?
- 24 What does she do?
- 25 Q Yes, sir.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 A She -- nobody hollered and then---

2 Q No.

3 What occupation does she have?

4 A She drive a school bus.

5 Q Okay. And is she the wife of a minister?

6 A Yes, she's the first lady of the church.

7 Q First lady at the church.

8 And did Brenda attend church there?

9 A I don't know if Brenda was attending church there or
10 not because Brenda at one time go to other churches.

11 Q Did you attend church there?

12 A Well, at her church, yeah.

13 Q Mrs. Bailey's.

14 A Sometimes. Yeah, I like her church.

15 Q Okay. What did your sister think about you not wanting
16 to get involved?

17 MR. BRANNON: Objection. How would he know that?

18 SOLICITOR BULSA: I'll, I'll rephrase it.

19 THE COURT: I'll ask you to do that. Thank you.

20 Q Did your sister tell you anything as you were making
21 that 9-1-1 call?

22 A Did she tell me anything?

23 Q Yes, sir.

24 A I don't remember. I just, I just told my sister just
25 drove around, just go around to the store. I don't remember

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 what she said or what she didn't say.

2 Q Was she aware that you were making a 9-1-1 call?

3 A I don't, I don't believe she was. She might of -- I
4 think -- I don't remember if she was remember -- I got out
5 the car, I got out the car and she -- I think this -- stay
6 inside the store. I don't know if she went in the store or
7 something. I can't remember that. I remember I told her to
8 take me to a phone booth.

9 Q Did you tell her you called 9-1-1?

10 A Did I tell her I called 9-1-1?

11 Q Yes, sir.

12 A I believe I did, yeah.

13 Q Okay. And did she try to get you to go to the police?

14 A No, I told her to take me on home.

15 Q Okay.

16 A I think I told her to take me on home.

17 Q Now, while you're in West Virginia and the police were
18 talking to you, do you remember telling them you wanted to
19 talk it over with your family before you told them anymore?

20 A Yeah, yeah, because they was acting like, acting like
21 they was trying to interrogate me or something. You know I
22 didn't like that. I didn't like that.

23 Q Well, did you talk with your family?

24 A I don't know if I did or not. I think -- I don't know
25 if I did. I might of. I might of talked to them. I don't

Robert Phipps - Cross-examination
by Solicitor Balsa

1 know. I don't remember. But I know I didn't -- I think
2 they told me -- I told them -- I don't remember if they -- I
3 don't remember if I talked to them or not, man. I don't
4 remember, I don't remember if I talked to them or not.

5 Q So, you lied to the police about wanting to talk to
6 your family?

7 MR. BRANNON: Objection.

8 A No.

9 MR. BRANNON: Calls for -- he didn't say I'm going to.
10 He said he would like to. That's a misclassification of the
11 statement or misstatement of the testimony.

12 THE COURT: He's on cross-examination. I'm gonna allow
13 him to ask the question. Of course, the witness can explain
14 his answer and the fact that he may not have, that may not
15 have been said or he may not have said it.

16 You may answer the question.

17 Q Did you, sir?

18 A I may not. I may not. I may, I may not.

19 Q Okay. And so, you didn't call Mrs. Bailey and say hey,
20 the police came up to me about that incident back in April
21 of '04?

22 A I don't remember, I don't remember if I did or if I
23 didn't.

24 Q I mean you didn't do the right thing and tell them what
25 we know?

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 You didn't do that, did you?

2 A Say what?

3 Q You didn't call her and tell her that y'all needed to
4 tell the police what you knew, did you?

5 A I don't remember. I don't know. I don't remember. I
6 don't know, man.

7 Q Had you told her what you, what you'd done?

8 A Who, told my sister what I done?

9 Q Yes, sir.

10 A About calling 9-1-1?

11 Q No, about what happened in the house.

12 A I might, I might -- I think I did. I don't remember if
13 I told her or not.

14 Q Okay. Well, were you in Spartanburg the next day,
15 April 4th of 2004?

16 A Yeah. Yes, sir.

17 Q When did you learn Mr. Gossett had been killed?

18 A I think I learned he had been killed. I didn't know he
19 was killed. I didn't know he was killed.

20 Q You didn't know he was killed?

21 A No, I think when I found out he was killed, I think he,
22 they, the detectives and them came and saw me.

23 Q So, you're telling us it wasn't until you were in west
24 virginia that you learned Mr. Gossett had been killed?

25 A Right.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q And you had nothing to fear about any violation, did
2 you, at that point?

3 A I don't remember if I did or I didn't.

4 Q And you lied about knowing anything happening to a man
5 that had been so nice to you?

6 A Say that again.

7 Q You lied to the police about knowing anything that had
8 happened to about the man that had been so nice to you that
9 day?

10 A No, I didn't lie to them. I just didn't want to get
11 into it.

12 SOLICITOR BULSA: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 Q I'm about finished with you, Mr. Phipps. I'm going to
16 go back to the scene. A couple other questions.

17 One thing is your blood being on Mr. Gossett's pants.

18 You described nothing in the way for you to be cut, did
19 you?

20 A What do you mean?

21 Q Your description to the jury is you just simply pushed
22 the two of them aside?

23 A I don't remember. No, I just remember broke -- just
24 got in-between them maybe somewhat like scuffling. It
25 looked like -- it appeared like they getting ready to fight.

Robert Phipps - Cross-examination
by Solicitor Balsa

1 So, I was just trying to break it up before it got out of
2 hand. That's all I did.

3 Q So, you're saying that fight was about Mr. Gossett
4 pushing a crack pipe?

5 A Yes.

6 Q With a wire hanger or with, with something, right?

7 A Yes.

8 Q And that something was given to you initially by this
9 fellow you called New York, isn't that true?

10 A Yes.

11 Q Did Mr. Gossett touch you in any way, sir?

12 A He may, he may not. I don't remember.

13 Q Isn't it a fact that he was fighting you off, and
14 that's how he got your DNA under his fingernails?

15 A No.

16 Q Cause you provided no other explanation, have you?

17 A (No response.)

18 Q When you went back to Brenda's after this happened, you
19 say you went back there before you called 9-1-1, how were
20 you acting?

21 A I was just -- I was like -- I wasn't acting -- I was
22 just like I -- I just said I saw a fight. I don't
23 remember---

24 Q Okay.

25 A ---if I was acting funny or anything.

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 Q You were acting normal according to yourself?

2 A Well, I was just like saying I saw, I saw a fight,
3 Brenda, there's some crazy -- I said I saw a crazy, you
4 know, this crazy fight going on at this house I was at. I
5 saw a fight and it was crazy. I don't remember exactly how
6 I was acting and stuff. Man, come on.

7 Q Your testimony is, is you would of been to her house
8 before 7:35 p.m., and you said you went back to her house
9 late that same evening?

10 A Hu huh. (Negative).

11 No, I didn't go back to her house back -- I went to her
12 house and then we left, me and my sister left, and then I
13 went home.

14 Q You went home with your sister?

15 A Yes.

16 Q So, you didn't go back to Brenda's that night?

17 A No.

18 Q So, you only went to Brenda's house one time that
19 evening?

20 A I -- yeah, when I, when I, when I left Sam's house I
21 went to Brenda's house.

22 Q Okay. And you stayed for a matter of minutes?

23 A No.

24 Q How long?

25 A When I went to Brenda's house I stayed maybe about -- I

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 sat in the front room the whole time I was there. So, it
2 had -- maybe about happened, maybe about, maybe, maybe about
3 a half an hour, an hour or something like that. Between a
4 half an hour or an hour, something like that.

5 Q Okay. And that would of been, by your testimony,
6 before you made a call to 9-1-1 and went back by the house
7 and behind, went back by South Center Street, correct?

8 A Yeah.

9 Q And you never went back to Brenda's house that evening?

10 A No.

11 Q Did you ever go back by Brenda's house after that day?

12 A I think I might of just went over to her house that
13 morning. Yeah, I think I went back over to her house that
14 morning I think. I couldn't tell. Man, I may of -- I don't
15 remember. I think I did go back to her house the morning.

16 Q All right. What time?

17 A Oh, about -- let me see. Maybe about 7:00, maybe about
18 7:00. It was early. Maybe about 7:00.

19 Q For what purpose?

20 A To borrow, to -- I wanted to borrow a CD or something
21 she had. I was going to ask her for a CD disk, you know, an
22 O.J. -- she had the greatest hit, an O.J. CD I wanted and I
23 was gonna play it.

24 Q Was there any more conversation about what had happened
25 the night before?

Robert Phipps - Cross-examination
by Solicitor Bulsa

1 A I'm trying to think. I might of said something, some
2 other things to her about it. I may or may not. I don't
3 remember. I don't remember.

4 Q But you were acting normal again?

5 A Yeah, I don't believe I might of. I may or may not. I
6 don't remember.

7 Q How did I get over to her house the next day?

8 A Excuse me?

9 Q How did you get over to her house that morning?

10 A How get I got over to her house that morning?

11 Q (Nods affirmatively.)

12 A I drove the black car. I drive the car.

13 Q How did you get the car you left at the house the
14 previous night with your sister?

15 A Excuse me?

16 Q You told this jury that you drove to Brenda's house in
17 a black car.

18 A Yeah.

19 Q Your sister came to her house and picked you up. That
20 would of left the black car at that house.

21 A Yeah.

22 Q How in the world did you have the black car if you
23 didn't go back by her house the night before?

24 A Man, I had -- I don't remember. I might of went back
25 to her house in a different car or something. She -- my

Robert Phipps - Cross-examination
by Solicitor Balsa

1 sister got three or four cars man. They got a bunch of
2 cars.

3 Q So, you've had plenty of time to recall this incident,
4 hadn't you?

5 A I don't know. I don't -- no, I don't know.

6 Q From the day the police went and visited you in West
7 Virginia?

8 A Whatever you say, man. I guess what you say, then
9 that's what you believe.

10 Q Wasn't that in 2005?

11 A When they came and saw me?

12 Q Yes, sir.

13 A Yeah, they did come and see me in 2005.

14 Q And by your testimony, you're telling us that's the
15 first you learned he was dead?

16 A Yes, sir.

17 Q And you've had all that time to recall what occurred?

18 A That's all -- yeah, yeah.

19 Q Thank you. That's all I have.

20 THE COURT: Redirect.

21 MR. BRANNON: Please the Court.

22 THE COURT: Just one second.

23 Is this gonna be fairly extensive?

24 MR. BRANNON: It could be.

25 THE COURT: Well, let's, let's take a break now.

1 Ladies and gentlemen of the jury, we been going about
2 two hours, and I'm gonna allow you to stretch your legs and
3 just remain seated for just a second, and we'll allow you to
4 go outside for a smoke as well.

5 And as I always instruct you, please don't begin any
6 discussions concerning this case until I've advised you to
7 do so. You may retire to the jury room.

8 Thank you very much.

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

11 THE COURT: Mr. Phipps, you may step off of the stand.
12 But I will caution you not to discuss your testimony with
13 anyone. You're in the midst of your testimony at this time.

14 DEFENDANT: Yes, sir.

15 THE COURT: Court will be recess for about ten to
16 fifteen minutes.

17 (Whereupon, a short recess was taken at this time.)

18 THE COURT: No hurry. The jury is having a smoke. It
19 may be two or three minutes before we start.

20 MR. BRANNON: May we approach, Your Honor?

21 THE COURT: Certainly.

22 (Whereupon, a bench conference was held at this time.)

23 THE COURT: All right.

24 (The following takes place within the presence of the
25 jury.)

Robert Phipps - Redirect examination
by Mr. Brannon

1 THE COURT: Mr. Phipps, if you would, you can resume
2 the stand please, sir.

3 (Witness returns to the stand.)

4 THE COURT: All right. The record will reflect that
5 the jury has returned to the courtroom.

6 When we broke the defense was in a position to redirect
7 examine the witness.

8 You may proceed.

9 MR. BRANNON: Thank you.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. BRANNON:

13 Q Mr. Phipps, you've been sitting in the courtroom at
14 that table between Mr. Turnipseed and I throughout this
15 trial, correct?

16 A Yes.

17 Q You've heard all of the witnesses testify, correct?

18 A Yes.

19 Q Did you hear at least one witness testify that
20 Mr. Gossett's house was basically a crack house?

21 A Yeah.

22 SOLICITOR BULSA: I object to pitting the witness'
23 testimony.

24 MR. BRANNON: All right. I didn't think that was
25 pitting, Your Honor. I'll be more than happy to---

Robert Phipps - Redirect examination
by Mr. Brannon

1 THE COURT: Well, I haven't sustained the objection at
2 this point in time. I'll allow you to ask the questions.
3 But there is, of course, a requirement that you not pit one
4 witness against the other witness' statements. I don't know
5 where you're leading with this. But I'll allow you to go
6 ahead until I think you've gone too far.

7 Q All right. You heard at least one witness testify that
8 she use to go there to smoke crack, right?

9 A Yes.

10 Q And then I believe another witness testified that guys
11 use to hang out there and drink beer, right?

12 SOLICITOR BULSA: Object to that line of questioning as
13 to what the other witnesses testified to. The jury's
14 already heard that.

15 THE COURT: I would sustain the objection at this point
16 in time.

17 Now, if you're using this to bolster their testimony or
18 re, readmit it to the jury, I'll sustain the objection.

19 MR. BRANNON: All right.

20 THE COURT: You may proceed.

21 Q I want to do a little bit of defining.

22 You've used the word stem, you've used the word glass,
23 and you've used the word pipe.

24 A Yes.

25 Q All of those are the same thing, correct?

Robert Phipps - Redirect examination
by Mr. Brannon

- 1 A Yeah. Yeah.
- 2 Q I mean you, you're---
- 3 A It's---
- 4 Q It's a crack pipe?
- 5 A Right. We call -- you can call a stem a pipe. You can
- 6 call a pipe a, you know, it's a pipe. Basically it's the
- 7 same thing. But it's still---
- 8 Q Right.
- 9 A But it's two different things. But it's a pipe, you
- 10 know. Crack pipe, you got a pipe, you could ask.
- 11 Q Okay. But a stem is a slang word for a pipe, right?
- 12 A Yeah, a long -- but a stem is a long tube. Look like a
- 13 test tube or something.
- 14 Q Okay.
- 15 A Like a long thing.
- 16 Q All right. You were asked questions about going to
- 17 Ohio.
- 18 Do you remember that?
- 19 A Yes.
- 20 Q You were, you were born there?
- 21 You're from Ohio, right?
- 22 A Yes.
- 23 Q Okay. And you have family in Ohio, correct?
- 24 A Right.
- 25 Q In fact, many of your family members that live in Ohio

Robert Phipps - Redirect examination
by Mr. Brannon

1 are here today, right?

2 A Yes.

3 Q Okay. When the two officers came to West Virginia to
4 talk to you --

5 A Yes.

6 Q -- you didn't really want to help them or talk to them
7 at all, did you?

8 A I really didn't.

9 Q And did you feel like you were being interrogated?

10 A Yeah. Yes, I sure did.

11 Q All right. But based on some of the things they said,
12 did you, in fact, give them the name New York?

13 A Yes, I did tell them about New York.

14 Q You gave them two other names as well, correct?

15 A Yes.

16 Q Were those people that you know to be smokers or
17 dealers?

18 A They do a little of both. They sell and they, and they
19 smoke --

20 Q Okay.

21 A -- to support their habits.

22 Q Did you see, on April the 3rd of 2004, the person
23 introduced to you as New York beat down Sam Gossett?

24 A Yes.

25 Q Now, Mr. Gossett, excuse me, Mr. Bulsa kept calling

Robert Phipps - Redirect examination
by Mr. Brannon

- 1 Mr. Gossett the man that was so nice to you.
2 Do you remember him saying that?
3 A Yes.
4 Q Did Mr. Gossett ask you for a ride that day?
5 A Yes.
6 Q Did you give it to him?
7 A Yes.
8 Q There were two different occasions when crack cocaine
9 was purchased, correct?
10 A Yes.
11 Q Did you pay for the crack both times?
12 A Yes, I did.
13 Q So, he wasn't supplying you with -- he wasn't providing
14 you with the drugs?
15 A No.
16 Q He took you some place to buy it and then he went and
17 bought it for you, right?
18 A Yes.
19 Q So, on that day he let you use his house, right?
20 A Yes.
21 Q You let him use your car, right?
22 You gave him a ride?
23 A Yes. Yeah, I gave him a ride. Yeah.
24 Q So, were you as nice to him as he was to you?
25 A Yes.

Robert Phipps - Redirect examination
by Mr. Brannon

1 Q Now, at some point you called or you believed that Sam
2 Gossett was a crack head, right?

3 You said that.

4 A Yes.

5 Q So, you're a crack head too or you were, right?

6 A Yeah.

7 Q Okay. And is it typical or is it standard for people
8 to gather around when I mean -- why do they call a house a
9 crack house?

10 A Because peoples goes over there and they drink and
11 smoke and, you know, buy beer and provide the house man a
12 little something, you know, give him a little beer. You
13 know, just gathering, you know what I'm saying.

14 Q People gather at a crack house, right?

15 A Yeah.

16 Q To smoke crack, right?

17 A Right.

18 Q And they gather at a crack house because the other
19 people there usually aren't cops, right?

20 A Right.

21 Q The other people there are usually drunk or stoned,
22 right?

23 A Right.

24 Q Why didn't you give your name on that 9-1-1 tape?

25 A I just -- I didn't want to get involved.

Robert Phipps - Redirect examination
by Mr. Brannon

1 Q You didn't want to be involved on the 9-1-1 tape,
2 right?

3 A Right.

4 Q You didn't want to be involved when the two police
5 officers came to West Virginia to talk to you, right?

6 A Right. I really didn't.

7 Q But they kind of pinned you in a corner, didn't they?

8 A Yeah, yeah, they pressed me.

9 Q Talking about phone calls and fingerprints, right?

10 A Yes.

11 Q Did they ever read you your Miranda rights?

12 A No, never. That's why I was kind of like hesitant
13 about even talking to them.

14 Q Right.

15 Now -- and, and you been arrested many times, correct?

16 A Right.

17 Q You know that they're suppose to read you your Miranda
18 rights, correct?

19 A Right. Yeah, I know they're suppose to read it to you,
20 right. They didn't.

21 Q But they're talking to you about fingerprints and phone
22 calls, correct?

23 A Right.

24 Q Never once did they say you're a suspect, did they?

25 A No.

Robert Phipps - Redirect examination
by Mr. Brannon

1 Q Never once did they Mirandize you, did they?

2 A No.

3 Q Sir, have you learned in the past that you don't talk
4 to anybody without your lawyer there?

5 A Yes.

6 Q Did you have a lawyer there that day?

7 A No.

8 Q They read you your rights that day?

9 A No.

10 Q Did you want to be involved that day?

11 A No.

12 Q You gave them New York, didn't you?

13 A Yes.

14 MR. BRANNON: Indulgence, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 MR. BRANNON: Nothing further, Your Honor. Thank you.

18 THE COURT: Your witness, Mr. Bulsa.

19 SOLICITOR BULSA: Thank you, Your Honor.

20 RECROSS EXAMINATION

21 BY SOLICITOR BULSA:

22 Q The police did not call you a suspect when they were
23 talking to you, did they?

24 A They was acting like I was, man.

25 Q You just -- Mr. Brannon asked you---

Robert Phipps - Recross examination
by Solicitor Bulsa

1 A What?

2 Q They didn't call you a suspect, they didn't tell you
3 you were a suspect, and you said no, they didn't.

4 You weren't a suspect, were you?

5 A I don't think I was.

6 Q The only information that---

7 A I don't know. They just -- they just acting, they just
8 acting like, they acting wierd, funny, you know. They just
9 acting real -- they trying to twist things around. Like I
10 don't know. But they just acting funny, man.

11 Q The only information they told you they had was your
12 fingerprint in the house and they thought you called 9-1-1,
13 is that right?

14 A I believe that's right.

15 Q They didn't tell you about any DNA under the
16 fingernails, did they?

17 A I don't remember if they did or they didn't.

18 Q Okay.

19 A Cause I, I don't, I don't remember a whole lot about
20 that. It was just -- sometimes I remember more than I do
21 about others.

22 Q And they didn't tell you about any DNA, in fact, did
23 they?

24 A I don't know if they did or not.

25 Q Okay. And I believe you testified that you'd never

Robert Phipps - Recross examination
by Solicitor Balsa

1 been on South Center Street before that night, right?

2 A Right.

3 Q Okay. These three names you gave the police, New York,
4 King Dirty, and John John --

5 A Yes.

6 Q -- did you see those three people that night?

7 A I don't know if I did. I don't know if I did or I
8 didn't. I don't remember.

9 Q But you gave the police three names?

10 A Yes.

11 Q And you can't even say that you saw these three people
12 on South Center Street before, can you?

13 A I don't know if I -- I remember seeing them before, but
14 I don't know if they was, if I remember seeing them on South
15 Center because I ain't never been on South Center. But I
16 know that they, they well known drug users and, and King
17 Dirty is and the other dude is and --.

18 Q Okay. Right.

19 They're well known drug users. So, you just gave three
20 names to the police to make this up, didn't you?

21 A No, no.

22 Q To throw the police off of your trail, right?

23 A No, I just told them about some people that I know that
24 do drugs around that area on Williams.

25 Q And when Mr. Gossett went and got the crack for you,

Robert Phipps - Recross examination
by Solicitor Bulsa

- 1 you didn't give him extra money, did you?
- 2 A I don't remember if did or didn't.
- 3 Q You didn't. You testified you give him 20.
- 4 A Yeah, yeah, I did. Yeah -- no, I gave him \$40 of
- 5 crack. I gave him \$40 of crack. I gave him \$40.
- 6 Q To go buy the crack?
- 7 A Yes.
- 8 Q Come back with that amount of crack?
- 9 A Yeah.
- 10 Q And he wasn't smoke the crack. So, he didn't even get
- 11 any of it, did he?
- 12 A I don't think he -- I don't think he did. I don't
- 13 know. No, no, I don't think he did.
- 14 Q About the only thing you did for Mr. Gossett that night
- 15 was give him a ride?
- 16 A Gave him a ride and I don't remember what all I might
- 17 of done for him. I don't remember everything I might -- I
- 18 might of done more than that. I don't remember everything.
- 19 Q And that turned out to be a bad choice on his part,
- 20 didn't it?
- 21 A I don't know. I guess so. I guess so. I don't know.
- 22 Q Cause he---
- 23 A He wound up dead I guess.
- 24 Q Cause he wound up dead?
- 25 A Yeah.

Robert Phipps - Recross examination
by Solicitor Bulsa

1 Q Now, sir, you went to Ohio to flee Spartanburg for one
2 reason or another, didn't you?

3 A To flee?

4 Q Yes, sir.

5 You ran away from Spartanburg, did you not?

6 A To go see my family down there, and I was, I was -- my
7 parole officer was, kind of kept coming around the house.
8 So, yeah, I left because of that.

9 Q And because you killed Mr. Gossett, right?

10 A No, no.

11 MR. BRANNON: Follow-up to those, Your Honor?

12 THE COURT: You may proceed.

13 REDIRECT EXAMINATION

14 BY MR. BRANNON:

15 Q The only thing you did for Mr. Gossett that day was
16 give him a ride home.

17 Do you remember that question?

18 A Yeah.

19 Q Didn't you call 9-1-1 to try to get him help?

20 A Right.

21 Q Thank you. Nothing further.

22 A I did. I sure did.

23 THE COURT: Anything further, Mr. Bulsa?

24 SOLICITOR BULSA: No, sir.

25 THE COURT: You may step down, sir.

Marcella Bailey - Direct examination
by Mr. Brannon

1 WITNESS: Thank you.

2 THE COURT: Thank you.

3 Ask the attorneys to approach.

4 (Whereupon, a bench conference was held out of the
5 hearing of the jury at this time.)

6 THE COURT: Call your next witness.

7 MR. BRANNON: Marcella Bailey.

8 THE COURT: Come forward, ma'am, to my left to be
9 sworn.

10 MARCELLA BAILEY, being first duly
11 sworn, testified as follows:

12 THE COURT: Have a seat in the stand, please.

13 (Witness complies.)

14 THE COURT: State your name for the record.

15 WITNESS: Marcella Bailey.

16 THE COURT: Your witness.

17 MR. BRANNON: Please the Court?

18 THE COURT: Yes, sir.

19 DIRECT EXAMINATION

20 BY MR. BRANNON:

21 Q Marcella, you're Robert's sister, correct?

22 A Yes, sir.

23 Q Where do you live?

24 A [REDACTED] Starlyn Drive.

25 Q Is that here in Spartanburg?

Marcella Bailey - Direct examination
by Mr. Brannon

1 A In Spartanburg.

2 Q How long have you lived in Spartanburg?

3 A About 15 years.

4 Q Thank you.

5 Now, you, you go by another name, don't you?

6 Don't they call you Marcy?

7 A Yeah, Marcy.

8 Q Okay. All right. So, when Robert's been talking about

9 Marcy, that's you?

10 A Yeah, that's me.

11 Q Okay. Ma'am, do you remember receiving a phone call

12 back in April, early April of 2004 from a lady known as

13 Sister Brenda or Brenda Urquhart?

14 A Yes, sir.

15 Q Do you remember that that phone call occurred on April

16 3rd or April the 4th?

17 Do you know when that was?

18 A No.

19 Q But you remember getting a phone call?

20 A Yes.

21 Q Is that correct?

22 A That's correct.

23 Q And as a result of that phone call, did you do

24 something?

25 A Yes, I did.

Marcella Bailey - Direct examination
by Mr. Brannon

- 1 Q what did you do?
2 A She called me and---
3 Q Okay.
4 A Oh.
5 Q You can't say what she said.
6 A Oh.
7 Q what did you do because of this phone call?
8 A Oh, went over to Sister Brenda's house.
9 Q All right. And when you got there, what did you do?
10 A waited till Robert came out the house.
11 Q Okay. So, your brother was at---
12 A Sister Brenda's.
13 Q Brenda's house?
14 A Yeah.
15 Q He came out of the house?
16 A Yes.
17 Q When he came out of the house, ma'am, did he have blood
18 on him?
19 was he disheveled?
20 was he -- what, what condition was his clothing and his
21 body in?
22 A Normal.
23 Q Normal.
24 okay. No blood on him?
25 A No, sir.

Marcella Bailey - Direct examination
by Mr. Brannon

- 1 Q No cuts or bruises?
- 2 A No, sir.
- 3 Q No scrapes or nothing?
- 4 A No, sir.
- 5 Q Did your brother ask you to do something?
- 6 A Yes.
- 7 Q what did he ask you to do?
- 8 A He wanted me to take him somewhere to see.
- 9 Q Did he tell you where?
- 10 A Yes.
- 11 Q Where?
- 12 A Over by Biggerstaff.
- 13 Q Okay. Did he tell you -- did he give you the name of
- 14 the street?
- 15 A Yes.
- 16 Q Was it South Center?
- 17 A Yes.
- 18 Q Did you agree to do that?
- 19 A Yes.
- 20 Q Did your brother tell you why he wanted to go there?
- 21 A Yes.
- 22 Q And what was that reason?
- 23 A That he had, had to break up a fight.
- 24 Q Okay. And did he give you anymore detail?
- 25 A Well, I cut him off. I told him I didn't want to hear

Marcella Bailey - Direct examination
by Mr. Brannon

- 1 what he, what he got in, what he, what he gets involved in.
2 I said I didn't want to hear anymore.
3 Q Okay. All right. Did you take him some place?
4 A Yes.
5 Q And where was that?
6 A At the top of South Center Street.
7 Q Okay. And did you know what you were looking at?
8 A No.
9 Q Did Robert explain to you?
10 A Yeah, he told me he wanted to go see if there was an
11 ambulance up there.
12 Q Okay. Did, did he even point out which house it was
13 that he was looking at?
14 A No.
15 Q Did you go to any house?
16 A No.
17 Q Did you see an ambulance?
18 A No, sir.
19 Q Did you see a police car?
20 A No, sir.
21 Q Then what happened?
22 A And then he told me to take him to the store.
23 Q All right. And did you?
24 A Yes, sir.
25 Q Did he ever get out of your car?

Marcella Bailey - Direct examination
by Mr. Brannon

- 1 A Yes, he did.
- 2 Q Do you know what he did when he got out of the car?
- 3 A No.
- 4 Q When he got back into the car, did he tell you what he
- 5 had done?
- 6 A No.
- 7 Q After you left the store, where did you go?
- 8 A Home.
- 9 Q And who, who went with you?
- 10 A Robert.
- 11 Q So, he didn't stay at the store?
- 12 A No.
- 13 Q He got back in your car?
- 14 A Yes, sir.
- 15 Q And then you took him to your house, is that correct?
- 16 A That's correct.
- 17 Q Did you ever go back to South Center Street?
- 18 A Oh, no. No, sir.
- 19 Q And when was the next time you heard anything about
- 20 South Center Street or something that may of happened on
- 21 South Center Street?
- 22 A When the authorities came to my job.
- 23 Q Okay. The police came to your job?
- 24 A Yes.
- 25 Q Right?

Marcella Bailey - Direct examination
by Mr. Brannon

1 A Yes, sir.

2 Q You got a little upset with them, didn't you?

3 A Yes, I did.

4 Q Why?

5 A I felt that they had overstepped my boundaries and they
6 was putting my job in jeopardy.

7 Q Okay. You didn't want to talk to them at your job, did
8 you?

9 A No, not at my job.

10 Q All right. Did Robert ever go into any detail -- did
11 you let Robert ever go into any detail about what had
12 happened that night?

13 A No, nope. Hu huh. (Negative).

14 He went downstairs and I went on upstairs.

15 Q Okay. Thank you, Mrs. Marcy. I have nothing further.

16 A All right.

17 THE COURT: Mr. Bulsa, your witness.

18 CROSS-EXAMINATION

19 BY SOLICITOR BULSA:

20 Q Mrs. Bailey, you don't remember what, what day that he
21 called you from Brenda's or Brenda called you?

22 A I can't remember the day.

23 Q Okay. Do you remember the time?

24 A It was daytime, evening, daytime. I think it was
25 daytime.

Marcella Bailey - Cross-examination
by Solicitor Bulsa

- 1 Q Okay. And why did you call her sister Brenda?
- 2 A Because she's a sister and a member of our church and
- 3 she's my best friend.
- 4 Q Okay. And was she attending your church back then?
- 5 A Yes.
- 6 Q On a regular basis?
- 7 A Yes.
- 8 Q Was your brother?
- 9 A On and off.
- 10 Q On and off. Okay.
- 11 A Uh-huh. (Affirmative).
- 12 Q In fact, wasn't it Sunday morning that you went and got
- 13 him?
- 14 A I can't recall.
- 15 Q You don't remember it being Sunday morning when you
- 16 went to Sister Brenda's house to pick him up?
- 17 A I remembered that I just, I went to Sister Brenda
- 18 house.
- 19 Q Okay. Do you remember his head being shaved?
- 20 A His who?
- 21 Q His head. Shaved his hair.
- 22 A I didn't pay it no attention, no.
- 23 Q You didn't pay any attention to him, to that?
- 24 A No, cause he wears a bald head.
- 25 Q But he told you he wanted to go by South Center Street

Marcella Bailey - Cross-examination
by Solicitor Balsa

1 to see if there was an ambulance there?

2 A Yes.

3 Q Did he tell you why he thought there might be an
4 ambulance there?

5 A Yes, he, he tried to go into detail that he, he seen a
6 fight that he had to break up and that's when I stopped him.
7 I told him I didn't want to hear no more about it.

8 Q Did he tell you he called 9-1-1---

9 A No, he didn't---

10 Q ---and made an anonymous phone call about there being a
11 fight---

12 A No, he didn't.

13 Q ---which would of led to an ambulance being sent over
14 there.

15 A No.

16 Q He didn't tell you that?

17 A Hu huh. (Negative).

18 Q Okay. When you picked him up, what was he driving?

19 A Mazda.

20 Q He was driving a Mazda.

21 A Uh-huh. (Affirmative).

22 Q Whose car was it?

23 A Mine.

24 Q Okay. And what did you pick him up in?

25 A My van.

Marcella Bailey - Cross-examination
by Solicitor Balsa

- 1 Q All right. And did you take him back to Brenda's at
2 anytime?
- 3 A No, sir.
- 4 Q You didn't take him back to get the car?
- 5 A No, I didn't.
- 6 Q So, you left the Mazda at Brenda's house and took him
7 away in the van, right?
- 8 A I went, I went home.
- 9 Q Okay. I know.
- 10 But you, you picked him up from Brenda's and went back
11 by---
- 12 A Yes, sir.
- 13 Q ---South Center Street?
- 14 A Yeah, then we went home.
- 15 Q Well, you said before you went home you went by a
16 store.
- 17 A Yes, I said the store. But like I say, after all that
18 I went home.
- 19 Q Okay. How far did you live away from Brenda's house?
- 20 A Off of Chesnee Highway.
- 21 Q How far do you live from her?
- 22 A Hillcrest.
- 23 Q You live in Hillcrest?
- 24 A Yes.
- 25 Q How far is that from South Center Street?

Marcella Bailey - Cross-examination
by Solicitor Balsa

- 1 A I don't know. I never measured it.
- 2 Q Okay. About how much time did it take you to get back
3 home?
- 4 A I don't know. I wasn't looking at the time.
- 5 Q And you can't estimate it for me?
- 6 A Not really.
- 7 Q Do you remember which store you stopped at?
- 8 A I just know I stopped at a store over in that area.
- 9 Q Okay. And you don't -- did you go inside?
- 10 A No, I didn't.
- 11 Q You stayed in the car
- 12 A Uh-huh. (Affirmative).
- 13 I pulled around the side.
- 14 Q Pulled around the side?
- 15 A Uh-huh. (Affirmative).
- 16 Q To where, the side of the building?
- 17 A On the side of the building. I parked.
- 18 Q Okay. Did you see where your brother went?
- 19 A No, cause when he got out, out, I just, I pulled up and
20 I didn't pay it no attention.
- 21 Q What do you mean?
- 22 Did you---
- 23 A No, I didn't.
- 24 Q You pulled up and let him out you mean?
- 25 A I just pulled up and let him out. He said I'll be

Marcella Bailey - Cross-examination
by Solicitor Bulsa

- 1 right back. I said okay.
- 2 Q You pulled up to the door?
- 3 A I pulled on the side.
- 4 Q That's what I'm trying to understand.
- 5 Had you parked before you let him out?
- 6 A I don't recall. I just know I let him out.
- 7 Q Okay. And you didn't see where he went?
- 8 A No, sir, I didn't.
- 9 Q How long was he gone?
- 10 A I guess maybe a few minutes. I don't know. I didn't
- 11 calculate.
- 12 Q All right. But he -- you'd just been by South Center
- 13 and he started telling you---
- 14 A I didn't calculate -- pardon me?
- 15 Q I know you'd just been by South Center and then you
- 16 told, tried to tell you something that happened there.
- 17 A He, he tried to tell me that on the way when he got---
- 18 Q You said you cut him off.
- 19 A ---when he got in the car. He started -- he wanted to
- 20 tell me.
- 21 Q All right. You cut him off.
- 22 So, you never learned exactly what had happened?
- 23 A No, I told him I didn't want to hear about that.
- 24 Q Okay. Why is that?
- 25 A I just didn't want to hear about his life-style.

Marcella Bailey - Cross-examination
by Solicitor Balsa

1 Q Did you know he was using drugs?

2 A Yeah, I knew he used crack.

3 Q Okay. And how long had he stayed with Brenda?

4 A For some time. Some time.

5 Q Did he have some of these clothes and belongings over
6 there?

7 A Yes.

8 Q You talking about the police coming to your job.

9 A Yeah, I was highly upset.

10 Q Why?

11 A Well, I got -- a, a supervisor called me on the, on my
12 radio and told me Mrs. Bailey I need to see you before you
13 go to your job site. So, I said okay. So, when I got in
14 there -- well, upon getting in there, I seen two gentleman
15 sitting down. So, I went to use the restroom, and then when
16 I, when I got into the office, my boss' office, there was a,
17 two black men sitting there, and they told me to have a
18 seat.

19 So, I had a seat and they told me that, that they was
20 investigating a murder and -- so I said okay. And then they
21 put a picture on the table and slid it across the table and
22 asked me do I know him. I said yes. And I, I told him. I
23 said that's my brother. I said -- and so -- and they said,
24 well, we want you to see, see if you could identify this,
25 his voice.

Marcella Bailey - Cross-examination
by Solicitor Balsa

1 So I said okay. And with the gentleman -- one of the
2 detectives got up to go out to the car. And when he got up,
3 I thought about well, what if my supervisor come in here
4 cause he's always in every meeting I ever have. And I, I --
5 fear just kind of grip me like oh, my Lord, maybe he might
6 think that this get, bring a reproach on, on the job cause
7 he's always concerned about District Seven looking bad.

8 So, I thought about it. I, I said oh, I said I think
9 this is the wrong place for them to come to talk to me about
10 a, a crime like this. So, I got up. I looked at the
11 gentleman. I told him, I said, I said, I don't appreciate
12 you coming here trying to talk to me about a crime as this
13 when you could of had a different, another way of getting in
14 contact with me. And, and so, I said, I'm going to go talk
15 to your superiors right now.

16 So, I went to the County Sheriff's Department cause I
17 didn't know where they was and what, what, what, what place
18 they had came from. So, I went there and I went to the desk
19 and I -- there was a man in charge, a sheriff that was in
20 charge. And asked him, I said who, who is the superior over
21 this, over this department. I need to talk with someone
22 cause I'm very -- I'm highly upset that, that these people
23 come to my job and question me about a murder.

24 And so, so, they tried to check who these people were.
25 But they said that, they said that well, maybe he's not,

Marcella Bailey - Cross-examination
by Solicitor Balsa

1 maybe they're not from here. Go to the city. So, I went to
2 the city. I went to tell them the same story that I had
3 told the sheriff that I was highly upset that two detectives
4 came to my job, and I felt as though that they were putting
5 my job at risk, and that was not the place and I wanted to
6 talk to a, to their superior and right away, right now.

7 And so, so, I think they took me upstairs, and I waited
8 and then a gentleman came and was talking to me. And I told
9 him what had happened at my job, and, and that I didn't
10 appreciate them -- I didn't have no problem talking to them.
11 But I didn't appreciate them coming to my job, bringing that
12 kind of scene on my job cause that could cost me my job or
13 get my supervisor a little upset with me.

14 So, I said I didn't appreciate that, and then they
15 begin to go through a story of well, this is a murder
16 investigation, all that. And I told them I understand. But
17 I didn't appreciate it. I just said, at this point, I
18 wouldn't care who was being investigated, it was the Pope, I
19 didn't appreciate y'all coming in here on my job and trying,
20 trying to get me to listen to a tape when you could of
21 waited and came to my house. That's what I told them.

22 Q Was one of those gentleman this man right here?

23 A No, he wasn't. That's the one came to my job. But
24 that's not who I talked to.

25 Q I know.

Marcella Bailey - Cross-examination
by Solicitor Balsa

1 But he came to your job and was he cordial with you,
2 ma'am?

3 A Yeah.

4 Q He was nice?

5 A He was. He's respectable.

6 Q Wasn't confrontational?

7 A No, I just told him I didn't appreciate them coming to
8 my job.

9 Q Okay. And who brought you into the break room to talk
10 to him?

11 A They -- no, they talked to him in the, in my boss'
12 office.

13 Q Your boss' office?

14 A Yeah.

15 Q Who took you to your boss' office?

16 A My, my boss told me to go in there.

17 Q Okay. And your boss, I would presume, would be your
18 supervisor?

19 A Yes.

20 Q So, your supervisor was aware of the police talking to
21 you?

22 A But I didn't know if he understood what they was
23 talking to me about, and that I, and that the police didn't
24 have a right to come to my job to go in his office.

25 why would they bring me in my boss' office?