

 ORIGINAL
VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JEFFREY HERRMANN,

APPELLANT

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

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ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

STATE OF SOUTH CAROLINA,

VS

TRANSCRIPT OF PROCEEDINGS
January 4, 2010
Charleston, South Carolina

JEFFREY HERRMANN,

Defendant.

VOLUME ONE
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BEFORE:

THE HONORABLE CHRISTI L. HARRINGTON, Judge

APPEARANCES:

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

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

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

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1 a true and just verdict.

2 Madam Foreperson, it
3 is your duty and your added
4 duty to preside in the jury
5 room and also to be the jury
6 spokesperson here in court. I
7 will give you further
8 instructions on writing the
9 verdict at the close of this
10 case.

11 Please give close
12 attention.

13 Miss Cardillo.

14 **MS. CARDILLO:** Thank
15 you, your Honor. May it
16 please the Court.

17 Good morning, ladies
18 and gentlemen. My name is
19 Julie Cardillo and I am one of
20 the attorneys that represents
21 the State on behalf of the
22 State of South Carolina
23 against the defendant, Jeffrey
24 Herrmann, who is sitting at
25 this table with his attorneys

1 for the charge of murder. He
2 is charged with the murder of
3 Ala or Ali Sarhan. The
4 evidence will show that he
5 didn't just die, that he was
6 shot in the head, stuffed in
7 the trunk of his car that was
8 pushed into the Wadmalaw Creek
9 bed and that's where he laid
10 until he was found
11 approximately eight years
12 later. His murder happened as
13 close as we can tell between
14 July fifteenth of 2000 and the
15 end of August of 2000. He was
16 found still in the trunk of
17 his car on July seven of 2008.
18 He is why we are here today
19 and he has a name and it's not
20 the victim and it's not the
21 body and it's not the remains.
22 From the evidence you will
23 hear that he again with Ala
24 Sarhan, his nickname that
25 everybody knew him was by Ali.

1 He was thirty-one years old
2 when he was reported missing
3 in 2000. He was thirty-one
4 years old when he died. Now
5 the next several days you're
6 going to hear and see a lot of
7 evidence, evidence of how the
8 defendant lured Ali to one
9 place with certain
10 expectations and then taking
11 Ali to another place and in
12 between those two destinations
13 the defendant shot Ali in the
14 head or, as you'll hear from
15 the testimony, right in the
16 ear.

17 You will hear from a
18 lot of witnesses and sometimes
19 it will seem like they're a
20 cast of characters. What
21 you'll hear is what these
22 witnesses saw and how the
23 defendant owed Ali a debt
24 arising from a drug
25 transaction, from several, and

1 that the defendant shot Ali to
2 get away or out of that debt.
3 What you'll hear from these
4 witnesses is regarding the
5 defendant's shooting, death,
6 and disposal of Ali during the
7 summer of 2000. But please
8 don't make a mistake about
9 this. This is not about a
10 drug deal. Please don't throw
11 Ali away. This case as the
12 evidence will show is about
13 payment or I guess nonpayment
14 of a debt, about vengeance
15 over money and no matter how
16 Ali is perceived, he did not
17 deserve to die at the hand of
18 another. The State does not
19 have to prove motive to you
20 but you'll hear from the
21 evidence why the defendant did
22 what he did to Ali again to
23 relieve his own debt. So
24 you'll see Ali was no angel
25 but again he did not deserve

1 to die or end, have his life
2 end in this way.

3 As the judge will
4 tell you, she is the judge of
5 the law which she's already
6 told you and that you're the
7 judges of the facts. You
8 determine the credibility of
9 each witness and of the
10 evidence itself. That is one
11 of the, if not the most
12 important things that you do
13 in this case. By being judges
14 of the facts, it's not rocket
15 science if you will, you
16 already do it every day. It's
17 common sense, or good old
18 common sense you get from
19 other people. When you use
20 your common sense, pay
21 attention to how did the
22 witnesses know what they know,
23 how did they know -- how does
24 what they say fit with the
25 physical evidence. Are there

1 conflicts and are these
2 conflicts meaningful. Is
3 there an explanation to the
4 conflicts. Does it mean a lot
5 if the time was six o'clock or
6 eight o'clock or if it was
7 Saturday or Wednesday
8 especially when it was eight
9 to ten years ago.

10 You'll hear from the
11 witnesses and other evidence
12 but again the defendant and
13 Ali knew each other from drug
14 transactions. The defendant
15 owed Ali money because Ali
16 would front drugs to the
17 defendant whereby the
18 defendant would go out and
19 sell these drugs for them.
20 Again the defendant owed Ali
21 this money that he couldn't
22 repay.

23 You will hear from
24 one friend that in 2000, in
25 July, that she reported Ali

1 missing after she went to his
2 trailer and found it
3 disturbed. You'll also hear
4 how his missing, how he was an
5 active missing person and the
6 police investigated that and
7 it was an active case but it
8 went cold. So for eight years
9 it was literally a missing
10 person cold case.

11 You will hear from
12 the defendant's codefendant,
13 Jason Cumbee that essentially
14 opened this can of worms. He
15 was arrested on July second I
16 believe, of 2008, when a bench
17 warrant for his arrest for
18 driving under suspension, the
19 police came to his house to
20 arrest him and he said don't
21 arrest me, don't arrest me. I
22 can tell you where you can
23 find the body. You'll find
24 Jason a little bit shady. I'm
25 not going to lie to you on

1 that point. He's in trouble
2 here, too. He told the police
3 where the car was and that
4 they would find a body in the
5 trunk and after looking and
6 going to several different
7 landings in the Francis Marion
8 National Forest, I believe the
9 biggest national forest in the
10 southeast, at least maybe on
11 this side of the country, they
12 found Ali. They took a truck
13 crane, pulled up the car, and
14 lo and behold when they popped
15 the trunk they found the
16 remains of Ali.

17 Now Jason made --
18 you'll hear that Jason made
19 multiple statements to the
20 police trying to minimize his
21 involvement but he did tell
22 the police the ultimate truth
23 about the robbery and finding
24 Ali. His testimony is just
25 one piece of a very, very much

1 larger picture and it is your
2 job to put those pieces
3 together to determine the
4 truth.

5 You will also hear
6 from the defendant's
7 girlfriend during the time of
8 2000. You'll hear a co-worker
9 of the defendant during the
10 time of 2000 and you'll hear
11 from, from some of his friends
12 of the defendant in 2000. A
13 lot has changed in eight
14 years. I guess almost ten
15 years now. A lot of people
16 have changed, time has gone
17 by, people move on, but they
18 will testify to the
19 defendant's actions during
20 that time and how he was
21 involved with Ali, and the
22 things he said. You will also
23 hear from the defendant's
24 girlfriend in 2008, eight
25 years later, when the

1 defendant was ultimately
2 arrested. She had known --
3 she knew of these other people
4 from 2000, but she didn't hang
5 out with them or be close with
6 them but you'll hear from her
7 as well. You will hear the
8 defendant went to Ali's
9 trailer, RV if you will, at
10 the KOA campground after he
11 murdered Ali and wanted to go
12 burn Ali's paperwork and
13 ransacked the trailer, looking
14 for drugs or money.

15 You'll also hear from
16 the medical professionals who
17 examined Ali's remains to
18 determine the manner of death,
19 which they do in a homicide,
20 one shot through the head and
21 it went through and through.

22 You'll also hear from
23 the police who conducted this
24 investigation. Again, each
25 witness's testimony is one

1 piece of a larger puzzle, one
2 piece of the truth that you
3 put together and at the end of
4 the day when you take the
5 entire puzzle and the entire
6 truth and the entire picture
7 you will see from the evidence
8 and the testimony that Mr.
9 Herrmann killed Ali almost ten
10 years ago. Again this is not
11 about the drug deal. This is
12 about a murder. And at the
13 end of all the evidence we
14 will ask you to find the
15 defendant guilty of murdering
16 Ali Sarhan.

17 Thank you.

18 THE COURT: Mr. Davis.

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

21 My client, Jeff
22 Herrmann, is not guilty of
23 murder. He was arrested in
24 August of 2008 on that charge
25 by the Charleston County

1 Sheriff's deputies. As the
2 judge just told you a minute
3 ago, this is a search for the
4 truth.

5 Now the State has
6 brought these charges. They
7 will control the order of the
8 witnesses that they choose to
9 put up. I believe they're
10 going to take you on a journey
11 back to 2000. Mrs. Cardillo
12 just talked about this overall
13 picture of several witnesses.
14 They've got one tour guide to
15 take you back to 2000. One
16 tour guide. Because this one
17 person is who the
18 Sheriff's Office followed and
19 it provided that information
20 to the Solicitor's Office, and
21 it's the one person that the
22 Solicitor's Office followed.
23 That one tour guide is Jason
24 Cumbee. The State has already
25 represented he's a codefendant

1 in this case. He's arrest for
2 accessory after the fact of
3 murder. That's what he's
4 charged with. Just because
5 this Sheriff's Office and the
6 solicitors have followed Jason
7 Cumbee does not mean you
8 should. This is a search for
9 the truth.

10 As you listen to the
11 testimony, as you look at any
12 other evidence that's
13 presented to you, I suggest
14 you ask for the evidence. Ask
15 for the evidence. Not just
16 stories, not just speculation,
17 not just gossip, but proof.
18 That's what changes gossip to
19 proof is evidence.

20 Now few things, there
21 are very few things that Jeff
22 agrees with, with the State.
23 Is Jason shady? Sure. Is he
24 opening up a can of worms?
25 Probably. We don't agree on

1 much more than that.

2 You're going to be
3 asked to sit in judgment, to
4 determine the facts, to
5 determine whether Jeff
6 Herrmann is a murderer or not.
7 You need not feel daunted by
8 that task. It only requires
9 common sense, and that only
10 requires the wisdom and life
11 experience that you will be
12 able to determine what is the
13 truthful testimony, what is
14 proof, what is evidence or
15 simply gossip and rumor.

16 Now this is not
17 inconsequential gossip and
18 rumor that leads to Jeff
19 Herrmann being accused of
20 shooting someone that he knew.

21 Miss Cardillo
22 indicated their witnesses are
23 a cast of characters. We also
24 agree with that. The judge
25 will talk to you at the very

1 end about what the law is but
2 a lot of it, a lot of it is
3 common sense especially
4 dealing with witnesses. You
5 are the finders of the fact.
6 That's your job. To find the
7 truth. In determining that
8 again it's natural. You watch
9 the demeanor of the witnesses.
10 You listen to their
11 relationship to one another
12 and their relationship to Mr.
13 Herrmann and about any motive
14 or bias they may have, and
15 then you will decide whether
16 they can be believed or not.
17 Please listen for their
18 relationship to one another,
19 their relationship to my
20 client, and their interest and
21 motive. Your job is not, the
22 judge will tell you this, your
23 job is not to solve this
24 crime. I'm not sure you can.
25 Your job is not, I disagree

1 with the State, to put pieces
2 together, to map out the
3 picture they want you to see.
4 They're going to present to
5 you, the jury, to present
6 their case. Your job is to
7 search for the truth.

8 Judge Harrington just
9 mentioned that we're all
10 trying to protect the
11 integrity of the system. You
12 do that by the verdict that
13 you write, the outcome that
14 you write. You will test the
15 State's evidence, the evidence
16 and as the judge will tell you
17 at the end, they have brought
18 the charges. They said it's
19 murder. Prove it. Prove it.
20 He had nothing to do with
21 this. He's glad to have his
22 day in court since his arrest
23 in August of 2008, to allow
24 you all to search for the
25 truth. I suggest today you

1 challenge the State's
2 evidence, discuss the rumor.
3 He's not a murderer. He
4 didn't have anything to do
5 with this. And once you've
6 listened to all the evidence
7 the State presents you will
8 find that this is simply
9 speculation of the grandest
10 scales of rumor and gossip,
11 and that is, that does not
12 make Jeff a murderer.

13 Thank you for your
14 time.

15 THE COURT: Call your
16 first witness.

17 MR. SIMPSON: Thank
18 you, your Honor. The State
19 calls Ken Hawsey.

20

21

22

23

24

25

HAWSEY -- DIRECT

1

2

KENNETH DORIAN

3

HAWSEY, having been called as

4

a witness, is duly sworn and

5

testifies as follows:

6

DIRECT EXAMINATION BY

7

MR. SIMPSON:

8

Q Hi, Ken. How are

9

you?

10

A Good.

11

Q I appreciate your

12

being here. What agency do you

13

work for?

14

A U. S. Immigrations

15

and Customs Enforcement.

16

Q Is that also referred

17

to as ICE?

18

A Yes.

19

Q Is that a public

20

agency?

21

A Yes.

22

Q And that agency is

23

now, for lack of a better term,

24

under the umbrella so-to-speak and

25

what department does your agency

HAWSEY -- DIRECT

1 fall under?

2 A Under the Department
3 of Homeland Security.

4 Q And prior to --
5 that's a recent development?

6 A Since 2003.

7 Q And prior to that
8 what was your agency referred to?

9 A A combination of the
10 Immigration/Naturalization Service
11 and the U. S. Custom Service.

12 Q Okay. Customs and
13 I. N. S.

14 A Yes.

15 Q As it's commonly
16 called. What, what is your title
17 with that, with your agency?

18 A Special agent.

19 Q Okay. Are part of
20 the responsibilities of the agency
21 by which you're employed to
22 maintain files on legal immigrants
23 in the United States?

24 A Yes.

25 Q Did we, being the

HAWSEY -- DIRECT

1 State, ask you to review one such
2 file for this case?

3 A Yes.

4 Q Do these files --
5 I'll ask you -- well, what kind of
6 information are typically
7 contained in these files?

8 A Biographical data,
9 names, which country they're from,
10 where they were born, what reasons
11 they entered.

12 Q And does the
13 information in these files
14 typically come from an interview
15 process with the actual immigrant?

16 A That's correct.

17 Q And so your agency
18 can independently verify the
19 information, you get it from this
20 interview process?

21 A In a lot of cases
22 that's correct.

23 Q Okay. What was the
24 person's name of the file in your
25 agency that you reviewed at the

HAWSEY -- DIRECT

1 request of the State?

2 A Ala Hassan Sarhan.

3 Q And what date was he
4 granted permission to come to the
5 United States?

6 MR. DAVIS: Your Honor,
7 I'm going to object to the
8 testimony at this point.

9 THE COURT: Please
10 approach.

11 (Whereupon, there was
12 an off-the-record bench
13 conference.)

14 THE COURT: Mr. Davis,
15 I'm going to sustain your
16 objection and please continue,
17 Mr. Simpson.

18 Q Mr. Hawsey, when you
19 were asked -- when were you asked
20 by our office to review this file?

21 A Approximately a week
22 ago.

23 Q And can you explain
24 to the jury a little bit about the
25 process of where immigrant files

HAWSEY -- DIRECT

1 are kept and how you come about
2 pulling, if you will, a file on a
3 specific immigrant.

4 A They're kept
5 throughout the country and we just
6 use our data base to find out
7 where they're located and when we
8 find out where they're located we
9 just request that the file may be
10 sent to us.

11 Q A computer data base?

12 A Yes.

13 Q Obtain information of
14 where the physical file is
15 located?

16 A Yes, sir.

17 Q And what process did
18 you use to obtain the file in this
19 specific case?

20 A An email to the
21 Citizenship and Immigration
22 Services here in Charleston and
23 they request the file from the
24 national records center.

25 Q Repeating the

HAWSEY -- DIRECT

1 question, you said you were given
2 actual documentation for the
3 immigrant file in this case?

4 A That's correct.

5 Q And you reviewed that
6 file in detail?

7 A Yes, sir.

8 Q And did that file
9 indicate when Ala Sarhan or Ali
10 Sarhan was granted permission to
11 come to the United States?

12 A Yes.

13 Q And what was that
14 date?

15 A September
16 seventeenth, 1992.

17 Q Did that file
18 indicate what country or
19 citizenship Ali Sarhan belonged
20 to?

21 A Yes.

22 Q And what country was
23 that?

24 A Iraq.

25 Q And 1992 obviously,

HAWSEY -- DIRECT

1 common knowledge, it was a fairly
2 turbulent time in Iraq?

3 A That's correct.

4 Q What was the basis of
5 your agency granting him legal
6 entry into this country?

7 A The reason they
8 allowed him in was credible fear
9 of political reprisal if he
10 returned to Iraq.

11 Q Did the file indicate
12 Ali Sarhan's date of birth?

13 A Yes.

14 Q And what was that?

15 A May fourth of 1969.

16 Q Did the file, the
17 documents you reviewed, you
18 reviewed note any information
19 regarding any physical traits of
20 Ali Sarhan?

21 A Height, approximately
22 five two, a hundred and sixty
23 pounds.

24 Q So he was, according
25 to the file you reviewed, a rather

HAWSEY - - DIRECT

1 short guy?

2 A Yes.

3 Q Did the file note any
4 indication of a physical injury to
5 Ali Sarhan?

6 A Yes.

7 Q And what was that?

8 A Left foot amputation.

9 Q Did it note how he
10 over, for lack of a better word,
11 overcame that injury, how he got
12 about?

13 A Yes.

14 Q And what was that?

15 A According to the file
16 he was in the Iraqi army as a
17 soldier and lost the foot in a
18 mine field during the Iraq/Iran
19 war, approximately 1987, 1988.

20 Q Is there any note
21 about any prosthesis?

22 A Yes.

23 Q And that would be a
24 fake leg?

25 A That's correct.

HAWSEY -- DIRECT

1 Q Did the file indicate
2 any information from Ali Sarhan
3 about his life in Iraq?

4 A Yes.

5 MR. DAVIS: Objection,
6 your Honor. Relevance.

7 THE COURT: Sustained.

8 MR. SIMPSON: I'll
9 withdraw the question.

10 Q Did it indicate his
11 basis for fearing this political
12 persecution?

13 A Yes.

14 MR. DAVIS: Objection,
15 your Honor, as to relevance.

16 THE COURT: Counsel,
17 approach.

18 (Whereupon, there was
19 an off-the-record bench
20 conference.)

21 THE COURT: Sustained.

22 Q Does your file
23 indicate, Mr. Hawsey, the fact I
24 believe you've already testified
25 to 1992 around September of '92 --

HAWSEY -- DIRECT

1 A Yes.

2 Q -- Ali Sarhan was
3 given legal permission to enter
4 this country?

5 A That's correct.

6 Q Does you file
7 indicate that he was later granted
8 permanent resident status?

9 A Yes.

10 Q And can you explain a
11 little bit to the jury about what
12 the permanent resident status is?

13 A Just another phase in
14 becoming naturalized in the United
15 States and given, particularly in
16 this case, lawful permanent
17 residence to stay here as long as
18 he wanted to, be afforded those
19 rights.

20 Q And that's a state,
21 if you will, of, of just short of
22 citizenship?

23 A That's correct.

24 Q Mr. Hawsey, I have no
25 questions for you. Please answer

HAWSEY -- CROSS

1 any questions Mr. Davis may have.

2 CROSS-EXAMINATION BY

3 MR. DAVIS:

4 Q Is it Officer Hawsey?

5 A Agent.

6 Q Agent Hawsey. You're
7 simply reviewing documents from
8 seventeen years ago?

9 A Yes.

10 Q You have no personal
11 involvement in the case of the
12 application or the admission into
13 the country --

14 A No.

15 Q -- of this person?

16 A No, sir.

17 Q And you never met the
18 immigrant that was applying?

19 A No, sir.

20 MR. DAVIS: Thank you.

21 Nothing further.

22 MR. SIMPSON: No

23 redirect, your Honor.

24 THE COURT: May this
25 witness step down and be

FREEMAN -- DIRECT

1 excused?

2 **MR. SIMPSON:** No
3 objection from the State.

4 **MR. DAVIS:** No
5 objection from the defense.

6 **THE COURT:** Agent
7 Hawsey, you may step down and
8 you're excused from the
9 courtroom.

10 **THE WITNESS:** Thank
11 you.

12 **THE COURT:** Call your
13 next witness.

14 **MS. CARDILLO:** The
15 State calls Theresa Freeman.

16

17

18

19 **THERESA FREEMAN,**
20 having been sworn as a
21 witness, is duly sworn and
22 testifies as follows:

23 **DIRECT EXAMINATION BY**
24 **MS. CARDILLO:**

25 **Q** Good morning,

FREEMAN -- DIRECT

1 Theresa.

2 A Good morning.

3 Q How you doing today?

4 A All right.

5 Q What are -- are you

6 from the Charleston area?

7 A Mostly.

8 Q How long have you

9 lived here?

10 A Since I was seven.

11 Q Where are you

12 currently employed?

13 A Steve's Place.

14 Q What is that?

15 A It's a bar.

16 Q What do you do there?

17 A I'm the manager and

18 bartender.

19 Q Did you know or did

20 you know a person by the name of

21 Ala Sarhan?

22 A Yes.

23 Q And how did you know

24 him or how did you meet him?

25 A I met him at Bourbon

FREEMAN -- DIRECT

1 Street. Me and my family we shot
2 pool there together at Bourbon
3 Street.

4 Q And when did you meet
5 him?

6 A Ten, eleven years
7 ago.

8 Q Do you remember the
9 year?

10 A Not right off. I'd
11 say 1999 or 2000.

12 Q And how long did you
13 really know him?

14 A I believe roughly
15 about maybe five months, six
16 months.

17 Q Did you guys become
18 friends?

19 A Yeah.

20 Q And what did you guys
21 do as friends?

22 A We just hung -- well,
23 we met at Bourbon Street. We
24 didn't do much. He'd come over
25 and him and my husband would talk.

FREEMAN -- DIRECT

1 We'd go in the back room. I had a
2 pool table back there. He'd just
3 bring a six-pack or something and
4 we'd have dinner and we'd shoot
5 pool.

6 Q How long would he
7 come over to your house?

8 A Maybe once, twice a
9 week maybe.

10 Q So pretty regularly?

11 A Yeah. Pretty much.
12 He said he didn't have any friends
13 here. He just moved here he said.

14 Q Now I'm going to show
15 you what's been premarked as
16 State's proposed exhibit number
17 one.

18 MS. CARDILLO: Your
19 Honor, may I approach?

20 THE COURT: You may.

21 Q If you would look at
22 this photograph. I'm sorry. Do
23 you recognize this photo?

24 A Yes.

25 Q And how do you

FREEMAN -- DIRECT

1 recognize it?

2 A Because it looks like
3 Ali.

4 Q Is that what -- is
5 that the same as Ala Sarhan?

6 A Yeah.

7 Q What did he go by?

8 A Yeah. Ali.

9 Q And is that the
10 person that you --

11 A Yes, I did.

12 Q -- befriended in
13 2000?

14 A Yes.

15 MS. CARDILLO: Your
16 Honor, at this time at the
17 State would ask to admit
18 State's proposed exhibit
19 number one?

20 THE COURT: Any
21 objection?

22 MR. DAVIS: No
23 objection, your Honor.

24 THE COURT: State's
25 one into evidence without

FREEMAN -- DIRECT

1 objection.

2 (Whereupon, the
3 photograph of Ali Sarhan
4 previously referred to is
5 received and marked as State's
6 Exhibit No. 1 in evidence.)

7 Q Now could you
8 describe Ali's physical
9 appearance?

10 A Physical appearance?

11 Q Yes.

12 A He was short. Clean
13 cut hair. He didn't shave every
14 day but who does? Other than
15 that, just a casual dresser.

16 Q Easy to get along
17 with?

18 A Fairly. Yes. He was
19 very impressionable.

20 Q Did he have any
21 disabilities?

22 A Yes, he did.

23 Q And what was that?

24 A One of his foot, feet
25 were blown off he said in the war

FREEMAN - - DIRECT

1 he said.

2 Q Did he wear anything
3 to help him with that disability?

4 A Yes. He had a
5 prosthesis, foot.

6 Q Now do you know where
7 he was from?

8 A No. He just said the
9 Middle East.

10 Q Now was he - - did you
11 know where he lived when you first
12 met him?

13 A Where he lived? Yes.
14 I think he stayed at the InTown
15 Suites on Rivers Avenue. That's
16 how I met him at Bourbon Street.
17 I guess it was the bar closest to
18 where he was staying at.

19 Q And did he ever live
20 anywhere else when you knew him?

21 A He had bought a RV
22 and lived in a campground over on
23 78 for maybe, maybe a month.

24 Q Now how did you know
25 about this camper - -

FREEMAN -- DIRECT

- 1 A Because he --
- 2 Q Or RV. I'm sorry.
- 3 A He told us about it
- 4 because he told us if he ever got
- 5 transferred back to North Carolina
- 6 or anything he couldn't take it
- 7 back to North Carolina with him so
- 8 he put us on there as to get the
- 9 RV if he had to move back, if he
- 10 got stationed back home.
- 11 Q Now when you said us,
- 12 who is that?
- 13 A Me and my husband.
- 14 Q So in fact you had
- 15 title to this RV for lack of a
- 16 better --
- 17 A Yeah. Because he
- 18 paid -- I guess he paid over half
- 19 of it on the RV and then put it on
- 20 the thing and I guess he still
- 21 owed maybe, maybe roughly about
- 22 half of it.
- 23 Q Now had you ever been
- 24 to this RV?
- 25 A Maybe once, twice

FREEMAN -- DIRECT

1 maybe.

2 Q Could you explain it,
3 what it involved?

4 A It was kind of like a
5 fifth wheel type. It was just
6 like a one bedroom, it had a
7 kitchen, one bathroom, little
8 living area.

9 Q Any storage space?

10 A Yeah. There was
11 storage spaces around on the
12 sides.

13 Q Was that on the
14 outside or --

15 A On the outside.

16 Q Were those usually
17 locked?

18 A Yes. He usually kept
19 them locked.

20 Q Now I'm going to turn
21 your attention to July of 2000.
22 Now did you see Ali that month?

23 A I don't remember if I
24 did or not. More likely I
25 probably did.

FREEMAN -- DIRECT

1 Q Well, did you ever go
2 to the RV?

3 A Yes.

4 Q And what if anything
5 did you find in his RV?

6 A What I had noticed
7 him missing is his car was gone,
8 the RV was unlocked and all the
9 storage spaces on the sides of
10 them were all unlocked.

11 Q Now was that unusual?

12 A Yes, it was.

13 Q And why is that?

14 A Because he never left
15 it unlocked, not unless he was
16 there and the front door was also
17 unlocked and I know that he had
18 been there because he had dirty
19 dishes that he had been there and
20 he fixed him something to eat and
21 left them there. Normally he kept
22 everything clean.

23 Q Now once you saw the
24 condition of his RV what did you
25 do as a result of that?

FREEMAN - - DIRECT

1 A I think I waited
2 maybe a day or two and I called
3 and reported him missing.

4 Q And you mean you
5 called - - who did you call to
6 report him missing?

7 A I do believe I called
8 nine one one and reported him
9 missing I guess. I called the
10 police and told them that he was
11 missing.

12 Q Did you have to go to
13 the police station?

14 A No. I called them
15 and they came to me.

16 Q And subsequently you
17 filed a missing person's report.

18 A Missing person's
19 report. Yes.

20 Q Did you give the
21 police a description of Ali?

22 A Yes.

23 Q What other
24 information did you give the
25 police about Ali?

FREEMAN -- DIRECT

1 A That I don't
2 remember. That's been ten or
3 eleven years ago. I don't even
4 remember the color of his car.

5 Q Do you remember the
6 date?

7 A No, ma'am, I sure
8 don't.

9 MS. CARDILLO: One
10 moment, your Honor, with the
11 Court's indulgence.

12 THE COURT: Okay.

13 Q Theresa, now I know
14 it's been a while, but you say you
15 don't remember the information you
16 gave to the police?

17 A Not -- not all of it.
18 No, I don't.

19 Q What do you remember?

20 A Just that I called
21 and reported him missing, that he,
22 he had gone, he called and told us
23 he'd gone to North Carolina, he'd
24 be back Sunday.

25 Q And did you hear from

FREEMAN -- DIRECT

1 him again?

2 A No, I did not.

3 Q Would, would looking
4 at a prior police report that you
5 gave the police, would that help
6 refresh your memory of what you
7 told the police regarding -- or
8 the information?

9 A Probably not. I work
10 nights and I don't have a very
11 good memory. I didn't think it
12 was that important so, you know.

13 Q Now do you, do you
14 recall, you said you don't
15 remember what kind of car he
16 drove?

17 A No.

18 Q The color, but do you
19 remember what kind of car it was?

20 A No. It may have been
21 black. I'm not sure.

22 Q Do you remember the
23 model or anything?

24 A No.

25 Q Now did you keep any

FREEMAN -- DIRECT

1 personal effects of the defendant?

2 A Yes, I did. I have
3 the title to his car in my, in my
4 little safe at home because he
5 didn't want to keep it in his RV
6 and he didn't want to keep it in
7 the glove compartment of the car
8 and I just threw it in my, my
9 little safe that I keep for my
10 papers.

11 Q So did you give this
12 information to the police if you
13 recall?

14 A Yes. I gave the
15 information to them. Yes.

16 Q About the title?

17 A Yes.

18 Q So they have the
19 make, model --

20 A I think so. I think,
21 I think they did. I don't recall
22 giving it to them but I think they
23 did.

24 MS. CARDILLO: Court's
25 indulgence, your Honor.

FREEMAN -- DIRECT

1 THE COURT: Yes,
2 ma'am.

3 Q If I showed it to
4 you, the information you gave the
5 police, would that refresh your
6 memory?

7 A That might. It
8 probably would.

9 MS. CARDILLO: Your
10 Honor, may I approach?

11 THE COURT: You may.

12 MS. CARDILLO: May I
13 have this marked for
14 identification.

15 (Whereupon, the
16 police report previously
17 referred to is received and
18 marked as State's Exhibit No.
19 49 for identification.)

20 Q All right. Theresa,
21 I'm going to show you the police
22 report that you gave to the
23 police. Please review that.

24 A I'll do the best I
25 can without my glasses, okay?

FREEMAN, -- DIRECT

1 Q I understand. Do the
2 best you can to read it and look
3 at me when you're done. But read
4 it to yourself, okay?

5 A Okay.

6 Q Does that refresh
7 your memory of what you told the
8 police?

9 A Yes.

10 Q Do you recall when
11 you gave the police the report?

12 A No, I don't. It's
13 either Monday or Tuesday but no, I
14 do not.

15 Q Do you recall the
16 date, not the actual day?

17 A No, I do not.

18 Q In reviewing the
19 document that you gave --

20 A No. I mean that was
21 ten, eleven years ago.

22 Q That's fair. Now
23 what exactly did you tell the
24 police about the defendant being
25 missing?

FREEMAN -- DIRECT

1 A That he was missing
2 and that I thought it had
3 something to do with the fight
4 that he had gotten into at the
5 Slaughter House.

6 Q Well, let me ask you
7 this. Did you give the police his
8 description?

9 A Yes.

10 Q And about a car?

11 A Yes.

12 Q Did you ever hear
13 anything again?

14 A No.

15 MS. CARDILLO: Your
16 Honor, the State has no
17 further questions.

18 Theresa, if you would
19 be so kind as to answer any
20 questions that defense counsel
21 may have.

22 THE COURT: Mr. Davis.

23 MR. DAVIS: Thank you,
24 your Honor. Your Honor, may I
25 have just one moment?

FREEMAN - - CROSS

1 THE COURT: You may.

2 CROSS-EXAMINATION BY

3 MR. DAVIS:

4 Q Miss Freeman, just a
5 few questions if I may. You met
6 this, this gentleman at, at
7 Bourbon Street?

8 A Yeah. Right.

9 Q That's a bar in North
10 Charleston?

11 A It used to be a bar
12 in North Charleston.

13 Q Used to be?

14 A Yes.

15 Q Back in 2000 is when
16 you met him?

17 A Yes.

18 Q Now you got to know
19 him well enough that he hung out
20 with you and your husband at your
21 house? Is that right?

22 A Yeah. He didn't have
23 any friends here, so, you know, he
24 was a very impressionable fellow.

25 Q You also visited, did

FREEMAN -- CROSS

1 you visit him at InTown Suites?

2 A No.

3 Q But you did visit at
4 the RV?

5 A Only once.

6 Q This is a brief
7 friendship of a few months?

8 A Yeah.

9 Q And yet you had your
10 name on the title to his RV?

11 A Yeah. I found that
12 unusual myself.

13 Q Okay. And ultimately
14 about that RV, ultimately in this
15 time frame that we're talking
16 about, you made a payment on the
17 RV. Correct?

18 A Only, only after a
19 month or so after he was missing
20 and I didn't want him, he didn't
21 want to lose what money he put
22 into it. Yes, I did. I paid the
23 balance of it off.

24 Q Fifteen hundred
25 dollars?

FREEMAN - - CROSS

1 A About fifteen,
2 eighteen, something like that.

3 Q Now that's not the
4 only time you helped him out
5 financially, is it?

6 A No.

7 Q And in fact you
8 mentioned just a moment ago about
9 a fight at a bar?

10 A Yes.

11 MS. CARDILLO: Your
12 Honor, objection. Relevance.

13 THE COURT: Counsel
14 approach.

15 (Whereupon, there was
16 an off-the-record bench
17 conference.)

18 THE COURT: Overruled.

19 Q I just asked you
20 something about a fight that this
21 gentleman was in?

22 A Yeah.

23 Q You knew about that?

24 A Yes.

25 Q He was arrested for

FREEMAN -- CROSS

- 1 that?
- 2 A Yes, he was.
- 3 Q You bonded him out?
- 4 A Yes. He paid me back
5 after he got out.
- 6 Q I'm sorry?
- 7 A He paid me back after
8 he got out.
- 9 Q It was about
10 twenty-five hundred dollars,
11 wasn't it?
- 12 A Something like that.
13 I don't remember how much it was.
- 14 Q You don't recall.
15 Okay. But it wasn't a small
16 amount of money?
- 17 A I don't think -- I
18 don't think so. I don't remember.
- 19 Q That's all right.
20 Now this was not at Bourbon
21 Street?
- 22 A No, it was not.
- 23 Q This was at another
24 bar?
- 25 A Yes.

FREEMAN -- CROSS

1 Q Okay. He had -- he
2 was accused of cutting someone --

3 A Yes.

4 Q -- pretty severely.

5 Correct?

6 A Yes.

7 Q Now you said
8 something also about the RV, that
9 one of the reasons that you were
10 involved with that is in case he
11 got transferred back to --

12 A If he moved back to
13 North Carolina or anything he
14 didn't want to have to take it
15 with him because he didn't have no
16 way to pull it up there and he
17 didn't want to pay anybody to pull
18 it up there.

19 Q Okay. He visited
20 North Carolina a lot. Right?

21 A I believe so.

22 Q Well, you --

23 A Almost like every
24 other weekend, or weekend or --

25 Q Okay. And he would

FREEMAN -- CROSS

1 stay up there for periods of time?

2 A Yeah. Just basically
3 for the weekend.

4 Q Okay. And you knew a
5 friend of his up there, a Miss
6 either Porter or --

7 A I don't remember the
8 name except --

9 Q Okay.

10 A -- for what, a
11 nickname that he called her and I
12 don't even recall what that name
13 was.

14 Q Okay. Let me go in
15 reverse order just briefly.

16 A Okay.

17 Q You go to the RV.
18 He's not there.

19 A It was a Sunday I
20 went and checked.

21 Q There are, there's
22 some damage to it?

23 A Well there was no
24 damage but all the storage unit
25 parts were all unlocked and the

FREEMAN -- CROSS

1 front door was unlocked.

2 Q Okay. And you called
3 the police? You waited a couple
4 days --

5 A Yeah. I waited a
6 couple days. I waited till Monday
7 or Tuesday and then I called the
8 police because I didn't hear
9 anything from him.

10 Q And reported perhaps
11 he's missing?

12 A He's missing. Yes.

13 Q Okay. Prior to that
14 you knew he was heading out of
15 town?

16 A Yes.

17 Q He was going to North
18 Carolina?

19 A Yes.

20 Q He said going to
21 North Carolina, I'll call you when
22 I get back?

23 A Yeah.

24 Q He never called you?

25 A I don't believe so.

FREEMAN -- CROSS

1 MR. DAVIS: Your Honor,
2 if I could have just one
3 moment.

4 THE COURT: Yes, sir.

5 Q Miss Freeman, you --
6 the reason you went to the RV just
7 went out of the blue, you'd been
8 trying to call him, trying to
9 reach him. Right?

10 A Yes. I'd been trying
11 to get in touch with him. Yes.

12 Q And you and your sone
13 went over. Correct?

14 A No. I think it was
15 me and my husband.

16 Q Okay. Do you
17 remember talking to the law
18 enforcement about this whole
19 thing?

20 A Yes. A little bit.
21 Yeah. It might have been me and
22 my son. I don't, I don't
23 remember.

24 Q Okay. And you also
25 don't recall about the person's

FREEMAN -- CROSS

1 name in North Carolina?

2 A No, I sure don't.

3 Q Do you remember
4 telling the police about that?

5 A I know that he had
6 friends up there but I, I don't
7 recall if I told them a name.

8 Q Okay. I'm going to
9 ask you similar to what Miss
10 Cardillo did. If you looked at,
11 at a report would that refresh
12 your memory?

13 A That might.

14 MR. DAVIS: May I
15 approach the court reporter,
16 your Honor?

17 THE COURT: You may.

18 (Whereupon, a police
19 report is received and marked
20 as Defendant's Exhibit No. 1
21 for identification.)

22 MR. DAVIS: May I
23 approach the witness, your
24 Honor?

25 THE COURT: You may.

FREEMAN -- CROSS

1 Q You're welcome to
2 look at the whole thing.

3 A Okay. Well, I still
4 don't have my glasses.

5 Q I'm going to
6 reference you to a page that has
7 your name kind of highlighted.

8 A Okay.

9 Q You're welcome to
10 look at all of it but I'm going
11 to refer you to that.

12 A I probably can't see
13 that because I don't have my
14 glasses.

15 Q Take your time, take
16 your time. When you've had a
17 chance to review that document you
18 let me know and I'm going to have
19 a few questions for you about
20 that.

21 A I really can't read
22 this. I don't, I don't have my
23 glasses and I can't see what is
24 says, so...

25 Q Okay.

FREEMAN -- CROSS

1 MR. DAVIS: Your Honor,
2 may I just have one moment?

3 THE COURT: You may.

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

7 THE COURT: You may.

8 Q Would you be
9 surprised if the report indicates
10 it was you and your son that went
11 out there?

12 A No, I would not, I
13 would not be surprised.

14 Q Would you be --

15 A My husband was
16 probably working.

17 Q Okay. Would you be
18 surprised if they had listed the
19 name Margaret Porter or Nugget,
20 Nugent --

21 A Okay.

22 Q -- as the person in
23 North Carolina?

24 A Okay.

25 Q Would that surprise

FREEMAN --- CROSS

1 you?

2 A Okay. Okay. No.
3 That wouldn't surprise me because
4 back then I probably would have
5 remembered the name but right now
6 I don't.

7 Q One final thing, Miss
8 Freeman. After you had bonded
9 this gentleman out for the ABWIK
10 you were aware of threats?

11 A He, he said he'd gone
12 to a bar and he'd gotten
13 threatened one time but he said it
14 was by the same gentleman that he
15 assaulted and the fight went on
16 about, so I told him he should not
17 frequent those bars any more.

18 Q I understand. Thank
19 you so much, ma'am. No other
20 questions.

21 THE COURT: Miss
22 Cardillo.

23 MS. CARDILLO: Briefly,
24 your Honor.

25

FREEMAN -- REDIRECT

1

2

REDIRECT EXAMINATION

3

BY MS. CARDILLO:

4

Q Did you ever see Ali

5

again after you reported him

6

missing?

7

A No, I did not.

8

Q Even though you had

9

his property?

10

A Even though I had his

11

property. No.

12

Q Would it surprise you

13

if you filed missing person's

14

report on July nineteenth of 2000?

15

A No.

16

MS. CARDILLO: Thank

17

you. I have nothing further,

18

Theresa. Thank you.

19

THE COURT: Mr. Davis.

20

Miss Freeman, just

21

one second.

22

THE WITNESS: Oh, okay.

23

THE COURT: Mr. Davis,

24

do you have any redirect --

25

recross?

HETTICH -- DIRECT

1

2

JUSTIN ARTHUR

3

HETTICH, having been called as
4 a witness, is duly sworn and
5 testifies as follows:

6

THE COURT: Mr.

7

Hettich, I'm going to need you
8 to speak up very loud.

9

THE WITNESS: Okay.

10

THE COURT: Thank you.

11

Mr. Simpson.

12

MR. SIMPSON: Thank

13

you, your Honor.

14

15

16

17

DIRECT EXAMINATION BY

18

MR. SIMPSON:

19

Q Justin, good morning.

20

A Good morning.

21

Q How are you?

22

A Pretty good.

23

Q I'm going to start

24

off with some questions about you

25

and your background. Where do you

HETTICH -- DIRECT

1 live?

2 A In Honey Hill,
3 Jamestown, South Carolina.

4 Q Is Jamestown close to
5 McClellanville?

6 A Yes, sir.

7 Q Did you grow up in
8 that area?

9 A Yes, sir. I grew up
10 in McClellanville since I was
11 about two years old.

12 Q Since around age two
13 when you came to McClellanville
14 have you been in that area your
15 whole life?

16 A Yes, sir.

17 Q Are you married?

18 A Yes, sir.

19 Q Have any children?

20 A I have two children.

21 Q Okay. You obviously
22 know why we're here today.

23 A Yes, sir.

24 Q And it involves your
25 life back in 2000. Correct?

HETTICH -- DIRECT

1 A Yes, sir.

2 Q Could you discuss a
3 little bit about how different
4 your life is today than it was in
5 2000?

6 MR. DAVIS: Objection,
7 your Honor. Relevance.

8 THE COURT: Counsel
9 approach.

10 (Whereupon, there was
11 an off-the-record discussion
12 at side bar.)

13 THE COURT: Please
14 rephrase your question. Thank
15 you.

16 Q Mr. Hettich, could
17 you -- I'm sorry. Try to catch
18 back up where we were. Back in
19 2000 where did you live?

20 A Well, throughout the
21 whole year it was a couple
22 different places. Mostly at my
23 mother's house but I also lived on
24 Highway 17 with Jeff Herrmann and
25 Shanna Cumbee.

HETTICH -- DIRECT

1 Q Okay. So they had a
2 place on Highway 17, if I could
3 just get you to repeat that, and
4 you lived with this person at the
5 table right here?

6 A Yes, sir.

7 Q Okay. Who is that?

8 A Jeffrey Herrmann.

9 Q And who else lived at
10 that location?

11 A Shanna Cumbee. And
12 I.

13 Q Did you have any
14 knowledge, obviously being a
15 roommate of the relationship
16 between Jeff Herrmann and Shanna
17 Cumbee at that time?

18 A Yes, sir. They were
19 boyfriend and girlfriend.

20 Q Let's talk a little
21 bit, get right to the point. Were
22 you at all involved in the use of
23 drugs in 2000?

24 A Yes, sir. Very much
25 so.

HETTICH -- DIRECT

- 1 Q And this is prior to
2 your being married back then?
- 3 A Yes, sir.
- 4 Q Prior to you being a
5 father?
- 6 A Yes, sir. That's
7 correct.
- 8 Q Okay. How long did
9 you live with Jeff and Shanna?
10 You may have already stated it.
- 11 A Yes, sir. Two
12 months. At the most three months.
- 13 Q And again this is
14 2000 so it's some time ago.
15 Correct?
- 16 A Yes, sir. I'm not
17 exactly sure how long it was but
18 it wasn't more than three months
19 and it wasn't less than two
20 months.
- 21 Q And why don't you
22 just go ahead and explain this to
23 the jury. Whenever we're talking
24 about dates back in 2000 --
- 25 A Yes, sir.

HETTICH -- DIRECT

1 Q -- is it fair to say
2 you're approximating?

3 A Yes, sir.

4 MR. DAVIS: Objection,
5 your Honor. That's, that's
6 leading the witness.

7 THE COURT: Overruled.

8 Q We mentioned Shanna
9 Cumbee and Jeffrey Herrmann living
10 at this residence. Do you also
11 know Shanna's brother?

12 A Yes, sir. Very well.

13 Q And what's his name?

14 A Jason Cumbee.

15 Q And how long have you
16 known Jason Cumbee?

17 A Probably since I was
18 three or four years old. We've
19 been friends most of my life.

20 Q Okay. In the last
21 say two years, '08, '09, have you
22 spent a lot of time with Jason
23 Cumbee?

24 A Not at all. I've
25 probably seen him -- I only see

HETTICH -- DIRECT

1 him in passing. I haven't been in
2 his house like once in two years
3 or something like that. Maybe
4 twice at the most.

5 Q So you've known Jason
6 a long time.

7 A Yes, sir.

8 Q But you haven't spent
9 a lot of time with him in the last
10 couple of years?

11 A No. I, I personally
12 haven't spent any time with him in
13 the last couple years. I see him
14 in passing. We live in a small
15 town so I mean I see him here and
16 there.

17 Q Did anything happen
18 between you to cause a rift?

19 A In the last two
20 years? Well, yes, sir.

21 Q Anything?

22 A He -- my wife at --
23 the time I lived with Jeff and
24 Shanna, right thereafter I got
25 together with my wife and Jason

HETTICH -- DIRECT

1 had a crush on her and thought
2 that there was something there but
3 I think he, like I stole his
4 girlfriend and so he, from then on
5 it's, you know, slowly, you know,
6 deteriorating from there.

7 Q And approximately how
8 many years ago did this kind of
9 rift happen?

10 A I would say eight or
11 nine years ago.

12 Q All right. And since
13 that time is it fair to say that
14 you guys haven't been close
15 friends?

16 A No, sir. Yes, sir.
17 That's very fair to say. Yes,
18 sir.

19 Q Going back to 2000,
20 you had mentioned you had been
21 involved in some drugs?

22 A Uh-huh. Yes, sir.

23 Q What -- from whom did
24 you get most of the drugs?

25 MR. DAVIS: Objection,

HETTICH -- DIRECT

1 your Honor, as previously
2 stated.

3 THE COURT: I'm going
4 to allow it.

5 A Well, at the time
6 when I lived with Jeff and Shanna,
7 the easiest place was the room
8 next door, which was their room.
9 I got drugs from Jeffrey mostly,
10 the easiest, cheapest way.

11 Q Did you have a
12 personal knowledge at the time
13 about where -- oh, first of all.
14 What, what drugs are we talking
15 about here?

16 A Cocaine.

17 Q Okay. I believe you
18 indicated in a previous hearing
19 there was some marijuana use as
20 well.

21 A Oh, yes, sir. Yes.

22 MR. DAVIS: May we
23 approach just briefly on this?

24 THE COURT: You may.

25 (Whereupon, there was

HETTICH -- DIRECT

1 an off-the-record bench
2 conference.)

3 THE COURT: Mr. Davis,
4 I'm going to overrule your
5 objection and allow you to
6 articulate it outside the
7 presence of the jury.

8 MR. DAVIS: Thank you,
9 your Honor.

10 Q Forgive me, Mr.
11 Hettich. Get back on track here.
12 So you acknowledge that when we
13 talk about drug use we're talking
14 about cocaine and marijuana?

15 A Yes, sir.

16 Q With the main one
17 being cocaine?

18 A Yes, sir.

19 Q Did you have any
20 personal knowledge in 2000 about
21 where Jeffrey Herrmann got his
22 cocaine?

23 A Yes, sir.

24 Q Did you ever
25 accompany Jeffrey Herrmann to get

HETTICH -- DIRECT

1 cocaine?

2 A Yes, sir.

3 Q And could you please
4 explain to the jury a little bit
5 about this instance where you
6 accompanied Mr. Herrmann?

7 A Well, basically I, I
8 was the only one that really had a
9 car at the time so when, one night
10 in particular I took Jeffrey to,
11 Jeff to have meet Ali at
12 McDonald's in North Charleston
13 area somewhere. I'm not exactly
14 sure where it was, but then --

15 Q Did you know why, did
16 you know why you were going to
17 meet Ali?

18 A Yes, sir.

19 Q And did you know that
20 because Jeff Herrmann told you
21 that?

22 A Yes, sir.

23 Q Continue.

24 A And we got to
25 McDonald's and he was, Ali was

HETTICH -- DIRECT

1 already there and we walked in and
2 sat next to him and Jeff handed
3 him a McDonald's cup that he had
4 put cash into and he received a
5 Kleenex box from Ali which I
6 later, when we got back in the
7 car, you know, could see it was
8 cocaine in there.

9 Q Okay. It did appear
10 to you to be cocaine?

11 A Yes.

12 Q And did you later
13 sample --

14 A Yes.

15 Q -- the cocaine?

16 A Yes. We later, yeah.
17 Yes, sir.

18 Q Did you have any
19 knowledge at the time generally
20 speaking from Jeffrey Herrmann
21 about how these, the, the money in
22 these deals, was he buying it?
23 Was it being fronted?

24 A From what I, I
25 remember in the instance that I

HETTICH -- DIRECT

1 went, he was, he was fronting him
2 the cocaine and the money was from
3 a previous transaction.

4 Q Okay. At any point
5 in time, and remember that we're
6 referring to these months that you
7 lived with the defendant, Jeffrey
8 Herrmann, did Mr. Herrmann ever
9 express any money problems to you?

10 A No, sir. Not, no.
11 Not at all.

12 Q Do you recall ever,
13 ever telling -- do you recall
14 giving a written statement in this
15 case?

16 A Yes, sir.

17 Q Do you, do you ever
18 recall mentioning some money
19 problems in that written attempt?

20 A No, sir.

21 Q Would it refresh your
22 recollection if I showed you a
23 copy of your statement?

24 A Sure.

25 MR. DAVIS: Objection,

HETTICH -- DIRECT

1 your Honor. He -- I think, I
2 believe it's inappropriate to
3 refresh his memory based on
4 these questions.

5 THE COURT: Counsel,
6 approach.

7 (Whereupon, there was
8 an off-the-record sidebar
9 conversation.)

10 THE COURT: Sustained
11 as to the form of the
12 question, Mr. Simpson.

13 Q Did the defendant,
14 Jeffrey Herrmann, ever explain to
15 you any plans he had regarding
16 this gentleman, Ali?

17 A Yes, sir. I believe
18 he told me of a story about one
19 day, this is before we lived
20 together, that Ali came out to
21 where he was staying, Jason and
22 Shanna's house, their parents'
23 house, and he had a cooler in the
24 car with him with, I -- from what
25 I remember it was supposedly nine

HETTICH -- DIRECT

1 kilos and seventy, eighty thousand
2 dollars in cash or something in
3 the cooler, and they, they rode
4 around. I'm not exactly sure what
5 they did. I guess he was bringing
6 them something.

7 Q And this was about --

8

9 A Well, I mean he said
10 I mean I never seen that much
11 money or drugs and I doubt that he
12 had and he said that, you know,
13 that's enough to get killed over.

14 Q So the defendant saw
15 all this stuff in the cooler and
16 that's enough to get killed over?

17 A Right. I mean it
18 was, it was later on, it was a
19 late night just -- I mean from
20 what I felt it was just, you know,
21 a complete joke, you know.

22 Q Okay. And you
23 approximated about two weeks
24 later, did the defendant tell you
25 anything further regarding --

HETTICH -- DIRECT

1 actually I'm sorry I asked.

2 MR. SIMPSON: Your
3 Honor, may I approach the
4 evidence table?

5 THE COURT: You may.

6 Q Presenting to the
7 witness what's been marked as
8 State's exhibit one, marked and
9 entered. Do you recognize that
10 photograph?

11 A Yes, sir.

12 Q I should say do you
13 recognize the person in that
14 photograph?

15 A Yes, sir. It looks
16 to me to be Ali.

17 Q The individual that
18 you met at the McDonald's in North
19 Charleston?

20 A Yes, sir.

21 Q Continuing on. You
22 have this conversation with the
23 defendant about this large amount
24 of money and large amount of
25 drugs. You say that was about two

HETTICH -- DIRECT

1 weeks before, sometime before.
2 Did he ever later tell you about
3 Ali?
4 A Well, I mean, yes.
5 Yes, sir. Yes. He, he -- one day
6 I came home -- this is after we
7 had moved into this house on
8 seventeen and he told me that he,
9 he did it and I didn't know
10 exactly what he was talking about
11 first and later on that afternoon,
12 you know, he explained to me what
13 had happened, that he came out
14 there, that Ali came there. I
15 think Ali came there to get the
16 money that he had fronted, fronted
17 him an ounce of cocaine and Ali
18 was there to get his money and the
19 story he told me was that Jeff
20 told him that he left the money at
21 Jason Cumbee's house which is
22 five, ten miles away from where we
23 were, and that Ali took him down
24 the road, you know, down to
25 Jason's house to get his money and

HETTICH -- DIRECT

1 said that he asked if he could
2 smoke a cigarette and Ali said
3 that was fine and he reached over
4 on the side and grabbed the gun
5 and turned and shot him.

6 Q Did he say where on
7 his body he shot him?

8 A In the head.

9 Q Did the defendant,
10 Jeffrey Herrmann, indicate to you
11 who was in the car when this took
12 place?

13 A Yes. Just him and
14 Ali.

15 Q Did the defendant
16 indicate to you that Jason Cumbee
17 became involved at that --

18 MR. DAVIS: Objection.
19 Leading, your Honor.

20 THE COURT: Sustained.

21 Q Did the defendant
22 indicate what happened next to you
23 since that time?

24 A Yes. Yes, sir. He
25 said that he was thinking about

HETTICH -- DIRECT

1 burning the car in the national
2 forest and said that Jason told
3 him that that was a pretty stupid
4 idea, that that would bring
5 helicopters and fire trucks, and
6 so that he told him that there's
7 quite a few boat ramps out there
8 and they went to a remote location
9 and to a boat ramp in the Wadmalaw
10 Swamp and that's where they
11 disposed of the car.

12 Q If I could backtrack
13 just a little bit.

14 MR. DAVIS: Your Honor,
15 may we approach just a moment?

16 THE COURT: You may.

17 (Whereupon, there was
18 an off-the-record bench
19 conference.)

20 THE COURT: Ladies and
21 gentlemen, as I indicated to
22 you, sometimes it would be
23 times when counsel would
24 approach, ask to approach.
25 The -- there has been an

HETTICH -- DIRECT

1 objection made and I have
2 determined based upon the
3 rules of evidence that there
4 was some improper hearsay
5 statements admitted during the
6 last colloquy by this witness.
7 You are instructed and it
8 needs to be stricken from the
9 record. You must disregard
10 the statement that this
11 witness testified that Jason
12 suggested not to burn the car
13 and that that there are boat
14 landing in the area.

15 Counsel?

16 MR. DAVIS: Thank you,
17 your Honor.

18 THE COURT: And,
19 Mr. Simpson, do you need to
20 approach?

21 MR. SIMPSON: Yes,
22 ma'am.

23 THE COURT: Mr. Davis.

24 MR. DAVIS: Yes, ma'am.

25 (Whereupon, there was

HETTICH -- DIRECT

1 an off-the-record bench
2 conversation.)

3 THE COURT: And just
4 to say that so the record is
5 abundantly clear, the
6 testimony that I just ordered
7 stricken was the testimony
8 that Jason said, is that I
9 have determined that it was
10 improper hearsay statements
11 as to what Jason told him.

12 Mr. Simpson.

13 MR. SIMPSON: Thank
14 you.

15 Q Did Jeff, not Jason,
16 indicate to you what he did with
17 the body right after he shot Ali?

18 A Yes, sir. He -- I
19 was told by Jeff that he shot him
20 on the dirt road going to Jason
21 Cumbee's house.

22 Q Did he indicate to
23 you where on the dirt road?

24 A Yes, sir.
25 Approximately.

HETTICH -- DIRECT

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

4 THE COURT: You may.

5 Q I show the witness
6 what's been marked for I. D. only
7 as State's exhibit two.

8 A Okay.

9 Q You could see
10 obviously that's a map. Do you
11 recognize what area that map
12 covers?

13 A Yes.

14 Q If I showed you that
15 map could you indicate to me some
16 of the areas you're talking about?

17 A Yes, sir.

18 Q We can set it up
19 here.

20 A Okay.

21 MR. SIMPSON: Your
22 Honor, at this point the State
23 would move State's exhibit two
24 into evidence, ask that it be
25 entered into evidence.

HETTICH -- DIRECT

1 THE COURT: Any
2 objection, Mr. Davis?

3 MR. DAVIS: I have no
4 objection.

5 THE COURT: State's
6 two into evidence without
7 objection. You may publish.

8 (Whereupon, the map
9 of the crime scene area
10 previously referred to is
11 received and marked as State's
12 Exhibit No. 2 in evidence.)

13 Q I'm going to ask you
14 to --

15 A Stand up?

16 Q Well --

17 A Okay.

18 Q If you could just
19 turn around. See this top button
20 here.

21 A Okay.

22 Q First of all point
23 out to the jury, and again you
24 lived in this area your whole
25 life. Correct?

HETTICH -- DIRECT

- 1 A Yes, sir.
- 2 Q Where's seventeen?
- 3 A Right here. (The
4 witness indicates.)
- 5 Q And does that highway
6 seventeen run north from
7 Charleston?
- 8 A Yes, sir. I mean
9 it's a two lane highway but, yes,
10 it's, it's north.
- 11 Q And highway
12 forty-five?
- 13 A That would be this
14 here.
- 15 Q And where they
16 intersect down near the bottom,
17 when you say generally the town of
18 McClellanville, is that what we're
19 talking about?
- 20 A Yes, sir. Yes, sir.
21 This is McClellanville.
- 22 Q And do you know the
23 Cumbee address?
- 24 A I, I, I mean I don't
25 know it off the top of, of my

HETTICH -- DIRECT

1 head. I don't know their address.

2 Q But could you point
3 out approximately where the Cumbee
4 household lies on that map?

5 A Yes, sir. This, this
6 would be approximately where it
7 would be at?

8 Q What road is that?

9 A This is Old
10 Georgetown Road. It's an old dirt
11 road. It's been there for
12 hundreds of years.

13 Q And you previously
14 testified that Mr. Herrmann
15 indicated to you approximately
16 where they were when he shot Ali?

17 A Yes, sir.

18 Q And it was a place
19 you're familiar with?

20 A Yes, sir.

21 Q And could you
22 indicate to the jury where that
23 is?

24 A This is forty-five
25 and right here is, right before

HETTICH -- DIRECT

1 that curve on Old Georgetown, old
2 dirt road starts right here. I
3 would say it was, it was before he
4 got to Jason's house. It was
5 right about in here that he said
6 he shot him.

7 Q Thank you, Justin.

8 A Okay.

9 Q Excluding obviously
10 anything Jason has alleged to
11 us --

12 A Yes.

13 Q Did Jeff tell you
14 what he did with the body after it
15 was placed in the trunk?

16 A After it was placed
17 in the trunk he, he, he found
18 Jason. I don't know if Jason was
19 out of town or if Jason was in
20 McClellanville.

21 Q Did Mr. Herrmann tell
22 you that he was alone when the
23 bullet was fired?

24 A Yes, sir. Yes, sir.

25 Q And did Mr. Herrmann

HETTICH -- DIRECT

1 tell you what was ultimately done
2 with the car with the body in the
3 trunk?

4 A Yes, sir.

5 Q And what did he tell
6 you?

7 A He said that he, that
8 he drove it to the boat, the boat
9 ramp in the national forest and
10 that they put in, that he put it
11 in neutral and let the car roll
12 down the ramp into the water and
13 then got, ran around the ramp and
14 got in the trunk with Jason.

15 MR. SIMPSON: Court's
16 indulgence.

17 THE COURT: Yes, sir.

18 Q Justin, you indicated
19 on the map that we're looking at
20 now --

21 A Yes, sir.

22 Q -- where Jeffrey told
23 you he shot Ali.

24 A Yes, sir.

25 Q And that is just -- I

HETTICH -- DIRECT

1 suppose it would be west of
2 McClellanville, northwest of the
3 town of McClellanville?

4 A Yes, sir. I know
5 where the town limits are but
6 it's, I would consider it right
7 outside McClellanville.

8 Q You've grown up in
9 McClellanville a large portion of
10 your life. Correct?

11 A Yes, sir.

12 Q Is that in the county
13 of Charleston?

14 A Yes, sir.

15 Q Did the defendant,
16 Jeffrey Herrmann, ever mention to
17 you anything about where Ali might
18 reside and anything that was done
19 following the murder?

20 MR. DAVIS: Your Honor,
21 may we approach?

22 THE COURT: You may.

23 (Whereupon, there was
24 an off-the-record bench
25 conference.)

HETTICH -- DIRECT

1 THE COURT: And, Mr.
2 Davis, I overrule your
3 objection based upon a
4 previous ruling.

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

7 THE COURT: Thank you.

8 Q Do you remember the
9 question?

10 A I'm sorry. If you
11 could repeat it.

12 Q Did the defendant
13 ever mention anything to you about
14 where Ali lived and any details in
15 relation to that?

16 A Yes. He told me that
17 he thought it was a little odd
18 that someone to have that much
19 money in drugs that for some
20 reason he -- that Ali lived in a
21 camper at K. O. A. campground.

22 Q Did he ever mention
23 to you going there personally?

24 A Did he mention if he
25 went there?

HETTICH -- DIRECT

1 Q Uh-huh.

2 A Yeah. Yes, sir. He
3 said he'd been there.

4 Q Did he say when he
5 had been there?

6 A Obviously it was
7 previous to this incident. I mean
8 I would say maybe a month before
9 that.

10 MR. SIMPSON: Court's
11 indulgence.

12 THE COURT: Yes, sir.

13 Q Justin, thank you
14 very much. Please answer any
15 questions the defense might have
16 for you.

17 A Yes, sir.

18 THE COURT: Mr. Davis.

19 MR. DAVIS: If I can
20 have a moment, your Honor.

21 THE COURT: Yes, sir.

22

23

24

25

HETTICH -- CROSS

1

2

CROSS-EXAMINATION BY

3

MR. DAVIS:

4

Q It's Hettich. Is

5

that right?

6

A Yes, sir. It's hard

7

to pronounce.

8

Q Let's back up here

9

just a bit. So up until some

10

issue with a lady you'd been

11

life-long friends with Jason

12

Cumbee. Right?

13

A Yes, sir.

14

Q And when was it that

15

you had this rift with him?

16

A It was in the summer

17

of 2000.

18

Q Okay. Now most of

19

your testimony to the jury today

20

has been what Jeff told you back

21

in 2000 as well. Is that right?

22

A Yes, sir.

23

Q Now I'm going to ask

24

you not to speculate. If you

25

don't recall, you don't recall.

HETTICH -- CROSS

1 A Sure.

2 Q Do you remember when
3 it was that Jeff first started
4 talking to you about supposedly
5 killed somebody? Do you recall
6 when that was in 2000?

7 A Are you for a date?

8 Q As best you can
9 recall.

10 A I would say September
11 of 2000.

12 Q Okay. To the best of
13 your recollection this, this
14 meeting at the McDonald's that you
15 talked about --

16 A Yes, sir.

17 Q -- to the best of
18 your recollection when did that
19 take place?

20 A That was, it was
21 right before we moved into the
22 house on seventeen. I would say
23 beginning of August maybe.

24 Q Okay. And at that
25 meeting at McDonald's you claim

HETTICH -- CROSS

1 Jeff was there?

2 A Yes, sir.

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

6 THE COURT: You may.

7 Q You have in front of
8 you a large photograph. Do you
9 claim that's the gentleman that
10 was there as well?

11 A Yes, sir.

12 Q Okay. Now how sure
13 are you that that's the other
14 gentleman that was there?

15 A I'm, I'm pretty sure
16 it's him. He was obviously he was
17 dressed differently and, and it's
18 nine years, but to the best of my
19 recollection that's him.

20 Q Mr. Hettich, do you
21 remember testifying at a prior
22 proceeding without the jury here?

23 A Yes, sir.

24 Q And do you recall
25 that you were, you were also shown

HETTICH -- CROSS

1 that photo and asked about it? Do
2 you remember that?

3 A Yes, sir.

4 Q And I believe your
5 testimony is it looks very similar
6 to Ali?

7 A Yes, sir. I think
8 what I may have said is that if
9 this is not his picture then this
10 is someone who looks very much
11 like him.

12 Q And you were a bit
13 hesitant because again I think you
14 said it's been eight, nine, ten
15 years. Right?

16 A Yes, sir.

17 Q Now during this
18 supposed meeting at the
19 McDonald's, you claim that, that
20 Jeff bought some, some white
21 substance from that man. Correct?

22 A Yes, sir. I'm not
23 sure if the money was to purchase
24 or if it was from a previous
25 transaction that he did. He

HETTICH -- CROSS

1 didn't really discuss business
2 with me too much.

3 Q Okay. So it wasn't
4 said at that meeting whether
5 because I think you said that the
6 money, Jeff handed the guy the
7 money in a cup?

8 A Yes, sir. It was in
9 a McDonald's cup with the top on
10 it so it wouldn't be very obvious.

11 Q And supposedly that
12 gentleman handed him a Kleenex
13 box?

14 A Yes, sir. Tissues.
15 Kleenex.

16 Q And it had some white
17 powdery substance in it. Right?

18 A It was in a bag
19 inside the box. Yes, sir.

20 Q Now it was cocaine
21 because you claim you used it
22 later. Right?

23 A Yes, sir.

24 Q But there was no
25 discussion at that meeting as to

HETTICH -- CROSS

1 whether that money was for that
2 cocaine or whether it was being
3 fronted or there was no discussion
4 of that?

5 A No, sir. We were in
6 public. That was in a McDonald's
7 restaurant. There were other
8 people around.

9 Q So you don't know
10 whether the amount of cocaine,
11 that they were being fronted or
12 being purchased?

13 A No, sir.

14 Q But you, you were
15 there for that purchase?

16 A I sat directly across
17 the table from him.

18 Q That's the only time
19 that you and the man in this photo
20 did a drug buy?

21 A Yes, sir. It's the
22 only time I've ever seen Ali.

23 Q Now during that time
24 frame in August or September of
25 2000, you were using cocaine?

HETTICH -- CROSS

1 A Yes, sir.

2 Q You were also sharing
3 or selling the drug?

4 A Yes, sir.

5 Q And I believe you
6 told the jury that the reason that
7 you took Jeff to meet with the guy
8 in the picture at the McDonald's
9 is that you were the only one that
10 had a car?

11 A Yes, sir. And I was
12 compensated for the ride.

13 Q So Jeff didn't ask
14 any other friends, asked you
15 because you were the only one with
16 a vehicle?

17 A Yes, sir.

18 Q Okay. Would Jeff or
19 you and Jason Cumbee drove him.
20 Right?

21 A Yes, sir.

22 Q He was living in the
23 area in 2000 as well?

24 A Yes, sir. He's
25 living with his parents.

HETTICH -- CROSS

1 Q And he was able to
2 use his mom's red truck all the
3 time. Right?

4 A Sure. In
5 McClellanville.

6 Q Oh. So she just
7 didn't that let him take it out of
8 McClellanville?

9 A Yes, sir.

10 Q How old were you in
11 2000?

12 A I was nineteen.

13 Q Nineteen. So Jason's
14 about the same age?

15 A I think he's a year
16 or two older than me.

17 Q All right. So he's
18 twenty or twenty-one at the time.
19 Right?

20 A Yes, sir.

21 Q All right. Then you
22 tell the jury that sometime after
23 this meeting at the McDonald's
24 that Jeff talks to you about
25 killing this guy?

HETTICH -- CROSS

1 A It wasn't a whole lot
2 of discussion. It was, he told
3 me, you know, about seeing that
4 much drugs and money and which
5 none of us had ever seen so it was
6 quite a story to tell and I mean
7 it was simply in passing that
8 that --

9 Q And when you say
10 seeing "that much", you didn't see
11 the drugs and money that Jeff told
12 you about?

13 A No, sir. Not at all.

14 Q This nine kilos and
15 seventy or eighty thousand
16 dollars?

17 A Not at all. I never
18 saw it.

19 Q Okay. And so Jeff
20 makes a comment that it's enough
21 for somebody to get killed over,
22 right, to you?

23 A Yes, sir.

24 Q But you thought it
25 was a joke?

HETTICH -- CROSS

1 A Yes, sir. I did. I
2 never known anyone to kill anyone.
3 Didn't think that any of my
4 friends would be involved in
5 anything like that.

6 Q All right. In fact
7 the first time you talked to any
8 police about this is in August of
9 2008. Right?

10 A Yes, sir.

11 Q You talked to
12 Detective Casale and Detective
13 Magwood from the Sheriff's Office?

14 A Yes, sir. I believe
15 that was their names.

16 Q One kind of big, tall
17 white gentleman?

18 A Yes, sir.

19 Q And kind of a shorter
20 black gentleman with glasses?

21 A Yes, sir. I still
22 have their card actually.

23 Q And when you talked
24 to them you basically repeated
25 what Jeff told you back in 2000?

HETTICH -- CROSS

1 A Yes, sir. To the
2 best of my knowledge and
3 recollection, yes.

4 Q And you lived up in
5 McClellanville back in 2000.
6 Right?

7 A Yes, sir.

8 Q And where do you live
9 now, currently? In
10 McClellanville?

11 A It's a town slightly
12 further down Highway forty-five.

13 Q Honey --

14 A Honey Hill. It's
15 considered Jamestown in our
16 address.

17 Q Okay. When the
18 police stopped you in August of
19 2008 --

20 A Yes, sir.

21 Q -- you knew that
22 Jason had been arrested for
23 accessory after the fact of
24 murder?

25 A Yes, sir. Pretty

HETTICH -- CROSS

1 sure.

2 Q And when you gave
3 that statement to the two
4 detectives in August of 2008
5 before you gave that, they read
6 you your Miranda warnings. Right?
7 You have the right to remain
8 silent, anything you say can be
9 used against you.

10 A Right. I, I --

11 Q Do you recall those
12 being read?

13 A I don't remember. I
14 don't remember whether they did
15 that or not. I thought that was
16 only if you were being arrested.

17 MR. DAVIS: May I
18 approach the court reporter,
19 your Honor?

20 THE COURT: You may.

21 (Whereupon, the
22 statement of Justin Hettich
23 previously referred to is
24 received and marked as
25 Defendant's Exhibit No. 2 for

HETTICH -- CROSS

1 identification.)

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

5 THE COURT: You may.

6 Q Mr. Hettich, I'm
7 going to show you what's been
8 marked for identification purposes
9 as State's (sic) exhibit number
10 two. I want you to take a, take a
11 look at it. It's several pages.
12 Take your time. When you've had a
13 chance to review the entire thing
14 I'm going to have some questions
15 for you. Okay?

16 A Okay.

17 Q Okay. Mr. Hettich,
18 have you had enough time to review
19 it?

20 A Yes, sir.

21 MR. DAVIS: May I
22 approach the witness, your
23 Honor?

24 THE COURT: You may.

25 Q On the front page

HETTICH -- CROSS

1 there, is that in fact the
2 warnings that I was starting to
3 talk about?

4 A Yes, sir. I -- I --
5 yes, sir. I thought that the --

6 Q All right. So those
7 are the ones?

8 A Yes, sir. I --

9 Q They're in written
10 form. Correct?

11 A Right.

12 Q And down each side
13 there's a place for you to initial
14 that you understand and agree
15 these. Correct?

16 A Yes, sir.

17 Q And at the bottom
18 there's a signature by yourself.
19 Correct?

20 A Yes, sir.

21 Q And Detective Casale
22 or there's two other signatures on
23 there?

24 A Right.

25 Q Do you know what

HETTICH -- CROSS

1 those two other signatures are?

2 A By reading them it
3 looks like the officer's name,
4 detective's name is Detective
5 Magwood.

6 Q Okay. And that was
7 back in August of 2008?

8 A Yes, sir. Yes.

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

11 THE COURT: Yes, sir.

12 Q So that they warned
13 you that anything you said could
14 be used against you. Correct?

15 A Yes, sir.

16 Q Were you worried
17 about getting arrested?

18 A I mean I've never
19 been in this position but I wasn't
20 personally worried about myself
21 being arrested, no.

22 Q Okay. You've talked
23 to -- without saying what was
24 said, you've spoken with Jason
25 since he bonded out. Right?

HETTICH -- CROSS

1 A I'm sorry. Since
2 what?

3 Q You've spoken with
4 Jason Cumbee since he's bonded
5 out. Correct?

6 A Bonded out. Very
7 little. Yeah. I've seen him at
8 the gas station and I try not to
9 talk to him as much as possible.

10 Q I understand, Mr.
11 Hettich. All I'm asking is you've
12 spoken with him since he got out.

13 A Sure.

14 Q Today are you aware
15 that he's implicated you in this?

16 A No. Not at all.

17 MR. SIMPSON: Object,
18 your Honor. May we approach?

19 THE COURT: You may
20 approach.

21 (Whereupon, there was
22 an off-the-record bench
23 conference.)

24 THE COURT: You may
25 proceed, Mr. Davis.

HETTICH -- CROSS

1 MR. DAVIS: Thank you,
2 your Honor.

3 Q Just a few final
4 questions, Mr. Hettich. Prior to
5 testifying today, you met with
6 people at the Solicitor's Office
7 to get ready for testimony?

8 A Yes, sir.

9 Q More than one
10 occasion?

11 A Yes, sir.

12 Q And you would have
13 reviewed with them what you told
14 the jury about today. Correct?

15 A Yes, sir.

16 Q And just to be clear,
17 you've told the jury that Jeff
18 told you about planning, some
19 planning and how to kill someone.
20 Right?

21 A Yes, sir. Yes.

22 Q And I believe August
23 or September, 2000. That's your
24 best recollection. Correct?

25 A Yes, sir.

HETTICH -- CROSS

1 Q Okay.

2 A I didn't believe it
3 that they had done it. There was
4 no reason to flee.

5 Q I understand, Mr.
6 Hettich. I want to be clear.
7 I'm, I'm not asking you about, you
8 also say Jeff at some point said I
9 didn't. Correct?

10 A Yes, sir.

11 Q All right.
12 Specifically a moment ago I asked
13 you about sometime prior to that
14 he talked to you about,
15 anticipatory, about doing it.
16 Correct?

17 A Like I said before,
18 he made that statement and yes,
19 sir. I mean. . . that, that's
20 what I'm basing that on. Made
21 that statement.

22 Q Okay. And the
23 statement being enough to get
24 killed over or something to that
25 effect?

HETTICH -- CROSS

1 A Yes, sir.

2 Q Right?

3 A Yes, sir.

4 Q And that's dealing
5 with some drugs or money you never
6 saw. Correct?

7 A Yes, sir.

8 Q And that's August or
9 September of 2000 to your
10 recollection. Correct?

11 A Yes, sir.

12 MR. DAVIS: Your Honor,
13 if I could have just one
14 moment.

15 THE COURT: Yes, sir.

16 MR. DAVIS: Thank you,
17 Mr. Hettich. I have no
18 further questions.

19 THE COURT: Mr.
20 Simpson.

21 MR. SIMPSON: Thank
22 you, your Honor. Just
23 briefly.

24

25

HETTICH -- REDIRECT

1

2

REDIRECT EXAMINATION

3

BY MR. SIMPSON:

4

Q Justin, I asked

5

you -- I believe it was one of my

6

first questions I asked you.

7

A Okay.

8

Q Talking about dates

9

over nine years ago.

10

A Yes, sir.

11

Q Do you recall living

12

with the defendant and Shanna and

13

Jason the summer of 2000?

14

A Yes, sir.

15

Q I believe Mr. Davis

16

just asked you and we may be ball

17

parking the year. Is that

18

correct?

19

A Yes, sir.

20

Q You said that this

21

probably occurred in August or

22

September?

23

A Yes, sir.

24

Q Are we going on best

25

guess there?

HETTICH -- REDIRECT

1 A Well, has it been
2 more than that? I don't like to
3 say this but we actually had some
4 marijuana plants in the back yard
5 and they were about ready and
6 that's the time of the year and --

7 Q Mid to late summer?

8 A Yes, sir.

9 Q Okay. But still
10 we're approximating?

11 A Yes, sir.

12 MR. SIMPSON: Your
13 Honor, I believe I'm going to
14 have to request to approach.

15 THE COURT: Very well,
16 Mr. Simpson.

17 (Whereupon, there was
18 an off-the-record bench
19 conference.)

20 Q Jason (sic), since
21 2000 and all this time we're
22 talking about, something happened
23 in your life. Correct?

24 A I didn't --

25 Q We've referenced some

HETTICH -- REDIRECT

1 of these. You're married.

2 A Yes, sir.

3 Q And now you have

4 kids.

5 A Yes, sir.

6 Q You're a father and a

7 husband?

8 A Yes, sir.

9 Q Are you still running

10 in the same circles of social

11 acquaintances that you did back in

12 2000?

13 A No, sir. That's

14 basically why I do try to avoid

15 Jason most of the time.

16 Q And we talked about

17 that. And let's talk about this

18 again. You had a rift with Jason

19 Cumbee. Right?

20 A Yeah. That, that was

21 the beginning of it. Yes.

22 Q And it happened

23 around the same time of these

24 incidents you're testifying to?

25 A Yes.

HETTICH -- REDIRECT

1 Q Now you did testify
2 that you've known him for a long
3 time. Correct?

4 A Yes, sir.

5 Q Justin, are you here
6 today protecting Jason Cumbee?

7 A No, sir. Not at all.

8 Q You are being
9 untruthful to help Jason Cumbee?

10 A No. I would think I
11 almost implicated him. I mean --

12 Q In fact when the
13 police first came to you, you told
14 them that the defendant told
15 you --

16 MR. DAVIS: Objection.
17 Leading, your Honor.

18 THE COURT: Let him
19 finish his question.

20 Q You had previously
21 testified that the defendant told
22 you Jason helped him after the
23 murder.

24 MR. DAVIS: Objection,
25 your Honor. There's the

HETTICH -- REDIRECT

1 hearsay --

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

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

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

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

17 A Jason Cumbee.

18 Q And you told the
19 police that information?

20 A Yes, sir.

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

25 A In no way, shape, or

HETTICH -- REDIRECT

1 form.

2 Q Have you told the
3 truth to the jury here today?

4 A Yes, sir. I believe
5 have. I've been very truthful.

6 Q That's that Jeffrey
7 Herrmann said he killed Ali?

8 A Yes, sir.

9 Q He pretended to be
10 reaching for a cigarette?

11 A Yes, sir. That's how
12 he told me that it happened.

13 Q Shot him in the head?

14 MR. DAVIS: Again, your
15 Honor, leading. If the
16 witness would like to testify.

17 THE COURT: Please
18 rephrase your question, Mr.
19 Simpson.

20 Q Did he educate you
21 where he shoot victim?

22 A Yes, sir, he did. In
23 his head.

24 Q Did he indicate where
25 on the car he put the body after

HETTICH - - REDIRECT

1 he shot him in the head?

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

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

6 THE COURT: Mr. Davis.

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

9

10

11

12

13

14

15 RE-CROSS-EXAMINATION

16 BY MR. DAVIS:

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

20 A Yes, sir.

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

25 A Yes.

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

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

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

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

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

1 hearing.

2 MR. SIMPSON: At any
3 time you wish, your Honor.

4 THE COURT: Why don't
5 we resume back at 1:45. That
6 will give us fifteen minutes
7 and if any other matters
8 arise, Mr. Davis, if anything
9 arises while you're listening
10 to the audio tape.

11 MR. DAVIS: Thank you,
12 your Honor.

13 THE COURT: Anything
14 before we break?

15 MR. SIMPSON: No, your
16 Honor.

17 MR. DAVIS: No, your
18 Honor. Thank you.

19 THE COURT: Thank you.
20 We'll be at ease until 1:45.

21 (Whereupon, a
22 luncheon recess is called at
23 12:09 p.m.)
24
25

1

2

3

AFTERNOON SESSION.

4

5

6

(Whereupon, the judge enters the courtroom at 1:49 p.m.)

7

8

THE COURT: All right, Mr. Davis.

9

10

11

12

13

14

15

16

17

18

19

MR. DAVIS: Thank you, your Honor. I believe we're ready. We appreciate the extra time over lunch to do that. We will be ready assuming they're calling Mr. Cumbee next. We're ready for that. If now is a good time for us to make our argument on the reliability motion.

20

21

22

23

24

25

THE COURT: Certainly.

MR. DAVIS: Your Honor, we, we visited briefly in chambers at the beginning on Monday and briefly on the record. It is a unique motion. I'll grant you that.

1 But the, the gist of the
2 motion is this, judge. In
3 this unique situation a
4 co-defendant is charged with
5 a, an accessory after the fact
6 of murder. Accessory charge.
7 Currently pending and I think
8 will be readily apparent
9 during any of the testimony
10 either to the Court or to the
11 jury, it's unique in the sense
12 that there are two different
13 proffer statements, and there
14 are, I will suggest six
15 statements or five statements
16 and we have made -- and, and
17 the gist of our argument in
18 the motion is that we have
19 made it analogous to an
20 identification, that in
21 determining whether an
22 identification testimony will
23 be submitted to the jury,
24 there -- part of that
25 determination is reliability.

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

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

1 is not charged with the murder
2 of Ali Sarhan.

3 I think I pointed out
4 purview in our brief on this
5 issue. This is truly a motion
6 that's created from
7 whole-cloth. This is not an
8 uncommon situation that we're
9 facing right here and to file
10 a motion asking the Court to
11 invade the purview of the jury
12 in determining a witness's
13 credibility is unsupported in,
14 in any source of law and I
15 think we've, we've cited that
16 quite thoroughly in our
17 written briefs on the matter.
18 That being the case in
19 pre-camera, pretrial
20 conference in your chambers
21 Rodney said well, at least let
22 me ask a couple of questions
23 before their testimony in sort
24 of a "reveal the deal" type of
25 capacity and then in deference

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

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

1 MR. SIMPSON: Yes, your
2 Honor.

3 THE COURT: All right.

4 Mr. Davis, I'm going
5 to allow Mr. Simpson, Mr.
6 Simpson will call Mr. Cumbee
7 and the purpose is to
8 determine his understanding of
9 proffer to, to allow you to
10 inquire as to reveal the deal
11 as you have put it. Mr.
12 Davis, is there any questions
13 about Mr. Cumbee's competency?
14 Your motion had indicated that
15 on Mr. Korth you were
16 concerned about Mr. Korth's
17 competency.

18 MR. DAVIS: Correct,
19 judge. I'm not aware of
20 anything that would cause the
21 defense concern about Mr.
22 Cumbee being able to
23 communicate and otherwise
24 understand truthful testimony
25 versus perjured testimony.

J. CUMBEE -- DIRECT VOIR DIRE

1 THE COURT: All right.

2 MR. SIMPSON: Thank

3 you, your Honor.

4 THE COURT: Thank you.

5 MR. SIMPSON: State

6 calls Jason Cumbee.

7

8

9

10

11

JASON WARD CUMBEE,

12

having been called as a

13

witness, is duly sworn and

14

testifies as follows:

15

VOIR DIRE EXAMINATION

16

BY MR. SIMPSON:

17

Q Mr. Cumbee, how are

18

you?

19

A Fine.

20

Q We have a short

21

series of questions for you prior

22

to the jury coming in, if you'll

23

indulge us. You currently have a

24

pending charge. Correct?

25

A Yes.

J. CUMBEE -- DIRECT VOIR DIRE

1 Q And what is that
2 criminal charge?

3 A Accessory of murder
4 after the fact.

5 Q And that is a -- if
6 you don't have any knowledge about
7 this, just be honest. Is that a
8 charge that was handled by our
9 office?

10 A I'm not sure. You'll
11 have to talk to my lawyer about
12 that. I'm not sure.

13 Q You have counsel on
14 this case. Correct?

15 A Yes.

16 Q Is counsel present in
17 the courtroom?

18 MR. SMILEY: I'm right
19 here.

20 Q That's Jim Smiley.
21 Correct?

22 A Yes. Hey, Jim. I'm
23 sorry.

24 Q Is it fair to say
25 that he, he's handling your

J. CUMBEE -- DIRECT VOIR DIRE

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

3 A Yes.

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

11 A No.

12 Q You executed a
13 proffer agreement. Correct?

14 A Yes.

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

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

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

J. CUMBEE -- DIRECT VOIR DIRE

1 the effect that come and be
2 truthful and we'll consider that
3 at a later date?

4 A I'm not sure I
5 understand.

6 Q Did we ever tell you,
7 you know, to come and be truthful
8 and we'll consider your
9 cooperation?

10 A As far as the proffer
11 is I mean I was just going to come
12 in and tell the truth and that
13 would pretty much take care of it
14 from there.

15 Q Okay.

16 A I mean that and my
17 attorney as far as --

18 Q Okay.

19 A I'm just supposed to
20 come in and tell the truth.

21 MR. SIMPSON: Okay.

22 Thank you, Jason. I like to
23 clarify for the record I don't
24 have any specific memory of
25 saying that but that's

J. CUMBEE -- DIRECT VOIR DIRE

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

14 Thank you, your
15 Honor.

16 THE COURT: Thank you.

17 Mr. Davis.

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

20

21

22

23

CROSS VOIR DIRE

24

EXAMINATION BY MR. DAVIS:

25

Q Mr. Cumbee, do you

1 remember entering into a written
2 proffer agreement in July of 2008?

3 A I do.

4 Q And do you recall
5 that that was Assistant Solicitor
6 Gregg Voigt, not one of these
7 solicitors?

8 A I know it was one of
9 them but I don't remember his name
10 or anything.

11 Q But you -- he was in
12 the room with you when you signed
13 that?

14 A Yeah.

15 Q And that would have
16 been with Mr. Smiley's help?

17 A No.

18 Q Okay. Who's, who's
19 your attorney at that time?

20 A I didn't have an
21 attorney then.

22 Q You did not have an
23 attorney?

24 A I didn't have one,
25 no.

J. CUMBEE -- CROSS VOIR DIRE

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

5 A Yes.

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

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

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

20 A Yes.

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

24 A Yes.

25 Q And that was handled

1 by Mr. Smiley, who's in the
2 courtroom?

3 A Yes. That was.

4 Q And Mr. Simpson was
5 in the room?

6 A Yes.

7 Q Miss Cardillo was in
8 the room?

9 A Yes.

10 Q That was -- was that
11 Mr. Smiley's office?

12 A Yeah.

13 Q And Investigator
14 Osborne who's sitting in the
15 courtroom was in the room as well.
16 Correct?

17 A Yeah.

18 Q And again I'm -- you
19 may have already said but can you
20 tell me your understanding of this
21 written proffer?

22 A That as long as I'm
23 truthful in the statements and
24 cooperate and all that nothing I
25 say after I sign it can be used

J. CUMBEE -- CROSS VOIR DIRE

1 against me.

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

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

12 A Yes.

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

17 A Yes.

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

21 A Yes.

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

J. CUMBEE -- CROSS VOIR DIRE

1 jail but we'll get you in front of
2 a judge?

3 A They said they'd try
4 to get my case reopened, yes.

5 Q And in fact it was?

6 A Yes.

7 Q And the reopening and
8 the release from jail happened
9 after you gave -- you talked to
10 Detective Casale and Detective
11 Magwood. Correct?

12 A Yes.

13 Q That was discussed
14 before you gave the statements to
15 them?

16 A About my case being
17 reopened?

18 Q Yes.

19 A Yes.

20 Q And Detective Magwood
21 gave you his business card?

22 A Yes.

23 Q You called him from
24 the jail to make sure he was going
25 to get you out?

J. CUMBEE -- CROSS VOIR DIRE

1 A Yes.

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

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

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

11 A Yes.

12 Q Correct?

13 A Yes.

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

19 A I believe so.

20 Q What part do you
21 not --

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

24 Q I said in August of
25 '08.

J. CUMBEE -- CROSS VOIR DIRE

- 1 A Oh, I'm sorry. I
2 thought you said August eight.
3 I'm sorry.
- 4 Q August of 2008?
- 5 A Yes. It was August.
- 6 Q You spoke with Mr.
7 Smiley but you hadn't hired him at
8 the time of the arrest?
- 9 A That's right.
- 10 Q Your family hired him
11 while you were in jail?
- 12 A Yes.
- 13 Q After your bond was
14 set at twenty-five thousand
15 dollars?
- 16 A Yes.
- 17 Q Because you got taken
18 to the bond court before they got
19 him hired. Right?
- 20 A Yes.
- 21 Q And then do you
22 have -- do you know about Mr.
23 Smiley getting your bond reduced
24 to a fifteen thousand dollar
25 personal recognizance bond?

J. CUMBEE -- CROSS VOIR DIRE

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

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

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

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

13 THE COURT: You may.

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

19 THE COURT: You may.

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

J. CUMBEE -- CROSS VOIR DIRE

1 time to look at them and then I
2 may have some questions for you?

3 MR. SIMPSON: Your
4 Honor, at this point I'm going
5 to object. Certainly he can
6 I. D. the exhibits. We've
7 granted the defense a lot of
8 deference here. He's
9 explained what his
10 understanding of the proffer
11 agreements are. Again, I'm
12 not quite sure what we're
13 doing here but if we -- I
14 think the witness is covered
15 from arrest from any sort of
16 deals and his understanding of
17 any sort of inducement as the
18 defense likes to call it for
19 his testimony today. I think
20 we've covered it.

21 If, if we could, I
22 would ask the defense to get
23 to another part because I
24 don't think that the
25 terminology exchange between

J. CUMBEE -- CROSS VOIR DIRE

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

5 THE COURT: Mr. Davis.

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

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

15 A You'd like me to
16 answer?

17 Q Briefly. Have you
18 reviewed them?

19 A Yeah..

20 Q Okay.

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

23 Q Do they look
24 familiar?

25 A It's hard to say. I

J. CUMBEE -- CROSS VOIR DIRE

1 can't remember anything else, you
2 know, what specifically they
3 looked like.

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

6 THE COURT: You may.

7 Q Is that your
8 signature that we're talking
9 about, Court's number two?

10 A Yes.

11 Q Is that a proffer
12 agreement?

13 A To the best of my
14 knowledge, yes. I haven't --

15 Q Does that say proffer
16 agreement right there, sir?

17 A No.

18 Q That does not say
19 proffer agreement? Sir? This one
20 you're looking at, number two,
21 does that say proffer agreement
22 typed there?

23 A Yeah.

24 Q Okay. I'm sorry you.
25 Are you having trouble reading.

J. CUMBEE -- CROSS VOIR DIRE

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

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

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

11 THE COURT: All right.

12 A Yeah. I signed it
13 and --

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

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

J. CUMBEE -- CROSS VOIR DIRE

1 this is in fact the document
2 of the deal now we've got some
3 issues, judge. I didn't
4 intend that. I assume Mr.
5 Cumbee would say yeah, that's
6 my signature, that's it. I
7 have no intention of asking
8 any more questions other than
9 that, is his signature on the
10 document.

11 THE COURT: Mr.
12 Cumbee, is that your signature
13 on that document?

14 THE WITNESS: Yes,
15 ma'am, it is. But I mean I
16 don't remember that specific
17 document. I don't remember,
18 you know. I mean I read it
19 and all but that's been,
20 that's been a while back and I
21 can't -- I mean sure there are
22 proffered agreements that are
23 different, drawn up different
24 ways. Am I correct, sir?

25 THE COURT: Mr. Davis,

J. CUMBEE -- CROSS VOIR DIRE

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

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

9 A Yes.

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

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

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

17 A Yes.

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

23 A I believe so.

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

1 different solicitor and did a
2 similar process?

3 A Yes.

4 MR. DAVIS: Now and --
5 thank you, your Honor. That's
6 all the questions I have.

7 THE COURT: All right.
8 Mr. Simpson, do you have any
9 follow up questions for Mr.
10 Cumbee?

11 MR. SIMPSON: No, your
12 Honor.

13 THE COURT: Mr.
14 Cumbee, you may step down. I
15 believe you are the next
16 witness to be called. The
17 rule of sequestration has been
18 invoked. Has Mr. Simpson
19 explained to you what that
20 means?

21 THE WITNESS: No,
22 ma'am.

23 THE COURT: You may
24 not discuss your testimony,
25 what you've just testified to,

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

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

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

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

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

1 initial statements to the
2 Sheriff's detectives. Beyond
3 that I don't believe that Mr.
4 Cumbee has any other
5 knowledge, based on his
6 testimony.

7 **THE COURT:** All right.

8 Mr. Simpson.

9 **MR. SIMPSON:** Your
10 Honor, I think any of the
11 implications that he's talking
12 about raising is fertile
13 ground for cross. I have no
14 objection to it. I would ask
15 that in the presence of the
16 jury when we start talking
17 about the proffer agreement
18 we're talking about a
19 five-page legal document,
20 typically as it was in the
21 12/4 proffer, exchange between
22 two attorneys to review and
23 talk to their client about.

24 He in his testimony
25 was very direct. What is your

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

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

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

1 allowed to cross-examine as to
2 what Mr. Cumbee's
3 understanding of what the
4 proffer agreement contained
5 and what his understanding of
6 the proffer was.

7 MR. SIMPSON: Okay.

8 Understood, your Honor.

9 THE COURT: Anything
10 further, Mr. Davis?

11 MR. DAVIS: And as to
12 the bench warrant and the
13 reopening of the driving under
14 suspension case, I want to be
15 able to ask about that as
16 well.

17 THE COURT: Mr.
18 Simpson, do you have any
19 objection?

20 MR. SIMPSON: I have no
21 objections.

22 THE COURT: Okay.

23 MR. DAVIS: Your Honor,
24 the State had provided, of
25 course, Mr. Cumbee's record

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

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

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

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

1 MR. DAVIS: No. No.

2 MR. SIMPSON: Oh.

3 Okay. I misunderstood.

4 THE COURT: -- if you
5 had any contact with the
6 Solicitor's Office in Horry or
7 Georgetown County.

8 MR. SIMPSON: I
9 misunderstood. I have not.

10 MR. SMILEY: I
11 represent him and there's been
12 no contact with them.

13 THE COURT: Thank you,
14 Mr. Smiley.

15 MR. SMILEY: No contact
16 at all with those courts.

17 THE COURT: Thank you,
18 Mr. Smiley.

19 MR. DAVIS: And, Judge,
20 just to finish that thought.
21 I don't believe there --
22 otherwise there's no
23 conviction, there's no
24 convictions for impeachment
25 purposes.

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

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

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

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

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

13 THE COURT: Yes, sir.

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

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

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

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

25 MR. SIMPSON: Thank

1 you, your Honor. The State
2 calls Jason Cumbee.

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JASON WARD CUMBEE,
having been called as a
witness, is duly sworn and
testifies as follows:

DIRECT EXAMINATION BY
MR. SIMPSON:

Q Good afternoon?

A Good afternoon.

Q Are you a little
nervous to be here today?

A Yes, I am.

Q And let's get right
to the point. Do you know why
you're here today?

A Yes.

Q Do you have currently
pending a criminal charge against
you that arises out of the subject
matter we're here about today?

J. CUMBEE -- DIRECT

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

J. CUMBEE -- DIRECT

1 Q And who is that?

2 A Jeffrey Herrmann.

3 Q And if could you
4 explain to the jury a little bit
5 about how you met Jeffrey
6 Herrmann.

7 A Well, him and a
8 friend of his used to come to
9 McClellanville and ride around
10 late at night and I'd usually do
11 the same thing and I had a big
12 four wheel drive truck and his
13 friend Eric McBride admired it and
14 we met at a gas station one night
15 and I let him look at it and all.

16 Q McClellanville is a
17 pretty small town?

18 A Yeah.

19 Q And so you would hang
20 around the town and you met him
21 that way?

22 A Yeah.

23 Q About what time are
24 we talking about? Is this a long
25 time ago that you met Jeff?

J. CUMBEE -- DIRECT

1 A Nine, ten years ago.

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

4 A Yes, I did.

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

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

9 Q Cocaine?

10 A Yes.

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

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

17 THE COURT: Overruled.

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

21 A Yes.

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

J. CUMBEE -- DIRECT

1 A Throughout the
2 whole -- yes, I did.

3 Q Was there an incident
4 where you accompanied Jeffrey
5 Herrmann to a gas station?

6 A Yes.

7 Q Could you explain to
8 the jury a little bit about why
9 you and Jeff went to the gas
10 station and what occurred there
11 together?

12 A He was supposed to
13 meet somebody he was to go off
14 with and eventually come home with
15 cocaine and I offered him a ride.
16 I took him up there and I dropped
17 him off.

18 Q And did you see who
19 he met at the gas station?

20 A Yes, I did.

21 Q Did Jeff tell you who
22 he was meeting at the gas station?

23 A Yes.

24 Q And what did he tell
25 you?

J. CUMBEE -- DIRECT

1 A A man named Ali.

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

5 A Yes.

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

9 A Yes.

10 Q And what did he tell
11 you?

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

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

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

J. CUMBEE -- DIRECT

1 had a kilo of cocaine in it and an
2 undetermined amount of money.

3 Q Did Jeffrey Herrmann
4 indicate that it was a large
5 amount of money?

6 A Yes.

7 Q When we talk about
8 the gas station here what gas
9 station are we talking about?

10 A I'm not sure what
11 it's called. It's the Kangaroo
12 now. I'm not sure what it was
13 back then.

14 Q And by back then you
15 mean in, around the summer of
16 2000?

17 A Yeah. It's changed
18 several times. Different names,
19 different owners and all.

20 Q After this incident
21 where you took Jeff Herrmann to
22 the gas station to meet Ali, did
23 Jeff Herrmann begin discussing
24 anything with you in relation to
25 Ali?

J. CUMBEE -- DIRECT

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

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

9 A It was brought up.

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

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

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

21 A I'm not sure about
22 that.

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

J. CUMBEE -- DIRECT

1 A Yes.

2 Q Could you discuss
3 with the jury what transpired on
4 that day that you ran into Mr.
5 Herrmann?

6 A Just start at the
7 beginning and describe it?

8 Q Yes, sir.

9 A I was leaving my
10 house probably mid-afternoon and I
11 saw him on the -- I think it was
12 my dirt road or somewhere about
13 there and I followed him out and
14 at some point I seen him riding up
15 and down the highway.

16 Q I may stop you --

17 A Okay.

18 Q -- from time-to-time
19 just to ask you a question but I
20 do want you to keep going. You
21 said near my house. This was
22 107 -- 10744 Old Village --

23 A I believe it was on
24 that dirt road. It was either
25 there or on the highway, somewhere

J. CUMBEE -- DIRECT

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

4 Q Okay.

5 A And I think we
6 just --

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

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

13 THE COURT: You may.

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

20 A Describe where we
21 were?

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

25 A Yeah.

J. CUMBEE -- DIRECT

1 Q And this is the dirt
2 road you're referring to?

3 A I believe so.

4 Q And what is this? Is
5 this intersection here where it
6 hits forty-five?

7 A Yeah.

8 Q So as you just
9 testified, this would be the area
10 that you first saw Jeffrey
11 Herrmann?

12 A Yes.

13 Q Somewhere in there
14abouts?

15 A Yeah.

16 Q What car was Jeffrey
17 Herrmann driving?

18 A A black Chevy. I'm
19 not sure exactly what make it was.
20 I mean, you know, model or
21 whatever.

22 Q Had you ever seen
23 that car before?

24 A Once before.

25 Q And when was that?

J. CUMBEE -- DIRECT

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

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

6 THE COURT: You may.

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

12 A I do.

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

18 A Yeah.

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

21 THE COURT: You may.

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

J. CUMBEE -- DIRECT

1 THE COURT: Any
2 objection?

3 MR. DAVIS: Yes, your
4 Honor. May we approach?

5 THE COURT: You may.

6 (Whereupon, there was
7 an off-the-record bench
8 conference.)

9 MR. SIMPSON: The
10 witness has indicated that
11 State's seven and eight for
12 I.D. only is consistent with
13 the car he saw the defendant
14 in.

15 MR. DAVIS: No
16 objection.

17 THE COURT: Thank you.

18 Q Jason, if you would
19 continue from this point when you
20 saw Mr. Herrmann driving the car
21 that, that you've indicated in
22 photographs, what happened next?

23 A About the time we
24 came to the intersection along the
25 gas station, Highway 17, I believe

J. CUMBEE -- DIRECT

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

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

11 A Yes.

12 Q Who was that?

13 A My sister and a
14 friend of mine.

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

17 A Justin Hettich.

18 Q Okay. Continue.

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

J. CUMBEE -- DIRECT

1 over to the car and look in the
2 trunk and I told him I didn't want
3 to know. You know, I didn't want
4 to get out and look at anything
5 and --

6 Q You recognized the
7 car, correct, from when he met
8 Ali?

9 A Yes.

10 Q And you previously
11 testified that you had heard
12 discussions about what might
13 befall Ali?

14 A Yes.

15 Q Why didn't you want
16 to look in the trunk of the car?

17 A That's just not
18 something I'd want to see. If
19 something happened I wouldn't, you
20 know.

21 Q You can continue.

22 A Where was I?

23 Q I believe at Jeffrey
24 Herrmann's house.

25 A Oh, yeah. And he, he

J. CUMBEE -- DIRECT

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

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

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

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

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

19 Q You're not a
20 scientist.

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

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

J. CUMBEE -- DIRECT

1 place than lighting it on fire?

2 A Yes.

3 Q And what happened
4 then?

5 A We went down Highway
6 17 towards Georgetown and we took
7 a, a side road and we went to a
8 boat landing where we put the car
9 in the water.

10 Q Now you've lived in
11 the McClellanville area your whole
12 life you've mentioned?

13 A Yeah.

14 Q If I showed you
15 pictures of the boat landing do
16 you think -- of a boat landing do
17 you think you'd be able to say
18 that's where you went?

19 A Yes.

20 Q I could probably
21 phrase that better.

22 A I don't know if I can
23 give you the name of it for sure.

24 MR. SIMPSON: Your
25 Honor, permission to approach.

J. CUMBEE -- DIRECT

1 THE COURT: Yes.

2 Q I'm showing the
3 witness what's been premarked for
4 I. D. only as State's four --
5 three, four, five, and six.

6 Jason, if you could take a minute
7 and flip through those. Finished?

8 A Yeah.

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

12 A Yes, they do.

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

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

17 Q And what car was Jeff
18 driving?

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

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

24 A No..

25 Q I'm assuming he

J. CUMBEE -- DIRECT

1 followed you since you knew where
2 you were going?

3 A Well, a lot of people
4 know where that is. I mean I
5 can't remember who followed who
6 but. . .

7 Q Okay. Can you
8 describe, you mentioned pushed the
9 car in the water. Could you give
10 the jury a little more detail
11 about that? What, what went down
12 when you got to the landing?

13 A Well, we got there.
14 Basically he drove it down the
15 ramp and jumped out about halfway
16 down the ramp and the car went in
17 the water. I was parked at the
18 top of it.

19 MR. SIMPSON: May I
20 approach the witness?

21 THE COURT: You may.

22 Q Handing the witness
23 what's been marked for I. D. only
24 as State's three does that depict
25 where you were parked?

J. CUMBEE -- DIRECT

1 A Yeah.

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

6 THE COURT: Mr. Davis.

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

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

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

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

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

20 No. 5, photo of boat
21 ramp;

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

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

J. CUMBEE -- DIRECT

1 some pictures up behind you again.
2 If you could just kind of point
3 out to the jury what we're looking
4 at. Show you first State's four.
5 You said the boat ramp, is that
6 the boat ramp across the creek
7 area that you indicated?

8 A Yes.

9 Q Tell the jury a
10 little bit about where this is.
11 Is this a, a busy, busy road?

12 A It kind of depends on
13 the time of year. I mean a lot of
14 hunters go down the road and all.

15 Q Is this a, an urban,
16 metropolitan street or is it fair
17 to say this is kind of out in the
18 middle of nowhere.

19 A It's out in the
20 middle of nowhere.

21 Q Okay.

22 A It's close to a
23 hunting camp so there is traffic.

24 Q Okay. Showing you
25 now what's been entered into

J. CUMBEE -- DIRECT

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

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

5 Q From the opposite
6 side?

7 A Yes.

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

12 A Yes.

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

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

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

21 A I'm not sure.

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

25 A The ramp.

J. CUMBEE -- DIRECT

1 Q That's the ramp that
2 Mr. Herrmann drove the car down?

3 A Yes.

4 Q And State's six. Is
5 that an aerial view of the area
6 where you saw Jeffrey Herrmann
7 dispose of the car?

8 A It looks like it.

9 Q While you were out at
10 the scene depicted in those
11 photographs did you help Mr.
12 Herrmann push the car?

13 A No, I didn't.

14 Q And let's clarify
15 that a little bit. Did he get
16 behind car and push it?

17 A No.

18 Q Describe that to the
19 jury a little bit.

20 A Well, I mean, I mean
21 in able to get the car in the
22 water deep enough for it to sink
23 you've got to get some speed so he
24 drove it.

25 Q So it appeared to you

J. CUMBEE -- DIRECT

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

3 A Yes.

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

7 A Yes.

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

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

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

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

18 A Yes.

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

21 A Someone was driving
22 it.

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

25 A Yes.

J. CUMBEE -- DIRECT

- 1 Q Okay. Did you see
2 the car hit the water?
- 3 A Yes.
- 4 Q Did you watch it
5 sink, sink?
- 6 A No, I did not.
- 7 Q What did Mr. Herrmann
8 do once the car hit the water?
- 9 A He got up off the
10 ground and got in my truck and we
11 left.
- 12 Q And when you say "off
13 the ground" he kind of rolled from
14 the car?
- 15 A Yeah.
- 16 Q While the car was
17 moving?
- 18 A Yes.
- 19 Q Okay. And what did
20 you do after Mr. Herrmann got back
21 in the car?
- 22 A We left. I believe I
23 took him home. I'm not sure. I
24 can't remember.
- 25 Q Okay. Now, Jason,

J. CUMBEE -- DIRECT

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

7 A Yes.

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

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

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

17 A Not specifically.

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

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

25 Q And who was this

J. CUMBEE -- DIRECT

1 phone call to?

2 A A friend of mine
3 named Jazz.

4 Q And you say Jazz,
5 J-a-z-z. Is that a nickname?

6 A As far as I know,
7 yes. I've always known him as
8 Jazz.

9 Q And this person you
10 had personal knowledge of, did
11 Jeffrey Herrmann ever get a gun
12 from Jazz?

13 A Yes.

14 Q Were you present when
15 that happened?

16 A I didn't actually see
17 it happen but I was around in the
18 general area, yes.

19 Q Okay. Did Jeffrey
20 Herrmann ever show you the gun he
21 got from Jazz?

22 A Yes.

23 Q What kind of gun was
24 it?

25 A Nickel plated nine

J. CUMBEE -- DIRECT

1 millimeter I believe.

2 Q Now nine millimeter.

3 That's the caliber weapon it was?

4 A Yes.

5 Q And nickel plated, is

6 that a silvery --

7 A Chrome, heavy.

8 Q Chrome?

9 A Yes.

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

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

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

18 A At some point, yes.

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

21 A Yes.

22 Q And where was that?

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

J. CUMBEE -- DIRECT

1 Q And on your dirt road
2 I think pointed this out, you're
3 talking about Old Georgetown Road?

4 A Yes. I'm sorry.

5 Q Jason, we're going to
6 have to talk for a little bit
7 about what brought you here today.
8 Do you remember some police
9 officers coming to your house and
10 serving a bench warrant?

11 A Yes.

12 Q What was that warrant
13 for?

14 A D. U. S. third I
15 believe.

16 Q And a D. U. S. stands
17 for driving under suspension?

18 A Yes.

19 Q And when they first
20 came to your house did you go to
21 the door?

22 A No.

23 Q Who did?

24 A My mother did.

25 Q Did you willingly go

J. CUMBEE -- DIRECT

1 outside and here I am?

2 A No.

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

5 A After she came back,
6 yeah.

7 Q Did the police
8 officers leave?

9 A Yes.

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

12 A Yes.

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

16 A Yes.

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

19 A Yes.

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

22 A Who did I talk to?

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

J. CUMBEE -- DIRECT

1 A They came to the door
2 and I think four or five of them
3 came inside. Maybe three or four.

4 Q And they were there
5 to arrest you. Correct?

6 A Yes.

7 Q Did they place you
8 under arrest?

9 A Yes.

10 Q Did they tell you
11 what for?

12 A They might have said
13 warrant. I'm not sure.

14 Q Did you know that
15 this warrant was over a traffic
16 violation?

17 A Yes.

18 Q How long a drive is
19 it from McClellanville to Mount
20 Pleasant?

21 A Say thirty minutes
22 maybe.

23 Q So you had a fairly
24 lengthy drive to go in a police
25 car?

J. CUMBEE -- DIRECT

- 1 A Yes.
- 2 Q Did you want to go to
3 jail that day?
- 4 A No.
- 5 Q Were you trying to
6 think of ways of perhaps you could
7 avoid going to jail?
- 8 A Yes.
- 9 Q And what did you tell
10 the police?
- 11 A I told them I might
12 have some information on a person
13 that had gone missing.
- 14 Q Did those police --
15 and they were in their uniforms.
16 Correct?
- 17 A Yes. Mount Pleasant
18 police.
- 19 Q Okay. Did they,
20 given what you were telling them,
21 take you to talk to another police
22 officer?
- 23 A Well, they took me to
24 the police station.
- 25 Q Okay. Can you just

J. CUMBEE -- DIRECT

1 tell the jury a little bit about
2 what happened there at the police
3 station.

4 A I can't remember
5 exactly who I talked to. I
6 believe it was a detective and he
7 told me that he'd have to call
8 somebody else, somebody from
9 Charleston County to come talk to
10 me.

11 Q Is that because
12 McClellanville is thirty minutes
13 away?

14 A Well, it's because of
15 it wasn't a Mount Pleasant thing I
16 believe. It was a Charleston
17 County thing.

18 Q And did other police
19 officers then come to speak with
20 you?

21 A Detectives.

22 Q Right. Do you recall
23 who those were?

24 A Detective Magwood and
25 I can't remember his name.

J. CUMBEE -- DIRECT

1 Something with a C.

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

4 A Yes.

5 Q Casale?

6 A Casale. Yes.

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

11 A Specifically?

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

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

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

23 A I did but not, not
24 them.

25 Q Where did you take

J. CUMBEE -- DIRECT

1 them first?

2 A Well, I mean they --
3 after they, they took me -- I
4 believe they took me to their
5 headquarters in Charleston
6 somewhere and I think we talked a
7 little bit more and at some point
8 I ended up going to jail because
9 since they had picked me up on the
10 warrant I had to be processed in
11 before anything could happen.

12 Q They had to process
13 you through on a warrant --

14 A Yes.

15 Q -- before they could
16 bring you with them --

17 A Yes.

18 Q -- to these places
19 we've noted?

20 A I believe that's how
21 it worked. I'm not --

22 Q Okay.

23 A I don't particularly
24 recall that.

25 Q I understand. But

J. CUMBEE -- DIRECT

1 that was your understanding?

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

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

6 A Yes.

7 Q Driving under
8 suspension?

9 A Yes.

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

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

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

J. CUMBEE -- DIRECT

1 remember?

2 A I'm not positive. It
3 might have been before.

4 Q Okay.

5 A I'm not sure.

6 Q Okay. You took
7 police to a couple of locations
8 out in the national forest.

9 Correct?

10 A Yes.

11 Q And why did you do
12 that?

13 A I don't understand
14 the question.

15 Q You didn't take them
16 directly to the boat landing we
17 showed, showed you on the
18 photographs?

19 A I guess it was, I
20 don't know. Guilt. Fear I guess.

21 Q Perhaps now is the
22 time to address this. Over the
23 course from when you were first
24 picked up to today, you've given
25 many statements to police.

J. CUMBEE -- DIRECT

1 Correct?

2 A Yes.

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

5 A No.

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

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

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

14 THE COURT: Thank you.

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

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

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

24 A Yes.

25 Q You've told -- you

J. CUMBEE -- DIRECT

1 talked about the story to the jury
2 and you've told them about taking
3 Mr. Herrmann to the ramp and
4 witnessing his car being disposed
5 of.

6 A Yes.

7 Q At the time that you
8 did that what did you think was in
9 the trunk?

10 A I wasn't sure.

11 Q You hadn't seen in
12 the trunk.

13 A I hadn't seen.

14 Q But what did you
15 suspect was in the trunk?

16 A The owner of the car.

17 Q And so when police --
18 when you took the police to this
19 location, you were worried that
20 you would get in trouble?

21 A Yes.

22 Q And so over the
23 course of this investigation and I
24 may have -- I the -- I believe you
25 gave seven statements.

J. CUMBEE -- DIRECT

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

3 Q I may have my number
4 wrong.

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

8 A Yes.

9 Q Okay. Who was that
10 attorney?

11 A Jim Smiley.

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

17 A Yes.

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

21 A I believe so.

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

J. CUMBEE -- DIRECT

1 proffer agreement. Correct?

2 A Yes.

3 Q And what is your
4 understanding of a proffer
5 agreement?

6 A That after I sign
7 anything I, you know, as long as I
8 tell the truth and all it can't be
9 used against me.

10 Q After it's being
11 signed?

12 A Yes.

13 Q Anything that comes
14 out after that can't be used
15 against you. Correct?

16 A Yes.

17 Q That's your
18 understanding of that?

19 A Yes.

20 Q Now so you can be
21 frank with the jury, you had
22 signed proffer agreements before.
23 Right?

24 A Yes.

25 Q And you weren't

J. CUMBEE -- DIRECT

1 entirely truthful after that?

2 A Right.

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

5 A Yes.

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

9 A Yes.

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

12 THE COURT: Overruled.
13 You may answer.

14 A Yes.

15 Q Jason, did you kill
16 Ali Sarhan?

17 A No.

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

22 A Yes.

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

J. CUMBEE -- CROSS

1 THE COURT: Mr. Davis.

2 MR. DAVIS: Thank you,
3 your Honor.

4

5

6

7

8

CROSS-EXAMINATION BY

9

MR. DAVIS:

10

Q Just be clear.

11

You're the one that led

12

Detective Casale and Detective

13

Magwood out to Francis Marion

14

Forest and to a vehicle and to a

15

creek. Right?

16

A Yes.

17

Q All right. About a

18

month ago you, we met in your

19

attorney's office with these two

20

attorneys. Correct?

21

A Yes.

22

Q And Mr. Osborne who's

23

sitting here in the front row,

24

investigator from the Solicitor's

25

Office, he was there. Right?

J. CUMBEE - - CROSS

1 A Yes.

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

5 A Yes.

6 Q That was your second
7 one. Right?

8 A Yes.

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

14 A That was my
15 understanding.

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

20 A Yes.

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

24 A Yes.

25 Q At the beginning Mr.

J. CUMBEE -- CROSS

1 Simpson asked you if you're
2 nervous. You are a little
3 nervous?

4 A Yes, I am.

5 Q And you're aware,
6 you're aware that the case against
7 Jeff depends largely on your
8 testimony?

9 A I guess so.

10 Q And you still don't
11 want to get in trouble for what
12 you're in. Right?

13 A Right.

14 Q Let get some names
15 out of the say. You currently
16 live with your sister, Shanna
17 Cumbee. Correct?

18 A Yes.

19 Q And is it her husband
20 or her boyfriend that you live
21 with as well.

22 A Boyfriend.

23 Q Okay. And that's
24 Jeremy Casselman?

25 A Yes.

J. CUMBEE -- CROSS

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

J. CUMBEE -- CROSS

1 Q Mike Legender or
2 Leggett?

3 A Yes.

4 Q Big Money or Jeffrey
5 somebody?

6 A I never met him, no.

7 Q You know of him?

8 A I know of him, yes.

9 Q Okay. Well, let me
10 ask you a little differently then.
11 Do you know of Aaron?

12 A No.

13 Q You've already
14 admitted to the jury that you lied
15 in statements to the police.
16 Correct?

17 A (No response.)

18 Q I want to go through
19 this chronologically for the jury.
20 July third you're at home with
21 your mom, correct, of 2008?

22 A Yes.

23 Q Mount Pleasant police
24 come, knock at the door, they're
25 looking for you, your mom doesn't

J. CUMBEE - - CROSS

1 invite them in, they leave.

2 A Right.

3 Q But they come back.

4 Right?

5 A Along with Charleston
6 County.

7 Q Several officers
8 come. Right?

9 A Yes.

10 Q Because you'd been
11 there the whole time?

12 A Yep.

13 Q And they come in and
14 arrest you on a bench warrant.
15 Correct?

16 A Yep.

17 Q And you recall that
18 that was - - I'll ask you. Do you
19 recall whether that was for
20 missing that court date or for not
21 paying the fine on that charge?

22 A I don't know what the
23 warrant was for specifically.

24 Q You knew it was one
25 or the other? You knew that?

J. CUMBEE -- CROSS

1 A Yes.

2 Q You knew you'd either
3 missed court date or failed to pay
4 a fine on that charge?

5 A Yeah.

6 Q This is at your
7 parents' residence out in
8 McClellanville. Right?

9 A Yes.

10 Q That's where they
11 still live?

12 A Yep.

13 Q In driving back, not
14 wanting to go to jail, you start
15 asking the Mount Pleasant
16 officer -- you're in a Mount
17 Pleasant car. Right?

18 A Yes.

19 Q You start asking the
20 Mount Pleasant officer if there's
21 any way you cannot go to jail.
22 Right?

23 A Yep.

24 Q They need to help you
25 out. You say don't take me to

J. CUMBEE -- CROSS

1 jail. Right?

2 A Yep.

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

8 A Uh-huh.

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

13 A That I heard about.
14 Yes.

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

22 A Yes.

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

J. CUMBEE -- CROSS

1 A Yes.

2 Q And when you're there
3 you're still trying to figure out
4 some way that you don't have to go
5 to jail that day. Fourth of July
6 weekend. Right?

7 A I believe so.

8 Q Well, it was the
9 third of July. Right?

10 A I believe so.

11 Q Well, I don't want
12 you to believe. I want this jury
13 to know for sure. Was it the
14 third of July you got arrested or
15 not?

16 A I can't remember
17 exactly. I mean that's been a
18 long time ago, too.

19 Q Okay. Did the, did
20 the offices give you a copy of
21 your bench warrant?

22 A No.

23 Q Well, was it the
24 third of July, 2008 when you think
25 you got arrested?

J. CUMBEE -- CROSS

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

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

11 A Yes.

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

16 A Yes.

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

21 A I might have.

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

25 A I did talk to them

J. CUMBEE -- CROSS

1 about it. I don't remember the
2 specifics of any of it.

3 Q My question, Mr.
4 Cumbee, simply is did you talk to
5 that gentleman about copper?

6 A Yes, I did.

7 Q And you also talked
8 to that same detective about this.
9 Right?

10 A The Mount Pleasant
11 detective?

12 Q Yes.

13 A Yes.

14 Q Okay. So he didn't
15 or he, he took a statement from
16 you before he called Charleston
17 County to come in and speak to
18 you. Right?

19 A Possibly. Yes.

20 Q I don't want you to
21 guess, Mr. Cumbee. This is very
22 important. Do you remember
23 whether he took a statement from
24 you about this or not?

25 A I'm not sure.

J. CUMBEE -- CROSS

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

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

10 THE COURT: You may.

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

17 A Yes.

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

20 A Yes.

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

24 A Yes, it does.

25 Q And is that a witness

J. CUMBEE -- CROSS

1 statement?

2 A Yes, it is.

3 Q Three pages?

4 A Yes.

5 Q Okay. Why don't you
6 take a second to review that. I'm
7 going to ask you one other
8 question about that.

9 A All right.

10 Q Have you had enough
11 time to look at it?

12 A Yeah. I browsed over
13 it.

14 Q Have you had enough
15 time to look at it?

16 A Yes.

17 Q Is it, the first part
18 of that statement about this
19 incident that you're testified now
20 about?

21 A Yes.

22 MR. DAVIS: Okay. May
23 I approach the witness, your
24 Honor?

25 THE COURT: You may.

J. CUMBEE -- CROSS

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

4 A I guess.

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

8 THE COURT: You may.

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

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

16 A I don't think so.

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

20 THE COURT: You may.

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

25 A His last name.

J. CUMBEE -- CROSS

1 Q "I really do not know
2 his last name." That's what it
3 says. Right?

4 A Well, I meant
5 that --

6 Q Isn't that what it
7 says?

8 A Yes. That's what it
9 says.

10 Q Okay. But in fact
11 you're meaning Jeffrey Herrmann.
12 Right?

13 A Yes.

14 Q And in fact he dated
15 your sister for a year and a half.
16 Right?

17 A Yes.

18 Q And in fact you hung
19 out with him. Right?

20 A Yes.

21 Q So you knew his last
22 name?

23 A Yes.

24 Q Did you lie to
25 Detective Cheney?

J. CUMBEE -- CROSS

1 A Yes, I did.

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

5 THE COURT: You may.

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

9 A Yes.

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

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

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

17 A Yes.

18 Q So you lied to
19 Detective Cheney?

20 A Yes.

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

J. CUMBEE -- CROSS

1 A Yes.

2 Q And you told
3 Detective Cheney that since July
4 of 2008 that you thought Jeff was
5 dead. Right?

6 A Nobody had seen him.

7 Q So that you told
8 Detective Cheney your buddy is
9 dead. Right?

10 A Yes.

11 Q And again what you're
12 doing is you're talking to
13 detectives from Mount Pleasant and
14 trying to avoid being taken out to
15 jail on Leeds Avenue. Right?

16 A Yes.

17 Q Whatever you could do
18 to help them to help you. Right?

19 A Yes.

20 Q And then Detective
21 Magwood and Detective Casale
22 showed up from the Sheriff's
23 Office. Right?

24 A Yes.

25 Q And you lied to

J. CUMBEE -- CROSS

- 1 Detective Magwood. Right?
- 2 A Yes.
- 3 Q and you lied about
- 4 who supposedly picked up Jeff at
- 5 the boat landing. Right?
- 6 A Yes.
- 7 Q You told him Aaron
- 8 picked him up at the boat landing,
- 9 didn't you?
- 10 A Yes.
- 11 Q And you just told the
- 12 jury a moment ago that you don't
- 13 know who Aaron is it when I asked
- 14 you. Right?
- 15 A Right.
- 16 Q So it was just made
- 17 up. Right? I'm sorry?
- 18 A Yes.
- 19 Q When you talked to
- 20 Detective Magwood you, you
- 21 indicate that you met a guy named
- 22 Ali at a gas station. Right?
- 23 A Yes.
- 24 Q And you described Ali
- 25 to Detective Magwood, didn't you?

J. CUMBEE - - CROSS

- 1 A Yes.
- 2 Q You said he was
- 3 short. Right?
- 4 A Yes.
- 5 Q Stocky?
- 6 A Yes.
- 7 Q Bald?
- 8 A Yes.
- 9 Q Dark skin?
- 10 A Yes.
- 11 Q You told Detective
- 12 Magwood that you knew Jeff
- 13 somebody from parking out in
- 14 McClellanville. Right?
- 15 A Yes.
- 16 Q You didn't tell him
- 17 it was just because he dated your
- 18 sister?
- 19 A No.
- 20 Q You even went as far
- 21 as to describe what Aaron looked
- 22 like, didn't you?
- 23 A Yes.
- 24 Q You told Detective
- 25 Magwood that Aaron was blonde or

J. CUMBEE -- CROSS

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

J. CUMBEE - - CROSS

1 A I'm not sure. I went
2 down there several times
3 voluntarily to answer questions
4 and make statements. I'm not
5 sure.

6 Q To arrest you? To
7 arrest you?

8 A No. I don't believe
9 so.

10 Q Well, what were the
11 threats?

12 A I can't really
13 remember what they were. It might
14 have been to arrest me. It might
15 have been - - he was just saying
16 things. I don't really recall
17 exactly what they were. He made a
18 statement at one point that, he
19 said that I was lying and he said
20 that there was five different ways
21 that he could kill me in that room
22 without leaving evidence. We
23 were - - I think we were discussing
24 evidence is how he got on that
25 topic.

J. CUMBEE -- CROSS

- 1 Q That's
2 Detective Casale?
- 3 A Yes. And he
4 thought --
- 5 Q It was the white
6 gentleman?
- 7 A Yes.
- 8 Q Let's stay with
9 Detective Magwood for a second.
10 Didn't he threaten or try to tazz
11 you?
- 12 A No, he didn't. It
13 was -- no. It was Casale, and he
14 didn't say that to me.
- 15 Q Who'd he say it in
16 front of?
- 17 A He said it in front
18 of Jeremy.
- 19 Q All right. Correct
20 me on this if I'm wrong. Is
21 Detective Magwood the one that was
22 threatening your mom about a bench
23 warrant?
- 24 A Yes.
- 25 Q So you're worried

J. CUMBEE - - CROSS

1 about your mom going to jail?

2 A Yes.

3 Q All right. Now let's
4 talk about Detective Casale doing
5 this threatening to kill you.

6 A I didn't say he
7 threatened to kill me. I said he
8 said he could kill me five
9 different ways without leaving any
10 evidence.

11 Q Okay.

12 A He didn't threaten to
13 kill me.

14 Q Okay. You, you gave
15 him a statement on July third as
16 well. Right?

17 A What do you mean "as
18 well"? I mean they were both,
19 both there in the room.

20 Q Okay.

21 A They were all in this
22 together.

23 Q Okay. You -- so you
24 also lied to Detective Casale.
25 Right?

J. CUMBEE -- CROSS

1 A Again?

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

4 A Yes.

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

9 A I was concerned what?

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

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

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

20 THE COURT: Yes, sir.

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

J. CUMBEE - - CROSS

1 identification.)

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

5 THE COURT: You may.

6 Q I show you want's
7 been marked as defendant's exhibit
8 number four for identification
9 purposes. Is that your signature?

10 A Yes, it is.

11 Q And is that
12 Detective Casale's name? Does
13 that say Detective Casale?

14 A Yes.

15 Q 7/3/08. Correct?

16 A Yes.

17 Q Okay. And does this
18 appear to be a one, two, three,
19 four, five page statement with
20 your signature at the end?

21 A It appears to be.

22 Q Q and A right there
23 on the, on the third page of the
24 statement, Q and A, question and
25 answer. Right?

J. CUMBEE -- CROSS

1 A Yes.

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

8 A Yes.

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

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

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

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

22 Q Go ahead.

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

J. CUMBEE -- CROSS

1 time in between statements and
2 yes, there are different,
3 different people asked me
4 different questions and all, so...

5 Q It's hard to keep it
6 straight?

7 A Yes, it is. That's a
8 lot of questions, a lot of answers
9 on all those statements.

10 Q And you told
11 Detective Casale that Big Money is
12 how Jeff and Ali communicated.
13 Isn't that right?

14 A I said that's how
15 they met as far as I know.

16 Q Okay. And that's
17 this Jeffrey you don't know his
18 last name?

19 A I don't know his last
20 name. I never met him.

21 Q But you told
22 Detective Casale that this Jeffrey
23 "Big Money" worked at Nucor?

24 A I believe so.

25 Q Now, this Mike

J. CUMBEE -- CROSS

1 Leggett guy, you know him. Right?

2 A Yes.

3 Q He claimed Jeff sold
4 him the gun. Right?

5 A Yes.

6 Q You sold dope to Mike
7 Leggett?

8 A Yes.

9 Q And you told
10 Detective Casale that?

11 A Yes.

12 Q And Osborne.

13 A I told them I sold
14 dope to a lot of people.

15 Q Now all this
16 statement to Casale, again you
17 were telling him, and again this
18 is before you made it to Leeds
19 Avenue, to, to go to jail on that
20 bench warrant. Right?

21 A I'm not sure. After
22 I was released I came down there
23 three, at least three times to
24 cooperate with statements and
25 offered to take a polygraph.

J. CUMBEE -- CROSS

1 Q It's hard to, hard to
2 keep it straight?

3 A Yeah.

4 Q You certainly
5 talked to Detective Casale before
6 you went to Leeds Avenue and the
7 county jail. Right?

8 A Yeah. I
9 definitely --

10 Q Do you remember --
11 I'm sorry.

12 A I had a conversation
13 with both of them, yes.

14 Q Okay. Despite all
15 this, you went to jail any way.
16 Correct?

17 A Yes.

18 Q And so then you began
19 the frantic attempt to do whatever
20 you could with your family to get
21 out. Right?

22 A I guess.

23 Q You started calling
24 them. Right?

25 A Yes.

J. CUMBEE -- CROSS

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

3 A Yeah.

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

8 A Yes.

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

12 A Yes.

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

15 A Yes.

16 Q And you called him
17 from the jail?

18 A Yes.

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

24 A Yes. Six months.

25 Q So to you what does

J. CUMBEE - - CROSS

1 "up the road" mean?

2 A I don't know. Well,
3 I guess to prison for six months.
4 There was also a fine and I would
5 have been, that would have been my
6 third strike on the D. U. S. and I
7 would have lost my license for an
8 additional five years.

9 Q But thankfully
10 arrangements were made for you to
11 get in front of a judge the next
12 day.

13 A Arrangements were
14 made before I left Mount Pleasant
15 Police Department I believe.

16 Q Okay.

17 A When I went to jail
18 they told me they would try to get
19 me in front of a judge and the
20 detective from Mount Pleasant said
21 he would come and get me and take
22 me in front the judge and he did.
23 He came and picked me up and I
24 never went in front of a judge.

25 Q Okay. But you got

J. CUMBEE -- CROSS

1 released?

2 A Yes.

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

5 A Yes.

6 Q Driving under
7 suspension arrest?

8 A Yes.

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

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

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

19 A Yes.

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

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

J. CUMBEE -- CROSS

1 Q Okay. You rode with
2 them in a, in a police car,
3 though?

4 A Yes.

5 Q And the first place
6 you took them was deep into the
7 Francis Marion forest. Right?

8 A I'm not sure where we
9 went first. I can't remember but
10 we went to several places.

11 Q You were taking them
12 there, weren't you?

13 A Yeah.

14 Q Okay. Well, let me
15 ask it this way. You didn't take
16 them to where the car was first,
17 did you?

18 A I don't believe so.

19 Q I don't want you to
20 believe, Mr. Cumbee.

21 A I'm not sure. I mean
22 this has been -- it's been a while
23 since this happened.

24 Q Well, let me ask you
25 this question. You said you took

J. CUMBEE -- CROSS

1 them several places. Right?

2 A Yes.

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

6 A Yes.

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

9 A Yes --

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

12 A Yes.

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

18 A Yes.

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

21 A Yes.

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

25 A Yes. Several times.

J. CUMBEE -- CROSS

1 Q Well, I want to talk
2 about the next time. Do you
3 remember meeting with them on July
4 seventeenth '08?

5 A I don't remember a
6 specific date, no.

7 Q Okay.

8 MR. DAVIS: May I
9 approach the court reporter?

10 THE COURT: You may.

11 (Whereupon, the
12 statement of Jason Cumbee on
13 July 17, 2008 previously
14 referred to is received and
15 marked as Defendant's Exhibit
16 No. 5 for identification.)

17 THE COURT: Number
18 five for identification
19 purposes.

20 Q Is that your
21 signature at the bottom?

22 A Yes, it is.

23 Q And does that say
24 seven seven '08?

25 A Yes.

J. CUMBEE -- CROSS

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

5 A Yes.

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

9 A Yup.

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

13 A Yep.

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

18 A Yes.

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

21 A No.

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

24 A He's a friend of
25 mine.

J. CUMBEE --- CROSS

- 1 Q You claim Justin and
2 Aaron were close. Right?
- 3 A Yes.
- 4 Q Aaron doesn't exist,
5 does he?
- 6 A That's been made
7 clear. You don't have to keep
8 repeating that.
- 9 Q I'd like you to
10 answer that question. Okay?
- 11 A Yes.
- 12 Q You admitted in this
13 statement, in the third statement,
14 that you got phone calls at your
15 parents's land line for Jeff about
16 drugs?
- 17 A Yes.
- 18 Q But you don't want
19 them near your house, right, or
20 dealers. Right?
- 21 A People I don't know.
22 Yes.
- 23 Q And drug dealers?
- 24 A Yeah.
- 25 Q And again in this

J. CUMBEE -- CROSS

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

5 A Yes.

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

11 A Yes.

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

15 A Yes.

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

18 A Yes.

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

24 A Yes.

25 Q You told the police

J. CUMBEE - - CROSS

1 that Aaron picked Jeff up at the
2 boat landing?

3 A Yes.

4 Q Aaron doesn't exist,
5 does he?

6 A Right.

7 Q You denied any
8 involvement in Ali's
9 disappearance.

10 A Right.

11 Q You lied?

12 A Yes.

13 Q You denied being at
14 the boat ramp?

15 A Correct.

16 Q You lied?

17 A Yes. That's what
18 that proffer that I signed was
19 torn up or not void or whatever or
20 void, however you want to say it.

21 Q Meaning the one in
22 early July?

23 A The first one, yes.

24 Q The first one.

25 You denied being in

J. CUMBEE -- CROSS

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

3 A I denied being in the
4 car?

5 Q Uh-hum.

6 A I was never in the
7 car.

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

11 A Correct.

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

15 A Right.

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

19 A Right.

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

24 A Right.

25 Q And then you got

J. CUMBEE -- CROSS

- 1 arrested?
- 2 A Yes.
- 3 Q August eighth of
- 4 2008.
- 5 A That sounds about
- 6 right.
- 7 Q Now, before you got
- 8 arrested you went to talk to Mr.
- 9 Smiley, didn't you?
- 10 A Yes.
- 11 Q Feeling guilty,
- 12 weren't you?
- 13 A Yes.
- 14 Q Feeling scared,
- 15 weren't you?
- 16 A Yes.
- 17 Q You were surprised
- 18 you got arrested on August of
- 19 2008. Right?
- 20 A A little bit.
- 21 Q Kind of upset you got
- 22 arrested. Right?
- 23 A I guess.
- 24 Q Well, I don't want
- 25 you to guess, Mr. Cumbee.

J. CUMBEE -- CROSS

- 1 A Yes.
- 2 Q Were you upset when
3 you got arrested?
- 4 A Yeah. Every time I
5 get arrested I'm upset.
- 6 Q Well, in this case
7 you thought you weren't going to
8 be arrested. Right?
- 9 A What do you mean?
- 10 Q Well, like -- you
11 thought this time you weren't
12 going to be arrested. Right?
- 13 A Right, because of the
14 proffer. I thought that was
15 supposed -- is that what you're
16 saying?
- 17 Q Okay. I just want
18 you to tell the jury if you
19 thought you were going to be
20 arrested or not?
- 21 A No, I didn't.
- 22 Q And then you had
23 signed a proffer with an attorney,
24 not one of these attorneys, but
25 attorneys with the solicitor's

J. CUMBEE -- CROSS

1 Office originally. Right?

2 A Yes.

3 Q You thought you were
4 free. Right?

5 A Yes.

6 Q But you went and
7 talked to Mr. Smiley?

8 A Yeah.

9 Q Okay. And didn't he
10 call the Solicitor's Office?

11 A I'm not sure.

12 Q Well, were you -- do
13 you know or not prior to arrest
14 whether he called the Solicitor's
15 Office?

16 A I don't know.

17 Q Well, once you got
18 arrested on accessory after the
19 fact for murder you tried calling
20 your family again. Right?

21 A Yes.

22 Q Your family was
23 worried that or you were -- there
24 was concern that Shanna might get
25 arrested, too?

J. CUMBEE -- CROSS

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

J. CUMBEE -- CROSS

1 from jail. I might have told them
2 to try to get in touch with him.

3 Q All right. You
4 thought perhaps your bond would be
5 several hundred thousand or even a
6 million dollars?

7 A I'm not a lawyer or a
8 bondsman. I don't know anything
9 about that.

10 Q Do you understand the
11 question?

12 A Yes.

13 Q Could you answer the
14 question?

15 A Ask it again, please.

16 Q You thought the bond
17 was going to be a couple thousand
18 dollars or a million dollars?

19 A No.

20 Q It was twenty-five
21 thousand dollars actually. Right?

22 A Yes.

23 Q And your family
24 couldn't make that?

25 A Nope.

J. CUMBEE -- CROSS

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

3 A Right.

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

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

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

11 A No.

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

16 A Yeah.

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

19 A Not exactly.

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

23 A Right.

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

J. CUMBEE -- CROSS

1 hired Mr. Smiley?

2 A Yes.

3 Q I apologize, Mr.
4 Cumbee. I've gotten a little out
5 of order here. You gave a
6 statement, another statement
7 before you got arrested on August
8 first, didn't you? Do you
9 remember?

10 A I don't remember
11 specifically, no.

12 Q Okay.

13 MR. DAVIS: May I
14 approach the court reporter?

15 THE COURT: You may.

16 (Whereupon, the
17 statement of Mr. Cumbee on
18 August 1, 2008 previously
19 referred to is received and
20 marked as Defendant's Exhibit
21 No. 6 for identification.)

22 MR. DAVIS: May I
23 approach the witness, your
24 Honor?

25 THE COURT: You may.

J. CUMBEE -- CROSS

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

6 A Yes.

7 Q Does that say eight
8 one oh eight?

9 A Yes.

10 Q Charleston County
11 Sheriff's Office?

12 A Yes.

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

17 A Yes.

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

23 A Yes.

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

J. CUMBEE -- CROSS

1 Sheriff's Office on August first,
2 2008?

3 A Yes.

4 Q Finally you mentioned
5 that Jeff dated your sister
6 Shanna. Right?

7 A Yes.

8 Q But you tell the
9 detectives it was against
10 everyone's wishes. Right?

11 A Yes.

12 Q And this is when you
13 first say that Jeff told you he
14 had plans to deal with Ali?

15 A Yes, sir. I guess
16 so.

17 Q I don't want you to
18 guess, Mr. Cumbee.

19 A Yes.

20 Q And this is when you
21 say but Ali showed up unannounced.

22 A Yes.

23 Q And you tell the
24 story about Jason saying that the
25 money was at your parents's house

J. CUMBEE -- CROSS

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

3 A You said Jason said?

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

9 A Yes.

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

13 A Yes.

14 Q And Aaron doesn't
15 exist?

16 A Right.

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

20 A I believe so.

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

J. CUMBEE - - CROSS

1 A That's what is
2 written, yes.

3 Q Did you say that or
4 not?

5 A I can't be sure.
6 Like I said I asked several
7 questions and made several
8 statements over different periods
9 of time and I don't have a very
10 good memory as to what exactly I
11 said.

12 MR. DAVIS: Okay. May
13 I have a moment, your Honor?

14 THE COURT: You may.

15 MR. DAVIS: May I
16 approach the witness, your
17 Honor?

18 THE COURT: You may.

19 Q Still showing you
20 what's been marked as defendant's
21 exhibit number six for
22 identification, I'm going to go to
23 page two. "For the record, my
24 family means the most to me,
25 so" - -

J. CUMBEE -- CROSS

1 A Yes.

2 Q Let me finish.

3 A Yes.

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

6 MR. SIMPSON: Objection.

7 Asked and answered.

8 THE COURT: Overruled.

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

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

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

16 A Yes.

17 Q -- detectives. From
18 getting arrested?

19 A Excuse me?

20 Q From getting
21 arrested.

22 A Excuse me?

23 Q Protect you from
24 getting arrested?

25 A Yes.

J. CUMBEE - - CROSS

- 1 Q In that statement you
2 admit to selling drugs?
- 3 A Yes.
- 4 Q You say you sold
5 drugs with Jeff?
- 6 A Yes.
- 7 Q You admit to partying
8 at all these different boat
9 landings in McClellanville?
- 10 A Yes.
- 11 Q And so now the
12 sheriffs have your sister's name.
13 Right?
- 14 A Yes.
- 15 Q Had who's Jeremy
16 Casselman?
- 17 A That's the fellow
18 that my sister is currently
19 seeing.
- 20 Q They have a child
21 together?
- 22 A Yes, they do.
- 23 Q Is he family?
- 24 A Is he family?
- 25 Q You consider him

J. CUMBEE - - CROSS

1 family?

2 A I guess so.

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

7 A July fifth?

8 Q Uh-huh.

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

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

14 THE COURT: Yes, sir.

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

17 THE COURT: You may.

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

J. CUMBEE -- CROSS

- 1 That's what it says?
- 2 A Yes.
- 3 Q "A, answer: Jeremy
4 Casselman." Correct?
- 5 A Yes.
- 6 Q Now I'm going to skip
7 down just a moment to the next
8 question: "Q. How long ago did
9 you have this conversation?
10 Answer: July fifth." Correct?
- 11 A Yes.
- 12 Q Well, is that what it
13 says or not?
- 14 A That's what it says
15 but I don't think that was -- I'm
16 not sure that's what they were
17 talking about when they asked me
18 that.
- 19 Q Okay. Let me ask you
20 my question again.
- 21 A Okay.
- 22 Q You talked to Jeremy
23 Casselman on July fifth about this
24 incident. I'm being general.
- 25 A Yes. I'm not sure

J. CUMBEE -- CROSS

1 about the fifth, but I mean yes.
2 I'm sure I discussed it with him.

3 Q Do you need to see
4 this again?

5 A No.

6 Q That says July fifth.
7 Right?

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

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

18 A Yes.

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

21 A Yes.

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

J. CUMBEE -- CROSS

1 talked to him after you got out.

2 Right?

3 A Yes.

4 Q And before you got
5 arrested on accessory after the
6 fact of murder?

7 A Yes.

8 Q Last month you and
9 Mr. Smiley met at his office with
10 Mr. Simpson. Correct?

11 A Yes.

12 Q Mrs. Cardillo.

13 Correct?

14 A Yes.

15 Q And they're the two
16 State's attorneys sitting there at
17 the table. Right?

18 A Yes.

19 Q You met with
20 Investigator Osborne who's with
21 their office. Correct?

22 A Yes.

23 Q And Investigator
24 Osborne with the Solicitor's
25 Office asked you several questions

J. CUMBEE - - CROSS

1 and you gave him a statement.

2 Right?

3 A Yes.

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

6 A Yes.

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

10 A Yes.

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

13 A Yes.

14 Q 2008. Right?

15 A Yes.

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

20 A Yeah.

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

J. CUMBEE -- CROSS

1 Right?

2 A Yes.

3 Q Okay. But you also
4 mentioned, you also gave a
5 statement that at some point I
6 guess -- well, you help me. Was
7 it when Jeff was dating Shanna
8 that you told him that if he ever
9 hurt your sister you'd do
10 everything in your power to bust
11 his ass?

12 A Sounds like something
13 I'd tell him.

14 Q Okay. Well; did you
15 tell him that back when he was
16 dating her?

17 A When he, when he
18 first came up to me and asked my
19 permission to date my sister.

20 Q I'm sorry, sir. Did
21 you tell that to him back when he
22 was dating your sister? Answer
23 the question.

24 A I can't remember.
25 Probably.

J. CUMBEE -- CROSS

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

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

9 A Are you finished?

10 Q I believe the
11 question has been answered.

12 A Oh, okay.

13 THE COURT: Counsel,
14 approach.

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

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

21 A Correct.

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

J. CUMBEE - - CROSS

- 1 A Yes.
- 2 Q You told them you'd
- 3 only met Ali once. Right?
- 4 A Yes.
- 5 Q And that's supposedly
- 6 the one time you took Jeff to the
- 7 gas station and Jeff rode off with
- 8 him. Right?
- 9 A Yes.
- 10 Q And you never got out
- 11 of the vehicle?
- 12 A No.
- 13 Q And so to you he
- 14 looked as though he was either
- 15 mixed. Right?
- 16 A Yes.
- 17 Q Or Mexican. Right?
- 18 A Yes.
- 19 Q Or middle Eastern.
- 20 Right?
- 21 A Yes.
- 22 Q But you didn't know
- 23 which?
- 24 A No.
- 25 Q Because you didn't

J. CUMBEE - - CROSS

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

3 A No.

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

9 A I guess so.

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

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

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

16 A Yes.

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

19 A Right.

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

22 A Right.

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

J. CUMBEE -- CROSS

1 her. Right?

2 A Yes.

3 Q So you're really just
4 keeping an eye on him. Right?

5 A Yeah. I mean I spent
6 time with him as well, though.

7 Q You sold drugs with
8 him. Right?

9 A Yes.

10 Q Supposedly. Right?

11 A Yeah.

12 Q You told the lawyers
13 and the investigator that two
14 months after this meeting at the
15 gas station is the first time that
16 Jeff mentions to you the debt
17 problem with this guy at the gas
18 station?

19 A It was after that.
20 I'm not sure as to the exact time.

21 Q Okay. But you told
22 them it was a couple months later.

23 A Yeah. That was my
24 best guess.

25 Q Okay. And you had --

J. CUMBEE -- CROSS

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

4 A Yes.

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

10 A Basically, yes.

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

13 A Yes.

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

16 A Yes. As well as
17 using.

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

21 A Yes.

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

25 A Occasionally I would

J. CUMBEE -- CROSS

1 take them.

2 Q Okay. And you talked
3 to Ali on the phone. Right?

4 A No. I would just
5 ask, you know, if I could take a
6 message or something like that. I
7 never carried on a conversation.

8 Q I apologize. You
9 didn't have a conversation with
10 him but you heard him ask for
11 Jeff.

12 A Yes.

13 Q Tell him you'd take a
14 message?

15 A Yes.

16 Q You'd take messages?

17 A I never did. He
18 never left one. Just tell Jeff
19 somebody called or something like
20 that. But again, again can't
21 really remember. It's...

22 Q Okay. You told them
23 that the deal was that since you
24 knew everyone from McClellanville
25 that you would help Jeff sell the

J. CUMBEE - - CROSS

1 drugs. Right?

2 A Yes.

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

5 A Yes.

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

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

11 Q For your drugs that
12 you using.

13 A Oh, yeah.

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

17 A I suppose.

18 Q You bought
19 occasionally from Ali. Right?

20 A Me?

21 Q Yes.

22 A No.

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

25 A Yes.

J. CUMBEE -- CROSS

1 Q Now, you told them
2 that you don't, you told the
3 lawyers and the investigators you
4 don't like guns. Right?

5 A No.

6 Q But you got Jazz
7 together with Jeff to buy the gun.
8 Right?

9 A Yes.

10 Q And Jazz, you're not
11 sure who that is. Right?

12 A I know his, his name.
13 I mean it's Tarvis Blake or
14 something like that. I mean I
15 know him as Jazz. It's Travis,
16 Tarvis. I'm not sure how he says
17 it. Jazz is what I know him.

18 Q He went to school
19 with you.

20 A He was a couple
21 grades above me but, yes, we were
22 in the same school.

23 Q And so Jazz isn't his
24 nickname as far as you know, as
25 you told Mr. Simpson when he was

J. CUMBEE -- CROSS

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

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

6 Q Okay.

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

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

16 A Yes.

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

20 A Yes.

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

23 A Yes.

24 Q The other windows
25 were tinted. Right?

J. CUMBEE - - CROSS

1 A Yes.

2 Q And you saw blood on
3 Jeff's pant leg, right, bottom of
4 it?

5 A Well - -

6 Q You saw something red
7 on the bottom of his pant leg?

8 A It appeared to be.

9 Q Okay. But this whole
10 time you never got out of the
11 truck?

12 A Never.

13 Q Not at your mom's red
14 truck that she let you use?

15 A Correct.

16 Q Drive around and go
17 all over the place?

18 A Correct.

19 Q And you didn't get
20 out and look in the trunk?

21 A No.

22 Q But you took him to a
23 landing to dump the car?

24 A Yes.

25 Q Okay. Did he follow

J. CUMBEE -- CROSS

1 you or did you follow him?

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

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

9 A To pick him up I
10 guess.

11 Q Well when I --

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

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

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

25 Q You, you said you saw

J. CUMBEE -- CROSS

1 the car sink to the bottom.

2 A No.

3 Q You didn't?

4 A I didn't.

5 Q Okay. But you talked
6 to the solicitor about how it was
7 put into the creek. Right?

8 A Yes.

9 Q You can't just stand
10 behind it and push it. Right?

11 A I guess you could if
12 you wanted to.

13 Q Well, I thought that
14 you said that to enable -- you got
15 to get some speed, I thought that
16 was you quote during Mr. Simpson's
17 question.

18 A Yeah.

19 Q Right? I mean you
20 got to get some --

21 A Yeah. If you say you
22 have to push it. You, you
23 don't -- I mean you don't have to.

24 Q Because you know
25 about sinking cars, don't you?

J. CUMBEE -- CROSS

1 A No.

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

4 A Nope. Never had one
5 to sink.

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

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

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

14 A Correct.

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

22 A Yes.

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

J. CUMBEE -- CROSS

1 someone were to threaten your
2 sister's life, if it came down to
3 killing them then yeah, you'd kill
4 them for your family. Right?

5 A Yes.

6 Q Because if this guy
7 were to come in and kick the door
8 in and kill them all -- your
9 family. Right?

10 A Yes.

11 Q That would have been
12 a bad thing. That's what you told
13 them. Right?

14 A Yeah.

15 Q And that's what
16 happened, isn't it?

17 A No.

18 Q You didn't kill him?

19 A No.

20 Q Weren't you scared of
21 him?

22 A I never met him other
23 than that one time.

24 Q So you just -- you
25 were in your red truck at the boat

J. CUMBEE -- CROSS

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

3 A Yes.

4 Q You don't do
5 anything.

6 A No.

7 Q You didn't help?

8 A No.

9 Q You didn't get out?

10 A No.

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

13 A No.

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

19 A Yep.

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

22 THE COURT: Yes, sir.

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

J. CUMBEE -- CROSS

1 MR. SIMPSON: Very
2 briefly, your Honor.

3 THE COURT: Yes, sir.
4
5
6
7
8

REDIRECT EXAMINATION

9
10 BY MR. SIMPSON:

11 Q Mr. Cumbee, I believe
12 you acknowledged in your direct
13 testimony, you did not -- you
14 weren't completely truthful to the
15 police, were you?

16 A Correct.

17 Q For a while as you
18 acknowledged in your direct
19 testimony?

20 A Yes.

21 Q You gave several
22 statements. Correct?

23 A Yes.

24 Q And you didn't want
25 to get in trouble for this?

J. CUMBEE -- REDIRECT

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

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

7 A Yeah.

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

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

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

16 A No.

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

22 A Yes.

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

J. CUMBEE -- REDIRECT

1 You made it up, two H names that
2 aren't Herrmann. Correct?

3 A Yes.

4 Q And then you even
5 said I think he might be dead.
6 Right?

7 A Yes.

8 Q Because you hadn't
9 seen him in a long time.

10 A Yeah.

11 Q So when you're
12 giving -- and you acknowledge
13 you're very honest with the jury,
14 you, you --

15 MR. DAVIS: Objection,
16 your Honor. Bolstering.

17 MR. SIMPSON: All
18 right. I'll withdraw and
19 rephrase the question, your
20 Honor.

21 THE COURT: Sustained.

22 Q You acknowledge you
23 were going to say what you needed
24 to say to get out of going to jail
25 on that warrant. Correct? You

J. CUMBEE -- REDIRECT

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

3 A Right.

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

9 A Correct.

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

14 A Yes.

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

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

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

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

25 Q You testified during

J. CUMBEE -- REDIRECT

1 cross-examination that you
2 admitted to not telling the truth
3 and the first proffer was busted.

4 A To my knowledge, yes.

5 Q Correct. You said --
6 obviously some of your
7 truthfulness was to protect
8 yourself but also Shanna?

9 A Yes.

10 Q Is that because
11 Shanna has some knowledge about
12 this incident?

13 A Yes.

14 MR. DAVIS: Objection,
15 your Honor. Leading.

16 THE COURT: Sustained.

17 Q Why were you worried
18 about Shanna?

19 A Well just mainly
20 worried about her because she just
21 had a child and that can be
22 stressful enough as it is.

23 Q You love your sister.
24 Correct?

25 A Yes.

J. CUMBEE -- REDIRECT

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

4 A Yes.

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

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

12 A Family as well. Yes.

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

15 THE WITNESS: Okay.

16 THE COURT: Please
17 rephrase your question.

18 Sustained as to leading.

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

21 THE COURT: Thank you.

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

24 A Yes.

25 Q From Ali?

J. CUMBEE -- REDIRECT

1 A Yes.

2 Q For Jeff?

3 A Yes.

4 Q At your house?

5 A Yes.

6 MR. SIMPSON: I have no
7 further questions, your Honor.

8 THE COURT: Mr. Davis,
9 any recross?

10 MR. DAVIS: If I can
11 have just one moment, your
12 Honor.

13 THE COURT: You may.

14

15

16

17 RE CROSS - EXAMINATION

18 BY MR. DAVIS:

19 Q Mr. Cumbee, two
20 questions I hope. Two, two
21 topics. You were not just worried
22 about Shanna and getting stressed
23 out. You were worried about
24 Shanna getting arrested. Right?

25 A Yes.

J. CUMBEE -- RECROSS

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

5 A Correct.

6 Q You thought maybe he
7 was dead?

8 A It's a good
9 possibility.

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

12 No other questions,
13 your Honor.

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

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

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

21 MR. DAVIS: None.

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

1 Thank you.

2 Any matters before we
3 take our afternoon recess?

4 MR. SIMPSON: None from
5 the State, your Honor.

6 THE COURT: Okay.

7 MR. DAVIS: Judge, the
8 only matter to kind of
9 conclude that witness and any
10 proffers, deals, et cetera. I
11 believe in pretrial the State
12 agreed that Assistant
13 Solicitor Voigt had consented
14 to the personal recognizance
15 bond.

16 THE COURT: Yes, sir.

17 MR. DAVIS: I would
18 hope that I would not need to
19 call Mr. Voigt for that
20 purpose. I would hope to
21 propose a stipulation.

22 MR. SIMPSON: We
23 stipulate. May I just go to
24 the restroom now? (Laughter.)

25 THE COURT: All right.

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

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

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

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

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

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

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

1 that Miss Cardillo was called
2 out. You are prepared to go
3 forward and handle those
4 remaining two witnesses for
5 this afternoon.

6 **MR. SIMPSON:** I am
7 prepared, your Honor, and wish
8 to proceed.

9 **THE COURT:** And you
10 also requested that the Court
11 give the, an informational
12 statement to the jury
13 indicating that Miss Cardillo
14 had matters unrelated to this
15 case to attend to and will be
16 gone the remainder of the
17 afternoon.

18 **MR. SIMPSON:** I did
19 request that, your Honor.
20 Thank you.

21 **THE COURT:** Any
22 objections to handling it that
23 way, Mr. Davis?

24 **MR. DAVIS:** Your Honor,
25 we appreciate your handling it

1 that way.

2 THE COURT: All right.

3 MR. DAVIS: No

4 objection.

5 THE COURT: All right.

6 Thank you. And any other

7 matters? We're waiting on the

8 stipulation. Please let me

9 know when that is here. And

10 with that we'll bring in the

11 jury.

12 MR. SIMPSON: Thank

13 you.

14 MR. DAVIS: Yes, ma'am.

15 Thank you.

16 THE COURT: All right.

17 Please bring in the jury.

18 Is that the

19 stipulation?

20 MR. DAVIS: It is. Do

21 you want to take a look?

22 MR. SIMPSON: No

23 objection to that being

24 entered.

25 MR. DAVIS: I'll show

1 the Court what I've marked and
2 I'd like the State to publish
3 that, your Honor. Preferably
4 before the next witness.

5 (Whereupon, the jury
6 enters the courtroom at 4:08
7 p.m.)

8 THE COURT: Thank you.
9 Please be seated.

10 Ladies and gentlemen
11 of the jury, Miss Cardillo,
12 one of the solicitors, will be
13 attending to some matters
14 unrelated to this case. She
15 will not be here for the
16 remainder of the afternoon. I
17 just tell you that so that
18 you're not wondering where she
19 has gone to for the afternoon,
20 but she -- we will continue
21 and proceed on with the trial.

22 I understand there's
23 a stipulation to be read into
24 the record?

25 MR. SIMPSON: There is,

1 your Honor.

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

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

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

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

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

25 MR. DAVIS: Your Honor,

1 one other matter.

2 **THE COURT:** Mr.
3 Simpson, please approach.

4 (Whereupon, there was
5 an off-the-record bench
6 conference.)

7 **MR. SIMPSON:** Ladies
8 and gentlemen of the jury, the
9 State and the defense enter
10 into a stipulation. The State
11 and the attorneys for the
12 defendant, Jeffrey M. Herman,
13 do hereby stipulate that
14 Assistant Solicitor Gregg
15 Voigt consented to a fifteen
16 thousand dollar personal
17 recognizance bond on Jason
18 Ward Cumbee and his attorney
19 James Smiley on August
20 eleventh, 2008.

21 **THE COURT:** Thank you.
22 And, Mr. Simpson, if you'll
23 just bring that up to the
24 bench.

25 And with all those

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

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

7
8
9
10
11
12

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

17 DIRECT EXAMINATION BY
18 MR. SIMPSON:

19 THE COURT: Mr.
20 Simpson.

21 MR. SIMPSON: Thank
22 you, your Honor.

23 Q Shanna, how are you
24 today?

25 A I'm okay.

S. CUMBEE -- DIRECT

1 Q And where do you
2 currently reside?

3 A McClellanville with
4 my parents.

5 Q Okay. Does your
6 brother also live there?

7 A Yes, he does.

8 Q And who's your
9 brother?

10 A Jason Cumbee.

11 Q Okay. How old are
12 you?

13 A I'm twenty-six years
14 old.

15 Q And how old were you
16 on -- I'm not very good at math,
17 but how old were you back in 2000?

18 A I believe sixteen.

19 Q Okay.

20 THE COURT: Miss
21 Cumbee, I'm going to ask you,
22 probably lean into the
23 microphone. You're very soft
24 spoken.

25 THE WITNESS: Okay.

S. CUMBEE -- DIRECT

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

S. CUMBEE - - DIRECT

1 involved with anyone in 2000?

2 A Jeff. Jeffrey
3 Herrmann.

4 Q Is Jeffrey Herrmann
5 present in the courtroom today?

6 A Yes, he is.

7 Q Is he the individual
8 sitting at the defendant's table?

9 A Yes, he is.

10 Q Did you live together
11 back in 2000?

12 A Yes. He stayed with
13 me and my parents for a while and
14 then we were in a couple different
15 places.

16 Q When you first lived
17 together outside of your parents's
18 house, where did you live?

19 A I believe the first
20 place was a house on seventeen.

21 Q And who all lived at
22 that residence?

23 A Jeffrey, myself, and
24 Justin Hettich.

25 Q I'm going to ask you

S. CUMBEE -- DIRECT

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

3 A Okay.

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

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

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

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

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

S. CUMBEE -- DIRECT

1 you ever see the defendant do
2 narcotics?

3 A Yes.

4 Q Did you ever see --
5 did you ever do drugs together?

6 A Yes.

7 MR. DAVIS: Your Honor,
8 I would object as previously
9 noted.

10 THE COURT: Thank you.
11 It will be noted for the
12 record. Thank you.

13 You may continue, Mr.
14 Simpson.

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

17 Q Did you ever see the
18 defendant, Jeffrey Herrmann, with
19 in your opinion what would be
20 large amounts of narcotics?

21 A Only one time that I
22 can recall.

23 Q And explain that to
24 the jury.

25 A I don't really know

S. CUMBEE -- DIRECT

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

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

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

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

19 A Yes.

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

23 A Yes.

24 Q Did you ever meet
25 Ali?

S. CUMBEE -- DIRECT

1 A Not -- I don't
2 remember if I did. I don't think
3 I ever did. I know that I spoke
4 to him on the phone once.

5 Q Did there come a time
6 that the defendant, Jeff Herrmann,
7 ever discussed problems with Ali
8 to you?

9 A In a -- yeah. I
10 guess. I mean not as far as, you
11 know, his drug deals and stuff but
12 he did mention, you know, because
13 he wanted to -- I wanted him to
14 stop and that he wanted to get
15 out.

16 Q And just explain to
17 the jury a little bit more what
18 you mean by stop and get out.

19 A I wanted him to stop
20 selling drugs. It was, you know,
21 it was something that was
22 occurring, you know. We were
23 doing it quite frequently and I
24 was in love with him and I was
25 playing house and I wanted to stop

S. CUMBEE -- DIRECT

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

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

10 A Yes.

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

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

16 MR. DAVIS: Objection,
17 your Honor.

18 A -- was coming --

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

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

23 Q Without going into
24 the particulars --

25 A Okay.

S. CUMBEE -- DIRECT

1 Q -- did Jeff
2 communicate to you that he thought
3 this would be a problem getting
4 out as you said?

5 A Yes.

6 Q Okay. Later did Jeff
7 communicate to you that he taken
8 care of that problem and in what
9 way?

10 A He didn't really -- I
11 mean a lot of things progressed
12 before that happened. I mean, you
13 know, he'd been acting strangely
14 and I think, you know, everybody
15 around us kind of knew something
16 was going on and I confronted him
17 about it and, you know, I was like
18 well, you know, Jason and Justin
19 and the people --

20 Q Please. I'm just
21 going to -- just be careful.
22 Don't mention anything they said.

23 A Okay. Well, he
24 acted --

25 Q Just mention your

S. CUMBEE -- DIRECT

1 conversation.

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

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

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

14 MR. DAVIS: Objection,
15 your Honor.

16 THE COURT: Basis?

17 MR. DAVIS: Hearsay.

18 THE COURT: Sustained
19 as to hearsay.

20 MR. SIMPSON: I'll
21 rephrase.

22 THE COURT: Thank you.

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

S. CUMBEE -- DIRECT

1 told you happened between him and
2 Ali.

3 A Okay. He told me
4 that Ali came to our house on
5 seventeen and picked him up and
6 made him drive Ali's car I would
7 assume and that they were heading
8 out down forty-five, Highway 45.
9 I'm not sure the destination. And
10 Ali had reached behind his back
11 and I guess Jeff assumed he was
12 reaching for his gun so Jeff
13 pulled out his gun and shot Ali in
14 the ear.

15 Q So you were Jeff's
16 girlfriend at the time?

17 A Yes.

18 Q And he explains to
19 you that he thought Ali was going
20 to pull a weapon.

21 A Yes.

22 Q Did Jeffrey Herrmann
23 indicate to you where on Ali's
24 body he shot him?

25 A Yes.

S. CUMBEE -- DIRECT

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

S. CUMBEE -- DIRECT

1 a point in time, progressing
2 forward where your relationship
3 ended with the defendant?

4 A About -- did there
5 come a point when it ended?

6 Q The relationship?

7 A Yes.

8 Q You guys break up?

9 A Yes.

10 Q How much longer was
11 that when that happened?

12 A It was probably a few
13 more months. I'm not sure
14 exactly. I know the whole time
15 that we were together it wasn't
16 two, it wasn't even two years.

17 Q Okay. Following your
18 break-up do you recall receiving
19 any letters written to you from
20 Mr. Herrmann?

21 A Yes.

22 MR. SIMPSON: Court's
23 indulgence.

24 THE COURT: Yes, sir.

25 MR. SIMPSON: May I

S. CUMBEE -- DIRECT

1 approach, your Honor?

2 THE COURT: You may.

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

7 A Yes.

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

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

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

19 A A few. Yeah.

20 Q That they were
21 exchanged.

22 A Yeah.

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

S. CUMBEE -- DIRECT

1 told?

2 A Yes.

3 Q Things of that
4 nature.

5 A Yes.

6 MR. SIMPSON: May I
7 approach the witness, your
8 Honor?

9 THE COURT: You may.

10 Q Shanna, I'm showing
11 you what's been marked for State's
12 I.D, as State's nine and ten. And
13 if you could just take moment,
14 look through those, as long as you
15 need. And I'm just going to ask
16 you if those look familiar to you
17 and if you can identify them?

18 A What do you want me
19 to tell you about these?

20 Q Do you recognize the
21 papers I've handed you?

22 A Yes.

23 Q Can you identify them
24 what they are?

25 A Letters from Jeff.

S. CUMBEE -- DIRECT

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

3 A Yes.

4 Q And you exchanged
5 letters. Correct?

6 A Yes.

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

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

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

17 A Yes.

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

22 THE COURT: Yes, sir.

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

S. CUMBEE -- DIRECT

1 THE COURT: You may.

2 Q Shanna, I'm going to
3 point you -- I'm going to get all
4 into your little business here.
5 I'm just going to, to point you
6 one thing on State's exhibit nine
7 for I. D -- ten for I. D. only.
8 We have a numbered list. Is that
9 correct?

10 A Yes.

11 Q And as you testified
12 the context of that is numbering
13 and talking about problems that
14 you had in your relationship?

15 A Uh-huh. Yes.

16 Q I'm going to ask you
17 to read to the jury what is number
18 ten in the letter from the
19 defendant.

20 A There's a little note
21 that says I'm sorry for lying. It
22 says I was selling coke to him. I
23 hid from it you because I knew
24 you'd be pissed but it was making
25 money. I promise you I wouldn't

S. CUMBEE -- DIRECT

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

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

6 A Okay.

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

12 THE COURT: Mr. Davis.

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

15

16

17

18 CROSS-EXAMINATION BY

19 MR. DAVIS:

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

23 A Yes.

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

S. CUMBEE -- CROSS

1 A Yes.

2 Q And you also live
3 with -- forgive me. Your
4 boyfriend, Jeremy?

5 A Yes.

6 Q You all have a child
7 together?

8 A Yes.

9 Q How old is your
10 child?

11 A She turned two in
12 October.

13 Q I just want to ask
14 you if you recognize or know these
15 people. I'm going to mention some
16 names. Do you know Justin
17 Hettich?

18 A Yes.

19 Q You've known him back
20 in 2000?

21 A I've known him since
22 we were babies I believe.

23 Q Eric and Christina
24 Thigpen?

25 A Yes. I went to

S. CUMBEE -- CROSS

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

3 Q They were married for
4 a while?

5 A Yes.

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

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

15 Q Started back in 2000.
16 Right?

17 A Uh-huh.

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

21 A No, they did not.

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

25 A Uh-huh.

S. CUMBEE -- CROSS

1 Q You had told -- do
2 you remember speaking with
3 Detective Casale and Detective
4 Magwood from at the Charleston
5 County Sheriff's Office?

6 A Yes.

7 Q Do you remember that
8 was on August the fifth of 2008?

9 A I guess it was.

10 Q Well, I don't want
11 you to guess at it. Do you recall
12 when that was?

13 A Not exactly.

14 Q Okay. But you do
15 remember meeting with them.
16 Right?

17 A Yes.

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

21 THE COURT: You may.

22 (Whereupon, the
23 statement of Shanna Cumbee
24 previously referred to is
25 received and marked as

S. CUMBEE - - CROSS

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

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

6 THE COURT: You may.

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

12 A Yes, it is.

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

17 A Yes.

18 Q Correct?

19 A Yes.

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

22 A Casale and Magwood.

23 Q And do you remember
24 those gentlemen?

25 A Yes.

S. CUMBEE -- CROSS

1 Q And it appears to be
2 a one, two, three, four, five,
3 six, seven, eight page statement
4 after that?

5 A Yes.

6 Q Okay. With your
7 signature at the end?

8 A Yes.

9 Q All right. Okay.

10 A Okay.

11 Q And does that -- do
12 you recall the date then?

13 A Yes.

14 Q And that's eight five
15 oh eight?

16 A Yes.

17 Q Right?

18 A Yes.

19 Q Okay. Do you
20 remember where that happened?

21 A Where?

22 Q Yes.

23 A Probably at mine and
24 Jeremy's house.

25 Q Just briefly. The,

S. CUMBEE - - CROSS

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

3 A Yes.

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

6 A Yes.

7 Q Were you scared about
8 being arrested?

9 A No.

10 Q You weren't scared?

11 A No.

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

16 A Yes.

17 Q Right?

18 A Yes.

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

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

S. CUMBEE - - CROSS

1 sure, it's been a long time and I
2 didn't know if I still had them,
3 but that I recall him writing to
4 me something stating that murder
5 was one of the main mistakes that
6 he had made.

7 Q You remember your
8 brother getting arrested for
9 accessory after the fact of
10 murder?

11 A The past year? Kind
12 of. I don't think I lived there
13 at the time.

14 Q Wasn't it three days
15 after you gave this statement?

16 A I think so, yes.

17 Q And he called you
18 from the jail, right, wanting to
19 get out?

20 A My brother never
21 called me I don't think.

22 Q He never called you
23 while you were, while he was at
24 the jail trying to get a bond,
25 trying to get, trying to hire Mr.

S. CUMBEE -- CROSS

1 Smiley?

2 A Not, not me.

3 Q Well, forgive me.

4 Did you speak with him.

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

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

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

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

20 THE COURT: Yes, sir.

21 Q Sorry, Miss Cumbee.
22 Forgive me.

23 A Yes, sir.

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

S. CUMBEE - - CROSS

1 asked you if you were worried
2 about being arrested and you said
3 no. Correct?

4 A Correct.

5 Q Were you concerned
6 that the detectives were going to
7 arrest any of your family on any
8 bench warrants?

9 A No. Jason's a big
10 boy.

11 Q What about your, your
12 mother? Did they not threaten to
13 arrest your mother for a bench
14 warrant?

15 A Well, they never
16 threatened me.

17 Q I understand. Your
18 mother. You don't recall your
19 mother?

20 A Did they threaten my
21 mother?

22 Q To arrest her on a
23 bench warrant?

24 A If they did, they
25 didn't do it in front of me.

S. CUMBEE -- CROSS

1 Q You had no knowledge
2 of that?

3 A No.

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

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

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

14 A No.

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

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

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

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

S. CUMBEE -- CROSS

1 us to see them.

2 Q You didn't know that
3 in the paper arrest warrant
4 someone was claiming that he was
5 at the boat ramp?

6 A In what paper? The
7 newspaper?

8 Q No. His arrest
9 warrant.

10 A I don't think I ever
11 saw his arrest warrant.

12 MR. DAVIS: Your Honor,
13 I beg the Court's indulgence
14 for just a moment on a matter.

15 THE COURT: Yes, sir.

16 MR. DAVIS: Your Honor,
17 may we approach for a moment?

18 THE COURT: You may.

19 (Whereupon, there was
20 an off-the-record bench
21 conference.)

22 THE COURT: Ladies and
23 gentlemen of the jury, we are
24 attempting or going to attempt
25 to play an audio recording so

S. CUMBEE -- CROSS

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

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

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

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

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

16 A My brother. And that
17 was me.

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

22 A Yes.

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

S. CUMBEE -- CROSS

1 A Well, I recall that
2 conversation. I can't tell you
3 how many calls I got. Really
4 didn't -- I honestly didn't
5 remember that.

6 Q Okay. Calling,
7 talking about bonds, getting a
8 lawyer. Correct?

9 A Right. Yes.

10 Q Okay.

11 A But I did not
12 remember.

13 Q I understand. But
14 that's what you talked about and
15 that would have been from the
16 jail. Correct?

17 A Yes.

18 Q And you don't recall
19 indicating, being concerned that
20 you might end up there, too?

21 A I was just -- I mean
22 I didn't know if they were going
23 to threaten me. I know, you know,
24 people have been telling me that,
25 you know, they like to try and

S. CUMBEE -- CROSS

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

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

6 A I already had her.

7 Q Okay. Mary Ellen.
8 Right?

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

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

20 A They never made any
21 threats.

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

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

S. CUMBEE -- CROSS

1 think they really had anything to
2 arrest me for.

3 Q And they did not make
4 any threats to you when they took
5 the statement?

6 A No.

7 MR. DAVIS: Okay. I
8 believe that's all, Miss
9 Cumbee. If you give me just
10 one second.

11 Miss Cumbee, thank
12 you. That's all the questions
13 I have.

14 MR. SIMPSON: Just
15 briefly, your Honor.

16 THE COURT: Yes, sir.

17

18

19

20 REDIRECT EXAMINATION

21 BY MR. SIMPSON:

22 Q Miss Cumbee, have you
23 ever been arrested before?

24 A No.

25 Q And so you

S. CUMBEE -- REDIRECT

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

3 A Yes.

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

7 A Yes.

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

10 A No.

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

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

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

25 Is that the correct

S. CUMBEE -- REDIRECT

1 quote of number ten?

2 A Yes.

3 MR. SIMPSON: Okay. I
4 have no further questions,
5 your Honor.

6 THE COURT: Mr. Davis,
7 re-cross.

8 MR. DAVIS: Your Honor,
9 may I have one moment?

10 THE COURT: You may.

11 MR. DAVIS: Miss
12 Cumbee, that's all the
13 questions.

14 Thank you, your
15 Honor.

16 THE COURT: Miss
17 Cumbee, you may step down.
18 You are excused from the
19 courthouse.

20 Call your next
21 witness.

22 MR. SIMPSON: State
23 calls Jerry Casselman.

24

25

CASSELMAN -- DIRECT

1

2

3

JEREMY BOYD

4

CASSELMAN, having been called

5

as a witness, is duly sworn

6

and testifies as follows:

7

DIRECT EXAMINATION BY

8

MR. SIMPSON:

9

Q Jeremy, good

10 afternoon.

11

A How you doing?

12

Q Okay. How you doing

13 today?

14

A I'm tired.

15

Q Is this where you

16 want to be today?

17

A No.

18

Q Okay. How old are

19 you?

20

A I'm thirty-three.

21 years old.

22

Q And where do you

23 live?

24

A I live in

25 McClellanville.

CASSELMAN -- DIRECT

1 Q I'm assuming you
2 passed a female as you were coming
3 in. Who was that?

4 A That was my fiancée,
5 Shanna Cumbee.

6 Q And do you have any
7 children together?

8 A Yes, sir. We have a
9 two year old daughter.

10 Q I'm going to take you
11 back in time a bit to 2000. What
12 were you doing for work back in
13 2000?

14 A I was a service tech
15 for a heating and air company.

16 Q Okay. And tell me
17 how that worked. Was that an
18 on-the-books kind of thing or --

19 A Sometimes yes,
20 sometimes no.

21 Q Okay.

22 A I worked in the shop
23 a lot when I wasn't doing service
24 calls.

25 Q Do you recognize

CASSELMAN -- DIRECT

1 anyone sitting at this table here?

2 A Yes, sir. Mr.

3 Herrmann.

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

7 A Yes.

8 Q How do you recognize
9 him?

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

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

17 A Yes, sir.

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

21 A Yes, sir.

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

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

CASSELMAN -- DIRECT

1 think it was 2001, 2002 before I
2 actually got my indictment but I
3 got caught in the national forest
4 I think it was '99 or either 2000.

5 Q The -- did you plead
6 guilty to that?

7 A Yes, sir.

8 Q Did it sound about
9 right that the guilty plea to that
10 might happen in early '03?

11 A Yes, sir. It was a
12 was couple years I was on the
13 pretrial for around two years.
14 Yes, sir.

15 Q All right. Any other
16 run-ins you had?

17 A Simple possession.
18 Just minor things. No big
19 charges.

20 Q Well, in, in your
21 terms that was the only big
22 charge?

23 A Yes, sir. That was
24 the major one.

25 Q You said you met the

CASSELMAN -- DIRECT

1 defendant back in 2000. Correct?

2 A Yes, sir.

3 Q And would you say you
4 guys were really goods friends?

5 A No, sir.

6 Q Just --

7 A Work acquaintances.

8 Q Work acquaintances?

9 A I seen him once in a
10 while around. McClellanville is a
11 small town. I seen him around
12 once in a while. We bumped into
13 one another a couple times at the
14 shop.

15 Q Okay. Did the
16 defendant -- you say you were work
17 acquaintances.

18 A Yes.

19 Q Let me back up a
20 little bit. What about Shanna
21 back in 2000? You obviously
22 weren't involved romantically
23 then.

24 A No, sir.

25 Q Did you know her back

CASSELMAN - - DIRECT

1 in 2000?

2 A Yes, sir.

3 Q How'd you know her?

4 A My parents and her
5 parents knew one another.

6 Q And how about Jason
7 Cumbee, her brother?

8 A The same thing. Like
9 I said, I knew of him but I didn't
10 associate that much with anybody.

11 Q Were you close
12 friends with Jason Cumbee and
13 Shanna Cumbee back in 2000?

14 A No, sir.

15 THE COURT: Mr.
16 Casselman, can you speak up,
17 please.

18 THE WITNESS: I'm
19 sorry.

20 THE COURT: Thank you.

21 THE WITNESS: Yes,
22 ma'am.

23 Q And you've talked
24 about your relation with Shanna
25 Cumbee now, and she's not in the

CASSELMAN -- DIRECT

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

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

9 Q He's your fiancée's
10 brother?

11 A Yes, sir.

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

15 A No. No.

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

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

CASSELMAN -- DIRECT

1 MR. DAVIS: I object,
2 your Honor, for the reasons
3 previously mentioned.

4 THE COURT: It will be
5 noted in the record.

6 Mr. Simpson.

7 MR. SIMPSON: Thank
8 you, your Honor. Court's
9 indulgence.

10 THE COURT: Yes, sir.

11 Q Did he ever mention
12 anything to you about a firearm?

13 A Yes, sir. He told me
14 that he acquired one because he
15 owed a fellow some money and that
16 the fellow was coming to collect.

17 Q So did he show you
18 the gun?

19 A No, sir.

20 Q What did he tell you
21 about where the gun was?

22 A He asked me if I
23 wanted to see it with my own eyes.
24 I didn't want nothing to do with
25 the firearm.

CASSELMAN -- DIRECT

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

4 A No, sir.

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

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

15 Q The defendant mention
16 having a gun?

17 A Yes, sir.

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

20 A Yes, sir.

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

25 A Yes, sir.

CASSELMAN -- DIRECT

1 THE COURT: Mr. Davis.

2 MR. DAVIS: Yes. Thank
3 you, your Honor. May it
4 please the Court.

5

6

7

8

9

10 CROSS-EXAMINATION BY

11 MR. DAVIS:

12 Q Do you remember in
13 July of 2008 when Jason got
14 arrested for the bench warrant for
15 driving under suspension? Do you
16 remember that?

17 A I remember when they
18 come and get him. Yes, sir.

19 Q Mount Pleasant and
20 the Sheriff's Office. Right?

21 A The first time it was
22 Mount Pleasant.

23 Q Okay. And then they
24 came back with some more folks?

25 A Yes.

CASSELMAN -- CROSS

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

6 A Yes, sir.

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

9 A Unfortunately for me.
10 Yes, sir.

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

15 A Yes, sir.

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

20 A Yes, sir.

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

25 A Yes, sir.

CASSELMAN - - CROSS

1 Q Okay. Meaning what
2 happened back in 2000. Right?

3 A Yes, sir.

4 Q Okay. Of course
5 Jason also spoke to the solicitor
6 the same day talked to you after
7 getting out. Right?

8 A Yes, sir.

9 Q And then do you
10 know -- if this was asked
11 previously, I apologize. Justin
12 Hettich, you know Justing?

13 A Yes, sir.

14 Q Okay. How do you
15 know Justin?

16 A He's actually married
17 to the daughter of my former
18 employer.

19 Q The employer we were
20 just talking about?

21 A Yes, sir.

22 Q Okay.

23 A Of the heating and
24 air company where I worked at.

25 Q All right. And

CASSELMAN -- CROSS

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

4 A Yes, sir.

5 Q Not close, just kind
6 of acquaintances?

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

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

16 A Yes, sir.

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

21 A Yes, sir.

22 Q Do you remember that
23 date?

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

CASSELMAN -- CROSS

1 MR. DAVIS: Okay.

2 Your Honor, may I
3 approach and have this marked?

4 THE COURT: You may.

5 (Whereupon, Mr.
6 Casselman's statement on
7 August 4, 2008 previously
8 referred to is received and
9 marked as Defendant's Exhibit
10 No. 8 for identification.)

11 MR. DAVIS: May I
12 approach the witness, your
13 Honor?

14 THE COURT: You may.

15 Q I'm going to show you
16 what's been marked as defendant's
17 exhibit number eight for
18 identification purposes only.
19 Does that appear to be your
20 signature?

21 A Yes, sir.

22 Q Okay. Does that
23 appear to be a Charleston County
24 Sheriff's Office advisement of
25 rights form?

CASSELMAN -- CROSS

1 A Yes, sir.

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

5 A I can't even read it.

6 Q Four or nine.

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

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

11 A Yes.

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

15 A Yes, sir.

16 Q Is that right?

17 A Yes, sir.

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

20 A Yes, sir.

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

23 A Yes, sir.

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

CASSELMAN -- CROSS

1 page that the Miranda warning was?

2 A Yes, sir. My

3 initials. Yes, sir.

4 Q So you remember the
5 Sheriff's deputies going over that
6 with you. You didn't have to talk
7 to if them. If you did they could
8 use what you said against you.

9 That kind of stuff?

10 A Yes, sir.

11 Q And you initialed,
12 you understood all that?

13 A Yeah.

14 Q Before you gave the
15 statement?

16 A Yes, sir.

17 Q Were you worried
18 about being arrested?

19 A Yes, sir. At the
20 time I had a bench warrant on me
21 for child support.

22 Q Okay. Did the
23 detectives threaten you in any way
24 about the statement?

25 A No, sir. They asked

CASSELMAN -- CROSS

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

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

8 A No, sir.

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

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

15 Q Magwood.

16 A Magwood.

17 Q Is that right?

18 A Yes, sir.

19 Q Is that right?

20 A Yes, sir.

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

23 THE COURT: Yes, sir.

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

CASSELMAN -- CROSS

1 little bit further: I want to get
2 a little more detail about when
3 Jeff, when Jason got out after the
4 big arrest. I mean the, the
5 D. U. S. with all the, all the
6 officers.

7 A Yes.

8 Q Do you remember
9 telling the Sheriff's deputies
10 when you talked to them that he
11 tried to tell you his version?

12 A Yes.

13 Q And he -- may I
14 approach the court reporter, your
15 Honor?

16 THE COURT: You may.

17 Q And that you should
18 tell the police that Jeff told you
19 that he killed a fellow? Do you
20 recall that?

21 A I don't recall.

22 MR. DAVIS: Okay. May
23 I approach the witness, your
24 Honor?

25 THE COURT: Yes.

CASSELMAN -- CROSS

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

4 A Yes, sir.

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

8 A Yes.

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

14 A Jason. Yes, sir.

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

18 A Okay. Yes, sir.

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

22 A Yeah.

23 Q Is that what it says?

24 A Yes, sir.

25 Q Okay. And that's

CASSELMAN -- CROSS

1 your statement and your
2 handwriting?

3 A Yes, sir.

4 Q Okay. So that was
5 what you told the Sheriff's
6 deputies back in August?

7 A Yes. That's what me
8 and Jason had talked about.

9 MR. DAVIS: Okay.

10 Thank you, Mr. Casselman. No
11 other questions. I appreciate
12 it.

13 MR. SIMPSON: Briefly,
14 your Honor.

15

16

17

18 REDIRECT EXAMINATION

19 BY MR. SIMPSON:

20 Q Jeremy, Jason, we've
21 met him. He's a nervous guy.

22 A Yes, sir.

23 Q He tried to get you
24 to, because you lived together --

25 MR. DAVIS: Objection.

CASSELMAN -- CROSS

1 Leading the witness, your
2 Honor.

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

6 A Yes, sir.

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

11 MR. DAVIS: Objection.

12 Leading the witness, your
13 Honor.

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

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

21 A No, sir.

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

25 A No, sir.

CASSELMAN -- CROSS

- 1 Q And your statement on
2 direct, you had a conversation
3 with this person at this table.
4 Correct?
- 5 A Yes, sir.
- 6 Q It involved a gun?
- 7 A Yes, sir.
- 8 Q And why did defendant
9 tell you he had gotten a gun?
- 10 A Why? I'm not sure
11 exactly.
- 12 Q Did he tell you?
- 13 A Oh, well, why he, he
14 had gotten a gun?
- 15 Q What did he tell you
16 about getting the gun?
- 17 A That he was scared.
18 He was in fear of his life. That
19 the man was coming to collect his
20 money.
- 21 Q And did he tell you
22 that this arose out of a drug
23 issue?
- 24 A Yes, sir.
- 25 Q And that's your only

CASSELMAN -- CROSS

1 involvement in this case.

2 Correct?

3 A That's it.

4 MR. SIMPSON: No

5 further questions, your Honor.

6 THE COURT: Mr. Davis.

7

8

9

10

11

12

13

RECROSS-EXAMINATION

14 BY MR. DAVIS:

15 Q You never saw the

16 gun?

17 A No, sir.

18 MR. DAVIS: Thank you.

19 That's all I have, your Honor.

20 THE COURT: Mr.

21 Casselman, you may step down

22 and you may be excused.

23 THE WITNESS: Thank

24 you, your Honor.

25 THE COURT: Call your

* Please print ~~(000)~~
from redacted copy.
Due today. Thx.

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Marlboro County

William H. Seals, Jr., Circuit Court Judge

KENDALL GREEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-206206

APPENDIX

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

VOLUME TWO
PAGES 501-530

1 next witness.

2 MR. SIMPSON: State
3 calls Melissa Hollander.

4 Your Honor, may this
5 witness be excused?

6 THE COURT: Any
7 objection to him leaving the
8 courthouse?

9 MR. DAVIS: No, your
10 Honor.

11 THE COURT: You may be
12 excused.

13

14

15

16

17

MELISSA ROSE

18

HOLLANDER, having been called

19

as a witness, is duly sworn

20

and testifies as follows:

21

DIRECT EXAMINATION BY

22

MR. SIMPSON:

23

THE COURT: Mr.

24

Simpson, your witness.

25

MR. SIMPSON: Thank

HOLLANDER -- DIRECT

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

4 May I approach, your
5 Honor?

6 **THE COURT:** You may.

7 (Whereupon, there was
8 an off-the-record bench
9 conference.)

10 **MR. SIMPSON:** I
11 apologize for that.

12 **Q** Melissa, how are you
13 today?

14 **A** Good.

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

17 **A** Not really.

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

21 **A** Not as much as I was
22 yesterday.

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

25 **A** Yes.

HOLLANDER -- DIRECT

1 Q Can you explain
2 the -- to the jury a little bit
3 about your background; how old are
4 you, where are you from, where you
5 grew up.

6 A I'm twenty-five years
7 old. I grew up in Charleston,
8 South Carolina. I'm an artist. I
9 worked with a hair stylist for ten
10 years I'm a personal fitness
11 trainer and I have animals, pit
12 bulls. I raise pit bulls.

13 Q Thanks, Melissa. Do
14 you recognize anyone sitting here
15 at the defense table?

16 A Yes, sir.

17 Q And who is that?

18 A That would be Jeff
19 Herrmann.

20 Q Is that the defendant
21 sitting in the middle?

22 A Yes, sir.

23 Q Okay. Can you
24 explain to the jury how you know
25 Jeffrey Herrmann?

HOLLANDER -- DIRECT

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

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

11 A September of 2007.

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

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

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

HOLLANDER -- DIRECT

1 A Yes.

2 Q Okay. Could you
3 describe a little to the jury
4 about your relationship. Where
5 did you meet, et cetera.

6 A We met at Wild Wings
7 in Mount Pleasant. Well that's
8 where we started hanging out. We
9 became good friends and started
10 dating and we were just kind of
11 inseparable after that and I even
12 moved in with him like two months
13 of being with him.

14 Q When you say you
15 moved in together, where did you
16 live together?

17 A Well, he was already
18 living on James Island and so I
19 moved in with him on James Island.

20 Q And how long did you
21 live together on James Island?

22 A Let me think about
23 that for one second.

24 Q Sure. Approximately.

25 A Maybe four months.

HOLLANDER -- DIRECT

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

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

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

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

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

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

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

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

HOLLANDER -- DIRECT

1 Lauderdale?

2 A I want to say March
3 but I'm not a hundred per cent.

4 Q Would that be March
5 of 2008?

6 A Yes.

7 Q Okay. I want to take
8 you now, Melissa, to July
9 twenty-first, 2008.

10 A Uh-huh.

11 Q First does that
12 particular date have a certain
13 significance to you?

14 A A lot.

15 Q And why is that?

16 A Well, that's -- I --
17 we hated Florida. I hated
18 Florida. I wanted to move back
19 home and July twenty-first is my
20 birthday so I said all I want for
21 my birthday is to go home.

22 Q Okay. And did you
23 communicate to Mr. Herrmann that
24 you didn't like Florida, you
25 wanted to come back to Charleston?

HOLLANDER -- DIRECT

1 A Yes.

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

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

7 Q On July twenty-first?

8 A Yes.

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

13 A No.

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

18 A Yes.

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

23 THE COURT: The record
24 will reflect that.

25 You may continue, Mr.

HOLLANDER -- DIRECT

1 Simpson.

2 Q Without talking, did
3 you hear any of the conversation
4 on the phone?

5 A No. I didn't hear
6 any of the conversation. He
7 was -- I was packing the car and
8 he kind of walked away.

9 Q After this phone call
10 did Jeffrey Herrmann's demeanor
11 change?

12 A Yes.

13 Q In what way?

14 A He was very agitated,
15 very upset. Didn't -- he wanted
16 to be alone for a few minutes I
17 could tell, and so I left him
18 alone for a few minutes before I
19 started prying.

20 Q Before you started --

21 A Prying.

22 Q Okay. And you guys
23 are dating at the time?

24 A Yeah. I wanted to
25 know what was wrong.

HOLLANDER -- DIRECT

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

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

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

15 A Yes.

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

18 A Like thirteen hours.

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

22 A Yes.

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

HOLLANDER -- DIRECT

1 A He said it was about,
2 and he didn't give me any names,
3 but I guess almost a decade prior
4 to this particular day there was
5 a, a man that owed a lot of money
6 to, you know, in years before that
7 they were into some drugs I guess,
8 drug deal gone bad. He had owed a
9 lot of money to this man and was
10 not able to pay him and, and in
11 self-defense he, he shot him.

12 Q He told you that in
13 self-defense he shot him?

14 A Yes. This is what
15 Jeff told me.. Yes.

16 Q Did he tell you what
17 he did after he shot him, the man?

18 A Yes.

19 Q And what was that?

20 A To, to my best
21 ability, I'm going to say it in
22 the right words, he I believe was
23 by himself, this was again --

24 Q According to Jeff?

25 A Yes. He was by

HOLLANDER -- DIRECT

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

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

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

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

13 A I believe the trunk.

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

17 A Yes.

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

21 MR. DAVIS: Objection,
22 your Honor.

23 A A camp ground?

24 THE COURT: Hold on
25 one second.

HOLLANDER -- DIRECT

1 MR. DAVIS: Objection,
2 your Honor, as previously
3 noted. May we approach?

4 THE COURT: You may.

5 (Whereupon, there was
6 an off-the-record bench
7 conference.)

8 THE COURT: Your
9 objection is notes for the
10 record. Overruled.

11 MR. DAVIS: Thank you,
12 your Honor.

13 Q Melissa, just to kind
14 of catch us up where we left off,
15 you had stated that the defendant
16 had indicated that the body was
17 put in the trunk and pushed in the
18 creek?

19 A Yes, sir.

20 Q Did he indicate to
21 you what he did after pushing the
22 car into the creek?

23 A I don't know the
24 order of these events but he went
25 to I guess where the guy was

HOLLANDER -- DIRECT

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

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

12 A No.

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

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

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

22 A Yes.

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

HOLLANDER -- DIRECT

1 than destroying evidence?

2 A Money.

3 Q Did he indicate to
4 you that any money was located?

5 A Yes.

6 Q And anything else
7 that was located?

8 A I don't think so. I
9 think it was just money.

10 MR. SIMPSON: Okay.

11 Melissa, thank you very much.
12 I'm just going to ask you to
13 answer any questions of Mr.
14 Davis.

15 A Thank you.

16 THE COURT: Mr. Davis.

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

19

20

21

22

23

24

CROSS-EXAMINATION BY

25

MR. DAVIS:

HOLLANDER -- CROSS

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

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

7 Q That's where you met
8 him?

9 A Right.

10 Q His brother, Zack,
11 works there?

12 A Yes, sir.

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

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

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

24 A Yes.

25 Q Okay. When you moved

HOLLANDER - - CROSS

1 in with him you all originally
2 were living on James Island for a
3 while?

4 A Yes.

5 Q All right. You guys
6 were kind of home bodies, stayed
7 at home, cooked out, watched
8 movies, that kind of thing.
9 Right?

10 A Uh-huh. Yes.

11 Q And in May of '08 you
12 moved to Florida. Right?

13 A Yes.

14 Q That's North
15 Lauderdale?

16 A Yes.

17 Q That's where your now
18 deceased or then - - was it then
19 deceased?

20 A It was then.

21 Q Grandmother?

22 A Yes.

23 Q She had, she had a
24 condo there. Right?

25 A Yes.

HOLLANDER -- CROSS

- 1 Q And you all were able
2 to move into there.
- 3 A Yes.
- 4 Q Right?
- 5 A Yes.
- 6 Q And Jeff got a job
7 down there for a while. Right?
- 8 A Yes.
- 9 Q He gets laid off.
10 Right?
- 11 A Yes.
- 12 Q And then it's coming
13 up to your birthday on the
14 twenty-first of July. Right?
- 15 A Yes.
- 16 Q Okay. 2008. It's
17 not appropriate to ask what your
18 age -- but what age were you
19 turning July twenty-first, '08?
- 20 A Twenty-three.
- 21 Q And it was that day
22 that you wanted to come back home
23 and see family and friends and
24 that kind of thing and that's why
25 you all were packing and coming

HOLLANDER -- CROSS

1 back?

2 A Yes. I, I didn't
3 have a very good job and then he
4 got laid off and it just wasn't
5 working out so I wanted to come
6 home.

7 Q And it's supposedly
8 on this drive home that he
9 confesses this whole murder thing
10 to you. Right?

11 A I forced it out of
12 him.

13 Q Okay. And so he, he
14 said he did it all by himself.
15 Right?

16 A Yes.

17 Q He said he shot the
18 guy several times and removed all
19 the bullets from the body and
20 dumped the car. Right?

21 A All but one and I
22 don't know how many times this man
23 was shot or anything like that.

24 Q Okay. But I'm not
25 asking you what you know -- I'm

HOLLANDER -- CROSS

- 1 asking you, you testified Jason
2 told you that. Right?
- 3 A That -- that --
- 4 Q You testified that
5 Jason told you that. Right?
- 6 A That --
- 7 Q You testified that
8 Jason told you he shot him several
9 times. Right?
- 10 A Yes.
- 11 Q Okay. And he also --
12 you're claiming Jason also told
13 you he removed the bullets?
- 14 A That, that, that --
15 Jeff --
- 16 Q I'm sorry. Jeff.
17 I'm sorry.
- 18 A Yes.
- 19 Q Jeff also told you he
20 removed the bullets?
- 21 A Yes. All except for
22 maybe one.
- 23 Q Okay. And then he,
24 Jeff, told he dumped the car?
- 25 A Yes.

HOLLANDER - - CROSS

1 Q All right. And he
2 did all that by himself is what
3 you're saying Jeff told you in the
4 car ride here from North
5 Lauderdale. Right?

6 A Yes.

7 Q And this is after he
8 has told you "I just got word that
9 the police are looking for me."
10 Right?

11 A Yes.

12 Q That's here in the
13 Charleston area?

14 A Yes.

15 Q About a missing
16 person?

17 A Yes.

18 Q Now, isn't it really
19 the truth that you alls
20 relationship wasn't doing well in
21 July of '08?

22 A Yes. That's true.

23 Q In fact the night
24 before you'd been out all night
25 partying?

HOLLANDER -- CROSS

- 1 A I'm sorry?
- 2 Q The night before
- 3 you'd been out all night partying?
- 4 A For my birthday?
- 5 Q Yes.
- 6 A No. When we got back
- 7 into Charleston we stayed at my
- 8 house.
- 9 Q No. I'm asking down
- 10 in Florida the night before you
- 11 came back you were out all night
- 12 without Jeff.
- 13 A Oh. Yes.
- 14 Q He didn't take that
- 15 too well.
- 16 A No.
- 17 Q He was going to break
- 18 up with you on the twenty-first.
- 19 A Okay.
- 20 Q I want you to, I want
- 21 you to tell the jury if that's
- 22 accurate or not.
- 23 A I didn't know
- 24 anything about that, but if he was
- 25 then --

HOLLANDER -- CROSS

1 Q He didn't tell you
2 that he was going to break up with
3 you on the twenty-first?

4 A No. Not -- no, sir.
5 Not that I remember.

6 Q In North Lauderdale
7 he didn't tell you I'm done, I'm
8 going home, and if you want to get
9 in the car go with me that's fine,
10 but we're done?

11 A No. I apologize.

12 Q Now, when you got
13 back to Charleston your testimony
14 is that the next day, July
15 twenty-second, you break up with
16 him. Is that right?

17 A Yes, sir.

18 Q Okay. But you didn't
19 really believe this story that he
20 had told in the drive up, did you?

21 A If it was true or
22 not, what I believed didn't really
23 matter. It was --

24 Q Did you misunderstand
25 the question, ma'am?

HOLLANDER - - - CROSS

1 A Possibly.

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

4 A I -- not that story.

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

9 A Yes.

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

14 A Yes.

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

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

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

24 A Yes, sir.

25 MR. DAVIS: If I may

HOLLANDER - - CROSS

1 approach and have this marked,
2 your Honor.

3 THE COURT: You may.

4 (Whereupon, Miss
5 Hollander's statement of
6 August 11, 2008 previously
7 referred to is received and
8 marked as Defendant's Exhibit
9 No. 9 for identification.)

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

13 THE COURT: You may.

14 Q I'm going to show you
15 what's been marked as defendant's
16 exhibit number nine for
17 identification purposes only and
18 I'm going to ask you is that your
19 signature at the bottom?

20 A Yes, sir.

21 Q Okay. Does that
22 appear to your handwriting?

23 A It looks like my
24 handwriting.

25 Q Okay. And your name

HOLLANDER -- CROSS

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

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

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

11 A Yes.

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

14 A Yes.

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

18 A Yes, sir.

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

23 A Yes, sir.

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

HOLLANDER - - CROSS

1 A I, I spoke to Keith
2 Hair. I don't remember anybody
3 else's name. I apologize.

4 Q Okay. And when would
5 that have been?

6 A In - - on and off in
7 the month of August of '08.

8 Q Okay. Do you believe
9 that Mr. Hair was one of the
10 detectives you spoke to on this
11 statement or do you recall?

12 A I don't recall.

13 Q Okay. I'm going to
14 ask - - if you remember - - the
15 name, Detective Casale. Do you
16 remember that name?

17 A No, I don't.

18 Q Okay. Whatever
19 detective took this statement, do
20 you recall giving this statement
21 August eleventh, '08?

22 A Yes, sir.

23 Q All right. And you
24 knew what they were wanting to
25 talk to you about. Right?

HOLLANDER -- CROSS

1 A Yes.

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

5 A Yes, sir.

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

10 A Yes.

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

16 A Yes.

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

23 A Yes.

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

HOLLANDER -- CROSS

1 A No, I didn't.

2 MR. DAVIS: May I
3 approach and have it marked,
4 your Honor?

5 THE COURT: You may.

6 (Whereupon, Miss
7 Hollander's statement of
8 August 12, 2008 previously
9 referred to is received and
10 marked as Defendant's Exhibit
11 No. 10 for identification.)

12 MR. DAVIS: May I
13 approach the witness, your
14 Honor?

15 THE COURT: You may.

16 Q I'm going to show you
17 what's been marked as defendant's
18 exhibit number ten for
19 identification purposes. Again is
20 that your signature at the bottom?

21 A Yes, it is.

22 Q And again it says
23 Charleston County Sheriff's Office
24 statement at the top?

25 A Yes.

HOLLANDER -- CROSS

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

HOLLANDER -- CROSS

1 pretty big deal. Yes.

2 Q But you forgot to
3 mention it in your first
4 statement. Right? It's not --
5 it's not in your first statement.

6 A Can I say something,
7 please?

8 Q No. I'll let you
9 answer fully but it's not in your
10 first statement, is it?

11 A No, it's not.

12 Q Okay.

13 A It's an embarrassing
14 thing but unfortunately that time
15 in my life I was on a lot of
16 drugs, and I was also prescribed
17 to lot of Xanax. I was not
18 thinking clearly. I was not
19 thinking rationally. I was also
20 just turned twenty-three years
21 old. I was extremely scared and
22 if it seems a little -- my
23 statement seems a little distorted
24 or if I say I don't remember and
25 it's something that I wrote, I'm a

HOLLANDER -- CROSS

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

7 Q Thank you.

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

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

18 A Yes.

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

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

24 Q Is that for
25 schizophrenia?

HOLLANDER -- CROSS

1 A No.

2 Q So -- I'm sorry.

3 What medication are you supposed
4 to be taking?

5 A I take Klonopin. I
6 need it for sleep. And I have in
7 the past taken Adoral for AHDD.

8 Q And that's the
9 medication you're no longer
10 taking?

11 A Correct.

12 Q Okay.

13 A At the time I was
14 taking Xanax but that was too
15 strong, so --

16 Q Okay.

17 A That's why my memory
18 is a little distorted.

19 Q Meaning in July of
20 2008?

21 A Yes, sir.

22 Q Okay. For whatever
23 reason the next time, the second
24 statement also talks about using
25 that money to keep people quiet,

HOLLANDER -- CROSS

- 1 to pay people off. Correct? I
2 need you to answer out loud.
- 3 A I'm sorry.
- 4 Q I'm sorry.
- 5 A I didn't even know.
6 What was the question? I
7 apologize.
- 8 Q In the second
9 statement you indicate that the
10 money was used to keep people
11 quiet. Is that right?
- 12 A That's what I was
13 told. Yes, sir.
- 14 Q My question is, in
15 your second statement?
- 16 A Yes, sir.
- 17 Q And again that's not
18 mentioned in the first statement.
19 Correct?
- 20 A Yes.
- 21 Q One of your oldest
22 friends is Lauren Hutchinson.
23 Right?
- 24 A Yes, sir.
- 25 Q And you've spoken

HOLLANDER -- CROSS

1 with her about this whole ordeal.
2 Right?

3 A In the past, yes.

4 MR. DAVIS: Okay. Miss
5 Hollander, if you'll give me
6 just one second. That may be
7 all the questions I have, your
8 Honor. If I could have a
9 moment.

10 Your Honor, if we
11 could approach for one matter
12 and then I don't believe I
13 have any further questions.

14 (Whereupon, there was
15 an off-the-record bench
16 conference.)

17 MR. DAVIS: Your Honor,
18 I have no other questions at
19 this time.

20 THE COURT: Thank you.

21 Mr. Simpson,
22 redirect.

23

24

25

REDIRECT EXAMINATION

HOLLANDER -- REDIRECT

1 BY MR. SIMPSON:

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

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

9 A Yes.

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

12 A Oh...

13 Q Was it recently?

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

19 Q Socially.

20 A Oh, is that right?
21 Is that right what he was
22 referring to?

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

HOLLANDER -- REDIRECT

1 A Yes. I believe so.

2 Q Okay.

3 A Please don't put me
4 under oath on that one. I might
5 be wrong.

6 Q That's according to
7 Keith. He had mentioned --

8 A Yes.

9 Q -- meeting you
10 previously.

11 A Yes.

12 Q Okay. Do you know a
13 person named Jason Cumbee?

14 A I've never met him.
15 I just know the name.

16 Q Okay. Shanna Cumbee?

17 A I met her once.

18 Q And that was here?

19 A Yes.

20 Q Okay. In, in your
21 cross Mr. Davis referenced some
22 problems. The fact that, that at
23 the time you drove back from Fort
24 Lauderdale your and the
25 defendant's relationship wasn't as

HOLLANDER -- REDIRECT

1 good as it had been previously.

2 Is that correct?

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

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

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

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

22 A Yes, sir.

23 Q Put him in the trunk?

24 A Yes, sir.

25 Q That he went to his

HOLLANDER -- REDIRECT

1 residence which was an R. V.

2 A Yes.

3 Q And the car was
4 pushed in the river. Is that
5 correct?

6 A Yes.

7 MR. SIMPSON: I have
8 nothing further, your Honor.

9 THE COURT: Mr. Davis,
10 recross.

11 MR. DAVIS: Just
12 briefly, your Honor.

13 THE WITNESS: Am I
14 allowed to talk? It's nothing
15 --

16 THE COURT: Hold on
17 one second. Mr. Davis, it's
18 recross, okay?

19 THE WITNESS: I'm
20 sorry. I've never done this
21 before.

22 THE COURT: Just
23 answer any questions Mr. Davis
24 has for you.

25 RE-CROSS-EXAMINATION

HOLLANDER - - RECROSS

1 BY MR. DAVIS:

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

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

6 Q You met Shanna Cumbee
7 yesterday. Right?

8 A Yes, sir.

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

12 A Yes.

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

17 A Yes, sir.

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

21 A Yes, sir.

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

24 A Yes, sir.

25 MR. DAVIS: Miss

1 Hollander, that's all the
2 questions I have. Thank you.

3 THE COURT: Miss
4 Hollander, you may be excused
5 from the courtroom but I need
6 to you wait out in the hallway
7 for just a few moments.

8 THE WITNESS: Okay.

9 THE COURT: Thank you.
10 You may step down.

11 Ladies and gentlemen
12 of the jury, we have reached
13 an appropriate time for us to
14 break for the evening. Please
15 remember my admonition. Do
16 not discuss this case with
17 anyone. That includes your
18 fellow jury members as well as
19 friends and family members
20 when you get home. Do not do
21 any independent research. Do
22 not read, watch, listen to any
23 news accounts regarding this
24 case should there be any. And
25 do not do any independent

1 **THE COURT:** Thank you,
2 Mr. Hair.

3 Anything further
4 before we bring in the jury?

5 **MR. SIMPSON:** Nothing
6 from the State, your Honor.

7 **MR. DAVIS:** Nothing
8 from the defense, your honor.

9 **THE COURT:** All right.
10 Let's bring in the jury.

11 (Whereupon, the jury
12 enters the courtroom at 9:20
13 a.m.)

14 **THE COURT:** Good
15 morning, ladies and gentlemen.
16 I hope you all had a restful
17 and wonderful evening.

18 Mr. Simpson, please
19 call your next witness.

20 **MR. SIMPSON:** Thank
21 you, your Honor.

22 Your Honor, the State
23 calls Sergeant Richardson of
24 Mount Pleasant. Officer
25 Richardson.

RICHARDSON - - DIRECT

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

5 DIRECT EXAMINATION BY
6 MR. SIMPSON:

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

10 A Mount Pleasant Police
11 Department.

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

14 A I'm a sergeant.

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

19 A Yes, sir.

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

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

RICHARDSON -- DIRECT

1 papers and take them into custody.

2 Q And in attempting to
3 find an individual would it be an
4 obvious place to look is any known
5 address that you may have?

6 A Yes. We start with
7 the address on the warrant.

8 Q Do you remember
9 serving a bench warrant on July
10 second 2008?

11 A Yes, sir.

12 Q And on what
13 individual?

14 A I can't recall his
15 name, the name of the individual.
16 I recall the place.

17 Q And what was the
18 place?

19 A It's McClellanville.

20 Q And you think if you
21 heard the name then that it would
22 refresh your recollection?

23 A Yes.

24 Q Does the name Jason
25 Cumbee --

RICHARDSON -- DIRECT

1 A Yes.

2 Q -- ring a bell?

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

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

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

16 A On different
17 individuals.

18 Q Correct?

19 A Correct.

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

23 A Just a single
24 warrant.

25 Q Okay.

RICHARDSON -- DIRECT

1 A We went out to the
2 area, McClellanville, trying to
3 locate the address that's on the
4 warrant. We located the address.
5 We went to the address in question
6 here. Knocked on the door, myself
7 and Officer Mulvey, knocked on the
8 door. Met with a female at the
9 door. Asked her if she knew the
10 subject, Mr. Cumbee. She said
11 yes, it was her, his, her son and
12 that he had moved out and was
13 living with his grandmother in
14 North Charleston. We heard some
15 movement in the house so we didn't
16 quite believe the story. So we
17 backed out and we went back down
18 the road and we called for
19 additional units, Charleston
20 County Police Department, which is
21 their jurisdiction, and asked them
22 to assist us because we believed
23 the subject was in the house. We
24 went back to the house. Pulled
25 up, knocked on the door again, and

RICHARDSON - - DIRECT

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

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

9 A Okay.

10 Q What was the
11 subject's demeanor?

12 A Panic. He's scared.

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

17 A Not at all. Not at
18 all.

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

22 A Yes, I did.

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

25 A I would say about

RICHARDSON -- DIRECT

1 forty minutes, thirty, forty
2 minutes.

3 Q And without going
4 into the subject of the
5 conversation, were there
6 conversations in the car?

7 A Yes. Conversations.

8 Q As a result of those
9 conversations did you deem it
10 appropriate to, for lack of a
11 better phrase, pass Mr. Cumbee on
12 to another officer once you
13 arrived at the Mount Pleasant
14 Police Department?

15 A Yes. During the
16 conversation we decided it's best
17 we have somebody speak with Mr.
18 Cumbee.

19 Q Okay. And whom did
20 Mr. Cumbee speak to?

21 A Our investigation
22 unit. One of several people. I'm
23 not sure exactly which one. We
24 took him into investigation and
25 asked that they sit down and talk

RICHARDSON -- DIRECT

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

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

6 A Yes.

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

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

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

15 THE COURT: Yes, sir.

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

21

22

23

24

25

RICHARDSON -- CROSS

1 CROSS-EXAMINATION BY

2 MR. DAVIS:

3 Q I'm sorry. What
4 rank, Officer?

5 A I'm a sergeant.

6 Q Okay. Sergeant.
7 Sergeant Richardson, to affect the
8 arrest -- this is a bench warrant.
9 Right?10 A Yes. I believe it
11 was.12 Q Do you recall whether
13 it was or not?14 A It was a bench
15 warrant. I believe. Yes, sir.16 Q And to affect that,
17 to affect that arrest you would
18 have had the warrant with you?

19 A Yes.

20 Q Okay.

21 MR. DAVIS: May I
22 approach the court reporter,
23 your Honor?24 THE COURT: You may.
25 (Whereupon, the bench

RICHARDSON -- CROSS

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

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

8 THE COURT: You may.

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

16 A Yes.

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

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

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

25 A Correct.

RICHARDSON -- CROSS

1 Q Okay. You go to the
2 house. You ask for Mr. Cumbee,
3 and forgive me. Did you say it
4 was his mother that answered the
5 door?

6 A Yes. We were greeted
7 by the mother there.

8 Q Okay. And that lady
9 turned you away or said he wasn't
10 there. Right?

11 A Correct.

12 Q But because of some
13 stuff you heard in your experience
14 you, you had reason not to believe
15 that. Correct?

16 A Correct.

17 Q And this was up in
18 McClellanville?

19 A Yes. In that area.
20 You know, every area has some --
21 they call it different areas but I
22 call it McClellanville.

23 Q Generally speaking?

24 A Generally speaking,
25 McClellanville.

RICHARDSON -- CROSS

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

6 A Correct.

7 Q Correct?

8 A Correct.

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

12 A Correct.

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

16 A Correct.

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

20 A Right.

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

24 A Exactly.

25 Q Now, a bench warrant

RICHARDSON -- CROSS

1 is different than a normal arrest
2 warrant. Right?

3 A Yeah. It has some
4 difference to it, yes.

5 Q Okay. A bench
6 warrant is from a judge. Correct?

7 A Correct.

8 Q For -- and let me
9 back up for a second. You're a
10 sergeant now. You've moved up in
11 rank. Right?

12 A Right.

13 Q You've been with
14 Mount Pleasant how long now?

15 A Twenty years.

16 Q Twenty years. All
17 right. And so if this is the town
18 of Mount Pleasant the bench
19 warrant would have been from one
20 of those municipal judges over
21 there?

22 A Correct.

23 Q Okay. You're
24 familiar, this was -- do you
25 recall the issuance date?

RICHARDSON -- CROSS

1 A State?

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

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

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

8 A It should be on the
9 form.

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

12 THE COURT: You may.

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

16 A Yes.

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

19 A Yes.

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

23 A In '08. Correct.

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

RICHARDSON - - CROSS

1 June 2006 bench warrant is being
2 served in July of 2008?

3 A Number one, we
4 couldn't probably find him. I
5 mean it's, it's lots of warrants
6 still on file. Most time we try
7 to make a phone call and ask that
8 you come in. They don't come in
9 and since then until somebody can
10 actually go out and look for them.

11 Q There's a bunch of
12 these bench warrants, right, for
13 people that don't show up in
14 court?

15 A Exactly.

16 Q People don't pay the
17 fines?

18 A Correct.

19 Q And so it just takes
20 a while?

21 A Takes a while.

22 MR. DAVIS: Sergeant,
23 thank you. No other
24 questions.

25 MR. SIMPSON: Just

RICHARDSON -- REDIRECT

1 briefly, your Honor.

2

3

4

5

6

REDIRECT EXAMINATION

7

BY MR. SIMPSON:

8

Q Now, Sergeant

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

16

A It was a D. U. S.

17

third.

18

Q And D. U. S. That is

19 essentially driving while your
20 license is suspended?

21

A Suspended. Correct.

22

Q Okay. And in your

23 twenty years of law enforcement
24 experience, knowing what you know
25 about a wide range of criminal

RICHARDSON -- REDIRECT

1 offenses, would you characterize a
2 D. U. S. as a major criminal
3 offense?

4 A No.

5 Q Okay. And we
6 discussed how it did take some
7 time to serve this warrant?

8 A Correct.

9 Q Does your agency in
10 looking for people and serving
11 these warrants prioritize based on
12 the importance of a, of a warrant?

13 A Yes. We do.

14 Q And that would have
15 something to do with the severity
16 of the underlying charges?

17 A Exactly.

18 Q Okay. And could it
19 be that the warrant was not served
20 for a while because obviously you
21 officers are very busy and this is
22 a low priority?

23 A Yes.

24 MR. SIMPSON: Okay. I
25 have nothing further, your

RICHARDSON -- RECROSS

1 Honor.

2 THE COURT: Mr. Davis.

3

4

5

6

7

8

9 RECROSS-EXAMINATION

10 BY MR. DAVIS:

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

14 A Third offense.

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

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

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

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

23 MR. DAVIS: Thank you,

24 Sergeant.

25 THE COURT: Sergeant,

RICHARDSON - - RE CROSS

1 you may step down. You're
2 excused from the court house.

3 THE WITNESS: Thank
4 you.

5 THE COURT: Call your
6 next witness.

7 MR. SIMPSON: Thank
8 you, your Honor. State calls
9 Detective Josh Cheney.

10

11

12

13

14

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18

JOSHUA CHENEY, having
been called as a witness, is
duly sworn and testifies as
follows:

19

DIRECT EXAMINATION BY

20

MR. SIMPSON:

21

Q Good morning,

22

Detective Cheney. How are you?

23

A Good. How are you?

24

Q I think this kind of

25

answers this question but what,

CHENEY -- DIRECT

1 what's your occupation?

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

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

7 A Approximately six
8 years.

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

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

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

CHENEY -- DIRECT

1 normally handle?

2 A Usually.

3 Q Usually. Okay. Do
4 you recall being asked by a
5 Sergeant Richardson to speak with
6 someone on July second, 2008?

7 A I do.

8 Q And who was that
9 individual?

10 A His name was Jason
11 Cumbee.

12 Q Okay. Can you
13 explain to the jury a little bit
14 about his demeanor when he sat
15 down.

16 A His demeanor was that
17 he -- he had I guess informed
18 Sergeant Richardson and as it got
19 relayed to me that he wanted to
20 tell us about something that we
21 should know about, about a
22 possible murder or a possible --
23 where a body was located at.

24 Q Okay. Did you in
25 fact take a statement from Mr.

CHENEY - - DIRECT

1 Cumbee?

2 A I did.

3 Q A written statement?

4 A I did.

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

8 THE COURT: You may.

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

14 A I do.

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

18 A That is correct.

19 Q On July second, 2008?

20 A That's correct.

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

CHENEY -- DIRECT

1 A That's correct. We
2 notified Charleston County based
3 on the location of the lead.

4 Q The alleged location.
5 Is that correct?

6 A That's correct.

7 Q And it was your
8 understanding that that perhaps
9 was outside of the Mount Pleasant
10 jurisdiction?

11 A That's correct.

12 Q Do you remember who
13 responded to this assist call from
14 your agency in Charleston County?

15 A I'm sorry. Can you
16 repeat the question?

17 Q Do you, do you
18 remember the specific officers
19 that responded to this call for
20 Charleston County
21 Sheriff's Office.

22 A I believe it was
23 Detective Casale and Detective
24 Magwood I believe.

25 MR. SIMPSON: Okay.

CHENEY -- CROSS

1 Court's indulgence.

2 THE COURT: Yes, sir.

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

7 THE COURT: Mr. Davis.

8

9

10

11

12

13

CROSS-EXAMINATION BY

14

MR. DAVIS:

15

Q I believe just one

16

question, Detective. In that

17

statement you not only talked

18

about what you've already

19

testified to, he also gave you

20

information about some copper

21

thefts as well. Correct?

22

A That's correct.

23

MR. DAVIS: Thank you,

24

Detective.

25

MR. SIMPSON: State has

1 no redirect.

2 THE COURT: Any
3 objection to this witness
4 being excused?

5 MR. DAVIS: No
6 objection.

7 MR. SIMPSON: None from
8 the State.

9 THE COURT: Detective
10 Cheney, you may step down.
11 You're excused.

12 Call your next
13 witness.

14 MS. CARDILLO: The
15 State calls Lieutenant Jack
16 Scarborough.

17 MR. DAVIS: Your Honor,
18 may we approach while this
19 witness is coming in?

20 THE COURT: You may.

21 (Whereupon, there was
22 an off-the-record bench
23 conference.)

24 THE COURT: Mr. Davis,
25 the record will reflect that

SCARBOROUGH -- DIRECT

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

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

6

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

DIRECT EXAMINATION BY

MS. CARDILLO:

Q Good morning,
Lieutenant Scarborough.

A Good morning.

Q That better?

A Yes. Thank you.

Q You're welcome.

Lieutenant
Scarborough, where are you
employed?

SCARBOROUGH -- DIRECT

1 A I'm with the
2 Charleston County
3 Sheriff's Office.

4 Q And how long have you
5 been with the Charleston County
6 Sheriff's Office?

7 A I've been with
8 Charleston County for twelve years
9 and I've been in law enforcement
10 for twenty-four years.

11 Q What law enforcement
12 agencies?

13 A I was with the City
14 of Charleston Police Department
15 for thirteen years.

16 Q Now what, what areas
17 at the the Charleston County
18 Sheriff's Office have you worked
19 in or been employed at, as?

20 A I worked in the
21 patrol division and I've also
22 worked as a detective. I've also
23 worked in court security as a
24 sergeant, and when I made
25 sergeant -- when I made lieutenant

SCARBOROUGH - - DIRECT

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

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

10 A Yes, ma'am, I did.

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

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

SCARBOROUGH -- DIRECT

1 system to the records division and
2 then it ends up upstairs in the
3 detective office and then when it
4 arrives in the detective office
5 the detective sergeant decides
6 whether or not there's -- the
7 cases are assigned, which all
8 missing persons cases naturally
9 are assigned.

10 Q And what is done at
11 that point when it's assigned to a
12 detective?

13 A Naturally the first
14 thing you do is you try to contact
15 the complainant, the original
16 person that called in the missing
17 person, try to contact them, see
18 if they've heard from them. A lot
19 of times it's a, it's a
20 misunderstanding. Somebody's gone
21 out of town, things of that
22 nature, and, and once they've
23 done, once we've done that, once
24 we contacted them, if they said
25 that they haven't seen or heard

SCARBOROUGH -- DIRECT

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

SCARBOROUGH -- DIRECT

1 identity, and they met with some
2 other type of demise.

3 Q Now, is it ever
4 registered at a national level,
5 level that somebody is missing?

6 A Yes. I'm sorry. I
7 skipped over part, the most
8 important part. It's entered into
9 N. C. I. C.

10 Q Which is what?

11 A The National Crime
12 Information Center, which is a
13 nationally based --
14 internationally based now data
15 base where you load information
16 and it goes out to all the
17 jurisdictions throughout the
18 United States and also beyond and
19 gives them the information of what
20 we're looking for and the person
21 and it goes from there.

22 Q So let me ask you.
23 Were you with the Sheriff's -- I
24 thing you said you've been with
25 the Sheriff's Office for twelve

SCARBOROUGH -- DIRECT

1 years?

2 A Yes, ma'am.

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

5 A Yes, ma'am.

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

8 A Yes, ma'am.

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

12 A Yes, ma'am.

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

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

18 Q And you were assigned
19 this case?

20 A Yes, ma'am.

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

24 A Basically exactly
25 what I stated previously. I

SCARBOROUGH -- DIRECT

1 received the information about the
2 case, and I notified the, got in
3 touch with the person that
4 initially notified us that the
5 person was missing and then we
6 basically put everything in motion
7 from there. He was actually -- he
8 had been charged with ABWIK, he
9 had been involved in a stabbing in
10 North Charleston we so naturally
11 contacted that jurisdiction and
12 found out, you know, what had
13 happened with the trial, if it had
14 gone to trial, if it had been
15 expunged, and in talking to the
16 detective and also the, the
17 victim's attorney, Tony O'Neill,
18 it was determined that the person
19 never went to trial and that the
20 case had actually been expunged
21 and dismissed.

22 Q Now did you ever
23 actually find Ali Sarhan from your
24 missing person investigation?

25 A No, ma'am.

SCARBOROUGH -- DIRECT

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

6 A On July the second?

7 Q Of 2008.

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

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

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

SCARBOROUGH - - - DIRECT.

1 type of waterway or any type of
2 evidence or anything like that
3 within Charleston County, and also
4 throughout the state. Anything
5 that's underwater we pretty much
6 go get if or attempt to go get it.

7 Q Now, did you
8 receive -- well, did you respond
9 to an area on July second of 2008
10 for recovery?

11 A For an investigation.
12 Yes, ma'am.

13 Q Oh, I'm sorry. For
14 an investigation.

15 A Yes, ma'am.

16 Q Please explain why
17 you responded. What was the
18 reason?

19 A The reason was I was
20 contacted by the C. I. D. which is
21 the Criminal Investigation
22 Division, which is the detective
23 office, in reference to an ongoing
24 investigation, that they had been
25 notified of a person of interest

SCARBOROUGH - - DIRECT

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

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

25 A Well, naturally it's

SCARBOROUGH -- DIRECT

1 all according to the
2 circumstances. It's all according
3 to the waterway and if it's a
4 pond, what we refer to as generic,
5 there's no, no tide or anything
6 like that, no current, so I
7 minimize the amount of the team I
8 would call out.

9 What it initially was
10 on this call, I drove out there to
11 do reconnaissance with the -- I
12 met with the detectives. They had
13 a gentleman in custody and he was
14 actually showing them locations
15 where a vehicle had been placed in
16 the water. During the
17 reconnaissance I determined that
18 one of them was in the North
19 Santee River which is a large body
20 of water, very swift moving
21 currents. I determined that we
22 would need every asset that I
23 could put my hands on in order to
24 be able to cover that specific
25 area and then we would work on the

SCARBOROUGH -- DIRECT

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

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

7 A Yes.

8 Q Machinery, equipment?

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

25 Charleston County

SCARBOROUGH -- DIRECT

1 Sheriff's Office has boats but
2 most of the boats that we have are
3 large water craft that are
4 designed to be in larger areas of
5 water such as the Cooper River and
6 the ocean and we needed smaller
7 boats to cover this area where we
8 were at.

9 Q And did that happen?

10 A Yes. Charleston
11 County rescue, as they always do,
12 they came out, they brought boat
13 twenty-four which is a large flat
14 bottom boat. It's twenty-four
15 foot Sea-Arc and it's equipped
16 with side-scan sonar.

17 Q What exactly is
18 side-scan sonar?

19 A Side-scan sonar
20 basically is a, it's a device
21 that's used by, it's been, being
22 used by fishermen for years to
23 find fish. Technology has come
24 around quite a bit and now we use
25 it in our job to find any kind of

SCARBOROUGH -- DIRECT

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

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

SCARBOROUGH -- DIRECT

1 Marion National Forest, what, your
2 initial comments -- and I'm sorry
3 if I'm muddling up that word --
4 did you go to the bodies of water?

5 A Yes, ma'am.

6 Q What was first?

7 A I saw the largest one
8 first because traditionally that's
9 what we do. We went ahead, put
10 the boat in the water, which was
11 boat twenty-four. It did
12 side-scan sonar for us up and down
13 the river. We were looking for a
14 vehicle so we had an idea of what
15 it would look like and so we did
16 the side-scan sonar. We did come
17 up with a couple of anomalies
18 which turned out to be large
19 pieces of brick that were just
20 down there from some previous
21 thing that maybe they had done
22 with the boat ramp itself. So we
23 decided and we made the decision
24 at that point that that was clear,
25 that that was not the location

SCARBOROUGH -- DIRECT

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

6 Q What kind of -- you
7 said you were looking for a
8 vehicle. What type of vehicle
9 were you looking for?

10 A I don't remember
11 exactly the -- whether or not the
12 suspect told them whether or not
13 what type of vehicle it was. I
14 know that they said it was a small
15 sedan but I don't believe they
16 went into make and model and all
17 that.

18 Q All right. So you
19 said that you moved closer back
20 towards 17. What happened --
21 where did you go at that point?

22 A The second location
23 ended up to be a very small
24 tributary which actually ended up
25 to be hardly deep enough to put a

SCARBOROUGH -- DIRECT

1 vehicle in so we didn't even put
2 the boat in the water. We were
3 able to determine that from the
4 shoreline. And then the third
5 location was on Robbins Road in
6 Germantown and that's where the --
7 there was a bridge located and
8 next to that bridge is a boat ramp
9 and the waterway there was a very
10 fast moving current that
11 eventually, that it meets up with
12 the Santee River, so it is a tidal
13 creek and it does connect back.

14 Q I am not very, just
15 not water-savvy at all but what
16 exactly is a tidal creek?

17 A A tidal creek is a --
18 it's a, anything, any body of
19 water that moves up and down with
20 the lunar tides. Similar to the
21 beach, when you, you go out to the
22 beach and you can see where the
23 waterline is. You can actually
24 set up your chair and your
25 umbrella away from that because

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1 you know when the tide comes in,
2 that's where the waterline is
3 going to be, and basically in, in
4 waterways you can tell it by
5 looking at the marsh, the marsh
6 usually is dark in color up to a
7 certain point and that tells you
8 where the waterline usually will
9 reach at high tide.

10 Q Does the work
11 brackish sound familiar?

12 A Brackish water is, is
13 any type of water that's mixed
14 with salt. Salt and fresh water,
15 we refer to it as brackish water.
16 I don't know if that's a chemical
17 term or if that's just a
18 good-old-boy term. I have no
19 idea, but it's something we've
20 used forever. Brackish water is
21 usually up at the Cooper River
22 where it's closes to the ocean,
23 it's very salty. As you get
24 further up the Cooper River, up
25 towards the locks and up in that

SCARBOROUGH - - DIRECT

1 area it becomes fresh water and
2 that's what fresh and salt kind of
3 mixed together, and they refer to
4 it as brackish.

5 Q What was the Wadmalaw
6 Creek? Was it brackish?

7 A Brackish. Yes,
8 ma'am.

9 Q Now, you're at this
10 landing. Could you explain to the
11 jury a little bit about this area
12 where the Wadmalaw Creek is.

13 A As you're traveling
14 down 17 heading north down towards
15 Myrtle Beach you'll go through the
16 flashing lights in McClellanville.
17 You'll go further past that and it
18 will be to your left. There's a
19 sign there for a, an old
20 plantation and it's basically the
21 Francis Marion Forest. It's way
22 out in God's country. It's way
23 out in the middle of nowhere. I
24 personally have never been in this
25 location. There was a bridge that

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1 is maintained by the state. It
2 actually travels over a, the tidal
3 creek that we were at. And as you
4 go over this bridge to the right
5 was a boat ramp which was a, it
6 was a paved boat ramp so it's
7 maintained by someone, either the
8 state or -- I don't know who would
9 maintain it but it was -- a lot of
10 duck hunters and people of that
11 nature use those type of very
12 desolate areas to put, you know,
13 boats in the water.

14 Q Is this -- well, you
15 mentioned hunters and that -- is
16 it well-travelled just by the
17 everyday person?

18 A I would say not
19 because the reason why I would say
20 that, we were there for all night
21 basically once we located this
22 vehicle in question. We were
23 there all night and at no point
24 did we have to turn anybody around
25 and send them back on 17. So we,

SCARBOROUGH -- DIRECT

1 we had no traffic whatsoever. We
2 were, we were the only one out
3 there so I would say not very well
4 traveled.

5 Q Lieutenant
6 Scarborough, I'm going to show you
7 what's been marked as people's --
8 excuse me, State's proposed
9 exhibits thirteen, fourteen, and
10 fifteen.

11 A Yes, ma'am.

12 MS. CARDILLO: May I
13 approach, your Honor?

14 THE COURT: You may.

15 Q Lieutenant, will you
16 look at those photographs and then
17 look up at me when you're done.

18 A Yes, ma'am. Yes,
19 ma'am.

20 Q Thank you. Do you
21 recognize these photographs?

22 A Yes, ma'am.

23 Q And are you familiar
24 with this area?

25 A Yes, ma'am.

SCARBOROUGH -- DIRECT

1 Q And how are you
2 familiar with that photograph?

3 A That's the location
4 where the actual dock mission took
5 place for recovery of the vehicle.

6 Q And do these
7 photographs accurately or fairly
8 and accurately depict the area
9 where the recovery of the car
10 occurred on July second of, July
11 third of 2008?

12 A Yes, ma'am.

13 MS. CARDILLO: Your
14 Honor, the State would move at
15 this time to move into
16 admission State's proposed
17 exhibits thirteen, fourteen,
18 and fifteen.

19 THE COURT: Mr. Davis?

20 MR. DAVIS: No
21 objection, your Honor.

22 THE COURT: State's
23 thirteen, fourteen, and
24 fifteen admitted into evidence
25 without objection.

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1 (Whereupon, the three
2 photographs previously
3 referred to are received and
4 marked as State's Exhibit Nos.
5 13, 14, and 15 in evidence.)

6 MS. CARDILLO: Thank
7 you, your Honor. May I
8 publish?

9 THE COURT: You may.

10 MS. CARDILLO: May I
11 approach, your Honor?

12 THE COURT: You may.

13 Q Lieutenant
14 Scarborough, do you recognize
15 this?

16 A Yes, ma'am.

17 Q Please explain to the
18 jury what this area is.
19 (Indicating.)

20 A This is the bridge in
21 question and this location would
22 be Highway 17, Myrtle Beach being
23 in this direction. This is the
24 waterway in question that we were
25 diving on. This is the boat ramp

SCARBOROUGH - - DIRECT

1 that I referred to right here.

2 And beyond this, this is a dirt
3 road that leads way into the
4 forest.

5 Q Is this just another
6 picture of the same area, further
7 out?

8 A This, the best I can
9 tell from here, this would be, 17
10 would be back here. This would be
11 the boat ramp. This would be the
12 road over the bridge right here.
13 I can't really -- (Indicating.)

14 Q Okay. Let's move it
15 a little bit.

16 A It's a whole lot of
17 trees.

18 Q And this one. This
19 is a better one.

20 A Okay. Again this is,
21 this is a much better photo. This
22 is the bridge in question. This
23 is the boat ramp in question. And
24 this is the roadway. This would
25 be 17 like this right here.

SCARBOROUGH -- DIRECT

1 (Indicating.)

2 Q Thank you.

3 A Yes, ma'am.

4 Q Now, what exactly,
5 when you got to this creek, please
6 explain to the jury what you and
7 your team did. You mentioned side
8 sonar. Did you do the same acts
9 there as you had in other -- in
10 the North Santee or the South
11 Santee?

12 A Yes, ma'am. Our
13 normal protocol is to identify the
14 location where we're at. We will
15 identify the depth of what we were
16 dealing with. We launched boat
17 twenty-four and on board was one
18 of our divers and also rescue
19 personnel and they ran up and down
20 the river and they did what we
21 refer to as painting a picture
22 which is when we run up and down
23 the river and basically the whole
24 time they're going they're
25 shooting the sonar out and they're

SCARBOROUGH - - DIRECT

1 looking for anything out of the
2 ordinary that would be in the
3 picture, at which time they did
4 that for probably thirty minutes.
5 They notified me, which I was on
6 land at that point, notified me
7 that they found an anomaly, which
8 is, you know, something that
9 shouldn't have been in the
10 waterway, and they have me meet
11 them at the ramp. I got on board
12 the boat and they showed me on the
13 side-scan a picture which is very
14 similar to a very small TV, what
15 they identified as an anomaly. So
16 we decided at that point, we knew
17 exactly where it was because of
18 them taking a picture where it
19 was. I handed them a down buoy
20 which is basically just an orange
21 large float with a magnet on board
22 and a, and a piece of rope. They
23 went, they located that exact
24 location where it was. They
25 placed the magnet on something

SCARBOROUGH -- DIRECT

1 that actually was metal. It was
2 actually -- that's why we use
3 magnets on vehicles because you
4 wouldn't be able to use that on a
5 boat because most of the time a
6 boat is made of fiberglass, most
7 of the time. And it stuck to the
8 vehicle, the magnet did, and we
9 tightened up the line, gave us a
10 reference point, and then divers
11 prepared down in the water.

12 Q And did you yourself
13 dive?

14 A Yes. I dove on that
15 specific mission. Yes, ma'am.

16 Q And what if anything
17 did you find?

18 A Upon entering the
19 water we approached that exact
20 down buoy. We, we dropped down --
21 our, our team is, we, we've got
22 some very good equipment. We're
23 able to talk under water. We have
24 communications gear where
25 basically it's call an auger mask.

SCARBOROUGH - - DIRECT

1 It's a, it's a mask that basically
2 to transmit you push a button on
3 the outside of it and we can talk
4 to each other effortlessly or we
5 can talk to the topside unit which
6 is usually a diver that's in a
7 boat and he's got a line dropped
8 down which is a transducer and he
9 can hear our entire conversation
10 about what we're talking about and
11 what we're doing, because this is,
12 this is because we need to talk a
13 lot of times, especially when
14 we're trying rig something up, we
15 need to know what each other is
16 doing because most of the time
17 with the water, it's black and we
18 can't see each other. All we know
19 is what we're feeling.

20 Q Was that the case
21 here?

22 A The case was - - yes.
23 It was black water.

24 Q What time of day or
25 night was it when you were in the

SCARBOROUGH -- DIRECT

1 water?

2 A Well, it was, it was,
3 the sun was going down at that
4 point, and I'm not sure the exact
5 time, and I don't know if I have
6 it on my notes or not whether or
7 not -- I know the sun was going
8 down when we located the vehicle.
9 The actual mission itself started
10 around noon, but this being the
11 third location, the sun is
12 actually going down. We located
13 the vehicle under water. We
14 identified it as a vehicle. The
15 windows were down. We just had to
16 do a sweep inside the vehicle to
17 make sure there was not a body
18 inside. The vehicle it was
19 determined had been there for
20 quite some time.

21 Q How did you determine
22 that?

23 A Well, there was mud
24 in the vehicle which is -- in our
25 job we, we basically base a lot of

SCARBOROUGH -- DIRECT

1 things on that. There was mud in
2 the vehicle all the way up to the
3 door. When the windows go down,
4 all the way up to where the window
5 was open there was mud all the way
6 across. It was just like a big
7 square area of mud inside this
8 vehicle. And so once we
9 determined that, we actually
10 couldn't determine if anything was
11 in there because of the mud. We
12 did the best we could as far as
13 feeling around inside the vehicle.
14 Went back and tried to identify
15 the vehicle. We could not see the
16 VIN plate which is the VIN plate
17 which is located on your dashboard
18 of your car feel. It's a number
19 that's specific to every vehicle
20 within the United States. We
21 could not locate it because of
22 the, the darkness of the water. I
23 went back and located the tag. I
24 could not read it because of the
25 darkness of the water.

SCARBOROUGH - - DIRECT

1 Q Well, let me ask you
2 another question.

3 A Yes, ma'am.

4 Q You talked about a
5 tag.

6 MS. CARDILLO: May I
7 have a moment, your Honor?

8 THE COURT: You may.

9 Q Now, you mentioned a
10 tag that you couldn't see. What
11 did you do with that?

12 A When I couldn't read
13 the tag, what I determined was,
14 you know, I couldn't read it. I
15 didn't want to wait until the
16 vehicle was pulled out of the
17 water just in case it was a crime
18 scene or anything of that nature
19 because we treat those actually a
20 lot different than we would a
21 generic stolen car. I pulled off
22 my knife which is located on my VC
23 and attempted at first to take the
24 screws out, which I was
25 unsuccessful in that, so went

SCARBOROUGH - - DIRECT

1 ahead and pried it off the
2 vehicle.

3 MS. CARDILLO: Your
4 Honor, may I approach?

5 THE COURT: You may.

6 MS. CARDILLO: I'm
7 sorry, your Honor. Can I get
8 this marked as State's
9 twenty-one?

10 (Whereupon, the North
11 Carolina vehicle tag
12 previously referred to is
13 received as State's Exhibit
14 No. 21 for identification.)

15 Q I'm going to hand you
16 what's been marked as State's
17 exhibit twenty-one.

18 A Yes, ma'am.

19 Q Would you look at
20 that and then tell the jury if you
21 recognize it?

22 A Yes, ma'am. This
23 appears to be the same tag that I
24 removed from the vehicle.

25 Q And does it fairly

SCARBOROUGH -- DIRECT

1 and accurately depict what the tag
2 looked like when you pulled it off
3 the car?

4 A Yes, ma'am. It was,
5 as I stated before, it was
6 unreadable and I had to pry it off
7 which would make for the pry marks
8 that are on the, that are on the
9 other part, which you can see
10 where the bolts were busted out
11 where I pried it with the knife.

12 Q Thank you.

13 A Yes, ma'am.

14 MS. CARDILLO: Your
15 Honor, the State at this time
16 would move the tag in for
17 admission.

18 THE COURT: Any
19 objection to State's
20 twenty-one?

21 MR. DAVIS: No new
22 objections.

23 THE COURT: State's
24 twenty-one into evidence.

25 MS. CARDILLO: Thank

SCARBOROUGH -- DIRECT

1 you, your Honor.

2 THE COURT: Without
3 objection.

4 MR. DAVIS: Your Honor,
5 would that be with no --

6 THE COURT: No new
7 objections. Thank you.

8 (Whereupon, the North
9 Carolina vehicle tag
10 previously referred to is
11 received and marked as State's
12 Exhibit No. 21 in evidence.)

13 THE COURT: No new
14 objections. Thank you.

15 Q Now, Lieutenant, let
16 me ask you a few more questions
17 about this tag.

18 A Yes, ma'am.

19 Q So you pulled this
20 tag off for what purpose?

21 A To identify the
22 vehicle and see if the vehicle had
23 been involved in any type of crime
24 or if it was actually stolen or
25 what the scenario was with this

SCARBOROUGH -- DIRECT

1 vehicle, why it would be placed in
2 the waterway.

3 Q And during your
4 investigation did you discover
5 the, any information about the
6 tag?

7 A Yes, I did. When,
8 when I surfaced with the tag there
9 was a detective -- the vehicle
10 was, was located very close to the
11 shoreline and the -- when I
12 surfaced with the tag there was
13 actually a detective that had made
14 his way into the woods and was
15 within earshot of me. I could, I
16 could talk to him. I took my mask
17 off and told him we had a tag to
18 return. I yelled it out to him,
19 there was a North Carolina plate,
20 and gave him the tag and, and he
21 worked his magic from there and he
22 determined that the vehicle was
23 involved with a missing person
24 case.

25 Q And do you remember

SCARBOROUGH - - DIRECT

1 the name of that missing person?

2 A Just happens to be
3 the same one that I had been
4 assigned prior to this, which was
5 my missing person case when I was
6 a detective in the detective
7 office.

8 Q From eight years
9 before?

10 A I'm not sure the
11 amount of time, but yes.

12 MS. CARDILLO: May I
13 approach, your Honor?

14 THE COURT: You may.

15 Q All right. Now if
16 you could explain to the jury now
17 you're underwater and you're going
18 through this vehicle or trying to.
19 Where exactly in the waterway --
20 now, lieutenant, where exactly in
21 the waterway were -- where did you
22 enter, I mean I guess where did
23 you enter is a bad question.
24 Where exactly did you put your
25 boat in and where did you dive and

SCARBOROUGH -- DIRECT

1 where was the car located?

2 A The -- actually the
3 car was located right here. (The
4 witness indicates.) This was the
5 area where we put the boat in and
6 where it was -- this area up here
7 is where I had the staging area
8 for the dive team (the witness
9 indicates). This location would
10 be where we had the, the crane
11 respond to remove the vehicle from
12 the waterway.

13 Q Well, let me ask you
14 this. Was the crane there when
15 you first located it or did you
16 call the crane out later?

17 A No. We, we, we
18 wouldn't call them out until we
19 located something. We wouldn't
20 put the cart in front of the horse
21 like that, so...

22 Q Now, once you found
23 or located the vehicle and you'd
24 run the tag, what did -- what was
25 your objective at this point?

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1 A Our objective at that
2 point was to, we, we swept around
3 the vehicle which meant we did a
4 cursory check around the vehicle
5 to make sure there was nothing
6 from the vehicle there. A body,
7 clothing, anything that has to do
8 with that vehicle. We usually do
9 a perimeter check around it. We
10 determined there was nothing
11 there. There was, there was
12 wildlife in the area. There was a
13 lot of alligators. They were very
14 inquisitive as to what we were
15 doing there and they kept coming
16 around the boats, kept trying to
17 keep them off us, and that was one
18 of our concerns, naturally, but we
19 were able to do the cursory check,
20 then when I surfaced I told them
21 that we needed a crane because of
22 the fact that the mud inside the
23 vehicle, the vehicle's weight is,
24 is bad enough, but once you put
25 mud in the water and inside the

SCARBOROUGH -- DIRECT

1 vehicle, it's astronomical the
2 amount of weight, so we requested
3 that rescue, as I reported to you
4 earlier, they have a lot of assets
5 also. Rescue has a large crane
6 that they use called Rescue Eight
7 which is a, a large truck that
8 they have a crane, it's, it's
9 brand new actually, they've had it
10 for a couple years, that has a
11 crane on the back of it, and
12 they've got special, specific
13 people that are assigned to
14 operate that piece of equipment
15 because it's very technical, and
16 we requested that they respond
17 with that.

18 Being that we were in
19 Germantown, the response time was
20 a good hour, hour and a half for
21 that to get there to us.

22 Q When you say because
23 you were in Germantown, is that
24 because it's far in to the forest
25 or how --

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1 A Well, McClellanville
2 alone from Charleston, from where,
3 where they're located on
4 Dorchester Road. Like 526 is
5 where rescue headquarters is. And
6 from there to where we were at,
7 driving a large truck, it took
8 them a while to get there.

9 Q So once they arrived,
10 what -- you're trying to pull the
11 car out. Could you explain that
12 process of what you did in the
13 case.

14 A Well, due to the
15 weight and due to the, the fact
16 that it was not right underneath
17 the bridge, it was away from the
18 bridge which meant that anybody
19 that's familiar with the crane
20 basically, the further out they
21 put their arm the, the less
22 strength they have. So they had
23 to extend the arm of the crane way
24 out, which meant that it was maxed
25 out and it also had their cable

SCARBOROUGH -- DIRECT

1 out, so they didn't have as much
2 strength as they would have if
3 they were to have all their
4 equipment closer in, they'd have a
5 lot more strength, but we didn't
6 have that luxury. So we put what
7 we call lift tags, which basically
8 the layman's term for it would be
9 like large balloons inside the
10 vehicle we placed one. They're
11 capable of lifting up to
12 twenty-five hundred pounds per
13 bag. We carry on the truck four
14 bags because we have to use them
15 quite often because this scenario
16 is kind of plain. But when we put
17 one lift bag in initially just to
18 aid them in the process of pulling
19 it up. Once they got it up the
20 crane was having a difficult time
21 pulling it towards shore so we
22 placed two more lift bags outside
23 of the vehicle to give it wings
24 per se to keep it even more
25 afloat.

SCARBOROUGH -- DIRECT

1 Q Well, let me show you
2 what's been previously marked as
3 State's proposed exhibit sixteen.

4 A Yes, ma'am.

5 MS. CARDILLO: May I
6 approach, your Honor?

7 THE COURT: You may.

8 Q Lieutenant
9 Scarborough, do you recognize that
10 photo?

11 A Yes, ma'am.

12 Q And why do you
13 recognize that phot?

14 A That is the --
15 there's a lift back. There's
16 myself and another diver. I
17 recognize myself. I'm not sure
18 who the other diver, I'm not sure
19 who that was exactly because there
20 was a lot of people involved in
21 this, and there's a strap going
22 under the vehicle and, which goes
23 straight up. It doesn't depict
24 that here, but that would be
25 connected to the crane.

SCARBOROUGH -- DIRECT

1 Q Well, does that
2 fairly and accurately depict the
3 scene as you recall it on July
4 second of, July second of 2008?

5 A Yes, ma'am. And also
6 the orange ball that's there,
7 that's the down ball that I
8 referred to earlier. That has a
9 magnet attached to it. That was
10 the initial ball that we went down
11 to locate it once we found it with
12 the side scan.

13 MS. CARDILLO: Your
14 Honor, at this time the State
15 would move for the admission
16 of exhibit sixteen.

17 THE COURT: Mr. Davis?

18 MR. DAVIS: No new
19 objection, your Honor.

20 THE COURT: State's
21 sixteen into evidence with no
22 new objections.

23 MS. CARDILLO: Thank
24 you, your Honor.

25 (Whereupon, the

SCARBOROUGH -- DIRECT

1 photograph of the dive team
2 previously referred to is
3 received and marked as State's
4 Exhibit No. 16 in evidence.)

5 MS. CARDILLO: Your
6 Honor, may I publish?

7 THE COURT: You may
8 publish.

9 MS. CARDILLO: Thank
10 you, your Honor.

11 Q Now, this is really
12 dark I know. It's really hard.
13 I'm sorry.

14 A Is it darker now
15 or --

16 Q No. It's my fault.

17 A These are the divers.
18 (The witness indicates.) This is
19 myself right here. (The witness
20 indicates.) And I'm not sure
21 which diver this was. (The
22 witness indicates.) This is the
23 lift bags that I was referring to.
24 This is one. This is another lift
25 bag that's actually protruding out

SCARBOROUGH -- DIRECT

1 of the window. This would be the
2 strap, referred to as the sling,
3 which would go, your driver's
4 window would be here, passenger's
5 window would be here. (The
6 witness indicates.) You'd run the
7 strap through because this is the
8 strongest part of the vehicle.
9 And then we come up to a coupling
10 up here, and you can't see it
11 here, up in this area would be
12 where the cable from the crane was
13 attached as we were attempting to
14 pull the vehicle out. (The
15 witness indicates.)

16 Q Now, would --

17 A And this -- I'm
18 sorry. This was the down ball
19 lift I referred to a minute ago
20 that we initially attached to the
21 vehicle. That's the orange ball I
22 referred to earlier. Yes, ma'am?

23 Q Now, I know you saw
24 the picture, but the crane would
25 be over on this side, on the left?

SCARBOROUGH -- DIRECT

1 A It would be where
2 you're standing. It would --
3 there -- it would be behind it.
4 This being the woods I referred to
5 where the detective was that I
6 had, that I yelled to, the
7 information on the tag. That's
8 how close we were to the exact
9 opposite -- we were exactly the
10 opposite of the boat ramp. So the
11 vehicle went in, apparently got
12 caught up in the current and ended
13 up directly across from it.

14 Q Thank you,
15 Lieutenant.

16 A Yes, ma'am.

17 Q Now, you talked a
18 lot, or I asked you a lot of
19 questions about, about the process
20 of pulling up the car.

21 A Yes.

22 Q You said it was very
23 heavy, weighing it down. Did it
24 come to a point where you were
25 able to get the car closer to the

SCARBOROUGH -- DIRECT

1 boat ramp?

2 A Yes, ma'am. What we
3 ended up doing, we pretty much
4 dropped back and evaluated what we
5 had. The crane was having a
6 difficult time. We had the lift
7 bags on it. We knew that it was
8 floating. We didn't have a boat
9 out there that was capable of
10 pulling it closer to shore. We
11 were not dealing with that far of
12 a distance, maybe seventy-five
13 yards if that, so I exited the
14 water. My, my vehicle was a
15 Suburban, and that -- it's
16 equipped with a ninety-five
17 hundred pound winch on the front
18 of it. I had the winch pulled out
19 and I attached the winch to the
20 front of the strap and was able to
21 pull it to shore. Once we were
22 able to get it to an area where it
23 was only waist deep in water,
24 right at the boat ramp, I was
25 able -- we deflated the bags and

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1 basically what happened was it
2 was -- floated. We deflated the
3 bags. It came to rest and then it
4 gave us a position just to pull it
5 up the boat ramp.

6 Q And did you pull it
7 up at that point?

8 A Yes, ma'am.

9 Q What, what happened
10 next? What was your objective at
11 that point once the car was up?

12 A We -- our job was
13 completed. We, we did what we
14 were called to do. We basically
15 preserved the crime scene and
16 we --

17 Q I'm sorry. You said
18 a crime scene. This was not a
19 recovery at this point? It was a
20 crime scene?

21 A Well, it was a
22 recovery up to the point where we
23 pulled the tag off and it was
24 identified as a, as a missing
25 person's vehicle. Then it would

SCARBOROUGH -- DIRECT

1 be treated as a crime scene.
2 Once, once, you know, we
3 determined that either a crime has
4 been committed or possibly could
5 have been an accident, someone
6 could accidentally drove the
7 vehicle in the water which has
8 happened in Charleston quite a few
9 times -- excuse my voice.

10 Q Do you need some more
11 water?

12 A No. I'm fine. Thank
13 you.

14 Q Now, what was the
15 condition of the car once it was
16 pulled out of the water? You
17 explained the condition when it
18 was under the water, but what was
19 the condition of the vehicle out
20 of the water?

21 A It was completely
22 full of mud. The -- basically
23 looked I guess you would refer to
24 like a little rider type car where
25 the springs have been cut off and

SCARBOROUGH -- DIRECT

1 it was basically the, the vehicle
2 was sitting on top of the tires.
3 Unlike most vehicles, you know,
4 your suspension and everything
5 keep you, you know, from doing
6 that, and that was all due to
7 weight. That wasn't --

8 Q The mud?

9 A The mud. Yes, ma'am.

10 Q Any other

11 observations you made about the
12 car, the condition of the --

13 A There was a key in
14 the ignition and the vehicle was,
15 the best I remember, was in drive.

16 Q Let me show you
17 what's been marked as State's
18 proposed exhibit seventeen,
19 eighteen, nineteen, twenty,
20 twenty-two, and twenty-three. Let
21 me ask you now. Did you leave the
22 scene immediately once the car was
23 up or did you actually stay and
24 observe the car and all the
25 officers and the crime scene?

SCARBOROUGH -- DIRECT

1 A Well, I stayed the
2 entire time until -- I was dive
3 team leader so I don't, I don't
4 leave until everybody's completely
5 gone, especially in an area like
6 that, way out in the woods, so I
7 didn't, I stayed. It was a very
8 long night. We were there from --
9 for quite some time.

10 MS. CARDILLO: Your
11 Honor, may I approach?

12 THE COURT: You may.

13 Q Lieutenant, I'm going
14 to show you State's proposed
15 seventeen, eighteen, nineteen,
16 twenty, twenty-two, and
17 twenty-three. Could you look at
18 these and we'll go back and look
19 at them.

20 A Yes, ma'am. Yes,
21 ma'am.

22 Q You are in any of
23 these photos?

24 A Yes, ma'am.

25 Q Do they fairly and

SCARBOROUGH -- DIRECT

1 accurately depict the car as it
2 was -- after it was removed from
3 the water?

4 A Yes, ma'am.

5 MS. CARDILLO: Your
6 Honor, at this time the State
7 would move to admit seventeen,
8 eighteen, nineteen, twenty,
9 twenty-two, and twenty-three.

10 MR. DAVIS: With no new
11 objections.

12 THE COURT: State's
13 seventeen, eighteen, nineteen,
14 twenty, twenty-two, and
15 twenty-three into evidence
16 with no new objections. Note
17 your previous objections, Mr.
18 Davis.

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

21 (Whereupon, the
22 photograph of the Chevrolet
23 Lumina at the top of the boat
24 ramp, previously referred to,
25 is received and marked as

SCARBOROUGH -- DIRECT

1 State's Exhibit No. 17 in
2 evidence.)

3 (Whereupon, the
4 photograph of the Chevrolet
5 Lumina at the top of the boat
6 ramp, previously referred to,
7 is received and marked as
8 State's Exhibit No. 18 in
9 evidence.)

10 (Whereupon, the
11 photograph of the Chevrolet
12 Lumina's interior at the
13 scene, driver's side,
14 previously referred to, is
15 received and marked as State's
16 Exhibit No. 19 in evidence.)

17 (Whereupon, the
18 photograph of the Chevrolet
19 Lumina's interior at the
20 scene, passenger's side,
21 previously referred to, is
22 received and marked as State's
23 Exhibit No. 20 in evidence.)

24 (Whereupon, the
25 photograph of the Chevrolet

SCARBOROUGH -- DIRECT

1 Lumina's open trunk at the
2 crime scene, previously
3 referred to, is received and
4 marked as State's Exhibit No.
5 22 in evidence.)

6 (Whereupon, the
7 photograph of the Chevrolet
8 Lumina's trunk at the scene,
9 with mud layer removed, is
10 received and marked as State's
11 Exhibit No. 23 in evidence.)

12 THE COURT: You may
13 publish.

14 MS. CARDILLO: Thank
15 you, your Honor.

16 Q Lieutenant
17 Scarborough, what is that image
18 of?

19 A That's the vehicle in
20 question, pulled out. This would
21 be the vehicle. (The witness
22 indicates.) That would be one of
23 the rescue trucks. (The witness
24 indicates.) And that would be one
25 of their hydraulics, referred to

SCARBOROUGH -- DIRECT

1 as "the jaws of life". (The
2 witness indicates.)

3 Q And this is another
4 side view?

5 A Yes, ma'am. The boat
6 ramp being behind you, back here.
7 (The witness indicates.) This
8 being the vehicle. (The witness
9 indicates.) And it's compressed.
10 Same vehicle. Same tool, off to
11 the side, which is the hydraulic
12 tool.

13 Q Now, you mentioned a
14 lot of mud.

15 A Yes, ma'am.

16 Q Is this -- please
17 explain this for the jury. Is
18 this similar to what you looked --
19 what it looked like under water
20 even though this is on land.

21 A Well, can't testify
22 to what it looked like because
23 like I said I couldn't see
24 anything, but as far as what we
25 dealt with, that's exactly what it

SCARBOROUGH -- DIRECT

1 was. It was full of mud, with
2 the, the seat being reclined as it
3 was. Not reclined but forward and
4 the, that's what it looked like,
5 the interior.

6 Q Thank you. That's a
7 little bit better. And that's
8 similar to the mud being under the
9 top of what you were talking
10 about?

11 A Yes. These are the
12 seats. (The witness indicates.)
13 This is all the mud and the
14 steering wheel, and this is the
15 door frame. And this is how high
16 the mud got. (The witness
17 indicates.) It's all the way up
18 the door frame on either side.

19 Q That is a similar
20 picture of the other side, the
21 passenger's side?

22 A Yes, ma'am.

23 Q Lieutenant
24 Scarborough, did there come a
25 point where you guys were trying

SCARBOROUGH -- DIRECT

1 to process -- not process but open
2 the trunk?

3 A Yes, ma'am.

4 Q Tell us a little bit
5 about that.

6 A Any time a vehicle is
7 towed away from any, any place,
8 even if it's an accident, anything
9 that has to do with Charleston
10 County Sheriff's Office or most
11 jurisdictions you have to do a, a
12 basically a survey of that
13 vehicle. That's not really a
14 search. It's more of a make sure
15 there's nothing in it, explosives,
16 anything like that, and in this
17 case the trunk, being that the
18 electrical system was out of order
19 because it had been under water,
20 the trunk could not be accessed.
21 We attempted to try the key.
22 Being that it was under water for
23 so long the key actually didn't
24 work so that's why we had rescue
25 come up and do "the jaws of life"

SCARBOROUGH -- DIRECT

1 which is basically it's a, it's a
2 mechanism that's, when it goes in
3 it's flat. As they press the
4 hydraulics it basically just opens
5 up and uses its force to pry open
6 whatever it's trying to pry open.

7 Q And you indicated
8 that was done in this case?

9 A Yes, ma'am.

10 Q Were you present when
11 that happened?

12 A Yes, ma'am.

13 Q Did you -- did there
14 come a point where the trunk
15 eventually opened?

16 A Yes, ma'am.

17 Q And did you observe
18 what was inside?

19 A Yes, ma'am.

20 Q Is this familiar to
21 you?

22 A Yes, ma'am.

23 Q And with the mud,
24 it's pretty obvious, but explain
25 for the Court and jury.

SCARBOROUGH -- DIRECT

1 A This is the mud all
2 the way up to the very top of the
3 -- well, actually it's
4 overflowing. These are -- they
5 were placed there. They're
6 referred to as basically --
7 anybody else would call that wood.
8 They call that crimming, the
9 rescue guys do, because they use
10 it to stabilize anything. And the
11 trunk naturally wouldn't stay
12 open, so they crimmed it so that
13 it would not close on anybody's
14 head, and then crime scene
15 naturally was taking these
16 photographs and was involved with
17 it at that point.

18 Q And now at this point
19 was crime scene on, on location?

20 A Yes.

21 Q Charleston County
22 Crime Scene?

23 A Charleston County
24 Crime Scene. Investigator
25 Kjellman I believe was the only

SCARBOROUGH -- DIRECT

1 one there.

2 Q Now did you observe
3 anything that she did?

4 A I was -- yeah. She
5 was photographing the sergeant,
6 CID. I was talking to her in
7 reference to the missing person
8 case up until we left.

9 Q Was there ever a
10 point where mud was skimmed off in
11 the trunk?

12 A I, I don't recall it
13 being skimmed off. I believe what
14 happened was, was the vehicle
15 itself kind of leaked out. The
16 water, the mud and the water kind
17 of separated and the water was
18 leaking out of the vehicle and
19 therefore making the mud come
20 lower and lower and lower.

21 Q And did you make any
22 observations of the trunk?

23 A Yes, ma'am.
24 Eventually as the mud dissipated I
25 believe there was a, a bone

SCARBOROUGH -- DIRECT

1 located in the trunk, laying right
2 on top of the, the mud line.

3 Q Now, does this look
4 familiar?

5 A Yes, ma'am.

6 Q Could you please
7 explain that photograph for the
8 jury.

9 A It's the same as
10 before. It marks the, marks
11 the -- the cribbing is, is not
12 here. I don't know why. And I
13 believe that the bone was located
14 somewhere in this general area
15 right here. (The witness
16 indicates.) And the body was
17 eventually seen. And at that time
18 crime scene determined, you know,
19 what -- and I'm sure they'll
20 testify to that. I don't want to
21 get into their stuff.

22 Q Of course. Thank
23 you.

24 MS. CARDILLO: One
25 moment, your Honor.

SCARBOROUGH -- DIRECT

1 THE COURT: Yes, ma'am.

2 Q A couple more
3 questions, Lieutenant.

4 A Yes, ma'am.

5 MS. CARDILLO: May I
6 approach the court reporter,
7 your Honor?

8 THE COURT: Yes, ma'am.

9 MS. CARDILLO: May I
10 approach the witness, your
11 Honor?

12 THE COURT: You may.

13 Q I'm going to show you
14 what's already been admitted as
15 State's number two. Let me show
16 this to counsel first.

17 Do you recognize
18 that?

19 A I do. It's a -- it
20 looks like something from Google
21 Earth. I mean I really can't --

22 Q That's okay. Is it a
23 map?

24 A Yes. It's a map of
25 Google Earth it appears.

SCARBOROUGH -- DIRECT

1 Q It's already been
2 admitted as the map of the area of
3 where the for lack of a better
4 term --

5 A Yes.

6 Q -- pulling out the
7 car from Wadmalaw Creek.

8 A Yes, ma'am.

9 Q Was your -- was the
10 crime scene located in Charleston
11 County?

12 A Yes, ma'am.

13 MS. CARDILLO: One
14 moment, your Honor.

15 Lieutenant
16 Scarborough, I don't have any
17 further questions for you. If
18 you would answer any questions
19 that Mr. Davis or Mr. Groeber
20 may have for you.

21 THE WITNESS: Yes,
22 ma'am.

23 MS. CARDILLO: Thank
24 you so much for your
25 testimony.

SCARBOROUGH - - CROSS

1 THE WITNESS: Yes,

2 ma'am.

3 THE COURT: Mr. Davis.

4 MR. DAVIS: Thank you

5 very much, your Honor.

6

7

8

9

10

11

CROSS-EXAMINATION BY

12

MR. DAVIS:

13

Q Is, is it lieutenant?

14

A Yes.

15

Q Lieutenant

16

Scarborough. Correct?

17

A Yes, sir.

18

Q Okay. Lieutenant

19

Scarborough, let me get -- let me

20

go way back to the first part of

21

your testimony just for a second.

22

Okay?

23

A Okay.

24

Q Back in 2000 I think

25

you said you were with the

SCARBOROUGH -- CROSS

- 1 detectives division.
- 2 A Yes.
- 3 Q Is that right?
- 4 A I believe so. Yes,
- 5 sir.
- 6 Q And that's when you
- 7 would have gotten -- somebody
- 8 called in with a concern about a
- 9 friend being missing?
- 10 A Yes.
- 11 Q Right?
- 12 A Yes.
- 13 Q And you did some
- 14 preliminary investigation in that
- 15 which you told the jury all about.
- 16 A Yes, sir.
- 17 Q Right.
- 18 A Yes, sir.
- 19 Q And during that
- 20 investigation I think you said you
- 21 talked about checking with friends
- 22 to see if they had seen the person
- 23 obviously.
- 24 A Yes, sir.
- 25 Q You also talked about

SCARBOROUGH -- CROSS

1 checking with financial records.

2 Correct?

3 A Yes, sir.

4 Q Phone records, that
5 kind of thing. Correct?

6 A Yes, sir.

7 Q You also would have
8 talked to other law enforcement
9 officers?

10 A Yes, sir.

11 Q And that's how you
12 knew that this missing person, it
13 was Ali Sarhan?

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q That's how you knew
18 that he had a pending assault and
19 battery with intent to kill
20 charge?

21 A Yes, sir.

22 Q You also were aware
23 by talking to other law
24 enforcement that he was alleging
25 during that incident that his

SCARBOROUGH -- CROSS

1 wallet was missing and --

2 MR. SIMPSON: Objection
3 , your Honor.

4 THE COURT: All right.
5 Counsel, approach.

6 (Whereupon, there was
7 an off-the-record bench
8 conference.)

9 THE COURT: Overruled,
10 Miss Cardillo.

11 Q In discussing with
12 other law enforcement officers
13 were you aware that Mr. Sarhan
14 alleged his wallet was stolen and
15 there was an investigation on that
16 as well?

17 A No. I referred back
18 to my notes while you all were
19 with the judge and I don't recall
20 that.

21 Q Okay. Do you recall
22 talking to North Charleston
23 officers in your investigation on
24 the missing person?

25 A I believe it was only

SCARBOROUGH -- CROSS

1 one North Charleston officer that
2 I spoke to.

3 Q Would that have been
4 Officer Thomas or Officer Harris
5 perhaps?

6 A If I may refer back?
7 Detective C. Johnson.

8 MR. DAVIS: May I
9 approach and have this marked,
10 your Honor?

11 THE COURT: You may.

12 (Whereupon, an
13 incident report is received
14 and marked as Defendant's
15 Exhibit No. 12 for
16 identification.)

17 MR. DAVIS: May I
18 approach the witness, your
19 Honor?

20 THE COURT: You may.

21 Q Officer, I'm going to
22 show you what's been marked for
23 identification purposes as
24 defendant's exhibit number twelve.

25 A Yes, sir.

SCARBOROUGH - - CROSS

1 Q You're welcome to
2 look at the entirety. I'm going
3 to draw your attention to some
4 highlighted portions on what
5 appears to be indicated as -- it's
6 indicated as page seven and see if
7 that references you and see if
8 that refreshes your memory.

9 A Sure.

10 Q If I may approach.

11 A Yes, sir.

12 Q Have you had enough
13 time to look at it?

14 A Yes, sir.

15 Q Okay. And so does
16 that appear to be a North
17 Charleston police report?

18 A It appears to be
19 something from either a case file
20 or some type of case notes.

21 Q Would you look to the
22 bottom perhaps on that page.

23 A It's a --

24 Q Does it indicate the
25 agency?

SCARBOROUGH -- CROSS

1 A Yes. I guess it's --
2 yes. It's North Charleston Police
3 Department.

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

7 THE COURT: Yes.

8 Q All right. So, so
9 you recall talking to North
10 Charleston. You simply don't
11 recall about a missing wallet or
12 something to that effect?

13 A I don't -- I actually
14 don't recall that. I actually
15 been referring back to my notes.
16 I don't actually remember the
17 phone call or -- as a detective
18 you handle numerous, numerous
19 cases.

20 Q You completed a
21 one-page report when you initially
22 got the case. Is that accurate?

23 A According to this,
24 yes, but it was not during the
25 initial -- this would have been

SCARBOROUGH -- CROSS

1 when the case was put into an
2 active status.

3 Q Fair enough. Back
4 again, we're talking about back
5 again in 2000?

6 A Yes, sir. According
7 to the date on the bottom. Yes,
8 sir.

9 Q All right. We jump
10 now to the tail end of your
11 testimony. For how long now have
12 you been a part of the underwater
13 recovery team?

14 A I was with the City
15 of Charleston underwater recovery
16 team and then when I went on the
17 Sheriff's Office I was --

18 Q Okay. Tell the jury.

19 A Oh, okay. I was with
20 the City of Charleston dive team
21 pretty much my whole career. I
22 have been diving for almost
23 twenty-five years now.

24 Q It's not unusual to
25 find cars that have been dumped in

SCARBOROUGH -- CROSS

1 bodies of water. You do that type
2 of recovery in, in your experience
3 in law enforcement? You've done
4 that several times.

5 A Oh, yes, sir. Yes,
6 sir.

7 Q Okay. Now you
8 have -- obviously getting the
9 location of this machine we're
10 talking about, we have a bridge
11 and a boat ramp. Correct?

12 A Yes, sir.

13 Q The boat ramp is, is
14 concrete or some other way, wise a
15 structure that's maintained and
16 what you testified about?

17 A Yes. It appeared to
18 be. Yes, sir.

19 Q Certainly that's
20 apparent at the scene and
21 certainly you've had years of, of
22 doing this, but as far as how that
23 car actually got there you're just
24 speculating on how it ended up
25 where you recovered it?

SCARBOROUGH -- CROSS

1 A As far as the current
2 and things of that nature?

3 Q As far as how it got
4 in that body of water.

5 A I don't, I don't
6 believe I ever testified to how it
7 got there.

8 Q What I'm saying is if
9 you, you even with all your
10 tricks, you can only speculate
11 about how it ended up where it
12 was. Correct?

13 A Yes, sir. I won't
14 even speculate to that. All I do
15 is get them out.

16 Q Fair enough. You
17 also, even though you've had years
18 of experience, you could at best
19 only speculate when it ended up in
20 that body of water?

21 A Yes, sir.

22 Q Okay. With your
23 years of law enforcement -- well,
24 first off you recovered, the first
25 thing you recovered was the tag.

SCARBOROUGH -- CROSS

1 off the, the back of the vehicle,
2 the license plate?

3 A Yes, sir.

4 Q Correct?

5 A Yes, sir.

6 Q You recall that
7 license plate. Correct?

8 A Yes, sir.

9 Q In your years of
10 experience as a law enforcement
11 officer, you're aware that if you
12 change state residency you're
13 supposed to replace your plate
14 immediately or at least you have a
15 forty-five grace -- days grace
16 period to do that. You're aware
17 of that?

18 A Yes, sir.

19 Q Okay. Finally, just
20 one last issue. I think when you
21 first were called out, was it a
22 Charleston County detective that,
23 that called you out? Do you
24 recall?

25 A I was notified by

SCARBOROUGH -- CROSS

1 their office and then I met up
2 with I believe it was Detective
3 Casale and Detective Magwood.
4 Q Okay. Casale and
5 Magwood had an individual in
6 custody. Correct?
7 A Yes, sir.
8 Q In their vehicle.
9 Correct?
10 A Yes, sir.
11 Q Cuffed? Correct?
12 A I don't recall, sir.
13 Q Okay.
14 A I knew he was in the
15 car but I don't recall if he was
16 cuffed or not.
17 Q Fair enough. It was
18 obviously they, they had custody
19 and control of him?
20 A He was in their car.
21 Q Fair enough.
22 A I can't testify to
23 that.
24 Q Did you ever see him
25 out of the car walking, around?

SCARBOROUGH -- CROSS

1 A Not that I recall.
2 No, sir.
3 Q Okay.
4 A I was in my vehicle.
5 Side-by-side.
6 Q Is it fair to say
7 that you followed where they led?
8 A That would be fair to
9 say. Yes, sir.
10 Q And you're talking
11 about three locations. Right?
12 A Yes, sir.
13 Q The first one being
14 in North Santee rear view --
15 river. Right?
16 A Yes, sir.
17 Q Connoll's Landing.
18 Correct?
19 A I believe so. Yes,
20 sir.
21 Q That's in the forest.
22 Right?
23 A Yes, sir.
24 Q That's all the way up
25 the Santee. Right?

SCARBOROUGH -- CROSS

1 A Yes, sir.

2 Q You ran sonar there.

3 Didn't find anything.

4 A No.

5 Q You did not run sonar

6 there?

7 A No. We didn't find

8 anything.

9 Q You didn't find

10 anything. I'm sorry. So you

11 did -- I'm sorry. You did run

12 sonar.

13 A Yes, sir.

14 Q You did not find

15 anything?

16 A Yes, sir.

17 Q Fair enough. Sorry.

18 Sorry about that.

19 A We found two

20 anomalies but they were not

21 anything to approach.

22 Q Then is it fair to

23 say any followed their lead to a

24 second location? Small tributary?

25 A Yes.

SCARBOROUGH -- CROSS

1 Q And all the time this
2 individual is in their vehicle?

3 A Best I recall, yes,
4 sir.

5 Q Okay. So small
6 tributary. Again, nothing new of
7 evidentiary value.

8 A Yes, sir.

9 Q That's also deep in
10 the forest. Right?

11 A Yes, sir.

12 Q Okay. The third one
13 is this location. Right?

14 A Yes, sir.

15 Q And again is it fair
16 to say you're following their lead
17 to this location?

18 A That would definitely
19 be a fair assumption.

20 Q Tell the jury, did
21 you come from the direction where
22 the boat ramp's on your left, that
23 way across the bridge, or were you
24 going to go where you had to go
25 across the bridge to the boat

SCARBOROUGH -- CROSS

1 ramp?

2 A We met on the other
3 side of the -- I really, to be
4 honest with you, I would not be
5 able to testify to that. I don't
6 recall which way.

7 Q You don't recall
8 which way?

9 A No, sir.

10 Q Okay.

11 A No, sir. The dive
12 stands out to me, but --

13 Q I'm sorry.

14 A The dive stands out
15 to me.

16 Q Of course.

17 A But meeting and cars
18 and all that, that really doesn't
19 come back.

20 Q The Santee River
21 flows into Berkeley County, does
22 it not?

23 A And also Georgetown
24 County.

25 Q And Georgetown County

SCARBOROUGH -- REDIRECT

1 when it meets up to the cups.

2 Correct?

3 A Yes, sir.

4 MR. DAVIS: Okay.

5 Lieutenant, if you give me one
6 second, that may be all the
7 questions I have.

8 Your Honor, before I
9 turn this back over to the
10 State, may we approach?

11 THE COURT: Approach.

12 (Whereupon, there was
13 an off-the-record bench
14 conference.)

15 MR. DAVIS: I don't
16 have any other questions. I'm
17 not sure if Mrs. Cardillo
18 does. Thank you, Lieutenant.

19 THE COURT: Ms.
20 Cardillo.

21 MS. CARDILLO: Very
22 briefly, your Honor.

23

24

25

SCARBOROUGH -- REDIRECT

1

2

REDIRECT EXAMINATION

3

BY MS. CARDILLO:

4

5

6

7

Q Going back to your investigation of Mr. Sarhan when he, when he was reported missing in 2000 --

8

A Yes, ma'am.

9

10

11

12

13

Q -- did you have any information through your involvement that his disappearance had anything to do with this alleged stabbing?

14

A No, ma'am.

15

16

17

Q And the fact that that, that case was later dismissed --

18

19

20

21

A According to my case notes, yes, ma'am. It was dismissed I believe at prelim.

22

23

Q And you were just following up leads on missing persons at that point?

24

A Yes, ma'am.

25

Q One final question.

SCARBOROUGH -- REDIRECT

1 You've been diving how long and
2 recovering vehicles and what not
3 in several bodies of water
4 throughout the state. How long
5 have you done that?

6 A Almost twenty-five
7 years.

8 Q Can you tell when you
9 recovered this vehicle when it was
10 brought up to the surface, did it
11 appear the car had been in the
12 water for an extended period of
13 time?

14 MR. DAVIS: Objection,
15 your Honor. Calls for pitting
16 testimony.

17 A That's --

18 THE COURT: Hold up one
19 second, Lieutenant.

20 THE WITNESS: Yes,
21 ma'am.

22 THE COURT: I'm going
23 to allow it. Overruled.

24 Q You may go ahead and
25 answer the question.

SCARBOROUGH -- REDIRECT

1 A Yes, ma'am. It had
2 been there for quite some time.
3 That's my professional opinion as
4 a diver and, you know, every
5 vehicle acts a little bit
6 differently according to the water
7 that it's in. If that would have
8 been salt water that vehicle
9 probably wouldn't even exist any
10 more. It probably would already
11 be eaten up by the salt water.
12 But being that it was brackish
13 water, it had been there a very
14 long time.

15 **MS. CARDILLO:** Thank
16 you, Lieutenant Scarborough.
17 I have nothing further.

18 **MR. DAVIS:** Your Honor,
19 if I may just -- may we
20 approach?

21 **THE COURT:** You may.

22 (Whereupon, there was
23 an off-the-record bench
24 conference.)

25 **THE COURT:** Ms.

SCARBOROUGH -- REDIRECT

1 Cardillo.

2 Q Lieutenant

3 Scarborough, you've testified that
4 you've been diving for twenty-five
5 years.

6 A Yes, ma'am.

7 Q Where?

8 A Where? I should have
9 brought my dive book. Everywhere.
10 Actually I've been all over, I've
11 been all over the country. I've
12 also been out of the United States
13 diving. But in the State of South
14 Carolina, I dove everywhere from
15 Greenville, as a, as a team, as a
16 professional diver, as a Sheriff's
17 Office diver. We've been
18 requested throughout the state on
19 numerous times to dive for
20 everything from evidence to, to
21 body recoveries.

22 Q So in your
23 professional capacity as a member
24 of a law enforcement agency, you
25 have dove in that capacity?

SCARBOROUGH -- REDIRECT

1 A Yes, ma'am.

2 Q That was a very weird
3 question I asked. But have you
4 done any dives to recover
5 potential crime scenes?

6 A Yes, ma'am. And
7 we -- I'm actually a crime scene,
8 underwater crime scene technician.

9 Q You are?

10 A Yes. We've actually
11 are trained in underwater crime
12 scene preservation.

13 MS. CARDILLO: Your
14 Honor, at this time the State
15 would move for Lieutenant
16 Scarborough to be an expert in
17 under -- underwater recovery
18 of crime scenes and of
19 vehicles.

20 THE COURT: Mr. Davis?

21 MR. DAVIS: Judge,
22 based on the additional
23 testimony, we have no
24 objection.

25 THE COURT: Underwater

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1 recovery of crime scenes, Miss
2 Cardillo?

3 MS. CARDILLO: Yes,
4 your Honor. Thank you.

5 THE COURT: Ladies and
6 gentlemen of the jury,
7 normally a person cannot give
8 opinion testimony. Normally
9 when a person testifies, they
10 must testify as to either what
11 they saw or heard or said
12 specifically by smell or touch
13 or something of that nature.
14 However there is an exception.
15 When someone is qualified
16 because of their education or
17 their experience, they are
18 permitted to give their
19 opinion in certain areas if
20 the Court qualifies them that
21 way. Lieutenant Scarborough
22 will be qualified in the area
23 of underwater recovery of
24 crime scenes, to give opinion
25 testimony in that area. That

SCARBOROUGH - - REDIRECT

1 does not mean that you must
2 accept that opinion. It is
3 evidence for you to use in any
4 way that you see fit and to
5 give it the weight and
6 credibility that you believe
7 is appropriate.

8 Ms. Cardillo.

9 MS. CARDILLO: Thank
10 you.

11 Q One just final
12 question. You already may have
13 stated this, but in your
14 professional opinion, how long or
15 had this vehicle been in the water
16 for an extended period of time?

17 A For an extended
18 period of time. Yes, ma'am.

19 Q And how did you
20 determine that?

21 A Due to the fact that
22 the mud that was in the vehicle,
23 that it was a tidal creek, and
24 also my professional experience of
25 the mud building up in cars such