

VOLUME I OF IV

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

THEODORE MANNING,

APPELLANT

RECORD ON APPEAL

LUKE A SHEALEY
Assistant Public Defender

ALAN WILSON
Attorney General

E FIELDING PRINGLE
Chief Public Defender

WILLIAM M. BLITCH, JR.
Assistant Attorney General

Richland County Public Defender's Office
1701 Main St.
Columbia, SC 29201
803-929-6150
Attorneys for Appellant

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
803-734-3727
Attorneys for Respondent

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SC Court of Appeals

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*****THE FOLLOWING EXHIBITS WILL BE TRANSPORTED TO THE COURT OF APPEALS: STATE'S EXHIBIT'S 2 (STATEMENT), 3 (STATEMENT), AND 133 (CD AND TRANSCRIPT), 226 (PHOTO) AND 227 (PHOTO); DEFENDANT'S EXHIBIT'S 1 (SEARCH WARRANT) AND 2 (SEARCH WARRANT); COURT'S EXHIBITS 1 (MOTIONS LIST) AND 6 (DEFENDANT'S REQUEST TO CHARGE).**

STATE OF SOUTH CAROLINA	)	GENERAL SESSIONS
	)	
COUNTY OF RICHLAND	)	2009-GS-40-4647
	)	
	)	
THE STATE,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THEODORE MANNING,	)	
	)	
DEFENDANT,	)	

October 4th - 14th, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE; and a jury.

APPEARANCES:

W. Barney Giese, Solicitor
Luck Campbell, Asst. Solicitor
Joanne McDuffie, Asst. Solicitor
Attorneys for the State

Luke Shealey, Esq.
James May, Esq.
Fielding Pringle, Esq.
Attorneys for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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KELLY FITE

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1	Advice of Rights	265	1,246
2	Statement	265	1,255
3	Statement	265	
4	US Airways records	543	599
5	Wachovia records	543	612
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9	Photo	619	830
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13	Photo	619	830
14	Photo	619	830
15	Photo	619	830
16	Photo	619	830
17	Photo	619	830
18	Photo	619	830

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19	Photo	619	830
20	Photo	619	830
21	Photo	619	830
22	Photo	619	830
23	Photo	619	830
24	Photo	619	830
25	Photo	619	830
26	Photo	619	830
27	Photo	619	830
28	Photo	619	830
29	Photo	619	830
30	Photo	619	830
31	Photo	619	830
32	Photo	619	830
33	Photo	619	830
34	Photo	619	830
35	Photo	619	830
36	Photo	619	830
37	Photo	619	830
38	Photo	619	830

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EXHIBITS (Continued):

39	Photo	619	830
40	Photo	619	
41	Photo	619	830
42	Photo	619	830
43	Photo	619	830
44	Photo	619	830
45	Photo	619	830
46	Photo	619	830
47	Photo	619	830
48	Photo	619	830
49	Photo	619	830
50	Photo	619	830
51	Photo	619	830
52	Photo	619	830
53	Photo	619	830
54	Photo	619	830
55	Photo	619	830
56	Photo	619	830
57	Photo	619	830
58	Photo	619	830

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59	Photo	619	830
60	Photo	619	830
61	Diagram	619	658
62	Diagram	619	658
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71	Photo	661	710
72	Photo	661	710
73	Photo	661	710
74	Photo	661	710
75	Photo	661	710
76	Photo	661	710
77	Photo	661	710
78	Photo	661	710

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79	Photo	661	710
80	Photo	661	710
81	Photo	661	710
82	Photo	661	710
83	Photo	661	710
84	Photo	661	710
85	Photo	661	710
86	Photo	661	710
87	Photo	661	710
88	Photo	661	710
89	Photo	661	710
90	Photo	661	710
91	Photo	661	710
92	Photo	661	710
93	Photo	661	710
94	Photo	661	710
95	Photo	661	710
96	Photo	661	710
97	Photo	661	710
98	Photo	661	710

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99	Photo	661	710
100	Photo	661	710
101	Photo	661	710
102	Photo	661	710
103	Photo	661	710
104	Photo	661	710
105	Photo	661	710
106	Photo	661	710
107	Photo	661	710
108	Photo	661	710
109	Photo	661	710
110	Photo	661	710
111	Photo	661	710
112	Photo	661	710
113	Photo	661	710
114	Photo	661	710
115	Photo	661	710
116	Photo	661	710
117	Photo	661	710
118	Photo	661	

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159	Photo	845	
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163	Photo	845	
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169	Photo	845	
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177	Photo	845	
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182	Photo	845	
183	Photo	845	1,124
184	Photo Blowups	845	1,196
185	Photo Blowups	845	1,196
186	Photo Blowups	845	1,122
187	Photo Blowups	845	1,119
188	Photo Blowups	845	1,121
189	Photo Blowups	845	1,119
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193	Gun paper	1,005	1,221
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196	Gun paper (withdrawn)	1,005	1,005
198	Mop (withdrawn)	1,005	
199	Newspaper article (withdrawn)	1,005	

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228	Photo	1,005	
229	Photo	1,005	
230	Photo	1,005	
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249	Photo	1,005	1,158
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251	Photo	1,005	1,190
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261	Photo	1,005	1,190
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262	Photo	1,005	1,190
263	Photo	1,005	1,190
264	Photo	1,005	1,190
265	Photo	1,005	1,190
266	Photo	1,005	1,190
267	Photo	1,005	1,190
268	Photo	1,005	1,188
269	Photo	1,005	1,190
270	Photo	1,005	1,189
271	Photo	1,005	1,189
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273	Photo	1,005	1,189
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288	Photo	1,005	1,189
289	Photo	1,005	1,189
290	Photo	1,005	1,189
291	Photo	1,005	
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293	Photo	1,005	1,187
294	Photo	1,005	1,188
295	Photo	1,005	1,188
296	Photo	1,005	1,188
297	Photo	1,005	1,188
298	Photo	1,005	1,188

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299	Photo	1,005	1,187
300	Photo	1,005	1,187
301	Photo	1,005	1,187
302	Photo	1,005	1,187
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305	Photo	1,005	1,186
306	Photo	1,005	1,186
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308	Photo	1,005	1,186
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323	Photo	1,005	1,174
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333	Photo	1,005	1,184
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341	Photo	1,005	1,172
342	Photo	1,005	1,172
343	Photo	1,005	1,172
344	Photo	1,005	1,172
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346	Photo	1,005	1,171
347	Photo	1,005	1,171
348	Photo	1,005	1,171
349	Photo	1,005	1,171
350	Photo	1,005	1,171
351	Photo	1,005	1,171
352	Photo	1,005	1,142
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354	Photo	1,005	1,171
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356	Cell Phone travel	1,005	
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5	Letter 9/9/10	315	
6	Masella Intake Sheet	406	
7	Charlotte/Mecklenburg Report	475	
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Closing Statement by Mr. Shealey	1,712
Closing Statement by Mr. Giese	1,742
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JURY CHARGE	1,778
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1 THE COURT: Are you here, Ms. McDuffie, representing
2 the Solicitor's Office?

3 MS. McDUFFIE: Yes, sir.

4 THE COURT: Have you been served with a motion
5 regarding Mr. Giese's presence at jury qualifications?

6 MS. McDUFFIE: Yes, sir, Your Honor.

7 THE COURT: All right. Your motion.

8 MR. SHEALEY: Your Honor, it's simply a motion to
9 prevent him from being acknowledged or complimented
10 by the judge in jury qualifications as is the custom in
11 this county. We believe --

12 THE COURT: In every county of the State?

13 MR. SHEALEY: Yeah, we think simply because he is one
14 of the attorneys trying the case, we think it would give
15 the entire jury trial unfair bias.

16 If he's not in there, it's a moot issue, but if he
17 is in there, we would simply ask to avoid this taint in
18 the entire jury panel, we would ask that he not be
19 recognized in that regard.

20 THE COURT: What's the State's position?

21 MS. McDUFFIE: Your Honor, typically, in jury
22 qualifications, Mr. Giese is recognized, as well as Chief
23 Public Defender, Doug Strickler, but usually Mr.
24 Strickler is not in there. Today Mr. Giese is not in jury
25 qualification. He had a doctor's appointment.

1 THE COURT: Okay. Well, I don't want to start a
2 precedent that other jurists would have to abide by, so
3 I'm going to deny your motion.

4 MR. SHEALEY: All right. Thank you very much.

5 THE COURT: Let's go qualify the jury.

6 (Jury qualifications were held.)

7 (State's Exhibits pre-marked by the State.)

8 THE COURT: Take the cuffs off.

9 (Complies.)

10 MR. MAY: Belly chain.

11 (Complies.)

12 THE COURT: All right, Solicitor. Call your case.

13 MR. GIESE: The State calls indictment number
14 2009-GS-40-4647, the State v. Theodore Manning. It's an
15 indictment for murder.

16 THE COURT: All right. Anything from the State of
17 the nature of pretrial motions? Any pretrial from the
18 State?

19 MS. McDUFFIE: Not at this time, Your Honor.

20 THE COURT: All right. From the defense?

21 MR. SHEALEY: Yes, sir, Your Honor. We passed up
22 our motions list. One of the first motions I'd like to
23 address is regarding the media.

24 I wasn't here for your briefing, but we feel that
25 the media presence during the pretrial itself, some

1 motions we will be arguing, could potentially taint the
2 jury panel even while they're at lunch right now. We'd
3 ask that they be excluded from the courtroom, at least
4 for the pretrial purposes.

5 THE COURT: Well, be more specific.

6 MR. SHEALEY: Well, anything --

7 THE COURT: As specific as you can.

8 MR. SHEALEY: Well, it's hard to be specific without
9 them recording it, and it getting it out to the jury. I'd
10 love to approach the bench, if you will.

11 THE COURT: All right. Cut the cameras off, please.

12 (Complies.)

13 Okay.

14 MR. SHEALEY: Well, one of the issues that we'd like
15 to address, as it's been made public record, as we've been
16 approached by the media already, is that he will plead
17 to 30 years. We don't need to do a trial.

18 I don't want the media knowing that necessarily as
19 to what he'd plead to, but that's one thing I just want
20 to take up for the record before we get going. I don't
21 think it's appropriate.

22 THE COURT: That's not a motion.

23 MR. SHEALEY: But there are numerous other motions,
24 Your Honor, that I think if the media is here throughout
25 pretrial, they could be influenced regarding, you know,

1 the postmortem acts regarding the autopsy photos.

2 I just -- out of an abundance of caution, we have
3 such limited jurors in this panel anyway. I don't want
4 to have any -- I'd like to not have any issue to taint
5 them or have them any more biased than they already have
6 or have already heard throughout the -- over a year since
7 this case has been ongoing. I just think it's prudent
8 to not have them in the pretrial process. That's to the
9 media --

10 THE COURT: What's the State's position?

11 MR. GIESE: Your Honor, that's precisely why we ought
12 to pick the jury at this time.

13 THE COURT: Say what?

14 MR. GIESE: Which is precisely why we ought to be
15 picking a jury at 2:30 before we have pretrial motions.
16 At that point, you instruct the jury not to watch any
17 T.V. or listen to anything at that point.

18 THE COURT: How about that, Mr. Shealey?

19 MR. SHEALEY: The only thing my -- there are specific
20 motions regarding excluding certain testimony regarding
21 postmortem bad acts and things like that that have to be
22 dealt with, have to be dealt with, before we could select
23 our jury...

24 THE COURT: Why would they have to be? It's not
25 unusual in any kind of case to select a jury and then do

1 the pretrial.

2 MR. SHEALEY: Yes, sir. This is somewhat unusual
3 because of all the publicity, but it affects our voir
4 dire.

5 Depending on what is going to come into evidence or
6 not come into evidence based on your ruling affects our
7 voir dire. I'm not sure, really, what the benefit or
8 drawback is of the media for either side during
9 pretrial.

10 I don't know what that would be, but we do have
11 several motions that must be heard before our voir dire.
12 I just think it's a prudent course of action just for
13 pretrial.

14 THE COURT: I understand, but I'm dealing with a
15 rule that allows the press to be present unless I'm shown
16 that there is some compelling reason to exclude the
17 press.

18 MR. GIESE: Your Honor, can you -- may I be heard on
19 this?

20 THE COURT: Sure.

21 MR. GIESE: Voir dire is not fact specific. If he's
22 talking about facts that may come out during these
23 preliminary issues, then the voir dire is not fact specific.
24 It's -- you have certain voir dire.

25 THE COURT: Why can't the defense tailor their voir

1 dire to cover what you're concerned about?

2 MR. SHEALEY: Judge, I mean depending on what you
3 rule, I'm saying -- let's say, for instance --

4 THE COURT: Just give me an unrelated type of
5 defense.

6 MR. SHEALEY: And under that hypothetical, okay, say
7 there's a murder and the body has been grossly
8 dismembered and scattered about the county.

9 THE COURT: Okay.

10 MR. SHEALEY: Evidence of that might affect --
11 whether it comes into evidence or not, based on your
12 pretrial ruling is certainly going to affect whether we
13 have to question jurors about how they feel about
14 dismemberment in general.

15 That would be kind of the analogy I would make, can
16 you not be fair and impartial if you feel that someone
17 who is on trial has dismembered a body?

18 I think that's a pertinent question. It's certainly
19 one of the reasons, using that analogy, why we have to
20 get some of this pretrial done before we select a jury,
21 and we prefer this live streaming feed not go out to the
22 world and affect our jurors, we only have about 85 on
23 the panel.

24 And -- and just -- eventually, once we get down that
25 road and start arguing whether certain postmortem bad

1 acts, dismembering or whatever they may be, are going to
2 come into evidence, I mean, we're going to have a -- an
3 analysis on that, and I'm sure the State's position is
4 going to be --

5 THE COURT: What do you mean analysis?

6 MR. SHEALEY: Analysis. Whether it's highly
7 prejudicial versus probative, things of that nature.

8 THE COURT: Oh.

9 MR. SHEALEY: You know, I would imagine that the State
10 would argue that it's not going to be too prejudicial.
11 It's going to be more probative. Well, that's something
12 a jury -- you know, we don't want them getting involved
13 with that at this point.

14 THE COURT: All right. All right. Have you
15 done -- have you prepared your voir dire?

16 MR. MAY: We have, Your Honor.

17 THE COURT: Well, there's no way to anticipate
18 everything that's going to come up during the trial and
19 that you need to voir dire.

20 I think you need, based on your knowledge of the case
21 and what the State intends to prove and what you intend
22 to prove, that you need to tailor your voir dire to do
23 so, and we need to go ahead and select a jury and then
24 hear the motions.

25 If we've got to hear all of the motions and then

1 tailor voir dire, I don't see why you can't do it. If
2 you know that the Court may or may not admit certain
3 evidence, then put it in your voir dire. We'll give the
4 State the opportunity to object to it.

5 I think you're -- we're going to have to go ahead
6 and draw this jury rather than --

7 MR. SHEALEY: Your Honor --

8 THE COURT: -- do it backwards.

9 MR. SHEALEY: Your Honor.

10 THE COURT: To do it backwards, so to speak
11 backwards, and hear all the voir dire, hear all of this,
12 whatever. All -- how many? Thirty-five motions, and
13 then based on the outcome of those motions, allow you to
14 tailor a voir dire that takes into account the rulings
15 on those motions.

16 If you feel that there is some -- I mean, the word
17 "gun" is used in these motions, just for example. If you
18 want to ask if jurors have any negative feelings about
19 guns, you can ask that question.

20 MR. MAY: Your Honor, if I may, just -- just so we
21 can be procedurally correct, I believe this is -- actually
22 addressed one of the motions that is on the list.

23 THE COURT: Okay.

24 MR. MAY: If I may approach, Your Honor.

25 THE COURT: Sure..

1 MR. MAY: Just so that way, procedurally, we don't
2 get out of sync.

3 THE COURT: Out of sync, all right. So you -- this
4 is your written motion?

5 MR. MAY: Yes, sir. We have a written motion for
6 this request, of doing all the pretrial before selecting
7 the jury. That's basically based on so we could get him
8 a fair trial, Your Honor.

9 THE COURT: Well, you know, it -- it's fine to make
10 a motion based on the 4th, 5th, 6th, 14th Amendments,
11 Article 1, 3, 8, 9, 11, 12, 14, 15 of the Constitution.
12 Now, we'll be here all week arguing all of those, and
13 that's what we may have to do. But I don't know of any
14 of those -- show me a case that says we must decide all
15 motions in the case pretrial and then select a jury.

16 MR. MAY: Yes, Your Honor.

17 THE COURT: I don't do that in death penalty cases.

18 MR. MAY: Yes, sir.

19 Just to address our feelings as we're -- as we're
20 preparing for this case in itself, there are a lot of
21 facts that we believe would be probative for us to address
22 to the jury. The fact is that we're going to put them
23 in our voir dire.

24 Our fear is that -- one of two: Either that the
25 Court -- if there is a question about burning presented

1 to the jury, and we select a jury in the next fifteen
2 minutes and Your Honor then says the burning can't come
3 in, then we've tainted this jury to know that there is
4 a burning in the case.

5 If, however, on the other end of the spectrum, if -- we
6 just don't want our -- our -- what is asked to the jury
7 to influence their thoughts in the deliberations or in
8 how we may start working with the evidence if we go ahead
9 and select and then have brought up a burning.

10 We believe that a burning is completely probative
11 because that's the most prejudicial issue in this case.
12 That's the reason why we believe Mr. Giese is here.
13 That's the reason we haven't had a plea.

14 THE COURT: Okay.

15 MR. MAY: The burning is a very visceral,
16 prejudicial act, and it's something that we believe is
17 appropriate to ask to a jury in voir dire to see whether
18 or not they could give this young man a fair trial or not.

19 THE COURT: Well, I think you're just going to have
20 to ask them.

21 MR. SHEALEY: And, Judge, just so -- maybe if we don't
22 hear all of them, perhaps we could hear two or three of
23 those ones that Mr. May is discussing that could go to
24 those extreme, prejudicial aspects. I don't think that
25 will take very long.

1 THE COURT: Well, back to -- let's come full circle.
2 You started out asking that the press be excluded for
3 these -- for these reasons. Is that it?

4 MR. SHEALEY: Yes, sir. Those would be some of my
5 reasons.

6 THE COURT: All right. Approach the bench.

7 (WHEREUPON, there was a bench conference.)

8 THE COURT: All right. Members of the Press Corps,
9 I'm going to have to take up some matters on the record
10 in-camera. I'm going to have to ask you to turn them off,
11 and that will be it for today.

12 I don't -- we're going to draw this jury shortly or
13 today anyway, and opening statements will be -- may be
14 at 9:30 in the morning, depending on the outcome of what
15 takes place today, but I think the defense has made a
16 reasonable argument that several matters need to be taken
17 up on the record in-camera. So I'm going to have to ask
18 you to turn off your machines and come back tomorrow.

19 Thank you very much.

20 MEDIA: Your Honor, is it okay if we get our
21 microphones?

22 THE COURT: Sure, sure.

23 Mr. Shealey, is there anybody else that's in the
24 courtroom that you feel would prejudice your case?

25 MR. SHEALEY: I mean, not at this point, Judge. The

1 only thing --

2 THE COURT: Okay.

3 MR. SHEALEY: -- the last thing is Jackson v. Denno.
4 We'd ask for sequestration, but that's a different ball
5 of yarn.

6 THE COURT: All right.

7 Mr. Counts.

8 MALE SPECTATOR: Yes.

9 THE COURT: I believe that's probably going to
10 include you.

11 MALE SPECTATOR: Okay.

12 MR. MAY: Your Honor, just in the interest of inquiry,
13 I'd ask to make sure that there's no other journalists
14 here that we don't actually recognize their face.

15 THE COURT: All right. Anybody else here with the
16 media?

17 (There was no response.)

18 You may proceed, Mr. Shealey.

19 MR. SHEALEY: Your Honor, I'll go ahead and pass up
20 the motion.

21 Your Honor, one motion would be number 13.

22 THE COURT: Just hold on a minute.

23 (Pause)

24 Is that your computer?

25 MR. MAY: Yes, sir. I apologize.

1 THE COURT: Number 13?

2 MR. SHEALEY: Yes, Your Honor, this motion -- we
3 specifically -- there's going to be a lot of testimony,
4 perhaps about my client, Mr. Manning's sexual activity
5 in the wake of this alleged murder: The women he was with
6 afterwards, the sex with his codefendant.

7 According to his codefendant's statement, they had
8 sex afterwards, you know, very much in a prejudicial
9 Bonnie and Clyde type scenario. I'm not -- this motion
10 specifically is that it's only prejudicial, not probative
11 of anything whatsoever regarding any sexual activity he
12 had after this alleged killing.

13 Certainly, there's going to be some allegations
14 prior to the -- to the alleged murder regarding his
15 relationship and his alleged relationship with the
16 alleged victim, but what I'm talking about is after the
17 killing, any reference to him having sex with other women
18 or having sex with a codefendant merely is meant to tarnish
19 his character, which I think would be excluded under Rule
20 404(b).

21 I passed up this motion, and I submitted it to --

22 THE COURT: 404(b)?

23 MR. SHEALEY: Yes, Your Honor, simply as a bad act.
24 It doesn't prove anything, but merely to tarnish the
25 character of my client in the eyes of the jury that he's

1 callous in having sex afterwards.

2 I don't know what it would prove in terms of the
3 elements of the crime of murder, and I would ask that
4 you -- that you suppress any mention of it.

5 THE COURT: The State's position?

6 MS. CAMPBELL: Your Honor, I don't know how, arguing
7 this over 404(b), having consensual sex with another
8 person would be a bad act.

9 The only -- we do not intend on going into sexual
10 escapades, of which there are many, on the days after this
11 event occurred. However, Your Honor, I think we have the
12 right in order to show his state of mind.

13 The defense has provided us with information that
14 they intend to characterize this as an accident or some
15 type of lesser homicide.

16 Based on that, we then have a right to show his state
17 of mind and what he was then doing as far as on that day
18 leading up to the crime, what he did during the crime,
19 and what he did after the crime.

20 THE COURT: Same day?

21 MS. CAMPBELL: Same day. That's the only one we
22 planned on going into, Your Honor.

23 THE COURT: With the codefendant?

24 MS. CAMPBELL: With the codefendant. There were
25 numerous other women that we are not going to go into,

1 that aren't relevant. However, his actions on that day,
2 as this is an ongoing thing as far as the interaction
3 with the codefendant herself that helped him get rid of
4 the body.

5 THE COURT: In how close proximity?

6 MS. CAMPBELL: Within hours.

7 THE COURT: All right.

8 MS. CAMPBELL: I don't know how any of his actions
9 with the codefendant only -- Your Honor, we plan to limit
10 it to that, and we don't plan to go into anything else.

11 THE COURT: Res gestae?

12 MS. CAMPBELL: Excuse me?

13 THE COURT: Is it within the res gestae?

14 MS. CAMPBELL: Yes, Your Honor.

15 THE COURT: Mr. Shealey?

16 MR. SHEALEY: In general, we have a motion on res
17 gestae, as well. We're going to get into that, but our
18 argument simply was bad character evidence.

19 I don't know what having sex with a codefendant
20 hours after an alleged murder has to do with the intent
21 in his mind when a gun would have been fired.

22 I think it's simply the thing that 404(b) was
23 designed to prevent against, which was tactics kept in
24 a way to simply make him a monster in the eyes of the jury.
25 It does nothing to prove whether he pulled the trigger

1 with malice in his heart.

2 You know, we're -- and there has been some reference
3 made to that we put the State on notice somehow that we're
4 talking about this being an accident. I don't know what
5 evidence that would have been, but that's not our
6 intention, Judge. We'll say that for the record. This
7 isn't an accident case.

8 THE COURT: I assume you're arguing 403 also?

9 MR. SHEALEY: Yes, sir, unfortunately.

10 I think all this evidence is subject to this 403 and
11 401 and the 15th Amendment.

12 THE COURT: Ms. Campbell?

13 MS. CAMPBELL: Your Honor, as far as the
14 timeframe, we're talking about he murders her sometime
15 midday. During that period of time, sometime thereafter,
16 within a few hours, Kendra Goodman shows up at the residence
17 would be what we intend to prove.

18 At that point, she does cleaning up. Then she follows
19 him up the highway, the lower side of Richland County,
20 all the way up to Fairfield County where the body is disposed
21 of.

22 She then helps him get gasoline so that the body can
23 be burned in the trunk of her own car. It's in the trunk
24 of the victim's own car.

25 At that point, she then drives him back. During that

1 point of time, they also use some -- the victim's A.T.M.
2 cards or attempt to use them, as well as they do use them.

3 Subsequent to that, they then immediately go back
4 to his residence, at which point she would talk about how
5 his demeanor changed.

6 At that point, he became interested in her, and at
7 that point, they had a consensual sexual encounter. At
8 which point she then left and went home and was home some
9 time between eight and nine that night. So you're talking
10 about a pretty short period of time during which there
11 is a series of events, of which are all connected, Your
12 Honor.

13 I think just under a res gestae, just for relevance,
14 Your Honor, we are able to show the state of mind that
15 day. No matter what they claim, be it accident, the
16 lesser-included homicide or whatever their defense may
17 or may not be, we still have to prove the element of malice.

18 His actions, as all the cases --

19 THE COURT: It's --

20 MS. CAMPBELL: I'll be glad to pull some case law,
21 Your Honor, but I believe you're familiar with it, as all
22 the cases show, any of his actions that day, in and
23 around and subsequent to, the actual act itself are
24 relevant as to proving what he had -- what his state of
25 mind was at the time.

1 Your Honor, in your malice charge, or in your -- one
2 of your charges itself, Your Honor, when you're talking
3 about criminal intent, specifically the law even
4 addresses the fact that we can't say specifically what
5 was in his mind, but we use the -- the surrounding
6 behaviors, surrounding acts, by the defendant in order
7 to infer or determine what, if any, criminal intent they
8 may have.

9 It goes even a step further when the burden is upon
10 the State to prove malice. Therefore, Your Honor, any
11 and all conduct up until that day, that day during the
12 events whatever we can or cannot prove -- and there are
13 no other eyewitnesses -- and subsequent to that, what he
14 and the codefendant do together just that day -- and we
15 do not intend to go into any further sex acts with anyone
16 else that night or any other subsequent days, Your
17 Honor -- at this point, we don't see any relevance to
18 those.

19 THE COURT: All right.

20 MS. CAMPBELL: So we have limited ourselves just to
21 what we think would be relevant as to his conduct that
22 day.

23 THE COURT: All right. As so limited, the motion is
24 denied.

25 MS. CAMPBELL: Thank you, Your Honor.

1 MR. MAY: Your Honor, if we could address, because
2 the Solicitor so succinctly put it, they're relying on
3 res gestae.

4 Your Honor, in State v. Gagum, which is 328 S.C. 560,
5 the Court of Appeals expressed uncertainty of whether
6 there is viability of res gestae since the adoption of
7 the South Carolina Rules of Evidence.

8 A thorough review of case law since then, no court
9 has ever said that res gestae survived the adoption of
10 the Rules of Evidence. The adoption of the Rules of
11 Evidence, Your Honor, was in 1995.

12 The ancient doctrine of res gestae, I believe has
13 been by clear legislative intent, not put in there. Had
14 they said they wanted res gestae, it would be in there.
15 It's not there.

16 THE COURT: What does Gagum say?

17 MR. MAY: Gagum says there's a question as to the
18 viability of res gestae.

19 THE COURT: Right.

20 MR. MAY: We'd ask the Court to make a ruling of
21 whether or not res gestae is still viable since the adoption
22 of the Rules of Evidence.

23 The defense maintains that when you look at the case
24 law regarding clear legislative intent, that it's not
25 viable.

1 THE COURT: Well, what do you -- what are you leading
2 up to?

3 MR. MAY: Your Honor, it --

4 THE COURT: If I were to so rule, you would move to
5 exclude anything post whatever the date and time --

6 MR. MAY: Well, Your Honor --

7 THE COURT: -- of the alleged murder; correct?

8 MR. MAY: Well, it --

9 THE COURT: I mean, is that what you're leading up
10 to?

11 MR. MAY: I'm leading that they need to follow the
12 Rules of Evidence and not an ancient doctrine. The Rules
13 of Evidence and by Luck Campbell getting up here and
14 saying this res gestae, this res gestae --

15 THE COURT: Wait a minute. I suggested that.

16 MR. MAY: Okay.

17 THE COURT: It came from the Court.

18 MR. MAY: Well, Your Honor, with the Court
19 suggesting that, I believe that there is a problem with
20 the fact that it is not here.

21 If we look at the federal Rules of Evidence which
22 South Carolina adopted and copied for a large portion --

23 THE COURT: All right.

24 MR. MAY: -- there are definitely additional 404(b)
25 acts that are in the federal Rules of Evidence that were

1 not adopted by the South Carolina legislature.

2 Therefore, with clear legislative intent, I believe it
3 is -- beg the Court's indulgence for one second.

4 (Pause)

5 Your Honor, we'd ask the State to state which
6 Rules of Evidence they're given under, not an ancient
7 doctrine, but we'd ask that they go by the clear rules
8 as adopted by the South Carolina legislature, what rule
9 are they trying to get this evidence in under.

10 THE COURT: As to the issue of a ruling that anything
11 formerly characterized as res gestae be excluded from this
12 trial, what's the State's position?

13 MS. CAMPBELL: Our position is that the Court clearly
14 held since 1997, and there are plenty of Gagum with it
15 being -- and I can get to the case law, Your Honor. I'm
16 sorry. They did not give us any list of motions until
17 just right before you walked onto the bench, Your Honor.

18 THE COURT: Yes.

19 MS. CAMPBELL: So we weren't prepared on this issue.
20 There is case law out there. Off the top of my head, I
21 can cite you Anderson v. State, which is 581 S.E.2d 834,
22 which talks about evidence of prior -- bad acts or part
23 of res gestae. That is a 2003 case, Your Honor.

24 It says that differentiating those were the
25 analysis of res gestae versus prior bad acts under Rule

1 404(b). That's just one case that I could get off the
2 top of my head, Your Honor.

3 There are other cases out there, Your Honor. I know
4 Justice Toal has addressed this issue, Your Honor. I
5 cannot recall -- I apologize -- off the top of my head --

6 THE COURT: All right.

7 MS. CAMPBELL: -- which case --

8 THE COURT: I'll let you submit something in the case.

9 MS. CAMPBELL: I'll provide something.

10 MR. MAY: Your Honor, I'd just ask for your leave,
11 Your Honor. I was trying to pull something else up.

12 I would strongly take the position against what the
13 Solicitor says. This -- this issue has not been ruled
14 upon.

15 While other courts have addressed the issue, they
16 have no -- nobody has brought up and challenged res
17 gestae's viability. That's what we're doing.

18 Your Honor, I believe that under Harris v. Anderson
19 County Sheriff's Department, 381 S.C. 357.

20 THE COURT: Who, Harris County?

21 MR. MAY: Harris v. Anderson County Sheriff's
22 Department.

23 THE COURT: Anderson?

24 MR. MAY: Yes, sir. That's 381 S.C. 357. It states,
25 "The Court will give words their plain and ordinary

1 meaning. It will not resort to a subtle or forced
2 instruction that will limit or expand the statute's
3 operation.

4 THE COURT: All right.

5 MR. MAY: I'd just ask the Solicitor's Office what
6 rule they're going under.

7 THE COURT: Well, it's your motion.

8 MR. MAY: And I -- yes, sir. I'd say that res gestae
9 is no longer -- has been done away with through the Rules
10 of Evidence, and we're asking for a ruling on the viability
11 of it.

12 THE COURT: All right. I'll read your -- I'll read
13 your cases. Anything from the State, I'll be glad to read
14 it, and I'll let you know, but that's why I asked the
15 question what other motions depend on this ruling. I
16 would assume seven --

17 MR. MAY: Yes, sir.

18 THE COURT: But I don't know that.

19 MR. MAY: All right, Your Honor. Here is an
20 additional one.

21 MS. CAMPBELL: Your Honor.

22 THE COURT: Yes.

23 MS. CAMPBELL: Would it be possible for them to
24 provide us with all of their written motions at once, so
25 we don't have to delay this trial any more than necessary?

1 THE COURT: Can you do that?

2 MR. MAY: I don't know.

3 THE COURT: What? Give them all you've got, if
4 you're going to argue them.

5 MR. MAY: Yes, sir. Yes, sir. If we can -- I'll just
6 take a few minutes to sign everything.

7 THE COURT: Go ahead.

8 MR. MAY: All right.

9 (Pause)

10 THE COURT: Is that it?

11 MR. MAY: I believe so.

12 THE COURT: You've provided all to the State?

13 MR. SHEALEY: Yes, sir, Your Honor.

14 THE COURT: All right.

15 MR. SHEALEY: They should have a copy of everything
16 at this point.

17 THE COURT: All right. Well, let's move on to those
18 issues which you feel necessarily need to be addressed
19 prior to constructing your voir dire to the jury.

20 In other words, a lot of these deal with evidentiary
21 issues, procedural issues, that don't have anything, in
22 my mind, to do with the voir dire of the jury.

23 MR. MAY: Yes, sir. Beg the Court's indulgence. I
24 have one more that I had already pulled out.

25 THE COURT: Okay. I apologize.

1 (Pause)

2 MR. MAY: I haven't caught up in all the papers.

3 (Pause)

4 THE COURT: All right.

5 MR. MAY: Yes, sir. May it please the Court, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. MAY: At this time, the defense would move to
9 exclude any testimony regarding the burning of the car,
10 as well as the body of Nikki McPhatter.

11 Your Honor, I believe there are five hurdles which
12 the State must meet, and we believe that they fail on the
13 analysis of all five hurdles.

14 THE COURT: Go ahead.

15 MR. MAY: Yes, sir. The first issue is: does it fall
16 within 404(b)? Your Honor, looking at 404(b) the five
17 exceptions, I don't believe this goes to any of the five
18 exceptions.

19 THE COURT: What's the difference between this and
20 your last motion?

21 MR. MAY: Just different pieces of evidence, Your
22 Honor.

23 THE COURT: Same argument?

24 MR. MAY: Same argument, but I believe we need to
25 address all five hurdles.

1 Your Honor, it doesn't go into any of the five
2 exceptions of 404(b). I'd ask the State to respond to
3 that, get your ruling, and then we'll move to the next
4 hurdle they must clear.

5 THE COURT: Why don't you tell me what they are.

6 MR. MAY: Yes, sir.

7 First, does it fall within 404(b)? Clearly, it does
8 not. Is the act itself by clear and convincing evidence?
9 The defense would stipulate that it does.

10 Is the evidence relevant to the crime charged? Your
11 Honor, 401, the acts approximately three hours after the
12 shooting has no elemental purpose of the crime of murder
13 charged.

14 The Solicitor could have charged the crimes as
15 desecration of human remains. They could have charged
16 arson, second degree. They chose not to. They chose to
17 only charge murder, Your Honor.

18 The good old 403 analysis, the probative value of
19 the evidence is not outweighed by the prejudicial.

20 Your Honor, there may be -- the most prejudicial
21 thing in this trial is the burning of the body.

22 It is clearly prejudicial, Your Honor, to quote
23 United States v. Antonelli Fireworks, 155 F.E.2d 631.

24 "Next to perjury, prejudice is the main cause of the
25 miscarriage of justice. If the Government Counsel

1 is -- in a criminal suit, is allowed to inflame jurors
2 by reveling, arousing the deepest passion, the jury may
3 well become a weapon in the hands of the prosecutor."

4 Your Honor, the burning of the body goes no -- to
5 no element of the crime. It merely goes to the fact that
6 they want the jury to hate this young man, Your Honor.
7 The elements of the crime are malice aforethought, not
8 malice afterthought.

9 Your Honor, additionally, we have the 14th
10 Amendment hurdle that the act is so prejudicial that the
11 defendant cannot get a fair trial.

12 Your Honor, we believe that when a jury hears that
13 Theo Manning put her body of Nikki McPhatter in the back
14 of the car, drove it to Fairfield County and set it on
15 fire, that it doesn't matter what happened when the gun
16 went off.

17 It doesn't matter about his state of his mind, which
18 is an element of the crime. None of the elements of the
19 crime are met through the introduction of the evidence
20 of burning the car.

21 Your Honor, that would be our argument. The defense
22 would stipulate to a charge similar in Wood, Your Honor,
23 362 S.C. 520, the State v. John Richard Wood.

24 In that opinion -- this is when Justice Kittredge
25 was riding the circuit. Justice Kittredge had a -- had

1 a trial in front of him that was actually much more than
2 the State has in this.

3 It was a trial where the defendant was -- had already
4 been convicted of killing a highway patrolman on the
5 road. He's pulled over a short time later, and that's
6 the reason why he fires again.

7 He's already been convicted. He already got the
8 death penalty for that. That would go to the intent, the
9 reason why he committed the subsequent crime.

10 Justice Kittredge in that trial limited the State
11 to say that an incident occurred earlier.

12 THE COURT: A completely unrelated incident.

13 MR. MAY: They were within a couple of hours, very
14 similar to this, but I think it's a lot more probative
15 of why somebody would do something, why somebody was evading
16 law enforcement.

17 Your Honor, the evidence --

18 THE COURT: What else does the court say in that case?

19 MR. MAY: Yes, sir.

20 THE COURT: It's a Court of Appeal case?

21 MR. MAY: That is correct, Your Honor.

22 THE COURT: They have a -- sort of a broad
23 understanding of res gestae, which is not...

24 MR. MAY: Yes, pardon me, sir.

25 Res gestae was not raised in that case. I don't

1 believe we're precluded from arguing it because it was
2 used in this case. I think res gestae, the viability of
3 it, per Gagum and the case law --

4 THE COURT: What am I reading? Evidence of bad acts
5 or other crimes may be admitted under the res gestae
6 theory.

7 MR. MAY: I'm not disagreeing. That's what it says
8 in here. I'm saying - I'm not disagreeing, I'm saying
9 that the viability of that doctrine was not challenged.
10 It has not been challenged as the adoption of the Rules
11 of Evidence. That's what we did with the previous motion.

12 THE COURT: Okay. I see.

13 MR. MAY: I'm not saying that it hasn't been used by
14 courts, but the viability objecting to the doctrine is
15 what the defense is doing in this.

16 THE COURT: Well, they used the res gestae analysis
17 to allow the evidence.

18 MR. MAY: But they --

19 THE COURT: They don't have to reach Lyle or 404(B).

20 MR. MAY: You always have to address 403 and 401
21 regardless of any --

22 THE COURT: I agree.

23 MR. MAY: -- of any analysis of 403 and 401.

24 THE COURT: All right.

25 MR. MAY: There is no -- if we look at the elements

1 of the crime of murder, the unlawful killing of another
2 with malice aforethought.

3 THE COURT: So nothing after the crime --

4 MR. MAY: Is a snapshot.

5 THE COURT: -- is admissible.

6 MR. MAY: It is a snapshot. That is all. It's a
7 snapshot.

8 THE COURT: It --

9 MR. MAY: -- at the time the gun went off, it was --

10 THE COURT: Answer my question.

11 MR. MAY: Pardon me, sir?

12 THE COURT: Are you saying that nothing that takes
13 place immediately after the crime is relevant?

14 MR. MAY: Your Honor, in this case, absolutely not.

15 THE COURT: Okay. How about the State's position?

16 MS. CAMPBELL: We disagree with them. We think it's
17 extremely relevant. This is an ongoing commission of a
18 crime.

19 Basically, the murder takes place at one place. He
20 takes -- and this goes to his state of mind. It doesn't
21 matter the time of the act. He puts the body into a trunk.
22 He drives it across county lines.

23 He hides it in the woods and sets the car on fire.
24 He has to leave the car there. He goes and gets gas and
25 comes back and doused the car with gasoline in order to

1 make sure it burns up enough.

2 Your Honor, it's clearly relevant. Under the
3 defense theory of the case, at no time would any evidence
4 come in after the actual shot is fired.

5 I guess all testimony would cease at that moment,
6 evidence of flight, which is clearly admissible; evidence
7 of his acts after and around the time of the crime are
8 not admissible under their theory of how this is.

9 Your Honor, I did get some of the res gestae cases
10 up, and one of the ones they quote to limit us is Woods,
11 as well as State v. Adams, State v. Prather, even the
12 State v. Gouthien (phonetic), which they talked about which
13 I forwarded Your Honor, clearly says that this evidence
14 comes in under a res gestae theory.

15 THE COURT: I think -- I think that's right, but what
16 he's saying is he wants this court to challenge the res
17 gestae rule and -- not that other courts haven't allowed
18 evidence in under the rule.

19 He's saying that, as I understand his position, that
20 the Rules of Evidence subsume the doctrine of res gestae,
21 and therefore, he wants the Court, as I understand it,
22 to rule that res gestae is no longer a viable vehicle for
23 the admission of evidence in South Carolina.

24 MR. MAY: That's correct, Your Honor.

25 THE COURT: Correct?

1 MR. MAY: Yes, Your Honor.

2 MS. CAMPBELL: Except, Your Honor, the State v.
3 Carmen -- Russell Weiss, Your Honor. In that one they
4 address that one of the accepted basis for the
5 admissibility of evidence of other crimes arises when
6 such evidence furnishes part of the context of the crime
7 is necessary for the full presentation.

8 Again, Your Honor, I mean, they were not quoting the
9 law, because it's not law. They are quoting it because
10 it is the law that -- it's -- under which this is argued.
11 That's what they relied on, clearly.

12 THE COURT: Okay.

13 MS. CAMPBELL: The evidence itself, the
14 admissibility of the evidence --

15 THE COURT: It's not the old --

16 MS. CAMPBELL: -- that's being challenged --

17 THE COURT: -- res gestae.

18 MS. CAMPBELL: Can I just approach with that case,
19 Your Honor?

20 THE COURT: Hand up anything you wish.

21 MS. CAMPBELL: Thank you, Your Honor.

22 THE COURT: Let's move on.

23 MS. CAMPBELL: Do you want this?

24 THE COURT: Motion to exclude the burning of the
25 decedent's body in the car is denied. Again, I see no

1 difference in this and the sexual activity motion.

2 I assume. Let me -- I'm going to let you argue it,
3 but I'm assuming that the additional gun and financial
4 transaction card theft and fraud are all based on the same
5 theory.

6 MR. MAY: That's correct, Your Honor. The one thing
7 that I would ask, that the way that the motion was worded.
8 I believe after the first paragraph, it says in the
9 alternative.

10 THE COURT: Which?

11 MR. MAY: We would ask that the Court proceeds as
12 Justice Kittredge did. We provided the case of Wood.

13 THE COURT: Yes. How can I do that in this case?

14 MR. MAY: Your Honor, pardon me?

15 THE COURT: How could I do that in this case?

16 MR. MAY: Okay. At the Wood case, Justice Kittredge
17 limited it and said, "At this time I'll hear from the
18 State's witness to testify to observing, perhaps hearing
19 of an incident" --

20 THE COURT: Prior to.

21 MR. MAY: Prior to -- well, I mean, when we look at
22 the old rule of prior bad acts, prior bad acts, so any
23 acts that happened before --

24 THE COURT: Well, 404(b) could apply to acts that
25 happened after the crime, too.

1 MR. MAY: Correct, and as you're ruling is that
2 you're denying the motion, Your Honor, I, in the
3 alternative -- the defense would ask for limiting
4 instructions as far as what the State's witnesses can
5 testify to and what evidence the State may introduce.

6 Justice Kittredge in this case to be --

7 THE COURT: But that was -- that was factually
8 different.

9 MR. MAY: Every case is factually different and --

10 THE COURT: Well, I think it's significant in this
11 case that it was prior to, and he was attempting to
12 keep the jury from being prejudiced prior -- about an
13 act that was prior to the act of the -- for which the case
14 was being tried, as in most any other prior bad act case,
15 and he did.

16 He limited it to incident, and that's not unusual.
17 But I don't see -- I don't see the applicability of that
18 procedure to this case.

19 This -- these are acts which take -- allegedly take
20 place immediately following the killing of the deceased,
21 and I don't see how -- I don't see how -- I don't see how
22 it makes any sense to a jury to say he committed certain
23 incidents after the murder. So I mean, I don't -- I really
24 don't even understand what you're asking me to do.

25 MR. MAY: Yes, Your Honor. Your Honor, as Your Honor

1 just stated, the 404(b) can apply to prior and bad
2 act -- prior and post acts. That was what Your Honor just
3 stated from the bench.

4 THE COURT: Right.

5 MR. MAY: With that analysis, I'm understanding
6 that --

7 THE COURT: All right, what I'm -- what I'm saying
8 is it does not have to, based on my ruling, it does not
9 have to fall within 404(b).

10 MR. MAY: All right. Your Honor, for the defense,
11 we'd ask under which method -- so you're saying -- I'm
12 trying to understand your ruling for the burning of the
13 body, okay.

14 THE COURT: The same with the sexual activity, and
15 it's probably going to be the same with transaction card
16 and theft, that it is relevant in the context of what
17 happened that day. It does not have to fall within one
18 of the exceptions of 404(b).

19 MR. MAY: Okay. So it does not have to fall within
20 the exception of 404(b). I guess the defense would just
21 question, in all due respect, then how is it being
22 admitted?

23 THE COURT: They put it up. You object. I overrule.

24 MR. MAY: So it's being admitted through no rule of
25 evidence?

1 THE COURT: How about 401. I find it's relevant.

2 MR. MAY: Okay. But then doesn't it have to still --

3 THE COURT: I find it is more probative than
4 prejudicial.

5 MR. MAY: Okay. So -- I mean, I'm not trying to be
6 a jerk. I'm just trying to wrap my mind around your
7 ruling, so that way I know how to --

8 THE COURT: My ruling is real clear.

9 MR. MAY: Okay. So you're saying --

10 THE COURT: I'm going to allow them to put it in, yes.

11 MR. MAY: So 404(b) does not apply?

12 THE COURT: I don't think it applies --

13 MR. MAY: Okay.

14 THE COURT: -- to this specific fact situation that
15 you've raised --

16 MR. MAY: Yes, sir, okay.

17 THE COURT: -- in this case.

18 MR. MAY: All right. Thank you, Your Honor.

19 Our next motion would be the financial transaction
20 card theft and fraud.

21 THE COURT: Okay. Go ahead and argue it.

22 MR. MAY: Yes, sir. If you'll give me one second,
23 Your Honor.

24 Your Honor, your previous ruling was to the fact that
25 the actions of burning of the car were to cover-up the --

1 THE COURT: I didn't say that.

2 MR. MAY: Or in -- okay. See, I'm trying to get your
3 ruling so I can know how to argue this.

4 THE COURT: I didn't say it was to cover-up anything.

5 MR. MAY: All right. So it was relevant for what
6 purpose? I mean, I'm not -- I'm just trying to
7 understand.

8 THE COURT: It's relevant.

9 MR. MAY: Okay. Your Honor, following the car being
10 burned in Fairfield County.

11 THE COURT: Is that before or after the sex?

12 MR. MAY: The sex is following everything.

13 MR. SHEALEY: Allegedly.

14 MR. MAY: Allegedly.

15 All right. Just for the Court's -- what we can
16 understand from their recitation of the facts, a
17 gun -- Nikki McPhatter was killed by a gunshot in Theo
18 Manning's house around sometime the afternoon of May 6th.

19 A codefendant, a subsequently charged codefendant,
20 Kendra Goodman comes over, and the car is loaded into the
21 back of Nikki McPhatter's car.

22 THE COURT: The car is loaded?

23 MR. MAY: From --

24 THE COURT: The body is loaded.

25 MR. MAY: The body is loaded into the back of Nikki

1 McPhatter's car. The body is driven to Fairfield County
2 where it is --

3 THE COURT: Both them in the car?

4 MR. MAY: I believe Goodman is --

5 THE COURT: Allegedly, allegedly, both of them were
6 in the car?

7 MR. MAY: No, sir. There was a car that was
8 following. The car is burned. Their allegations are
9 that then Manning gets into Goodman's car. They drive
10 to an A.T.M. where they take out approximately \$500 of
11 the decedent's money where then they return back to the
12 residence, the crime scene location.

13 THE COURT: Okay.

14 MR. MAY: Your Honor, for that reason, we would move
15 to exclude any testimony of financial transaction card
16 theft and fraud, Your Honor. They didn't charge it. They
17 could have charged it. They chose not to.

18 It, again, does not fall within one of the categories
19 of 404(b). This is a bad act. I don't think that anybody
20 can say this is not a bad act, and for a bad act to be
21 admissible, it must follow the 404(b) analysis.

22 We'd argue that the burning of the body also is a
23 bad act, and it must be -- come in subject to 404(b). That
24 would be the same argument here, Your Honor.

25 Financial transaction card theft and fraud are

1 codified law, crimes in this state. We'd argue that it
2 is a bad act. Therefore, the only way it comes in is through
3 one of the five exceptions of 404(b).

4 We agree it is established by clear and convincing
5 evidence. The next hurdle then is the crime is relevant
6 to the case charged. There is nothing relevant. Nowhere
7 do they allege that the killing was due to theft. Nowhere
8 do they allege that the killing was due to a -- for monetary
9 gain.

10 The mere fact is that the only thing that this evidence
11 will go to is to inflame the passion and prejudice of the
12 jury. This is not an identity case.

13 We are here to say -- we'll put him up to say he pulled
14 the trigger right now, if Your Honor would like to, so
15 that way the State can rest assured. He is going -- nobody
16 is contesting that he pulled the trigger.

17 Therefore, the evidence is not relevant to the crime
18 whatsoever. Additionally, it is highly prejudicial. If
19 it doesn't go to the element of the crime, then whatever
20 was probative of is greatly outweighed by the prejudicial
21 effect.

22 This will confuse the issue. The issue is not whether
23 or not he committed financial transaction card theft and
24 fraud. The question is whether he killed somebody with
25 murder, who had malice aforethought, as well as that

1 this evidence -- again, there is a 14th Amendment analysis.

2 This evidence has no relation to an unlawful killing.

3 It would deprive him of a fair trial as guaranteed under
4 the 14th and 16th Amendments of the United States.

5 THE COURT: The State's position?

6 MR. GIESE: Your Honor, I think -- I think in this
7 specific instance, it goes to the issue of identification.
8 It's the only way the Charlotte police force first got
9 contact with this defendant and was first able to come
10 down to Richland County and get involved with our -- with
11 our deputies was because of the transaction card.

12 So it goes totally to I.D. This crime took place on
13 one day. They don't find the body for 23 days. In all
14 of it, all of the investigation in Richland County,
15 comes from that financial transaction card photo that was
16 taken the same day that the victim died. It is clearly
17 relevant and clearly admissible and clearly part of the
18 investigation. The only way that they came down here was
19 because of that.

20 THE COURT: All right. The motion is denied.

21 MR. MAY: Your Honor, if I may just for the record,
22 respond?

23 THE COURT: Yes.

24 MR. MAY: Yes, sir.

25 Your Honor, I believe that the Solicitor grossly

1 misstated the occurrence of finding Mr. Manning. That
2 was not the way they found him. They found him after a
3 search warrant and finding a receipt in that search
4 warrant.

5 MR. GIESE: And, Your Honor, that's how they --

6 MR. MAY: Excuse me --

7 MR. GIESE: That's how they --

8 MR. MAY: Excuse me.

9 MR. GIESE: -- came to Columbia because of the
10 picture.

11 MR. MAY: Excuse me, excuse me.

12 MR. GIESE: Because you --

13 MR. MAY: Excuse me.

14 MR. GIESE: -- for misstating for what I said.

15 MR. MAY: Your Honor, in the case notes, it clearly
16 says they could not identify him at the time. U.S.C.
17 Lovely --

18 THE COURT: Well, that's the State's position. I
19 don't know if the light is red or the light is green.

20 MR. MAY: Yes, sir.

21 THE COURT: I take the Solicitor at his word that that
22 photograph was taken at the A.T.M., assisting law
23 enforcement in solving the case and arresting the
24 defendant.

25 MR. MAY: Yes, sir.

1 THE COURT: The motion is denied.

2 MR. MAY: And -- and so it is relevant? Are you
3 making it a 404(b)? Does it come in under 404(b) or some
4 other --

5 THE COURT: Your motion is denied.

6 MR. MAY: Okay.

7 THE COURT: Next motion.

8 MR. MAY: Yes, sir.

9 Your Honor, while we're still on the same
10 analysis, in -- during the search warrant, a gun was found.
11 It's the same analysis, but it's something a little
12 different.

13 A gun that was used in -- for the killing was never
14 recovered. This is a completely separate gun. It holds
15 absolutely no probative value whatsoever but that the
16 defendant owned numerous guns.

17 THE COURT: Okay.

18 MR. MAY: It's not forensically linked to the
19 killing. It's not alleged to be used.

20 THE COURT: Okay. Let me hear from the State.
21 What's this gun got to do with this case?

22 MS. McDUFFIE: Your Honor, the projectile that was
23 recovered from the victim's body was determined to be a .38
24 caliber type projectile. David Collins, the ballistics
25 examiner, could not be more specific. However, he was

1 able to --

2 THE COURT: Where would -- where was the projectile
3 recovered?

4 MS. McDUFFIE: From the victim's head, Your Honor.

5 THE COURT: Okay.

6 MS. McDUFFIE: All right.

7 THE COURT: Was it analyzed?

8 MS. McDUFFIE: It was analyzed, Your Honor, and he
9 was able to determine the projectile --

10 THE COURT: Was it analyzed with a specimen fired from
11 this gun?

12 MS. McDUFFIE: Your Honor, yes, it was. There was --

13 THE COURT: And what was result? Inconclusive?

14 MS. McDUFFIE: Your Honor, yes, it was inconclusive.
15 The projectile from the victim's head had a certain
16 number of lands and grooves with a left-hand twist. A
17 nine millimeter was recovered from the defendant's house
18 with the same number of lands and grooves with a left-hand
19 twist.

20 THE COURT: I thought it was -- I thought it was
21 a .38.

22 MS. McDUFFIE: It was a nine millimeter recovered
23 from the victim's house, which could have fired the
24 projectile that --

25 THE COURT: Could have fired the .38 projectile?

1 MS. McDUFFIE: Could have fired the caliber of the
2 projectile that was found in the victim's head.

3 THE COURT: A .38?

4 MS. McDUFFIE: It was a .38 caliber projectile
5 which -- and according to David Collins -- means that it
6 could be consistent with a nine millimeter, could be
7 consistent with .380 ammunition, and that would be his
8 testimony, Your Honor.

9 The .380 that the defendant says that he shot her
10 with also contains the same lands and grooves with a
11 left-hand twist of the projectile from the victim's head.

12 So David Collins would state that it would be
13 inconclusive whether or not he could determine it was fired
14 from a nine millimeter or from a .380. He would say that
15 it -- she could have been killed by a Highpoint nine
16 millimeter or a .380 if a Highpoint nine millimeter
17 recovered from the --

18 THE COURT: And he admits that?

19 MS. McDUFFIE: Who? I'm sorry, Your Honor?

20 THE COURT: He admits...

21 MS. McDUFFIE: This defendant, Your Honor, says that
22 he killed her with a .380. Your Honor, the .380 was not
23 recovered. However, a nine millimeter gun was recovered,
24 and that gun also is consistent with the projectile found
25 in the victim's head.

1 THE COURT: Nothing links this gun with the death of
2 the defendant (sic)?

3 MS. McDUFFIE: Your Honor, the number --

4 THE COURT: It's possible.

5 MS. McDUFFIE: Yes, Your Honor. This could possibly
6 be the murder weapon.

7 THE COURT: Mr. May?

8 MR. MAY: Your Honor, you have two statements, both
9 from the codefendant, as well as the defendant, that says
10 it was a .380.

11 Your Honor, I'll be happy -- I have a firearms expert
12 here in the courtroom right now. If I may consult with
13 him, I'll be happy to, if you need to hear testimony, but
14 I -- it was our understanding through the entire --

15 THE COURT: All right. I'm going to grant your
16 motion depending on what comes up -- as a limiting motion
17 at this point.

18 MR. MAY: Yes, sir.

19 THE COURT: Unless there is some other -- some more
20 foundation to link this gun to this incident, I'm going
21 to grant your motion.

22 MR. MAY: Thank you, Your Honor.

23 THE COURT: Is that all?

24 MR. MAY: Beg the Court's indulgence for one second.

25 (Pause)

1 MR. SHEALEY: Your Honor, would you renew your
2 motion regarding the journalists being here.

3 THE COURT: The journalist just walked in.

4 MR. SHEALEY: Yes, sir. My understanding was that
5 you didn't want any journalists in here.

6 THE COURT: I understand, but I thought you were
7 finished.

8 MR. SHEALEY: We have at least one more motion that
9 needs to cover the same ground before we -- before we go
10 on to the jury selection.

11 THE COURT: And which one is that?

12 MR. SHEALEY: This would be about prejudicial
13 photographs, Your Honor.

14 THE COURT: Which motion?

15 MR. SHEALEY: This would be motion 16.

16 THE COURT: Sixteen?

17 MR. SHEALEY: Yes, sir. We'd move to exclude any --

18 THE COURT: All right. All right.

19 MS. CAMPBELL: I was -- I don't mean to interrupt,
20 but how is this possibly connected to voir dire as far
21 as the exclusion or inclusion thereof?

22 THE COURT: Well, I'm going to take defense counsel
23 at their word that they need these rulings to properly
24 voir dire the jury, but the photographs will be -- I will
25 rule on photographs when they're offered or when

1 they're -- prior to trial or before the State seeks to
2 introduce them into evidence, and I'll rule on which
3 photographs are admissible or not, if that's the
4 substance of your motion.

5 MR. SHEALEY: Well, essentially, in an attempt to
6 streamline this process, it would be the defense's
7 opinion the prejudicial and probative burning of the
8 carcass and things like that coming in, we want to know
9 if the jury can be fair and impartial when they're going
10 to be faced with something like that.

11 THE COURT: Well, you're going to have to ask what
12 you think is proper. I don't know. I haven't seen the
13 photographs, so I can't rule on them.

14 MR. SHEALEY: It's essentially the same argument
15 that if we ask everybody and it doesn't come in, then the
16 whole jury knows that's there is something to do with this
17 case that has to do with a burned individual. If you rule
18 it doesn't come in --

19 THE COURT: I've already ruled that it does come in.

20 MR. SHEALEY: I'm talking about your mentioning,
21 deciding at a later point which photographs come into
22 evidence.

23 THE COURT: Which specific photographs.

24 MR. SHEALEY: Right, which specific --

25 THE COURT: But if they deal with the motion that

1 you've already argued and I've already denied your motion,
2 you can pretty well bet on something along that line
3 that will be offered by the State that they'll probably
4 admit.

5 Since I -- since I have not ruled out the evidence,
6 I can't rule out the photographs in a vacuum, pretrial.

7 MR. SHEALEY: Would you like a --

8 THE COURT: Pre-voir dire.

9 MR. SHEALEY: We just take it up at that same point
10 in time they seek to admit?

11 THE COURT: Sure.

12 MR. SHEALEY: All right. Your Honor, I think that
13 would be some of the key ones the defense felt would need
14 to be addressed before we pick a jury.

15 THE COURT: All right. Do you need time to revise
16 your voir dire?

17 MR. MAY: Could we just get a brief --

18 THE COURT: All right. We'll take about a ten-minute
19 recess. Is the jury back? Does anybody know?

20 MR. SHEALEY: May we approach for scheduling, Judge?

21 THE COURT: Sure.

22 (WHEREUPON, there was a bench conference.)

23 THE COURT: I'll give you a few minutes.

24 Have you already submitted a voir dire and also
25 looked at the State's voir dire?

1 MS. McDUFFIE: Your Honor, we have not seen the
2 defense's voir dire.

3 THE COURT: All right. We'll stand at ease for about
4 ten minutes, and then we'll select a jury.

5 (WHEREUPON, a short break was taken.)

6 MR. MAY: Your Honor, before the jury is brought up,
7 we do have one additional issue.

8 With all of the news coverage of the events back in
9 mid May through early June of last year, there was
10 approximately 200 comments posted on the internet from
11 different people.

12 We subpoenaed W.L.T.X., W.O.L.O., W.A.C.H., W.I.S.
13 and The State to obtain the names of people who would
14 have posted, just so that way we'd be sure not get them
15 on our jury.

16 THE COURT: Yes.

17 MR. MAY: Whatever our -- they haven't complied with
18 the subpoenas.

19 THE COURT: They what?

20 MR. MAY: They have not complied with the
21 subpoenas.

22 THE COURT: Okay.

23 MR. MAY: We would ask -- just we didn't put it in
24 our voir dire.

25 THE COURT: I'll ask it.

1 MR. MAY: Just if they've formed any opinion on the
2 case after hearing the alleged facts.

3 THE COURT: Or if they had posted.

4 MR. MAY: If they have posted, yes, sir, and if they've
5 already formed an opinion of the -- due to the media coverage,
6 would be a requested issue or a requested voir dire of
7 the defense.

8 THE COURT: All right. The jury is coming up?

9 MS. CAMPBELL: Your Honor, may we address their voir
10 dire?

11 THE COURT: Yes. We haven't called them yet. My
12 clerk went to get something.

13 MS. CAMPBELL: I'm sorry.

14 (Pause)

15 THE COURT: All right. With regard to the State's
16 voir dire, any objection by the defense to the State's
17 voir dire?

18 MR. SHEALEY: Beg the Court's indulgence, Judge.

19 (Pause)

20 Judge, we don't have a problem with the Solicitor's
21 voir dire.

22 THE COURT: All right. How about any objection by
23 the State to the defendant's voir dire?

24 MS. CAMPBELL: Yes, sir. Your Honor, as far as one,
25 three and five, I think that can be combined to general

1 law enforcement, since they addressed three different
2 sections of law enforcement.

3 THE COURT: Let me look at it.

4 (Pause)

5 Well, we have any law enforcement agency, civil,
6 military or Department of Corrections.

7 MS. CAMPBELL: All right.

8 THE COURT: And you don't object to them?

9 MS. CAMPBELL: We don't object to them. We just ask
10 that they be consolidated.

11 THE COURT: I'll do that.

12 MS. CAMPBELL: Then on number two, we'd ask for a
13 reciprocal one, which they have no problem with that.

14 THE COURT: All right.

15 MS. CAMPBELL: We have no problem with number six.
16 Your Honor, on number seven --

17 THE COURT: How about --

18 MS. CAMPBELL: Number seven?

19 THE COURT: No. You skipped four. I mean, any
20 objection to four?

21 MS. CAMPBELL: No, Your Honor.

22 THE COURT: Okay.

23 MS. CAMPBELL: And we'd ask for a reciprocal one, as
24 well on that one.

25 THE COURT: Yes, ma'am. Seven?

1 MS. CAMPBELL: Seven, "Does any member of the jury
2 panel belong to any organization that has as its primary
3 purpose opposition to the ownership of handguns?"

4 There is a handgun that's alleged to have been
5 involved in this case. I'd just ask that it be a little
6 more general -- or that's fine the way it is. I don't
7 care.

8 THE COURT: I'll deal with it.

9 MS. CAMPBELL: Number eight, included in your general
10 charge, Your Honor.

11 THE COURT: Well, I've not -- I've never talked about
12 promiscuity.

13 MS. CAMPBELL: Oh, I'm sorry. I didn't read that
14 one.

15 THE COURT: You do --

16 MS. CAMPBELL: I have no problem with number eight.
17 Number nine, Your Honor --

18 THE COURT: You do know the definition?

19 MS. CAMPBELL: -- I do object to. I don't think it's
20 proper voir dire to insert self-defense, and it's
21 certainly not fair to consider a plea of self-defense when
22 the victim was shot in the back of the head. I just think
23 that would be inappropriate voir dire on that.

24 THE COURT: Okay. I'll hear them out on that.

25 MS. CAMPBELL: Number ten, Your Honor, I don't know

1 if this would necessarily qualify as domestic violence.
2 They were boyfriend and girlfriend. They were not
3 cohabitating.

4 THE COURT: Well, they won't know. I'll ask them.

5 MS. CAMPBELL: That's fine.

6 And Your Honor, we'd object to Number 11 and Number
7 12 -- or actually Number 11, if you could just rephrase
8 it a little bit better. But Number 12, we do object to,
9 "Does a juror have a religious opposition to a
10 nontraditional burial?"

11 No one is going to claim that he was burying her.

12 MR. SHEALEY: We're not claiming that. We can clear
13 that up.

14 THE COURT: Okay. Mr. Shealey or Mr. May, address
15 Number 9 and Number 12.

16 MR. SHEALEY: Right before we get to that, we're
17 talking about 1, 3, and 5 kind of being the same thing.

18 THE COURT: I'll ask it. Don't worry about it.

19 MR. SHEALEY: Okay. In terms of Number 9, we think
20 it's important that the facts that are alleged,
21 Mr. Manning's statement, potentially self-defense, all
22 the facts clearing alleging from the following that:
23 Gunshot wound, right in the back of the head.

24 THE COURT: Wait a minute. Why would the State allege
25 self-defense?

1 MR. SHEALEY: Well, they're not. But Mr. Manning's
2 statement, we think on its face provides particularly an
3 area for self-defense.

4 Now, if that jury doesn't think that anybody
5 could -- could be -- conceivably under the law of
6 self-defense when there is evidence of a gunshot to the
7 back of the head.

8 I have a right to know which juror thinks that's
9 impossible or that's not -- they can't be fair hearing
10 that evidence. I think that is extremely important for
11 the defense's case in this situation because that's the
12 evidence that will be presented: The gunshot wound was
13 to the right back of the head.

14 If they can't understand that concept and
15 self-defense, then we need to know about that to have a
16 fair and impartial jury. That would be our position on
17 number nine.

18 THE COURT: Do you think they'll even understand
19 that?

20 MR. SHEALEY: I would hope so, Judge, but if they can't
21 understand it from a moral standpoint, the defense has
22 a right to know.

23 Number 11, we're not really --

24 THE COURT: Go ahead.

25 MR. SHEALEY: Oh, okay. Number 12 is the one I

1 missed.

2 We're not saying this is any kind of burial. What
3 we mean is -- maybe I didn't articulate it well
4 enough -- that does anybody out there have a feeling that
5 they can't be fair and impartial when someone
6 is -- basically their right to a burial of their choosing
7 has been taken away from them, I guess is more of a feeling
8 that we can't...

9 THE COURT: I'm not going to do that.

10 MR. SHEALEY: Sir?

11 THE COURT: I'm not going to do that. I can't -- I
12 can't explain it.

13 MR. SHEALEY: Well, I could rewrite it: "Does
14 anybody feel they cannot be fair and impartial when a
15 person's right to the burial of their choosing has been
16 denied?" Basically, I think it's important because this
17 woman probably --

18 THE COURT: What was her choosing?

19 MR. SHEALEY: I don't know what her choosing is, but
20 they're going to realize that she didn't get --

21 THE COURT: Well, you can argue that. I'm not going
22 to exclude somebody from the jury based on that
23 question.

24 MR. SHEALEY: Well, I think if they can't be fair based
25 on that, Judge.

1 THE COURT: I've already ruled.

2 MS. CAMPBELL: Your Honor, may I be heard on number
3 nine briefly?

4 THE COURT: Number 9.

5 MS. CAMPBELL: Your Honor, he has a right -- in voir
6 dire, he has a right to -- as far as them being maybe
7 instructed on the law itself. At this point, it's
8 premature.

9 You don't even know if you will be charging
10 self-defense. That's just their characterization of what
11 they get out of the statement.

12 As far as whether or not it's legal principle which
13 will apply to this case, it's too soon to tell. You would
14 ultimately have to rule on that. Therefore, I think it
15 would be premature, and not reciprocal, necessarily in
16 this case.

17 Of course, our characterization of the statement is
18 different from theirs, and I don't think that until you
19 hear the case and the entire factual setting and all of
20 the evidence in the case whether or not you would find
21 that would be an appropriate charge at that point. I mean,
22 it's -- it's the same manner in saying voluntary
23 manslaughter, involuntary manslaughter, accident,
24 duress.

25 There are a number that could apply potentially, but

1 it's premature, and therefore, it would not be proper at
2 this point to ask them about those different defenses.

3 THE COURT: All right.

4 MR. SHEALEY: Judge, just briefly.

5 THE COURT: Yes.

6 MR. SHEALEY: The factual scenario, which is in the
7 light most favorable to the State, is an argument
8 that -- according to statement, what they're going to call
9 a confession is that --

10 THE COURT: What -- well, what does the statement
11 say?

12 MR. SHEALEY: The statement basically says that there
13 was heated argument about the relationship.

14 THE COURT: That she attacked him?

15 MR. SHEALEY: That she pulled a gun on him. He
16 disarmed her, continues to argue, and he shoots her.
17 That's what the -- that's what the jury is going to hear.
18 I think that -- this self-defense --

19 THE COURT: Where does that come from?

20 MR. SHEALEY: That comes from his statement, Judge.

21 THE COURT: So there is some evidence?

22 MR. SHEALEY: Yes, sir.

23 THE COURT: That may or may not be introduced that
24 there was an argument. Whoever the provocateur was
25 is -- may be irrelevant.

1 MR. SHEALEY: Yes, sir. These are -- these are kind
2 of the bare-bone facts of the case. We're not going to
3 get to the jury charge and things like that --

4 THE COURT: All right. I'll give it.

5 MS. CAMPBELL: You'll get -- Judge, just so you know,
6 you're going to talk about could you impartially
7 consider a plea of self-defense when a victim is shot in
8 the back of the head or just so they can understand there
9 may be a defense of self-defense in this case?

10 THE COURT: I think that's -- I'm going to try to put
11 it in language that they can understand.

12 THE COURT: All right. Anything further?

13 MS. CAMPBELL: Your Honor, before you charge that,
14 just so you know, they do have a motion --

15 THE COURT: I'm not charging it.

16 MS. CAMPBELL: I apologize.

17 THE COURT: I'm just asking if they think -- if there
18 was a self-defense argument and if there was evidence -- and
19 I'm not sure if I can say shot in the back of the head
20 at this point.

21 MS. CAMPBELL: This would be the same statement
22 they're seeking to suppress.

23 THE COURT: Oh. That may happen, too, but I don't
24 see how this in any way prejudices the State by finding
25 out this information if, indeed, we find out any

1 information.

2 Are you ready for the jury?

3 MR. SHEALEY: Yes, Your Honor.

4 THE COURT: Is the State ready for the jury?

5 MS. McDUFFIE: Your Honor, we have not received the
6 new strike list.

7 THE COURT: I'm sorry, show it.

8 (Pause)

9 Is the State ready to proceed?

10 MS. CAMPBELL: Yes, sir, Your Honor.

11 THE COURT: Is the defense ready to proceed?

12 MR. SHEALEY: Yes, sir, Your Honor.

13 THE COURT: Bring the jury, please.

14 (WHEREUPON, the jury panel was brought into the
15 courtroom.)

16 MR. SHEALEY: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 (WHEREUPON, a bench conference was held in the
19 presence, but not within the hearing of the jury.)

20 THE BAILIFF: The jury panel is present, Your
21 Honor.

22 THE COURT: All right. Thank you very much.

23 Good afternoon, ladies and gentlemen.

24 PROSPECTIVE JURORS: Good afternoon.

25 THE COURT: Welcome to the Court of General Sessions.

1 This is the criminal division of our court system, and
2 those of you necessarily who are going to be selected to
3 serve on a jury today will be listening to a criminal case.

4 I'm going to tell you a little bit about it. I'm
5 probably going to tell you a lot about it before we finish
6 this question-and-answer period, but before we...

7 (A prospective juror entered the courtroom.)

8 (Pause)

9 Is this a juror? Is that a juror? We've got people
10 still coming in.

11 THE BAILIFF: Sorry about that, Your Honor. I
12 miscounted.

13 THE COURT: All right. Everybody present now?

14 As I said, that is criminal case, and those of you
15 who are selected will be sitting on a criminal jury. I'm
16 going to go through a -- as I told you this morning, a
17 more specific question-and-answer period with relation
18 to the case that's about to be tried.

19 Let me say before we get started that when I ask these
20 questions, and there are going to be several of them, I
21 need for you to identify yourself by juror number. So
22 I want you to be familiar with your number.

23 I found over the past several years that
24 jurors -- when -- particularly in criminal cases, would
25 rather be identified by their number than by their names.

1 So if you will respond at all times with your jury number
2 and not with your name.

3 I have a list of jurors here in front of me with your
4 numbers on them, so I can refer to that when you tell me
5 what your jury number is.

6 Now, as you probably know, in any criminal case, the
7 prosecuting entity is the State of South Carolina, which
8 is represented by the State Solicitor's Office.

9 Now, in some states, they call that prosecuting
10 entity the State's Attorney or the District Attorney, but
11 here in South Carolina, we call it the State Solicitor's
12 Office.

13 The state -- your State-elected Solicitor is
14 Mr. Barney Giese who is present in the courtroom today,
15 and I'll introduce him to you. He is one of the State's
16 attorneys in this case, Mr. Giese.

17 I need to know if any member of the jury panel or
18 any member of your family is related to Mr. Giese or works
19 in the State Solicitor's Office for Mr. Giese. Any
20 member of the jury panel?

21 (There was no response.)

22 THE COURT: Any member of the jury panel related to
23 anybody that does work in the State Solicitor's Office?
24 If so, please stand.

25 (There was no response.)

1 THE COURT: All right. The other two assistant
2 solicitors or deputy solicitors that will be handling
3 the -- will be working on this case today are Mr. Katherine
4 Luck Campbell and Ms. Joanna McDuffie. I'll ask them to
5 stand.

6 Any member of the jury panel related by blood,
7 connected by marriage or close personal acquaintance to
8 Ms. Katherine Luck Campbell or Ms. Joanna McDuffie? Any
9 member of the jury panel?

10 (There was no response).

11 THE COURT: All right. Now necessarily, the State
12 Solicitor's Office, or the prosecutors, work very
13 closely with law enforcement because they bring the
14 cases to court that law enforcement brings to them.

15 So I do need to know if any member of the jury panel
16 or any member of your family works in law enforcement,
17 and that could be anything from the Kershaw -- I mean,
18 from the Richland County Sheriff's Office to the City of
19 Columbia Police Department.

20 I believe this case involves the City of Columbia
21 Police Department primarily. Any State Law Enforcement
22 Division, F.B.I., D.E.A., military police force, or any
23 other type of police force that you or a member of your
24 family or close personal acquaintance works for? Any
25 member of the jury panel?

1 Yes, ma'am, if you'll please stand and give me your
2 number.

3 PROSPECTIVE JUROR: 128.

4 THE COURT: 1-2-8, and how...

5 PROSPECTIVE JUROR: Does this have to be the State
6 of South Carolina?

7 THE COURT: No, ma'am, any law enforcement agency
8 anywhere. You tell me who and what they do.

9 PROSPECTIVE JUROR: My brother is a detective.

10 THE COURT: Where?

11 PROSPECTIVE JUROR: In the Fayetteville Police
12 Department in North Carolina.

13 THE COURT: Okay. Your brother is a detective.

14 PROSPECTIVE JUROR: And my father is retired from
15 the Department of Corrections in North Carolina also and
16 is retired military.

17 THE COURT: He is what?

18 PROSPECTIVE JUROR: Retired military.

19 THE COURT: Let me ask you this: Would that fact in
20 any way interfere with your ability to give both the State
21 and the defendant a fair and impartial trial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you very much.

24 Yes, ma'am, number?

25 PROSPECTIVE JUROR: 129.

1 THE COURT: 129.

2 PROSPECTIVE JUROR: My nephew is a detective in
3 Belton, Texas.

4 THE COURT: All right. Ma'am, would that fact in any
5 way interfere with your ability to give both the
6 State --

7 PROSPECTIVE JUROR: No.

8 THE COURT: -- and the defendant a fair and impartial
9 trial?

10 PROSPECTIVE JUROR: No.

11 THE COURT: Thank you very much. Anybody else?

12 Yes. Just y'all can stand, and I'll just go down the
13 row.

14 PROSPECTIVE JUROR: 188.

15 THE COURT: 1-8-8, yes, sir.

16 PROSPECTIVE JUROR: My first cousin is retired police
17 chief Charles Austin.

18 THE COURT: In the City of Columbia?

19 PROSPECTIVE JUROR: City of Columbia. He's my first
20 cousin.

21 THE COURT: First cousin. Would that fact in any
22 way interfere with your ability to give both the State
23 and the defendant a fair and impartial trial in this case?

24 PROSPECTIVE JUROR: It would not.

25 THE COURT: Sir?

1 PROSPECTIVE JUROR: It would not.

2 THE COURT: Thank you very much, Mr. 188.

3 Anybody else have any connection with law
4 enforcement?

5 Yes, sir.

6 PROSPECTIVE JUROR: Number 61. I've got a cousin
7 that works in Denmark County where she's a --

8 THE COURT: Where? In Denmark.

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: Your number is 68?

11 PROSPECTIVE JUROR: No, I'm number 61.

12 THE COURT: I'm sorry. I've got to find you on the
13 list when you give me your number. Just one second.

14 (Pause)

15 She does what for Denmark?

16 PROSPECTIVE JUROR: She works -- she is with the
17 sheriff's department in Denmark.

18 THE COURT: What county is that in?

19 PROSPECTIVE JUROR: I'm not sure which county,
20 Denmark County or Barnwell County or something like that.

21 THE COURT: Probably Barnwell County.

22 PROSPECTIVE JUROR: Yeah, I'm not sure.

23 THE COURT: Mr. 61, would that fact in any way
24 interfere with your ability to give both the State and
25 the defendant a fair and impartial trial?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: All right. You could be fair to both
3 parties?

4 PROSPECTIVE JUROR: Yes, sir.

5 THE COURT: All right. Anybody else?

6 PROSPECTIVE JUROR: Seventy-three.

7 THE COURT: Yes, ma'am.

8 PROSPECTIVE JUROR: I work for the Office of Highway
9 Safety.

10 THE COURT: You what?

11 PROSPECTIVE JUROR: The Office of Highway Safety.

12 THE COURT: Who does?

13 PROSPECTIVE JUROR: I do.

14 THE COURT: You do?

15 PROSPECTIVE JUROR: Yes, sir, Your Honor.

16 THE COURT: All right. Do you have a patrol car?

17 PROSPECTIVE JUROR: No, Your Honor.

18 THE COURT: Okay. All right. Ms. 73, would that
19 fact in any way interfere with your ability to give both
20 the State and the defendant a fair and impartial trial?

21 PROSPECTIVE JUROR: No, sir.

22 THE COURT: Thank you very much.

23 Anybody else?

24 (There was no response.)

25 THE COURT: All right. Let me carry that one step

1 further. Any member of the jury panel, as a -- have as
2 a -- something that you do regularly or perhaps even
3 irregularly that you -- I'm going to ask if you support,
4 either financially or as volunteer, any groups that have
5 as their primary function the support of law enforcement.
6 For example, the State Troopers Association or the
7 Sheriff's Association or the Mother's Against Drunk
8 Driving or Students Against Drunk Driving or perhaps
9 support a victim's group, such as Sistercare, or any
10 groups which has as their primary function support of
11 victims of crime, or perhaps even groups like the Alston
12 Wilkes Society that work with people who are being
13 released from incarceration? Any of these groups that
14 you support, either financially, as I said, or as a
15 volunteer, please stand.

16 Yes, ma'am.

17 PROSPECTIVE JUROR: Number four.

18 THE COURT: Number four.

19 PROSPECTIVE JUROR: The State Troopers Association.

20 THE COURT: All right. All right. Let me ask you
21 something, ma'am. I always ask jurors, the lawyers know
22 I ask this question.

23 When you made the donation to the Troopers
24 Association did you get a sticker to go on the back of
25 your car?

1 PROSPECTIVE JUROR: Yes, sir.

2 THE COURT: Did you put it on your car?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Have you ever got a ticket?

5 PROSPECTIVE JUROR: No, sir, not yet.

6 THE COURT: All right, folks.

7 PROSPECTIVE JUROR: But my husband did.

8 THE COURT: Just an observation.

9 Yes, ma'am?

10 PROSPECTIVE JUROR: You mean currently have I
11 ever -- have I ever --

12 THE COURT: Just go ahead and tell me.

13 PROSPECTIVE JUROR: I can --

14 THE COURT: Your number?

15 PROSPECTIVE JUROR: 194.

16 THE COURT: Yes, ma'am.

17 PROSPECTIVE JUROR: I think I donated to the
18 same --

19 THE COURT: Troopers Association.

20 PROSPECTIVE JUROR: Yes, but I don't...

21 THE COURT: Okay. That's all I need to know.

22 Thank you very much, ma'am.

23 PROSPECTIVE JUROR: I didn't use my sticker, by the
24 way. I got it.

25 THE COURT: You just proved my point.

1 Yes, ma'am. Your number, please?

2 PROSPECTIVE JUROR: Number 68.

3 THE COURT: Yes, ma'am.

4 PROSPECTIVE JUROR: Sistercare.

5 THE COURT: All right. Thank you, ma'am.

6 Anybody else?

7 PROSPECTIVE JUROR: Juror number 36.

8 THE COURT: Thirty-six, yes, sir.

9 PROSPECTIVE JUROR: Richland County Sheriff's
10 Department.

11 THE COURT: Sheriff's Department?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: As a volunteer or just with the
14 contribution?

15 PROSPECTIVE JUROR: Contribution.

16 THE COURT: All right. Thank you very much, Mr. 36.

17 Yes, ma'am.

18 PROSPECTIVE JUROR: 289, supported Sistercare
19 financially.

20 THE COURT: All right. Thank you, ma'am. Anybody
21 else?

22 PROSPECTIVE JUROR: 221, the same, supported
23 Sistercare.

24 THE COURT: Sistercare, 221. All right.

25 Anybody else?

1 (There was no response).

2 THE COURT: All right. When I was asking about
3 people working in law enforcement, I don't know if I talked
4 about in military law enforcement. I don't know if I said
5 that. I want to include that in that list of potential
6 law enforcement agencies.

7 Any member of the jury panel, any member of your
8 family, work in -- as a -- in law enforcement in the
9 military?

10 (There was no response.)

11 THE COURT: All right. Thank you very much.

12 Any member of the jury panel or any member of your
13 family been employed by the Department of Corrections in
14 South Carolina?

15 Yes, ma'am, and your number, 221?

16 PROSPECTIVE JUROR: No, 194.

17 THE COURT: What?

18 PROSPECTIVE JUROR: 194. My father is retired from
19 the Department of Corrections.

20 THE COURT: All right. Let me ask you, 194, would
21 that fact in any way interfere with your ability to give
22 both the State and the defendant a fair and impartial
23 trial?

24 PROSPECTIVE JUROR: No.

25 THE COURT: Thank you very much.

1 Anybody else?

2 (There was no response.)

3 THE COURT: All right. The defendant in this case
4 today is Mr. Theodore Manning.

5 Mr. Manning, will you stand and face the jury. Just
6 Mr. Manning. Any member of the jury panel related by
7 blood, connected by marriage or employment or a close
8 personal acquaintance of Mr. Theodore Manning? If so,
9 please stand. Anybody know Mr. Manning?

10 Yes, sir, your number, please?

11 PROSPECTIVE JUROR: Number 226.

12 THE COURT: 226?

13 PROSPECTIVE JUROR: Yes, sir.

14 THE COURT: All right.

15 You can be seated, Mr. Manning.

16 Mr. 226, will you -- will you just approach the bench
17 and tell me how you -- let me ask you -- I'd rather ask
18 you at the bench something about this.

19 (WHEREUPON, a bench conference was held in the
20 presence, but not within the hearing of the jury.)

21 THE COURT: All right. Anybody else?

22 (There was no response.)

23 THE COURT: All right. Mr. Manning is represented
24 in this matter today by Ms. Fielding Pringle, Mr. Jim May,
25 and Mr. Luke Shealey.

1 Stand and face the jury. Any member of the jury panel
2 related by blood, connected by marriage or employment,
3 or a close personal acquaintance of other -- of either
4 of these three attorneys who practice law here in Richland
5 County? Anybody know any of these three attorneys?

6 (There was no response.)

7 THE COURT: Thank you very much.

8 Any member of the jury panel related by blood,
9 connected by marriage or employment to any person who works
10 in the Richland County Public Defender's office? If so,
11 please stand.

12 Yes, ma'am, and your number, please?

13 PROSPECTIVE JUROR: Sixty-nine.

14 THE COURT: Fifty-nine?

15 PROSPECTIVE JUROR: Sixty-nine.

16 THE COURT: Sixty-nine, I'm sorry. Yes, ma'am, and
17 who --

18 PROSPECTIVE JUROR: My mother works for the Public
19 Defender's Office.

20 THE COURT: Your mother?

21 PROSPECTIVE JUROR: Uh-huh.

22 THE COURT: All right. Ms. 69, would that fact in
23 any way interfere with your ability to give both the State
24 and the defendant a fair and impartial trial?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: Thank you very much, ma'am.

2 Anybody else?

3 (There was no response.)

4 THE COURT: Now, ladies and gentlemen, what I hold
5 in my hand is what's known as an indictment. It is the
6 formal document by which a case is brought into court.

7 It's not evidence of anything. When I tell you what
8 it says, you're not to presume or assume anything from
9 the mere fact that the defendant was charged in this case.

10 Any individual in the State of South Carolina in the
11 United States who is charged with a crime is presumed
12 innocent of that crime until proven guilty to a jury beyond
13 a reasonable doubt.

14 So when I tell you the nature of the charge, it is
15 merely to advise you of what the charge is, and I'm going
16 to ask you some questions whether you know anything about
17 it one way or the other.

18 Now, the defendant is charged with murder, in that
19 on or about May 6th, 2009, the defendant, Theodore
20 Manning, did feloniously, willfully, and with malice
21 aforethought kill one Nikki McPhatter by means of a gunshot
22 wound, and that the said victim died as a proximate result
23 thereof. That's the charge.

24 Now, I'm aware of the fact that this morning's
25 newspaper carried an article about this upcoming trial.

1 So I'm going to ask you some questions about what you know
2 about this.

3 Now, let me just say this to begin with: If all you
4 know about this case is what you read in the paper this
5 morning, I'm going to ask that group of people to stand.

6 There may be some of you who know something about
7 the case from some time back. You may have heard about
8 it, read about it. I'm going to ask you that question,
9 too.

10 Back in -- sometime in 2009, the summer of 2009, there
11 was probably -- and I'm not privy to it at this point,
12 there probably was some news media coverage of this event
13 back then. So I'll ask you if you -- by the same token,
14 if you had any knowledge of the fact back then.

15 Then I guess there's a third category of those of
16 you who may know something about it that you did not read
17 about or see in the media; that you may have heard about
18 at work. You may have talked to your neighbors. You may
19 have lived in the neighborhood. You may know something
20 about the case that was not reported in the media.

21 I'll ask those people, I'll ask each of them to come
22 forward and talk to me personally at the bench, because
23 obviously, I wouldn't want a member of your jury to stand
24 up and say something that may influence the rest of the
25 jurors one way or the other.

1 So the easiest way to deal with that is to have you
2 come forward to the bench. So with that in mind, because
3 I -- because there has been some publicity about this
4 matter, I do need to find out what you know or don't know
5 about it.

6 If you have no knowledge about it, then you don't
7 answer any of these questions. So let me ask those persons
8 who have only become aware of this situation, of this
9 alleged crime today by just reading about it in the
10 newspaper. I'm going to ask you to stand at this time.

11 Are you the only person that reads the newspaper?

12 PROSPECTIVE JUROR: (Indicating).

13 THE COURT: Well, two.

14 PROSPECTIVE JUROR: Well --

15 PROSPECTIVE JUROR: I read it upstairs.

16 THE COURT: All right. You're in that same category,
17 ma'am?

18 PROSPECTIVE JUROR: Right. Although, once I saw the
19 article, I remembered the prior question.

20 THE COURT: Okay. Well, I'll ask that question.

21 (Sitting down.)

22 No, no, no.

23 PROSPECTIVE JUROR: Okay.

24 THE COURT: Those that just saw what was in the press
25 today -- all right. Now, what's your number, please?

1 PROSPECTIVE JUROR: 160.

2 THE COURT: 160. And let me ask you, Mr. 160, after
3 reading that article, did you come -- have you, in your
4 mind, come to any conclusions about this case, about the
5 guilt or innocence of the defendant one way or the
6 other?

7 PROSPECTIVE JUROR: No, sir.

8 THE COURT: All right. Do you feel that you could
9 be fair and impartial and sit in this case, despite having
10 read that article, and fairly judge the innocence or guilt
11 of the defendant?

12 PROSPECTIVE JUROR: Yes, sir.

13 THE COURT: Thank you very much, Mr. 160.

14 PROSPECTIVE JUROR: You're welcome.

15 THE COURT: Your number, please, ma'am?

16 PROSPECTIVE JUROR: 221.

17 THE COURT: 221.

18 Ms. 221, let me ask you the same question: Although
19 you say you -- it jarred something in your memory about
20 having been aware of it prior to.

21 PROSPECTIVE JUROR: Right.

22 THE COURT: Are those -- when you heard -- when you
23 learned about it prior to today, how did you learn about
24 it?

25 PROSPECTIVE JUROR: News reports.

1 THE COURT: Through the media?

2 PROSPECTIVE JUROR: Yes.

3 THE COURT: Any other connection with the case one
4 way or the other?

5 PROSPECTIVE JUROR: No.

6 THE COURT: All right. Ma'am, based on your exposure
7 to the media reports in 2009 and again today, have you
8 formed, or did those reports lead you to any conclusions
9 about the guilt or the innocence of the defendant?

10 PROSPECTIVE JUROR: I believe I could hear the
11 evidence in court and be fair.

12 THE COURT: That was my question.

13 PROSPECTIVE JUROR: Yes.

14 THE COURT: And my next question is based on
15 receiving that information, do you believe you could be
16 fair and impartial, even though you've read those
17 two -- that media report?

18 PROSPECTIVE JUROR: Yes.

19 THE COURT: All right. Thank you very much, Ms. 221.

20 Now, as I said, any member of the jury panel who,
21 in 2009 when this event is alleged to have occurred,
22 remember seeing or hearing or talking about or knowing
23 anything about this case as a result of media coverage?

24 All right. That's good.

25 Now, your number, please?

1 PROSPECTIVE JUROR: Thirteen.

2 THE COURT: Mr. 13, and what was your exposure to the
3 case?

4 PROSPECTIVE JUROR: I work for the media.

5 THE COURT: All right. And you work for which one?

6 PROSPECTIVE JUROR: I work -- I'm a news producer for
7 W.O.L.O. T.V.

8 THE COURT: Okay. So you were probably...

9 PROSPECTIVE JUROR: I was not a producer back when
10 this was alleged to have occurred.

11 THE COURT: Okay. You were with --

12 PROSPECTIVE JUROR: Right, I was with the station,
13 but not in a producer capacity, but I was employed there
14 in 2009.

15 THE COURT: All right. Well, were you exposed to the
16 news reports at that time?

17 PROSPECTIVE JUROR: Correct.

18 THE COURT: You were?

19 PROSPECTIVE JUROR: But I would say no more or less
20 than anybody that was watching that.

21 THE COURT: All right. Based on your exposure to the
22 media that took place in 2009, do you feel that you could
23 be fair and impartial to both parties in this case?

24 PROSPECTIVE JUROR: Yes, I do.

25 THE COURT: Thank you very much, Mr. 13.

1 Yes, ma'am?

2 PROSPECTIVE JUROR: Fifty-three.

3 THE COURT: Oh, let me ask just -- Mr. 13, did you
4 have any other follow-up involvement with the case or
5 discussions with other people in the news room, that
6 sort of thing?

7 PROSPECTIVE JUROR: Not that I recall.

8 THE COURT: All right. Thank you very much.
9 I'm sorry, what was your...

10 PROSPECTIVE JUROR: Fifty-three, sir.

11 THE COURT: Fifty-three. Yes, ma'am.

12 PROSPECTIVE JUROR: I learned of it in the media.

13 THE COURT: In 2009?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: And did you have any other exposure to
16 this case one way or the other?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Okay. You feel based on the fact that
19 there was media attention that you were exposed to that
20 you could be fair and impartial in this case?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: All right. You don't think that that
23 coverage in any way influenced you one way or the other?
24 It was just a news report?

25 PROSPECTIVE JUROR: That's right.

1 THE COURT: All right. Thank you very much, Ms. 53.

2 Yes, ma'am, your number?

3 PROSPECTIVE JUROR: 260.

4 THE COURT: 260?

5 PROSPECTIVE JUROR: Uh-huh.

6 THE COURT: Yes, ma'am. What was your exposure to
7 it?

8 PROSPECTIVE JUROR: I read about it in the local news
9 and also in the Charlotte news.

10 THE COURT: Okay. Do you have any connections in
11 Charlotte?

12 PROSPECTIVE JUROR: I do. My two daughters live
13 there.

14 THE COURT: Okay. Did you have any occasion to
15 discuss the matter with them?

16 PROSPECTIVE JUROR: I believe we may have.

17 THE COURT: Did they indicate there was coverage of
18 it in the Charlotte papers, as well?

19 PROSPECTIVE JUROR: It was in the papers and I also
20 think on the news.

21 THE COURT: Okay. So you not only were exposed to
22 it through the news media, but you also had some discussion
23 with your daughters about it one way or the other?

24 PROSPECTIVE JUROR: I did, sir.

25 THE COURT: Okay. Based on not only your perception

1 from the news media, but also from your conversation with
2 your daughter or daughters, do you feel that in any way
3 interfered with -- would interfere with your ability to
4 give both the State and the defendant a fair and impartial
5 trial? Do you think you might have been biased one way
6 or the other by those discussions?

7 PROSPECTIVE JUROR: I don't know. I think I could
8 be impartial.

9 THE COURT: But you're a little hesitant about that?

10 PROSPECTIVE JUROR: Well, we discussed it. I mean,
11 I've never been in this situation before, so to be
12 honest, I could not tell you. I don't know. I would want
13 to be. I would try hard to be.

14 THE COURT: Okay. All right. Thank you very much,
15 ma'am.

16 Yes, sir.

17 PROSPECTIVE JURORS: 226.

18 THE COURT: And your number?

19 PROSPECTIVE JUROR: 226.

20 THE COURT: 226. Yes, sir, how were you exposed to
21 it?

22 PROSPECTIVE JUROR: I just saw it in the media.

23 THE COURT: All right, sir. Did you have any
24 follow-up discussions about it one way or the other with
25 anybody?

1 PROSPECTIVE JUROR: I mean, I also work at the same
2 place.

3 THE COURT: Well, you told me that, yeah. All
4 right.

5 Well, what I mean -- what I'm asking is after you
6 were exposed to it in the media, did you have any other
7 discussions with your coworkers about this case one way
8 or the other?

9 PROSPECTIVE JUROR: Yes, sir.

10 THE COURT: You probably did?

11 (Nods in the affirmative).

12 All right. Thank you very much, mister -- well, let
13 me ask you this: Do you think you could still be fair
14 and impartial?

15 PROSPECTIVE JUROR: Yes, sir.

16 THE COURT: All right. Anybody else?

17 (There was no response.)

18 THE COURT: Now, as I said, the third category of
19 responses to the media or whether or not any member of
20 the jury panel knows anything else about this case, that
21 either you got from the media or from friends or from
22 coworkers, church members, maybe you heard a sermon in
23 church about it Sunday, anything else that would have
24 brought this matter to your attention which may have had
25 some bearing on your knowledge of the facts of this case?

1 Any member of the jury panel?

2 (There was no response.)

3 THE COURT: Any member of the jury panel belong to
4 any organization which has as its primary purpose the
5 opposition to the ownership of handguns? Anybody belong
6 to a group whose purpose is to oppose the private ownership
7 of handguns?

8 (There was no response.)

9 THE COURT: Any member of the jury panel have any
10 issue -- I'm sorry, any opinion or issue with
11 promiscuity? In other words, there may -- I don't
12 know -- be testimony in this case about promiscuity,
13 either from one of the witnesses or -- I'm not sure how
14 it may occur, but if it did occur, is there anything about
15 that subject which would cause you to feel uncomfortable
16 and render you unable to fairly and impartially listen
17 to this case and make a judgment based on the facts of
18 this case? Not necessarily on the issue of whether some
19 individual or witness may have been promiscuous.

20 Any member of the jury panel feel that may be such
21 a taint that it would color your judgment one way or the
22 other?

23 (There was no response.)

24 THE COURT: All right. This case involves the
25 alleged killing and subsequent burning of the victim or

1 woman in this case.

2 Anything about that fact, if it is proven to be a
3 fact, that would prevent you from rendering a fair and
4 impartial verdict about guilt or innocence of the
5 defendant?

6 If that were a -- proven to you by the evidence, would
7 that fact in anyway interfere with your ability to render
8 judgment as to the guilt or innocence of the defendant
9 for the murder, if that's proven, of the defendant?

10 Any member of the jury panel feel that that would
11 so color their judgment that they might automatically vote
12 for guilt based on that fact and not based on the fact
13 of the actual killing?

14 (There was no response.)

15 THE COURT: All right. Now, there may be a claim of
16 self-defense in this case. I don't know. There may be.
17 In the event that there is a claim of self-defense, I want
18 to know if you could consider that in light of the
19 fact -- if it becomes a fact -- if it's proven to you that
20 the defendant -- that the deceased was shot in the back
21 of the head -- now, I know that may be a tough concept
22 to wrap your brain around, but if there is a claim of
23 self-defense, would the fact that there may be evidence
24 that the defendant was shot in the back of the head, would
25 that so color your judgment as to the claim of

1 self-defense that you could not fairly decide whether the
2 issue was self-defense or not?

3 Number, please?

4 PROSPECTIVE JUROR: 239.

5 THE COURT: 289?

6 PROSPECTIVE JUROR: Okay. I'm going to be honest
7 with you, I don't -- I don't know whether I could or not.
8 Not having heard, you know, everything involved, I don't
9 know whether I could or not.

10 THE COURT: Well, that's what I want. I want -- you
11 know, it's better to sort of get it out at this point than
12 later on.

13 Well, let me ask you this, ma'am: If -- do you
14 believe that you can sit and listen to the evidence,
15 listen to the arguments of the attorneys, listen to my
16 instructions to the Court -- I mean, to the jury on this
17 issue of self-defense?

18 Let's assume that say -- I mean, that there is proof
19 that that's how the deceased died, do you think you could
20 follow my instructions and consider the issue of
21 self-defense even though you know about the fact that she
22 was shot in the back of the head?

23 PROSPECTIVE JUROR: Yeah.

24 THE COURT: Thank you very much.

25 THE COURT: Yes, ma'am?

1 PROSPECTIVE JUROR: Number 68.

2 THE COURT: Yes, ma'am. How do you feel about that?

3 PROSPECTIVE JUROR: I don't know if I could be
4 impartial.

5 THE COURT: All right. If you heard that testimony,
6 you think that would color your judgment to the point that
7 you could not consider the issue of self-defense?

8 PROSPECTIVE JUROR: I don't think so.

9 THE COURT: You don't think so? All right. Thank
10 you very much, Ms. 68.

11 The gentleman with the yellow shirt, number?

12 PROSPECTIVE JUROR: Number 40. I am a military
13 expert with weapons, and I have hunted most of my life,
14 and I feel it would be very difficult --

15 MR. SHEALEY: Your Honor, can we approach?

16 THE COURT: Just don't put your hands on your hips.

17 MR. SHEALEY: Sorry.

18 THE COURT: Sir, just come on up. Let me talk to you.
19 Yes, approach the bench, counsel.

20 (WHEREUPON, a bench conference was held in the
21 presence, but not within the hearing of the jury
22 panel.)

23 THE COURT: Any member of the jury panel who has been
24 a victim or has a close friend or family member whose been
25 the victim of domestic violence, and I'm not going to ask

1 a lot about it.

2 The lady -- well, let's just start with the lady with
3 the red, pink standing.

4 PROSPECTIVE JUROR: Twenty-nine.

5 THE COURT: Number 29. You or a member of your
6 family?

7 PROSPECTIVE JUROR: Me.

8 THE COURT: How long ago, ma'am?

9 PROSPECTIVE JUROR: Seventeen years ago.

10 THE COURT: All right. Based on that fact, do you
11 feel you could be fair and impartial in this case? Was
12 there any legal action that came as a result of that?

13 (There was no response).

14 Sort of?

15 PROSPECTIVE JUROR: Yes.

16 THE COURT: Okay. Thank you very much.

17 Yes, ma'am, your number, please?

18 PROSPECTIVE JUROR: Seventy-three.

19 THE COURT: Seventy-three.

20 Yes, ma'am, you or a member of your family?

21 PROSPECTIVE JUROR: My family, Your Honor.

22 THE COURT: All right.

23 PROSPECTIVE JUROR: My biological mother, as well as
24 my adopted father now.

25 THE COURT: All right. How long ago?

1 PROSPECTIVE JUROR: The battery was when I was a
2 child.

3 THE COURT: Okay. And based on that experience in
4 your life, do you feel that you could be fair and impartial
5 in this case?

6 PROSPECTIVE JUROR: No.

7 THE COURT: All right. Thank you very much, ma'am.
8 Yes, sir?

9 PROSPECTIVE JUROR: 8-0, Your Honor.

10 THE COURT: All right. Mr. 8-0, 80.

11 PROSPECTIVE JUROR: Yes.

12 THE COURT: Yes, you or a member of your family?

13 PROSPECTIVE JUROR: A member of my family.

14 THE COURT: All right. How long ago?

15 PROSPECTIVE JUROR: Approximately about three years
16 ago.

17 THE COURT: All right. Any legal action come out
18 of -- as a result of that?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: All right. Based on that experience in
21 your lifetime, do you feel you could be fair and impartial
22 in a case like this?

23 PROSPECTIVE JUROR: Yes, sir.

24 THE COURT: All right. Thank you very much, Mr. 80.
25 Yes, ma'am.

1 PROSPECTIVE JUROR: Number 68, an aunt.

2 THE COURT: How long ago, ma'am?

3 PROSPECTIVE JUROR: About 15 to 20 years ago.

4 THE COURT: All right. Based on that experience in
5 your lifetime, do you feel that you could be fair and
6 impartial in this case?

7 PROSPECTIVE JUROR: No.

8 THE COURT: Thank you very much, Ms. 68.

9 Yes, ma'am?

10 PROSPECTIVE JUROR: 214.

11 THE COURT: 2-1-4.

12 Yes, ma'am, you or a member of your family?

13 PROSPECTIVE JUROR: A member of my family.

14 THE COURT: All right. And how long ago?

15 PROSPECTIVE JUROR: Over 20 years.

16 THE COURT: And based on that fact, ma'am, would
17 that fact in any way interfere with your ability to give
18 both the State and the defendant a fair and impartial
19 trial?

20 PROSPECTIVE JUROR: No.

21 THE COURT: Thank you very much.

22 MS. PRINGLE: Your Honor, may I ask her number?

23 THE COURT: 214.

24 MS. PRINGLE: Thank you, Your Honor.

25 PROSPECTIVE JUROR: Juror number two.

1 THE COURT: Two?

2 Yes, ma'am, you or a member of your family?

3 PROSPECTIVE JUROR: Myself.

4 THE COURT: How long ago, ma'am?

5 PROSPECTIVE JUROR: Almost 20 years ago.

6 THE COURT: All right. Based on that fact, do you
7 feel that you could be fair and impartial in this case,
8 ma'am?

9 PROSPECTIVE JUROR: Yes, ma'am.

10 THE COURT: Thank you very much.

11 Yes, ma'am.

12 PROSPECTIVE JUROR: 318.

13 THE COURT: 318.

14 (Pause)

15 All the way on the last page.

16 Yes, ma'am. You or a member of your family?

17 PROSPECTIVE JUROR: My sister, five years ago.

18 THE COURT: All right. Based on that fact, ma'am,
19 would that in any way interfere with your ability to
20 give both the State and the defendant a fair and impartial
21 trial?

22 PROSPECTIVE JUROR: No.

23 THE COURT: Thank you very much, ma'am.

24 Yes, ma'am.

25 PROSPECTIVE JUROR: Seventy-six.

1 THE COURT: Seventy-six?

2 Yes, ma'am. You or a member of your family?

3 PROSPECTIVE JUROR: This was actually the previous
4 question.

5 THE COURT: Oh, okay.

6 PROSPECTIVE JUROR: I just am kind of unsure the
7 way you presented it. I'm just unsure that I'd be able
8 to -- to favor --

9 THE COURT: This is the issue of whether you could
10 consider self-defense?

11 PROSPECTIVE JUROR: Well, I mean, I think I'd be
12 able to --

13 THE COURT: Is that?

14 PROSPECTIVE JUROR: Yes, sir, to the previous
15 question.

16 I think I'd be able to take in the other elements,
17 but I don't know exactly. The way it's been phrased, it's
18 kind of difficult to --

19 THE COURT: Well, I figured it would be. Not that
20 I -- I just didn't know how to phrase it any other way.

21 PROSPECTIVE JUROR: Well, I'm not saying --

22 THE COURT: At this point, I don't know what evidence
23 is going to come out at all, but generally speaking, the
24 attorneys want me to try to find out something about you,
25 about your feelings about various issues. So I try to

1 get at it the best I can.

2 So you're unsure about whether you'd be able to
3 consider self-defense if the other evidence was proven?

4 PROSPECTIVE JUROR: Well, the weight that I would
5 give to certain elements, I mean, I'd have to evaluate
6 it all, but...

7 THE COURT: Okay.

8 PROSPECTIVE JUROR: If there's something that's...

9 THE COURT: Okay. Well, think about it for a minute
10 because I'm going to ask one more question. I'm going
11 to ask another question at the end of this.

12 You may sort of have to hear everything to put it
13 into words.

14 PROSPECTIVE JUROR: Yes, sir.

15 THE COURT: All right. Thank you, Ms. 76.

16 Anybody else?

17 (There was no response.)

18 THE COURT: How about -- one thing that I better find
19 out, probably should have found out at the beginning. In
20 all likelihood, given the hour, this case is not going
21 to start until tomorrow, and there's a possibility it
22 could run over either into Saturday or into next week.

23 Now, just I want you to think about whether that
24 would prevent you from serving on this jury. Now, as I
25 said in jury qualification, jury service is not a

1 voluntary thing, but if you have some reason that you can't
2 change that would prevent you from perhaps staying if we
3 need you past Friday, I probably need to know that now.

4 Any member of the jury panel?

5 PROSPECTIVE JUROR: Yeah.

6 THE COURT: All right. Let me get your numbers, your
7 number?

8 PROSPECTIVE JUROR: Number 301.

9 THE COURT: 301?

10 PROSPECTIVE JUROR: They moved my jury duty to this
11 week because my husband is undergoing chemo. He begins
12 his infusions on Monday. I'm his primary caretaker.

13 THE COURT: All right. Let me make a note of that,
14 ma'am.

15 Thank you very much, ma'am.

16 Yes, ma'am?

17 PROSPECTIVE JUROR: 121.

18 THE COURT: And what's your concern?

19 PROSPECTIVE JUROR: My concern is that I'm a -- I'm
20 a teacher and a graduate student. I -- I came this
21 week -- basically had already been transferred once, but
22 there were a lot of arrangements that had to be made for
23 me to be here this week.

24 THE COURT: Right. Well, we'd be glad to accommodate
25 you in the summer. You know, that's why I asked that

1 question in qualification.

2 PROSPECTIVE JUROR: Yeah. I know, and I -- but I
3 wasn't --

4 THE COURT: Okay.

5 PROSPECTIVE JUROR: -- called back during the
6 summer, and this has happened several times now. So I
7 thought I would try to serve but...

8 THE COURT: Would you -- would you prefer that we
9 transfer you to the summer?

10 PROSPECTIVE JUROR: At this point, I have made the
11 arrangements to stay for this week, but if it extended
12 into another week, that might be complicated.

13 THE COURT: Complicated.

14 PROSPECTIVE JUROR: Yeah.

15 THE COURT: Okay. All right. I understand.

16 PROSPECTIVE JUROR: Okay.

17 THE COURT: We'll -- I'll -- we'll just have to try
18 to work it out if you're selected --

19 PROSPECTIVE JUROR: Okay.

20 THE COURT: -- of course, you may not even be selected.
21 Yes, ma'am, the lady in green.

22 PROSPECTIVE JUROR: 129.

23 THE COURT: 129.

24 PROSPECTIVE JUROR: My son just recently moved here
25 from New York City, just recently relocated here, and

1 he -- I mind his son on the weekends. It would be a problem.

2 He doesn't know anybody but us.

3 THE COURT: Okay. On the weekends?

4 PROSPECTIVE JUROR: Yes.

5 THE COURT: All right. Well, I like my weekends, too.

6 So I think we'll be able to accommodate that. All right.

7 Thank you, ma'am.

8 Yes, ma'am?

9 PROSPECTIVE JUROR: Number 32.

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: I paid for a vacation that's
12 supposed to start Friday and into next week. It's for
13 my anniversary. I don't know if it can be changed at this
14 late date. It would be a loss of money on my part if I
15 have to stay.

16 THE COURT: And when were you to leave?

17 PROSPECTIVE JUROR: I was supposed to leave Friday
18 morning, but I could leave as late as Friday evening, drive.

19 THE COURT: But you could stay through Friday?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Yes, sir, your number?

22 PROSPECTIVE JUROR: 103.

23 THE COURT: Yes, sir.

24 PROSPECTIVE JUROR: My concerns are job related.

25 THE COURT: All right. Can you just briefly -- I

1 know you made arrangements to be here this week.

2 PROSPECTIVE JUROR: Yes, sir.

3 THE COURT: What's -- what's the complication if we
4 had to stay?

5 PROSPECTIVE JUROR: Well, I work at U.S. Central
6 Command and --

7 THE COURT: For? Who do you work for?

8 PROSPECTIVE JUROR: I.T.T. It's a defense
9 contractor.

10 THE COURT: Okay. I understand that. Okay. And?

11 PROSPECTIVE JUROR: And the person that works in
12 the department with me is being deployed to the Middle
13 East, so that would just leave -- it would be a
14 single-point failure if I was out for longer than a week.

15 (Pause)

16 THE COURT: You know, I'm going to use that. I like
17 that term, "a single-point failure".

18 PROSPECTIVE JUROR: I use it a lot, sir.

19 THE COURT: All right. Thank you very much, sir.
20 And, yes, ma'am, your number, please?

21 PROSPECTIVE JUROR: Thirty-three.

22 THE COURT: Yes, ma'am.

23 PROSPECTIVE JUROR: I'm a single parent, and I don't
24 have a sitter on the weekends.

25 THE COURT: So -- but you have a sitter during the

1 week?

2 PROSPECTIVE JUROR: Yes, he's in childcare.

3 THE COURT: What time does he get out of childcare?

4 PROSPECTIVE JUROR: 5:30.

5 THE COURT: Okay. Any member of the jury panel -- I
6 know I asked about domestic violence. Any member of the
7 jury panel or any member of your family been a victim of
8 any crime of violence, not just domestic violence? I'll
9 just ask you very briefly about it.

10 Okay. Yes, ma'am, on the front row.

11 PROSPECTIVE JUROR: Four.

12 THE COURT: Number 4, yes, ma'am.

13 PROSPECTIVE JUROR: Armed robbery.

14 THE COURT: You or a member of your family?

15 PROSPECTIVE JUROR: Me.

16 THE COURT: How long ago?

17 PROSPECTIVE JUROR: Three years.

18 THE COURT: Richland County?

19 PROSPECTIVE JUROR: Yes, sir.

20 THE COURT: Has that matter concluded at this time?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Thank you. Well, let me ask you this:
23 Based on that fact, ma'am, do you feel that that fact would
24 in any way interfere with your ability to give both the
25 State and the defendant a fair and impartial trial in this

1 case?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you very much, Ms. -- number 4.

4 Yes, ma'am, in the black.

5 (There was no response).

6 Ma'am, in the black.

7 PROSPECTIVE JUROR: You said -- me? Seventy-six.

8 THE COURT: That's black, isn't it? Maybe it's blue.

9 Number what?

10 PROSPECTIVE JUROR: Seventy-six.

11 THE COURT: Seventy-six, yes, ma'am.

12 PROSPECTIVE JUROR: My brother was robbed.

13 THE COURT: An armed robbery?

14 PROSPECTIVE JUROR: Right. It wasn't a court case
15 or anything.

16 THE COURT: How long ago?

17 PROSPECTIVE JUROR: About four years ago, probably.

18 THE COURT: In Richland County?

19 PROSPECTIVE JUROR: Right.

20 THE COURT: Ma'am, would that fact in any way
21 interfere with your ability to give both the State and
22 the defendant a fair and impartial trial?

23 PROSPECTIVE JUROR: No.

24 THE COURT: Yes, ma'am, your number?

25 PROSPECTIVE JUROR: Sixty-four.

1 THE COURT: Yes, ma'am.

2 PROSPECTIVE JUROR: My son was assaulted at school
3 about a month ago, and the case is pending with the D.J.J.

4 THE COURT: He was the victim?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: He was assaulted?

7 PROSPECTIVE JUROR: Yes.

8 THE COURT: Pending.

9 Ma'am, would that fact in any way interfere with your
10 ability to give both the State and the defendant a fair
11 and impartial trial in this case?

12 PROSPECTIVE JUROR: No, sir.

13 THE COURT: Thank you very much.

14 All right.

15 PROSPECTIVE JUROR: Eighty, sir.

16 THE COURT: All right.

17 PROSPECTIVE JUROR: My daughter was assaulted about
18 two years ago. The case is resolved.

19 THE COURT: In Richland County?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: Would that fact in any way interfere with
22 your ability to give both the State --

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: -- and the defendant a fair and impartial
25 trial?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you very much, Mr. 80.

3 PROSPECTIVE JUROR: 188, Your Honor.

4 THE COURT: 188?

5 You're not going to tell me somebody --

6 PROSPECTIVE JUROR: My cousin was the one in
7 Greenville County where they found the hands and the feet.

8 THE COURT: Found what?

9 PROSPECTIVE JUROR: My cousin. She was -- that was
10 in Greenville County. She was dismembered. Her body was
11 spread all over the city about three or four years ago.

12 THE COURT: Your cousin. Would that fact in any way
13 interfere with your ability to give both the State and
14 the defendant a fair and impartial trial?

15 PROSPECTIVE JUROR: No, it would not.

16 THE COURT: All right. Thank you very much.

17 Yes, ma'am, number?

18 PROSPECTIVE JUROR: Number 304. My niece, Nicole
19 Boykin, was murdered at the U.S. 1 Flea Market in a drive-by
20 shooting. That was in the flea market three years ago.

21 THE COURT: That was three years ago?

22 PROSPECTIVE JUROR: It would be four.

23 THE COURT: How is she kin to you?

24 PROSPECTIVE JUROR: First cousin. Her dad and my
25 mama are brother and sisters.

1 THE COURT: And she was shot and killed?

2 PROSPECTIVE JUROR: She was shot 14 times, yes, sir.

3 THE COURT: About three years ago?

4 PROSPECTIVE JUROR: It was about three years ago. It
5 was the U.S. 1 Flea Market on Augusta Highway.

6 THE COURT: Is that matter over now?

7 PROSPECTIVE JUROR: Well...

8 THE COURT: As far as you know?

9 PROSPECTIVE JUROR: Well, one of the guys that
10 was -- he's coming up on appeal.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: One of the guys who was one of
13 the shooters, but the main triggerman, he got life without
14 parole, but he was -- well, my uncle was informed that
15 one of the guys was released because he was --

16 THE COURT: Okay.

17 PROSPECTIVE JUROR: -- just one of the drivers.

18 THE COURT: Okay. Ma'am --

19 PROSPECTIVE JUROR: But the other guy is on for
20 appeal.

21 THE COURT: All right. That is your first cousin.
22 Ma'am, would that fact in any way interfere with your
23 ability to give both the State and the defendant a fair
24 and impartial trial in this case? Do you think you could
25 be fair in this case --

1 PROSPECTIVE JUROR: Yes, ma'am.

2 THE COURT: -- given the fact that you have that kind
3 of event in your background?

4 PROSPECTIVE JUROR: Yes, I would because I do know
5 things can happen. I'm willing to figure it out.

6 THE COURT: Okay. Thank you very much, ma'am.

7 PROSPECTIVE JUROR: Okay.

8 THE COURT: All right. I'm going to turn that around.
9 I'm going to ask if any member of the jury panel or any
10 member of your family has been accused of committing a
11 violent crime? Accused of committing a violent crime,
12 any member of the jury panel number?

13 PROSPECTIVE JUROR: 318, sir.

14 THE COURT: I can't remember them all. If we do this
15 long enough, I'll remember everybody's number.

16 Yes, ma'am, and a member of your family?

17 PROSPECTIVE JUROR: Yes, sir, domestic violence. My
18 mother -- both parties were --

19 THE COURT: Culpable?

20 PROSPECTIVE JUROR: They went on both party's
21 records.

22 THE COURT: Okay.

23 PROSPECTIVE JUROR: So both --

24 THE COURT: So both were accused in that, what you've
25 already told me about?

1 PROSPECTIVE JUROR: Yes.

2 THE COURT: Okay. Again, would that fact in any way
3 interfere with your ability to give both the State and
4 the defendant a fair and impartial trial?

5 PROSPECTIVE JUROR: No, sir.

6 THE COURT: Thank you. Anybody else?

7 All right. Ladies and gentlemen, I'm going to call
8 out a list of potential witnesses. I'm going to ask if
9 any member of the jury panel knows or has any connection,
10 family connection, or any other connection with any of
11 the following witnesses.

12 It's a long list. Not all of these witnesses will
13 testify. One or more of them may testify. So we just need
14 to know if you have any connection with any of the following
15 potential witnesses.

16 And if any of these witnesses are present, I'll ask
17 you to stand so the jury can identify you. Mekenda
18 Bradley.

19 Now, let me just say this, ladies and gentlemen: To
20 avoid cricks in your neck, if any of the witnesses are
21 back there, I'll tell you. If they stand, I'll tell you
22 and you can turn around and look, but just assume they're
23 not here if I don't tell you to look -- to turn around.

24 Akilah Weaver, Latoya McPhatter. This is
25 Ms. McPhatter. Anybody know Ms. McPhatter?

1 (There was no response.)

2 THE COURT: Thank you, ma'am.

3 Annette Samuels. This is -- Ms. Samuels is in the
4 back with the pretty dress on.

5 Anybody know Ms. Samuels?

6 (There was no response.)

7 THE COURT: Thank you, ma'am.

8 Candace Jackson; Randy Samuel; Maxwell

9 Goodwin -- Goodman -- Goodman; Frankie Goodman; Kendra
10 Goodman; Laine Washington; Officer C.J. DeCarlo;

11 Dr. John Edwards, dentist; Jonathan Deese, 911; Ann

12 Harwood, U.S. Airways; Stephen Bautista with Allsouth

13 Federal Credit Union; Janice Davis, Bank of America;

14 Roxanne Hollingsworth, Bank of America; Denise Hinson.

15 I guess that's a manager of a convenience store, is that
16 a B.P. convenience store?

17 John Stone with Best Deal Pawn and Gun; Investigator

18 Robert McCracken, Columbia Police Department; Gerald

19 Robinson at Freeman's Place; Robert Garrick, Freeman's

20 Place; Mary Medina -- or Medina, Lexington Dry Cleaners;

21 Carolyn Player, Lexington Dry Cleaners; Sandra Jackson,

22 Navy Federal Credit Union; Nicole Phillips, Navy Federal

23 Credit Union; Dr. Bradley Marcus, Palmetto Richland

24 Hospital; Jeffrey Sthrom or Strom with Sprint; Kevin

25 Gardner, Verizon Wireless; Tom Hudson, Wachovia bank;

1 Ricky Borghheresi, Wachovia bank; Joe McCown, Wal-Mart;
2 Megan Hardy, Westinghouse; Leticia Tyler, custodian of
3 records at the Veteran's Administration.

4 No name, but the custodian of records for the North
5 Carolina Department of Motor Vehicles. Do you know
6 anybody that works there?

7 (There was no response).

8 THE COURT: Officer Etheridge, Charlotte/
9 Mecklenburg Police Department; Detective Kevin Martin,
10 Charlotte/Mecklenburg.

11 The next few names are going to be all from
12 Charlotte/Mecklenburg -- I'm sorry. You're Mr. Martin?

13 THE WITNESS: Yes, sir.

14 THE COURT: Kevin Martin?

15 THE WITNESS: It's Keith.

16 THE COURT: Keith Martin?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. Anybody know Mr. Martin?

19 (There was no response.)

20 THE COURT: Thank you, sir. Thank you.

21 Detective Fitch, Charlotte/Mecklenburg Police
22 Department in the rear; Lisa Magnum, Charlotte/
23 Mecklenburg; Camilla Hopkins, Charlotte/Mecklenburg, in
24 the rear; R.B. Pickler, Charlotte/Mecklenburg; Detective
25 Johnnie Tuttle, Charlotte/Mecklenburg; Detective Flag,

1 Charlotte/Mecklenburg; Sergeant Faulkenberry,
2 Charlotte/Mecklenburg; Michael Sloop,
3 Charlotte/Mecklenburg; Mark Balmas, Charlotte/
4 Mecklenburg; Alvin Hart, Charlotte/Mecklenburg; Marysue
5 Rogers, Charlotte/Mecklenburg; George T. Gale, same;
6 William Faulkner, same; Eric Lo, same; K.R. Scheuerman,
7 same; A. Florczyk, Charlotte/Mecklenburg; A. Flanders,
8 Charlotte/Mecklenburg; Detective Phil Rainwater,
9 Charlotte/Mecklenburg; Jason Kelly, same; Detective
10 Steven Ladd, same; Kathy Tinnes or Tinnes, same; Officer
11 Gaines, same; Detective T. Burkard, same; Sergeant Suarez,
12 Charlotte/Mecklenburg; Detective Marty Longshore,
13 Lexington County sheriff; Sergeant Jeff Patowski,
14 Lexington County; Captain Brian Currence, Lexington
15 County; Bill Stevens, Richland County Sheriff -- I'm sorry,
16 Coroner's Office. Jeremy Knight, Richland County
17 Coroner's Office; Zem Dozier, Richland County Coroner's
18 Office; Leonard Bradley, Richland County Coroner's
19 Office; Coroner Gary Watts, Richland County Coroner's
20 Office; Albert McLendon, Richland County Sheriff's
21 Department; Sergeant Kevin Isenhoward, Richland County.
22 Anybody know Mr. Isenhoward?
23 (There was no response).
24 THE COURT: Sergeant Shawn McDaniels, Richland
25 County; Captain Stan Smith, Richland County.

1 Yes, sir?

2 PROSPECTIVE JUROR: I know Sergeant McDaniels.

3 THE COURT: All right. And your number is 8-0?

4 PROSPECTIVE JUROR: 8-0.

5 THE COURT: I remembered that.

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: And let me ask you, Mr. 8-0, how do you
8 know Mr. McDaniels?

9 PROSPECTIVE JUROR: He was investigating a case
10 involving my wife and daughter, an assault case.

11 THE COURT: Okay. Do you have any other relationship
12 with him, any social relationship or business
13 relationship, or church relationship, any of those type
14 things?

15 PROSPECTIVE JUROR: Negative, Your Honor.

16 THE COURT: All right. Thank you very much.

17 Well, let me ask you this: Would the fact that he
18 worked on a case that you were familiar with, would that
19 fact, again, in any way interfere with your ability to
20 give both the State and the defendant a fair and impartial
21 trial?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: Thank you very much.

24 Anybody else?

25 (There was no response.)

1 THE COURT: Sergeant Don Robinson, Richland County
2 Sheriff's Department.

3 Yes. Oh, I'm sorry. Yes, ma'am?

4 PROSPECTIVE JUROR: Number 259. We went to college
5 together.

6 THE COURT: Robinson?

7 PROSPECTIVE JUROR: Yes, sir.

8 THE COURT: Might I ask what college?

9 PROSPECTIVE JUROR: University of South Carolina.

10 THE COURT: Oh.

11 (Pause)

12 (Laughter)

13 If you -- if you look me up on the internet, you'll
14 find I did not go to that school, but a very good school
15 in South Carolina.

16 Ms. 259, other than going through school with
17 Sergeant Robinson, do you have any other contacts with
18 him, social, business, or as I said religious or anything
19 like that?

20 PROSPECTIVE JUROR: I've seen him socially.

21 THE COURT: All right.

22 PROSPECTIVE JUROR: On occasion.

23 THE COURT: On occasion.

24 PROSPECTIVE JUROR: Yes, sir.

25 THE COURT: All right. Ma'am, would that fact in any

1 way, again, interfere with your ability to give both the
2 State and the defendant a fair and impartial trial?

3 PROSPECTIVE JUROR: No.

4 THE COURT: Thank you very much, ma'am.

5 Lieutenant Jimmy white, Richland County;
6 Investigator Holly Wagner, Richland County,
7 Investigator Bill Mann, Richland County; Sergeant Matt
8 Ellis, Richland County; Investigator John Baker, Richland
9 County; Lieutenant Scott McDonald, Richland County;
10 Lieutenant Anna Elsey, Richland County; Investigator
11 Stan Richards with the Richland County Sheriff's
12 Department; Investigator Trevor Holt.

13 These are all Richland County.

14 Investigator Kristin Polis; Investigator Tommy
15 Croxton; Investigator Robert Oates; Investigator Harold
16 Bouknight; Investigator Yvonne Woods; Investigator Ray
17 Livingston..

18 PROSPECTIVE JUROR: Ninety-three.

19 THE COURT: Ninety-three, how do you know
20 Mr. Livingston?

21 PROSPECTIVE JUROR: Went to high school together.

22 THE COURT: All right. Do you see him any other
23 times?

24 PROSPECTIVE JUROR: We had a -- I work at the Waffle
25 House. And we had a crate -- where they did some damage

1 to the store -- and he came out to investigate it.

2 THE COURT: Is that the only way you know him?

3 PROSPECTIVE JUROR: That's it, yes, sir.

4 THE COURT: Does he -- how many waffles did he eat?

5 PROSPECTIVE JUROR: He was -- he was on duty. He
6 couldn't have none.

7 THE COURT: All right. Come back later.

8 PROSPECTIVE JUROR: There you go.

9 THE COURT: All right. Would that fact in any way
10 interfere with your ability to be fair and impartial to
11 both parties?

12 PROSPECTIVE JUROR: No.

13 THE COURT: Thank you very much.

14 Lieutenant Chris Cowan.

15 Yes, ma'am?

16 PROSPECTIVE JUROR: Former student, number 301. I
17 think it's 301.

18 (Pause)

19 Yes, sir.

20 THE COURT: He's a former student of yours?

21 PROSPECTIVE JUROR: Yes, sir.

22 THE COURT: Any other relationship?

23 PROSPECTIVE JUROR: No, sir.

24 THE COURT: Would that fact in any way interfere with
25 your ability to give both the State and the defendant a

1 fair and impartial trial?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: Thank you very much, ma'am.

4 Investigator Travis Holdorf; Rachel Grant

5 -- Holdorf?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: All right.

8 PROSPECTIVE JUROR: He was working the case, as
9 well.

10 THE COURT: Okay. Any other relationship with
11 Investigator Holdorf?

12 PROSPECTIVE JUROR: No, Your Honor.

13 THE COURT: Same answer?

14 PROSPECTIVE JUROR: Same answer.

15 THE COURT: A fair and impartial answer is "yes"?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: You've given that before.

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: Rachel Grant; Curtis Burnett; Tena Goff;
20 William Cedarstaff; David Collins; Daniel Lane; Chief
21 David Wilson; Sheriff Leon Lott; Vera Parker; Crystal
22 Smith.

23 These are not Richland County officers.

24 Lakisha Temoney or Temoney; Shameika Manning;

25 Jacqueline Marvin; Sherman Samuels; Robbie Bowman; Bob

1 Masella, who happened to be -- who happens to be an attorney
2 here in Columbia.

3 Yes, sir.

4 PROSPECTIVE JUROR: I know Bob.

5 THE COURT: Your number again?

6 PROSPECTIVE JUROR: 160.

7 THE COURT: 160. You know him professionally or
8 socially?

9 PROSPECTIVE JUROR: We used to play tennis together.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR: Not anymore.

12 THE COURT: Would that fact in any way -- and the fact
13 that he might be a witness in this case, would that fact
14 in any way interfere with your ability to give both the
15 State and the defendant a fair and impartial trial?

16 PROSPECTIVE JUROR: No, sir.

17 THE COURT: Thank you very much.

18 Kelly Fite, F-I-T-E. This is Mr. Fite. Anybody
19 know Mr. Fite?

20 (There was no response).

21 Thank you.

22 Dr. Solomon Fulero; Dr. James Gustainis, also a
23 dentist; Stan Kessler, M.D.

24 (There was no response).

25 All right.

1 MS. PRINGLE: Your Honor, may we approach briefly?

2 THE COURT: Yes, sir.

3 (There was no response).

4 Well, I need somebody from the State.

5 MR. GIESE: I'm sorry, we didn't hear.

6 THE COURT: Asked to approach.

7 (WHEREUPON, a bench conference was held in the
8 presence, but not within the hearing of the jury.)

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, there is a matter I need to take up with the
11 attorneys before we conclude this question and answer
12 period.

13 I don't want -- I don't want you all to run, but I'll
14 do this: We're going to take about a 10-minute break,
15 and after which we're going to come back and select a jury.
16 I'm just about finished.

17 I may have one more question but that's all. I'll
18 tell you what I'm going to ask do you do, and the bailiffs
19 are going to assist me. We have got three bailiffs.

20 I'm going to ask you to have a bathroom break and
21 reconvene in the next courtroom while I take this matter
22 up with the attorneys, and as soon as we're finished, and
23 as soon as you're finished, we'll call you back in. All
24 right. It will only take a few minutes.

25 All right. I'm going to excuse you now. You can take

1 a bathroom break. Then reassemble in the next courtroom.

2 (WHEREUPON, the jury panel left the courtroom.)

3 THE COURT: Is the State ready to proceed?

4 MS. CAMPBELL: Yes, sir.

5 THE COURT: How about call your officers to order.

6 (There was no response).

7 Will your officers come to order?

8 MS. CAMPBELL: He wants y'all to sit down.

9 THE COURT: All right. Let's -- let's take up the
10 issue of the strike for cause.

11 Now, we had several that can't work past Friday.
12 What's your pleasure with regard to those individuals?

13 MS. CAMPBELL: Your Honor, as I recall, on the list,
14 the first one of those was number five on the list.

15 THE COURT: Number --

16 MS. CAMPBELL: Number 88. She has a --

17 THE COURT: I'm working off the big list so what
18 number?

19 MS. CAMPBELL: Eighty-eight.

20 THE COURT: I don't have that one marked.

21 MS. CAMPBELL: I'm sorry, number 32. I looked at the
22 wrong number, I apologize. Number 32.

23 THE COURT: That's the one that already had
24 tickets?

25 MS. CAMPBELL: She has a paid-for vacation Friday that

1 she is supposed to leave Friday. We didn't inquire any
2 further of her. I don't know what your position on that
3 one would be. I mean, it's not just work. She's got a
4 paid vacation.

5 THE COURT: Right. I would have excused her this
6 morning if she had told me that, probably.

7 MS. CAMPBELL: Okay. Then that would just be the
8 first one that came up with an issue.

9 THE COURT: Any objection to letting this lady go?

10 MR. SHEALEY: No, Your Honor.

11 THE COURT: All right. Is she on the strike sheet?

12 MS. CAMPBELL: Yes, sir. She is number six on the
13 strike sheet.

14 THE COURT: Okay.

15 MS. CAMPBELL: The next one is number 68 who is number
16 ten on the strike sheet. Excuse me, I skipped one. The
17 next one is number 121, which is number nine on the strike
18 sheet.

19 THE COURT: All right. I -- remember, I'm working
20 off the big list.

21 MS. CAMPBELL: I apologize, 68. I'm reading this
22 wrong.

23 THE COURT: 121, right.

24 MR. SHEALEY: I believe that's --

25 THE COURT: That's the school teacher, "I find it

1 difficult to work next week."

2 MS. CAMPBELL: She just said "difficult". She
3 doesn't have a paid vacation or anything like that.

4 THE COURT: Right. It would be my intention to keep
5 her unless -- any objection?

6 MR. SHEALEY: We would move for cause.

7 THE COURT: What?

8 MR. SHEALEY: We would move for cause. I don't think
9 she contemplated being here past Friday.

10 THE COURT: She didn't, but she said she would have
11 to make other arrangements if she had to be here Monday.

12 MS. CAMPBELL: Then the next one, Your Honor --

13 THE COURT: Just hold on. Let me make a note of it.
14 What number on the strike sheet?

15 MS. CAMPBELL: She is number nine.

16 THE COURT: Okay.

17 MS. CAMPBELL: The next one is Juror 68. She is
18 number ten on the strike sheet. I agree that she said
19 she could not be fair and impartial.

20 THE COURT: Said she could not be fair and impartial.
21 Strike for cause, everybody agree?

22 MR. SHEALEY: Yes, sir.

23 THE COURT: What number on the strike sheet?

24 MS. CAMPBELL: Number ten.

25 THE COURT: Okay.

1 MS. CAMPBELL: The next one was number 103, who is
2 number 14 on the strike sheet. He said he had a job-related
3 concern. He said it would be a -- something about a
4 failure.

5 MR. MAY: Single point.

6 THE COURT: Single-point failure.

7 MS. CAMPBELL: That would be it. Your Honor, again,
8 it's just problem with his work.

9 THE COURT: Well --

10 MS. CAMPBELL: We would oppose him being struck for
11 cause.

12 THE COURT: The problem with him is he's some kind
13 of defense contractor, and if the other person leaves,
14 he's a network engineer with I.T.T. I mean, it -- I think
15 that's more significant than a school teacher getting a
16 substitute. I'm not sure you can substitute for somebody
17 like that.

18 MS. CAMPBELL: Well, Your Honor, I think he's going
19 to be in the same position this week as next week with
20 what -- what he said, basically, is just that he was
21 missing.

22 THE COURT: What do you want to do?

23 MS. CAMPBELL: I'd like to keep him. Again, it's just
24 a job-related concern.

25 THE COURT: What's the defense's position?

1 MR. SHEALEY: Judge, Your Honor, our recollection
2 was that the other guy working with him was leaving next
3 week.

4 THE COURT: Right.

5 MR. SHEALEY: It seemed kind of more desperate if the
6 other guy is being deployed to the Middle East. So we'd
7 ask that -- I don't think he really wants to be here, Judge.
8 I just respect---

9 THE COURT: Say what?

10 MR. SHEALEY: I don't think he really wants to be here
11 past this week. I'd ask that he be struck for cause.

12 THE COURT: Nobody wants to be here.

13 MS. CAMPBELL: I know but we --

14 THE COURT: No one wants to be here past this week.

15 MR. SHEALEY: I think it's going to affect his
16 decision making as a juror.

17 THE COURT: What's his number on the strike sheet?

18 MR. MAY: Fourteen, Your Honor.

19 THE COURT: All right. I'm going to individually
20 voir dire him.

21 MS. CAMPBELL: Okay.

22 The next one, Your Honor, I believe is number 33,
23 juror number 33. She is number 20 on the strike sheet.

24 THE COURT: Number 33.

25 MS. CAMPBELL: She did not have a problem working next

1 week. Her problem was with the weekend. However, she did
2 tell you she is going to be picking up her child at 5:30 every
3 day, which causes me more problem than -- just as far as
4 us working and -- this is...

5 THE COURT: All right. So you want to -- you -- you're
6 not opposed to a strike --

7 MS. CAMPBELL: We would not oppose her just because
8 of her -- she has to leave here before five every day.

9 THE COURT: Well, sometimes you'll get people to pick
10 up for them. I usually find that out after they've
11 already been selected.

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: What is the defense's position?

14 MS. CAMPBELL: She did also say she was a single
15 parent.

16 MR. SHEALEY: I imagine we'll be going longer than
17 five some days.

18 THE COURT: What's your position?

19 MR. SHEALEY: Strike for cause.

20 THE COURT: All right. Both of you agree. What
21 number on the strike sheet?

22 MS. CAMPBELL: Number 20.

23 MR. SHEALEY: Number 20.

24 THE COURT: Next?

25 MS. CAMPBELL: Beg the Court's indulgence, Your

1 Honor.

2 (Pause)

3 MS. CAMPBELL: That's some of the ones that had
4 problems with next week. What number was that?

5 MR. MAY: Forty-one.

6 MS. CAMPBELL: What number is that on the street
7 strike?

8 MR. MAY: Forty-one on the strike sheet, I'm sorry,
9 stated weekends would give her problems.

10 MS. CAMPBELL: That's the one that said yes, she had
11 to watch her son -- I think her son's son on the weekends.

12 MR. MAY: Yes.

13 MS. CAMPBELL: But she didn't have a problem working
14 next week.

15 THE COURT: Right.

16 MS. CAMPBELL: So we would say she is fine.

17 THE COURT: All right. What number on the --

18 MS. CAMPBELL: 129 juror.

19 MR. MAY: And reporting on the strike list, Your
20 Honor.

21 THE COURT: All right. I'm just working on one right
22 now. She just said she can't work Saturday.

23 MS. CAMPBELL: That's correct.

24 THE COURT: So if we're going to go over, we'll go
25 over to Monday.

1 MS. CAMPBELL: Okay.

2 THE COURT: All right. Next?

3 MS. CAMPBELL: I think that takes care of -- do you
4 have any others on yours?

5 THE COURT: The conflicts.

6 MR. SHEALEY: I mean, those are all the scheduling.

7 MS. CAMPBELL: Those are just the scheduling.

8 THE COURT: Scheduling. All right.

9 How about the lady said her -- what number is she,
10 301? Her husband has got chemo Monday, and she has to
11 administer it.

12 MS. CAMPBELL: She is number 301?

13 THE COURT: 30---

14 THE CLERK: Fifteen on the list.

15 THE COURT: She can't serve, cannot serve past
16 Friday.

17 MS. CAMPBELL: We have no objection to letting her
18 go.

19 MR. SHEALEY: We'd like to strike her for cause.

20 THE COURT: What number on the strike sheet?

21 MS. CAMPBELL: Fifteen.

22 THE COURT: All right. Any other scheduling
23 problems?

24 (There was no response.)

25 Any other motions to strike for cause by the State?

1 MS. CAMPBELL: Your Honor, I believe number 73, Juror
2 73, number 51 on the strike sheet.

3 THE COURT: Seventy-three?

4 MS. CAMPBELL: At least she said she couldn't be fair
5 and impartial.

6 MR. SHEALEY: You're right about that. I think she
7 has -- her mom, mother.

8 MS. CAMPBELL: It was awful.

9 MR. SHEALEY: Domestic violence. She was crying.

10 THE COURT: What number on the strike sheet?

11 MS. CAMPBELL: Fifty-one.

12 THE COURT: Everybody agree to let her go?

13 (Ms. Campbell nods in the affirmative).

14 THE COURT: Okay. Next?

15 MR. SHEALEY: Number 50 just -- just talked about --

16 THE COURT: On the -- on the jury list.

17 MR. SHEALEY: Yes, sir. Her jury number is 260.

18 THE COURT: All right. That's the list I'm working
19 from 260.

20 MR. SHEALEY: Yes, sir. I'll just refer to that one.

21 She talked about reading it on the news and talked
22 about it with her daughters in Charlotte. If I'm not
23 mistaken, I think she said she really hesitated and
24 couldn't be fair. Correct me if I'm wrong on that one
25 but...

1 THE COURT: Well, she said she discussed it with her
2 daughters, and she didn't -- she said she thought that
3 she could be fair and impartial.

4 MR. SHEALEY: I just thought there was a lot of
5 hesitation there. I thought she should be --

6 THE COURT: Well, there was hesitation.

7 MR. SHEALEY: I'd just ask that she be struck.

8 THE COURT: What's the State's position? Two
9 daughters in Charlotte.

10 MR. SHEALEY: I don't think --

11 MS. CAMPBELL: Two daughters -- I don't think she ever
12 said she couldn't be fair and impartial. She thought she
13 could is what I recall.

14 THE COURT: Do you want me to -- what's the State's
15 position?

16 MS. CAMPBELL: She should not be struck.

17 THE COURT: All right. I'll voir dire her.

18 MR. SHEALEY: Yes, sir.

19 THE COURT: Again. Wait a minute, what number on the
20 strike sheet?

21 MR. SHEALEY: She was --

22 MS. CAMPBELL: Number 50.

23 MR. SHEALEY: She was juror number 260.

24 THE COURT: It's 50.

25 MR. SHEALEY: It's 50. All right.

1 The next one we had a problem with, Juror 289. She
2 didn't think that self-defense and a gunshot wound to the
3 back of the head was possible. She seemed pretty adamant
4 about that. We'd strike her for cause..

5 MS. CAMPBELL: Your Honor, I thought you followed up
6 with her, and she basically was fine. We'd ask do you
7 individually voir dire her on that to make sure.

8 THE COURT: Okay.

9 MR. SHEALEY: The next one I would say is number 40 -- or
10 I'm sorry, juror number 76 from your list.

11 She also seemed unsure whether she could be fair and
12 impartial when confronted with self-defense and a gunshot
13 to the back of the head. She also was the victim of robbery.

14 THE COURT: Her brother was.

15 MR. SHEALEY: Oh, her brother was. She seemed unsure
16 about it, didn't know if she could be fair and impartial.
17 If you won't strike her for cause, we'd ask that you at
18 least individually voir dire her.

19 THE COURT: All right.

20 (Pause)

21 MR. SHEALEY: I'd like you to strike her for cause.

22 THE COURT: I'll ask her.

23 MR. SHEALEY: And finally, number 40, juror number,
24 the gentleman that caused me to want to approach when asked
25 about the scenario about whether you believe in

1 self-defense when confronted with a gunshot to the back
2 of the head, he --

3 THE COURT: He said he couldn't.

4 MR. SHEALEY: He said he couldn't, so I'd just like
5 him to be struck for cause.

6 THE COURT: Any objection?

7 MS. CAMPBELL: No, sir.

8 THE COURT: What juror number?

9 MR. SHEALEY: It's 40.

10 MS. CAMPBELL: Forty-seven on the strike sheet.

11 THE COURT: Forty-seven on the strike sheet. That's
12 what I meant.

13 MS. CAMPBELL: Yes, sir.

14 THE COURT: Anything else?

15 MS. PRINGLE: Yes, Your Honor.

16 THE COURT: On the list?

17 MS. PRINGLE: No.

18 THE COURT: How about 226? Is he on the strike
19 sheet?

20 MS. CAMPBELL: Yes, Your Honor. He's number 17 on
21 the strike sheet.

22 THE COURT: He said he worked at the same place as
23 the defendant and had conversations at work about this
24 case and -- but he said that he could be fair and impartial.

25 MS. CAMPBELL: Yes, Your Honor, but he seemed to know

1 a lot about the case. He also worked, apparently, with
2 the defendant at some point.

3 THE COURT: Right.

4 MS. CAMPBELL: We would ask that he be struck for
5 cause.

6 MR. SHEALEY: We would disagree. He said he didn't
7 really know the defendant. I would make his knowledge
8 of the case akin to what they've heard in the media.

9 THE COURT: He said they talked about it at work.

10 MR. SHEALEY: Oh. The woman from Charlotte was not
11 struck for cause regarding her conversations, but if you'd
12 like to individually voir dire him.

13 THE COURT: Well, I already had him up once.

14 MR. SHEALEY: Right.

15 THE COURT: I mean, when he said he knew about the
16 defendant.

17 MR. SHEALEY: He said he worked with him. He said
18 he didn't really know him.

19 THE COURT: That's right.

20 MR. SHEALEY: He said he could be fair and impartial,
21 so I think he's an acceptable juror.

22 THE COURT: All right. I'm going to -- I'm going to
23 leave him on the panel.

24 All right. Let me do this, then: I'm going to
25 release immediately juror number 32, six on the panel.

1 I don't recall -- I have a note about 56, but I can't read
2 it. What -- I'm sorry, number 36. I don't know what the
3 number is on the strike sheet. Twenty-three?

4 Is there a question about that juror?

5 MS. CAMPBELL: No, sir.

6 THE COURT: You don't have anything?

7 MR. SHEALEY: No, sir.

8 THE COURT: Okay. Just forget it.

9 We're going to strike number 47 on the strike sheet.

10 MS. CAMPBELL: Yes, sir.

11 THE COURT: Number ten on the strike sheet; number
12 51 on the strike sheet.

13 Any others?

14 MS. CAMPBELL: Yes, Your Honor. I believe you also
15 said that number 15 on the strike sheet, which is juror
16 number 301, she has a husband with cancer treatment.

17 THE COURT: Oh, I'm sorry. I didn't get to the back
18 page, you're right.

19 MS. CAMPBELL: And finally number 20 on the strike
20 sheet. We both agreed on her.

21 THE COURT: Number 3-0?

22 MS. CAMPBELL: 33.

23 THE COURT: Thirty-three, hard work.

24 MS. CAMPBELL: I know.

25 THE COURT: Okay. You're right. Then we're going

1 to voir dire several of the others.

2 MS. CAMPBELL: Yes, sir.

3 THE COURT: Okay. Anything further?

4 Now, Ms. Pringle, you had something you wanted to
5 bring up?

6 MS. PRINGLE: Yes, Your Honor. At this point, we're
7 obligated to object to striking this jury at all, and I
8 don't make this motion lightly.

9 I recognize that we've been here for almost two hours.
10 We've all been working very hard to try to get a jury,
11 and so I don't -- I don't say this lightly, but I think
12 that we need to bring up a new panel and start over and
13 I'll tell you why, about four reasons.

14 Several things took place during the last two hours
15 that we've been sitting here during the Court's voir
16 dire beginning with, Your Honor, one of the requested voir
17 dire questions by the defense that you granted before we
18 brought the panel up was number nine on our requested voir
19 dire.

20 This is, and I'll quote number nine, "This is a case
21 in which the defendant will claim self-defense. If there
22 is any member of the jury panel who could not fairly and
23 impartially consider a plea self-defense when a victim
24 was shot in the back of the head."

25 Prior to bringing the jury up, we were arguing about

1 this. I believe, ultimately, Ms. Campbell objected to
2 that, specifically to the language at the end there, and
3 the Court indicated that -- that you would come up with
4 some phraseology or wording.

5 And I wrote down what you said, and I -- I do
6 recognize that you were struggling with it. However, I
7 think what you said creates a serious problem.

8 I think you read -- if I'm not mistaken, you did
9 read number nine verbatim the way we requested it, but
10 you then added, and I wrote down, "I know that may be a
11 tough concept to wrap your brain around."

12 I don't know how it was intended. I'm afraid, though,
13 that the interpretation the panel would take from that
14 would be, "I know that sounds impossible because, you know,
15 everybody knows that can't happen", or "You know, it's
16 a tough thing to accept because it's so unlikely."

17 It, therefore, amounted to a judicial comment on that
18 defense. That, obviously, puts us in a real bad position,
19 puts us way behind before we ever even get a jury in the
20 box.

21 With that being our defense, I think that we've
22 already got a comment, almost an instruction to the jury,
23 that this is a very unlikely and implausible defense.

24 But you know, even if it were -- if a plausible defense
25 were presented to you, would you listen to it. I think

1 there is a serious problem there, Your Honor.

2 I think that would be a due process problem. I think
3 that alone is enough to send this jury back down, bring
4 up a new panel in the morning, and we'll start over.

5 Secondly, Your Honor, there was a juror, and I think
6 they asked for her to be excused for cause, if I'm not
7 mistaken. She responded in the affirmative to having a
8 history of domestic violence. She is the one who worked
9 for Highway Safety.

10 Once she made those comments, she sat down and she
11 became -- she began crying quite a lot. I believe some
12 of our tissues -- the bailiff brought her tissues, so it
13 was a noticeable thing to everyone.

14 I know that these are -- these are sensitive issues
15 to bring all these issues up to jurors, but when we have
16 an emotional reaction like that, it's one more thing, I
17 think, that causes the entire panel to pick up on the
18 emotion.

19 What we don't want here is emotion. That's not what
20 this trial is supposed to be about.

21 Finally, these two are sort of linked, number 40 you
22 have excused for cause.

23 THE COURT: Number what?

24 MS. PRINGLE: I'm sorry. I'm sorry?

25 THE COURT: Number 40?

1 MS. PRINGLE: Forty. I don't know exactly what he
2 said. It happened sort of suddenly. We all jumped up,
3 but he said something to the fact of, "I have expert -- I
4 have expertise in military weapons."

5 It was very clear to us, at least us to -- I can only
6 presume it was clear to the jury that his implication of
7 what he was saying was, "If this is an -- you know, I'm
8 an expert, and this ain't likely. That's not possible."

9 THE COURT: He didn't say that.

10 MS. PRINGLE: That was what I thought the implication
11 was.

12 THE COURT: Okay.

13 MS. PRINGLE: I think that was what generated our
14 sudden and quick reaction, and I don't know exactly what
15 he said. But the question was do -- "Would you have a
16 problem accepting this?"

17 He stands up and says, "Well, I'm an expert." He
18 stands up in response to, "Would you have a problem with
19 this?" He announced, "I'm an expert." I don't want to
20 misstate. "I have expertise or I'm an expert in military
21 weapons."

22 At that point, we jumped up. Also at that point, Your
23 Honor, I think that was when you admonished Mr. Shealey
24 about his hands on his hips.

25 I just think that's another thing that creates a real

1 problem, but all we can hope to have is to gain some
2 credibility with this jury.

3 Mr. Shealey has now been admonished in front of the
4 entire panel. I will tell you this, and I don't really
5 know. I didn't see it, so I don't know exactly what
6 caused the admonishment by Your Honor, but I've seen
7 Mr. Shealey do that a thousand times.

8 His office is across the hall from me. It's not an
9 aggressive thing with him. He's bound to do it again.

10 THE COURT: Appears to be.

11 MS. PRINGLE: And I understand that's your reaction,
12 Your Honor, but I think that it is undermining for lead
13 counsel to be admonished in that manner before we ever
14 get going, so I think we have --

15 THE COURT: Sort of like people throwing down books.

16 MS. PRINGLE: I'm sorry?

17 THE COURT: Sort of like people throwing down books.

18 MS. PRINGLE: Yes, sir.

19 THE COURT: Go ahead.

20 MS. PRINGLE: I think we have a serious problem with
21 this panel. I know nobody wants to start all over again,
22 but I think -- I think we need to.

23 THE COURT: You said there were two -- okay. With
24 regard to 40 and the admonishment, all right.

25 MS. PRINGLE: Yeah, Your Honor, it would be -- the

1 comment by you on the self-defense issue, number 73,
2 crying profusely and having this episode of emotion,
3 number 40 provoked -- the response from number 40, juror
4 number 40, that was a direct reaction in response to your
5 question, "Do you have a problem with that?" And then
6 the admonishment of Mr. Shealey.

7 I think we're in a position where it would be very
8 difficult for Mr. Manning to get a fair trial at all.

9 THE COURT: Okay. What's the State's position?

10 MS. CAMPBELL: Your Honor, taking them in the
11 reverse order, as far as admonishing Mr. Shealey about
12 his hands, I think you merely asked him to take his hands
13 off his hips. You've admonished many lawyers when it is
14 appropriate, Your Honor.

15 I don't think the jury really understood or got what
16 was going on any way. It wasn't done in any kind of
17 offensive manner by you or in a raised voice or anything
18 like that, Your Honor. You merely asked him to take his
19 hands off his hips.

20 As far as the juror, the expert who said -- he claims
21 he said he was an expert or something, I think before he
22 was able to get out anything -- this is in response, by
23 the way, to their question that they posed that you gave
24 verbatim the way they wanted it.

25 As far as this being -- they say that you commented

1 on this is a hard thing. You were referring to
2 self-defense, period, was a hard concept sometimes, and
3 then now they want to twist it by taking it a step further
4 and -- in the back of the head.

5 It's their question that brought up -- specifically,
6 Your Honor, this is what you said, "Can you
7 fairly -- not -- who could not fairly and impartially
8 consider a plea of self-defense where the victim was
9 shot in the back of the head?" They're bringing attention
10 to that with their question.

11 I don't think you made any inappropriate comment on,
12 you know, that. It was a concept they brought up and wanted
13 to explore in front of the jury, I assume because they
14 think it's a hard concept to concede.

15 I do not think any comment by you on the whole theory
16 of self-defense was inappropriate in any way.

17 As far as the juror that was crying, Your Honor, I
18 believe she became somewhat tearful when she responded
19 to a question about -- I believe she told the court that
20 she had lost her mother and her, I believe, her adopted
21 father.

22 I could be wrong -- don't quote me -- but she had
23 lost two parents or parent figures, and that's when she
24 became a little bit tearful. She was not disruptive. She
25 was not inappropriate about, you know, what she was doing

1 in the courtroom.

2 I don't think the jurors in any way would construe
3 that as far as putting that on to the defendant, Mr. Manning,
4 as far as his actions.

5 THE COURT: All right. Well, I -- Ms. Pringle, I
6 don't feel that this jury has been so tainted that I need
7 to draw a new jury.

8 It's true that the defense had asked for this issue
9 about self-defense. They obviously understood it after
10 I -- after my feeble attempt to explain it, feeble or not,
11 because several of the jurors stood up and responded.

12 So it's not as though the Court somehow, in my
13 opinion, mocked or made light of the question or sort of
14 attempted to draw attention to it unfairly.

15 It -- it's a -- it's a concept that the defense
16 requested. I tried to explain to it them. I don't think
17 I minimized the fact that the -- that self-defense, in
18 conjunction with the facts -- that she may have been shot
19 in the back of the head -- was anything that -- that it
20 would be a difficult concept, but obviously, people
21 understood what I was saying because they stood up and
22 responded.

23 So I don't think that in and of itself tainted the
24 jury. I understand your position.

25 The crying juror, that's not the first time that

1 jurors have got upset, gotten upset, when asked personal
2 questions about their families and violence to their
3 families, things of that nature.

4 That's -- I've never had to restrike a jury, or thought
5 I should restrike a jury because a juror got upset when
6 these things were recalled to their mind by questions from
7 the Court.

8 The weapons expert, your team of counsel was prompt
9 in their objection. We brought the juror forward. We
10 agreed to strike him. He said he was a weapons expert.
11 I don't know that he said much more than that.

12 He said he's a military weapons expert, but he never
13 went on to express an opinion that, until he came to the
14 bench, that his opinion would be contrary to your theory.

15 Mr. Shealey's hands on his hips, in my opinion -- and
16 I'll put it on the record, was a -- I won't say it was
17 an insult to the Court, but it was the appearance to the
18 Court that it was a defiant position to take.

19 Now, that's the way I see it from my perspective.
20 I think I was -- I certainly didn't take that opportunity
21 to say anything more to Mr. Shealey than, "Take your hands
22 off your hips," sort of like saying to a defendant during
23 a plea to take your hands out of your pockets, but it was
24 in front of the jury. I understand that.

25 I don't think it belittled, in my opinion. It

1 wasn't intended to belittle Mr. Shealey. It was just a
2 reaction on my part to what I thought was a...

3 We've got to get the jury back in here. The jury needs
4 to return. The motion is denied. Bring the jury back.
5 The jury needs to leave.

6 (WHEREUPON, the jury panel was brought back into the
7 courtroom.)

8 THE COURT: Is everybody back?

9 THE BAILIFF: Everyone is present, your honor.

10 (Pause)

11 THE COURT: Thanks.

12 All right. Ladies and gentlemen, listen up, please.
13 The following jurors are excused at this time: Number
14 32. You can get up and leave if I call your number. Number
15 68, 301, 33, 40, and 73.

16 I will ask the following jurors to come forward one
17 at a time. I want to ask you some more questions about
18 what you've told me.

19 Number 76, approach the bench counsel.

20 (WHEREUPON, a bench conference was held in the
21 presence, but not within the hearing of the jury.)

22 THE COURT: Number 103.

23 Who needs to make a phone call? Okay, and your number,
24 please?

25 PROSPECTIVE JUROR: 304.

1 THE COURT: Do you have a cell phone?

2 PROSPECTIVE JUROR: No, sir. I didn't bring it in.

3 I don't know if you're going past 6:00, but it's a dollar
4 a minute, so I need to call my mama.

5 THE COURT: These lawyers will give you a dollar a
6 minute. Do you need to make a phone call?

7 PROSPECTIVE JUROR: Just to be on the safe side.

8 THE COURT: All right. And your number was what?

9 PROSPECTIVE JUROR: 304.

10 THE CLERK: Judge, I have another juror here that
11 also needs to call about picking up children.

12 THE COURT: What number?

13 THE CLERK: 3-1-8.

14 THE COURT: All right. Go ahead.

15 Okay, 260.

16 (WHEREUPON, a bench conference was held in the
17 presence, but not within the hearing of the jury.)

18 THE COURT: 289.

19 (WHEREUPON, a bench conference was held in the
20 presence, but not within the hearing of the jury.)

21 THE COURT: 226.

22 (WHEREUPON, a bench conference was held in the
23 presence, but not within the hearing of the jury.)

24 THE COURT: All right. Juror number 103 is excused.

25 (Pause)

1 Juror number 2-6-0 is excused.

2 (Pause)

3 Juror number 76 is excused.

4 All right. Ladies and gentlemen, one final question:

5 Any member of the jury panel know of any other reason why
6 he or she could not sit and fairly decide this case based
7 on the facts and the evidence, the arguments of counsel
8 and my explanation to you of the law in South Carolina
9 as it applies in this case?

10 Any reason why you feel that you could not be fair
11 and impartial in this case to sit and decide the case based
12 on the evidence?

13 Yes, ma'am. Your number, please?

14 PROSPECTIVE JUROR: 2-4-0.

15 THE COURT: Come forward, please.

16 (WHEREUPON, a bench conference was held in the
17 presence, but not within the hearing of the jury.)

18 THE COURT: Ms. 240, you're free to go.

19 (Pause)

20 Oh, I'm sorry. Come up, ma'am. What's your number,
21 please?

22 PROSPECTIVE JUROR: Forty-five.

23 THE COURT: Forty-five?

24 PROSPECTIVE JUROR: Yes.

25 (WHEREUPON, a bench conference was held in the

1 Number 219.

2 (There was no response.)

3 Number 219.

4 (White female.)

5 PROSPECTIVE JUROR: 219, I'm a product manager in
6 schematics.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SHEALEY: Please seat this juror.

11 THE CLERK: Have a seat in the jury box, please.

12 Number 29.

13 (White female.)

14 PROSPECTIVE JUROR: 29, project manager.

15 THE CLERK: What says the State?

16 MS. CAMPBELL: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. SHEALEY: Please excuse this juror.

19 THE CLERK: Have a seat in the back of the courtroom,
20 please.

21 Number 121.

22 (White female.)

23 PROSPECTIVE JUROR: 121, teacher and grad student.

24 THE CLERK: What says the State?

25 MS. CAMPBELL: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. SHEALEY: Please excuse this juror.

3 THE CLERK: Have a seat in the back of the courtroom,
4 please.

5 Number 61.

6 (White male.)

7 PROSPECTIVE JUROR: 61, I'm a landscaper.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. SHEALEY: Please seat this juror.

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

13 Number 318.

14 (Hispanic female.)

15 PROSPECTIVE JUROR: 318, Army, active duty.

16 THE CLERK: What says the State?

17 MS. CAMPBELL: Please present this juror.

18 THE CLERK: What says the defense?

19 MR. SHEALEY: Please seat this juror.

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

21 Number 239.

22 (Black female.)

23 PROSPECTIVE JUROR: 239, Wal-Mart.

24 THE CLERK: What says the State?

25 MS. CAMPBELL: Please present the juror.

1 THE CLERK: What says the defense?

2 MR. SHEALEY: Please excuse this juror.

3 THE CLERK: Have a seat in the back of the courtroom,
4 please.

5 Number 46.

6 (White male.)

7 PROSPECTIVE JUROR: 46, financial analyst.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. SHEALEY: Please seat this juror.

12 THE CLERK: Have a seat in the jury box, please.

13 Number 226.

14 (Black male.)

15 PROSPECTIVE JUROR: Number 226, chief barber.

16 THE CLERK: What says the State?

17 MS. CAMPBELL: Please excuse the juror.

18 THE CLERK: Have a seat in the back of the courtroom.

19 Number 220.

20 (White male.)

21 PROSPECTIVE JUROR: 220, sales and marketing
22 executive.

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. SHEALEY: Please seat this juror.

2 THE CLERK: Have a seat in the jury box, please.

3 Number four.

4 (White female.)

5 PROSPECTIVE JUROR: Number four, finance and
6 banking.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SHEALEY: Please excuse this juror.

11 THE CLERK: Have a seat in the back of the courtroom,
12 please.

13 Number 203.

14 THE BAILIFF: This way, ma'am.

15 PROSPECTIVE JUROR: Oh, this way?

16 (White female.)

17 PROSPECTIVE JUROR: Number 203, currently staying
18 home with my children.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. SHEALEY: Please seat this juror.

23 THE CLERK: Have a seat in the jury box, please.

24 Number 100.

25 (Black female.)

1 PROSPECTIVE JUROR: Number 100, administrative
2 assistant.

3 THE COURT: What says the State?

4 MS. CAMPBELL: Please seat the juror.

5 THE CLERK: What says the defense?

6 MR. SHEALEY: Please seat this juror.

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

8 Number 36.

9 (Black male.)

10 PROSPECTIVE JUROR: Number 36, warehouse manager.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. MAY: Please seat this juror.

15 THE CLERK: Have a seat in the jury box, please.

16 THE BAILIFF: Watch your step.

17 THE CLERK: Number 13.

18 (White male.)

19 PROSPECTIVE JUROR: Number 13. I'm a T.V. producer.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please excuse this juror.

22 THE CLERK: Have a seat in the back of the courtroom.

23 Number 221.

24 (White female.)

25 PROSPECTIVE JUROR: 221, research analyst.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. SHEALEY: Please excuse this juror.

5 THE CLERK: Have a seat in the back of the courtroom,
6 please.

7 Number 128.

8 (White female.)

9 PROSPECTIVE JUROR: Number 128, accounting
10 specialist.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SHEALEY: Please excuse this juror.

15 THE CLERK: Have a seat in the back of the courtroom,
16 please.

17 THE BAILIFF: This way, please.

18 THE CLERK: Number 289.

19 (White female.)

20 PROSPECTIVE JUROR: 289, retired, Colonial Life and
21 Accident Insurance Company, currently working as
22 administrative liaison at the church.

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please present the juror.

25 THE CLERK: What says the defense?

1 MR. SHEALEY: Please excuse this juror.

2 THE CLERK: Have a seat in the back of the courtroom,
3 please.

4 Please allow me to review your strikes. For the State
5 I have three. For the defense I have nine. Thank you.

6 Number 64.

7 (White female.)

8 PROSPECTIVE JUROR: Number 64, medical
9 transcriptionist.

10 THE CLERK: What says the State?

11 MS. CAMPBELL: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. SHEALEY: Please excuse this juror.

14 THE CLERK: Have a seat in the back of the courtroom,
15 please.

16 Number 307.

17 (White male.)

18 PROSPECTIVE JUROR: 307, I'm an accident and
19 healthcare consultant.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: Does the defense challenge for cause?

23 MR. SHEALEY: No. Please seat this juror.

24 THE BAILIFF: Watch your step.

25 THE CLERK: Have a seat in the jury box, please.

1 Number 158.

2 (Black female.)

3 PROSPECTIVE JUROR: 158, food service employee.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Present the juror.

6 THE CLERK: Does the defense challenge for cause?

7 MR. SHEALEY: No, please seat this juror.

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

9 Number 247.

10 (White male.)

11 PROSPECTIVE JUROR: 247, real estate broker.

12 THE CLERK: What says the State?

13 MS. CAMPBELL: Please present the juror.

14 THE CLERK: Does the defense challenge for cause?

15 MR. SHEALEY: No, please seat this juror.

16 THE CLERK: Have a seat in the jury box, please.

17 THE COURT: Two alternates.

18 THE CLERK: Number 53.

19 (Black female.)

20 PROSPECTIVE JUROR: Number 53, medical

21 technologist.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. SHEALEY: Please seat this juror.

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

2 Number 171.

3 (White female.)

4 PROSPECTIVE JUROR: 171, budget analyst and in the
5 Army Reserve.

6 THE CLERK: What says the State?

7 MS. CAMPBELL: Present this juror.

8 THE CLERK: What says the defense?

9 MR. SHEALEY: Please seat this juror.

10 THE CLERK: Have a seat in the jury box, please.

11 THE COURT: Any objection to the jury selection
12 process from the State?

13 MS. CAMPBELL: Nothing from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. SHEALEY: Beg the Court's indulgence.

16 (Pause)

17 MS. PRINGLE: May we approach, Your Honor?

18 THE COURT: Sure.

19 (WHEREUPON, a bench conference was held in the
20 presence, but not within the hearing of the jury.)

21 THE COURT: Anything further from the defense?

22 MR. SHEALEY: No, Your Honor.

23 THE COURT: All right. Thank you very much.

24 All right. Ladies and gentlemen of the jury who were
25 not selected on this panel, I'm going to release you now,

1 obviously.

2 Becky, what time do you want them back?

3 THE CLERK: 9:30 in the morning, Judge.

4 THE COURT: I'm going to ask you to return to the jury
5 assembly room at 9:30 in the morning for further
6 instructions. I don't know if we'll have another case
7 for you. We may.

8 I don't know what's going on in civil court. I believe
9 we are going to select another jury in the morning, I
10 believe so.

11 So I'm going to ask you to have a pleasant evening.
12 Now, I do want to thank you for your attendance and your
13 patience today.

14 It's been a long afternoon, but we've got through
15 the process. The jury has been selected, and they will
16 hear this case.

17 I tell jurors all the time that this system can do
18 without me. It can do without these attorneys, but it
19 can't do without you.

20 You're such an important part of the judicial process
21 in this State and this county and in this United States
22 that your role in the jury system was written into the
23 Constitution of the United States and the State of South
24 Carolina.

25 Your role is vitally important to the business that

1 we conduct here every day, every week of the year. So
2 thank you for coming. Have a pleasant evening. I might
3 see you again later in the week, I might not, but good
4 evening. Thank you very much.

5 (WHEREUPON, the unselected members of the jury left
6 the courtroom.)

7 MR. SHEALEY: Your Honor.

8 THE COURT: I'm going to dismiss this jury.

9 MR. SHEALEY: I have a motion regarding the
10 instruction. I'd like to approach, if you wouldn't mind,
11 briefly.

12 THE COURT: All right. Approach the bench.

13 (WHEREUPON, a bench conference was held in the
14 presence, but not within the hearing of the jury.)

15 THE COURT: All right. Ladies and gentlemen of the
16 jury, I'm going to dismiss you now, but I have a couple
17 words of caution for you.

18 To begin with, I'm going to ask you not to discuss
19 this case with anyone over the evening hours. Now,
20 it's -- I am certain that your friends or family, whoever
21 you come in contact with after you leave this jury room
22 or after you leave the jury room, are going to ask you
23 what you're doing up here.

24 The easy thing is to say, "Well, I'm on that jury
25 that was in the paper this morning."

1 Well, I -- that would -- that just invites some comment
2 from somebody to try to perhaps influence you one way or
3 the other about what you should do or what they think about
4 this case.

5 So I'm going to ask you, in all seriousness, not to
6 discuss this case even with your family. You can certainly
7 tell them you're on a jury. You can tell them you're on
8 a criminal jury. You can tell them you're at the Richland
9 County courthouse.

10 I'm going to ask you not to, and put you on your honor,
11 not to discuss this case with anyone over the evening hours.
12 I'm going to tell -- ask -- that's my first instruction
13 and I'll be telling you that every evening. Don't discuss
14 the case with anyone else over the evening hours or among
15 yourselves when you return to the jury room.

16 You might think, "Well, I'm back with my jury so now
17 I can start asking questions about the case," but that
18 also would be highly improper. Our goal is to have as
19 unbiased a jury as we can -- as you can have and the defendant
20 can have and the State can have, and the best way to ensure
21 that is to ask you not to discuss the case with anyone
22 during the pendency of the case, while the case is going
23 on.

24 I'm going to ask you also not to listen to, read
25 about, or turn on the evening news, and of course, I don't

1 know what's on there or what will or will not be on there,
2 but I'm going to ask you to not watch any -- or read any
3 accounts of what went on today or what goes on during the
4 week because remember, those reports are somebody else's
5 take or interpretation of what happened here in court today,
6 and you're the best ones to judge what happened here in
7 court today.

8 You don't need any -- any newspaper article telling
9 you what went on or any T.V. shows, so I'm going to ask
10 you just to cut it off when it comes on, so it won't in
11 any way interfere with your judgment in this case.

12 Now, the third thing, and you're going to ask, "Well,
13 why is he talking about that?" I'm going to ask you not
14 to do any independent research about this case.

15 Now, we've had -- I say "we've had". There have been
16 problems around the State recently, and I was involved
17 in one of them, where jurors did independent research on
18 the internet.

19 The internet, as you know, is just a world of
20 material, information out there. I don't know if there's
21 any information on the internet about this case, but it
22 would be highly improper for you to go trying to find out
23 something about this case or the people involved in this
24 case on the internet doing your own independent
25 research.

1 The reason I bring this up is because we have received
2 on Order from the Chief Justice of the State of South
3 Carolina which specifically says that judges are to
4 instruct jurors, until their service is concluded, that
5 they are not to use a computer or cell phone either during
6 the trial or during the evening hours to do any research
7 about the case.

8 It says, "To use a computer, a cell phone, or any
9 electronic device with communications capabilities or any
10 other method to obtain or disclose information about the
11 case when they're not in court."

12 Now, this happened to me in Lexington County not too
13 long ago, and I was -- because the offending juror talked
14 about doing research on the case to her fellow jurors,
15 and -- I had to impose a fine on her. The case had to
16 be -- it's going to have to be retried because of her
17 actions.

18 I had to end up sentencing her to a short period of
19 jail time, and I fined her in an amount sufficient to pay
20 the county back for the cost of that trial because the
21 county is going to have to have another trial on the same
22 issue between the same parties.

23 Now, I don't say that in any -- for any personal reason,
24 but I will tell you, it's a -- it can be a serious problem
25 when jurors try to find out more about the case than the

1 State offers in evidence and the defense offers in evidence.

2 Your job and my job is to listen to what they say,
3 both parties, and try to make a judgment based on the
4 information that you hear in court. So I'm going to ask
5 you, please do not do any independent investigation of
6 this case.

7 You know, sometimes in civil cases, the wreck
8 happened at maybe -- Mayor Benjamin's wreck happened on
9 Pickens and Gervais Street. Maybe half the jury wants
10 to go out and see where it happened. Well, that -- that's
11 the same kind of research. It's a little bit different
12 than internet research, but it's research on the case,
13 which I'm going to ask you not to do.

14 I'm going to ask you to be back in the jury room at
15 11:00 in the morning. We are not -- we are not finished
16 with the pretrial in this case.

17 There are a number of issues that I need to take up
18 with the attorneys before we get started. We'll start
19 at nine.

20 I hope you'll be present in the jury room at 11:00,
21 at which time we should be able to begin the opening remarks
22 in this trial.

23 The bailiffs are going to show you where your jury
24 room is. When you return to the courthouse in the morning,
25 please go straight to the jury room, not to the jury

1 assembly room downstairs. Just come on up to the third
2 floor.

3 The bailiffs will have coffee or refreshments or
4 something available to you. It's not -- it's not the Ritz
5 in there. It's pretty bare, but we'll try to make it as
6 comfortable for you as we can during the course of the
7 trial.

8 Other than that -- oh, yeah. I'm going to ask you
9 to do one thing when you return to the jury room, that
10 is select one of your members to be the foreperson of the
11 jury. That person eventually will write the verdict in
12 this case and will preside in the jury room during
13 deliberations.

14 That juror (A) doesn't get paid any more than anybody
15 else, but I do need somebody to serve as foreperson of
16 the jury. The foreperson will take the seat occupied by
17 the gentleman with the blue shirt here on the front row
18 and will maintain that seat throughout the trial.

19 All the rest of the seats don't have any names on
20 them or numbers on them, so I want you to just sit where
21 you are most comfortable.

22 I'm going to give you notepads and pencils so you
23 can take notes. Those are for your own benefit, but I'll
24 allow you to do that during the course of the trial.

25 The only two people who could not be selected as

1 forepersons of the jury are the two ladies who were selected
2 last. They are going to be our alternates in case something
3 comes up with one of the other jurors, and we have to call
4 on the services of an alternate.

5 Other than that, 6:15, have a pleasant evening. We'll
6 see you at eleven o'clock in the morning. Thank you very
7 much for being here.

8 (WHEREUPON, the jury left open court at approximately
9 6:14 p.m.)

10 All right. Now, anything further for today from the
11 State?

12 MR. GIESE: No, Your Honor.

13 THE COURT: From the defense?

14 MS. PRINGLE: Your Honor, yes. We have actually two
15 things. Mr. Shealey had taken a second, but I wanted to
16 renew our motion prior to striking that jury.

17 One of the things that happened in the interim is
18 we conducted -- you conducted individual voir dire of
19 juror number 76. This is a female juror who had expressed
20 some concern while out in the crowd, and you brought her
21 up to the bench.

22 While I was up there, I came back and wrote down
23 that she said something to the effect of, "The way that
24 question was asked, I would be inclined to be anti" then
25 she kind of rambled a little bit and she said "biased".

1 She was ultimately excused for cause. I just -- Your
2 Honor, I would submit that is illustrative of the problem
3 that I was suggesting, which was there was a clear signal
4 from the Court as to the merit, the culpability and the
5 factual scenario at play here.

6 If that is in dispute or as -- what I have represented
7 that she said is in disputed at the bench, I'd ask that
8 she be put under oath and offer testimony tomorrow as to
9 what she was referring to.

10 Just in response, really, to what the State proffered
11 earlier, the question was not given by you verbatim. There
12 was an additional comment that was added on to the
13 question.

14 I think the problem is not whether or not we think
15 it's a tough sell or we think it's hard to conceive of,
16 but what you think and the impact of what you think on
17 not necessarily people who responded but really, the
18 people who might not have responded.

19 You're certainly the most revered person in the
20 courtroom with authority. I was trying to articulate
21 that a little bit better, but that ultimately is the
22 problem. I probably should specify, specifically, I
23 should object, pursuant to the fifth, sixth, and 14th
24 amendments. I think it's due process law, Your Honor.

25 THE COURT: All right. Well, I think I've ruled on

1 the issue, and I don't intend to change my ruling.

2 The juror was excused based on that testimony, and
3 so any harm that she might have done to the defense has
4 been cured.

5 I don't think her comment from the -- from the panel
6 was sufficient enough to justify granting your motion,
7 so I respectfully deny your motion.

8 Next?

9 MR. SHEALEY: Yes, Your Honor. We have a bit of a
10 scheduling matter as to one of our motions that we
11 intended to get to today but we didn't.

12 We have an expert witness that we were planning on
13 calling as part of this entire motion, motion number seven,
14 the portions and provisions of 16-11-450, which is our
15 Protection of Persons and Property Act that codified the
16 Castle Doctrine. I don't know what the scheduling is going
17 to be, but he was available today.

18 THE COURT: An expert to talk about the Castle
19 Doctrine?

20 MR. SHEALEY: As an expert witness. Without going
21 into our whole motion, unless you want me to, he --

22 THE COURT: Well, just try to help me understand.

23 MR. SHEALEY: Basically, it was our opinion that we
24 think that our client would be entitled to the Castle
25 Doctrine --

1 THE COURT: Okay.

2 MR. SHEALEY: -- when someone is in your home.

3 THE COURT: How do you get to be an expert in the
4 statute?

5 MR. SHEALEY: Well, he is not an expert, Judge, but
6 under the -- under section (A) 450, a person is immune from
7 prosecution, criminal or civil --

8 THE COURT: Right.

9 MR. SHEALEY: -- unless the State can prove it's in
10 the statute there was probable cause to believe that
11 this person is acting unlawfully.

12 Well, we've gone through this, and there is only one
13 witness to what happened in that room that day here. The
14 only evidence, other than the fact that his statement -- it
15 was a struggle, it was an argument over the relationship,
16 but like we discussed before, there is this evidence that
17 we think we presented well.

18 We don't think it's self-defense or a lawful killing
19 because of a gunshot to the back of the head. Well, our
20 expert would be prepared to testify, in that area, that
21 forensic area about how, yes, a gunshot in this manner,
22 in the way it was situated with the victim, is consistent
23 with his statement. It is consistent with self-defense,
24 as well.

25 That's what he would be willing to testify as to a

1 rebuttal to them saying perhaps, "Well, we've done our
2 job. We've proven that there is probable cause to state
3 this is an unlawful killing. The Castle Doctrine should
4 not apply."

5 He was here to testify in response to that, because
6 the way the statute is set up is you are immune unless
7 through law enforcement and investigation by --

8 THE COURT: Would you take that testimony out of
9 order?

10 MR. SHEALEY: Just simply if we couldn't get it today,
11 I'm asking the Court how you would like to do that. The
12 way -- the way we ask for it is we think he has provided
13 this immunity; that he has provided these protections
14 unless the State meets --

15 THE COURT: Okay. I understand that.

16 MR. SHEALEY: -- their burdens.

17 THE COURT: What was the expert an expert in?

18 MR. SHEALEY: His name is Kelly Fite. He is an
19 expert in basically forensics, and ballistics, firearms.

20 THE COURT: You think he would be qualified?

21 MR. SHEALEY: Yes, sir.

22 THE COURT: Okay.

23 MR. SHEALEY: And because he's available today but
24 would not be available tomorrow, we just question -- he
25 is available the rest of the week, but we're just

1 questioning if you'd like us to take his testimony today
2 so that we would start with that motion tomorrow. We're
3 just requesting that.

4 THE COURT: Let me find the motion.

5 MR. SHEALEY: It should be entitled "Motion to
6 Enforce the Protection of 16-11-450."

7 THE COURT: (A).

8 MR. SHEALEY: Yes, sir.

9 THE COURT: What's the State's position?

10 MR. GIESE: First off, Your Honor, the case has been
11 indicted by the Grand Jury. Clearly, someone thought,
12 with the grand jury, there was plenty of evidence to go
13 forward. Secondly, I think this is premature. He
14 doesn't know what we're going to prove or not prove. He's
15 guessing we're going to -- it's premature.

16 Any evidence putting up this Castle Doctrine issue
17 will come up after the State's case. He has no idea what
18 we're going to prove or not prove.

19 THE COURT: Well, I don't see how I can rule on whether
20 the Castle Doctrine applies or does not apply. I mean
21 the statute says what it says, and if the evidence brings
22 the case within the Castle Doctrine, then it would seem
23 to me that --

24 MR. MAY: Yes, sir.

25 THE COURT: I'm having a problem with taking it up

1 now before (A), the motion is heard, or (B), the evidence
2 has been presented.

3 MR. MAY: Yes, sir. May it please the Court, Your
4 Honor.

5 Your Honor, under 16-11-450, there is immunity from
6 criminal prosecution. Immunity from criminal
7 prosecution recognizes that the State may have a case,
8 but we need to have a referee, the Judge, to rule that
9 there has been enough evidence to rebut this immunity.

10 So we're asking that the prosecution be stopped.
11 We're asking that the defendant be granted immunity from
12 prosecution from putting his life on the limb and liberty
13 at stake in front of the jury.

14 The legislature intended for people who shoot people
15 in their own house in self-defense not to have to go in
16 front of a jury. This is a --

17 THE COURT: That's not absolute.

18 MR. MAY: In barring a showing from the State, I
19 believe it is. Barring a showing from the State that
20 immunity does not apply, we believe it's their burden.
21 The issue with our witness is he's here today and will
22 be back on Wednesday.

23 Your Honor, it's our position the State has the
24 burden to show that immunity does not apply.

25 THE COURT: Well, be that as it may, I'll hear your

1 motions in the morning.

2 I'm just -- I'm not going to take a witness on a
3 motion that hasn't been heard on a case that's not even
4 been made for the Castle Doctrine. That case has got to
5 be made first, and then if your expert is going to rebut
6 that theory, we'll hear from him, if he's qualified.

7 All right. Anything further?

8 MR. GIESE: No, Your Honor.

9 THE COURT: Nine o'clock we'll start with the -- the
10 State will be prepared to argue the defense motions; is
11 that correct, Ms. Campbell, or Ms. McDuffie?

12 MS. McDUFFIE: That's correct, Your Honor.

13 THE COURT: Oh, hold on just a minute, Counsel. One
14 other matter.

15 Has -- all right. Attention, please. I'm not
16 finished. Has everybody -- has anybody or everybody
17 been served with a motion to modify a subpoena from Sheriff
18 Lott?

19 MR. SHEALEY: Yes. I think Mr. Scott Hayes dropped
20 that off while we were on break.

21 THE COURT: And has the State been served?

22 MS. CAMPBELL: We have.

23 MS. McDUFFIE: Yes, Your Honor.

24 THE COURT: All right. What's the defense's
25 position?

1 MR. SHEALEY: Well, I guess we -- Sheriff Lott is one
2 of our witnesses we want for one of our motions. I guess
3 Scott Hayes would need to be prepared to argue that
4 tomorrow morning. We feel he's been served properly.

5 THE COURT: I don't doubt that he's been served
6 properly. Why does he have to be here the whole time or
7 at least be available by phone?

8 MR. SHEALEY: He's on telephone standby. We didn't
9 ask him to be here at a specific time.

10 THE COURT: I said why does he have to be on
11 telephone standby.

12 MR. SHEALEY: Why is he -- just so we wouldn't
13 inconvenience him so he doesn't have to be here all week.
14 He's obviously a busy public official, so I spoke with
15 Mr. Hayes when we served the subpoena. I said, "We'll
16 keep you posted, but I guess Tuesday would probably be
17 the day you might call Sheriff Lott." Then I got the
18 motion to modify subpoena.

19 THE COURT: All right.

20 MR. SHEALEY: So I guess Mr. Hayes will have to put
21 something on the record, Your Honor.

22 THE COURT: I'm sure he will. I'm just trying
23 shortcut it if that's not necessary.

24 If he has a cell phone with him is that
25 satisfactory?

1 MR. SHEALEY: Yes, sir.

2 THE COURT: Any problem with that from the State?

3 MR. GIESE: No, Your Honor.

4 THE COURT: Okay. I'll tell Mr. Hayes as long as the
5 sheriff has got a cell phone with him on at all times that
6 will modify the subpoena.

7 MR. SHEALEY: Yes, sir.

8 (There was an overnight recess.)

9 MR. HAYES: May it please the Court, Your Honor

10 THE COURT: We're now back on Theodore Manning.

11 Mr. Hayes, in an attempt to --

12 MR. SHEALEY: Your Honor, I apologize, but I think
13 Mr. Manning probably needs to be present for all of his
14 pretrial motions and issues regarding this --

15 THE COURT: This is not a pretrial motion.

16 MR. SHEALEY: I would like him present.

17 THE COURT: Well, get him.

18 MR. SHEALEY: Would y'all get Mr. Manning? I think
19 he probably should be around.

20 THE COURT: This has nothing to do with the motions
21 or merits in the case, but he's invited.

22 (Pause)

23 (The defendant entered the courtroom.)

24 All right. Mr. Hayes, as I was about to say,
25 yesterday late in the day, I brought up a matter of

1 your motion to modify the -- Sheriff Lott's subpoena and
2 thought I had resolved it by having both parties agree
3 that if Sheriff Lott is available by cell phone, that he
4 need not take any further action, would be subject to call
5 when counsel felt they needed him.

6 Following that yesterday afternoon, when court was
7 adjourned yesterday, I called your office, called you on
8 the cell phone. You told me that was not a satisfactory
9 resolution of your motion. So it's nine o'clock, and
10 you're here. You may argue your motion.

11 MR. HAYES: Yes, sir. Thank you, Judge.

12 Sorry for the confusion on my motion, and after
13 thinking about it last night a little bit, Judge, you know,
14 I'm trying to figure out actually on the face of the
15 subpoena, he wants all the information listing, all the
16 procedures for all Richland County officers. That's the
17 first thing that this addresses.

18 I feel like that's going to be very overbroad. I mean,
19 it's not necessarily vague because they want the whole
20 procedure manual, but at the end -- at the same time, I
21 don't know how the whole procedure manual is relevant to
22 this case.

23 I mean, if there are specific areas that they feel
24 like are relevant, they can make an argument. I'm not
25 even sure how our procedures are relevant to the legal

1 standards that are before Your Honor in this trial. That
2 would be my first inquiry.

3 Secondly, having the Sheriff on telephone standby
4 to come down here to possibly testify, I guess, they
5 didn't really tell me the outline too much. They just
6 told me they wanted him available to maybe -- if he came,
7 he needed to bring a procedure manual with him. That tells
8 me they want to put him on the stand and ask him who knows
9 what about whatever is inside of our procedure manual.

10 Again, I'm not sure know how that's relevant or
11 -- they haven't given me any information to lead me to
12 believe that may be relevant.

13 I'm sure the Solicitor's Office would have some input
14 and argument on that, but as far as the subpoena itself,
15 you know, if the judge -- if the Court decides at some
16 point in time that some procedure that we have is relevant,
17 I would ask that the subpoena be limited to that procedure
18 specifically.

19 If, you know, we needed testimony, pretrial
20 testimony, about that procedure because the Court decides
21 that's something that needs to be explored, I don't
22 necessarily think it needs to come from the Sheriff.

23 It would be the Sheriff's position, and I think the
24 Department's position, as the attorney for the agency
25 itself, that if it was an investigatory procedure, that

1 defense counsel wants to ask somebody from our agency
2 about, you know, Chief Wilson, Major Wilson. I mean,
3 Captain Smith is here.

4 You know, he's fluent in all of these procedures,
5 as well. You know, someone from the command staff, I think
6 other than the Sheriff, would be in a position to offer
7 that kind of testimony and give that insight, talk about
8 how we use that procedure and how it applies. That is,
9 in the first place, if it's even decided it's relevant
10 to begin with.

11 I'm not sure that our procedures are relevant.
12 Clearly, they're all inside of the law. You know, any
13 kind of legal issue would be ruled on by Your Honor. You
14 know, really, our procedure isn't going to have much of
15 a bearing on the admissibility of some evidence.

16 So just initially, I don't know what the -- if the
17 defense would like to respond.

18 THE COURT: Do you have a copy of the subpoena?

19 MR. HAYES: Yes, sir.

20 THE COURT: All right. Mr. Shealey?

21 MR. SHEALEY: Good morning, Your Honor, may it
22 please the Court. In terms of why we specifically needed
23 Sheriff Leon Lott to be here, we specifically planned on
24 calling him as a witness for some of these pretrial
25 motions and also as a much broader witness in terms of

1 the case.

2 In terms of the pretrial, specifically we have one
3 motion regarding the policy of the Richland County
4 Sheriff's Department to not record any interrogation or
5 statement by defendants.

6 Sheriff Leon Lott is the top police officer in this
7 county. He's the one that would be making this policy.
8 He's the one that would be the one deciding why to, or
9 why to not record something as central as a statement from
10 a defendant.

11 I understand there's other law enforcement officials
12 here, Stan Smith, but ultimately, Leon Lott is making
13 that policy. We wanted to question him on why it is the
14 policy pursuant to one of our specific motions to --

15 THE COURT: Which motion?

16 MR. SHEALEY: It's the motion -- let me see the
17 motions list.

18 (Pause)

19 Written motion number 18. The written motion has the
20 legal argument behind it that we passed up. You know,
21 why is this state not in line with others? Why is this
22 county not in line with others?

23 Leon Lott is the one that would make that decision
24 in terms of how his agency is operating with the manuals
25 and any and all information listing all procedures that

1 he is helping to implement and devise and would speak to
2 that.

3 THE COURT: What do you mean by any and all information
4 listing all procedures of Richland County officers?

5 MR. SHEALEY: Well, within that manual is going to
6 be the policy on the recording of statements. Within that
7 manual will also be other -- other issues in this case,
8 such as jurisdictional issues when someone like
9 Charlotte/Mecklenburg wants to come down and wants to do
10 a search warrant or other issues such as, you know, lack
11 of recording like I've gone on.

12 He's also a broader witness in the case due to all
13 the media made about the statements in the case,
14 statements about how the motivation, the intent that they
15 think Mr. Manning had, what specific for pretrial -- why
16 he was on telephone standby this week was to answer
17 motion 18 and to bring his Policy Manual and discuss this.

18 The less -- you know, no offense, but the officers
19 that are under him aren't going to be able to talk about
20 why this is the policy for Richland County Sheriff's
21 Department. Leon Lott would be able to address that and
22 only Leon Lott.

23 MR. HAYES: Your Honor, I can address that.

24 THE COURT: Yes.

25 MR. HAYES: I mean, Chief Wilson is definitely going

1 to be in a position to address any kind of investigative
2 policy about why we do or why we don't record.

3 THE COURT: What's the relevance to this case other
4 than just a fishing expedition?

5 MR. HAYES: Right.

6 THE COURT: I mean, what's the relevance to this
7 case of why you do what you do, do what you do?

8 MR. HAYES: You know, with all due respect to defense
9 counsel, there is no law that mandates that all
10 confessions be video record. So this isn't a -- this isn't
11 a forum for public policy, or try to pick apart why we
12 do or don't do something. This isn't the proper place
13 for that.

14 You know, this is a criminal trial and our policies
15 are -- and procedures are in line with the state law, and
16 there isn't a law that requires it. So, again, I agree
17 with Your Honor. I don't know how that has any effect
18 on the bearing of -- or any bearing on this court hearing,
19 this trial.

20 MR. SHEALEY: Your Honor, just briefly, I'm sure
21 you're getting close to making a decision here, but in
22 terms of relevance, we have a seven-hour interrogation
23 that's reduced down to three or four pages.

24 THE COURT: Who did the interrogation?

25 MR. SHEALEY: Richland County Sheriff's Department.

1 THE COURT: Who?

2 MR. SHEALEY: Isenhoward, Shawn McDaniels. You
3 know, why are they doing it this way without \$5.00 --

4 THE COURT: Why don't you ask them?

5 MR. SHEALEY: I will, but they are going to do what
6 Leon Lott demands them to do. That's the policy of Richland
7 County. This is a forum of public policy, to challenge,
8 as well.

9 THE COURT: No, it's not. This is a trial.

10 MR. SHEALEY: Over history, Judge, I do respectfully
11 disagree. It is certainly relevant why West Columbia
12 records a statement when Richland County, right across
13 the river, isn't. I think it --

14 THE COURT: I'm not going to even get into that.

15 MR. SHEALEY: I'm going to respect your decision, but
16 I think I stated our position for the record as to why
17 it's relevant in this case.

18 THE COURT: Well, the question to me is why Leon
19 Lott -- does Sheriff Lott, in your opinion, have any
20 information about this case?

21 I mean, your point about him making public
22 statements may be relevant, and that may be a reason to
23 bring him here to find out what the basis of his knowledge
24 was when he made those statements, but the fact that he
25 has a policy manual and his officers followed the policy

1 manual, I don't -- this court is not going to get into
2 a lengthy policy decision as to why the sheriff does this
3 or why the sheriff doesn't do that.

4 You know, if the public does not like what the sheriff
5 does, they have a remedy, and it's not to be decided in
6 the guilt or innocence of your client.

7 MR. SHEALEY: Your Honor, just on your first question,
8 Sheriff Lott provides numerous quotes to the media as to
9 the motivation, as to the relationship of the parties
10 involved, Ms. McPhatter, Mr. Manning.

11 He calls them the most cold-blooded killing he had
12 ever seen.

13 THE COURT: Okay.

14 MR. SHEALEY: A lot of things about why she would be
15 coming to Columbia, and the law enforcement theory, I
16 think, is certainly relevant when you have a seven-hour,
17 you know, unrecorded statement as to the guilt or
18 innocence.

19 Without being recorded, we don't know what he said.
20 We don't know the whole story. That certainly goes to --

21 THE COURT: You --

22 MR. SHEALEY: -- the whole statement.

23 THE COURT: But you can tell the jury that. You can
24 argue that to the jury.

25 MR. SHEALEY: Cases like Jackson V. Denno are what

1 make public policy. Some lawyer challenged it at some
2 point.

3 THE COURT: Well, I'm going to -- I'll let you
4 challenge it, but not here.

5 MR. SHEALEY: Well, that's what I've asked to do. The
6 forum, I would say, is here, challenge the recordation
7 policy.

8 THE COURT: You made your motion.

9 MR. SHEALEY: Yes, sir.

10 THE COURT: Put it on the record, and then we're going
11 to move on.

12 MR. SHEALEY: It's also, just another point, it's
13 also relevant in how we cross these officers on their
14 interrogation of Mr. Manning.

15 They're going to provide a number of answers, "That's
16 not our policy to record." The jury is going to hear that,
17 think it's okay. You know, it's relevant to their
18 cross-examination.

19 Well, why it not the policy? You know, what -- why
20 does West Columbia do it and you don't? Without having
21 Leon Lott here to talk about that, this jury is going to
22 be able to hear this.

23 And where is the written policy? Is it written, or
24 is it just a wink, wink, nod, nod? I don't know, Judge,
25 but Leon Lott knows. That's why I'd ask him to be here

1 for pretrial.

2 THE COURT: Mr. Hayes.

3 MR. HAYES: Sir, again, I just -- getting back to the
4 point. I'm not sure what our policy is -- how we do it,
5 what we -- you know, some of our investigations and
6 how the result and what gets recorded and what doesn't,
7 I don't think that has any bearing on the admissibility,
8 and I don't think having the Sheriff down here to answer
9 those questions. I mean, I don't think --

10 THE COURT: What about his --

11 MR. HAYES: If those --

12 THE COURT: -- knowledge of the case and the public
13 statements about the case?

14 MR. HAYES: Well, as far as the public statements go,
15 Judge, really, when these things happen, you know, he has
16 a public information officer who is going to get with the
17 Criminal Investigations Division, C.I.D.

18 Probably Captain Smith and Chief Wilson or whoever,
19 they're going to talk about the case, and they're going
20 to formulate a press release. I think that probably
21 most of the statements that Mr. Shealey has alluded to
22 here this morning are it came out in a press release of
23 some kind.

24 THE COURT: Do you know that?

25 MR. HAYES: Do I know that? I know that's our process,

1 yes, sir.

2 THE COURT: Do you know that he did or did not get
3 on the television?

4 MR. HAYES: I mean, I can ask Captain Smith. I'm sure
5 that he has a better memory than I on that. I don't -- I
6 don't know specifically, Judge.

7 MR. SHEALEY: Your Honor, the proof of my point is --

8 THE COURT: Hold on just a minute.

9 MR. MAY: Yes, sir.

10 MR. HAYES: Judge, this is a press release. Captain
11 Smith just handed it to me this morning, and it looks
12 like it came from our P.I.O., Public Information Officer.
13 I'll be happy to hand it up.

14 I don't think that he was on T.V. Was he on T.V.,
15 Captain?

16 (Mr. Smith nods in the affirmative).

17 THE COURT: He was on T.V.?

18 (Mr. Smith nods in the affirmative).

19 MR. SHEALEY: We've got tons of press releases. I
20 mean, it's been going on for over a year.

21 Are you looking for direct quotes?

22 MR. HAYES: Well, I mean, you know, if -- if the
23 Sheriff went on T.V. and said something about the case,
24 Judge, I mean, obviously -- you know, I don't know why -- I
25 don't know what relevance there would be to come in and

1 have him testify or make him say, "Did you say X?"

2 If they -- this would be up to the Solicitor. I don't
3 want to speak for him, but I mean, you know, I want them
4 to say the relevance, objections and things, but if you
5 decide they were relevant, for some reason, you know, the
6 press release is almost the best evidence -- you know,
7 probably would fall under some kind of business record.

8 As long as it's authenticated, you wouldn't need the
9 Sheriff here to testify about what he said. You could
10 just show him the press release.

11 MR. SHEALEY: I've got the article if you'd like me
12 to approach with it, Your Honor. It's been all over
13 the news for over a year. The theory -- law enforcement's
14 theory of why she was coming down, what motivation Mr.
15 Manning had, if any, in terms of intent in this case.

16 MR. HAYES: I mean, candidly, Judge --

17 THE COURT: Hold on. Just one at a time.

18 MR. HAYES: I'm sorry.

19 THE COURT: Wait a minute. This is today's State
20 paper.

21 MR. SHEALEY: No, sir.

22 THE COURT: Oh really? "Burning car trial starts
23 today"?

24 MR. SHEALEY: Well, that was -- that's the point is
25 what we had from a while back, Judge, but I can find the

1 actual...

2 MR. GIESE: Your Honor, may I ask a question while
3 you're reading that?

4 THE COURT: To the Court?

5 MR. GIESE: Yes, sir.

6 THE COURT: You have a -- you have a standing in this
7 case, Solicitor, yes.

8 MR. GIESE: You dual task, I know.

9 THE COURT: I see no quotes.

10 MR. GIESE: Are they talking about calling Sheriff
11 Lott -- this is just for my own clarification. Are they
12 talking about calling Sheriff Lott pretrial or during the
13 trial? That's my question, about these quotes.

14 THE COURT: Well, I'm going to try to answer that,
15 because there is a motion they've made to suppress the
16 statements.

17 MR. GIESE: Yes, sir. And the State's position
18 would be in that regard pretrial that Sheriff Lott has
19 absolutely no bearing or relevance to this -- in this
20 case.

21 THE COURT: Well --

22 MR. GIESE: In front of the jury, if they would like
23 to call Sheriff Lott, then they might have an issue.

24 THE COURT: Well, the basis, as I understand it, for
25 their motion is that the statement -- they want to

1 suppress the statement.

2 MR. GIESE: Yes, sir.

3 THE COURT: Because it was unrecorded.

4 MR. GIESE: Yes, sir, which --

5 THE COURT: That's the bottom line.

6 MR. GIESE: Yes, sir, and we're saying that's not
7 relevant to this case.

8 THE COURT: Well, I think --

9 MR. GIESE: We're saying that's not relevant in this
10 case, and any policy Sheriff Lott may know or not have
11 is not relevant. Therefore, Sheriff Lott --

12 THE COURT: Well, according that, then these
13 statements shouldn't come in.

14 MR. GIESE: Correct, but I don't think that would
15 be -- whether or not they have a policy as to that or
16 not, whether or not that's Sheriff Lott's policy, is not
17 relevant. The question is whether or not it was taken
18 legally.

19 THE COURT: Right.

20 MR. SHEALEY: Judge, there's a pretrial issue here
21 that Mr. Giese has discussed, and then there's the quotes
22 and things in front of the jury and pretrial.

23 The thing is relevant under the sixth amendment
24 complete and full defense, why is it that we can't know
25 word for word what my client said when he was arrested

1 and interrogated.

2 To answer the Court's question, we can put Stan Smith
3 on the stand right now, and I can ask him, "Sir, why is
4 it that your policy is that you don't record?"

5 "It's just our policy." I imagine that's what he'll
6 say.

7 "Who is making this policy? Why not record it?"

8 Leon Lott knows the answer to this question.

9 THE COURT: I think Stan Smith probably knows the
10 answer to that question.

11 MR. SHEALEY: Well, let's put him on the stand right
12 now, Your Honor. I imagine -- I'm just taking a guess.
13 I imagine it's right, he's going to say that's
14 what -- "That's our policy. I don't make the policy, but
15 that's our policy."

16 THE COURT: Well, if that's it, that's it.

17 MR. GIESE: Exactly.

18 MR. SHEALEY: Well, if -- it needs to be fleshed out
19 then as part of this motion as to why there's no recording
20 of this. It's certainly relevant. We don't know.
21 Charlotte has come in here --

22 THE COURT: Besides that, you're saying this motion
23 of the State's decision to pursue life without parole,
24 well, this is -- this is merely a murder case. This is
25 not a --

1 MR. SHEALEY: Mr. Giese, in response to one of our
2 letters, indicated they are seeking life for my client,
3 so that's --

4 THE COURT: But you have not been given a life without
5 parole notice, have you?

6 MR. SHEALEY: No, sir.

7 MR. GIESE: Your Honor, he's misstating what I wrote.
8 I said --

9 MR. SHEALEY: It's simply a murder case that carries
10 life. That's what -- we're just talking about --

11 THE COURT: That's right.

12 MR. SHEALEY: That's all it is.

13 MR. GIESE: But still it's a misstatement --
14 (Talking over each other).

15 -- by the defense. That's all it is.

16 MR. SHEALEY: We're just talking about the State's --

17 THE COURT: I understand that.

18 MR. SHEALEY: That's just a preface that it's a very
19 serious situation. I'd like to know what happened
20 during those seven hours and why it's chilling to not be
21 able to -- I mean --

22 THE COURT: Well, I can't -- I don't know that you'll
23 ever know that.

24 MR. SHEALEY: Well, Your Honor, I will if Leon Lott
25 takes the stand and --

1 THE COURT: No, you won't.

2 MR. SHEALEY: -- pursuant to our subpoena and tells
3 us why, and that's why we're asking. We're not -- we're
4 not trying to waste Mr. Lott's time.

5 MR. GIESE: The State disagrees because we know
6 exactly what they're trying to do because they know very
7 well that this is not admissible, not relevant in this
8 hearing that we're getting ready to have some time today,
9 first.

10 Second, if they want to argue that it's not taped,
11 they want to use that, it goes to the weight but not the
12 admissibility. If they want to call Sheriff Lott in front
13 of the jury, they certainly can do that. That's their
14 prerogative.

15 THE COURT: All right. Mr. Shealey, I'm going to let
16 you argue your motion to suppress the unrecorded
17 statements made by Theodore Manning.

18 MR. SHEALEY: Yes, sir.

19 The defense calls -- well, Stan Smith or Leon Lott.

20 THE COURT: No. I want you to argue. I want your
21 legal argument.

22 MR. SHEALEY: Your Honor, the bottom line is, as
23 you're reading my memo, there is -- there is no case law
24 to dictate in this state, you're right. Mr. Giese is
25 right.

1 He's right saying that we have to record. All right.
2 Several of our jurisdictions, several counties, several
3 cities do. The bottom line is, it's just like Jackson V.
4 Denno. It's just like cases like Miranda.

5 It's important to provide complete and full background
6 to know what the intent of the sixth amendment to be able
7 to challenge this and understand why we have a four-page
8 statement out of a seven-hour interrogation.

9 Your Honor, we want to -- we're challenging this Court
10 to tell law enforcement to get in line with other leading
11 states in the nation and other, even, other counties in
12 this state that -- and get in line with the standards from
13 the American Bar Association that not recording creates
14 false confessions.

15 We're not getting what he's saying when he's speaking
16 to law enforcement for seven hours. We think that under
17 the sixth amendment, to have a full and complete defense,
18 that's appropriate to be questioned in this case.

19 We'd argue that this whole statement should be
20 suppressed simply because of that fact. It's not something
21 you probably have addressed a lot, but it's not law on
22 our books, but laws change because things are challenged.

23 North Carolina, Your Honor, Charlotte/Mecklenburg
24 County records everything, every phone call, everything.
25 I have a 45-page transcript. They are our neighbor, our

1 sister state.

2 Their law changed -- they are not that different from
3 us -- because somebody challenged it. They feel it's
4 appropriate, but I think I'm allowed to challenge the
5 quality here in this county. It has to start somewhere.

6 I would ask that this, all the statements to Richland
7 County, be suppressed for the sheer fact that we're not
8 in line with the A.B.A. that this statement, this
9 seven-hour interrogation, was not recorded.

10 THE COURT: All right. What's the State's position?

11 MR. GIESE: Your Honor, first off, a couple of things.
12 We don't think it's relevant. We don't think that Sheriff
13 Lott's testimony is required today. The other thing --

14 THE COURT: Just address the motion.

15 MR. GIESE: Excuse me?

16 THE COURT: Based on arguments of counsel.

17 MR. GIESE: Correct. We're saying it's not relevant.

18 THE COURT: Well, I think you've got to go further.

19 MR. GIESE: The recording of the statements?

20 THE COURT: Sir?

21 MR. GIESE: Are you talking about -- you're talking
22 about recording the statements?

23 THE COURT: He did.

24 MR. GIESE: Your Honor~~~

25 (Talking over each other.)

1 THE COURT: Do you have the motion?

2 MR. GIESE: Yes, sir. I'm looking at it right here.

3 THE COURT: All right. Counsel says that the
4 statements should be suppressed because they're
5 unrecorded, and he cannot get a fair trial.

6 MR. GIESE: Your Honor, the State's position --

7 THE COURT: Based on the fact that these statements
8 were not recorded, and he has no way of knowing what took
9 place in the interrogation room, and that it's violative
10 of his constitutional rights.

11 MR. GIESE: Your Honor, that's not the law in South
12 Carolina. The law in South Carolina is they do not have
13 to be recorded.

14 Sheriff Lott's testimony will have no effect as to
15 why it's not recorded, whether it was recorded or not.
16 The bottom line is that it was not recorded. You don't
17 have to record in South Carolina, and this is not a place
18 for public policy.

19 If they want to fight the legislature go down there
20 and make sure that all statements are recorded, that's
21 their business. That's not what we're here today to see.
22 We're here to see whether or not the statements were
23 taken lawfully.

24 THE COURT: Can that be determined from the Denno
25 hearing?

1 MR. GIESE: Yes, sir, obviously. That's why we're
2 here. I thought that's why we were going to start at
3 nine o'clock.

4 THE COURT: All right.

5 MR. MAY: Your Honor, if I might inquire of the Court
6 something real quick. If the investigators, Stan Smith,
7 take the stand, and they plead the Nuremberg test, just
8 as (unintelligible) did --

9 THE COURT REPORTER: I'm sorry, just as what did?

10 MR. MAY: They will --

11 MR. GIESE: I'd object to that.

12 MR. MAY: Wait a second --

13 MR. GIESE: For them to --

14 (Talking over each other.)

15 THE COURT REPORTER: I'm sorry. I can't take down --

16 (Talking over each other.)

17 -- the record--

18 (Talking over each other.)

19 I'm sorry, Your Honor. I didn't hear anything that
20 either person said because they were speaking over each
21 other.

22 MR. GIESE: It's offensive for them to use that. That
23 term is offensive.

24 THE COURT: All right. I take you -- I take you at
25 your word.

1 I understand what you mean. Now, what's your point?

2 MR. MAY: Yes, sir, Your Honor. I believe that this
3 testimony will become relevant if -- I don't know a better
4 way to -- but if they just rely on the appearance to policy.

5 THE COURT: All right. We'll find out. Let's start
6 the Denno hearing, then we'll address your motion.

7 MR. GIESE: May I be heard on the statement that they
8 made about the defense that they're using? I'm asking
9 the Court --

10 THE COURT: I'm --

11 MR. GIESE: I'm asking the Court to not allow them
12 to use that phrase again.

13 THE COURT: Well, he certainly won't use it during
14 the trial.

15 MR. GIESE: Thank you.

16 THE COURT: Now, call your first witness.

17 MS. PRINGLE: May I take just a moment to retrieve
18 the motions from Ms. Tracy so that we can refer properly
19 to the Court's Exhibits as they're marked, as they're
20 argued for this motion, just for the record?

21 THE COURT: Sure.

22 MS. PRINGLE: It will keep things moving.

23 (Pause)

24 Your Honor, we're trying to organize the motions so
25 the record will reflect which one we're dealing with as

1 we get them.

2 THE COURT: I hope the record -- I agree with you.

3 MS. PRINGLE: There was some confusion, I believe,
4 by Ms. Tracy. We're trying to straighten it out.

5 THE COURT: All right.

6 Raise your right hand, sir. You can take an oath.

7 KEITH MARTIN,

8 after being duly sworn, testified as follows:

9 THE COURT: You may proceed, Solicitor.

10 DIRECT EXAMINATION:

11 BY MS. CAMPBELL:

12 Q Thank you, Your Honor.

13 Detective Martin, where are you employed?

14 A With the Charlotte/Mecklenburg Police Department in
15 North Carolina.

16 Q And what do you do there, sir?

17 A I'm a homicide detective.

18 Q And did you become involved in the investigation of
19 a missing person in Charlotte back in May of 2009?

20 A Yes, I did.

21 Q And who was that you were -- that was missing?

22 A The lady's name was Nikki McPhatter.

23 Q And what date did you actually become involved in the
24 investigation of this case?

25 A On May 19th, 2009.

1 Q And prior to that had -- are you aware of when
2 Ms. McPhatter had been reported missing?

3 A Yes, ma'am.

4 Q And what date was that?

5 A It was on May 5th.

6 Q Could it have been May 11th?

7 A Yes.

8 Q And during the time between May 11th when you became
9 involved and May 19th, what division within your department
10 was handling the investigation for the missing person?

11 A The Missing Person's Unit. We have a unit
12 specifically for missing persons.

13 Q Then on May 19th, they called you in because you are
14 part of the homicide unit?

15 A That's correct.

16 Q During the course of your investigation, did you
17 develop a person that you all wanted to talk to that
18 Ms. McPhatter had possibly gone to see in Columbia, South
19 Carolina?

20 A Yes, I did.

21 Q What was the name that person?

22 A Theodore Manning.

23 Q I want to turn your attention specifically, for
24 purposes of this hearing, to May 21st around 22:03. Did
25 you make a telephone call that day?

1 A Yes, I did.

2 Q And who were you trying to get in touch with?

3 A I was trying to get in touch with Theodore Manning.

4 Q And were you able to make contact with Mr. Manning
5 via telephone that day around 23:00 hours?

6 A I believe I left a voicemail for him on his cell phone.

7 Q Specifically, at some point that day, did you make
8 contact with him over the phone?

9 A Yes, I did. He called me back.

10 Q And when he called you, did you ask him any specific
11 questions about Nikki McPhatter?

12 A Briefly, yes.

13 Q At that point -- this is a stupid question -- but was
14 he in your custody?

15 A No, he was not.

16 Q In fact, you were talking to him over the telephone?

17 A Yes, I was.

18 Q Did he give you some information about the last time
19 he had seen Ms. McPhatter?

20 A He did.

21 Q During the course of that phone call, did you then
22 make arrangements to meet up with Mr. Theodore Manning
23 that day?

24 A Yes, ma'am.

25 Q And did you meet him that day?

1 A Yes, I did.

2 Q And where did y'all meet?

3 A He asked that we meet him at the post office on Bluff
4 Road.

5 Q And that would be here in Richland County?

6 A Yes, ma'am.

7 Q And who was with you when you made contact with him
8 on May 21st at the post office?

9 A Detective Blair Fitch.

10 Q When you went to meet him that day, did you make contact
11 with him?

12 A Yes, I did.

13 Q At any point during the phone call or that day, did
14 you advise him of any rights that he might have?

15 A No, I did not.

16 Q Was he in your custody at any point that day?

17 A No, he wasn't.

18 Q Did he agree to voluntarily meet you at the post office?

19 A He did. It was the location of his choice.

20 Q And that was his choice?

21 A Yes, it was.

22 Q And do you know how he actually got to the post office
23 that day?

24 A I do.

25 Q How?

1 A He rode with his fiancée, Candace Jackson.

2 Q When you made contact with him that day, what was the
3 purpose of you talking to him?

4 A I wanted to speak with him about his relationship with
5 Ms. McPhatter.

6 Q Was he able to give you some information -- we won't
7 go into the content of it -- about the last time he had
8 seen Ms. McPhatter?

9 A He was.

10 Q And specifically, that was related to you and Detective
11 Fitch?

12 A Yes, it was.

13 Q After he was -- approximately how long did y'all meet
14 that day, do you remember?

15 A Approximately 20 minutes.

16 Q And during that time period, was he able to give you
17 some information?

18 A Yes, he was.

19 Q About Ms. McPhatter and the last time he said he had
20 seen her?

21 A Yes, he did.

22 Q At any point that day, did you take him into custody?

23 A No, I did not.

24 Q And, in fact, was he able to leave the post office
25 after voluntarily going there of his own free will?

1 A Yes, he was.

2 Q And when he left the post office, do you know how he
3 left?

4 A He left, again, with Ms. Candace Jackson.

5 Q So that interview with this defendant was
6 noncustodial?

7 A That's correct.

8 Q And was he voluntarily -- was he agreeable or
9 cooperative with you?

10 A He was, yes.

11 Q And, in fact, he was able to get someone to drive him
12 to the post office, and he left of his own volition?

13 A Yes, he did.

14 Q I want to turn your attention to May 22nd, the next
15 day. Did you and Detective Hopkins return to Columbia
16 or the Columbia area to -- and actually go to the defendant's
17 house that day?

18 A Yes, we did.

19 Q And what was the purpose of you going to the house?

20 A To make contact with him again in an effort to get
21 a more detailed statement.

22 Q And, in fact, did y'all make contact with him at his
23 house?

24 A Yes, We did.

25 Q At that point, did you all also -- were you also

1 accompanied by some other officers from Richland County?

2 A Yes, we were.

3 Q And what was one of the purposes, in addition to talking
4 to him, that you were there that day?

5 A To ask for permission to search his house for anything
6 of evidentiary value pertaining to this case.

7 Q And again, when you made contact with him again that
8 day, was he cooperative?

9 A He was.

10 Q Did he agree that y'all would be able to search his
11 house?

12 A He did.

13 Q Was there also a search warrant that was executed that
14 day by Richland County?

15 A Yes, there was.

16 Q Did you take the statement -- or when you made contact
17 with the defendant, did you talk to him about
18 talking -- about some more details that day?

19 A We did, yes.

20 Q And did you ask him to actually meet you somewhere?

21 A We did, yes.

22 Q And where were y'all meeting on that day, the 22nd?

23 A We went to a satellite office from the Richland County
24 Sheriff's Department.

25 Q And how did you get to the satellite office from the

1 defendant's house that day?

2 A I drove with Detective Hopkins, and the defendant
3 drove with his uncle and Ms. Jackson, again.

4 Q Okay. When you asked the defendant to meet you, was
5 he cooperative?

6 A Yes, he was.

7 Q And was he voluntarily assisting y'all in your
8 investigation at that point?

9 A Yes.

10 Q And he agreed to meet you there, and how did he get
11 there to the sheriff's department --

12 A He rode --

13 Q -- satellite office?

14 A He rode with family members.

15 Q So he rode in a separate car from you?

16 A Yes, he did.

17 Q And he arranged to get there on his own?

18 A Yes,

19 Q And y'all didn't take him there or handcuff him or
20 arrest him or anything that day?

21 A No, ma'am.

22 Q Was he ever in your custody that day?

23 A No, he was not.

24 Q Once y'all got to the sheriff's department, y'all came
25 in separate vehicles?

1 A We did, yes.

2 Q And once you got there, did he agree to give you some
3 additional details in which y'all took a statement?

4 A Yes, we did.

5 Q And the statement you took that day, I believe you
6 recorded it?

7 A We did.

8 Q Did you ever advise him of his Miranda rights that
9 day?

10 A I did not.

11 Q Was he ever taken into custody that day?

12 A No, he was not.

13 Q Was he ever arrested that day?

14 A No, he was not.

15 Q And approximately how long was he with y'all on that
16 day, do you remember?

17 A Approximately one to two hours.

18 Q During the course of your recorded conversation that
19 day, did he -- was he able to give you some details,
20 additional details?

21 A Yes.

22 Q And did he do that voluntarily?

23 A He did.

24 Q How did he leave?

25 A With Ms. Jackson in her car.

1 Q And did y'all follow him or anything, or did he leave
2 of his own free will?

3 A He left on his own. We all ended up back at his house,
4 though.

5 Q But he was traveling on his own at that point?

6 A That's correct.

7 Q At any point during that day, did you take him into
8 custody?

9 A No, I didn't.

10 Q I want to turn your attention to May 27th, 2009. Were
11 you still working on this case?

12 A Yes, I was.

13 Q And did you, again, initiate a telephone call to this
14 defendant?

15 A I did.

16 Q And what was the purpose of you making the telephone
17 call on the 27th?

18 A The sole purpose of that call was to ask him if he
19 would be willing to submit to a polygraph.

20 Q And at that point, what did the defendant tell you?

21 A He said that he would like to speak to his attorney
22 first, but would call me back.

23 Q And when he said speak to his attorney, about what?

24 A The polygraph.

25 Q About taking the polygraph?

1 A That was the nature of that conversation, yes.

2 Q And that was the extent of that conversation?

3 A That was it.

4 Q And as far as your conversation with the defendant,
5 did you ever -- you personally take any more statements
6 from him after that?

7 A No, I didn't.

8 Q In all your conversations with this defendant either
9 by telephone or in person, did he agree to cooperate with
10 you voluntarily?

11 A Yes.

12 Q At any time, did you ever confine him or take him into
13 custody or anything of that nature?

14 A No.

15 Q At any point, did he ever indicate he didn't want to
16 talk to you anymore or anything of that nature?

17 A No.

18 MS. CAMPBELL: Your Honor, that's all we'd have of
19 this witness.

20 THE COURT: Cross-examination?

21 MR. MAY: May it please the Court, Your Honor.

22 CROSS-EXAMINATION:

23 BY MR. MAY:

24 Q How are you doing?

25 A I'm good. How are you doing?

1 Q My name is Jim May. I represent the defendant.

2 All right. Just starting out on the 21st, where did
3 the interrogation take place?

4 A The interview took place in my vehicle.

5 Q In your vehicle?

6 A Yes, sir.

7 Q Where was he seated?

8 A In the front right seat.

9 Q He was sitting in the front right seat, all right.
10 Now, was there a member from the Richland County Sheriff's
11 Department there?

12 A Yes, there was.

13 Q Okay. Was that person in the vehicle?

14 A No, they were not.

15 Q All right. So who was in the vehicle?

16 A Myself and Detective Fitch.

17 Q You and detective Fitch, and were you wearing a
18 firearm?

19 A Yes, sir.

20 Q And what firearm do you wear?

21 A We wear a Smith & Wesson .40 caliber, M & P.

22 Q Smith & Wesson .40 caliber. That's for stopping
23 power, right?

24 A Well, we're just required to carry guns, law
25 enforcement.

1 Q All right. Were you -- are you deputized, or do you
2 have any law enforcement affiliation in the State of South
3 Carolina?

4 A No, sir.

5 Q All right. Now, we're going into the 22nd.

6 A Yes, sir.

7 Q The 22nd, you talked to Theo for a little bit, correct?

8 A Yes, sir.

9 Q All right. And then at some point, Detective Fitch,
10 correct, drafts a search warrant; correct?

11 A I believe he did, yes.

12 Q All right. So Detective Fitch drafts a search
13 warrant, and in the search warrant, he's alleging the murder
14 occurred.

15 A I don't know what the narrative states in the search
16 warrant. I could look at it, but...

17 Q All right. Do you have it?

18 Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MR. MAY:

21 Q You don't have to read everything, but this is the
22 search warrant and -- but can you please just read this
23 last line to yourself and see if it says "murder"?

24 A This looks to be a search warrant for -- that would
25 have been issue in Charlotte. This is one of our forms.

1 This isn't a Richland County form.

2 Q Correct, correct.

3 A That does appear to be a search warrant for that day.

4 Q Correct. But then Detective Fitch filled it out, and
5 then it is supplemented?

6 A It should be in a --

7 MR. MAY: May I mark this?

8 THE COURT: All right.

9 MR. MAY: As Defense Exhibits.

10 (WHEREUPON, Defendant's Exhibits Nos. 1, 2 were
11 marked for identification only.)

12 BY MR. MAY:

13 Q All right. Beg the Court's indulgence for one second.

14 (Pause)

15 I'm going to hand you the search warrant from Richland
16 County --

17 A Okay.

18 Q -- dated May 22nd. Look on the last line, please.

19 A Okay. What was the question?

20 Q This is Exhibit 1. So on May 22nd, there was a search
21 warrant requested by y'all to search Theo Manning's
22 house for evidence for a murder; correct?

23 A That's correct.

24 Q So at the time that you go with the sheriff's
25 department to Theo's house, you're going there to search

1 the house for evidence of a murder?

2 A Correct.

3 Q So at this time you've identified Mr. Manning as a
4 suspect?

5 A He was definitely a person of interest.

6 Q He's a person of interest, okay. So you go -- how
7 many people went to Theo's house on May 22nd in the evening
8 hours?

9 A I don't know the exact number.

10 Q Several?

11 A Several, yes.

12 Q Were most people wearing firearms?

13 A Yes, sir, police officers.

14 Q All right. And when you knock on the door, Detective
15 Fitch tells him that we're here to serve a search warrant,
16 correct?

17 A That's incorrect.

18 Q Did you ever inform him there was a search warrant?

19 A Did I ever inform him --

20 Q Yes. Was he ever informed there was a search warrant?

21 A Later on, yes.

22 Q Okay. So he was informed there was a search warrant,
23 and he could have consented or not?

24 A Pardon me?

25 Q He was informed there was a search warrant for his

1 residence, correct?

2 A Not at the door as you were stating, sir.

3 Q All right. Y'all knocked on the door wearing your
4 firearms?

5 A Yes, sir.

6 Q And you start searching the house; correct?

7 A Not in that order, sir. It wasn't as immediate as
8 you make it sound, but we did ultimately search his house.

9 Q You did ultimately search his house. During the
10 search of his house, he asked to go retrieve pants and
11 shoes, and he had to be escorted into the house to do that;
12 correct?

13 A We were with him, yes.

14 Q So you escorted him?

15 A We --

16 Q He wasn't free to go into his own house, was he?

17 A We walked behind. We weren't, you know, grabbing him
18 and escorting, so to speak.

19 Q Was he free to go into his own house by himself?

20 A He was with us. He wouldn't -- we wouldn't let
21 somebody just walk in their house unattended and then walk
22 back out for obvious safety reasons. So we were just there
23 with him, as you stated. If you want to say escorted him
24 or escorting him.

25 Q Okay. So you escorted him into his own house. All

1 right. At this time, there are a bunch of men and women
2 searching his house, and ya'll are wearing firearms?

3 A The search had not begun at that point, sir.

4 Q Had not begun. So before the search even started,
5 he was being escorted into his own house?

6 A We walked with him, yes.

7 Q All right. At some point, you informed him that he
8 needs to come with you to get a more complete statement;
9 correct?

10 A I asked him. I didn't inform him.

11 Q You asked him, all right. But the place you took him
12 was a substation of Richland County Sheriff's Department;
13 correct?

14 A It was, yes.

15 Q All right. When you got there, was anybody allowed
16 to be in the room with him?

17 A He didn't request anyone.

18 Q Did you say, "Hey, do you want to see if your Uncle
19 Randy or Candace wanted to be in the room?"

20 A I didn't ask him. He didn't --

21 Q All right. Are you trained in the Reid Technique?

22 A I have had a course on it, yes.

23 Q You had a course in the Reid Technique, and the first
24 thing the Reid Technique does is it teaches you to isolate
25 the suspect from any support structure. That's number

1 one, isolate.

2 A I don't know. To be honest with you, it's been so
3 long since I've taken it. I really didn't find it that
4 beneficial.

5 Q Your didn't find it beneficial, but you did isolate
6 him. You put him in a room with you and one other detective.
7 Who was the detective, Hopkins?

8 A Detective Hopkins, yes, sir.

9 Q So you and Detective Hopkins are in there, and
10 you're interrogating him for -- you said between one and
11 two hours?

12 A I would have to look at the recording to see the actual
13 time, but that was my approximation, yes, sir.

14 Q All right. Now, he was a person of interest at this
15 time; correct?

16 A Yes, sir, by all means.

17 Q And you were investigating him, even though you're
18 not deputized or have any law enforcement affiliation in
19 South Carolina. You were interrogating him and
20 investigating him for a crime that may or may not have,
21 at that time, occurred in South Carolina?

22 A We were interviewing him, yes. We weren't enforcing
23 any laws or anything.

24 Q Pardon me?

25 A We weren't enforcing any laws or arresting him or

1 anything.

2 Q You weren't enforcing any laws, all right. And to
3 be clear for the record, at no point did you ever Mirandize
4 him.

5 A I did not, no.

6 Q You never Mirandized him, and as the search is going
7 on, you were receiving information via a Blackberry or
8 some kind of text?

9 A Just a text on my phone, yes.

10 Q A text on your phone, and information was coming in
11 from the search of the house, correct?

12 A Yes, sir.

13 Q At some point in your interview, you asked him in no
14 uncertain terms, "Did you kill Nikki McPhatter?"

15 A That question was asked. I don't know if it was by
16 me specifically.

17 Q That question was asked.

18 A Yes, sir.

19 Q In no uncertain terms. And was that question asked
20 to elicit a response?

21 A Sure.

22 Q So you're interrogating him for a murder at this
23 time?

24 A We assumed that she was deceased at that time, but
25 again, we didn't know.

1 Q You didn't know.

2 A At that point. We hadn't recovered her.

3 Q Back to the question, at -- you were interrogating
4 him for a potential murder?

5 A Potentially, yes.

6 Q Beg the Court's indulgence.

7 (Pause)

8 Now, I just have a few more quick questions.

9 Okay. Get you off the stand.

10 A All right.

11 Q Does the Charlotte/Mecklenburg Police Department
12 have a policy of recording statements?

13 A Yes, we do.

14 Q All right. Can you please explain that policy?

15 A We are required by our law in North Carolina to record
16 suspect statements for homicide cases.

17 Q For homicide cases?

18 A In their entirety, audio recording.

19 Q Do you find it to be beneficial?

20 A I mean, it is what it is.

21 Q I mean, it records everything so that people can see
22 and hear what happened.

23 A Sure.

24 Q What's said.

25 A Sure.

1 Q There is no confusion. There is nothing that's left
2 out. If there's question, you can push play.

3 A That's correct.

4 MR. MAY: No further questions at this time.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION:

7 BY MS. CAMPBELL:

8 Q Just a couple of questions. How many witnesses did
9 you interview in this case?

10 A Approximately six or eight.

11 Q And when you interviewed all those witnesses,
12 including Theodore Manning, were you wearing a gun?

13 A Yes.

14 Q And do you, in your normal course of business, whether
15 it be a witness to a car wreck or whatever it is -- now
16 it's in a homicide case -- do you always wear your gun
17 when you're interviewing witnesses?

18 A Yes, I do.

19 Q And is it unusual for you to ask a witness to meet
20 you at headquarters?

21 A No, it's not.

22 Q Whether it's a person of interest or just a witness.

23 A That's correct.

24 Q And in this case, was it unusual for you to ask Theodore
25 Manning to meet you at a substation?

1 A Was it -- that was not unusual for me to do that, no.

2 Q He also asked you about how you walked with him in
3 during the search warrant, and you mentioned something
4 about safety.

5 A Yes.

6 Q And what were you meaning by that?

7 A Just -- you wouldn't want someone just to have any
8 weapons or anything at their disposal if they may want
9 to harm you in any way. You not want to -- not hover over
10 them but just keep them in your sight, let them do what
11 they need to do.

12 Q And he was allowed to go back in his home and get
13 whatever he wanted, and then he agreed when you asked him,
14 to meet you down at the substation; is that correct?

15 A He did, yes.

16 Q And at that point after he got his stuff out that he
17 needed, how did he get to the substation?

18 A He rode with his family members.

19 Q And, in fact, during the course -- after y'all got
20 there, I believe you indicated initially he gave you all
21 consent to search the house?

22 A He did initially, yes.

23 Q And then subsequent to that, was he -- did he also
24 make some phone calls to, I believe these family members
25 that came down with him?

1 A Yes, an uncle. He was on the phone with an uncle.

2 Q And as a result of his phone call, did his uncle
3 actually come there to the house?

4 A He did, yes.

5 Q And then the uncle was actually the one that drove
6 with him?

7 A Yes.

8 Q Not you, but someone else?

9 A That's right.

10 Q At any point, was he in your custody that day?

11 A No, he was not.

12 Q And in your experience as an investigator, was he
13 talking to you voluntarily?

14 A Yes, he was.

15 Q As far as the actual -- you mentioned he asked you
16 about the search warrant. He was informed of the search
17 warrant. He first gave you all consent to search the
18 house?

19 A That's correct.

20 Q And then later the search warrant was actually
21 executed by Richland County?

22 A That's correct.

23 Q And he was cooperative with you the entire time you
24 had contact with him that day?

25 A Absolutely.

1 MS. CAMPBELL: Thank you, Your Honor.

2 MR. MAY: Briefly?

3 THE COURT: Yes.

4 RECROSS-EXAMINATION:

5 BY MR. MAY:

6 Q All right. So you always wear a weapon when you
7 interrogate people. If he was wearing a sidearm, would
8 you have been feeling uncomfortable?

9 A (There was no response).

10 Q If Theo Manning had a sidearm on him while you were
11 interrogating him, would you have felt comfortable? I
12 mean, you just testified that you wouldn't let him walk
13 into his own house, for your safety.

14 A Yeah.

15 Q So if he had a firearm on his hip, would you have felt
16 comfortable while you were interrogating him?

17 A Considering the nature of why we were talking to him
18 personally, no, no. I would not.

19 Q Okay. So you wouldn't have felt comfortable.

20 How many other people -- and please give their
21 names -- did you interview at the Richland County
22 substation ever?

23 A None.

24 Q None.

25 A A lot of them were in Charlotte.

1 Q Have you ever interviewed anybody besides Mr. Manning
2 at any property of the Richland County Sheriff's
3 Department?

4 A I have not, no.

5 MR. MAY: Thank you, Your Honor. No further
6 questions.

7 THE COURT: Thank you.

8 You may come down, sir. Thank you.

9 THE WITNESS: Thanks.

10 THE COURT: Next witness?

11 MS. CAMPBELL: Thank you. The State calls Captain
12 Smith.

13 JAMES SMITH,
14 after being duly sworn, testified as follows:

15 THE CLERK: Thank you. Give the court reporter your
16 name.

17 THE WITNESS: James Standin Smith, S-T-A-N-D-I-N.

18 DIRECT EXAMINATION:

19 BY MS. CAMPBELL:

20 Q Captain Smith, where are you employed?

21 A The Richland County Sheriff's Department.

22 Q What do you do there, sir?

23 A I'm in the Criminal Investigative Division. I
24 supervise violent major crimes, armed robberies,
25 homicides.

1 Q How long have you been in law enforcement?

2 A I started in June of 1984.

3 Q I want to turn your attention to the -- what began
4 as a missing person's case and later ended up as a homicide
5 involving Nikki McPhatter. Did your department become
6 involved in that case?

7 A Yes.

8 Q And how did your department become involved?

9 A We actually received a call from the Columbia Police
10 Department. Two Charlotte/Mecklenburg detectives had
11 come to the Columbia Police Department on the 21st of May
12 seeking assistance. Particularly, they want to identify
13 an individual that they had the first name of and some
14 details about where he may have become employed, where
15 he was employed. They were seeking assistance in that
16 regard.

17 Q And through phone records, were they able to develop
18 a possible person of interest?

19 A Yes.

20 Q And who was that person?

21 A Theodore Manning.

22 Q And did you become aware -- and what date was that
23 that you actually became involved?

24 A That was the 21st of May.

25 Q And did you become aware that Charlotte was down in

1 Richland County doing some investigation or some follow-
2 up as far as the whereabouts of Nikki McPhatter?

3 A Yes. Myself and Sergeant Isenhoward actually went
4 to the Columbia Police Department and met with the
5 detective.

6 Q I want to turn your attention to May 22nd, around
7 eleven a.m. Did you and Sergeant Isenhoward make contact
8 with the defendant?

9 A Yes.

10 Q And what was the purpose of you making contact with
11 him that day?

12 A We had learned that the night before -- I'd assigned
13 a detective to accompany Charlotte/Mecklenburg, Holly
14 Wagner, to try to make contact with him.

15 We learned they had a brief interview with him the
16 night before, and Isenhoward and I wanted to go back and
17 interview him further at his residence that morning.

18 Q And at that point, had you been brought up to date
19 about what evidence was out there and what the fruits of
20 the search were?

21 A The search was actually later that night.

22 Q Later that night, I'm sorry.

23 A Yes.

24 Q As far as what the Mecklenburg people had --

25 A Yes. I had learned that basically they had talked

1 to him briefly. He had denied any knowledge or
2 involvement in her -- Ms. McPhatter's disappearance, and
3 I believe the meeting had been cut short, possibility.
4 He may have had to go to work or something.

5 Q And that morning, did you actually go to 8047 Bluff
6 Road?

7 A Yes.

8 Q And was that the actual defendant's residence?

9 A Yes.

10 Q And when you got there, was he there?

11 A He was.

12 Q And tell the judge what happened when you got there.

13 A When we got his house, he -- Judge, he appeared -- in
14 my notes, I indicated he appeared calm. He did agree to
15 talk to us.

16 We talked about the events from May the 6th, which
17 is -- at that point, from my understanding, was the last
18 day that anyone had spoken to Ms. McPhatter.

19 He basically told us that she had, indeed, come to
20 his residence that morning. They had actually had some
21 relations that morning. Later in the day, he actually
22 helped her fill up her car with gas, and he sent her back
23 in his -- as far as he knew, to Charlotte.

24 Q And he indicated at that point that she was alive the
25 last time he saw her?

1 A That's correct.

2 Q And that was around 1:30 p.m. on the 6th?

3 A Yes.

4 Q While y'all were talking with him that day and getting
5 some additional details, what was his demeanor like?

6 A He was collected, calm, did not appear nervous in any
7 way.

8 Q And when you y'all were asking him questions there
9 at his house that day, did you ever take him into custody?

10 A No.

11 Q Was he cooperative with you?

12 A He was.

13 Q Was he talking to you voluntarily, in your experience?

14 A He was.

15 Q At any point, did you ever advise him of his Miranda
16 rights?

17 A No.

18 Q And why was that?

19 A He was in a noncustodial situation. He was in his
20 residence. He was free to leave or ask us to leave, for
21 that matter, at any time.

22 Q And did he cooperate with you that day?

23 A He did.

24 Q And he was able to give you certain details that you
25 memorialized on your follow-up?

1 A Yes.

2 Q At any time that day, did you ever restrain him in
3 any way or take him into custody, anything of that nature?

4 A No, ma'am.

5 Q And ultimately, he wasn't arrested until what date?

6 A He was arrested, I believe, on the 29th.

7 MS. CAMPBELL: Thank you. I don't have anything
8 further.

9 CROSS-EXAMINATION:

10 MR. SHEALEY: May it please the Court.

11 (A cell phone went off.)

12 THE BAILIFF: Shut your phone off.

13 (Pause)

14 MEDIA: It's off.

15 BY MR. SHEALEY:

16 Q Is it fair to say that what you described to us was
17 your one and only conversation with Mr. Manning?

18 A I believe that's correct, yes.

19 Q You went to his house and followed up with this
20 investigation? You mention this was at his residence on
21 Bluff Road, right?

22 A That's correct.

23 Q You went there with Isenhoward, correct?

24 A That's correct.

25 Q You both had a firearm, of course, right?

1 A Yes, sir.

2 Q You talked to him at his home, and essentially, from
3 what you're aware of from the investigation in Charlotte
4 talking to him earlier, he pretty much told you the same
5 thing he told Charlotte, right?

6 A I don't know that I got a full briefing from Holly
7 Wagner about the evening of the 22nd other than basically
8 that he has been in a hurry, and had indicated that he
9 had seen her that day, and she had gone back to Charlotte.

10 I don't think I got all the details that he got gave
11 us, like the gas and the Freeman's and that kind of thing.

12 Q Holly never -- she didn't talk to you a whole lot about
13 it?

14 A I don't believe I got all that detail, no.

15 Q Okay.

16 A I didn't notate it in my notes.

17 Q But he basically told you that they had been dating;
18 that she came down. He gassed her up, and she --

19 A The gist was that she had, indeed, come there on the
20 6th, and that he had sent her on her way. He did not -- he
21 did not acknowledge her disappearance or, of course,
22 homicide.

23 Q Correct. This conversation didn't break the case
24 wide open for you or anything like that, right?

25 A Which one?

1 Q The one I'm referring to. You're at his house.

2 A No.

3 Q Do you have a copy of your report with you?

4 A Yes.

5 Q Okay. Do you have it in front of you?

6 A Yes.

7 Q Okay. But from here, Charlotte very soon after
8 told you they wanted to come down and do a search warrant,
9 right?

10 A They indicated to, I think, Sergeant Robinson, who
11 was in communication with them at that time, later on the
12 afternoon of the 22nd.

13 Q Okay. Now, all right. If you'll turn to page three
14 of your report. Your typed words are basically that, you
15 know, you were informed that Charlotte was going back to
16 Richland County desiring to do a search warrant at his
17 residence, right?

18 Mark this, please.

19 A Our notes may not coincide by page number, so it's
20 actually -- that entry is on page two of my notes.

21 Q Okay. Well, I've got a copy of your report, but --

22 A Is this what you're referring to?

23 Q Well, I don't have that copy but...

24 A It's different. The pages are --

25 Q Right here, the top of this page that I'm showing you.

1 That's your report?

2 A Yes.

3 Q And there it's when you were informed that Charlotte
4 wanted to come down and desired to do a search warrant
5 at Theo Manning's residence, right?

6 A That's correct.

7 Q Now, in terms of the statements, and that's what we're
8 here for, like you said, this was your only involvement
9 with Mr. Manning.

10 A I believe that's correct.

11 Q Okay. So I won't ask too many more questions about
12 your statement -- about his statement to you, but since
13 I've got you on the stand, what is your policy on recording
14 statements?

15 A We don't audiotape or videotape statements.

16 Q Okay. And you make this policy?

17 A I did not make the policy, no, sir.

18 Q Okay. You don't make the policy. It's the policy
19 of Richland County?

20 A It's -- yes, sir.

21 Q Okay. Who makes this policy?

22 A The policy -- that policy actually originated under
23 Sheriff Allen Sloan, I believe, early '90s.

24 Q Okay. So under that sheriff at that time.

25 A Yes, sir. It has persisted through that

1 administration and this administration.

2 Q Who is the current sheriff of Richland County?

3 A Leon Lott.

4 Q And he has not changed that policy?

5 A No, he has not.

6 Q He would have the power to change that policy if he
7 could?

8 A He could, yes, sir.

9 Q All right. Beg the Court's indulgence.

10 (Pause)

11 In terms of talking about policy a little bit more,
12 is the policy written down in the a somewhere that
13 everybody is required to know as law enforcement officers
14 in this county?

15 A No, sir.

16 Q So is it more of a guideline then?

17 A It's a -- we have a memorandum that actually has that
18 policy in it.

19 Q Okay. So there is some written document somewhere?

20 A Yes, sir. It's just not in the Policy and Procedures
21 Manual under the investigative section.

22 Q Okay.

23 A That particular portion of the manual is a little bit
24 more general.

25 Q Is this a memorandum that you have possession of?

1 A I don't have one with me, but there is one, yes, sir.

2 Q But you might have one at your office?

3 A Yes, sir.

4 Q Would every officer of Richland County be required
5 to read and know and have a copy of this memorandum?

6 A Investigators are. We have an Investigative
7 Training Manual, and that memorandum is part of that
8 manual.

9 Q And this memorandum, which is in keeping with the
10 policy, is what Sheriff Lott is implementing in Richland
11 County, correct?

12 A Yes, sir.

13 Q Okay. Just briefly since we're talking about this
14 policy, answer me this, Captain Smith: How could it hurt
15 you to record audio, video, a statement from a person who
16 is being interviewed?

17 A I didn't say it could hurt.

18 Q Okay. How -- so it couldn't hurt you, could it?

19 A Not hurt. I'm not sure what you mean by hurt.

20 Q How could it not be useful evidence to record
21 everything that someone says in an interview?

22 A I didn't say it couldn't be useful evidence.

23 Q So it would be useful evidence, wouldn't it?

24 A We have a system where we will memorialize
25 statements.

1 Q All right.

2 A And that's -- we consider that very useful in the forum
3 of the court. The system of transference of paperwork
4 comes through the solicitor, through discovery. You then
5 get copies of those statements.

6 Q Okay.

7 A We find that useful and productive as far as what we
8 do.

9 Q But when you have lawyers like myself coming up and
10 talking to judges and asking about why something isn't
11 recorded because we want to know what was said by both
12 parties, the interviewers and the interviewee, wouldn't
13 it be beneficial to have that word for word memorialized
14 by audio or videotape? Wouldn't that be a way to help
15 law enforcement?

16 A Well, the system that we use is very beneficial.
17 You're asking me for my opinion. What was memorialized
18 in that interview is in that written statement.

19 Q Okay.

20 A And that is his final product as far as I know, as
21 far as what he wanted to publish or want known as far as
22 what his statement was.

23 Q But you would agree that seven hours' worth of
24 conversation between Isenhoward and Shawn McDaniels and
25 my client is not captured in that four or five-page

1 statement; correct?

2 A Over the course of it, it would be, yes, sir. That -- I
3 think that statement was a combination of all of what he
4 said, but what he agreed to --

5 (Talking over each other.)

6 A If you'd let me finish --

7 (Talking over each other.)

8 Q Your testimony today is that every word uttered by
9 Theodore Manning to Shawn McDaniels and Isenhoward from,
10 "Hello, how are you? Why am I here?" is recorded in that
11 simply four or five-page statement. That's your
12 testimony?

13 A If you'd let me finish, I was going to say --

14 Q I'll --

15 A -- I think that final statement was a combination of
16 that entire interview. That's what he arrived at that
17 he wanted to say.

18 Q Okay.

19 A It was read to him. A copy was provided to him per
20 our policy. He had a right at that time to change it or
21 alter it in any way.

22 Q Just simply, what's the purpose of the policy not to
23 record?

24 A We don't have the equipment provided to us to record.
25 We don't issue that to every investigator. Some of this

1 would be speculative on my part. Then we get into the
2 issue of field recording statements from witnesses.

3 In the next trial, that question will come up, why
4 didn't we audiotape or videotape a witness statement in
5 the field. Our system, again, is based on paperwork.

6 Q Uh-huh.

7 A We formulate a case file. That case file is turned
8 in to the Solicitor, copies made, discovery issues are
9 met, and copies are turned over to your office or defense
10 counsel.

11 Q Okay. Now, I've recently been -- let's see, talking
12 about equipment to record, you know, I've got -- me
13 personally, a public defender in Richland County, I've
14 got little \$4.00 Wal-Mart audiocassette recorder.

15 Y'all don't have the funds to give your investigators that?

16 A I don't -- I don't -- I'm not privy to the budget of
17 the funds. I'm just saying that equipment is not provided.

18 Q Okay.

19 A Then you get into the issue of the evidence transferred,
20 what do you do with the tapes? Are they digitally recorded?
21 Are they mini-cassettes?

22 Q Y'all wouldn't know what to do with those tapes.

23 A We would have to develop policy regarding all of that.
24 We just never have done it.

25 Q Okay. Now, I've been down in Richland County,

1 actually recently, on this case viewing evidence in a very
2 fancy evidence room. Now, y'all have equipment in there,
3 LaserJet printers running, correct?

4 A (Nods in the affirmative).

5 Q You got a projector screen, correct?

6 A Yes, sir.

7 Q These things cost more than \$5, correct?

8 A I assume so.

9 Q Okay. Now, the policy is to have those in this
10 Richland -- headquarters in Richland County?

11 A I don't know if we have a policy about --
12 (Talking over each other.)

13 Q But you do have them, right? That's the practice?

14 A Yeah, but you asked about policy.

15 Q Okay. What's the practice to have this expensive
16 equipment in the Richland County Sheriff's Department?

17 A We have some, yes.

18 Q Okay. Now, as well, every time a phone is picked up,
19 say, from an investigator's office, it has the ability
20 to record, does it not?

21 A Yes, sir. That was the system that was designed when
22 that system was purchased.

23 Q Okay.

24 A It came with that option.

25 Q So there is recording ability in the building, correct?

1 A On the phones, yes, sir.

2 Q On the phones. But you don't have the ability to -- or
3 the need or desire to hand out a \$5.00 Wal-Mart audio
4 recording.

5 Q I don't -- again, that's not a decision I make. You
6 asked --

7 (Talking over each other.)

8 A You asked for my opinion.

9 Q That's the decision of the sheriff, correct?

10 A He would be the ultimate decider of that, yes, sir,
11 but you asked me for my opinion. I mean, I just speculated
12 as to why --

13 Q Mr. Lott would be the ultimate decider?

14 A He would be, yeah.

15 MR. SHEALEY: Nothing further, Judge.

16 THE COURT: Redirect?

17 MS. CAMPBELL: No, sir.

18 THE COURT: Come down.

19 THE COURT: Next witness.

20 MS. CAMPBELL: The State would call Sergeant Shawn
21 McDaniels.

22 WALTER SHAWN MCDANIELS,

23 after duly affirming, testified as follows outside the
24 presence of a jury:

25 THE CLERK: Have a seat in the witness stand and

1 give the court reporter your name.

2 THE WITNESS: My name is Walter Shawn McDaniels.

3 DIRECT EXAMINATION:

4 BY MS. CAMPBELL:

5 Q Sergeant, where are you employed?

6 A Currently, I'm employed with the Richland County
7 Sheriff's Department.

8 Q What do you do there, sir?

9 A I'm a sergeant within the Major Crimes Division.

10 Q I want to turn your attention back to May of 2009.

11 Did you become involved in the investigation of Theodore
12 Manning for the murder of Nikki McPhatter?

13 A Yes, I did.

14 Q And you actually didn't become involved, I believe,
15 until May 29th.

16 A Yes; that's correct.

17 Q And tell the judge how you became involved in this
18 case.

19 A I was contacted by Captain Smith who asked me to
20 assist in the search of the victim Nikki McPhatter's
21 vehicle.

22 Q At some point, did you become involved in the actual
23 arrest of Theodore Manning himself on the evening of the
24 29th, I believe?

25 A I did. Once the victim's vehicle was discovered,

1 Captain Smith then instructed me to return back to
2 headquarters. I generated an arrest warrant. I'm sorry,
3 generated a warrant worksheet, faxed it to Judge Edmonds
4 and obtained an arrest warrant for the arrest of the
5 defendant.

6 Q After obtaining the arrest warrant, did you actually
7 participate in the arrest of the defendant?

8 A Yes, I did.

9 Q And --

10 A Myself and Sergeant Robinson, along with Holly
11 Wagner, several other deputies. We met up, developed a
12 plan and executed the arrest warrant at the defendant's
13 residence.

14 Q And that would be down on Bluff Road?

15 A Yes; that's correct.

16 Q Here in Richland County?

17 A That's correct.

18 Q And that evening around 7:00 p.m. were you able to
19 take the defendant into custody?

20 A I did. I arrested him. I actually handcuffed him
21 myself, advised him that I would explain everything to
22 him later, but at that time I wanted to make sure the house
23 was secure.

24 Being the fact that I met with him in the living
25 room, as soon as we walked -- as soon as we got inside

1 the home, he was inside the living room, and I handcuffed
2 him myself.

3 Q And once he was placed under arrest and handcuffed,
4 did you then take him outside of the residence?

5 A I did, myself and Investigator Holly Wagner.
6 He -- we -- I then placed him inside my vehicle, and since
7 he was handcuffed and in custody at that time, he was
8 advised of his Miranda rights verbally.

9 Q And for the record, and for the judge, what rights
10 did you actually advise him of there in the car that day
11 as soon as you arrested him?

12 A I had advised him that he had the right to remain
13 silent; that anything he says can and will be used against
14 him in court. I advised him that he had the right to an
15 attorney, and if he could not afford an attorney, then
16 one would be provided for him.

17 I also advised him of his right to have an attorney
18 present during questioning, and if he chose to stop
19 answering questions at any time, he then would still have
20 a right to have an attorney present.

21 Q Who was present when you advised him of his rights?

22 A Investigator Holly Wagner.

23 Q And at this point, did you ask him any questions
24 about Nikki McPhatter or anything else?

25 A At that point, the first words out of my mouth was,

1 "I need to know the truth" and --

2 Q Let me back up, for the record.

3 A Okay.

4 Q As far as advising him of his rights, when you
5 advised him of his rights, did he appear to understand
6 what you were saying?

7 A He did understand.

8 Q Did he acknowledge that he understood?

9 A He did. I asked him if he understood what I just
10 stated to him, and he stated he did understand. At that
11 time, he appeared to be -- he appeared to be calm.
12 However, his facial expression was -- you know, he kept
13 his head down, and he -- you know, when he was, in fact,
14 answering my questions.

15 Q And -- and at any time -- and I'll get back to this,
16 but at that point -- did he tell you he didn't want to
17 talk to you?

18 A No, he did not.

19 Q At that point, did he ask for an attorney to be
20 present?

21 A After I read him his rights, he did not.

22 Q At any point, did he indicate he no longer wanted to
23 talk to you or Holly Wagner or anyone else in the car that
24 day?

25 A Not at all.

1 Q Did you promise him anything to make him talk to
2 you?

3 A No, ma'am.

4 Q Did you threaten him in any way or coerce him?

5 A No, ma'am.

6 Q And, in fact, did his responses appear to be
7 coherent? Did he appear to be under the influence of any
8 drugs or alcohol or anything of that nature?

9 A Not at all.

10 Q And in your opinion, was he voluntarily talking to
11 you at that point?

12 A He was very cooperative at that time.

13 Q And that was after being advised of his rights, which
14 he indicated he understood?

15 A That is correct.

16 Q At any point in your conversations with him over the
17 next several hours -- and I'll go back -- if he had asked
18 for a lawyer, would you have honored that request?

19 A Yes, ma'am.

20 Q If he told you he did not want to talk to you anymore,
21 would you have ceased talking to him?

22 A Correct.

23 Q Did that happen in this case?

24 A Not at all.

25 Q And during the course of the next several hours, was

1 he cooperative as far as wanting to give you his version
2 of the story?

3 A Yes, he was. He appeared to be -- have some signs
4 of remorse.

5 Q Once you had advised him of his rights and he
6 indicated -- and orally you advised him of his rights in
7 the car and he indicated he understood them, what was -- I
8 believe you indicated earlier -- what was the first thing
9 you asked him?

10 A I told him that I needed to know the truth.

11 Q And at that point, did he provide you with some
12 details of what had happened to Nikki McPhatter?

13 A Yes, he did.

14 Q How was the defendant transported to headquarters?

15 A I transported him inside of my vehicle myself.

16 Q And during that time period, was he talking to you
17 about what was going on? Were y'all having any
18 conversation? Tell the judge how that worked.

19 A When I first made contact with him and advised him
20 of his Miranda rights, Holly Wagner was pregnant --
21 present, excuse me, inside the vehicle. At that the time,
22 I was still in charge of the scene.

23 I was coordinating with Sergeant Robinson and, of
24 course, Holly Wagner in an effort to get a search warrant
25 for the vehicle -- I mean, for the residence.

1 So after I initially spoke with him and advised him
2 of his Miranda rights, I then instructed Holly Wagner to
3 remain on the scene so that we could execute a search warrant
4 at that residence.

5 It was at that time that I then got back inside of
6 my vehicle and continued to speak with Mr. -- with the
7 defendant.

8 Q And he proceeded to give you some details about what
9 had happened?

10 A Yes, he did.

11 Q And then you transported back to headquarters?

12 A That is correct.

13 Q And approximately how long did it take you to get to
14 headquarters?

15 A Where the defendant resides, it's -- resides, it's
16 about 30, 35 minutes away from headquarters. You have
17 to understand, again, as I stated earlier, while in the
18 middle of coordinating a search warrant, I was also
19 talking to the defendant.

20 Q And that's when he was able to have provide you
21 orally with some details of what had happened?

22 A That's correct.

23 Q Once he had been transported back to headquarters,
24 did you take any precautions as far as ensuring that his
25 rights were protected?

1 A We got back to headquarters at approximately
2 -- anywhere between eight and 8:15. Again, my initial
3 contact with Mr... I'm sorry.

4 Q Manning.

5 A I'm sorry, I apologize, I get his name mixed up with
6 Ms. McPhatter -- Mr. Manning was around seven o'clock
7 that night, again 30, 35 minutes away from headquarters.
8 Also coordinating -- after coordinating the search
9 warrant, we got back anywhere between eight and 8:15. He
10 was advised of his Miranda rights in written form at that
11 particular time.

12 Q I'm going to show you -- I'm going to mark this.
13 (WHEREUPON, State's Exhibits Nos. 1, 2, 3 were marked
14 for identification only.)

15 BY MS. CAMPBELL:

16 Q I want to show you what's been marked for purposes
17 of this hearing as State's Exhibit Number 1. Do you
18 recognize that piece of paper?

19 A Yes, I do. This is the advice of rights form that
20 we -- that I used while advising Theodore Manning of his
21 rights on May 29th at approximately 8:40 p.m.

22 Q And specifically the handwriting, the form was
23 blank when you originally got it?

24 A That is correct.

25 Q And then the information that's filled out at the

1 top, including the name of the defendant, the place,
2 headquarters, where it was taking place, who was present,
3 the date and the time, who filled that out?

4 A I did.

5 Q And what time does it reflect that you began the
6 advice of rights?

7 A 20:40 hours, which is 8:40 p.m.

8 Q And that was approximately within a few minutes of
9 you getting to headquarters?

10 A That is correct.

11 Q And, of course, you have to get the defendant -- where
12 did this interview take place?

13 A It took place in my office. Initially, when we
14 first got to headquarters, I placed Mr. Manning in the
15 D Cell, which is located within the C.I.D. section of the
16 Richland County Sheriff's Department, because again, I
17 was still coordinating the scene at the incident
18 location --

19 Q Okay.

20 A -- on Bluff Road via telephone.

21 Q Okay. And then he was taken to D Cell in your office?

22 A Then after being placed into the D Cell, a few
23 minutes later he was then leaving out, according to this
24 form.

25 Q And at that point is when you actually filled out this

1 written form of the advice of rights; is that correct?

2 A That's correct. Also on that note, that in between
3 getting to headquarters and also coordinating on the
4 -- the cell phone, I was -- immediately started to
5 record -- and from my memory, based on our conversation
6 on the way up there, exactly what the defendant has said
7 to me inside the car to make sure that I didn't lose it.

8 Q And that was recorded as part of your follow-up?

9 A Yes, it was in my follow-up.

10 Q And that was oral statements he made to you prior to
11 you getting to headquarters?

12 A That's correct.

13 Q And once you got to headquarters, you started
14 advising him of his rights, and for the record, State's
15 Exhibit 1, what rights did you go through that were
16 reflected on that page?

17 A This is a standard advice of rights template that we
18 use at the Richland County Sheriff's Department. The
19 Miranda Warnings are broken up into sections, if you
20 would. There's a check box next to each section.

21 I then advised him before we ask you any questions,
22 you must understand your rights. At that particular
23 point, I paused, asked him if he understood his rights,
24 and initially the defendant, again with his head down,
25 he just nodded his head.

1 I advised -- I told him that I needed for him to say
2 yes or no, if he understood that particular section. At
3 that particular point, he then acknowledged by stating
4 "yes."

5 I then checked next to that sentence. It reads, "You
6 have the right to remain silent." The same procedure was
7 done for that particular section.

8 "Anything that you say can be used against you in
9 court." Again, that box was checked.

10 "You have the right to talk to a lawyer for advice
11 before we ask any questions and to have a lawyer present
12 during questioning." That box was also checked.

13 "If you cannot afford a lawyer, one will be
14 appointed for you before any questioning, if you wish."
15 That box was checked, as well.

16 "If you decide to answer questions now without a
17 lawyer present, you still have the right to stop answering
18 at any time. You also have the right to stop answering
19 at any time until you talk to a lawyer." That box was
20 also checked.

21 He, at that time, acknowledged that he understood
22 his rights as I read them to him. He signed and then I
23 signed and then Investigator Holly Wagner was a witness
24 to the advisement of rights also signed.

25 The template goes on to state -- there's a waiver

1 of rights section at the bottom of it. That section reads
2 as follows: "I have read the statement of my rights and
3 understand what my rights are. I am willing to talk and
4 answer questions. I understand and know what I am doing.
5 No promises have been made to me and no pressure or
6 coercion of any kind has been used against me."

7 It is the standard practice of myself to ask every
8 defendant if they understood what the word coercion
9 meant. Oftentimes, based on my experience, I find that
10 some people don't.

11 He indicated that he did understand what the word
12 coercion meant. I asked him -- I told him I wasn't trying
13 to be disrespectful, but I asked him to define that word.
14 He stated to be pressured or forced to do something.

15 It was at that point that he also signed, for the
16 second time, the advice of rights form and my signature
17 and Holly Wagner's signature is also signed, for the
18 second time.

19 Q So first you went through his Miranda rights, which
20 he did sign off on, and then you went to the waiver of
21 rights to indicate whether or not he wanted to talk to
22 you?

23 A That's correct.

24 Q And he also signed off on that document?

25 A That is correct.

1 Q Your Honor, may I approach?

2 (Pause)

3 Once he had been advised of his rights and
4 subsequently signed off on waiving his rights, as well,
5 did he indicate whether or not he wanted to talk to you?

6 A Yes, he did.

7 Q Did you promise him anything to make him talk?

8 A No, ma'am.

9 Q Did you threaten him?

10 A No, ma'am.

11 Q Did you use any coercion?

12 A Not at all.

13 Q Did you deprive him of any creature comforts?

14 A No.

15 Q At any point, did he ask for a lawyer?

16 A No, he did not.

17 Q At any point while you were talking to him that night
18 did he tell you he didn't want to talk to you anymore?

19 A Not at all. He was -- he was quite cooperative.

20 Q That was my next question. He was very
21 cooperative?

22 A Yes, he was.

23 Q Once he had been advised of his rights, did you -- and
24 he indicated he wanted to talk to you, did you then
25 proceed to memorialize his statement to you?

1 A I did. We did it in written form.

2 Q And I want to show you what's been marked as State's
3 Exhibit number 2, which is an 11 page document. Do you
4 recognize that?

5 A This is the written statement that I initially
6 obtained from the defendant.

7 Q And tell the judge how the process goes and how
8 you memorialize what the defendant's version -- what he
9 wanted to tell you.

10 A Generally an interview consists of, of course, some
11 dialogue. However, we -- we -- I asked the defendant to
12 tell me exactly what happened, and once we got the facts,
13 as in any interview or interrogation, we tend to --
14 there's a series of questions that are asked in an effort
15 to gather the facts.

16 Once those facts have been obtained, then we
17 memorialize it in written form in Q and A format. We make
18 an effort to make sure that those words that we type up
19 are the exact words of the defendant.

20 We go over that statement multiple times throughout
21 the interview and again at the end of that, at the
22 conclusion of that interview, that defendant is allowed
23 to -- this is read to him, and he's allowed to read it
24 for himself.

25 He signs -- he is asked to sign two times on each

1 sheet. I believe that this is -- the initial statement
2 is an 11-page statement, which means that he was asked
3 to sign an agreement to those being his words, a total
4 of 22 times.

5 Q This statement was developed over a period of
6 several hours?

7 A That's correct.

8 Q And during that time period, did the defendant
9 appear to be coherent and understand what you were
10 saying?

11 A Again, he was very cooperative and coherent.

12 Q Did he appear to be under the influence of any alcohol
13 or drugs?

14 A None at all, no, ma'am.

15 Q And at any point during the conversation that lasted
16 several hours where you memorialized what he had said to
17 you, did he tell you he didn't want to talk anymore?

18 A Not at all.

19 Q At any point, did he invoke any of his rights?

20 A No, he did not. Actually, he -- he thanked me for
21 being so nice to him.

22 Q And he gave you his version of the events that
23 happened May 6th?

24 A That's correct.

25 Q And after that?

1 A That's correct.

2 Q And this State's Exhibit number 2, whose words are
3 these as far as the answers to all these questions?

4 Well, most of it is a narrative. Whose words are those?

5 A The questions are asked and written by me. The
6 answers are the exact words of the defendant.

7 Q And that reflects what was said to you that night by
8 the defendant about what happened to Nikki McPhatter?

9 A That's correct.

10 Q You mentioned that after you reduced it to a written
11 form -- that is typewritten form, actually?

12 A That's correct.

13 Q Was he then given the opportunity -- you mentioned
14 that you read it to him?

15 A Yes.

16 Q Was he also given an opportunity to read it himself?

17 A That's correct.

18 Q And was he given an opportunity to make any changes,
19 if this wasn't what he wanted, to be his statement?

20 A I explained to him from the beginning that if there
21 was anything that we needed to go over and change and
22 after -- at the conclusion of the statement, I read it
23 back to him and asked him if there was anything that he
24 wanted to change within his statement.

25 I typed -- after it was printed out, I then gave it

1 to him and asked him, "Read over this, make sure it's
2 everything that you want to be in your statement," and
3 at that time he did agree and sign it a total of 22 times.

4 Q And I believe his signature is here in the blue ink?

5 A That's correct. I use blue ink for the defendant to
6 indicate the original.

7 Q And in this case, it was witnessed by whom?

8 A Investigator Holly Wagner.

9 Q And you also, I think, notarized it?

10 A I did, yes, ma'am.

11 MS. CAMPBELL: Your Honor, may I approach?

12 THE COURT: You may.

13 BY MS. CAMPBELL:

14 Q You went through the defendant's -- what he wanted
15 to tell you and then reduced it to writing and everything.
16 Approximately what time was it when you finished up after
17 signing that statement, the 11-page statement?

18 A It was approximately one o'clock in the morning.

19 Q At that point, was he still being cooperative?

20 A Yes, he was.

21 Q And where did this take place?

22 A It took place in my -- in my office.

23 Q After taking that statement, which is State's Exhibit
24 number 2, do you then -- was the defendant still in your
25 office?

1 A Yes, he was.

2 Q And did you make contact with Sergeant Isenhoward?

3 A I did.

4 Q How does that happen?

5 A Well, Sergeant Isenhoward showed up at headquarters.

6 It's also important to note that during the seven
7 hours, the defendant was allowed -- he didn't always stay
8 inside the office. He was allowed to use the bathroom.

9 There was -- he was allowed to get some water. I asked
10 him if he wanted something to eat. He stated he wasn't
11 very hungry at the time.

12 So the -- during the total seven hours -- again, I
13 was still facilitating other responsibilities with
14 respect to the investigation as a whole, back and forth
15 on the phone with Captain Smith.

16 It's not uncommon for him to constantly call you
17 while you're -- while you're interviewing, but -- so it
18 wasn't a complete seven hours inside of my office.
19 However, it was predominantly conducted inside my office,
20 while the statement was...

21 Q And I believe the statement started shortly before
22 nine o'clock?

23 A That is correct.

24 Q And it was -- ended at one, the initial statement,
25 the written statement we just referred to.

1 A Yes, ma'am.

2 Q Then after that, I believe you made contact with
3 Sergeant Isenhoward?

4 A I did. He showed up to headquarters, and because
5 Sergeant Isenhoward was involved in the investigation
6 from the onset, he had additional information with respect
7 to what may have possibly occurred, and based on his
8 knowledge and when -- when -- after I advised him, updated
9 him on the first statement, at that particular point, he
10 stated there were some things that were inconsistent with
11 respect to his knowledge of what may have happened and
12 what the defendant gave in his first statement.

13 Q And at that point, did you and Sergeant Isenhoward
14 then talk to the defendant again?

15 A Yes, we did.

16 Q And, again, where did that take place?

17 A It took place inside of my office.

18 Q And was he still cooperating? Had he invoked any
19 rights or anything?

20 A No, ma'am, he didn't.

21 Q Still cooperating?

22 A Still cooperating.

23 Q And at that point, did he follow up with some changes
24 to his initial -- to his initial written statement?

25 A Yes, he did. He went from saying that it was an

1 accident to "I shot her" and that there was an argument
2 prior to the shooting.

3 Q And again, I'm going to show you State's Exhibit
4 Number 3, is this the subsequent statement you took once
5 Sergeant Isenhoward talked to you?

6 A That's correct.

7 Q And prior to taking the statement, or during the time
8 of your taking the statement, did anyone threaten him in
9 any way?

10 A No, ma'am.

11 Q Pressure him?

12 A None at all.

13 Q Use any coercion?

14 A No, ma'am.

15 Q At any point, did he ask for a lawyer or tell you he
16 didn't want to talk to you?

17 A No, ma'am.

18 Q Was he actually voluntarily talking to you that
19 night?

20 A Yes, he was.

21 Q And did he then give you this subsequent statement,
22 State's Exhibit Number 3?

23 A Yes, that's correct.

24 Q And I believe it was actually taken around 1:38 in
25 the morning?

1 A Yes, ma'am.

2 MS. CAMPBELL: Your Honor, may I approach?

3 THE COURT: You may.

4 BY MS. CAMPBELL:

5 Q And without going into the entire substance of the
6 statement, he basically modified some of what he says
7 happened with he and -- between he and Nikki?

8 A That is correct.

9 Q You mentioned that the defendant actually thanked
10 you for being nice to him. At some point, did he request
11 to make contact with anybody?

12 A Yes. He asked if he could call his mom.

13 Q And was that after the taking of State's Exhibit
14 Number 3, after the written statement?

15 A Yes, it was.

16 Q And would that have been around 2:27 a.m. when the
17 phone call actually took place?

18 A It took place from my office, yes, ma'am.

19 Q From your office?

20 A Yes, ma'am.

21 Q And who was he requesting to call or make contact
22 with?

23 A He wanted to speak with his mother.

24 Q And did you make that happen?

25 A I did.

1 Q And where did the phone call -- it took place in your
2 office?

3 A Yes, it did.

4 Q From your phone?

5 A Yes, ma'am.

6 Q And were you present during the course of him talking
7 to his mother?

8 A I was standing outside the door.

9 Q Was he able to see y'all right there?

10 A Yes.

11 Q So he knew y'all were present?

12 A That is correct.

13 Q Beg the Court's indulgence.

14 (Pause)

15 Who actually dialed the number, do you remember?

16 A I dialed the number.

17 Q And who gave you the number to be dialed?

18 A The defendant did.

19 Q And was he able to talk to his mother that morning?

20 A Yes, ma'am.

21 Q And you were able to hear what was said during that
22 conversation?

23 A Yes.

24 Q After that, was the defendant then transported, I
25 guess, to the county jail?

1 A Yeah. At that particular point, he was pretty upset
2 after speaking with his mom. He started -- he started
3 actually getting upset once he heard his mom's voice
4 asking her to forgive him.

5 He had -- basically, he admitted to her what he had
6 done, and he labeled it -- he said -- they called it the
7 heat of passion.

8 She asked him, she was very direct, "Did you do it?"
9 And he said, "Yes."

10 Q And --

11 A So he was upset inside of my office, and I gave him
12 a minute to gather himself, collect himself. Then I
13 placed him back into the D Cell. After that, he was
14 subsequently transported to the Alvin S. Glenn Detention
15 Center.

16 Q And when he was making that phone call that you were
17 able to hear, how far were you away from him?

18 A Closer, closer than you and I are now.

19 Q Closer than two or three feet?

20 A Yeah, I have a very small office.

21 Q The person you took the statement from, Theodore
22 Manning, do you see him in the courtroom?

23 A Yes, I do.

24 Q Could you just identify him for the record?

25 A He is the gentleman sitting in between the female

1 attorney and Mr. May. I'm sorry, I don't know the female
2 attorney's name, I apologize, but sitting at the table
3 on the left side.

4 MS. CAMPBELL: Your Honor, may the record reflect he
5 has identified the defendant?

6 THE COURT: All right. The record so reflects.

7 MS. CAMPBELL: Thank you.

8 THE WITNESS: You're welcome.

9 THE COURT: Cross-examination?

10 MR. MAY: Yes, sir. May it please the Court, Your
11 Honor.

12 CROSS-EXAMINATION:

13 BY MR. MAY:

14 Q Hey Shawn, how are you doing?

15 A Hey, Mr. May.

16 Q All right. I have just a few questions for you.

17 All right. What time was the arrest warrant sworn
18 out, do you know?

19 A Approximately in between six and 6:20.

20 Q Six and 6:20. Who all went with you to serve the
21 arrest warrant?

22 A If I may refer to my notes.

23 Q All right. Please do.

24 A Sergeant Robinson, Investigator Wagner, Investigator
25 Mann, and usually when we are executing any kind of warrant,

1 arrest or a search warrant, we solicit the assistance of
2 the uniform division.

3 Q Okay. So I mean, can you just give me a ballpark,
4 I mean, do you think there are ten or 15 people there?

5 A Oh no. No, sir.

6 Q How many do you think?

7 A There was approximately five.

8 Q Well, you just named five, and then we have some more
9 uniformed people.

10 A I just named four.

11 Q You named four.

12 A Right.

13 Q And then you --

14 A Right.

15 Q -- named yourself; correct?

16 A Right, that's four.

17 Q Have you --

18 A That's four.

19 Q That's four?

20 A -- with me.

21 Q So that's including --

22 A Right.

23 Q -- you. All right. So you have four and how many
24 uniform people do you think there were?

25 A Maybe three.

1 Q Three, so about seven folks?

2 A Yes.

3 Q All right. How did you gain entry?

4 A I kicked the door in.

5 Q You kicked the door in?

6 A That's correct.

7 Q Did you have a no-knock warrant at this time?

8 A I had an arrest warrant.

9 Q You had an arrest warrant?

10 A Right, and based on -- I had reason to believe that

11 the subject was there, also coupled with the fact that

12 we were executing a felony arrest warrant.

13 Q Okay. So you did not get a no-knock warrant from

14 the magistrate, did you?

15 A That would be for a search warrant.

16 Q I understand.

17 A Not an arrest warrant.

18 Q I understand, but did you first knock and say, "Hey,

19 Richland County Police Department, please open up"?

20 A Oh, of course, yeah.

21 Q You did?

22 A Yes.

23 Q You did, okay. You kicked in the door, and Theo

24 Manning, which you've already identified, was standing

25 there in boxer shorts and no shirt, right?

1 A I remember he had shorts on. I'm not sure if they
2 were boxer shorts.

3 Q Well, you eventually had to get him pants at the
4 sheriff's department because he just was wearing boxer
5 shorts. Do you remember that?

6 A I don't remember that.

7 Q Okay. But you go in, and he's standing there, and
8 you go -- and guns are drawn. Is that fair to say?

9 A That is correct.

10 Q All right. Did everybody have their gun out?

11 A I was the first one to enter the home.

12 Q Okay. So you --

13 A No.

14 Q -- kicked the door in? And how many times did it
15 take to kick the door in?

16 A I want to say twice.

17 Q All right. So you kicked the door once, couldn't get
18 in. Kicked the door twice, the door opens up, and you
19 go in with a gun drawn?

20 A That's correct, while yelling, "Richland County
21 Sheriff's Department".

22 Q While yelling, "Richland County Sheriff's
23 Department". Did he try to fight you?

24 A Oh, no, not at all.

25 Q Did he try to run?

1 A No. He -- he immediately met me at the door,
2 basically. The living room is right next to the front
3 door.

4 Q All right. So what -- I mean, he was where -- I mean,
5 just tell me to stop when we get as close as he was to
6 you when you kicked in the door?

7 A About right there.

8 Q Right about there?

9 A Right.

10 Q So you're coming in at him with a gun?

11 A That is correct.

12 Q All right. And he didn't try to run. He didn't make
13 any further movement. He just kind of stood there, right?

14 A I instructed him to lay down on the ground.

15 Q All right. And, in fact, you actually threw him on
16 the ground; correct? You used physical force to put him
17 on the ground?

18 A That is not correct.

19 Q You put your knee in his back. You had the gun to
20 his face as he was being handcuffed, correct?

21 A That is completely incorrect.

22 Q You didn't have your knee in his back?

23 A No. Actually, he immediately got on the ground, and
24 I kneeled down.

25 Q You kneeled down?

1 A Right, I kneeled -- didn't put a knee in his back --

2 Q You didn't put a knee on his on his back? Did you
3 have your gun drawn to --

4 A If I may finish. I kneeled down and then handcuffed
5 him, and he at that point was saying, "What did I do? What
6 did I do?"

7 Q Okay.

8 A I then said, "I will explain" -- as I stated earlier,
9 "I will explain it to you later."

10 Q All right.

11 A And I handcuffed him. He -- there was no -- there
12 was no use of force. I didn't have to throw him down.
13 He immediately got down as soon as he saw me enter his
14 home.

15 Q All right, sir. Well, there was some show of force
16 of kicking in doors and holding guns. You would agree
17 with that?

18 A That is correct.

19 Q All right. So he gets on the ground. When do you
20 finally hold your sidearm? In fact, it was when you put
21 it in his face, didn't you --

22 A That is not correct. I did not put my gun into his
23 face when he was on the ground. It's standard practice
24 for us to holster our weapon before handcuffing someone.
25 I mean, it's unsafe to handcuff -- you can't handcuff

1 with one hand.

2 Q Okay. Was the execution of this arrest warrant
3 videotaped?

4 A No, sir.

5 Q It was not videotaped. So I mean -- so your
6 testimony is that you never laid hands on him besides just
7 a nice and easily put his hands behind his back?

8 A Nice and easily is your description. I handcuffed
9 him.

10 Q All right. Now, as we were talking earlier, he was
11 wearing boxers and an undershirt, correct?

12 A I stated earlier, I'm not sure what kind of shorts
13 they were. I do remember having to give him some pants
14 but that -- I'm not sure if that was at the house or if
15 that was, in fact, at headquarters. I don't remember.

16 Q You don't remember having to go get him the inmate
17 pants from -- or the detainee pants from the Alvin S.
18 Glenn Detention Center?

19 A I don't remember that.

20 Q All right. Well, he asked for pants, and you wouldn't
21 let him have them, so you put him in the front seat of
22 your burgundy Expedition, is that fair to say?

23 A That's incorrect.

24 Q Okay.

25 A I have a -- I have a gray Trailblazer.

1 Q A gray Trailblazer?

2 A Yes.

3 Q I apologize. I was not there.

4 A I understand.

5 Q A gray Trailblazer. You put him in the front seat.

6 Now, where is he handcuffed? Is he handcuffed behind or
7 in front?

8 A At that time, he was handcuffed behind.

9 Q So he's sitting in the seat kind of leaning up, and
10 did you help put a seatbelt on him?

11 A At that -- initially, we were just sitting in the car.

12 Q All right. Initially, you were sitting in the car?

13 A Right. Before we drove off, we first -- he was -- the
14 seat belt was placed on him.

15 Q Are you the one who did that?

16 A Yes.

17 Q Okay. You placed the seat belt on him, and he is
18 still sitting in the front seat with boxers on and --

19 A Again, I -- that's your description. I don't recall
20 him having boxers on.

21 Q You don't recall that?

22 A I don't -- it's not my common practice to allow
23 someone to sit in my car in their underwear. That's not
24 something that I would normally do. Boxer shorts, I'm
25 almost quite sure they -- if he had shorts on --

1 Q Yes, sir.

2 A -- then they were normal shorts. They were not as
3 underwear. I wouldn't want it done to me.

4 Q All right. Now, this occurred at 8047 Bluff Road,
5 is that fair to say?

6 A That is correct, sir.

7 Q All right. And 8047 Bluff Road is approximately
8 28 miles from the sheriff's department? Is that fair to
9 say, ballpark?

10 A Between --

11 Q Thirty, 35 miles?

12 A Right.

13 Q And at the initial time, Investigator Wagner's truck
14 was parked at the Bluff Road post office; is that correct?
15 Is that where you dropped her off?

16 A I don't recall.

17 Q You don't recall. Okay. But she was not with you
18 for the entire drive to the sheriff's department on Two
19 Notch Road?

20 A That is correct.

21 Q So at some point, you took Investigator Holly Wagner
22 to her vehicle, I'm assuming, or did she just stay at the
23 Manning residence?

24 A I don't remember giving her instructions. Again,
25 this was over a year ago, but I don't remember giving her

1 instructions to assist in the execution of the search
2 warrant.

3 Q Okay.

4 A She did not go with me to the sheriff's department
5 at that time.

6 Q Okay.

7 A She -- I may have dropped her off. Again, as I told
8 you, around 18:30 we met up, myself, Sergeant Robinson,
9 Investigator Mann and several other deputies to
10 gather -- to collect our ideas and to formulate a plan.

11 Q Yes, sir. Now, in your gray Trailblazer, do you have
12 audio recording materials?

13 A No. No, sir.

14 Q All right. You said that on the drive to Two Notch,
15 you were communicating back and forth regarding executing
16 or obtaining the search warrant to eventually execute the
17 following day, is that fair to say?

18 A I'm sorry, repeat.

19 Q You said that on your drive to the sheriff's
20 department on Two Notch Road, that 30 to 35 minutes, that
21 you were simultaneously talking to him and trying to
22 coordinate the search warrant that was eventually
23 executed the next day?

24 A A lot of the coordinating initially was done while
25 I was still on the scene --

1 Q Yes, sir.

2 A -- between talking to Investigator Holly Wagner and
3 communicating with Captain Smith. That was done
4 primarily on the scene. When I got inside the vehicle
5 to drive to headquarters, the defendant had my undivided
6 attention.

7 Q Okay. So at no point you were communicating with
8 people via Blackberry or whatever telephone y'all have?

9 A I'm quite sure there may have been some attempt on
10 Captain Smith's part to intervene, but usually if I --
11 from talking to the defendant, I'm usually giving them
12 my undivided attention.

13 Q Yes, sir. Sergeant McDaniels, what kind of phone do
14 you have?

15 A I have a Blackberry.

16 Q You have a Blackberry. Does that have a record
17 function?

18 A It -- it should. I've never used it.

19 Q So I mean, it does have a record function, so you
20 could have quite easily taken it, reached in your pocket
21 and pushed record, and we could have memorialized every
22 word that was said between you and Theo?

23 A I mean, I could have done a lot of things.

24 Q You could have. I mean, all it took was put your hand
25 in your pocket and pushing a button, and then we could

1 know all the answers that we seek to know. But you chose
2 not to do that; correct?

3 A That's correct.

4 Q It was your choice. It wasn't -- Mr. Manning didn't
5 say, "Hey, man, don't record this. This is just between
6 you and me." It was your choice?

7 A That is correct.

8 Q All right. Now, let's talk about this car ride. He's
9 in the front seat, and it's you and he alone; correct?

10 A Yes, sir.

11 Q And as you just testified to, you decided, you made
12 the willful choice not to record it. He said, "I want
13 to talk to Bob Masella," too, didn't he?

14 A I'm sorry?

15 Q He informed you he wanted to talk to Bob Masella.

16 A I have no idea who that name -- person is.

17 Q He is a criminal defense attorney in Columbia, South
18 Carolina, who he had been in communication with twice
19 leading up to the eventual execution of the arrest
20 warrant?

21 A That is completely incorrect.

22 Q Did he tell you he wanted to make a phone call?

23 A No, sir.

24 Q He told you he wanted to make a phone call.

25 A No, sir.

1 Q And you told him, "Hey, man, just talk to me. Hey,
2 you don't need to talk to a lawyer. You don't need to
3 make a phone call. Just talk to me. Tell me what
4 happened."

5 A That is a complete lie.

6 Q That is a complete lie, all right.

7 A Yes, sir.

8 Q Now, referring to your testimony that you had with
9 Ms. Campbell, something kind of struck me. You said,
10 "After I read him his rights", not, "He didn't ask for
11 an attorney then."

12 A No, he did not.

13 Q Okay. But the way you phrased it -- when did he ask
14 for an attorney, because you phrased it wasn't then. When
15 else was it?

16 A I'm not sure how you gather that, but at no point
17 during my interaction with your client did he ever ask
18 for an attorney, not from the onset and not at any point
19 during and, of course, not at -- at the conclusion of my
20 interaction with him.

21 Q Okay.

22 A He never asked for an attorney.

23 Q Well, and we'd know that if it was recorded but it
24 is not.

25 A It is not correct.

1 Q And so --

2 A It is not recorded, I apologize.

3 Q All right. In that 30 minute -- 35-minute, 28-mile
4 drive, you're interrogating him; correct?

5 A That is correct.

6 Q You're interrogating him, and you interrogated him
7 after he asked for an attorney. Now --

8 A Again --

9 Q Did anybody else -- was anybody else in your car?

10 A That last statement was not correct. He never asked
11 for an attorney.

12 Q Okay. And now, this -- this is just a swearing
13 contest between you and how he now because it's not
14 recorded, and there's nobody else in the car; is that
15 correct?

16 A Well, those are your words that they he asked for an
17 attorney. I -- I'm --

18 Q I wasn't there --

19 A -- I mean --

20 THE COURT REPORTER: I'm sorry, Your Honor. I can't
21 make a record when they're talking over each other.

22 MR. MAY: I apologize.

23 THE COURT: Let him answer the question.

24 BY MR. MAY:

25 Q Yes, sir.

1 A At no point, Mr. May, did your client ever ask for
2 an attorney at all.

3 Q Okay.

4 A He was fully cooperative.

5 Q He was fully cooperative, all right.

6 A Yes, sir.

7 Q Now, when you got him to headquarters, you said he
8 wasn't deprived of any creature comforts; is that
9 correct?

10 A That is correct.

11 Q Now, a creature comfort, to me, is a pair of pants.
12 You said you just don't recall that.

13 A Is that a question, I'm sorry?

14 Q Yeah. I mean, it's...

15 (Cell phone rings.)

16 (Pause)

17 I'm sorry, let me rephrase that. I got a little
18 distracted.

19 A I understand.

20 Q You say he wasn't deprived of any creature comforts,
21 correct?

22 A As I stated earlier, it's not my practice to allow
23 somebody to be interviewed in their underwear. I would
24 not do that.

25 Q All right. Now, this interview lasted about seven

1 hours; correct?

2 A Yes, it did.

3 Q All right. Did you ask him if he was on any
4 medication per chance, back medication?

5 A Yes. Yes, I did.

6 Q And what was the response?

7 A He stated that he suffers from back spasms.

8 Q Okay.

9 A I asked him if he needed any medication at this time.
10 He stated that he did not. He stated that he had just
11 taken his medication prior to my making contact with
12 him.

13 Q So he did say he had just taken his medication prior
14 to making contact?

15 A Pain medicine, pain medication.

16 Q I got you. Now, have you been to training courses
17 on how to interrogate people?

18 A Yes, I have.

19 Q All right. And in this case, is it fair to say that
20 you and Kevin Isenhoward were the two main people
21 interrogating the defendant?

22 A For the purposes of both statements, yes.

23 Q Okay, sir. All right. Have you been trained on the
24 Reid Technique?

25 A No. I missed that training.

1 Q You have not been in training on the Reid
2 Technique?

3 A No.

4 Q Well, let's talk, let's just look at the method of
5 what you went through and just use -- look at the different
6 techniques.

7 All right. Isolation: Did you allow him to make a
8 telephone call before he started -- before you started
9 the interrogation, during the interrogation, or only
10 afterwards?

11 A He asked -- he only asked to make a telephone call
12 afterwards.

13 Q He only -- that's the only time he ever asked to make
14 a telephone call?

15 A That is correct, sir.

16 Q Now, you placed him in your office. Now, I've been
17 to y'all's office a bunch of times. Now, help me out here.
18 Your office is what, two doors down from Jimmy White's
19 office?

20 A That's correct.

21 Q And Jimmy White's office has video recording in it;
22 correct?

23 A Part of his office has video recording in it,
24 yes.

25 Q The polygraph room has a camera, and any time the

1 light is on, the video is running.

2 A That's correct.

3 Q Okay.

4 A It's generally used for polygraphs.

5 Q Right. Let's look at other places in the department
6 where there are videos. DUIs -- in the drunk -- now, when
7 you have the advice of rights, you have a video camera
8 in that room, correct?

9 A When we have the advice of rights?

10 Q Yes. When somebody is arrested for D.U.I., once the
11 advice of rights is given, that has to be recorded, correct,
12 and you have video cameras for that purpose at the
13 sheriff's department?

14 A I've never seen any cameras for that purpose. I
15 mean, if you're asking us, asking me if I -- if we have
16 a video camera inside the D Cell, we do have a video camera
17 inside the D Cell.

18 Q All right.

19 A But for purposes of your questions, that's -- I want
20 to say that's incorrect.

21 Q All right. Now, you started out talking to Theo.
22 You started out saying, "Come on, man. Just tell me it
23 was an accident," correct?

24 A No. As I stated earlier, I told him I needed to know
25 the truth.

1 Q You needed to know the truth.

2 A Right.

3 Q You never threw the out the idea of an accident?

4 A The next -- the next thing that I stated to him was,
5 "We found her car."

6 Q Okay.

7 A And then he stated that there was an accident. As
8 I stated to you earlier, he immediately -- once those
9 two statements were made, he immediately began to show
10 signs of remorse. Typically, based on our experience with
11 the head down and -- and, you know, he appeared to
12 be -- almost as if like he was caught.

13 Q Acted like he was caught, you said?

14 A That is correct.

15 Q All right. Sorry. You got a little jumbled right
16 there.

17 All right. Now, he was -- he responded during the
18 interrogation that -- he thanked you because you were
19 nice to him. That's because Isenhoward was the bad cop,
20 right? Y'all played good cop/bad cop, correct?

21 A I've seen that tactic on television. I've never
22 participated in that. I've never seen it done at the
23 sheriff's department where it's labeled as bad cop/good
24 cop.

25 Q All right. Well --

1 A And --

2 Q -- you're the nicer person, and he was the more
3 un-nice person. Is that fair to say?

4 A Sergeant Isenhoward had more facts with respect to
5 the investigation. I mean, he knew that the defendant
6 was not completely honest with me in the first
7 statement.

8 And so, with that knowledge, you know, he confronted
9 the defendant with what he had already known, thus
10 creating the second statement where he admitted to shooting
11 the victim as a result of an argument.

12 Q Okay. Now, when -- at what point did you get him food
13 from McDonald's?

14 A I asked him if he wanted food.

15 Q Yes, and when did you go get it?

16 A I'm not sure if we actually got it or not. I mean,
17 we may have gotten it. Again, it's my practice to at
18 least offer it. It was over a year ago, but I don't recall
19 whether he did -- I want to say that he did, but I'm not
20 sure.

21 Q All right. So there's a lot of things about this
22 process that you don't remember because, as you said, it
23 was about 17 months ago.

24 A Right. It was seven hours during an interview 17
25 months ago. I told you that he wasn't always in my

1 office. He was allowed, you know, to use the bathroom,
2 if he wanted something to drink.

3 It is normal for me to ask him if he wanted something
4 to eat. I just don't remember if I, in fact, bought him
5 something to eat, and if I did, I didn't get my money back.

6 Q I mean, I think Leon owes you that, but -- but I mean,
7 this kind of late point we're making is that there's a
8 lot of stuff that you don't remember occurring. Because,
9 as you said, this was over seven hours, and it was 17
10 months ago. Is that fair to say?

11 A In terms of the small details, whether I bought him
12 food, you know, I don't remember those, those details,
13 but in terms of the Q and A, the questioning respect to
14 the murder, everything that I didn't -- that I did remember
15 was memorialized in my follow-up and also in both of the
16 statements.

17 Q So it started about 6:30, and then at 2:27 you said
18 it's over; correct?

19 A No, sir, that's not correct. I initially made
20 contact with your client at around seven o'clock.

21 Q Okay. So at 2:27, it's pretty much over. That's
22 when you tell him he can go call his mama?

23 A No. That's when he asked to go call his mom.

24 Q Okay. Now --

25 A And again, the initial interview was -- started at

1 seven o'clock. We arrived at headquarters at
2 approximately between eight and 8:15, as I stated
3 earlier.

4 Q Okay.

5 A If you notice that the advice of rights was not given
6 to your client until 8:40. As I stated earlier, he
7 was placed into -- inside the D Cell, so throughout the
8 seven hours, it wasn't as if he was in one room
9 continuously being asked questions, back-to-back
10 questions. You know, that's -- that just wasn't the
11 atmosphere.

12 Q All right. So --

13 A As you were describing it.

14 Q Okay. So on May 29th, if we looked at the D Cell
15 video from 8:10 to 8:40, because it has not been provided
16 to the defense, you would tell us that we would see him
17 in there? That would kind of give us a timeline; is that
18 correct?

19 A That's is correct.

20 Q All right.

21 A At some point, you'll find him in there.

22 Q Okay. Now, throughout this entire time, what type
23 of firearm do you carry?

24 A I carry a .40 Caliber Glock.

25 Q .40 Caliber Glock. Is that the standard issue for

1 the Richland County Sheriff's Department?

2 A That is correct.

3 Q Were you armed throughout this interrogation?

4 A As law enforcement, I'm armed when I'm executing my
5 duties, yes, sir.

6 Q Okay. So is it fair to say that anybody who he would
7 have seen, who is deputized at the sheriff's department,
8 would be wearing a gun at the time?

9 A That is correct.

10 Q Okay. He didn't have a gun.

11 A No, he did not.

12 Q He didn't --

13 A No.

14 Q -- okay. And you definitely would not have allowed
15 him to have a gun at this point?

16 A Of course I wouldn't.

17 Q Okay. Was he in handcuffs?

18 A At the office, no, sir.

19 Q When were the handcuffs removed?

20 A When he went inside the D Cell, they were removed.

21 Q When were they placed back on?

22 A When he was transported. Throughout the entire time
23 during my interaction with the defendant at headquarters,
24 he was not handcuffed.

25 MR. MAY: Beg the Court's indulgence, Your Honor.

1 (Pause)

2 Your Honor, just one more question. I'll be brief,
3 I promise.

4 THE COURT: All right.

5 BY MR. MAY:

6 Q All right. Now, you don't remember if he was wearing
7 boxer shorts, but you don't think he was. It's not your
8 general practice. He went into the office barefoot,
9 correct?

10 A I wouldn't transport anyone barefoot.

11 Q You wouldn't?

12 A I would not.

13 Q So in his property report at the jail, there should
14 be shoes.

15 A I'm just answering your question.

16 Q Okay.

17 A I don't know if that's a question.

18 Q Yeah, I'm asking. So if -- if you took him from his
19 house -- you're saying he was wearing shoes at the
20 time -- and he was never outside of your custody until
21 he then went to Alvin S. Glenn, in his property report,
22 there should be a pair of shoes.

23 A There should be. If he had a pair of shoes on him
24 when he left the office -- I'm sorry, the residence,
25 there should be a pair of shoes in his property report

1 unless we took them.

2 Q They're nowhere in evidence, so I'm just trying
3 to -- just trying to understand. You're saying if he was
4 wearing shoes. That's the question I have. Was he
5 wearing shoes?

6 A He was wearing -- sir, I would not transport anyone
7 without shoes, or in their boxer shorts, in my vehicle
8 to conduct an interview. I wouldn't do that. I wouldn't
9 have done it. I wouldn't want it done to me.

10 Q I -- neither would I.

11 A Right.

12 Q That's the reason why I'm asking.

13 A I understand.

14 Q Did you rip his shirt when you were putting him on
15 the ground?

16 A Did I rip his shirt?

17 Q Yes, sir.

18 A As I stated earlier, sir, your client immediately
19 got on the ground when I met with him inside the living
20 room. And there was really no need for me to -- besides
21 handcuffing him, to use any kind of force against him.

22 Q All right. Now, back to your training in the art of
23 interrogation. What techniques are you trained in?

24 A We're trained to basically -- in a nutshell, to
25 listen with both our ears and our eyes, basically, and

1 that is to observe body language, facial expressions and
2 to couple that with what the individual is actually
3 saying.

4 Q All right, sir. So are you trained in the psychology
5 of confrontation?

6 A The psychology of confrontation?

7 Q Yes, sir. Wouldn't that be kind of like if you're
8 looking with your eyes, if they touch their face or cover
9 their mouth or start looking up to the left as opposed
10 to the right, are you trained in that kind of --

11 A By psychology of confrontation, are you referring to
12 kinesics?

13 Q I'm just asking what are you trained in, and you
14 gave me something very vague. So I'm trying to narrow
15 it down.

16 A It would be kinesics.

17 Q Kinesics. Can you describe that, please?

18 A Again, it's the reading of an individual's body
19 language coupled with what they're saying.

20 Q Okay. What training have you had as far as the
21 procedure to do the interrogation?

22 A Besides the academy, I've been to four different
23 homicide training seminars.

24 Q Okay.

25 A Throughout the course of my nine years in my

1 investigations, and you know, I'm -- I have a master's
2 degree in public administration and also an undergraduate
3 degree in criminal justice.

4 So throughout my experience and my -- my time at the
5 sheriff's department with respect to the C.I.D., more
6 specifically --

7 Q All right.

8 A -- trained throughout the entire nine years.

9 Q All right. So you can't give me any specific
10 techniques that are used?

11 A I gave you one, sir, and that's called kinesics.

12 Q And that's the only one you've ever been trained in?

13 A That's correct.

14 THE COURT: Redirect?

15 MS. CAMPBELL: No, sir.

16 THE COURT: Officer, you may come down.

17 THE WITNESS: Thank you, sir.

18 THE COURT: Approach the bench counsel, please.

19 (WHEREUPON, there was a bench conference.)

20 MS. PRINGLE: Your Honor, we have to think if we
21 could -- may I have just a moment, Your Honor?

22 THE COURT: Sure.

23 (Pause)

24 MS. PRINGLE: Your Honor, I have a brief matter if
25 I may take up regarding the jury. If I may have just a

1 moment.

2 THE COURT: May I dismiss the jury?

3 MS. PRINGLE: It's actually involves questioning the
4 jurors regarding some information that was released in
5 the press yesterday. One of the requests I'm going to
6 make is that you perform individual voir dire of one of
7 the jurors. I don't know if you grant that or not, but
8 it would make more sense to do that today as opposed to
9 tomorrow should you grant the request.

10 THE COURT: Make your motion.

11 MS. PRINGLE: Your Honor, this issue involves
12 information that was released by the press -- I don't know
13 if the press is present.

14 THE COURT: The press is present.

15 MS. PRINGLE: I think the problem will be compounded
16 by the presence of the press. If I am to make this motion,
17 I need to make it in the -- without them on.

18 THE COURT: I don't even know what it is.

19 MS. PRINGLE: I'll be happy to approach, Your Honor.

20 (WHEREUPON, there was a bench conference.)

21 MS. PRINGLE: Your Honor, there was information that
22 was --

23 THE COURT: There was an article in today's paper.

24 MS. PRINGLE: Yes, sir. The front of the -- every
25 internet website midday yesterday starting early to

1 mid-afternoon yesterday involved the --

2 THE COURT: Every what? Every --

3 MS. PRINGLE: WISTV.com, TheState.com, the main news
4 information sources that would be on the internet. There
5 was a --

6 THE COURT: C.N.N.?

7 MS. PRINGLE: No. Your Honor, locally, locally. I
8 have exhibits to mark that include the article from
9 W.I.S.T.V. and TheState.com.

10 The issue involves printing of communications
11 between Mr. May and Solicitor Giese regarding resolution
12 of this case. I would like to take that up specifically.

13 I'm looking forward, Your Honor, and thinking of
14 making a record, really to protect counsel at this table.
15 I think that it needs to be made, but I think if I go
16 into it in too much detail and explain why what happened,
17 that is going to compound the problem, if that is released
18 in the press, Your Honor.

19 I don't know if I'm being clear in explaining, but
20 I think I need to make a record as to why those
21 communications took place, why counsel took the actions
22 that they did, looking on down the road should those actions
23 ever be questioned.

24 It would be good, I think, at this point to have a
25 record of it. I also have grave concerns about the jurors

1 having seen those reports, Your Honor.

2 There's really nothing more damaging, if they -- than
3 if they've seen it. I think it's very intimidating for
4 jurors when they are asked, "Have you seen anything? Have
5 you read anything?"

6 They know they're not supposed to. Sometimes jurors
7 will come into possession of information accidentally.
8 They -- they can't help it, but it's intimidating and
9 frightening. They don't want to say it in front of
10 everyone.

11 I think this is serious enough that it would make
12 sense if we could take the time, very quickly, for the
13 Court just to question each juror individually and
14 privately to ensure that they didn't see anything between
15 yesterday and today.

16 I think any potential damage could be mitigated by
17 that because if they didn't see it yesterday, then unless
18 they go looking, it's not going to be something that they
19 stumble upon as easily as it would have happened
20 yesterday.

21 I have a few other things to add to that, Your Honor,
22 but just to protect counsel and make a record, I don't --

23 THE COURT: I'm going to allow you to make a record.

24 MS. PRINGLE: In front of the press -- I think I need
25 to explain why they did that, Your Honor.

1 THE COURT: Why who did that?

2 MS. PRINGLE: Why those communications --

3 THE COURT: Oh.

4 MS. PRINGLE: -- took place, for the record.

5 THE COURT: I'll allow you to do that.

6 MS. PRINGLE: I would like to.

7 THE COURT: But here is the problem: Other than
8 sequestration, I know no other method of assuring that
9 jurors are not tainted.

10 We -- I did not voir dire this entire panel on Monday
11 as to whether they had seen the initial article in the
12 State paper, and I don't know what -- I don't know what's
13 on the internet, wasn't searching for it, but
14 nevertheless, there was an article in the State paper
15 Monday.

16 I did not voir dire all of those jurors individually
17 under oath as to whether or not they had seen them. At
18 some point, it gets to be an inquisition of jurors as to
19 what they've seen, and what they don't see, and if they
20 see it, if it affects their objectivity one way or the
21 other.

22 I'm going to allow you to go into the issue of what
23 was reported today about some letter, right? I assume
24 that's where you're going, but other than cautioning
25 the jurors to -- because I'm not going to voir dire every

1 juror every day for the next two weeks. What's what you
2 want me to do.

3 MS. PRINGLE: No, sir; no, sir. I'm sorry. I'm not
4 asking for that at all. I'm only asking if we could ask
5 them individually and nonspecific to this, but just
6 individually very quickly, "Hi. Did you see anything
7 yesterday? Just double checking with everybody, did you
8 see anything by accident or otherwise?" only because this
9 stuff was so bad.

10 What was reported, and I'm going to mark a copy of
11 the letter and the reports, but one of the news reports
12 quotes the letter. It says, "Your office" -- from Mr.
13 Shealey: "Your office has provided significant amounts
14 of discovery over the past two weeks that has significantly
15 affected the case."

16 A letter went on this date: "We have reviewed the
17 new information with Mr. Manning, and he expresses a
18 desire to plead guilty as charged."

19 That's a huge problem if they saw that accidentally,
20 and that's a problem on the bus.

21 THE COURT: Well, yeah.

22 MS. PRINGLE: Probably --

23 THE COURT: I mean, if he wrote the letter, it sure
24 is.

25 MS. PRINGLE: But I think that -- I just -- I think

1 that we can mitigate it if each is asked if anybody saw
2 it, then we can seat our alternate, and we can ensure that
3 nobody saw it.

4 THE COURT: Plural.

5 MS. PRINGLE: I'm sorry?

6 THE COURT: Plural. We may not have another
7 alternate. True?

8 MS. PRINGLE: In light of the new -- the juror that
9 needs to leave next week?

10 THE COURT: No. I was -- you're just assuming only
11 one person may have seen it. What if six people saw it?

12 MS. PRINGLE: Then I think we have to start over.

13 THE COURT: Yeah, I know but that's -- that's --

14 MS. PRINGLE: But we want to know. I think we want
15 know, and we want to do this right. We want to do this
16 one time.

17 I'm trying to be very cautious, Your Honor. I think
18 it's -- I would not ask you this every day. I think this
19 is a different kind of situation. It's a different kind
20 of information than you would ever see.

21 It's tantamount to -- there's nothing more damaging
22 that they could have seen.

23 THE COURT: What does it say? You wrote the letter.
24 And I assume you released the letter or I don't know. The
25 press does not --

1 MS. PRINGLE: It -- no, sir. No.

2 MR. GIESE: Your Honor --

3 MS. PRINGLE: We did not --

4 (Talking over each other.)

5 MS. PRINGLE: It was filed in the --

6 MR. GIESE: Your Honor, they filed it in the clerk's
7 office. They filed it in the clerk's office. It's an open
8 file.

9 THE COURT: Who did?

10 MR. GIESE: They did.

11 MS. PRINGLE: I'm not suggesting anything other than
12 it was obtained -- I don't know how it was obtained, but
13 it was filed --

14 THE COURT: Well, if you made it public information.

15 MS. PRINGLE: It was filed in the clerk's office, and
16 that is what I would like to address, the reason why, when
17 the press is asked.

18 THE COURT: All right. But if -- I mean, you can't
19 have it both ways. If a juror read the article that your
20 office may have read the article about a letter that your
21 office made public, you can't then say, "Well, now we've
22 got to start over."

23 I mean, it doesn't seem right that you should -- and
24 I'm not saying it was done with this in mind, but that
25 you should intentionally do something to prejudice -- that

1 might prejudice the jury and then ask for relief in the
2 form of a mistrial or a retrial as a result of those actions.

3 MS. PRINGLE: It was --

4 THE COURT: I --

5 MS. PRINGLE: I'm sorry.

6 THE COURT: Well, I will -- I will inquire of the jury,
7 but I'm not going to do it out here.

8 Go ahead, Ms. Pringle.

9 MS. PRINGLE: I just wanted to hand up -- I'll have
10 them marked, the W.I.S. T.V. article, the State's article
11 and the letter.

12 (Pause)

13 MR. GIESE: Your Honor, just for the record, it's --

14 THE COURT REPORTER: I'm still marking it. One
15 moment, please.

16 MR. GIESE: I'm sorry.

17 THE COURT: Let the court reporter mark it.

18 (Pause)

19 (WHEREUPON, Defendant's Exhibits Nos. 3, 4, 5 were
20 marked for identification only.)

21 MS. PRINGLE: Essentially, Your Honor, what I'm
22 trying to do is mitigate what was made -- I'd like to
23 explain why we did this without the press, Your Honor.

24 THE COURT: Okay. I'll do that. I'll allow you to
25 do that, but let's talk about the immediate question and

1 the procedure.

2 Mr. Giese, you may --

3 MR. GIESE: I just wanted to make sure I understand.
4 They're asking for the jurors to be individually asked
5 about whether or not they saw something in the newspaper
6 that they, themselves, planted --

7 THE COURT: Or apparently on the video, on the
8 internet.

9 MR. GIESE: Something like that, but that they
10 themselves made public. That's their position, so they
11 can find out whether or not they want to ask for a
12 mistrial on something they put in public record. That's
13 their position? Thank you.

14 MR. HAYES: Judge, if I may, to that point, to the
15 extent that my motion is still pending, and I hate to
16 interject myself in this, but I felt confident that we
17 talked about maybe the Sheriff not being available to talk
18 about policy, and why it is and why it isn't that Captain
19 Smith and everybody else will be subject to that on
20 cross-examination, but then they talked about they wanted
21 the Sheriff to be available for the comments that he
22 provided to the press.

23 To me, I mean, it's sort of fascinating in that, you
24 know, I know y'all had a tedious jury selection process
25 yesterday to find out who had been exposed to what and

1 what they knew and what they had seen and read and that
2 kind of thing.

3 So I'm confident that the jury you selected or that
4 was selected -- I wasn't here for the process -- but you
5 know, they had been exposed to most of that -- to those
6 comments.

7 So to have the sheriff call him to cross-examine him
8 about comments that he made publicly when the jury
9 really -- you know, probably is not familiar with those
10 comments to begin with, I'm not sure how that -- how that's
11 relevant at all in this case. I would ask that the Sheriff
12 be relieved of the subpoena.

13 THE COURT: Why don't you change your motion to a
14 motion to quash.

15 MR. HAYES: Well, Judge, based on -- based on
16 everything that I just said, I guess I would ask that this
17 Court quash the subpoena that was issued to the Sheriff
18 that's in front of Your Honor regarding this trial.

19 MS. PRINGLE: Sheriff Lott will be necessary to
20 testify as to the recording policy of the department.
21 Without question, regardless of anything about comments
22 in the media, it goes directly to the question that Captain
23 Smith can't answer, and I think we have every right to
24 put him on the stand in front of the jury to talk about
25 what that policy is, where it came from, why it's been

1 perpetuated.

2 THE COURT: I thought Captain Smith explained that.

3 MS. PRINGLE: He did not. He was actually asked, "Who
4 would have the authority to change it? What is
5 justification for it?"

6 THE COURT: He said --

7 MS. PRINGLE: He doesn't have a justification for
8 it. He said that Sheriff Lott would have to answer that
9 question.

10 THE COURT: Your motion is granted.

11 MR. HAYES: Thank you.

12 MS. PRINGLE: Is that -- is your ruling that Sheriff
13 Lott cannot -- that we cannot subpoena Sheriff Lott for --

14 THE COURT: For these purposes.

15 (Talking over each other.)

16 MS. PRINGLE: For pretrial.

17 THE COURT: Correct.

18 MS. PRINGLE: Does he remain under subpoena for the
19 trial of the case?

20 THE COURT: I don't know. I don't see why not.

21 MR. HAYES: Well, Judge, I think -- I mean, again --

22 THE COURT: All right. I'm going to allow him to
23 remain under subpoena for the trial of the case, not the
24 pretrial.

25 MR. HAYES: Can we revisit the issue again at the time

1 that they want to call him?

2 THE COURT: I don't know. I don't know if he'll ever
3 be called.

4 MR. HAYES: Right. I understand. I'm just saying
5 in the event that they want to call him, I'd like to come
6 back down and be heard again.

7 MS. PRINGLE: Well, I think that --

8 THE COURT: The door is open.

9 MR. HAYES: Thank you, sir.

10 THE COURT: Now, how would you suggest that we -- I
11 think the Court needs to inquire about the jurors' state
12 of knowledge about this case at 11:40 on Tuesday the 5th
13 of October.

14 I need to do that in camera, all right. Is that what
15 you want?

16 MS. PRINGLE: Yes, sir, Your Honor.

17 THE COURT: All right.

18 MS. PRINGLE: I think it can be done quickly. I
19 just -- I don't want there to be any confusion. I'm not
20 asking you to ask them specifically did they see that
21 information on it, just generically, individually, so
22 they are in sort of a more --

23 THE COURT: What would you have me ask them?

24 MS. PRINGLE: "Have you seen anything? Have you been
25 exposed to anything, even accidentally? Did anything, any

1 information, come in? Sometimes that happens. If
2 anything has come into your realm of knowledge, even if
3 it were accidental?"

4 I think if we'll do that, we'll all be protected.
5 I mean, I would hope that they would -- nobody would have
6 intentionally gone in and defied your order. Your order
7 was very specific, so I think if there was an accidental
8 one, we'll flesh them out, and hopefully it will just be
9 one, if there is more than one.

10 THE COURT: All right.

11 MS. PRINGLE: Your Honor, I'm not trying to stop
12 things. I'm just -- I think it's important to protect
13 what we've got in going forward so that we don't have this
14 problem later.

15 MS. CAMPBELL: Your Honor, of course, you've already
16 voir died them on that issue as of -- up until the time
17 they left the courthouse yesterday, so the time period
18 would be after that.

19 THE COURT: All right. All right. Clear the
20 courtroom.

21 (WHEREUPON, the courtroom was cleared.)

22 THE COURT: I'm going to bring the individual jurors
23 into the courtroom because I need to do it on the record.

24 Mr. Addison, where are you going? I need juror number
25 160.

1 (Juror 160 entered the courtroom.)

2 THE COURT: Mr. 160, I'm going to ask each member of
3 the jury a question, and it regards my instructions of
4 last night and what's taken place overnight.

5 Have you been exposed to any information about this
6 case either through the media or through the internet,
7 either intentionally or accidentally, about this case as
8 it relates to my instructions of last night?

9 THE JUROR: Just what was in the paper this morning.

10 THE COURT: And --

11 THE JUROR: Just --

12 THE COURT: Well, here --

13 THE JUROR: Just the headline. I didn't read the
14 article.

15 THE COURT: Just the headline?

16 THE JUROR: Uh-huh.

17 THE COURT: Okay. Thank you very much.

18 THE JUROR: I knew better than that.

19 THE COURT: What?

20 THE JUROR: I knew better than that.

21 THE COURT: Good.

22 I'm going to dismiss -- we're still not finished with
23 this pretrial. There's some complicated issues in this
24 case. I'm going to dismiss the jury until 9:30 in the
25 morning, so at this point, you're free to go.

1 THE JUROR: Okay.

2 THE COURT: Return to the jury room at 9:30.

3 THE JUROR: I'll let everyone know.

4 THE COURT: No, no, no.

5 THE JUROR: No?

6 THE COURT: You're free to go. I'm going to bring
7 the jurors in individually.

8 (Juror 160 leaves the courtroom.)

9 He's not going in the jury room, is he?

10 THE BAILIFF: No, sir. I just told him not to.

11 THE COURT: All right. When you bring them out, tell
12 them to bring their belongings.

13 THE BAILIFF: Right.

14 THE COURT: Bring juror 219.

15 THE BAILIFF: Yes.

16 (Juror 219 entered the courtroom.)

17 THE COURT: You can stand right there, Ms. 219.

18 Ms. 219, I'm going ask each member of the jury,
19 overnight, have you been exposed to any information either
20 accidentally or intentionally about this case?

21 THE JUROR: No; no, sir.

22 THE COURT: Thank you very much.

23 I'm going to release -- we're still not finished with
24 the pretrial, so I'm going to release the jury today, ask
25 you to be back in the jury room at 9:30. So you're free

1 to go.

2 THE JUROR: Okay. Thank you.

3 THE COURT: Thank you very much.

4 Keep your fingers crossed.

5 Juror number 61.

6 (Juror number 61 entered the courtroom).

7 THE COURT: Mr. 61, how are you doing?

8 THE JUROR: Pretty good.

9 THE COURT: You can stand right there.

10 With regard to my instructions of last night, I need
11 to ask -- I'm going to ask each juror -- over the evening
12 hours, have you been exposed to or received any -- or
13 exposed to any -- let me just leave it at that, exposed
14 to any information about this case, whether accidentally
15 or intentionally?

16 THE JUROR: No, Your Honor.

17 THE COURT: All right. Thank you very much.

18 Now, let me say this: We are going to reconvene -- I'm
19 not -- we're not finished with this pretrial. We're going
20 to reconvene tomorrow morning at 9:30.

21 THE JUROR: Yes, sir.

22 THE COURT: So you're free to go for the day.

23 THE JUROR: Just -- just come back tomorrow morning
24 at 9:30?

25 THE COURT: Yes, sir. See you then.

1 THE JUROR: Thank you, appreciate it.

2 (Juror leaves the courtroom.)

3 THE COURT: Number 318.

4 This is the juror that wants to be excused.

5 (Juror 318 entered the courtroom.)

6 Ms. 318, you can stand right there.

7 THE JUROR: Yes.

8 THE COURT: I need to ask all of the jurors.

9 Overnight, have you been exposed to or read any
10 information about this case in light of my instructions
11 of yesterday afternoon?

12 THE JUROR: No, sir.

13 THE COURT: All right. Thank you very much, ma'am.
14 You're free to go.

15 Now, we are going to -- we're not finished with this
16 pretrial. There's no sense in making the jury wait, so
17 I'm going to dismiss all the jurors until 9:30 in the
18 morning.

19 THE JUROR: Thank you.

20 THE COURT: So you're free to go.

21 Number 46.

22 (Juror 46 entered the courtroom.)

23 THE COURT: You can stop right there.

24 Mr. 46, in light of my instructions from yesterday
25 evening, I need to know if you have -- overnight, if you've

1 been exposed to any information about this case or read
2 any information about this case?

3 THE JUROR: No, I have not.

4 THE COURT: Thank you very much, sir.

5 We have not concluded the preliminary matters of
6 these pretrial hearings, so I've decided that I'm going
7 to release the jury today. I'm going to ask you to be
8 back in the jury room at 9:30. You're free to go.

9 THE JUROR: Okay. Thank you.

10 THE COURT: Thank you very much.

11 Number 220, 220.

12 (Juror 220 enters the courtroom.)

13 THE COURT: Mr. 220, you can just stay right there.

14 In light of my instructions of yesterday evening,
15 I need to know if you've been exposed to any press releases
16 or any media coverage either that you were exposed to
17 accidentally or that you read anything about this case.

18 THE JUROR: No, sir.

19 THE COURT: Thank you very much.

20 We have not completed the pretrial, so I've decided
21 to release the jury until tomorrow morning at 9:30; at
22 which time I hope we'll be ready to get started with the
23 trial.

24 THE JUROR: Okay.

25 THE COURT: Thank you very much. You're free to go.

1 THE JUROR: Thank you.

2 THE COURT: Number 203.

3 THE BAILIFF: Three?

4 THE COURT: 203.

5 (Juror 203 enters the courtroom.)

6 THE COURT: Ms. 203, you can stay right there.

7 In relation to my instructions from yesterday
8 evening about any press releases, I need to ask, have you
9 been exposed to any press reports either by -- by the
10 press or the internet, any -- whether it be intentionally
11 or accidentally exposed to any information about this case
12 since yesterday evening?

13 THE JUROR: No, sir. I've intentionally stayed
14 away.

15 THE COURT: Thank you very much.

16 Ms. 203, we are not concluded -- we have not concluded
17 the pretrial matters that have to be taken care of, so
18 I'm going to release the jury until 9:30 in the morning.

19 THE JUROR: Okay.

20 THE COURT: So again, my instructions still apply,
21 obviously. You're free to go for the day.

22 THE JUROR: Thank you.

23 THE COURT: One hundred, 1-0-0.

24 (Juror 100 enters the courtroom.)

25 THE COURT: You can stand right there.

1 Ms. 100, let me -- I'm asking all the jurors: Over
2 the evening hours, have you been exposed to or read anything
3 about this case either in the press reports, on the
4 television, or internet or anything of that nature?

5 THE JUROR: No, Your Honor.

6 THE COURT: Thank you very much.

7 Now, Ms. 100, we have not concluded the pretrial
8 hearings in this matter, so I'm going to release the jury
9 until 9:30 in the morning. So you're free to go, and my
10 instructions still apply.

11 THE JUROR: Okay.

12 THE COURT: Thank you very much.

13 Number 36.

14 (Juror 36 enters the courtroom.)

15 THE COURT: Mr. 36, you can stand right there.

16 I need to ask you a question. After my instructions
17 of yesterday evening, between then and now, have you been
18 exposed to any press reports or internet reports or
19 television reports or anything about this case?

20 THE JUROR: No, sir.

21 THE COURT: Thank you very much, sir.

22 We -- I -- we have not completed the pretrial in this
23 matter, so it's my decision to release the jury for the
24 rest of the day and ask you to be back in the jury room
25 at 9:30 in the morning. So you're free to go, and my

1 instructions still apply.

2 THE JUROR: Okay.

3 THE COURT: Thank you very much.

4 THE JUROR: You're welcome.

5 THE COURT: Number 307.

6 Juror 307 enters the courtroom.)

7 THE COURT: Mr. 307.

8 THE JUROR: Yes, sir.

9 THE COURT: Just a quick question. Since my
10 instructions of yesterday evening, have you been
11 exposed to any press coverage either through the media,
12 the print press or the television or the internet
13 regarding this case since yesterday evening?

14 THE JUROR: No, I have not.

15 THE COURT: Thank you very much, sir. We have not
16 concluded the pretrial in this matter, so I've made the
17 decision to release the jury until 9:30 in the morning.
18 You're free to go. My instructions still apply. Have a
19 pleasant afternoon.

20 THE JUROR: Thank you.

21 THE COURT: Number 158.

22 (Juror 158 enters the courtroom.)

23 THE COURT: You can stand right there, 158.

24 I just need to ask all the jurors a question. After
25 my instructions of last night, I need to know if you've

1 been exposed to any media or press, newspaper or
2 television or internet recounts -- or counts of this trial
3 or anything to do with this trial? Have you been exposed
4 to or read anything about this trial?

5 THE JUROR: No, sir.

6 THE COURT: All right. Thank you very much, ma'am.

7 The pretrial has not concluded, so we're going to
8 dismiss the jury today and ask you to be back in the jury
9 room at 9:30, so that will give you the afternoon off.
10 My instructions still apply, and you're free to go.

11 THE JUROR: Uh-huh.

12 THE COURT: Thank you, ma'am.

13 247.

14 (Juror 247 enters the courtroom.)

15 THE COURT: You can stay right there. I just have
16 a question for all the jurors, 247.

17 Since my instructions of yesterday evening, have you
18 been exposed to any media, press, or internet coverage
19 of this case in any way whatsoever?

20 THE JUROR: No, sir.

21 THE COURT: All right. Thank you very much.

22 We have not completed the pretrial in this case, and
23 so I've decided to let the jury go until tomorrow morning
24 at 9:30. So you -- go sell something.

25 THE JUROR: Okay. Thank you.

1 THE COURT: My instructions still apply.

2 THE JUROR: Okay.

3 THE COURT: All right. Thank you very much. We'll
4 see you at 9:30.

5 Number 53.

6 (Juror 53 enters the courtroom.)

7 THE COURT: You can stand right there, Ms. 53.

8 I've asked all the jurors, and I need to ask you:
9 since my instructions of yesterday evening, have you been
10 exposed to any press coverage or internet coverage or
11 television coverage in this case in any manner
12 whatsoever?

13 THE JUROR: No, sir.

14 THE COURT: All right. Thank you very much, ma'am.

15 Because we have not finished with the pretrial in
16 this matter, I've dismissed -- I'm dismissing the entire
17 jury until 9:30 in the morning, so have a pleasant afternoon.
18 We'll see you at office 9:30. My instructions still
19 apply.

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you very much.

22 And 171.

23 (Juror 171 enters the courtroom.)

24 THE COURT: Ms. 171.

25 THE JUROR: Yes.

1 THE COURT: Following my instructions yesterday
2 afternoon -- and I've asked every member of the jury --

3 THE JUROR: Yes, sir.

4 THE COURT: I need to know if you've been exposed to
5 any press reports of this trial, either on the internet
6 or in print or television or anything of that nature?

7 PROSPECTIVE JUROR: No. I just got back from a
8 15-month deployment. I am not used to watching T.V. or
9 reading a newspaper.

10 THE COURT: What do they say, hoo-ha?

11 THE JUROR: Something like that.

12 THE COURT: Something like that. We have not
13 finished with the pretrial. I'm dismissing the jury for
14 the rest of the day and asking them to return at 9:30 in
15 the morning. My instructions still apply.

16 All right. Thank you. Have a pleasant afternoon.

17 THE JUROR: All right. Thank you.

18 THE COURT: Ms. Pringle?

19 MS. PRINGLE: Thank you, Your Honor. I think that
20 that gives us all confidence in proceeding, and I think
21 that we'll also have an effect of deterring any searching
22 that might be done. Your Honor, I think that was the
23 appropriate thing to do.

24 I just wanted to state for the record, in all
25 likelihood this decision will be analyzed when you go on.

1 This was simply an error borne out of the best of
2 intentions.

3 We have a young man who was 29 at the time of this
4 crime. He has no prior record. He is charged with
5 something that is quite terrible, but you've
6 had -- everybody in this room has had cases in which there
7 are horrible homicides and horrible facts that have been
8 able to be negotiated and pled.

9 We had met up against an inability to even engage
10 the Solicitor's Office in a conversation. I understand
11 and respect that that this is Mr. Giese's decision alone.

12 We're just trying to do the best for our client. We
13 were trying to find some way to negotiate this down so
14 he would ever have a chance of getting out, not trying
15 to get him a pass to go home anytime soon.

16 He is willing to plead to a substantial amount of
17 time. We wanted to document that. We wanted a record of
18 that for him.

19 We felt that was the thing to do to protect him.
20 Filing it, this was unforeseen to me. I recognize that.
21 I, obviously, wouldn't do that again.

22 I have filed many, many, many things through the years
23 that have never hit the papers, that has never been found
24 or looked for.

25 I -- you know, it's just -- it could have been and

1 should have been -- there were great pieces of papers and
2 motions and documents that have never been discovered in
3 high press cases.

4 So it is an error. I take responsibility for it.
5 Mr. Strickler and I both engaged in this conversation with
6 these two.

7 We were -- are the ones with more experience, and
8 it was simply a mistake. I think that it, obviously -- we
9 covered the record with the jurors, but I wanted to make
10 a record of why they did it and what the intentions were
11 in doing it.

12 THE COURT: All right. Call your next witness.

13 Well, now we can open the courtroom. Unlock the
14 courtroom.

15 Call your next witness.

16 MS. CAMPBELL: State calls Sergeant Isenhoward.

17 THE COURT: Let me just talk about scheduling. Have
18 a seat.

19 (Pause)

20 Go ahead. Have a seat. I'm just going to talk about
21 scheduling.

22 (WHEREUPON, there was a bench conference.)

23 THE COURT: All right. Be seated. Thank you. All
24 right Ms. Campbell, call your next witness.

25 MS. CAMPBELL: The State calls Sergeant Isenhoward.

1 KEVIN ISENHOWARD,
2 after being duly sworn, testified as follows:

3 THE CLERK: Thank you. Have a seat in the witness
4 stand. Give the court reporter your name.

5 THE WITNESS: My name is Kevin Isenhoward.

6 DIRECT EXAMINATION:

7 BY MS. CAMPBELL:

8 Q Sergeant Isenhoward, where are you employed?

9 A At the Richland County Sheriff's Department.

10 Q What are your duties there, sir?

11 A I'm a sergeant in the Major Crimes Unit.

12 Q How long have you been in law enforcement?

13 A Twelve years.

14 Q I want to turn your attention back to May of 2009.
15 Did you become involved in the case involving the victim,
16 Nikki McPhatter?

17 A Yes, I did.

18 Q And when did you first become involved, sir?

19 A On the 21st of May, we were contacted by the Columbia
20 Police Department, specifically Sergeant Babin and
21 asked to assist the Charlotte Police Department and
22 themselves.

23 Q Turning your attention to the next morning, May the
24 22nd, did you and Captain Smith follow up on some
25 information?

1 A Yes. We went to 8047 Bluff Road to speak with
2 Mr. Manning.

3 Q And that would be Theodore Manning, the defendant in
4 this case?

5 A That's correct.

6 Q And what was the purpose in y'all going there that
7 day and speaking to Mr. Manning?

8 A Just trying to get a feel ourselves of what was going
9 on and what information he had to provide about the missing
10 person in this case, Ms. McPhatter. It was just a
11 conversation about the last time he had seen her.

12 Q And was Mr. Manning there when you got there?

13 A Yes.

14 Q And y'all made contact with him at that point?

15 A Yes, we did.

16 Q Did you advise him of his rights at that point?

17 A No.

18 Q Was he in custody?

19 A No, he was not.

20 Q Was he under arrest?

21 A No, he was not.

22 Q And at that point, were you just trying to gain
23 information because he had been a person -- one of the
24 last people to see her?

25 A Yes. And obviously, that's where you start with any

1 case, especially a missing person or a homicide.

2 Q When you got there, did you advise the defendant of
3 why you wanted to talk to him?

4 A Sure.

5 Q And did he appear to be cooperative to you?

6 A Yes, he was very cooperative.

7 Q And did he voluntarily give y'all information that
8 morning?

9 A Yes, he did.

10 Q Specifically information about the last time he had
11 seen Nikki McPhatter?

12 A Yes.

13 Q And do you remember approximately how long this
14 conversation took place?

15 A It was probably 15, 20 minutes, if I recall correctly.
16 He was actually eating while he was talking to us, eating
17 chicken wings.

18 Q And this took place at his residence?

19 A Yeah. He was sitting on his couch, or a chair in his
20 living room. As a matter of fact, towards the end of our
21 conversation, an alarm, his repairman -- I guess he was
22 installing an alarm system in the home. He actually came
23 there while we were there, and he let him in and talked
24 to him briefly. So he was doing -- you know, he was talking
25 to us, and he had some other things going on.

1 THE COURT: Just hold on a minute.

2 Sir, are you recording?

3 (There was no response).

4 Press, red tie.

5 MEDIA: No, sir, no. Not anymore.

6 THE COURT: Who are you with?

7 MEDIA: W L.T.X.

8 THE COURT: All right. Well, the recording was not
9 to start until the jury -- until opening arguments.

10 MEDIA: Yes, sir.

11 THE COURT: Were you not aware of that?

12 MEDIA: No, sir. I was told at 11:00 we were going
13 to be allowed to film after the recess.

14 THE COURT: Well, this is probably going to last the
15 rest of the day, and hopefully we'll get started in the
16 morning at 9:30 with opening statements, but there was
17 to be no recording of any -- and I don't expect to see
18 it on the news tonight either.

19 MEDIA: I will -- we will record over everything.

20 THE COURT: Thank you very much.

21 You may continue.

22 BY MS. CAMPBELL:

23 Q Thank you, Your Honor.

24 And did y'all then leave the residence?

25 A Yes.

1 Q And at any time, had Mr. Manning asked you to leave,
2 would you have left?

3 A We would have.

4 Q And did he ever ask y'all to leave?

5 A No.

6 Q During the time you were there, did he voluntarily
7 talk to you?

8 A Yes.

9 Q I'm going to turn your attention to the 29th of May.
10 Did you become aware that afternoon that the car with
11 Nikki McPhatter's -- the burned up car with Nikki
12 McPhatter's skeletal -- with what was thought to be her
13 remains was found?

14 A Yes, I was present.

15 Q Were you also aware that evening that an arrest
16 warrant was secured for the defendant, Theodore Manning?

17 A Yes, ma'am. I was involved with the discussion about
18 it.

19 Q That evening, did you also become aware of whether
20 or not Mr. Manning had been placed under arrest?

21 A Yes.

22 Q And who had arrested him?

23 A Sergeant McDaniels.

24 Q During the course of the evening, what were you doing
25 prior to going to headquarters?

1 A Obviously, there were several things to take care of
2 at the location where the body had been found. We
3 organized that, and I was also speaking with a codefendant
4 in this case, Ms. Kendra Goodman.

5 I completed that interaction with her, those
6 statements, and then as soon as possible returned to
7 headquarters to check on Theodore Manning.

8 Q And approximately what time was it when you got to
9 headquarters that night?

10 A I think probably nine, nine or so. I'm not sure
11 exactly, but after nine o'clock.

12 Q Okay. So at that point, was Mr. Manning
13 interviewed -- had already been -- or was being interviewed
14 while -- when you got there?

15 A When I walked up, obviously Sergeant McDaniels' door
16 was open. I just noticed that the defendant was speaking
17 with McDaniels and Investigator Holly Wagner.

18 I did not interrupt the interview. I stood by. I
19 was within earshot of the interview. I could hear what
20 was being said there, and I sat in an adjacent office and
21 just kind of listened in.

22 Q Okay. But you weren't actually in the room with him?

23 A No. I never made contact with them in the room. I
24 just sat there until they were completed and then spoke
25 with them.

1 Q And around one o'clock that evening, they were
2 completed -- taking the 11-page statement?

3 A That's correct.

4 Q At that point, did you confer with Sergeant
5 McDaniels?

6 A Yes. When he was finished, and only when he was
7 finished, he came out and spoke with me. He had, at that
8 point, been aware that I was there.

9 We went over the statement and talked about some things
10 that I felt were inconsistencies in their story, which
11 were not very plausible and decided to readdress those
12 with him.

13 Q And did you, in fact, make contact, you and Sergeant
14 McDaniels, with the defendant in Sergeant McDaniels'
15 office?

16 A Yes.

17 Q And were you aware at that point that he had been
18 advised of his rights?

19 A Yes, I was.

20 Q And specifically, did you remind him -- I believe it's
21 actually in the statement that he had been advised of his
22 rights?

23 A Yes.

24 Q And at that point, did you confront him? I'm going
25 to show you State's Exhibit No. 3. Is that a statement

1 you took that night?

2 A Yes, it is.

3 Q Did you ask him about what you thought were some
4 inconsistencies?

5 A Yes, I did.

6 Q And at that point, did he indicate whether or not he
7 wanted to give an additional statement correcting some
8 things?

9 A Yes, he did.

10 Q I'm going to show you State's Exhibit No. 3. Is that
11 a written statement that was then taken from the
12 defendant?

13 A Yes, it was.

14 Q And in the first page, I believe you even remind him
15 whether or not he understands his Miranda rights?

16 A I did.

17 Q And did he indicate whether or not he understood his
18 Miranda rights?

19 A Yes, he did.

20 Q At that point, did he then give another version of
21 what had taken place as far as Ms. McPhatter being shot?

22 A Yes, he did.

23 Q Were his words memorialized in State's Exhibit
24 number 3?

25 A Yes, they were.

1 Q And these were his words?

2 A Yes, they are.

3 Q At any time when you were talking to him about that
4 statement and everything, did you promise him anything
5 to make him talk to you?

6 A No, I did not.

7 Q Did you threaten him?

8 A No.

9 Q Coerce him?

10 A No.

11 Q Deprive him of any creature comforts?

12 A No.

13 Q Did you use any type of intimidation and/or force to
14 make him talk to you?

15 A Not at all.

16 Q At any time, did he ask for a lawyer?

17 A No, he did not.

18 Q At any time, did he tell you he didn't want to talk
19 to you anymore?

20 A No.

21 Q Did he appear to be coherent and understand what was
22 going on?

23 A Very much so.

24 Q Did he appear to be under the influence of any alcohol
25 or drugs that would inhibit his ability to understand?

1 A No.

2 Q Was he able to answer your questions without slurring
3 incoherently?

4 A Yes. All of his questions of the two of us made sense,
5 and he -- he acknowledged that he understood the things
6 we were saying, which allowed us to carry on with our
7 conversation. So he understood and was able to participate
8 in the conversation.

9 Q State's Exhibit number 3 memorializes, actually, his
10 words and his version of the final of events?

11 A Yes, they do.

12 Q And once that was reduced into a written form -- it's
13 actually a typewritten form -- was he then allowed to review
14 it?

15 A Yes, he was.

16 Q While you and Sergeant McDaniels were present?

17 A Yes.

18 Q And at that point, did he actually acknowledge it,
19 the statement?

20 A Yes. He's allowed to look at the statement, make any
21 changes, and then he acknowledges it when he tells us it
22 is correct.

23 If that's what he meant to say, then he's -- the
24 statement is printed. If any changes were made, it's
25 reprinted. It's given to him to sign. We signed and

1 acknowledged it.

2 Q All right. Okay. The signature is on the third
3 statement, the second written statement. Whose
4 signatures are those?

5 A The defendant, Mr. Manning's, my notary, and Sergeant
6 McDaniels.

7 Q Okay. And the words that are in there as far as what
8 happened to Nikki McPhatter, do those accurately reflect
9 the information he gave you?

10 A That is what he told us.

11 Q Once he had signed off on his statement after reviewing
12 it, did he then ask to speak to anyone?

13 A Yes. He asked to call his mother.

14 Q And was that after the statement was taken?

15 A It was.

16 Q And around 2:27 a.m. that morning, did y'all -- or
17 did one of you assist him in making a phone call?

18 A I was present with Sergeant McDaniels, using his desk
19 phone, helped him dial out with the number Mr. Manning
20 provided to Sergeant McDaniels. The call was made, I was
21 present, heard the conversation.

22 Q And that was a phone call to his mother?

23 A Yes.

24 Q And in that, you also were able to hear what he was
25 saying as far as his admission?

1 A Yes.

2 Q At any time when you were there that night, did he
3 ask for a lawyer?

4 A No, he did not.

5 Q At any time, did he tell you he didn't want to talk
6 anymore?

7 A No.

8 Q The entire time he was with you, including the phone
9 call, when he was talking to y'all and subsequently
10 talking to his mother, was he voluntarily speaking to
11 y'all?

12 A Yes.

13 Q And he didn't appear to be under the influence of any
14 kind of debilitating drugs, alcohol, or anything like
15 that?

16 A No, he was fine.

17 Q The person you interviewed, do you see him here in
18 the courtroom?

19 A Yes, ma'am.

20 Q Could you please identify him for the judge?

21 A He's the defendant, a black male, sitting between the
22 two attorneys towards the -- my left side of the State's
23 table wearing a brown sweater.

24 MS. CAMPBELL: Your Honor, may the record reflect he
25 has identified the defendant?

1 THE COURT: The record so reflects the witness has
2 identified the defendant.

3 Cross-examination?

4 MR. SHEALEY: May it please the Court.

5 CROSS-EXAMINATION:

6 BY MR. SHEALEY:

7 Q All right. Let me turn your attention directly to
8 May 29th. When you had -- you had spoken briefly with
9 him, you said it Captain Stan Smith, at his home, correct?
10 That was a 20-minutes encounter that was interrupted by
11 the alarm repair guy; right?

12 A You said you wanted to direct my --

13 Q Just get me past the background. That one brief
14 conversation took about 20 minutes, correct?

15 A Right.

16 Q Okay. On May 29th is when things started really to
17 develop in the case, right?

18 A That's correct.

19 Q This is when you were aware of his arrest on the
20 charge of murder, and you were informed that Shawn
21 McDaniels was taking him into custody.

22 A That's correct.

23 Q You were aware that he was driving him to Richland
24 County headquarters to be interviewed?

25 A That's right.

1 Q You would have been aware that investigator Wagner
2 was assisting in that first interview; right?

3 A Correct.

4 Q You weren't present for that initial Miranda that may
5 or may not have been given at that point. You didn't
6 witness any of that with Investigator McDaniels or
7 Investigator Wagner, right?

8 A I didn't witness it, but I saw the form. He signed
9 the form.

10 Q You weren't there at that time?

11 A No.

12 Q You didn't see who signed the form.

13 A I recognize the signature, but...

14 Q Not at that time you didn't.

15 A I did recognize the signatures. I wasn't present when
16 it was done, but I know it was done, but I mean, I know
17 it was done.

18 Q Okay. Fair enough. Okay. Now, when you get
19 there -- let's talk about this is in Shawn McDaniels'
20 office; right?

21 A That's correct.

22 Q You sat here, you testified that's a small office,
23 right?

24 A Yes, I guess. I mean, it's a typical office in an
25 office building.

1 Q Okay. And you were aware that Mr. Manning was
2 arrested at seven o'clock, right?

3 A Around that time, yes.

4 Q Okay. The time your involvement really gets into it,
5 we're looking about one, 1:30, right?

6 A Well, I was present before that, but as far as speaking
7 myself with the defendant, yes, it was later.

8 Q And you agreed that you were basically there -- you
9 had heard -- you had witnessed or seen what had been typed
10 about the first interview; correct?

11 A That's correct, and I did also hear it.

12 Q Okay. And you were now here to basically confront
13 Mr. Manning with what you thought were some different
14 facts about what happened here, right?

15 A Well, I wanted to speak with -- I was assigned to be
16 the case officer.

17 Q Okay.

18 A So obviously, it's my responsibility to know other
19 parts of the investigation. At that point, like I said,
20 there were certainly some things in the statement that
21 I did not feel were very likely. There were certain things
22 that didn't seem to --

23 Q Okay.

24 A -- gel.

25 Q And you heard Shawn McDaniels testify, right?

1 A Yes, I did.

2 Q And he testified that you confronted him with these
3 things? That's what you testified to.

4 A Well, I mean, that's what you do when you say somebody
5 is not telling the truth.

6 Q Right. You confronted him.

7 A That's correct.

8 Q Shawn McDaniels had already gotten some report then,
9 but you -- you know, addressing these things with him,
10 you're trained in techniques to interrogate, interview,
11 if you will, suspects, you know, criminals, correct?

12 A I have had some training.

13 Q Let's talk about that training. Shawn McDaniels has
14 been to four seminars. How many have you been to?

15 A I -- I don't know exactly the number. I know where
16 you're getting. I've had training throughout my
17 career.

18 Q It's not a bad thing.

19 A Basically all --

20 Q I'm just asking --

21 (Talking over each other.)

22 A I'm going to explain it to you if you'll give me a
23 chance. Throughout my career --

24 Q The number of training sessions.

25 MS. CAMPBELL: Objection, Your Honor. Let him

1 finish his answer.

2 THE COURT: Go ahead.

3 MS. CAMPBELL: Thank you.

4 THE WITNESS: Throughout my career, I received
5 training, obviously, as you will and any other
6 professional person, basic law enforcement training,
7 patrol tactics.

8 When I was promoted to an investigator, obviously
9 it's a basis that you receive training, basic detective
10 at the academy, maybe some advanced schools, which I've
11 been to several advanced homicide investigating schools.

12 Now, as it pertains specifically to interrogation
13 techniques, I have some knowledge of them, but I do not
14 find that they're very useful, so I do not employ those
15 tactics.

16 Q Okay. So --

17 A Now, something that I do mirror, some sort of
18 organized -- you know, course --

19 Q So you don't know the tactics that you learned?

20 MS. CAMPBELL: Objection, Your Honor. Let him
21 finish.

22 THE COURT: Finish.

23 BY MR. SHEALEY:

24 Q I said --

25 A Do I know the tactics that I've --

1 Q You said --

2 A I'm telling you I have learned some tactics --

3 Q Uh-huh.

4 A -- but I don't necessarily use those tactics, because

5 I don't find that they're very successful.

6 Q So you disregard some of the training that you

7 receive?

8 A Yes.

9 Q Okay. Now, there's a policy that we've heard about

10 not recording statements in Richland County by

11 investigators. Is that a policy you're aware of?

12 A Yes.

13 Q So that not something you would disregard, right?

14 A No. That's a part of our operation.

15 Q Okay. So you chose to follow that procedure; correct?

16 A Yes, sir.

17 Q And that's promulgated by Leon Lott?

18 A Yes. It's our policy. You know, I -- I believe it's

19 something that occurred. I was aware, even before today,

20 that it occurred before Mr. -- Sheriff Lott, but yes, we

21 continue it to this day.

22 Q Okay. So none of this was audio-taped or videotaped

23 at all, this conversation that you had with Mr. Manning?

24 A Our conversation was not.

25 Q Okay. And this is in Shawn McDaniels' office?

- 1 A Correct.
- 2 Q This office has a phone, right?
- 3 A It does.
- 4 Q Your office has a phone?
- 5 A Yes.
- 6 Q These phones are equipped are recording abilities?
- 7 A Yes.
- 8 Q They have a button that's a speaker phone, correct?
- 9 A That's correct.
- 10 Q So you could have pushed a speakerphone, and your
- 11 entire conversation would have been recorded, right?
- 12 A The -- during the interview?
- 13 Q Sure.
- 14 A I'm not sure. I've never attempted it.
- 15 Q Well, you testified at the end of the interview when
- 16 Shawn McDaniels called mom for Theo, that's -- that was
- 17 recorded, right?
- 18 A Yes.
- 19 Q So when you push -- when that phone is in use, it can
- 20 be recorded?
- 21 A I believe so.
- 22 Q So the speakerphone could have been used to record
- 23 all of these interviews?
- 24 A I guess that's what you're saying. I don't know.
- 25 I imagine it could.

1 Q I'm asking you. You imagine it could?
2 A I've never done it. I don't know.
3 Q It's not the policy to do that?
4 A No.
5 Q It's not a policy to use a \$5.00 hand-held audio
6 recorder?
7 A Correct.
8 Q Now, we've been down to Richland County recently, you
9 and I. We looked at some evidence. I'm not going to
10 belabor the point, but you have got the technology in your
11 building, correct?
12 A We've got some.
13 Q You've got a projector.
14 A Yes.
15 Q A projector machine.
16 A Yes.
17 Q In that room that you and I were in a couple weeks
18 ago, there's a laser printer.
19 A Yes.
20 Q This costs money.
21 A It cost some money, yes.
22 Q It's in there for a purpose.
23 A Yes.
24 Q Okay. But you don't audiotape anything in these
25 interviews. That's the policy?

1 A We don't have -- we're not provided with any
2 equipment to audiotape these.

3 Q All right. Let me -- let me turn your attention a
4 little bit more to your conversation with Mr. Manning.
5 It's a small office. You've stated that, right?

6 A Correct.

7 Q You're in there with Mr. -- with Shawn McDaniels
8 after Mr. Manning has already been with Shawn McDaniels
9 and Investigator Wagner, right?

10 A Right.

11 Q It's now 1:30; correct?

12 A About, yes.

13 Q You're wearing your pistol.

14 A I'm sure I was, yes.

15 Q You know you were, right?

16 A Well, I -- to be honest with you, I probably was, but
17 sometimes I didn't wear it.

18 Q Really. You were here for Shawn McDaniels'
19 testimony. He always wears his pistol.

20 A Yes.

21 Q So -- and McDaniels is in there wearing his pistol,
22 as well.

23 A Okay.

24 Q That is small room, right?

25 A Yes.

- 1 Q There's one table.
- 2 A Yes.
- 3 Q And Mr. Manning is sitting there.
- 4 A Yes.
- 5 Q And y'all will be sitting there with him.
- 6 A Correct.
- 7 Q And you're confronting him with these facts.
- 8 A Yes.
- 9 Q Okay. Now, he asked for his lawyer; correct?
- 10 A No.
- 11 Q He asked for his attorney, Bob Masella, isn't that
- 12 true?
- 13 A That is not true.
- 14 Q He asked for a phone call, didn't he?
- 15 A To his mother.
- 16 Q Okay. Now, he told you, and you were aware because
- 17 you got briefed by Shawn McDaniels, that he was on some
- 18 pain medication, right?
- 19 A I don't recall being told he was on pain medication.
- 20 He didn't appear to be under the influence of any drugs
- 21 or alcohol. His conversation with me was clear and
- 22 concise, to the point. He was coherent. Everything
- 23 seemed okay.
- 24 Q You weren't aware that he was on medication?
- 25 A No.

1 Q So Shawn McDaniels didn't tell you that?

2 A It didn't come up.

3 Q He didn't tell you what he learned about Theo Manning
4 from Theo Manning?

5 A That didn't come up with me. That's what I'm telling
6 you.

7 MR. SHEALEY: Okay. Beg the Court's indulgence.

8 (Pause)

9 I don't have anything further, Judge.

10 THE COURT: Any redirect?

11 MS. CAMPBELL: Beg the Court's indulgence.

12 (Pause)

13 REDIRECT EXAMINATION:

14 BY MS. CAMPBELL:

15 Q Just to clarify a couple of things. During the time
16 period when you were listening, and when you were talking
17 to him, you never heard him ask for any lawyer?

18 A Did not.

19 Q And, in fact, the only time he did request to talk
20 to anyone, y'all made sure he was able to talk to his
21 mother.

22 A That's correct.

23 Q And that happened around 2:27 a.m.?

24 A Yes.

25 Q At no time prior to that did he ever ask for a lawyer

1 or tell you he didn't want to talk anymore?

2 A That's correct.

3 Q And as far as him being coherent, he was able to
4 respond appropriately to the questions.

5 A Yes, he was.

6 Q And, in fact, he was the one that was able to give
7 you all the information, the stories that were reflected
8 in the statements?

9 A Those were his words.

10 MS. CAMPBELL: That's all.

11 THE COURT: Anything further?

12 MR. SHEALEY: No, Your Honor.

13 THE COURT: This witness can come down.

14 (There was no response).

15 Please come down.

16 Next witness?

17 MS. CAMPBELL: That's all we have at this time, Your
18 Honor.

19 THE COURT: All right. Does the defense have any
20 witnesses?

21 MR. SHEALEY: Yes, Your Honor, we do.

22 MR. MAY: The defense calls Theo Manning.

23 THE COURT: Come around Mr. Manning.

24 THEODORE MANNING,

25 after being duly sworn, testified as follows:

1 THE CLERK: Have a seat in the witness stand, please.
2 Give the court reporter your name.

3 THE BAILIFF: Watch your step.

4 MR. MAY: Your Honor, just for the record to be clear,
5 we're calling him solely for the purpose of voluntariness
6 of the statements.

7 THE COURT: I understand.

8 MR. MAY: All right.

9 DIRECT EXAMINATION:

10 BY MR. MAY:

11 Q All right. Theo, we're just going to talk about the
12 times when the police came to your house, okay. That's
13 what we're going to talk about.

14 A Yes, sir.

15 Q I know you're nervous, but you're going to have to
16 speak up so that the judge can hear you. All right. Turn
17 your attention to May 22nd. Can you tell us what occurred
18 that was out of the ordinary?

19 A On May 22nd, I got off work at about 7:30 that
20 morning. When I got to my house, about maybe 15, 30 minutes
21 after that, two Richland County Sheriff -- well, officers
22 showed up at my house. They told me that they needed to
23 talk to me. It was about Nikki McPhatter.

24 Q Okay. Do you see those two men in this room?

25 A Yes, I do.

1 Q And who are they?

2 A One is Isenhoward.

3 Q Okay.

4 A And the other one is the...

5 Q On the left, Stan Smith, right?

6 A I believe that's...

7 Q Okay.

8 MR. GIESE: Your Honor, I apologize. I can't hear
9 him. I don't know if it's my hearing, or if he could speak
10 up.

11 THE COURT: Okay. Mr. May, come up a little closer.

12 MR. MAY: All right.

13 THE COURT: Move that mic.

14 MR. MAY: You're hard to understand in the first
15 place. We have a lot of old ears in here, including mine.

16 THE WITNESS: Okay.

17 BY MR. MAY:

18 Q All right. So these two investigators from the
19 sheriff's department came to your house. Now, what did
20 they say?

21 A They asked to come in. They -- when they got in the
22 house, they told me they would like to talk to me about
23 Nikki McPhatter. They said that they were aware that she
24 was missing and they would like to know if I had any
25 information about her.

1 Q All right. Now, were -- did these gentlemen say, "You
2 don't have to talk to us"?

3 A No.

4 Q Did they ever Mirandize you?

5 A No.

6 Q So did you think you had to talk to them?

7 A Yes, sir.

8 Q Okay. And you talked to them for how long?

9 A It was about maybe 15 minutes.

10 Q All right. Were they wearing guns?

11 A Yes, sir.

12 Q Now, that was just about a 15-minute conversation?

13 A Yes, sir.

14 Q Did you have an occasion any time later on May 22nd
15 to have something out of the ordinary happen?

16 A Yes, sir. At -- it was about 6:30 that night, the
17 Mecklenburg Police Department showed up to my house.
18 There was also some Richland County Sheriff's Department,
19 but two other detectives from Mecklenburg rang my
20 doorbell.

21 Q All right.

22 A When I opened the door, one of them grabbed my arm
23 and said that they had a search warrant for my house.

24 Q Okay. So they said they had a search warrant. Did
25 they ask you to consent?

1 A No.

2 Q All right. So they said they had a search warrant.
3 Where did they take you? What happened from that point
4 on?

5 A Once they grabbed my arm, they ushered me out the
6 doorway. I was on the front porch. I had on some
7 basketball shorts and a tank top.

8 Q All right.

9 A Later I asked -- it was few minutes later I asked
10 about getting some clothes. One of the detectives went
11 in the house and retrieved me a pair of my pants. When
12 she brought them back down, I was able to get in touch
13 with an uncle, and I also got in touch with my fiancée
14 at the time, Candace Jackson.

15 Q All right. So they would not allow you to go back
16 in your own house?

17 A No, sir.

18 Q Okay. Did they -- can you tell where they were in
19 your house when they were going through your home?

20 A I was outside on the front porch.

21 Q Were there people around you?

22 A Yes, sir.

23 Q Did you feel at that moment that you could -- were
24 free to leave?

25 A No, sir. When I asked about going somewhere, they

1 told me that I couldn't because they also had a search
2 warrant that included my vehicle.

3 Q Okay. So you didn't feel free to leave at that time?

4 A No, sir.

5 Q Was there always people around you, or were you by
6 yourself?

7 A It was always someone around me. Once my uncle
8 arrived, they told me and my uncle that they needed to
9 interrogate -- well, question me further.

10 Q They told you that they needed to question you
11 further. Did you feel at that time that you could just
12 leave?

13 A No, sir.

14 Q So where did they -- did they just interrogate you
15 on your front lawn?

16 A No, sir. They told me they wanted me to follow them
17 to the little sheriff's subdivision (sic).

18 Q Okay. So the sheriff's substation is where they took
19 you?

20 A Yes, sir.

21 Q All right. Now, can you please tell us who was at
22 the sheriff's substation?

23 A It was two Mecklenburg detectives, and there was one
24 Richland County detective that waited outside.

25 Q Okay. So when they're interrogating you, can you

1 talk to me -- can you tell me about the room that you were
2 in?

3 A It was like a conference room. It was just me, a big
4 table and the two detectives from Mecklenburg.

5 Q Where were they sitting in comparison to you?

6 A Like one on each corner.

7 Q One on each corner. Now, did they say, "Hey" -- you
8 went there with whom?

9 A I went there with my Uncle Randy and my fiancée,
10 Candace.

11 Q Did these two Charlotte/Mecklenburg police officers
12 say that they could come into the interview with you?

13 A No. They told them to wait out front.

14 Q Wait out front. And at this time, did they ever read
15 you Miranda?

16 A No, sir.

17 Q Did you feel like you could say no to them?

18 A No, sir.

19 Q All right. How long did they talk to you for?

20 A About an hour-and-a-half, maybe two hours.

21 Q An hour-and-a-half, two hours. And how did it end?

22 A Most of the conversation, they was going back and
23 forth through texts messages that he was receiving. He
24 was asking me questions from the texts. They also was
25 asking me questions like, "Did you kill Nikki?" After

1 that, they told me that I could leave.

2 Q They told you could leave after you talked to them?

3 A Yes.

4 Q But they did ask you, and you remember them asking,
5 "Did you kill Nikki?"

6 A Yes.

7 Q Now, did you see if they were wearing anything on
8 their hips?

9 A They both had their weapons on them.

10 Q They had their weapons on them. Now, did you have
11 a weapon at this time?

12 A No, sir.

13 Q On you?

14 A No, sir.

15 Q Okay. Turning your attention now to the day of
16 May 29th, do you remember that day?

17 A Yes, sir.

18 Q All right. Can you tell me what was unusual -- or
19 how the day started getting unusual?

20 A Around 6:30 that afternoon, I had just got through
21 taking some medicine for my back.

22 Q What do you take for your back?

23 A Muscles relaxers and pain pills.

24 Q Okay. Do they cause -- do they cause you to not think
25 normally, get tired or anything?

1 A Tired, kind of sluggish.

2 Q Okay. So at 6:30, what happened?

3 A Around 6:30, I heard a loud thump at the door. Well,
4 at first I thought it was maybe my car. I had a dog in
5 the garage. I thought it might have knocked the stands
6 down from under the car.

7 Q Okay. So you had your car jacked up?

8 A Yes, sir.

9 Q Okay.

10 A I went and checked on my car. It was fine, so I went
11 to the front door. I was standing maybe three feet away
12 from the front door when it busted open. I immediately
13 threw my hands up in the air. All I saw was weapons
14 pointed at me.

15 Q All right. So I imagine that was scary. Did you ever
16 hear a doorbell or anybody knocking on the door --

17 A No, sir.

18 Q -- trying to announce themselves?

19 A No, sir.

20 Q So it's -- so just trying to get your clarification
21 of your testimony, you hear a thud, and all of the sudden
22 the door gets kicked open?

23 A Yes, sir.

24 Q All right. How many people do you think come into
25 your house?

1 A When I looked, I could see it was at least seven
2 people. There was also one person from Mecklenburg with
3 the Richland County department.

4 Q Okay. And you said all you could see is guns.
5 What -- what did you do? You put your hands up and then
6 what happened?

7 A I put my hands up. They told me -- at the time, I
8 didn't know who it was, but later I found out it was Sergeant
9 McDaniels. He told me to get down on the floor.

10 Q Did you?

11 A I was getting down on the floor. They grabbed me by
12 my tank top, yanking me down on the floor. After I was
13 down on the floor, he started to handcuff me.

14 He dropped his knee in my lower back and finished
15 handcuffing me. While he was doing this, he told me that
16 they got me. They know about the car, and he said he knew
17 about the church and the dirt road.

18 At this time, he got up and he was squatting in front
19 of me, and that's when he took his firearm and pressed
20 it up against my face. He said, "It's all over now."

21 Q Were you scared?

22 A Yes, sir.

23 Q Why were you scared?

24 A Because I had a firearm placed up against my face,
25 and these were supposed to be the police, and they were

1 using force on me.

2 Q Okay. What were you wearing at this time?

3 A At this time, I had on a pair of boxers and a tank
4 top.

5 Q All right. So you're on the ground. What happens?
6 How do you get up?

7 A He eventually helps me up, and he talks to a couple
8 of the other deputy sheriffs that was in the house. Then
9 he ushered me out of the house and had me stand beside
10 his vehicle.

11 Q Okay. What happened outside?

12 A Outside he talked to a couple more of the deputy
13 sheriffs, and he -- then he told me -- he helped me up
14 inside his truck.

15 Q All right. What happened inside the truck?

16 A Inside the truck, he -- he told me to wait a second.
17 He talked to a few more deputy sheriffs. He was on his
18 cellphone. Then he went around. He got in on the driver's
19 side and he cranked up the vehicle. He was still talking
20 on the phone. Maybe a minute went by and then the -- another
21 detective got in the back behind him.

22 Q Do you know who that was?

23 A It was Detective Holly, Holly Wagner.

24 Q Investigator Wagner was in the backseat?

25 A Yes, sir.

1 Q All right. What happened then?

2 A Then that's when he started reading me my rights and
3 telling me that -- he basically just read me my rights
4 at that point.

5 Q What did you do?

6 A I didn't say anything.

7 Q You didn't say anything. So -- just so that we can
8 understand, you were sitting in the front seat of his car?

9 A Yes, sir.

10 Q You were handcuffed?

11 A Yes, sir.

12 Q Okay. So you're not saying anything, and what is
13 Investigator -- or Sergeant McDaniels and Investigator
14 Wagner doing?

15 A He was continuing to talk on his cell phone. He
16 pulled out of my yard and headed up Bluff Road to the post
17 office.

18 Q Okay.

19 A On the way to the post office, he was telling me that
20 I should just tell him it was an accident. Accidents could
21 be explained. Just tell me it was an accident, and he
22 said that he had a friend that had an accident where his
23 shotgun went off and it shot him.

24 Q Okay. You talking to him at this point?

25 A No, sir.

1 Q All right. So do you talk on the drive from your house
2 to the post office?

3 A No, sir.

4 Q Okay. What happens at the post office?

5 A At the post office, he tells me to say something before
6 Officer Wagner gets out of the vehicle. At this time,
7 I still didn't say anything.

8 Detective -- Officer Wagner got out of the vehicle.
9 She made a phone call. He told me, "Look, you just -- just
10 talk to me. You know, it will look much better for you.
11 Kendra is at the sheriff's department. She is painting
12 a real bad picture for you. You need to talk to me."

13 Q Okay. What did you do?

14 A I told him I wanted my lawyer.

15 Q Okay. Now -- well, let's pause the story real quick.
16 Had you been talking to a lawyer?

17 A I had been talking to Bob Masella.

18 Q Bob Masella?

19 A Yes, sir.

20 Q How did -- tell me about that. Why were you talking
21 to an attorney?

22 A Because at the time, they -- my supervisor had told
23 me that the situation looked like they was planning on
24 arresting me for something, and I wanted to protect my
25 best interest.

1 Q Okay. So you went and met with Bob how many times?

2 A I met twice.

3 Q You met Bob twice, and was that at his office or
4 where?

5 A His office.

6 Q All right. Did he give you any advice as far as what
7 to do if they ever arrested you?

8 A He told me to call him and don't say anything to them.

9 Q All right. So you met with Bob twice?

10 A Yes, sir.

11 Q Did you take Mr. Masella's advice?

12 A I was taking his advice until everyone named names.
13 I told him that -- after I had told him I wanted my lawyer,
14 he told me that, "You don't need a lawyer. You just need
15 to talk to me."

16 Q Okay.

17 A And I was like, "Well, I need to make a phone call."
18 He told me no. He had two cell phones with him, both on
19 his Blackberries. He said one of them was dead. The
20 other one he said that he needed to use because he was
21 making phone calls.

22 Q Okay.

23 A Then he was like, "When we get to the sheriff's
24 department, you can make a phone call."

25 Q All right. Who would you have called with that phone

1 call?

2 A I would have called Bob.

3 Q Masella?

4 A Yes, sir.

5 Q So Sergeant McDaniels said you couldn't use a phone.

6 So did he start questioning you?

7 A He -- he was asking me roundabout questions, and then

8 he started telling me -- I guess he started telling me

9 what he thought might have happened, his idea. By the

10 time we got to the sheriff's department, I had went along

11 with what he had said, pretty much.

12 Q You were just agreeing what he said. Well, I mean,

13 the question that the judge is going to want to know is

14 why didn't you say, "Hey, I'm not going to talk to you.

15 I have already asked for a lawyer. I'm not going to talk

16 to you anymore"?

17 A He said I didn't need a lawyer.

18 Q Okay. Let's talk about your background a little

19 bit. After high school, what did you do?

20 A I went to the military.

21 Q You went to the military. What branch?

22 A Air Force.

23 Q For how long?

24 A For about three years.

25 Q So you were an enlisted person?

1 A Yes, sir.

2 Q As an enlisted person, did you take orders?

3 A Yes, sir.

4 Q So is it fair to say you were following orders from
5 Sergeant McDaniels?

6 A Yes, sir.

7 Q Now, on that drive to the sheriff's department -- it's
8 about 28 miles from your house to the sheriff's department.
9 Can you tell us how were you dressed at the time?

10 A I was still in my boxers and my tank top that was
11 ripped.

12 Q That was ripped. Was that ever fixed?

13 A He tried to tie it up before I left the sheriff's
14 department to go to the restroom.

15 Q All right. How did you ever get any pants?

16 A They gave me pants, and they also tried to find me
17 a pair of flip flops.

18 Q Why did you need flip flops?

19 A I was barefoot.

20 Q You were barefoot. All right. On that ride there,
21 per your testimony, Sergeant McDaniels had just put a gun
22 to your face; is that correct?

23 A Yes, sir.

24 Q Can you tell me your feelings towards him at the time?
25 Were you scared?

1 A Yes, sir.

2 Q Just explain that a little bit.

3 A I was -- I was actually terrified.

4 Q Why were you terrified?

5 A He -- he had just put a gun to my face, and now he
6 was -- it was like he was trying to be my friend --

7 Q Okay.

8 A -- at the same time. He was playing -- he was asking
9 me did I like music. He was playing music that he said
10 he had mixed when he was back in college.

11 Q Now, turn your attention to when you actually get to
12 the sheriff's department. Now, you just testified that
13 you started going along with what he was saying.

14 A Yes, sir.

15 Q Correct? Can you tell us, did you ever feel like you
16 could stop the questioning?

17 A No, sir.

18 Q And why not?

19 A It was -- I was in the office with them. I was
20 handcuffed. I was sitting there waiting for a pair of
21 pants, and it was me, him, and it's just -- the whole time
22 I just didn't feel like I was able to stop talking.

23 MR. MAY: Okay. Beg the Court's indulgence, Your
24 Honor.

25 (Pause)

1 Thank you, Your Honor. No further questions at this
2 time.

3 THE COURT: Cross-examination?

4 MR. GIESE: Thank you, Your Honor.

5 CROSS-EXAMINATION:

6 BY MR. GIESE:

7 Q Mr. Manning, I hand you what's been marked State's
8 Exhibit Number one. Do you recognize that?

9 A Yes, sir. It's the interrogation sheet that
10 Mr. McDaniels told me to sign.

11 Q - And, in fact -- may I approach him, Your Honor?

12 THE COURT: Sure.

13 BY MR. GIESE:

14 Q And, in fact, he read you your rights; is that correct?

15 A He read them to me, but when he gave me the sheet,
16 all he did was tell me to sign it.

17 Q But he read you those rights, didn't he?

18 A Yes, sir.

19 Q Yes, sir. And, in fact, he read you, "Before we ask
20 you any questions, you must understand your rights." He
21 read you that, didn't he?

22 A Yes, sir.

23 Q And he said, "You have the right to remain silent."
24 Do you remember him saying that?

25 A He told me I had the right to remain silent. Back

1 when I was trying to keep that right, he told me that I
2 just needed to talk to him.

3 Q "Anything you say can be used against you in court."
4 He read you that; correct?

5 A Yes. He read me that, and he told me that it would
6 be better if I talked to him.

7 Q He also read, "You have the right to talk to a lawyer
8 for advice before you ask any questions and to have a lawyer
9 with you during any questioning." He read that to you,
10 too, didn't he?

11 A Yeah. When I asked for a lawyer, he told me I didn't
12 need a lawyer, just to talk to them.

13 Q But they let you call your mother, didn't they?

14 A At the end of the second interrogation, he told me
15 that I needed to call my mom and tell her what I did.

16 Q So you didn't request to call your mother?

17 A Not at that time, I didn't request to call my mother,
18 sir.

19 Q So the thing about your mother, calling your mother,
20 was their idea?

21 A He told me I needed to go ahead and call her.

22 Q So it was their idea --

23 A Yes.

24 Q -- is what you're saying? And then they also read
25 you, "If you decide to answer questions now without a

1 lawyer present, you still have the right to stop answering
2 at any time. You also have the right to stop answering
3 at any time until you talk to a lawyer." They read you
4 that; correct?

5 A He read me that.

6 Q And you signed it?

7 A He told me to sign it.

8 Q And then it says, "You waive your rights. I have read
9 this statement of my rights and understand what my rights
10 are. I am willing to talk and answer questions. I
11 understand and know what I am doing. No promise has been
12 made to me, no pressure or coercion of any kind has been
13 used against me." You signed that, too, didn't you?

14 A He told me just to sign it.

15 Q But they read you that, and it specifically says, "No
16 pressure or coercion of any kind has been used against
17 me," and you signed it?

18 A That's because he told me to sign it.

19 Q It's your signature?

20 A That's my signature.

21 Q And then they took two written statements from you;
22 correct?

23 A Yes.

24 Q Now, let me ask you, you said earlier that you had
25 taken some kind of medication?

1 A Yes.

2 Q What kind?

3 A That's correct.

4 Q What kind of pain medication was it?

5 A Flexeril and some (unintelligible).

6 THE COURT REPORTER: I'm sorry, I didn't hear the
7 answer.

8 THE WITNESS: Flexeril.

9 THE COURT REPORTER: And what did you say?

10 THE WITNESS: Motrin 800.

11 THE COURT REPORTER: Thank you.

12 BY MR. GIESE:

13 Q Motrin, is that like aspirin?

14 A It's a stronger version of aspirin, yes, sir.

15 Q All right. And you took this knowing that you're
16 going to work that day at Westinghouse; correct?

17 A I had worked my shift that night and a shift -- half
18 of another shift. I got off at about 1:30 that afternoon,
19 and yes, I did take it because my back was hurting.

20 Q And you were going to work the next night, right, that
21 night?

22 A I got to work at eleven o'clock that night. I should
23 have been all right.

24 Q So at eleven o'clock at night, you would have been
25 all right, you just said?

1 A I should have been, yes.

2 Q And this statement that was taken from you, a written
3 statement, was at 20:44 hours?

4 A That's 8:40.

5 Q Right. And then at 1:38 hours the next morning;
6 correct?

7 A Yes, I guess.

8 Q So it would have worn off by then?

9 A Yes, sir.

10 Q Now, specifically on State's Exhibit number 2, I want
11 you to take a look at that. Look at every page and see
12 whether or not your signature is affixed on every single
13 page for me, please.

14 (Pause)

15 A My signature is on every page.

16 Q And this is the statement that you gave to law
17 enforcement at 20:44 hours at the Richland County
18 Sheriff's Department; correct?

19 A That is correct.

20 Q And prior to your signing every page, you read
21 the -- you read the statement?

22 A No.

23 Q Hmm.

24 A But when I signed the pages, it was after Sergeant
25 McDaniels signed it, and after I signed it, I passed it

1 off to Mr. Isenhoward, Sergeant Isenhoward.

2 Q But you -- they gave you each page after going over
3 this with you, and you signed it?

4 A I signed it, yes.

5 Q Did they go over it with you?

6 A I don't remember them going over it with me right
7 after he printed it off, no.

8 Q Well -- and right before -- right before your first
9 signature, it says on State's Exhibit number 2, "I have
10 made the foregoing statement freely and voluntarily
11 without fear, threat, promise or reward or hope of reward
12 of any kind," and you signed it; correct?

13 A Yes. I signed it, but I mean --

14 Q And then right underneath that -- I didn't mean to
15 interrupt you.

16 A It says without fear, but I was afraid the whole time.

17 Q But it says here -- you signed it underneath where
18 it says without fear. Why didn't you cross "without fear"
19 off?

20 A I didn't know I could.

21 Q Then it says, "This is to certify that I have read
22 or have read to me the foregoing statement consisting of
23 11 pages, and a true copy has been given to me this 29th
24 day of May 2009." That's right above your signature again,
25 isn't it?

- 1 A That was above my signature, but I didn't read that.
- 2 Q Did they read to it you?
- 3 A The statement?
- 4 Q Correct.
- 5 A I'm not sure.
- 6 Q You signed where it says they either read it to you
- 7 or you read it; correct?
- 8 A I'm not sure that I read that statement, no.
- 9 Q And, in fact, you signed it underneath it on all 11
- 10 pages; correct?
- 11 A Yes, sir; yes, sir.
- 12 Q And there again, on the top of the first page, it
- 13 talks about your rights again, correct? About how you
- 14 have the right to remain silent. We won't go over them
- 15 again, but that's part of what you signed, too, isn't it?
- 16 Do you want to take a look?
- 17 A I never read it.
- 18 Q But you do understand that's not what your signature
- 19 says.
- 20 A I understand that's not what my signature says.
- 21 Q Now, State's Exhibit number 3 was a statement given
- 22 to Sergeant McDaniels and Sergeant Isenhoward at 1:38 on
- 23 May 30th. Do you recognize that?
- 24 A Yes, I do.
- 25 Q What is it?

1 A It's my signature on a statement that Sergeant
2 McDaniels typed up and Sergeant Isenhoward worded,
3 pretty much.

4 Q And, in fact, Sergeant Isenhoward asked you
5 specifically on this statement prior to your signature,
6 "Are you doing this of your own free will and accord?"
7 You answered yes, correct?

8 A I answered yes, but when I was giving my statement,
9 it was reworded in some instances.

10 Q Which statement?

11 A Both of them, really, but --

12 Q I thought --

13 A I read --

14 Q -- you didn't read it? I thought you said you didn't
15 read --

16 A I read --

17 Q -- State's Exhibit number 2.

18 A I've read it since I've been locked up.

19 Q "Have you properly been advised of your Miranda
20 rights?" And your answer was?

21 A Yes.

22 Q Because you had, because they had advised you of your
23 Miranda rights; correct?

24 A They advised me of my Miranda rights, and then when
25 I did try to ask for a lawyer, he told me I didn't need

1 one. I just needed to talk to him.

2 Q But yet you signed your rights away. You stated,
3 again, on State's Exhibit number 3, "I have made the
4 foregoing statement freely and voluntarily without fear
5 or threat, promise of reward or hope of reward of any
6 kind," and you signed your name again, correct, all three
7 pages?

8 A Correct.

9 Q After being fully advised of your Miranda rights;
10 correct?

11 A Correct.

12 Q And at 1:38 that night, or that early morning, under
13 your own testimony, the drugs that you had taken would
14 have been gone from your system; correct?

15 A Correct.

16 Q Now, I want to go back, if we could. And the -- your
17 attorneys didn't ask you these questions about the first
18 statements, but I'd like to go over them with you, if we
19 could, very briefly. May 21st, 2009, at 22:03, you had
20 a telephone call from Detective Martin. Do you remember
21 that?

22 A I had a phone call from Detective Martin. He left
23 a message, and I called him back.

24 Q And that was -- you remember it because that was your
25 first contact with any law enforcement in this case;

1 correct?

2 A Correct.

3 Q And that was fifteen days after Nikki went missing;
4 correct?

5 A Correct.

6 Q All right. And when you talked to him on the phone,
7 you clearly was not -- well, you weren't in custody;
8 correct?

9 A Correct.

10 Q All right. At that point, you knew you didn't have
11 to talk to him because you weren't in custody. You could
12 have hung up on them, right?

13 A No, I didn't get that feeling.

14 Q But in that conversation, you told Martin that you
15 had not seen her in two weeks and you agreed to meet with
16 Martin at the post office on Bluff Road; correct?

17 A Yes.

18 MR. MAY: Objection.

19 THE COURT: Sustained.

20 MR. GIESE: So -- well, Your Honor, I was getting to
21 the next point. So you voluntarily -- I was talking about
22 the post office on Bluff Road --

23 THE COURT: Let's just -- let's just clear the air.
24 The issue here is voluntariness.

25 MR. GIESE: Yes, I understand.

1 THE COURT: Not what he said.

2 MR. GIESE: And I have stayed away from that.

3 THE COURT: All right.

4 MR. GIESE: But this -- I think this part, he agrees
5 to meet Martin at the post office on Bluff Road. It goes
6 to voluntariness of that statement.

7 THE COURT: I understand that, but whatever was said
8 is not admissible in this hearing.

9 MR. GIESE: Correct, I understand.

10 THE COURT: All right. Proceed.

11 BY MR. GIESE:

12 Q You agreed to meet Martin at the post office on Bluff
13 Road and you voluntarily --

14 MR. MAY: Your Honor, again, we'll stipulate --

15 MR. GIESE: It goes to voluntariness.

16 MR. MAY: We will stipulate that he agreed to meet
17 with him, but not the actual substance of the statement.

18 THE COURT: Well, I just cautioned the Solicitor that
19 he cannot go into the substance of the statement.

20 Overruled.

21 BY MR. GIESE:

22 Q So you voluntarily went to the post office on Bluff
23 Road, and you met with Detective Martin and Detective
24 Fitch from the Charlotte Metro Police Department.

25 A No, sir, not voluntarily. I went and I did meet with

1 them, but it wasn't because I wanted to.

2 Q I'm missing something here, because you drove yourself,
3 didn't you?

4 A I drove myself. They -- when I had talked to Detective
5 Martin, he had told me that they really needed to talk
6 to me. They had to see me. He wanted to meet with me that
7 night. I told him I had to go to work. He said that it
8 would be better if they met with me that night.

9 Q Did you or did you not voluntarily drive yourself,
10 by yourself, to the post office at Bluff Road? It's a
11 simple question.

12 A No, not voluntarily, because I did not want to go and
13 meet with him.

14 Q So you're in your car. You could have driven anywhere
15 in the world. You could have driven to go see Bob Masella.
16 You could have driven to go see anybody.

17 You could have gone to the Richland County Sheriff's
18 Department and say, "I don't want to voluntarily go down
19 here." You could have gone to anybody, and you're saying
20 that you didn't voluntarily drive down to Bluff Road, to
21 the post office?

22 A Not to meet with them, no.

23 Q And when you met with them, you're saying now that
24 whatever you said to them, you didn't feel like you could
25 leave?

1 A No, sir. I didn't feel like I could leave.

2 Q You drove yourself voluntarily down there, got in the
3 car with them, correct, their car?

4 A I got in the car with him, but it was because they
5 said it would be better if they interrogated me in the
6 car, less noise. While I was in the car with them, Detective
7 Wagner was talking to Candace Jackson.

8 Q No, I think you're -- we're talking about May 21st.

9 A Yes.

10 Q You're saying this detective was involved?

11 A She was there.

12 Q Now, on the 21st, you made a statement at that time.
13 They asked you questions and you left.

14 A They asked me questions. They told me they would be
15 in contact with me.

16 Q But you left.

17 A Yes, I left. I had to go to work.

18 Q And you worked that night?

19 A I was a couple of hours late, but yes, I did work.

20 Q Now, to May 22nd -- so it's your testimony that this
21 whole time you talked to the officers from the
22 Charlotte Metro Police Department, you didn't feel like
23 you were free to leave?

24 A No, I did not.

25 Q Now, specifically May 22nd, when you talked to Stan

1 Smith and Kevin Isenhoward at 8047 Bluff Road, you were
2 in your own home?

3 A Yes, sir, I was.

4 Q You had a telephone there?

5 A No, sir, I did not. I had my cell phone with me.

6 Q Okay.

7 A I was trying to find --

8 Q You had your cell phone telephone there. You could
9 have called anywhere in the world at that point; correct?

10 A Yes, sir.

11 Q And it's your testimony that you did not feel like
12 you were free to leave?

13 A No, sir.

14 Q You were trapped there.

15 A Yes, sir.

16 Q And they just happened to let you go again, too, right?

17 A After they said that they would finish, they left.

18 Q And at that point, you felt free to go?

19 A At that point, yes, sir.

20 Q Prior to that in your own home with a cell phone, you
21 felt like you were in custody. Is that your testimony?

22 A At my own home with two detectives in my presence,
23 both of them carrying weapons, yes, sir.

24 Q All right. Now, you also testified that on May 22nd,
25 2009, at Region One -- do you remember when you went to

1 Region One?

2 A Yes, sir.

3 Q With the Charlotte Police Department, you met with
4 them, drove yourself down?

5 A Which one?

6 Q Started at your house, they came by your house. You
7 gave consent to search the house?

8 A No, I did not.

9 Q But then you had -- later on -- I'm not going to get
10 into that, but later on, you met them at Region One
11 headquarters.

12 A Oh, that's--

13 Q Recorded the statement, remember?

14 A That's the sheriff's station?

15 Q Yeah.

16 A Okay, yes, sir.

17 Q And there again, the police, Charlotte Police
18 Department, they didn't throw you in the car and say,
19 "You've got to come down with us", did they?

20 A Actually, they gave me a choice: Either I could ride
21 with them or I could ride with my uncle and follow them.

22 Q And you voluntarily rode with your uncle down there;
23 correct?

24 A No, sir, it wasn't voluntarily. I didn't feel like
25 I had much of a choice in the matter.

1 Q Well, let me ask you this -- and Your Honor, speaking
2 about the voluntariness at this time, so I'm going to have
3 to go into part of the statement when he asked whether
4 he was in there voluntarily or not.

5 THE COURT: That's the only issue?

6 MR. GIESE: Only issue.

7 THE COURT: And you --

8 MS. PRINGLE: Can we just --

9 MR. MAY: What page?

10 MR. GIESE: Page one.

11 MR. MAY: Hold on one second.

12 THE COURT: Approach the bench.

13 (WHEREUPON, there was a bench conference.)

14 THE COURT: You may proceed.

15 MR. GIESE: Thank you.

16 BY MR. GIESE:

17 Q Just very briefly on that statement, at the beginning,
18 Detective Hopkins asked you -- she is talking to you
19 right at the beginning of conversation, it's on tape.

20 A It was either her the other detective --

21 Q So it's --

22 (Talking over each other.)

23 THE COURT REPORTER: I'm sorry, it was either her
24 or --

25 (Talking over each other.)

1 MR. GIESE: -- or the --

2 THE WITNESS: The other detective, yes.

3 THE COURT REPORTER: I'm sorry, and what was your
4 question?

5 BY MR. GIESE:

6 Q My question is: Do you remember talking to them?

7 A Yes, sir.

8 Q Okay. And it's on tape?

9 A Yes, sir.

10 Q And do you remember them asking you: Detective
11 Hopkins, "We made you aware of the fact that you weren't
12 under arrest. You were free to go. You didn't have to
13 come and speak with us, and that there's no outstanding
14 warrant, and you understand all of that; is that correct?"
15 And you said yes.

16 MR. MAY: Objection, Your Honor.

17 MR. GIESE: Voluntariness.

18 MR. MAY: It goes to that his answer is not part of
19 it. It's starting to get into the substance of the
20 statement.

21 THE COURT: Overruled.

22 MR. GIESE: Voluntariness.

23 THE COURT: Overruled, go ahead.

24 BY MR. GIESE:

25 Q Thank you.

1 Just one last little area: When you called your
2 mother --

3 A Okay.

4 Q -- do you remember that?

5 A You're talking about at the sheriff's department?

6 Q Yeah.

7 A Yes, sir.

8 Q You saw on the phones that it said "All phone calls
9 recorded", didn't you?

10 A No, sir, I did not.

11 Q You didn't see that big sticker on there?

12 A No, sir.

13 MR. GIESE: That's all.

14 THE COURT: Redirect.

15 MR. MAY: Beg the Court's indulgence one second.

16 (Pause)

17 Your Honor, I'll be very brief. May it please the
18 Court, Your Honor.

19 REDIRECT EXAMINATION:

20 BY MR. MAY:

21 Q Very briefly, now you were just questioned about
22 why you didn't call Bob Masella with your telephone;
23 correct?

24 A Yes, sir.

25 Q He just asked you. Now, you didn't talk to Bob

1 Masella until the 27th and that interrogation happened
2 on the 22nd; is that correct?

3 A Yes, sir.

4 Q All right. Now, Solicitor Giese went into great
5 detail through that advice of rights; correct?

6 A Yes, sir.

7 Q You knew your rights, didn't you, because you asked
8 for an attorney?

9 A Yes, sir.

10 Q All right. The last question: He was asking you
11 about when they called your mother for you in the morning
12 hours of May 30th --

13 A Yes, sir.

14 Q -- you didn't dial the phone, did you?

15 A No.

16 Q You didn't get a chance to look at the telephone, did
17 you?

18 A No, sir.

19 Q They just gave you the receiver?

20 A Yes, sir.

21 MR. MAY: No further questions at this time.

22 THE COURT: Anything further?

23 MR. GIESE: No, Your Honor.

24 THE COURT: All right. You may come down.

25 All right. What time did you indicate counsel -- Mr.

1 Masella, is available?

2 MR. SHEALEY: Your Honor, I know he has this screening
3 committee hearing at 1:00. He indicated that he wasn't
4 exactly sure the period. He hoped to be available by 2:30
5 or three. I told him I'd let him know.

6 THE COURT: Well, those things don't last that long.

7 MR. SHEALEY: Yes, sir. He didn't think it would take
8 all afternoon.

9 THE COURT: All right. We're going to reconvene at
10 2:30.

11 I'm going to ask you to try to get him on your cell
12 phone at some point in time during the next hour.

13 MR. SHEALEY: Yes, sir.

14 THE COURT: All right, 2:30.

15 (WHEREUPON, a lunch break was taken.)

16 MR. SHEALEY: Your Honor, I spoke to Mr. Masella.
17 He's still tied up in that meeting. I don't expect him
18 to be too much longer. Perhaps we can get to one of the
19 other shorter motions while we wait for him.

20 THE COURT: I left them on the desk. Stay seated.

21 (Pause)

22 All right. Let me sort of pick and choose on these.
23 I think we can move through them pretty expeditiously.

24 Sequestration of fact witnesses from the State. Any
25 problem from the State?

1 MS. CAMPBELL: It's fine. We would like to make it
2 reciprocal.

3 MR. MAY: We don't have a problem with that.

4 MR. SHEALEY: No objection to that.

5 THE COURT: All right. Motion is granted provided.
6 Both sides adhere to the sequestration order.

7 MS. CAMPBELL: That's the lay witnesses, Your Honor?

8 THE COURT: That's it.

9 MR. SHEALEY: And law enforcement, correct?

10 THE COURT: It says fact witnesses.

11 MS. CAMPBELL: I'm sorry, Your Honor. I thought it
12 said lay witnesses.

13 THE COURT: It says fact.

14 MS. CAMPBELL: Your Honor, we would object to law
15 enforcement being sequestered. I don't know of any
16 reason. They've got all the reports. Each one wrote a
17 detailed report for testing.

18 As usual, Your Honor, in my experience --

19 THE COURT: The motion --

20 MS. CAMPBELL: -- you have sequestered lay witness,
21 but usually experts, both theirs and ours and law
22 enforcement, are allowed to stay in.

23 THE COURT: Well, who are the fact witnesses? Go
24 ahead.

25 MR. SHEALEY: I was just going to say the exact

1 opposite. My experience is not Ms. Campbell's, but it
2 seems like law enforcement is usually sequestered except
3 maybe the lead investigator. So we would request that.

4 THE COURT: Have you got any witnesses other than law
5 enforcement?

6 MS. CAMPBELL: Yes, sir. We have lay witnesses.

7 THE COURT: I'm going to grant the motion.

8 MR. MAY: Thank you, Your Honor.

9 THE COURT: Motion to permit the defendant to be
10 physically present and a part of all conferences between
11 counsel, opposing counsel, judge and -- excluding
12 scheduling conferences.

13 What's the State's position?

14 MS. CAMPBELL: I'm sorry, Your Honor? I missed
15 part of what you said.

16 THE COURT: Well, maybe you ought to read them.

17 MS. CAMPBELL: Maybe I should. Hand me this.

18 What number is this, Your Honor?

19 THE COURT: I don't know what number it is.

20 MR. MAY: Your Honor, we'll withdraw that right now.

21 THE COURT: All right. It's withdrawn. It's going
22 to be denied anyway.

23 How about the -- well, let me just, for the record,
24 deny your motion to bar the introduction of evidence
25 under the principle of res gestae.

1 You argued that yesterday. I allowed -- I mean, I
2 denied your motion with regard to several factual
3 scenarios with regard to the res gestae principle, and
4 I don't see how I can reverse that and say now that I will
5 grant your motion.

6 MR. MAY: All right. So, Your Honor, just for my notes
7 and for the record, you're saying that res gestae is a
8 viable doctrine in South Carolina?

9 THE COURT: I said I denied your motion.
10 How about Rule 611?

11 MR. MAY: Yes, sir. We'd ask that the Solicitor's
12 Office follow it.

13 THE COURT: Does anybody have any experience with any
14 Solicitor that did not follow it?

15 MR. MAY: Unfortunately, yes.

16 MS. CAMPBELL: Your Honor, if we are violating the
17 rule, of course, their remedy is to object.

18 THE COURT: Your motion is granted.

19 MR. MAY: Thank you, Your Honor.

20 THE COURT: Let's see. Motion in limine to prevent
21 mention of or reference to or any other issue of this
22 being Barney Giese's last trial.

23 MR. SHEALEY: Yes, sir. Just -- I don't know if this
24 is going to happen or not. I think, the whole courthouse
25 is aware, you know, of the changing of the guard, so to

1 speak. We think that would be an improper appeal to the
2 jury. I think it would not be at all appropriate.

3 MR. SHEALEY: Granted.

4 MR. GIESE: Your Honor, just for the record, I think
5 it would be inappropriate for me to even mention it.

6 THE COURT: I agree. Besides that?

7 MR. GIESE: But there needs to be some reciprocity.
8 It's my understanding in their opening statements that
9 I just -- I only know this by hearsay, but in opening
10 statements, they have mentioned certain cases that my
11 office has prosecuted over the years that clearly would
12 be irrelevant and inappropriate to mention.

13 I just would ask the Court to admonish them to make
14 sure that they don't do that.

15 THE COURT: I certainly will be vigilant.

16 MR. GIESE: Thank you.

17 THE COURT: But -- Solicitor, you can try other cases
18 this year, can't you?

19 MR. GIESE: It may not be my last one, but I wouldn't
20 mention it even if it is my last one.

21 THE COURT: All right. Motion is granted.

22 MR. GIESE: Thank you.

23 THE COURT: Motion to change the order and method of
24 closings?

25 MR. MAY: Yes, Your Honor. We'd ask for a civil

1 court-esque closing where they can only reply. We believe
2 it would be a violation of the defendant's sixth amendment
3 right to present a full and complete defense for the
4 simple fact that they can present evidence or an argument
5 that we would not be able to respond to. They're the last
6 people that the jury will hear from on the case.

7 THE COURT: And they do have the burden.

8 MR. MAY: Correct. Well, they do have a burden in
9 civil court. So does the plaintiff. The plaintiff is not
10 allowed --

11 THE COURT: It's a little bit different burden.

12 MR. MAY: It's a little bit different burden, and it's
13 a little bit different stakes. This is freedom versus
14 monetary.

15 So, Your Honor, we respectfully believe if it is
16 appropriate for civil court because it's fair to the party
17 who is the defense, it's only reciprocally fair, and
18 even more so necessary in this court, where the sixth
19 amendment is applicable.

20 THE COURT: Denied.

21 Motion for transcripts of the pretrial to be
22 provided for the parties.

23 MR. MAY: Yes, sir. We talked with Ms. Tracy before
24 the trial started, and she said -- she just didn't know
25 with whether or not we could have transcripts from the

1 pretrial for the trial itself. That is just -- we just
2 would inquire, have the Court inquire if that's
3 possible.

4 THE COURT: Ms. Tracy, do you have a position on
5 providing a transcript, a transcript of all pretrial
6 motions?

7 THE COURT REPORTER: It would be impossible to have
8 it before this case could be tried.

9 THE COURT: Denied.

10 Motion for order of one camera feed. The rule allows
11 for two, 605.

12 MR. SHEALEY: Well, just -- I was unaware of the rule.
13 Just the fewer cameras the better in terms of distraction
14 of the jury. I would just simply ask that --

15 THE COURT: I've excluded camera requests already.
16 It's limited to two.

17 MR. SHEALEY: Yes, sir. And when I wrote -- when we
18 did this motion, I didn't know how many cameras, if any,
19 cameras would be here but --

20 THE COURT: Well, it's in the rule book.

21 MR. SHEALEY: Yes, sir.

22 THE COURT: 605, two.

23 MR. SHEALEY: Yes, sir.

24 THE COURT: The motion is denied.

25 MR. SHEALEY: Yes, sir.

1 THE COURT: Motion in limine to prevent the Solicitor
2 from misstating the law, the Belcher case.

3 MR. SHEALEY: Yes, sir, Your Honor. It's simply a
4 case on Belcher, can no longer infer malice from the use
5 of a deadly weapon alone if -- you know, if there is
6 mitigating evidence, which there -- the defense feels
7 certain will be in this case in terms all the struggle,
8 self-defense, things you already heard about.

9 If that came out, we think it would be grounds for
10 a mistrial. So we'd just like at this point to not
11 misstep in any way. So we'd ask that that not be said.

12 THE COURT: What's the State's position?

13 MS. McDUFFIE: Your Honor, I believe the Belcher case
14 allows the parties to argue it in their address to the
15 jury, but does not permit the Court to charge it.

16 THE COURT: Well, certainly, I don't know that Belcher
17 said you could use it in opening statement. I don't recall
18 that. I mean, I certainly agree with his final
19 instructions: If you have it, you can quote the book and
20 page.

21 MS. CAMPBELL: Beg the Court's indulgence.

22 THE COURT: Now, does the State intend to use that?

23 MR. GIESE: Your Honor, in my 30 years of prosecution,
24 I don't think I've ever used it. I don't think so. I don't
25 see why we're even having the motion.

1 THE COURT: Well, I've got to address it because they
2 filed it.

3 That motion is granted.

4 MR. MAY: Thank you, Your Honor.

5 THE COURT: Preventing the Solicitor from misstating
6 the law.

7 MR. GIESE: And I'll do the best I can.

8 THE COURT: I understand, with your knowledge of the
9 law.

10 MR. MAY: Your Honor, Mr. Masella is here.

11 THE COURT: I see him. I see him. I have a better
12 vantage point than you do.

13 All right. Well, there are three motions about
14 prejudicial terms. Maybe we'll go ahead and take
15 Mr. Masella's testimony and not get into that.

16 Call your next witness.

17 MR. SHEALEY: Your Honor, the defense called Robert
18 Masella.

19 THE COURT: Come around, Mr. Masella.

20 ROBERT MASELLA,
21 after being duly sworn, testified as follows:

22 THE CLERK: Would you state your name for the record,
23 please?

24 THE WITNESS: Bob Masella.

25 MR. MAY: Address that on the record.

1 MR. SHEALEY: Yeah.

2 THE WITNESS: Where do you want me to stay, Your
3 Honor?

4 THE COURT: Just as long as you can be heard.
5 I think you can hear him.

6 THE COURT REPORTER: Yes.

7 THE COURT: Okay.

8 DIRECT EXAMINATION:

9 BY MR. SHEALEY:

10 Q Mr. Masella, where are you from?

11 A Now or where am I originally from?

12 Q Where are you currently? Where were you for the past
13 few years? What do you do, for the record?

14 A I'm an attorney.

15 Q Do you practice criminal defense?

16 A I do, as part of my practice.

17 Q Okay. Mr. Masella, do you know that gentleman right
18 there?

19 A We've met.

20 Q Okay. What's his name?

21 A Theo Manning.

22 Q All right. Did you have occasion to come in contact
23 with Theodore Manning May of 2009?

24 A Yes.

25 Q Okay. Was it -- did he come to you seeking your

1 counsel as an attorney?

2 A He came to my office twice.

3 Q Okay. Your Honor, at this time --

4 THE COURT: I'm sorry, did you say once or twice?

5 THE WITNESS: Twice, Your Honor.

6 MR. SHEALEY: Your Honor, at this time, some of the
7 questions I'm going to get into will probably get into
8 attorney/client privilege, and I don't -- I haven't dealt
9 with it before, but it's my understanding that if we go
10 down this line further, Mr. Manning is waiving some
11 attorney/client privilege regarding this conversation.

12 I don't know if you prefer to question him if he wants
13 to waive that, but as his lawyer, it's his indication that
14 he does. Whatever satisfies the Court.

15 THE COURT: Mr. Manning, you were sworn a few
16 minutes ago to tell the truth; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I'm going to ask you just a few questions
19 about this issue.

20 Do you recognize Mr. Masella?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you meet with Mr. Masella?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And that was in May of 2009?

25 THE DEFENDANT: Yes, sir, it was.

1 THE COURT: Did you have conversations with him about
2 representation?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under our law and our ethical standards,
5 Mr. Masella cannot tell this Court, even in this -- even
6 in this courtroom under oath what you and he discussed.
7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: That's what is known as a privilege, and
10 that's an absolute privilege. He is not allowed to violate
11 that. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Only with your permission can
14 he talk about, in this courtroom on the record, what you
15 told him or what he told you. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you wish for him to be able to do that?
18 In other words, do you waive your right of privilege from
19 anything that you and he discussed?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Anything?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Mr. Masella, is that satisfactory to you?

1 THE WITNESS: Yes, Your Honor, as long as my ethical
2 obligations are covered and complied with.

3 THE COURT: All right.

4 BY MR. SHEALEY:

5 Q All right. Mr. Masella, I want to turn your attention
6 back to Mr. Manning. You said you practice criminal law
7 as an attorney in Columbia, and you did have occasion in
8 May of last year to talk to Theodore Manning.

9 Do you recall if there -- do you recall the
10 conversations with Mr. Manning?

11 A Yes.

12 Q Okay.

13 A Not -- not verbatim, but I recall meeting with him
14 and the topics we discussed.

15 Q Do you -- do you recall in general that there was any
16 kind of contact with law enforcement that might have
17 prompted Mr. Manning to seek your counsel and advice?

18 A Yes.

19 Q What do you recall about that?

20 A That Charlotte/Mecklenburg had met or called him.
21 They wanted to meet with him; that they wanted him to do
22 a DataMaster test to prove to them that he was not involved.
23 They said it would clear him if he passed the DataMaster
24 test.

25 Q Okay. Do you ever have documentation as -- in your

1 law practice? When someone comes seeking your counsel
2 advice, do you document that?

3 A We have an intake sheet.

4 Q Okay. And is that for potential clients?

5 A Correct. So we can do cross-checks to make sure that
6 we don't have conflicts, and also so we can take notes
7 or have information about the person, whom to contact and
8 things like that.

9 Q And is it fair to say he was a potential client at
10 this point?

11 A He was.

12 Q Do you have that intake sheet with you today?

13 A I do.

14 Q May I approach?

15 If I could have this marked for identification.

16 (WHEREUPON, Defendant's Exhibit No. 6 was marked for
17 identification only.)

18 BY MR. SHEALEY:

19 Q This would have been the first time he came to visit
20 you?

21 A Correct.

22 Q Do you recall how many times total he came to visit
23 you?

24 A Twice.

25 Q And what is the date on that, your intake form, about

1 the first time he came to visit you?

2 A To my memory, I believe it's 5/27/09.

3 Q Okay. May 27th, 2009?

4 A Correct.

5 Q Does it give you any other information about him,
6 where he works, how old he is?

7 MS. CAMPBELL: Your Honor, if I may, we just -- we
8 did file a reciprocal Rule 5 in this case. We have not
9 been provided with any documents whatsoever as far as
10 this matter is concerned. We would just ask, like to
11 review the document at some point.

12 MR. SHEALEY: I'll be happy to show it her. This is
13 pretrial.

14 MS. CAMPBELL: Is there a reason you didn't provide
15 it?

16 MR. SHEALEY: There you go.

17 (Pause)

18 BY MR. SHEALEY:

19 Q All right. So you didn't do another intake form the
20 second time he saw you?

21 A I don't believe so. I had my office check the -- our
22 files. They found this. I had them check the calendar,
23 which shows he came to me the afternoon of May 27th, but
24 they don't have any other indication that he scheduled
25 an appointment to come back -- before, or scheduled an

1 appointment to see me before, nor did he schedule one after.
2 I believe what he did was he just called and asked to come
3 in without an appointment.

4 Q Okay. And you testified that he was receiving contact
5 with Charlotte/Mecklenburg police regarding this, this
6 case?

7 A Correct.

8 Q Did you talk money with him at all and what it would
9 take to be fully retained?

10 A Sure. In his case, I broke it down. It would be a
11 certain amount just to represent him through the
12 investigation, the bond hearing.

13 I also told him how much the DataMaster test would
14 cost. We have somebody that does the DataMaster test,
15 so if he wanted to see how he would do on the DataMaster,
16 he would take the test.

17 Q Are you referring to a polygraph test?

18 A Yeah. I keep calling it a DataMaster. Again, it's
19 a polygraph --

20 Q Yeah.

21 A All my clients either take the DataMaster or a
22 polygraph.

23 Q That's fine.

24 A It's sort of the same thing.

25 Q Right. So he also called you and had some concerns

1 about taking a polygraph?

2 A Yeah, had concerns about the polygraph or the
3 DataMaster..

4 Q All right. Now, as he was making you aware of this
5 impending investigation, what would you have counseled
6 him to do if you had come into contact with law
7 enforcement at this juncture?

8 A Well, we usually tell our clients not to talk to police
9 without attorneys.

10 Q Okay. Is that something you would had made pretty
11 clear?

12 A Oh, yeah.

13 Q Would you have counseled him to call you, as well,
14 if law enforcement had arrested him?

15 A He knew how to get ahold of me. I told him to call
16 me on the cell phone or the office or wherever he needed
17 to if he ever met with law enforcement. I can't tell you
18 if I told him to call me on a specific day or if something
19 happened.

20 Q Okay. You can definitely tell us you told him never
21 to talk without you being present, right?

22 A That's right.

23 MR. SHEALEY: Okay. Beg the Court's indulgence.

24 (Pause)

25 Nothing further.

1 THE COURT: Cross-examination?

2 MS. CAMPBELL: Just a couple questions.

3 CROSS-EXAMINATION:

4 BY MS. CAMPBELL:

5 Q This happened about a year-and-a-half ago, and the
6 only notes we've got are the notes you just looked at?

7 A Yes, ma'am.

8 Q And basically, you're indicating the first time he
9 met with you on May 27th, as reflected on that, even though
10 that's his handwriting?

11 A Right.

12 Q So you're relying on his date as far as it being
13 accurate?

14 A That is correct, yes. I've looked at -- yes.

15 Q Because there's nothing in your calendar or in your --

16 A Notes --

17 (Talking over each other.)

18 Q You don't have any other notes, do you?

19 A No, but my calendar -- the office said that the 27th
20 is the day he had scheduled an appointment to see me. I
21 think my paralegal told me it's on the file.

22 Q And I believe you mentioned that you quoted him some
23 things about taking a test polygraph, kind of like a test
24 run?

25 A Yes, ma'am.

1 Q To see whether or not he could pass?

2 A Correct.

3 Q And on that you quoted him some numbers. Are those
4 the numbers back here on the back?

5 A Yeah. The top number would be the number that I
6 would have charged him to go through the investigation,
7 and that's how much the polygraph cost.

8 Q And did he, in fact, try to take the test polygraph?

9 A No.

10 Q You also mentioned that you talked with him a second
11 time. When was that?

12 A It would have had to have been -- I think he was
13 arrested a few days later, so it would have had to have
14 been the next day.

15 Q And do you remember if that was the --

16 (Talking over each other.)

17 A -- in person --

18 Q -- in person. At that point, the first time you talked
19 to him about the polygraph about whether or not he could
20 take a test polygraph to see if he could pass it, on the
21 next day, do you remember what you talked about
22 specifically?

23 A How much he could pay me and when he could pay me.

24 Q And was that as far as taking the polygraph, or is
25 it as far as representing him in the murder charge?

1 A He would have to -- well, at that point, it was just
2 a missing person investigation, so he would have to retain
3 me and then pay the additional cost for the polygraph.

4 Q Okay. And so those costs that you -- as far as the
5 polygraph and just to retain you, just to have you onboard,
6 would have been the \$2,500 and then the \$350?

7 A Yes.

8 Q So around \$3,000, just less than \$3,000?

9 A Yes.

10 Q Do you remember quoting him a price or when this became
11 a murder that it would cost \$25,000 to represent him?

12 A Yeah. I told him if this was a murder, it would
13 cost him --

14 Q So you discussed with him actively that this was a
15 missing person's case, but you discussed with him on that
16 date that he could be possibly -- you might have to
17 represent him on a murder?

18 A Yeah. If it turned out to be that way, that would
19 be my price, yes, ma'am.

20 Q And he was concerned about that and wanted to retain
21 you for the murder.

22 A I can't tell you. You're just reminding me about the
23 \$25,000.

24 Q Okay.

25 A I can't tell what it was.

1 Q You also said that it's your practice to give your
2 clients -- he had never retained you; is that correct?

3 A Correct.

4 Q So he wasn't technically your client at that point.

5 A Well --

6 Q It was just kind of a preliminary thing?

7 A He is. That's why I had to get the waiver so
8 ethically...

9 Q Ethically any conversation --

10 A Right.

11 Q -- and that's why -- and I don't mean to --

12 A I understand.

13 Q -- belittle that.

14 A I just want --

15 Q I'm just saying that he never actually paid you money
16 and retained you --

17 A Correct.

18 Q -- to be a lawyer?

19 A Correct.

20 Q So he never took the test polygraph to see if he could
21 pass, and he never actually retained you or paid you the
22 \$25,000 to represent him on the murder?

23 A Correct.

24 Q And you said usually, it's usually your procedure,
25 I believe, and I don't mean to misquote you, about the

1 advice you give your clients about contact with law
2 enforcement?

3 A Yes.

4 Q Do you remember that specifically in this case?

5 A (There was no response).

6 Q And I looked in your notes. It's not in there.

7 A Yeah, not in there. Because Charlotte/Mecklenburg
8 was trying to have him take a polygraph, I told him that
9 if they contacted him --

10 Q And if you don't remember specifically -- I'm not
11 trying to put you on the spot.

12 A No. No. I'm okay with being put on the spot.
13 Something was telling me that I talked to one of the
14 officers involved in this case. I'm not sure if it was
15 the Charlotte people or the Richland County or if I'm
16 crossing it up with other cases. So --

17 Q You're like me. We have a lot of cases.

18 A Yes.

19 Q We don't mean to forget things, but what may not seem
20 important at the time may become important later.

21 A Yes.

22 Q And in this case, there are no notes or anything
23 documenting that?

24 A No.

25 Q And specifically, even if you had told him that, and

1 you had a number of clients over the years, criminal
2 defense?

3 A Yes, ma'am.

4 Q Do they always follow your advice?

5 A I was surprised to see that he had spoken to the
6 police, so unfortunately, they don't always follow my
7 advice.

8 Q And that's not unusual?

9 A That's not unusual.

10 Q And, in fact, some defendants, in your experience,
11 want to get their version of the events out there.

12 A I don't know that.

13 Q You've had other clients that have chosen voluntarily
14 to speak to the police?

15 A I'm sure there are other clients that have spoken to
16 the police.

17 Q And yesterday you actually spoke to the defendant
18 again in the courtroom?

19 A Yes, ma'am.

20 Q And what was that about?

21 A I wanted to go through with him what he was waiving,
22 make sure that he understood what a waiver was.

23 Q When he first came to see you on the 27th -- I want
24 to back up, get more on --

25 A Yes, ma'am.

1 Q When he first came to see you on the 27th, that was
2 when he indicated, as is on the sheet, it was a missing
3 person's case; is that right?

4 A Yes, ma'am.

5 Q When exactly did you have a conversation about this
6 being a murder case with him, prior to his arrest on the
7 29th? Do you recall?

8 A No, ma'am. I had to have had the conversation with
9 him when I told him how much it was going to cost, but
10 I don't remember exactly when it happened.

11 Q And, of course, you wouldn't quote a fee for a murder
12 case if the client wasn't inquiring about whether or not
13 it was a murder.

14 A If it turned out to be a murder, this is what it was
15 going to cost.

16 Q Thank you. I'm sorry, Your Honor. I don't have a
17 document.

18 (Pause)

19 THE COURT: Is that it?

20 MS. CAMPBELL: That's all I have, Your Honor.

21 MR. SHEALEY: I have nothing further, Judge.

22 THE COURT: Redirect?

23 MR. SHEALEY: If we could excuse Mr. Masella -- --

24 THE COURT: All right.

25 MR. SHEALEY: -- from pretrial.

1 THE COURT: From what?

2 MR. SHEALEY: For this Denno hearing.

3 THE COURT: For the pretrial?

4 MR. SHEALEY: Sure.

5 THE COURT: All right. Mr. Masella is excused for
6 the pretrial purposes.

7 You may be called at some other point during the
8 trial.

9 MS. CAMPBELL: You're not under subpoena.

10 THE WITNESS: I'm not under subpoena.

11 MS. CAMPBELL: Okay.

12 THE WITNESS: Thank you.

13 THE COURT: All right. Anything further on this
14 issue?

15 MR. SHEALEY: Your Honor, that's the final defense
16 witness, but we have arguments to make.

17 THE COURT: All right. Just one minute.

18 (Pause)

19 All right. The motion says to suppress unrecorded
20 statements made by Theodore Manning to the Richland
21 County Sheriff's Department. That's the motion we're
22 considering at this time.

23 MR. SHEALEY: Your Honor, I was under the impression
24 this was a Jackson V. Denno.

25 THE COURT: What's the --

1 MR. SHEALEY: The other motion was kind of alluded
2 to this morning. The basis of that motion of suppressing
3 the statements was simply because they were unrecorded.
4 That's what I thought.

5 THE COURT: What's the difference between them?

6 MR. SHEALEY: Well, one is about the voluntariness.
7 One is about the practice of being unrecorded, which
8 many states and many cases say that lead to false
9 confessions --

10 THE COURT: Well, you need to argue both unless you
11 have got other -- since I have ruled that Sheriff Lott
12 would not be called at this preliminary hearing.

13 MR. SHEALEY: Yes, sir. I understand that.

14 THE COURT: Pretrial.

15 MR. SHEALEY: Yes, sir. In terms of Jackson Denno,
16 I'd be happy to start arguing, but it seems to me the
17 State --

18 THE COURT: You're moving -- you are -- you're the
19 movant. You're moving the State -- that the statements
20 not be admitted, are you not?

21 MR. SHEALEY: I'll be happy to make that argument,
22 Your Honor.

23 THE COURT: And that the statements are not
24 voluntary.

25 MR. MAY: Yes, sir. As to the voluntariness of the

1 statements that we just had, I'll start -- I'll start
2 with, just to kind of break it up, we're not questioning
3 the voluntariness of the statement he made, his first
4 statement to Charlotte/Mecklenburg when he's at the post
5 office and he's in the police car. He's talking to
6 Detective Martin and Investigator Wagner, is there.

7 I'm not going to question the voluntariness of that,
8 okay. He left. He went to work. I'm also not going to
9 question the voluntariness of any statements that were
10 made to Stan Smith and Investigator Isenhoward as they
11 went to his house on Bluff Road and spoke to him while
12 he was eating wings. I'm not going to question the
13 voluntariness of that.

14 The two main statements that are at play here, Your
15 Honor --

16 THE COURT: Let me -- just to be sure I understand,
17 there was no testimony about those statements, was there?

18 MR. SHEALEY: There was, Your Honor. There were
19 about --

20 THE COURT: It wasn't about the substance of those
21 statements.

22 MR. SHEALEY: No, sir, Your Honor. There is a
23 transcript from Charlotte/Mecklenburg. He did talk about
24 his relationship with Ms. McPhatter and --

25 THE COURT: But it wasn't afterwards.

1 MR. SHEALEY: I don't know if they're seeking to
2 introduce them, but they certainly questioned about the
3 voluntariness of that scenario throughout this whole
4 Denno hearing, yes, sir, but it seems to me we need to
5 know what they're seeking to introduce before I can address
6 what should not be --

7 THE COURT: Well, let's just start with these
8 exhibits, number one, two, and three.

9 MR. SHEALEY: Yes, sir. I'm -- as -- may I approach
10 and see what exactly -- we got one, two -- two Richland
11 County statements.

12 THE COURT: Approach. They've got the red stickers
13 on them.

14 MR. SHEALEY: Yes, sir. Out of an abundance of
15 caution, though, I would seek to suppress the statement
16 made after the May 22nd search warrant at his house,
17 okay. That was the third --

18 THE COURT: Well, which -- just refer to it by number.

19 MR. SHEALEY: I don't think it's up there, but I don't
20 know if they're going to try to introduce it or not, but
21 it's -- it's a transcript where he clearly breaks the
22 case wide open to law enforcement.

23 THE COURT: A transcript of?

24 MR. SHEALEY: The facts.

25 THE COURT: I mean, is it --

1 MR. SHEALEY: This is what I'm saying. It's
2 somewhat -- it's their burden, Your Honor, to talk about
3 what they would like to introduce, and I'd like to say
4 why it should be suppressed. But if they don't want to
5 introduce it, that's fine. We kind of need to know before
6 we start arguing.

7 THE COURT: Well, I need to know what you're talking
8 about.

9 MR. SHEALEY: Yes, sir, it's 45-page transcript
10 after a search warrant.

11 THE COURT: Transcript?

12 MR. SHEALEY: Charlotte/Mecklenburg records
13 everything, literally word for word, and produces a
14 transcript.

15 THE COURT: Okay. I understand that.

16 MR. SHEALEY: So that's why I'm going to call it a
17 transcript, but I don't know whether they want to
18 introduce that one or not. It was right after a search
19 warrant where he went to the police substation on May 22nd.

20 THE COURT: Okay.

21 MR. SHEALEY: I guess I need to know if it's going
22 to be sought to be introduced.

23 THE COURT: A 45-page transcript?

24 MS. CAMPBELL: Your Honor, it --

25 MR. SHEALEY: Fifty-five.

1 THE COURT: Fifty-five?

2 MR. SHEALEY: Yes, sir.

3 MS. CAMPBELL: We did not introduce the transcript
4 of the tape recording because we would intend to introduce
5 the tape recording.

6 THE COURT: The tape recording?

7 MS. CAMPBELL: Yes, Your Honor.

8 THE COURT: His statement Mirandized?

9 MS. CAMPBELL: Non-Mirandized, noncustodial.

10 THE COURT: All right.

11 MS. CAMPBELL: On the 22nd. I believe Detective
12 Martin testified as far as the surrounding, just that it
13 was generally voluntary.

14 THE COURT: I understand, but I remember him saying
15 he had a 55-page transcript of that conversation.

16 All right. They intend to offer the tape.

17 MR. SHEALEY: Yes, sir.

18 THE COURT: The entire tape?

19 MR. SHEALEY: Yes, sir. I'll address that now.

20 Your Honor, Charlotte/Mecklenburg got to Columbia,
21 South Carolina, on May 21st. That day they spoke to
22 Theodore Manning at the post office, which I'm not
23 challenging.

24 But by the following day, they had told Richland
25 County that they wanted to do a search warrant at his

1 house. They had to have probable cause. They put it in
2 a Richland County form, and as Theo Manning testified,
3 a search warrant was shown to him at his house.

4 He was pulled out by his arm. A search warrant was
5 for the charge of murder, and that is on the criminal
6 warrant which is made -- been marked for I.D. purposes.

7 Your Honor, it was wee hours of the night. He was
8 asked -- or he told you he was -- really had no choice
9 but to either get in the car with Charlotte/Mecklenburg
10 or ride with his uncle. He chose to ride with his uncle
11 to this Richland County, I think it's listed as Region
12 One, but a police substation.

13 This conversation that Charlotte/Mecklenburg so
14 wanted to have with him was not had in his yard. It
15 wasn't had in a coffee shop. It wasn't had at a relative's
16 house.

17 They came down here with a name "Teddy" who had dated
18 Ms. Nikki McPhatter, and within one day, they had the
19 search warrant for the murder suspect, and they searched
20 his house.

21 Investigator Martin testified to this. When they
22 asked him, you know, was he your suspect. He said he was
23 a person of interest. He was a suspect.

24 Your Honor, they took him. They went with him, he
25 says not of his own volition, to this police substation.

1 He says his uncle and his fiancée at the time were not
2 allowed to be present with him in this interrogation.

3 THE COURT: What's the date of this, the 22nd?

4 MR. SHEALEY: This is all the 22nd right after he
5 was taken out of this house and his house was searched
6 on the murder search warrant.

7 He was taken to the police substation, and he spent
8 30 to 35 minutes in there, which is all recorded on
9 audiotape, one to two hours.

10 A substantial amount of time enough to produce a
11 55-page transcript. They asked him the ultimate
12 question, "Did you kill Nikki McPhatter?"

13 When Jim May asked Investigator Martin about that,
14 he said yes, he is asking him this because he is the suspect
15 at this time. He is certainly in custody.

16 He said he did not feel free to leave. When he was
17 taken out of his house, he was never left alone. He was
18 there for a couple of hours, Judge.

19 THE COURT: How many officers?

20 MR. SHEALEY: There were two officers in the
21 substation. There were about -- I think the testimony
22 is five or six that were there when they were searching
23 the house, but two Charlotte/Mecklenburg officers,
24 Officer -- Investigator Martin and Hopkins who were there
25 one on one interrogating him at this substation.

1 He says he did not feel free to leave. They began,
2 as well, he testified, receiving text messages from the
3 officers that were searching the house.

4 Ultimately, they began collecting a receipt for
5 cleaning supplies. They questioned him about that. That
6 was sent via text to the officers interrogating him.

7 Because of that questioning, Theo Manning said he
8 gave up his codefendants. He said, "Yes, I do go shopping
9 with Kendra Goodman. She and I shopped on such and such
10 a day."

11 Due to this, they began to question Kendra Goodman
12 because she ultimately implicated Manning a couple days
13 later.

14 Your Honor, this is the essence of the custodial
15 interrogation. At no time was Miranda ever given, even
16 in light of the fact when they he knew he was their primary
17 suspect. Investigator Martin testified as such.

18 He had nowhere to go. He could not leave. This was
19 not a friendly conversation. They were armed, and they
20 asked him, "Did you kill Nikki McPhatter?"

21 Through the course of this audio-taped conversation,
22 they developed evidence from him, namely who his
23 codefendant was, and they looked into the Wal-Mart
24 cleaning supplies, and eventually zeroed in on her.

25 So they did break the case wide open, all

1 un-Mirandized. I would ask certainly that this statement
2 be suppressed.

3 THE COURT: What's the State's position?

4 MS. CAMPBELL: Your Honor, in -- for the record, there
5 are three additional oral statements, one recorded prior
6 to that, which I believe they're conceding or not in
7 contention here.

8 On May 21st, there was a telephone call from Detective
9 Martin to the defendant that we intend to introduce, the
10 oral statement there. On May 21st, at 22:45 at the post
11 office on Bluff Road, which I heard them say --

12 MR. SHEALEY: That's correct.

13 MS. CAMPBELL: -- they concede that comes in. Then
14 on May 22nd around 11:00 a.m. at the defendant's house,
15 Sergeant Isenhoward and Captain Smith took an oral
16 statement, which I think they concede, just for the
17 record --

18 MR. SHEALEY: That's correct.

19 MS. CAMPBELL: -- would come in. Then this one is
20 the one, May 22nd at 10:50, 8:50, excuse me, at the
21 defendant's house with --

22 THE COURT: 10:50?

23 MS. CAMPBELL: It's 20:50 so that would be 8:50,
24 wouldn't it, p.m.?

25 Your Honor, the testimony in this case from law

1 enforcement was that they went to the defendant's house
2 to get consent to search. They got consent.

3 Ultimately, they executed the search warrant. They
4 asked him to go down to Region One headquarters on the
5 lower side. He then contacted his uncle. His uncle came
6 down.

7 They didn't even drive him to the place. He actually
8 was driven by his uncle and I believe his fiancée at that
9 time to the Region One headquarters.

10 At that point, they proceeded to talk to him about
11 certain information. It was recorded, Your Honor. In
12 addition to that, there was no Miranda given, but he wasn't
13 in custody, Your Honor.

14 I don't know of any case where the defendant is free
15 to leave at any time and ultimately does leave after
16 talking to the police and drives away on his own, and is
17 not actually taken into custody for another seven days,
18 how that could be a custodial situation.

19 They're relying on this defendant's perception that
20 he had to do this. Well, on the other four statements
21 that they concede, the defendant testified that he felt
22 he had to talk to them, too, and they weren't voluntary.

23 As far as, you know, what the police officers did
24 and said according to the testimony before you from
25 Martin, it -- our position would be it's clearly

1 noncustodial, and he was voluntarily doing it. Miranda
2 does not apply here because it was non-custodial.

3 Your Honor, in addition to that, I would also make
4 as a Court's Exhibit the first two pages of the
5 transcript, what we intend to offer.

6 THE COURT: Approach the bench.

7 MS. CAMPBELL: Do you want me to approach?

8 THE COURT: Yes, I want both of you.

9 MS. CAMPBELL: Jim, can you come up here?

10 (WHEREUPON, there was a bench conference.)

11 THE COURT: Mr. Dye.

12 THE BAILIFF: Yeah?

13 THE COURT: Let me see you a minute.

14 (WHEREUPON, there was a bench conference.)

15 (WHEREUPON, Court's Exhibits No. 2, 3, 4 were marked
16 for identification only.)

17 MS. CAMPBELL: Your Honor, if I may approach with
18 Court's Exhibit 2. I know we won't go into the
19 substance of it; however, I would just say in the recorded
20 statement itself, there's a transcript of -- the first
21 two pages of the transcript I've handed up, they would
22 be aware of it.

23 The Mecklenburg Police Department tells him that
24 he's not under arrest; he's free to go at any time. They
25 just wanted to go to a neutral location in order to talk.

1 There was no evidence, credible evidence, of any
2 sort that this defendant did anything but voluntarily go
3 there and talk to them on the 22nd.

4 He went there of his own volition. He was not under
5 arrest. He was not arrested for another seven days, and
6 he agreed, as is in the transcript, to go there and meet
7 them in neutral territory and was free to go at any point.

8 MR. SHEALEY: Your Honor, if I may respond?

9 THE COURT: Just let me look at this just for a
10 second.

11 (Pause)

12 All right.

13 MR. SHEALEY: Your Honor, it seems Ms. Campbell's
14 main argument as to why Miranda was not necessary is
15 because Mr. Manning was not in custody. This was not a
16 custodial interrogation.

17 I extremely disagree with that, but I'll just put
18 this real quickly. It's -- whether he was in custody or
19 not is not based on what, ultimately, what he coughs up
20 in terms of information.

21 If he had said two minutes, or ten minutes into this
22 conversation, that, "You know what, I did it. You're
23 right. I did kill her." They would have arrested him
24 right there. Richland County would have been right there,
25 and we'd be talking about this as a confession with no

1 Miranda.

2 He was certainly in custody. At the time the
3 detectives were searching the house or discovering
4 evidence, there was testimony that they texted this
5 information to question.

6 You know, the officers that are interrogating him
7 are using this information about a Wal-Mart receipt
8 where he allegedly got -- there were cleaning supplies,
9 having to clean up after the crime.

10 At that point, certainly once they learn this, they
11 begin zeroing in on his, "Who did you go shopping with?
12 When did you go shopping? Why did you go shopping?"

13 As Investigator Martin said, he is the main murder
14 suspect. He is certainly a person of interest. They
15 just served a murder search warrant on his house.

16 I think -- you know, it's custodial from the moment
17 he steps in there as opposed to a coffee shop or
18 somewhere else.

19 For what it's worth, as the Solicitor said, his
20 testimony is self-serving about voluntariness, but the
21 main argument the Solicitor lists is about him not being
22 in custody.

23 Well, Your Honor, two officers, police substation,
24 "Did you kill Nikki McPhatter?" And he gave no -- he
25 never Mirandized him once. I just don't -- I can't think

1 of a more custodial situation.

2 THE COURT: Well, did he -- was he able to leave?

3 MR. SHEALEY: He testified he did not feel free, like
4 he was able to leave. There were two armed --

5 THE COURT: No. I said, did he leave.

6 MR. SHEALEY: He left after a couple of hours once
7 they were done interrogating him.

8 THE COURT: But he left. He wasn't held in custody.

9 MR. SHEALEY: Well, they didn't have probable cause
10 to arrest him.

11 THE COURT: Was he held in custody?

12 MR. SHEALEY: Yes, sir. He was, but he was not
13 handcuffed. In terms of whether he felt like he was free
14 to leave --

15 THE COURT: I thought you said he left.

16 MR. SHEALEY: After two hours of being interrogated.

17 THE COURT: So you're talking about temporary
18 custody.

19 MR. SHEALEY: I'm talking about a custodial
20 interrogation, Your Honor. That's brings out the law
21 that asks us to look at when you give these statements
22 without Miranda, is he in custody, a custodial
23 interrogation.

24 THE COURT: That's what I'm asking.

25 MR. SHEALEY: Yes, sir.

1 THE COURT: Did he leave?

2 MR. SHEALEY: After two hours, he did. He left once
3 they were finished with him.

4 THE COURT: Okay. On his own?

5 MR. SHEALEY: His uncle drove him back to his home,
6 yes, sir.

7 THE COURT: Okay. So he was not in custody at that
8 time.

9 MR. SHEALEY: I think after two hours, they released
10 him. When they had information about the case, that he
11 went with Kendra Goodman to Wal-Mart to buy cleaning
12 supplies.

13 They zeroed in on that, and within a couple of days,
14 they interviewed her, and she implicated him. All a part
15 of --

16 THE COURT: Let's just stay at the substation.

17 MR. SHEALEY: Yes, sir.

18 THE COURT: Was he -- did he leave, or was he
19 maintained in custody?

20 MR. SHEALEY: The two hours he --

21 THE COURT: Under your theory of custody.

22 MR. SHEALEY: My theory of custody, he's in custody
23 from the moment he's pulled out by his shirt when
24 after -- when he is searched when he --

25 THE COURT: He could --

1 MR. SHEALEY: When he --

2 THE COURT: -- be temporarily in custody.

3 MR. SHEALEY: He said he was never free to leave. They
4 sat in there and told him --

5 THE COURT: He didn't leave.

6 MR. SHEALEY: No, sir. He went to the police
7 substation where they asked him to go. That was his
8 testimony. That's the testimony of Investigator Martin.

9 From his house, he goes to the police substation.
10 He testified he didn't feel he had a choice about that,
11 but once there --

12 THE COURT: I understand about that.

13 MR. SHEALEY: Once there, he's in that room, Judge.

14 Judge, under a totality of the circumstances, at
15 issue is what he believed at the time of his questioning.
16 Certainly, we've heard from law enforcement that they
17 believed he was the primary murder suspect. He didn't
18 have anywhere to go. His house was being searched under
19 a murder search warrant.

20 THE COURT: All right. California v. Beheler says,
21 "The defendant is asked by authorities to go to the police
22 station, put in a small room. The door is shut for
23 privacy. He's questioned by an officer.

24 "As long as the defendant is not arrested and is free
25 to leave, there is no custody, no need for Miranda warnings.

1 "Being in custody a person, must be arrested or have
2 a restraint of freedom of movement of a degree associated
3 with a formal arrest."

4 The mere fact that a person is questioned at the
5 station house does not trigger Miranda. That's North
6 Carolina v. Thompson, a 2002 case.

7 MR. SHEALEY: Yes, sir, I think.

8 THE COURT: I'm just looking at my notes.

9 MR. SHEALEY: Yes, sir. I think this can be highly
10 distinguished from these situations. Within one day
11 they had their prime suspect and got a murder search
12 warrant for his house.

13 This wasn't a kind of willie-nillie, "We think that
14 you-- we want to just talk to you. We searched your house
15 for evidence of murder. We found what we think is evidence
16 of murder in terms of the clean up. We found a gun in
17 your car, and now we're going to question you about these
18 things."

19 When you're eliciting these types of responses out
20 of a man whose at a police substation who has testified
21 that he didn't feel he had a choice about being there,
22 Miranda should have been.-- this was not a benign
23 questioning to help get on the path of investigation.
24 This was the investigator. As the case boils down --

25 THE COURT: Well, I understand this was the

1 investigation. That's not the issue whether there was
2 an investigation or not.

3 MR. SHEALEY: All right, whether he was in custody.

4 THE COURT: The officer told him he was not under
5 arrest and he was free to go and didn't have to speak to
6 them. There's no outstanding warrant. He says he agrees
7 with that.

8 All right. Your motion is denied as to that
9 statement.

10 Next?

11 MR. MAY: Yes, sir, Your Honor. May it please the
12 Court, Your Honor. We'd move to exclude the two typed
13 statements -- if I may approach, I'll give you the correct
14 numbers.

15 THE COURT: Sure.

16 MR. SHEALEY: I believe they're two and three,
17 Ms. Campbell just told me; due to the fact that they were
18 taken in violation of the defendant's sixth amendment
19 right to counsel.

20 We believe that Jackson v. Missouri, as well as
21 Arizona v. Edwards are in control on this point. We
22 believe that the testimony from Mr. Masella that the
23 defendant contacted him and the defendant's recitation
24 of the facts that he did ask for an attorney, did ask to
25 call, should go to the fact that his rights were violated

1 as he was invoking at that time.

2 Sergeant McDaniels, by having him in his car with
3 no other witnesses, was able, per the defendant, to get
4 him to start talking about the case, and by the time he
5 gets to the station house or to the main headquarters at
6 Two Notch Road, his will was overborne.

7 He just goes along with it because he has already
8 requested counsel, and it's been denied. So, Your Honor,
9 I don't believe that there is any case that I've been
10 able to find where one has to keep asserting their sixth
11 amendment right to counsel.

12 The sixth amendment right to counsel starts at the
13 invocation. He indicated to Sergeant McDaniels. The
14 questions should have stopped. It didn't.

15 Therefore, the defense would move that the last two
16 statements, State's 2 and 3, be excluded for violation
17 of the defendant's right to counsel as guaranteed under
18 the sixth and 14th amendment.

19 THE COURT: All right. What's the State's position?

20 MS. CAMPBELL: Your Honor, I believe it would not be
21 a sixth amendment issue we've got here, but a fifth
22 amendment issue under his scenario of when it applies.

23 The defendant's testimony is that he was taken and
24 advised of his rights with Ms. Wagner present. At that
25 point, he then gets in the car, and at some point when

1 he is alone in the car with Shawn McDaniels, he says he
2 invokes his right to counsel.

3 That is contradicted completely by the fact that
4 Shawn McDaniels testified as to what went on; that he at
5 no time ever invoked any rights. He never asked for a
6 lawyer.

7 He was voluntarily cooperating, as the testimony
8 from he, as well as Sergeant Isenhoward, as far as -- the
9 defendant also after that then goes and signs off on a
10 Miranda form and subsequently gives two written statements,
11 Your Honor, which have been provided to the Court which
12 I can hand up again.

13 Even in the second statement that was taken later
14 that night, prior to taking his final version of the
15 events, Sergeant Isenhoward and Sergeant McDaniels also
16 remind the defendant that he has been Mirandized, and he
17 understands his right in that part of the statement
18 himself. He acknowledges that he does. He then signs off
19 on that statement, as well.

20 Subsequent to that, Your Honor, he does make a phone
21 call to -- at his request, to his mother and is allowed
22 to do that and admits to his mother that he had shot the
23 victim.

24 There is no indication of any credible evidence in
25 this case that this defendant invoked any rights or that

1 either his fifth amendment and certainly not his sixth
2 amendment rights were in any way violated.

3 MR. MAY: Your Honor, respectfully.

4 THE COURT: Sure.

5 MR. MAY: I believe the sixth amendment right -- if
6 I may just state, I believe that the sixth amendment right
7 attaches once adversarial proceedings started.

8 I would think that adversarial proceedings started
9 with the service of an arrest warrant. If, however, these
10 are only his fifth amendment rights at this time, that
11 adversarial proceedings had not started, then we're by
12 no means arguing that they weren't violated either.

13 Either the fifth amendment or the sixth
14 amendment -- and/or the sixth amendment rights were
15 violated, the State seems to discredit a young man who
16 served three years in the military, has no record, as there
17 is no credible evidence.

18 I believe that is a swearing contest between two
19 people who, at this point, currently have the same
20 nonexistent record.

21 Your Honor, Bob Masella, I believe, shows the fact
22 that he went and talked to him the two previous days before
23 he was arrested.

24 This goes to the weight and the credibility of his
25 story that he requested to speak to them. Your Honor,

1 be it the fifth and/or sixth amendment rights that are
2 violated, once he invokes one time, the implication remains
3 in that because he is talked out of it on a 30 to 35-mile
4 car ride, he doesn't lose that right. That invocation
5 does not disappear, Your Honor.

6 Your Honor, to say that his testimony is any less
7 credible, I think is -- is a stretch and is a needless
8 bolstering of their witnesses.

9 I believe it's for the Court's determination. They
10 have the same exact record. He's a veteran of the
11 military. He is -- truly, he's on trial, but Sergeant
12 McDaniels has a vested interest in this trial, as well.

13 And it's a swearing contest, but I believe that
14 Mr. Masella's testimony goes to this fact that what he's
15 saying appears to be true.

16 While we have an unrecorded statement that was
17 willfully unrecorded or a story by Sergeant McDaniels
18 that he willfully did not record the entire trip. He did
19 not have anybody else in his car that could either
20 verify or deny what the defendant said.

21 He took him out by himself out of contact with
22 anybody for 30 to 35 minutes. To say there is no credible
23 evidence that he requested an attorney, I think is just
24 not true and not what the evidence that was presented.

25 THE COURT: Anything further?

1 MS. CAMPBELL: Briefly, Your Honor, as far as his
2 credibility, he also says that statements, by his defense
3 attorneys, are involuntary, so those weren't voluntary
4 either. We just think his credibility is flawed -- it
5 goes to its weight, not its admissibility.

6 THE COURT: Well, the standard is only, as you know,
7 by a preponderance of the evidence. In ruling on the
8 admissibility of the evidence is all this Court can do
9 at this time, and that is if I rule that it is
10 admissible, then that's it. You take this argument to
11 a jury on the voluntariness.

12 You're right, Mr. May, it always comes down to an
13 issue of credibility between law enforcement,
14 generally, and a defendant, generally, but I have -- I
15 have listened to the evidence.

16 I have listened to the testimony, both of your client
17 and Mr. McDaniels and Mr. Isenhoward, and I considered
18 that evidence. I find by a preponderance of the evidence
19 that the statement was obtained from the defendant.

20 The defendant was fully advised of his rights under
21 the fifth and sixth amendments to the constitution of the
22 United States.

23 The defendant was advised of his constitutional
24 safeguards regarding -- required by Miranda v. Arizona.
25 He was advised prior to any interrogation that he had the

1 right to remain silent; that he was advised prior to the
2 interrogation that he waived his right -- if he waived
3 his right to remain silent to make a statement and such
4 statement could and would be used against him in a court
5 of law.

6 The defendant was advised prior to any interrogation
7 he had the right to employ or select an attorney of his
8 own choice in that if he did not have the money, funds
9 or resources to employ an attorney, the Court would appoint
10 and provide an attorney for him, if he so desired, without
11 cost or expense to him; that he had the right to have his
12 attorney present with him at all times during all
13 interviews an all interrogations.

14 He was advised prior to any interrogation he had the
15 right to consult with his attorney before interrogation,
16 and he was advised prior to the interrogation that he had
17 the right to interrupt and terminate the interrogation
18 at any time.

19 He had the further right to stop answering questions
20 at any time during the interrogation. The defendant was
21 advised prior to the interrogation that if during the
22 interrogation he desired an attorney, the interrogation
23 would cease until an attorney was provided to him.

24 He would be given an opportunity to consult with his
25 attorney prior to the interrogation; that the defendant

1 knowingly and intelligently waived his rights under the
2 fifth and sixth amendments to the constitution of the
3 United States and the constitutional safeguards provided
4 by Miranda v. Arizona that the alleged statement obtained
5 from the defendant was freely and voluntarily given
6 without duress, without coercion, without undue influence,
7 without reward, without promise or hope of reward, without
8 promise of leniency, without threat of injury and without
9 force of inducement of any kind, and that such alleged
10 statement was the voluntary product of the free and
11 unconstrained will of the defendant.

12 The Court finds all the foregoing conclusions by the
13 preponderance of the evidence. Therefore, I find the
14 statements are admissible into evidence.

15 Now --

16 MS. CAMPBELL: Your Honor, one housekeeping matter.
17 There was an oral statement taken there at the house at
18 seven o'clock. I assume they're conceding that because
19 they said he didn't assert his rights until he was in the
20 car.

21 THE COURT: I thought they waived any --

22 MS. CAMPBELL: I think they did.

23 THE COURT: -- objection to --

24 MS. CAMPBELL: I just wanted to make it for the record.

25 MR. SHEALEY: You're talking about the one with Stan

1 Smith and Isenhoward --

2 MS. CAMPBELL: No, sir. On May 29th at seven o'clock
3 he was arrested. He was orally advised of his rights by
4 Shawn McDaniels and gave a statement there, and then later
5 with authorities tried to take --

6 MR. SHEALEY: You're talking about the alleged verbal
7 admission that he was --

8 MS. CAMPBELL: Verbal admission.

9 MR. SHEALEY: -- the shooter and all of that?

10 MS. CAMPBELL: Yes.

11 MR. SHEALEY: The rest of the argument was with
12 Mr. May. We're not conceding to that. He asked for the
13 warrants.

14 MS. CAMPBELL: No. He did not ask -- according to
15 Mr. May's rendition of the facts, he didn't ask for his
16 lawyer until after he gave that initial verbal statement
17 in the house.

18 Once he was on the way back to the county is when
19 they're saying he -- he asked for a lawyer.

20 MR. MAY: Your Honor -- and Your Honor, it is my
21 recollection of the facts that Sergeant McDaniels did not
22 tell him or did not advise him of any Miranda until after
23 he was in the car. So when you say "at the house", I'm
24 sorry, I'm not -- just...

25 MS. CAMPBELL: In the car in front of the house he

1 was orally advised of his rights. He then made admissions
2 there. Then they went, and you're saying on the route
3 to --

4 THE COURT: McDaniels testified about that.

5 MS. CAMPBELL: Yes.

6 THE COURT: Other than he testified just to giving
7 him --

8 MS. CAMPBELL: Your Honor, again, I wasn't --

9 THE COURT: -- gave him his Miranda rights.

10 MS. CAMPBELL: He gave him Miranda rights, and then
11 he said he made an oral statement making admissions.

12 THE COURT: He didn't say what he did.

13 MS. CAMPBELL: And I -- I couldn't go into the
14 substance of it pursuant to your ruling. I'm sorry, I
15 don't mean to be confusing.

16 THE COURT: You're saying that was post Miranda?

17 MS. CAMPBELL: It was post oral Miranda.

18 THE COURT: Post Miranda custodial.

19 MS. CAMPBELL: Custodial, oral statement to Sergeant
20 McDaniels and Holly Wagner.

21 THE COURT: What's your position?

22 MR. MAY: Beg the Court's indulgence one second.

23 (Pause)

24 Your Honor, we do not concede to that at all. I
25 believe it was the defendant's testimony that he did not

1 say anything until it was just he and Sergeant McDaniels
2 in the car.

3 I believe that -- he said he didn't say anything
4 until he and Sergeant McDaniels were in the car.

5 At the time that Ms. Campbell, I believe, is talking
6 about, Investigator Wagner was in the car, as well. The
7 defendant's testimony was that he didn't say anything,
8 period.

9 So the lack of a statement would argue that there
10 wasn't a statement. So I can't concede that a statement
11 that didn't exist was in compliance with Miranda or
12 freely and voluntarily given.

13 THE COURT: All right. Well, I'll allow the
14 testimony. You can cross-examine him.

15 MS. CAMPBELL: Thank you, Your Honor.

16 THE COURT: Any other statements?

17 MS. CAMPBELL: There are no other statements we
18 intend to offer at this time, Your Honor, other than the
19 phone call, which I think that is -- is that correct?

20 MR. MAY: That is correct.

21 THE COURT: All right. The motion to exclude any
22 handwritten notes that cannot be authenticated. What's
23 that all about?

24 MR. SHEALEY: Your Honor, Rule 901 with the
25 authentication rule.

1 THE COURT: Right.

2 MR. SHEALEY: During the course of the May 22nd
3 search warrant, there were journals or some type of pieces
4 of paper that were found, taken pursuant to the search.

5 There are all kinds of writings, things in there that
6 we reviewed, the evidence at Richland County. You know,
7 we got some more specifics on his alleged inflammatory
8 things, in the defense's opinion, in these journals.

9 The journals say, "Theo Manning's journal, started
10 1980, ended 2009." I don't know who wrote this journal
11 is the bottom line.

12 We want to preclude them from seeking to introduce
13 any kind of written hearsay from this journal. Number
14 one, it can't be authenticated. We don't know who wrote
15 it, unless they're going to bring in a handwriting expert
16 to say this was Theo Manning.

17 You know, I don't know who all -- where this journal
18 came from, whose it was, nobody does. It doesn't have
19 a name on it, Judge.

20 THE COURT: I thought you said it does have a name
21 on it.

22 MR. SHEALEY: No, sir. I'm saying it does not. It
23 doesn't.

24 THE COURT: You told me it had "Theo Manning's
25 journal" on it. Isn't that what you just said?

1 MR. SHEALEY: No, sir. I was perhaps being a little
2 too sarcastic with the argument. I was saying it does
3 not say Theo Manning's journal, started 1980. It doesn't
4 say anything. There's just a bunch of scribbling on it.

5 THE COURT: Oh. Okay.

6 MR. SHEALEY: There's just a bunch of scribbling on
7 it, poems, some of it which we feel could be seen as
8 inflammatory about Mr. Manning, about his sexual, you
9 know, proclivities.

10 There's a lot of things that could be used a lot of
11 different ways that could not be authenticated. We would
12 object to that.

13 MS. CAMPBELL: For the record --

14 THE COURT: So it's a motion in limine?

15 MR. SHEALEY: Yes, sir.

16 MS. CAMPBELL: Is he referring to the notebook?

17 This may also play to his sexual orientation.

18 MR. MAY: Well, and that's a separate motion, but
19 really, any journal taken from the house at that time would
20 fall under that gambit.

21 THE COURT: Well --

22 MS. CAMPBELL: At this point --

23 THE COURT: -- it --

24 MS. CAMPBELL: -- we aren't planning on putting in
25 his sexual orientation or his sexual proclivities, excuse

1 me.

2 At this point, we don't intend to offer those unless
3 they become relevant. If they do, we certainly would
4 advise the Court that we would offer them at that time.
5 At this time, we don't see any relevance as far as who
6 he's having sex with and things of that nature.

7 THE COURT: All right.

8 MR. SHEALEY: Just so I'm clear, none of these
9 handwritten notes are being sought to be introduced?
10 That's the motion, because they can't be authenticated.
11 If we're agreeing, then we don't have much more to talk
12 about. We're agreeing?

13 THE COURT: We'll, you're going to have to -- you
14 know, if they seek to introduce something that you are
15 objecting to, you're going to have to object on the
16 grounds that it's not properly authenticated.

17 I don't know what they're going to offer at this
18 point. I've got no idea what these things say. I don't
19 know if they even were seized properly, if they were
20 seized, are they hearsay. I mean, it's just --

21 MR. SHEALEY: Yes, sir. The only reason we're
22 bringing it up before trial is so we can try to --

23 THE COURT: Well, we don't have to try the case before
24 we go to trial or we're going to have to go through every
25 piece of evidence. So I don't know. They have said, the

1 State has said they don't plan to --

2 MR. SHEALEY: Yes, sir.

3 THE COURT: -- offer any of this, but it may become
4 necessary at some point in time for some reason, at which
5 point you'll object, and if your objection is well laid,
6 it will be granted.

7 MR. SHEALEY: Thank you.

8 THE COURT: I'm neither going to deny nor grant the
9 motion at this time. I'll just take it under
10 advisement.

11 MR. MAY: Your Honor, just before we get off the
12 entire track, you --

13 THE COURT: We're not off the track. Here is the
14 track (indicating).

15 MR. MAY: Okay.

16 THE COURT: What --

17 MR. MAY: I was going -- you just mentioned, you asked
18 if there were any other statements that were sought to
19 be introduced.

20 We do have a motion regarding the telephone call to
21 his mother, if you'd like to take it up at this time or
22 at a later time.

23 THE COURT: We might as well get on that phone call
24 to his mother.

25 MR. MAY: Yes, sir.

1 THE COURT: Okay. Okay. Go ahead.

2 MR. MAY: Yes, sir. May it please the Court, Your
3 Honor. Under Katz v. United States, 389 U.S. 347, South
4 Carolina, a person has a right or has an expectation of
5 privacy to telephone calls without a search warrant.
6 That --

7 THE COURT: Tell me again. Give me the facts.

8 MR. MAY: Yes, sir. After -- after he was
9 interrogated for seven hours, I believe at 2:37 he was
10 permitted to make a telephone call to his mother.

11 The testimony was that either Sergeant Isenhoward
12 or Sergeant McDaniels dialed the number, gave him the
13 phone and waited outside the doorway so he could talk to
14 his mother.

15 THE COURT: Closed door or open door?

16 MR. MAY: It was an open door.

17 He was talking to his mother. I believe he has a
18 right to privacy in that conversation. He was never
19 advised -- there was never any testimony that he was
20 advised that the conversation was being recorded.

21 They said there was a sign on the telephone. Well,
22 he didn't dial the telephone number. The telephone was
23 dialed for him and given to him.

24 The fact of the matter is that's in violation of the
25 South Carolina, as well as the federal wiretapping

1 statutes via 18 -- United States Code Section 2511, and
2 South Carolina code section 17-30-30 whereby at least one
3 party to the conversation has to have been informed or
4 consented to it being recorded absent a search warrant.

5 A search warrant is not available -- is not present
6 here.. They never said they told him that they were
7 recording the telephone call. That's the defense's
8 position.

9 THE COURT: All right. What's the State's position?

10 MS. McDUFFIE: Your Honor, under the South
11 Carolina -- first, Your Honor, the State's position
12 would be that -- that he consented to it's -- it's merely
13 on -- Shawn McDaniels testified that all calls from that
14 line are recorded. Shawn has a very small office and we
15 can show Your Honor --

16 THE COURT: So you're assuming he read it.

17 MS. McDUFFIE: Your Honor, it's on a bright orange
18 sticker right on the front --

19 THE COURT: Even though he didn't dial?

20 MS. McDUFFIE: Yes, sir, Your Honor. It's clearly
21 visible from all aspects of Shawn McDaniels' office.

22 MR. MAY: Objection, Your Honor. She is
23 testifying.

24 THE COURT: I asked her the question.

25 MS. McDUFFIE: Your Honor, if you would like me to

1 put investigator McDaniels on the stand, he can show Your
2 Honor pictures of his office where this is clearly
3 identifiable.

4 Furthermore, Your Honor, to move to suppress
5 something on -- as a violation of the South Carolina
6 wiretap act, under 17-30-110, that motion has to be made
7 before the reviewing authority.

8 The reviewing authority is a three-judge panel on
9 the Court of Appeals, Your Honor. I do not believe that
10 this is the proper forum for that motion to be made.
11 That's section 17-30-110.

12 THE COURT: What are you seeking to introduce?

13 MS. MCDUFFIE: Your Honor, we're seeking to
14 introduce the substance of the call, the recording of the
15 call that was made from the sheriff's department's
16 phone.

17 THE COURT: Did he have -- he -- I mean, nobody was
18 in the office with him?

19 MS. MCDUFFIE: Your Honor, they were standing right
20 outside the door. The door was open. They heard his
21 portion of the conversation, Your Honor. We are seeking
22 to introduce the entire conversation.

23 THE COURT: Well, I think if he saw them standing
24 there and made some statements on the phone, they can
25 testify as to what he said. What about the mother?

1 Doesn't she have some right to privacy?

2 MS. McDUFFIE: Your Honor, if one party consents to
3 the conversation, then the conversation can be recorded.
4 We do not --

5 THE COURT: Are you saying he consented to it?

6 MS. McDUFFIE: Yes, sir, Your Honor.

7 THE COURT: I'll grant the motion.

8 MR. MAY: Thank you, Your Honor.

9 THE COURT: The motion is granted.

10 Now, the officer can testify to what he heard, but
11 I -- I just think that the conversation to your mom ought
12 to have a little bit of protection.

13 Granted.

14 MR. MAY: Thank you, Your Honor.

15 THE COURT: All right. We only have about 12 more.
16 Let's talk about all these terms: "Confession,
17 statement, murder, innocent, guilty, execution,
18 execution style." Is that all the terms?

19 MR. MAY: I believe "victim", as well.

20 THE COURT: I missed "victim". Are you asking that
21 these not be used by the Court or by counsel?

22 MR. SHEALEY: Well, Your Honor, specifically as to
23 the case of the "murder" term restriction, State v. Mark
24 says it cannot be used by counsel -- not -- well, counsel
25 during his argument is fine, but really, by the witnesses,

1 officers.

2 You know, you're innocent until proven guilty.
3 These officers -- it's for the jury to decide whether he's
4 guilty of murder. They can come in arguments.

5 You know, the Court obviously has to discuss what
6 the charge is, but the Court always admonishes that you're
7 innocent until proven guilty.

8 THE COURT: Right.

9 MR. SHEALEY: We're looking to restrict, really,
10 witness testimony from that stand, from officers,
11 whatever lay witnesses, about murder.

12 THE COURT: That's just the "murder" term?

13 MR. SHEALEY: That's as to murder, yes, sir.

14 THE COURT: What about the "victim"?

15 MR. MAY: Yes, sir, Your Honor.

16 THE COURT: What about "confession"?

17 MR. MAY: Yes, sir.

18 THE COURT: What about the statement -- I mean,
19 let's -- let's -- do each -- can one person argue all of
20 them?

21 MR. MAY: Sure, I'll be happy to.

22 THE COURT: Or do you have to switch off by word?

23 MR. MAY: No. I'll be happy to, Your Honor.

24 THE COURT: Well, let me just -- let me just -- can't
25 you and the State work this out? I mean, do I have to

1 parse every word that's going to be said in this trial?

2 MR. MAY: We'd love to work this whole entire case
3 out. They've been --

4 THE COURT: That's not my question. Has the State
5 reviewed these motions?

6 MS. CAMPBELL: Yes, sir.

7 THE COURT: All right. And what's your position --

8 MS. CAMPBELL: Our position is --

9 THE COURT: -- on the --

10 MS. CAMPBELL: -- that we can use the term "victim"
11 to refer to the victim, as is in the statutes. The
12 statutes specifically use the word "victim". It's the
13 statute that you'll be charging the jury. This is murder.

14 THE COURT: I know that.

15 MS. CAMPBELL: As far as any characterization not
16 by any witnesses, I don't think as far as "execution
17 style", but as far as argument goes, just like they can
18 argue whatever they want to about what we're doing and
19 how we're muddying the waters and who or whatever, we are
20 allowed to argue in an appropriate manner.

21 I don't think Solicitor Giese has ever gone outside
22 the bounds of what is ethically correct, and then as far
23 as the terms of "not guilty" and "innocent", these are
24 the same motions you've heard before, Your Honor, but I
25 mean, I think we've really been -- you know, you can use

1 the term "innocent".

2 It's part of your charge to the jury, that they must
3 presume the defendant innocent. As far as "not guilty",
4 that is a form of the verdict they will be getting. We
5 just don't understand what about these terms that are
6 literally throughout everything in the law and the
7 charges they will be getting how we can be limited in the
8 use of those.

9 We aren't using them randomly or making them up. It's
10 simply -- other than the "execution style", all of those
11 are terms that are used in the statutes and in the law
12 itself, so I think we have the right to explore that.

13 As far as whether or not to refer to this as an
14 "execution-style killing", I'm not sure they'll have some
15 characterization of how this is a self-defense killing,
16 some term. Usually they have a story about there's a rat
17 or something.

18 THE COURT: Well, we've heard the muddy story, too.

19 MS. CAMPBELL: Yeah, and the ship drowning with
20 rats, those types of things. They were entitled to do
21 ethically what they can do and we are, too.

22 THE COURT: All right.

23 MR. MAY: Your Honor, respectfully, the word
24 "murder" used by witnesses, I believe, is completely
25 inappropriate because they are then supplanting their

1 wisdom, their experience, in the shoes of the jury.

2 The ultimate question is did he commit a murder. If
3 a witness -- if their witnesses are not instructed not
4 to use that term besides "we obtained a murder arrest
5 warrant," but if they said that he murdered her, then that
6 is supplanting their testimony and their knowledge for
7 the jury's.

8 As far as --

9 THE COURT: Well, I just can't anticipate
10 everything, so I'm just going to take that under advisement.
11 Make the objections as they come.

12 MR. MAY: Yes, sir.

13 THE COURT: Let's get on with some substance.

14 MR. MAY: Okay.

15 THE COURT: The remaining motions I have are domestic
16 violence, photographs, the search warrant jurisdiction
17 issue. I think that's about it.

18 MR. SHEALEY: I think we also have the 16-11-450.

19 THE COURT: I'm sorry. You're right. It's over
20 here. It's the Castle Doctrine issue, right?

21 MR. MAY: Yes, sir.

22 THE COURT: Is that pretty much what we have left?

23 MR. SHEALEY: I believe so.

24 THE COURT: Well, let's get --

25 MS. CAMPBELL: Your Honor, if I'm not mistaken, I

1 think you ruled on the photograph issue yesterday, that
2 it would have to be something that you would object to
3 when it comes up at trial.

4 MR. MAY: And we agree.

5 MS. CAMPBELL: And they agree. That was --

6 THE COURT: Okay, neither granted nor denied.

7 MS. CAMPBELL: Yes, sir.

8 MS. PRINGLE: Your Honor, we do have one other -- with
9 respect to -- I think I can do this very quickly with
10 respect to -- I don't know what's it's on here.

11 There are numerous -- it was a missing person's case,
12 of course, as you know by now, and there were numerous
13 statements relied upon by the investigators.

14 The statements made by the deceased to friends. As
15 you can imagine, they went to seek everyone and interview
16 people and find out, you know, where she might have gone.

17 Many of those statements are not hearsay, and we would
18 concede that, but many of them would be hearsay. We
19 just -- if the State intends to offer those during
20 opening, I think it would be appropriate to give us the
21 opportunity to respond to that and object to that now.

22 I don't know what they would intend to do in that
23 regard. Some of them are clearly not hearsay, but some
24 of them would be objectionable.

25 THE COURT: These are the statements by whom?

1 MS. PRINGLE: By the victim.

2 THE COURT: By the victim?

3 MS. PRINGLE: Yes, by the deceased to friends.

4 THE COURT: Like, "I'm afraid of somebody" --

5 MS. PRINGLE: Exactly.

6 THE COURT: Or one of those --

7 MS. PRINGLE: Exactly.

8 THE COURT: -- things that...

9 MS. PRINGLE: Exactly, Your Honor. I don't know that
10 they would do that in opening, but if they intend to do
11 that in opening, I think that we -- we should be permitted
12 to object to that and take that up and object before
13 then.

14 THE COURT: What's the State's position?

15 MR. GIESE: Your Honor, here again, I think it's one
16 of those motions that they want some kind of pretrial
17 ruling about what I might say or what I might not say.

18 I mean, until -- you know, until I say it and they
19 object to it, if it's something that's objectionable, you
20 know, I really -- it's kind of --

21 THE COURT: Well --

22 MR. GIESE: -- bizarre. We're standing here
23 speculating.

24 THE COURT: I understand, but let me just -- if
25 you've been in this courtroom long, and you all have, I'm

1 reluctant to interfere with openings and closings.

2 I try give counsel as much leeway as possible. It's
3 gotten me in trouble several times, but nevertheless, I
4 understand, Solicitor, that you would not, in an opening
5 statement, make any reference to inadmissible
6 conversations by whomever, but by the same token, if
7 there's -- maybe with that caution, it's enough.

8 But I don't want to start opening statements and
9 have objections and have to keep -- ask the jury to leave
10 and argue about whether or not that's a proper opening
11 statement or not.

12 So counsel for the defense has put you on notice if
13 you -- if you plan to do it, whoever plans to do the opening
14 statement, that there may be objections if certain
15 statements are referred to that were made by the decedent
16 to friends of the decedent. I don't know why that would
17 be -- all be hearsay, but nevertheless, I just caution
18 you in that regard.

19 All right. Ms. Pringle, that's about all I can do
20 at this time.

21 MS. PRINGLE: Thank you, Your Honor.

22 I think in fairness, I should note that with respect
23 to Mr. Manning and Ms. Goodman having sex that day, we
24 do intend to continue to pursue that. I understand your
25 ruling you just made, but that would be another thing that

1 if that would come out in opening statements, we will be
2 objecting to that. I think that's one of those in limine
3 motions that could develop, could change, as the trial
4 goes on, but I think --

5 THE COURT: I understand.

6 MS. PRINGLE: I'd just let that be known. Thank you.

7 THE COURT: All right. How about the record for
8 arrest for criminal domestic violence? What is that all
9 about?

10 MR. SHEALEY: Just, he does have an arrest, not a
11 conviction but an arrest, for criminal domestic violence.
12 We basically would ask the Court to preclude any mention
13 of that in the prosecution of this case in chief.

14 THE COURT: Same victim?

15 MR. SHEALEY: No, sir.

16 THE COURT: Some one other?

17 MR. SHEALEY: This is years ago. It was an unrelated
18 person. It would come in if it was a conviction. I don't
19 think that coming in as an arrest would do anything but
20 just --

21 THE COURT: Does the State plan to offer anything in
22 that regard?

23 MS. CAMPBELL: Not unless the door is opened, Your
24 Honor.

25 THE COURT: Thank you.

1 That leaves the motion to suppress and the Castle
2 Doctrine issue. Mr. May, since you were so eloquent
3 yesterday with the Castle Doctrine, I recognize you at
4 this time.

5 MR. MAY: Thank you, Your Honor.

6 Your Honor, I believe that the Castle Doctrine -- I
7 believe that the legislature in 16-11-450 foresaw
8 solicitor's offices prosecuting citizens of South
9 Carolina after the citizens of South Carolina
10 justifiably took somebody's life in their own home.

11 I believe that the prima fascia evidence as provided
12 in the statement that Mr. Manning gave to the
13 investigators which the State is introducing, which is
14 Exhibit 3, says that Ms. McPhatter pulled a gun on him;
15 where heby (sic) then disarmed her, and she came at him
16 and he pulled the trigger.

17 Your Honor, I believe that this would trigger --

18 THE COURT: Two guns or one gun?

19 MR. MAY: There's two guns, Your Honor. One was
20 found in the car which had no -- which --

21 THE COURT: I mean, they don't both have guns?

22 MR. MAY: Correct. His testimony -- I mean, his
23 statement to the Richland County Sheriff's Department is
24 that she pulled a gun on him. He disarmed her, and when
25 she came at him, again, he pulled the trigger. Your Honor,

1 I believe that that's a prima fascia --

2 THE COURT: How did he get the gun?

3 MR. MAY: He disarmed -- he goes and wrestles it away,
4 and she goes at him and he pulls the trigger.

5 Your Honor, the fact that this is his residence, that
6 that's a prima facia showing that the Castle Doctrine is
7 triggered and 16-11-450 would be applicable.

8 It would be the State's burden to undo that
9 presumption that he acted lawfully; and therefore,
10 he -- that he be immune from prosecution in this case.

11 THE COURT: Where -- give me the statement. Show me
12 the statement.

13 MR. MAY: Yes, sir. It's actually attached to the
14 back of the motion.

15 THE COURT: All right.

16 THE COURT: That's page two?

17 MR. MAY: Yes, sir.

18 THE COURT: Whose statement? I mean, what -- whose
19 firearm was it?

20 MR. MAY: Your Honor, this was in the defendant's
21 residence. It was his --

22 THE COURT: All right.

23 MR. MAY: -- weapon that he had lawfully.

24 THE COURT: All right. Okay.

25 MR. MAY: We believe that there needs to be an

1 evidentiary hearing to determine whether or not
2 the -- whether or not the Castle Doctrine is applicable
3 in this case.

4 THE COURT: Well, you said it's prima fascia
5 evidence.

6 MR. MAY: I need to rebut that unless we have an
7 evidentiary hearing to show that it's not.

8 THE COURT: Let me -- I mean, let me at least get to
9 the first prong. Factually, how does she get there? I
10 mean, how long was she there? Give me some factual
11 background.

12 MR. MAY: Beg the Court's indulgence one moment.

13 Your Honor, it is my understanding that she was in
14 the house from that morning to -- until the actual
15 shooting. She was under --

16 THE COURT: I mean, how did she get there?

17 MR. MAY: She drove down from North Carolina.

18 THE COURT: When did she get there?

19 MR. MAY: That morning, the morning of May 6th.

20 THE COURT: All right. What happened? She drove her
21 car?

22 MR. MAY: She drove her car.

23 THE COURT: She was by herself?

24 MR. MAY: Correct.

25 THE COURT: She went to his house?

1 MR. MAY: Yes, sir.

2 THE COURT: How did she get in?

3 MR. MAY: Doorbell. She was an invitee under the
4 property and tort laws.

5 THE COURT: She was a --

6 MR. MAY: I'm sorry, a licensee. I failed to follow
7 that --

8 THE COURT: Oh, that doesn't matter. She was invited
9 into the house?

10 MR. MAY: That's correct.

11 THE COURT: How long did she stay there?

12 MR. MAY: Stayed for a matter of hours. Then they
13 left to go fill up with gas and came back -- and she came
14 back into the house at that point.

15 THE COURT: Again, with his permission?

16 MR. MAY: That's correct, Your Honor.

17 THE COURT: What do I do about this statutory
18 provision saying that the entry must be unlawful and
19 forcible?

20 MR. MAY: Yes, sir. I believe that when we look at
21 the law, property law --

22 THE COURT: The what?

23 MR. MAY: Property law, Your Honor.

24 THE COURT: I'm looking at the statute.

25 MR. MAY: I agree.

1 THE COURT: Okay.

2 MR. MAY: Yes, sir.

3 At the time that she is in the house, she is a
4 licensee. Once she does an unlawful act towards the
5 defendant, she becomes a trespasser.

6 A trespasser is -- as found in -- when one reads
7 Dickey, it's from intruders and attackers. She is
8 attacking him at the time when she levels the gun upon
9 him. She is attacking him. At that moment, a person has
10 the right to defend themselves in their own home.

11 THE COURT: All right. They have the right to defend
12 themselves, period. That doesn't mean they're immune
13 from prosecution.

14 MR. MAY: Your Honor, I believe that under (c) of
15 16-11-440 --

16 THE COURT: All right.

17 MR. MAY: -- I believe that 16-11-440, as well as (6) (c)
18 and (a) both apply to this. That is the defense of Property
19 and Persons Act of 2006, Your Honor, but when a licensee
20 or from -- just for more common terms, the more
21 common part of this, a social guest comes in your house.
22 They -- you invite a guest into your house, and they pull
23 a gun on you, you have the ability to defend yourself.

24 THE COURT: Correct.

25 MR. MAY: Even though -- and the Castle Doctrine

1 applies. Even though you invite them into your house,
2 because at the time they pull the gun and do an unlawful
3 act towards you, they become an attacker.

4 THE COURT: Go ahead.

5 MR. MAY: And because she became the -- becomes the
6 attacker, he has the benefit of 16-11-440 and 16-11-450.
7 They have to show why it's unlawful. Under 16-11-440(a),
8 it's the traditional Castle Doctrine; (c) is if you're
9 attacked anywhere where you're lawfully in --

10 THE COURT: In another place?

11 MR. MAY: Pardon me?

12 THE COURT: In another place, like a business?

13 MR. MAY: Correct. That -- this statute extends it
14 to it any place where you're lawfully able to be.

15 Your Honor, I believe that it is it is -- it is
16 without a doubt that the Castle Doctrine applies if a
17 social guest brandishes a weapon at the owner of a home.
18 And that -- they become the attacker. They become the
19 intruder at that time.

20 It's not only -- it's not just for people who kick
21 down doors. It's for any time that one feels unsafe in
22 their own home.

23 THE COURT: All right. Let me hear from the State.

24 MS. McDUFFIE: Your Honor, looking at the statement,
25 which Mr. May attached to the motion in support of this,

1 he clearly says that he -- the defendant clearly says in
2 his statement that he took the gun from her. He grabbed
3 her hand and took it from her.

4 He then pointed it at her and said, "Are you
5 fucking crazy? I told her that you can't be mad at me
6 because when I came up to see you last, you were asking
7 me if I wanted to be friends with benefits.

8 "She was talking about whether I was serious. The
9 whole time she was crying. She hit the gun. I asked her
10 again, 'Are you fucking crazy?' She told me, 'You're just
11 like everyone else.' She went and takes a step, like
12 motioned towards me but she pivoted. When she did, I
13 pulled the trigger to show her to stop playing."

14 Your Honor, he has to be in reasonable fear of
15 imminent peril of death of great bodily injury. At the
16 time he pulled the trigger, she is unarmed.

17 He admits in his own statement that he was -- nowhere
18 does he say that he was in fear of death or great bodily
19 injury, but rather that he pulled the trigger to show her
20 to stop playing.

21 Your Honor, we believe the Castle Doctrine would not
22 apply; that he has to be in reasonable fear of imminent
23 peril or death; and therefore, the Castle Doctrine would
24 not apply.

25 Furthermore, Your Honor, because there is

1 substantial question about this, this is a question for
2 the jury, and they're free to argue self-defense or to -- if
3 the evidence presents itself, Your Honor, and you charge
4 that and argue that to the jury.

5 THE COURT: Yes, sir.

6 MR. MAY: Respectfully, Your Honor, under 16-11-440,
7 there is the presumption that he's in fear any time you're
8 in your house. That's what the Castle Doctrine says.

9 There's a presumption of fear after someone levels
10 a gun at you; that that is undisputed that he is presumed
11 to be in fear. He has no duty to retreat within his own
12 domicile.

13 Your Honor, this is not a jury issue at this
14 moment. This issue is can the State proceed, and absent
15 an evidentiary showing by the State, it is the defense's
16 position that they are barred procedurally from the
17 prosecution of Theodore Manning for murder.

18 It's -- they have to overcome this presumption.
19 Mr. McNealy, who is our super clerk waiting for Bar
20 results saying that he did a 403 in Laurens County where
21 this issue came up.

22 THE COURT: In a domestic squabble, dispute?

23 (The clerk indicates.)

24 No, I'm asking you.

25 MR. MAY: I -- the -- arguably, Your Honor, I

1 don't -- I'd argue that this is not a domestic squabble.
2 I believe that the State argued that earlier due to the
3 fact that they were not ever domiciled. They never held
4 themselves out to be married. They did not have --

5 THE COURT: I understand it's not prosecuted --

6 MR. MAY: -- any children in common.

7 THE COURT: -- but it's domestic argument.

8 MR. MAY: Your Honor, there is an argument in
9 Mr. Manning's house with a firearm that he did not bring
10 to the argument.

11 THE COURT: And this is -- this is an argument
12 between lovers.

13 MR. MAY: Yes, sir, and unfortunately I believe --

14 THE COURT: This is not a home invasion.

15 MR. MAY: That is correct.

16 THE COURT: All right.

17 MR. MAY: Which becomes --

18 THE COURT: Which the statute is design to protect.

19 MR. MAY: Your Honor, I believe the statute is
20 designed to protect the homeowner when they are in their
21 own house and a person becomes an attacker.

22 THE COURT: Okay.

23 MR. MAY: I believe that's what Dickey says, which
24 is S.C. -- I'm sorry, 380 S.C. 384, that the attack also
25 gives citizens the right to protect themselves, their

1 families and others, from intruders and attackers.

2 THE COURT: Well, why is she an intruder?

3 MR. MAY: Because the second she pulled a gun, she
4 is no longer lawfully in the house.

5 THE COURT: All right. Well, you'll have to argue
6 that in -- in another court, motion is denied.

7 MR. MAY: So, I'm sorry, Your Honor. Are you ruling
8 that this is not -- that the act -- the defense of
9 Property and Person's Act is not applicable to this case?

10 THE COURT: Yes.

11 MR. MAY: Okay.

12 THE COURT: All right. Let's talk about your motion
13 to suppress.

14 MR. MAY: Yes, sir.

15 MR. SHEALEY: Your Honor, I'm not sure if you've
16 had a chance to read this, but we -- we'd like to call
17 some witnesses in this matter before we get to arguing
18 that we think will make this -- this more --

19 THE COURT: Tell me why. Tell me what your premise
20 is and who you are planning to call.

21 MR. SHEALEY: Your Honor, we would like to call
22 Charlotte/Mecklenburg Detective Hopkins. She was
23 instrumental. She was at the scene when the search
24 warrant was served, and she can testify a lot as to
25 the -- basically the facts around the delivery of the search

1 warrant.

2 THE COURT: Are the facts in dispute?

3 MR. SHEALEY: Yes, sir.

4 THE COURT: How so?

5 MR. SHEALEY: Well...

6 THE COURT: I don't know.

7 MR. SHEALEY: Well, we'd like to -- we'd also like
8 to question her.

9 THE COURT: I said, are there facts in dispute?

10 MR. SHEALEY: I believe so, Judge.

11 THE COURT: All right.

12 MR. SHEALEY: I believe that Charlotte/Mecklenburg
13 might say that he consented to this whole thing; that
14 he let everybody come in and search his house, and we
15 disagree with that.

16 THE COURT: Well, all this disagreement. There
17 is -- there is indication in this record that they say
18 he gave consent, right?

19 MR. MAY: Yes, sir. We've addressed that in the
20 memo. We have five different points that we feel would
21 cause the search warrant to fail individually and
22 collectively. We'd take them in turn, but we feel we need
23 to call Detective Hopkins.

24 THE COURT: Is that the only one?

25 MR. SHEALEY: Yes, sir.

1 THE COURT: What's the State's position?

2 MS. McDUFFIE: Your Honor, our position is that he
3 consented to the search. Your Honor has already read the
4 first page of the statement given on 5/22, the date that
5 the search warrant was executed.

6 In that first paragraph, Investigators Hopkins
7 said, "You're not under arrest. We came here earlier.
8 We're executing a search warrant. Prior to that, he gave
9 us consent to search." He says "yes."

10 Your Honor, it would be our position that that would
11 be consistent with the testimony on the stand that has
12 already been heard by Your Honor today.

13 THE COURT: All right.

14 MS. McDUFFIE: And he acknowledges through that
15 statement.

16 THE COURT: All right. Well, let's make the record
17 clear. Call her, call your witness.

18 MR. SHEALEY: Okay. The defense would call
19 Investigator Detective Hopkins.

20 CAMILLA HOPKINS,
21 after being duly sworn, testified as follows:

22 THE CLERK: Have a seat on the stand, please. Give
23 the court reporter your name.

24 THE WITNESS: Camilla Hopkins.

25 DIRECT EXAMINATION:

1 BY MR. SHEALEY:

2 Q All right. Basically, is it fair to say that you
3 were involved, first off, in Charlotte with this case,
4 right?

5 A Right.

6 Q It was a missing person's case. Correct me if I'm
7 wrong, but it was assigned to you as y'all were
8 heading down to Columbia to investigate more of a
9 murder, right?

10 A Prior to coming to Columbia, it was assigned to
11 me.

12 THE COURT: Ma'am, ma'am, you're going to have to
13 speak up so I can hear you.

14 THE WITNESS: Oh, I'm sorry.

15 THE COURT: Say it again.

16 THE WITNESS: Prior to going to Columbia, it was
17 assigned to me.

18 BY MR. SHEALEY:

19 Q Right. And correct me if I'm wrong, but you were the
20 lead detective coming from Charlotte on this.

21 A Correct.

22 Q Okay. And do you have a copy of your report on this
23 today?

24 A Not with me here, no.

25 Q You don't. If I could mark this exhibit.

1 (WHEREUPON, Defendant's Exhibit No. 7 was marked for
2 identification only.)

3 MR. SHEALEY: Thank you. May I approach the witness,
4 Judge?

5 THE COURT: Yes, sir.

6 BY MR. SHEALEY:

7 Q This is a -- this is your report?

8 A Yes. It was 31 pages, but you've got one extra page
9 here.

10 Q Okay. Pages one through 31, right?

11 A Right.

12 Q Reporting officer Camilla Hopkins; correct?

13 A Correct.

14 Q Homicide section?

15 A Correct.

16 Q Okay. I'm going to draw your attention to May 21st.
17 That was when y'all first came to Columbia to start
18 looking for Teddy, right?

19 A You said May 21st?

20 Q Yes, ma'am. That would be the first time Charlotte/
21 Mecklenburg came down to talk to Theodore Manning.

22 A If that was Detective Martin who wrote that down,
23 yes.

24 Q I'm just asking you, in charge of the case, is that
25 your recollection?

1 A Yes.

2 Q Okay. Now, if you'll turn your attention to page 11
3 of your report. The first paragraph, you'll agree that
4 in your report, you advised Detective Fitch, that last
5 sentence of the first paragraph, he's advising that he
6 wants to complete a search warrant of Theodore Manning's
7 residence; correct?

8 A Right.

9 Q Okay. So at that point, Detective Martin, yourself,
10 Fitch, Flanders, you're all en route to Richland County;
11 correct?

12 A Correct.

13 Q All right. 19:00 hours, you're talking about
14 briefing a Sergeant Robbins. You refer to Sergeant
15 Robbins throughout this.

16 A I think it's Robinson.

17 Q Robinson, that's --

18 (Talking over each other.)

19 A I --

20 Q I don't have a problem with that, but we're talking
21 about Don Robinson with the Richland County Sheriff's
22 Department, correct?

23 A Correct.

24 Q Okay. Right in the middle of that page, that same
25 paragraph, it was at that point that Sergeant Robinson

1 is provided with y'all's probable cause to do a search
2 warrant; correct?

3 A Correct.

4 Q This is a search -- this is the probable cause that
5 your agency had established, you know, previous to that
6 date.

7 A Correct.

8 Q Okay. From everything you've learned about the case;
9 correct?

10 A Correct.

11 Q And if you continue, go down, or be with me, at this
12 point you get -- Don Robinson gets this, goes to a judge
13 with this search warrant, right?

14 A Correct.

15 Q Okay.

16 A I wasn't sure of the name but --

17 Q Right.

18 A -- I understood that that's what they did.

19 Q With y'all's probable cause?

20 A Right.

21 Q Okay. Now, if I could direct your attention to where
22 it says at -- starting at 20:50 hours, okay. The
23 nighttime. This would be when you and Martin and Fitch
24 and Flanders arrived at Mr. Manning's house, right?

25 A Correct.

1 Q You'll agree that in your report, you said you knocked
2 on the door and Detective Martin and I spoke with -- spoke
3 with him, explained to him that we had obtained a search
4 warrant for his residence, right?

5 A That was after we had spoke to him and obtained
6 consent.

7 Q Well, that's not what your report says, right?

8 A It's filled out later down in the paragraph.

9 Q All right. Now, in chronological order, that's not
10 what your report says. It says, "We knocked at the door,
11 and I spoke with him explaining to him that we obtained
12 a search warrant;" isn't that correct?

13 A Yes, that's what it says.

14 Q And your report is meant to be accurate, is it not?

15 A Yes.

16 Q You are highly trained. You are the lead
17 investigator on this case, are you not?

18 A Yes.

19 Q You've gone through years of training from being a
20 lowly cop who might be assigned to patrol, but now you're
21 lead investigation in an interstate murder, correct?

22 A Correct.

23 Q This record better be accurate, right?

24 A Correct.

25 Q Okay. It says after knocking on the door, you

1 explained to him that we obtained a search warrant; is
2 that correct?

3 A Correct.

4 Q Okay. All right. And then later everybody is
5 searching the house, right? Okay. Now, at that point
6 Mr. Manning is escorted out?

7 A He was already outside when we talked to him at the
8 door.

9 Q He's outside and people are searching his house?

10 A Officers and crime scene techs.

11 Q All these -- all of these people are officers. Of
12 course, they're one in the same. These are all officers
13 searching his house?

14 A Correct.

15 Q And he is then going to this police substation, right?

16 A Correct.

17 Q Where you're involved in his interview with
18 Investigator Manning -- I mean, Investigator Martin;
19 correct?

20 A Correct.

21 MR. SHEALEY: Okay. Beg the Court's indulgence.

22 I don't have any further questions of this witness
23 at this time, Judge.

24 CROSS-EXAMINATION:

25 BY MS. CAMPBELL:

1 Q Good afternoon, Detective. As you were attempting
2 to explain to the defense attorney, but you clarified then
3 in your follow-up paragraph as to what the chain of events
4 were, can you explain to the judge just what happened when
5 you knocked on the door that day and got consent?

6 A We knocked on the door, and it took him a while to
7 come to the door because his bedroom was -- he later
8 informed us was on the back side of the house in the upper
9 right-hand corner towards the backyard. So it took him
10 a bit to come to the door.

11 When we got him to the door, myself and Detective
12 Martin spoke to him. Meanwhile, in his driveway, kind
13 of staged over to the other side were the crime scene van
14 and technician from Charlotte, our vehicles, and the
15 Richland County deputies were there to assist us in
16 executing the warrant.

17 But when we first spoke to him, we talked to him,
18 and we explained to him that we wanted to search his
19 residence. We wanted -- we had information that Nikki
20 McPhatter, from his statements, had been there and
21 from other witness statements that she had given him
22 jewelry, and there were possible other belongings of hers
23 there.

24 THE COURT: Possible what?

25 THE WITNESS: Belongings.

1 He was -- had just woken up. He was somewhat sleepy,
2 and he was somewhat confused. I was trying to explain
3 to him what exactly was going on, why we were there, what
4 we were going to do, how we were going to do it.

5 I went into the soap box spiel, if you will, that
6 we wanted to search his house; that we were going to go
7 room by room. We were going to be thorough. We were
8 going to respect his property. We weren't going to tear
9 anything up.

10 If there was something that we wanted to get into
11 that we couldn't get into, we would ask how to get into
12 it.

13 MR. SHEALEY: Could you ask the witness to slow down
14 a little bit. I'm having a hard time understanding what
15 she is saying.

16 THE COURT: All right.

17 THE WITNESS: I'm sorry.

18 If there was something that we needed to get into
19 and couldn't get into, that we asked him how to get into
20 it, or how -- if he could provide us a key or whatever
21 means it was to get into it.

22 So he had a lot of questions as to how we were going
23 to do what we were going to do, and he was okay with it.
24 He was going to sign our form of consent.

25 It spells out our names, his names, the property,

1 and he would be provided with a property sheet that would
2 itemize all the property that was taken from the
3 residence.

4 BY MS. CAMPBELL:

5 Q Okay. And did he, in fact, give you consent to go
6 into his residence --

7 A Yes.

8 Q -- earlier that day?

9 A Yes. And he was willing to sign that form.

10 Q And later that day -- and while you were there, did
11 you also ask him to go and meet you at a neutral location
12 so y'all could take a more detailed statement?

13 A Yes.

14 Q I'm going to show you what's been marked as Court's
15 Exhibit number 2. Do you recognize these front two pages
16 of that statement?

17 A Yes, that's my -- or his statement, I'm sorry.

18 Q In this, the first thing you advised him of, I
19 believe, is that you had a search warrant, but prior to
20 that, you agreed to give us consent to go in there.

21 You made us aware of the fact you weren't under
22 arrest. You were free to go. You didn't have to come
23 speak with us. There was no outstanding warrant. You
24 understand that is all correct, and his answer was?

25 A Yes.

1 Q So he acknowledged that he had given you consent?

2 A Yes.

3 Q After he had given you consent, then Richland County
4 had already gotten a search warrant; is that correct?

5 A The search warrant was in hand.

6 Q In hand?

7 A And, obviously, they were staged over on the
8 driveway side, so after he gave his consent, I went over
9 to Sergeant Robinson, informed him that we had consent.
10 He was willing to sign the consent form, and that he was
11 willing to do the search consensually.

12 Q Okay. Then they executed the search warrant, as
13 well?

14 A Yes, ma'am.

15 Q After he had given consent.

16 A Right.

17 MS. CAMPBELL: Thank you.

18 MR. SHEALEY: May it please the Court.

19 THE COURT: Yes, sir, go ahead.

20 REDIRECT EXAMINATION:

21 BY MR. SHEALEY:

22 Q All right. I've got to take you, again, to this
23 statement. This is your investigative report, right?

24 A Right.

25 Q This embodies the integrity of everything that's

1 happened with your investigation; correct?

2 A Correct.

3 Q You're not lying in this statement, are you?

4 A No.

5 Q Your name is Camilla Hopkins?

6 A Correct.

7 Q The document date at the very top says 7/15/2009,
8 right?

9 A Correct.

10 Q The first page. How many documents? Thirty-five.

11 There's a reason behind why this has to be truthful and
12 accurate. It's so that issues like this, we'll know what
13 happened then because this was a year-and-a-half ago,
14 right?

15 A Yeah.

16 Q I mean, that's the point of it. That's the barebones,
17 bottom-line point. It's very specific in here throughout
18 your report. There's hours, hours, and dates, correct?

19 A Correct.

20 Q In military times. So there is no confusion about
21 when something might have happened in the investigation,
22 right?

23 A Correct.

24 Q I want to take you, again, to page 11 of 31 at

25 20:50 hours. We're just going to be plain people in plain

1 English. It says, "Detective Martin with Detective
2 Fitch, Flanders and I arrived at Manning's residence,"
3 correct?

4 A Correct.

5 Q That's the first thing that happened, right?

6 "We knocked on the door." That happened then, right?

7 A Correct.

8 Q "Detective Martin and I spoke with him." That
9 happened next, right?

10 Q "We explained to him that we had obtained a search
11 warrant for his residence." That happened next, right?

12 A No.

13 Q So you lied in your statement?

14 A No. I did not lie. If you read below -- if you
15 continue reading the paragraph, it's mentioned in there
16 that prior to him being informed of the search warrant
17 that he provided us with consent.

18 Q Now, you said that this statement is truthful and
19 accurate; correct?

20 A Correct.

21 Q You agree with me that dates and the military time
22 in here is all for a reason, right?

23 A Yes.

24 Q This is in chronological order about the events.

25 Otherwise, you could put one day or page one. That is

1 at the end of this statement, right?

2 A I don't understand what you're saying.

3 Q You would not do that, right --

4 A No.

5 Q -- because it matters.

6 A No.

7 Q So now you want to tell me that out of this whole
8 thing, this certain section is just not accurate, right?

9 This is the one section that's not accurate?

10 A It's accurate in that the things that occurred are
11 mentioned all in that one paragraph.

12 Q So the first sentence when you say, "I spoke to him,
13 explained to him that we obtained a search warrant,"
14 that's just not accurate. That happened later, and that
15 would be a mistake in here, right?

16 A This was a conversation that we had at the door. The
17 conversation started out with us telling him why we were
18 there. You know, we wanted to search his residence, and
19 we wanted to do it consensually and he agreed.

20 Q And you told him you had a search warrant.

21 A Not until I went -- after -- after we got consent from
22 him.

23 Q You told him --

24 A Can I finish?

25 Q Please do.

1 A After I got consent from him and his willingness to
2 sign a search -- the consent form that we had brought down,
3 I walked over across the yard and informed Sergeant
4 Robinson that he was going to give us consent.

5 Q Okay. But you'll agree, then, that according to your
6 report, the first thing you say is, "We knocked and told
7 him that we had a search warrant," right? You'll agree
8 that's in your report?

9 A I agree that's in my report.

10 Q My question was --

11 A I understand what you're saying.

12 Q That is my first question. Number two --

13 A That is not the order that --

14 Q Number two --

15 A -- it --

16 (Inaudible.)

17 (Talking over each other.)

18 Q -- you will agree --

19 THE COURT REPORTER: I'm sorry. I can't take a record
20 when you're talking at the same time. I didn't hear
21 anything that either one of you said. If you could repeat
22 it, please.

23 BY MR. SHEALEY:

24 Q You'll agree that the first -- where it says 20:50
25 hours, the first thing in your report there is that you

1 spoke to him and told him you had a search warrant. That's
2 in your report; correct?

3 A Correct.

4 Q You'll agree that that's right there. There's no
5 getting around that, right?

6 A Correct.

7 Q That's the report. Now, the next thing that you'll
8 agree is that you told him it was necessary for us to
9 complete our search and collect evidence so we can
10 eliminate him, right?

11 A Correct.

12 Q That's in the report. The next thing is so you can
13 move past in the investigation, right? That's the next
14 thing chronologically in your report right there. It's
15 part of that same sentence. Do you see that?

16 A Yes.

17 Q That's in your report. The last sentence in that
18 paragraph is -- you'll agree you say, "Manning consented
19 to us searching his residence." You'll agree that that's
20 the way your report reads?

21 A Correct.

22 Q So if that is not the truth, why would you write it
23 that way if the purpose of this is to be truthful and
24 accurate?

25 A The statement is truthful. I understand how it's

1 confusing, but the statement is truthful.

2 Q It's not confusing. It's very clear. You're --

3 MS. CAMPBELL: Objection, Your Honor. He's starting
4 to argue with the witness.

5 THE COURT: All right. Don't argue with the
6 witness. Just ask your question.

7 BY MR. SHEALEY:

8 Q Beg the Court's indulgence.

9 (Pause)

10 I won't belabor the point a whole lot more, but while
11 you're talking to him at this juncture, there's a lot of
12 law enforcement around, right?

13 A There's the three of us, a crime scene tech, Sergeant
14 Robbins, and I believe two -- Robinson. I believe there
15 were two other Richland.

16 Q All right. Six or seven --

17 A Yeah.

18 Q -- people is what you testified to.

19 A Right.

20 Q And they're going in searching the house, right?

21 A Right.

22 Q Okay. Now, you say in your report at the last
23 sentence that he consented, right?

24 A Correct.

25 Q And that he was willing to sign a Charlotte/Mecklenburg

1 Police -- Mecklenburg department consent to search form,
2 right?

3 A Correct.

4 Q Do you have this form with you?

5 A No. It was never completed because after I went
6 across the yard and informed Sergeant Robinson that he
7 had consented to the search and was willing to sign a consent
8 form, Sergeant Robinson advised that his jurisdiction was
9 going to execute the search warrant. It kind of trumped
10 it.

11 Q So he never signed the form that you --

12 A No.

13 Q -- referenced that he was willing to sign?

14 A No.

15 MR. SHEALEY: Beg the Court's indulgence.

16 (Pause)

17 BY MR. SHEALEY:

18 Q So you never got a signed consent to search form?

19 A If I have had gone and talked with Sergeant
20 Robinson, and he was willing to let me do the search, they
21 would have -- on a conditional basis, I would have gotten
22 the form completed --

23 Q Did you get a signed consent to search form?

24 A No. I didn't need to.

25 Q Okay.

1 A I didn't need to.

2 Q But then Robinson --

3 A First of all, it wouldn't be executed.

4 Q -- went and executed it, right?

5 A Correct.

6 MR. SHEALEY: Okay. The Court's indulgence.

7 (Pause)

8 I don't have anything further, Judge.

9 THE COURT: Anything further from the State?

10 MS. McDUFFIE: No, sir.

11 THE COURT: All right. You may come down.

12 MS. CAMPBELL: Your Honor, may I hand that document
13 back up to you?

14 THE BAILIFF: Watch your step.

15 MS. CAMPBELL: Thank you. May I approach?

16 THE COURT: Yes.

17 (WHEREUPON, there was a bench conference.)

18 THE COURT: All right. Mr. Shealey, if you'd like
19 to proceed.

20 MR. SHEALEY: Judge, we'd like to go point by point
21 on this. We have arguments on this issue.

22 THE COURT: All right. Go ahead.

23 MR. SHEALEY: Your Honor, the first motion. The
24 first argument we have, Your Honor, is simply that
25 Charlotte/Mecklenburg, being an agency out of North

1 Carolina, does not have jurisdiction to be
2 conducting activity they conducted in our State of South
3 Carolina.

4 Basically, the law says that absent a specific
5 statute from South Carolina allowing this type of
6 activity by another state's law enforcement agency, that
7 this cannot happen. That's actually a North Carolina
8 case, Wilson v. Town of Mooresville cited at 222 North
9 Carolina 283 that only if authorized by a state statute
10 that someone from a different municipality or county,
11 that's the only way they're able to go with a different
12 territorial jurisdiction.

13 What our statute says on the matter is that in the
14 case of a warrant issued here by the magistrate or a
15 judge, or a court of record, they can only be in reference
16 to a peace officer having jurisdiction in the county
17 where it occurred.

18 Okay. Here, Officer Hopkins, as you know, has
19 testified, and it's complete with the exhibits attached
20 to this motion. They came down on the 21st. They already
21 had probable cause, in their opinion.

22 They told Captain Stan Smith, "We want to do a search
23 warrant." All right. There's testimony from Martin.
24 There's testimony from Hopkins that they -- Detective
25 Fitch is the one that typed up a search warrant.

1 He then comes down with this form and puts it in a
2 Richland County form. It's the same probable cause. At
3 this point, Richland County doesn't really know much
4 about the case except that Charlotte/Mecklenburg wants
5 to come and do a search warrant.

6 They're not interviewing this probable cause. This
7 is what Charlotte/Mecklenburg is entering into a Richland
8 County form.

9 At this point, Don Robinson is given the task by Stan
10 Smith to go ahead and go to a judge and have this search
11 warrant done, all right.

12 Keeping intact with this jurisdiction argument,
13 essentially, it's their probable cause from their
14 Charlotte form, their narrative here in our state.

15 There's, I think, four or five Charlotte police
16 officers that are doing -- that are there. There's an
17 issue of whether it's a consent or a search warrant,
18 they're the ones that are there to search this house.

19 The house gets searched, and whether you said Don
20 Robinson eventually searches it, or Investigator --
21 Detective Hopkins says after -- after he doesn't show
22 whether he searches it or not.

23 It's based on something that was -- cut out of the
24 whole cloth of a different jurisdiction. The probable
25 cause, if you think there's probable cause, is coming

1 from a different jurisdiction here; that they completed
2 the return form.

3 I mean, they are in custody of any physical evidence
4 that is taken from that house. It's only at a later stage,
5 several days later, when they're talking about searching
6 the codefendant's house do they all sit down over Stan
7 Smith's notes and discuss -- and that's an exhibit, as
8 well, discussion jurisdictionally when it is that
9 Richland County would start -- obtain -- in collecting
10 this evidence.

11 It's in the custody of Charlotte/Mecklenburg at this
12 point. The basic argument on this is they don't have -- we
13 don't have a law in our state allowing other state law
14 enforcement agencies to come down here and do search
15 warrants.

16 It's in the exhibits. It's in the testimony that's
17 what they wanted to do. That's what they did do. It's
18 unlawful, and that point alone would cause the entire
19 search to fail. It would be illegal for jurisdictional
20 reasons.

21 I think for them to come in and say that, "Well, we
22 gave -- we typed it up, and we gave it to Don Robinson
23 to put it in the Richland County form" is simply a
24 pretext, you know, that our law doesn't allow.

25 They had their -- I mean, Investigator Hopkins

1 testified she had their own tech van there as opposed to
2 the other four detectives from Charlotte that were there
3 on the scene. This was their baby. They were there on
4 the 21st. They searched the 22nd. Richland County was
5 only remotely involved.

6 THE COURT: Do you want to address these -- I'm
7 going to address the remaining?

8 MR. SHEALEY: Well, yes. However you'd like to do
9 it. If you'd like to have us argue in turn, point by
10 point, or just like us to all argue on down the line.

11 THE COURT: Why don't you just give me your complete
12 argument. Then I'll hear from the State.

13 MR. SHEALEY: Yes, sir.

14 The second argument would go to basically the
15 failure of the probable cause of the search warrant.
16 It's not necessarily a jurisdictional warrant, but the
17 probable cause as it relates to being supported by an
18 oath or affirmation, as their uncontroverted testimony
19 is from Detective Martin, from Detective Hopkins, they
20 came down with their probable cause. They gave it to
21 Richland County.

22 Richland County put it in a form, and at that point
23 when it's entered into the Richland County form by Don
24 Robinson, he is given the task to go to a magistrate judge
25 and get this warrant.

1 Don Robinson, and it's in the exhibits attached, per
2 Stan Smith's notes, is called away on a separate
3 criminal investigation.

4 The duty to get this search warrant signed by a judge
5 is left with Tommy Croxton. Nowhere in any discovery
6 provided by the State is Tommy Croxton a part of this
7 investigation, has he ever been briefed on any matter of
8 it.

9 But he goes, and if you'll look to the exhibit, I
10 believe it's Exhibit B, Exhibit A regarding the
11 Richland County form -- it's for Exhibit B, he signs
12 "Tommy Croxton, affiant for Don Robinson."

13 The argument I'm making here is this probable cause,
14 whether you think there's probable cause or not is not
15 supported by proper oath or affirmation from someone that
16 has personal knowledge of the facts of the issue.

17 All right. And that -- that's according to State v
18 McKnight 291 South Carolina 110. Without that personal
19 knowledge to support this oath or the petition, that
20 fails, and there is no probable cause.

21 Now, you can have -- there's cases where agencies
22 can talk and be briefed, and you can have hearsay to support
23 probable cause in this way. That's allowable.

24 Cases like State v. Dunbar addressed that, but what
25 they also say is that, "When an affidavit in support of

1 a search warrant is based on hearsay information, the
2 affidavit must present a substantial basis for crediting
3 the hearsay."

4 Okay. In this affidavit, there is no reference
5 whatsoever by Tommy Croxton as to how this information
6 is being credited.

7 It's hearsay because it's coming from Charlotte
8 who has given it to Don Robinson who then is telling Tommy
9 Croxton sign off on it for me.

10 There is no record whatsoever in this affidavit
11 asking for a search warrant as to how this hearsay has
12 been credited. Okay. That's something, without that,
13 according to our case law, in State v. Dunbar that it fails.

14 The Richland County Sheriff's Department does not
15 have personal knowledge at that point with Mr. Croxton,
16 so therefore, there is no substantial basis to credit it.
17 It simply fails.

18 Now, if they credit it, even the hearsay, the triple
19 hearsay, it could survive. It's simply not done here,
20 Judge. Because of that uncredited hearsay, Tommy
21 Croxton is not provided an oath of his personal facts.
22 It's uncredited hearsay from Robinson --

23 THE COURT: Is the same true of Robinson?

24 MR. SHEALEY: Robinson might have been briefed. I
25 don't know. It's not referenced in this. It's loose in

1 the discovery.

2 The search warrant affidavit doesn't say anything
3 about being credited, but it's uncontroverted that this
4 probable cause for the search warrant is coming from
5 Charlotte.

6 When we get down to Tommy Croxton, and he's in front
7 of that judge and the oath or affirmation is swearing to
8 the petition, it can only survive if that hearsay is
9 credited. It's referenced nowhere.

10 I'd ask do you look at these exhibits, but that would
11 be the argument for why that would -- would basically fail
12 for probable cause at that point.

13 MR. MAY: Your Honor, I'm sorry that we're doing this
14 in a hypothecated manner, but that's the way we prepared
15 for it, I apologize.

16 Your Honor, in looking at the affidavit, an affidavit
17 must, one, establish probable cause that a crime has been
18 committed, and two, enumerate evidence of the offense that
19 we found at the place be searched, U.S. v. Eliz, 182 F.3d
20 82, Your Honor.

21 You can't just have mere conclusory statements. The
22 affidavit that is used in support of the search warrant
23 that was constructed by the Charlotte/Mecklenburg Police
24 Department and then incorporated through the Richland
25 County form has a listing of the investigation thus far.

1 It has a list of the investigation, and then it has
2 just a mere conclusory statement. The conclusory
3 statement says, "For these reasons, we believe -- based
4 on the facts, it is believed there is probable cause to
5 believe the evidence of murder has been tainted with the
6 presence."

7 Nowhere in that affidavit do they ever state that,
8 (1), Nikki McPhatter is believed to be dead; (2), that
9 it is believed that Theo Manning killed Nikki McPhatter,
10 or (3), that a crime is believed to have occurred at Theo
11 Manning's house, his home, or that taking of D.N.A. through
12 a buccal swab would produce any evidence of a crime.

13 Your Honor, in State v. Smith, the South Carolina
14 Supreme Court addressed this issue. It said there is no
15 reason to believe why Smith in that -- that the affidavit
16 in Smith had no evidence as to why or presented no
17 probable cause as to why they believed Smith committed
18 that crime.

19 Your Honor, I believe that this search warrant goes
20 a giant step further. It doesn't even state that a crime
21 was committed until the conclusory statement at the end.

22 THE COURT: Was the buccal swab taken?

23 MR. MAY: Pardon me?

24 THE COURT: Was the buccal swab taken?

25 MR. MAY: Yes, sir.

1 Furthermore, Your Honor, I think it goes to the
2 belayed fact that there was not probable cause at the time
3 to obtain the search warrant.

4 If you look at Exhibit H, the search warrant, the
5 Charlotte/Mecklenburg search warrant return sheet says
6 that this is a missing person.

7 In Section I, Captain Stan Smith states that on May the
8 28th, six days after the execution of the search warrant,
9 I'm quoting, "All to -- as to all involved were under the
10 assumption that the missing person's case had turned into
11 a homicide investigation at this juncture."

12 So it wasn't for six days after executing the
13 search warrant and investigating the fruits of the search
14 warrant did the multiple jurisdictional law enforcement
15 agencies believe that this case had turned into a homicide
16 investigation.

17 That belayed the fact that not only does -- not only
18 does the affidavit support -- have no claims or
19 allegations that a murder was committed, or that any crime
20 was committed in the body of the affidavit, that in their
21 own words, law enforcement said that it took six more days
22 of investigating the fruits of the search warrant for this
23 to even turn into a homicide investigation, as well as
24 that when they were executing the search warrant,
25 Mr. Manning's uncle arrives on the scene, and the

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

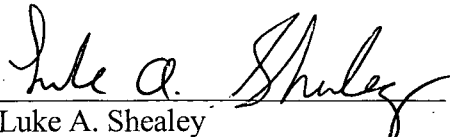
V.

THEODORE MANNING,

APPELLANT

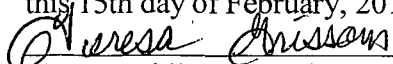
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon William M. Blich, Jr., Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 15th day of February, 2013.


Luke A. Shealey
Assistant Public Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of February, 2013.

 (L.S.)

Notary Public for South Carolina My Commission Expires: 6/22/19

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FEB 15 2013

SC Court of Appeals