

 ORIGINAL

VOLUME I OF II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM FLORENCE COUNTY

Michael G. Nettles, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SCOTT LEE,

APPELLANT

APPELLATE CASE NO. 2012-210830

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
11-GS-21-1189

SCOTT THOMAS LEE,)

DEFENDANT.)

March 12, 2012
Florence, South Carolina

BEFORE :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;
AND JURY

APPEARANCES:

MATTHEW R. OZMENT, ESQ.
Assistant Solicitor

H. M. ANDERSON, JR., ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

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1 THE COURT: Ladies and gentlemen of the
2 jury panel, each of you are qualified. None of you
3 have exercised an exemption, and I'm gonna ask you
4 another series of questions under oath to determine
5 whether or not you can be fair and impartial with
6 regard to the trial of this next case. This case is
7 entitled the State of South Carolina versus Scott
8 Thomas Lee, indictment number 2011-GS-21-1189. As
9 Mr. Lee is seated at the defense table there and he
10 has been accused of these criminal offenses, and as
11 he sits there he's presumed to be just as innocent
12 as me or you. We'll start from that frame of
13 reference. He has been accused of count one,
14 murder, with regard to the death of one Michael G.
15 Ford. These allegations allegedly took place on
16 December 17, 2010. He's also charged and accused of
17 arson third degree with regard to a 2005 Chevrolet
18 Lumina automobile. All right.

19 Having been armed with the basic
20 information of these allegations does anyone know
21 anything about these allegations, did you witness
22 any of these events that gave rise to these
23 allegations, if so please stand?

24 Yes, sir, if you could come forward.

25 (Potential juror approached the Bench for an

1 on-the-record discussion.)

2 THE POTENTIAL JUROR: Do you have the name
3 of the arresting officer or was it Florence County?

4 THE COURT: Who was the arresting officer?

5 MR. OZMENT: It was the Sheriff's Office
6 case.

7 THE COURT: Sheriff's office case. Did
8 you work the case or?

9 THE POTENTIAL JUROR: I could have.

10 MR. OZMENT: I can get it for you. If EMS
11 was involved it would be Robert Morris, Barry Dowdy,
12 Billy Dillon, Todd Matthews.

13 THE POTENTIAL JUROR: I wasn't on that
14 particular one.

15 THE COURT: Harold Jones. And your
16 number? Harold Jones. Juror number 76. He'll stay
17 with us.

18 (End of Bench conference.)

19 THE COURT: Mr. Anderson, I'm going to ask
20 if you can have Mr. Lee stand and face the jury
21 panel. Very good. You may be seated Mr. Lee.
22 Mr. Scott Thomas Lee. Is anybody related by blood
23 or marriage, do you have a close, social, or
24 personal or business relationship with Mr. Lee, if
25 so, please stand?

1 (There was no response.)

2 THE COURT: No response. Ladies and
3 gentlemen of the jury, pay very close attention to
4 potential witnesses who may testify in this case.
5 And the focus is whether or not you know these
6 individuals, whether you have a close, social,
7 business or personal relationship, whether or not
8 you are related by blood or marriage. Pay very
9 close attention. David Coleman, Robert Brinkley,
10 Karen Alexander, Nelson Alexander, Ashley Alexander,
11 Albert Edge, Harlot Jones, Gene Owens, Shirley
12 Worley, Michael Budd, Scott Lee, Shirley Lee, George
13 Bailey, David Lynch, Joshua Irish, Jason Plowden of
14 the Florence County Sheriff's Office, Sergeant Wayne
15 Drummond of the Florence County Sheriff's Office;
16 Investigator Chad Collins, Florence County Sheriff's
17 Office; Corporal Andrew Clendenin, Florence County
18 Sheriff's Office; Marlon Mack, Florence County
19 Sheriff's Office; Investigator Thomas McFadden,
20 Florence County Sheriff's Office; Investigator
21 Kathleen Street, Florence County Sheriff's Office;
22 Investigator Patrick O'Hara, Florence County
23 Sheriff's Office; Brian Profitt, Florence County
24 Sheriff's Office; Larry Quick, Florence County
25 Sheriff's Office; Sandra Galloway, Shirley Worley,

1 Elijah Sherman, Jonathan Lee, Chavis Cook, Ashley
2 Campbell, Cynthia Welch, Shannon Bailey, Steven
3 Pearson, Gene Owens, Gerald Mark Ford, Jessica
4 James, Doctor Erin Presnell, Illa Simmons, Hue Tang,
5 Dan Defreese. Is anyone related by blood or
6 marriage, do you have a close, social, or business
7 or personal relationship with any of these potential
8 witnesses, if so, please stand?

9 All right, yes, sir, if you can come
10 forward.

11 (Potential juror approached the Bench for an
12 on-the-record discussion.)

13 THE COURT: Your name and number again.

14 THE POTENTIAL JUROR: 76, Harold Jones.

15 THE COURT: Harold Jones, 76. Tell me
16 what's your relationship.

17 THE POTENTIAL JUROR: Well, I know most of
18 the deputies that were involved personally, but
19 that's it on relation.

20 THE COURT: Well, if called upon to serve
21 on this jury could you set aside any -- the fact
22 that you know these officers and work with them, can
23 you set aside that relationship and base your
24 decision on the evidence that's been presented in
25 this case or lack thereof and render a verdict that

1 would be fair to both the State and the Defendant if
2 called upon to serve on this case?

3 THE POTENTIAL JUROR: Yes, sir.

4 THE COURT: All right, you're qualified to
5 serve.

6 THE POTENTIAL JUROR: All right.

7 THE COURT: He's qualified to serve.
8 He'll stay with us.

9 (Potential juror approached the Bench for an
10 on-the-record discussion.)

11 THE BAILIFF: Number 46.

12 THE COURT: How are you doing? Your
13 number?

14 THE POTENTIAL JUROR: 46.

15 THE COURT: Mr. Elmore, number 46.

16 MR. ANDERSON: I believe you said Thomas
17 McKenzie. I've been knowing him all my life. I
18 don't know if that's a problem.

19 THE COURT: If called upon to serve on
20 this jury could you set aside any relationship that
21 you might have with Thomas McKenzie and give both
22 the State and the defendant a fair and impartial
23 trial?

24 THE POTENTIAL JUROR: Yes, sir.

25 THE COURT: You're qualified to serve.

1 Thank you.

2 MR. OZMENT: Your Honor, I believe it's
3 Thomas McFadden.

4 THE POTENTIAL JUROR: Okay, I
5 misunderstood.

6 THE COURT: Okay, very good. Thomas
7 McKenzie actually works for the other side, works
8 for the Public Defender.

9 (Potential juror approached the Bench
10 for an on-the-record discussion.)

11 THE BAILIFF: 110.

12 THE COURT: Your name?

13 THE POTENTIAL JUROR: 110, David Norris.

14 THE COURT: David Norris, 110.

15 THE POTENTIAL JUROR: Scott Lay, is that
16 the one that's been charged with murder and arson?
17 I was friends with him growing up and I also heard
18 Jonathan Lee. I think that might be his brother.
19 I'm not sure. I know him too.

20 THE COURT: Okay. Let me ask you this
21 question, how well do you know them? Do you have a
22 ongoing social relationship?

23 THE POTENTIAL JUROR: No, they ended when
24 I went a different direction and quit hanging out
25 with that crowd and stuff. But I hung out with them

1 for probably five, six, seven years, you know. I
2 know him when he was 13. I hang out with him but
3 like 19, something like that.

4 THE COURT: Y'all were hanging out
5 together when you were 19 or 20.

6 THE POTENTIAL JUROR: Well, I was a few
7 years older than him; but yeah, I used to hang out
8 with him, party with him. I know Scott real well.
9 I mean, I haven't seen him in probably ten years. I
10 was surprised to, you knew, about this but.

11 THE COURT: All right. In view of the
12 fact that you have a close relationship with him,
13 that y'all went out socially and y'all partied
14 together and you a parting of ways with him, do you
15 feel like you could set that aside and give both the
16 State and the Defendant a fair and impartial trial
17 or not?

18 THE POTENTIAL JUROR: I mean, I know what
19 he did was wrong, but just knowing him I wouldn't --
20 I know too many people that just ---

21 THE COURT: So you could not be fair and
22 impartial?

23 THE POTENTIAL JUROR: I would not want to
24 get involved with that.

25 THE COURT: Very good. Based on what you

1 said, the fact that you have a preconceived notion
2 that he's done wrong I'm gonna excuse you from the
3 trial of this case.

4 THE POTENTIAL JUROR: Okay.

5 THE COURT: You're excused.

6 MR. ANDERSON: Okay. I've got another
7 question. I got a child support for two children
8 and our hours have been cut back to 27 hours. I'm
9 —

10 THE COURT: Why don't you go get back to
11 work because you're gonna be free to leave.

12 THE POTENTIAL JUROR: Okay, so —

13 THE COURT: No, you need to stay, stay
14 here. We've got other cases that need to be tried
15 this week. And if you got child support you can
16 talk with your lawyer or the clerk and explain that
17 you're on jury service.

18 THE POTENTIAL JUROR: I just want to make
19 sure. I've never been late so I don't -- I don't
20 want to go to jail for doing —

21 THE COURT: I don't think that's gonna
22 happen. You need to notify the clerk that you're
23 here because of this. He's excused for the purpose
24 of this trial.

25 THE POTENTIAL JUROR: Okay. So now —

1 THE COURT: You need to stay back here.
2 We have another case you might be required to serve.

3 (Potential juror approached the Bench
4 for an on-the-record discussion.)

5 THE BAILIFF: 151.

6 THE COURT: Yes, ma'am.

7 THE POTENTIAL JUROR: Yes, sir. I knew the
8 victim and his mother for many years, Michael Ford
9 and his mother.

10 THE COURT: And how well did you know
11 them?

12 THE POTENTIAL JUROR: Quite well from All
13 State Bowling Lanes, we bowled together.

14 THE COURT: In view of the fact that you
15 knew them very well and y'all bowled together in a
16 social relationship you saw her how often?

17 THE POTENTIAL JUROR: Weekly.

18 THE COURT: Okay.

19 THE POTENTIAL JUROR: That's not recent,
20 but that's in the past.

21 THE COURT: In view of the fact that you
22 had a close relationship with the victims would it
23 be difficult for you to be fair and impartial?

24 THE POTENTIAL JUROR: It would.

25 THE COURT: All right. Well then based on

1 that, I'm gonna excuse you for purpose of this
2 trial. I would ask that you stay here for further
3 matters to tend to. She'll be excused for purposes
4 of this trial only.

5 (Potential juror approached the Bench for
6 an on-the-record discussion.)

7 THE BAILLIFF: Number 17.

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

10 THE POTENTIAL JUROR: Corrie Bines, number
11 17.

12 THE COURT: Juror number 17.

13 THE POTENTIAL JUROR: I work with Marlin
14 Mack before and with Larry Quick before, but I don't
15 have no problem.

16 THE COURT: Okay. If -- what is your
17 relationship with each of them?

18 THE POTENTIAL JUROR: Well, I know them,
19 just know them just by seeing them.

20 THE COURT: But you don't -- they don't
21 come to your house and eat, you don't go to their
22 house and eat?

23 THE POTENTIAL JUROR: No, sir.

24 THE COURT: Y'all don't go out socially?

25 THE POTENTIAL JUROR: No, sir.

1 THE COURT: You don't work together, have
2 any business relationship with one another, you just
3 know who they are.

4 THE POTENTIAL JUROR: I just know who they
5 are.

6
7 THE COURT: If called upon to serve on
8 this jury could you set aside the fact that you know
9 them and pay attention to the evidence presented in
10 this case or the lack thereof and give both the
11 State and the Defendant a fair and impartial trial?

12 THE POTENTIAL JUROR: Yes, sir.

13 THE COURT: You're qualified to serve.
14 Very good.

15 Mr. Ozment, I'm gonna ask if you could
16 stand and identify yourself and the members of your
17 office if you could.

18 MR. OZMENT: Thank you, Your Honor. My
19 name is Mat Ozment. I'm assistant solicitor here in
20 the Twelfth Judicial Circuit. Sitting with me for
21 this trial will be Mr. Bob Wells who is a deputy
22 solicitor in our office. The elected circuit
23 solicitor is Mr. Ed Clements. I think he'd been
24 here earlier. Additional members of our offense
25 will be Mr. Todd Tucker, Pat Parr, Mr. Steven Hill,

1 Mr. John Jepertinger, Ms. Katherine Anderson. I
2 believe that's all. Thank you.

3 THE COURT: Is anyone related by blood or
4 marriage to any of these lawyers, have you ever been
5 represent by them in the past, do you have a close
6 social, business, personal relationship with any of
7 them, if so, please stand.

8 (There was no response.)

9 THE COURT: Yes, ma'am, if you can come
10 forward.

11 (Potential juror approached the Bench for an
12 on-the-record discussion.)

13 THE COURT: Yes, ma'am, your full name and
14 number.

15 THE POTENTIAL JUROR: Erin Tart.

16 THE COURT: Okay, Ms. Tart.

17 THE POTENTIAL JUROR: I don't know what
18 number.

19 THE COURT: Did you notice that other lady
20 back there when she stood up, she said she was
21 engaged.

22 THE POTENTIAL JUROR: She did.

23 THE COURT: But you didn't claim Fitz Lee,
24 did you?

25 THE POTENTIAL JUROR: No. Technically I'm

1 not married so I'm single.

2 THE COURT: Now who do you know?

3 THE POTENTIAL JUROR: Bob, Hank, Todd.

4 THE COURT: If called upon to serve on
5 this jury could you set aside ---

6 THE POTENTIAL JUROR: Yes.

7 THE COURT: ---any social relationship
8 that you might have with them and give both the
9 State and the Defendant a fair and impartial trial?

10 THE POTENTIAL JUROR: Yes.

11 THE COURT: Okay. You're qualified to
12 serve.

13 THE COURT: Mr. Anderson, if you can
14 stand, identify yourself and the members of your
15 firm.

16 MR. ANDERSON: My name is Hank Anderson.
17 I work here in Florence. Mr. Ozment introduced a
18 young lady named Katherine Anderson. That's my
19 little sister. She's married now. Her name is
20 Katherine Wyse. Mr. Tucker that he called out used
21 to work for me, but he doesn't work for me anymore.
22 He moved over to the other side of the table. Here
23 with me is my secretary Denise Goldman. She'll be
24 helping me with this trial. I'm the only attorney
25 in the office.

1 THE COURT: Has anyone ever been
2 represented by Mr. Anderson, are you represented by
3 him now, been represented by him in the past, are
4 you related to him by blood or marriage, do you have
5 a close, social, business, or personal relationship
6 with him, if so, please stand.

7 Yes, sir, if you could come forward.

8 (Potential juror approached the Bench for an
9 on-the-record discussion.)

10 THE COURT: Your full name and number.

11 THE POTENTIAL JUROR: Houston Hamilton,
12 number 60.

13 THE COURT: Houston Hamilton, number 60.

14 THE POTENTIAL JUROR: He represented me on
15 simple assault.

16 THE COURT: If called to serve on this
17 jury could you set aside the fact that he
18 represented you in the past and give both the State
19 and the Defendant a fair and impartial trial?

20 THE POTENTIAL JUROR: Without a doubt.

21 THE COURT: You're qualified to serve.

22 Thank you.

23 THE POTENTIAL JUROR: Thank you.

24 (Potential juror approached the Bench for an
25 on-the-record discussion.)

1 THE COURT: Yes, ma'am, your name and
2 number.

3 THE POTENTIAL JUROR: June Douglas, 41. I
4 think Denise might be my brother-in-law's
5 sister-in-law. Does it matter?

6 THE COURT: In view of the fact that
7 you're not real sure whether you know her could you
8 ---

9 THE POTENTIAL JUROR: I'm pretty sure.

10 THE COURT: If you could set aside that
11 tangential relationship ---

12 THE POTENTIAL JUROR: Yes.

13 THE COURT: ---give both the State and the
14 Defendant a fair and impartial trial? Could you do
15 that?

16 THE POTENTIAL JUROR: Yes, yes.

17 THE COURT: Could you set aside any
18 relationship and base your decision on the evidence
19 presented in this case or the lack thereof, the law
20 as I charge it to you?

21 THE POTENTIAL JUROR: Yes.

22 THE COURT: You're qualified to serve,
23 thank you.

24 Has any member of the jury panel formed or
25 expressed an opinion about any issue or matter

1 involved in this case, if so, please stand.

2 (There was no response.)

3 THE COURT: No response. Is any member of
4 the jury panel aware of any bias or prejudice
5 towards either the State or the Defendant in this
6 case, if so, please stand.

7 (There was no response.)

8 THE COURT: No response. Is any member of
9 the jury panel a member that served on the grand
10 jury that issued the indictment in this case, if so,
11 please stand.

12 (There was no response.)

13 THE COURT: No response. Is any member of
14 the jury panel who is a former law enforcement
15 officer or have a family member who is a law
16 enforcement officer or a former law enforcement
17 officer, if so, please stand. If you could come
18 forward.

19 (Potential juror approached the Bench for an
20 on-the-record discussion.)

21 THE COURT: Your name and number?

22 THE POTENTIAL JUROR: Leslie Rogers, 78.

23 THE COURT: Okay.

24 THE POTENTIAL JUROR: My dad is a retired
25 captain of the highway patrol.

1 THE COURT: Okay. And his name was?

2 THE POTENTIAL JUROR: David Jordan.

3 THE COURT: I remember him. I tried my
4 first driving under the influence case against your
5 father over in Timmons ville 25 years ago, how about
6 that? If called upon to serve on this jury could
7 you set aside the fact that your father was involved
8 in law enforcement and give both the State and the
9 Defendant a fair and impartial trial?

10 THE POTENTIAL JUROR: Yes, sir.

11 THE COURT: Could you base your decision
12 on the evidence presented in this case, the law as I
13 charge it to you, and render a fair verdict?

14 THE POTENTIAL JUROR: Yes, sir.

15 THE COURT: You're qualified to serve.
16 Thank you.

17 (Potential juror approached the Bench
18 for an on-the-record discussion.)

19 THE COURT: Your name and number?

20 THE POTENTIAL JUROR: My name is Misty
21 Williams. My number is 158.

22 THE COURT: Okay. And you are a Shawna
23 Cleary but you married a Patriot; is that right?

24 THE POTENTIAL JUROR: Yes.

25 THE COURT: And you're related to who?

1 THE POTENTIAL JUROR: My grandfather was a
2 detective for the Portland police force and my
3 future sister-in-law is a detective for the Richmond
4 police force in Virginia.

5 THE COURT: Neither one of those are
6 involved in this case. If called upon to serve on
7 this jury, the fact that you're related to someone
8 who is involved in law enforcement, could you set
9 aside that fact and base your decision on the
10 evidence presented in this case or lack thereof and
11 the law as I charge it to you and give both the
12 State and the Defendant a fair and impartial trial?

13 THE POTENTIAL JUROR: Yes, sir.

14 THE COURT: You're qualified to serve.
15 Thank you.

16 (Potential juror approached the Bench for an
17 on-the-record discussion.)

18 THE COURT: Yes, sir, your name and
19 number?

20 THE POTENTIAL JUROR: Robert Cannon,
21 number 26.

22 THE COURT: Number 26, Robert Cannon.

23 THE POTENTIAL JUROR: My brother was a
24 deputy sheriff. He was killed in the line of duty
25 almost seven years ago.

1 THE COURT: And where did he work?

2 THE POTENTIAL JUROR: Richland County.

3 THE COURT: This doesn't involve Richland
4 County. And if called upon to serve on this jury
5 could you set aside the fact that you were related
6 to a law enforcement officer and if called upon to
7 serve on this jury base your decision on the
8 evidence presented in this case or the lack thereof,
9 the law as I charge it to you, and give both the
10 State and the Defendant a fair and impartial trial?

11 THE POTENTIAL JUROR: I don't believe I
12 could.

13 THE COURT: Okay. And the reason for
14 that?

15 THE POTENTIAL JUROR: Because my brother
16 died chasing somebody who didn't stop for him.

17 THE COURT: Well, in view of that I'm
18 going to excuse you for this term of court and have
19 them transfer you to a civil term of court so you're
20 free to leave at this time. You will receive
21 additional notice.

22 THE POTENTIAL JUROR: Okay.

23 (Potential juror approached the Bench for an
24 on-the-record discussion.)

25 THE COURT: Yes, sir, your name and

1 number?

2 THE POTENTIAL JUROR: Number 63, Michael
3 Hinson.

4 THE COURT: Michael Hinson, 63.

5 THE POTENTIAL JUROR: My brother, he works
6 for the Sheriff's department now.

7 THE COURT: In Florence?

8 THE POTENTIAL JUROR: Yeah.

9 THE COURT: What's his name?

10 THE POTENTIAL JUROR: Mitchell Hinson.

11 THE COURT: Mitchell Hinson? Is he
12 involved in this case in any way?

13 THE POTENTIAL JUROR: No, he's not.

14 THE COURT: Okay. He was not involved in
15 this case. And if called upon to serve on this jury
16 could you set aside the fact that you're related to
17 someone who is involved in law enforcement and base
18 your decision on the evidence presented in this case
19 or lack thereof, the law as I charge it to you, give
20 both the State and the Defendant a fair and
21 impartial trial?

22 THE POTENTIAL JUROR: Yeah.

23 THE COURT: You're qualified to serve.
24 Thank you.

25 (Potential juror approached the Bench for an

1 on-the-record discussion.)

2 THE COURT: Yes, ma'am.

3 THE POTENTIAL JUROR: June Douglas, 41.

4 THE COURT: Juror number 41, June Douglas,
5 41.

6 THE POTENTIAL JUROR: My brother is a
7 constable.

8 THE COURT: If called upon to serve on
9 this jury could you set aside that relationship and
10 give both the State and the Defendant a fair and
11 impartial trial?

12 THE POTENTIAL JUROR: Yes.

13 THE COURT: You're qualified. She said
14 her brother is a constable.

15 (Potential juror approached the Bench for an
16 on-the-record discussion.)

17 THE COURT: Your name and number?

18 THE POTENTIAL JUROR: Joshua Dennis, 39.

19 THE COURT: Joshua Dennis, 39.

20 THE POTENTIAL JUROR: I just want to let
21 you be aware my first cousin works for the Florence
22 Police Department.

23 THE COURT: His first cousin works for the
24 Florence Police Department. The Florence Police
25 Department is not involved in this in any way. If

1 called upon to serve on this jury could you set
2 aside the fact that you're related to somebody
3 involved in law enforcement and base your decision
4 on the evidence presented in this case or the lack
5 thereof and the law as I charge it to you and give
6 both the State and the Defendant a fair and
7 impartial trial?

8 THE POTENTIAL JUROR: Yes, sir.

9 THE COURT: You're qualified to serve.
10 Thank you.

11 Has any member of the jury panel heard,
12 seen, or read anything about this in the news media?
13 I don't anticipate that there was any coverage of
14 this case; but if there was, has anybody read, seen,
15 or heard anything about this case, if so, please
16 stand.

17 (There was no response.)

18 THE COURT: All right, very good. No
19 response.

20 Is there any member of the jury panel who
21 has been a victim of a violent crime, if so, please
22 stand.

23 (There was no response.)

24 THE COURT: No response. Any additional
25 questions from the State?

1 MR. OZMENT: None, Your Honor.

2 THE COURT: Any additional questions from
3 the Defendant?

4 MR. ANDERSON: No, sir, Your Honor.

5 THE COURT: Very good. Strikes are five
6 and ten, five and ten.

7 Madam clerk, if you could give us the
8 jury. It will take us just one moment for the
9 computer to draw the list. Since the advent of the
10 the new computer system there's not been a
11 definitive law with regard to the sharing of the
12 struck list. What is the State's position with
13 regard to providing the list to both the State and
14 the Defendant? What is your position?

15 MR. OZMENT: Your Honor, it seems like
16 it's governed by local rules almost. And everywhere
17 I think is done a little different so either way,
18 Your Honor.

19 THE COURT: Very good. If there's no
20 objection from the State I'll provide both sides
21 with a struck -- with a strike sheet.

22 (Bailiff approaches the Bench for an off-the-record
23 discussion.)

24 THE COURT: You're excused for the week.
25 We'll send you another notice.

1 THE POTENTIAL JUROR: Okay.

2 THE COURT: Hope your child gets better.

3 Number 74 has been excused. She's been
4 notified that her child is sick, and they've asked
5 her to come to school to get her child. She'll be
6 transferred to a different week. She's actually on
7 the struck list so it's juror number 74. She is --
8 was it 74; is that correct?

9 THE CLERK OF COURT: Yes, sir.

10 THE COURT: 74.

11 THE CLERK OF COURT: Whenever I call your
12 name if you'll come to the front, bring everything
13 with you. Come to the microphone and face the back
14 of the courtroom please.

15 86, Terry Livingston (white male). What
16 say the State?

17 MR. OZMENT: Please present
18 Mr. Livingston.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. ANDERSON: Please excuse Mr.
22 Livingston for purposes of this trial.

23 THE CLERK OF COURT: You've been excused
24 for this trial only, sir. You may return to your
25 seat.

1 60, Houston Hamilton (white male). What
2 say the State?

3 MR. OZMENT: Please excuse Mr. Hamilton
4 for the purposes of this trial.

5 THE CLERK OF COURT: You've been excused
6 for this trial. You may return to your seat.

7 61, Ernestine Hancock (black female).
8 What say the State?

9 MR. OZMENT: Please present Ms. Hancock.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MR. ANDERSON: Please seat Ms. Hancock.

13 THE CLERK OF COURT: Please have a seat in
14 the jury box, ma'am.

15 52, Bonnie Strong (white female).

16 THE COURT: What say the State?

17 MR. OZMENT: Please present Ms. Strong.

18 THE CLERK OF COURT: What say Defendant?

19 MR. ANDERSON: Please seat Ms. Strong.

20 THE CLERK OF COURT: Please have a seat in
21 the jury box, ma'am.

22 136, Betty Stephens (white female). What
23 say the State?

24 MR. OZMENT: Please present Ms. Stephens.

25 THE CLERK OF COURT: What say the

1 Defendant?

2 MR. ANDERSON: Your Honor, if I could have
3 the Court's indulgence just for a moment. Your
4 Honor, if it please the Court we'll excuse her for
5 purposes of this trial.

6 THE CLERK OF COURT: You've been excused
7 for this trial only. You may be seated.

8 64, Gail Harley (black female). What say
9 the State?

10 MR. OZMENT: Please present Ms. Harley.

11 THE CLERK OF COURT: What say the
12 Defendant?

13 MR. ANDERSON: Please seat Ms. Harley.

14 THE CLERK OF COURT: Please have a seat in
15 the jury box, ma'am.

16 134, Andreker Staggers (black female).
17 What say the State?

18 MR. OZMENT: Please excuse Ms. Staggers
19 for purposes of this trial.

20 THE CLERK OF COURT: You've been excused
21 for this trial only, ma'am. You may return to your
22 seat.

23 78, Leslie Rogers (white female). What
24 say the State?

25 MR. OZMENT: Please present Ms. Rogers.

1 THE CLERK OF COURT: What say the
2 Defendant?

3 MR. ANDERSON: Please excuse her for the
4 purpose of this trial.

5 THE CLERK OF COURT: You've been excused
6 for this trial. You may return to your seat.

7 39, Joshua Dennis (white male). What say
8 the State?

9 MR. OZMENT: Please present Mr. Dennis.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MR. ANDERSON: Please excuse Mr. Dennis
13 from this case.

14 THE CLERK OF COURT: You've been excused
15 from this trial only. You may return to your seat.

16 158, Misti Williams (white female). What
17 say the State?

18 MR. OZMENT: Please present Ms. Williams.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. ANDERSON: Please excuse her from this
22 case.

23 THE CLERK OF COURT: You've been excused
24 from this trial, ma'am. You may return to your
25 seat.

1 146, Kenneth Turbeville (white male).

2 What say the State?

3 MR. OZMENT: Please present

4 Mr. Turbeville.

5 THE CLERK OF COURT: What say the

6 Defendant?

7 MR. ANDERSON: Please seat Mr. Turbeville.

8 THE CLERK OF COURT: Please have a seat in
9 the jury box, sir.

10 71, Bobby Hyman (white male). What say
11 the State?

12 MR. OZMENT: Please excuse Mr. Hyman for
13 purposes of this trial.

14 THE CLERK OF COURT: You've been excused
15 for this trial, sir. You may return to your seat.

16 124, Stephen Rowell (white male). What
17 say the State?

18 MR. OZMENT: Please present Mr. Rowell.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. ANDERSON: Please seat Mr. Rowell.

22 THE CLERK OF COURT: Please have a seat in
23 the jury box, sir.

24 Number 20, Andrew Britt (white male).
25 What say the State?

1 MR. OZMENT: Please present Mr. Britt.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MR. ANDERSON: Please seat Mr. Britt.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, sir.

7 76, Harold Jones (white male). What say
8 the State?

9 MR. OZMENT: Please present Mr. Jones.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MR. ANDERSON: Please excuse him for
13 purpose of this trial.

14 THE CLERK OF COURT: You've been excused
15 for this trial. You may return to your seat.

16 42, Richard Dowdy (white male). What say
17 the State?

18 MR. OZMENT: Please present Mr. Dowdy.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. ANDERSON: Please seat Mr. Dowdy.

22 THE CLERK OF COURT: Please have a seat in
23 the jury box, sir.

24 15, Wayne Bennett (white male). What say
25 the State?

1 MR. OZMENT: Please present Mr. Bennett.

2 THE CLERK OF COURT: What say the
3 Defendant?

4 MR. ANDERSON: Please seat Mr. Bennett.

5 THE CLERK OF COURT: Please have a seat in
6 the jury box, sir.

7 102, Debra Melton (white female). What
8 say the State?

9 MR. OZMENT: Please present Ms. Melton.

10 THE CLERK OF COURT: What say the
11 Defendant?

12 MR. ANDERSON: Please excuse her from this
13 case.

14 THE CLERK OF COURT: You've been excused
15 for this trial only. You may return to your seat.

16 113, Sherrie Paige (black female). What
17 say the State?

18 MR. OZMENT: Please present Ms. Paige.

19 THE CLERK OF COURT: What say the
20 Defendant?

21 MR. ANDERSON: Please seat Ms. Paige.

22 THE CLERK OF COURT: Please have a seat in
23 the jury box, ma'am.

24 148, William Turner.

25 (There was no response.)

1 MR. ANDERSON: Judge, he was court
2 excused.

3 MR. OZMENT: He was a nuclear security
4 guy.

5 THE COURT: That's correct.

6 THE CLERK OF COURT: That must have been
7 before you started qualifying. I wasn't up here.

8 105, Victoria Moore (white female). What
9 say the State?

10 MR. OZMENT: Please present Ms. Moore.

11 THE CLERK OF COURT: What say Defendant?

12 MR. ANDERSON: Please seat Ms. Moore.

13 THE CLERK OF COURT: Please have a seat in
14 the jury box, ma'am.

15 Number 4, Warren Anderson (white male).
16 What say the State?

17 MR. OZMENT: Please present Mr. Anderson.

18 THE CLERK OF COURT: What say the
19 Defendant?

20 MR. ANDERSON: Court's indulgence for a
21 moment, Your Honor. Your Honor, please excuse this
22 juror.

23 THE CLERK OF COURT: You've been excused
24 from this trial only. You may return to your seat.

25 63, Michael Hansen (white male). What say

1 the State?

2 MR. OZMENT: Please present Mr. Hansen.

3 THE CLERK OF COURT: What say the
4 Defendant?

5 MR. ANDERSON: Please excuse Mr. Hansen
6 from this trial.

7 THE CLERK OF COURT: You've been excused
8 from this trial. You may return to your seated.

9 137, Rick Stephens (white male)..

10 THE COURT: Current strikes nine and
11 three. Current strikes are nine and three.

12 THE CLERK OF COURT: What say the State?

13 MR. OZMENT: Please present Mr. Stephens.

14 THE CLERK OF COURT: What say the
15 Defendant?

16 MR. ANDERSON: Please seat Mr. Stephens.

17 THE CLERK OF COURT: Please have a seat in
18 the jury box, sir.

19 Number 74 was excused by the Court.

20 160, Dorothy Williamson (white female).

21 What say the State?

22 MR. OZMENT: Please present
23 Ms. Williamson.

24 THE CLERK OF COURT: What say the
25 Defendant?

1 MR. ANDERSON: Please excuse her from this
2 case.

3 THE COURT: You've been excused from this
4 trial only. You may return to your seat.

5 108, Andrea Brockington (white female).
6 What say the State?

7 MR. OZMENT: Please excuse Ms. Brockington
8 for purposes of this case.

9 THE CLERK OF COURT: You've been excused
10 for this trial only. You may return to your seat.

11 116, Shane Patrick (white male). What say
12 the State?

13 MR. OZMENT: Please present Mr. Patrick.

14 THE CLERK OF COURT: Does Defendant wish
15 to challenge juror for cause?

16 MR. ANDERSON: Please seat the juror.

17 THE CLERK OF COURT: Please have a seat in
18 the jury box, sir.

19 THE COURT: All right. Strikes are one
20 and two on each alternate, two alternates.

21 THE CLERK OF COURT: 122, Angel Rogers
22 (black female). What say the State?

23 MR. OZMENT: Please present Ms. Rogers.

24 THE CLERK OF COURT: What say the
25 Defendant?

1 MR. ANDERSON: Please seat Ms. Rogers.

2 THE CLERK OF COURT: Please have a seat in
3 the jury box, ma'am.

4 17, Corrie Bines (black male). What say
5 the State?

6 MR. OZMENT: Please present Mr. Bines.

7 THE CLERK OF COURT: What say the
8 Defendant?

9 MR. ANDERSON: Please seat Mr. Bines.

10 THE CLERK OF COURT: Please have a seat in
11 the jury box please.

12 That's it, Judge.

13 THE COURT: All right. Mr. Wayne Bennett,
14 I'm going to ask if you could to change chairs with
15 this gentleman seated right here. If you could --
16 yeah, if you could change chairs right there.

17 Mr. Bennett, I'm gonna ask you serve as foreman of
18 this jury. You're like everyone else. When it
19 comes time to deliberating they're gonna have one
20 voted, but you're gonna have additional
21 responsibilities. If there are questions or
22 concerns that develop throughout this trial I'm
23 gonna ask the members of the jury to communicate
24 those concerns to you. You can tell right -- reduce
25 them to writing, give it to the bailiff. If there's

1 something I can help you with or question I can
2 answer I'll be happy to do that. In addition to
3 that, when it comes time to deliberation you're also
4 gonna be called upon to preside over the
5 deliberation. Essentially that means to insure that
6 everybody's voice is heard. I'm gonna ask that each
7 of you stand and raise your right hand as the clerk
8 administers the oath.

9 (WHEREUPON, the jury was sworn at 12:08
10 p.m.)

11 THE COURT: Very good. Mr. Bennett, I'm
12 gonna ask that you remain in that chair the entire
13 time. Everybody else is sort of general admission
14 with the exception of the alternates. I'm gonna ask
15 that y'all stay in these two chairs the entire time
16 so y'all stay there and the foreman is gonna stay
17 there. Everybody else can sit anywhere that they
18 want to. Y'all have been given some very attractive
19 badges, these orange badges, and they're given to
20 you for a purpose. Because of the way this building
21 is designed sometimes you'll be called upon to ride
22 on the elevator and there might be witnesses
23 involved in this case. We need to know who the
24 jurors are so there wouldn't be any inadvertent
25 conversations that take place in your presence. You

1 need to base your decision on what transpires here
2 in this courtroom. Also, we need for everybody to
3 know that you're a juror. If anyone were to try to
4 contact you about this case -- I don't anticipate
5 they would -- but if anyone would try to say
6 something to you about this case your only
7 responsibility and job is to try to identify them
8 and report them to me. That's inappropriate; it's
9 illegal. I'll deal with them accordingly. That
10 will not take place; but if it does, report it to
11 me.

12 I'm also gonna give y'all instructions --
13 that I don't anticipate that there's gonna be any
14 media coverage with regard no case, but there very
15 well could be. And if there is an article in the
16 paper in the morning about this case I'm gonna ask
17 that you divert your attention from that. If there
18 is anything on the news coverage about this case I'm
19 going to ask that you divert your attention from
20 that because you need to base your decision on what
21 transpires here in this courtroom, not anything
22 else. We don't need -- you don't need to pay
23 attention to what somebody else has to say about
24 these proceeds you're gonna be here to hear all of
25 the evidence that's relevant in this case. Also,

1 you know, I don't — you have not heard at this
2 point in time about where these allegations
3 supposedly took place. But it might be that some of
4 y'all are familiar with this area of the county and
5 I'm gonna ask and instruct and order that you not go
6 and do any independent investigation. Say for
7 instance, if these alleged incidents took place on a
8 street that you're familiar with. Don't go and take
9 a look at it and do your own independent
10 investigation; that's inappropriate. Base your
11 decision on what transpires here in this courtroom.

12 Ladies and gentlemen of the jury, there's
13 not anything in the entire world that you can't look
14 up on the internet now. I'm gonna order and
15 instruct and demand that you not do any independent
16 investigation on the internet. Don't look up the
17 law; I will charge you the law. As a matter of
18 fact, you're required to accept and apply the law
19 exactly as I state it to you at the conclusion of
20 this case. Do not do that; do not do any
21 independent investigation. There's also these fancy
22 things that my children made me aware of. It's
23 called social media. Facebook and Twitter. I call
24 it tweeter, twitter, whatever it is. But do not
25 post anything about your whereabouts or anything

1 about this case on Facebook or Twitter. Do not put
2 anything on the computer. These matters need to be
3 handled here in this courtroom. I'm gonna order,
4 instruct, and demand that you not discuss this case
5 amongst yourselves or with anyone else. I bet
6 you -- I'd be willing to bet the mortgage -- when
7 you go back to your office or if you make contact
8 with family members during lunch break they're gonna
9 say, well, tell me what happened in jury service.
10 And this is one occasion where you don't have to
11 tell your spouse what you're doing. You tell them
12 that you've been selected on a case and at the
13 conclusion of the case you can tell them all they
14 want to know about it. But until then it's
15 inappropriate and illegal for you to do that. And
16 the reason is, they might have some opinion about
17 this type litigation. You need to base your
18 decision on what transpires here in this courtroom
19 and the law as I charge it to you. Do not discuss
20 the case amongst yourselves or with anyone else.

21 Mr. Foreman, there are gonna be occasions
22 when you're in the jury room by yourselves, and I'm
23 gonna order and instruct and demand that you enforce
24 that rule. There will be no discussion about this
25 case. Don't talk about the lawyers, don't talk

1 about what a witness said, don't talk about any of
2 that. You can talk about the spring weather. You
3 can talk about Carolina/Clemson baseball, football,
4 basketball, anything you want to talk about.
5 Fishing, whatever you want to talk about, but you
6 cannot talk about this case. Do you understand me
7 on that, Mr. Foreman? And that's your job and your
8 responsibility to make sure that does not happen.

9 I'm gonna release you until 3:00. We're
10 gonna be back at 2:00 and we have some legal matters
11 that have to take place outside of your presence.
12 We'll be back working at 2:00, and we're gonna ask
13 that you report back to the 10th floor. You're on
14 the 11th floor now. Report back to the 10th floor.
15 When you get off the elevator the bailiff will
16 escort you to the jury room. Do not discuss the
17 case. We'll ask that you be back at 3:00, 3:00
18 sharp.

19 And Madam Bailiff, you may escort the
20 jury. Everyone remain seated as the jury exits the
21 courtroom.

22 (WHEREUPON, the jury was removed from the
23 courtroom at 12:14 p.m., and the following
24 proceedings commenced in open court.)

25 (WHEREUPON, as the jury was exiting one

1 of the jurors approached the Bench for an
2 on-the-record discussion.)

3 THE POTENTIAL JUROR: Can I ask a question
4 or ---

5 THE COURT: Yes.

6 THE POTENTIAL JUROR: ---do I ask the
7 foreman?

8 THE COURT: Yes.

9 THE POTENTIAL JUROR: I might have an
10 issue with being on a capital case. I'm gonna find
11 out for sure for religious reasons but...

12 THE COURT: Okay, all right. Well, first
13 of all this is not -- this is not a capital murder
14 case.

15 THE POTENTIAL JUROR: Okay, then, that's
16 it.

17 THE COURT: Well, you don't. ---

18 THE POTENTIAL JUROR: Uh-huh.

19 THE COURT: All right, very good. Okay.

20 (End of Bench conference.)

21 THE COURT: There was not any motion with
22 regard to the jury selection process from the State,
23 is that correct, Mr. Ozment?

24 MR. OZMENT: No objection, Your Honor.

25 THE COURT: Is that correct from the

1 Defense?

2 MR. ANDERSON: Yes, sir, Your Honor.

3 THE COURT: All right. And the juror
4 indicated to me that she did not -- she might have
5 some ethical problems with serving on a capital
6 murder case, and I explained to her that this is not
7 a capital murder case and she was all right with
8 that. And she -- and that is on the record what she
9 said. Anything from the State before we break for
10 lunch?

11 MR. OZMENT: Nothing from the State, Your
12 Honor.

13 THE COURT: Anything from Defense?

14 MR. ANDERSON: No, sir, Your Honor.

15 THE COURT: We're gonna be back, we're
16 gonna start at 2:00, 2:00 sharp. And I understand
17 we have a Jackson v. Denno hearing and maybe some
18 motions with regard to a photograph. Anything
19 further from the State?

20 MR. OZMENT: Nothing from the State, Your
21 Honor.

22 THE COURT: Anything from Defense?

23 MR. ANDERSON: No, sir.

24 THE COURT: We'll reconvene 2:00, 2:00
25 sharp.

1 (WHEREUPON, a lunch break was taken.)
2 (Remainder of trial was taken by court reporter
3 Krystal Smith.)
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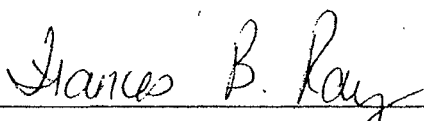
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 15th day of March, 2012.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF FLORENCE	)	CASE NO. 2011-GS-21-1189
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(VOLUME ONE OF THREE)
	)	
SCOTT THOMAS LEE,	)	
	)	
Defendant.	)	
	)	

March 12-14, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge; and a jury

A P P E A R A N C E S:

MATTHEW OZMENT, Assistant Solicitor
 ROBERT WELLS, Assistant Solicitor
 Attorneys for the Plaintiff

HENRY M. ANDERSON, JR., Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Official Court Reporter

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1 MARCH 12, 2012

2 (WHEREAS this matter was scheduled for a trial, the
3 defendant appeared along with his counsel of record. The
4 trial began at 2:01 p.m. The jury is not yet present.)

5 THE COURT: Mr. Ozment, you're recognized. Let's have
6 quiet.

7 MR. OZMENT: Your Honor, I believe we have a couple pre-
8 trial motions. The first we can handle, we had some late Rule
9 5 discovery that just happened over lunch. It's a statement
10 by the defendant given to law enforcement after he was
11 incarcerated. I watched it over lunch as thoroughly as I
12 could. The State does not intend to offer the statement in
13 any way. The State doesn't intend to use it. You know, as
14 far as we're concerned, it doesn't exist. If Mr. Anderson has
15 anything in regards to that?

16 THE COURT: All right, you've made that available to him
17 for his inspection. Is that correct?

18 MR. OZMENT: Yes, Your Honor. I handed him a copy. I
19 can tell you there's no way he's watched it since I've handed
20 it to him, but I have given him a copy.

21 THE COURT: All right.

22 MR. ANDERSON: Your Honor, that's my -- My position is --
23 I mean this case is fifteen, sixteen months old. I was handed
24 it right after we picked the jury and I was going to object
25 based on the lateness of it getting to me and the fact that it

1 should have been provided previously through Rule 5 and Brady,
2 but since the State does not care to introduce it or offer it
3 or refer to it, I don't think I even need to bring that up at
4 this time, Your Honor.

5 THE COURT: All right. Well, I'm going to give you an
6 opportunity over the evening to make a determination with
7 regard to whether or not there is any exculpatory matter in it
8 and based on your discussions with the investigator's office
9 and your review of it, Mr. Ozment, do you feel as though
10 there's any exculpatory evidence on there?

11 MR. OZMENT: Your Honor, there's a story that was
12 disclosed that the defendant tells that was disclosed in other
13 evidence, so in that sense, you could argue it is cumulative
14 in some ways. That being said, there is -- Certainly, this is
15 the only time the defendant has been video recorded telling
16 this certain story.

17 THE COURT: All right, but obviously, it would be very
18 difficult for there to be any prejudicial effect because he's
19 the one who gave the statement. He could have told his
20 lawyer. I mean it's not as though there's a tremendous amount
21 of prejudice.

22 MR. OZMENT: I agree, Your Honor.

23 THE COURT: Is that right, Mr. Anderson?

24 MR. ANDERSON: That's correct.

25 THE COURT: Okay. Well, I'm still going to give you an

1 opportunity to review it. We'll entertain any motions that
2 you have with regard to that, but it does appear as if it's
3 really not an issue since he's not intending to use it. It
4 would appear as if the only thing that would make it an issue
5 would be if there was any exculpatory material and obviously,
6 it's coming from him, so it would be very difficult for there
7 to be any prejudice in that regard. Would you agree, Mr.
8 Anderson?

9 MR. ANDERSON: I would.

10 THE COURT: All right, what I'll do is I'll give you an
11 opportunity to review it this evening and I'll entertain any
12 motions that you have in that regard. Anything further?

13 MR. OZMENT: Your Honor, I believe we have two *Jackson* --
14 Well, one *Jackson v. Denno* hearing on two statements that the
15 defendant gave to law enforcement, the first one being two
16 days after the incident happened, the other one being the date
17 of his arrest.

18 THE COURT: All right, you may call your first witness.

19 MR. OZMENT: All right, Chad Collins.

20 THE COURT: Mr. Collins, if you could, please come
21 forward and place your left hand on the Bible and raise your
22 right hand as the clerk administers the oath. Mr. Collins,
23 I'm going to ask -- Investigator Collins, I'm going to ask for
24 you to take that Bible and set it right beside that
25 microphone, right there. Turn it the other way. There you're

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 talking. All right, left hand on the Bible, raise your right
2 hand. Very good.

3 THE CLERK: Do you swear the testimony you will give in
4 this case will be the truth, the whole truth and nothing but
5 the truth, so help you God?

6 WITNESS: Yes, ma'am.

7 THE CLERK: Please be seated and state your full name for
8 the record.

9 THE COURT: Investigator Collins, pull up real close to
10 that microphone and speak loudly, clearly and slowly in order
11 that we can hear everything that you've got to say.

12 WITNESS: Chad Collins.

13 THE COURT: Mr. Ozment, you're recognized.

14 INVESTIGATOR CHAD COLLINS, being
15 first duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. OZMENT:

18 Q: How are you today, Investigator Collins?

19 A: Good, thank you.

20 Q: Good. During this hearing, we're going to discuss with
21 you the statement that was given December 19th, 2010, by the
22 defendant in this case. Were you present for that statement?

23 A: Yes, sir, I was.

24 Q: Where did that statement take place?

25 A: It took place at the Florence County Sheriff's Office

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 interview room.

2 Q: What -- Why were you interested in talking to Scott Lee
3 at that time?

4 A: Through the course of that day, previous I had learned
5 that there was friendship between the defendant and the victim
6 in this case, Michael Ford. We wanted to go and talk with him
7 to find out if he had any pertinent information relating to
8 Mr. Ford and why he would have been where he was, anything
9 that he could have possibly helped us with.

10 Q: At that time, was he a suspect?

11 A: No, sir.

12 Q: At that time in your investigation, did you have any
13 evidence, lead, tip, anything that had led you to believe
14 Scott Lee might have been a possible person of interest or
15 suspect, whatever you want to call it, in this case?

16 A: No, sir, not at that time.

17 Q: All right. When you interviewed him on December 19th,
18 where did that interview take place?

19 A: Again, it took place at the Florence County Sheriff's
20 Office in the interview room at that location.

21 Q: Was it recorded?

22 A: Yes, sir, it was.

23 Q: Audio and video?

24 A: Yes, sir.

25 Q: Was he Mirandized at the beginning of that interview?

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 A: No, sir.

2 Q: All right. What was, you know -- What was the nature of
3 the interview? In other words, what sort of information were
4 you trying to get from Mr. Lee?

5 A: Again, any -- any contacts that he may have known of
6 Michael Ford's, any -- any reason why we would have to, you
7 know -- any other people we could go look for ---

8 Q: All right.

9 A: --- to talk with, to gather information.

10 Q: At that time, did he have any useful information for you?

11 A: He appeared to be helpful at the -- at the outset. He
12 was giving names of people that we could talk to, things of
13 that nature.

14 Q: Did he in any way indicate he had any direct knowledge of
15 what had happened with Michael Ford?

16 A: No, sir, not at that time.

17 Q: All right. Was he under arrest at the time of this
18 interview?

19 A: No, sir. As a matter of fact, we went to his residence
20 and asked if he would voluntarily come down and he did say
21 that he would voluntarily come to the Sheriff's Office. We
22 drove him down there and he -- When we were finished, I took
23 him home.

24 Q: Was he -- Would he have been free to leave at any time if
25 he wanted to?

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 A: Yes, sir, at any time.

2 Q: Could he have stopped the interview at any time ---

3 A: Yes, sir.

4 Q: --- if he wanted to? Was there any sort of threats,
5 pressure?

6 A: No, sir.

7 Q: Anything to make him give a statement?

8 A: No, sir.

9 Q: Maybe when -- Like I said, when you asked him, it was --
10 He agreed, it wasn't any sort of give a statement or else,
11 anything like that?

12 A: No, sir.

13 MR. OZMENT: No further questions for this witness, Your
14 Honor.

15 THE COURT: What was the essence of the statement?

16 MR. OZMENT: Your Honor, essentially that he didn't know
17 anything. He had heard Michael Ford had died. He went
18 through and kind of said, maybe you should look at this guy,
19 maybe you should look at this guy. It's terrible what
20 happened. You know, I'll help you investigate in any way you
21 can.

22 THE COURT: Very good, all right. Cross examination, Mr.
23 Anderson?

24 MR. ANDERSON: No questions.

25 THE COURT: All right, very good. All right, you may

1 step down.

2 WITNESS: Thank you.

3 (Whereupon, the witness leaves the stand at 2:09 p.m.)

4 THE COURT: You may call your next witness.

5 MR. OZMENT: Your Honor, we're now going to move on to
6 the statement of February 9th.

7 THE COURT: Is that the only evidence you have with
8 regard to the December 19th statement?

9 MR. OZMENT: Well, we have the audio and video that Mr.
10 Anderson also has.

11 THE COURT: Okay.

12 MR. OZMENT: We would be happy ---

13 MR. WELLS: Do you want to listen to that at this time or
14 not?

15 THE COURT: Well, let's -- let's deal with the December
16 19th statement before we go any further. First of all, the
17 most -- most important question is do you object to the
18 introduction of this statement, Mr. Anderson?

19 MR. ANDERSON: No, sir.

20 THE COURT: Okay, very good. All right, very good.

21 Well, in view of the fact that the defendant has not objected
22 and in view of the fact that the defendant was not in custody,
23 it's clear that he wasn't in custody because he was released
24 shortly thereafter. He did not give any inculpatory
25 statements as far as I understand. Is that correct, Mr.

1 Ozment?

2 MR. OZMENT: That's correct, Your Honor.

3 THE COURT: And -- And therefore, anything that was given
4 was indeed innocuous or exculpatory. So, and in view of the
5 fact that the defendant has not objected to it, I specifically
6 find that he was not in custody, it did not trigger the
7 Miranda warning, and therefore, it is indeed admissible and
8 I'll so rule. Any -- Anything further, Mr. Anderson?

9 MR. ANDERSON: Not on the December 19th statement, Your
10 Honor.

11 THE COURT: All right, anything further from the State in
12 that regard?

13 MR. OZMENT: Not on that statement, Your Honor.

14 THE COURT: Okay, very good. All right and do you intend
15 on introducing that into evidence?

16 MR. OZMENT: Yes, Your Honor.

17 THE COURT: Okay, here at this hearing or during the
18 trial?

19 MR. OZMENT: My intention was during the trial, Your
20 Honor, but if you would like to, I could ---

21 THE COURT: I don't think it's necessary in view of what
22 we've learned here today, but if you weren't going to
23 introduce it, I was going to -- I need it to be made a part of
24 the record for the purposes of this hearing. But ---

25 MR. OZMENT: The intention is to introduce it, Your

1 Honor.

2 THE COURT: Okay, very good. All right, we'll -- we can
3 move forward.

4 MR. OZMENT: Your Honor, moving on to the January 9th
5 statement, the State calls Investigator Thomas McFadden.

6 THE COURT: Mr. McFadden, please come forward and place
7 your left hand on the Bible and raise your right hand as the
8 clerk administers the oath.

9 THE CLERK: Do you swear the testimony you will give in
10 this case will be the truth, the whole truth and nothing but
11 the truth, so help you God?

12 WITNESS: I do.

13 THE CLERK: Please be seated and state your full name for
14 the record.

15 THE COURT: Investigator McFadden, pull up real close to
16 that microphone and speak loudly, clearly and slowly in order
17 that we can hear everything that you've got to say. Thank
18 you, sir.

19 WITNESS: My name is Thomas Jermaine McFadden.

20 THE COURT: Mr. Ozment?

21 MR. OZMENT: Your Honor, also, I believe I misspoke.
22 It's February 9th, not January 9th, 2011, on that statement.
23 Thank you.

24 THE COURT: All right, February 9th, very good.

25 INVESTIGATOR THOMAS MCFADDEN, being

DIRECT EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. OZMENT

1 first duly sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. OZMENT:

4 Q: How are you today, Investigator McFadden?

5 A: I'm good.

6 Q: Good. Did you have occasion on February 9th, 2011, to
7 interview Scott Lee?

8 A: Yes, I did.

9 Q: Where did that interview take place?

10 A: The Florence County Sheriff's Office.

11 Q: At that time, was Mr. Lee under arrest?

12 A: Yes, he was.

13 Q: He was under -- Was he under arrest for the charges that
14 we're here today concerning?

15 A: Yes.

16 Q: Did you have Mr. Lee sign a written Miranda Warning sheet
17 that day?

18 A: Yes, I did.

19 MR. OZMENT: May I approach the witness, Your Honor?

20 THE COURT: Yes.

21 Q: Could you look over the two sheets of paper I've just
22 handed you and identify them for the Court?

23 A: The first sheet is an interview form just stating his
24 name, his address, date of birth, age, Social Security number,
25 height, weight, whether he was working or going to school,

DIRECT EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. OZMENT

1 education, was he under the influence of any alcohol or drugs
2 or whether he was comfortable talking with us, he got yes.
3 Was he threatened or misled in any way, he said no. That was
4 at 4:40 p.m. The case number was 2010-12-463.

5 The second sheet is the Miranda form, which shows that we
6 read them and tell them, you know, they got constitutional
7 rights and we inform them that they have the right to remain
8 silent. He checked off of that. Anything he say can be used
9 against him in a court of law. He checked off of that. He
10 has the right to talk with a lawyer and have him present while
11 being questioned. He checked off on that. If he could not
12 afford to hire one, one would be appointed to represent him
13 before any questioning if he wishes. He checked off on that.

14 THE COURT: Investigator McFadden, I'm going to ask you
15 to speak up.

16 WITNESS: Okay.

17 THE COURT: Just a little bit just to make sure. I can
18 hear you and the court reporter can ---

19 WITNESS: Sure.

20 THE COURT: --- but we want to make sure that it's being
21 recorded properly.

22 WITNESS: Thank you.

23 A: On the fifth one, we told him he could decide at any time
24 to exercise his rights to not answer any questions or make any
25 statements. He did check off on that. After we asked him did

DIRECT EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. OZMENT

1 he understand his rights, he put yes and he checked off on
2 that. It have, having his rights in mind, did he wish to
3 explain himself and talk and he checked off on that and he put
4 yes. Also, he read the waiver form and he signed off on it.
5 Eyewitnesses, also Investigator Kathleen Street witnessed it
6 at the bottom.

7 Q: All right. Did you see Mr. Lee sign that sheet of paper?

8 A: Yes, I did.

9 Q: Did you see him check off all those check marks?

10 A: Yes, I did.

11 Q: Did you verbally go over those rights with him?

12 A: Yes, I did.

13 Q: In the interview room or had you also done it before?

14 A: Yeah. First, we was in a car -- in the car on the way
15 there and I explained them to him and then after we got there,
16 I also explained it to him.

17 Q: All right. Did he seem to understand them?

18 A: Yes. He asked a few questions about them and we had to
19 thoroughly keep explaining it to him, explaining stuff to him,
20 and then he -- I told him -- One question was like if we
21 decided to talk to him and he didn't want to talk, he could
22 stop at any time. Like I tell him, at any point in time he
23 didn't want to talk or answer any more questions, he could
24 have told us no. Also, we videoed it.

25 Q: All right and I may have already asked you this. Was he

DIRECT EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. OZMENT

1 under arrest at the time when this interview took place?

2 A: Yeah, we was taking him into custody at that time.

3 Q: All right, but now when you were going over these rights
4 with him and asking him to talk to him, did you assert any
5 kind of pressure or threaten him, anything of that nature?

6 A: No.

7 Q: And you kind of already just said this also, but did you
8 explain to him that he didn't have to give a statement?

9 A: Yes, we did.

10 Q: Did you explain to him he could stop giving a statement
11 at any moment?

12 A: Yes, I explained that to him also.

13 Q: All right. Was he given any sort of incentive or reward
14 or anything, any sort of promise to give a statement?

15 A: No, he wasn't promised anything.

16 Q: All right.

17 MR. OZMENT: No further questions, Your Honor.

18 THE COURT: Cross examination, Mr. Anderson? While he's
19 doing that, how long did the interrogation last?

20 WITNESS: It didn't last too long. We might have been in
21 the room probably no longer than thirty, forty-five minutes
22 maybe.

23 THE COURT: Very good.

24 WITNESS: In the interview room.

25 THE COURT: All right, Mr. Anderson?

CROSS EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. ANDERSONCROSS EXAMINATION

1 BY MR. ANDERSON:

2 Q: Investigator McFadden, on the Miranda Warning at the top
3 of it, it's got the case number, the location, date and then
4 the time. Is that right?

5 A: Yes.

6 Q: The time says 4:50?

7 A: Mm-hmm.

8 Q: And then it's got everything checked off, one through
9 seven. It's got his name, address and then waiver of rights
10 at the bottom?

11 A: Yes.

12 Q: What time is the bottom of it signed?

13 A: It appears that it could be either a zero or a eight, an
14 unfinished eight.

15 Q: What do you think it is?

16 A: I would assume it may be a zero.

17 Q: Okay. Have you looked at his interview since it happened
18 on December -- excuse me, on February the 9th, 2011?

19 A: Yeah, I briefly went over it.

20 Q: On that taped statement, didn't he stand up and show you
21 the top of his head and didn't he talk to you for probably a
22 good eight or ten minutes before he signed that?

23 A: He talked to me a couple of times and asked -- He asked
24 questions about whether it was being videoed because he didn't
25

CROSS EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. ANDERSON

1 want his words twisted up and we advised him it would be
2 videoed.

3 Q: So that's probably an eight down there?

4 A: It could be an eight or zero, but a zero look different
5 from the top. That's why I said an eight.

6 Q: So he had -- It took him eight minutes to read this and
7 ask questions before he signed it?

8 A: Yeah. He wanted to make sure he understood.

9 Q: Okay. Now the judge -- You were here during jury
10 selection, weren't you?

11 A: Mm-hmm.

12 Q: You heard the judge ask a question in jury selection, is
13 everybody able to read, write and understand the English
14 language?

15 A: Yes.

16 Q: And he kind of laughed a little bit and said I don't
17 understand why I have to ask that because if you don't
18 understand the English language, you can't answer that
19 question, can you?

20 A: Mm-hmm.

21 Q: Do you remember when he said that?

22 A: Yeah.

23 Q: All right, one of the questions right here says -- Not on
24 this page, but on the one before that ---

25 A: The interview form?

CROSS EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. ANDERSON

1 Q: Yes, sir, the interview form. "Are you under the
2 influence of drugs or alcohol at this time?" If you were
3 under the influence of drugs or alcohol, could that affect
4 your ability to say yes or no?

5 A: Yes, if -- if he was under the influence of drugs or
6 alcohol.

7 Q: All right. Didn't Scott appear to be messed up and
8 having trouble talking and slurring his words on that
9 interview?

10 A: He was rambling on really. He wasn't -- He didn't have
11 problems with me. He just kept talking. He was even talking
12 before I was trying to get some of this stuff done. I had to
13 stop him to tell him hold on, you can explain yourself, but
14 let me ---

15 Q: Right.

16 A: --- finish doing the paperwork.

17 Q: I mean y'all talked for probably four or five minutes
18 before you even went over that with him, didn't you?

19 A: Yeah. He was rambling on about some other stuff.

20 Q: Okay, when you could have said whoa, whoa, whoa, stop;
21 don't say another word until I read you this form. Could you
22 have done that?

23 A: Yeah, I did.

24 Q: Didn't he say on at least three occasions, "I'd like to
25 speak to a lawyer," while you were interviewing him?

CROSS EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. ANDERSON

1 A: No. He said -- He made some comment about an attorney
2 and I said this is the part over here. If you want your
3 attorney present, you can stop at any time and then he ---

4 Q: Didn't he say during the interview that he wanted to talk
5 to an attorney?

6 A: I don't recall him saying that.

7 Q: When you arrested him on February the 9th in his front
8 yard, did he say at that time that he wanted to talk to an
9 attorney?

10 A: At that time, he said with me and Investigator Collins
11 there, he said -- We asked him did he want to come back down
12 with -- come back down for questioning and he said he was
13 going to talk to some attorney and we said that's fine, you
14 know, you can come on in and that ---

15 Q: Is that the time you arrested him?

16 A: Yeah, that's the time we took him in and then when he --
17 when we and him got in the car, that's why this took place.
18 When we got in the car, I told him -- He said, "No." He said,
19 "I want to help y'all." And I said, "Well, that's fine, but
20 you asked for an attorney." And he said, "No, I want to help
21 you." I think he even said on the video, "I'm here to help
22 you."

23 Q: On the way to the jail, was that recorded?

24 A: No, not on the way to the jail.

25 Q: Why not?

CROSS EXAMINATION OF INVESTIGATOR MCFADDEN BY MR. ANDERSON

1 A: I didn't have the recorder.

2 Q: What about your cell phone?

3 A: Yeah, I got my cell phone.

4 Q: Now could you have recorded it on your cell phone?

5 A: I could have if I had thought about it at the time.

6 Q: So that statement on the way to jail was not recorded?

7 A: No, it wasn't recorded. Then when I got to the jail,
8 then I explained it to him again. That's why this took place,
9 the paperwork. He could have stopped then and said it, but he
10 didn't. He said in the video then, he said, "No, I'm here to
11 help y'all."

12 Q: To your recollection, he did not ask for an attorney
13 while he was making that statement?

14 A: No. I -- When he made a mention of an attorney, I told
15 him just the part right here, if you want an attorney, you can
16 have one present. Any time you can stop. That's what I
17 explained to him. If you decide -- He said, "No, I'm here to
18 help y'all. I want to get to the bottom of what happened to
19 Michael."

20 Q: And you don't think that Scott was under the influence of
21 any narcotics or drugs at that time?

22 A: He was not. He was coherent. He understood. He read
23 off on the stuff we explained and it sounded like he did know
24 what he was talking about what he was doing.

25 MR. ANDERSON: That's all the questions I have at this

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 time, Judge.

2 THE COURT: Any redirect?

3 MR. OZMENT: No redirect, Your Honor.

4 THE COURT: All right, you may step down.

5 (Whereupon, the witness leaves the stand at 2:22 p.m.)

6 THE COURT: Any further witnesses with regard to the
7 February 9th statement?

8 MR. OZMENT: The State calls Kathleen Streett, Your
9 Honor.

10 THE COURT: All right, Ms. Street, if you could, please
11 come forward. I'm going to ask you, if you could, to place
12 your left hand on the Bible and raise your right hand as the
13 clerk administers the oath.

14 THE CLERK: Do you swear the testimony you will give in
15 this case will be the truth, the whole truth and nothing but
16 the truth, so help you God?

17 WITNESS: I do.

18 THE CLERK: Please be seated and state your full name for
19 the record.

20 THE COURT: Yes, ma'am, please pull up real close to that
21 microphone and speak loudly, clearly and slowly. Let's start
22 with your full name.

23 WITNESS: Kathleen Vargovchik Streett.

24 THE COURT: Very good. Is that an Eastern European name?

25 WITNESS: It's Slovak.

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 THE COURT: Very good.

2 INVESTIGATOR KATHLEEN STREET, being
3 first duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. OZMENT:

6 Q: How are you today, Investigator Streett?

7 A: Fine.

8 Q: Good. I'm just going to be brief with you. Looking at
9 the same Waiver of Rights Form that we just discussed with
10 Investigator McFadden, is your signature on that form?

11 A: Yes, it is.

12 Q: Were you present when the defendant signed -- filled out
13 the form and signed his name on it?

14 A: Yes, I was.

15 Q: While in your presence, were there any sort of threats,
16 any sort of pressure or anything on him to give that
17 statement?

18 A: No.

19 Q: Was there any sort of reward or incentive or promise that
20 if he gave a statement, something would happen?

21 A: No, there wasn't.

22 Q: All right. Did he seem to you from the questions he was
23 asking and the conversation that he understood what his
24 Miranda rights were?

25 A: Yes, definitely.

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 MR. OZMENT: No further questions, Your Honor.

2 THE COURT: All right, cross examination, Mr. Anderson?

3 CROSS EXAMINATION

4 BY MR. ANDERSON:

5 Q: Investigator Streett?

6 A: Yes, sir.

7 Q: Do you recall how long it took him to review that and
8 sign it?

9 A: It took him several minutes.

10 Q: At some point in time, did he stand up and show you some
11 injuries that he had received to his head at a prior time?

12 A: He told us that he had a skin condition. I can't
13 remember the name of it. Cal ---

14 DEFENDANT: Alopecia.

15 A: Yeah, it -- where his hair would fall out in spots. He
16 showed us that. I don't recall him saying anything about any
17 head injuries.

18 Q: He told you he had a tenth grade education?

19 A: I don't recall what he said about his education.

20 Q: Do you recall him asking for an attorney?

21 A: No.

22 Q: During the interview?

23 A: No.

24 Q: Do you recall him having trouble and asking several
25 questions about the Miranda Warning and the Waiver of Rights?

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 A: He asked questions and Thomas -- Investigator McFadden
2 answered questions that he had.

3 Q: At any point in time during this interview, did he appear
4 to be rambling, as far as Mr. Lee is concerned?

5 A: He was talking in -- I wouldn't call it rambling, but he
6 was talking fast, maybe quickly, not really rambling. But I
7 mean he was talking a lot.

8 Q: Now, of course ---

9 A: Very coherently.

10 Q: Go ahead. I'm sorry.

11 A: Excuse me. Very coherently, I mean we understood
12 everything he was saying.

13 Q: At no -- You weren't with him prior to 4:50 on February
14 the 9th, 2011, were you?

15 A: I believe when we first went into the interview room, it
16 was before he signed off on the -- the Miranda form.

17 Q: What I'm -- You weren't with him at lunch time that day,
18 were you?

19 A: No, no.

20 Q: You weren't with him at one o'clock, two o'clock?

21 A: No.

22 Q: Three o'clock, anything like that?

23 A: No, the first time I met him was ---

24 Q: And I'm talking, of course, p.m.

25 A: Correct, right.

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 Q: So you don't know if he had drank anything or consumed
2 any drugs prior to being interviewed, do you?

3 A: No.

4 MR. ANDERSON: Judge, that's all the questions I have.

5 THE COURT: Any redirect?

6 MR. OZMENT: No further questions, Your Honor.

7 THE COURT: All right, you may step down.

8 (Whereupon, the witness leaves the stand at 2:26 p.m.)

9 THE COURT: Any further witnesses with regard to the
10 February 9th statement?

11 MR. OZMENT: None from the State, Your Honor. We, of
12 course, have the statement and would be happy for Your Honor
13 to watch it or play it.

14 THE COURT: All right. One of the things that comes out
15 that I have a particular question about is that there is some
16 mention of his request for a lawyer, but that part is not on
17 the recorded statement. Is that correct? Or is it?

18 MR. ANDERSON: Your Honor, I think it is. I think he did
19 request an attorney.

20 THE COURT: All right. Do you have a transcript of that,
21 Mr. Ozment?

22 MR. OZMENT: We have no transcript for Your Honor.

23 THE COURT: Okay. Mr. Anderson, what do you -- What's
24 your recollection of what he says on the -- on the tape?

25 MR. ANDERSON: Your Honor, I listened to the tape Sunday

1 morning for -- for the second time and I -- I recall him
2 asking to speak to an attorney, but, Your Honor, my
3 recollection is he was ram -- I mean in my opinion I call it
4 rambling. He was talking and talking and talking and I have
5 had some of the transcript or some of his statements
6 transcribed and the girl that I got to transcribe it said you
7 can't understand half of it because four people are talking at
8 the same time and I think it's easy to miss. But I think he
9 did ask for one.

10 THE COURT: Okay, all right. Have you -- You obviously
11 have had an opportunity to review the statements. Is that
12 right, Mr. Ozment?

13 MR. OZMENT: Yes, Your Honor.

14 THE COURT: And what is your recollection of what's said?

15 MR. OZMENT: I do recall his rights being gone through
16 and explained and I can't remember if it's in the very
17 beginning of the statement or if it's a little bit into it.
18 At one point, I think a discussion of an attorney comes up,
19 his Miranda rights are kind of explained, and they said, well,
20 you can have an attorney and we can end this or you can keep
21 talking to us. You don't have an attorney, but you have a
22 right to an attorney going into -- And kind of that part of
23 the Miranda rights were explained and he says, "No, I want to
24 talk to y'all and help y'all," is how I remember it.
25 Certainly, we'd be happy to play it, if that's what Your Honor

1 wants.

2 THE COURT: Okay. How long does it last?

3 MR. OZMENT: The whole statement I want to say is either
4 right under or right over an hour.

5 THE COURT: Okay. I think the part that I want to hear
6 has to do with the request for a lawyer. How long will it
7 take for you to queue that up?

8 MR. OZMENT: It's -- It's towards the beginning unless
9 Mr. Anderson knows it's ---

10 MR. ANDERSON: Ten minutes, Your Honor

11 THE COURT: Okay. Well, I'd like to hear that.

12 MR. OZMENT: Okay. I'm going to have to find our --
13 Unless Your Honor wants to do it in chambers, I'm going to
14 have to find our ---

15 THE COURT: I think we probably need to do that on a
16 break.

17 MR. OZMENT: Your Honor, also, the Miranda Warning Form
18 we would be happy to make a Court's exhibit.

19 THE COURT: All right, very good. Any objection to these
20 being made a Court's exhibit?

21 MR. ANDERSON: No, sir, Your Honor, I do not.

22 THE COURT: All right, those will be State's Exhibit 1
23 and 2. Is that correct?

24 COURT REPORTER: Court's or State's?

25 THE COURT: State's Exhibit 1 and 2 for purposes of this

1 hearing only.

2 (Whereupon, State's Exhibit Number 1, the Miranda Warning
3 Form, and State's Exhibit Number 2, the Statement and
4 Interview Form, are admitted into evidence.)

5 (Whereupon, there is a pause in the proceedings as the
6 audio/video equipment is readied for playing the
7 statements. A large video screen is placed in front of
8 the bench for viewing.)

9 THE COURT: This looks like some kind of Star Trek thing
10 y'all got going on.

11 TECHNICIAN: Can you see that, Judge?

12 THE COURT: Yes.

13 TECHNICIAN: All right.

14 (Whereupon, the video is played. NOT TRANSCRIBED.)

15 MR. OZMENT: As I remember, there is some dead time at
16 the beginning that we can ---

17 THE COURT: You can fast forward that.

18 MR. OZMENT: Okay.

19 (Whereupon, the technician fast forwards the video to the
20 point where speaking is heard.)

21 THE COURT: Here we go.

22 (Whereupon, the video is played for approximately 17
23 minutes.)

24 THE COURT: All right, let's -- let's cut it off. Is
25 that the -- the discussion with regard to the attorney -- with

1 regard to the attorney?

2 MR. ANDERSON: Yes, sir, Your Honor.

3 THE COURT: All right. I -- Is there any other evidence
4 that you want to offer with regard to the statement, Mr.
5 Ozment?

6 MR. OZMENT: I don't believe so, Your Honor.

7 THE COURT: All right and we will make this tape, the
8 entire tape, a part of this transcript for this hearing.
9 Anything further from the defendant?

10 (Whereupon, State's Exhibit Number 3, the video DVD of
11 the statement, is admitted into evidence.)

12 MR. ANDERSON: Your Honor, just ---

13 THE COURT: You've got a right to call any witnesses that
14 you want to with regard to voluntariness or any Miranda
15 issues. You feel free to do that. Do you have anything you
16 would like to offer in that regard?

17 MR. ANDERSON: Your Honor, just on the video. As you
18 heard from Investigator McFadden, he said what's the color of
19 your hair, he said well, it used to be this color, but I can't
20 grow it right now and then he said ---

21 THE COURT: Before we -- Before we do that, do you have
22 any witnesses that you want to offer?

23 MR. ANDERSON: Your Honor, I could offer his mother, but
24 she would just say that in his yard probably four or five
25 hours earlier he asked for an attorney, but I think this would

1 override what he had ---

2 THE COURT: Right.

3 MR. ANDERSON: --- previously asked for.

4 THE COURT: Okay, very good. All right, you -- so
5 essentially, you don't want to call any witnesses with regard
6 to this issue?

7 MR. ANDERSON: No, sir, Your Honor.

8 THE COURT: Okay and I'll be glad to hear your argument
9 in that regard.

10 MR. ANDERSON: Judge, it just -- When the -- When he was
11 asked about the color of his hair, he said my hair is brown
12 and then they said what's the color of your eyes, and he said,
13 well, I told you my hair is brown. I mean he couldn't even
14 answer, you know, what are the color of your eyes. I mean he
15 kept talking about his hair even though the question was clear
16 what are the color of your eyes, Your Honor, and I just think
17 that he was under the influence of some substance or narcotic
18 at that time. I think it's pretty evident by the -- the way
19 he's talking and the trouble that he's had going over this
20 form. I think he asked about the attorney thing at least
21 three times, possibly more and, Your Honor, I just don't think
22 he understood these rights.

23 THE COURT: Mr. Ozment, I'd be glad to hear from you.

24 MR. OZMENT: Your Honor, other than Mr. Anderson's word,
25 there's no evidence here that he's intoxicated in any way

1 other than obviously just his behavior on the video.

2 THE COURT: I think he specifically says he's not
3 intoxicated, doesn't he?

4 MR. OZMENT: He does. He answers that question that he's
5 not under the influence of anything. Also in regards to every
6 time he brings up an attorney, I mean I think it was clearly
7 explained you have the right to an attorney. Anytime you want
8 to, this can stop. You can say -- You know, I think McFadden
9 says you can say, "McFadden, I don't want to talk to you
10 anymore, I want to talk to an attorney," and it'll end.

11 You know, to me it wasn't brushed over. It wasn't --
12 There wasn't any pressure put on him. It was, you know, every
13 time he asked, it was explained and then he continued filling
14 out the form and eventually signed it and that was it.

15 THE COURT: All right, okay. First of all, everybody
16 needs to -- Let's place that down, that screen down if we
17 could.

18 (Whereupon, the technician complies.)

19 THE COURT: Of course, the threshold question is whether
20 or not it is to be admissible and first of all, there's no
21 question but that Miranda is triggered. He's under arrest at
22 this time. Miranda warnings were given and the forms that
23 have been made a part of the record indicate that he was given
24 his rights and he indicates that he signed and he understands
25 those rights.

1 With regard to the substance of the statement that's --
2 that's been played on this tape, first of all, all of the
3 statements that were made, the vast majority of what we
4 listened to really is not subject to an interrogation. He's
5 just voluntarily talking. There hasn't really been any
6 questions asked, so I really don't think Miranda applies to
7 the vast majority of what's been played up until this point.
8 He's just rambling on and just talking.

9 However, once there is a discussion with regard to the
10 Miranda rights, no question but that it was read to him, he
11 indicated that he understood them, he indicated that he -- The
12 question of intoxication came up and he indicated that he
13 indeed was not intoxicated.

14 With regard to the issue of involuntariness, number one,
15 it never said exactly how old the defendant is, but he's
16 clearly not very young. He's got at least a tenth grade
17 education. How old is the defendant?

18 MR. ANDERSON: Your Honor, I think at the time he was 35.

19 THE COURT: Okay. He -- I was saying that he appeared to
20 be in his late 20's, but if he was 35 years old, clearly youth
21 is not an issue. He does have a tenth grade education.
22 There's been no evidence that's been introduced with regard to
23 any mental deficiency, any low intelligence, the fact that he
24 was in special ed or anything such as that. There's no
25 question but that he has not been in prison for an extremely

1 long period of time. There was certainly no lengthy
2 interrogation that would play onto the voluntariness of this.

3 I think the Miranda warnings were explained to him and he
4 understood them. The -- The -- There is a threshold issue as
5 to whether or not he requested a lawyer and I think the case
6 of *Wannamaker* makes it very clear that an equivocal request
7 for an attorney is not good enough. Just by virtue of the
8 fact that you bring up an attorney isn't going to be a request
9 for an attorney. He specifically said when he -- He says, "I
10 thought about an attorney, but my tax -- I didn't have the
11 money, but my taxes were coming in." But it was explained to
12 him early on that he had a right to an attorney and if he
13 couldn't afford one, one would be appointed for him. The
14 case, *Wannamaker*, specifically says that although these issues
15 are brought up, it's not incumbent upon the police to go
16 further and explain it in greater detail.

17 Those matters were explained to him and what transpired
18 and what's been made apparent on this tape is that he's made
19 an equivocal -- He equivocally discussed the issue of a
20 lawyer, but he specifically said on more than one occasion
21 that he didn't want a lawyer, that he wanted to go ahead and
22 talk with them, to not talk with them would be like not
23 helping and he wanted to help. He also said that one of the
24 reasons why he was wanting to talk with a lawyer was that he
25 was concerned that they would twist his words. He

1 specifically wanted to know whether or not it was recorded and
2 they indicated that his words would indeed be recorded.

3 Taking all of the facts and circumstances that are made
4 apparent in the video that's been made a part of the record
5 for the purpose of this hearing, shows that there was not a
6 unequivocal request for an attorney. However, as we all know,
7 that I'm going to make the ruling that it's admissible, the
8 jury is going to be able to hear it, but all of the issues
9 with regard to Miranda, whether or not he requested a lawyer,
10 whether or not this is voluntary or not -- it doesn't appear
11 as if he is speaking -- It does appear as if there could be an
12 argument made that he was not -- that he might have been
13 intoxicated on something, but clearly he's talking. You can
14 understand what he's saying and he specifically refutes the
15 fact that he's intoxicated.

16 All of those are issues for the jury to determine and I
17 -- I will charge them accordingly, that if they find as though
18 if he was intoxicated, then they are to disregard the
19 statement in its entirety. If they make the determination
20 that he requested a lawyer, they are to disregard it in its
21 entirety.

22 But the threshold question has been answered and I
23 specifically find that he was in custody at the time, Miranda
24 warnings were given, he understood his Miranda warnings, and
25 there was not an unequivocal request for a lawyer. That's my

1 ruling at this time and I will charge the jury that all these
2 issues are ultimately a question of fact for the jury to
3 determine.

4 Anything further, Mr. Ozment?

5 MR. OZMENT: Nothing, Your Honor.

6 THE COURT: Anything further, Mr. Anderson?

7 MR. ANDERSON: No, sir, not at this time.

8 THE COURT: All right, very good. All right, any further
9 motions at this time, Mr. Ozment?

10 MR. OZMENT: We don't have -- Nothing from the State,
11 Your Honor. I think there are some exhibits and whatnot we
12 can pre-mark at some point. I don't know if you want to do
13 that now or after opening.

14 THE COURT: All right. Well, I think since it really
15 works out well because it's three o'clock, we told the jury to
16 be back at three o'clock. We're going to go ahead and bring
17 the jury out and we're going to give them a preliminary charge
18 and -- and have the openings and we'll call the first witness
19 and if there are exhibits, we'll take them as it comes up.

20 MR. OZMENT: All right.

21 THE COURT: And then at the end of the day if there are
22 additional exhibits that need to be marked, we'll go from
23 there.

24 THE CLERK: There are jurors in the hallway.

25 THE COURT: Okay, very good. We're going to take about a

1 five minute recess and we'll get the jury in the jury room and
2 we'll be ready to proceed.

3 (Whereupon, there is a break in the proceedings from 3:03
4 p.m. until 3:07 p.m. During the break, State's Exhibits
5 1 through 25, all color photographs, are pre-marked.)

6 THE COURT: Sammy, did you have a question or concern
7 from the jury?

8 BAILIFF: The -- The juror went to the foreman and told
9 him.

10 THE COURT: Okay, all right. Call the foreman out and
11 let's ask if he has a question.

12 BAILIFF: Yes, sir.

13 (Whereupon, the jury foreman is brought into the
14 courtroom.)

15 THE COURT: Yes, sir, if you could, stand right there. I
16 understand that the deputies indicated there was a question.

17 FOREMAN: Yeah, two of the jurors. Number 42, indicated
18 that about 14 to 15 years ago, his son was best friends with
19 Steve Pearson's son and he didn't make the connection until he
20 was gone to lunch and apparently Steve Pearson was one of the
21 witnesses or involvees, I don't know which, but he said he
22 just wanted to make sure he's doing what he's supposed to do.

23 THE COURT: Okay and -- All right, and his name? The
24 juror's name is?

25 FOREMAN: Earl is all I know. He was number 42.

1 THE CLERK: Richard Dowdy on the list, Judge.
2 THE COURT: Richard Dowdy?
3 THE CLERK: Yes, sir.
4 THE COURT: Okay, is that the only ---
5 FOREMAN: No, there was one other, number 62. I did not
6 get her name. She wanted to know if South Carolina is a death
7 penalty state and I said I don't know.
8 THE COURT: Okay, all right. All right, I'll ---
9 THE CLERK: I bet it's 61.
10 THE COURT: 61?
11 THE CLERK: Ernestine Hancock.
12 THE COURT: African American lady?
13 FOREMAN: Yes.
14 THE CLERK: The lady that's been up here already, Judge.
15 THE COURT: All right, very good. All right, let's speak
16 with juror number 42. You can retire to the jury room.
17 FOREMAN: Okay, number 42?
18 THE COURT: Number 42.
19 (Whereupon, the foreman complies and juror number 42 is
20 brought into the courtroom.)
21 THE COURT: Yes, sir, you can stand right there.
22 JUROR: Thank you, sir.
23 THE COURT: Yes, sir, your full name for the record?
24 JUROR: Richard Earl Dowdy.
25 THE COURT: Okay, Mr. Dowdy, you had mentioned something

1 to the bailiff that you had a concern about a particular
2 witness. Tell me what your concern is.

3 JUROR: When the name was first mentioned -- Can I say
4 the name?

5 THE COURT: Certainly.

6 JUROR: Okay, it was Pearson, Steve Pearson. His son
7 used to be my son's best friend. Now I'm not -- I don't know
8 him personally. I just see him on a motorcycle sometimes, but
9 I've never had anything to do with him as far as personal.
10 I've never been to his house. His -- At the time, the boy was
11 13. My son is 29 now. That's the last time I saw him or
12 anything else.

13 THE COURT: Well, this is the most important question
14 and, of course, we have alternates for this very purpose, but
15 the question is, by virtue of the fact that there was some
16 connection with a family member with this particular witness,
17 could you set that relationship aside and if called upon to
18 serve as a juror in this case, base your decision on the
19 evidence that's presented in this case or the lack thereof ---

20 JUROR: Yes, sir.

21 THE COURT: --- the law as I charge it to you and give
22 both the State and the defendant a fair and impartial trial?

23 JUROR: Absolutely.

24 THE COURT: All right, you're qualified to serve. Thank
25 you so much.

1 JUROR: Thank you, sir.

2 (Whereupon, the juror returns to the jury room.)

3 THE COURT: All right, any -- any questions or objections
4 with regard to that, Mr. Ozment?

5 MR. OZMENT: Nothing from the State, Your Honor.

6 THE COURT: Anything from defense?

7 MR. ANDERSON: Yes, sir, Your Honor. Judge, if he'd have
8 said that he knew one of the witnesses, I would have exercised
9 one of my strikes and I don't care -- I mean, of course, you
10 would have said, can you be fair and impartial, and he would
11 have said just what he just said, but I would have exercised
12 one of my strikes.

13 I mean anybody that was related, you know, knew a witness
14 or something like that or had dealings with them, I struck
15 them. I mean I don't ever take that chance. You know, if
16 that had come out previously, I would have struck him. I
17 mean, Your Honor, it's kind of like the fellow that was drawn
18 that I previously represented. You know, I mean I think the
19 State's position was, well, since Hank represented him, I'd
20 better strike him.

21 THE COURT: All right. Well, the witness that they're
22 talking about, is that a witness for the State or for the
23 defense?

24 MR. OZMENT: It's a witness for the State, Your Honor.
25 He is a man who saw the car burning and called 9-1-1. He

1 doesn't know Scott Lee, doesn't know who Scott Lee is, and to
2 be honest, he could never be served with a subpoena because he
3 couldn't be found. So he was on the list because if we found
4 him between then and when we intend to call him, he may
5 testify, but at this point he's not going to be called because
6 he hasn't been served with a subpoena yet.

7 THE COURT: Okay. Does that affect your -- Does that
8 affect your position in any way, Mr. Anderson?

9 MR. ANDERSON: Your Honor, I thought that he said
10 something on his 9-1-1 call that may have been beneficial to
11 me. Mr. Pearson, when he gave ---

12 THE COURT: Right.

13 MR. ANDERSON: You know, when he called into 9-1-1, he
14 said a few things that I certainly wanted the chance to ask
15 him about.

16 THE COURT: Have you subpoenaed him to be here?

17 MR. ANDERSON: No, sir, Your Honor.

18 THE COURT: Okay. Well, I'm just kind of asking -- I'm
19 trying to gather from you what the prejudice would be if this
20 Pearson gentleman is going to be favorable to you and this
21 witness knows -- I mean this juror knows that witness, I'm
22 just wondering what the ---

23 MR. ANDERSON: Your Honor, I don't know if he's going to
24 be favorable to me or not. I was going to ask him the
25 questions that may have turned out to be favorable to me.

1 THE COURT: Okay, all right, but you did not subpoena
2 this particular witness?

3 MR. ANDERSON: No, sir, Your Honor. He made the 9-1-1
4 call. I assumed that the State was subpoenaing him. I mean I
5 didn't subpoena all the law enforcement officers either, but
6 ---

7 THE COURT: Okay and you anticipate that he is not going
8 to testify?

9 MR. OZMENT: I would anticipate that because as of right
10 now, we don't know where he is.

11 THE COURT: Okay. Well, I tell you what we'll do is
12 we're going -- I'm going to allow him to serve, but we will
13 revisit the issue, Mr. Anderson -- Mr. Anderson?

14 MR. ANDERSON: Yes, sir.

15 THE COURT: We will revisit the issue in the event he
16 does testify and -- and it might not be an issue. Very good.
17 All right, anything further?

18 MR. OZMENT: Nothing further from the State, Your Honor.

19 THE COURT: All right, we're ready for the jury.

20 MR. WELLS: I was going to say at some point based on the
21 second question that you might instruct the jury that this is
22 not a case the State is seeking the death penalty.

23 THE COURT: I will. I will indeed do that. Let's bring
24 -- I don't think we need to discuss the death penalty in front
25 of everybody. I'm going to call that particular juror out and

1 answer the question. Any objection to handling it that way
2 from the State?

3 MR. WELLS: No, Your Honor.

4 THE COURT: Any objection from the defense?

5 MR. ANDERSON: No, sir.

6 THE COURT: Very good. Well, let's have juror number 61
7 out.

8 BAILIFF: And her name again, please, Judge?

9 THE COURT: They didn't tell me. It said juror ---

10 THE CLERK: Ms. Hancock.

11 THE COURT: Ms. Hancock, 61.

12 BAILIFF: Okay, thank you.

13 (Whereupon, juror number 61 is brought into the
14 courtroom.)

15 THE COURT: Yes, ma'am, if you could, just stand right
16 there. The question has been asked as to whether or not the
17 State of South Carolina is a death penalty state and that's
18 really not for your consideration because this -- this is not
19 a death penalty case.

20 JUROR: Okay.

21 THE COURT: It doesn't have anything to do with the death
22 penalty.

23 JUROR: Okay.

24 THE COURT: Very good.

25 JUROR: Okay.

1 THE COURT: So that's not even an option.

2 JUROR: I just wanted to clear my conscience.

3 THE COURT: Very good.

4 JUROR: Okay.

5 THE COURT: And you may return to the jury room.

6 JUROR: Okay.

7 THE COURT: Thank you very much.

8 (Whereupon, the juror returns to the jury room.)

9 THE COURT: All right, anything further from the State?

10 MR. OZMENT: Nothing from the State, Your Honor.

11 THE COURT: Anything from the defense?

12 MR. ANDERSON: Yes, Your Honor. Judge, I would request
13 that the -- any witnesses that the State intends on calling
14 that they be sequestered until they are called.

15 THE COURT: All right and what's the State's position in
16 that regard?

17 MR. OZMENT: That's fine, Your Honor, but we do want an
18 exception that the victim's father is on the witness list to
19 be called and we would ask that he not be sequestered. As a
20 victim, he has a right to be in this forum and see the court
21 proceedings. Additionally, if the request is granted, we
22 would ask that any defense witnesses also be sequestered.

23 THE COURT: All right. All right, I am going to grant
24 that motion and I'm going to ask that, however, the lead
25 investigator and the victim's father may remain in the

1 courtroom. I'm going to go ask that -- The order of
2 sequestration not only requires that all of the witnesses be
3 sequestered, but it also goes to the fact that none of the
4 witnesses may discuss their testimony with -- with other
5 witnesses and I'm going to ask that you instruct your State's
6 witnesses to that effect and the defense witnesses as well.

7 MR. ANDERSON: Your Honor, the only defense witness that
8 I have that is here right now, other than of course my client,
9 would be his -- his mother, Shirley Lee, Your Honor, and if I
10 call her as a witness, it would not be until the defense
11 started their case in chief, Your Honor, so I would ask the
12 Court to allow her to stay in here. I'm not going to question
13 her about things that, you know, the deputies that went to the
14 scene and the 9-1-1 call and that. I'm going to question her
15 in regards to other matters that relate to my client. So I
16 would ask that she be allowed to stay in here.

17 THE COURT: What's the position of the State?

18 MR. OZMENT: Your Honor, to my knowledge there's nothing
19 that grants the defendant a right to have his family present
20 at the hearing if they're going to be called as a witness.

21 THE COURT: Okay. Well, I'm going to require -- You
22 know, the motion was made by the defense to sequester
23 witnesses and it applies to both sides and I'm going to ask
24 that she be sequestered. Very good.

25 MR. OZMENT: And also, Your Honor, just for purposes of

1 the record, the victim has some other family here. We don't
2 intend on calling them as a witness, so ---

3 THE COURT: All right.

4 MR. OZMENT: --- obviously, we would ask that they be
5 allowed to stay in the courtroom.

6 THE COURT: They will be allowed to stay in the
7 courtroom, but they will be precluded from testifying. Very
8 good. All right, we're ready for the jury.

9 MR. WELLS: Do you want -- Your Honor, before we start,
10 do you want us to go ahead and have the people ---

11 THE COURT: Yes.

12 MR. WELLS: The lead investigator stays and the father
13 stays.

14 THE COURT: Yes, let's go ahead and get situated now.

15 MR. WELLS: We need to see where they're going to be so I
16 can go get them.

17 THE COURT: There's a room right next door that would be
18 perfect.

19 MR. WELLS: Yeah, that would be good.

20 THE COURT: Don't get lost, so we can locate you.

21 BAILIFF: Wait up, Judge?

22 THE COURT: Just one second.

23 (Whereupon, there is a pause in the proceedings as the
24 witnesses are sequestered.)

25 THE COURT: All right, we're ready for the jury. All

1 right, let's have order.

2 (Whereupon, the jury enters the courtroom at 3:19 p.m.)

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury, we are about to begin the trial of the State of South
5 Carolina versus Scott Thomas Lee, Indictment Number 2011-GS-
6 21-1189. As I indicated earlier, he has been indicted with
7 murder arising out of the death of Michael G. Ford, which
8 allegedly took place on December 17, 2010, and an alleged
9 arson third degree, which also took place on December 17,
10 2010, and involved a 2005 Chevrolet Lumina.

11 Ladies and gentlemen of the jury, I hold in my hand the
12 indictment and this document is essentially the paper that
13 starts the criminal proceeding. It has absolutely no
14 evidentiary value whatsoever. Ladies and gentlemen of the
15 jury, as Scott Thomas Lee is seated over there at the defense
16 table, he is presumed to be just as innocent as me or you.
17 He's been accused of this crime and to that -- those charges
18 he has pled not guilty and there are certain constitutional
19 safeguards that come into play when any one of us as American
20 citizens are accused of a crime, the first of which is -- as
21 I'd already mentioned is he's presumed to be innocent.

22 The presumption of innocence is a very real right.
23 That's just not something you hear about in social studies or
24 something you hear on TV.. That is a very real substantial
25 right. It's the presumption of innocence.

1 He has pled not guilty to these charges and because he's
2 pled not guilty, certain other constitutional safeguards come
3 in play, the first of which is that the State has the burden
4 of proof. When the State chose to make this charge against
5 the defendant, they have all the wherewithal to gather the
6 evidence and bring it before you as jurors here today and
7 they're the ones that are required to present the witnesses
8 and present all of the evidence.

9 It is not the law and never has been the law that the
10 defendant is required to present any evidence or present any
11 -- any evidence or any witnesses whatsoever. It's completely
12 incumbent upon the State to prove each and every element of
13 the offense. You know, all of us in our everyday lives,
14 sometimes we've been accused of something that's absolutely
15 impossible to prove your innocence. In the United States of
16 America, an individual is not required to do that.

17 The third constitutional safeguard is that in order for a
18 person to be convicted of a crime, the State has to not only
19 meet their burden of proof, but it's the highest burden of
20 proof known to our judicial system. Suppose with me, if you
21 will, you are called upon as a juror to -- to stand as a jury
22 in a civil case, a wreck case would be a good example of that.
23 Suppose with me, if you will, the scales of justice where the
24 lady is blindfolded from all bias and all prejudice. When the
25 trial starts, the scales are even and in a civil case, if the

1 person who was injured in the car accident tilts the scales
2 ever so slightly in their favor, they will prevail. That's
3 known as the preponderance of the evidence, ever so slightly,
4 more likely than not, because in those cases all you're
5 talking about is money.

6 But in this case, we're talking about very important
7 liberties, constitutional rights, and because of that, our
8 forefathers have made the determination that in order for
9 someone to be convicted, the State has to meet the highest
10 burden of proof known to our judicial system, proof beyond a
11 reasonable doubt. Now I envision that as locking up the
12 scales. I'll charge you in greater detail about what proof
13 beyond a reasonable doubt is at the conclusion of the case.

14 Ladies and gentlemen of the jury, I want to tell you
15 individuals who have not served on a jury before a little bit
16 about how we're going to proceed. First of all, the lawyers
17 are going to have an opportunity to give an opening statement.
18 The State goes first. They're going to stand up and tell you
19 a little bit about the case and a little bit about the law and
20 what they intend to prove.

21 The defendant after that is going to have an opportunity
22 through his lawyer to stand up before you and talk with you
23 about the law and any defenses that they might have. Once
24 again, they don't have to do that because the burden is not
25 upon them, but they're going to be given an opportunity to

1 give an opening statement if they elect to do so.

2 After that, we will begin the trial of the case and the
3 presentation of evidence. Likewise and with regard to the
4 trial, the State goes first. They will call witnesses and
5 present evidence.

6 The evidence can take a number of different forms, the
7 primary form of which is oral testimony. You, as ladies and
8 gentlemen of the jury, are the triers of fact and you're going
9 to have to listen to the evidence as it's presented. It can
10 be oral testimony. It can be written documents, sometimes
11 depositions, sometimes stipulations of counsel. All of those
12 things are going to be for your consideration and, ladies and
13 gentlemen of the jury, you are the triers of fact and in every
14 trial that's ever taken place in the United States of America,
15 there's a question of fact and see, y'all are going to be the
16 ones who have to evaluate the evidence that comes from this
17 witness stand and determine what the truth is.

18 In every case or virtually every case, there's a dispute
19 about what the true facts are. You're going to have to listen
20 to the evidence and determine what the truth is. There is a
21 rare occasion where the parties agree as to what the facts
22 are, but disagree as to inferences to be drawn from the facts,
23 but in both instances, you as jurors are going to be called
24 upon to determine what the truth is.

25 Ladies and gentlemen of the jury, the law does not allow

1 me to comment on the facts of the case. You are the sole and
2 exclusive judges of the facts. My job is the arbiter of the
3 law. I determine what evidence you get to hear and at the
4 conclusion of the case I will charge you the law, what the
5 substantive law is that governs this case.

6 I also am the arbiter of what evidence you get to hear.
7 Quite often throughout the trial of this case, you're going to
8 hear lawyers stand up and say, "I object. We need to take up
9 a matter of law outside of the presence of the jury." And
10 this is a proceeding that's governed by the Rules of Evidence
11 and the South Carolina Rules of Criminal Procedure and I have
12 to make a ruling as to what evidence you get to hear and when
13 they make these type objections, quite often I have to do it
14 outside of your presence and the reason for that is that
15 sometimes in ruling on these matters, I have to comment on the
16 facts, but the law doesn't allow me to have an opinion about
17 the facts and for that reason, those conversations take place
18 outside of your presence.

19 I promise you at the conclusion of the case, if there's a
20 particular point of law or an objection that you had a
21 particular interest in and if I can remember what we were
22 talking about, I will share it with you at that time. But it
23 would be inappropriate for me to do so until after all of the
24 evidence is in, after I charge you the law, and after there's
25 been a verdict that's rendered.

1 Ladies and gentlemen of the jury, you have a very
2 important role to fill in this trial and that's the trier of
3 fact and you necessarily are going to be called upon to
4 determine the believability and credibility of witnesses.
5 There are a number of things that you need to take into
6 consideration, the first of which is use your good common
7 sense. We all in our everyday lives are called upon to
8 determine whether or not we believe someone.

9 I'll tell you from the very outset that you can believe
10 one witness against many, you can believe many against one,
11 you can believe all of what one witness says, none of what a
12 witness says, or a portion thereof. That's completely within
13 your collective wisdom as a jury to make those type
14 determinations and you're certainly called upon to do that.

15 You're also going to be called upon to evaluate whether
16 or not a witness has an interest or bias or something to gain
17 by their testimony. Take that into consideration. In
18 addition to that, you can also and the law allows you to take
19 into consideration the demeanor of a witness. Any of you have
20 teenage children, sometimes it's important to hear what your
21 child has to say, but it's also important to pay attention to
22 how they say it and the law allows you to do that, to evaluate
23 the demeanor in which these witnesses take the witness stand.

24 Ladies and gentlemen of the jury, you have an awesome
25 responsibility in this case. This is an important case for

1 the State of South Carolina, it's an important case to the
2 defendant and you need to proceed forward with a very serious
3 mind. I know you didn't want to be here today, y'all have
4 other things that you would rather do, but I can promise you
5 there's not anything that you will do in your entire life that
6 would be more important than this. This is an important
7 thing. You need to proceed forward with a very serious mind.
8 Very serious consequences arise from this case.

9 Ladies and gentlemen of the jury, I also remind you that
10 if I make an error in the law with regard to what evidence you
11 get to hear, if I charge you the law wrong, those errors quite
12 often can be easily corrected. However, ladies and gentlemen
13 of the jury, if you make an error with regard to the findings
14 of fact, quite often those can't be corrected. I tell you
15 that to emphasize how important it is what you're doing here
16 today and ask that you pay very close attention. A lot is at
17 stake here. Pay very close attention.

18 The defendant -- The State goes first with regard to the
19 presentation of evidence. Then the defendant, if they elect
20 to do so, are going to have an opportunity to present
21 evidence. However, they're not required to do so and if they
22 do present evidence, then once again the State has an
23 opportunity to reply.

24 After the presentation of all of the evidence, the
25 lawyers are going to have an opportunity to present closing

OPENING STATEMENT - MR. OZMENT

1 arguments. They're very similar in form to opening
2 statements. However, they're truly argumentative in nature
3 because in that point in time, you will have heard all of the
4 evidence and the lawyers are going to have an opportunity to
5 point to the evidence that supports their relative position.
6 What they have to say is not evidence, but it will aid you
7 immensely in your deliberation process. So I'm going to ask
8 that you pay very close attention.

9 At the conclusion of the closing arguments, I will charge
10 you the law and then you will begin deliberations. I am going
11 to order and direct that you not take notes. Given the nature
12 of this case, the length of the case, I think it's important
13 for you to pay very close attention. There will be no note
14 taking, so it's important for you to pay close attention as
15 the witnesses testify.

16 Ladies and gentlemen of the jury, you are participating
17 in a time tested system. I'm going to ask that you pay very
18 close attention and proceed forward with a very serious mind.
19 Mr. Ozment, you're recognized.

20 MR. OZMENT: May it please the Court.

21 THE COURT: Certainly.

22 MR. OZMENT: Opposing counsel.

23 OPENING STATEMENTS

24 MR. OZMENT: Good afternoon. Genesis tells us the story
25 of Cain and Abel. It tells us how Cain summoned his brother

OPENING STATEMENT - MR. OZMENT

1 Abel out to the field and he struck him down. Later, the Lord
2 came and said, "Cain, where's your brother, Abel?" and he
3 said, "I don't know. I don't know. I'm not my brother's
4 keeper." He denied it. Then the Lord said, "Your brother's
5 blood calls out to me from the ground."

6 In this case, you're going to hear from many witnesses
7 from that witness stand. You're going to see pictures of a
8 crime scene, pictures of a burned car, and some other things.
9 In some of the pictures of the crime scene, you'll see a gray
10 road on a cold, rainy day. It's the morning of December 18th,
11 2010. Across that road is some puddles, the puddles are red
12 with blood.

13 If you were to follow those bloody puddles down into the
14 ditch, you'll see a picture of the body of Michael Ford, Mr.
15 Ford's body lying there in the ditch along with the McDonald's
16 wrappers and the soda bottle that's been thrown out. Mr.
17 Ford's body at that point was as cold as the air around it.
18 You see the blood collecting under him. You see a hole in his
19 head the size of a baseball.

20 What we're here to decide, what the State intends to show
21 from that witness stand, is how Mr. Ford's body was found that
22 morning in that ditch with that trail of blood draining off
23 the road into the ditch under him. To answer that question,
24 we're going to look back to before that body was in that
25 ditch, obviously.

OPENING STATEMENT - MR. OZMENT

1 You're going to hear from many witnesses. I'm not going
2 to go through every one right now because I'd be standing up
3 here for 45 minutes, but some of the highlights of those
4 witnesses. You're going to hear from Mr. Elijah Sherman. Mr.
5 Sherman will tell you that that afternoon before, Michael Ford
6 had come by his house. Now you're going to hear some
7 testimony that Mr. Ford smokes marijuana. He would pay for
8 his marijuana by going and getting some, selling it out to his
9 friends, basically to cover his cost. He went to see Mr.
10 Sherman that afternoon, talked to him. Mr. Sherman will tell
11 you that as he was leaving, he said I've got a few errands to
12 run and I'm going to go over to Scott Lee's house.

13 Later, you'll hear from a lady named Cynthia Welch. Ms.
14 Welch will make no bones about what she had to do with Mr.
15 Ford that day. She'll say Mikey came by my house because I
16 was going to buy a little marijuana from him. She bought some
17 marijuana from him and she will then tell you that as Mikey
18 was leaving, she noticed another gentleman in the car with him
19 that wasn't there when he left Elijah Sherman's house. Now
20 Ms. Welch ain't going to say it was Scott Lee, she doesn't
21 know who Scott Lee is, but she'll say it was a white male
22 sitting in the car with him. She can tell you what his car
23 looked like. It's a mid-2000's dark blue Chevrolet.

24 Now we come next to some of the most important witnesses
25 you can listen to in this trial. You're going to hear from

OPENING STATEMENT - MR. OZMENT

1 two people that were in Scott Lee's house this same night was
2 Michael Ford was killed. It's going to be Scott Lee's brother
3 and his brother's former girlfriend. They'll tell you how
4 they were laying in bed. It was after dark and they thought
5 their house was being broken into. They heard noise, slamming
6 cabinets.

7 Jonathan, Scott's brother, came out of the room and saw
8 Scott Lee in a frenzy, throwing around papers, opening
9 cabinets, going all through their house. He didn't know what
10 was going on. Jonathan will tell you he looks down at the
11 linoleum on the floor in the kitchen and sees a bloody boot
12 print. At the time, it caught him so off guard he didn't know
13 what it was, but it was a red boot print right there on the
14 floor.

15 Jonathan will tell you how Scott got some cleaning
16 supplies and went out to a car. He was cleaning the inside of
17 the car and didn't know what to do. He ended up stripping his
18 clothes on the porch and went and took a shower.

19 Now this whole time, Jonathan's girlfriend is in the
20 bedroom. She'll tell you that she looked out the window and
21 saw Scott. All the cars doors were open, the overhead light
22 was on, and the inside of the car was covered in blood and she
23 saw Scott Lee going in and out of the car, going in and out of
24 the car.

25 They'll both tell you that they saw on the counter a

OPENING STATEMENT - MR. OZMENT

1 bloody bag of marijuana, bloody money. They'll tell you that
2 after Scott took a shower, he packed all that up and left
3 again in the victim's car.

4 Then you'll hear testimony of a car fire that happened
5 that same evening. You'll hear testimony about the deputy
6 responding out to that car fire and running the tag number on
7 the car that was burning and you'll hear the deputy testify
8 that that tag came back to Michael Ford, the same victim.

9 You'll also hear testimony from a girl named Ashley
10 Campbell. Ashley is the sister of Scott's child's mother.
11 Ashley will tell you that she picked up Scott Lee that night
12 no more than half a mile from where that car fire was burning.
13 She'll tell you that Scott Lee had a bag of marijuana on him
14 then, too, and that she took him back home.

15 Those will be all the witnesses who saw something that
16 night. You'll also hear from law enforcement. Law
17 enforcement investigated this case for almost two months
18 before making an arrest and kept investigating it afterwards.

19 You'll hear how law enforcement interviewed Scott Lee.
20 He said I don't know anything about this. If I knew anything,
21 I would tell you. I want to help you investigate it. You'll
22 hear that over and over and over.

23 Then you'll eventually hear a different story. You'll
24 hear letters that Scott Lee wrote several months later. As
25 opposed to now not knowing anything, now he says, well, I was

OPENING STATEMENT - MR. OZMENT/MR. ANDERSON

1 with Michael Ford that night. I was on that gray dirt road in
2 the rain, but an unknown masked person pulled us over, took us
3 out of the car, shot my friend, I somehow escaped, and then I
4 took the car and went home and I was going to call the police,
5 but I didn't. And then I was going to call the police again,
6 but I didn't and then I decided that I should just take the
7 car and burn it to make sure nobody thinks I did it.

8 Now what we intend to prove is that neither of those
9 stories is true. What we intend to prove is that the reason
10 Michael Ford's body was laying in that ditch with the blood
11 draining into it with a hole in the side of his head is
12 because Scott Lee took his uncle's shotgun, sawed it off, and
13 put that hole in the side of his head and threw that body in
14 that ditch and left him there with the trash.

15 I appreciate your attention. I appreciate your
16 consideration in this case.

17 THE COURT: Mr. Anderson, you're recognized.

18 MR. ANDERSON: Michael Ford was killed on December the
19 17th of 2010, Michael Ford was robbed on December the 17th of
20 2010, and Michael Ford was murdered on December the 17th of
21 2010, but it wasn't Scott Lee.

22 Scott Lee didn't shoot Mikey. Scott Lee calls Michael
23 Ford "Mikey". He's known him all his life. Scott Lee didn't
24 kill Mikey. Scott Lee didn't murder Mikey. There's
25 absolutely no reason in the world for Scott to do this.

OPENING STATEMENT - MR. ANDERSON

1 One of the things that I think the judge will tell you
2 about is something that we call motive. Well, Scott Lee had
3 absolutely no motive whatsoever to kill Mikey and you will
4 hear several State's witnesses say that Scott and Mikey were
5 good friends. As a matter of fact, you'll hear several
6 witnesses say I think Scott and Mikey were best friends.
7 You'll also hear several witnesses say I don't think Scott
8 would do this.

9 Jonathan Lee, his own brother, will say I never would
10 have believed it. I didn't think Scott was capable of
11 anything like this. Of course, at that point in time,
12 Jonathan is assuming that my client killed Mikey, but he
13 didn't.

14 Before I go any further in this case, I want to tell you
15 a few things. One of the counts on the indictment, arson
16 third degree, my client is absolutely, positively guilty of
17 that. Make no mistake about it, my client took that car and
18 he burned that car. No doubt about it, he did that. I just
19 want to let y'all know that right now.

20 I also want to tell you that Scott Lee was there. My
21 client was there the night this happened. My client was
22 there, he saw what happened, and he panicked.

23 You heard the State say that Jonathan Lee will come up
24 here and say that my client came in the house and stuff was
25 getting thrown around and they thought somebody was breaking

OPENING STATEMENT - MR. ANDERSON

1 in. That was my client and he was running on adrenalin. As a
2 matter of fact, you'll hear Jonathan Lee testify that, hey, I
3 was on an adrenalin rush. I don't remember everything that
4 happened that night.

5 And the funny thing about this case that I've -- So far
6 as the State says, well, you know, Scott Lee wrote a letter to
7 a guy named Gene Owens and he said something and Scott Lee
8 wrote a letter to Ed Clements and he said something, but don't
9 believe any of that because that's just him coming up with it
10 later. Well, Jonathan Lee, the person that the State says is
11 going to testify and tell you everything that he saw that
12 night, Jonathan has given four statements and you know what?
13 None of them are the same. All of them are different.

14 One February the 4th, he gives a statement, I really don't
15 know anything about anything. Then on February the 9th, he
16 gives a statement at the library and the funny thing about
17 that statement is law enforcement tells him you're not being
18 recorded, don't worry about it. Law enforcement goes on to
19 tell him don't worry about it, you'll never, ever have to
20 testify against your brother. Why does law enforcement lie to
21 people? Why do they do that? We'll get to that later.

22 So Jonathan gives a statement and then law enforcement
23 says, you know what? We're going to talk to Shannon, your
24 girlfriend. Is there anything you want to change about this
25 statement? And Jonathan then gives another statement and he

OPENING STATEMENT - MR. ANDERSON

1 adds to it. He says things that he didn't say ten, fifteen
2 minutes earlier.

3 And then they get Shannon down there and she gives her
4 statement and then Jonathan comes back in and they say, hey,
5 Shannon told us this, this and this. Yeah, I was going to
6 tell you that. I kind of forgot. And then he goes and gives
7 another statement and you know what, folks? I guarantee you
8 when he comes up here either today or tomorrow or Wednesday,
9 he'll give you his fifth statement and it'll be different from
10 all the others. I promise you that.

11 But make no mistake about it, my client was there and my
12 client wrote Gene Owens and my client wrote Ed Clements, who
13 is the Solicitor. He told them what happened. He also told
14 Thomas McFadden, I'd like to tell you what happened, but I'm
15 afraid it would incriminate myself. Well, what did he mean by
16 that? I would suggest that he meant the car. I would suggest
17 that he meant that he was there and didn't call law
18 enforcement.

19 You know, when the State said in their opening, you know,
20 Mr. Scott Lee waited and waited and waited and -- and he never
21 did tell anybody until months later. Well, this happened on
22 December the 17th. Jonathan and Shannon supposedly come clean
23 on February the 9th. Who waited and waited and waited who the
24 State is going to call to testify? Jonathan and Shannon.

25 You know what else we're going to hear? We're going to

OPENING STATEMENT - MR. ANDERSON

1 hear that somebody by the name of Charles was coming over to
2 Jonathan and Shannon's house that night and dropping things
3 off. Now you don't have to use your imagination too much to
4 kind of figure out what was being dropped off. As a matter of
5 fact, in one of Scott's [sic.] statements he says that, you
6 know, my girlfriend's stomach was a little bit upset and so
7 Charles was bringing some K-2. Now I'm going to ask Jonathan
8 what K-2 is, but I have a feeling that's that synthetic
9 marijuana that has since been banned by the City of Florence
10 and also been banned by the Attorney General's Office because
11 it causes people to have hallucinations. But I'm going to ask
12 them about that when they come up here to testify.

13 The case revolves around what happened that night. Well,
14 my client thinks that a third party did it. My client says
15 that someone else did it. My client says it was three people
16 that night. You know what? Less than 24 hours later, three
17 people robbed somebody about 12 miles down the road. You know
18 what they used? They used a shotgun. What kind of shotgun?
19 A twelve gauge shotgun. What kind of birdshot was in that
20 twelve gauge shotgun? Number eight. And you know what killed
21 Mikey? A shotgun. What kind of shotgun? A twelve gauge.
22 What kind of birdshot was used? Number eight.

23 Now that happened the very next night about twelve miles
24 down the road, three boys in a truck. Now I think one witness
25 will come up here and say that a truck was seen on the road

OPENING STATEMENT - MR. ANDERSON

1 that night. It was seen right after Scott went up there with
2 Mikey. I think you'll hear about this other truck. What were
3 they doing there that night? Well, that's who we believe the
4 shooters were.

5 Make no mistake about it, Scott was there. I mean he was
6 absolutely, positively there. Make no mistake about it and he
7 moved the body. He panicked and he made a terrible mistake
8 and I guarantee if he could go back, he would try and change
9 this. He says that in his letters that he wrote Gene Owens.
10 He says in his letter to Ed Clements, I'm sorry I didn't tell
11 you earlier, but I didn't know what to do. He says to Thomas
12 McFadden, don't take this personal, but y'all sometimes look
13 alike to me, talking about black people. He said they had on
14 masks. I'm not real sure what they looked like. I could not
15 give a good description and so I didn't know what to say. Now
16 is that the right thing to do? Obviously not, obviously not.

17 Folks, when people come up here and testify, everything
18 they say is evidence. Just like the judge says, it's for you
19 to decide, for you to weight. He is the judge of the law, you
20 are the judge of all testimony. Don't forget that testimony
21 is made up of two parts, what the State asks, but it's also
22 made up of what I ask. Don't turn me down, don't shut me off,
23 don't stop listening once the State finishes. Listen to the
24 questions that I ask and listen to the responses I get.

25 I think that after you hear all of the evidence, I think

OPENING STATEMENT - MR. ANDERSON

1 that after you hear everything, there will be several
2 reasonable doubts and I think that you'll find Scott not
3 guilty of the murder. Thank you.

4 THE COURT: Thank you, Mr. Anderson. Mr. Ozment, you're
5 recognized. You may call your first witness.

6 MR. OZMENT: Your Honor, the State calls Ms. Sandra
7 Galloway.

8 (Whereupon, there is a brief pause in the proceedings
9 until the witness enters the courtroom.)

10 THE COURT: Ms. Galloway, please come forward. Yes,
11 ma'am, I'm going to ask you, if you could, to come forward to
12 the front of the courtroom and I'm going to ask, if you could,
13 to place your left hand on the Bible and raise your right hand
14 as the clerk administers the oath. Watch your step. Very
15 good.

16 THE CLERK: Do you swear the testimony you give in this
17 case to be the truth, the whole truth and nothing but the
18 truth, so help you God?

19 WITNESS: I affirm, yes, ma'am.

20 THE CLERK: Please walk around and have a seat and state
21 your full name for the record.

22 THE COURT: I'm going to ask that you pull up real close
23 to that microphone. Speak loudly, clearly and slowly in order
24 that we can hear everything that you've got to say and let's
25 start with your full name, please, ma'am.

DIRECT EXAMINATION OF SANDRA GALLOWAY BY MR. OZMENT

1 WITNESS: Okay, Sandra Bruton Galloway.

2 THE COURT: Thank you, Ms. Galloway. Mr. Ozment?

3 SANDRA GALLOWAY, being first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. OZMENT:

7 Q: How are you today, Ms. Galloway?

8 A: Good.

9 Q: Good. Can you tell me where you live?

10 A: I live at [REDACTED] in Effingham.

11 Q: All right. Were you living there the morning of December
12 18th, 2010?

13 A: Yes, sir.

14 Q: Did you call 9-1-1 that morning?

15 A: Yes, sir.

16 Q: What led you to call 9-1-1 that morning?

17 A: I had left to go Christmas shopping and when I got down
18 the road, I realized I left something at home and turned
19 around to go back and as I was turning around, I saw something
20 in the ditch and as I was going back to my house, I was
21 looking in the ditch and I saw a person laying there and I
22 assumed it was someone that lived across the road maybe had
23 gotten drunk and passed out. So I called 9-1-1 and they asked
24 me to stay there until they got there and that's when I
25 realized that the person in the ditch was dead.

DIRECT EXAMINATION OF SANDRA GALLOWAY BY MR. OZMENT

1 Q: When you say you saw a person in the ditch, had you
2 already driven by and then ---

3 A: Yes.

4 Q: --- turned around and saw it on the way back?

5 A: Well, as I was turning around, I saw it in the ditch.

6 Q: Did you recognize the person or ---

7 A: No.

8 Q: --- think you recognized the person?

9 A: No.

10 Q: You say you called 9-1-1?

11 A: Yes, sir.

12 Q: How long did it take 9-1-1 to respond once you called.
13 them until somebody had arrived?

14 A: Well, it seemed like forever, but probably maybe anywhere
15 from 30 minutes to an hour.

16 Q: Okay and how long did they keep you there after someone
17 had arrived?

18 A: Well, after somebody arrived, they looked and they told
19 me the person was dead and I was able to leave and I left and
20 went to my mom's and they called me because they got my number
21 and they called me and asked me to come back by so that I
22 could make a statement.

23 Q: Did you make a statement?

24 A: Yes, I did.

25 Q: All right. What -- How -- What form was that statement?

CROSS EXAMINATION OF SANDRA GALLOWAY BY MR. ANDERSON

1 A: I could not -- I mean I have no idea. I can't remember.

2 Q: I mean did you write it?

3 A: Yes, I wrote it. I'm sorry.

4 Q: Okay. Do you remember who you gave it to?

5 A: I think I give it to somebody in a uniform, but I can't
6 remember.

7 Q: That's fine.

8 MR. ANDERSON: Your Honor, may Mr. Ozment and I approach
9 for a moment?

10 THE COURT: Yes.

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

14 THE COURT: Mr. Ozment, you're recognized.

15 MR. OZMENT: I have no further questions for this
16 witness, Your Honor.

17 THE COURT: Cross examination, Mr. Anderson?

18 CROSS EXAMINATION

19 BY MR. ANDERSON:

20 Q: Ms. Galloway, you indicated that you were going shopping.

21 I think you said you had your daughter or ---

22 A: I had my granddaughter with me.

23 Q: Granddaughter. You don't look old enough to have a
24 granddaughter.

25 A: Thank you.

CROSS EXAMINATION OF SANDRA GALLOWAY BY MR. ANDERSON

1 Q: But you had your granddaughter with you and you were
2 going shopping. I think she left her water cup or ---

3 A: Yes.

4 Q: --- juice cup or ---

5 A: That's correct.

6 Q: --- something at the house. You saw him when you were
7 going back to your house?

8 A: Yes. As I was turning around, I saw him in the ditch.

9 Q: And that's when you called 9-1-1?

10 A: Yes, sir.

11 Q: And I've listened to the tape. As a matter of fact, I
12 remember the operator saying just remain calm, I'll stay on
13 the line with you until help gets there and I think a couple
14 of times you even said, hey, I think that's them, but it
15 didn't turn out to be them.

16 A: Right.

17 Q: And I know that you kept saying what's taking them so
18 long. Like you indicated earlier, it seemed like it took
19 forever for them to get there.

20 A: Correct.

21 Q: Now I think the 9-1-1 operator told you not to run over
22 the crime scene if you could help it. I believe you indicated
23 to her, "I already have done that, but I won't do it again?"

24 A: Yeah.

25 Q: Is that right?

CROSS EXAMINATION OF SANDRA GALLOWAY BY MR. ANDERSON

- 1 A: Well, I mean -- Yeah, as I was passing back by, yes.
- 2 Q: Obviously, you went over it ---
- 3 A: Right.
- 4 Q: --- twice?
- 5 A: Right.
- 6 Q: Or not twice, but once?
- 7 A: Yeah.
- 8 Q: You stopped the second time?
- 9 A: Mm-hmm.
- 10 Q: Eventually, I think you told him it was near W. Lee's or
- 11 W.J. Lee's junkyard. You can get to it by [REDACTED]. Did
- 12 you tell them that?
- 13 A: Yes.
- 14 Q: And then I think you indicated just a few minutes ago
- 15 that you had given a statement?
- 16 A: Yes.
- 17 Q: Now did you -- And you indicated you had given a written
- 18 statement?
- 19 A: Mm-hmm. They asked me to write it down.
- 20 Q: Do you recall if that was on a sheet of paper? Was it a
- 21 form that they gave you to fill out? Do you remember what it
- 22 was?
- 23 A: I'm not positive, but I think it was a form.
- 24 Q: All right. Do you remember who you gave it to?
- 25 A: Um ---

CROSS EXAMINATION OF SANDRA GALLOWAY BY MR. ANDERSON

1 Q: This is Investigator Chad Collins with the sheriff's
2 office. Do you remember whether or not you gave it to him?

3 A: From what I can remember and I've even asked my mom
4 because somebody's already asked me this, I think it was
5 somebody in uniform.

6 Q: All right. For example, this gentleman back here is in
7 uniform. Do you think you may have given it to somebody in a
8 Florence County ---

9 A: Yes.

10 Q: --- Sheriff's Office ---

11 A: Yes.

12 Q: --- uniform?

13 A: Yes.

14 Q: And you're pretty sure that you did give them a
15 statement?

16 A: Yes.

17 Q: Okay.

18 MR. ANDERSON: Judge, that's all the questions I have.

19 MR. OZMENT: Nothing further from this witness, Your
20 Honor.

21 THE COURT: You may step down.

22 (Whereupon, the witness leaves the stand at 3:56 p.m.)

23 THE COURT: You may call your next witness.

24 MR. ANDERSON: Your Honor, do we need to put that other
25 matter on the record at this time?

1 THE COURT: I don't think so at this time. We will. At
2 the conclusion of the day, we will address the matter on the
3 record. However, I think that other witnesses might address
4 some of the issues. Very good.

5 MR. OZMENT: Your Honor, the State calls Deputy Plowden
6 of the Florence County Sheriff's Office.

7 THE COURT: Very good.

8 (Whereupon, there is a pause in the proceedings until the
9 witness enters the courtroom.)

10 THE COURT: Deputy Plowden, please come forward. Sir,
11 I'm going to ask you, if you could, to place your left hand on
12 the Bible and raise your right hand as the clerk administers
13 the oath.

14 THE CLERK: Do you swear the testimony you give in this
15 case to be the truth, the whole truth and nothing but the
16 truth, so help you God?

17 WITNESS: I do.

18 THE CLERK: Please be seated and state your full name for
19 the record.

20 THE COURT: Deputy Plowden, pull up real close to that
21 microphone and speak loudly, clearly and slowly in order that
22 we can hear everything that you've got to say and let's start
23 with your full name, please, sir.

24 WITNESS: Jason Samuel Plowden.

25 THE COURT: Thank you, Mr. -- Officer Plowden. Mr.

DIRECT EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. OZMENT

1 Ozment, you're recognized.

2 DEPUTY JASON PLOWDEN, being first
3 duly sworn, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. OZMENT:

6 Q: How are you, Deputy Plowden?

7 A: Good, sir.

8 Q: Good. How long have you been working with the sheriff's
9 office?

10 A: Close to four years.

11 Q: Is that your total time in law enforcement?

12 A: No, sir. I've been almost 17 years in it.

13 Q: Where were you before you were with the sheriff's office?

14 A: I started my career in '95 in Lake City. I've been all
15 the way through the state level and I hope to finish it off
16 here.

17 Q: All right. Did you respond out to a call on [REDACTED]
18 on December 18th, 2010?

19 A: Yes, sir, I did.

20 Q: Who was on the scene when you arrived at that scene?

21 A: There were -- EMS was just ahead of myself and Sergeant
22 Drummond and also there were a couple of first responders on
23 scene and also the -- That was it. I was going to say the
24 complainant, but I think she had already left.

25 Q: When you said yourself and Sergeant Drummond, were y'all

DIRECT EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. OZMENT

1 riding together then?

2 A: He was right in front of me.

3 Q: All right, separate cars?

4 A: Yes, sir.

5 Q: All right. Tell us what you saw when you got out at the
6 scene?

7 A: Once we got there, we had not seen the victim at that
8 time. It had been raining the night before and this morning,
9 so everything was pretty much wet and soggy around. As we
10 made it past EMS, we -- I noticed that there was a white male
11 laying in the ditch on [REDACTED]. He was -- His feet were
12 on the 301 end and his head was on the Willow Grove end.

13 Q: When you say he was laying in the ditch, so was he facing
14 towards the road bed or towards the field or the woods on the
15 other side?

16 A: He was facing the road.

17 Q: All right.

18 A: On his left side I should say.

19 Q: All right. Did you have a chance to look around the
20 crime scene for anything?

21 A: I did. I glanced around to see if there was anything
22 that would indicate what exactly had happened. The only thing
23 that we could find at that time was there were some -- some
24 glass fragments in the road that appeared to be that of
25 tempered glass, which would come out of a side window or

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

1 either possibly a windshield.

2 Q: All right. Did you see any blood on the road?

3 A: There was a section of road there right beside the ditch
4 that did contain blood that also trailed. It appeared that he
5 had rolled down and the blood followed.

6 Q: How long did you stay on the scene that -- that morning?

7 A: I was there probably -- probably around an hour and a
8 half, maybe two hours.

9 Q: All right. What were your duties for the rest of the
10 time while you were there at the scene?

11 A: The -- The main thing we did was we secured the scene.
12 We notified -- allowed EMS in if there was anything they could
13 do. Once we determined there was nothing they could do, they
14 had to leave the crime scene. We secured the area, documented
15 who came in and who went out, and made notification to the
16 investigators of what we had and also contacted the coroner
17 and forensics.

18 Q: All right.

19 MR. OZMENT: No further questions for this witness, Your
20 Honor.

21 THE COURT: Cross examination, Mr. Anderson?

22 CROSS EXAMINATION

23 BY MR. ANDERSON:

24 Q: Do you recall what the temperature was?

25 A: It was quite chilly. I don't -- I don't know exactly

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

- 1 what it was.
- 2 Q: Probably and I'm just guessing the low 40's? High 30's?
- 3 A: Probably low to mid 40's, I would imagine.
- 4 Q: Was there any freezing rain?
- 5 A: No, sir.
- 6 Q: Do you recall?
- 7 A: No, sir.
- 8 Q: But you said it had rained that night and it was raining
- 9 that morning?
- 10 A: Yes, sir.
- 11 Q: Now the ditch that Mr. Ozment was talking about, that was
- 12 like a drainage ditch?
- 13 A: Just your normal ditch.
- 14 Q: I mean so if it had been raining, obviously there would
- 15 be water in there?
- 16 A: Yeah.
- 17 Q: And he was laying in the ditch?
- 18 A: Yes, sir.
- 19 Q: And his hands were underneath him. Is that right, if you
- 20 recall?
- 21 A: I do not recall exactly where his hands were.
- 22 Q: Do you recall seeing his hands laying out?
- 23 A: No, sir.
- 24 Q: You said he was laying on his left side?
- 25 A: On his left side facing the roadway.

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

1 Q: But you don't recall whether or not his hands were
2 visible or not?

3 A: No, no, not that.

4 Q: Did it appear that this had happened recently? Were his
5 clothes dry? Were they wet?

6 A: They were wet.

7 Q: They were wet? Was his entire body wet?

8 A: Yes, sir.

9 Q: You said there was tempered glass on the roadway?

10 A: Yes, sir.

11 Q: And that's [REDACTED]?

12 A: Yes, sir.

13 Q: And I believe you also said that it looked like the blood
14 kind of trailed down to the -- to the ditch?

15 A: Yes, sir.

16 Q: Did it look like a body had been drug down to the ditch?

17 A: It was -- It was really hard to tell. The only thing we
18 could really tell was that where the road came to the ditch,
19 there was a little bit of a lip and where the body went over,
20 it had actually fell in behind him.

21 Q: Kind of caved in?

22 A: Right, right.

23 Q: Pulled over it?

24 A: Right.

25 Q: Okay. Do you recall how he was dressed?

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

1 A: I want to say he had a pair of dark blue jeans on and a
2 light colored shirt.

3 Q: No coat?

4 A: No, sir.

5 Q: No gloves? No hat? Nothing like that?

6 A: No, sir.

7 Q: I indicated to you -- I think you indicated that you more
8 or less secured the crime scene. Did you actually put up a
9 crime scene tape?

10 A: Yes, sir.

11 Q: Or was that someone else?

12 A: Yes, sir, I did and also my sergeant did and we also had
13 a couple first responders helping us also.

14 Q: How big of an area was it? Was it from that wall to this
15 wall? Or was it bigger than that? Smaller than that? Do you
16 recall?

17 A: In my opinion, it would probably be a little bit longer
18 than this room and probably about as wide as this room.

19 Q: The road itself?

20 A: The area that we were dealing with.

21 Q: Okay.

22 A: Which included the road and the -- and the ditches.

23 Q: Okay. I think one of the last things that you indicated
24 that you noted people who came in and out.

25 A: That's just ---

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

1 Q: That just means to ---

2 A: That was one of our jobs. I didn't actually do the crime
3 scene log. Another deputy did the crime scene log.

4 Q: And, of course, if I'm reading the report correctly, it
5 looks like on 12/18/2010 at 1008 hours, so that would have
6 been at 10:08 in the morning?

7 A: Yes, sir.

8 Q: Is that what time y'all got the call?

9 A: Yes, sir.

10 Q: And then you said about an hour and a half, so you may
11 have left 11:30, quarter to -- quarter to twelve?

12 A: Probably somewhere thereabouts.

13 Q: Now, of course, no one was at -- making notations of who
14 came and went before you got there, did they?

15 A: Right.

16 Q: I mean so you don't know who went by there at nine
17 o'clock p.m., midnight?

18 A: No, sir.

19 Q: Two or three in the morning?

20 A: No, sir.

21 Q: Six o'clock in the morning? You don't know who was going
22 up and down the road?

23 A: No, sir.

24 Q: You only know what happened from 10:08 to about quarter
25 to twelve?

CROSS EXAMINATION OF DEPUTY JASON PLOWDEN BY MR. ANDERSON

1 A: Correct.

2 MR. ANDERSON: Judge, that's all the questions I have.

3 THE COURT: Any redirect? Let me make one clarification.
4 Some judges handle it differently, but it's incumbent upon you
5 to object to any new material he brings up on redirect. There
6 will be no recross. Mr. Ozment, you're recognized.

7 MR. OZMENT: No redirect, Your Honor.

8 THE COURT: Very good. You may step down.

9 WITNESS: Thank you.

10 (Whereupon, the witness leaves the stand at 4:05 p.m.)

11 THE COURT: Very good, thank you. You may call your next
12 witness.

13 MR. OZMENT: Your Honor, the State calls Deputy Marlon
14 Mack.

15 (Whereupon, there is a pause in the proceedings until the
16 witness enters the courtroom.)

17 THE CLERK: Come around, please. Come around and place
18 your left hand on the Bible and raise your right hand.

19 THE COURT: Left hand on the Bible and raise your right
20 hand, please, sir.

21 THE CLERK: Do you swear the testimony you give in this
22 case will be the truth, the whole truth and nothing but the
23 truth, so help you God?

24 WITNESS: Yes.

25 THE CLERK: Please be seated and state your full name for

DIRECT EXAMINATION OF DEPUTY MARLON MACK BY MR. OZMENT

1 the record.

2 THE COURT: Yes, sir, pull up the chair and I'm going to
3 ask that you pull up real close to that microphone and speak
4 loudly, clearly and slowly in order that we can hear
5 everything that you've got to say and let's start with your
6 full name, please, sir.

7 WITNESS: Marlon Mack.

8 THE COURT: Thank you, Officer Mack. Mr. Ozment?

9 OFFICER MARLON MACK, being first duly
10 sworn, testifies as follows:

11 DIRECT EXAMINATION

12 BY MR. OZMENT:

13 Q: How are you today, Officer Mack?

14 A: I'm fine.

15 Q: Good. How long have you been with the sheriff's office?

16 A: It'll be five years in September.

17 Q: Were you in law enforcement before that or ---

18 A: No, sir.

19 Q: All right. Did you respond to a call on December 18th,
20 2010, on [REDACTED]

21 A: Yes, sir, I did.

22 Q: What responsibilities did you have at that crime scene?

23 A: Once I got there, I started the crime scene log, which
24 was the names of everyone who had been inside the crime scene
25 at that time.

DIRECT EXAMINATION OF DEPUTY MARLON MACK BY MR. OZMENT

1 Q: Explain to me how -- When you say the names of everybody
2 who has been inside the crime scene, explain to me how -- what
3 the procedure is in setting up a crime scene and then
4 controlling access?

5 A: Whenever I got there, they had already put the tape up.
6 So at that time, I was told to get the names of everyone who
7 had been inside the crime scene and which I -- I did so.

8 Q: All right. Do you know -- In your law enforcement
9 experience, do you know why you record the names of people who
10 go in and out of crime scenes?

11 A: Court purposes.

12 Q: All right.

13 MR. OZMENT: May I approach the witness, Your Honor?

14 THE COURT: You may.

15 Q: Deputy Mack, I'm handing you a sheet of paper. Do you
16 recognize that sheet of paper?

17 A: Yes, sir.

18 Q: What is that, Deputy Mack?

19 A: This is the crime scene entry log that I had people to
20 sign that were inside the crime scene when I was on scene.

21 Q: All right and did you -- You may have just said this, I
22 couldn't tell. Is your signature on that piece of paper?

23 A: Yes, sir, it is.

24 Q: All right and now do you -- When someone goes into the
25 crime scene, do you list the name or do you have them sign?

DIRECT EXAMINATION OF DEPUTY MARLON MACK BY MR. OZMENT

1 How did you handle that?

2 A: I gave them the sheet and let them fill it out, then put
3 their name, their agency and they signed it also.

4 Q: All right. How accurate is the crime scene log?

5 A: It's accurate. I mean there may have been like somebody
6 from EMS that -- But as far as law enforcement, while I was on
7 scene, everyone that actually went in that crime scene's names
8 are on this piece of paper.

9 Q: All right.

10 MR. OZMENT: Your Honor, we would -- The State would
11 submit the crime scene log as evidence. I'm not sure which
12 exhibit number it will be.

13 COURT REPORTER: Twenty-six.

14 MR. OZMENT: State's Exhibit 26.

15 THE COURT: Any objection from defense?

16 MR. ANDERSON: No, sir, Your Honor.

17 THE COURT: All right, State's Exhibit 26 is into
18 evidence without objection from defense. You may proceed.

19 (Whereupon, State's Exhibit Number 26, the crime scene
20 log, is admitted into evidence.)

21 MR. OZMENT: Your Honor, we have no further questions for
22 this witness.

23 THE COURT: Cross examination, Mr. Anderson?

24 CROSS EXAMINATION

25 BY MR. ANDERSON:

CROSS EXAMINATION OF DEPUTY MARLON MACK BY MR. ANDERSON

1 Q: State's Number 26, it looks like you've got Robert
2 Morris, who is with EMS, Rudy Lewis. Is that Wayne Lawhon?
3 Randall Bellflower, Wayne M. Drummond, Todd Matthews, and then
4 you'll have to help me with the next one. I'm not -- That
5 signature is as bad as mine.

6 A: I believe that's Deputy Plowden's signature.

7 Q: All right and then you're obviously next?

8 A: Right.

9 Q: And then Richard Gannon, who -- Is that Jamie Gannon with
10 the Highway Patrol?

11 A: Right.

12 Q: Okay and then Andrew Clendenin, Keith Lutcken, Barrett?

13 A: Dowdy.

14 Q: Dowdy and then Billy Dixon?

15 A: Dillon.

16 Q: Dillon, I'm sorry. So you've got basically thirteen
17 people that came in and out?

18 A: Right.

19 Q: All right. Now the first responder -- Not the first
20 responder, I'm sorry, the lady that called it in, her name was
21 not on there, is it? The lady that called 9-1-1 and said,
22 hey, I think I see a body. Her name's not on there, is it?

23 A: No, sir.

24 Q: And she was actually at the crime scene, wasn't she?

25 A: When I was there, she was not there.

CROSS EXAMINATION OF DEPUTY MARLON MACK BY MR. ANDERSON

1 Q: Okay, but I mean she had been there previously?

2 A: Right.

3 Q: She'd actually ridden over the scene and then came back
4 up and stopped I guess before the scene?

5 MR. OZMENT: Your Honor, I think that would be hearsay or
6 at best speculation.

7 THE COURT: I'll sustain the objection with regard to his
8 -- He needs to restrict his testimony to his own personal
9 knowledge.

10 Q: Did you see Sandra Galloway there?

11 A: No, sir.

12 Q: Is her name on that list?

13 A: No, sir.

14 Q: But she was obviously there at some point in time if she
15 previously made the call?

16 A: I would assume so.

17 Q: Okay. How long was the crime scene? How big was the
18 crime scene?

19 A: As far as?

20 Q: The taped -- where it was taped off. Would you say from
21 that wall to this wall?

22 A: Not quite that big, but ---

23 Q: Was it as wide as this room?

24 A: It was on a dirt road. It was maybe -- So I mean ---

25 Q: Two lane dirt road?

CROSS EXAMINATION OF DEPUTY MARLON MACK BY MR. ANDERSON

- 1 A: Maybe one and a half.
- 2 Q: Now I understand dirt roads don't have the ---
- 3 A: Yeah.
- 4 Q: --- the divider in the middle.
- 5 A: Right.
- 6 Q: It's just whoever's got the oldest and the biggest car, I
- 7 guess has the right of way.
- 8 A: That's right.
- 9 Q: Okay. Was it raining that morning?
- 10 A: Yes, sir, it was.
- 11 Q: Did you actually see the body?
- 12 A: Yes, sir.
- 13 Q: Was he laying on his left side?
- 14 A: I really didn't pay that much attention to it.
- 15 Q: Okay.
- 16 A: All I saw was a white male laying in the ditch.
- 17 Q: Okay. Do you recall if he had his hands out or
- 18 underneath him? Do you recall?
- 19 A: I do not.
- 20 Q: It was raining that morning, you do recall that?
- 21 A: Yes, sir.
- 22 Q: Did you have on a raincoat?
- 23 A: Probably not.
- 24 Q: Did you have on a coat though? Were you wearing short
- 25 sleeves or long sleeves?

CROSS EXAMINATION OF DEPUTY MARLON MACK BY MR. ANDERSON

- 1 A: I can't remember.
- 2 Q: Okay. December the 18th, chilly morning, you don't recall
3 though? Is that right?
- 4 A: Yes, sir.
- 5 Q: Do you recall what time you left the crime scene?
- 6 A: No, sir.
- 7 Q: Did you make any type of incident report, supplemental
8 report, or anything like that?
- 9 A: I did.
- 10 Q: Would it be on that?
- 11 A: Yes, sir.
- 12 Q: If I handed you one, would it refresh your memory?
- 13 A: I can probably tell you what it says.
- 14 Q: Okay. Have you looked at it recently?
- 15 A: I did.
- 16 Q: Okay. Did you get there about 10:08?
- 17 A: It was around about that time.
- 18 Q: Okay. Do you recall how long you were there?
- 19 A: No, sir.
- 20 Q: You don't know who may have gone in the crime scene after
21 you left, do you?
- 22 A: No, sir.
- 23 Q: Is that correct?
- 24 A: No, sir.
- 25 Q: And you turned this over to Sergeant Wayne Drummond?

REDIRECT EXAMINATION OF DEPUTY MARLON MACK BY MR. OZMENT

1 A: That's correct.

2 Q: And on State's 26, it's got date and time where it says
3 received from Wayne Drummond. Is that when you gave it to
4 Wayne or is that when Wayne gave it to Andrew Clendenin?

5 A: That probably would be when he gave it to Clendenin.

6 Q: All right and the time that's marked on there for him is
7 12/18/2010, 12:15. Is that right?

8 A: I can't tell you. He filled that part out.

9 Q: Okay.

10 A: I was no longer on scene.

11 Q: Does it say 12:15 on it?

12 A: It does.

13 Q: Okay. Now over here on the side of that crime scene
14 entry log, it's got time. Were any of the times filled in?

15 A: No, sir.

16 Q: Okay. You didn't make any notations of the times?

17 A: I did not.

18 Q: Okay.

19 MR. ANDERSON: Judge, that's all the questions I have.

20 THE COURT: Any redirect?

21 MR. OZMENT: Briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. OZMENT:

24 Q: Deputy Mack, Mr. Anderson asked you about the lady who
25 made the 9-1-1 call in this case. You said that she had

REDIRECT EXAMINATION OF DEPUTY MARLON MACK BY MR. OZMENT

1 already left when you got there. Is that correct?

2 A: When I arrived on scene, I saw no civilian, only EMS,
3 sheriff's office.

4 Q: So that list, the crime scene log, it just includes
5 people that were on the crime scene while you were there?

6 A: Yes, sir.

7 Q: All right.

8 MR. OZMENT: No further questions, Your Honor.

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

10 (Whereupon, the witness leaves the stand at 4:14 p.m.)

11 THE COURT: All right, you may call your next witness.

12 MR. OZMENT: Your Honor, the State calls Sergeant

13 Drummond of the Florence County Sheriff's Office.

14 (Whereupon, there is a pause in the proceedings until the
15 witness enters the courtroom.)

16 THE COURT: Yes, sir, please come forward. I'm going to
17 ask you, if you could, to come forward to the front of the
18 courtroom and ask you to place your left hand on the Bible and
19 raise your right hand as the clerk administers the oath.

20 THE CLERK: Do you swear the testimony you give in this
21 case will be the truth, the whole truth and nothing but the
22 truth, so help you God?

23 WITNESS: I do, ma'am.

24 THE CLERK: Please be seated and state your full name for
25 the record.

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 THE COURT: Pull up real close to that microphone and
2 speak loudly, clearly and slowly in order that we can hear
3 everything that you've got to say and I'm going to ask that
4 you start with your full name, please, sir.

5 WITNESS: My name is Sergeant Wayne Anthony Drummond.

6 THE COURT: Thank you, Sergeant Drummond.

7 SERGEANT WAYNE DRUMMOND, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. OZMENT:

11 Q: How are you today, Sergeant Drummond?

12 A: Doing fine, sir.

13 Q: Good. How long have you been in law enforcement?

14 A: Almost sixteen years.

15 Q: How much of that have you been with the Florence County
16 Sheriff's Office?

17 A: I've been with the Sheriff's Office for approximately
18 seven years and I was with the Florence City Police Department
19 for almost eight and a half.

20 Q: All right. Did you respond to a call on December 18th,
21 2010, on [REDACTED]?

22 A: Yes, sir, I did.

23 Q: How -- Who all was on the scene when you arrived that
24 morning?

25 A: The only people that were on scene was EMS, which arrived

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 directly in front of me, and Howe Springs Fire Department was
2 already on scene.

3 Q: When you say directly in front of you, did you watch them
4 arrive?

5 A: Yes, sir.

6 Q: All right. What was the weather that morning?

7 A: Raining on and off all morning.

8 Q: Was it cold?

9 A: A little chilly, yes, sir.

10 Q: All right. Once you arrived at the scene, what was the
11 first thing you did?

12 A: The first thing I did was asked EMS to rope off the
13 scene. I had spoke to the fire department personnel, which
14 stated that they believed the -- the victim was possibly
15 deceased and that EMS had -- was in the process of getting
16 ready to check him out.

17 Q: When you say that they roped off the scene, do you mean
18 the yellow crime scene tape that we see?

19 A: Correct.

20 Q: All right. Did you take any photographs that day?

21 A: Yes, sir.

22 MR. OZMENT: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q: Sergeant Drummond, I've handed you what's been pre-marked
25 as State's Exhibits 1 through 10. Could you flip through

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 those and tell me if you took those photographs?

2 A: Yes, sir. It appears to be the ones that I took.

3 Q: Do those -- Do those photographs accurately represent how
4 you remember the scene that morning?

5 A: Yes, sir, they do.

6 Q: All right.

7 MR. OZMENT: Your Honor, the State would move for State's
8 Exhibits 1 through 10 to be made evidence.

9 THE COURT: Let's show those to the defense counsel.

10 (Whereupon, counsel for the defense is provided the
11 proposed exhibits to review.)

12 MR. ANDERSON: No objection, Your Honor.

13 THE COURT: State's Exhibits 1 through 10 are into
14 evidence without objection from defense. You may proceed.

15 (Whereupon, State's Exhibits Number 1 through 10, all
16 color photographs, are admitted into evidence.)

17 Q: How long were you on the scene that morning?

18 A: Approximately an hour and a half, two hours.

19 Q: At what point during that hour and a half, two hours, did
20 you take the photographs?

21 A: I took them as quickly as I could due to the raining on
22 and off and it started raining and I wanted to try to capture
23 as much of the scene that I could before the rain washed
24 anything away in case it did become a hard rain to try to
25 gather as much evidence as I could with the photographs before

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 it was disturbed.

2 Q: Now obviously, you were there that long. You stated that
3 you instructed that the crime scene be roped off and then you
4 took photographs. What other duties did you perform that
5 morning while you were on the crime scene?

6 A: Being the supervisor on the shift, I advised Deputy
7 Plowden to talk with the -- any witnesses that he might see or
8 the complainant, while I instructed the fire department to
9 rope off the scene and I went ahead and contacted our
10 investigators, contacted forensics, and also asked them to
11 contact Highway Patrol.

12 Q: All right. Who all -- Did all those people that you
13 asked to be contacted arrive at the scene while you were still
14 on the scene?

15 A: Yes, sir.

16 Q: All right.

17 MR. OZMENT: And may I approach the witness, Your Honor?

18 THE COURT: You may.

19 Q: Going back to these photographs, if you don't mind, just
20 if you will go through and maybe we can just go in numerical
21 order and just if you wouldn't mind, if you could hold them up
22 kind of the best you can and tell us what each one shows.

23 A: According to my report, I had labeled each picture,
24 picture number 1, as I took them, but I don't ---

25 Q: Excuse me for interrupting and I'm afraid the numbers on

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 the photographs now may not correlate necessarily to the
2 numbers in your report.

3 A: Correct.

4 Q: I'll tell you what, let's just -- We'll go one by one.
5 That'll make it easier. This is State's Exhibit 9 I'm having
6 you look at. What does that photograph show?

7 A: That is a picture of the dirt road as you come in on
8 [REDACTED] where W.J. Lee's Cars is if you come down
9 [REDACTED] from that direction as you're headed back towards

10 [REDACTED]

11 Q: All right and the crime scene tape we see in this photo,
12 is that the tape you've been referring to that you instructed
13 to be put up?

14 A: Yes, sir.

15 Q: All right. I will now -- This is State's Exhibit 10.
16 What does that photo show?

17 A: It's the same direction, just turned a little bit or
18 stepped a little bit further over to the ditch line to show
19 the body in the roadway and also the telephone pole that I had
20 marked with the numbers on the pole.

21 Q: Why did you mark the telephone pole?

22 A: To show where the body was laying if any pictures or
23 anything like that just to get a general area of approximately
24 how far the body was from the pole.

25 Q: All right. This is State's Exhibit Number 2. Could you

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 look at that and tell us what that picture is showing?

2 A: The blood in the roadway.

3 Q: All right. This is the blood?

4 A: And there -- there was also glass in it, which is the
5 same reason that I contacted Highway Patrol in case it was a
6 hit and run.

7 Q: So this red coloration here is what you're referring to?

8 A: Yes, sir, the red coloration right there, which is the
9 blood in the roadway.

10 Q: All right and now on State's Exhibit 2, that puddle, is
11 that the same puddle that we see in State's Exhibit 1 here?

12 A: Correct.

13 Q: All right. You just referred to some glass. Looking at
14 State's Exhibit 7 and 8, what do you see in those two photos?

15 A: You can see the shard glass from the -- It's like from a
16 side window. The front windshield don't do it because that
17 has a coating on it. The side windows as they shatter.

18 Q: This is State's Exhibit 6. Tell us what we see in that
19 photo?

20 A: Which is the body in the ditch. It looks like it appears
21 to have been drug in the ditch and, of course, what's left of
22 any kind of tire impressions in the road.

23 Q: Now when you say it looks like it was drug in the ditch,
24 looking at State's Exhibit 3, can you see where it was drug
25 into the ditch in that picture?

DIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 A: It -- Just by looking at the embankment to where the body
2 was -- looked like it had entered the ditch.

3 Q: All right. Lastly, I'm going to ask that you look at
4 State's Exhibit 4 and 5. What do you see in those two
5 pictures?

6 A: That's the lower extremities of the victim, which appears
7 that the dirt had collapsed on the legs of the victim, which
8 would -- I would indicate or possibly indicate that someone
9 either stepped on the bank to -- and pushed the dirt down on
10 top of him because it had not rained hard enough that day to
11 cause that type of damage to the roadway.

12 Q: And also in these two photographs, the pockets are out on
13 the victim. Did you pull those pockets out?

14 A: No, sir.

15 Q: When you arrived at the scene, were those pockets already
16 pulled out?

17 A: Yes, sir.

18 Q: Thank you. Did you have any involvement in this case
19 past your involvement at the scene that day?

20 A: The only other involvement was after I had left the
21 scene, I drove down the road and spoke to another individual
22 that lived right down the road.

23 Q: All right, anything past that day? Did you do anything
24 else?

25 A: Past that day, no, sir.

CROSS EXAMINATION OF SERGEANT DRUMMOND BY MR. ANDERSON

1 MR. OZMENT: No further questions, Your Honor.

2 THE COURT: Cross examination?

3 CROSS EXAMINATION

4 BY MR. OZMENT:

5 Q: Do you want me to call you Wayne or Tony?

6 A: However you want to do it there.

7 Q: Officer Drummond or Sergeant Drummond, did you take a
8 statement from anybody? A handwritten statement from anybody?

9 A: No, sir.

10 Q: Do you recall whether or not you directed Officer Plowden
11 to take a statement from Ms. Galloway, the 9-1-1 caller?

12 A: Yes, sir. I believe she arrived later in a van and he is
13 the one that took the written statement from the complainant.

14 Q: Do you know what happened to that written statement?

15 A: No, sir, I do not.

16 Q: Have you seen the written statement since that day?

17 A: Never saw it that day and I have not seen it since that
18 day.

19 Q: Typically, when statements are taken, aren't they turned
20 over to the solicitor's office?

21 A: They are supposed to be put in evidence.

22 Q: But you have not seen that statement since that time,
23 have you?

24 A: I have not, sir.

25 Q: Now, Officer Drummond, previously what came into

CROSS EXAMINATION OF SERGEANT DRUMMOND BY MR. ANDERSON

1 evidence, I think it was State's 26. Yes, State's 26 was the
2 crime scene entry log and that's got a list of people that
3 were on the scene while Deputy -- I think Mack was there. Did
4 you ask him to do that?

5 A: Yes, sir.

6 Q: All right. It looks like he took down maybe thirteen
7 names and at some point in time, he gave it to you. Does that
8 look right?

9 A: Yes, sir. We had other calls pending, so I relieved him
10 of that duty so he could answer other calls.

11 Q: And it looks like you actually handed it over to Andrew
12 Clendenin 12/18/2010 at 12:15. Is that right?

13 A: Correct.

14 Q: And Officer Clendenin, he's like a forensic officer. Is
15 that right?

16 A: Yes, sir. He takes pictures and gathers evidence at the
17 scene.

18 Q: Like a crime scene ---

19 A: Crime scene.

20 Q: CSI kind of stuff?

21 A: Kind of, yes, sir.

22 Q: All right. Now you took a total of looks like twenty-one
23 pictures that day. Is that right? That appears to be what's
24 reflected on your incident report.

25 A: Yes, sir.

CROSS EXAMINATION OF SERGEANT DRUMMOND BY MR. ANDERSON

1 Q: And today we have looked at ten of them. Now you
2 indicated earlier that it had been raining that day off and on
3 through the morning?

4 A: Yes, sir.

5 Q: And in State's Exhibit Number 4 and State's Exhibit
6 Number 5, it looks like some mud or dirt was on his pants. Is
7 that right?

8 A: Yes, sir.

9 Q: And I think that you indicated that, in your opinion, it
10 looked like somebody either stepped on the embankment getting
11 out or something caused some of that dirt to fall in on his
12 pants?

13 A: Correct.

14 Q: All right. Now could you make out any footprints, tennis
15 shoe prints, boot prints, anything like that or had it rained
16 too much?

17 A: By that photo, no, sir, I cannot tell.

18 Q: And it looks like in State's Number 3, I mean you can see
19 I guess-- And what I'm referring to, Sergeant Drummond, is
20 right here. It looks like somebody was either stepping out or
21 maybe that was their toe print or that's where it dug a
22 little bit. But I mean it looks like it's rained so much that
23 you can't really tell what kind of shoe that was. Is that
24 right?

25 A: That's correct.

CROSS EXAMINATION OF SERGEANT DRUMMOND BY MR. ANDERSON

1 Q: Can you ---

2 A: I mean according to the photo.

3 Q: Right. Can you detect any type of shoes or boots in this
4 -- in State's Number 3 or in State's Number 6?

5 A: I mean just by looking at the photo, I cannot. That's
6 the reason I took pictures and indicated in my report what the
7 pic -- why I took that particular picture.

8 Q: Now I mean that's not your job, that's Andrew Clendenin's
9 job, right?

10 A: Correct.

11 Q: Okay.

12 A: The only reason I did it is because of the rain and
13 trying to preserve the evidence.

14 Q: Because you're a thorough investigator?

15 A: I try to be, yes, sir.

16 Q: All right, State's Number 8 right here. It looks like
17 you've got some blood, some tempered glass, and then up here
18 in the top it looks like there is some blood where the body
19 may have been moved. Is that right?

20 A: Correct.

21 Q: Now is there any blood in the middle and what I mean by
22 that, does there appear to be any blood between the one spot
23 and then the next spot where it was being drug? Do you see
24 any red puddles, red area, anything like that?

25 A: I'm sorry. I'm not following your question.

CROSS EXAMINATION OF SERGEANT DRUMMOND BY MR. ANDERSON

- 1 Q: Right here.
- 2 A: You said from here to here?
- 3 Q: Yes, sir.
- 4 A: What you're saying is from here to here?
- 5 Q: Yes, sir.
- 6 A: No, sir, I don't see any. I don't see any blood
- 7 according to the pictures over here.
- 8 Q: Okay and, of course, when Mr. Clendenin got there,
- 9 Officer Clendenin, he may have taken some additional pictures?
- 10 A: Correct, yes, sir.
- 11 Q: Okay. Now State's Number 1, it looks like you certainly
- 12 can see the blood, which is right here, but it also looks like
- 13 it's starting to puddle up a little bit and when I say puddle
- 14 up, I don't mean necessarily from the amount of blood, but it
- 15 looks like from the rain.
- 16 A: Correct.
- 17 Q: Okay and State's Number ---
- 18 A: This one was -- This one was under that one.
- 19 Q: --- 2, you can actually see a mud puddle, I guess a
- 20 little bit behind where the flow trail is. Is that right?
- 21 A: I'm sorry. Are you speaking about ---
- 22 Q: Right there.
- 23 A: Right there, okay.
- 24 Q: A little mud puddle?
- 25 A: Yes, sir.

REDIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 Q: Okay, all right. Now I'm looking at State's Number 1 and
2 I'm just referring to the body in this picture, it looks like
3 the body -- or his right hand is underneath him. Is that
4 right?

5 A: Yes, sir.

6 Q: And it looks like he is on his left side?

7 A: Yes, sir.

8 Q: And if you look at State's Number 3 and I know this is
9 not the best picture, can you tell from State's 3 if his left
10 hand is out or if it's also under him? Do you recall?

11 A: I don't recall. May I see the picture?

12 Q: Sure. You don't know who may have been at the crime
13 scene at midnight that night, do you?

14 A: No, sir.

15 Q: Or at two a.m., five a.m., six a.m.? All you can account
16 for is about ten after ten until about 12:30?

17 A: Correct.

18 MR. ANDERSON: Judge, that's all the questions I have.

19 THE COURT: Any redirect?

20 MR. OZMENT: Very briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MR. OZMENT:

23 Q: In the course of you investigating the crime scene, you
24 said you quickly took the pictures and looked around. Did you
25 find any sort of -- Other than what has already been talked

REDIRECT EXAMINATION OF SERGEANT DRUMMOND BY MR. OZMENT

1 about, the glass, did you find any sort of other physical
2 evidence there at the crime scene?

3 A: Not to my knowledge, no, sir.

4 Q: And so you didn't find any shotgun shell casings?

5 A: No, sir.

6 Q: All right.

7 MR. OZMENT: No further questions for this witness, Your
8 Honor.

9 THE COURT: All right, you may step down.

10 (Whereupon, the witness leaves the stand at 4:37 p.m.)

11 THE COURT: You may call your next witness.

12 MR. OZMENT: Your Honor, the State calls Mr. Andrew
13 Clendenin.

14 THE COURT: All right, let's stand up while we're getting
15 -- waiting on this next witness. Let's just stand up and
16 stretch while we are waiting on this next witness, a little
17 seventh inning stretch.

18 (Whereupon, there is a pause in the proceedings until the
19 witness enters the courtroom.)

20 THE COURT: All right, please be seated.

21 MR. OZMENT: Your Honor, as law enforcement witnesses
22 step off the stand, may they be released from their subpoenas
23 so they can go back to work?

24 THE COURT: Any objection from the defense?

25 MR. ANDERSON: No, sir, Your Honor.

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 THE COURT: All right. They -- They -- You may be
2 released after you've testified. Thank you, sir.

3 MR. OZMENT: Thank you, Your Honor.

4 THE COURT: If you could, please come forward and place
5 your left hand on the Bible and raise your right hand as the
6 clerk administers the oath.

7 THE CLERK: Do you swear the testimony you give in this
8 case will be the truth, the whole truth and nothing but the
9 truth, so help you God?

10 WITNESS: I do.

11 THE CLERK: Please be seated and state your full name for
12 the record.

13 THE COURT: I ask that you pull up real close to that
14 microphone and speak loudly, clearly and slowly in order that
15 we can hear everything that you've got to say and let's start
16 with your full name.

17 WITNESS: Andrew Robert Clendenin.

18 THE COURT: Let's spell that last name for the court
19 reporter.

20 WITNESS: C-L-E-N-D-E-N-I-N.

21 THE COURT: Very good. Mr. Ozment?

22 CORPORAL ANDREW CLENDENIN, being
23 first duly sworn, testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. OZMENT:

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 Q: How are you today, Corporal Clendenin?

2 A: I'm good.

3 Q: Good. How long have you been in law enforcement?

4 A: I've been in law enforcement the last twelve years.

5 Q: How much of that with the sheriff's office?

6 A: All twelve years.

7 Q: All right. What do you do with the sheriff's office?

8 A: I am a crime scene investigator.

9 Q: So is that just like CSI I see on TV?

10 A: Not quite CSI, but we do do a few things.

11 Q: Did you investigate a body found on [REDACTED] on

12 December 18th, 2010?

13 A: I did.

14 Q: Who was on the scene when you arrived out there?

15 A: Deputy Marlon Mack and I can't remember if Chad Collins

16 arrived shortly after or was there.

17 Q: All right. Was Sergeant Drummond there at that time?

18 A: He had already exited at that time.

19 Q: All right. Explain just briefly what your job is when

20 you arrive at a crime scene?

21 A: Once I arrive on a crime scene, I document, photograph

22 and try to collect all evidence found at the scene for further

23 processing.

24 Q: All right. At the scene on [REDACTED], what did you do

25 when you got there?

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 A: I did an initial walk-through to see what they had behind
2 the yellow crime scene tape they had stretched across the
3 road. After that, I started documenting with photographs and
4 I actually did a field sketch on it.

5 Q: All right and when you say field sketch, what is that?

6 A: It's basically a two dimensional drawing of what I have
7 seen out there.

8 MR. OZMENT: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 Q: Corporal Clendenin, I'm handing you a sheet of paper.
11 Can you identify that?

12 A: Yes. This is a copy of the field sketch I made that day.

13 Q: All right and so you created that document?

14 A: That is correct.

15 Q: All right. How did you go about creating it? I notice
16 on that document there are some measurements and whatnot.
17 What's your process for your making one of those?

18 A: Basically, we use a standard fixture, something that's
19 not going to move and then we measure to the object usually in
20 triangulation. We'll -- We'll measure to and from say a
21 telephone pole that's not going to be removed to the object
22 and then back to another fixed location that's not going to be
23 moved so we can tell exactly where something was later on.

24 Q: All right. What sort of things would you note on one of
25 these?

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 A: Anything found in the scene as far as location-wise,
2 objects the way they was found, including the victim the way
3 he was found in proportion to the location.

4 Q: All right.

5 MR. OZMENT: Your Honor, I've provided a copy of this to
6 Mr. Anderson. At this time, the State would move Corporal
7 Clendenin's illustration into evidence.

8 THE COURT: Any objection from the defense?

9 MR. ANDERSON: No, sir.

10 THE COURT: All right and that is denominated as State's
11 Exhibit ---

12 COURT REPORTER: Twenty-seven.

13 THE COURT: --- 27 is into evidence without objection
14 from the defense. Let's mark that, if we could.

15 (Whereupon, State's Exhibit Number 27, the field sketch
16 of the crime scene, is admitted into evidence.)

17 THE COURT: Very good. Mr. Ozment, you're recognized.

18 MR. OZMENT: Thank you, Your Honor.

19 Q: When you arrived at the scene, was the yellow crime scene
20 tape still up?

21 A: Yes, it was.

22 Q: Okay. How long did that stay up or do you know?

23 A: It stayed up until we removed the victim from the scene
24 and all the scene was processed.

25 Q: All right. Do you know approximately how long that was?

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 A: I can give you an approximation. Due to my notes, it was
2 12:18 p.m. that morning.

3 Q: Part of your job is processing the scene. Did you
4 examine the victim at the scene that day?

5 A: Yes, I did.

6 Q: Can you go through how you approach a body like that and
7 what -- what you did?

8 A: Basically, the body was photographed prior to me even
9 touching it. Once it's photographed in its natural position,
10 then I rotate the body to see what -- if it's on its back,
11 front, to see what's going on.

12 Q: When you arrived at the scene, were the pants pockets
13 pulled out?

14 A: They were slightly pulled out.

15 Q: All right. Did you pull them out?

16 A: No, I did not.

17 Q: As the body was moved, was anything found in the body's
18 vicinity?

19 A: Yes, some loose change was found underneath the body.

20 Q: Were you able to locate a wound on the body at the scene?

21 A: Yes, it was a very visual head wound once I rolled the
22 body over.

23 Q: When you say a very visual head wound, what -- you know,
24 just describe as best you can what -- what you saw?

25 A: It was almost an open pattern to the side of the face,

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 near to the ear just down from the top of the head.

2 Q: Were there any other visible injuries on the outside of
3 the body?

4 A: Not that I could tell at that time.

5 Q: All right. Were you there when the body was taken from
6 the scene?

7 A: Yes, I was.

8 Q: All right. Do you know where the body went next?

9 A: It went to McLeod to await autopsy at MUSC, which is the
10 Medical University of South Carolina.

11 Q: Did you go to McLeod with it at all?

12 A: I went later on. After I'd finished the scene, I went
13 back to McLeod.

14 Q: All right. What was done with the body at McLeod?

15 A: Again, I done some more facial photographs and also I
16 tried to get latents from the body to make identification
17 because at the time that when I found the victim, I could find
18 no forms of identification.

19 Q: And when you say latents, what does that mean?

20 A: Latent fingerprints. I actually took ink and took
21 fingerprints from the victim.

22 Q: All right. Now you just referred that it waited at
23 McLeod until it had an autopsy. Do you know when it was
24 autopsied?

25 A: The autopsy took place the following morning. It was

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 transported to MUSC in Charleston.

2 Q: All right. Were you present for that autopsy?

3 A: Yes, I was.

4 Q: When I say you, did you actually observe the autopsy?

5 A: I observed the doctor perform the autopsy, yes.

6 Q: All right. While the autopsy was being performed, did
7 you do any -- Did you do any tests on the body? Did you
8 actually do anything?

9 A: I did a -- I performed a gunshot residue test while at
10 MUSC.

11 Q: Could you explain what a gunshot residue test, why you
12 would do that?

13 A: I had to check for particles of gunshot residue since it
14 was evident that he was a victim of a gunshot.

15 Q: All right and explain what is a gunshot residue test?
16 What are you testing and what do you actually do?

17 A: It's a two part test where I use two metal discs and
18 packets of swabs to swab the hands for possible GSR, which
19 contains unfired lead particles, gunpowder, and various other
20 items.

21 Q: All right and then once you do that test, what do you do
22 with your swabs and whatnot?

23 A: It's packaged and then sent to SLED for further testing.

24 Q: All right. Do you take any sort of precautions or
25 anything to ensure that that test isn't contaminated?

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 A: Yes. The entire time, I am gloved and I'm the only one
2 present during the actual taking of the GSR test and then once
3 I finish the GSR -- GSR test, the package is then closed and
4 then sealed with a red tape and with my signature over top, so
5 nobody else can go into it.

6 Q: All right. Now when you say you were present for the
7 autopsy, following the autopsy or during the autopsy, was any
8 evidence or potential evidence, any items collected from the
9 body?

10 A: Yes, they were. They were actually shotgun plastic
11 wadding and also pellets from the victim's cranial area.

12 Q: All right. Was any glass removed from the victim?

13 A: Yes, there was a piece of glass stuck in the victim's
14 hair that they removed during autopsy.

15 Q: All right and you observed all that?

16 A: I observed all that and then collected it after they
17 finished.

18 Q: What was the victim wearing when he was taken to his
19 autopsy?

20 A: He was wearing a t-shirt, blue jeans, tennis shoes,
21 socks, belt.

22 Q: Was that removed in your presence before the autopsy
23 actually ---

24 A: Yes, it was.

25 Q: All right and did you take possession back of those items

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 when you ---

2 A: Yes, I did.

3 Q: Okay, all right. Going back to when you were at -- on
4 the scene on the roadway, did you collect any physical
5 evidence on the scene other than the coins we talked about?

6 A: I did. There were tempered glass in the middle of the
7 roadway that I collected.

8 Q: When you say tempered glass, would that ---

9 MR. OZMENT: May I approach the witness, Your Honor?

10 THE COURT: You may.

11 Q: For instance, looking at State's Exhibit 7?

12 A: Yes, I collected the -- some of the particles of glass
13 shown here.

14 Q: All right.

15 MR. OZMENT: I beg the Court's indulgence one moment,
16 Your Honor. May I approach the witness, Your Honor?

17 THE COURT: You may.

18 Q: Mr. Clendenin, I am handing you a brown paper bag. Could
19 you look in that bag and tell me what you see?

20 A: This is a -- some of the glass that I collected from the
21 scene.

22 Q: All right and you identify that as the -- the glass that
23 you collected?

24 A: Yes.

25 Q: What did you do with it after you collected it from the

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 scene?

2 A: After I collected it at the scene, I returned to the
3 Florence County Sheriff's Office and I placed it in the
4 evidence room for safekeeping.

5 Q: All right. Since then, has anything -- To your
6 knowledge, has it left the evidence room?

7 A: Other than what I have sent to SLED for further
8 investigation, no, it has not.

9 Q: All right.

10 MR. OZMENT: Your Honor, at this time, the State would
11 move the glass that Mr. Clendenin just identified into
12 evidence.

13 THE COURT: Any objection from the defense?

14 MR. ANDERSON: No, sir.

15 THE COURT: All right, that would be State's Exhibit --
16 27?

17 COURT REPORTER: Twenty-eight.

18 THE COURT: Twenty-eight is into evidence without
19 objection from the defense, State's Exhibit 28.

20 (Whereupon, State's Exhibit Number 28, small pieces of
21 glass in a brown paper bag, is admitted into evidence.)

22 MR. OZMENT: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q: Mr. Clendenin, I'm handing you a sheet of paper. Can you
25 identify that sheet of paper?

DIRECT EXAMINATION OF CORPORAL CLENDENIN BY MR. OZMENT

1 A: Yes. This is one of our evidence log sheets that I
2 filled out after the time that I collected everything before I
3 submitted it into the evidence room.

4 Q: So does that reflect all of the evidence that you
5 collected from the crime scene that day?

6 A: Yes, it does.

7 Q: All right and is there anyone's signature on that stating
8 that you, you know, that it was received into the evidence
9 room?

10 A: Yes. It went from me to Officer Larry Quick.

11 Q: All right.

12 MR. OZMENT: Your Honor, we would ask that that be marked
13 as State's Exhibit 29 and moved into evidence.

14 THE COURT: Any objection from the defense?

15 MR. ANDERSON: No, sir, Your Honor.

16 THE COURT: State's Exhibit 29 is into evidence without
17 objection from the defense.

18 (Whereupon, State's Exhibit Number 29, the evidence log,
19 is admitted into evidence.)

20 MR. OZMENT: Your Honor, no further questions for this
21 witness.

22 THE COURT: Cross examination, Mr. Anderson?

23 CROSS EXAMINATION

24 BY MR. ANDERSON:

25 Q: On the exhibit that you introduced earlier of this

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

1 drawing that you made of the scene, over in the corner it says
2 that's not to scale, so I mean it's not -- It's as accurate as
3 you can make it, but it's not like you're out there walking
4 around. Is that right?

5 A: The actual measurements is, but not the scale as that
6 telephone pole wasn't that big when I was out there. So it's
7 only an ---

8 Q: Right.

9 A: --- eight by eleven sheet of paper.

10 Q: And from State's Number 27, you've got some looks like
11 weeds, but ---

12 A: Actually, they were small pines, probably no more than a
13 year old.

14 Q: Okay.

15 A: They were no more than six to seven feet high.

16 Q: Okay, so a little bit taller than me? Now, if you would,
17 look at your exhibit a second.

18 A: Yes, sir.

19 Q: The wooded area I guess would be -- If you're looking at
20 the body, the wooded area would be to the right, the telephone
21 pole would be to the left. Is that right? Looking at the
22 body the way it's laying.

23 A: Oh, facing ---

24 Q: You're looking at the body the way he's laying.

25 A: Yes, the way he's laying, yes.

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

- 1 Q: The telephone pole would be to your left and the wooded
2 area would be to your right?
- 3 A: Yes.
- 4 Q: Now in the ditch line, I mean you didn't go down there
5 and say, well, you know, twelve feet away there's a Pepsi Cola
6 bottle?
- 7 A: No, sir.
- 8 Q: And five feet behind that there's a McDonald's wrapper
9 and I mean you didn't notate that anywhere on here, did you?
- 10 A: No. There was not that much debris in that ditch line.
- 11 Q: But I mean you didn't notate any debris in the ditch
12 line, did you?
- 13 A: No, I didn't find any debris other than the broken glass
14 in sight.
- 15 Q: Okay. Now you've got the broken glass notated about 20.9
16 or 20 feet 9 inches away and then you've got another
17 measurement, 183.2 feet or 183 feet and 2 inches from the
18 start of the ditch. Is that right?
- 19 A: Yes, sir. There's actually the driveway there, so I
20 measured from the corner of the driveway over to a telephone
21 pole.
- 22 Q: I looked at your incident report that you drew or that
23 you I guess prepared. Do you have a copy of that?
- 24 A: Yes, I do.
- 25 Q: Okay and it says that you got there at approximately

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

- 1 10:54. Is that right? 10:54 a.m.?
- 2 A: That's correct.
- 3 Q: And then you left at approximately 12:17 and you've got
- 4 a.m., but obviously that's p.m.?
- 5 A: Yes, that's correct, that's p.m.
- 6 Q: I mean you weren't there for fourteen hours, were you?
- 7 A: No, I was not.
- 8 Q: Okay, you were there for, if my math is right, an hour
- 9 and twenty-four minutes?
- 10 A: That's correct.
- 11 Q: A little bit less than an hour and a half and then it
- 12 indicates and you testified to this, you later went to
- 13 McLeod's and took some additional pictures, you did the
- 14 fingerprints on his hands.
- 15 A: That's correct.
- 16 Q: Now when did you do the GSR? Was that at MUSC or was
- 17 that at McLeod's?
- 18 A: Once I arrived at MUSC, I done it there.
- 19 Q: So that would have been the very next day?
- 20 A: That's correct.
- 21 Q: All right. Now, gunshot residue, that is a fragile
- 22 substance. It has like a shelf life or a time life, doesn't
- 23 it?
- 24 A: It does. If it's exposed to open air, it does.
- 25 Q: Okay and, of course, it was raining that morning?

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

- 1 A: Yes, it was.
- 2 Q: And it had been raining the night before?
- 3 A: Yes, it was on and off rain that morning.
- 4 Q: Okay. Usually, don't they indicate to you we want a two
- 5 to three hour window of time for GSR to be accurate?
- 6 A: It can be, but once the victim was encased in the body
- 7 bag, it sealed the GSR of whatever he had with him.
- 8 Q: Right, but if he had say been shot at ten p.m. the night
- 9 before and then he gets sealed up at twelve p.m. the next day,
- 10 he's been out in the open for fourteen hours?
- 11 A: It could play some area, but as being that he's
- 12 completely still, not moving, not brushing up against
- 13 clothing, not washing his hands, it'll still carry some. But
- 14 with the inclement weather now, it could ---
- 15 Q: Right.
- 16 A: It could.
- 17 Q: He wasn't washing his hands, but it was raining off and
- 18 on ---
- 19 A: That's correct.
- 20 Q: --- all night and all morning. Okay, the shirt was wet
- 21 in the pictures?
- 22 A: Yes, sir.
- 23 Q: The jeans were wet. It looked like there was mud on his
- 24 pants. Of course, his hands were underneath him?
- 25 A: Yes.

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

1 Q: Drainage ditch?

2 A: He actually sealed himself quite nicely underneath the
3 dirt because the dirt was dry underneath the body.

4 Q: Okay and do you have any pictures of that?

5 A: I don't know if there is any up here, but actually at the
6 scene, there may be some photographs in there where once he's
7 rolled over, you see sort of the dry sand underneath him.

8 Q: Okay, no doubt his shirt was wet?

9 A: The back of the shirt was wet.

10 Q: You were on the scene for an hour and twenty-four
11 minutes. What would you say the majority of that time was
12 doing?

13 A: Searching.

14 Q: Were you taking measurements?

15 A: Measurements and searching all the area to the ditch line
16 over into the wood line for any other objects.

17 Q: Okay. Did you note that in your report anywhere?

18 A: No, I didn't. That's -- That's something we always do.

19 Q: Okay, but in the report that you prepared on December the
20 18th, nowhere in there do you say you were looking for other
21 evidence, do you?

22 A: No, I do not.

23 Q: Now you do say you were doing several things while you
24 were in there. For example, you got there at 10:54 a.m. and
25 then you met with Sergeant Tony Drummond. Is that right?

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

- 1 A: He -- He may have still been on scene, yes.
- 2 Q: Well, it says you met with him?
- 3 A: Yes.
- 4 Q: And then he told you that a white male victim was found
- 5 by a passing motorist. Is that right?
- 6 A: That's correct.
- 7 Q: And then you obviously take some measurements. Is that
- 8 right?
- 9 A: That's correct. During that investigation, I took
- 10 measurements.
- 11 Q: You also examined the body I think you said?
- 12 A: Yes.
- 13 Q: After evidence or after photographs had been taken, then
- 14 you actually moved the body?
- 15 A: That's correct.
- 16 Q: It also indicates in your report that you took digital
- 17 photographs of the scene. Is that right?
- 18 A: That's correct.
- 19 Q: You met with Investigator Collins and Lieutenant Keith
- 20 Lutcken. You and Lieutenant Lutcken rolled the -- I guess
- 21 Mikey over onto his back. Is that right?
- 22 A: That's correct.
- 23 Q: And took some digital photographs of his wounds, searched
- 24 through his pants, unable to locate any form of
- 25 identification. Then you found the -- I guess loose change

CROSS EXAMINATION OF CORPORAL CLENDENIN BY MR. ANDERSON

1 under him. Is that right?

2 A: That's correct.

3 Q: At some point in time, you took these measurements. Is
4 that right?

5 A: That's correct.

6 Q: And at some -- You measured from the telephone pole to
7 the broken glass. You measured from the telephone pole to the
8 top of his head. You measured from the telephone pole to the
9 bottom of his foot. Is that right?

10 A: That's correct.

11 Q: All right. You also measured from the broken glass to
12 the driveway or what I have previously referred to as the
13 ditch line. Is that right?

14 A: That's correct.

15 Q: Nowhere in your report do you make any notation of any
16 cans, bottles, trash, anything like that, do you?

17 A: No, none was collected.

18 Q: Nowhere in your file or your notes do you say, well, I
19 was over on the other side of the road and I was looking in
20 the tree line or the wooded line or anything like that. You
21 don't put that anywhere in your report, do you?

22 A: No, I do not.

23 Q: Okay.

24 MR. ANDERSON: Judge, that's all the questions I have.

25 THE COURT: Any redirect?

1 MR. OZMENT: No redirect, Your Honor.

2 THE COURT: All right, you may step down.

3 WITNESS: Thank you.

4 (Whereupon, the witness leaves the stand at 5:00 p.m.)

5 THE COURT: Mr. Foreman, ladies and gentlemen of the
6 jury, we're going to recess for the evening and I'm going to
7 ask that you be back at 9:30 in the morning. Once again, do
8 not discuss the case amongst yourselves or with anyone else.
9 Do not do any investigation on the internet or otherwise.
10 Don't go by and look at any scenes that you might be familiar
11 with. Do not post anything on any social media.

12 And with regard to these very handsome badges, I notice
13 that we're having some budgetary constraints here in Florence
14 County and there's not enough stickum on the back of those
15 things. So if you need to help them out with a pin or a
16 safety pin, I'm going to ask that you do that because it is
17 important for people to be able to recognize that you are
18 jurors, particularly the way this -- this courthouse is
19 configured. If anybody -- If anybody were to try to contact
20 you about this case, once again, identify them as best you can
21 and notify the bailiff and Court and I'll deal with them
22 accordingly.

23 The other admonition I have, a lot of times when you're
24 not working and you are coming here serving on jury duty,
25 there's a tendency maybe to stay up a little bit later at

1 night. These are important matters and sometimes the
2 testimony that you hear is more exciting than others, so it's
3 very important for you to get plenty of sleep so you can pay
4 close attention. These are important matters, important
5 matters to the defendant, important matters to the State.

6 I'm going to ask that everyone remain seated as the jury
7 exits the courtroom. See you at 9:30, 9:30 sharp, in this
8 courtroom.

9 BAILIFF: Follow me, please.

10 (Whereupon, the jury exits the courtroom at 5:02 p.m.)

11 THE COURT: Yes, sir, I'm going to ask the juror in the
12 back of the courtroom if he could come forward.

13 (Whereupon, the individual from the morning's jury pool,
14 who is not a part of the seated jury in this case, comes
15 forward.)

16 THE COURT: Sir, you can -- you can stand right there.
17 Your full name once again?

18 JUROR: Joshua Smith Bush.

19 THE COURT: All right. The clerk informed me that you
20 were late showing up for jury selection this morning and you
21 were late once before or didn't show up once before. Tell me
22 about that.

23 JUROR: I came the first time, but I was late because I
24 didn't know where to go and by the time I came, it was just
25 too late. I left. I talked to a lady and she said they

1 rescheduled me.

2 THE COURT: Okay, all right. What do we have to do to
3 ensure that you're going to be here next time?

4 JUROR: I'm going to be here.

5 THE COURT: All right and you understand that you're
6 forewarned. You've been late twice and if you're not here
7 next time, you're going to be subject to contempt proceedings.
8 Do you -- Do you understand that?

9 JUROR: Yes, sir.

10 THE COURT: All right. Do we know when he'll be
11 notified?

12 THE CLERK: Do you want to transfer him?

13 THE COURT: We're going to transfer him.

14 THE CLERK: We can transfer him. We've got April the 16th
15 or either in June.

16 THE COURT: All right.

17 THE CLERK: Either one.

18 THE COURT: April the 16th and you'll receive notice. You
19 need to -- You probably need to be here about 7:30 and waiting
20 on the doors to open.

21 JUROR: Yes, sir.

22 THE COURT: And you need to be here so you can check the
23 10th and the 11th floor and you can check in rapid succession
24 to make sure you get the right floor. All right?

25 JUROR: Yes, sir. What about they said be back Wednesday

1 at 9:30?

2 THE COURT: You don't need to be here Wednesday because
3 you didn't make it here for roll call. You aren't a member of
4 this jury pool because we didn't get your information. You
5 didn't get sworn in. Then you weren't able to be qualified,
6 so therefore, you need to try to do it once again and you need
7 to be here on time. If I happen to be here and you're late,
8 you're going to run into some difficulties. Do you understand
9 that?

10 JUROR: Yes, sir.

11 THE COURT: All right, good luck to you. You're free to
12 leave.

13 THE CLERK: We'll send you another letter letting you
14 know about that date.

15 JUROR: All right, thanks.

16 (Whereupon, the juror leaves the courtroom.)

17 THE COURT: All right, anything from the State before we
18 proceed or recess for the evening?

19 MR. OZMENT: I don't believe so, Your Honor.

20 THE COURT: All right, anything from the defense?

21 MR. ANDERSON: Yes, sir. Your Honor, before this case
22 began, I would say sometime in February, I talked to Matt
23 Ozment, the assistant solicitor in this case, and I said,
24 "Matt, let's you and I get together and make sure I've got
25 everything you've got, every CD, every statement, everything."

1 So we did and we went in his office. We started going
2 through stuff, and I said, "Matt, you have not given me a
3 statement of Sandra Galloway," and he said, "Which statement
4 is that?" And I said Officer Plowden or Officer Wayne
5 Drummond either prepared a supplemental report and it states,
6 "Clendenin with forensics arrived and began processing the
7 scene. The complainant was not on scene when we arrived, but
8 did return and gave a written statement."

9 So I asked Matt. I said, "Matt, where is the written
10 statement?" He said, "I don't know. I'll check on it." So
11 he calls whoever he calls. He says, "Hank, there is no
12 written statement." I said, "Okay, that's fine."

13 Your Honor, she gets up here today and says she gave a
14 written statement. Then Chicken Wing, is what I refer to him,
15 but Tony Drummond, Wayne Drummond, comes up here and says,
16 yeah, I did tell them to get a statement from her. I believe
17 they did. I haven't seen it. It should have been turned
18 over.

19 So, Your Honor, my concern is what's in that statement.
20 I mean it could have been something that I could have used.
21 If there is a statement, I'd like to get it. If there is a
22 statement, I'd like for that jury to know that somehow, hey, I
23 don't have a copy of it, the State doesn't have a copy of it.
24 I mean she testified she gave a statement. I haven't seen it.
25 The Solicitor's Office hasn't seen it.

1 I mean today I get a CD that I'm not aware of and that
2 he's not aware of. Then a witness testifies that they've
3 given a statement. I don't have it. I specifically asked him
4 for it, he says it doesn't exist. So I'm not real sure what's
5 going on.

6 THE COURT: All right. Well, I think before we hear from
7 Mr. Ozment, it appears to me as if the lady seemed to be a
8 little bit confused about who she returned the statement to.
9 She seemed to be very unclear on it. She I think even spoke
10 with her mother about it and it seemed to be she seemed to be
11 a little bit confused and unclear about it.

12 Before we do that, I think it's probably very important
13 for us to -- for you to set out for the record how you are
14 prejudiced in that regard. This is, of course, the lady who
15 essentially saw the body in the ditch and called 9-1-1 and I
16 want you to set forth on the record how you are prejudiced, if
17 you can say.

18 MR. ANDERSON: Your Honor, she said she gave a statement.

19 THE COURT: Yeah, I'm saying ---

20 MR. ANDERSON: I mean I'd like to have that statement.

21 THE COURT: Right.

22 MR. ANDERSON: I mean anybody else that's had something,
23 I've taken documents up to them and questioned them about it.

24 THE COURT: Right.

25 MR. ANDERSON: This is one person I can't go up to and

1 question about it. [This is one person I can't say, well, do
2 you recall on 12/18, you said "x"? Now I don't know what she
3 put in the statement. It could have been something good for
4 me. It could -- She could have said, you know, "Now that I
5 think about it and I've had a chance to go talk to my mom, I
6 remember seeing a silver truck the night before." I don't
7 know.

8 THE COURT: All right.

9 MR. WELLS: Your Honor, I was taking notes during her
10 testimony. The last thing she said was I'm pretty sure that I
11 gave them a statement. She never said a hundred percent, but
12 again, I fail to see how the fact she reports a crime -- I
13 don't imagine she had anything to say that she didn't testify
14 to in court. I just don't see how it can possibly prejudice
15 his client because she didn't have anything to do with his
16 client as far as what her statement would have been.

17 MR. OZMENT: And certainly on the stand today, he had a
18 full cross examination of her. He could have asked about any
19 silver trucks or anything else.

20 MR. WELLS: It was also something he can use when he
21 argues the jury and say why didn't they provide us this
22 statement.

23 THE COURT: All right and I think ---

24 MR. ANDERSON: Your Honor, I specifically asked her on
25 cross, are you sure you gave a statement ---

1 MR. WELLS: And she said I'm pretty ---

2 MR. ANDERSON: --- and she said yes.

3 MR. WELLS: No, she said I'm pretty sure.

4 MR. ANDERSON: No, she said -- she said yes, she did,
5 because I cleared it up.

6 MR. WELLS: And then she said I'm pretty sure.

7 THE COURT: I think -- Do you agree that at one time she
8 did say I'm pretty sure?

9 MR. ANDERSON: She did that on direct, not on cross.

10 THE COURT: Okay, but clearly there's an equivocation
11 there. You're absolutely one hundred percent right and you
12 say, well, the jury needs to be made aware of the fact that
13 there is no statement. He hasn't been provided one and you
14 haven't been provided one. I think that's clear from the
15 record that it has not been provided.

16 MR. ANDERSON: Your Honor, it just appears to me we're
17 getting into a pattern. Today I get a taped statement, then
18 suddenly there's a written statement and I don't want this to
19 continue throughout the trial.

20 THE COURT: All right. Mr. Ozment, is there anything
21 else that has not been turned over?

22 MR. OZMENT: Your Honor, he has seen my file like he
23 said. We went through it. The one taped statement I got
24 today. I've met with Chad Collins. I've gone through the
25 evidence out at the sheriff's office. He's brought his file

1 to my office, we've gone through it.

2 As to this statement with Ms. Galloway today, she stated
3 on the stand that this wasn't the first time she'd been asked
4 about this. When Mr. Anderson asked me about it, I talked to
5 people at the sheriff's office. They went back to her and she
6 originally -- I mean this is obviously not on the stand today.
7 This is two or three weeks ago.

8 THE COURT: Well, somebody ought -- Based on the pattern
9 of the questions, it does appear as if that's what happened,
10 you know, it wasn't the first time I've been asked about it.
11 So it's really been a question and it doesn't appear to me
12 that the State is trying to hide the ball. I think either
13 they didn't get the statement or they lost it, one of the two.

14 MR. OZMENT: And when Investigator Collins goes on the
15 stand either tomorrow or Wednesday, we -- I intend to ask him
16 about the statement and he will say that from his
17 investigation of where the statement is, either she never
18 returned it or it never reached him. It certainly never
19 reached him. It didn't reach ---

20 THE COURT: Either it wasn't given or it was lost.

21 MR. OZMENT: It was either lost or she never actually
22 gave it back.

23 THE COURT: Okay, all right. Mr. Wells, what's your
24 understanding with regard to lost or destroyed evidence.
25 Isn't it incumbent upon the defense in order to -- to

1 establish that there is something exculpatory on there in
2 order for there to be really a ---

3 MR. WELLS: Yes, that would be my understanding of the
4 law.

5 THE COURT: Right.

6 MR. ANDERSON: Your Honor, if evidence is lost or
7 destroyed, how can I prove whether or not it might be
8 exculpatory?

9 THE COURT: Well, that is ---

10 MR. WELLS: Again, I think that's something he can -- you
11 know, if he wants to argue that to the jury. I think defense
12 counsel argue that all the time. There was a sloppy
13 investigation, why didn't they provide this or ---

14 THE COURT: Right.

15 MR. WELLS: --- or that.

16 THE COURT: Well, that's one of the elements that you
17 have to prove in order to show prejudice with regard to lost
18 or destroyed evidence and it is incumbent upon you to
19 establish that there is something exculpatory and I understand
20 what you're saying, it's kind of hard to do that without
21 looking at it, but I think that is one of the elements you do
22 have to show. I mean you can read the cases and it will
23 explain that to you. However, what do you -- what do you ask
24 that I do about this, Mr. Anderson?

25 MR. ANDERSON: Your Honor, we just said we'd put it on

1 the record.

2 THE COURT: Okay.

3 MR. ANDERSON: So it's on the record now.

4 THE COURT: Okay and what's the remedy you're asking?

5 MR. ANDERSON: Your Honor, I just don't want this to
6 happen sometime tomorrow or Wednesday.

7 THE COURT: All right.

8 MR. ANDERSON: If someone says they gave a statement and
9 I haven't seen it and the State hasn't seen it.

10 THE COURT: All right. I'm not real sure ---

11 MR. ANDERSON: I mean I -- If I recall a certain murder
12 trial in Marion that went sideways and I don't want a repeat
13 at this.

14 THE COURT: All right, very good. So I imagine based on
15 your response, there is no specific remedy that you're asking
16 me to render today?

17 MR. ANDERSON: No, sir.

18 THE COURT: Very good. All right and we'll reconvene at
19 9:30 in the morning, 9:30. All right, we'll stand at ease.

20 (Whereupon, there is a break in the proceedings from 5:14
21 p.m. on Monday until 9:34 a.m. on Tuesday morning.)

22 --- END DAY ONE, VOLUME ONE ---

23 --- CONTINUED IN VOLUME TWO ---

24

25

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF FLORENCE	)	CASE NO. 2011-GS-21-1189
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(VOLUME TWO OF THREE)
	)	
SCOTT THOMAS LEE,	)	
	)	
Defendant.	)	
	)	

March 12-14, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge; and a jury

A P P E A R A N C E S:

MATTHEW OZMENT, Assistant Solicitor
 ROBERT WELLS, Assistant Solicitor
 Attorneys for the Plaintiff

HENRY M. ANDERSON, JR., Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Official Court Reporter

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1 MARCH 13, 2012

2 (Whereupon, the proceedings resume at 9:34 a.m. with the
3 defendant and all counsel present.)

4 THE COURT: All right, everybody please be seated.

5 MR. WELLS: Judge, to save time, why don't we go ahead
6 and just bring our next witness in the courtroom?

7 THE COURT: That would be good. All right, is there
8 anything from the State before we proceed?

9 MR. OZMENT: Nothing from the State, Your Honor.

10 THE COURT: Anything from the defense?

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

12 THE COURT: I understand that the foreman has a question.
13 Let's bring the foreman out and we will deal with whatever
14 question they have.

15 BAILIFF: Okay, sir.

16 (Whereupon, the jury foreman enters the courtroom at 9:35
17 a.m.)

18 THE COURT: Mr. Foreman, how are you doing this morning?

19 FOREMAN: I am good, hope you are, too, Your Honor.

20 THE COURT: Good. I understand that there is a question.

21 FOREMAN: There -- The preacher.

22 THE COURT: Okay.

23 FOREMAN: I don't know his name. He's -- His
24 congregation is in Lake City and he found out last night that
25 one of his congregation, I want to say parishioners, but I

1 don't know what denomination he is, is dying of cancer and
2 he's concerned if he will be in this trial when he needs to be
3 there.

4 THE COURT: All right.

5 FOREMAN: And he just wanted me to present that to you.

6 THE COURT: All right.

7 FOREMAN: The man has been sick for a while, but
8 apparently took a turn for the worse last night.

9 THE COURT: Right. All right, very good. Thank you so
10 much.

11 FOREMAN: Mm-hmm.

12 (Whereupon, the jury foreman returns to the jury room at
13 9:36 a.m.)

14 THE COURT: What is the State's position with regard to
15 this particular juror?

16 MR. OZMENT: Obviously, he's qualified and we chose him
17 for the jury. I would say, you know, if we could call him out
18 and see kind of how dire the circumstances are. If it's in
19 the next couple -- you know, if it's by the end of the week
20 or, you know, what kind of time table we're working with.

21 THE COURT: Okay, all right. What is the defense
22 position?

23 MR. ANDERSON: Judge, if it please the Court, I don't
24 think I agree with Matt often, but I will agree with him in
25 this case. Your Honor, I think it's one of those where you

1 just -- You've got two alternates. Let's wait and see what
2 happens. Your Honor, certainly if that person does pass away,
3 I mean ---

4 THE COURT: Well, I think the idea probably is that the
5 gentleman is probably on hospice and then, you know, the
6 family is in dire need of talking with the preacher is
7 probably the situation we're in and I'm sure that he's
8 probably thinking that -- that his -- he's probably needed as
9 much now as afterwards. So -- and particularly if he needs to
10 talk with the gentleman who is dying. I don't know. Let's --
11 Let's call him out and speak with him, if we could.

12 BAILIFF: The preacher?

13 THE COURT: Mr. Patrick.

14 (Whereupon, the juror enters the courtroom at 9:37 a.m.)

15 THE COURT: Mr. Patrick, how are you doing this morning?

16 JUROR: I'm fine, thank you, Judge.

17 THE COURT: Good. Tell us what your situation is and we
18 are trying to decide what we need to do with regard to your
19 service.

20 JUROR: Right.

21 THE COURT: Tell us what your situation is.

22 JUROR: I got home last night and learned that a
23 gentleman in our church was on the brink of death and ran out
24 to see the family and, you know, we don't know. I mean he
25 could die today, he could die tomorrow, but it looks like it's

1 -- it's imminent in the next day or two. If he dies, they're
2 wanting me to do the funeral.

3 THE COURT: Right.

4 JUROR: And I just didn't know possibly how long the
5 trial may last.

6 THE COURT: All right.

7 JUROR: You know, I thought it may be better for me to
8 notify you. I'm not looking necessarily to be excused. I
9 just thought, you know, if it happens later, that ---

10 THE COURT: Okay.

11 JUROR: --- I need to be.

12 THE COURT: All right and certainly if he -- if he does
13 pass away, we will -- we have two alternates and we'll
14 certainly make arrangements for that.

15 JUROR: Okay.

16 THE COURT: My question is, is it something that you feel
17 compelled to be relieved of your duty in order to tend to it
18 now or is it the type thing that you could speak with him
19 before you come over here and after -- after hours in the
20 evenings?

21 JUROR: Right now, it is.

22 THE COURT: Okay. Well, just let us -- keep us informed
23 in that regard.

24 JUROR: Okay.

25 THE COURT: And we'll certainly evaluate it as it goes.

1 JUROR: All right, thank you, Judge.

2 THE COURT: Thank you.

3 (Whereupon, the juror returns to the jury room at 9:39
4 a.m.)

5 THE COURT: All right, we're ready for the jury.

6 (Whereupon, the jury enters the courtroom at 9:39 a.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of the
8 jury, good morning. Thank y'all for being here and being here
9 on time. Everybody looks good and refreshed and ready to hear
10 some testimony this morning. Thank you so much. I always
11 find it odd that the only three assigned seats are the
12 alternates and the foreman, but it appears as if everybody
13 sits in the same spot all the time. We must have a bunch of
14 Baptists in here. I don't know, but at any rate, pay very
15 close attention. Let's proceed forward with a serious mind.
16 These are -- This is a very important case. It's important to
17 the State, it's important to the defendant, and it's important
18 to you. Play very close attention. Mr. Ozment, you're
19 recognized.

20 MR. OZMENT: Your Honor, the State calls Larry Quick to
21 the stand.

22 THE COURT: All right, Mr. Quick, please come forward.
23 I'm going to ask you, if you could, to set that paper down and
24 put your left hand on the Bible and raise your right hand as
25 the clerk administers the oath.

1 WITNESS: Yes, sir.

2 THE CLERK: Do you swear the testimony you give in this
3 case will be the truth, the whole truth and nothing but the
4 truth, so help you God?

5 WITNESS: I do.

6 THE CLERK: Please be seated and state your full name for
7 the record.

8 THE COURT: Mr. Quick, I'm going to ask you, if you
9 could, to pull up real close to that microphone and speak
10 loudly, clearly and slowly in order that we can hear
11 everything that you've got to say. Let's start with your full
12 name, Mr. Quick.

13 WITNESS: My name is Larry Howard Quick.

14 LARRY QUICK, being first duly sworn,
15 testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. OZMENT:

18 Q: How are you today, Mr. Quick?

19 A: Good.

20 Q: Good. What do you do for a living?

21 A: I am the evidence tech at Florence County Sheriff's
22 Office.

23 Q: How long have you been an evidence tech for Florence
24 County?

25 A: Just about three years now.

DIRECT EXAMINATION OF LARRY QUICK BY MR. OZMENT

1 Q: Okay. What did -- What experience did you have before
2 that?

3 A: I worked six years over on the jail side or almost six
4 years, lacked about a couple weeks, and before that I was a
5 supervisor in a textile plant.

6 Q: All right and as the evidence tech, kind of explain to me
7 what you do out at the -- out at the Sheriff's Office?

8 A: As the evidence tech, my requirements are to pick up the
9 evidence that the deputies will bring in to the squad room.

10 Also, I have to go to Narcotics and pick up the evidence they
11 have there. Also, sometimes I might have to even go to a
12 crime scene or something to pick up evidence to bring back.

13 But what I do is bring it back, I log it in to the evidence
14 room, and place it on a shelf.

15 Q: All right. Do you ever take evidence anywhere to be
16 tested or something like that, if necessary?

17 A: Yes, sir. I have to take different types of evidence to
18 like the SLED in Columbia and I'll enter it in there and then
19 when they have it ready, I pick it up and bring it back.

20 Q: All right and in this case, I believe at the time of your
21 involvement, it was a deceased person's case, Mr. Michael
22 Ford. Did you transport any evidence to SLED in this case?

23 A: Yes, sir, I did.

24 Q: Did you transport a gunshot residue test in this case?

25 A: Yes, sir, I did.

DIRECT EXAMINATION OF LARRY QUICK BY MR. OZMENT

1 Q: Once SLED processed that, did -- did -- was it received
2 back by the sheriff's office?

3 A: Yes, sir.

4 Q: Do you have it with you today?

5 A: Yes, sir, I do.

6 Q: Could you just show it? Is that in your hand right there
7 the gunshot residue test you were just referring to?

8 A: Yes, sir.

9 Q: All right.

10 A: This is in a sealed envelope. It was -- When I took it
11 to them, once it was registered in, it was sealed. They do
12 the testing on it and they return it back as being sealed also
13 and since then, it has not been tampered with.

14 Q: All right.

15 MR. OZMENT: No further questions for this witness, Your
16 Honor.

17 THE COURT: Cross examination, Mr. Anderson?

18 CROSS EXAMINATION

19 BY MR. ANDERSON:

20 Q: Mr. Quick?

21 A: Yes, sir.

22 Q: The only thing that you took to SLED and brought back
23 from SLED was the GSR, the gunshot residue kit?

24 A: I have to check my notes to be sure. I think that is.

25 (Whereupon, there is a brief pause in the testimony as

CROSS EXAMINATION OF LARRY QUICK BY MR. ANDERSON

1 the witness checks his notes.)

2 A: Also, I took a container holding the pellets and the
3 wadding that was from -- I think from the crime scene that I
4 took to SLED. Also ---

5 Q: Who did you get that from? The pellets and the wadding?

6 A: From ---

7 Q: Was that from the forensics team?

8 A: Andrew -- From forensics, Andrew Clendenin.

9 Q: All right. Now the only thing that you can take to SLED,
10 Mr. Quick, or the only thing that you can put into evidence is
11 items that they give to you. Is that right?

12 A: Yes, sir, and if they specify to be carried to SLED.

13 Q: Okay. You don't go -- Or strike that, strike that. You
14 said you went to the crime scene sometimes?

15 A: Sometimes, not at this time. I did not go to this crime
16 scene.

17 Q: But if you go to a crime scene, I mean your job is not to
18 look around and, hey, you know, that right there might be
19 important. You don't do that, do you?

20 A: No, sir.

21 Q: You only receive what they give you?

22 A: Right, that's correct.

23 Q: And then you either transport it to the evidence room at
24 the Florence County Sheriff's Office ---

25 A: Yes, sir.

CROSS EXAMINATION OF LARRY QUICK BY MR. ANDERSON

1 Q: --- or to SLED?

2 A: Yes, sir.

3 Q: Okay.

4 MR. ANDERSON: Judge, that's all the questions I have.

5 THE COURT: Any redirect?

6 MR. OZMENT: None, Your Honor. We would ask that this
7 witness be excused.

8 THE COURT: All right, you're free to leave.

9 WITNESS: Thank you, sir.

10 THE COURT: Thank you, you may step down.

11 (Whereupon, the witness leaves the stand at 9:46 a.m.)

12 MR. OZMENT: Your Honor, the State would next call Ms.
13 Ila Simmons from SLED.

14 THE COURT: Very good.

15 (Whereupon, there is a pause in the proceedings until the
16 witness enters the courtroom.)

17 THE COURT: Yes, ma'am, please come forward. Yes, ma'am,
18 I'm going to allow you to put your piece of paper up here and
19 watch your step there and place your left hand on the Bible
20 and raise your right hand as the clerk administers the oath.

21 THE CLERK: Do you swear the testimony you give in this
22 case will be the truth, the whole truth and nothing but the
23 truth, so help you God?

24 WITNESS: I do.

25 THE CLERK: Please be seated and state your full name for

CROSS EXAMINATION OF LARRY QUICK BY MR. ANDERSON

1 the record.

2 THE COURT: Yes, ma'am, pull up real close to that
3 microphone and speak loudly, clearly and slowly in order that
4 we can hear everything that you've got -- that you have to say
5 and let's start with your full name, please, ma'am.

6 WITNESS: My name is Ila Simmons.

7 THE COURT: Thank you, Ms. Simmons.

8 ILA SIMMONS, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. OZMENT:

12 Q: How are you today, Ms. Simmons?

13 A: I'm well, thank you.

14 Q: Good. What is it that you do?

15 A: I work at the South Carolina Law Enforcement Division,
16 also known as SLED, in the forensics laboratory's Trace
17 Evidence Department.

18 Q: And being that you work in the Trace Evidence Department,
19 briefly describe what that job entails?

20 A: We analyze gunshot residue, gunpowder residue. We
21 perform comparisons of fibers, paints. We also analyze
22 explosives and arson residue.

23 Q: All right. What qualifies you? Like for instance, what
24 kind of schooling do you have to have this position?

25 A: I have a Bachelor's of Science degree in chemistry.

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 After completing that, I came to SLED and worked with a court
2 qualified, SLED certified trace evidence examiner for three
3 years. During that time, I had to complete practical and
4 written examinations with one hundred percent efficiency.
5 After completing all those examinations, I was certified by
6 SLED to analyze trace evidence.

7 Q: How long have you been doing this?

8 A: Twelve years.

9 Q: Okay. What -- Are there any sort of certifications you
10 have or any, you know, anything with the state?

11 A: I'm certified through SLED to analyze trace evidence.
12 I'm also a member of the American Academy of Forensic Science,
13 the Southern Association of Forensic Science, and I'm also a
14 member of the FBI's Gunshot Residue Symposium where the FBI
15 invites analysts from around the world who analyze gunshot
16 residue to discuss the standards and practices every five
17 years and we set the standards through ASGM of how gunshot
18 residue will be analyzed.

19 Q: All right. How many gunshot residue tests have you
20 performed do you think while you have been at SLED?

21 A: I have probably analyzed over 50,000 gunshot residue
22 samples.

23 Q: All right.

24 MR. OZMENT: Your Honor, at this time, we would move for
25 the witness to be made an expert in trace evidence,

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 specifically gunshot residue tests.

2 THE COURT: Any query with regard to her qualifications?

3 MR. ANDERSON: No, sir.

4 THE COURT: All right. Mr. Foreman, ladies and gentlemen
5 of the jury, I want to talk to you a little bit about what an
6 expert witness is. Normally, a person cannot give opinion
7 testimony. Normally, when a person testifies, they must
8 testify as to what they either saw, heard, or sensed by smell.
9 However, there is an exception when someone is qualified
10 because of education or experience. They are permitted to
11 give their opinion in certain areas if the Court requires them
12 -- or qualifies them that way.

13 This witness will be qualified and I qualify her as an
14 expert in the area of gunshot residue to give opinions in that
15 area. That does not mean that you must accept the opinion,
16 but it is evidence for you to use in any way you see fit. Mr.
17 Ozment?

18 MR. OZMENT: Thank you, Your Honor.

19 Q: Were you -- Did you have an opportunity to get involved
20 in a case with the Florence County Sheriff's Office? I
21 believe your work would have been done January 19th, 2011.

22 A: Yes, sir.

23 Q: On a victim, Michael Ford?

24 A: Yes, sir.

25 Q: Did you perform a gunshot residue test on that?

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 A: Yes, sir, I did.

2 Q: All right. Just before we get into the specifics of that
3 test, can you explain what a gunshot residue test is, what
4 purpose it serves?

5 A: Gunshot residue is a mixture of microscopic chemicals
6 that come out of a gun when it's fired. They come from the
7 components that are placed in the cartridge from the primer
8 and the gunpowder, as well as metal that comes off a
9 projectile. When the gun is discharged, this material comes
10 out in a cone shaped cloud and can get on anything in close
11 proximity, with a handgun, within six feet of the handgun when
12 it's discharged, including someone's hands that are holding
13 the gun when it's discharged.

14 A gunshot residue kit is a standardized kit that is
15 produced by a scientific company. It contains two components.
16 The first component is a double sided sticky tape that has a
17 handle so that the person collecting the kit never touches the
18 area of the tape that we're analyzing. That only touches the
19 hands from whomever the kit is being collected. The second
20 portion is ---

21 Q: Excuse me. Let me just interrupt you real quick and just
22 to clarify when you are describing the kit, you did not
23 collect gunshot residue?

24 A: No, sir, I did not.

25 Q: Okay, continue with how the kit works.

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 A: The second portion is Q-tips that have a small amount of
2 dilute acid placed on them. A sample is collected from the
3 palm of the right hand, a sample is collected from the back of
4 the left hand, a sample from the palm of the -- back of the
5 right hand, palm of the left hand, and back of the left hand.
6 So there are four samples that are collected and these are all
7 packaged each individually, placed in an envelope and
8 submitted to SLED for analysis.

9 The reason we analyze for the gunshot residue is to see
10 if someone was in the vicinity of a gun when it was fired or
11 if they discharged a gun or if perhaps they could have handled
12 a gun and transferred gunshot residue onto themselves from
13 that.

14 Q: If -- And you kind of got into this, but if someone's
15 shot at close range, would they receive gunshot residue from
16 the barrel of the gun? I mean from the -- the -- what's being
17 propelled out of the gun coming towards them?

18 A: Yes, sir. In fact, about 98 percent of the gunshot
19 residue comes out of the muzzle of the gun and someone who is
20 standing in front of a gun when it's discharged in close
21 proximity to it will have -- will most likely have more
22 gunshot residue on them than the person holding the gun or
23 discharging the gun because if I were to hold a gun and shoot
24 it like this, only a small amount is going to come back and
25 wrap around and get on my hand, but a very large amount is

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 going to go out forward.

2 Q: Can you test gunshot residue with a shotgun?

3 A: Yes, sir.

4 Q: All right. Now you said that you're looking for
5 microscopic particles and as simply as you can, I guess what
6 are the -- I mean you said it comes from the -- the various
7 components of whatever is being discharged, but what are these
8 particles? I mean ---

9 A: The three primary elements that we're looking for are
10 lead, barium and antimony. That's what makes up most of the
11 components within the cartridge that's placed into the gun.

12 Q: All right.

13 MR. OZMENT: Your Honor, may I approach the witness?

14 THE COURT: You may.

15 Q: I am handing you a package. Could you look at that and
16 tell me if you recognize it?

17 A: Yes, sir, I do.

18 Q: All right. What is that?

19 A: This is the gunshot residue kit that I analyzed. It is
20 marked with our unique identification number that every case
21 receives when it comes into our laboratory, as well as the
22 item number. Each piece of evidence in every case receives
23 its own item number. It's also marked with my initials and
24 the date that I sealed it after I completed analysis.

25 Q: All right. In looking at that seal, has that seal been

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 tampered with?

2 A: No, sir.

3 Q: So it hasn't been tampered with. Does that mean -- What
4 does that tell us?

5 A: That it has not been opened since I sealed it at the
6 laboratory to return it.

7 Q: All right. Could you open that gunshot residue ---

8 A: Yes, sir.

9 Q: --- the envelope for us?

10 A: Mm-hmm.

11 (Whereupon, the witness opens the package and removes an
12 envelope.)

13 Q: All right. Now I see we've just arrived at a second
14 envelope. What is that envelope?

15 A: This is the envelope that actually contains the gunshot
16 residue. This kit, this is what it would have come to me in
17 when ---

18 Q: All right.

19 A: --- it was submitted by the agency.

20 Q: It looks like it's sealed as well. Did you seal that
21 also?

22 A: Yes, I did.

23 Q: All right. Can you open that envelope?

24 A: Yes, sir.

25 (Whereupon, the witness opens the envelope and looks

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 inside.)

2 Q: Is there another envelope in there or ---

3 A: No, there is a small plastic bag, as well as the double
4 sided sticky tape vials.

5 Q: All right. So this isn't like a Russian doll?

6 A: No, sir.

7 Q: Okay. Could you pull that out for us?

8 A: Yes, sir.

9 (Whereupon, the witness removes the contents of the
10 envelope and places them on the stand in front of her.)

11 A: All right.

12 Q: Would you mind just showing us what -- I guess what makes
13 up the kit? I know you described it, but sometimes it's
14 easier to look at.

15 A: All right. This is what I was referring to when I said
16 the double sided sticky tape with a handle. Basically, what
17 would happen is when the kit was being administered, they
18 would pop this lid off and this is actually the sticky tape
19 here, so that you see my hand is never touching the tape. The
20 only thing that would ever touch the tape would be the
21 person's hands from whom the kit is being collected. Then
22 they would seal it back up this way and that portion of the
23 kit would have been collected.

24 These have already been placed together, but when the kit
25 is first opened by the officer collecting the kit, you would

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 have a small bag of tubes and a small bag of Q-tips and they
2 would put a couple drops of acid on the Q-tip that's also
3 contained within the kit when they get it and then they would
4 rub the Q-tips over the hands of the person and put them in
5 these each individually labeled tubes.

6 Q: All right and you said this, but so they -- When they
7 collect, they test each surface of the hands, the back, palm,
8 back, palm, and that's why there's four of everything in
9 there?

10 A: Yes, sir, and there is also a control swab. The control
11 swab is taken from an area away from where gunshot residue is
12 expected to have gathered, like on the back of the leg or on
13 the back, someplace where clothing would cover it, and that is
14 for us to take into account any environmental conditions. If
15 someone worked in a metal factory or they were a mechanic,
16 they could have more of these metals on their hands and on
17 their body just naturally than other people. So we take that
18 and we subtract that from the quantities of metals that we get
19 just to make sure that we're taking into account all of their
20 environmental factors as well.

21 Q: All right. Now once you receive this kit and you've
22 opened it, explain how you test and what you test?

23 A: Okay. We begin by analyzing the swabs and we analyze
24 them on an instrument that tells us how much of each element
25 is present, how much barium, how much lead, and how much

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 antimony is present. And once we get our results from that,
2 then we would go on and put the double sided sticky tape onto
3 a very powerful microscope. The microscope can see down a
4 hundred thousand times greater than the human eye can see. It
5 can see things that where you could fit a thousand of them on
6 the head of a pin, so -- and it would tell us what elements
7 are present as well.

8 Q: All right and you did that on this case?

9 A: Yes, sir.

10 Q: Did you prepare a report with your results?

11 A: Yes, sir, I did.

12 MR. OZMENT: May I approach the witness, Your Honor?

13 THE COURT: Yes.

14 Q: I've just handed you a stapled two sheets of paper. Can
15 you look at that and can you identify it?

16 A: Yes, sir. This is a copy of the report that I prepared
17 in this case.

18 Q: All right. Let's go through, if you don't mind, the
19 report. First, it says "Item One." What -- What is that?

20 A: One gunshot residue kit from Michael Ford.

21 Q: All right. So is that identifying just what you tested?

22 A: Yes, sir.

23 Q: Okay. Now the next item says "right palm" and that has
24 some results.

25 A: Yes.

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 Q: What -- Explain to me what that is?

2 A: That would be the sample that was collected from the palm
3 of the right hand and the quantities of metals that were found
4 on the palm of the right hand did not indicate the presence of
5 gunshot residue.

6 Q: All right. Now item one point two is the right back.
7 What does it -- What are the results you found there?

8 A: The quantities of metals found may be associated with
9 gunshot residue.

10 Q: All right. Now "may be associated" is what you said.
11 Explain to me what you mean by "may be associated with gunshot
12 residue."

13 A: When we find the elements that we were -- that I was
14 discussing earlier in a certain threshold level with one
15 another, we can make the conclusion that it is -- may be
16 associated with the presence of gunshot residue. In this
17 case, the concentrations of metals that we found -- Generally
18 when someone shoots a gun, we find around two hundred to three
19 hundred counts of lead, maybe eight counts of antimony. In
20 this case, they were -- On the back of the right hand, the
21 count of lead were twenty-three hundred counts and thirteen
22 counts of antimony, which is most consistent with someone
23 having been on the muzzle end of a weapon just because it's
24 such a large amount of gunshot residue that was found.

25 Q: All right and so when you said the muzzle end of a

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 weapon, that would be implying that as to the right back of
2 his hand, it was not firing a weapon, it was on the receiving
3 end?

4 A: I can't say definitively, but it is most consistent with
5 someone having been on the muzzle end of the weapon rather
6 than just being, you know, just discharging a weapon.

7 Q: All right.

8 A: If they had discharged a weapon, they would -- even a
9 shotgun would have had been discharged numerous times.

10 Q: All right. Going on to item one point three, that's the
11 left palm it says. What were your results there?

12 A: The metals found did not indicate the presence of gunshot
13 residue.

14 Q: And the left back, item one point four, what were your
15 results there?

16 A: The same. The quantities of metals did not indicate the
17 presence of gunshot residue.

18 Q: All right and then at the bottom I see a signature.
19 Whose is that?

20 A: That would be my signature.

21 Q: Okay. So just in conclusion on this report, the right
22 back is the only place that gunshot residue was found?

23 A: Yes, where the quantities were high enough for us to say
24 that they could be associated with gunshot residue.

25 Q: All right.

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 MR. OZMENT: Your Honor, at this time, the State would
2 move for Ms. Simmons' report, as long as -- as well as the
3 gunshot residue test, to be moved into evidence.

4 THE COURT: Any objection from defense?

5 MR. ANDERSON: No, sir, Your Honor..

6 THE COURT: All right and that is denominated as State's
7 Exhibit?

8 COURT REPORTER: Thirty.

9 THE COURT: Thirty is into evidence without objection
10 from the defense and if we could have that document, please.

11 (Whereupon, State's Exhibit Number 30, the gunshot
12 residue kit and report, is marked and admitted into
13 evidence.)

14 THE COURT: Thirty is into evidence.

15 Q: Ms. Simmons, I have a couple more questions just in
16 closing.

17 A: Mm-hmm.

18 Q: Do you know anything about the facts of this case?

19 A: No, sir, not specifically I do not.

20 Q: Okay. Do you -- Other than what is contained in your
21 report and the testing that you did, do you have any outside
22 knowledge of this case or anything else?

23 A: No, sir, not other than any documentation that would have
24 been submitted to SLED.

25 Q: All right.

DIRECT EXAMINATION OF ILA SIMMONS BY MR. OZMENT

1 MR. OZMENT: No further questions, Your Honor.

2 THE COURT: Cross examination?

3 CROSS EXAMINATION

4 BY MR. ANDERSON:

5 Q: Ms. Simmons, you indicated that on the right back that
6 the -- I think the lead and the antimony was -- was higher
7 than somebody that would have pulled the trigger on a pistol
8 or on a shotgun?

9 A: Yes, sir.

10 Q: But you didn't see anything on the right front?

11 A: No, sir, I did not.

12 Q: And on the left front and on the left back, nothing that
13 caught your attention?

14 A: No, sir. The thresholds weren't high enough.

15 Q: So just the right back?

16 A: Yes, sir.

17 Q: Now do you know what the time constraints are or when is
18 it I guess the optimum time to try and collect GSR?

19 A: As quickly as possible. Gunshot residue has the
20 consistency of salt, so it begins to be wiped away very
21 quickly on someone who is living. On someone who is deceased,
22 once the body stops sweating and the skin stops absorbing
23 things, it can remain on the hands indefinitely until it's
24 removed by an outside source.

25 Q: What if it was raining?

CROSS EXAMINATION OF ILA SIMMONS BY MR. ANDERSON

1 A: If it were raining, then it could be removed.

2 Q: If the person was living or if the person was deceased
3 and, of course, like you indicated they had stopped sweating,
4 what time frame -- Is there a time frame for when you want it
5 to be collected?

6 A: On a living human being, it's six hours.

7 Q: What about on someone who is deceased?

8 A: It is indefinitely.

9 Q: If it's more than six hours, do they consider that a
10 valid test on someone that's living?

11 A: No, sir.

12 Q: And like you indicated, on a -- on someone who is
13 deceased, it can be indefinite?

14 A: Yes, sir.

15 Q: You indicated that based on the high amount of
16 concentration of lead and of antimony that it was a result --
17 most likely the result of a -- the receiving end?

18 A: Yes, sir, it's most consistent with that.

19 Q: If -- Would that indicate to you that the hand was down
20 on something and that's why it didn't get on the palm? I mean
21 why mainly on the back and not on the front?

22 A: It -- The hand had to have been bladed in a way so that
23 the gunshot residue didn't get on the palm. Yes, that is a
24 possibility someone had their hand down on something. It
25 couldn't have gotten on the palm and would have just gotten on

CROSS EXAMINATION OF ILA SIMMONS BY MR. ANDERSON

1 the back of the hand.

2 Q: If they had hit a muzzle or hit a gun with the back of
3 their hand, could that have resulted in the -- and that gun
4 has recently been fired, could that result in the high
5 amounts?

6 A: I wouldn't expect that high of an amount. Generally with
7 such high levels, it's during the discharge of the weapon or a
8 multiple discharge of a weapon because when someone handles a
9 gun, it's not going to be a one to one transfer of gunshot
10 residue. If there were ten gunshot residue particles on a gun
11 and I would handle it, I would probably only get one or two
12 particles. I wouldn't get all of the gunshot residue on to my
13 hands.

14 Q: If the gun had discharged and at the same time someone
15 was trying to slap it away, could that result in the high
16 amount of GSR on the back of the right hand?

17 A: Yes, sir.

18 MR. ANDERSON: Judge, that's all the questions I have.

19 THE COURT: Any redirect, Mr. Ozment?

20 MR. OZMENT: Nothing further for this witness, Your
21 Honor.

22 THE COURT: You may step down. Any objection to this
23 witness being excused?

24 MR. ANDERSON: No, sir, Your Honor.

25 THE COURT: You're free to leave. Thank you, ma'am.

CROSS EXAMINATION OF ILA SIMMONS BY MR. ANDERSON

1 (Whereupon, the witness leaves the stand at 10:06 a.m.)

2 THE COURT: Mr. Ozment, you may call your next witness.

3 MR. OZMENT: I beg the Court's indulgence one minute,

4 Your Honor.

5 (Whereupon, there is a brief pause in the proceedings.)

6 MR. OZMENT: Your Honor, may we approach the bench for
7 just a minute?

8 THE COURT: Yes.

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

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury, the next witness is a pathologist and I understand from
14 the State that she is in the parking lot now parking, but as
15 y'all know, that can take a little while for her to get up
16 here. So we're probably talking about five -- five minutes or
17 so, so I'm going to ask that you retire to the jury room. Mr.
18 Foreman, do not allow any discussion with regard to this case
19 and we'll be with you momentarily. Everyone remain seated as
20 the jury exits the courtroom.

21 (Whereupon, the jury exits the courtroom at 10:08 a.m.)

22 THE COURT: All right, we'll stand at ease for five
23 minutes.

24 MR. OZMENT: Thank you, Your Honor.

25 (Whereupon, there is a break in the proceedings from

1 10:08 a.m. until 10:26 a.m.)

2 THE COURT: We're ready for the jury.

3 BAILIFF: Yes, sir.

4 (Whereupon, the jury enters the courtroom at 10:26 a.m.)

5 THE COURT: Mr. Ozment, you're recognized. You may call
6 your next witness.

7 MR. OZMENT: Your Honor, the State calls Dr. Erin
8 Presnell to the stand.

9 THE COURT: Dr. Presnell, if you could, please come
10 forward and you can put your bag down and place your left hand
11 on the Bible and raise your right hand as the clerk
12 administers the oath.

13 THE CLERK: Do you swear the testimony you give in this
14 case to be the truth, the whole truth and nothing but the
15 truth, so help you God?

16 WITNESS: Yes, ma'am.

17 THE CLERK: Please be seated and state your full name for
18 the record.

19 THE COURT: Watch your step. There you go, all right.
20 Pull up real close to that microphone and speak loudly,
21 clearly and slowly ---

22 WITNESS: All right.

23 THE COURT: --- in order that we can hear everything that
24 you've got to say.

25 WITNESS: All right.

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 THE COURT: And let's start with your full name, Dr.
2 Presnell.

3 WITNESS: My name is Susan Erin Presnell, P-R-E-S-N-E-L-
4 L.

5 THE COURT: Mr. Ozment?

6 DR. ERIN PRESNELL, being first
7 duly sworn, testifies as follows:

8 DIRECT EXAMINATION

9 BY MR. OZMENT:

10 Q: How are you today, Dr. Presnell?

11 A: Good, thanks.

12 Q: Good. What do you do for a living?

13 A: I'm a forensic pathologist. I work at MUSC down in
14 Charleston.

15 Q: All right. Now as a forensic pathologist, are you an
16 M.D., like a medical doctor?

17 A: Yes, yes.

18 Q: What sort of schooling did you go through to become a
19 forensic pathologist?

20 A: Well, like the solicitor referred to, a pathologist is an
21 M.D., so I finished high school, I went to college. I went to
22 Clemson and graduated with a microbiology major. Then I went
23 to medical school, which is four years. After medical school,
24 you pick your specialty, pediatrics, surgery, family medicine.
25 I chose pathology, which at the time was a five year training

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 program and that's for general pathology. And then after
2 that, I did the one year specialty training in forensic
3 pathology, which is a sub-specialty of the broad field of
4 pathology.

5 So after that or during that process, of course, I took
6 the national boards for general pathology, as well as forensic
7 pathology. So I'm board certified in those areas.

8 Q: Generally, what does a pathologist do as opposed to a
9 forensic pathologist?

10 A: Well, pathology is -- It basically means the study of
11 disease and so pathologists functions -- function as the
12 diagnoser of diseases. So that if you go to your doctor and
13 like say they do a skin biopsy or a breast biopsy or you get
14 surgery and something is taken out like a gall bladder, that
15 tissue will go to the pathologist and the pathologist looks at
16 it, dissects it, looks under the microscope, and comes up with
17 a diagnosis, like it's cancer or it's not cancer or it's an
18 infection or not an infection. That's kind of general
19 pathology.

20 And then forensic pathology is, like I said before, is a
21 sub-specialty of that where we're not just looking at a single
22 piece of tissue or a single organ, we're looking at the entire
23 individual who has passed and the process is called an
24 autopsy. We are looking for diseases, but also we're
25 evaluating things like trauma and ultimately to put all that

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 information together to come up with the cause and manner of
2 death.

3 Q: So it is exactly like CSI on TV basically?

4 A: No, it's not exactly like CSI.

5 Q: All right. Now do you have any board certifications and
6 licenses to let you do what you do?

7 A: Yes. So I'm licensed to practice medicine in South
8 Carolina and then I'm board certified in what they call
9 anatomic and clinical pathology, which is the general
10 pathology, and also forensic pathology.

11 Q: All right and you said you're at MUSC. So what positions
12 have you held at MUSC?

13 A: Well, I became faculty there in 1999 after all my
14 training and I've been doing forensic pathology ever since.
15 I'm also involved in the medical school curriculum. So that's
16 my role.

17 Q: So you -- Are you kind of like a professor as well as a
18 doctor?

19 A: Right. Well, right, I'm a professor of medicine.

20 Q: All right. What -- What are your day to day duties in
21 your job at MUSC?

22 A: Well, there currently -- There used to only be two, but
23 currently there's six of us, six forensic pathologists, so we
24 all take turns taking the cases for the day. So it really
25 depends on the week. Like I said, I'm also involved in the

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 curriculum. So if I'm on autopsy service, then I'm doing
2 autopsies throughout the day. When I'm off autopsy service,
3 there's a lot of ancillary studies that go along with autopsy,
4 like toxicology and looking at the slides under the microscope
5 that comes back later. So I'll do that during the following
6 weeks and again, working on other activities like the
7 curriculum.

8 Q: How many autopsies have you performed in your career?

9 A: I don't -- We just have to estimate. Around two
10 thousand.

11 MR. OZMENT: Your Honor, at this time, the State would
12 move for Dr. Presnell to be an expert in forensic pathology
13 and autopsies.

14 THE COURT: Any query with regard to her qualifications?

15 MR. ANDERSON: Your Honor, since she went to Clemson
16 undergrad, no questions.

17 THE COURT: Very good. All right, once again, she is
18 qualified as an expert in the area of forensic pathology. She
19 will be allowed to render opinions in that area and you can
20 give that opinion the weight you think it deserves. At the
21 conclusion of the trial, I'll once again explain in great
22 detail how to evaluate expert witnesses and their testimony.
23 Mr. Ozment?

24 MR. OZMENT: Thank you, Your Honor.

25 Q: Dr. Presnell, did you become involved in a case with the

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 Florence County Sheriff's Office on a deceased individual
2 named Michael Ford?

3 A: Yes. We performed an autopsy on December 10th, 2010. I'm
4 sorry, December 19th, 2010.

5 Q: All right and what was the process? I guess why did you
6 perform that autopsy as opposed to someone else in your
7 office? What's kind of the intake procedure when a body comes
8 in?

9 A: Well, South Carolina is a coroner county, so each county
10 has a coroner that's elected and they'll respond to death
11 scenes and evaluate what's going on and decide who gets an
12 autopsy and in this case, Mr. Bubba Matthews and Mr. Don
13 Reynolds elected to send the -- this case, Mr. Ford, to us. I
14 was on service that week, so once we received the call and
15 took the information, we made arrangement to do the autopsy,
16 which again we did on the 19th.

17 Q: All right. Could you briefly go through, when you first
18 receive a body, what is kind of your process with, you know,
19 your examination of the body and just kind of briefly take me
20 through what you do and then we'll deal with the specifics of
21 this case?

22 A: Okay. Well, it -- We tailor our examination based on
23 what type of case it is, but I mean there are certain standard
24 things that we do on all cases. So when someone arrives,
25 they're entered into the computer so they have a case number.

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 We take overall photographs of how he's received -- he or she
2 is received. We will undress them, photograph again, clean
3 them up, and photograph injuries or any like -- like again
4 disease processes. Anything of particular interest, we'll
5 photograph that, document it with diagrams, and then -- then
6 we'll do the internal exam.

7 So we'll do the Y incision and -- and look at all the
8 internal organs. Those come out, they're examined, dissected,
9 samples are taken, just depending on -- Well, depending on
10 what type of case, what is actually sampled for the
11 microscopic examination. We'll get body fluids for
12 toxicology. That process also includes examination of the
13 brain. Again, once -- Then that's basically the complete
14 autopsy. Then those studies, like I said, with the
15 microscopic slides and the toxicology come back later.

16 There are other things that we do, like in cases of
17 gunshots or shotguns, we'll do x-rays to see the location of
18 the projectiles. In a potential homicide type case, we'll do
19 fingernail clippings and all just for potential trace evidence
20 collection.

21 Q: All right and so on a case such as this one where it
22 appears it's a gunshot wound, you still do an autopsy on the
23 whole body? You don't just focus on what appears to be the
24 injury, correct?

25 A: Right. Our autopsies are complete autopsies.

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT.

1 Q: All right. Now you mentioned you had -- you took
2 pictures. Did you take pictures in this case?

3 A: Yes, we did.

4 MR. OZMENT: Your Honor, may I approach ---

5 THE COURT: You may.

6 MR. OZMENT: --- the witness?

7 Q: Dr. Presnell, I'm handing you State's Exhibits 18 through
8 25. Can you look over those photographs and could you
9 identify them?

10 A: Yes. These are duplications of the pictures we took at
11 autopsy.

12 Q: And from your examination of those photographs, do they
13 appear to be accurate representations of the autopsy as you
14 remember it?

15 A: Yes, they are.

16 MR. OZMENT: Your Honor, at this time, we would move for
17 State's Exhibits 18 through 25 to be made evidence.

18 THE COURT: Any objection from defense?

19 MR. ANDERSON: Your Honor, just there's one that I would
20 like to -- Your Honor, the only objection I have is to Number
21 21 and I'll be -- If you want to let the jury retire just for
22 a minute, I'll put my basis for that objection on the record.

23 THE COURT: All right, Mr. Foreman, ladies and gentlemen
24 of the jury, I'm going to ask that you retire to the jury
25 room, but do not discuss the case.

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1 (Whereupon, the jury exits the courtroom at 10:38 a.m.)

2 THE COURT: Mr. Anderson, you're recognized.

3 MR. ANDERSON: Yes, sir, Your Honor. Judge, may it
4 please the Court. Specifically, I'm referring to photograph
5 21, Your Honor, and, Your Honor, I have seen this prior to
6 today. I was given a disk by the Solicitor's Office. I took
7 the disk and had pictures printed off.

8 Your Honor, I understand that Dr. Presnell is an expert.
9 Judge, in her autopsy report, she does indicate in there the
10 injuries. She indicates how many pellets she received or took
11 out of the -- I guess the victim's head. She indicates the
12 plastic wadding, the shotgun wadding that she also took.

13 But, Your Honor, I just think that picture will unfairly
14 and unduly prejudice the jury against my client. Your Honor,
15 I think that under 403 and 404, I think that it is more
16 prejudicial than probative. Your Honor, I think that, of
17 course, the doctor can testify as to what she saw and what she
18 observed. Your Honor, there's some other photographs that do
19 not have the head shaved. There's some other photographs that
20 certainly show the -- I guess the entry wound and the -- the
21 -- I guess for the lack of a better word, Your Honor, the
22 trauma that was received to the head, but, Your Honor, I would
23 object to that picture. I do think that it's more prejudicial
24 than probative.

25 THE COURT: Mr. Ozment, what do you have to say about

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1 that? And, of course, there's been a case and I can't recall
2 the name of the case, that dealt with this very issue about
3 how unnecessary it is to introduce autopsy photographs into
4 evidence and the Chief Justice in that particular case because
5 of the nature of the case did not reverse it, but admonished
6 the State to refrain from trying to introduce these type
7 photographs when it can upset an otherwise pristine
8 prosecution. Why would you want to do that?

9 MR. OZMENT: Your Honor, there's probative value that can
10 be gained from this photograph and the reason is Dr. Presnell
11 I anticipate will testify that on a -- when you are looking at
12 an entry wound of a firearm, such as this case, scalloped
13 edges can tell you certain things about the distance that the
14 shot was taken from, what sort of weapon was used,
15 specifically a shotgun. Also on this one, with the head being
16 shaved, you can see where other pellets entered.

17 So as for our theory of the case that this was a close
18 range shotgun that was used, this photograph is the only way
19 you can show the scalloped edges of that wound ---

20 THE COURT: Well, I think ---

21 MR. OZMENT: --- for her to apply her science to the
22 facts.

23 THE COURT: Well, I think that she can testify to that
24 like Mr. Anderson said and I think he's in a position to
25 stipulate to those. Is that correct?

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1 MR. ANDERSON: That's correct, Your Honor, and also, Your
2 Honor, one of the photos they do want to introduce that I do
3 not object to certainly it's a -- more or less an x-ray of the
4 skull and, Your Honor ---

5 MR. OZMENT: It's not in those actually.

6 MR. ANDERSON: Oh, well, it would -- it would show the,
7 you know, the different shot and where they were located on
8 the ---

9 THE COURT: But you would -- you're offering this to show
10 that it was a close range shot and that there were scalloped
11 edges to say the -- talk about the distance?

12 MR. OZMENT: Right, Your Honor, and I think to have Dr.
13 Presnell just testify that there were scalloped edges, well,
14 that is putting the evidence all on her and her making the
15 fact finding for the jury. I think it's up to the jury to
16 look at the injury, compare it to her scientific testimony,
17 and to leave the jury as the finder of fact.

18 THE COURT: Well, there is no finding of fact with regard
19 to that when he's in a position to stipulate to it. Would you
20 agree with me on that?

21 MR. OZMENT: I would, Your Honor, but I don't think that
22 his agreement to stipulate to something doesn't relieve us of
23 our burden of proving our case and being allowed to present it
24 ---

25 THE COURT: Well, it does because if the issue that

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1 you're trying to prove is close range, scalloped edges and the
2 number of pellets that entered, if he stipulates to that, it
3 does take it off of the State because they agree to it.
4 Wouldn't you agree?

5 MR. OZMENT: I would agree, Your Honor, but I think a
6 stipulation is a two way street and I'm not agreeing to
7 stipulate. I'm saying that I think that photo will better
8 prove what I'm trying to say than a mere stipulation that the
9 jury may hear and, you know, kind of go through one ear and
10 right out of the other.

11 THE COURT: Okay, all right. Well, have you read the
12 opinion that the Supreme Court issued last year, I think it
13 was within the year, that talked about this very issue? How
14 do you justify your position with that opinion?

15 MR. OZMENT: Your Honor, in reading that case and I read
16 it along with the recent Court of Appeals case from Dillon
17 that involved the dogs eating the child and that's the last
18 time I looked at that Supreme Court case. As I remember, the
19 Supreme Court doesn't tell the State not to enter autopsy
20 photos, but the Supreme Court basically says there needs to be
21 a good probative reason to do it and not just to flash in
22 front of the jury for an impact and all that. That's not what
23 this ---

24 THE COURT: I think that -- I think that's what you said,
25 you would rather show them this because it would be more of an

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1 impact, but he's stipulating to the very contested issues that
2 you're trying to prove.

3 MR. OZMENT: I see what you're saying, Your Honor, but I
4 still think it leaves it up to the jury to apply her testimony
5 to the facts of this and in contrasting ---

6 THE COURT: No, it's not, because he agrees to it and a
7 stipulation is an agreement.

8 MR. OZMENT: Yes, Your Honor. I follow that a
9 stipulation is an agreement. However, I still would argue
10 that the photo is more probative than mere stipulation in that
11 regard.

12 THE COURT: Okay, all right. Well, I'm going to allow
13 this photograph being marked as an exhibit for whatever
14 reason, but I'm not going to allow it in. But before I make
15 this final ruling, what is it that you're in agreement to
16 stipulate to?

17 MR. ANDERSON: Your Honor, I will stipulate obviously
18 that I think, Your Honor, according to the autopsy report
19 there is a two point one by one point eight inch entrance
20 wound with scalloped edges ---

21 THE COURT: Say that again now?

22 MR. ANDERSON: There's a two point one by one point eight
23 inch entrance wound with scalloped edges.

24 THE COURT: A one point eight -- Hang on. Entrance
25 wound. Okay, scalloped?

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 MR. ANDERSON: With scalloped edges, Your Honor, and
2 that's -- I'm reading off of the autopsy report.

3 THE COURT: Okay, all right. Very good and that is what
4 you intend -- That's the reason that you're offering this is
5 to show ---

6 MR. ANDERSON: And, Your Honor, if it please the Court, I
7 ---

8 THE COURT: --- an entrance wound and the scalloped
9 edges?

10 MR. OZMENT: Specifically, the scalloped edges, Your
11 Honor. Also, the pellets around it and the scallop, I'd like
12 a stipulation that there are injuries on the scalp that are
13 consistent with pellets entering the scalp because that's also
14 in that photograph.

15 THE COURT: Okay.

16 MR. ANDERSON: I'll stipulate to that, Judge. I mean
17 I'll stipulate that it was a close ---

18 THE COURT: Numerous pellet entry wounds? Is that what
19 ---

20 MR. OZMENT: That would be fine.

21 MR. ANDERSON: Yes, sir.

22 THE COURT: Numerous pellet entry wounds.

23 MR. ANDERSON: Your Honor, I mean I think she'll testify
24 that she got approximately forty pellets out of his head. So
25 I mean obviously there were numerous pellets.

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1 THE COURT: All right, very good. All right. Well, once
2 again, her testimony is one thing, but this is a stipulation
3 of ---

4 MR. ANDERSON: Yes, sir.

5 THE COURT: --- fact for the jury to take as a settled
6 issue and is there any other thing that you want this
7 photograph in for, one of which is it's a two point one by one
8 point eight entry wound? Is that -- What are the
9 denominations? Is that centimeters?

10 WITNESS: Inch.

11 MR. ANDERSON: Inches, Your Honor.

12 THE COURT: Inches, inches. Now that's an odd thing that
13 usually anything having to do with the medical field or legal
14 field, they assume that we are some communist country and on
15 the metric system. There's very few -- But you go with
16 inches, aye?

17 WITNESS: For external examination, yes, because ---

18 THE COURT: Very good. I wonder why they do that?

19 WITNESS: The layperson understanding.

20 THE COURT: Okay.

21 WITNESS: And also with gunshot wounds, you know, the
22 calibers are an inch system.

23 THE COURT: Oh, okay, very good. Well, I like the inches
24 better, but at any rate, two point one inch by one point eight
25 inch entry wound with scalloped edges and numerous pellet

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1 entry wounds. Okay? And I'm going to allow this Exhibit 21
2 to be marked as a Court's exhibit. It will not go into
3 evidence. We specifically need to make sure that does not go
4 into evidence.

5 (Whereupon, State's Exhibit Number 21, a color
6 photograph, is re-marked as Court's Exhibit Number 1.)

7 MR. OZMENT: Your Honor, while we have the jury out, I
8 think Mr. Anderson thought I was already introducing and he
9 didn't object, but as far as the x-ray, we want to ---

10 (Whereupon, counsel briefly discuss the photograph with
11 each other.)

12 THE COURT: All right, what is the position with regard
13 to the x-ray?

14 MR. OZMENT: Your Honor, there's -- We intend to
15 introduce testimony as to the direction of travel of the -- of
16 the shotgun blast, also to talk about how far, you know, into
17 the skull it went. The autopsy report is in scientific, you
18 know, anatomical terms that I can read, but I don't really
19 understand. I doubt Mr. Anderson can tell me exactly what all
20 that means. I think that picture illustrates far better what
21 we're talking about when we say that it went through this lobe
22 and that lobe and that node ---

23 THE COURT: All right.

24 MR. OZMENT: --- than we possibly could through language.

25 THE COURT: I thought Mr. Anderson agreed.

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1 MR. OZMENT: Well, I didn't move that into evidence
2 earlier. He thought I did, but I didn't. I had just done the
3 photographs. I had not done the x-ray.

4 THE COURT: Okay. Do you object to the x-ray?

5 MR. ANDERSON: No, sir, Your Honor.

6 THE COURT: Very good. Well, she's still on the stand
7 and she can -- you can ---

8 MR. OZMENT: Right.

9 THE COURT: --- offer that and he -- I understand that
10 that's into evidence by agreement, State's Exhibit 17. Is
11 that correct?

12 MR. ANDERSON: That's correct.

13 THE COURT: All right. Well, that's into evidence and
14 we'll allow you to put it in.

15 MR. OZMENT: Thank you, Your Honor.

16 (Whereupon, State's Exhibit Number 17, a black and white
17 photograph of an x-ray, is admitted into evidence.)

18 THE COURT: All right and I want everybody to pay close
19 attention. This is -- It's Court Exhibit -- Is it 15?

20 COURT REPORTER: One.

21 THE COURT: One? Oh, oh, okay. All right, Court's
22 Exhibit 1 and I'm going to -- At the end of the trial, we're
23 going to go through the exhibits. It's going to be incumbent
24 upon both of y'all to ensure that this doesn't get into the
25 evidence and I'm going to question each one of you to go over

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1 that, but we don't want that to happen. Make sure that does
2 not go into evidence.

3 All right and how do y'all want to handle the
4 stipulation? I -- I would suggest that when we call the jury
5 out that the parties have agreed and stipulated to the
6 following facts: that the entry -- that there was a wound on
7 the deceased two point one inches by one point eight inches at
8 the entry site with scalloped edges and there were numerous --
9 and it's also stipulated that there were numerous pellet entry
10 wounds.

11 MR. OZMENT: I would just add that that was on the head
12 or the, you know, just something to indicate ---

13 THE COURT: Yeah.

14 MR. OZMENT: --- where on the body that was.

15 MR. ANDERSON: Your Honor, I think in the report and
16 certainly the doctor I anticipate will testify that it is at
17 the left temple. I mean that's in her report and I anticipate
18 that Matt will ---

19 THE COURT: You will stipulate to that?

20 MR. ANDERSON: Yes, sir.

21 THE COURT: That the deceased had a head injury to the
22 left temple and that the -- that there was a two point one
23 inch by one point eight inch entry wound with scalloped edges
24 and there -- and there also is a stipulation there are
25 numerous pellet entry wounds.

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1 MR. ANDERSON: Yes, sir.

2 THE COURT: Very good. Any -- Any objection to the form
3 of the stipulation, Mr. Ozment?

4 MR. OZMENT: None, Your Honor.

5 THE COURT: Very good. We're ready for the jury.

6 BAILIFF: Yes, sir.

7 (Whereupon, the jury enters the courtroom at 10:52 a.m.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, the parties have agreed and stipulated to the following
10 facts: That the deceased had a head injury. That the head
11 injury was to the left temple. The dimensions of the injury
12 was two point one inches by one point eight inches at the
13 entry wound with scalloped edges. The parties also agree that
14 there are numerous pellet entry wounds. Mr. Ozment, you're
15 recognized.

16 MR. OZMENT: Thank you, Your Honor.

17 CONTINUED DIRECT EXAMINATION

18 BY MR. OZMENT:

19 Q: Dr. Presnell, I believe ---

20 MR. OZMENT: Your Honor, the State's exhibits are now
21 moved into evidence. Am I correct?

22 THE COURT: All right and I'm going to ask if you can
23 take these pictures and give it to the defendant and let him
24 look at them and we'll set forth the denominations.

25 (Whereupon, counsel complies.)

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 MR. ANDERSON: Without objection, Your Honor.

2 THE COURT: All right and let's set forth for the record
3 the denominations of each exhibit.

4 MR. OZMENT: Your Honor, that would be State's Exhibit
5 17, 18, 19, 20, 22, 23, 24 and 25.

6 THE COURT: These items are in evidence.

7 MR. OZMENT: Thank you, Your Honor.

8 (Whereupon, State's Exhibits 17, 18, 19, 20, 22, 23, 24,
9 and 25, all color photographs, are admitted into
10 evidence.)

11 THE COURT: You may proceed.

12 Q: Dr. Presnell, I believe I just asked you about that you
13 had taken photographs of the body and you said those were the
14 photographs. What -- What did you do after taking the --
15 after the photographs were taken? Kind of what was your next
16 thing to do with the body?

17 A: Well, I guess we diagram, we measure, document the
18 injuries and other external findings and then we would do the
19 internal exam, which usually is the torso first, which would
20 happen in this case, and then -- and then the head.

21 Q: All right. Did you find anything of note with the torso
22 that would have any implications on this -- in this case?

23 A: No.

24 Q: Okay. So moving to the head, can you kind of explain the
25 process of your examination of the head?

DIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 A: Well, how about I'll describe our process and I -- but as
2 I go, I'll describe what we find?

3 Q: All right.

4 A: All right. Well, so we're examining the head visually.
5 There's -- Because it's an injury associated with blood, we
6 clean it up and also because this injury is in the temple
7 area, the left temple area, we shave the head so that -- in
8 that area so we can actually visualize what injuries are
9 actually -- are there.

10 As far as his injuries, less significant are -- is this
11 diffuse abrasion, which is kind of like an abrasion or scratch
12 where the skin is scratched on the left side of the face, so
13 he just has this diffuse scratching across there with a
14 laceration, which is where the skin is split usually from a
15 blunt trauma.

16 Q: Excuse me, Dr. Presnell. On that abrasion you're
17 referring to, can you tell when that happened? Is it, you
18 know, before the death, at the time of death, after the death?
19 Is there any way to tell?

20 A: Well, it's a recent injury. It could have happened soon
21 before death or what we call in the perimortem period, which
22 is right after death. One of the ways that we try to
23 differentiate something that -- an injury that happened before
24 death versus something that happened after death, like say the
25 autopsy because, you know, we make incisions so we make

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1 injuries, is that before death the heart is beating, so the
2 injury is going to bleed. So if we see an injury that is
3 bleeding, then we know that that was before death. When he
4 comes to autopsy and we make the incision, those incisions
5 don't actually bleed because the heart is not pumping the
6 blood around. So that would be a definite injury after death.

7 However, that perimortem period, right before and right
8 after, you still can get some bleeding. So you can't
9 necessarily say whether the scratching is before he died or
10 soon after he died, but sometime around that period.

11 Q: All right, thank you. So moving on from the scratching,
12 what else did you notice?

13 A: So and his most significant finding and his cause of
14 death was a shotgun wound to the left temple. The appearance
15 of the shotgun wound I can come back to because it has
16 significance in the range of fire, meaning how -- how far away
17 the -- the shooter was, but the shotgun pellets, which were
18 bird pellets, entered the head, went through the -- basically
19 the base of the brain on the left and across the brain. It
20 went through the brain stem, which is the part that connects
21 your brain to your spinal cord. Across the brain stem and
22 into the right portions of the brain as well. Associated with
23 this are a lot of skull fractures, bleeding around the scalp
24 and over the brain as well.

25 Q: Excuse me, Doctor.

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1 MR. OZMENT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q: Dr. Presnell, you also took an x-ray, correct, you stated
4 earlier?

5 A: Yes.

6 Q: Looking at State's Exhibit 17, what do we see in this
7 picture? Or this x-ray, excuse me?

8 A: The x-ray is demonstrating the numerous birdshot pellets
9 that entered into his head.

10 Q: And looking at the x-ray, did any of the pellets go all
11 the way through the head, as in come out the other side?

12 A: No. We have no exit wound in this case. The -- If you
13 -- Just to get oriented, this is like you're looking at him,
14 so this is his left side over there. There's where the eyes
15 would be and the jaw right here. So all the white dots there
16 are the birdshot pellets.

17 Q: All right. You mentioned some skull fractures. Can you
18 see any of that on this x-ray or not?

19 A: Yes. You can make out some skull fractures. It's the
20 dark lines right along here.

21 Q: And from your examination, could you determine were the
22 skull fractures from the time of death?

23 A: Well, they're the result of the shotgun wound.

24 Q: All right.

25 MR. OZMENT: Your Honor, permission to publish State's

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1 Exhibit 17 to the jury?

2 THE COURT: You may.

3 (Whereupon, State's Exhibit Number 17, the photograph of
4 the head x-ray, is published to the jury.)

5 Q: We had talked about the appearance of the actual entry
6 wound. We'll come back to that, but let's just finish
7 covering that part of the head. What other -- You said there
8 were some other wounds, the abrasion, the actual hole. What
9 else was in that area?

10 A: Well, it's part of the -- And this is what I was thinking
11 as part of the appearance of the shotgun wound, but his
12 shotgun wound is actually composed of several injuries, I
13 guess you could say, the one main entrance area, one main hole
14 in the left side of the temple, and a bunch of smaller pellet
15 entrance wounds around that main hole.

16 Q: What do -- What did they look like? The smaller pellet
17 entrance wounds?

18 A: They looked like little punctures.

19 Q: All right. All right. Now going back, you had discussed
20 the -- the main injury, the hole if you will. You were saying
21 that there's significance to the appearance of the hole. I
22 guess first kind of describe what it looks like, if you could,
23 and then we'll go from there and discuss what the significance
24 is.

25 A: All right. Well, the appearance of this -- And I

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1 apologize in advance if I like oversimplify my presentation of
2 shotguns and birdshot pellets and buckshot pellets, although I
3 won't mention buckshot pellets because this case was with
4 birdshot pellets.

5 But back to his injury, his injury again was the one main
6 hole about two inches. That hole had scalloped edges, meaning
7 it looked -- It had scalloping around the edges and then
8 again, we had a bunch of individual pellet entrances around
9 that one main hole and then -- So to try to think how does a
10 shotgun injury cause that type of appearance, you have to
11 appreciate that shotgun ammunition and in this case birdshot
12 ammunition is actually a casing with a bunch of small kind of
13 -- I guess you could think of them as beads, little metal
14 beads, and you see those beads on the -- on the x-ray, so you
15 can appreciate how many there are.

16 When the shotgun is fired, all those beads come out
17 together. If the shotgun is close enough to a target, then
18 all those pellets enter together and they create one hole.

19 All right? As the shot ---

20 Q: Excuse me and so just to clarify, you're essentially
21 saying it was close enough it didn't have time to spread out.
22 Is that what you're saying?

23 A: Not in this case.

24 Q: Okay.

25 A: So, but just to -- What we're going to do is go through

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1 the progression of what an entrance wound would look like as
2 the gun is pulled further away and we'll describe where that
3 was in relation to this case. So at contact or usually
4 anywhere within two feet, it's close enough where all those
5 pellets are still together and they'll entrance making a --
6 they'll enter making a single hole. All right?

7 Now as the -- the gun is pulled further away, then the
8 pellets have time to start to spread out and as they spread
9 out, say it's another couple feet away, you still get a bulk
10 of them entering together, but you start -- since they're
11 starting to spread out, you get those scalloped edges and you
12 start to get what we call satellite entrance wounds, which are
13 those individual punctures.

14 This is signifying to us a close range. So it's not a
15 contact, it's far enough away where the pellets have actually
16 had time to spread out and even though they're still entering
17 as a big bulk, there's still a lot around the entrance wounds
18 that have come away from that main mass that are entering
19 separately. Now -- And that's this case.

20 Now if you got even further away, then all those pellets
21 would spread out and you would get individual entrance wounds
22 without any main hole. So in this case, it was the main hole
23 with a bunch of satellite entrance wounds around it, which to
24 us in the medical examiner or the forensic pathology field is
25 a close range gunshot wound. With that and a standard

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1 shotgun, that would be around the, you know, the five to seven
2 foot-ish range.

3 Now to really narrow it down though, you'd have to test
4 fire that weapon and say if that weapon's been altered, like
5 say it's a sawed-off shotgun, that appearance is going to
6 happen a lot quicker because you don't have that long choke
7 keeping the birdshot together. So it all depends really on
8 the particular gun and that ammunition how exactly far it was
9 back, but again for us in general terms, it's considered a
10 close range shotgun wound.

11 Q: You said that the standard shotgun would be five to seven
12 feet, but then you clarified -- Well, not clarified, but then
13 you modified for a sawed-off shotgun. So if this was done
14 with a sawed-off shotgun, would you think it would be less
15 than the five to seven feet or farther away from the five to
16 seven feet?

17 A: It would be closer.

18 Q: Okay. What sort of effects on the wound would a sawed-
19 off shotgun have otherwise? I mean is there anything we can
20 tell from looking at it that a sawed-off -- if the shotgun was
21 sawed-off it would affect?

22 A: No, I can't tell by looking at the wound what kind of --
23 if the shotgun was manipulated or sawed off.

24 Q: All right. From your examination of the body, how many
25 shots were taken in this case?

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1 A: How many times was he shot?

2 Q: Correct.

3 A: Once.

4 Q: All right. From examining -- From your examination of
5 Mr. Ford's head, could you tell the trajectory of the shot?

6 In other words, you know, what direction it came from and what
7 direction the shot was given?

8 A: Well, we can tell you the direction through his body. I
9 can't tell you exactly position he was in at the time of the
10 incident and as you can tell from the x-ray, it's kind of a
11 generalization because the pellets spread out over a pretty
12 broad range. But obviously, it's going into the left side of
13 his head, so it's traveling to the right and we can also tell
14 the bulk is going a little bit forward on his body, so to the
15 left and a little bit forward.

16 Q: All right. Were you able to remove any of the shotgun
17 pellets?

18 A: Yes. We -- It -- And as you saw from the number of
19 pellets, in this type of case we'll remove representative
20 pellets and so I got around forty-five pellets out as
21 representative pellets.

22 Q: Did you remove anything else from the inside of his head?

23 A: Yes. We also removed the wadding and the wadding is part
24 of that contraption that holds the pellets all together in the
25 shotgun and that comes out when the -- When the shotgun is

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1 fired, that comes out with the pellets as well. Again, it's
2 the -- The fact that the wadding is in the wound supports that
3 it's a close range gunshot or close range shotgun wound.
4 That's because the wadding is -- In this case, it's plastic,
5 and that will tend to fall away a lot -- Like it won't travel
6 as far as the pellets, the metal pellets, but again, because
7 it was close enough, it actually went into the -- the brain as
8 well.

9 Q: Doctor ---

10 MR. OZMENT: May I approach, Your Honor?

11 THE COURT: You may.

12 Q: Dr. Presnell, looking at these photographs that we've
13 entered, first looking at State's Exhibit 22, what does that
14 photograph show?

15 A: Those are the pellets that we recovered.

16 Q: And then looking at State's Exhibits 23 and 24, what do
17 those two photographs show?

18 A: Those are two different angles of the wadding, the
19 plastic wadding that we recovered from the injury.

20 Q: And all of this was taken out of his head. Is that
21 correct?

22 A: Yes.

23 Q: All right and you did -- I think you said that you took a
24 representative sample, but you didn't remove every pellet ---

25 A: No.

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1 Q: --- that we see in the x-ray for instance?

2 A: No, we did not.

3 Q: All right. Dr. Presnell, I'm handing you a sealed
4 envelope. Would you mind opening that for us?

5 (Whereupon, the witness complies.)

6 Q: Dr. Presnell, what did you find in that envelope?

7 A: Two boxes that are labeled. One is labeled "lead round"
8 and the other is labeled "plastic shot wadding."

9 Q: Would you like to open those boxes?

10 (Whereupon, the witness complies.)

11 A: Okay, they are opened and they contain what looks to be
12 the plastic wadding that we -- you saw the photograph of and
13 then the lead pellets or the birdshot pellets recovered at
14 autopsy.

15 Q: And those -- and that's the wadding and the pellets that
16 you took out of Mr. Ford's head?

17 A: It appears to be. It's been relabeled obviously by SLED
18 or some other law enforcement agency.

19 Q: All right.

20 MR. OZMENT: Your Honor, at this time, we would -- The
21 State would move for those pellets as well as the wadding to
22 be made evidence in this case.

23 THE COURT: Have you had an opportunity to see those, Mr.
24 Anderson?

25 MR. ANDERSON: Your Honor, I haven't, but I don't

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1 anticipate any objection.

2 (Whereupon, counsel for the defendant inspects the
3 proposed exhibits.)

4 MR. ANDERSON: No objection, Your Honor.

5 THE COURT: Then those are State's Exhibit?

6 COURT REPORTER: Thirty ---

7 MR. OZMENT: Thirty ---

8 COURT REPORTER: --- one.

9 THE COURT: Thirty and 31?

10 COURT REPORTER: Thirty-one.

11 THE COURT: Thirty-one together?

12 COURT REPORTER: No, 31 and 32.

13 THE COURT: Okay, 31 and 32. All right, 31 and 32 are
14 into evidence without objection from the defense.

15 (Whereupon, State's Exhibit Number 31, the pellets, and
16 State's Exhibit Number 32, the plastic wadding, are
17 admitted into evidence.)

18 MR. OZMENT: Thank you, Your Honor.

19 Q: Dr. Presnell, did you have -- When you were examining the
20 head, did you recover anything else from the head?

21 A: Well, there's little smaller pieces of plastic that were
22 the wad -- no, that was wadding and then some glass cubes.

23 Q: Are those representative in that picture I think you just
24 ---

25 MR. OZMENT: May I approach the witness, Your Honor?

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1 THE COURT: You may.

2 Q: In State's Exhibit 25, which is already in evidence, is
3 that the glass you're referring to?

4 A: Right, the little small tempered glass cubes.

5 Q: Dr. Presnell, I'm handing you a tiny little envelope. Do
6 you mind opening that envelope?

7 (Whereupon, the witness complies.)

8 A: These appear to be some of the little glass cubes
9 recovered at autopsy.

10 MR. OZMENT: Your Honor, at this time, the State would
11 move the little pieces of glass into evidence as what would be
12 I guess State's Exhibit 32.

13 COURT REPORTER: Thirty-three.

14 THE COURT: Thirty-three.

15 MR. OZMENT: Thirty-three.

16 THE COURT: All right. Any objection from defense?

17 MR. ANDERSON: No, sir.

18 THE COURT: State's Exhibit 33 is into evidence without
19 objection from defense.

20 (Whereupon, State's Exhibit Number 33, an envelope
21 containing pieces of glass, is admitted into evidence.)

22 Q: Dr. Presnell, where would -- That glass that just came
23 into evidence, where on the head was that located? Was it
24 inside the wound? Was it ---

25 A: No, it's on the scalp area.

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1 Q: All right. Is there any way you can tell where that
2 glass came from or anything like that?

3 A: No, I don't know where it came from.

4 Q: Which side of the scalp was it found on?

5 A: I don't think that we specified.

6 Q: All right. Do you recall?

7 A: No. Let me -- Let me just check.

8 Q: All right.

9 A: We didn't specify where particularly they were found.

10 Q: All right. I'm going to ask you just a couple more
11 questions and finish up with the head injury. We talked about
12 the entrance wound and its scalloped edges and we said that it
13 was two point one by one point eight inches, you know, the
14 hole. My question is if I'm looking at that, what would --
15 and you said the scalloped edges. Is it -- I mean is it a
16 neat circle with scalloped edges? Is it more just kind of a
17 not really a shape at all, kind of -- What -- What would I be
18 looking at if I was looking at it?

19 A: Well, I mean when you put it back together, because
20 there's a lot of energy and force associated with a shotgun
21 blast, so we kind of have an oval shaped entrance once we put
22 it back together. It has a couple skin splits associated with
23 it, but once again it's all back together, it kind of appears
24 to be an oval, but again, with pretty broad scalloped edges.

25 Q: And I would say it's a pretty large hole. What about the

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1 depth of it? I mean is it -- Do you see what I'm saying? Is
2 it just like the skin is away and a little bit of scalp is
3 broken or I mean, you know, could I stick my fingers in it if
4 I wanted to?

5 A: It's a hole. There's no -- There's no scalp in that two
6 by one point eight inch area.

7 Q: All right. Now you stated that you examined the rest of
8 the body as well?

9 A: Yes.

10 Q: Did you find any injuries on the right arm of Mr. Ford
11 when you examined him?

12 A: Yes. We found an abrasion, so again another scratch, on
13 the back of his right hand, but on his arm we found these two
14 abraded areas and they were associated with what would best be
15 described as like punctate abrasions. So not punctures, like
16 individual pellets going into the head, but little punctate
17 scratches on the -- on the right forearm.

18 Q: Did those break the skin or were they more, you know, on
19 the outside?

20 A: It's superficial. It's scratch -- It's little scratches.

21 Q: All right.

22 MR. OZMENT: May I approach the witness, Your Honor?

23 THE COURT: You may.

24 Q: We're looking at State's Exhibits 18, 19 and 20. Would
25 those be what we were just referring to?

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1 A: Right. The middle photograph, the 19, kind of gives you
2 orientation of where the injuries were, kind of on the thumb
3 side of the fore -- of the forearm and then looking a little
4 bit closer, here's the two abraded areas and then you can
5 appreciate those little punctate red dots. Those are the
6 little punctate abrasions and the last one is just real, real
7 up close one showing those punctate lesions.

8 Q: When you're talking about those lesions, you're talking
9 about these little red dots that we see, correct?

10 A: Correct, these little red dots.

11 Q: Now in your training and experience as a forensic
12 pathologist, what do those red dots indicate to you?

13 A: Well, there's possibilities and it goes back to a range
14 of fire, as well as something that we didn't talk about yet --
15 we didn't talk about with the shotgun to the -- the shotgun
16 injury to the head, but something else that comes out the end
17 of the barrel when a firearm is fired is not only the
18 ammunition, the pellets, not only the wadding, but you can
19 have little gunpowder particles come out and the gunpowder is
20 what is -- is fired in the weapon to cause the -- to ignite
21 and cause and actually propel the ammunition down the barrel.

22 So those little gunpowder particles can actually exit the
23 end of the barrel, too, and if the -- if the muzzle of the gun
24 is close enough to an object or to skin, those little
25 gunpowder particles can scratch the skin and cause something

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1 that looks like that. We call that stippling and again, to us
2 it would indicate that the weapon is close to this particular
3 target.

4 So it raises a possibility that this injury on his arm
5 was somewhere in the vicinity of the shotgun blast. I cannot
6 say for sure a hundred percent that that is stippling injury
7 and that it's caused by the gunpowder particles from -- from
8 the shotgun, but it is a possibility.

9 Q: All right and this is the right arm that we're looking
10 at?

11 A: Correct.

12 Q: All right.

13 MR. OZMENT: Your Honor, permission to publish State's
14 18, 19 and 20 to the jury?

15 THE COURT: You may.

16 (Whereupon, the referenced exhibits are published to the
17 jury.)

18 Q: Was stippling found anywhere else -- Well, was what could
19 possibly be stippling found anywhere else on Mr. Ford's body?

20 A: No.

21 Q: When you perform an autopsy, do you make any conclusions
22 or diagnosis after you've finished the autopsy?

23 A: Yes.

24 Q: All right. What did you find the cause of death to be in
25 this case?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: It was the single penetrating, meaning that it went into
2 the head and didn't exit, close range shotgun wound to the
3 head.

4 Q: All right and did you make a ruling on the manner of
5 death?

6 A: The manner of death is homicide.

7 Q: Do you recall during the autopsy if a gunshot residue
8 test was collected while you were there?

9 A: Yes. The -- They -- The law enforcement attended the
10 autopsy and they performed that prior to our examination.

11 Q: All right.

12 MR. OZMENT: Your Honor, I have no further questions for
13 Dr. Presnell.

14 THE COURT: Cross examination, Mr. Anderson?

15 MR. ANDERSON: Yes, sir, Your Honor. Your Honor, if it
16 please the Court, I'll wait until the jury finishes looking at
17 those photos.

18 THE COURT: Very good.

19 (Whereupon, there is a brief pause in the proceedings
20 until the photographs are returned to the court reporter.)

21 CROSS EXAMINATION

22 BY MR. ANDERSON:

23 Q: Dr. Presnell, do you have a copy of the forensic autopsy
24 final report with you?

25 A: Yes, I do.

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 Q: And if I have the same one that you have, how many pages
2 do you have?

3 A: Eight.

4 Q: Okay. At the very top of it, autopsy information, date
5 of death 12-17/18. You don't know when the time of death was,
6 do you?

7 A: No, I don't.

8 Q: Right out beside that you've got time unknown as far as
9 time of death?

10 A: Correct.

11 Q: Over on page two where you've got the gross description
12 and that's just -- Is that like a physical description when
13 you say gross description?

14 A: Right. That means not microscopic, not under the
15 microscope, but what you see with your eyes.

16 Q: Okay. It indicates that he is seventy-one inches in
17 length?

18 A: Correct.

19 Q: Five eleven? Is that right?

20 A: Yes.

21 Q: Okay and 266 pounds. Is that right?

22 A: Yes.

23 Q: So y'all actually measure him and also actually weigh him
24 on some scales?

25 A: Uh-huh. There is a large scale that the gurney is rolled

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 onto that we weigh the bodies.

2 Q: Now one thing that you indicate that you found was two
3 pennies and a pack of Dragonfly rolling papers are in the
4 pants pocket. Do you know whether that was front pants
5 pocket, back pocket? Do you know where that was found?

6 A: Let me see. No, I didn't specify which -- which pocket
7 of the pants that we recovered that from.

8 Q: So that could have been front or back pocket. Is that
9 right?

10 A: Uh-huh, yes.

11 Q: Okay. Now rolling papers, are you familiar with rolling
12 papers?

13 A: I'm ---

14 Q: I'm not suggesting that you smoke or use rolling papers.
15 I'm just asking if you're familiar with them.

16 A: Yes.

17 Q: What do people typically use those for?

18 A: Tobacco type products.

19 Q: Are they used for marijuana?

20 A: Yes, yes, indeed.

21 Q: Okay and if you wanted to buy cigarettes, you could
22 certainly buy those already rolled, can't you?

23 A: You could do that, yes.

24 Q: Okay. You indicated earlier when you were testifying
25 that -- and I want to say it was State's 33, I believe.

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 THE COURT: The last one was 33 I think.

2 Q: You found some glass fragments from the scalp, but you
3 don't recall whether or not that was the -- I guess left side,
4 right side? You don't recall where those glass fragments were
5 found, do you?

6 A: No. I mean they're tiny, tiny, tiny. I mean that
7 photograph that was the State's exhibit is pretty magnified
8 and this is what -- you know, he's wet, he's also got dirt,
9 dirty sandiness adherent to large parts of his body and those
10 were areas of specifically glass. What we're doing -- What
11 we're trying to recover are the pellets and then you feel
12 these little hard items and it turns out to be glass instead
13 of the pellets around the scalp area. But I don't -- I mean
14 it could have been on either side really.

15 Q: And you said it was just found like in the hair?

16 A: Right, correct.

17 Q: Okay. Now on page three of your autopsy report, I guess
18 the first full paragraph about the fourth line down, you
19 indicate soot is not grossly identified. Now earlier you were
20 talk -- Is that right?

21 A: Yes, yes, that is correct.

22 Q: Now earlier you were talking about powder burns and you
23 mentioned stippling and soot can also be associated with
24 gunshot wounds, can't it?

25 A: Yes. Another thing that can come out the end of the

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 barrel besides the ammunition, the wadding, the gunpowder
2 particles, soot, sootiness from the -- the ignition can come
3 out the end of the barrel.

4 Q: And you indicate that soot was not readily identifiable
5 by the wound to the left side of the head. Is that right?

6 A: Right. I couldn't see it.

7 Q: And you also indicate that stippling was not seen around
8 that wound. Is that right?

9 A: Correct.

10 Q: Now with a gunshot wound and with you being an expert,
11 you've seen soot and stippling before, haven't you?

12 A: Yes, I have.

13 Q: And those are typical with close gunshots?

14 A: Yes, but soot is something that we typically see with
15 contacts. We would not see stippling with contact because --
16 We're kind of crossing over between handguns and shotguns,
17 too, but remember the contact that I was describing? With the
18 shotguns, all the pellets enter together.

19 Well, another component is you can also have soot that's
20 going to -- that may or may not be around the edges of a wound
21 if it's a contact. When you pull it away, if it's close
22 enough, you may still get some soot making it to the skin. As
23 you pull it away further, the soot may not make it, but the
24 gunpowder particles may still make it. As you pull it away
25 further, the soot is not making it, the gunpowder particles

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1 may not make it to the skin, and just the pellets make it to
2 the skin.

3 In that case, this is what we're seeing. We're only
4 seeing the pellets making it to the skin, not the -- which
5 also you're going to recall is somewhat protected by the hair
6 in this area. But those -- We don't see any soot or gunpowder
7 particle marks on the left side of the head.

8 Q: How far is the typical range for stippling to be present?

9 A: It depends on the type of gun. You know, with -- You
10 know, it's pretty -- It's pretty well -- well defined. I'm a
11 lot more knowledgeable with the handguns. When you start
12 going into rifles and the long barreled weapons, a lot of that
13 -- a lot of -- You have distance there, so even though you
14 have contact against -- or close -- Like say the end of the
15 barrel and here's the skin, you still have a certain amount of
16 distance from where the actual ignition occurred.

17 So you have a different type of range. I believe in
18 general that most of the -- with most guns, by the time you
19 get to thirty-six to forty-two inches. So a yard, a yard and
20 six inches, once you get that far away, you're not going to
21 expect to see any stippling marks and not soot as well.

22 Q: What about with a -- And you said there is a difference
23 between pistols versus say a shotgun or a rifle?

24 A: Right.

25 Q: What about if a sawed-off shotgun was used?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: Well, that just makes it even more complicated and again,
2 I referred to this before. To really narrow it down, you
3 would have to test fire that particular weapon with the same
4 type of ammunition and, of course, with its individual
5 manipulation, whatever was done to the -- to the gun.

6 Q: With a sawed-off shotgun though, earlier you mentioned
7 that with the stippling and the soot and the gunpowder going
8 through the length of the barrel, sometimes, you know, you
9 would not see it, but with a sawed-off shotgun, it's not going
10 that far down the barrel, is it?

11 A: Right. There's not as much barrel on a sawed-off
12 shotgun.

13 Q: So more soot, more stippling would come out?

14 A: Well, it would be -- It just -- Again, it goes back to
15 range, how close is it. You can get a sawed-off shotgun a lot
16 closer. Not a lot, you can get it closer to the individual
17 than you can -- That doesn't make sense, does it? Like if
18 you're standing in a -- in a certain position -- No, that --

19 A sawed-off shotgun, yes, you can -- you would still have
20 the same materials coming out, the soot, the stippling, the
21 ammunition, and the wadding. What we referred to before, the
22 sawed off part of it affects the appearance of the wound by
23 not holding those pellets together as tightly and so that
24 they'll start to spread sooner and so that's why I was saying
25 that with the appearance of his wound, a sawed-off shotgun

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 might be closer.

2 Again, going back to soot and stippling, closer and when
3 we were talking about the five to seven foot range, it's still
4 a lot further than the -- the, you know, the three foot range
5 of thirty-six inches to forty-two inches of soot and stippling
6 being present. So again, even if you can be closer, you still
7 may not expect to see it in that -- in those dimensions.

8 Q: A sawed-off shotgun though would be more likely than not
9 that the closer someone was, there may be, more likely than
10 not, more stippling, more soot?

11 A: I really can't answer that. Again, it depends on the
12 particular weapon, the type of ammunition, how much soot it
13 makes, and, you know, it's just all general estimates.

14 Q: On that same page at the bottom, you've got lower
15 extremities?

16 A: Yes.

17 Q: You've got a point seven five, so a three quarter inch
18 abrasion is on the -- and I'm not sure. I'm going to say
19 anterior medial right knee?

20 A: Yes. That's -- Anterior is front and medial is towards
21 the middle. So on the front inside right knee, there's
22 another scratch.

23 Q: And then you've got a one point five inch by point four
24 inch rectangular shaped abrasion on the lateral left lower
25 leg?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: Yes. We have another rectangular shaped scratch or
2 abrasion on the left lower leg that is lateral and lateral is
3 on the outside. It's on the outside of the left lower leg.

4 Q: On the fourth page top there, you indicate the clothing.
5 The very first thing you say is the clothing is wet. Is that
6 right?

7 A: Yes.

8 Q: And I think you basically said something about this
9 earlier. You said there was also blood and gritty dirt over
10 the t-shirt and gritty dirt is adherent to the jeans. Is that
11 right?

12 A: Yes, sir.

13 Q: At some point in time, the day before, the night before
14 this incident happened, he was in the rain or in the mud or
15 something? I mean that's what you can gather from that?

16 A: Yes. Well, I know he was found in a ditch area and the
17 report was that it had been raining.

18 Q: Did you review the toxicology report?

19 A: I did.

20 Q: And I believe that was negative for common drugs?

21 A: Right, negative for common drugs of abuse and alcohol.

22 Q: And you are a doctor, we talked about that earlier.
23 You've got your medical degree?

24 A: Yes, sir.

25 Q: And then you've also got your sub-specialties?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: Yes.

2 Q: If -- Now cocaine, marijuana, depressants, stimulants, do
3 they typically stay longer in the bloodstream than they do in
4 urine?

5 A: I'll defer that to the toxicologist. Again, it depends
6 on a number of different factors and the metabolism and how
7 big of the dose and -- and when is the last time they
8 urinated. So I'll have to defer.

9 Q: Okay. What about if someone smoked today? Would you
10 expect to find -- If someone smoked marijuana today, would you
11 expect to find marijuana in their blood tomorrow?

12 A: No, not on a typical dosage. I wouldn't expect it to be
13 there twenty-four hours later in the blood and that -- and
14 we're test -- At autopsy, we're testing the blood to see
15 what's present, what the person is under the influence at the
16 time of his death.

17 Q: So let me ask you another question that's unrelated to
18 this case. When probation says marijuana can show up for
19 three to four weeks, is that an accurate statement?

20 A: Three to four weeks where?

21 Q: In their urine.

22 A: It possibly is. I -- I don't know. I haven't researched
23 that recently.

24 Q: What if someone is a chronic user of marijuana?

25 A: Chronic use of marijuana you may get deposits in other

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 parts of your body and tissues. Again, this is not something
2 that I've read up on recently and again, in this particular
3 test, it was just blood that was tested.

4 Q: When you look for drug abuse, you look for cocaine,
5 marijuana, stimulants, depressants, I mean it's a full tox
6 screen?

7 A: It depends which laboratory you send your toxicology
8 specimens to. In this case, the coroner elected to send it to
9 SLED, which appears in their report that was issued to us that
10 what they screened for were common drugs of abuse and the
11 alcohols, the common drugs of abuse being amphetamines,
12 benzodiazepines, that's like Valium, methamphetamines,
13 oxycodone and cannabinoids and that's where the marijuana
14 would fall under. Again, I would have to -- As far as more
15 specific details of the analysis and the extent of the
16 testing, I would defer that to the toxicologist.

17 Q: They were all negative though. Is that right?

18 A: Yes, sir.

19 Q: Okay, all the drugs you just listed were all negative?

20 A: Yes.

21 Q: In State's Number 19, has his arm been cleaned?

22 A: His arm has been partially cleaned. His hand appears to
23 have some residue on it, some bloody residue.

24 Q: You said there was two abrasions to the right I guess
25 forearm area or wrist area?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: Yes.

2 Q: In State's 20, it looks like that is just a closer
3 picture of the two wounds to the right list that we -- right
4 wrist that we see in State's 19?

5 A: It is a closer up injury. You can see one full abrasion
6 in the close up picture and then part of the other abrasion.

7 Q: So yes?

8 A: Yes, it is a close up of one and a half of the wounds.

9 Q: Okay. What about State's 18?

10 A: That's the medium sized picture. Yes, it's closer of
11 both of the injuries.

12 Q: Earlier, you stated that the red dots had several
13 possibilities and that's referring to the -- I guess the red
14 dots are evident in several of these pictures, but more
15 evident in State's 20. Is that right?

16 A: Yes.

17 Q: And you said that had several possibilities, one of the
18 possibilities may be that it could be from stippling. Is that
19 right?

20 A: Correct, it may. It -- What I -- What these injuries are
21 are little punctate abrasions. They could be from gunpowder
22 particles. They could be from other -- some other type of --
23 of scratching.

24 Q: Could it be from -- I'm just going to make -- sandpaper
25 or something like that where it rubs on there?

CROSS EXAMINATION OF DR. ERIN PRESNELL BY MR. ANDERSON

1 A: That -- I mean anything that's going to create little
2 punctate abrasions. So a gravelly type instance.

3 Q: Being on the ground?

4 A: Perhaps being on the ground. I haven't seen a sandpaper
5 injury, but I imagine that would probably be more of a linear
6 scratches.

7 Q: How about like a rug burn or a carpet burn?

8 A: You know, you think of those as more of a rubbing and not
9 necessarily individual punctate scratches, but, you know,
10 again, it's the -- Because it's not associated with a specific
11 gunshot, you know, I can't say for sure what -- what caused
12 it. Something caused little punctate abrasions.

13 Q: And one of the things you said it could be, one of the
14 possibilities is that it could be stippling which would
15 indicate close to a weapon being discharged?

16 A: Correct.

17 Q: And that's on the right wrist?

18 A: Correct, on the right forearm close to the wrist on this
19 side by the thumb side.

20 Q: Doctor, back now just for a minute, when we were talking
21 about the wound to the left temple, you said a standard
22 shotgun you would expect that to be about five to seven feet
23 away, with a sawed-off shotgun, a lot quicker because it would
24 be closer, but you can't tell definitively without the weapon?

25 A: Correct.

REDIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 Q: I think you also indicated that you cannot tell whether
2 it was a regular shotgun, a sawed-off shotgun, just judging by
3 the wound?

4 A: Right. They would have the same appearance at autopsy.

5 MR. ANDERSON: Your Honor, could I have the Court's
6 indulgence just for a moment?

7 THE COURT: Certainly.

8 MR. ANDERSON: Your Honor, that's all the questions I
9 have at this time.

10 THE COURT: Any redirect?

11 MR. OZMENT: Briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MR. OZMENT:

14 Q: Dr. Presnell ---

15 MR. OZMENT: May I approach the witness, Your Honor?

16 THE COURT: You certainly may.

17 Q: You commented that on the head around the injury you
18 didn't see any stippling like we see in the three photographs
19 of the arm/wrist area, correct?

20 A: Correct.

21 Q: You also stated that that area might be protected by
22 hair, correct?

23 A: Correct.

24 MR. ANDERSON: Your Honor, I'm going to object to leading
25 at this time.

REDIRECT EXAMINATION OF DR. ERIN PRESNELL BY MR. OZMENT

1 THE COURT: All right, that's sustained. This is
2 redirect. You need to ask a direct question.

3 MR. OZMENT: Yes, sir, Your Honor.

4 Q: Explain for me when you say these small punctate wounds
5 what -- what does that mean exactly?

6 MR. ANDERSON: Your Honor, I'm going to object at this
7 time. I think that was covered or should have been covered in
8 direct. I don't think this is a new matter that I brought up
9 on my cross.

10 THE COURT: I'll sustain the objection in that regard.

11 MR. OZMENT: Your Honor, Mr. Anderson talked about the
12 difference between a scratch as opposed to what this is and
13 that's what I was trying to correct.

14 THE COURT: I'll sustain the objection. Move on.

15 MR. OZMENT: No further questions, Your Honor.

16 THE COURT: Very good. All right, any objection to this
17 witness being excused?

18 MR. ANDERSON: No, sir, Your Honor.

19 THE COURT: All right, you may -- you're free to leave,
20 but you're welcome to stay if you would like.

21 WITNESS: Thank you.

22 (Whereupon, the witness leaves the stand at 11:40 a.m.)

23 THE COURT: All right. Mr. Ozment, you may call your
24 next witness.

25 MR. OZMENT: Your Honor, the State calls Mr. Elijah

DIRECT EXAMINATION OF ELIJAH SHERMAN BY MR. OZMENT

1 Sherman to the stand.

2 THE COURT: Very good.

3 (Whereupon, there is a pause in the proceedings until the
4 witness enters the courtroom.)

5 THE COURT: Mr. Sherman, I'm going to ask if you'd come
6 forward and place your left hand on the Bible and raise your
7 right hand as the clerk administers the oath. Watch your step
8 there as well. Very good.

9 THE CLERK: Place your left hand on the Bible and raise
10 your right hand.

11 WITNESS: All right.

12 THE CLERK: Do you swear the testimony you give in this
13 case will be the truth, the whole truth and nothing but the
14 truth, so help you God?

15 WITNESS: So help me God.

16 THE CLERK: Please take a seat and state your full name
17 for the record.

18 THE COURT: I'm going to ask you to pull up real close to
19 that microphone and speak loudly, clearly and slowly in order
20 that we can hear everything that you've got to say.

21 WITNESS: Okay.

22 THE COURT: Let's start with your full name.

23 WITNESS: All right. My name is Elijah Lee Sherman.

24 THE COURT: Very good.

25 ELIJAH SHERMAN, being first duly

DIRECT EXAMINATION OF ELIJAH SHERMAN BY MR. OZMENT

1 sworn, testifies as follows:

2 DIRECT EXAMINATION

3 BY MR. OZMENT:

4 Q: How are you today, Mr. Sherman?

5 A: I'm doing pretty good.

6 Q: Good. Did you know Michael Ford, the victim in this
7 case?

8 A: Yes, I did.

9 Q: How did you know Mikey?

10 A: We had lived together for a little while, maybe two
11 years, and I had known him about five years total.

12 Q: All right. Were you living with him when this incident
13 happened?

14 A: No, sir, I was not.

15 Q: All right. How long between the time that this incident
16 happened and when you were living with him?

17 A: Maybe three or four months, something like that.

18 Q: All right. Do you know Scott Lee?

19 A: I sure do.

20 Q: How do you know Mr. Lee?

21 A: I grew up on the same side of town as he did when I was
22 younger.

23 Q: How long have you known him?

24 A: Maybe since I was fifteen maybe.

25 Q: All right. On the night of December 17th, 2010, did you

DIRECT EXAMINATION OF ELIJAH SHERMAN BY MR. OZMENT

- 1 speak with Michael Ford on the phone at all?
- 2 A: Yes.
- 3 Q: Afternoon and night?
- 4 A: Yes, sir, I sure did.
- 5 Q: Do you remember how many times?
- 6 A: I can't recall how many times I talked to him.
- 7 Q: All right. Did you see Michael Ford that evening/night?
- 8 A: Yes, sir, I did.
- 9 Q: Was that before or after you talked to him on the phone?
- 10 A: Probably after I talked to him on the phone.
- 11 Q: All right. When did you see Mikey that day?
- 12 A: It was early evening time, maybe six, seven, eight
- 13 o'clock, somewhere around that time.
- 14 Q: All right. Was it dark?
- 15 A: It wasn't quite dark yet, but it was starting to get
- 16 dark.
- 17 Q: All right. Where was Mikey when you saw him?
- 18 A: He come at my house for a little while.
- 19 Q: All right. Do you remember how long he was there?
- 20 A: I'd say about thirty minutes to an hour at the most.
- 21 Q: What did y'all do while he was there?
- 22 A: Just talked a little bit and see how he's been doing
- 23 because he hasn't lived out there where I was living for a
- 24 while, so he just come out there to stop by and see me.
- 25 Q: Was anybody with him when he was out there that evening?

DIRECT EXAMINATION OF ELIJAH SHERMAN BY MR. OZMENT

- 1 A: No, sir, there wasn't.
- 2 Q: All right. When Michael was getting ready to go, did you
3 see him get in his car?
- 4 A: Yes, sir, I did.
- 5 Q: All right. What color and make do you recall was that
6 vehicle?
- 7 A: It was a blue Impala.
- 8 Q: Is that a Chevrolet?
- 9 A: Yes, sir, it is.
- 10 Q: Do you know where Michael was going when he left your
11 house?
- 12 A: He told me that he had to run a couple errands and that
13 he definitely was going by Scott's house later..
- 14 Q: Scott's house being?
- 15 A: Scott Lee.
- 16 Q: All right. At any point, did anybody from the sheriff's
17 office come and talk to you about this case?
- 18 A: I spoke to Collins, Chad Collins, about it, I talked to
19 McFadden a couple times on the phone, and I believe that's it.
- 20 Q: Do you recall how long it was between that evening when
21 you last saw Michael and you spoke to someone at the sheriff's
22 department?
- 23 A: Oh, yeah, that reminds me. That night about one or two
24 in the morning, a sheriff did come by there looking for
25 Michael Ford.

DIRECT EXAMINATION OF ELIJAH SHERMAN BY MR. OZMENT

1 Q: Okay. After you spoke to the sheriff's department about
2 this case ---

3 A: Mm-hmm.

4 Q: --- did you ever speak to Scott Lee about this case?

5 A: He had come by my house unannounced after all this and he
6 was putting on a big guilt trip, you know, saying he was going
7 to find out who did this and did that and, you know, I just
8 told him he needed to leave.

9 Q: All right. When he came by unannounced, describe kind of
10 his behavior and kind of how he was acting?

11 A: Real antsy, just real nervous, just he was a mess.

12 Q: Was he being loud?

13 A: I can't really remember if he was being loud or not.

14 Q: All right. What was he -- What was he talking about with
15 you and what was he saying?

16 A: He was trying to point the finger towards two other guys
17 and that's about all I remember.

18 Q: Do you remember who the two guys were?

19 A: A guy named Keith and some other guy.

20 Q: All right.

21 A: That's all I remember.

22 Q: But at the time, do you recall did he actually say names
23 as to who he thought did it?

24 A: Yeah, he said he thought that Keith and that other guy
25 did it.

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

1 Q: All right. Did he ask you about what you had told the
2 sheriff's department?

3 A: I can't remember if he asked me that or not ---

4 Q: All right.

5 A: --- to tell you the truth.

6 Q: How long was he at your house?

7 A: Not long at all.

8 Q: All right. Did you ask him to leave?

9 A: Yes, sir, I did.

10 Q: Did he leave when you asked him to?

11 A: Yes, sir, he did.

12 Q: Since that time, have you talked to him or had any
13 contact with him?

14 A: Not that I know of.

15 Q: All right.

16 MR. OZMENT: No further questions, Your Honor.

17 THE COURT: Cross examination, Mr. Anderson?

18 MR. ANDERSON: Thank you.

19 CROSS EXAMINATION

20 BY MR. ANDERSON:

21 Q: Do you go by Eli or do you go by Elijah?

22 A: People call me both.

23 Q: I'll call you Mr. Sherman, how about that?

24 A: All right, that's fine.

25 Q: Mr. Sherman, do you recall going down to the Florence

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

1 County Sheriff's Office on February the 2nd, 2011?

2 A: Yes, sir, I do.

3 Q: They took a taped ---

4 A: Yes, sir.

5 Q: --- statement from you, I guess a videotaped and
6 audiotaped statement?

7 A: Yes, sir, I do.

8 Q: Do you recall a lady, a dark haired lady, Kathleen
9 Streett, being in there?

10 A: Yes, sir, I do.

11 Q: All right. Chad Collins and Kathleen did the interview
12 with you?

13 A: Yes, sir.

14 Q: Do you remember at that time I think they asked you if
15 you were working and you told them, no, you couldn't find work
16 at that point in time?

17 A: Yes, sir, I -- I think so.

18 Q: Are you working right now?

19 A: Yes, sir, I am.

20 Q: Where you work at?

21 A: Rivers Electric.

22 Q: Are you a certified electrician or ---

23 A: I'm just a top helper.

24 Q: You probably can do everything they do, you're just not
25 board certified?

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

- 1 A: Just not certified, yes, sir.
- 2 Q: All right. You indicated to them that night that you
- 3 thought Mikey was going over to a lady's house to deliver
- 4 something. Do you recall that?
- 5 A: I do not recall that.
- 6 Q: And that her boyfriend was a guy named Frog?
- 7 A: Yeah, I know who Frog is, but I don't remember.
- 8 Q: What's Frog's real name? Albert Bird?
- 9 A: Yes, sir.
- 10 Q: Okay. Do you recall what Mikey specifically told you
- 11 that night while he was at your house?
- 12 A: Only that he said he had to run a couple errands and that
- 13 he was going to Scott's house or going to pick Scott up.
- 14 Q: I think you indicated earlier that you were pretty good
- 15 friends with -- with Mikey?
- 16 A: Yes, sir, I was.
- 17 Q: Now was Scott also good friends with Mikey?
- 18 A: Yes, sir, he was.
- 19 Q: If you had to say Scott had a best friend, would that
- 20 have been Mikey?
- 21 MR. OZMENT: Your Honor, this calls for speculation.
- 22 THE COURT: If he knows, I'll allow him to -- to answer.
- 23 A: Could you repeat the question?
- 24 Q: Do you know if Scott and Mikey were best friends?
- 25 A: They were pretty good friends.

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

1 Q: Did you know whether or not Mikey was buying and selling
2 marijuana?

3 A: I've -- I heard about it, yes, sir.

4 Q: I think when you were talking with Chad and Kathleen, you
5 indicated that you know he went two places?

6 A: Mm-hmm.

7 Q: One place that you weren't sure about and then he was
8 definitely going over to Scott's?

9 A: Yes, sir.

10 Q: I think Kathleen and Chad also asked you in that
11 interview if -- if you knew whether or not Mikey was having
12 any problems with anybody and you indicated that he and
13 Jonathan had had some problems in the past?

14 A: Yes, sir.

15 Q: Do you recall what that was over?

16 A: I think it had something to do with the rental agreements
17 towards each other, you know, maybe one -- I don't think
18 Jonathan was paying his bills and Mikey just wanted him to
19 either move out or pay the bills.

20 Q: So Jonathan moved out?

21 A: Yes, sir.

22 Q: I think you talked about Scott Lee coming by your house
23 later on after -- after obviously Mikey was killed?

24 A: Mm-hmm.

25 Q: And in the interview, you said that he was drunk. Do you

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

- 1 recall that?
- 2 A: He was on something. I don't know what it was, but he
- 3 might have been on something.
- 4 Q: He was high from either ---
- 5 A: Something.
- 6 Q: --- some substance or alcohol?
- 7 A: Yes, sir.
- 8 Q: And he was also kind of angry, wasn't he?
- 9 A: Angry, anxious. It was all of -- all of that.
- 10 Q: He said he was going out to Pygatt Road to find out who
- 11 did this?
- 12 A: Yes, sir.
- 13 Q: He told you that he was pretty sure it was Donnie Gaskins
- 14 and Keith Odom?
- 15 A: Yes, sir.
- 16 Q: Now did -- Do you know Michael Budd?
- 17 A: Yes, sir. He used to live out there where I live now.
- 18 Q: Were Mikey -- Michael Ford, I shouldn't say Mikey when
- 19 I'm talking about Michael Budd.
- 20 A: Mm-hmm.
- 21 Q: Were Michael Ford and Michael Budd friends?
- 22 A: Yes, sir, they were.
- 23 Q: Did they associate with each other?
- 24 A: Yes, sir, they did.
- 25 Q: Did they talk on a regular basis?

CROSS EXAMINATION OF ELIJAH SHERMAN BY MR. ANDERSON

1 A: As far as I know, they used to, you know. When he moved
2 out from out there where I stay, you know, I don't know how
3 much they talked to each other then.

4 Q: Earlier, I asked you about a Cynthia Welch. Do you know
5 who that is?

6 A: No, sir, I don't.

7 Q: That was Frog's girlfriend. You know Frog, but you don't
8 know who his girlfriend is?

9 A: I don't know Cynthia Welch.

10 Q: Had you ever seen Scott Lee get violent towards Mikey?

11 A: Not that I can remember.

12 Q: You said you've known Scott about fifteen years?

13 A: Known of him, yes, sir.

14 Q: And you actually lived with Mikey?

15 A: Yes, sir.

16 Q: Okay.

17 MR. ANDERSON: Judge, that's all the questions I have.

18 THE COURT: Any redirect?

19 MR. OZMENT: No redirect, Your Honor.

20 THE COURT: All right, you may step down.

21 (Whereupon, the witness leaves the stand at 11:53 a.m.)

22 MR. OZMENT: Your Honor, may Mr. Sherman be released from
23 his subpoena to go back to work?

24 THE COURT: Any objection, Mr. Anderson?

25 MR. ANDERSON: No, sir, Your Honor.

1 THE COURT: You're free to leave. Thank you, sir.

2 WITNESS: All right.

3 THE COURT: Mr. Foreman, ladies and gentlemen of the
4 jury, we're going to take a break for lunch. I'm going to ask
5 that you be back at 1:30, 1:30 sharp. Once again, do not do
6 any independent investigation. Do not discuss the case
7 amongst yourselves or with anyone else. I'm going to ask that
8 everyone remain seated as the jury exits the courtroom.

9 (Whereupon, the jury exits the courtroom at 11:53 a.m.)

10 THE COURT: Anything from the State before we break for
11 lunch?

12 MR. OZMENT: Nothing from the State, Your Honor.

13 THE COURT: Anything from the defense?

14 MR. ANDERSON: No, sir, Your Honor.

15 THE COURT: All right. We'll be back at 1:30, 1:30
16 sharp.

17 MR. OZMENT: Thank you, Your Honor.

18 (Whereupon, there is a break in the proceedings from
19 11:55 a.m. until 1:33 p.m.)

20 THE COURT: Please be seated. All right, anything from
21 the State before we proceed?

22 MR. OZMENT: Nothing, Your Honor, at this point.

23 THE COURT: Anything from the defense?

24 MR. ANDERSON: Yes, sir, Your Honor. I'd like to get
25 that middle elevator fixed.

1 THE COURT: Yeah, it was causing some difficulty. You
2 know, stairs work real good every time.

3 MR. ANDERSON: I asked Todd to carry me.

4 THE COURT: Okay. All right, we're ready for the jury.

5 BAILIFF: Okay.

6 (Whereupon, the jury enters the courtroom at 1:34 p.m.)

7 THE COURT: Mr. Foreman, ladies and gentlemen of the
8 jury, thank you for being here and thank you for being here on
9 time. We had some difficulties with the elevators, but
10 everybody was here promptly. Thank you so much. Mr. Ozment,
11 you're recognized.

12 MR. OZMENT: Thank you, Your Honor. The State calls
13 Cynthia Welch to the stand.

14 (Whereupon, there is a pause in the proceedings until the
15 witness enters the courtroom.)

16 THE COURT: Ms. Welch, please come forward to the front
17 of the courtroom, if you could, please. Ms. Welch, I'm going
18 to ask you, if you could, to watch your step. I'm going to
19 ask you to step up and place your left hand on the Bible and
20 raise your right hand as the clerk administers the oath.

21 THE CLERK: Raise your right hand. There you go, all
22 right.

23 THE COURT: There you go. Now you're talking.

24 THE CLERK: Do you swear the testimony you give in this
25 case will be the truth, the whole truth and nothing but the

DIRECT EXAMINATION OF CYNTHIA WELCH BY MR. OZMENT

1 truth, so help you God?

2 WITNESS: Yes, ma'am.

3 THE CLERK: Please have a seat and state your full name
4 for the record.

5 WITNESS: Cynthia Welch.

6 THE COURT: All right, Ms. Welch. Pull up real close to
7 that microphone and I'm going to ask you to speak loudly,
8 clearly and slowly in order that we can hear everything that
9 you've got to say.

10 WITNESS: Okay.

11 THE COURT: Thank you, ma'am. Mr. Ozment?

12 CYNTHIA WELCH, being first duly
13 sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. OZMENT:

16 Q: How are you today, Ms. Welch?

17 A: I'm just fine.

18 Q: Would you please state your name for the record?

19 A: Cynthia Welch.

20 Q: Where do you live, Ms. Welch?

21 A: 411 Garrett Circle.

22 Q: Did you live there in December of 2010?

23 A: No, sir.

24 Q: Where did you live at that time?

25 A: 5603 Shorty Lane.

DIRECT EXAMINATION OF CYNTHIA WELCH BY MR. OZMENT

- 1 Q: All right. What do you do, Ms. Welch?
- 2 A: Just housewife.
- 3 Q: All right. Are you married?
- 4 A: Yes, sir.
- 5 Q: Ms. Welch, did you see Michael Ford on January [sic.]
- 6 17th, 2010?
- 7 A: Yes, sir.
- 8 Q: Did you talk to him on the phone that day?
- 9 A: I talked to him twice.
- 10 Q: All right. Did you talk to him before or after you saw
- 11 him?
- 12 A: Before. We were playing phone tag.
- 13 Q: All right. How long had you known Mikey?
- 14 A: Just like the last -- Well, not even six months. I had
- 15 just met him not long.
- 16 Q: All right. What time -- How -- Where did you see Mikey
- 17 that day?
- 18 A: At my house.
- 19 Q: All right. Do you remember about what time that was?
- 20 A: It was dusk dark. It was just getting dark.
- 21 Q: Okay. Did Mikey come in your house?
- 22 A: No, sir.
- 23 Q: Okay. Did you meet him at the door?
- 24 A: I just met him outside.
- 25 Q: What was Mikey coming to your house that day for?

DIRECT EXAMINATION OF CYNTHIA WELCH BY MR. OZMENT

- 1 A: To bring me a bag of marijuana.
- 2 Q: All right. How -- Do you recall how much?
- 3 A: A quarter.
- 4 Q: Was that -- Was he -- What were you planning on doing
- 5 with that marijuana?
- 6 A: Smoking it.
- 7 Q: Just you?
- 8 A: Yeah, just myself.
- 9 Q: Is that how you've known Mikey?
- 10 A: Yes, sir.
- 11 Q: For that sort of thing? Do you know Scott Lee?
- 12 A: No, sir.
- 13 Q: Back in 2010 when this happened, could you pick Scott Lee
- 14 out if you saw him on the street?
- 15 A: No, sir.
- 16 Q: When -- How long was Mikey at your house that day?
- 17 A: Maybe five minutes at the most.
- 18 Q: All right. Did you see what car he was driving?
- 19 A: It was a blue car or the car that they found is the one
- 20 that he was in. I'm not sure what color it was.
- 21 Q: Did you see him get in and out of the car?
- 22 A: He got out the car and walked up and gave it to me and
- 23 then he -- he just -- I mean he talked to me for a few seconds
- 24 and said, "Well, I gotta go. I gotta run some errands," and
- 25 went to get back in the car and leave.

DIRECT EXAMINATION OF CYNTHIA WELCH BY MR. OZMENT

1 Q: All right. Was anyone in the car with him?

2 A: Yes, sir.

3 Q: Could you describe who you saw in the car with him?

4 A: All it -- The only time I saw him was when the light came
5 on for him to get back in the car. I just noticed it was a
6 white male. I couldn't tell you anything about him because I
7 wasn't really paying attention.

8 Q: All right. You didn't recognize the individual?

9 A: No.

10 Q: Did you see the hair color or anything like that?

11 A: It was light brown. It wasn't -- It wasn't like blonde,
12 but it wasn't all the way dark dark either.

13 Q: Okay. Anything else you remember about this individual?

14 A: No, sir.

15 Q: After Mikey left that day, did Scott Lee ever contact you
16 in any way?

17 A: Yes, he did.

18 Q: How did he contact you?

19 A: Over the telephone.

20 Q: Do you remember how long after that day that he contacted
21 you?

22 A: It was after I had talked to the detectives.

23 Q: All right.

24 A: I'm not sure if it was the same day or not, but it was --
25 it was after I had already talked to them.

DIRECT EXAMINATION OF CYNTHIA WELCH BY MR. OZMENT

1 Q: All right. You stated you didn't know him, but do you
2 know any way Scott Lee would have your phone number? Do you
3 recall if it was your house number or your cell?

4 A: It was my house and the phone wasn't in my name, so I
5 don't know how.

6 Q: All right. When Scott Lee called you, what did he talk
7 to you about?

8 A: He told me that he was trying to find out who hurt Mike
9 and trying to help the parents find out who did it.

10 Q: All right. When you said the parents, who do you mean?

11 A: His mother.

12 Q: Scott Lee's or Mikey's?

13 A: Mike's.

14 Q: Okay. Did he ask you what you had told the Sheriff's
15 Office?

16 A: He wanted to know if I could -- if I could give him any
17 information to help him find out who did it.

18 Q: What did you tell him?

19 A: I told him what I told them, that I didn't know who it
20 was. I didn't -- I don't really -- I didn't really know him
21 like that. I didn't know his friends or anything.

22 Q: Did you tell him that you had seen somebody in the car
23 just like you told ---

24 A: Yeah, I told him that I seen somebody in the car.

25 Q: All right. How long did you talk to Scott on the phone

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 that day?

2 A: Just a few minutes.

3 Q: Okay. How did that conversation end?

4 A: Just told him if I remembered anything, you know, I would
5 let the police know.

6 Q: Okay. After that, did you have any more contact with
7 him?

8 A: No, sir.

9 Q: All right.

10 MR. OZMENT: No further questions for this witness, Your
11 Honor.

12 THE COURT: Cross examination?

13 CROSS EXAMINATION

14 BY MR. ANDERSON:

15 Q: Did you meet with Officer Chad Collins?

16 A: Yes, sir.

17 Q: So was it Chad and another officer by the name of Officer
18 McFadden?

19 A: Yes, sir.

20 Q: And they came to your residence?

21 A: Yes, sir.

22 Q: Do you know anybody by the name of Frog?

23 A: Yeah, I do.

24 Q: What's Frog's real name?

25 A: Albert. I don't even know Frog's last name.

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

- 1 Q: If I said Albert Bird, does that ---
- 2 A: Yeah.
- 3 Q: Did you know Albert in December? And I think Mr. Ozment
- 4 when he was talking to you he said January of 2010, but we're
- 5 -- I'm talking about December of 2010.
- 6 A: Oh, I've known Frog for a long time. I don't -- I mean I
- 7 don't know how long I've known him.
- 8 Q: And you indicated earlier that you had got a quarter bag
- 9 of marijuana. How much is a quarter bag?
- 10 A: I don't -- I don't know. I don't weigh it or anything
- 11 like that. I mean I just -- I just got it from him for my own
- 12 use. I didn't get it to sell it or anything.
- 13 Q: I mean it wasn't a quarter of a pound, was it?
- 14 A: No, no, no, no.
- 15 Q: A quarter of an ounce?
- 16 A: Twenty-five dollars for it.
- 17 Q: Okay. So if I said seven or eight grams, would that ---
- 18 A: I wouldn't know. I don't even -- I don't know it like
- 19 that.
- 20 Q: Okay. Did you know Albert Bird during this time?
- 21 A: Yeah. Like I said, I've known him for a long time.
- 22 Q: Does Albert -- To your knowledge, does Albert smoke
- 23 marijuana?
- 24 A: He did. I don't know if he does now or not. He did.
- 25 Q: Back in December ---

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 A: Yes, sir.

2 Q: --- of 2010, did you and he ever smoke together?

3 A: I couldn't tell you. I probably have smoked with him.

4 Q: Now you said you saw a white male in the car when Michael
5 Ford left your house?

6 A: Yes, sir.

7 Q: Do you recall what time of night that was?

8 A: Like I said, it was just dusk dark.

9 Q: All right. So in December, dusk dark would have been
10 5:30?

11 A: I think it was later than that. It was after the phone
12 calls that I had got -- that I had gotten from Mike because it
13 was like fifteen or twenty minutes after the last phone call.

14 Q: All right. How far did you go in school, Ms. Welch?

15 A: To the eleventh.

16 Q: All right. Do you recall the -- I guess the summer
17 solstice and the winter solstice and all that stuff in school?
18 What's the longest day of the year?

19 A: No.

20 Q: The shortest day of the year? In December, does it
21 typically get shorter, the days get shorter? Daylight?

22 A: I would say it had -- because I was running errands. My
23 husband had got home and I had some errands I had to do when
24 he got home and it was like 7:30.

25 Q: All right.

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 A: Something like that. I'm not really sure what time it
2 was at all.

3 Q: But there's no doubt this was December 17th, 18th,
4 something like that?

5 A: Yeah, the only way -- the only way I even seen the person
6 in the car was when he opened the door because the light came
7 on.

8 Q: Okay, but you -- and the only reason I ask you this is
9 you say it was dusk dark.

10 A: Yeah. Well, it was getting dark. It wasn't really dark
11 dark all the way, but the light came on when he opened the car
12 door.

13 Q: Okay.

14 A: And that's how I know.

15 Q: All right. So you think to the best of your recollection
16 this was 7:30, eight o'clock?

17 A: Somewhere around in there.

18 Q: Now when you -- when Mikey opened the door and the -- I
19 guess the dome light in the car came on, you saw another male
20 in the car?

21 A: Yeah. I wasn't paying it any attention. I just know
22 that there was a male in the car with him.

23 Q: And you said you thought that he had, if you remember
24 right, he had brown hair?

25 A: Brownish blonde looking color hair.

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 Q: Okay. Believe it or not, my hair used to be blonde, but
2 that was when I was a lot younger. Was his hair darker than
3 mine? Do you remember? Lighter than mine?

4 A: I can't remember. I just know it wasn't -- it wasn't
5 blonde all the way and it wasn't dark dark.

6 Q: Okay. Well, I don't think mine is dark dark. You
7 indicated that later -- Oh, I'm sorry, I'm sorry. Let me back
8 up for a second. You said that y'all talked for a few minutes
9 and then Mikey told you that he had to run a few more errands?

10 A: Yes, sir.

11 Q: So he didn't say ---

12 A: He didn't say where he was going or anything.

13 Q: But he didn't say I'm going to go do one more thing. He
14 just said I've got to go a couple more places?

15 A: Mm-hmm.

16 Q: Is that a yes?

17 A: Yes, sir.

18 Q: Okay. Now based on what he had brought you, do you have
19 any knowledge as to whether or not he was going to take some
20 marijuana somewhere else?

21 A: I have no idea. I didn't know him like that.

22 Q: That's fine, that's fine. Now did Mikey ever tell you me
23 and my buddy are going to go a few more places or did he just
24 say I'm going to go a few more places?

25 A: No, sir. He just said he had a few errands to run.

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 Q: You indicated that Scott Lee later contacted you by
2 telephone?

3 A: Yes, sir.

4 Q: And I think you said he told you that he was trying to
5 find out what happened to Mikey?

6 A: Yes, sir.

7 Q: And he said to you, "I'm trying to find out for his
8 family."

9 A: Yes, sir.

10 Q: All right. Do you know whether or not -- Wait a minute,
11 let me back up a second. You said you didn't know Scott Lee?

12 A: No, sir, I don't.

13 Q: And until -- Did he introduce himself over the phone?

14 A: He just told me who he was.

15 Q: Okay. So he said, "Hey, this is Scott Lee."

16 A: Yeah.

17 Q: All right. So prior to that time, you had no idea who
18 Scott Lee was?

19 A: No, sir.

20 Q: So he would not have had your number, would he have?

21 A: No, sir.

22 Q: But when he indicated to you I'm trying to find out for
23 the family, did he ever say I got the number from Mikey's
24 family?

25 A: I have no idea how he got the number. I haven't to this

CROSS EXAMINATION OF CYNTHIA WELCH BY MR. ANDERSON

1 day don't know.

2 Q: Do you know whether or not he said they asked me to call
3 you or ---

4 A: I don't. I don't remember then.

5 Q: Okay, but he definitely told you that he was trying to
6 find out for the family?

7 A: Yeah.

8 Q: Okay.

9 MR. ANDERSON: Your Honor, Court's indulgence just for a
10 moment.

11 Q: Do you know a guy named Michael Budd?

12 A: Not that I recall.

13 Q: Okay.

14 MR. ANDERSON: Judge, that's all the questions I have.

15 THE COURT: Any redirect?

16 MR. OZMENT: Nothing further for this witness, Your
17 Honor.

18 THE COURT: All right, any objection to this witness
19 being excused?

20 MR. ANDERSON: No, sir, Your Honor.

21 THE COURT: You're free to leave. Thank you, ma'am.

22 WITNESS: Thank you.

23 (Whereupon, the witness leaves the stand at 1:48 p.m.)

24 THE COURT: Mr. Ozment, you may call your next witness.

25 MR. OZMENT: Your Honor, the State calls Shannon Bailey

1 to the stand.

2 MR. ANDERSON: Your Honor, if it please the Court, can
3 Mr. Ozment and I have a hearing out of the presence of the
4 jury with you concerning this next witness?

5 THE COURT: Certainly. Mr. Foreman, ladies and gentlemen
6 of the jury, it is necessary for us to take up a legal matter
7 outside of your presence. I'm going to ask that you retire to
8 the jury room, but do not discuss the case.

9 (Whereupon, the jury exits the courtroom at 1:49 p.m. and
10 the witness enters the courtroom.)

11 THE COURT: All right.

12 MR. ANDERSON: Your Honor, if it please the Court.

13 THE COURT: Yes, sir.

14 MR. ANDERSON: You don't under -- You don't know this
15 yet, but, Your Honor, it's my understanding and belief the
16 State is calling Miss Bailey to testify as to certain events
17 that she witnessed on the night of December the 17th, 2010.
18 Your Honor, I have listened to her statement. It is probably
19 well over an hour long, Your Honor, and there's a lot of
20 hearsay in her statement, a lot of things she said Jonathan
21 told me, Your Honor, and I -- I want her, as well as the
22 State, to be very mindful that I don't want any hearsay coming
23 in concerning my client and what he may have told Jonathan.

24 THE COURT: All right. Mr. Ozment, have you explained to
25 the witness the fact that she has to testify as to things that

1 are within her personal knowledge? She can't say what other
2 people said. However, obviously, if it's something the
3 defendant said, she can testify to that, but you've talked to
4 her about the concept of hearsay, haven't you?

5 MR. OZMENT: Yes, Your Honor, we met. I didn't call it
6 hearsay, but we met and I explained to her what she could
7 testify to and what she couldn't and I explained. I explained
8 hearsay without calling it hearsay.

9 THE COURT: Very good. Well, Mr. Anderson, I -- The
10 statement obviously is not coming into evidence. You can
11 cross examine her on it and quite often statements have -- are
12 just littered with hearsay, but the fact that it's in a
13 statement doesn't make it admissible and it's going to be
14 incumbent upon you to object when he asks a question that
15 calls for hearsay or if she starts meandering into some
16 hearsay testimony, just object to it and we'll address it. I
17 think she's been informed of that and she can't testify as to
18 what other people told her.

19 MR. ANDERSON: Good enough, Your Honor, thank you.

20 THE COURT: Very good. All right, anything further?

21 MR. ANDERSON: No, sir, Your Honor.

22 THE COURT: All right, we're ready for the jury.

23 BAILIFF: Yes, sir.

24 (Whereupon, the jury enters the courtroom at 1:51 p.m.)

25 THE COURT: Mr. Ozment, you're recognized.

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 MR. OZMENT: Your Honor, the State calls Shannon Bailey
2 to the stand.

3 THE COURT: Miss Bailey, if you could, come forward and
4 I'm going to ask that you watch your step and place your left
5 hand on the Bible and raise your right hand as the clerk
6 administers the oath.

7 THE CLERK: Do you swear the testimony you will give in
8 this case will be the truth, the whole truth, and nothing but
9 the truth, so help you God?

10 WITNESS: I do.

11 THE CLERK: Please be seated and state your full name for
12 the record.

13 THE COURT: Yes, ma'am, have a seat in that chair, pull
14 up real close to that microphone, and speak loudly, clearly
15 and slowly in order that we can hear everything that you've
16 got to say and let's start with your full name.

17 WITNESS: Shannon Christine Bailey.

18 THE COURT: Very good, Miss Bailey.

19 DIRECT EXAMINATION

20 BY MR. OZMENT:

21 Q: Hi, Miss Bailey, how are you?

22 A: Good, how are you?

23 Q: Good. Where do you live?

24 A: I live on [REDACTED] with my cousin.

25 Q: Okay. Are you from Florence?

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 A: I am.

2 Q: All right. Do you know Scott Lee?

3 A: Yes, I do.

4 Q: How do you know Scott Lee?

5 A: We've known each other since we were -- since we were
6 younger. I know him through his brother. That's how we
7 originally met.

8 Q: Are you referring to Jonathan Lee?

9 A: Mm-hmm.

10 Q: How long have you known Jonathan?

11 A: For at least more than ten years.

12 Q: All right. Are you and Jonathan just friends or more
13 than friends? What ---

14 A: We're just friends.

15 Q: Okay. On December 17th, 2010, were you at Jonathan's
16 house?

17 A: Yes, I was.

18 Q: On that day, was Scott -- Did Jonathan live with his
19 mother?

20 A: Yes, he did.

21 Q: Who else lived in that house?

22 A: Scott.

23 Q: Okay.

24 A: And his son, [REDACTED]

25 Q: All right. Was Scott's mother home that day?

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

- 1 A: No, she wasn't. She was out of town.
- 2 Q: Okay. Do you know where she was?
- 3 A: Maybe the beach or Charleston. I know she was out of
- 4 town. That's all I know.
- 5 Q: All right. Do you recall what time you had gotten there
- 6 that day?
- 7 A: Earlier, you know, earlier that morning. I mean it was
- 8 probably maybe twelve-ish.
- 9 Q: Okay.
- 10 A: I guess.
- 11 Q: What were you doing over there? I mean just how were you
- 12 passing the time?
- 13 A: How were we passing the time?
- 14 Q: Yeah. What were y'all doing the day you were there?
- 15 A: We were all just pretty much hanging out. That's all any
- 16 of us were doing and we took the car back to Jonathan's mom
- 17 and she left.
- 18 Q: All right. When you say all of us, who was there at that
- 19 time?
- 20 A: Me, Scott and Jonathan.
- 21 Q: All right. Now you went into the evening. Do you recall
- 22 Michael Ford ever coming by the house?
- 23 A: I didn't personally see Mikey. I seen Mikey's car pull
- 24 up.
- 25 Q: Okay. What sort of car did Mikey drive?

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

- 1 A: He drove an Impala.
- 2 Q: Was that -- Do you know what brand that is?
- 3 A: Uh ---
- 4 Q: That's all right. Do you remember what ---
- 5 A: All I know is it's a darker blue Impala.
- 6 Q: All right, darker blue. Do you recall about what time
- 7 that was that he came by or that you saw his car? Excuse me.
- 8 A: I know it was after dark.
- 9 Q: All right. Do you know if anybody left with him when he
- 10 came by or do you ---
- 11 A: Scott left with him.
- 12 Q: Okay. Where were you when you saw they had left?
- 13 A: I was in Jonathan's mom's bedroom.
- 14 Q: How did -- And how did you see the car if you were in the
- 15 bedroom?
- 16 A: Because the blinds were a little bit open.
- 17 Q: Okay. So you saw it out the window?
- 18 A: Mm-hmm.
- 19 Q: Okay. Did Scott come back that night?
- 20 A: Yes, he did.
- 21 Q: Did Mikey come back that night?
- 22 A: No, he didn't.
- 23 Q: How long was it between when you saw the car leave and
- 24 when you saw Scott come back?
- 25 A: Maybe thirty, forty-five minutes, an hour at the most.

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 Q: Okay. How did you first become aware that Scott had
2 arrived back at the house?

3 A: Jonathan ran in the room and told me to stay in the room.

4 Q: Okay and don't tell me anything Jonathan said, but just
5 -- just tell me, you know, what you heard and ---

6 A: I was told to stay in the room.

7 Q: --- other than what other people told you, but what you
8 heard, what you saw?

9 A: I heard the car pull up and Scott come in and ---

10 Q: When you say -- I didn't mean to cut you off. When you
11 say you heard Scott come in, what did you -- How did you know
12 Scott had come in the house?

13 A: Him and Jonathan were in the living room talking.

14 Q: Okay. What did you -- What else did you hear around that
15 time?

16 A: It got quiet.

17 Q: Okay. When you say you heard them talking, could you
18 tell -- Were they, you know -- Could you tell the nature of
19 their conversation? Were they arguing? Was it loud? Was it
20 soft? Do you recall?

21 A: I couldn't tell.

22 Q: At any point during that time, did you try to leave the
23 room?

24 A: I did once it got quiet.

25 Q: Okay.

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 A: I walked out. Yeah, I did.

2 Q: What happened when you tried to walk out of the room?

3 A: When I tried to walk out of the room, Jonathan pushed me
4 back in the room.

5 Q: Okay. When -- Earlier you had said there's a window in
6 that room. Were you still in the same room?

7 A: Yes.

8 Q: All right. Could you see anything out the window of that
9 room at this point?

10 A: I could see Mikey's car with all four -- with the four
11 doors open.

12 Q: Okay and with the four doors open, was like the light on
13 inside?

14 A: On the inside of the car.

15 Q: What did you see inside the car?

16 A: At that time, I couldn't see the inside of the car.

17 Q: Okay. At any point during the night, could you see the
18 inside of the car?

19 A: Yeah.

20 Q: When was that?

21 A: It got quiet again and Jonathan didn't come back in the
22 room and I walked out. I heard the shower going and looked
23 out the front door and that's when I seen Mikey's car.

24 Q: Okay and you could see the inside?

25 A: (Witness nods.)

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

- 1 Q: What did the inside look like?
- 2 A: It was just full of blood.
- 3 Q: When you say -- I know it's hard, but you say full of
- 4 blood, I mean ---
- 5 A: Everywhere.
- 6 Q: Okay. You said you saw -- heard the shower running. Do
- 7 you know where Scott was during this time?
- 8 A: In the shower.
- 9 Q: Where was Jonathan during this time?
- 10 A: He was on the kitchen floor cleaning up blood.
- 11 Q: All right. Did you see blood on the kitchen floor?
- 12 A: Yes, I did.
- 13 Q: How much?
- 14 A: A lot.
- 15 Q: Okay. Was anything laying on the counters in the kitchen
- 16 at this time?
- 17 A: There was marijuana and a little bit of cash.
- 18 Q: When you say marijuana, was it just loose marijuana or
- 19 what?
- 20 A: No, it was bags of marijuana.
- 21 Q: Okay. How much? Just about?
- 22 A: A couple ounces.
- 23 Q: Okay. Was there any blood on that?
- 24 A: Oh, yeah.
- 25 Q: Now you said some money. Do you remember ---

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

- 1 A: There was blood all over the money, too.
- 2 Q: Okay. Do you remember how much money it was?
- 3 A: I think it was like thirty something dollars.
- 4 Q: Okay. So from -- At this point, the shower is going,
- 5 you've gone and seen the car. What happened next?
- 6 A: I went back in the room, but I continued to watch out the
- 7 -- out of the door and I seen Scott cleaning the inside of the
- 8 car a little bit and squirting stuff in it. I don't know what
- 9 it was.
- 10 Q: Okay. At any point that evening, did you see Scott get
- 11 any kind of -- anything that would help start a fire or
- 12 anything like that?
- 13 A: (Witness shakes her head.)
- 14 Q: Now on this day, had you taken any substances like any
- 15 drug or alcohol, anything like that?
- 16 A: Yes.
- 17 Q: What had you done that day?
- 18 A: We had -- Me -- We had all -- Well, I had taken pills and
- 19 I had done cocaine.
- 20 Q: Okay. Had Jonathan been doing those with you or do you
- 21 remember?
- 22 A: Yes.
- 23 Q: What about Scott?
- 24 A: No.
- 25 Q: Okay. Does your -- The fact that you took those

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

- 1 substances, does that in any way affect your memories of that?
- 2 A: No.
- 3 Q: Okay. At any point prior to this, have you ever seen
- 4 Scott with a gun?
- 5 A: Yes, I did.
- 6 Q: When was that?
- 7 A: Earlier that day.
- 8 Q: Okay. What type of gun did you see Scott with?
- 9 A: It was a shotgun.
- 10 Q: Okay. Can you -- I mean just describe it, color, what
- 11 it's made of, anything like that?
- 12 A: It was just a regular shotgun with a wooden handle.
- 13 Q: Okay. What did you see Scott doing with that gun?
- 14 A: Well, me and him were standing on the deck and he shot it
- 15 a couple times and I think it was ---
- 16 Q: Excuse me. What -- What was he shooting at?
- 17 A: Just in the woods.
- 18 Q: Okay, go ahead.
- 19 A: And I seen him saw a piece of the wood off of it.
- 20 Q: Okay. How big was that?
- 21 A: About like that.
- 22 Q: All right. Did you see what he did with it?
- 23 A: It just kind of fell onto the ground, the piece of wood
- 24 did.
- 25 Q: Okay and where was that? Kind of where did that take

DIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 place?

2 A: Around the left side maybe to the deck.

3 Q: All right.

4 A: Left front.

5 MR. OZMENT: I beg the Court's indulgence for one minute.

6 May I approach the witness, Your Honor?

7 THE COURT: You may.

8 Q: Miss Bailey, I've handed you a paper bag. Would you mind
9 opening that bag and telling me what you see inside?

10 (Whereupon, the witness complies.)

11 A: Do you want me to pull it out?

12 Q: If you'll just tell me what it is?

13 A: The wooden piece off the gun.

14 Q: Is it the piece that you saw cut off that day?

15 A: Yes, it is.

16 Q: You can pull it out if you want to look at it and make
17 sure.

18 MR. OZMENT: All right, Your Honor, at this time, the
19 State would move the piece of gun stock into evidence.

20 THE COURT: Any objection?

21 MR. ANDERSON: No, sir, Your Honor.

22 THE COURT: All right, that will be State's Exhibit 34 is
23 into evidence without objection from the defense.

24 (Whereupon, State's Exhibit Number 34, the piece of
25 gunstock in the bag, is admitted into evidence.)

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 Q: Have you -- After -- After that day, did Scott ever talk
2 to you about what happened that night?

3 A: No. Scott wasn't aware that I even knew I don't think.

4 Q: Okay. How much did you hang around the Lee house after
5 this happened?

6 A: I was there until his mom come home from out of town,
7 which I believe might have been on a Sunday, it might have
8 been Saturday, and I left and him and Jonathan would drive
9 over to my house every now and then, but Scott would sit in
10 the car. He wouldn't never come in.

11 Q: Okay. Are you and Jonathan still friends?

12 A: No.

13 Q: Okay.

14 MR. OZMENT: No further questions, Your Honor.

15 THE COURT: Cross examination, Mr. Anderson?

16 CROSS EXAMINATION

17 BY MR. ANDERSON:

18 Q: Miss Bailey, you went to the Sheriff's Department and met
19 with Kathleen Street and Thomas McFadden on February the 9th,
20 2011. Is that right?

21 A: Yes, sir.

22 Q: Now this incident that you've described happened on
23 December the 17th, 2010. Is that right?

24 A: Yes, sir.

25 Q: And I think you just said that you left the residence on

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 Sunday and went to stay with your mom?
- 2 A: I went back to my house.
- 3 Q: You went back to your house?
- 4 A: Mm-hmm.
- 5 Q: And you did that I guess on December the 19th, 2010?
- 6 A: Yes, sir.
- 7 Q: And that every once in a while Scott and Jonathan would
- 8 drive over to where you were?
- 9 A: Yes.
- 10 Q: So if we do the math, on December the 17th, December 18th,
- 11 until December the 31st, that's thirteen, fourteen days. Is
- 12 that right?
- 13 A: Yes.
- 14 Q: And then all of January would be thirty-one days. Is
- 15 that right?
- 16 A: Yes.
- 17 Q: And then February the 9th would be nine more days. So
- 18 fifty-three, fifty- four days later, you give a statement to
- 19 two investigators?
- 20 A: Yes.
- 21 Q: You waited fifty-three days and they actually contacted
- 22 you, didn't they?
- 23 A: Yes, they did.
- 24 Q: They called you and asked you to come in and give a
- 25 statement?

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 A: Yes, they did.

2 Q: Now on the night in question, you and Jonathan were
3 getting your drugs from a guy named Charles?

4 A: Yes, sir.

5 Q: And Charles had actually been over to the house three
6 times that night before Scott and Mikey left, hadn't he?

7 A: I'm not sure how many times, but several, yes.

8 Q: Several times, several more than two, less than five?

9 A: Yes, sir.

10 Q: So three or four times?

11 A: Yes, sir.

12 Q: And when he was coming over, he was bringing different
13 substances?

14 A: He was bringing cocaine.

15 Q: And I think you said you were also taking pills?

16 A: Yes.

17 Q: All right. So he was bringing cocaine and you were
18 taking the cocaine?

19 A: He brought the pills after the murder.

20 Q: Okay. So you were taking cocaine all throughout the
21 night?

22 A: Yes, sir.

23 Q: All right. How much cocaine would you think you
24 ingested?

25 A: I really don't know.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 Q: So he came over at least three times and he brought
2 cocaine each time and I'm guessing that the reason he came
3 back over a second time was because all the cocaine was gone
4 from the first time?

5 A: Correct.

6 Q: And then when all the cocaine was gone from the second
7 one, he got a call and came back and brought a third one. Is
8 that right?

9 A: Yes, sir.

10 Q: Okay and you can't remember how much you did?

11 A: I wasn't the one paying for it, no.

12 Q: Okay. You were just doing as much as you could?

13 A: I was -- I done a little bit with Jonathan, yes. That's
14 not my drug of choice. So I ---

15 Q: Well, you previously had lost your children to DSS
16 because of drug use. What's your drug of choice?

17 A: I was prescribed prescription medicine after my baby's
18 father was abusing me.

19 Q: Okay. So what's your drug of choice?

20 A: My drug of choice was -- would have been -- I was
21 prescribed to benzos.

22 Q: Okay. Now did you take those later that night?

23 A: No, I was on pain pills.

24 Q: All right. Now Jonathan mentioned earlier when he was
25 talking with either Chad or talking with Thomas McFadden that

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 you were taking K-2 that night.

2 MR. OZMENT: Your Honor, we would object to hearsay
3 because Jonathan has not testified and this is out of her ---

4 THE COURT: I'll ask -- I'll ask him to rephrase the
5 question.

6 Q: Did you take any K-2 that night?

7 A: I did.

8 Q: And what was that?

9 A: That's pain medicine.

10 Q: Is that ketamine?

11 A: Is that what?

12 Q: What is K-2? What's the name for it?

13 A: Dilaudid.

14 Q: Dilaudid and that's a pain medication?

15 A: Yes, sir.

16 Q: Also a depressant?

17 A: I cannot tell you.

18 Q: I mean pain medication, does it ever knock you out, make
19 you go to sleep?

20 A: No.

21 Q: No, it doesn't?

22 A: (Witness shakes her head.)

23 Q: Is K-2 also like morphine?

24 A: Yes, sir.

25 Q: All right. When you would take K-2, would you swallow it

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 or would you shoot it with a needle and a syringe?
- 2 A: I would -- I swallowed it.
- 3 Q: Okay. You never shot it with a needle?
- 4 A: I have.
- 5 Q: Now do you have your children back right now?
- 6 A: No, I don't.
- 7 Q: Who are your children staying with?
- 8 A: With my mother.
- 9 Q: You and Jonathan were doing cocaine that night?
- 10 A: Yes, sir.
- 11 Q: Were you doing anything other than cocaine prior to Scott
- 12 Lee coming back?
- 13 A: No, sir.
- 14 Q: Now you just told me a second ago that you can't remember
- 15 how much you did, but you can remember certain things from
- 16 that night?
- 17 A: Mm-hmm.
- 18 Q: Is that right?
- 19 A: That's right.
- 20 Q: You do remember giving a statement on 2/9/2011 out at the
- 21 Florence County Sheriff's Office?
- 22 A: I remember the statement, yes.
- 23 Q: They never asked you if you were under the influence of
- 24 any drugs, did they? Before they interviewed you?
- 25 A: That particular day?

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 Q: Yes, ma'am.
- 2 A: I wasn't under the influence.
- 3 Q: The investigators didn't ask you if you were under the
4 influence of anything, did they?
- 5 A: I don't recall.
- 6 Q: When you were giving the statement, the investigators
7 never asked you if Charles came out there, did they?
- 8 A: I don't remember.
- 9 Q: They never asked you to tell them the truth during this
10 interview, did they?
- 11 A: I don't remember.
- 12 Q: Now you testified just a minute ago that you didn't see
13 Mikey, but you saw his car and it was a blue Impala after
14 dark. You were in Scott's mom's room. Scott came back up and
15 you said maybe thirty to forty-five minutes later?
- 16 A: Yes.
- 17 Q: All right. Weren't you asleep at that time?
- 18 A: No.
- 19 Q: You were not asleep?
- 20 A: I was not asleep.
- 21 Q: Okay. So you never told law enforcement that you were
22 sleeping?
- 23 A: No, I didn't.
- 24 Q: Now when you testified just a minute ago, you said that
25 Jonathan came in the room and told you to stay in the room.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 Is that right?
- 2 A: Yes.
- 3 Q: And that he and Scott were in the living room talking?
- 4 A: Yes, sir.
- 5 Q: Didn't you tell law enforcement that y'all heard a loud
- 6 crash and a commotion and cabinets being slammed and things
- 7 being pushed and that Scott handed you the phone and said call
- 8 9-1-1 if I tell you to? Isn't that what you told law
- 9 enforcement?
- 10 A: Not that I recall.
- 11 Q: Not that you recall? Didn't you tell law enforcement
- 12 that I heard a bunch of yelling and everything like that?
- 13 A: I -- I can't remember.
- 14 Q: You can't remember? Didn't you tell law enforcement I'm
- 15 not sure if it was Mike's car or not because Charles was over
- 16 there back and forth and Charles has got a black car and ---
- 17 A: I'm sure it was Mikey's car.
- 18 Q: Okay, but you don't remember calling -- telling law
- 19 enforcement I'm not sure if it was Mike's car or not? You
- 20 don't remember that?
- 21 A: No, I don't.
- 22 Q: Okay. You don't remember telling law enforcement I
- 23 happened to walk back out and it was a few drops of blood on
- 24 the kitchen floor?
- 25 A: I remember telling them that.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 Q: All right. Well, just a few minutes ago, you said there
2 was a lot of blood on the car and that's when you got upset
3 and teared up a little bit.

4 A: Yeah.

5 Q: All right. So was it a ---

6 A: The car was covered.

7 Q: I'm talking about the floor.

8 A: The floor, Jonathan was on the floor cleaning it.

9 Q: All right. Well, earlier you said there was a lot of
10 blood on the floor.

11 A: There was.

12 Q: All right. Well, you told law enforcement that there was
13 a few drops of blood on the floor. Is a few drops a lot of
14 blood?

15 A: To me, yeah.

16 Q: Okay. So therefore, we can assume that Mikey's car just
17 had a few drops of blood in it because you just said a few
18 drops is a lot. Isn't that right?

19 A: Mikey's car was covered in blood.

20 Q: Okay, okay. When did you tell law enforcement on
21 2/9/2011 that it was thirty dollars? When did you say that?

22 A: What -- Can you repeat the question?

23 Q: Sure, sure. You told law enforcement that I saw money.
24 When did you tell them it was thirty dollars? Today, you said
25 it was thirty dollars. Did you tell law enforcement it was

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 thirty dollars?

2 A: I don't know if I told them how much it was.

3 Q: You don't remember? Do you recall telling law
4 enforcement that night that you had really bad stomach
5 problems and that you started throwing up?

6 A: I'm sure I did.

7 Q: Okay. Now is the cocaine causing the stomach problems or
8 was it something else?

9 A: I didn't start getting sick like that until Scott came
10 back.

11 Q: Okay. Do you remember telling law enforcement about
12 Scott seeing Junior later that night?

13 A: Yes, I do.

14 Q: Okay and Junior is friends with Peaches?

15 A: Junior is Peaches' boyfriend.

16 Q: Okay and they -- and you saw them later that night. Is
17 that right?

18 A: I seen Junior, yeah.

19 Q: Okay. Did you see Scott?

20 A: Yep. Yes, sir.

21 Q: Do you recall -- Well, let me back up a second. You saw
22 Scott earlier that day, so that would have been on the day of
23 December the 17th, 2010 that you saw -- you saw Scott earlier
24 that day with a shotgun. Is that right?

25 A: Yes, sir.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 Q: And that is the same day that he sawed off the stock?
- 2 A: Yes, sir.
- 3 Q: That's right?
- 4 A: (Witness nods.)
- 5 Q: Okay. So on December the 17th, what's been introduced
- 6 into evidence as State's 34 is what you saw him saw off?
- 7 A: Yes, sir.
- 8 Q: It wasn't a week earlier, it wasn't three or four days
- 9 earlier, it was that day, December the 17th?
- 10 A: It was that day.
- 11 Q: Do you recall telling law enforcement that you saw him
- 12 saw it off three or four days earlier?
- 13 A: No.
- 14 Q: Do you recall telling law enforcement that the shotgun
- 15 sat in the den for about four or five days prior to this even
- 16 happening?
- 17 A: Yes.
- 18 Q: And that it was sawed off at that time?
- 19 A: He -- It was sawed off two different times.
- 20 Q: Oh, it was sawed off two different times? Okay. Well,
- 21 when was the second time?
- 22 A: I don't know that.
- 23 Q: Okay, you don't know that. Did you see him saw it off
- 24 the second time?
- 25 A: Nope.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 Q: Do you recall telling law enforcement there was
2 absolutely no motive for Scott, that he and that boy were best
3 friends?

4 A: Yes, sir.

5 Q: Do you recall telling law enforcement I never heard
6 Mikey's voice because I was asleep?

7 A: No.

8 Q: No? How did Jonathan clean up the kitchen?

9 A: With a rag and bleach.

10 Q: You saw him pour bleach on it?

11 A: I saw him spraying it, yeah.

12 Q: And that was just for the few drops of blood?

13 A: That was for the blood that was on the tile floor.

14 Q: Was there any blood on the porch?

15 A: Yes.

16 Q: How much blood was on the porch?

17 A: A good bit.

18 MR. ANDERSON: The Court's indulgence for a moment, Your
19 Honor.

20 THE COURT: Certainly.

21 Q: Do you recall anything else you may have said to law
22 enforcement on February the 9th, 2011?

23 A: Um ---

24 Q: That you have direct knowledge of?

25 A: I just told them exactly everything I seen.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

- 1 Q: Do you remember telling them about some scales?
- 2 A: Hand scales?
- 3 Q: Yes, ma'am.
- 4 A: Digitals?
- 5 Q: Yes, ma'am.
- 6 A: Yeah.
- 7 Q: So you do remember that now?
- 8 A: Mm-hmm.
- 9 Q: Those were Mikey's scales?
- 10 A: Yes, they were.
- 11 Q: Okay. Do you remember telling them about that?
- 12 A: I do.
- 13 Q: Okay. Do you remember telling law enforcement that
- 14 Jonathan would not let you go outside?
- 15 A: Yes, I do.
- 16 Q: When was the last time you talked with Jonathan?
- 17 A: It's been a few months.
- 18 Q: And who did you say you are staying with or living with
- 19 right now?
- 20 A: My cousin.
- 21 Q: I think earlier Mr. Ozment may have asked you what your
- 22 relationship with Jonathan Lee was back in December of 2010.
- 23 A: Mm-hmm.
- 24 Q: Were y'all boyfriend and girlfriend?
- 25 A: No, we weren't.

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 Q: Y'all were just sleeping together in his mom's bed?

2 A: We weren't sleeping together.

3 Q: Just doing drugs together?

4 A: Yep.

5 Q: Do you remember saying in that interview that you gave on
6 February the 9th, 2011, that you did not know that Scott had
7 left?

8 A: No.

9 Q: Because earlier you said that you do remember him
10 leaving?

11 A: I know he left.

12 Q: Okay, but -- So you don't know why you would have told
13 law enforcement on February the 9th, 2011, that he -- I didn't
14 know he left?

15 A: No.

16 Q: And you weren't sleeping that night?

17 A: No.

18 Q: And February the 9th, which I think we talked about this
19 earlier, of 2011 -- February 9th of 2011 was fifty-three,
20 fifty-four days after the incident. Now here we are probably
21 closer to four hundred plus days removed from the time of
22 this. So was your memory better on the 9th or is your memory
23 better here today?

24 A: I don't remember fully everything that I -- I told and
25 said, but I'm fully aware of everything that happened and I

CROSS EXAMINATION OF SHANNON BAILEY BY MR. ANDERSON

1 can't -- I can't remember to tell you the exact things that I
2 said to law enforcement that happened that long ago, not my
3 exact words, no.

4 Q: Did you and Jonathan ever try and blackmail Scott?

5 A: No, sir.

6 Q: Did y'all ever say give me half of your income tax check
7 or ---

8 A: No. (Laughs.)

9 Q: Nothing like that?

10 A: No.

11 MR. ANDERSON: One more minute, Your Honor.

12 Q: You said that Scott was outside cleaning up the car, that
13 you saw him out there cleaning the car?

14 A: Yes, sir.

15 Q: Now on the 9th of February, you never told law enforcement
16 about that, did you?

17 A: I believe I did.

18 Q: So if Jonathan -- Excuse me. If Scott was out there
19 cleaning the car, certainly Jonathan would have also seen him
20 out there cleaning the car?

21 A: You would think.

22 Q: And you had done how much cocaine this night?

23 A: I don't recall how much it was. Jonathan got a couple
24 separate -- a couple different bags.

25 Q: Okay.

REDIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 MR. ANDERSON: Judge, that's all the questions I have.

2 THE COURT: Any redirect?

3 MR. OZMENT: Briefly, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. OZMENT:

6 Q: Mr. Anderson asked about your stomach being sick that
7 night. When did your stomach get sick that night?

8 A: Well, I have ulcers already, but my stomach didn't get
9 sick until Scott came back.

10 Q: Do you -- Did anything trigger your stomach to get sick?

11 A: The inside of the car and just knowing everything that
12 was -- had happened.

13 Q: Now Mr. Anderson also asked you about some scales. Where
14 did you see those scales?

15 A: On the -- On the coffee table.

16 Q: Okay. When did you see them on the coffee table?

17 A: The same time I seen the marijuana and the money.

18 Q: So this was when Scott had come back?

19 A: (Witness nods.)

20 Q: Okay. Were the scales there earlier in the day before
21 anyone ever let?

22 A: No.

23 Q: And whose scales were they?

24 A: Those were Mikey's scales.

25 Q: Okay.

REDIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 MR. OZMENT: Your Honor, may I approach the witness?

2 THE COURT: You may.

3 Q: Lastly, you spoke with Mr. Anderson that there were two
4 times the shotgun was sawed off. The time that I asked you
5 about earlier, tell me everything that was sawed off the
6 shotgun at that point?

7 MR. ANDERSON: Your Honor, I'm going to object at this
8 time. That could have been handled on direct. I think that's
9 a new matter.

10 THE COURT: I think you did ask about the ---

11 MR. ANDERSON: But she said she didn't see it, Your
12 Honor.

13 THE COURT: All right. I'm going to allow him to ask it.
14 I think you did address the issue with regard to the -- to the
15 stock.

16 MR. ANDERSON: As far as the stock, yes, sir, Your Honor,
17 absolutely.

18 THE COURT: Well, I'm going to allow him to follow up on
19 that.

20 Q: Miss Bailey, so looking at the piece of stock in evidence
21 in front of you, tell me everything that you saw sawed off the
22 shotgun at that time when you saw it?

23 A: It had already been sawed off when I seen it for the
24 first time.

25 Q: Is it the piece of wood in front of you?

REDIRECT EXAMINATION OF SHANNON BAILEY BY MR. OZMENT

1 A: That's the -- That's what was sawed off in front of me.

2 Q: All right, that's everything that was sawed off in front
3 of you?

4 A: Mm-hmm.

5 MR. OZMENT: No further questions, Your Honor.

6 THE COURT: Very good. All right, any objection to this
7 witness being excused?

8 MR. ANDERSON: No, sir, Your Honor.

9 THE COURT: You're free to leave. Thank you, ma'am.

10 WITNESS: Thank you.

11 (Whereupon, the witness leaves the stand at 2:28 p.m.)

12 THE COURT: All right, Mr. Ozment, you may call your next
13 witness.

14 MR. OZMENT: Your Honor, the State calls Deputy Brian
15 Proffitt to the stand.

16 (Whereupon, there is a pause in the proceedings until the
17 witness enters the courtroom.)

18 THE COURT: Deputy, if you could, please come forward.
19 I'm going to ask you to place your left hand on the Bible and
20 raise your right hand as the clerk administers the oath.

21 THE CLERK: Do you swear the testimony you give in this
22 case will be the truth, the whole truth and nothing but the
23 truth, so help you God?

24 WITNESS: Yes, ma'am.

25 THE CLERK: Please be seated and state your full name for

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 the record.

2 THE COURT: Pull up real close to that microphone and
3 speak loudly, clearly and slowly in order that we can hear
4 everything that you've got to say and state your full name and
5 spell that last one for us.

6 WITNESS: All right. Brian Thomas Proffitt, last name P-
7 R-O-F-F-I-T-T.

8 THE COURT: Very good. All right, Mr. Ozment, you're
9 recognized.

10 DEPUTY BRIAN PROFFITT, being first
11 duly sworn, testifies as follows:

12 DIRECT EXAMINATION

13 BY MR. OZMENT:

14 Q: How are you today, Deputy Proffitt?

15 A: Doing good, sir.

16 Q: Good. Did you respond to a call for a car fire call the
17 night of January -- Excuse me, December 17th, 2010?

18 A: Yes, sir.

19 Q: Where was that -- that location?

20 A: It was Wickerwood. It was actually off Willow Creek
21 Road.

22 Q: Is that in Florence County?

23 A: Yes, sir.

24 Q: If I showed you a map of that area of the county, could
25 you identify where that was?

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 A: Yes, sir.

2 MR. OZMENT: Permission to approach, Your Honor?

3 THE COURT: You may.

4 MR. OZMENT: Your Honor, could I have the witness step
5 down?

6 THE COURT: You can.

7 (Whereupon, the witness complies and a large map is
8 displayed in front of the jury.)

9 Q: Deputy Proffitt, I'm showing you a map prepared by the
10 Tax Assessor. Is this the area that you were just discussing?

11 A: Yes, sir.

12 Q: Is it represented on this map?

13 A: Yes, sir.

14 Q: Could you point out for the jury approximately where the
15 car fire was?

16 A: It was right about here on Wickerwood.

17 Q: All right.

18 MR. OZMENT: Your Honor, we would ask that Deputy
19 Proffitt be allowed to mark on this map where---

20 THE COURT: He may do so.

21 Q: Just mark it however you would like it to be marked.

22 (Whereupon, the witness complies.)

23 Q: All right. All right, thank you, Deputy. You can take
24 the stand again.

25 (Whereupon, the witness complies.)

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 Q: Do you recall what time you responded out to that
2 location?

3 A: Exact time, I don't -- I don't remember. I know it was
4 real early in the morning. It was the last.

5 Q: When you say early in the morning, to me early in the
6 morning is six a.m., but what are you referring to?

7 A: I would say past midnight.

8 Q: All right. So when you say early, you mean one o'clock,
9 two o'clock, somewhere in there?

10 A: Yes, sir.

11 Q: All right. Are you aware of how you were dispatched? I
12 mean what was your ---

13 A: I'd actually received a call to respond to Wickerwood
14 with also Howe Springs Fire Department in reference to a
15 suspicious car fire.

16 Q: All right. When you arrived on the scene, was anyone
17 else on the scene at that point?

18 A: The first responders, there were some firefighters that
19 were already on scene. They were already trying to extinguish
20 the car fire.

21 Q: All right. Do you recall what was your -- What did you
22 do first when you got there?

23 A: I spoke with some of the firefighters just to make sure
24 if they had seen anything responding to the scene, at which
25 time that's when I asked if they identified the car, the

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 license plate, had it ran, see who it come back to.

2 Q: Excuse me and you -- you ran the license plate?

3 A: I did.

4 Q: When you say run the license plate, what -- what does
5 that entail?

6 A: The license plate on the car just to see who the car was
7 registered to, if it had been reported stolen, anything like
8 that.

9 Q: All right. Obviously, the car was on fire. Was the
10 license plate still readable at that time?

11 A: It was, yes, sir.

12 Q: All right. Do you recall when you ran the license plate
13 what results came back?

14 A: It was -- I know it came back to an address in Coward.
15 I'm not sure who it was registered to.

16 MR. OZMENT: I beg the Court's indulgence just for a
17 moment.

18 Q: Did you write a narrative after that evening?

19 A: Yes, sir.

20 Q: Did you enter that with the Sheriff's Office computer
21 system that keeps up with that kind of thing?

22 A: Yes, sir.

23 Q: If I were to give you your narrative, do you think that
24 might help refresh your memory as to who the car belonged to?

25 A: Yes, sir.

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 MR. OZMENT: May I approach, Your Honor?

2 THE COURT: You may.

3 Q: Deputy Proffitt, would you read over that and confirm
4 that is what you wrote?

5 A: Yes, sir, this -- this is what I wrote.

6 Q: When did you write that narrative?

7 A: It was on 12/17/2010.

8 Q: All right, so around the time that you ---

9 A: Yes, sir..

10 Q: All right. On that narrative, did you put down who the
11 car belonged to?

12 A: Yes, sir. It states that it was registered to a Michael
13 Ford.

14 Q: All right. Do you recall the make or color of the car or
15 were you able to determine based on when it was burning?

16 A: Yes, sir. The front end was still -- hadn't been burned
17 at that time, so I was able to distinguish a color and a make,
18 which was a blue in color Chevy Impala.

19 Q: Okay. Were the firefighters successful in getting the
20 car fire out?

21 A: Yes, sir.

22 Q: How long did that take?

23 A: When I arrived on scene, it was pretty much already
24 extinguished.

25 Q: All right. When you were on scene, did you look for any

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 evidence, any sort of, you know, kind of short term
2 investigation at that point?

3 A: I looked around just to see if I could see anything. I
4 didn't notice anything out of place. I'd asked if the
5 firefighters had seen anything suspicious, which they at the
6 time told me no.

7 Q: Okay and do you know if anyone called 9-1-1 and that's
8 what led to the call?

9 A: We did have a complainant that had called us. It was --
10 I think from reading my report it was a Pearson, that he had
11 also -- I'd called him on the phone and spoke with him by
12 phone.

13 Q: Okay. After the fire was out, what did you do with the
14 car?

15 A: I actually called our -- We have a rotation with the
16 Sheriff's Office for a tow company, which came out and towed
17 the car to the Sheriff's Office impound.

18 Q: Okay.

19 MR. OZMENT: Your Honor, may I approach the witness?

20 THE COURT: You may.

21 Q: Deputy Proffitt, I'm handing you what's been pre-marked
22 as State's Exhibits 11 and 12. Could you look at those two
23 photographs and tell me if you recognize that location?

24 A: Yes, sir. It's -- It was where the vehicle was parked
25 the night of -- of this call.

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 Q: This is ---

2 A: On Wickerwood.

3 Q: This is the spot that you ---

4 A: This is.

5 Q: Okay. Can you still see any evidence in those photos
6 where the car was parked?

7 A: Yes, sir.

8 Q: What do you see in those photos?

9 A: I actually see ---

10 Q: Don't show it to the jury yet. Just tell me what you
11 see.

12 A: On -- Which I can tell it's facing Wickerwood where the
13 car was parked slanted.

14 Q: Okay. Do those photos accurately represent what you
15 remember the scene looking like that evening?

16 A: Yes, sir.

17 MR. OZMENT: Your Honor, at this time, the State would
18 move State's 11 and 12 into evidence.

19 THE COURT: Any objection from the defense?

20 MR. ANDERSON: No, sir.

21 THE COURT: Eleven and 12 are into evidence without
22 objection from the defense.

23 (Whereupon, State's Exhibits Number 11 and 12, both color
24 photographs, are admitted into evidence.)

25 MR. OZMENT: All right. May I approach the witness, Your

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 Honor?

2 THE COURT: You may.

3 Q: Looking at State's 11 and 12 -- We'll use just number 12.

4 So this photo, where was the front of the car parked and where
5 was the back of the car parked? Do you see what I'm saying?

6 A: The front of the car was facing this way like they had
7 pulled it in and tried to slant it.

8 Q: So you're saying it was parked on a diagonal?

9 A: Yes, sir.

10 Q: All right and was the -- was the back of the car facing
11 the roadbed or was the front of the car facing the roadbed?

12 A: The back of the car was facing the road. The front of it
13 was more facing the ditch.

14 Q: All right. Deputy Proffitt, I'm handing you State's
15 Exhibits 13, 14, 15 and 16. Could you look at those and tell
16 me if you can tell me what is in those pictures?

17 A: Yes, sir. This would be the car that I responded to on
18 Wickerwood.

19 Q: As you recall, is that what the car looked like that
20 evening?

21 A: Yes, sir.

22 MR. OZMENT: Your Honor, at this time, the State would
23 move I believe it's 13 through 16, State's Exhibits into
24 evidence.

25 MR. ANDERSON: Your Honor, I don't think I have any

DIRECT EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. OZMENT

1 objection. I just wanted to review them first. Without
2 objection, Your Honor.

3 THE COURT: Thirteen through 16 are into evidence without
4 objection from the defense.

5 (Whereupon, State's Exhibits Number 13 through 16, all
6 color photographs, are admitted into evidence.)

7 MR. OZMENT: May I approach the witness, Your Honor?

8 THE COURT: You may.

9 Q: Deputy Proffitt, I believe you testified when you got
10 there that it was primarily the back of the car that was on
11 fire?

12 A: Yes, sir.

13 Q: So I'm holding up State's 15 and 16. Is this -- When the
14 fire was out, this is about what it looked like?

15 A: Yes, sir.

16 Q: All right and so we can see the badging on the vehicle
17 and whatnot on the front there?

18 A: Yes, sir.

19 Q: Thank you. After you had the car towed from the scene,
20 how much longer did you stay on the scene?

21 A: Pretty much I -- probably a minute or two. I had to
22 contact one of our investigators in reference this incident
23 and then I actually cleared.

24 Q: Do you recall which investigator you contacted?

25 A: It was our arson investigator, Pat O'Hara.

CROSS EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. ANDERSON

1 Q: All right.

2 MR. OZMENT: I have no further questions for this
3 witness, Your Honor.

4 THE COURT: Cross examination, Mr. Anderson?

5 CROSS EXAMINATION

6 BY MR. ANDERSON:

7 Q: Mr. Proffitt, when did you clear the scene?

8 A: I would say it -- I don't remember exactly what -- what
9 time it was. It would be after our tow truck picked the
10 vehicle up.

11 Q: Do you know what time the truck left?

12 A: I -- I don't.

13 Q: Okay. Was it still dark?

14 A: It was still early in the morning. Yes, sir.

15 Q: All right, early in the morning. Was it still dark?

16 A: Yes, sir, I would say.

17 Q: Okay.

18 A: Yes, sir.

19 Q: Did you take these pictures or you can just identify
20 them?

21 A: I can identify them. I didn't take the pictures, sir.

22 Q: When you said earlier you referred it to the arson
23 investigator, Pat O'Hara, do you know whether or not he would
24 have taken those pictures?

25 A: I couldn't ---

CROSS EXAMINATION OF DEPUTY BRIAN PROFFITT BY MR. ANDERSON

1 Q: Somebody took them.

2 A: Somebody, yes. If I had to guess, probably forensics.

3 Q: Okay.

4 A: If I had to guess.

5 MR. ANDERSON: Judge, that's all the questions I have.

6 THE COURT: Any redirect?

7 MR. OZMENT: No redirect, Your Honor.

8 THE COURT: You may step down and you're free to leave.

9 WITNESS: Thank you.

10 (Whereupon, the witness leaves the stand at 2:43 p.m.)

11 THE COURT: You may call your next witness.

12 MR. OZMENT: Your Honor, the State calls Investigator Pat

13 O'Hara.

14 THE COURT: All right. While Mr. O'Hara is coming, let's

15 stand and stretch one more time, how about that? A post-lunch

16 stretch.

17 (Whereupon, there is a pause in the proceedings until the

18 witness enters the courtroom.)

19 THE COURT: All right, you can have a seat. Mr. O'Hara,

20 please -- please come forward and I'm going to ask you, if you

21 could, to place your left hand on the Bible and raise your

22 right hand as the clerk administers the oath.

23 THE CLERK: Do you swear the testimony you give in this

24 case will be the truth, the whole truth and nothing but the

25 truth, so help you God?

DIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 WITNESS: I do.

2 THE CLERK: Please be seated and state your full name for
3 the record.

4 THE COURT: Yes, sir, pull up real close to that
5 microphone and speak loudly, clearly and slowly in order that
6 we can hear everything that you've got to say and we're going
7 to start with your full name and spell that last one for the
8 court reporter.

9 WITNESS: Yes, sir. Patrick J. O'Hara, O apostrophe H-A-
10 R-A.

11 THE COURT: Thank you. All right, Mr. Ozment, you're
12 recognized.

13 MR. OZMENT: Thank you, Your Honor.

14 INVESTIGATOR PAT O'HARA, being first
15 duly sworn, testifies as follows:

16 DIRECT EXAMINATION

17 BY MR. OZMENT:

18 Q: How are you, Investigator O'Hara?

19 A: Doing fine.

20 Q: Good. How long have you been the fire -- the arson
21 investigator out at the Sheriff's Department?

22 A: I did it part-time two years, full-time now this is my
23 fourth year.

24 Q: All right. What did you do before that?

25 A: Just a criminal investigator.

DIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 Q: How long were you an investigator in that capacity?

2 A: Probably three or four years.

3 Q: All right. Were you in law enforcement before that?

4 A: Yes, I was.

5 Q: How long have you been in law enforcement in total?

6 A: Total fifteen years.

7 Q: All right. On December 17th, 2010, maybe early 18th,

8 2010, did you have instance to become involved in a car fire

9 off [REDACTED]

10 A: I was.

11 Q: What was your involvement in that case?

12 A: I was notified by Deputy Proffitt that they were out on

13 [REDACTED] with a vehicle fire. Deputy Proffitt gave me

14 the details of it, that there was nobody around the vehicle at

15 the time of the fire, and that there was a witness, Mr. Steve

16 Pearson, who observed an individual not far from the car

17 walking away from it.

18 Q: All right. Did you have a chance to invest -- to examine

19 the vehicle itself?

20 A: I did.

21 Q: At what point did you examine the vehicle?

22 A: On December 20th, I executed a search warrant on this car

23 because I was later notified that the victim was deceased. So

24 at that time, protocol says I issue -- do a search warrant on

25 the car. At that time, I executed a search warrant along with

DIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 my backup, Investigator Alvin Powell.

2 Q: All right. Where was the car at this point?

3 A: The car was at the Sheriff's Office impound secure.

4 Q: All right and when you said it was secure, explain to me
5 how you secure things in the sheriff's impound lot?

6 A: It has a fence around with barbed wire along with
7 electronic surveillance system.

8 Q: Why do you secure things in the impound lot?

9 A: To keep the general public away from it and it lets -- it
10 keeps it secure so nobody messes with the car and once it's
11 dropped off, then the only next person that has access is the
12 impound officer and myself.

13 Q: All right. When you went through the car and you found
14 -- Were you able to find any useful evidence?

15 A: While processing the vehicle, I was able to -- I did take
16 two samples out of this vehicle. The reason why we take
17 samples is to determine was anything used, an ignition -- I'm
18 sorry, an ignitable liquid source and I also by digging the
19 car out up under the driver's compartment where the steering
20 wheel and everything would have fallen, I also found the
21 ignition.

22 Q: All right. What -- What does that tell you that you
23 found the ignition?

24 A: When looking at the ignition, I was able to examine it.
25 The cylinder was still intact. The plastic had melted around

DIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 it, but I could see that there was no key in the ignition,
2 which tells me that this vehicle was not running at the time
3 of the fire.

4 Q: All right. Did you find the key anywhere on the vehicle,
5 around the vehicle, anything?

6 A: No, we never did find the keys to the vehicle.

7 Q: All right.

8 MR. OZMENT: May I approach, Your Honor?

9 THE COURT: Yes.

10 Q: Looking at what have been -- what is in evidence as
11 State's Exhibits 13 through 16, could you look at those
12 photographs and tell me if that is the car that you
13 investigated?

14 A: It appears to be, yes.

15 Q: All right and when you went through the car and
16 investigated it, there are some pictures of the interior
17 there, is that the condition of the interior when you went
18 through it?

19 A: Yes, it is.

20 Q: All right and in your experience as an arson investigator
21 and as a criminal investigator long before that, when a car
22 has been destroyed to that level, is it possible to collect
23 any trace evidence out of that kind of vehicle?

24 A: No. The fire would have consumed all the trace evidence.

25 Q: All right. So hair, DNA, blood, anything like that,

DIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 could any of that be recovered from that kind of interior?

2 A: The only -- The hair would have been destroyed by the
3 fire. The only way blood would have been preserved is if
4 something would have been covering the pool of blood, i.e. the
5 deceased, a heavy object. Anything like that would have
6 covered the pool of blood and in this case, nothing was that
7 -- found like that.

8 Q: All right. So you were unable to collect any sort of
9 trace evidence?

10 A: No.

11 Q: All right.

12 MR. OZMENT: I beg the Court's indulgence one moment.

13 Q: What -- What -- After looking through the car and that in
14 the subsequent days following, did you take any steps to
15 investigate this crime and what might be behind it?

16 A: I worked a little with -- with Investigator Collins and
17 Investigator McFadden and later they told me that they secured
18 statements that put Mr. Lee in the area at the time of the
19 fire less than I believe -- I'm going to say a sixteenth to an
20 eighth of a mile away from the fire.

21 Q: Okay. Did you sign the arson third warrant?

22 A: I did.

23 Q: Okay. Was it your investigation along with Investigator
24 Collins and Investigator McFadden's, is that what led to
25 signing that warrant?

CROSS EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. ANDERSON

1 A: It is.

2 Q: Okay.

3 MR. OZMENT: No further questions for this witness, Your
4 Honor.

5 THE COURT: Cross examination, Mr. Anderson?

6 CROSS EXAMINATION

7 BY MR. ANDERSON:

8 Q: Investigator O'Hara, did you talk with Mr. Steve Pearson?

9 A: I did.

10 Q: You actually interviewed him because he was the 9-1-1
11 caller?

12 A: I did.

13 Q: So you talked to him about what he had seen that night?

14 A: I did.

15 Q: Did he tell you that he saw approximately a -- Excuse me,
16 he saw a white male that was approximately six feet tall,
17 about 250 pounds, wearing a burgundy long-sleeved shirt?

18 A: He did.

19 Q: Did he also tell you that he didn't see the individual
20 make any hand gestures?

21 A: Correct.

22 Q: Now did he say I saw him carrying anything?

23 A: No, he did not.

24 Q: Now the best part about this report is why did Mr.

25 Pearson say he didn't stop?

REDIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 A: Mr. Pearson said to the officer and to myself that he was
2 under the influence of alcohol.

3 Q: And he didn't want to meet with law enforcement while he
4 was on his way home?

5 A: Correct.

6 Q: You indicated earlier that you couldn't collect any trace
7 evidence?

8 A: That's correct.

9 Q: Did you ever do a photo line-up with Mr. Pearson?

10 A: I did.

11 Q: Who did Mr. Pearson -- Or was he able to pick anyone out?

12 A: No, he was not able to pick anybody out.

13 MR. ANDERSON: The Court's indulgence just for a moment,
14 Your Honor. No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MR. OZMENT: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. OZMENT:

19 Q: Mr. Anderson asked you about Mr. Pearson and your
20 conversation with him. Was Mr. Pearson the 9-1-1 caller?

21 A: Yes, he was.

22 Q: All right and you did speak with him about the case
23 afterwards?

24 A: I spoke with him. I don't have my notes in front of me,
25 but it would have been probably a couple days later. I did

REDIRECT EXAMINATION OF INVESTIGATOR PAT O'HARA BY MR. OZMENT

1 bring him down to the Sheriff's Department where I did get a
2 recorded statement from him.

3 Q: Do you recall if he was forthcoming in reference to his
4 drinking and driving?

5 A: He fully admitted.

6 Q: All right.

7 MR. OZMENT: No further questions, Your Honor.

8 THE COURT: All right, any objection to this witness
9 being excused?

10 MR. ANDERSON: No, sir, Your Honor.

11 THE COURT: All right, Detective O'Hara, you're free to
12 leave. Thank you.

13 WITNESS: Thank you, Your Honor.

14 (Whereupon, the witness leaves the stand at 2:54 p.m.)

15 THE COURT: All right, Mr. Foreman, ladies and gentlemen
16 of the jury, we're going to take a midafternoon break and
17 allow you to refresh yourselves. Everyone remain seated as
18 the jury exits the courtroom.

19 (Whereupon, the jury exits the courtroom at 2:54 p.m.)

20 THE COURT: Might counsel approach the bench for a
21 moment?

22 (Whereupon, a bench conference is held off the record.)

23 THE COURT: All right, we'll stand at ease for about
24 seven and a half minutes.

25 MR. OZMENT: All right, seven and a half.

1 (Whereupon, there is a break in the proceedings from 2:55
2 p.m. until 3:10 p.m.)

3 THE COURT: All right, we're ready for the jury.

4 BAILIFF: Yes, sir.

5 (Whereupon, the jury enters the courtroom at 3:11 p.m.)

6 THE COURT: Mr. Ozment, you're recognized. You may call
7 your next witness.

8 MR. OZMENT: Thank you, Your Honor. The State calls Miss
9 Ashley Campbell to the stand.

10 (Whereupon, there is a pause in the proceedings until the
11 witness enters the courtroom.)

12 THE CLERK: Ma'am, if you'll please come around and place
13 your left hand on the Bible and raise your right hand.

14 THE COURT: I'm going to ask you, if you could, watch
15 your step right there.

16 WITNESS: Okay.

17 THE COURT: Very good.

18 THE CLERK: Do you swear the testimony you will give in
19 this case will be the truth, the whole truth and nothing but
20 the truth, so help you God?

21 WITNESS: Yes.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 THE COURT: Pull up real close to that microphone and
25 speak loudly, clearly and slowly in order that we can hear

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 everything that you've got to say.

2 WITNESS: Okay.

3 THE COURT: Let's start with your full name.

4 WITNESS: Ashley Lynn Campbell.

5 THE COURT: Very good, Miss Campbell. You're recognized,
6 Mr. Ozment.

7 ASHLEY CAMPBELL, being first
8 duly sworn, testifies as follows:

9 DIRECT EXAMINATION

10 BY MR. OZMENT:

11 Q: How are you today, Miss Campbell?

12 A: I'm doing fine.

13 Q: Good. Where do you live?

14 A: McElveen Lane in Florence.

15 Q: All right and what do you do?

16 A: What do I do what now?

17 Q: Yeah, do you have a job? Do you go to school?

18 A: No, I go to school full-time.

19 Q: Okay. What do you go to school for?

20 A: Nursing.

21 Q: All right. Do you know Scott Lee?

22 A: Yes.

23 Q: How do you know Scott?

24 A: My sister and him have a child together.

25 Q: All right. Older sister? Younger sister?

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

- 1 A: Older sister.
- 2 Q: How much older is she?
- 3 A: Ten years.
- 4 Q: Okay. How long have you known Scott?
- 5 A: My nephew is about to be fifteen, so almost fifteen years
- 6 I should say.
- 7 Q: All right. Did Scott contact you on -- late on the
- 8 evening of either December 17th or early December 18th of 2010?
- 9 A: Yes.
- 10 Q: How did he contact you?
- 11 A: Telephone.
- 12 Q: On a cell phone or house phone?
- 13 A: On my cell phone.
- 14 Q: Okay. Where were you that evening?
- 15 A: At my house where I was residing on Willow Creek Road at
- 16 the time.
- 17 Q: Okay. Did you -- Do you know where on [REDACTED]
- 18 that was?
- 19 A: Um ---
- 20 Q: Well, I mean the address?
- 21 A: Yeah, [REDACTED]
- 22 Q: All right. If I showed you a map of that area of
- 23 Florence County, could you kind of point me to at least the
- 24 general area that house is?.
- 25 A: Yes.

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 Q: All right.

2 MR. OZMENT: Your Honor, may I approach?

3 THE COURT: You may.

4 MR. OZMENT: May the witness step down, Your Honor?

5 THE COURT: She may.

6 Q: Would you come around, Ashley?

7 (Whereupon, the witness complies.)

8 Q: Now looking at this map, do you see where you used to
9 live on Willow Creek?

10 A: Yes, right here.

11 Q: All right. Would you mind just marking, you can mark it
12 with whatever mark you want to, where you used to live.

13 (Whereupon, the witness complies.)

14 Q: All right, thank you. You can sit back up there. You
15 may come back in a minute.

16 (Whereupon, the witness complies.)

17 Q: What did Scott say when he called you that night?

18 A: That he needed a ride home. He called and he said that
19 his friend couldn't drive him all the way home because he was
20 -- I believe he said he left his young children at the house,
21 so he couldn't drive all the way to [REDACTED] where

22 Scott was staying. So he called me and asked if I could take
23 him home and he'd give me some gas money and ---

24 Q: Hold it, hold on one second. And so when you said his
25 children were at home, was that Scott's child or ---

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 A: No. It's whoever his friend was that was taking him home
2 must have left his kids at the house.

3 Q: Okay. Where did Scott tell you that they were coming
4 from or do you recall?

5 A: Old River Road.

6 Q: All right and where was Scott being asked to be taken to?

7 A: Lamb Road.

8 Q: Where is Lamb Road?

9 A: Off of Howe Springs Road.

10 Q: Okay. If you were going from Old River Road to Scott's
11 house, wouldn't you drive down where you -- I mean would you
12 drive by your house?

13 A: Well, you'd pass my street, but you wouldn't drive by my
14 house.

15 Q: Okay, but would you drive down Wickerwood?

16 A: No.

17 Q: Okay. Do you remember where you picked up Scott that
18 night?

19 A: Yes, sir, in-between Wickerwood and I believe the other
20 dirt road is called Ben Ingram.

21 Q: Okay.

22 A: That dirt road.

23 Q: Do you think you could pick that out on the map if I
24 asked you to?

25 A: Yeah.

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 MR. OZMENT: Your Honor, may she step down again?

2 THE COURT: Yes..

3 (Whereupon, the witness complies.)

4 Q: Where -- On the map, do you see where you think you
5 picked up Scott that night?

6 A: He was walking from this direction towards my house right
7 about here.

8 Q: Okay. Can you mark that for us?

9 (Whereupon, the witness complies.)

10 Q: All right and now do you -- Are you aware which direction
11 on Willow Creek you would go to get to Scott's house?

12 A: Yes.

13 Q: Could you just point on the map? You know, how -- And I
14 realize they're not on this map, but, you know, how would you
15 leave say where you picked up Scott to go to Scott's house?

16 A: I would keep going straight ---

17 Q: Okay.

18 A: --- on Willow Creek Road. Oh, I'm sorry. I would keep
19 going straight on Willow Creek Road.

20 Q: Okay and then to come from Old River Road, which
21 direction is Old River Road?

22 A: It would -- You would go down to the end of Willow Creek
23 Road to the stop sign and take a right and Old River Road is
24 also Claussen. It turns into Claussen Road.

25 Q: Okay, thank you. You can step back up.

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 (Whereupon, the witness complies.)

2 Q: Now you said Scott called you to get a ride and you went
3 and picked him up. Do you recall what he was wearing when you
4 picked him up?

5 A: No, sir.

6 Q: All right. Do you recall if he had anything in his hand?
7 Was he carrying anything?

8 A: A bag, a grocery bag.

9 Q: Okay. Now when you say a grocery bag, was it like paper
10 or plastic?

11 A: Plastic.

12 Q: Okay. Do you know what was in the grocery bag?

13 A: Yes.

14 Q: What was in the grocery bag?

15 A: Marijuana.

16 Q: Okay. Do you know how much?

17 A: No, sir.

18 Q: All right.

19 A: It was a grocery bag full, that's the only thing I could
20 tell you.

21 Q: Okay. Do you know -- Do you recall if you saw anything
22 on the grocery bag on the outside?

23 A: No, sir.

24 Q: Okay. Did Scott have anything else with him that night?

25 A: No, sir.

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 Q: All right. When you said there was marijuana, did Scott
2 get any marijuana out of the bag while ---

3 A: Yes.

4 Q: --- he was in the car with you?

5 A: Yes.

6 Q: What -- What did he do with that marijuana?

7 A: He gave it to my boyfriend at the time, Chavis Cooks.

8 Q: Okay. Now where were you sitting in the car?

9 A: I was in the driver's seat.

10 Q: Okay. Where was your boyfriend, Chavis?

11 A: In the -- In the passenger beside me.

12 Q: Okay and where was Scott?

13 A: Directly behind me.

14 Q: Okay. Do you recall how much marijuana he gave to
15 Chavis?

16 A: Enough for a blunt.

17 Q: Okay.

18 A: Maybe a gram.

19 Q: Okay. Was it -- Was it rolled into a blunt or joint or
20 was it just like loose?

21 A: No, sir, it was loose.

22 Q: Okay.

23 A: It was loose.

24 Q: Before this happened, how often did Scott call you for a
25 favor?

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

- 1 A: Not too often.
- 2 Q: Okay. Had he ever called you and asked to be picked up
3 somewhere before?
- 4 A: No, sir.
- 5 Q: Okay. Did he ever pay you that gas money that he
6 promised you?
- 7 A: He did. Yeah, he did give me some money, but he didn't
8 give me all of it that he had told me he was going to give me.
- 9 Q: Okay. Did he give it to you that night?
- 10 A: No, sir.
- 11 Q: When did he give it to you?
- 12 A: It was a week or two later after I dropped him off that
13 -- that night.
- 14 Q: Okay. After you picked him up -- Well, excuse me. Did
15 you drive him all the way to his house like he had asked you
16 to?
- 17 A: Yes.
- 18 Q: Where did you drop him off in relation to the house?
- 19 A: Right there in his driveway in front of his house.
- 20 Q: Okay. Where did you go from there?
- 21 A: Home, I went back home.
- 22 Q: Do you recall if Scott said anything on the ride there?
23 I mean was he talking about anything?
- 24 A: No. He wasn't really saying anything in particular, no.
25 He asked to stop by the store and I took him to the store at

DIRECT EXAMINATION OF ASHLEY CAMPBELL BY MR. OZMENT

1 the Exxon right there at Claussen and Pamplico Highway and
2 then we left the store and I took him home then.

3 Q: Okay. After you dropped him off, at any time -- any time
4 after that, did he come and talk to you about that night when
5 you had picked him up?

6 A: No.

7 Q: Okay. Do you recall speaking with any law enforcement
8 about this case?

9 A: Yes.

10 Q: Who did you speak to?

11 A: Officer Collins and Officer McFadden.

12 Q: What did you talk to them about?

13 A: About me picking him up and what happened that night and
14 taking him home.

15 Q: All right, just -- Did you talk to them about anything
16 you hadn't talked about here?

17 A: No.

18 Q: Okay.

19 MR. OZMENT: No further questions for this witness, Your
20 Honor.

21 THE COURT: Cross examination, Mr. Anderson?

22 CROSS EXAMINATION

23 BY MR. ANDERSON:

24 Q: You talked with law enforcement on two different
25 occasions?

CROSS EXAMINATION OF ASHLEY CAMPBELL BY MR. ANDERSON

- 1 A: Yes, sir.
- 2 Q: I think one was on January the 31st, 2011, and then again
3 on March the 18th, 2011. Is that right?
- 4 A: I believe so. I'm not sure of the exact dates though.
- 5 Q: And both times did you go out to Effingham or did they
6 talk to you at your house? Where did ---
- 7 A: No, I went to Effingham.
- 8 Q: Both times?
- 9 A: Yes, sir, I believe so.
- 10 Q: Do you recall whether or not both statements were
11 recorded? Do you remember?
- 12 A: I believe they -- I know the first one was recorded.
- 13 Q: Do you remember what time of night it was when you got
14 the phone call from Scott?
- 15 A: It was between like nine and -- between the hours of nine
16 and eleven because I was at home in my bedclothes at the time,
17 so I know it was late.
- 18 Q: All right, so about a two hour window between nine and
19 eleven?
- 20 A: Yes, sir.
- 21 Q: Is that best guess?
- 22 A: Best guess, yes.
- 23 Q: When he got in the vehicle -- I think when you were
24 talking to law enforcement, you indicated that when he had
25 first gotten into the vehicle, you didn't know if he had

CROSS EXAMINATION OF ASHLEY CAMPBELL BY MR. ANDERSON

- 1 anything in his hands or not, but later you figured out that
2 he did have something in his hands?
- 3 A: Yes, the grocery bag.
- 4 Q: Was he trying to hide anything when you approached him?
- 5 A: No, sir.
- 6 Q: All right. If you'd have seen blood on him, would that
7 have caused you some concern?
- 8 A: Yes.
- 9 Q: If you'd have seen blood on that bag, would that have
10 caused you some concern?
- 11 A: Yes.
- 12 Q: If you'd have seen bloody money, would that have caused
13 you concern?
- 14 A: Yes.
- 15 Q: But you didn't see any of that on him, you didn't see any
16 bloody money, and you didn't see a bloody bag, did you?
- 17 A: No, sir.
- 18 Q: And he actually gave I guess some marijuana to Chavis,
19 you said about enough for a blunt?
- 20 A: Yes, sir.
- 21 Q: Now is Chavis, is that Chavis Cook?
- 22 A: Chavis Cooks, yes.
- 23 Q: And he was your boyfriend at the time?
- 24 A: Yes.
- 25 Q: After you dropped Scott off -- That's right, let me back

CROSS EXAMINATION OF ASHLEY CAMPBELL BY MR. ANDERSON

1 up a second. Did you smell any smoke, gas, kerosene, lighter
2 fluid, anything like that on Scott when he got in the car?

3 A: No, sir.

4 Q: When he got in the car with you, did he appear to be
5 nervous? Did he appear to be excited?

6 A: No.

7 Q: Did he ever tell you, "Hey, Ashley, could you hurry up?"

8 A: No.

9 Q: When you were talking with Chad Collins, do you recall
10 telling him that you stopped and Scott went to the Indian
11 store?

12 A: To the Indian -- To the Exxon.

13 Q: The Exxon?

14 A: Yes.

15 Q: Was that what you said, the Exxon?

16 A: Yeah.

17 Q: I'm sorry, I must have misunderstood that. He went to
18 the Exxon store on the way home?

19 A: Yes, sir.

20 Q: Y'all stayed in the car when he went in the Exxon store?

21 A: Yes, sir.

22 Q: And then he came back out and got in the car and y'all
23 took him home?

24 A: Yes, sir.

25 Q: You dropped him off in the driveway?

CROSS EXAMINATION OF ASHLEY CAMPBELL BY MR. ANDERSON

- 1 A: Yes.
- 2 Q: Now what is your nephew's name?
- 3 A: Daniel Lee.
- 4 Q: And that's the ---
- 5 A: The one ---
- 6 Q: --- son of Scott and your sister?
- 7 A: Yes.
- 8 Q: Okay. I remember on the interview that at that time you
- 9 indicated that Daniel's mom was in the hospital. Why was she
- 10 in the hospital?
- 11 A: She has a mental illness.
- 12 Q: Okay, I'm sorry. Also, when Chad Collins and that other
- 13 officer were interviewing you, you were asked if you knew of
- 14 any grudges that Scott might have and you told him no. Did
- 15 you know of any grudges that Scott had?
- 16 A: No, sir.
- 17 Q: Did you know Mikey Ford?
- 18 A: No, sir.
- 19 Q: Do you remember Scott telling you and Chavis at a later
- 20 point in time that somebody had killed his friend?
- 21 A: Yes.
- 22 Q: And that he was trying to help law enforcement find that
- 23 person?
- 24 A: Yes.
- 25 MR. ANDERSON: Judge, that's all the questions I have.

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 THE COURT: Any redirect?

2 MR. OZMENT: Nothing, Your Honor.

3 THE COURT: You may step down. Any objection to this
4 witness being excused?

5 MR. ANDERSON: No, sir, Your Honor.

6 THE COURT: You're free to leave.

7 WITNESS: Thank you.

8 (Whereupon, the witness leaves the stand at 3:26 p.m.)

9 THE COURT: You may call your next witness.

10 MR. OZMENT: Your Honor, the State calls Investigator
11 Kathleen Streett to the stand.

12 (Whereupon, there is a pause in the proceedings until the
13 witness enters the courtroom.)

14 THE COURT: Ms. Streett, if you could, come forward,
15 please, ma'am. I'm going to ask you, if you could, you can
16 set your paper down and place your left hand on the Bible and
17 raise your right hand as the clerk administers the oath.

18 THE CLERK: Do you swear the testimony you give in this
19 case will be the truth, the whole truth and nothing but the
20 truth, so help you God?

21 WITNESS: I do.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 WITNESS: Kathleen Vargovchik Streett.

25 THE COURT: Very good. You're recognized, Mr. Ozment.

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 INVESTIGATOR KATHLEEN STREETT, being
2 first duly sworn, testifies as follows:

3 DIRECT EXAMINATION

4 BY MR. OZMENT:

5 Q: How are you, Investigator Streett?

6 A: Fine.

7 Q: Can you say that middle name again?

8 A: Vargovchik.

9 Q: Can you spell that name?

10 A: V as in victory, A-R-G-O-V as in victory, C-H-I-K.

11 Q: Thank you, Investigator Streett. How long have you been
12 an investigator at the Sheriff's Office?

13 A: Since 2000, twelve years.

14 Q: All right. What did you do before that?

15 A: I was a road deputy.

16 Q: How long were you a road deputy?

17 A: Since 1994, so six years.

18 Q: All right. How many total years have you been with the
19 Sheriff's Office?

20 A: Since 1994, so this is -- I'm not very good at math.

21 Q: All right.

22 A: Sixteen, seventeen years.

23 Q: All right. How many homicides would you say you've
24 investigated during your time as an investigator?

25 A: A large number.

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 Q: All right. What was your involvement in the case that
2 we're here with today?

3 A: Actually, this case took place when I was out of town and
4 it happened in December and then during the -- some of the
5 investigations process, I helped with some of the interviews
6 with some of the people that were involved in the case.

7 Q: All right. Were you assisting other investigators when
8 you did those interviews?

9 A: Correct, Chad Collins and Thomas McFadden.

10 Q: All right. On February 9th, 2011, did you interview
11 Shannon Bailey?

12 A: I did with Investigator McFadden.

13 Q: All right. Where did that interview take place?

14 A: At the Sheriff's Office.

15 Q: All right.

16 A: In Effingham.

17 Q: On that same date, did you interview Jonathan Lee?

18 A: That's correct, yes.

19 Q: Do you recall what time approximately that occurred?

20 A: I have here in my narrative that it happened at
21 approximately 3:45, a quarter till four.

22 Q: Who helped you with that interview?

23 A: Lieutenant Doar and also Thomas McFadden.

24 Q: All right. Was that interview recorded?

25 A: Yes, it was.

DIRECT EXAMINATION OF INVESTIGATOR STREETT BY MR. OZMENT

1 Q: All right and then on the same day, did you also
2 interview Scott Lee?

3 A: That's correct.

4 Q: What time did that interview occur?

5 A: It was after Jonathan that -- later on that afternoon.

6 Q: All right. Had Mr. Lee been arrested at that point?

7 A: Yes.

8 Q: All right. Do you recall from being in that interview if
9 he was Mirandized at the beginning of it?

10 A: He was.

11 Q: All right and just to explain to us briefly, what is --
12 what is Miranda? Why do you Mirandize someone?

13 A: Miranda Warnings are basically so that whoever it is that
14 you're talking to, they know that, you know, they have the
15 right to remain silent and that anything that they say can and
16 will be used against them in a court of law. It's basically
17 your rights under the Constitution that you have as a citizen.

18 Q: All right. Did he waive those and choose to talk to you
19 all that day?

20 A: He did.

21 Q: After that interview, what other involvement did you have
22 on this case?

23 A: Very little actually. I believe I assisted Investigator
24 Collins with possibly putting together some search warrants
25 for some phone records and things like that and then there

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 were two other people that were also interviewed, Harlette
2 Jones and her boyfriend, Albert Edge.

3 Q: All right. I may have neglected to ask you this earlier.
4 When you interviewed Scott that same day that you did the
5 three interviews, was that interview recorded?

6 A: It was.

7 Q: Audio and video?

8 A: Yes, sir.

9 MR. OZMENT: No further questions for this witness, Your
10 Honor.

11 THE COURT: All right, cross examination, Mr. Anderson?

12 CROSS EXAMINATION

13 BY MR. ANDERSON:

14 Q: Investigator Streett, did you do a narrative report or
15 supplemental report in this case?

16 A: I did.

17 Q: Do you have a copy of that with you?

18 A: Yes, sir.

19 Q: You indicated that on the first page, paragraph two, that
20 you had assisted Investigator Thomas McFadden with the
21 interviews of three people, the first being Shannon Bailey.
22 Is that right?

23 A: That's correct.

24 Q: And then later I think you sat in on an interview with
25 Jonathan Lee?

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 A: That's correct.

2 Q: And then later you sat in on the interview with Scott
3 Lee?

4 A: That's correct.

5 Q: And those were all on February the 9th, 2011?

6 A: Yes, sir.

7 Q: All right. You also interviewed -- On February the 10th,
8 2011, you interviewed Albert Edge, Jr., AKA Junior, and his
9 live-in girlfriend or his girl -- yeah, his live-in
10 girlfriend, Harlette Jones, AKA Peaches.

11 A: Correct.

12 Q: Is that right? You interviewed them with Investigator
13 Thomas McFadden?

14 A: Yes, sir.

15 Q: Now did Junior tell you that he had received a phone call
16 on the 17th from Scott Lee?

17 A: He did.

18 Q: And did he tell you ---

19 MR. OZMENT: Your Honor, I would object to any hearsay
20 with what Junior said.

21 THE COURT: Sustained.

22 MR. ANDERSON: Your Honor, if Junior made the statement
23 to her?

24 THE COURT: That's hearsay. She can say what the
25 defendant said, but not what an individual said. You have to

CROSS EXAMINATION OF INVESTIGATOR STREETT BY MR. ANDERSON

1 ask him.

2 MR. ANDERSON: Can I have the Court's indulgence just for
3 a moment, Your Honor?

4 THE COURT: Certainly.

5 MR. ANDERSON: Your Honor, I don't have any additional
6 questions at this time.

7 THE COURT: Any redirect?

8 MR. OZMENT: No redirect, Your Honor.

9 THE COURT: You may step down.

10 (Whereupon, the witness leaves the stand at 3:35 p.m.)

11 THE COURT: You may call your next witness.

12 MR. OZMENT: I beg the Court's indulgence just a minute.

13 Investigator Collins has gone to see if he's here.

14 THE COURT: Very good.

15 MR. OZMENT: We would ask that Investigator Streett be
16 released from her subpoena.

17 THE COURT: You're free to leave. You're welcome to stay
18 if you would like though.

19 WITNESS: Thank you, Your Honor.

20 THE COURT: There's a number of things that are difficult
21 about practicing law and the presentation of a case, not the
22 least of which is coordinating all of your witnesses, but the
23 State has done a very good job at that. It's very difficult.

24 MR. OZMENT: Your Honor, the State calls Jonathan Lee to
25 the stand.

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 THE COURT: All right. Yes, sir, if you could come
2 forward, I'm going to ask you, if you could, to place your
3 left hand on the Bible and raise your right as the clerk
4 administers the oath. Right here, you can stand right there.
5 Left hand on the Bible and raise your right.

6 THE CLERK: Do you swear the testimony you give in this
7 case will be the truth, the whole truth and nothing but the
8 truth, so help you God?

9 WITNESS: Yes, ma'am.

10 THE CLERK: Please be seated and state your full name for
11 the record.

12 THE COURT: Pull up real close to that microphone and
13 speak loudly, clearly and slowly in order that we can hear
14 everything that you've got to say. Start with your full name.

15 WITNESS: Michael Jonathan Lee.

16 THE COURT: Very good.

17 JONATHAN LEE, being first duly sworn,
18 testifies as follows:

19 DIRECT EXAMINATION

20 BY MR. OZMENT:

21 Q: Mr. Lee, how are you today?

22 A: I'm okay.

23 Q: What -- What do you do for a living?

24 A: I operate cranes.

25 Q: Where do you live?

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

- 1 A: Florence, South Carolina.
- 2 Q: What's your address?
- 3 A: [REDACTED]
- 4 Q: How long have you lived there?
- 5 A: Off and on twenty, twenty-three years.
- 6 Q: All right. How are you related to the defendant?
- 7 A: That's my older brother.
- 8 Q: How many years older is Scott than you?
- 9 A: Probably about four years.
- 10 Q: Were you living at that address back in December of 2010?
- 11 A: Pretty much, yes, sir.
- 12 Q: All right. Was Scott living there at that time?
- 13 A: Yes, sir, pretty much.
- 14 Q: You and Scott, did you all have a family member die in
- 15 December of 2010?
- 16 A: Yes, sir. It was my late uncle, Bobby.
- 17 Q: And how was Uncle Bobby related to you and Scott?
- 18 A: Excuse me?
- 19 Q: How was he related? I mean I know he was your uncle, but
- 20 was he your dad or your mom's ---
- 21 A: My father's uncle -- My father's brother.
- 22 Q: All right. After your Uncle Bobby died, did you and
- 23 Scott retrieve anything from his house?
- 24 A: We went out there and we went through his stuff and we
- 25 were packing stuff up and yes, sir, there was a -- I believe

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 it was a 12 gauge shotgun. It was my Uncle Bobby's. It was
2 -- It was there and a box of shells mixed up. We sorted the
3 shells while we were there, stuff like that.

4 Q: You said you mixed up sorted shells. What do you mean by
5 that?

6 A: Different brands, different types of shells, stuff like
7 that.

8 Q: All right. Can you describe the shotgun as far as what
9 was it made out of? What did it look like generally?

10 A: Like a regular shotgun. It was -- I remember it had a
11 wooden stock, a long barrel. I don't know. I don't handle
12 guns too much, but it was a regular shotgun.

13 Q: All right, I understand. Did you all get that shotgun
14 out of your Uncle Bobby's house before December 17th?

15 A: Yes, sir. I -- Yeah, yes, sir.

16 Q: Okay. Did you ever see Scott fire that shotgun?

17 A: He tested it out out in the front yard of my mother's
18 house. I mean just fired it off a couple times.

19 Q: Was he shooting at anything?

20 A: No, just air, pretty much shooting up in the air.

21 Q: Okay and the shells he used then, were they from ---

22 A: From the ---

23 Q: --- that box of mixed shells?

24 A: Yes, sir.

25 Q: Do you recall ever seeing Scott saw off that shotgun?

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

- 1 A: Yes, sir, I did, but I want to say that he also had
2 measured it to make sure that it was legal whenever he did saw
3 it because he -- I remember I was speaking about the length of
4 the -- the length of a legal shotgun versus the length of an
5 illegal shotgun.
- 6 Q: When do you recall him sawing off the shotgun?
- 7 A: It was around that period of time. It wasn't long after
8 we brought it back to the house.
- 9 Q: What did you see him saw off?
- 10 A: The wooden stock and a piece of the barrel.
- 11 Q: Do you recall just approximately how much of the barrel
12 he sawed off?
- 13 A: Somewhere around ten, twelve inches, I guess.
- 14 Q: All right. Do you remember how much of the stock he
15 sawed off?
- 16 A: It was six, eight inches maybe, something like that.
- 17 Q: When he sawed it off, had any of it been sawed off
18 previously?
- 19 A: Not to my recollection, no, sir.
- 20 Q: All right.
- 21 A: As far as I know, the gun was intact, you know.
- 22 Q: All right. Looking now at December 17th, what -- what had
23 you been doing the afternoon during the day of December 17th?
- 24 A: I remember my mother was out of town for about a three
25 day span. She was out of state and my birthday was December

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 5th. My girlfriend at the time, Shannon, myself and my
2 brother, we were just having a good time, partying, doing
3 whatever, and as far as December 17th, I really can't say
4 exactly what I done that day.

5 Q: All right.

6 A: I mean I know I was there at that trailer, I know that.

7 Q: Okay. When you say partying a little bit, were y'all
8 doing any drugs?

9 A: Yes, sir.

10 Q: What were you -- What were you doing that particular day?

11 A: I had done some cocaine. I had done some Xanaxes. I'm
12 not sure if we had been drinking or not. You know, smoked a
13 little bit of marijuana, stuff like that.

14 Q: Had Shannon been doing anything?

15 A: Yes, sir, pretty much the same stuff.

16 Q: What about Scott?

17 A: Pretty much the same stuff. I can't remember if he done
18 any cocaine or anything like that. I can't remember for sure.

19 Q: Okay. Do you recall Scott leaving that night?

20 A: Like I spoke with you about, there was a friend of ours
21 that had a car identical to Mikey's except a little bit
22 difference in color. I know Scott left that night, but I did
23 not actually see him get into Mikey's car and leave with
24 Mikey. Now Shannon on the other hand ---

25 Q: Hold it. Don't tell me anything that Shannon may have

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 said or did.

2 A: Okay, I'm sorry.

3 Q: Did you see Scott get into a car that night?

4 A: No, sir, I did not.

5 Q: Okay.

6 A: I know I ---

7 Q: Do you -- Do you know if you saw Mikey's car come to the
8 house that night and pick up Scott or anything like that?

9 A: I cannot say a hundred percent certainty. No, sir.

10 Q: Okay. When did you become aware that Scott had left the
11 house the first time that evening?

12 A: When I -- I didn't mean to interrupt you. When I had
13 walked out of the room, I had seen one car leave which I
14 thought was my buddy's car, but come to find out whatever.
15 When I walked out of the bedroom, he was no longer in the
16 house. That's when I knew he was gone.

17 Q: Okay. How long between when you walked out of the
18 bedroom that time and saw he wasn't there to when he returned
19 again?

20 A: An hour or so maybe. I'm not exactly sure on time span
21 because I was under the influence of drugs at the time and I
22 really can't say for certain, but it doesn't seem like it was
23 too awful long.

24 Q: All right. How did you know he had gotten back to the
25 house that night?

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 A: When I realized he was back, I heard what sounded like
2 somebody was tearing the kitchen apart and Shannon and myself
3 were in the bedroom. I told her to stay in the bedroom, I
4 went out to check and see what it was. I shut -- I believe I
5 shut the door behind me as I walked out the room. Well, I
6 walked into the kitchen, I looked down, and I seen red stuff
7 all over the kitchen floor. I looked up ---

8 Q: Excuse me, I'm sorry to interrupt you. When you say red
9 stuff all over the kitchen floor, how much red stuff?

10 A: I'd say maybe a spot like this big and a couple other
11 spots.

12 Q: All right.

13 A: It looked more like footprints where it had smeared.

14 Q: All right. You say you saw the red stuff. Keep going.

15 A: I was trying to figure out and wrap my head around what I
16 was looking at and that's when I looked up and I seen a
17 grocery bag and some money sitting on the counter and it was
18 -- That's when I realized that it was covered in blood.

19 Q: When you say it was covered in blood, the grocery bag and
20 the money was?

21 A: Yes, sir. I know there was a five dollar bill that was
22 -- that was half covered in blood. I seen that. It was on
23 top of the other money. It wasn't much, but it was just some
24 money sitting there and the bag was sitting there with it.

25 Q: How much marijuana was it? I mean just a ballpark

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 figure, how much marijuana was sitting there?

2 A: A few ounces maybe. I mean it -- I couldn't tell really.
3 It was kind of just crunched up sitting there.

4 Q: Did it have blood on it?

5 A: Yes, sir, on the outside of the grocery bag.

6 Q: All right. So you see the blood on the ground and you
7 see that on the counter. What did you do next?

8 A: I kind of in disbelief -- I remember hearing -- Shannon
9 had walked out the room and come up behind me. I heard a
10 noise and I turned around. I spun her around and I marched
11 her pretty much back to the room and told her to shut -- I
12 told her to stay in the room and I shut the door.

13 Q: Why did you want her to stay in the room?

14 A: I don't know. It just happened like that.

15 (Whereupon, the witness snaps his fingers.)

16 A: And maybe to protect her or something. I don't know.
17 When I come back in, Scott was going through the cabinets,
18 slamming the cabinets, looking for something and I just kept
19 asking him what the F, what the F, what happened, you know,
20 stuff like that. He tried to answer me and he tried to
21 respond to what I was saying and he said, "I -- I," and he was
22 trying to talk and it was like he just couldn't get the words
23 out and he said, "It," and then the next thing I know, he was
24 out of the kitchen and still to this day don't ask me why, I
25 grabbed the Clorox that was sitting right there. It was in

DIRECT EXAMINATION OF JONATHAN LEE BY MR. OZMENT

1 plain sight. I just grabbed it and poured it out on the -- on
2 the linoleum floor and I just started wiping it up and then I
3 heard Shannon just standing there again and she was asking me
4 what was going on and that kind of stuff and I was pretty much
5 telling her to get back in the room and stay in the room.

6 Q: After -- So at this point, you're cleaning the floor.
7 Where was Scott or do you know where Scott was while you were
8 cleaning the floor?

9 A: As soon as I -- I remember saying that to her and the
10 next thing I remember is Scott was outside because I was
11 looking through, because the way the kitchen is, you have a
12 viewing area of the living room from the kitchen and I was
13 looking through to try to see where he was. I made it to the
14 front door and he was outside. He was going around Mikey's
15 car, which was pulled up by the corner of my mother's trailer.

16 Q: You said around Mikey's car. Earlier, you had said that
17 there was another car that had been coming to the house that
18 night that looked similar. How did you deduce this was
19 Mikey's car?

20 A: Because it was within ten feet of my viewing, you know.
21 I mean there was no mistaking the car.

22 Q: Okay, sorry. What was he doing to the car?

23 A: He was more or less -- It seemed like he was just in full
24 panic mode and he was going around the car. He opened up the
25 doors so the inside dome light cut on. When he made it to the

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1 driver's door and it opened up, that's when I noticed it was
2 busted. It was just shattered and when I looked at the in --
3 From the way I was looking at it, it was kind of at a downward
4 left kind of angle, so I could see down into the car because I
5 was at an elevated height and you could see the console of the
6 car, top of the console in-between the two seats area, and
7 like the headrest area was just black or just deep, dark red.
8 It was just saturated with something and Scott was just -- He
9 was just in full panic mode.

10 Q: And what did he -- Was he trying to clean the car or just
11 go through the car? Could you tell what he was doing?

12 A: He was spraying things on the car.

13 Q: Stuff he'd gotten from the kitchen?

14 A: Yes, sir, and stuff like that and then if I remember
15 correctly, I want to say that Shannon come in a third time and
16 walked into the living room behind me and I was trying to talk
17 to her and trying to -- because she was totally irrational and
18 I was just trying to wrap my head around everything and next
19 thing I remember is talking with her and then the next thing I
20 remember is Scott stripping down on the porch.

21 Q: When you say he was stripping down, what was he wearing
22 that he took off?

23 A: When I first seen him in the kitchen, I want to say he
24 had on a pair of black jeans. I don't remember what kind of
25 shoes or anything, but he had on his big blue goose down coat

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1 and ---

2 Q: When you say big blue goose down coat ---

3 A: It's one of them big puffy blue down -- goose down type
4 jackets. Anyway, he had stripped down on the porch and the
5 next thing I remember ---

6 Q: Excuse me a minute. Were those clothes bloody?

7 A: Yes, sir. He had blood on his clothes, yes, sir.

8 Q: Do you recall how much?

9 A: I -- It all happened so fast I really didn't focus on
10 that. I was just in disbelief at what I was looking at pretty
11 much the whole entire time.

12 Q: Was it enough that when you looked at him, did you
13 instantly recognize he had blood on him?

14 A: Well, when I -- when I noticed he had blood on him, that
15 was whenever I had looked over and seen the stuff sitting on
16 the counter and when I looked back at him and I was saying,
17 "What the F? What the F?" That's whenever I noticed he had
18 the blood on him.

19 Q: All right. Going back to where you were when he was
20 stripping on the front porch, what happened next?

21 A: The next thing I remember the shower was running and he
22 was in the shower and it was like just that quick he was out
23 the shower and, you know, he was coming through the house
24 throwing on his t-shirt and everything like that and it seemed
25 like I went -- I did, I went back into the room to talk to

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1 Shannon and the next thing I seen was the car back out and
2 turn around or when it backed up, there's a basketball goal
3 right there, but he backed up and stopped with the lights
4 facing the trailer and he pulled out and went down the
5 driveway and that was the last time I seen him until he come
6 back.

7 Q: Do you know what happened to the clothes that were
8 sitting on the front porch?

9 A: The last time I seen them they were sitting right there
10 on that porch.

11 Q: The next time you came out of the room, you said you were
12 back with Shannon, were they still on the porch?

13 A: I don't remember.

14 Q: Okay.

15 A: I want to say yes, but I -- I'm not going to say yes and
16 then ---

17 Q: What about the stuff on the counter, the marijuana? Was
18 it ---

19 A: It was gone, it was gone.

20 Q: It -- So when you came back out of the room, Scott had
21 gone. Was it on the counter then?

22 A: Say that one more time?

23 Q: When Scott left and you came back out of the bedroom ---

24 A: When Scott left in the car when he backed out, no, sir,
25 there was nothing there.

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1 Q: . Okay. So the money, was it there?

2 A: There was nothing.

3 Q: Okay. Can you recall -- When Scott came home in a frenzy
4 with the blood on him, do you recall seeing the gun anywhere
5 during this time period?

6 A: Again, I want to say -- because when I looked down at the
7 floor, I looked over and I seen that, I do want to say that I
8 looked and I seen the gun sitting on the edge of the kitchen
9 table, but I cannot say for a hundred percent certainty that I
10 did see it. I do want to say I did, but I'm not going to say
11 for a hundred percent.

12 Q: Okay.

13 A: Because everything just happened so fast.

14 Q: All right. After that night, do you remember seeing the
15 gun again after that?

16 A: I want to say I did, but he had it wrapped up to get rid
17 of it. I want to say he buried it in the woods, if I'm not
18 mistaken, but I mean that was because my mother had told him
19 to get it out of our house. But she didn't know anything at
20 that time about anything, so.

21 Q: Okay. Did Scott ever talk to you about the gun after
22 that?

23 A: He mentioned that he did get rid of it.

24 Q: Okay. Did you see Scott come back home that evening
25 after he left in the car?

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1 A: No, I did not see him come back home. I actually was in
2 the room trying -- Shannon and I both were trying to figure
3 out what to do and how to deal with the situation and then
4 that's when I heard him talking and when I walked out of the
5 room and through the kitchen into the living room, that's when
6 I seen a friend of ours, his name is Junior. He had walked
7 over with Scott or either had met Scott walking and Scott was
8 walking back towards the house. But they were in there
9 talking and he might have stayed ten or fifteen minutes, maybe
10 twenty minutes, but he was gone.

11 Q: I'm sorry. Who stayed ten or fifteen minutes?

12 A: A friend of ours, his name is Junior.

13 Q: All right. Did Scott leave the house again that night?

14 A: Not to my knowledge, I don't believe so.

15 Q: Okay. When Scott came back to the house, did he have or
16 do you recall if he had the marijuana with him?

17 A: I know he had marijuana sitting there that -- that they
18 were rolling up to smoke. I mean I did not see exactly how
19 much, but it was a smaller bag than what was on the counter.

20 Q: Do you know what he did with any of that marijuana that
21 was on the counter and that maybe some of it was there, but do
22 you know what happened to any of that marijuana?

23 A: I have no -- I couldn't tell you for sure.

24 Q: Okay. You talked about when you went outside and saw the
25 car and Scott was trying to clean it or doing something with

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1 it in a panic. Which window was broken in the vehicle?

2 A: The driver's front. I mean it ---

3 Q: Now where on your property and around the trailer -- Can
4 you explain, you know, where you were standing and kind of
5 where the car was?

6 A: Okay. Like there's a mobile home that sits like this.
7 It's straight across. The car was parked -- If that's the
8 face of the mobile home, it was on the front corner like right
9 here like parked at a forty-five degree angle, but I was
10 standing in the screen doorway, which is on -- You have a
11 porch. You've got about a three and a half feet clearance
12 from the ground. So I was upward looking down on it like --
13 basically like this.

14 Q: And approximately how far were you from the car?

15 A: Ten, fifteen feet tops.

16 Q: Okay. After that night -- Actually, let me go back. So
17 the rest of that evening you said that Junior was there. What
18 did -- What went on in the house after Junior left?

19 A: Pretty much while Junior was still there, Shannon had
20 come out while I was standing there talking with Scott and
21 Junior. She pretty much said hello, this, that and the other
22 and she was trying to get me back in the room and trying to
23 tell me to tell Junior that he needed to get on out of there,
24 that kind of thing, but she and I went back to the room. I
25 don't think Junior stayed but just a few minutes and then he

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1 was gone. But from that point on, I remember sitting down and
2 then when I woke up, it was -- it was daylight and just that
3 quick we had to get ready because we had to be at the funeral
4 that morning for my uncle at the wake and everything. So --
5 So, you know, it was just a rush, but it seemed like I just
6 sat down and when I woke and opened my eyes, it was morning,
7 you know.

8 Q: All right. How many -- You said the wake was that --
9 that Saturday. How many days had your uncle been dead at that
10 point?

11 A: I'm not exactly sure.

12 Q: But it didn't -- I mean fairly recent within a few days?

13 A: Yes, sir. I mean because he had been at hospice for --
14 for I think about a month's time, a month and a half's time he
15 had been up there.

16 Q: Do you recall how long it had been since y'all had had
17 the shotgun?

18 A: He was in hospice and at that point, we knew he was never
19 coming home and that's when the family -- some of the family
20 started going over there going through his stuff and just
21 taking stuff. That's initially why we had went out there to
22 try to set aside family stuff and during that period -- It was
23 before he died that the gun was brought back to my mother's
24 house.

25 Q: All right.

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1 A: But it might not have been maybe a day or so, a day or
2 two's time before, you know, he actually died.

3 Q: Between the time he died and the wake you mean?

4 A: Right in there, yes, sir.

5 Q: Around -- Scott was living with you in your mother's
6 house during around this time. Is that correct?

7 A: Yes, sir. I had -- I had just moved out because Mikey
8 and I were roommates. I had just moved out and was staying
9 there.

10 Q: All right. How long had you known Mikey?

11 A: A long time. Let's see, maybe since I was about twenty,
12 nineteen, twenty years old, somewhere around there, twenty-
13 one, somewhere around there.

14 Q: And you said y'all had been roommates. How long were
15 y'all roommates?

16 A: Six, eight months, something like that.

17 Q: All right.

18 A: Maybe nine months, somewhere around there.

19 Q: What happened that ended y'all being roommates?

20 A: I was -- It was actually my place and I was digging a
21 hole. I had lost the job I had, so I was drawing my
22 unemployment off the job and I was just digging a hole in
23 debt. So I needed a roommate, Mikey needed a new place. We
24 started roommating together, but I wasn't doing nothing but
25 digging a hole and digging a hole and it got to the point

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1 where I just couldn't afford my half of the bills. I mean
2 there was some animosity between himself and myself, you know,
3 a couple F-U's, but that was about it as far as when I moved
4 out.

5 Q: Were those -- Were those words over the bills and over
6 the ending of the roommate situation?

7 A: No, it was over how things were handled more or less.

8 Q: When you say ---

9 A: Just demeanor because I just packed up and left, but I
10 let him know that I was leaving and I left things behind also
11 because there was like a hundred and fifty dollars or
12 something. So I left him a washer and dryer and a few other
13 things as well, but I mean I had seen him since then. I had
14 passed him walking down the steps when he was coming up the
15 steps, you know. If there was any kind of animosity between
16 us, it would have been handled then, you know.

17 Q: All right. Had you and Mikey ever gotten into a fight
18 before? And by a fight, I mean a physical fist fight?

19 A: No, not physical, verbal, you know. That's it.

20 Q: Prior to this, had Mikey ever threatened to physically do
21 anything to do where you felt like he was going to?

22 A: No, not -- no. We had an incident on the jobsite one
23 time, but it wasn't nothing major, you know.

24 Q: When you and Mikey had had I guess these verbal spats
25 before, had y'all always gotten over it and become friends

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1 again?

2 A: Yes, sir.

3 Q: After the events of that night, did you and Scott ever
4 talk about what had happened that night?

5 A: I -- I -- I kind of pressed Scott. I kept asking him and
6 asking him for days and days and he wouldn't -- He just
7 wouldn't talk about it and finally, one day I just kept
8 telling him I wanted to know. As bad as I wanted to know, I
9 didn't want to know, but he started to tell me and when he
10 started to tell me, he made the statement that shit had got
11 sideways, but he also made the statement that he had known --
12 How did he say it? He said that since he now knew he done it
13 once that he knew he could do it again and from that point on,
14 it's just a rollercoaster.

15 Q: What do you mean by when you say it was a rollercoaster?

16 A: Emotional rollercoaster, just ---

17 Q: Okay.

18 A: I don't know how to explain it, just nerves all over the
19 place, just didn't know how to deal with the situation at
20 hand.

21 Q: When you were talking about that night, you a couple of
22 times referred that Scott was in a kind of a frenzy and seemed
23 like he was panicking. Did he seem aware that you were around
24 that night?

25 A: Some of the time, no. It was just like -- It was just

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1 like he wasn't himself. It was just like he didn't know how
2 to handle what he was involved in and what was going on. He
3 was just all over the place. He ---

4 Q: Okay. After that night, did you feel like -- Scratch
5 that. Did Scott ever in any way talk to you about you talking
6 to the police or anything like that?

7 A: Scott was extremely paranoid because I could go somewhere
8 and before I would get there, you know, there'd be several
9 phone calls wondering where I'm at. It got to the point
10 sometimes I had to cut my cell phone off. I would say I'm
11 going one place and go another and I'd still get to the other
12 place and there would be a phone call. Your brother called
13 wanting to know where you were and wanting you to call him
14 back. But I don't know if it -- I just don't know why, but I
15 know that he was awfully worried about something.

16 Q: Before this happened, did he do that? I mean did he keep
17 track of your whereabouts before this happened?

18 A: No. No, sir, nowhere. You know, he might have called
19 looking for me or something, but nothing like this, nothing
20 like that rather.

21 Q: Okay and -- and how -- how constant or how frequent was
22 it after this happened that he was tracking you?

23 A: Pretty much every time I left the house.

24 Q: Did it make you fearful or paranoid based on that he was
25 tracking you like this?

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1 A: After seeing everything I saw that night, after -- I mean
2 he's my brother and I love him to death, but I just didn't
3 know if he was -- I would have never thought he was capable of
4 that and I wasn't exactly sure if he did do that, but all I
5 did know is what I seen and that he was coming unglued, you
6 know. He was just -- He wasn't himself at all.

7 Q: Do you know if he was using any drugs he'd not used
8 before during this time?

9 A: I've heard from other people since ---

10 Q: Don't tell me anything that other people told you.

11 A: Right.

12 Q: Just what you ---

13 A: Personal knowledge.

14 Q: --- saw or ---

15 A: Personal knowledge. I mean from time to time around me,
16 but I tried -- I tried to be around him as much as possible,
17 but at the same time tried not to be around him as much as
18 possible and the kind of drugs that Scott would mess with at
19 that time, I didn't mess with those kinds of drugs. I messed
20 with other things, similar but not that type of drug and he
21 knows that I wouldn't. So he wouldn't do something like that
22 around me.

23 Q: Could you -- When you say they are similar or a different
24 type, what kind of drugs are you talking about?

25 A: Like if I -- My drug of choice over the years has been

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1 cocaine, I will not lie, but his drug of choice would have
2 been crack and even though it's similar, there's a huge
3 difference as far as the effects and stuff that it has on
4 someone.

5 Q: Before this night, had you ever known Scott to do crack?

6 A: Off and on throughout the years. I mean he's had
7 episodes, but, you know, for the most part, Scott -- You know,
8 he's been a good person, you know. I just ---

9 Q: When he was kind of tracking you or following you, did he
10 ever threaten you or, you know, actually in any way did you
11 feel threatened by him?

12 A: I never felt safe because I wasn't exactly sure of what
13 had happened, what he was capable of, you know, if anything
14 and I just -- For that whole month from the time that happened
15 until the time he was arrested, I pretty much did not sleep.
16 I mean if I slept, it was an hour here, an hour there and that
17 was just my own nerves, but I didn't know what he was capable
18 of, you know.

19 Q: When he -- When he said that I've done it once and I can
20 do it again, did you take that as a threat in any way?

21 A: I took that to mean that he had done it once and that he
22 knew he could do it again if he needed to do it again, not as
23 a personal threat straight towards me, but just in speaking.

24 Q: Okay. In the context of your conversation, what did you
25 take "it" to mean?

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1 A: I honestly didn't know what to take it to mean because --
2 I mean it's -- Like I say, I tried to get him to talk to me
3 about it and he wouldn't and then when he said what he said, I
4 immediately told him I didn't want to hear no more and that's
5 when I got up and tried to walk off from him. But I honestly
6 didn't know what to take it to mean.

7 Q: Okay. When he said that, did that make you at some point
8 either then or later scared or fearful of what it could mean?

9 A: Yes. I mean it still does. I mean I -- The only thing I
10 could figure is that -- is that it means that he -- that he
11 actually killed Mikey and -- but I can't sit here and
12 speculate on what it meant. I just -- I don't know what you
13 want me to say.

14 Q: No, nothing, just the truth.

15 MR. OZMENT: I beg the Court's indulgence for one minute.

16 Q: One thing I meant to ask you earlier and I left it out.
17 In the house that night when Scott had come back, did you see
18 scales anywhere in the house?

19 A: After -- After he had come back and Junior was in the
20 living room, I do believe there was a set of scales on the
21 table, but there was also some bags, you know, like sandwich
22 baggies and stuff like that scattered around. But I want to
23 say there was.

24 Q: Do you know whose scales those were?

25 A: Well, to be honest with you, I couldn't tell you because

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1 Mikey and myself both had a similar set. So they could have
2 been mine from moving stuff or they could have been his, I
3 don't know.

4 Q: Okay. After Scott was -- You gave -- You spoke to law
5 enforcement several times regarding this case. Is that
6 correct?

7 A: Yes, sir.

8 Q: Do you recall when the first time was?

9 A: Whenever I was asked to come down to the Florence County
10 Sheriff's Office to speak with Investigator Collins and
11 Investigator McFadden.

12 Q: All right. Did they ask you if you knew anything about
13 Mikey's death?

14 A: They were asking me several questions, the exact
15 questions I couldn't be honest, but pretty much sounds about
16 right.

17 Q: Was that the subject matter though?

18 A: Yes, sir.

19 Q: It was about what had happened with Mikey? In that first
20 interview, what did you tell them?

21 A: I told them that as far as I knew, Scott was at home that
22 whole night and I had come out of the bedroom to use the
23 bathroom one time and seen him on the couch and when I went
24 back in the bedroom and got up the next morning, I come out
25 the room and he was still on the couch.

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1 Q: All right. Obviously, is that different than your
2 testimony today?

3 A: Yes, sir.

4 Q: Why at that time did you tell them that Scott had been
5 home that night?

6 A: In all honesty, I did not have to be the one to talk to
7 law enforcement and tell them the things that I witnessed that
8 night. I did not want to have to be involved. I was hoping
9 that they would have been showing up at any moment to do their
10 job and, you know, I just -- I was trying to protect him.

11 Q: Was that out of, you know, out of fear or was that
12 because he's your brother or why did you?

13 A: I believe pretty much that at a particular time I still
14 hadn't wrapped my head around the concept that -- of how
15 things appeared. You know, I was still trying to protect him
16 as best I could, but at the same time I knew I couldn't.

17 Q: Now did you contact law enforcement at some point after
18 that?

19 A: Yes, I did.

20 Q: Did -- Sorry to interrupt you, but did you then meet with
21 them again?

22 A: Yes. Actually, they pulled me in a second time at the
23 Florence County Sheriff's Office. That was before I contacted
24 them. I think it was about a week after the first one, three,
25 four, five days, something like that, and they questioned me

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1 and they done their interview and everything, but then there
2 was a period of time later after that one which was the third
3 time that I actually contacted them and had them meet me at
4 the Florence County Library.

5 Q: What -- What led you to contact them?

6 A: I was just at my ends. I was on edge. I was in fear of
7 what was possible, you know. I wasn't sure at that time what
8 Scott -- where his head was. It was just bouncing around all
9 over the place and, you know, I didn't know whether I could
10 trust to be around him at that time. I didn't know whether he
11 was capable of doing what happened to Mikey and if he did do
12 it, I didn't know if I had to fear for something like that to
13 happen to myself or to Shannon because she was there or, you
14 know, if he hadn't done this, you know, then I -- I just
15 didn't know what to do and I was dealing with a lot of
16 emotions and a lot of issues of my own at that time.

17 Q: Earlier, you had said that the first couple times you
18 spoke to law enforcement you hadn't to come to terms. What
19 had -- You know, what in your mind had changed that made you
20 decide to talk to them again?

21 A: Because it just got a bunch -- It just started getting
22 clearer and clearer to me that there was more to it than what
23 he was trying -- or what he had actually said about what was
24 going on and it had actually become more clear to me that he
25 was more involved and he was more involved than what I was

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1 thinking at that time and I wasn't sure and at the same time I
2 wanted to be sure.

3 Q: So -- And I interrupted your story. Earlier, you had
4 said that you -- When you called law enforcement, where did
5 you all meet that time?

6 A: The Florence County Library.

7 Q: All right. Why did you want to meet them at the library
8 or why did you meet at the library?

9 A: At that particular time, I was going up there a lot doing
10 a lot of research on the type of jobs I do and stuff and it
11 just worked out that way.

12 Q: When you met with them that time, did you -- did you tell
13 them the same story that Scott was home the whole time that
14 you had told them the first couple times?

15 A: I tried not to tell them no more than I absolutely had
16 to. I was hoping that, you know, they could take what little
17 bit of information I was giving them and go ahead and make
18 their case and go ahead and make an arrest and interrogate him
19 and find out the truth. What all was said, I still couldn't
20 tell you.

21 Q: Why at that point were you wanting to limit what you told
22 them?

23 A: I just didn't want to be the one to have to -- I mean
24 he's my brother. I don't want to be up here testifying now,
25 but I didn't know how to deal with the situation. It was out

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1 of my hands and I couldn't control it any longer.

2 Q: And then after that statement did you give -- Then did
3 you meet with law enforcement again after that?

4 A: After the library?

5 Q: Yes.

6 A: Not that I'm aware of. No, sir.

7 Q: Did you go down to the Sheriff's Office after that and
8 meet in an interview room that was recorded?

9 A: Oh, yes, sir. I'm sorry, I did. I was asked to bring
10 Shannon Bailey down there and I carried her. I went with her
11 rather and they interviewed her and they had me in a waiting
12 room. Then they come in and they got me and they put me back
13 in an interrogation room again. That was the fourth time,
14 you're right.

15 Q: All right. At that -- Was that the final time you spoke
16 with them?

17 A: Yes, sir.

18 Q: Okay and that time, did you tell them that Scott had been
19 home on the couch or did you tell something like what you've
20 told in court today?

21 A: I don't remember what we spoke about. I was asked two or
22 three questions and I think one of them was about the gun. I
23 can't remember what the other two questions were.

24 Q: Okay. Did you tell them the truth then?

25 A: Yes, sir.

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1 Q: Do you know where the gun is now?

2 A: No, sir.

3 Q: Now you are Scott's brother, correct?

4 A: Yes, sir.

5 Q: Okay. Are you familiar with Scott's handwriting?

6 A: Yes, sir.

7 Q: All right. If I showed you something written, could you
8 identify whether it's Scott's handwriting or not?

9 A: I should be able to.

10 MR. OZMENT: I beg the Court's indulgence for just one
11 moment. May I approach the witness, Your Honor?

12 THE COURT: You may.

13 Q: Jonathan, I'm handing you four individual separate pieces
14 of paper and then copies of three letters. I'm not asking --
15 Please don't read anything out loud or anything like that, but
16 I just ask that you look at those documents and tell me if you
17 can say with certainty whether or not that's your brother's
18 handwriting you see.

19 A: Yes, sir. Yes, sir. Yes, sir. Yes. Yes, sir. Yes,
20 that's all his.

21 Q: All right. Just a couple more questions, Jonathan. Did
22 Scott ever tell you what had actually happened that night when
23 he was not at the house?

24 A: Like I said earlier, he made a statement that shit had
25 got sideways and he started telling me the story that one day

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1 when he finally broke down and was going to tell me. He got
2 about a sentence into it and I just stood up and told him I
3 didn't want to hear no more. I walked out the trailer, he
4 come outside behind me on the porch talking. I walked off the
5 porch, walked over to my grandma's trailer, and left him
6 talking to himself and, you know, he pretty much at that point
7 by the time I walked off the porch is about when he stopped
8 talking. But as far as what exactly happened, no, sir.

9 MR. OZMENT: No further questions, Your Honor.

10 THE COURT: Cross examination, Mr. Anderson?

11 CROSS EXAMINATION

12 BY MR. ANDERSON:

13 Q: Jonathan, just a few minutes ago, you were talking about
14 statements and you said that you had given an interview
15 shortly after this happened, which I'm guessing that would
16 have been 12/19, 12/20 of 2010?

17 A: Somewhere around there.

18 Q: Then you gave another interview at the Florence County
19 Sheriff's Office. Is that right?

20 A: Yes, sir, two of them back to back.

21 Q: Then you gave an interview at the library and then you
22 gave another interview at the Sheriff's Office?

23 A: Right.

24 Q: Is that right? All right. So shortly after this
25 happened on December the 20th, law enforcement -- I think they

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1 actually talked with -- with you and your brother at your
2 residence. Is that right?

3 A: That seems right because they come and picked Scott up.

4 Q: Did you give them a statement at that time?

5 A: I had spoke to Mr. Collins actually. He was waiting in
6 the yard for Scott to get there and I just spoke with Mr.

7 Collins for a few minutes and then Scott come pulling up.

8 Q: And that was a day or two after this incident happened?

9 A: Yes, sir.

10 Q: And at that point in time, you said Mikey was a good guy,
11 I don't know a whole lot about anything, something to that
12 effect?

13 A: Right, but we had talked about the marijuana and stuff
14 like that.

15 Q: And then on February the 4th, 2011, you actually went out
16 to the Law Enforcement Center and gave a tape recorded
17 statement that was audiotaped and videotaped. Is that right?

18 A: I believe all of it was.

19 Q: And that time you talked a little bit about your
20 relationship with Mikey, the falling out that you had, still
21 nothing about Scott?

22 A: Sounds about right.

23 Q: And then on -- Well, let me back up for a second. On the
24 2/4/2011 interview, Thomas McFadden -- and this might refresh
25 your memory. The way the interview started off was, "Hey,

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1 man, where you been hiding? You're an important man. I've
2 been trying to get a hold of you."

3 A: Something like that, yes, sir.

4 Q: Okay. You told him that Scott was taking it hard, he had
5 started drinking heavier, taking some Xanax, actually Scott
6 had wrecked the car at that time. Do you remember that?

7 A: Yes, sir.

8 Q: Okay. You told him that you -- You told Investigator
9 McFadden that you had talked with Chad and that Scott had
10 talked with Chad and tried to provide a few names and a few
11 numbers, told him that you thought Mikey was maybe selling a
12 little bit of drugs.

13 A: They already knew that he was selling drugs.

14 Q: Okay. They talked about where you went to school, you
15 told them about the alternative school. You told them you
16 weren't working. Do you recall that?

17 A: That seems right. I was between a side job and drawing
18 my unemployment.

19 Q: Okay. You told them a little bit about -- Y'all talked a
20 little bit about Eli?

21 A: Yes, sir.

22 Q: Or Elijah. You talked a little bit about Michael Budd.
23 Do you remember that?

24 A: I believe I was asked about a Michael Budd, but I don't
25 know who Michael Budd is.

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1 Q: Okay, all right. You never once said Scott was involved
2 in it?

3 A: I tried not to. I tried to stay out of it as best I
4 could and let them do their job and discover it for
5 themselves.

6 Q: Okay. So then on 2/9/2011, you go to the library?

7 A: Okay.

8 Q: You meet with the library -- You meet at the library. Do
9 you recall that?

10 A: Yes, sir.

11 Q: Okay. Did they tell you they were tape recording the
12 statement?

13 A: I don't believe they did, but I believe they did tape
14 record it. I mean they might have said it, but I mean my mind
15 was -- I mean I was stressed out beyond belief.

16 Q: Do you recall Chad Collins telling you, "I want you to be
17 honest with me"?

18 A: Yeah, pretty much every time we spoke.

19 Q: Chad said, "Did you see Scott with blood on his clothes?"
20 Thomas McFadden said "Did you?" and then you said, and I'm
21 quoting you here, you said, "I didn't help him do a damn
22 thing." Do you recall that?

23 A: I said what now?

24 Q: "I didn't help him do a damn thing."

25 A: I don't understand what you mean by that.

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1 Q: That was your response when they were asking you about
2 blood on his clothes. Do you recall that?

3 A: I remember being asked a thousand questions and two or
4 three questions at a time and before I could answer one
5 question, I was being asked another question.

6 Q: Right, right, no doubt about that. Do you remember
7 telling Chad Collins that the first time you saw footprints
8 was the next morning?

9 A: I don't know nothing about -- I can't -- I don't remember
10 that, no. I remember I seen the foot smears of the blood in
11 the floor. That's what I poured Clorox on.

12 Q: Do you remember telling Chad and Thomas that Charles had
13 come over?

14 A: Yes, sir.

15 Q: Did you tell them that he had come over several times?

16 A: I believe so, yes, sir.

17 Q: Did you tell them he had come over once before dark and
18 twice after dark?

19 A: That seems about right. He come by three or four times
20 that -- throughout that afternoon and night.

21 Q: And do you remember telling Chad and Thomas that Shannon
22 was sick, that she had gotten sick right after supper?

23 A: I was trying to keep her out of it, protect her as well.

24 Q: Do you remember telling them that?

25 A: Yes, sir.

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1 Q: Okay. Do you remember telling them -- Now I'm talking
2 about the second -- the statement at the library. I'm not
3 talking about today. I'm talking about the statement at the
4 library. Do you remember telling them that Scott was there
5 when you dealt with Charles?

6 A: Mikey's car was sitting there. He was back with Mikey's
7 car when Charles -- the last time that Charles come up.

8 Q: All right. Before that when Charles come up, was Scott
9 there?

10 A: Scott was there earlier that afternoon when Charles come
11 by, yes.

12 Q: Okay.

13 A: I believe when ---

14 Q: What were y'all getting from Charles?

15 A: Different types of drugs.

16 Q: What kind of drugs?

17 A: A little bit a cocaine, there was some pain pills that
18 Shannon -- that were for Shannon. Scott and Charles did their
19 own thing, you know. It seemed like some Xanaxes, I believe.
20 I believe that's where they came from, too.

21 Q: Did you do cocaine that day?

22 A: I did, yes, sir.

23 Q: Did Shannon do cocaine that day?

24 A: Yes, sir, so did Scott. What's your point?

25 Q: I'm asking you questions.

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1 THE COURT: All right, all right. The way -- The way it
2 operates ---

3 WITNESS: I'm sorry.

4 THE COURT: --- is he asks the questions, you provide the
5 answers. That's the way it works.

6 WITNESS: Yes, sir, I'm sorry.

7 THE COURT: Very good.

8 WITNESS: I apologize.

9 THE COURT: All right, Mr. Anderson?

10 Q: Was Shannon taking any pain pills that night?

11 A: Yes, sir.

12 Q: Was she taking -- I think you indicated earlier maybe --
13 or not today, but in a statement you said K-2?

14 A: Yes, sir.

15 Q: What's K-2?

16 A: I'm not -- I'm not up to date on it. It's a pain pill.

17 Q: Okay. At the library, do you remember telling Chad and
18 Thomas McFadden that you saw what you thought was ketchup on
19 the carpet -- excuse me, on the kitchen floor and that you
20 cleaned it up the next morning?

21 A: I remember telling them I didn't know what it was. I
22 thought it was ketchup, but when I looked over and I seen the
23 blood covered bag and the blood covered money, that's when I
24 realized it was blood and then when he turned around and I
25 seen the blood on him, that's when I knew it was all blood.

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1 Q: Okay. Well, I'm asking you about the statement on
2 February ---

3 A: Okay.

4 Q: --- 9th at the library, okay?

5 A: I'm going to tell you honestly, what was said on which
6 day at which statement I can't remember everything because a
7 lot of it I believe I just blocked and tried to block, but I
8 mean ---

9 Q: But would you agree with me that a lot of it you didn't
10 tell the truth?

11 A: Say again?

12 Q: Would you agree with me that on a lot of it you didn't
13 tell the truth?

14 A: Well, when you say I didn't tell the truth, the things I
15 didn't tell the truth about was just trying to protect him,
16 protect her, and trying to let the cops do their job for
17 themselves without me having to indicate my brother in this
18 crime.

19 Q: Do you remember about halfway through that statement on
20 February the 9th that you changed your story and got out of the
21 car and then you got back in and started giving a little bit
22 more detail?

23 A: I'm sorry, say that one more time?

24 Q: Do you recall that on February the 9th when you were
25 giving your statement at the library, at one point in time you

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1 got out of the car and was outside of the car for a minute or
2 two and then got back in the car and then you started giving
3 them even more details?

4 A: I remember getting out of the car to smoke a cigarette
5 and I -- I don't remember getting out the car for any other
6 reason than that.

7 Q: Do you recall telling them that you thought someone was
8 breaking into the house?

9 A: That's what it sounded like initially when -- Before --
10 When all this started, that's what it sounded like, somebody
11 was ripping the house apart.

12 Q: Do you recall telling them that you gave the phone to
13 Shannon and told her to call 9-1-1 if you told her to?

14 A: Yes, I do.

15 Q: Do you remember telling them that you were in a panic
16 yourself, that the adrenalin was pumping in you and you were
17 just in a state of shock?

18 A: State of disbelief at everything, yes, sir. I didn't
19 even realize I had poured the Clorox on the floor until
20 Shannon was standing there like, "Jonathan, what are you
21 doing? What are you doing?"

22 Q: Do you remember telling Chad Collins or, excuse me, Chad
23 Collins asking you, "Did Scott shoot Mikey?" and your
24 statement was, "If he did, I have no direct knowledge"?

25 A: Yes, something along them lines. Yes, sir.

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1 Q: Okay and then another questions was asked, "Did he tell
2 you he did?" and you said, "He hasn't told me anything like
3 that."

4 A: Still trying to protect him. I was trying not to
5 volunteer any more information than I had to because I didn't
6 want to have to be the one to get up here and testify against
7 my own brother. I figured they could do their job and that
8 they would do their job.

9 Q: Do you remember Chad Collins telling you that nothing was
10 being recorded, that it's us three only talking?

11 A: That seems -- I seem to remember that, but I can't say
12 for a hundred percent certainty.

13 Q: Do you remember telling Chad and Thomas that Chavis had
14 been trying to blackmail Scott over some gas money?

15 A: Yes, sir. I had -- I overheard a conversation Scott had
16 with Chavis. It was inside my mother's house and they were on
17 the phone with each other and Chavis was trying to blackmail
18 him or something. They were having a conversation. When they
19 hung up, Scott mentioned that Chavis was trying to blackmail
20 him.

21 Q: On the February 9th statement at the library, do you
22 remember Chad Collins asking you was there blood on the floor,
23 too, and you responded I honestly can't -- Excuse me, was
24 there blood on the clothes, too, and you said, "I honestly
25 can't say. I was dozing. I jumped up."

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1 A: I was what?

2 Q: Dozing?

3 A: I don't know, man. I know that there was -- there was
4 blood on the clothes, you know. Some things come ---

5 Q: Do you remember telling Chad ---

6 A: I've never been ---

7 Q: I'm sorry, go ahead.

8 A: I've never been in that kind of situation, adrenalin
9 pumping, being in disbelief at what I was looking at. Some
10 things I didn't remember right away. Some things come back to
11 me, some things are still coming back, some things just won't
12 come back. There's nothing I can do about that.

13 Q: Do you remember telling Chad and Thomas that you thought
14 it was Charles because Charles was supposed to come back over
15 and bring some more stuff?

16 A: Yes, sir, and I did think it was Charles.

17 Q: Do you remember ---

18 A: But that was before he ever left with Mikey.

19 Q: Then why did you wake up all startled?

20 A: Excuse me?

21 Q: Then why did you wake up startled?

22 A: What do you mean wake up startled? I didn't wake up
23 until the next morning. I didn't go to bed until after he got
24 back that night and after Junior left that night. When he
25 actually was leaving with Mikey, that's what I thought was

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1 Charles' car backing out, but Shannon corrected me and told me.
2 that it was Mikey's car and she saw Mikey. That's how I know
3 that he left with Mikey. Other than that, I can't say that I
4 seen him get in the car with Mikey because I didn't.

5 Q: So what time did he leave with Mikey?

6 A: It had to be that time at that particular moment that I
7 thought it was Charles. That's whenever he had to leave with
8 Mikey because right after that is when I walked out of the --
9 out of the bedroom through the kitchen into the living room
10 looking for him and he was nowhere to be found.

11 Q: But I'm saying do you know what time that was?

12 A: In all honesty, I couldn't tell you to be honest. It was
13 nighttime. It was dark outside.

14 Q: Do you remember Chad Collins asking you when he got back
15 home, do you remember what he said and you said, "Honestly,
16 no." Do you remember that?

17 A: I was still at that particular time trying to protect him
18 and trying not to volunteer too much information, trying to
19 let -- you know, as I've already answered before.

20 Q: Do you remember saying, I told -- I asked, "What the F is
21 going on?"

22 A: Right.

23 Q: And you said Scott wouldn't talk to you, he was freaking
24 out, opening and slamming cabinets?

25 A: That's when he turned around and he said, "I -- I," and

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1 there was a hesitation and he was trying to say something and
2 then he said, "It," and the next thing he was out of the
3 kitchen.

4 Q: And that's what you -- And then you said you went right
5 back -- I mean right through the door, that's when I wiped up
6 the floor?

7 A: Say it -- I'm sorry, I didn't hear you.

8 Q: "He walked right past me back through the door. That's
9 when I wiped up the floor."

10 A: Right. Shannon was standing behind me and I turned
11 around. You know, everything is so ---

12 Q: Do you remember telling them repeatedly over and over
13 that you were freaking out, it was a -- Adrenalin was rushing.
14 They asked you if Shannon ever called 9-1-1 and you said, "I
15 don't know." Do you recall that?

16 A: Who asked me what?

17 Q: One of the officers asked you if Shannon ever called 9-1-
18 1 and you said, "I honestly don't know."

19 A: I mean half the stuff they asked me I don't remember them
20 asking me. You know, honestly.

21 Q: Do you remember them asking you why would Scott have done
22 this?

23 A: It seems like I remember them asking me something along
24 those lines, yes, sir.

25 Q: Do you remember telling them, "I honestly don't know"?

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- 1 A: That sounds about right.
- 2 Q: He and Mikey were good friends?
- 3 A: They were.
- 4 Q: Where is your -- Now let me ask you -- Let me back up
- 5 just for a second. You said that you and Shannon were
- 6 boyfriend and girlfriend?
- 7 A: Yes, sir, at that time.
- 8 Q: And that was back in December of 2010?
- 9 A: Off and on for about two years.
- 10 Q: Where is your mom's bedroom as far as the trailer is
- 11 concerned?
- 12 A: It depends on how you look at the trailer, looking at the
- 13 mobile home, the far left, all the way at the left end of the
- 14 trailer.
- 15 Q: All right.
- 16 A: But looking -- I don't understand.
- 17 Q: If you went off your front porch ---
- 18 A: It would be all the way to the right.
- 19 Q: To the right?
- 20 A: All the way to the right.
- 21 Q: So if this was the front porch and I walked through it,
- 22 your mom's ---
- 23 A: No, it's all the way on the end. I mean you've got to
- 24 walk in the front door, into the living room ---
- 25 Q: No, no, no. I'm sorry. If I walk -- If I'm in the

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1 kitchen area or den area and I walk out like I'm going into
2 the yard and I'm on the porch, is your mom's to the left or is
3 it to the right?

4 A: Walking outside the trailer from the inside, it would be
5 on the right all the way down on the right.

6 Q: So it would be to the right down on that end?

7 A: Spun around, yes, sir.

8 Q: All right. I'm walking out the trailer like I'm going
9 into the yard.

10 A: Right.

11 Q: How big is the porch? Is it as big as that area you're
12 sitting in? A little bit bigger?

13 A: Fifteen by twenty, twenty, something like that.

14 Q: Okay. So not a -- not just three steps I mean.

15 A: No, it's a deck.

16 Q: A deck?

17 A: A small deck, yes.

18 Q: All right. Was it screened in?

19 A: No.

20 Q: How tall was the deck?

21 A: Off the ground to the floor of the deck, three and a half
22 feet, something like that.

23 Q: So maybe ---

24 A: Four feet tops.

25 Q: A little bit taller than this?

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- 1 A: About as high as that desk, somewhere around about that.
- 2 Q: Now when Scott came back in Mikey's car, if this is the
- 3 -- Well, let me do it this way. If this is the porch and you
- 4 walk out the front door and you're standing on the porch,
- 5 where would Mikey's car have been?
- 6 A: Right there.
- 7 Q: Right here to the left?
- 8 A: Like if this was the mobile home, this is the porch, I
- 9 walk out, the car was right there on the left.
- 10 Q: All right. So the deck, the car right here on the left?
- 11 A: Right.
- 12 Q: Okay. Momma's car -- I mean Momma's bedroom down here on
- 13 the right?
- 14 A: On the other end of the trailer.
- 15 Q: Okay. Now the -- When you were talking with Mr. Ozment,
- 16 you indicated that Scott sawed off the shotgun, but that he
- 17 had measured it before he sawed it off?
- 18 A: I remember a tape measure laying there and I remember us
- 19 speaking about the -- what was the legal length and what would
- 20 be the legal length of a sawed off shotgun. As far as
- 21 actually measuring it, I cannot say for certain.
- 22 Q: Did you help him saw it off?
- 23 A: No, sir.
- 24 Q: I mean did you hold an end of it or the saw or anything
- 25 like that?

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- 1 A: No, sir.
- 2 Q: You were there ---
- 3 A: I -- I'm sorry, go ahead.
- 4 Q: You were there when he did it though?
- 5 A: Yes, sir, I was there.
- 6 Q: How far away was it from you?
- 7 A: Five feet.
- 8 Q: Was it closer than you and I are?
- 9 A: Yes, sir.
- 10 Q: Maybe from the ---
- 11 A: Probably about half the distance.
- 12 Q: --- podium?
- 13 A: Well, I don't know. About five feet, five, six feet,
- 14 something like that.
- 15 Q: When you take cocaine, Jonathan, what does it do to you?
- 16 I mean how does it make you feel?
- 17 A: It's a stimulant. I mean it's just like any other
- 18 stimulant. It speeds you up.
- 19 Q: So if you're doing cocaine and then you think somebody's
- 20 breaking into the house and that adrenalin starts pumping, it
- 21 would just be amplified?
- 22 A: I would think so. Common sense would say so.
- 23 Q: You indicated earlier today that you heard someone
- 24 tearing the kitchen apart, looked down -- or you went out
- 25 there and you looked down and saw some red stuff, a few spots.

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- 1 They were like footprints?
- 2 A: Like smeared prints, like -- yeah.
- 3 Q: Okay. Now were you asleep at that time when you first
- 4 heard the commotion in the kitchen?
- 5 A: No, I was -- My girlfriend, Shannon, at the time and
- 6 myself, we were engaged in other things.
- 7 Q: When you engage in other things, does that also make your
- 8 heart rate go up?
- 9 A: Well, what I mean by that is, if you want to get
- 10 technical, we were in the process of having sex whenever we
- 11 heard the kitchen being torn apart.
- 12 Q: Okay. Well, when you're in the process of having sex,
- 13 does your heart rate go up?
- 14 A: Yes, sir.
- 15 Q: Okay. You said when you went out in the kitchen, you saw
- 16 a grocery bag and some money. You said you saw a five dollar
- 17 bill?
- 18 A: Yes, sir, it was sitting on top.
- 19 Q: Sitting on top of the counter?
- 20 A: The bag was crunched up sitting there at the edge of the
- 21 counter by the -- excuse me, by the trash can. The money was
- 22 sitting right there by it. The bill was sitting on top of the
- 23 money.
- 24 Q: All right. You said money, meaning?
- 25 A: It wasn't that much. It might have been a stack about

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1 like that.

2 Q: Was it folded? Was it laid out straight?

3 A: Folded.

4 Q: So could it have been -- And I'm just asking because I
5 don't -- I'm not real clear on what -- Was it -- Could it have
6 been a couple of ones and a five dollar bill?

7 A: I don't know because I didn't concentrate on that. My
8 eyes focused on the red five dollar bill and the soaked bag.

9 Q: You said the marijuana was just a few ounces?

10 A: From my personal experience dealing with it, yes, it
11 looked like a few ounces.

12 Q: Now at some point in time and I think you said I'm not
13 sure why I did it, but I started cleaning up the floor?

14 A: I still can't explain that.

15 Q: Did you pour Clorox? Did you spray Clorox? What did you
16 do?

17 A: I just grabbed a bottle. All I remember -- I don't even
18 remember taking the top off the bottle and I just -- I
19 remember pouring it and sitting the thing down and grabbing a
20 rag somehow and I threw it down and just started with my foot
21 wiping it up.

22 Q: I mean Scott didn't ask you to, did he?

23 A: No, sir, he did not ask me to do that. He -- No. I
24 still don't know why I did it.

25 Q: Later that night, Junior was over at the house?

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1 A: Yes, sir.

2 Q: He and Scott were smoking some marijuana?

3 A: I believe Scott was rolling it up when I was standing
4 there talking to Junior, but I believe they did, yes.

5 Q: You indicated, Jonathan, that after several days went by,
6 maybe a week, maybe a month, I'm not sure, you were talking to
7 Scott and you asked him what happened or you were pushing him
8 to tell you what happened. Is that right?

9 A: I kept asking him, yes.

10 Q: And he said something to the effect of shit got sideways?

11 A: Yes, sir. He said shit got sideways.

12 Q: And then he made some comment like, "Now I know I've done
13 it once, I could do it again."

14 A: He knew he had done it once and now he knew he could do
15 it again.

16 Q: All right. He didn't tell you ---

17 A: He didn't.

18 Q: --- now that I've killed somebody one time I know that I
19 can kill somebody again. He didn't say that, did he?

20 A: He did not say that for word for word, no, sir.

21 Q: Then you indicated that Scott was extremely paranoid,
22 like he was worried about something. Mr. Ozment said did that
23 make you fearful. Do you recall that just a few minutes ago?

24 A: Yes, sir.

25 Q: And then you said, "I didn't think Scott was capable of

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1 this."

2 A: I -- I don't want to believe he's capable of it and I
3 didn't want to believe it then and I don't want to believe it
4 now.

5 Q: And that's what you said. You said, "I wasn't sure he
6 did it."

7 A: Right.

8 Q: Okay.

9 A: I'm not.

10 Q: And then Mr. Ozment followed up with a question, "Do you
11 know what he meant by that?" And you -- Correct me if I'm
12 wrong, but you stated, "I don't know what it was."

13 A: What?

14 Q: Do you recall saying that?

15 A: What he meant by the word "it", right?

16 Q: Yes, sir.

17 A: I don't -- I don't know what exactly he meant by what he
18 said.

19 Q: Now the statement that you gave at the Sheriff's Office
20 after Shannon gave hers, do you recall talking at that time
21 with law enforcement?

22 A: Where I was asked if -- I was pulled back into the room
23 out of the waiting room and asked two or three, maybe four
24 questions.

25 Q: Okay.

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1 A: Something along those lines.

2 Q: To your recollection, it was two or three or four
3 questions?

4 A: It seems like, yes, sir.

5 Q: Okay. Would it surprise you to know that interview
6 lasted more than an hour?

7 A: Not with me in there. It lasted it seemed like about
8 thirty minutes, twenty or thirty minutes.

9 Q: All right, but if it lasted twenty or thirty minutes,
10 don't you think that would be more than three or four
11 questions?

12 A: They -- When they pulled me back in that room and I sat
13 down, there was -- Mr. McFadden was there and there was a lady
14 there and there was a man there and they all asked me a couple
15 questions each maybe tops, it seems like. But it don't seem
16 like I was in there for no hour. I don't know, to be honest
17 with you. I mean I was in there for as long as I was in
18 there.

19 Q: That Sunday your mom came home, the weekend of December
20 17, 18, 19?

21 A: She came home the morning of my Uncle Bobby's wake. We
22 were leaving with my father, my brother and I, and we passed
23 her and she was coming in as we were going out.

24 Q: Had she gone to North Carolina? Is that right?

25 A: I believe so, North Carolina.

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1 Q: Did you and Shannon continue to date one another after I
2 guess this weekend?

3 A: After that weekend you mean?

4 Q: Yes, sir.

5 A: We broke up, got back together and broke up and got back
6 together and that kind of thing.

7 Q: Where did she live during this time?

8 A: Wherever she could between her ex-boyfriend and between
9 her cousins and rehab.

10 Q: Did she ever live with you?

11 A: Excuse me?

12 Q: Did she ever live with you and your mom?

13 A: Yeah, she stayed with us for about a week.

14 Q: Okay.

15 A: But that was long after that.

16 Q: On the 2/9 -- February 9th, 2011, statement that you gave
17 at jail, do you recall law enforcement telling you you got to
18 tell us what you know, there's not a lot of physical evidence?
19 Do you recall that?

20 A: I can't say for certain, no, sir. I mean I'm sure
21 something along them lines was probably said, but I can't
22 remember.

23 Q: Do you know Scott's son's mom?

24 A: Yes, sir, Nicole.

25 Q: Do you remember telling law enforcement that his mother

CROSS EXAMINATION OF JONATHAN LEE BY MR. ANDERSON

1 is a complete fruit loop? Do you remember saying that?

2 A: Yeah, because Nicole -- I mean she has a chemical
3 imbalance.

4 Q: Do you remember when they were questioning you that
5 afternoon of February the 9th, 2011, telling them I really told
6 you pretty much everything I knew this morning? Do you
7 remember telling them that?

8 A: There's a -- I could have, I'm not sure. I mean if I
9 did, it was just to keep from telling any more than I did tell
10 them or anything like that trying to protect him.

11 Q: Do you remember telling them, "But when I seen that car
12 back out and leave, I did not see him again until the next
13 day." Do you remember saying that?

14 A: No, I don't. I don't remember saying the next day.

15 Q: Would that have been after midnight or the next morning?

16 A: Say again?

17 Q: The next day, would that have been after midnight, like
18 12:05 a.m., or would that have been the next morning?

19 A: I don't know. I mean I don't even remember responding
20 with that answer, but if I had said it -- If I said anything
21 that wasn't right, it was just to try to protect him, try to
22 stay out of the -- out of the scenario altogether.

23 Q: Do you recall saying when they asked you, "Was he saying
24 anything? What was he throwing around?" "I swear he was, but
25 it was like it was a bunch of gibberish."

CROSS EXAMINATION OF JONATHAN LEE BY MR. ANDERSON

1 A: That was after the fact of him being in the kitchen and
2 he was ---

3 Q: "It was more like he was just in a hundred percent
4 adrenalin panic mode because he was opening stuff and slamming
5 it shut." Do you recall saying that?

6 A: Right. He was in full panic mode in the kitchen, yes.
7 He was asking for some -- some -- he kept asking -- When he
8 was going through the cabinets, he was -- His back was to me.
9 That was before he turned around and I actually seen the blood
10 on his clothes and that's before -- right before he said, "I
11 -- I" and then "It." He was asking for some stuff and it was
12 just like gibberish. I mean it was just I couldn't understand
13 it.

14 Q: Do you recall the investigator, Kathleen Streett, saying,
15 "How bloody were his clothes?" and your response was, "See
16 that, I can't remember that."

17 A: At that particular time ---

18 Q: "It was just like a blank to me because I think I was
19 more or less freaking out about what I had seen on the floor."
20 Do you remember saying that?

21 A: I remember saying something along them lines, yes, sir.
22 Like I said before, some things come back, some things ain't
23 hit me right away, some things are still coming back.

24 Q: Were he and Mikey friends?

25 A: Scott and Mikey?

CROSS EXAMINATION OF JONATHAN LEE BY MR. ANDERSON

1 Q: Yes, sir.

2 A: At that particular time, I considered them to be really
3 good friends, if not best friends.

4 Q: Do you recall telling law enforcement on 2/9/2011 that he
5 had sawed the barrel about a week or two before this night?

6 Does that ---

7 A: It sounds about right. As far as dates, times, and all
8 that, I mean I wasn't sleeping so I was on edge 24/7. You
9 keep throwing dates and times at me and I can't tell you for
10 sure.

11 Q: Do you remember law enforcement talking to you about
12 spreading Luminol on the floor and Luminol possibly on the
13 deck? Do you remember that?

14 A: Yes, sir, which they did and nothing showed up from my
15 understanding, but the next morning there was like -- where
16 you -- Come to find out it was from food, from blood from food
17 from the protein in the blood, but there was stuff everywhere,
18 which Mr. Collins come back over and checked it out and
19 verified that it wasn't anything human as far as blood.

20 Q: Now the first time you talked to law enforcement was a
21 day or two after this happened. Is that right?

22 A: It was in my mother's front yard when Mr. Collins was
23 waiting on Scott to get back, if I'm not mistaken.

24 Q: And then you went -- You think you went and gave another
25 interview about a week later after that?

CROSS EXAMINATION OF JONATHAN LEE BY MR. ANDERSON

1 A: Yeah, a week or two, somewhere around there.

2 Q: And then you gave another on February the 4th, 2011?

3 A: All right, you got me confused now. Back up because I
4 talked to them in the yard that day. The first time as far as
5 an interview goes that I'm aware of was at the Florence County
6 jailhouse. Then the second one was at the jailhouse and then
7 the third one was at the library and the fourth one was at the
8 jailhouse that day with Shannon.

9 Q: So on December the 19th or 20th, did you actually go to
10 the jail?

11 A: I don't know what dates I went out there, to be honest
12 with you. I know I went out twice -- three times, I'm sorry,
13 three times total to the jailhouse.

14 Q: Three times to the jail, once at the library?

15 A: Yes, sir, and then that one ---

16 Q: And then ---

17 A: --- conversation ---

18 Q: --- here again today?

19 A: Plus that one conversation with Mr. Collins.

20 Q: Plus one conversation with who?

21 A: Mr. Collins, the day that he was waiting on Scott.

22 MR. ANDERSON: Your Honor, could I have the Court's
23 indulgence just for a moment?

24 THE COURT: Certainly.

25 Q: Do you recall taking the -- the gun after this night over

CROSS EXAMINATION OF JONATHAN LEE BY MR. ANDERSON

1 to another friends' house?

2 A: No.

3 Q: No? You never saw the gun?

4 A: Say again?

5 Q: You never touched the gun after this night?

6 A: I never touched the gun after that day at my mother's
7 house.

8 Q: That's what I'm saying. You never touched the gun after
9 Scott brought it back to the house that night?

10 A: No.

11 Q: Okay. You didn't take it over to a friend's house?

12 A: No. Why would I have done that?

13 Q: Do you recall that it stayed in your house for several
14 days?

15 A: I recall it being up underneath the front porch and I
16 recall my mother telling Scott to get rid of it and then I
17 recall him coming out of the woods with it or carrying it in
18 the woods and then coming out of the woods with it another day
19 and then when the next time I asked him about it, it was gone.
20 He had gotten rid of it.

21 MR. ANDERSON: Your Honor, that's all the questions I
22 have.

23 THE COURT: Any redirect?

24 MR. OZMENT: Nothing further for this witness, Your
25 Honor.

1 THE COURT: All right. You may step down. Any objection
2 to this witness being released?

3 MR. OZMENT: None, Your Honor.

4 THE COURT: Mr. Anderson?

5 MR. ANDERSON: No, sir, Your Honor.

6 THE COURT: All right, you're free to leave.

7 WITNESS: Thank you, sir.

8 (Whereupon, the witness leaves the stand at 4:56 p.m.)

9 THE COURT: All right, Mr. Foreman, ladies and gentlemen
10 of the jury, y'all have worked hard today. We will reconvene
11 at 9:30 in the morning. Once again, I'm going to give the
12 same admonishment not to discuss the case amongst yourselves
13 or with anyone else. Do not do any independent investigation,
14 no social media.

15 I'm going to ask everybody to display the -- the
16 beautiful orange badges and make sure that everybody can see
17 that you're jurors while you're traveling out of the
18 courthouse and wear them back in the morning. Don't tarry
19 around in the common areas to avoid any inadvertent
20 conversations. Thank you very much. Everyone remain seated
21 as the jury exits the courtroom.

22 (Whereupon, the jury exits the courtroom at 4:57 p.m.)

23 THE COURT: All right, anything -- I'm sorry. Anything
24 from the State before we recess for the evening?

25 MR. OZMENT: Your Honor, I don't know if we want to take

1 it up now or we can take it up in the morning. The writings I
2 had Jonathan identify, which we intend to introduce tomorrow
3 with witnesses that received those writings, and part of
4 laying the foundation was having him identify the handwriting
5 in them. So we would just ask that those be maybe made
6 Court's exhibits so we keep those separate from any other
7 writings that it would be -- So when we introduce them
8 tomorrow, we are sure we're talking about the same writings,
9 if that makes sense.

10 THE COURT: Very good. All right, you can label them as
11 Court's Exhibits.

12 MR. OZMENT: Also, Your Honor, I think Mr. Anderson and I
13 would be in agreement everything in those is not admissible.
14 I've given Mr. Anderson some proposed redactions, so we can
15 agree on what needs to be redacted when they're actually given
16 to the jury. I don't know if he can go over that tonight and
17 maybe in the morning we could discuss it.

18 THE COURT: All right. Why don't y'all do that before
19 y'all leave today and we'll -- If you can't agree, then we'll
20 -- You can present them to me in the morning. I'll tell you
21 what, we'll probably take that up. When do you anticipate
22 introducing them?

23 MR. OZMENT: In the morning, Your Honor. It would be ---

24 THE COURT: All right, I'll ---

25 MR. OZMENT: --- one more witness, but after that we

1 would be getting into the witness that would be introducing
2 those.

3 THE COURT: Hopefully, we will -- y'all can reach an
4 agreement. If you cannot, I'll make a ruling on that first
5 thing in the morning. All right and how many more witnesses
6 do you anticipate? Three?

7 MR. OZMENT: Probably four, Your Honor.

8 THE COURT: Four, okay, very good. All right, we'll
9 stand at ease until 9:30 in the morning, 9:30 sharp.
10 Everybody be here on time.

11 (Whereupon, the writings are marked as Court's Exhibits 2
12 through 8 and there is a break in the proceedings from
13 5:01 p.m. until 9:30 a.m. the next day.)

14 --- END DAY TWO, VOLUME TWO ---

15 --- CONTINUED IN VOLUME THREE ---

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25

STATE OF SOUTH CAROLINA	)	IN THE CIRCUIT COURT
	)	
COUNTY OF FLORENCE	)	CASE NO. 2011-GS-21-1189
	)	
THE STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	(VOLUME THREE OF THREE)
	)	
SCOTT THOMAS LEE,	)	
	)	
Defendant.	)	
	)	

March 12-14, 2012
 Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge; and a jury

A P P E A R A N C E S:

MATTHEW OZMENT, Assistant Solicitor
 ROBERT WELLS, Assistant Solicitor
 Attorneys for the Plaintiff

HENRY M. ANDERSON, JR., Esquire
 Attorney for the Defendant

KRYSTAL J. SMITH
 Official Court Reporter

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1 MARCH 14, 2012

2 (Whereupon, the proceedings resume at 9:30 a.m. with the
3 defendant and all counsel present.)

4 THE COURT: All right, let's come to order. All right,
5 Mr. Ozment, let's come to order. All right, you ready for --
6 you ready for the jury? Anything before we proceed?

7 MR. ANDERSON: Your Honor, we just went over the letters.
8 That's what we were doing while we were waiting on that last
9 juror.

10 THE COURT: Okay.

11 MR. ANDERSON: I think we've agreed on what's coming in.
12 It's already been redacted what should be redacted, so we're
13 good to go on that.

14 THE COURT: All right, so everybody's in agreement in
15 that regard. Is that right, Mr. Ozment?

16 MR. OZMENT: That's correct, Your Honor.

17 THE COURT: Very good. All right, we're ready for the
18 jury.

19 MR. ANDERSON: Wait a minute, Judge, wait a minute.

20 THE COURT: Okay.

21 MR. ANDERSON: He might want to talk to me in private for
22 just a second.

23 (Whereupon, there is a pause in the proceedings as Mr.
24 Anderson talks to the defendant outside of the
25 courtroom.)

1 THE COURT: All right, we're ready to go. Tell them to
2 come on out, we're ready to go.

3 (Whereupon, the defendant and all counsel are again
4 present in the courtroom.)

5 THE COURT: Anything further from the State before we
6 proceed?

7 MR. OZMENT: Nothing from the State, Your Honor.

8 THE COURT: Anything from the defense?

9 MR. ANDERSON: No, sir, Your Honor.

10 THE COURT: All right, we're ready to proceed.

11 (Whereupon, the jury enters the courtroom at 9:40 a.m.)

12 THE COURT: Mr. Foreman, ladies and gentlemen of the
13 jury, thank y'all for being here and being here on time.
14 Everybody looks refreshed and ready to proceed forward here
15 this morning. Y'all all have discovered that we probably do
16 need a new judicial complex. We got problems with parking.
17 We got two courts going on now and it makes it very difficult,
18 as y'all have discovered. But thank you for being here and
19 being here on time. Mr. Ozment, you're recognized.

20 MR. OZMENT: Thank you, Your Honor. The State calls Gene
21 Owens to the stand.

22 (Whereupon, there is a pause in the proceedings until the
23 witness enters the courtroom.)

24 THE COURT: Yes, sir, please come forward. I'm going to
25 ask you, if you could, to come right up here and place your

DIRECT EXAMINATION OF GENE OWENS BY MR. OZMENT

1 left hand on the Bible and raise your right hand as the clerk
2 administers the oath. Watch your step. There you go.

3 THE CLERK: Do you swear that the testimony you give in
4 this case will be the truth, the whole truth and nothing but
5 the truth, so help you God?

6 WITNESS: Yes, ma'am.

7 THE CLERK: Please have a seat and state your full name
8 for the record.

9 THE COURT: Yes, sir, I'm going to ask if you can pull up
10 real close to that microphone and speak loudly, clearly and
11 slowly in order that we can hear everything that you've got to
12 say and let's start with your full name, please, sir.

13 WITNESS: My full name is Gene Palmer Owens.

14 THE COURT: All right, let's keep your voice up. Thank
15 you, Mr. Owens. Mr. Ozment, you're recognized.

16 GENE OWENS, being first duly sworn,
17 testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. OZMENT:

20 Q: Good morning, Mr. Owens.

21 A: Good morning.

22 Q: Do you know the defendant, Scott Lee?

23 A: Yes, sir.

24 Q: All right. How long have you known Mr. Lee?

25 A: He's been a lifelong friend.

DIRECT EXAMINATION OF GENE OWENS BY MR. OZMENT

1 Q: All right. Has Mr. Lee ever sent you any letters about
2 the case we're here about today?

3 A: We corresponded back and forth, yes, sir.

4 Q: All right.

5 MR. OZMENT: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 Q: Mr. Owens, I'm going to show you copies of two letters
8 that are marked Court's Exhibits 6 and 8. If you'll just look
9 at those and I realize they're photocopies and there may be
10 some marks on them, but are those photocopies of the letters
11 you received? Of some of the letters you received?

12 A: What's the marks? The lines? What's that again?

13 MR. OZMENT: (To the Court out of the hearing of the
14 jury) Those are proposed redactions is what they are.

15 THE COURT: All right, we -- You don't need to focus on
16 that. You need to focus on ---

17 WITNESS: Yes, sir.

18 THE COURT: --- on the words that are written and that
19 have not been deleted.

20 WITNESS: Okay, okay.

21 THE COURT: Ladies and gentlemen of the jury, the State
22 is tendering these letters. There are certain portions that
23 I've determined to be inadmissible and have been redacted.
24 That's what he's referring to.

25 (Whereupon, there is a pause in the proceedings as the

CROSS EXAMINATION OF GENE OWENS BY MR. ANDERSON

1 witness examines the letters.)

2 A: Yes, sir, this is the letters.

3 Q: All right. Thank you, Mr. Owens.

4 MR. OZMENT: At this time, Your Honor, I'm going to show
5 the two letters that were marked Court's Exhibits along with
6 two fully redacted versions that Mr. Anderson has previously
7 seen to Mr. Anderson and we would move that the fully redacted
8 versions be moved into evidence.

9 MR. ANDERSON: Without objection, Your Honor.

10 THE COURT: All right and these are State's Exhibits
11 Number ---

12 COURT REPORTER: Thirty-five and 36.

13 THE COURT: Thirty-five and 36 are into evidence without
14 objection from the defense.

15 (Whereupon, State's Exhibits 35 and 36, both handwritten
16 letters with redactions, are admitted into evidence.)

17 MR. OZMENT: Thank you, Your Honor. No further questions
18 for this witness.

19 THE COURT: All right, cross examination?

20 CROSS EXAMINATION

21 BY MR. ANDERSON:

22 Q: Mr. Owens, you said you have known Scott Lee for a long
23 time?

24 A: Yes, sir.

25 Q: You indicated earlier I think that y'all had corresponded

CROSS EXAMINATION OF GENE OWENS BY MR. ANDERSON

1 on several occasions?

2 A: Yes, sir.

3 Q: How long have you known Scott Lee?

4 A: When we was in children ---When we were kids, we grew --
5 we lived in the trailer park together and this is when we was
6 very young and then over the years I would see him here and
7 there and then we were in school together. Basically, all my
8 life, sir.

9 Q: Okay. You've been around him on many occasions?

10 A: I've been -- Yeah, I've been around him on several
11 occasions.

12 Q: Do you consider yourself a friend of Scott's?

13 A: Yes, I would.

14 Q: Did Scott ever strike you as a violent person?

15 A: I knew Scott would fight if was pushed to, but as I told
16 Mr. McFadden the day that I spoke that I didn't think Scott
17 was capable of anything like this. I did say that and -- and
18 in my heart I still honestly, if you want the truth from me, I
19 don't feel that Scott, you know -- It would be hard -- If he
20 did do it, it would be hard for me to believe it.

21 MR. OZMENT: Your Honor, I believe at this point the
22 witness is speculating as to this case.

23 THE COURT: I'll sustain the objection and I'm going to
24 ask that defense counsel fashion the questions with regard to
25 reputation in an appropriate fashion. Might counsel approach

CROSS EXAMINATION OF GENE OWENS BY MR. ANDERSON

1 the bench?

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

5 THE COURT: Objection sustained.

6 MR. OZMENT: Your Honor, the State would ask that any
7 testimony elicited as to his thoughts on this case
8 specifically on whether or not he did it or not would be
9 struck from the record.

10 THE COURT: All right. I will sustain that objection and
11 ask that the counsel rephrase the question if he elects to do
12 so.

13 Q: Gene, you said you've known him all your life?

14 A: Yes, sir.

15 Q: Are you familiar with his reputation in the community
16 whether or not he's a peaceful person or whether he's a
17 tranquil person?

18 A: As far as I know, the little time I've, you know, like
19 school and everything, I knew he would like fight if pushed to
20 do so, but other than that, a casual person I guess I would
21 say.

22 Q: All right, thank you.

23 MR. ANDERSON: That's all the questions I have, Judge.

24 THE COURT: Very good. Any cross examination?

25 MR. OZMENT: No redirect, Your Honor.

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 THE COURT: I'm -- Very good, very good. You may step.
2 down.

3 (Whereupon, the witness leaves the stand at 9:52 a.m.)

4 THE COURT: You may call your next witness, Mr. Ozment.

5 MR. OZMENT: Your Honor, the State calls Mr. Mark Ford to
6 the stand.

7 THE COURT: Mr. Ford, if you could, please come forward
8 and place your left hand on the Bible and raise your right
9 hand as the clerk administers the oath.

10 THE CLERK: Do you swear the testimony you give in this
11 case will be the truth, the whole truth and nothing but the
12 truth, so help you God?

13 WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE COURT: Yes, sir, Mr. Ford, I'm going to ask if you
17 can pull up real close to that microphone and speak loudly,
18 clearly and slowly in order that we can hear everything that
19 you've got to say and let's start with your full name.

20 WITNESS: My name is Gerard Mark Ford.

21 THE COURT: Very good. Mr. Ozment?

22 MARK FORD, being first duly sworn,
23 testifies as follows:

24 DIRECT EXAMINATION

25 BY MR. OZMENT:

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

- 1 Q: Good morning, Mr. Ford.
- 2 A: Good morning.
- 3 Q: Where do you live now?
- 4 A: In Fayetteville.
- 5 Q: All right. How long have you lived in Fayetteville?
- 6 A: Going on two -- May will be two years.
- 7 Q: All right. How are you related to Mikey in this case?
- 8 A: Michael is my son through my marriage with my wife.
- 9 Q: All right. Before you lived in Fayetteville, where did
10 you live?
- 11 A: I lived in Manning, before that in Timmons ville, before
12 that in Florence.
- 13 Q: All right.
- 14 A: Before that, I was raised in New Jersey, but I got down
15 here as quick as I could.
- 16 Q: How long did you live kind of in this area of South
17 Carolina, the Pee Dee?
- 18 A: Over twenty years.
- 19 Q: All right. Did Mikey live with you during that time?
- 20 A: I guess Michael was -- Well, yes, he lived with us up
21 until he was like eighteen and then he moved out and then he
22 moved back in. So he was in and out a couple of times as he
23 was in-between, you know, what -- what a lot of teenagers do
24 when they reach that age I guess.
- 25 Q: All right. Did Mikey grow up in this area?

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 A: Yes, sir.

2 Q: All right. Do you -- Are you aware of when Mikey and
3 Scott became acquainted?

4 A: Vaguely.

5 Q: When about -- You know, do you remember about when it was
6 that they, you know, started hanging out or whatnot?

7 A: It had to be shortly before and from what I understand
8 about 2008. I didn't -- I didn't meet Scott until 2008.

9 Q: All right, but when Mikey was growing up, did Scott ever
10 come over to y'all's house?

11 A: Never.

12 Q: Okay. To your knowledge, were they friends in high
13 school or friends going back that far?

14 A: I don't think Michael knew Scott when he was in high
15 school. It was probably -- It was after he was out of high
16 school.

17 Q: All right and you mentioned this a second ago. How did
18 you first meet Scott?

19 A: After my wife's doctor's appointment back in 2008, we
20 went to the trailer that he lived in down on the river in I
21 guess Effingham.

22 Q: When you say he, is that Mikey or Scott?

23 A: Michael lived with another fellow out there on the river
24 and my wife and I showed up to visit with Michael. My wife is
25 handicapped and we pulled up in the van so Becky could, you

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 know. Michael came out because we couldn't get her out of the
2 wheelchair up the steps into the trailer, so he came out and
3 as we were visiting with Michael, Scott came, arrived in
4 another vehicle.

5 Q: All right. Do you remember any of your interaction with
6 Scott on that day?

7 A: That was the first time I'd ever -- I'd ever met him.

8 Q: All right. Did he stay around and hang out or how long
9 was he there? Do you remember anything?

10 A: We were there probably maybe fifteen, twenty minutes and
11 then we left. I presumed he was still there. There was a --
12 There was I believe another friend that lived in the next
13 trailer over. I'm not sure where they went when we left, so.
14 I wasn't there, I can't say.

15 Q: All right. Now I meant to ask you this a minute ago.
16 When was -- When was Mikey's birthday?

17 A: [REDACTED] [REDACTED] [REDACTED] He was a bicentennial baby.

18 Q: All right. All right, so after you met Scott the first
19 time in 2008, when was the next time you met Scott?

20 A: I can't remember. There may have been one other time
21 where just -- I'll put it like this. There may have been a
22 time where I was driving by and Michael was driving by and
23 Scott may have been with him, but I can't say for sure because
24 I don't remember. The next time I remember seeing Scott was
25 after the December -- It probably would have been the 20th of

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 December, 2010.

2 Q: All right. So after ---

3 A: Three days after.

4 Q: --- Mikey was killed. All right, how -- how did you find
5 out that Mikey -- Mikey's body had been found?

6 A: Michael would normally call his mama every Saturday.

7 Q: Let me just ask do you live with Mikey's mother? Y'all
8 are still married?

9 A: Yes. Well, we're divorced now, but we're still -- we're
10 still -- How can I put it? On paper, we're divorced.

11 Q: Okay.

12 A: But in our hearts, we live together, so.

13 Q: I'm sorry. I just didn't hear what you said.

14 A: On paper, we're divorced.

15 Q: Okay.

16 A: But so legally we're divorced, but we're still together
17 and ---

18 Q: Okay. Do you live in the same house?

19 A: Yes.

20 Q: Okay. I'm sorry, anyway continue. You had said that he
21 usually called on Saturdays. Go ahead.

22 A: Michael would always call his mama. During the week, he
23 was working and he always called her on Saturdays and Saturday
24 rolled around and there was no call and hadn't heard from him
25 in -- in over two days, which was unlike Michael, and Sunday

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 afternoon, I guess that would have been the 19th, my daughter
2 drove down. She was in Florence visiting with my wife's
3 mother, who is in a nursing home, and she drove over to
4 Michael's trailer to see where he was, what's up with Michael,
5 you know. And when she got there, the detectives were there
6 and that's how we were notified.

7 Q: All right. Did you find out from -- You meaning -- And
8 when I say you, I mean you personally. Did you find out from
9 the detectives or did your daughter call you? What?

10 A: My daughter called my wife and my wife told me.

11 Q: All right.

12 A: I mean I was in a different room in the house when, you
13 know.

14 Q: When did you first come to Florence after you had found
15 out that Mikey had died?

16 A: We found out Sunday and then my daughter had talked with
17 the investigators, I think it was McFadden and Collins.

18 Q: Okay, let me interrupt you. I'm going to rephrase my
19 question. Did you talk on the phone with anyone before you
20 came to Florence for the first time afterwards?

21 A: Did I talk with anyone on the phone before I came to
22 Florence?

23 Q: Right.

24 A: Yes.

25 Q: Who did you talk to?

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 A: I talked to Scott.

2 Q: All right. How did you come about talking to Scott ---

3 A: Okay.

4 Q: --- on the phone about this?

5 A: The detectives wanted to -- were inquiring about

6 Michael's cell phone. Michael had a -- The plan he was on was

7 my wife's plan and he had an extra phone for like ten dollars

8 a month, so the phone was in her name and also they wanted her

9 to get the record -- the phone records and the next day we had

10 the phone records and we were -- I was going through the calls

11 for the 17th to see what was there and there was like -- I

12 believe the first call that day was like 2:30 in the

13 afternoon, somewhere between 2:30, three o'clock, and that was

14 Scott's cell phone number I believe and then ---

15 Q: When you called that number, did you know who you were
16 calling?

17 A: My wife recognized that number as Scott's cell phone
18 number.

19 Q: Okay.

20 A: Okay. I guess he may have called. I'm not sure if he
21 had talked with her in-between there, but the -- There was

22 like eight or nine, maybe ten phone calls that day between

23 2:30 I think the first call was and the last call was a little

24 after eight o'clock or before eight o'clock, whatever, and

25 there were certain numbers that I recognized and what I did

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1 when I talked to Scott, I said, "Do you recognize this number?
2 Hey, this is your cell phone number," and I said this number
3 and he said, "That's my mama's home. That's the home line."
4 And the next number, he said, "That sounds like Eli's number."
5 So he knew several of those numbers because of I guess the
6 people that were hanging around.

7 Q: Were you giving Scott the actual numbers that you were
8 reading off of the cell phone bill?

9 A: I would. I'd say, "Do you recognize this number?"

10 "Yeah, that's my cell phone."

11 "Okay, great. Do you recognize this number?"

12 And I'd go through them.

13 Q: All right.

14 A: Like there's eight or so numbers.

15 Q: Were there any numbers that were indicated on that cell
16 phone bill from that afternoon before Mikey died that Scott
17 did not recognize?

18 A: There was two or three numbers that were -- he couldn't
19 tell which they were and I didn't know which ones they were.

20 Q: All right. During this conversation with Mr. Lee, did
21 you at any time -- Did you decide that you would come to
22 Florence?

23 A: (Coughs.) Excuse me. Michael lived in a trailer and he
24 was not going to be staying there in January and the landlord
25 was hoping that we would get Michael's stuff out of there so

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1 he could clean the place and get it rented out in January. So
2 Scott offered to help me clean Michael's -- clean the
3 furniture out and, you know, clean out the trailer and we
4 talked on Monday and I came down on Tuesday.

5 Q: All right.

6 A: So Monday when we were talking about the phone, we also
7 coordinated for me to meet him at the store when he was
8 getting off somewhere at five o'clock in the afternoon that
9 day and it was Tuesday that I ---

10 Q: What time did you drive down from Fayetteville that
11 Tuesday?

12 A: It was Tuesday afternoon. I got down here to meet him at
13 the store down the road from where his mama lived where he
14 stayed and when I got down there, it was after -- I believe
15 after five o'clock.

16 Q: All right.

17 A: I had to wait for him to get off.

18 Q: Did you meet him at the store as planned?

19 A: I picked him up at the store.

20 Q: All right. Where did you all head from the store?

21 A: We went to Michael's trailer.

22 Q: All right.

23 A: And we were there for a couple hours. He helped me clean
24 the place out.

25 Q: Did you go through the entire trailer going through

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 Michael's stuff?

2 A: Yeah. We pretty much went from -- from Michael's bedroom
3 to the kitchen to the, you know, all the things. After
4 talking with the landlord, I said I'll go ahead and get what
5 we want. Whatever we don't need, he said don't worry about
6 it, just leave it, and he would take care of, you know,
7 getting rid of it and cleaning it after that because he knew
8 the -- the situation we were in.

9 Q: All right. Tell me what happened at the end of -- You
10 just said you left some, but what happened to the other items
11 in the trailer that you didn't leave?

12 A: The things that we collected, I'm going to say out of --
13 I'm going to say a good thirty percent of the stuff I gave to
14 Scott, a couple of TVs, some clothes. One of the things Scott
15 had mentioned was -- and this is where -- this is what had
16 prompted me on Monday when talking with him. He had mentioned
17 that his brother Jonathan had a power tool at Michael's, a
18 sander or something, I forget exactly what it was, but it was
19 in the trailer and he wanted to get that if possible and I
20 said that wouldn't be a problem and that's when he offered to
21 -- to help me clean the place out.

22 Q: All right. When you went through the trailer, did you
23 find any sort of firearms, guns, weapons?

24 A: No.

25 Q: Any ammunition, shotgun shells, firearm cleaning kit, gun

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1 oil, anything like that?

2 A: No, sir.

3 Q: Okay. Had you ever known Mikey to own any sort of gun or
4 firearm?

5 A: Absolutely not.

6 Q: When Mikey was growing up in your house, what was his
7 exposure to guns, you know, growing up?

8 A: I liked to hunt and he used to -- excuse me. He would
9 give me a hard time. He used to pick on me. He didn't like
10 guns. He told me that I should feel bad for, you know,
11 killing that deer and, you know, I would kid him back saying,
12 you know, we're having Bambi next week for dinner, that type
13 of thing. It was just a thing we would do, but no, he -- he
14 wasn't -- He didn't like guns.

15 Q: Did he go deer hunting with you growing up?

16 A: He wouldn't go with me.

17 Q: All right. After you had cleaned out the trailer, where
18 did you go from the trailer?

19 A: Went straight back to Scott's mama's trailer and unloaded
20 the couple of TVs and there was a shed -- a shed that was next
21 to the trailer and I kind of backed the truck up close to
22 there and put the stuff there. He left it on the ground. He
23 was going to put it up afterwards. Some of the clothes I
24 think he may have taken inside. There were -- There was -- If
25 you could imagine, there was a lot of stuff.

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 Q: All right, I understand. Did anything else happen or did
2 Scott talk to you about anything of significance before you
3 left Florence?

4 A: After we had unloaded the truck and when Scott came back
5 out from being in the trailer, he got inside. I got into the
6 driver's side and he got into the passenger side and he
7 started to roll a joint and before he got a chance to light it
8 up, I had asked him to step out of the truck. I didn't want
9 the smell in the truck.

10 Q: All right. Do you know where he got that marijuana from?

11 A: No, sir.

12 Q: All right. From there, as you left Scott's house, where
13 did you go next?

14 A: I believe I headed back to Fayetteville.

15 Q: All right. Now this was on Tuesday I believe you said.
16 When is the next time you come to Florence?

17 A: It would have been that Friday.

18 Q: All right. What was the purpose of that trip?

19 A: Not -- Not knowing the specifics of, you know, where
20 Michael was found and where the car was found and I wanted to
21 know, I wanted to see, and Scott knew exactly where these
22 locations were. So I picked him up Friday and we went out to
23 ---

24 Q: Excuse me. What time? Just morning, afternoon,
25 approximately what time?

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1 A: It was after lunch, after twelve, I want to say between
2 twelve and one and we went out to Pygatt Road where Michael's
3 body was found. Scott had told me that him and Robert,
4 another friend of theirs, had gone out there and put up a
5 cross where the -- near where the body was found.

6 Q: All right. When you got out there, did Scott know where
7 the crime scene was?

8 A: Yes, sir.

9 Q: What was he able to tell you about the crime scene?

10 A: It was a dirt road and there was a telephone pole on the
11 left side as you're going in off from where the junkyard is.
12 The ditch is on the left and there was a telephone pole and he
13 said the body was found about fifteen feet in front of the
14 telephone pole and when a plow scrapes a dirt road, it leaves
15 a little hump of dirt on each side. He showed me where it
16 looked like the body had been dragged through that hump. It
17 had been disturbed and he showed me where the cross was and he
18 had brought a couple cans. We stopped and picked up a couple
19 cans of white paint because he wanted to paint the cross.

20 When we got there, it was just wood grained and it was
21 signed. He had put a thing on there with Robert and them both
22 had signed it and he spray painted it white and while we were
23 out there, I looked at the glass in the road, the blood stain
24 that was there, and this was a week later. I could still see
25 it there.

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1 And we talked about the folks that lived down the road
2 that he was saying he suspected. We were trying to find out
3 who did it and I was like who could have done such a thing and
4 he had a couple of theories of people that he suspected.

5 Q: What -- Do you recall what his couple of theories were on
6 people he suspected did it?

7 A: There was a guy named Donnie Gaskins and his nephew that
8 lived on that dirt road. That's why Michael would have been
9 out in the area because Michael used to deal with that fellow.
10 Scott said that Michael quit messing with that guy a year or
11 so before that, but had just started talking to him again a
12 few weeks before that.

13 Give me a second to collect my thought here. Ask me the
14 question again?

15 Q: I was asking if Scott had -- what the theories were that
16 he had put forth on who he suspected did it.

17 A: The other thing was that prompted me to go down to clear
18 out the trailer the next day, because, you know, I was hoping
19 to go down maybe the weekend and clean the trailer out, but I
20 went down that -- that Tuesday, which would have been the 21st
21 whatever?

22 Q: Right.

23 A: Because Scott had mentioned that the other boys that
24 lived down the street from Michael's trailer, one guy named
25 Jersey, they called him Jersey, and his cousin, I don't know

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1 their real names, I forget, but that they were crack heads and
2 we'd better -- and he told me the best thing to do was to get
3 down there and to get Michael's stuff out of there because
4 they'd break in and they would steal it and so that prompted
5 me to go down that next -- that next day.

6 Q: All right. Did Scott in any way implicate Jersey and the
7 other guy as possible ---

8 A: Yeah. He said that he had talked with them or was going
9 to talk with them and put the fear of death into them type of
10 thing. If they did it, he was going to -- You know, his exact
11 words, I couldn't tell you his exact words, but it was along
12 those lines that he was going to, you know, if they had
13 anything to do with it, they needed to come out and fess up,
14 basically.

15 Q: Okay. Did -- How long were y'all out at the Pygatt Road
16 crime scene?

17 A: I would say while I was there looking around and walking
18 around, Scott had spray painted. I was waiting on him and he
19 spray painted the cross and he raked up the debris around the
20 cross, you know, the grass and made it look good and he had
21 taken a -- I was taking pictures. I took some pictures and he
22 had taken a -- like a chain with a cross on it and put it
23 around the wooden cross that he had painted. I'm going to say
24 forty-five minutes to an hour.

25 Q: All right.

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1 A: And from there, we left there and we went to the other
2 location where the car was found.

3 Q: Do you -- Do you recall about how long it took you to
4 drive between those two locations?

5 A: I want to say twenty minutes maybe.

6 Q: Did you just go straight from one to the other?

7 A: Right.

8 Q: All right.

9 A: We got to the -- to the dirt road where the car was found
10 and it's like there was a paved road and then the dirt road
11 and another paved road and that paved road -- the dirt road
12 where the car was found was I'm going to venture was over a
13 mile long or close to it. I mean it's -- I would drive -- I
14 drove back and forth, back and forth. We went back and forth
15 a half a dozen times and I was going slow and I couldn't see
16 any signs of where a car -- the remnants of a car were burned.

17 Q: Excuse me. Was Scott in the car with you ---

18 A: Yes.

19 Q: --- at this time when you were going back and forth?

20 A: Right.

21 Q: All right, continue.

22 A: And I had placed a call to McFadden trying to get him. I
23 got his voice mail and left him a message trying to get him to
24 call me back saying, hey, where exactly was it on this dirt
25 road? I can't find it and I was about ready to give up, but I

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1 didn't want to give up. I was -- I was determined I was going
2 to -- If I had to -- I think I even told Scott if I have to
3 get out and walk up and down this road, you know, and Scott
4 was getting a little antsy.

5 He was ready to go and I kind of saw that he was ready to
6 go and as I was -- as I was about to leave to give up on that,
7 my phone rang and it was McFadden and he told me, you know. I
8 basically asked him. I said if I'm here and I'm going down
9 the road, is it going to be in the first half or the second
10 half, you know, break it down for me and he said it was going
11 to be on the first half.

12 So I went back again and drove back in and that next
13 time, that's when Scott turned around and said -- pointed over
14 here and I pulled over and got out and there was very little
15 to see, but I think there was like maybe a soda can that had
16 some burn mark on it and all. But there was -- Like I said, I
17 drove up and down that road, I couldn't see nothing, couldn't
18 find nothing and, you know, when he saw that I wasn't going to
19 leave, if I had to get out and walk up and down, the very next
20 time we went by, he was able to point out where the car was.

21 MR. OZMENT: Your Honor, may I approach the witness?

22 THE COURT: You may.

23 Q: I'm holding up State's Exhibit Number 12. Looking at
24 that, the burn scene, did it have all that black and soot when
25 you saw it that Friday?

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1 A: I don't think there was that much black and soot when I
2 was there that Friday. It was -- It might have been some cars
3 had driven -- Because if you look, this looks like part of the
4 road where tires would go. Over here, there was a little bit
5 more, but I don't think there was there.

6 Q: Was it this obvious when you were ---

7 A: No.

8 Q: --- driving up and down the road that day?

9 A: No, I didn't see that.

10 Q: All right. What ---

11 A: That there I would have stopped. I would have stopped on
12 a dime.

13 Q: All right and so what was it that you think caught
14 Scott's eye when you were driving up and down when he finally
15 spotted ---

16 MR. ANDERSON: Your Honor, I object to speculation.

17 THE COURT: I'll ask that you rephrase the question.

18 Q: Did Scott state any items that he said he saw that when
19 you finally found the arson scene?

20 A: To the best of my recollection, it was more that I was
21 driving so I was on the left and he was in the passenger side.
22 As we were coming back, it would have been on his side. It
23 was like, "Over there, right there, over there," which could
24 have been maybe as far as from me to that table.

25 Q: All right. Did you get out at the arson site?

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

- 1 A: Oh, yeah. Oh, yeah.
- 2 Q: How long did you spend there?
- 3 A: There wasn't much to see there, maybe five minutes.
- 4 Q: All right. From the arson site, where did you go next?
- 5 A: I carried Scott back home to his house.
- 6 Q: All right. Did you just drop Scott off? Did you stay
- 7 and visit? What?
- 8 A: No, I just dropped him off.
- 9 Q: Okay. Where did you head from Scott's house?
- 10 A: I -- I went off. I went to visit my mother-in-law. I
- 11 went to visit another friend of mine in Timmons ville. I don't
- 12 know which one I did first. I might have gone to Timmons ville
- 13 first and then stopped to see my mother-in-law on the way
- 14 back. I'm not sure.
- 15 Q: All right. Did you head back to Fayetteville that night?
- 16 A: Yeah, I went back.
- 17 Q: Okay. After that Friday, when was the next time that you
- 18 had any contact with Scott?
- 19 A: Contact on the phone possibly.
- 20 Q: I mean on the phone or saw him somewhere.
- 21 A: There may have been a phone -- There -- We may have
- 22 talked on the phone during that week after. I want to say the
- 23 21st was Tuesday, Friday was the day that we went out to the
- 24 two different locations, and then Sunday after is when we had
- 25 a get-together at the house, at my daughter's house in

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 Fayetteville where we stay, close family and friends.

2 We didn't have his -- Michael was cremated and back in
3 that week, there was a lot of snow. We had family out of
4 state in Florida and then New Jersey and they were going to
5 come down to the get-together, but because of the snow what we
6 decided to do was to have a memorial service around about
7 Michael's birthday in March where all the family could come
8 from out of state and not have to worry about the snow storm.

9 So we had the -- I don't know if it was that Sunday or
10 the following Sunday. I'd have to double check. It was
11 within -- You know what it was? We were going to have it that
12 Sunday, but I think we had to postpone it because even the
13 people from Florence couldn't come up because it was a real
14 blizzard. Well, it was a snow storm, 95 was not advisable to
15 travel for that Sunday. So it was the following Sunday that
16 we had the get-together because we had to put it off for a
17 week and that's when Scott and Jonathan and another friend,
18 Robert, had come up from Florence ---

19 Q: All right.

20 A: --- to my house in Fayetteville.

21 Q: About how many people came to the memorial service that
22 day?

23 A: I want to say twenty maybe, if I had to guess, maybe
24 more, twenty-five maybe. I know my family came in from
25 Morehead City and Michael's -- some of Michael's friends

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1 growing up and friends of my daughter and friends of my wife.

2 Q: All right. After that memorial service, did Scott call
3 your house anymore?

4 A: He called my wife's cell phone one day when I was -- My
5 wife is handicapped and bedridden and I'm her primary
6 caregiver and there was one day that he had called and I
7 didn't know until I was in the room and the phone rang and she
8 says, "Yes, I'll accept." And she accepted collect charges
9 and I said -- I mouthed to her, I said, "Who's that?" and she
10 said, "Scott." And she basically mouthed to me that ---

11 MR. ANDERSON: Your Honor, I'm going to object to
12 hearsay.

13 Q: Don't tell me anything that ---

14 THE COURT: I'll sustain. I'll sustain the objection.

15 A: Pardon me?

16 Q: Don't tell me anything that your wife said, but following
17 that phone call, did you contact the Florence County Sheriff's
18 Office and ask them to do anything?

19 A: My daughter did. My daughter talked with somebody to
20 see.

21 Q: Okay and ---

22 A: I was thinking about calling.

23 Q: All right and following that phone call, did your family
24 want to have any more contact with Mr. Lee?

25 A: No.

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 Q: All right. From your many years with Mikey and knowing
2 him as a father, would you say Scott was his best friend?

3 A: Best friend? At best, an acquaintance in my opinion and
4 I can preface it by saying I know who Michael's friends were,
5 I know who his close friends were. To me, a best friend is
6 somebody that you call on them whatever time of day. If you
7 say I'm trouble, come get me, they'll drop what they're doing
8 and come get you, no matter who it is or where they're at. To
9 me, that's a best friend.

10 So I have one, maybe two best friends. I've got lots of
11 friends and I've got a slew of acquaintances. I know who
12 Michael's friends were growing up, I know who his close
13 friends were in his adult life, and I know who the people that
14 he hung around with that were -- I knew Michael smoked pot and
15 that crowd, I wouldn't consider them his best friends, no.

16 Q: All right.

17 MR. OZMENT: No further questions for this witness, Your
18 Honor.

19 THE COURT: Cross examination, Mr. Anderson?

20 (Whereupon, Mr. Anderson pours a cup of water and takes
21 it to the witness.)

22 MR. ANDERSON: Mr. Ford, I noticed you were coughing a
23 couple times.

24 WITNESS: I've got some here. Thank you, I appreciate
25 it. I'll take that, too. Actually, I've got a retainer. If

DIRECT EXAMINATION OF MARK FORD BY MR. OZMENT

1 I don't keep it wet, it starts to stick and I start slurring
2 my -- The judge might think I'm drunk.

3 THE COURT: You're doing fine.

4 WITNESS: Okay.

5 CROSS EXAMINATION

6 BY MR. ANDERSON:

7 Q: Mr. Ford, how long have you been living in Fayetteville?

8 A: May will be -- Going on May will be two years I believe,
9 two years.

10 Q: Okay. Fayetteville is just right down 95? I mean it's
11 not that far from Florence?

12 A: An hour and forty-five minutes.

13 Q: Less than two hours? How often did you come to Florence
14 after you moved to Fayetteville?

15 A: Once, twice a month.

16 Q: Every other week maybe? Maybe like you said once a month
17 or ---

18 A: Well, there may have been a two month span where I didn't
19 make it down at all and it was all dependent upon what was
20 going on. I -- Like I said earlier, I take care of my wife
21 and she's -- she's bedridden. So on occasion I need to
22 recharge my batteries and if my buddies at the lake say, "Want
23 to go fishing?", if my daughter's got nothing going on with
24 the grand-youngins and I can get out for a weekend, I can be
25 gone. You know, I have to be back within two days.

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

1 Q: When you would go, would somebody come in and help your
2 wife? When you'd be gone a day or two, would somebody come in
3 and ---

4 A: My daughter and my grandsons and my son-in-law, who is
5 deployed to Afghanistan now, but -- He's in the Army, but when
6 he's home, there's others there, which is why we went to
7 Fayetteville so that we could have more people help take care
8 of my wife. The reason that I moved there in May was because
9 when she come out of the hospital, she went to a nursing home
10 and Michael went with her and he called and he was crying and
11 he said, "I'm not going to leave my mama here." So I quit my
12 job that day and went down to the nursing home and I've been
13 in Fayetteville since.

14 Q: I understand. You said it's usual for Mikey to call his
15 mom every Saturday?

16 A: He would call her throughout during the week ---

17 Q: Well, that's what ---

18 A: --- but when he was busy, he would call her on Saturday.

19 Q: That's what I was getting ready to ask you, but you said
20 on this Saturday, it had been a couple days, which was
21 unusual. So he called frequently, didn't he?

22 A: He would talk to her frequently.

23 Q: Just a minute ago, Mr. Ford, you said that your daughter
24 -- You said your daughter was home -- Well, she was not home,
25 she was in Florence visiting. She said I'm going to run by

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

- 1 Mikey's house and check on some things and see what's going
2 on. Is that the daughter that lives near Fayetteville or in
3 Fayetteville?
- 4 A: That's the only daughter.
- 5 Q: Okay, all right and then you got a call from her saying
6 Mikey's been killed?
- 7 A: We hadn't heard from Michael. Lisa was coming down to --
8 to -- One of the things we do for our mother-in-law -- my
9 mother-in-law and her grandma is wash her clothes, her shoes,
10 certain things. Lisa was coming to visit Grandma that weekend
11 and while she was down since we hadn't heard from Bubba,
12 Michael, she went by.
- 13 Q: You indicated I believe that you called one of the
14 numbers on the cell phone bill and you ended up talking with
15 Scott?
- 16 A: Say that again?
- 17 Q: When you got the cell phone bill, you were looking at the
18 numbers?
- 19 A: Right.
- 20 Q: And you saw Scott's or recognized Scott's number or
21 something, so you gave Scott a call?
- 22 A: My wife recognized the first number as Scott's cell phone
23 number.
- 24 Q: And so did you call Scott?
- 25 A: I called Scott.

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

1 Q: Did y'all actually talk about some other numbers on the
2 phone bill?

3 A: Meaning talk about?

4 Q: Do you recognize this number?

5 A: Yeah. What I did was I had -- I had the record, the cell
6 phone record, in front of me and I knew the first number. I
7 think it was like 2:30 in the afternoon. I think that was his
8 cell phone and then that number was repeated a couple of times
9 and as I went down, I said exactly, "Do you know this number?
10 How about this number? How about this number?"

11 "That's my mama's land line."

12 "How about this number?"

13 "No. That's Eli's number."

14 Okay and there was two or three that he didn't know out
15 of the seven or eight.

16 Q: Did you ever ask Scott, "Hey, will you find out who these
17 numbers belong to or will you give them a call and see what's
18 going on?"

19 A: Did I -- Say again?

20 Q: Did you ever ask Scott, "Will you give this person a
21 call?" or "Will you find out whose number this is?" or
22 anything like that?

23 A: I didn't ask him to.

24 Q: Okay. Did anyone else help you move Michael's stuff out
25 of his trailer?

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

1 A: No, no, sir.

2 Q: The two names you mentioned earlier -- Excuse me, Scott
3 said that there was a -- some guy named Joe Jersey. Does the
4 name Joey Budd or Michael Budd, does that sound ---

5 A: The first name Michael possibly, but then again my son is
6 named Michael and I know from where Michael's -- my Michael's
7 trailer was, maybe a hundred yards, a hundred fifty yards down
8 the road on the opposite side of the street, Scott had pointed
9 out that's where Jersey -- And I recognize Jersey because the
10 name Jersey because I'm from New Jersey originally. So I
11 think they called him that because that's where he was from.
12 I'm not sure. I can't say for sure what their actual names
13 were. I only recognize Jersey because I'm from Jersey.

14 Q: Okay. You and Scott, I think you said earlier y'all went
15 out to Pygatt Road and went to the place where the scene was?

16 A: Yes, sir.

17 Q: Did you see any other houses or trailers or -- on Pygatt
18 Road as you were driving to the scene?

19 A: We stopped where the incident occurred and further down
20 there was a trailer on the right and on the left a dwelling.
21 I didn't see if it was a trailer or a house. I believe it
22 might have been a trailer. I never drove down that far and
23 Scott had pointed out that that's where Keith and ---

24 Q: Donnie?

25 A: Donnie.

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

1 Q: Okay. I think you indicated that one Sunday there was
2 going to be like a memorial service and then the bad weather
3 had ---

4 A: Right.

5 Q: --- made it postponed I guess to the next weekend?

6 A: The following Sunday, correct.

7 Q: And I think you indicated that Scott Lee, Jonathan Lee,
8 and then I think you said Robert?

9 A: Right, another friend, Robert.

10 Q: Came from Florence. Did anyone else come from Florence
11 that you're aware of?

12 A: Yes, sir.

13 Q: Okay, any other of Mikey's friends?

14 A: Yes.

15 Q: Do you know who they were?

16 A: Yes.

17 Q: Okay. What were their names?

18 A: Corinne, Tracie Anderson -- Corinne. Let me see. Tracie
19 Anderson, who Michael grew up with at the bowling alley.

20 Michael hung out at the bowling alley, so a lot of his bowling
21 alley friends. I'm trying to think who else came up from
22 Florence.

23 Q: I think you indicated, Mr. Ford, and I'm not trying to
24 cut you off, but it was twenty to twenty-five people. Was
25 that total or was it twenty to twenty-five from Florence?

CROSS EXAMINATION OF MARK FORD BY MR. ANDERSON

1 A: Oh, total, total.

2 Q: All right.

3 A: I mean I had my -- My family from Morehead City came in
4 and that was probably a third of the people.

5 Q: Mikey never indicated to you he was in any kind of
6 trouble, did he?

7 A: No, sir.

8 Q: When you were talking on the phone, Michael never
9 indicated to you that he was scared of Scott Lee, did he?

10 A: No.

11 MR. ANDERSON: Court's indulgence for a moment, Your
12 Honor.

13 THE COURT: Certainly.

14 MR. ANDERSON: Your Honor, I don't have any more
15 questions. Thank you.

16 THE COURT: Redirect?

17 MR. OZMENT: No redirect, Your Honor.

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

19 WITNESS: Thank you.

20 (Whereupon, the witness leaves the stand at 10:33 a.m.)

21 THE COURT: You may call your next witness, Mr. Ozment.

22 MR. OZMENT: Your Honor, the State calls Jessica James.

23 THE COURT: All right, Ms. James, please come forward.

24 MR. OZMENT: I think Ms. Floyd is going to have to grab
25 her.

DIRECT EXAMINATION OF JESSICA JAMES BY MR. OZMENT

1 THE COURT: Very good. I thought that was Ms. James
2 making a move. It's taking a little while for that witness.
3 Let's stand up and stretch just a little bit while we're
4 waiting on this witness. Very good. We're going to take a
5 mid-morning break here about eleven o'clock, but I thought it
6 might be good to stretch a little bit.

7 (Whereupon, there is a pause in the proceedings until the
8 witness enters the courtroom.)

9 THE COURT: All right, you may be seated. Yes, ma'am,
10 please come forward. I'm going to ask you, if you could, to
11 please place your left hand on the Bible and raise your right
12 hand as the clerk administers the oath.

13 THE CLERK: Do you swear the testimony you give in this
14 case will be the truth, the whole truth, and nothing but the
15 truth, so help you God?

16 WITNESS: Yes.

17 THE CLERK: Please be seated ---

18 THE COURT: Watch your step.

19 THE CLERK: --- and state your full name for the record.

20 THE COURT: Watch your step. Very good. Pull up real
21 close to that microphone, please, ma'am, and I'm going to ask
22 you to speak loudly, clearly and slowly in order that we can
23 hear everything that you've got to say. Pull up real close to
24 that microphone. There you go. All right, let's start with
25 your full name.

DIRECT EXAMINATION OF JESSICA JAMES BY MR. OZMENT

1 WITNESS: My full name is Jessica Monique James.

2 THE COURT: Very good. Mr. Ozment?

3 JESSICA JAMES, being first duly
4 sworn, testifies as follows:

5 DIRECT EXAMINATION

6 BY MR. OZMENT:

7 Q: How are you today, Jessica?

8 A: I'm good, Matt, how are you?

9 Q: Good. What do you do for a living?

10 A: I'm a receptionist for the Solicitor's Office.

11 Q: All right. How long have you been a receptionist for the
12 Solicitor's Office?

13 A: It'll be three years in July.

14 Q: All right. Are you also in school?

15 A: Yes, sir.

16 Q: What are you in school for?

17 A: I'm in graduate school at Francis Marion majoring in
18 Masters of Arts in teaching students with learning
19 disabilities.

20 Q: All right.

21 MR. OZMENT: Your Honor, may I ---

22 Q: And as the receptionist, do you receive mail and any
23 other correspondence for the Solicitor's Office?

24 A: Yes, sir, I do.

25 Q: When you receive something in the Solicitor's Office,

DIRECT EXAMINATION OF JESSICA JAMES BY MR. OZMENT

1 what is your procedure? What do you do with it?

2 A: The first thing we do is clock it in and I initial it.

3 Q: Okay. When you say you clock it in, what does that
4 involve?

5 A: It's our date stamp timer and it has the Office of the
6 Solicitor and it has the time and the date we received it.

7 Q: All right.

8 MR. OZMENT: Your Honor, may I approach the witness?

9 THE COURT: You may.

10 Q: Jessica, I'm handing you what has been marked Court's
11 Exhibits 2, 3, 4 and 5. Can you look at each of those and see
12 if you see a time stamp on each?

13 A: Yes, sir.

14 Q: Each one has a time stamp on it?

15 A: Yes, sir.

16 Q: All right, thank you.

17 MR. OZMENT: Your Honor, I'm showing opposing counsel the
18 Court's Exhibits, as well as the four redacted copies and at
19 this time, we would move the four redacted versions into
20 evidence.

21 MR. ANDERSON: Without objection, Your Honor.

22 THE COURT: All right and these are denominated as what?

23 COURT REPORTER: Thirty-seven through 40.

24 THE COURT: Thirty-seven?

25 MR. OZMENT: Through 40, I believe.

DIRECT EXAMINATION OF JESSICA JAMES BY MR. OZMENT

1 THE COURT: Thirty-seven through 40 are into evidence
2 without objection from the defense.

3 (Whereupon, State's Exhibits 37, 38, 39 and 40, all
4 redacted versions of letters, are admitted into
5 evidence.)

6 MR. OZMENT: Your Honor, I have no further questions for
7 this witness.

8 THE COURT: Cross examination?

9 MR. ANDERSON: Your Honor, I don't have any questions for
10 Ms. James.

11 THE COURT: Very good, you may step down. Thank you,
12 ma'am.

13 WITNESS: You're welcome.

14 (Whereupon, the witness leaves the stand at 10:38 a.m.)

15 THE COURT: Mr. Ozment, you may call your next witness.

16 MR. OZMENT: Your Honor, at this time, we would like to
17 play a couple video recorded statements of Mr. Lee. I will
18 say both of them are lengthy, so if we were going to take an
19 eleven o'clock break, you may want to go ahead and take it now
20 as opposed to starting the first video.

21 THE COURT: Very good. We'll do that. Mr. Foreman,
22 ladies and gentlemen of the jury, we're going to ask that you
23 retire to the jury room and refresh yourselves. We'll be back
24 momentarily. Do not discuss the case.

25 (Whereupon, the jury leaves the courtroom at 10:39 a.m.)

1 THE COURT: We'll stand at ease for ten minutes.

2 (Whereupon, there is a break in the proceedings from
3 10:39 a.m. until 10:53 a.m. Prior to the proceedings
4 restarting, a DVD containing a videotaped statement of
5 the defendant is marked as Court's Exhibit Number 9 and
6 admitted by consent.)

7 THE COURT: Please be seated. All right, we're ready for
8 the jury. Is the technician ready?

9 TECHNICIAN: We're ready.

10 THE COURT: All right. We can't have any misfires now.
11 You can go ahead and start it right now and get that thing
12 fired up.

13 (Whereupon, the jury enters the courtroom at 10:56 a.m.
14 and a large video screen is placed in front of the jury.)

15 THE COURT: Mr. Ozment, you're recognized.

16 MR. OZMENT: Your Honor, at this time, we would play --
17 It's a Court's Exhibit, I can't recall the number, but it's a
18 video from December 19th, 2011.

19 THE COURT: Very good.

20 MR. OZMENT: 2010, Your Honor. If I said another year,
21 it was 2010.

22 THE COURT: You stand corrected.

23 (Whereupon, the video contained on Court's Exhibit Number
24 9 is played in the courtroom beginning at 10:57 a.m. NOT
25 TRANSCRIBED)

1 THE COURT: I'm going to ask you, if you could, to stop
2 it right there.

3 (Whereupon, the video is stopped at 11:11 a.m.)

4 THE COURT: Very good. Mr. Foreman, ladies and gentlemen
5 of the jury, I'm going to ask if you'd retire to the jury room
6 for just one moment.

7 (Whereupon, the jury leaves the courtroom at 11:11 a.m.
8 and a bench conference is held off the record.)

9 THE COURT: Mr. Ozment, it was not made very clear with
10 regard to this particular statement the circumstances of it.
11 This -- And tell me about this statement and whether or not he
12 was a suspect at this time.

13 MR. OZMENT: Your Honor, at the time of this statement,
14 this was taken two days after the date of death, he was not a
15 suspect at this time. His name had come up because they had
16 spoken to several people in the area that were kind of in this
17 circle of friends and they just said you should talk to these
18 people, not naming them as persons of interest, but just as
19 possible friends of Michael Ford that might know something.
20 This was a voluntary statement. They asked if he wouldn't
21 mind coming down just to talk to them. He said he would.
22 There was no sort of ---

23 THE COURT: And it was non-custodial and he left after
24 this, didn't he?

25 MR. OZMENT: Yes, it was non-custodial.

1 THE COURT: Very good.

2 MR. OZMENT: He left after it.

3 THE COURT: I just wanted to clear that up. I wanted to
4 clear that up in my mind because we hadn't looked at that in
5 the other hearing because y'all agreed that this was a non-
6 custodial statement. Very good. All right, we're ready for
7 the jury.

8 MR. OZMENT: Thank you, Your Honor.

9 (Whereupon, the jury enters the courtroom at 11:14 a.m.)

10 THE COURT: You may proceed.

11 (Whereupon, the taped statement is resumed beginning at
12 11:15 a.m. and continuing until 11:36 a.m. when the
13 statement ends. NOT TRANSCRIBED)

14 THE COURT: Mr. Ozment, you're recognized.

15 MR. OZMENT: Your Honor, at this time, the State would
16 ask that we now play the interview of February 9th, 2011.

17 THE COURT: Any objection from the defense?

18 MR. ANDERSON: Not at this time, Your Honor. No, sir.

19 THE COURT: Very good, very good.

20 MR. ANDERSON: Your Honor, if it pleases the Court, I
21 think there's some dead areas in here and I have no objection
22 if the State wants to I guess fast forward it to get through
23 that.

24 THE COURT: Very good.

25 MR. OZMENT: No objection from the State, Your Honor.

1 THE COURT: Very good.

2 (Whereupon, the statement previously admitted as State's
3 Exhibit Number 3 during the *Jackson v. Denno* hearing is
4 played in the courtroom from 11:36 a.m. until 12:09 p.m.
5 when it ends. NOT TRANSCRIBED)

6 THE COURT: All right, Mr. Foreman, ladies and gentlemen
7 of the jury, we're going to recess for lunch. I'm going to
8 ask that you be back at 1:30 and 1:30 sharp. Do not discuss
9 the case. Do not do any independent investigation. We'll see
10 you back at 1:30, 1:30 sharp. Everyone remain seated as the
11 jury exits the courtroom.

12 (Whereupon, the jury leaves the courtroom at 12:10 p.m.)

13 THE COURT: Anything from the State before we recess for
14 lunch?

15 MR. OZMENT: Nothing at this time, Your Honor.

16 THE COURT: Anything from the defense?

17 MR. ANDERSON: No, sir, Your Honor.

18 THE COURT: All right. How much -- How many more
19 witnesses or ---

20 MR. OZMENT: One, potentially two.

21 THE COURT: All right, very good. We'll recess until
22 1:30. Thank you very much.

23 (Whereupon, there is a break in the proceedings from
24 12:10 p.m. until 1:34 p.m.)

25 THE COURT: Please be seated. Good afternoon, everybody.

1 Anything from the State before we proceed?

2 MR. OZMENT: Nothing from the State, Your Honor.

3 THE COURT: Anything from the defense?

4 MR. ANDERSON: Not at this time, Your Honor.

5 THE COURT: We're ready. We're ready for the jury.

6 BAILIFF: Okay.

7 (Whereupon, the jury enters the courtroom at 1:35 p.m.)

8 THE COURT: Mr. Foreman, ladies and gentlemen of the
9 jury, thank you for being here and thank you for being here on
10 time. Mr. Ozment, you're recognized. You may call your next
11 witness.

12 MR. OZMENT: Your Honor, the State calls Investigator
13 Chad Collins to the stand.

14 THE COURT: All right, Investigator Collins, please come
15 forward. I'm going to ask you to place your left hand on the
16 Bible and raise your right hand as the clerk administers the
17 oath.

18 THE CLERK: Do you swear the testimony you give in this
19 case will be the truth, the whole truth and nothing but the
20 truth, so help you God?

21 WITNESS: Yes, I do.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 THE COURT: Pull up real close to that microphone and
25 speak loudly, clearly and slowly and let's start with your

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 full name.

2 WITNESS: Yes, sir. Chad Michael Collins.

3 THE COURT: Thank you, Investigator Collins. Mr. Ozment,
4 you're recognized.

5 INVESTIGATOR CHAD COLLINS, being
6 first duly sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. OZMENT:

9 Q: How are you doing today, Investigator Collins?

10 A: Good, thank you.

11 Q: Good. What do you do for a living?

12 A: I work for the Florence County Sheriff's Office as an
13 investigator in the Criminal Investigation Division.

14 Q: How long have you been doing that?

15 A: I have been in investigations since 2005 and I worked for
16 the Sheriff's Office here in Florence since 1999.

17 Q: All right. Did you have any law enforcement experience
18 prior to 1999?

19 A: I did. I worked for a year with Spartanburg County
20 Sheriff's Office.

21 Q: All right. Did you go to the Law Enforcement Academy at
22 some point?

23 A: Yes, sir, I did.

24 Q: Are you qualified to make arrests anywhere?

25 A: Yes, sir, I am in Florence County.

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 Q: All right. Approximately how many homicide
2 investigations have you taken part in?

3 A: More than ten.

4 Q: All right. Now on December 17th, 2010, how did you first
5 become involved in this case?

6 A: That particular time, I was working as the on call
7 investigator for the Florence County Sheriff's Office. We
8 have a duty that's required of us every so often that we're
9 required to answer any type of calls that patrol officers are
10 unable to handle and they contact deputies or investigators.
11 I was contacted by dispatch and I was notified that they had
12 located a body of a male located on Pygatt Road in Effingham,
13 which is in Florence County.

14 Q: All right. You responded to that scene?

15 A: Yes, sir, I did.

16 Q: When you responded to the scene, what was going on?

17 A: Upon my arrival, there were several other officers. EMS
18 was already present on the scene. The area had already been
19 taped off with crime scene tape in order to keep people in --
20 keep people out of the crime scene area. I made contact
21 initially with the patrol deputy that had responded, the
22 supervisor which would be Sergeant Wayne Drummond, and then I
23 spoke with Lieutenant Lutcken of the Florence County Sheriff's
24 Office and Corporal Clendenin of the Sheriff's Office. They
25 work in the Forensics Unit.

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 Q: All right. Did you look around the scene for evidence or
2 anything like that?

3 A: I did. I entered the scene and I did look around just to
4 kind of get an overview of the area. I noticed that there was
5 some broken glass on the roadway. There appeared to be some
6 red stain in the area of the glass and then also off to my
7 left when I entered the crime scene, I also noticed that there
8 was a body of a white male in the ditch lying on his left side
9 with his face facing towards the roadway.

10 Q: All right. Did you at any point speak with Sandra
11 Galloway at the scene?

12 A: I did, I did. I was notified that the complainant was
13 still on scene, that she had left and come back. I made
14 contact with her. I spoke briefly with her and asked her
15 specifically what she called in. She stated that she had
16 driven past the location and recalled that she had to go back
17 and get her child's cup. She was headed back towards the
18 house and that's when she noticed the body lying in the ditch.

19 I asked her if she would not mind making a statement for
20 that and she agreed to do so. I approached Deputy Plowden
21 with the Florence County Sheriff's Office and asked him for a
22 statement form. I did not have any with me at the time and I
23 did hand Ms. Galloway a statement form and asked her to fill
24 it out.

25 Q: Did you ever receive that statement form back?

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 A: No, sir, I did not. I gave her instruction if I was not
2 present or able to get it back from her to give it to a
3 uniformed officer at the scene with the Sheriff's Office and
4 then I went back to doing what duties I needed to accomplish.

5 Q: Did you ever receive it from her or a uniformed officer
6 or anyone?

7 A: No, sir.

8 Q: Okay. Before you -- Did you do anything else before you
9 cleared the scene?

10 A: Yes, I did. While we were looking in the area for any
11 other type of evidence on the scene, I was contacted by
12 Sergeant Drummond. He told me that there was a person that
13 could possibly identify the person that was in the ditch. We
14 did not let him into the crime scene. He looked from a
15 distance. He told me and us that he thought it was a person
16 named Ricky Miles, I believe it was. Ricky Miles' father
17 owned a shop down the road and we started at that point trying
18 to determine if it was Ricky Miles in fact in the ditch.

19 Q: And did you speak with Mr. Miles' father?

20 A: Yes, sir, I did. Myself and Lieutenant Lutcken, we went
21 to Mr. Miles' shop and met with him, spoke with him for about
22 twenty or thirty minutes trying to ascertain the location of
23 his son. He at first was unable to locate his son by phone.
24 Eventually, we were able to figure out that it was not Mr.
25 Miles that was in the ditch.

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 Q: All right. After you determined it was not Mr. Miles,
2 what did you -- What did you do next after that?

3 A: At that point, I had remembered earlier I was working a
4 side job that I do and that particular evening, it was Friday
5 night and I was actually working that side job and I
6 remembered that our deputies had responded out to a fire for a
7 vehicle in a location in the county. At the time, I could not
8 remember specifically where it was, but I remembered there was
9 a fire call that night. Thinking there might be some
10 correlation between the two, I checked to see what the
11 location was of the fire with dispatch and also if there was
12 any indication of who the vehicle belonged to.

13 Q: All right. Were you able to ascertain who you thought
14 the vehicle belonged to that had been in the car fire?

15 A: Yes. I was able to ascertain from dispatch. The records
16 show that the deputy ran the tag on the vehicle and it came
17 back to Michael Ford.

18 Q: All right. After you had ascertained that the car fire
19 was related to Michael Ford's vehicle, what did you do next?

20 A: Myself and Investigator -- I mean Lieutenant Lutcken, I
21 apologize. We went to Michael Ford's residence, which is on
22 Lindfield Circle in Florence County in Effingham. We knocked
23 on the door, we did not get a response. While we were there,
24 a gentleman by the name of Michael Budd came up to the
25 residence and asked us what we were doing there, who we were

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 looking for. We explained that we were looking for Michael
2 Ford. He said he was well aware of who Michael Ford was and
3 we asked him if he could possibly identify Michael by picture
4 and at that point, we showed him a photo of the crime that we
5 had taken at the crime scene of Mr. Ford in the ditch and
6 Michael Budd was able to identify Michael Ford as the deceased
7 person in the ditch.

8 Q: All right. After speaking with Mr. Budd, did he give you
9 any more useful information?

10 A: He told me that he had spoken with Mr. Ford around eight
11 p.m. on that Friday evening. He and Mr. Ford -- Actually, Mr.
12 Ford was at his house. Mr. Ford told him that he had to go to
13 home and take a shower and then he had to go run some errands
14 and that was the last time he talked to Mr. Ford.

15 Q: Okay. Did he tell you any -- anywhere specifically that
16 he thought Mr. Ford might have gone?

17 A: He told me that he may have gone to see his ex-roommate,
18 Elijah Sherman, down in Coward.

19 Q: All right. Did you go see Elijah Sherman?

20 A: Yes, sir, myself and Lieutenant Lutcken. We went to
21 Coward and spoke with Elijah Sherman at his residence. He
22 said that Michael Ford had been down at his residence to meet
23 him briefly. He didn't elaborate on what the reason was. He
24 just told us that he had come by. We asked if anybody was
25 with him, he said no, he didn't see anyone and we left it at

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 that.

2 Q: Okay. Did Mr. Sherman give you any indication of anyone
3 else you should talk to?

4 A: He did. He was able to tell us that we might want to
5 talk with another ex-roommate of Michael Ford's, which is
6 Jonathan Lee, and Scott Lee, which is Jonathan's brother.

7 Q: All right. Did you have occasion to do that?

8 A: Yes, sir. Yes, sir, we did. Prior to talking with those
9 two gentlemen, we did serve a search warrant at Mr. Ford's
10 residence.

11 Q: All right. Was his residence the trailer you had gone
12 to?

13 A: Yes, sir, on Lindfield Circle.

14 Q: All right. Did you find anything of use in the trailer?

15 A: No, sir.

16 Q: All right. At what point did you talk to Jonathan Lee
17 and Scott Lee?

18 A: It was on 12/19/2010. I stopped by the Lee residence,
19 which is on Lamb Road, and I spoke with Jonathan Lee. At the
20 time, Scott was not at the house. I spoke with Jonathan
21 briefly out in the yard, you know, how he knew Michael Ford,
22 what the, you know, situation was with the roommate, and he
23 had already called Scott and asked him to come back and Scott
24 was en route back to the house. We chit-chatted for a few
25 minutes and then Scott responded back to the house.

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 Q: Did you ask them to give a statement?

2 A: Yes, sir. Well, I asked Scott at that time if he
3 wouldn't mind talking to us and he agreed to come to the
4 Sheriff's Office and we transported him down to the office.

5 Q: Okay. Did he give a statement?

6 A: He did.

7 Q: Was that the video that we saw?

8 A: Yes, sir.

9 Q: The first video we saw?

10 A: The first video, yes, sir, that was it.

11 Q: Okay. Was he a suspect at that point?

12 A: No, sir, he was not.

13 Q: Was he under arrest at that point?

14 A: No, sir.

15 Q: Could he have left any time he wanted to?

16 A: Yes, sir.

17 Q: Okay. After you talked to Scott down at the Sheriff's
18 Office, what was the next step in your investigation?

19 A: After we talked with Scott, I went back -- I apologize.
20 We went and talked with Keith Odom and Teresa Filyaw down on
21 Pygatt Road.

22 Q: After you spoke to them, what -- what -- Were you able to
23 draw any conclusions as to their involvement in this?

24 A: They were able to tell us that they were at a barbecue
25 the entire evening on Friday evening. Several family members

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 corroborated and alibied them, stating that they were there
2 with them the whole time. They did respond back to their
3 house between ten and eleven o'clock and I believe Ms. Filyaw
4 and her mother actually went to Walmart to do some Christmas
5 shopping after they returned home.

6 Q: All right. After you had spoken to them and corroborated
7 with family members, did you consider Keith Odom or Ms. Filyaw
8 a suspect in this case?

9 A: No, sir, but we did have them come down and give
10 statements at the Sheriff's Office.

11 Q: All right. Were those statements consistent with
12 conversations you had had with them?

13 A: Yes, sir.

14 Q: After you spoke with them, what -- what was -- What was
15 the next step you took in the investigation?

16 A: At that point, there were really no other leads that came
17 up at that time. I had received the autopsy reports back from
18 MUSC after the autopsy was completed. It did show that Mr.
19 Ford died of a single gunshot wound to the left side of his
20 head and it was possibly fired from a 12 gauge shotgun. The
21 shot was birdshot, I believe the report showed and that
22 according to the autopsy report that it was a very close range
23 shot within five to six feet.

24 Q: Okay. You said the case had gotten cold. What -- What
25 warmed up the case again?

DIRECT EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. OZMENT

1 A: I received a tip anonymously to go and speak with a
2 gentleman by the name of Clint Garris and I went to Clint
3 Garris' house to talk with him.

4 Q: All right. After you had spoken to Mr. Garris, what was
5 the next step in your investigation?

6 Q: After speaking with Mr. Garris, he gave me some names to
7 talk to as well, which included Jonathan Lee and also Shannon
8 Bailey. At that point, I decided to make contact with them
9 and also Elijah Sherman as well to come down to the Sheriff's
10 Office.

11 Q: All right. Prior to talking to Mr. Garris, had Shannon
12 Bailey's name come up at all in your investigation?

13 A: No, sir, not at that time.

14 Q: All right. Did you talk to those three individuals?

15 A: Yes, sir, I did. I spoke with Elijah Sherman at the
16 Sheriff's Office. We talked briefly about some things and he
17 told me again that Michael had come down. It was just to
18 confirm and corroborate what his first story was and after
19 that, we -- I did try and make contact with Janet -- I'm
20 sorry, Jonathan Lee and Shannon.

21 Q: Were you able to make contact with them?

22 A: I spoke with Jonathan and then I called Shannon as well
23 and I did make contact with both.

24 Q: All right. Did they give statements at that time?

25 A: Not at that time, no. I asked Shannon if I could make an

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1 appointment for her to come down and talk with me at the
2 Sheriff's Office and I think we arranged a time of two o'clock
3 on a specific date and that was -- that was set.

4 Q: Okay. Did you at any point speak with Chavis Cooks in
5 this investigation?

6 A: Yes, sir, we did. I received some information from a
7 fellow investigator, Mr. McFadden. His cousin had called him
8 and spoke with him on the phone briefly about some things.

9 Q: Is Chavis Cooks his cousin?

10 A: Yes, sir.

11 Q: All right. Are you aware at that time who Chavis Cooks
12 was dating?

13 A: No. Well, I was after he came in. He spoke with me and
14 Thomas and told us that he was dating an Ashley Campbell and
15 that Ashley and he had picked up Scott on Willow Creek Road
16 the night of the 17th.

17 Q: Okay. After you had had that conversation and after your
18 conversations that you had with Mr. Garri's, at this point,
19 were you starting to formulate an idea of a suspect in this
20 case?

21 A: At that time, yes. Based on some earlier statements that
22 had been given about some problems between Jonathan and
23 Michael with the roommate situation I believe that was
24 testified to earlier, we kind of started putting some pieces
25 together thinking that might be a conclusion. Again, this was

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1 a working theory.

2 Q: I got you. Did you speak to Ashley Campbell at any
3 point?

4 A: Yes, sir, we did. We interviewed her at the Sheriff's
5 Office and she corroborated what Mr. Cooks told us.

6 Q: All right. At any point, did you speak with Cynthia
7 Welch?

8 A: Yes, we did. Myself and Mr. McFadden went to Ms. Welch's
9 residence on Shorty Lane. We approached her and talked to her
10 and asked her, you know, if Michael had come by the residence
11 and she said he had. She was truthful I believe in stating
12 that she had bought some marijuana from him. She told us that
13 he came up in the yard in his vehicle, which was -- she
14 described as a blue car, and Michael got out, approached her,
15 and at that point ---

16 MR. ANDERSON: Your Honor, I believe that witness has
17 already testified. You know, if he wants to say he talked to
18 her, I think that's fine, but she's already testified here
19 today or not today, yesterday. So I would object to this just
20 being cumulative.

21 THE COURT: I'll allow him some leeway in that regard.
22 He's not really saying what she said, but he can say what his
23 investigation entailed and I'll allow you wide latitude with
24 regard to cross examination.

25 MR. OZMENT: Thank you, Your Honor.

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1 Q: Was Ms. Welch able to give you a description of anyone
2 she saw in the car with Mr. Ford?

3 A: The -- The information that she gave us was it was a
4 white male in the vehicle and that he kept his head down. The
5 dome light was on when Michael exited or entered the vehicle
6 again and she could just see that the person had his head down
7 and that he had brownish to reddish hair.

8 Q: Okay. A minute ago, you said you started putting pieces
9 together. Did that lead you to want to speak to Jonathan Lee
10 about this case?

11 A: Yes, sir.

12 Q: When was the first time you spoke with him, you know, at
13 this point in the time line that we're going through?

14 A: If I recall -- If you'll bear with me just a minute. It
15 was on February the 4th of 2011. We had Jonathan come to the
16 Sheriff's Office ---

17 Q: All right.

18 A: --- to talk with him.

19 Q: Did he -- Did you talk to him? Did he give a statement?

20 A: He talked to us. He did give us a statement. The
21 information that he related to us at that time was that he
22 didn't -- he didn't know what we needed from him. He said
23 that he was at home all night and that he didn't have any
24 specific information to give us.

25 Q: Okay. Did you ask him at all if Scott had any

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1 involvement in it?

2 A: I think we did, yes, sir.

3 Q: Okay. After you spoke with Jonathan on the 4th, what was
4 your next contact with Jonathan?

5 A: It would have been on the 9th of February.

6 Q: Did -- Who contacted who on that date?

7 A: Mr. Jonathan Lee contacted me and asked us to meet him at
8 the Florence County Library.

9 Q: Did he give any indication as to why he wanted to meet
10 with you again?

11 A: He said he wanted to talk to us about what happened?

12 Q: Okay. Did you meet with him at the library?

13 A: Yes, sir, myself and Investigator McFadden met with him.

14 Q: Where? I mean was it inside the library? Where at the
15 library?

16 A: No, sir. It was in the parking lot. Mr. McFadden and I
17 rode up there and at first we met with Mr. Lee outside the
18 vehicle and we talked briefly and then -- It was very cold
19 that day and we got inside the vehicle.

20 Q: Did Jonathan tell you -- Did he stick by the story of
21 February 4th?

22 THE COURT: That -- That -- I'm sorry, go ahead.

23 MR. ANDERSON: I'm just going to object. I mean
24 Jonathan's already testified and I can question ---

25 THE COURT: He has and he can lay out -- I mean he's the

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1 chief investigator. He can say what he did, what his
2 impressions were, what his conclusions were in that regard,
3 but he can't go over and say what other people told him. You
4 know, we've had these witnesses already testify. There's no
5 sense in rehashing that, not to mention the fact that it is
6 indeed hearsay.

7 MR. OZMENT: Yes, Your Honor.

8 THE COURT: Very good. You may proceed.

9 Q: Did Jonathan's story on the 9th corroborate his previous
10 statements he had given you?

11 A: No, sir, he gave a different story at that time.

12 Q: All right. Following that conversation on the 9th at the
13 library, were you interested in speaking to Jonathan anymore?

14 A: Yes, sir. We asked him to come back down to the
15 Sheriff's Office and he agreed to bring Shannon with him.

16 Q: All right. What day did he come back down to the
17 Sheriff's Office?

18 A: That was on that same day, February the 9th.

19 Q: All right. Did you interview him at the Sheriff's
20 Office?

21 A: I was not privy to that interview. Investigator Streett
22 and Investigator McFadden and Lieutenant Jason Doar spoke with
23 them that day.

24 Q: All right. Where were you during that interview?

25 A: I was at Scott Lee's mother's house on Lamb Road.

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1 Q: All right. What were you doing on -- at Scott Lee's
2 mother's house?

3 A: After speaking with Jonathan Lee at the library, I
4 contacted my lieutenant and explained to him what information
5 we had received from Jonathan. We made the decision at that
6 point to go to the residence and try to make contact with
7 Scott and at that time place him under arrest.

8 Q: All right. Was in fact Scott arrested?

9 A: Yes, sir, he was arrested that night.

10 MR. OZMENT: May I approach the witness, Your Honor?

11 THE COURT: You may.

12 Q: Did you search Ms. Lee's residence that day?

13 A: Yes, sir, we did. We searched the grounds and the
14 residence.

15 Q: Did she consent to that search?

16 A: Yes, sir. I had her sign a Florence County Sheriff's
17 Office Consent to Search Form on that date. The location was
18 2967 Lamb Road in Florence County.

19 Q: All right. The sheet of paper I just handed you, what is
20 that sheet of paper?

21 A: It is a Consent to Search Form that is supplied to us by
22 the Florence County Sheriff's Office. It's a form that we use
23 in order to gain consent from the owner of property, whether
24 it be a vehicle or a house, to gain consent to search the
25 area.

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1 Q: All right. When she consented to search her property,
2 did you threaten her in any way, pressure her to do it,
3 anything like that?

4 A: No, sir.

5 Q: All right. Did she seem agreeable to you searching the
6 property?

7 A: Yes, sir, she did.

8 Q: All right.

9 MR. OZMENT: Your Honor, at this point, the State would
10 move the Consent to Search Form into evidence.

11 THE COURT: Any objection?

12 MR. ANDERSON: No objection.

13 THE COURT: And this would be State's Exhibit?

14 COURT REPORTER: Forty-one.

15 THE COURT: Forty-one is into evidence without objection
16 from the defense.

17 (Whereupon, State's Exhibit Number 41, the Consent to
18 Search Form, is admitted into evidence.)

19 Q: How long were you at the property that day?

20 A: Well over an hour.

21 Q: All right. Who all was searching the property?

22 A: It was myself and Corporal Byrd with the Florence County
23 Sheriff's Office.

24 Q: All right. Based on your investigation at this point and
25 the statements you had taken, what sort of things were you

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1 looking for?

2 A: Any evidence relating to a vehicle having been at the
3 residence, busted glass, any possible blood that may have been
4 at the scene or at the residence, anything that -- possibly a
5 shotgun, that type of thing.

6 Q: All right and when you said a vehicle, which vehicle had
7 -- were you interested in being at the residence?

8 A: Based on what we learned at the scene that there was
9 possibly glass or a vehicle -- Obviously, glass had been
10 busted out of the window. We were looking for that particular
11 type of evidence and from Mr. Lee's information that Michael
12 Ford had been there and knowing what had happened with the
13 vehicle or Michael Ford's car, I wanted to see if there was
14 any evidence lying about that might put Michael Ford's car
15 there at the residence.

16 Q: All right. Did you find any potential evidence to that
17 effect?

18 A: I searched the grassy area on the -- If you're coming out
19 of their front porch, onto their front porch, I searched the
20 left -- all over the grounds, but the grassy area on the left
21 side of the residence if you're facing out their front door.

22 Q: All right. So if this is the front door of the trailer?

23 A: Yes, sir.

24 Q: Where would you have searched?

25 A: If you're coming off to your left, if you were to hold

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1 your left arm out, sir, off to that left in front of the
2 residence at the corner of the residence.

3 Q: All right. Did you find anything in that area?

4 A: I found some tempered glass on the ground.

5 MR. OZMENT: May I approach the witness, Your Honor?

6 THE COURT: You may.

7 Q: Can you please look in the little box I just handed you?

8 A: Yes, sir.

9 Q: What do you see in that box?

10 A: A piece of tempered glass.

11 Q: Is that the same piece you found that day?

12 A: Yes, sir, it looks like it.

13 Q: All right.

14 MR. OZMENT: At this point, Your Honor, the State would
15 move that little piece of glass into evidence.

16 MR. ANDERSON: No objections, Your Honor.

17 THE COURT: All right. This is 42?

18 COURT REPORTER: Yes.

19 THE COURT: Forty-to is into evidence without objection
20 from the defense.

21 (Whereupon, State's Exhibit Number 42, a piece of
22 tempered glass in a box, is admitted into evidence.)

23 Q: Is there any other physical evidence, I mean something
24 you found that day?

25 A: Yes, sir. Again, we searched the entire grounds. Up

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1 underneath the porch, there was a piece of wooden stock from a
2 -- what looked like a gunstock to me. It was a very small
3 piece, maybe six inches to eight inches long.

4 Q: All right. Is that the piece that's in evidence that
5 we've seen here in this case?

6 A: Yes, sir.

7 Q: Okay. Did you know where to look for that?

8 A: Information from -- that I was being given over the phone
9 by investigators as they were interviewing Mr. Lee and Miss
10 Bailey ---

11 Q: Okay.

12 A: --- prompted me to search.

13 Q: Okay. Now where did you actually find that piece of
14 stock?

15 A: It was up underneath the deck porch area of the
16 residence.

17 Q: Okay. At what point was a warrant issued?

18 A: We -- I signed the warrant on the 10th I believe, the next
19 day.

20 Q: Following the arrest, were you -- at any point, did you
21 have contact with Mr. Gene Owens in regards to this case?

22 A: Yes, sir, I did.

23 Q: What was that contact?

24 A: Mr. McFadden had contacted me. Again, Mr. Owens had
25 contacted Mr. McFadden, McFadden relayed the information to me

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1 that Mr. Owens had received some letters from Scott while he
2 was incarcerated at our jail.

3 Q: Okay. Did you ever have any contact with the Solicitor's
4 Office regarding this case during that time?

5 A: Yes, sir. I was contacted by the Solicitor's Office
6 stating that they had received several letters from Mr. Owens
7 -- I mean from Mr. Lee as well while he was incarcerated.

8 Q: Had you -- Have you read all of these letters?

9 A: Yes, sir.

10 MR. OZMENT: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 MR. OZMENT: Your Honor, at this time, we would like to
13 publish some portions of the letters which are already in
14 evidence to the jury.

15 THE COURT: Very good.

16 Q: Investigator Collins, starting with -- I failed to note
17 which exhibit. It's the letter from March 1st to the
18 Solicitor's Office.

19 A: Yes, sir.

20 Q: Can you read for me starting on about the sixth line
21 where it says, "Sir, I absolutely did not"?

22 A: Yes, sir. "Sir, I absolutely did not kill my boy, Mikey.
23 I don't know how to make you understand exactly how wrong you
24 are about -- about me, Mr. Clements. I wish to God that I
25 could prove to you that I -- who I think -- who I think done

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1 it, but I just can't be one hundred percent sure that what I
2 think is right, sir. I tried to tell the cops who Mikey was
3 going to meet that night and they said that they had spoke to
4 Donnie Gaskins on the phone and they told me that them Gaskins
5 stick together and then the cops pretty much laughed in my
6 face after that. Chad Collins stood on my mama's front porch
7 and told her that he knew I did this murder, but they couldn't
8 figure it out. Why then he told her that they didn't have to
9 stop questioning me when I asked for a lawyer, that they were
10 doing their jobs."

11 Q: Okay. Now moving on to the next letter in chronological
12 order that he wrote the Solicitor, I believe it's 4/13/2011.

13 A: Yes, sir. "Mr. Clements, no matter how much these
14 detectives say I killed my friend, Mikey, it just isn't true.
15 They can say that I'm a murderer till they're blue in the
16 face, but the facts are facts and the fact is I did not kill
17 anybody, sir. That was my brother that they shot, sir, and
18 now you have me charged for his murder. These cops stepped on
19 -- stepped on and disregarded so much evidence in this case
20 that you could have loaded it all in the back of a truck, sir.
21 I did not kill anyone, sir, and I cannot admit to these
22 charges. Now I didn't do it. Sir, I have never wanted to
23 hurt the cops' investigation, but I cannot give you something
24 I don't know, you know. Thanks for your time, sir. Scott
25 Lee."

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1 Q: All right and the date of that letter?

2 A: That date was 4/13/2011.

3 Q: All right, moving on to the next letter, which was written
4 twelve days later on 4/23. You can just start with, "It,"
5 after the redacted part -- portion.

6 A: "If he isn't a part of the murder because in my heart I
7 believe he pulled the trigger, I don't know anything else to
8 tell y'all. I didn't do this murder, sir. Please get these
9 charges off of me -- off of my record, sir. These cops are
10 trying to pin this murder on me, but they will have to frame
11 me, sir, because I did not do it."

12 Q: All right and when you said, "if he," who is that "he"
13 referring back to in the letter?

14 A: I apologize. "If Donnie Gaskins didn't kill my friend,
15 then I really don't have a clue. I can't help you."

16 Q: Okay. Now the final letter and I apologize it's a little
17 difficult to make out the copy, but on July 23rd, 2011. Could
18 you just read that one from the beginning and I'll stop you?

19 A: Yes, sir. "Sir, I am not going to make you or the judge
20 or the jury or anyone else guess about anything any longer. I
21 was just scared completely out of my wits, sir. The coroner's
22 report is off on the time of death that night. It was very
23 cold and it was drizzling rain that night and all the next
24 day, sir. Check the weather reports for December 17th, 2010,
25 and December 18th, 2010.

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1 Also, I didn't ever avoid the police, sir. I spoke to
2 them every time they came up to my house, sir. I even invited
3 them inside. I went with them every time they asked me to,
4 sir. Sir, I make more money than any of my friends do, even
5 Eli, the ones we bought -- the one we bought weed from. I
6 loaned Mikey money that night. These punks stole thirteen
7 hundred dollars from me, sir. I almost lost my life three
8 times in two minutes time, sir. I almost got shot in the face
9 twice in two months' time, Mr. Clements. That boy was one of
10 my best friends.

11 I think they caught my brother in a lie and he had to say
12 or agree with whatever Shannon was saying or they would have
13 locked him up with me. In fact, I know that's what happened,
14 sir. Both Shannon and my brother are or were strung out on
15 morphine, Dilaudid, heroin, morphine patches, Percocets,
16 Loricets, Oxycontin" -- I apologize. "Roxycotin and
17 Oxycontin and cocaine and Lord knows what else. I only smoke
18 my weed and I'll take a Xanax once in a while. I cannot -- I
19 couldn't sleep."

20 Q: All right and just to put things in order before we move
21 to the final two letters, what -- Can you just read me the
22 dates and what order that you read those?

23 A: Yes, sir. The first one was dated 3/1/2011, the second
24 one was dated 4/13/2011, the third one 4/23/2011, and the
25 fourth one 7/23/2011.

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1 Q: All right. Now moving to the first letter from Mr.

2 Owens, which I believe is dated 3/5/2011.

3 A: Yes, sir.

4 Q: If you don't mind, start reading on -- It's the -- some
5 of the very last words on the first page of text of the
6 letter. It starts, "Anyway, man, I ain't." It should be ---

7 A: Let me make sure I've got the right one.

8 Q: 3/5/2011, right there, right at the bottom.

9 A: "Anyway, man, I ain't killed nobody, Gene, just in the
10 wrong place, wrong time I guess. My buddy, Mikey, came to
11 bring me a quarter bag that Friday night about eight p.m. or
12 so. Hell, he woke me up off the couch when he got there. He
13 handed me the smoke. He asked me to ride with him to drop off
14 a couple bags of smoke to those Odom boys, Donnie Gaskins, Pee
15 Wee Gaskins' people. Anyway, he said he didn't really trust
16 them and just wanted me to ride along.

17 Anyway, we stopped to weigh the bags out five or six
18 hundred feet from these guys' house in the middle of a dirt
19 road. I had a blunt in my mouth and scales in my hand and all
20 of a sudden, we had a big SUV or sedan, whatever, dead on our
21 bumper, man, bright lighting us and somebody yells, 'Police,
22 get out with your hands up.' Then we had laser lights on us
23 and all over the inside of Mikey car. Hell, we was convinced
24 we was in trouble.

25 So I threw the blunt in the ashtray, scales in the

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1 floorboard, Mike shoves weed down beside him. I get out and a
2 fucking nigger with a ski mask runs up to me and caught me
3 with some brass knuckles, put me down right where I stood,
4 bro. Dud starting kicking the shit out of my ribs, then
5 someone else came to join him. That fucker kicked me a couple
6 of times telling me to give them my shit and then one of them
7 snatched my wallet, three thousand dollars in cash in it,
8 dude, or thirteen hundred dollars in cash in it, dude,
9 thirteen hundred bucks.

10 Anyway, the bastards had Mike at gunpoint. I mean they
11 had it in his face and it was cocked, man. The other two that
12 was beat on my head had stopped and went around the front of
13 the car to see what was in my wallet, told me stay down face
14 down. Dude, I was scared shitless, Gene, and you know I ain't
15 someone who gets scared easily. Anyway, my door was still
16 open and all I could see was that pistol in my boy's face.

17 I got my hand on Mikey's sawed off 12 gauge, got up,
18 leveled it at the ones that took my wallet, and got the party
19 started. Mikey seen me come up with the sawed off and he
20 slapped the pistol hard and jumped towards the ditch. I came
21 around the front end cutting loose at them boys, but the shots
22 were spreading or I wasn't aiming right. Either way, it
23 seemed as if I was missing the motherfuckers.

24 By the way, they were starting towards me with a pistol
25 and I guess it was a 12 gauge or 20 gauge, not sure. Anyhow,

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1 when I shot the five shell out, I hit the woods and they shot
2 at me a couple more times as I was running in the woods. Then
3 I heard them spinning and hollering at me.

4 When they were sure to be gone, I came back to the car
5 and through the smoke I seen Bubba laying there on the ground,
6 man, bleeding like hell. Man, I fell to the ground, talking
7 to him, cuddling him. I was trying CPR on him. Then I seen
8 him, how bad the side of his head was messed up and I kind of
9 knew before I even checked his pulse that he was gone, man. I
10 tried to get him into the car, but he was so big and heavy
11 that I couldn't do nothing with him.

12 Anyway, I couldn't find my phone and if I left him there
13 in the middle of the road, someone would have run over him
14 probably, so I pulled and pulled until I got him into the
15 shallow ditch and then I got back in the car and went up and
16 down that road -- dirt road looking for that sedan, but never
17 saw it again. I went home to call the police, pulled into my
18 front yard, ran inside to wash the blood off my hands, and
19 grabbed the phone.

20 I seen my Xanaxes and decided to take sixteen blues at
21 once. Man, I was shaking uncontrollably, Gene. There was a
22 bottle of Crown sitting there, so I hit the bottle three or
23 four times, grabbed the phone, hit 9-1-1, then it hit me that
24 I couldn't even describe any of those three punks. One was
25 black, I seen his fists. I think the other one that got my

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1 wallet was black, but the one that had the pistol in Mikey's
2 face was white, I'm sure of it.

3 Anyway, nobody knew we was coming but Keith Odom and his
4 brother and Donnie Gaskins lives six hundred feet from where
5 we got jumped, man. That's too fucking much coincidence for
6 me. Anyway, I realized I couldn't describe them at the time
7 and at the time I could think, hell, I couldn't even talk by
8 the time I get back to my mom's anyway. I hung the phone up
9 after hitting 9-1-1 about ten times and I knew I had to get
10 away from that car if I wasn't going to call the cops, so I
11 burned it.

12 Two months later, they arrested me for this fucking
13 murder, man. My brother seen me covered with blood and I
14 couldn't speak to even tell him what had happened. Plus, his
15 girl seen it and there were -- their minds went to wandering
16 and assuming. Shannon tried to blackmail me into giving her
17 and my brother my tax money and I told them to go to hell. In
18 fact, they needed to call the police and tell them what they
19 thought. Well, they did and two days later, I was charged
20 with murder and arson.

21 The only thing I have going for me is that a woman
22 actually seen that truck that they were driving, get this,
23 parked in her driveway way right at the spot this all
24 happened. I mean I couldn't figure out why we didn't see the
25 truck come up on us, but they were in a driveway behind some

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1 fifteen feet."

2 I'm sorry I can't make out that word.

3 "Trees and they pulled right out of that driveway and
4 dead onto our bumper. Anyway, I'm here and these fucking
5 punks got away with murder and I lost everything, Gene, my
6 son, my freedom, and my best friend, my career. Dude, I had
7 started my welding career, fifteen hundred dollars a week,
8 sixteen hundred sixty-one dollars for a seven day work week.
9 Everything is fucking gone now, Dude. My family's name is put
10 through all this and what's really killing me is Mikey's mom
11 don't even have a clue as to what really happened."

12 Q: All right and when was that letter dated again?

13 A: Again, that letter was dated on 3/5/2011.

14 Q: All right. Now moving to the final letter, April 1st,
15 2011, just start at the top of the second page -- the first
16 page. The first page is almost totally redacted, so it's the
17 ---

18 A: May I have some water, please?

19 BAILIFF: I'll get you some.

20 WITNESS: Thank you.

21 A: "I hadn't had any sleep at the time. I mean literally
22 nineteen hours before I saw my best friend get killed, Gene,
23 so I know I wasn't in my right mind at all. I'd been straight
24 for years and all that changed as soon as I got home that
25 night. I think I ate five blue Xanaxes and a couple of shots

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1 of Crown Royal time as I walked back in the door and then I
2 grabbed my house phone to call the police and that's when I
3 realized I couldn't really describe a fucking thing, but the
4 color of the SUV or sedan and I just cowarded out.

5 I just felt as if I couldn't tell the cops who done it
6 beyond any kind of doubt, then I'd be the last one with Mikey
7 and I felt like I'd get slammed and locked what happened. I
8 could have never went with him on one hand, but on the other
9 hand that's my dog, man, and he needed -- felt like he needed
10 someone with him and I'd probably go with him again, man.

11 I don't know if what I done was right or wrong. I just
12 was scared as hell, Gene. Well, it scares me -- scares the
13 hell out of me every time I relive this fucking shit. I can't
14 sleep hardly and when I do, I dream some really bad dreams to
15 where I don't want to go back to sleep.

16 December 17th, 2011, Friday night eight p.m. or so, I've
17 been in hell, Gene. My life will never be the same even if --
18 even if they get them motherfuckers. I think that they think
19 they got their man and they really don't have a clue as to
20 what happened that night, Gene. No one know I was with him
21 until the guns were pulled on us. It's a wonder I'm still
22 breathing. In fact, if Mike wouldn't have brought the sawed
23 off, I would have been dead I think.

24 In fact, I'm having nightmares about right time as they
25 shot Mikey, the other guy puts the shotgun to my head, pumps a

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1 round in the chamber, and I wake up in a cold sweat, dude, and
2 this nightmare is coming to me over and over and over, man.
3 Sometimes I wish I would have got shot -- I wish I would have
4 shot at them first, but I thought I could save us, man. I
5 seen no other choice, Gene. Mike had a pistol in his face
6 with hammer cocked when I came up off the dirt and he seen me
7 and slapped it and that's when I got -- what I cut loose.
8 Then the other guy came shooting with another shotgun. I mean
9 for about sixty or seventy seconds, it seemed like I was in
10 the wild, wild west.

11 I can't believe I'm here with this fucking charges. I
12 don't know what to do about anything, Gene. I'm scared if I
13 talk to the cops that I'll make it even worse on myself than
14 it already is and on the other hand I'm scare if I don't, I'll
15 make it worse than it already is. I don't know what's right
16 and I don't know what's wrong in any of this shit. All I do
17 know is that they have the wrong person charged with this
18 murder. Man, if you have any kind of advice, please tell me
19 because I don't know what to do, man. Later, bro, Scott Lee.
20 If you still" ---

21 Q: That's fine. You don't have to read further. Following
22 you reading these letters and the letters that were sent to
23 the Solicitor's Office, did you feel the need to do any
24 follow-up investigation as to whether there was any veracity
25 to these statements?

CROSS EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. ANDERSON

1 A: I -- We did check into some things, but it never panned
2 out.

3 Q: All right.

4 MR. OZMENT: No further questions for this witness, Your
5 Honor.

6 THE COURT: Cross examination, Mr. Anderson?

7 MR. ANDERSON: Yes, sir, Your Honor.

8 CROSS EXAMINATION

9 BY MR. ANDERSON:

10 Q: Investigator Collins, that last letter you were reading,
11 at the bottom of the first page -- and this is the one that is
12 dated March -- It's dated April 1st, I'm sorry. At the bottom
13 of that -- I guess it's the second page because the first page
14 is almost fully redacted and I know that it looks like the
15 margin is kind of ---

16 A: Yes, sir.

17 Q: --- cut off a little bit. At the very bottom, it says,
18 "I felt like I'd get" -- you said, "slammed." Could that be
19 "blamed"?

20 A: It may be, yes, sir. I ---

21 Q: Okay. Now on the other letter, the one that is dated
22 March the 5th, 2011, on the sixth page, one, two, three, four,
23 five lines down where it says, "Take" and you said, "Sixteen
24 blues at once." Is that actually six because the Y comes down
25 in front of it?

CROSS EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. ANDERSON

1 A: That may be. I read it wrong. I apologize.

2 Q: Okay. Investigator Collins, you went to the academy at
3 SLED?

4 A: I went to the academy at South Carolina Criminal Justice
5 Academy.

6 Q: Commonly referred to as SLED?

7 A: I -- Well ---

8 Q: I mean isn't that where SLED is?

9 A: It is, yes, sir, right down the road.

10 Q: How long was the class? Six weeks? Eight weeks? Twelve
11 weeks?

12 A: When I went, I believe it was eight weeks.

13 Q: Okay. They teach you various things while you're up
14 there?

15 A: Yes, sir.

16 Q: Drive a car, shoot a weapon, some legal stuff, how to
17 write a report, things like that?

18 A: Yes, sir.

19 Q: You passed the class?

20 A: Yes, sir.

21 Q: All right. You said you'd been with the Spartanburg
22 County Sheriff's Office for a year. Did you go to the South
23 Carolina Justice Academy, Law Enforcement Academy ---

24 A: Prior to being -- After being hired with Spartanburg
25 County, yes, sir. They sent me to school.

CROSS EXAMINATION OF INVESTIGATOR CHAD COLLINS BY MR. ANDERSON

1 Q: Okay. Then you came to Florence County and later became
2 a homicide -- or excuse me, an investigator. Have you been
3 back for additional courses since that time?

4 A: Yes, sir. I've been to Basic Detective. I've been to
5 several Interview and Interrogation classes. I've been to
6 Homicide Investigation classes.

7 Q: Okay. Is that part of what I refer to as continuing
8 education type classes?

9 A: Yes, sir.

10 Q: Now you filled out a report in this case?

11 A: Yes, sir, I did.

12 Q: And I think it's sixteen pages long?

13 A: Most of it, yes. It's not completely all mine is sixteen
14 pages ---

15 Q: Right, right.

16 A: --- but the majority.

17 Q: But the entire report is sixteen pages long?

18 A: Yes, sir.

19 Q: A lot of it is what you did, some of it is what Wayne
20 Drummond did, some of it is what Thomas McFadden did, but it's
21 all encompassed on a -- I guess a sixteen page report?

22 A: Yes, sir.

23 Q: And some of the pages, like it'll have, you know, Wayne
24 Drummond I think it's got twenty-two pictures, so it's not a
25 lot on that page.