

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

George C. James, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ANDRE WALLACE

APPELLANT

APPELLATE CASE NO. 2012-212937

RECORD ON APPEAL

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SC Court of Appeals

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State's Exhibit 108, photograph;
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State's Exhibit 110, photograph;
State's Exhibit 114, photograph

State of South Carolina

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County of Sumter

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State of South Carolina,
Plaintiffs

Transcript of Record
2012-GS-45-00028

vs.

May 17th-20th, 2011
Sumter, S.C.

Andre Wallace,
Defendant

Before the Honorable George C. James, Jr. Judge.

Ms. Kimberly Barr,
Assistant Solicitor, for the State

Mr. Charles David Barr,
Attorney for Defendant

Margaret T. Sullivan
Court Reporter

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1 MS. BARR: Your Honor, at this time, the
2 State calls Indictment No. 2010-GS-45-28. It's
3 the State versus Andre Wallace. Mr. Wallace was
4 indicted by the Williamsburg County Grand Jury for
5 criminal conspiracy, burglary in the first degree,
6 murder, and possession of a weapon during the
7 commission of a violent crime.

8 He is being represented at trial by
9 Mr. Charles Barr. And the state is ready for
10 trial.

11 THE COURT: Okay. Mr. Barr, if you will
12 come up just a moment.

13 (Whereupon, attorneys approach the bench
14 and confer with judge.)

15 THE COURT: We are now going to select a
16 jury for the trial of the case of the State of
17 South Carolina versus Andre C. Wallace. You are
18 still under the oath that you took this morning,
19 to answer all questions truthfully. As we go
20 through this process if you do have occasion to
21 respond to a question, the first thing I want you
22 to do, is just stand up. Don't raise your hand,
23 because I won't be able to see you.

24 Once you do stand up, and you are only
25 one, the first thing I will ask is, what your name

1 is, and then you will give me a little time to
2 find your juror number. What I don't want you to
3 do is stand up and just start talking. That's not
4 the way I want you to do it.

5 Also if there is occasion for anyone to
6 come forward, don't read anything in to that. I
7 don't -- I am likely not going to have an idea of
8 what you are going to say. And out of an
9 abundance of caution, I am going to ask you more
10 than likely, to come forward and give me that
11 information up here. That's not to hide anything,
12 it's just part of the process. If that does
13 happen, don't talk to any of your fellow jurors
14 about what we talk about up here.

15 Also when a juror goes back to the seat,
16 don't ask him or her what we talked about or what
17 that juror talked about.

18 Ladies and gentlemen, in this case the
19 State of South Carolina has charged Andre C.
20 Wallace with various criminal offenses. The fact
21 that a person is arrested or charged or indicted
22 for any crime, is not evidence of anything. The
23 indictment that I am going to refer to is simply a
24 charging document. It is the document that walks
25 this case into the courtroom. The defendant has

1 entered pleas of not guilty to these charges. The
2 state has the sole burden of proving the defendant
3 guilty beyond a reasonable doubt. The fact that I
4 referred to the charges by reading from the
5 indictment is not intended to be a comment by me
6 on the facts. I simply have to give you this
7 information to ask you the first question. I am
8 not going to ask it yet, but it's going to be is
9 there anybody on this jury who knows anything able
10 this case.

11 All right, so the state contends that
12 between October 27th and October 30th, 2009, the
13 defendants did unlawfully, wilfully, knowingly and
14 so forth, conspire and unite with others for the
15 purposes of committing the offenses or committing
16 certain criminal offenses. In other words, the
17 first count is a criminal conspiracy count. Count
18 2, says that on or about or excuse me, on or
19 between October 27th 2009 and October 30th, the
20 defendant did enter the dwelling of Ernest William
21 Prosser, III, without consent and with the intent
22 to commit a crime therein. So the second count is
23 a burglary count.

24 Count 3, contends that on or excuse me, on
25 or between October 7th and October 30th 2009, the

1 defendant did commit the offense of murder by
2 shooting the victim Ernest William Prosser, III;
3 thereby, causing his death. And Count 4, contains
4 the charge that on or about or between October
5 27th 2009 and October 30th 2009, the defendant was
6 possession of weapon during the commission of a
7 violent crime.

8 The first question, Ladies and gentlemen,
9 is there anyone on this jury panel who knows
10 anything about this case? Has anybody heard
11 anything about it? Has anybody gathered or
12 received or come by any information at all about
13 this case, other than what I have just referenced
14 from reading the indictment. And that simply
15 means have you heard anything about it. Read
16 anything about it. Listened to anything about it,
17 or obtained any knowledge of anything about this
18 case, other than what I've just read. If you 7, 8
19 folks would stand in line.

20 Is there anybody else who wants to stand
21 in response to this question? There are 10 now.
22 Go ahead and please stand if you would, even if
23 you are uncertain so that I can kind of get an
24 idea.

25 (Jurors proceed up front to confer with

1 judge.)

2 THE CLERK: Hunter Sims. 164.

3 THE COURT: You can come up. 164.

4 THE JUROR: Yes, sir.

5 THE COURT: Your name again.

6 THE JUROR: Hunter Sims.

7 THE COURT: Mr. Sims, what have you heard?

8 THE JUROR: I just heard about the story

9 on the internet.

10 THE COURT: What story?

11 THE JUROR: Lonnie's or no, it's Cliff's
12 now.

13 THE COURT: And what about the internet?

14 THE JUROR: I just read about it.

15 THE COURT: Was that a particular
16 newspaper or?

17 THE JUROR: Yeah, it was something to do
18 with school.

19 THE COURT: Okay. You are in school and
20 that was part of the assignment?

21 THE JUROR: Yes, sir.

22 THE COURT: What have you read or about
23 this?

24 THE JUROR: Yes, sir. There was two boys
25 and two girls.

1 THE COURT: Okay.

2 THE JUROR: Whatever they done.

3 THE COURT: Now whatever you may have read
4 or gathered information on, would that have any
5 impact at all on your ability to be fair and
6 impartial in this case to the state, that's the
7 prosecution, or the to defendant, the one who is
8 accused. Would you be able to be fair and
9 impartial?

10 THE JUROR: I reckon, what I read.

11 THE COURT: Well would you feel that you
12 are bound by that, or would you be able to sit on
13 the jury and give an open mind to all the evidence
14 that comes in?

15 The JUROR: Yes, I can do it.

16 THE COURT: You can do it.

17 THE JUROR: Uh-huh. (Affirmative.)

18 THE COURT: You can have seat. Thank you.

19 THE BAILIFF: 177. Susan Tomlinson. 177.

20 THE COURT: Come up please, Ms. Tomlinson.

21 THE JUROR: I just read about it in the
22 paper.

23 THE COURT: Tell me what you read or
24 heard. Or where you got it.

25 THE JUROR: Well my son is Jason. He's

1 friends with Coker Prosser. And I just heard what
2 he said..

3 THE COURT: You said your son is friends
4 with who?

5 THE JUROR: The son.

6 THE COURT: And have you heard anything
7 that Coker Prosser said?

8 THE JUROR: All I know is that he was
9 shot. We went to the funeral and all that.

10 THE COURT: Have you read anything about
11 it?

12 THE JUROR: Just what, you know, came out
13 in the news.

14 THE COURT: What did your son tell you?

15 THE JUROR: That four people were caught
16 that murdered him. I don't know in detail.

17 THE COURT: Did you know any names of any
18 of the people?

19 THE JUROR: No, sir, I sure don't.

20 THE COURT: Do you believe that you would
21 able to sit as a juror in this case, keep an open
22 mind and be completely fair and impartial and
23 weigh the evidence in that fashion for the state
24 and for the defendant?

25 THE JUROR: I would..

1 THE COURT: And could you set aside
2 everything that you have seen and heard and base
3 your verdict in this case on the evidence and the
4 law?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you, ma'am. You can
7 have a seat.

8 THE BAILIFF: David Brown No. 17.

9 THE COURT: What was your last name?

10 THE JUROR: Brown.

11 THE COURT: And your first name?

12 THE JUROR: David.

13 THE COURT: Yes, sir, Mr. Brown, what
14 would your answer to the question be? What have
15 you read or heard?

16 THE JUROR: I have talked to some people,
17 law enforcement who was at the scene and told me
18 some things about it.

19 THE COURT: What did they tell you?

20 THE JUROR: The two women, you know. And
21 sometime later the men came in behind and they
22 shot him.

23 THE COURT: And do you know who those law
24 enforcement officers are?

25 THE JUROR: Yes.

1 THE COURT: Do you know their names?

2 THE JUROR: I do, but I am not going to
3 say that.

4 THE COURT: Well it's not, it's not,
5 certainly not to get them in any trouble. Are
6 they deputies or detectives or do you know?

7 THE JUROR: Yes, I don't want to say.

8 THE COURT: You can have a seat,
9 Mr. Brown. Thank you.

10 THE BAILIFF: Michael Brown, 194.

11 THE JUROR: Wilson.

12 THE COURT: Wilson.

13 THE JUROR: Michael Wilson. What I read
14 about it in the paper just small town news.

15 THE COURT: Yes, sir.

16 THE JUROR: Different ones talking about
17 it.

18 THE COURT: What did you read?

19 THE JUROR: Just that he was murdered.
20 That's about all I know.

21 THE COURT: Okay, what have you heard
22 around town?

23 THE JUROR: Basically the same thing.

24 THE COURT: If you were to sit on this
25 jury, could you set aside everything that you have

1 heard or read and base your verdict solely on the
2 evidence in this case?

3 THE JUROR: Certainly.

4 THE COURT: Could you be completely fair
5 and impartial to both sides?

6 THE JUROR: Yes, sir.

7 THE BAILIFF: 73 John R. Tisdale.

8 THE COURT: Mr. Tisdale. Yes, sir.

9 THE JUROR: I've known Ernest all my days
10 growing up with him.

11 THE COURT: You grew up with him?

12 THE JUROR: He lived about 7 miles from
13 me. I hunted with Ernest Prosser.

14 THE COURT: So you think you would have a
15 problem being a fair and impartial juror?

16 THE JUROR: I don't think I could.

17 THE COURT: You can't sit down and when a
18 witness takes the stand respond to any questions?

19 THE JUROR: I don't know. If I am a
20 friend of him.

21 THE COURT: Okay. Thank you.

22 THE BAILIFF: 173. William McCray.

23 THE JUROR: I lived, I just know his
24 family.

25 THE COURT: How far did you live from him?

1 THE JUROR: 5 miles.

2 THE COURT: Okay. And you have been
3 friends with him?

4 THE JUROR: I have.

5 THE COURT: And how long were you, and
6 what family member were you a better friend to
7 before this?

8 THE JUROR: Probably the son. Junior.

9 THE COURT: Have you heard anything about
10 this case specifically? In other words, just tell
11 me what you heard.

12 THE JUROR: Just speculation. Robbery and
13 that he was shot in the house.

14 THE COURT: Okay. And taking into account
15 what you have heard, could you be fair and
16 impartial to both sides?

17 THE JUROR: Yes, sir.

18 THE COURT: Could you set aside everything
19 that you have knowledge of, or think you have
20 knowledge of, and base your verdict in this case
21 on what's introduced in this courtroom?

22 THE JUROR: Yes, sir.

23 THE COURT: Now, the clerk handed me a
24 note that said you had acquaintances or friends in
25 law enforcement.

1 THE JUROR: Yes.

2 THE COURT: I'm getting to that question
3 in just a few minutes. But do you think you could
4 be fair and impartial to the state and the
5 defendant, and put aside the fact that you are a
6 close distance from this place and know members of
7 the family?

8 THE JUROR: I think so, yes, sir.

9 THE COURT: You think so or you know so?

10 THE JUROR: I know so.

11 THE COURT: Thank you, Mr. McCray.

12 THE BAILIFF: Wanda Floyd No. 58.

13 THE COURT: Okay. Ms. Floyd, what have
14 you heard or seen or read about this case?

15 THE JUROR: The only thing is what was in
16 the paper.

17 THE COURT: You can talk in your voice
18 now, you don't need to whisper.

19 THE JUROR: The only thing I read was what
20 was in the paper.

21 THE COURT: What was that?

22 THE JUROR: Just that he was murdered and
23 shot I think. And I dated him when I was younger.
24 I dated him one time.

25 THE COURT: How many years ago was that?

1 More than 10?

2 THE JUROR: I am 53. I have been married
3 5 years. Around 19 or 20.

4 THE COURT: Okay. How long did you -- did
5 you date him one time?

6 THE JUROR: Just one.

7 THE COURT: What else have you heard or
8 read about this case?

9 THE JUROR: Nothing else.

10 THE COURT: Nothing in the community.

11 THE JUROR: Uh-uh. (Negative.) I am from
12 Indian Town, they don't know him.

13 THE COURT: Would the fact that you have
14 read something or you knew him the way that you
15 mentioned, would you be able to be completely fair
16 and impartial?

17 THE JUROR: Yes, sir, absolutely.

18 THE COURT: Could you set aside all of
19 that to the base your verdict in this case solely
20 on the evidence -- solely on the evidence that was
21 introduced?

22 THE JUROR: Yes, uh-huh. (affirmative.)
23 Sure.

24 THE COURT: Do you know any members of his
25 family currently?

1 THE JUROR: I never met his family.

2 THE COURT: Thank you. Thank you, Ms.

3 Floyd.

4 THE BAILIFF: 158 Karen Scott.

5 THE COURT: Yes, sir.

6 THE JUROR: I lived in the community.

7 THE COURT: What community?

8 THE JUROR: Millwood.

9 THE COURT: Okay.

10 THE JUROR: Not now, I live in Cedar

11 Swamp. Just rumors in the area.

12 THE COURT: What are those rumors that you
13 heard?

14 THE JUROR: Nothing I recall just about
15 that he was murdered. You know, that maybe it was
16 drugs involved and that sort of thing.

17 THE COURT: Have you read anything?

18 THE JUROR: No, sir.

19 THE COURT: Would the fact that you have
20 heard what you heard that you just described to
21 me, would you be able to be completely fair and
22 impartial in this case?

23 THE JUROR Yes, sir.

24 THE COURT: Could you set aside all of
25 that and base your verdict on not on what you

1 heard, but on what is introduced in this
2 courtroom?

3 THE JUROR: Yes, sir.

4 THE COURT: Thank you.

5 THE BAILIFF: 171 Dorothy Dornell.

6 THE COURT: Tell me what you know about
7 this case.

8 THE JUROR: While we were on break, I went
9 to the restroom. One of the jurors while we were
10 on break was talking. She used to visit where he
11 worked at. I don't know her name. She just came
12 in. They were coming in ahead of me. I was just
13 walking in you know.

14 THE COURT: You can stand right here. You
15 didn't do anything. With what you heard, would it
16 be a problem for you to be completely fair and
17 impartial in spite of what you just heard?

18 THE JUROR: I could.

19 THE COURT: You would have a problem---

20 THE JUROR: No.

21 THE COURT: ---or you could be?

22 THE JUROR: I could be.

23 THE COURT: And would you base your
24 verdict in this case on the evidence that you see
25 and hear in this courtroom?

1 THE JUROR: I can.

2 THE COURT: Thank you. You can have a
3 seat.

4 THE BAILIFF: 54 Jonathan Ferguson.

5 THE COURT: Yes, sir. I would ask you
6 what you heard about this.

7 THE JUROR: I heard about it.

8 THE COURT: What have you heard and what
9 did you hear?

10 THE JUROR: I think something about
11 involving three people broke into a home and then
12 killed somebody. Robbing them is what I heard.

13 THE COURT: Where did you hear that, just
14 out in the community?

15 THE JUROR: Yes, sir. Uh-huh.

16 (Affirmative.)

17 THE COURT: Have you read anything about
18 it?

19 THE JUROR: No.

20 THE COURT: Would the fact that you heard
21 what you say you heard, would that have any impact
22 on your ability to be fair and impartial in this
23 case?

24 THE JUROR: Oh, no, sir.

25 THE COURT: Could you set aside all that

1 and base your verdict on the evidence and the law?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you, sir.

4 THE BAILIFF: Erica Williams, 187.

5 THE COURT: Yes, ma'am.

6 THE JUROR: Well I read about it. The
7 names.

8 THE COURT: Let me ask you this, what did
9 you read?

10 THE JUROR: I just read what were the
11 convictions which was on the front page. Where
12 all four or something like that. And after
13 relating all this, we just went to school
14 together.

15 THE COURT: The four people you knew in
16 school together?

17 THE JUROR: No, all except one of them.

18 THE COURT: Do you know the defendants?

19 THE JUROR: I don't him personally, but I
20 remember him from school.

21 THE COURT: So you knew -- heard what you
22 heard. Any other information that you have got
23 about it?

24 THE JUROR: No, sir. Her husband was the
25 individual, but she didn't want to get involved in

1 detail.

2 THE COURT: Yes, ma'am.

3 THE JUROR: With her name and her
4 grandson.

5 THE COURT: Now taking into account
6 everything that you have heard, would you be able
7 to be completely fair and impartial in this case?

8 THE JUROR: I think I would need to come
9 forward and probably would.

10 THE COURT: You can go ahead and have a
11 seat. Don't tell anybody about what we talked
12 about. Okay.

13 THE BAILIFF: 52 Raymond Evans.

14 THE COURT: Come on up, Mr. Evans. Yes,
15 sir. What have you heard or read?

16 THE JUROR: Just what I read in the
17 newspaper.

18 THE COURT: What did you read in the
19 newspaper?

20 THE JUROR: That Mr. Prosser was murdered.
21 I can't remember detail. I just remember seeing
22 it in the newspaper.

23 THE COURT: Would the fact that you read
24 something about it in the paper have any impact at
25 all on you being a fair and impartial juror?

1 THE JUROR: Yes, sir.

2 THE COURT: Sir?

3 THE JUROR: Yes, sir.

4 THE COURT: How so?

5 THE JUROR: Because I know him from

6 school. I went to school with him.

7 THE COURT: You went to school with Mr.

8 Prosser?

9 THE JUROR: No, the defendant.

10 THE COURT: The defendant?

11 THE JUROR: Yes, sir.

12 THE COURT: Your last name again?

13 THE JUROR: Evans.

14 THE COURT: Mr. Evans, you can have a

15 seat. And you don't need to stand up and answer

16 any more questions. But you can have a seat back

17 out there.

18 MR. BARR: What is his number again?

19 THE COURT: 52.

20 THE BAILIFF: 197 Alton Worchester.

21 THE COURT: Your last name again?

22 THE JUROR: Worchester.

23 THE COURT: Yes, sir.

24 THE JUROR: I remember hearing what the

25 news. It happened a couple of years ago. But

1 when I remembered seeing it, it was they had the
2 suspects and everything.

3 THE COURT: Do you remember hearing about
4 it or actually reading something about it, or did
5 you hear it from the people in the community?

6 THE JUROR: It was actually the news.

7 THE COURT: Anything else that you've
8 heard or seen or read?

9 THE JUROR: No, sir.

10 THE COURT: Would any of that have any
11 impact on your ability to fair and impartial?

12 THE JUROR: No, sir. No impact at all.

13 THE COURT: Could you base your verdict on
14 the evidence in this case and not on anything that
15 you may have heard?

16 THE JUROR: Yes, sir.

17 THE COURT: Thank you, Mr. Worchester.

18 THE BAILIFF: 140 Donna Piatt.

19 THE COURT: P-I-A-T-T?

20 THE JUROR: Yes.

21 THE COURT: Yes, ma'am.

22 THE JUROR: I was a friend of the Prosser
23 family, during the time.

24 THE COURT: Where is that?

25 THE JUROR: I worked at Low Country

1 Medical Supply?

2 THE COURT: And would that person talk
3 about the case at all?

4 THE JUROR: Yes.

5 THE COURT: Do you know his name?

6 THE JUROR: David McIntosh.

7 THE COURT: Is he a witness in this case?

8 THE JUROR: No, sir.

9 THE COURT: What did he say?

10 THE JUROR: Just discussed it, and I
11 overheard it.

12 THE COURT: Any specifics about what was
13 done, who did it?

14 THE JUROR: No, he just talked about it.
15 I overheard.

16 THE COURT: Would any of that have any
17 impact on your ability to be completely fair and
18 impartial to both sides?

19 THE JUROR: No, sir, not at all.

20 THE COURT: Could you set aside all of
21 that and base your verdict on the law and the
22 evidence in this case?

23 THE JUROR: Yes, sir.

24 THE COURT: Thank you. Ladies and
25 gentlemen, the defendant in this case is Andre

1 Wallace. Mr. Wallace if you would stand and face
2 the jury panel. All right, thank you, sir.
3 Ladies and gentlemen, during the course, some of
4 these questions I will use the term, immediate
5 family member. That would mean your father,
6 mother, brother, sister or child. Or any other
7 relative that you think is a very close relative.
8 Is there anyone on this jury panel or is there any
9 member of your immediate family or any close
10 personal friend of yours who is related by blood
11 or marriage, in other words, kin to him or is
12 there anyone on the panel or any member of your
13 immediate family or any close friend who is
14 acquainted with the defendant? If so, please
15 stand.

16 (Whereupon, no Response.)

17 THE COURT: I am going to read a list of
18 names and these are potential witnesses in this
19 case. They may testify; they may not. But since
20 they may testify, I am going to call their names
21 out. And if they are present, simply stand and
22 face the jury panel and give them a chance to look
23 at you. And the question will be the same. Is
24 there anyone on this jury panel or is there anyone
25 in your immediate family who is kin to any of

1 these potential witnesses or do you know them or
2 have any connection or acquaintance of any kind at
3 all? And that would be now, in the past, work
4 with them, gone to church with them, in any kind
5 of organization with them or anything of that
6 nature? Ronetta Miller, Tiffany Jones, Johnny
7 Jenkins of the Williamsburg County Sheriff's
8 Office. Sergeant Brenda Lambert of the Andrews
9 Police Department. Sheriff Michael Johnson.
10 Investigator Willie Brown from the sheriff's
11 office. Investigator Deborah Collins.
12 Investigator Pamela Jean Lail also of the
13 sheriff's office.

14 Lieutenant Jeffrey Scott of the sheriff's
15 office. Kenny Kenzie of sled, alternately called
16 the South Carolina Law Enforcement Division.
17 I'll just shorten it to sled. Susan Cromer of
18 sled. Amanda Webb of sled. Carl Kenley, sled.
19 John G.D. Roberts, sled. Ricardo Prince of sled.
20 Dr. Susan Erin Presnell of MUSC. Anthony Gause,
21 Williamsburg County EMS. Misty Warrell of EMS.
22 Harrison McKnight of Williamsburg County Coroner.
23 Ernest William Prosser, IV. Stand please.
24 Seated kind of behind the television here.
25 Elizabeth Prosser. LeQuency Peterson right over

1 here to my right. Excuse me, your right.

2 Shanquella Miller. James Gregory Dicks, Sr.

3 James Dicks, Jr.

4 And, again, the question is, is there
5 anyone on this panel or is there any member of
6 your immediate family who is kin to any of these
7 possible witnesses or do you or a family member
8 know them, have any connection or acquaintance or
9 association with them at all, now or in the past.

10 Okay. I am going to start with the first
11 row. Your name, please.

12 THE JUROR: My name is Carolyn Sessions.

13 THE CLERK: 160.

14 THE COURT: Ms. Sessions, is 160. First
15 of all, is it you that has the connection, or is
16 it a family member of yours?

17 THE JUROR: I have a connection. I know
18 them from my job.

19 THE COURT: Know who?

20 THE JUROR: Tiffany Jones and Ms. Miller.
21 And Shanquella.

22 THE COURT: And Maquella?

23 THE JUROR: Shanquella.

24 THE COURT: And what is your occupation?

25 THE JUROR: I'm an administrator at the

1 Williamsburg Health Department.

2 THE COURT: Okay. And you know them from
3 there?

4 THE JUROR: Yes.

5 THE COURT: How long do you think you have
6 known them or been acquainted with them in that
7 capacity? More than 5 years?

8 THE JUROR: No.

9 THE COURT: More than a year?

10 THE JUROR: Yes.

11 THE COURT: Now are you in the medical
12 field there or what?

13 THE JUROR: A clerical.

14 THE COURT: Ma'am?

15 THE JUROR: Clerical.

16 THE COURT: Clerical?

17 THE JUROR: Yes.

18 THE COURT: Would the fact that you know
19 the potential witnesses the way you described,
20 have any impact on your ability to be fair and
21 impartial?

22 THE JUROR: No, sir.

23 THE COURT: Could you set aside that fact,
24 and base your verdict on the law that you hear and
25 see in this courtroom?

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you, ma'am. Your name
3 again please, ma'am?

4 THE JUROR: Susan Tomlinson.

5 THE CLERK: 177.

6 THE COURT: Yes, ma'am.

7 THE JUROR: Now, I am not related to any
8 of them. I just know some of the ones you called
9 out.

10 THE COURT: Okay. And which individuals?

11 THE JUROR: Everyone of them. I know
12 Elizabeth. I know E. I know all those over
13 there.

14 THE COURT: You said, everyone. All 20
15 some odd?

16 THE JUROR: Well, no, I know Michael
17 Johnson.

18 THE COURT: Okay. Let's just start this
19 way. What are the names of the people that you
20 know, and tell me how long you've known them.

21 THE JUROR: Bestie Prosser. The children
22 were little. 20 something years.

23 THE COURT: Okay.

24 THE JUROR: Estimate.

25 THE COURT: Do you know Sheriff Johnson?

1 THE JUROR: I know Johnson.

2 THE COURT: How long have you known him?

3 THE JUROR: 5 or 6 years.

4 THE COURT: And what do you do?

5 THE JUROR: I help run the golf course and
6 he plays golf.

7 THE COURT: Okay.

8 THE JUROR: I'm sorry, when he is off.

9 THE COURT: And you said Betsy Prosser?

10 THE JUROR: That's Elizabeth's mamma.

11 She's over here. And I know Ms. Ann right beside
12 her.

13 THE COURT: Okay. I don't believe I
14 called her name. But anyone else? Whose names
15 did I call?

16 THE JUROR: You called E's. Ernest,
17 III -- IV. And and his wife, I know her.

18 THE COURT: Okay. Does that pretty much
19 sum it up?

20 THE JUROR: I think that's about it.

21 THE COURT: Now, Ms. Tomlinson, would any
22 of what you relayed to me have any impact on your
23 ability to be fair and impartial?

24 THE JUROR: No, sir.

25 THE COURT: Could you set aside the

1 acquaintances you've described and base your
2 verdict on the evidence and the law?

3 THE JUROR: I could.

4 THE COURT: Thank you ma'am. Your name,
5 please, ma'am?

6 THE JUROR: Boles Mozell.

7 THE COURT: Ms. Mozell, her number is 178.
8 Yes, ma'am.

9 THE JUROR: I know Sheriff Johnson.

10 THE COURT: How long have you known him?

11 THE JUROR: Maybe 5 years.

12 THE COURT: Okay. Anybody else?

13 THE JUROR: I also know the officer right
14 beside him.

15 THE COURT: Ms. Lail?

16 THE JUROR: Willie Brown.

17 THE COURT: Oh, Mr. Brown.

18 THE JUROR: Uh-huh. (affirmative.)

19 THE COURT: How long had you known him?

20 THE JUROR: Maybe 5 years total.

21 THE COURT: Who else?

22 THE JUROR: Deborah Collins.

23 THE COURT: How long have you known her?

24 THE JUROR: Most of my life.

25 THE COURT: Okay. And do you know them

1 closely or are they acquaintances?

2 THE JUROR: As family, and those other
3 two.

4 THE COURT: Whose family?

5 THE JUROR: Ms. Collins.

6 THE COURT: Do you know the degree of
7 kinship? I don't how to measure all the cousin
8 stuff.

9 THE JUROR: No.

10 THE COURT: But you are related to her
11 somehow?

12 THE JUROR: Yes.

13 THE COURT: Do you see her frequently?

14 THE JUROR: Off and on.

15 THE COURT: More than twice a year?

16 THE JUROR: Yes.

17 THE COURT: More than 5 times a year? Are
18 these family gatherings or just?

19 THE JUROR: Just out.

20 THE COURT: Just out. Okay. And how
21 often do you see the sheriff and Mr. Brown?

22 THE JUROR: I only see Mr. Brown is in the
23 court system.

24 THE COURT: Okay.

25 THE JUROR: And Mr. Johnson I see him all

1 the time.

2 THE COURT: Would any of those you've
3 related to me have any impact on your ability to
4 be fair in this case?

5 THE JUROR: No, sir.

6 THE COURT: Okay. Could you base your
7 verdict in this case on the evidence and the law
8 and set aside all this information you've related
9 to me?

10 THE JUROR: Yes.

11 THE COURT: Thank you, Ms. Mozell.

12 THE COURT: Your name, sir.

13 THE JUROR: My name is Christopher Dozier.

14 THE CLERK: Juror No. 48.

15 THE COURT: Mr. Dozier is No 48. Yes,
16 sir.

17 THE JUROR: I know several of the
18 witnesses. And the defendants too.

19 THE COURT: All right.

20 THE JUROR: I know Andre. I know Tiffany.
21 I know Crystal. I know Sheriff Johnson. Most of
22 the defendants I know, because I worked in the
23 school district.

24 THE COURT: You worked for the school
25 district as what?

1 THE JUROR: An intervention specialist.

2 THE COURT: What does that mean?

3 THE JUROR: We handle mostly at risk
4 children.

5 THE COURT: And were any of those people
6 in that category?

7 THE JUROR: Some of them were.

8 THE COURT: How about Mr. -- how about the
9 defendant?

10 THE JUROR: I have dealt with him several
11 times.

12 THE COURT: In what way did you deal with
13 him? Was he -- was it a behavior issue?

14 THE JUROR: Behavior.

15 THE COURT: Attendance issue?

16 THE JUROR: Behavior.

17 THE COURT: What kind of behavior issues?

18 THE JUROR: He has some listening.

19 THE COURT: Well since you mentioned that,
20 how long ago do you think? If you had to just
21 estimate more than 10 years?

22 THE JUROR: Less than 10. Probably 5.
23 Maybe less than 5.

24 THE COURT: And you said you know the
25 sheriff too?

1 THE JUROR: Yes, sir.

2 THE COURT: Anyone else that you know?

3 You mentioned, you said, Tiffany, Andre and---

4 THE JUROR: Crystal.

5 THE COURT: Crystal. Okay, I don't
6 remember that name. But there was Shenquella.

7 THE JUROR: Shenquella.

8 THE COURT: And Ronetta. How long have
9 you known the sheriff?

10 THE COURT: Since I started, 10 years.

11 THE COURT: Keeping in mind the charge in
12 this case, and the fact that you know the
13 defendant and some of these witnesses from your
14 job as an intervention specialist, could you be a
15 fair and impartial juror in this case to the state
16 and to the defendant?

17 THE JUROR: Yes, sir.

18 THE COURT: Are you sure?

19 THE JUROR: Yes, sir.

20 THE COURT: Keeping in mind the same thing
21 about the sheriff, could you be fair and
22 impartial?

23 THE JUROR: Yes, sir.

24 THE COURT: Would you be fair and
25 impartial?

1 THE JUROR: Yes, sir.

2 THE COURT: And could you base your
3 verdict on the evidence and the law in this case?

4 THE JUROR: Yes, sir.

5 THE COURT: Thank you, sir. Mr. Tisdale,
6 your don't have to stand up anymore in response to
7 any questions. Okay. Thank you, sir. Your name,
8 again, sir?

9 THE JUROR: Michael Wilson.

10 THE COURT: Mr. Wilson, what is your
11 response to that question?

12 THE JUROR: Ernest and Elizabeth were
13 several years behind me in school. I knew he was
14 murdered. That's about it.

15 THE COURT: Any other witnesses?

16 THE JUROR: I don't think so.

17 THE COURT: Would you be able to set aside
18 that, sir, and base your verdict on the evidence
19 and the law in this case?

20 THE JUROR: Yes.

21 THE COURT: And be completely fair and
22 impartial?

23 THE JUROR: Yes, sir.

24 THE COURT: Thank you, sir. And Mr.---

25 THE JUROR: William McCray, 107.

1 THE COURT: Just a second. Mr. Wilson was
2 No. 194.

3 MS. BARR: Thank you, Judge.

4 THE COURT: Mr. McCray is 107. Yes, sir.

5 THE JUROR: I know E, and Elizabeth. And
6 my dad was a Williamsburg County Sheriff. I know
7 Ms. -- Deputy Collins and Mr. Johnson. Sheriff
8 Johnson. And Deputy Scott works with my dad.

9 THE COURT: And for the record, when was
10 your father sheriff?

11 THE JUROR: 92 to 98.

12 THE COURT: And you've known E and
13 Elizabeth for how long?

14 THE JUROR: Probably 25 years, probably.

15 THE COURT: And Sheriff Johnson for how
16 long?

17 THE JUROR: My dad would know. Me
18 personally, I don't know him.

19 THE COURT: Okay. Would any of those
20 circumstances you've related to me, Mr. McCray,
21 have any impact on your ability to be fair and
22 impartial?

23 THE JUROR: No, sir.

24 THE COURT: And could you set all that
25 aside and base your verdict on the evidence and

1 the law?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you. Is it Ms.

4 Thornall? No. 171. Yes, ma'am?

5 THE JUROR: I know Brenda Lambert.

6 THE COURT: How long have you known her?

7 THE JUROR: Since she was a little girl.

8 She goes to my church.

9 THE COURT: Would you say that you are
10 close friends with her now, or you have just known
11 her casually throughout the years?

12 THE JUROR: Well we are friends actually.

13 THE COURT: Okay. Are you all about the
14 same age?

15 THE JUROR: No, Brenda is younger than me.

16 THE COURT: Do you see her frequently?

17 THE JUROR: She goes go my church. So if
18 she doesn't come Sunday while she is still
19 working. In law enforcement I see her often.

20 THE COURT: Would any of that have any
21 impact on your ability to be fair and impartial to
22 the state and the defendant?

23 THE JUROR: No, sir.

24 THE COURT: And could you base your
25 verdict on the evidence and law in this case?

1 THE JUROR: Yes, sir.

2 THE COURT: Thank you, ma'am. And your
3 name, please.

4 THE JUROR: Rose Carraway. 26.

5 THE COURT: 26. Yes, ma'am.

6 THE JUROR: Deborah Collins is my sister.
7 And Sheriff Johnson, Brenda Lambert.

8 THE COURT: Thank you, ma'am. Yes, ma'am,
9 your name?

10 THE JUROR: Kathy McCrea. Juror No. 105.

11 THE COURT: Your last name again.

12 THE JUROR: McCrea.

13 THE COURT: McCrea.

14 THE JUROR: In the sheriff's department,
15 Brenda Lambert---

16 THE COURT: Speak up for me. I will tell
17 you what, just come on up closer so I can hear
18 you.

19 THE JUROR: The gentleman from the
20 sheriff's department, Willie Brown, Sheriff Lail,
21 Brenda Lambert.

22 THE COURT: Where do you work?

23 THE JUROR: I work at DSS.

24 THE COURT: And you know them through your
25 work at DSS? Is there anybody else who is going

1 to stand and respond to this question? Yes,
2 ma'am, come up here. You too, ma'am, come on up.
3 It's Ms. McCrea, correct?

4 THE JUROR: Yes, that is correct. I am
5 employed with DSS.

6 THE COURT: Yes, ma'am.

7 THE JUROR: I work with the sheriff's
8 department, Investigator Lail.

9 THE COURT: What do you do there?

10 THE JUROR: I'm a CPS investigator worker.

11 THE COURT: Child protective services.

12 THE JUROR: Uh-huh. (affirmative.)

13 THE COURT: And you, how long have worked
14 with them or how long have you known them in that
15 capacity?

16 THE JUROR: Since 2006.

17 THE COURT: If they were to testify in
18 this case and you are seated as a juror, could you
19 weigh their testimony completely fairly and
20 impartially?

21 THE JUROR: Yes, sir.

22 THE COURT: Even though you know them in
23 the capacity you know them,---

24 THE JUROR: Yes, sir.

25 THE COURT: ---would you automatically

1 believe them?

2 THE JUROR: No, sir.

3 THE COURT: In other words, if you were
4 faced with testimony that was consistent or
5 inconsistent with what they said, would you
6 automatically believe them over what you know of
7 them? Would you automatically believe them over
8 any testimony that was against what they said?

9 THE JUROR: No, sir.

10 THE COURT: Are you sure?

11 THE JUROR: Yes, sir.

12 THE COURT: And could you be completely
13 fair to the defendant and the prosecution?

14 THE JUROR: Yes, sir.

15 THE COURT: And base your verdict on the
16 evidence that's in this case?

17 THE JUROR: Yes, sir.

18 THE COURT: Thank you, Ms. McCrea.

19 THE JUROR: Uh-huh. (affirmative.)

20 THE COURT: Yes, ma'am, your name again.

21 THE JUROR: Erica Williams.

22 THE COURT: Ms. Williams.

23 THE JUROR: I didn't know if you knew or,
24 but I know Tiffany because I do her hair.

25 THE COURT: You do her hair?

1 THE JUROR: Uh-huh. (Affirmative.)

2 THE COURT: What's Tiffany's last name?

3 THE JUROR: Jones.

4 THE COURT: And have you heard anything
5 about what she knows about this case?

6 THE JUROR: No, sir.

7 THE COURT: Has she said anything to you
8 about it?

9 THE JUROR: She knows me. Her mom, you
10 know, like I said before, she knows where the
11 evidence is at.

12 THE COURT: I think I have already excused
13 Ms. Williams. Okay. So what I am going, you
14 don't need to. And you are No. 187 Erica
15 Williams. You don't need to stand up anymore.

16 THE JUROR: Thank you.

17 THE COURT: Ladies and gentlemen, what we
18 are going to do, I understand that several jurors
19 need to take a break at this time. What we are
20 going to do is take about 15 minutes. And then
21 we will come back in. Now I want to tell you
22 this, don't talk about this case during this
23 recess. Please. That's, I guess the best way to
24 put it, that's an order.

25 Also don't let anybody else talk to you

1 about it. But please be back in your seats if you
2 look at that back wall clock, it will be 20
3 minutes until four and you would be back seated.
4 And don't talk about any of the questions that you
5 have been asked. Don't talk about answers that
6 you have given. And don't ask anybody about what
7 we've talked about up here. Most of it would be
8 spectacularly non-eventful. But if you will
9 follow that instruction, that will keep us on the
10 right path. Thank you. I'll see you back in 15
11 minutes. Can I see the lawyers up here?

12 (Whereupon, the attorneys confer with the
13 judge at the bench.)

14 (Whereupon, the court breaks.)

15 THE COURT: We will continue with the
16 determination of your qualification to serve in
17 this case. We will follow the same process. If
18 the question applies, simply stand.

19 Is there anyone on this jury panel or any
20 member of your immediate family who is employed or
21 has been employed in the last 5 years by any type
22 of law enforcement agency? That would be local,
23 police department, sheriff's department, state or
24 federal. Anyone on the jury panel or any member
25 of your immediate family now employed or in the

1 past been employed by any law enforcement agency?

2 And these would include but they're not
3 limited to, Kingstree Police Department, any
4 police department, any sheriff's office, sled,
5 FBI. Any parole/probation office. Anything like
6 that. Yes, sir, Mr. McCrea, you can stand. Your
7 name again, sir?

8 THE JUROR: Christopher Dozier.

9 THE COURT: Mr. Dozier.

10 THE JUROR: I have a son that works with
11 the Kingstree Police Department. And I have a son
12 that works with the county jail house. I have a
13 nephew, two nephews there. And I have a
14 brother-in-law that works with the federal.

15 THE COURT: Federal?

16 THE JUROR: Federal.

17 THE COURT: And how long -- you said your
18 son?

19 THE JUROR: Yes, sir.

20 THE COURT: Where is he employed?

21 THE JUROR: One is with the Kingstree
22 Police Department.

23 THE COURT: And your nephews, how long
24 have they been employed where you said they were
25 employed?

1 THE JUROR: I have another son that works
2 at the jail house. And he has been there about 6
3 to 8 years.

4 THE COURT: And your nephews?

5 THE JUROR: And the nephew is about the
6 same.

7 THE COURT: Okay. And you said another
8 one? Another relative?

9 THE JUROR: I have a brother-in-law that
10 works at the federal prison. He's been there
11 about a year now.

12 THE COURT: You can stay standing just for
13 the moment. Yes, ma'am, your name?

14 THE JUROR: Lucille Bradley No. 9.

15 THE COURT: Ms. Bradley is No. 9. Yes,
16 ma'am. You need to speak up for me.

17 THE JUROR: A sheriff's deputy. His name
18 is Michael McBride, my nephew.

19 THE COURT: Okay. How long has he worked
20 there do you think?

21 THE JUROR: I don't think it's -- I don't
22 know whether it has been a year, I am not sure.

23 THE COURT: And he is a deputy.

24 THE JUROR: Yes.

25 THE COURT: Anyone else? Stay standing.

1 for just a moment. Your name, please, ma'am,
2 against the wall.

3 THE JUROR: Dora Wilson.

4 THE COURT: I can't hear you.

5 THE JUROR: Dora Wilson.

6 THE COURT: Wilson?

7 THE CLERK: 191.

8 THE COURT: Yes, ma'am.

9 THE JUROR: I have a brother-in-law,
10 Curtis Keels.

11 THE COURT: With the probation office?

12 THE JUROR: Yes.

13 THE COURT: Anyone else? Yes, ma'am,
14 your name.

15 THE COURT: Crystal Parker. My---

16 THE COURT: I have got to get a number
17 first. Ms. Parker is No. 138. Christine Parker.

18 THE JUROR: My uncle is a deputy sheriff
19 and investigator for Sumter County.

20 THE COURT: That relation again?

21 THE JUROR: My uncle.

22 THE COURT: What's his name?

23 THE JUROR: William Welch.

24 THE COURT: How long has he been there?

25 THE JUROR: With Sumter probably 5 years

1 or more.

2 THE COURT: How long total in law
3 enforcement?

4 THE JUROR: Over 10 years.

5 THE COURT: Your name, sir?

6 THE JUROR: William Brown.

7 THE COURT: If you know your number, can
8 you tell me? Mr. Brown is No. 20. Yes, sir.

9 THE JUROR: My mom works part time for the
10 Williamsburg County Sheriff's Department.

11 THE COURT: What does she do?

12 THE JUROR: Bookkeeping and accounting
13 type.

14 THE COURT: How long has that been the
15 case?

16 THE JUROR: Probably, I guess about 3
17 years.

18 THE COURT: Anyone else?

19 THE JUROR: No, sir.

20 THE COURT: Mr. McCrea, do you know your
21 number?

22 THE JUROR: 107.

23 THE COURT: 107?

24 THE JUROR: Yes, sir.

25 THE COURT: Yes, sir. My dad worked for

1 the Williamsburg County Sheriff's Office in 1998.

2 And he was with the Probation Pardon Services I

3 think about 18 years before that.

4 THE COURT: Anyone else?

5 THE JUROR: That's it.

6 THE COURT: Against the window, your name,

7 sir?

8 THE JUROR: Michael Laney.

9 THE COURT: Michael what?

10 THE JUROR: Michael Laney. It's No. 89.

11 THE COURT: Mr. Laney.

12 THE JUROR: I have got a cousin that works

13 for the Florence Police Department.

14 THE COURT: You've got a what?

15 THE JUROR: A cousin that works for the

16 Florence Police Department.

17 THE COURT: How long has that been the

18 case?

19 THE JUROR: About 10 years or so.

20 THE COURT: Cousins unless you consider

21 them to be a very close cousin, I am not concerned

22 about. Ms. Thornall again, on the wall.

23 THE JUROR: My nephew is a deputy in

24 Georgetown County, and he was a South Carolina

25 Highway Patrolman, but not anymore.

1 THE COURT: For how long?

2 THE JUROR: Probably maybe 5 or 6 years.

3 But he doesn't do that anymore.

4 THE COURT: Okay. Thank you, ma'am.

5 MR. BARR: Your number again, ma'am?

6 MS. BARR: 171.

7 THE COURT: 171. The lady next to

8 Ms. McCrea have I talked to you yet?

9 THE JUROR: No, sir.

10 THE COURT: Your name.

11 THE JUROR: Sonya Covert.

12 THE COURT: Ms. Covert is No. 39. Yes,

13 ma'am.

14 THE JUROR: My cousin, Mark Whitfield.

15 THE COURT: Ma'am?

16 THE JUROR: Mark Whitfield. Kingstree

17 Police Department.

18 THE COURT: Mark Whitfield works for the

19 Kingstree Police Department. And the relation to

20 you?

21 THE JUROR: First cousin.

22 THE COURT: How long has he worked there?

23 THE JUROR: About 5 years.

24 THE COURT: Okay. Anyone else?

25 THE JUROR: That's it.

1 THE COURT: Yes, sir. Your name again?

2 THE JUROR: Alton Worchester.

3 THE COURT: Mr. Worchester. Let me get
4 your number first.

5 THE JUROR: Juror No. 197.

6 THE COURT: Yes, sir.

7 THE JUROR: My grandfather used to be head
8 jailer at the Kingstree jail. William Edgar
9 Worchester.

10 THE COURT: Your grandfather was the head
11 jailer at the Kingstree jail.

12 THE JUROR: Yes, sir.

13 THE COURT: How long was that the case?

14 THE JUROR: To my knowledge, more than 10
15 years. But that was a long time ago.

16 THE COURT: And your name, ma'am?

17 THE JUROR: Rose Carraway No. 26.

18 THE COURT: Yes, ma'am.

19 THE JUROR: Deborah Collins.

20 THE COURT: Your sister.

21 THE COURT: Thank you. Those of you who
22 stood, if you could stand back up. Some of them
23 sat down. The circumstances that you related to
24 me about the family members employed by a law
25 enforcement agency. Could you still be fair and

1 impartial and completely set aside the fact that
2 your relative or relatives work or worked in those
3 capacities? If you can still be completely fair
4 and impartial, simply raise your hand.

5 (Whereupon all jurors affirm.)

6 THE COURT: They all raised their hand.
7 And could you set or base your verdict on the
8 evidence and the law in this case? Raise your
9 hand. Thank you very much. Is there anyone on
10 the jury panel or any member of your immediate
11 family who is now or has in the past 5 years,
12 been employed by the State of South Carolina? If
13 so, please stand. Your name, sir.

14 THE JUROR: Michael Wilson.

15 THE COURT: Yes, sir.

16 THE JUROR: 194. My wife is employed by
17 the Department of Transportation.

18 THE COURT: How long has she been there?

19 THE JUROR: 25 years.

20 THE COURT: Mr. Worchester.

21 THE JUROR: Yes, sir. My mother works as
22 a teacher in Clarendon County.

23 THE COURT: That's employed by the
24 Clarendon School District?

25 THE JUROR: Yes, sir.

1 THE COURT: How long has that been the
2 case?

3

4 THE JUROR: 8 years maybe. Maybe more.

5 THE COURT: Thank you. Ms. Langley.

6 THE JUROR: My mother, she works with the
7 Williamsburg County Disability and Special Needs.

8 THE COURT: How long has that been the
9 case?

10 THE JUROR: Probably 8 or 9 years.

11 THE COURT: Okay. Yes, sir. Your name.

12 THE JUROR: Ronnie Mitchum. No. 123.

13 THE COURT: 123. Mr. Mitchum; yes, sir.

14 THE JUROR: I have a brother that works fo
15 the state penitentiary.

16 THE COURT: Say again.

17 THE JUROR: I have a brother that works
18 for the state penitentiary in Turbeville, South
19 Carolina.

20 THE COURT: How long has that been the
21 case?

22 THE JUROR: Around 5 years.

23 THE COURT: Mr. McCrea.

24 THE JUROR: My wife is a school nurse at
25 Williamsburg County School District.

1 THE COURT: How long has that been the
2 case.

3 THE JUROR: About 3 years. No longer than
4 that.

5 THE COURT: Thank you. Ms. Thornall.

6 THE JUROR: 170. My son has been a
7 paramedic and an EMT.

8 THE COURT: That's not the State of South
9 Carolina. Yes, ma'am.

10 THE JUROR: Juror No. 160. Carolyn
11 Session. I work for S.C. DHEC.

12 THE COURT: How long have you worked
13 there?

14 THE JUROR: 33 years.

15 THE COURT: Thank you. Your name.

16 THE JUROR: Rose Carraway. Juror 26. My
17 son worked at Williamsburg County school for 12
18 years. He is now in Florida as a principal. And
19 my daughter-in-law worked here 10 years. She is
20 now in Florence County teaching.

21 THE COURT: Thank you. The folks that
22 stood in response to that question have got to
23 stand back. The reason for that is, I can see you
24 better. Those of who did respond to those
25 questions, could you set all of that aside and

1 base your verdict in this case solely on the
2 evidence and the law in this case? If you can,
3 raise your hand. And could you be completely fair
4 and impartial? If you can raise your hand. Thank
5 you. They all raised their hand to both
6 questions.

7 The State of South Carolina is represented
8 by Kimberly Barr of the Third Circuit solicitor's
9 office. And Tyler Brown also third with the third
10 Circuit solicitor's office. You all please stand,
11 and face the jury panel. And, Ms. Barr, you are
12 also in private practice?

13 MS. BARR: I am, Your Honor.

14 THE COURT: The name of your firm?

15 MR. BARR: I work for the law office of
16 Ronnie Sabb. And I used to work with Mr. Sabb and
17 also Helen McFadden.

18 THE COURT: Excuse me, the defendant is
19 represented by Charles David Barr of the
20 Williamsburg County bar. Mr. Barr, if you could
21 please stand, and the give the jury the name of
22 any lawyers in your firm.

23 MR. BARR: Ladies and gentlemen, I am
24 Charles David Barr, and I practice law here in
25 Kingstree. I practice in association with my

1 brother Verdell Barr.

2 THE COURT: Thank you. Ladies and
3 gentlemen, is there anyone on this jury panel or
4 is there any member of your immediate family who
5 is kin to any of these lawyers? That means
6 related to them by blood or marriage?

7 Is there anyone on this jury panel or any
8 member of your immediate family, who is a close
9 personal friend of any of these lawyers? Or have
10 you been represented by any of these lawyers or
11 their firms in the past 5 years?

12 (Whereupon, no response.)

13 THE COURT: No one stood. Ladies and
14 gentlemen, under the law, there are certain
15 categories of criminal offenses. Some are called
16 felonies. Some are called misdemeanors. There
17 are classifications for violent crimes and
18 nonviolent crimes. Listen carefully to this
19 question. Is there anyone on this jury panel or
20 is there any member of your immediate family who
21 has been accused of committing a crime of violence
22 or ever been the victim or claim to have been the
23 victim of a crime of a violence?

24 And these include but are not limited to,
25 armed robbery, murder burglary or anything of that

1 nature. Aggravated assault, criminal sexual
2 conduct, which is commonly called rape. Anything
3 of that nature? Anyone on this panel or any
4 member of your immediate family who has ever been
5 accused of it, or ever been the victim of it?

6 Go ahead and stand up now. Okay, I count
7 8 of you. You can go ahead and get in line in the
8 center. Ms. Suzell, Come up please, ma'am.

9 MR. BARR: Her number.

10 THE CLERK: 178.

11 THE JUROR: My daughter was sexually
12 assaulted.

13 THE COURT: She was the victim.

14 THE JUROR: Yes. And I have my son was
15 involved. My son was stabbed twice in the leg.

16 THE COURT: Okay. Your daughter and your
17 son and who else? You said---

18 THE JUROR: My nephew has two burglary
19 cases.

20 THE COURT: Anything else?

21 THE JUROR: And my nephew just got killed
22 I think last year on mother's day.

23 THE COURT: What is his name?

24 THE JUROR: Willie Brown.

25 THE COURT: And is that here in

1 Williamsburg County?

2 THE JUROR: No, Lake City.

3 THE COURT: In Florence County.

4 THE JUROR: Yes.

5 THE COURT: Would any of those facts that
6 you have related to me have an impact on your
7 ability to be fair and impartial?

8 THE JUROR: No, sir.

9 THE COURT: Thank you. Would you be able
10 to base your verdict on the evidence and the law
11 in this case?

12 THE JUROR: Yes, sir.

13 THE COURT: Thank you.

14 THE BAILIFF: Brenda Cooper 36.

15 THE JUROR: My child for pointing a
16 firearm.

17 MR. BARR: Six or seven years ago there
18 was a Jerry Cooper for pointing and presenting a
19 firearm.

20 THE COURT: What is his name?

21 MR. BARR: Jerry Cooper.

22 THE COURT: Was that here? He was tried?

23 THE JUROR: I think that was here. I know
24 he's been in jail for a little while.

25 THE COURT: Would that give you any

1 problem being fair and impartial in this case?

2 THE JUROR: No.

3 THE COURT: Could you set all that aside
4 and base your verdict on the evidence in this
5 case?

6 THE JUROR: Yes, sir.

7 THE COURT: Thank you, Ms. Cooper.

8 THE BAILIFF: 40 Kenneth Cox.

9 THE COURT: Yes, sir, Mr. Cox.

10 THE COURT: Me and my wife's house was
11 broken into about 5 years ago.

12 THE JUROR: She was there alone.

13 THE COURT: Did they ever catch anybody?

14 THE JUROR: He had been taking drugs. She
15 went up to see about his parole and three times
16 they denied it.

17 THE COURT: Now she was there at the time.

18 THE JUROR: Yes.

19 THE COURT: Now you have heard what was
20 relayed to what occurred in this case. And the
21 people entered the dwelling and the victim was
22 shot and killed. Keeping in mind the
23 circumstances involving your wife and your house,
24 could you be completely fair and impartial in this
25 case?

1 THE JUROR: I would be.

2 THE COURT: What I want you to do is see
3 if you would stand and respond to any questions
4 but don't say anything to anybody about what we
5 talked about.

6 THE JUROR: If I had been there, he would
7 have been dead.

8 THE COURT: Thank you, sir. That's No.
9 40. He is excused.

10 THE BAILIFF: 68 Tony Green.

11 THE COURT: Yes, sir.

12 THE JUROR: My house, and some boy was
13 stealing.

14 THE COURT: How long ago?

15 THE JUROR: About two years ago.

16 THE COURT: Was anybody caught?

17 THE JUROR: No, sir.

18 THE COURT: Was your wife there at the
19 time?

20 THE JUROR: No.

21 THE COURT: And would that have any impact
22 on your ability to be fair in this case?

23 THE JUROR: No. Could you set that aside
24 and base your verdict on the evidence and the
25 law?

1 THE JUROR: Yes, sir.

2 THE BAILIFF: 142 Gerald Powell.

3 THE COURT: Mr. Powell. Yes, sir.

4 THE JUROR: Yes, sir. My aunt was robbed

5 by someone at work. It was about 6 years ago.

6 THE COURT: And it's what relation to you?

7 THE JUROR: My aunt.

8 THE COURT: Was that a robbery?

9 THE JUROR: Yes, sir.

10 THE COURT: Was she working?

11 THE JUROR: Yes, sir.

12 THE COURT: Did they ever catch them?

13 THE JUROR: Yes, sir.

14 THE COURT: Were they prosecuted?

15 THE JUROR: Yes, sir.

16 THE COURT: That was here in Williamsburg?

17 THE JUROR: Georgetown County.

18 THE COURT: Georgetown County. Okay.

19 That's fine. Would any of those circumstances

20 impact your ability to be fair and impartial to

21 the state and the defendant?

22 THE JUROR: No, sir.

23 THE COURT: Would you set all that aside

24 and be completely unbiased in this case?

25 THE JUROR: Yes, sir.

1 THE COURT: Thank you, sir.

2 THE BAILIFF: 171 Dorothy Dornell.

3 THE JUROR: I saw an altercation where my
4 son was hit with a crow bar.

5 THE COURT: How long ago was that?

6 THE JUROR: About three years ago.

7 THE COURT: Is that your son-in-law?

8 THE JUROR: That's my son.

9 THE COURT: Where was that?

10 THE JUROR: In Georgetown County. Andrews.

11 THE COURT: Did they catch anybody?

12 THE JUROR: Yes.

13 THE COURT: Was that person prosecuted?

14 THE JUROR: They got probation.

15 THE COURT: Would that, Ms. Dornell, have
16 an impact on your ability to be fair in this case?

17 THE JUROR: No, sir.

18 THE COURT: Could you set that aside and
19 base your verdict on the evidence in this
20 courtroom? And put aside what happened to your
21 son?

22 THE JUROR: Yes, sir.

23 THE COURT: Thank you.

24 THE BAILIFF: 54 Jonathan Ferguson.

25 THE COURT: Yes, sir.

1 THE JUROR: I was robbed in the county
2 about 7 years ago.

3 THE COURT: Was anybody caught?

4 THE JUROR: Yes, sir.

5 THE COURT: Were they prosecuted?

6 THE JUROR: Yes, sir.

7 THE COURT: And it was an armed robbery?

8 THE JUROR: Yes, sir.

9 THE COURT: And where were you, at a store
10 or home?

11 THE JUROR: No, I was visiting somebody.

12 THE COURT: What happened? How much time?

13 THE JUROR: One year, I believe.

14 THE COURT: Did you know the person?

15 THE JUROR: No, sir.

16 THE COURT: Just random. They just robbed
17 you.

18 THE JUROR: Yes, sir.

19 THE COURT: Would any of that have any
20 impact on your ability to be fair and impartial in
21 this case?

22 THE JUROR: No.

23 THE COURT: Could you set that aside and
24 base the evidence that you see and hear in this
25 courtroom?

1 THE JUROR: Yes, sir.

2 THE BAILIFF: 82. Ellis M. Jackson, Jr.

3 THE JUROR: In August of 06, my home was
4 burglarized.

5 THE COURT: That was in August of 06. Was
6 anybody caught?

7 THE JUROR: No. I am a minister to a
8 parsonage of the home that I am living in.

9 THE COURT: Was anyone home?

10 THE JUROR: Not at the time.

11 THE COURT: Do you think you could set
12 that aside and be fair and impartial in this case?

13 THE JUROR: Yes, sir.

14 THE COURT: Could you base your verdict on
15 the evidence and the law in this case and forgot
16 about what happened to you?

17 THE JUROR: Yes, sir.

18 THE BAILIFF: 58. Wanda J. Floyd.

19 THE JUROR: My home was burglarized in
20 2000, I think it was.

21 THE COURT: Was anybody caught?

22 THE JUROR: No. uh-huh. (affirmative.)

23 THE COURT: Was anybody home?

24 THE JUROR: No. Uh-uh. (Negative.)

25 THE COURT: Was that here in Williamsburg

1 County?

2 THE JUROR: No, Darlington.

3 THE COURT: Could you set all that aside
4 and be fair in this case?

5 THE JUROR: Yes, sir.

6 THE COURT: And be completely unbiased?

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you. Is there anyone on
9 the jury panel who has ever had any kind of
10 business relationship or were you a frequent
11 customer with a business in Kingstree that was
12 now -- that is now or was formerly known as E-Z-E?

13 (Whereupon, no response.)

14 THE COURT: Is there anyone on the jury
15 panel who had, let me back up. Is there anyone on
16 the jury panel or is there any member of your
17 immediate family that's your father, mother,
18 brother, sister or child. Father, mother,
19 brother, sister or child or you, who does now or
20 has in the past, lived in the Cedar Swamp
21 community? If so, please stand. On the aisle
22 again, your name, sir.

23 THE JUROR: Michael Wilson Juror 194.

24 THE COURT: Do you? Do you live in the
25 Cedar Swamp community?

1 THE JUROR: I live close to it.

2 THE COURT: Do you live in it?

3 THE JUROR: Just sort of.

4 THE COURT: I know how those things go.

5 Do you have family members who live in the
6 community too?

7 THE JUROR: Sir?

8 THE COURT: Do you have immediate family
9 members who live in the community?

10 THE JUROR: Yes.

11 THE COURT: Mr. Wilson, how long has that
12 been the case?

13 THE JUROR: I am 38. And we have lived
14 there my entire life. And two or three
15 generations before.

16 THE COURT: Mr. McCrea?

17 THE JUROR: I've lived in Cedar Swamp all
18 my life. My family. And two other generations, I
19 guess.

20 THE COURT: Mr. Worchester.

21 THE JUROR: My mother used to live in
22 Cedar Swamp.

23 THE COURT: Speak up for me.

24 THE JUROR: My mother used to live in
25 Cedar Swamp in a house over there.

1 THE COURT: Okay. Your name, ma'am.

2 THE JUROR: Karen Scott. 158.

3 THE COURT: Ms. Scott.

4 THE JUROR: I've lived in the Cedar Swamp
5 community 27 years.

6 THE COURT: Yes, sir. Mr. Brown.

7 THE JUROR: My father is from Cedar Swamp.

8 THE COURT: Sir?

9 THE JUROR: My father is from Cedar Swamp.

10 THE COURT: Okay. You folks who stood in
11 response to that question, if there is testimony
12 or some type of evidence that would indicate this
13 event may have happened in that community, and the
14 fact that you have those connections that you
15 related, could you still be fair and impartial in
16 this case? If you can, raise your hand. And
17 could you set aside those circumstances and base
18 your verdict on the evidence and the law in this
19 case? If you can raise your hand.

20 (Whereupon, all affirmed.)

21 THE COURT: Thank you, very much. There
22 has been reference, of course, I've called out the
23 names of witnesses. I've also referenced from the
24 indictment the name of Ernest William Prosser, III
25 as having been the person who was killed. Is

1 there anyone on this jury panel or is there anyone
2 of your immediate family member to your knowledge,
3 who was kin to him? Or is there any member of
4 this jury panel or any member of your immediate
5 family who knew him or had any connection or
6 acquaintance with him? If so, please stand. And
7 you may have already stood in response to a
8 similar question about the family members. And
9 this is specifically of kinship or acquaintance or
10 friendship or connection with Ernest William
11 Prosser, III. Mr. Wilson, 194.

12 THE JUROR: Yes, sir.

13 THE COURT: Yes, sir.

14 THE JUROR: I knew who he was.

15 THE COURT: You just knew who he was?

16 THE JUROR: Yes, sir. No kin to him.

17 THE COURT: Yes, ma'am, your name again,

18 Ms. Tomlinson.

19 THE JUROR: Susan Tomlinson. Uh-huh.

20 THE COURT: Yes, ma'am.

21 THE JUROR: I knew the family well. I
22 knew him well.

23 THE COURT: Okay. And how long was that?

24 THE JUROR: Over 20 years.

25 THE COURT: Thank you. Mr. McCrea.

1 THE JUROR: I knew Ernest. I am not
2 related but I knew Ernest.

3 THE COURT: How long have you known him?

4 THE JUROR: Probably 20 years.

5 THE COURT: Mr. Brown.

6 THE JUROR: I know him, and acquainted him
7 with my father.

8 THE COURT: You need speak up for me.

9 THE JUROR: My father and him were
10 similarly acquainted, and I knew him as an
11 acquaintance.

12 THE COURT: For how long?

13 THE JUROR: I have known him probably 20
14 years. And my father about all his life.

15 THE COURT: Okay. Thank you, sir. Your
16 name again, ma'am.

17 THE JUROR: Lila Floyd No. 58.

18 THE COURT: Ms. Floyd.

19 THE JUROR: I knew him about 19 or 20
20 years.

21 THE COURT: And the manner you described
22 earlier.

23 THE JUROR: Correct.

24 THE COURT: Those folks of you who stood,
25 just stand one more time. Ms. McCrea, you know

1 the rule. You can stay standing up. If you could
2 still be need completely fair and impartial and
3 completely set aside any degree of acquaintance
4 you had with Mr. Prosser and could be fair to the
5 defendant and the state, raise your hand. Thank
6 you.

7 Now is there anyone on the panel who may
8 or who was a member of the grand jury that issued
9 this case?

10 (Whereupon, no response.)

11 THE COURT: No one stood. Is there anyone
12 on the jury panel who has formed or expressed an
13 opinion about any issue or matter involved in this
14 case?

15 Is there anyone on the jury panel who is
16 aware of any bias or prejudice -- come on up, Ms.
17 Brown. Lawyers, you can come up too.

18 THE CLERK: Come on up.

19 (Whereupon, the attorneys confer with the
20 judge at the bench with Ms. Brown.)

21 THE COURT: Is there anyone on the panel
22 who is aware of any bias or prejudice that you
23 might have for or against the state, for or
24 against the defendant, any of the witnesses or any
25 of the lawyers in this case? Any bias or

1 prejudice for or against them?

2 (Thereupon, no response.)

3 THE COURT: Is there any member of the
4 jury panel or any member of your immediate family
5 who is a member of, or a contributor to any
6 organization that has its primary focus as the
7 promotion of law enforcement or the enforcement of
8 victim's rights? And these organizations include,
9 but they are not limited to, Mother Against Drunk
10 Driving, Students Against Drunk Driving, State
11 Trooper's Association, South Carolina Law
12 Enforcement Officer's Association, Citizen's
13 Against Violent Crime or any other similar type
14 organization? Anybody a member of or a
15 contributor to or to your knowledge, any immediate
16 family member of yours a member of or a
17 contributor to?

18 (Whereupon, no response.)

19 THE COURT: No one stood. One of the
20 instructions among many that you will be given in
21 this case is that you will be required to apply
22 the law exactly as I give it to you even if you
23 might disagree with the law. You would be sworn
24 to do that.

25 Is there anyone on this panel who feels

1 that he or she could not follow that instruction
2 and follow the law exactly as I give it to you
3 even though you might disagree with it?

4 (Whereupon, no response.)

5 THE COURT: No one stood. Is there any
6 member of the jury panel who knows of any reason
7 at all why you should not serve as a juror in this
8 case?

9 (Whereupon, no response.)

10 THE COURT: Ms. Barr, any additional
11 questions from the state?

12 MS. BARR: No, Your Honor.

13 THE COURT: Mr. Barr?

14 MR. BARR: Yes, sir, Judge No. 6.

15 THE COURT: I think I have covered that.

16 MR. BARR: May I approach the bench?

17 THE COURT: Yes.

18 (Whereupon, the attorneys approach the
19 bench and confer with judge.)

20 THE COURT: Ladies and gentlemen, is there
21 anyone on the jury panel who has any type of
22 religious or personal beliefs that you believe
23 would prevent you from being a fair and impartial
24 juror?

25 (Whereupon, no response.)

1 THE COURT: No one stood. Anything else,
2 Ms. Barr?

3 MS. BARR: Nothing else from the state.

4 THE COURT: Mr. Barr?

5 MR. BARR: No, sir, judge.

6 THE COURT: Ladies and gentlemen, the
7 process we will follow will be this, if your name
8 is called, if you will come forward down the
9 center aisle or wait just a second. You all come
10 on back up.

11 (Whereupon, the attorneys confer with
12 Judge.)

13 THE COURT: Ladies and gentlemen, we are
14 going to do one more thing. Please bear with me.
15 In some counties we go through, there is a
16 separate jury assembly room where we could
17 actually leave the room and discuss the issues.
18 That's not the case here in Williamsburg County
19 and in many other counties. What I am going to
20 ask the jury to do at this time is, if you will
21 please step outside. It's not raining; is it?
22 It's a nice, cool day out there. It's probably
23 cooler out there than it is in here.

24 So if every member of the jury panel would
25 simply step outside and I am going to ask

1 everybody on my left not to leave the courtroom
2 during this process. But all you, Ladies and
3 gentlemen on the jury if you would step outside,
4 please.

5 (Whereupon, the following takes place
6 outside the jury pool.)

7 THE COURT: Let me have the lawyer's
8 attention for just a minute. There were at least
9 two dozen people who stood. Some of them multiple
10 times. I'm talking about two dozen in all. Not
11 two dozen people. Mr. Barr, Ms. Barr, let me tell
12 you who I am going to exclude and in anticipation
13 of some motions primarily because these
14 individuals said they couldn't be fair.

15 First of all, No. 17 Mr. Brown, will not
16 be seated. No. 173 Mr. Tisdale. And we don't
17 need to put on the record. It's already on the
18 record. We don't need to put. Mr. Barr, I
19 believe you agree with those.

20 MR. BARR: I don't object.

21 THE COURT: Sir?

22 MR. BARR: I don't object.

23 THE COURT: 187 Erica Williams said she
24 could not be fair. No. 52 Raymond Evans gave a
25 similar answer. I am going to excuse Ms. Carraway

1 No. 26. Her sister is going to be testifying.

2 Mr. Cox. Is Mr. Cox No. 40? Said he could not be
3 fair. He was about as definite as he could be.

4 Mr. Barr, you indicated earlier that you
5 had some additional motions.

6 MR. BARR: Yes, sir. Judge, could you
7 just---

8 THE COURT: I will be glad to hear. You
9 can stay seated during this if you like.

10 MR. BARR: If you could just repeat the
11 ones. I would like to get them on the page.

12 THE COURT: Yes, sir. The ones that I
13 said were---

14 MR. BARR: Yes, sir.

15 THE COURT: Mr. Brown No. 17. Mr. Tisdale
16 173. Ms. Williams 187. Mr. Evans No. 52.
17 Ms. Carraway No. 26. Mr. Cox No. 40.

18 MR. BARR: Six.

19 THE COURT: I believe that's right. Yes,
20 sir. Any others?

21 MR. BARR: My recollection is, and, Judge,
22 specifically as it relates to Ms. Tomlinson. Her
23 husband owned a golf course here in Kingstree; the
24 front part. And my thinking perhaps and maybe I
25 must have overheard what was said. But I think

1 there were a number of comments that she made
2 regarding her familiarity with the family, which I
3 believe caused or perhaps certainly should cause
4 some genuine concern as to whether or not, I knew
5 she was able to identify all the family members
6 personally.

7 In fact, in referring to the decedent's
8 family, she said all of them they were there. And
9 clearly I thought we had discussed some issues
10 regarding her qualifications which made her
11 question to be excused for cause. And she would
12 certainly be one of the ones that I would
13 specifically and I will get to the other one.
14 But that was just one of the ones that I thought
15 it wasn't even close.

16 THE COURT: Ms. Barr.

17 MS. BARR: Your Honor, she along with some
18 of the other jurors stood up and indicated that
19 they knew either the victim or his family members.
20 And, Judge, he was you will hear, he was a
21 business man in the community. And the reality, a
22 lot of members of our community knew him.

23 And so when the court inquired as this
24 particular juror as it did for all the jurors, as
25 to whether or not the fact that they know the

1 victim or know his family whether that would
2 influence their ability to win a fair and just
3 verdict. They indicated it would not. And then
4 we asked further whether they would be able to
5 deliberate fairly, considering, taking into
6 consideration the state's position as well as the
7 defendant's position, they indicated that they
8 could. And all the testimony before the court is
9 that---

10 THE COURT: We're talking about just Ms.
11 Tomlinson now.

12 MS. BARR: And, Judge, the I guess, what I
13 would say to that, Judge, is you asked her the
14 same questions you asked each individual juror who
15 stood up and said they know Mr. Prosser and his
16 family. Her response was that given the fact that
17 she knew him, she still could be fair and
18 impartial.

19 THE COURT: Anything else, Mr. Barr? Your
20 own motion.

21 MR. BARR: Judge, she also indicated that
22 her son, I believe, was a friend that she used on
23 a first name basis. The decedent's son. And
24 again, I would just simply, in fact was the very
25 first thing that drew my attention to her when she

1 said that she was referring to Coker Prosser I
2 believe. But be that as it may, Your Honor, I
3 think when you add together in terms of what
4 appears to be a multitude of contacts, very close
5 contacts concerning this particular juror and the
6 decedent's family. As well as the decedent.

7 And of course now in addition, I would
8 remind the prosecution that we asked the question
9 regarding the E-Z-E business establishment as to
10 whether that would again to ferret out those
11 business relationships concerning the decedent.
12 Here we have just the same thing but it's just in
13 the opposite way.

14 Mr. Prosser was apparently an avid golfer.
15 And no doubt spent a whole lot of time on the golf
16 course. And for that reason again, we would
17 certainly turn the kind of contact that you would
18 have expected to occur between him and this
19 particular juror. We would again ask that she be
20 excused for cause.

21 THE COURT: What I am required to do
22 certainly, is to ask the questions that I asked.
23 And I am not bound by the answers they give. I
24 have to judge the demeanor of the witness. In
25 saying that, I am not questioning her credibility

1 if she thinks she could be fair. But just across
2 the board, the enate familiarity she has with the
3 family and frankly, her body language when I asked
4 her these questions, she kind of winced and kind
5 of did like that. I am going to excuse
6 Ms. Tomlinson from this jury.

7 So the motion is granted as to her. Who
8 is next, Mr. Barr?

9 THE CLERK: Her number is 177?

10 THE COURT: 177. Somebody else, Mr. Barr?
11 Are you looking?

12 MR. BARR: Yes, sir. Your Honor, I
13 would of course I have got my strike sheet here.
14 But I would start with just for the record, in
15 addition to 177, and I can go, we'll go through
16 these individually. I am moving to strike for
17 cause Juror No. 164.

18 THE COURT: He's the one that said -- came
19 up and said he read an article on the internet as
20 part of a class project. And he heard, well he
21 didn't know what he heard, but he heard something
22 in the community. The fact that somebody reads
23 something about it in any publication doesn't mean
24 that they have unwarranted facts about. He said
25 he could set it aside and be fair.

1 THE COURT: Ms. Barr, do you think he
2 should sit or not sit?

3 MS. BARR: Judge, I think that he should.
4 sit. And one of the things that I am getting
5 kind of concerned about, there are, obviously
6 white jurors who know the victim and his family.
7 There are black jurors who know the victim and his
8 family. I don't want the white jurors singled
9 out. And that's what it appears.

10 THE COURT: Well I singled out the ones
11 who said they couldn't be fair.

12 MS. BARR: No, I understand that.

13 THE COURT: We've only talked about two,
14 and these are the first two that stood. They're
15 coincidentally white, but they are the first two
16 who came forward in response to the question. I
17 am not going to let that happen.

18 MS. BARR: Yes, sir, Judge. I am talking
19 about the court. I'm talking about defense
20 counsel. I'm concerned that he's getting on a
21 pattern here. But clearly the juror came up and
22 said the only thing he knew was something that he
23 heard. He didn't know anything about the facts.

24 THE COURT: Mr. Barr, your motion as to
25 Mr. Sims is denied.

1 MR. BARR: Judge, of course, and just so
2 we don't start off behind the eight ball, I would
3 point out to the solicitor that three of the first
4 six people that you've disqualified have been
5 black jurors. Now the simple fact that we have
6 a---

7 THE COURT: I've already -- wait a minute,
8 we're not going to get into this. I disqualified
9 them, Mr. Barr, because they said they couldn't be
10 fair.

11 MR. BARR: Yes, sir.

12 THE COURT: Not because they said they
13 knew anybody. They just came up and said what
14 they knew and said I can't be fair. So
15 black/white is not anything right now.

16 MR. BARR: Well, Judge, now and of
17 course---

18 THE COURT: When she fired that shot
19 across the bow---

20 MR. BARR: She certainly did. And while
21 she fired it, I am letting her know now.

22 THE COURT: Well wait. This is not a
23 discussion between you and her. This is a motion
24 for you to bring things to my attention. It ain't
25 no debate.

1 MR. BARR: Yes, sir.

2 THE COURT: Until I ask you to debate. So
3 who is your next one?

4 MR. BARR: Number, court's indulgence,
5 Judge.

6 THE COURT: All right. And you have known
7 me long enough, Mr. Barr, I am not fussing at
8 you, I am just making a point.

9 MR. BARR: Judge, I am not going to -- I
10 am not discouraged by that at all. No. 117 or
11 No. 17, I believe that was Mr. -- I think you have
12 already -- I think you excused him for cause.

13 THE COURT: I have excused him, Mr. Brown.

14 MR. BARR: No. 17. No. 194 would be the
15 next person that we want to excuse for cause.

16 THE COURT: Michael Wilson. What is your
17 position on Mr. Wilson?

18 MR. BARR: Mr. Wilson made reference to
19 some things that he had heard from the newspaper.
20 And also from some people who went to the house.
21 And he specifically -- he specifically mentioned
22 he had knowledge of the murder and who would do
23 it. And of course I think in Mr. Wilson's case
24 unlike perhaps some of the other potential jurors
25 who I am going to talk about later on, who

1 actually by way of media or whatever, had direct
2 information concerning the incident and for
3 whatever reason would simply have you to believe
4 that notwithstanding what I heard, I don't even
5 recall the specifics of what I heard.

6 And quite frankly, Judge, I think that
7 that being, that's probably bordering on being
8 disingenuous. I cannot believe that all of these
9 people would just simply hear about an alleged
10 killing. And as far as the specifics of what they
11 actually recollect, I don't recall any as being as
12 straightforward about it maybe other than in the
13 case of Mr. Gaymon Brown. Of course I've known
14 him for years. I would not expect anything else.
15 But the others I think that they were reluctant in
16 coming forward and actually specifying what it is.
17 And, Judge, I have got several numbers.

18 I think that applies to No. 194. No. 107,
19 No. 58.

20 THE COURT: Wait a minute, 194.

21 MR. BARR: Yes, sir.

22 THE COURT: 107. 58.

23 MR. BARR: No. 58.

24 THE COURT: Uh-huh. (Affirmative.)

25 MR. BARR: No. 158. No. 171.

1 THE COURT: No. 54 said the same thing.

2 Said he heard something about it.

3 MR. BARR: Yes, sir. No. 171. No. 54.

4 Now if you have, I think you have gotten No. 87.

5 THE COURT: 187.

6 MR. BARR: 187.

7 THE COURT: He's excused.

8 MR. BARR: No. 52 is excused.

9 THE COURT: Yes.

10 THE COURT: Now also in that same category
11 would be No. 197 and No. 140. I am specifically
12 requesting that each and everyone of these jurors
13 be excused for cause. As it relates, as Your
14 Honor would recall, this is the -- these jurors in
15 particular, respond to your voir dire concerning
16 information that they had heard. As I said,
17 either through the newspaper. They all recall
18 having read something, but they didn't recall what
19 they read.

20 They knew that it was related to this
21 incident.

22 THE COURT: That's not what they said.

23 They said they recall reading about it. But the
24 gentlemen who was killed, there were four people
25 who went in the house. One of them said three

1 people.

2 MR. BARR: One said three.

3 THE COURT: That four people went in the
4 house.

5 MR. BARR: And the young black fellow is
6 the one that said three. And Mr. Brown, I am not
7 excluding him either. He's in there too.

8 THE COURT: Ms. Barr, how about the folks
9 who came forward that I haven't excluded? Now
10 some came forward and said they read what they
11 read or heard what they heard and said they
12 couldn't be fair. I am not talking about those.
13 I am talking about first of all, Mr. Wilson, No.
14 194. What do you think about him? He stood up in
15 response to several questions.

16 MS. BARR: Yes, sir, Judge. He indicated
17 he lived in Cedar Swamp. And was from the Cedar
18 Swamp community and he read about it in the
19 newspaper. And, Judge, I think the question is
20 not whether or not the jurors have heard about the
21 case. The question is whether or not having
22 whatever knowledge that they think they have in
23 the case, whether or not they can still be fair
24 and impartial. I choose to believe----

25 THE COURT: And I have to base -- I have

1 to judge their credibility and their demeanor.

2 MS. BARR: Yes, sir, Judge. Your Honor, I
3 choose to believe the jurors when they come
4 forward and you ask them whether or not they can
5 be fair and impartial and they tell you that they
6 can, I choose to believe that they're telling the
7 truth as opposed to telling a lie.

8 Most people don't want to sit on jury
9 duty. So if you can give them an out, most of
10 them will take it. And, Judge, and here's why I
11 raised the concern that I did earlier. Mr. Barr
12 has raised 10 people that he wants to excuse for
13 cause. Nine of those 10 are white people.

14 THE COURT: Ms. Barr, that might be 9 out
15 of the 10 that came forward in response to the
16 question.

17 MS. BARR: Yes, sir.

18 THE COURT: So that's neither here nor
19 there. Race is not a part of this case. It's
20 going to be a part of this case. Now race is an
21 issue in jury selection if he strikes members of a
22 cognizable racial group. Now if he has 20 people
23 who came forward in response to a question and 20
24 identical answers and 20 credibly wise are on the
25 same scale. And then he starts to say well I want

1 to keep all the black people and disqualify all
2 the white people. I'll notice that. But these
3 folks that we mentioned, he is going down the same
4 list that I've got and you've got. They're the
5 only ones that came forward.

6 Now the fact that more members of one
7 racial group came forward and gave answers to the
8 questions, I can't do anything about that. Now I
9 am not going to remove Mr. Wilson. I judged his
10 credibility, his demeanor, he said he could be
11 fair. And I don't think that I am required to
12 decide whether or not they're lying. I am
13 inquiring to decide whether or not they really
14 can. I am taking all that into account.

15 MR. BARR: Judge, of course, I realize---

16 THE COURT: I know you disagree.

17 MR. BARR: But hear me out. And I
18 understand at this point, and I really don't think
19 that Ms. Barr is serious when she mentioned the
20 fact or mentioned some suggestion that somehow
21 race is not an issue in the case.

22 THE COURT: I am not going to hear
23 anything else about race.

24 MR. BARR: Judge, I cannot -- it's
25 unfortunate that you have got a white person who

1 is deceased. And you have got a young black man
2 who is accused of killing him. But the simple
3 fact of the matter is, here in Williamsburg County
4 race is very much an issue. And I don't see how
5 you can avoid it in this trial. It is just simply
6 a reality of life. There is no way we are going
7 to be able to try this case without acknowledging
8 that reality of life. It is an issue. And it's
9 alive not just here in Williamsburg County, in
10 South Carolina, but throughout the United States.

11 THE COURT: But here is my ruling right
12 now, Mr. Barr. Of the 10, if she said 9 out of 10
13 were white that you mentioned.

14 MR. BARR: Yes, sir.

15 THE COURT: She's correct. Don't
16 interrupt me. Okay. Don't interrupt me. That's
17 because 9 out of the 10 people who came forward in
18 response to that question were white. It's not
19 because of any undertoned or undertow of
20 discrimination or racism.

21 If we have 500 people in a room and I ask
22 the question, who was born on a Monday, and 200
23 stood up and 190 of them were white that doesn't
24 mean Monday is a racist. That just means that's
25 the day they were born. So the motion as to Mr.

1 Wilson is denied. 107, William McCrea. He said
2 he lives 5 miles away from where this happened.
3 And his words were, I know E and Elizabeth. Of
4 course on down the line his father worked for the
5 sheriff for 6 years. And he was, I don't know
6 what, did he work somewhere else in some type of
7 law enforcement for a period of time before that?
8 How about Mr. McCrea? You want to disqualify him?

9 MR. BARR: Judge, that's Jack McCrea's
10 son. Jack McCrea was sheriff here. Aside from
11 him having intimate knowledge with the victim, not
12 only did he respond in fashion which suggests that
13 with respect to whether or not his, his ability to
14 be fair and impartial would be a concern. But he
15 also mentioned the existing law enforcement people
16 who he had maintained a relationship with.

17 He lives right down the road. Now, Judge,
18 and I realize the test is when it comes to
19 deciding the magic word of whether or not I can be
20 fair and impartial. Anybody can say that.

21 THE COURT: That's what I just said.

22 MR. BARR: Yes, sir. So now----

23 THE COURT: That's not the magic word.

24 MR. BARR: But now you said that you will
25 also look at the demeanor of the people who were

1 involved. And I think when you start looking at
2 it, you've got to take that in context with what
3 the existing consideration would be around that
4 particular person. And in this case is just an
5 overt number of contacts which you just simply
6 cannot ignore.

7 THE COURT: Ms. Barr.

8 MS. BARR: Your Honor, I mean, I didn't
9 see anything about this juror, this perspective
10 juror that would indicate that he couldn't be fair
11 and impartial or that he gave any representation
12 to the court that he couldn't be fair and
13 impartial. Your Honor, if he wants to use his
14 preemptory challenges to strike him, let him do
15 it. But there's not a reason at this point for
16 the court to disqualify.

17 MR. BARR: I'm asking for a reason to
18 strike---

19 THE COURT: Anything else on Mr. McCrea?
20 I'll come back to him. How about Ms. Floyd, Wanda
21 Floyd, No. 58? Said she dated Mr. Prosser one
22 time when she was 18 or 19. Didn't know my
23 family, and didn't see him much after that time.
24 Do you want to disqualify her, Mr. Barr?

25 MR. BARR: Yes, sir, I sure do. Your

1 Honor, she, in addition to having said that she
2 dated several times---

3 THE COURT: No, dated him one time.

4 MR. BARR: Or dated one time. Of course,
5 I don't know what kind of dating that was. But
6 she said it was 20 years ago, but it seems to me
7 to be very fresh in my mind. But aside from that,
8 Your Honor, she indicated that, and of course,
9 this may very well be the reason why when she read
10 about it in the paper, she then realized that he
11 was the person that she had dated several times.
12 And that now initially she said that she heard
13 nothing else.

14 But now initially she said that she heard
15 nothing else. But now, Your Honor, she also got
16 up a number of times subsequent to that regarding
17 a father when questioned about other matters. And
18 I think when you take the whole together, the
19 totality of the situation with her, quite frankly,
20 Your Honor, I would suggest that perhaps that she
21 should be stricken for cause.

22 THE COURT: Just to make sure the record
23 is complete, she also said her home was
24 burglarized in 2000. And just for the record, if
25 she dated him when she was 18 or 19 that that was

1 in 1976 or 1977. I am looking in my notes to see
2 if she came forward on anything else other than
3 being the victim of a crime and knowledge or
4 acquaintance with anyone in the victim's family.

5 MR. BARR: Your Honor, is she the one that
6 said that nobody was ever caught.

7 THE COURT: I believe so.

8 THE COURT: Ms. Barr, how about Ms. Floyd?

9 MS. BARR: Judge, Mr. Barr keeps saying
10 they dated several times.

11 THE COURT: She said one time. I
12 corrected him. So let's not argue with each
13 other. You all argue to me, not with each other.

14 MS. BARR: Yes, sir, Judge. Basically her
15 only knowledge about the case was something that
16 she read in the newspaper. And she couldn't
17 remember the particulars of it. And, Judge, you
18 asked her again whether she could be fair and
19 impartial. She responded appropriately to the
20 court's question. I don't think there is any
21 reason to disqualify her.

22 THE COURT: And the burglary part, same
23 thing.

24 MS. BARR: Yes, sir.

25 THE COURT: I'll come back to her. Karen

1 Scott No. 158. And she said that she heard
2 rumors and that she read something. And doesn't
3 even remember what she heard or read.

4 MR. BARR: Well she heard -- she said she
5 heard that someone was murdered. And that it was
6 drug related.

7 THE COURT: Okay.

8 MR. BARR: And I believe she indicated
9 earlier that -- or I think that maybe somebody
10 else. But clearly she said that she heard
11 somebody had been murdered, and that it was drug
12 related.

13 THE COURT: Ms. Barr.

14 MS. BARR: Judge, my comments is going to
15 be the same. There is no reason for the court to
16 disqualify her.

17 THE COURT: Ms. Thornall is next. No.
18 171. Mr. Barr, she came forward in response to
19 the question saying she heard something in the
20 restroom during the break. I think that was very
21 unfortunate. And also a nephew is on the highway
22 patrol. Also her son was hit over the head with a
23 crow bar at the gas station and the person is out
24 of jail. Mr. Barr.

25 MR. BARR: Your Honor, I believe she

1 should be stricken for cause.

2 THE COURT: Ms. Barr.

3 MS. BARR: Judge, my comments are the
4 same. There is no reason to believe that she
5 should be disqualified.

6 MR. BARR: Your Honor, if I am not
7 mistaken, she is Juror No. 171.

8 THE COURT: Yes, sir.

9 MR. BARR: Who is very, very familiar with
10 one of the state's witnesses, Ms. Brenda Lambert.
11 In fact they even attend the same church.

12 THE COURT: That's right.

13 MR. BARR: Where she sees her, and I am
14 sure Ms. Lambert being a member of the sheriff's
15 department goes to church every Sunday.

16 THE COURT: No, she said she didn't
17 because she was working some of the time. That's
18 what Ms. Thornall said. Anything else, Mr. Barr,
19 on Ms. Thornall?

20 MR. BARR: No, sir.

21 THE COURT: I'm coming back to most of
22 these. Mr. Ferguson No. 54. He came forward
23 twice. Once, stated that he had read something
24 about the case. Nothing specific. And he also
25 said he was the victim of an armed robbery a few

1 years ago. Somebody was apprehended and sent to
2 prison for 12 years. And your motion to
3 disqualify him is based on the fact that he read
4 something?

5 MR. BARR: And did not disclose
6 specifically what it was he read.

7 THE COURT: Well I asked him what he read,
8 and he said he didn't really recall. Just that
9 somebody was killed. Ms. Barr, how about Mr.
10 Ferguson?

11 MS. BARR: Judge, my comments would still
12 be the same.

13 THE COURT: Okay.

14 MR. BARR: Yes, sir.

15 THE COURT: 187 has already been excused.
16 52 has been excused. Next is No. 197, Alton
17 Worchester. Mr. Barr.

18 MR. BARR: Judge, of course, I believe
19 there were a number of concerns that we have about
20 this potential juror. I believe he also indicated
21 that he had heard some unspecified news. Court's
22 indulgence.

23 THE COURT: Okay. His grandfather worked
24 at the jail.

25 MR. BARR: His grandfather worked at the

1 jail for a number of years. And of course, I hate
2 to travel where other people have already gone,
3 but he was emphatic that when asked whether or not
4 he could be fair and impartial. And I thought
5 that response was rather taking into consideration
6 all the other things that he said about his
7 involvement or his knowledge about this case, I
8 thought that was a specific response.

9 THE COURT: And your response is the same,
10 Ms. Barr?

11 MS. BARR: And, Judge, it is. And the
12 only other thing is I remember specifically when
13 the court asked him about it, he said that he
14 heard about the murder before the arrest. Just
15 that he had gotten killed. And he didn't hear
16 anything apparently after our former suspects were
17 arrested. And so we would submit that he is
18 qualified.

19 THE COURT: No. 140, Donna Piatt. Mr.
20 Barr.

21 MR. BARR: Judge, my notes indicate that
22 she had actually had some direct contact with some
23 person, and they talked about the incident. Of
24 course, I don't know the details or the specific
25 details of what it was about, what they talked

1 about concerning the incident. I don't think she
2 actually disclosed even though she was asked. Or
3 she hadn't disclosed some of the nature of what it
4 is that they actually talked about. Which again,
5 Your Honor, would cause me some concern. I can
6 certainly see how a potential juror can have,
7 perhaps have a recollection of having discussed
8 some specific matters with some friend or
9 whatever. But then not being able to articulate
10 any particular details of what was discussed. And
11 that causes me some concern.

12 THE COURT: Ms. Barr.

13 MS. BARR: Judge, my response would be the
14 same. My notes indicate that she said that at one
15 point, she worked with some members of the
16 victim's family and Dale McIntosh. But in terms
17 of having a conversation, I think she may
18 indicated she may have overheard someone talking
19 about it.

20 THE COURT: But doesn't remember what she
21 overheard specifically.

22 MS. BARR: Correct, sir.

23 THE COURT: Carolyn Sessions. I didn't
24 write her juror number down, but she, the lady
25 that works for DHEC.

1 THE CLERK: 160.

2 THE COURT: 160. How about Ms. Sessions,
3 Mr. Barr?

4 MR. BARR: She worked for DHEC for 32
5 years.

6 THE COURT: She knew certain of the
7 witnesses. Said she could fair and impartial.

8 MR. BARR: If that's what she said, Judge,
9 we would move to have her stricken for cause.

10 THE COURT: Ms. Barr.

11 MS. BARR: Your Honor, he's moving to have
12 her stricken for cause now?

13 MR. BARR: Yes, sir.

14 THE COURT: The same response?

15 MS. BARR: Yes, sir, Judge.

16 THE COURT: Okay. The next one on my list
17 is Rose Mozell No. 178. She's known the sheriff
18 for 5 years. Mr. Brown for 5 years. Mr. Collins
19 for 5 years or however long. She also said that
20 her daughter was the victim CSC. A son of hers
21 was stabbed on a school bus and she has been the
22 victim of two burglaries.

23 MR. BARR: Two burglaries.

24 THE COURT: And of course all these
25 jurors, including Ms. Mozell, said that she could

1 be fair and impartial and set aside all those
2 circumstances.

3 MR. BARR: Your Honor, I would move to
4 strike for cause.

5 THE COURT: Anything specific? Just how
6 they answered?

7 MR. BARR: Yes, sir. I mean you have
8 already articulated.

9 THE COURT: Ms. Barr.

10 MS. BARR: Your Honor, the same response.

11 THE COURT: No. 48. Christopher Dozier.
12 He's an intervention specialist with the school
13 district. Said he had encountered the defendant
14 during the course of that. He said he worked with
15 at risk. And he had encountered the defendant
16 from the standpoint of behavioral issues. He also
17 said -- he came forward at the tail end as well;
18 didn't he?

19 MR. BARR: Yes, sir.

20 MS. BARR: Judge, he was the juror that
21 said he had some relatives in law enforcement?

22 THE COURT: That's right.

23 MS. BARR: Yes, sir.

24 THE COURT: Mr. Barr.

25 MR. BARR: Of course, Judge, in addition

1 to the number of relatives that he expressed to be
2 in law enforcement, he was also and what concerns
3 me he specifically had direct knowledge of Tiffany
4 Jones.

5 THE COURT: That's right. Tiffany Jones
6 and another, a lady named---

7 MS. BARR: Shanquella.

8 MR. BARR: And Shanquella is not a
9 potential witness in this case, but she is a first
10 cousin of Tiffany Jones.

11 MS. BARR: She's on the witness list.

12 THE COURT: She's on the witness list.
13 All right, and I can give the numbers. You said
14 you wanted to raise objections to everybody,
15 Mr. Barr. And then the next one I've got is
16 Catherine McCray DSS, No. 105. Said she worked
17 with the sheriff's deputies in child protective
18 services. Or excuse me, that was her job.

19 MR. BARR: Yes, sir.

20 THE COURT: And that's how she had contact
21 with law enforcement.

22 MR. BARR: Your Honor, she said she had
23 frequent contact with them. And I suppose, you
24 know, just part of her job is taking into custody
25 children and all that. From time to time she does

1 have direct and frequent contacts with a number of
2 people in law enforcement. That is a area of
3 concern for us. And we would move to excuse her
4 for cause.

5 THE COURT: I specifically asked her---

6 MR. BARR: Yes, sir.

7 THE COURT: If it came down to these law
8 enforcement testifying and you have dealt with
9 them in the past in your job, would you
10 automatically believe them or would you be
11 openminded as to the truth of counter evidence or
12 contrary evidence. And she said she would.

13 MR. BARR: And, of course, Judge, that
14 gave her a whole lot of room for latitude. And
15 you are obviously right. That's what -- you asked
16 her whether or not she would be automatically. Of
17 course I thought that perhaps it seemed to me that
18 she could be persuaded. In terms of being
19 impressed with the testimony to be given by, I
20 think, it had to have been couched more in terms
21 of credibility and believability. Your Honor, I
22 think she'd probably and this is just what I
23 picked up from the discussion we had at the side
24 bar. And for that reason, as I said, even though
25 she came forward but her, the number of people

1 that she mentioned that she was involved with; as
2 well as, the frequent contacts caused me some
3 concern.

4 And I would move for her to be
5 disqualified for cause.

6 THE COURT: Ms. Barr.

7 MS. BARR: Your Honor, her association
8 with law enforcement doesn't render her
9 disqualified. If Mr. Barr has those concerns,
10 then I would submit that he can strike her and
11 then use one of his preemptory challenges.

12 THE COURT: Who's next, Mr. Barr?

13 MR. BARR: Which number did we stop with?

14 THE COURT: Did we start with?

15 MR. BARR: Did we stop?

16 THE COURT: 105. You got anybody next?

17 MR. BARR: Yes, sir.

18 THE COURT: Who is next, Mr. Barr?

19 MR. BARR: I've got No. 9. No. 191. And
20 of course I don't want to be accused later, of
21 bashing.

22 THE COURT: I don't want to hear one peep
23 about race right now. It is not relevant. These
24 are people that answered questions. You have
25 moved to disqualify everyone black or white so I

1 don't want to hear about race. When you finish, I
2 don't want Ms. Barr to talk about it until it's
3 the Batson stage of jury selection.

4 MR. BARR: Your Honor, that's -- those are
5 the only ones that we would move for
6 disqualification at this time.

7 THE COURT: So no other jurors?

8 MR. BARR: No, sir.

9 THE COURT: Ms. Barr, you have no motions?

10 MR. BARR: Your Honor, and I would just, I
11 would -- but I do, I say that with a caveat.
12 Because I don't want to get into a situation where
13 I am precluded from arguing that a jury should be
14 disqualified and I should give a -- and, Judge, I
15 think it's just almost impossible for us to do
16 this process with this procedure without talking
17 about Batson. Because what Ms. Barr is attempting
18 to do is to position herself in such a way that I
19 am precluding from arguing or putting forth some
20 rationale perhaps from a jury that I wind up
21 having to use the strike form.

22 But for the record, there are perhaps some
23 other people that I would also want excused for
24 cause, but because of the number of people that we
25 have already. And in addition to running into a

1 problem later on, we would simply settle for those
2 people at this time.

3 THE COURT: But now if you want---

4 MS. BARR: Yes, sir, I understand that.

5 THE COURT: If you want to, you can put
6 anything else on the record.

7 MR. BARR: Yes, sir.

8 THE COURT: Anything from the state?

9 MS. BARR: We don't have anything else.

10 THE COURT: Here is my ruling: as to
11 Wanda Floyd the defense motion to disqualify is
12 denied. That's No. 58. She is not subject to
13 being pulled from the computer. In other words,
14 she would be up for consideration by the lawyers.
15 No. 158 Karen Scott, the motion to disqualify is
16 denied. No. 171 Ms. Thornall motion to disqualify
17 is granted specifically, because of the bathroom
18 encounter. I am not going to entertain that
19 scenario. Whether intentional or not, I'm not
20 casting dispersions on anyone, but I just don't
21 think that's something that would be palatable to
22 me.

23 The motion to disqualify Mr. Ferguson
24 No. 54 is denied. The motion to disqualify
25 Mr. Worchester No. 197, is denied. The motion to

1 disqualify No. 140 Ms. Piatt is denied. The
2 motion to disqualify Mr. Dozier No. 48 is granted.
3 Specifically because of his past encounters with
4 the defendants as a behavior problem at the
5 school. Other than that, I think he would make an
6 eminently excellent juror on that past. Now if he
7 had just been at the school and the student there,
8 no problem. But that specific prior knowledge is
9 my reason for that.

10 Ms. Mozell No. 178, the motion to
11 disqualify is denied. Carolyn Session No. 160,
12 the motion to disqualify is denied. Ms. McBride
13 No. 9, the motion is denied. Did you stop with
14 her? I know I have got some to go back to, but
15 did you stop with her, Mr. Barr?

16 MR. BARR: Yes, sir.

17 THE COURT: Okay. Going back up---

18 THE CLERK: No. 9 is not McBride.

19 MS. BARR: Her nephew was Mike McBride.

20 THE COURT: What is her name?

21 MS. BARR: Bradley.

22 THE COURT: Ms. Bradley, I am sorry. As
23 to Mr. McCrea No. 107, the motion to disqualify is
24 granted because of his friendship with the family.
25 Not because of his father's law enforcement past.

1 Catherine McCray No. 105, the motion is denied.

2 Mr. Barr, your positions are preserved on
3 the record. So we will go forward right now with
4 the jury selection. Everybody ready to go?

5 MS. BARR: The state is ready.

6 MR. BARR: The defense is ready, Judge.

7 THE COURT: Bring in the jury.

8 MR. BARR: 5 and 10?

9 THE COURT: Yes, sir. And 1 and 2. Can I
10 see you all up here for just a second?

11 (Whereupon, the attorneys confer with
12 judge.)

13 (Whereupon the following takes place
14 within the presence of the jury.)

15 THE COURT: Ladies and Gentlemen what we
16 are going to do now is select a jury for the trial
17 of this case. If your name is called what you do
18 is you come forward down the center aisle and walk
19 towards Ms. Williams and this microphone. You
20 don't have to say anything. When you get there,
21 you just turn around and face the back of the
22 courtroom. That's all you have to do.

23 If you are seated, you will have a seat in
24 the jury box. If you are excused from the trial
25 of this case, you just have a seat right back

1 where you were. Ms. Barr, is the state ready?

2 MS. BARR: The state is ready, Judge.

3 MR. BARR: The defense is ready.

4 THE COURT: You may strike the jury.

5 THE CLERK: Members of the petit jury as
6 your name and number is called, please come to the
7 front of my desk, turn around and face counsel and
8 await further instructions. Ladies please bring
9 your personal belongings with you as your name and
10 number is called.

11 Juror No. 123 Narada Mithchum (m-b) state
12 struck. No 150 Rickco Ravenel (m-b) accepted.
13 No. 74 Virgina Harvin (f-b) accepted. No. 162
14 Willie Shaw (m-b) accepted. No. 85 Keamble Jones
15 (m-b) accepted. Juror No. 82 Ellis Jackson (m-w)
16 defense struck. Juror No. 80 Roosevelt Huell
17 (m-b) accepted. No. 20 William D. Brown (m-w)
18 accepted. 113 Marcella McFadden (f-b) accepted.
19 Juror No. 12 Kelvin Brockington (m-b) accepted.
20 Juror No. 58 Wanda Floyd (f-w) defense struck.
21 Juror No. 191 Dora Wilson (f-b) accepted. Juror
22 154 Christine Rouse (f-b) accepted. Juror No. 39
23 Sonya Covert (f-b) state struck. Juror 139 Gerald
24 Patterson (m-b) (f-b) accepted. No. 115
25 Alexandria McGee (f-b) accepted. Juror No. 137

1 Janice Parker (f-w) accepted. Juror No. 158 Karen
2 Scott (f-w) defense struck. Juror 138 Christine
3 Parker (f-w) accepted.

4 THE COURT: Are there any motions or other
5 matters pertaining to the jury selection process
6 from either the state or the defendant?

7 MS. BARR: Nothing on behalf of the state,
8 Judge.

9 THE COURT: Mr. Barr?

10 MR. BARR: No, sir, Judge.

11 THE COURT: Ladies and gentlemen of the
12 jury in the trial of this case, we are going to
13 begin the trial tomorrow morning at 10:30. 10:30
14 tomorrow morning. In the meantime, I am going to
15 give you some instructions that you are required
16 to follow. No. 1, this might be the only thing
17 that the 14 of you have in common is this case.
18 You cannot talk about this case amongst each
19 other. You may be back in the jury room tomorrow
20 morning and you simply don't have anything to talk
21 about, but what you cannot talk about is this
22 case.

23 You can't talk about any of the issues,
24 the parties, any of the witnesses, any of the
25 lawyers, the charges or anything like that. You

1 can't talk about it. Likewise during all recesses
2 including when you go out of the courtroom in just
3 a minute, you cannot talk about this case with
4 anybody under the sun. That means nobody.
5 Friends, family, co-workers, nobody. Some people
6 that may know that you are on jury duty. They may
7 be wondering what in the world have you been doing
8 all day long. The only thing that you can tell
9 them is that you have been serving on jury duty.

10 Don't talk to them about this case. Don't
11 talk to them about any of the people involved.

12 Because I'll guarantee you as soon as you say
13 something, somebody will say something in response
14 and that may have an impact on your decisions in
15 this case. Likewise, I'm required to tell you by
16 Order of the Chief Justice, that you cannot use
17 any type of communication device. I take that to
18 mean a computer, a cell phone, a radio,
19 television, newspaper, magazine, you can't do
20 anything that would lead you to gather any
21 information about this case.

22 That means you can't do any type of
23 internet research. No magazines, no newspapers,
24 no encyclopedias, no nothing. And you will be
25 subject to being questioned about that at the end

1 of each recess. So simply just put this case out
2 of your mind right now. Come back tomorrow
3 morning at 10:30 ready to go, and we will begin
4 the trial promptly at the time. Thank you very
5 much. Are you going to show them where the jury
6 room is?

7 THE BAILFF: Yes, sir.

8 THE COURT: Okay. Follow the bailiff.
9 He's going to show you to the jury room where you
10 are supposed to go tomorrow morning.

11 (Whereupon, the jury is dismissed.)

12 MS. BARR: Judge, do you want to talk to
13 the defendant remaining on bond and making sure he
14 comes back tomorrow?

15 THE COURT: Mr. Wallace, Mr. Andre
16 Wallace, I am going to tell you a couple of
17 things. The state has indicated it does not
18 object to you remaining free during the pendency
19 of this trial. I am going to tell you a couple of
20 things. We are going to start, the jury is going
21 to be here at 10:30 tomorrow. We are going to
22 start in this case tomorrow morning at 9:30.
23 There are other things that we may have to clean
24 up before we start. Your lawyer may want you here
25 earlier. But I want to tell you to make sure you

1 understand. If you are not here by 9:30, and
2 after any recess throughout the course of this
3 trial, if you are not back in the court at the
4 appointed time, we will go on without you. Do you
5 understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You have the right to be
8 present but you forfeit that right by not showing
9 up; do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Ms. Barr, anything else?

12 MS. BARR: No, sir.

13 THE COURT: Also if there are any
14 witnesses involved in this case, I want to
15 caution all the witnesses not to have any, even a
16 side long glance at a juror. Okay. I just want
17 to make sure we are clear about that. Thank you,
18 Mr. Wallace.

19 MS. BARR: All witnesses need to report
20 back to court tomorrow at 9:30.

21 THE COURT: That's in this case.

22 MR. BARR: Yes, sir.

23 (Whereupon, the trial commences on
24 Tuesday, May 17, 2011 at 9:30 a.m.)

25 THE COURT: We are back on the record in

1 State vs. Wallace. We have a pretrial matter,
2 Ms. Barr?

3 MS. BARR: Yes, sir, Judge. We have a
4 hearing on the admissibility of the defendant's
5 statement of November 3rd, 2009.

6 THE COURT: Okay, you can call your first
7 witness.

8 MS. BARR: I would call Investigator
9 Willie Brown.

10 Investigator Willie Brown,
11 being first duly sworn, testified as follows:

12 Direct Examination by Ms. Barr:

13 Q Sir, state your name for the record.

14 A Willie Brown.

15 Q And tell the court where you are employed.

16 A With Williamsburg County Sheriff's Office.

17 Q And what do you do for the sheriff's
18 office?

19 A Criminal investigator.

20 Q Are you a certified police officer?

21 A That's correct.

22 Q And how long have you been a police
23 officer?

24 A Over 15 years.

25 Q Now, sir, were you working back on

1 November 3rd, 2007?

2 A Yes, ma'am, I did.

3 Q And on that particular day, did you see
4 the defendant Andre Wallace?

5 A Yes, ma'am, I did.

6 Q And, sir, he was at the sheriff's office
7 on that day?

8 A That's correct.

9 Q Now you -- he was being questioned
10 regarding the death of Ernest Prosser?

11 A That's correct.

12 Q Now let's talk about that questioning, if
13 I can. You were a part of what we call an
14 interrogation of the defendant; is that correct?

15 A Yes, ma'am.

16 Q Who else was present in the room
17 physically when those questions were being posed?

18 A It was myself and investigator Wayne
19 McFadden.

20 Q As well as the defendant Mr. Wallace?

21 A That's correct.

22 Q Was there anyone else there?

23 A Not that I can recall; no, ma'am.

24 Q Now, sir, did you advise him of what we
25 know to be his Miranda Rights?

1 A Yes, ma'am; that's correct.

2 Q And when you gave him his Miranda Rights,
3 if you will, tell the court exactly what you would
4 have advised him.

5 A I would read from the sheet. We would let
6 them know we are here to question him in reference
7 to a case ongoing. We tell them the victim's
8 name. And then we would also advise him that the
9 constitution requires, we or I, inform you that
10 you have the right to remain silent. Anything you
11 say can and will be sued against you in a court of
12 law. You have the right to talk to a lawyer and
13 have him present with you while you are being
14 questioning. If you cannot afford to hire a
15 lawyer, one will appointed to represent you for
16 any questioning if you wish. You can decide at
17 any time to excise these questions -- exercise
18 these rights and not make any statements or make
19 any -- I am sorry. Not answer any questions or
20 make any statements. And then we also have them,
21 ask if you understand these rights, and then they
22 will verbally answer yes. And then they sign the
23 answer yes. And then put their initial behind the
24 answer. The second question we ask them, "Having
25 these rights in mind, do you wish to talk to us

1 now." And they will verbally answer yes or no.
2 Mark the answer, and then initial.

3 At the bottom of the page, we also read or
4 have them read their Waiver of Rights. And it
5 states, "that I have read the above statement of
6 my rights, and I understand each of those rights
7 and what they are. I waive those rights and I am
8 willing to make a statement and answer questions.
9 I do not want a lawyer at this time. I understand
10 and know what I am doing. No threats or promises
11 have been made to me. No pressure or coercion of
12 any kind has been used against me by anyone." And
13 I advise them if that's a true statement to sign
14 it and date it.

15 Q Did he in fact sign it and date it?

16 A That's correct; yes, ma'am.

17 Q What time was it on November 3rd of 2009,
18 that he was given his Miranda Warnings and he gave
19 a statement to you?

20 A It was 7:48 p.m.

21 Q Now at the time when you advised him of
22 his Miranda Warnings and he waived his rights, did
23 you threaten him in any way?

24 A No, ma'am.

25 Q Did you physically harm him in any way?

1 A No, ma'am.

2 Q Did he appear to understand what you were
3 asking him or investigator McFadden was asking
4 him?

5 A Yes, ma'am.

6 Q Did he give appropriate responses to your
7 questions or Investigator McFadden's questions?

8 A Yes, he did.

9 Q Could he read and understand the English
10 language?

11 A Yes, he advised. We also asked him, you
12 know, how far he went to school, and if he is able
13 to understand; read and write. Which he also
14 verbally yes; yes.

15 Q And in addition you were testifying
16 earlier there was a second part of the Waiver of
17 Right Form, where you actually have him read it
18 back to you.

19 A That's correct.

20 Q And he was able to read that paragraph
21 back to you.

22 A That's correct.

23 Q I am going to hand you what has been
24 marked as Court's Exhibit No. 1. Tell the judge
25 what that particular document is, please, sir.

1 A This is a copy of the Miranda Warnings.

2 Q Yes, sir.

3 A That we advise him.

4 Q This is the document that you referenced
5 earlier that Mr. Wallace signed?

6 A Yes, that's correct.

7 Q And it indicates that you along with Wayne
8 McFadden were witnesses to his signing of the
9 document?

10 A That's correct.

11 MS. BARR: Your Honor, we would this --
12 hand this to the court as Court's Exhibit No. 1.

13 THE COURT: Mr. Barr, have you seen this?

14 MR. BARR: Yes, sir.

15 THE COURT: Any objection to me
16 considering it?

17 MR. BARR: No, sir.

18 (Miranda Warnings of Andre Wallace marked
19 Court's Exhibit No. 1.)

20 Q Sir, after he signed the Miranda warnings
21 form, he gave a statement to you; is that correct?

22 A That's correct.

23 Q You asked him specifically about the death
24 of Ernest Prosser; is that correct?

25 A That's correct.

1 Q The statement that he gave was tape
2 recorded?

3 A It was recorded.

4 Q And as a result of it being tape recorded,
5 did you or your agency at some point have that
6 recording transcribed?

7 A That's correct.

8 Q Now I am going to hand you what has been
9 marked as Court's Exhibit No. 2, and ask you if
10 you recognize that particular document.

11 A Yes, ma'am, I do.

12 Q Tell the court what it is.

13 A This a transcript transcribed, a copy of
14 his recorded statement.

15 Q And that recorded statement again was
16 given November 3rd, 2009.

17 A That's correct.

18 Q The transcript of that statement is 18
19 pages long?

20 A Huh?

21 Q The transcript of that recording and that
22 statement is 18 pages long?

23 A That's correct.

24 MS. BARR: Judge, we would also ask the
25 court to -- or we would hand up to the court what

1 is marked as Court's Exhibit No. 2.

2 THE COURT: Any objection to the -- me
3 considering this, Mr. Barr?

4 MR. BARR: Judge, I don't know that the
5 prosecution has actually properly authenticated
6 the writing. I know he didn't prepare it. And of
7 course would respect the accuracy of it. Now of
8 course if they had the recording that would be one
9 thing.

10 THE COURT: Do you have the recording?

11 MS. BARR: We do, Your Honor. And, Judge,
12 for the record, we are not moving to introduce it
13 at this time.

14 THE COURT: Well you are asking me to look
15 at it.

16 MS. BARR: Yes, sir.

17 THE COURT: And I was asking if he
18 objected to me considering it for the purposes of
19 this hearing. He said that he didn't think the
20 foundation has been laid. Who typed it?

21 Q Investigator Brown, after you recorded the
22 statement from the defendant, what did you do with
23 that statement?

24 A We sent it over to Ms. Kelley who
25 transcribes all our recorded statements.

1 Q When you say Ms. Kelley, you are talking
2 about Andrea Kelley?

3 A That's correct.

4 Q She's a Certified Court Reporter.

5 A That's correct.

6 Q Now in terms of the transcript of the
7 statement, to your knowledge, does it accurately
8 reflect the contents of the oral statement that
9 was given by the defendant?

10 MR. BARR: Objection, Your Honor, he's not
11 competent to answer that question. Moreover,
12 there is no foundation; that they hadn't laid a
13 foundation for him to even testify regarding the
14 accuracy.

15 THE COURT: If he's listened to the
16 tape---

17 MR. BARR: Judge, he hasn't said he
18 listened.

19 THE COURT: Wait, wait. Don't, please
20 don't interrupt. If he's listened to the tape and
21 read the statement, that would be a proper
22 foundation. So I don't know the answer to that
23 question yet. She just asked him if it accurately
24 reflected the substance of the oral statements.
25 You can repeat the question.

1 MS. BARR: Yes, sir.

2 Q Investigator Brown, were you there
3 throughout the entire time that Mr. Wallace gave
4 the statement to law enforcement?

5 A Yes, I was.

6 Q And you are familiar with the contents of
7 that statement in terms of what he said?

8 A That's correct.

9 Q In terms of the transcript that has been
10 marked as Court's Exhibit No. 2, to the best of
11 your knowledge, does it accurately reflect the
12 extent of the statement that was given to you and
13 Investigator McFadden on November 3rd, 2009?

14 A Yes, ma'am, it does.

15 Q Is there any question in your mind that
16 the defendant knew he was being interrogated.

17 A He understood that we was questioning him
18 in reference to a murder of Mr. Prosser.

19 Q No question that he was not forced or
20 threatened in any way?

21 A No, ma'am.

22 MR. BARR: Judge, that's all the State
23 would have at this time.

24 THE COURT: Mr. Barr, any questions?

25 Cross Examination by Mr. Barr:

1 Q As I understand it, there were two, only
2 two officers present at the time Mr. Wallace was
3 being interrogating.

4 A That's correct.

5 Q You and Wayne McFadden.

6 A That's correct.

7 Q And this was on the 3rd of November?

8 A That's correct.

9 Q Now, officer, you indicated a few minutes
10 ago, that you had read the statement after it had
11 been transcribed. And I want you to listen to me
12 carefully.

13 MS. BARR: Judge, I'm sorry. Can I get
14 counsel to speak out, I can barely hear him.

15 THE COURT: You can get closer.

16 MR. BARR: I am sorry. Let me get back.

17 THE COURT: He said he wanted him to
18 listen very carefully.

19 Q Did you, have you read that transcript
20 since of time, and of course, I don't know who
21 transcribed it. But you say Andrea Kelley did.
22 But have you actually read it since it was
23 transcribed?

24 A Yes, sir, I did.

25 Q When did you read it?

1 A The day we got it back. I can't remember
2 exact dates, but I want to say at least three
3 times.

4 Q You read it at least three times?

5 A Yes, sir.

6 Q And based on your recollection, you've
7 compared it to the recording and there are no
8 deviations. The transcript actually reflects
9 what's actually recorded?

10 A Yes, sir. It's pretty much the same
11 thing.

12 Q Pretty much.

13 A Word for word.

14 Q How is it that you found, you said that
15 you -- this recording took place at the sheriff's
16 office?

17 A That's correct.

18 Q How did you get Mr. Wallace down to the
19 sheriff's office?

20 A I am not exactly sure how he came or he
21 was brought up there with law enforcement, or he
22 came on his own. I know we got a call that said
23 he was up there, and we needed to interview him.

24 Q Now I believe Wayne McFadden was the one
25 that's actually doing the interviewing; wasn't he?

1 A That's correct.

2 Q But it's your contention that you were
3 present.

4 A I was there.

5 Q Did you have any discussions with
6 Mr. Wallace at that time about searching the
7 vehicle?

8 A Not that I can remember.

9 Q But I think you did eventually take
10 possession of it at some point; didn't you?

11 A That's correct.

12 Q And you searched it.

13 A I believe we did, I am not sure.

14 Q Well you took it to search it, and you
15 tore it up. You went through it, so you did
16 search it.

17 A No, I don't remember us tearing it up.
18 But I know we did had it towed.

19 Q You went to his house i Lake City. Or was
20 it in Kingstree?

21 A It was somewhere over in Lake City.

22 Q And had it towed.

23 A It was towed back.

24 Q I am just kind of curious.

25 A It wasn't at his house. It was at some

1 type of apartment complex.

2 Q Were you with him? Were you with him
3 when they had it towed?

4 A I had already had left the scene.

5 Q Pardon me?

6 A I already left the scene when they towed
7 it.

8 Q Do you know by what authority they towed
9 his vehicle?

10 A By him saying tow it off by the apartment.

11 Q Do you know by what authority the
12 Williamsburg County Sheriff's Department towed it?

13 MS. BARR: Judge, we would object to this
14 line of questioning. And we believe that it is
15 irrelevant to the issues before the court.

16 MR. BARR: Judge, I am not going any
17 further with this. But I am just curious.

18 THE COURT: You can answer that.

19 A Usually when we do any type of stop, we
20 don't leave personal property or anything on the
21 side of the road or, you know, abandoned area. As
22 far as I understood, he was living in the White
23 Oak Community. And for us to leave that vehicle
24 there, it would have been, you know, a liability.

25 Q So you when you questioned him at the

1 sheriff's department, did he come in to your
2 custody as a result of a traffic stop?

3 A I think we was looking for him to talk to
4 him. And then we was able to pick him up and talk
5 to him.

6 Q Was he driving when you picked him up?

7 A I wasn't on the scene when they actually
8 put their hands on him.

9 MR. BARR: Thank you, sir. I have nothing
10 further.

11 THE COURT: Redirect?

12 MS. BARR: No, sir, Judge.

13 THE COURT: Thank you, sir. You may step
14 down.. Thank you, sir. Any other witnesses,
15 Ms. Barr?

16 MS. BARR: No other witnesses on this
17 issue.

18 THE COURT: Mr. Barr, do you have any
19 witnesses?

20 MR. BARR: No, sir.

21 THE COURT: What is the State's position
22 on the statement?

23 MS. BARR: Your Honor, we take the
24 position that the statement was freely and
25 voluntarily given; that the defendant's Miranda

1 Rights were adequately protected. And we would
2 ask the court to make a finding that the State has
3 complied with the requirements that he was fully
4 advised of his rights; that he knowingly,
5 intelligently waived those rights.

6 THE COURT: Mr. Barr, let me hear from you
7 first on the voluntariness of the statement; not
8 the dispute about the foundation of the transcript
9 that I have in front of me. Or if you think they
10 go hand and hand, you can just talk about it all
11 at the same time.

12 MR. BARR: Your Honor, I don't based on
13 what has been presented and what has not been
14 presented, of course, I don't think that we can
15 dispute the voluntariness of it in terms of the
16 totality of the circumstances. However, with
17 respect to the identification of the, and the
18 accuracy of the transcript, it would simply be our
19 position that the only way that we could actually
20 confirm the accuracy of that transcript would be
21 to have the person that prepared it, testify.

22 And therefore, we would take the position
23 that the recording, I would have no problem with
24 the recording coming in. But the transcript
25 clearly, I don't think Willie Brown is qualified

1 to even though he indicated that he had listened
2 to it. And he thought that it confirmed what was
3 on the recording. First of all, I don't think
4 he's competent to testify concerning that. He's
5 not a police officer. And as far as this record
6 is concerned, he has nothing in the record to
7 indicate that he has the requisite experience to
8 do that. So we would just simply merely insist
9 that the recording be provided.

10 THE COURT: Ms. Barr.

11 MS. BARR: And, Judge, I think counsel is
12 a little bit ahead of us. We are not seeking to
13 introduce the contents of the statements. We're
14 just seeking a finding that the statement given by
15 the defendant was freely and voluntarily made.
16 Freely, voluntarily and knowingly made.

17 THE COURT: I am not sure I follow you.
18 If you ask me to make that finding so at trial you
19 can introduce the statement. In other words, you
20 want the jury to hear what the defendant said.

21 MS. BARR: I may.

22 THE COURT: Okay, now who and where is Ms.
23 Kelley?

24 MS. BARR: Well, judge, I think we can
25 probably resolve that issue. If I choose to

1 introduce the statement or asked to introduce the
2 statement, I won't be introducing the transcript.
3 It will be the tape recording.

4 THE COURT: Well, I will since he doesn't
5 dispute the voluntariness of the statement. And,
6 Mr. Barr, since the investigator is testifying
7 that he read this three times. And I wrote it
8 down. He said it's pretty much the same word for
9 word. At least at this stage of the proceeding.
10 My responsibility in determining the Jackson vs.
11 Denno hearing.

12 MR. BARR: Yes, sir.

13 THE COURT: The foundation for whatever
14 the jury might hear. So if you all would give me
15 just a minute or two. Well longer than that to
16 read this, perhaps I will more educated. And I
17 believe it's 18 pages.

18 MR. BARR: Your Honor, I don't think, you
19 know, and I think Ms. Barr is actually quite
20 right. So I don't think we really need to get in
21 to, because clearly it appears that for whatever
22 reason she wants the State to identify it. She
23 doesn't necessarily -- hadn't made a decision as
24 to whether or not she was trying to get it in
25 evidence. So I think we are beating a dead horse.

1 THE COURT: Well what I will do then is
2 knowledge Mr. Barr's representation, that he does
3 not have an objection under Jackson vs. Denno.
4 And I do find by the greater weight of the
5 evidence that before the statement was given, that
6 he was fully advised -- the Defendant was fully
7 advised of his rights under the 5th and 6th
8 Amendments; of the the right to remain silent and
9 all the other rights among the litany that he
10 mentioned; that the statement was given freely and
11 voluntarily without hope of reward or without
12 threat. And that he knowingly and intelligently
13 waived all of his rights in giving the statement.

14 I guess where I am caught a little bit
15 short is the setting of the hearing we just had.
16 But as far as the Jackson vs. Denno matter, I do
17 find by the greater weight of the evidence that
18 the statement is admissible of course should the
19 State choose to try to introduce it. The court's
20 exhibits, I will hand back to the Court Reporter,
21 and ask this question. Is there anything else
22 that we need to do before we begin? For example,
23 I would hope that you all have premarked
24 everything that you all agreed on. Because
25 sometimes it's a frustrating exercise to have

1 dozens of exhibits that could be agreed upon, and
2 then we have go through in front of the jury,
3 marking and moving all of them. Have they been
4 marked? Have the exhibits been marked?

5 MS. BARR: No, sir, Judge. We can do that
6 right now, Your Honor.

7 THE COURT: Well we've got 9 minutes
8 before the jury comes in. I promised them we
9 would start on time.

10 MS. BARR: Yes, sir.

11 THE COURT: Okay. So we're going to start
12 promptly at 10 o'clock. I mean, excuse me, 10:30.

13 (Photographs marked State's Exhibit Nos. 1
14 through 56 for id.)

15 THE COURT: State's Exhibit Nos. 1 through
16 56 for Id.?

17 MS. BARR: And as I understand, Judge, the
18 Defendant does not have an objection.

19 MR. BARR: No, sir.

20 THE COURT: 1 through 56.

21 (Photographs marked State's Exhibit Nos.
22 1-56 in evidence.)

23 THE COURT: Is the State ready?

24 MS. BARR: Yes, sir.

25 THE COURT: Is the defense ready?

1 MR. BARR: Yes, sir.

2 THE COURT: Okay, bring in the jury.

3 (Whereupon, the following takes place
4 within the presence of the jury.)

5 THE COURT: Ladies and gentlemen, we are
6 now ready to move forward with the trial of this
7 case. The first order of business this morning
8 will be for you to be sworn. The clerk will
9 administer an oath. So if you will please stand.

10 (Whereupon, the jury is sworn.)

11 THE COURT: Ladies and gentlemen, we are
12 now going to begin the trial of the case of the
13 State of South Carolina versus Andre C. Wallace.
14 As I mentioned to you yesterday, Mr. Wallace has
15 been charged with various criminal offenses. I am
16 going to talk to you now about the progression in
17 the trial and about your responsibilities and my
18 responsibilities. And I want to make sure that
19 you understand that when I make these comments or
20 these statements to you, I don't want you to take
21 from anything that I say or do now or throughout
22 this trial, that I think that one particular
23 result ought to be reached, because I don't.

24 And as I tell you repeatedly, you, Ladies
25 and gentlemen, are the sole finders of facts in

1 this case. In other words, you are the only
2 people in the world who can decide whether or not
3 the State would have met its burden or proof in
4 establishing beyond a reasonable doubt that the
5 defendants committed these criminal offenses.

6 As I mentioned to you yesterday, the fact
7 that a person is arrested or charged or indicted
8 is not evidence of anything. The State has the
9 sole burden in this case. The Defendant has
10 entered not guilty pleas to these charges. He has
11 to prove nothing. He has to disprove nothing.
12 The State has the sole burden of establishing
13 guilt beyond a reasonable doubt.

14 Now, Ladies and gentlemen, in the case,
15 the Defendant is charged with the following
16 criminal offenses. First of all, criminal
17 conspiracy. Second of all, burglary in the first
18 degree. Third, murder. And fourth, possession of
19 a weapon during a violent crime. And the fact
20 that I mentioned he has been charged with those
21 crimes is not evidence of anything as I just
22 mentioned to you a moment ago.

23 Now, Ladies and gentlemen, during the
24 course of this trial, it will become apparent to
25 you that these witnesses who take the stand and

1 these exhibits that will be introduced, are for
2 you. They are not for me; that is, because you
3 are sole judges of the facts. It makes no
4 difference under the law what I may think about
5 the facts, because I have no role at all in
6 determining whether or not this Defendant is found
7 guilty or not guilty. That's for you and for you
8 alone.

9 Now how do you do that? How do you
10 fulfill your responsibility and your oath to be
11 the finders of the facts? First of all, you pay
12 very, very close attention. There will be several
13 witnesses who testify. And in some cases there is
14 one witness.

15 In some there are 10, 20, 30, 40, 50. The
16 testimony of the first witness, 5th, 10th, 20th,
17 is no more and no less important than the
18 testimony of any other witness who testifies.
19 You will find that more apparent when we come back
20 after lunch. Because if you are like most people
21 that's when your clock starts to wind down
22 internally, and you want to wind up your day. But
23 I will tell you that you cannot decide to be
24 distracted or let your attention wander while a
25 witness is testifying, because you will miss

1 something. So it's extremely important that you
2 pay very close attention.

3 Second of all, what you have to do as the
4 facts is use your common sense. That is the tool
5 that you come into this courtroom armed with. And
6 you are supposed to use it. Now using that common
7 sense to take whatever form you think it should
8 take. And what you will have to do is use your
9 common sense in evaluating the evidence that's
10 introduced. Then at the end of the case, you take
11 the law exactly as I give it to you. You take
12 your view of the evidence and the law and you put
13 those things together, and you will reach a
14 verdict that speaks the truth. That's what your
15 responsibility is.

16 Now, ladies and gentlemen, evidence will
17 come to you in various different forms. It will
18 come to you by testimony of the witnesses who take
19 the stand. You have got to listen to them. It
20 will come to you in the form of exhibits. Those
21 may be, and I don't know, but it may pieces of
22 paper, other documents, photographs. I may be
23 other things that either party might introduce.
24 That's a second form of evidence. A third form of
25 evidence that's sometimes in trial and sometimes

1 it's not. It's called a stipulation. That's just
2 a fancy word for when the State and the Defendant
3 agree on a particular point. And that comes into
4 evidence and it will be made known to you.
5 Sometimes they ask a judge to make it known.
6 Sometimes one of the lawyers would stand up and
7 read it, or simply recite what that stipulation
8 is. So testimony, exhibits, and stipulations are
9 the forms of evidence. And it's up to you again
10 to evaluate that evidence and make your
11 determinations in that regard.

12 Now, as the fact finders, you must
13 evaluate whether or not you believe witnesses who
14 testify. Another word for that is credibility.
15 You use your common sense in determining whether
16 or not you believe someone. You do that every day
17 when you watch somebody talk and they claim to
18 know something. You are evaluating in your mind
19 by, "Do I believe that person." Now under the
20 law, there is no magic formula for me to tell you
21 what to take into account, except you use your
22 common sense. You can believe every word of what
23 a witness says if that's what you want to do. You
24 can disbelieve every single word. Or you can
25 believe parts and disbelieve the rest. That's up

1 to you. You can take into account, there are
2 several things, and you are not bound by this.
3 How does that witness appear on the witness stand.
4 Is that witness hesitant or straight forward in
5 answering questions. Sometimes the lawyers call
6 that demeanor.

7 Second of all, was that witness' testimony
8 strengthened or weakened by other testimony or
9 evidence that's in the record. Also you can take
10 into account did that witness have a reason to
11 give testimony that helped or hurt one side or the
12 other. Sometimes that's called bias or prejudice.
13 And also, Ladies and gentlemen, you can take into
14 account anything else that you think is
15 appropriate as far as your common sense is
16 concerned in determining who to believe and what
17 to believe.

18 Now, Ladies and gentlemen, you can believe
19 one witness over several. You can believe many
20 witnesses over one. But what you don't do is
21 count up the number of witnesses and say well 10
22 said this, 4 said this, so I must believe 10.
23 That might be the case, but that's not the way it
24 automatically works. You can believe 4 or 10 if
25 that's what you want to do.

1 Ladies ad gentlemen, during the course of
2 this trial more than likely as is the case in most
3 trials, one or both of the lawyers at any given
4 time will stand up and make an objection. That's
5 one of the points where I come in. An objection
6 is a legal argument. A lawyer may ask a question
7 that's objected to. A witness may give an answer
8 that is objected to. Someone may try to
9 introduce an exhibit that's objected to. A lawyer
10 may say something that the other lawyer objects
11 to. Those are legal issues.

12 Now don't keep score. If I rule in favor
13 or against one side or the other more than the
14 other side, I am not keeping score. My
15 responsibility simply is to apply the law. We
16 have the South Carolina Rules of Evidence. And my
17 copy is in this brown book. I'm on my second
18 brown book because this one is worn out. So I may
19 look in both. But in any event, those are legal
20 issues. And don't think that a lawyer who makes
21 an objection is trying to keep something from you.
22 And don't think that if a lawyer asks a question
23 that is objected to, that that lawyer is trying to
24 slip something in that you ought not consider.
25 These rules are open to interpretation. They're

1 open to argument. And these lawyers are very well
2 trained in these rules. And so they make
3 objections. And that is a request that I rule on
4 that.

5 Now sometimes I may rule in your presence.
6 I may just issue the ruling right there. But
7 sometimes I may have to send you out of the
8 courtroom and make a ruling on an objection.
9 Frankly, that's because I will not know what the
10 particular issue is. These lawyers know all about
11 the case. And you and I right now know as much
12 about this case as one another. So I may have to
13 send you out, out of an abundance of caution.

14 And sometimes I may send you out, and make
15 a ruling and come back in and have to send you
16 right back out. And I apologize in advance for
17 that. And you can blame me for that. Now, Ladies
18 and gentlemen, do not take from anything that I
19 say or do that I favor one result over another.
20 Because I truly do respect your role as the fact
21 finders. At the end of this case, you will be
22 called upon to go back and deliberate and reach a
23 verdict that speaks the truth.

24 Now one thing, one thing else that you
25 know very well from yesterday. Until I tell you

1 that you can, you cannot discuss this case at all
2 with each other or with anybody else. For
3 example, if we take a recess during the trial for
4 15 or 20 minutes which we will do this morning at
5 some point, you can't go back there and talk about
6 what you just heard. You can't talk about what
7 you think you might hear. Because you are
8 required to base a verdict on the evidence, and
9 the law. And you're not going to know all the
10 evidence. And you're not going to know the law
11 until the very, very end of this case. At each
12 break when you go to lunch or go home for the
13 evening, I will repeat to you all of this. And
14 lots of times jurors say, well I've heard that, I
15 don't need to listen. But please make sure that
16 you follow that instruction very carefully. You
17 cannot read anything about this case. I don't
18 know if there will be anything in any publication.
19 But if you see something, put it aside. You can't
20 listen to anything about it. If you should go to
21 McDonald's or somewhere during lunch and you hear
22 somebody talking about the case, tell them you are
23 on the jury and they will respect that. Also when
24 you go home for lunch or wherever you might go
25 over the evening, you can't talk about this case

1 with anybody. You can't get on the internet. You
2 can't do anything to gather any information about
3 this case. You will be tired of me telling you by
4 the end, but I am going to keep telling you that.

5 The trial itself will follow a particular
6 form, a particular procedure. In a moment, the
7 lawyers are going to stand up and give what's
8 called an opening statement. That is their
9 opportunity to tell you what they think the
10 evidence will or will not establish. And what
11 they say is not evidence. And so don't -- the
12 evidence comes from those three forms that I gave
13 you; not lawyer talking. Now they have the right
14 to tell you what they think the evidence will or
15 won't show. But what they say is not evidence.

16 After those opening statements, the State
17 will begin presenting what is called its case in
18 chief. And they will do that by calling witnesses
19 and introducing evidence during that case. Now
20 after that, the Defendant can if he wants, present
21 evidence. He does not have to. He doesn't have
22 to present a thing. And that is because he has
23 no burden at all in this case. Now once the
24 evidence is in, the lawyers will give you their
25 closing arguments. And then after that, I will

1 give you a charge on the law. And then after
2 that, shortly after that, you will be released to
3 deliberate.

4 Now kept an open mind. Don't begin making
5 any decisions about what your verdict is going to
6 be until you have heard and seen everything. That
7 is your responsibility. These, the State and the
8 Defendant have chosen you to be the jurors in this
9 case. And it is up to you for your solemn
10 responsibility to give them what they ask for, and
11 that is a fair and impartial trial at your hands.

12 Ms. Barr, or Mr. Barr, any objection to
13 those remarks?

14 MS. BARR: No, sir, Your Honor.

15 MR. BARR: No, sir, Judge.

16 THE COURT: Ms. Barr.

17 MR BARR: May it Please the Court, Ladies
18 and gentlemen of the jury, good morning. I want
19 to thank you all for being with us this week. And
20 when I say that, I am being as sincere as I can
21 possibly be. We understand and we know that being
22 on jury duty is a sacrifice. I am sorry there are
23 probably 10 other places in the world you all
24 would rather be right now.

25 But I want you to know, and I want to

1 piggyback on what the judge has said. You are the
2 reason why our criminal justice system works.
3 Good, hard working citizens who are willing to
4 sacrifice their time and their energy to come in
5 and sit in on a case and render justice. And
6 really I can't thank you all enough for that. I
7 want to say one more brief comment and then I will
8 kind of talk about the case and then I will sit
9 down.

10 When we have a case where we have to
11 select a jury, a lot of times what will happen is
12 that when juror's individual names are called they
13 have to stand up. And then they tell us a little
14 about themselves. Not a whole lot. I don't think
15 I know any of you all. And so as a lawyer who is
16 about to try a case, and Mr. Barr as a defense
17 lawyer who is about to try a case, we often have
18 to make a very split second decision on whether or
19 not that person should be seated on our jury.

20 And we have to make a really important
21 decision, because we don't know a whole lot about
22 you. And this is an important case without
23 knowing a whole lot. When you all stand up and
24 you give your information, we're looking at you.
25 And we're making judgments about you. And I can

1 tell you, and I will speak on behalf of
2 Mr. Barr just in this regard. When you all came
3 up and you give your information and the court
4 asked you certain questions, I was impressed by
5 the jurors when they came up.

6 You all say some people didn't get picked.
7 Some people were struck. And not for any personal
8 reasons, but just a gut instinct. And I have to
9 say on this jury I think Mr. Barr, and I think
10 myself, I think we got it right. And the only
11 thing we really want, everybody in this courtroom
12 wants, is a jury who will fair and impartial, and
13 who can listen to the case, listen to the law and
14 render a fair verdict.

15 Now this Defendant is charged with four
16 counts as Your Honor stated. Criminal conspiracy,
17 which is simply the State is going to show that
18 the Defendant planned a burglary. He's charged
19 with burglary first degree. And what that means
20 quite simply as it relates to this case; is that,
21 the Defendant entered the home of the victim one,
22 without consent. And two, with the intent to
23 commit a crime therein. And what makes it a first
24 degree burglary is because one, it happened in the
25 nighttime. Two, he had a weapon when he entered.

1 And three, he caused the death of Ernest Prosser,
2 the victim in the case.

3 In addition this Defendant is charged with
4 murder. And murder is the unlawful killing of
5 another human being with malice aforethought. A
6 fancy legal way of saying that the person
7 committed an intentional killing upon the victim.
8 The last count of the indictment that you will be
9 required to render a verdict on is the
10 possession of a weapon during the commission of a
11 violent crime. I'll go ahead and tell you under
12 our law, the State of South Carolina considers
13 murder a violent crime. And considers burglary in
14 the first degree a violent crime.

15 So if you find that Defendant committed
16 the offense of burglary or murder, and he had a
17 weapon during those crimes, you should also find
18 him guilty of possession of a weapon during a
19 violent crime. Now let me tell you this. This is
20 not an easy murder case. If there is any such
21 thing as an easy murder case. All murder cases
22 are horrible. All murder cases are complicated.
23 And this murder case quite frankly, is not easy
24 and it's complicated. You are going to hear all
25 sorts of things during the trial of this case.

1 You are going to hear evidence about drug
2 use. You are going to hear evidence about strange
3 sexual relationships. You are going to hear
4 evidence that two of the defendants who were
5 involved in this crime have pled guilty. And you
6 are going all hear all of those things. And I
7 know or I expect that there will be a tendency on
8 some of your parts to kind of be overwhelmed by
9 some of the things that you hear. Because it's
10 not every day things that you hear about. But,
11 folks, what I would remind you all of during the
12 trial of the case is specifically, when you go
13 back in the jury room to deliberate, at the end of
14 the day, once it's all said and done, once I have
15 said everything that I have to say, once all the
16 evidence comes in, once Mr. Barr has said all he
17 has to say, it comes down to one thing, and one
18 thing only.

19 This man, Ernest Prosser, was shot and
20 killed in his own home. He wasn't doing anything
21 to anybody. He wasn't hurting anybody. And there
22 is no dispute that he was shot and killed in his
23 own home. And so at the conclusion of this case,
24 I get to stand before you all again. And I am
25 going to remind you about some of the things that

1 I've said during my opening statement. And I am
2 going to ask you based on everything that you've
3 heard in the case, everything that you've seen in
4 the case, to return a guilty verdict against the
5 Defendant on each and every count of the
6 indictment. Thank you all for your time. I
7 think you most importantly for your attention.

8 THE COURT: Mr. Barr.

9 MR. BARR: Please the Court, Judge, Madam
10 Prosecutor, Ladies and gentlemen, I am Charles
11 David Barr and I practice law here in Kingstree.
12 One of the things and one of the primary
13 responsibilities of the defense lawyer is to
14 defend people when they are charged with criminal
15 offenses. Now let me just say at the very outset
16 with respect to an opening statement, I will adopt
17 and certainly associate myself with the remarks
18 that's been made by our able trial judge. He has
19 given you some very excellent preliminary
20 instructions regarding your duties and
21 responsibility as jurors. And I would simply say
22 that irrespective of whether or not it's this case
23 or any other case in South Carolina, if you were
24 called upon for jury service, and you had those
25 instructions, I assure you that you would be

1 equipped to discharge your duties and
2 responsibilities based on what you have heard thus
3 far with the instructions and the preliminary
4 instructions that you have gotten from the trial
5 judge.

6 Now with respect to the comments that have
7 been made and the opening remarks of the
8 prosecutor, there are some remarks that I will
9 also associate myself with, and that is with
10 respect to your qualifications as jurors.

11 The screening process to get you where you
12 are now is not a simple process. And, of course,
13 from the time that you get your summons to appear
14 in court, there are some people that would perhaps
15 rather be doing something else. Most people
16 would. But then there are some that say, well,
17 look I understand that I have got a civic
18 responsibility. And understand I drive a vehicle
19 in South Carolina. I am the voting register in
20 South Carolina. This is where I have got a State
21 identification. This is where the names come from
22 that you were selected -- that were used to
23 select you to serve as jurors.

24 Now I tell you that there is no greater
25 service in all of these United States. And to do

1 you civic duty as a juror. I just can't think of
2 anything greater having spent 33 years of my life
3 doing what I do now, I admire this aspect of our
4 judicial system. Because now whenever somebody is
5 charged with an offense, and let me tell you
6 something, life starts when you are born. And of
7 course as many great writers have written, you are
8 in the process of dying from the time you are
9 born. It's just a matter of time.

10 Now with respect to life and time, they
11 are a whole lot of circumstances that can create a
12 lot of issues when it comes to what's going to
13 happen to a person and the experiences that we
14 have. And those are the things that make up the
15 kind of system that cause us to be here even right
16 now. Because what has happened is that in the
17 process of time, a man has met an untimely death;
18 Ernest Prosser.

19 Now I have known Ernest over 50 years. I
20 grew up in the Cedar Swamp Community, and I have
21 got a farm that adjoins his farm; knew his father.
22 I've never had an opportunity to say I am sorry to
23 his family, but of course, with respect to where
24 we are now, it's unfortunate that this whole
25 situation is presented in the way it's presented

1 now. But it's one of those things about life that
2 if you live long enough, you have some ups and you
3 have some downs. But as the prosecutor has
4 indicated, at the end of the day, we all have
5 duties and responsibilities that we adhere to.

6 Now just with respects to your
7 qualification, there is no question in my mind
8 that each and every one of you are eminently
9 qualified with respect to where you sit. And if
10 you notice a whole lot of huddling on the day --
11 from the day that you came here and stood up and
12 announced your name, your occupation, what your
13 spouse does, don't think that that's the only
14 information that we gather on you all.

15 And lawyers have a way of getting that
16 information, and we kind of believe that we want
17 to try to get 12 people on a jury that are
18 impartial. Twelve people that are willing to
19 seek the truth in a case based on the law as His
20 Honor gives it to you. Now let me tell you
21 something about truth. There is truth and then
22 there is absolute truth. Absolute truth is what
23 you will be dealing with, because you will hear
24 some things in this courtroom. Some of them you
25 probably won't even believe. But you will be

1 called upon to develop among the 12 of you, what.
2 the facts are in this particular case. And so
3 what you will be determining will be based on the
4 circumstances. You will be determining what the
5 truth is.

6 Now I tell you that with respect to Mr.
7 Prosser's death, ain't nobody going to ever know.
8 You just will not know, unless you were standing
9 there. But your duty and your responsibility at
10 this time within the context of a criminal
11 prosecution is to find truth. And you have to
12 find that truth based on the facts as you find
13 them to be. And in this system, it is the
14 prosecution's responsibility to provide you with
15 truth sufficient to convince you beyond a
16 reasonable doubt, that the Defendant did in fact
17 commit the offense that he's charged with having
18 committed.

19 Now Ms. Barr told you about the offense of
20 murder. She told you about first degree burglary,
21 possession of a weapon during a violent crime, and
22 criminal conspiracy. Now let me just tell you
23 with respect to those criminal offenses, and His
24 Honor read to you from the indictment as it
25 relates to each one of those offenses. The

1 indictment itself has no evidentiary value. The
2 only thing that it is, it's a charging paper.
3 It's an information paper. It's means by which
4 the State of South Carolina gets before you a case
5 involving State versus in this case, a number of
6 different people: Cornelius McClary, Ms. Miller
7 and Ms. Jones.

8 Now if you notice, the only person that's
9 sitting at this table on trial today is Andre
10 Wallace. He is the Defendant. Now I will
11 guarantee you, you will hear about the others.
12 And, Ladies and gentlemen, with respect to, this
13 particular trial, irrelevant of what anybody else
14 may have done or anybody what you will hear today
15 have done, the law says now, here is the truth.
16 Here is one of those truths that I am going to
17 tell you about. The truth is, Andre Wallace right
18 now is presumed innocent with respect to this
19 prosecution. And His Honor will instruct you even
20 at the appropriate time after you have heard all
21 of the evidence, that Andre Wallace will remain
22 presumed innocent throughout the course of the
23 entire trial; even when you go in your jury room
24 and you start deliberating. That's what the law
25 says. And see that's why it's so important for us

1 to make certain that we have got 12 people that
2 are willing to seek truth and listen to the law,
3 and listen to truth as it's presented. That's the
4 truth.

5 Now irrespective of how much you might
6 disagree with what the law says, Ladies and
7 gentlemen, that's the law. And as jurors, you
8 have to be willing to abide by that. In addition
9 to that, in addition to being presumed innocent,
10 His Honor will instruct you that it is the burden
11 of proof, the burden of proof in this case is on
12 the prosecution. Andre Wallace doesn't have to
13 prove anything. He's presumed innocent. And the
14 prosecution must prove to you by a standard of
15 proof that's beyond a reasonable doubt.

16 In other words, at the end of the day if
17 the prosecution hasn't proven absolute truth from
18 which you can extract facts from, that you
19 conclude that they've proven to you beyond a
20 reasonable doubt each and every element of the
21 offense by which the Defendant is charged, you
22 must return a verdict and find him not guilty.
23 That's truth. Now notice I said, each element of
24 the offense. And I'm not going to get in to
25 articulating to you at this time what the elements

1 of all those offenses are. But I'm going to give
2 you an example. Now think for instance, the
3 defense of -- the offense of possession of a
4 weapon during a violent crime. That's exactly
5 what it means. It's means possession. Which can
6 easily be actual or constructive. But you must
7 have dominion and control over it. It must be a
8 weapon. It doesn't have to be a gun, but it can
9 be a weapon during a violent crime. And must have
10 possession of whatever that weapon is during the
11 commission of a crime, which is violent.

12 So you have got essentially three things
13 there, the component parts of possession of a
14 weapon during a violent crime. And I would
15 suggest to you that that approach applies to each
16 one of these criminal offenses. We'll talk about
17 that more at the appropriate time. But right now,
18 I just want to introduce you to the concept of
19 what you are dealing with. And His Honor will
20 instruct you that with respect to those elements,
21 each and every one has to be proven to your
22 satisfaction beyond a reasonable doubt. And you
23 all will have to agree that the prosecution has
24 met its burden of proof.

25 Now I am going to sit down now, and I am

1 not going to say anything else, because quite,
2 frankly, Ms. Barr talked about, and at least
3 briefly, about what you will hear. You know, I
4 think you heard this morning Arnold Schwarzenegger
5 got in trouble. And it is unfortunate prominent
6 people, because of a lot of things that we have
7 come to know as things that will get you in
8 serious trouble.

9 And I have known and I have seen over the
10 years that drugs will get you in trouble. Illicit
11 sex will get you in trouble. The wrong attitude
12 about money will get you in trouble. And I would
13 submit to you that if you draw and put those
14 things in a circle, 90 percent of the things that
15 come through this courtroom one way or another
16 touch on at least one of those three things. This
17 case is no different.

18 Now, I think that in this case with
19 respect to Mr. Andre Wallace, you will probably
20 hear that from the time he was arrested, he
21 willingly gave a voluntary statement concerning what
22 he knew about this case. He told the police the
23 people that were involved, and these are the
24 people that Ms. Barr made reference to earlier;
25 that I gave them my cell phone. I allowed them to

1 use my cell phone. And I even gave them a ride in
2 my car, but that's all I did. And I am not taking
3 responsibility for anything else. And that's
4 where he sits.

5 Now on behalf of Andre and his family, I
6 want to take this opportunity at this time to
7 thank you for your commitment to this jury
8 service. And I am sure, Ladies and gentlemen, at
9 the end of the day if you will pay attention to
10 the evidence in the case as you paid attention
11 thus far, this quest for this judicial system to
12 seek the truth in a case that's always difficult
13 for people to resolve, you will have discharged
14 your duties and responsibilities.

15 There's one thing I want you to remember
16 now with respect to proving a person guilty under
17 our law. Sometimes it's not just the evidence
18 that you produce, but it's also the lack of
19 evidence that ought to be produced to persuade and
20 cause you to be convinced in your mind beyond a
21 reasonable doubt, that the State has met it's
22 burden of proof. And that's what stands between
23 Andre Wallace and being convicted for a serious
24 crime or several serious crimes. But notice it
25 stands between, that's what we stand on. Thank

Ernest Prosser, IV-direct by Ms. Barr

1 you.

2 THE COURT: Thank you, Mr. Barr.

3 THE COURT: Ms. Barr, you can call your
4 first witness.

5 MS. BARR: We would call Mr. Ernest
6 Prosser.

7 Ernest Prosser, Being
8 first duly sworn, testified as follows:

9 Direct Examination by Ms. Barr:

10 Q Sir, State your name for the record for
11 me.

12 A Ernest William Prosser, IV.

13 Q And you live in Williamsburg County?

14 A Yes, ma'am.

15 Q And are you married?

16 A Yes, ma'am.

17 Q And your wife is in the courtroom with
18 you?

19 A Yes, ma'am.

20 Q Do you have any children.

21 A I do.

22 Q How many children do you have?

23 A Two. A little boy and a little girl.

24 Q And how old are they?

25 A The little boy is two. The little girl

Ernest Prosser, IV-direct by Ms. Barr

1 just turned 2 months.

2 Q Tell the Ladies and gentlemen what your
3 relationship was to Ernest Prosser, III?

4 A He is my father.

5 Q Okay. Now at the time of his passing, how
6 old was he?

7 A 54.

8 Q And when he was killed, where, what did he
9 call home? Where was his home address?

10 A

11 Q And that's here in Williamsburg County?

12 A Yes, ma'am.

13 Q How long had he lived at that address?

14 A Probably 2 years.

15 Q Now if you would, Mr. Prosser, kind of
16 give us, not long, but give us a little bit of
17 background information about your dad in terms of
18 what he did in the community and that sort of
19 thing.

20 A And he was a business man.

21 Q I need you to speak up in the microphone
22 for me, okay. Thanks.

23 A He was business man. Owned a truck stop.
24 Owned a farm; did hunting. As far I know, he had
25 no enemies. Everybody liked him. He would go out

Ernest Prosser, IV-direct by Ms. Barr

1 of his way, get up in the middle of the night to
2 help anybody whether he knew them or not.

3 Q You said he owned a truck stop. Is that
4 what we used to call, E-Z-E's?

5 A Yes, ma'am.

6 Q Is that off of Eastland?

7 A Yes, ma'am.

8 Q Okay.

9 A Old Lake City Highway.

10 Q Let's just go back to the morning or
11 afternoon of October 30th 2009, when you called
12 the police department. Do you remember that day
13 quite well?

14 A Yes, ma'am.

15 Q Tell us about when you arrived at your
16 father's house. And what was the reason why you
17 were going there.

18 A I hadn't talked to him all week. And I
19 was going by there to pick up some such that he
20 was cleaning out that was mine. And---

21 Q Now when you say stuff that he was
22 cleaning out that was yours, did you live with
23 your father for a period of time?

24 A I did.

25 Q Okay. Now do you remember the day of the

Ernest Prosser, IV-direct by Ms. Barr

1 week that you went to his house? If you don't,
2 that's fine.

3 A I don't.

4 Q You said that you hadn't talked to him in
5 a few days.

6 A Yes, ma'am.

7 Q Was that unusual?

8 A Yes, ma'am. We talked at least every two
9 days.

10 Q Okay. When you arrived at his house, tell
11 the ladies and gentlemen what happened.

12 A I got out. The screen door was closed.
13 The wooden door was open.

14 Q Are you talking about to the front or to
15 the---

16 A The back door.

17 Q ---rear of the house?

18 A The back door.

19 Q The back door. Now I'm sorry, the screen
20 door was closed but the wooden door was open.

21 A Yes, ma'am.

22 Q Would that have been unusual?

23 A Yes, ma'am. He kept all the doors closed,
24 pretty much all the time. Unless he was getting
25 ready to come out of it.

Ernest Prosser, IV-direct by Ms. Barr

1 Q Now what type of vehicle did your father
2 drive?

3 A A 2001 extended cab Ford Ranger.

4 Q Was the vehicle parked in the yard when
5 you got there?

6 A It was.

7 Q Were there any other vehicles in the yard
8 when you got there?

9 A No, ma'am.

10 Q When you arrived there, do you all
11 normally come in through the front door or the
12 back door?

13 A Back door.

14 Q Did you ever use the front door of the
15 house to go in and out, as far as you know?

16 A As far as I know; no, ma'am.

17 Q When you arrived, you parked in the back?

18 A Yes, ma'am.

19 Q When you approached the back door, did you
20 see any signs of forced entry into the house?

21 A No, ma'am.

22 Q When you came in the back door, you
23 noticed that the wooden door was open. Did you
24 call out to your father?

25 A I did.

Ernest Prosser, IV-direct by Ms. Barr

1 Q Was there any response?

2 A No, ma'am.

3 Q Tell us what happened as you entered the
4 house.

5 A As I entered the house, I saw boxes of
6 stuff that he had been cleaning out on the floor.
7 I called for him again; didn't hear anything. So
8 I proceeded to walk on to the front of the house.
9 And when I got to the den, I found him sitting on
10 the couch. I hollered his name. He didn't
11 respond. I went and tapped him on the knee. And
12 that's when I turned around and left.

13 Q Mr. Prosser, tell us the condition of your
14 father's body when you saw him sitting on the
15 couch.

16 A Bad. He was just sitting up right; head
17 down. Swollen. Face was blue and black in color.

18 Q He was dead.

19 A Yes, ma'am.

20 Q Okay. Now when you approached him and saw
21 his body, could you see obviously other than him
22 being swollen, could you see any visible signs of
23 injury to him? Could you tell what had caused his
24 death at that point?

25 A At that point; no, ma'am.

Ernest Prosser, IV-direct by Ms. Barr

1 Q After you left the house, what did you do?

2 A I went outside and called 911.

3 Q And---

4 A Well actually my wife took the phone from
5 me.

6 Q Your wife was with you?

7 A Yes, ma'am.

8 Q Did she come in to the residence with you?

9 A Not with me the first time. She went
10 back. She thought I might have been mistaken or
11 something.

12 Q So when you left out of the residence
13 after you saw your father, what did you tell your
14 wife?

15 A I told her he was dead.

16 Q And she went back in, I guess to see for
17 herself?

18 A Uh-huh. (Affirmative.) Her comment was:
19 "No, he's probably just sleeping."

20 Q Now why is it that your wife called the
21 police as opposed to you? Were you not able to?
22 I need you to respond affirmatively for the
23 record.

24 A No, ma'am.

25 Q Where is your wife in the courtroom? She

Ernest Prosser, IV-direct by Ms. Barr

1 has black sweater on?

2 A Black. Yes, ma'am.

3 Q Black jacket on.

4 A Uh-huh. (Affirmative.)

5 Q I need to show you some photos from the
6 scene. Can you come down off the witness stand
7 for me, please?

8 A Yes, ma'am.

9 (Whereupon, the witness steps down off the
10 witness stand.)

11 THE COURT: Ladies and Gentlemen, if you
12 are not able to see the screen, simply raise your
13 hand, and we will get her to move it. Ms. Barr,
14 you can get where you need to be.

15 Q I am going to publish what has been
16 admitted as State's Exhibit No. 1. Can you tell
17 the Ladies and Gentlemen of the jury what is
18 depicted in that particular photograph?

19 A The mail.

20 Q Okay.

21 A That's the mailbox and driveway going into
22 the residence.

23 THE COURT: Make sure he keeps his voice
24 up, Ms. Barr, so everybody can hear.

25 MS. BARR: Thank Your Honor.

Ernest Prosser, IV-direct by Ms. Barr

1 Q Sir, is this White Oak Road here?

2 A Yes, ma'am, it is.

3 Q And as it relates to where your father's
4 house, would it be back this way?

5 A Yes, ma'am.

6 Q I am going to publish what is State's
7 Exhibit No. 2. Tell the jury what is depicted in
8 that photograph.

9 A That's the residence that he stayed at.

10 Q Now you talked about the front door and
11 the back door. Does this show the front of the
12 house?

13 A Yes, ma'am, it does.

14 Q And we will get the pictures that are a
15 little bit descriptive later. But in terms of the
16 location of your father's bedroom, would it be on
17 this side of the house?

18 A Yes, ma'am, it was.

19 Q So if you are facing the house, it would
20 be to the left of the house?

21 A Yes, ma'am.

22 Q Explain to us what is depicted in State's
23 No. 3.

24 A That is the, looking at the front of the
25 house, the left side; that being his bedroom

Ernest Prosser, IV-direct by Ms. Barr

1 window.

2 Q Okay. Do you know whose truck this is
3 here?

4 A I think it was the sled truck.

5 Q Okay. Tell us about State's No. 4.

6 A That is standing in the front of the house
7 looking at White Oak Road and the driveway coming
8 in.

9 Q Okay, sir, this would be the driveway here
10 that you're talking about?

11 A Yes, ma'am.

12 Q And white Oak Road would be here; is that
13 correct?

14 A Uh-huh. (Affirmative.)

15 Q Make sure you say yes or no.

16 A Yes, ma'am.

17 Q That's fine. I will remind you from time
18 to time. That's okay. Tell us about State's
19 Exhibit No. 5.

20 A That's another picture of the driveway on
21 White Oak Road from the, it looks like the back
22 corner of the house.

23 Q Tell us about State's No. 11.

24 A That's the front of the house.

25 Q This is your dad's front door?

Ernest Prosser, IV-direct by Ms. Barr

1 A Yes, ma'am.

2 Q In terms of this vehicle, do you know
3 whose vehicle that is?

4 A That was the vehicle we were driving, me
5 and my wife.

6 Q State's Exhibit No. 12 is simply a closer
7 view of the front of the house?

8 A Yes, ma'am.

9 Q And in terms of how the house looked at
10 that time, what is that there? That object there,
11 is that some kind of dog house?

12 A Probably.

13 Q And your father owned a dog?

14 A Yes, ma'am, he did.

15 Q What kind of dog was it?

16 A It was half boxer, half, I don't know.

17 Q Okay, half you don't know. I got you.

18 Now Exhibit 13, tell the ladies and gentlemen of
19 the jury what is depicted in that particular
20 photograph.

21 A That is the back side of the house; that
22 being the bathroom window.

23 Q Okay.

24 A And that being a bedroom window.

25 Q Let me ask you that while we are on that.

Ernest Prosser, IV-direct by Ms. Barr

1 How many bedrooms were in the house?

2 A Three.

3 Q And were they all on the same side of the
4 house?

5 A Yes, ma'am.

6 Q And so they all would been on, if you're
7 facing the house, the left of the house, if you
8 are facing it.

9 A Uh-huh. (Affirmative.

10 Q Yes or---

11 A Yes, ma'am.

12 Q So all of the bedrooms would have been
13 here.

14 A Yes, ma'am.

15 Q How many baths did he have?

16 A One bath.

17 Q And that bathroom would be here.

18 A Yes, ma'am.

19 Q Tell us about State's No. 16.

20 A That is the other side of the house.

21 Q Now in terms of the front and the back,
22 the front of the residence would be here?

23 A Yes, ma'am.

24 Q Facing White Oak Road.

25 A Yes, ma'am.

Ernest Prosser, IV-direct by Ms. Barr

1 Q And this is the rear of the residence?

2 A Yes, ma'am.

3 Q And if you will, Mr. Prosser, tell us
4 about State's Exhibit No. 19.

5 A That's the back door and the back of the
6 house.

7 Q Now this picture was taken at a later
8 date. The day you walked into the house it didn't
9 look like this on this -- on that particular day,
10 did it?

11 A No, ma'am.

12 Q Now where would the kitchen have been, if
13 you can see on this photograph?

14 A That's the kitchen window.

15 Q Here?

16 A Yes, ma'am.

17 Q Now as it relates to the back door, how
18 would one have gained entry into your father's
19 house from the back door?

20 A It had a key pad deadbolt.

21 Q Okay.

22 A Enter four numbers and turn the knob and
23 it opened the deadbolt.

24 Q I am going to show you State's Exhibit No.
25 20. Is that a depiction of the rear of the house

Ernest Prosser, IV-direct by Ms. Barr

1 on the date that the murder was discovered?

2 A Yes, ma'am.

3 Q Now it appears on the back door that the
4 screen is torn. Is that how you remember it being
5 that day?

6 A Yes, ma'am.

7 Q Do you know whether it had always been
8 like that?

9 A Yes, ma'am, it had been like that for a
10 while.

11 Q I am going to publish State's Exhibit No.
12 21. Tell us about what is depicted in that
13 photograph.

14 A That's showing the key pad deadbolt on the
15 back door.

16 Q Would that be here?

17 A Yes, ma'am.

18 Q And is that what you talked about you had
19 to press the four numbers to gain entry?

20 A Yes, ma'am.

21 Q I am going to show you State's Exhibit No.
22 23. Can you tell us what is depicted in that
23 photograph, please, sir.

24 A That is the front living room.

25 Q Okay.

Ernest Prosser, IV-direct by Ms. Barr

1 A And that's where I found my father
2 sitting on the couch.

3 Q Mr. Prosser, this is the front door?

4 A Yes, ma'am.

5 Q Now using the pointer, I know you can't
6 see it in this picture. But just to give us some
7 idea of the setup of the house, where would Mr.
8 Prosser's bedroom have been?

9 A It would have been right here, right off
10 of this room.

11 Q What is this object there in that
12 photograph?

13 A A TV.

14 Q And what room would be here behind this
15 wall over there?

16 A That was the dining room.

17 Q And in terms of how the picture is here,
18 is this the exact location that your father would
19 have been in when you came in the house?

20 A Yes, ma'am.

21 Q Now, Mr. Prosser, when you came and saw
22 your dad and you left out of the house, did you
23 go back in at some point later in terms of
24 viewing; after police officers? And during their
25 investigation you went back into the house?

Ernest Prosser, IV-direct by Ms. Barr

1 A After they had already got him out and
2 everything; yes, ma'am.

3 Q Did you see any signs of any blood inside
4 the residence?

5 A Yes, ma'am.

6 Q Can you kind of tell us where you saw
7 blood in the residence?

8 A There was blood saturated in the carpet in
9 his bedroom, on his bed, splattered all over the
10 walls. It left his bedroom. It went down the
11 hall to the back of the house. There was a little
12 bit on the back doorknob. There was a book shelf
13 half way, where apparently he had fell down. And
14 there was bloody handprints pulling where he had
15 pulled up on it. And then there was a little bit
16 of blood right around the table where he was
17 found.

18 Q What about in the kitchen on the
19 refrigerator. Do you remember seeing anything?

20 A Yes, ma'am. There were handprints and
21 spots of blood all over the refrigerator.

22 Q Now, Mr. Prosser, did your father own any
23 firearms?

24 A Yes, ma'am.

25 Q Tell us about those.

Ernest Prosser, IV-direct by Ms. Barr

1 A He owned a Smith & Wesson 40 handgun; had
2 numerous shotguns and probably two or three
3 rifles.

4 Q Was he a hunter?

5 A Yes, ma'am.

6 Q I asked you for clarity, State's Exhibit
7 25. Can you tell us where your dad's bedroom
8 would be in that photograph?

9 A That's the doorway going into his bedroom.

10 Q And the sofa he was found would be back
11 this way?

12 A Yes, ma'am.

13 Q Tell us about State's Exhibit No. 26,
14 please.

15 A That would be his bedroom door on that
16 side. And that's the center bedroom. And that's
17 the back bedroom. And that's the refrigerator.

18 Q Yes, sir. So can we see the bathroom from
19 this angle in this photograph?

20 A The bathroom door is on the other side of
21 this refrigerator.

22 Q Did your father have a nickname?

23 A Not that I recall.

24 Q Did anybody ever call him Easy?

25 A That's what everybody called me in high

Ernest Prosser, IV-direct by Ms. Barr

1 school.

2 Q Let me show you State's Exhibit No. 27,
3 and let the ladies and gentlemen of the jury, kind
4 of know what that depicts.

5 A That's the front door to the house, the
6 TV. His bedroom door would be right here.

7 Q Okay. I will publish State's Exhibit No.
8 28. You indicated that he was hunter. We've got
9 the deer up here on the wall.

10 A Yes, ma'am.

11 Q I am going to ask you about something in
12 the photograph. These pictures up here that's on
13 top of this shelf.

14 A Yes, ma'am.

15 Q Who are those pictures of?

16 A That picture is my graduating class
17 picture.

18 Q Yes, sir.

19 A This picture is a picture of me and my
20 sister when we were 3 and 4.

21 Q Tell us about State's Exhibit No. 30.

22 A That's the gun rack shelf.

23 Q Where is the gun rack?

24 A That's the gun rack.

25 Q Okay.

Ernest Prosser, IV-direct by Ms. Barr

1 A Which he didn't keep many guns in it. So
2 it didn't have a lock or anything. So it was
3 easy, he kept in the closet and hidden. That is
4 the picture of me and my sister when we were
5 little. Closer up picture of my class picture.

6 Q Tell us what is behind that shelf here?

7 A That is the dining room.

8 Q State's Exhibit No. 29, is this how you
9 saw your father?

10 A Yes, ma'am.

11 Q State's Exhibit No. 32 where is this of
12 you?

13 A Ma'am?

14 Q Where is this of you from, State's Exhibit
15 No. 32?

16 A This is taken from the dining room -- edge
17 of the dining room. The refrigerator would be
18 right behind where they were taking this picture.
19 The front door, the dining room table going into
20 the living room.

21 Q When you talk about the picture of you and
22 your sister, is that reflected in State's Exhibit
23 No. 32?

24 A Yes, ma'am, it is.

25 Q So this is you and this is your sister?

Ernest Prosser, IV-direct by Ms. Barr

1 A Yes, ma'am.

2 Q Did you notice any damage to that
3 particular photograph?

4 A Yes, ma'am.

5 Q Tell the jury about that.

6 A It had a couple of pellet holes through
7 it.

8 Q Okay. Point to the jury where the pellet
9 holes would be.

10 A That's one there. And the glare, I can't
11 see. Yup, that's it right there.

12 Q Now what about, it looks like there is a
13 hole there?

14 A Yes, ma'am. There were holes there, and
15 there were holes in this board underneath the
16 bottom of it.

17 Q Now, E, did you visit with your father
18 frequently in his home before he was killed?

19 A Yes, ma'am.

20 Q Did you notice any damage to the
21 photographs or to the wall before that day?

22 A No, ma'am.

23 Q Now you said it looked like pellets?

24 A Yes, ma'am.

25 Q Are you a hunter as well?

Ernest Prosser, IV-direct by Ms. Barr

1 A Yes, ma'am.

2 Q You are familiar with firearms, rifles,
3 shotguns and that sort of thing?

4 A Yes, ma'am.

5 Q If you will, tell us about State's Exhibit
6 No. 33.

7 A That is the doorway going into his
8 bedroom. That was where we found the big puddle
9 of blood. Blood on the dresser. There was blood
10 all over the wall inside his bedroom, and on the
11 bed.

12 Q Tell us about State's Exhibit No. 35.

13 A This is taken from against the other wall,
14 the side wall.. That was the dresser. And that
15 was blood. There is the blood on the wall. And
16 that was his bed.

17 Q So just for clarity, that picture is taken
18 from an angle as if you are standing inside the
19 bedroom looking out?

20 A Looking out; yes, ma'am.

21 Q So the doorway to his bedroom would be
22 there?

23 A Yes, ma'am.

24 Q Now behind this number 4 marker, there
25 appears to be a firearm.

Ernest Prosser, IV-direct by Ms. Barr

1 A Yes, ma'am.

2 Q Does that look like the handgun?

3 A That's his handgun.

4 Q That's your dad's handgun?

5 A Yes, ma'am.

6 Q Now did myself along with law enforcement,
7 meet you at the residence of your father in
8 anticipation of trial some weeks ago?

9 A Yes, ma'am.

10 Q And did you show myself other signs of
11 that firearm that had been used at the residence?

12 A Yes, ma'am.

13 Q I am going to publish what has been
14 admitted as State's Exhibit No. 38. Tell the
15 ladies and gentlemen of the jury what is depicted
16 in that photograph.

17 A There is a shot that was hit right at the
18 front door. Left of the front door.

19 Q Now, Mr. Prosser, prior to the day that
20 your father was killed, have you ever seen that
21 there before?

22 A No, ma'am.

23 Q I am going to publish State's Exhibit No.
24 41. Is that the rear of the front door, from the
25 bottom of the front door?

Ernest Prosser, IV-direct by Ms. Barr

1 A The bottom left corner of the front door.

2 Q Tell the ladies and gentlemen of the jury
3 what that photograph shows.

4 A That is another bullet hole that was in
5 the front of the house that we....

6 Q Now again, prior to the date that your
7 father was killed, did you notice that there?

8 A No, ma'am.

9 Q State's Exhibit No. 43, that is a closer
10 view of what you just talked with us about?

11 A Yes, ma'am.

12 Q That's the bottom of the door?

13 A Yes, ma'am.

14 Q Mr. Prosser, tell us about State's 44.

15 A Looking at the front of the house, that is
16 the left corner. And that is another bullet hole
17 that we found when we were out there.

18 Q Tell us about State's Exhibit No. 47.

19 A That is the refrigerator, and that is the
20 refrigerator door.

21 Q And what does it show on the refrigerator
22 and on the door?

23 A Blood.

24 Q Sir, tell us about, beg the court's
25 indulgence. Is that 51 or 57?

Ernest Prosser, IV-direct by Ms. Barr

1 THE REPORTER: 51.

2 Q Tell us about State's 51.

3 A That is the shower in the bathroom, the
4 toilet and the bathroom window that we pointed out
5 earlier, from the outside of the house.

6 Q That's right on the edge of the house. If
7 you're facing the house, the house would be on
8 the?

9 A On the left corner.

10 Q Yes, sir. In terms of your dad's bedroom
11 and the frame, the door frame, is sort of like in
12 terms of like the courthouse? You see how it has
13 frames around the door?

14 A Yes, ma'am.

15 Q And were you also able to see signs of;
16 that firearms were used inside your dad's bedroom?

17 A Yes, ma'am.

18 Q Tell us about -- tell us about State's
19 Exhibit No. 52.

20 A Those were pellet marks in the concrete.
21 And that being the front wooden frame around the
22 door.

23 Q Yes, sir. Tell us about State's 54. Wait
24 a minute.

25 A Pellet marks in the concrete.

Ernest Prosser, IV-direct by Ms. Barr

1 Q Okay. Is that another one up there?

2 A Yes, sir.

3 Q Now for perspective, tell the ladies and
4 gentlemen of the jury the angle that that
5 photograph was taken from.

6 A This is inside the bedroom.

7 Q Okay.

8 A This is the door frame coming into the
9 bedroom and this was the living room area where he
10 was found.

11 Q Okay. I am going to publish State's
12 Exhibits No. 56. Tell us what that is also.

13 A That is his driver's license.

14 Q You can take a seat.

15 A Back up?

16 Q Yes, sir.

17 (Whereupon, the witness resumes the
18 witness stand.)

19 Q Mr. Prosser, prior to your father's
20 killing, did you know the Defendant Andre Wallace?

21 A No, ma'am.

22 Q What about another individual who was
23 charged, Cornelius McClary, did you know him?

24 A No, ma'am.

25 Q What about Tiffany Jones?

Ernest Prosser, IV-direct by Ms. Barr

1 A No, ma'am.

2 Q What about Ronetta Miller?

3 A No, sir.

4 Q When law enforcement came out to

5 investigate, did they ask you whether or not your

6 father had any known enemies that you were aware

7 of?

8 A I don't remember.

9 Q At the time that you discovered your

10 father's body, did you have any idea who did that

11 to him?

12 A No, ma'am.

13 MS. BARR: I beg the Court's indulgence.

14 Mr. Prosser, thank you. That's all the questions

15 that I have. Please answer any questions that

16 defense counsel may have.

17 THE COURT: Mr. Barr.

18 MR. BARR: Thank you, judge.

19 Cross Examination by Mr. Barr:

20 Q Mr. Prosser, I have just got a few

21 questions. First of all, let me express my

22 sincere condolences for your father. As I said

23 earlier, I have known since I was a child. We

24 grew up in the same neighborhood.

25 Q Now, I think it was Exhibit Nos. 46, I

Ernest Prosser IV-cross by Mr. Barr

1 believe. You say that you are a hunter?

2 A Yes, sir.

3 Q Hunt deer?

4 A Deer, duck, doves.

5 Q Uh-huh. (Affirmative.) You hunt birds
6 and deer.

7 A Yes, sir.

8 Q And of course you hunt deer with buck
9 shots? Rifle?

10 A Rifle; yes, sir.

11 Q Still hunt.

12 A Yes, sir.

13 Q You don't run deer with dogs.

14 A I have been once or twice and I didn't
15 like it.

16 Q Does your father or did your father run
17 deer with dogs?

18 A He did a few times, but he prefers to
19 still hunt.

20 Q You hunt some deer and you hunt birds.

21 A Yes, sir.

22 Q This is State's Exhibit No. 44.

23 A Yes, sir.

24 Q That Ms. Barr just had you look at.

25 A Yes, sir.

Ernest Prosser IV-cross by Mr. Barr

1 Q Now you say that you hunt deer. You run
2 deer, but you don't like that. I don't like to
3 hunt deer at all. You -- but you hunt ducks?

4 A Yes, sir.

5 Q And do you hunt quail?

6 A I do sometimes.

7 Q You hunt doves?

8 A Yes, sir.

9 Q Now and how long have you been hunting?

10 A Since 89.

11 Q I know your father, you were probably born
12 with hunting.

13 A Yes, sir.

14 Q Now when you hunt quail, about what load
15 do you use?

16 A Seven and a half.

17 Q Bird shot.

18 A Bird shot; yes, sir.

19 Q Now based on your knowledge and your
20 familiarity with guns and firearms, and I take it,
21 you've shown that picture to Ms. -- what's
22 depicted in that photograph to Ms. Barr. And you
23 told her that you thought that it had been made by
24 some type of bullet.

25 A Yes, sir.

Ernest Prosser IV-cross by Mr. Barr

1 Q You think bird shot would do that?

2 A No, sir.

3 Q Bird shot wouldn't do that; would it?

4 A No, sir.

5 Q Probably buck shot or some other kind of
6 shot. Or perhaps maybe not even buck shot.

7 A If it was buckshot it should have been
8 more holes.

9 Q Should have been more holes.

10 A Yes, sir.

11 Q That's the same thing I thought.

12 MS. BARR: Objection, Your Honor.

13 THE COURT: Sustained.

14 MS. BARR: Move to strike.

15 THE COURT: The jury is to disregard
16 Mr. Barr's statement.

17 Q Well in fact I think with respect to 44,
18 44 as well as 43, there are no bird shots in that.

19 A No, sir.

20 Q You were asked about some of your
21 father's -- well, let's put it this way. Ms. Barr
22 asked you about in particular, two of the
23 co-defendants in this case, Ronetta Miller, better
24 known as Net, and Tiffany Jones.

25 A Yes, sir.

Ernest Prosser IV-cross by Mr. Barr

1 Q Now Ms. Tiffany Jones is the young lady
2 wit the plaid shirt on. Have you seen your father
3 with her?

4 A No, sir.

5 Q Do know of any reason why she would have
6 access to your father's house by way of the
7 combination to that key pad that you use to get
8 into his house?

9 A No, sir, I sure don't. I would like to
10 know myself.

11 Q The woman sitting behind her, another
12 co-defendant. We call her Net. Have you even
13 seen her before?

14 A No, sir.

15 Q And with respect to any kind of
16 association or relationships or acquaintances; in
17 as much as, you had never seen them or either when
18 I say them, I am talking specially about Ms. Jones
19 and Ms. Miller. You did not know them to be any
20 of his acquaintances?

21 A No, sir.

22 MR. BARR: Thank you, sir. I have nothing
23 further.

24 THE COURT: Redirect?

25 MS. BARR: No, Your Honor.

Ernest Prosser IV-cross by Mr. Barr

1 THE COURT: You can step down. Everybody
2 on the jury okay? Anybody need to take a break,
3 just raise your hand. We'll take a break for
4 about 10 minutes. Ladies and gentlemen, it's 10
5 till 12 according to that clock. We'll start
6 back promptly at noon. Of course, you may not
7 discuss this case at all. Thank you.

8 (Whereupon, the Court takes a short
9 recess.)

10 MS. BARR: Your Honor, we have marked
11 without objection, State's Exhibit Nos. 57 through
12 71.

13 THE COURT: Is that right, Mr. Barr?

14 MS. BARR: Yes, sir.

15 THE COURT: So 1 through 71 are in without
16 objection. Is the Defendant ready?

17 MR. BARR: Yes, sir.

18 THE COURT: Okay, it's about 10 after. Or
19 it is 10 after 12. Ms. Barr, what do you think
20 you want to accomplish before lunch?

21 MS. BARR: And, Judge, that was one of the
22 things I want to. We are prepared to proceed with
23 our next witness. It's going to be a
24 co-defendant. So I imagine that between her
25 direct examination and cross examination, it will

Ernest Prosser IV-cross by Mr. Barr

1 be lengthy. So I will do whatever the court wants
2 to do.

3 THE COURT: Mr. Barr, do you have a
4 problem with separating the direct from cross if
5 her direct goes anymore than 30 minutes or so?

6 MR. BARR: Judge, I would prefer we do it
7 together.

8 THE COURT: We will just have to play it
9 by ear. Okay. We are looking at 2:45 after
10 lunch. Okay. Mr. Ravenel will be foreperson.
11 And I noticed the two alternates were seated among
12 the jury. It doesn't matter. But however you
13 might handle that is up to you. You may bring the
14 jury in.

15 (Whereupon, the following takes place
16 within the presence of the jury.)

17 THE COURT: Mr. Ravenel, I have appointed
18 you as foreperson of the jury. That simply means
19 that you will spokesperson for the jury should any
20 concerns arise during the trial. Also if and
21 during of course of deliberations you will
22 preside over that. And you will be responsible
23 for completing the verdict form and making sure
24 the verdict is unanimous.

25 THE COURT: Mr. Barr, you can call your

Ernest Prosser IV-cross by Mr. Barr

1 next witness.

2 MS. BARR: Please the court, we would call
3 Ronetta Miller.

4 MR. BARR: Your Honor, may we approach the
5 bench?

6 THE COURT: Yes, sir.

7 (Whereupon, the attorneys approach the
8 bench and confer with judge.)

9 THE COURT: Ladies and gentlemen what we
10 are going to do at this point, and I'm making this
11 call after having conferred with the lawyers.
12 They tell me that the next witness is going to
13 take an extended period of time for direct
14 examination and cross examination. That would
15 necessarily get us up to well past 2:00 o'clock.
16 And what I am going to do is go ahead and break
17 for lunch at this point, and ask you to be in your
18 jury room at 2:15. That's longer than normal, but
19 there's another case I have to contend with. And
20 I have to have a hearing in that case. The
21 lawyers assure me it will take no longer than 10
22 minutes.

23 I will excuse you for lunch now. I want
24 you to be back in your jury room at 2:15. Please
25 be the best you can not to be late. We will start

Ernest Prosser IV-cross by Mr. Barr

1 at that time. I want everything at my disposal to
2 start promptly at that time.

3 Of course, during the lunch break you may
4 not discuss the case. You may not talk about it
5 with anyone. See you back at 2:15.

6 (Whereupon, the court dismisses jury for
7 lunch.)

8 THE COURT: We will do the best we can to
9 avoid dividing up direct and cross. I will see
10 you all back at 2:15.

11 (Photographs marked State's Exhibit Nos.
12 72 through 83 into evidence.)

13 THE COURT: You may bring the jury.

14 (Whereupon, the following takes place
15 within the presence of the jury.)

16 THE COURT: Thank you for your patience.
17 The hearing took just a tad bit longer than I
18 thought it would. And then we had to get
19 everybody reassembled in their proper places. And
20 we are now ready to move forward at this time.

21 MS. BARR: We would call Ronetta Miller.

22 Ronetta Miller, being first duly
23 sworn, testified as follows:

24 Direct Examination by Ms. Barr:

25 Q Ms. Miller, State your full name for the

Ernest Prosser IV-cross by Mr. Barr

1 record.

2 A Ronetta Miller.

3 Q And you live here in Williamsburg County?

4 A Yes.

5 Q How old are you?

6 A 20.

7 Q How long have you lived in Williamsburg
8 County?

9 A About 5 or 6 years.

10 Q Are you married?

11 A No.

12 Q Where did you go to school? High school?

13 A Kingstree Senior High.

14 Q Did you finish?

15 A No.

16 Q What grades did you stop at?

17 A The 11th.

18 Q Do you have any children?

19 A Yes.

20 Q How many children do you have?

21 A One.

22 Q And how old is your child?

23 A One.

24 Q And Ms. Miller, you obviously, you know,
25 why we are here.

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q You were arrested in connection with the
3 burglary and murder of Ernest Prosser, III, is
4 that correct?

5 A Yes.

6 Q And the shooting happened in October of
7 2009?

8 A Yes, sir.

9 Q I need you to speak up nice and clear for
10 me. How long did you know Mr. Prosser prior to
11 his death?

12 A I had known him for like 2 or 3 years
13 prior, through my dad.

14 Q Okay.

15 A I didn't know him other than that.

16 Q Now, ma'am, on yesterday, you entered a
17 guilty plea to the burglary of Mr. Prosser's home;
18 is that correct?

19 A Yes.

20 Q And you also entered a guilty plea to
21 criminal conspiracy; is that correct?

22 A Yes.

23 Q That charge related to planning the
24 burglary of Mr. Prosser's home.

25 A Yes.

Ronetta Miller-direct by Ms. Barr

1 Q Now you are awaiting sentencing in
2 connection with those guilty pleas; is that
3 correct?

4 A Yes, I am.

5 Q Ms. Miller, do you know the Defendant
6 Andre Wallace?

7 A Yes.

8 Q This gentleman here?

9 A Yes.

10 Q Tell the jury how long you have known him.

11 A A couple of days.

12 Q A couple of days as of today's date?

13 A No, I have known him prior to this
14 incident like 3 days or 4 days before that. I
15 don't know him personally.

16 Q How is it that you came to know him a
17 couple of days before what you call the incident
18 before Mr. Prosser was killed? How did you know
19 him?

20 A I knew him through one of my friends.

21 Q That's friend's name is what?

22 A Tiffany.

23 Q Tiffany Jones?

24 A Yes.

25 Q Is she also seated in the courtroom?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Now tell the jury, you had a romantic
3 relationship with Tiffany Jones?

4 A Yes.

5 Q And how long had the two of you been
6 seeing each other before Mr. Prosser was killed?

7 A About 8 months, 7 months.

8 Q Now you indicated that you have a child?

9 A Yes.

10 Q When was your child born?

11 A of .

12 Q of . So a little over 2 months
13 before Mr. Prosser was killed?

14 A Yes.

15 Q Now were there any complications related
16 to your child birth?

17 A Yes.

18 Q I need you to speak up. Tell the jury
19 about the complications related to your child
20 birth.

21 A During my cesarean, I was cut too deep,
22 which made me get into a State of shock on the
23 table. And I lost a series of blood. So they had
24 to perform an emergency hysterectomy. Which is to
25 take everything out of me. And during that, they

Ronetta Miller-direct by Ms. Barr

1 cut my kidney in half.

2 Q Do during the process where you were
3 getting the emergency hysterectomy where your
4 reproductive organs were removed.

5 A Yes.

6 Q The doctors cut your kidneys in half?

7 A Yes.

8 Q What happened as a result of you having
9 your kidneys cut in half?

10 A I was just out of it. I am sick.

11 Q Okay. Where were you hospitalized?

12 A I had my child in Manning. But I was
13 hospitalized for a couple of days in Manning.
14 Then I was in Columbia. From Columbia, I went to
15 Charleston.

16 Q MUSC?

17 A Yes, ma'am.

18 Q How long were you at MUSC?

19 A Just for a couple of days until I got
20 better.

21 Q Total, how long were you in the hospital?

22 A I was in the hospital since September 1st
23 or 2nd.

24 Q So you were in the hospital about a month?

25 A Uh-huh. (Affirmative.)

Ronetta Miller-direct by Ms. Barr

1 Q Now as a result of you having the injury
2 to your kidney, were you required to wear what we
3 call the colostomy bag?

4 A Yes.

5 Q Tell the jury what that is.

6 A It's a bag to hold the urine or the feces
7 that can't come out of you, so it will go directly
8 in the bag.

9 Q How long did you wear that?

10 A I wore it for like 6 or 7 months.

11 Q At the time that Mr. Prosser was killed,
12 were you wearing the colostomy bag?

13 A Yes.

14 Q Before the night of the incident, have you
15 ever been to Mr. Prosser's home?

16 A Yes.

17 Q How many times before the night he was
18 killed, have you been to his home?

19 A Maybe 3.

20 Q When you went there, were you going alone,
21 or did you go with somebody?

22 A I always went with somebody.

23 Q Who did you go with?

24 A Tiffany.

25 Q Did You ever go by yourself.

Ronetta Miller-direct by Ms. Barr

1 A No, ma'am.

2 Q Now did you know whether or not Mr.

3 Prosser had weapons?

4 A Yes.

5 Q Have you seen the guns inside his home?

6 A I've seen them, yes.

7 Q Okay. I want to take you back to the day

8 this all happened. You were with Tiffany Jones

9 that day?

10 A That night?

11 Q Yes.

12 A That night, yes.

13 Q Tell me about how the conversation came up

14 to go to Mr. Prosser's home. Well first of all

15 before you do that, other than Tiffany Jones was

16 there anyone else with you that night?

17 A Cornelius and Andre.

18 Q Cornelius. What's his last name?

19 A McClary.

20 Q McClary? Now did you know him

21 personally?

22 A No.

23 Q Had you met him before the night that this

24 all went down?

25 A Yes.

Ronetta Miller-direct by Ms. Barr

1 Q Cornelius you had?

2 A Yes.

3 Q What do you call Cornelius?

4 A What do I call him?

5 Q Yeah, what's his nickname?

6 A Trell.

7 Q Trell. Okay. Now you indicated that you
8 were also with Andre Wallace; is that correct?

9 A Yes.

10 Q And what do you call him? What's his
11 nickname?

12 A Dre.

13 Q You call him Dre. Ms. Miller, is there
14 any doubt that the individual who was with you
15 that night when you all were planning this was the
16 Defendant Andre Wallace? No doubt in your mind?

17 A Yes.

18 Q It was him. Tell me where you were and
19 how it was that Tiffany or Andre or McClary came
20 to you and how this discussion took place.

21 A We were at my house.

22 Q When you say, "We," tell us who we are.

23 A Me, Tiffany, Andre and Cornelius was at my
24 house.

25 Q How did you all get to your house? Were

Ronetta Miller-direct by Ms. Barr

1 you already there and they came? Or did you all
2 meet somewhere and come to your house? How did
3 that come about?

4 A I was actually over in the next apartment
5 complex, and I saw Andre and Cornelius.

6 Q And where was that? What's the name of
7 that apartment complex? Where is it located?

8 A It's on Main Street, but I live on Brooks
9 Street.

10 Q Okay. Go ahead.

11 A And I walked to my house, and they drove
12 to my house.

13 Q When you say they, who?

14 A Andre and Cornelius rode in the car to my
15 house. And me and Tiffany walked to my house.

16 Q Okay. Go ahead. What happened?

17 A And we just began smoking?

18 Q What were you smoking.

19 A Marijuana.

20 Q Who all was smoking marijuana?

21 A Everybody. All of us.

22 Q The four of you?

23 A Yes, sir.

24 Q Please continue.

25 A And I don't know how the conversation came

Ronetta Miller-direct by Ms. Barr

1 about, but I know we just began talking about
2 Mr. Prosser..

3 Q Okay. What were you all saying about
4 Mr. Prosser?

5 A Planning. They was -- we were just
6 basically planning on what we were going to do
7 that night.

8 Q Okay. Ms. Miller, I wasn't there
9 obviously, so you are going to have to tell me.
10 What did you all plan to do that night?

11 A To go his home and take whatever it was
12 that we had wanted, and leave.

13 Q Okay. Now who came up with this idea?

14 A Tiffany.

15 Q Okay. Now do you know whether or not
16 Tiffany was friends with Mr. Prosser?

17 A Yes, sir.

18 Q You indicated that you had been at his
19 house at least three times before he was killed;
20 right?

21 A Yes.

22 Q You saw that he owned firearms at his
23 house?

24 A Yes.

25 Q Did Tiffany also see the firearms in his

Ronetta Miller-direct by Ms. Barr

1 house?

2 A Yes.

3 Q Tell me about the planning. Where did you
4 all first start talking about robbing Mr. Prosser?

5 A At my home.

6 Q Who was a part of that discussion?

7 A Me, Tiffany, Andre and Cornelius.

8 Q In terms of the planning, who was supposed
9 to do what?

10 A I was supposed to go in there and just
11 basically distract him and talk to him.

12 Q Okay.

13 A While Andre and Cornelius go in there, and
14 take his belongings.

15 Q How were you supposed to distract him?
16 What were you supposed to do to distract him?

17 A Anything.

18 Q Do you know whether or not Mr. Prosser had
19 an interest in you, or liked you or was fond of
20 you in any way?

21 A I knew from what he said, that he had like
22 me, but I didn't take him serious.

23 Q When you all were in the car, and talked
24 about the planning of the robbery and who would do
25 what, were you all, did you all kind of talk about

Ronetta Miller-direct by Ms. Barr

1 the fact that Mr. Prosser had access to firearms;
2 that he actually owned them and kept them in his
3 house?

4 A Not that recall, no.

5 Q Was there any concern among you or
6 Mr. Wallace or any of the other two co-defendants
7 that, you know, we are planning to go in and rob
8 this guy and he has guns?

9 A No.

10 Q Did Mr. Wallace say anything about the
11 fact that he has guns inside the house?

12 A No.

13 Q Did he seem to be worried he had guns in
14 the house? Mr. Wallace I mean.

15 A No.

16 Q When you all decided that you were going
17 to do this, how did you notify Mr. Prosser?

18 A I called him.

19 Q Okay. And tell me about the conversation
20 you had with him.

21 A I told him that I was going to come to his
22 house, and come over there and just chill with
23 him.

24 Q Okay. Now was that the original plan for
25 you to come to his house?

Ronetta Miller-direct by Ms. Barr

1 A No.

2 Q What was the original plan?

3 A For him to come to me, to my house.

4 Q You all were trying to get him out of the
5 house?

6 A Yes, ma'am.

7 Q So the original plan was for you to get
8 him out of the house and you all rob him while he
9 was away from the house?

10 A Originally---

11 MR. BARR: Your Honor, ordinarily, but you
12 all and you.

13 THE COURT: Objection is sustained. Just
14 clarify.

15 MS. BARR: Yes, sir.

16 THE COURT: That's fine, go ahead.

17 MS. BARR: Thank you.

18 Q Ms. Miller, what was the original plan as
19 it related to Mr. Prosser?

20 A For me to call him and tell him to come to
21 my house.

22 Q Now in terms of that being the plan, who
23 all was a part of that plan?

24 A Me, Tiffany, Andre and Cornelius.

25 Q Now did you have a way to call him at this

Ronetta Miller-direct by Ms. Barr

1 time?

2 A On somebody else's phone.

3 Q Who is somebody's else phone did you call
4 him off of?

5 A Andre.

6 Q Now did you have a cell phone?

7 A I had one, but I didn't have it at the
8 time.

9 Q At that time.

10 A At the time.

11 Q Now when you say the plan was to call off
12 of Andre's phone, was it a land line phone or a
13 cell phone?

14 A A cell phone.

15 Q Did you in fact call Mr. Prosser off of
16 Andre's phone?

17 A Yes.

18 Q The first time you called him were you
19 able to reach him?

20 A I can't recall if it was the first or
21 second time. But I know like from where he stay
22 in the country, he didn't have much of a signal.

23 Q Now did Mr. Prosser have a land line phone
24 inside his house?

25 A To my knowledge, no.

Ronetta Miller-direct by Ms. Barr

1 Q You were aware that he had a cell phone
2 though.

3 A Yes.

4 Q And do you recall what his cell phone
5 number was?

6 A 372-1147.

7 Q I am going to hand you what has been
8 admitted as State's Exhibit 71. And this is a
9 cell phone record from Mr. Prosser's phone. Does
10 it indicate to you what his cell phone number was?

11 A Yes.

12 Q Okay. Can you read that?

13 A 372-1147.

14 Q And that's in the name of Elizabeth
15 Prosser; is that correct?

16 A Yes.

17 Q Do you recall by any chance, the number,
18 the cell phone number of the telephone that
19 Mr Wallace was using that night?

20 A No.

21 Q Now you said that you're not sure whether
22 you called him one or two times. But the first
23 time that you spoke with him, what did he say to
24 you?

25 A He told me he was unable to come to me,

Ronetta Miller-direct by Ms. Barr

1 because he was drinking. And he don't drink and
2 drive.

3 Q Did he tell you about a -- the reason why
4 he had been drinking?

5 MR. BARR: Your Honor, this is hearsay.

6 THE COURT: Ms. Barr.

7 MS. BARR: It is not being offered for the
8 truth of the matter asserted, Judge.

9 THE COURT: You all come up, please.

10 (Whereupon, the attorneys confer with
11 judge.)

12 THE COURT: You need to restate the
13 question.

14 Q Did he tell you why he had been drinking?

15 A I think it was his birthday. Or his
16 birthday was a couple of days before that.

17 Q In any event, he said he was not going to
18 come out and pick you up?

19 A Yes.

20 Q Then what was the conversation after he
21 refused to come and pick you up? What did you
22 say?

23 A Okay.

24 Q Okay. Did you have another conversation
25 with him, given the fact that the original plan

Ronetta Miller-direct by Ms. Barr

1 was to get him out, and he wouldn't come out?

2 A After I hung up, I called him back and
3 tell him I would just come to him.

4 Q Did anybody tell you to call him back?

5 A Yes.

6 Q Who?

7 A I can't recall who. But I know I was told
8 to call him back.

9 Q You indicated that you were with three
10 people that night, and that one of those three
11 people told you to go call him back?

12 A Yes.

13 Q Did you in fact call him back?

14 A Yes.

15 Q Tell us about that conversation.

16 A I basically called him back to tell him I
17 would come to him.

18 Q Okay. And what did he say?

19 A Okay.

20 Q And did you in fact go to his house?

21 A Yes.

22 Q Now on the route to his house, did you see
23 anyone with a firearm inside the vehicle?

24 A No.

25 Q How did you get to his house?

Ronetta Miller-direct by Ms. Barr

- 1 A I rode with Andre.
- 2 Q Anybody else in the vehicle?
- 3 A Tiffany and Cornelius.
- 4 Q Who was driving the vehicle?
- 5 A Andre.
- 6 Q And what type of vehicle was it?
- 7 A I don't even know.
- 8 Q Do you remember the color of it?
- 9 A Like grayish, bluish, I think.
- 10 Q You said Mr. Wallace was driving the
- 11 vehicle?
- 12 A Yes.
- 13 Q Who was in the front passenger seat on the
- 14 way to Mr. Prosser's house?
- 15 A Cornelius.
- 16 Q Who was in back seat?
- 17 A Me and Tiffany.
- 18 Q Now were you behind the passenger
- 19 Mr. McClary, or were you behind the driver,
- 20 Mr. Wallace?
- 21 A I was sitting behind Cornelius.
- 22 Q Now on the way to Mr. Prosser's house, was
- 23 it daytime or nighttime?
- 24 A It was night.
- 25 Q Do you have any idea about what time it

Ronetta Miller-direct by Ms. Barr

1 was?

2 A I was assuming it was late, because it was
3 night. So it could have been 8 or 9.

4 Q Okay. Now had you all been to the store
5 earlier that day?

6 A Yes, ma'am.

7 Q Which store did you go to?

8 A To IGA.

9 Q What time does IGA close?

10 A Nine, I believe.

11 Q Do you remember about what time it was
12 that you went to Mr. Prosser's house in
13 relationship to the time that the store closed?

14 A No.

15 Q Did you all make any stops on the way to
16 Mr. Prosser's house?

17 A Yes.

18 Q Where did you even stop at?

19 A We stopped at Cornelius' house or one of
20 his relative's house.

21 Q For what purpose?

22 A I don't know who he stopped for; what he
23 did. But I know he went in and came back out.

24 Q Did he get in the front passenger seat
25 again?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Now while you were in the car en route to
3 Mr. Prosser's house, did you have any
4 conversations with Ms. Jones?

5 A Yes.

6 Q Tell us about those conversations?

7 A I can't remember everything word for word.
8 I just was telling her I was scared.

9 Q Okay.

10 A And that's all I pretty much remember.

11 Q What did she say to you?

12 A I can't remember.

13 Q Okay. What happened when you got to Mr.
14 Prosser's house?

15 A When I got there, I was dropped off a
16 little bit further from his house.

17 Q Now when you were dropped off, who dropped
18 you off?

19 A Andre.

20 Q He was still driving the vehicle?

21 A Yes.

22 Q Now, Mr. Prosser lives on Road;
23 right?

24 A Yes.

25 Q I am going to and tell me if you can see

Ronetta Miller-direct by Ms. Barr

1 from where you are. I am going to publish what's
2 been admitted as State's Exhibit No 1. Can you
3 see that from where you are?

4 A Yes.

5 Q In terms of where you were dropped off by
6 Mr. Wallace, is -- can you see that area that you
7 were dropped off on from this particular exhibit?
8 If the front of his house is here, there, can you
9 see the area where you were dropped off in this
10 particular exhibit?

11 A Yes.

12 Q Can you come down and show me? Make sure
13 you stand out of the way of the jurors.

14 (Whereupon, the witness steps down from
15 the witness stand.)

16 Q Point to where Mr. Wallace dropped you off
17 at.

18 A Further down this road. Down here.

19 Q Could Mr. Prosser have seen that vehicle
20 where you were dropped off at?

21 A He could have if he would have came
22 outside when I first came.

23 Q Okay.

24 A But he didn't.

25 Q Tell me what happened when you got to Mr.

Ronetta Miller-direct by Ms. Barr

1 Prosser's house.

2 A When he got there, his dog was coming
3 towards me, so I ran back to the car. And I used
4 the phone to tell him to come to meet me outside.

5 Q Okay.

6 A Because I was afraid the dog was going to
7 bite me.

8 Q Where was his dog -- where did the dog
9 meet you at?

10 A At the head of the road.

11 Q Okay. So somewhere up in here?

12 A Yes.

13 Q Okay. Now when the dog met you, where was
14 Mr. Wallace's vehicle?

15 A Still in the same spot.

16 Q Now when you all were planning this,
17 how---

18 MR. BARR: Judge,---

19 THE COURT: The basis? Do you all?

20 MR. BARR: You all, Your Honor.

21 THE COURT: That's overruled. Go ahead.

22 Q When you all were planning this, how was
23 the Defendant, or Ms. Jones or Mr. McClary, how
24 were they supposed to get in the house?

25 A We didn't discuss how they were going to

Ronetta Miller-direct by Ms. Barr

1 get in the house.

2 Q Okay.

3 A But I know they were going to come in.

4 Q And your job was to distract him?

5 A Yes.

6 Q Did Ms. Jones have any specific knowledge
7 about how to get inside of the victim's home?

8 A It wasn't sure at the moment.

9 Q Okay.

10 A That she knew how to gain entrance into
11 his home.

12 Q Okay. Did you know anything about a pass
13 code?

14 A I didn't know at the time, no.

15 Q Okay. So Ms. Jones never told you
16 anything about having knowledge of a password or
17 pass code.

18 A No.

19 Q The previous times that you had went to
20 the victim's home, did you go through the front
21 door or the back door?

22 A The back.

23 Q You always went to the back door.

24 A Yes.

25 Q Your plan that night when you got out of

Ronetta Miller-direct by Ms. Barr

1 the vehicle was to go to the back door to meet Mr.
2 Prosser?

3 A Well the only door I only knew -- known
4 for him to use.

5 Q Okay. Now you said when you came there,
6 the dog barked, you got scared, and you called him
7 back.

8 A I went back to the vehicle and called him
9 back.

10 Q And when you called him back this second
11 time, or perhaps third time, whose phone were you
12 using?

13 A Andre.

14 Q Tell us about that conversation when you
15 called him back. What did you say to him?

16 A I just tell him to come meet me outside
17 because of his dog.

18 Q Okay. What did he say?

19 A Okay.

20 Q Did he tell you anything about the dog?
21 Whether or not the dog would hurt you?

22 A He tell me it wouldn't hurt me.

23 Q What did you say?

24 A It's still a dog, and it still has teeth
25 and it would still bite me.

Ronetta Miller-direct by Ms. Barr

1 Q What happened after you had that call with
2 him? What did you do then?

3 A I then proceeded down to his house.

4 Q Okay. You got back out of the car, and
5 went down to.

6 A I never went inside. I was standing
7 outside the car.

8 Q When you made the phone call.

9 A Yes.

10 Q When you went back in his yard, where did
11 you meet him?

12 A In the front.

13 Q Okay. By the front door or where?

14 A Like it was in the front, but it was on
15 the side.

16 Q Okay. Let me get you to step down again
17 for me, please, ma'am.

18 (Whereupon, the witness resumes the
19 witness stand.)

20 THE COURT: Can everybody on this side
21 see?

22 Q Stand on this side and make sure you don't
23 block the view. I am going to publish State's
24 Exhibit No. 2. Can you tell us is that front
25 entrance of Mr. Prosser's house?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Can you tell us where you met him, using
3 the pointer where you meet him, after you made the
4 phone call about the dog?

5 A On this side.

6 Q Okay. I am going to publish State's
7 Exhibit No. 3. Is that the side where you met Mr.
8 Prosser at?

9 A Yes.

10 Q He came out and met you in the yard.

11 A Yes.

12 Q Make sure to keep your voice up, turn
13 around and tell the jury what happened when he
14 came out and met you in the yard.

15 A We just proceeded to go in the house.

16 Q How was he dressed?

17 A He had some blue pajama pants and no
18 shirt. And he had a gun on him too.

19 Q Now did that strike you as odd that he had
20 had a gun on him?

21 A Yes.

22 Q Do you know anything about firearms?

23 A Not really; no.

24 Q Was it a long gun like a shotgun or rifle?
25 Or was it a like a handgun or pistol?

Ronetta Miller-direct by Ms. Barr

1 A It was a handgun.

2 Q Did he say why he had the gun on him?

3 A No.

4 Q You all entered the house through the back
5 door?

6 A Yes.

7 Q I am going to publish State's Exhibit No.
8 20. Just for the record, tell the jury, the
9 ladies and gentlemen of the jury, which door you
10 all went into?

11 A We went in this door.

12 Q Okay. Now this is, is this the window to
13 the kitchen?

14 A Yes.

15 Q Okay. Now I am going to also publish
16 State's Exhibit No. 21. Is that the back door to
17 the residence?

18 A Yes.

19 Q Tell us what happened once you got inside
20 the house.

21 A Once I got in the house, he begin to want
22 to take a shower.

23 Q Okay.

24 A So I went in the bathroom with him and
25 started talking to him, and he run his water and

Ronetta Miller-direct by Ms. Barr

1 he got in the shower.

2 Q Okay.

3 A And we began talking while he was taking
4 his shower.

5 Q Okay.

6 A And I asked to use his phone.

7 Q Okay.

8 A And he let me use it. And we just began
9 talking about what happened to me at the hospital.

10 Q Did you tell him about your surgery and so
11 forth?

12 A Yes.

13 Q Okay. Now did you have anything on you
14 that night that he removed?

15 A Yes.

16 Q Okay. Tell the jury about that.

17 A He removed my gauze off my back that was
18 holding down like a cord or something attached to
19 my colostomy bag.

20 Q And for what reason did he remove that?

21 A Because he wanted to see it.

22 Q Now did you have to change your dressing
23 or your bandage?

24 A Yes.

25 Q Periodically?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Now in terms of the bathroom, where is it
3 located in the house?

4 A As soon as you walk in, to your right.

5 Q So if you are going into the back door,
6 his bathroom would be somewhere on the corner
7 there?

8 A Yes.

9 Q Ms. Miller, when you got inside the
10 residence, you indicated that the victim was
11 taking a shower. I am curious, you said that when
12 he met you outside he had a handgun on him; right?

13 A Yes.

14 Q When you went inside the residence, what
15 did he do with the handgun?

16 A He walked down the hallway and put it on
17 his coffee table.

18 Q And where was the coffee table inside the
19 residence? What room was it in?

20 A In the living room.

21 Q Now when you went inside the residence and
22 you were talking to Mr. Prosser, did you notice
23 anything unusual about his appearance?

24 A He had like scratches and bruises on him.

25 Q Where?

Ronetta Miller-direct by Ms. Barr

1 A On his arms.

2 Q Did you ask him about how he got the
3 scratches and bruises?

4 A Yes.

5 Q What did he tell you?

6 A He told me---

7 MR. BARR: Objection.

8 THE COURT: The basis?

9 MR. BARR: Clearly it's hearsay, Judge.

10 THE COURT: Ms. Barr?

11 MS. BARR: Judge, it is not offered for
12 the truth of matter asserted. May we approach?

13 THE COURT: Yes, ma'am.

14 (Whereupon, the attorneys confer with the
15 judge.)

16 THE COURT: Objection is overruled.

17 Q You indicated that he had bruises on his
18 hand and on his arm.

19 A Yes.

20 Q Is that right?

21 A Yes.

22 Q Did you ask him how he got the bruises?

23 A Yes.

24 Q What did he tell you?

25 A He had got into a fight with some dude.

Ronetta Miller-direct by Ms. Barr

1 Q And I am going to hand you what has been
2 marked as State's Exhibit No. 57. Does that
3 appear to be consistent with the bruises on Mr.
4 Prosser's hand that night?

5 A Yes.

6 Q Okay. You indicated that Mr. Prosser gave
7 you his cell phone.

8 A Yes.

9 Q Why did you want his cell phone?

10 A So I could call Andre, Tiffany and
11 Cornelius.

12 Q Okay. Why were you calling Andre, Tiffany
13 and Cornelius?

14 A To tell them that I was in the house.
15 They already knew that he was going to take a
16 shower.

17 Q Okay.

18 A And tell them to come on and hurry up
19 because I was ready for them to come. And I was
20 ready to go.

21 Q Did you ask them what was taking them so
22 long?

23 A Yes.

24 Q Who answered the phone when you made that
25 call?

Ronetta Miller-direct by Ms. Barr

1 A Tiffany.

2 Q I am going to hand you what has been
3 admitted as State's Exhibit No. 67. Is this the
4 rear of the victim's house?

5 A Yes.

6 Q Can you see the door frame to the bathroom
7 where he was in there taking a shower?

8 A I believe it's that one.

9 MS. BARR: Judge, we would move State's
10 Exhibit No. 67 in at this time.

11 THE COURT: 67 is in.

12 (Photograph marked State's Exhibit No. 67
13 marked into evidence.)

14 Q Is this the back door to the victim's
15 residence?

16 A Yes.

17 Q Now this first door frame here, is that to
18 the bathroom? I am sorry.

19 A It looks like the laundry room. But I
20 would say it looks like the laundry room.

21 Q Did you go through the laundry room to get
22 to the bathroom?

23 A I can't remember how his house is set up.

24 Q Now you said you asked for his phone so
25 that you can call Tiffany, Andre and Cornelius to

Ronetta Miller-direct by Ms. Barr

1 let them know to hurry up.

2 A Yes.

3 Q Now when you got his phone, did you see
4 anything unusual about his phone?

5 A Yes.

6 Q Tell the ladies and gentlemen what you saw
7 that unusual about his phone.

8 A He had my number programmed in his -- he
9 had my name programmed under Andre's number.

10 Q Okay. How did he have your name typed in?

11 A It was in capitalized letters.

12 Q And how did have it spelled?

13 A N-E-T-T-A.

14 Q Did you ask him why it was that he had
15 your number programmed in his phone?

16 A Yes.

17 Q What did he say?

18 A Because he thought it was my phone.

19 Q And was that in fact your phone?

20 A No.

21 Q Was that the first time you ever would
22 have called Mr. Prosser from that number?

23 A Yes.

24 Q Tell us what happened after you got off
25 the telephone with, I think you said Tiffany.

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Tell us what happened next.

3 A We just began, we had proceeded talking.

4 And he didn't quite step out of the shower, but he

5 just reached his arm out enough for him to take

6 the gauze off my back.

7 Q Okay. I have a quick question for you. I

8 am going to publish State's Exhibit No. 28. You

9 talked about there being a little coffee table in

10 the living room that he put his gun on. Do you

11 see that coffee table in this photograph?

12 A Yes.

13 Q Okay. Point out the coffee table to the

14 jury.

15 A (Witness pointing in the photograph.)

16 Q That's the table that he put his weapon

17 on.

18 A Yes.

19 Q Tell me what happened when he got out of

20 the shower.

21 A We didn't step quite out of the shower.

22 We wasn't quite in the kitchen.

23 Q Okay.

24 A We stood right there for some apparent

25 reason, and began talking.

Ronetta Miller-direct by Ms. Barr

1 Q Okay.

2 A During our conversation, we saw Cornelius
3 and Tiffany.

4 Q Okay. Where did you see Cornelius and
5 Tiffany?

6 A By the window.

7 Q Okay. Which window?

8 A The kitchen window.

9 Q Okay. You saw them doing what? What were
10 they doing?

11 A I just seen them went by, that's all.

12 Q Okay. Did Mr. Prosser see them as well?

13 A Yes. He was the first one to spot them.

14 Q Now when you talk about the kitchen
15 window, I am going to publish State's Exhibit 19.
16 Can you see the window that's in this exhibit that
17 Mr. Prosser saw Cornelius and Tiffany?

18 A Yes.

19 Q Okay, show the jury where it is.

20 A (Witness pointing in photograph.)

21 Q You said you saw them.

22 A Yes.

23 Q And Mr. Prosser saw them.

24 A Yes.

25 Q And what did he say, or do at that point?

Ronetta Miller-direct by Ms. Barr

1 A He just told me to stand right there and
2 don't move.

3 Q Okay. And when you say, "Stand right
4 there," where is "right there?" What are you
5 referring to? What area?

6 A The area that we stopped and talked in.

7 Q Okay. What room of the house was that
8 area in?

9 A We were still outside the bathroom.

10 Q Okay.

11 A In the kitchen.

12 Q Okay.

13 A Standing outside the bathroom.

14 Q What was going through your mind when he
15 said that?

16 A I was just like, you know, I don't, I was
17 scared. That was all that was going through my
18 mind.

19 Q You think he figured it out by that point?

20 A Yes.

21 Q Tell me what happened next.

22 A He walked down the hallway, and he got his
23 handgun off the coffee table.

24 Q Okay. You actually saw that?

25 A Yes.

Ronetta Miller-direct by Ms. Barr

1 Q Now I am going to publish what has been
2 admitted as State's Exhibit No. 51. Is that the
3 bathroom where Mr. Prosser took his shower?

4 A Yes.

5 Q And that's the shower area over here?

6 A Yes.

7 Q And that's the window to the outside of
8 the bathroom?

9 A Yes.

10 Q Tell me what happened when he went to go
11 get his gun.

12 A He picked it up, and he looked back at me.

13 Q Let me publish State's Exhibit No. 31.
14 Would you tell us where Mr. Prosser would have
15 been when at the time he picked up his handgun?
16 Hold on just a second. Where was he standing when
17 he looked back at you?

18 A He was standing right here.

19 Q In the living room?

20 A In this area right here.

21 Q Did he look back at you?

22 A Yes.

23 Q What happened as he looked back at you?

24 A As soon as he looked back at me, Cornelius
25 came running in the back door, and he stood beside

Ronetta Miller-direct by Ms. Barr

1 me.

2 Q Okay.

3 A And Mr. Prosser, when he ran in, Cornelius
4 ran in, Mr. Prosser already proceeded to walk
5 towards this way.

6 Q So when he walked toward this way, this is
7 his bedroom here. This room right here. Or you
8 didn't know which one was his bedroom?

9 A I didn't know which one.

10 Q Do you know why he left this area and went
11 toward there?

12 A Because he obviously heard something or
13 saw something.

14 Q And when he walked toward that room, he
15 still had his handgun with him?

16 A Yes.

17 Q Now you indicated that Cornelius then ran
18 in by you. And you were still in the kitchen?

19 A I was in the still in the same spot.

20 Q In the kitchen?

21 A Yes.

22 Q Were you by the door -- doorway?

23 A Yes.

24 Q When Mr. McClary, Cornelius McClary came
25 in, did he have anything with?

Ronetta Miller-direct by Ms. Barr

1 A A handgun.

2 Q What did he do or say when Cornelius
3 entered the house?

4 A Mr. Prosser?

5 Q No, Cornelius. What did he do or say?

6 MR. BARR: Objection, Your Honor.

7 A He didn't say anything.

8 THE COURT: Wait a minute.

9 MR. BARR: Hearsay.

10 THE COURT: She said he didn't say
11 anything.

12 MR. BARR: Cornelius?

13 THE COURT: Yes, sir. Go ahead.

14 Q When -- did Mr. Prosser ever see Cornelius
15 come in the house?

16 A No..

17 Q By the time Cornelius came in the house,
18 where was Mr. Prosser?

19 A He was already walking in the room or
20 whatever.

21 Q Do you know whether or not he had ever
22 raised his firearm, Mr. Prosser?

23 A I couldn't see.

24 Q Okay.

25 A So I actually can't say what he did,

Ronetta Miller-direct by Ms. Barr

1 because I wasn't in the room.

2 Q When Mr. Prosser went up and got his
3 firearm and then he advanced toward this room, did
4 he ever look back at you?

5 A Yes.

6 Q Describe his expression when he looked
7 back at you.

8 A He just gave me a look like, he thought we
9 was alone.

10 Q Okay.

11 A And surprised that somebody would be in
12 his home.

13 Q When he went back -- when he went into
14 that room whatever room it was, what happens next?

15 A I just heard a gunshot.

16 Q Okay. And then what happened?

17 A I ran out the back door.

18 Q What about Cornelius, where did he go?

19 A He ran out the back door before I ran out
20 the back door.

21 Q Now at the time Mr. Prosser went into that
22 room and you heard the gunshot, did you know at
23 that moment who had actually had been shot if
24 anybody?

25 A No.

Ronetta Miller-direct by Ms. Barr

1 Q Did you know how long he had been standing
2 in his room or in that room?

3 A At the time I wasn't thinking about who
4 was in the room or what was in the room. Because
5 I didn't -- I wasn't quite sure what he was going
6 to do.

7 Q Well we know that it wasn't Cornelius in
8 the room, because he was by you.

9 A Yeah, at that moment; yes.

10 MS. BARR: You can have a seat.

11 (Whereupon, the witness steps back to the
12 witness stand.)

13 MS. BARR: Mr. Barr, do you have any
14 objections to Exhibit 72 through 83, the last
15 photographs? Judge, we would obviously offer 72
16 through 83 into evidence.

17 THE COURT: Mr. Barr.

18 MR. BARR: No objection.

19 THE COURT: Okay.

20 (Photographs marked State's Exhibit Nos.
21 72-83.)

22 Q Okay. Ms. Miller, take us back to when
23 you heard the gun being fired. What did you do?

24 A I ran out the back door.

25 Q And then what happened?

Ronetta Miller-direct by Ms. Barr

1 A I ran away from the house.

2 Q Okay.

3 A And on my way running, I left my shoes and
4 I dropped his cell phone that I had in my hands.

5 Q You were running so fast you ran out of
6 your shoes?

7 A Yes.

8 Q What type of shoe was it?

9 A I had these Baby Phat shoes on.

10 Q What about, and you lost your shoe where?

11 A In the yard.

12 Q Of the victim's home?

13 A Yes.

14 Q And you indicated that you dropped his
15 phone?

16 A Well actually it fell, yes.

17 Q And where was that dropped at?

18 A In the yard.

19 Q I am going to publish State's Exhibit No.

20 7. Does that look like the victim's phone that
21 you were using that night?

22 A Yes.

23 Q I am going to publish State's Exhibit No.

24 9. Is that the shoe that you were wearing that
25 night?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q And that's the shoe that was left in the
3 victim's yard?

4 A Yes.

5 Q And in terms of the direction that you
6 would have gone, once you left the victim's house,
7 did you go on the same side of the house that you
8 came in on or did you go on the opposite side?

9 A I came on the opposite side.

10 Q I am going to publish State's Exhibit No.
11 11. When you initially went into the house that
12 night, did you go on this side or this side?

13 A The opposite side.

14 Q You went here on the left side facing the
15 house.

16 A Yes.

17 Q When you were running away from the scene,
18 which side did you run from, on the left side or
19 the right side?

20 A The left.

21 Q Tell us what happened as you were running
22 away from the scene.

23 A I just ran. And ran until I couldn't run
24 no more.

25 Q Where was Cornelius?

Ronetta Miller-direct by Ms. Barr

1 A He was in front of me.

2 Q Where was Tiffany, if you knew at that
3 time?

4 A I didn't know where she was at, at that
5 time.

6 Q Where was Andre Wallace, if you knew at
7 that time?

8 A I didn't know where he was at at that
9 time.

10 Q You said you ran them until you couldn't
11 run anymore. Where did you eventually end up?

12 A We just stopped running. I just stopped
13 running.

14 Q Now Cornelius was right by you?

15 A Yes.

16 Q Did you say anything to him, or did he say
17 anything to you?

18 A I told him I was scared. And I tell him I
19 didn't have my shoes on. And I tell him I dropped
20 the phone. And that---

21 Q What did he say to you?

22 MR. BARR: Objection, Your Honor.

23 THE COURT: Hearsay?

24 MS. BARR: Excited utterance, Your Honor.
25 presence sense impression.

Ronetta Miller-direct by Ms. Barr

1 THE COURT: Wait just a second. Ladies
2 and gentlemen, please step to your jury room for
3 just a moment. Of course you may not discuss the
4 case.

5 THE COURT: When you do come back, you can
6 bring coke or coffee or whatever drink they have.
7 Water back. You can bring it back in the
8 courtroom.

9 (Whereupon, the following takes place
10 outside the presence of the jury.)

11 THE COURT: Your objection is noted,
12 Mr. Barr.

13 MR. BARR: Your Honor.

14 THE COURT: Yes, sir.

15 MR. BARR: Lack of foundation as well.

16 THE COURT: Go ahead and ask the question.

17 Q Ms. Miller, when you were running out of
18 the scene---

19 THE COURT: If you would pinpoint for me
20 exactly where after they quit running, as they
21 were running and before they started running.

22 MS. BARR: Yes, sir.

23 Q Ms. Miller, you testified earlier that you
24 and Cornelius ran away from the scene; is that
25 correct?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q And you said you ran until you couldn't
3 run anymore.

4 A Yes.

5 Q Were you all -- were you having a
6 conversation with Cornelius as you were running,
7 or once you all came to a stop?

8 A Once we came to a stop.

9 Q Where were you once you came to a stop?
10 Were you on White Oak Road?

11 A Yes, we were still on the same road.

12 Q Okay. You indicated that you told him
13 that you were scared and you ran out of your shoes
14 and you dropped the phone?

15 A Yes.

16 Q Now in terms of how he was, his demeanor,
17 what was -- how was he like? What was his State
18 of mind at the time?

19 A He was just trying to calm me down.

20 Q Okay.

21 A And he didn't say anything about how he
22 felt, but he was trying to calm me down.

23 Q What did he say to you in response to your
24 statement that you dropped the phone and you ran
25 out of your shoes?

Ronetta Miller-direct by Ms. Barr

1 A Don't worry about it.

2 THE COURT: Have you got a problem with
3 that Mr. Barr? Did you hear her answer?

4 MR. BARR: Yes, sir. It is still the same
5 objection, Judge.

6 THE COURT: And the answer as I hear it,
7 Ms. Barr, was don't worry about it?

8 MS. BARR: Right.

9 THE COURT: Any other testimony you might
10 elicit in that regard about any statements made by
11 Mr. McClary?

12 MS. BARR: No, sir.

13 THE COURT: Mr. Barr, what is your -- is
14 that offered to prove the truth of the matter
15 asserted?

16 MS. BARR: No, sir.

17 THE COURT: Well I am asking Mr. Barr.

18 MS. BARR: Oh, I am sorry, Judge. Let me
19 move out of the way.

20 MR. BARR: I don't think it would be.

21 THE COURT: I am going to overrule that
22 objection. And I know things have a flow about
23 them. Is there any other points that we might
24 need to get in to in camera to save having to send
25 the jury back out?

Ronetta Miller-direct by Ms. Barr

1 MS. BARR: Yes, sir. There are statements
2 that the Defendant made while inside the vehicle.

3 I think we probably need to deal with those.

4 THE COURT: Are you talking about?

5 MS. BARR: Mr. Wallace.

6 THE COURT: Mr. Wallace. Go ahead.

7 Q Ms. Miller, when you got back inside the
8 vehicle, what if anything did Mr. Wallace say?

9 A He was fussing. He was just raising his
10 voice. And I assume he thought it was my fault.

11 Q He was fussing at who?

12 A He was talking out loud and fussing. And
13 I assume he was talking to me.

14 Q Okay.

15 A Because of what had happened.

16 Q Okay. What did he say?

17 A He was saying that he shot Mr. Prosser.

18 Q Okay.

19 A And I think -- and I recall him saying
20 that he had to do it.

21 Q Okay.

22 A And he also said that it was my fault.

23 Q Why did he think it was your fault?

24 A I don't know why.

25 Q Why did he say to you?

Ronetta Miller-direct by Ms. Barr

1 A He didn't actually tell me in my face. He
2 was driving and saying it.

3 Q Okay. And tell me what he was saying
4 specifically about you. Why did you think he was
5 mad at you?

6 A Because of how it had happened; how things
7 happened.

8 Q You are going to tell me specifically what
9 he said when he got in the car. Tell me
10 everything he said when you got in the car.

11 A I can't word for word everything he said.

12 Q Okay.

13 A I can't remember everything he said.

14 Q Okay. Tell me what you do remember.

15 A I remember him fussing and just hollering.
16 And he shot Mr. Prosser. And how he was mad and
17 how it was my fault.

18 Q Did he say why he shot Mr. Prosser?

19 A He had to.

20 Q Did he say why he had to?

21 A I can't remember why he said it.

22 Q Did he ever make any statements to you
23 that he thought you had tipped him off?

24 A Yes.

25 Q Okay. Tell me what he said.

Ronetta Miller-direct by Ms. Barr

1 A He just thought I told Mr. Prosser about
2 the whole robbery or burglary.

3 Q Okay. Why did he think you had told
4 Mr. Prosser what was happening?

5 A I guess so Mr. Prosser would discover then
6 that someone was in his home other than us two.

7 MS. BARR: Judge, I think that is in
8 essence of any statements as relates to the
9 Defendant.

10 THE COURT: Mr. Barr, do you have any
11 objection to that testimony?

12 MR. BARR: No, sir.

13 THE COURT: I tell you what, let's go
14 ahead and do this. We will just take our
15 afternoon recess at this point. And we will keep
16 it brief. We are at 3:25 on that back wall clock.
17 Ms. Williams, I went out on a limb and said they
18 could bring their drinks back in here. I hope
19 that's okay. Some clerks don't like it, because
20 they have new carpet. But that's not the case
21 here. But we will break for a little less than 10
22 minutes, okay.

23 I want to instruct the witness, ma'am, you
24 can step down, but you cannot discuss your
25 testimony with anyone. And that means anyone in

Ronetta Miller-direct by Ms. Barr

1 the whole wide world, okay. Thank you.

2 (Whereupon, the court takes a short
3 recess.)

4 THE COURT: You may bring the jury.

5 (Whereupon, the following takes place
6 within the presence of the jury.)

7 Examination continues by Ms. Barr:

8 Q I believe the last thing you said to us,
9 you and Cornelius ran from the scene. And I think
10 the last thing you said in the presence of the
11 jury is that you ran until you couldn't run
12 anymore. Did you meet back up with Mr. Wallace
13 and Ms. Jones?

14 A Yes.

15 Q Did you meet at some other location, or
16 did you meet right after in front of the victim's
17 residence?

18 A They was where I was standing; me and
19 Cornelius.

20 Q And that was right in the front of the
21 victim's residence on White Oak Road?

22 A Not in front of it.

23 Q A little distance away?

24 A Further down the road.

25 Q Is it near where you pointed to earlier

Ronetta Miller-direct by Ms. Barr

1 where you had parked, or where Andre parked and
2 let you out?

3 A No, that was on the opposite side.

4 Q Okay. Now when you and Cornelius ran, did
5 you say anything to him?

6 A Not while we were running.

7 Q Okay. What about when you all came to the
8 stop in the road.

9 A Yes.

10 Q Okay. What did you say to him?

11 A That I was scared, and that I didn't have
12 my shoes---

13 Q Okay.

14 A ---on. And that I had the phone; that I
15 Mr. Prosser's phone that I had in my hand, I had
16 dropped.

17 Q What did Cornelius say to you?

18 A He told me not to worry about it.

19 Q How did you get away from the scene that
20 night?

21 A I ran.

22 Q Where was Mr. Wallace and Tiffany Jones?

23 A They were in the car.

24 Q Okay. I guess what I am getting at, they
25 came back and got you?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q When they came back and got you, who was
3 driving the vehicle?

4 A Andre.

5 Q Where was Tiffany at inside the vehicle?

6 A She was in the back seat.

7 Q And Mr. Wallace picked you up. And

8 Cornelius up on White Oak Road?

9 A Yes.

10 Q Down from the victim's house?

11 A Yes.

12 Q When you got inside the vehicle, did you
13 see any of the weapons or firearms inside the
14 vehicle?

15 A Yes.

16 Q Tell us about that.

17 A I just seen a long gun.

18 Q This was not like the hand gun that

19 Mr. Prosser had?

20 A No.

21 Q It wasn't like the handgun that Cornelius
22 had?

23 A No.

24 Q Do you know whether it was a shotgun or
25 rifle?

Ronetta Miller-direct by Ms. Barr

1 A I ain't know what it was.

2 Q You just know it was a long gun.

3 A Yes.

4 Q When you got back inside the vehicle, what
5 if anything did Mr. Wallace say? First of all,
6 tell me what his State of mind, his demeanor was
7 like when you got inside the vehicle.

8 A I would say he was in shock that he had
9 just shot someone.

10 Q Did he say that? Did he tell you that he
11 shot Mr. Prosser?

12 A Yes.

13 Q Okay, what did he say about it? Tell me
14 what he told you about what happened in that room.

15 A He just said he shot him.

16 Q Did he say why he shot him?

17 A He had to.

18 Q You tell me, what did he say?

19 A He just said he shot Mr. Prosser, but he
20 had to. He didn't go into details.

21 Q Okay. How was he towards you? When I
22 say he, I'm talking about Mr. Wallace.

23 A I would say he was upset.

24 Q Okay. Tell me what he said.

25 A He thought that I had told Mr. Prosser

Ronetta Miller-direct by Ms. Barr

1 that he was in there.

2 Q Why did he think that?

3 A Because Mr. Prosser had then discovered
4 someone was in home other than us.

5 Q Did he call you any names?

6 A No.

7 Q Mr. Wallace didn't call you any names?

8 A I can recall him saying; yes.

9 Q What did he say?

10 A Bitch.

11 Q What were you doing in the back seat when
12 he saying all this?

13 A I was scared. And I was just scared.

14 Q Now when he was -- you said that you would
15 say he was upset with you. Was he talking to you
16 with the same tone that you and I are talking
17 right now?

18 A No.

19 Q Tell us about his tone. You kind of have
20 to put me in the seat of the car.

21 A He just had raised his voice.

22 Q Okay.

23 A And he was just talking. Fussing and
24 talking.

25 Q When you all left the scene as you were --

Ronetta Miller-direct by Ms. Barr

1 after you were picked up and after Cornelius was
2 picked up, where did Cornelius get inside the
3 vehicle?

4 A In the passenger seat.

5 Q In the front or back?

6 A The front.

7 Q What if anything did Cornelius do once he
8 got inside the vehicle? After you got inside and
9 you all were driving off?

10 A What did Cornelius do?

11 Q Yes.

12 A He like got out the window---

13 Q Okay.

14 A ---as we was driving off.

15 Q Okay.

16 A And like sat down on the window and
17 started shooting.

18 Q Okay. Shooting at what?

19 A The residence of Mr. Prosser.

20 Q The front or the back?

21 A The front.

22 Q Do you know why he did that?

23 A No.

24 Q Was it before or after Mr. Wallace said
25 that he had shot Mr. Prosser?

Ronetta Miller-direct by Ms. Barr

1 A It was during.

2 Q During the time when he said he had shot.

3 A Yes, because we was riding.

4 Q So he basically sat his butt on the door,
5 of the window part of the door?

6 A Yes.

7 Q And how did he do that? Did he reach over
8 the top of the vehicle?

9 A I ain't actually see how he did it, but I
10 just know that he did it.

11 Q He leaned out of the vehicle and shot at
12 the front door.

13 A Yes.

14 Q Now was Mr. Prosser at the front door when
15 he was shooting?

16 A I don't where he was at.

17 Q Did you ever see Mr. Prosser after you ran
18 out of the house?

19 A No.

20 Q Now you indicated that you saw another, a
21 long weapon inside the vehicle. Where did see
22 that, the long gun?

23 A It was sitting beside Andre and the hand
24 rest.

25 Q Okay. And when you all were leaving, did

Ronetta Miller-direct by Ms. Barr

1 you see any law enforcement vehicles?

2 A Yes.

3 Q Tell us about that.

4 A We saw two sheriff's cars pass by us.

5 Q Did Andre make any statement about the
6 two sheriff's cars that passed you?

7 A No.

8 Q Did he realize that the sheriff's vehicle
9 had passed you?

10 A I would hope he did, because I saw it.
11 But I don't know if he saw it or not.

12 Q What if anything did you tell Tiffany
13 about your concern about your shoes?

14 A I kept telling her, like, I didn't have no
15 more shoes. And I can't like -- I can't walk back
16 in my house without no shoes, because I left my
17 house with a pair of shoes.

18 Q Did your father see you when you left?

19 A Yes.

20 Q And he knew you went out of the house with
21 shoes on?

22 A Yes.

23 Q Did you have a concern trying to explain
24 why you were coming back with no shoes on?

25 A No.

Ronetta Miller-direct by Ms. Barr

1 Q What did you do about the shoes?

2 A Tiffany had gave me a pair of slippers.

3 Q Did you put those on?

4 A Yes.

5 Q When you went home, was Tiffany still with
6 you?

7 A No.

8 Q Where was she?

9 A I guess she went home too.

10 Q What about Cornelius? Was he in the
11 vehicle when you went home?

12 A Oh, everybody was in the vehicle when I
13 got dropped off.

14 Q Okay.

15 A After I got dropped off, I don't know
16 where they went.

17 Q So you were the first of the four to get
18 dropped off home.

19 A Yes.

20 Q I understand. Was your father at home
21 when you got home?

22 A Yes.

23 Q Did he notice anything unusual about your
24 appearance?

25 A No.

Ronetta Miller-direct by Ms. Barr

1 Q Did he say anything to you about where you
2 had been?

3 A No.

4 Q Did you tell anybody about what had
5 happened that night? That night, that specific
6 night, did you tell anybody?

7 A Yes.

8 Q Who did you tell?

9 A I told my friend Quinton.

10 Q Okay, LaQuincy Peterson? Is that his
11 name?

12 A I guess that's his last name.

13 Q He's in the courtroom today?

14 A Yes.

15 Q What did you tell him.

16 A I didn't went into details with. I just
17 told E-Z got shot. And...

18 Q When you say E-Z, are talking about Mr.
19 Prosser?

20 A Yes.

21 Q Yes, ma'am. What else?

22 A We told him that basically that we went
23 there to rob him and he just got shot. That's all
24 I said.

25 Q Now did you talk any more about what had

Ronetta Miller-direct by Ms. Barr

1 happened with Tiffany?

2 A Yes.

3 Q And you, why did you keep talking about
4 it?

5 A Because I was concerned about what
6 happened to him that night. And what was going to
7 happen to me. And I was basically just scared.

8 Q Now did Tiffany tell you -- what did she
9 say in response to you talking to her about what
10 had happened that night?

11 A She told everything was going to be all
12 right; stop worrying about it.

13 Q So did you quit talking about it?

14 A Yes.

15 Q Now when you left the house and got back
16 home, at this point did you know whether Mr.
17 Prosser was still alive?

18 A No.

19 Q Ms. Miller, and of course, you never
20 called to get help for him.

21 A No.

22 Q None of your co-defendants never called to
23 get help for him; did they?

24 A No.

25 Q When Cornelius came in to the house when

Ronetta Miller-direct by Ms. Barr

1 you were standing in the kitchen, how was he
2 dressed?

3 A He had on jeans, a shirt, and something
4 like a hat or a hat.

5 Q How was Mr. Wallace dressed when you got
6 back in to the vehicle?

7 A I couldn't see everything that he had on,
8 I just know he had on black.

9 Q Okay.

10 A I couldn't see anything he had on.

11 Q What about Ms. Jones, how was she dressed?

12 A She just had on a black shirt and jeans.

13 Q Did you ever see Ms. Jones with a firearm
14 that night?

15 A No.

16 Q Here's what I don't understand. You all
17 had this elaborate plan about how you were going
18 to rob Mr. Prosser; right?

19 A Yes.

20 Q How was this supposed to end? I mean if
21 this was going to be a successful robbery, how did
22 you think this was going to end?

23 A I ain't never thought about that.

24 Q Well what did you all talk about? I mean,
25 how were you all going to carry it out? I mean if

Ronetta Miller-direct by Ms. Barr.

1 your job was to keep Mr. Prosser occupied, how
2 were you supposed to get out of there?

3 A One of them either Cornelius and Andre was
4 going to come in there and get me out of the
5 house.

6 Q Well how was that supposed to happen?

7 A I don't know how it was supposed to
8 happen. But I just know I was supposed to get out
9 of there.

10 Q Okay. After the robbery happened,
11 either Cornelius or Andre was supposed to come and
12 get you out?

13 A Yes.

14 Q You are going to help me. How was
15 there -- how were they supposed to come get you
16 out? I mean, if you all had robbed Mr. Prosser,
17 were they planning to just come in there while he
18 was sitting in the living room with a gun and tell
19 you, okay, let's go?

20 A Not exactly like that. But just was going
21 to tell me like, what are you doing here. Come
22 on, let's go.

23 Q While Mr. Prosser was in there?

24 A I suppose so while he was in there.

25 Q Who was Andre and or Cornelius supposed to

Ronetta Miller-direct by Ms. Barr

1 be to you to come in there to get you out?

2 A A friend, a boyfriend. It didn't matter
3 what they were supposed to be to me as long as I
4 got out.

5 Q So you all -- the plan was that after you
6 robbed him, or after you all robbed him, Andre or
7 Cornelius was supposed to come in and pretend like
8 you were their girlfriend and come get you out of
9 the house.

10 A Yes.

11 Q You indicated and you testified that you
12 had been to Mr. Prosser's house.

13 A Yes.

14 Q Was he the type of man that if somebody
15 broke in his house, he would defend his house, and
16 defend himself?

17 A Yes.

18 Q And you told your co-defendants that;
19 right?

20 A But they -- from my concern, I knew
21 Tiffany knew him. I didn't know if the other two
22 knew him or not.

23 Q What was the discussion about, okay, if we
24 go in Mr. Prosser's house and he catches us, what
25 if he does something? I mean, what was the

Ronetta Miller-direct by Ms. Barr

1 discussion about that?

2 A I don't think we had a discussion about
3 that specifically.

4 Q Were you worried about what would happen
5 if you all went in there with guns, and he was
6 prepared for you?

7 A Yes.

8 Q And how were you going to address that
9 problem if it came up?

10 A We didn't expect for that to happen like
11 it did.

12 Q Was Mr. Wallace concerned at all that
13 Mr. Prosser had a gun and he might defend his
14 home?

15 A I don't know.

16 Q Did he appear to be concerned to you?

17 A Not to my knowledge.

18 Q If you all wanted to initially get him out
19 of the house, and you recognized that for whatever
20 he was celebrating, he had too much to drink, he
21 wasn't coming out of the house. I mean you all
22 knew that that night.

23 A Yes.

24 Q Why didn't you all just say well let's
25 just do it another night? Let's just not do it.

Ronetta Miller-direct by Ms. Barr

1 this night, because he is not going to leave the
2 house, it's too risky. Why didn't you all just
3 say that?

4 A I don't know why.

5 Q Was there any reason why it couldn't wait
6 until the next night? Or one day while he was in
7 the grocery store and you all not even run the
8 risk that he would be there?

9 A No.

10 Q Do you remember the night of the week that
11 this happened?

12 A Not quite.

13 Q Do you remember if it was during the week
14 or on the weekend?

15 A It was on a weekday.

16 Q A couple of days went by before law
17 enforcement arrested you; is that right?

18 A Yes.

19 Q And some of the deputies who are at the
20 table with me, they were part of interrogating you
21 and getting statements from you; is that right?
22 Do you remember talking to some of the
23 investigators and giving statements to them?

24 A Yes.

25 Q And you gave them at least three

Ronetta Miller-direct by Ms. Barr

1 statements; right?

2 A Yes.

3 Q Ms. Miller, the first statement that you
4 gave to law enforcement wasn't exactly truthful;
5 was it?

6 A No.

7 Q The second statement that gave to law
8 enforcement wasn't exactly truthful; was it?

9 A No.

10 Q You lied in some of those statements.
11 Most of them.

12 A Yes.

13 Q When you first gave the statement to law
14 enforcement, was I in the room at the time?

15 A No.

16 Q When you gave those statements to law
17 enforcement, did you tell them that you were with
18 Tiffany Jones?

19 A I don't think I tell them right then and
20 there.

21 Q In one of the subsequent statements you
22 gave to law enforcement, you told them that you
23 were with Tiffany Jones?

24 A I can't remember what I tell them exactly.

25 Q Did you tell them you were with Andre

Ronetta Miller-direct by Ms. Barr

1 Wallace?

2 A I can't remember what I tell them.

3 Q At some point when you talked to law
4 enforcement, did you name the three people who
5 were involved in this?

6 A No.

7 Q The first time?

8 A No.

9 Q Now when you arrested you were obviously
10 taken in to the Williamsburg County jail. And you
11 stayed there for several months; is that right?

12 A I stayed there for a year.

13 Q For a year. At some point did you and
14 Wayne Investigator Wayne McFadden talk with him
15 about the case? Do you remember that?

16 A Yes.

17 Q That was in January of 2010. About a year
18 and a half ago?

19 A I can't remember when it was.

20 Q That's fair enough.

21 MS. BARR: May I approach this witness?

22 THE COURT: Yes, ma'am.

23 Q Ms. Miller, does this appear to be a
24 transcript of your statement that you gave
25 Investigator Wayne McFadden on January 29th 2010?

Ronetta Miller-direct by Ms. Barr

1 A Yes.

2 Q Now you've never read this transcript;
3 have you?

4 A No.

5 Q Now I don't want you to answer this out
6 loud. I need you to just read over the
7 highlighted portions to yourself, okay. And I
8 want you to start on the page 58. And just read
9 the highlighted sections.

10 THE COURT: Show that to Mr. Barr, please.

11 MR. BARR: Which transcript is that?

12 MS. BARR: January 29th 2010.

13 MR. BARR: 29th.

14 MS. BARR: Yeah.

15 MR. BARR: Page what?

16 Q 58. Read over the highlighted portions.

17 Just the highlighted portions through page 64.

18 And you don't have to read all of them, but just
19 the highlighted portions.

20 THE COURT: To herself.

21 Q Yes, to yourself. Not out loud.

22 MR. BARR: What page is that now?

23 MS. BARR: 58.

24 Q See if I can move it along a little bit.

25 Ms. Miller, let me see the transcript, please,

Ronetta Miller-direct by Ms. Barr

1 ma'am. And I obviously don't expect you to
2 remember all of it and read all of this. I don't
3 have time for that. But on page 60, starting with
4 line 6, do you say who was with you that night,
5 and who was at the back door in the kitchen
6 window?

7 A Yes.

8 Q And who did you tell the police were with
9 you that night and Mr. Prosser at his kitchen
10 window?

11 A Tiffany and Cornelius.

12 Q Did you tell them that because that is the
13 truth?

14 A Yes.

15 Q I am going to call your attention to page
16 63, line 15, who do you say was in the room, who
17 shot Mr. Prosser?

18 A Andre.

19 Q And when you gave that statement to law
20 enforcement back then, did you tell them that
21 because that was true; that Andre was in the room
22 and had shot Mr. Prosser?

23 A Yes.

24 Q Did anybody threaten you or promise you
25 anything to get you to implicate Mr. Wallace,

Ronetta Miller-direct by Ms. Barr

1 Ms. Jones and Mr. McClary?

2 A No.

3 Q Did you testify today truthfully?

4 A Yes.

5 MS. BARR: I beg the court's indulgence.

6 Ms. McClary -- I am sorry, Ms. Miller, please
7 answer any questions that defense counsel has for
8 you.

9 A Yes.

10 THE COURT: Mr. Barr.

11 Cross Examination by Mr. Barr:

12 Q You are testifying today truthfully.

13 A Yes.

14 Q It took three statements by the police to
15 finally get you to tell the truth.

16 A Yes.

17 Q So now you admit that with respect to
18 three statements or at least two, in fact you gave
19 two on the same date. On November 3rd, you gave
20 one in the morning and one in the afternoon, the
21 same day. And in both of those statements you
22 have acknowledged that you lied to the police.
23 Have you not?

24 A Yes.

25 Q Now you would agree with me that you are a

Ronetta Miller-cross by Mr. Barr

1 liar.

2 A I wouldn't say I was a liar.

3 Q Well what would you call yourself, a
4 criminal?

5 A No.

6 Q You did plead guilty yesterday; didn't
7 you?

8 A Yes.

9 Q And what did you plead guilty to?

10 A What I have done.

11 Q Oh, what you have done. Now you didn't
12 plead guilty to what you have done. You made a
13 deal with the solicitor to testify; didn't you?

14 A No.

15 Q Oh, have you been sentenced yet?

16 A No.

17 Q When do you think you are going to be
18 sentenced?

19 A Whatever this trial is over.

20 Q Exactly. Whenever this trial is over. So
21 in other words, when you finish giving your
22 testimony today, you expect to get your medicine.
23 And your medicine is what you expect to be your
24 reward for whatever you say on the witness stand
25 today; isn't it?

Ronetta Miller-cross by Mr. Barr

1 A No, sir.

2 Q Oh, it's not? How do you think you would
3 like to spend life in the penitentiary? Do you
4 think you would like that?

5 A No.

6 Q You don't intend to do that; do you?

7 A Whatever happens, happens.

8 Q Now I am sure you have been conscious,
9 very well, considering the consequences of getting
10 convicted of murder; aren't you? Haven't you?
11 And I know somebody told you what will happen to
12 you if you get convicted of murder. Ain't
13 somebody told you that?

14 MS. BARR: Judge, we -- first of all,
15 Judge, we are going to object.

16 THE COURT: Basis.

17 MS. BARR: To the extent that it requires
18 the disclosure of the possible penalty. We object
19 to that.

20 THE COURT: Overruled. As far as this
21 Defendant is concerned, that is overruled.

22 MR. BARR: Thank you, Judge.

23 Q Now when you made a deal to testify, you
24 were told by somebody what you could possibly get
25 if you got convicted; weren't you?

Ronetta Miller-cross by Mr. Barr

1 A No.

2 Q Nobody told you that? You mean your
3 lawyer didn't tell you if you got convicted of
4 murder, how much time you could get?

5 THE COURT: Don't get into the attorney/
6 client relationship.

7 MR. BARR: I won't. I'll rephrase it,
8 Judge. You had no knowledge of it?

9 MS. BARR: I am sorry, may we approach the
10 bench?

11 THE COURT: Yes, ma'am.

12 Whereupon, the attorneys approach the
13 bench and confer with judge.)

14 THE COURT: Objection is overruled. Go
15 ahead, Mr. Barr.

16 MR. BARR: Thank you, Judge.

17 Q Now I will ask you again. You are not
18 looking forward, and when you decided to take the
19 witness stand and testify against Mr. Wallace, you
20 wasn't looking forward to spending the night in
21 the penitentiary; were you?

22 A No.

23 Q And when you decided that the prosecution
24 told you that we will drop the murder charge, and
25 we will drop the burglary charge, which will get

Ronetta Miller-cross by Mr. Barr

1 you 30 more years. You wasn't impressed with that
2 either; were you? Ma'am?

3 A We didn't discuss that.

4 Q Oh, you didn't discuss it. You would have
5 us believe that you just walked into the
6 courtroom, not knowing what the consequences would
7 be, you just decided to belly up to burglary
8 second degree. That's what you would have us
9 believe? I know you wouldn't. Now but you would
10 have us believe that somehow Andre Wallace
11 engineered a deal to go rob Mr. Prosser. You
12 would have us believe that?

13 A Yes.

14 Q Well, let's look at that. First of all,
15 let's start with your relationship with the people
16 that you say that were supposedly involved in this
17 whole business. Now no question in your mind that
18 you know Ms. Tiffany Jones. Where is she? Stand
19 up, Ms. Jones. Now Ms. Tiffany Jones is your
20 lesbian lover; is she not?

21 A She was. Was.

22 Q Oh, you, I believe you indicated that you
23 all stopped having sex now. Did you say that?
24 That's what you told the police; didn't you?

25 A Yes, I did.

Ronetta Miller-cross by Mr. Barr

1 Q But now of course at the time that you
2 went to Mr. Prosser's house that night, you all
3 were still lovers; weren't you?

4 A We wasn't on good terms; no.

5 Q Well you mean to tell me you let somebody
6 talk you into going to somebody's house to rob
7 them and you ain't on good terms with them?

8 A We were still conversating, but we wasn't
9 in a sexual relationship.

10 Q Were you still friends?

11 A Yes, we were.

12 Q And so far as you being friends, you were
13 still willing to go along with whatever deal she
14 hatched up to get some marijuana.

15 A Yes.

16 Q Now you acknowledge that you have been
17 advised that you are not going to be sentenced for
18 your guilty plea until after you testify against
19 Mr. Wallace. You were told that; weren't you?

20 A Yes, I was.

21 Q And of course the fact that depending upon
22 what you -- how well you do, that certainly has no
23 bearing on what you say on this witness stand
24 today; does it?

25 A That's incorrect.

Ronetta Miller-cross by Mr. Barr

1 Q Ma'am?

2 A That's incorrect.

3 Q Oh, it does have some bearing on it? It
4 does have bearing on it?

5 A I suppose, yes.

6 Q You know if you mess up, the handle might
7 fall down on you. You know that; don't you? And
8 you thought about it long and hard before you made
9 the decision. Now when you got with Ms. Jones on
10 the 27th of November, were you still friends then?

11 A Yes.

12 Q Were you also friends with Mr. Prosser?

13 A He was an associate.

14 Q Well associate. You said you had gone to
15 his house several times; didn't you?

16 A Yes, I have.

17 Q You said that you, and you told the police
18 that you had gone out there and you go out there.
19 And in fact you even told him that -- told them
20 that he had some stuff a little bit stronger than
21 marijuana; didn't you?

22 A Yes.

23 Q And what kind of stuff were you referring
24 to?

25 A Cocaine.

Ronetta Miller-cross by Mr. Barr

1 Q Cocaine. You don't -- you've never
2 snorted a piece of crack or a piece of cocaine in
3 your life; have you?

4 A No, I haven't.

5 Q You just went out there and told the
6 police about it, because you just think it would
7 be popular to talk about it; right?

8 A No.

9 Q Did you go out there to get some?

10 A Not cocaine.

11 Q Oh, you went out there for something else.
12 In fact you said look he has cookouts. And we go
13 out there with him and we chill. In fact that's
14 the reason that you told the police officer that
15 you were going out there this time in your
16 statement, you told them you were going to chill.

17 A Yes.

18 Q I see. And you didn't tell, in fact it
19 took three times to pry it out of you, you didn't
20 tell them anything about any conspiracy to rob
21 anybody. And you didn't tell about any
22 conspiracy to go out there and take anything from
23 anybody. You told them you were going out, and
24 you and this woman, Ms. Jones, were going out
25 there to chill. That's what you told them; didn't

Ronetta Miller-cross by Mr. Barr

1 you?

2 A Yes.

3 Q Now with respect to this conspiracy, you
4 know what a conspiracy is? Do you know what a
5 criminal conspiracy is? Do you know what it is?

6 A I believe so, yes.

7 Q Now, inasmuch you believe and know what it
8 is, tell me whether you agree with me; that it's
9 an agreement among two or more people to perform
10 some criminal act, or at least do something
11 otherwise illegal by some criminal means. You
12 would agree with that?

13 A Yes.

14 Q Now tell me if you would please, ma'am, I
15 want to know specific dates. Did you know Andre
16 Wallace before October 27th of 2009?

17 A Not personally.

18 Q Not personally. Had you ever discussed
19 with him, or had it ever been discussed in your
20 presence prior to October 27th of 2009, robbing
21 Mr. Prosser?

22 A No.

23 Q Now on October 27th of 2009, tell me what
24 you heard Andre Wallace say as it relates to a
25 plan to rob Mr. Prosser.

Ronetta Miller-cross by Mr. Barr

1 A That we was just going to go in there and
2 rob him.

3 Q I want to know specifically what you heard
4 Andre Wallace said.

5 A I can't remember exact word for word
6 everything he said.

7 Q Oh, you can't remember?

8 A No, I can't.

9 Q You think it might be because you didn't
10 ever hear him say anything? In fact you yourself
11 said that the plan originated or if it was a plan
12 it originated with Ms. Jones; didn't you?

13 MS. BARR: Objection. That's a compound
14 question.

15 THE COURT: Divide it up, please, Mr.
16 Barr. Restate the question.

17 MS. BARR: Judge, I will be more than
18 happy to rephrase it.

19 THE COURT: Objection is sustained.

20 Q Here is what you wrote. Whose idea was it
21 initially for you to call Mr. Prosser's house?

22 A Tiffany.

23 Q Tiffany. And isn't it true that you
24 borrowed Andre's telephone and made the first
25 phone call; didn't you?

Ronetta Miller-cross by Mr. Barr

1 A I don't know about the first phone call,
2 but I had called Andre's phone.

3 Q In fact, you had available your own
4 telephone, but it was on your land line. And you
5 didn't want Mr. Prosser's name and telephone
6 number showing up on your house telephone number;
7 did you?

8 A I have called him on the house phone
9 numerous times.

10 Q Oh, you have?

11 A We just wasn't in my house at the time.
12 We was outside of my house.

13 Q Your January 29th statement, do you deny
14 January 29th, line 3, starting with line 2. So I
15 called him up on Andre's phone, because I didn't
16 have a phone. I didn't want to call him off my
17 house phone. Was that you?

18 MS. BARR: And, Judge,---

19 A Yes, that's me.

20 THE COURT: Hold it just a second. Yes,
21 ma'am.

22 MS. BARR: I would ask obviously that if
23 the witness is going to be questioned about this
24 statement, she be given an opportunity to see it.

25 MR. BARR: I would be more than happy to

Ronetta Miller-cross by Mr. Barr

1 do that.

2 Q That was you; wasn't it?

3 A Yes.

4 Q So you didn't want to call him on your
5 house phone. Another lie you just told; that you
6 just---

7 A I didn't have no reason---

8 Q ---said you didn't want to---

9 A ---to call him on my house phone.

10 Q Pardon?

11 A I didn't have a reason to go all the way
12 in my house, and come back outside and make a
13 phone call when the phone was -- an available
14 phone was right there for me to use.

15 Q I just quoted you where you said you
16 didn't want to call him on your house phone.
17 Didn't you say that?

18 A Yeah, I said that in that statement.

19 Q Oh, in that statement. Tell me if would
20 please, ma'am, now that we understand based on
21 what you are saying; that as far as anything that
22 you know about going out to Mr. Prosser's house,
23 it was told to you by Ms. Jones, now you called
24 Mr. Prosser's house on Andre's telephone. Do you
25 remember approximately what time it was when you

Ronetta Miller-cross by Mr. Barr

1 called him?

2 A It was before 9:00 o'clock.

3 Q Before 9 o'clock?

4 A Yes.

5 Q Can you get a little bit better than that?

6 A It was probably 8 o'clock. I know it was
7 nighttime.

8 Q It was nighttime. You said you still had
9 to go to the IGA. You had left the IGA. In fact
10 I believe you said you went to the store to get
11 your daddy some beer.

12 A Yes.

13 Q Now do you know what time you came back
14 and brought the beer home for him?

15 A No.

16 Q You don't remember?

17 A No.

18 Q How long between the first time you called
19 Mr. Prosser's house, how long did it take for you
20 to get out there to his house?

21 A 10 to 15 minutes, perhaps.

22 Q 10 or 15 minutes. You didn't get him the
23 first time you called him though; did you?

24 A I can't remember.

25 Q You called him several times. Now of

Ronetta Miller-cross by Mr. Barr

1 course if you look at his phone records it tells
2 you exactly how many times you called him.
3 Andre's phone number is on there. And he gave you
4 his phone to use. Have you seen that phone
5 record?

6 MS. BARR: Judge.

7 THE COURT: Yes, ma'am.

8 MS. BARR: We would object, counsel is
9 testifying. Obviously we would---

10 THE COURT: Mr. Barr you can ask the
11 questions. Of course, some of the questions in
12 cross examination on both sides might be more
13 confrontational. But try to avoid injecting your
14 own comments. Just ask the questions.

15 MS. BARR: Your Honor, If I am not
16 mistaken, I believe Ms. Barr is the one that made
17 reference to the phone records.

18 THE COURT: I don't think she was
19 objecting to you discussing those. Her objection
20 is to you offering your own take on them. And
21 what I am instructing you to do is just ask
22 questions instead of commenting on your view of
23 them.

24 MR. BARR: All right.

25 THE COURT: You can certainly inquire---

Ronetta Miller-cross by Mr. Barr

1 Q His number is 372-1147. That's his
2 number; right?

3 A Yes.

4 Q And Andre's number is 372-9548.

5 A I don't know his number.

6 Q You don't know his number.

7 A No.

8 Q How did you call it when you claimed that
9 you were calling somebody to come get you?

10 A Because it was already saved under my name
11 in his phone.

12 Q And that's when you had Mr. Prosser's
13 phone?

14 A Yes.

15 Q Tell me if you would please, ma'am, you
16 indicated that as it relates to Mr. Wallace, I
17 want to know the name if there is any. Of one
18 individual that saw you in Mr. Wallace's vehicle
19 after you went out to Mr. Prosser's house.

20 A After I went?

21 Q Yes, ma'am.

22 A Ain't nobody saw me in his vehicle, but
23 the people I was with.

24 Q Now you said that you came back to
25 Kingstree.

Ronetta Miller-cross by Mr. Barr

1 A Yes.

2 Q And you said you stopped at a store.

3 A Yes.

4 Q Now did you go in the store?

5 A No, I didn't.

6 Q Mr. Wallace you said went in the store.

7 A Yes.

8 Q Now are you aware, or do you know whether
9 or not -- well let me, I better not ask you that.
10 You don't know the identity of any individual at
11 the store that could have identified Mr. Prosser.

12 A I never went in the store.

13 Q And you don't know exactly where the store
14 is located.

15 A Yes, I know exactly where the store is
16 located.

17 Q Well where is it?

18 A It's in the Cades.

19 Q Cades cash and carry. And what time was
20 it was when you got to that store?

21 A I don't know.

22 Q You don't know?

23 A No.

24 Q Do you know of a single sole other than
25 you and your lover and your other friend,

Ronetta Miller-cross by Mr. Barr

1 Mr. Cornelius McClary, that could verify that
2 Mr. Wallace, Andre Wallace, did anything other
3 than drop you off at Mr. Prosser's house? One
4 person.

5 A My daddy saw me get into the car. And he
6 know I came back in that car.

7 Q Your daddy.

8 A Yes.

9 Q And you told that to the police officers?

10 A No.

11 Q You didn't tell them. Now of course that
12 would have confirmed that Andre Wallace brought
13 you back home; would it not?

14 A Yes.

15 Q But you did not tell these officers about
16 that, you didn't tell them about that?

17 A About what?

18 Q Your father could have confirmed that
19 Andre Wallace brought you back home.

20 A No, I didn't tell them about that.

21 Q When did you tell them about the -- about
22 Mr. Cornelius McClary hanging out of the window
23 and shooting back at Mr. Prosser's house?

24 A I can't recall when I told him.

25 Q You can't recall?

Ronetta Miller-cross by Mr. Barr

1 A No, I can't.

2 Q That bad memory again?

3 A It just had happened a while ago. I just
4 can't remember everything that happened a while
5 ago.

6 Q Do you recall whether or not you actually
7 told them that?

8 A No, I can't recall.

9 Q But you remembered it today. You were
10 sitting in the courtroom. In fact you were
11 sitting right back here when I asked young Mr.
12 Prosser today about those bullet holes outside of
13 that house; weren't you?

14 A Yes.

15 Q You heard what we said.

16 A Yes.

17 Q And you heard that he said that they
18 weren't made by any bird shots. You heard him say
19 that.

20 A Yes.

21 Q Now at some point between then and now,
22 you have now realized, and you have come to know
23 and you are testifying, that Mr. McClary shot back
24 at Mr. Prosser's house; is that correct?

25 A Yes.

Ronetta Miller-cross by Mr. Barr

1 Q That doesn't strike you as being a little
2 bit odd; that your memory will just jump back---

3 A I had already told---

4 Q ---like that?

5 A I had already told my lawyer that.

6 Q Oh, you told your lawyer?

7 A Yes, I did.

8 Q But now when Di Collins took your
9 statement the third time.. Do you remember what
10 she told you?

11 A No, and I don't know who that is.

12 Q That's this young lady right here, sitting
13 right here next to the solicitor. Next to the
14 prosecutor. This is her right here. Do you
15 remember she took your statement the third time on
16 the 29th of January?

17 A No.

18 Q Didn't they tell you that they had gotten
19 kind of tired of you lying to them? Didn't they
20 tell you that?

21 A I ain't know.

22 Q Ma'am?

23 A I don't know if they told me that or not.

24 Q You don't know?

25 A No.

Ronetta Miller-cross by Mr. Barr

1 Q Well do you remember telling them what you
2 thought the purpose was for you calling
3 Mr. Prosser?

4 A No.

5 Q Let me show you your statement
6 January 29th, 2009, and ask you whether you
7 recognize having that conversation with the police
8 officers?

9 THE COURT: What page, Mr. Barr?

10 MR. BARR: Page 6 line 13.

11 A I read it.

12 Q You read it. Now do you recollect what
13 you told them that your purpose was for calling
14 Mr. Prosser?

15 A His birthday.

16 Q For his birthday. Now you didn't tell
17 them about any conspiracy to rob nobody; did you?

18 A No.

19 Q He took a long gun out of the car. Who
20 did you tell that to; that you saw Andre Wallace
21 when you all returned to Kingstree, take a long
22 gun out of the car? Did you tell any one of the
23 police officers that?

24 A I reckon so.

25 Q When did you tell them that?

Ronetta Miller-cross by Mr. Barr

1 A I can't remember when.

2 Q Oh, you can't remember when. Tell, let's
3 see. Tell me which one. There is one seated at
4 this table. There were only three. Officer Brown
5 over here. Officer Collins. And Wayne McFadden
6 who is no longer here. Now was it either one of
7 these two that you told that to?

8 A I only remember talking to Mr. Wayne
9 McFadden and the gentleman right there.

10 Q But which one of them? Did you tell
11 either one of them that?

12 A More than likely I had a conversation with
13 Mr. Wayne McFadden.

14 Q Wayne McFadden. So which do you recall on
15 what occasion? You gave three statements. Two on
16 November 3rd, and one on January 29th. Do you
17 recall which statement you told them about seeing
18 Andre Wallace take a long gun? You don't remember
19 that.

20 A No.

21 Q Ms. Barr asked you as it relates to this
22 conspiracy, criminal conspiracy, that you talked
23 about that you say Andre was a part. She asked
24 you how you would excavate yourself from that
25 situation once you got into it, how you were going

Ronetta Miller-cross by Mr. Barr

1 to get out of it. Now I want you if you would,
2 what if it happened, Andre told you he was going
3 to get you out of it.

4 A That him---

5 Q How he was going to get you out of it.

6 A That him and Cornelius was going to come
7 in there and get me. And I was going to walk out
8 of there.

9 Q That's what he told you?

10 A Yes, he did.

11 Q And who did you tell that to? Now your
12 lawyer, the Solicitor just asked you why in the
13 world did you do that not having a way to get out.
14 Are you telling us now that Andre told you that he
15 was going to barge in there, come in there and get
16 you out?

17 A Yes, but it didn't happen like that.

18 Q But that's what Andre told you?

19 A Yes, but it didn't happen like that.

20 Q Did you tell either one of the
21 investigating officers that that's what he told
22 you?

23 A I can't recall telling them that.

24 Q You don't recall. You think maybe you
25 didn't recall it because it just didn't happen?

Ronetta Miller-cross by Mr. Barr

1 A No.

2 Q You had three statements to write it.

3 Which one did you write it in? None; did you?

4 Now I know you would have considered that

5 important; would you not? Especially in your

6 statement of January 29th 2010, when they told you

7 they were tired of you lying to them. So I know

8 you would have considered that important. But you

9 didn't tell anybody.

10 You were asked by Investigator Lail and

11 McFadden. This is your January 29th statement; about

12 having any conversation with Andre concerning the

13 initiation of this so called plan to stick up

14 Mr. Prosser. Now let me show you, this is page 11.

15 Starting at the bottom of page 11 through line 6. This

16 is a question. Line 6. I'm sorry, line 24. Page 11,

17 line 24. Have you read it?

18 A Uh-huh. (Affirmative.)

19 Q Now according to this statement, you were

20 asked to break down the individuals that were

21 inside the car. And the question said that we,

22 with Andre, who had a conversation with you when

23 you first met in the project on your way to go to

24 the house. Now what was your response?

25 A It said I never had a conversation.

Ronetta Miller-cross by Mr. Barr

1 Q You didn't even conversate with him. You
2 didn't like him? Why didn't you like him?
3 Because he was quiet?

4 A I didn't never got to know him to like him
5 like that.

6 Q I see.

7 A We never got to know each other.

8 Q You don't care whether he falls through
9 the crack or not; do you?

10 A I didn't say that. We just didn't know
11 each other.

12 Q Well let me ask you something. As it
13 relates to your boyfriend or girlfriend, and---

14 MS. BARR: Judge, I am going to object to
15 that. That's inappropriate.

16 MR. BARR: Your Honor, that is in the record.

17 THE COURT: Objecting to characterizing---

18 MS. BARR: Absolutely.

19 THE COURT: As a girlfriend?

20 MS. BARR: Girlfriend and boyfriend. That
21 comment is inappropriate, Your Honor. As it relates to
22 a co-defendant, that's improper.

23 MR. BARR: I can rephrase it, Judge.

24 THE COURT: Well the objection is overruled.

25 You can refer to her as whatever the witness has

Ronetta Miller-cross by Mr. Barr

1 described her to being. She described her as being a
2 girlfriend; is that not true, Ms. Barr?

3 MS. BARR: Now Mr. Barr is describing it
4 as boyfriend, girlfriend. Now that's just not
5 funny.

6 THE COURT: Well let's just leave that. That
7 objection is sustained.

8 Q With respect to your relationship between
9 this woman and yourself; which is, you said you
10 all are lovers. Now are both of you all female
11 lovers, or one a male or what? I mean I---

12 MS. BARR: Objection, Judge. Relevance.

13 THE COURT: All right, just lovers. Stick with
14 that. Objection sustained.

15 Q Of course you do admit that you have warm,
16 friendly feelings and very serious concerns about
17 what happens to this lady out here in the plaid --
18 the person in the plaid shirt; haven't you?

19 A Yes.

20 Q You care very much about her. In fact
21 whatever she tells you, you seem to go along and
22 do it, irrespective of what the consequences are.

23 THE COURT: You need to ask her a question,
24 Mr. Barr.

25 Q Do you consider the potential consequences

Ronetta Miller-cross by Mr. Barr

1 of your actions when she tells something before
2 you do it?

3 A No, not all the time.

4 Q Did you consider it in this case?

5 A No.

6 Q In fact, she apologized to you for getting
7 you mixed up and dragged up in all of this mess;
8 didn't she?

9 A Yes.

10 Q Sorry I ever brought you into this thing;
11 didn't she? Didn't she tell you that?

12 A Yes.

13 Q Of course that was after you got caught;
14 right?

15 A Yes.

16 Q In fact, you told these officers that in
17 terms of your getting access to Mr. Prosser's
18 house, you told them that Tiffany had the code,
19 didn't you?

20 A Yes.

21 Q Did you ever ask her how she got it?

22 A The only way---

23 Q Got the code to this man's house?

24 A The only way she had to get it was from
25 Mr. Prosser.

Ronetta Miller-cross by Mr. Barr

1 Q And you went to his house expecting to
2 walk in after she punched in the code and let you
3 in; didn't you?

4 A I went there with Mr. Prosser.

5 Q But you went there and planned to go in
6 after she punched in the code and opened the door
7 and let you in; didn't you? Oh, that wasn't your
8 plan? She did tell you that she had the code and
9 could let you in.

10 A After the fact. After everything was said
11 and done.

12 Q After the fact. Now of all the people you
13 know, the people that you claim, and I am just
14 referring to specifically to Andre. I'm not
15 talking about Mr. McClary. Do you have any
16 knowledge about Andre Wallace knowing anything
17 about where any marijuana was in Mr. Prosser's
18 house?

19 A No.

20 Q In fact, you don't have any knowledge that
21 Andre Wallace knew Mr. Prosser prior to 27th of
22 October; do you?

23 A No.

24 Q The only person to your knowledge who
25 would know where Mr. Prosser had his stash was

Ronetta Miller-cross by Mr. Barr

1 Ms. Jones.

2 A Yes.

3 Q Did you ever hear Ms. Jones tell

4 Mr. McClary where to look for it when you got in
5 the house?

6 A No.

7 Q You never heard her doing that. Well I am
8 just curious then, he was just supposed to go in
9 there and stumble around until he found marijuana
10 somewhere; when Ms. Jones knew where the marijuana
11 was? She'd in fact, you had smoked some too;
12 hadn't you?

13 A Yes.

14 Q In fact you watched Mr. Prosser and saw
15 where he got it from; didn't you?

16 A No.

17 Q But Ms. Jones knew where he got it from;
18 didn't she?

19 A I assume she did.

20 Q You know you've told -- you told, you were
21 asked whether or not you shot Mr. Prosser, and you
22 said you didn't. In fact, I think you indicated
23 to the police officers that when Mr. Prosser got
24 shot, you were running in the other direction when
25 you heard the shot. Now isn't that true?

Ronetta Miller-cross by Mr. Barr

1 A Yes, I did run.

2 Q I see. So now under this theory that you
3 have got about who shot Mr. Prosser, according to
4 you, you don't know who shot him.

5 A I know who shot him.

6 Q Who did you see shoot him?

7 A I ain't see nobody shoot him.

8 Q Now you said when you were in the house,
9 or when you ran out of the house, after the shot
10 was fired, while you were running, you were
11 running as fast as you could. Isn't that correct?

12 A Yes.

13 Q You ran out of your shoes.

14 A Yes.

15 MS. BARR: Judge, I am going to object to
16 counsel's characterization. He is assuming facts not in
17 evidence. She testified she heard the shot while she
18 was in the house, not while she was running.

19 THE COURT: Well that was some questions back.
20 So your objection goes back to that question?

21 MS. BARR: Yes. Well I guess my objection also
22 would be compound question.

23 THE COURT: In response, well in response to
24 that, the witness said, yes, I ran. Now you can clear
25 that up on redirect.

Ronetta Miller-cross by Mr. Barr

1 MS. BARR: Yes, sir.

2 THE COURT: But I'll overrule it at this
3 time.

4 Q Your November 3rd, statement 2009, page
5 42. You were asked, did you shoot Mr. Prosser.
6 And what was your response?

7 A No, I didn't shoot him.

8 Q You were in the house with Mr. Prosser,
9 when the shooting happened. What was your
10 response?

11 A I said no, I heard it.

12 Q You went out the back door.

13 A I said yes.

14 Q What room were you in when you heard it?

15 A I was at the door.

16 Q And what were you doing?

17 A Running.

18 Q What?

19 A As I was running, I heard it.

20 Q As you were running -- now as you were
21 running, you were wide open; weren't you? You had
22 the after burners turned on. You weren't messing
23 around, you were running. Now according to you
24 when you got to the car, Andre was in the car.
25 You told Ms.---

Ronetta Miller-cross by Mr. Barr

1 THE COURT: Ask her the question instead.

2 Q Did not you tell Ms. Barr that Andre was
3 driving the car when you got there?

4 A Yes, I did.

5 Q Now you didn't do any frolicking detour
6 when you came out of that man's house. You went
7 straight to that car; didn't you?

8 A I was running. The car wasn't even there
9 yet.

10 Q It wasn't there. But when you saw it,
11 Andre was driving it. Is that it?

12 A When he came to pick me up, he was
13 driving.

14 Q When he came to pick you up. Ms. Miller,
15 isn't it true that in your November 3rd statement
16 page 15, line 15, you told the investigating
17 officers that you never saw Mr. Wallace with a
18 gun? And---

19 MS. BARR: I'm sorry, Judge, page 50 or
20 15?

21 THE COURT: Page 15, line 15.

22 MR. BARR: Line 15.

23 Q That's what you told him; right?

24 A Uh-huh. (Affirmative.) Yes.

25 Q Never saw him with a gun. In fact the

Ronetta Miller-cross by Mr. Barr

1 truth of the matter is, Ms. Miller, did you and
2 Ms. Jones agree to pay Andre Wallace \$20 to take
3 you all out to Cedar Swamp?

4 A I didn't agree to him about anything.

5 Q Did you hear Ms. Jones agree to pay him
6 \$20 to take him?

7 MS. BARR: Objection, Judge, that's
8 hearsay. To the extent that she is asking him to
9 comment on what somebody may or may not have said.

10 Q I'll rephrase the question, Judge. You
11 didn't agree to pay him anything.

12 A No.

13 Q And you never heard Ms. - well I'll tell
14 you what. There were never any discussions in
15 your presence concerning \$20.

16 A No.

17 Q Whose friend is Mr. Cornelius McClary?

18 A He isn't mine.

19 Q Do you know if he is Mr. Wallace's friend?

20 A No, I don't.

21 Q I mean Ms. Jones? You don't know?

22 A I don't know what they were to each other.

23 Q You said you never shot a gun. Or have
24 you ever shot a gun?

25 A No.

Ronetta Miller-cross by Mr. Barr

1 Q How about Ms. Jones? How about Ms. Jones?
2 Do you know whether or not she?

3 A No.

4 Q You don't know.

5 A No, I don't.

6 MR. BARR: Thank you, ma'am. I have
7 nothing further.

8 THE COURT: Redirect.

9 MS. BARR: Yes, sir.

10 Redirect Examination by Ms. Barr:

11 Q Ms. Miller, I have got a couple of
12 questions that I need to follow up with you.
13 Mr. Barr asked you about a statement that you made
14 to the police in January of 2010, where you talked
15 about the Defendant Andre Wallace being quiet.
16 And you never really as you say, conversated with
17 him that much.

18 Do you remember him asking you questions
19 about that?

20 A Yes.

21 Q I am going to hand you the transcript of
22 your statement dated January 29th 2010. And I
23 going to call your attention to page 11. Can you
24 see? Line 23. You said that you remember talking
25 with Deputy Wayne McFadden; right?

Ronetta Miller-redirect by Ms. Barr

1 A Yes.

2 Q And beginning at line 23, deputy McFadden
3 asked, let's break this down as far as individuals
4 inside the car. I am going to start with Andre.
5 What was the conversation with Andre as far as
6 when you first met him in the projects. Does that
7 appear to be the question?

8 A Yes.

9 Q And you all were talking about when you
10 first met him. Is that right, during that part of
11 the statement?

12 A Yes.

13 Q And that's when you said he was really
14 quiet and you didn't talk to him like that.

15 A Yes.

16 Q When you gave the first statement to the
17 police it was same day you were arrested?

18 A Yes.

19 Q So we know that the first statement you
20 gave to the police was November 3rd, 2009. Does
21 that sound about right?

22 A Yes.

23 Q Ms. Miller, Mr. Barr asked you on cross
24 examination to tell the ladies and gentlemen of
25 the jury everything that the Defendant Andre

Ronetta Miller-redirect by Ms. Barr

1 Wallace said as far as this criminal conspiracy.

2 Do you remember him asking you that?

3 A Yes.

4 Q He wanted to know specifically what if
5 anything his client said as far as planning this
6 robbery, do you remember that?

7 A Yes.

8 Q I am going to hand you a transcript of
9 your statement the day you were arrested. Does
10 that appear to be November 3rd 2009?

11 A Yes.

12 Q 12:57 p.m. is when the statement started?

13 A Yes.

14 Q I am going to turn your attention to
15 starting at line 24, page 22. The bottom of that,
16 line 24. It says Lieutenant Collins who is the
17 lady that is seated next to me, she asked you, it
18 had, I'll keep him in the room while you all
19 search the house. Who said that for you to keep
20 him in one room while you searched the house for
21 marijuana. Do you remember her asking that
22 question?

23 A No.

24 Q Does it appear that that was asked in your
25 statement?

Ronetta Miller-redirect by Ms. Barr

1 A Yes.

2 Q Tell the jury what you said in that
3 response to that statement by her.

4 A It said nobody really told me what to do.
5 Yes, they did. Dre was like man you got to do
6 this right, because if it goes wrong, we don't
7 want to mess up. I was like, what.

8 Q So when Investigator Collins asked you
9 about what the role, you told her the day you were
10 arrested that Dre said you got to do this right.
11 You don't want to mess this up; right? That's
12 what he told you; right.

13 A That's what I said in the statement.

14 Q That's what he told you not to mess it up,
15 we got to do it right?

16 A Yes.

17 Q I call your attention to the highlighted
18 portions on page 24 of that same statement. When
19 the investigator was asking you about whose idea
20 it was to make a call, and who told you to call
21 Mr. Prosser. What did you tell them?

22 A I said Dre.

23 Q Dre what?

24 A Andre.

25 Q Andre did what?

Ronetta Miller-redirect by Ms. Barr

1 A He gave me his phone. I walked to the
2 store to buy my daddy beer, me and Tiffany.

3 Q And what did Andre say about the phone
4 call?

5 A Telling me to call Mr. Prosser.

6 Q Okay. So the day you were arrested
7 November 3rd 2009, which is less than a week after
8 the murder, you actually told the police that
9 Andre was involved in this; right?

10 A Yes.

11 Q You told them that Tiffany was involved in
12 this; right?

13 A Yes.

14 Q You told them you were involved in it?

15 A Yes.

16 Q And you told them that Cornelius McClary
17 was involved in this.

18 A Yes.

19 Q Now when you indicated that -- when you
20 testified that Cornelius McClary sat on the window
21 sill of the car and started shooting at the
22 victim's residence, you didn't testify about that
23 just because you heard what the victim's son said;
24 did you?

25 A No.

Ronetta Miller-redirect by Ms. Barr

1 Q You testified because it was true.

2 A Yes.

3 Q And you indicated that you had already
4 told your lawyer about it?

5 A Yes.

6 Q Your lawyer is Mr. Carraway?

7 A Yes.

8 Q He's in the courtroom right behind you?

9 A Yes.

10 Q And when you gave that statement on
11 November 3rd, and you talked about the planning of
12 this, page 6 of that statement, did you tell the
13 investigators, they just needed somebody to help
14 them?

15 A Yes.

16 Q And they asked you who planned it?

17 A Yes.

18 Q And what did you say?

19 A Dre, Trell and Tiffany.

20 Q Where were you specifically, when you
21 heard the shot going off.

22 A I was in the home.

23 Q Were you near the door? The back door?

24 A Uh-huh. (affirmative.) Yes.

25 Q And where was Cornelius when you heard the

Ronetta Miller-redirect by Ms. Barr

1 shot going off?

2 A Standing beside me.

3 Q So you know he didn't do it.

4 A Yes.

5 Q Who is the only person that you told that
6 shot Mr. Prosser?

7 A Andre.

8 Q This Defendant sitting right there at the
9 defense table; right?

10 A Yes.

11 THE COURT: Anything else?

12 Recross Examination by Mr. Barr:

13 Q Now according to you, there would have
14 been two other people in the car when Andre told
15 you he shot Mr. Prosser, according to you. Ms.
16 Jones and Mr. McClary; right?

17 A Yes.

18 Q Now when he told you that, did he say it
19 loud enough that either one of them if they were
20 present that they could have heard it too?

21 A Yes.

22 Q And Ms. Jones would have been in the
23 vehicle too so she could have heard it too.

24 A Yes.

25 MR. BARR: Thank you, ma'am.

Ronetta Miller-recross by Mr. Barr

1 MS. BARR: Judge, I don't have anything
2 further.

3 THE COURT: Thank you, ma'am. You may
4 step down.

5 (Whereupon, the trial commences on Wednesday May
6 18th 2011 at 9:30 a.m.)

7 THE COURT: Ms. Barr.

8 MS. BARR: If it please the court we will
9 call Gregory Dicks, Sr.

10 Gregory Dicks, Sr. being first
11 duly sworn, testified as follows:

12 MS. BARR: May it please the Court.

13 THE COURT: Yes, ma'am.

14 Direct Examination by Ms. Barr:

15 Q Mr. Dicks, State your full name for the
16 record.

17 A My name is Gregory Dicks, Sr.

18 Q And, sir, I need you to please make sure
19 to speak up nice and clearly for me, okay.

20 A Okay.

21 Q So where did you live?

22 A Road, Lake City, South
23 Carolina.

24 Q Currently who lives there with you?

25 A Me, Angela Wallace and Andre Wallace.

Gregory Dicks-direct by Ms. Barr

1 Q When you say Andre Wallace, you are
2 talking about the Defendant in this case; is that
3 correct?

4 A Yes.

5 Q Angela Wallace is his mother?

6 A Yes.

7 Q She's also present in the courtroom?

8 A Yes.

9 Q And you and she -- are you in a
10 relationship?

11 A Yes.

12 Q And you all have been in a relationship
13 together for some time.

14 A Yes.

15 Q How long have you lived at that address in
16 Lake City?

17 A 10, 15 years.

18 Q Now you were subpoenaed by me to testify
19 in this case.

20 A Yes.

21 Q You probably don't want to be here; do
22 you?

23 A No.

24 Q Sir, back on the November 2nd 2009, did
25 Investigator Deborah Collins and other members of

Gregory Dicks-direct by Ms. Barr

1 the Williamsburg County Sheriff's Department come
2 to your home?

3 A Yes, they did.

4 Q What reason did they come to your home?

5 A They came to ask me about a phone.

6 Q A cell phone?

7 A Yes.

8 Q And did they give you the number 372-9548?

9 A Yes.

10 Q And did they indicate to you that that
11 cell phone number had come back registered in your
12 name?

13 A Yes.

14 Q Did they tell you that they were
15 investigating a homicide?

16 A Well no, they just asked me was there
17 another phone in my name.

18 Q And did you say it was?

19 A Yes.

20 Q Now was that a cell phone that you were
21 using?

22 A No. That's a cell phone that Andre was
23 using.

24 Q You say a cell phone that Andre was using.
25 You are talking about Mr. Wallace, the Defendant.

Gregory Dicks-direct by Ms. Barr

1 A Yes.

2 Q Now did you know he had this cell phone in
3 your name?

4 A Yes.

5 Q What type of vehicle was, I am going to
6 call him your son-in-law. What type of vehicle
7 was Mr. Wallace, Andre Wallace driving at the
8 time?

9 A Gray and burgundy Mercury Marquis.

10 Q And what color was the top of the vehicle?

11 A Burgundy.

12 Q The cell phone services were provided
13 through AT & T?

14 A Yes.

15 Q Now did you ever use that phone that night
16 to contract Mr. Prosser?

17 A No.

18 Q Did you ever use the phone?

19 A No.

20 Q That was his phone. Only he used it as
21 far as you know.

22 A Yes.

23 Q You all had some sort of family plan or
24 something?

25 A No, it's -- it's like a prepaid plan. You

Gregory Dicks-direct by Ms. Barr

1 pay for the minutes and just use the phone.

2 MS. BARR: Thank you, sir. That's all the
3 questions I have.

4 THE COURT: Mr. Barr.

5 MR. BARR: I have no questions, Judge.

6 THE COURT: Thank you, sir. You may step
7 down.

8 MS. BARR: Judge, we would ask that the
9 witness be excused.

10 THE COURT: Any objection?

11 MR. BARR: No, sir.

12 THE COURT: Thank you, Mr. Dicks, you can
13 leave or stay whichever you like.

14 THE COURT: Next witness.

15 MS. BARR: We would call Mr. Karl Kenley.

16 Karl Kenley, after being duly sworn,
17 testified as follows:

18 Direct Examination by Ms. Barr:

19 Q If you will, sir, please introduce
20 yourself to the ladies and gentlemen of the jury.

21 A My name is Karl Kenley. Karl with K.
22 Last name is Kenley. K-E-N-L-E-Y. I am an agent
23 with the State law enforcement division.

24 Q Now the State Law Enforcement Division,
25 that's our chief criminal investigation agency in

Karl Kenley-direct by Ms. Barr

1 the State; right?

2 A That's correct.

3 Q We call it sled?

4 A That's correct.

5 Q How long have you been employed there?

6 A I have been employed there for 5 years.

7 Q And kind of tell the jury what it is that
8 you do for sled.

9 A I am employed in the crime scene unit. I
10 do respond to all 46 counties in the State of
11 South Carolina when requested by agencies to
12 process a crime scene, collect evidence and
13 document crime scenes.

14 Q Will you tell us a little bit about your
15 educational background and your experience for
16 your job?

17 A I have a bachelor of Arts degree, Criminal
18 Justice and Sociology. I have been in law
19 enforcement for 20 years. The last 5 in sled.

20 Q Sir, your voice kind of left me as you
21 were speaking. So if you will, just kind of go
22 over again your educational background and your
23 qualifications in terms of your training for your
24 job.

25 A I have bachelor of Arts degree in

Karl Kenley-direct by Ms. Barr

1 Sociology and Criminal Justice. The sled housing
2 unit is actually a 2-year in house training
3 program, training all aspects of crime scene
4 photography, crime scene construction and blood
5 stain pattern analysis, footwear and tire wear
6 tread and that's all in house training program.

7 Q Now that's a little better in terms of
8 keeping your voice near the microphone, okay, so
9 please continue to do that. And you said you have
10 been in law enforcement for how many years?

11 A 20 years.

12 Q You are a certified police officer?

13 A Yes.

14 Q Now, sir, back on October 30th 2009, you
15 assisted our county chair in the investigation of
16 the shooting Mr. Ernest Prosser; is that correct?

17 A That's correct.

18 Q And is that routine practice for your
19 agencies to assist other county agencies in
20 investigating not just homicides, but other major
21 crimes?

22 A Yes, that is an assisting agency;
23 specifically, with the crime scene unit when we
24 are requested by other agencies to come and help
25 process the crime scene. 90 percent of what we do

Karl Kenley-direct by Ms. Barr

1 is death investigations.

2 Q And do you remember, I don't want to trick
3 you, but do you remember day of the week that you
4 came out to investigate?

5 A It was a Friday.

6 Q Tell us how you begin your investigation
7 once you arrive at the scene?

8 A Once we arrive at a scene, we will brief
9 or talk to the local agency that investigated that
10 scene. And they basically give us a run down of
11 basically what happened at the scene. And myself
12 and my partner, we kind of look over the premises
13 and walk through the scene, basically get an idea
14 of where this was needed photographed, documented
15 and collected. And then we start processing the
16 scene.

17 Q When you came into the residence of
18 Mr. Prosser, you saw his body on the couch?

19 A That's correct.

20 Q And it was obvious at that point that he
21 had been injured in some manner?

22 A That's correct.

23 Q Now I am getting you to step down off the
24 witness stand for me.

25 (Whereupon, the witness steps down from

Karl Kenley-direct by Ms. Barr

1 the witness stand.)

2 Q I want to use our projector screen. Now
3 because you are no longer at the microphone, I
4 need you make sure you keep your voice up nice and
5 clear for me, okay.

6 A Okay.

7 Q Step over there, Mr. Kenley. And, Your
8 Honor for the record, State's Exhibits No. 84
9 through 87 have -- the Defendant has no objection
10 to them, and so we would move them in evidence.

11 THE COURT: Is that right, Mr. Barr?

12 MR. BARR: That's correct, Judge.

13 (Diagram and photos marked State's Exhibit
14 Nos. 84 to 87 into evidence.)

15 Q Mr. Kenley, I am going to publish State's
16 Exhibit No. 84. Now is this a diagram that you
17 created following your crime scene investigation?

18 A Correct. It's a hand drawn diagram of the
19 crime scene after it was processed.

20 Q If you will, kind of explain to the jury
21 what is depicted in that particular exhibit.
22 Remember to keep you voice up.

23 A This is basically a diagram of the house
24 if you are actually looking down from the top of
25 the house from the sky basically from the camera.

Karl Kenley-direct by Ms. Barr

1 This is actually the back door where we actually
2 came up the residence to do the walk through and
3 get an idea of what the scene looked like. This
4 is a kitchen. This is a bathroom. These little
5 circles with the x's in are what we found to be
6 blood stains inside the house. Or suspected blood
7 at the time.

8 Then you have markers that were evidence
9 that were noticed, collected and photographed on
10 the scene. And the markers are also labeled on
11 this side of the key to give you -- to let you
12 know what each particular marker is marked in the
13 scene.

14 Q Let's start with the kitchen if I can.

15 A Okay.

16 Q Make sure I can understand your writing.

17 Does that say fridge here?

18 A That says fridge.

19 Q And your s with the circle in it,

20 indicated that blood was found---

21 A On the refrigerator.

22 Q On the refrigerator?

23 A Correct.

24 Q Now if we go down the hallway, there's the
25 dining room there; is that correct?

Karl Kenley-direct by Ms. Barr

1 A That's correct.

2 Q And there, I guess, that's in the hallway.

3 A This is the hallway between the dining
4 room. Again that was indicated suspected blood on
5 the floor.

6 Q And there is what I assume that you have
7 here is a bookshelf.

8 A Bookshelf, correct.

9 Q And your diagram reflects that there was
10 blood on the bookshelf.

11 A That's correct.

12 Q Now tell us about the living room in terms
13 of what if anything of evidentiary value you found
14 inside the living room.

15 A In the living room, this is a couch. This
16 is where the victim's body was when we arrived on
17 the scene. This marker on the floor was a live 9
18 millimeter round that was on the floor in the
19 living room.

20 Q Yes, sir.

21 A Off of the living room directly across the
22 living room is actually the bedroom. As you walk
23 into this bedroom area, again these circles with
24 the x again those were suspected blood stains on
25 the floor inside the bedroom. This marker No. 2

Karl Kenley-direct by Ms. Barr

1 was a wadding from a shotgun. Showing that a
2 shotgun had been fired. Somewhere similar to the
3 living room or in the bedroom.

4 Q Okay.

5 A Again, these circles with the x's again
6 are suspected blood stains that were on the floor.
7 Marker No. 4, this is actually a dresser, and we
8 found a 9 millimeter handgun that was found in an
9 open position with a live cartridge in the weapon.
10 Again, this is the bed. And the circles with the
11 x again where blood stains were found on the
12 comforter on the bed.

13 Q When you first saw the victim's body,
14 could you tell us at that point how he died?

15 A Not right away, because he was in a slight
16 stage of decomposition. So right away, it wasn't
17 readily available how he died or how he received
18 his injuries.

19 Q What did your investigation show as it
20 relates to the victim was most probably shot at
21 inside the residence.

22 A Basically he had to have to have been in
23 this area some place in the living room. Between
24 the living room and the bedroom when the shot was
25 actually fired from the bedroom in this direction.

Karl Kenley-direct by Ms. Barr

1 Because we found shotgun pellet up above where he
2 was sitting on the couch.

3 Q Now when you say up above the wall, you
4 are talking there was little, I am sorry, there
5 was some little shelf there above his body.

6 A That's correct. There was a shelf with
7 pictures on it. The wall itself actually had
8 holes in it apparently indicating that the shotgun
9 blast went in that direction.

10 Q Now, in terms of your photographing or
11 observing the crime scene inside the residence,
12 tell us about your investigation as it relates to
13 outside the residence.

14 A Outside of the residence we noticed that
15 there was a shoe that appeared to be out of place
16 But initially in the walk through, we didn't know
17 if there were any kids or anybody that lives in
18 the residence. So the shoe wasn't a factor
19 initially. But after we processed inside of the
20 residence and we realized that there wasn't any
21 kids there, we realized that that shoe possibly
22 belonged to somebody else. And it looked like a
23 female shoe when we collected it for evidence.

24 Q I am curious about the location of the
25 victim's residence. In terms of its proximity to

Karl Kenley-direct by Ms. Barr

1 other houses, was this like a residential
2 neighborhood, or is it out in the country, as we
3 call it?

4 A It was basically out in the country.
5 There weren't any houses around this particular
6 residence.

7 Q Now you indicated that you all found a
8 shoe outside the residence that appeared to have
9 belonged to a child or a female?

10 A That's correct.

11 Q And as a part of your investigation, did
12 you take possession of that shoe?

13 A Yes, we did.

14 Q What did you do after you took possession
15 of the shoe?

16 A . It was taken back to sled laboratory in
17 Columbia, and it was submitted to the DNA
18 department.

19 Q Did you find anything else outside the
20 residence that was of evidentiary value?

21 A A cell phone. And it also taken back o
22 sled and processed by me for fingerprints. And
23 then transferred to the DNA department.

24 Q The cell phone was?

25 A I think. I am pretty sure it was.

Karl Kenley-direct by Ms. Barr

1 Q As it relates to that particular cell
2 phone, you said it was processed for fingerprints?

3 A That's correct.

4 Q And that was done by you?

5 A That's correct.

6 Q And were you able to find any fingerprints
7 on that particular phone?

8 A No.

9 Q I beg the Court's indulgence. Let me
10 switch over, Judge. You indicated that you found
11 a 9 millimeter handgun inside the bedroom?

12 A That's correct.

13 Q And that particular handgun was located
14 where in the bedroom? And I call your attention
15 to State's Exhibit No. 59.

16 A It was on a dresser inside the bedroom
17 across from the bed.

18 Q We have seen several items and photographs
19 from this case where there are yellow colored
20 markers, if you will, by certain items of
21 evidence. Tell us the -- what is the purpose in
22 having those markers placed by certain items?

23 A When we photograph a scene initially, we
24 photograph it with the evidence as it is. General
25 photographs, mid length photographs and then

Karl Kenley-direct by Ms. Barr

1 closer photographs. And then after we locate or
2 find pieces of evidence we have to put makers on
3 them. So when you look at the photographs, you
4 have a picture of a particular piece of evidence
5 without the maker. We put the marker in it, and
6 take another photograph. So that when you are
7 looking at it in general, you have an idea of what
8 piece of evidence you are looking at.

9 Q While we are taking, get our technology
10 back to working. You talked about the shelf above
11 the couch where the victim's body was found. You
12 talked about there being a photograph that
13 appeared to have to damaged by pellets.

14 A That's correct.

15 Q And calling your attention to State's
16 Exhibit 32, is that the photograph that you talked
17 about that showed the damage done by what you
18 believed to be pellets?

19 A Yes, it is.

20 Q And I call your attention to State's
21 Exhibit No. 59. Is that a photograph of where the
22 handgun was found?

23 A That's correct.

24 Q In terms of the handgun, the magazine, the
25 live round, the shot shell that was found, you

Karl Kenley-direct by Ms. Barr

1 said the shot shell was found inside the victim's
2 bedroom.

3 A That's correct.

4 Q What do you do with all of those items,
5 including the shoe and the cell phone?

6 A The shoe and cell phone were taken back to
7 sled laboratory and submitted to the DNA
8 department.

9 Q Okay.

10 A The handgun was taken back. I processed
11 it first myself for fingerprints, and then it was
12 transferred to the firearm's department.

13 Q And so one of the people at sled who does
14 the firearm analysis is Ms. Suzann Cromer who is
15 here in the courtroom?

16 A That's correct.

17 Q And you said that certain items of
18 evidence were taken to the DNA lab?

19 A That's correct.

20 Q And one of the ladies that helps you with
21 that is Ms. Amanda Webb.

22 A That's correct.

23 Q She is present in the courtroom as well.

24 A She is.

25 Q And now one of the things that I noticed

Karl Kenley-direct by Ms. Barr

1 on her report, there was reference to a bandage
2 that was found.

3 A That's correct.

4 Q Can you tell us if you recovered a
5 bandage, and if so, where?

6 A I did. Just as you walk in the back door,
7 the bandage was basically on the floor in this
8 area. One of the first things we noticed when we
9 did a walk-through of the scene.

10 Q Okay. Tell us again where it was located.
11 Point to it again.

12 A In this area.

13 Q Near that is the back door?

14 A That's correct.

15 Q And it was a typical bandage where if
16 someone got a little scrap or something they would
17 put it on there?

18 A It was a gauze bandage.

19 Q A gauze bandage, yes. Okay. You can have
20 a seat, sir. Thank you.

21 (Whereupon, the witness resumes the witness
22 stand.)

23 Q In terms of what happens to evidence after
24 it is taken to sled and submitted for analysis,
25 what then becomes of that evidence?

Karl Kenley-direct by Ms. Barr

1 A After we get this piece of evidence that,
2 needs to be processed by the crime scene unit,
3 after we process it, it is taken downstairs to
4 what we call the log-in area. And the ladies down
5 there transfers that piece of evidence from our
6 custody to their custody. And then it is
7 distributed to whichever department is to do the
8 analysis.

9 Q And it is eventually returned to the local
10 agency and they---

11 A That's correct.

12 Q I am going to have Lieutenant Scott help
13 me for just a moment. Are you familiar with
14 Lieutenant Scott?

15 A Yes.

16 Q He is one of our crime scene techs in
17 Williamsburg County?

18 A Yes.

19 Q And you have handled cases with him in the
20 past?

21 A Yes..

22 Q Would he be the person as far as
23 Williamsburg County is concerned, who would be
24 responsible for taking or receiving the evidence
25 from sled after it has been analyzed?

Karl Kenley-direct by Ms. Barr

1 A Yes.

2 THE COURT: Let me see the lawyers up here
3 for just a minute.

4 (Whereupon, the attorneys confer with judge at
5 the bench.)

6 THE COURT: First we have received some
7 information about some firearms that was perhaps
8 discussed during testimony. I want to make sure
9 that you understand that the weapon is not loaded;
10 is that correct, sir?

11 A That's correct.

12 THE COURT: It is an open position. It is
13 incapable of being fired. I want to make sure you
14 understood that. At all times, I want anyone
15 handling it to make sure it is pointed down, and
16 nowhere but down. Okay.

17 MS. BARR: Yes, sir. Lieutenant Scott, if
18 you will come over. Now you are not sworn, so I
19 don't need to speak or anything. I just need you
20 to open the box containing the firearm that was
21 taken from sled, please. And make sure the safety
22 mechanism is on the firearm please.

23 MR. BARR: Your Honor, at this point, I
24 don't think we've -- it's not in evidence. We
25 certainly haven't established any chain of

Karl Kenley-direct by Ms. Barr

1 custody.

2 THE COURT: Well I think that can come in
3 due course. But I frankly don't know what -- what
4 are you asking the witness, this witness to do.
5 Not the lieutenant.

6 MS. BARR: Just to identify it.

7 THE COURT: Well you can perhaps ask a
8 question that lead to him, may or may not being
9 able to identify it.

10 MS. BARR: Sure. Let me have it marked as
11 an exhibit first.

12 THE COURT: Okay, ID?

13 MS. BARR: Yes, sir.

14 THE COURT: That would be 88?

15 MS. BARR: Yes, sir.

16 (Box of firearms, swabs, shell marked as
17 State's Exhibit No. 88 for Id.)

18 Q I show you what has been marked as State's
19 Exhibit No. 88. Tell me is there anyway you can
20 recognize that particular exhibit?

21 A Yes, this is a gun box we commonly use at
22 sled. When I seal it, I put seal tape on it. And
23 my initials and the date that I seal it.

24 Q Now as it relates to this particular
25 exhibit, you indicate that it has your initials on

Karl Kenley-direct by Ms. Barr

1 it?

2 A That's correct.

3 Q So you would have placed the tape over it.

4 A That's correct.

5 Q Is there any way to identify as when you

6 would have taken that particular item into

7 custody. Is there a date on it?

8 A Correct. The date is on the same label

9 with initials.

10 Q What's that date?

11 A 11/30/09.

12 Q 11/30 or 11/3?

13 A 11/03, I'm sorry, 09.

14 Q This is when you took it to sled?

15 A That's correct.

16 Q What is the purpose of putting the seal on

17 it?

18 A So that we know after I processed it for

19 whatever purposes I needed that, when I sealed it,

20 no one else opened that particular package until

21 it was received in that department.

22 Q So you physically took the firearm to the

23 sled department?

24 A Yes.

25 Q And once you did that it would have gone

Karl Kenley-direct by Ms. Barr

1 to the firearm's department.

2 A Department, and it was assigned to
3 firearm's to analyze.

4 Q Lieutenant Scott, if I -- and before I get
5 you to do that, Lieutenant Scott does it appear to
6 have been sealed? Still sealed?

7 A Yes.

8 Q Does that suggest it hasn't been tampered
9 with since it was analyzed?

10 A That's correct.

11 Q Lieutenant Scott if I can get you to open
12 it, please, sir.

13 LIEUTENANT SCOTT: It is still sealed.

14 Q I am going to leave it in the box.

15 THE COURT: Make sure it is still pointed
16 downward.

17 Q Yes, sir. Sir, I am going to show you
18 what was in -- what has been marked for
19 identification purposes as State's Exhibit No. 88.
20 Do you recognize this item?

21 A Yes.

22 Q Tell the court how it is that you
23 recognize it, and what it is?

24 A That's the firearm that was recovered from
25 the bedroom at the crime scene.

Karl Kenley-direct by Ms. Barr.

1 Q And I know absolutely nothing about guns.

2 So help me out here. Is this the magazine?

3 A That's the magazine that was in the
4 weapon.

5 Q There's also another plastic bag that's
6 contained within State's Exhibit No. 88. Tell the
7 ladies and gentlemen what this is.

8 A There were swabs apparently that were
9 taken by the firearms chambers. And by firing the
10 gun in that firearm. The swabs of the weapon.

11 Q Tell us about this particular item that is
12 within that exhibit.

13 A They were actually the rounds that were in
14 the weapon when it was recovered from the crime
15 scene in a separate bag.

16 Q Okay. Just for the ease of presentation,
17 I would ask that the Madam Court Reporter label
18 these individual items as 88-a the firearm, 88-b
19 the swabs and 88-c the bullets.

20 THE COURT: For Id.

21 MS. BARR: Yes, sir.

22 (Firearm marked 88-a, swabs 88-b, bullets
23 88-c for id.)

24 Q I show you for identification purposes as
25 State's Exhibit No. 89, and tell us if you

Karl Kenley-direct by Ms. Barr

1 recognize whether that is anything that is
2 associated with this case?

3 A Yes, it is.

4 Q How do you know that?

5 A This is a lab number and the agencies
6 witnessed it.

7 Q And is there anything to indicate that you
8 would have had possession of that particular item?

9 A Correct. My name is way all across.

10 Q And when you say the lab number, when you
11 all recover evidence from a crime scene, all items
12 of evidence are given a certain lab number
13 individually or they all are connected with lab
14 number.

15 A The entire case has one lab number.

16 Q And this indicates that correct, that the
17 lab number is L09-13204.

18 A That's correct. The L09 means that it was
19 in 2009.

20 Q And it has Williamsburg County Sheriff's
21 Department.

22 A That's correct.

23 Q And is also the Number 12 after that lab
24 number. What is the significance of the number
25 12?

Karl Kenley-direct by Ms. Barr

1 A That's the item number that's in the
2 particular package the Item Number 12.

3 Q Does it indicate your initials on here?

4 A That's correct.

5 Q And in terms of your report, what would
6 have been Item No. 12?

7 A It was a black AT & T cell phone.

8 Q So when you talked earlier, when you were
9 standing up by the projector about finding a
10 cell phone on the outside of the residence, is
11 this the cell phone you are talking about?

12 A That's correct.

13 Q Is that the particular cell phone that you
14 mentioned?

15 A That's correct.

16 MS. BARR: If we can have Madam Court
17 Reporter mark this 89-a. Judge, we would move
18 State's 89 and 89-a into evidence at this time.

19 THE COURT: We will discuss that in just a
20 few minutes at the next break. It's been moved in
21 to evidence.

22 (Envelope and cell phone marked as 89 and
23 89-a into evidence.)

24 Q Now after you took this over to sled and
25 it was analyzed by -- well first of all, was it

Karl Kenley-direct by Ms. Barr

1 analyzed by the DNA department?

2 A It was analyzed by the crime scene.

3 Q By you. And your purpose in looking at it
4 was to see whether or not there were any
5 fingerprints on it?

6 A That's correct.

7 Q And I think you testified earlier that
8 there were no fingerprints that you could find on
9 the cell phone?

10 A That's correct.

11 Q Kind of help me out on that. A lot of
12 times if we watch TV we assumed that when
13 something is touched, it leaves a fingerprint
14 impression. Can you tell us about that?

15 A Not always. It depends on basically three
16 factors. For one thing fingerprints are 98
17 percent water. So if you guys watch me touch this
18 container, you see me physically touching it. But
19 when it is processed or enhanced to try to develop
20 a print, it doesn't necessarily mean that I am
21 going to leave an identifiable print meaning I can
22 tell when I touched it. And you will see a smudge
23 where my hand came in contact with it. But you
24 don't see any ridge detail to make a comparisons
25 to find out who the fingerprint belongs to.

Karl Kenley-direct by Ms. Barr

1 Either because my hands were too sweaty, my hands
2 were too dry, depending on what your work
3 environment is, your occupation, somebody that
4 works just say in masonry, because their hands are
5 on that particular item so often, it basically
6 wears down fingerprints. So a lot of factors
7 come into play for you to be able to identifiable
8 fingerprint.

9 Q And is that kind of why when we see on TV
10 or in person someone being fingerprinted, we see
11 that there is a pressing down and then a moving?

12 A That's correct.

13 Q Of the finger to get the impression?

14 A That's correct.

15 Q And most people don't actually hold things
16 like that in terms of making sure that from this
17 point of the nail to the other part of the nail,
18 all of that finger is on it.

19 A That's correct. The fingerprint rolled
20 impressions are a deliberate roll as opposed to
21 somebody basically granted you are not going to
22 leave a perfect fingerprint, as if somebody
23 actually rolled the fingerprint.

24 Q And after you conducted your review of
25 this item of evidence and was able to identify

Karl Kenley-direct by Ms. Barr

1 fingerprints on the phone, what did you do with
2 this piece of evidence?

3 A It was placed back into evidence and
4 marked for returned to go back to the requested
5 agencies.

6 Q So it would have gone back to Lieutenant
7 Scott of the Williamsburg County Sheriff's
8 Department.

9 A That's correct.

10 MS. BARR: Judge, we would move 89 and
11 89-a into evidence at this time.

12 MR. BARR: Same objection.

13 THE COURT: It has moved in. We have
14 discussed it.

15 Q Okay, sir, now I am going to hand you what
16 has been marked for identification purposes as
17 State's Exhibit No. 90. Tell me if you recognize
18 that item.

19 A Yes, it's marked item No. A. It has the
20 same lab number. And it has my initials and the
21 date on this sticker tape.

22 Q And you said the sticker tape that is on
23 there has your initials and a date?

24 A That's correct.

25 Q Does it indicate that the box is still

Karl Kenley-direct by Ms. Barr

1 sealed?

2 A It does.

3 Q Indicated that no one has tampered with
4 it, or bothered it in any way.

5 A That's correct.

6 Q Tell me what is your Sled Item No. 8. I
7 will hold it while you are looking at it.

8 A You have to hold that for me, Ms. Barr.

9 Q Let me show you this. Is this a log of
10 all of the evidence in your case? Or in our case,
11 that you've helped us with?

12 A Yes, it is.

13 Q And that lab log sheet would indicate all
14 of the items that were taken in evidence.

15 A That's correct.

16 Q And on that log sheet, what is Identified
17 as Item No. 8?

18 A A pair of shoes.

19 Q Let me give you some scissors and let you
20 open it. Do you need any gloves or anything to
21 handle it?

22 A No.

23 Q You can go on. Can you take out what's in
24 that box, please. Now did you do all that taping
25 up?

Karl Kenley-direct by Ms. Barr

1 A No.

2 Q Which persons in your agency would have
3 done on that?

4 A Andrina Felton, looks like the initials.
5 Andrina Felton who does crime scene analysis also.

6 Q Can you open that for us? You take it out
7 pretty good. Okay. Tell the ladies and gentlemen
8 of the jury, what was actually in all of that
9 packaging?

10 A These were the pair of shoes that were
11 recovered from the crime scene.

12 Q And it indicates again your same lab
13 number?

14 A That's correct.

15 Q And those were the shoes that were taken
16 by you?

17 A That's correct.

18 Q To sled.

19 A That's correct. And I misspoke about the
20 initials. It would probably be the initials of
21 the DNA examiner.

22 Q Now after those shoes would have been
23 analyzed by another department up at sled, they
24 would have been returned to the Williamsburg
25 County Sheriff's Office?

Karl Kenley-direct by Ms. Barr

1 A That's correct.

2 Q You can place them back in the box.

3 MS. Barr: Judge, again, we would move

4 State's 90 in.

5 THE COURT: Mr. Barr?

6 MR. BARR: Same objection.

7 THE COURT: We will address that shortly.

8 MS. BARR: Yes, sir.

9 Q Mr. Kenley, I am going to hand you for
10 identification purposes only as State's Exhibit
11 91.. Bearing sled number L09-13204 CA. Can you
12 tell the ladies and gentlemen of the jury, what is
13 contained in that particular exhibit?

14 A It's probably the shot shell going to
15 firearm's department.

16 Q And that was collected from the bedroom of
17 the victim?

18 A That's correct.

19 Q And that collected by you and taken to
20 sled?

21 A That's correct.

22 Q And following its analysis by the
23 firearm's department, it was then returned to the
24 Williamsburg County Sheriff's Office?

25 A That's correct.

Karl Kenley-direct by Ms. Barr

1 Q And can you open that for us please, sir?
2 And just for clarity and can you tell the jury
3 about the seal and any tamper proof measures that
4 were taken?

5 A These are my initials again, and the date
6 that I actually sealed this piece of evidence.

7 Q Tell us what is contained in there, sir.

8 A The first envelope is the shot shell that
9 was recovered from the crime scene. And again,
10 in an envelope that actually has my initials on
11 it. This envelop is the fired bullet that was
12 found in the residence also in the bedroom. And
13 again it has a marker number. Again talking about
14 the photographs and the photographs marked of when
15 we received in evidence. That was photographed.

16 Q Okay.

17 A And this was shotgun wadding that was
18 located in the residence also.

19 Q Now you say in the residence. Where in
20 the residence?

21 A In the bedroom.

22 MS. BARR: Judge, we would like to have
23 these marked. The individual containers have
24 91-a, b, and c.

25 THE COURT: You are authorizing into

Karl Kenley-direct by Ms. Barr

1 evidence. And your first envelope and these are
2 all witness characterizations. The shot shell,
3 a second envelope a fired bullet. And a third
4 envelope, the shotgun wadding.

5 MS. BARR: Yes, sir.

6 THE COURT: Mr. Barr.

7 MR. BARR: No objection.

8 THE COURT: Those are admitted.

9 (Shell, bullet, wadding marked State's
10 Exhibit No. 91-a, b, c into evidence.)

11 Q I am going you what has been marked for
12 identifications as State's Exhibit No. 92. Is
13 that an item of evidence that appears to have been
14 analyzed or at least seen by someone at sled?

15 A That's correct.

16 Q And there is a sealing official signature
17 here for Lieutenant Jeffrey F. Scott; is that
18 correct?

19 A That's correct.

20 Q And of course that's the gentleman here
21 with the Williamsburg County Sheriff's Office?

22 A That's correct.

23 Q Can you tell us what is contained within
24 that particular exhibit and I think we have it as
25 Item No. 13 for Sled lab number.

Karl Kenley-direct by Ms. Barr

1 A Correct. It is the bandage that was
2 recovered from inside of that door.

3 Q Can you open that for us, please? Now do
4 you need gloves or anything to handle that?

5 A Yes.

6 Q That's a big bandage.

7 A Uh-huh (affirmative.)

8 Q And this is what was taken from the home
9 of Mr. Prosser?

10 A That's correct.

11 Q And it was analyzed by sled's DNA
12 department?

13 A That's correct.

14 Q Please place it back in there.

15 MS. BARR: Judge, we would move State's
16 Exhibit No. 92 in at this time.

17 THE COURT: Mr. Barr.

18 MR. BARR: No objection, Judge.

19 (Bandage marked State's Exhibit No. 92
20 into evidence.)

21 (Swabs and condom marked State's Exhibit
22 No. 93 into evidence.)

23 Q Mr. Kenley, I am now going to hand you
24 what has been marked for identification purposes
25 as State's No. 93. I think that it is listed as

Karl Kenley-direct by Ms. Barr

1 Item No. 5. I believe on a -- I am not sure if
2 that is how it is listed? Is this evidence that
3 was seized also in connection with the case?

4 A That's correct.

5 Q And we know that based on the lab number
6 and our agency's case number?

7 A That's correct.

8 Q Is there anything that's on this
9 particular exhibit that lets the jury know that
10 you handle it, and you took it from the crime
11 scene?

12 A Yes, ma'am. The bag inside the bag, it
13 actually has my name and the date on it.

14 Q And is it also sealed?

15 A Yes. It is heat sealed.

16 Q Heat sealed. Now this part of, it looks
17 like it is cut there. But is that sealed where
18 you can't open it?

19 A That's correct.

20 Q It looks like it is cut there. But it's
21 sealed with a date.

22 A That's correct.

23 Q So you unseal it or cut it out?

24 A That's correct.

25 Q Can you tell the ladies and gentlemen of

Karl Kenley-direct by Ms. Barr

1 the jury what is contained within that exhibit?

2 A It is the condom that was located in the
3 residence.

4 Q Where was the condom found?

5 A In the trash can in the bedroom.

6 Q That was taken by you to sled?

7 A That's correct.

8 Q And after you took it to sled, it was
9 later analyzed by the DNA department?

10 A That's correct.

11 Q And after the analysis was done, it was
12 returned to the sheriff's department.

13 A That's correct.

14 Q I am not going to ask you about that,
15 because we have got somebody else to ask about the
16 analysis and so forth. Is there anything else
17 that contained within that particular exhibit
18 related to the case?

19 A There is an envelope inside along with the
20 condom. Actually there are three envelopes.

21 Q Can you open that exhibit, please, and
22 kind of tell us what is there?

23 A Do you want me to open this one also?
24 This is a sealed bag inside of larger bag.

25 Q Yes, sir, please sir.

Karl Kenley-direct by Ms. Barr

1 A First of all, the round item that is
2 there. Can you hold that up and show it to the
3 jury and tell them what that is?

4 MR. BARR: Judge, objection. It is not in
5 evidence. It's not in evidence yet.

6 THE COURT: Well he can -- let's have him
7 identify it first. And I don't know if it can be
8 separately marked for ID. I want to make sure the
9 record is clear of what we are talking about.

10 Q Yes, sir. Mr. Kenley, the item that you
11 are holding in your particular hand, what is it?
12 Does it have your initials on it?

13 A It does.

14 Q So this was actually picked up by you?

15 A That's correct.

16 Q And tell the jury what it is.

17 A It's Item No. 5, and it's the condom that
18 was found in the bedroom.

19 Q Can you hold it up to the jury so the jury
20 can see it? Now in terms of the container that it
21 is in, is that how you found it, or did you all
22 place it in a container to preserve it?

23 A I placed it in this container to preserve
24 it.

25 Q And for record, let's just have that

Karl Kenley-direct by Ms. Barr

1 marked as 93-a.

2 MR. BARR: Your Honor, for the record, you
3 know, I think this is being done in terms of the
4 way it is being done, it is presented to the jury
5 as evidence. It's obviously evidence, because
6 it's being presented to them. Then they are
7 coming back and marking it and it's not even in
8 evidence.

9 THE COURT: The first thing to do,
10 Ms. Barr is to mark it. And then you can offer
11 it. If it's in evidence, then it can be
12 published. So right now you are marking things
13 for ID right now. So 93-a has been marked for ID.

14 (Swabs and condom marked State's Exhibit
15 No. 93, a-e.)

16 Q Do you recognize Exhibit No. 93-a as the
17 condom that you took from the scene? There are
18 also four other envelopes that are contained
19 within Exhibit No. 93; is that correct?

20 A That's correct.

21 Q In terms of what those items are, other
22 analysts from sled will be able to identify what
23 those other particular items are; is that correct?

24 A That's correct.

25 Q If you will, Mr. Kenley, please place

Karl Kenley-direct by Ms. Barr

1 those back in the bag. Mr. Kenley, I am going to
2 hand you what has marked as State's Exhibit No.
3 94. And I think that that is indicated as Item
4 No. 6 on your sled inventory sheet. Does that
5 appear to be correct?

6 A That's correct.

7 Q Same lab number and everything.

8 A That's correct.

9 Q Now in terms of whether this item has been
10 tampered with in any way, and whether or not it
11 was appropriately sealed, is that the case as
12 relates to Exhibit 94?

13 A That's correct.. It essentially has my
14 initials and the date.

15 Q Your initials KLK?

16 A That's correct.

17 Q And the date is 11/3/09?

18 A That's correct.

19 Q Tell the jury what your Item No. 6, our
20 Exhibit 94 is.

21 A It's a GSR kit that was conducted upon the
22 victim at the scene. A gunshot residue test to
23 test whether there was gunshot particles on the
24 hands.

25 Q You actually took the GSR sample of the

Karl Kenley-direct by Ms. Barr

1 victim?

2 A That's correct.

3 Q Tell us how you go about doing that.

4 A A kit comes basically in a package that is
5 sealed. We open the package and it has two
6 applicators. And you basically swab both inside
7 and outside the hands and the arms. Basically We
8 assume that is the gunshot residue. It is sealed
9 and sent to the trace department.

10 Q And once it got to sled to the trace
11 department, who would have been the person who
12 would conducted the analysis on the GSR kit?

13 A The analyst that is here with us also.

14 Q Mr. John Roberts in the back?

15 A That's correct.

16 MS. BARR: Thank you, sir. Judge, we
17 would move State's Exhibit No. 94 into evidence at
18 this time.

19 THE COURT: Mr. Barr?

20 MR. BARR: I have no objection.

21 (GSR kit marked State's Exhibit No. 94
22 into evidence.)

23 MS. BARR: Let me check with my co-counsel
24 and I think that might be it.

25 Q Mr. Kenley, after you came out to the

Karl Kenley-direct by Ms. Barr

1 residence and you picked up certain items that
2 were considered to be evidence in connection with
3 the case and transferred or transported I should
4 say, to sled, did you have any other involvement?

5 A No.

6 MS. BARR: Sir, thank you so much. Please
7 answer any questions that defense counsel may have
8 for you.

9 THE COURT: Mr. Barr, what we will do is
10 take about a 15, 20 minute recess and we will take
11 up cross after that. Ladies and gentlemen, please
12 go to your jury room. You may not discuss the
13 case.

14 (Whereupon, the following takes place out
15 the presence of the jury.)

16 THE COURT: Mr. Kenley, you can step
17 down, but you can't discuss your testimony with
18 anybody.

19 MS. BARR: Yes, sir.

20 (Whereupon Court breaks.)

21 THE COURT: And the State offered State
22 offered 88 for Id. 89, Id. 90, Id. And I don't
23 know whether you actually offered 93-a, which was
24 identified as the condom found in the trash can.
25 I don't know whether you offered that. Have you

Karl Kenley-direct by Ms. Barr

1 offered that yet?

2 MS. BARR: I'm sorry 93-a. I didn't do
3 b, c, d and e, but I did offer it.

4 THE COURT: And, now, Mr. Barr, your
5 objection to 88, a, b and c, just to clarify for
6 your mind right now, is the firearm---

7 MR. BARR: What I will do, Judge.

8 THE COURT: Yes, sir.

9 MR. BARR: ---is, and if I need to do this
10 in front of the jury, I will withdraw my
11 objections to all of it.

12 THE COURT: Okay. Here is what we will,
13 when the jury comes back in, Ms. Barr, if you
14 would, please reoffer, 88 a, b and c, 89, 90, and
15 93 a. And then we will -- Mr. Barr will evidently
16 withdraw his objections. It will be in without
17 objection. Okay.

18 MS. BARR: And, Your Honor, you have got,
19 93 a, b, c, d and e?

20 THE COURT: For id. But you only offering
21 right now, 93-a.

22 MS. BARR: Right. But if he's not going
23 to have any objections, we will just move all
24 those in when the jury comes back in. Are you
25 going to objection to those?

Karl Kenley-direct by Ms. Barr

1 MR. BARR: No, sir.

2 THE COURT: That's fine. I know that I
3 said 15 to 20 minutes. I just wanted to come back
4 a little bit earlier to cover that point. By the
5 time the jury comes back in, it is going to be
6 about 5 till 11. You have four more sled
7 witnesses?

8 MS. BARR: Three more.

9 THE COURT: And you will be able to get
10 all those folks up and back on the road by lunch,
11 I assume.

12 MS. BARR: Yes, sir.

13 THE COURT: I just wanted to make sure we
14 had kind of a plan.

15 MS. BARR: I think he is going to be the
16 longest one. Mr. Kenley is the longest one.

17 THE COURT: If the jury is ready, do you
18 all mind starting a minute or two earlier? You
19 may bring the jury.

20 (Whereupon, the following takes place
21 within the presence of the jury.)

22 MS. BARR: Judge, we would move State's
23 Exhibit No. 88, a, b, c. State's Exhibit No. 89,
24 which was is the cell phone. State's Exhibit No.
25 90, which are the shoes. And State's Exhibit No.

Karl Kenley-direct by Ms. Barr

1 93 a, b, c d, and e.

2 MR. BARR: The defense has no objection to
3 the introduction into evidence of any item or
4 exhibit that has been properly identified and
5 offered into evidence.

6 (State's Exhibits Nos. 88, 89, 90, 93
7 admitted into evidence.)

8 THE COURT: Those are in. Thank you.
9 Mr. Barr, you can cross examine.

10 MR. BARR: Thank you.

11 Cross Examination by Mr. Barr:

12 Q Mr. Kenley, I am Charles David Barr. I am
13 the Defendant's attorney. Welcome to Williamsburg
14 County.

15 A Thank you.

16 Q With respect to your involvement in this
17 case, I believe you indicated you have got, what
18 approximately 20 years in law enforcement?

19 A That's correct.

20 Q And of those 20 years, how long have you
21 been employed by sled?

22 A Five.

23 Q 5 years?

24 A That's correct.

25 Q Now prior to the last 5 years, what were

Karl Kenley-cross by Mr. Barr

1 you doing in law enforcement?

2 A I was a major crimes investigator.

3 Q Majority crime scene investigator?

4 A Major crimes investigator.

5 Q Now with respect to being a major crime
6 scene investigator, and, of course, and that's the
7 reason you were called here to Williamsburg
8 County. Would it be fair to say that you are
9 pretty familiar with the forensic value of
10 evidence collected at the crime scene?

11 A That's correct.

12 Q And for the purpose of the ladies and
13 gentlemen of this jury, as it relates to forensic
14 value, would you not agree that often when you go
15 to a crime scene, there are items of value at the
16 crime scene which cannot be seen with the naked
17 eye?

18 A That's correct.

19 Q In fact, as far as, what you collect, you
20 collect items that you see, that you believe that
21 in some way could be connected to a crime.

22 A Correct.

23 Q And of course, you don't have any way of
24 knowing when the items that you collect were
25 placed at the crime scene.

Karl Kenley-cross by Mr. Barr

1 A That's correct.

2 Q And would it be equally fair to say that
3 nor do you have any way of knowing what items have
4 been moved or tampered with at a crime scene.

5 A That's correct.

6 Q Now would you not agree further that with
7 respect to evidence and proof that it is very
8 important that a crime scene not be contaminated?

9 A That's correct.

10 Q And would you not agree again that one of
11 the ways that you can contaminate a crime scene is
12 that the crime scene is not made secure as soon as
13 or immediately following the discovery of the
14 crime?

15 A That's correct.

16 Q Now generally then as a forensic examiner
17 and particularly in this case, when you arrived at
18 the crime scene, who escorted you to this crime
19 scene?

20 A The, I think the on scene investigator was
21 Investigator McFadden was the contact.

22 Q Wayne McFadden.

23 A Correct.

24 Q And Wayne McFadden with the Williamsburg
25 County Sheriff's Department.

Karl Kenley-cross by Mr. Barr

1 A That's correct.

2 Q So as far as relating information to you
3 regarding the security of the crime scene, was
4 that information related to you if at all, was it
5 related by Officer McFadden?

6 A What was your question?

7 Q If there was any information related to
8 you regarding the security of the crime scene was
9 it related to you by Officer McFadden?

10 A It would have been, correct.

11 Q I see. So then would it be fair to say
12 that as far as whether or not the crime scene was
13 secure from the time that the crime was discovered
14 the only way for us to know or the only way for
15 you to have known would be to have discussed it
16 with Mr. McFadden.

17 A That's correct.

18 Q Now when you arrived at the crime scene or
19 arrived at the Prosser residence, did you see any
20 security tape anywhere?

21 A Yes.

22 Q Where was the tape?

23 A It was around the residence.

24 Q Around the building. And generally what
25 does that security tape mean?

Karl Kenley-cross by Mr. Barr

1 A That the scene is secured. It has not
2 been tampered with or handled by anybody other
3 than law enforcement or EMS personnel.

4 Q Well now would of course in terms of, do
5 you know who placed the security tape?

6 A It would have been someone at the
7 sheriff's department. It was placed there before
8 we arrived at the scene.

9 Q So you really don't know who did it.

10 A Correct.

11 Q And you also don't know who if anybody at
12 any crime scene could contaminate the crime scene.

13 A Other than law enforcement, that's
14 correct.

15 Q Well unless proper precautions are taken,
16 would you not agree that law enforcement
17 themselves can contaminant a crime scene?

18 A It's possible if they move something. But
19 obviously responding to an incident they have to
20 go in and look at the scene and see what is going
21 on.

22 Q Well but they have to take certain
23 precautions.

24 A That's correct.

25 Q Yeah, and if they don't take those

Karl Kenley-cross by Mr. Barr

1 precautions, they can go in there and mess things
2 up.

3 A That's possible, correct.

4 Q And of course in this case you don't know
5 whether they did that or not; do you?

6 A No, I didn't have any evidence of that.
7 Correct.

8 Q So inasmuch as, you don't have any
9 evidence of it, you don't know.

10 A That's correct.

11 Q No you would agree that with respect to
12 whether or not the crime scene was contaminated,
13 the forensic value of the evidence could be
14 effected by whether or not somebody had moved
15 something around.

16 A What is your question?

17 Q My question is, would you not agree that
18 the forensic value of all of these things that you
19 have collected here, the forensic value and that
20 is I assume you collected with the intentions of
21 bringing them to court, the forensic value could
22 be either diminished if they had been tampered
23 with.

24 A That's correct.

25 Q Now in terms of crime scene investigation,

Karl Kenley-cross by Mr. Barr

1 would you not agree as well that often one of the
2 objects of investigating a crime scene before it
3 is contaminated would be to get an accurate
4 identity of the possible suspects?

5 A If that information is known. It doesn't
6 really have a bearing on how crime scene response.
7 Depending on the scene, each scene is different.

8 Q So you want to know whose been there;
9 don't you? You want to be able to identify who
10 has been there; don't you? If you can.

11 A Correct.

12 Q Now you don't -- this crime scene wasn't
13 any different. You wanted to identify who was in
14 the house.

15 A Correct.

16 Q And of course in terms of identifying who
17 is in the house, you collected a whole lot of
18 information in this case. One of which was some
19 shoes.

20 A Correct.

21 Q And would you not agree that those shoes
22 were for the purpose of assisting you in perhaps
23 being able to identify somebody that's responsible
24 for this crime?

25 A It's possible.

Karl Kenley-cross by Mr. Barr

1 Q Now unless I am mistaken, when you open
2 this box which had these tennis shoes in it, did
3 you know what was in this box before you opened
4 it?

5 A No, I did not.

6 Q You didn't know. So you looked at the box
7 and there were no markings on the box that you or
8 anybody else had made that would have enabled you
9 to say what was in that box before you opened it.

10 A No, I didn't go in.

11 Q You have a recollection of having
12 collected some tennis shoes.

13 A Correct.

14 Q Now you and Ms. Barr talked about
15 fingerprints.

16 A Correct.

17 Q And the quality of the fingerprints, and
18 how water actually in terms of evaporation effects
19 the ability to collect fingerprints that can be
20 used for forensic purposes.

21 A That's correct.

22 Q Now have you ever used a forensic
23 microscope at a crime scene?

24 A Yes.

25 Q Why do you do that?

Karl Kenley-cross by Mr. Barr

1 A In terms of sexual assaults where you have
2 maybe semen and some other fluids that is not
3 visible to the naked eye, we use what you call an
4 ultimate light source to illuminate whatever may
5 be present.

6 Q And of course you mentioned, I noticed you
7 mentioned sexual assaults. Of course you don't
8 know whether or not this crime involved a sexual
9 assault; do you?

10 A No, I didn't have any evidence of any
11 assault.

12 Q In other words, you came to the crime
13 scene after having been told to come there because
14 a man had been killed.

15 A It was due to that effect.

16 Q Yes, sir. And as far as what all was
17 involved in that investigation, you want to be as
18 thorough as you possibly can?

19 A That's correct.

20 Q And any evidence material to this crime,
21 you wanted to be able to collect that evidence and
22 put it together. And send it back to your
23 laboratory to have it analyzed?

24 A That's correct.

25 Q Did you do the very best you could in this

Karl Kenley-cross by Mr. Barr

1 case to collect everything that you thought that
2 could possibly be of some forensic value?

3 A Yes.

4 Q Now did you collect any fingerprints that
5 could be sent to your laboratory to be analyzed?

6 A At the scene?

7 Q Yes, sir.

8 A No, sir.

9 Q None.

10 A Correct.

11 Q Now you would agree that fingerprint
12 analysis is very important when it comes to
13 identifying people at the crime scene.

14 A That's correct.

15 Q But you collected none?

16 A That's correct.

17 Q Did you collect any trace material, hairs,
18 fibers, anything that could be sent to the trace
19 lab? Did you collect any items that could
20 potentially have forensic value that could be sent
21 to the trace lab?

22 A The GSR kit from the victim.

23 Q From the victim. You collected no hair
24 samples. No other kind of fiber. Nothing else
25 that would assist in being able to accurately

Karl Kenley-cross by Mr. Barr

1 identify who was actually at the scene.

2 A Other than the condom, no.

3 Q Of course you said absent somebody with
4 DNA from your laboratory.

5 A That's correct.

6 Q But you did collect the condom.

7 A That's correct.

8 Q You collected that from the bedroom.

9 A Correct.

10 Q As far as forensic value; that is,
11 evidentiary value, you don't know how long it was
12 in the trash can; do you?

13 A That's correct.

14 Q And in fact you collected no fingerprints
15 from it, you don't know how long. So as far as
16 forensic value or evidentiary value, do you know
17 of any from the standpoint of perhaps, well
18 perhaps I guess maybe I am getting ahead of
19 myself. You will have somebody else from sled to
20 talk about it. I will withdraw that question and
21 I will move on to something else.

22 Now footprints, footprints, I believe you
23 and I am not going to have you come down here yet.
24 But I believe you designated with a circle those
25 areas that you found in the residence or were you

Karl Kenley-cross by Mr. Barr

1 able to identify in the residence, that you said
2 you found what you believe to be blood?

3 A Correct, suspected blood.

4 Q Of course we don't know until they come
5 back from your serology department.

6 A That's correct.

7 Q Now the items or areas that you marked
8 with this designation, a circle with an x in it,
9 are the areas on your diagram in the residence
10 that you claim that you found samples of what you
11 thought to be blood.

12 A That's correct.

13 Q Now of course you would agree that even if
14 they were blood, you don't know how long that
15 sample was there.

16 A That's correct.

17 Q So you really don't know even as to those
18 samples that you got marked, and the ones that you
19 collected, you don't know whether they are
20 connected with this case or not; do you?

21 A They were on the scene. We photographed,
22 processed and collected.

23 Q The question is whether they are connected
24 with this killing or not.

25 A That would have to come from the DNA

Karl Kenley-cross by Mr. Barr

1 analyst.

2 Q So you wouldn't know; do you?

3 A No.

4 Q And of course when you are collecting them
5 you don't know.

6 MS. BARR: Objection. Counsel is
7 interrupting the witness. We'd ask that he be
8 allowed to finish his response.

9 MR. BARR: I'm sorry, Judge. I apologize
10 to Mr. Kenley.

11 Q Now you don't when you collected it,
12 whether they are related to this crime or not; do
13 you?

14 A They were at the scene.

15 Q Well but I am talking about whether or not
16 they are related. There is a whole bunch of
17 knives and folks in the kitchen at the scene. You
18 didn't collect any of those. The question is, do
19 you know whether or not whatever it was that was
20 collected that you thought it was blood, do you
21 know whether it's connected to this homicide?

22 A For our investigative purposes it was.

23 Q For investigative purposes. In other
24 words for investigative purposes it may exclude
25 something as well as include something.

Karl Kenley-cross by Mr. Barr

1 A That's correct. It will tell us who the
2 blood belonged to.

3 Q And you couldn't make that determination.

4 A That's correct.

5 Q It could have been made by somebody else
6 after it has been analyzed.

7 A That's correct.

8 Q So at the time that you collect it, you
9 don't know whether or not it's related to it or
10 not.

11 A Again, it's evidence at the scene that we
12 collect.

13 Q You made the decision as to what to
14 collect then.

15 A Yes, for the purpose for the
16 investigation.

17 Q That's your decision. And you use your
18 judgment.

19 A Judgment and experience; correct.

20 Q Judgment and experience. And with your
21 judgment, with the best judgment you had, with all
22 the experience you had, you found no fingerprints.

23

24 A That's correct.

25 Q And you found no other trace evidence

Karl Kenley-cross by Mr. Barr

1 other than the kit that you sent to DNA.

2 A That's correct.

3 Q The triangles. You have got 1, 2, 3.

4 What do those triangles on this diagram designate?

5 A Those are the markers in the photographs
6 that they were shown earlier, and they were marked
7 in items of evidence.

8 Q Those are what now?

9 A Markers that are marked items.

10 Q What items? This mark up here, does it
11 have a number on it?

12 A No. 1.

13 Q This is 1. What is No. 1?

14 A That is a 40 caliber live round.

15 Q What now?

16 A 40 caliber live round.

17 Q Live round.

18 A That's right.

19 Q It's an unspent bullet.

20 A That's correct.

21 Q 40 caliber.

22 A Correct.

23 Q Now the weapon that you collected, the
24 pistol, what kind of pistol is that?

25 A It is a 40 caliber Smith & Wesson.

Karl Kenley-cross by Mr. Barr

1 Q 40 caliber Smith & Wesson. And I think
2 you said that you took the clip out of it. Did
3 you take the clip out of it?

4 A Correct.

5 Q The clip was in it?

6 A Correct.

7 Q And how many shells or how many bullets
8 was in the clip?

9 A I think there were nine. Including the
10 one lodged in the chamber.

11 Q There was one in the caliber.

12 A Correct.

13 Q You collected a single bullet from right
14 in here. Right here.

15 A Correct.

16 Q That could had not been fired.

17 A Correct.

18 Q You had 9 in the clip. And one in the
19 chamber? How many does the clip hold?

20 A I think it holds 10.

21 Q Do you how many bullets the clip holds?

22 A Not in this particular weapon.

23 Q I see. So you don't know if it was a full
24 clip, a partially full clip. Still don't know.

25 A That's correct.

Karl Kenley-cross by Mr. Barr

1 Q And did you check the gun to see whether
2 it had been fired?

3 A That's for firearms.

4 Q Oh, did you send that to firearms?

5 A That's correct.

6 Q I see. So they'll testify about that.

7 A That's correct.

8 Q Now the live bullet here has not been
9 fired. What was here?

10 A That's No. 2, and that was a shotgun
11 wadding.

12 Q Shotgun wadding.

13 A Correct.

14 Q Now some of the ladies and gentlemen of
15 this jury may not know what a shotgun wadding is.
16 Could you explain to them what happened?

17 A It is shotgun shell that has been fired,
18 it's a piece of the wadding that will come out of
19 shot shell.

20 Q Back behind -- it stays in there behind
21 the, what is it, the blue stuff that actually does
22 the ignition. The powder. It's between the
23 powder and the pellets; is that correct?

24 A That's the firearms question, I believe.

25 Q Now was the shotgun wadding.

Karl Kenley-cross by Mr. Barr

1 A That's correct.

2 Q And here was what?

3 A Marker 3, that was 12 gauge shotgun shell.

4 Q Shotgun shell. And that's the item that

5 you, that's already been offered into evidence.

6 You identified and it was offered into evidence.

7 A That's correct.

8 Q Now what kind of load was the shotgun

9 shell?

10 A That's a firearm's question.

11 Q Firearms specialist. You didn't look at

12 it at all?

13 A It was a 12 gauge. It had 12 gauge

14 written on it.

15 Q It's 12 gauge. But there is written on

16 it. I can't see it. Let me see what kind of load

17 that is. Whether or not it is a buck shot, or

18 bird shot or a No. 6, No. 7, No. 8 and a half.

19 A I can't see it.

20 Q You can't see it?

21 A No, sir. It's just head stamped 12 gauge.

22 Q Head stamped 12 gauge. It comes from a 12

23 gauge shotgun. I mean it fits a 12 gauge shotgun.

24 A That's what was on the head stamp.

25 Q But as far as the load, you can't tell

Karl Kenley-cross by Mr. Barr

1 what kind. So at the time that you collected it,
2 you don't know what kind of load it was.

3 A No.

4 Q But you did examine the crime.

5 A Correct.

6 Q And in fact you testified to Ms. Barr that
7 you looked in this area. And you concluded that
8 somewhere in here, you found some shots, what
9 appeared to you to be shots. There were in
10 picture frame and on this top of a -- what kind of
11 piece of furniture over here?

12 A This was a shelf with a picture frame on
13 it.

14 Q Shelf with a picture frame.

15 A Correct.

16 Q And you said you found what appeared to be
17 shotgun shell particles?

18 A Yes.

19 Q Now did you remove or attempt to remove
20 any particles from this wood?

21 A We looked for them, we didn't see them.

22 Q What do you think happened to them?

23 A They were gone. Embedded into the wood.
24 They weren't visible to the eye.

25 Q Well of course you could take the wood and

Karl Kenley-cross by Mr. Barr

1 take it apart and take them out; couldn't you?

2 A Correct. But I found the shot shells
3 themselves had no evidentiary value.

4 Q That's what you decided.

5 A That's what firearms has told us.

6 Q Well we'll talk to firearms when they get
7 here. But you're the man that is responsible for
8 collecting evidence.

9 A That's correct.

10 Q That even though you found this area here
11 where you thought that these shots were lodged in
12 here, you didn't bother to get any shots out.

13 A That's correct.

14 Q Now of course firearms could if you had
15 sent them to firearms, they could tell you what
16 kind, exactly what kind of load. Whether or not
17 they were bird shots, squirrels, maybe even
18 buckshot for a deer. They could have told you
19 that; couldn't they?

20 A That's a firearm's question, but I would
21 think so.

22 Q Yes, sir. And of course you would agree
23 that in a case where a man has been shot, nobody
24 knows who shot him. Nobody knows what he is shot
25 with. That sounds to me to be pretty material

Karl Kenley-cross by Mr. Barr

1 evidence, potential evidence.

2 A The shotgun shell.

3 Q In the wood that you left in there. It's
4 still in there probably if nobody took them out.

5 MS. BARR: Judge, I am going to object to
6 that. Counsel making statements.

7 THE COURT: Sustained. Rephrase the
8 question.

9 MR. BARR: I'll rephrase.

10 Q You don't -- nobody you haven't sent any
11 deputies back out to Mr. Prosser's house and asked
12 them to collect that evidence; have you?

13 A No.

14 Q Now listen to me, and listen carefully,
15 please, sir. You would agree as a crime scene
16 specialist, forensic expert, it was evidence.

17 A The pellets?

18 Q Yes, sir.

19 A Again in previous experience if you worked
20 with sled in our firearm's, you understand that
21 they have no evidentiary value for firearm's.

22 Q My question was, in this case, a man is
23 shot with a shotgun, what appeared to you to be a
24 shotgun. You looked at the body; right?

25 A Yes.

Karl Kenley-cross by Mr. Barr

1 Q And you are telling us that in your
2 judgment that wasn't evidence?

3 A That's correct.

4 Q Now in your judgment it wasn't. But
5 whichever the case is, you ignored it and left it
6 there.

7 A In my professional opinion, it was not
8 evidence.

9 Q So, sir. So then everything at this crime
10 scene that you found that could have been
11 connected to the crime that you didn't believe to
12 be evidence, you left it there.

13 A All the items that I collected were items
14 that were part of this crime scene.

15 Q You got any shoe prints?

16 A No, we did not do footwear impressions.

17 Q Pardon me?

18 A We did not receive any footwear
19 impressions.

20 Q You didn't collect any shoe prints?

21 A We didn't see any.

22 Q Well I mean you probably couldn't maybe if
23 you walked in here. But, inasmuch as you didn't
24 know how long what you collected that you thought
25 was blood, you didn't how long it had been on the

Karl Kenley-cross by Mr. Barr

1 floor. You didn't know whether anybody had
2 tracked in and out of it. And you didn't know
3 whether or not, even though they may have not
4 been visible, somebody could have stepped in it,
5 and left an imprint on the floor.

6 MS. BARR: Judge, we would object. I hate
7 to keep doing this.

8 MR. BARR: I'll rephrase the question.

9 MS. BARR: It's a compound question.

10 MR. BARR: I'll rephrase the question.

11 Q Did you get on the floor at any point with
12 a microscope or a hand scope, to see whether or
13 not there were footprints that might have some
14 evidentiary value?

15 A During the walk through, we didn't see any
16 bloody footwear impressions.

17 Q Who is we?

18 A Me and my partner, Ricardo Prince.

19 Q Your partner?

20 A Uh-huh. (Affirmative.)

21 Q Where is he?

22 A He is in Columbia.

23 Q You had somebody else helping you?

24 A We were working in pairs of two; that's
25 correct.

Karl Kenley-cross by Mr. Barr

1 Q And he was doing the same thing you were
2 doing.

3 A I was primary. In teams of two, the
4 primary, which was me, was responsible for the
5 report. And the court appearance.

6 Q Well was it you or him that left a shell
7 in the wood?

8 A It was me.

9 MS. BARR: Judge, we are going to object.
10 Asked and answered.

11 THE COURT: Overruled.

12 MR. BARR: Had somebody else been working
13 with you?

14 A Correct.

15 Q And that person had the same kind of
16 discretion you had as far as what to take
17 possession of.

18 A No, as in years' experience. But again,
19 I was the primary senior agent on the scene.

20 Q But with respect to their decision making
21 process, they had the same authority to make
22 decisions regarding what they collected as well as
23 you.

24 A That's correct.

25 Q So now what you are telling us, you said

Karl Kenley-cross by Mr. Barr

1 you put the blue light on the floor. What does
2 that do?

3 A A flashlight. A regular flashlight.

4 Q A regular, oh a regular flashlight.

5 A A regular flashlight; correct.

6 Q So this was not one of those lights that
7 changes color.

8 A No.

9 Q For just a regular flashlight.

10 A Regular flashlight. Correct.

11 Q And you looked on the floor and didn't see
12 anything.

13 A Correct.

14 Q And there you concluded there were no
15 footprints that you could use.

16 A Correct. Using cross lighting we didn't
17 see any.

18 Q Pardon?

19 A Using the cross lighting technique, we
20 didn't see footwear impressions. And normally
21 footwear impressions are in the dust, or anything
22 like that, and we didn't see any.

23 Q Well, now, of course you, today is your
24 first day in this courtroom; right?

25 A Correct.

Karl Kenley-cross by Mr. Barr

1 Q So you are telling the ladies and
2 gentlemen of this jury that you found no
3 footprints.

4 A That's correct.

5 Q Not even Mr. Prosser's.

6 A That's correct.

7 Q Now you would agree your theory is, and I
8 think you said that when you were testifying, that
9 you believed he was somewhere in this area when he
10 was shot.

11 A That's correct.

12 Q And that the direction that the shot came
13 from was over here.

14 A That's correct.

15 Q Now if he was over here, where was the
16 body found when you arrived at the scene?

17 A That's where the body was when we arrived
18 at the scene as is depicted.

19 Q But there was blood all over here.

20 A That's correct.

21 Q So he would have had to get from over
22 here, to over here, if it was his blood.

23 A There was some movement. If the blood was
24 found in the house, showing, indicating there was
25 some movement.

Karl Kenley-cross by Mr. Barr

1 Q Blood all over the place over here.

2 A Correct. There was blood in the bedroom;
3 yes, sir.

4 Q Of course. You don't know when it got
5 there; do you?

6 A That's correct.

7 Q And you don't know whether anybody tracked
8 through it after it got there.

9 A We didn't see any blood or footwear
10 impressions in the residence.

11 Q With the flashlight. You didn't see any
12 with the flashlight.

13 A The flashlight or the naked eye.

14 Q Oh, the naked eye. Did you collect, this
15 is the front of the house here?

16 A That's correct.

17 Q Did you notice any areas near the front of
18 the house, near the front door, were there areas
19 where it looks like there may have been gunshots?

20 A No.

21 Q You didn't see anything like that?

22 A No.

23 Q How about the back door?

24 A No.

25 Q You didn't?

Karl Kenley-cross by Mr. Barr

1 A We did not; no.

2 Q Nothing appeared to be bullet holes?

3 A No.

4 Q Did you look?

5 A Yes.

6 Q Did you see any firearms holes in his
7 house other than that pistol?

8 A There was a gun cabinet that has some long
9 guns, rifles or something in it.

10 Q Shotguns. Any 12-gauge shotguns?

11 A I don't recall the models or the makes,
12 but I know they were long guns.

13 Q Did you examine them?

14 A On the scene we looked at them; correct.
15 They were not collected.

16 Q Now listen at my questions. Did you take
17 the guns down individually and look at them?

18 A No we didn't. We looked at them in the
19 cabinet.

20 Q You just looked at them in the cabinet?

21 A That's correct. We had information I
22 think, from a family member that there were --
23 there was a gun cabinet in the residence.

24 Q Information from the family. That's what
25 you relied on?

Karl Kenley-cross by Mr. Barr

1 A Information from the family members
2 received by the sheriff's department.

3 Q Received by the sheriff's department.

4 A Yes, sir.

5 Q Were you there when it was received?

6 A No.

7 Q So you don't whether it was received or
8 not; do you?

9 A We were told that information.

10 Q By who?

11 A By Investigator McFadden.

12 Q Investigator McFadden. Has anybody told
13 you that he is no longer with the sheriff's
14 department?

15 A They have not.

16 Q So it could have been 12-gauge shotguns up
17 there.

18 A Correct.

19 Q And you don't deny that you already had
20 either in your possession, 12 shells, spent
21 shells.

22 A Correct.

23 Q You either had it in your position at the
24 time you saw the shotguns or you collected it
25 after you saw the shotguns, and you did not exam

Karl Kenley-cross by Mr. Barr

1 the shotguns to make a determination as to whether
2 or not any of them were recently fired. Or you
3 couldn't make that determination.

4 A That is correct.

5 Q But you could have seized them. You could
6 have taken them. And you could have sent them to
7 your firearm's department, and they could tell you
8 exactly whether or not they had been fired
9 recently; couldn't they?

10 A We determined that the shotguns in the
11 residence were not the type of shotgun that was
12 fired with those shotgun shells.

13 Q Who made that determination?

14 A I did.

15 Q I thought you were not a firearm's expert?

16 A But I know the difference. I know the
17 shotgun 12 gauge versus a 14.

18 Q So you are not---

19 MS. BARR: Judge, again.

20 THE COURT: Let him finish. Go ahead.

21 Q You are not a firearm's expert?

22 A Correct.

23 Q And of course probably anybody that's ever
24 shot a gun, would know the difference between a
25 410, and a 12 gauge or a 20 gauge or even a 16

Karl Kenley-cross by Mr. Barr

1 gauge.

2 A Correct.

3 Q Now are you telling the ladies and
4 gentlemen of this jury, with your experience of 20
5 years as a crime scene investigator, with all your
6 professional credentials on the line, you looked
7 at the shotguns, but you don't know whether any
8 of them are 12 gauge?

9 A That is correct.

10 Q Have you ever investigated a crime scene
11 where it turned out that a decedent was shot with
12 his own gun?

13 A Yes.

14 Q That's not unusual; is it?

15 A No, sir.

16 Q It happens a lot.

17 A Frequently.

18 Q Do you know in this case -- well you
19 wouldn't know whether a decedent would have been
20 shot with is own gun; would you?

21 A The shotgun shells in the residence and
22 the gun in the residence, we determined it was the
23 wrong size. It couldn't have been shot from
24 that -- those particular weapons just by the size
25 of the barrel.

Karl Kenley-cross by Mr. Barr

1 Q The size of the barrel.

2 A Correct.

3 Q Now you told us a few minutes ago that you
4 just looked at the guns.

5 A That's correct.

6 Q Now I want to know whether or not you
7 actually took one of those shotguns down, or took
8 all of them down to see whether or not they
9 were -- any of them were 12-gauge shotguns. You
10 didn't do that; did you?

11 A Correct.

12 Q So as far as you know today, one of those
13 same shotguns could have been used to shoot Mr.
14 Prosser. As far as you know today.

15 A Not based on the determination at the
16 scene.

17 THE COURT: Just a second. Ma'am?

18 MS. BARR: Again, objection. That
19 question has been asked and answered.

20 THE COURT: Overruled. Go ahead.

21 Q The judge said you can answer it.

22 A Not based on the determination at the
23 scene that day, we determined the shot shells
24 found in the residence did not match the weapon in
25 the cabinet.

Karl Kenley-cross by Mr. Barr

1 Q Do you ever write anything down when you
2 investigate a crime scene?

3 A Yes.

4 Q Do you take good notes?

5 A Yes.

6 Q And of course, you certainly make sure that
7 everything that is material and important in a
8 crime scene investigation that you can't remember,
9 you write that down; don't you?

10 A Yes, and photograph it.

11 Q Tell me what you got in your notes
12 regarding your examination of the shotgun.

13 A Do you want me to read it verbatim?

14 Q Yes, sir.

15 A There was a gun cabinet in the living room
16 with approximately 6 long guns with different
17 calibers, none of which were capable of firing a
18 12 gauge shotgun shell.

19 Q And those are the only shotguns in there?

20 A That we were made aware of, correct.

21 Q The victim's son stated that he did not
22 know---

23 MS. BARR: Objection, judge. Hearsay.

24 THE COURT: Sustained.

25 Q Well this is your report. You wrote that.

Karl Kenley-cross by Mr. Barr

1 A Those are my minutes taken from the crime
2 scene.

3 Q And according to you, the victim said he
4 didn't know whether---

5 A That's information we received.

6 THE COURT: There is an objection about
7 hearsay. You need to resolve that before you
8 continue that line of questioning, Mr. Barr. I
9 don't know what the document says. If somebody
10 would like to show it to me, I will look at it.

11 A Okay.

12 THE COURT: Come up, Ms. Barr.

13 (Whereupon, the attorneys confer with
14 judge.)

15 THE COURT: Objection is sustained. You
16 may put it on the record later.

17 MR. BARR: Yes, sir.

18 THE COURT: You can ask the witness if he
19 knows; not what anybody else says about it.

20 MR. BARR: Thank you, sir. I have nothing
21 further at this time.

22 THE COURT: Redirect.

23 Redirect Examination by Ms. Barr:

24 Q Mr. Kenley, I have got a couple of follow
25 up questions that I need with talk you about. And

Karl Kenley-cross by Mr. Barr

1 I'll try to be as brief as I can. When we talk
2 about this gun cabinet, I'm going to publish what
3 has been admitted as State's Exhibit No. 30. Can
4 you see this, sir, from where you are?

5 A Yes, ma'am.

6 Q Let me get out of your way a little bit.
7 Tyler, if I can get your help. Mr. Kenley, when
8 you talk about the gun cabinet that was inside the
9 residence, is that what you are talking about
10 here?

11 A That's correct.

12 Q And based upon your examination of the
13 firearms inside the gun cabinet, you determined
14 that they could not have been fired from the shot
15 shell that was found inside the victim's bedroom.

16 A That's correct.

17 THE COURT: Some of the folks on the jury
18 cannot see. And try not to lead.

19 Q Yes, sir.

20 THE COURT: Ms. Barr, you might be
21 standing in the way.

22 Q Let me get you to do it. When you talked
23 on cross examination about the gun cabinet being
24 in the residence, tell the ladies and gentlemen of
25 jury where that gun cabinet is as it relates to

Karl Kenley-redirect by Ms. Barr

1 that exhibit.

2 A Right here.

3 Q And again reiterate your testimony
4 concerning whether or not those firearms inside
5 that gun cabinet related to the shooting in the
6 victim's residence.

7 A That's where we visually looked at the
8 shotguns and determined that they were not capable
9 of firing the shot shell that we found in the
10 residence.

11 Q You talked about having a partner there,
12 Mr. Ricardo Prince?

13 A Correct.

14 Q You were in a supervisory capacity?

15 A Not necessarily a supervisory capacity,
16 but I had more experience. In this particular
17 scene, I was a primary agent.

18 Q In terms of anything that he could testify
19 to were he here, could he tell the jury any more
20 than you are telling them right now?

21 MR. BARR: Objection.

22 THE COURT: Sustained.

23 Q Did he follow you throughout the crime
24 scene?

25 A We worked the crime scene together.

Karl Kenley-redirect by Ms. Barr

1 Q Hand in hand.

2 A Correct.

3 Q I am going to show you what has been
4 admitted as State's Exhibit No. 11. Which part
5 of, is that the front of the residence?

6 A That's correct.

7 Q I am going to publish State's Exhibit No.
8 12. Is that a close up view of the residence?

9 A That's correct.

10 Q In terms of that particular view, is that
11 the most close up view that you all would have
12 taken of the front of the residence?

13 A Correct.

14 Q And you were asked on cross examination
15 whether or not you knew anything about the front
16 of the residence being fired upon. Do you
17 remember those series of questions?

18 A I do.

19 Q Sir, do you see what I am pointing to down
20 there near, you are facing the rear left side of
21 the door?

22 A Yes.

23 Q Does that appear to be some sort of damage
24 or defect there?

25 A Yes, ma'am.

Karl Kenley-redirect by Ms. Barr

1 Q What about here toward the middle of the
2 door? Does that appear to some sort of damage or
3 defect there?

4 A Yes.

5 Q Now when I talk about the middle of the
6 door frame there, I guess that's right by the
7 flag. You indicate there is some damage or
8 damage or defect there?

9 A Yes.

10 Q Just to be clear, these pictures were
11 taken by you on October---

12 MR. BARR: Objection, Your Honor.
13 Leading the witness?

14 THE COURT: Sustained.

15 Q When were the pictures taken by you,
16 Mr. Kenley?

17 A On the day of the response.

18 Q And that would have been?

19 A October 30th.

20 Q 2009.

21 A Correct.

22 Q Now as it relates to State's Exhibit No.
23 40, does that appear to be a closer up view of
24 that same photo?

25 A That's correct.

Karl Kenley-redirect by Ms. Barr

1 Q Can you see any damage or defect in that
2 particular picture?

3 A Yes.

4 Q Same as the other exhibit.

5 A Correct.

6 Q I publish what has been admitted as
7 State's 43. Does that appear to be the bottom of
8 the left hand side of that door if you are facing
9 it?

10 A Yes.

11 Q Is there obvious damage or defect there?

12 A Yes.

13 Q I am sorry. Now when you talk about the
14 markers, 1, 2, 3, you mentioned on cross
15 examination that Marker No. 1 is an unfired bullet
16 that is reflected in Exhibit No. 24; is that
17 right?

18 A That's correct.

19 Q And that item is located where?

20 A In the bedroom. Living room, I am sorry.
21 The living room.

22 Q You talked about Item No., Marker No. 2
23 that was located as depicted in State's Exhibit's
24 No. 33. Can you show us where Item No. 2, or
25 Marker No. 2 to be?

Karl Kenley-redirect by Ms. Barr

1 A Right here.

2 Q Is that the wadding you talked about?

3 A That's correct.

4 Q And we can see Marker 3 in the bedroom as
5 well?

6 A Correct.

7 Q Point to where that is. And where would
8 that have been?

9 A That would have been a shot shell.

10 Q I am going to publish State's No. 32, as a
11 closer up view of marker 2.

12 A That's correct.

13 Q And that's the---

14 A Shotgun wadding.

15 Q I am going to publish State's Exhibit No.
16 59. Is that the Smith & Wesson firearm that you
17 see?

18 A That's correct.

19 Q Okay. You can have a seat.

20 (Whereupon, the witness resumes the
21 witness stand.)

22 Q Mr. Barr, asked you questions about
23 whether or not the scene had been contaminated.

24 Do you remember those questions?

25 A Correct.

Karl Kenley-redirect by Ms. Barr

1 Q And of course when you became a police
2 officer your training was through where?

3 A Through the criminal justice academy.

4 Q In South Carolina in terms of where all
5 law enforcement officers, police officers,
6 sheriff's deputies are trained, where are they
7 trained in their certification?

8 A At the South Carolina Criminal Justice
9 Academy in Columbia.

10 Q Do you all receive any training on how to
11 preserve the crime scene to avoid contamination?

12 A Yes.

13 Q And that training is pretty uniform?

14 A Yes.

15 Q Now you weren't part of any statements
16 that any of the suspects or the defendants gave in
17 this case; were you?

18 A No.

19 Q In terms of your gathering evidence for
20 purposes of submitting them for analysis, do you,
21 does it matter to you one way or the other who the
22 defendants are?

23 A No.

24 Q That's not a part of your job. You just
25 collect the evidence.

Karl Kenley-redirect by Ms. Barr

1 A Correct.

2 Q When you arrived at the scene and you saw
3 Mr. Prosser on the sofa. Now I imagine in 20
4 years you have been to a lot of death scenes.

5 A Correct.

6 Q Did it appear that he had been deceased
7 for minutes, hours or days?

8 MR. BARR: Objection, Your Honor.

9 THE COURT: Basis?

10 MR. BARR: He's incompetent to answer
11 questions. There is no foundation laid for it.

12 THE COURT: Overruled.

13 A Based on his body, it seemed to a be in
14 the last stage of decomp. We knew it was a
15 recent incident.

16 Q Okay. Now you were asked about whether or
17 not you recovered any fingerprints from the scene.

18 A Correct.

19 Q And your response was no?

20 A Correct.

21 Q If a Defendant had been wearing gloves at
22 the time of this crime scene -- at the time of
23 this crime I should say, would you expect to find
24 fingerprints?

25 A No.

Karl Kenley-redirect by Ms. Barr

1 MS. BARR: That's all the questions I
2 have.

3 THE COURT: Anything else, Mr. Barr?

4 MR. BARR: Yes, sir.

5 Recross Examination by Mr. Barr:

6 Q You said that when you go to a crime scene
7 to conduct an investigation, the identity of the
8 people that have walked at a crime scene is of no
9 concern to you at the time?

10 A That's correct.

11 Q Would you not agree that if I told you
12 that I was not at the crime scene, and you found
13 my footprints there, that would certainly suggest
14 that perhaps I was there?

15 A That would be evidence.

16 Q That I was there. If I told you I wasn't.

17 A Correct.

18 Q Now State's Exhibit No. 41 and 42 the
19 photographs, did you take those?

20 A I think I did. But I am not sure, but I
21 think I did. If I didn't take them, Ricardo
22 Prince may have taken them.

23 Q Do you remember taking them?

24 A No. And normally again when we work in
25 teams of two, I am the primary and there is a

Karl Kenley-recross by Mr. Barr

1 second person that took those photographs.

2 Q You don't remember taking them.

3 A Correct.

4 Q Of course if you don't remember taking
5 them, you certainly don't know when they were
6 taken; do you?

7 A They were taken the day of the response.
8 All of our crime scene photos were taken the day
9 of the response.

10 Q Are these your crime scene photos? 41,
11 42?

12 A I am not sure if those are ours or not.

13 Q Now you are telling me that you come to
14 court as a forensic examiner as it relates to
15 crime scene investigation, and you would have
16 fingerprints or have photographs admitted into
17 evidence of a crime scene, bullet holes, and you
18 wouldn't know whether or not you took them?

19 A Again, I don't know whether I would have
20 taken them. On this particular incident, it would
21 Ricardo Prince.

22 Q Well but I mean, you don't know who took
23 these; do you?

24 A If those are our photographs.

25 Q Well if they are your photographs, you

Karl Kenley-recross by Mr. Barr

1 ought to know who took them, wouldn't you say so?

2 A You know, it's probably over 200, and I
3 don't remember each one of them specifically.

4 Q So you don't know about these.

5 A If I look at them yes, I could tell you
6 whether those are ours.

7 Q Well I just showed them to you. Do you
8 want to see them again?

9 A No. The entire disk we submitted with all
10 the pictures in it.

11 Q A disk.

12 A That is correct.

13 Q I see. Now of course you don't deny that
14 you sat right here in this courtroom in the same
15 chair you are sitting in right now, and I asked
16 you on direct examination whether you examined the
17 front of the house, in the back of the house. Or
18 bullet prints at the front and the back. And you
19 told me, no. Didn't you tell me that?

20 A I told you I didn't see them.

21 Q Oh, you didn't see them?

22 A No.

23 Q Are you telling the ladies and gentlemen
24 of this jury if this was there, you wouldn't have
25 seen it?

Karl Kenley-recross by Mr. Barr

1 A I don't know that that's a bullet hole.

2 Q I see. Somebody in the firearm's
3 department could tell us whether that was a
4 bullet hole.

5 A You would have to ask them, I am not sure.

6 Q Well I mean you have been on the scene
7 doing the investigation?

8 THE COURT: No comments. Just ask the
9 questions.

10 MR. BARR: I have nothing further, Judge.

11 THE COURT: Anything else?

12 MR. BARR: No, sir, judge.

13 THE COURT: You can step down thank.
14 Everybody on the jury okay? Does anybody need to
15 take a break? Ms. Barr.

16 MS. BARR: We would Suzann Cromer.

17 SUZANN CROMER, after being duly sworn,
18 testified as follows:

19 Direct Examination by Ms. Barr:

20 Q Please introduce yourself to the ladies
21 and gentlemen of my jury.

22 A My name is Suzann Cromer. And I am
23 firearm tool mark examiner. I am employed by
24 South Carolina Law Enforcement Division commonly
25 referred to as sled.

Suzann Cromer-direct by Ms. Barr

1 Q Give us a little bit of information, if
2 you will, about background, your education,
3 training and so forth to qualify you for your job.

4 A I received my a bachelor's degree from
5 Clemson University. I did some graduate work at
6 the University of South Carolina in Criminal
7 Justice. I have completed sled's in-house
8 training program. It's a 3 to 5 year more of an
9 apprenticeship, if you will. Where I studied
10 under five Court qualified firearm and tool mark
11 examiners. We take written tests, oral tests,
12 practical exercises. Upon completion of that, we
13 work cases. I have attended classes through the
14 association of firearms and tool mark examiners.

15 I have attended classes through the South
16 Carolina Chapter of International Association for
17 Identification. I attended classes through the
18 Bureau of Alcohol, Tobacco Firearms. It is what
19 is commonly referred to as the ATF. I have taken
20 classes in conjunction with the ATF and forensic
21 technology on the integrated ballistics
22 identification system. I'm also on the user's
23 conference. And I'm sled's AFIS coordinator for
24 the State of South Carolina. I have been with
25 sled for 12 and a half years. I have been in my

Suzann Cromer-direct by Ms. Barr

1 current position for over 11 years.

2 Q Did you have an occasion to testify as an
3 expert witness in the State courts in South
4 Carolina and in the area of firearms, tool
5 markings identification?

6 A Yes, ma'am. I have testified in State and
7 Federal courts.

8 Q And of course you have been here and
9 testified as a expert witness in our county court.

10 A That's correct.

11 Q And your specific area of expertise.

12 A Firearm and tool mark identification.

13 MS. BARR: Your Honor, we would tender Ms.
14 Cromer as an expert in the field of firearm and
15 tool mark identification.

16 THE COURT: Any questions, Mr. Barr? As
17 to qualifications.

18 MR. BARR: No, sir.

19 THE COURT: Any objection?

20 MR. BARR: No, sir.

21 THE COURT: Ladies and gentlemen of the
22 jury, this witness is qualified as an expert in
23 the field of firearm and tool mark identification.
24 Let me have your attention for just a moment.
25 Typically in a trial setting, a witness is not

Suzann Cromer-direct by Ms. Barr

1 permitted to give opinions. Most of the time a
2 witness is permitted simply to testify as to what
3 the witness saw or heard, smelled, things of that
4 nature.

5 There are exceptions in our rules of
6 evidence for witnesses who are qualified by reason
7 of education, training or experience in a
8 particular field. Those witnesses can give
9 opinions and they give the reasons for those
10 opinions. That does not mean that you are
11 automatically bound by the testimony of a witness
12 who is designated as an expert. In other words,
13 you use your good common sense and evaluate this
14 witness' testimony just as you would the testimony
15 of any other witness.

16 THE COURT: Ms. Barr.

17 Q Ms. Cromer, you assisted the Williamsburg
18 County Sheriff's Office with a Smith & Wesson
19 firearms that we believe is related to this case;
20 is that correct?

21 A That's correct.

22 Q I am going to hand you what has been
23 admitted as State's Exhibit No. 88, I believe.
24 Tell us if you recognize this particular exhibit.

25 A First off, this box does have the lab

Suzann Cromer-direct by Ms. Barr

1 number, my item number, and my initials on the
2 outside.

3 Q Tell us what is in the box.

4 THE COURT: What Exhibit, Ms. Barr?

5 MS. BARR: No. 88. I believe it's 88.

6 Q I am specifically referring to Exhibit No.
7 88-a. Tell us what that is.

8 A 88-a is a Smith & Wesson model SW40b-e.
9 40 as in caliber. Semiautomatic pistol. With
10 serial number BPL8107. With a magazine.

11 Q In terms of that particular item, when it
12 came in to your agency for you to analyze, tell us
13 about the condition that the firearm was in and
14 tell us what the results of your analysis was.

15 A The first thing I do when I receive a
16 firearm, it is in this box. I open this box. I
17 notice that it had possible blood on it. So I
18 went ahead swabbed blood from this area, the lower
19 grip of the left side, the upper grip of the left
20 side and the slide. So then I swabbed it and then
21 I cleaned the firearm.

22 Then what I do is I take a bunch of notes
23 and measurements.

24 Q Yes, ma'am.

25 A When I received it, it was very similar to

Suzann Cromer-direct by Ms. Barr

1 this slide closed, laying in this box. When I
2 started looking at it more closely, I noticed what
3 is called lead swiping on the side of the slide.

4 Q Let me get you to do me a favor, Ms.
5 Cromer, if you would. Can you step down so all
6 our jurors over here can see.

7 (Whereupon, the witness steps down from
8 the witness stand.)

9 Q Now we have been cautioned to keep the
10 firearm pointed downward. So if you could do that
11 for me, please.

12 A You can see those little tracks coming
13 down the side and on the top of the slide as well.
14 And also the sites are missing.

15 Q What do you mean when you say the sites
16 are missing?

17 A It's usually something like a little post
18 or a little blade, and then there is a blade back
19 here.

20 Q Okay.

21 A Which you use it to line it up as a
22 target. Then the rear site and the front site
23 line up with your target. They were both missing,
24 and there were lead tracks going down there. Also
25 there was an accumulation of possible lead around

Suzann Cromer-direct by Ms. Barr

1 the muzzle of the gun where the area where the
2 bullet comes out.

3 Q Okay. Tell us about your, you've talked
4 about your visual observation of guns. Tell us
5 about your analysis.

6 A After that, I opened it up. I pushed the
7 slide back. Locked the slide rearward so I can
8 see inside actually in the barrel. And I noticed
9 a large amount of possible lead accumulated inside
10 the barrel. So then I got what we call a
11 borescope. It kind of looks like a wand with a
12 camera that magnifies that we can stick down the
13 barrel of the gun. And I can confirm that there
14 was a large quantity of lead right forward of the
15 chamber.

16 This is the part of firearm that holds the
17 cartridge when it is unfired. And the bullet is
18 right inside the barrel part. So when it's fired,
19 that bullet will start going down the barrel and
20 leave the firearm. And right there at the end of
21 where the bullet was, unfired bullet was placed
22 into the chamber, there was a large amount of
23 lead.

24 You can typically find leading in a
25 firearm barrel that has been firing a lot of lead

Suzann Cromer-direct by Ms. Barr

1 for nonjacketed ignition. But this wasn't leading
2 that was consistent with that. Leading of a
3 barrel for firing lead bullets usually accumulates
4 around the edges of the rifling or the land
5 grooves. The rifling is what is put in the gun to
6 put rotary motion on the bullet. Very similar to
7 when a quarterback plays football. He wants to
8 get into a tight spiral so it can more accurately
9 can target. Well that's what that rifling does.
10 It puts that bullet and that projectile into a
11 tight spot so they can more accurately be
12 recovered.

13 You can have a series of -- you can have
14 different numbers, lands and grooves. You can have
15 9 left, 5 right, 6 right. All of those. Or left.
16 Right and left meaning which way has the bullet
17 been spinning.

18 Q Okay.

19 A Leading is not typical with firing lead
20 bullets. You can actually see tracks. Just like
21 your swipes on the left side. You can see those
22 inside the barrel leading up to that accumulation
23 of lead.

24 Q Okay. Now based on the accumulation,
25 amount of the accumulation of lead, I just kind of

Suzann Cromer-direct by Ms. Barr

1 want to be clear. I need you to teach me. Is
2 that something that you would see and you would
3 expect to find in the owner or the person
4 possessing that particular handgun fired, or
5 would that be something based on the amounts that
6 you know to expect to see hang from the person who
7 shot at the person holding that gun?

8 A It was not something I typically see from
9 firing. It's something that what I surmise
10 happened. From the examination of this and other
11 evidence that I received, that bird shot pellets
12 or shot pellets actually entered the barrel and
13 hit around or a bullet that was inside of the
14 chamber of the firearm to cause melting. And
15 that's what it is. So this firearm is not safe to
16 fire with the amount of lead that is crusted into
17 the barrel. I could not even chamber around
18 properly. And what I mean by that, you see the
19 slides close. If I tried to put an unfired round
20 in here, it won't close. It would be propped open
21 a little bit. And the firearm will not fire
22 unless the slide is open.

23 Q Did the amount of the damage that was done
24 to that firearm and the accumulation of lead,
25 suggest anything to you about how far the person

Suzann Cromer-direct by Ms. Barr

1 holding that firearm would have been from the
2 shooter?

3 A No, I don't have a distance determination.
4 It determines that this was pointed in the
5 direction of the shot pellets coming.

6 Q Okay.

7 A Because the shot pellets did go down the
8 barrel.

9 Q The pellets did go down the barrel.

10 A Did go down the barrel.

11 Q Okay.

12 A And that's it kind of pointed kind of at a
13 downward position and to the right. Because I
14 have no lead swiping on the left side.

15 Q Based upon your expert opinions, kind of
16 demonstrate to the jury, how you opine that the --
17 recall that the victim was holding the gun at the
18 time he was shot with the shotgun?

19 A Well my opinion and I spoke incorrectly.
20 There was no swiping down the right side of the
21 gun. What I was thinking is that this firearm was
22 pointed in the direction of the shot pellet kind
23 of downward and to the right.

24 Q Downward to the right.

25 A Right, like this.

Suzann Cromer-direct by Ms. Barr

1 Q Now after that firearm was damaged by the
2 shotgun blast, would Mr. Prosser have been able to
3 fire that gun after he was shot at?

4 A No, ma'am. If this was fired and if it's
5 fired right now, because of the amount of lead
6 that is stuck in the barrel, it could cause
7 catastrophic failure of the barrel. This barrel
8 can blow up. All that pressure and all that gas
9 has to go somewhere and if it's not going down the
10 barrel, it's going to come out.

11 Q Okay. You can have a seat.

12 (Whereupon, the witness resumes the
13 witness stand.)

14 Q If you will tell us about what has been
15 admitted as State's Exhibit No. 88-b.

16 A These were the swabs that I took. I took,
17 I labeled them, this is my Item 1. State's
18 Exhibit No. 88, I believe. I took a swab from the
19 top of the grip and the back strap. The back
20 strap of the firearm is the back of the grip. I
21 took another swab from the lower grip and the
22 magazine release button. And another swab of the
23 slide and right rear side area.

24 Q And you indicated that the material on the
25 firearm that you swabbed you thought it was blood.

Suzann Cromer-direct by Ms. Barr

1 A Possible blood, yes.

2 Q I understand. Tell us about State's
3 Exhibit 88-c.

4 A 88-c was the 9 unfired 40's S & W caliber
5 cartridges that I received with the firearm.

6 Q In terms of the magazine, how many
7 cartridges would a magazine have?

8 A It will hold 10.

9 Q Tell us about State's Exhibit No. 91-a.

10 A 91-a is my sled laboratory number Item 3.
11 It is a fired 12-gauge shot shell or excuse me,
12 federal brand.

13 Q As it relates to that particular exhibit,
14 what type of firearm would have fired that shot
15 shell?

16 A A 12-gauge caliber shotgun.

17 Q Let me ask you this before I forget. Were
18 you ever given a 12 gauge caliber shotgun to
19 analyze in connection with this case?

20 A No, ma'am, I wasn't.

21 Q Other than that Smith & Wesson firearm,
22 were you ever given any other firearms to analyze?

23 A No, ma'am, I was not.

24 Q In terms of your experience in the past
25 when you have to analyze certain weapons in

Suzann Cromer-direct by Ms. Barr

1 connection with a criminal case, have there ever
2 been other occasions where you don't have the
3 suspected gun that was used to---

4 MR. BARR: Objection to relevance, Judge?

5 THE COURT: Ms. Barr.

6 MS. BARR: I'm sorry, the objection was?

7 MR. BARR: Objection, relevance.

8 MS. BARR: Your Honor, there clearly was
9 testimony that there was no other firearm that
10 were seized and analyzed.

11 THE COURT: Objection is overruled.

12 A No, ma'am. That's not uncommon.

13 MS. BARR: I am going to hand you, first
14 of all, let me have it marked as 95 for ID.

15 (Pellets marked as State's Exhibit No. 95
16 for id.)

17 Q I am going to hand you what is marked as
18 State's Exhibit No. 95, which is sled lab number,
19 Item 16. Tell us if you recognize that particular
20 item.

21 A Yes, ma'am. This is a steel container
22 with still my evidence tape, my initials and my
23 seal date.

24 Q What is that?

25 A My Item 16 was pellets received from

Suzann Cromer-direct by Ms. Barr

1 autopsy of Mr. Prosser.

2 MS. BARR: Your Honor, we would move
3 State's Exhibit No. 95 into evidence at this time.

4 MR. BARR: No objection, Judge.

5 THE COURT: Exhibit No. 95 is in.

6 (Pellets from autopsy marked State's No.
7 95 into evidence.)

8 Q Now what would be the purpose of sled
9 getting the pellets from the autopsy?

10 A We usually, if there is any type of
11 projectile at autopsy it usually does come to us.

12 Q If you will, Ms. Cromer, will you use the
13 scissors to your left to open that for us, please?
14 If you will kind of hold it up so the jury can see
15 what you are referring to. Tell us about the
16 results of any analysis from that particular item
17 No. 95.

18 A These were found to be most consistent
19 with No. 4 bird shot.

20 Q Okay. Help me again, and I need you
21 continue to teach me. Are you able to determine
22 aside from it being a No. 4 bird shot, a specific
23 firearm? Are you able to tie the bird shot pellet
24 with anything else related to the case?

25 A No, ma'am. When we have a pellet, a

Suzann Cromer-direct by Ms. Barr

1 shotgun barrel is not a rifle. So it doesn't
2 usually come in contact with anything inside the
3 rifle. Inside the barrel of a shotgun. So it's
4 not going to have any of those identifiable
5 markings that we look for in say a bullet. So we
6 cannot tie it back to a particular gun. We can't
7 tie it to a particular shot shell. All we can say
8 that it is consistent with a certain number of
9 bird shot.

10 Q So if I were to fire a 12 gauge shotgun,
11 and it would have hit the wall, and there were
12 pellets in the wall, and you got the pellets out
13 of the wall, and I gave them to you to analyze,
14 could you tell us anymore other than that they are
15 the bird shot pellet? Could you tell us anymore
16 about that?

17 A All I can tell you is what size they were..
18 consistent with being.

19 Q Now if I could get Exhibit No. 91. I
20 think there was some evidence here about the
21 wadding that I need you to tell us about.

22 A 91-b was my Item 2. This was an important
23 part when I was examining the firearm, because I
24 have not seen a bullet damaged to this extent
25 before. It actually looks melted, but it is not

Suzann Cromer-direct by Ms. Barr

1 fired. So when I examine a firearm, and I can see
2 the lead tracking and an accumulation of lead, I
3 theorized that most of that lead was either from
4 bird shot pellets from this bullet or from a
5 combination of the two. So this is an unfired 40
6 S & W caliber cartridge.

7 Q But it has been damaged or melted as you
8 say.

9 A Yes.

10 Q Tell us what that suggests to you as to
11 the location of the bullet at the time that the
12 victim was shot?

13 A This was in the Smith & Wesson firearm.

14 Q I am going to publish State's Exhibit No.
15 86, which contains the Williamsburg County marker
16 No. 4, is that the firearm we are talking about?

17 A Yes, ma'am, it is.

18 Q The bullet that was unfired, the damage,
19 is that what is depicted here?

20 A No, that is not. This was found from a
21 marker on the living room floor. That does depict
22 what I was telling you about earlier about how if
23 you tried to chamber another round in the firearm,
24 It would not fully close the slide all the way.

25 Q Okay. In terms of what are you talking

Suzann Cromer-direct by Ms. Barr

1 about being the unfired bullet, but having damage
2 to the tip, is that's what depicted in State's 85?

3 A Yes, ma'am, it is.

4 Q And can you step down just a quick second
5 for me?

6 (Whereupon, the witness steps down from
7 the witness stand.)

8 Q And bring that particular exhibit number
9 with you if you can. Show us the part of that
10 bullet, step over here, Ms. Cromer, that would
11 have been melted as you describe it. Right here.
12 The bullet portion. And it was actually, you
13 could see some bulging in this cartridge case,
14 which suggests that it was hit with force to shove
15 the bullet rearward into the firearm. Or the
16 bullet further into the cartridge case, which
17 caused the bulge of the cartridge case and also
18 the melting of the actual bullet.

19 Q Thank, you ma'am, you can take your seat.

20 (Whereupon, the witness resumes the
21 witness stand.)

22 Q You indicated that your expert testimony
23 was that at the time Mr. Prosser was shot, and was
24 holding the firearm pointed towards the right in
25 the downward position.

Suzann Cromer-direct by Ms. Barr

1 A The firearm was pointed downward and
2 right.

3 Q Can you tell us whether or not that
4 particular firing of the shotgun would have
5 resulted in any possible injury to the victim's
6 hands?

7 A When I examined the firearm, I've noticed
8 that there was no damage to the actual frame of
9 the firearm. It's a polymer frame gun or plastic.
10 So I was expecting some damage there. So since
11 there wasn't, I would have assumed that whoever
12 was holding the firearm did have damage to their
13 hand.

14 Q And does it appear based on the State's
15 Exhibit No. 57, that there is a damage to the hand
16 of the person depicted in that particular
17 photograph.

18 A It does appear that there is damage.

19 Q I should say injury rather than damage.
20 And as it relates to State's Exhibit No. 91-a, is
21 that the same shot shell that's depicted in
22 State's Exhibit No. 37, or does it appear to be?

23 A I am sorry. I have to check my State's
24 Exhibit No. 91-a.

25 Q Is this State's Exhibit No. 91-a?

Suzann Cromer-direct by Ms. Barr

1 A Yes, ma'am, it is.

2 Q Does it appear to be the same shot shell
3 that is depicted in that particular exhibit
4 number?

5 A Yes, ma'am, it does.

6 MS. BARR: I beg the court's indulgence.

7 THE COURT: All right.

8 Q Other than analyzing the firearm, and the
9 shot shells and the pellets in this case, did you
10 participate in any further investigation in this
11 case?

12 A No, ma'am, I didn't. And I also examined
13 the wadding.

14 Q I am sorry, okay. Let me ask about that
15 now, and this will be the last question I have for
16 you. Let me make sure I put that back in 92.
17 Tell us about before you leave State's Exhibit No.
18 91-c.

19 A State's Exhibit No. 91-c is consistent
20 with being a 12-gauge shotgun wad. More
21 specifically, it's consistent with being a federal
22 triple plus wad.

23 Q And is that particular exhibit what's
24 depicted in State's Exhibit No. 34 as far as you
25 know?

Suzann Cromer-direct by Ms. Barr

1 A Yes, ma'am, it is.

2 MS. BARR: Ms. Cromer, thank you so much
3 for answering my questions. Please answer any
4 questions the defense counsel may have for you.

5 THE COURT: Mr. Barr:

6 Cross Examination by Mr. Barr:

7 Q I've just got one or two questions. The
8 theory of the firing of the handgun. This is your
9 melt down theory is what I am talking about.

10 A Melt down.

11 Q You cannot give us an opinion regarding
12 the distance that you -- that the person say for
13 instance fired the shotgun would have been from
14 the person holding the handgun.

15 A No, I cannot give you a determination of
16 distance.

17 Q But you say that they would have been
18 holding the handgun slightly down and slightly to
19 the right.

20 A Yes, sir.

21 Q Now of course you don't know whether or
22 not that's a set motion or whether or not the
23 person is in the process of moving his hand, or
24 say for instance whether or not he is drawing down
25 on somebody. There is no way for you to tell that

Suzann Cromer-cross by Mr. Barr

1 in your theory.

2 A No, sir. I can only tell you what the
3 damage on the firearm is consistent with.

4 Q What would be the likelihood if I came out
5 of the bedroom and pointed the gun this way, or
6 pointed the gun toward, I'm sorry, this way. Well
7 hold on a second. Come back down a second.

8 (Whereupon, the witness steps down from
9 the witness stand.)

10 Q The, it's a semiautomatic pistol.

11 A That's correct.

12 Q It's going to shoot every time you pull
13 the trigger. It's going to kick the shell out.

14 A Yes, sir. As long as it's working
15 properly.

16 Q Well now does your theory suggest that the
17 spent shell on the floor ejected from the gun?

18 A There wasn't a spent shell on the floor;
19 from my understanding.

20 Q I'm sorry. Unspent shell on the floor.
21 Right here.

22 A It had to have been manually removed.

23 Q This is the shell.

24 MS. BARR: Judge, I'm sorry. Can she
25 finish her response?

Suzann Cromer-cross by Mr. Barr

1 THE COURT: She said it had to have been
2 manually removed. Go ahead, Mr. Barr.

3 Q It has to be manually removed.

4 A Yes.

5 Q When it came out of the gun, because the
6 gun had fired.

7 A That's right. Someone had to actually
8 pull the slide back and shake it out.

9 Q And you pull the slide back.

10 A Yes, sir.

11 Q And turn it lose. Then one of the shells
12 in the clip will be chambered.

13 A With the unfired cartridge.

14 Q Yes.

15 A From the magazine, yes. It would push the
16 next unfired round into the chamber.

17 Q Wouldn't that require another blast by the
18 shotgun in order to damage that shell as well?

19 A To damage the next shell---

20 Q The melt down.

21 A That next shell was not damaged.

22 Q Well the first shell, If I've got a
23 semiautomatic pistol and I attempted to shoot it,
24 and the first shell would not fire, because it was
25 damaged by a shotgun shell.

Suzann Cromer-cross by Mr. Barr

1 A Uh-huh. (affirmative.)

2 Q And I had to eject that shell from the
3 pistol. Around it comes out and falls, when I
4 turn it loose, another shell goes into the
5 chamber.

6 A That is correct.

7 Q Undamaged shell.

8 A That is correct. If It could be fit into
9 the chamber. On this firearm as was depicted in
10 the picture, this slide would not come all the way
11 forward with the next unfired round in it.

12 Q Well didn't Mr. Kenley testify that there
13 was a shell jammed in the chamber?

14 A Yes.

15 Q And according to you, after you started
16 examining the gun, you found that quite frankly
17 that I better not shoot that. If I took it right
18 now, and tried to shoot and shot it, it might
19 explode because it is damaged. The shell is
20 damaged.

21 A Because it would not feed off of that. It
22 would be jammed in the next round in the chamber.

23 Q Well how about the round that's in the
24 chamber? The one that was jammed in the chamber
25 at the time that you got the gun.

Suzann Cromer-cross by Mr. Barr

1 A It was jammed because the lead in the
2 barrel would not allow it to feed properly into
3 the chamber of the barrel fully, so the slide
4 would close.

5 Q Well I thought you said that shell, the
6 one that was jammed in the gun, was damaged by a
7 shotgun blast?

8 A No, sir. Not the one that Mr. Kenley
9 found in the firearm. It was one of the unfired
10 rounds received with the gun. The damaged round
11 was actually found on the living room floor. Let
12 me check my notes.

13 Q And that's the one that you said your
14 theory is, that that shell would have been in the
15 weapon at the time say for instance, Mr. Prosser.
16 aimed it and decided to fire. And the gun
17 probably didn't go off.

18 A It was the one that I theorized was in
19 the---

20 Q Yeah.

21 A ---firearm when it was hit.

22 Q And of course by that same theory, right
23 now you would be scared to fire the pistol.
24 Because if you fired and pulled the trigger, it
25 might explode.

Suzann Cromer-cross by Mr. Barr

1 A That's correct. Because I can't even, if
2 I could force another round into the chamber.

3 Q One was in the chamber.

4 A But the slide was not fully closed. So it
5 was not fully sealed in the chamber. We call that
6 in battery. I cannot make the firearm fully in
7 battery with the slide fully closed, to fire. And
8 if I could force it inside the chamber of the
9 firearm and attempt to pull the trigger, I could
10 cause an explosion.

11 Q Well if it's not set, or you call it what,
12 in battery, you said?

13 A Yes, sir.

14 Q You couldn't pull the trigger; would you
15 not agree?

16 A If the firearm is not in battery.

17 Q With a semiautomatic.

18 A You might be able to pull the trigger, it
19 depends on the size of the gun. But It would not
20 fire.

21 Q Tell me about the shotgun shell. What
22 kind of load is it?

23 A A No. 4 bird shot.

24 Q No. 4 bird shot.

25 A Yes, sir.

Suzann Cromer-cross by Mr. Barr

1 Q Can you read that writing that is on the
2 shell?

3 A Yes, sir.

4 Q Do you have the bullet there? Is that the
5 -- that's the writing that's on the shell?

6 A Yes, sir, on the shell?

7 Q No. 4 bird shot.

8 A On the shell it indicated Federal, let me
9 check my notes.

10 MR. BARR: A lot of pellets.

11 MS. BARR: Judge, again, I would ask that
12 the witness be allowed to answer the last question
13 before counsel asks her another one.

14 THE COURT: Go ahead. Do it in a more
15 orderly fashion. Mr. Barr, let her answer the
16 first question. Unless she wants to refer to her
17 notes.

18 A On the shot sheet, it was listed Federal,
19 it was listed No. 4, high brass, 2 and 3 quarter
20 inch, 70 milliliter. Which means that it's
21 typically loaded with No. 4 bird shot. High brass
22 means it has a high lit on the head of the
23 cartridge. 2 and 3 quarter inch means the side of
24 the shell. And 70 millimeter is equivalent of 2
25 and 3 quarter inch.

Suzann Cromer-cross by Mr. Barr

1 Q You would agree if I had a standard
2 pellet, whether I got it out of the wood or
3 wherever I got it from, I would be able to
4 determine whether or not that pellet is consistent
5 with the pellets that it's in No. 4 bird shot.

6 A Depending on the amount of damage to it,
7 you might be able to determine.

8 Q How much damage was there to the bird shot
9 that you got from the pathologist?

10 A It was pretty much flattened. The rest
11 was pretty in tact. Pretty round.

12 Q Now you are a firearm's expert.

13 A I am an expert in firearm's
14 identification.

15 Q Identification. But the pellets you
16 received in pathology consists of the No. 4 bird
17 shot.

18 A Yes, sir. Based on their weight and their
19 diameter.

20 Q And the diameter is how much? What
21 centimeters or something?

22 A Just the average diameter of a No. 4 bird
23 shot is approximately is .13 inches.

24 Q No. 4 bird shot. Thank you, ma'am.

25 THE COURT: Redirect?

Suzann Cromer-cross by Mr. Barr

1 MS. BARR: A few questions.

2 Redirect Examination by Ms. Barr:

3 Q Mr. Barr asked you about the unspent
4 bullet as well as the shot shell. There was
5 testimony that the shot shell was found at the
6 rear of the bed inside the victim's bedroom. As
7 depicted on State's Exhibit No. 35.

8 A Okay.

9 Q I think it's 3. Can you tell us what the
10 location of that shot shell inside of the victim's
11 bedroom, tell us about where the shooter was.

12 A We usually don't do a---

13 MR. BARR: I would object because she is
14 qualified, not a ballistics, but a firearm expert.

15 THE COURT: Firearm's identification.

16 MR. BARR: Identification. She would have
17 to qualify in the field of trajectory in order to
18 give an opinion.

19 THE COURT: Ms. Barr.

20 MS. BARR: Judge, I will rephrase the
21 question.

22 THE COURT: All right.

23 Q In terms of your experience, have you
24 fired a 12 gauge shotgun before?

25 A Many times.

Suzann Cromer-redirect by Ms. Barr

1 Q Have you done it within the course of your
2 personal experience or your professional duties or
3 both?

4 A Both.

5 Q Okay. In terms of a shotgun, a 12 gauge
6 shotgun, when you have the shot shell coming out,
7 where does it normally come out in relation to
8 where it's fired?

9 A It depends on the type of the firearm.

10 Q Okay.

11 A You can have a single barrel shotgun where
12 it opens up and it might crack out, being ejected
13 out, shot out. You can have a pump shotgun which
14 a lot of people have seen in the movies where
15 you -- the rack will slide back and forth when it
16 comes out. So it would really determine on what
17 type of firearm it was fired from to know where
18 the shooter was standing.

19 Q Now if you had a shotgun that was a 12
20 gauge that was used in this particular case to be
21 analyzed, would be you be able to tell us a
22 little more about where the shooter had been?

23 A I might. Again, we don't usually do, we
24 call that ejection pattern testing.

25 Q Okay.

Suzann Cromer-redirect by Ms. Barr

1 A There are so many factors that go into it..
2 Height, did it hit something and bounce into the
3 location it is now.

4 Q Okay.

5 MS. BARR: Fair enough. Thank you, ma'am.

6 Recross-Examination by Mr. Barr:

7 Q Now you said that based on the kind of
8 shotgun that you are using, if it was a pump, you
9 would have to pump the gun in order to eject the
10 shell.

11 A That's correct.

12 Q Put another shell in the chamber.

13 A That's correct.

14 Q The pump shotgun.

15 A That's correct.

16 Q Now if it's an automatic and you pull the
17 trigger and it fires, it's going to keep firing
18 until you turn the trigger loose. And the shell
19 is going to be kicking out.

20 A That's correct. I don't personally know
21 of any automatic shotguns, but semiautomatic, with
22 one pull of the trigger it will fire the shell,
23 eject and then reload.

24 Q Now if it's a single barrel shotgun, you'd
25 have to break the gun down in order to get the

Suzann Cromer-redirect by Mr. Barr

1 shell casing out.

2 A If it's a hinged framed firearm, you have
3 to crack it open.

4 Q Yeah. What's the -- when the shotgun
5 shell, can you look at the shotgun shell casing
6 and tell me what the number, the lab number is?

7 A The lab number would be the same for all
8 of sled. It's LRO.

9 Q How about the number that would have been
10 assigned by Mr. Kenley to that particular exhibit
11 or item when it was sent to you?

12 MS. BARR: Judge, we would object to this
13 line. The question falls out of the scope of
14 recross.

15 THE COURT: Is it---

16 MR. BARR: Your Honor,---

17 THE COURT: Let me finish the question.
18 It is connected to anything on redirect?

19 MR. BARR: Yes, sir.

20 THE COURT: How so?

21 MR. BARR: It is connected to the shell
22 casing.

23 THE COURT: Did somebody find, do you have
24 the lab number, ma'am?

25 A Yes, sir, I do.

Suzann Cromer-redirect by Mr. Barr

1 THE COURT: Go ahead.

2 A The lab number for the case is L0913204.

3 That's the lab number.

4 Q And you don't have a number when it comes
5 to use of a lab number, which indicates where the
6 item was found at the scene.

7 A I do not have an indicating corresponding
8 marker numbers from---

9 Q Yeah, that's---

10 A ---Mr. Kenley.

11 Q ---what I am talking about.

12 A No, what I have from the shot shell is
13 that it was found on the bedroom floor near the
14 bed.

15 MR. BARR: Thank you, ma'am. I have
16 nothing further.

17 THE COURT: Step down.

18 MS. BARR: We would call John Roberts.

19 John Roberts, after being duly sworn,
20 testified as follows:

21 Direct Examination by Ms. Barr:

22 Q State your full name for the record,
23 please?

24 A My name is John Roberts.

25 Q And you were subpoenaed to testify in this

John Roberts-direct by Ms. Barr

1 case?

2 A Yes, ma'am.

3 Q Please tell the jury where you are
4 employed, and what you do.

5 A I work for the South Carolina Law
6 Enforcement Division. More commonly called sled.
7 I work in the trace evidence department for our
8 forensic services unit.

9 Q Can you tell us what that means, and what
10 you do day to day?

11 A Trace evidence is the analysis of evidence
12 that you can't see with your naked eye. Most of
13 what we do is connected with chemical
14 instrumentation of one kind or another. In fact,
15 the vast majority of what we do is gunshot
16 residue. Gunshot residue is the term given to the
17 projectiles that are ejected from a firearm when
18 it is fired, and not the projectile that goes
19 down the barrel and out towards the target. This
20 is the chemicals and the metals that are ejected
21 when you fire off a gun.

22 In addition to gunshot residue, we do
23 arson analysis. We do paint, fiberglass,
24 explosives, bank dye packs.

25 Q Bank dye packs?

John Roberts-direct by Ms. Barr

1 A Bank dye packs.

2 Q Do you hold any degrees as it relates to
3 your job now?

4 A Yes, ma'am. I have a bachelor of Science
5 Degree in Chemistry from Texas A & M Corpus
6 Christi. I moved to South Carolina and got a job
7 at sled. I am in our training program for gunshot
8 residue first. Since it is the thing we get the
9 most of, we like to train everybody up in it so we
10 can rotate in and out of taking cases. I trained
11 under my lieutenant who had been doing that for 20
12 years.

13 I helped him with his cases. I worked his
14 cases. We went through the instrumentation that
15 we use. We went over the data that we generate
16 and the conclusions that I can draw from that
17 data. After I did that for a while, I was given a
18 test, and I was drilled by everybody in the
19 department that could be qualified to do gunshot
20 residue. They asked me instrumentation questions,
21 analysis questions and everything like that.
22 After that, I was given my own case load, which I
23 have been doing since 2006.

24 Q And, sir, have you had an occasion to
25 testify as an expert witness in the State courts

John Roberts-direct by Ms. Barr

1 in South Carolina on previous occasions?

2 A Yes, ma'am, I have.

3 Q Are you qualified as a expert in the field
4 of trace evidence?

5 A In the field of gunshot residue.

6 MS. BARR: Gunshot residue, I am sorry.
7 Judge, we would tender Mr. Roberts as an expert in
8 the field of gunshot residue.

9 THE COURT: Mr. Barr, any questions.

10 MR. BARR: No, sir, Judge.

11 THE COURT: Any objection?

12 MR. BARR: No, sir.

13 THE COURT: Ladies and gentlemen, this
14 witness is qualified as an expert in the field of
15 gunshot residue analysis. The instruction I gave
16 you earlier about your weighing testimony of an
17 expert witness is exactly the same. Ms. Barr.

18 Q Mr. Roberts, I am going to hand you what
19 has been admitted as State's Exhibit No. 94, and
20 ask if you recognize that, sir.

21 A Yes, ma'am, I do.

22 Q Tell the court how it is that you
23 recognize it.

24 A This has my initials and the date that I
25 sealed it. It has got the lab number that

John Roberts-direct by Ms. Barr

1 corresponds to this case, L0913204. It has the
2 Item number that is contained inside the bag.

3 Q Tell us what is contained inside the
4 package.

5 A According to my notes and corresponding
6 with this, it contains a gunshot residue kit.

7 Q A gunshot residue kit from whom?

8 A Let me look, and I'll give the name
9 exactly here. Ernest William Prosser, III.

10 Q Tell the court about your analysis of the
11 GSR kit on Ernest Prosser, III.

12 A What happens with a gunshot residue kit
13 is, it comes in two different types of sampling.
14 The first is a set of particle lifts. Particle
15 lifts are aluminum disks about a half inch across
16 with carbon tape on it. And there is four lifts
17 in each gunshot residue kit. And each lift
18 corresponds to a portion of the hands that we need
19 to test in gunshot residue. The right palm and
20 right back of the hand. And the left palm and the
21 left back of the hand. Excuse me. What happens
22 is, If I have got somebody I need to test for
23 gunshot residue, I pull out the left palm
24 particle. Pop the top off it. And there is a
25 little disk in there. And I just dab it on their

John Roberts-direct by Ms. Barr

1 hands. Like a bingo gathering. Put the top back
2 on. Take out the left back lift. Do the same
3 thing, and then put right palm and the right back.
4 After those lifts are done, they are put in an
5 envelope, and then you take out the swabs. And
6 swabs are cotton swabs. Instead of being two
7 ends, there is only one end with cotton on it.
8 You drip, put some nitric acid on it. And you
9 apply them in the same areas you applied the
10 dabbers. Except you swipe them like you are
11 trying to mop something up with the cotton swabs.
12 So there is cotton swabs for the right palm, right
13 back, left palm, left back.

14 What happens is, this all gets sealed up
15 in an envelope and sent to us at sled. When we
16 receive it at log-in, it comes through our
17 technician, and we prep it for analysis and we run
18 it on an instrument. And what we run on the
19 instrument first is the swabs. We get, over 2,000
20 gunshots residue kits a year at sled. The swabs
21 are run on an automated instrument that looks for
22 metals that we find in gunshot residue. What we
23 look for is lead, barium and antimony. These
24 metals in addition to sometimes being contained in
25 the bullet, they are contained in the primer.

John Roberts-direct by Ms. Barr

1 And if you look at a bullet, they are
2 contained in the primer. And if you look at a
3 bullet, I look at a cartridge. The back of the
4 cartridge, the little silver disk in the middle of
5 this unfired cartridge, is the primer. And that
6 explodes and set off the powder. And the powder
7 pushes the bullet down the muzzle of the gun.
8 What comes out the primer is what we are looking
9 for and we refer to as gunshot residue.

10 Q As it relates to your analysis of the GSR
11 kit on Mr. Posser, including the back and the palm
12 of his right hand, and the back and palm of his
13 left hand, what were the results of that analysis?

14 A When we issue a report, we issue a report
15 on all four areas of the hand. On the right palm
16 I found quantity of metals found, were consistent
17 with gunshot residue. On the right back, the same
18 result, quantities of metals found were consistent
19 with gunshot residue. On the right back, the same
20 result. Quantities of metals found were
21 consistent with gunshot residue. On the left
22 palm, it's a little different. The quantities of
23 metals found were associated with gunshot residue.

24 Q What is the difference between consistent
25 with gunshot residue, and being associated with

John Roberts-direct by Ms. Barr

1 gunshot residue?

2 A Basically it's the difference in the
3 concentration of the metals found on that specific
4 area.

5 Q Okay.

6 A On the left back of the hand metals found
7 were consistent with gunshot residue. So on 3 or
8 4 areas consistent with and one it is associated
9 with.

10 Q Now would the presence of gunshot residue
11 on the hands of Mr. Processer tell you
12 emphatically that he fired a gun?

13 A It can tell me a couple of different
14 things. And I can't be 100 percent of one or the
15 other.

16 Q Yes, sir.

17 A You get gunshot residue on your hands in
18 basically three different ways. You shoot a gun,
19 or you pick up a gun that's been recently fired
20 and you handle it. Or you are near it when it
21 goes off. Either standing to the sides or in
22 front of it.

23 Q Okay.

24 A In this case, there was a lot of material.
25 And like I said, what we are looking for is lead,

John Roberts-direct by Ms. Barr

1 barium and antimony. There was a lot of lead on
2 all four areas. So it is difficult to tell
3 whether it was either one of those three
4 situations. It's not consistent really with just
5 handling a gun, because it doesn't pick up
6 anything from the back of your hands. So usually
7 when you find metals on the backs, it's consistent
8 with either shooting a gun, or being near when it
9 goes off.

10 Q Now you were in court when your colleague,
11 Suzann Cromer, testified about the condition of
12 Mr. Prosser's gun. In terms of the damage, is
13 that right?

14 A The pistol, yes, ma'am.

15 Q The pistol, I'm sorry. And you heard her
16 talk about the extent that it been damaged, and
17 finding an accumulation of lead inside the barrel
18 of that gun.

19 A Yes, ma'am.

20 Q Would we expect to find gunshot residue on
21 Mr. Prosser's hands if he was holding that gun
22 at the time he was shot?

23 A Yes, ma'am.

24 Q Now other than getting the GSR kit on
25 Mr. Prosser, did you get any other GSR kits in

John Roberts-direct by Ms. Barr

1 this case analyzed?

2 A No, ma'am, I did not.

3 Q And just to be clear, the firing of a 12
4 gauge shotgun would result in the emission of
5 GSR. Gunshot residue.

6 A If I went out and fired a 12 gauge
7 shotgun, I would more than likely get gunshot
8 residue on my hands.

9 Q What about if you fired a 12 gauge
10 shotgun, and you I were as far apart as I am
11 standing from you now, would it be expected if you
12 fired it at me, that I would have gunshot residue
13 on my hands?

14 A The way your hands are now, probably not.
15 But if they are in the front; probably, yes.

16 Q And as I am standing here now, I am
17 approximately I'm out of measure. I am
18 approximately how far from you?

19 A 8 feet. But if I was firing a shotgun, it
20 would probably be 2 feet closer than that.

21 Q What if I had my hands raised towards you?

22 A Then you are talking 4 feet.

23 Q In terms of being able to get GSR off of
24 an individual's hands, if a person who had fired a
25 gun had gone and washed their hands, would we

John Roberts-direct by Ms. Barr

1 expect to find a large accumulation of GSR on
2 their hands?

3 A I would not expect to find any if they had
4 washed their hands.

5 Q What about if they were wearing gloves?

6 A On the gloves, and depending on the type
7 of gloves, you may get residue on their hands. In
8 the really thin cheesy cotton gloves---

9 Q Yes.

10 A ---there is gaps in between the fibers and
11 the weave is kind of loose.

12 Q Yes, sir.

13 A If you shoot enough, you can get residue
14 in through those pores. I mean it's like soaking
15 something through cheese cloth. Liquid comes
16 through if it's solid stuff based on top. You
17 might get something through there. But in general
18 with gloves you won't get any on the hands.

19 MS. BARR: Thank you, sir. Please answer
20 any questions defense counsel has.

21 Cross Examination by Mr. Barr:

22 Q You found gunshot residue on both sides of
23 the hands?

24 A I found metals consistent with residue on
25 both palms and back---

John Roberts-cross by Mr. Barr

1 Q Palms and backs.

2 A ---of the victim's hands.

3 Q Of both hands?

4 A Of both hands.

5 Q I am going to make sure I understand the
6 approximate distance you told Ms. Barr. And this
7 is, I understand this is your opinion. I notice
8 that when she had her hands down, you said they
9 are probably, and I think she was about this
10 distance from you. It probably wouldn't, if
11 somebody fired a gun say, for instance, where you
12 are, it probably wouldn't be any gunshot residue
13 on my hand if I had them down.

14 A She had them behind her back.

15 Q Behind her back?

16 A Yes, sir.

17 Q I see.

18 A When she put them out in front of her---

19 Q Like this?

20 A ---she was probably a step and a half
21 closer than you are right now.

22 Q About here?

23 A Possibly. Yeah, I would expect to see
24 gunshot residue.

25 Q That close.

John Roberts-cross by Mr. Barr

1 A Yes, sir. Firing from a shotgun; yes,
2 sir.

3 Q All right. Now of course you were also in
4 the courtroom when the firearm's expert testified
5 that the pistol wasn't fired. Did you hear her
6 say that?

7 A I didn't recall whether she said it was
8 fired or not. I don't believe she said it was
9 fired.

10 MR. BARR: Thank you, sir.

11 THE COURT: Redirect?

12 MS. BARR: No, sir, judge.

13 THE COURT: Step down. Ms. Barr.

14 MS. BARR: Can we approach?

15 THE COURT: Yes, ma'am.

16 (Whereupon, the attorneys approach the
17 bench and confer with judge.)

18 THE COURT: Ladies and gentlemen, we are
19 going to break for lunch at this time. Sorry to
20 carry over a little bit longer than we normally
21 would. But we will be back in the courtroom at
22 2:30. We will be ready to proceed at 2:30. Of
23 course you may not the discuss the case at all.
24 Thank you.

25 (Whereupon, court breaks for lunch.)

John Roberts-cross by Mr. Barr

1 THE COURT: Is there anything we need to
2 take up before the jury comes back?

3 MS. BARR: I need to have some exhibits
4 marked. It looks like for the first part is a
5 diagram from the pathologist and then the x-ray of
6 the victim's. It's my understanding that Mr. Barr
7 does not have any objection to these items.

8 THE COURT: Are those marked for ID?

9 MS. BARR: They're being marked now.

10 THE COURT: Okay.

11 (Photographs marked State's Exhibit Nos.
12 108 through 115 for id.)

13 MS. BARR: Your Honor, for the record, the
14 Defendant has stipulated to the admissibility of
15 Exhibits 96, 97, 98, 99. And those are all DNA
16 evidence that will come through the next witness.
17 It's my understanding further that the Defendant
18 has stipulated to the admissibility of Exhibits
19 100-107, which are diagrams by the pathologist of
20 the victim, as well as x-rays of the victim at
21 autopsy.

22 (State's Exhibit Nos. 100-107 diagrams
23 marked into evidence.)

24 THE COURT: 96 through 99 is what?

25 MS. BARR: Blood cuttings from the bandage

John Roberts-cross by Mr. Barr

1 that was located inside the victim's residence.

2 Exhibit No. 97.

3 THE COURT: Is it material from which DNA
4 was taken?

5 MS. BARR: I am sorry, sir.

6 THE COURT: Those four exhibits are from
7 which DNA was taken?

8 MS. BARR: Yes. Yes, sir.

9 THE COURT: Mr. Barr, 96 through 97, you
10 do not object to?

11 MR. BARR: No, sir.

12 THE COURT: What is in dispute?

13 MS. BARR: The State's, what has been
14 marked for identification purposes as State's
15 Exhibits No. 108 through 115, which are autopsy
16 photos of the victim.

17 THE COURT: Which witness is going to
18 testify about these photographs?

19 MS. BARR: Dr. Erin Presnell.

20 THE COURT: Is she going to be here this
21 afternoon?

22 MS. BARR: Yes, sir. She will be right
23 after the man we have from sled.

24 THE COURT: Mr. Barr, your objection would
25 be 403 objection?

John Roberts-cross by Mr. Barr

1 MR. BARR: You mean as far as the
2 photographs that she's?

3 THE COURT: Yes, sir.

4 MR BARR: Yes, sir.

5 THE COURT: I guess what it boils down to
6 in making the determination about whether or not
7 the probative value is substantially outweighed
8 by the danger of unfair prejudice and so forth and
9 so on to rule. I would have to hear the witness'
10 testimony as to what probative value they have at
11 all. And then I have and then if they do, well
12 let me stop. If they won't, they don't come in.

13 MS. BARR: Yes, sir.

14 THE COURT: If they do, I have to
15 determine whether or not that value is
16 substantially outweighed by the danger of unfair
17 prejudice. I can anticipate Mr. Barr's argument
18 on that. Also I have to take into account whether
19 they might be cumulative; for you it's cumulative
20 and so forth and so on. Mr. Barr, is your
21 objection based on the inflammatory you contend
22 the photographs contain?

23 MR. BARR: Yes, the photographs she showed
24 me.

25 THE COURT: Here they are.

John Roberts-cross by Mr. Barr

1 MR. BARR: Well you have seen them.

2 THE COURT: Yes, sir.

3 MR. BARR: Are very prejudicial. And
4 under 403, It would be our position the
5 introduction into evidence of these photographs,
6 the unfair prejudice from these photographs, the
7 danger of unfair prejudice is substantially
8 outweighed by the probative value. And, judge,
9 they are specifically photographs which have
10 already been entered into evidence. Which it
11 would be our position they would substantiate
12 anything associated with his death. And you have
13 a photograph of him laying on the sofa. All of
14 which has been entered into evidence. And I can
15 see no reason other than just to simply inflame
16 the jury; and the prosecution would even consider
17 putting these photographs in.

18 THE COURT: But we have got one witness
19 before we get to that.

20 MS. BARR: Yes, sir, Judge.

21 THE COURT: Mr. Barr, can you hand those
22 back to the Court Reporter. And if somebody could
23 find the photographs of Mr. Prosser that are in,
24 since I haven't see those.

25 MS. BARR: Yes, sir. Your Honor, for the

John Roberts-cross by Mr. Barr

1 record, I am going to hand what's been admitted as
2 State's Exhibit No. 29, State's Exhibit No. 28,
3 and 23.

4 MR. BARR: Can I see those a second?

5 THE COURT: The State ready?

6 MS. BARR: Yes, sir.

7 THE COURT: The defense ready?

8 MS. BARR: Yes, sir, Judge.

9 THE COURT: You can bring the jury in.

10 (Whereupon, the following takes place
11 within the presence of the jury.)

12 THE COURT: We are now ready to move
13 forward. Ms. Barr, you can call your next
14 witness.

15 MS. BARR: Please the court, we would call
16 Amanda Webb.

17 Amanda Webb, being first duly sworn,
18 testified as follows:

19 Direct Examination by Ms. Barr:

20 Q Good afternoon, Ms. Webb?

21 A Good afternoon.

22 Q If you would please, introduce yourself to
23 the ladies and gentlemen of our jury.

24 A My name is Amanda Webb. And I am employed
25 by the South Carolina Law Enforcement Division.

Amanda Webb-direct by Ms. Barr

1 And I am in the DNA department.

2 Q And tell us what you specifically do for
3 sled.

4 A I do serology and DNA testing. Serology
5 testing, the identification of bodily fluids. I
6 test for blood, semen and saliva. And I also do
7 DNA testing to try to develop DNA profiles from
8 evidence and known standards.

9 Q If you will, give us a little information.
10 You didn't go into a lot of detail. But give us a
11 little information about your educational
12 background and your experience with sled.

13 A I have a bachelor's in Forensic Chemistry
14 from Marshall University. And I also have a
15 master's of Science degree in Forensics Science
16 from Marshall University. I have been employed
17 with sled for 3 years. I was in training for
18 approximately a little over a year at that time.
19 And during my training, I had to take many tests,
20 written, oral, practical tests. And perform many
21 lab duties and correctly get those answers right.
22 And then I was able to do independent case work.

23 Q Okay. And have you ever had an
24 opportunity to testify as an expert witness in our
25 State courts on previous occasions?

Amanda Webb-direct by Ms. Barr

1 A Yes, I have.

2 Q And what is your area of expertise?

3 A Serology and DNA analysis.

4 MS. BARR: We would tender Ms. Webb as an
5 expert in the field of Serology and DNA analysis.

6 THE COURT: Mr. Barr.

7 MR. BARR: Judge, I don't have any
8 additional questions. And I will consent she is
9 qualified.

10 THE COURT: Ladies and gentlemen, this
11 witness is qualified as an expert in the field of
12 Serology and DNA analysis. The prior instruction
13 I gave you about your weighing of expert testimony
14 is the same. You give it the weight you think it
15 is entitled to.

16 MS. BARR: Thank you, Judge.

17 Q Ms. Webb, did you assist the Williamsburg
18 County Sheriff's Department in the connection with
19 the murder of Ernest Prosser?

20 A Yes, I did.

21 Q And tell us, did you receive any items?
22 And was there a request made for you to analyze
23 those items?

24 A Yes, I did.

25 Q Tell the jury what you received.

Amanda Webb-direct by Ms. Barr

1 A I received a condom in this case. And the
2 request was to try to find female DNA.

3 Q Okay.

4 A I received swabs from a back doorknob.

5 Q Okay.

6 A And the request was for blood and a DNA
7 profile.

8 Q Okay.

9 A And I received swabs from a pair of
10 sneakers.

11 Q Okay.

12 A And there was a request to develop a DNA
13 profile.

14 Q Okay.

15 A And swabs from the pistol of a gun.

16 Q Okay.

17 A And that was also for blood and DNA
18 profile.

19 Q Okay.

20 A I received a known standard. A known
21 standard to us is for referencing. It's DNA taken
22 from an individual so we know whose DNA profile it
23 is. So we develop profiles from evidence to
24 compare it back to that person to see if it
25 matches.

Amanda Webb-direct by Ms. Barr

1 Q Okay.

2 A I received a buccal swab from Ms. Ronetta
3 Miller.

4 Q Okay.

5 A And I received -- there was a bandage.
6 And I got cuttings from a bandage. And one for
7 blood and DNA profile.

8 Q Yes, ma'am.

9 A And known head hairs from the victim
10 Ernest Prosser. The head hairs were used as a
11 known standard so I would know what his DNA
12 profile was.

13 Q Okay.

14 A And also fingernail scrapings from the
15 victim.

16 Q Okay. In terms of DNA. Give us a brief
17 course, in terms of what DNA is. And how it is
18 used to identify individuals.

19 A Sure. DNA is a component in the body.
20 And we inherit half from our mother, and half
21 from our father. And it's unique to each
22 individual except identical twins. In forensics,
23 we test 16 different locations of the DNA. And we
24 develop profiles from the evidence, and then
25 compare any developed profiles from the evidence

Amanda Webb-direct by Ms. Barr

1 to the known standards to the individuals.

2 It's basically what I look at is a bunch
3 of numbers. It equates to like a street address.
4 The more numbers I have, the more complete the DNA
5 profile is. And it gives me more information I
6 can get, and can give a match or exclude someone
7 from the evidence.

8 Q So you had two known samples in connection
9 with this case. Two known standards, as you say.

10 A Yes, that's correct.

11 Q Ronetta Miller and Mr. Ernest Prosser?

12 A Yes, that's correct.

13 Q Let's talk about the condom, which I think
14 we've got admitted as State's Exhibit No. 93. You
15 performed an analysis, and we have already opened
16 them in court, so we are okay as far as that is
17 concerned. But you performed an analysis of what
18 has admitted as State's Exhibit No. 93 that it's
19 in a sealed container?

20 A I didn't receive that sealed container, I
21 received swabs---

22 Q Okay.

23 A ---from the condom inside.

24 Q If you will, Ms. Webb, please tell us
25 about the results of your analysis from the condom

Amanda Webb-direct by Ms. Barr

1 that was submitted.

2 A A swab was taken from the interior and
3 exterior of the condom as it received to us at
4 sled. And both the swabs the interior and the
5 exterior, were tested for semen. And the chemical
6 test showed that there was no semen was indicated.
7 But a DNA profile was attempted to be developed.

8 Q Okay.

9 A I did develop a DNA profile from both the
10 interior and exterior swabs of the condom. And
11 both of those DNA profiles matched the DNA from
12 Ernest Prosser. And the probably of randomly
13 selecting an unrelated individual having a DNA
14 profile matching these items is approximately one
15 and 140 quadrillion.

16 Q That's weird.

17 A Now what that statistic means it's just
18 basically just how rare a DNA profile is in the
19 population. And so that just tells us that if you
20 were to pick a person at random the chance that
21 they would have the same profile would 1 and 140
22 quadrillion.

23 Q Okay. That's weird. Pretty
24 scientifically certain that this was the DNA of
25 Mr. Prosser.

Amanda Webb-direct by Ms. Barr

1 A Yes; that's correct.

2 Q Tell us about your analysis of your item
3 No. 7 on your DNA report that concerns swabs that
4 were taken from the back doorknob.

5 A I tested the swabs from the back doorknob
6 for blood and blood was indicated. And then upon
7 developed a DNA profile, the profile was
8 insufficient for reliable interpretation. And
9 what that means is that sometimes there is just
10 not enough DNA to get enough information to really
11 make interpretation. And that's what the case was
12 here. It was just a real partial DNA profile.
13 And so I couldn't make a statement about it in one
14 way or another.

15 Q Okay. I am going to hand you what has
16 been admitted as State's Exhibit No. 99. Does
17 this appear to be the swab that was taken of the
18 right of the sneaker that was submitted into
19 evidence?

20 A Yes, it does. And I can tell because it
21 has the sled lab number. And then also in the
22 envelope on the inside package has the item
23 number. And it also has my initials on it.

24 Q What was the result of your analysis of
25 the swab that were taken from the sneakers?

Amanda Webb-direct by Ms. Barr

1 A Blood was indicated. And then upon
2 developing a profile, the DNA profile developed
3 from Ms. Segars is from an unidentified
4 individual. Meaning that compared to the
5 standards that I have of Ronetta Miller and Ernest
6 Prosser it doesn't match either of them. It's
7 another person.

8 Q Tell us about your Item No. 10 which is
9 the swab from the pistol that was taken into
10 evidence.

11 A I tested for the blood on the swab, pistol
12 grip, and blood was indicated. And then
13 developing a DNA profile, I found the DNA from the
14 pistol grip matches the DNA profile of the victim
15 Ernest Prosser.

16 Q As it relates to State's Exhibit No. 97,
17 can you tell us what that particular exhibit is?

18 A I can tell from the sled lab number and
19 the container number on the bar code. And also it
20 has where I have opened the package and then
21 resealed it, and it has the date and my initials.

22 Q Yes, ma'am.

23 A And this container contains the items. It
24 contains the known head hairs from the victim
25 Ernest Prosser. And fingernail scrapings from the

Amanda Webb-direct by Ms. Barr

1 right and left fingernails of the victim Ernest
2 Prosser.

3 Q And those items would have been taken from
4 the victim at autopsy?

5 A Yes, I believe so.

6 Q Now tell us the significance of the
7 letters STAT, and the red label that's contained
8 within particular Exhibit No. 97. What's the
9 significance of that?

10 A Well for me the STAT doesn't really relay
11 anything special to me. But the red bag and the
12 the Biohazard emblem just tells me that there is
13 biological materials in there. And to handle it
14 with precautions in case there is any type of
15 dangerous material.

16 Q Now let's talk about State's Exhibit No.
17 98, which is your Item No. 11. Tell us about
18 that, please, ma'am.

19 A That is buccal swabs from Ronetta Miller.
20 Again, that's the known standard from Ronetta
21 Miller. A buccal swab is just like a cotton swab
22 on the inside of your cheek. It's just way to get
23 cellular material on a swab so I can get DNA from
24 it. And that area is called the buccal area, so
25 that's why it's called a buccal swab.

Amanda Webb-direct by Ms. Barr

1 Q Okay. Mr. Webb, I am going to hand you
2 what's been previously admitted as State's Exhibit
3 No. 92. I think it's your Item No. 13, if I am
4 not mistaken. Tell us about that, please, ma'am.
5 And you don't have to take it out, but you can
6 just kind of tell us about it.

7 A Yes, it is my Item No. 13. And it is a
8 bandage. And I received cuttings from the bandage
9 for DNA analysis.

10 Q Okay. And tell us what the results of
11 your analysis was on 19 of this cutting from this
12 bandage were?

13 A Well blood now indicated. And I developed
14 a DNA profile. And the DNA profile developed from
15 the bandage matches the DNA profile of Ronetta
16 Miller. And the probably of randomly selecting an
17 unrelated individual having a DNA profile matching
18 this item is approximately one and 610 trillion.

19 Q So again, we are pretty scientifically
20 certain that that's Ronetta Miller's DNA on that
21 bandage.

22 A Yes, that's correct.

23 Q In terms of any other DNA evidence in
24 connection with the case, have you received or
25 have you analyzed any other evidence that had any

Amanda Webb-direct by Ms. Barr

1 DNA ties to this particular case?

2 A No, that's all the items that I have.

3 MS. BARR: Ma'am, I believe that's all the
4 questions I have for you. Please answer any
5 questions defense counsel may have.

6 THE COURT: Mr. Barr.

7 Cross Examination by Mr. Barr:

8 Q Ms. Webb, I am Charles David Barr, and I
9 represent the Defendant in this case, Mr. Wallace.
10 Now tell me if you could, please, ma'am, you
11 indicated to Ms. Barr that you attempted to
12 develop a DNA profile from the items that were
13 submitted to you for analysis, and only those
14 items.

15 A Yes, that's correct.

16 Q Now with respect to the whole purpose and
17 process of DNA, the, in order to make a comparison
18 between the genetic profile and says, for
19 instance, for some particular item, and to match
20 that to an individual, you would have to have a
21 standard from the individual.

22 A Yes, that's correct.

23 Q And the only two individuals from whom you
24 have standards that were submitted to you, was
25 Ronetta Miller and Ernest Prosser.

Amanda Webb-cross by Mr. Barr

1 A Yes, only those two.

2 Q And the only DNA that you developed from
3 all the materials submitted to you, there was one
4 examination which the results was inconclusive as
5 to the two of them, but pointed to another
6 individuals who we don't know.

7 A Yes, that's correct. The swab from the
8 pair of sneakers.

9 Q From the sneakers. Yes, uh-huh.
10 (Affirmative.). So now with respect to the crime
11 scene in this case, other than the items that you
12 enumerated, which would be swabs from their swabs
13 from the exterior and the interior of the condom,
14 the back door swab, or from the knob on the back
15 door, the sneakers, the swab from the sneakers,
16 the swab from the grip on the pistol, the swab
17 from Ronetta Miller, the bandage, the cutting from
18 the bandage. And of course, the bandage itself,
19 you didn't examine that. But you just examined
20 the cutting from the bandage, and known hair
21 sample from Ernest Prosser and fingernail
22 scrapings from Ernest Prosser. And there was
23 nothing else that you examined.

24 A That's correct.

25 Q So with respect with forensic findings

Amanda Webb-cross by Mr. Barr

1 would you not agree that insofar as what you might
2 be able to tell us about this case from an
3 evidentiary standpoint, the helpfulness of your
4 testimony and opinions in order to assist the jury
5 in determining whatever facts they need to
6 determine, to a great degree is determined by
7 what is submitted to you.

8 A Yes, that's correct. It helps.

9 Q So now if somebody on the front end, when
10 I say on the front end, I am saying, for instance,
11 if a person like a forensic examiner whose
12 responsibility it is to investigate a crime scene,
13 if they don't present the material to you, and
14 send it to your lab to be analyzed, then you don't
15 get to analyze it, and come back and tell the jury
16 what was found.

17 A That's correct. I can only analyze what's
18 submitted.

19 MR. BARR: Thank you, ma'am.

20 MS. BARR: Judge, I don't have any
21 redirect.

22 THE COURT: Thank you, ma'am. You can
23 step down.

24 MS. BARR: We would ask the witness to be
25 excused.

Amanda Webb-cross by Mr. Barr

1 THE COURT: Ma'am, you can leave or stay
2 whichever you like.

3 MS. BARR: I think she is going to leave.

4 THE COURT: All right.

5 MS. BARR: We would call Dr. Erin
6 Presnell.

7 Dr. Erin Presnell, after being duly
8 sworn, testified as follows:

9 THE COURT: Ladies and gentlemen, I need
10 to take up a matter with the lawyers outside of
11 your presence so if you will please go to your
12 jury room, I will have you back out in just a
13 minute.

14 (Whereupon, the following takes place
15 outside the presence of the jury.)

16 THE COURT: For purposes of this hearing,
17 Mr. Barr, will you stipulate to her qualifications
18 in the field of---

19 MS. BARR: Forensic pathology.

20 THE COURT: ---forensic pathology? In
21 other words, do you want to qualify her for the in
22 camera purpose of the hearing?

23 MR. BARR: No, sir, Judge. I was just --
24 I am sure you have testified in courts of record
25 in this State before.

Amanda Webb-cross by Mr. Barr

1 A Yes, sir.

2 MR. BARR: I before I have seen you
3 before.

4 A Yes, sir, I guess you have.

5 MR. BARR: Your Honor, she's qualified.

6 She's definitely qualified.

7 THE COURT: Okay. Ms. Barr, you can
8 qualify her in front of the jury for persuasion
9 purposes. But for now, I will let you go
10 through---

11 MS. BARR: Yes, sir.

12 THE COURT: ---your questions that lead up
13 to the issue at hand.

14 Direct Examination by Ms. Barr:

15 Q Dr. Presnell, you are employed by---

16 THE COURT: And if you would, when you do,
17 if you show the photographs that you want to put
18 in evidence, point it more towards up here. Okay.

19 MS. BARR: Yes, sir.

20 THE COURT: So I will be able to see it.

21 Q Let me do this. Let me turn around.

22 Dr. Presnell, I am going to hand you what has been
23 marked for identification purposes as State's Nos.
24 108 through 115. Do you recognize what's depicted
25 in those photographs?

Dr. Erin Presnell-direct by Ms. Barr

1 A Yes, those are photographs taken at the
2 scene of the autopsy.

3 Q Of William Prosser?

4 A Yes.

5 Q And is it the normal practice when you
6 have a homicide, that officers of the
7 investigating law enforcement agency will take
8 photographs of the victim's body?

9 A It used to be, although the policy has
10 changed now, and we do all the photographs. At
11 that time; yes.

12 Q And certainly It is the practice for
13 somebody in homicide investigation---

14 MR. BARR: Your Honor, object. And for
15 the record.

16 THE COURT: Don't lead. And is that what
17 you are objecting to?

18 MR. BARR: No. That wasn't my objection.

19 THE COURT: I will sustain that.

20 MR. BARR: The jury is not here. Well she
21 was doing that too, but I let here get away with
22 that one. I will stipulate that for the record,
23 that the -- Mr. Prosser died as a result of a
24 gunshot blast with bird shots to the torso area,
25 the upper part of his body. We will stipulate to

Dr. Erin Presnell-direct by Ms. Barr

1 that. Now I don't know -- you know, I don't know
2 what else a pathologist unless the testimony in
3 some way will provide probative evidence
4 concerning some other material issue. I just, and
5 that's where we get to this business of these
6 photographs.

7 THE COURT: Ms. Barr, of course you've
8 heard and stipulated that the cause of death was a
9 shotgun blast to the areas he described. Does
10 that add anything to the equation from your
11 perspective?

12 MS. BARR: Absolutely, Judge. We would
13 take the position that first of all, we don't have
14 to accept the defense counsel's stipulation. We
15 actually argued, of course, it's not precedent of
16 course. But we actually argued this very same
17 issue in a murder case that I tried in this court
18 in January of this year. Mr. Jenkinson was
19 representing the Defendant.

20 THE COURT: Well the Case law is
21 clearly -- you are not bound by stipulation.

22 MS. BARR: Yes, sir.

23 THE COURT: So the fact that he stipulates
24 to it does not cut you off from trying to
25 establish it anyway.

Dr. Erin Presnell-direct by Ms. Barr

1 MR. BARR: Yes, sir.

2 THE COURT: So if you are objecting to a
3 question, I will entertain your objection. If you
4 are just making a broad based statement about this
5 evidence then I will get to that at the end of the
6 proffer. Does that make sense? In other words,
7 if she says question No. 1, "so forth and so on, if
8 you object to it, I will hear that. If you don't,
9 I will hear all of your argument.

10 MR. BARR: All right.

11 THE COURT: Go ahead.

12 MS. BARR: So, Your Honor, you want to
13 have the court address the argument about?

14 THE COURT: No, go ahead and ask the
15 questions.

16 MS. BARR: Okay.

17 THE COURT: And if he wants to object,
18 like for example, I thought he would object to
19 because you were leading, and I was going to
20 sustain it. But he didn't object to the leading.
21 But he might now.

22 Q I am going to publish what's been marked
23 for identification purposes only as State's
24 Exhibit No. 108. That's a shot of the victim in
25 this case.

Dr. Erin Presnell-direct by Ms. Barr

1 A Yes.

2 Q What is the significance in photographing
3 the victim's body at autopsy?

4 A So It demonstrates the injuries.

5 THE COURT: What is the number on that.
6 again?

7 MS. BARR: 108.

8 MR. BARR: I didn't hear the response.

9 A It demonstrates the injuries. We
10 document the injuries, photograph them.

11 Q And is there anything that is evidentiary
12 value in this case as it relates as Exhibit No.
13 108, that will help you to explain to the jury and
14 show them the extent of the injuries that Mr.
15 Prosser suffered?

16 MR. BARR: Your Honor, I object. I would
17 submit that the answer to that question calls for
18 a conclusion that only the jury could reach. It
19 relates to an issue of fact to be decided by the
20 jury. Because what it does is, it calls upon her
21 to in essence, establish probative value to her
22 opinion. I think if she was simply asking for an
23 opinion that would be one thing. But she is
24 asking her to make some determination.

25 THE COURT: Perhaps the question could be

Dr. Erin Presnell-direct by Ms. Barr

1 better asked this way. Ask her what the cause of
2 death was. And what part if any these photographs
3 play in her explaining that to the jury. And you
4 don't need to argue with him. You can argue with
5 me. I know you all are getting cross ways with
6 one another, but that needs to stop. That's going
7 to stop right now. Because when one side objects,
8 the other side doesn't need to wince and grit
9 their teeth. If somebody does not prevail in an
10 objection, they don't grit their teeth and wince
11 either. In other words, this case is to be tried
12 with the jury, not to each of you. Okay. So the
13 question that you can put to the witness is that
14 she has an opinion as to the cause of death of
15 Mr. Prosser.

16 Can you answer, that, please, ma'am.

17 A Yes, I have an opinion as to the cause of
18 death. The photographs aren't necessarily
19 illustrating the cause of death more so as the
20 range of fire.

21 THE COURT: You can get into that, Ms.
22 Barr. And to that extent your objection is
23 overruled, Mr. Barr.

24 Q Dr. Presnell, as it relates to Exhibit No.
25 108, does that photograph help you to explain to

Dr. Erin Presnell-direct by Ms. Barr

1 the jury the type of injury that was suffered by
2 Mr. Prosser?

3 A Not necessarily the type of injury. But
4 again, the interpretation of the range of fire of
5 the shotgun blast.

6 Q Okay.

7 A You know, I understand there is
8 extenuating circumstances with the condition of
9 the deceased person in this case. We do have a
10 diagram that also demonstrates the pattern.
11 Certainly the photograph illustrates what we -- I
12 interpreted as a wide mark much better than the
13 the diagram. But again you were earlier asking,
14 you know, for me to decide what's the best.

15 THE COURT: No, you don't need to listen
16 to him. You just answer the question. If he asks
17 you a question, you answer it. But his objections
18 are irrelevant for the purposes of the questions
19 that I do permit you to answer.

20 Q What was the cause of Mr. Prosser's death?

21 A A shotgun wound.

22 Q As it relates to Exhibit No. 108, does it
23 depict the part of the shotgun wound to the
24 victim?

25 A Yes, it does.

Dr. Erin Presnell-direct by Ms. Barr

1 Q As it relates to Exhibit 109, does it show
2 evidence of the shotgun wound to the victim? I am
3 sorry.

4 A Yes, it does.

5 Q What about this Exhibit 110?

6 A Yes.

7 Q Was about Exhibit No. 111?

8 A Yes.

9 Q Can you see any evidence of injury from
10 the shotgun blast from Exhibit 112?

11 A It is difficult seeing that far away
12 picture.

13 Q I am sorry.

14 A It's difficult for me to discern that
15 long distance in the photograph.

16 Q What about Exhibit No. 113? And if you
17 need to step down, feel free to do that. Let me
18 zoom in a little bit.

19 A Yes, it does. That is the wadding mark.

20 Q That is the wadding mark. And, of course,
21 there is some testimony there was shotgun wadding
22 found at the scene. Are you aware of that?

23 A Yes, ma'am.

24 Q And would that photograph help to
25 corroborate that there was wadding found at the

Dr. Erin Presnell-direct by Ms. Barr

1 scene, in terms of the injury to the victim?

2 A I don't know if that corroborates what was
3 done at the scene, but it certainly is
4 consistent.

5 Q What about Exhibit No. 114? Is there
6 evidence of injury of a shotgun blast to the
7 victim depicted in that photograph?

8 A Yes, ma'am.

9 Q What about 115, Dr. Presnell?

10 A Yes, that is part of the shotgun, although
11 I am not sure of that orientation in that.

12 Q Is that the injury from the wadding?

13 A That looks like the wadding; yes.

14 Q Okay. Now you said something that was
15 interesting earlier. You talked about the
16 photographs of the shotgun blast to the victim.
17 Would help you to explain to the jury the distance
18 and so forth?

19 A The, I was saying that the photographs of
20 the shotgun doesn't necessarily help me explain
21 it. But the shotgun more illustrates a distance.

22 Q Okay. The distance the victim was from
23 the shooter?

24 A From the gun; yes.

25 Q Dr. Presnell, when you all do an autopsy,

Dr. Erin Presnell-direct by Ms. Barr

1 you actually open the victim up?

2 A Yes.

3 Q And are those photographs, are pictures
4 also taken of that part of the autopsy?

5 A Frequently..

6 Q And we don't have any of those obviously
7 in the proposed exhibits?

8 A I didn't see; no.

9 MS. BARR: Your Honor, that would be the
10 cross or my examination on this issue with this
11 witness.

12 THE COURT: Mr. Barr, any questions?

13 MR. BARR: Yes, sir.

14 Cross Examination by Mr. Barr:

15 Q Doctor, with respect to Exhibit No. 108,
16 turn the photo upright if you don't mind. Is that
17 better? Now from the standpoint of a forensic
18 pathologist insofar as, your findings as it
19 relates to this decedent's death, tell us if you
20 can, if you would please, ma'am, what if anything
21 is demonstrated in this photograph?

22 A The spread of the pellets.

23 Q So if other than the decedent's death, it
24 would be your opinion that this particular
25 photograph perhaps more than any of these others,

Dr. Erin Presnell-cross by Mr. Barr

1 demonstrates the spread of the load?

2 A Well I preferred one of the other
3 photographs, if I have to choose one. That's just
4 the far right side of the spread of the pellets.

5 Q State's Exhibit No. 114, does this
6 particular photograph 114, from an evidentiary
7 standpoint, add something more to what you would
8 otherwise be able to determine from the
9 photographs that you just looked at, the previous
10 photographs?

11 A I prefer again, choosing one. I prefer
12 this photograph over the other one. Because I can
13 see the spread. I can see the spread of pellets;
14 as well as the wadding mark.

15 Q Exhibit No. 115. What in addition to the
16 spread of the shotgun pellets, what other feature
17 from an evidentiary standpoint, what else is there
18 that this photograph demonstrates that the other
19 photograph doesn't?

20 A This is a closer up of the one that we
21 just looked at. And we have more focused on the
22 wadding mark.

23 Q Closer up.

24 MR. BARR: Thank you, ma'am.

25 THE COURT: Anything else, Mr. Barr?

Dr. Erin Presnell-cross by Mr. Barr

1 MS. BARR: Not from the witness, Judge.

2 THE COURT: Is somebody going to ask the
3 witness what her opinion is about the distance?
4 And how the photographs, if at all, played in to
5 that?

6 MS. BARR: Yes, sir, Judge.

7 THE COURT: Because she said that is what
8 is relevant to, but I never heard any testimony
9 about it.

10 MS. BARR: Yes, sir, Judge. I'll asked
11 her.

12 Direct Examination continues by Ms. Barr:

13 Q Dr. Presnell, as it relates to your
14 opinion regarding the significance of the pellet
15 wound of the victim, what if anything does it tell
16 you where the shooter would have been from the
17 victim at the time the injury was sustained?

18 A As a forensic pathologist, we do kind of
19 broad general categories of range. We certainly
20 test fired the weapon, the suspected ammunition,
21 etc., with a much better way to narrow it down.
22 However with a shotgun wound, what we do is look
23 to the point and see it's contact.

24 The contact would be like a single hole in
25 the body, with the wadding going into the body

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1 after it. So that's a shotgun wound that's had
2 contact against the body. As the gun was pulled
3 away, when the shotgun was pulled away, the
4 pellets that are coming out of the end of the
5 barrel, instead of staying altogether start to
6 spread out. So when you get in a 3 to 4 foot
7 range you still have a big defect. But you have a
8 bunch of satellite entrances, pellet entrances,
9 around the entrance gunshot wound. As you get
10 further, the wadding frequently still follows the
11 pellets into the body. As you get further away,
12 the pellets start entering all individually. And
13 the wadding instead of going into a main defect
14 which slowly disperses, the pellets spread out.
15 And it will strike the skin and can leave a
16 wadding. When, of course, as you get further, the
17 pellets can strike the skin, but the wadding,
18 which is plastic, cardboard, doesn't typically
19 make it to the skin, nor does it make a mark.

20 All this of course is based on, the
21 estimates are based on a shotgun that hasn't been
22 manipulated. For instance, a sawed off shotgun.
23 So with that, you have a plastic wadding that can
24 still make a mark on the skin out to approximately
25 within broad estimates of 20 feet. And you can

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1 see it making a mark maybe 5 feet away as well; 5
2 to 20 feet. However with spread, the extent of
3 the spread of the pellets, I would pick a broad
4 estimate between 10 and 40 feet with a shotgun
5 that is not going to make that. Something like a
6 sawed off shotgun, those things are going to
7 happen sooner. The spread is going to happen
8 sooner, and they are probably closer.

9 So the main conclusion for this is that's
10 it is not a contact wound. And it's not a 2 to 3
11 close distance wound. It's somewhere beyond that.

12 Q If the weapon that was used in this case
13 were a sawed off shotgun, what would be your
14 opinion regarding the distance the victim would
15 have been from the shooter if a sawed off shotgun
16 were used?

17 A The distance from the end of the gun.

18 Q Okay.

19 A With the barrel, it completely depends on
20 how much it is sawed off, and what kind of
21 ammunition. If it is something that hasn't been
22 manipulated, I would estimate to 1 -- and 10 and
23 20 million to get better numbers to test fire, so
24 it is somewhere before that. So that's, you know,
25 that is as narrow that I can suggest.

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1 Q I understand. Thank you.

2 THE COURT: Any other questions, Mr. Barr?

3 MR. BARR: No, sir.

4 THE COURT: Can I see the photographs,
5 please? Mr. Barr, of course you have already made
6 some statements. Of course, it is your burden
7 under Rule 403 that the probative value of the
8 photographs is substantially outweighed by the
9 unfair prejudice or needless presentation of
10 cumulative evidence. Or confusing the jury. Of
11 course if you want to take these back and show
12 them to me separately. If you have any separate
13 arguments on these, whichever you would like. But
14 I'll be glad to hear from if you have anything
15 else to offer.

16 MR. BARR: Judge, If I am hearing
17 correctly, it's the State's position that the
18 photographs that she is now attempting to get into
19 evidence as some value as it relates to injury,
20 beyond the other photographs that are already in
21 evidence. And in addition to that, they also
22 present evidence from which a determination could
23 be made regarding the distance that the shooter
24 had to have been from this decedent.

25 THE COURT: But nobody has asked her about

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1 those other photographs. Nobody asked her about
2 those. They only asked her about these 8.

3 MR. BARR: Well as to these 8. Based on
4 what I hear in her testimony, unless she had some
5 foundation evidence concerning the width of the
6 barrel of the gun, which I think she was
7 describing it as a gun that had been manipulated,
8 then she would not be in a position to give an
9 opinion as to the approximate distance that the
10 shooter was from the victim.

11 THE COURT: Well the end of the---

12 MR. BARR: Yes, sir.

13 THE COURT: ---muzzle.

14 MR. BARR: Well then, Judge, I don't see
15 other than the cause of death by a shotgun blast,
16 which is what our position is, that the other
17 photographs clearly demonstrate the photograph
18 that you now have in front of you are -- they are
19 just over the top in terms of what is admissible,
20 or what ought to be admissible in this court. I
21 can see no reason other than to try to inflame the
22 jury or to prey upon the jury's passion to
23 introduce photographs of that nature.

24 THE COURT: Ms. Barr.

25 MS. BARR: Your Honor, we would take the

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1 position that rarely are autopsy photos that
2 depict a gunshot victim ever not gruesome and not
3 prejudicial. I've tried a number of murder cases
4 and never had a Defendant yet come and say they
5 are not prejudicial. They are going to be
6 prejudicial. The question and test for the court
7 is whether or not they are unduly prejudicial.

8 And, Your Honor, we would take the
9 position that the photographs that we have had
10 marked are not so unduly prejudice as it would
11 shock the conscience of this jury, and have them
12 base a decision based solely on the pictures
13 rather than the evidence in the case. Further we
14 would submit that the evidence -- the photographs
15 are properly permissible evidence, because it
16 corroborates the testimony of other witnesses. It
17 helps the pathologist to describe the nature and
18 the extent of injury.

19 Judge, we have the Defendant charged with
20 burglary in the first degree, which is obviously
21 entering the dwelling -- the dwelling of the
22 victim. We have to establish that the defendant's
23 presence inside the residence. So far, there is
24 no eye witness that have put the Defendant inside
25 the residence. Ms. Miller testified that he told

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1 her that he shot the victim. And nobody actually
2 so far in the State's case, has said they saw him
3 in the house.

4 Obviously the pathologist's testimony
5 concerning the distance the shooter would have
6 been from the victim would corroborate his
7 presence inside the house which is a necessary
8 element of burglary in the first degree. And,
9 Judge, we would submit that the case law State vs.
10 Haselton 577 S.E. 2nd, 445, 2003 case. State
11 versus---

12 THE COURT: Slow down.

13 MS. BARR: I'm sorry.

14 THE COURT? Have you got A copy of them?

15 MS. BARR: Judge, you can have mine. I
16 don't have a copy, but you can have what I have.

17 THE COURT: State versus Haselton?

18 MS. BARR: Haselton. It's a Supreme Court
19 case from 2003. And it concerned the
20 admissibility of the victim's -- photographs of
21 the victim's intestines in autopsy. The court
22 held that those were properly admissible. We have
23 State versus Jarrell. J-A-R-R-E-L-L. 564, S.E.
24 2nd., 362. It's a 2002 South Carolina Court of
25 Appeals case. Which stood for the proposition

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1 that the photographic evidence when it serves to
2 corroborate the testimony of witnesses offered at
3 trial are properly admissible; that the State
4 argued in that case the photographs were necessary
5 to corroborate the testimony of the pathologist.
6 And the court held that while some of the
7 photographs are graphic, the facts of the case
8 were graphic, and the photographs helped to --
9 helped the jury to understand and interpret the
10 pathologist's testimony, and they were properly
11 admissible.

12 And, Judge, we would submit that the
13 photographs that we have marked for identification
14 corroborate this witness' testimony, as well as,
15 other witnesses in the case, and they are not
16 unduly prejudicial.

17 THE COURT: Mr. Barr, I'll give you the
18 last word.

19 MR. BARR: Judge, you know, I don't from
20 the standpoint of making a legal argument, the
21 prosecution can do that, based on what they are
22 intending to do. However, the rule is as clear as
23 glass. It says that although relevant material,
24 evidence may be excluded. It's probative value is
25 substantially outweighed by the danger,

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1 substantially outweighed by the danger of unfair
2 prejudice. And in this case aside from being just
3 purely cumulative, I cannot conceive of any
4 photograph that would be more gruesome in nature.
5 And what you have here where the only thing that
6 could possibly come from these photographs, and
7 the only thing that the prosecution wants from the
8 photograph is undue prejudice.

9 But aside from that, here clearly, if they
10 do have any probative value, Judge, this is
11 exactly what the rule was designed to prevent.
12 And in this case from a strictly probative value
13 standpoint and evidentiary standpoint, these
14 photographs whatever they may add in terms of
15 presenting this jury with information from which
16 they can reasonable come up with a verdict based
17 on the truth of the evidence, clearly this goes
18 beyond what would otherwise be necessary, or goes
19 beyond what should otherwise be accepted as would
20 be within the bounds of what would otherwise be
21 considered undue prejudice. But it is clearly
22 not.

23 THE COURT: The latest case is State
24 versus Torres. It's a December 2010 case. If you
25 care to have the cite, it's 390, S.C. 618. 703,

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1 S.C. 2nd, 226. In that case, it was a murder
2 case. In that case, the State offered autopsy
3 photographs. And the Supreme Court stated what
4 you all have just said. Everybody knows the Rule.
5 Rule 403 says that even though it is relevant, it
6 can be excluded if the opponent of the evidence
7 establishes that the probative value is
8 substantially, which raises your bar, Mr. Barr.
9 Substantially is outweighed by the danger of
10 unfair prejudice, needless presentation,
11 cumulative evidence, so forth and so on.

12 The case goes on to say, this is no
13 secret. And Mr. Barr is right, that everybody can
14 spout the law. It's not just not what -- what
15 makes the difference is how I apply it. In that
16 case the State argued the photographs were
17 properly admitted, because they corroborated the
18 witness testimony. And were introduced to
19 illustrate the circumstances of the crime. And in
20 this case, it was during the sentencing phase in
21 the death testimony in this case when it had the
22 character of the Defendant. And they added the
23 character of the Defendant. That's not why we are
24 here.

25 It is well settled that if the photograph

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1 served to corroborate testimony, it is not an
2 abuse of discretion to admit it. And they cite
3 there in the State vs. Nance, State vs. Holder.
4 Now the doctor in that case who performed the
5 autopsy used the photographs to illustrate the
6 number of injuries, the location of the injuries
7 and the manner in which the injuries, were
8 committed. And the court went on to say, we do
9 not suggest these autopsy photographs are mild and
10 easy to view. Some of the photographs are close
11 ups of the injuries and are graphic in nature.
12 However the purpose of the close ups was to help
13 identify the nature of each particular injury.
14 The net effect was to show what was done to the
15 victims. Which goes straight to the circumstances
16 of the crime.

17 Now in that case, there were 16 pictures.
18 The trial court excluded 3, which is neither here
19 nor there. Now it also goes on to say although we
20 affirm the admission of the photographs of the 13
21 photographs, we take this opportunity to address
22 an area of growing concern to this court. The
23 photographs while admissible, are at the outer
24 limits of what our law, of what it permits a jury
25 to consider.

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1 We strongly encourage all solicitors to refrain
2 from pushing the envelope on the admissibility in order
3 to gain a victory parenthetically, which might end up
4 being reversed because of the the photographs
5 themselves. That's why I was interested in hearing a
6 couple of things. Number one, what her opinion was on
7 the distance. And what these photographs added to the
8 equation.

9 So the witness said that No. 114 was the
10 best at least as far as the wadding and spread was
11 concerned. And that 115 was a close up of that.
12 There was no testimony about the discoloration and
13 what if anything that had to do with the shotgun
14 fire, the shotgun blast. That's one of the more
15 disturbing things about the pictures. Now I can
16 gather from my own laymen's perspective why there
17 is discoloration. But I didn't hear any testimony
18 about it. The shotgun pellet marks are not
19 disturbing at all. Would you agree with that, Mr.
20 Barr? Or at least in the scheme of things?

21 MR. BARR: Judge, I think they appear to
22 me to be disturbing. I mean it's not the stuff I
23 like to look at every day.

24 THE COURT: They pale in comparison to the
25 discoloration. Do you not agree? So Ms. Barr,

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1 may I ask the witness a question?

2 MS. BARR: Absolutely, Your Honor.

3 THE COURT: What is the discoloration
4 from?

5 A The decomposition.

6 THE COURT: Over what period of time in
7 your opinion?

8 A Just with the known facts in the case, 3
9 or 4 days.

10 THE COURT: And your examination was
11 performed on what date?

12 A The 31st.

13 THE COURT: And that would have been one
14 day after the discovery?

15 A Right. Well that's hence the 4 days.

16 THE COURT: I thought the call to the
17 scene was on the 30th.

18 A Yes. The information that we received at
19 the time of the autopsy can change. He was last
20 known to be alive on the 27th of October. Did not
21 return home the 28th. Found on the 30th. We saw
22 him the 31st.

23 THE COURT: Do you have an opinion as to
24 the day he died?

25 A 27th or 28th.

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1 THE COURT: 27th or 28th. Ms. Barr, did
2 the witness not say that No. 108 did not add much
3 to her opinion? Mr. Barr, you can come up and
4 look at it too.

5 MS. BARR: Judge, If I may just ask her
6 briefly.

7 THE COURT: Well show it to Mr. Barr
8 first.

9 Q Is this the particular exhibit that you
10 indicated to the court doesn't add much in terms
11 of your testimony?

12 A That was where If I had to choose one or
13 other, I would choose the other one.

14 THE COURT: Now do these photographs -- do
15 any of these photographs not add anything to your
16 equation? Opinion? I am not asking you if you
17 had to pick. I am saying what photographs would
18 enter into your factoring in the distance of the
19 gunshot blast. I will hand these back to you.

20 Q And, Dr. Presnell, you can refer to the
21 exhibit numbers.

22 A Exhibit 112 is not very helpful in the big
23 scheme of things.

24 A 109 is helpful. These two are the most
25 helpful with a debatable.

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1 Q Okay. You said these two you need to
2 refer to exhibit numbers.

3 A I already referred to Exhibit No. 109.
4 Exhibit 114 would be helpful. And 110 shows the
5 frontal spread.

6 THE COURT: How about 113, in your
7 opinion?

8 A Exhibit 113, 115, 108, and 111 are not as
9 helpful as the other 3.

10 THE COURT: Is the witness going to
11 testify? I got you. Now of those three, are any
12 of those -- well never mind. I don't need to ask
13 that question. Ms. Barr she said that 112 is not
14 helpful in her estimation, so I am going to
15 exclude that for relevance alone.

16 MS. BARR: Yes, sir.

17 THE COURT: 111, and I am going to put
18 them in numerical order. 108, 111, 113 and 115.
19 What is your position on those? The ones you are
20 holding?

21 MS. BARR: Your Honor, as it relates to
22 Exhibit No. 108, we would just simply say that it
23 shows the right side of the victim's face, which
24 shows substantial contact wound. It's more
25 descriptive in terms of being able to show that

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1 than 110. The 110 shows the front view. 109
2 shows the left view. And so we would just submit
3 that 108 properly shows the right view.

4 Your Honor, as it relates to 111,
5 obviously that's just a closer up view of 110 and
6 108. And so if Your Honor admits 108, we would
7 withdraw 111. Judge, we would take the position
8 that 113 is relevant and pertinent because it
9 shows the injury from the wadding that the witness
10 described. And it's a closer up view than 114.
11 Your Honor, obviously if the court admits 113 then
12 we would take the position that 115 maybe is
13 cumulative.

14 THE COURT: 115 is which one?

15 MS. BARR: That is the photograph of the
16 injury from the wadding.

17 THE COURT: Anything else, Mr. Barr? I
18 know you want -- I'll certainly allow you to
19 incorporate your previous argument. But what I am
20 trying to do is first of all narrow it down.

21 MR. BARR: Yes, sir.

22 THE COURT: Then your focus would be
23 refined. Do you have anything else to add?

24 MR. BARR: No, Judge. Other than as to
25 the photographs that the State did not agree to

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1 withdraw, It would still be our position for the
2 record that they violated Rule 403 under South
3 Carolina rules of evidence. And in addition to
4 that, that they are cumulative in nature.

5 THE COURT: Okay. My ruling is as follows:
6 I am weary of the jury viewing these photographs
7 from a graphic standpoint. So I share your
8 concern in that regard. The rule says that the
9 probative value has to be substantiated. And
10 that's the key word, outweighed by the danger of
11 unfair prejudice, needless presentation of
12 cumulative evidence and so forth. What I will do
13 is, I am going to permit, I am going to exclude
14 first of all 111, 112, and 115. I am going to
15 permit provided you lay the proper foundation with
16 the witness in front of the jury, 114 -- excuse
17 me, 109, 110, and 114.

18 Now, Mr. Barr, of course you will have to
19 make sure that you object when these photographs
20 are offered.

21 MR. BARR: Yes, sir.

22 THE COURT: Now, Mr. Barr, as to 113 and
23 108, you can offer those, but I may have to
24 exclude those based on the cumulative nature of
25 113. And I thought I heard the witness say as to

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1 108, it did not lend anything relevant to her
2 opinion. But I will leave that up to you to
3 establish.

4 MS. BARR: Yes, sir.

5 THE COURT: And, Mr. Barr, certainly I
6 encourage you. And will not---

7 MR. BARR: Judge, to avoid making a
8 running objection, I will object to the first one.
9 And I hope that we can rather than just keep
10 jumping up.

11 THE COURT: Well I certainly do understand
12 that. But there is a case that says If I say
13 okay, the Court of Appeals ain't bound by that.
14 In other words, if I say, yeah, that's fine---

15 MR. BARR: Yes, sir.

16 THE COURT: If there is an appeal, you run
17 the risk of abandoning that issue. So I certainly
18 think that is a practical way to approach it. But
19 I can't assure you that it won't bite you in the
20 end, okay.

21 MR. BARR: Yes, sir.

22 THE COURT: Ms. Barr, if you would please
23 come up here and take these out of my hands. And
24 I need to see the lawyers up here for just a
25 second.

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1 THE COURT: And to make clear I think that
2 the reason that I am admitting those three
3 photographs up front is that they do serve to
4 corroborate this witness' testimony. And the net
5 effect is to show perhaps more exactly what the
6 time in question. Are you ready for the jury,
7 Mr. Barr?

8 MR. BARR: Yes, sir.

9 THE COURT: Ms. Barr?

10 MS. BARR: Yes, sir, Judge.

11 THE COURT: You may bring the jury.

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

14 THE COURT: Thank you, Ladies and
15 gentlemen, for your patience. Let me have your
16 attention for just a moment. I told you at the
17 beginning of the trial that sometimes I would have
18 to send you out of the courtroom. I want to make
19 sure you don't blame that on these lawyers or
20 these parties. Most of the time we spend is me
21 examining the issues. It's not their fault. It's
22 simply an exercise that I have to go through. So
23 if you want to blame anybody, blame me. But the
24 lawyers are simply, and they did what they said
25 they would do. They would bring to my attention

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1 some issues. So that's why I had to send you out.

2 Do not again hold that against any of the
3 parties other than me. Go ahead, Ms. Barr.

4 Direct Examination by Ms. Barr:

5 Q Dr. Presnell, you were subpoenaed to
6 testify in this case?

7 A Yes, ma'am.

8 Q If you will make sure you keep your voice
9 up nice and clear. Tell us your full name.

10 A Susan Erin Presnell.

11 Q And tell us where you work and what you do
12 for a living?

13 A I'm a forensic pathologist. I work down
14 in Charleston at the Medical University of South
15 Carolina.

16 Q You are a licensed physician?

17 A Yes, ma'am. I'm licensed to practice
18 medicine in the State of South Carolina. As well
19 as board certified in Pathology and subspecialty
20 of Forensic Pathology.

21 Q Where did you go to medical school?

22 A At MUSC, the Medical University. The same
23 place that I work now.

24 Q How long have you been physician?

25 A I got MD degree in 1993. And then went in

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1 to my training process, which is Pathology. And
2 specialty of Medicine in Pediatrics. And that was
3 5 years. Then Forensics was a year. And then I
4 started as faculty in 1999 at MUSC.

5 Q Dr. Presnell, have you testified as an
6 expert witness not just in Williamsburg County
7 court, but in other courts throughout the State of
8 South Carolina?

9 A Yes, ma'am.

10 Q And what is your area of expertise?

11 A Forensic Pathology.

12 MS. BARR: Judge, we would tender Dr.
13 Presnell as an expert in the field of Forensic
14 Pathology.

15 THE COURT: Any questions, Mr. Barr?

16 MR. BARR: No, sir, judge.

17 THE COURT: Ladies and gentlemen, this
18 witness is qualified as an expert in the field of
19 Forensic Pathology. My instruction to you as it
20 has been that the prior witnesses who were
21 qualified as experts is the same.

22 Q Thank you. Now, Dr. Presnell, tell the
23 jury what is meant by the term Pathology.

24 A Most everyone has been familiar with the
25 term of forensic pathology. But Forensic

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1 Pathology is actually a subspeciality. It's a
2 broad field of pathology in medicine. Pathology
3 and new Pathologists aren't -- don't a lot, most
4 Pathologists are either Anatomic Pathologists or
5 Surgical Pathologists. And what they -- what
6 their main function is the diagnosis of disease.
7 So if they go to the doctor and you have something
8 on your arm, they do a biopsy. Or say if a woman
9 has a lump in her breast, they do a biopsy. That
10 material goes to the pathologist. They look at it
11 in a microscope and they diagnose. You have
12 cancer, you don't. You have an infection process,
13 you don't. So that's the general rule of
14 pathology.

15 And then forensic pathology, a trained
16 pathologist, but then you subspecialize, where we
17 are looking at disease processes. We are looking
18 at not just a single piece of tissue, you have an
19 whole entire individual who has died. Our process
20 is called an autopsy. We are looking for the
21 cause of death. And sometimes the cause of death
22 is obvious, and it's more interpretation of
23 death. For example, a lot of our people that we
24 examine can pass from the disease process. But
25 the other factor is a traumatic death. And again,

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1 so not only the cause of death which might
2 something traumatic. But an interpretation of
3 those injuries.

4 Again, we accomplish that through the
5 autopsy. And put all our findings together, and
6 ultimately make an autopsy report with the cause
7 and manner of death.

8 Q Now who actually which officer or employee
9 would actually make a formal request to MUSC for
10 an autopsy of a victim of a crime?

11 A Well South Carolina has coroners.
12 Coroners are elected. So it would be actually the
13 coroner who would make the request; would
14 authorize a post-mortem examine on autopsy on an
15 individual. And in Williamsburg County, that's
16 Mr. Harris McKnight. And he would call us up and
17 arrange to transport the person down in Charleston
18 for us to do the examination.

19 Q Now, Dr. Presnell, back on October 31st,
20 of 2009, did you perform an autopsy on the body of
21 Ernest William Prosser, III?

22 A Yes, we did.

23 Q Tell us there was some testimony earlier
24 that law enforcement was notified about his death
25 on the 30th. But you actually, the 30th of

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1 October 2009, you actually performed the autopsy
2 the next day?

3 A Yes. That's not unusual. Especially
4 when something is out of Charleston County. The
5 person is found, the diseased person is found.
6 And then subsequently the coroner will make
7 arrangements to transport them. We'll typically
8 do that autopsy the next day.

9 Q Tell us about the condition of Mr.
10 Prosser's body when you began your autopsy.

11 A Well notably he had started to decompose.
12 And so he had some decomposition changes that
13 would affect the body if not embalmed or
14 refrigerated.

15 Q And when you say he was decomposed and he
16 had decomposition changes, tell the jury what you
17 mean by that. What would be evidence of
18 decomposition?

19 A Well decomposition has got a lot of
20 different components to it. You have your own
21 body that will start to break itself down by
22 enzymes, and by adjusted enzymes and all and start
23 to break down tissues. But also all the bacteria
24 that are in your intestines they, your immune
25 system doesn't work anymore so the bacteria start

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1 to multiple. Bacteria that multiples produce gas.
2 So typically the body will start to bloat. The
3 skin will slip off and get a green discoloration
4 from the bacteria as well. And some of those
5 things -- and those things had started to effect
6 Mr. Prosser.

7 Q And when you observed his body, were there
8 physical signs of injury?

9 A Yes, ma'am.

10 Q Tell the jury about that.

11 A Mr. Prosser had a single shotgun wound.
12 It was in the mid-range. How far a range is just
13 awhile. But shotgun wounds of course is not
14 necessarily -- a shotgun wound is not a single
15 projectile that's coming out of the end of the
16 gun. It's all the pellets. Individual pellets
17 that contain the shotgun shell. They come out of
18 the end of the gun. The pellets had spread out
19 and struck Mr. Process on the left. Well actually
20 at a range to the left shoulder, chest area.
21 Across the neck and across the face. Kind of in a
22 direction from his left to his right, front to
23 back.

24 The pellets actually when they enter the
25 body, the most significant thing that it hit was

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1 the carotid artery on the left side of the neck,
2 and the left jugular vein. But the most
3 significant were the two major vessels taking
4 blood to your head and bringing it back from the
5 head. In fact, the cause of his death was a
6 single shotgun wound to his body with the
7 perforation of those two large vessels.

8 Q Now, I am going to hand you State's
9 Exhibits 109, 110 and 114. Do you recognize what
10 is depicted in those photographs?

11 A Yes. These are taken, these photographs
12 are taken at the time of autopsy showing the
13 entrances from the pellets from the shotgun. As
14 well as what looks or what is consistent with the
15 wadding mark.

16 Q In addition, you talked about signs of
17 decomposition as it relates to this victim. Do
18 these photographs also reflect the signs of
19 decomposition you told the jury about earlier?

20 A Yes, they do.

21 Q And specifically as it relates to
22 discoloration are those reflected in the
23 photograph?

24 A Yes, those are marks of green
25 discoloration.

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1 Q What about the bloating that you talked
2 about?

3 A Well I can tell that he is bloated. I
4 don't think that shows significantly in those
5 pictures. Which are kind of centered around the
6 head and neck area.

7 Q And in terms of the evidence of injury,
8 the shotgun pellets and the pattern on the victim
9 Mr. Prosser, does that injury tell you anything
10 about how close Mr. Prosser would have been from
11 the shooter?

12 A Yes, it does tell us some information.

13 MS. BARR: Okay. Judge, we would move
14 State's Exhibits 110, 109 and 114. Just for the
15 record.

16 (Photographs marked State's Exhibit Nos.
17 109, 110, 114 into evidence.)

18 THE COURT: Mr. Barr, same objection?

19 MR. BARR: Same objection, Judge.

20 THE COURT: Thank you.

21 Q Dr. Presnell, let me get you to step off
22 the witness stand, please.

23 (Whereupon, the witness steps down from
24 the witness stand.)

25 Q Let me do this. Let me give you the

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1 pointer. And I will ask you some questions. Let
2 me first publish what has been admitted as State's
3 Exhibit No. 109. Tell us what is depicted in that
4 particular exhibit, please, ma'am.

5 A Before I do that, and I don't know if you
6 guys have already been through this with
7 ballistics or one of the other sled agents. And I
8 don't mean to oversimplify for a lot of you that
9 are familiar with shotguns and shotgun shells.
10 But it helps me to explain to kind of go over
11 that. When a shotgun is fired with a shotgun
12 shell, and in this particular case, it was bird
13 shot which are little, little tiny pellets. The
14 shotgun shell itself is filled up with tiny metal
15 pellets on the top. Then they have -- then there
16 is wadding that can either be plastic or
17 cardboard type material, paper, that protects all
18 those pellets from the gunpowder that's
19 underneath it.

20 So when the gun is fired and it hits that
21 gunpowder and it does a little explosion to propel
22 the pellets down the barrel, not only pellets go
23 down the barrel, but the wadding goes down the
24 barrel as well. If the gun is right against a
25 target or a body, then all of those pellets and

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1 that wadding, they all make a big hole and enter
2 the body. So this is like, that would be
3 considered a single hole would be considered a
4 contact or a very close, close range shotgun
5 wound.

6 As you start to move the shotgun away, so
7 you are not on contact with the body anymore, but
8 you are further away, those pellets when they come
9 out the end of the barrel, they start to spread.
10 They don't all stay together in a close lump
11 anymore, they start to spread. And when they hit
12 the body, you can start to see individual pellet
13 marks. As they get further back, you don't even
14 see like a main entrance hole. Just the
15 individual tiny pellet marks all over the body --
16 not all over the body, but where they strike the
17 body.

18 The same thing with the wadding. As when
19 it's real close, it actually goes in through the
20 major wound. But you get further away, the
21 wadding will tend to drift, because it's plastic
22 or paper compared to metal. And can strike the
23 body and make a mark, or what they call a wadding
24 mark, and then fall away. So that's what we are
25 going to look at in these pictures, are the

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1 pellets and the wadding mark. And then interpret
2 what that means as much as we can tell what that
3 means in this case.

4 Q Okay. Now a quick question. You talked
5 about the discoloration that was evident of the
6 victim's decomposition. Can you just point out to
7 the jury the specific areas of discoloration that
8 are visible?

9 A Right. So all of this, kind of a
10 green/brown gray color is not bruising. It's not
11 something, not an injury that happened before
12 death. All this color right here is a part of the
13 decomposition process.

14 Q Now, I need to ask you a quick question.
15 Some of the crime scene photos of the victim at
16 the scene show a lot of blood. Do you all clean
17 up the body and allow pictures to be taken when
18 the body is bloodied, if you will, and after it is
19 cleaned up?

20 A Yes, ma'am.

21 Q Okay.

22 A Yes, we do.

23 Q Tell us about the evidence about the
24 injury from the wadding and the shotgun pellets.

25 A Well see what this diagram is illustrating

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1 is that he has no major central entrance. Or even
2 several entrances that the pellets spread. All of
3 these dark marks here, the green color is the
4 decomposition. But these dark brown ruddy marks,
5 these are all individual pellet marks. So all
6 individual areas where the pellets are -- if the
7 gun is far enough backwards, it's spread. The
8 pellets are spread out and enter individually into
9 the body.

10 This right here and we will see a little
11 bit closer in the next picture, is a big old round
12 abrasion which is consistent with a wadding mark
13 from the wad, hitting and striking the skin and
14 leaving mark.

15 Q Now let me publish No. 114.

16 A Now this is kind of the same orientation
17 as the last photograph, or just a little bit
18 closer you can see, that rounded mark right there.
19 This is consistent with the wadding mark.

20 Q Okay. Tell us about State's Exhibit No.
21 110.

22 A This is the frontal photograph. We were
23 mainly concentrating down here. But like I said,
24 the pellets not only did they hit here, but it was
25 the front of the face and the look, and some on

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1 the right shoulder area. But this demonstrates
2 again the individual nature of the entrances.

3 Q Now as it relates to Exhibit 109, that is
4 a side view of the victims left side. Is that
5 correct?

6 A Yes.

7 Q And that obviously shows the shotgun
8 pellet wounds to the left side of the face, the
9 shoulder area?

10 A Yes, ma'am.

11 Q Now can you see the extent of any injury
12 from the shotgun pellets to the specific side, the
13 victim's right side of the face on Exhibit 110?

14 A We can see some of the right side of the
15 face, but we can't see the lateral or the side or
16 excuse me, the right shoulder area.

17 Q I am going to hand you, but not publish
18 what has been marked for identifications purposes
19 as State's Exhibit No. 108. Does that reflect the
20 extent of the shotgun wound to the right side of
21 the victim's face?

22 A It shows the other end of the shotgun
23 wound, yes.

24 Q And it relates to 108. Does it also show
25 shotgun pellets to the victim's right shoulder

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1 area?

2 A Yes, ma'am.

3 Q Now are those same injuries visible in
4 this photograph?

5 A No, not to the right shoulder.

6 Q Okay. Would the publishing and the
7 admission of this Exhibit 108, would it be helpful
8 for the jury to explain your testimony as it
9 relates to the injury to the victim's right side
10 and his shoulder?

11 A It would show the full extent of the
12 spread of the shotgun pellets entering the body.

13 MS. BARR: Judge, I would move State's
14 Exhibit 108.

15 MR. BARR: Objection, Judge. Same
16 objection, Judge.

17 THE COURT: That objection is overruled.
18 108 is in. And just to make 108, 109, 110 and
19 114 at this point.

20 (Photographs marked State's Exhibits Nos.
21 108, 109, 110 and 114 admitted into evidence.)

22 Q I am going to publish State's Exhibit No.
23 108. The series of questions I was asking you
24 about in terms of being able to show the spray
25 pattern on the right side of the victim's body.

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1 Is that reflected in that particular exhibit?

2 A Yes, ma'am. These dark marks again are
3 the pellet entrances.

4 Q Okay. Now you said also that it was
5 obvious to you when you first saw the victim that
6 he had, one of the signs of decomposition was
7 bloating?

8 A Yes, ma'am.

9 Q Tell me about his right ear. Is there
10 evidence of that, as relates to his ear?

11 A One of the other things that I mentioned
12 is that the skin starts to soften and slip and
13 separate from the underlying dermis. And the
14 fluids start to leak. It looks like some of that
15 process has happened to the ear area.

16 Q Now I will have you take your chair, but I
17 may need to get you back up in a minute. But you
18 can sit down for now. In terms of evidence of
19 bloating, in terms of the discoloration of the
20 victim's body and the pulling away of the skin as
21 you described it earlier, does that tell you
22 anything about the time frame in which the victim
23 had been deceased before he came for autopsy?

24 A Despite CSI, and the rest of the shows,
25 estimating how long someone has been dead at

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1 post-mortem interval is probably typical. It is
2 so individual and so dependent on circumstances.
3 So what were -- really the way the forensic
4 pathologist approaches; what do you see. And does
5 it fit with what the purposed scenario was. The
6 purposed scenario when we had examined him
7 originally was that he was last seen on the 27th.

8 Q Of October 2009.

9 A October 27th 2009. Did not answer a phone
10 call the next day. Found on the 30th. And then
11 we saw him the 31st. Our findings are consistent
12 with him having passed on the 27th. It may have
13 been the 28th. I wouldn't be able to narrow it
14 down more.

15 Q Okay. Now you talked about the pattern of
16 the shotgun pellets as well the wadding on the
17 victim in terms of his injuries. Tell us what
18 that tells you about the distance the victim would
19 have been from his shooter.

20 A The best way to try to estimate how far
21 away a weapon was from a victim when it was fired,
22 would be of course to test fire a weapon with the
23 suspected ammunition. And what we do where a
24 victim of a gunshot wound, we measure that range
25 of fire. How far across is it this way. How far

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1 across is the pellet spread this way. Then you
2 would try to replicate that with the suspended
3 weapon until you matched. That, you know, we are
4 not entitled to go do that. Where we stand with
5 what we are looking at there, is we know it is not
6 a contact. It is not single hole. And really you
7 would see a major central defect for 7 to 8
8 sometimes feet. So we would say that -- well let
9 me back up. So we know this is far enough back to
10 create all the individual marks. So that could be
11 a fair amount of distance. However, we do have
12 that wadding mark, remember. And the wadding, to
13 know what type it is, plastic wadding is still
14 straight. And it's going to cause a mark out to
15 about 20 feet. So putting it altogether, I would
16 estimate. And I took a broad estimate. And we
17 have no sign of contact. We know it's not very
18 close. But a broad estimate maybe 10 to 20 feet.
19 But that wadding still was close enough to hit the
20 skin and make a mark.

21 Now all that being said, if you manipulate
22 the weapon, the shotgun and you saw it off, then
23 those estimates would apply the -- it would
24 probably would be a little bit closer to impact.

25 Q If the victim's killer had used a sawed

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1 off shotgun you would expect that he would have
2 been closer to the victim if he had a regular
3 shotgun that not been manipulated.

4 A Correct. This was in that broad estimate
5 of 10 to 20 feet.

6 Q Okay. As a part of your autopsy report do
7 you get a toxicology screen from the victim?

8 A Yes.

9 Q What were the results -- first of all,
10 tell me what a toxicology screen is.

11 A On all the cases that we do, or pretty
12 much all of them, we always draw blood or we can't
13 get blood because decomposition. But we send the
14 tissue to the laboratory to get analyzed for drugs
15 and alcohol. But in this case, I send liver
16 because there wasn't any blood left.

17 Q Say that again now.

18 A We sent liver tissue.

19 Q Because of what now?

20 A There was no blood left. Probably
21 partially because of the injury, but also because
22 of decomposition. It breaks down and we can't get
23 any. So his liver toxicology showed caffeine and
24 nicotine.

25 Q Caffeine is coffee, sodas.

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1 A Right, right.

2 Q Colas.

3 A And tea.

4 Q Okay.

5 A And nicotine from typically from cigarette
6 smoke.

7 Q Okay.

8 A And then the alcohol -- the liver alcohol
9 is 71 milligrams to 100 grams. Which I know
10 doesn't mean a whole lot. It could possibly
11 translate into a .007. But part of process of
12 decomposition is it can produce alcohol --
13 ethanol. And so his alcohol level in his liver
14 may be reflective of some drinks prior to death.
15 But also it can also be completely explained by
16 his State of decomposition. So we don't know what
17 to do about. And then as far as, did it mean a
18 drink or not, we can't tell.

19 Q And so maybe he was drinking, and he had
20 smoked cigarettes and had some sort of caffeine in
21 his system.

22 A Yes.

23 Q Now you indicated that there was no blood
24 left in the victim. And it may have been related
25 to decomposition or it may have been related to