

VOLUME TWO OF TWO

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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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

- State’s Exhibit 108, photograph;**
- State’s Exhibit 109, photograph;**
- State’s Exhibit 110, photograph;**
- State’s Exhibit 114, photograph**

Dr. Erin Presnell-direct by Ms. Barr

1 the injury. Would you expect to see a lot of
2 blood loss based on the type of injury that he had
3 received?

4 A Keep in mind that, a lot of times the
5 holes are, so even though you have a significant
6 injury on the inside, it doesn't necessarily mean
7 that they completely bleed out to the outside of
8 the body. They can still do a lot of bleeding on
9 the inside. You can get a lot of blood in the
10 soft tissues. And, you know, you mentioned, and I
11 said no blood left. There was no blood that was
12 easily attainable by us that was not contained in
13 the decomposition fluids. So I am not saying that
14 there wasn't any liquid left in the inside.

15 Q I understand.

16 A You just got -- you couldn't obtain like a
17 pure sample.

18 Q Okay. Now based on the type of injury
19 that Mr. Prosser sustained, was it immediately
20 fatal? For example, like if somebody were shot in
21 the head and they died instantly? Or was it the
22 type of injury where he would have lived for some
23 period of time?

24 A Well perforating the two major vessels in
25 the left side of the neck could cause instant

Dr. Erin Presnell-direct by Ms. Barr

1 clots and stuff in some cases. However remember
2 again, you have the little tiny pellets. And so
3 there was just small perforations. So in this
4 case, it's certainly possible that he was able to
5 move around and function for a short period of
6 time after the incident.

7 Q I'm sorry. Your voice lowered during the
8 last part. When you said it's certainly possible
9 that he could have done what?

10 A That he moved around and was functional
11 for a short period of time after the incident.

12 Q What if he had gotten medical attention
13 say, 10 or 15 minutes after he was shot, could he
14 have survived this?

15 A Well again, it's one of those questions I
16 can't necessarily answer.

17 Q Okay.

18 A And we have certainly gotten cases where
19 somebody who has had this type of injury and did
20 get medical attention, and did not survive. And
21 then of course we don't see them, but they did get
22 medical attention and did survive.

23 Q I am going to have you come down again for
24 me. What is this?

25 A This is a diagram or a replica of a

Dr. Erin Presnell-direct by Ms. Barr

1 diagram at the time of autopsy. And all the red
2 marks are the pellet entrances. The larger red
3 mark right there is what we looked at as the
4 wadding mark. Also I noticed we didn't really
5 talk about was, there are some little oval oblong
6 abrasions on the left hand, which would be
7 consistent with his hand in general vicinity of
8 the shotgun at that time.

9 Q From the shotgun when it was fired.

10 A Yes.

11 Q There are some little notes here that are
12 on the diagram. Those are your notes?

13 A That's my notes for dictating the autopsy
14 report after we are done inside the autopsy room.

15 Q Other than the evidence of injury on the
16 hand, on the face and the shoulder and the neck,
17 were there any other signs of visible injury to
18 the victim?

19 A He had a little small scratch on his knee
20 and a bruise on his right knee. That's it.

21 Q Tell us about State's 101.

22 A This is -- we x-ray any kind of gunshot or
23 shotgun wound victim that comes into the autopsy
24 room, we'll x-ray them. Mostly to help us
25 identify where the projectiles are so we can

Dr. Erin Presnell-direct by Ms. Barr

1 recover them. This is kind of -- a little ended
2 up being a little faded out. But this is his
3 skull. His head is a little tipped up. And so
4 this is the neck area. That mark or that light
5 area right there, that's the collar bone. So all
6 these white dots, those are the pellets that are
7 inside.

8 Q Tell us about State's 102.

9 A This is actually just a little further
10 down. So we're at the chest area. So here's all
11 the ribs. That's the diagram separating the chest
12 from the abdomen. And up here again are where the
13 pellets are. The white dots.

14 Q Dr. Presnell tell us about 103.

15 A Very similar to the first one that we saw.
16 Again the head, it's a little more of the collar
17 bone and the pellets.

18 Q Tell us about 105.

19 A It might be the same one as the first one
20 we saw, which is the head tilted up. And the
21 collar bone. Actually it looks like it is a
22 little further down. But again, it's the same
23 view demonstrating the majority of the location of
24 the pellets.

25 Q You can take your seat back.

Dr. Erin Presnell-direct by Ms. Barr

1 (Whereupon, the witness steps back to the
2 witness stand.)

3 Q Now based upon your visual obviously
4 observation of Mr. Prosser, how did you continue
5 with the autopsy? What else did you do?

6 A Well we -- you know, I didn't tailor any
7 autopsy to individual entries with individual
8 disease process. We do the same. We do the
9 autopsy on everybody that comes through. So when
10 we remove all the organs, we dissect all the
11 organs. We look for any diseases. Anything else
12 that might lend some help for information should a
13 question come up in the future. We'll take a we
14 didn't in this case, because it wasn't necessary.
15 But sometimes we'll take sections to look under
16 the microscope for. He was decomposing and had an
17 obvious cause of death so we did not do that. And
18 of course the toxicology that you guys heard
19 about as well.

20 Q Based upon your professional judgment and
21 based upon your autopsy on the body of Mr.
22 Prosser, tell the jury what caused his death.

23 A The shotgun wound to the body, the chest,
24 neck, head area with the perforation of the
25 carotid artery and the jugular vein.

Dr. Erin Presnell-direct by Ms. Barr

1 Q Now we all have classifications of death,
2 of the manner of death in South Carolina, tell us
3 about those.

4 A Well for us it is certainly is unequal to
5 the legal definition, but for the forensic
6 pathologist, you have the four manners of
7 undetermined. And one is natural. Which
8 obviously this one wasn't. One is accident. One
9 is suicide and one is homicide. This one was
10 classified as a homicide. Meaning the death at
11 the hands of another.

12 MS. BARR: I beg the court's indulgence.
13 Dr. Presnell, thank you. Please answer any
14 questions defense counsel may have.

15 Cross Examination by Mr. Barr:

16 Q Doctor, I have just -- I may have one
17 question. Doctor, I am going to show you now what
18 has been marked and entered into evidence as
19 State's Exhibit No. 91 in this case. And ask you
20 to take a look at it, please, ma'am. It's a
21 shotgun shell. That shotgun shell was found at
22 the decedent's residence ostensibly where he was
23 shot. And what I am going to show you is Exhibit
24 No. 2, which was also found and submitted for
25 analysis to sled. And Exhibits No. 92.

Dr. Erin Presnell-direct by Ms. Barr

1 THE COURT: Is it 92 or 2?

2 Q They are both 91, I am sorry. It's 91-b.
3 One is 91-a. Exhibit 91-a is a shotgun shell. Is
4 it c? It is. Is the wadding that you were
5 talking about? Now I notice that in this
6 particular case you testified that you were able
7 to determine, and if you look at your diagram
8 here, a wadding mark.

9 A Yeah, an injury that is consistent with a
10 wadding mark. I don't know that this is a
11 specific wad. But it's appearance is consistent
12 with a wadding mark.

13 Q It's consistent with a wadding mark. In
14 fact on some of the other photographs, you can
15 actually see it. It actually penetrated the
16 exterior skin and went into the body.

17 A Well no, it's not in the body. It's just
18 an abrasion or scratch---

19 Q An abrasion.

20 A ---on the surface. It did not enter the
21 body.

22 Q But it did penetrate the skin.

23 A It scratched the skin off the surface;
24 yes.

25 Q You think that that was -- in terms of

Dr. Erin Presnell-direct by Ms. Barr

1 what you noticed in the autopsy during your
2 examination, should there have been blood? Would
3 there be blood on the wadding?

4 A. On the wadding I think there may have
5 been, I don't know.

6 Q But the only way you could find out would
7 be probably -- you didn't have -- you've never had
8 that.

9 A No, I haven't seen this before.

10 Q In fact, the only way to find out would be
11 probably to send it to a sled lab serology
12 department?

13 A I know that sled does the analysis of the
14 evidence.

15 Q It doesn't visibly appear. Of course, I
16 realize we can't see everything with our eyes. It
17 doesn't visibly appear to have any blood.

18 A I mean, I don't know if they typically
19 clean it or not. Something was written on this.
20 So I don't know what was done to it.

21 Q It looks pretty clean; doesn't it?
22 Doctor you testified of course with the sawed off
23 shotgun, modified shotgun, you are getting wide
24 spread as far as the parameter of the pellets that
25 is discharged. And as you get further away,

Dr. Erin Presnell-direct by Ms. Barr

1 further away, you get a wider spread.

2 A Yes.

3 Q And of course with a standard size

4 shotgun, I think you may have indicated that the

5 actual distances in most cases that the wadding

6 actually travel, did you say that earlier?

7 A Yeah. Well so for a standard, and again

8 these are concluded by numbers. They are numbers

9 that come up touching on skin. So that's what I

10 delegate for human skin. So again there are other

11 variables. But for wads, for paper wads, I think

12 it went out to 15 feet. Depending on the wad.

13 Just different makes and models.

14 Q Plastic and cork.

15 A Plastic and you can go further out, and it

16 still reach the skin. But for plastic it was --

17 you can see a mark in some instances 20 feet away.

18 Q 20 feet?

19 A So but then a lot of times it was closer

20 than that. But looking at the types of wadding,

21 it was only -- they can see it like only 11 feet

22 away. Then it wouldn't reach the skin anymore.

23 Q Now State's Exhibit No. in this case 91-c

24 that I just showed to you. It appears to be

25 plastic, doesn't it?

Dr. Erin Presnell-direct by Ms. Barr

1 A It does, yes.

2 Q Doctor, I know you don't, in this case,
3 this is not drawn to scale. This is a diagram of
4 the decedent's residence in this case. This
5 diagram. And up here, it's been testified to
6 earlier today, that there are pellet marks along
7 here tending to indicate that the decedent was
8 shot somewhere in this area of the house. This is
9 where the body was found.

10 MS. BARR: Your Honor, we are going to
11 object to counsel's characterization of the
12 evidence in terms of where the decedent was.

13 MR. BARR: Well, Judge, I am just
14 repeating what the evidence. If I'm---

15 THE COURT: I will allow him to couch that
16 question in terms of what he perceived the
17 testimony to be, Ms. Barr. And you can clarify on
18 redirect. But I can't see the diagram. So that
19 might help. What did you ask her again?

20 Q This is where supposedly where the
21 decedent's body was found. And this was where it
22 was testified to earlier that there were pellet
23 marks in the wood.

24 THE COURT: Okay. Go ahead You can
25 continue.

Dr. Erin Presnell-direct by Ms. Barr

1 Q And there was also testimony that a shot
2 came from this direction going that way.

3 MS BARR: Judge, I don't know if some of
4 the jurors can see.

5 MR. BARR: Well let me just---

6 THE COURT: I am fine. But watch out,
7 don't thank that other thing down behind you. In
8 other words, you are getting ready to pull it off
9 the projector over there.

10 MR. BARR: I'm getting ready to cause a
11 catastrophe.

12 THE COURT: Yes, sir.

13 MR. BARR: I am getting ready to sit down
14 now though.

15 Q The point is, if I was standing here, and
16 I shot somebody in this direction, the wadding
17 would go with the bullets; would it not?

18 A Yes.

19 Q In that direction toward this way.

20 A Yes.

21 MR. BARR: Thank you, ma'am. Thank you,
22 doctor, I have nothing further.

23 THE COURT: Redirect?

24 MS. BARR: Yes.

25 Redirect Examination by Ms. Barr:

Dr. Erin Presnell-direct by Ms. Barr

1 Q Dr. Presnell, can you come down for just a
2 moment for me, please.

3 (Whereupon, the witness steps down from
4 the witness stand.)

5 Q Do you recall what the question that you
6 were asked, if the shot shell were found here in
7 the bedroom, let's just assume for purposes of
8 this question that this is the victim's bed.

9 Okay.

10 A Okay.

11 Q Let's further assume that was fired upon
12 and landed here in that little square. In that
13 little triangle, I'm sorry.

14 A Okay.

15 Q And let's further assume that as Mr. Barr
16 asked you earlier, that there was evidence and
17 there was damage to a shell that was on the wall
18 here in the living room.

19 A All right.

20 Q He asked you, where would, and also from
21 my question, let's assume that the wadding was
22 found somewhere here inside the bedroom.

23 MR. BARR: Objection, Your Honor. She's
24 gone beyond the scope of cross examination.

25 THE COURT: Overruled.

Dr. Erin Presnell-redirect by Ms. Barr

1 Q If the wadding inside the bedroom was
2 found here and if the shot shell was found here,
3 what would -- and as Ms. Barr indicated there was
4 evidence of shot pellets that landed here, what
5 would that suggest to you about the shooter?

6 A Well---

7 MR. BARR: Objection, Your Honor. She's
8 not competent to answer that.

9 THE COURT: Well I think she can testify
10 as to -- she can answer that question within the
11 confines of what she said about distances and so
12 forth. But not any ballistic's theory about
13 angles or anything like that. Except as she is
14 able to derive from looking at those photographs
15 and viewing the monitor.

16 MR. BARR: Improper foundation.

17 THE COURT: Overruled.

18 Q You may answer.

19 A Well we know the wadding hit the person.
20 So wherever the person actually is, if the wadding
21 dropped off here then perhaps, you know, he was up
22 closer. If that's the wadding. If I -- I mean I
23 haven't seen the crime scene. And I haven't been
24 privy to the information on the crime scene. We
25 know a wad hit him. We know they followed the

Dr. Erin Presnell-redirect by Ms. Barr

1 pellets there. You know, you saw a lot of pellet
2 entrances in his body. That doesn't mean they all
3 hit him. And certainly they could have gone past
4 him to, you know, back to whatever was behind him
5 at the time of the shooting.

6 Q One last question if I may. I am going to
7 publish State's Exhibit No. 35. If the wadding
8 were found where the marker 2 is, where would that
9 suggest to you where the victim was standing when
10 he was hit?

11 A I have no idea where 2 is.

12 Q Okay.

13 A I mean somewhere in that vicinity. But
14 again, I haven't been---

15 Q I understand.

16 A ---interested on this. I mean, you know,
17 if the wadding strikes him and makes a mark, you
18 know, and falls, it doesn't fall straight down.
19 But perhaps it bounced a little. Again as far as
20 how far away, I can't answer that.

21 Q I understand. You didn't go to the crime
22 scene; right?

23 A Correct.

24 Q So the only thing you can tell if the
25 wadding found near marker 2, that would suggest it

Dr. Erin Presnell-redirect by Ms. Barr

1 was in proximity to where he was.

2 MR. BARR: Objection.

3 THE COURT: It's leading.

4 Q If the wadding were found on marker 2 is
5 located on this photograph, what would that if
6 anything indicate to you as to where the victim
7 may have been when he was hit?

8 MR. BARR: Your Honor, objection. She's
9 not competent. It's an improper hypothetical.
10 And she's laid no foundation for it.

11 THE COURT: Overruled.

12 Q Again, I don't feel that I can properly
13 can answer that.

14 THE COURT: That will do it, Ms. Barr.

15 MS. BARR: That's all I have, Judge.

16 Thank you, Dr. Presnell.

17 THE COURT: Anything else, Mr. Barr?

18 MR. BARR: No, sir.

19 THE COURT: Thank you, ma'am. Doctor, you
20 can continue to step down. Any objection to this
21 witness being released?

22 MS. BARR: Not from the State, Judge.

23 MR. BARR: No, sir.

24 THE COURT: Thank you, doctor. You can
25 leave or stay whichever you like. Ms. Barr. Is

Dr. Erin Presnell-redirect by Ms. Barr

1 everybody on the jury, okay? Ms. Barr.

2 MS. BARR: We would call investigator
3 Willie Brown.

4 WILLIE BROWN, after being duly sworn,
5 testified as follows:

6 Direct Examination by Ms. Barr:

7 Q State your full name for me.

8 A Willie Brown.

9 Q Tell us where you are employed.

10 A Williamsburg County Sheriff's Office.

11 Q What do you do there?

12 A Investigator.

13 Q You are a certified police officer?

14 A That's correct.

15 Q How long have you been employed with the
16 sheriff's office?

17 A Over 15 years now.

18 Q Now of course the sheriff's department was
19 in conjunction with sled, the agency that
20 investigated the death of Mr. Ernest William
21 Prosser, III?

22 A That's correct.

23 Q Now I need to get some information from
24 you. As it relates your notification or the
25 agency's notification of the death of Mr. Prosser,

Willie Brown-direct by Ms. Barr

1 when did that happen? When did you all receive
2 information about the death?

3 A It was that Thursday the 27th.

4 Q Would it help you to refer to the incident
5 report to be sure about dates?

6 A Yes, ma'am.

7 Q When does the case file indicate that the
8 notification by the sheriff's department that the
9 death of Mr. Prosser happened?

10 A It could have been the 30th. That's the
11 date. Between the 27th and the 30th.

12 Q Now not in terms of when he died, but in
13 terms of when you all were notified that he died?

14 A It would have been the 30th.

15 Q The 30th. Okay. I want to be clear. Now
16 when you all come and you all respond to a crime
17 scene, we hear sometimes about the crime scene
18 tape and securing the scene and all that stuff.
19 Tell us what you all would normally do.

20 A Try to set up a perimeter as to where the
21 crime scene took place. And put the crime scene
22 tape up and keep anybody from crossing over to
23 contaminate the crime scene.

24 Q And, sir, I am going to publish State's
25 Exhibit No. 3. Let me get you to come on down.

Willie Brown-direct by Ms. Barr

1 Is this the photograph of the victim's residence?

2 A Yes, it is.

3 Q Do you see any evidence in that photograph
4 that the crime scene was secured?

5 A Yes. There is yellow crime scene tape
6 here.

7 Q Okay. What about State's Exhibit No. 11?

8 A Yes, it is crime scene tape also.

9 Q This is the view which side of the house?

10 A Be the front.

11 Q Now there appears to be some stuff, I
12 guess in the front, on the front porch?

13 A That's correct.

14 Q Tell us about that? Was that debris of
15 of some sort?

16 A Some sort of debris or some type of dog
17 house, I believe.

18 Q Now did you take this picture?

19 A No, ma'am.

20 Q Tell us about State's Exhibit No. 2. Is
21 there anything in the photograph that would
22 indicate to you when that particular picture was
23 taken?

24 A Yes, the crime scene tape and the sled
25 vehicle also.

Willie Brown-direct by Ms. Barr

1 Q As it relates to State's Exhibit No. 20,
2 do you know where those pictures were taken?

3 A That would have also been sled.

4 Q Let me do this. Stay right here for me.
5 Let me just have marked for ID only.

6 (CD disk marked State's Exhibit no. 16 for
7 id. only.)

8 Q Tell me if you recognize this particular
9 exhibit?

10 A Yes, ma'am, I do.

11 Q How is it that you recognize it?

12 A This is the CD disk with the photograph
13 that sled took.

14 Q Are there initials on that particular
15 disk?

16 A That's correct.

17 Q What are the initials?

18 A KKK.

19 Q Is that Mr. Kenley? Carl Kenley?

20 A That's correct.

21 Q The gentlemen that testified earlier.

22 A That's correct.

23 Q Now this disk was provided to your agency
24 by sled?

25 A That's correct.

Willie Brown-direct by Ms. Barr

1 Q And at my request, did you go and have the
2 images from this disk copied and then submitted to
3 me.

4 A That's correct.

5 Q Now in terms of what we have already in
6 evidence, this particular photograph that I have
7 published, State's Exhibit No. 20, that would have
8 been an intercept taken from that desk from sled?

9 A Yes, ma'am.

10 Q What about 12, is that an image that would
11 have been taken from the disk provided by sled?

12 A It was.

13 Q What about 2? Taken from the disk from
14 sled?

15 A Yes, that's correct.

16 Q And 11, the same question.

17 A That's correct also.

18 Q Three the same question.

19 A That's correct.

20 Q Now a few weeks ago did you go back out to
21 the scene of the crime?

22 A Yes, ma'am I, did.

23 Q For what purpose did you go out to the
24 scene of the crime?

25 A Back in October, we was able to get

Willie Brown-direct by Ms. Barr

1 another statement from Ronetta. And she gave us
2 other information in reference to the crime scene.
3 We went out to corroborate her statement. And,
4 you know, we took more pictures of what she told
5 us to look for.

6 Q Okay. Now in terms of who was with you, I
7 was with you on that occasion; correct?

8 A That's correct.

9 Q I went out with you to the crime scene.

10 A You did.

11 Q How did you gain entry into the house?

12 A We able to get contact with Mr. Prosser.
13 And he came out and also met us at the scene, and
14 gave us access to the residence.

15 Q Now did you actually yourself take
16 additional photographs of the crime scene of the
17 house?

18 A I did.

19 Q Now I am going to publish what's been
20 admitted as State's Exhibit No. 40. Tell us what
21 is in that photograph.

22 A In this photograph you can see the front
23 door. Also you can see some type of abrasion or a
24 marking to the side corner. And you see myself in
25 the reflection on the mirror.

Willie Brown-direct by Ms. Barr

1 Q So that's your shadow there.

2 A That's correct.

3 Q And you took that photograph.

4 A That's correct.

5 Q Now can you tell the nature of that, as
6 you call it, an abrasion there?

7 A It looked to be like a gunshot to the
8 brick wall, where it skipped the brick wall and
9 chipped a piece off and then hit the door.

10 Q Investigator Brown, as it relates to
11 Exhibit No. 12, again, I need to be clear. This
12 image was an image taken by the sled agent that
13 day?

14 A That's correct.

15 Q Do you see anything that is consistent
16 with what you photographed in terms of showing the
17 abrasion as you called it, a couple of weeks ago?

18 A Yes, ma'am.

19 Q Use the pointer for me, please.

20 A Actually there is one here at the top of
21 the door.

22 Q Yes, sir.

23 A And one here at the bottom of the door.

24 Q Now the one that's at the top of the door
25 that you described is that what you photographed

Willie Brown-direct by Ms. Barr

1 in No. 40?

2 A That's the same one, that's correct.

3 Q And that again, that photograph was taken
4 by you a couple of weeks ago.

5 A That's correct.

6 Q Tell us about State's Exhibit No. 38. I
7 am sorry.

8 A This here is a different angle. As you
9 can see here, you can see it is more pronounced
10 where it actually chipped the block where the
11 bullet hit the wall.

12 Q Mr. Brown, make sure you stand over this
13 way so all the jurors can see. Now that's my
14 profile, I guess, there?

15 A That's correct.

16 Q Tell us about 39. Is that a closer up
17 view of that abrasion as you characterized it at
18 the time.

19 A That's correct.

20 Q Some out.

21 A That's correct. You can actually see
22 where the lead part of the bullet hit the --
23 struck the frame of the door after it hit.

24 Q The door here?

25 A That's correct.

Willie Brown-direct by Ms. Barr

1 Q Now I am going to call your attention back
2 to No. 12. And that being the photograph that was
3 taken by the sled that day?

4 A That's correct.

5 Q You talked about in addition to there
6 being a part defect in the upper part of the door,
7 you mentioned something at the bottom?

8 A That's right. There was another defect
9 there at the bottom.

10 Q And did you concentrate on that when you
11 went out to the crime scene?

12 A Yes, ma'am. I also took a photograph of
13 that.

14 Q That was State's Exhibit No. 43?

15 A That's correct. This is it.

16 Q Tell us about 41.

17 A This is a clear up picture of the same
18 defect to the bottom of the door to the left.

19 Q Now tell us about what of State's No. 44.

20 A As you are standing in front of the house
21 to the left going around to the edge, this is the
22 corner. And it was another what appeared to be a
23 bullet hole defect to the front of the house.
24 Just to the left of the front porch.

25 Q So based on this photograph, the victim's

Willie Brown-direct by Ms. Barr

1 bedroom would have been on this side of the house?

2 A That's correct.

3 Q In addition to photographing the exterior
4 of house following the discussion with Ms. Miller,
5 did you also photograph the inside of the victim's
6 bedroom?

7 A Yes, ma'am, I did.

8 Q And when you after that conversation
9 focused on certain things?

10 A Yes, ma'am.

11 Q Tell us about State's Exhibit 54.

12 A In this picture it depicts the pellets
13 from what we assume is the shotgun at the top of
14 the door. This is the doorway to the bedroom, and
15 to the side of the bedroom door. From here to
16 here. And this is the bedroom door here leading
17 into the living area.

18 Q Is that a closer up view in State's
19 Exhibit No. 53.

20 A Yes, it is. You can see the pellets one,
21 two, a few of them throughout the picture.

22 Q And this is a door frame here.

23 A That's correct.

24 Q And I just -- I'm publishing this one,
25 because I want to make sure that we are certain

Willie Brown-direct by Ms. Barr

1 about when these were taken. Again, I want to
2 talk about No. 20 and 19.

3 A Uh-huh. (Affirmative.)

4 Q Now in terms of No. 20, that we talked
5 about, is this one of the photographs that was
6 taken by sled and on that CD?

7 A That's correct. This one was taken by
8 sled. You can see in this picture, the screen
9 door is torn. And he has some other items out in
10 the yard. I guess, he was living, stored on the
11 outside.

12 Q Now even though No. 19 is marked in
13 sequence for trial as coming right before No. 20.
14 Was No. 20 -- No. 19 taken the same day?

15 A No, ma'am. I took this picture at a later
16 date.

17 Q That's when you and I went out?

18 A That's correct. The screen as you see, is
19 removed also. And it's already cleaned.

20 Q Okay. Just want to make sure. You can
21 take a seat, sir.

22 (Whereupon, the witness resumes the
23 witness stand.)

24 Q Now was the -- did the sheriff's
25 department recover any of the firearms in

Willie Brown-direct by Ms. Barr

1 connection with this case other than the Smith &
2 Wesson firearm that belonged to Mr. Prosser?

3 A No, ma'am, not to my knowledge.

4 MS. BARR: That's all the questions I
5 have. Please answer any questions Mr. Barr may
6 have for you.

7 Cross Examination by Mr. Barr:

8 Q Officer Brown.

9 A Yes, sir.

10 Q You are a deputy sheriff with the
11 Williamsburg County Sheriff's Department?

12 A Yes, sir.

13 Q How long have you been with the sheriff's
14 department?

15 A Over 15 years.

16 Q And how long have you been you been an
17 investigator?

18 A 6 years.

19 Q Pardon me?

20 A 6 or 7 years.

21 Q During the time that you have been an
22 investigator with the Sheriff's Department, have
23 you had an occasion to investigate a crime scene
24 involving an alleged homicide?

25 A Yes, sir, I have.

Willie Brown-cross by Mr. Barr

1 Q Investigating crime scenes involving
2 homicides?

3 A Yes, sir.

4 Q Now are you also one of the investigators
5 assigned to Williamsburg County Sheriff's
6 Department to this particular case?

7 A Yes, sir.

8 Q You indicated to Ms. Barr on direct
9 examination, that you, and I think you were
10 referring to disk number -- Exhibit No. 116. What
11 did you say that was?

12 A It was photographs of the crime scene that
13 sled took.

14 Q That sled took.

15 A That's correct.

16 Q And who had them processed?

17 A I did.

18 Q Where did you have them processed?

19 A At CVS. Local CVS.

20 Q Local CVS.

21 A That's correct.

22 Q Now were you there at the time they were
23 processed?

24 A Yes, I was.

25 Q And you waited until they processed.

Willie Brown-cross by Mr. Barr

- 1 A I processed them myself.
- 2 Q How did you process them?
- 3 A We have a machine we put the disk in.
- 4 Q Yes, sir.
- 5 A And do the prints while we wait there.
- 6 Q So you waited for them to be processed.
- 7 A Yes, I did. They printed out right there.
- 8 Q And then you brought them back.
- 9 A That's correct.
- 10 Q Now at the time these photographs were
11 taken, do you know when they were taken?
- 12 A No, sir, I don't have the -- it was taken
13 in the day that they called sled. And they came
14 down on the 30th.
- 15 Q Well I know you know what time sled came
16 down, but do you know when the photographs were
17 taken?
- 18 A I don't exact time, but that date it was
19 10/30.
- 20 Q Were you there when they were taken?
- 21 A No, sir.
- 22 Q So at the time that they were taken, you
23 don't know what if anything, and where they were
24 taken.
- 25 A No, sir. I don't know. I wasn't there on

Willie Brown-cross by Mr. Barr

1 the scene when they took the photographs.

2 Q That's what I am talking about. You were
3 not -- was Wayne McFadden there?

4 A I am not sure. I wasn't on the scene at
5 all.

6 Q So you wasn't on the scene.

7 A No, sir.

8 Q So the truth of the matter is, with
9 respect to sled photographs, you don't know where
10 those photographs were taken. I am talking about
11 what you know.

12 A They were taken at Road, at
13 the scene of Mr. Ernest Prosser's murder.

14 Q Let me ask you something.

15 A Yes, sir.

16 Q When were you at Road when
17 the photographs were taken?

18 A I wasn't there when sled took the
19 photographs.

20 Q Well would you not agree if you weren't
21 there when they took them, you don't know where
22 they took them; do you? You wasn't there.

23 A I was not there.

24 Q You know what they told you. Isn't that
25 right?

Willie Brown-cross by Mr. Barr

1 A That's a question you are asking or?

2 Q That's a question. You know what they
3 told you. But you don't know where they were
4 taken. That's a question.

5 A Yes, sir.

6 Q And the answer is, I don't know.

7 A The question -- the answer is, yes, that's
8 where they told me they took the pictures at.

9 Q But you don't know where they took them.

10 A No, sir, I wasn't there.

11 Q Now you were there a few minutes ago when
12 Ms. Barr showed you a copy of the front of
13 Mr. Prosser's house. Let's see if I can find it
14 in here. This is State's Exhibit No. 3. That's
15 the house?

16 A Yes, sir, it is.

17 Q And I notice that there is a piece of
18 yellow tape laying on the ground. Do you see it i
19 in that photograph?

20 A I do.

21 Q Now is it your contention that the yellow
22 tape laying down on the ground is the -- that's
23 what you got there protecting the crime scene.

24 A Yes, sir, it was.

25 Q It was. Well what happened to it,

Willie Brown-cross by Mr. Barr

1 somebody took it down?

2 A The question was, was that used to
3 protect the crime scene?

4 Q Yes, sir.

5 A It was. It was used to protect the crime
6 scene.

7 Q Well it's not protecting the crime scene
8 now in that photograph; is it?

9 A I mean it's down on the ground.

10 Q How did it get down on the ground?

11 A I don't know, sir. I wasn't...

12 Q So in other words, if somebody wanted to
13 come and go in there, all they had do is just come
14 in and walk straight in, with nothing to stop
15 them.

16 A No, sir. We just usually let it down
17 when the vehicles like say come in, to let it down
18 for them to drive through onto the crime scene.

19 Q Were you there when this was put down on
20 the ground?

21 A No, sir.

22 Q So you don't know how it got down on the
23 ground.

24 A No, I don't.

25 Q In fact, you don't know what the first law

Willie Brown-cross by Mr. Barr

1 enforcement that got to Mr. Prosser's house was
2 Johnny Jenkins; was it not?

3 A That's correct.

4 Q And when you came, was it Johnny Jenkins
5 that called you?

6 A No, sir.

7 Q Who called you?

8 A It was part of the investigation process.

9 Q Part of the investigation process. What
10 time did Johnny Jenkins get to Mr. Prosser's
11 house?

12 A His arrival time was 10:07.

13 Q 10:07 in the morning?

14 A That's correct.

15 Q And what time did you get there?

16 A I did not get on this scene. I was not
17 part of the crime scene at that time.

18 Q I see. So you don't anything about
19 anybody securing any crime scene; do you?

20 A I was not on the scene; no, sir.

21 Q So you know don't know whether I went in
22 the house or anybody else went in the house. You
23 don't know who went in and out of that house.
24 Sir?

25 A No, sir, I wasn't there.

Willie Brown-cross by Mr. Barr

1 Q So in terms of how that piece of tape got
2 on the ground, if you wasn't there, you don't know
3 how it got on the ground. You don't why they took
4 it down.

5 A No, sir. I don't know what officer took
6 the crime scene down.

7 Q Well you don't know what officer took it
8 down; do you?

9 A No, sir, I don't.

10 Q Now and you don't know whether or not
11 Johnny Jenkins secured the crime scene when he got
12 to the location; do you?

13 A I wasn't on the scene when he got there.

14 Q But you do know he found some shoes.

15 A That's correct.

16 Q And you know that he talked with a lot of
17 people who had already arrived at the crime scene,
18 who was in the house when he got there. You know
19 that; don't you?

20 A We talked to the complainant, I believe.

21 Q You talked to the complainant. And the
22 complainant would you consider him to be a person.

23 A Yes, sir.

24 Q And they went in the house. Do you know
25 who else went in the house?

Willie Brown-cross by Mr. Barr

1 A I'm not -- I don't have that information;
2 no, sir.

3 Q I see. Do you know what if any weapons,
4 shotguns were in Mr. Prosser's house, other than
5 the one that was in the gun case?

6 A No, sir, not I am not.

7 Q You don't know?

8 A No, sir, uh-uh. (Negative.)

9 Q Have you asked somebody?

10 A No, sir.

11 Q Now I am going to show you, and I am not
12 going through all of them. I just need to go
13 through maybe better yet, can you step down a
14 second?

15 (Whereupon, the witness steps down from
16 the witness stand.)

17 Q Now who took the photograph?

18 A I did.

19 Q And what---

20 MS. BARR: Judge, I'm sorry. I don't mean
21 to interrupt counsel.

22 Q What day did you take it?

23 A It which April.

24 Q April what now?

25 A I don't recall the exact date on it.

Willie Brown-cross by Mr. Barr

1 Q Now the date that Mr. Prosser was killed,
2 was probably around based on everything we know,
3 about October 27th, would you not agree?

4 A Yes, sir.

5 Q You took the photograph in April.

6 A April..

7 Q Of 2010.

8 A That's correct.

9 Q October, November, December, January,
10 February, March. 6 months later.

11 A That's correct.

12 Q Now do you know what this is that you told
13 Ms. Barr about?

14 A Damage to the wall.

15 Q Do you know what caused it?

16 A It appeared to be a gunshot.

17 Q I'm asking do you know what caused it.

18 Were you there when it was caused?

19 A No, sir, I wasn't there.

20 Q So the answer to my question is, you don't
21 know; do you?

22 A It appears to be a gunshot.

23 Q Now I don't know what it appears to be, I
24 want to know if you know.

25 MS. BARR: Judge, that has been asked and

Willie Brown-cross by Mr. Barr

1 answered.

2 THE COURT: Argumentative. Go ahead.

3 Objection sustained.

4 Q Now do you know whether or not the -- take
5 a look at this photograph. Do you know what that
6 is?

7 A Damage to the wall also.

8 Q But now the truth of the matter is, you
9 don't know whether or not it's a gunshot that did
10 it; do you?

11 A It appears to be a gunshot.

12 Q No; I mean do you know whether or not it
13 was?

14 A I only can go from what I assume it is a
15 gunshot.

16 Q From what you assume.

17 A Gunshot damage to the wall.

18 Q Well inasmuch as, you assume it's a
19 gunshot, what did you do if anything, as an
20 investigator with the Williamsburg County
21 Sheriff's Department, to make some scientific
22 determination as to what caused it? What did you
23 do?

24 A Photographed it. And we also notified the
25 Solicitor's Office and documented it for trial.

Willie Brown-cross by Mr. Barr

1 Q You took Ms. Barr out there to look at it?

2 A Yes, we did.

3 Q For her to see what -- determine what it
4 was?

5 A Not to determine it, but to just, you
6 know, document it.

7 Q Now the truth of the matter is, did you
8 take a sample of it and sent it to sled? At any
9 point?

10 A It's a hole.

11 Q Yes, sir.

12 A There's no sample to take.

13 Q But it's concrete right here. Broken
14 concrete. Did you take a sample of it?

15 A No, sir. Just.....

16 Q You can go back and have a seat.

17 (Whereupon, the witness resumes the
18 witness stand.)

19 Q The truth of the matter is---

20 THE COURT: Let him sit down first.

21 Q You could have determined whether or not a
22 bullet caused it by simply having the crushed
23 concrete analyzed; couldn't you?

24 A I am not exactly sure.

25 Q You are not sure? But you had your

Willie Brown-cross by Mr. Barr

1 firearm out there from sled or you had your
2 criminal specialist from sled, the day that you
3 claim that he took a picture of that same hole.
4 Did anybody suggest it to him that maybe you all
5 ought to determine whether or not it was a bullet
6 hole?

7 A I wasn't there with them; no, sir.

8 Q Oh you weren't there.

9 A No.

10 Q Did any -- which one of these deputies
11 were there? Was Officer Collins there?

12 A I believe she was.

13 Q Do you know whether or not, have you got
14 anything in your file that indicates that you all
15 asked him to examine to find out what it was?

16 A No, sir. I don't think anything is
17 indicated.

18 Q Because there is nothing in there; right?

19 A I haven't seen anything.

20 Q Now if it was in there, you would have
21 seen it, would you not? Speaking of your files.
22 Now you testified earlier in this courtroom
23 regarding the statements that you took from Andre
24 Wallace.

25 MS. BARR: Judge, we are going to object

Willie Brown-cross by Mr. Barr

1 to that.

2 MR. BARR: For identification only.

3 THE COURT: You all come up here.

4 (Whereupon, the attorneys approach the
5 bench and confer with judge.)

6 THE COURT: Ladies and gentlemen, I need
7 to send you to your jury room. You may not
8 discuss the case.

9 (Whereupon, the following takes place
10 outside the presence of the jury.)

11 Q Are you familiar with a statement that was
12 taken from Andre Wallace that you claim on Monday
13 that you read three times?

14 A Yes, sir.

15 Q Now you are one of the persons that took
16 that statement; were you not?

17 A Yes, I was.

18 MR. BARR: Now, Your Honor, are we, I am
19 not sure I understood the nature of the objection.

20 THE COURT: Ms. Barr.

21 MS. BARR: Your Honor, he is going to ask
22 the witness about a statement made by the
23 Defendant. The objection is hearsay.

24 THE COURT: Mr. Barr.

25 MR. BARR: Your Honor, I asked him whether

Willie Brown-cross by Mr. Barr

1 or not he took the statement. I didn't ask him
2 what was in it.

3 THE COURT: Well go ahead and asked him
4 what you want to ask him. Is that all you want to
5 ask him?

6 MR. BARR: No, sir.. That's not all I want
7 to ask him.

8 THE COURT: Well keep on asking him.

9 Q Did you take a statement?

10 A I was assisting Wayne McFadden who took
11 the statement, yes.

12 Q You asked him; that is, Mr. Wallace a
13 number of questions; didn't you?

14 A That's correct.

15 Q In fact, you mirandized him.

16 A That's correct.

17 Q And you asked him a number of questions.

18 A That's correct.

19 Q Now with respect to the questions that you
20 asked him, did you find out where he was on the
21 night of the 27th?

22 A I can't remember if he asked him that
23 specific question. But I know -- yes, we did. He
24 indicated that he actually took the two girls out
25 to Mr. Prosser's house.

Willie Brown-cross by Mr. Barr

1 Q He told you that.

2 A That's correct.

3 Q And what else did he tell you?

4 A I don't remember everything. But I have
5 statements of what he said.

6 Q Didn't he tell you that the only thing he
7 did was took two people out there and dropped them
8 off and left them?

9 A He tell them to use his telephone to call.

10 Q And let them use his cell phone.

11 A That's correct.

12 MR. BARR: Your Honor, at this point,
13 there are some other things I want to question him
14 about. Do I have a right to continue?

15 THE COURT: Well I don't whether, Ms.
16 Barr, you contend that this eliciting testimony is
17 hearsay?

18 MS. BARR: Absolutely.

19 THE COURT: How is it not hearsay?

20 MR. BARR: Your Honor, he took the
21 statement, and it's not being offered for the
22 truth of the matter asserted. I asked him whether
23 or not he did it. Whether or not he was aware of
24 it.

25 THE COURT: Wouldn't you like to -- what

Willie Brown-cross by Mr. Barr

1 are you offering it for? To prove that your
2 client said that he dropped the people off?

3 MR. BARR: Your Honor, I am offering it to
4 prove, to establish whether or not insofar as, the
5 investigation is concerned, whether or not he had
6 reason to conduct in the course of his
7 investigation an inquiry into whether or not what
8 the man told him was actually the truth.

9 THE COURT: I am not sure I understand.
10 You're wanting to know---

11 MR. BARR: I'll tell you what, here's what
12 I will do. I will withdraw the question
13 concerning what he knew about Mr. Wallace.

14 THE COURT: Whether he asked him. Taking
15 a statement?

16 MR. BARR: Withdrawn.

17 THE COURT: What do you want me to
18 withdraw? I'm not sure I understand you.

19 MR. BARR: Well Ms. Barr I assume objected
20 to me. And she says it's hearsay asking him about
21 whether or not what Mr. Wallace has said. I said
22 I will withdraw the question.

23 THE COURT: Okay.

24 MS. BARR: And, Judge, for the record, is
25 it counsel's assertion to the representation to

Willie Brown-cross by Mr. Barr

1 the court, that he is not going to ask him about
2 who the statements that the Defendant made to him
3 or Investigator McFadden?

4 THE COURT: That's what I take it as. Is
5 that right, Mr. Barr?

6 MR. BARR: Your Honor, I---

7 THE COURT: It's an out of court
8 statement.

9 MR. BARR: You've already made a ruling,
10 Judge.

11 THE COURT: You are going to withdraw the
12 question.

13 MR. BARR: I said I would.

14 THE COURT: Anything else before the jury
15 comes back in?

16 MR. BARR: No, sir. Not from me.

17 THE COURT: Bring them in.

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

20 Cross Examination by Mr. Barr:

21 Q And at some point during the course of
22 your investigation, you did have an opportunity or
23 you did decide to focus on Mr. Andre Wallace as a
24 person of interest.

25 A That's correct.

Willie Brown-cross by Mr. Barr

1 Q In fact, not only did you focus on him as
2 a person of interest, you may have considered him
3 a suspect.

4 A That's correct.

5 Q And as a result of considering him a
6 suspect, and as a result of all the other
7 information that you had in your file, I assume
8 that you had already interviewed the lady that you
9 referred to Ms. Barr a few minutes ago, Ms.
10 Miller.

11 A That's correct.

12 Q In fact you had interviewed them three
13 times.

14 A That's correct.

15 Q And you had also interviewed Tiffany
16 Jones; had you not?

17 A That's correct.

18 Q In fact, I believe you also interviewed
19 Cornelius McClary.

20 A That's correct.

21 Q That's everybody. I mean at least as far
22 as the people that's been charged in connection
23 with this crime.

24 A That's correct.

25 Q Now with respect to your investigation,

Willie Brown-cross by Mr. Barr

1 you did have an occasion, I believe, to approach
2 Mr. Wallace about his vehicle; did you not?

3 A Yes, we did.

4 Q Now at the time that you approached him
5 about his vehicle, where did you find him and his
6 vehicle?

7 A I believe the location he was locked up at
8 was located in the Lake City area.

9 Q Pardon me?

10 A In the Lake City area.

11 Q You found him in the Lake City area?

12 A Yes, sir.

13 Q Where was he?

14 A I think his mom brought him to his vehicle
15 where the law officers were looking for him at.

16 Q By the what now?

17 A Over to the Lake City area. I don't know
18 the name of the area. It's in Lake City.

19 Q In Lake City.

20 A Yes, sir.

21 Q But you did confiscate his vehicle.

22 A Yes, It was towed.

23 Q It was towed by you or by the sheriff's
24 department?

25 A That's correct.

Willie Brown-cross by Mr. Barr

1 Q Now were you looking for evidence when you
2 got his vehicle?

3 A I wasn't there when they towed it. I
4 already left the scene. But yes, sir, we was at
5 the scene.

6 Q Well you didn't just go take the man's
7 vehicle just to be on a Sunday ride; did you?

8 A No, sir.

9 Q You took it looking for evidence.

10 A That's correct.

11 Q Now at the time you encountered Mr.
12 Wallace, specifically where was this man? Where
13 was he standing or sitting when you found him?

14 A He was brought by his mother to the scene.

15 Q He was brought where?

16 A To where his vehicle was at.

17 Q To where his vehicle was at. His mother
18 brought him.

19 A I believe that's his mother.

20 Q And that's his mother the lady with the
21 pink on, in the courtroom on the right side.

22 A I don't how she choose.

23 Q Now why did she bring him there?

24 A I don't know, somebody maybe able to make
25 contact with him to determine if it was a law

Willie Brown-cross by Mr. Barr

1 officer.

2 Q Now you're telling us that you don't how
3 he got there?

4 A His mother or it was a female. I don't
5 know if that was his mother or who brought him
6 there.

7 Q And she brought him there. Was it at the
8 request of somebody at the sheriff's department?

9 A That's correct. I don't know who made
10 contact to let him know that we was looking for
11 him; and where he was located at.

12 Q And where was he located at?

13 A In Lake City.

14 Q Where?

15 A I don't know the name of the project that
16 we was at.

17 Q You were at a project in Lake City.

18 A That's correct.

19 Q And his vehicle was at the project.

20 A It was parked in the parking lot.

21 Q Parked in the parking lot. And he
22 arrived; is that correct?

23 A That's correct.

24 Q Did you take him in to custody?

25 A We did.

Willie Brown-cross by Mr. Barr

1 Q You took him in to custody.

2 A That's correct.

3 Q And you had an arrest warrant for him.

4 A That's correct.

5 Q And you arrested him.

6 A That's correct.

7 Q At the time you arrested him, was he
8 driving his vehicle?

9 A No, sir, he was not.

10 Q He was not. His vehicle was in the
11 parking lot. Do know where the key was?

12 A I do not know.

13 Q You don't know where the key was?

14 A No, I do not.

15 Q Who gave you permission to take the
16 vehicle?

17 A Like I say, after we took him in to
18 custody, I left. I don't know who actually took
19 possession of the vehicle at the time. Or
20 possession of the keys.

21 Q Who give the sheriff's department
22 permission to take his vehicle?

23 A I don't recall who gave permission, or if
24 we had a search warrant or not. I was -- I
25 transported him back to the county detention

Willie Brown-cross by Mr. Barr

1 center there.

2 Q Now, Mr. Brown, from there you would have
3 drove to the Magistrate's Office to see whether or
4 not the Magistrate's Office issued a search
5 warrant?

6 A I am saying, I didn't know if they had a
7 consent order or search warrant, I wasn't aware.

8 Q You know they had no search warrant.

9 A I wasn't aware of the search warrant or
10 consent.

11 Q I know you are not aware of it, because
12 nobody had one. You just took the man's vehicle;
13 didn't you?

14 MS. BARR: Objection.

15 THE COURT: Sustained. You can't make a
16 statement and argue with him. You are only to ask
17 him questions.

18 Q You took his vehicle; didn't you?

19 A No, sir.

20 Q How did you get it? He gave it to you?

21 A I was going to transport him back to the
22 office.

23 Q One of your fellow deputies took his
24 vehicle. Sir?

25 A He might have towed it for inventory and

Willie Brown-cross by Mr. Barr

1 took the evidence. That's correct.

2 Q Inventory for what? Out of the man's
3 parking lot?

4 A I don't know if he was living over there
5 or not.

6 Q Well even if he was.

7 A I mean, if he wasn't living there, I mean
8 you just couldn't leave the vehicle on the side of
9 the road, or in the parking lot.

10 Q You told us it was in the parking lot.

11 A In the parking lot, that's correct.

12 Q So it ain't on the side of no road.

13 A Well if he doesn't live there then, I
14 mean, it was just like it is on the side of the
15 road.

16 Q How do you know where he lives?

17 A He's supposed to be living over in the
18 White Oak area.

19 Q He lives where he wants to live; doesn't
20 he?

21 MS. BARR: Judge, never mind.

22 Q You took the vehicle without authority.

23 MS. BARR: Objection. Asked and answered.

24 THE COURT: Sustained.

25 Q You had no authority.

Willie Brown-cross by Mr. Barr

1 THE COURT: Is that a statement or a
2 question, Mr. Barr?

3 MR. BARR: That's a question, Judge.

4 THE COURT: Stop, stop. I am not going to
5 say it again. Number one, don't interrupt me.
6 Number two, you don't a make a statement. You ask
7 the witness a question.

8 Q No you dismantle the vehicle?

9 A No, sir, I didn't.

10 Q Your searched him.

11 A No, sir, I didn't.

12 Q Somebody at the sheriff's department
13 searched him?

14 A Yes, we did.

15 Q And you searched him looking for evidence
16 didn't you?

17 A The officer that searched him, I am not
18 sure exactly who the officer was, that's who you
19 have to pose that question to.

20 Q You searched the vehicle because you were
21 investigating this homicide and you had determined
22 that that was the vehicle that he was driving the
23 night that this incident occurred. Now that's the
24 truth; isn't it?

25 A I not exactly sure the reason why they

Willie Brown-cross by Mr. Barr

1 searched him. But my understanding doing
2 inventory and also looking for I think the weapon
3 or something like that. But it wasn't like a tore
4 up the vehicle type search.

5 Q Doing an inventory.

6 A Uh-huh. (affirmative.)

7 Q And looking for a weapon.

8 A Yes.

9 Q Was it the intent of the Williamsburg
10 County Sheriff's Office to search the vehicle to
11 determine whether or not there was any evidence
12 that would connect the vehicle with the scene of
13 Mr. Prosser's killer?

14 A Well if any evidence was found about
15 weapons then we would have tested it to see if
16 was, you know, the weapon that was used or not.

17 Q The truth of the matter is, you looked and
18 you didn't find not one thing; did you?

19 A I am not sure what they found at the
20 scene..

21 Q Did you send anything to sled?

22 A I'm not sure what they found in the
23 vehicle, sir.

24 Q Pardon me?

25 A I'm not sure what they found in the

Willie Brown-cross by Mr. Barr

1 vehicle.

2 Q Who did it? Somebody with the sheriff's
3 department?

4 A I don't know.

5 Q You are familiar with the case file.

6 A Yes, sir.

7 Q And you are familiar with all the items
8 that have been sent to sled to be analyzed as
9 having potential evidentiary value in this case;
10 are you not?

11 A I am not..

12 Q You don't read the file. I thought you
13 said you were the investigator.

14 A I am the investigator.

15 Q On this case.

16 A That's correct.

17 Q But you don't know what's in the file.

18 A No, sir, I wasn't familiar with all the
19 evidence that was sent.

20 Q Oh, I see. You are just responsible for
21 pictures.

22 A No, sir.

23 Q Well what evidence are you responsible
24 for?

25 A In this particular case, for the pictures

Willie Brown-cross by Mr. Barr

1 and the interview of the client.

2 Q For the interview? Let's just -- let me
3 do. Would you not agree that you found not one
4 piece of evidence forensic or otherwise?

5 A I don't know what they found.

6 MS. BARR: Judge, again, we would object.
7 That question has already been asked and already
8 answered.

9 THE COURT: Overruled.

10 MR. BARR: Court's indulgence, judge.

11 THE COURT: All right.

12 Q You were present at the time that the
13 statement was taken from Ronetta Miller on the 3rd
14 of November 2009; were you not?

15 A Yes.

16 Q There were two statements taken from her,
17 I believe. It may have been on that same day.
18 Were you there in taking both statements?

19 A I believe I was there on one of them.

20 Q On one of them.

21 A Yes, sir.

22 Q Let me see if I can refresh your memory.
23 You were present on that day, November 3rd 2009?

24 A That's correct.

25 Q You along with Deborah Collins and

Willie Brown-cross by Mr. Barr

1 investigator Wayne McFadden; is that correct?

2 A That's correct.

3 Q Now you were in this courtroom on
4 yesterday, or the day before yesterday. I can't
5 recall when it was, when Ms. Miller testified.
6 Ronetta Miller.

7 A That's correct.

8 Q Would it be fair to say that you arrested
9 Cornelius McClary? Did you arrest him?

10 A Yes, sir.

11 Q As a co-defendant in this case.

12 A That's correct.

13 Q You charged him with murder.

14 A That's correct.

15 Q First degree burglary.

16 A That's correct.

17 Q Possession of a weapon during a violent
18 crime.

19 A That's correct.

20 Q And criminal conspiracy.

21 A That's correct.

22 Q Now are you privy to the understanding
23 that has been made by the State of South Carolina
24 to the Solicitor's Office with Ms. Miller
25 concerning her testifying in this courtroom.

Willie Brown-cross by Mr. Barr

1 A Can you repeat the question.

2 Q Are you privy to the understanding that
3 they have reached as far as her testifying in this
4 case? Do you know about the agreement?

5 A No, sir.

6 Q You don't know anything about.

7 A Uh-uh. (Negative.)

8 Q How about with Ms. Jones?

9 A I don't know about any agreement; no, sir.

10 Q You know absolutely nothing of after kind
11 of plea agreement.

12 A No, sir.

13 Q Now, of course, ordinarily before any
14 kind of plea agreement is entered, the Solicitor's
15 Office usually consults the sheriff's department;
16 don't they?

17 A Yes.

18 Q But now you have been con -- you have not
19 consulted.

20 A I am not familiar with the plea agreement.

21 Q All right. Court's indulgence, judge.

22 THE COURT: Yes, sir.

23 Q Is there a senior crime investigator with
24 the Williamsburg County Sheriff's Department?

25 A Yes, sir.

Willie Brown-cross by Mr. Barr

1 Q So who is in charge of the investigation
2 unit? Criminal investigation unit?

3 A Deborah Collins.

4 Q Ms. Deborah Collins.

5 A Yes, sir.

6 Q Now you say, and I have just got a few
7 more questions. With respect to this inventory
8 that you were doing when you got Mr. Wallace's
9 vehicle.

10 MS. BARR: And, Judge, we would object.

11 THE COURT: The witness has testified that
12 he did not do it, Mr. Barr. So you can rephrase
13 you question or go to another topic.

14 MR. BARR: I will rephrase the question.

15 Q Do no know whether or not there is an
16 inventory in your case file concerning the
17 search -- seizure and search of Mr. Wallace's
18 vehicle?

19 A I am not aware of one; no, sir.

20 Q Thank you, sir. I have no further
21 questions at this time.

22 THE COURT: Redirect.

23 MS. BARR: Just a couple, Judge, if I may.

24 Redirect Examination by Ms. Barr:

25 Q Investigator Brown, I missed that part

Willie Brown-cross by Mr. Barr

1 when you were testifying about the crime scene
2 tape and why it was on the ground when it was
3 photographed. Can you kind of explain that again
4 to me?

5 A He was -- well he asked why was it down
6 there. And who had put it down. And I told him
7 that it could have been the officer's that left
8 the vehicle, you know, law enforcement vehicles
9 onto the scene. And that would explain the reason
10 why it was down.

11 Q I understand. I want to make sure I was
12 clear about that. Now another question, in terms
13 of your agencies protocol in preserving the crime
14 scene, photographing the crime scene and
15 collecting evidence, which order do you do that
16 in, in terms of your protocol?

17 A We preserve the crime scene first.

18 Q First. That's the first thing, to
19 preserve the crime. What is the second thing?

20 A It would goes where we kind of get a list
21 of any person that went inside or, you know,
22 tampered with evidence. May have tampered with
23 any evidence.

24 Q You said that you talked about trying to
25 find out who all had access to the crime scene.

Willie Brown-redirect by Ms. Barr

1 A That's correct.

2 Q You testified on cross examination that
3 the Complainant had obviously entered the house.

4 A That's correct.

5 Q And when you say Complainant, you're
6 talking about the victim's son, Mr. Prosser.

7 A That's correct.

8 Q You know he went in the house.

9 A Yes.

10 Q Because he's the one to call you.

11 A That's right.

12 Q Now after you all had access to the crime
13 scene, do you all photograph the crime scene as it
14 was that date?

15 A That's correct. And between that, you
16 know, take photographs. And then we call sled
17 about, you know, if they want to start processing;
18 as far as taking photographs. And if they
19 determined to call sled, then everybody back out
20 of the crime scene until sled gets there.

21 Q And after sled would have gotten here, the
22 photographs would have been taken?

23 A By sled, that's correct.

24 Q And then the evidence would have been
25 collected.

Willie Brown-redirect by Ms. Barr

1 A By sled.

2 Q By sled. And obviously you photograph the
3 scene before you collect the evidence.

4 A That's correct.

5 MS. BARR: That's all I have. Thank you.

6 THE COURT: Anything else, Mr. Barr?

7 Recross Examination by Mr. Barr:

8 Q Was the protocol followed in this case?

9 A Yes, sir.

10 Q Who executed it? Who was in charge of it?

11 A I believe it was Johnny Jenkins a senior
12 officer got on the scene.

13 Q Now you were not there to know what Johnny
14 Jenkins -- tell us the first what Johnny Jenkins
15 did when he got to the house.

16 A I wasn't there, sir.

17 Q You wasn't there. So you don't know what
18 Johnny Jenkins did; do you?

19 A No, I don't.

20 Q Did he tell you he collected some shoe
21 prints or determine what everybody's shoe size
22 was?

23 A No, sir, he didn't tell me.

24 Q But you know that as a result of reading
25 his, his incident report; don't you?

Willie Brown-recross by Mr. Barr

1 A That's correct. He did collect the shoe
2 size?

3 Q Now why did he do that?

4 A Just in case we found a footprint that
5 would compare them to shoe prints.

6 Q If they found footprints.

7 A Shoe prints.

8 Q If who found shoe prints?

9 A A law enforcement officer.

10 Q What law enforcement officer?

11 A The officer that got on the scene.

12 Q Sled.

13 A Sled, the law enforcement officer. If
14 there was any evidence of certain types of shoe
15 prints or anything, they would be able to compare
16 to the shoe size or the type of shoe that either
17 the officers or EMS would have been wearing.

18 Q Now of course, were you in the courtroom
19 today when Mr. Kenley testified from sled?

20 A No, sir.

21 Q About the shoe prints?

22 A I wasn't.

23 Q You wasn't here.

24 A No, sir.

25 MR. BARR: That's all.

Willie Brown-recross by Mr. Barr

1 THE COURT: Excuse him?

2 MR. BARR: No, sir, I said thank you.

3 THE COURT: You may step down. Let me
4 see the lawyers up here just a moment.

5 (Whereupon, the attorneys approach and
6 confer with judge.)

7 THE COURT: Ladies and gentlemen of the
8 jury, we are going to break until tomorrow morning
9 at 9:30. I will remind you again, that you are
10 not permitted to discuss the case with anyone.
11 You can't undertake to do any type of information
12 gathering of your own of any kind. I know you
13 will follow that instruction. I look forward to
14 seeing you tomorrow morning at 9:30.

15 (Whereupon, the jury is dismissed at 3:15 p.m.)

16 THE COURT: I will see you tomorrow at 9:30.

17 (Whereupon, the trial commences at 9:30
18 a.m. on Thursday, May 19th, 2011.)

19 MS. BARR: Judge, while we are waiting to
20 come in, we have additional exhibits that the
21 Defendant has stipulated. They are 117 through
22 122, photographs.

23 (Photographs 117-122 marked for evidence.)

24 (Whereupon, the following takes place
25 within the presence of the jury.)

Willie Brown-recross by Mr. Barr

1 THE COURT: Ms. Barr, you may call the
2 State's next witness.

3 MS. BARR: Thank you, Your Honor. We
4 would call Lieutenant Jeff Scott.

5 Lieutenant Jeff Scott, being
6 first duly sworn, testified as follows:

7 Direct Examination by Ms. Barr:

8 Q Sir, let me get you to State your full
9 name for the record.

10 A It's Lieutenant Jeffrey F. Scott.

11 Q And if you will, tell the ladies and
12 gentlemen of the jury, I see you have your uniform
13 on. But just tell us where you work, and what it
14 is that you do for a living.

15 A I work for the Williamsburg County
16 Sheriff's Office, and I process crime scenes. I
17 am the evidence custodian and I do training for
18 the department.

19 Q Sir, how long have worked with the
20 sheriff's office?

21 A Since 1999.

22 Q And you are a certified police officer?

23 A Yes, I am.

24 Q And have gone through the criminal justice
25 academy in Columbia?

Lieutenant Scott-direct by Ms. Barr

1 A That is correct.

2 Q Now, sir, as a member of the sheriff's
3 office, did you participate in the investigation
4 of the murder of Ernest Prosser?

5 A Not the initial investigation.

6 Q Yes, sir.

7 A But as far as evidence keeping yes, that
8 part I did.

9 Q It's your job to maintain the chain of
10 custody as relates to evidence in the case?

11 A That is correct.

12 Q All of this, these exhibits that we have,
13 we admitted on yesterday concerning the gun and
14 the DNA swabs and the shoes and all that. It's
15 your job to preserve that and keep it until
16 trial.

17 A That is correct.

18 Q So after those series of exhibits were
19 analyzed by sled, you would have maintained them
20 at the Sheriff's Department.

21 A That is correct.

22 Q And with the exception of taking those
23 items out this week for trial, would anyone else
24 have had access to those items after they came
25 back from sled?

Lieutenant Scott-direct by Ms. Barr

1 A No.

2 Q Now you heard, well let me ask you this
3 way. You were in court when investigator Willie
4 Brown testified on yesterday.

5 A Yes.

6 Q And did you hear when he talked about you
7 all going to Lake City and getting in the
8 defendant's vehicle?

9 A Yes.

10 Q I am going to now hand you what has been
11 admitted as State's Exhibits No. 117 and 122. ask
12 and if you recognize what is depicted in those
13 photographs.

14 A Yes, I do.

15 Q Tell us what is depicted in there.

16 A In each one of the photographs is depicted
17 a gray in color.

18 Q You are losing your voice, I'm sorry.

19 A Oh, gray in color. With a red top, four
20 door. It looks to be a Mercury style car.
21 Mercury. Probably basically a Ford product.

22 Q Now if you will, let me get you to step
23 off the witness stand, Mr. Scott. Come here with
24 the photographs please, sir.

25 (Whereupon, the witness steps off the

Lieutenant Scott-direct by Ms. Barr

1 witness stand.)

2 Q And if you would make sure to stand to the
3 side for me. These photographs were taken of the
4 vehicle when the vehicle was where?

5 A At the Williamsburg County Sheriff's
6 Office at the holding yard right behind the
7 detention center.

8 Q Is that like the impound?

9 A Yes.

10 Q Let me make sure I keep them in numerical
11 order. Okay. I am going to publish State's
12 Exhibit No. 17.

13 THE COURT: 117.

14 Q 117, I am sorry. Tell us what is depicted
15 on that exhibit.

16 A This is, if you looking at the left side,
17 or the driver's side of a gray in color, four door
18 Mercury vehicle with a red, it looks like a cloth
19 top.

20 Q Okay. I am going to publish State's 118.
21 Tell us about please, sir.

22 A This is going to the passenger side of the
23 vehicle in question with the red top. And I am
24 also in the photograph.

25 Q Yes, sir. Tell us about 119.

Lieutenant Scott-direct by Ms. Barr

1 A This another driver's side shot of the
2 same vehicle, gray in color, four door Mercury,
3 with a burgundy top.

4 Q With tell us about 120.

5 A And this is the same driver's side view.
6 It's just a closer up view of the driver's side
7 front and rear door and the back side of the car
8 with the red top. So a little bit better view of
9 the red top.

10 Q How do we know from this photograph that
11 the pictures were taken while the vehicle was
12 impounded? Is there anything in your photograph
13 that suggests that to us?

14 A The fencing, the high fencing with the
15 razor rim, that's at the detention center to try
16 to keep people from escaping over the fence.

17 Q Tell us about 121.

18 A And it's another shot to that driver's
19 side. It's just another shot showing the driver's
20 front, rear door on the rear part.

21 Q Tell us about 122.

22 A This is a shot of the rear of the car near
23 the trunk lid just showing the license plate,
24 which is one of those 45 day paper type plates
25 that they would get from like a dealership. If

Lieutenant Scott-direct by Ms. Barr

1 they buy a car from the dealership, the dealership
2 will write down a vin number and a 45-day plate
3 until they can get their plates from DMV.

4 Q And that's a temporary tag.

5 A Temporary tag.

6 Q There has been testimony that sled
7 assisted your agency in this particular
8 investigation. Would they have been a part of
9 collecting any material or any evidence from the
10 vehicle as well?

11 A They were assisting and collecting
12 evidence from the crime scene and other things.

13 Q Now did you see anything on the vehicle
14 that day that was of interest to you, that you
15 thought, at least, initially that may have been
16 related to the crime scene?

17 A It was brought to my attention by
18 Investigator McFadden that there was possibly some
19 kind of stain on the front side of the quarter
20 panel, the driver side that could have been
21 possibly blood.

22 Q Was it on the interior of the vehicle or
23 the exterior of the vehicle?

24 A No, it was the exterior of the vehicle.

25 Q Yes, sir.

Lieutenant Scott-direct by Ms. Barr

1 A And what we did was, we went in and did a
2 presumptive test using phenolphthalein.

3 Q Tell me -- first of all, tell me what a
4 presumptive test is.

5 A A presumptive test we usually use a
6 chemical; such as, phenolphthalein.

7 MR. BARR: Your Honor, can we approach to
8 bench?

9 THE COURT: Yes, sir.

10 (Attorneys approach the bench and confer
11 with judge.)

12 Q Please proceed, Lieutenant Scott. Can you
13 tell us what the presumptive test is?

14 A A presumptive test is basically use of a
15 chemical; such as, phenolphthalein or toluylene.
16 Basically what these chemicals do is they are
17 mixture. If you take a sample; such as,
18 something you think is blood, you can use
19 phenolphthalein on it. And then you put drops of
20 chemical; such as, alcohol, hydrogen peroxide and
21 phenol. You mix those two together on the
22 substance, and if it's blood, they will turn it
23 pink. A bright pink color, which will be a
24 presumptive test for blood. It doesn't say what
25 type of blood. It just presumptively says it's

Lieutenant Scott-direct by Ms. Barr

1 positive for some type of blood sample.

2 Q Okay.

3 A Same thing with toluylene it's more
4 specific, but it will turn blood a bluish color.

5 Q Okay.

6 A And it looks for human related blood.

7 Q I understand.

8 A In this instance, they advised us of a
9 possible stain. So we take a sample of it, and
10 use phenolphthalein. And it did not show up any
11 indication of any color, so it would be a
12 negative presumptive test.

13 Q So you saw something or you were informed
14 that something may be blood and did a presumptive
15 test to determine if it was blood.

16 A That's right.

17 Q And you determined after the test that it
18 was not blood.

19 A And it was not. And it gave a negative
20 for any type of blood.

21 Q I am now going to hand you, let me make
22 sure I have got my Exhibit Nos. correct. Hand you
23 what has been previously admitted as State's
24 Exhibit No. 89, and ask if you recognize that.

25 A Yes, I do.

Lieutenant Scott-direct by Ms. Barr

1 Q Tell the jury how it is that you recognize
2 it.

3 A This is an AT & T cell phone that was
4 introduced yesterday by crime scene investigator
5 Carl Kenley.

6 Q Yes, sir.

7 A It is one of the exhibits that had been
8 collected from this crime scene.

9 Q This is the cell phone belonging to the
10 victim, Ernest Prosser?

11 A That is correct.

12 Q Now Lieutenant Scott, you were in court
13 yesterday. I'm getting the dates mixed up now, or
14 on Tuesday when Ronetta Miller testified.

15 A Yes.

16 Q Did you hear her testimony regarding the
17 victim's stating her name into his cell phone?

18 A Yes, I did.

19 Q And some discussion about between her and
20 him as to why he did that? Do you remember that
21 testimony?

22 A Yes. Yes, I did.

23 Q Now have you prior to today, been able to
24 confirm whether or not her name was actually
25 placed into that cell phone?

Lieutenant Scott-direct by Ms. Barr

1 A At the request -- well I haven't had any
2. access to it, because it was sealed. But at the
3 request of yourself, we were able to access that
4 there was---

5 MR. BARR: Your Honor.

6 THE COURT: Yes, sir.

7 MR. BARR: Object at this time. If this
8 is the result of any test examination performed on
9 the cell phone, we requested that information on
10 discovery. I have not been provided any test
11 results conducted by this officer concerning the
12 cell phone, and we would object to his testimony
13 being admitted.

14 THE COURT: Ask the witness if he did any
15 test. Or just first of all, don't ask him what he
16 found, but ask him what he did.

17 MS. BARR: He didn't do any test, Judge.

18 THE COURT: Just ask him that.

19 Q Sir, did you -- well first of all, you
20 indicated that up until this week, that phone was
21 in a sealed package from sled?

22 A That is correct.

23 Q And at my request, did you open the
24 package this week?

25 A That's correct.

Lieutenant Scott-direct by Ms. Barr

1 Q For the purpose of trial.

2 A That is correct.

3 Q Now in terms of the examination of the
4 phone, did you do any scientific testing on the
5 phone.

6 A No, no scientific test.

7 Q What did you do at my request this week
8 for court?

9 A All we were asked to do is just power up
10 the phone and make sure it was---

11 Q Charge it.

12 A Make sure it was working and charged.

13 Q Yes, sir.

14 A And just check to make sure it was in
15 working order.

16 Q And one, did you charge up the phone?

17 A Yes.

18 Q Did you determine that it was working
19 correctly?

20 A That is correct.

21 Q At my request were you -- well first of
22 all, were you able to access the phone in terms of
23 determining who placed calls and received calls on
24 that particular phone?

25 A Yes.

Lieutenant Scott-direct by Ms. Barr

1 Q And you didn't need a scientific test to
2 do that; did you?

3 A No.

4 Q At my request, did you see whether or not
5 there were any placed calls from Mr. Prosser's
6 phone to anybody that may be associated with
7 Ronetta Miller?

8 A That is correct, yes.

9 Q Would you open it up for me, please. That
10 is a flip phone; is that correct?

11 A That is correct. It is an LG flip phone
12 from AT & T.

13 Q Let me do this, I will switch places. And
14 when you did that, did you simply look through the
15 call history?

16 A Yes. I just go right through the call
17 history, and it's very simple to do.

18 THE COURT: Just keep your voice up.

19 A I just basically went through the call
20 history; yes, sir.

21 Q I am going to ask you to put it on a
22 projector screen so that everyone can see it,
23 please. That indicates that a dial call was
24 placed from the victim's phone on when?

25 A October 22nd.

Lieutenant Scott-direct by Ms. Barr

1 Q Hit the screen again? At what time?

2 A Well it has 0 hours. But it's 0 seconds
3 but it's at 9 p.m.

4 Q And it indicates who as the person the
5 call was placed to in terms of the name identified
6 in the phone?

7 A It says Netta.

8 Q N-E-T-T-A?

9 A N-E-T-T-A.

10 Q And what number? What number was called?

11 A (843)372-9548.

12 Q Sir, I want you to pick the phone back up,
13 please. And would you please look in the call
14 history to determine whether or not there were any
15 received calls to that phone on that night of
16 October 27th?

17 A You want to look?

18 Q And if you will, if you need to, if you
19 will just go through the received calls at this
20 point; yes, sir. Let me ask you this, while you
21 were searching through the call history on today
22 and you opened the phone this week to open the
23 package containing the phone this week in
24 anticipation of trial, you didn't delete any
25 calls; did you?

Lieutenant Scott-direct by Ms. Barr

1 A No.

2 Q You didn't delete any incoming or outgoing
3 calls or anything from the phone.

4 A No.

5 Q In terms of received calls from somebody
6 identified as Netta, does the phone reflect that
7 there are any, when was that received call? I am
8 sorry. And I know the screen goes out relatively
9 quickly. When was the call received?

10 A It has two indications. The first very
11 one, is October 27th.

12 Q What was the telephone number that the
13 received call came from?

14 A (845)372-9548.

15 Q What time was the call received?

16 A One was at on October 27th, 8:55 p.m. And
17 it was received for 35 seconds.

18 Q The call lasted 35 seconds.

19 A Yes.

20 Q Any other received calls that you could
21 indicate from the screen or the phone?

22 A There was one received on October 27th at
23 8:51 p.m. And this one lasted 38 seconds.

24 Q Now if you would, I should have asked you
25 this earlier. Can you tell us based on the call

Lieutenant Scott-direct by Ms. Barr

1 history, whether there were any other dialed calls
2 using Mr. Prosser's phone to that 372-9548 number
3 that night?

4 A Yes.

5 Q Yes, sir.

6 A There was a second call that was made on
7 October 27th at 9:15 p.m.

8 Q And again we are talking about the dial
9 call history.

10 A That's right, dial call history.

11 Q The person called was Netta. The
12 telephone number again.

13 A (843)372-9548.

14 Q That call was 9:15 p.m.?

15 A That's right. And it lasted 46 seconds.

16 Q It looks like there were two calls made
17 using that cell phone to the voice mail?

18 A Yes.

19 Q The last call was November 1st. Which was
20 a Sunday at 1:05 p.m.

21 A P.M.

22 Q Another call to the voice mail was made,
23 on November 1st, Sunday, at 12:08 p.m.

24 A That's correct.

25 Q Now in terms of who would have had access

Lieutenant Scott-direct by Ms. Barr

1 to that phone at the time those voice mail calls
2 were made, whose possession, custody and control
3 would that phone have been in?

4 A Those would have been in sled's control.

5 Q So if you all have access to a cell phone,
6 and you are investigating a homicide or any other
7 serious crimes, would you as a law enforcement
8 officer, dial the voice mail to see if there were
9 any messages that may relate to a crime?

10 A Yes. There that would be something we
11 would do to see if anything was left.

12 Q Okay.

13 A Or anybody had called and left a message
14 that the person didn't receive.

15 Q Okay. And so I just want to be clear in
16 terms of the those dialed numbers. It wasn't like
17 one of the family members or somebody else had
18 access to that phone.

19 A No.

20 Q That would have been law enforcement.

21 A This was collected at the crime scene, and
22 it was in my possession the whole time.

23 Q Lieutenant Scott, I think that's all the
24 questions I have for you. Thank you.

25 Cross Examination by Mr. Barr:

Lieutenant Scott-direct by Ms. Barr

1 Q Mr. Scott, are you familiar with the
2 telephone records? The telephone?

3 A No, sir.

4 Q You are not familiar with the telephone
5 records?

6 A Not with the phone records; no, sir.

7 Q You are just familiar with what you have
8 been able to pull up on the telephone since you
9 had it.

10 A Yes, sir. I am not familiar with the
11 phone records, and I have not had any control over
12 the phone records.

13 Q Well now as I understand what you just
14 testified to from October 27th of 2009, or from
15 the time you all found this phone, it was in
16 sled's possession.

17 A That is correct.

18 Q Now based on what you just demonstrated
19 for us on the telephone, two calls going out. The
20 last two phone calls going out of Mr. Prosser's
21 telephone went to Netta?

22 A That is correct.

23 Q The last two.

24 A There was two that came -- that were from
25 Netta on the phone.

Lieutenant Scott-cross by Mr. Barr

1 Q There was several that came from Netta.
2 Are you saying that there is only two phone calls
3 that came from Netta?

4 A There is just showing two -- a couple on
5 the dial history. Just on that dial history
6 monitor.

7 MR. BARR: Court's indulgence, Your Honor.

8 THE COURT: Yes, sir.

9 Q State's Exhibit No. 71, the phone records
10 for Mr. Prosser's telephone. Now take a look at
11 that, and tell me whether or not that phone record
12 accurately describes what you just showed the
13 jury, as far as the last telephone call either in
14 or out from Mr. Prosser's telephone.

15 A It has got the same phone number and the
16 same dates.

17 Q The same phone.

18 A Yes. It says incoming. And even has a
19 call waiting for the same date.

20 Q Uh-huh. (Affirmative.) And then it has
21 where it says calls from Kingstree on the same
22 date.

23 Q Of course that's the phone record that the
24 Sheriff's Department and that the Solicitor's
25 Office has provided me as a record of the phone

Lieutenant Scott-cross by Mr. Barr

1 calls from Mr. Prosser's telephone.

2 A Yes.

3 Q Two calls out. The last two phone calls
4 from that telephone one at 9:16, and the other
5 9:18. I think you testified---

6 A 9:08.

7 Q I am sorry, 9:08.

8 A Yes, sir.

9 Q 16 seconds or 8 seconds apart. Eight
10 seconds apart. And you said that the first one
11 lasts---

12 MS. BARR: Judge---

13 Q An earlier call would be the 9:08 call?

14 MS. BARR: Judge, and it is not
15 intentional I am sure. When he said 8 seconds, I
16 think it is 8 minutes.

17 MR. BARR: IT would have to be 8 seconds.

18 THE COURT: I am not going to get in the
19 middle of that.

20 Q What is the time on the call?

21 A It's on the first one that you are talked
22 about.

23 Q Yes, sir.

24 A It would 9:00 o'clock, 9:08 p.m. And then
25 the second would be 9:16 p.m. That would be

Lieutenant Scott-cross by Mr. Barr

1 about an 8 minute lapse between the two calls.

2 Q Between the two calls.

3 A Yes. There is a lapse.

4 Q 8-minute lapse.

5 A Yes.

6 Q And those calls were made to who?

7 A On the phone it has Netta.

8 Q Netta?

9 A Netta. N-E-T-T-A.

10 Q Now of course you don't think, in terms of
11 you looking at the telephone of Mr. Prosser was
12 calling himself; he was calling Netta.

13 A He was calling, the number says Netta.
14 That's the call it's going to.

15 Q And incoming calls came from Netta.

16 A Yes.

17 Q The ones from Mr. Wallace's telephone came
18 from Netta. He's got it marked on the telephone.

19 A It has Netta.

20 Q Now you indicated that you did some type
21 of chemical test on a spot that you found on
22 Mr. Wallace's vehicle.

23 A Yes.

24 Q And you said that somebody told you that
25 the spot was on his vehicle.

Lieutenant Scott-cross by Mr. Barr

1 A I was advised by investigator McFadden
2 that there was some type of possible stain on the
3 vehicle in the location where it was at.

4 Q By Wayne McFadden.

5 A Yes, sir.

6 Q Now were you present when Mr. Wallace's
7 vehicle was collected from him?

8 A Not when it was towed. It was already in
9 the impound.

10 Q So you don't know how it got to the
11 impound.

12 A No.

13 Q Now you are familiar with the impound
14 process that's used by the Sheriff's Department?

15 A Yes.

16 Q Based on your knowledge of that process,
17 ordinarily when a vehicle is impounded, is it done
18 with the consent of the owner or without the
19 consent of the owner?

20 A It can be towed if it's in relations to --
21 if the investigator wants it towed. I don't know
22 about -- it's something you ask the investigator
23 the reason behind it being towed.

24 Q But usually it's from somebody driving the
25 vehicle; they are charged with some kind of

Lieutenant Scott-cross by Mr. Barr

1 traffic offense or with any kind of offense and
2 they are driving the vehicle, and you don't want
3 to leave the vehicle on the road, so it is towed
4 and impounded.

5 A Yes.

6 Q Now if you don't know where Mr. Wallace's
7 vehicle was taken from; do you?

8 A No. No, sir.

9 Q Ain't nobody told you he was driving it.

10 A No.

11 Q Did Mr. Wallace at any time show up and
12 tell you that, look you can't do any tests on my
13 vehicle?

14 A He was not present.

15 Q Wasn't present.

16 A No, sir.

17 Q Now aside from the taking of the vehicle
18 from Mr. Wallace, you do agree that however it was
19 taken from him, when it was at the sheriff's
20 department, it was your job to collect evidence
21 from him. That's what you had it for.

22 A If I was requested to.

23 Q Well let me ask you something. When you
24 first got on the witness stand, and Ms. Barr asked
25 you what your job title was, and what you do, did

Lieutenant Scott-cross by Mr. Barr

1 you not say something about being a crime scene
2 investigator?

3 A Yes, sir.

4 Q Crime scene investigator.

5 A Yes, sir.

6 Q Now does that include also investigating
7 or attempting to collect evidence of the crime
8 from the vehicle that you've got impounded at the
9 sheriff's department?

10 A If I am requested to.

11 Q If you requested to.

12 A Yes, sir.

13 Q Now Mr. Wallace's vehicle, irrelevant of
14 how you got it, shows up at the sheriff's
15 department, and you do a test on it. Now you do
16 admit that you were doing those tests to try and
17 determine whether or not that vehicle was in any
18 way connected or at least what you thought could
19 have possibly been blood. And you did that test
20 in connection with Mr. Prosser's case.

21 A I was asked to check a spot on the car in
22 reference to a case; yes.

23 Q Nobody told you what case it was?

24 A I didn't really know what case it was.

25 They just asked me to come and check it. Check

Lieutenant Scott-cross by Mr. Barr

1 this spot.

2 Q Now, Officer Scott, are you telling us you
3 had the man's vehicle impounded, and you were
4 doing tests on the vehicle. And you had no idea
5 whose case you were doing the test in connection
6 with?

7 A It was Investigator's McFadden's case. He
8 asked me to come and look at any spot he thought
9 could possibly be blood.

10 Q And that's all you did?

11 A Yes, sir.

12 Q You didn't go inside of the vehicle?

13 A No.

14 Q You didn't vacuum the interior of the
15 vehicle?

16 A No.

17 Q You didn't check the vehicle for fiber, or
18 blood stains inside the car, or anything that
19 could potentially be considered evidence of a
20 crime that you could send to the sled lab and have
21 it analyzed? You didn't do any of that?

22 A Not inside the vehicle, no.

23 Q So now if Officer McFadden is the one that
24 told you to check the spots, Officer Collins is
25 the person that is in charge of this

Lieutenant Scott-cross by Mr. Barr

1 investigation; is that right?

2 A She is head over investigations; yes.

3 Q Well who is in charge of? It seems like
4 Mr. Wayne McFadden? Where is Wayne McFadden?

5 A I don't know.

6 Q You don't know?

7 A No, sir.

8 Q Are you telling the ladies and gentlemen
9 of this jury that with respect to the impounding
10 and the inspection of this vehicle, in connection
11 with collecting evidence, Wayne McFadden is the
12 person that was responsible for that.

13 A Yes.

14 Q And you don't know where Wayne McFadden
15 is?

16 A No, sir.

17 Q Have you seen him this week?

18 A No.

19 Q Did you look at the witness list in this
20 case?

21 A No.

22 Q Do you know if your name is on the witness
23 list?

24 A I haven't looked at the witness list.

25 Q Is your name on there?

Lieutenant Scott-cross by Mr. Barr

1 A Yes.

2 Q Wayne's name on there?

3 A I don't see it.

4 Q And as far as what you did with the car,
5 of course, you now know that the car figures in
6 pretty, I mean, it's an integral part of this
7 investigation. But as far as examining that car,
8 and Wayne McFadden is in charge of all of that.
9 And whatever knowledge could have been gained, or
10 was not gained or whatever, Wayne McFadden is
11 responsible for that and nobody knows where he is.

12 A That is correct.

13 MR. BARR: Thank you, sir. I have nothing
14 further.

15 THE COURT: Redirect?

16 MS. BARR: No, sir.

17 THE COURT: You can step down. Next
18 witness. Everybody on the jury okay?

19 MS. BARR: Tiffany Jones.

20 TIFFANY JONES, after being duly sworn,
21 testified as follows:

22 Direct Examination by Ms. Barr:

23 Q Ms. Jones, State your full name for the
24 record.

25 A Tiffany Laron Jones.

Lieutenant Scott-cross by Mr. Barr

1 Q And I need to make sure that you speak up
2 nice and clear so we can hear you. I need to hear
3 you back here, and the jury needs to hear you.

4 Okay.

5 A Tiffany Laron Jones.

6 Q How old are you?

7 A 24.

8 Q And you live here in Williamsburg County?

9 A Yes, ma'am.

10 Q And have you lived here all your life?

11 A Yes, ma'am.

12 Q Who lives in the household with you?

13 A My mother, my two kids, and my little
14 brother.

15 Q You have two children?

16 A Yes.

17 Q How old?

18 A I have three.

19 Q Three, I'm sorry. How old are they?

20 A The oldest is 6. And my twins are 14
21 months.

22 Q Did you finish high school?

23 A No, ma'am.

24 Q What grade did you stop going to high
25 school in?

Lieutenant Scott-cross by Mr. Barr

- 1 A The 9th.
- 2 Q You know your co-defendant Ronetta Miller?
- 3 A Yes, ma'am.
- 4 Q How long have you known her?
- 5 A A little over 11 months.
- 6 Q You all, around the time that Mr. Prosser
- 7 was killed, you all had a romantic relationship?
- 8 A Yes, ma'am.
- 9 Q How long did that relationship last?
- 10 A About 11 months.
- 11 Q What was the last time you spoke to her?
- 12 A Prior to this?
- 13 Q As of from the day you are sitting in this
- 14 court right now, when was the last time you spoke
- 15 to her from today's date?
- 16 A Probably the second week in April of this
- 17 year.
- 18 Q What about before then? When was the last
- 19 time before then?
- 20 A I can't recall.
- 21 Q Was it this year?
- 22 A No, ma'am.
- 23 Q So you talked to her once at the most, in
- 24 the last 6 months?
- 25 A Yes, ma'am.

Lieutenant Scott-cross by Mr. Barr

1 Q Now your other co-defendant Cornelius
2 McClary, how long have you known him?

3 A Basically all my life.

4 Q Are you related to him or you just known
5 him from the neighborhood?

6 A Just knowing him from the neighborhood.

7 Q Is he about the same age as you or a
8 little older?

9 A A little older.

10 Q Now do you call him Cornelius, or do you
11 have a nickname?

12 A We call him Trell.

13 Q You call him Trell?

14 A Yes, ma'am.

15 Q What about this Defendant, Andre Wallace,
16 do you know him?

17 A I know of him.

18 Q How long have you known him?

19 A Prior to this incident about maybe a
20 month.

21 Q Now, Ms. Jones, on Tuesday morning, you
22 entered a guilty plea criminal conspiracy; is that
23 correct?

24 A Yes, ma'am.

25 Q You also entered a guilty plea to

Lieutenant Scott-cross by Mr. Barr

1 burglary; is that right?

2 A Yes, ma'am.

3 Q You were represented by an attorney at
4 that time? You had a lawyer?

5 A Yes.

6 Q His name is Mr. Shaun Kent?

7 A Yes, ma'am.

8 Q Now you have not been sentenced in
9 connection with that case yet?

10 A No, ma'am, I have not.

11 Q Now both the burglary conviction and the
12 criminal conspiracy conviction concern the
13 incident that resulted in the death of Ernest
14 Prosser; is that right?

15 A Yes, ma'am.

16 Q And you understand that at some point you
17 will be sentenced either by this judge or some
18 other judge?

19 A Yes, ma'am.

20 Q And you understand that as a result of
21 your guilty pleas, you are going to prison.

22 A Yes, ma'am.

23 Q Is there any question in your mind that
24 you are going to prison?

25 A Yes, ma'am.

Lieutenant Scott-cross by Mr. Barr

1 Q You understand that are going to prison
2 for many, many years.

3 A Yes.

4 Q Any question in your mind about that
5 likelihood?

6 A No, ma'am.

7 Q You knew Mr. Prosser personally?

8 A Yes, ma'am.

9 Q How long have you known him before the
10 time he got killed?

11 A I have known him off and on for years.
12 But, as far as friendship, it was a little over a
13 year.

14 Q So he was a fiend of yours?

15 A Yes.

16 Q Now you indicated you had known the
17 Defendant prior to the death of Mr. Prosser for
18 about a month.

19 A Yes.

20 Q What -- I mean how would you all associate
21 with each other?

22 A Like we basically talk about anything
23 like.

24 Q Make sure now you speak up, Ms. Jones.

25 A He was like a real definition of a friend.

Lieutenant Scott-cross by Mr. Barr

- 1 Q Mr. Prosser?
- 2 A Yes.
- 3 Q He was a real definition of a friend.
- 4 A Yes.
- 5 Q Were there times when he helped you out?
- 6 A Yes.
- 7 Q Times when he gave you money when you
8 needed it?
- 9 A Yes.
- 10 Q Did he give you a place to stay sometimes
11 when you needed it?
- 12 A Yes.
- 13 Q Now prior to his death, you had spent the
14 night at his home?
- 15 A Not that exact night.
- 16 Q I mean at any point and time before he got
17 killed?
- 18 A Yes, I did.
- 19 Q You -- were you aware that he had several
20 firearms?
- 21 A Yes.
- 22 Q He was a hunter?
- 23 A Yes, he was.
- 24 Q What type of firearms did he have?
- 25 A I am not familiar with them, but he had

Lieutenant Scott-cross by Mr. Barr

1 several.

2 Q Now do you know anything about guns?

3 A No, ma'am.

4 Q Do you know the difference between a rifle
5 and shotgun?

6 A Yes.

7 Q Now did Mr. Prosser have hunting firearms
8 like rifles or shotguns or whatever in his house?

9 A Yes. Some of them were inside a case.

10 Q Inside of a gun case. Did he have any
11 handguns?

12 A Yes, he did.

13 Q How many handguns did he have?

14 A Quite a few.

15 Q When was the last time you were in his
16 house? You were in his house before the night of
17 the shooting?

18 A Probably about 2 or 3 months before.

19 Q You indicated that you had spent the night
20 in his home on several occasions before he was
21 killed; is that right?

22 A Yes, ma'am.

23 Q Now did Mr. Prosser have a -- has had some
24 type of alarm system or some type of coding system
25 to allow somebody to gain entrance into his home?

Lieutenant Scott-cross by Mr. Barr

1 A Yes, he did.

2 Q Now in the times that you have been to his
3 home, had you ever gone through the front door?

4 A Never.

5 Q How would you get inside the house?

6 A I would have to go through the back door.

7 Q Did you ever see him go in the front or
8 out the front door?

9 A I never.

10 Q And did he trust you to give you his pass
11 code?

12 A Yes, he did.

13 Q Do you remember the pass code number?

14 A Yes, I do.

15 Q How is it that you are able to remember
16 the number?

17 A It's the same year I was born in.

18 Q Had you ever before the night of the
19 shooting, used the pass code to get inside the
20 house?

21 A Only with him.

22 Q Ma'am?

23 A Only with him.

24 Q Now you said you spent the night at his
25 house. Did you ever spend the night at his house

Lieutenant Scott-cross by Mr. Barr

1 with Ronetta?

2 A Yes, I have.

3 Q As far you know, had she ever gone to his
4 house without you being there with her?

5 A I have no idea.

6 Q Ms. Jones, you understand why you are here
7 today.

8 A Yes, ma'am.

9 Q You pled guilty to criminal conspiracy.
10 Tell me about the plan, the planning of the
11 robbery---

12 MR. BARR: Objection to leading, Your
13 Honor?

14 THE COURT: Overruled.

15 Q Tell us about the plan and the planning of
16 the robbery of Mr. Prosser. When did it first
17 start? When were there first talk about it?

18 A Several days before the incident occurred.

19 Q Several days before. Tell us about it.

20 A Well the plan was actually for him not to
21 be in the house. And it didn't turn out that way.

22 Q Now when you say the plan actually was for
23 him not to be in the house.

24 A Correct.

25 Q Tell the jury who was a part of that plan

Lieutenant Scott-cross by Mr. Barr

1 and those conversations?

2 A It was myself.

3 Q Okay.

4 A Andre Wallace.

5 Q This Defendant.

6 A Yes.

7 Q Who else?

8 A Cornelius McClary.

9 Q Okay.

10 A And Ronetta Miller.

11 Q Okay. Now you're saying the plan was not
12 to be in the house. Tell me the specifics of the
13 plan. The initial plan. What were you all going
14 to do, and what were you all looking for?

15 A The plan was to go in his house just to
16 receive some guns.

17 Q Say it again?

18 A The plan was to go in the house to receive
19 the weapons.

20 Q To receive the weapons.

21 A Yes, the guns. The firearms.

22 Q To steal his guns.

23 A Yes.

24 Q What we you all going to do with the guns?

25 A Keep them. Maybe sell them.

Lieutenant Scott-cross by Mr. Barr

1 Q Okay. Now were you using drugs during
2 this time?

3 A Marijuana; yes, I was.

4 Q What about Ms. Miller? Was she using
5 drugs at this time too?

6 A At this time, we as, and my other three
7 co-defendants, we were all smoking marijuana.

8 Q Now, Ms. Jones, at the time Mr. Prosser
9 was killed you were actually pregnant; right?

10 A Correct.

11 Q You were carrying twins.

12 A Yes.

13 Q Ronetta had just given birth to a baby a
14 month earlier.

15 A Yes.

16 Q She was smoking marijuana as well.

17 A Yes.

18 Q Now you indicated that the plan was to go
19 in the house initially when Mr. Prosser was not
20 there. How did you all know when he would be at
21 the house and when he wouldn't be at the house?

22 A The plan was get Ronetta Miller to get him
23 away from the house---

24 Q Okay.

25 A ---so we could go in.

Lieutenant Scott-cross by Mr. Barr

1 Q You all, you said you started talking
2 about it a couple of days before he was actually
3 killed; right?

4 A Yes.

5 Q Were there ever any attempts by you,
6 Mr. Wallace, Ms. Miller and Mr. McClary to go to
7 his house the day before or two days before he got
8 killed?

9 A It wasn't actually like a plan we made.
10 We didn't like say what day it was going to be.

11 Q Okay. You all were just talking about it.

12 A Yes.

13 Q Tell us about the day it happened on the
14 27th of October 2009. When did you meet up with
15 these folks?

16 A We met up, I would say a little before
17 eight.

18 Q 8 p.m?

19 A 8:00 p.m.

20 Q When you say we met up, who are the we
21 that you are talking about?

22 A Me, Andre Wallace, Cornelius McClary and
23 Ronetta Miller.

24 Q Where did you all meet at?

25 A We met at Ronetta's house.

Lieutenant Scott-cross by Mr. Barr

1 Q Who got there first?

2 A Well at first, I went there for -- I went
3 to Ronetta's house for her, and she was not home.

4 Q Okay.

5 A So I went over to the next project.

6 Q You went over to where?

7 A To the next projects.

8 Q Okay.

9 A To the complex; to a friend's house. And
10 on this day, I had my brother, my little brother
11 with me.

12 Q Okay. What happened next?

13 A Well Ronetta came by, and my daughter and
14 my brother went with her. They went across the
15 street to a bank. And that's when Andre Wallace
16 and Cornelius McClary came up the road and stopped
17 me. And they wanted to smoke or whatever, so
18 that's what we decided to do.

19 Q You said Andre Wallace and Cornelius
20 McClary came up to where you all were.

21 A Correct.

22 Q How did they get there?

23 A In Andre's car.

24 Q When we talk about Andre's car, publishing
25 State's Exhibit 117, is that the vehicle that he

Lieutenant Scott-cross by Mr. Barr

1 was driving at the time? Can you see that from
2 where you are?

3 A Yes, ma'am.

4 Q Let me show it to up close. Is that the
5 vehicle he was driving at the time?

6 A Yes, ma'am.

7 Q Cornelius was in what position when
8 Mr. Wallace came to where you and Ronetta were?

9 A What was that?

10 Q Where was he seated inside the car when he
11 and Mr. Wallace came to where you and Ronetta
12 were?

13 A Which one?

14 Q Cornelius McClary.

15 A He was on the passenger side.

16 Q In the front?

17 A In the front.

18 Q Tell us what happened when Mr. Wallace and
19 Mr. McClary got to where you and Ronetta were.

20 A By that time, Ronetta was riding in the
21 back. And so we all went over back to Ronetta's
22 house.

23 Q Okay.

24 A And my mother came and she got the kids.

25 And so her father wanted us to go to the store

Lieutenant Scott-cross by Mr. Barr

1 for him, and we did that.

2 Q What were you going to the store for?

3 A To get her father some beer.

4 Q Now did you go because Ronetta was too
5 young to buy beer?

6 A Correct.

7 Q What happened next?

8 A As far as me, Ronetta, Andre, and
9 Cornelius, we sat down and talked and smoked
10 marijuana.

11 Q All four of you were smoking marijuana?

12 A Correct.

13 Q A guy came through, I began to talk to
14 him. And Ronetta, Andre, and Cornelius, they was
15 all by themselves. Well Andre and Ronetta, they
16 were talking. And Trell he was sitting down
17 snorting cocaine.

18 Q Cornelius was doing what now?

19 A He was snorting cocaine.

20 Q Snorting cocaine.

21 A After my conversation with the fellow that
22 I was talking to, it was -- they was talking about
23 the -- it was already, well Ronetta and Andre
24 were already making calls to Mr. Ernest.

25 Q To Mr. Prosser?

Lieutenant Scott-cross by Mr. Barr

1 A Yes.

2 Q Now the fellow you were talking to, was it
3 something particular about that day for him?

4 A It was his birthday.

5 Q It was his birthday. Now you said that
6 Andre and Ronetta were together.

7 A Yes.

8 Q And they and you -- did you actually see
9 her making calls to Mr. Prosser?

10 A No, she told me that Andre asked her to
11 call him.

12 MR. BARR: Objection. It's hearsay, Your
13 Honor.

14 THE COURT: Sustained.

15 MS. BARR: Your Honor, we take the
16 position it is admissible. It is co-conspirator's
17 statements. Co-conspirator's statements are
18 admissible.

19 THE COURT: Ladies and gentlemen, please
20 step to your jury room. We need to take this
21 matter outside your presence. You may not discuss
22 the case.

23 (Whereupon, the following takes place
24 Outside the presence of the jury.)

25

Lieutenant Scott-cross by Mr. Barr

1 THE COURT: Repeat this question, please.

2 Q Did you actually see Ronetta calling
3 Mr. Prosser?

4 A She did when I was right there. Yes, she
5 have. Because Andre kept telling her to call
6 back. To the point that he actually took the
7 phone away from her. He was making the calls.

8 Q Did you see that, or is that what somebody
9 told you?

10 A That's I what saw.

11 Q Now you were about to say that Ronetta
12 told you that Andre told her to call Mr. Prosser.

13 A Yes.

14 MS. BARR: Judge, and again we just simply
15 we take the position that it's a co-conspirator
16 statement made in furtherance of the conspiracy,
17 and it's admissible under either the hearsay
18 exception or it's not hearsay at all because it's
19 a co-conspirator statement.

20 THE COURT: Well it is offered to prove
21 the truth of the matter asserted. Mr. Barr, what
22 is your position on the fact that this is a
23 statement made by a co-conspirator?

24 MR. BARR: That it's hearsay, Judge. It
25 does not fall within any exception.

Lieutenant Scott-cross by Mr. Barr

1 THE COURT: That's 801(d) 2 E, which says
2 that a statement is not hearsay if the statement
3 is offered against the party and is a statement by
4 a co-conspirator of a party during the course and
5 in furtherance of the conspiracy.

6 Ms. Barr, does that apply to what, now it
7 would obviously apply to what Mr. Wallace may have
8 told this witness. Does it apply to what
9 Mr. Wallace may have told another co-conspirator
10 who related that to this witness? In other words,
11 does (d) 2 E apply to that scenario? It would
12 obviously apply if Mr. Wallace said it to her, Ms.
13 Jones. Does it apply to the middle man?

14 MS. BARR: Judge, we would take the
15 position that it does. I would take the position
16 that there is not a distinction; that all of the
17 parties to that conversation were co-conspirators.
18 And the State would be concerned with conspiracy.

19 In addition, Judge, if it doesn't fall
20 under the co-conspirator statement exception, we
21 would take the position that it's a -- it falls
22 under 803 as either a presence sense impression
23 exception, or an exception as to the existing
24 State of mind: emotions, sensation or physical
25 condition; such as, intent, plan, motive, design,

Lieutenant Scott-cross by Mr. Barr

1 middle feeling and so forth.

2 THE COURT: And again, that was, I think
3 that 803 (1) doesn't apply, but 803 (3) if the
4 statement had been made by Mr. Wallace directly to
5 the witness. And the testimony of the witness is
6 that Ronetta told her that Mr. Wallace told
7 Ronetta to call Mr. Prosser.

8 MS. BARR: Yes, sir.

9 THE COURT: I sustain the objection. I
10 don't think either one of those rules would go to
11 the doubling up of that. By doubling up, I mean
12 what Ms. Miller said to this witness; what
13 Mr. Wallace said to her.

14 MS. BARR: Yes, sir.

15 THE COURT: Anything else?

16 MR. BARR: No, sir.

17 THE COURT: Bring in the jury.

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

20 Q Ms. Jones, I asked you about, I think my
21 last question concerned Ms. Miller dialing or
22 trying to get in touch with Mr. Prosser, okay.
23 Whose phone was she using to call Mr. Prosser?

24 A Andre's phone.

25 Q It was his cell phone?

Lieutenant Scott-cross by Mr. Barr

1 A Correct.

2 Q Now did you have a cell phone at the time?

3 A Yes, I did.

4 Q But she was calling from Andre Wallace's
5 cell phone?

6 A Correct.

7 Q Now when you all were out there in terms
8 of when she made the call, was she actually
9 physically inside the vehicle? Or you all were
10 standing out in the projects as you described?

11 A At first we were standing out, outside.

12 Q Now at any point, well first of all, when
13 she first tried to get a hold of Mr. Prosser,
14 could you tell, don't tell me what she may have
15 said. But could you tell whether or not she was
16 able to reach him on the first try?

17 A Actually I know she tried several times,
18 but she didn't get any answer.

19 Q Now at any point and time while you all
20 were out in the projects, did the Defendant
21 Mr. Wallace, try to call Mr. Prosser?

22 A Correct, yes, he did.

23 Q You actually saw him take the phone from
24 Ronetta and tried to dial it?

25 A Yes, she dialed it numerous times and she

Lieutenant Scott-cross by Mr. Barr

1 didn't get any answer until the last call.

2 Q Now he got an answer the last time he
3 tried to call. Was he talking with Mr. Prosser?

4 A No, he passed the phone to Ronetta.

5 Q He gave it back to Ronetta.

6 A Yes.

7 Q No question in your mind.

8 A No question in my mind.

9 Q Now in terms of the plan, whose idea was
10 it rob him?

11 A It was my idea.

12 Q It was your idea.

13 A Yes, ma'am.

14 Q Did you ever tell your mom about the plan
15 and whose idea it was?

16 A A couple of days ago, I believe.

17 Q So this case has been pending for a year
18 and a half, and you just fessed up to your mom a
19 couple of days ago.

20 A That would be the only time I actually
21 told the story to anyone. I've never told anybody
22 about it. Anybody.

23 Q Why?

24 A Because I was hurt about it. And
25 everything that happened, it shouldn't have

Lieutenant Scott-cross by Mr. Barr

1 happened the way that it happened. And It wasn't
2 supposed to happen that way.

3 Q Was your mother in court with you on
4 yesterday?

5 A Yes, she was.

6 Q What was her reaction when you told her
7 what you did?

8 A She was hurt. And she just began to cry.

9 Q Let's go back to the night of the plan.
10 You were there when Ronetta spoke to Mr. Prosser?

11 A Yes.

12 Q After that conversation, what happened?

13 A We left out of her house. And the plan
14 was to meet them at the store that is located
15 right up to Ernie's house down 261.

16 Q Who was supposed to met him? And when say
17 him, you are talking about Mr. Prosser?

18 A Correct.

19 Q Who was supposed to meet him at the store?

20 A Me, Andre, Cornelius and Ronetta was going
21 to met him to drop Ronetta off with him.

22 Q And what was the plan after he got with
23 Ronetta? What were you all supposed to do then?

24 A The plan was for Ronetta to ride around
25 with him while we go into his house.

Lieutenant Scott-cross by Mr. Barr

1 Q Now when you said around with him, in his
2 truck?

3 A Yes.

4 Q You all realized following that
5 conversation that he wasn't coming out of the
6 house.

7 A When we made it to the store, he wasn't
8 there.

9 Q Okay.

10 A But before we got to the store, he called
11 back and he asked what was taking so long. Well
12 actually he asked what was taking Ronetta so long
13 to get there.

14 Q Okay. Then what happened?

15 A When we see he wasn't at the store, then
16 Andre decided that if we go to the house; that he
17 just take Ronetta to the house.

18 Q To whose house?

19 A To Mr. Ernie's house.

20 Q Now prior to this, had you seen any
21 firearms in vehicle?

22 A No, ma'am, not at this time.

23 Q So once Mr. Prosser didn't come to the
24 store, then what was the plan? You all had to
25 alter your plan somewhat; didn't you?

Lieutenant Scott-cross by Mr. Barr

1 A Actually, yes.

2 Q Okay. Tell us about that.

3 A When we see that he wasn't at the store,
4 he turned down this road, and Andre wanted to know
5 where he stayed. And I pointed out the house to
6 him.

7 Q Speak up, I can't hear you.

8 A Andre wanted to know where he stayed. And
9 I pointed out the house to him. So I instead of
10 stopping at the house, he rode by. And we went
11 out to his house, and we made a right turn, and he
12 took us down that road. We went and turned
13 around---

14 Q I'm sorry, I can barely hear you. Make
15 sure you speak up. When he went to turn around,
16 and when we turned around, there was a little cut,
17 he got out of the car.

18 Q Who got out of the car?

19 A Andre got out of the car from the driver's
20 seat. And he asked me and Ronetta both to get out
21 of the car. And once we did that, he removed the
22 back seat and he received a firearm.

23 Q He moved the back seat and what now?

24 A He removed the back seat of his vehicle.

25 Q Okay.

Lieutenant Scott-cross by Mr. Barr

1 A And he received a firearm.

2 Q When you say he received it, he picked it
3 up?

4 A He picked it up.

5 Q And what kind of firearm was it?

6 A I'm am not familiar with guns, but it was
7 a long weapon with a no handle.

8 Q A long weapon with no handle.

9 A Correct.

10 Q Did you see any other firearms inside the
11 vehicle?

12 A Not at this time.

13 Q Not at that time. Now that night when he
14 got the long gun with no handle as you described
15 it, was he dressed all nice like he is today in
16 court?

17 A No, ma'am, he wasn't.

18 Q How was he dressed?

19 A All black.

20 Q How were you dressed?

21 A I had on all black also.

22 Q How was Cornelius dressed?

23 A He had on all black.

24 Q Now in terms of his physical appearance,
25 was his hair low cut like it is now in court?

Lieutenant Scott-cross by Mr. Barr

- 1 A No, ma'am, It wasn't.
- 2 Q How was it?
- 3 A It was little dreads.
- 4 Q It had the little dreads in it?
- 5 A Yes, ma'am.
- 6 Q Now you said you all were wearing all
7 black. Did you have anything else on to try to
8 conceal your face or your identity?
- 9 A I did not, but Andre Wallace and Cornelius
10 did. They had put on bandannas.
- 11 Q They put on bandannas?
- 12 A Yes.
- 13 Q Over their face?
- 14 A Over their face.
- 15 Q And what color were the bandannas?
- 16 A They were red.
- 17 Q What about gloves?
- 18 A Yes.
- 19 Q Tell me who had gloves.
- 20 A We made a stop before we got to his house.
- 21 Q Okay.
- 22 A Cornelius' house.
- 23 Q You made a stop at Cornelius' house?
- 24 A Yes. And he went and got some gloves.
- 25 Q Who got gloves?

Lieutenant Scott-cross by Mr. Barr

1 A Cornelius did.

2 Q Okay. Tell us what happened when you got
3 out to the victim's house and you saw Mr. Wallace
4 get the long gun with no handle.

5 A We were going to drive back to Mr. Ernie's
6 house.

7 Q Okay.

8 A And we dropped Ronetta off at his
9 driveway. But she wanted -- probably half way up
10 the driveway before she came back in the street.
11 And she asked to use the phone to call him.

12 Q Now did Mr. Prosser have a dog at time?

13 A Yes, ma'am.

14 Q You've seen the dog at the house before?

15 A Yes, I have.

16 Q Do you know what kind of dog it is?

17 A I am not sure.

18 Q When she came back after she got about
19 half way down the driveway and came back to use
20 the phone, or what happened next?

21 A She told Mr. Ernest that she was afraid of
22 the dog, and could he come outside and meet her.
23 And that's what he did.

24 Q Okay. What happened next?

25 A We began to drive away after Ronetta went

Lieutenant Scott-cross by Mr. Barr

1 back up. And then we went up just a little bit.

2 Q Slow down for me just a second. When
3 Mr. Prosser met her, did he meet her at the back
4 of the house, or like in the driveway on the side
5 of the house?

6 A I am not sure.

7 Q Did you ever see him when he came out to
8 meet her?

9 A No, ma'am.

10 Q Based on where you all were when Ronetta
11 met him, was your vehicle visible to Mr. Prosser?

12 A If he would come halfway to his driveway
13 and looked up the road, it is possible that he
14 could have spotted the car.

15 Q What happened next after he came to meet
16 Ronetta?

17 A We began to pull up some. And we pulled
18 over to the right before you get on that little
19 bridge.

20 Q Now at this time who was driving the
21 vehicle?

22 A Andre was still driving.

23 Q Where is Cornelius?

24 A Still in the passenger side.

25 Q And you were behind Andre or you were

Lieutenant Scott-cross by Mr. Barr

1 behind Cornelius?

2 A At this time, I was behind Cornelius.

3 Q What happened next?

4 A They began to put bandannas on. And the
5 gloves, and they both got out of the car and they
6 went into the trunk; for what I don't know. I
7 didn't get out of the car right then. And before
8 you know it, Andre took off before me and Trell
9 did.

10 Q Andre took off before Trell did?

11 A He took off before any of us did.

12 Q What happened next?

13 A And he began to run up to the house, like
14 he knows where he was going and what he was doing.
15 Andre did.

16 Q Okay.

17 A And Trell and I went like right through
18 the woods---

19 Q Okay.

20 A ---to get in his yard. And by the time we
21 got up to the yard, Andre is at the front door.

22 Q Okay. Andre went to the front door; is
23 that right?

24 A Correct.

25 Q What happened next?

Lieutenant Scott-cross by Mr. Barr

1 A I told him he couldn't get in by that
2 door.

3 Q Okay. So you were out there with him at
4 the time?

5 A Correct.

6 Q What happened next?

7 A Then we went around back of the house.

8 Q Okay.

9 A And I was told to go ahead and put the
10 code in.

11 Q Who told you to put the code in?

12 A Andre did.

13 Q You told him that you had the code to the
14 house?

15 A Yes, ma'am.

16 Q When you told him to go ahead and put the
17 code in who all was there with you?

18 A It was just me, Andre and Cornelius at
19 that the time.

20 Q After he told you to put the code in, then
21 what happened?

22 A Then there was no response to trying to
23 get in the house.

24 Q You pressed the code in. You couldn't get
25 in?

Lieutenant Scott-cross by Mr. Barr

1 A Correct.

2 Q Then what happened?

3 A I didn't -- well I stood right then and
4 there. And Andre went around to the window on the
5 side of the house, because that was where
6 Mr. Prosser was at the time.

7 Q Say it again now.

8 A Mr. Ernest was taking a shower at that
9 time. He was in his bathroom. And that is
10 located right next to the back door. So Andre
11 went and stood by the window to see what he was
12 doing.

13 Q Okay.

14 A And me and Trell, well me and Cornelius
15 was standing at the back door still. And we stood
16 there for awhile. And I went back to the car.
17 And they also came back to the car. And that's
18 when we received a telephone call from Ronetta.

19 Q Now before you all went back to the car,
20 you said that you were outside the window. And
21 you knew he was in the shower. How did you know
22 he was in the shower? Well, let me ask you this.
23 How did you know he was in the bathroom as opposed
24 to any other room in the house? Could you hear
25 anything?

Lieutenant Scott-cross by Mr. Barr

1 A Yes. The bathroom window was up, so you
2 could hear everything that was going on in the
3 bathroom at that time.

4 Q So the bathroom window was up. And you,
5 did you hear -- I'm assuming you heard voices?

6 A Yes.

7 Q Can you step down off the witness chair
8 for a minute for me?

9 THE COURT: She's going to have to keep
10 her voice up, Ms. Barr.

11 MS. BARR: Yes, sir.

12 (Whereupon, the witness steps down from
13 the witness stand.

14 Q Stand over here for me. I am going to
15 publish State's Exhibit No 13. Now are you
16 familiar with this? What's depicted in this
17 picture?

18 A Not really.

19 THE COURT: She's got to speak up or get
20 back on the witness stand.

21 A Not really.

22 Q Do you recognize this as being Mr.
23 Prosser's home?

24 A Yes.

25 Q Is this the back of the home?

Lieutenant Scott-cross by Mr. Barr

1 A Yes. That's the side. That's the side of
2 the home. And the little part where it looks like
3 a piece of grill.

4 Q Yes.

5 A I believe that's the back.

6 Q When you said that there was a window
7 open, and could hear voices, point to the window
8 you are talking about.

9 A It would be that window.

10 Q And that's the bathroom window?

11 A Correct.

12 Q I am going to publish State's 20. And you
13 said that you went to put in the password to the
14 door, which door did you go into? I mean, I am
15 sorry, which door did you try to put the pass code
16 in?

17 A The back door.

18 Q Is that depicted on the photograph?

19 A Yes, ma'am.

20 Q Point to it.

21 A It's right here.

22 Q Okay. You can go back on the witness
23 stand.

24 (Whereupon, the witness resumes the
25 witness stand.)

Lieutenant Scott-cross by Mr. Barr

1 Q Tell me what happened after you all, first
2 of all, when you got back to the car, when you say
3 you all got back to the car, who are talking about
4 that went back to the car after you all couldn't
5 get in the back door?

6 A I went back to the car first.

7 Q Okay.

8 A Because I already knew that, you couldn't
9 just get in his house with the code.

10 Q Okay.

11 A And they also came back. Andre and
12 Cornelius they came back to the car also. So
13 right and then there, we received a call from
14 Ronetta off of Mr. Ernie's phone, asking what was
15 taking us so long to come in the house. And then
16 and there, was told -- I told her that we couldn't
17 get in.

18 Q Okay.

19 A So she then said she would open the door.

20 Q Okay. Then what happened?

21 A We all went back. And at this time,
22 Mr. Ernie was in the shower.

23 Q Okay.

24 A Ronetta, she wasn't in the shower.

25 Q Okay.

Lieutenant Scott-cross by Mr. Barr

1 A But she was in the bathroom with him.

2 Q Okay.

3 A And while he was in the shower, she was at
4 the door talking. And I can't remember what was
5 said at that time.

6 Q At what door?

7 A At the back door.

8 Q This door here?

9 A Correct.

10 Q What happened next?

11 A At this time she then did her hand like
12 this right here, and tell us to come on in.

13 Q Okay. Now mr. Prosser was in the shower
14 at that time?

15 A Yes, he was still in the shower. At that
16 time Andre went right in.

17 Q Andre did what?

18 A Andre went in the house.

19 Q You saw him go in the house.

20 A Yes. And Cornelius had his hand on the
21 screen door to go get in. And before he got in,
22 Ronetta did this right? And Mr. Ernest was
23 getting out of the shower.

24 Q Now, I need you to be clear on the record,
25 because we can see what you are doing. But when

Lieutenant Scott-cross by Mr. Barr

1 you say -- you said Cornelius is holding on to
2 the screen door.

3 A Correct.

4 Q Was he wearing gloves at the time?

5 A I can't remember.

6 Q And you said, and Ronetta did this like.

7 Explain what are doing when you are demonstrating?

8 What are you doing?

9 A At that time she was telling us to stop;
10 go back.

11 Q And she was motioning her hands to stop.

12 A Yes.

13 Q And then what happened?

14 A At that time, I spotted Mr. Ernest coming
15 out of the bathroom. And I just wanted to get out
16 of there, because Andre and Cornelius they had
17 bandannas on, and I didn't. I didn't have
18 anything on so....

19 Q And he knew you.

20 A Yes.

21 Q You say you spotted him. How were you
22 able to see him from outside the house?

23 A I was able to see him through the window.

24 Q Which window?

25 A This window, the back kitchen window to

Lieutenant Scott-cross by Mr. Barr

1 the left.

2 Q This window here?

3 A Correct.

4 Q Now as it relates to his house, this wall
5 here, what's on the opposite side of that wall?

6 A The bathroom.

7 Q Okay. So you saw when you were looking
8 through this window.

9 A Correct.

10 Q Did he see you?

11 A I am not sure, but he seen one of us.

12 Because either me or Trell -- I mean, Cornelius.

13 And I believe it was Cornelius, because I was
14 like, half way gone by that time.

15 Q Okay. When you saw him, what did you do?

16 A I ran.

17 Q You took off?

18 A Yes, I did.

19 Q When you saw him, was Andre already inside
20 the house?

21 A Correct.

22 Q When Andre went inside the house was --
23 did he have a firearm with him?

24 A Yes, he did.

25 Q Did he have that long gun that you talked

Lieutenant Scott-cross by Mr. Barr

1 about?

2 A Yes, ma'am.

3 Q Now you call him Trell too. When
4 Cornelius was standing out with you, and he was
5 holding onto the screen door, did he have a weapon
6 with him?

7 A At the time he didn't have a weapon in his
8 hand.

9 Q He didn't have it in his hand?

10 A No, he didn't.

11 Q Now between the time you all went back to
12 the car, after you realized that you couldn't get
13 in from the pass code, when using the pass code,
14 did you ever see Cornelius with a weapon between
15 that time and the time you all came back?

16 A Yes.

17 Q Okay. What kind of weapon did Cornelius?

18 A It was handgun he received from Andre.

19 Q Andre gave him a handgun?

20 A Yes, he did.

21 Q When did that happen?

22 A That happened before we went to the house
23 the first time.

24 Q When Andre gave him the handgun, you all
25 were inside the vehicle?

Lieutenant Scott-cross by Mr. Barr

1 A Correct. They were still sitting in the
2 front.

3 Q And where was the vehicle at that time
4 positioned on White Oak Road? When he, when Andre
5 passed the handgun to Cornelius, where was the
6 vehicle at?

7 A It was still parked in front of the little
8 bridge.

9 Q When he passed the gun, when Andre passed
10 the gun to Cornelius, would the vehicle have been
11 visible from Mr. Prosser's house?

12 A Correct.

13 Q Now, I am going to publish State's Exhibit
14 Nos. 6 and 7. Is this the back door to
15 Mr. Prosser's house? Can you see that?

16 A Yes, ma'am.

17 Q When you say he came out of the bathroom,
18 is that the door to the bathroom that you talked
19 about?

20 A Correct.

21 Q So the window that you talking about that
22 you saw him, it would be somewhere over here?

23 A That's right.

24 Q Now let's pick up where we left off. You
25 said when you saw Mr. Prosser, Cornelius was by

Lieutenant Scott-cross by Mr. Barr

1 you, and you said that Mr. Prosser had seen either
2 you or Cornelius.

3 A I said I wasn't sure, but I know he seen
4 one of us.

5 Q Okay, why do you think that?

6 A The expression on his face.

7 Q What was the expression on his face?

8 A Like what this, you know.

9 Q Ma'am?

10 A Like, what the....

11 Q Then what happened? Well first of all, in
12 terms of, if, in terms of the front of the house
13 and where that vehicle was parked, help me out
14 here. I am going to publish State's 12. That's
15 the front of Mr. Prosser's home?

16 A Yes, ma'am.

17 Q If I am facing the front of the house,
18 where was Mr. Wallace's vehicle parked before you
19 all went in, before you got there the first time
20 to put the pass code in? Would it have been to
21 the right of the house, or down from the house
22 here, or to the left of the house there where the
23 store is?

24 A It would be, I can explain better coming
25 out of the driveway.

Lieutenant Scott-cross by Mr. Barr

1 Q Okay. Let me see if can I get a picture
2 of the driveway. Come down?

3 (Witness steps down from the witness
4 stand.)

5 Q I am going to publish State's Exhibit No.
6 11. Is that the front of the house?

7 A Yes, ma'am.

8 Q When you all left your, Mr. Wallace's
9 vehicle, and Ronetta was in the house, when you
10 all came to the back of the house and tried to get
11 in the first time, did you all come this way where
12 these vehicles were parked, or did you all come
13 this way? You point.

14 A We came this way.

15 Q Okay. I am going to publish State's
16 Exhibit No. 4. If you know, tell me. If you
17 don't, tell me. I'm trying to get some of the
18 glare out. Is the driveway in front of the house?

19 A I am not sure.

20 Q Okay. That's fine. I am going to publish
21 State's Exhibit No. 11 here. You indicated you
22 all came down this side?

23 A Correct.

24 Q And this is when you first tried to get in
25 the house.

Lieutenant Scott-cross by Mr. Barr

1 A Yes, ma'am.

2 Q So if you all came down this way, tell me
3 whether the vehicle was further down the road on
4 this side of the house, or further down on this
5 side of the house down the road?

6 A It would be further down this side.

7 Q So if I'm facing the house, it would be
8 further down on the right side.

9 A Correct.

10 Q Now when you all first dropped Ronetta
11 off, once she saw the dog and called Mr. Prosser
12 back, was the vehicle on this side of the road or
13 on this side of the road if you are facing the
14 house?

15 A It was on the side of the road going
16 towards that side.

17 Q And when you say that side, you are
18 talking?

19 A To the right.

20 Q To the right. Now tell me what happened
21 after, when you ran out after he saw you, which
22 direction did you go in?

23 A I came back around this side, the same way
24 I went. I seen Trell going like coming around
25 that side.

Lieutenant Scott-cross by Mr. Barr

1 Q You saw Trell coming around this side.

2 Which side?

3 A He was coming around that way. That would
4 have been my right, because I was on the back of
5 the house. But since this is on the front, it
6 would be his left.

7 Q Okay, where like the crime scene tape is?

8 A Correct.

9 Q He came out this way?

10 A Yes.

11 Q Who got to the car first?

12 A I got to the car first.

13 Q Was the car running?

14 A No, ma'am.

15 Q Did you have keys to the car?

16 A No, ma'am.

17 Q When you got to the car, what did you do?

18 A I got in the front, and tried to crank up
19 the car, but there was no keys in the ignition.

20 Q How quick did Trell -- Cornelius McClary
21 get back to the car after you got in?

22 A He never came back to the car.

23 Q Who was the first person after you got
24 back to get to the car?

25 A Andre.

Lieutenant Scott-cross by Mr. Barr

1 Q Tell me what happened when you got to the
2 car?

3 A When I got to the car, and I found out
4 there wasn't any keys in the ignition. I then
5 just got back in the back seat where I were,
6 before we went to the house. And when I was in
7 the back seat, I heard two gunshots. The first
8 one was a small pow; was a small pow. And the
9 second one was a much louder one. Louder one.

10 Q Louder?

11 A Yes. And after that probably 35 to 40
12 seconds later, Andre came running to the car with
13 that weapon.

14 Q What weapon?

15 A The gun that he received from the scene.

16 Q The long gun?

17 A Yes, ma'am.

18 Q Then what happened?

19 A I asked what happened, because of the gun
20 shots that I heard. And he was like---

21 Q Tell me what specifically what he said.

22 A He said that mother fucker tried to shoot
23 me. And he said, I shot him. And we left from
24 there. He turned the car around. He cranked up
25 the car, and turned around. And I began asking

Lieutenant Scott-cross by Mr. Barr

1 where was Ronetta; whether or not she was okay.

2 And he turned around, and we went back down the

3 road, down the street.

4 Q Down which way?

5 A Once he got in the car and he turned

6 around, we went back going towards that side,

7 which would be to your left.

8 Q So he did a U turn?

9 A Yes, he did a U turn in the road.

10 Q Then what happened? Now first of all,

11 when he got in the car and he told you that the MF

12 tried to shoot me, what was his tone like?

13 A It was like scary. Like it wasn't no type

14 of tone like he felt sorry that he did it.

15 Q It wasn't that kind of tone.

16 A No. I was like, he had to do it. Like he

17 meant to do it, like it wasn't no accident or

18 nothing. He did it.

19 Q Okay. When he made a U turn, why was he

20 making a U turn?

21 A To go find Ronetta and Cornelius.

22 Q Then what happened?

23 A Ronetta and Cornelius, they was running.

24 Once she come out his back door there is a field

25 located beside his house, and that's where Ronetta

Lieutenant Scott-cross by Mr. Barr

1 and Cornelius came running from that field.

2 Q Did they get in the car with you and
3 Andre?

4 A Correct.

5 Q Which seat did Cornelius get in?

6 A He got back in the passenger seat in the
7 front.

8 Q Where did Ronetta get in?

9 A She got behind Andre on the driver's side.

10 Q I am going to publish State's Exhibit No.
11 1. Is that the front of Mr. Prosser's house?

12 A Yes, ma'am.

13 Q In terms of where Andre had parked his
14 vehicle when you all went out there to go in the
15 back of the house, can you kind of demonstrate
16 using that photograph and give the jury an idea of
17 how far he would have parked down from the house?

18 A I don't know if you can see it, but it's
19 directly in front of this sign.

20 Q In front of what?

21 A It's directly in front of this sign. The
22 bridge sign, the black and yellow one, It was
23 directly in front of that sign.

24 Q Do you see the bridge sign?

25 A Yes, ma'am.

Lieutenant Scott-cross by Mr. Barr

1 Q Point to it.

2 A Right here.

3 Q When he parked his vehicle, was the front
4 of the vehicle facing this way, or the front of
5 the vehicle facing this way like this one is?

6 A It was facing that way, going towards the
7 sign.

8 Q In the opposite direction where this
9 vehicle is?

10 A Correct.

11 Q Where did he turn around at?

12 A Right there. Like all he had to do is
13 turn the wheel and turn around.

14 Q You can go back.

15 (Whereupon, the witness resumes the
16 witness stand.)

17 Q Tell me what happened once Cornelius and
18 Ronetta got back inside Andre's vehicle.

19 A Right then and there, I asked Netta what
20 happened. And she began to tell me.

21 Q First of all, when she got back in the
22 vehicle, describe her State of mind. I mean, was
23 she normal tone like you and I are having now?

24 A No, she was scared. She was very scared.

25 Q Was she crying?

Lieutenant Scott-cross by Mr. Barr

1 A Yes.

2 Q Was she screaming?

3 A No, she wasn't like screaming or nothing
4 like that. But she was very upset.

5 Q Okay. What -- go ahead and tell me what
6 happened when you asked her what happened.

7 A She told me Andre---

8 MR. BARR: Objection to hearsay.

9 MS. BARR: Excited utterance.

10 MR. BARR: Your Honor, no foundation.

11 THE COURT: Do a little bit more. Timing
12 wise.

13 MS. BARR: Yes, sir. Yes, sir, Judge.

14 Q When Ronetta got back in the vehicle, you
15 indicated that it was -- you all picked, when I
16 saw you all, I am talking about you and Andre,
17 picked Cornelius and Ronetta up a little further
18 down this way.

19 A Correct.

20 Q When she got back in the vehicle, and you
21 asked her what had happened, were you all still on
22 White Oak Road?

23 A Correct.

24 Q Was it within a matter of a minute after
25 the shooting? Or 2 minutes or 3 minutes after the

Lieutenant Scott-cross by Mr. Barr

1 shooting?

2 A I am not sure.

3 Q Was it pretty quick after the shooting, or
4 was it 10 minutes, 20 minutes later?

5 A I would say it was about a minute or
6 two.

7 Q Again, describe to me her tone.

8 A Scared.

9 Q You indicated upset earlier?

10 A Yes.

11 Q You asked her what had happened, what did
12 she say?

13 A She told me---

14 MR. BARR: Objection, Your Honor. She's
15 leading the witness.

16 THE COURT: Overruled.

17 Q You can answer.

18 A She told me that Andre shot Mr. Ernest in
19 front of her.

20 Q In front of her.

21 A In front of her.

22 Q Now at the same time she said this, Andre
23 was driving the vehicle?

24 A Correct.

25 Q Now you said initially that when he got in

Lieutenant Scott-cross by Mr. Barr

1 the vehicle and he told you what happened, he was
2 not remorseful about it?

3 A No.

4 Q What was he saying to Ronetta?

5 A May I say the exact words?

6 Q Tell us.

7 A He told her that she was a stupid bitch.
8 And he know that she set us -- that she set the
9 whole thing up by telling Mr. Ernest that we were
10 coming to his house.

11 Q Was he angry with her?

12 A Yes.

13 Q Did he make any threats to her or to you?

14 A I will tell you what he said. You all
15 can, you know. He was like well, you know, don't
16 say nothing about it. And, you know, as long as
17 you don't say nothing about it, no one would ever
18 know about it.

19 Q Now after you asked Ronetta about what
20 happened, and after Andre made the statement that
21 he shot him, what if anything did Cornelius do?

22 A Him and Cornelius was in the front seat
23 conversating.

24 MR. BARR: objection to hearsay from
25 Cornelius, Judge.

Lieutenant Scott-cross by Mr. Barr

1 THE COURT: Ms. Barr?

2 MS. BARR: Your Honor, it is excited
3 utterance. Present sense impression. A statement
4 made by co-conspirators.

5 THE COURT: Let's -- there is no
6 foundation for excited utterance as to Mr. -- or
7 presence sense impression as to Mr. McClary. What
8 is the relevance of what Mr. McClary said? I
9 don't know what the witness' response is going to
10 be. So can you all come up here, please?

11 MS. BARR: Yes, sir.

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

14 Q You described Mr. Wallace's State of mind.
15 You described Ronetta Miller's State of mind.
16 Tell me what Cornelius McClary's State of mind was
17 when he came back inside the car when you all
18 picked him up.

19 A Well he was just breathing heavy. You
20 know, I guess tired from the running they was
21 doing.

22 Q In terms of what his State of mind was
23 though, could you tell me whether he was sad,
24 happy, angry, scared or what?

25 A Both angry and upset.

Lieutenant Scott-cross by Mr. Barr

1 Q And once he got inside the vehicle, you
2 said that he and Mr. Wallace had a conversation?

3 A Yes.

4 Q What did Cornelius do after that
5 conversation?

6 A He told Andre to slow down by Mr. Ernest's
7 house.

8 MR. BARR: Objection, Your Honor.

9 THE COURT: The question is, what did he
10 do, not what did he say.

11 A He got out of the -- like his passenger
12 window was down. And he got up out of the window.
13 Through the window and sat on the window thing,
14 like the window panel.

15 Q Yes, ma'am.

16 A And he reached over the hood of the car,
17 and he began to fire inside Mr. Ernest's house.

18 Q Okay. What type of gun did he have when
19 he was firing at Mr. Ernest's house?

20 A He had a handgun.

21 Q How did he do that? You said, he got out.
22 And I guess, he sat his behind on the door frame.

23 A Correct.

24 Q Where the window is?

25 A Yes.

Lieutenant Scott-cross by Mr. Barr

1 Q And reached over the top of the car?

2 A I believe. I just know that he sat up on
3 this window and started firing towards the house.

4 Q Okay. Where did you all go after that?

5 A After we drove off, before we got off on
6 White Oak Road, there was two sheriff's cars---

7 Q Okay.

8 A ---were coming down the road. And at that
9 time Andre told Cornelius well, yeah, I know
10 that---

11 Q Go ahead and say it.

12 A This bitch set us up, because how do the
13 fuck the police is going to get here this fast.

14 Q Okay.

15 A And when we got off that road and made a
16 left back on 261, and we made that first right on
17 that road. I am not sure what it's called.

18 Q Then where did you all go?

19 A I believe it was to Andre's mother's
20 house.

21 Q Okay. Where is the house located?

22 A I know it's off 261.

23 Q Now before you all got to Mr. Prosser's
24 house that night, did you see where Mr. Wallace
25 got the two firearms from? Do you know where he

Lieutenant Scott-cross by Mr. Barr

1 got them from?

2 A The long one he got, from off the seat
3 that me and Ronetta was sitting in the back seat.

4 Q Okay.

5 A And the second handgun, came, I believe
6 from his waist, or that particular area where he
7 was sitting on the driver's side.

8 Q You were sitting in the back seat when you
9 saw him pass it to McClary?

10 A Correct.

11 Q In terms of where they got them from, not
12 just inside the vehicle, but where they might have
13 gotten them from earlier that day, do you know?

14 A From my understanding---

15 MR. BARR: Objection.

16 Q Well let me just ask you this. Did you
17 see how the vehicles got -- I am sorry, how the
18 firearms got inside the vehicle? Either that day
19 or any other day?

20 A By Andre or either Cornelius.

21 Q Tell me what happened after you left the
22 scene of the crime. Just continue with your
23 testimony. He drove us to, what I believe is his
24 mother's house, that he told us. And when he got
25 there, him and Cornelius got out of the car, and

Lieutenant Scott-cross by Mr. Barr

1 they opened up the trunk. What they was doing, I
2 don't have any idea. But they stayed out there
3 for more than for 15 or 20 minutes; while me and
4 Ronetta stayed sitting in the back seat of the
5 car.

6 Q When Mr. Wallace came by Mr. Prosser's
7 house after he shot him, did he have any other
8 firearms with him?

9 A No, not that I know of. I just seen a
10 long gun that he took with him.

11 Q Did he get any money or personal property
12 from the victim's home that you know of?

13 A It's possible, I am not sure.

14 Q Now once they were kind of standing
15 around, at the trunk of the vehicle, what
16 happened next?

17 A Andre went into the woods in the back of
18 the house for maybe 2 or 3 minutes.

19 Q Okay.

20 A And he came back.

21 Q Did he take the long gun that he had with
22 him when he went to the woods?

23 A I am not sure. It was like I was
24 watching, but I wasn't watching.

25 Q They were behind you.

Lieutenant Scott-cross by Mr. Barr

1 A Yes. At this time me and Ronetta were
2 still sitting in the car, and he and Cornelius are
3 at the trunk of the car.

4 Q At what point and time did Wallace take
5 the long gun out of the vehicle after he killed
6 Mr. Prosser?

7 A When we got to our destination.

8 Q To the destination.

9 A To the destination that we were at right
10 now.

11 Q Is that what you said you believe to be
12 his mother's house?

13 A Correct.

14 Q Is that the same time Cornelius took his
15 handgun out, or did he ever give the handgun back
16 to Andre?

17 A That part I don't know.

18 Q Fair enough. After he went into the woods
19 what happened?

20 A He came back, and he got back into the
21 driver's side. And Cornelius got back on the
22 passenger side. And we left his mother's house,
23 and he made that right turn which is, I believe
24 that Cade's Road.

25 Q Okay.

Lieutenant Scott-cross by Mr. Barr

1 A Because at the other road there is a gas
2 station. And we made a stop at that gas station.

3 Q Is that the gas station, the cash and
4 carry from the post office?

5 A Correct.

6 Q Go ahead. What happened when you all made
7 a stop at the gas station?

8 A Nobody had any money for any gas. So
9 Andre asked me would I put some gas in, and I did
10 that.

11 Q Okay.

12 A And we left the store. I didn't know
13 where he was going, but he made that left back on
14 to 52, and we went back into Kingstree.

15 Q And then where did you go?

16 A We went and we dropped Ronetta off at home
17 first.

18 Q Okay. He was the first one to get out of
19 the car.

20 A Correct.

21 Q Then what happened?

22 A They drove me home. Cornelius and Andre
23 did.

24 Q So you were the second one to get out?

25 A Correct.

Lieutenant Scott-cross by Mr. Barr

1 Q Now when you all dropped Ronetta off, you
2 know Ronetta's father; right?

3 A Yes, ma'am.

4 Q Was, do you know whether or not he was
5 home when you dropped her off?

6 A He was; yes.

7 Q Was he there when you all left to go to
8 Prosser's house?

9 A Yes, ma'am.

10 Q Ronetta's father was.

11 A Yes, ma'am.

12 Q Did you receive any more -- did you
13 receive any calls from Ronetta that night after
14 the shooting?

15 A We spoke since then; yes.

16 Q Did she -- did you tell her to just keep
17 her mouth shut and quit talking about it?

18 A No, ma'am, I didn't. Actually I told her,
19 like friends or whatever, not to tell him. Yes, I
20 did.

21 Q Now you were arrested on November 3rd,
22 2009? Is that right?

23 A That's correct.

24 Q And you gave a statement to Deborah
25 Collins and Wayne McFadden of the Williamsburg

Lieutenant Scott-cross by Mr. Barr

1 County Sheriff's Department.

2 A Yes, ma'am.

3 Q Ms. Jones, when you gave that statement,
4 did you tell investigator Collins or Investigator
5 McFadden everything that you told the jury?

6 A No, I did not.

7 Q Did you lie about some things?

8 A Yes, ma'am, I did.

9 Q Why?

10 A Scared.

11 Q You didn't want to go to jail?

12 A Yes.. That's part of it. And the other
13 part was that basically I didn't know what Andre
14 or Cornelius would have did to any of us.

15 Q You didn't know what?

16 A I didn't know what they were going to do
17 after what they -- after what Andre have done to
18 Mr. Ernest, I didn't know what he would have done
19 to me, knowing that he knew where I stay.

20 Q He knows where you live?

21 A Yes, he does.

22 Q Ms. Jones, does that appear to be the
23 transcript of the statement you gave to law
24 enforcement back on November 3rd, 2009, the date
25 that you were arrested?

Lieutenant Scott-cross by Mr. Barr

1 A Yes, ma'am.

2 Q Now you indicated that you lied to law
3 enforcement and didn't tell them the entire truth
4 about what happened.

5 A Correct.

6 Q Turn to page 8 for me, please. And
7 specifically start reading, don't read aloud, to
8 yourself. Start reading at line 7. And read to
9 yourself through line 12. Let me know when you
10 finish. You finished?

11 A Yes.

12 Q Now the day you were arrested, when you
13 gave you this statement, did you admit to law
14 enforcement that you were at Mr. Prosser's house?
15 And look at line 7, 8 and 9.

16 A Yes.

17 Q When they asked you who all was with you
18 the day you got arrested, who all was with you on
19 the night that Mr. Prosser got killed, you refer
20 to line 12, who do you tell them then and there
21 was with you the night Mr. Prosser got killed?

22 A Me, Ronetta, Andre and Cornelius.

23 Q Now when you gave this statement to law
24 enforcement, was I in the room?

25 A No, ma'am.

Lieutenant Scott-cross by Mr. Barr

1 Q Turn to page 11 for me and read to
2 yourself lines 8 through 9. Have you done that?

3 A Yes, sir.

4 Q When law enforcement asked you whose
5 vehicle you were using, who did you tell them?

6 A I said Dre's car, which is Andre.

7 Q Turn to page 12 for me. Read to yourself
8 lines 5 through 11. Let me know when you are
9 ready. When you finish.

10 MR. BARR: What page was that?

11 Q 12. Tell me what you told law enforcement
12 way back when, when they asked you about hearing a
13 shot being fired.

14 A At that time, I did get out of the vehicle
15 to go back to the house to find out what had
16 happened. And I didn't even make it all the way
17 back in the yard, not even by that ditch where I
18 told you guys that's the way that I went in. And
19 I seen Andre running back to the car with the gun.

20 Q What did you tell law enforcement? If you
21 look at lines, end of line 10 and starting at the
22 beginning of line 11. What did you tell law
23 enforcement way back when about what Andre said?

24 A He said that the mother fucker tried to
25 shoot me.

Lieutenant Scott-cross by Mr. Barr

1 Q Look at the end of that page, starting at
2 the end of line 24 and the beginning of line 25.
3 Did you repeat that to law enforcement about what
4 Andre said that he did to Mr. Prosser?

5 A Yes; yes, ma'am.

6 Q Now look at the bottom of page 13. Lines
7 24 through 25.

8 A What was that?

9 Q The bottom of page 13 lines 23 through 25.

10 MR. BARR: Your Honor, I have no objection
11 to putting the entire statement in the record.
12 She's reading the entire statement. I have no
13 objection to putting it into evidence if she wants
14 to put it in.

15 MS. BARR: I'm not trying to put the whole
16 statement in.

17 THE COURT: We'll go over that later,
18 because she is not offering it at this time.

19 Q Ms. Jones, did you tell law enforcement
20 anything about spotting the two sheriff's deputies
21 when you all were leaving the scene?

22 A Yes, ma'am, I did.

23 Q How do you feel about your role in what
24 you did?

25 A Terrible.

Lieutenant Scott-cross by Mr. Barr

1 Q Ma'am?

2 A I feel terrible.

3 Q Why?

4 A Because my friend got killed out of all
5 this. I just feel terrible. Embarrassed. Upset.
6 It is just has pain. Very painful.

7 Q When I asked you all these questions today
8 in court did you understand my questions?

9 A Yes, ma'am.

10 Q Did you tell this jury the whole truth
11 about that night?

12 A I did. You guys are the first people that
13 I ever told this story to.

14 Q You didn't tell your lawyer?

15 A I didn't even tell my lawyer.

16 MS. BARR: I beg the court's indulgence.

17 Please answer any questions defense counsel has.

18 THE COURT: Is everybody on the jury okay?

19 Would anybody like to take a break? Mr. Barr.

20 Cross Examination by Mr. Barr:

21 Q Ms. Jones, now in other words, today is
22 the first day that you've decided to tell the
23 truth about this matter with Mr. Prosser; is that
24 right?

25 A That's right.

Lieutenant Scott-cross by Mr. Barr

1 Q And with respect to what had caused you to
2 now come forward and tell the truth, tell the
3 ladies and gentlemen what it is about this day
4 that has you made you stop lying and tell the
5 truth. Tell us about that.

6 A First of all, for the family, I apologize.
7 And this is something I was holding almost 2
8 years. And I deeply apologize the way it
9 happened. That was my friend. I loved him like a
10 friend. And I know he loved back as a friend. It
11 was nothing more, nothing less. And things could
12 have been avoided if I wouldn't even have thought
13 about the idea. Or if the other defendants
14 wouldn't even have wanted to go continue to go
15 there after I said we can wait until another day.

16 Q Well I don't -- do you know whether
17 Mr. Wallace even knew Mr. Prosser? He didn't even
18 know Ernest Mr. Prosser.

19 A I am not sure.

20 Q In fact now, of course, you claim that
21 Mr. Prosser was your friend. You knew he had a
22 son before today; didn't you?

23 A Yes, I did.

24 Q And you knew he had family members who
25 loved him and were concerned about him very much;

Lieutenant Scott-cross by Mr. Barr

1 didn't you?

2 A Yes, sir.

3 Q And you considered him to be your friend.

4 A That's correct.

5 Q I see. And of course you decided that you
6 wanted to rob your friend. According to you, the
7 idea of robbing him originated with you; isn't
8 that correct?

9 A That's correct.

10 Q Now when you decided to rob the man, did
11 you think you were getting ready to do him a
12 favor?

13 A What was that?

14 Q Did you think you were getting ready to do
15 him a favor when you decided to rob him?

16 A No, sir.

17 Q Now you've been out to his house many
18 times; haven't you?

19 A Yes, I have.

20 Q You said you have even spent nights in his
21 house. Eat his groceries. You ate his food when
22 you went there; didn't you?

23 A Yes, sir.

24 Q You spent his money; didn't you?

25 A Yes, sir.

Lieutenant Scott-cross by Mr. Barr

1 Q You smoked his marijuana; didn't you?

2 A Yes, sir.

3 Q Did you all have a romantic relationship
4 as well?

5 A No, we have not.

6 Q Oh, you didn't?

7 A No, sir.

8 Q Now when you decided that you would pimp
9 Ms. Miller to him. You sent her in there. You
10 claim you sent her in there. Now it was your idea
11 to send her in there, wasn't it?

12 A No, sir. It was not my idea to send her
13 in his house.

14 Q It wasn't your idea?

15 A No, sir, it was not.

16 Q Now you cooked up the scheme. You said
17 that the idea of robbing him originated with you.

18 A That's correct.

19 Q And how did you plan to rob him? You knew
20 the man had all those guns in the house. What did
21 you let Ms. Miller go in there for?

22 A Sir, I did not let her go in there.

23 Q Oh, you didn't?

24 A No, sir, I didn't.

25 Q She was friend too; wasn't she?

Lieutenant Scott-cross by Mr. Barr

1 A She was.

2 Q And you didn't send her in to

3 Mr. Prosser's house?

4 A No, sir, I did not.

5 Q She volunteered on her own, and decided

6 you know what, I think I want to go in Ernest

7 Prosser's house today. And I think I want to

8 distract him. I want to go in the bathroom with

9 him. That was her idea; right?

10 A Yes, sir.

11 Q Now, Ms. Jones, let's just start from the

12 very beginning. Now this, of course, I realize

13 now that you've decided that the ambience of the

14 courtroom and seen Mr. Prosser's family causes you

15 to tell the truth. Now isn't it true that you

16 didn't even know Andre Wallace prior to the time

17 that this incident took place on the 27th; did

18 you?

19 A Yes, I knew him.

20 Q Oh, you did?

21 A Yes.

22 Q Where is your statement that you were

23 reading from a few minutes ago?

24 A Could I see that statement, please?

25 Q I am going to give you a copy of your

Lieutenant Scott-cross by Mr. Barr

1 statement, and I want you to look. You have
2 already told Ms. Barr you are familiar with it.
3 Turn to page 3. Now if you would please, ma'am,
4 start reading at line 14, and read through line
5 24.

6 Q Now, of course, you knew Ms. Net, you knew
7 her very well; is that correct? That was your
8 friend too.

9 A Yes, sir.

10 Q And of course you would agree that in
11 terms of -- well let's not put it that way. Have
12 you looked at it?

13 A Yes, I have.

14 Q Now you were asked at line 15 or line 14.
15 Tiffany, what is your friend -- or what is your
16 relationship with Net. You said she was your
17 friend. Of course you also said that Mr. Prosser
18 was your friend; right?

19 MS. BARR: Compound question, Judge.

20 THE COURT: Overruled.

21 Q Now on line 16, you were asked, on the
22 night of this shooting, where were you all at.
23 What was your response? Line 17.

24 A I don't know.

25 Q I don't know. In fact, if you go through

Lieutenant Scott-cross by Mr. Barr

1 your statement, you will see, I don't know
2 approximately 27 times; won't you?

3 A You're right.

4 Q Now are you telling the ladies and
5 gentlemen of this jury, in so much as, you have
6 now been overwhelmed by the power of this
7 courtroom, and the sympathy of Mr. Prosser's
8 family every time you said, I don't know, those 27
9 times, you were just telling a lie.

10 A That's right, I was.

11 Q You were. How did you get to be such a
12 liar? You can just tell a lie 27 times to the
13 police?

14 MS. BARR: Judge, I have an objection.
15 First of all, it's not a question for the witness.
16 Second, it's argumentative.

17 THE COURT: Overruled.

18 Q Of course when you were telling all them
19 lies, you didn't have life hanging over your head.
20 Or did you have it over your head? It hadn't
21 dawned on you, that you could get life for murder.
22 That hasn't dawned on you; has it?

23 A A lot of things dawned on me that day,
24 sir.

25 Q And it hasn't dawned on you that you could

Lieutenant Scott-cross by Mr. Barr

1 get 30 years for burglary. That hasn't dawned on
2 you; has it?

3 A No, sir, not at that time it didn't.

4 Q But it's making it's way home now. It's
5 beginning to make an impression on you. And even
6 though with this history of lying, you have
7 decided that you need to tell the truth; is that
8 right?

9 A Yes, sir.

10 Q Now you have not had any discussion with
11 me concerning your testimony; have you?

12 A No, sir, I haven't.

13 Q Who have you had a discussion with about
14 the preparation of your testimony for today?

15 A What do you mean by that?

16 Q I mean who sat down and discussed it with
17 you; this new revelation that you've decided to
18 give today when you discussed that with her?

19 A Myself.

20 Q How about Ms. Barr, did you discuss it
21 with her?

22 A Discuss what, sir?

23 Q How about Ms. Barr, did you discuss it
24 with her?

25 A Discuss what?

Lieutenant Scott-cross by Mr. Barr

1 Q This new revelation of truth that you've
2 given us today.

3 A No, I haven't discussed the truth with
4 anybody.

5 Q Okay. I see. You haven't.

6 A No, sir, I haven't.

7 Q Not even your lawyer.

8 A Not even my lawyer.

9 Q Haven't discussed it with anybody. But
10 all of sudden, you've now got holy. And you've
11 decided you need to be forthcoming. And when you
12 put your hand on this bible, it has done something
13 to you; right?

14 A That's right.

15 Q Line 17, I don't know. I don't even know
16 what that night was. The question was asked you,
17 Line 18. Are you familiar with a young man named
18 Trell. Your response was, yes. And, of course,
19 Mr. Trell, who is he?

20 A That's Cornelius.

21 Q He's Cornelius. We haven't heard a whole
22 lot about him. But you say you've known him for
23 over a year.

24 A Four years. I grew up with him.

25 Q Oh, for years. For years, I see. Was he

Lieutenant Scott-cross by Mr. Barr

1 ever employed at E-Z-E's truck stop?

2 A I have no idea, sir.

3 Q You have no idea.

4 A No, I don't.

5 Q You've known him for years. And you know

6 Mr. Prosser. And you've known whether or not he

7 worked at Mr. Prosser's store?

8 A That's his personal life, sir, I don't

9 know.

10 Q That's his personal life?

11 A That's correct.

12 Q You don't how he found out about

13 Mr. Prosser; do you?

14 A No, sir, I don't.

15 Q No idea. You were asked line 22, how

16 about Andre. Are you familiar with the young man?

17 Are you familiar with a young man named Andre.

18 What was your response?

19 A No.

20 Q No. Didn't even know him. Now of course,

21 do you deny that you all gave, when I say you all,

22 I am talking about you and Net. You gave Andre

23 Wallace \$20 to take you and her to Mr. Prosser's

24 house; didn't you?

25 A No, sir, I did not.

Lieutenant Scott-cross by Mr. Barr

1 Q And he had never even seen Cornelius
2 McClary; had he? Had he?

3 A Had who, sir?

4 Q Had Andre seen Cornelius McClary?

5 A That night?

6 Q Yes, ma'am.

7 A Yes, sir. All four of us was together.
8 Me, Andre, Ronetta and Cornelius.

9 Q All four of you all together.

10 A Yes, sir, we were.

11 Q In fact, I believe you -- when you were
12 asked about the whole incident regarding
13 Mr. Prosser's house, you told the police that you
14 couldn't even remember -- you lost all of that.
15 You didn't even know anything about that. You
16 said you were asleep the entire time; didn't you?

17 A I don't know about being asleep, sir.

18 Q Oh, well take a look at line, turn over to
19 page 4 of your statement. Look at line 7. The
20 question was, Mr. Prosser's house. Was there a
21 conversation at the store when you all were going
22 out to Mr. Prosser's residence. What was your
23 response line 10?

24 A I lost all of that, seriously.

25 Q Seriously. Now when you say seriously,

Lieutenant Scott-cross by Mr. Barr

1 that means that you are serious about what you are
2 saying; right? That's what you meant?

3 A Uh-huh. (Affirmative.) Yes, sir.

4 Q It meant that you wasn't lying; right?

5 A Yes, sir.

6 Q And were asked at the very next sentence,
7 you were asked, what your, after you told them
8 that you lost all of that, your answer was? What
9 was your answer?

10 A It started at this residence in all of
11 this. I was asleep.

12 Q You were asleep. Asleep. It meant you
13 probably had your eyes closed and you were
14 somewhere in la, la land. Now but of course, you
15 really wasn't asleep; were you?

16 A No, sir, I wasn't.

17 Q You just made that up.

18 A Yes, sir, at that time I did.

19 Q Now incidentally, you have known Cornelius
20 McClary for about as long as you have been living.
21 And now you don't have a driver's license; do you?

22 A No, sir, I don't.

23 Q But you have been living in Williamsburg
24 County for how many years?

25 A All my life.

Lieutenant Scott-cross by Mr. Barr

1 Q All your life. Are you familiar with the
2 highways? You do travel; don't you?

3 A Yes, sir, I do.

4 Q Now you probably know how to get to
5 Mr. Prosser's house as well as anybody; don't you?

6 A That's correct.

7 Q And you know how to get from his house;
8 don't you?

9 A Yes, ma'am -- yes, sir.

10 Q Ain't nobody got to show you highway 52
11 from Mr. Prosser's house; do they?

12 A No, sir.

13 Q You know exactly where it is. In fact,
14 you say that you've now decided to tell the truth.
15 You have been converted. Now if you will, please,
16 ma'am, did you tell either Officer McElveen or any
17 other police officer involved in this case, did
18 you give them the name of one person that could
19 substantiate that on the night that you were with
20 Andre Wallace; that he did anything other than
21 drop you off at Mr. Prosser's house, got your \$20,
22 and came back to Kingstree? Gave me one name.

23 MS. BARR: Your Honor the question
24 assumes facts not in evidence. There is no
25 evidence that he dropped them off and gave him

Lieutenant Scott-cross by Mr. Barr

1 \$20.

2 MR. BARR: I'll rephrase the question.

3 THE COURT: All right.

4 Q Tell me the name of one person, one
5 person, that could confirm that you were with
6 Andre Wallace at any time after you left Mr.
7 Prosser's house? After you left Mr. Prosser's
8 house.

9 A Well actually where Ronetta lives, they
10 have placed cameras there.

11 Q They have what now?

12 A They have cameras where Ronetta lives.
13 And it's pointing directly to where we dropped her
14 off at. So that right there, sir, is your answer.

15 Q Now tell me -- give me the name of one
16 person, one living human being, that saw you with
17 Andre Wallace after 9 o'clock on the night that
18 Mr. Prosser was shot. Give me one.

19 A I can't give you a name. But there are
20 people that seen us together at the gas station
21 where we stopped at.

22 Q Did you tell Di Collins any of those names
23 that could confirm that you with him after 9:00
24 o'clock?

25 A Did I give her the names?

Lieutenant Scott-cross by Mr. Barr

1 Q Yes, ma'am.

2 A No, sir, I just told her the four -- who
3 the four people was together. Which were me,
4 Cornelius and Ronetta.

5 Q The four people were. And the four
6 people, Andre Wallace is here on trial. And who
7 said that he didn't do what you said he did. And
8 the only other three people, Cornelius McClary.
9 Who knows where he is. Do you know where he is?

10 A No, sir, I don't.

11 Q Well his day is going to come. Just like
12 your day came, his day is coming. And Netta's day
13 has already come. Now you were in the courtroom
14 the day before yesterday; weren't you?

15 A Yes, sir.

16 Q But you wasn't here yesterday; were you?

17 A Yes, sir, I was here all this week.

18 Q All this week.

19 A Yes, sir.

20 Q And you were sitting through the testimony
21 all this week.

22 A I was.

23 Q Now did you hear a young man by the name
24 of Mr. Kenley with the sled get on this witness
25 stand and testify that he looked at the front of

Lieutenant Scott-cross by Mr. Barr

1 Mr. Prosser's house, and didn't see any bullet
2 holes. Were you here when that happened?

3 A I am not familiar with what he said.

4 Q You are not familiar with what he said.

5 A No. No, sir, I am not.

6 Q But you would be familiar with this.

7 Listen at me. Sometime between, when did you
8 tell Di Collins that Cornelius McClary shot at
9 Mr. Prosser's house. When did you tell her that?

10 A If it wasn't that same day when I was
11 arrested, it was the following week. But I
12 believe it was that same day.

13 Q That same day. You've got your statement.
14 That's the only statement you gave the police; is
15 it not? November 3rd?

16 A It was the only statement, but later on
17 that week, what I was feeling, I asked, requested
18 if I can come back over to the sheriff's
19 department and I gave him more information about
20 what I knew.

21 Q Wayne McFadden?

22 A Yes, sir.

23 Q You gave it to him?

24 A Yes.

25 Q Well I guess you heard that he's

Lieutenant Scott-cross by Mr. Barr

1 disappeared. You haven't heard that?

2 A No, sir.

3 Q He's nowhere to be found.

4 MS. BARR: Your Honor, we would object.

5 That's not in evidence.

6 THE COURT: Well you can rephrase it,

7 Mr. Barr.

8 Q Did you hear this officer, where is he?

9 Here he is, officer Scott. Did you hear him say
10 this morning that he did not know where Wayne is?

11 A Yes, sir.

12 Q You heard that?

13 A Yes.

14 Q So know as far as telling somebody about
15 this bullet hole, about this business of

16 Mr. Cornelius McClary shooting at Mr. Prosser's
17 house, you will admit that out of that 20

18 something page statement that you have got right
19 there in front of you, which is your statement.

20 You didn't mention one word about that; did you?

21 It's not in there; is it?

22 A I am not sure. I don't remember
23 everything that I said that day. That was what,
24 almost two years ago?

25 Q Almost 2 years ago.

Lieutenant Scott-cross by Mr. Barr

1 A Yes, sir.

2 Q Well I am not going to take the time to
3 make you go through that entire statement, but you
4 don't have a recollection of ever telling them
5 that on the 23rd; do you?

6 A The 23rd?

7 Q Yes, ma'am. 23rd of November -- on the
8 3rd of November?

9 A No, sir.

10 Q I know you don't. Now of course that was
11 before you got converted. You know, time in the
12 penitentiary will convert you. That's what it
13 will do.

14 MS. BARR: Objection. Is that a question,
15 Your Honor?

16 MR. BARR: Well---

17 THE COURT: Don't -- you can ask
18 questions, Mr. Barr. Objection is sustained.

19 Q Now I want to make sure I understand. You
20 said that you saw Andre; you heard 2 shots.
21 That's what you said you heard 2 shots.

22 A Correct.

23 Q One that wasn't quite so loud. And then
24 another one a loud shot. But you also indicated
25 that you were in the courtroom yesterday when the

Lieutenant Scott-cross by Mr. Barr

1 firearm's expert testified. And where were you
2 sitting, because I looked up here and I didn't see
3 you. Where were you sitting?

4 A I was sitting right over there.

5 Q Because the firearm's expert testified
6 that Mr. Prosser's gun couldn't even shoot. Did
7 you hear that?

8 A Yes, I heard.

9 Q And of course, you claim that, that you
10 heard 2 shots.

11 A Yes, I did.

12 Q Did not you tell the police, and I don't
13 know -- If I need to go back to your statement.
14 Did not you tell them that you didn't see Andre
15 Wallace with a firearm? Didn't you tell them
16 that?

17 A Yes, I did.

18 Q But you were lying then; right?

19 A Yes, sir, I was.

20 Q The plan, conspiracy, to go and rob
21 Mr. Prosser, your friend. Now if I was your
22 friend, would you not agree that you wouldn't want
23 many friends like me; would you?

24 The plan that you said to rob Mr. Prosser,
25 that originated with you, tell me when and where

Lieutenant Scott-cross by Mr. Barr

1 you discussed with Andre Wallace, prior to the
2 27th, going out to rob Mr. Prosser?

3 A Actually we discussed it a couple of days
4 before this incident took place. It was me and
5 Cornelius.

6 Q And where was that?

7 A I can't recall exactly where it was at.
8 But we would go out in the evening time and shoot
9 pool. And the discussion came up, and yes, me and
10 Andre and Cornelius, we did discuss it.

11 Q Where were you shooting pool?

12 A It was either up the track or in Rocktown.

13 Q Tell me the name of one person who ever
14 saw you put a quarter in the pool table with Andre
15 Wallace? Just gave me one. One person.

16 A The owner of the pool place.

17 Q Who is that?

18 A Mr. Billy. Mr. Billy Graham.

19 Q Billy Graham.

20 A Yes, sir.

21 Q Saw you put a quarter in the pool table
22 shooting pool with Andre Wallace?

23 A Yes.

24 Q Now did you ever tell Ms. Di Collins that,
25 you know, me and Andre had struck this plan, and

Lieutenant Scott-cross by Mr. Barr

1 we talked about it. Billy Wallace saw us at the
2 pool room. Did you tell her that?

3 A No, sir.

4 Q In fact, you told the policemen as far as
5 you knew, Andre lived somewhere up here near the
6 pecan orchard; didn't you? That's where you
7 thought he lived; didn't you?

8 A No, sir.

9 Q Well, take a look at your statement, page
10 5 line, line 21. In fact you can start at line
11 15, says so -- line 13 says the question was put
12 to you. So you and Dre are friends. What was
13 your response?

14 A No, ma'am.

15 Q No, ma'am. And what did tell her in line
16 16, he ain't no friend. And then you go on and
17 tell them where you think he lives. And where did
18 you tell them he lived down at line 21? When you
19 were coming through the pecan orchard.

20 A It says Andre's house.

21 Q Out of his house. The pecan orchard. Now
22 if you would, turn on page 8 of your statement.
23 Look at line 5. This is when you told Ms. Collins
24 that you all were sitting around smoking
25 marijuana. And the question was put to you, tell

Lieutenant Scott-cross by Mr. Barr

1 us what happened. What was your response?

2 A I don't know nothing about that.

3 Q I don't know nothing about that. Tell us
4 what happened when you got to Mr. Prosser's house.
5 Tell us what happened when you all got to
6 Mr. Process's house. What did you say?

7 A I say I ain't even know. I don't know
8 what was going on. I really don't.

9 Q Don't know what was going on. Page 9.
10 Line 9. Better yet line 8. Did you get sober
11 when Mr. Prosser was killed. What was your
12 response?

13 A No, I didn't. I don't know what happened
14 over there. To be honest with you, I never even
15 got out of the car.

16 Q Never even got out of the car. Wow. Page
17 10, line 19. Better yet, start with line 17.
18 Tiffany tell us what happened. It's in the open
19 now, and you might as well be honest. When she
20 said in the open, did you understands that to
21 mean that everybody now knows about it? That's
22 what she meant. I mean that's what you understood
23 that she meant. And what was your response? Line
24 19.

25 A Yeah, I really don't know what happened.

Lieutenant Scott-cross by Mr. Barr

1 Q You really don't know what happened. But
2 now today you've got after that -- after some --
3 after you got hit with that or after you promised
4 that you will testify in this courtroom against
5 Andre. And you have now got a deal on burglary,
6 or at least the first degree burglary, as to
7 something that will give you at least more time to
8 spend in this.

9 Tell me this much. You know you can't
10 get, with second degree burglary, you know you are
11 looking at max of 15 years. You know that;
12 right?

13 A Yes, sir.

14 Q What was your response now? Was it yes?

15 A Yes, sir.

16 Q Yes sir. And you know that right now
17 depending upon what you do, well, out of that
18 15 years, you might just get lucky. You've got
19 two kids. You might get lucky and just get in
20 single digits. Have you thought about that? You
21 might get 9 years. Now that's not too bad.
22 That's not too bad compared to life, 30 years.
23 Criminal conspiracy, 5 years. Possession of the
24 weapon, 5 more years. That's not bad when you
25 take a look at that. Do you know what I believe,

Lieutenant Scott-cross by Mr. Barr

1 I believe you were---

2 MS. BARR: Judge.

3 THE COURT: Sustained. You can ask
4 questions. You can't make a statement about what
5 you believe.

6 Q Turn to page 11.

7 MS. BARR: Well, Judge, to the extent that
8 there was no question posed to this witness, in
9 all those comments, we would ask that they be
10 stricken from the record.

11 THE COURT: Well, I will overrule your
12 objection to the last. Mr. Barr, if you want to
13 ask a question about---

14 MR. BARR: Yes, sir.

15 THE COURT: ---the term of imprisonment,
16 you need to let her answer the question.

17 MR. BARR: Yes, sir.

18 THE COURT: But to the extent that you
19 haven't, I will sustain that objection. And
20 instruct the jury to disregard those remarks by
21 Mr. Barr.

22 MR. BARR: I apologize, Your Honor, to the
23 court and to this jury. And to Ms. Barr.

24 Q Page 11. Now you were asked, supposedly
25 you were asked, if you look to page 11, line 12.

Lieutenant Scott-cross by Mr. Barr

1 When you were told and now you don't, about you
2 don't deny, and of course when Ms. Barr came back
3 up here and asked you about this statement, there
4 were some things in here that you probably said
5 that were true; weren't there?

6 A Yes, sir.

7 Q Just a few of them. But you were very
8 careful to make sure that you stick to the script
9 that you and Tiffany had and probably that
10 Mr. McClary had. You tell some truth, and some
11 lies when you want to. That's how you do. Or
12 that's how you did it.

13 A That's how I did with my statement.

14 Q Well when you said in your statement well
15 he parked, Mr. Andre parked right in front of
16 Mr. Prosser's house. Were you telling the truth
17 then or was?

18 A Yes, sir.

19 Q Oh, you were?

20 A When we dropped Ronetta off, yes.

21 Q Parked right in front of the house.

22 A Yes, sir, we were.

23 Q I see. Parked right in front of the
24 house. Netta got out then. And you got out. And
25 don't you agree that McClary was not even in the

Lieutenant Scott-cross by Mr. Barr

1 vehicle then. Wherever he came from, was wherever
2 you all planned that he would be; didn't you?

3 A No, sir.

4 Q Didn't you?

5 A That's not true.

6 Q Not true.

7 A That is not true.

8 Q Take a look at page 11, line 17. Or
9 better yet, line 18. Who got out of the car?
10 Your response is at line 19.

11 A Dre and Trell got out of the car. Both of
12 them.

13 Q Did you see a gun?

14 A No, I did not.

15 Q But of course more lying on your part;
16 right?

17 A Yes, sir, it was.

18 Q Well now between that lie that you told,
19 and a few seconds later over on the page 12. Turn
20 over to page 12, if you would please, to line 16.
21 Question: Dre got out of the car. Did he have a
22 gun in his hand. What was your response?

23 A No, ma'am. I still didn't seen no gun.

24 Q You know what. Took a look at the next
25 page, page 13. Look at this page 13. And look at

Lieutenant Scott-cross by Mr. Barr

1 question No. 9. Says, what were they supposed to
2 do when they got there. That's to Mr. Prosser's
3 house. What was your response?

4 A I don't even know.

5 Q I don't even know. The next question was,
6 said, I don't even know. Or you said, robbery and
7 marijuana. I was like what? And the question was
8 put to you, Net says that you all had a plan.
9 Your response to line 14 was what?

10 A Huh.

11 Q Huh. And would I be correct in taking
12 that to mean you didn't know what it was?

13 A I mentioned about a robbery and marijuana.
14 That's when I said, huh.

15 Q Huh. And No. 15 the question was, and ask
16 her to get her attention while you all searched
17 the house. What was your response? Line 17.

18 A No.

19 Q And that he had come in. What was your
20 response then?

21 A No, I promise you that.

22 Q No, I promise you that. Now in this case,
23 what do you -- what did you go on to say?

24 A I will put that on my grave.

25 Q I will put that on my grave. It wasn't

Lieutenant Scott-cross by Mr. Barr

1 like that. I will put it on my grave. Turn over,
2 if you would, line 14, page 14, please, ma'am.
3 Better yet, line, page 15 when you were asked
4 about Mr. Wallace. Look at line 20. You were
5 asked by Officer Collins, or perhaps investigator,
6 I think Investigator McFadden was there with you.
7 Says what kind of person is Dre. What was your
8 response?

9 A I said I know him from church.

10 Q You know him from church.

11 A Yes, sir.

12 Q You know him from church. And you went on
13 to say, oh, I don't even know him like that;
14 didn't you?

15 A Yes, sir, I did.

16 Q Now this fellow Trell, that you say you
17 don't know whether or not he worked for Prosser at
18 E-Z-E. When did you ever, prior to October 27th,
19 or did you ever see Andre Wallace and Cornelius
20 McClary together anywhere?

21 A Anytime I seen Cornelius I always see
22 Andre.

23 Q Where did you see Andre, and Cornelius
24 together?

25 A I was working up the track at Cornelius'

Lieutenant Scott-cross by Mr. Barr

1 uncle's place, which was Dodson. They were up
2 there every night.

3 Q Now you saw Cornelius there shooting pool
4 at Dodson; didn't you?

5 A Along with Andre; yes, sir.

6 Q Now what I want to know is, where you ever
7 saw the two of them socializing together.

8 A All the time at that particular location.

9 Q At that location.

10 A Yes, sir.

11 Q Now you mean to tell me that what you saw
12 is that you saw him and Andre in there shooting
13 pool; is that right?

14 A Or sitting outside, inside Andre's car,
15 together.

16 Q Oh, you did?

17 A Yes, sir, I did.

18 Q Now who do you know other than yourself,
19 that you have given the name to Officer Collins
20 that that person ever saw Cornelius McClary and
21 Andre Wallace together? Did you give her one
22 name?

23 A No, sir, I have not.

24 Q None. And of course you've said that as
25 far as these phone records, Mr. Prosser called

Lieutenant Scott-cross by Mr. Barr

1 Nett, Ms. Miller, after he had called her -- after
2 she called him several times. Mr. Prosser did.

3 A That's correct.

4 Q Now you know we have got his phone
5 records.

6 A Correct.

7 Q Incidentally, Ms. McClary, or, Ms. Miller,
8 I am sorry. Ms. Jones -- when Mr. Prosser, you
9 don't know when Mr. Prosser was shot. And you
10 didn't see him shot; did you?

11 A I didn't see him shot, being shot, but I
12 heard gunshots.

13 MR. BARR: I see. Court indulgence, Your
14 Honor.

15 THE COURT: Yes, sir.

16 Q Bandannas and gloves. You were in the
17 courtroom you said yesterday. Now tell me one
18 time when you ever told Officer Collins on
19 November 3rd, about anybody with any bandannas and
20 gloves? You didn't do that; did you?

21 A If I am not mistaken, I believe I told
22 them the bandannas. I left the part out about the
23 gloves.

24 Q You told them about the bandannas.

25 A Yes, I did.

Lieutenant Scott-cross by Mr. Barr

1 Q And you told them that in your statement?

2 A If I am not mistaken.

3 Q Show it to me.

4 A I am not sure where it is located.

5 Q You are not sure.

6 A No, sir, I am not.

7 Q I thought maybe you could have pointed it
8 out to me. Now about three or four last
9 questions. At the end your testimony when you
10 were summing it up for Ms. Barr, you told this
11 court and the ladies and gentlemen of this jury
12 that the reason that you were lying is because you
13 were scared.

14 Now, of course, you know you are going to
15 have to, you are going to be separated from your
16 children. They don't allow -- they don't allow
17 women to carry young children to the
18 penitentiary. And you know that you are going to
19 be separated from the other members of your
20 family. They will have to come visit you. Some
21 might visit you. Some might don't. You've
22 thought about that; haven't you?

23 A Yes, sir, I have.

24 Q And of course, sometimes there are some
25 rough women in the penitentiary. Pretty rough.

Lieutenant Scott-cross by Mr. Barr

1 You've thought about that too.

2 A Yes, sir.

3 Q Of course you not frightened by any of
4 that. That doesn't scare you at all. You've got
5 nerves of steel; right? So now you are scared.
6 And you were scared then, and lied. And you are
7 still scared. And if you lied then, for the
8 reason that you are scared, can you think of any
9 reason why we ought to believe that you won't lie
10 now, because you are even scarer? I have no
11 further questions.

12 MS. BARR: No, sir.

13 THE COURT: Step down, thank you, ma'am.
14 We are going to break for lunch. What we will do
15 start back at quarter till two. Of course, ladies
16 and gentlemen, you may not discuss the case.
17 Don't discuss it with anyone. Don't undertake to
18 obtain any information from any source at all. We
19 will see you back at quarter till two. Thank you.

20 (Whereupon, the court takes a lunch recess.)

21 THE COURT: Is the State ready?

22 MS. BARR: The State is ready. Exhibit 123, if
23 we can deal with it right quick. The defendant's
24 booking photo. The Defendant has objected to it.

25 THE COURT: What is purpose of it?

Lieutenant Scott-cross by Mr. Barr

1 MS. BARR: To corroborate the co-defendant's
2 testimony regarding his appearance and his hair at the
3 time the crime was committed.

4 THE COURT: Why does that need any
5 corroboration?

6 MS. BARR: Well, Judge, any time I have a
7 Co-Defendant who has multiple statements and
8 defenses, the defense is, she is lying. Any time
9 I have the opportunity to corroborate her
10 testimony, I will try to do that.

11 THE COURT: How about fact that this is a
12 booking photo? And it shows him in custody? How
13 about some other photo?

14 MS. BARR: We don't have any other photo
15 of him, Judge. And, obviously, there has been
16 testimony that he was arrested. And I think the
17 normal procedure Investigator Collins will testify
18 is that when a Defendant is arrested, he is booked
19 in and a photograph is taken.

20 THE COURT: What is your objection
21 Mr. Barr?

22 MR. BARR: It is irrelevant. It certainly
23 doesn't go to the issue of identity. In addition,
24 it would be our position it violates Rule 403.
25 The Defendant as the defendant's appearance, and

Lieutenant Scott-cross by Mr. Barr

1 we understand that he has been arrested. And of
2 course it now presents his appearance in custody.
3 Judge, I just -- I can -- I know why the
4 prosecution wants it to come in but, Your Honor.

5 THE COURT: Why do they want it to come
6 in?

7 MR. BARR: They want to give the jury the
8 appearance that he is a criminal. I can't think
9 of any other reason. It certainly doesn't go to
10 the issue of identity. It would clearly identify
11 him. He is sitting right here next to me. And I
12 can't think of any other reason to have that
13 admitted into evidence.

14 THE COURT: I will think about. I just
15 want to know what probative value at all. The
16 fact that one witness said he had hair similar to
17 hers at the time doesn't really make any
18 difference to anything. They both identified him
19 as being the one who said he shot Mr. Prosser.
20 And what kind of hair he had, and the
21 corroboration of what kind of hair he had just
22 doesn't appear to be relevant. Even if it is, the
23 fact that this photo is being used, I think the
24 probative value is substantially outweighed by the
25 danger of unfair prejudice.

Lieutenant Scott-cross by Mr. Barr

1 If you are offering the photo, I may
2 change my mind depending upon the context of the
3 case at that time. But I am sustaining the
4 objection right now. And plus if it is -- if it
5 does come in, I can easily read his social
6 security number if that makes any difference. Are
7 you ready, Ms. Barr?

8 MS. BARR: Yes, sir, Judge.

9 THE COURT: Mr. Barr.

10 MR. BARR: Yes, Your Honor.

11 THE COURT: You may bring the jury.

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

14 THE COURT: The State's next witness.

15 MS. BARR: We would call Investigator
16 Collins.

17 Investigator Di Collins, being first
18 duly sworn, testified as follows:

19 Direct Examination by Ms. Barr:

20 Q Good afternoon, Ms. Collins. State your
21 full name for the ladies and gentlemen of the
22 jury.

23 A Deborah McElveen Collins.

24 Q And tell us where you work?

25 A Williamsburg County Sheriff's Department.

Lieutenant Scott-cross by Mr. Barr

1 Q What do you do there?

2 A I am Lieutenant of investigations.

3 Q Now at the risk of telling your age, how
4 long have you been in law enforcement?

5 A I graduated from the Criminal Justice
6 Academy in 1978.

7 Q Over 30 years.

8 A 31.

9 Q 31. Okay, and how long have you been
10 employed with the sheriff's office?

11 A 31 years.

12 Q Okay. So you came right with the
13 sheriff's office when you graduated from the
14 academy?

15 A Yes.

16 Q Give us a little bit of an idea of what
17 you do day to day, as an investigator with the
18 sheriff's office.

19 A I assign cases to the investigators that
20 work under me; such as, murder, burglary,
21 larceny. Child neglect. Whatever needs to be
22 followed up from the uniformed officers, I assign
23 those cases.

24 Q And prior to October 2009, I am sure in a
25 31-year career, you have been to a number of crime

Investigator Di Collins-direct by Ms. Barr

1 scenes.

2 A Yes, ma'am.

3 Q A number of scenes involving murder.

4 A Yes.

5 Q You've seen a lot of dead bodies in 30
6 years.

7 A Yes.

8 Q Now back on October the 30th of 2009, did
9 you come to the home of Ernest Prosser?

10 A Yes.

11 Q And you assisted in a supervisory
12 capacity, your junior investigators in this case?

13 A Yes, ma'am.

14 Q Okay. Now who all in terms of being
15 employee's of the sheriff's department, who all
16 would have been assisting you or working under
17 you, or at your direction; as far as, the
18 sheriff's department is concerned at that time?
19 Who all worked on this case?

20 A When I received the call from Officer
21 Johnny Jenkins, myself along with Investigator
22 McFadden.

23 Q Wayne McFadden?

24 A Wayne McFadden, Brenda Lambert, and
25 Investigator Willie Brown proceeded to the scene.

Investigator Di Collins-direct by Ms. Barr

1 Q Now out of those three individuals, those
2 names you called, who is the only one that's
3 working at the sheriff's office now?

4 A Investigator Brown, myself and Lial.

5 Q And Investigator Lail.

6 A Uh-huh. (Affirmative.)

7 Q Investigator Lambert and Investigator
8 McFadden are no longer working at the sheriff's
9 office.

10 A That's correct.

11 Q Now tell us how you began or your agency
12 began the investigation when you got to the home
13 of Mr. Prosser?

14 A Initially, when I got to the scene, I
15 spoke with Johnny Jenkins, Deputy Jenkins, to find
16 out who had already been in the residence. After
17 having that conversation with him, I advised
18 Investigator Lambert and McFadden to put tape
19 around the residence so that no one else can drive
20 up in the yard.

21 Q Now by the time you all did this, had sled
22 already arrived on the scene?

23 A No, during that time, that's when I called
24 the sheriff and got permission to call sled to go
25 down and assist us.

Investigator Di Collins-direct by Ms. Barr

1 Q Now the sheriff at that time was Calvin
2 Washington.

3 A Yes, ma'am.

4 Q He is now a U.S. Marshall.

5 A Yes.

6 Q Now so your agency put down the crime
7 scene tape, not sled.

8 A That's correct.

9 Q And what is the purpose in putting down
10 crime scene tape?

11 A At that time, there were a lot of people
12 coming to the residence, and that was to keep them
13 from driving closer to the house so that we
14 wouldn't mess up any evidence if there were some
15 in the yard.

16 Q Now you said that a lot of people were
17 coming to the house, you mean like....

18 A Neighbors and family members.

19 Q I am curious in terms of the neighbors,
20 how is that house situated, Mr. Prosser's house in
21 relation to other houses? Is it suburban or
22 residential area?

23 A It's a residential area. But it's not --
24 the houses are not that close.

25 Q Okay. Do you recall whether or not EMS

Investigator Di Collins-direct by Ms. Barr

1 had arrived on the scene when you got there?

2 A Yes, they had already been there.

3 Q Kind of tell us about the investigation of
4 the case from the standpoint of Williamsburg
5 County.

6 A While we were at the scene, there was a
7 cell phone on the ground.

8 Q Okay.

9 A After sled came in and processed the
10 scene, Investigator McFadden looked through the
11 phone to recent calls that was coming in or and
12 going out.

13 Q Yes, ma'am.

14 A And we received a number from the
15 telephone.

16 Q Now and I will get to that in a just a
17 quick second. Did you actually go inside the
18 residence?

19 A No, ma'am.

20 Q When Investigator McFadden looked through
21 the call history of the cell phone, you all got a
22 number; right?

23 A Right.

24 Q Tell me if you can see as far as State's
25 Exhibit No. 71. Can you see that from where you

Investigator Di Collins-direct by Ms. Barr

1 are?

2 A Yes, ma'am.

3 Q You don't put your eyes on? You got it?

4 A Not right now.

5 Q You all got a number from the actual

6 physical phone itself.

7 A Of Mr. Prosser's.

8 Q Right. And the last call that was made

9 from that phone was made to (843)372-9548.

10 A Correct.

11 Q And that indicates that that was the

12 number called; is that right?

13 A Outgoing call; yes.

14 Q The time that that call was placed, the

15 last call that was made from that phone as of

16 October 30th was 9:16 p.m.?

17 A Yes.

18 Q Based on that information, but what did

19 you do with that investigation?

20 A We did a subpoena to get the phone records

21 of Mr. Prosser to see who that number belonged to.

22 Q Now whose name, because I saw something on

23 the exhibit that said Elizabeth. And that is

24 Mr. Prosser's cell phone number is 372-1147?

25 A Yes.

Investigator Di Collins-direct by Ms. Barr

1 Q His phone was actually registered in whose
2 name?

3 A Elizabeth Prosser.

4 Q Right. That's one of his family members.

5 A Right.

6 Q Once you all -- you got the cell phone
7 information and these records by virtue of a
8 subpoena?

9 A Yes.

10 Q And you sent that to AT & T.

11 A Yes.

12 Q Now how were you able to track down the
13 owner of the 372-9548 cell number?

14 A If I am not mistaken, Investigator
15 McFadden did a subpoena on that number. The
16 843-372-9548.

17 Q As a result of getting information as to
18 who that cell phone number was registered to, what
19 did your agency do after you got the register for
20 that cell phone number?

21 A We went to a residence on Hemingway
22 highway, and I can't remember the elderly lady we
23 spoke to, but we were looking for a Gregory Dicks.

24 Q A Gregory Dicks.

25 A Yes.

Investigator Di Collins-direct by Ms. Barr

1 Q Is that the registered owner of the cell
2 phone?

3 A Yes, ma'am.

4 Q That number I should say.

5 A That number.

6 Q Yes, ma'am. Do you recall what day you
7 actually went out there and tried to speak with
8 Mr. Dicks?

9 A It was on this 11/02/2009.

10 Q And Mr. Dicks, that was the gentleman who
11 testified I believe in here on yesterday.

12 A Yes, but he wasn't at the residence on
13 261. We got information to go out to White Oak
14 Road. And we spoke with Ms. Pressley at that
15 residence.

16 Q Okay.

17 A And she give us, after talking with her,
18 we went to Bradley Bay Road where we talked to Mr.
19 Dicks.

20 Q Okay. Now what was Mr. Dicks'
21 relationship to this Defendant, Andre Wallace?

22 A After having a conversation with
23 Mr. Dicks, we learned that his girlfriend's son
24 was Andre Wallace---

25 Q Mother? I am sorry, say that again.

Investigator Di Collins-direct by Ms. Barr

1 A His girlfriend was the mother of Andre
2 Wallace.

3 Q Now was he forthcoming initially about him
4 owning that cell phone number?

5 MR. BARR: Objection?

6 THE COURT: Mr. Barr, basis.

7 MR. BARR: Relevance, Judge.

8 THE COURT: Ms. Barr, is that relevant?

9 MS. BARR: Judge, can we approach, so I
10 won't say anything out of turn?

11 THE COURT: Yes.

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

14 THE COURT: Ladies and gentlemen, I
15 apologize. I know we just began. This is for my
16 purpose. Please bear with me. Please go to your
17 jury room. You may not discuss the case.

18 (Whereupon, the following takes place
19 outside the presence of the jury.)

20 THE COURT: The question that was objected
21 to was Mr. Dicks initially forthcoming. Ma'am,
22 you can answer that question. And then you can
23 continue, Ms. Barr.

24 A No.

25 Q What did he say to you?

Investigator Di Collins-direct by Ms. Barr

1 A When Mr. Dicks was asked about the cell
2 number, he said it wasn't his phone, and he didn't
3 know whose number it was.

4 MS. BARR: And, Judge, that was the
5 question.

6 THE COURT: Mr. Barr, would you like to
7 ask any questions at this time? Or do you just
8 want to make your objections?

9 MR. BARR: I will just make the
10 objection. Judge, I have no questions.

11 THE COURT: Just make sure everything is
12 on the record. I don't know what was said up here
13 and out there. So go ahead and State your
14 objection.

15 MR. BARR: My objection would be that it
16 is irrelevant. And quite frankly now it is also
17 immaterial.

18 THE COURT: Ms. Barr, what does it have,
19 what would that have testimony have the tendency
20 to prove as far as whether or not the Defendant is
21 guilty or not guilty?

22 MS. BARR: That Mr. Dicks was recovering
23 for him.

24 THE COURT: And is there any evidence that
25 he was or that if he was, why he was?

Investigator Di Collins-direct by Ms. Barr

1 MS. BARR: I don't know that there is any
2 direct evidence. But obviously, Judge, we would
3 want to argue to the jury that the Defendant --
4 the witness Mr. Dicks was covering for him because
5 that's his girlfriend's son. And he was aware at
6 the time that they were coming out asking
7 questions regarding the murder.

8 THE COURT: I didn't hear your testimony
9 about that. So all I heard was testimony that the
10 investigators asked him if he knew about anything
11 that phone, not anything about a murder. You can
12 ask the witness those questions. Go ahead.

13 Q Investigator Collins, when you went out
14 and you talked with Mr. Dicks and you asked him
15 about the cell phone, were you asking him in an
16 official capacity as a police officer?

17 A Yes.

18 Q You were investigating the death of Ernest
19 Prosser?

20 A We did not tell him that.

21 Q You didn't tell him you were investigating
22 a murder?

23 A We did not explain the reason why we
24 needed to know.

25 Q Did you indicate to Mr. Dicks that you

Investigator Di Collins-direct by Ms. Barr

1 were investigating a crime in particular? If you
2 remember.

3 A No.

4 Q If you don't that's fine. That's fine.

5 THE COURT: Anything else, Ms. Barr?

6 MS. BARR: No, sir.

7 THE COURT: Relevant evidence under Rule
8 401 is evidence that has a tendency to make the
9 existence of any fact that is a consequence more
10 probable or less probable than it would be without
11 the evidence. That's what I am struggling with.

12 MS. BARR: Yes, sir.

13 THE COURT: Why would this evidence to
14 have a tendency to make it more likely than not?
15 Or more likely or less likely? It would certainly
16 have a tendency to show that Mr. Dicks didn't want
17 to deal with the police. And perhaps
18 substantially he knew his son-in-law used that
19 phone. And that he might be in trouble with the
20 police.

21 But as far as specifically anything about
22 this incident involving Mr. Prosser, and the
23 murder of him, where is that connection?

24 MS. BARR: Well, Judge, we would just, if
25 the information is admitted, we would certainly,

Investigator Di Collins-direct by Ms. Barr

1 my position would be, I would argue to the jury
2 that they can infer some guilt on behalf of the
3 Defendant based upon his lie.

4 THE COURT: All right. Okay. At this
5 time the objection is sustained.

6 MS. BARR: yes, sir.

7 THE COURT: You ready for the jury?

8 MS. BARR: Yes, sir.

9 (Whereupon, the following takes place
10 within the presence of the jury.)

11 MS. BARR: Please the court.

12 THE COURT: Yes, ma'am.

13 Direct Examination continues by Ms. Barr:

14 Q Investigator Collins, you indicated that
15 when you went out and you spoke to Mr. Gregory
16 Dicks about the ownership of that cell phone
17 number. Do you remember my last question to you?

18 A Yes.

19 Q When you went out there, did you go out
20 there in an investigative capacity in your
21 professional capacity?

22 A Yes.

23 Q Do you recall whether or not you were
24 wearing your uniform?

25 A Yes.

Investigator Di Collins-direct by Ms. Barr

1 Q Did you have your police vehicle?

2 A Yes, ma'am. Unmarked.

3 Q Now you, and I am not going to get into
4 the specifics of it. But you had a conversation
5 with Mr. Dicks about his cell phone.

6 A Yes.

7 Q Based upon that conversation, your
8 investigation pointed in the direction of the
9 Defendant Mr. Wallace among others?

10 A After the conversation with Mr. Dicks then
11 we would start to look for Andre Wallace.

12 Q Okay. Fair enough. After that
13 conversation you went to start to look for
14 Mr. Wallace. Now in terms of that cell phone
15 record, according to State's Exhibit No. 71, that
16 indicates that a call was placed from
17 Mr. Prosser's phone on the night of the 27th to
18 Mr. Wallace's phone at 9:16 p.m?

19 A Yes.

20 Q The call before that was placed by
21 Mr. Prosser to Mr. Wallace's phone at what time?

22 A 9:08 p.m.

23 Q Now in terms of receiving a call placed by
24 Mr. Wallace's phone to Mr. Prosser's phone, what
25 time was that done as I am pointing here?

Investigator Di Collins-direct by Ms. Barr

1 A 8:55 p.m.

2 Q What about incoming before then from
3 Mr. Wallace's phone?

4 A 8:51 p.m.

5 Q What about an incoming call before that to
6 to Mr. Prosser's from Mr. Wallace's phone?

7 A 8:40 p.m.

8 Q What about before that call from
9 Mr. Wallace's phone to Mr. Prosser's phone?

10 A 8:04 p.m.

11 Q What about before that? Can you see that?

12 A 7:58 p.m.

13 Q That's how many phone calls were either
14 placed to Mr. Wallace's phone or from
15 Mr. Wallace's phone to the victim on the night of
16 the murder 1,---

17 A Seven.

18 Q And what kind of time span are we talking
19 about? When did those calls begin, and when was
20 the last one placed?

21 A The call began at 7:58 p.m. And the last
22 call going to Andre Wallace's phone was 9:16 p.m.

23 Q So that was a span of 7 calls in about an
24 hour and 15 minutes.

25 A Yes.

Investigator Di Collins-direct by Ms. Barr

1 Q You said that after that conversation you
2 begin to look for Andre Wallace.

3 A Correct.

4 Q Did you find him? I mean obviously you
5 found him, we are here in trial. But when did you
6 find him?

7 A I didn't find him right then. It was
8 later that afternoon.

9 Q Tell us what efforts you did find
10 Mr. Wallace.

11 A After, doing an interview with the
12 co-defendant, Tiffany.

13 Q Jones.

14 A Jones.

15 Q And Ronetta Miller.

16 A Ronetta Miller. I called Lake City Police
17 Department and talked with Chief Brown, and
18 advised him that there was a residence we needed
19 to go to Lake City to pick up a subject.

20 Q And you all actually went to that
21 residence?

22 A When we got there, I realized that it was
23 in the county. And the officer that met us from
24 Lake City P.D. called Florence County officers to
25 met with us.

Investigator Di Collins-direct by Ms. Barr

1 Q Florence County Sheriff Deputies?

2 A Yes.

3 Q And then what happened?

4 A Then we went to Morning Glory Apartments.
5 It's right across from Scotman's.

6 Q Okay.

7 A When we pulled into the apartment complex,
8 there were some guys standing up in front of the
9 apartment. And as we drove in, there were other
10 people standing in the apartment complex. And we
11 noticed the gray, I would say it was a Malibu with
12 a burgundy top at the back of the apartment
13 complex.

14 Q Did you believe that to be the defendant's
15 vehicle at the time?

16 A Yes.

17 Q Please continue.

18 A The officer from Florence County started
19 to knock at the apartments to the right from where
20 the car was parked. The first apartment nobody
21 came to the door. And the second apartment, a
22 young lady came out. And we was inquiring about
23 Andre Wallace, if they knew him. And after having
24 a conversation with that female, she denied
25 knowing him. And they basically threatened to

Investigator Di Collins-direct by Ms. Barr

1 arrest her. And she admitted that it was his car,
2 and he was somewhere in the apartment complex.

3 Q Tell us what happened next.

4 A We waited and waited for awhile, and he
5 didn't come back to the car.

6 Q When you say, he didn't come to the car.

7 A Andre didn't come back -- Andre Wallace
8 didn't come back to the car.

9 Q Yes, ma'am.

10 A And at that time, one of the officers was
11 standing with people who were talking to the
12 female, supposedly Andre Wallace's girlfriend.
13 She gave us a phone numbers, and I actually dialed
14 the number. Andre Wallace answered the phone.

15 Q Okay.

16 A And I asked him where was he. And after
17 talking with him, he said he was with his mother.
18 And I told him that we were at the apartment
19 complex where his car was, and I needed him to
20 come back, because we needed to talk with him.
21 And he said he was on his way.

22 Q Okay.

23 A We waited approximately 10 minutes. He
24 didn't show up, so I called the number again. And
25 Andre answered the phone. And I said, we are

Investigator Di Collins-direct by Ms. Barr

1 still waiting on you, are you coming. And he
2 said, I am on my way. I am on my way. And hang
3 the phone up. So we waited another 15 minutes,
4 and he weren't there, so I called the number.
5 Andre Wallace answered the phone. I said, Andre,
6 are you coming or are you not coming. He said
7 well I am with my mother.

8 MR. BARR: Your Honor, I am going to
9 object to the relevancy. If they had a warrant,
10 then all they had to do was go get him. He has
11 no -- I don't see the relevancy of this.

12 THE COURT: Overruled.

13 Q Please continue.

14 A And I said well let me speak to your
15 mother.

16 Q Now did he know you were a sheriff's
17 deputy at the time you called?

18 A I told him who I was.

19 Q Go ahead.

20 A And I asked to speak to his mother, and he
21 gave her the phone. And after having a
22 conversation with her, I advised her that she
23 needed to bring him on, because we were waiting
24 for him. And probably 7 minutes after that, they
25 pulled into the apartment complex. And Florence

Investigator Di Collins-direct by Ms. Barr

1 County placed him under arrest, because we had an
2 arrest warrant for him, and he ended up NCIC.

3 Q Okay. Now you had a conversation, or had
4 an interrogation of Ms. Miller and Ms. Jones.
5 After that interrogation, were you all looking for
6 additional firearms, not to include the ones that
7 was inside the residence that sled got that day?
8 Were you looking for firearms?

9 A Yes, ma'am.

10 Q Did you ever recover a shotgun in
11 connection with this case?

12 A No.

13 Q Did you ever recover a gun that Ms.
14 Cornelius McClary had?

15 A No.

16 Q Now you indicated that Ms. Brenda Lambert
17 from the Sheriff's Department was a part of this
18 investigation; that Mr. Wayne McFadden was a part
19 of this investigation. Don't tell me what the
20 substance of the conversation was. But did you
21 talk with Mr. McFadden in connection with
22 preparing this case for trial just recently?

23 A I had talked with Wayne McFadden on
24 Saturday, this past Saturday.

25 Q What did you tell him about as to whether

Investigator Di Collins-direct by Ms. Barr

1 or not you needed him to be here for the trial?

2 MR. BARR: Objection, Your Honor. I don't
3 see what the relevancy of what she told Wayne
4 McFadden.

5 THE COURT: Sustained.

6 MS. BARR: Judge, may I be heard at the
7 bench?

8 THE COURT: Yes, ma'am.

9 (Whereupon, the attorneys approach the
10 bench and confer with judge.)

11 THE COURT: Go ahead, Ms. Barr. The
12 objection is overruled.

13 Q Mr. Collins, you spoke to Wayne McFadden
14 on Saturday?

15 A Yes, ma'am.

16 Q Did you tell him whether or not that he
17 needed to be here during the trial?

18 A I advised him that we didn't need him
19 because I had the other investigators here.

20 Q In terms of his role in the case, as far
21 as interviewing the defendants in the case, was
22 either yourself or Willie Brown present when those
23 interviews took place?

24 A Yes, sir.

25 Q Did he offer to come?

Investigator Di Collins-direct by Ms. Barr

1 A He offered, and I told him I didn't need
2 him to come.

3 THE COURT: That's hearsay. The jury will
4 disregard that remark.

5 Q On Tuesday, were you present in the
6 courtroom when Ms. Jones and Ms. Miller pled
7 guilty?

8 A Yes.

9 Q Now there is a fourth person out here,
10 Mr. Cornelius McClary.

11 A Cornelius McClary.

12 Q What is the status of his case?

13 A The judge postponed his case to a later
14 date, because---

15 MR. BARR: Objection, Your Honor.

16 THE COURT: The status of it. Not -- ask
17 the question, are the charges pending or not
18 pending. You can ask that question. Not what
19 any other judge did. Or any judge did.

20 Q Are Cornelius McClary's charges still
21 pending?

22 A Yes.

23 Q Is the intent of the Sheriff's Department
24 to prosecute his case?

25 A Absolutely.

Investigator Di Collins-direct by Ms. Barr

1 Q To try him for the charges.

2 A Yes.

3 Q There was testimony that there was
4 multiple statements given by Tiffany Jones. Did
5 you hear when Mr. Barr cross examined her
6 regarding those statements?

7 A Yes.

8 Q Is that unusual in your experience?

9 A No.

10 Q Tell me why.

11 A We have to take statements from
12 individuals.

13 MR. BARR: Objection, Your Honor. It is
14 irrelevant. The witness is being called upon to
15 speculate.

16 THE COURT: Well the witness can testify
17 to what occurs in the normal course of
18 investigation. The witness cannot vouch for any
19 other witness credibility. So your objection as
20 to the relevance is overruled. But, Ms. Barr,
21 please don't ask any questions about what I have
22 just said.

23 MS. BARR: Yes, sir.

24 THE COURT: I don't want you to ask about.

25 Q You have indicated in your 31-year career

Investigator Di Collins-direct by Ms. Barr

1 with the sheriff's department, you have
2 investigated a number of homicides and other
3 violent crimes.

4 A Yes.

5 Q And you have investigated prior cases
6 where there is not just one person charged; there
7 are multiple people charged.

8 A Correct.

9 Q During your experience, is it unusual for
10 suspects to give multiple statements?

11 A It is not usual.

12 Q Now you were there of course when
13 Mr. Wallace was arrested.

14 A Yes.

15 Q Can you describe his appearance to the
16 court?

17 A I don't remember exactly what he was
18 wearing.

19 Q In terms of the clothing and so forth.

20 A The clothing. His hair, he had like,
21 dreadlocks. They weren't real long, but they
22 probably come around about to his neck.

23 Q Okay. When he was arrested, he was taken
24 to the Williamsburg County jail?

25 A Yes.

Investigator Di Collins-direct by Ms. Barr

1 Q He was booked in?

2 A Yes..

3 Q Now what is the normal practice in terms
4 of booking an individual charged with a crime at
5 the jail?

6 A Once we take him in to the booking area
7 and give the jailer the arrest warrant, they book
8 him in, and take a photo of him.

9 Q I am going to hand you what has been
10 marked for identification purposes as State's
11 Exhibit No. 123. Is that a copy of Mr. Wallace's
12 booking photo that was taken on the date of his
13 arrest?

14 A Yes, ma'am.

15 Q Describe his appearance in terms of---

16 MR. BARR: Objection, Your Honor, she has
17 handed it to him for identification. She's
18 identified it. It's not in evidence. She can't
19 testify to what it's in it.

20 THE COURT: Sustained.

21 Q Is this a copy of the photograph of his
22 booking picture?

23 MR. BARR: Objection, Your Honor, as to
24 whether or not it's a copy of the booking picture.
25 Booking picture, booking statement and booking

Investigator Di Collins--direct by Ms. Barr

1 picture is irrelevant to this case.

2 THE COURT: Objection is sustained at this
3 time.

4 Q The booking photograph was taken the same
5 day he was -- this photograph State's Exhibit 123
6 was taken the same day he was arrested?

7 A Yes.

8 MS. BARR: I beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 Q Did you know Mr. Wallace before this date?

11 A No.

12 Q The last question. The cell phone that
13 was used by the defendant's on the night of his
14 murder that belonged to Mr. Wallace, were you all
15 able to recover that?

16 A No.

17 MS. BARR: That's all the questions I
18 have. Please answer any questions Mr. Barr may
19 have for you.

20 Cross Examination by Mr. Barr:

21 Q Office Collins, is Johnny Jenkins a crime
22 scene investigator?

23 A He should be able to take prints, but he
24 is a patrol officer.

25 Q Patrol. So the answer to my question,

Investigator Di Collins--direct by Ms. Barr

1 would it be no?

2 A He should be -- he should know how to
3 process a crime scene. He's a deputy.

4 Q Every deputy with the Williamsburg County
5 Sheriff's Department ought to know what they ought
6 to do.

7 A He had training.

8 Q That doesn't say that they know.

9 A He had training. So I would say, yes.

10 Q You would say yes. So you are telling us
11 that he has had the training, and you would say
12 yes, that he is a crime scene investigator. Is
13 his name on the witness list?

14 A I don't have one up here.

15 Q I see Johnny Jenkins' name is on here as a
16 witness, a potential witness, with the
17 Williamsburg County Sheriff's Department. And he
18 is a crime scene investigator.

19 A I did not say he was crime scene
20 investigator. I said he is a deputy. He should
21 know how to process a crime scene.

22 Q Or he should know.

23 A A certified police officer.

24 Q Well that doesn't mean that he knows.

25 MS. BARR: Objection, argumentative.

Investigator Di Collins-cross by Mr. Barr

1 THE COURT: It's argumentative.

2 Sustained. End it with a question mark.

3 Q I will do it a different way, judge. We
4 do agree, that he is the first person from the
5 sheriff's department that arrived at Mr. Prosser's
6 house.

7 A Yes, sir.

8 Q And of course you say that he is a crime
9 scene investigator. So he ought to know what to
10 do in terms of being able to preserve a crime
11 scene.

12 A I did not say he was crime scene
13 investigator. I said he was trained. He should
14 be able to process a crime scene. That's what I
15 said.

16 Q Now if he was the first person that
17 arrived on the scene, and he had been trained, it
18 seems to me or does it seem to you, let me ask
19 you; that he is a person that should have been
20 here today?

21 A Not necessarily.

22 Q Not necessarily.

23 A No, sir. He did not process the crime
24 scene. I called sled to do that.

25 Q Who was the first person that took

Investigator Di Collins-cross by Mr. Barr

1 footprints of Mr -- young Mr. Prosser at the crime
2 scene?

3 A Say that again.

4 Q Who to was the first person that examined
5 the footprints from Mr. Prosser at the crime
6 scene?

7 A The crime scene was turned over to sled
8 crime scene. Who all they took prints from, I do
9 not know.

10 Q Now I can call Mr. Prosser as a witness.

11 A That's fine.

12 Q And I'm sure he will testify that it was
13 Johnny Jenkins.

14 A Johnny Jenkins asked him what his shoe
15 size was. It's a difference in taking his prints
16 and his shoe size.

17 Q So you do know about what Johnny Jenkins
18 was doing at this crime scene.

19 A That wasn't the question you asked me.

20 Q I am asking you now, tell me what was he
21 doing, asking people about the foot size?

22 A When I got to the residence, I asked
23 Johnny Jenkins who all had been in the residence.
24 And he advised me was the EMS workers and
25 Mr. Prosser, Jr. and I believe his wife. And that

Investigator Di Collins-cross by Mr. Barr

1 he was advised to get their shoe size.

2 Q So the EMS workers had already been into
3 the crime scene?

4 A When they got the call, they go in the
5 house to see whether the person is still alive or
6 not.

7 Q How many of them went in there?

8 A Two.

9 Q Do you know whether or not they trained in
10 crime scene preservation?

11 A I don't know.

12 Q Now you said you told Mr. Wayne McFadden.
13 that he didn't need to be here.

14 A Correct.

15 Q And that he volunteered if you wanted him
16 here, he will be here.

17 A Yes.

18 Q Now you could have sent him a subpoena if
19 you wanted him here.

20 A He would have come without a subpoena.

21 Q Well, I don't know. He is not here; is
22 he?

23 A I told him not to come, because we didn't
24 need him.

25 Q Now you didn't need him, or you didn't

Investigator Di Collins-cross by Mr. Barr

1 want him? Tell the truth.

2 A We didn't need him.

3 Q Didn't need him. Now I know he was
4 present at the time that Ms. Miller gave a
5 statement on at least two occasions; was he not?

6 A I was present on one of them. And
7 Investigator Brown was on the other one with
8 Investigator McFadden.

9 Q I know he was also involved in the arrest
10 of Mr. Wallace.

11 A I was there also.

12 Q So every place you are and he is, you
13 exclude him?

14 A Not necessarily.

15 Q Ms. Collins, are you going to tell the
16 ladies and gentlemen of this jury, that the truth
17 of the matter is, are you going to deny that you
18 didn't want him here?

19 MS. BARR: Objection. Objection, Judge, I
20 need to be heard outside the presence of the jury,
21 please.

22 THE COURT: Ladies and gentlemen, please
23 step to the jury room, you may not discuss the
24 case.

25 (Whereupon, the following takes place

Investigator Di Collins-cross by Mr. Barr

1 outside the presence of the jury.)

2 THE COURT: Mr. Barr.

3 Q The question is, it's not so much you
4 don't want him, or don't need him, but you don't
5 want him.

6 A We don't need him.

7 Q Don't you think or did not you feel that
8 he might be an embarrassment to your case? Isn't
9 that the real reason that you don't want him here
10 is that you think that he might be an
11 embarrassment to your case and any other case with
12 the Williamsburg County Sheriff's Department?

13 A No, sir.

14 Q You don't think he would be an
15 embarrassment?

16 A No, sir.

17 Q Did they fire him?

18 A He resigned from his position.

19 Q Under pressure?

20 A I have no idea.

21 Q For dishonesty?

22 A I was told for personal reasons.

23 Q Personal reasons. And you and I both know
24 that he resigned because he took the polygraph and
25 failed regarding whether or not he took somebody's

Investigator Di Collins-cross by Mr. Barr

1 money.

2 A That's correct.

3 Q And that's why you don't want him here.

4 A That had nothing to do with it.

5 Q It had nothing to do with it. So from

6 time to time, you use the polygraph as an

7 investigative tool?

8 A Sometimes.

9 Q In this case, did you have an opportunity
10 to give Mr. Wallace a polygraph?

11 A We did not ask him for one.

12 Q Did you deny that I offered you several
13 times to allow him to take the polygraph?

14 A You told me that you would let your client
15 take the polygraph.

16 Q And I told you in 30 years I had never
17 done that; didn't I?

18 A Yes, sir.

19 Q You never got around to having it
20 administered to him; did you?

21 A No, sir.

22 THE COURT: Any other questions along
23 those lines, Mr. Barr?

24 MR. BARR: Nothing.

25 THE COURT: Ms. Barr, any questions, first

Investigator Di Collins-cross by Mr. Barr

1 of all?

2 MS. BARR: No, sir.

3 THE COURT: Your objection.

4 MS. BARR: My objection to the testimony
5 regarding the reasons why Investigator McFadden
6 did not testify. First of all, Judge, we would
7 take the position it is irrelevant, it's
8 prejudicial, and its improper character testimony
9 of a witness that is not here. If Mr. Barr wants
10 to impeach the witness' credibility, he can call
11 him. So, Judge, any testimony regarding why he is
12 no longer employed with the Sheriff's Department,
13 we take the position it is irrelevant, and it is
14 improper character testimony.

15 THE COURT: Both objections are sustained.
16 Don't being talking about Wayne McFadden's theft,
17 his polygraph. You can ask her what you have
18 already asked her, but not anything specifically
19 about did he resign under pressure, did he fail a
20 polygraph or did he steal people's money. And the
21 objection about from this witness at this stage
22 about your polygraph as to your client is also
23 sustained.

24 THE COURT: Anybody need to take a break?

25 MR. BARR: No, sir.

Investigator Di Collins-cross by Mr. Barr

1 THE COURT: You may bring the jury.

2 (Whereupon, the following takes place

3 within the presence of the jury.)

4 Examination continues by Mr. Barr:

5 Q Now, Officer Collins, you went over to

6 Florence County.

7 A Yes, sir.

8 Q Your investigation lead you to Florence

9 County to search for Mr. Wallace; is that correct?

10 A Yes.

11 Q And you did have a warrant.

12 A Yes.

13 Q And you called Mr. Wallace on three

14 occasions?

15 A Yes.

16 Q Did you tell him on any occasion that you

17 had a warrant for him?

18 A No, sir.

19 Q In other words, even though you had the

20 warrant, what you really wanted to do is, you

21 wanted to trick him over here, and get him in to

22 custody, question him, and then serve the warrant

23 on him. Now that's what you wanted to do; isn't

24 it?

25 A No, sir.

Investigator Di Collins-cross by Mr. Barr

1 Q Tell me if you would, please, ma'am, then
2 what obligation did he have, if any, to come at
3 your beck and call simply because you told him
4 that you wanted to see?

5 A He didn't have to come, and I didn't have
6 to tell him I had a warrant for him.

7 Q Well if you wanted to talk to him.

8 A I told him I wanted to talk to him.

9 Q But you didn't tell him you had warrant.

10 A No, sir.

11 Q I see. And you wanted his car.

12 A Yes, sir.

13 Q And you didn't have a search warrant for
14 that either?

15 A Not at the time.

16 Q Now up you went over, and you waited in
17 the Lake City until he come home. He came to his
18 girlfriend's house.

19 A After I called him.

20 Q His car was parked in his girlfriend's
21 house in the parking lot.

22 A He was there too.

23 Q Well I mean his car was in the parking
24 lot.

25 A He was inquiring us pulling up in the

Investigator Di Collins-cross by Mr. Barr

1 apartment complex.

2 Q Well so what. You didn't attempt to
3 arrest him. He didn't flee from you after you
4 told him he was under arrest; did he?

5 A I didn't see him.

6 Q Pardon me?

7 A I would have arrested him if I had seen
8 him, I didn't see him.

9 Q Well did you ever tell him he was under
10 arrest him, and he ran from you?

11 A I didn't see him until his mother brought
12 him back to the apartment complex.

13 Q Well you probably don't see half the
14 people that you are looking for to arrest until
15 you get your eyes on them; don't you?

16 A Yes, sir.

17 Q Now once you told him that he was under
18 arrest, did he resist in any way?

19 A I didn't place him under arrest. One of
20 the Florence County Officer's did, because he was
21 in Florence County.

22 Q Well did he resist them?

23 A No, sir.

24 Q He went along with them.

25 A He was under arrest.

Investigator Di Collins-cross by Mr. Barr

1 Q Well you have heard of people of resisting
2 arrest once they have been put under arrest. I
3 mean in your experience as a law enforcement
4 officer that has happened, hasn't it?

5 A Sometimes. He did not resist.

6 Q He did not resist.

7 A No.

8 Q And he also did not prevent you from
9 taking his vehicle even though you didn't have a
10 search warrant. You took it out of the parking
11 lot; didn't you?

12 A We had it towed from Lake City back to the
13 sheriff's department.

14 Q Did you not tow it out of the parking lot
15 where it was parked by his girlfriend's house?

16 A Yes, sir.

17 Q And you had no warrant to seize it.

18 A Not at that time I didn't.

19 Q Not at the time. So you seized it
20 unlawfully.

21 A No, I didn't.

22 Q What lawful process did you have?

23 A He didn't live in the apartment complex.
24 That's his girlfriend's residence. We arrested
25 him, and I was not going to leave his vehicle

Investigator Di Collins-cross by Mr. Barr

1 there.

2 Q At his girlfriend's house.

3 A Right.

4 Q Where he parked it.

5 A Right. We had a warrant for him for
6 murder. And we had not found our weapons yet that
7 was used in the murder. And it's a possibility
8 they were still in the trunk. And I wasn't going
9 to leave the car at the apartment complex.

10 Q And you think you could seize his car
11 without a warrant.

12 A Yes, sir, he was under arrest. And I took
13 the car.

14 Q I am just curious as to the legal theory
15 under which you thought.

16 A I can't hear you.

17 Q I said, I am curious as to the legal that
18 theory that you thought you would use during the
19 search incident to arrest.

20 A I didn't hear you.

21 Q That's all right. He didn't try to
22 prevent you from taking his vehicle or did he?

23 A He was on his way to Kingstree in the
24 patrol car.

25 Q Yeah. His girlfriend didn't prevent you.

Investigator Di Collins-cross by Mr. Barr

1 A She wasn't saying anything.

2 Q One other issue I want to ask you about.
3 You told Ms. Barr, now it's not unusual when you
4 question defendants for them to give you multiple
5 statements.

6 A That's correct.

7 Q Now isn't it true that with respect to the
8 multiple statements that only takes place when
9 they start lying; isn't it?

10 A Sometimes.

11 Q Sometimes?

12 A Yes, sir.

13 Q Now if they tell you the truth in one
14 statement, is it necessary to go back and have
15 them tell you the truth again?

16 A Why should we take a statement from an
17 individual, let's say he's telling the truth, and
18 we take a truthful statement, if we have a
19 co-defendant and we interview the co-defendant,
20 there may be some more questions that we need to
21 ask the prior Defendant that we took the interview
22 from. And that would be a reason for the second
23 interview.

24 Q Officer Collins, I have Ms. -- the young
25 lady that testified earlier today.

Investigator Di Collins-cross by Mr. Barr

1 A Tiffany.

2 Q Ms. Tiffany. I have got three statements
3 from her.

4 MS. BARR: Objection, facts not in
5 evidence.

6 MR. BARR: Pardon me?

7 MS. BARR: My objection would be that the
8 question assumes facts not in evidence. There was
9 only one statement given by Ms. Jones.

10 THE COURT: You have two statements?

11 MS. BARR: Correct, Judge.

12 THE COURT: You said from Ms. Tiffany.

13 MR. BARR: From Tiffany Jones.

14 THE COURT: Okay.

15 MR. BARR: Ms. Miller. Ms. Ronetta,
16 that's the one I am talking about. You got three
17 statements from her.

18 A Yes, sir.

19 Q Now do you deny that in the second
20 statement that you told her to stop her lying and
21 come clean. Didn't you tell her that?

22 A The interview that I did?

23 Q Yes, ma'am.

24 A Along with McFadden? Yes, sir.

25 Q You told her to stop lying.

Investigator Di Collins-cross by Mr. Barr

1 A Yes, sir.

2 Q Now you would agree that with respect to
3 the things that you get a truthful answer to, you
4 don't have to go out and keep getting the
5 statement about the same thing when you are
6 getting the truth; are you? It's only when
7 somebody gives you, that you have to get 3 or 4?

8 A Yes, sir.

9 Q Thank you, ma'am. And in this case you
10 got three from Ronetta Miller.

11 A We took three statements from her.

12 Q Now inasmuch as, you acknowledge that from
13 time to time, you have to take several statements
14 when you get a lie in one. And in this case you
15 took three. Which one do you think she was lying
16 in?

17 A I wasn't---

18 MS. BARR: Objection. That calls for the
19 witness to comment on the credibility of another
20 witness.

21 THE COURT: Mr. Barr, you can rephrase it
22 in perhaps the context of the witnesses.

23 MR. BARR: Your Honor, I will withdraw the
24 question.

25 THE COURT: Okay.

Investigator Di Collins-cross by Mr. Barr

1 MR. BARR: I have no further questions of
2 the witness.

3 THE COURT: Redirect?

4 MS. BARR: No, sir, Judge.

5 THE COURT: You can step down.

6 MS. BARR: Your Honor, at this time the
7 State would rest.

8 (Whereupon, the trial commences on Friday, May
9 20, 2011 at 9:30 a.m.)

10 (Whereupon, the defendant's rights were given.)

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

13 MR. BARR: We would recall Officer
14 Collins and proffer her testimony.

15 (Di Collins, being previously
16 sworn, retakes the witness stand.)

17 Q Officer Collins, you are an investigator
18 with the Williamsburg County Sheriff's Department.

19 A Yes, sir.

20 Q And we discovered that Officer Wayne
21 McFadden is no longer with the Williamsburg County
22 Sheriff's Department.

23 A Yes, sir.

24 Q And I believe I asked you whether or not
25 Officer Wayne McFadden had been given a polygraph

Investigator Di Collins-cross by Mr. Barr

1 test as a part of an internal investigation
2 regarding allegations of impropriety.

3 A Correct.

4 Q And I think your answer was yes.

5 A Yes.

6 Q And I asked you whether or not from time
7 to time, you find it useful as an investigator to
8 use the polygraph procedure as an investigative
9 device.

10 A Yes, sir. Sometimes we use it to see
11 whether a person is telling the truth or not.

12 Q And of course you would agree that you
13 mainly use it as an investigative tool.

14 A Yes.

15 Q And I asked you also to tell us whether or
16 not in this particular case, whether or not the
17 Defendant Andre Wallace had offered to take the
18 polygraph.

19 A When you approached me, Mr. Barr, and
20 asked me -- and told me that you would put your
21 client on the polygraph test.

22 Q Did -- were you not requested to give a
23 polygraph exam?

24 A You said you wanted your client to take
25 one.

Investigator Di. Collins-direct by Ms. Barr

1 Q Did you ever give him a polygraph test?

2 A No, sir.

3 Q You could have if you wanted to.

4 A I could have, and you could have also.

5 MR. BARR: Thank you, ma'am.

6 THE COURT: Anything on this point, Ms.

7 Barr.

8 MS. BARR: I don't have any questions on
9 this.

10 THE COURT: The law is clear, of course.
11 Over the decades to come, it may change. But the
12 evidence regarding the defendant's willingness or
13 refusal to submit to one is not admissible. It
14 won't be mentioned by anybody.

15 MS. BARR: Yes, sir, Judge.

16 THE COURT: I want to make sure your
17 client understands that too, Mr. Barr. I don't
18 want him blurting it out that he offered to take
19 one. Okay, everybody ready for the jury?

20 MS. BARR: Judge, the only matter we have
21 is the issue about Defendant's Exhibit No. 1. I
22 think though that exhibit was to be a record of
23 cell phone calls made by the Defendant or from
24 that phone on the night of the murder. And,
25 Judge, we will stipulate to the admissibility. We

1 further stipulate as relates to the timing of
2 those calls. And it's based on central standard
3 time rather than eastern standard time.

4 THE COURT: Is that one hour?

5 MS. BARR: One hour; yes, sir.

6 THE COURT: Is that correct, Mr. Barr?

7 MR. BARR: That's correct, Judge.

8 THE COURT: Is it for ID now, and you are
9 going to offer it?

10 MR. BARR: I have already identified, and
11 I will offer. It's by stipulation.

12 (Cell phone records offered as Defendant's
13 Exhibit No. 1 into evidence.)

14 THE COURT: As far as the time on it, do
15 you all want me to tell the jury that, or one of
16 you all to tell the jury that?

17 MR. BARR: Judge, if you could tell them
18 that.

19 THE COURT: What I will do is, Mr. Barr,
20 is the first time you begin to use it with a
21 witness.

22 MR. BARR: Yes, sir.

23 THE COURT: I will make that known to the
24 jury.

25 MR. BARR: Thank you, Judge.

1 THE COURT: You can bring in the jury.

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

4 THE COURT: Ladies and gentlemen of the
5 jury, the State has presented all the evidence it
6 is going to present in it's case in chief.
7 Mr. Barr, will the Defendant be offering any
8 evidence?

9 MR. BARR: Yes, sir.

10 THE COURT: You may call your first
11 witness.

12 MR. BARR: The defense calls Mr. Andre
13 Wallace.

14 Andre Wallace, being first
15 duly sworn, testified as follows:

16 Direct Examination by Mr. Barr:

17 Q Andre, if you would, please, I am going to
18 ask you to speak up so the ladies and gentlemen of
19 this jury, the Court Reporter and His Honor, can
20 hear your testimony clearly. State your full name
21 for the record, please.

22 A Andre Courtney Dante Wallace.

23 Q Where do you live?

24 A At Road, Lake City, South
25 Carolina.

Andre Wallace-direct by Mr. Barr

1 Q And how long have you lived here?

2 A About maybe 12 or 13 years.

3 Q Where were you born?

4 A In Kingstree, South Carolina.

5 Q And what is your date of birth?

6 A .

7 Q Where did you go to school?

8 A Kingstree Sen -- well I graduated from

9 Kingstree Senior High and Kingstree public

10 schools.

11 Q And what year did you graduate in?

12 A 2003.

13 Q Are you employed?

14 A Yes, sir.

15 Q Where do you work?

16 A Nan Ya Plastics.

17 Q Is that in Lake City?

18 A Yes, sir.

19 Q And how long have you been working at Nan

20 Ya Plastics?

21 A Approximately going on like 3 months.

22 Q Were you employed prior to your job at Nan

23 Ya Plastics?

24 A Yes.

25 Q Where were you employed?

Andre Wallace-direct by Mr. Barr

1 A Well I was in Lacross, Georgia working for
2 GM Motors.

3 Q Now are, are you married, single or?

4 A I am single.

5 Q Have any children?

6 A Yes, sir.

7 Q How many children do you have?

8 A Four.

9 Q What are there ages?

10 A 2, 1, and I got twins at 5 months.

11 Q And do they live here in Williamsburg
12 County?

13 A Well my son does. And the other three
14 stay in Florence County.

15 Q Now are your parents alive?

16 A Yes, sir.

17 Q And are they here today?

18 A Yes, sir.

19 Q In the courtroom?

20 A Yes, sir.

21 Q Now, Andre, let me direct your attention
22 to, of course, you have been sitting in this
23 courtroom during these entire proceedings; have
24 you not?

25 A Yes, sir.

Andre Wallace-direct. by Mr. Barr

1 Q Let me direct your attention to October
2 27th 2009. Now you know that you are presently
3 charged with the criminal offense of murder?

4 A I do.

5 Q And you know you are charged with
6 possession of a weapon during a violent crime.

7 A Yes.

8 Q And you are charged with first degree
9 burglary.

10 A Yes.

11 Q And criminal conspiracy.

12 A Yes.

13 Q Now, Andre, if you would, again directing
14 your attention to October 27th 2009, do you have a
15 recollection of what you -- or where you were on
16 October 27th? Starting with early that morning.

17 A Well early that morning, I was in Lake
18 City where I stay. And half the time I live in
19 Florence, South Carolina. And then I went to the
20 car stereo place, because my CD player was messed
21 up in my car. So I went and got another CD player
22 and came back down to Kingstree. That was
23 approximately about 3 or 4:00 o'clock. And I went
24 to see my son, my first son's mother. And I
25 talked to her for a minute, and then I left.

Andre Wallace-direct by Mr. Barr

1 And later on that evening, I was up the
2 track at Dodson's. It's like a little hole in the
3 wall where I can shoot pool and stuff at, and I
4 was out there.

5 Q Dodson. That's a little club.

6 A Yes, you can say a little club now.

7 Q And what do they do there? Do they sell
8 anything there?

9 A Yes like little snacks, but mainly you
10 just shot pool there.

11 Q And that's where you -- and you were
12 there. About what time did you get there?

13 A Well I got Dodson probably like around
14 like 6, 6:30 in the evening.

15 Q And when you got to Dodson's, did you have
16 anybody with you?

17 A Yes.

18 Q Pardon me?

19 A Yes.

20 Q Who was with you?

21 A It was a friend I know from a while back.

22 Q What's his name?

23 A Jake.

24 Q What is his last name?

25 A Williams.

Andre Wallace-direct by Mr. Barr

1 Q And you arrived at Dodson with him?

2 A Yes, sir.

3 Q And were you driving?

4 A Yes, sir.

5 Q Now you have been in the courtroom and I

6 think you heard the testimony as well. Describe

7 the kind of vehicle that you were driving at the

8 time?

9 A It's a gray Mercury Grand Marquis with a
10 burgundy top.

11 Q And is that the same vehicle that at some

12 point the sheriff's department came to your house

13 or came to your girlfriend's house in Florence

14 County and took that vehicle?

15 A Yes.

16 Q Now did you do anything to try to get them

17 to keep them from taking the vehicle?

18 A No, sir.

19 Q You allowed them to take it?

20 A Yes, sir.

21 Q Now, Andre, did you have an occasion while

22 you were at Dodson to see either and or both, Ms.

23 Jones or Ms. Miller?

24 A Yes, sir.

25 Q And tell the ladies and gentlemen of this

Andre Wallace-direct by Mr. Barr

1 jury the circumstances under which you met either
2 one or both of them.

3 A Well actually I saw them like 3 to 4
4 minutes prior to me sitting at Dodson's, because I
5 was coming from around the corner. They was
6 walking towards that way, but they was on another
7 street.

8 Q Now do you know Ms. Jones?

9 A I mean I know of her. I seen her numerous
10 of times, but never had no conversation with her.

11 Q Never had any conversation with her?

12 A No, sir.

13 Q How about Ms. Miller?

14 A No, sir. I know I seen her for like a
15 week prior to the incident, but never spoke to
16 her.

17 Q And where did you see Ms. Miller? Where
18 did you have a recollection of seeing her?

19 A The first time I saw her was at Tanner's
20 Money Saver here in Kingstree.

21 Q And that's a convenience store.

22 A Yes, sir.

23 Q Now were you friends with either one of
24 these two people?

25 A No, sir.

Andre Wallace-direct by Mr. Barr

1 Q But you did see them on the afternoon of
2 the 27th at Dodson.

3 A Yes, sir.

4 Q Tell the ladies and gentlemen of this
5 jury, what happened, whether or not, did you have
6 any conversation with them?

7 A No, not -- they was, I talked to them
8 after the fact. But when they first walked up,
9 they was talking to another person in a different
10 type of car. But like they talked to them
11 probably approximately 3 to 4 minutes. And then
12 they walked to my car and asked me if they could
13 use my phone.

14 Q Were they driving anything?

15 A No, sir.

16 Q And they asked you to use your telephone.

17 A Yes, sir.

18 Q Now is your telephone the same telephone,
19 how did you get your telephone?

20 A Well I actually bought the phone off the
21 street. But when I bought the phone, he tell me
22 all I need is a sim card. Instead of going and
23 buying one, I found one that my stepdad was using
24 at the time, at the house.

25 Q I see. So you changed your sim card.

Andre Wallace-direct by Mr. Barr

1 A Yes, sir. And then I just changed the
2 number.

3 Q And what was the number?

4 A The number before that was, it was
5 372-2354. And I changed it to 372-9548.

6 Q And on the day of November 27th 2009, your
7 number was 9548?

8 A Yes, sir.

9 Q Now, Andre, who specifically was the first
10 person that asked you to use your telephone?

11 A Tiffany Jones.

12 Q And did you give her permission to use the
13 phone?

14 A Yes, sir.

15 Q Did you tell her who to call?

16 A No, sir.

17 Q Did you -- did anybody else use your
18 phone?

19 A Not at that present time.

20 Q Well when Tiffany Jones used your phone
21 where were you?

22 A Still sitting in the car.

23 Q Now what happened with the telephone after
24 you gave it to Tiffany?

25 A Well she used the phone, walked off and

Andre Wallace-direct by Mr. Barr

1 bring it back.

2 Q And did you use the phone after she
3 brought it back?

4 A I don't believe the first time. I believe
5 after the second time she used the phone, I used
6 it after that.

7 Q And when you used the phone, who did you
8 use it to call?

9 A My son's mother.

10 Q And do you know her number?

11 A Yes, sir.

12 Q Now do you know whether or not Ms. Miller
13 used the phone while Ms. Jones had the telephone?

14 A Not at that present time.

15 Q Did Ms. Miller ever use the phone?

16 A Yes, sir.

17 Q When did she use it?

18 A Once we began to ride. Once they got in
19 the car.

20 Q So they got in your vehicle?

21 A Yes, sir.

22 Q Why did they get in your vehicle?

23 A Because they had want me to drop them off.

24 Q Did they tell you where they wanted you
25 to -- who took, when you say, they, who wanted

Andre Wallace-direct by Mr. Barr

1 you to?

2 A Tiffany Jones and Ronetta Miller.

3 Q And did they tell you where they wanted
4 you to drop them off?

5 A They didn't say the exact spot, they just
6 said down 261.

7 Q Now was there any kind of agreement
8 between you and Ms. Jones and Tiffany Miller
9 concerning where they were going or what you all
10 would do after you got there?

11 A No, sir. They must have told me that they
12 would give me gas money to take them.

13 Q How much was that?

14 A \$20.

15 Q Did you ever get the \$20 from them?

16 A Yes, sir.

17 Q When did you get it?

18 A Before we even got on 261, because I had
19 to go to the gas station.

20 Q So you went and got gas before you got on
21 261?

22 A Yes, sir.

23 Q Where did you go?

24 A Young's.

25 Q Young's Convenience Store?

Andre Wallace-direct by Mr. Barr

1 A Yes, sir.

2 Q And where is Young's?

3 A It's right there, right off 261, like in
4 the Green Acres area.

5 Q That's on Highway 261.

6 A Yes, sir.

7 Q And you got -- how much gas did you get?

8 A I get the whole \$20.

9 Q Now Andre did you know Mr -- did you know
10 Mr. Prosser?

11 A No, sir.

12 Q Prior to November 27th, you did not know
13 him?

14 A No, sir.

15 Q Had you ever talked with him?

16 A No, sir.

17 Q Did you have any kind of dealings with
18 him?

19 A No, sir.

20 Q Did you ever work at E-Z-E convenience
21 store and truck store?

22 A No, sir.

23 Q Now you heard some conversation about a
24 Mr. McClary.

25 A Yes.

Andre Wallace-direct by Mr. Barr

1 Q Do you know Mr. McClary?

2 A I seen him, but I don't actually know him.

3 Q Where have you seen him?

4 A Up the track.

5 Q Now on the afternoon or on the evening of
6 the 27th, was he in -- when you left Kingstree,
7 was he with you in your vehicle?

8 A No, sir.

9 Q Now did you see Mr. McClary at all on the
10 27th?

11 A No, sir.

12 Q Well tell the ladies and gentlemen after
13 you left Kingstree -- well after you went to
14 Young's and got the gas, what did you do then?

15 A I proceeded to take Tiffany and Ronetta.

16 Q Where did you take them to?

17 A To Mr. Prosser's house.

18 Q Now when you got to Mr. Process's house,
19 what did you do?

20 A Well I pulled up in the driveway.

21 Q And what happened after that?

22 A Well as I was pulling up, the phone was
23 ringing. And then I looked at it and noticed it
24 wasn't my number. So I asked them if that was the
25 number they was calling. Tiffany said yes. So

Andre Wallace-direct by Mr. Barr

1 she got the phone answered and passed it to
2 Ronetta. And Ronetta said yeah, I am on the
3 outside. Come get your dog. And then he came
4 outside, got the dog and that was it.

5 Q Now did you have any conversation at that
6 time with Tiffany or Ronetta?

7 A Well Tiffany was -- when they first got in
8 the car, Tiffany asked me if I was going to come
9 back. I was like that wasn't the deal. You told
10 me you were going to give \$20 to take you. And
11 now you want me to come pick you up. You got to
12 give me more gas money. But that was it.

13 Q Did she give you any more gas money?

14 A No, sir.

15 Q When you -- did you leave Mr. Prosser's
16 house at that time?

17 A Yes, I did.

18 Q Did you see Mr. Prosser at all?

19 A Yes, when he walked out to get the dog.

20 Q You saw him walk out of his house?

21 A Yes, sir.

22 Q And he got his dog?

23 A Yes.

24 Q Now did Tiffany go in the house or Ronetta
25 or both?

Andre Wallace-direct by Mr. Barr

1 A Well both of them were walking with him,
2 but I didn't know. They was on the side of the
3 house, and I was backing up out of the driveway.

4 Q Do you know where they went after that?

5 A No, sir.

6 Q At any time did you see Mr. McClary?

7 A No, sir.

8 Q Now when you left Mr. Prosser's house,
9 what did you do?

10 A Well I called my son's mother again and
11 she didn't answer it. So I proceeded back to Lake
12 City.

13 Q And you went back to Lake City.

14 A Yes.

15 Q Now, Andre, you were arrested, I believe,
16 in connection with this incident; were you not?

17 A Yes.

18 Q And you were taken in to custody.

19 A Yes.

20 Q And you were taken into custody at the
21 Williamsburg County jail.

22 A Yes.

23 Q Were you ever approached at any time and
24 asked to give a statement to any one of the
25 investigators involved in this incident?

Andre Wallace-direct by Mr. Barr

1 A No.

2 Q Did you ever give them a statement?

3 A Yes.

4 Q Do you remember the day that you gave the
5 statement on?

6 A Yes.

7 Q Now of course, you heard and you are
8 familiar with, was it November 23rd of 2009, when
9 you gave that statement?

10 A Well it was November 3rd.

11 Q November 3rd?

12 A Yes, sir.

13 Q Who did you give a statement to?

14 A Investigator McFadden and investigator
15 Brown.

16 Q Willie Brown?

17 A Yes.

18 Q Now, Andre, did you tell them in that
19 statement, did you tell them the same thing that
20 you just told me as far as what you knew about
21 this incident involving Mr. Prosser's death?

22 A Yes.

23 Q Are you sure about that?

24 A Yes.

25 Q The very same thing?

Andre Wallace-direct by Mr. Barr

1 A Yes.

2 Q Now during the time that Ronetta,
3 Ms. Jones, had your telephone, I am going to show
4 you now what's been marked and entered into
5 evidence by stipulation as Defense Exhibit No. 1,
6 and ask you to take a look at it.

7 THE COURT: Ladies and gentlemen, while he
8 is handing that up, remember I told you that
9 evidence can come in, in various forms. One of
10 those forms is by way of stipulation. Reference
11 is going to be made to this exhibit. And I want
12 to instruct you that the times on that exhibit are
13 central standard time. In other words, if it's
14 10:15 here eastern time, central time, it's 11:15.
15 And those times on that exhibit are according to
16 the lawyers and their agreement made known to me,
17 is central time. Is that right, Mr. Barr?

18 MR. BARR: That's right, Judge.

19 MS. BARR: I think it's the other way
20 around.

21 MR. BARR: I'm sorry, the other way.

22 THE COURT: I wasn't a math major. I
23 apologize. Those times on that will be one
24 earlier, one hour earlier than the time would have
25 been, eastern time, which is our time zone.

Andre Wallace-direct by Mr. Barr

1 Thank you.

2 Q Now, Mr. Andre, I am going to show you
3 now what has been marked and entered into evidence
4 as Defense Exhibit No. 1, a copy of your cell
5 phone record. Now that cell phone record, is that
6 the record of the cell phone that you gave to Ms.
7 Jones and Ms. Miller to use?

8 A Yes, it is.

9 Q Now I believe you looked over that phone
10 record before you came into the courtroom today;
11 did you not?

12 A Yes.

13 Q Now I am going to let you hold that for
14 just a second. Now if you look at -- go to -- are
15 the pages numbered on the copy that you got?

16 A Yes.

17 Q Turn to page 9 on the phone records. Now,
18 Andre, if you look about page 9, down there at the
19 very bottom, it looks like around 6:22. There
20 was a telephone call made from your telephone to a
21 telephone number at (845)342-1147; is that
22 correct?

23 A Yes.

24 Q Are you at page 9?

25 A Yes, sir.

Andre Wallace-direct by Mr. Barr

1 Q Now do you know whose telephone number
2 that is now?

3 A Yes, sir.

4 Q Now did you make that phone call -- well
5 you have been in the courtroom. That's
6 Mr. Prosser's telephone number. Did you make that
7 phone call?

8 A No, sir.

9 Q To Mr. Prosser's house?

10 A No, sir.

11 Q But it was made from your phone.

12 A Yes, it was.

13 Q Now do you know which one of these young
14 lady's made that phone call?

15 A There was the first call from Tiffany
16 Jones.

17 Q Tiffany Jones made that call.

18 A Yes.

19 Q Now, Andre, the very next call that was
20 made from your telephone, your cell phone, was
21 made to 372-2210. Whose number is that?

22 A My son's mother.

23 Q And who made that call?

24 A I did.

25 Q The next telephone call that was made was

Andre Wallace-direct by Mr. Barr

1 also made to 372-2210. Who made that call?

2 A I did.

3 Q And there was a next telephone call that
4 was made was made to Mr. Prosser's number at 1147,
5 which was this telephone number. Who made that
6 phone call?

7 A At the time, it was Tiffany Jones.

8 Q Now the very next telephone call was made
9 to 372-2210. And that's the same girlfriend's
10 number; is that correct?

11 A Yes, it is.

12 Q And is it true to say that -- fair to say
13 that the very next telephone call is to 372-2210;
14 is that correct?

15 A Yes, it is.

16 Q That's at 6:28.

17 A Yes.

18 Q The next telephone call at 6:30 was made
19 to 372-2210. Is that the same girlfriend?

20 A Yes.

21 Q Now, Andre, at 6:36, there is another
22 phone call made to Mr. Prosser's telephone number
23 at 1147. Who made that call do you know?

24 A Tiffany Jones.

25 Q The next phone call that was made from

Andre Wallace-direct by Mr. Barr

1 phone, there's a call to Mr. Prosser's house at
2 6:43. Who made that phone call?

3 A Again, Tiffany Jones.

4 Q Now the next phone call at 6:51 was made
5 to 372-2210. Is that your girlfriend?

6 A Yes.

7 Q The very next telephone call at 7:57 was
8 also made to 372-2210. Is that still your
9 girlfriend?

10 A Yes.

11 Q Now these calls to your girlfriends, how
12 is it that you wound up making calls to your
13 girlfriend in between the calls that were being
14 made by Tiffany and Ronetta?

15 A At this point, we were sitting -- I was
16 still sitting in the car at Dodson. And she was
17 walking in between me and the car, and in and out
18 of Dodson, asking to use the phone.

19 Q And you let her use the phone every time
20 she asked you to use it.

21 A Correct.

22 Q And you called your girlfriend back?

23 A Yes.

24 Q Now the next call was at 7:58 to Mr.
25 Prosser's telephone number. Do you know who made

Andre Wallace-direct by Mr. Barr

1 that call?

2 A At that time it was Ronetta Miller.

3 Q Another call was made to Mr. Prosser. The
4 next call was 7:04. Who made that call?

5 A Tiffany Jones.

6 Q Now the phone call, or the next call that
7 came to your telephone from another phone
8 (843)373-3480. Whose phone -- who called you
9 then?

10 A That's my other three kids mother.

11 Q She called you.

12 A Yes.

13 Q And where were you then?

14 A Still at Dodson.

15 Q Now after she called you, there was a
16 phone call made from your phone at 11 -- to that
17 1147 number at 7:40 from your phone. Do you know
18 who made that call?

19 A Ronetta Miller.

20 Q How about the next one at 7:51 to 1147?
21 Do you know who made that one?

22 A I believe it was Tiffany Jones, I am not
23 sure.

24 Q And in fact, there are 2 more calls made.
25 The next two calls on that telephone was made --

Andre Wallace-direct by Mr. Barr

1 that was made to Mr. Prosser's number. One at
2 7:55 and one at 8:07. Do you know who made those
3 phone calls?

4 A Ronetta Miller.

5 Q Now, Andre, the very call on your
6 telephone was a call to your telephone from
7 Mr. Prosser's phone at 1147 at 8:08. Now who had
8 the telephone when that call was made from
9 Mr. Prosser's telephone to your telephone?

10 A Ronetta Miller.

11 Q Now there is a second call from
12 Mr. Prosser's phone to your phone at 8:16 from
13 Mr. Processor's phone to your phone. Who received
14 that call?

15 A Ronetta Miller.

16 Q Did you ever talk to Mr. Prosser?

17 A No, I didn't.

18 Q Now, Andre, you how old are you?

19 A 26.

20 Q Now you are 26 years old. You've
21 indicated that you have got four children. Now
22 did you ever when you went to drop off Ronetta and
23 Tiffany, did you ever get out of the vehicle?

24 A No, I didn't.

25 Q Did you ever have any discussion from

Andre Wallace-direct by Mr. Barr

1 either Tiffany Jones or Ronetta Miller concerning
2 robbing Mr. Prosser?

3 A No, sir, I didn't.

4 Q Did you ever see Mr. McClary?

5 A No, I didn't.

6 Q Do you where he came from?

7 A No, sir.

8 Q Now do you own a sawed off shotgun?

9 A No, sir.

10 Q Have you ever owned one?

11 A No, sir.

12 Q Did you have one on the night of October
13 27th?

14 A No, sir.

15 Q Have you ever shot a shotgun?

16 A No, sir.

17 Q Do you own a pistol?

18 A I have owned a pistol in the past.

19 Q How long ago was that?

20 A Like that was like about 2 years prior
21 this.

22 Q Do you own one now?

23 A No, sir.

24 Q Did you own -- did you own one the night
25 you dropped Tiffany and Ronetta off?

Andre Wallace-direct by Mr. Barr

1 A No, sir.

2 Q Did you have a pistol?

3 A No, sir.

4 Q Did you have any kind of weapon?

5 A No, sir.

6 Q Now when you were at Dodson with Ronetta
7 and, did you all smoke reefer over there?

8 A No, sir, I was smoking; I admit that. But
9 they did not smoke.

10 Q You were smoking marijuana?

11 A Yes, sir.

12 Q But you said Ronetta and Tiffany didn't
13 smoke any marijuana?

14 A No, sir.

15 Q Do you know if they had any marijuana?

16 A I don't know whether they had. But I know
17 they ain't did smoke with me.

18 Q They never smoked anything with you?

19 A No, sir.

20 Q Now of course you know the difference
21 between the truth and a lie.

22 A Yes.

23 Q And you know that probably everybody in
24 this courtroom is thinking that you will tell any
25 kind of lie to keep from going to the

Andre Wallace-direct by Mr. Barr

1 penitentiary.

2 A Yes, I do.

3 Q Now you took an oath to tell the truth.

4 A Yes, I did.

5 Q Have you told the truth?

6 A I did.

7 Q Did you ever -- have you seen Mr. Prosser?

8 A The only time was when he came on the

9 outside to get his dog.

10 Q That's the only time you have ever seen

11 him.

12 A Yes.

13 Q You never went in his house?

14 A No, sir, I wasn't.

15 Q Andre, are you sure about that?

16 A Yes, I am sure.

17 MR. BARR: Would you answer any questions

18 that Ms. Barr might have for you?

19 A Yes, I will.

20 MS. BARR: Judge, may I have a quick recess to

21 set this up right quick?

22 THE COURT: Yes, sir.

23 (Court takes a short break.)

24 THE COURT: Ms. Barr.

25 Cross Examination by Ms. Barr:

Andre Wallace-direct by Mr. Barr

1 Q Mr. Wallace, I want to make sure I
2 understand this story you are telling the jury
3 today. How long have you known Tiffany Jones?

4 A I don't actually know her. I never had a
5 conversation with her, but I seen her off and on
6 for about a month, or month and a half.

7 Q Seen her off and on.

8 A Prior to the incident.

9 Q So if you want this jury to believe you,
10 you're suggesting to us that you have only seen
11 her. You wouldn't have any reason to be mad at
12 her at this time.

13 A No.

14 Q And she wouldn't have any reason to be mad
15 at you?

16 A No, ma'am.

17 Q No bad blood between the two of you.

18 A No, ma'am.

19 Q What about Ronetta Miller?

20 A No, ma'am.

21 Q No reason for her to be angry with you.

22 A I've known her shortly.

23 Q Sir?

24 A I've known her shortly. I've only seen
25 her like a week prior to the incident.

Andre Wallace-cross by Ms. Barr

1 Q So she would have no reason to be mad at
2 you; right?

3 A I guess not.

4 Q You would have no reason to be mad at her;
5 right?

6 A No.

7 Q As far as you know, they have no reason to
8 tell the police that day they were arrested, that
9 you were the one who shot Mr. Prosser if it wasn't
10 true?

11 A No.

12 Q No reason you can think of in a year and a
13 half this case has been pending.

14 A No, sir.

15 Q Now where is the phone you used that
16 night?

17 A Well I don't know. I know it's not in my
18 possession now. I don't know where it is now.

19 Q When is the last time you saw it?

20 A That night.

21 Q That night? What happened to it?

22 A I got arrested.

23 Q The night you got arrested was the last
24 time you saw it? I need you to answer for the
25 Court Reporter.

Andre Wallace-cross by Ms. Barr

1 A The last time I got arrested that's when I
2 saw it.

3 Q You got arrested the same day you gave a
4 statement.

5 A Huh?

6 Q Sir?

7 A Yes.

8 Q So that would be November 3rd 2009?

9 A Yes.

10 Q Speak up for me.

11 A Yes.

12 Q Now when the police asked you about the
13 phone, you told them you don't have no phone.

14 A I told I had a -- I got a phone. They
15 know I had a phone. I told them it was my number.
16 And I told them that it was in Kingstree.

17 Q That's what you told them?

18 A Yes. Because I thought it was.

19 Q Now I am going to show you this exhibit or
20 this document, I should say. That's a copy of
21 your statement from November 3rd, 2009?

22 A Yes.

23 Q And that's when you were talking to Willie
24 Brown and Wayne McFadden; right?

25 A Yes.

Andre Wallace-cross by Ms. Barr

1 Q Sir?

2 A Yes.

3 Q And they asked you, where is your phone

4 at; right? Let me help you. Turn to page 15.

5 Look at line 17. Are you with me?

6 A Yes.

7 Q Now McFadden asked you where is your

8 phone; right?

9 A Yes.

10 Q And you -- your response was, my phone;

11 right?

12 A Yes.

13 Q You answered the question, my phone.

14 A Yes.

15 Q And McFadden said uh-huh; right?

16 A Yes.

17 Q And didn't you say, I ain't got no phone.

18 Isn't that your response?

19 A Yes.

20 Q So you lied?

21 A I didn't have the phone at the time.

22 Q Oh, come on now. Didn't you just tell the

23 jury you had it? The last time you had it was the

24 night you were arrested?

25 A Yeah, but I didn't had it at the time.

Andre Wallace-cross by Ms. Barr

1 They took my keys and the phone out of my pocket.

2 Q So the sheriff's department had it.

3 A I guess they took my keys. That's the
4 only way they took my car. Because my keys and my
5 phone were in my pocket.

6 Q So you turned it over to law enforcement
7 is your testimony.

8 A Yes.

9 Q Go on further down that page. They
10 continue to pressure you about it; right?

11 A Uh-huh. (affirmative.)

12 Q Sir?

13 A Yes.

14 Q And they asked on line 24 or 23, where is
15 the phone at; right?

16 A Yes.

17 Q And you said the phone was in Kingstree;
18 right?

19 A Yes.

20 Q And they asked you where is the phone at
21 Mr. Wallace; right?

22 A Yes.

23 Q And go on up page 16. Your response was,
24 at my mom's house. At my mom's house. It's at my
25 mom's house. That's what you told the police;

Andre Wallace-cross by Ms. Barr

1 wasn't it?

2 A I don't remember that, ma'am.

3 Q Well that is your statement; isn't it?

4 A I don't know if that's what I said.

5 Q Well you said it, and you lied to the
6 police. There is no question about that.

7 A No, I didn't lie, ma'am.

8 Q Well, is that your statement?

9 A I don't know if this is my statement or
10 not.

11 Q Oh, now you don't know?

12 A I don't remember saying this right here.

13 Q Now you said that you told them that the
14 phone was in your stepdad's name?

15 A Yes.

16 Q And that's Gregory Dicks, Sr.; right?

17 Q That was the man who testified earlier in
18 the trial of the case; right?

19 A Yes.

20 Q He dates your mama?

21 A Yes, he do.

22 Q Now they asked you about whose name that
23 phone was in. Do you remember that?

24 A No, ma'am.

25 Q Wait a minute now. I thought you just

Andre Wallace-cross by Ms. Barr

1 said to this jury that you told them it was your
2 stepdad's name. Didn't you just testify to that?

3 A I told them what my number was. I
4 identified the number when they asked me the
5 number.

6 Q I understand that.

7 A I told them it was my number.

8 Q I am sorry. Didn't you just tell this
9 jury that you told the police that the telephone
10 number was in your stepdad's name? Didn't you
11 just say that like 10 minutes ago.

12 A No, I told Mr. Barr it was my stepdad's
13 name.

14 Q And I don't want to trick you. I just
15 want to be clear. Your testimony now is you did
16 not tell the police that the phone was in your
17 stepdad's name.

18 A I didn't tell the police. I told Mr. Barr
19 that.

20 Q Did you ever tell the police whose name
21 the phone was in?

22 A No, they didn't never ask. They never
23 asked me about whose number it was.

24 Q So your testimony before this jury is, you
25 never told the police whose name your cell phone

Andre Wallace-cross by Ms. Barr

1 was in.

2 A No.

3 Q Go on down on page 16 to line 3 and 4.

4 Are you with me? Sir?

5 A What line?

6 Q Lines 3, 4 and 5. Let me know when you
7 are with me.

8 A Uh-huh. (affirmative.)

9 Q The police asked you, does your father
10 know that phone is in his name; right?

11 A Yes.

12 Q And you said, I'm saying it ain't in his
13 name; right?

14 A Yes.

15 Q Then you go on to say his son has the
16 same name as him; right?

17 A Yes.

18 Q And you go on to say, it's not in the
19 senior's name. It's in the junior's name; right?

20 A Yes.

21 Q And you go on to say it was the junior's
22 phone; right?

23 A Yes, I did.

24 Q So you lied. You did tell the police
25 about whose name the phone was in. You just lied

Andre Wallace-cross by Ms. Barr

1 today; didn't you? In this courtroom.

2 A I didn't recall.

3 Q Now I am curious about another part of
4 your statement. Describe to me what Mr. Prosser
5 did when you saw him that night.

6 A Well when he walked out, all he did was
7 stood like in my high beam, because I had the
8 lights on. And he just told them to come on while
9 his dog was standing next to him.

10 Q What else did you observe about
11 Mr. Prosser?

12 A I mean, he had a gun in his waist line.

13 Q Yeah, you saw him. He came out of the
14 car, out of his house with the gun; right?

15 A Yes.

16 Q But you didn't tell us about that earlier.

17 A I mean he didn't ask me nothing about the
18 gun. He asked me if I saw him. I said yes, I saw
19 him.

20 Q Now your testimony is that Tiffany and
21 Ronetta, the last time you saw them that night,
22 both of them were going with Mr. Prosser toward
23 his house.

24 A Yeah, they was going towards the back from
25 the side of the house.

Andre Wallace-cross by Ms. Barr

1 Q Now your statement is that you were just
2 giving them a ride, and they gave you \$20.

3 A Yes.

4 Q What were you giving them a ride from?

5 A The track.

6 Q You are going to have to help me. What's
7 up the track. What does that mean? Is that near
8 here?

9 A Yeah, that's near Eastland Avenue, I
10 believe.

11 Q How long did it take you to get from up
12 the track to Mr. Prosser's house?

13 A I don't know, because I stopped at the gas
14 station.

15 Q Give me an estimate, because I don't
16 know. You have to tell me.

17 A Probably 15, 20 minutes.

18 Q How many miles was it?

19 A Oh, I don't know.

20 Q Less than 20?

21 A Yeah, I guess that was less than 20.

22 Q And your testimony is that the only thing
23 you would do -- or the only thing you were doing
24 was giving them a ride to get Mr. Prosser's house.
25 You wasn't even planning on coming back and pick

Andre Wallace-cross by Ms. Barr

1 them up.

2 A No, I wasn't.

3 Q And they gave you \$20 from a 20-mile ride?

4 A Yes.

5 Q How were they supposed to get back from

6 the house?

7 A I didn't know, I didn't care.

8 Q Now the police asked you what's that brown

9 stuff on your car; right?

10 A Yes.

11 Q And that's all they asked you, what's the

12 brown stuff on your car; right? Right?

13 A Yes.

14 Q And you just volunteered out of the blue,

15 that ain't blood.

16 A Well that's the police. I know what they

17 are getting at. They are trying to convict me of

18 murder.

19 Q So the answer to that question is yeah.

20 You just volunteered out of the blue.

21 A Yes, because I know what they was getting

22 at. Yes, I volunteered and said it.

23 Q It ain't blood. Now let's talk about

24 these calls okay. I am going to give you

25 Defendant's Exhibit No. 1. And you can look it

Andre Wallace-cross by Ms. Barr

1 over with me.

2 Q Turn to page 9 for me. Are you there?

3 A Yes.

4 Q The first call that was placed by your

5 phone to the victim's phone was at 6:21 p.m.;

6 right? All the way at the bottom.

7 A Yes.

8 Q Now we all know that that's central

9 standard time now. So that's 7:21 p.m. eastern

10 standard time. Our time; right?

11 A Yes.

12 Q And that was an outgoing call placed on

13 your phone -- from your phone; right?

14 A Yes.

15 Q And if you go to the top of page 10, you

16 can see that that call lasted 30 seconds; right?

17 A Yes.

18 Q Now the next call that was placed by your

19 phone was at 6:22 p.m.; right?

20 A Yes, I was.

21 Q And 41 seconds; right?

22 A Yes.

23 Q The length of that call was 51 seconds to

24 Mr. Prosser's phone; right?

25 A Yes.

Andre Wallace-cross by Ms. Barr

1 Q So the time frame between that first call
2 and that second call was around about a little
3 under a minute; right?

4 A Yes.

5 Q Now the next call that was placed from
6 that phone, you said that was your call. You did
7 that; right?

8 A Yes, I did.

9 Q That was at 6:24 p.m.; right?

10 A Yes.

11 Q That call lasted 37 seconds; right?

12 A Yes.

13 Q And the time frame between the call that
14 was placed to Mr. Prosser's phone that you allege
15 is made by Tiffany, and your call was 2 minutes;
16 right?

17 A Yes.

18 Q The next call placed by you was at 6:25
19 p.m.; right?

20 A Yes, it was.

21 Q And you admitted that that's your call;
22 right?

23 A Yes.

24 Q And it was less than a minute before the
25 previous call; right?

Andre Wallace-cross by Ms. Barr

1 A Yes, it was.

2 Q The next call that you purport to have
3 been made by Tiffany to Mr. Prosser's phone, and I
4 will need to go to the bottom of page 8. Was at
5 6:26 p.m.; right?

6 A Yes.

7 Q Now if go back up the top of page 9, that
8 call lasted less or the call lasted 28 seconds;
9 right?

10 A Yes.

11 Q And the distance between, the time frame
12 between when that call was made that you allege
13 was made by Tiffany Jones and the last call you
14 made was less than a minute.

15 A Yes.

16 Q Go back to page 8 for me at the bottom.
17 Now you claim Tiffany Jones made this call to
18 Mr. Prosser's phone at 6:26 p.m.

19 A Yes.

20 Q The next call that was made by you was a
21 minute later; right?

22 A Yes, I was.

23 Q The next call made by you was a minute
24 later at 6:28 p.m. right?

25 A Yes, it was.

Andre Wallace-cross by Ms. Barr

1 Q The next call was that made according to
2 you, was less than 2 minutes later at 6:30; right?

3 A Yes, it was.

4 Q The next call that you claim Tiffany made
5 was 6 minutes later at 6:36 p.m.; right?

6 A Yes.

7 Q Go to the bottom of page 7. We've
8 established that the last call placed to
9 Mr. Prosser's phone was at 6:36 p.m. The next
10 call that was placed to Mr. Prosser's phone was
11 6:43 p.m.; right?

12 A Yes, it was.

13 Q About 7 minutes between the last call;
14 right?

15 A Yes, it was.

16 Q The next one, and you say this call that
17 was made by you was at 6:51: p.m.; right?

18 A Yes.

19 Q And so there was a difference of about
20 7 minutes between those two calls; right?

21 A Yes, it was.

22 Q The next one placed by you according to
23 you was at 6:57 p.m.; right?

24 A Yes.

25 Q Six minutes between those two calls;

Andre Wallace-cross by Ms. Barr

1 right?

2 A Yes.

3 Q The next call placed by your phone was at
4 6:58 p.m.; right?

5 A Yes.

6 Q That was to the victim's number; right?

7 A Yes.

8 Q That lasted 4 minutes and 6 seconds;
9 right?

10 A Yes, It did.

11 Q So there was a difference in time of right
12 about a minute; right?

13 A Yes.

14 Q Go down to page 6 for me. Right at the
15 bottom. Last call placed that we just talked
16 about to Mr. Prosser's phone was at 6:58 p.m.
17 The call after that was at 7:04 p.m.; right?

18 A Yes.

19 Q To the victim's phone; right? It lasted
20 33 seconds; right?

21 A Yes, it did.

22 Q And there was a difference of about
23 6 minutes between that call and the last one;
24 right?

25 A Yes, it was.

Andre Wallace-cross by Ms. Barr

1 Q The next call that your phone received
2 was at 7:10 p.m.; right?

3 A Yes.

4 Q You answered that call; right?

5 A Yes.

6 Q And it was one minute and 24 seconds;
7 right?

8 A Yes.

9 Q And whose number was calling you at that
10 time?

11 A That's my three kids' mother.

12 Q That -- the difference between that call
13 and the last one was about 5 minutes; right?

14 A Yes.

15 Q The next call that went out from your
16 phone was at 7:40 p.m.; right?

17 A Yes, it was.

18 Q To the victim's phone; right?

19 A Yes.

20 Q One minute, two seconds; right?

21 A Yes.

22 Q So 30 minutes had gone by; right?

23 A Yes.

24 Q And you indicated that it took you about
25 20 minutes to get out there. Plus you stopped for

Andre Wallace-cross by Ms. Barr

1 gas; right?

2 A Yes.

3 Q So that was probably the time frame
4 between when that outgoing call was made to Mr.
5 Prosser's phone, and when this call was made at
6 7:40 p.m.

7 MR. BARR: Your Honor.

8 THE COURT: Wait just a second, sir.

9 MR. BARR: I understand she can lead on
10 cross, but she is testifying.

11 THE COURT: Well just say, doesn't that
12 mean instead of, now that means. In other words,
13 just ask the questions instead of making a
14 statement.

15 Q You said it took you about 20 minutes to
16 get out there to Mr. Prosser's house? Sir?

17 A Yes, ma'am.

18 Q And you had to, in addition to the 20
19 minutes you had to stop for gas?

20 A Yes, I did.

21 Q So about 30 minutes; right?

22 A Yes, about 20 minutes.

23 Q Sir?

24 A About 20 minutes.

25 Q Okay. And there is a 30-minute time frame

Andre Wallace-cross by Ms. Barr

1 between when those two outgoing calls were made to
2 Mr. Prosser's phone; right?

3 A Yes.

4 Q The next call that was made to Mr.
5 Prosser's phone from your phone was at 7:51 p.m.;
6 right?

7 A Yes.

8 Q That call was 50 seconds; right?

9 A Yes, it was.

10 Q Now how many calls did you get from
11 Mr. Prosser's phone?

12 A And I didn't count them up or nothing.

13 Q Now don't, I want you to go from memory,
14 because obviously if your phone rings you would
15 remember that; right?

16 A Probably about from them calling the phone
17 probably like 2 or 3 times. Two or three times.

18 Q I thought you testified earlier that he
19 called one time.

20 A The phone rang two or three times.

21 Q From him?

22 A Yes.

23 Q Okay. Turn the page 5 for me. Your phone
24 call to Mr. Prosser's phone at 7:55 p.m.; right?

25 A Yes.

Andre Wallace-cross by Ms. Barr

1 Q Lasted 54 seconds.

2 A Yes, it did.

3 Q The next call was made at 8:07 p.m. to

4 Mr. Prosser's phone.

5 A Yes.

6 Q Lasted one minute and 5 seconds?

7 A Yes.

8 Q There was a difference of if my math was

9 right, about 12 minutes between those two calls;

10 is that right?

11 A Yes, it was.

12 Q The next call made at -- I'm sorry, 8:08.

13 That was a received call from Mr. Prosser's phone?

14 A Yes, it was.

15 Q And that was a call that lasted 50

16 seconds; right?

17 A Yes.

18 Q And the last call that was made or

19 received from Mr. Prosser's phone to our phone

20 happened at 8:16 p.m.; right?

21 A Yes.

22 Q And it lasted 46 seconds; right?

23 A Yes.

24 Q So I need to be clear about something.

25 When these outgoing calls were being made to Mr.

Andre Wallace-cross by Ms. Barr.

1 Prosser's phone; right?

2 A Yes.

3 Q And a minute later we get incoming calls
4 or outgoing calls to your baby's mothers. I mean
5 how did that work?. If Tiffany was making the
6 phone calls, let me finish my question. If
7 Tiffany is the one making the phone calls to Mr.
8 Prosser and not you, how was it less than a minute
9 later, you were able to get a phone call from your
10 baby's mama, if you didn't have a phone?

11 A Because I was in the same spot. They were
12 standing right there by the car.

13 Q So what were you all doing, just talking
14 on the phone and passing it back and forth within
15 a minute?

16 A When she will use the phone, she will hand
17 it back and she will come get it back.

18 Q Okay. And you all did that repeatedly
19 back and forth.

20 A Yeah, like 4 or 5 times.

21 Q Four or five times.

22 A Outside the car. Then we started inside
23 the car.

24 Q When you looked through those phone
25 records, there were 13 calls placed either by your

Andre Wallace-cross by Ms. Barr

1 phone or received from your phone to
2 Mr. Prosser's phone; right? Thirteen calls
3 between the two numbers.

4 A Yes.

5 Q In the span of about an hour and 15
6 minutes; right? Well actually a little longer
7 than that actually.

8 A Yes.

9 Q In the span of about 2 hours, 13 calls.
10 That sound about right? And out of those 13
11 calls, 11 calls were actually made by your phone;
12 right?

13 A Yes.

14 Q And if your story is to be believed, it
15 never even crossed your mind as to wonder why all
16 those calls were being placed?

17 A I mean they said they had to use the
18 phone. They had no minutes on there. I saw the
19 phone, but they pretend they had no minutes so I
20 let them use the phone.

21 Q And of course you never heard any
22 conversations or anything.

23 A Oh, no, uh-huh. (Negative.)

24 Q If you weren't there that night, when was
25 the first time you heard about Mr. Prosser dying?

Andre Wallace-cross by Ms. Barr

1 A That day I got arrested.

2 Q That was the first time you ever heard
3 anything about it?

4 A Yes.

5 Q After you were arrested, you were
6 eventually released on bond; weren't you?

7 A Yes.

8 Q And Ms. Jones was eventually released on
9 bond; right?

10 A Yes.

11 Q And you remember after you all were both
12 out of jail seeing her at a nightclub?

13 A No.

14 Q You don't remember that?

15 A No, ma'am.

16 Q You don't remember telling her now, you
17 keep your mouth shut, and I will keep my mouth
18 shut?

19 A No, ma'am.

20 Q You're saying that didn't happen?

21 A No, ma'am, I never saw her after we got
22 out.

23 MR. BARR: Your Honor, objection. May we
24 approach the bench?

25 (Whereupon the attorneys to approach the

Andre Wallace-cross by Ms. Barr

1 bench and confer with judge.)

2 THE COURT: Objection is overruled. Go
3 ahead, Ms. Barr.

4 Q Mr. Wallace, you don't recall telling
5 Tiffany Jones in a nightclub after you were both
6 released on bond that if you keep your mouth shut,
7 I will keep my mouth shut?

8 A No, ma'am.

9 Q You deny ever seeing her in a nightclub?

10 A I never saw her.

11 Q Let me finish my question. Do you deny
12 ever seeing her in a nightclub after you were
13 released on bond?

14 A No, ma'am.

15 Q You never saw her anymore after you got
16 arrested?

17 A No.

18 Q Well I mean you had to at least see her
19 in court at some point; right?

20 A I may have thought that in a nightclub.

21 Q You said you owned -- you used to own a
22 pistol.

23 A Yes.

24 Q Where is that pistol?

25 A It was pawned like 3 or 4 months prior to

Andre Wallace-cross by Ms. Barr

1 the incident.

2 Q To that incident. You mean the day Mr.
3 Prosser was murdered?

4 A Yes.

5 Q Where is the shotgun?

6 A I never had a shotgun.

7 Q You had that pistol legally or illegally?

8 A Yeah, I had it registered in my name.

9 Q What else were you smoking other than the
10 marijuana?

11 A That's it.

12 Q You weren't snorting cocaine?

13 A No.

14 Q Now, sir, there is no question that if you
15 get convicted you are going to go to prison for
16 awhile; right?

17 A Yes.

18 Q And of course, you like anybody else, you
19 don't want to go prison; right?

20 A No, I don't.

21 Q Have you told your mom what you did?

22 A I haven't done nothing, so there is
23 nothing to tell.

24 Q So you want to make sure you continue to
25 tell that story for her benefit?

Andre Wallace-cross by Ms. Barr

1 A I'm saying that's the truth, so I am
2 telling it.

3 Q The reality is, you would get up here and
4 say anything to get your behind off the hook;
5 wouldn't you?

6 A No.

7 Q Come on now. If you shot him, you are
8 telling this jury that you would them that you
9 shot him?

10 A I would tell. That's something I would
11 have to deal with, not nobody else.

12 Q So my question is, you would actually
13 admit it. If you shot him, you would actually
14 tell this court---

15 A Yes.

16 Q Let me finish the question.

17 THE COURT: Ms. Barr, you can ask me to
18 tell him to finish the question. I don't want you
19 all arguing with the witnesses.

20 MS. BARR: I'm sorry, Your Honor.

21 THE COURT: Mr. Barr, just let her finish
22 what she is going to say. Even though you might
23 intentionally know what she is going to be asking.

24 Q The reality is, you wouldn't come up and
25 tell this jury if you did shot him; would you?

Andre Wallace-cross by Ms. Barr

1 A Yes, I would.

2 Q You would?

3 A Yes.

4 Q Just like you told the police that your
5 phone was at your mama's house in Kingstree when
6 it really wasn't.

7 A I mean, that was a phone. A murder is
8 different.

9 Q Yeah, and that's my point. That's exactly
10 my point. You would lie about something small, so
11 there is nothing to prevent you to lie about
12 something big; is it?

13 A I wouldn't lie about a murder. I wouldn't
14 have 3 people going down for a murder for
15 something I did.

16 Q But you lie about something small like a
17 phone?

18 A I mean I told them the phone was in
19 Kingstree.

20 Q And you want this jury to believe you
21 would lie about something small something like a
22 phone, but you wouldn't lie about something big
23 like a murder?

24 A They can believe what they want to
25 believe. I know the truth.

Andre Wallace-cross by Ms. Barr

1 MS. BARR: I beg the court's indulgence.

2 Q Let me be clear about one more thing. Do
3 you still have those cell phone records up there
4 with you?

5 A Yes, I do.

6 Q The first call again on page 9 was made
7 from your phone at 6:21 central standard time?

8 A Yes, it was.

9 Q Page 5, the last call that was received
10 from the victim's phone to your phone was 8:16.
11 About two hours later; right?

12 A Yes, it was.

13 Q And you mean to tell me that in the 2
14 hours between all these calls and the times the
15 calls were placed, and the time they were
16 received, the only thing you were doing was giving
17 a 20 minute-ride to these two girls. And that's
18 the only thing you were doing?

19 A Yes.

20 Q And It took you 2 hours to do that?

21 A I mean I was sitting there handling my
22 business. I guess they had to get in touch with
23 them and let him know everything that was going
24 down first.

25 Q Yeah, you were handling---

Andre Wallace-cross by Ms. Barr

1 A That's why I gave them a ride.

2 Q Yeah, you were handling your business
3 because you were planning this robbery with them;
4 right?

5 A No, ma'am.

6 Q Now the reality, sir, is it doesn't take 2
7 hours; does it?

8 A No, it don't.

9 Q But it takes about two hours to plan the
10 robbery; doesn't it?

11 A No, it don't.

12 Q Well how long does it take; do you know?

13 A I don't know. I never planned a robbery.

14 THE COURT: Redirect?

15 Redirect Examination by Mr. Barr:

16 Q During the time that your telephone was
17 going back and forth between Ms. Miller and Ms.
18 Jones before you took them down the road, where
19 were you?

20 A I was at Dodson's up the track on Eastland
21 Avenue.

22 Q In your vehicle?

23 A Yes.

24 Q So the two hours that Ms. Barr is talking
25 about is not riding time.

Andre Wallace-redirect by Mr. Barr

1 A No.

2 Q But most of it is a sitting time.

3 MS. BARR: Object to the leading.

4 THE COURT: Sustained.

5 Q Now Ms. Barr asked you about you went to
6 the jail. Did you have your phone in your pocket?

7 A No, I didn't.

8 Q You did not have it?

9 A No.

10 Q After you left the jail, do you ever use
11 the phone again?

12 A No, I didn't.

13 MR. BARR: Thank you, sir. I have nothing
14 further.

15 THE COURT: Is that concluded?

16 MS. BARR: One quick question, if I may.

17 Recross Examination by Ms. Barr:

18 Q You said it wasn't in your pocket when you
19 went to jail.

20 A No, ma'am.

21 Q So according to your earlier testimony you
22 were -- gave it to law enforcement?

23 A Yes.

24 Q But you were arrested in Lake City.

25 A I was.

Andre Wallace-recross by Ms. Barr

1 Q So how could the phone be in Kingstree if
2 you were arrested in Lake City and you gave it to
3 the police?

4 A That's what I said at the time. I
5 remember the statement, I said Lake City. But
6 they didn't put it in the statement.

7 MS. BARR: That's fine.

8 THE COURT: Step down. Mr. Barr.

9 MR. BARR: I have no further questions.

10 THE COURT: No additional witnesses?

11 MR. BARR: Nothing.

12 THE COURT: I will note that all motions
13 have been made. Ms. Barr, any reply?

14 MS. BARR: We would call Tiffany Jones.

15 THE COURT: Ms. Jones, you can have a
16 seat. You are still under oath.

17 Tiffany Jones, after being previously duly
18 sworn, testified as follows:

19 Direct Examination by Ms. Barr:

20 Q Ms. Jones, when were you released on bond?

21 A November 23rd of 2010.

22 Q So, 6 or 7 months ago?

23 A Yes, ma'am.

24 Q Following your release on bond, did you
25 have occasion to see the Defendant after you were

Andre Wallace-recross by Ms. Barr

1 released, at a nightclub?

2 A Yes, ma'am, I have.

3 Q Did you a conversation with him, or did he
4 have a conversation with you?

5 A Yes.

6 Q Tell us what the substance of that
7 conversation was.

8 A He told me, you know, that I was locked up
9 for awhile. And that he wanted to know that
10 Ronetta and Cornelius was well, blaming everything
11 on him. And he told me well, I don't know nothing
12 and you don't know nothing. And I'm just going to
13 leave it at that. And he was like, you know, and
14 I don't want to say the exact words. He said you
15 know that is your little bitch's fault. She is
16 the one that got us in to this. And that was
17 that. But after that, I seen him once more at
18 that same nightclub and we spoke to each other and
19 that was that.

20 MS. BARR: That's all the questions I
21 have.

22 THE COURT: Mr. Barr.

23 Cross Examination by Mr. Barr:

24 Q Did you report it to the police that he
25 told you that?

Tiffany Jones-direct by Ms. Barr

- 1 A No, sir, I didn't; not to the police.
- 2 Q You didn't report it to the police, huh?
- 3 A No, sir.
- 4 Q Who did you report it to?
- 5 A I told my lawyer.
- 6 Q Who?
- 7 A I told my lawyer.
- 8 Q Your lawyer?
- 9 A Yes, sir, I did.
- 10 Q Well when did you tell Ms. Barr?
- 11 A I can't remember right now, sir.
- 12 Q You can't remember.
- 13 A No, sir, I can't.
- 14 Q You got back up on the witness stand, and
- 15 you have a recollection of something that he told
- 16 you in some nightclub somewhere that you claim
- 17 that just happened to be at a nightclub, but you
- 18 can't remember when you told Ms. Barr; right?
- 19 A Correct.
- 20 Q You still suffer from a bad memory?
- 21 A Someone shot somebody, sir.
- 22 MR. BARR: I have nothing further.
- 23 THE COURT: Anything else?
- 24 MS. BARR: No, Your Honor. The State
- 25 rests.

Tiffany Jones-cross by Mr. Barr

1 THE COURT: Ms. Barr.

2 MS. BARR: Please the Court, Judge.

3 THE COURT: Yes, ma'am.

4 MS. BARR: Ladies and gentlemen of the
5 jury, good afternoon. Let me begin by telling you
6 all, picking up I guess where I left off on, on
7 Tuesday morning and that's, thank you. I have to
8 tell you that Mr. Barr I have tried a number of
9 cases. Not just in this courtroom, but in other
10 courtrooms throughout the State. And oftentimes
11 when we select a jury, one of the things I always
12 worry about is whether or not the trial has gone
13 so long, or some of the witnesses are so boring
14 and I have put you to sleep. And I have had
15 occasions unfortunately where jurors have fell
16 asleep during trial. It's not a good feeling.
17 But I can tell you, I say that to say, that you
18 all have been a very attentive jury. You've
19 listened very closely to the witnesses as they
20 testified. You have looked at the exhibits very
21 attentively. And I thank you on behalf of Mr.
22 Prosser's family. And that's probably the only
23 thing that Mr. Barr I will agree on in this case.
24 But I am sure that he thanks you as well.

25 Often times, in a case, whether it's

1 criminal case or whether it's a civil case. The
2 case kind of boils down and the crux will be the
3 facts of the case. In this case though the law is
4 almost as important as the facts in the case, if
5 not more important than the facts of the case.
6 Now I am going to tell you what I believe that the
7 judge will tell you and won't tell you about the
8 law. Then I am going to sit down and then
9 Mr. Barr gets up to -- he gets an opportunity to
10 come and talk to you as well.

11 The Defendant is charged in the first
12 count with criminal conspiracy. And criminal
13 conspiracy as I stated earlier, is simply a plan
14 between 2 or more people, to do something illegal.
15 Or a plan between 2 or more people, to do
16 something legal, but by unlawful means. And so
17 when I told you earlier that in proving criminal
18 conspiracy, we have to prove that plan.
19 Obviously, I was talking about the plan in this
20 case among the defendants to rob Mr. Prosser. And
21 the important thing about criminal conspiracy,
22 once the agreement is made between everybody,
23 then the crime of criminal conspiracy is
24 completed.

25 So once they talked about it, once they

1 got guns, once they went the victim's home, that
2 crime was completed. The second count in the
3 indictment is burglary in the first degree. And
4 that's an important count. I need to spend a
5 little time talking about the law on that case.
6 Burglary first of all, is defined as a person who
7 enters the dwelling of the victim, their home,
8 their residence. One, without consent. And two,
9 with intent to commit a crime therein.

10 The important thing to remember about
11 burglary regardless of which degree it is, once
12 you enter a person's house and you intend to
13 commit a crime in the house, the offense of
14 burglary is completed. A lot of times people
15 think about burglary and robbery. And obviously
16 there is testimony that they planned to rob the
17 victim. But they think about it as one and the
18 same.

19 There was no evidence during that trial of
20 this case that they took anything from the
21 victim's home. So some of you may be saying, well
22 how is it a burglary if they didn't take anything.
23 And that's important to understand how the law
24 operates in that regard. Once they went in the
25 house with the intent to commit a crime, whether

1 or not they completed the crime, they are guilty
2 of the offense of burglary if you all understand
3 what I am saying.

4 Now the thing that -- there a couple of
5 things that make this first degree burglary. One
6 of the things the judge will tell you is that a
7 person if they enter the dwelling of the victim
8 with the intent to commit a crime, and if they
9 come to the house in the nighttime, that makes it
10 first degree burglary. And clearly there was
11 testimony that that Defendant entered
12 Mr. Prosser's home during the nighttime. The
13 second thing the judge is going to tell you about
14 is if the Defendant entered the victim's home with
15 a deadly weapon. And clearly, a firearm, a
16 shotgun, is a deadly weapon. If the Defendant
17 enters the victim's home with a deadly weapon,
18 that also makes it burglary in the first degree.

19 I think the last thing that the judge is
20 going to tell you about burglary in the first
21 degree as it relates to whether or not it's a
22 first degree, is if the Defendant caused physical
23 harm to somebody who wasn't a part of the crime,
24 that also makes it burglary in the first degree.
25 So when this Defendant entered the home of

1 Mr. Prosser during the nighttime, and he killed
2 Mr. Prosser, that's physical harm. It obviously
3 can't get any worse than that. Then that would
4 make him guilty of burglary in the first degree.

5 So we would submit that there is
6 sufficient evidence of that. Now one really,
7 really, really, really important thing about
8 burglary in the first degree, there is this notion
9 that you enter somebody's house without consent.
10 Now some of you may be thinking well, Ms. Barr,
11 how can you ask us to convict him of burglary if
12 he didn't enter the house without consent. And
13 clearly there is testimony that one of his
14 co-defendants let him in the house. So some of
15 you will say well, how can he be convicted of
16 entering without consent if somebody let him in.

17 Two important things to know about that.
18 One is, if you gain entry, if you can get in to
19 somebody's house, and you -- the only way you get
20 in is through trickery or deceit, then that's
21 considered without consent. Give you an example.
22 If I am a vacuum cleaner salesman, you all some of
23 these people go out and they sell these 2 or
24 \$3,000; come to your house and want you to get
25 them. And they offer to do free demonstrations

1 and sort of thing. If I am a vacuum cleaner
2 salesman, and I come and I knock on somebody's
3 door, and I said, listen, I've got this
4 demonstration. I'd love to show it to you, to see
5 if you are interested in buying a vacuum cleaner,
6 and the homeowner says yeah, sure, come on in. If
7 I know that the only reason I am trying to get in
8 that house is because I want to steal something
9 out of the house, I don't have under the law, the
10 homeowner's consent to come in the house, because
11 the only reason I am doing it is to get entry into
12 the house is through deceit or fraud or deception.
13 And so the judge is going to tell you that.

14 So when there is this testimony about a
15 co-defendant coming into Mr. Prosser's house, I
16 think somebody said, to chill, or hang out or
17 whatever, to keep him occupied, and he didn't know
18 what the plan was. That is evidence that they
19 entered the house without consent. The second
20 thing that is really important to know about that,
21 is you are satisfied from the evidence that
22 Ronetta Miller let Mr. Wallace into the residence.
23 She can't give consent to come in to that
24 residence, because it's not her home. And so even
25 if you believe everything that you have heard

1 about her letting them in to the house, she didn't
2 have the authority to do so. So in any event, the
3 Defendant under the facts of this case will be
4 guilty of burglary in the first degree.

5 Now let's talk about the third count of
6 the indictment, the murder count. South Carolina
7 law defines murder as the unlawful killing of
8 another human being with malice aforethought.
9 Malice aforethought, the judge is going to define
10 that term to you. And it's -- when we were in law
11 school in our criminal law classes, the professor
12 always talks at length about malice, and
13 forethought and all this other stuff. And I think
14 probably the best way to describe it is, malice
15 means the intentional doing of a wrongful act.
16 When you do something illegal and you know you
17 don't have any business doing what you just did,
18 then law says that's evidence of malice.

19 Aforethought means that it is pre-planned,
20 if you will. For example, if I am standing next
21 to someone, and we are playing and tussling over a
22 gun and the gun accidentally goes off. That's not
23 a pre-planned event. That's an accident. Here
24 the judge is going to tell you as far as malice is,
25 concerned that when you when are considering

1 whether or not this Defendant committed murder,
2 one of the things that you can consider is malice
3 can be inferred. If you find that the Defendant
4 intentionally committed a felony.

5 South Carolina calls that the felony
6 murder rule. That the classic situation where if
7 somebody goes into a convenience store to rob the
8 convenience store and they have a gun, they may to
9 in to that convenience store never intending to
10 hurt a single soul. They just may go in there,
11 point a gun at the cashier, scare the cashier and
12 get money and run. And oftentimes in those cases,
13 those cases end very badly. Just as in this
14 particular case. Some of you when you get back in
15 the jury room, you may say well, how can we find
16 him guilty of murder because when they went in the
17 house, they may not have meant to kill anybody And
18 there is clearly there is evidence that the
19 Defendant said he shot the victim, because the
20 victim had a gun on him.

21 Well, folks, the law states that if you
22 believe that they intended to commit the burglary,
23 if somebody dies as a result of them committing
24 the burglary, they are guilty of murder in the
25 State of South Carolina. It's no different in the

1 law, the felony murder is no different if they had
2 walked into the house with the sole intent to
3 kill. The law still recognizes it and calls it
4 murder. Murder is murder. Now the last count of
5 the indictment is possession of a weapon during
6 the commission of a violent crime.

7 The law also states, and the judge is
8 going to tell you that in South Carolina murder is
9 a violent crime. One of the most, obviously the
10 most serious offense you can commit in South
11 Carolina. Burglary in the first degree is a
12 violent crime. If you find that the Defendant
13 had the shotgun, and he killed Mr. Prosser, then
14 you should also find him guilty of possession of a
15 weapon during a violent crime. Almost as
16 important as the notion of what the law is that
17 you are going to hear from the judge, it's almost
18 as important to know what you are not going to
19 hear from the judge. What the judge is not going
20 to tell you the law is.

21 You are not going to hear anything about
22 self defense. Again, you know, I always get
23 concerned when I hear evidence that the Defendant
24 shot a victim, because the victim was holding a
25 gun. Folks, the judge is not going to tell you

1 anything about self defense. The Defendant does
2 not get the benefit of making that as a claim or a
3 defense, because he's the one that went in to this
4 victim's home, with a firearm. The law always
5 gives the victim a right to protect his home when
6 he is in his home minding his own business. You
7 know, a man's home is his castle. And the law
8 recognizes that you have a 100 percent right and
9 obligation to do what is necessary to protect your
10 home. So you are not going to hear any business
11 about self defense. He doesn't get to claim that.

12 Another thing that's kind of important is,
13 you are not going to hear any law from this court,
14 from the judge about any lesser crimes. You know.
15 A lot of times when somebody goes in somebody's
16 house and they kill the victim and the victim has
17 a gun, they get to say, oh, well, I didn't plan to
18 kill him. Or oh well, you know, it might be
19 manslaughter or voluntary manslaughter, something
20 like that, you're not going to hear any of that.
21 That tells the judge, that tells everybody when
22 you go in somebody's house with a gun, you are
23 prepared to kill or be killed.

24 Unfortunately, for Mr. Prosser and his
25 family he was killed during the course of this.

1 Now I will have another opportunity to address
2 you. I want to just quite frankly, go over the
3 law in the case so I can talk a little more about
4 the facts as it relates to the law when I get back
5 before you. But I obviously wanted to give you
6 the opportunity or give myself the opportunity or
7 give myself the opportunity to explain what I
8 think the judge is going to tell you and what he
9 is not going to tell you.

10 Again, I thank you for your time. Again,
11 I thank you for your attention. I look forward to
12 addressing you again.

13 THE COURT: Mr. Barr.

14 MR. BARR: I sincerely trust the
15 experience that you had during this trial, which
16 has actually taken most of the week. It will be
17 one that will give you some insight first of all,
18 into the judicial system. And secondly, will
19 reinforce for some of you how important it is to
20 discharge your civic responsibility when it comes
21 to acting as jurors when you are summoned to come
22 to court and discharge your duty and your
23 responsibility as jurors.

24 Now let me just say at the outset, that I
25 hope that you will take something away from this.

1 In other words, when you go back home and you get
2 back with your families and you start and you
3 think about what you've done and think about how
4 you have done it, now when I leave here this
5 afternoon, I am going back to Greeleyville. I am
6 going back home. And I will be through with this
7 case. Hopefully, not to have to recall the facts
8 and circumstances other than it was an experience
9 that I had.

10 Now I certainly hope that when you go back
11 this afternoon, that you take back something
12 little bit more. Because this is something that I
13 do almost every day. But for a lot of you, it's
14 not something that you do every day. It's perhaps
15 could be once in a lifetime situation. So I hope
16 that when you leave this service and you see how
17 things are, when you say for instance in this
18 case, it is a very, very serious case. Very
19 serious. A man has died. And, of course, you
20 know, we look at death sometimes, and remember in
21 my opening statement, I suggested to you that from
22 the time we are born, from the time we are born,
23 we start to die. And death occurs whether we want
24 it to or not.

25 Unfortunately, sometimes depending upon

1 what you do in life, death can come at a time
2 earlier than it would ordinarily would come
3 depending upon the circumstances you get involved
4 in. So we see in this case a man met an untimely
5 death. An untimely death. And that death is
6 essentially due to the circumstances of life.
7 Because they deal with things that he was involved
8 in; things that other people were involved in.
9 Almost any kind of situation such as those things
10 that we find ourselves in from time to time.

11 You know, I'm always reminded and when
12 initially spoke to you my opening statement, I
13 told you that sometimes in the circle of life,
14 there are some things in particular that usually
15 get us hung up, and particularly men. I've seen a
16 great men fall as results of drugs, as a result of
17 improper attitude about sex, and as a result of
18 getting involved sometimes with the wrong women.

19 I went home the other night, and there was
20 an old story on TV. One that most of you are
21 familiar with. It's about Sampson. Now for those
22 of you that are perhaps bible scholars and maybe
23 some that aren't even bible scholars, Sampson,
24 when Sampson was born he was -- Sampson was a
25 Nazarite. He wasn't supposed to get his hair cut.

1 And he also was supposed to stick with Jewish
2 women. But somehow he found himself mixed up with
3 some other kind of women. And he liked those,
4 even though his parents told him don't get
5 involved with those other people. You need to
6 keep yourself separated from them. But now what
7 Sampson did was somehow he got mixed up with
8 Delila. And, you know, even though he found out
9 that Delila had betrayed him, he still confided in
10 her. At the end of day, Sampson woke up one day,
11 hair cut. His hair had been cut, and his enemies
12 were standing all around him, because he had been
13 betrayed by a woman he loved.

14 So sometimes in term of the things that we
15 get into, and in this case, I would submit to you
16 that there are two women in this case. There are
17 two women that betrayed a man and caused his life.
18 And do you who those two women that are seated? I
19 see on in this courtroom now, Ms. Jones.

20 Now let me just say to you, and I am not
21 going to spend a whole lot of time talking about
22 the law as Ms. Barr has. And I must admit she has
23 done an excellent job in at least apprising you of
24 what the law is in South Carolina concerning the
25 offenses of murder, first degree burglary,

1 possession of a weapon during a violent crime, and
2 criminal conspiracy. His Honor in his
3 instructions will also tell you about these laws
4 and he will give you some further instructions as
5 to how you are to apply them to the facts as you
6 find them to be in this case, and come back with a
7 verdict that speaks the truth.

8 But in the meantime the things -- a couple
9 of things that I want to talk about, because see
10 if you analyze this case, if you analyze this
11 case, there is no question that you have got a man
12 that's died. And he died as a result of somebody
13 killing him. And there is no question that in
14 terms of who was responsible, we have got two
15 people who have admitted their responsibility in
16 the death of Mr. Prosser.

17 We have got a third who is yet to be
18 tried. And we've got another person that is being
19 tried. Now where does that put us? I would
20 submit to you that with respect to where it puts
21 us, His Honor will instruct you that this case is
22 representative of a number of cases where you get
23 a situation were as triers of the facts, you are
24 called upon not so much to make legal decisions,
25 but decisions based on the law as His Honor gives

1 it to you.

2 And if remember, when I first came up here
3 in my opening statement, I told you that your
4 responsibility as jurors, is most and foremost,
5 to seek the truth. And I also told you that there
6 some things that are certain, and there are other
7 things that are not. I said there are some things
8 that you will never know, because you can't go
9 back in time and see something that has already
10 occurred. Now so how do we resolve these
11 situations where you have got a man that is on
12 trial for murder. And you have got the
13 prosecution who represents the State of South
14 Carolina, that is responsible for prosecuting
15 criminal offenses; that is, when an offense such
16 as murder has occurred, you've got an arm of the
17 government that is responsible for prosecuting
18 those. And in this case that's this table over
19 here, the prosecutor.

20 So in spite of this circle of life there
21 are things and systems that built in to the
22 circle of life whereby justice at the end of the
23 day is to be achieved. And you are an integral
24 part of that justice. So now, as we seek the
25 truth and apply the law, His Honor will instruct

1 you regarding how you will decide this case that
2 the first thing that you have to remember, and one
3 of the first things that you need to remember, is
4 that right now Mr. Wallace, is presumed innocent.
5 Andre is presumed innocent. Now I tell you that
6 that is something even Ms. Barr or anyone else
7 can't dispute, because that's the truth. That is
8 an absolute truth. That is the law. That is
9 something, ladies and gentlemen, that when you
10 took an oath as jurors, you agreed that you would
11 take the law as His Honor gives it to you,
12 irrespective of whether or not you are deciding a
13 case involving a murder or whether or not you are
14 deciding a case that involved a trespass. This
15 case is just as important as any one that you ever
16 will decide. But you apply the same rules. You
17 are not to be taken by passion or sympathy.

18 Now I am just as sorry, and I feel for Mr.
19 Prosser's family as anybody. My goodness, I am a
20 God fearing man. I am a Christian. I don't want
21 to see anybody get killed untimely. But now, we
22 have duties and we have responsibilities. And as
23 I said, this particular case, you have one. And
24 you have to take the law as His Honor gives it to
25 and not be compelled and propelled by things that

1 might occur outside this courtroom or might not
2 necessarily reflect on the instructions as His
3 Honor gives it to you. He is presumed innocent.
4 That presumption of innocence will remain with him
5 throughout the remainder of my statement. It will
6 remain with him even when Ms. Barr comes back and
7 talks to you again. And of course under our
8 rules, I don't get a chance to respond to what she
9 says. But that presumption of innocence should
10 remain with you in your minds and in your hearts
11 until in your jury room during the course of your
12 deliberations, you are convinced; that is, the 12
13 of you, and convinced beyond a reasonable doubt
14 that the prosecution has proven the defendant's
15 guilt.

16 Now that's the law. That's what we have
17 to go by. Now in addition to being presumed
18 innocent, the burden of proof, the burden of proof
19 is again on this table. That's the law in South
20 Carolina. That's a truth. And that's something
21 that you can depend on when you go to your jury
22 room in terms of applying the facts as you find
23 them to be. The burden of proof is on the
24 prosecution to come to court when people can't
25 agree. Say for instance as in this case, when

1 people don't agree what took place, and how it
2 happened and who was involved. It is the
3 prosecution's responsibility to present you with
4 evidence that persuades you beyond a reasonable
5 doubt before you can convict somebody. Whether it
6 again whether it be for trespass or whether it be
7 for murder. The rule is the same. It is the
8 prosecution's responsibility to convince you
9 beyond a reasonable doubt.

10 The Defendant is presumed innocent. It is
11 the state's responsibility to prove his guilt.
12 The Defendant did not have to take the witness
13 stand. He is presumed innocent. Now proof of
14 guilt. I would submit to you that proof in this
15 case or lack of prove, now if notice when His
16 Honor gave you your instructions right before we
17 got started, he mentioned something, he said lack
18 of evidence. Lack of evidence.

19 And, ladies and gentlemen, I have seen in
20 this case, If I don't ever see enough, and in the
21 last 33 years that I have been practicing, I have
22 never seen a case where the proof has been so
23 bad. Now why do I say that? When you look at the
24 facts in this case, there is no question, there is
25 no question, it is in dispute that when Andre

1 Wallace got on the witness stand, one of the first
2 things he acknowledges, well look I gave a
3 statement on November 3rd. And in that statement,
4 here is what I said. The very same thing that he
5 said in this courtroom today as to how this thing
6 occurred and what his involvement was in it.

7 Now chief investigator Collins knew what
8 was in that statement. Anybody else involved with
9 the sheriff's department knew what was in that
10 statement. They knew when the Defendant said
11 look, I want a trial. They knew that it was
12 incumbent upon somebody to go out find proof if
13 you want to convict him. Now what proof do we
14 have. I am not going to talk a whole lot about
15 the evidence particularly as it relates to
16 forensic evidence. That is in general. But I do
17 want you to keep in mind, ladies and gentlemen,
18 that i the whole world of forensic evidence, it is
19 the powerful and persuasive evidence when it's
20 presented. And in this case, in this case, there
21 is no forensic evidence. Not one shed of forensic
22 evidence that confirms the testimony of Ms. Miller
23 and Ms. Jones. Not one piece. Not one piece.
24 They even took Andre's vehicle. And
25 irrespective of whether or not the police tried to

1 suggest that no, well we really wasn't trying to
2 collect evidence. They were looking for evidence.
3 That's what they were looking for. And if they
4 had found anything that they thought that had any
5 probative value, they would have sent it to sled
6 to be analyzed. But not one sled agent you hear
7 came in this courtroom and testified that that was
8 one piece of forensic evidence. Because see, most
9 times forensic evidence doesn't lie. People lie.
10 People lie.

11 And one of the chief witnesses in this
12 case got on this witness stand and acknowledged
13 that I am a liar. My lord, have mercy. 27 times
14 The first thing I asked, did not you say in this
15 statement, I don't know 27 times. His Honor will
16 instruct you at the appropriate time that you are
17 the judges the credibility of witnesses. Any
18 witness that takes this witness stand, ladies and
19 gentlemen, it is your responsibility to judge
20 their credibility. And their credibility is
21 nothing more than believability. If I sat at my
22 desk over across at the sheriff's office, and I
23 looked at this case, and I saw that there was
24 nothing more than what you had here, I would have
25 gotten out and I would have found somebody that

1 could tell me something about Cornelius McClary.

2 Ms. Barr didn't even ask Andre anything.

3 According to all of the testimony, Cornelius

4 McClary, Andre, Andre never met Cornelius McClary.

5 Didn't even know him. The only people that knew

6 him Ms. Jones said look, I have known him all my

7 life. You didn't have one person to come up here

8 and confirm and say look. Andre Wallace knew

9 Cornelius McClary. Now they knew in this

10 statement, he said, look I had never met him, I

11 don't know him. Why could not find one person. If

12 you want to confirm the story that Ronetta Miller

13 has told you and Ms. Jones, just somebody that

14 will say he knew Cornelius McClary, and come in

15 here and say, look Andre Wallace is lying. It

16 ain't here. Now you talk about reasonable doubt.

17 Find one person, I asked the witness tell me one

18 person who could verify that they saw Andre

19 Wallace with either Ronetta Miller or Ms. Jones

20 after 9 o'clock on the evening of October 27th.

21 One person. One person. My lord, you have got

22 the police officers had three statements from

23 Ronetta Miller.

24 Now she would have you to believe hat

25 somehow that something fell out of the sky. As

1 well Ms. Jones. I tell you what, and quite
2 frankly, I didn't expect her to say anything any
3 different. Somehow, she got some kind of divine
4 revelation, and she got converted because she
5 came in the courtroom and she saw Mr. Prosser's
6 family. And now she has decided to tell the
7 truth. Give me a break.

8 Ladies and gentlemen, one of the things
9 that His Honor is going to tell you is that in
10 spite of this charge, the thing that will enable
11 you and help you most when you go to your jury
12 room and start deciding this case, is using your
13 good common sense. Because credibility is nothing
14 more than believability. And I said earlier, any
15 person that gets on this witness stand puts in to
16 issue, their credibility. That's an issue that
17 you, you will have to decide how much of what and
18 His Honor will tell you that in so far as in
19 addition using your good common sense, that is
20 those things that enable you to look at a person
21 and tell when they are lying to you.

22 This business of, I don't know, I asked
23 this young woman when she got back on this witness
24 stand just a few minutes ago, when she put -- when
25 Ms. Barr put Ms. Jones back on the witness stand

1 as a rebuttal witness. Some story about she saw
2 Andre at a club somewhere. And he told her, look,
3 Be quite about it. Not one person. I said, well,
4 look well when did you tell her that. Well I
5 don't know. Ladies and gentlemen, use your good
6 common sense.

7 Now Andre driving a fairly decent looking
8 car, working and making some money, what in the
9 world, he's doing to a man's house that he don't
10 even know. The testimony was undisputable that
11 and undisputed that Andre didn't even know
12 Mr. Prosser. Didn't know him from anybody. What
13 in the world is he going to be doing out at that
14 man's house, to steal a gun to sell. There is
15 only two people that we know of. We don't know
16 about the missing person. But there is only two
17 that we knew about knew exactly what was in
18 Mr. Prosser's house. They went there all the
19 time. Said they went there. Spent nights there.
20 And again, this is the betrayal.

21 Now how in the world can you have a friend
22 that when he turn his back the next thing you are
23 plotting to come in his house. And quite frankly,
24 I am not going to speculate on exactly what her --
25 what they intended to take. I am not sure whether

1 or not they thought he had marijuana or whatever.
2 Now I can tell you one thing, after Mr. Prosser
3 had died, I can hardly imagine if Andre Wallace
4 had went there to still some guns, all the guns
5 was right there in the gun case. All he had to do
6 was take them down and put in his car. And carry
7 them off. He didn't want to steal no guns. For
8 what. I can go to almost every house in
9 Kingstree and get a gun out of there. And
10 somebody you don't even know. Not one shred. Not
11 one footprint. Not one fingerprint. Not anything
12 that verifies anything that Ms. Miller said or
13 that Ms. Wallace said as it relates to Andre
14 Wallace being anywhere near Mr. Prosser's house
15 other than to take them there and to drop them
16 off.

17 Ms. Barr said well look, didn't you tell
18 the sheriff something or tell the deputy something
19 about your telephone. Let me tell you something,
20 most people and quite frankly, I thought he did
21 well. Because if the police come to my house
22 tomorrow, I am going to have know what they are
23 looking for before I start telling them a whole
24 lot. Most people are scared of the police. And
25 some of them have got good reason no be.

1 But aside from that you have the -- you
2 will have the phone records when you go. We only
3 put into evidence one exhibit. One exhibit. And
4 you will have those phone records. You will see
5 that there were calls after call, after call, that
6 was made to Mr. Prosser's. Now why in the world
7 is Andre Wallace going to be calling Mr. Prosser,
8 and he don't even know him. Mr. Prosser would
9 have seen, well what in the world are you doing
10 calling me.

11 Ronetta Miller and Ms. Jones kept calling
12 him back and forth for whatever reason. And every
13 time they gave Andre Wallace his phone, he is
14 calling his girlfriend. They sat down there at
15 the Dodson club, until he got ready to leave. Now
16 this thing about taking 2 hours, the man didn't
17 say it took no 2 hours to drive over there. They
18 said 15 to 20 minutes. They stayed at the club
19 for almost 2 hours going back and forth. With
20 who. With who.

21 The only thing Andre Wallace did was give
22 them his telephone and got his money. And said,
23 look if you want me to come back and get you, they
24 you all are going to have to some more money. And
25 took them out there. Now where is the third man I

1 didn't hear not one person, not one person
2 challenged Andre Wallace when he said he didn't
3 know him; when he didn't know McClary. Not one.
4 Again, every police officer with the sheriff's
5 department who calls himself an investigator knew
6 that Andre Wallace said I do not know him. Never
7 meet him. And didn't go out there with him.

8 Now I challenge the prosecution to stand
9 up and tell you that they have got one person.
10 The case is over, that confirmed. In other words,
11 if you want to -- if there is any question in your
12 mind, if there doubt in your mind, as to whether
13 or not these women are telling the truth, and lord
14 have mercy, they contradict even each other.
15 Even each other. According to Ms. Jones she never
16 went in the house. But to tie Andre in, she said
17 later on, she said well Ms. Miller told me that
18 she saw Andre shoot Mr. Prosser.

19 Now Ms. Miller had already said on the
20 witness stand that she didn't see anybody shot.
21 She said that she saw Mr. Prosser pick up a gun,
22 and when he got the gun and looked down the
23 hallway, she booked up started up out there. Now
24 that's what she said. But now quite frankly, I
25 wouldn't take what either one of them said, based

1 on what I have heard in this courtroom with more
2 than a grain of salt. Now if think for one second
3 that when Ms. Miller and Ms. Jones started making
4 those deals to testify and to tell their story.
5 Now notice that they're not -- they haven't been
6 sentenced yet.

7 Why in the world -- why in the world you
8 think they haven't been sentenced? I don't care
9 what Ms. Barr will get up here and say. They don't
10 trust them either. If they trusted them, they
11 will go and sentence them and put them over in the
12 jail house. But they don't trust them. They
13 don't trust them to do what they promised to do
14 when they get on the witness stand. Otherwise,
15 they would have been sentenced. They keep the axe
16 over their head until after they get off the
17 witness stand. And guess what, now I don't know
18 what they will do.

19 Now Ms. Jones said, look, oh, I didn't
20 even tell my lawyer. My goodness. She didn't
21 even tell her lawyer. But now today she has
22 decided to tell you. All of these things that she
23 never told the police, not one think about. But
24 now, got a bad memory. His Honor will instruct
25 you that ability to recall is one of the things

1 that you might consider in determining the
2 credibility; that is, the believability of a
3 witness. The witness' demeanor on the witness
4 stand. How whether or not they're forthright.
5 Andre Wallace got on this witness stand as best he
6 could, and told you exactly what happened.

7 Now I'm not suggesting that you count
8 witnesses against, one against the other. But
9 now, ladies and gentlemen, His Honor will instruct
10 you that the prosecution's responsibility is to
11 prove Mr. Wallace's guilt by a standard that we
12 call beyond a reasonable doubt. The kind of
13 doubt that would cause a person to hesitate to
14 act. Now if you tell me with 27, I don't know,
15 an admission that I am a pathological liar. And
16 every other kind of contradiction that you can
17 trust, and you are ready to trust. That kind of
18 testimony without some kind of corroboration,
19 without some kind of corroboration.

20 Ladies and gentlemen, that's every kind of
21 doubt. Every kind of doubt. His Honor will
22 instruct you that if you are not convinced when he
23 charges you the law, that the prosecution has
24 proven that Andre Wallace committed the offense of
25 murder, possession of a weapon during a violent

1 crime, burglarize that man's house; that he
2 entered the criminal conspiracy. If you are
3 not -- if you are not convinced, and that is you
4 all have to agree. If you are not convinced that
5 the prosecution has proven that to you beyond a
6 reasonable doubt, the kind of doubt that would
7 cause a person to hesitate to act. In other
8 words, if you there is a real possibility that he
9 may not, then after that doubt, it is your charged
10 duty and responsibility to find the Defendant not
11 guilty.

12 Not again, that is not something me and my
13 brother cooked up down there in our office.
14 That's the law. And that's why we were concerned
15 initially to make sure that we get people on the
16 jury that will listen to the law, and not be
17 persuaded by passion. And not be persuaded by
18 anything else that hasn't come in this courtroom.

19 Now I am going to sit down now. I am
20 going to take up any more of your time. As I said
21 Mr. Barr, quite Frankly, as I said earlier, this
22 case is like any other case, it is a death case.
23 That is true. But the rules are the same. The
24 burden of proof is the same. The standard of
25 proof is the same. The law is same. And, ladies

1 and gentlemen, your verdict as long as your
2 verdict speaks the truth based on the law and the
3 evidence it will still be the same. I am not
4 going to suggest that you, I beg you to please sit
5 and listen to Ms. Barr. Because she is going to
6 have a whole lot to say. And she's going to talk
7 about Andre Wallace and how he tried to concoct
8 some scheme, and got Ms. Jones and Ms. Miller to
9 go out and rob.

10 Now notwithstanding as I stated earlier,
11 Andre Wallace and the evidence is, that he didn't
12 know Mr. Prosser. There has no been no evidence
13 to the contrary. Now if he didn't even know the
14 man what in the world is he going to be doing out
15 there trying to rob somebody that he don't even
16 know.

17 He said Mr. Prosser came to the door. He
18 had a gun on him. He got -- he drove his car and
19 came back to Kingstree. Now I don't know whether
20 or not, and I am not going to theorize whether
21 somebody is protecting Mr. McClary. Both of these
22 young ladies claim well no, I ain't never shot no
23 gun. But now they both indicate that Mr. Prosser
24 had guns all over the place. They were looking at
25 his guns. And whatever else they were looking at

1 whenever they went to his house.

2 They were the only people. And my lord,
3 as I said, I don't know -- I don't know where
4 McClary went. And I don't know where he was
5 hiding. I don't know whether he was hiding. But
6 I do know one thing, Andre Wallace got on the
7 witness stand, and you had an opportunity to judge
8 his credibility; that is, his believability. Now,
9 Ms. Barr did the best she could. But she couldn't
10 do too much with him, because quit frankly, the
11 man was telling the truth. And when you are
12 telling the truth, the truth will stand on it's
13 own. It will stand on it's own.

14 You didn't hear one, I don't know. And
15 you didn't hear one, I lied. But now I am telling
16 the truth. My goodness. Ladies and gentlemen,
17 use your good common sense. And we ask that you
18 come back with a verdict in this case based on the
19 law and the evidence. And in particular, the lack
20 of evidence. The lack of evidence. And that you
21 come back with a verdict that speaks the truth.
22 If you are not convinced beyond a reasonable
23 doubt, convinced.

24 Now notice His Honor will instruct you.
25 And if you don't listen to anything else, the

1 judge says, I want you to listen to this. He is
2 going to say that convinced beyond, beyond a
3 reasonable doubt that the prosecution has proven,
4 the defendant's guilt, the defendant's guilt, then
5 you must find him not guilty. An I would submit
6 to you that in this particular case, there is no
7 physical evidence. There is no forensic evidence.
8 Ms. Barr is going -- she's going to say, well, you
9 know, the doctor got up and said that the cork
10 from the the gun which according to her, it would
11 have gone out this way. Even though they found it
12 back on the other side of the room. Well he got
13 up and walked around. You know, I am not going to
14 argue with any of that. I am going to argue with
15 what is the real substance of this case. And the
16 real substance of this case is, you cannot, and
17 you should not trust this story that; they were
18 lovers for goodness sake. What else are they
19 going to come to this courtroom and say. The two
20 of them. The two lovers. That's what we are. We
21 are lovers. I don't know expect one of them to
22 betray the other one.

23 Now that's the one thing that you don't
24 those of you that are married, your spouses, or
25 the person that you, you don't expect betrayal.

1 And in this case, Ladies and gentlemen, Ms. Jones
2 and Ms. Miller, they are just as thick as thieves
3 in a pod. And they are going to stay that way.
4 They are going to stay that way until they get to
5 the penitentiary. They are going to stay that way
6 until death. Please, ma'am, please, sir, use
7 your good common sense. Apply the law, and
8 remember to listen for Your Honor's charge
9 regarding the standard of proof. Thank you.

10 THE COURT: Ms. Barr.

11 MS. BARR: Folks, you all probably can't
12 tell, by the way Mr. Barr and I have been fussing
13 back and forth with each other, but we are
14 actually friends. He is my colleague. I have the
15 utmost respect for him as trial lawyer. He is an
16 excellent trial lawyer. And you all, he is just
17 wrong on this. He is just wrong. Let me tell
18 you, I almost fall into a trap that he laid for
19 you.

20 When I got this case in October/November
21 of 2009, when it came to the attention of law
22 enforcement, and I started getting the police
23 reports in and the statements of the defendants
24 and all that. and from that point on up until
25 maybe Monday or Tuesday of this week, I was

1 almost so consumed with some of the more solacious
2 details of the case, I almost couldn't see the
3 forest for the trees.

4 Now you know, human nature is, we hear
5 about sex and drugs and all that stuff. Human
6 nature is all that's interesting to us. It's easy
7 to get sidetracked by that. Mr. Barr started this
8 case on Tuesday by talking about the -- all the
9 news coverage and the trauma that Arnold
10 Schwartzegger is going through now. It was
11 discovered and revealed this week that he had an
12 affair with one of his housekeepers and they have
13 a child together.

14 And, you know, that's started off -- I
15 watch the Today show every morning. And that was
16 the lead story. With all the stuff going on in
17 the world, that was the lead story about 2 or 3
18 days in a row. And it's the feeding that part of
19 our human nature where we like to hear the gory,
20 juicy details. I almost fell into that trap.
21 And, you all, I have been a lawyer for 16 years.
22 I ought to know better. But I almost fell into
23 that trap where I got so worried about, oh, what
24 would my jury about who is zooming who and who is
25 doing this to that. And who is sleeping together;

1 that they would really lose sight of the fact that
2 somebody lost their life.

3 And so I kept thinking, golly, how am I --
4 you know, how is the jury is going to deal with
5 this thing Ronetta and Tiffany being lovers. And
6 golly, they are going into the man's house, and
7 they're talking about they did drugs and this that
8 and the other. And I was talking with one of my
9 co-workers, and she said well Kim, despite all
10 that, so what. And I said huh. And she said so
11 what. What people do in their private lives
12 that's their business. And I said, you know what,
13 duh? You are right. What people do to who, as
14 they ain't hurting nobody, at the end of the day,
15 it doesn't matter a hill of beans what people do
16 in their personal lives.

17 This case when I thought about it, I was
18 like, it's not all that complicated. So I said,
19 well I am going to have to come back. When I talk
20 to this jury today, I am going to take back
21 something I said on Tuesday when I started. And
22 you all remember, I warned you. I said you are
23 going to hear some strange things in this case.
24 And you have probably heard things in this case
25 you haven't heard on TV and the movies. I said

1 you are going to hear some strange things and the
2 case is complicated and it's messy. It's not
3 really. It's not.

4 The facts of the case in terms of a man
5 losing his life during a botched robbery, what is
6 complicated about that. Not a thing. We hear
7 about every single day. A robbery goes bad, and
8 somebody gets killed. Ain't nothing complicated
9 about that. Now some of the players, some of this
10 side show and stuff going on, now that is
11 complicated. I can see that point. There ain't
12 nothing complicated about this. Mr. Barr gets up
13 here and tells the victim's family, oh, you know,
14 I've known this for 50 years. I am sorry that he
15 died. And this that and the other. And then
16 throws a rock and hides his hand in the next
17 instance. He was doing this with this woman or
18 whatever. And doing this and doing that. At the
19 end of the day, folks, who cares? You can't
20 escape the reality that that man was in his own
21 home, minding his own business. And these people
22 decided to in his house and victimize him. That's
23 the bottom line.

24 And there is nothing that is a natural
25 part of life about being murdered. That's not a

1 natural part of life, I presume to you. One of
2 the things that the lawyer is right about, you are
3 going to be asked to judge the credibility of
4 witnesses. Can you believe what these people have
5 told me. And I can, I mean, you all know.
6 Tiffany lied. When she gave a statement to the
7 police the first time, she lied. When Ronetta
8 gave a statement to the police the first time, she
9 lied.

10 It's hard. Now I mean these are young
11 folks. All of them are young. All of them less
12 than 25. It's hard to get up there and say, yeah,
13 I admit I planned to rob somebody. I admit I
14 planned. It makes it even worse when you get up
15 there and say, I admit I planned to rob my friend.
16 It's hard to admit that. I've prosecuted a number
17 of murder cases. I haven't known many people that
18 will just come out of the blue, and the first
19 thing they say, they go to law enforcement, oh,
20 yeah, hey, let me go ahead and turn myself in, I
21 killed so and so. That's just not going to
22 happen. That's not realistic to think that that
23 is going to happen.

24 But when you all are trying to figure out,
25 well, can I believe Ms. Jones. And she did plead

1 guilty to planning it. She did plead guilty to
2 burglary. Can I believe her? The judge is jury
3 going to tell you that if you are judging the
4 credibility of witnesses, ask yourself, well if I
5 can believe how can I back up what she said.
6 Because I can tell you, there is no other
7 evidence that they just came in there and Mr.
8 Prosser was just dead on the floor and nothing
9 else was in the house. They had no idea who got
10 in there. They had no DNA. No fingerprints. And
11 somebody just happened to come out of the blue
12 and say well, yeah, the Defendant did it, I would
13 be the first to say we got a problem.

14 Well when you ask yourself a question
15 well, how can I know and trust that Ms. Jones is
16 telling the truth. How can I know and trust that
17 Ms. Miller is telling the truth. First of all,
18 when they got locked up, the very first day,
19 November 3rd 2009, this is a couple of days after
20 Mr. Prosser's body is found from jump, day one,
21 when they were asked who involved with this with
22 you. Who did the both of them say from day one?
23 Andre Wallace, Cornelius McClary.

24 Now Mr. Barr and I have done this dance in
25 the courtroom before. We've had people, many of

1 days, if you don't want to tell what all you did,
2 of you don't want to tell what all your
3 co-defendants did, how many times have we had a
4 Defendant or a suspect to get up here and say,
5 well I was with so and so, but I can't remember
6 his name. I just know him his nickname. Oh,
7 what's the nickname. Oh, Bo Bo, I don't know his
8 real name. If you don't want to tell it, you
9 just don't tell it.

10 I remember I tried this case a couple of
11 weeks back. This guy was charged with breaking in
12 somebody's house. And I think a DVD and some
13 jewelry and stuff were taken out of the house.
14 And the way that law enforcement was able to track
15 down the person, he had taken the stolen goods to
16 a pawn shop. And, you know, you have to use your
17 ID and everything when you are pawing goods.

18 And so they were able to recover the stuff
19 from the pawn shop. And so they went back, and
20 the police interrogated the guy. And the guy,
21 and, you know, they said you broke into the
22 person's house. We got you. You know, we've got
23 the surveillance tape where you went in the pawn
24 shop and got your ID where you signed for it. And
25 I will be dog gone if the guy didn't say, no, no,

1 I didn't break into the house then. Some crack
2 head off the street sold me this. And, you know,
3 also sold the jewelry to me and sold the DVD
4 player to me. And I don't know the crack head's
5 name. Somebody named Bo Bo. I don't know the
6 real name. People say that every day.

7 They have not given you one single reason
8 why Tiffany Jones and Ronetta Miller would pick
9 this Defendant out of everybody on this planet to
10 put in that house if he wasn't there. Mr. Wallace
11 got up and said---

12 MR. BARR: Objection, Your Honor.

13 THE COURT: Yes.

14 MR. BARR: Burden shifting.

15 THE COURT: The objection is overruled. I
16 will instruct the jury on the verdict.

17 MS. BARR: Mr. Wallace got up there and
18 said, these girls don't have no reason that I know
19 of, to lie on him. I didn't do anything to them.
20 They didn't do anything to me. But now he wants
21 you to believe that back on the day that they were
22 arrested they would just call his name, just out
23 of the blue. And that's not the only ones who
24 called his name. You remember when Tiffany got
25 back on that stand and she was talking about how

1 they met at -- saw each other in a nightclub after
2 she got out of jail.

3 She said that Mr. Wallace told her,
4 Cornelius said yeah, you know, Cornelius and
5 Ronetta is trying to put it one me and you. So
6 you just keep your mouth shut. Everybody in this
7 case, Ronetta, Cornelius and Tiffany all just
8 blaming him as opposed to everybody else on this
9 planet. And he wants us to believe that's just
10 because. Come on now you all. They are calling
11 his name, because he was there and committed this
12 crime. When you look at, okay, and I believe Ms.
13 Miller and Ms. Jones. Ms. Miller got up there and
14 she talked about how she had had surgery. She had
15 a complicated child birth. And she had a
16 colostomy bag and she had this bandage on. On her
17 back, and she said, on her back and Mr. Prosser
18 took it off. Can we corroborate that? Do we know
19 she was telling the truth about that? Absolutely.
20 Absolutely. How do you know that? Because it was
21 found in the house, and her DNA was on it.

22 When Tiffany Jones gets up here and
23 Ronetta Miller gets up her and talks about all the
24 calls that were placed to Mr. Prosser's phone from
25 Andre's phone, how do we know? Because when

1 investigator's went out, and they tract down the
2 owner of the phone, who does it come back to?
3 Andre Wallace. We subpoenaed his cell phone
4 records. What do they show? Just as those girls
5 said. There were all these calls back and forth
6 between those two phones.

7 When Ronetta gets up and says that after
8 she heard the shots, she ran so fast she ran out
9 of her shoes. How do we know she is telling the
10 truth? The shoe is right here in evidence. Right
11 at the yard. When she says she dropped the
12 victim's cell phone because she was running so
13 fast, how do we know she is telling the truth?
14 The cell phone found right there in that yard.
15 When they get back in that car and Tiffany Jones
16 says Andre runs into the car with the shotgun in
17 his hand, and say I had to shoot that MF, because
18 he was about to shoot me. How do we know she's
19 telling the truth. The victim's handgun right
20 there in the house.

21 Now we believe that those girls are that
22 smart to be able to make that up, and to ensure
23 that the forensic evidence was going to
24 corroborate what they said. Uh-uh. They are not
25 that smart and they are not that lucky. You know

1 that those girls are telling the truth, because
2 everything that they said could be corroborated.
3 That's how you know they are telling the truth.

4 And you know how you know he is lying
5 when he got up there? First of all, he lied about
6 the phone. When the police asked him, you know,
7 where is his phone. Huh? What phone? Your phone
8 where is it. It's in Kingstree. Now he got
9 uneasy when I asked it about it on the stand, and
10 then when I showed him the statement. Yeah. I
11 mean it was in Kingstree. I said, well wait a
12 minute now. You said you gave it to the police,
13 right. Yeah, they took it from me. I said, well
14 you were arrested in Lake City. How is your phone
15 going to be in Kingstree if you were arrested in
16 Lake City.

17 Remember Florence County had to pick him
18 up because we were outside Williamsburg County
19 jurisdiction. You all remember when Di Collins
20 said she called Lake City Police Department then
21 they later found it was another county. They had
22 to get the Florence County Sheriff's Office. Now
23 which one is it? He wants you to believe that
24 those girls paid him \$20 to take them a 20-minute
25 ride and he was just supposed to leave them out

1 there and go.

2 Now how they supposedly got back from out
3 on Road, I don't know. I mean I
4 don't how he is supposed to explain that. But
5 that's his story. He said he never went in the
6 house. Never had a gun to do anything. Here's
7 how you know he is lying. And basically his own
8 cell phone records hurt him. They hurt him
9 because they tell the truth. And they corroborate
10 the testimony of Ms. Jones. If you look at page
11 6, and I am going to publish it at this point.
12 Page 6. Let me get my copy. The very first call
13 was made from Mr. Wallace's phone to Mr. Prosser's
14 phone is reflected on page 9 of the defendant's
15 exhibit. That very first call was made at 6:21
16 p.m. Now again, you all, be reminded that is
17 central standard time. That's really 7 o'clock.
18 7:20 in South Carolina time.

19 The next call was made a little over a
20 minute later to Mr. Prosser's phone. The next
21 call to Mr. Prosser's phone is made at 6:26 p.m.
22 7:26 p.m. South Carolina time. And you can
23 obviously short calls. They are less than a
24 minute. So what we can surmise from the length of
25 those calls they weren't able to reach him.

1 Because they are all less than a minute. They're
2 seconds.

3 Now the next call after that, a phone call
4 to the victim's cell phone was 6:36 p.m. Again,
5 a 30-second call. We can surmise they wasn't able
6 to reach him. What does that do, and why is that
7 important, I am pointing it out? Because it
8 corroborates Tiffany's testimony that they kept
9 calling, they kept calling and they couldn't reach
10 him.

11 Again, the next call made from the
12 defendant's cell phone the victim's cell phone is
13 at 6:43 p.m. 29 seconds. We know he wasn't able
14 to reach him. Now here is the interesting thing
15 about this next call, folks. The next call that
16 was placed from the defendant's phone to the
17 victim's phone is at 6:58 p.m. The night of the
18 murder. Look at the time about that call, the
19 duration of that call. Can you all see that?
20 Four minutes and 6 seconds. What does that tell
21 us? That's when they spoke to him. That's a
22 conversation. If it's a four minute call that's a
23 conversation. So that's when all this plan was
24 hatched up about, you know, you come out. Let me
25 get you out of the house. You come and pick me

1 up.

2 And then there was conversation about no
3 he had been drinking. He wasn't going to come
4 out. That's when that called took place. That
5 corroborates what Ms. Jones or Ms. Miller said.
6 After that call was placed at 6:58 p.m. you see
7 that there was another call at 7:04 to the
8 victim's cell phone. That call was 33 seconds in
9 duration. Called him back, couldn't reach him.
10 You can look at the very next call going to the
11 victim about 30 minutes later. You all see that
12 time? 7:40 p.m. It would have taken them in all
13 this planning and stuff about 30 minutes to get
14 there. That's the next call to that location.

15 Now you have another call to the victim's
16 house that goes out at 7:51 p.m. That's a
17 50-second conversation. Why don't we go back to
18 page 6 of that exhibit. You all remember when
19 Ms. Miller testified that when she got out there,
20 the victim's dog was in the yard. And she called
21 him back said, come get your dog. And the victim
22 told her, oh, it's a dog. It's not going to hurt
23 you. She said well it's a dog. It's got teeth it
24 can bite.

25 I would submit to you, Ladies and

1. gentlemen that's when that call took place. And
2 that's when they got there. Because you see the
3 duration of that? It's not the other calls, 28
4 seconds; 30 seconds, 33 seconds. That's a longer
5 call. So that tells us, what we know from that
6 is, somebody actually spoke to the victim at that
7 time. I would submit to you, that's when they got
8 there. The next call after that is 50 second
9 call.

10 Now, folks, if they got to his house, as
11 the records would indicate at 7:40 p.m., and if
12 believe this Defendant that the only thing he did
13 was drop him off, there wouldn't be any other
14 calls after that; right? Because he took his cell
15 phone. Now I remind you, he didn't leave the cell
16 phone with the girls. He took his cell phone. So
17 if he dropped them off, and he did all he had to
18 do, and wasn't involved in it, you wouldn't expect
19 to find any more calls; would you. That ain't the
20 case. How many calls do you see after that call?
21 You have got the one at 7:51 p.m. You've got the
22 7:55 going out to the victim's phone. That's two.
23 You've got number three going out at 8:07 p.m. to
24 the victim's phone. And the last two calls, that
25 were made concerning the victim's phone, were both

1 incoming calls. Both of those were calls placed
2 by the victim's cell phone to the defendant's call
3 phone.

4 And that corroborates Tiffany's testimony;
5 doesn't it? When Ronetta called him back and
6 said, what's taking you all so long, you all need
7 to hurry up, doesn't that substantiate what she
8 said? If he dropped them off and left them there,
9 why in the world would Mr. Prosser be calling his
10 phone. That's what his lawyer argued. You
11 remember he got up there and said he didn't know
12 Mr. Prosser. Mr. Prosser wouldn't have any reason
13 to be calling him. And he's right. Mr. Barr is
14 absolutely right about that. That's proof
15 positive that he was in on it the entire time.

16 Now I imagine some of you all are, you are
17 going to ask yourself the question. Well Ms. Barr
18 you, these girls plead guilty to burglary. You
19 dropped the murder case on them. How are we
20 supposed to take that. You know if I can handle
21 it. If you all, that doesn't set right with you,
22 if you don't like the smell of that, you all
23 please take that out on me. Please take that out
24 on me. Don't that out on this family who's here
25 seeking justice for the murder of their loved one.

1 I personally believe that a man or a
2 woman should be held to account for their actions.
3 And these girls will. It's a sad situation for
4 everybody involved. Because the reality is,
5 Tiffany Jones and Ronetta Miller are going to
6 prison. They are going to prison. When they came
7 up here and they testified for their purposes, it
8 doesn't matter what happened to this guy today,
9 right here. He can go to prison for the rest of
10 his life. He can go to prison for 5 years. Or he
11 can walk out of this courtroom right today or
12 tomorrow, it doesn't matter as they are concerned.
13 They are going to prison. They understand that.

14 Now you mean to tell me if these girls are
15 going to lie and they are going to put it him, and
16 they are just lying just because I want them to
17 lie. I just want -- I want to just hem him up
18 for something he didn't do. Why in the world
19 would they get up there, and say that this
20 happened the way it did, if it didn't.

21 They could have quite frankly,
22 particularly Tiffany. She could have kept her
23 mouth shut. She could have exercised her right to
24 remain silent. She could have said just as this
25 Defendant, no I am not guilty. I want a trial.

1 And, you know, to be honest with you, between her
2 and Cornelius nothing ties them to the scene.
3 Because the only other person who would have
4 placed those two folks at the scene, he ain't
5 here. He's dead. He's gone. There is forensic
6 evidence that ties Tiffany to the scene. It
7 wasn't her car. She didn't have a gun. She
8 didn't go in the house. And even if they had
9 fingerprints or whatever in the house, she had
10 lived there at some point. So we would expect to
11 find the stuff. But really if she wanted to say
12 no, I am going to take my chances, I am going to
13 roll the dice. There's not a who lot of evidence
14 against her.

15 So you all tell me what she would have to
16 gain by getting up here lying. And believe me
17 when I say Cornelius McClary is next. I don't
18 want you to think that he's just going and being
19 free. He will be next. But you really have to
20 ask yourself the question. I don't mind you
21 examining what they said. That's what you are
22 supposed to do as jurors. But, folks, I would
23 submit to you that both of these girls are
24 credible.

25 I would submit to you that both of these

1 girls are worthy to be believed. And I tell you I
2 am so angry at them. I really am, because this
3 is foolishness. These young kids look at the TV
4 shows and the movies, and they think it's so easy
5 to go in and rob somebody. I don't even think
6 they even think about what they are doing. I
7 imagine that was hard for her to get up here and
8 say that in front of her mama. It's not just I
9 just -- it wasn't just that I happened to be
10 there, it was my idea; to a man who is really,
11 really good to her.

12 Nobody deserve to go out like that. He
13 especially didn't deserve to go out like that.
14 But she did it. Now why in the world would she
15 get up there and say all that, that it was her
16 idea? And say that he's the one that shot him if
17 he didn't?

18 I told you if you all are angry that this
19 murder charge was dismissed against those girls,
20 please again, take that out on me. I mentioned
21 earlier, I think everybody should -- everybody
22 should stand on their own feet. Everybody should
23 account for what they did. Those girls plead
24 guilty to planning this robbery. They are going
25 to stand account for that. They plead guilty to

1 what they did. They planned it. Those girls went
2 in that house and participated, and allowed other
3 people to go in that house, they pled guilty to
4 that. They admitted to what they did. They
5 didn't kill him though. And that's my point.
6 They didn't take his life. Andre Wallace did.
7 And Andre Wallace needs to stand account for what
8 he did. And, folks, the only way to do that in
9 this case, the only way to do that, is to find him
10 guilty.

11 THE COURT: Thank you, Ms. Barr. Ladies
12 and Gentlemen, the charge that I am going to give
13 you is a charge that the law in the State of South
14 Carolina requires me to give. And the law
15 requires you to accept the law exactly as I give
16 it to you. So I want your undivided attention
17 while I am giving you this charge.

18 Your receipt of the charge and your
19 deliberations in this case will culminate in your
20 foreperson's completion of this verdict form.
21 It's a little bit more than one page long. Your
22 verdicts in the case must be unanimous. That
23 means all 12 of you have to agree. This is not
24 going to be a situation in which the 11 to 1 vote
25 will control, or 7 to 5 vote or 8 to 4. It must

1 be absolutely unanimous. And what you are
2 required to do, Ladies and gentlemen, is take your
3 common sense view of the evidence and the law as I
4 charge it to you, and complete the verdict form in
5 manner which speaks the truth. The word verdict
6 comes from these Latin words which together means
7 to speak the truth. That's what your verdict has
8 to do.

9 Ladies and gentlemen, as you know, and as
10 I mentioned to you at the beginning and I will
11 remind you now, during this trial you and I have
12 had certain duties to perform. Your
13 responsibility as jurors is to be the fact finders
14 of this case. And it's your responsibility to
15 evaluate the evidence that has been introduced,
16 take the law as I charge it to you, put together
17 with your common sense and reach a verdict that I
18 just mentioned.

19 During the course of this charge, I am
20 going to be discussing with you several legal
21 principles. One of the disadvantages that I have,
22 is that, I am going to be reading a lot of this to
23 you. I've tried many cases as a lawyer. I've
24 tried many right here in this courtroom. And it
25 was all -- it was a bit relaxing. And I think

1 it's a bit relaxing to most lawyers, to be able to
2 stand up and give an argument to a jury when you
3 don't use any notes. These lawyers did that. I
4 feel more comfortable in not using notes. But
5 because I am required to give you a complete
6 charge, I have to use notes.

7 Now when I talk about these principles,
8 these will include but they are not limited to,
9 credibility of the witnesses, presumption of
10 innocence, reasonable doubt, direct and
11 circumstantial evidence, murder, burglary,
12 possession of a weapon during a violent crime and
13 conspiracy. Things of that nature. I will
14 guarantee you that I will repeat myself. That is
15 not because I have lost my place or that I don't
16 know what I am talking about. It's simply that
17 when you talk about legal principles on down the
18 road, they are going to intertwine and have
19 something to do with another one. So I won't
20 repeat myself. And if I do, that does not mean
21 that I am emphasizing a particular legal
22 principle over another. It's simply that I have
23 to explain to you what all these things mean. And
24 they, again, they intertwine with one another.

25 Now, Ladies and gentlemen, you may have

1 come in to this case with a preconceived notion of
2 what the law is or what you think it ought to be.
3 You have to put that out of your mind completely,
4 because under your oath, you have to accept the
5 law exactly as I give it to you.

6 For example if you were on a speeding
7 ticket jury and the evidence is right out here in
8 front of the courthouse, the speed limit was a
9 certain number of miles per hour, and you were
10 seated on a jury where a person was charged with
11 speeding, and you thought that the speed limit
12 ought to be something different, you can't base
13 your verdict on what you think the law ought to
14 be, you have got to base it on whether or not that
15 person has violated that law at that time. And
16 not what you thought the law ought to be.

17 Now during the course of the trial and
18 during the course of your deliberations in
19 reaching your decisions, you are to consider only
20 the competent evidence before you. If there was
21 any testimony or comment or anything of that
22 nature that I ordered you to disregard, if I
23 ordered it to be stricken from the record, you are
24 to disregard what I told you to disregard. Under
25 your oath you are required to do that.

1 You can take into account as far as
2 evidence is concerned, the testimony that has come
3 in, exhibits that have been introduced and any
4 stipulations or agreements between the two
5 lawyers. And again, I have got the responsibility
6 of charging you on the law. I don't have any view
7 of the evidence in this case. I respect your
8 responsibility and your role as jurors. You will
9 note that the vast majority of the exhibits that
10 were introduced, I never even saw. If there was a
11 dispute about admissibility of course I will have
12 to look at it and make a ruling. But the vast
13 majority of exhibits that came in, I have not even
14 seen. And the reason for that is, factually they
15 don't make any difference to my role at all. They
16 are for you.

17 The screen that may have shown certain
18 things to you, most of the time I couldn't see it.
19 It didn't matter what I thought what was on there.
20 That was for you. The witnesses who testified,
21 they testified to you. The witnesses weren't
22 trying to convince me of anything. The witnesses
23 were testifying for your benefit.

24 So if I have said or done anything during
25 the course of the trial that makes you think that

1 I favor one side over the other or I favor one
2 result over another, you can put that out of your
3 mind completely. Now however, when I have ruled
4 on evidentiary arguments or ruled on the
5 admissibility of testimony or exhibits likewise,
6 don't take anything from that in a way that I
7 favor one side over the other. I don't. I follow
8 the law. I follow the rules in these books right
9 here. And I'm surrounded by books. And I don't
10 make my rulings based on any preconceived notion
11 that I have or which side ought to prevail. I
12 don't do that. So please, understand that my
13 rulings are based on the law and not on any
14 admission that I have to see one particular result
15 is reached. Likewise, if I have said anything,
16 don't take that mean anything at all.

17 Ladies and gentlemen, as I have explained
18 to you earlier, the fact that a person is arrested
19 or charged or indicted is not evidence of
20 anything. This indictment which I have here is
21 simply the piece of paper that walks this case
22 into the courtroom. The defendant in this case
23 has been charged with criminal conspiracy,
24 burglary in the first degree, murder and
25 possession of a weapon during the commission of a

1 violent crime. I am going to explain all those
2 things. But the fact that a person is charged
3 with those offenses, it in and of itself doesn't
4 mean anything. The defendant has entered pleas of
5 not guilty on these charges. The state has the
6 burden of proving him guilty beyond a reasonable
7 doubt.

8 Now Ladies and gentlemen, as I told you I
9 would explain to you in the end with one
10 exception, your verdict on one of these charges
11 does not control your verdict on the other. In
12 other words, you evaluate the evidence as to each
13 charge separately and determine whether or not the
14 state has met the burden of proof beyond a
15 reasonable doubt. And I will explain that to you
16 in more detail later.

17 All right, as fact finders, you must
18 determine the credibility of the witnesses who
19 have testified in this case. Credibility and
20 believability are interchangeable words and mean
21 the same thing. Now it's your duty to analyze and
22 evaluate the evidence and determine which evidence
23 convinces you of its truth. And that includes
24 testimony. In determining the believability of
25 witnesses who have testified, you can believe one

1 witness over several. You can believe several
2 over one. You can believe part of what someone
3 says and disbelieve the rest. You can believe
4 every single word or you can disbelieve ever
5 single word.

6 Now you use your good common sense in
7 determining those issues of credibility. You can
8 take into account when you are evaluating whether
9 or not you believe the witness, whether or not
10 that witness has been hesitant or straight forward
11 in answering questions. We call that demeanor.
12 You can take into account whether or not that
13 witness has a reason to give testimony that helps
14 or hurts one side or the other. We call that bias
15 or prejudice. You can also take into account
16 whether or not that witness' testimony has been
17 strengthened or weakened in your judgment by other
18 evidence that's in the record. And you can take
19 into account whether that witness had said
20 something different or the same on prior
21 occasions.

22 Now, Ladies and gentlemen, you have heard
23 testimony concerning the penalties that a person
24 can serve for the crimes alleged in this case. In
25 determining whether or not this defendant is

1 guilty or not guilty, you cannot consider any
2 possible punishment for any particular crime.
3 Punishment in the end is for me to determine. It
4 is not appropriate for you to take -- to take into
5 account a particular punishment in determining
6 whether or not he is guilty or not guilty.

7 Now you can consider the potential
8 sentence for a crime that a witness may have faced
9 or may face when determining whether or not you
10 believe that witness' testimony. Now Ladies and
11 gentlemen as I explained to you earlier during the
12 trial, the rules of evidence ordinarily don't
13 permit witnesses to give opinions or conclusions.
14 An exception to that rule exists for witnesses
15 that we call expert witnesses. A witness who by
16 education, training or experience who has been,
17 has become an expert in a particular art, science
18 or profession may state opinions as to relevant
19 and material matters. And that witness may also
20 give a reason for those opinions.

21 You can consider any expert opinion just
22 like any other evidence, any other testimony. You
23 give it the weight you think it deserves. If you
24 decide that the opinion is not based upon
25 sufficient education or experience or if you

1 conclude that the reasons given for the opinion.
2 are not sufficient or if you conclude that the
3 opinion given by the expert is outweighed by other
4 evidence, you can disregard the opinion entirely.
5 An expert witness' opinion need not be accepted by
6 you just because it comes from an expert. And you
7 do not have to accept it even though it might be
8 uncontradicted.

9 Now, Ladies and gentlemen, the defendant
10 has entered pleas of not guilty to the charges in
11 this indictment, and that plea puts the burden on
12 the state to prove the defendant guilty beyond a
13 reasonable doubt. A person charged with a
14 criminal offense is never required to prove
15 himself innocent. He is never required to prove
16 himself not guilty. It's a very important rule of
17 law that the defendant in a criminal trial no
18 matter what the charge A-Z, no matter what the
19 charge, no matter what the seriousness of the
20 crime, is always presumed innocent unless guilt
21 has been proven by evidence satisfying you of that
22 guilt beyond a reasonable doubt.

23 The presumption of innocence does not end
24 when you stand up and walk out of this jury box
25 and walk to that jury room and begin your

1 deliberations. The presumption of innocence
2 accompanies the defendant throughout the trial and
3 throughout your deliberations unless and until you
4 reach a verdict of guilt based on the evidence
5 that satisfies you of that guilt beyond a
6 reasonable doubt.

7 Now some people describe the presumption
8 of innocence to be like a robe righteousness that
9 is placed around a defendant's shoulder's. And
10 that robe stays on the defendant until it is
11 stripped away by evidence satisfying you of guilt
12 beyond a reasonable doubt. So in the end, Ladies
13 and gentlemen, the presumption of innocence.
14 Those three words. It's not a mere legal theory.
15 It's not a catch phrase that we casually toss
16 around. The presumption of innocence is a
17 substantial right to which every defendant is
18 entitled unless a jury is satisfied of guilt
19 beyond a reasonable doubt.

20 I have probably used the words reasonable
21 doubt at least 10 times. I am going to talk to
22 you about that now. And with regard to the
23 elements of the crimes that the defendant is
24 charged with, the state does have the burden of
25 proving those elements beyond a reasonable doubt.

1 So what is a reasonable doubt in the law. A
2 reasonable doubt is the kind of doubt that would
3 cause an honest and a sincere and reasonable
4 person to hesitate to act. The state again has
5 the burden of proving the defendant guilty beyond
6 a reasonable doubt.

7 Some of you may be familiar. Perhaps you
8 served as a juror, but you may otherwise be
9 familiar with the civil cases where you were told
10 that it's only necessary to prove that a fact is
11 more likely true than not. And that's by the
12 greater weight of the evidence. In other words,
13 the party having the burden only has to tip the
14 scales of justice ever so slightly. In a criminal
15 case the state's proof must be more powerful than
16 that. It must be proof beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that
18 leaves you firmly convinced of the defendant's
19 guilt. Now I realize that there are very few
20 things on this earth that we know with absolute
21 certainty. And the law does not require the state
22 to present proof that overcomes every possible
23 doubt. The state must present proof that
24 overcomes every reasonable doubt.

25 If based on your considerations in this --

1 of the evidence in this case, if you are firmly
2 convinced of the defendant's guilt to the crime
3 you are considering at the time, you must find him
4 guilty. If on the other hand you think there is a
5 real possibility that defendant is not guilty and
6 you are firmly convinced of his guilt you must
7 give him the benefit of the doubt and find him not
8 guilty.

9 Now reasonable doubt may arise from
10 evidence which is in the case or it may arise from
11 the lack of or absence of evidence in the case.
12 And, Ladies and gentlemen, the fact that the
13 defendant has testified or offered evidence does
14 not mean that the defendant has assumed any burden
15 of proving or disproving anything. Because at all
16 times, the state has the sole burden of proving
17 guilt beyond a reasonable doubt.

18 All right, Ladies and gentlemen, I am
19 going to start to get more specific now. So
20 please bear with me. I've told you that there are
21 generally several forms of evidence that are
22 introduced, testimony, exhibits and stipulations.
23 There are two types of evidence that are generally
24 presented during the trial. These are called
25 direct evidence and circumstantial evidence.

1 Direct evidence is evidence that immediately
2 establishes the main fact to be proved. I saw the
3 light turn red. I saw a man in a purple coat. I
4 heard a door shut. Things of that nature. That's
5 evidence that immediately establishes the main
6 fact to be proved. Circumstantial evidence is
7 proof of a chain of facts and circumstances that
8 indicate the existence of a fact. It's evidence
9 that immediately establishes collateral facts
10 from which a main fact may be inferred.

11 A quick example, if you are seated and you
12 may be able to identify this as jurors, even
13 though in this courthouse you do not have windows.
14 Some jury rooms don't have any. If you are seated
15 and are completely in a sound proof and in a
16 windowless room for 8 hours, and you don't know
17 because you haven't been outside and you can't
18 hear it, you can't smell it and you can't see it,
19 you don't know what the weather is. At the end of
20 those 8 hours a man walked in the door, and you
21 see that he has an umbrella. And you see that he
22 shakes it off, and you see that and you hear him
23 say, I just came in from the outside.

24 If you wanted to, you could
25 circumstantially infer that it was raining

1 outside. That's a very fundamental example of
2 circumstantial evidence. Now Ladies and
3 gentlemen, the law make absolutely no distinction
4 between the weight or the value that you are to
5 give to either direct or circumstantial evidence.
6 Nor is a greater degree of certainty required of
7 circumstantial evidence than of direct evidence.
8 You weigh all the evidence, and after weighing all
9 the evidence if you are not convinced of the
10 defendant's guilt beyond a reasonable doubt, you
11 find him not guilty. If after weighing all the
12 evidence you are convinced of the defendant's
13 guilt beyond a reasonable doubt, then you find him
14 guilty.

15 Now, Ladies and gentlemen to get more
16 specific, I am going to talk to you about these
17 criminal charges in the order that they are in the
18 indictment. I am going to define those for you.
19 And with regard to everything that the state must
20 prove, keep in mind that has to be proven to you
21 beyond a reasonable doubt. The defendant is
22 charged with criminal conspiracy. The state must
23 move beyond a reasonable doubt that the defendant
24 combined with one or more persons for the purpose
25 of committing an unlawful act. Or of committing a

1 lawful act by unlawful means. There must be a
2 mutual understanding, agreement, or common
3 intention of plan. Mere passing knowledge of
4 consent to the criminal conduct of another is not
5 enough to make person a conspirator. There must
6 be guilty knowledge and participation. The mere
7 fact that a defendant may have been associated
8 with another person or met with another person and
9 discussed common aims and interests does not
10 necessarily establish proof of the existence of a
11 conspiracy or that the defendant was involved in a
12 conspiracy. On the other hand, it is not
13 necessary that the agreement be a formal
14 agreement, or that it be in writing or that the
15 persons hold a meeting and expressly state the
16 terms of the common plan or that the agreement be
17 stated in word between them.

18 The agreement of a civil -- a criminal
19 conspiracy may come into being through an implied
20 mutual understanding. The willful, intentional
21 and knowing adoption by two or more people for a
22 common plan is sufficient. No overt acts need be
23 shown to establish conspiracy. A conspiracy may
24 be shown by circumstantial evidence and the
25 conduct of the parties.

1 Now, Ladies and gentlemen, in order to
2 convict the defendant of conspiracy, the state
3 must have proven beyond a reasonable doubt not
4 only that the defendant knew of the unlawful
5 conduct but that the defendant agreed to combine
6 with the other people or person for the purpose of
7 accomplishing the unlawful conduct. Ladies and
8 gentlemen, I will now move on to the second count
9 in the indictment and that is first degree
10 burglary. It's also called burglary in the first
11 degree. And the defendant is charged with first
12 degree burglary.

13 The state must prove beyond a reasonable
14 doubt first of all, that the defendant entered a
15 dwelling without consent. A dwelling is any
16 building or portion of a building in which a
17 person ordinarily sleeps. Now in order to prove
18 that the defendant entered the dwelling, the state
19 does not have to show that the defendant's entire
20 body entered the dwelling, the smallest entry is
21 sufficient.

22 If a person, and in addition, Ladies and
23 gentlemen, the state does not have to prove that
24 force was used to gain entry to the dwelling. If
25 a person enters a building by using deception,

1 artifice, trick or misrepresentation to get
2 consent to enter, that is an entry without
3 consent. The state must also prove beyond a
4 reasonable doubt that the defendant intended to
5 commit a crime inside the dwelling either a felony
6 or a misdemeanor at the time of the entry.

7 The mere entry into a dwelling without
8 consent is not a burglary. If the intent to
9 commit a crime is formed after the entry, it is
10 not burglary. And if the defendant intended to
11 commit a crime at the time of entry, it is a
12 burglary even if the intent was abandoned after
13 the entry. It does not matter that the intended
14 crime was not completed.

15 Now, Ladies and gentlemen, finally with
16 regard to burglary in the first degree, the state
17 must proof beyond a reasonable doubt one of the
18 following: when entering while in the dwelling
19 or when fleeing, the defendant or an accomplice
20 was armed with a deadly weapon. A deadly weapon
21 is any article, instrument or substance that is
22 likely to cause death or great bodily harm. And
23 the following are examples of instruments which
24 may be used as deadly weapons, a pistol, shotgun,
25 rifle, knife, slingshot, brass knuckles, gasoline

1 or a firearm.

2 Now, Ladies and gentlemen, I have already
3 told you, I've talked to you about entering the
4 dwelling without consent with the intent to commit
5 a crime therein which the state have to prove
6 beyond a reasonable doubt. And one of these other
7 things that the state must prove when entering the
8 dwelling, the defendant or an accomplice was armed
9 with a deadly weapon. Or when entering while in
10 the dwelling or when fleeing, the defendant or an
11 accomplice caused physical injury to anyone not
12 participating in the crime. Or No. 3, Ladies and
13 gentlemen, when entering while in the dwelling or
14 when the fleeing, the defendant or an accomplice
15 used a dangerous object. Or Ladies and gentlemen,
16 that the defendant entered or remained in the
17 dwelling in the nighttime. And the nighttime is
18 the period between sunset and sunrise during which
19 there is not enough daylight to recognize a
20 person's face without artificial light or moon
21 light.

22 Now, Ladies and gentlemen, I will now
23 discuss with you the crime of murder that has been
24 charged as Count 3 in the indictment. The
25 defendant is charged with murder. The state must

1 prove beyond a reasonable doubt that the defendant
2 killed another person with malice aforethought.
3 Malice is hatred, ill will or hostility towards
4 another person. It's the intentional doing of a
5 wrongful act without just cause or excuse and
6 with an intent to inflict an injury or under
7 circumstances that the law would infer an evil
8 intent.

9 Malice aforethought, that element does not
10 require that malice exist for any particular time
11 before the act is committed. But malice must
12 exist in the mind of defendant just before and at
13 the time the act is committed. Therefore, there
14 must be a combination of the previous evil intent
15 and the act. All right, now, Ladies and gentlemen
16 to get more specific, malice aforethought can be
17 expressed or it can be inferred. Those two terms
18 express and inferred do not mean different kind of
19 malice, but simply the manner in which the malice
20 may be shown to exist. And that's either by
21 direct evidence or circumstantial evidence.

22 Express malice is shown when a person
23 speaks words which express hatred or ill will for
24 another. Or when the person prepared beforehand
25 to do the act which was later accomplished.

1 Malice may be inferred from conduct showing a
2 total disregard for human life. Inferred malice
3 may also arise when the act is done with a deadly
4 weapon which I previously defined for you.

5 Further, Ladies and gentlemen, if one
6 intentionally kills another during the commission
7 of a felony, the inference of malice may arise.
8 And I charge you, Ladies and gentlemen, that
9 burglary in the first degree is a felony. Now,
10 Ladies and gentlemen, with regard to these
11 inferences of malice from the use of a deadly
12 weapon or of the killing of another during the
13 commission of a felony, those inferences are
14 simply evidentiary facts to be taken into
15 consideration by you along with other evidence in
16 the case and you give it the weight you think it
17 should receive.

18 Ladies and gentlemen, lastly, the
19 defendant is charged with the offense of
20 possession of a weapon during the commission of a
21 violent crime. In that regard, Ladies and
22 gentlemen, the state must prove beyond a
23 reasonable doubt that the defendant was in
24 possession of a firearm or visibly displayed what
25 appeared to be a firearm during the commission of

1 a violent crime. A firearm, I will define that
2 for you, is a machine gun, automatic rifle,
3 revolver, pistol, shotgun or rifle or any weapon
4 which is designed to or maybe converted to expel a
5 projectile.

6 Now, Ladies and gentlemen, in order to
7 find the defendant guilty of possession of a
8 weapon during the commission of a violent crime,
9 you must first find the defendant guilty of
10 committing a violent crime. And I charge you,
11 Ladies and gentlemen, that murder under the laws
12 of this state is a violent crime. And burglary in
13 the first degree is a violent crime. Now, Ladies
14 and gentlemen, in order to establish criminal
15 liability for any criminal offense, the state must
16 prove criminal intent beyond a reasonable doubt.
17 In other words, criminal intent is an element of
18 every crime in this state.

19 Criminal intent must again be proven by
20 the state beyond a reasonable doubt. It's always
21 a matter that must be determined by the jury from
22 the facts and circumstances surrounding the
23 situation. So with regard to criminal conspiracy,
24 burglary in the first degree, murder and
25 possession of a weapon during the commission of a

1 violent crime, an added element of each is
2 criminal intent.

3 Now there is no way to prove intent to a
4 mathematical certainty. And there is no way that
5 medical science can yet dissect a person's brain
6 and look at that brain and decide what that person
7 intended to do if anything, on any given occasion.
8 So the law says that criminal intent may be
9 inferred from the circumstances shown to have
10 existed. It's not necessary for the state to
11 establish criminal intent by direct and positive
12 evidence. But criminal intent may be established
13 by circumstantial evidence in the same way as any
14 other fact by taking into consideration the
15 actions of the parties and all the facts and
16 circumstances of the case. But the state has to
17 establish criminal intent beyond a reasonable
18 doubt. Criminal intent is a mental state. It is
19 conscious wrongdoing. And it's up to you to
20 determine what if anything the defendant intended
21 to do based on your view of the evidence in this
22 case.

23 Now, Ladies and gentlemen, I am not going
24 to concerned about what your verdict is going to
25 be. I want to make sure however you understand

1 that your job in many respects is just beginning.
2 The foreperson will be charged with the
3 responsibility of conducting the deliberations in
4 a thorough and orderly manner. And, Mr. Foreman,
5 in that regard, you don't have any greater
6 authority in the jury room. You're simply the
7 spokesperson for the jury, and you are
8 responsible for making sure that the verdicts
9 are unanimous and the verdict form correctly
10 reflects your unanimous decision. And you also
11 have the responsibility of conducting those
12 deliberations thoroughly and in an orderly
13 fashion.

14 And in that regard, if someone wants to
15 talk during the course of deliberations, you don't
16 have the right to decide when that person has
17 talked long enough. In other words, in the
18 Roberts Rules of Order, you might be able to cut
19 off the date. You can't do that in there.

20 Likewise if a juror simply wants to make
21 his or her verdict known, you don't have the right
22 to force that person to explain anything. Your
23 responsibility is to make sure the verdict is
24 unanimous and that it does speak the truth. Now
25 with regard to the verdict form, there are four

1. inquiries. And you might realize now why there
2 are four. Because there are four counts on the
3 indictment. There is a separate question for each
4 one or separate inquiry.

5 No. 1 says, as to the charge of criminal
6 conspiracy, we the jury unanimously find that the
7 defendant, and there are two choices. Not
8 guilty/guilty. Whatever your verdict is, whatever
9 your unanimous verdict is, you put a check or an x
10 in the appropriate space. Secondly, as to the
11 charge of burglary in the first degree, we the
12 jury unanimously find the defendant, and again
13 your two choices are the same. Thirdly, as to the
14 charge of murder, we the jury unanimously find the
15 defendant again, your choices are the same.

16 As I explained to you, your verdict on
17 those three does not control your verdict -- or
18 your verdict on one, two and three, don't control
19 your verdicts on one, two and three. In other
20 words, you may find the defendant not guilty of
21 all or guilty of all. Or not guilty of some and
22 guilty of the others. That's entirely up to your
23 view of the evidence.

24 With regard to the fourth inquiry, it says
25 as to the charge of possession of a weapon during

1 the commission of a violent crime, we the jury
2 unanimously find the defendant again, the two
3 choices, not guilty/guilty. Right before that,
4 Mr. Foreman, as I previously explained, don't
5 consider that fourth charge unless you have first
6 found the defendant guilty of burglary in the
7 first degree or murder or both.

8 Now, Ladies and gentlemen, there is in
9 evidence a firearm that has been introduced. I
10 don't want you to take anything out of the packet.
11 It's in a plastic bag. Is that correct,
12 Attorneys?

13 MS. BARR: Yes, sir, Judge.

14 THE COURT: Leave it in there, don't take
15 it out. Likewise, there is a cell phone or what
16 has been described as a cell phone in evidence.
17 Don't play around with any of the buttons. If you
18 want to, we will bring you back out and you can
19 open it up and the correct person or persons can
20 let you you see what you might want to see. And I
21 don't think there is any other evidence that is in
22 that state, but we don't want you punching any of
23 these buttons, or I don't. The lawyers haven't
24 said anything. But I don't want you punching any
25 of those buttons. So that whatever is on that

1 screen can be preserved in its current form.

2 Now right now, Ladies and gentlemen, you have
3 some that might say the honor and conscience of
4 Williamsburg County is in your hands. And that is
5 because you have given a solemn oath to render verdicts
6 that speak the truth. The State of South Carolina
7 expects and is entitled to a fair and impartial trial at
8 your hands. The defendant, Andre Wallace, expects and
9 is entitled to a fair and impartial trial at your hands.
10 Both sides expect a fair and impartial verdict. The
11 only way you can give that to them is to take your oath
12 seriously, examine all the issues in this case and
13 truly render verdicts that speak the truth. And I have
14 every confidence that you will do that.

15 I will note that over the past five plus
16 years, I have presided over many, many trials.
17 And as a lawyer over the course of more than 20
18 years, I participated in hundreds of trials. And
19 I will tell you that you, Ladies and gentlemen,
20 you have paid extremely close attention throughout
21 this trial. I don't do what Judge Newman and that
22 is from here typically does. I don't say well
23 stand up and stretch. That's a code for when I
24 see somebody sleeping, I am going to make them
25 stand up for awhile. I don't do that. I

1 certainly didn't have to do it in this trial
2 because all of you paid very close attention, and
3 I appreciate that.

4 Now the next phase of the trial, Ladies
5 and gentlemen, will be for me to review with the
6 lawyers whether or not I charged anything
7 incorrectly or whether or not I left something
8 out. You may not believe that to be the case but
9 that might be. So having said that, I want you to
10 go to your jury room. You can't start talking
11 yet. Your signal to deliberate will come when
12 the bailiff comes to your door with this verdict
13 form and with the exhibits and tells you that you
14 can begin your deliberations.

15 If you have any questions during the
16 course of your deliberations, there will be a note
17 pad for you to write the question down. That's
18 what I want you to do. You write it down and sign
19 it. Today is the 20th, you date it. Tap on the
20 door and let the bailiff know you have a
21 question. With regard to questions, I will tell
22 you this; that I will read whatever question you
23 send out, but the law dictates No. 1, if I can
24 respond. And it dictates how I can respond. So
25 please don't be offended if I give you a response

1 that you think doesn't answer it. I will be
2 guided by the law in that regard.

3 Likewise, Mr. Foreman, when you have
4 reached a verdict and you are sure they are all
5 unanimous, you sign the verdict form on the bottom
6 right down there. And you date it. You tap on
7 the door, and let the bailiff know you have
8 reached a verdict. That's how we will know. I
9 did have a case one time when the jury sat back
10 there for hours, and they said they had reached a
11 verdict hours before, but they didn't know what to
12 do. So I'm telling you that's what you're
13 supposed to do. When you do reach a verdict,
14 complete the form and tap on the door and let us
15 know.

16 You can go to your jury room. The two
17 alternates, you all can stay out in the hall for
18 the time being until I come back to you. And the
19 rest of you, Ladies and gentlemen, can go back in
20 to your jury room and we will be with you shortly.

21 (Whereupon, the following takes place
22 outside the presence of the jury.)

23 THE COURT: Any additions or any
24 exceptions?

25 MS. BARR: No, sir, Your Honor.

1 THE COURT: Mr. Barr, other than my
2 refusal to charge voluntary manslaughter, do you
3 have any exceptions or additions?

4 MR. BARR: No, sir.

5 THE COURT: Let me ask you this question.
6 With regard to the two alternates we basically
7 have three choices. I won't let them go unless
8 both sides agree in writing which the rule
9 requires to go with the verdict of no less than
10 11. No. 2, this is a criminal case. The rules
11 are a little bit different. If we need an
12 alternate, it's a blind draw. Civil cases by the
13 order selected. We can blind draw one and ask
14 that person to stay. Or we can have them both
15 stay in separate rooms from one another.

16 What's the state's position on that?

17 MS. BARR: Have them both stay, Judge.

18 THE COURT: Mr. Barr?

19 MR. BARR: Yes, sir.

20 THE COURT: Okay. We will find, Ms.
21 Williams, we will have to find different rooms for
22 both. I guess the grand jury room will be one.
23 But I will let you decide that. But make sure
24 that whoever -- wherever they go, there has got to
25 be posted outside their door.

1 THE COURT: Mr. Barr, or, Ms. Barr, do you
2 have any objection to the bailiff telling them
3 that if they want to handle any of the evidence
4 they need to put on some gloves?

5 MR. BARR: No, sir.

6 MS. BARR: Your Honor, I have no
7 objection.

8 THE COURT: Tell them when they handle any
9 evidence that they need to put on a pair of these
10 gloves we're going to send back there, okay.

11 THE BAILIFF: Yes, sir.

12 THE COURT: Not yet, we're going to take
13 it back there to them first.

14 THE BAILIFF: All right.

15 THE COURT: Okay, do you all have gloves?

16 MS. BARR: Judge, we can get them some
17 gloves.

18 THE COURT: 12 pairs.

19 MS. BARR: 12 pairs?

20 THE COURT: Well I doubt that they will
21 swapping gloves.

22 MS. BARR: I got you.

23 THE COURT: Okay. Anything else?

24 MS. BARR: No, sir.

25 THE COURT: Ms. Barr, would you please

1 tell your folks that if the jury has a question,
2 and, Mr. Barr, you tell your folks the same thing.
3 If the jury has a question or a verdict, I will
4 wait a reasonable time for them to come back. But
5 I can't wait a long time. In other words, if they
6 drive to Brown's to eat and the jury has a
7 question or a verdict right in the middle of their
8 first bite, I am not going to wait that 15 minutes
9 for them to come back. Mr. Barr, do you all
10 understand that?.

11 MR. BARR: Yes, sir, Judge.

12 THE COURT: If you all do go anywhere, if
13 the lawyers would leave me you cell numbers,
14 please.

15 (Whereupon, at 2:05 p.m. jury commences
16 deliberates.)

17 (Whereupon at 4:10 p.m. jury has a
18 question.)

19 THE COURT: I need to find Ms. Barr and
20 Mr. Barr. We have question from the jury. Okay,
21 is everybody ready?

22 MS. BARR: Yes, sir.

23 THE COURT: This will be the next Court's
24 Exhibit, a note from the jury signed by
25 Mr. Ravenel. It says, if we cannot come to an

1 agreement on a verdict what would be the outcome
2 of that question. They haven't said they can't.
3 They just asked what would happen if they can't.
4 That's frankly typically how the note comes out.
5 What would do when we can't reach a verdict.

6 We can do one of two things. Well I
7 think a factual thing is for me is to bring the
8 jury out to be safe, are you telling me that you
9 are unable to reach a verdict. And then we will
10 go from there. And so it might be a technicality,
11 but one side or the other may or may not want me
12 to go straight into an allen charge. What's the
13 state's -- if you all want to read the note?

14 (Note from jury marked Court's Exhibit No.
15 3.)

16 (Whereupon, attorneys read note.)

17 MS. BARR: What will be the outcome of
18 that question.

19 THE COURT: The outcome that they asked
20 about is another jury, no more educated than them,
21 same lawyers, same witnesses so forth and so on.
22 Same testimony. So do you all want to discuss
23 that? Because sometimes if one side says one
24 thing the other side automatically says something
25 different. I just want to get y'all's input.

1 Mr. Barr, what do you think?

2 MR. BARR: Judge, until we have proven
3 the record clear, it would seem to me that their
4 question you know certainly ultimately the case
5 would have to be declared a mistrial and retried.
6 But I think in the interim, I would think one
7 allen charge. That's just my thinking.

8 THE COURT: Ms. Barr.

9 MS. BARR: They haven't said they are
10 deadlocked.

11 MR. BARR: Yes, sir.

12 THE COURT: They are just saying what
13 happens if we are. And in layman's -- from a
14 layman's perspective what does the state say?

15 MS. BARR: Judge, I think if you tell the
16 jury that if you -- if they are unable to reach a
17 verdict then the case will have to be retried with
18 the same witnesses, same lawyers. And that
19 particular will not be in any better position than
20 they are now. So....

21 THE COURT: So are you asking for a
22 full-blown allen charge?

23 MS. BARR: No, sir.

24 THE COURT: Mr. Barr. And you know what
25 the law is, once I give them an allen charge, I

1 can't -- and they come back again deadlocked, I
2 can't force them to go back and do it again. I
3 have to do that Buff vs. The DOT exercise by me
4 judging their body language and demeanor. And
5 whether or not additional deliberations. I don't
6 know if there is such a thing as, well if you
7 can't reach a verdict I am going to give you --
8 I'm going to tell you that you have to try it
9 again.

10 That's not an allen charge, but Mr. Barr
11 may take issue with that.

12 MR. BARR: Well, no, Judge,---

13 THE COURT: If you agree with her, I will
14 do that.

15 MR. BARR: You know, I don't have a
16 problem with that. Of course you are probably
17 absolutely right. In layman's terms this may very
18 well be. But I mean in terms of specifically
19 answering their question, it would be a precise
20 answer to just say, you know, we. But in the
21 interim, an allen charge would be the next.

22 THE COURT: So are you in agreement
23 that -- well, do either of you have a problem with
24 me saying to the jury can you clarify to me as to
25 whether or not you are unable to reach a verdict

1 and the foreman can just tell me.

2 MR. BARR: Or saying at this time we can
3 not reach a verdict.

4 THE COURT: Right now---

5 MR. BARR: Yes, sir.

6 THE COURT: ---are you telling you can't
7 reach a verdict now, or are you just asking me
8 what happens if you can't reach a verdict.

9 MS. BARR: Judge, it would appear from
10 their question that they are asking you what would
11 happen if they couldn't.

12 THE COURT: But why would they be asking
13 that unless they couldn't. I'm sure they're not
14 back there saying all right we have got a verdict,
15 let's just ask the judge what happens if we can't.

16 MS. BARR: Well, Judge, I tell you some
17 strange things happen during the course of
18 deliberations. The only thing I would say in
19 response; is that, if they could not reach a
20 verdict, I've never had a jury that couldn't reach
21 a verdict just come and say, Judge, we can't reach
22 a verdict. We can't agree. And so I would submit
23 to the court if they were at that stage then they
24 would say that. Yeah.

25 THE COURT: Mr. Barr, anything else?

1 MR. BARR: No, sir.

2 THE COURT: What I am going to do is, I am
3 going to bring the jury out. And I am going to
4 ask the foreman, say I can easily answer that
5 question. But are you telling me that truly
6 can't reach a verdict right now.

7 MS. BARR: All right.

8 THE COURT: Do you have a problem with
9 that, Mr. Barr?

10 MR. BARR: No, sir.

11 THE COURT: Okay. Bring in the jury.
12 Just the 12, not the alternates.

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

15 THE COURT: Ladies and gentlemen, thank
16 you for your patience in that delay in having you
17 come out here after your question. I do have your
18 question. And I am going to go ahead and read it
19 and make sure it is clear.

20 It says, if we cannot come to an agreement
21 on a verdict what would be the outcome of that
22 question. Of course it is signed by Mr. Ravenel.
23 Mr. Ravenel, I want to ask you one very basic
24 question. Are you telling me at this time that
25 the jury cannot reach a verdict, or are you just

1 asking me what will happen if you can't?

2 THE FOREMAN: I'm asking because---

3 THE COURT: I don't want you to discuss
4 any deliberations.

5 THE FOREMAN: Right.

6 THE COURT: I just want to -- are you,
7 there is a fine line between what I would go into
8 depending upon what your answer is. Are you
9 telling me that you can't reach a verdict or are
10 you just asking me what would happen if that
11 arises?

12 THE FOREMAN: Since I sent that, we have
13 reached a verdict on that. But I would like to
14 know for us that if we could not come to an
15 agreement on any of the questions---

16 THE COURT: Yes, sir. What would happen?

17 THE FOREMAN: Right.

18 THE COURT: So are you telling me you have
19 reached a verdict?

20 THE FOREMAN: Well on a couple of them.

21 THE COURT: I see.

22 THE FOREMAN: But not all.

23 THE COURT: Here's what I am going to do.

24 If you would be patient with me for a minute or
25 two, I'm going to ask you to step back in your

1 jury room. Of course you can continue your
2 deliberations. And then I will have a
3 conversation with the lawyers. Okay. Thank you.

4 (Whereupon, the following takes place
5 outside the presence of the jury.)

6 THE COURT: Perhaps that makes it clear.
7 But in my mind it clarifies some things. What I
8 am hearing them say is that they have reached a
9 verdict on some things but not on others, and they
10 want to know what happens if they can't reach a
11 verdict on the other ones. I think I know the
12 answer to that question. Ms. Barr, what's the
13 state's position? Not about the allen charge, but
14 substantively what happens.

15 MS. BARR: Judge, I think I've only seen
16 this happen one or two times. And I hadn't had a
17 chance to digest my thoughts on it. But I've had
18 some courts that will accept the verdict as it
19 relates to the charges that they can agree on.
20 Give them and declare a mistrial. On the others I
21 have had the judges in some instancse tell them to
22 go back and give the allen charge on everything
23 and if they can't reach a verdict. I am not quite
24 sure how do that.

25 THE COURT: Mr. Barr.

1 MR. BARR: Your Honor, if, I would -- I
2 would definitely think it would be appropriate for
3 at least one allen charge as to the counts of the
4 indictment they cannot reach a verdict on, and
5 have not reached a verdict on.

6 THE COURT: Without knowing what those
7 were?

8 MR. BARR: Yes, sir. And of course if
9 then they cannot reach a verdict of the remaining
10 charges, I would think that perhaps their verdict
11 would stand as to the charges they reached a
12 verdict on, and the counts they didn't, a mistrial
13 as to those.

14 THE COURT: Well I think both of you are
15 saying the same thing. In other words, Ms. Barr,
16 you didn't say whether you agree with it. You
17 said you had seen it happen. The correct approach
18 would be, in the end, at the very end of all this,
19 if I give an allen charge and they can still only
20 reach a verdict on 1 of 4 or 2 of 4 or whatever, I
21 would accept the unanimous verdict on what they
22 could reach a verdict on. And then the mistrial
23 would be declared on the others. I think -- yes,
24 ma'am.

25 MS. BARR: Judge, I'm sorry, I didn't

1 hear.

2 THE COURT: I think what the foreman was
3 telling is that they have reached a verdict on
4 some but not the others, and that if they couldn't
5 reach a verdict on the others. But I don't know
6 whether I closed that loop on it.

7 MS. BARR: So, Your Honor, would you then
8 tell the jury? Because it doesn't look like the
9 foreman has indicated to the court that they are
10 hopelessly deadlocked on one or more of the
11 charges.

12 THE COURT: That's right. That's what I
13 don't think I closed the loop on.

14 MS. BARR: Okay.

15 THE COURT: So I am going to bring them
16 out here and say, but he did say they hadn't. He
17 didn't say they couldn't.

18 MS. BARR: That's what I understood him to
19 say.

20 THE COURT: And I hate to be highly
21 technical, but I guess part of my responsibility
22 is to dwell on that technicality. Mr. Barr, did
23 you have a problem with me---

24 MR. BARR: No, sir.

25 THE COURT: ---having them come back out

1 and reclarify?

2 MR. BARR: No, sir.

3 THE COURT: Okay, bring them back out.

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

6 THE COURT: I am sorry to bring you right
7 back in. Now, Mr. Foreman, the reason I am going
8 to ask you these questions is that the law
9 requires me to do certain things, but only under
10 certain conditions. That's why I am being more
11 specific with you. You told me that the jury had
12 reached a verdict as to certain things, but you
13 had not reached a verdict as to certain other
14 things.

15 Now as the matters on which you have not
16 reached a verdict, are you telling me that you
17 cannot reach a verdict, or that you simply have
18 not?

19 MR. FOREMAN: Well as of this point, we
20 have not.

21 THE COURT: You have not. So you are not
22 saying you cannot? Because---

23 THE FOREMAN: I don't---

24 THE COURT: ---if you are unable to reach
25 a verdict---

1 THE FOREMAN: Right.

2 THE COURT: If you are unable to reach a
3 verdict as to certain matters then I would need
4 some affirmation of that from you either now or by
5 way of another note. If you simply just have not,
6 but you are continuing to deliberate, then there
7 is really no need for us to have this discussion.
8 So I don't know whether you need to discuss that
9 with your fellow jurors and send out a subsequent
10 note or whether you are sure from where you sit
11 right now, not only have you not reached a
12 verdict, but you cannot because you are
13 deadlocked.

14 MR. FOREMAN: Well with that decision let
15 me discuss that with everyone, because I don't
16 want to be the one that says directly that we can
17 or cannot come to this decision. It has to be
18 where we agree.

19 THE COURT: And I think you just
20 demonstrated why I picked you as foreman. That is
21 exactly what you should do. So you can go have a
22 seat in the jury room. And then you can alert me
23 to anything else. And I appreciate your thoughts
24 on this so far. Thank you.

25 (Whereupon, the following takes place

1 outside the presence of the jury.)

2 THE COURT: Any objection to that from the
3 state?

4 MS. BARR: No, sir.

5 THE COURT: From the defendant?

6 MR. BARR: No, sir.

7 THE COURT: All right, we will continue to
8 wait. Thank you for your patience.

9 (Whereupon, at 5:20 p.m. jury has a note.)

10 THE COURT: The jury has a question. If
11 you will mark this Court's Exhibit No. 4.

12 (Note from jury marked Court's Exhibit No.
13 4.)

14 THE COURT: The question in what location
15 of the house was Mr. Prosser shot. My take on
16 that is that's a very simple question. Of course,
17 I am not going to answer it. I'm going to say
18 based on my recollection of the testimony or other
19 evidence this is where it was. What's the state's
20 position on that?

21 MS. BARR: Your Honor, I think it's
22 appropriate that the court instruct the jury that
23 the jury is the judge of the facts and that the
24 court would be happy if they would like to replay
25 any testimony or emphasize any or show them any

1 other exhibits that's in evidence, but that you
2 can't comment. You can't answer that question,
3 because it would be an improper comment on the
4 facts.

5 THE COURT: Mr. Barr.

6 MR. BARR: The only issue I take with
7 that is the issue of replaying testimony. I would
8 if the jury -- I would want to limit that. If
9 that is -- if the jury wants to review any
10 evidence or anything that is presented in case.
11 It may have been closing arguments.

12 THE COURT: Well they can't listen to your
13 closing arguments again.

14 MR. BARR: Well what I am saying is, I
15 think that would then lead them into deciding
16 exactly what it is they want to hear if anything.

17 THE COURT: Well just while we're on the
18 subject, I think the only witness who could
19 possibly or who did possibly offer any testimony
20 of that location would have been Ms. Miller. But
21 I don't think it is my place to tell them that.
22 So what I am going to do is tell the jury that
23 they are the judges of the facts. And that while
24 any person in here may have some input for them on
25 that point, they are the ones that are going to

1 have to resolve that based on the evidence that
2 has been presented. They have exhibits with them
3 in the jury room. If there is anything else they
4 would like to review or reconsider that can be
5 arranged if the rules permit. How about something
6 along those lines?

7 MR. BARR: That's fine, Judge.

8 THE COURT: Does that suit you, Ms. Barr?

9 MR. BARR: Yes, sir.

10 MS. BARR: Judge, sometimes we take for
11 granted that the jury knows that the testimony
12 they've heard can be replayed. Sometimes they
13 don't.

14 MR. BARR: I think when you start getting
15 into testimony, I think that's when you start
16 suggesting to the jury. If there was something in
17 the testimony, and that's when, I believe that's
18 where we are bordering on commenting on the facts.

19 THE COURT: You can in bring the jury.

20 (Whereupon, the following takes place
21 within the presence of the jury.)

22 THE COURT: Thank you, Ladies and
23 gentlemen. I have your question here and I will
24 read it. It says, in what location of the house
25 was Mr. Prosser shot. I will respond to the

1 question this way, Ladies and gentlemen.
2 Obviously as I have explained to you on more than
3 one occasion, you are the judges of the facts.
4 And while any one person in the courtroom may have
5 some input for you on that, it would have to have
6 come from the evidence that you've heard. And
7 perhaps the evidence that you have seen.

8 I am not going to comment on what I think
9 that evidence shows to you or did not show to you,
10 because that's your role. Now you obviously have
11 in your jury room the exhibits in this case and
12 you are entitled to consider those. Also the
13 other forms of evidence that have been introduced
14 of course includes testimony and stipulations.
15 You are entitled to take all of that into account.
16 If there is something amongst those items of
17 evidence or types of evidence that you would like
18 to reconsider or made available that can be done.
19 But that would be on your specific request.

20 All right so the short answer to the
21 question is that you are the judges of the facts
22 and I am not going to recite to you my view of
23 anything in response to a question, because that
24 would cause me to comment on the facts which I am
25 not going to do. All right. So if you would like

1 to, if you have any additional questions in that
2 regard, Mr. Foreman, I will be glad to hear those
3 from you. All right. Thank you.

4 (Whereupon, the following takes place
5 outside the presence of the jury.)

6 THE COURT: Any exceptions to that, Ms.
7 Barr?

8 MS. BARR: No, sir, Judge.

9 THE COURT: From the defendant?

10 MR. BARR: No, sir.

11 THE COURT: We will continue to wait on
12 the jury.

13 (Whereupon At 5:25 p.m. jury commences
14 deliberations.)

15 (Whereupon, at 6:12 p.m. the jury has a note.)

16 (Note from jury marked Court's Exhibit No. 5 for
17 id.)

18 THE COURT: I have a note from the jury.
19 At this time we the jury have made a unanimous
20 decision on questions on 1, 2 and 4. Question 3
21 we feel that a unanimous decision cannot be
22 reached. Signed by the foreman. What is the
23 state's position?

24 MS. BARR: You can give the allen charge.

25 THE COURT: What I am inclined to do is

1 give them an allen charge without exceptions to
2 the verdicts on 1, 2 and 4. That's what I am
3 inclined to do. Mr. Barr, what do you think?

4 MR. BARR: I think the allen charge would
5 be.

6 THE COURT: Ms. Barr?

7 MS. BARR: We request the jury be given an
8 allen charge as it relates to whatever they can't
9 reach a verdict on. Because I don't, it has been
10 clear to them that the court could if they were
11 given the option, the court could accept whatever
12 verdicts that they have reached. And instruct
13 them to continue to deliberate on the ones that
14 they can't reach. So I don't know, you know,
15 they---

16 THE COURT: Well until I get a signed
17 verdict form, until I get a signed verdict on 1,
18 2 and 4.

19 MS. BARR: I understand. But what I
20 would suggest is, or ask the court to consider is
21 letting them know if they have reached a verdict
22 on whatever count that they can inform the court.

23 THE COURT: Well what I will do, I will
24 let them know that during the allen charge.

25 MS. BARR: But they may think they have to

1 have a verdict on all four.

2 THE COURT: What I will do in the allen
3 charge is tell them that as to the count they
4 cannot reach a verdict on, that another jury will
5 come in at another time and give testimony to the
6 same witnesses, the same lawyers and say the same
7 things. You know the allen charge. I think they
8 will get that drift then.

9 MS. BARR: So will they know that the
10 court can go ahead and accept?

11 THE COURT: I don't have any problem
12 telling them that during the allen charge. I
13 think that's what I have been telling them anyway.

14 THE COURT: Mr. Barr, do you have any
15 other input?

16 MR. BARR: No, sir, Judge.

17 THE COURT: So what I will do just to make
18 it clear to you all is, I will requestion them and
19 tell them that as to -- I will give them an allen
20 charge as to Count No. 3 that is the murder count.
21 I will tell them that I have -- the court can
22 accept the verdicts that are unanimous. But as to
23 the charge they cannot reach a verdict, I will
24 let them know them as follows, or something like
25 that. Do you have a problem with that, Ms. Barr?

1 MS. BARR: No, sir, Judge.

2 THE COURT: Mr. Barr?

3 MR. BARR: Well, Judge, I would certainly
4 want them to know that in terms of reaching a
5 verdict on even on that count, that they are not
6 precluded from perhaps changing another count.

7 THE COURT: Oh, no, not at all. I will
8 tell them that too.

9 MR. BARR: Yes, sir.

10 THE COURT: That they can go back in there
11 and even though they may now be unanimous on 1, 2,
12 and 4 this -- if their deliberations continue and
13 those things can change. I don't see any harm in
14 doing that. In other words, the fact that they
15 have given me this note doesn't box them in on
16 anything. Okay, if you will bring me the jury.

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

19 THE COURT: Okay, ladies and gentlemen, I
20 have your message. I'll read it to you. As of
21 this time, we the jury have made a unanimous
22 decision on Questions 1, 2 and 4. On Question 3
23 we feel that a unanimous decision cannot be
24 reached. And of course, Mr. Foreman, you had
25 signed that.

1 Now I am going to talk to you a few
2 minutes about this situation. And I recognize the
3 hard work you put into this case and everyone in
4 the courtroom certainly does appreciate that.
5 You've obviously stated that you are unable to
6 reach a verdict as to Count No. 3. Now in the
7 scheme of things, if you are unable to reach a
8 verdict as to that particular count, your verdict
9 on the other three counts if it remains unanimous,
10 will be accepted by the court.

11 Just to make it clear, I will just repeat
12 myself. If at the conclusion of this trial, if
13 you are not able to reach a verdict as to the
14 count you mentioned, the court will accept a
15 unanimous verdict. If it continues to be a
16 unanimous verdict on the other counts or whichever
17 other number of the counts there might be.

18 Now with the regard to the count that
19 you've related to me that you cannot reach a
20 verdict on, let me have your attention for just a
21 few minutes. When anything is in dispute, we all
22 know that it is not easy for even two people to
23 agree. So when 12 people have to agree it becomes
24 even more difficult. And in most cases, an
25 absolute certainty cannot be reached and it cannot

1 be expected. But obviously you realize that you
2 have a duty to make every reasonable effort to
3 reach a unanimous verdict as to the particular
4 count you've related to me that you can't reach a
5 verdict on.

6 In doing what you are required to do, and
7 I'm sure you have been doing it; is, to consult
8 with one another. Express your views. Listen to
9 the opinions of your fellow jurors. Tell each
10 other how you feel and why you feel that way, and
11 discuss your differences with open minds.
12 Although your verdict has to be unanimous,
13 everybody on the jury has the right -- every one
14 of you has the right to your own opinion. I
15 realize that and I respect that. The verdict that
16 you reach must be your verdict, and the result of
17 your own conviction. You should not give up your
18 firmly held belief just to be in agreement with
19 somebody else. And the minority should listen to
20 the majority, and the majority should listen to
21 the minority and everybody should analyze their
22 position and respect the opinions of each other
23 and perhaps reevaluate your position for
24 reasonableness, correctness and impartiality. And
25 in doing this, you should lay aside all outside

1 matters and reexamine the questions before you,
2 based on the evidence and the law as I have given
3 it to you.

4 Now, Ladies and gentlemen, to answer your
5 immediate question perhaps, if you reach a verdict
6 that's unanimous on this particular count, as to
7 that count, I will declare a mistrial and any
8 other count that you may end up not being
9 unanimous on, I will declare a mistrial on. In
10 that case it doesn't mean that anybody wins or
11 anybody loses. It means at some future time,
12 another jury just like you, will sit in the jury
13 box. Essentially the same witnesses will testify.
14 The same lawyers will ask the same questions. And
15 you will go through all that again.

16 You are selected in this case from the
17 same -- in the same, based on the same process,
18 the same source as any future jury would be
19 selected. And there is no reason for me to assume
20 that the case will be ever committed to 12 or more
21 intelligent, conscientious and impartial and
22 competent jurors than you. And there is no reason
23 for me to doubt that any different types of
24 evidence or any clear or less clear evidence
25 would be produced by one side or the other.

1 Now, what I am going to do, Mr. Foreman
2 and, Ladies and gentlemen, is in accordance with
3 the instruction that I have just given you, to go
4 back into your jury room and do the best you can
5 to reach a verdict on this remaining count.
6 Obviously if you cannot do that, you simply let me
7 know. And if can do that, you will simply let me
8 know.

9 Now this does not mean that your verdict
10 as to Counts 1, 2 and 4 you are not locked into
11 that verdict until you have handed me the verdict
12 form and confirmed that your verdicts are
13 unanimous. But with regard to the count on which
14 you say you cannot reach a verdict, I am going to
15 encourage you to try to reach a unanimous verdict.
16 Obviously again if you cannot, you simply let me
17 know that. All right. Thank you very much.
18 Yes, sir.

19 THE FOREMAN: I have one question for you.
20 At that point and time when I let you know and say
21 that this is the final one, I am going to sign off
22 on that paper, right?

23 THE COURT: Yes, sir.

24 THE FOREMAN: I needed to have that
25 verification to make sure.

1 THE COURT: And you can send a note out if
2 that is the case, and let me know whether you are
3 still deadlocked on that particular count. Thank
4 you very much.

5 (Whereupon, the jury commences
6 deliberations a 6:20 p.m.)

7 (Whereupon, the following takes place
8 outside the presence of the jury.)

9 THE COURT: Any objections from the state?

10 MS. BARR: No, sir, Your Honor.

11 THE COURT: Any from the defense?

12 MS. BARR: No, sir, Judge.

13 THE COURT: Okay. It's about 6:20 so we
14 will continue to wait.

15 (Whereupon, at 7:06 p.m. jury has a note.)

16 THE COURT: Okay. This note says we the
17 jury cannot make a unanimous decision on Question
18 No 3. However, at this time, we would like to
19 lock in our verdict for Nos. 1, 2 and 4. Under
20 the law one of the buffers of DOT unless both
21 sides agree, what I am required to do is
22 diplomatically discuss with the jury whether
23 further deliberations could be beneficial. And I
24 am the judge -- I have the discretion to judge
25 whether or not their response either express or

1 implied would warrant further deliberations.

2 What is the state's position?

3 MS. BARR: Judge, we are fine with that
4 verdict.

5 THE COURT: Mr. Barr?

6 MR. BARR: Yes, sir.

7 THE COURT: All right, you can bring in
8 the jury.

9 (Whereupon, the following takes place
10 within the presence of the jury.)

11 THE COURT: Mr. Foreman, I have got your
12 note here. I am going to read it to you just as I
13 have done in the past. It says, we the jury,
14 cannot make a unanimous decision on Question No.
15 3. However, at this time, we would like to lock
16 in our verdicts on Nos. 1, 2 and 4.

17 Having read that, I certainly respect your
18 position. I wanted to ask you, Mr. Foreman, and
19 Ladies and gentlemen of the jury, you don't need
20 to respond out loud. But is there any hope that
21 any further deliberations would help you reach a
22 verdict as to No. 3? Is there hope at all?

23 (Whereupon, no response.)

24 THE COURT: Can I see the lawyers up here
25 a minute?

1 (Whereupon, the attorneys approach the
2 bench and confer with judge.)

3 THE COURT: Mr. Foreman, or Ladies and
4 gentlemen and lawyers, I am going to declare a
5 mistrial as to Count 3. You can answer this, Mr.
6 Ravenel, has the jury reached a unanimous verdict
7 as to Counts 1, 2 and 4?

8 THE FOREMAN: Yes, it has.

9 THE COURT: You can hand that to the
10 clerk, and she will hand it up to me.
11 Mr. Wallace, you can come on up or you can stay
12 right there. Ms. Williams, you can publish the
13 verdict 1, 2 and 4.

14 THE CLERK: The State of South Carolina
15 versus Andre C. Wallace, as to the charge of
16 criminal conspiracy, we the jury unanimously find
17 the defendant, guilty. As to the charge of
18 burglary in the first degree, we the jury
19 unanimously find the defendant, guilty. That is
20 Count 2. And as to the charge of the possession
21 of a weapon during the commission of a violent
22 crime, we the jury unanimously find the defendant,
23 guilty.

24 If these are your verdicts, so say you
25 all. Please let it be known by raising you right

1 hand.

2 (Whereupon, the jurors all affirm.)

3 THE COURT: Let the record show that all
4 the jurors have raised their right hand. Mr.
5 Barr, anything as far as polling the jury before
6 the jury is released?

7 MR. BARR: No, sir.

8 THE COURT: Anything from the state before
9 the jury is released?

10 MS. BARR: No, sir, Your Honor.

11 THE COURT: Ladies and gentlemen of the
12 jury, that does conclude your service in this
13 case. And I don't say this casually at all. I
14 certainly do appreciate your service. You have
15 rendered it fully. And no one can argue with your
16 verdict. And having said that, I want to make
17 sure you understand a couple of more things. You
18 are released now obviously from your service. If
19 you would, if anybody needs any assistance getting
20 to their cars, just let one of the bailiffs or the
21 officers know that.

22 Also, I would appreciate it, if you would
23 not discuss with anyone your verdict on the
24 courthouse grounds. Now you can talk about this
25 case all you want. But I don't want you doing it

1 out on the sidewalk in front of the courthouse.
2 That will surely keep from anybody who wants to
3 talk to you about it when you are trying to make
4 your way to your car. If in the future if anyone
5 approaches you or calls you and wants to talk to
6 you about this case, you can talk about it. But
7 you don't have to. If you don't want to, simply
8 tell the person that and they should respond and
9 comply with your wish not to talk about it.

10 If they persist, get the person's name and
11 you can contact Ms. Williams and give that
12 information to her, and she will bring it to my
13 attention and I will resolve that. But now,
14 Ladies and gentlemen, and also the two alternates
15 I apologize for you all being where you were, but
16 there is a method to that and the jury has reached
17 a verdict in this case on three counts. And for
18 your information as to criminal conspiracy, the
19 verdict is guilty.

20 As to burglary in the first degree the
21 verdict of guilty. And possession of a weapon
22 during the commission of a violent crime, the
23 verdict is guilty. There was no verdict on the
24 murder charge. Now also, you are free to go. As
25 I told the other jurors, you do not have to

1 discuss this case with anybody. If you want to
2 you can. I just don't want you doing it on the
3 courthouse grounds. If someone calls you or
4 approaches you at a later time and wants to talk
5 to you about it, you can. If you don't want to,
6 just tell them that. If they don't comply with
7 your wish, get their names and you can contact
8 Ms. Williams and she will bring it to my
9 attention. Ladies and gentlemen, you are free to
10 go at this time.

11 (Whereupon, the jury is dismissed.)

12 THE COURT: Mr. Barr, at this time, would you
13 like to make any post-trial motions?

14 MR. BARR: Judge, I would like to do it within
15 10 days.

16 THE COURT: I will leave that up to you to
17 calculate that 10 days. So I won't rely on my memory.

18 MR. BARR: Yes, sir.

19 THE COURT: Make sure that when you do file
20 those, you send a copy to Ms. Barr and to me in Sumter,
21 okay.

22 MR. BARR: Yes, sir.

23 THE COURT: Okay, does the state want to proceed
24 with sentencing at this time?

25 MS. BARR: Yes, sir, Your Honor. May it Please

1 the Court, we have a number of members of Mr. Prosser's
2 family here, and they would like to address the court
3 before sentencing. If you would start, first right.
4 State your name.

5 MS. PROSSER: Betsy.

6 THE COURT: Just before we start, I will be glad
7 to hear from everybody. I want to make sure everybody
8 understands to maintain order, if you will direct all
9 your comments to me and not to anyone else. Your name,
10 please, ma'am.

11 MS. PROSSER: Betsy Prosser.

12 THE COURT: Yes, ma'am.

13 MS. PROSSER: I just ask that you give him the
14 most that he can get. I know that he was not found
15 guilty for the murder, but he did have a weapon. And I
16 feel like if the weapon was not there, this may not have
17 happened. He has caused three children to lose their
18 daddy.

19 THE COURT: What was your relation to
20 Mr. Prosser?

21 MS. PROSSER: Wife. He has now five
22 grandchildren. There were three at the time. Two
23 were too small to remember him. There is one who
24 is three. She is now five. She asks for him
25 every day. She cries for him at night. And she

1 remembers everything that she ever did with him.

2 THE COURT: Thank you, Ms. Prosser.

3 Anything else? Your name, please.

4 MS. POWELL: Elizabeth Powell. I am his
5 daughter. And that little girl that remembers him
6 is my little girl. One day she told me we needed
7 to pack our bags. I asked her where we were
8 going. She said she had to go to heaven to see
9 granddaddy. How do you tell a 3-year-old you
10 can't go see granddaddy ever again. But I just ask
11 that you make the decision that you think is
12 right. That's all.

13 THE COURT: Your name, please.

14 MS. PROSSER: Ann Prosser. He is my son.
15 And it's just a great loss. And I feel like that
16 justice will be done on earth when he leaves this
17 earth. Justice will be done.

18 THE COURT: Thank you, ma'am.

19 MS. BARR: Judge, that's all we have.

20 THE COURT: Ms. Barr.

21 MS. BARR: Judge, just that it's a tragic
22 case. I have to say that this family has been
23 wonderful to work with.

24 THE COURT: They can stay up here if they
25 want.

1 MS. BARR: It was interesting. I saw
2 something on yesterday that I haven't seen in 15,
3 16 years of practicing law. They asked whether or
4 not they could talk to Ms. Jones. And I said if
5 you want you to, you can. And she turned around
6 and faced them, Judge, and burst out in tears.
7 And Mr. Prosser's mother said I just want to let
8 you know I forgive you.

9 And I need, you know, and another member
10 of his family said, you need to be saved. And so
11 just a testament of how wonderful, caring and
12 forgiving these folks are. It is a tragic
13 situation, judge. It's altered everybody's lives.
14 It's not just the victim, it has effected his
15 family. Of course the defendant's family will be
16 forever effected as well.

17 And, Judge, I think you've probably heard
18 all you need to hear in this connection with this
19 case.

20 THE COURT: Mr. Barr.

21 MR. BARR: Please the Court, Judge, of
22 course Mr. Wallace is here with his family. He is
23 flanked on his left by his mother and
24 father-in-law, his grandmother and his
25 grandfather.

1 Your Honor, it's certainly and I would be
2 the first to at least express my condolences to
3 the Prosser family. As I said, I grew up in Cedar
4 Swamp. And Mr. Prosser, I knew his father. Knew
5 all of his family. I still have a small farm that
6 is adjacent to the farm that he had in -- well
7 really we call it Cooper Brothers. It's probably
8 close to that. But I have known him. Went to
9 high school with him. He and Verdell, my brother,
10 were in class together. They were classmates. He
11 was a fine man. I have often said that I have
12 never known him to be able to say no to people.

13 And, Judge, I think that of course as
14 unfortunate as it might be, that some people are
15 taken advantage of when they are that way. When
16 they just simply would not say no. Or do not say
17 no.

18 But in any event, Your Honor, you've seen
19 this young man. You have heard from him. He is
20 25-years-old. He has no criminal record. He
21 works at Nan Ya Plastics. Never been in any kind
22 of trouble. He's got four children. Four young
23 children. Two 5-month old children are twins.
24 And he got's another child. And then he's got an
25 older child. And, Judge, I would just simply, and

1 I realize the court does have some special with
2 respect to sentencing. And, Your Honor, the jury
3 has spoken. And he has been found guilty of first
4 degree burglary. But, Your Honor, I would
5 certainly hope that you would take into
6 consideration the fact that he stands before you
7 having not ever been in any kind of trouble.

8 He is still young. And I happen to
9 believe, I am a person, as I said, I am a
10 christian. I believe in second chances. And I
11 would just simply ask, Judge, that you take this
12 into consideration and tailor a sentence that is
13 appropriate, but yet one, Judge, that shows mercy.
14 Thank you.

15 THE COURT: Mr. Barr, I assume, Mr. Barr
16 that you instructed your client the murder charge
17 is still pending. And since the other procedural
18 ramifications still apply, do you want to be
19 silent or do you want me to talk with him?

20 MR. BARR: Judge, I would and, of course,
21 it's not out of any, you know, I am sure, you
22 know, he's offered his apologies as well. But,
23 Your Honor, we are still in mitigation. And I
24 think there is another defendant to be tried. And
25 at this point, I think I would certainly ask the

1 court to from where I am standing, I have to ask
2 him not to make any statements.

3 THE COURT: Yes, sir. I understand that.
4 Anyone from his family if you would like to speak.

5 MR. BARR: Judge, that's it.

6 MR. DICKS: Well, Your Honor, for as long
7 as I've known Andre, he has been a well mannered
8 young man.

9 THE COURT: What is your name, sir?

10 MR. DICKS: Mr. Dicks. James Dicks. Been
11 a well mannered young man. Always tried to find
12 the best in everybody. Easily made friends. Made
13 lots of friends. I mean, I don't know nobody that
14 I ever come in contact with that knows him, and
15 didn't like him. And he was always concerned
16 about his kids. Always taking care of his kids;
17 doing whatever he can for them. When he couldn't
18 do, I mean, if I was able to help I did.

19 He was looking for a job. I helped him
20 get the the job he got. And since he had the job,
21 I mean, he's been working every day. Doing what
22 he is supposed to do as a young man. So all I can
23 say is, be as lenient as possible. Thank you.

24 THE COURT: Anyone else? Anyone from law
25 enforcement, Ms. Barr?

1 MS. BARR: No, sir, judge.

2 THE COURT: Mr. Wallace, I typically say
3 when I sentence someone that I certainly don't
4 take any pleasure in sentencing anyone to any
5 prison time. But this particular jury has found
6 you guilty of burglary in the first degree,
7 criminal conspiracy, and possession of a weapon
8 during a violent crime. The minimum on burglary
9 is 15 years. The maximum is life in prison. The
10 maximum on conspiracy is 5 years. The same on
11 possession of a weapon during the commission of a
12 violent crime.

13 Obviously, the difficulty lies in the
14 sentencing on the burglary. Of course, you are
15 still exposed to the further proceedings on the
16 murder charge. And that's going to present some
17 interesting issues depending upon whether or not
18 you're tried with Ms. McClary or not. That's
19 neither here nor there right now. On the burglary
20 in the first degree, you are Committed to the
21 State Department of Corrections for a period of 35
22 years. On the criminal conspiracy charge, you are
23 committed to the State Department of Corrections
24 for a period of 5 years. Which will be
25 consecutive to the burglary. And on possession of

1 a weapon during the commission of a violent crime,
2 you are committed to the State Department of
3 Corrections for a period of 5 years. And that
4 will also be consecutive to the other sentences.
5 You will get credit for any time you have served,
6 and that concludes these proceedings.

7 I thank the lawyers for the way they tried the
8 case. It was very enjoyable. Especially to have two
9 attorneys who know the rules and advocated your
10 positions. And I think both sides were very well
11 served.

12 -----End of Requested Transcript of Record-----
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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the General Sessions Court on May 17th-20th, 2011, in Williamsburg County, Kingstree, South Carolina.

I do further certify that I am neither kin, counsel, nor interest to any party hereto.

3.23.13

DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

914
WITNESSES
SHERIFF'S OFFICE
Wayne McFadden

ARREST WARRANT NUMBER
M 061501, 508, 512, M 061500, 510, 511,
M 061509, M 061506 & M 061507

D/A: 11/4/09

ACTION OF GRAND JURY

Nancy McBride
Foreperson of Grand Jury
Date: 5/5/11

VERDICT

Foreperson of Petit Jury
Date:

AMENDED
DOCKET NO. 2010-GS-45-28
The State of South Carolina
County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

MAY TERM 2011

THE STATE
vs.

ANDRE C. WALLACE

CORNELIUS MCCLARY

RONNETTA MILLER

TIFFANY JONES

Indictment for
CRIMINAL CONSPIRACY, BURGLARY
- FIRST DEGREE, MURDER AND
POSSESSION OF A WEAPON DURING
VIOLENT CRIME

ERNEST A. FINNEY, III, SOLICITOR

FILED
11 MAY -5 AM 11:48
CLERK OF COURT
WILLIAMSBURG COUNTY
S.C.
A CERTIFIED TRUE COPY
Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR
**CRIMINAL CONSPIRACY, BURGLARY – FIRST
 DEGREE, MURDER AND POSSESSION OF A
 WEAPON DURING VIOLENT CRIME**

At a Court of General Sessions, convened on May 5, 2011, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE – CRIMINAL CONSPIRACY - §16-17-410

That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that they did unlawfully, wilfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have a tacit understanding with each other for the purpose of committing the offenses of burglary, robbery and/or other criminal offenses.

COUNT TWO – BURGLARY – FIRST DEGREE - §16-11-311

That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, enter the dwelling of the victim, **Ernest William Prosser, III**, without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime; and when effecting entry or while in the dwelling or in immediate flight therefrom, one or more of the participants in the crime was armed with a deadly weapon and caused physical injury to the victim, who was not a participant in the crime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

U.S. DISTRICT COURT
 SOUTH CAROLINA
 WILLIAMSBURG
 MAY 5 2011
 U.S. DISTRICT COURT

COUNT THREE - MURDER - §16-3-10

That **ANDRE C. WALLACE, CORNELIUS MCCLARY, RONNETTA MILLER** and **TIFFANY JONES** did in Williamsburg County between October 27, 2009 and October 30, 2009, in that they shot the victim, **Ernest William Prosser, III**, with malice aforethought, and caused his death.

COUNT FOUR - POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME - §16-23-490

That **ANDRE C. WALLACE** and **CORNELIUS MCCLARY** did in Williamsburg County between October 27, 2009 and October 30, 2009, in that they did knowingly and willfully have possession of or visibly display what appears to be a firearm, while committing a violent crime, in violation of §16-23-490, South Carolina Law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

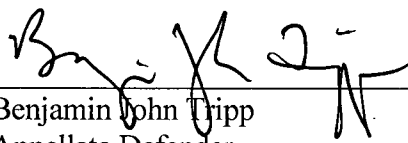
Ernest A. Finney III
A CERTIFIED TRUE COPY
ERNEST A. FINNEY, III, SOLICITOR

Carolyn F. Williams
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 28, 2013



Benjamin John Tripp
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Williamsburg County
George C. James, Jr., Circuit Court Judge

RECEIVED

OCT 28 2013

THE STATE,

RESPONDENT

SC COURT of Appeals

V.

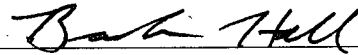
ANDRE WALLACE

APPELLANT

APPELLATE CASE NO. 2012-212937

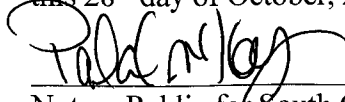
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of October, 2013.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 28th day of October, 2013..

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.