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ORIGINAL

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane Schafer Goodstein, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT.

APPELLATE CASE NO. 2011-200186

RECORD ON APPEAL

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State of South Carolina) In the Court of General Sessions
County of Dorchester) First Judicial Circuit
2008-GS-18-00009

State of South Carolina,)
Plaintiff,)
Vs.) Transcript of Record
Donsurvi Chisolm,)
Defendant.)

February 11, 2011
St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

John Loy, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EV.</u>

-- NO EXHIBITS ENTERED --

1 THE COURT: All right. This is a -- I've got a matter
2 that I must hear in ex-parte fashion with Mr. Chisolm,
3 involving an attorney matter. And that means that -- that
4 -- that I'm going to need -- but for security folks, my
5 law clerk, of course our court reporter, I need to have
6 the courtroom.

7 (Briefly off the record as people exit the courtroom.)

8 MR. LOY: Your Honor --

9 THE COURT: Yes.

10 MR. LOY: -- I told Mr. Bischoff that -- there are no
11 co-defendants and there's no conflict in this case. I've
12 told Mr. Bischoff he can stay and --

13 THE COURT: As a member of the Public Defender's
14 Office, that's perfectly fine.

15 MR. LOY: Thank you, Your Honor.

16 THE COURT: If he wishes to observe, I have no problem
17 with that at all.

18 All right. Now, here's what I'm going to do for our
19 record. And if you all will assist me, I'm just going to
20 have you just call your names out.

21 And we're going to start with: Ms. Salsbury is here,
22 and Ms. Kelly, of course, my court reporter; George
23 Taylor, part of our security team; Sean is our clerk.
24 He's present; part of our security team Ms. Jackson; my
25 law clerk Ryan Miller. Of course, Mr. Bischoff is -- he

1 is a public defender.

2 (To deputies) And gentlemen, just help me. Give me
3 your names.

4 DEPUTY: Lee Taylor.

5 DEPUTY: Kelly Williams.

6 DEPUTY: John Brogan.

7 DEPUTY: Syd Jackson.

8 THE COURT: Wonderful. And Marvin is in the back --
9 is part of our security detail as well.

10 That just reflects for the record who is present in
11 the courtroom during this ex-parte proceeding.

12 For purposes of our record, I am just giving the
13 notice to everyone that these matters are done on the
14 record, but in ex-parte fashion. The matters that we are
15 to address are going to be attorney/client privileged
16 information. You are not at liberty to discuss these
17 matters.

18 These matters are, again, attorney/client privileged.
19 This part of the record will be sealed for the protection
20 of Mr. Chisolm and his attorney/client privileged
21 information. You are not at liberty to discuss this
22 matter. I am ordering you not to discuss this matter
23 unless you have been ordered to discuss them by -- by a
24 judge, by a circuit court judge.

25 Is there any questions from anyone about that?

1 (No audible response.)

2 THE COURT: Very well. You are in here for security
3 reasons or associated with your duties to the circuit
4 court. Otherwise these matters are not to be discussed by
5 you, because you are here in your official capacity and it
6 is imperative that Mr. Chisolm's attorney/client privilege
7 be protected.

8 All right. Yes, sir, Mr. Loy.

9 MR. LOY: Thank you, Your Honor. We're here on my
10 request on Mr. Chisolm's behalf. Mr. Chisolm's currently
11 housed in the Berkeley County Jail, and he had various
12 issues he wanted brought to the Court's attention; and
13 indicated he would like to address Your Honor directly on
14 his own behalf.

15 I will make the Court aware that when he indicated to
16 me the nature of some of his request, or his request today
17 as I understand it to be, that I did tell him I didn't
18 think it was necessary he go through the disadvantage --
19 as he is at this point -- go through the formalities of
20 filing a formal motion on his ground for relief that he's
21 requested, etc.; that I thought you would hear from him
22 and hear his motion today even absent having filed some
23 formal motion notice on the Court or anything else.

24 THE COURT: Okay.

25 MR. LOY: With that, are you prepared to hear from Mr.

1 Chisolm?

2 THE COURT: I am prepared to hear from Mr. Chisolm.

3 (To the defendant) Hi, Mr. Chisolm.

4 THE DEFENDANT: How you doing today, Your Honor.

5 THE COURT: Mr. Chisolm, what is your first name?

6 THE DEFENDANT: My name is Donsurvi; D.--

7 THE COURT: Thank you.

8 THE DEFENDANT: D-o-n-s-u-r-v-I. Last name is
9 Chisolm; C-h-i-s-o-l-m.

10 THE COURT: Thank you, Mr. Chisolm. Yes, sir.

11 THE DEFENDANT: Your Honor, I would like to assert my
12 constitutional right to self-representation. I'm aware of
13 the disadvantages and dangers of that. I am of sound
14 mind. I'm very -- I'm -- I know clearly the decision that
15 I am making.

16 I don't want to waste the Court's time arguing the
17 conflicts and issues that me and Mr. Loy have together. I
18 would like to proceed pro se as of this day February 11,
19 2011.

20 THE COURT: All right. In other words, you don't want
21 a lawyer. You want to represent yourself.

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: I understand. And I'm going to have to
24 examine you about that, and you know that, right?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: And you -- you -- you understand that
2 that's required, because I gotta make a decision, right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Okay. Very well. Thank you. If you want
5 to be seated. I want you to be comfortable. You need
6 some water?

7 THE DEFENDANT: No ---

8 THE COURT: Because we gotta talk a little bit. Well,
9 you just let us know if you want something to drink now,
10 okay?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Because you're going to have to talk a
13 bit, because I'm going to be asking you some questions.

14 Now, let me ask you this question: Do you solemnly
15 swear or -- or affirm that the testimony that you will
16 give will be the truth and the whole truth?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Okay. Because I've gotta do an
19 examination, I'm going to try to be as thorough as I can
20 just to be sure that you and I are clear with one another
21 that that's really what you want to do, okay?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Okay. Great. And -- and if you have any
24 questions about what I'm asking you or if you don't
25 understand my question, you let me know, okay?

DIRECT EXAMINATION BY THE COURT - DONSURVI CHISOLM

9

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Very well.

3 DIRECT EXAMINATION BY THE COURT:

4 Q Now, tell me what you're charged with.

5 A Murder.

6 Q In -- in Dorchester County.

7 A Yes, Your Honor.

8 Q But you're in Berkeley County.

9 A Yes, Your Honor.

10 Q Okay. All right. Do you have a lawyer in Berkeley
11 County?

12 A I'm representing myself in Berkeley County, Your
13 Honor.

14 Q Okay. Let me ask you -- because I don't know, so I
15 ask you some -- some of this information I'm just asking
16 just to begin to get familiar with your case, because I
17 know absolutely nothing about your case, Mr. Chisolm,
18 other than I signed an order to transport. And I think
19 that's when I learned some information that you were in
20 Berkeley County and needed to come over here, okay?

21 A Yes, Your Honor.

22 Q Is your case scheduled for trial at this time so far
23 as you know?

24 A No, Your Honor.

25 Q Okay. I -- I don't know it to be scheduled at this

1 time either. I'll just share that with you. I certainly
2 don't know that.

3 And the reason that I say that is I have some notes.
4 And one of my notes is that the Court is supposed to
5 determine whether the request to represent oneself may
6 hinder the administration of justice or whether it's --
7 it's interposed -- a request to represent oneself is
8 interposed to gain some sort of delay. Well, it couldn't
9 be, because your case isn't -- isn't scheduled, right?

10 A Correct, Your Honor.

11 Q Okay. And interestingly enough, the first thing that
12 I would -- of course, would -- that I have to determine is
13 that you are informed of the dangers of self-
14 representation. That's what you just said.

15 A Yes, Your Honor.

16 Q You said, "Judge, I'm aware -- I -- I'm aware that
17 it's dangerous for me to be representing myself." And you
18 went right to that, which means that you know that's one
19 of the things that I'm going to be real concerned about,
20 is that you are aware that there is a danger of self-
21 representation, and you went to that just a minute ago,
22 didn't you?

23 A Yes, Your Honor.

24 Q And that's the reason that you did that.

25 A Yes, Your Honor.

DIRECT EXAMINATION BY THE COURT - DONSURVI CHISOLM 11

1 Q Okay. And you said "disadvantage," too: "I know I'm
2 disadvantaging myself by self-representing myself. And
3 I'm aware of the disadvantage and I'm aware of the dangers
4 of self-representation." Both of those items, you went
5 right there, didn't you?

6 A Yes, Your Honor.

7 Q And the reason that you did that is because you know
8 that those are -- those are both items that I'm supposed
9 to be concerned about.

10 A Yes, Your Honor.

11 Q Okay. All right. And I gotta ask -- ask some
12 background -- (sneezes) excuse me -- information you. Mr.
13 Chisolm, tell me how old you are.

14 A 31, Your Honor.

15 Q Okay. And where -- where were you born?

16 A New Orleans, Louisiana.

17 Q Okay. And -- and where is your home now?

18 A Was Goose Creek, South Carolina.

19 Q It was? Okay. When did you move to Goose Creek?

20 A 2009, Your Honor.

21 Q Okay. Are you married?

22 A Yes, Your Honor.

23 Q Got kids?

24 A Four, Your Honor.

25 Q Okay. Tell me how long you've been locked up.

1 A Ten months, Your Honor.

2 Q Before then, were you working?

3 A Yes, Your Honor.

4 Q Where?

5 A Sonic Drive-in.

6 Q Okay. Which -- which Sonic?

7 A I worked at the Highway 78 location and I was
8 preparing to take over as the GM on the Highway 41 Mount
9 Pleasant location.

10 Q Highway -- where's the one on Highway 78?

11 A Right across the street from Charleston Southern, Your
12 Honor.

13 Q Oh, okay. Okay. I know where you're talking about.
14 All right.

15 And you were going to take over which one now?

16 A The one on Highway 41, Mount Pleasant.

17 Q Oh, okay.

18 A Yes.

19 Q And how far did you go in school?

20 A One year of college.

21 Q Okay.

22 A And more college credits when I was in the military,
23 Your Honor.

24 Q You were in the military, too?

25 A Yes, Your Honor.

1 Q Okay. So -- all right. You graduated from high
2 school ---

3 A I ---

4 Q --- or got your GED.

5 A Yes, Your Honor.

6 Q Okay.

7 A And then I immediately went to college for nursing. I
8 decided I didn't want to be a nurse.

9 Q Okay.

10 A I went into the military. Got a little more college
11 credits in the military. Did 10 months in Afghanistan,
12 came home.

13 Q All right. Well, which branch of the military did you
14 go into?

15 A The Army, Your Honor.

16 Q You went into -- when? Tell me when you're talking.

17 A 2003.

18 Q All right. 2003 you go into the Army.

19 A Yes, Your Honor.

20 Q Okay. And -- and you're trained in what -- in what
21 area?

22 A Fuel and ammo, Your Honor.

23 Q Say that one more time.

24 A Fuel and ammo, Your Honor. I ---

25 Q Fuel and ammo --

1 A Yes. I ---

2 Q Ordinates. Isn't that called "ordinates"?

3 A Yes.

4 Q Maybe it used to be called that. I'm -- I'm married
5 to an old Viet Nam vet, you know what I'm saying? I know
6 all the old lingo. I don't know none of the new lingo,
7 but I know the old lingo.

8 All right. So you were in fuel and ammo, right?

9 A Yes, Your Honor. I was working with the aviation unit
10 ---

11 Q Yeah.

12 A --- and separately I worked the special forces unit --

13 Q Yes.

14 A -- for the last six months of deployment.

15 Q I got it. And so then you deploy out of --

16 A Fort Drum, New York, Your Honor.

17 Q Okay. And then you go to Afghanistan.

18 A Yes, Your Honor.

19 Q For 10 months you're in Afghanistan.

20 A Yes, Your Honor.

21 Q All right. And what is your job there?

22 A As I said, it's fueling helicopters, loading
23 helicopters with -- with the special ammo that they need.
24 And the last six months I just did things with special
25 forces that's --

1 Q That you can't talk about.

2 A Yeah.

3 Q Okay. And -- and that's in Afghanistan. Then you
4 return from Afghanistan after 10 months of deployment, and
5 where do you go then?

6 A Back here, Your Honor.

7 Q To Goose Creek?

8 A No, Your Honor, I'm sorry. To Summerville, South
9 Carolina.

10 Q To Summerville.

11 A Yes.

12 Q Okay. And -- and at that point, are you -- are you
13 discharged from -- from the military?

14 A Yes, Your Honor. I received a medical discharge from
15 the military. I injured myself in -- well, I was injured
16 in Afghanistan. I received a -- general under honorable
17 conditions discharge from the military.

18 Q Say that one more time: A general --

19 A Under honorable conditions --

20 Q Yes.

21 A -- discharge from the military. I was injured and I'm
22 still currently getting paid by the military.

23 Q Tell me what -- in general terms -- the nature of the
24 injury.

25 A Shoulder.

1 Q Injured your shoulder.

2 A Yes, Your Honor.

3 Q Came back. And where were you treated? Were you
4 treated --

5 A I was treated in Afghanistan.

6 Q Uh-huh.

7 A I was treated in Fort Drum, and I received limited
8 treatment here. I'm actually on the VA list to have
9 surgery on my shoulder. The VA takes forever.

10 Q I understand. All right. So then you -- and so then
11 you were discharged and you come back to Summerville.

12 A Yes.

13 Q All right. But -- but in the whole process of getting
14 ready to deploy, you have additional college credits.

15 A Yes.

16 Q Okay. And additional educational credits.

17 A Yes.

18 Q Yes. So you come back here, you discharge out of the
19 military, and then, where -- then what do you do?

20 A Work on heavy machinery.

21 Q Okay.

22 A Trucks and heavy machinery.

23 Q Yes.

24 A I learned to drive pretty much anything with wheels
25 while I was in the Army.

1 Q Yeah. I bet.

2 A I worked on any type of heavy machinery that, you know
3 -- semi-trucks; Charleston Portable Storage, the pods, you
4 know, those trucks.

5 Q Yep.

6 A Cranes, factories.

7 Q And you're working for --

8 A I worked at Charleston Portable Storage, and Furniture
9 Rentals Incorporated. Charleston Portable Storage and
10 Furniture Rentals were both located on Ashley-Phosphate
11 Road. Well, Furniture Rentals actually moved. I'm not
12 sure of the location they moved to. And Charleston
13 Portable Storage is on Ashley-Phosphate Road off of North
14 Railroad Drive, across from the cemetery on Ashley-
15 Phosphate Road ---

16 Q I know where you're talking about. I got you. All
17 right. And so how long did you work for them?

18 A One year a piece.

19 Q Each of those ---

20 A Yes.

21 Q --- for a year. And basically drove whatever they
22 needed to be -- and worked on their equipment and do
23 whatever they needed to be done.

24 A Yes, Your Honor.

25 Q Okay. And -- and now, tell me at this point, after

1 those two years, tell me what year we're in.

2 A Let's see, 2000 -- I came back in 2005, 2006, will be
3 2007. And the last job that I had in 2007 after those
4 would have been Berkeley Steel Tech, where I operated
5 cranes. That's in Huger, South Carolina, right next to
6 NuCor.

7 Q You were -- you were on the Port?

8 A No. It's on -- it's -- is that on -- no. It's not on
9 the Port, not to my knowledge.

10 Q But you were operating cranes for --

11 A Berkeley Steel Tech.

12 Q Okay.

13 A Berkeley Steel Technologies.

14 Q Yes.

15 A It's -- it's a smaller company. It's right next to
16 NuCor and they -- they shipped and -- they cut and ship
17 all the steel coils for NuCor before it's ---

18 Q Okay.

19 A --- they melt it down.

20 Q Okay. And you were operating a crane. Were you
21 loading trucks or were you loading ships? What are you --

22 A Loading trucks, trailer cars for trains, things ---

23 Q Got it.

24 A --- like that.

25 Q Got it.

DIRECT EXAMINATION BY THE COURT - DONSURVI CHISOLM 19

1 A Pretty much I controlled those -- anywhere from 15,000
2 to 60,000 pounds of metal being moved over everyone inside
3 a warehouse at any given time. So I was trusted with a
4 lot of people's lives.

5 Q Got it. And so you work at that job for ...

6 A Only a couple of months actually. The -- the time ---

7 Q Okay.

8 A --- frame that they had there, I worked 12-hour
9 shifts, six to seven days a week; and it was an hour there
10 and an hour back. I felt it was unsafe for me to keep
11 driving back and forth, you know. After a 12-hour shift,
12 I get sleepy at three o'clock in the morning, and come up
13 from Huger and you know, there's no other traffic to keep
14 me awake.

15 Q Uh-huh. Uh-huh.

16 A I could possibly wreck, and my wife didn't like that -
17 - like that idea. I didn't like that idea. So I left it.

18 Q After a couple of months. All right. Then you went
19 to Sonic.

20 A No.

21 Q No?

22 A I actually got arrested after that for murder in
23 Dorchester County.

24 Q Okay.

25 A I spent 10 months inside Dorchester County Jail.

1 Q Okay.

2 A Bonded out.

3 Q Bonded out. Right.

4 A And then, immediately after bonding out, I went and
5 applied -- well, the only place I could apply for a job at
6 was McDonald's at the time, because the murder charge kept
7 coming up on my background check and I couldn't work in a
8 warehouse.

9 So I went to -- I went to McDonald's, applied for a
10 job, told them I wanted to be a manager because I had a
11 past history of being a manager when I was 19 at Hardee's,
12 that I was assistant manager in Atlanta -- well, in
13 Marietta, Georgia.

14 Q Yeah.

15 A And based off of that, they gave me a chance. Allowed
16 me to -- gave me a start being -- as a shift manager.
17 Someone found out about the murder charge in Dorchester
18 County. So you know, things started getting a little
19 rough. I transferred to North Charleston to another
20 McDonald's. Someone found out about it there as well, so
21 things started getting a little rough.

22 And I applied with Buck Management. They did a
23 background check. The murder charge didn't come up on the
24 background check. And I just worked to the best of my
25 abilities, until they decided they were going to give me

1 the GM position at the Sonic on 41.

2 Q Okay.

3 A And then I got charged with murder in Berkeley County.

4 Q Okay. And then -- and so that's -- hence, you've been
5 in Berkeley County.

6 A Yes.

7 Q Got it. Now -- and that gets -- and then you've been
8 in Berkeley County the rest -- you've been -- you have not
9 bonded out since that time.

10 A No.

11 Q Okay. Now, so your work history is -- is exceptional,
12 your educational background is exceptional. Yes.

13 A Yes, Your Honor.

14 Q Any treatment for post-traumatic stress syndrome, any
15 mental health treatment?

16 A No.

17 Q Any treatment for alcohol or drug abuse?

18 A No, Your Honor.

19 Q Okay. I got to go back to my cheat sheet.

20 A Yes, Your Honor.

21 (Brief pause.)

22 Q You understand that you have a constitutional right to
23 counsel.

24 A Yes, Your Honor.

25 Q You understand there's a benefit to counsel.

1 A Yes, Your Honor.

2 Q You understand that -- well, you understand that
3 murder carries from 30 years to life in prison.

4 A Yes, Your Honor.

5 Q All right. And life without the possibility of
6 parole.

7 A Yes, Your Honor.

8 Q Meaning you go out in a box.

9 A Yes, Your Honor.

10 Q You go out horizontally.

11 A Yes, Your Honor.

12 Q Okay. And you understand that the reason -- the
13 reason -- the reason that there's a benefit of counsel is
14 because if you took me today and said we're going to put
15 you on this crane out in Huger, and you're going to take
16 this steel between 15,000 and 60,000 pounds of steel with
17 this crane, and we want you to go on up there and climb up
18 and operate this steel, you -- you're reasonably --
19 Goodstein, you're reasonable talented, go up there and get
20 in and operate it.

21 A I would go nowhere near you. Yes.

22 Q Thank you.

23 A I understand that.

24 Q You know why? Now, whose -- I don't know whose -- I
25 don't know whose life would be at greater risk, mine or

1 yours. But just as you said, there's a number of -- you
2 said there were a number of lives that were at risk and I
3 was protecting all these people, right? Remember you said
4 that?

5 A Yes.

6 Q I -- I would be very dangerous.

7 A Yes.

8 Q Myself and you. Yeah. Don't go near Huger that day,
9 right?

10 A No.

11 Q No. Okay. That's the reason. I don't know what I'm
12 doing, you know. And -- and -- and -- and it would very
13 dangerous. It's the exact same thing. It is the exact
14 same thing. Practice of law is an art.

15 A Yes.

16 Q People go to school and they train. And it takes
17 experience, and there's a language to it. There's an
18 experience to it.

19 Mr. Loy represents you here. You know, whether you
20 know it or not, he is an extraordinary lawyer.

21 A Yes, he is.

22 Q Yes. He really is. He's incredibly -- this is almost
23 painful. He's incredibly bright and incredibly capable.

24 You know, he knows what he's doing. He knows -- he and I
25 -- you know, we've known each other. We've been friends

1 for a very long time, and he is as fine a lawyer as there
2 is for sure in this state, probably this country. You
3 understand that?

4 A Yes, Your Honor.

5 Q Okay. So you know you won the lottery. I mean, you
6 know, he's not only -- you're not only entitled to a
7 lawyer, it just so happens that the lawyer that you happen
8 to have drawn, if you will, happens to -- to be a superb
9 lawyer. Or any -- use anybody skilled, doesn't matter.
10 Use them. He's a superb lawyer. You know that.

11 A Yes.

12 Q Okay.

13 A I'm very aware of that.

14 Q Very well. And you're like, excuse me, I'm going to
15 toss that away.

16 A Yes, Your Honor.

17 Q You understand that.

18 A Yes.

19 Q Makes no sense to me.

20 A It --

21 Q It worries me. I'll be up walking tomorrow morning,
22 three o'clock, you're responsible for me having no sleep.
23 I'm worried about you.

24 A I apologize for that.

25 Q Okay. But you understand there's dangerousness --

1 there's dangerousness associated with that.

2 A Yes, Your Honor.

3 Q All right. Being the captain of your own ship --
4 there's a lot to be said for being the captain of your own
5 ship, being -- being in charge of what happens in your own
6 universe, except when you're amongst lots of rocks and you
7 don't know what you -- and you don't know how to be
8 captain of your ship. Okay.

9 A Okay.

10 Q All right. And you happen to have Captain Ahab at the
11 helm. Okay. It just happens that you got Ahab. Am I
12 making sense?

13 A Yes.

14 Q Okay. So I'm -- and not only am I concerned about
15 you, I'm real concerned about you because you got who you
16 got.

17 A Yes.

18 Q Okay. And are you hearing me?

19 A Yes.

20 Q I mean, I want you to hear what I'm saying is: What
21 are you doing? You know, there's some lawyers, uh-huh.
22 This lawyer, I don't know what you're doing, and I want
23 you to -- I just want you to hear that. Wherever we go
24 from this point, we're -- honestly, wherever we go from
25 this point, I do want you to know that -- that you really

1 did win the lottery.

2 A I understand.

3 Q Do you hear what I'm saying?

4 A I understand, Your Honor.

5 Q Okay.

6 A I apologize ---

7 Q No, no, no. Don't apologize. That's not what we're
8 about. I just want you to know that, you know, sometimes
9 you luck out, sometimes you don't luck out in life. Do
10 you know what I'm saying?

11 A Yes, Your Honor.

12 Q Yeah. This time you lucked out. That -- I just --
13 it's important that you at least know that, you at least
14 got somebody that -- we were real lucky when we got -- I
15 mean, I had -- actually had a conversation with one of the
16 justices of our Supreme Court as we were talking about the
17 implementation of the public defender system.

18 And we were talking about it and -- and I -- and I was
19 real -- I was bragging because I could not believe that we
20 had had -- first of all, we've got Mark Leinendecker, who
21 I have all the confidence in the world in. And I was real
22 excited that we got him.

23 But when I -- and -- and -- and -- but when we got Mr.
24 Loy, and -- and again, I'm not quite sure why, but when we
25 got him in the Public Defender's Office, it was -- it was

DIRECT EXAMINATION BY THE COURT - DONSURVI CHISOLM 27

1 a tremendous coup, and I was real excited about that. And
2 I was sort of bragging about it to one of the justices,
3 because you know, it was just -- it was -- we didn't know
4 much about it as -- as -- as our public defender system
5 came up and I was just really bragging about ours.

6 I said we really -- we really got something special.
7 And I said, "We got this guy Loy that is really going to
8 take our Solicitor's Office to task, and he's going to
9 make them step up, because he's just that good." And I
10 was real proud of that so ...

11 Again, this is almost painful. But -- but you really
12 did win the lottery and it's important that you know.

13 You're entitled to represent yourself. Our
14 constitution says you're -- it's important that you know
15 that. And we're going through that process. But I gotta
16 -- you know, and all my concern, my heart-felt concern for
17 you, I gotta tell you, you have -- you don't have just any
18 lawyer. You got -- really have a great lawyer, and it's
19 important that you know that. And -- and I think you do.
20 I hope you've heard that. I hope you ---

21 A Yes.

22 Q --- picked that up, because you -- you really do.

23 Now, you know, it's interesting, one of the things I
24 have down here: possible defenses to the charge. You
25 know, self-defense, of course, is important, that -- that

1 you know, I -- and -- and we're not going to talk about
2 your defenses. We're just not going to do that. I'm not
3 going to let you go into your factual basis. We're not
4 going to do that. I'm not going to let you do that.
5 Okay.

6 A (No audible response.)

7 Q But there's a note down here that says "possible
8 defenses to the charge." I don't know -- I don't know
9 about your investigation. I don't know about that, but
10 you know, there -- there are any number of defenses that
11 can be/must be developed. And that's important. And
12 you've got to have somebody that has the ability and the
13 capacity to -- to develop any number of areas.

14 There's all kind of expertise that's available in the
15 world. And -- and you've got to have somebody who has the
16 capacity to do that, which is -- which is another reason
17 why it's important and -- and why you put yourself in
18 danger by not having a lawyer represent you.

19 And -- and not -- it -- it really -- it's twofold:
20 Number one, it has to do with the development of defenses
21 at trial, and then any mitigation in the event -- in the
22 unhappy event, shall we say, of a conviction. Okay. You
23 with me on that?

24 A Yes, Your Honor.

25 Q Okay. And -- and there's all -- and -- and there's

1 all the overlay. And again, I don't want to get into the
2 facts since I don't know anything about the facts. And
3 I'm a little bit in -- in shark-infested waters myself
4 here, because I don't know -- I don't know the
5 relationship between the Berkeley County allegations and
6 the Dorchester County allegations. But I can tell you
7 that they -- that that having two allegations and -- and
8 two murders in two counties is not helpful. How bout
9 that?

10 A Yes.

11 Q And so, I -- and that's all I know. I know no more
12 than that, but I know that's not good. And -- and I know
13 that the overlay of that's not good.

14 So it -- it's -- so as troublesome and as dangerous
15 and as much as you put yourself at risk in representing
16 yourself with regards to one murder charge, having two of
17 them has got to make that even more risky and even more
18 problematic exponentially. It's got to. And I don't need
19 to know any -- any more. But I'm even more troubled. Do
20 -- do you hear what I'm saying?

21 A Yes, Your Honor.

22 Q Okay. All right. And put you even more at
23 disadvantage, yes?

24 A In a sense, yes.

25 Q Yes. Yes.

1 A Yes.

2 Q Yes. Running the tactics of all that, yes, right. I
3 mean, you know exactly what I'm talking about because you
4 just came back from Afghanistan. You have -- you
5 participated in the planning and the execution of tactics,
6 where tactics, you know, in the world mean everything.
7 You know, how you do; what you do, when you do, you know.
8 So you know that first -- up close and personal, as they
9 say, given what your life has been in the last 10 years.

10 A Yes, Your Honor.

11 Q Yes. So am I getting anywhere with changing your
12 mind?

13 A No, Your Honor.

14 Q I was afraid of that. I really was concerned about
15 that. Okay. You know I want to change your mind, right?

16 A Yes, Your Honor.

17 Q Okay. You know that I really don't want you to
18 represent yourself.

19 A Very aware of that, Your Honor.

20 Q Okay. And because I really know -- I really believe
21 that you are at risk.

22 A Yes, Your Honor.

23 Q Okay. And I really do think that it's not wise for
24 you to do that. You know I believe that with my --

25 A Yes, Your Honor.

DIRECT EXAMINATION BY THE COURT - DONSURVI CHISOLM 31

1 Q -- heart of hearts.

2 A Yes.

3 Q And I don't want you to do that, because I know you're
4 at risk. And I think you understand that, too.

5 A Yes, Your Honor.

6 Q Okay. Oh. And so let me ask you this question: Do
7 you know that you can change your mind?

8 A Yes, Your Honor.

9 Q At any time.

10 A Yes, Your Honor.

11 Q Okay. And you certainly can have counsel --

12 THE COURT: Now, Mr. Loy, where are we on stand-by
13 counsel? You can have stand-by counsel, right?

14 MR. LOY: In the past you can, because I have been
15 stand-by counsel ---

16 THE COURT: That's what I thought.

17 MR. LOY: --- Your Honor.

18 THE COURT: What is the -- what is the hybrid that you
19 can't have? Isn't that right? One of them we're -- one
20 of them we're not happy with, and one of them -- stand-by
21 we're okay; hybrid we're less sure about.

22 MR. LOY: I -- I --

23 THE COURT: You don't know. We won't go there.

24 THE DEFENDANT: I actually have the case law, but I --
25 I forgot to bring it ---

1 THE COURT: Well, how are we on hybrid?

2 THE DEFENDANT: I -- I have the papers downstairs. I
3 forgot to bring them up here.

4 THE COURT: That's okay. That is okay.

5 Here's what I -- here's what I want to tell you.

6 Here's what I would like you to know: What I would like
7 you to know is that I -- I would certainly want Mr. Loy to
8 continue as stand-by counsel, whatever that means. If you
9 need him, he's there.

10 But here's what I absolutely want you to know --

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: -- is you know that you still have to
13 comply with the rules.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All of the rules.

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Rules of evidence, the court rules.

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Okay. And -- and if you -- and you do
20 know that you can change your mind.

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Yes?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Okay. And it's okay if you change your
25 mind.

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And it's a good thing if you change your
3 mind.

4 THE DEFENDANT: It can ---

5 THE COURT: Yes?

6 THE DEFENDANT: --- be. Yes, Your Honor.

7 THE COURT: Okay. And I would -- I would celebrate a
8 mind-changing event for you, right? You know that?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Okay. Okay. Because -- and again, only
11 because I worry about you, and I know that you're putting
12 your freedom at risk; and I know that -- and -- and I
13 worry about you, right? You know that.

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Okay. Very well. Well, here's my problem
16 with -- with this whole thing, Mr. Chisolm: You're
17 obviously very bright. You're obviously highly educated.
18 Your work background is superior. I mean, there's -- as I
19 go through my notes and I go through the case law,
20 unfortunately, I -- I mean, I really -- you know, I would
21 really like to say, "I'm sorry, Mr. Chisolm, but you can't
22 represent yourself." And -- and I'm looking for a way to
23 say, "Mr. Chisolm, I -- you know, you can't represent
24 yourself, only because I worry about you." You know that.
25 Because I know what kind of risk you put yourself in.

1 But our constitution gives you that right. You know
2 that, right?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And -- and I must tell you here's what I
5 am finding: You are a 31-year-old gentleman; you're from
6 New Orleans. You've moved to our area. You -- you know,
7 but recently you lived in Goose Creek before these events
8 that find you in -- pre-trial detained in Berkeley County.

9 You're married with four children. You were working
10 at Sonic. You were on board to become a general manager
11 at the Sonic on 41.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And that you were in Afghanistan in 19 --
14 2007.

15 THE DEFENDANT: 2004 to 2005, Your Honor.

16 THE COURT: 2004 to 2005. And then you were honorably
17 discharged -- you were discharged honorably, but with
18 medical conditions to your shoulder. And you're awaiting
19 some additional treatment to your shoulder at the VA.

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: And -- and you have a -- certainly a good
22 work history.

23 You are aware of your charges. You're aware of the
24 possible punishments. You -- you began this hearing
25 basically by saying, "Hi, Judge Goodstein. Yes, I am very

1 aware of the risk that I'm placing myself in and the
2 dangers of self-representation."

3 And I'm -- and I must tell you I'm -- I'm convinced
4 that you are aware of it. I -- I think that your waiver
5 is being made understanding what -- what you're doing.

6 You know, I wouldn't say it's not been intelligently
7 made, but you're an intelligent man and you're making the
8 decision. And I think you're doing that with your eyes
9 open.

10 I don't think I understand the "why" part of it. I
11 think I don't like it. But that -- the judge's pleasure
12 with it is -- doesn't get to be factored in. I don't get
13 a vote. You do. I don't.

14 I think you're knowing -- you know what you're doing.
15 You're intelligent. There isn't any evidence of any kind
16 of mental illness or any sort of incompetency at all on
17 your part. I -- I can find no reason to disallow you to -
18 - to self-represent yourself.

19 I don't want you to do it. I think you know that, and
20 I think you know why. I want you to change your mind. I
21 want to communicate to you in every way that I know how
22 that you can change your mind. Please change your mind.

23 But I can find absolutely no -- no basis in the law
24 based on my examination of you that would -- that would
25 dictate that you are a person who is someone who cannot

1 represent themselves.

2 And you know, if you had chosen to -- to probably to
3 go to law school instead of going to nursing school, you
4 probably could have done that, too, because you're
5 obviously very bright and very capable and you're aware of
6 what you're doing.

7 Do you have any questions of me with regards to this
8 part of the process?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Okay. Now, let me ask you this question -
11 - or -- or you know, you're in Berkeley County.

12 THE DEFENDANT: Yes.

13 THE COURT: If you choose to -- you know, you're going
14 to have to file things, right?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And it suits me if the first thing you
17 want to choose to do is to file a motion to appoint
18 counsel, right? Yeah?

19 THE DEFENDANT: No.

20 THE COURT: Okay. Well, don't hesitate to do that if
21 you change your mind.

22 THE DEFENDANT: Yes ---

23 THE COURT: I'm going to ask Mr. Loy to -- to draft
24 for me an order, but I'm going ask him to run that by you
25 first. Okay?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: So when you get that document from him,
3 just know that -- that I just need hands to help me. So
4 when -- when he shows it to you, you will approve it, then
5 I will sign it, okay?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Fair enough?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: All right. Any other questions?

10 THE DEFENDANT: Just wanted to know -- but you leaving
11 him on as stand-by counsel, and who will be in charge of
12 my transportation once I'm in Berkeley County if I need to
13 come back?

14 THE COURT: Oh. That is so smart on your behalf.
15 What you'll need to do is that you will need to send an
16 order for trans -- well, there really a couple of places.

17 If there's a pending motion and you need an order to
18 be transported, I think it can go -- Mr. -- and feel free
19 to chime in. I think either it can go to the solicitor or
20 can -- can give it to the judge and go to chief
21 administrative judge, who is Judge Dickson right now. Or
22 can go to whoever the presiding judge is. If it's a two-
23 week term, it can come to me. If -- if there's a motion
24 here or something else, and -- and it can go to whoever's
25 here, like week one for week two.

1 THE DEFENDANT: Yes.

2 THE COURT: Does that make sense? In other words, the
3 difficulty simply is that the order arrive at the --
4 for the judge to sign it and get it back to Berkeley
5 County so they got time to react to it.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Does that make sense what I'm saying?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Okay. Okay.

10 THE DEFENDANT: All right.

11 THE COURT: All right.

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Anything further you can think
14 of, Mr. Loy?

15 MR. LOY: No, Your Honor. Thank you.

16 THE COURT: Okay. Great. All right. Be well.

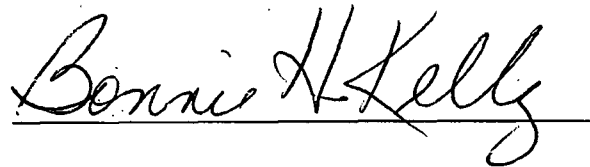
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18 -- END OF TRANSCRIPT RECORD --

CERTIFICATE

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the First Circuit Court, for Dorchester County, South Carolina, on the 11th day of February, 2011.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", is written over a horizontal line.

Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

August 12, 2013

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
County of Dorchester) 2008-GS-18-00009

State of South Carolina)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 Don-Survi Chisolm,)
)
 Defendant.)
)
)

July 14, 2011

St. George, South Carolina

B e f o r e:

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
Attorney for the Plaintiff

Don-Survi Chisolm, Pro se Defendant

John Loy, Esquire
Stand-by Cou

Bonnie H. Kelly, CVR
Circuit Court Reporter

1 is that correct?

2 MR. CHISOLM: Yes, sir.

3 MR. HILTON: And from there he may have had another
4 one before John Loy.

5 MR. CHISOLM: No, sir.

6 MR. HILTON: Just from Marva Hardy-Thomas to John Loy.

7 THE COURT: Okay.

8 MR. HILTON: Now he's proceeding pro se. I'm not sure
9 what discovery he has, where the discovery has; because
10 likewise, it's gone through several prosecutors ---

11 THE COURT: Sure.

12 MR. HILTON: --- to get to him. And so, I -- I have
13 brought my stuff here in the courtroom. Mr. Chisolm,
14 through correspondence back and forth to me, has indicated
15 that he does lack a few of the video tapes. And so I'm
16 going to try and figure out which ones of those he's
17 missing.

18 And ultimately, I think we're going to make another
19 copy of everything --

20 THE COURT: Uh-huh.

21 MR. HILTON: -- and just give that to Mr. Chisolm.

22 THE COURT: Uh-huh.

23 MR. HILTON: I hate to burden him with all of that
24 documentation again, but that's the safest way that I know
25 of to make sure that he has everything that I am working

1 with. There's no intention of the State to hide anything
2 from him or to not disclose anything.

3 So, you know, my stuff is here today, and Mr. Chisolm
4 is -- is more than -- is more than -- I'm drawing a blank
5 here. He's welcome to look in the -- look in my boxes
6 here and take a look at what I've got, in addition to me
7 making him a copy of all this stuff.

8 I know that there's some photographs and so forth from
9 a CD that I have. And I don't know what the
10 accommodations are at the jail. As with the VHS tapes, I
11 can't -- I can't print out a video. I can print out the
12 pictures, and so I can -- I can print out those pictures.
13 So while they're on a CD in -- in my stuff, we'll print
14 those out for Mr. Chisolm, and -- and I think that will
15 give him better access over at the jail to be able to
16 literally flip through the pictures.

17 And so however the Court thinks I should proceed as
18 far as the discovery, I mean, it's here; if he wants to
19 look through it, he has any questions about it, we can
20 answer those on the record.

21 THE COURT: Okay. Well, let me ask -- let me just ask
22 Mr. Chisolm, and then -- and then I have some additional -
23 - just in terms of the -- of the Court's needs.

24 All right. Now, let's talk about the discovery. I --
25 I like very much that everything that the Solicitor has to

1 this point is going to be copied anew and provided to you.
2 The most -- one of -- one of the very important things
3 that has to happen is that there has -- you gotta get
4 everything.

5 MR. CHISOLM: Yes.

6 THE COURT: We gotta be sure you get everything.

7 MR. CHISOLM: Yes, Your Honor.

8 THE COURT: In fact, Mr. Hilton, when you -- when you
9 provide what you provide to Mr. Chisolm, I want you to --
10 to do a copy of -- you know, just do a listing of all the
11 items. And my -- my preference would have those scanned
12 to a disc, but I certainly want some accounting of the
13 information that has gone to Mr. Chisolm. I want Mr.
14 Chisolm to have that, too.

15 And then I want that to be filed in the file -- in the
16 Court's file, so that there will be -- so that not only
17 will you have the information, Mr. Chisolm have the
18 information, but that there will be an accounting of that
19 information on file with the Court.

20 But I want you to give Mr. Chisolm a listing of the --
21 those documentation, because if something sticks together
22 and it doesn't copy and yet it shows up on a sheet, Mr.
23 Chisolm will have the benefit of that sheet. In other
24 words, it's like, if you will, another accounting of what
25 you have already received to be sure that you got

1 everything, if that makes sense.

2 MR. CHISOLM: Yes, Your Honor.

3 THE COURT: Now, talk to me about the photos and the
4 disc. Do you want -- I -- I think you -- I think you --
5 you ought to have the photos printed. But do you want the
6 disc, too?

7 MR. CHISOLM: I prefer it on the disc file, Your
8 Honor, because Berkeley County gave me it on a disc file,
9 and they actually let me watch it on the computer.

10 THE COURT: Okay.

11 MR. CHISOLM: So I can see the clearer image. It --
12 it's ---

13 THE COURT: Okay.

14 MR. CHISOLM: --- the clarity. Because --

15 THE COURT: Do you want both, or do you just want the
16 disc?

17 MR. CHISOLM: I -- I prefer both actually.

18 THE COURT: You got it.

19 MR. CHISOLM: Yes.

20 THE COURT: Very well. Done.

21 MR. CHISOLM: Thank you.

22 THE COURT: All right. Yep.

23 MR. CHISOLM: Thank you.

24 THE COURT: Now, the VH -- the VHS tapes, now, Mr.
25 Hilton, are you gonna reprint all the VHS tapes?

1 MR. HILTON: Well, that's the thing. I mean, there's
2 so many of them that he's got.

3 THE COURT: Some of them.

4 MR. CHISOLM: I have these.(indicates.)

5 THE COURT: Oh, great. You've got -- oh, you have a
6 list. Oh, great.

7 MR. HILTON: If he's got a list, which he does appear
8 to have --

9 THE COURT: Now, how are they listed so I understand:
10 by date or by ---

11 MR. HILTON: The name of the interviewee and the date
12 that the interview was conducted.

13 THE COURT: Okay.

14 MR. HILTON: And they're listed on the video, and Mr.
15 Chisolm can take a look at that. The one I've pulled out
16 is from David White. It says "First, 9/16/07." And --
17 and that's listed as one of the ones he has.

18 It looks pretty clear that we'll be able to
19 distinguish which ones he has and ---

20 THE COURT: Okay.

21 MR. CHISOLM: And all of these I -- I had at
22 Dorchester County, these will be picked up when -- when I
23 go back, these are -- I mean, not Dorchester, Berkeley
24 County, I'm sorry.

25 THE COURT: I know. Yeah.

1 MR. CHISOLM: Yeah. All these are already at -- those
2 are in a box waiting for me ---

3 THE COURT: Yeah.

4 MR. CHISOLM: So anything that's missing is all -- all
5 I'm going to need.

6 THE COURT: And -- and exactly. But be mindful, if
7 something has -- even though you have a list, because you
8 have had them, if something has happened to them in
9 Berkeley County, don't worry about that; don't sweat that.
10 You let Mr. Hilton know, and he will recopy it.

11 MR. CHISOLM: Yes, Your Honor.

12 THE COURT: Do not put yourself under the additional
13 stress of trying to find what was in Berkeley; you know
14 what I'm saying?

15 MR. CHISOLM: Yes, Your Honor.

16 THE COURT: Something happened to it, let it go. You
17 know, Mr. Hilton will get you another one.

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. CHISOLM: Yes, Your Honor.

21 THE COURT: All right. And something we can't -- you
22 know, if where -- it cannot be duplicated, then that's a
23 problem. We gotta go find it in Berkeley. But you know,
24 that -- that's too easy to duplicate, you know what I'm
25 saying?

1 MR. CHISOLM: Yes, Your Honor.

2 THE COURT: So rather than be -- you know, be worried
3 about that, just come on, get what you got, and just let
4 Mr. Hilton know.

5 Now -- all right. So one of the things I'm concerned
6 about is if you have a listing of those. There may be
7 folks with more than one interview. So what I'd like
8 y'all to do is to sort of if y'all can just -- at least
9 today, based on one sheet, just if y'all can check -- you
10 know, check off in some form or fashion what you have.
11 And -- and -- and then I'd like to file that with the
12 court. I want -- I just don't want there to be any
13 question about -- about whether you have received
14 everything.

15 I don't -- I don't want get down to trial, and all of
16 a sudden, there's something and you haven't seen it.
17 That's just not where -- where -- where I want -- where I
18 want anybody to be.

19 MR. CHISOLM: Yes, Your Honor.

20 THE COURT: So are you gonna pull those now?

21 MR. HILTON: I just ---

22 THE COURT: Oh, that's great.

23 MR. HILTON: I just going through this stuff ---

24 THE COURT: Oh, that's great.

25 MR. HILTON: --- I'm just gonna compare ---

1 THE COURT: I think that's great.

2 MR. HILTON: --- it to this list.

3 THE COURT: And then we can just count what's in the
4 box.

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: You can look at that, and you know, you
7 can just --

8 MR. CHISOLM: I have one issue I'd like to bring up
9 when I have the chance.

10 THE COURT: You bet.

11 MR. CHISOLM: I've been trying to issue subpoenas.

12 THE COURT: Yeah.

13 MR. CHISOLM: And I've been having difficulty getting
14 the Clerk of Court to sign and issue the subpoenas for me.
15 Can I possibly be granted an order, you know, to let the
16 Clerk of Court know that I'm -- that I have subpoena
17 power? Because if I need to subpoena witnesses, it's
18 going to be very difficult for me to subpoena them to
19 trial if I can't get ---

20 THE COURT: Yeah.

21 MR. CHISOLM: --- the subpoenas issued.

22 THE COURT: Absolutely.

23 MR. CHISOLM: I -- I've been ---

24 THE COURT: Of course ---

25 MR. CHISOLM: --- trying for a while.

1 THE COURT: And so what you are concerned about is the
2 subpoenas for trial? Your trial subpoenas?

3 MR. CHISOLM: Yes.

4 THE COURT: Tell me ---

5 MR. CHISOLM: I initially tried to issue a subpoena to
6 the -- to get someone to produce evidence for me. And it
7 never got signed. I -- I've -- I've written
8 correspondence to the Clerk of Court. I asked a couple of
9 times, you know, is there -- am I filling out something
10 wrong? Am I doing this the wrong way? Could you please
11 instruct me on, you know, the proper ---

12 THE COURT: Sure.

13 MR. CHISOLM: --- procedure if I'm doing it wrong?

14 THE COURT: Sure.

15 MR. CHISOLM: I never received a response. So I don't
16 -- I don't know what I was doing wrong.

17 THE COURT: I -- I understand.

18 MR. CHISOLM: But I want to make sure that when it
19 comes time, that my subpoenas actually get issued.

20 THE COURT: Okay.

21 MR. CHISOLM: And then I can make sure that my
22 witnesses, you know, need be come.

23 THE COURT: Yeah. Absolutely. I'm just trying -- I'm
24 just trying to think -- of course, you're going to have
25 your -- of course you are going to have your subpoenas.

1 Let me ask you this question: And I'm not -- I'm --
2 I'm going to say something, but I want you to understand I
3 am not -- I'm not going to tie you to a number. Because -
4 - because it's not appropriate to tie you to any sort of
5 number. Do you have a listing of the folks that you think
6 you're going to want to come at this point?

7 MR. CHISOLM: At this point, I have a couple. I -- I
8 intend, after looking at discovery, to have at least three
9 or four more.

10 THE COURT: Tell me what -- tell me how you want to
11 proceed, because we can proceed in a couple of different
12 ways. We can get -- you can get a couple now, and we'll
13 get those issued, put the date of the trial, they
14 anticipate a trial. Put that on there and then go; or you
15 can wait until you've been through discovery and -- and do
16 more.

17 But you're going to have whatever subpoenas you need
18 done. You know, I don't want you to get -- that's an
19 excellent thing to -- first of all, to bring to my
20 attention. Thank goodness you did. But that's not going
21 to be a problem.

22 And whichever way you want to do it. You can do a
23 couple now, if those are the names that you know you're
24 gonna want; or if you want to look at discovery and do it
25 next week, that's fine, too. Either way you want to do

1 it.

2 MR. CHISOLM: I'd like to look at discovery first,
3 because my needs may change after I look at discovery.

4 THE COURT: Absolutely.

5 MR. CHISOLM: I -- I may not need some of the people
6 that I need right now based on --

7 THE COURT: It will be what it is.

8 MR. CHISOLM: Yes, Your Honor.

9 THE COURT: Now, remember just -- I just suggest
10 that's a great -- that's a great thing for you to use Mr.
11 Loy as stand-by counsel, only because he can facilitate --

12 MR. CHISOLM: Yes, Your Honor.

13 THE COURT: -- do you know what I'm saying?

14 And -- and you know, Mr. Loy, just know to -- when you
15 deal with the Clerk's office on behalf of Mr. Chisolm, you
16 know, if -- if you need a subpoena signed and you're
17 having any kind of difficulty, just bring them to me.
18 I'll sign them.

19 MR. LOY: Thank you, Your Honor.

20 MR. CHISOLM: Thank you, Your Honor.

21 THE COURT: I think I can do that. Okay. All right.
22 Now --

23 MR. HILTON: I pulled these videos and -- and there is
24 some -- some discrepancy between the list that Mr. Chisolm
25 has and the list that I have.

1 And so, let me just ask Mr. Chisolm: Have you
2 verified that the tapes on this paper that you've passed
3 over, that was from Blair Jennings dated August 8 of 2008
4 -- are you satisfied that you do have these videos?

5 MR. CHISOLM: Yes.

6 MR. HILTON: Okay. All right. Then that's Kenneth
7 Durham, on September 20 of 2007; I have that ---

8 THE COURT: Is it "Durham" like the city?

9 MR. CHISOLM: Yes.

10 MR. HILTON: D-u-r-h-a-m. Tomeika Williams; it was
11 two videos: 9/16 and 9/17. It'd be September 16 and
12 September 17 of '07. And those are in my stuff as well as
13 on his list.

14 The first video from David White, which is so labeled
15 on September 16 of 2007.

16 Mr. Chisolm, you follow along with me as I go through
17 these ---

18 MR. CHISOLM: Yes.

19 MR. HILTON: --- videos.

20 The second video being David White on 9/24/2007. The
21 third -- the next video on the -- on the list is David
22 White on November 8, 2007. And then another one from
23 November 26, 2007.

24 I actually have two copies of this November 16, 2007
25 video. And I will verify that they're the same video.

1 And if they're not the same video, I want to make sure
2 that you get a copy of --

3 MR. CHISOLM: Yes.

4 MR. HILTON: -- of each.

5 THE COURT: Absolutely. It's -- good for you for
6 making the note.

7 (Brief pause.)

8 MR. HILTON: What's labeled as No. 6 on your -- on Mr.
9 Chisolm's list is a video from Mr. Chisolm dated November
10 29, 2007. There's another one on his list dated December
11 18, 2007, which I do not have.

12 Now, I -- I don't have it in my box. I'm sure it's at
13 the Sheriff's Office. I don't have it here, but
14 apparently --

15 THE COURT: Well, Mr. Chisolm probably share it with
16 you.

17 (Courtroom laughter.)

18 THE COURT: Just let him know. He'll loan it to you,
19 let you copy it.

20 (Brief pause.)

21 MR. HILTON: The next one is the video from Don-Survi
22 Chisolm dated September 17, 2007. That's on the list and
23 in my box.

24 There's another one, November 13, 2007, from Mr.
25 Chisolm; and another one from September 16, 2007.

1 And I'm not going in chronological order. I'm going
2 by the order that's on his list. And so that's why the --
3 the dates are out of order.

4 The next video is Calvin Wade; 9/17/2007. The next
5 one's Joshua Stokes; September 16, 2007. The next one is
6 Siquan [phonetic] Moody; October 8, 2007, which I do not
7 have in the stuff that I brought here; however, it is --
8 it is on Mr. Chisolm's list.

9 Next one is Diana Hardy Joseph; September 16, 2007.
10 Next one is Chad Coll, C-o-l-l; September 27, 2007. Next
11 one's Justin Odom; September 28, 2007. And the last one
12 is Nicole -- I guess it's Ruiz, R-u-i-z; September 27,
13 2007.

14 MR. CHISOLM: All right. I -- I -- I realize where
15 the discrepancy was in the number of tapes. Mine are
16 consolidated into 11 tapes. Yours are split apart. Like
17 Chad Coll, Justin Odom, and Nicole Ruiz, that's all on one
18 tape in mine. So when I sent you the correspondence
19 saying that we're missing tapes, we're actually not
20 missing any tapes. Mine are just consolidated.

21 MR. HILTON: And you're satisfied those are the copies
22 of the tapes, that you have a full copy ---

23 MR. CHISOLM: Yes.

24 MR. HILTON: --- of the interview?

25 MR. CHISOLM: Yes.

1 MR. HILTON: So it appears the only discrepancy we
2 have then is the tape from Mr. Chisolm on -- actually that
3 I need to verify. I think Mr. Chisolm has all the -- all
4 the videos; more than what I have.

5 MR. CHISOLM: Yes.

6 MR. HILTON: And again, I will check with the
7 Dorchester County Sheriff's Office, which I already have
8 one time, to make sure that I have all the videos that
9 they have in evidence; because my copies are presumably
10 copies of theirs.

11 THE COURT: And then you'll double check the -- the --
12 the duplicative tape to be sure that, in fact, it is a
13 duplication.

14 MR. HILTON: That's correct.

15 THE COURT: Okay. Great.

16 MR. HILTON: One thing I do want to show Mr. Chisolm
17 now, in that I won't be able to make a copy of it -- and
18 I'm not sure that he needs a copy of it just because of
19 the size of it. But I may or may not intend to use this
20 map at trial. It was -- it's actually two maps. And if
21 we could mark these, maybe as a Court's Exhibit.

22 THE COURT: Absolutely. And I want this sheet, too,
23 so everybody -- and I want to -- just mark a copy. I
24 don't want to take Mr. Chisolm's note, but I want to make
25 a copy of that piece of paper.

1 And then I want to make a copy of that piece of paper
2 a Court's exhibit. Then I want to copy it as a Court's
3 exhibit and give it back to you guys, if that makes sense.

4 MR. CHISOLM: Yes, Your Honor.

5 MR. HILTON: Now --

6 THE COURT: So give me three copies.

7 MR. HILTON: I'm not sure it will work, but I -- I
8 would like to keep these maps in my possession. You can
9 mark them as a Court's exhibit, and that way, later on,
10 we're just know that we're using the same map in the trial
11 ---

12 THE COURT: I understand. If you need -- if you need
13 someone to run down to Kinko's and get a copy or whatever,
14 if -- you know. But let him -- let's let him look at it
15 and see if -- if -- if that's what he needs. But go ahead
16 and let him take a look.

17 (Brief pause.)

18 THE COURT: I'm going to mark it for discovery and
19 identification, much like one does discovery deposition
20 and marks an exhibit. And I'll put on the record he's
21 just going to maintain possession of it, because this is
22 an informal conference and not done for any sort of
23 admission purposes at trial at all.

24 It's only for the purposes of identifying what was
25 shown to Mr. Chisolm and what may be needed to be copied

1 for Mr. Chisolm. It's only for tracking purposes only.
2 Not for any sort of evidentiary reason at all. In other
3 words, I'm just swiping one of your stickers.

4 (Marked Court's Exhibit No. 1, map of Clubhouse Road
5 area of Dorchester County.)

6 (Marked Court's Exhibit No. 2, map of Bacon's Bridge/
7 Dorchester Road area.)

8 MR. HILTON: Mr. Chisolm, this has been marked for
9 purposes of this hearing as -- as Court's Exhibit 1. This
10 is a map that was used by David White in his interview
11 with detectives. They showed him this map in the
12 interview with David White, and that's reflected on one of
13 your video tapes. And so I just show you that.

14 The second one -- show you what's been marked as
15 Court's Exhibit No. 2.

16 Before I go forward, Court's Exhibit 1 was a map of --
17 labeled "Clubhouse Road area of Dorchester County.

18 Court's Exhibit 2 is a map of the Bacon's
19 Bridge/Dorchester Road area, that was also used in the
20 same interview as the other map.

21 Do you think you're going to need copies of these
22 maps, or are you satisfied with just looking at them?

23 MR. CHISOLM: I'll take copies of it.

24 MR. HILTON: All right. I'll ---

25 THE COURT: And let me just tell you -- let me just

1 suggest, any of the engineering firms have got copiers,
2 because they've got to do surveys. And they can do it
3 pretty efficaciously I would think.

4 Did we mark them both and put a sticker on both of
5 them?

6 MR. HILTON: We did. There's ---

7 THE COURT: Okay.

8 MR. HILTON: They're separate.

9 THE COURT: Very well. I want to do -- I want to mark
10 the copy. I don't want to mark on Mr. -- Mr. Chisolm has
11 an original document. I don't want to mess with his
12 document. I just want to mark a copy and make it an
13 exhibit.

14 (Marked Court's Exhibit No. 3, list document.)

15 MR. HILTON: And finally, Your Honor, I do have other
16 stuff here. I'm going to show Mr. Chisolm this notebook.
17 This will not be included in the discovery in that it's
18 only the correspondence that he and I have been writing
19 back and forth. And so I'm not going to copy those again
20 to give him, unless you want a copy.

21 MR. CHISOLM: That's all right.

22 MR. HILTON: And you're welcome to flip through there
23 if ---

24 MR. CHISOLM: I have -- I have copies of it all.

25 MR. HILTON: Instead of going through the rest of this

1 stuff, what -- what I'm going again is just make copies of
2 everything, make copies of the pictures. I will make
3 copies of these maps that we've marked as Court's Exhibit
4 1 and 2. And I will deliver that to Mr. Chisolm hopefully
5 towards maybe the middle of next week.

6 At that time Mr. Chisolm should be over at the
7 Dorchester County Jail, and I can either -- I think what
8 would be best if I just brought him back over and served
9 him -- put this on the record.

10 THE COURT: I think -- yeah. Absolutely. And I think
11 what's probably going to be helpful is -- I'm just going
12 to play that by ear. Either just, you know, the -- the
13 rooms downstairs are large enough that -- that he could
14 certainly take a look at them; or we could do it here in
15 court, one way or the other.

16 But the next time's going to be a little more lengthy,
17 because he's got to go through the other documents. But
18 we'll just -- we'll -- we'll work through that.

19 And -- oh. And I would just add you're going to copy
20 the pictures and the discs.

21 MR. HILTON: That's correct.

22 MR. CHISOLM: Your Honor, could I go on record with a
23 couple of things that I specifically would -- I mean, I
24 don't know ---

25 THE COURT: That's real helpful.

1 MR. CHISOLM: --- if they're in there, but --

2 THE COURT: Yeah.

3 MR. CHISOLM: The phone records of the victim and the
4 alleged phone records of me, the defendant, okay, if -- if
5 they are in the State's possession; because they were
6 marked in my warrant. So I would ---

7 THE COURT: What does that mean, "marked in your
8 warrant"? Tell me what ---

9 MR. CHISOLM: It -- it was sited in my warrant that I
10 was arrested --

11 THE COURT: Oh, yes..

12 MR. CHISOLM: -- possibly -- the phone records. And I
13 haven't seen them in four years.

14 (The Court and Mr. Chisolm talk simultaneously.)

15 THE COURT: Do ---

16 MR. HILTON: I have his phone records, and that would
17 be part of the ---

18 MR. CHISOLM: Okay.

19 THE COURT: Great. Thanks.

20 MR. CHISOLM: I need the statements of David White,
21 statements of ---

22 THE COURT: Well, let me ask this question: The
23 statement of David White, there's a written one, too?
24 Because obviously there's an oral one. But you think
25 there's a written one, too?

1 MR. CHISOLM: I believe so, yes.

2 THE COURT: Okay. Well, you should have all the
3 written statements.

4 MR. HILTON: He --

5 MR. CHISOLM: I -- not ---

6 MR. HILTON: Again, that -- that will be in the packet
7 that I give him.

8 THE COURT: Okay.

9 MR. HILTON: However, his statement is on video and --
10 and recorded. If he gave a written statement, they would
11 record him writing it out also. So --

12 THE COURT: And so -- so -- okay. So the written --
13 all written statements, but with particularity, take a
14 look to see if there's a written statement of David White
15 --

16 MR. CHISOLM: Shaquanda L. White, because ---

17 THE COURT REPORTER: Could you spell "Shaquanda."

18 MR. CHISOLM: S-h-a-q-u-a-n-d-a. She -- she is sited
19 on one of my warrants. I don't --

20 THE COURT: Got it.

21 MR. CHISOLM: I don't see a video, so I'm assuming she
22 has a written statement.

23 THE COURT: I understand.

24 MR. CHISOLM: The written statements of any employees
25 from LKQ Auto.

1 THE COURT: LKQ ---

2 MR. CHISOLM: KQ ---

3 THE COURT: --- Auto.

4 MR. CHISOLM: --- Auto Parts.

5 THE COURT: Uh-huh.

6 MR. CHISOLM: Yes.

7 THE COURT: All right. Now, understand that Mr.

8 Hilton's going to give you all the written statements.

9 MR. CHISOLM: Yes.

10 THE COURT: But he's going -- because you have --

11 you've addressed these specifically, he's going to take

12 special care to look to see if these are in existence.

13 Okay.

14 MR. CHISOLM: Yes, Your Honor.

15 THE COURT: All right.

16 MR. CHISOLM: Criminal records of any witnesses the

17 State intends to call.

18 THE COURT: Okay.

19 MR. CHISOLM: All right.

20 THE COURT: Now, they will do that. It will be closer

21 to trial, because they probably don't know right now who

22 they're going to call. So ---

23 MR. CHISOLM: Okay.

24 THE COURT: --- it will be closer to trial, but most

25 assuredly. Yes.

1 MR. CHISOLM: Ballistics reports of the -- of the
2 projectile found in the victim. I've never seen these, so
3 I ---

4 THE COURT: Okay.

5 MR. CHISOLM: --- I would like the ballistic reports.

6 THE COURT: Okay.

7 MR. CHISOLM: Any fingerprint reports.

8 THE COURT: Let me ask this question. ---

9 MR. CHISOLM: Okay.

10 THE COURT: --- do you have the stuff back from SLED?
11 Do you have the -- the ballistics and the fingerprint
12 stuff?

13 MR. HILTON: We do. We have all that. I've looked
14 over that.

15 THE COURT: Great.

16 MR. HILTON: And I'll give that to Mr. Chisolm.

17 THE COURT: It's in the -- it's in the stuff you're
18 going to copy. Okay. Good.

19 MR. CHISOLM: I need another copy of the coroner's
20 report, but I'm pretty sure that I have that. If the
21 coroner made a video, that they should have, and any
22 pictures, I would need that.

23 The video of the crime scene or any pictures included
24 with that.

25 THE COURT: Yes.

1 MR. CHISOLM: An inventory sheet of the vehicle when
2 it was searched; any items seized or items given back. I
3 -- I need ---

4 MR. HILTON: Let me stop Mr. Chisolm right there and
5 just say that I am not aware of any video of the crime
6 scene. There are numerous pictures, and those pictures
7 will be included. I am not aware of any video.

8 If he has seen something that references a video,
9 please let me know and I will try to track that down. But
10 I have personally looked through the evidence at the
11 Sheriff's Office, and I'm not aware of any video ---

12 THE COURT: Okay. Do you -- have you -- because that
13 does happen, where the Sheriff's Department's got
14 something and -- and -- and the Solicitor's Office is the
15 last to know.

16 Have you seen any indication in any thing else that
17 leads you to believe that there may be a video of ---

18 MR. CHISOLM: No, Your Honor. I was ---

19 THE COURT: Okay.

20 MR. CHISOLM: --- just covering all the bases.

21 THE COURT: All right. Good for you. That's no
22 problem with that.

23 MR. CHISOLM: And any and all chain of custody forms.

24 THE COURT: Okay.

25 MR. CHISOLM: Because I -- I have none -- none of

1 those.

2 THE COURT: Okay. Yes.

3 MR. CHISOLM: And that would be it. Just -- and I
4 need the inventory reports from both searches and
5 seizures, because they actually searched the vehicle
6 twice. I need the inventory items seized from both the
7 times.

8 THE COURT: And you also wanted any -- any
9 documentation that shows a return of items ---

10 MR. CHISOLM: Yes.

11 THE COURT: --- to anyone.

12 MR. CHISOLM: Yes, Your Honor.

13 THE COURT: Got it.

14 MR. HILTON: Mr. Chisolm, I don't want you to disclose
15 your defense to me or anything like that, but one thing
16 that I'm going to need to know ahead of time is that --
17 the 2006, I believe it was, Dodge Durango, grey in color -
18 - silver in color, is still impounded at the Sheriff's
19 Office. Are -- are you going to need that for trial?

20 MR. CHISOLM: No. That's a good question. I'm going
21 to say I don't know right now, actually, on that question.

22 THE COURT: And I was going to tell you, you can
23 change your mind.

24 MR. HILTON: Absolutely.

25 THE COURT: It's okay.

1 MR. CHISOLM: I'm not -- not a hundred percent sure.

2 THE COURT: Why don't we say this: At this point,
3 based on the discovery that you have seen, you just don't
4 have any clarity about it at this point. Can we -- we may
5 forget -- I may forget to ask again, Mr. Hilton may forget
6 to ask again about it. But if you do need it, will you -
7 - will you try to help remember to -- to let that be
8 known?

9 MR. CHISOLM: Yes, Your Honor.

10 THE COURT: Very well. Great.

11 MR. HILTON: Is there anything else at this time you
12 want to address, Mr. Chisolm?

13 MR. CHISOLM: No, sir.

14 THE COURT: Now, understand, this is really important,
15 this is -- this discovery is ongoing. We're going to
16 hopefully get back together next week. And if things come
17 up and you need additional information, you know, that --
18 just let that be known.

19 And -- and be mindful that if -- if interimly, before
20 we're together in this format, if you need Mr. -- you
21 know, if you need to get messages around, Mr. Loy is
22 certainly really an excellent source to do that;
23 particularly, you know, when General Sessions is going on.

24 MR. CHISOLM: Yes, Your Honor.

25 THE COURT: Okay. It just -- it's just very

1 efficacious and efficient for -- for you to be able to do
2 that. Okay.

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Don't hesitate to do that. Really.
5 Because as you look at the discovery, other issues may
6 arise, and -- and in all -- in all candor, I do believe
7 that Mr. Hilton's trying to get everything to you.

8 But don't hesitate. If you see something and you
9 think something else is out there, let him know that,
10 because it is -- it is not -- it's -- it's not unheard of
11 that there can be something that the Sheriff's Department
12 has and -- and for whatever reason, it could be a myriad
13 or reasons, perhaps you see that as being important and
14 that that -- you know, and perhaps they didn't. And --
15 and it's sort of fallen through the cracks.

16 So if you think of something like that, if -- as you
17 go through the discovery, if you have concerns about
18 things that you think are out there that you haven't
19 received, just let Mr. Hilton know.

20 And probably the most efficient way to do that would
21 be maybe either write him or get a message through Mr.
22 Loy, particularly if we're in General Sessions. That will
23 be pretty -- pretty efficient, because believe it or not,
24 Mr. Chisolm, oft times that could help a solicitor, too.

25 And just -- so as you go through, if you have

1 questions, you know, don't assume anybody's trying to keep
2 anything. It very well may be that -- that he doesn't
3 know that it exists either, and you'll help each other.
4 Okay?

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: All right. Very well.

7 MR. HILTON: And I'll tell Mr. Chisolm one thing that
8 I -- I will do is contact Captain Van -- Van Doren over at
9 the Dorchester County Jail.

10 If, before next week, he discovers something that he
11 needs or something that he wants to address next week, if
12 he will get with someone over at the jail, they'll let
13 Captain Van Doren know and then we can, you know, have you
14 brought over at your request, really.

15 MR. CHISOLM: Thanks.

16 THE COURT: In other words, sort of like you had
17 somebody at Berkeley. And you mentioned somebody's name
18 who was your legal, sort of, ombudsman person.

19 MR. CHISOLM: Yes.

20 THE COURT: Van Doren's going to be your legal
21 ombudsman.

22 MR. CHISOLM: I'd prefer that it's not Captain Van
23 Doren, because he was actually the head detective on this
24 ---

25 THE COURT: Oh.

1 MR. CHISOLM: --- same case before he became the
2 captain of the jail.

3 THE COURT: Thank you for that.

4 MR. CHISOLM: Yes.

5 THE COURT: Thank you -- thank you for that. Good.
6 Thank you for that.

7 MR. HILTON: It'd be Lieutenant Taylor then.

8 THE COURT: Do you know who that is?

9 MR. CHISOLM: Yes.

10 THE COURT: Okay. Is that okay?

11 MR. CHISOLM: Yes.

12 THE COURT: Okay. Good.

13 MR. HILTON: Finally, Your Honor, I sent Mr. Chisolm a
14 letter back just a couple of weeks ago, a week or two ago,
15 June 30, 2011, that specifically requested any alibi
16 defense. Under Rule 5(e)(1) of the Rules of Criminal
17 Procedure, the discovery rule that requires Mr. Chisolm to
18 alert the Solicitor of any alibi witnesses or addresses or
19 how to contact them essentially, so we can verify that.

20 I have not heard back from Mr. Chisolm on any alibi
21 witness list or any defense of alibi. And so if he is
22 going to employ that defense, we do need to know that
23 fairly soon.

24 THE COURT: Okay. Very well. And again, he may or
25 may not wish to -- to talk to stand-by counsel about that.

1 Okay. Just look at the rule yourself, and if you wish,
2 address it with Mr. Loy. And then if that's appropriate
3 for you to -- to disclose, then -- then if you could do
4 that some time in the near future. It'll just keep -- it
5 will allow the trial to go forward. You know, because if
6 it comes late -- you know, late in the process, then it
7 could -- it could cause an unhappy delay. And as I
8 understand it, this case has been set for date certain.

9 MR. CHISOLM: Yes.

10 THE COURT: Okay. So I -- I don't want you to address
11 it now, but ---

12 MR. CHISOLM: Yes, Your Honor.

13 THE COURT: --- just be mindful of that. Okay.

14 MR. CHISOLM: Yes, Your Honor.

15 THE COURT: Great.

16 MR. HILTON: And I would mark that letter as a Court's
17 Exhibit.

18 THE COURT: Great. Yeah.

19 MR. HILTON: A copy of the letter.

20 THE COURT: A copy of the letter.

21 MR. HILTON: This would be Court's Exhibit ---

22 THE COURT: You -- you remember the letter?

23 MR. CHISOLM: Yes.

24 THE COURT: Great.

25 (Marked Court's Exhibit No. 4, letter.)

1 THE COURT: Okay. Great.

2 MR. CHISOLM: Yes. I have a copy.

3 THE COURT: And that one you can take. That's
4 evidentiary.

5 MR. HILTON: In furtherance of that rule, Your Honor,
6 I think the requirement is the defendant has to file a
7 discovery motion; and through his attorneys, he has done
8 that.

9 THE COURT: Yep. Yep.

10 MR. HILTON: If not, this hearing today, I think, is -
11 - is discovery motion enough to -- to ask for the
12 discovery from the State. And so in return, the State is
13 asking for reciprocal discovery, as well as any notice of
14 alibi.

15 THE COURT: Got it.

16 MR. HILTON: Anything else, Mr. Chisolm?

17 MR. CHISOLM: Yeah. You will be receiving
18 correspondence today, and you can disregard that. It was
19 in reference to this hearing.

20 MR. HILTON: Okay.

21 THE COURT: Okay. Great. All right. So just -- just
22 for your planning purposes, if there are just any matters
23 that -- that we need to address, we'll do that next week.

24 MR. CHISOLM: Yes, Your Honor.

25 THE COURT: Great. Thanks.

State of South Carolina)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 Don-Survi Chisolm,)
)
 Defendant.)
)
)

July 22, 2011
St. George, South Carolina

B e f o r e:.

The Honorable Diane S. Goodstein, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
Attorney for the Plaintiff

Don-Survi Chisolm, Pro se Defendant

John Loy, Esquire
Stand-by Counsel for Mr. Chisolm

Bonnie H. Kelly, CVR
Circuit Court Reporter

1 MR. HILTON: May it please the Court, Your Honor.

2 THE COURT: Yes.

3 MR. HILTON: Before you stands Don-Survi Chisolm.

4 He's charged in Indictment 2008-GS-18-0009, with the
5 offense of murder. He's been examined and is representing
6 himself on these charges, with stand-by counsel being Mr.
7 John Loy, with the Public Defender's Office.

8 I brought Mr. Chisolm over today to address discovery
9 issues that we had previously addressed in a hearing prior
10 to this. And also I wanted to bring Mr. Chisolm over,
11 because in a letter subsequent to that prior hearing, he
12 asked -- or he said he was still having trouble with his
13 subpoenas. And so I wanted to allow him to address that
14 issue, and deliver some discovery to him.

15 MR. CHISOLM: With the -- in regards to the letter,
16 that was the letter that day that I told you to disregard
17 that letter; that you'd be getting it the same day. I
18 addressed everything with the subpoena and the issues at
19 that time, so ---

20 THE COURT: Good.

21 MR. CHISOLM: Okay.

22 THE COURT: Good.

23 MR. CHISOLM: So ---

24 THE COURT: So that's -- that's ---

25 MR. CHISOLM: Yeah.

1 THE COURT: --- that's progressing.

2 MR. CHISOLM: Yes. That's taken care of.

3 THE COURT: Good.

4 MR. CHISOLM: I received mail from the Clerk of Court
5 this morning with subpoenas and everything. Everything's
6 taken care. That's --

7 THE COURT: Good.

8 MR. CHISOLM: That's been completely resolved and ---

9 THE COURT: Good.

10 MR. CHISOLM: --- I appreciate that.

11 THE COURT: Good. All right. And I understand that -
12 - I -- I just noticed that there was a box on Counsel
13 table, and I was hoping it wasn't for me, work for me.
14 And Counsel informed me, no, that it was work for you.

15 MR. CHISOLM: Yes, Your Honor.

16 THE COURT: So we -- you want to go through that now?

17 MR. HILTON: Well, in that previous hearing --

18 THE COURT: Uh-huh.

19 MR. HILTON: -- you know, the State was going to just
20 completely copy everything -- everything that we had
21 again, regardless of whether Mr. Chisolm had it or not.

22 We had addressed the video tapes, and determined that
23 he did have all of those video tapes that the State had in
24 its possession. And so that -- that part has been taken
25 care of.

1 THE COURT: There was one of them that had to be
2 checked on.

3 MR. CHISOLM: Actually, in -- in regards to that,
4 okay, one did need to be checked on, Your Honor, and
5 that's the one that I had. He did not have a copy of it,
6 and I'll be more than willing to give him that copy.

7 But I -- I've watched the video tapes and one of mine
8 is missing, an interview of David White. He had an
9 interview from November 16, 2007. It said it was on my
10 tape, but that portion is actually blank. So ---

11 THE COURT: Great.

12 MR. CHISOLM: --- I'm not sure -- it -- it would be
13 his fourth interview. I'm not sure if -- if he actually
14 had a fourth interview or if that's a misprint. But if
15 there is a fourth interview, I'm missing that and I -- I
16 need that.

17 THE COURT: And you think it's on that date?

18 MR. CHISOLM: Yes. It's on -- it says on the -- it
19 says on the thing "11/17 ---

20 THE COURT: Okay.

21 MR. CHISOLM: --- 07." I mean, 11/16. I apologize.
22 I'm sorry.

23 MR. HILTON: November 16, 2007, fourth interview with
24 David White?

25 MR. CHISOLM: Yes.

1 THE COURT: You have interviews 1, 2, and 3.

2 MR. CHISOLM: Yes. I -- I have those.

3 THE COURT: Great.

4 MR. HILTON: I will certainly check on that. I know
5 that Mr. Chisolm has expressed some concern, because we
6 did say that we would try to get him his discovery towards
7 the middle of this week. And -- and I didn't want to
8 delay that any more.

9 I still need to print out the pictures. There's some
10 discs in the -- CD -- compact discs in this -- in this box
11 that have the pictures on there. We still need to print
12 those out and give them to Mr. Chisolm.

13 THE COURT: Okay.

14 MR. HILTON: There's also the two enlarged maps that
15 we marked as Court's Exhibit 1 and 2 ---

16 THE COURT: Right.

17 MR. HILTON: --- for identification. I think it may
18 have been State's Exhibit 1 -- 1 and 2 for identification.

19 And also the index of material that we were going to
20 give to Mr. Chisolm.

21 THE COURT: Right.

22 MR. HILTON: That's been handwritten at this point,
23 but has not been typed up and prepared. And so I would
24 like to go ahead and deliver Mr. Chisolm the copies of all
25 the printed documentation and the four CDs containing the

1 pictures regarding the case. I'd like to give that to him
2 and then possibly next week -- I know there's a civil term
3 -- maybe at some point bringing Mr. Chisolm up, and I can
4 deliver the rest of that stuff with the maps and printed
5 pictures and an index of all the stuff that we have given
6 him.

7 THE COURT: When do you think you'll be prepared to --
8 to do that, because it -- and just -- just for Mr.
9 Chisolm's knowledge, I had Mr. Hilton in trial last week
10 and this week.

11 MR. CHISOLM: Yes, Your Honor.

12 THE COURT: That's a little unusual to have one
13 solicitor for both weeks. So that's probably why -- why
14 he's a little bit delayed, because I don't think he's
15 letting -- I think he's pretty much marshaling this
16 himself, just from my observation. So that's probably why
17 it's a little bit delayed.

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: And -- and go ahead. Tell me when you
20 think you'll be ready, because we'll talk about the term
21 next week. Because I don't want Mr. Chisolm anticipating
22 --

23 MR. HILTON: I think Tuesday or Wednesday of next
24 week, depending on the ---

25 THE COURT: Well, that's ---

1 MR. HILTON: --- term and how things are going with
2 it.

3 THE COURT: Exactly. Let -- let me share -- just let
4 me share with you where that term is at this point: At
5 this moment, there are two condemnation cases that we will
6 try. If those two cases settle -- it may be a little
7 problematic, because I'll have -- I'm going to need to get
8 Bonnie to come down. And Court Administration -- if they
9 think she's not in trial, they'll probably snatch her and
10 send her to Pickens or Walhalla or someplace.

11 So y'all gonna have to bear with me just a little bit
12 in that regard just because I've got to -- I've got to get
13 her.

14 And then I'm -- I'm out, and then I'm -- then on the
15 week of the -- of August the 1st, I'm in Orangeburg and I
16 don't know who's here.

17 But I -- we will absolutely endeavor to -- to -- as
18 soon as -- as Mr. Hilton's ready with those things, to get
19 those delivered to you, because I do want you to have them
20 just as soon as possible.

21 So it might be that if that term gets -- starts
22 falling apart -- if the term doesn't fall apart, we'll try
23 to do it Tuesday, because I -- it'll go into Tuesday, the
24 condemnations. But if that term has difficulty and begins
25 to fall apart, we will do that sometime next week, but I

1 gotta work with Court Administration to see when I can
2 grab Bonnie back ---

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: --- from Walhalla or Dillon or Pickens.

5 But we'll -- we'll just see how that goes. But we
6 will certainly get back together if at all possible next
7 week. But if there's a little bit of a hiccup, that's
8 why.

9 MR. CHISOLM: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. HILTON: I ---

12 MR. CHISOLM: I apologize.

13 MR. HILTON: Go ahead.

14 MR. CHISOLM: Is it at all possible that you have a
15 written inventory right now of what's there, since I have
16 more time on my hands and over the weekend I can go
17 through everything and -- and like, if you just want to
18 photocopy that for me or -- and I can go through
19 everything. And that way on Tuesday, if something was
20 missing out of there, we -- we'd know on Tuesday instead
21 of, you know, having to find out later on that week.

22 MR. HILTON: I do not have the inventory here yet.

23 MR. CHISOLM: Okay.

24 MR. HILTON: Like I say, that's in the process of
25 being typed up.

1 MR. CHISOLM: Okay.

2 MR. HILTON: But I will get that to you. I'm
3 confident that everything that's on the inventory is in
4 the -- in the stack; however, if it's not, Mr. Chisolm can
5 write me or let his liaison know at the jail, and I'm able
6 to contact him fairly quickly ---

7 THE COURT: Have you got the handwritten one? Where's
8 that?

9 MR. HILTON: It's between two interns.

10 THE COURT: Gotcha.

11 MR. HILTON: One intern has some of the stuff, and the
12 other intern has the other stuff. And they're not --
13 well, one of them's here with me today; the other one is
14 not. And so --

15 THE COURT: So we couldn't get -- the handwritten, we
16 could only give Mr. -- Mr. Chisolm half.

17 MR. HILTON: We could only give part ---

18 THE COURT: So -- but you'll endeavor to -- to get
19 that to him.

20 MR. HILTON: I anticipate that everything should be
21 complete when we ---

22 THE COURT: Okay.

23 MR. HILTON: --- when or if we can bring him over next
24 week and I can give him the printed pictures, the index,
25 and the copies of the -- of the -- of the large maps ---

1 THE COURT: Okay.

2 MR. HILTON: --- that I showed to him at the previous
3 hearing.

4 THE COURT: Okay.

5 (Mr. Hilton confers with the intern.)

6 THE COURT: Oh, great. The we can give -- let's give
7 him the handwritten one.

8 MR. CHISOLM: Thank you.

9 THE COURT: That way you can look at over the weekend.

10 MR. CHISOLM: Thank you, Your Honor.

11 THE COURT: Understanding it's going to be "prettied
12 up;" it's going to be typed.

13 MR. HILTON: We'll -- we'll note that as the
14 "unofficial copy."

15 THE COURT: We will note it -- yeah. It will be the
16 handwritten one.

17 MR. CHISOLM: Yes, Your Honor.

18 THE COURT: But that would be great, because as you
19 said, with the weekend, you can do a comparison. That
20 way, when we come back the first of the week, if there's
21 some issues with it, we can deal with them early.

22 MR. CHISOLM: Yes.

23 THE COURT: That sounds good. Yeah. I like that.
24 That's good. Great.

25 MR. HILTON: While we're waiting on those copies, for

1 security purposes, I've been in contact with the jail.
2 They have -- it's my understanding -- and Mr. Chisolm can
3 correct me if I'm wrong -- but they have set up a room for
4 Mr. Chisolm where he can go in and watch his video tapes.
5 They're not just going to give him all the stuff to take
6 back in the cell with him.

7 THE COURT: I understand.

8 MR. HILTON: But he can watch those video tapes, and I
9 think that's going to be true with the -- with the CDs as
10 well.

11 But for security purposes, I'd like to turn over this
12 box of stuff to the jailer, so that that can be delivered
13 to that room for Mr. Chisolm.

14 THE COURT: Okay. Well, here's what I want to do: I
15 want to seal it and sign it, both of you.

16 MR. CHISOLM: Yes, Your Honor.

17 THE COURT: Because I want, just for -- for safe-
18 keeping purposes, make sure it doesn't fall out of the --
19 looks kind of heavy. Make sure it doesn't fall out and
20 stuff spill out of it. Who's got packing tape?

21 (Brief pause.)

22 MR. HILTON: Mr. Chisolm, let me show you in here now.

23 (Brief pause as Mr. Hilton opens a box and confers
24 with Mr. Chisolm.)

25 THE COURT: Oh. And I wanted the record to reflect

1 that Mr. Loy is present in the courtroom.

2 (Brief pause.)

3 THE COURT: And Mr. Chisolm, draw a line.

4 (Mr. Chisolm complies.)

5 THE COURT: There you go. There you go. Across the -

6 - there you go -- across the box and across the tape.

7 (Mr. Chisolm complies.)

8 THE COURT: There you go. Great. Great. Yeah.

9 There you go. Just like that. Yep. Okay. Great. All
10 right. Anything else we need to do?

11 MR. HILTON: We can just ---

12 THE COURT: Didn't you ---

13 MR. HILTON: --- set it aside until we get that other
14 documentation.

15 THE COURT: Oh. That other -- very well. Of course.
16 Of course.

17 Any issues that you're having other than that?

18 MR. CHISOLM: No, Your Honor.

19 THE COURT: Okay. Great. You have enough time to
20 look at the tapes and things like that?

21 MR. CHISOLM: Yes, Your Honor.

22 THE COURT: Okay.

23 MR. HILTON: And I do -- I do know, from Mr. Loy, that
24 Mr. Chisolm expressed some desire to speak to me about
25 whatever issue. And if -- if you want to do that, now's

1 the time ---

2 MR. CHISOLM: That -- it was -- that was ---

3 THE COURT: That was ---

4 MR. CHISOLM: --- in reference to all this.

5 THE COURT: --- getting your stuff? Great.

6 MR. HILTON: Okay.

7 THE COURT: Good. Good, good, good.

8 (Brief pause.)

9 MR. HILTON: Let me just run check, Your Honor.

10 THE COURT: Okay. Thank you.

11 (Briefly off the record.)

12 THE COURT: Oh, no. You're -- you're back empty
13 handed.

14 MR. HILTON: Your Honor, it was written on legal-size
15 paper. So he had to go to the Clerk's office because we
16 didn't have any legal-size paper.

17 THE COURT: Got it. Great. Good.

18 (Briefly off the record.)

19 THE COURT: Great. Great, great, great.

20 MR. HILTON: Just hand him the paperwork.

21 (Mr. Hilton hands papers to Mr. Chisolm.)

22 MR. HILTON: Count those. I think it's 24.

23 (Mr. Chisolm complies.)

24 MR. CHISOLM: 24.

25 (Brief pause.)

1 THE COURT: All right. Mr. Loy has arrived. How many
2 pages did -- did you count, Mr. Hilton?

3 MR. HILTON: I think both of us counted 24 pages.

4 THE COURT: How many pages did you count?

5 MR. CHISOLM: 24, Your Honor.

6 THE COURT: 24. All right. 24 pages. And -- and
7 that is the handwritten inventory, and you anticipate it's
8 going to be typed.

9 MR. HILTON: That's going to be a typed list on our
10 letterhead. That's 24 pages of relatively detailed
11 information. Nothing's grouped more than just a few
12 pages. So it's fairly descriptive of what should be
13 contained in the box being ---

14 THE COURT: In the box.

15 MR. HILTON: --- delivered to him today.

16 THE COURT: In the box that's already been delivered
17 to the folks who are going to deliver the sealed box back
18 to the jail.

19 MR. CHISOLM: Yes, Your Honor.

20 THE COURT: Very well. All right. Anything further
21 today?

22 MR. HILTON: Not that I'm aware of. Mr. Chisolm?

23 MR. CHISOLM: Nothing -- nothing ---

24 THE COURT: Mr. Chisolm, nothing from you?

25 MR. CHISOLM: --- further, Your Honor.

State of South Carolina) In the Court of General Sessions
) First Judicial Circuit
 County of Dorchester) 2008-GS-18-00009

State of South Carolina)
)
 Plaintiff,)
)
 Vs.) Transcript of Record
)
 Don-Survi Chisolm,)
)
 Defendant.)
)
 _____)

August 22 - 23, 2011
 Orangeburg, South Carolina

B e f o r e:

The Honorable Edgar W. Dickson, Judge

A p p e a r a n c e s:

Russell Hilton, Esquire
 Matt Austin, Esquire
 Attorneys for the Plaintiff

Don-Survi Chisolm
 Pro se Defendant
 John Loy, Esquire
 As Stand-by Counsel for the Defendant

Bonnie H. Kelly, CVR
 Circuit Court Reporter

1 MR. CHISOLM: My first -- my first argument, Your
2 Honor, is that officers willfully and knowingly, with
3 reckless disregard, omitted facts, and abandoned the truth
4 while submitting false information on an affidavit for a
5 warrant.

6 THE COURT: All right, sir.

7 MR. CHISOLM: My second argument on this warrant, Your
8 Honor, be that the search warrant failed to mention
9 specific information that -- I'm sorry. The search
10 warrant failed to mention specific information that was
11 being -- specific items, I'm sorry, that were being
12 sought. In such, it -- let's see. Give me one second,
13 Your Honor.

14 THE COURT: Yes, sir.

15 MR. CHISOLM: In such that the search warrant violated
16 the -- the -- violated the express constitutional
17 requirement of warrants, particularly describing things
18 and items to be sought.

19 THE COURT: All right, sir. Anything else?

20 MR. CHISOLM: No, Your Honor. I'm prepared to proceed
21 as --

22 THE COURT: You need to tell me how they abandoned the
23 truth.

24 MR. CHISOLM: Okay. All right. I'll -- you want me
25 to start with the facts, Your Honor?

1 THE COURT: Yes, sir.

2 MR. CHISOLM: Okay. September -- on September 15,
3 2007, Your Honor, detectives responded to a homicide on
4 the Clubhouse Road in the Ridgeville area. Through
5 further investigation on it, it was determined that the
6 victim died on September 13, 2007.

7 After -- detectives continued their investigation, and
8 it was determined that two of the last people to be seen
9 with the victim on September 13, 2007, was my co-
10 defendant, David Leon White, and myself.

11 On September 17, 2007, detectives served a search
12 warrant for my vehicle, 2005 Silver Dodge Durango, issuing
13 -- the Silver Dodge Durango. On the affidavit for the
14 warrant, officers cited inconsistencies and statements
15 received throughout their investigation as probable cause
16 for the issuance of this warrant.

17 The warrant was executed. No items of evidentiary
18 value were taken from the vehicle at that time. The
19 investigation continued.

20 On September 27, 2007, officers submitted for and
21 received yet another search warrant for my 2005 Dodge
22 Durango. The affidavit for this search warrant was word-
23 for-word, identical as the affidavit for the September 17,
24 2007 search warrant less the addition of a recent set of
25 facts pertaining to the purchase of a car seat at LKQ Auto

1 Parts. I'll read specifically, Your Honor, the addition
2 to the warrant.

3 THE COURT: All right.

4 MR. CHISOLM: And -- and this is what is in question,
5 Your Honor.

6 THE COURT: Okay.

7 MR. CHISOLM: The -- the additional ---

8 THE COURT: And this is the additional -- you're
9 saying this is additional wording?

10 MR. CHISOLM: The -- the additional wording, yes.

11 THE COURT: Okay.

12 MR. CHISOLM: All right. As it pertains to the
13 September 27, 2000 [sic] search warrant.

14 THE COURT: Yes, sir.

15 MR. CHISOLM: The additional wording is (as read) "On
16 November 20 -- I mean, September 26, 2007, Detective Walsh
17 and Detective Giglio met with employees at LKQ Auto Parts
18 of Charleston. Officers obtained verbal and written
19 statements that Don-Survi Chisolm purchased a passenger
20 seat -- passenger front seat for a Dodge Durango on
21 September 14, 2007. This search warrant is requested to
22 -- is requested to determine if any evidence of the crime
23 is in -- in -- is inside the above vehicle."

24 THE COURT: And that's the additional wording?

25 MR. CHISOLM: That's the additional wording, Your

1 Honor. And also in the search warrant, it -- it follows
2 to my second argument that detectives knew that they were
3 -- they were searching for a car seat. And in the
4 description of property being sought, detectives failed to
5 mention that -- that they were particularly looking for
6 this car seat.

7 THE COURT: Okay. And -- all right, sir. And Mr.
8 Chisolm, let me make sure I understand this. They said
9 that L -- what, LKQ Auto Parts?

10 MR. CHISOLM: Yes, Your Honor.

11 THE COURT: Said that who purchased the front seat?

12 MR. CHISOLM: The Detective Walsh and Detective Giglio
13 said that I, Don-Survi Chisolm, purchased the car seat on
14 September 14, 2007.

15 THE COURT: And when you say a "car seat," like for an
16 infant?

17 MR. CHISOLM: No. I'm sorry, Your Honor. A front
18 passenger seat for my 2005 Dodge Durango.

19 THE COURT: Okay. A replacement front passenger seat?

20 MR. CHISOLM: Replacement, yes. Yes, Your Honor.

21 THE COURT: Okay. All right, sir. Just wanted to
22 make sure I understood. Okay. All right, sir.

23 MR. CHISOLM: Yes, Your Honor. Okay. Now --

24 THE COURT: Yes, sir.

25 MR. CHISOLM: -- as -- as -- as we have just covered,

1 I've received all of my discovery.

2 THE COURT: Uh-huh.

3 MR. CHISOLM: And, Your Honor, at the conclusion of
4 discovery, the -- the State has failed to provide any
5 proof of a purchase or a final transaction of a seat -- a
6 passenger seat for a 2005 Dodge Durango on 9/14/2007 or
7 any day thereafter by me, Don-Survi Chisolm, at LKQ Auto
8 Parts.

9 As per -- along with that, Your Honor, detectives --
10 I'm sorry -- that the State has failed to provide any
11 witness statements of a final transaction or a purchase
12 taking place by me at LKQ Auto Parts on 9/14/2007 or any
13 day thereafter.

14 The State has also, Your Honor, failed to provide any
15 witness statements of me taking control or possession of a
16 passenger seat at LKQ Auto Parts on 9/14/2007 or any day
17 thereafter.

18 And lastly, Your Honor, the detectives -- I'm sorry,
19 the State has failed to provide any witness identification
20 of me being at LKQ Auto Parts on 9/14/2007 or any day
21 thereafter.

22 And when I -- when I speak of any witness
23 identification, Your Honor, I mean, they -- they have not
24 provided any photo lineup, any photos that are signed and
25 dated by any witnesses that they actually saw me at the

1 location that the detectives are saying I was at.

2 THE COURT: All right. Anything else with that?

3 MR. CHISOLM: No, Your Honor.

4 THE COURT: Okay. Mr. Chisolm, what evidence did they
5 find as a result of this search warrant that you want me
6 to ---

7 MR. CHISOLM: As a -- as a result of the search
8 warrant, Your Honor, the -- they came upon the knowledge
9 that my car seat was changed. Anything else -- my -- my
10 car was actually cleared of -- of any apparent crime. But
11 the knowledge -- the knowledge of the car seat, I -- I
12 want that to be suppressed.

13 They -- there's a cell phone -- two cell phones and
14 SIM cards -- actually, I can be very specific. I'm sorry.
15 The knowledge of the car seat being changed, Your Honor,
16 for the 2005 Dodge Durango, is one of the things I would
17 like suppressed.

18 Also, in addition, Your Honor, it was a Nokia cell
19 phone, Serial No. 0516267JL05TC, Model No. 601D. This
20 cell phone was pink and blue in color. Along with that is
21 a SunCom SIM card, 8901490110014686766.

22 And with -- with the cell phone, Your Honor, when the
23 State searched the vehicle, they actually without warrant,
24 searched the cell phone and came up with a -- with a
25 number for the cell phone as [REDACTED]. And I ask

1 that the knowledge of that number be suppressed, Your
2 Honor, and along with that, any phone records that -- that
3 were obtained from receiving that number.

4 THE COURT: And the reason you want the knowledge of
5 the cell phone suppressed was because ...

6 MR. CHISOLM: I -- I -- I think that the State intends
7 to use any knowledge of this cell phone against me.

8 THE COURT: No. I understand that.

9 MR. CHISOLM: Oh.

10 THE COURT: But you -- you're saying it's part of an
11 illegal search or ...

12 MR. CHISOLM: Yes, Your Honor.

13 THE COURT: It's part of -- they found it at the same
14 time they did the --

15 MR. CHISOLM: Well, they found it inside the truck and
16 they actually illegally searched it after it was with the
17 truck. Which is the second motion I have if this motion
18 didn't go through. I have a motion for the illegal search
19 and seizure of the cell phone.

20 THE COURT: Okay.

21 MR. CHISOLM: With cell phone records and numbers.

22 THE COURT: Now, is this -- is that a result of the
23 --

24 MR. CHISOLM: This was as a result of -- of the search
25 warrant, Your Honor.

1 THE COURT: The same search warrant?

2 MR. CHISOLM: Yes. When they -- when they -- they
3 pulled me over for the search warrant, Your Honor, and I
4 was ordered out of -- out of the vehicle at gunpoint by
5 six officers.

6 THE COURT: Uh-huh.

7 MR. CHISOLM: When they ordered me out of the vehicle,
8 they -- anything that was inside of the vehicle had to be
9 left inside the vehicle -

10 THE COURT: Uh-huh.

11 MR. CHISOLM: -- at the time. So that was left inside
12 of the vehicle.

13 THE COURT: Okay.

14 MR. CHISOLM: Yes.

15 THE COURT: Okay. The -- the cell phone -

16 MR. CHISOLM: Yes, Your Honor.

17 THE COURT: -- was inside the vehicle?

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: Not in the trunk of the vehicle?

20 MR. CHISOLM: No, Your Honor. It was -

21 THE COURT: Okay.

22 MR. CHISOLM: -- inside -- I was actually ordered to
23 put everything that was in my hands down by six officers
24 at gunpoint, so that they could commandeer the vehicle.
25 And -

1 THE COURT: And that was as part of the September 27,
2 '07 search warrant?

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Okay. All right, sir. What else, Mr.
5 Chisolm?

6 MR. CHISOLM: That's it, Your Honor. I'm prepared to
7 call any witnesses if need be to further my points.

8 THE COURT: Do you have -- I --

9 MR. CHISOLM: I would actually like to call Detective
10 Giglio -- the detectives who served the search warrant, so
11 that they can attest to their case notes and the fact that
12 no one ever acknowledged me purchasing anything on
13 9/14/2007, Your Honor. If that's possible.

14 THE COURT: I don't know if -- I -- is -- is --

15 MR. CHISOLM: If the State contests.

16 THE COURT: -- detective here?

17 MR. HILTON: He is here, Your Honor.

18 THE COURT: Okay. Well, do you -- bring him on up.
19 We'll --

20 MR. HILTON: And Your Honor, while he's coming up, I
21 just -- the search warrant that Mr. Chisolm is talking
22 about and I'll show it to him.

23 THE COURT: Yeah. Make sure --

24 MR. HILTON: We'll make that a Court's exhibit..

25 THE COURT: Okay. Mark it -- no. I need to -- I

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 21

1 THE COURT: I notice you've got a lot of stuff there.

2 A Yes, sir.

3 THE COURT: All right. All right, Mr. Chisolm.

4 MR. CHISOLM: If I could have just one more second,
5 Your Honor. I just want to gather a couple of pieces of
6 paper. I apologize for the inconvenience.

7 THE COURT: Take your time.

8 (Brief pause)

9 THE COURT: Are you ready, Mr. Chisolm?

10 MR. CHISOLM: Yes, Your Honor.

11 THE COURT: Okay. You -- we've already sworn -- is it
12 Deputy Giglio?

13 A Yes, Your Honor.

14 THE COURT: He's already been sworn.

15 MR. CHISOLM: All right.

16 DIRECT EXAMINATION BY MR. CHISOLM:

17 Q Detective Giglio --

18 A Yes, sir.

19 Q -- is it true that you signed the search warrant that
20 you submitted the affidavit for 9/2/7 -- 9/27/2007 search
21 warrant?

22 A Yes, sir, I did.

23 Q Okay. Did you report to LKQ Auto Parts on 9/14/2007?

24 A If you'll give me just a moment to refer to my notes.

25 Q Yes.

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 22

1 (Brief pause)

2 A Yeah. I -- I didn't -- your question was, did I
3 report to LKQ on September 14th?

4 Q Yes.

5 A Okay. I -- I went LKQ Auto Parts on September 27 and
6 obtained a written statement from Mr. Richard Jones, who
7 was an employee of LKQ.

8 Actually, Detectives Bistromowitz and Detectives
9 Morgan, I understand made contact with the employees of
10 LKQ which led us to probe that investigation further in
11 the matter.

12 Q All right. I apologize. Yes. That was 9/26. Okay.
13 Did -- did you receive any witness state -- I'm sorry.
14 Did you receive any receipts or any proof of a
15 transaction, a finalized transaction or purchase, taking
16 place on 9/14/2007 from LKQ Auto Parts?

17 A No, sir. I did not receive any finalized
18 transactions. I received an initial copy of the receipt
19 with a -- with a quote or request for a seat purchase.
20 Also, obtained statements and information from employees
21 of LKQ who identified Mr. Chisolm and his wife Natalia as
22 customers who came in the business to acquire a seat.

23 And then upon further investigation in this case ---

24 Q Detective Giglio --

25 THE COURT: Wait a minute. Wait a minute. Let him

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 23

1 finish answering the question.

2 A Okay. Upon further investigation in this case, after
3 the search warrant was executed on your vehicle, we
4 compared the serial numbers from the passenger seat side,
5 that was placed in your vehicle to the vehicle at LKQ Auto
6 Parts which matched the same serial numbers. Therefore,
7 the driver's seat that was still at LKQ matched the
8 passenger side seat that was now in your vehicle.

9 Q Detective Giglio, the -- the question that's being
10 asked is: On 9/2 -- on 9/27/2007, when you served the
11 search warrant, you stated that you -- that employees at
12 LKQ Auto Parts confirmed a purchase on 9/14/2007. We are
13 asking -- I am asking, as to your knowledge at the time of
14 9/27/2007, not upon your further investigation, On
15 9/27/2007, with the combined knowledge of yourself,
16 Detective Walsh, Detective Bistromowitz, and Detective
17 Morgan, over a two-day investigation, did you all come up
18 with any finalized purchase or proof of a transaction at
19 LKQ Auto Parts, yes or no?

20 A No, sir. I didn't find any final proof that you had
21 purchased it. But I was advised that you came in
22 possession of it. It was disputed whether or not the
23 purchase was a legal transaction.

24 It was unclear on how the seat came into your
25 possession. But ...

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 24

1 Q Okay. According to your answer you just said, you
2 were aware that I came into possession of it. And at the
3 end of your answer, you said you were -- it was not
4 determined how I came into possession of it. The -- the
5 question I'm asking is: Did anyone -- did you receive any
6 statements regarding exactly how I came into possession of
7 the seat? Did anyone tell you? Did you receive any
8 statements from any witnesses that a seat from LKQ Auto
9 Parts was taken by me on that day, on 9/14/2007? Is there
10 anyone that confirmed that they saw me clearly take
11 possession and control of a seat from LKQ Auto Parts on
12 September 14, 2007?

13 A Give me just one second, sir.

14 Q Yes.

15 THE COURT: Take your time, Detective.

16 (Brief pause)

17 A Mr. Chisolm, I'm sorry. Could you repeat the
18 question?

19 Q Yes, sir. Did you receive any statements from any
20 employees at LKQ Auto Parts --

21 A I ---

22 Q -- that they witnessed me take control or possession
23 of a seat from -- from LKQ Auto Parts on September 14,
24 2007?

25 A No, sir. I -- I -- I did not. Through the course of

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 25

1 investigations, Detective Morgan and Detective
2 Bistromowitz initially responded to LKQ Auto Parts. They
3 inquired in regards to the seat which led us to
4 investigation. Like you said, we never received any final
5 transaction receipt that you ---

6 Q So your answer is "no"?

7 A No, sir.

8 Q Thank you. All right.

9 MR. CHISOLM: Your Honor, I'd like to put the -- the
10 Court's Exhibit, the receipt.

11 THE COURT: Okay. It would be Defense Exhibit, your
12 defense.

13 MR. CHISOLM: I'm sorry. Yes.

14 THE COURT: Okay.

15 MR. CHISOLM: Defense Exhibit. The receipt that Mr.
16 -- Detective Giglio mentioned.

17 THE COURT: Uh-huh. If you'd mark that as Defendant's
18 1.

19 (WHEREUPON, Defendant's Exhibit No. 1 was marked and
20 entered)

21 THE COURT: Do -- do you need it or is that for me to
22 ---

23 MR. CHISOLM: No. I -- I do not need it, Your Honor.

24 THE COURT: Okay.

25 MR. CHISOLM: I have a copy.

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 26

1 THE COURT: Okay. If you'd hand it up. I'm assuming
2 you want me to look at it.

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Okay. All right.

5 Q Detective Giglio, in reference to this receipt --

6 A Yes, sir.

7 Q -- could -- could you tell me exactly what this
8 recreated sale receipt? What -- what it is ---

9 THE COURT: I'm -- I'm going to hand him the exhibit
10 -

11 MR. CHISOLM: Yes.

12 THE COURT: -- so he can look -- look it over.

13 MR. CHISOLM: Yes, Your Honor.

14 THE COURT: This is Defendant's Exhibit No. 1. And
15 this is an invoice from -- looks like -- well, I'll let
16 you look at it --

17 A Yes, sir.

18 THE COURT: -- and see if you've seen it. Okay. And
19 Deputy Giglio, have you seen that receipt before?

20 A Yes, Your Honor.

21 THE COURT: Okay. All right. Now, all right. Mr.
22 Chisolm.

23 Q Could -- could you tell me -- actually, I'm sorry.
24 Could you tell me what this recreated sales receipt is --
25 is saying? Does it -- it's not a finalized transaction.

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO

27

1 What information did you receive from this receipt?

2 A The receipt itself or the ---

3 Q Well, from the employees. What -- what -- what was
4 the basis of you collecting this receipt and putting it
5 into evidence?

6 A Through the course of investigation, we noted that Mr.
7 Chisolm, through his cell phone records had contacted
8 numerous auto parts stores or junk yards looking for a
9 seat for a Dodge Durango. Or it's -- while speaking with
10 employees of LKQ, they recalled a transaction where a
11 gentleman by the name of "Don" had called and inquired
12 about a passenger side seat for a Dodge Durango.

13 Based on that and -- and it was my understanding that
14 LKQ's policy, prior to them giving a quote, is they create
15 a counter receipt for -- to document the request or
16 inquiry whether or not they have the part.

17 Q Okay. In -- in your case notes -- I'm sorry. In your
18 case notes and in other -- other case notes, it was
19 reported that that receipt is the -- is the proof of a
20 credit card being declined from LKQ Auto Parts on that
21 date at that exact time which is 1:07 p.m.; is that
22 correct?

23 A Yes, sir.

24 Q All right. And would you happen to notice the -- the
25 credit card numbers in the right-hand corner above -- I

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 28

1 mean -- I'm sorry, below the time at 1:07?

2 A Yes, sir.

3 Q All right. And did y'all - did detectives investigate
4 who this credit card belonged to?

5 A Yes, sir, we did.

6 Q All right. And the credit card did not belong to me;
7 is that correct?

8 A That is correct.

9 Q All right. And this is also in reference to your
10 knowledge at the time you issued the search warrant. The
11 credit card did not belong to me for a purchase -- the
12 credit card -- I'm sorry, was declined on 9/14/2007, of a
13 -- and the credit card did not belong to me. You were
14 aware of this; is that correct?

15 A Yes, sir. The credit card belonged to another
16 individual --

17 Q Okay.

18 A -- who gave us statements.

19 Q Okay. You were aware that the credit card did not
20 belong to me even though it was quoted with the name
21 "Don." My name is Don-Survi Chisolm, but it was quoted
22 with the name "Don."

23 The credit card did not belong to me. You were fully
24 aware that no purchase took place on 9/14/2007 and it --
25 indeed it was not me who attempted to use the credit card

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 29

1 because the credit card is not in my name. There's --
2 there's no proof that I could have --

3 THE COURT: Are -- you asked him a question?

4 MR. CHISOLM: I'm sorry.

5 THE COURT: You can ask him the question. I -- I --

6 MR. CHISOLM: Yes.

7 THE COURT: But I -- I want you to --

8 MR. CHISOLM: Go on too long. I -- I --

9 THE COURT: Yes, sir.

10 MR. CHISOLM: -- apologize, Your Honor.

11 THE COURT: But I'm not trying to discourage you. But
12 what I want you to do is just ask him --

13 MR. CHISOLM: Okay.

14 THE COURT: -- ask him the question. I think you want
15 to make sure he didn't -- he didn't find anything that
16 said that you purchased that; is that correct?

17 MR. CHISOLM: Yes. Yes, Your Honor.

18 THE COURT: Okay.

19 MR. CHISOLM: In -- in -- in short.

20 Q Is there any proof that I purchased anything on
21 September 14, 2007?

22 A The time the search -- search warrant was executed was
23 based on -- to prove information in regards to the seat
24 purchase as well as evidence of this crime.

25 Through the course of investigation, we led -- we were

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 30

1 led in the direction of LKQ Auto Parts based on statements
2 from the credit card owner, the person in possession of
3 it, giving you access to the numbers, through phone
4 records that led us to LKQ, through employees of LKQ
5 identifying you at that business.

6 Q Okay. Detective Giglio, you did not answer the
7 question. And the things that you are pertaining [sic] to
8 are your investigation after September 27, 2007.

9 What I'm asking is: When you issued the search
10 warrant to a magistrate -- when you applied for the
11 warrant to a magistrate on September 27, 2007, was there
12 any definitive proof, as listed on the search warrant,
13 that I purchased a seat from LKQ Auto Parts on 9/14/2007?

14 A Through ---

15 MR. HILTON: I'm going to object. That's already been
16 answered. He just answered that same question.

17 THE COURT: Yeah. I think he -- I think he answered
18 that earlier -

19 MR. CHISOLM: Okay. The answer's "no."

20 THE COURT: -- when -- when he said -- he said there
21 was no final purchase receipt.

22 MR. CHISOLM: Okay.

23 THE COURT: I believe that's what he testified to
24 earlier.

25 MR. CHISOLM: Yes, Your Honor.

1 THE COURT: Is that correct?

2 A That's correct. Yes, Your Honor.

3 THE COURT: Okay.

4 Q And also, just to reiterate, no one -- no -- no -- you
5 have no witnesses saying that I took possession or control
6 of a seat from LKQ Auto Parts on 9/14/2007?

7 A I have no confirmed documentation that you took
8 possession of that seat.

9 Q So that's a "no"?

10 A I have no confirmed receipts. If -- if that answers
11 your question. I have no --

12 Q What ---

13 A -- final sales receipt available.

14 Q What I'm asking is: Do you have any witness
15 statements, verbal or written, that I took possession of a
16 seat from LKQ Auto Parts on 9/14/2007?

17 A No, sir.

18 Q Okay. Now, your -- your -- your case notes also note
19 that witnesses ID'd myself and my wife at the time,
20 Natalia Chisolm, as being at LKQ Auto Parts on September
21 14, 2007. Do you have -- did you provide the State with
22 any photos, or lineups, any -- any signed photos, signed
23 and dated by these witnesses, IDing me as being at LKQ
24 Auto Parts on September 14, 2007?

25 A Any and all documents or evidence pertaining to this

DIRECT EXAMINATION BY MR. CHISOLM - DETECTIVE GIGLIO 32

1 case were -- was turned over to the Solicitor's Office.

2 In regards to who presented those lineups to the employees
3 at LKQ, there -- through the course of investigation,
4 there was other detectives, other investigators who may
5 have presented those.

6 Q Thank you.

7 MR. CHISOLM: Your Honor, I'd like to go on the record
8 and say that I have received full discovery.

9 THE COURT: Uh-huh.

10 MR. CHISOLM: I also have -- I'm sorry. I also have
11 the inventory of discovery. There is no -- there -- there
12 are no pictures or any signed lineups IDing myself or my
13 ex-wife at the time, Natalia Chisolm, being at LKQ Auto
14 Parts on 9/14/2007 by any witnesses of LKQ -- any
15 employees, I'm sorry, of LKQ Auto Parts.

16 THE COURT: Okay. Any other questions of this
17 witness?

18 MR. CHISOLM: I have no -- no more questions for the
19 witness, Your Honor.

20 THE COURT: All right.

21 MR. CHISOLM: Actually -- I'm -- I'm sorry, Your
22 Honor. I do have them.

23 Q So just -- just to be sure. When you submitted the
24 warrant to the magistrate stating that Detective Walsh and
25 Detective Giglio met with employees of LKQ Auto Parts of

CROSS-EXAMINATION BY MR. HILTON - DETECTIVE GIGLIO

33

1 Charleston and obtained verbal and written statements that
2 Don-Survi Chisolm purchased a passenger front seat of a
3 Dodge Durango on 9/14/2007, that was incorrect?

4 A I believe I've already answered that, but ---

5 Q Yes. Thank you.

6 MR. CHISOLM: I have no further questions, Your Honor.

7 THE COURT: All right. Mr. Hilton, any questions?

8 CROSS-EXAMINATION BY MR. HILTON:

9 Q Detective Giglio, I think the issue is, did y'all have
10 knowledge that Mr. Chisolm purchased a seat from LKQ prior
11 to the obtaining of the September 27 search warrant. All
12 right. So let's -- let's talk about that.

13 (WHEREUPON, State's Exhibit No. 1 was marked and
14 entered)

15 THE COURT: This would be State's 1?

16 MR. HILTON: Yes, sir.

17 THE COURT: Okay. And I know that -- know -- I know
18 that you showed that to Mr. Chisolm.

19 MR. HILTON: I did, Your Honor.

20 THE COURT: Okay.

21 Q Detective Giglio, who was the other investigator --
22 lead investigator in the case with you?

23 A Detective Walsh.

24 Q Okay. And did she -- well, she interviewed witnesses
25 in this case as well; right?

1 this is just cautionary, you have to be careful of any
2 assertions that you would make in both your opening
3 argument and possibly in your closing argument that would
4 be taken as testimony. Do you understand that?

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: Okay. All right, sir. It's my
7 understanding that in picking the jury, we're going go
8 with -- you will have 10 strikes.

9 MR. CHISOLM: Yes, Your Honor.

10 THE COURT: Okay. I'm planning -- yes, sir? You were
11 getting ready to ask a question?

12 MR. CHISOLM: I'm sorry, Your Honor. I -- I requested
13 to sequester the jury. I did that --

14 THE COURT: Okay.

15 MR. CHISOLM: -- last week. I forgot to --

16 THE COURT: Well, tell -- tell me about that then,
17 please, sir.

18 MR. CHISOLM: -- mention that again. One second.

19 THE COURT: Tell me why you want to sequester the
20 jury.

21 MR. CHISOLM: Yes, Your Honor. I believe the
22 potential media coverage of my case will have a profound
23 affect on the jury's ability to presume innocence. Any
24 time I've been mentioned in news in the past, Your Honor,
25 has been in an unfavorable light.

1 MR. HILTON: Potentially.

2 THE COURT: And have you -- have you given me a
3 witness list?

4 MR. HILTON: I gave it to the court reporter.

5 THE COURT: Okay.

6 MR. HILTON: And I've given it to the defendant. I
7 don't think I passed it up to the Court.

8 THE COURT: Yeah. If you'd -- if you wouldn't mind.
9 Okay. All right.

10 Now, do you have any voir dire other than just general
11 voir dire?

12 MR. HILTON: Just general voir dire and ask if they
13 know anything about this case.

14 THE COURT: Right. Okay. All right.

15 MR. HILTON: And just to make sure that witness list I
16 gave you does have 43 witnesses; is that correct?

17 THE COURT: Yeah. Great. All right.

18 Mr. Chisolm, do you -- you told me earlier you did not
19 have any additional witnesses?

20 MR. CHISOLM: No, Your Honor.

21 THE COURT: Okay.

22 MR. CHISOLM: No, Your Honor. I do not.

23 THE COURT: And then do you have any voir dire?

24 MR. CHISOLM: Yes, Your Honor.

25 THE COURT: Okay. You want to hand that up to me?

1 (Court security officer hands a document to the Court)

2 MR. CHISOLM: If I ---

3 THE COURT: Have you -- have you shown it a copy to

4 ---

5 MR. CHISOLM: No. I'm sorry.

6 THE COURT: Yeah.

7 MR. HILTON: I'll take a look at it.

8 MR. CHISOLM: Okay.

9 (Brief pause)

10 THE COURT: Okay. Any objection to any of these?

11 MR. HILTON: I -- I mean, I just glanced at them.

12 THE COURT: Oh. Well, here ---

13 MR. HILTON: Most of them, I think, are covered in --
14 in the general instruction.

15 THE COURT: Right.

16 MR. HILTON: There's some specific ones I don't have a
17 problem with --

18 THE COURT: Okay.

19 MR. HILTON: -- any family member in law enforcement.

20 THE COURT: Okay.

21 MR. HILTON: Especially the bottom one: "Is anybody
22 opposed to self representation."

23 THE COURT: Yeah.

24 MR. HILTON: I think those are appropriate.

25 THE COURT: Okay. All right, sir. All right.

1 when it comes out, just store it away in your mind, and
2 you might get a few other pieces, and then you'll start
3 seeing the picture. And I'm convinced at the end of this
4 trial you will see the whole picture.

5 And I'm going to talk to you more at the end of the
6 trial about the burden of proof and beyond a reasonable
7 doubt. And keep in mind, beyond a reasonable doubt is not
8 beyond a shadow of a doubt, not beyond any possible doubt.
9 It's beyond a reasonable doubt. And I'll tell you, again,
10 that beyond a reasonable doubt, we don't know -- there's
11 very few things in life that we know with absolute
12 certainty. Death is one of them. And the law doesn't
13 require beyond a shadow of a doubt to convict somebody.
14 It's not an impossible burden of proof. If that were the
15 case, nobody would ever be convicted of anything.

16 At the end of this trial, you're going to see that
17 bigger picture that that puzzle makes for you and I'm
18 convinced that you'll be able to return a verdict of
19 guilty. Hold Mr. Chisolm accountable for the murder of
20 Craig Michael Canaday. Thank you.

21 THE COURT: Thank you, Mr. Hilton. Mr. Chisolm, do
22 you wish to make an opening statement?

23 MR. CHISOLM: Yes, Your Honor.

24 THE COURT: All right, sir.

25 MR. CHISOLM: Good morning.

1 JURORS: Good morning.

2 MR. CHISOLM: First off, I would like to thank you all
3 for being here, help me bring this case to a conclusion.
4 I am Don-Survi Chisolm. I am the defendant, and as you
5 know, I will be representing myself. And as to why I'm
6 representing myself, the simplest answer I can give is, I
7 have been searching for the truth -- I am searching for
8 the truth and I have been for the past four years. And it
9 was only upon representing myself that I was able to get
10 this case brought to trial so that I may have the
11 opportunity to clear my name.

12 With that said, one of the fundamental backbones of
13 our legal system is the presumption of innocence, that we
14 are all innocent until proven guilty beyond a reasonable
15 doubt. It's on this foundation of innocence that I stand.
16 I am confident that as this case is presented, my
17 innocence, which is presumed, will be proven.

18 The facts will show that upon hearing of my friend's
19 death, I was one of the first to make myself available to
20 the family as well as detectives. And during detectives'
21 two-month investigation, I, myself, and my co-defendant,
22 David Leon White, made ourselves continually available to
23 detectives even though we were the ones being accused.

24 We will also be showing that detectives preyed upon
25 the limited eighth-grade education of my co-defendant,

1 David Leon White, in an attempt to force a false
2 accusation or confession.

3 At the end of this two-month time period, detectives
4 got their way. The question is: How? Do they use
5 questionable tactics and falsify reports? Did one
6 detective go above and beyond in a negative sense to close
7 the case no matter the cost? Did he attempt to take two
8 innocent lives along with the one innocent life that was
9 already lost? I anticipate that together we will find the
10 answers to these questions.

11 Craig Michael Canaday, also known as "Red," was my
12 friend, just as David Leon White was my friend. And
13 though he may attempt to take -- he may or may not attempt
14 to take the stand to testify against me, I stand for all
15 three of us.

16 I, myself, will not take the stand in an attempt to
17 refute testimony that he may or may not give. I am very
18 confident that as the facts are presented, his testimony,
19 if -- if he chooses to testify, it will be proven to be
20 false and forced.

21 All right. As I stand before you today, it is no
22 longer what I intend to prove or the State intends to
23 prove. As I stand before you, I am proving that I will
24 fight for my life and I will fight for answers to be
25 solved for my friends' lives, too, my friends, Craig

1 Michael Canaday and David Leon White.

2 I am proving that I will stand for the truth. Truth,
3 something that evades us all -- evades us all very often.
4 It is the truth -- the truth that so very often evades us
5 all. It shimmers at the corner of our eye. And when we
6 turn to capture its image, it is gone.

7 It is your mission to search for this light of truth
8 and expose the deeds done in the dark. And with that
9 said, I would like to thank you for listening to the truth
10 as you have just heard it and as you will continue to hear
11 it throughout this trial. I am confident at the
12 conclusion of this case, I will not have to put on a
13 defense. It will be proven that I did not commit the
14 offense of murder. I did not do anything to my friend.
15 The only thing I've done for the past four years is
16 attempt to get this case heard and attempt to get
17 questions answered the things that happened to me, my
18 friend, and my friend David Leon White. Thank you.

19 THE COURT: Thank you, Mr. Chisolm. Mr. Hilton, are
20 you ready to call your first witness?

21 MR. HILTON: We are, Your Honor.

22 THE COURT: All right, sir. You make call your first
23 witness.

24 MR. AUSTIN: The State calls Tanya Platt.

25 THE COURT: Tanya Platt?

1 A I have -- I have no idea.

2 Q He was not there; is that correct?

3 A Yes. But what the -- what the recruiter said was with
4 your criminal history in -- in your past ---

5 THE COURT: Okay.

6 A --- in the military.

7 THE COURT: Okay. Number 1, you can't say what
8 somebody else said.

9 THE WITNESS: Okay.

10 THE COURT: Okay. Sorry.

11 MR. CHISOLM: Not -- not a problem.

12 THE COURT: Thank you.

13 Q I just wanted to confirm you had no way of checking
14 into the fact that with me Sergeant Schumacher had
15 planned, because he was not -- he was unavailable ---

16 A Correct.

17 Q --- to you all at the time.

18 A Correct.

19 Q Thank you.

20 THE COURT: All right. Thank you, sir. All right.
21 You may step down. Appreciate it. All right.

22 Your next witness. State's next witness.

23 MR. CHISOLM: Your Honor, I have a matter of law.

24 THE COURT: Okay. You -- you can still step down.

25 Okay.

1 (The witness exits the stand.)

2 THE COURT: Ladies and gentlemen, again, I'm going to
3 have to ask you to step back into the jury room for a
4 minute while I find out what's -- what I've got to
5 discuss.

6 So again, if y'all will go back there again. You
7 cannot discuss what you've heard so far. Okay. Thanks.

8 (The jury exits the courtroom at 11:02 a.m.)

9 MR. CHISOLM: One second, Your Honor.

10 THE COURT: Sure.

11 (Mr. Chisolm confers with Mr. Loy.)

12 MR. CHISOLM: Your Honor --

13 THE COURT: Yes, sir.

14 MR. CHISOLM: -- the witness, Detective Bistromowitz -

15 -

16 THE COURT: Uh-huh.

17 MR. CHISOLM: -- just got on the stand and testified
18 to my criminal history. And as you said in your opening
19 statement to the jury, I'm not taking the stand, so my
20 criminal history is not to come up.

21 So he just prejudiced me, Your Honor, and the -- the
22 fact that I have a criminal history is not going to be
23 able to get out of the jury's head. And I'm requesting a
24 mistrial.

25 The -- the -- the prosecution should have -- sorry --

1 made sure that their witness knew not to introduce my
2 criminal history in the trial. There's no way for me to -
3 - to -- I'm -- I'm prejudiced. There's no way for me to
4 get it out of the jury's head that I have a criminal
5 history, and I'm not taking the stand, Your Honor.

6 THE COURT: But -- but you did ask a question.

7 MR. CHISOLM: I -- I never asked about my criminal
8 history, Your Honor.

9 THE COURT: I understand. But you asked about getting
10 into that MEPS program?

11 MR. CHISOLM: Yes. Into the military.

12 THE COURT: Okay.

13 MR. CHISOLM: And -- and that had absolutely nothing
14 to do with my criminal history. It has to do with getting
15 into the military period. That was actually talking about
16 a positive aspect of -- of life, and he turned a positive
17 into a negative for no apparent reason, Your Honor.

18 THE COURT: Okay. Do you have a criminal history?

19 MR. CHISOLM: What's that, Your Honor?

20 THE COURT: Do you have a criminal history, because
21 I'm not aware -- I don't know.

22 MR. CHISOLM: I -- I -- I do not have a felony
23 criminal history. But I do have -- I have issues on -- in
24 my past, yes.

25 THE COURT: Okay. Okay. All right. So you're moving

1 for a mistrial because he -- he made the comment ---

2 MR. CHISOLM: Yes, he ---

3 THE COURT: --- about him -- clean up the criminal ---

4 MR. CHISOLM: Yes. He prejudiced me to the jury, Your
5 Honor. He -- he's mentioned my criminal history and I'm -
6 - I'm not taking the stand, Your Honor.

7 THE COURT: Okay. Okay. All right. Mr. Hilton, let
8 me hear from you, please, sir.

9 MR. HILTON: Just briefly, Your Honor. I mean, the
10 defendant did ask the question, and the question -- or at
11 least the line of the questioning is: How do you know I
12 wasn't going into the MEPS program?

13 And part of the reason how they knew was because of
14 his criminal history. I mean, so when you ask a question,
15 you get the answer that's coming to you. It's not a
16 question the prosecution asked the witness. This came
17 from the defendant. And the defendant can't ask a
18 question, solicit an answer, and then ask for a mistrial.
19 It just can't work that way.

20 There was no mention of what his criminal history was.
21 There can certainly be -- certainly be a curative
22 instruction indicating that they're to disregard that
23 comment that he made about any criminal history.

24 The Court immediately stopped him when -- when that
25 was said, and you even made reference to -- I think you

1 said, "First of all, you can't say what someone else
2 said." You took attention away from the criminal history
3 element, and you turned it into a hearsay element, which I
4 felt was quite astute.

5 So for those reasons, Your Honor, I -- I -- I -- I
6 would ask that you deny the defense motion for a mistrial.

7 THE COURT: All right.

8 MR. CHISOLM: Your Honor --

9 THE COURT: Mr. Chisolm, I think you want to tell me
10 something else.

11 MR. CHISOLM: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. CHISOLM: Your Honor, it didn't get immediately
14 stopped. He actually mentioned my criminal history twice,
15 Your Honor. And the question I asked him -- I -- I didn't
16 ask him about criminal history.

17 THE COURT: Uh-huh.

18 MR. CHISOLM: He was not responsive, Your Honor. He -
19 - he offered that on his own.

20 THE COURT: All right. All right. Okay.

21 MR. CHISOLM: Your Honor, this is -- this is a very
22 serious case. My -- my criminal history is -- is -- you
23 know, it -- the -- if I have a criminal history, you know,
24 that can severely prejudice me with -- with -- with
25 tainting the -- the jury's minds.

1 THE COURT: Okay. Okay. All right. Mr. Chisolm,
2 here -- here is what I'm going to do. Okay. He
3 mentioned, as I recall it, something to the effect that
4 one of the things they were trying to do was -- was either
5 review criminal background or a comment like that. He did
6 not go into any history of criminal behavior. He was --
7 he -- to me, he was talking about it as what -- at least,
8 the way I took it, was that he was talking about it as
9 just a procedure that you go through to get involved or
10 get admitted into the military.

11 I think you want to tell me something. Yes, sir.

12 MR. CHISOLM: Yes. Your Honor, he -- he testified
13 that they were trying to clean up my criminal history, and
14 he said it twice: Clean up my criminal history.

15 If -- if -- if we need, Your Honor, we can ---

16 THE COURT: Yeah. I'm gonna -- I'm gonna check.

17 MR. CHISOLM: Yes, Your Honor.

18 THE COURT: (To the court reporter) You mind
19 checking, Madam Court Reporter, to see what he -- what he
20 said?

21 THE COURT REPORTER: It will take me a minute to stop
22 and go back and ---

23 THE COURT: Okay. No problem. Yeah. We're going to
24 be off the record for a while. If y'all want to take a
25 break for about 10 minutes, y'all are welcome to do it.

1 Okay.

2 (Off the record at 11:08 a.m.)

3 (Back on the record at 11:47 a.m.)

4 MR. HILTON: Your Honor, Mr. Chisolm has requested
5 that we print out a current copy of his criminal record.
6 So we're doing that, so that can be done.

7 THE COURT: Okay.

8 (Mr. Hilton hands documents to Mr. Chisolm and to the
9 Court.)

10 THE COURT: Okay. All right. Do you have -- I
11 understand he wants to see that. I want to see what you
12 got right now. You can -- you can mention that to me
13 later --

14 MR. CHISOLM: Yes, Your Honor.

15 THE COURT: -- if -- if it's something different. I
16 want to know what the criminal history was when this
17 happened.

18 MR. CHISOLM: Yes, Your Honor.

19 (Brief pause.)

20 THE COURT: Can you -- can you see ---

21 MR. CHISOLM: I've already -- I've already viewed it,
22 Your Honor.

23 THE COURT: You've already seen it?

24 MR. CHISOLM: Yes, sir.

25 THE COURT: That's the one that he gave you for your

1 report?

2 (No audible response.)

3 (Brief pause.)

4 (Mr. Hilton hands documents to the court clerk who
5 then hands them to the Court.)

6 THE COURT: All right. And -- and -- okay. Thank
7 you, sir.

8 (Brief pause as the Court reviews documents.)

9 THE COURT: All right. What is the -- he's got a
10 sentencing date in here. Got a \$250 fine and probation
11 for -- and I'm trying to figure out ---

12 MR. CHISOLM: That's for ---

13 THE COURT: Mr. Chisolm, I wouldn't mind knowing what
14 this is, if you -- if you don't mind telling me.

15 MR. CHISOLM: Possession of a firearm, Your Honor,
16 which, you know, in light of the case, that -- that --

17 THE COURT: Well, I saw -- I saw there was a 1999
18 carrying a pistol without a license. That's the same ---

19 MR. CHISOLM: Yes. It should ---

20 THE COURT: That's what you got?

21 MR. CHISOLM: Yes. It should be for that, the \$250
22 fine.

23 THE COURT: Okay. All right. And the only other
24 thing was a military thing for wrongful use of cocaine; is
25 that correct?

1 MR. CHISOLM: Yes, Your Honor.

2 THE COURT: Okay. There's -- Mr. Hilton, there's
3 nothing else in his criminal history but this; is that
4 correct?

5 MR. HILTON: Well, he does have his arrest from
6 Berkeley County, for the murder that he's ---

7 THE COURT: No. I -- I understand. But I mean,
8 convictions, that's it.

9 MR. HILTON: As far as I know.

10 THE COURT: Okay. Okay. Now, Mr. Chisolm, I want you
11 to -- if -- if the only two convictions you have is a
12 possession of -- carrying a weapon and -- and the wrongful
13 use of cocaine was in the military.

14 MR. CHISOLM: Yes, Your Honor.

15 THE COURT: Okay. That was a military ---

16 MR. CHISOLM: UCMJ. Yes, Your Honor.

17 THE COURT: -- that reduced you from an E-4 to an E-1.

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: And you got some extra duties and 45 days
20 restrictions.

21 MR. CHISOLM: Yes, Your Honor.

22 THE COURT: Okay. Tell me why a curative instruction
23 to the jury wouldn't -- I -- I couldn't make a curative
24 instruction to the jury that there's nothing -- and you
25 can talk it over with your counsel.

1 (Brief pause as Mr. Chisolm confers with Mr. Loy.)

2 MR. CHISOLM: Your Honor, it's -- it's -- I -- I -- I
3 don't think that will work because it's already -- the --
4 the fact that I have a criminal history is already put
5 into their mind.

6 THE COURT: No. But if I -- I mean, if I clear it up,
7 there's nothing -- it's nothing --

8 MR. CHISOLM: That -- that's -- that's a very great
9 risk to me, Your Honor. As -- as I -- as I said, I'm
10 already -- I'm under severe disadvantage as -- already,
11 Your Honor, and -- and they clearly violated the law and
12 introduced ---

13 THE COURT: Well ---

14 MR. CHISOLM: --- to introduce ---

15 (The Court and Mr. Chisolm speak simultaneously.)

16 THE COURT: Well ---

17 MR. CHISOLM: --- my criminal history, Your Honor.

18 THE COURT: Well, they -- they didn't really introduce
19 it. I realize it was an unresponsive answer to ---

20 MR. CHISOLM: Definitely.

21 THE COURT: --- your question where they volunteered
22 it. That bothers me ---

23 MR. CHISOLM: Yes, Your Honor.

24 THE COURT: --- to -- to -- to a degree.

25 MR. CHISOLM: That --

1 THE COURT: Tell me why you're at a -- at a
2 disadvantage if I explain to the jury what it is.

3 MR. CHISOLM: Because as I said before, Your Honor,
4 they -- that they -- it can tend to -- it could tend to
5 weigh upon the decisions of my presumption of innocence.
6 If they -- if my credibility ---

7 THE COURT: Okay.

8 MR. CHISOLM: --- could -- could possibly have already
9 went out the window the second that they ---

10 THE COURT: You'll have that -- you -- I believe you
11 told the jury you weren't testifying.

12 MR. CHISOLM: Yeah. I understand, Your Honor. But
13 they -- they still looking. They -- they're looking at me
14 standing here.

15 THE COURT: Okay.

16 MR. CHISOLM: That my presumption of innocence is --
17 is -- my presumption of innocence is in serious jeopardy
18 by them already -- by them having knowledge that I have
19 any type of criminal history.

20 Combined with the fact that, Your Honor -- I mean, in
21 all honesty, this is a high-profile case. I know you
22 instructed the jury not to watch the news or -- or not to,
23 you know, read print. But as of last night, I was on
24 every channel, Your Honor.

25 THE COURT: Tell me why you're -- well, never mind.

1 That's okay. Anything else you want to tell me.

2 MR. CHISOLM: No -- no -- no, Your Honor. Just really
3 believe that that seriously would prejudice my presumption
4 of innocence and my --

5 THE COURT: Okay.

6 MR. CHISOLM: -- and I ask for a mistrial.

7 THE COURT: All right. Mr. Hilton, anything else you
8 want to tell me?

9 MR. HILTON: Just reiterate that he's the one that
10 asked the question, and while I know the Court said that
11 he was non-responsive --

12 THE COURT: Right.

13 MR. HILTON: -- it was part of their decision to how
14 he knew -- how they knew he wasn't going back in the
15 military because of his criminal record. And that was one
16 of the things they discussed with either Sergeant Cook or
17 Shoemaker [phonetic.]

18 THE COURT: Yeah. I understand that, but question --
19 my concern was the question, the general question was:
20 Was Sergeant Shoemaker [phonetic] helping you get back in
21 -- helping me get back into the military?

22 And a "yes" or "no" would have been fine, you know.
23 That's my -- that's my concern. Okay.

24 MR. HILTON: Yes, sir. I -- I will add -- and there's
25 going to be other testimony that's ---

1 THE COURT: Uh-huh.

2 MR. HILTON: --- forthcoming about cocaine use and so
3 forth. I mean, that's *res geste* of the -- of the case and
4 the murder that night.

5 THE COURT: Uh-huh.

6 MR. HILTON: And so coupled with that, I don't think
7 that, you know, some -- just a brief mention, along with a
8 curative instruction, can't -- you know, it --- that's not
9 going to unduly prejudice the defendant.

10 THE COURT: Okay. All right. All right. Did you
11 want to say anything else, Mr. ---

12 MR. CHISOLM: Yes. Yes, Your Honor. The -- the
13 reason that they can't introduce my record is just --
14 plainly because it is prejudicial, Your Honor. And -- and
15 --

16 THE COURT: Okay.

17 MR. CHISOLM: That's it.

18 THE COURT: Thank y'all. Okay. We'll be in -- I hate
19 to do this, but y'all -- we'll be in recess for another
20 few minutes while -- let me mull this over. Okay.
21 Thanks.

22 (Off the record at 11:56 a.m.)

23 (Back on the record at 12:07 p.m.)

24 THE COURT: All right. Here's what -- here's what I'm
25 going to do: I'm going to let the jury go to lunch while

1 -- if anybody wants to give me any -- any cases, they can.
2 I'm doing some research on my own.

3 I'm going to tell the jury to be back here at 2. And
4 -- and hopefully, by 1:30, I'm going to decide what we're
5 going to do. Okay. All right. That's where we are.
6 Thanks.

7 (To bailiff) Tell the jury to go to lunch. Be back
8 here at 2.

9 THE BAILIFF: Yes, sir.

10 THE COURT: Okay. Thanks.

11 (Off the record at 12:07 p.m.)

12 (Back on the record at 1:53 p.m.)

13 THE COURT: All right. We are back on the record in
14 the case of *State of South Carolina vs. Don-Survi Chisolm*.
15 We -- we had a break for the Court to spend some time
16 looking over case law and reviewing the transcript.

17 As the case -- the most recent testimony in the case,
18 the officer -- detective on the stand was asked about
19 whether or not a Sergeant Shoemaker [phonetic] was helping
20 Mr. Chisolm get back in the military. The first time he
21 was asked that question if he was helping that, he
22 volunteered that he was trying to get his criminal history
23 in order and get back into the military. That was part of
24 -- of -- of his response. No objection was made at that
25 time.

1 He was later asked was Sergeant Shoemaker [phonetic]
2 working to get back -- get me back into the military. And
3 at that time, he started -- instead of responding either
4 "yes" or "no," he responded with (as read): "Your -- with
5 your criminal history and your past ..." at which time I
6 interrupted him. The defendant then made a motion for a
7 mistrial.

8 Now, both questions just had to do with whether or not
9 he was helping you get back into the military. The first
10 time did not appear to be so bad to the Court because it
11 was going along with all the other requirements. He
12 mentioned drugs, testing, and some other things prior to
13 that.

14 But the second time when he said, "With your criminal
15 history and your past," it seems to put the defendant's
16 character in question. This is a problem, particularly
17 when the defendant had mentioned at the beginning of the
18 case that he was not planning on testifying because he did
19 not believe the State could prove its case.

20 I've looked over these cases and read them. This is
21 not a situation where there is an implication that the
22 defendant had a criminal record because they had
23 fingerprints already on file. This was not a vague
24 reference to a criminal record and was not for the purpose
25 of establishing any element of the crime; however, in

1 saying this, I want to make sure that it is clear on the
2 record that I do not believe that there was any misconduct
3 or bad intent by the State's witness. I believe he was
4 simply explaining what he was told by the recruiting
5 sergeant, and he was not stopped prior to going into hear
6 -- hearsay testimony, which was essentially hearsay
7 testimony.

8 Unfortunately, it was unresponsive to the question.
9 It was unnecessary, and it was prejudicial because even
10 with a curative instruction from this Court, it still
11 forces the defendant to strongly consider testifying and
12 possibly giving -- give up his Fifth Amendment rights.

13 The defendant is entitled only to a fair trial, but
14 not to a perfect trial. However, the unsolicited comments
15 twice in this matter I believe affects the fairness. And
16 so I am going to grant motion for a mistrial. Okay.

17 Now, having said that, I -- I've just checked this
18 case. I don't think there's anything for trial next time.
19 In September, you need to be ready to go to trial. I
20 think it's -- September when?

21 CLERK OF COURT: The 12th.

22 THE COURT: Twelfth.

23 MR. HILTON: Thank you, Your Honor.

24 THE COURT: Okay.

25 MR. CHISOLM: Thank you, Your Honor, and I will be

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1 marked for ID.)

2 (State's Exhibit No. 11, photo, was
3 marked for ID.)

4 DEFENSE MOTION TO SUPPRESS HEARING:

5 THE COURT: Yes. I'm listening?

6 MR. CHISOLM: If I could have one second, Your Honor?

7 THE COURT: Yes, of course.

8 (Mr. Chisolm confers with Mr. Loy.)

9 MR. CHISOLM: May it please the Court, Your Honor?

10 THE COURT: Yes.

11 MR. CHISOLM: Your Honor, I move by way of motion to
12 suppress all evidence that includes the issuance of a
13 9/27/07 search warrant for my 2007 Dodge Durango, silver in
14 color, on the grounds that it was in violation of South
15 Carolina Code of Laws 17-13-140, and my Fourth Amendment
16 Constitutional Rights.

17 Briefly, what my argument is is, Your Honor, on
18 9/17/2007, detectives issued a valid search warrant and
19 listed probable cause. I'm not going to read -- actually,
20 could I hand this to you?

21 THE COURT: Absolutely.

22 (Document passed to the Court.)

23 THE COURT: Okay.

24 MR. CHISOLM: Yes, Your Honor --

25 COURT REPORTER: Could I get you to speak up for me just

1 a little bit.

2 MR. CHISOLM: I apologize.

3 THE COURT: You know what I was trying to do is you can
4 get some help with that microphone. Isn't that microphone
5 over there --

6 DEPUTY SMITH: Yes, ma'am.

7 MR. CHISOLM: I'll speak up.

8 THE COURT: I'm going to read it real quick. Give me
9 just a second.

10 (Pause.)

11 THE COURT: You go right ahead. Yes, sir.

12 MR. CHISOLM: Yes, Your Honor. This warrant was issued,
13 it was executed, no items of any evidentiary value were
14 recovered from my vehicle. 10 days later, Your Honor, on
15 9/27/07, detectives issued, yet, another search warrant for
16 my vehicle. Cited was the exact information that you just
17 read, same probable cause. In an effort to refresh that same
18 probable cause new information was added, Your Honor.

19 THE COURT: Okay.

20 MR. CHISOLM: It's my argument that the new information
21 that was added was false.

22 THE COURT: Okay. Okay.

23 MR. CHISOLM: And I would pass this --

24 THE COURT: Yes. Pass that forward, too.

25 (Documents passed up.)

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1 MR. HILTON: Your Honor, may I just briefly interject
2 and --

3 THE COURT: Sure.

4 MR. HILTON: -- just add that I think the law of the
5 case has been established. I mean, we've already heard this
6 motion. It was hashed out with witness testimony. Mr.
7 Chisolm has a full opportunity to be heard, and a decision
8 was made on this exact motion. Under that -- with that in
9 mind, we'd just object to this hearing, and that the law of
10 the case has been established.

11 THE COURT: Okay.

12 MR. HILTON: With regard to this issue.

13 THE COURT: Okay.

14 MR. CHISOLM: Your Honor --

15 THE COURT: I don't have any way of knowing that until
16 this moment, but let me finish reading and then I'll hear
17 from both of you.

18 (Pause.)

19 THE COURT: Okay. All right. I'm listening. I've read
20 both, now.

21 MR. CHISOLM: Continue on the motion or --

22 THE COURT: Well, you want to respond to that --

23 MR. CHISOLM: Yes.

24 THE COURT: Okay.

25 MR. CHISOLM: There is no transcript from the earlier

1 hearing, Your Honor. There is no written order. Only Mr.
2 Hilton's representation as to what happened. This is a de
3 novo. This is a new trial, a new hearing. Everything
4 started over again, Your Honor, and I believe I should have
5 a chance to continue my motion.

6 THE COURT: Okay. All right. And your position,
7 obviously is that the law of the case is -- that the matter
8 was decided by Judge Dickson, but there is no transcript?

9 MR. HILTON: There's a transcript. It hadn't been --
10 officially made part of this record. But, you know, I just
11 say that if Judge Dickson had suppressed that -- I wouldn't
12 be able to -- I wouldn't be able to get into that in this
13 trial, just because there was a mistrial declared in the
14 previous one. So on that -- kind of reverse line of
15 thinking, I have to think, you know, what's good for the
16 goose is good for the gander.

17 THE COURT: You know, y'all are presuming that I know --
18 which I know nothing. I mean, so your position is that he
19 made this motion and the motion was denied?

20 MR. HILTON: That's correct.

21 MR. CHISOLM: Your Honor, I've been granted a new trial.
22 Sort of like the grounds of appeal. It starts over. All
23 ruling up to the trial judge the case was presented in front
24 of. If this was presented in front of Judge Dickson, it
25 would be understandable that he wouldn't want to hear the

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1 same motion again, Your Honor. I'm granted a new trial.

2 THE COURT: I'm with you. Go ahead and let me hear from
3 you?

4 MR. CHISOLM: It's my argument that the affiant
5 willfully and knowingly with reckless disregard for the
6 truth submitted false information on a affidavit for a
7 warrant, and the warrant should therefore be deemed invalid,
8 and it's fruits excluded from use in court under the
9 exclusionary rule under the U.S. Constitution.

10 Briefly, the fact, Your Honor. On 9/26/07, the affiant
11 and lead investigator, Det. Giglio, arrived at LKQ, also
12 known as Livingston's Auto Parts to investigate the possible
13 purchase of a front passenger seat for my Dodge Durango. At
14 least three employees were interviewed. Detectives obtained
15 statements and their investigation concluded for that day.

16 On 9/7/07, in a follow-up investigation, employees were
17 interviewed once more. Information, as well as, statements
18 were taken and with the combined knowledge it was concluded
19 that the purchase could not be confirmed to have taken place
20 on the day or days in question.

21 Later on that day on 9/27/07, the affiant applied for
22 an obtained a search warrant citing information that I gave
23 to you.

24 I'd like to call Det. Giglio to the stand to verify
25 that the information was false.

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1 THE COURT: Now, tell me where in the affidavit --

2 MR. CHISOLM: Oh, I'm sorry.

3 THE COURT: -- you say it's false. Tell me specifically
4 what you're talking about?

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: Okay.

7 MR. CHISOLM: It's going to be the last two sentences,
8 Your Honor.

9 THE COURT: Okay.

10 MR. CHISOLM: On 9/26/07, Det. Walsh and Det. Giglio,
11 met with employees at LKQ Auto Parts of Charleston.
12 Officers obtained verbal and written statements that
13 Donsurvi Chisolm purchased a passenger side front seat for a
14 Dodge Durango on 9/14/07. This search warrant is requested
15 to determine if any evidence of the crime is inside the
16 above vehicle.

17 That exact portion, Your Honor, is false.

18 THE COURT: Which portion is false?

19 MR. CHISOLM: The part I just read, Your Honor, on
20 9/26/07, the detectives obtained verbal and written
21 statements from employees that a purchase -- that I
22 purchased a passenger seat on 9/14/07.

23 THE COURT: And what do you maintain is false; do you
24 maintain. What portion specifically do you think is false?
25 Do you think it's false that Det. Walsh and Det. Giglio met

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1 with the employees at LKQ; is that what you think is false?

2 MR. CHISOLM: They met with the employees of LKQ --

3 THE COURT: Uh-huh.

4 MR. CHISOLM: -- it was never confirmed that a purchase
5 took place on 9/14/2007.

6 THE COURT: I understand.

7 MR. CHISOLM: That portion is false. In essence, under
8 oath telling the magistrate that they had information that a
9 purchase took place on 9/14/07, and they had statements from
10 witnesses and they didn't. They had statements from
11 witnesses, Your Honor. No one attested to a purchase or not
12 on 9/14/07. They did a two day investigation and it was
13 confirmed twice that nothing was ever purchased on 9/14/07.
14 It was actually nothing -- they -- it was concluded that
15 nothing ever got purchased. There's no proof of purchase,
16 no final transaction. They say they have written statements
17 from employees attesting to a purchase, Your Honor. They
18 have written statements attesting that a purchase didn't
19 happen. They have the exact opposite.

20 THE COURT: But they also talk about verbal statements,
21 they had verbal and written statements.

22 MR. CHISOLM: Yes. They took notes and everyone --

23 THE COURT: Okay.

24 MR. CHISOLM: -- even verbal -- the verbal statements
25 were from the same people who wrote statements, Your Honor.

1 THE COURT: Okay.

2 MR. CHISOLM: They just took notes on it and they
3 confirmed verbally and in writing that no purchase took
4 place on 9/14/07. They confirmed that no purchase took
5 place, period.

6 I think the state will stipulate to that.

7 MR. HILTON: And it's to stipulate there's no
8 documentation that on the 26, the Sheriff's Office knew that
9 came and purchased a seat. No, I will not stipulate to
10 that.

11 MR. CHISOLM: Your Honor, I need to offer evidence.

12 COURT REPORTER: I'm sorry?

13 MR. CHISOLM: I need to offer evidence.

14 THE COURT: Where's the search warrant that was issued
15 pursuant to the second affidavit? Do you have that, yeah?

16 MR. CHISOLM: The actual --

17 THE COURT: Because I've got one search warrant, that's
18 dated -- this one is dated the 27. This is the second
19 search warrant?

20 MR. CHISOLM: Yes.

21 THE COURT: Okay. Hold on.

22 (Pause.)

23 THE COURT: Okay. You know, just reviewing some of the
24 case law, and as I understand it, it is your position that
25 the information that was given to the magistrate on the 27

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1 of September and sworn to in the affidavit was incorrect and
2 known to the officers to be incorrect at the time that it
3 made?

4 MR. CHISOLM: Yes, Your Honor.

5 THE COURT: Okay. And the way that you propose to show
6 that is to what?

7 MR. CHISOLM: Witness testimony, Your Honor.

8 THE COURT: What witness?

9 MR. CHISOLM: Det. Giglio.

10 THE COURT: Detective -- well, who signed the affidavit;
11 tell me who signed the affidavit?

12 MR. CHISOLM: Det. Giglio is the affiant, Your Honor.

13 THE COURT: I'm sorry?

14 MR. CHISOLM: Det. Giglio.

15 THE COURT: Oh, he's the affiant?

16 MR. CHISOLM: Yes, Your Honor.

17 THE COURT: All right. And -- Yes, sir, Mr. Hilton?

18 MR. HILTON: I mean, other than my previous objection
19 about the law of the case, if the Court wants to go forward,
20 we're prepared to go forward.

21 THE COURT: I'm going to have to. I don't have an
22 order, I don't have anything.

23 MR. HILTON: I understand.

24 THE COURT: I don't have the transcript, I don't have an
25 order. I don't have anything.

1 MR. HILTON: I understand. We're prepared to go
2 forward.

3 THE COURT: Very well. That will be what we will do.
4 All right.

5 MR. HILTON: It's my understanding Mr. Chisolm will be
6 calling Det. Giglio?

7 THE COURT: It's his position that the search warrant
8 issued on the 27 of September was improperly issued. So I
9 think so.

10 Yes, sir?

11 MR. CHISOLM: I'd like to call to the stand, Det. Mike
12 Giglio.

13 THE COURT: Okay.

14 THE CLERK: Please raise your right hand, state your
15 full name for the record.

16 MR. GIGLIO: Michael J, as in John, Giglio.

17 THE CLERK: Spell your last name, please

18 MR. GIGLIO: G-I-g-l-I-o.

19 (WHEREUPON, Mike Giglio was sworn
20 to tell the truth.)

21 THE CLERK: Thank you.

22 MIKE GIGLIO - DIRECT EXAMINATION

23 BY MR. CHISOLM:

24 Q Detective, how long have you been an officer of the
25 law?

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1 A I've been with the Sheriff's Office for about nine and
2 a-half years.

3 Q Do you take pride in your job as an officer of the law?

4 A Of course.

5 Q Would you consider part of your job as an officer is to
6 insure truthful conduct in society?

7 A Yes, sir.

8 Q Do you think those empowered to uphold the law should
9 break the law?

10 A No, sir.

11 Q Is giving false information to an officer of the law a
12 punishable crime?

13 A Yes, sir.

14 Q Did you apply for a warrant for my silver in color,
15 2005, Dodge Durango, on 9/27/07?

16 A Yes, sir. I met with Chief Magistrate Glenn Stephens,
17 and obtained a search warrant for your 2005, Dodge Durango,
18 registered to your sister, normally occupied by you.

19 Q Could you tell me yes or no, did you or not on 9/26/07,
20 have any proof of a purchase or a final transaction for a
21 front passenger seat for the 2005, Dodge Durango from LKQ
22 Auto Parts, dated 9/14/07 or any date thereafter?

23 A We received a sales quote from the LKQ Auto Parts, as
24 well as, written statement from a Mr. Richard Johns on
25 9/26/2007, who stated you came in to purchase the seat and

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1 the next day you came back and paid cash.

2 MR. CHISOLM: Hold on one second.

3 THE COURT: Okay.

4 (Mr. Chisolm confers with Mr. Loy.)

5 BY MR. CHISOLM:

6 Q Your answer is no, to the question?

7 A Can you repeat the question?

8 Q Do you have -- did you on 9/26/07, have any proof of a
9 purchase or a final transaction for a front passenger seat
10 for the 2005, Dodge Durango, from LKQ Auto Parts, dated
11 9/14/07 or any day thereafter?

12 A No, sir, I did not have the final transaction receipt,
13 but that cumulative with the statements and the photograph
14 we obtained on an earlier search warrant, it revealed the
15 seat had been changed in your vehicle.

16 Q Did you, on 9/26/07, have statements -- this is verbal
17 -- I mean, I'm sorry, not verbal -- plural statements from
18 employees of LKQ Auto Parts confirming a purchase for a
19 passenger seat took place on 9/14/07, and let me just be
20 more specific. In this warrant you say you have verbal
21 statements, plural, and written and verbal statements from
22 employees?

23 A Yes, sir.

24 Q Did you have from employees?

25 A Yes, sir. Mr. Richard Johns and I believe George

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1 Gallardo (sp) were the two, two of the employees we
2 interviewed. Mr. Richard Johns did provide a written
3 statement on 9/26/07.

4 Q And they attested to a purchase?

5 A Yes, and -- right here, if you'd like, I can read it to
6 you.

7 Q George Gallardo statement on 9/26/2007. You have that
8 statement; correct?

9 A Yes, sir.

10 Q Could you please read that statement for me?

11 A Sure. Statement of George Gallardo. He provided a home
12 address of [REDACTED] [REDACTED]. He is employed at
13 LKQ Corporation. Provided the address at [REDACTED].
14 His occupation was a parts puller. State --

15 COURT REPORTER: I'm sorry. Parts --

16 A -- parts puller. Statement was given on September 26,
17 2007, in Charleston at 3:10 p.m. at 4550 Rivers Avenue.
18 Says, I, George Gallardo, pulled a 2006 Dodge Durango, right
19 front seat on Friday September 14, 2007 for a customer. He
20 was then asked a series of questions on paper. Can you
21 describe the customer? He was a black male, 20 to 30 years
22 old. Hair was bald. Can you identify the person in the
23 photograph. Answer: That was the man for the seat.
24 Question: Can you tell me what items the customer was
25 looking for? Answer: He want seat trim and seatbelt back

1 parts for the seat. To the question, did the customer tell
2 you why he needed these parts? He need left seat top parts,
3 and then it continues to Page 2. Do you want me to
4 continue.

5 Q There's no need to continue. In that statement, he
6 does not attest to a purchase, and he actually says on the
7 fourth -- on the fourth question that the customer needed a
8 driver's seat, not a passenger seat? There is no purchase
9 in that; do you agree that he did not attest to a purchase
10 in that statement?

11 A This statement does not attest to a purchase, not in
12 the written statement, no, sir.

13 Q Didn't you just testify a second ago that you had --
14 that he had a written statement that said --

15 A No. I testified we received verbal and written
16 statements from the employees at LKQ.

17 Q Now, George Gallardo has a second statement on 9/27/07?

18 A Yes, sir.

19 Q Would you please read that statement?

20 A I, George Gallardo, Jr., saw the female September 14,
21 2007 with the black male. I pulled the seat, Friday, 14,
22 2007 and I put the seat up front. I was off Saturday 15,
23 2007. Detective came and showed me the picture of the
24 female and it was the same female on 9/14/2007.

25 Q Once again, he attest to no purchase?

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1 A Yes, sir. That was taken by Det. Morgan. Yes, sir.

2 Q All right. Now, I'd like to jump forward for one
3 second. As the lead investigator on this case, can you by
4 way of a signed and dated photo or photo array, prove that
5 an on-scene out of court identification photo was ever made
6 in reference to me being at LKQ Auto Parts on the day in
7 question?

8 A Can you clarify that for me?

9 Q Do you have -- did you do a photo line-up. Do you have
10 a signed and dated photo line-up to attest to be being
11 there?

12 A I have the individual photo that was shown to the
13 employees at LkQ that is signed and dated.

14 (Mr. Chisolm confers with Mr. Loy.)

15 BY MR. CHISOLM:

16 Q Have you ever done a photo line-up?

17 A Yes, sir, I have.

18 Q Could you tell me why a photo line-up are used?

19 A Photo line-ups are used -- I'm assuming your question
20 -- photo line-ups are used to identify a person involved in
21 a criminal offense or activity. At the time, we were
22 showing -- showed a photo of you to the employees of LKQ, to
23 identify if you were the person who came in to purchase a
24 seat, not suspect in a criminal activity at LKQ Auto Parts.

25 Q But the suspect in a criminal activity all the same?

1 A Yes, sir. You were the person who came to acquire a
2 passenger seat for a Dodge Durango. That was the only
3 reason that the photo was shown.

4 (Mr. Chisolm confers with Mr. Loy.)

5 BY MR. CHISOLM:

6 MR. CHISOLM: In regards to this photo, Your Honor, I've
7 never received this photo, and when we were in the last
8 trial, I asked that same question and there wasn't a photo.
9 My question is where did they get the photo from like within
10 the past two weeks, three weeks? Your Honor, I have a full
11 inventory and I was never given this picture, and we went
12 through this whole process, there was no photo available,
13 and three weeks later, now we have a photo available.

14 THE COURT: You mean the photo that was shown to the
15 folks at Livingston's?

16 MR. CHISOLM: And signed and dated.

17 THE COURT: You've never seen the photo?

18 MR. CHISOLM: I have a full inventory. It is not in
19 there.

20 THE COURT: Okay.

21 MR. CHISOLM: I asked the same question at the last
22 hearing.

23 THE COURT: Uh-huh.

24 MR. CHISOLM: They didn't have a photo.

25 THE COURT: Okay. Okay, I'll tell you again, just like

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1 -- Mr. Hilton, I just got here.

2 MR. CHISOLM: Sorry.

3 THE COURT: And if I don't have the transcript and I
4 don't know, I don't know.

5 MR. CHISOLM: Right.

6 THE COURT: But -- would you like to see the photo.
7 Would you like for me to get the photo so you can see what
8 they're talking about?

9 MR. CHISOLM: Yes.

10 THE COURT: Sure. Absolutely. George, Major --
11 Ernest. That's fine. Y'all come get the photo.

12 MR. GIGLIO: It's in the case file. Solicitor has it
13 also.

14 THE COURT: Okay. And what we'll do is we'll mark it
15 for identification purposes and then we'll show it to Mr.
16 Chisolm.

17 COURT REPORTER: Is it a Defense Exhibit or State's
18 Exhibit or a Court's Exhibit?

19 THE COURT: It's a state's exhibit because it's in
20 support of their --

21 COURT REPORTER: Okay. This will be State's 12. We've
22 pre-marked one through 11. Unless it's in that one through
23 11, Mr. Hilton?

24 MR. HILTON: No.

25 COURT REPORTER: So this will be State's 12, then.

1 Okay. ID only.

2 (State's Exhibit No. 12, photo, was
3 marked for ID.)

4 THE COURT: Got it?

5 COURT REPORTER: Yes, ma'am.

6 THE COURT: Great. Okay.

7 Is that it; that's the photo?

8 MR. CHISOLM: Yes, Your Honor.

9 THE COURT: Thank you so much, Mr. Taylor.

10 All right. Yes, sir.

11 MR. CHISOLM: I'd just like to know, on that picture,
12 Your Honor, when they describe me -- describe the black male
13 in their statements they only describe a 20 to 30 year old
14 bald headed male. They showed them a picture of a black male
15 standing directly next to a Dodge Durango. That's
16 prejudicial, kind of insinuates exactly what they wanted the
17 people to do.

18 THE COURT: Okay.

19 BY MR. CHISOLM:

20 Q Det. Giglio, on the statement -- we've made it clear
21 that Mr. Gallardo did not attest to a purchase; correct?

22 A Not on the written statement, no, sir.

23 Q Did he attest to it verbally?

24 A He -- during the course of the interview, we spoke with
25 him, as well as, Mr. Johns at the LKQ Auto Parts. Mr.

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1 Gallardo, I recall he -- his duties at LKQ was parts puller.
2 So he didn't handle the financial transactions, so he
3 couldn't give us any more information in that regard. So he
4 did not attest to the purchase?

5 A Correct.

6 Q Okay. Now, Mr. Johns, is it correct that his statement
7 says a customer came in on 9/14/07 at 1:07 p.m. He needed a
8 2006 Durango right seat, gray. His dad called in with
9 credit card to pay for seat. Credit card declined. So
10 customer came back the next day and paid cash.

11 A Yes, sir, that's what's in his statement.

12 Q So we're confirming in Mr. Johns's initial statement,
13 he confirmed that no purchase took place on 9/14/07 and he
14 said he believed that on 9/15/07, the customer came back and
15 paid cash; yes?

16 A Yes.

17 Q Okay. On Mr. Johns's second statement, do you recall
18 Mr. Johns clarifying that the customer came back on 9/15/07,
19 and the customer did not pay cash, that nothing was actually
20 purchased?

21 A Yes, sir. This statement was taken by Det. Morgan and
22 Det. Bistromowitz. I didn't interview Mr. Johns on that
23 date.

24 Q Okay. And as a lead investigator, do you routinely
25 receive updates from those detectives who are assigned to

1 work with you on a case?

2 A Yes, sir. As time permits and scheduling permits, we
3 do go over details and statements, and things of that
4 nature. If I recall, on the 27th, myself and Det. Walsh
5 were canvassing the area, local dump sites, landfills,
6 trying to locate the seat they removed from your vehicle.

7 Q Did Det. Bistromowitz accompany you to obtain the
8 warrant on 9/27/07?

9 A Yes, sir, he did when we met with Chief Magistrate
10 Glenn Justis -- I'm sorry, Glenn Stephens.

11 Q Det. Bistromowitz is the same one that got the
12 statements and who was at LKQ Auto Parts with Det. Morgan?

13 A Yes, sir. He and Det. Morgan were at LKQ.

14 Q And as the lead investigator, you did not get updated
15 before you went to --

16 A Addressing how you came into possession of the seat,
17 whether it was a thief or you legally acquired it, we then
18 received a final transaction receipt from the LKQ.

19 MR. CHISOLM: One second.

20 (Mr. Chisolm confers with Mr. Loy.)

21 MR. CHISOLM: All right.

22 BY MR. CHISOLM:

23 Q What you just said, probably two questions ago, you
24 didn't get updated by the detectives before you went to get
25 the search warrant. What you're saying now is that there

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1 was an issue of a possible thief. That was in the statement
2 that came from the detectives on the second date. So did
3 you or did you not receive an update?

4 A Yes, sir, we did. We discussed details as they were
5 unfolding.

6 Q Okay, and on the second -- on the second statement, Mr.
7 Johns confirmed that no purchase took place on 9/14 or 9/15;
8 correct?

9 A On the second statement the question was asked did he
10 pay for it to Tracy, the answer was no. End of statement.

11 Q So no purchase took place on either day?

12 A (No response.)

13 Q Can you please tell me yes or no?

14 A No -- we weren't able to confirm a lawful purchase had
15 occurred.

16 Q So in both statements, the culmination of the 48 hour
17 investigation and all the statements that you have, no one
18 attested to a purchase for final transaction taking place at
19 LKQ Auto Parts by me; is that correct?

20 A No one attested to a final transaction, however, Mr.
21 Richard Johns through verbal and written statements --

22 MR. CHISOLM: Your Honor, he's being no-responsive.
23 He's not answering the question, Your Honor. I'm clearly
24 asking if a purchase was confirmed. He's going around the
25 question as much as possible.

1 THE COURT: I guess I don't understand what you mean by
2 a final purchase. What do you mean by final purchase. Help
3 me out?

4 MR. CHISOLM: They have a receipt if a cash transaction
5 took place, if any type of -- any type of transaction took
6 place.

7 THE COURT: Okay. Your question to this witness is: Did
8 he have information that any transaction had occurred
9 between you and Livingston, LB-- whatever, LBS.(sic) Is that
10 the question?

11 MR. CHISOLM: Did anyone claim they sold me anything? Is
12 the question. Did anyone say they sold me anything?

13 THE COURT: Okay. When?

14 MR. CHISOLM: On 9/14 and ever. I'm sorry, Your Honor.

15 A I'll try to clarify this as best I can. The employees
16 at LKQ identified you as the person looking to purchase a
17 seat. They pulled a part for you. We never obtained a
18 final sales transaction receipt.

19 BY MR. CHISOLM:

20 Q Is that a no?

21 A What is the question, again?

22 Q Did anyone claim that they sold me anything?

23 A Once again, the first statement from Richard Johns
24 saying yes, you paid for it in cash, and then he contradicts
25 himself later on when he wasn't able to find a final sales

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1 receipt.

2 Q Okay, but in the second statement it was not a question
3 of could he find a final sales receipt, he clearly said no
4 purchase took place.

5 A (No response.)

6 MR. CHISOLM: I should have the second statement marked
7 as a receipt. Could I please see a copy?

8 THE COURT: Now the one that I have is not marked as an
9 exhibit.

10 MR. CHISOLM: The court's --

11 THE COURT: Do you want to have it marked as an exhibit?

12 MR. CHISOLM: I'm sorry. It should be in the Court's
13 file.

14 THE COURT: Again, I just got here, guys.

15 (Document passed to Mr. Chisolm.)

16 BY MR. CHISOLM:

17 Q When Mr. Johns was asked about the credit card purchase
18 or attempted purchase on 9/14/07, did he confirm that the
19 card was declined?

20 A Yes, sir, he did.

21 Q Okay. When Mr. Johns was asked, did he, as in the
22 person who was there, pay for the seat to Tracy, was his
23 answer yes or no?

24 A It was no.

25 Q Okay. No purchase took place?

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1 MR. HILTON: Objection, Your Honor, that's been asked
2 and answered three or four times.

3 MR. CHISOLM: Actually, no. He's went around it every
4 time, Mr. Hilton.

5 THE COURT: That's okay. You don't address Mr. Hilton,
6 you address me.

7 MR. CHISOLM: Oh, I'm sorry.

8 THE COURT: That's all right.

9 MR. CHISOLM: I'm sorry.

10 THE COURT: Okay.

11 BY MR. CHISOLM:

12 Q Was it your intent on 9/27/07, to get this warrant
13 signed by a judge so you can execute it on my 2005 Dodge
14 Durango?

15 A Was it my intent?

16 Q Yes. Was it your intent to get the warrant signed?

17 A Yes.

18 Q Did you in good faith correct any error on the
19 affidavit by submitting an additional affidavit?

20 A Submitting -- No, I did not submit an additional
21 affidavit.

22 Q You did not attempt to correct any errors on this
23 affidavit?

24 A No, sir, I did not submit any additional affidavit.

25 (Mr. Chisolm confers with Mr. Loy.)

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1 BY MR. CHISOLM:

2 Q Okay. So we've confirmed that no purchase took place,
3 no one attested, no employee from LKQ attested to a
4 purchase, that no purchase actually took place, it was your
5 intent to get the search warrant signed and that you did not
6 attempt to correct any errors on that affidavit knowing that
7 the affidavit was incorrect?

8 A I didn't know the affidavit was incorrect, if that's
9 your position, sir.

10 Q You read, you talked to the employees; yes?

11 A Yes, sir, I did on September 26.

12 Q Okay, and you were aware of the possible purchase on
13 9/15; yes?

14 A Correct.

15 Q And you cited on the search warrant that the purchase
16 took place on 9/14; correct?

17 A I'd have to read the search warrant.

18 (Document passed to witness.)

19 A Yes, sir. I cited in the warrant 9/14.

20 Q Okay. You knew the purchase was attempted on 9/15.
21 You signed 9/14 on the search warrant. You made no attempts
22 to correct the search warrant.

23 A No, sir, I made no attempts to correct the search
24 warrant.

25 MR. CHISOLM: I have no further questions, Your Honor.

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1 THE COURT: Okay. I'm concerned about the jury. I'm
2 concerned about the fact that it's 4:20. We're not going to
3 be able to begin today, and you may or may not have
4 questions. I'm going to let the jury go, and I'm going to do
5 that now. So you come on down and you'll have to come back.

6 Let me have the jury, please, Mr. Taylor, because I'm
7 going to dismiss them for the day.

8 Thank you.

9 (Jury in at 4:20 p.m.)

10 THE COURT: All right. Ladies and gentlemen, I have
11 brought you out at this juncture, because there is a matter
12 that I must attend to and it's taken me longer than I
13 anticipated that it would. I'm not going to hold you in
14 your jury room any longer. I'm going to send home for this
15 evening.

16 Now, note pads that were in your seat, just leave them
17 in your seat. We'll address those first thing in the
18 morning.

19 Ladies and gentlemen, we're going to begin in the
20 morning at 9:00 o'clock, at 9:00 o'clock. You will go home
21 this evening. There's going to be somebody who is curious
22 about what you have been up to, so we need to talk for just
23 a moment.

24 Ladies and gentlemen, I'm going to give you this
25 instruction. I'm going to tell you do not discuss this

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1 matter or allow anyone to discuss it with you, and you're
2 going to be going, what? You haven't even started, we've
3 met each other in the jury room, but we haven't started.
4 Well, I read you some of the allegations from the
5 indictment. I've introduced you to some folks. So ladies
6 and gentlemen, you have some information because you have
7 that small bit of information. I must give you the
8 instruction, do not discuss this matter or allow anyone to
9 discuss it with you. Now -- or anyone that has anything to
10 do with it.

11 Now, do not do any Columbo, do not do any
12 investigation. Internet is around us. Information bombards
13 us all the time with technology. You must not access that
14 technology. You must receive all of the information from
15 which you will make up your mind here in court while court
16 is in session. So don't blog, don't tweet, don't facebook.
17 Don't go to the internet, don't search. Don't go to the
18 internet or any social networking for any purpose with
19 regards to this case. Don't blog, don't chat with anyone
20 about this matter. Again, you must receive all of the
21 information from which you'll make up your mind here in the
22 court while court is in session.

23 When you go home it is perfectly fine to say that you
24 did go to St. George, that you showed up for your jury
25 service and yes you've been selected to serve on a jury.

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1 The next thing that folks seem to want to know is, well, is
2 it a civil matter as opposed to a criminal matter. It's
3 perfectly fine to say that the jury that you are sitting on
4 is a matter out of General Sessions or criminal court.
5 Nothing wrong with that. But, beyond that, you must not
6 discuss this matter or allow anyone to discuss it with you.
7 Don't you take any upset. Be sure you put it on the judge.
8 Tell whomever is asking you, just say the judge told you you
9 cannot talk about this matter.

10 You will be able to discuss this case when you have
11 been discharged from your jury service by me. We will talk
12 about it specifically. There will be no question in your
13 mind when that time has come, but before that time has come
14 you must not discuss this matter with anyone or allow anyone
15 to discuss it with you.

16 Now, do not read anything, listen to anything about
17 this matter, and that is, of course, is radio, the
18 television, the newspaper, or the internet. So please be
19 mindful of that, as well.

20 Anybody working at night? Anybody go in at what --
21 3:00 and get off at 11:00 or go in at 7:00 and get off at
22 7:00. Everybody works in the daylight hours? Yes. Great.
23 Good.

24 Very well, I was going to intercede on your behalf if
25 you worked in the evenings because I didn't want you to do

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1 that. I want you to rest because I need you rested in the
2 morning.

3 Ladies and gentlemen, those of you who are breakfast
4 eaters, let me notify you that if you are a Wheaties eater,
5 you better eat a half-a-bowl in the morning, because I know
6 Ms. Salisbury is going to have something here for you in the
7 morning, and I don't want you overeating on your breakfast.
8 I don't know what she's going to have, but I know she's
9 going to have something here for you. So those of you who
10 want to count your calories, I want you to be aware of that,
11 also in the morning.

12 I think that Ms. Salisbury is going to want you to
13 gather in the morning down in the jury assembly room -- yes,
14 George -- George is giving me the yes. And then she will
15 bring you up, and we will begin as soon as you all arrive at
16 9:00 o'clock or as soon as we can.

17 Have a very pleasant evening. Leave your notebooks in
18 your seat, and please remember do not discuss this matter or
19 allow anyone to discuss it with you.

20 See you in the morning.

21 (Jury out for the evening at 4:25 p.m.)

22 THE COURT: Yes, Mr. Hilton?

23 MR. HILTON: Thank Your Honor.

24 THE COURT: Sure.

25 MIKE GIGLIO -- CROSS-EXAMINATION

1 BY MR. HILTON:

2 Q Det. Giglio, you said in that search warrant affidavit
3 that you submitted to the magistrate's court for the
4 signature of this warrant, you said you obtained verbal and
5 written statements that Donsurvi Chisolm purchased a
6 passenger side front seat for a Dodge Durango. That was the
7 original thought after talking to Mr. Johns and Mr.
8 Gallardo, right?

9 A Correct.

10 Q And then as it turned out, there may have been some
11 confusion as to whether he purchased the seat or whether he
12 stole it; is that true?

13 A That is correct.

14 MR. CHISOLM: Objection, Your Honor, leading the
15 witness.

16 MR. HILTON: It's cross-examination.

17 THE COURT: It is -- it is cross-examination. But I'll
18 ask that you not lead.

19 MR. CHISOLM: Thank you.

20 BY MR. HILTON:

21 Q Let me show what's been marked --

22 MR. HILTON: Do I need to remark this? In this case,
23 can we use the --

24 THE COURT: I think you can. Yes.

25 MR. HILTON: Thank you.

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1 COURT REPORTER: That's State's 13. I'll put it over
2 the top so we won't get confused. Okay. What is it? What
3 is it?

4 MR. HILTON: That's a sales receipt.

5 COURT REPORTER: Oh, sales receipt. Thank you.

6 (State's Exhibit No. 13, sales
7 receipt, was marked for ID.)

8 BY MR. HILTON:

9 Q Let me show you what's been marked as State's Exhibit
10 13 for purposes of this hearing and ask you if you recognize
11 that?

12 A Yes, sir. It's a copy of a parts invoice for a 2006
13 Dodge Durango seat.

14 Q And was that part of the information that you had when
15 you obtained the search warrant?

16 A Yes, sir.

17 MR. HILTON: Your Honor, at this time, I'd off this as
18 State's Exhibit No. 13, into evidence, for this hearing.

19 THE COURT: And if you will show it, please, to Mr.
20 Chisolm.

21 (Document passed to Mr. Chisolm.)

22 THE COURT: Any objection?

23 MR. CHISOLM: No objection.

24 THE COURT: Very well.

25 BY MR. HILTON:

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1 Q Now, Mr. Johns's statement, do you have a copy of that
2 handy with you? That's the statement given on the 26?

3 A Yes, sir, I do.

4 Q Okay. Can you publish to the Court that first
5 statement prior to getting to the question and answer?

6 A Yes, sir. Statement of Richard Johns. Home address [REDACTED]
7 [REDACTED]. His employer is LKQ Auto. His occupation
8 was manager. The statement was given September 26, 2007.
9 Says: Customer came in at 9/14/07; 1:07 p.m. Needed 2006
10 Dodge Durango right seat, gray. Daddy called in with credit
11 card to pay for front seat. Credit card declined, so
12 customer came back next day and paid cash.

13 Q So he originally came in on the 14, right?

14 A Correct.

15 Q And did y'all learn it was the next day that he
16 actually either completed the purchase or stole the seat?

17 A Correct.

18 Q Now, let me show you State's Exhibit No. 13, just one
19 more time and ask you if you can publish the date at the top
20 of that?

21 A September 14, 2007 at 1:07 p.m.

22 Q The statement of Mr. Johns, what's been marked as
23 State's Exhibit No. 1, has -- in State's Exhibit 13, is that
24 the information you relied on to obtain the search warrant?

25 A That along with photographs obtained from the first --

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1 this interview on the 17 by Lt. Asbell.

2 Q But as far as the statement in the affidavit about
3 purchasing a seat, are those the documents that you relied
4 on?

5 A Yes, sir.

6 Q Did y'all make up that statement about, he purchased a
7 seat?

8 A No, sir. This was a voluntarily written statement by
9 Mr. Johns.

10 Q And the statement and the affidavit, did y'all just
11 make that up?

12 A No, sir.

13 MR. HILTON: No further questions, Your Honor.

14 THE COURT: All right. Yes, sir?

15 MIKE GIGLIO - REDIRECT EXAMINATION

16 BY MR. CHISOLM:

17 Q Detective, you said you relied upon the 9/26/07
18 statement, correct?

19 A Yes.

20 Q To get the warrant. Okay. And it is correct that this
21 statement says that on 9/14/07, no purchase took place;
22 correct?

23 A Correct.

24 Q And you relied upon this information and, yet, still on
25 the warrant you stated that the purchase took place on

1 9/14/07?

2 A Correct. That is a clerical error on my part.

3 Q Okay.

4 A 9/14/07 should be 9/15.

5 Q Did you -- did you attempt to correct your error by
6 additional affidavit?

7 A No, sir, I didn't.

8 Q And you knew that you made an error?

9 A No, sir. No, sir. It wasn't until you pointed this
10 part out to me. I looked at this document dozens of times.

11 Q Okay. Now, additional question. You never noticed
12 that, you said; yes?

13 A Correct.

14 Q Now, that warrant was issued. You said you were
15 updated at a later date, correct?

16 A Yes, sir.

17 Q And on a later day it was confirmed that no purchase
18 ever took place; correct?

19 A No, sir. We've never been able to confirm or deny
20 whether the purchase occurred.

21 Q You said -- the question was -- I mean, what was at
22 issue was, y'all didn't know if I took the seat or purchased
23 the seat. You have no one at LKQ Auto Parts that says the
24 seat was purchased; correct?

25 A I have no final sales counter transaction receipt;

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1 correct.

2 Q Okay. Do you have any statements from anyone at LKQ
3 Auto Parts of an eye-witness account of me taking physical
4 possession and control of a car seat?

5 A No, sir.

6 Q So it was never confirmed by eye-witness testimony or
7 verbal that I -- that I actually acquired this seat?

8 A No, sir. The only statement in that regard was in
9 response to how you came into the business. You were
10 standing by the seat and a moment later you and the seat
11 were both gone.

12 Q Okay. So in the end, after being updated, you were
13 aware that I did not purchase the seat and no one could
14 attest to me taking the seat; yes? But you still believe
15 that I had the seat?

16 A Yes, sir, based on the photographs and also --

17 Q Okay. And you did not make any attempt to correct the
18 affidavit?

19 A Correct.

20 MR. CHISOLM: No further questions.

21 THE COURT: Very well. All right.

22 Thank you. You can come down.

23 Anyone else you wish to --

24 MR. CHISOLM: No, Your Honor.

25 THE COURT: Okay. Very well.

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1 MR. CHISOLM: I'd like to cite State verses Sachs. It's
2 going to be spelled, S-a-c-h-s. In this case, as well as,
3 other South Carolina court cases, Your Honor, the
4 appropriate test in regards to false information on an
5 affidavit is cited as -- is held as -- I'm sorry -- did the
6 officer or other government official in such capacity
7 intentionally, recklessly, or in bad faith recite facts he
8 knew or should have known to be erroneous without correcting
9 the error by additional affidavit or affirmation to obtain
10 the issuance of a warrant.

11 The detective has clearly testified that he knew this
12 information was incorrect. He made no attempts to correct
13 the information, Your Honor. The information was false.

14 This is the exact type of conduct, the exact type of
15 conduct displayed in this case. Your Honor, this is the
16 exact type of conduct displayed in this case that the
17 exclusionary rule was made to determine.

18 The detectives previously obtained a warrant to search
19 the Dodge Durango on September 17, 2007, and used the false
20 information to refresh the probable cause that was
21 previously cited on that warrant. This was a blatant act of
22 mis-conduct that was well throughout as proven by the 48
23 hours they had to think about the information that was
24 obtained and confirmed that the time period -- obtained and
25 confirmed over that time period and still the information to

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1 a magistrate -- and still provided false information to a
2 magistrate with absolutely no intention of showing good
3 faith effort to correct it. This information was sworn to
4 and taken by the magistrate as true. I'm sure if he knew it
5 was a lie the warrant would never have been issued, and
6 since we know as much now, I ask for this warrant to be
7 suppressed.

8 THE COURT: Very well. Anything further in this regard?

9 MR. CHISOLM: Nothing further, Your Honor. We plan to
10 give you the case cites.

11 THE COURT: Got it.

12 MR. CHISOLM: Okay.

13 THE COURT: Thank you so much.

14 All right. All right. I do not find that the affidavit
15 was given intentionally or in bad faith or recklessly, and
16 the law is very clear that I am to take the application for
17 a search warrant, the affidavit, in support thereof and to
18 consider the circumstances existing, and as I review the
19 affidavit, I believe that there was probable cause
20 established, and I think there was a basis based upon the
21 interviews at LBS (sic) for that. And I do not believe that
22 the characterization by these officers as a purchase,
23 instead of saying, well, either purchase or thief, is really
24 of no moment. I think that what the officers were intending
25 to tell the magistrate was that based on their interviews

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1 they had probable cause to go -- and I don't know if it was
2 re-examination of the vehicle at this point, but certainly
3 that was information that had come to them. Apparently,
4 there was lack of clarity about whether the seat had been
5 purchased. Apparently, there was some attempt with a credit
6 card, and there certainly is a lack of clarity about that,
7 but what there isn't a lack of clarity about or that
8 certainly the investigation had led the officers to LBS
9 (sic) and that based upon their interviews with the need to
10 re-examine the vehicle again.

11 So taking the matter in its totality, I find that
12 probable cause did exist. I don't find that to be reckless
13 as establish and enumerated in the Sachs case or existent
14 here, and would respectfully deny your motion and your
15 exception thereto.

16 Do we have any additional motions? First from the
17 state?

18 MR. HILTON: Not from the state, Your Honor.

19 THE COURT: All right. And from Mr. Chisolm?

20 MR. CHISOLM: Yes, Your Honor. The police claim that I
21 was doing cocaine and it was a separate uncharged crime.

22 THE COURT: Okay.

23 MR. CHISOLM: Which is not relevant and prejudicial and
24 I move to suppress any such statement.

25 THE COURT: Tell me what -- tell me what you're telling

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1 me?

2 MR. CHISOLM: In the last hearing, Your Honor, when they
3 were on the stand they said they received information that I
4 was riding around doing cocaine. I don't want the jury to
5 hear that.

6 THE COURT: And -- well, let me just -- I -- let me say
7 this. I tend to rarely make evidentiary rulings in a
8 vacuum, and while I appreciate and like to know that that is
9 a potential issue, at this point, I'm not inclined to rule
10 on that motion. Sometimes, sometimes, even though there can
11 be additional criminal activity that is attendant to the
12 indicted activity, sometimes it becomes so integral that it
13 cannot be excluded, it ought not be excluded. It makes it
14 impossible to tell the jury the context of what occurred,
15 because you extricate it. I don't know that that's at all
16 the circumstance here. I will ask this, that prior to that
17 testimony being given I've given an opportunity to rule on
18 it, since there's been an objection at this point.

19 Mr. Hilton?

20 MR. HILTON: I mean, just putting it in a little context

21 --

22 THE COURT: Okay.

23 MR. HILTON: -- I mean, the co-defendant will testify
24 that they were riding around doing cocaine. They were also
25 looking for somebody to rob. I mean, that's part of the res-

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1 gestae -- that's part of the surroundings as this murder
2 occurred. So no, I don't intent to get into something
3 that's remote in time or that was somehow unconnected to
4 this offense, but I think it's essential to get that part of
5 the story out through the co-defendant, and the defendant
6 admitted that to a statement to police. So, I mean, that
7 would be coming out in that, as well.

8 THE COURT: So in other words, it wasn't -- your
9 position is that it wasn't gratuitous that law enforcement
10 just said, oh, and by the way, he does cocaine. That it was
11 -- that it is part of the story that would be told by
12 witnesses?

13 MR. HILTON: Absolutely. This is part of the res gestae
14 of the case.

15 THE COURT: Okay. All right. Mr. Chisolm, what about
16 that?

17 MR. CHISOLM: Once second; Your Honor.

18 THE COURT: All right.

19 (Mr. Chisolm confers with Mr. Loy.)

20 MR. CHISOLM: Your Honor, that is more prejudicial than
21 probative. The mentioning of the cocaine or the use of
22 cocaine.

23 THE COURT: The use of cocaine?

24 MR. CHISOLM: Yes, it would be more prejudicial than --

25 THE COURT: Okay. I understand.

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1 MR. CHISOLM: Okay.

2 THE COURT: Here -- and the only reason I'm concerned
3 about it at all is because you want to know where you are
4 because you want to argue that in your open -- you want to
5 make that statement in your opening statement; this is what
6 occurred, this is what the testimony will show. Right?

7 MR. HILTON: I mean, I can strike it out of my opening,
8 that's not the crux of it. The witnesses will testify and I
9 don't want to -- I mean, I hate to limit their telling of
10 the story of what happened just by excluding the cocaine.
11 Like I say, that's a major part of it. That's the whole
12 reason that he and David White were together that night.

13 THE COURT: Well, I got some sense of that just looking
14 at the affidavit that apparently -- somebody made a
15 statement that they were riding around and I think somebody
16 says, doing narcotics. I don't know if they identified what
17 they were doing, but at some point, they're picking up and
18 dropping off people. I picked that up just from the
19 affidavit Mr. Chisolm gave to me. And then at some point in
20 the course of this evening, this shooting occurred.

21 It seems to me, Mr. Chisolm, that it's part of the res
22 gestae. It seems to me that it's coming in. What I don't
23 want to have happen is I certainly don't want law
24 enforcement in the telling, if you will, telling the story
25 of what occurred over the course of this time, you know, I

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1 don't want it coming in gratuitously like, you know, that
2 Mr. Chisolm is a person known in the community to do
3 cocaine. I certainly don't anything like that coming out,
4 and I don't want to -- law enforcement saying, gee whiz, we
5 saw him before doing cocaine or a week afterward. I don't
6 want any of that. But when it comes to the events that
7 occurred, and again, I'm simply looking at the affidavit it
8 looks as though people are together in the vehicle and there
9 appears to be statements that they were doing drugs. I
10 gather that's the narcotic, the cocaine. Somebody says --

11 MR. HILTON: That's correct.

12 THE COURT: Doesn't say narcotic, but says cocaine and
13 over the course of the evening these things happened, and
14 this gentleman was shot. Yes?

15 MR. HILTON: That's correct.

16 THE COURT: That's just going -- res gestae. That's
17 just going to be part of the story. All right.

18 And understanding your objection to it, I would not
19 exclude that. I think it's a part of -- and I think it's
20 integral to what occurred on that evening. So I would not
21 exclude that.

22 MR. CHISOLM: Yes, Your Honor.

23 THE COURT: And noting your exception thereto.

24 MR. CHISOLM: Yes, ma'am.

25 THE COURT: Very well. Any other -- Mr. Chisolm, can you

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1 COURT REPORTER: J-o-h-n-s?

2 MR. HILTON: Uh-huh. (Affirmative response.)

3 (State's Exhibit No. 14, first
4 statement of Mr. Johns, was marked and entered for purposes
5 of Motion to Suppress Hearing only.)

6 COURT REPORTER: Okay. What else? This is going to be
7 -- What is it?

8 MR. HILTON: Second statement.

9 COURT REPORTER: Second statement of Mr. Johns.
10 The first one is the first statement?

11 MR. HILTON: Uh-huh. (Affirmative response.)

12 COURT REPORTER: State's 15 is the second statement of
13 Richard Johns. Okay.

14 (State's Exhibit No. 15, second
15 statement of Mr. Johns was marked and entered for purposes
16 of Motion to Suppress Hearing only.)

17 COURT REPORTER: Okay.

18 THE COURT: Mr. Hilton, in the morning, are you going to
19 need anyone other than Mr. Chisolm?

20 MR. HILTON: Not from the jail.

21 THE COURT: Okay.

22 COURT REPORTER: Okay, and now what else?

23 MR. HILTON: Uh --

24 COURT REPORTER: State's 16?

25 MR. HILTON: Yeah, that's the search warrant.

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1 COURT REPORTER: Search warrant. This one?

2 MR. HILTON: Uh-huh. (Affirmative response.)

3 COURT REPORTER: How many pages is that?

4 MR. HILTON: Four.

5 COURT REPORTER: Four.

6 (State's Exhibit No. 16, search
7 warrant was marked and entered for purposes of Motion to
8 Suppress Hearing only.)

9 THE COURT: All right. Now, I have questions. The
10 clerk's file from the first file with the exhibit sheet.
11 What are the exhibits that are listed on the clerk's file in
12 the first trial; what you got?

13 (Document passed to the Court.)

14 THE COURT: Thank you. This doesn't make any sense to
15 me. It says photo.

16 COURT REPORTER: Yes.

17 THE COURT: Squiggles?

18 COURT REPORTER: Yes. All those are photos. In other
19 words all the way down to where --

20 THE COURT: All right. In the motion hearing and the
21 date is 8/22 to 8/22 and it's plaintiff's exhibit, one page
22 statement doc. Defendant's exhibit, receipt, doc, 2 pg doc.
23 Court's Exhibit, search warrant doc 4 pages.

24 All right. And then we've got Plaintiff's Exhibits
25 8/22/11 through 8/23/11 and we've got photos -- ID, for ID -

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1 verdict.

2 Now, in order to preserve everyone's rights it's
3 necessary that I ask whether there are any objections by the
4 state?

5 MR. HILTON: None from the state.

6 THE COURT: And from the defense?

7 MR. CHISOLM: No, Your Honor.

8 THE COURT: Very well.

9 Ladies and gentlemen, I ask at this time that you
10 please draw close as we listen to the opening statements.

11 Mr. Hilton.

12 MR. HILTON: Thank you, ma'am.

13 THE COURT: Yes. Yes.

14 MR. HILTON: Ladies and gentlemen of the jury, good
15 morning.

16 Four years ago today, September 13, 2007, in the early
17 morning hours between 3:00, 4:00 o'clock, the victim in
18 this case, Craig Michael Canady, was murdered at the hands
19 of that defendant seated right over there at that defense
20 table, Mr. Donsurvi Chisolm. And for the next few days that
21 what I have the burden of proving to you.

22 First of all, I'm Russell Hilton. I think I introduced
23 myself briefly before, but I'm Russell Hilton, one of the
24 prosecutors of the First Judicial Circuit. At the table
25 with me is Mr. Matt Austin, Detective Giglio from the

1 Sheriff's Office. More importantly seated on the second row
2 of the courtroom is the victim's family, and they're here
3 today to watch the trial.

4 As in every case that I try, I'm going to present
5 testimony from the witness stand. I'm going to call
6 witnesses, I'm going to introduce evidence, and the purpose
7 of that is so that you will be able to listen to that
8 testimony, look at that evidence, hear that testimony and
9 reach a verdict, and that verdict says what happened that
10 day and will hold someone accountable or not for what
11 happened on September 13, 2007.

12 In this case, the evidence will show the defendant was
13 with a person, excuse me, was with the victim on the night
14 of September 17 -- excuse me -- September 13, 2007. He was
15 with the victim in the Azalea Park Haven Oaks community,
16 which is if you're familiar with Summerville, it's near
17 Summerville High School. It's at the intersection of
18 Highway 78 and Orangeburg Road. There's a BiLo there,
19 there's Haven Oaks right behind the BiLo and Azalea Park is
20 right behind Haven Oaks.

21 The victim and the defendant were together that night.
22 From that Haven Oaks, Azalea Park area they went over to the
23 Evergreen community, which is almost at the corner of
24 Bacon's Bridge and Dorchester Road, and there they picked up
25 a guy named David White, who goes by the nickname Sculley.

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1 They picked up Sculley. After they picked up Sculley they
2 went back to the Azalea Park Haven Oaks area looking for
3 somebody to rob. And as they were going around that Azalea
4 Park loop on the second go around, the defendant pulled out
5 a gun put it to the victim's head and pulled the trigger.
6 The victim died almost immediately after that. Murdered at
7 the hand of that man, Donsurvi Chisolm, and it is from that
8 point that the defendant and Mr. White, Sculley, went and
9 disposed of the body out in the Clubhouse Road area, which
10 is almost to Colleton County. They disposed of the body and
11 Mr. Chisolm started covering up his tracks, and he did that
12 by smooth talking the police, and you're going to hear about
13 that.

14 Folks, many people get picked on jury duty and they let
15 out this groan about having to serve, and I really didn't
16 hear that in this case. But that's unfortunate. As a
17 prosecutor, I will never be able to serve on a criminal
18 jury, but you get to and you have that right. You have a
19 right to serve on the jury. The defendant has a right to
20 represent himself. The judge has told you that. But the
21 state has rights, too, and the state has a right to a
22 conviction when it can prove beyond a reasonable doubt, in
23 this case, that the defendant murdered Craig Michael Canady
24 four years ago, today.

25 Now, the defendant is charged with murder, and there's

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1 no different degrees of murder in South Carolina. You're
2 guilty of murder or you're not. And it's one of the most
3 serious crimes that the state has and arguably has the
4 shortest definition of all of them. Murder, the definition
5 of that is the killing of another with malice aforethought,
6 either expressed or implied.

7 So throughout the trial I've got to prove several
8 things to you. One, I must prove the killing of Craig
9 Michael Canady. Two, I must prove it's with malice, and
10 three, that the defendant is the one who did it.

11 Now, what's malice? It may be a term you're not
12 familiar with, maybe. At the end of this trial, I think the
13 judge told you a few minutes ago, she will charge you on the
14 law, and what that means is she'll go through all the
15 elements, all the offenses, the offense of murder in this
16 case, and all the other things that relate to the law, and
17 she'll give you definitions of all those things, and
18 examples of some of them, but suffice it to say, at this
19 point, malice is just ill will or evil intention.

20 Now, one thing I didn't mention, one thing that's not
21 an element of murder is motive. The state does not have to
22 prove motive to you. You know, that's helpful sometimes,
23 but that's not an element. Keep that in mind as you go
24 through the case. You know, jurors are chosen from the
25 community. You sat out there with a big panel of people

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1 from right here in Dorchester County, and they are chosen
2 from people from all walks of life. And it's those people
3 that make the best jurors. You make the best jurors because
4 you can look at somebody from the witness stand and say, I
5 don't know about what that person is telling me. Or you can
6 look at that person and say, I believe that person is
7 telling me the truth. That's What you have to do as jurors.
8 You're the fact finders. Like I said, in this trial you're
9 going to hear from a fair number of witnesses, and I want
10 you to do that in this case. I want you to listen to their
11 testimony and ask yourself, is what they're saying, does
12 that make sense, is their testimony corroborated. You know,
13 do they have something to hide. Is their testimony
14 corroborated with other testimony, physical evidence in the
15 case. This trial is only going to take a few days, but by
16 no means is it unimportant. It's important to the state,
17 it's important to Mr. Chisolm, it's important to the
18 victim's family.

19 I want to leave you with just a closing thought or two.
20 The judge will tell you, I think has already told you, the
21 defendant has elected to represent himself in this case, and
22 she's also going to tell you that what I get up here and
23 tell you in argument, what the defendant gets up here and
24 tells you in argument are the questions that we ask aren't
25 necessarily evidence. What's evidence is what comes from

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1 that witness stand and what get introduced. That's what you
2 listen to in this case, and Mr. Chisolm has chosen to be his
3 own attorney. Just keep that in mind as we go through the
4 trial.

5 I want to thank you for listening and being here
6 throughout the course of the next couple of days. As you
7 listen to this testimony, you'll hear bits of testimony and
8 you'll ask yourself why did the prosecutor ask that
9 question, why did the witness say that.. I submit to you
10 that everything that comes from that witness stand will be
11 important to the case. You might not understand what that
12 witness is talking about or why that witness is talking
13 about that piece of evidence from the state. Just put it in
14 the back of your mind. You know there's that analogy that a
15 trial is like a puzzle, and it is. It is. Sometimes you
16 get a piece of the puzzle and you don't know exactly where
17 it goes at the moment, but you get a few other pieces and
18 then you see where that piece fits in. That's what a trial
19 is like, and at the end of this trial you'll see the big
20 picture in that puzzle, and I'm convinced that after hearing
21 all the evidence, after deliberating with your fellow
22 jurors, you'll find the defendant guilty of murder of Craig
23 Michael Canady on September 13, 2007.

24 Thank you.

25 THE COURT: Thank you, Mr. Hilton.

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1 Mr. Chisolm.

2 MR. CHISOLM: Morning. First of all, I would like to
3 thank you all for being here today, helping us bring this
4 case to conclusion. My name is Donsurvi Chisolm. I am the
5 defendant, and as you know, I will be representing myself.
6 As to the question of why I'm representing myself, the
7 simplest answer I can give is I'm searching for the truth,
8 as I have been for the past four years. It was only upon
9 representing myself, that I, not anyone else in this
10 courtroom was able to get this case heard so that I may have
11 a chance to clear my name.

12 With that said, one of the fundamental backbones of our
13 legal system is the presumption of innocence, that we are
14 all innocent until proven guilty beyond a reasonable doubt.
15 It is upon this foundation of innocence that I stand.

16 Four years ago my friend was slain by an unknown
17 assailant. Four years later, as the evidence will prove,
18 that this assailant is still unknown and that I, Donsurvi
19 Chisolm, am innocent.

20 As this case is presented, as this case is presented to
21 you, I am confident, I am confident, my innocence, which is
22 already presumed will be proven. The facts will show that
23 upon hearing of my friend's death, I was one of the first to
24 make myself available to friends, as well as, detectives and
25 that during their two month investigation, I, myself, and my

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1 close friend David Leon White continually made ourselves
2 available, even though we were the ones being accused. And
3 during this investigation detectives preyed on the limited
4 eighth grade education of my co-defendant, David Leon White
5 in an attempt to force a false accusation for conviction.
6 At the end of their investigation, detectives got their way.
7 The question is how. Did they use falsified reports and
8 questionable tactics. Did one detective go above and beyond
9 to insure that he close the case no matter the cost. Did
10 they attempt to take two innocent lives along with the one
11 that was already lost. I anticipate that together we will
12 find the answers to these questions.

13 Craig Michael Canady, also known as Red, was my friend,
14 just as David Leon White was my friend. And though he may
15 or may not attempt to testify against me, I stand for all
16 three of us. I, myself, will not take the stand in an
17 attempt to refute any testimony he may or may not give. I
18 am confident that the facts will show that any negative
19 testimony that he gives is false and forced.

20 As I stand before you today, it is no long about what I
21 intend to prove but what the state intends to prove. As I
22 stand before you I am proving that I am willing to fight for
23 not only myself, but for the -- but for answers to be sought
24 for my friends lives, too. As I stand before you, I am
25 showing that I stand for the truth. The truth is something

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1 that evades us all very often and shimmers at the corner of
2 our eye, and when we turn to capture it's image, it is gone.
3 It is your mission to search for this light of truth and
4 expose the deeds done in the dark.

5 With that said, I would like to thank you for listening
6 to the truth as you have just heard it, and as you will
7 continue to hear it throughout this trial.

8 Thank you.

9 THE COURT: Thank you, Mr. Chisolm.

10 All right, call your first witness, please, sir.

11 MR. AUSTIN: State calls Tonia Platt.

12 (Podium is moved from center of courtroom.)

13 THE COURT: Are you trying to get that out of the way,
14 Mr. Austin?

15 MR. AUSTIN: I am. Do you want me to move it?

16 THE COURT: We can help you move it. Thank you, Mr.
17 Hill. It -- thank you. Let's just move it on back. Mr.
18 Hill, let's just move it all the way back over here. That's
19 the beauty of it being on rollers.

20 Thank you so much. Little bit -- thanks Maj.

21 Very well.

22 THE CLERK: Please raise your right hand. State your
23 full name for the record.

24 MS. PLATT: Tonia Platt.

25 THE CLERK: Could you spell name, please?

1 MS. PLATT: It's T-o-n-i-a P-l-a-t-t.

2 (WHEREUPON, Tonia Platt was
3 sworn to tell the truth.)

4 THE CLERK: Thank you.

5 THE COURT: Your witness, Mr. Austin.

6 MR. AUSTIN: Thank Your Honor.

7 TONIA PLATT - DIRECT EXAMINATION

8 BY MR. AUSTIN:

9 Q Ms. Platt, where do you currently live?

10 A Jedburg.

11 Q Do you remember what you were doing on Saturday,
12 December 15, -- September 15, 2007?

13 A We were dog hunting at Pine Cone.

14 Q Where is Pine Cone?

15 A It's at the cut-off highway at Clubhouse Road.

16 Q Is that a hunting club?

17 A Yes, sir.

18 Q And did anything out of the ordinary happen that day?

19 A We were pulling on the side of the highway waiting for
20 the dogs to come and all of a sudden there was a bunch of
21 buzzards flying around, and I just happened to look down in
22 the ditch, and there was a body lying in the ditch.

23 Q And where was the ditch, on the side of the road?

24 A Yes, sir.

25 MR. AUSTIN: May I approach the witness, Your Honor?

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1 THE COURT: You may.

2 BY MR. AUSTIN:

3 Q I'll show you what's been marked as State's Exhibit No.
4 5, for identification purposes. Do you recognize that?

5 A Yes, sir.

6 Q Is that an accurate reflection of what you saw that
7 day?

8 A Yes, sir.

9 MR. AUSTIN: Your Honor, I'd like to introduce this
10 picture into evidence, State's Exhibit No. 5.

11 THE COURT: All right. Any objection?

12 MR. CHISOLM: No, Your Honor.

13 THE COURT: Very well, State's Exhibit No. 5 in evidence
14 without objection. It is a photograph.

15 (State's Exhibit No. 5, photo, was
16 marked and entered.)

17 BY MR. AUSTIN:

18 Q Ms. Platt, can you describe what you saw that day,
19 specifically, in the ditch?

20 A Just the body, and when I got off the tailgate, I was
21 probably five feet from it. I tried to yell just to see if
22 there was any movement. It wasn't. So I called the guy
23 right down the road from us to come over, and he yelled
24 also. There was no movement. Just lying in the ditch. So
25 I called my husband, and he came around there. That's when

1 I left and he stayed.

2 Q And did he appear to be dead, the person in the ditch?

3 A Yes, sir. He didn't move at all.

4 Q About how far from the road was it?

5 A Probably 10 feet.

6 Q Okay. And so you said you called another person; who
7 was that?

8 A It was Mike Black.

9 Q Okay, and so what happened after that?

10 A After I called him down, I called my husband on the CB
11 to come around there, because I had my 10 year old son with
12 me, and they came around, and that's when I left, and they
13 stayed and called the police.

14 Q Is that the extent of your involvement in the case?

15 A Yes, sir.

16 Q Please answer any questions Mr. Chisolm has.

17 A Okay.

18 MR. CHISOLM: I have no questions.

19 THE COURT: Very well.

20 MR. CHISOLM: Thank you.

21 THE COURT: You may come down.

22 Call your next witness, please.

23 MR. AUSTIN: State calls Joe Burnette.

24 THE CLERK: Please raise your right hand. State your
25 full name for the record.

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1 MR. BURNETTE: Joseph B. Burnette, II.

2 (WHEREUPON, Joe Burnette was sworn
3 to tell the truth.)

4 THE COURT: Your witness.

5 MR. AUSTIN: Thank Your Honor.

6 JOE BURNETTE - DIRECT EXAMINATION

7 BY MR. AUSTIN:

8 Q Officer Burnette, what do you do for a living?

9 A I'm a Dorchester County Sheriff's Deputy.

10 Q And how long have you been employed with the Sheriff's
11 Office?

12 A About 11 years.

13 Q And what previous experience do you have in law
14 enforcement?

15 A I started in Dorchester in '95. Stayed here until '98.
16 Left there, went to Charleston County for five years. And
17 in '03, I came back here.

18 Q Were you working for the Sheriff's Office back in
19 September 2007?

20 A Yes, I was.

21 Q Were you asked to respond to a body being found in a
22 ditch off Clubhouse Road?

23 A I was.

24 Q Was that on September 15, 2007?

25 A it was.

1 Q About what time did you receive that call?

2 A It was around five -- 5:37, I believe it was.

3 Q Okay. When you responded, what did you find at the
4 scene?

5 A Once we made contact with our complainant, we observed
6 a body laying in the ditch on the side of Clubhouse Road.
7 At that point, we secured the scene. It was myself, Sgt.
8 Dandridge, and another deputy. We secured the scene with
9 crime scene tape, and move the witnesses away from the area
10 and sent notification to the detectives.

11 Q And you're saying you secured the scene, what do you
12 mean by that?

13 A What we do is basically, that's considered a crime
14 scene. We don't know what we have at that point. All we
15 know is we've got a body in a ditch. So we automatically
16 assume there's something going on, so at that point we will
17 secure the scene and keep anybody from coming into that
18 scene.

19 Q That's just to make sure it's not tampered with in any
20 way?

21 A Not tampered with, nobody messes with it any more than
22 what has already been done.

23 Q Okay. What else did you do?

24 A Like I said, we made a notification to the detectives
25 and to our command staff, and then we basically waited for

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1 them to get there.

2 Q So at that point, crime scene investigation came?

3 A Crime scene arrived, detectives arrived, and I believe
4 some from the command center.

5 THE COURT: I'm sorry?

6 MR. BURNETTE: Some from the command center.

7 BY MR. AUSTIN:

8 Q And so was that the extent of your involvement?

9 A Yes.

10 Q You said 5:37. Was that 5:37 p.m.?

11 A P.m. In the afternoon.

12 Q Okay. Please answer any questions Mr. Chisolm may
13 have.

14 THE COURT: Cross examination.

15 JOE BURNETTE - CROSS-EXAMINATION

16 BY MR. CHISOLM:

17 Q Would you recall the clothes that the victim was
18 wearing?

19 A I don't recall right off-hand.

20 MR. CHISOLM: Your Honor, could I show him the picture
21 for recollection refresh?

22 THE COURT: You certainly may.

23 MR. CHISOLM: Okay.

24 (Photo passed to witness.)

25 BY MR. CHISOLM:

1 Q Now, in regards to that --

2 MR. CHISOLM: Mr. Loy, could you help me for just one
3 second.

4 Q -- I'd like to ask the blood pattern that you see that
5 stain on the picture?

6 A I'm not sure where you're talking about. If you want
7 to point it out, that's fine.

8 THE COURT: Hold on one second. You go ahead and
9 consult with Mr. Loy.

10 MR. CHISOLM: Okay.

11 THE COURT: He's right behind you. There you go.

12 (Mr. Chisolm confers with Mr. Loy.)

13 BY MR. CHISOLM:

14 Q All right. Looking at the picture, your recollection
15 is refreshed, correct?

16 A Yeah.

17 Q Can you -- by looking at the picture, can you tell
18 where the blood patterns are?

19 A I -- I --

20 Q The stain on the upper regions --

21 A I see something. It's a different color than the
22 shirt?

23 Q Yes. Okay, and I'd like to go into that.

24 A Okay.

25 Q Could you look, and could you tell me if on the right

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1 side of the deceased, is there any blood, is the shirt white
2 on the right side of the deceased?

3 A It appears to be.

4 Q Now, on this upper area --

5 A Yes.

6 Q -- okay, I'm sorry. If you could turn it sideways. If
7 you could look at this upper region here, you can see a dark
8 stain pattern that would -- sir, I'm sorry, just one second.
9 Do you see that dark stain pattern that would kind of follow
10 this trail in the upper region going to the left?

11 A Yes.

12 Q All right. So in accordance with your testimony, this
13 region, the lower back region and the full right side from
14 which you can tell as the victim lay at that time, it's --
15 there's no blood?

16 A I know the shirt's white. I don't know if that's
17 blood.

18 Q It's not stained?

19 A Right.

20 Q It's only stained here?

21 A Right.

22 Q And this area is clear?

23 A It doesn't appear to be stained, no.

24 Q Thank you, sir.

25 MR. CHISOLM: That's all.

1 THE COURT: Very well.

2 What's I'd like to do is just to mark that for
3 identification purposes. If you'll just hand it -- you can
4 still take it back if you need it.

5 MR. CHISOLM: All right. Can I ask a question?

6 THE COURT: Absolutely. You may.

7 (Mr. Chisolm confers with Mr. Loy.)

8 MR. CHISOLM: Okay.

9 THE COURT: That's right. It's not going into evidence,
10 it's marked for identification purposes, so our record is
11 clear.

12 MR. CHISOLM: Yes, ma'am.

13 COURT REPORTER: Defendant's No. 1.

14 (Defendant's Exhibit No. 1, photo,
15 was marked for ID only.)

16 MR. CHISOLM; I'll leave it there.

17 THE COURT: Okay, leave it there, but it's there if you
18 need it.

19 MR. CHISOLM: I have no further questions, sir.

20 Thank you.

21 THE COURT: All right.

22 Any redirect?

23 MR. AUSTIN: Nothing further.

24 THE COURT: Very well. Is this witness free to leave?

25 MR. AUSTIN: Yes, ma'am.

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1 THE COURT: Any objection?

2 MR. CHISOLM: No, Your Honor.

3 THE COURT: Very well. You are free to go.

4 All right. Call your next witness, please.

5 MR. HILTON: State call Detective Bistromowitz, Joe

6 Bistromowitz.

7 THE CLERK: Please raise your right hand. State your
8 full name for the record.

9 MR. BISTROMOWITZ: Joseph Bistromowitz.

10 THE CLERK: Spell your name, please.

11 MR. BISTROMOWITZ: B, as in boy, i-s-t-r-o-m-o-w-i-t-z.

12 (WHEREUPON, Joe Bistromowitz was
13 sworn to tell the truth.)

14 THE CLERK: Thank you.

15 THE COURT: Your witness.

16 MR. HILTON: Thank Your Honor.

17 JOE BISTROMOWITZ - DIRECT EXAMINATION

18 BY MR. HILTON:

19 Q Det. Bistromowitz, where are you employed?

20 A Dorchester County Sheriff's Office.

21 Q And how long have you been working there?

22 A Since 2000.

23 Q And what was your assignment back in 2007, September,
24 specifically?

25 A I was assigned to the Criminal Investigations Division.

1 Q Is that akin to detectives?

2 A Detective, yes, sir.

3 Q And were you asked to respond out to a scene on
4 September 15, 2007, out in the Clubhouse area to a body
5 found in a ditch?

6 A I was.

7 Q And did you respond to that scene?

8 A I did.

9 Q And when you got to the scene what was your
10 involvement?

11 A When I first arrived on the scene I was given a key
12 chain with a CVS card and a BiLo card. They asked me to
13 take that and find out if I could get any information on the
14 cards.

15 Q Were you all trying to figure out who this person was?

16 A Yes.

17 Q Did he have any identification on him at the time?

18 A No.

19 Q And with those cards, the CVS and the BiLo card, what
20 were you about to find out?

21 A We were -- I responded to the CVS at Orangeburg and
22 Central and spoke to an employee there who was able to
23 furnish me with Tamekka Williams name, address and telephone
24 number.

25 Q Now, obviously, the person in the ditch wasn't Tamekka

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1 Williams, isn't that right?

2 A They was not.

3 Q Did you end up speaking with Tamekka Williams?

4 A Yes.

5 Q Where was that?

6 A That was at her apartment at 523 Orangeburg Road,
7 Apartment E-8.

8 Q When was that?

9 A September 15, 2007.

10 Q And when y'all went to speak to Tamekka Williams, what
11 did you end up telling her?

12 A That we had located, there was a dead body located on
13 Clubhouse Road, and that the key chain was found on that
14 person. And she, at that point, got upset.

15 Q Now, did she give you any information as to who the
16 victim was?

17 A Yes. She said it was her boyfriend, Craig Michael
18 Canady, Jr.

19 Q And who was at the apartment at the time that you went
20 over there?

21 A There were several people gathered there. Cara Palmer,
22 (sp) Anastasia Williams, Nicole Palmer, Angela Dicks, Sierra
23 Wiggins, Kimberly Williams, and Omar Birch (sp).

24 Q And all these people, were they just friends of Tamekka
25 Williams?

1 A Yes. Neighbors, friends.

2 Q And did one of them end up leaving?

3 A Yes. Omar Birch went to the Coroner's Office to
4 identify the body.

5 Q And what -- do you remember what relationship Omar
6 Birch had with the victim?

7 A They were friends.

8 Q Do you remember a time on September 15, the day that
9 you were at Tamekka Williams apartment, where the defendant,
10 Mr. Chisolm came up?

11 A Yes. We were standing outside Ms. Williams apartment
12 and he came up and provided some information.

13 Q What information did he provide?

14 A He came up to us and advised that he last saw the
15 victim on Tuesday evening or Wednesday morning at
16 approximately 1:00 to 2:00 a.m., and that he and another
17 friend had been hanging out with him. He advised that he
18 picked up Red from site and rode around until 4:00 a.m. He
19 stated that he dropped Red off and he saw Red jump the ditch
20 at Azalea Apartments. He advised that during the time they
21 were together, he advised that they saw Sculley and
22 Evergreen and that he last saw, you know, the victim jump
23 the ditch going up to Azalea Apartments.

24 Q All right. And let's -- let's pause for just a second
25 and go over some nicknames. We got -- the victim in this

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1 case, Craig Michael Canady, did he go by a nickname?

2 A He went by Red.

3 Q Okay. So Craig Michael Canady is Red. Donsurvi
4 Chisolm, did he use any other names?

5 A Don.

6 Q Don. And David White, the co-defendant, did he use any
7 other names?

8 A Sculley.

9 Q And during that conversation with Mr. Chisolm at
10 Tamekka Williams, did he give you a cell phone number?

11 A He did. He provided me with [REDACTED].

12 Q Now, that was September 15. On September 16, the next
13 day, did you go back to Ms. Williams apartment that day?

14 A I did.

15 Q And what was that about?

16 A I had provided Ms. Williams and her sister a ride home
17 from the Sheriff's Office after they completed an interview
18 with Detectives Walsh and Giglio.

19 Q Did she have some stuff that she wanted you to look at?

20 A Yeah, she advised that she had pertinent information in
21 this case, some information that might be pertinent to this
22 case.

23 Q And what was that stuff?

24 A There was some of the victim's belongings.

25 Q Had the victim and Ms. Williams been living together?

1 A Yes.

2 Q And when you got back to the apartment on the 16, did
3 Mr. Chisolm come up to you again?

4 A Yes, he did.

5 Q And what did he have to say at that time?

6 A He asked if I needed any assistance from him, and I
7 basically told him that we'd probably be by there to take a
8 statement from him later.

9 Q Now, in your experience as a law enforcement officer,
10 looking back on that, does that seem a little out of the
11 ordinary for that area?

12 A Yes, it does.

13 MR. CHISOLM: Objection, Your Honor. Relevance.

14 THE COURT: Sustained.

15 BY MR. HILTON:

16 Q Now, later on that day on the 16, did you end up
17 getting a statement from Mr. Chisolm?

18 A Yes.

19 Q Where was that?

20 A At the sheriff's office.

21 Q And did he come in voluntarily?

22 A He did.

23 Q Did you read him his Miranda Rights?

24 A Yes, I did.

25 Q Did he seem to know what was going on?

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1 A Yes.

2 Q Did he appear to be cooperative at the time?

3 A Yes, sir.

4 Q And as far as the information that's pertinent to the
5 case, what did he tell you at that time?

6 A He advised that he saw Red at Haven Oaks about 1:00 to
7 2:00 in the morning. He advised that he and the victim were
8 hanging out at Jennifer's house on the porch. Mr. Chisolm
9 advised that the people that were present, Psych, Jen, Red
10 and himself. Mr. Chisolm stated that -- advised that he and
11 Red left to go to Sculley's house in Evergreen to pick up
12 Sculley. He advised that he, Red and Sculley drove around
13 in his vehicle getting intoxicated on beer and other things,
14 mainly cocaine. He advised that once they were done he
15 dropped Sculley off at his residence in Evergreen and
16 proceeded back to Haven Oaks. He advised once back at Haven
17 oaks, he went back to Jen's apartment and Red jumped the
18 ditch to go to Azalea Park Apartments. He advised that was
19 the last time that he saw Red.

20 Q So maybe with a little more detail, but similar to the
21 story that he gave you on the 15?

22 A Yes.

23 Q Okay. Now, do you remember what time that statement
24 was?

25 A Ah -- hang on one second. That statement was -- he was

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1 read his Miranda at 16:20 hours.

2 Q What does that mean in regular hours?

3 A 4:20 p.m.

4 Q Okay.

5 A And the statement was about 4:42 p.m. is what I have
6 written.

7 Q Now, was there a time after that that you talked to Mr.
8 Chisolm again?

9 A Yes.

10 Q When was that?

11 A Early morning of September 17.

12 Q So even though it's on the 17, it's not a whole lot of
13 time between the 16 statement and the 17 statement?

14 A No, several hours.

15 Q Now, what information were y'all looking for at that
16 time?

17 A Basically, we had obtained new information from other
18 witnesses and we wanted to question Mr. Chisolm one more
19 time on the time line.

20 Q Now, the second time, the statement on the 17, did he
21 come down voluntarily that time?

22 A He did.

23 Q And what did he say on that occasion?

24 A He reiterated the first statement, that he and Red and
25 Sculley were driving around Haven Oaks, Azalea Park

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1 Apartments and, you know, whenever they were done, he took
2 Sculley back to Evergreen and dropped Red back off at Haven
3 Oaks.

4 Q Did y'all question him as to the dates that he gave
5 you?

6 A Yes. He -- we questioned him on the dates and he said
7 that it could have been Tuesday. Initially, he said late
8 Tuesday or early Wednesday morning, and then he changed and
9 said it could possibly be Wednesday night, early Thursday
10 morning.

11 Q Did he say how you could verify that?

12 A Yeah, phone records.

13 Q And did y'all end up verifying?

14 A Yes, sir.

15 Q And what time did y'all verify that it was?

16 A It was --

17 Q Actually, what day --

18 MR. CHISOLM: Objection. Hearsay.

19 THE COURT: Sustained.

20 BY MR. HILTON:

21 Q During the course of the investigation were you able to
22 determine that it was actually Wednesday/Thursday instead of
23 Tuesday/Wednesday?

24 A Yes.

25 Q Now, did you question him on the 17 about where and all

1 they had traveled that night and where they had gone that
2 night?

3 A Um --

4 Q The three of them, being, the victim, Sculley and the
5 defendant?

6 A May I have a second.

7 (Pause reading notes.)

8 A Yeah, he advised they were around Azalea Park, Haven
9 Oaks riding around.

10 Q Did he say that they stayed pretty close to that area?

11 A Yes, sir.

12 Q And I guess that would be with the exception of
13 Evergreen area?

14 A Yes, sir.

15 Q Did he tell you where every one was sitting in the car
16 that night?

17 A Yes, sir.

18 Q Where was that?

19 A He advised that he was driving. That Red was in the
20 front passenger seat and Sculley was sitting behind him in
21 the rear driver's side seat.

22 Q Please answer any questions Mr. Chisolm may have for
23 you.

24 THE COURT: Cross-examination.

25 JOE BISTROMOWITZ - CROSS-EXAMINATION

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1 BY MR. CHISOLM:

2 Q How are you doing.

3 A Okay.

4 Q All right. So if someone comes forward after their
5 friend has been killed and they want to help any way that
6 they can, you said you find that suspicious?

7 A Well, it just seemed that you were overtly helpful
8 about coming forward with the information.

9 Q Do you find that suspicious?

10 A Do I find you coming forward --

11 Q If someone comes forward after their friend has been
12 killed and they are trying to help, do you find that
13 suspicious?

14 A No.

15 Q If I didn't return your calls or refused to come in
16 would you have found that suspicious?

17 A Yes.

18 Q Do you know what the term, lawyer up, means?

19 A Do you want to get a lawyer?

20 Q Could you explain that to the jury, if someone is in
21 interrogation and they sign a lawyer up, could you explain
22 what that --

23 A Yes.

24 Q -- exactly is saying?

25 A It's your right at the time of questioning, you know,

1 you can have an attorney with you while you are being
2 questioned. It's part of the Miranda Warning.

3 Q If --

4 A If you decide to get a lawyer, I guess that term,
5 lawyer up.

6 Q Do you all find, tend to find it suspicious when people
7 lawyer up, when they refuse to cooperate?

8 A I mean, that's your right.

9 Q I understand that's my right. Do you find it
10 suspicious in an interrogation if someone just completely
11 shuts down and lawyers up?

12 A It just depends on the situation, I guess.

13 Q If I lawyered up as soon as I came in would you have
14 found that suspicious?

15 A I mean, that's your right. I can't say it's
16 suspicious.

17 Q You're not responding -- I'm trying to --

18 MR. CHISOLM: He's not directly answering the question.
19 I'm asking --

20 THE COURT: I know. What he said was, what he said was
21 that is your right. At that point, you interpreted him. I
22 don't know if he's finished with his response. So let's let
23 him finish his response.

24 MR. CHISOLM: Yes, Your Honor.

25 A I mean, it could be suspicious just, but I mean, that's

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1 your right as a citizen of the United States.

2 BY MR. CHISOLM:

3 Q According to your testimony, what I did in cooperating
4 fully was suspicious?

5 A Overtly coming out every time that we went into the
6 subdivision or the apartment complex coming out seeking us
7 out was a little suspicious. Yes.

8 Q Were you aware that we were looking for my friend for
9 two days?

10 A You guys were out there looking. I was not aware of
11 that, no.

12 MR. CHISOLM: One second, Your Honor.

13 THE COURT: All right.

14 BY MR. CHISOLM:

15 Q When I approached, did I approach you first or did I
16 approach Tamekka first; do you recall?

17 A I don't recall.

18 Q Okay.

19 MR. CHISOLM: One second.

20 THE COURT: Very well.

21 BY MR. CHISOLM:

22 Q Could you turn to Page 3 of your report, to help your
23 recollection, please.

24 A Yes.

25 Q Second paragraph, first sentence?

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1 A It says, while speaking with Tamekka a male subject
2 approached me and stated that he last saw Red on Tuesday
3 evening or Wednesday morning at approximately 1:00 to 2:00
4 a.m. Do you want me to keep reading that whole sentence or
5 --

6 Q One second. Did I ask you why the police were there?

7 A No, not that I recall.

8 Q So I just came to you and just started giving you
9 information?

10 A I believe so. When we came up, you came up and started
11 talking to me. That's what you told me. I don't recall if
12 you asked why we were there. What we were doing there. I
13 don't recall that.

14 Q I had no idea what you were doing there, but I came and
15 gave complete information.

16 A I mean, it's possible you could have asked what we were
17 doing there. I don't know.

18 Q All right. You say at the time I was very forthcoming
19 with information and helpful; correct?

20 A Yes.

21 Q All right. And I didn't attempt to evade you or dodge
22 any questions; correct?

23 A Right.

24 Q And I did offer to give a statement fully of my free
25 will?

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1 A Yes.

2 Q Okay. When you asked me for another statement on
3 September 17 --

4 A Yes.

5 Q -- and you said that you came to my house at 1:30 in
6 the morning; correct?

7 A Yes.

8 Q All right. And when you woke me up at 1:30 in the
9 morning, did I complain or seem mad, angry?

10 A No, you came in voluntarily.

11 Q Cooperated?

12 A Yes.

13 Q Concern for my friends?

14 A Yes.

15 Q Do you have a copy of the Miranda Rights?

16 A I do.

17 Q Could you please read the Miranda Rights for us,
18 please?

19 A Which time, the first one or the second one?

20 Q Yeah, the same set of Miranda Rights.

21 A It's the same one, but I didn't know if you wanted a
22 particular --

23 Q No, sir. Just in general Miranda Rights, please?

24 A Okay. You have the right to remain silent. Anything
25 you say can or will be used against you in a court of law.

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1 You have the right to talk to a lawyer and have him present
2 with you while --

3 THE COURT: Slow down, because the court reporter has to
4 take down what you're saying.

5 A Okay. You have the right to talk to a lawyer and have
6 them present with you while you are being questioned. If
7 you cannot afford to hire a lawyer, one will be appointed to
8 represent you before any questioning, if you wish. You may
9 decide at any time to exercise these rights and not answer
10 any questions or make any statement.

11 Q And I gave up all these rights to help you with your
12 investigation into my friend's death?

13 A Yes.

14 Q Okay. When I gave up these rights, you say I gave you
15 information into what we were doing that night?

16 A Yes.

17 Q And I admitted we were driving around, getting
18 intoxicated, possibly using illegal substances; things that
19 are against the law?

20 A Yes.

21 Q I gave up these rights and admitted to doing unlawful
22 acts, all in an effort to help my friend or to help your
23 investigation?

24 A Yeah, you gave us information.

25 Q Okay. Could you tell me what all information I gave

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1 you?

2 A As far as?

3 Q My statement, could you read that entire statement for
4 me?

5 A Your whole statement?

6 Q Yes.

7 A The first one, the written statement?

8 Q Yes, the written statement, please.

9 A You said, on Tuesday night about 1:00 or 2:00 in the
10 morning, I saw Red in the Haven Oaks Apartment complex. We
11 chilled at Jennifer's house in and out on the porch. The
12 people there were Psych, Jen, Red, and myself.

13 THE COURT: Slow down just a little bit again, so our
14 court reporter can --

15 MR. BISTROMOWITZ: Do I need to start over or --

16 THE COURT: No.

17 A Me and Red left to go to Evergreen while Psych was also
18 leaving for Evergreen. We saw Psych at Evergreen. I picked
19 up my friend Sculley. We drove around getting intoxicated
20 and doing other things. Once we were done, I dropped off
21 Sculley. I proceeded to Haven Oaks where I went to Jen's
22 house. Red jumped across the ditch to Azalea Park. After
23 Jen's I went to my house. This was the last time I saw Red.
24 It says, Red is not know for any real problems except --

25 MR. HILTON: Your Honor, I'm going to object to that.

1 THE COURT: Very well. All right. Our security folks
2 have an awesome responsibility, and I would appreciate so
3 very much if you would cooperate with them, and I assure you
4 they mean no one anything other than security and safety for
5 all, and if I could anticipate -- and I look forward to your
6 cooperation with them.

7 All right. Very well.

8 All right. Now, obviously -- I've got a couple of
9 considerations. My first consideration is you know, Mr.
10 Hilton, it's never appropriate to publish a document that's
11 not in evidence. You didn't object to that. And obviously
12 there is a document that is being published into evidence
13 that isn't in evidence. So now you're objecting to this
14 portion of the document being published?

15 MR. HILTON: On the basis of third-party guilt.

16 THE COURT: Well, the whole document -- it ought not be
17 published in any event, because it's not in evidence. So
18 you're not going to object on that basis, you're just going
19 to object to this little piece of it; is that where we are?

20 MR. HILTON: Well, I didn't introduce the document. I
21 didn't think that was appropriate. I mean --

22 THE COURT: Right, but it's being published, and the
23 rule is you don't publish a document that hadn't been
24 introduced into evidence. And he's publishing a document
25 that's not in evidence.

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1 All right. So, let me look at the statement. I don't
2 have it. I don't know what it is.

3 (Document passed to the Court.)

4 THE COURT: All right. So where is your concern?

5 MR. HILTON: At the bottom of the statement he says, Red
6 is not known for any real problems except one person, Josh,
7 who stays at Haven Oaks. I have not actually witnessed any
8 of their altercations, but have heard through the grape
9 vine. I have witnessed Red carrying his weapons in very
10 close proximity to himself for protection because of a
11 threat made by Josh. I was told he said to Red, I'm going
12 to kill you and if I can't get you, I'll get your seed
13 first.

14 I mean, even in the statement itself, I've heard it
15 through the grape vine. That's just mere conjecture of some
16 third-party guilt. And, I mean, the case law prevents that.

17 THE COURT: All right. None of that is admissible, but
18 again, is a document that is being published for which there
19 was no objection to, and I gather now there's objection to
20 the remainder of the document being published. It is
21 hearsay. At least doubt hearsay. Maybe more than that, but
22 it is at least double hearsay if not triple hearsay.

23 MR. CHISOLM: Your Honor --

24 THE COURT: Yes.

25 MR. CHISOLM: Your Honor, I'm not offering it for the

1 truth of the matter asserted. I'm offering it to underscore
2 my cooperation, that I was putting everything on the table,
3 letting it all out there. At the beginning of the statement
4 I said a lot of things that could incriminate me, and I just
5 wanted it to be known that I put everything out, everything
6 that I could possibly tell them to help them with their
7 investigation, I put forth.

8 THE COURT: I'm with you. It's still inadmissible.
9 Thank you. There's no -- I find that -- I find that it is
10 hearsay and it is inadmissible hearsay.

11 Anything further?

12 MR. HILTON: Nothing from the state, Your Honor.

13 MR. CHISOLM: One other thing.

14 THE COURT: Sure. Of course.

15 MR. CHISOLM: Your Honor?

16 THE COURT: Yes.

17 MR. CHISOLM: The next question I want to ask, I won't
18 ask specifically what was in the statement, but I'll ask
19 questions, did I give you further information to help your
20 investigation. You know, not exactly asking exactly the way
21 I did, but just to get the point across that I did give more
22 information than what was there. That it wasn't limited to
23 that portion.

24 THE COURT: Very well. Let me just be clear that the --
25 that's fine.

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1 MR. CHISOLM: Yes, ma'am.

2 THE COURT: But the specifics of what is in the
3 statement would be inadmissible. It's inadmissible because
4 clearly the statements that you are referring to are out of
5 court statements, and I find that it would be admitted for
6 the truth of the matter asserted, therefore they're hearsay
7 statements. I do not find that there is an exception that
8 applies. However, if you're going to ask a general
9 question, did I continue to give information about these
10 matters or to help you in your investigation. Those are
11 fine so long as they are general, but you cannot get into
12 these specific statements, okay?

13 MR. CHISOLM: Yes, Your Honor.

14 THE COURT: Very well. Let's take our break. Fifteen
15 for us.

16 Do not discuss your testimony during the break, please,
17 sir.

18 MR. CHISOLM: No, ma'am.

19 (Court in recess for morning break.)

20 (Court in session after morning break.)

21 THE COURT: Thank you so much. Please be seated.

22 All right. Anything before we bring the jury out, from
23 the state?

24 MR. HILTON: Nothing from the state.

25 THE COURT: Mr. Chisolm?

1 if they have they get removed in my chambers and shredded in
2 my chambers. The only reason I tell you that is that I did
3 want you to know that they are protected so that in the
4 event you don't take them or you choose not to take them,
5 or you're just doodling. I don't want you doodling. Then
6 what does happen is they come to me and they are shredded
7 and destroyed in my office so that your notes, your privacy
8 in your notes is maintained. I just forgot to tell you that
9 earlier, so I'm telling you that now.

10 All right. Any objection to my comment to the jurors?

11 MR. HILTON: Nothing from the state.

12 THE COURT: From Mr. Chisolm?

13 MR. CHISOLM: No, ma'am.

14 THE COURT: Very well. Are you ready to proceed with
15 your cross?

16 MR. CHISOLM: Yes, Your Honor.

17 THE COURT: Very well.

18 If you will, pull that mic down just a little bit.

19 There you go. Perfect.

20 JOE BISTROMOWITZ - CONTINUED CROSS-EXAMINATION

21 BY MR. CHISOLM:

22 Q When I gave you my statement, did I give you further
23 information to help your investigation?

24 A Yes. You gave us information other than what was --

25 Q And was this information acted upon and did it help you

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1 in a sense to further your investigation?

2 A Yes.

3 Q Okay. Now, during my interview you all said there was
4 a -- the second interview, I'm sorry. You all said that
5 there was a time discrepancy that you all wanted to talk to
6 me about --

7 A Yes.

8 Q -- from talking to other witnesses?

9 A Yes.

10 Q All right. At this time, did I contest your
11 discrepancy, did I try and say that that person was wrong,
12 whoever said the time discrepancy, you know whoever stated
13 that the hours that we were together was different times,
14 did I say that they were wrong?

15 A No.

16 Q Okay. Did I, in an effort to help you all, offer to
17 search my phone records to clarify, because obviously I was
18 a little intoxicated at the time. I wouldn't know exactly,
19 I wouldn't want to give you wrong information so I asked you
20 to check the phone records to verify, to verify exactly what
21 times we were together?

22 A Yes.

23 Q Okay. All right. Is it true that I properly offered any
24 information that I had because I didn't want to halt your
25 investigation due to the fact that I believed that I was

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1 going to a screening, which is MEPS, military screening?

2 A Yes, sir.

3 Q And within a few days and I didn't want to halt your
4 investigation?

5 A Yes.

6 Q Okay. Are homicide investigations top priority?

7 A Are you asking me?

8 Q Yes.

9 A Yes. That is a high priority case.

10 Q Okay. Was my friend's a top priority?

11 A At the time?

12 Q Was my friend's case, at the time, a top priority to
13 your office?

14 A Yes.

15 Q Okay. Would it be true, or is it true, that say the
16 first 48 hours of an investigation are a crucial time, you
17 know to get leads and get the investigation started?

18 A Yes.

19 Q Okay. If that all is true, can you tell me why you all
20 waited 24 hours to start taking formal statement from me, a
21 person who was trying to help you?

22 A Initially, when we responded to the scene, we didn't
23 know how the victim had died. That wasn't revealed, you
24 know, the gunshot wound wasn't revealed until after the
25 autopsy was performed. So we didn't know if he had been hit

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1 by a car or what -- how he passed away.

2 Q But someone died?

3 A Right.

4 Q And it was important to know?

5 A Yes.

6 Q Okay. But you waited to continue your investigation?

7 A Well, we weren't sure of the manner of death. We
8 didn't know if he had been struck by a vehicle or how the
9 manner of death was.

10 MR. CHISOLM: I have no further questions.

11 THE COURT: Redirect?

12 MR. HILTON: Thank Your Honor.

13 THE COURT: All right.

14 JOE BISTROMOWITZ - REDIRECT EXAMINATION

15 BY MR. HILTON:

16 Q Detective Bistromowitz, there was some cross-
17 examination about whether it was suspicious for the
18 defendant to come up and give you information; what area did
19 Tamekka Williams live in?

20 A Haven Oaks.

21 Q And is that an area that you'd consider a high crime
22 area?

23 A Yes.

24 Q And is it common in your practice as a law enforcement
25 officer that folks in the Haven Oaks area come to you and

1 give you information?

2 A No, they don't.

3 Q And is that why you thought Mr. Chisolm's approaching
4 you and giving you information was suspicious?

5 A Yes.

6 Q Mr. Chisolm asked you if, I think one of this questions
7 was something about looking for his friend. Did anybody
8 call police to report that Red was missing from September 13
9 to September 15?

10 MR. CHISOLM: Objection. Hearsay. No foundation, Your
11 Honor.

12 THE COURT: Just a second. Overruled.

13 BY MR. HILTON:

14 Q If you're aware, did anybody call the Sheriff's Office
15 or law enforcement to report that Red had been missing?

16 A No, not to my knowledge.

17 Q Did Mr. Chisolm, when he came up to you, did he ask you
18 why you were there?

19 A Not to my knowledge. I don't recall if he asked why we
20 were there or not, to be honest with you. I just remember
21 him coming up and engaging me in conversation.

22 Q And I think in your direct testimony, you said that
23 Tamekka Williams appeared shaken up when you gave her the
24 information that you had found the victim in the ditch; is
25 that correct?

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1 A Yes.

2 MR. CHISOLM: Objection. Leading the witness, Your
3 Honor.

4 THE COURT: Sustained. Don't lead.

5 BY MR. HILTON:

6 Q And so did it appear to you that she didn't even know
7 that Red was dead at the time?

8 A She did not.

9 MR. CHISOLM: Objection. Leading the witness.

10 THE COURT: Mr. Hilton, stop leading, please.

11 BY MR. HILTON:

12 Q Detective Bistromowitz, are you aware of any way the
13 defendant would have known that the victim was dead?

14 MR. CHISOLM: Objection. Speculation, Your Honor.

15 THE COURT: Sustained.

16 MR. HILTON: No further questions. Thank you.

17 THE COURT: Recross?

18 JOE BISTROMOWITZ - RECROSS EXAMINATION

19 BY MR. CHISOLM:

20 Q Detective, could you tell us all what the time
21 discrepancy was?

22 A The time discrepancy for?

23 Q During the interview when y'all called me back in on
24 9/17?

25 A That early morning?

1 Q Yes. And y'all said there was a time discrepancy
2 between the witness statements?

3 A Well, we were trying to get a time-line, basically, you
4 know, what time you guys were in the vehicle. Basically, we
5 were trying to ascertain your time-line as it relates to
6 what happened, what occurred. Basically, the new
7 information that we had was basically the date issue that we
8 had they said that it was -- Tuesday evening, Wednesday
9 morning, and they said, you know, they said that it was, you
10 know, Wednesday night, Thursday morning.

11 Q And how did you all eventually resolve this issue?

12 A With phone records.

13 Q And that was at my suggestion, correct?

14 A Yes. You suggested to obtain your phone records for
15 the time.

16 Q And, once again, helped you all further your
17 investigation?

18 A Yes. That was something that we would have done
19 anyway, but yes.

20 Q Thank you.

21 THE COURT: You may come down.

22 DETECTIVE BISTROMOWITZ: Thank you.

23 THE COURT: Call your next witness.

24 MR. HILTON: State would call Tamekka Williams.

25 May this witness be excused, Detective Bistromowitz?

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1 THE COURT: Any objection?

2 MR. CHISOLM: No, Your Honor.

3 THE COURT: Very well. Yes, you may.

4 THE CLERK: Please raise your right hand. State your
5 full name for the record.

6 MS. WILLIAMS: Tamekka Williams.

7 THE CLERK: Could you spell your name, please?

8 MS. WILLIAMS: T-a-m-e-k-k-a W-i-l-l-i-a-m-s.

9 (WHEREUPON, Tamekka Williams was
10 sworn to tel the truth.)

11 THE CLERK: Thank you.

12 COURT REPORTER: Could you spell your first name, again,
13 please?

14 MS. WILLIAMS: T-a-m-e-k-k-a.

15 THE COURT: And would you pull that microphone just a
16 little bit closer. Thank you.

17 Your witness.

18 MR. HILTON: Thank Your Honor.

19 THE COURT: Uh-huh.

20 TAMEKKA WILLIAMS - DIRECT EXAMINATION

21 BY MR. HILTON:

22 Q All right, Ms. Williams, you're going to have to speak
23 up, okay. Thank you.

24 A Okay.

25 Q Where are you living now?

1 A I live in Sangaree.

2 Q Okay. And back in September of 2007, where were you
3 living?

4 A Orangeburg. Orangeburg Road.

5 Q And is that an apartment complex?

6 A Yes, sir.

7 Q Which one was that?

8 A Summerville Apartments.

9 Q Was it the Haven Oaks Apartments?

10 A Haven Oaks.

11 Q Now, did you know the victim in this case, Craig
12 Michael Canady?

13 A Yes, I did. I was his girlfriend at the time.

14 Q And where was he living at the time?

15 A He was residing with me, sir.

16 Q Now, let me turn your attention back to September 10 or
17 so, 2007. This would be right before the time that he went
18 missing. Had you talked to Red around that time?

19 A I called him, you know, I wanted to -- you know, talk
20 to him, not leave on bad terms. It was an argument and I
21 called and told him he was going to reside with his friends
22 and calm down for a while.

23 Q And did he leave your apartment?

24 A Yes, he left my apartment.

25 Q Did he ever pack his stuff or anything?

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1 A He packed up everything. When he packed up everything
2 he sat it by my wall, I believe, where my kitchen is, the
3 built-in. He sat everything there in the corner.

4 Q And when was the last time that you talked to him?

5 A I hadn't talked to him after that. I had a message on
6 a Wednesday where he said he was going to stay with a
7 friend. I didn't talk to him no longer.

8 Q Now, do you remember that Saturday, the 15, when the
9 Sheriff's Office came to your apartment?

10 A Yes, sir.

11 Q Do you remember why they came to your apartment?

12 A They came to tell me they had discovered a body.

13 Q And who did you have over at your apartment that day?

14 A My sister was there. I can't even remember it was so
15 many people that knew me, but they had came over, and my
16 friend Patrice. A lot of people were over there. I don't
17 remember every one.

18 Q Did the defendant come up?

19 A Yes, sir, he did.

20 Q And what was that about?

21 A He walked from the back and told me -- when the folks
22 were standing around outside, he was like do you need
23 anything, you know, I'm here, and he put his number in my
24 phone. I had my friend erase him out of my cell phone at
25 the time.

1 Q Had you asked him for any help at that point?

2 A No, sir. I was too upset.

3 Q Okay. Please answer any questions the defendant may
4 have for you.

5 THE COURT: Cross-examination.

6 TAMEKKA WILLIAMS - CROSS-EXAMINATION

7 BY MR. CHISOLM:

8 Q All right. You said Red pack up everything?

9 A Yes, he packed everything up.

10 Q Could you tell me why he was leaving?

11 A Me and him had an argument, everyone has arguments. We
12 had an argument, and he said he was going to leave and go
13 stay with one of his friends.

14 Q Okay. As a result of this argument did you of your male
15 cousins come to the house?

16 A Yes, and they left.

17 Q Was that Ace and Horse?

18 A Yes, and they left. They didn't stay there.

19 Q Did they come because of the argument?

20 A They came to see how I was -- I called my father, and
21 my father was like, are you okay, because he heard him
22 raving at me and going at each other.

23 Q After Ace and Horse came over, did I come over?

24 A I don't know if you came over.

25 MR. CHISOLM: One second, Your Honor.

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1 THE COURT: All right.

2 BY MR. CHISOLM:

3 Q Do you recall telling detectives on 9/17/07 -- did you
4 have an interview with detectives on 9/17, September 17?

5 A I don't remember the date. I know I went down to talk
6 with them. I don't remember the date.

7 Q Do you remember that you had two interviews with
8 detectives?

9 A Yes, I remember the interviews.

10 Q During this second interview with detectives do you
11 remember telling them that after you and Red had your
12 argument that Don came over?

13 A No, I don't remember you coming to my house.

14 Q So you -- Did you tell detectives in this same
15 interview that the argument that you and Red had was
16 partially because of me?

17 A No. I don't remember that.

18 Q So you and Red never got into an argument?

19 A We got into an argument. The argument was about him --
20 well, you know how people argue about cleaning the house or
21 something like that. You go through that every day.

22 Q So you never argued with Red about chilling with me as
23 often as he did?

24 A No.

25 Q Do you recall the 9 -- the first interview, telling

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1 detectives that I was the only one that was really
2 cooperating?

3 A No.

4 Q Do you recall in the same interview, telling
5 detectives, talk to Don, he'll talk to you. Let him tell
6 you?

7 A I don't recall that.

8 Q Okay. Do you recall telling detectives in this same
9 interview I was a cool person and I was there for you the
10 night you found out?

11 A I don't recall that either.

12 Q Okay. Do you recall telling investigators that D and
13 Red were always together and you didn't know anyone else who
14 hung together like us two?

15 A Yes, I do remember telling them that.

16 Q Okay. During that argument that you had with Red, did
17 he bite you on the leg?

18 MR. HILTON: Objection, Your Honor. Conjecture.

19 THE COURT: All right. Ladies and gentlemen, there's a
20 matter of law that I must take up outside of your presence.
21 I'm going to ask you to please step to your jury room. Do
22 not discuss this matter or allow anyone to discuss it with
23 you. We will be with you shortly.

24 (Jury out at 11:14 a.m.)

25 THE COURT: All right. Tell me what the objection is

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1 MR. CHISOLM: Yes, ma'am.

2 THE COURT: Very well. Let's have the jury.

3 (Jury in at 11:22 a.m.)

4 THE COURT: All right. Okay. You may continue.

5 MR. CHISOLM: I'm just going to review for one second,

6 Your Honor.

7 THE COURT: Sure.

8 TAMEKKA WILLIAMS - CONTINUED CROSS EXAMINATION

9 BY MR. CHISOLM:

10 Q How often would you say me and Red were together?

11 A I don't know. He would come and go, he had a lot of
12 friends. People that liked him. I don't know.

13 Q All right. Do you recall telling the detectives in your
14 first interview that you had no idea who most of the people
15 were that showed up at your house that night?

16 A Well, I have a lot of love ones. I've got a lot of
17 friends. Females that would come to my house, and I really
18 didn't socialize with too many people, but there were people
19 that live out there in my apartment complex, and then some
20 of my family members were also over there.

21 Q During your interview, did you tell detectives that you
22 didn't know most of the people that showed up?

23 A I mean, when something happens, people come that he
24 knows.

25 Q That must be it?

1 A Yeah. I don't know.

2 Q Did you recall telling detectives on this same
3 interview that most of the guys in Haven Oaks ran and jumped
4 the ditch when police came around?

5 A That's always -- Every time the police come they ran.

6 Q Did you tell the detectives that I was the only one
7 that wasn't scared to talk to the police?

8 A As I recall, I remember you telling me that you had --
9 that you were cooperating with them, as far as I know. I
10 don't remember telling them that.

11 Q Can you tell me who Joshua Stokley is?

12 MR. HILTON: Objection.

13 THE COURT: All right. And the basis is relevance?

14 MR. HILTON: Third-party guilt.

15 THE COURT: All right. Again, ladies and gentlemen,
16 there's a matter that I must take up outside your presence.
17 So please step to your jury room. Do not discuss this
18 matter or allow anyone to discuss it with you.

19 (Jury out at 11:27 a.m.)

20 MR. CHISOLM: Your Honor, may I make a proffer?

21 THE COURT: You can't see the door and neither can I.
22 So we have to wait to hear the sound of it closing. So
23 that's what I was waiting for.

24 First of all, as I understand it, the objection is on
25 the basis of third-party guilt, and yes, sir, you may make a

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1 been I don't remember or no. There certainly could be a
2 reason in cross-examination by Mr. Chisolm to refresh her
3 recollection with regards to those matters, and they will
4 certainly be consistent with his theories of his case, as he
5 argued in his opening. In that regard, I certainly think
6 it's appropriate for him to ask that she look at the video
7 tape. She said it would refresh her recollection.

8 With regard to the third-party guilt, in all candor you
9 have to appreciate where I am at this point. I don't know
10 that. I am aware of the Gregory case. I am aware of the
11 Holmes case. I know that I certainly, if that is his
12 position, I certainly can't just dismiss it out of hand.
13 And it has to be addressed. I have to listen to the
14 witnesses, I have to listen to the evidence of third-party
15 guilt, because as we know from the Holmes case I cannot
16 disallow it out of hand.

17 So I don't know where we are. We are where we are.

18 MR. HILTON: I understand. I'm just trying to save a
19 little time.

20 THE COURT: That -- ultimately that may save you no time.
21 That may cause you a lot more time. So -- in any event
22 that's where we are.

23 (Mr. Chisolm confers with Mr. Loy.)

24 THE COURT: Obviously, we need to mark these for
25 identification purposes, too, please.

1 THE COURT: Okay.

2 MR. CHISOLM: I'm pretty sure.

3 THE COURT: Okay. All right. The question -- let me just
4 recap. The question was to Ms. Williams, would playing the
5 tapes of your interviews, would that refresh your
6 recollection. Her response was, yes. She has now seen a
7 portion of the tape. She has not seen all of the tape of
8 even the first tape, and obviously she has not seen the
9 second tape. Remember the reason that the tape was played
10 was to allow for Ms. Williams to refresh her recollection.
11 So you can certainly begin your questioning again at this
12 time, if you wish. But if -- let me just say to you, if you
13 intend to refresh her recollection any further. I don't
14 want to send this jury out again. I've sent them to lunch
15 early because this was the time to do that. So if you want
16 to refresh her recollection additionally with these tapes,
17 let me just tell you that now's the time to do that.

18 MR. CHISOLM: I'll keep my questioning in line with what
19 I know she remembers.

20 THE COURT: Okay. Very well. All right. Then, let's --
21 Okay. Than additional questions with regards to your
22 proffer?

23 MR. CHISOLM: May I have one moment?

24 THE COURT: Of course. Yes.

25 (Mr. Chisolm confers with Mr. Loy.)

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1 you thought Red -- I mean, Josh and Diane clearly had
2 something to do with Red's death?

3 A I watched the video. I heard the video.

4 Q I'm asking if you said that?

5 A Yes, I said that. I remember saying it.

6 MR. CHISOLM: One second, please.

7 THE COURT: All right.

8 (Mr. Chisolm confers with Mr. Loy.)

9 BY MR. CHISOLM:

10 Q Did you tell detectives during your interview that you
11 received -- what you would call a questionable phone call
12 from Diane, Josh's girlfriend.

13 A Yes. Well, in the beginning I had called -- well, she
14 already knew that he was missing, because everybody was
15 trying to look for him, and she called me that night. We
16 both went job hunting. That was her response to calling me.
17 I'm going to go job hunting that Friday. She came out that
18 -- I discussed with her that he was missing, and she was
19 like, that's when she just came out and said, who -- I think
20 I told her that somebody, you know, had did something to
21 him. I think somebody hit him or something. She was like,
22 who would want to kill Red or who would want to hurt him.
23 That's what her response to me was.

24 Q Did you tell detectives that the only thing you said to
25 her was Red was missing?

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1 A I just stated that. That's what I told her.

2 Q No, actually, you -- what you said was you told her --

3 A That Red was missing.

4 Q No. That you thought someone did something to him.

5 A Yes, I did. We had a conversation. I can't go all the
6 way back in time. This was four years from now.

7 Q Did the conversation with Diane -- I'm sorry. Did you
8 tell detectives that the conversation with Diane gave you
9 the impression that they possibly had knowledge of or had
10 something to do with the death of Red?

11 A No. I got suspicious after she had said what she said
12 to me. I got suspicious. I had suspicions maybe she could
13 have harmed or did something because she did make that
14 threat.

15 Q So the answer is yes?

16 A Yes. With --

17 MR. CHISOLM: Just give me one second, Your Honor.

18 THE COURT: All right.

19 (Mr. Chisolm confers with Mr. Loy.)

20 BY MR. CHISOLM:

21 Q All right. You said that you do feel, after watching
22 the video that your memory is refreshed, correct?

23 A Yes, sir.

24 Q All right. Do you recall telling detectives that I was
25 the only one that was really cooperating?

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1 impeachment, because obviously credibility is another issue
2 altogether.

3 So I hope that's helpful.

4 (Mr. Chisolm confers with Mr. Loy.)

5 THE COURT: Anything you wish to add to that, Mr.
6 Hilton?

7 MR. HILTON: No, Your Honor.

8 (Mr. Chisolm confers with Mr. Loy.)

9 THE COURT: Yes.

10 MR. CHISOLM: We're ready, Your Honor.

11 THE COURT: Okay. Well, all right.

12 Ready?

13 MR. HILTON: State's ready.

14 THE COURT: Good. Let's have the jury.

15 (Jury in at 2:19 p.m.)

16 THE COURT: All right, ladies and gentlemen, we will
17 continue with the state's case and the cross-examination of
18 Ms. Williams.

19 Mr. Chisolm.

20 MR. CHISOLM: Thank Your Honor.

21 TAMEKKA WILLIAMS - CONTINUED CROSS-EXAMINATION

22 BY MR. CHISOLM:

23 Q Ms. Williams, during the break is it correct that you
24 had a chance to refresh your memory on your interview on the
25 tape?

1 A Yes. I'm fine.

2 Q Could you tell me now, do you recall during this
3 interview telling detectives I was the only one who was
4 really cooperating?

5 A Yes.

6 Q Do you recall telling detectives that I was a cool
7 person and I was there for you the day that you found out?

8 A I remember saying that you were cool. Yes.

9 Q Do you recall telling detectives that me and Red hung
10 out pretty often?

11 A No. I don't remember that.

12 MR. CHISOLM: One second, Your Honor.

13 THE COURT: All right.

14 BY MR. CHISOLM:

15 Q Do you recall telling detectives of an event when
16 Joshua Stokely threatened Red and yourself?

17 MR. HILTON: Objection.

18 MR. CHISOLM: Your Honor, I have a wide latitude as to
19 bias and prejudice with the witness.

20 THE COURT: This is where we had the objection the first
21 time that we took our break. And originally there was no
22 response at that point. And -- I'm going to sustain the
23 objection.

24 MR. HILTON: Thank Your Honor.

25 THE COURT: You may proceed.

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1 MR. CHISOLM: One second, Your Honor.

2 THE COURT: Okay.

3 (Mr. Chisolm confers with Mr. Loy.)

4 BY MR. CHISOLM:

5 Q Do you recall telling detectives that if Red wasn't in
6 Haven Oaks, he's be in Azalea Park?

7 A Sometimes, but he was mostly home.

8 Q Do you recall telling detectives that Red was in Azalea
9 Park he was likely with Sike?

10 A Sometimes. Yes.

11 Q Do you recall telling detectives that on Thursday
12 night, the last time you saw Red he got in the car with
13 Sike?

14 A Yes.

15 Q Did you tell detectives that no one saw him since he
16 got in the car with Sike?

17 A Yes.

18 Q Do you recall telling detectives that you've never seen
19 me with a weapon?

20 A Yes.

21 Q I'm going to try to word this question correctly.
22 During your interview with detectives you were being very
23 helpful and you attempted to give them as many leads as you
24 could for their investigation?

25 A Yes. I was cooperating.

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1 Q Yes. Did you, in essence, point them in numerous
2 directions -- did you point detectives to numerous male
3 acquaintances of Red that could possibly have involvement in
4 his death?

5 A Um --

6 MR. HILTON: Your Honor, I'm going to object again. This
7 is the same --

8 THE COURT: I'll allow that. You may answer.

9 A I -- in my mind I had a lot of suspects, but I did -- I
10 wasn't sure. I had a lot of suspects. They said they had a
11 lot of suspects theirselves, so --

12 BY MR. CHISOLM:

13 Q But you did point them to numerous suspects; yes?

14 A Probably two, I believe.

15 Q Okay. During this same interview do you recall not
16 pointing them in my direction?

17 A No.

18 Q Do did you point them in my direction during this
19 interview?

20 A No, I didn't point in any direction. I don't remember.
21 I never said who.

22 Q You pointed them -- so you can't remember whose
23 direction you pointed them in; is that what you're saying?

24 A No.

25 Q After just watching this tape you cannot recall which

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1 --

2 A I had suspicion about Josh, but like I said, as far as
3 I know, he wouldn't hurt nobody. I mean they both had
4 altercations. We all did. And --

5 Q Could you tell me more about this?

6 MR. HILTON: Objection. Relevance.

7 MR. CHISOLM: She introduced it herself, Your Honor.

8 THE COURT: Ask another question.

9 MR. CHISOLM: Okay.

10 BY MR. CHISOLM:

11 Q What would be some of your most memorable altercations?

12 A The altercation --

13 MR. HILTON: Objection, Your Honor.

14 THE COURT: Let me hear the rest of the question. Don't
15 answer yet until I have had a chance to rule.

16 And you may have finished your questions, but I don't
17 think so.

18 MR. CHISOLM: I'll try to make sure I get this question
19 correct.

20 THE COURT: Okay. So everybody just hold on for him.

21 Ms. Williams, okay.

22 MS. WILLIAMS: Okay.

23 THE COURT: I've got to rule on it.

24 MR. CHISOLM: I'm going to re-word that question, Your
25 Honor.

1 THE COURT: Okay. You're going to withdraw that
2 question and ask another?

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Okay. All right.

5 BY MR. MR. CHISOLM:

6 Q And this is along the same lines in regards to you
7 pointing the detectives in -- towards individuals that might
8 have -- that they should investigate.

9 Could you tell me why you felt detectives needed to go
10 in the direction that you were pointing?

11 MR. HILTON: Objection.

12 THE COURT: Sustained.

13 MR. CHISOLM: Could you give me one second.

14 THE COURT: Sure.

15 (Mr. Chisolm confers with Mr. Loy.)

16 MR. CHISOLM: May it please the Court, Your Honor?

17 THE COURT: Yes.

18 BY MR. CHISOLM:

19 Q Okay. You said you didn't point them in any direction?

20 A No, before it happened the week before Red went
21 missing, and that's why -- that's why. At the time, I
22 figured it would help to see, you know, maybe check him out,
23 also. That was my point. But it happened before -- the
24 altercation. Me and his girlfriend got -- it's a big thing.
25 She, you know, me and her got into it. He and him got into

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1 it.

2 MR. CHISOLM: One second.

3 THE COURT: Okay.

4 (Mr. Chisolm confers with Mr. Loy.)

5 BY MR. CHISOLM:

6 Q Did you tell the police that this person that you're
7 talking about made any threats toward you or your child?

8 MR. HILTON: Objection, Your Honor. That's about the
9 fourth time.

10 MR. CHISOLM: For impeachment purposes, Your Honor.

11 THE COURT: Sustained.

12 MR. CHISOLM: I have no further questions, Your Honor.

13 THE COURT: Very well. All right. Redirect?

14 TAMEKKA WILLIAMS - REDIRECT EXAMINATION

15 BY MR. HILTON:

16 Q Thank you, Ms. Williams. You said on cross-examination
17 you told police that Mr. Chisolm was actually cooperating
18 with police. Did you know what he was telling police?

19 A No. I He didn't discuss that with me.

20 Q Did Red, the victim in this case, did he use drugs?

21 A As far as I know, he did.

22 Q How about selling drugs. Did he ever sell drugs?

23 A Yes, sir.

24 Q Okay, and how long had he been doing that in the Haven
25 Oaks area?

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1 A I think for a month and then we -- He wanted to go get
2 a job, so he did go out and he did go job hunting. That's
3 what I was doing with Diane, we rode together.

4 Q Back in September 2007, was he still selling drugs at
5 that time in Haven Oaks?

6 A I didn't see any, so I -- No, I didn't see any drugs.

7 Q But you're not sure one way or the other?

8 A No, I'm not sure.

9 Q Okay. You said -- you said, Thursday night you saw him
10 get in the car with Sike. How sure are you about that date?

11 A I'm not sure about the date, the day, whatever. But I
12 know it was right before -- he got in the car, but you know,
13 like he came back home because the baby was sick, they child
14 was sick. So he dropped him back off. That's what he told
15 me.

16 Q Specifically, Thursday, I think that you mentioned.
17 Are you certain it was Thursday or could it have been one
18 other day of the week.

19 A It -- I'm not sure Wednesday or Thursday, because, like
20 I say, I do remember him bringing the key back. Bringing
21 the key to my house. He was like, I'm just going to cool
22 off for a little while. We going to the country with a
23 friend and stay for a while until he, you know, cooled off.

24 Q Thank you.

25 MR. HILTON: No further questions.

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1 MR. CHISOLM: Court's indulgence for one moment, Your
2 Honor?

3 THE COURT: Of course.

4 (Mr. Chisolm confers with Mr. Loy.)

5 TAMEKKA WILLIAMS - RECROSS-EXAMINATION

6 BY MR. CHISOLM:

7 Q In regards to the last time you saw Red, you're unsure
8 what night it was, whether it was Wednesday or Thursday?

9 A It was in the daytime. I remember the daytime. I
10 don't remember the time of day because it's been so long.

11 Q But you're certain the last person you saw him with was
12 Sike?

13 A Yes, he got in the car with him.

14 MR. CHISOLM: I have no further questions.

15 THE COURT: All right. Is this witness free to leave?

16 MR. HILTON: She is, Your Honor.

17 THE COURT: Any objection?

18 MR. CHISOLM: No, Your Honor.

19 THE COURT: Very well. You are free to go.

20 Call your next witness, please.

21 MR. HILTON: State would call Shakara Rose.

22 THE CLERK: Please raise your right hand, state your
23 full name for the record.

24 MS. ROSE: Shakara Rose.

25 THE CLERK: Could you spell your name, please?

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1 MS. ROSE: S-h-a-k-a-r-a R-o-s-e.

2 ((WHEREUPON, Shakara Rose was sworn
3 to tell the truth.))

4 THE CLERK: Thank you.

5 SHAKARA ROSE - DIRECT EXAMINATION

6 BY MR. HILTON:

7 Q Thank you, Ms. Rose. How are you today?

8 A Okay.

9 Q I've just got a few questions for you. Where were you
10 living back in September 2007?

11 A In Haven Oaks Apartments.

12 Q Do you remember what apartment?

13 A No.

14 Q And did you know a lot of the people from around there?

15 A Yes, sir.

16 Q You did. Did you know the defendant in this case, Mr.
17 Donsurvi Chisolm?

18 A Yes, sir.

19 Q Did you know the victim in this case, Craig Canady or
20 Red?

21 A Yes, sir.

22 Q How did you know Craig Canady?

23 A I lived close to him.

24 Q At sometime around September 2007, was he going to move
25 into your apartment?

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1 A Yes, sir.

2 Q Do you know what that was about?

3 A He and his girlfriend were arguing and I guess she was
4 putting him out. He asked to stay with me.

5 Q Let me turn your attention to September 13, 2007 when
6 Red went missing; do you remember that day?

7 A Uh-huh. (Affirmative response.)

8 COURT REPORTER: Is that a yes?

9 A Yes.

10 BY MR. HILTON:

11 Q And do you remember a time between the time that Red
12 went missing and the time his body was found, couple day
13 period, do you remember a time in between those days where
14 you heard the defendant say something about where the victim
15 was?

16 A All I heard was would you like to be in the ditch
17 stinking, too.

18 Q Would you like to be in the ditch stinking, too?

19 A Uh-huh. (Affirmative response.)

20 THE COURT: Is that a yes or a no?

21 A Yes.

22 BY MR. HILTON:

23 Q Where were you at when that conversation took place?

24 A Sitting on my porch.

25 Q That was at Haven Oaks?

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1 A Yes.

2 THE COURT: Is that a yes or a no?

3 A Yes, ma'am.

4 BY MR. HILTON:

5 Q Don't be nervous, okay. The court reporter has to take
6 down what you say. Was there a crowd of people around?

7 A Yes, sir.

8 Q And who made that statement?

9 A From what I remember I believe it was Don.

10 Q How do you believe that?

11 A Because he was out there at the time. A couple of
12 people said the comments.

13 Q And you heard the comments?

14 A I heard the comments.

15 Q Thank you. Please answer any questions Mr. Chisolm may
16 have for you.

17 THE COURT: Cross-examination.

18 MR. CHISOLM: Court's indulgence?

19 THE COURT: Sure.

20 (Mr. Chisolm confers with Mr. Loy.)

21 SHAKARA ROSE - CROSS-EXAMINATION

22 BY MR. CHISOLM:

23 Q Hey, Shakara.

24 A Hey.

25 Q All right. Did you say that I said that?

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1 A I didn't say you said that.

2 Q Okay. Do you recall -- you told detectives this on
3 October 10, 2007; correct?

4 A Uh-huh. (Affirmative response.)

5 Q Okay.

6 THE COURT: Is that a yes?

7 A Yes.

8 BY MR. CHISOLM:

9 Q Do you recall telling detectives you were in Haven Oaks
10 after Red's body was found. Someone asked where was Red.
11 You stated, I don't recall who stated it, but someone said
12 he must in a ditch stinking.

13 A Okay.

14 Q Is that what you said?

15 A Yes.

16 Q You don't recall who said that?

17 A No, I don't.

18 Q And it was a group of people around?

19 A Yes, a lot of us.

20 Q A lot of people were around?

21 A Uh-huh. (Affirmative response.)

22 Q Would you say about five or 10?

23 A The whole group from Haven Oaks was there.

24 Q So about 20, 30 people?

25 A 20 to 30, yeah.

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1 Q And you have no clue who said that?

2 A I don't know.

3 Q So I didn't say that.

4 A Well, I believe it was you. I do believe it was you,
5 because you were out there.

6 Q But you told detectives clearly that I didn't say it?

7 A But you were out there the day. I believe it was you.
8 You were looking for razors and shaving cream.

9 Q Looking for what?

10 A Razors and shaving cream.

11 COURT REPORTER: Razors and?

12 A Shaving cream.

13 Q Razors and --

14 A Yeah. You were out there.

15 Q I'm not -- Okay. What are the razors and shaving cream?

16 A I don't know. You were out asking for razors and
17 shaving cream that day.

18 Q All right.

19 MR. CHISOLM: One second?

20 THE COURT: All right.

21 (Mr. Chisolm confers with Mr. Loy.)

22 BY MR. CHISOLM:

23 Q All right. You said Red was about to move in with you;
24 correct?

25 A Uh-huh. (Affirmative response.)

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1 THE COURT: Is that a yes?

2 A Yes.

3 BY MR. CHISOLM:

4 Q Could you tell me why he was going to move in with you?

5 A Because he and his girlfriend got into a little
6 argument and so he asked if he can move in with me.

7 Q Okay. Could you elaborate further on -- On your
8 September 16 statement, did you tell detectives that you let
9 Red move in because he felt his safety was in questions?

10 A No, I didn't say that.

11 Q Okay. You didn't tell detectives on this same day, you
12 let Red move in because he had a fight with his girlfriend
13 and her cousins Ace and Horse came over?

14 A Well, the come over or they were supposed to come, or
15 something like that. Supposed to come, yes. He didn't move
16 in with me. He asked if he could come stay with me.

17 Q He didn't move in with you?

18 A No, not yet. He just stayed the night, that night.

19 Q Okay. So you didn't -- you didn't tell detectives that
20 you were expecting him back? That he moved in with you and
21 he brought his food to your apartment?

22 A That's two different days. Say that again, please?

23 Q Did you tell detectives that you were expecting Red
24 back because he was staying with you. He left food at your
25 apartment and --

1 A That's two different days.

2 Q I'm going off of what you said, Shakara.

3 THE COURT: Just ask her a question, please, sir.

4 MR. CHISOLM: Yes, Your Honor.

5 One moment, please?

6 THE COURT: All right.

7 (Mr. Chisolm confers with Mr. Loy.)

8 BY MR. CHISOLM:

9 Q I just want to clarify something, Shakara. When you
10 made your statement to detectives, your statement was, just
11 to clarify, you did not know who said it?

12 A No.

13 Q And four years later you remember?

14 A I don't remember. I believe -- I think I remember. I
15 mean, it was four years ago.

16 Q So you don't remember?

17 A I mean --

18 MR. HILTON: Objection.

19 THE COURT: Sustained.

20 MR. CHISOLM: No more questions, Your Honor.

21 THE COURT: Very well. All right. Redirect?

22 MR. HILTON: No redirect, Your Honor.

23 THE COURT: All right. Is this witness free to leave?

24 MR. HILTON: She is.

25 THE COURT: Any objection?

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1 MR. CHISOLM: No.

2 THE COURT: Very well. You may leave.

3 Call your next witness, please.

4 MR. HILTON: State would call Shaquanda White.

5 THE CLERK: Please raise your right hand. State your
6 full name for the record.

7 MS. WHITE: Shaquanda White.

8 THE CLERK: Could you spell your name, please.

9 MS. WHITE: S-h-a-q-u-a-n-d-a L-a-s-h-a-y White.

10 (WHEREUPON, Shaquanda White was
11 sworn to tell the truth.)

12 THE CLERK: Thank you.

13 THE COURT: Your witness.

14 MR. HILTON: Thank Your Honor.

15 THE COURT: I'm just sort of looking at that microphone.
16 Ms. White, do me a favor, state your name again. This is
17 like a sound stage.

18 MS. WHITE: Okay. Shaquanda White.

19 THE COURT: Good. That's good. Good volume.

20 SHAQUANDA WHITE - DIRECT EXAMINATION

21 BY MR. HILTON:

22 Q Thank you, Ms. White. If you can just keep up that
23 volume for us?

24 A Okay.

25 Q What area are you living in now?

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1 A Harleyville, South Carolina.

2 Q And where were you living back in September, 2007?

3 A In the Evergreen Apartments in Orangeburg?

4 Q And who lived in that apartment with you?

5 A Me, my mother, my sister, my brother, my mother's ex-
6 boyfriend, and a friend of ours.

7 Q Your mother's ex-boyfriend; who was that?

8 A David White.

9 Q Is he the one that goes by the nickname Scully?

10 A Yes, sir.

11 Q Do you know the defendant, in this case, Mr. Donsurvi
12 Chisolm?

13 A Yes, sir.

14 Q How did you know him?

15 A He was a good friend of the family. I met him when he
16 moved.

17 Q Did you know his wife, Natalia?

18 A Yes, sir.

19 Q And that's her seated in about the third row on the
20 right?

21 A Yes, sir.

22 Q What kind of car did they have back in 2007?

23 A A Dodge Durango, gray.

24 Q Let me show you what's been marked for identification,
25 State's Exhibit No. 6 and ask if you recognize this?

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1 A Yes.

2 Q Does that appear to be the Dodge Durango that they
3 drove?

4 A Yes, sir.

5 MR. HILTON: Your Honor, at this time, we'd offer
6 State's Exhibit 6 into evidence.

7 THE COURT: Any objection?

8 MR. CHISOLM: No, Your Honor.

9 THE COURT: Very well. State's Exhibit No. 6, in
10 evidence without objection. It is a photograph.

11 (State's Exhibit No. 6, photo, was
12 marked and entered.)

13 BY MR. HILTON:

14 Q Did you ever ride in that Dodge Durango?

15 A Yes, sir.

16 Q Now, in relation to September 13, 2007, when did you
17 ride in that car?

18 A I say a week before.

19 Q Do you remember where you sat?

20 A Yes, sir.

21 Q Where was that?

22 A Passenger seat, front.

23 Q What kind of condition was the car in?

24 A Normal condition.

25 Q What about the passenger seat?

- 1 A Normal condition.
- 2 Q Did it have any major holes in it or anything?
- 3 A No, sir.
- 4 Q Did it need to be replaced?
- 5 A No, sir.
- 6 Q What about the seatbelt, was the seatbelt in the car?
- 7 A Seatbelt was fine.
- 8 Q And that's the passenger seatbelt you're referring to?
- 9 A Yes, sir.
- 10 Q And you said it was fine?
- 11 A Yes, sir.
- 12 Q Do you remember wearing your seatbelt?
- 13 A I don't think I wore my seatbelt.
- 14 Q Do you remember seeing it in the car?
- 15 A Uh-huh. (Affirmative response.)
- 16 THE COURT: Is that a yes?
- 17 A Yes. Sorry.
- 18 BY MR. HILTON:
- 19 Q And this is side-tracking just a little bit, what
- 20 happened with your sister back on September 12, [REDACTED]?
- 21 A She wanted to go to the hospital to see my niece.
- 22 Q And was your niece born on that day?
- 23 A Yes.
- 24 Q And is that kind of how you can tie all these dates
- 25 together?

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1 A Yes, sir.

2 Q Okay. Let's talk about the day after your niece was
3 born, September 13, the early morning hours around 3:00
4 o'clock or so. Do you remember where you were at that time?

5 A Yes, sir.

6 Q Where were you?

7 A Home in Evergreen.

8 Q Was anybody over there with you?

9 A Yes, sir.

10 Q Who was there?

11 A Sike.

12 Q And is that the Sike --

13 A Yes, sir.

14 Q -- that people have been referring to?

15 A Yes, sir.

16 Q That was his nickname?

17 A Uh-huh. (Affirmative response.) Sike.

18 Q And around that time on September 13, 2007, did the
19 vehicle depicted in that Exhibit 6 come up?

20 A Yes, sir.

21 Q And who was in that vehicle?

22 A Don and Red.

23 Q Where was Sike at that time?

24 A Sitting in the passenger seat, and he got out and
25 talked to Red.

1 Q Passenger seat of whose car?

2 A Of his car -- I meant the driver's seat of his car, and
3 he got out and talked to Red on the passenger side of the
4 Durango.

5 Q And this sounds weird, but you said of his car?

6 A Uh-huh. (Affirmative response.)

7 Q Sike was in the --

8 A His car, and when the car -- when Don truck was pulling
9 up.

10 Q Sike was in Sike's car?

11 A Uh-huh. (Affirmative response.)

12 THE COURT: And that's a yes?

13 A Yes. I'm sorry. Yes.

14 BY MR. HILTON:

15 Q Just so everybody's clear, Sike was in Sike's car when
16 Don was pulling up?

17 A Yes, sir.

18 Q Was he ever in Red's car -- I mean, excuse me --

19 A No.

20 Q -- was he ever in Don's car?

21 A No, he never go in it.

22 Q Now, when Don pulled up in the gray Durango, what did
23 Sike do?

24 A He got out and talked to Red.

25 Q Where was Red seated?

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- 1 A In the front passenger.
- 2 Q Of whose car?
- 3 A Of Don's truck.
- 4 Q Red was in --
- 5 A Yes.
- 6 Q -- the front seat of this car?
- 7 A Yes.
- 8 Q Where was Scully at the time?
- 9 A Upstairs sleeping in my mother's room.
- 10 Q At some point in time, did Don go inside?
- 11 A Yes, sir.
- 12 Q And do you remember about how long he stayed inside?
- 13 A I don't remember. He was in and out. He just went to
- 14 get Scully and came back out.
- 15 Q You said he went to get Sully and come back out. Did
- 16 they come back out?
- 17 A Yes, sir.
- 18 Q Okay, and what did they do at that point?
- 19 A They left.
- 20 Q When you say they left; who left?
- 21 A Don, Red and Scully.
- 22 Q Okay. Do you remember where each one was sitting in
- 23 the gray Dodge Durango?
- 24 A Yes, sir.
- 25 Q Where were they sitting?

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1 A Don was sitting in the front driver's seat. Red was in
2 the front passenger, and Scully was sitting in behind the
3 driver's seat on the left-hand side.

4 Q What did you do the rest of that night and into, I
5 guess, Wednesday morning; what did you do the rest of that
6 morning?

7 A Me and Sike went upstairs, with my sister watching
8 movies and fell asleep.

9 Q Was Sike with you the whole time?

10 A Yes, sir.

11 Q When was the next time you saw Scully?

12 A The next morning when I woke up about 10:30 or 11:00.

13 Q Did he go to work that next day?

14 A No, sir.

15 Q And when I say the next day, later into the day on
16 Thursday; is that correct?

17 A Yes, sir.

18 Q So we're still into the 13?

19 A Yes, sir.

20 Q How was he acting that day, on Thursday?

21 A , He -- Scully, he stay in his room in bed all day. As I
22 was in the house he was in the bed.

23 Q Please answer any questions Mr. Chisolm may have for
24 you.

25 A All right.

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1 THE COURT: Cross-examination.

2 MR. CHISOLM: Yes.

3 SHAQUANDA WHITE - CROSS-EXAMINATION

4 BY MR. CHISOLM:

5 Q Shaquanda.

6 A Hi.

7 Q How you doing?

8 A Fine.

9 Q You've known me for a long time?

10 A Yes, sir.

11 Q Okay. Do I smoke?

12 A Do you smoke?

13 Q Black and Milds?

14 A Uh-huh. (Affirmative response.)

15 THE COURT: I'm sorry.

16 A Yes, sir. I'm so sorry.

17 BY MR. CHISOLM:

18 Q I frequently smoke Black and Milds?

19 A Yes.

20 Q Does Natalia smoke?

21 A Yes.

22 Q In regards to you being inside the vehicle, you're
23 saying it was in good condition, the seat?

24 A Uh-huh. (Affirmative response.)

25 THE COURT: That's a yes.

1 A Yes. Yes.

2 BY MR. CHISOLM:

3 Q Now, I understand -- make sure it's a questions.

4 MR. CHISOLM: I'm sorry, Your Honor.

5 BY MR. CHISOLM:

6 Q If you were sitting on the seat would you be able to
7 see burn holes that Black and Milds and cigarettes were
8 potentially in the seat?

9 A No, sir.

10 Q Huh?

11 A No, sir.

12 Q You said you'd be able to see them if you were on the
13 seat or you saw them?

14 A No. I'm saying you mean like on the side or the
15 cushion?

16 Q Just in general if you were sitting on it would you be
17 able to see burn holes on it?

18 A Uh-huh. (Affirmative response.)

19 THE COURT: And that is a?

20 A Yes.

21 BY MR. CHISOLM:

22 Q I'm not sure if you understand what I'm asking. If
23 you're sitting on top of them --

24 A Uh-huh. (Affirmative response.)

25 Q -- Okay, you wouldn't be able to see them, correct?

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1 A It depends on where they at on the seat.

2 Q All right. Did you inspect my vehicle closely when you
3 got inside of it or you just got inside --

4 A Just got inside.

5 Q -- like a normal person would.

6 A Yeah.

7 Q All right. So there's a possibility that you wouldn't
8 see the burn holes that were on the seat because you just
9 got inside the car?

10 A Well, like I said, if it was burnt, I don't know that.

11 Q Okay. And you said you do not recall putting on a
12 seatbelt?

13 A Huh-uh. (Negative response.)

14 THE COURT: That is a?

15 A No.

16 BY MR. CHISOLM:

17 Q Okay. Were you inspecting the car for a seatbelt?

18 A No.

19 Q Is there a chance that you were not trying to put your
20 seatbelt that you were not looking for the seatbelt that you
21 wouldn't really know if it was there or not?

22 A Can you say that one more time?

23 Q If you were not looking for a seatbelt --

24 A Uh-huh. (Affirmative response.)

25 Q -- and you were not trying to put a seatbelt on --

1 A) uh-huh. (Affirmative response.)

2 Q -- is there a chance you wouldn't notice whether it was
3 actually there or not?

4 A I wouldn't notice it.

5 Q That's what I'm saying. If you're looking for it when
6 you're trying to grab it. Understand you'd see it.

7 A Uh-huh. (Affirmative response.)

8 Q And if you're not looking for it, not trying to --

9 A I wasn't paying attention to the seatbelt.

10 Q Okay, and on this day you were not trying to put a
11 seatbelt on, you were just getting in the car to get a ride;
12 yes?

13 A On this day?

14 Q Well, on that day. I'm sorry.

15 A On that day, yes.

16 Q Okay.

17 A Just get in the car.

18 Q Now, you're pretty sure of the time Sike came by?

19 A Yeah. Yes.

20 Q And are you pretty sure of the time me and Red came by?

21 A Yeah.

22 Q Okay. What time would you say you went to sleep on
23 that night?

24 A I would say about 6:00 that morning.

25 Q Six?

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1 A Six in the morning. Between 5:00 and 6:00 in the
2 morning.

3 Q Do you recall telling detectives, and I know it's been
4 a while. Do you recall telling detectives that you went to
5 sleep anywhere from 5:15 to 5:30?

6 A Uh-huh. (Affirmative response.)

7 Q Do you recall making two statement to detectives?

8 A Statements?

9 Q Well, one written statement and I believe you talked to
10 him one more time?

11 A Yeah. Well, I was supposed to take a lie detector
12 test, but I got sick and I never took it, and that was my
13 last time to --

14 Q Okay. But you -- so you're fairly certain you went to
15 sleep somewhere around 5:15, 5:30 in the morning?

16 A Yes.

17 Q Was Scully home when you went to sleep?

18 A Yes.

19 Q Okay. Do you recall telling detectives that Scully was
20 not home when you went to sleep?

21 A No.

22 Q Okay.

23 MR. CHISOLM: I would like to refresh her memory, Your
24 Honor?

25 THE COURT: You want to show her a document for the

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1 purpose of refreshing her recollection?

2 MR. CHISOLM: Yes, Your Honor.

3 THE COURT: Well, she hasn't indicated she doesn't
4 remember.

5 MR. CHISOLM: She says she doesn't remember.

6 THE COURT: You asked her did she remember -- she
7 testified and then responded and then you asked her did she
8 say otherwise. I guess as to that I'll let you show it to
9 her. Pass it please to the --
10 (Deputy Smith passes document to witness.)

11 THE COURT: There you go. And you want her just to
12 review this document just to see if it refreshes her
13 recollection?

14 MR. CHISOLM: Yes.

15 THE COURT: All right. Just review the document to see
16 if it refreshes your recollection, and when you've finished
17 reviewing it, just -- if you'll just let us know.
18 (Witness reviews document.)

19 THE COURT: All right. I think she's finished. You may
20 ask her a question.

21 BY MR. CHISOLM:

22 Q All right. Was Scully home when you went to sleep in
23 accordance to what you told detectives?

24 A No.

25 Q And this would have been -- so he wasn't home as of

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1 5:15, 5:30. He still was not at the house?

2 A No.

3 Q Are you pretty certain you would have known if Scully
4 had come home before that?

5 A What?

6 Q Are you pretty certain if he did come home before you
7 went to sleep you would have known he was there?

8 A Yeah.

9 Q Did you tell detectives that you've never seen me with
10 a weapon?

11 A Yes.

12 Q Did you see Red with a weapon?

13 A No.

14 MR. HILTON: Objection, Your Honor.

15 THE COURT: As to that question, that general question,
16 I'm going to sustain the objection.

17 MR. CHISOLM: Okay.

18 BY MR. CHISOLM:

19 Q How long would you say that Scully and Nay-Nay date --
20 your mama dated?

21 A I'd say about a good four or five years.

22 Q So you know him pretty well. Did you get to know him
23 pretty well?

24 A Yes, sir.

25 Q Okay. Have you ever personally known Scully to lie?

1 A Sometimes.

2 Q Have you ever known him to lie to get out of a tight
3 situation?

4 MR. HILTON: Your Honor, I'm going to object.

5 THE COURT: Sustained.

6 MR. CHISOLM: Okay.

7 I have no further questions, Your Honor.

8 THE COURT: All right. Redirect?

9 MR. HILTON: No redirect, Your Honor.

10 THE COURT: Is this witness free to leave?

11 MR. HILTON: She is.

12 THE COURT: Any objection.

13 MR. CHISOLM: None, Your Honor.

14 THE COURT: All right. Call your next witness.

15 MR. HILTON: Your Honor, if I may, the next witness is a
16 little bit lengthy. If I may request an afternoon break at
17 this point?

18 THE COURT: Very well. All right. We'll take our
19 afternoon break. Ladies and gentlemen, please step to your
20 jury room. Do not discuss this matter or allow anyone to
21 discuss it with you. Let's take about 20 minutes. Leave
22 your notebooks in your seats. Those that want to smoke, let
23 them smoke.

24 Thank you.

25 Counsel, and Mr. Chisolm, hold on for me.

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1 THE CLERK: Thank you.

2 DAVID WHITE - DIRECT EXAMINATION

3 BY MR. HILTON:

4 Q Thank you, Mr. White. Just pull that microphone
5 forward a little bit. Speak up loud for us, okay.

6 Mr. White, do you go by any nicknames?

7 A Yes, I do.

8 Q What is that?

9 A Scully.

10 COURT REPORTER: Can you spell it for me, please?

11 MR. WHITE: S-c-u-l-l-y.

12 BY MR. HILTON:

13 Q Mr. White, where were you living back in 2007,
14 September 2007?

15 A Evergreen.

16 Q Where is that at?

17 A Off of Bacon Bridge Road.

18 Q If I was driving there how would I get there?

19 A From here?

20 Q Well, from the Dorchester Road area, where would you
21 turn?

22 A You take Dorchester, turn on Bacon Bridge, go down
23 about a half-mile or so and it will be on the right-hand
24 side.

25 Q Okay. And before you were living in Evergreen, where

1 were you living before that?

2 A Haven Oaks.

3 Q In 2007, in Evergreen, who were you living with at that
4 time?

5 A Fiance, Vanessa White.

6 Q Was anybody else in the house?

7 A Yes.

8 Q Who else?

9 A Shaquanda, her daughter, Charmonique, (sp) her
10 daughter, her son Onyx.

11 Q Any friends or anything staying there?

12 A We used to have Jay come by every once in a while and
13 stay over there.

14 Q Do you remember Jay's last name?

15 A No, I do not. Tell you the truth.

16 Q And who was Shaquanda dating at the time?

17 A All I know is Sike.

18 Q Sike?

19 A Yes.

20 Q Do you remember where you were working back in '07?

21 A Yes. I was working at Dickson Masonry (sp).

22 Q What were you doing for them?

23 A Laborer.

24 Q What's that?

25 A Laborer.

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1 Q Is that like a brick masonry company?

2 A Yes.

3 Q Now, do you remember about what time you would get off
4 work back in 2007?

5 A Probably get off about 4:30, something like that?

6 Q That's in the afternoon?

7 A Yes.

8 Q Where do you work now?

9 A I work at Lawn O'Green.

10 Q What is that?

11 A It a landscaping company.

12 Q I think Ms. Kelly had a question.

13 COURT REPORTER: The name of it, again?

14 MR. WHITE: Lawn O'Green.

15 BY MR. HILTON:

16 Q How long have you known the defendant, Mr. Chisolm, in
17 this case?

18 A Since I moved round to Haven Oaks. About five years,
19 prior to this.

20 Q You say prior to this; what do you mean?

21 A I would say like -- I been staying over here five
22 years. Five years around Haven Oaks.

23 Q Just so I understand, you've known him five years,
24 since 2001 or five years since 2007?

25 A No. Since 2003 or 2004, somewhere in there.

1 Q Okay. So you've known him for about nine years or so;
2 is that right?

3 A Yes.

4 Q Okay. How long did you know the victim in this case,
5 Red or Craig Canady?

6 A Probably about a month and a-half. No more than two
7 months.

8 Q How did you meet him?

9 A Through Don.

10 Q I want to turn your attention back to September 12,
11 2007, that was a Wednesday. Do you remember something
12 happening to Vanessa that day or actually Vanessa's
13 daughter?

14 A Yes.

15 Q What happened?

16 A She had a baby that night.

17 Q Do you remember calling the defendant, Mr. Chisolm,
18 that day?

19 A Yes.

20 Q What was that for?

21 A Because I had needed a ride to the hospital.

22 Q You were going to see the baby?

23 A Yes. Well, I was going to see the baby be born.

24 Q Do you remember where you were when you called Don?

25 A Yes. The name of it is -- trailer park behind

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1 Summerville High School -- Hershey Park, I believe. No, no,
2 not Hershey Park.

3 Q That's all right. You say it was behind Summerville
4 High School?

5 A Yes. Behind Summerville High School.

6 Q Did you ever meet up with the defendant that day?

7 A Yes.

8 Q Where did he pick you up?

9 A At the trailer park.

10 Q That's the one behind Summerville High School?

11 A Behind Summerville High School. Yes, sir.

12 Q Do you remember about what time that was?

13 A It was like after 5:00 or so.

14 Q Was it after work?

15 A Yes.

16 Q Do you remember what he was driving?

17 A Dodge Durango.

18 Q Okay. I'm going to show you what's been entered into
19 evidence as State's Exhibit No. 6, and just ask if you
20 recognize that?

21 A Yes, I do.

22 Q Is that the Dodge Durango?

23 A Yes.

24 Q That's the one he was driving that day?

25 A Yes.

1 Q You said he came and picked you up?

2 A Yes, sir.

3 Q Did you get in the car with him?

4 A Yes, sir.

5 Q Where were you sitting?

6 A I was sitting in the passenger seat. Front passenger
7 seat.

8 Q Did you notice anything wrong with the car at that
9 point?

10 A No, sir.

11 Q Specifically, with the seat?

12 A No, sir.

13 Q Was there any blood on the seat?

14 A No, sir.

15 Q Do you remember if there was a seatbelt?

16 A Yes, sir.

17 Q Was the seatbelt all torn up or messed up or anything?

18 A No, sir.

19 Q Once he picked you up from the trailer park or the
20 mobile home park, where did -- where did y'all go after
21 that; where were y'all going?

22 A He said he had to go by his mother house to pick up
23 some gumbo seasoning from his mama. Off of Ashley Phosphate
24 Road.

25 Q Did you know where the defendant was from?

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1 A No, not exactly, because I know him from Haven Oaks.

2 Q You knew if he grew up somewhere else?

3 A No.

4 Q Did you all make it to his mother's house?

5 A Yes.

6 Q What did you get when you got there?

7 A The gumbo seasoning.

8 Q After that, after you went to his mom's house and got
9 the seasoning, what happened?

10 A Well, we both had cocaine, powdered cocaine, and after
11 we got to his mother's we started doing it -- we made it
12 back home. I never made it to the hospital. We just rode
13 around and got high.

14 Q Change your mind about going to see the baby?

15 A Yes.

16 Q Do you remember about what time that was?

17 A I know we rode around until -- we rode around about to
18 10:00-something I called a white girl I know named Sabrina.

19 COURT REPORTER: I'm sorry. Her name, again?

20 MR. WHITE: Sabrina.

21 BY MR. HILTON:

22 Q And what was that about?

23 A Trying to have some fun.

24 Q Did you end up meeting with her.

25 A Yes, she had got off around 11:00 o'clock. We met her

1 at Bojangles on Main Street.

2 Q When you say we, who is we?

3 A Me and Don Chisolm.

4 Q What time did you end up leaving from meeting with her?

5 A Oh, soon as we got there she got off, we left. We
6 didn't stay around.

7 Q You say as soon as you got --

8 A When she got off, she got in her car and followed us
9 and we left.

10 Q Okay. Where did y'all go?

11 A We went to Knightsville, to some guy Don know named Bob
12 or something like that.

13 Q And then y'all stayed with Sabrina for a little while?

14 A Yes.

15 Q And about what time did Sabrina part ways with you and
16 Don?

17 A Probably about 12:00 or so.

18 Q At that time where did you go?

19 A He had got a call and had a serve. Had to go get a
20 serve on Nassau (sp) Road.

21 Q And after you left there where did you go?

22 A We stopped by the store right there on Dorchester back
23 -- going back toward my house and dropped me off.

24 Q Did y'all stop anywhere?

25 A To the gas station.

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1 Q Do you remember what gas station it was?

2 A The Exxon right on Bacon Bridge and Dorchester.

3 Q That's the one right near your house?

4 A Yes.

5 Q What did you do at the store?

6 A I got a quart of OE and a pack of Newports?

7 Q What's OE?

8 A OE beer.

9 Q Old English?

10 A Old English. Yeah. I'm sorry.

11 Q After you left the Exxon there at Dorchester and
12 Bacon's Bridge where did you go at that point?

13 A I went home.

14 Q And home is where?

15 A Evergreen.

16 Q Do you know about what time it was at that point?

17 A After 12:00, 1:00. Between 12:00 and 1:00, something
18 like that.

19 Q So now you say 1:00 o'clock. Are we into Thursday
20 morning at this point?

21 A Yes, we are.

22 Q So this would be on the 13, right. We left the 12, and
23 now we're in the 13?

24 A Yes.

25 Q When Don dropped you off, did he come inside or

1 anything?

2 A No.

3 Q Was there a time -- and if I say night I mean that
4 morning, but was there a time that morning that you talked
5 to Don again?

6 A Yes.

7 Q What was that about?

8 A I called him to tell him to tell him he forgot his
9 change when he give me a \$20 bill at the gas station, to get
10 a pack of cigarettes. I called him and tell him he forgot
11 his change. He told me he will get it later.

12 Q Whose phone did you use?

13 A I use Jay phone.

14 Q Did you have a cell phone at the time?

15 A No, I didn't.

16 Q Was it common for you to use Jay's phone?

17 A He'll let me use it if I need to use it.

18 Q After you called Don what did you do?

19 A Laid down and went to sleep.

20 Q Okay. Was that on the couch or in the bed?

21 A In the bedroom.

22 Q Did you talk to Don sometime after that, that morning?

23 A Yes. He had called back.

24 Q Whose phone did he call?

25 A He called Jay's phone.

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- 1 Q What did Don want at that time?
- 2 A To tell me to come back over. Go get some more.
- 3 Q More what?
- 4 A Cocaine.
- 5 Q What did you say to that?
- 6 A I said, whatever.
- 7 Q Do you remember about what time that was?
- 8 A It was after 1:00. I really ain't too sure about the
- 9 time, but I know it was after 1:00 sometime.
- 10 Q Okay. After he called what happened?
- 11 A I was sleeping, and he was tapping at the door.
- 12 Q Outside door, bedroom door?
- 13 A Bedroom. He came up.
- 14 Q When you say, he, who are you talking about?
- 15 A Don.
- 16 Q Mr. Chisolm?
- 17 A Yes.
- 18 Q Do you remember who was at the apartment at that time?
- 19 A Yes. Jay, Quanda --
- 20 Q Quanda is Shaquanda?
- 21 A Yes, Quanda. Her boyfriend, Sike, they was outside
- 22 together.
- 23 Q After Don came in and tapped on your door what
- 24 happened?
- 25 A I got up and said, let's ride.

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1 Q You remember what you were wearing?

2 A I had my shorts on. My slippers, and a t-shirt.

3 Q What kind of slippers?

4 A Like house slippers, like.

5 Q Like bedroom shoes, bedroom slippers?

6 A No, like something you can wear around outside. Not a
7 bedroom slippers, but slippers you wear outside.

8 Q Okay. And far as you knew what were y'all going to do
9 at that point?

10 A Get high.

11 Q Did you end up leaving at that time?

12 A Yes, we left out.

13 Q Who's we?

14 A Me, Don and Red.

15 Q Now, you told us what Don was driving earlier that day.
16 What was he driving at this time?

17 A Dodge Durango.

18 Q The same Dodge Durango in State's Exhibit No. 6?

19 A Yes.

20 Q Is that the same one you said the seatbelt was okay in,
21 the seatbelt was fine in?

22 A Yes.

23 Q You said it was you, Don and Red. Did Red ever come
24 into your apartment?

25 A No, Red ain't come in.

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1 Q Where did he stay?

2 A He stayed in the front passenger seat.

3 Q And when you went outside who was in the gray Dodge
4 Durango?

5 A Red.

6 Q And where was he seated?

7 A The front passenger seat.

8 Q Where did Don get in?

9 A The driver's seat.

10 Q Where did you get in?

11 A Behind the driver.

12 Q So I got it clear. Don't driving, right?

13 A Uh-huh. (Affirmative response.)

14 Q Red's in the front passenger seat?

15 THE COURT: I need for you to respond for our court
16 reporter, please.

17 A Oh. Yes.

18 Q And you were behind the driver in the back seat?

19 A Yes.

20 Q Once you got in the car and y'all pulled out the
21 driveway, which way did you go?

22 A On Bacon Bridge, went towards Dorchester. Made a right
23 on Dorchester and a right on the Orangeburg Road to Azalea
24 Park.

25 Q Do you remember, was Don talking about anything?

1 A When we got over by Azalea Park they talking about get
2 a lick, I'm not dressed for that. I'm like, man, I don't
3 want no --

4 Q What does that mean --

5 A A lick mean armed robbery.

6 Q Okay. And who was saying that?

7 A Don.

8 Q What was Red doing at that time?

9 A Just sitting there.

10 Q You said you weren't dressed for that. What do you
11 mean?

12 A I wasn't dressed properly. I didn't have no shoes on.
13 I had slippers on. Stuff like that.

14 Q You were just there for the cocaine?

15 A Yes.

16 Q You see any guns at that time?

17 A No.

18 Q Now, I think you said you all made it out and you
19 describe the route. When you got back to Azalea Park what
20 was going on when y'all got back to Azalea Park?

21 A When we got to Azalea Park they were driving around
22 looking for an apartment. Couldn't tell who apartment we
23 was looking for, but I know Don asked Red to call Sike and
24 asked him what apartment the guy stayed in. Red called Sike
25 and asked Sike what apartment the boy stayed in and Sike was

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1 telling him --

2 MR. CHISOLM: Objection, Your Honor. Hearsay.

3 THE COURT: Sustained.

4 BY MR. HILTON:

5 Q Did you see him make the call?

6 A Did I see Red make the call; yes, I did.

7 Q Do you know for certain who he was talking to?

8 A Talking bout I knew he asked Sike what apartment the
9 boy stayed in.

10 MR. CHISOLM: Objection. Hearsay.

11 BY MR. HILTON:

12 Q Did you talk to Sike at that time?

13 A No, I didn't.

14 Q Now, I know times are tough to remember four years ago,
15 but about what time do you think y'all made it back to
16 Azalea Park, roughly?

17 A Well, it was between 2:00 and 3:00. Something like
18 that. I can't give you an exact time, but between 2:00 and
19 3:00 probably. Could be between 2:30 and 3:30. I'm not
20 really sure.

21 Q Okay. Now, when y'all were riding around the Azalea
22 Park neighborhood there --

23 A Uh-huh. (Affirmative response.)

24 Q -- had anybody changed seats or everything?

25 A No.

1 Q Everybody still sitting in the same place?

2 A Yes.

3 Q Had y'all made any stops between Evergreen and Azalea
4 Park?

5 A No.

6 Q What were you doing at that time?

7 A Sitting in the back seat.

8 Q How many times did y'all end up going around the loop
9 in Azalea Park?

10 A Twice.

11 Q David, I want you to take it step by step, okay, and I
12 want you to tell the jury what happened on that second go-
13 around at Azalea Park?

14 A Well, the second go-around at Azalea Park, that's when
15 I saw Don pull out the gun and shot Red in the head.

16 Q Was there any discussion?

17 A No, I look back and I was like, what hell man, you just
18 shot my man. He said, yeah, the mother-fucker. From then
19 my mind went blank. I sitting here, this man sitting over
20 there dead. He kept on talking, but I couldn't tell you
21 exactly what he was saying. My mind is just looking at
22 what's going on.

23 Q Prior to the shot happening was there any discussion?

24 A Talking about discussion prior to the shot, no, there
25 wasn't no discussion. No argument. I couldn't tell you why

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1 he even shot my man for.

2 Q Did you see the flash of the gun?

3 A Yes, I did.

4 Q Did you hear it?

5 A Yes, I did.

6 Q After the defendant shot the victim, did the victim say
7 anything?

8 A After he shot him, did the victim say anything?

9 Q Yes?

10 A No, he didn't.

11 Q What happen to the victim after he was shot?

12 A I lean over and I heard him take a breath like that and
13 lean over to that side and that was it.

14 Q And you kind of jumped forward a little bit -- you said
15 after the shot occurred, you said the defendant was saying
16 some stuff. Can you go back over that for the jury one more
17 time.

18 A He was saying, mother-fucker. That was all I heard.

19 Q Was that all you heard because you went deaf or what?

20 A I went deaf, I was in shock. I was surprised.

21 Q Was this part of y'all plan that night?

22 A No. Not part of my plan, I know that.

23 Q So you saw the gun; what did the gun look like?

24 A It was a 22, a 22 long. I know what a 22 long look
25 like. It was a 22 long, long on the muzzle.

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1 Q Let me show you what's been marked for identification
2 as State's Exhibit No. 14, and ask if you recognize this?

3 A It appears like it looked.

4 Q Is that the gun the defendant shot the victim with?

5 A Yes.

6 MR. CHISOLM: Objection. Leading the witness, Your
7 Honor.

8 THE COURT: Sustained.

9 BY MR. HILTON:

10 Q What does this appear to be?

11 MR. CHISOLM: I move to strike that comment.

12 THE COURT: Yes. That was a leading question. I have
13 sustained the objection, ladies and gentlemen. You must
14 disavow that last answer from your mind.

15 Ask the question.

16 BY MR. HILTON:

17 Q What does State's Exhibit No. 14 appear to be?

18 A That looks like the gun that he shot Red with.

19 Q After the victim was shot, where did the defendant
20 place the gun?

21 A On the console right between the seats.

22 Q Let me show you what's been marked for identification
23 as State's Exhibit No. 13, and just ask if you recognize the
24 areas in this map?

25 A Yes, I do.

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1 Q And here's an area in blue labeled Azalea Park. Does
2 that appear to be Azalea Park?

3 A Yes, it does.

4 Q Mr. White, I'm going to stand over here where the jury
5 can see you, okay. I'll just ask if you will, can you point
6 out the Azalea Park area. And if you need to step up.

7 A It's right here.

8 THE COURT: Got to keep your voice up, because you don't
9 have the microphone.

10 MR. WHITE: Yes, ma'am.

11 By MR. HILTON:

12 Q Mr. White, when y'all left Evergreen and went to Azalea
13 Park --

14 THE COURT: Here a little red dot -- that's a little
15 pointer. There you go.

16 BY MR. HILTON:

17 Q When y'all left Evergreen and went to Azalea Park,
18 which way were y'all going in Azalea Park when you were
19 going around the circle?

20 A We went around here.

21 Q And you said you did that two times?

22 A Yeah. The second time we went around, right in this
23 area when the defendant was shot, I mean, shot Red.

24 Q I'm going to just ask you to take this red pen and put
25 an X there where the actual murder occurred.

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1 A (Witness complies.)

2 Q Would you put your initials by it?

3 A (Witness complies.)

4 MR. HILTON: Your Honor, at this time, we'd offer
5 State's Exhibit 13 into evidence?

6 THE COURT: Any objection?

7 MR. CHISOLM: No, Your Honor.

8 THE COURT: Very well. State's Exhibit No. 13 in
9 evidence without objection. It is a map.

10 BY MR. HILTON:

11 Q And just let me ask you, if you know, when you were
12 living in Haven Oaks, did you pay your taxes in Dorchester
13 County?

14 A Yes, I do.

15 Q Okay. Azalea Park is also in Dorchester County?

16 A Yes, sir.

17 Q After the murder occurred where did y'all go from that
18 point?

19 A We went up to -- and made a right on 17, and he pulled
20 over -- he pulled over just before he got to Indian Springs,
21 and jumped out. I'm like, man, what are you doing. Putting
22 a man's body on the side of the road like that. I told him
23 you can't do that.

24 Q Where was that, now?

25 A Right before you got to Indian Springs. Right there on

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1 17, soon as you make a right at the light in Haven Oaks.

2 Q Is there a grocery store right in there somewhere?

3 A Yes. Between BiLo and Indian Springs.

4 Q And you told him what?

5 A I said, you can't do that, man. Because when -- I'm
6 sitting there observing the cars coming behind us. He
7 pulled on the side of the road, cars coming behind us and
8 stuff like that. So we headed up Clubhouse.

9 Q About how far is Clubhouse from BiLo Indian Springs
10 area?

11 A (No response.)

12 Q Just guess. I mean, not guess, but about how far is
13 it?

14 A Well, three, three miles, four.

15 Q And when y'all got to the Clubhouse Road, which way did
16 you turn on Clubhouse?

17 A Turned left on Clubhouse Road.

18 Q And how far did you go down Clubhouse?

19 A About a mile or so.

20 Q And what happened then?

21 A We pulled to the side of the road, and throwed Red's
22 body in the ditch.

23 Q Who was doing this?

24 A Don.

25 Q Where were you at that time?

1 A In the back seat, still.

2 Q After the defendant put the victim down in the ditch
3 where did y'all go?

4 A Went straight down Clubhouse Road and made a left on
5 165.

6 Q So you didn't turn around and go back the other way?

7 A No.

8 Q Do you remember if the victim had one of those phone
9 earpieces?

10 A Yes, I do.

11 Q And what happened to that?

12 A He threw it out on 165, somewhere.

13 Q Do you remember roughly what time all this was?

14 A Could have been 4:00 or somewhere --

15 Q Are you certain about those times?

16 A No. It been a long time. I'm trying to remember what
17 time I got home.

18 Q I understand. Do you remember the defendant, Mr.
19 Chisolm, calling his wife, Natalia --

20 A Yes.

21 Q -- during any of that?

22 A Yes, sir.

23 Q And what did he tell her?

24 A He told her that he just got finished putting Red's
25 body in the ditch.

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1 THE COURT: I'm sorry?

2 A He told her he just got finished putting Red's body in
3 the ditch.

4 BY MR. HILTON:

5 Q Now, at some point in time on y'all's way back, did Mr.
6 Chisolm ever give you a story?

7 A Yes.

8 Q And what was that story was supposed to be?

9 A That we rode around, got high. He took me home, him
10 and Ray left and went back towards the high school?

11 Q Towards the high school. What does --

12 A Azalea Park, Haven Oaks area.

13 Q Okay. How far is Haven Oaks, Azalea Park from the high
14 school?

15 A Two minutes. A minute.

16 Q It's right around the corner?

17 A Yes.

18 Q Before the defendant dropped you off did he make any
19 more stops?

20 A To the bridge where he tossed the gun out over the
21 bridge.

22 Q Where is that bridge?

23 A Bacon Bridge Road.

24 Q Kind of behind, like, the CVS and stuff back in there?

25 A Yes.

1 Q And after he -- after he threw the gun in the swamp
2 there where did y'all go?

3 A He dropped me off home.

4 Q And is State's Exhibit No. 14 the gun he threw in the
5 swamp?

6 A Yes.

7 Q Let me show you what's been marked for identification
8 as State's Exhibit No. 12. I'll just ask if you recognize
9 this area?

10 A Yes.

11 MR. HILTON: Ms. Kelly just gave me a marker that was
12 blown up.

13 THE COURT: Here.

14 BY MR. HILTON:

15 Q Now, you may have given me an answer but I was
16 distracted. Do you recognize this area?

17 A Yes.

18 Q What area is this, just generally?

19 A That's Azalea Park, Haven Oaks, Bacon Bridge. That's
20 Highway 165.

21 Q Does this map show the area that y'all traveled?

22 THE COURT: Our jurors are distracted because I am too.
23 Whoever has got something -- something making noise, cause
24 it to stop, please.

25 I'm going to ask you to go back two questions. I don't

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1 know if you would hear it, but it sounded like a radio and
2 I'm distracted. I'm seeing jurors are also distracted. So
3 we all missed your questions. So take it back about two.

4 MR. HILTON: I'm going to back up just a little bit.
5 Maybe two or three, I can't remember.

6 BY MR. HILTON:

7 Q Does this map depict the area that y'all traveled that
8 night?

9 A Yes.

10 Q Okay. And I'm going to give you this highlighter, and
11 we know Haven Oaks and Azalea Park is up in this area?

12 A Uh-huh. (Affirmative response.)

13 Q Azalea Park can you kind of plot out where y'all
14 traveled that night. Take your time.

15 THE COURT: I tell you what, best move that cup of water
16 because that's just -- there you to. That's a tip waiting to
17 happen. There you go.

18 A When we came out Azalea Park --

19 Q If you just want to draw it out now and then we'll go
20 back over it --

21 A Okay.

22 Q -- and explain. I'm going to hold this map up just
23 like I did the other one. Just ask you, Mr. White, if
24 you'll stand up. Keep your voice up, and tell the jury what
25 all this is?

1 THE COURT: Mr. White.

2 A This is Azalea Apartment. That's where -- that's that
3 curve on 17. Got all the way down and got off the road.
4 That's 165. Back up that road. We stopped right here.
5 This is where the bridge is at where he tossed the gun out.

6 BY MR. HILTON:

7 Q All right. Now, you said this was Azalea Park. Where
8 did y'all originally stop to throw the body out?

9 A About right here.

10 Q Well, originally where you stopped?

11 A Oh, I'm sorry. Right in there.

12 Q Right in that area?

13 A Yeah.

14 Q And then y'all went down 17-A and where did y'all end
15 up on Clubhouse?

16 A Right in here.

17 Q Take this marker and put an X roughly where the body
18 was dumped. Was it on the left side of the road, right
19 side?

20 A It would be on the right side.

21 Q The right side. You actually made a mark on the left
22 side of the road.

23 A I'm sorry.

24 Q Just put your initials by that.

25 A (Witness complies.)

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1 Q And I think you said a moment ago is this the bridge --

2 A Yeah, right there.

3 Q -- and when Mr. Chisolm threw the gun out, how did that
4 take place; did he get out of the car?

5 A No, the passenger window, he leaned over and tossed it
6 over the bridge.

7 COURT REPORTER: I'm sorry, I couldn't hear you?

8 A The passenger window. He leaned over and tossed the
9 gun out.

10 MR. HILTON: Your Honor, at this time we would offer
11 State's Exhibit 12 into evidence?

12 THE COURT: All right. Any objection?

13 MR. CHISOLM: No, Your Honor.

14 THE COURT: Very well. State's Exhibit No. 12 in
15 evidence without objection. It is a map.

16 (State's Exhibit No. 12, map, was
17 marked and entered.)

18 BY MR. HILTON:

19 Q Now, at some point in time during all this, did the
20 defendant make a call on the victim's phone?

21 A Yes, he did.

22 Q What was that about?

23 A He had called Sike's number trying to make it seem like
24 it was Red calling him.

25 Q How do you know that?

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1 A Because he told me that was what he was going to do and
2 I reckon -- when he called Sike's number, I could hear Sike
3 say, hello, hello. Then he hung up.

4 Q Now, was Red already dead at this point?

5 A Yes.

6 Q After he threw the gun out and y'all got back to
7 Evergreen, when y'all pulled up to your apartment driveway
8 there in Evergreen, did you talk to the defendant?

9 A Yes.

10 Q And I guess at some point in time you got out the car;
11 is that correct?

12 A Yes.

13 Q Where were you standing when you got out the car?

14 A I was standing by the driver window.

15 Q And is that when you were speaking to the defendant?

16 A Yes.

17 Q And were you able to see into the driver's window at
18 that point?

19 A Yes.

20 Q Was there like a light on or anything?

21 A Yes, he had turned the light on to the switch.

22 Q And that made the interior light come on?

23 A Yes.

24 Q Did you see the passenger seat?

25 A Yes, I did.

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1 Q What did it look like?

2 A It had a big spot of blood on it.

3 Q Where at?

4 A To the back, back through there.

5 Q May I ask you to stand up and just use that chair to
6 show the jury where the blood spot was?

7 A Right in here. A big spot of blood.

8 Q Was that towards the bottom of the back of the seat or
9 the top of the back of the seat?

10 A No. It was in the middle seat right there.

11 Q Do you remember about what time that was when you got
12 home.

13 A No, but it was close to 5:00 because it was not too
14 much longer before my boss man came and picked me up to go
15 to work.

16 Q Did you end up going to work?

17 A No, I didn't.

18 Q When you got home what did you do?

19 A Crawl into bed.

20 Q Were you pretty shaken up by all this?

21 A Yes, I was.

22 Q Is that why you didn't go to work the next day?

23 A Yes.

24 Q Now, we're still talking about early Thursday morning,
25 right. All these times you're referring to, is that early

1 Thursday morning?

2 A Yes, sir.

3 Q Okay. Now, was there a time, either later on that
4 Thursday or the next day or so when Don came by again?

5 A That afternoon, I believe. That Thursday afternoon.

6 Q And where did he meet with you at that time?

7 A He came to my apartment.

8 Q Did you call him over there?

9 A No.

10 Q Did you even want to talk to him?

11 A No, at the time. No.

12 Q When he got there what did he do?

13 A He was just talking about he was trying to find a seat
14 for the truck.

15 Q Had he found a new seat yet.

16 A He didn't tell me if he did or not. He said he was
17 trying to find one.

18 Q Did he have a new seat in the car at that time?

19 A No, he didn't.

20 Q Did you see the passenger seat of the car at that time?

21 A Yes, sir. He showed me the hole he cut out the seat.

22 Q Are we still talking about the Dodge Durango in State's
23 No. 6?

24 A Yes.

25 Q And you say he showed you a hole he cut out the seat;

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1 what do you mean by that?

2 A Well, where the blood stains was on the seat. That's
3 the hole he cut out, cut around it to get rid of the big
4 spot of blood. The blood stain.

5 Q When you say he cut a hole out of the seat, do you mean
6 that he just -- like made a puncture? I mean, describe that
7 hole to us?

8 A This right here, there was nothing here. The only
9 thing was here was the hole and it was a big empty spot.

10 Q I think you said he had a cover on the seat, right?

11 A Yes.

12 Q What kind of cover was that?

13 A All I know was it was gray and black.

14 Q Let me show you what's been marked for identification
15 as State's Exhibit No. 7, and ask if you recognize this?

16 A Yes, sir.

17 Q Does that appear to be the cover?

18 A Yes, sir.

19 Q Is that an accurate picture of the cover that you saw
20 when he came back to your apartment the next day or so?

21 A Yes.

22 MR. HILTON: Your Honor, we'd offer State's Exhibit No.
23 7 into evidence.

24 THE COURT: All right. Any objection?

25 MR. CHISOLM: No, Your Honor.

1 THE COURT: Very well. State's Exhibit No. 7, in
2 evidence without objection. It is a photograph.

3 (State's Exhibit No. 7, photo was
4 marked and entered.)

5 BY MR. HILTON:

6 Q Did you notice anything about the seatbelt, as well?

7 A Yeah. It wasn't there.

8 Q What do you mean it wasn't there?

9 A It was gone. It was cut off.

10 Q You mean there was no seatbelt that you could see?

11 A No.

12 Q Did he say anything about being quiet or keeping your
13 mouth shut?

14 A Yes, sir.

15 Q What was that about?

16 A Tell me to be quiet, ain't nothing going to happen.

17 Q Did he ever say what he was going to do or what he did
18 with the old seat?

19 A He told me he torn it in pieces and toss them in
20 different places.

21 Q Now, just so we're not confused, is that the same time
22 that he showed you the seat or was that another time?

23 A Another time. Probably Friday or something.

24 Q Did he tell you what he did with the victim's phone?

25 A Threw it away.

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1 Q How about the seatbelt?

2 A All he told me was he threw the stuff away. I didn't
3 know where or when.

4 Q Do you remember a time around late September or so when
5 detectives came to talk to you?

6 A Yes.

7 Q Is that the first time that you had talked to police?

8 A Yes, I believe so.

9 Q And what story did you give them at that time?

10 A The story we made up we ride around, we got high, they
11 dropped me off home and they went about their way.

12 Q I think there was a time subsequent to that where you
13 met with police, again, is that right?

14 A Yes.

15 Q And what story did you give them that second time?

16 A The same one.

17 Q And both of those were the story that Don told you?

18 A Yes.

19 Q And when I say Don I mean Mr. Chisolm?

20 A Yes.

21 Q Why are you coming forward now with a different story?

22 A Because at the time he was on the street. You know, my
23 family stay out there and I see how he did this man here.
24 No problem doing it to me and my family member.

25 Q Okay.

1 A So when I found out they caught him, I call my
2 attorney, and I came to y'all.

3 Q Why did the defendant shoot the victim?

4 A I could not tell you. There was no arguing or nothing.
5 I couldn't tell you why he shot him.

6 Q Do you have any sort of deal with the prosecution or
7 the police department, Sheriff's Office --

8 A No.

9 Q -- about testifying?

10 A No.

11 Q And you're actually charged in this case, as well?

12 A Yes, I am.

13 Q What are you charged with?

14 A Accessory after the fact.

15 Q Are you guilty of that?

16 A Probably I am. I know what happened and I didn't say
17 nothing, but I didn't have nothing to do with it.

18 Q Now, I know several times you've made reference, but do
19 you see Mr. Chisolm in the courtroom today?

20 A Yes, I do.

21 Q Can you point him out to the jury?

22 A Sitting with the brown suit on.

23 Q And is the guy with the brown suit on the guy that took
24 this gun, State's Exhibit No. 14, put it to the victim's
25 head and pulled the trigger?

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1 A Yes, it is.

2 Q He's the one that threw State's Exhibit No. 14 into the
3 river?

4 A Yes, sir.

5 Q And he's the one that cut out his seat --

6 A Yes, sir.

7 Q -- and showed you?

8 MR. CHISOLM: Objection. Leading, Your Honor.

9 THE COURT: Sustained. Please do not lead.

10 BY MR. HILTON:

11 Q And Mr. White, you don't have a spotless past do you?

12 A No, I don't.

13 Q What kind of trouble have you been in before?

14 A I got distribution of crack cocaine, possession of
15 stolen good, aggravated assault. Rest of them is
16 misdemeanor stuff.

17 Q Okay.

18 MR. HILTON: Bear with me one second.

19 THE COURT: Okay.

20 MR. HILTON: Please answer any questions Mr. Chisolm may
21 have for you.

22 THE COURT: Cross-examination.

23 MR. CHISOLM: Can I have a second?

24 THE COURT: Yes, certainly.

25 (Mr. Chisolm confers with Mr. Loy.)

1 DAVID WHITE - CROSS-EXAMINATION

2 BY MR. CHISOLM:

3 Q You say you do recall the 9/17; you do recall your two
4 interviews with detectives, correct?

5 A Yes, I do.

6 Q Do you love your mother?

7 A Yes, I love my mother.

8 Q Okay. Would you say your mother -- would you say you
9 and your mother have a good relationship?

10 A Yes.

11 Q Do you and your mother communicate well with each
12 other?

13 A Sometimes we don't.

14 Q Okay. Would you say you are comfortable talking to
15 your mother?

16 A Yes, I am.

17 Q Do you think the mother and child relationship is built
18 upon trust?

19 A I don't know.

20 Q You don't know if your relationship with your mother is
21 built upon trust?

22 A I don't know.

23 Q Okay.

24 A Today, who can you trust.

25 Q Do you believe you should be able to trust your mother?

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1 A Yes, I should be able to trust my mother.

2 Q Okay. Do you believe that your mother should be able
3 to trust you?

4 A Yes.

5 Q Okay. Would you outright lie to your mother's face?

6 A I'm going to say I have before. I'm not perfect.

7 Q Okay. So if you would lie to your mom, the person who
8 raised you would you say you would lie to a complete
9 stranger?

10 A Yes.

11 Q So you're admitting that you are a pathological liar?

12 A No, I'm not admitting I'm a pathological liar. I'm
13 telling the truth that went on. Everybody lied before. I
14 ain't the only person to tell you they never lied before.

15 Q But you're saying you'd lie to anyone, and one person
16 you loved, right?

17 A Yes.

18 Q Okay. Would you lie to the police, too.

19 A I have.

20 Q Okay. So you'd pretty much lie to everyone?

21 A Not everyone. I'm not lying about what's going on.

22 Q But you lie to every one you know. You lie to your
23 mother and you lie to the police, correct?

24 A Yeah.

25 Q When you were interviewed on your first interview,

1 9/16/07 --

2 A Yes.

3 Q -- were you informed of your rights?

4 A Yes, I was.

5 Q And you were told you have the right to remain silent?

6 A Yes, I was.

7 Q And you chose to give up that right, correct?

8 A Yes.

9 Q Okay. Were you told you had the right to an attorney?

10 A Yes.

11 Q And you chose to give up that right as well, correct?

12 A Yes.

13 Q During this interview did detectives try and make you
14 feel that everyone was pointing the finger at you?

15 A No

16 Q The detectives did not tell you that?

17 A No.

18 MR. CHISOLM: I have tapes that I may need to play, Your
19 Honor.

20 THE COURT: Okay.

21 MR. CHISOLM: I'm going to finish my line of
22 questioning.

23 THE COURT: All right.

24 BY MR. CHISOLM:

25 Q During this interview did detectives attempt to put a

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1 lot of pressure on you to give them information on a crime
2 you may have known about?

3 A Yes, they do.

4 Q Okay. Did they constantly bombard you with accusations
5 and questions for upwards to an hour or so?

6 A Yes.

7 Q And for an hour or so you answered all of their
8 questions in spite of the pressure?

9 A Yes.

10 Q And you did this of your own free will, giving up your
11 silence and your right to a lawyer, correct?

12 A Yes.

13 Q Okay. Did you tell detectives that I came by as I
14 always did to talk business or just come around. I always
15 come around for various reasons?

16 A What day you came around?

17 Q In your original interview when you were asked all
18 these questions that are going to pertain to the night
19 within question? When detectives why I came by, did you
20 tell them I normally stop by at any time?

21 A One time you came by --

22 Q The night in question, Scully, 9/13. The day you said
23 everything happen. When they asked you about this date, did
24 you initially tell them that I always come by, I'm known to
25 stop by random times?

1 A Yes.

2 Q Okay. Did you tell detectives at least twice that no
3 calls were made on anyone's cell phones that you were aware
4 of on the night in question during this interview?

5 A Did I tell them there were no calls made on nobody cell
6 phone?

7 Q That you saw no one make any phone calls?

8 A I don't -- four years ago what I told them in that
9 interview room --

10 Q Yes.

11 A -- what I told the interview room or what I told them
12 now. Are you talking about the call?

13 Q I'm asking you -- yes. Did you tell them that you
14 didn't see anyone use a cell phone or phone calls happen on
15 that date?

16 A I don't know what I told them on that date about that
17 phone call stuff.

18 Q So you can remember everything from three days before
19 your interview --

20 A Uh-huh. (Affirmative response.)

21 Q -- but you can't remember three days after?

22 A Three days after?

23 Q I'm mean three days after everything was supposed to
24 happen. You can remember 9/13, but you can't remember 9/16?

25 A Are you talking about 9/16 I -- what happened on 9/16?

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1 Q That was your interview?

2 A Uh-huh. (Affirmative response.) And 9/16 what now, the
3 day of the interview?

4 Q 9/13 is the day you just told everybody the day this
5 happened?

6 A I know, but I'm saying what you're trying to say is
7 what I told them you're trying to say I didn't.

8 Q Okay. Are you telling me that you --

9 A What day are you talking about that I tell them what I
10 supposed to said.

11 Q I'm asking you, if on your first interview --

12 A Uh-huh. (Affirmative response.)

13 Q -- on September 16, did you tell detectives no one used
14 the phone that you were aware of?

15 A I can't remember if I told them that.

16 Q Okay. Did you tell detectives that you didn't see a
17 gun on either me or Red?

18 A Yes, I did.

19 Q Okay. Did you tell detectives that we had no plans,
20 that we were just riding around to avoid Shaquanda because
21 we were doing coke?

22 A I didn't say it was to avoid Shaquanda, but I know I
23 didn't call her name. I didn't tell them about Shaquanda,
24 but I told them we were riding around doing coke. Yes, I
25 told them that.

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1 Q And you didn't tell them we were trying to avoid
2 Shaquanda because you didn't want her to see us doing coke?

3 A No. We rode -- you came to get me. I ain't said
4 nothing about Shaquanda. I don't believe I did.

5 Q Okay. Did you tell detectives that we made no stops
6 and we, as in me and Red --

7 A Uh-huh. (Affirmative response.)

8 Q -- dropped you off?

9 A Yeah.

10 Q Did you tell detectives on this date that had never
11 seen me at Clubhouse?

12 A Never seen you at Clubhouse?

13 Q On 9/16, your interview, did you tell detectives --

14 A Uh-huh. (Affirmative response.)

15 Q -- when they questioned you, have I ever been in
16 Clubhouse. Did you tell detectives you've never seen me in
17 Clubhouse?

18 A I don't remember that question.

19 Q Okay.

20 MR. CHISOLM: Your Honor, I want to play this.

21 THE COURT: Okay.

22 BY MR. CHISOLM:

23 Q Did you tell detectives the last time you were in
24 Clubhouse was nine months prior to the interview?

25 A (No response.)

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1 Q Is that what you said?

2 A Excuse me?

3 Q The question.

4 A What --

5 Q Did you tell detectives that you hadn't been in
6 Clubhouse for nine months prior to the interview?

7 A I don't know if I did or not.

8 Q And despite you answering all these questions
9 detectives continued to bombard you, correct?

10 A Uh-huh. (Affirmative response.) Yes.

11 THE COURT: Is that a yes?

12 A Oh, yes, ma'am.

13 THE COURT: That's okay.

14 A I'm saying when he asking questions about something
15 that happened four years ago, and right now I know when I
16 gave my first -- only thing interview, all of it was lies,
17 and I'm saying I was admitting to that. But he asked me
18 questions about something I don't really remember nothing
19 about that.

20 THE COURT: I understand. When you respond what ends up
21 happening --

22 A Yes, ma'am.

23 THE COURT: -- when we communicate is that we go uh-huh
24 and uh-huh, and we know what we mean, and we can probably
25 interpret what you mean. The problem is in court my court

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1 reporter is taking down your responses.

2 A Okay.

3 THE COURT: And what happens is is it causes her to need
4 to interpret, and so what we ask folks to do is to respond
5 with their voice with an answer, just to stop my court
6 reporter from having to interpret. It happens, I think it's
7 happened with every witness. It happens because it's the
8 way people communicate. So that's the reason that I stopped
9 you just because I need you to respond with your voice.

10 A Yes, ma'am.

11 THE COURT: Thank you so much.

12 BY MR. CHISOLM:

13 Q Would it be safe to say during this -- during this
14 interview you were getting a little agitated with detectives
15 constantly questioning you?

16 A Yes.

17 Q Did you tell detectives toward the end of this hour
18 long interview, I quote, I done told y'all 100 times what
19 happened. Three of us came back and they dropped me off?

20 A Yes, I think I do remember something like that. Yes.

21 Q Did you tell detectives and I quote, nothing happened
22 in that truck when I was in there?

23 A Yes.

24 Q Were you once again interviewed on 9/24/07?

25 A That was my third interview?

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1 Q Second interview.

2 A Second one.

3 Q Yes.

4 A Yes.

5 Q And once again, was this interview done of your own
6 free will?

7 A Yes, it was.

8 Q You were read your right again, correct?

9 A Yes.

10 Q Did you, once again, give up your silence and your
11 right to an attorney?

12 A Yes.

13 Q Okay. During this interview, did detectives make you
14 feel as though a warrant for your arrest could be easily
15 obtained with little or not evidence?

16 A Yes.

17 Q Okay. Did detectives attempt to make you feel as
18 though you needed to decide if you wanted a lessor charge or
19 a homicide charge?

20 A Yes.

21 Q Did detectives once again continue to bombard you with
22 accusations and questions in regards to the morning of
23 September 13, for upwards of an hour or more?

24 A Yes.

25 Q Okay. Did detectives send your mother into the

1 interview room in an attempt to force -- I'm sorry.

2 Did detectives send your mother into the interview room?

3 A Yes.

4 Q Okay. And your mother does know one of the detectives,
5 correct?

6 A I don't know if she know them.

7 Q So Det. Walsh -- all right, so during your 9/24 --
8 after your second interview --

9 A Uh-huh. (Affirmative response.)

10 Q -- after Det. Giglio walked out of the interview room,
11 I believe this should be before your mother walked in. Do
12 you not recall Det. Walsh telling you she knows your family?

13 A ..(No response.)

14 Q She's known your family all of her life?

15 A (No response.)

16 Q She says she's aware that you talk to your mom, and
17 that's how she knows you know her family and she wanted to
18 help. She didn't think you did it.

19 A I don't recall. I don't remember that.

20 Q You don't remember if Det. Walsh knows your mother?

21 A My mother ain't never told me she knew them.

22 Q Okay. And your mom came into the interview room --

23 A Uh-huh. (Affirmative response.)

24 Q -- we've established that. Okay. During this second
25 interview did a second set of detectives get cycled in, Lt.

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1 Van Doran and another detectives.

2 A Yeah. I'm not sure of his name.

3 Q Okay. And did these two detectives attempt to put more
4 pressure on you and ask you more questions?

5 A Yes.

6 Q And though the magnitude of this pressure and
7 accusations from detectives and also your mother, because
8 she did come in and ask you questions, yes?

9 A Yes.

10 Q Okay. Actually, I want to be specific with you.

11 MR. HILTON: I object to what mom came in and asked.

12 THE COURT: Let me hear the whole question.

13 MR. CHISOLM: Okay. His mom just asked if he knew --

14 THE COURT: No, no, no. Let me hear your question to
15 him and I'll rule on it.

16 BY MR. CHISOLM:

17 Q Did your mom ask you if you knew anything?

18 THE COURT: The objection is?

19 MR. HILTON: Hearsay.

20 THE COURT: Sustained.

21 BY MR. CHISOLM:

22 Q After your mother came into the interview room do you
23 recall saying, and I quote, I don't know nothing. Don't
24 you think if I did I would tell them so they would leave me
25 alone. I'm tired of them coming and looking for me. This

1 was said to your mother.

2 A Yes.

3 Q Do you recall that. And that was a lie to your mother?

4 A Yes, it was.

5 Q And all of this questioning, correct, was done of your
6 own free will?

7 A Yes.

8 Q I didn't force you to go into these interviews, did I?

9 A No, but you made up the story.

10 Q So you're saying you were following my -- in the
11 presence of detectives, who could secure your safety, in the
12 presence of your mother, who knew one of the detectives, and
13 this is your second interview. You've had two opportunities
14 to talk to detectives. Are you saying that I forced -- you
15 didn't feel comfortable to talk to detectives?

16 A I didn't feel comfortable because you was still on the
17 street.

18 Q Wouldn't you think if you said something to detectives
19 at that time that they would come get me off the street?

20 A Well, while they're looking for you, you must know I
21 said something, right, and that's when you had an
22 opportunity to do something to my family.

23 Q So on September 24, I wasn't in town, is what you're
24 saying?

25 A I don't know where you was at. Where was you at

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1 September 24?

2 Q Haven Oaks.

3 A Oh.

4 Q Do you recall on this second interview Det. Walsh asked
5 you specifically, are you scared, Don?

6 A And I told her no.

7 Q Could you tell them that you were?

8 A I'm telling right now.

9 Q I don't understand. You're not scared of me. You're
10 saying you were scared of me. You were with detectives, you
11 were with your mother. You had all the protection that you
12 needed. You -- I don't understand. Sorry. We'll continue.

13 MR. HILTON: I'd ask that he be able to answer the
14 question.

15 THE COURT: Do you remember what the question was?

16 A Talking about was I scared of him.

17 THE COURT: You may respond to the question, if you
18 wish. There is no objection interposed. You may answer the
19 question.

20 A Yes. I might have told the police I wasn't scared of
21 you, but after I saw what you did I'm death afraid of you.

22 Q Okay.

23 A Is that the question --

24 THE COURT: That's responsive. You may proceed.

25 BY MR. CHISOLM:

1 Q And did you, once again, during this interview confirm
2 that neither me nor Red, that you didn't see either me or
3 Red with a gun?

4 A I told them I didn't know.

5 Q Did you confirm again during this interview that we
6 left to avoid Shaquanda because we were doing drugs?

7 A Like I said, I don't know who called Shaquanda's name.
8 I don't remember, but I know we left to get high. You
9 already asked that question once.

10 Q I'm asking in reference to the second interview.

11 A Oh.

12 Q I asked you whether or not -- you had two interviews,
13 so I'm asking you if you told them this again. You verified
14 your story is what I'm trying to confirm.

15 A Okay.

16 Q Did you tell detectives, once again, that no stops were
17 made, no one got out, and that we, as in me and Red, dropped
18 you off?

19 A Yes.

20 Q Did you tell detectives, once again that we did not to
21 go Clubhouse?

22 A Yes, I did.

23 Q Did you have to repeat yourself numerous times over
24 this hour or more interrogation?

25 A Yes.

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1 Q Okay. Did you say during this interview, and I quote,
2 I told you everything I know. I don't know what else I can
3 tell you?

4 A Yes.

5 Q Did you say, and I quote, I didn't see anybody shoot
6 anybody.

7 A Yes.

8 Q Did you say once again during this interview charge me
9 or let me go. I had nothing to do with this?

10 A Yes.

11 Q Did you say I have nothing to worry about. I don't
12 know nothing. I didn't do nothing. I'm telling the truth.

13 A Yes.

14 Q And what you're saying is -- when I gave you a story.
15 You said I just gave you a story -- You said that I gave you
16 a story to just say that we were riding around to get high
17 and we just rode in circles?

18 A Yes.

19 Q So I didn't give you all this extra information that
20 you were putting out, I didn't give you these quotes?

21 A What are you talking about?

22 Q I don't know nothing. Charge me or let me go. I don't
23 have anything to worry about, I'm telling the truth. I'm
24 not scared of Don. Was all this extra part of this story I
25 supposedly programed you to say?

1 A No.

2 Q So you spent an extra hour and a-half just giving them,
3 just giving them a story?

4 A Yes, I did.

5 Q Would you say that you withstood at least 3 hours in
6 interrogations two separate time, still combined into 3
7 hours, because you were extremely gifted in lying?

8 A I won't say that.

9 Q And you say you have been arrested, yes?

10 A Yes.

11 Q Or convicted, I'm sorry. And this was a drug charge,
12 yes?

13 A Yes.

14 Q Could you tell me about that?

15 MR. HILTON: Objection.

16 THE COURT: Sustained.

17 MR. CHISOLM: Give me one second.

18 THE COURT: All right.

19 (Mr. Chisolm confers with Mr. Loy.)

20 THE COURT: We'll take a comfort break ladies and
21 gentlemen. I'm not sure how much longer we'll be going
22 today. But anyway, step to your jury room. Do not discuss
23 this matter. Do not allow any one to discuss it with you.
24 Y'all knock on the door when you've had your comfort break.
25 Please step to your jury room.

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1 argument whether he admits those videos into evidence or
2 not.

3 THE COURT: Okay.

4 MR. HILTON: Thank you.

5 THE COURT: Very well. And you make that argument on the
6 basis that the prior inconsistent statements come in for
7 impeachment, but also substantively, as well?

8 MR. HILTON: That's correct.

9 THE COURT: Okay. Got it. All right. Thank you.

10 Anything from the defense before we bring the jury out?

11 MR. CHISOLM: What was that?

12 THE COURT: Anything before we bring the jury out?

13 MR. CHISOLM: No, Your Honor.

14 THE COURT: Very well, let's have the jury.

15 (Jury in at 9:20 a.m.)

16 THE COURT: All right. Good morning ladies and
17 gentlemen. At this time we will continue with the state's
18 case and the cross-examination of Mr. White.

19 DAVID WHITE - CONTINUED CROSS-EXAMINATION

20 BY MR. CHISOLM:

21 Q If you owed a debt to society would you own up to your
22 guilt and pay your debt?

23 A Yes.

24 MR. HILTON: Objection.

25 THE COURT: Sustained.

1 BY MR. CHISOLM:

2 Q Did you tell detectives that your highest grade of
3 education was eighth grade?

4 A Yes, I did.

5 Q Tell me do you know and understand your constitutional
6 rights?

7 A Yes, I do.

8 Q Could you tell me what your Fourth Amendment
9 Constitutional rights are?

10 MR. HILTON: Objection. Calls for a legal conclusion.

11 THE COURT: Sustained.

12 BY MR. CHISOLM:

13 Q Is it likely that you would know if you were unlawfully
14 arrested?

15 MR. HILTON: Objection.

16 THE COURT: Sustained.

17 BY MR. CHISOLM:

18 Q Did you speak to your attorney before you talked to
19 detectives on November 16th?

20 A No, I didn't. November 16, are you talking about the
21 (inaudible). Yes, I did.

22 Q Did you authorize your attorney to speak to the
23 solicitor in reference to you making a statement?

24 A Yes, I did.

25 Q To your knowledge, did the two attorneys speak?

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1 A Are you talking about the solicitor and my attorney?

2 Q Yes.

3 A To my knowledge, yes.

4 Q Did your attorney then advise you to make a statement?

5 A No. They didn't speak before he came to speak to me.

6 They spoke after I spoke to him. After I spoke to my
7 attorney, then I made by statement, then they asked if I
8 would come in and make a statement. Yes.

9 Q Say that again, for me.

10 A Well, my attorney came to me. I told him what
11 happened. He asked me did I want him to take it to the
12 solicitor, I said yes.

13 Q After making a statement and after leading officers to
14 the alleged but never proven murder weapon, you said was
15 involved in this crime, was your charge lowered?

16 A Yes.

17 Q Were you immediately given a lower bond, as well?

18 A I got a bond, yes.

19 Q All right. Did you bond out of jail?

20 A Yes.

21 Q Were you offered immunity for your testimony today?

22 A No. You're talking about offered a plea?

23 Q Immunity?

24

25 A I don't understand what you're talking about?

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1 Q When you testified earlier, Mr. Hilton asked you if you
2 were given immunity for your testimony today. Did you not
3 understand the terms of why you were coming to testify
4 today?

5 A Yes.

6 Q All right.

7 MR. CHISOLM: Give me one second, Your Honor.

8 THE COURT: Okay.

9 (Mr. Chisolm confers with Mr. Loy.)

10 BY MR. CHISOLM:

11 Q Did they make any type of deal with you?

12 A For my testimony today?

13 Q Yes.

14 A No.

15 Q So you willingly just came?

16 A Yes.

17 Q All right. So when you testified earlier that you were
18 given immunity, that was incorrect, that was false?

19 A What did I say when you were talking about testifying

20 --

21 Q Yesterday.

22 A I didn't. They didn't give me no immunity. I told you
23 that.

24 MR. CHISOLM: Can I ask for something to be played back,
25 Your Honor? There's a portion of his original testimony

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1 his testimony today is not being used against him is what
2 I'm trying to explain.

3 THE COURT: He's explained exactly what the situation is
4 and you can ask about that. Okay.

5 MR. CHISOLM: Okay.

6 THE COURT: All right.

7 MR. CHISOLM: All right.

8 MR. HILTON: I would just ask him to refer to it as a
9 proffer agreement, because that's what it is. Immunity, I
10 think, can mean something else.

11 THE COURT: Very well. Yes.

12 (Jury in at 9:29 a.m.)

13 THE COURT: All right. Yes, sir, you may continue.

14 DAVID WHITE - CONTINUED CROSS-EXAMINATION

15 BY MR. CHISOLM:

16 Q Were you offered a proffer agreement for your testimony
17 today?

18 A Yes.

19 Q Can you explain to us exactly what that means as it was
20 explained and understood by you?

21 A That my testimony here today would not be used against
22 me for my charges.

23 Q So basically nothing you say here today can be used
24 against you later, correct?

25 A Yes.

1 Q So you can basically say anything you want on the stand
2 with no worry of repercussion, correct?

3 MR. HILTON: Objection.

4 THE COURT: Sustained.

5 BY MR. CHISOLM:

6 Q Did you testify yesterday, that your first two
7 interviews you were lying?

8 A Yes.

9 Q So when you came forward after speaking with your
10 attorney you were telling the truth, correct?

11 A Yes.

12 Q And this was only two months after the alleged
13 incident, so your memory was fresh, correct?

14 A Yes.

15 Q Did you, during your 11/16 interview, tell detectives
16 that you put everything on the table and that's it, pretty
17 much saying you had no further information?

18 A That was the second interview?

19 Q No.

20 A First --

21 Q No, fourth, your fourth interview when you said you
22 were telling the truth. Did you tell them -- after the
23 interview --

24 A I told them everything that happened and yes, that was
25 it.

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1 Q You told them that was it, I have nothing else to put
2 on the table?

3 A When they personally asked me I told them the truth
4 about it. Yeah.

5 Q You testified earlier that you saw me put a gun to the
6 deceased head and shot him, correct?

7 A Yes, I did.

8 Q On 11/16, did you tell detectives that you only heard a
9 pop and saw a spark and that you were looking at a building?

10 A I saw -- you shot him. I saw the spark and I saw you
11 shot him.

12 Q Did you tell detectives on 11/16 that you only heard
13 the pop, saw a spark and that you were looking at a
14 building?

15 A I saw you shot him.

16 Q Okay. You testified earlier -- I'm sorry. You
17 testified yesterday that I said, yeah, mother-fucker,
18 afterwards, correct?

19 A Yes, I did.

20 Q On 11/16 did you tell detectives twice you weren't sure
21 what I said, and it was possibly something about Red's
22 cousin?

23 A That was the second interview?

24 Q Your final interview.

25 A Yes, I told them something about I asked you why you

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1 shot him and you said something the mother-fucker and I know
2 it was something about the family or something. Yes, I did.

3 Q I'm sorry. The question is, on 11/16 did you leave out
4 what you just said yesterday, the yeah, mother-fucker part,
5 and tell detectives that you weren't sure what I said and it
6 was possibly something about Red's cousin.

7 A I told them after you said what you said, I told them I
8 wasn't paying no attention anymore.

9 Q Okay. You testified earlier that I asked to pull off
10 the road, around the corner from Haven Oaks area and after
11 some communication it was decided to go to Clubhouse,
12 correct?

13 A You say you asked -- repeat that question, say that
14 question one more time?

15 Q You testified earlier that I started to pull off the
16 road, basically around the corner from Haven Oaks area and
17 after some conversation it was decided to go to Clubhouse,
18 correct?

19 A You didn't stop, you did pull off the road.

20 Q Okay. And what how did I get to Clubhouse?

21 A There was a conversation I told you to take the road
22 and go to Clubhouse.

23 Q Okay. On 11/16 did you tell detectives you didn't know
24 why the Clubhouse area was chosen and you didn't know why
25 there was no talking after the shooting?

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1 A I told them that I didn't know --

2 Q Why you didn't know why the Clubhouse area was chosen
3 and that there was no talking after the shooting?

4 A I remember telling them that I told you to go to
5 Clubhouse. I remember telling them that.

6 Q You told them that --

7 A Yes, I did.

8 Q Did you testify yesterday that I threw Red's earpiece
9 out the window?

10 A Yes, I did.

11 Q On 11/16 did you tell detectives that you didn't know
12 what happen to the earpiece?

13 A You said on 11/16?

14 Q Yes. Every question that I'm asking you is towards the
15 last interview. The one that you said you were telling the
16 truth.

17 A Yes, I was telling the truth.

18 Q Okay. On 11/16 did you tell detectives you didn't know
19 what happened to the earpiece?

20 A I told them you throwed it on the side of the road.

21 Q Okay. You testified yesterday that I called before I
22 came by on Jay's phone --

23 A Uh-huh. (Affirmative response.)

24 Q -- and was planning to get more coke, correct?

25

1 A Yes.

2 Q Did you, on 11/16 tell detectives that me and Red just
3 showed up unannounced?

4 A I don't remember if I did that or not.

5 Q Okay.

6 A I don't remember if I did that or not.

7 Q Okay. I'll refresh your memory in a second. Now, I
8 want to get this all -- I want to get this all in, so bear
9 with me for one second. You testified yesterday that I had
10 a conversation with my wife, that I made a call to Sike
11 after Red called Sike, and I gave you numerous instructions
12 on what to say to the police and what I was going to do and
13 should be done next, correct, that's what you testified to
14 yesterday?

15 A I know I testified to yesterday that you collaborated
16 and I went along with it. That you called your wife on 165
17 and told her you just got finished throwing Red body on the
18 side of the road, in the ditch.

19 Q All right. So I talked to my wife; that's a yes?

20 A Yes.

21 Q Did you testify yesterday that I called Red --

22 A Sike.

23 Q -- I called Sike off of Red's phone --

24 A Yes.

25 Q -- and I started trying to talk to him, I guess?

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1 A No, you didn't talk to him.

2 Q But I called?

3 A You didn't say nothing at all.

4 Q But I talked to you about Sike, about me calling Sike?

5 A Yes, you did talk to me.

6 Q So we did have a conversation about me calling Sike?

7 A Yes, we did.

8 Q Thank you. I gave you instructions on what to say to
9 police -- oh, I'm sorry. I make a story for you, yes?

10 A Yes.

11 Q And was I talking about plans on what should be done
12 next; is that what you testified to yesterday?

13 A I testified the story that we were going to use, if
14 they come to us, the story that you gave that me that we got
15 high and you and Red dropped me off and went on your way.

16 Q Okay. Did you on 11/16 tell detectives that after the
17 shot as fired no conversation went on in the truck, and if I
18 said something you were not listening.

19 A I told them I heard you say mother-fucker and say
20 something else and I wasn't paying attention because I was
21 looking at his man dead right here.

22 Q There wasn't conversation?

23 A That was after the fact. We were on 65 and you dropped
24 me on home.

25 Q So did you tell detectives, they asked you, did y'all

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1 have any conversation in this truck?

2 A From Haven Oaks to Azalea Park, no, but after we got --
3 after you got me on home, yes.

4 Q So you told detectives all this in that interview?

5 A I can't remember how the interview went.

6 Q I'll remind you.

7 MR. CHISOLM: Your Honor?

8 THE COURT: Yes.

9 MR. CHISOLM: I would like to play the tape.

10 I redacted it. It's in the exact order with the
11 questions I just asked him. Go snippet by snippet.

12 THE COURT: All right. Any objection?

13 MR. HILTON: No, objection.

14 THE COURT: Very well.

15 (Pause for video setup.)

16 MR. HILTON: Your Honor, I hate to do this, but maybe we
17 can get the jury to step out while we figure out what's
18 going on.

19 THE COURT: Sure.

20 Very well. Step to your jury room. Do not discuss this
21 matter or allow anyone to discuss it with you. We just need
22 to get the tape up and just make sure it's -- we all know
23 what's on it.

24 (Jury out at 9:39 a.m.)

25 (Pause to set up video.)

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1 MR. HILTON: I just used this this morning and it was
2 working fine. So I'm not sure if it's the tape or what. I'm
3 going to try to play another tape and just see.

4 THE COURT: Okay.

5 (Pause to set up video.)

6 MR. HILTON: Okay, Judge, I think we're ready.

7 THE COURT: Okay. Do you want to review these tapes or
8 are you all right?

9 MR. HILTON: I'll take Mr. Chisolm's word that it is the
10 16th interview.

11 THE COURT: Okay.

12 MR. HILTON: I don't have a problem with that.

13 THE COURT: Okay. Very well.

14 Okay, let's have the jury back, please.

15 (Jury in at 9:45 a.m.)

16 THE COURT: All right. You may proceed with your cross.

17 (Video plays.)

18 THE COURT: You just want -- stop a second.

19 (Video stops.)

20 THE COURT: Do you just want -- do you just want all of
21 these statements to play?

22 MR. CHISOLM: Yes, Your Honor. All right.

23 (Video plays.)

24 (Video stops.)

25 MR. CHISOLM: There's something I've got to push

1 forward.

2 THE COURT: Okay.

3 MR. CHISOLM: I apologize.

4 THE COURT: Okay.

5 (Pause to rewind video.)

6 MR. CHISOLM: Your Honor, I don't want to mistakenly
7 introduce --

8 (Off the record conference with Mr. Hilton, Mr. Chisolm and
9 Mr. Loy.)

10 MR. CHISOLM: Your Honor, I duly apologize, but we have
11 no way of being able to hear it like that. I know it's an
12 inconvenience, but could we possibly ask the jury to step
13 out one more time so --

14 THE COURT: We've got to see if we can get our
15 technology straight. If not, we've got an old TV with a
16 VCR. I apologize for our technological challenges this
17 morning. I'm just glad I'm not having to fool with it,
18 because I know y'all would never hear it or see it, but let
19 us work on it again. Y'all might as well be at ease having
20 a cup of coffee while we struggle with it. Hopefully, while
21 we get our little glitches fixed we'll have y'all come right
22 back. Anybody that wants to zip out and smoke you can do
23 that, too. Thank you guys.

24 Of course, do not discuss this matter or allow anyone
25 to discuss it with you.

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1 (Jury out at 9:49 a.m.)

2 THE COURT: Do you need to take a quick break. All
3 right, run on out.

4 (Court in recess for short break at 9:50 a.m.)

5 (Court in session after short break at (9:58 a.m.)

6 (Jury in at 9:59)

7 THE COURT: All right. We'll try again.

8 (Video plays.)

9 (Video stops.)

10 THE COURT: You may proceed.

11 MR. CHISOLM: Thank Your Honor.

12 DAVID WHITE - CONTINUED CROSS-EXAMINATION

13 BY MR. CHISOLM:

14 Q You said your memory four years ago was accurate,
15 right?

16 A Uh-huh. (Affirmative.)

17 THE COURT: That's a yes?

18 A Yes. I'm sorry.

19 THE COURT: That's all right.

20 BY MR. CHISOLM:

21 Q And you testified earlier you were telling the truth
22 four years ago?

23 A Yes, I was telling -- I'm telling the truth right now.

24 Q So if you were telling the truth four years ago, then
25 mostly all of your testimony yesterday was a lie, correct?

1 A Excuse me. All my testimony was a lie? No, it wasn't.

2 Q You just said you were telling the truth four years
3 ago; nothing you said four years ago matches what you said
4 yesterday?

5 A What I said yesterday was the truth. That's exactly
6 what happened.

7 Q So then you lied four years ago? One of them has to be
8 a lie?

9 A I did lie four years ago. I said I lied four years
10 ago, and I wasn't -- I'm not going to say I didn't lie, but
11 I know what I said yesterday was the truth.

12 Q Okay. So the November 16th interview was a lie, is what
13 you're saying?

14 A If you listen to most of it, all of it, some parts I
15 might have left out, but it wasn't a lie when you were
16 talking to them.

17 Q You gave a completely different story?

18 A I didn't give a completely different story. I left some
19 things out, but I didn't give them a completely different
20 story.

21 Q Really?

22 A Sometime you're in a situation like that the more you
23 know like on everything when you're sitting in front of
24 people they're trying to accuse you of something, yes, you
25 might leave something out. But I know I didn't lie. What

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1 I'm telling you right now today and yesterday, it's the God
2 honest truth. I'm saying you shot that man. I want you to
3 be a man and admit what you did.

4 Q I didn't do anything, David.

5 A Oh, okay.

6 MR. HILTON: Objection.

7 THE COURT: Sustained.

8 MR. CHISOLM: Yes, Your Honor.

9 BY MR. CHISOLM:

10 Q Now, in your alleged confession on November 16th, you
11 said you were looking at the building, you saw a spark, you
12 heard a pop and then you added later that you saw me
13 bringing a gun down?

14 A I saw you bringing a gun down?

15 Q Yes.

16 A I didn't -- see a gun until after you shot that man. I
17 ain't talked about bringing no gun down. You talking about
18 bring a gun down, are you talking about when you shot him?

19 Q You said, in your interview, that you saw -- that you
20 were looking at the building, you saw a spark, you heard a
21 pop. They asked you if I shot him. You said you weren't
22 sure, but you saw me bringing a gun down. You added that
23 later.

24 A No. I saw you shot him.

25 Q We just played your tape, David.

1 A Yes. I knew you did play my tape.

2 Q Okay. Was it dark in the car?

3 A No, the apartment had plenty of lights around it. So
4 you could see lights, you could see right there inside with
5 the lights out.

6 Q Okay. And so you could see clear inside the car is
7 what you're saying?

8 A This far from each other.

9 Q Okay.

10 A If I couldn't see you like that, come on, what --

11 Q And you were looking at the side of a building, so were
12 you looking out of your peripheral vision?

13 A I saw shot that man.

14 Q I'm asking you a question, you're not answering. Were
15 you --

16 A I'm answering your questions. I saw you shot him.

17 Q If you were looking at the building, were you looking
18 at me out of your peripheral vision?

19 A No. I got my head turned and I can still see you. I
20 can see this. I saw when you shot him.

21 Q I understand. I'm asking if you were looking out of
22 your peripheral vision?

23 A (No response.)

24 Q Is that a yes?

25 A (No response.)

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1 MR. CHISOLM: He's being non-responsive, Your Honor.

2 THE COURT: The question is; --

3 A No. I was looking around --

4 THE COURT: Hold. Just stop. The question is, were you
5 able to see him out of the peripheral -- out of your
6 peripheral vision.

7 A Yes. Yes, ma'am.

8 THE COURT: Very well. Ask him another question.

9 BY MR. CHISOLM:

10 Q Is it correct that you testified and given examples in
11 and out of court was the only place you saw blood in and out
12 of this truck was in a circular pattern in the back area of
13 the seat.

14 A It was on the back area of the seat, right there.
15 That's when I saw it.

16 Q So in the lower back area of the seat --

17 A I didn't say the lower back. I said right here in the
18 middle of the seat right here.

19 Q And the gun, the alleged weapon that's never been
20 proven as the murder weapon, you said this was thrown off
21 the bridge, correct?

22 A Yes.

23 Q All right. And I recall you testified you saw it on
24 the center console, it was in full view; yes?

25 A Yes.

1 Q Okay. Do you go fishing from time to time?

2 A Yes, I do.

3 Q Do you know the area the weapon was found in is a local
4 fishing hole?

5 A Yes, I do.

6 Q Have you ever been to that local fishing hole?

7 A Yes, I have.

8 MR. CHISOLM: I need your assistance with the map.

9 (Mr. Chisolm confers with Mr. Loy.)

10 (Mr. Loy holds up map.)

11 THE COURT: You're getting good with that. What
12 happened to it? I don't remember it being that crinklie.
13 Okay. It still shows what it needs to show.

14 MR. CHISOLM: Okay.

15 THE COURT: How are your arms holding up?

16 MR. CHISOLM: I apologize, Your Honor.

17 THE COURT: Mr. Loy put his arms down, so he's okay. He
18 was starting to feel the burn.

19 John, I think we've got an easel in that corner. It
20 might be helpful. Do y'all see one in there.

21 MR. LOY: Highspeed technology, Your Honor.

22 THE COURT: Can everybody see that or does it need to be
23 -- oh, bring it out a little bit. Come towards me a little
24 bit. Great. Great.

25 Can you all see it? Great.

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1 Mr. White, can you see it?

2 MR. WHITE: Yes, ma'am.

3 THE COURT: Oh, great.

4 BY MR. CHISOLM:

5 Q Could you show me the fishing hole, please.

6 A Right there.

7 Q The left, the bigger portion on the left. That makes
8 it easier. Yeah, right there. And your residence at the
9 time?

10 A Right in there.

11 Q So that was the closest fishing hole to your house?

12 A Yes, it was.

13 Q All right. Are you fairly familiar with the Clubhouse
14 area?

15 A Yes, I am.

16 Q Okay. On November 8th, when you were arrested, you
17 received a copy of your warrant, correct?

18 A Yes, I did.

19 Q Did you read it?

20 A I can't remember what it said.

21 Q Do you recall reading it at the time?

22 A Yes, I did.

23 Q Did the warrant, did your original warrant -- according
24 to your recollection, I apologize, did it pretty much give a
25 detail theory of what detectives thought happened in the

1 case?

2 A I don't remember what it said.

3 MR. CHISOLM: Can I use present recollection to refresh
4 his memory?

5 THE COURT: You want to hand him his statement?

6 MR. CHISOLM: His original warrant.

7 THE COURT: You want to hand him something to refresh
8 his recollection?

9 MR. CHISOLM: Yes. Well, I kind of need him to read it,
10 Your Honor.

11 THE COURT: Okay.

12 MR. CHISOLM: I want to refresh his recollection with
13 it.

14 THE COURT: All right.

15 MR. CHISOLM: As to the warrant, as to what warrant
16 said, ma'am. Can I do that?

17 THE COURT: You know, you can hand him the Manhattan
18 Phone Book to refresh his recollection if that's what you're
19 wishing to do. If you're offering it for a different
20 matter, then I -- I need to know, tell me what you're doing
21 with it?

22 MR. CHISOLM: I'll just refresh his recollection, Your
23 Honor.

24 THE COURT: That will be fine. I don't know if it will
25 refresh his recollection, but you can pass it to -- pass it

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1 to -- thank you, Mr. Hilton, Deputy. He'll pass it right to
2 him. Thank you.

3 And you want him to review this to see if it refreshes
4 his recollection?

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: All right.

7 BY MR. CHISOLM:

8 Q Do you recall pretty much the detail of what detectives
9 theory of the case was?

10 A (No response.)

11 Q Theory of what happened?

12 A Yes, sir.

13 Q Did they state that they thought phone calls were made
14 at certain times?

15 A Yes. They stated that.

16 Q Did they state that they thought the passenger seat was
17 removed?

18 A Yes.

19 Q Did they state that they thought a phone call was made
20 from a certain area at a certain time?

21 A Yes.

22 Q Did they state the caliber that they thought the
23 deceased died from?

24 A Yes.

25 Q So they gave you a whole theory of the case, right?

1 A Yes.

2 Q On 9/24, your second interview, if you recall 9/24/07,
3 were you showed towards the end of that interview a picture
4 of the deceased?

5 A Yes.

6 Q All right. Do you recall if that picture was the area,
7 do you recall the area where the deceased was when they
8 showed you the picture?

9 A The scene, the ditch with him in it.

10 Q So they showed you the crime scene?

11 A They didn't show me that, they just showed me where he
12 was at. Know what I'm saying, the ditch.

13 Q So in essence you know the Clubhouse area?

14 A Yes.

15 Q You know the fishing hole?

16 A Yes.

17 Q You saw the crime scene photo of what happened, and you
18 had the whole detectives theory of the case, correct?

19 A Yes.

20 Q And you sat in your cell for eight days and then you
21 decided to make a statement?

22 A I made a statement on what happened, not because of --

23 Q Yes or no?

24 A Yes.

25 Q Okay.

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1 A And on the statement it showed about you making a call
2 to your wife and the time -- and you made a call off the
3 phone and the time. They said you made a call to your wife,
4 like I said you did.

5 Q I'm aware of that. You read the statement before you
6 gave a statement is what I'm getting at. You read your
7 whole warrant before you made a statement eight days later.
8 I have another question for you if you'll give me one
9 second, please. Thank you.

10 Could you tell me what time I allegedly dropped you
11 off, if you recall?

12 A It was probably between 4:00 and 5:00 or something like
13 that. I don't remember the time, exactly. I'm not even
14 sure.

15 Q Okay. Could you tell me did we ever go anywhere near
16 or towards the Butternut Road or Jedburg area?

17 A Butternut Road. No.

18 Q Could you tell me where and when -- where did I
19 allegedly make the phone call to Sike?

20 A On 165

21 Q Okay. From the deceased phone?

22 A Yes.

23 Q In your opinion, would the deceased phone records
24 reflect that?

25 MR. HILTON: Objection.

1 THE COURT: Sustained.

2 MR. CHISOLM: I have no further questions, Your Honor.

3 THE COURT: Very well. Redirect?

4 MR. HILTON:

5 DAVID WHITE - REDIRECT EXAMINATION

6 BY MR. HILTON:

7 Q Mr. White, did the Sheriff's Office ever tell you what
8 to say?

9 A No.

10 Q And Mr. Chisolm made a big deal about the first two
11 interviews. Whose story were you giving in those first two
12 interviews?

13 A The story he made up.

14 Q Who made up?

15 A Mr. Chisolm.

16 Q Not Det. Giglio, right?

17 A No, sir.

18 Q And you remember about when you got arrested?

19 A Yes, sir.

20 Q About what day was that?

21 A I know I was arrested --

22 Q Was it in the early part of November?

23 A Yes. I can't remember the date.

24 Q Okay. And prior to you getting arrested, when you went
25 into the Sheriff's Office those two times to give those

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1 statements Mr. Chisolm was asking you about?

2 A Uh-huh. (Affirmative response.)

3 Q Did the Sheriff's Office beat you?

4 A No.

5 Q Did they arm twist you?

6 A No.

7 Q Put a gun to your head?

8 A No.

9 Q And, in fact, during those first two interviews did you
10 give them any information other than what the defendant told
11 you to tell?

12 A No, I didn't.

13 Q On the second interview at the Sheriff's Office, do you
14 remember telling them, I've had enough of these questions.
15 If you're not going to arrest me I'm leaving.

16 A Yes.

17 Q And were you able to leave?

18 A Yes.

19 Q When you gave that final statement on November 16th, I
20 think was the date, had Don been arrested at that point?

21 A If I'm not mistaken, yes, he was.

22 Q And he was incarcerated at that point?

23 A Yes, he was.

24 Q And I think you testified yesterday about being scared
25 of him; were you scared of him after he was incarcerated?

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1 A No. He couldn't bother nobody.

2 Q Now, let's talk about how you came in contact with
3 police around the 16th, that last statement you were talking
4 about; did the police contact you?

5 A No.

6 Q How did that happen?

7 A I got my lawyer to contact them.

8 Q After that second interview and other than that day
9 they served you with the warrant, so I guess after they
10 served you with your warrant did police ever talk to you
11 again until after the 16th?

12 A No.

13 Q When you came in on the 16th, did the Sheriff's Office
14 tell you what to say?

15 A No.

16 Q Did they give you a statement that you could read and
17 review and then came in there and gave a story?

18 A No.

19 Q And Mr. White, I think you told Mr. Chisolm, you have
20 an 8th grade education, right?

21 A Yes.

22 Q And you were working as a brick mason at the time?

23 A Yes, sir.

24 Q Or laborer, I think you said.

25 A (No response.)

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1 Q There's a couple of things that Mr. Chisolm brought up
2 about the seat. I want to ask you about that briefly, okay.

3 You testified yesterday, in fact, we introduced a
4 picture, State's Exhibit No. 7 -- Mr. White can you just set
5 that map down. We talked about the seat cover, do you
6 remember that?

7 A Yes.

8 Q All right. Was that seat cover on the vehicle the
9 night of September or the early morning of September 13,
10 2007?

11 A No, it wasn't.

12 Q When did that seat cover get on the vehicle?

13 A After he cut the -- cut the blood stains out.

14 Q All right. When he showed you that --

15 A He pulled me to the side and showed me where he cut the
16 spot where the blood was at.

17 Q So we all understand, after he cut the seat out
18 sometime before he showed it to you, the seat cover was
19 placed on it?

20 A Yes.

21 Q You said he was able to move the seat cover and you saw
22 the hole?

23 A Yes.

24 Q Okay. And Mr. White, I want to go back to the
25 interview for just a second.

1 The portion that Mr. Chisolm played, was that your
2 whole interview?

3 A No.

4 Q Were there other parts in that interview?

5 A I believe so.

6 Q Let me show you what's been marked for identification
7 as State's Exhibit No. 15. Have you had an opportunity to
8 view a portion of this video tape?

9 A Yes, sir.

10 Q And is this an accurate report of the video as it was
11 conducted on November 16, 2007, at the Sheriff's Office?

12 A Yes.

13 MR. HILTON: Your Honor, at this time, we would offer
14 State's Exhibit No. 15 into evidence.

15 THE COURT: Any objection?

16 MR. CHISOLM: No, Your Honor.

17 THE COURT: Very well.

18 MR. HILTON: At this time we'd ask to publish to the
19 jury?

20 THE COURT: Very well.

21 MR. HILTON: This is the defendant's video. At least --

22 THE COURT: It needs to be marked for identification
23 purposes, at least.

24 BY MR. HILTON:

25 Q Mr. White while this is rewinding, I'll just ask you a

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1 couple of questions. On this November 16th, did anybody beat
2 you?

3 Q Did anybody force you into making a statement on the
4 16th?

5 A No.

6 Q Did anybody put a gun to your head?

7 A No.

8 Q Did anybody tell you what to say?

9 A No.

10 (Video plays.)

11 (Video stops.)

12 BY MR. HILTON:

13 Q Mr. White, just a couple more questions. At the time
14 you gave this statement on November 16, 2007, did you know
15 anything about a proffer agreement at that time?

16 A No.

17 Q Had you ever even met me at that time?

18 A No.

19 Q And did they say anything about reducing your charge at
20 that time?

21 A No.

22 Q One brief question that you brought up on the
23 interview. You said something about Jay's cell phone. I
24 think you testified yesterday a little bit about that. Who
25 was Jay and what about his phone?

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1 A Jay was a friend of the family. He stay -- he's in
2 school and he comes down at times.

3 Q And did you have a cell phone at the time?

4 A No.

5 Q And who's cell phone did you use?

6 A Jay's.

7 Q And on September 13, 2007, and around that time, whose
8 phone were you using?

9 A Jay's.

10 Q Please answer any questions Mr. Chisolm may have.

11 THE COURT: All right. Recross?

12 MR. CHISOLM: Yes.

13 DAVID WHITE - RECROSS EXAMINATION

14 BY MR. CHISOLM:

15 Q You said on November 16th, your attorney did talk to
16 the solicitor, correct?

17 A He talked to me, yes.

18 Q But someone talked to the solicitor, Mr. Hilton wasn't
19 working yet, correct.

20 A I don't know what solicitor he talked to.

21 Q All right. On that day you offered to take a test; did
22 you ever take it?

23 A The polygraph test?

24 Q Yes.

25 A Yes, I did take it.

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1 Q When was this?

2 MR. HILTON: Your Honor, I'm going to object at this
3 point.

4 THE COURT: Sustained.

5 MR. CHISOLM: One second, Your Honor.

6 THE COURT: All right.

7 MR. CHISOLM: Your Honor, could you excuse the jury for
8 one second?

9 THE COURT: Do you have a matter of law?

10 MR. CHISOLM: Yes, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, please step
12 to your jury room. Do not discuss this matter or allow
13 anyone to discuss it with you.

14 (Jury out at 10:53 a.m.)

15 (Mr. Chisolm confers with Mr. Loy.)

16 THE COURT: Yes, sir?

17 MR. CHISOLM: Your Honor, I have a discovery issue.
18 We've been in court numerous times to insure that I had
19 everything in discovery that I was entitled to everything. I
20 have no -- there's nothing that I've been given that
21 acknowledges that a test took place or the test was possibly
22 taken the day it may have taken place or the result or
23 anything. And though it may not be admissible I'm entitled
24 to everything as it pertains to my case.

25 THE COURT: Why did you ask the question?

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1 -- if you don't want it, I'm not going to do that. So
2 that's about as accommodating to step him down, because it's
3 inconvenience is not going to work. Okay. We're going to go
4 forward.

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: All right.

7 Do you need a minute to tell whomever about Mr. Krell?

8 You got somebody handling that. Great.

9 Let me have my jury, please.

10 (Jury in at 11:39 a.m.)

11 THE COURT: All right. Ladies and gentlemen at this time
12 we will continue with the cross-examination of Mr. White.

13 Mr. Chisolm.

14 MR. CHISOLM: I have no further questions, Your Honor.

15 THE COURT: Very well. All right. I'm just going to ask
16 you to just remain with us. Thank you so much. You may come
17 down.

18 Call your next witness, please.

19 MR. HILTON: State would call Ms. Patrice McKnight.

20 THE CLERK: Please raise your right hand, state your
21 full name for the record.

22 MS. MCKNIGHT: Patrice McKnight.

23 THE CLERK: Could you spell your name please?

24 MS. MCKNIGHT: P-a-t-r-I-c-e M-c-K-n-I-g-h-t.

25 (WHEREUPON, Patrice McKnight was

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1 sworn to tell the truth.)

2 THE CLERK: Thank you.

3 THE COURT: Your witness.

4 MR. HILTON: Thank you, Your Honor.

5 PATRICE MCKNIGHT - DIRECT EXAMINATION

6 BY MR. HILTON:

7 Q Ms. McKnight, where are you employed?

8 A Verizon Wireless.

9 Q And what's your position at Verizon?

10 A Executive Relations Analyst.

11 Q What does that mean?

12 A I am custodian of records. I handle SEC complaints and
13 media complaints.

14 Q Okay. And you said, Verizon. At some point in time
15 did Verizon telephone company take over Alltel?

16 A Yes.

17 Q Do you remember when that was?

18 A Around January of 2009.

19 Q And in that take-over, did Verizon continue to maintain
20 the records that were originally maintained by Alltel?

21 A Yes.

22 Q And that would include telephone records?

23 A Yes.

24 Q Are you aware of whether then telephone company,
25 Alltel, received a subpoena for telephone records for the

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1 number, [REDACTED], for the dates of September 8, 2007 at
2 12:00 a.m. to September 17, 2007 at 12:00 a.m.?

3 A Yes.

4 Q Let me show you what's been marked for identification
5 as State's Exhibit No. 16, and ask if you recognize this?

6 A Yes.

7 Q Do those appear to be the records of that phone?

8 A Yes, they are.

9 Q And what is the telephone number?

10 A The telephone number is [REDACTED].

11 Q And are those the records that are kept in the normal
12 course of business?

13 A Yes.

14 MR. HILTON: Your Honor, at this time, we would offer
15 State's Exhibit No. 16 into evidence?

16 THE COURT: Any objection?

17 MR. CHISOLM: No, Your Honor.

18 THE COURT: State's Exhibit 16 in evidence without
19 objection.

20 (State's Exhibit No. 16, phone
21 records, was marked and entered.)

22 BY MR. HILTON:

23 Q Do you know who's account this was assigned to?

24 A Tabitha Polite.

25 Q Please answer any questions the defendant may have for

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1 you.

2 THE COURT: Cross-examination.

3 MR. CHISOLM: One moment, Your Honor.

4 THE COURT: Okay.

5 (Mr. Chisolm confers with Mr. Loy.)

6 MR. CHISOLM: Can you hand her this?

7 DEPUTY SMITH: Judge?

8 THE COURT: Yeah, sure, you want to hand her back her
9 document. Sure. All right. Thank you.

10 (Deputy Smith passes document to the witness.)

11 PATRICE MCKNIGHT - CROSS-EXAMINATION

12 BY MR. CHISOLM:

13 Q Would you be able to verify from the phone records what
14 tower the phone call came from?

15 A These are different records now.

16 Q So there's no way to --

17 A These were held by Alltel, so basically I would not be
18 able to track these records for you.

19 Q Okay. Could you confirm a phone call was made at 4:13
20 -- I'm sorry, on September 13th at 4:13 a.m.?

21 A Okay. What time?

22 Q 4:13 a.m.?

23 A Yes.

24 Q Could you also confirm that a phone call was made at
25 5:30 a.m. on the same date, September 13th?

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1 A Yes.

2 Q All right. Is there any way -- it is possible to tell
3 exactly what time the phone was turned off?

4 A No. Not from these records.

5 Q All right. Thank you. I have no further questions.

6 THE COURT: Redirect?

7 MR. HILTON: What'd we do with the records?

8 MR. CHISOLM: She has them.

9 PATRICE MCKNIGHT - REDIRECT EXAMINATION

10 BY MR. HILTON:

11 Q The 5:30 call, do you have a copy of these records?

12 A Yes.

13 Q The 5:30 call Mr. Chisolm just referred to, can you
14 take a look at that, that's on September 13, 2007?

15 A Yes.

16 Q Is there an outgoing number or a number that was
17 dialed?

18 A Okay. 570.

19 Q Is that any valid telephone number other than maybe the
20 operator?

21 A From these records, I wouldn't be able to tell.

22 Q Was there any out-going calls after that time?

23 A No.

24 Q No further questions.

25 THE COURT: Any re-cross?

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1 MR. CHISOLM: Yes, our Honor.

2 PATRICE MCKNIGHT - RE-CROSS-EXAMINATION

3 BY MR. CHISOLM:

4 Q Okay. Would you confirm that the call -- all right, at
5 3:34 a.m. on September 13th, could you confirm that was an
6 incoming call?

7 A That was an incoming call.

8 Q Could you tell me the number that that incoming call
9 came from, the number that it shows that it came from?

10 A It shows an [REDACTED].

11 Q Okay. And the call after that at 4:13 is one outgoing
12 call, correct?

13 A Correct.

14 Q And that number is?

15 A It is [REDACTED].

16 Q And you said -- and the 5:30 a.m. call, which is the
17 last call reflects a zero, correct?

18 A Correct.

19 Q Thank you.

20 MR. CHISOLM: No further questions, Your Honor.

21 THE COURT: Is this witness free to leave?

22 MR. HILTON: She is.

23 THE COURT: Any objection?

24 MR. CHISOLM: No, Your Honor.

25 THE COURT: You are free to go. Thank you.

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1 Call your next witness, please.

2 MR. HILTON: State would call Sue Johnson.

3 THE CLERK: Please raise your right hand, state your
4 full name for the record.

5 MS. JOHNSON: Susan Johnson.

6 THE CLERK: Could you spell your name, please?

7 MS. JOHNSON: S-u-s-a-n J-o-h-n-s-o-n.

8 (WHEREUPON, Susan Johnson was sworn
9 to tell the truth.)

10 THE CLERK: Thank you.

11 THE COURT: Your witness.

12 MR. HILTON: One minute, Your Honor?

13 THE COURT: Oh, sure.

14 SUSAN JOHNSON - DIRECT EXAMINATION

15 BY MR. HILTON:

16 Q Ms. Johnson, where are you employed?

17 A By T-Mobile.

18 Q And what's your position with T-Mobile?

19 A I am the custodian of records.

20 Q And in that capacity you're responsible for responding
21 to subpoenas and testifying in regard to those subpoenas?

22 A Yes.

23 Q Now, T-Mobile, is that a cell phone company?

24 A Yes, it is.

25 Q And at some point in time, did T-Mobile take over the

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1 company Sun-Com?

2 A Yes, we did.

3 Q Is that like an umbrella company or is T-Mobile the
4 parent company.

5 A T-Mobile is the main company.

6 Q Did T-Mobile receive a subpoena, or Sun-Com at the
7 time, receive a subpoena for telephone records for the
8 number [REDACTED], for the dates of September 8, 2007 from
9 12:00 a.m. to September 17, 2007 at 12:00 a.m.?

10 A Yes, sir.

11 Q Let me show you what's been marked for identification
12 as State's Exhibit No. 17, and ask if you recognize these?

13 A Yes, I do.

14 Q Do these appear to be those phone records?

15 A Yes, sir.

16 Q And are these the records that are kept in the normal
17 course of business for telephone number [REDACTED]?

18 A Yes.

19 Q And were maintained by Sun-Com?

20 A Yes, sir.

21 Q And taken over by T-Mobile?

22 A Correct.

23 Q Let me ask you, from these records what are some of the
24 things that you can tell from the telephone calls?

25 A The day and time, as well as the cell site location, as

1 well as the duration.

2 Q Can you tell the calling number and the number that was
3 called?

4 A Yes.

5 Q When you say the cell site locations would that be kin
6 to like a tower location?

7 A Correct.

8 Q Now, what can you tell from tower information?

9 A Tower information gives us the general area in which a
10 cell phone is located.

11 Q Now, the calls from around 2:00 a.m. on September 13,
12 2007, to about 8:00 in the early morning hours on September
13 13, 2007, what towers are we talking about there?

14 MR. CHISOLM: Objection, relevance, Your Honor.

15 THE COURT: Overruled.

16 A I'm sorry. What were the dates, again?

17 BY MR. HILTON:

18 Q From -- we're talking about September 13, 2007, from
19 2:00 a.m. to 8:00 a.m.?

20 A Tower number 6048, 6075, 6129, and 6152.

21 Q Now, through records and so forth, are you able to
22 translate those tower numbers into, like, an address?

23 A Yes.

24 Q Do you know the address for telephone tower 6048?

25 A Yes, I do.

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1 Q What was that?

2 A 400 Orangeburg Road in Summerville.

3 Q What about 6075?

4 A 516 Beach Hill Road in Summerville.

5 Q 6129?

6 A 1049 Beach Hill Road in Summerville.

7 Q And what about 6152?

8 A 132 Trolley Road in Summerville.

9 Q Now, generally how do these cell phone towers work?

10 A Generally, what happens is when the cell phone is
11 turned on it will reach out to the nearest tower with the
12 strongest signal. You then press the send button to call
13 the person, it gets routed through the tower into the switch
14 and then it's delivered by a land line to the person that
15 you're actually calling.

16 Q And let me ask you a question kind of in reverse. Is
17 it easier to tell from tower location, especially the
18 information we're dealing with here, is it easier to tell
19 where someone is not as opposed to where someone actually
20 is?

21 A (No response.)

22 Q Let me rephrase that. Can you pinpoint the location of
23 somebody with cell phone towers?

24 A You can't actually pinpoint, you can give the general
25 area based on the cell towers.

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1 Q And let me ask you this question. If someone's hitting
2 off of towers in Area B would they be in Area A?

3 A No, they would be near Area B.

4 Q Looking at the records in front of you there, I think
5 that's State's Exhibit 17.

6 MR. HILTON: And I'm not sure if I moved those into
7 evidence or not, but at this time I would ask to move those
8 into evidence.

9 THE COURT: All right. Have you shown the exhibit to Mr.
10 Chisolm?

11 MR. HILTON: I did.

12 THE COURT: All right. Any objection?

13 MR. CHISOLM: Your Honor, unless they can show whose
14 phone records they are and how they're relevant. I object.

15 THE COURT: All right.

16 MR. HILTON: That will become relevant.

17 THE COURT: I will conditionally admit it expecting you
18 to tie up the relevancy of it. And if that is not tied up,
19 then -- we'll have to deal with that issue at that point.
20 All right. Very well.

21 It is conditionally admitted.

22 (State's Exhibit No. 17, phone
23 records, was marked and entered conditionally.)

24 BY MR. HILTON:

25 Q Looking at State's Exhibit No. 17, can you tell whether

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1 the person that was using this phone, phone number [REDACTED]
2 between about 3:51 and 4:54, was that person in the area of
3 the 400 Orangeburg Road tower?

4 A I'm sorry, between 3:51 and what time?

5 Q 4:54.

6 A Between 3:51 and 4:54 a.m. no, they were not hitting
7 off of the Orangeburg Road tower.

8 Q What towers was the person hitting off of that time?

9 A 6075, which is 516 Beach Hill Road; 6129, which is 1049
10 Beach Hill Road.

11 Q Okay, and then closer up to 4:54, what tower is that?

12 A 4:54 is tower number 6152, which is 132 Trolley Road.

13 Q Okay. Please answer any questions the defendant may
14 have for you.

15 THE COURT: Cross-examination.

16 MR. CHISOLM: Yes, Your Honor.

17 SUSAN JOHNSON - CROSS-EXAMINATION.

18 BY MR. CHISOLM:

19 Q You said the area can't be pinpointed exactly, right?

20 A Exactly, correct.

21 Q If you were bouncing off of, let's say, two towers -- I
22 don't know how to word this -- if the time frame, if you
23 were bouncing in between two towers, let's say within a
24 minute apart, would you be able to give a general idea,
25 triangulate, you understand what I'm saying where the person

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1 might be in?

2 A No. What do you mean by bouncing?

3 Q Okay. On 9/13, on September 13, there's a phone call
4 at 4:47 a.m., and I believe that tower -- one second. I
5 believe that's the Beach Hill Road tower; correct?

6 A Correct. 516 Beach Hill Road.

7 Q Now, at 4:48 a.m., the next phone call. It's coming
8 from 132 Trolley Alley, the tower on Trolley Alley?

9 A Right.

10 Q Would you be able to tell from -- would it be more
11 likely that you're in that area of town in between those two
12 towers?

13 A Looking at these records, it's hard to tell which side
14 of the tower that the person was hitting off of.

15 Q What's the range, what's the average range on a tower?

16 A It depends on the area. The tower can cover one mile
17 out to 15 miles. Depends on how the engineering has been
18 set up.

19 Q Would you be able -- if I gave you a specific tower,
20 would you know what the range is of that tower?

21 A Not right now, no.

22 Q Would you say it ranges -- it could range anywhere --
23 it could range anywhere in between one mile to 15 miles?

24 A Correct.

25 Q All right. But you can tell if they don't hit that

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1 tower, hit a certain tower, it's pretty likely they're not
2 in that area?

3 A (No response.)

4 Q If they never hit a tower then there's pretty likely
5 they're not in that general area?

6 A The records that reflect here are going to show the
7 area in which the telephone was at.

8 Q I got you. Could you look at those records in between
9 the time frame of -- actually, could you look at those
10 records in between the time frame of 1:26 a.m. on September
11 13 to I'd say 8:11 a.m. on September 13, and verify if the
12 cell phone hit off of the tower location of 4500 Highway 17-
13 A/Clubhouse.

14 A I wouldn't know that without having a cell site list.

15 Q Okay. Hold on. For the number for 4500 --

16 A I would need the tower number for that address where
17 the tower is located.

18 Q Okay. Let's see -- could you verify this, could you
19 look at each one and tell me which tower they did it on.

20 A I can only tell you the four towers that were in
21 question. I would need a cell site list to determine where
22 the others are located.

23 MR. CHISOLM: Your Honor, pass this --

24 THE COURT: I don't know what it is. Has counsel seen
25 it?

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1 (Documents passed to Mr. Hilton.)

2 THE COURT: Thank you. Yes.

3 (Documents pass to deputy to pass to witness.)

4 BY MR. CHISOLM:

5 Q All right. I'm going to try to explain a little
6 further. I don't have the actual number -- I have a lot of
7 cell site towers there. I don't have the actual number for
8 4500 Highway 17-A and Clubhouse Road. What I'm trying to
9 verify is if you could look at all the calls in between 1:26
10 a.m. to 8:11 a.m., and verify that it hit off of some tower
11 on that list, but it never hit off of the 4500, I don't have
12 the 4500, but it's -- it's not going to hit off of the 4500,
13 in other words, what I'm saying.

14 MR. HILTON: I'm going to object to that. We have to be
15 referring to the towers that were active in 2007.

16 THE COURT: So your concern is -- is the foundation?

17 MR. HILTON: Correct.

18 THE COURT: Well, --

19 MR. CHISOLM: Actually, Your Honor --

20 THE COURT: Hold on. Let me rule.

21 You just got handed a document. I don't -- do you
22 recognize that document?

23 MS. JOHNSON: Yes, I do, ma'am.

24 THE COURT: Okay. And if you're able to answer the
25 question, then I'm going to ask you, since you recognize

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1 that document, if you can answer the question, please answer
2 the question.

3 MS. JOHNSON: Okay. He's asking if the phone was
4 hitting a tower located at a certain address. I can't
5 answer that because I don't know the tower number of the
6 address that he's referring to.

7 THE COURT: Okay.

8 BY MR. CHISOLM:

9 Q Could you go from each phone call one by one from 1:26
10 a.m. until 8:11 a.m. and verify what tower it hit off of?

11 A The call at 1:26 a.m. was tower number 6048, which was
12 400 Orangeburg Road. The next call was at 2:01 a.m., which
13 was the same tower number, 6048. At 2:04 a.m., it was the
14 same tower number, 6048. The call at 2:06 a.m., same tower
15 number 6048. The call at 2:11 a.m. was 6048. The call at
16 2:16 a.m., the same tower number, 6048. The call at 2:20
17 a.m., was tower number 6048. The call at 2:35 a.m., tower
18 number 6048. The call at 2:53 a.m., tower number 6048.
19 Next call was at 3:06 a.m., tower number 6048. Next call
20 was at 3:50 a.m., tower number 6048. Next call was at 3:51
21 a.m., tower number 6075. Next call is 4:41 a.m., which is
22 tower number 6129.

23 Q I'm sorry to stop you. Before you get into the new
24 towers could you verify the address on them?

25 A Sure. Tower number 6075 is 516 Beach Hill Road. Tower

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1 number 6129 is 1049 Beach Hill Road. Next call is at 4:47
2 a.m., tower number 6075, which is 516 Beach Hill Road.
3 Another call at 4:47 a.m., is the same tower number, 6075.
4 The next call is at 4:47 a.m., tower number 6075. The next
5 call is at 4:48 a.m., which is tower number 6152, which is
6 located at 132 Trolley Road. The next call is at 4:48 a.m.,
7 and that is tower number 6152. Next call is at 4:49 a.m.,
8 tower number 6075, which is 516 Beach Hill Road. Next call
9 was at 4:49 a.m., which is tower number 6152, which is the
10 Trolley Road tower. The next call is at 4:51 a.m., tower
11 number 6075, which is Beach Hill Road. The next call is
12 4:53 a.m., which is tower number 6075. The next call is at
13 4:54 a.m., which is tower number 6152, which is the Trolley
14 Road tower. The next call is at 6:19 a.m., which is tower
15 number 6048, which is Orangeburg Road. The next call is at
16 7:58 a.m., which is tower number 6048, which is Orangeburg
17 Road. And then the last call at 8:11 a.m., and that's 6048,
18 which is Orangeburg Road.

19 Q Okay. Would it be correct that no calls hit off of
20 tower number -- Could you check and see if 162 Checkerboard
21 Lane, off of that tower?

22 A There is no tower that hit -- Checkerboard Road.

23 Q Okay. And you say without me having the number for
24 4500 Highway 17-A and Clubhouse Road you can't verify, but
25 you can because you just listed every tower that I hit,

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1 correct?

2 A Every tower that was hit.

3 Q And I didn't hit -- you didn't leave out any towers?

4 A No.

5 Q And that -- so that would be all the towers that I hit,
6 and I would have to have been in that general area?

7 A Correct.

8 Q Thank you.

9 MR. CHISOLM: I have no further questions.

10 THE COURT: All right. Redirect?

11 MR. HILTON: One question, Your Honor.

12 THE COURT: All right.

13 SUSAN JOHNSON - REDIRECT EXAMINATION

14 BY MR. HILTON:

15 Q Ms. Johnson, if no calls were made or received would
16 there be any tower information indicated on the phone
17 records?

18 A No, sir.

19 Q Thank you.

20 THE COURT: Any recross?

21 MR. CHISOLM: No, Your Honor.

22 THE COURT: Very well. Is this witness free to leave?

23 MR. HILTON: She is.

24 THE COURT: You are free --

25 Any objection?

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1 MR. CHISOLM: No, Your Honor.

2 THE COURT: You are free to go.

3 Call your next witness.

4 MR. HILTON: State would call Dr. Erin Presnell.

5 THE CLERK: Please raise your right hand. State your
6 full name for the record.

7 DR. PRESNELL: Susan Erin Presnell, P-r-e-s-n-e-l-l.

8 (WHEREUPON, Erin Presnell was sworn
9 to tell the truth.)

10 THE CLERK: Thank you.

11 THE COURT: Your witness.

12 MR. HILTON: Thank Your Honor.

13 ERIN PRESNELL - DIRECT EXAMINATION

14 BY MR. HILTON:

15 Q Dr. Presnell, where are you employed?

16 A I'm a Forensic Pathologist at MUSC in Charleston, the
17 medical university.

18 Q How long have you been working there?

19 A I've been a faculty member there since 1999.

20 Q And basically what is a forensic pathologist?

21 A Well, forensic pathology is a sub-speciality of the
22 field of pathology. General pathology. Pathology is the
23 study of disease. Pathologist are the doctors that looks at
24 tissues or fluids of body samples taken from a patient by
25 their family doctor or their GYN or their pediatrician.

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1 They look at those tissues and whatnot under the microscope
2 and do certain things to them and come up with diagnoses,
3 like cancer or not cancer, it's infection or not infection.
4 Then a broad field of pathology. I'm trained as a general
5 pathologist. I'm also trained for the sub-speciality of
6 forensic pathology, which is where we're looking not just at
7 a piece of tissue or something that's been taken out by a
8 surgeon, we're looking at the whole entire body of someone
9 who has passed on. Our process of doing that is called the
10 autopsy. Although we are looking for disease, and
11 documenting any disease process, we're also looking at
12 trauma and evaluating trauma and interpreting that, and then
13 putting everything together in the final autopsy report
14 which includes the cause and manner of death.

15 Q Can you tell the jury your background and education?

16 A Well, pathologist are doctors, so I went to college and
17 then I went to medical school. After you go to medical
18 school, that's when you take your specialty whether it's
19 pediatrics or family medicine. I chose pathology, which was
20 a five year training program and then an additional year in
21 just forensics. And then through this process I've taken my
22 boards, national boards. I'm Board Certified in Anatomical
23 Clinical Pathology, just the general pathology and I'm also
24 Board Certified in Forensic Pathology.

25 Q And is this what you do on a daily basis?

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1 A Yes.

2 Q And about how many autopsies would you say you have
3 performed over the course of your career?

4 A An estimate of about 2000.

5 Q Have you ever testified as an expert before?

6 A Yes.

7 Q About how many time?

8 A Again, an estimate about 85, maybe.

9 Q Has that been in state courts like this one?

10 A Yes.

11 Q Any other courts?

12 A Federal court.

13 MR. HILTON: Your Honor, at this time, we'd offer Dr.
14 Erin Presnell as an expert in the field of Forensic
15 Pathology.

16 THE COURT: Is there any voir dire?

17 MR. CHISOLM: No, Your Honor.

18 THE COURT: Any objection?

19 MR. CHISOLM: No, Your Honor.

20 THE COURT: Very well. She's so qualified.

21 Ladies and gentlemen, let me just talk to you a moment
22 about what's just occurred. Dr. Presnell has been qualified
23 as an expert in the field of forensic pathology. What that
24 means is that she will be allow to testify with regards to
25 her opinions and the reason for those opinions. The reason

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1 that that matters is that under our rules of evidence,
2 ordinarily a person is not allowed to testify regarding
3 their opinions or the reasons for those opinions, but there
4 is an exception and that is when by virtue of someone's
5 knowledge, education, training, experience, profession, that
6 they have become an expert in the field of science or
7 medicine or art, and they are allowed to testify regarding
8 their opinions and the reasons for those opinions within
9 their expertise.

10 What that means is that Dr. Presnell will be allowed to
11 testify regarding her opinions and the reasons for those
12 opinions within the field of forensic pathology.

13 Now, ladies and gentlemen, I will give you further
14 instructions regarding expert testimony, however, I will
15 just tell you now that expert testimony is given for the
16 purpose of helping you understand the evidence, and not, of
17 course, for the purpose of controlling your judgment.

18 Thank you.

19 MR. HILTON: Thank Your Honor.

20 BY MR. HILTON:

21 Q Dr. Presnell, did you receive a body back on September
22 13th, 14th, somewhere around in there, of a Craig Michael
23 Canady?

24 A Yes. One of the coroners at Dorchester County referred
25 Mr. Canady to us for autopsy on September 16, 2007.

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1 Q It was the 16th?

2 A Yes.

3 Q And were you about to perform an autopsy on Mr. Canady?

4 A Yes, we did a complete autopsy.

5 Q And did you recover a projectile from the head of the
6 body?

7 A Yes.

8 Q Let me show you what's been marked for identification
9 as State's Exhibit No. 18, and see if you recognize it?

10 A Well, this looks like it comes from our autopsy room.
11 It has out autopsy label on it with an autopsy number and
12 the deceased person's name and my handwriting. It's a
13 bullet. Sounds like there's bullet inside.

14 Q And is that how you normally package things?

15 A Yes, typical packaging that we would prepare.

16 Q And does that appear to be the projectile that you
17 recovered during the autopsy of Mr. Canady?

18 A Yes, that's what it says, the projectile.

19 MR. HILTON: Your Honor, at this time we'd offer State's
20 Exhibit No. 18 into evidence?

21 THE COURT: Any objection?

22 MR. CHISOLM: No, Your Honor.

23 THE COURT: Very well. State's Exhibit No. 18 in
24 evidence without objection.

25 (State's Exhibit No. 18,

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1 projectile, was marked and entered.)

2 BY MR. HILTON:

3 Q Were you able, Dr. Presnell, to determine the cause of
4 death of Mr. Canady?

5 A Yes. When Mr. Canady came to us he had one major injury
6 which was a fatal injury. He had a gunshot wound that
7 entered the left side of his head about right in this
8 location. A little bit lower than your temple. The bullet
9 traveled through the skull kind of through the base of the
10 brain, through the brain stem area, which the brain stem is
11 what connects your brain to your spinal cord, then traveled
12 backward and actually went through the skull on the right
13 side, but the skull has stopped it from exiting and that's
14 where we recovered the bullet. The bullet that was entering
15 the left side of the skull traveling backwards and just a
16 little bit up, slightly up, all the way through to the right
17 side.

18 Q Now, is that consistent with being shot from -- shot by
19 a driver if you're sitting in the passenger side of a
20 vehicle?

21 MR. CHISOLM: Objection, Your Honor. Calls for
22 speculation.

23 MR. HILTON: I'll rephrase my question.

24 THE COURT: Very well.

25 BY MR. HILTON:

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1 Q Dr. Presnell, in your opinion as an expert forensic
2 pathologist with the wound that Mr. Canady suffered, the
3 fatal wound that Mr. Canady suffered be consistent with
4 being shot by the driver from the front seat of a vehicle if
5 he's sitting in the passenger seat?

6 MR. CHISOLM: Objection. Outside her realm of
7 qualification.

8 THE COURT: Overruled.

9 A Well, it certainly could be. When we were looking and
10 examining, Mr. Canady at autopsy, he was laying flat down on
11 the autopsy table and I can tell you the direction of the
12 bullet was back, towards his back, and from his left to his
13 right. So if you have, say him sitting in the passenger
14 seat of a vehicle this is where the bullet is coming from.
15 He's sitting straight forward, then the gun, you know, in
16 this orientation. Now, if he moves that changes where the
17 gun is. I don't know his position at the time of the
18 shooting. Whether he's looking backwards or forwards or
19 bending over, and I can't tell that from the autopsy.
20 Certainly coming from the left side is consistent with his
21 being shot from the left side of a vehicle.

22 Q Dr. Presnell, was there any decomposition of the body
23 when you received it?

24 A Yes. He wasn't that decomposed, but he definitely
25 showed signs of decomposition, he was bloated, there was

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1 insect activity and he had turned partially green, some of
2 his skin was slipping off. He had fly eggs and whatnot. So
3 there was --

4 COURT REPORTER: Sorry, he had what?

5 DR. PRESNELL: Fly eggs.

6 A So there was some degree of decomposition which didn't
7 actually obscure the actual bullet hole, but it obscured
8 skin over the -- where the entrance gunshot wound was.

9 BY MR. HILTON:

10 Q Now, you mentioned fly eggs and decomposition. Was
11 that consistent with being out in the weather for three
12 days?

13 A Yes. I had received information --

14 MR. CHISOLM: Objection. He's leading the witness, Your
15 Honor.

16 THE COURT: Don't lead.

17 BY MR. HILTON:

18 Q Based on your opinion as an expert, can you tell from
19 the decomposition approximately how long the body was out in
20 the weather?

21 A Well, the way that we really approach how long someone
22 has been deceased is we evaluate the post-mortem changes,
23 all the things that have changed and then compare it to a
24 particular scenario; when the victim died what was that
25 particular scenario. The information at the time of autopsy

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1 we received he'd last been seen on the early morning hours
2 of the 13th, found on the 15th. We autopsied him on the
3 16th, and these changes are consistent with that time line.

4 Q Dr. Presnell, based on your opinion as an expert in
5 forensic pathology, what's your opinion of the cause of
6 death of Mr. Canady?

7 A Cause of death is a gunshot wound to the head.

8 Q Please answer any questions Mr. Chisolm may have for
9 you.

10 THE COURT: Cross-examination.

11 ERIN PRESNELL - CROSS-EXAMINATION

12 BY MR. CHISOLM:

13 Q All right, you said that you can't determine whether or
14 not the victim would be turned a certain way or --

15 A Right. At the time of autopsy, I don't know the
16 position of the victim at the time of the shooting.

17 Q So he could have been standing?

18 A He could have been standing, yes.

19 Q Do you -- did you have -- how would you normally tell a
20 range of a gunshot; is there a way?

21 A Yes. The crime scene pathologist, when we're trying to
22 evaluate how far away the gun is from a target, what we're
23 looking at is what comes out the end of the barrel of the
24 gun, not just the bullet that comes out the end of the
25 barrel of the gun, but also little pieces of gunpowder

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1 particles and also some soot. So there's three ranges of
2 fire that we would typically classify a gunshot would as,
3 one is contact where you have the hole and you have the soot
4 deposited around the entrance wound, and that's when the
5 muzzle of the gun is up against the skin. As the gun is
6 pulled away from a target -- the soot comes out and may or
7 may not reach the skin, because it's more like powder, but
8 the little gunpowder particles, they come out the end of the
9 barrel, too, some of them do. When they strike the skin and
10 they cause little scratches all around the skin. We call
11 this stippling. So when the gun contact is away from the
12 skin but still close, the bullet will go in, the soot may or
13 may not hit the skin, the gunpowder particles, those make
14 stippling. We call that a close range gunshot wound. For
15 most guns once you get out and you -- for most guns once you
16 get out to a yard, 36 to 42 inches, the soot's not going to
17 make it to the skin, the gunpowder particles aren't going to
18 make it to the skin, only the bullet does. And so you see a
19 hole with nothing around it. No stippling, no soot
20 deposition. And we didn't do that in this case because Mr.
21 Canady was decomposing. So any of the changes that were on
22 the skin, if there had been any are now gone as the skin has
23 sloughed away. So if there was some there we can't see it.
24 If there had been soot there we can't see it. Or there may
25 not have been anything there. So therefore it is officially

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1 classified as an indeterminate range gunshot wound based on
2 autopsy.

3 MR. CHISOLM: I have no further questions, Your Honor.

4 THE COURT: Very well. Redirect?

5 ERIN PRESNELL - REDIRECT EXAMINATION

6 BY MR. HILTON:

7 Q Just to be clear, Dr. Presnell, are you saying that
8 there was no stippling?

9 A I'm saying that we couldn't see any stippling, but if
10 there had been I wouldn't have expected to see it because
11 the skin now has sloughed off. The skin is gone over the
12 area of the gunshot wound. So I'm saying that I cannot
13 evaluate, I cannot say whether there'd been something there
14 or not.

15 Q So when you say indeterminate range of gunfire or
16 whatever phrase you used, can you repeat that for us?

17 A Yeah. Indeterminate range or determinate range. We
18 can't tell from autopsy what the range of fire is in this
19 case because of decomposition.

20 Q And that could have been from zero to infinity?

21 A Yes.

22 Q The range of the gun, I guess.

23 A Yes.

24 MR. HILTON: No further questions.

25 THE COURT: All right. Any recross?

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1 MR. CHISOLM: Yes, Your Honor.

2 ERIN PRESNELL - RECROSS EXAMINATION

3 BY MR. CHISOLM:

4 Q So is it -- you can't tell the range; that's correct?

5 A Right.

6 Q And it could have been from here or to the wall?

7 A Yes.

8 Q So and we can't tell if the victim was standing, if he
9 was sitting, lying down; we can't determine?

10 A I can't tell that from his autopsy. No.

11 MR. CHISOLM: I have no further questions.

12 THE COURT: Very well.

13 All right. Is this witness free to leave?

14 MR. HILTON: She is, Your Honor.

15 THE COURT: Any objection?

16 MR. CHISOLM: No, Your Honor.

17 THE COURT: Very well. You are free to go.

18 Call your next witness, please.

19 MR. HILTON: I was going to suggest -- I know we have
20 somebody available by phone.

21 THE COURT: Oh, good. Yes.

22 MR. HILTON: We can break for lunch now.

23 THE COURT: Yes. I think that's appropriate.

24 Ladies and gentlemen, we are going to break for lunch
25 at this point, and I'm going to ask you to please be back in

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1 MR. LOY: Thank you, Your Honor.

2 MR. HILTON: Your Honor, I do have one unrelated matter
3 before the jury comes in, I'd like to sort of hash that out.
4 There's going to be some upcoming testimony with the next
5 few witnesses by a person by the name of Thomas Simonelli.
6 The gist of Mr. Simonelli's testimony is that around
7 September -- it would have been the 14th, that Friday, he
8 received calls from Mr. Chisolm in reference to Mr.
9 Simonelli paying LKQ automotive for the car seat. The
10 payment arrangement for that seat was that Mr. Chisolm was
11 going to pay him twice the amount in cocaine in exchange for
12 him putting the seat on his credit card.

13 All right. Also, the testimony by Mr. Simonelli would
14 be that he knows the defendant because that was his cocaine
15 supplier.

16 Now, the state would offer that testimony under Rule
17 404(b) to show motive in the case, and it's come out during
18 the testimony of Tamekka Williams that Red had started
19 selling drugs about a month prior to this. It's going to be
20 the state's position that -- we kind of recently put this
21 together, that defendant was selling drugs in the Haven Oaks
22 area, the victim was selling drugs in the Haven Oaks area.
23 Because of the motive, which would be admissible under
24 404(b), I think that testimony's relevant and admissible.

25 THE COURT: Well, let me ask you this question. Motive

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1 is not, obviously, is not an element of the offense. Right?

2 MR. HILTON: That's correct.

3 THE COURT: I'm just noticing that you're -- you know
4 you express that to the jury.

5 Well, essentially -- here's the interesting part of
6 this evidentiarily speaking. Because the -- you know -- I
7 tend to begin to look at these matters by looking to see the
8 underlying -- what you're trying to prove. What you're
9 trying to prove is that the defendant, Mr. Chisolm, desired
10 to purchase a replacement front seat for his Durango.
11 That's what you're offering to prove. As I understand it,
12 the link between Mr. Simonelli is the information from LBS
13 (sic) about he purchased it or was going to purchase it by
14 credit card and the credit card was declined.

15 MR. HILTON: That's correct.

16 THE COURT: And that -- and the story goes forward, I
17 gather, with the employees from LBS.

18 MR. HILTON: LKQ.

19 THE COURT: I'm sorry. Livingston. I know him as
20 Livingston. So I gather your concern is with regard to his
21 testimony about the mode of payment to Mr. Simonelli for the
22 use of his credit, use of Mr. Simonelli's credit and for his
23 being willing to go and purchase the seat for Mr. Chisolm?

24 MR. HILTON: That's correct, and there's many areas that
25 make that more probative than prejudicial, if I can go into

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1 some of those and connect it together.

2 THE COURT: Okay.

3 MR. HILTON: The defendant gave a statement to the
4 police, which will come out in later testimony about he
5 changed the seat out because it had some cigarette burns,
6 and in fact, earlier on, he asked one of the witnesses
7 about, I smoke Black and Milds or something to that effect.

8 THE COURT: Yes.

9 MR. HILTON: And, you know, here you have Thomas
10 Simonelli purchasing a seat for him that he can't pay for.
11 That's why he's paying cocaine for this seat. Obviously,
12 LKQ doesn't take cocaine for payment. So he's having to
13 make a third-party straw-man purchase, if you will.

14 COURT REPORTER: Straw-man?

15 MR. HILTON: Straw-man purchase, and so the fact that
16 he's telling police and hashing out their testimony that
17 he's going to change the seat out or that he changed the
18 seat out of his car because it has cigarette burns. That
19 doesn't -- that doesn't mess with the fact that a person
20 that can't pay for a seat wouldn't be trading cocaine to pay
21 for a seat the day after a murder. I think that that
22 connects together.

23 In addition to that, is the motive element, about, you
24 know, the victim was selling drugs in the Haven Oaks area.
25 That's been established through the testimony of Tamekka

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1 Williams. I need to establish at this point, and I think
2 I'm entitled to establish, the defendant also sold drugs in
3 that area to show motive as to why he would want to take out
4 the victim, and we know -- This wasn't some long-standing
5 thing. Tamekka Williams brought out the fact that he had
6 just started selling drugs. Had been selling drugs for
7 approximately a month prior to this happening.

8 It's the state's position that that would be quite a
9 good reason for Mr. Chisolm to want to take out a fellow
10 drug dealer that's cutting into his territory.

11 MR. CHISOLM: Your Honor, that is pure speculation and
12 it is highly prejudicial. It's remote in time, it's not res
13 gestae. It's not subject of conviction, it's purely
14 unrelated and unsubstantiated conjecture.

15 In regards to Tamekka Williams, if she was still on the
16 stand, Your Honor, her statements provided, her statements
17 she never mentions Red or me having a conflict or a drug
18 conflict. Thomas Simonelli doesn't live in Haven Oaks.
19 Even if the victim was selling drugs inside Haven Oaks, Mr.
20 Simonelli doesn't live inside of Haven Oaks. It's un --
21 there's no one saying I sold drugs inside of Haven Oaks.
22 There's only Mr. Simonelli that a trade was going to take
23 place. The purchase never even took place, Your Honor.

24 (Pause.)

25 MR. CHISOLM: May it please the Court, Your Honor?

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1 THE COURT: Yes?

2 MR. CHISOLM: One more bit of information, Your Honor.

3 The credit card in question was not owned by Thomas
4 Simonelli.

5 (Pause.)

6 THE COURT: All right. Now, go over Simon --

7 MR. HILTON: Simonelli.

8 THE COURT: Simonelli. Go over what you, what you
9 believe he would testify to?

10 MR. HILTON: The crux of his testimony is that on
11 September 14, 2007, and he may not remember the date
12 exactly, but around that time the defendant contacted him to
13 make arrangements for the payment of a car seat from LKQ
14 Automotive. Defendant was at LKQ when LKQ called or either
15 Mr. Chisolm called Thomas Simonelli's phone where they
16 arranged payment, I think, Mr. Simonelli's step-son's credit
17 card. He was going to use the credit card to pay for the
18 seat at the auto parts place there. That credit card was
19 declined.

20 In addition to that, I would like to get into the
21 payment arrangement that the whole reason that Mr. Simonelli
22 was willing to do this was he had a cocaine problem, Mr.
23 Chisolm was his cocaine provider. That the payment
24 arrangement was going to be twice as much cocaine as the
25 value of the seat. Otherwise, I agree that that would be

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1 prejudicial without any connection at all. However, there
2 is a connection, and that connection is the defendant's
3 statement to police later on in October when he made a
4 statement saying I changed my seat out because it had
5 cigarette burns on it.

6 My argument in closing will be something along the
7 lines of if you're trying to -- if you're so worried about
8 changing the seat out on your car because it's got cigarette
9 burns would you really be doing that by paying for it with
10 cocaine. I mean, if you're going to change out your seat to
11 fix up your car, you would have cash to do that. You
12 wouldn't need to arrange for a cocaine payment to make that
13 purchase.

14 So that's part of that testimony. The other part is
15 the motive element of it, and the motive element is that we
16 know through testimony now that the victim had been selling
17 drugs in the Haven Oaks area for approximately a week. Mr.
18 Simonelli, I think he lived right across the street -- the
19 apartments right across the street from Haven Oaks. So
20 while he didn't live in Haven Oaks, he lived right across
21 the street. Mr. Chisolm was selling cocaine to Mr.
22 Simonelli. That testimony become relevant then because it
23 allows me to argue motive, and that motive being Mr. Chisolm
24 was selling drugs in the Haven Oaks area, the victim had
25 started selling drugs in the Haven Oaks area, and for that

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1 reason he would have a reason to kill him.

2 THE COURT: Okay. I'm with you. I now understand you
3 fully and I appreciate that.

4 Yes, sir.

5 MR. CHISOLM: By the same token, Your Honor, a week
6 prior to these events he bought me two brand new tires for
7 my truck on the same credit card. There was -- I mean,
8 would that connect then, if he bought me two tires. That
9 has nothing to do with -- it's been used before is what I'm
10 trying to say. It was -- there's no way to prove that it
11 was a in a rush order trade for cocaine. A week prior to
12 that the man bought me two brand new tires on a credit car.
13 What he's insinuating -- it just doesn't make sense. You
14 see what I'm saying.

15 I'm sorry, Your Honor, give me one second.

16 (Mr. Chisolm confers with Mr. Loy.)

17 MR. CHISOLM: Your Honor, I just think it's highly
18 prejudicial towards me. I've never been arrested for any
19 drug charges. There's no evidence of ill will between me
20 and Red. Other than this accusation there's nothing
21 historically to show any problems between us. No one has
22 testified that there was a war between us in drug
23 competition. Nothing of that nature, Your Honor. It's just
24 pure speculation, Your Honor, on Mr. Hilton's behalf.

25 THE COURT: All right. I think that Mr. Simonelli's

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1 testimony is going to be admissible. I think that it's
2 going to be admissible because I think that the -- certainly
3 the portion of the testimony regarding the purchase of the
4 seat is certainly relevant. It is admissible and then when
5 you include in it the payment by cocaine as opposed to
6 money, you know, cash, money for the seat, it certainly is
7 relevant to the replacement of the seat. It is certainly
8 relevant with regards to the representation that you have
9 made conditionally that there is going to come a statement
10 that says he's doing it for cigarette burns as opposed to
11 some other reason such as it would be -- the seat as it was
12 would be evidence in this case. And as I look at -- also
13 look at 404(b), it talks about the issue of motive and
14 motive is an issue that can be considered with regards to
15 guilt even though motive is not an element of the offense,
16 and there are a number of cases that are talked about. And
17 in that you tell me and you represent that Mr. Simonelli
18 lives across the street from Haven Oaks, which is this area.
19 There is a connection, there is an undeniable connection,
20 given the testimony that we've already hear, but I think the
21 testimony, as I recall it, was that the alleged victim had
22 been dealing drugs -- it was a short period of time. I
23 remember it as being about a month, but yet -- your point is
24 a short period of time. And I think that that does -- that
25 evidence does allow an inference to be made also, of motive.

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1 So there are a couple of reasons why I think it's -- why I
2 think it's admissible.

3 With regard to the balancing -- in the prejudicial
4 effect that I would be considering would be the prejudicial
5 effect of cocaine possession. And that's -- I mean, it's in
6 this case. And -- we talked about that initially.

7 Initially, came in because it was really so much a part of
8 what the story of what occurred on that evening particularly
9 with the co-defendant as he talks about that's what he was
10 doing, what brought them together. His testimony is that's
11 what brought them together on both occasions that evening.

12 And it is not, obviously, having the testimony
13 regarding cocaine is certainly not similar to the alleged
14 offense. I think I would have a lot greater concern is we
15 were talking about a crime involving physical violence, and
16 it does not involve physical violence.

17 So I do not believe -- while certainly one assumes the
18 prejudice because it does involve the defendant, I do
19 believe the probative value far exceeds the prejudicial
20 effect to him in this matter. So I would allow it.

21 MR. HILTON: Thank you, Your Honor.

22 THE COURT: Noting the exception thereto of the defense.

23 All right. Now, anything else?

24 (Mr. Chisolm confers with Mr. Loy.)

25 (Pause.)

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1 we'll restrict as much as we possibly can, you're time here.

2 So while you're feeling like you're cooling your heels,
3 because you are, we are out here working. I apologize for
4 keeping you in your jury room, but you're probably getting
5 to know each other. Y'all keep on you'll probably end up
6 being related.

7 But at any way, ladies and gentlemen, we will continue
8 at this time with the state's case.

9 Call your next witness, please, sir.

10 MR. AUSTIN: State calls Richard Johns.

11 THE COURT: All right. Mr. Austin.

12 THE CLERK: Please raise your right hand. State your
13 full name for the record.

14 MR. JOHNS: Richard E. Johns.

15 (WHEREUPON, Richard Johns was sworn
16 to tell the truth.)

17 THE CLERK: Thank you.

18 THE COURT: Is that Johns with an S?

19 MR. JOHNS: Yes, ma'am.

20 THE COURT: More than one John?

21 MR. JOHNS: Yes, ma'am.

22 THE COURT: Wonderful. Mr. Johns would you pull that
23 microphone just a tiny bit closer for us.

24 MR. JOHNS: Fine.

25 THE COURT: And thank you so much.

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1 Mr. Austin, your witness.

2 (State's Exhibit No. 19, was
3 marked for ID only.)

4 (State's Exhibit No. 20, was
5 marked for ID only.)

6 RICHARD JOHNS - DIRECT EXAMINATION

7 BY MR. AUSTIN:

8 Q Mr. Johns, where were you working back in September
9 2007?

10 A At LKQ Auto Parts.

11 Q And what was your job there?

12 A Manager.

13 Q Do you remember an individual calling up and looking
14 for a portion of a seat for a gray Dodge Durango?

15 A Yes, I do.

16 Q So you remember specifically what part of the seat that
17 was?

18 A The whole seat --

19 COURT REPORTER: Sir, could you speak up for me just a
20 little bit, please.

21 A The whole seat.

22 BY MR. AUSTIN:

23 Q Do you recall him looking specifically for a seat back?

24 A Yes.

25 Q And can you describe, maybe using that chair right

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1 there what you're talking about?

2 A The back of the chair.

3 Q So that would include the actual bottom portion of it.

4 And did y'all end up selling him the seat?

5 A Yes.

6 Q I'm going to show you what's been marked as State's
7 Exhibit 19 and 20 for identification purposes. Do you
8 recognize those?

9 A Yes, sir.

10 Q Can you tell us what they are?

11 A Yeah, it's the inventory of the fleet for the '06
12 Durango.

13 Q And did y'all keep those just in the normal course of
14 business?

15 A Yes.

16 MR. AUSTIN: Your Honor, at this time I'd like to enter
17 these in evidence.

18 THE COURT: Have you shown it to Mr. Chisolm?

19 (Passes documents to Mr. Chisolm.)

20 THE COURT: Any objection?

21 MR. CHISOLM: No objection, Your Honor.

22 THE COURT: Very well.

23 BY MR. AUSTIN:

24 Q Can you tell me about the name in the corner of the
25 receipt?

1 A You mean the salesman or the one --

2 Q The one below the name of the business and the address.

3 A Don.

4 Q And can you tell us what that means.

5 A We get their first name when they call for a part.

6 Q Does that indicate when the purchase took place?

7 A Yes, it does.

8 Q Can you tell us when?

9 A 9/14/07.

10 Q And do you remember the defendant actually buying a
11 seat that day?

12 A Yes, he did.

13 Q On the 14th? Now, that's an invoice for pulling the
14 seats right?

15 A Right.

16 Q That doesn't indicate the purchase went took place,
17 went through?

18 A Right.

19 MR. CHISOLM: Objection. Leading.

20 THE COURT: Sustained.

21 BY MR. AUSTIN:

22 Q Do you remember if the defendant came in the next day
23 and actually came back for the seat?

24 A Yes, he did.

25 Q And that would be on the 15th?

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1 A Yes, sir.

2 Q Okay. What kind of vehicle was the seat for?

3 A A 2006 Durango.

4 Q And can you just kind of explain what -- how that took
5 place, when he called in for the seat after that point?

6 A He called in for the seat and he came in and I had the
7 gentleman show him the seat and he purchased it.

8 Q On the 15th?

9 A Yes.

10 Q Can you tell me when the payment took place?

11 A It took place the -- well, it took place that
12 afternoon, but I wasn't on the counter when he paid for it.

13 Q What about on the 14th?

14 A That's when talked to him.

15 Q Did you receive a phone call from anybody trying to --

16 A Yes, I did.

17 Q And do you remember who that was from?

18 A I thought the man said it was his daddy that asked for
19 it.

20 Q And why didn't the transaction take place at that time?

21 A Credit card wouldn't go through.

22 Q Okay. Please answer any questions Mr. Chisolm has.

23 THE COURT: Cross-examination?

24 MR. CHISOLM: Yes, Your Honor.

25 RICHARD JOHNS - CROSS-EXAMINATION

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1 BY MR. CHISOLM:

2 Q I just want to confirm, you said -- did the purchase
3 take place on the 14th?

4 A No. The receipt was wrote on the 14th, but the credit
5 card didn't go through on the 14th.

6 Q And was it paid by credit card or by cash on the 15th?

7 A It was paid by cash the following day, what I
8 understand. I wasn't on the counter.

9 Q Okay. Do you recall making a statement on 9 -- on
10 September 28, 2007 that the seat was not purchased or paid
11 for by Tracy?

12 A Right.

13 Q So the seat was not paid for?

14 A Not on the 14th it wasn't.

15 Q On the 15th, do you recall making a --

16 A It was on the 15th.

17 Q Do you recall making a statement that the seat was not
18 purchased on the 15th?

19 A I did. I did because it wasn't paid to me it was paid
20 to Tracy.

21 Q What I'm asking you is do you recall in your statement
22 saying that Tracy did not receive the money?

23 A Yeah, I did because I didn't know.

24 Q So she didn't --

25 A I hadn't talked to Tracy about it.

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1 Q So does she confirm that she got a payment?

2 A Yes.

3 Q Thank you.

4 MR. CHISOLM: No further questions, Your Honor.

5 THE COURT: Very well.

6 MR. AUSTIN: Nothing further from the state?

7 THE COURT: Very well. Is this witness free to leave?

8 MR. AUSTIN: Yes.

9 THE COURT: Any objection?

10 MR. CHISOLM: No, Your Honor.

11 THE COURT: Very well. You are free to go.

12 Call your next witness, please.

13 MR. HILTON: State would call George Gallardo.

14 THE CLERK: Please raise your right hand. State your
15 full name for the record.

16 MR. GALLARDO: George H. Gallardo, Jr.

17 THE CLERK: Could you spell your last name, please.

18 MR. GALLARDO: G-a-l-l-a-r-d-o.

19 (WHEREUPON, George Gallardo was
20 sworn to tell the truth.)

21 THE CLERK: Thank you.

22 MR. HILTON: May it please the Court, Your Honor.

23 THE COURT: Yes.

24 GEORGE GALLARDO - DIRECT EXAMINATION

25 BY MR. HILTON:

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1 Q Mr. Gallardo, where are you employed now?

2 A I'm on disability.

3 Q Where were you employed back in 2007?

4 A LKQ.

5 (Power outage with very loud screeching noise.)

6 THE COURT: My gosh.

7 MR. HILTON: That must have been the wrong answer.

8 THE COURT: My goodness. That was new and different.

9 COURT REPORTER: I hope that didn't blow my system.

10 THE COURT: What was child's figure that was like
11 electrical, you know, one of the power rangers.

12 (Electricity out in courtroom.)

13 THE COURT: You know when the lights go out you didn't
14 pay the power bill. What if the county paid it like twice
15 or something. Got like a little extra something. Wow.

16 (Power back on.)

17 THE COURT: Are you okay?

18 COURT REPORTER: Yes, ma'am.

19 THE COURT: Your system's okay.

20 COURT REPORTER: We're good.

21 THE COURT: Okay.

22 I'm kind of scared to ask you to do this, but would you
23 lower that microphone toward you just a little bit and just
24 speak into it. Just say hello.

25 MR. GALLARDO: Hello.

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1 THE COURT: I can't tell if it's working or not.

2 MR. GALLARDO: Hello.

3 THE COURT: It's working.

4 (State's Exhibit No. 21, photo, was
5 marked for ID only)

6 (State's Exhibit No. 22, photo, was
7 marked for ID only.)

8 (State's Exhibit No. 23, photo, was
9 marked for ID only.)

10 BY MR. HILTON:

11 Q Mr. Gallardo, we're just going to start over again,
12 okay?

13 Where are you employed now?

14 A I draw disability.

15 Q And where were you employed back in 2007?

16 A LKQ.

17 Q Okay, let me show you what's been marked as State's
18 Exhibit No. 21 for identification, and just ask if you
19 recognize this?

20 A Yes, sir. That's where I used to work at.

21 Q Is that a picture of the front of the building?

22 A Yes, sir.

23 MR. HILTON: Your Honor, at this time we'd offer State's
24 Exhibit No. 21 into evidence.

25 THE COURT: Did you show it to Mr. Chisolm?

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1 MR. HILTON: I did.

2 THE COURT: Any objection?

3 MR. CHISOLM: No objection, Your Honor.

4 THE COURT: Very well. State's Exhibit No. 21 in
5 evidence without objection. It is a photograph.

6 (State's Exhibit No. 21, photo, was
7 marked and entered.)

8 BY MR. HILTON:

9 Q And at LKQ, what did you do there?

10 A I was a parts puller and a stripper.

11 Q That means you took your clothes off?

12 A No, sir. I stripped cars.

13 Q Okay. And do you recall back in September 14, 2007,
14 pulling a seat for a Dodge Durango, 2006 model?

15 A Yes, sir.

16 Q Let me show you what's been entered into evidence as
17 State's Exhibit No. 19, and 20, and just ask you to take a
18 look at those.

19 A Yes, sir, that is the part.

20 Q The part what?

21 A That is the seat that I pulled.

22 Q This is actually a piece of paper?

23 A Right.

24 Q What does it mean?

25 A That's the work order.

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1 Q Okay. Do you recall pulling that seat?

2 A Yes, sir.

3 Q And do you recall speaking with the customer that came
4 in?

5 A My boss did, handled the transaction for me to pull the
6 seat.

7 Q Okay. And what part was being requested?

8 A The back part of the seat on the passenger side, but
9 you can't divide the whole seat.

10 Q Okay. Let me show you what's been marked for
11 identification as State's Exhibit No. 22. Just ask if you
12 recognize this?

13 A Yes, sir, that is the vehicle.

14 Q The vehicle what?

15 A That I pulled the seat out of.

16 Q That's an accurate picture of that vehicle?

17 A Yes, sir.

18 MR. HILTON: Your Honor, we'd offer State's Exhibit No.
19 22 into evidence?

20 THE COURT: Any objection?

21 MR. CHISOLM: No objection, Your Honor.

22 THE COURT: Very well. State's Exhibit No. 22 in
23 evidence without objection. It is a photograph.

24 (State's Exhibit No. 22, photo, was
25 marked and entered.)

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1 BY MR. HILTON:

2 Q Can you see what's been marked as State's Exhibit No.
3 23 for identification?

4 A Yes, sir.

5 Q What does this appear to be?

6 A That appears to be a Dodge Durango seat.

7 Q Does this appear to be the seat that you pulled from
8 that car that day?

9 A Yes, sir.

10 MR. HILTON: Your Honor, at this time we'd offer State's
11 Exhibit No. 23 into evidence.

12 THE COURT: All right. And Mr. Chisolm, have you seen
13 State's Exhibit No. 23 for ID?

14 MR. CHISOLM: Yes, Your Honor.

15 THE COURT: All right. Any objections?

16 MR. CHISOLM: No, Your Honor.

17 THE COURT: Thank you.

18 State's Exhibit No. 23 in evidence without objection.

19 (State's Exhibit No. 23,
20 photo, was marked and entered.)

21 BY MR. HILTON:

22 Q Do you recall, Mr. Gallardo, any mention of a seat
23 belt?

24 A Yes, sir.

25 Q What was that about?

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1 A They wanted a seat belt off the passenger side, but I
2 did pull the seat belt and a piece of trim off the Dodge
3 Durango.

4 Q Okay. And what do you mean by a piece of trim?

5 A On the B post.

6 Q Do you know if the customer ever got that?

7 A I don't think he did, sir.

8 Q What about the seat belt; do you know if he got the
9 seat belt?

10 A I'm --

11 MR. CHISOLM: Objection. Hearsay, Your Honor. No
12 foundation for the seat belt.

13 MR. HILTON: I'll --

14 THE COURT: You withdraw the question?

15 MR. HILTON: Yes, ma'am.

16 THE COURT: Okay.

17 BY MR. HILTON:

18 Q You mentioned the B post; what is that?

19 A You've got the A post by the windshield and then you
20 have the passenger side B post.

21 (State's Exhibit No. 24, photo, was
22 marked for ID only.)

23 Q Let me show you what's been marked for identification
24 as State's Exhibit No. 24; ask if you recognize this?

25 A Yes, sir. I do.

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1 Q What is this?

2 A That is the B post by the windshield.

3 Q What car is this?

4 A The '06 Dodge Durango.

5 Q That's the one you pulled the seat from?

6 A Yes, sir.

7 MR. HILTON: Your Honor, at this time we'd offer State's
8 Exhibit No. 24 into evidence.

9 THE COURT: Any objection?

10 MR. CHISOLM: One second, Your Honor.

11 THE COURT: Sure.

12 (Mr. Chisolm confers with Mr. Loy.)

13 MR. CHISOLM: Your Honor, I object to relevance.

14 THE COURT: Very well. Overruled. It's relevant.

15 MR. HILTON: Thank Your Honor.

16 THE COURT: State's 24 in evidence over objection of the
17 defense.

18 (State's Exhibit No. 24, photo, was
19 marked and entered.)

20 BY MR. HILTON:

21 Q And Mr. Gallardo, you may or may not have said this,
22 but did you say -- well, let me just ask you again.

23 Which seat was it that you were asked to pull?

24 A The passenger side seat.

25 Q Front, back?

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1 A The front.

2 Q The front passenger seat?

3 A Yes, sir.

4 Q And I'm showing you, once again, State's Exhibit No.
5 19, the customer name on that receipt is who; on that part's
6 request?

7 A It's got here, Don. Sold to Don. That's all I know.

8 Q All right.

9 Please answer any questions Mr. Chisolm may have for
10 you.

11 THE COURT: All right. Cross-examination.

12 MR. CHISOLM: Yes, Your Honor.

13 I'd like to use present recollection refresh and let
14 him read his statement, Your Honor, so I can ask more
15 questions.

16 MR. CHISOLM: I would like to refresh the witness's
17 memory?

18 THE COURT: I don't know that it needs to be refreshed.

19 MR. CHISOLM: All right.

20 THE COURT: Why don't you ask him a question and --

21 MR. CHISOLM: Sorry.

22 THE COURT: -- see if he needs to be refreshed, then you
23 can.

24 GEORGE GALLARDO - CROSS-EXAMINATION

25 BY MR. CHISOLM:

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1 Q Mr. Gallardo, on September 26, 2007, did you talk to
2 detectives about a part being pulled?

3 A Yes, I did.

4 Q Did you tell detectives that the customer needed a left
5 seat, top part?

6 A Yes, sir.

7 Q That would be the driver's seat?

8 A That would be the passenger side.

9 Q The left side of the car?

10 A The right side.

11 Q Did you tell detectives the customer needed the left
12 seat?

13 A No. He needed the right side, passenger side seat.

14 MR. CHISOLM: Your Honor.

15 THE COURT: You want to pass him something to refresh
16 his recollection?

17 MR. CHISOLM: Yes, Your Honor.

18 THE COURT: Okay.

19 Any objection, Mr. Hilton?

20 MR. HILTON: I am going to object --

21 THE COURT: Okay.

22 MR. HILTON: -- because he didn't say he didn't
23 remember.

24 THE COURT: That's correct.

25 Now, he's not indicated he's had a problem with his

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1 the looking at the photograph to keep them from listening to
2 the trial as it's coming at them. So absolutely, everything
3 that has gone into evidence is going to be yours during
4 deliberations. So not to worry. All of that is coming back
5 to you.

6 So we'll mark this as a Court's Exhibit.

7 Any objections to my comments from state?

8 MR. HILTON: No, ma'am.

9 THE COURT: From you, Mr. Chisolm?

10 MR. CHISOLM: No, Your Honor.

11 THE COURT: Very well.

12 (Court's Exhibit No. 7, jury note,
13 was marked.)

14 THE COURT: Now, don't be concerned. You get to see
15 these photographs during deliberation. Yes, you do.

16 All right. Now, you may proceed.

17 MR. CHISOLM: Thank Your Honor.

18 BY MR. CHISOLM:

19 Q Mr. Gallardo, do you recognize this document?

20 A Yes, I do.

21 Q And what is this document?

22 A This is the statement I gave to the detectives.

23 Q All right. Could you tell me the answer on question
24 -- could you read question number four and the answer for
25 me?

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1 MR. HILTON: Objection, Your Honor.

2 THE COURT: Yes.

3 MR. HILTON: If he wants to admit that into evidence he
4 can proceed that way.

5 THE COURT: Yes.

6 MR. CHISOLM: I'll admit that into evidence, Your Honor.

7 THE COURT: Any objections?

8 MR. HILTON: No objection.

9 THE COURT: Very well. I think it's marked for
10 identification purposes. It will be Defense Exhibit No. 4
11 in evidence without objection. It is a one or two page
12 documents.

13 MR. CHISOLM: Two page document, Your Honor.

14 THE COURT: Two page document. Thank you.

15 (Defendant's Exhibit No. 4,
16 document was marked and entered.)

17 A You want me to read it?

18 BY MR. CHISOLM:

19 Q Yes, question and answer number four.

20 A Okay. Question: Can you tell me what items the
21 customer was looking for. Answer: He wanted the seat trim,
22 the seat belt, back part of the seat.

23 Q The fourth question answer.

24 A Okay. Did the customer tell you why -- I can't read
25 his writing -- No, he needed the left seat top part.

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1 MR. CHISOLM: I have no further questions, Your Honor.

2 THE COURT: Very well. Redirect?

3 GEORGE GALLARDO - REDIRECT EXAMINATION

4 BY MR. HILTON:

5 Q Mr. Gallardo, if you're standing at the front of the
6 vehicle and you're looking at it, what side is the passenger
7 seat on?

8 A That would be the right side.

9 Q If you're standing at the front of the vehicle and
10 looking at it.

11 A It would be the left side.

12 Q If I'm standing at the back of the vehicle and looking
13 at it which side would it be on?

14 A It'd be on your right side.

15 MR. HILTON: No further questions, Your Honor.

16 THE COURT: Very well. Recross.

17 GEORGE GALLARDO - RE-CROSS EXAMINATION

18 BY MR. CHISOLM:

19 Q What you were saying before was the right seat,
20 correct?

21 A Right.

22 Q So if you were standing in the front of it and you
23 pulled the right seat it would be the driver's seat,
24 correct?

25 A No. It would be the passenger side.

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1 Q If you were standing in front of the car, the vehicle,
2 and you pulled the right seat?

3 A It would be the left.

4 Q If you're looking at the vehicle, sir?

5 A If I'm looking at the front of the vehicle --

6 Q And what seat.

7 A -- and this will be your left side, and this will be
8 your right.

9 Q Okay. So what seat would be on my right side?

10 A That would be your left. That would be the passenger
11 side, which is the left. Looking at the front of the
12 vehicle, it would be the left.

13 Q Sir, I'm asking you what seat is on my right side?

14 A Right side would be the driver's side.

15 Q Thank you, sir.

16 THE COURT: All right. May this witness be excused?

17 MR. HILTON: Fine with me, Your Honor.

18 THE COURT: And any objection?

19 MR. CHISOLM: No objection, Your Honor.

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

21 Call your next witness.

22 MR. HILTON: State would call Thomas Simonelli.

23 THE CLERK: Please raise your right hand. State your
24 full name for the record.

25 MR. SIMONELLI: Thomas Gerard Simonelli.

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1 THE CLERK: Could you spell your last name please.

2 MR. SIMONELLI: S, as in Sam; I-m, as in Michael, o-n-e-
3 l-l-I.

4 (WHEREUPON, Thomas Simonelli was
5 sworn to tell the truth.)

6 THE COURT: Your witness.

7 MR. HILTON: Thank Your Honor.

8 THOMAS SIMONELLI - DIRECT EXAMINATION

9 BY MR. HILTON:

10 Q Mr. Simonelli, where are you living now?

11 A Orangeburg Road, Azalea Park, 527 Orangeburg Road.

12 Q Okay. And where were you living back in September,
13 2007?

14 A Across the street from that subdivision, 572 Orangeburg
15 Road.

16 Q Okay. Is that an apartment complex or --

17 A No. Where I was living back --

18 Q Across the street.

19 A Across the street, that was a private home. Where I
20 live now is an apartment complex.

21 Q Do you know the defendant, Mr. Chisolm, in this case?

22 A Yes, I do.

23 Q How do you know Mr. Chisolm?

24 A I used to have a drug problem. He sold me drugs.

25 Q Okay.

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1 MR. CHISOLM: Objection, Your Honor.

2 THE COURT: Basis as articulated, earlier?

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Very well. Overruled.

5 BY MR. HILTON:

6 Q Do you recall getting a phone call from Mr. Chisolm
7 around Friday September 14, 2007 in reference to a vehicle
8 seat?

9 A Yes, I do.

10 Q What was that about?

11 A He asked if I could buy him a seat from a junk yard, if
12 I had a credit card around to do that.

13 Q Do you remember what junk yard that was?

14 A I want to say it was like LKQ. It was three letters.

15 Q Okay.

16 A I don't really remember. I think it was LKQ.

17 Q And you said something about a credit card?

18 A Yeah.

19 Q What was that about?

20 A He said, I said well, how would I pay for that, would I
21 come there or something. He said -- this is as far as I can
22 remember, okay. And he said no they'll take it. I think he
23 put on -- If I remember, okay, it was a long time ago, put
24 on the gentlemen that worked there. I asked my wife do we
25 have anything I could give to them. So she handed me

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1 something and I read it to them and called back about five
2 minutes later, I want to say, and they said it was no
3 balance left on it or credit left to pay for the seat.

4 Q You said you read it to him. What are you reading to
5 him?

6 A The numbers, I believe it was.

7 Q On what?

8 A On the card. Sorry about that.

9 Q You said that card was declined?

10 A Yes. That's exactly the word I'm looking for. Thank
11 you.

12 Q And who was the person asking you to buy this seat?

13 A Well, his nickname. I didn't even know his real name,
14 was Pop, this gentlemen here, Donsurvi Chisolm.

15 MR. HILTON: Let the record reflect that the witness
16 pointed out the defendant.

17 THE COURT: Very well.

18 BY MR. HILTON:

19 Q How was he going to pay you back for this seat?

20 A Well, I had owed him some money and we had that kind of
21 relationship, because I was doing reasonably well back then,
22 not emotionally or spiritually, obviously, I had a drug
23 problem. So he -- we had a relationship where he trusted me
24 and I always kept my word with him. I said I'd pay him the
25 next day a \$100 or something like that. And so I owed him

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1 some money, so I said we'll squash the bill. Again, this is
2 going off what I can remember. And -- and trade some more
3 cocaine or something like that. Needless to say, it didn't
4 work out anyway.

5 Q Please answer any questions Mr. Chisolm may have for
6 you.

7 THE COURT: Cross-examination.

8 MR. CHISOLM: Yes, Your Honor.

9 THOMAS SIMONELLI - CROSS-EXAMINATION

10 BY MR. CHISOLM:

11 Q How you doing, Tom?

12 A Okay.

13 Q All right. You said we had a pretty solid
14 relationship, yes.

15 A Yes, sir.

16 Q And I trusted you?

17 A Yes, sir.

18 Q You trusted me. We were good?

19 A Yes, sir.

20 Q Okay. Have you ever helped me make any other
21 alterations to my vehicle?

22 A No.

23 Q You didn't help me purchase two front tires from
24 Gerald's Auto?

25 A No.

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1 Q On Dorchester Road?

2 A No.

3 Q One week prior to you helping me to buy the passenger
4 seat?

5 A No, not that I can remember.

6 Q That's --

7 A I'll have to ask my wife. She's the one with the
8 brains in the family. I'll ask her when I go home. I don't
9 remember that, no.

10 MR. CHISOLM: I have no further questions, Your Honor.

11 THE COURT: Okay. Redirect?

12 MR. HILTON: No, redirect, Your Honor.

13 THE COURT: All right. And is this witness free to
14 leave?

15 MR. HILTON: He is.

16 THE COURT: Any objection?

17 MR. CHISOLM: No, Your Honor.

18 THE COURT: You are free to go.

19 Call your next witness.

20 MR. HILTON: Your Honor, at this point, I would ask that
21 we take our afternoon break. I need to really check to see
22 who's here, as far as witnesses go.

23 THE COURT: All right. We'll take about 15 minutes.

24 Step to your jury room. Do not discuss this matter or
25 allow anyone to discuss it with you. Smokers, smoke. 15

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1 THE CLERK: Thank you.

2 THE COURT: All right. Okay. Good afternoon.

3 MR. CARREIRO: Good afternoon.

4 THE COURT: All right. Your witness.

5 MR. HILTON: Thank Your Honor.

6 THE COURT: Uh-huh. (Affirmative response.)

7 CHRIS CARREIRO - DIRECT EXAMINATION

8 BY MR. HILTON:

9 Q Mr. Carreiro, where are you employed?

10 A Hoover Automotive in Summerville, South Carolina.

11 Q And how long have you worked there?

12 A Thirteen years.

13 Q And what's your job at Hoover Automotive?

14 A I'm the shop foreman.

15 Q And do you work with a guy named Brian Sutherland?

16 A I do.

17 Q Okay. And does he have a similar job?

18 A He does.

19 Q And as shop foreman there at Hoover Automotive, what
20 type of job training for that?

21 A Multiple Chrysler schools on (inaudible) systems on
22 Dodge, Chrysler and Jeep products.

23 Q And let me show you what's been marked as State's
24 Exhibit No. 6 and entered into evidence. Is this a Dodge
25 product?

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1 A It is.

2 Q Do you recognize what product that would be?

3 A It's a Dodge Durango.

4 Q Now, as far as your training and so forth, do you have
5 any training that's specific to restraint systems?

6 A I do.

7 Q Restraint systems in Dodge products?

8 A I do.

9 Q And just briefly can you go through some of that
10 training?

11 A I've probably been to just about every passive
12 restraint, active restraint school that Chrysler offers.

13 Q And are there different levels of certification within
14 Chrysler?

15 A There are. Level IV is the highest certification. I
16 have a Level IV.

17 Q Now, the seatbelts in today's cars, are they a little
18 more than just a hook and a strap?

19 A They are.

20 Q And does your training cover those mechanisms?

21 A It does.

22 MR. HILTON: Your Honor, at this time we'd offer Mr.
23 Chris Carreiro, as an expert in Dodge personal restraints.

24 THE COURT: All right. Voir dire?

25 MR. CHISOLM: I have no objection, Your Honor.

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1 THE COURT: Very well. He is so qualified.

2 BY MR. HILTON:

3 Q Mr. Carreiro, let me show you what's been marked for
4 identification as State's Exhibit No. 25, and just ask if
5 you'll take a look at this?

6 A Uh-huh. (Affirmative response.)

7 Q What is that item?

8 A It is a seatbelt mechanism out of a Dodge product.

9 Q All right. Were you asked by the Sheriff's Office to
10 take a look at that item previous to court today?

11 A Yes.

12 Q All right. And were you able to examine it?

13 A I was.

14 Q And what can you tell by looking at that seatbelt as
15 far as it's performance and whether it's broken or not?

16 A It's not broken. It's fully operational. Apparently
17 the pre-tensioner has not been deployed.

18 Q All right. Let's talk about some of the parts in a
19 seatbelt.

20 A Okay.

21 Q What makes a seatbelt, you know, I pull my seatbelt in
22 my car real fast, what makes it lockup?

23 A There's a mechanical inertia switch in the side of the
24 seatbelt. The G-forces going forward, will keep the
25 seatbelt locked and then as the G-forces are gone it will

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1 retract.

2 Q All right, and is there any other electrical device or
3 any type of device that will cause a seatbelt to lock up?

4 A There is.

5 Q How does that work?

6 A The actual -- it applies 12 volts in a ground to it
7 when the vehicle is in an accident and explodes a little
8 pre-tensioner in here which pulls it back away from the air
9 bag.

10 Q Does that cause any damage to the seatbelt?

11 A It does. It melts all the plastic inside.

12 Q All right. Does it cause the seatbelt to lock up?

13 A Yes.

14 Q All right, and even after the wreck will the seatbelt
15 still be locked up?

16 A Yes.

17 Q And in your examination of the seatbelt mechanism we're
18 talking about here, does it appear that the pre-tensioner
19 has any damage to it?

20 A It does not.

21 Q Does it appear to have gone off?

22 A No.

23 Q And what makes this pre-tensioner go off?

24 A There's a tiny explosive charge inside here when it
25 applies 12 volts in a ground and explodes the charge, and

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1 excessive heat melts the connector on it and also melts the
2 mechanism on the inside.

3 Q And does it work like in connection to like the air
4 bags and so forth?

5 A It does.

6 Q And are you able to spin the reel on the seatbelt?

7 A I can. (Demonstrates.)

8 Q Okay, and why is it if you turn it upside down it might
9 not, might not move, but if you turn it the right way it
10 will work?

11 A The mechanical part of it is what keeps it from doing
12 it. It will actually work mechanically when it's right-side
13 up. When it's upside-down it will not.

14 Q Okay. Now, is there anything wrong with that seatbelt
15 mechanism?

16 A Seems to be fully operational.

17 Q If I hooked that mechanism up in my car right now would
18 I be able to put on my seatbelt?

19 A Except for the cut it would be one thing.

20 Q Okay. Where is that device located in a 2006 Dodge
21 Durango?

22 A It's located in the B pillar, right behind the
23 passenger seat.

24 Q Let me show you what's been marked for identification
25 as State's Exhibit No. 9, and ask if you recognize what that

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1 is in a car?.

2 A That is actually the B pillar.

3 Q And is that an accurate picture of one of them?

4 A It is.

5 Q And does this picture display where the seatbelt
6 mechanism is located?

7 A It is.

8 MR. HILTON: Your Honor, at this time, we'd offer
9 State's No. 9 into evidence.

10 THE COURT: And have you --

11 MR. CHISOLM: No objection, Your Honor.

12 THE COURT: Very well. Exhibit No. 9 in evidence without
13 objection.

14 (State's Exhibit No. 9, photo, was
15 marked and entered.)

16 BY MR. HILTON:

17 Q Mr. Carreiro, if I'm sitting in the passenger seat of a
18 car, the item that's displayed in the picture, where would
19 that be located, with regard to me, if I'm sitting in the
20 passenger seat?

21 A It would be to your right behind you.

22 Q And would that be the passenger seatbelt?

23 A It would be.

24 Q All right. And with regard to State's Exhibit No. 25,
25 the seatbelt mechanism, in order to cut this strap as close

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1 as this one is cut, how would you have to do that?

2 A You'd have to remove the lower pieces, the trim is
3 already removed right there.

4 Q Okay. The strap that is remaining in that seatbelt
5 spool, would that be enough strap to stick out of the top of
6 the B post trim?

7 A No, sir.

8 Q And that trim, does it just fall off?

9 A No, it actually is snapped in, and there's two pieces
10 of sill plate to hold it in the bottom.

11 Q In your course of working at Hoover Dodge, have you
12 ever seen a lot of problems with seatbelts being torn or
13 cut?

14 A They're pretty strong.

15 Q Have you ever seen one that was cut below the trim of
16 the B post?

17 A No.

18 Q In your opinion as an expert in Dodge personal
19 restraints is that seatbelt mechanism in working order short
20 of the strap being cut off of it?

21 A It is.

22 Q Please answer any questions Mr. Chisolm may have for
23 you.

24 THE COURT: Cross-examination?

25 MR. CHISOLM: If I can have one second, Your Honor?

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1 THE COURT: You may.

2 (Mr. Chisolm confers with Mr. Loy.)

3 CHRIS CARREIRO - CROSS-EXAMINATION

4 BY MR. CHISOLM:

5 Q You said the seatbelt, the seatbelt has -- could you
6 describe the tension that --

7 A The pre-tensioner?

8 Q Yeah, the tension that would be on the belt?

9 A There is always going to be tension like when you lean
10 forward it will lock in place. So a pre-tensioner is
11 deployed it will actually pull you back to the back of the
12 seat.

13 Q Now, if you're pressing the release mechanism on the
14 seatbelt and it's retracting, how much -- what type of force
15 is the seatbelt being pulled back with, is there --

16 A How much force if you just release it?

17 Q Yes.

18 A Allowing the spring to retract it?

19 Q Yeah. How --

20 A What happens is when you let it go there's an actual
21 spring in there that retracts it, but it's at a slow rate of
22 speed. It's got to be a fast rate of speed in order to lock
23 it.

24 Q But it retracts it when it's -- when it's coming
25 through the seatbelt guide --

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1 A Uh-huh. (Affirmative response.)

2 Q -- would it be rubbing against the seatbelt guide?

3 A Yes.

4 Q Okay. How, if you could describe the pressure, I
5 guess, like a touch, a rub. How much pressure would the
6 seatbelt have on the seatbelt guide as it's coming through
7 the seatbelt guide?

8 A Minimum.

9 Q Minimum. So it's like --

10 A I don't know the exact pressure, but, I mean, it's very
11 minimal.

12 Q Okay.

13 MR. CHISOLM: I'd like to let him review this picture,
14 Your Honor.

15 THE COURT: Very well. Have you showed it to Counsel?

16 And let's mark it for identification purposes.

17 MR. CHISOLM: Yes, Your Honor.

18 (Defendant's Exhibit No. 5, photo,
19 was marked for ID only.)

20 MR. HILTON: Can I see the picture?

21 (Photo shown to Mr. Hilton.)

22 BY MR. CHISOLM:

23 Q Now, in this seatbelt guide -- well, the amount of
24 space is pretty small. Would the seatbelt rub against the
25 lower part or the top part or both?

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1 A The lower.

2 Q The lower part. You said it would brush against it?

3 A Right. (Nods head in the affirmative.)

4 THE COURT: That's a yes?

5 A Yes.

6 MR. CHISOLM: I have no further questions.

7 THE COURT: Very well. Any redirect?

8 MR. HILTON: No redirect.

9 THE COURT: Is this witness free to leave?

10 MR. HILTON: Yes.

11 MR. CHISOLM: Yes, Your Honor.

12 THE COURT: Very well. You are free to go.

13 Call your next witness, please.

14 MR. HILTON: State would call Det. Allison Greer.

15 THE CLERK: Please raise your right hand, state your
16 full name for the record.

17 MS. GREER: Allison Greer.

18 (WHEREUPON, Allison Greer was sworn
19 to tell the truth.)

20 THE CLERK: Thank you.

21 THE COURT: Your witness.

22 ALLISON GREER - DIRECT EXAMINATION

23 BY MR. HILTON:

24 Q Is it still Det. Greer or is it Ms. Greer now?

25 A Ms. Greer, now.

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1 Q All right. Are you still working with the Sheriff's
2 Office?

3 A I do.

4 Q In what capacity is that?

5 A I am a part-time administrative assistant.

6 Q All right. And back in 2007, what were your duties with
7 the Sheriff's Office?

8 A I was an investigations.

9 Q Okay. Why are you now in administration?

10 A I'm medically retired from law enforcement.

11 Q Okay. And how long did you work for the Sheriff's
12 Office?

13 A From -- I was hired in 1996. I became a certified
14 officer in 1998, and I worked until 2009.

15 Q All right. So I think you said back in 2007, you were
16 with what department?

17 A Investigations.

18 Q Okay. And were you involved in the investigation of
19 Mr. Chisolm for the murder of Craig Canady?

20 A I was.

21 Q And I said involved in the investigation of Mr.
22 Chisolm, did it only involve Mr. Chisolm?

23 A No, it did not.

24 Q Let me turn your attention back to September 27, 2007,
25 was that the day that the Sheriff's Office learned that Mr.

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1 Chisolm has changed his seat out?

2 A Yes, it was.

3 Q And how were y'all able to get that information?

4 A Through telephone records and through speaking, I
5 believe, with LKQ.

6 Q Okay. Now, after you learned that information what was
7 your role in the investigation with regard to the seat?

8 A I was requested to go to the landfills and recycling
9 centers located within Dorchester Counties to attempt to
10 gain any information on the possibility of a seat being
11 picked up or taken to the trash dumps.

12 Q And did you do that?

13 A I did.

14 Q How many places would you say you went?

15 A I went to the Oakridge landfill, which is the main
16 landfill here in Dorchester County. I went to Dorchester
17 County Public Works to actually run the recycling centers
18 throughout the county to try to obtain information as far as
19 cameras or anything that would be at the different sites
20 that we might obtain video from. I also went to BJ's
21 Recycling, which is anything from metal that is picked up at
22 the other recycling centers in Dorchester County goes there
23 where it is crushed and sent to Lexington. I think I went
24 back to Oakridge landfill for a second time.

25 Q Were you able to locate a seat?

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1 A We were not.

2 Q Let me turn your attention back to October 19, 2007,
3 was there a time when you talked to Mr. Chisolm about the
4 seat in his car?

5 A Yes, sir, it was.

6 Q And where was that?

7 A That was at the Haven Oaks apartment complex.

8 Q And how did that interaction take place?

9 A I was actually riding with Det. Walsh, and we were
10 patrolling through the Haven Oaks area, and Mr. Chisolm
11 flagged our patrol vehicle down and approached our vehicle.

12 Q Okay. And did y'all ask him any questions or he
13 volunteered information or what?

14 A Actually, he inquired on when he could obtain his
15 vehicle back.

16 Q Okay. And what else did he ask you or tell you?

17 A We advised him at that point in time that he would have
18 to contact crime scene at the Sheriff's Office to obtain
19 information on when he could get his vehicle back. We asked
20 him about his seat. The front passenger seat in his
21 vehicle. At which time he stated that he had changed out
22 the vehicle seat because it had burn holes in it when he had
23 obtained it from his brother and sister. That he had called
24 LkQ and asked about the seat, a replacement seat, as well as
25 a seatbelt for the vehicle.

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1 Q Did he say anything about the seatbelt not being in the
2 car?

3 A He said it wasn't there when he got the vehicle, when
4 he's obtained it from his brother and sister.

5 Q In that conversation did Mr. Chisolm tell you or was
6 there any conversation about phone calls being made the
7 night of September 13, 2007?

8 A Yes, sir. I believe we asked him in reference to when
9 he was riding around with the victim and Mr. White, if any
10 phone calls were made, and he stated that the only person
11 that -- the victim had called was (inaudible), that he was
12 unaware of any other phone calls, but the music was loud,
13 but we could always check phone records.

14 Q He told you to check phone records?

15 A Uh-huh. (Affirmative response.) Yes, sir.

16 Q All right. Let's fast forward a little bit. Was there
17 a time when the Sheriff's Office learned about the location
18 of the murder weapon in this case?

19 A Yes, sir. November 16, 2007.

20 Q Was that when David White came forward?

21 A Yes, sir.

22 Q As part of the Sheriff's Office and part of the
23 investigation, did you have any other duties at the
24 Sheriff's Office at the time?

25 A Yes, sir. I was also part of the dive team, recovery

1 team.

2 Q And were you asked to utilize your skills as a diver
3 with regard to this case?

4 A Yes, sir, I was.

5 Q And what location were you asked to look in?

6 A We were requested to dive the area on Bacon's Bridge
7 Road where the Ashley River crosses over Bacon's Bridge.

8 Q And I guess your dive team, is it just you or a group
9 of folks or what?

10 A No. There are several people that are on the dive team.
11 We also notified Charleston County and requested their
12 assistance, because even though we have several people not
13 everybody may be able to dive at that point in time.

14 Q And is it common place for agencies to help each other
15 with the dive team?

16 A Yes, sir.

17 Q And on November 16, 2007, did you search the area at
18 Bacon's Bridge Road?

19 A We did.

20 Q Were y'all able to find anything on the 16th?

21 A No. Actually on the 16th, we did recover a long gun,
22 like a rifle or a shotgun.

23 Q Did that have anything to do with this crime?

24 A No.

25 Q And did y'all go back on the 19th?

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1 A We did.

2 Q And did y'all find anything on the 19th?

3 A We did. We were able to locate a 22 caliber Browning
4 Buck Mark Semi-automatic pistol.

5 Q And when you found that pistol, how did y'all go about
6 collecting it?

7 A Basically, it was photographed in the water in which it
8 was found and then it was collected in the same water into a
9 cooler. The weapon is never lifted outside of the water
10 that it is located in.

11 Q What's the purpose of that?

12 A Basically, once you remove that weapon out of the
13 water, oxidation starts to occur on that weapon, which can
14 interfere with any type of examination that's going to be
15 done further on the weapon.

16 (State's Exhibit No. 26, photo, was
17 marked for ID only.)

18 (State's Exhibit No. 27, photo, was
19 marked for ID only.)

20 BY MR. HILTON:

21 Q Let me show you what's been marked for identification
22 as State's Exhibit No. 26, and ask if you recognize that?

23 A Yes, sir, I do.

24 Q What is that?

25 A That is actually a picture from divers from Dorchester

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1 County as well as Charleston County there at the Bacon's
2 Bridge/Ashley River area where we located the weapon.

3 Q Is this the dive we've been talking about?

4 A Yes.

5 Q Is that an accurate photo of y'all diving that day?

6 A Yes, sir.

7 MR. HILTON: Your Honor, at this time, we'd offer
8 State's Exhibit No. 26 into evidence.

9 THE COURT: Any objection?

10 MR. CHISOLM: No objection, Your Honor.

11 THE COURT: Very well. In evidence without objection.
12 It is a photograph.

13 (State's Exhibit No. 26, photo, was
14 marked and entered.)

15 BY MR. HILTON:

16 Q And let me show you what's been marked for
17 identification as State's Exhibit No. 27, and ask if you
18 recognize that?

19 A Yes, sir, I do.

20 Q What is that?

21 A That is a photograph that I took of the weapon, the 22
22 caliber located in the water.

23 Q And that's the gun that y'all recovered in relation to
24 this offense?

25 A Yes, sir, it is.

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1 Q Is that an accurate photograph of that weapon?

2 A Yes, sir. That is untouched.

3 MR. HILTON: At this time, we'd offer State's Exhibit
4 No. 27 into evidence.

5 THE COURT: And have you showed it to Mr. Chisolm?

6 MR. HILTON: I did.

7 THE COURT: Any objection?

8 MR. CHISOLM: No objection, Your Honor.

9 THE COURT: Very well. State's Exhibit No. 27 in
10 evidence without objection. It is a photograph.

11 (State's Exhibit No. 27, photo, was
12 marked and entered.)

13 BY MR. HILTON:

14 Q Let me show you what's been marked for identification
15 as State's 14, and just ask if you recognize this item?

16 A Yes, sir, I do.

17 Q What does this appear to be?

18 A That appears to be the same weapon that we located.

19 Q Is this the weapon depicted in those pictures we just
20 looked at?

21 A Yes, sir, it is.

22 MR. HILTON: Your Honor, at this time, we'd offer
23 State's Exhibit No. 14 into evidence.

24 THE COURT: Yes. Any objection?

25 (Mr. Chisolm confers with Mr. Loy.)

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1 MR. CHISOLM: Your Honor, there's nothing particularly
2 unique about this weapon. How can she be so sure that
3 that's the weapon we're talking about. I object. No
4 foundation.

5 THE COURT: All right. Is there any additional
6 foundation?

7 MR. HILTON: I guess if there needs to be.

8 THE COURT: Well, --

9 MR. HILTON: I can offer limited argument.

10 THE COURT: Step to your jury room. Do not discuss this
11 matter with anyone or allow anyone to discuss it with you.
12 (Jury out at 3:55 p.m.)

13 MR. HILTON: May it please the Court, Your Honor?

14 THE COURT: Yes.

15 MR. HILTON: The co-defendant, David White, during his
16 testimony looked at the gun, identified it, which was then
17 marked for identification, State's Exhibit No. 14. He said
18 that that appeared to be the murder weapon the victim was
19 shot with. The defendant pulled the trigger on, I think was
20 his testimony, and used to kill the victim in this case. At
21 that time it was not offered into evidence. It was only
22 marked for identification. Subsequent to that, we now have
23 Det. Greet on the stand. We've introduced photographs,
24 State's Exhibit No. 27, which depicts what appears to be an
25 identical gun in the water found at the location where the

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1 co-defendant said the gun would be. So we've tied it to the
2 crime through the co-defendant. Det. Greer testified just
3 moments ago that this appears to be the gun that she pulled
4 out of the water, and the gun that is photographed on
5 State's Exhibit No. 27.

6 It's certainly relevant. State would propose the
7 foundation has been laid for the gun to be admitted into
8 evidence.

9 THE COURT: Let me ask you this question. Once of the
10 concerns that I have is that -- and I would have no concern
11 if there was a serial number identified at the scene where
12 it was found as opposed to any sort of serial number or
13 identification on the gun itself. I'm a little bit
14 concerned about that. Of course, there hadn't been any kind
15 of chain of custody. I don't even know where it's been
16 kept.

17 MR. HILTON: Your Honor, if I may briefly respond to
18 that.

19 THE COURT: Sure.

20 MR. HILTON: It's a gun. It's not a fungible item.
21 Case law is pretty clear that on non-fungible items that
22 there is no chain of custody that needs to be proved as long
23 as the witness says this is the gun that is in the same
24 appearance and condition it was the date that it was
25 recovered.

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1 MR. CHISOLM: Your Honor, there's a proper procedure
2 that they would do. As you said, they record serial
3 numbers. They put it in the evidence bag, number it, sign
4 it, same way -- when they offered the projectile to the
5 coroner, it was marked, that they know exactly where it came
6 from. To follow the chain of custody, Your Honor.
7 (Mr. Chisolm confers with Mr. Loy.)

8 MR. CHISOLM: As far as tying it to David White, he was
9 high on cocaine, freaked out, he was in a dark car. They
10 found another gun inside the lake as well.

11 MR. HILTON: And that would be weight, not
12 admissibility.

13 THE COURT: All right. Let me just reiterate the
14 evidence I've heard regarding the gun.

15 The co-defendant, Mr. White, said the gun was
16 consistent and looked like the gun he remembered seeing.
17 And this witness has testified that she was on the dive team
18 when the dive team recovered the gun, participated in the
19 taking of the photographs and has not said that this gun
20 looks like the gun, but, in fact, has said that this is the
21 gun.

22 MS. GREER: I said it appears. It appears.

23 THE COURT: Appears. It appears to be the gun.

24 I need more foundation.

25 MR. HILTON: All right.

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1 THE COURT: Thank you.

2 Sustained.

3 MR. CHISOLM: Thank Your Honor.

4 THE COURT: Uh-huh. (Affirmative response.)

5 You may proceed.

6 MR. HILTON: There's no jury.

7 THE COURT: Oh, God, what am I doing. Focus is like --
8 you're right. Thank you. No, I'm not up here thinking hard.

9 Shall we have a jury. Please let us have a jury.

10 Thank you. Sorry.

11 THE BAILIFF: Judge, before I bring them in, they want
12 the blinds dropped all the way down so they can see better.

13 THE COURT: Okay.

14 THE BAILIFF: I'll do that before I bring them back.

15 THE COURT: Okay. I was going to just call both sides
16 attention to a particular case. The cite is 366 SC 125.

17 THE BAILIFF: Okay. Thank you.

18 (Jury in at 4:07 p.m.)

19 THE COURT: All right. You may continue.

20 MR. HILTON: Thank you.

21 ALLISON GREER - CONTINUED DIRECT EXAMINATION

22 BY MR. HILTON:

23 Q Det. Greer, we were talking about State's Exhibit No.
24 14, that's marked for identification at this point. Let me
25 just show you this gun here. Are there any unique markings

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1 or identifications on that gun that where you know that that
2 was the gun that was pulled out of the river?

3 A May I see the picture?

4 (Photo passed to witness.)

5 A The biggest one that stands out to me, obviously, would
6 be the gold trigger on the gun. And as far as the handle
7 grip, it would appear to be the same shape.

8 Q All right, and you were present when the gun was
9 actually pulled out of the water, correct?

10 A Yes, sir. We actually placed the gun, myself and
11 another deputy diver with Dorchester County actually placed
12 the cooler down in the water and gently placed the gun into
13 the cooler along with the water that flows -- you know, went
14 into the cooler, lifted it upright, closed it. I carried it
15 out of the river, up the bank and handed it off to Det.
16 Zensen, who is the crime scene investigator evidence
17 custodian.

18 Q Okay. Why all that trouble about the cooler?

19 A Because it has to stay in the water. You cannot lift
20 it out. Once you take it out of the water to examine it, to
21 look at it to try to obtain a serial number, the rust and
22 oxidation starts occurring to the gun and it can interfere
23 with SLED's examination of the weapon.

24 Q Is that why you weren't able to write down a serial
25 number?

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1 A That is correct.

2 Q Okay. And does the gun have any unique markings where
3 it started to corrode or anything?

4 A Yes. Sure. Once you look at the barrel across the top
5 here, all these marks would be the starting of corrosion on
6 the weapon. Once it's taken out, you can look at the screws
7 that hold the gun together, they've started to rust. If
8 it's removed out -- you can look down in it and tell rust
9 has started.

10 (State's Exhibit No. 28, cooler,
11 was marked for ID only.)

12 BY MR. HILTON:

13 Q Let me show you what's been marked for identification
14 as State's Exhibit No. 28. Do you recognize this item?

15 A Yes. That would be a cooler we would use to collect
16 the weapon at the Dorchester County Sheriff's Office.

17 Q And is this the cooler that you put the gun into when
18 you recovered it from the river that day?

19 A Yes, sir.

20 Q And when you put the gun in the cooler, what did you do
21 with it at that point?

22 A I immediately left the water, went up the bank to the
23 top of the bridge where Det. Zensen was standing awaiting
24 for the cooler. She would have taken that photograph from
25 the bridge.

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1 Q Were you able to get a good look at the gun when you
2 pulled it from the water or when it was pulled from the
3 water?

4 A Once it was put into the cooler and, you know, in
5 plenty of water, as far as it looks in a white cooler there,
6 yes.

7 Q And were you able to tell if there was any corrosion on
8 the gun at that time?

9 A It wasn't handled, it wasn't examined, because it was
10 -- you want to keep evidence like that pristine. You don't
11 want to handle it any more than you have to until it get to
12 where it's going, which would have been SLED for
13 examination.

14 Q How popular is a Browning Buck Mark 22 long rifle
15 pistol?

16 MR. CHISOLM: Objection, Your Honor. No foundation.

17 MR. HILTON: I'll withdraw the question.

18 BY MR. HILTON:

19 Q The gun that y'all recovered from the river, do you
20 remember whether it had a magazine in it that day?

21 A It did not.

22 Q Does this gun have a magazine in it?

23 A No, sir, it does not.

24 Q Were y'all able to find the magazine in the river?

25 A No, sir, we were not.

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1 Q Do you know whether the gun was loaded or not when you
2 found it?

3 A I was unable to handle it, so there's no way for me to
4 see if the chamber was loaded.

5 Q All right. Please answer any questions Mr. Chisolm may
6 have for you.

7 THE COURT: Cross-examination?

8 MR. CHISOLM: Yes, Your Honor.

9 ALLISON GREER - CROSS-EXAMINATION

10 BY MR. CHISOLM:

11 Q You said while on patrol in Haven Oaks I flagged you
12 down, correct?

13 A Yes, sir.

14 Q And I asked about my vehicle, correct?

15 A That is correct.

16 Q And you told me to contact crime scene, correct?

17 A That is correct.

18 Q Now, if I only want my vehicle in this conversation --
19 if I only wanted my vehicle at the time, the conversation
20 could have stopped and I could have left, correct?

21 A That is correct.

22 Q But the conversation didn't stop did it?

23 A No, it did not.

24 Q And I started to provide you all with more information
25 to help you further your investigation, correct?

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1 A You provided further information.

2 Q Okay. And I informed you that the seat was changed
3 out?

4 A Yes, you did.

5 Q Did I inform you all that I had plans to change out
6 both seats.

7 A You said that when you had gotten the vehicle it was in
8 bad condition and that the seat which you had changed had
9 burn holes in it and there was no seatbelt.

10 Q But did I inform you all that I intended to change out
11 both seats?

12 A I don't remember -- Yes, you did. You said that you
13 wanted to change out both seats in the vehicle.

14 Q All right. Did I inform you all that the person that
15 had attempted to help me purchase the seats had actually
16 purchased two new tires for me a week prior to the seat
17 purchase?

18 A You did mention that Mr. Simonelli had purchased front
19 tires, paid for front tires for your vehicle.

20 Q Did I tell you all where the tires were purchased so
21 that you could verify the info?

22 MR. HILTON: Objection, Your Honor. At this time, I
23 think he is essentially testifying.

24 THE COURT: Is it contained in the statement?

25 MR. CHISOLM: Yes, Your Honor.

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1 MR. HILTON: On that ground, I'd object to self-serving
2 hearsay.

3 MR. CHISOLM: Your Honor --

4 THE COURT: I'm prepared to rule.

5 MR. CHISOLM: Oh, sorry.

6 THE COURT: If it's in the statement, if it is in the
7 statement, or in the report, I'm going to allow it.

8 MR. CHISOLM: Thank Your Honor.

9 THE COURT: Uh-huh. (Affirmative response.)

10 BY MR. CHISOLM:

11 Q Did you all verify this purchase?

12 A You said that you had obtained the tires from Gerald's
13 Tires and you provided that information.

14 Q Did you attempt to verify that?

15 A I did not. I was not the lead investigator on this
16 case.

17 Q Okay. Did I provide you all contact info on the
18 previous damage, so that they could verify previous damage
19 verbally and through insurance claims that pre-dated me
20 coming into possession of the vehicle?

21 A You provided a telephone number for your sister. You
22 did not provide the telephone number for your brother. You
23 also called your mother while we were on scene and I spoke
24 to your mother who verified you changed out the seat in her
25 front yard.

1 Q Okay. And you all asked me what day I changed out the
2 seat, correct?

3 A That is correct.

4 Q All right. And actually, you skipped forward a little
5 bit. I told you all -- who saw me change out the seat
6 correct, because you all asked me if anybody saw me change
7 out the seat?

8 A Yes, and you provided your mother's name.

9 Q And I told you my mother --

10 A Uh-huh. (Affirmative response.)

11 Q When asked would my mother confirm this did I
12 immediately call my mother and ask her to speak with you
13 all?

14 A Sure.

15 Q Okay. And you said she verified it?

16 A Correct.

17 Q Okay. Did you ask me where I discarded the old seat?

18 A I believe Det. Walsh asked you that question, yes, sir.

19 Q Okay, and did I tell her?

20 A You said at the Old Fort dump site and it was closed.

21 Q Okay. And I told you all of this -- I told you this of
22 my own free will, correct?

23 A Yes, you did.

24 Q Okay. All right. And you all asked me to verify phone
25 calls that may or may not have happened that night, correct?

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1 A That's correct.

2 Q And that is when I said check the phone records,
3 because my memory -- I didn't want to halt your
4 investigation on account of my memory, and I wanted you to
5 check the phone records to alleviate any doubt; is that
6 correct?

7 A I can't answer why you --

8 Q Okay. I'm sorry. I'll rephrase my questions. All
9 right, now, in regards to the Old Fort dump site, you said
10 you all investigated the Old Fort dump site, you went to the
11 Old Fort dump site?

12 A I did not go to the Old Fort dump site. Det. Giglio and
13 Det. Walsh went to the Old Fort dump site. I went to the
14 Oak Bridge Landfill, B.J.'s Recycling Center and to
15 Dorchester Public Works.

16 Q Okay. Could you tell me if it was ever determined if
17 the Oak Brook dump site was searched for the seat?

18 A The information that I obtained from Oak Bridge
19 landfill, there are no cameras located at the recycle
20 centers that are located throughout Dorchester County.
21 Fennel Container Company comes in and loads up those trash
22 dump sites. They are then taken to the Oak Bridge landfill
23 where it is immediately smashed beyond recognition and
24 placed into what is called cells. Those cells located by
25 GPS for -- depending on what location they are picked up

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1 from. Those sites are -- once they are full they are then
2 covered and they go on to the next cell. So once I talked
3 to you, Mr. Muckenfuss at the Oak Ridge landfill, even if we
4 had decided to try to use search in one of these cells for
5 any type of seat it would have been unrecognizable.

6 Q You said that seat would be flattened?

7 A That seat would be unrecognizable.

8 Q Okay, but in your opinion would a flattened -- this is
9 a very large car seat, would a flattened car seat look like
10 anything other than a flattened out car seat?

11 A I can't answer that, sir --

12 MR. HILTON: Objection.

13 THE COURT: Sustained.

14 BY MR. CHISOLM:

15 Q But the site was never searched, correct?

16 A That's correct. At the Oak Bridge land site.

17 Q Okay. As a homicide detective, well, when you were a
18 homicide detective, I'm sorry --

19 A Actually, I was a general investigator.

20 Q General investigator. Did you do any work with
21 weapons, with guns?

22 A I did some work with guns when I was a forensic
23 investigator for six years.

24 Q And as a forensic investigator, can bullets be matched
25 back to weapons?

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1 MR. HILTON: Objection.

2 THE COURT: A word or two.

3 MR. HILTON: Foundation.

4 THE COURT: Sustained.

5 MR. CHISOLM: I have no further questions, Your Honor.

6 THE COURT: Very well. Redirect.

7 ALLISON GREER - REDIRECT EXAMINATION

8 BY MR. HILTON:

9 Q You say you didn't search the Oak Ridge Landfill; is
10 that correct?

11 A I did not.

12 Q And why was that?

13 A Because when any type of trash is brought in it's
14 automatically squashed by heavy machinery, and it's been
15 placed into cells, which are big dug out holes in the dirt.
16 They're dumped in and then once that cell is full it is --
17 dirt is pushed back over it and they go dig another cell and
18 dirt is placed there. And once I spoke to Mr. Muckenfuss,
19 who is the district manager for the entire area for the Oak
20 Ridge Landfill, he said it would be no need, because it
21 would be unrecognizable even if we were able to search it.

22 Q Did he give you any information as to how many pounds
23 or tons of trash and dirt would be over the top if it had
24 been there?

25 A I believe -- let me look here at my notes -- He said

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1 approximately 40 tons of trash had been dumped in the new
2 cells where these dump site would have -- where this trash
3 would have gone.

4 Q Thank you.

5 THE COURT: Any recross?

6 MR. CHISOLM: Yes, Your Honor.

7 THE COURT: All right.

8 ALLISON GREER - RECROSS EXAMINATION

9 BY MR. CHISOLM:

10 Q Can you tell me how long you were a forensic
11 investigator?

12 A Six years.

13 MR. HILTON: Your Honor, I'm going to object at this
14 point. I think it's outside of the scope of the cross-
15 examination.

16 THE COURT: It is outside the cross -- the scope of the
17 redirect.

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: Very well. Anything further?

20 MR. CHISOLM: No, Your Honor.

21 THE COURT: All right. May this witness be excused?

22 MR. HILTON: She may, Your Honor.

23 THE COURT: Any objection?

24 MR. CHISOLM: I have no objection, Your Honor.

25 THE COURT: Very well. You're free to go. Thank you.

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1 Call your next witness.

2 MR. HILTON: Your Honor, we have, I guess, about 30
3 minutes left in the work day. My next witness is, I think,
4 will be somewhat lengthy. I'll just inform the Court of
5 that and if we need to call we will.

6 THE COURT: Okay.

7 MR. HILTON: I will add that we have that witness and
8 probably maybe three more after that.

9 THE COURT: All right. I think I'd like to begin, even
10 if it's just preliminary matters. Perhaps get just the
11 preliminary matters done. That would be -- you know, up to
12 a point. I'd like to at least begin. I'd like to continue
13 to use the benefit of the day.

14 MR. HILTON: State would call Jamie Zensen.

15 THE COURT: All right.

16 THE CLERK: Please raise your right hand. State your
17 full name for the record.

18 MS. ZENSEN: Jamie Zensen.

19 THE CLERK: Could you spell your first and last name,
20 please?

21 MS. ZENSEN: Jamie, J-a-m-I-e. Zensen, Z-e-n-s-e-n.

22 (WHEREUPON, Jamie Zensen was sworn
23 to tell the truth.)

24 THE CLERK: Thank you.

25 THE COURT: Your witness.

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1 MR. HILTON: Thank Your Honor.

2 JAMIE ZENSEN - DIRECT EXAMINATION

3 BY MR. HILTON:

4 Q Det. Zensen, where are you employed?

5 A Dorchester County Sheriff's Office.

6 MR. HILTON: Bear with me just a second.

7 THE COURT: Sure.

8 BY MR. HILTON:

9 Q How long have you been working at the Sheriff's Office?

10 A Since 1999.

11 Q And prior to 1999, where were you employed?

12 A Palm Beach, Florida.

13 Q And what did you do there?

14 A Evidence technician.

15 Q How long did you work in Palm Beach, Florida?

16 A From '92 to '98.

17 Q Were you working with the Sheriff's Office around
18 September 15, 2007?

19 A Yes, sir.

20 Q And were you asked to respond to a call on September
21 15, 2007, out at the Clubhouse Road area of Dorchester
22 County?

23 A Yes, sir.

24 Q And was that in the capacity of a crime scene
25 technician?

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1 A Yes, it was.

2 Q And when you got to the scene, what did you do?

3 A I met with the Lt. Asbell and Deputy Dandridge in
4 reference to a body located in the canal.

5 Q Had they secured the scene when you got there?

6 A Yes, sir, it was secure.

7 Q Okay. And did you have the opportunity to process that
8 scene?

9 A Yes, sir. I photographed it and marked evidence that
10 was located on the side of the road; beer cans, a pacifier,
11 a couple of cigarette butts, and photographed the body.

12 Q And as far as that evidence you collected, when you
13 collected it what did you do with it?

14 A I collected it and I secured it in my vehicle.

15 Q Okay, and at some point in time was that sent somewhere
16 for analysis?

17 A The cigarette butt and the pacifier was sent to SLED
18 for DNA testing. The beer cans were processed in our lab
19 for latents.

20 Q And did anything become of that evidence?

21 A No.

22 Q When you say no, was it processed?

23 A Yes. It was processed for latents. We did not recover
24 any latents from the beer can. The pacifier did come back
25 with a DNA profile matching the victim.

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1 Q You say you were able to take some photographs of the
2 scene that day?

3 A Yes, sir.

4 Q What is the purpose of that?

5 A For documentation purposes. If we had to reconstruct,
6 we could.

7 Q And the photography. Do you do other things and then
8 take photography or is that an order to your processing?

9 A We photograph the overall scene, and then we'll go back
10 over the scene. We will mark the evidence. We will
11 photograph overalls of the evidence with the markers,
12 showing the placement of where everything is at, and then at
13 which point we will then start to do individual close-ups of
14 each piece of evidence that we're collecting.

15 Q Let me show you what's actually be entered into
16 evidence as State's Exhibit No. 5, and just ask if that's an
17 overview of the scene?

18 A Yes, sir, it's an overview.

19 Q Is that one of the pictures that you took when you got
20 there?

21 A Yes, it is.

22 MR. HILTON: Your Honor, at this time, I'd publish this
23 to the jury.

24 (Photo published.)

25 BY MR. HILTON:

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1 Q Can you just kind of describe what we're seeing there,
2 Det. Zensen?

3 A Yes, sir. Right here is the roadway -- you can't
4 really see it --

5 THE COURT: Hold on one second. We can give you an
6 annotation.

7 MR. HILTON: I think it's there, Your Honor

8 THE COURT: It's there.

9 MR. HILTON: If you'll just touch that screen, it make
10 it --

11 THE COURT: There you go.

12 A Along this corner here, we see the roadway. That
13 actually is a yellow marker for a beer can in this area
14 here. And down in here is the actual ditch that I was
15 explaining. This part up here is the top of the opposite
16 ditch and this is the ditch going down.

17 BY MR. HILTON:

18 Q And where was the body actually located in this
19 picture?

20 A It would have been located right in this area, right
21 here.

22 Q Now, the area that's depicted in this picture, where
23 are we talking about?

24 A Clubhouse Road. It's about a mile, maybe three-
25 quarters of a mile off of 17-A. Going down Clubhouse Road,

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1 it would have been on the right-hand side of the road going
2 towards Charleston.

3 Q Let me show you what's been marked for identification
4 as State's Exhibit No. 4, and ask if you recognize this?

5 A Yes.

6 Q What is that a picture of?

7 A That's a picture of the victim, Michael Canady.

8 Q And is that an accurate photograph of the body as you
9 came to the scene that day?

10 A Yes, sir.

11 Q Had the body been altered or messed up in any way at
12 that point?

13 A No, it has not.

14 MR. HILTON: Your Honor, at this time we would offer
15 State's Exhibit No. 4 into evidence.

16 THE COURT: Have you shown it to --

17 MR. CHISOLM: No objection, Your Honor.

18 MR. HILTON: He's seen it.

19 THE COURT: Very well.

20 THE COURT: State's Exhibit No. 4, in evidence without
21 objection. It is a photograph.

22 (State's Exhibit No. 4, photograph,
23 was marked and entered.)

24 BY MR. HILTON:

25 Q Can you just describe for the jury what we're seeing

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1 here?

2 A That is the victim, and when he's laying down, this is
3 actually -- that part right there -- I keep saying canal,
4 but it's more like a ditch. Where the ditch would have been
5 at an angle like this, he's actually laid against the angle
6 of the ditch.

7 Q I don't know if you're able to look at this side by
8 side --

9 A In here. Yes. Right -- that's where the back of him
10 would have been laying, like, up against the ditch. He was
11 on his side.

12 Q Let me show you what's been marked for identification
13 as State's Exhibit No. 1, and ask if you'd take a look at
14 that?

15 A Yes.

16 Q What is that a picture of?

17 A That is a picture -- we were photographing because his
18 pants were pulled down below where most young men wear their
19 pants below their bottom, and we were showing that these --
20 the pants were actually below where his undershorts were.

21 Q Was there ever any evidence of any rape or anything
22 like that?

23 A No. There was none of that.

24 Q Is this an accurate photograph of, I guess, another
25 portion of the body?

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1 A Yes. Actually shows how his leg is coming up.

2 MR. HILTON: At this time, we'd offer State's Exhibit
3 No. 1 in evidence.

4 THE COURT: Have you shown it to --

5 MR. CHISOLM: No objection, Your Honor.

6 THE COURT: Very well. State's Exhibit No. 1 in evidence
7 without objection.

8 BY MR. HILTON:

9 Q And that was the picture you were describing?

10 A Yes. And --

11 Q Oh, I'm sorry.

12 A -- I was just explaining that that shows the angle of
13 the side of the canal, the way his leg is laying up on that.

14 Q When you go out to process a crime scene do you know
15 what you're looking for?

16 A No, I do not.

17 Q Is it common to find things that end up having
18 absolutely nothing to do with the case?

19 A Very common.

20 Q Do you always find the smoking gun?

21 A No, not always.

22 Q Now, after processing this scene, what did you do with
23 the body?

24 A I assisted the coroner in collection of the body just
25 because of the angle of the ditch in order to get him up and

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1 out of the ditch. I just assisted in placing him in the
2 bag.

3 Q Did y'all request an autopsy?

4 A Yes, we did.

5 Q Is that standard practice?

6 A At the time, he just had a small mark on his cheek,
7 that we noticed he had some blood from, and other than that,
8 he had no other trauma. I did check him for trauma. We
9 found no other trauma to the body. So being of his age and
10 the condition we found the body, we did request that.

11 Q Who is it that makes the ultimate examination and
12 determination as the cause of death?

13 A The medical examiner.

14 Q Is that akin to a forensic pathologist?

15 A Yes.

16 Q Do you remember who you used in this case?

17 A Presnell, Dr. Presnell.

18 Q Now, were you involved with the identification of the
19 body?

20 A Yes, I was.

21 Q And in what capacity was that?

22 A Det. Bistromowitz got information that it was a young
23 -- it was possibly a young man by the name of Canady. At
24 which point I searched through the FBI file and found that
25 he had been arrested in Charleston County. We requested a

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1 fingerprint card, a latent card, and I did a -- after having
2 his fingerprints done, enrolled in the coroner's office, I
3 did a one-to-one comparison and identified him.

4 Q All right. Let's fast forward a little bit to
5 September 27, 2007. Do you remember on that day receiving
6 the defendant's Dodge Durango to be processed?

7 A Yes, sir.

8 Q And was that pursuant to a search warrant?

9 A Yes, it was.

10 Q And where was the car brought at that time?

11 A It was brought to the Sheriff's Office in Summerville.
12 We have a garage, a double bay garage for processing, and it
13 was secured inside that garage.

14 Q Now, did you end up processing it on the 27th?

15 A No, sir. We processed it the next day.

16 Q Was it secured during that time?

17 A Yes. It was locked inside our garage.

18 Q And we've talked about processing an outside scene, but
19 when you process a vehicle what procedure do you go through
20 there?

21 A We pretty much do the same thing. We photograph the
22 outside. We photograph all four sides, tag, vin, just so we
23 have identifying marks that that is that vehicle. Then we
24 will start with the driver's side opening the door and just
25 photographing the inside with everything in tact, before

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1 anything is searched or gone through. Then we meticulously
2 move around, then the back passenger, the back, the back
3 passenger, the front passenger, just to make sure that
4 that's how the vehicle came in and that's the condition and
5 everything within that vehicle.

6 Q Now, was there a particular area of this vehicle that
7 you were focusing on?

8 A Yes, sir. The passenger side.

9 Q What made you focus there?

10 A We had gotten information -- I had gotten -- received
11 information --

12 MR. CHISOLM: Objection. Hearsay, Your Honor.

13 MR. HILTON: Not for the truth of the matter asserted.

14 THE COURT: All right. And --

15 Ladies and gentlemen, I need to hear a word or two
16 about what we are talking about. Let me ask this of you.

17 The purpose that you are asking this statement, the
18 purpose that you are offering this statement is for what
19 purpose?

20 MR. HILTON: Why they were focusing on the passenger
21 side.

22 THE COURT: All right. I'm going to overrule the
23 objection, but I am going to tell the jury that the next
24 statement is offered only for the -- only for the reason of
25 indicating why there was a focus on a particular part of the

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1 car, and that is the only reason that this next statement is
2 being offered. It's not being offered for the truth of the
3 matter asserted, but only to explain why this witness
4 undertook to look in a particular place.

5 You may proceed.

6 BY MR. HILTON:

7 Q Detective, I'll repeat the question. Why were y'all
8 focused on the passenger side of the car?

9 A Det. Giglio was given information that the seat was
10 exchanged out on the passenger side.

11 Q Now, did you limit your search of the rest of the car?

12 A No. We still searched the rest of the vehicle.

13 Q Okay. So I understand, it was the focus that was on
14 the passenger area?

15 A It was the focus that was on the passenger side, yes,
16 sir.

17 Q And as far as forensic processing for blood and fluids
18 and that sort of thing, how do you go about doing that?

19 A We were using Otolidine at the time. It is a type of
20 -- it reacts positive to protein in the blood, and it acts
21 -- when you test it, you swab the area, you then put the
22 Otolidine on there, after you hit it with some hydrogen
23 peroxide it causes a chemical reaction and it will turn,
24 like, a purple.

25 Q Now, ultimately, Det. Zensen, was there anything of any

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1 DNA value found in the car?

2 A. None of DNA value.

3 Q Now, let me ask you some questions. You've been doing
4 this for a long time. You said down in Palm Beach, now with
5 the Sheriff's Office here in Dorchester County. How
6 accurate are those CSI shows and stuff that you see on TV?

7 MR. CHISOLM: Objection. Speculation, Your Honor. An
8 improper question, Your Honor.

9 (Mr. Chisolm confers with Mr. Loy.)

10 MR. CHISOLM: Foundation, Your Honor.

11 THE COURT: I'm going to allow -- but add a little
12 foundation, did she ever watch the show, and then I'll allow
13 that a little bit. Overruled.

14 BY MR. HILTON:

15 Q Det. Zensen, do you ever watch those shows like CSI
16 Miami and I don't know all the other ones that are one, but
17 the ones that talk about crime scene investigation?

18 A No. Actually, I work enough in it that I don't need to
19 go home and watch it.

20 Q Have you ever seen those shows or talked about those
21 shows?

22 MR. CHISOLM: Objection. Asked and answered, Your
23 Honor.

24 THE COURT: Sustained. She said she didn't look at it.
25 She's never seen it.

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1 BY MR. HILTON:

2 Q Have you discussed the content of those shows with your
3 co-employees?

4 A Yes.

5 MR. CHISOLM: Objection. Relevance, Your Honor.

6 THE COURT: Sustained.

7 BY MR. HILTON:

8 Q Det. Zensen, when you process the scene and you develop
9 a sample of something, can you just go plug it into your
10 computer and it go, beep, beep, beep, beep, and you get an
11 answer what you're looking for?

12 A No. It doesn't work like that.

13 Q Do you have endless data bases where you can find
14 almost any information that you look for?

15 A No. Usually, each state is on their own separate --
16 like for us for fingerprints we're on something called AFIS
17 tracker, which means affixed to Dorchester County. As an
18 example, for a latent card, I can run an latent in
19 Dorchester County, then I would have to do a remote search
20 for Charleston, a remote for Colleton, a remote for
21 Orangeburg and Berkeley. If wanted to go statewide, then
22 I'd have to go through SLED. They hit on all the counties
23 together, but each agency kind of builds their own database
24 within their own data.

25 Q Are you always able to find a key piece of evidence

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1 when you process a vehicle or scene or anything?

2 A No, not always.

3 Q Now, with regard to other information in the car did
4 you notice anything about the seatbelt?

5 A The seatbelt was missing and upon -- after
6 photographing and further review, we noticed that it wasn't
7 just missing from the actual -- where it hangs down, but the
8 -- I guess half the roll bar that goes across where the
9 seatbelt is connected into, that plastic was kind of pulled
10 out, and upon pulling it out, we noticed that the seatbelt
11 was cut all the way down to the actual retractor, itself.

12 Q Let me show you what's been introduced into evidence as
13 State's Exhibit No. 9, and ask if that's what you're talking
14 about?

15 A Yes.

16 MR. HILTON: I just want to verify. I believe that's in
17 evidence.

18 THE COURT: Say again? You just want to verify that --
19 I'm getting a nod. Yes.

20 BY MR. HILTON:

21 Q Det. Zensen, is this what you're referring to?

22 A Yes. Right here is where we noticed the seatbelt is
23 missing, and this is missing the plastic cover that covered
24 through here in this area. It was pulled out a little bit on
25 this side. This back here, that's just the inside of our

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1 garage. The door was just opened.

2 Q As far as the plastic cover, you say it's missing. Was
3 it missing because you took it off or what?

4 A It is not on there because we removed it. Yes.

5 Q And the mechanism at the bottom of that post, there.
6 This mechanism here, what is that?

7 A That's the seatbelt retractor.

8 Q Were y'all able to remove that from the vehicle?

9 A We didn't have the tool to remove it, but we had
10 someone from the road department who had mechanics tools
11 come down and remove it.

12 Q And were you there for that process?

13 A Yes, I was.

14 Q Let me show you what's been marked as State's Exhibit
15 No. 25, and ask if you recognize this item?

16 A Yes.

17 Q Is that the seatbelt you removed from the post of the
18 defendant's Dodge Durango?

19 MR. CHISOLM: Objection. Foundation, Your Honor.

20 THE COURT: Overruled.

21 A Yes.

22 MR. HILTON: At this time, we'd offer State's Exhibit
23 No. 25 into evidence.

24 THE COURT: Very well. Any objection?

25 MR. CHISOLM: Your Honor, she hasn't clearly identified

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1 it, no special markings, no number. She hasn't made a proper
2 foundation of why she's specifically recognized the item as
3 the item that was -- that was recovered.

4 THE COURT: Very well. Overruled. In evidence as
5 Exhibit?

6 MR. HILTON: State's 25.

7 THE COURT: Yes.

8 (State's Exhibit No. 25, seatbelt,
9 was marked and entered.)

10 MR. HILTON: Let me put this picture back up, just for a
11 moment.

12 BY MR. HILTON:

13 Q To get to that seatbelt mechanism did you have to
14 remove that panel?

15 A Yes.

16 Q And that's referring to State's Exhibit No.9.

17 Now, Det. Zensen, were you able to process the original
18 seat that was in that Dodge Durango?

19 A No, I was not.

20 Q Why was that?

21 A The original seat was not there.

22 Q Were you able to process that portion of the seatbelt
23 that had been cut from the car?

24 A No.

25 Q Why was that?

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1 A That -- the seatbelt portion had been removed. It was
2 cut all the way down to the retractor.

3 Q And can you find any DNA items or any items of
4 evidentiary value on items that you don't process?

5 A No.

6 Q And I guess it would be stuff you don't have any
7 opportunity to process; is that correct?

8 A That's correct. If it's removed, it's unable to be
9 processed.

10 Q Det. Zensen, let me show you what's been marked for
11 identification and ask if you recognize those items?

12 A Yes.

13 Q What does that appear to be?

14 A That is where we noticed that the seatbelt was missing
15 from, I guess, it would be the top guard to hold the
16 seatbelt from going all the way back down.

17 Q Okay. Is that a picture you took during the processing
18 of the vehicle that day?

19 A Yes.

20 Q Is that an accurate picture of the vehicle as it was?

21 A Yes.

22 MR. HILTON: Your Honor, we'd offer State's Exhibit No.
23 29, into evidence.

24 THE COURT: All right. Have you seen Exhibit 29, Mr.
25 Chisolm?

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1 MR. CHISOLM: Yes, Your Honor.

2 THE COURT: And is there any objection?

3 MR. CHISOLM: Yes, there is, Your Honor.

4 THE COURT: All right.

5 MR. CHISOLM: Your Honor, it's just cumulative. It's
6 already been proven that the seatbelt is missing.

7 THE COURT: All right. Very well. Let me see the
8 photograph.

9 (Photo pass to Court.)

10 MR. HILTON: I guess --

11 THE COURT: Yes?

12 MR. HILTON: -- in fairness, you need to look at State's
13 Exhibit No. 9.

14 THE COURT: Okay.

15 MR. HILTON: That's the other photograph.

16 THE COURT: Very well. I'll allow it.

17 MR. HILTON: Thank you.

18 THE COURT: Yes.

19 BY MR. HILTON:

20 Q Det. Zensen, is this what we're talking about here?

21 A Yes.

22 Q And does that show the panel and so forth in place
23 prior to you taking it off?

24 A Yes.

25 Q Now, did you remove the seatbelt out of there?

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1 A No, I did not.

2 Q Let me show you what's been marked for identification
3 as State's Exhibit 31, and ask if you recognize that?

4 A Yes.

5 Q What is that a photograph of?

6 A That's a photograph of the retractor that is actually
7 placed in that support beam.

8 Q Is that a closer-up photograph than the one that we've
9 used previously?

10 A Yes, it is.

11 MR. HILTON: Your Honor, at this time, I would offer
12 State's Exhibit 31 into evidence.

13 MR. CHISOLM: No objection, Your Honor.

14 THE COURT: Very well. State's Exhibit No. 31, in
15 evidence without objection. It is a photo.

16 (State's Exhibit No. 31, photo, was
17 marked and entered.)

18 BY MR. HILTON:

19 Q And is that what we're talking about?

20 A Yes.

21 Q And what is that a picture of?

22 A This here is the actual retractor.

23 Q And is that the item in State's Exhibit No. 25?

24 A Yes, it is.

25 Q Let me show you what's been marked as State's Exhibit

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1 No. 30 for identification and ask if you recognize that?

2 A Yes, I do.

3 Q And what is that a picture of?

4 A That is the inside of the driver's side of the Dodge
5 Durango, the first picture.

6 Q Is that an accurate photograph of the vehicle as it was
7 on September 28th?

8 A Yes, it is.

9 MR. HILTON: Your Honor, at this time, I'd offer State's
10 Exhibit 30 into evidence.

11 THE COURT: Any objection?

12 MR. CHISOLM: No objection, Your Honor.

13 THE COURT: Very well. State's Exhibit 30 in evidence
14 without objection. It is a photograph.

15 (State's Exhibit No. 30, photo, was
16 marked and entered.)

17 BY MR. HILTON:

18 Q Can you point out for the jury what that shows?

19 A Yes. This is the driver's side of the vehicle when we
20 first started our search when we take the overall, and we
21 start to photograph the inside, and that's the inside of the
22 vehicle.

23 Q Do you see any damage to that driver's seat?

24 A No.

25 Q Let me show you, again, State's Exhibit No. 4, that I

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1 believe is in evidence.

2 THE COURT: I believe it is, too.

3 BY MR. HILTON:

4 Q I'll ask you to take a look at that picture there. You
5 said, earlier, that State's Exhibit No. 4 was a picture of
6 the body at the scene as you found it?

7 A Yes.

8 Q And the stuff running down the back of his shirt, what
9 does that appear to be?

10 A It appears to be blood.

11 Q In your experience as a crime scene tech, is this scene
12 one that you would consider excessively bloody?

13 A No, it is not.

14 Q In that photograph, and it's hard to see on the
15 display, and that's why I'm asking you to look at it, but in
16 that photograph does the blood appear to be more faint than
17 one would think blood might be?

18 A Yes.

19 Q And why is that?

20 A Due to humidity, during that time of year, it's very
21 humid out and the dew. Dew is nothing but moisture that
22 lays on the ground and sinks back in. So whenever you have
23 dew laying on any object it's always going to roll over and
24 find the lowest point. It's moisture. It's nothing more
25 than water.

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1 Q But does that cause blood to fade out --

2 A Yes.

3 Q -- from its red color?

4 A Yes.

5 MR. CHISOLM: Objection. He's leading the witness, Your
6 Honor.

7 THE COURT: Sustained.. Don't lead.

8 BY MR. HILTON:

9 Q What would the effect on the color of the blood be
10 based on the dew and the water --

11 MR. CHISOLM: Objection. Foundation, Your Honor.

12 THE COURT: You may answer.

13 A I'd be like if you cut your finger on a light t-shirt
14 and you take it off immediately and you rinse it under, you
15 still have that browning or that very faint light look to
16 it. It takes some scrubbing in order to get it out. That's
17 the proteins and lipids and the fatty acids that's being
18 deposited. And that is what it appears to look like.

19 BY MR. HILTON:

20 Q And in your experience as a crime scene tech, have you
21 had the opportunity to deal like evidence transference and
22 so forth?

23 A Yes.

24 Q And would that include, you know, if blood is on one
25 item and touches something else would that include getting

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1 on that other item?

2 A Yes. There would be a transfer.

3 Q Okay. And would the blood on the back of the
4 defendant's shirt transfer to another item, if he was, say,
5 sitting in a seat?

6 A Yes. It would be like putting a wet towel on a seat or
7 putting a wet towel on a bed. Even if you placed it there
8 for just a moment and lifted it up, there would be some form
9 of wetness that would transfer just because of the water or
10 the wetness.

11 Q Det. Zensen, let me show you what's been marked as
12 State's Exhibit No. 28 for identification and ask you if you
13 recognize this item?

14 A Yes. It's our cooler.

15 Q Is it just any cooler; what relevance does it have to
16 this case?

17 A No. It's a Dorchester County cooler. We have several
18 of these that we use for either recovering wet objects
19 and/or if we were to have to transport any kind of
20 biological specimens to be tested at the lab, but this one
21 was used for transporting that handgun along with the water
22 that was collected at the time, to SLED.

23 Q And is that the cooler that was used?

24 A Yes, that's the cooler.

25 Q And let me show you what's been marked for

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1 identification as State's Exhibit No. 14, and ask if you
2 recognize this item?

3 A Yes, I do.

4 Q Is that the gun that was in that cooler?

5 A Yes, it is.

6 Q How do you know?

7 A It's very distinctive in the green neon sight that it
8 has on the top. Also, it's very distinctive in the gold
9 trigger that it has.

10 Q Now, were you able to take possession of this gun right
11 as it was pulled out of the water?

12 A Yes.

13 Q And as it was being pulled out of the water, what did
14 the dive team do with it?

15 A They put the cooler underneath the water to kind of --
16 because in order -- as soon as the gun would come out it
17 would start to oxidize and rust. So in order to keep it in
18 its natural state you need to keep it in what it was in, in
19 order to preserve it. So they would collect it in the water
20 and that's the way it was collected. I then placed it into
21 a large red bio-hazard bag just so it didn't spill in my
22 truck, in order to transport it to SLED.

23 Q And did you take that gun to SLED?

24 A I took it directly from the site directly to SLED.

25 Q Do you remember who gave you the gun?

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1 A Allison -- Det. Allison Greer had to. I had a broke
2 foot and wasn't able to make it down the embankment.

3 Q And physically, what was the process of how all that
4 took place?

5 A I stood on the actual bridge and gave her my camera for
6 her to go down the embankment, just because I was not able
7 to maneuver down there, so she could photograph it and it
8 could be collected. I stood on the side so it could be
9 brought directly to me, and it was placed in my vehicle and
10 I took it directly there, to SLED.

11 Q Were you able to see and observe from the bridge, them
12 removing the gun from the water?

13 A Yes, I was.

14 Q And were you able to see from the bridge, them place
15 the gun in that cooler?

16 A Yes.

17 Q And is that the cooler and the gun that Det. Greer
18 handed to you on the bridge that day?

19 A Yes. I gave her the actual cooler and my camera in
20 order to go down to collect it.

21 Q And after collecting it she gave it back to you?

22 A Correct.

23 Q And is that the gun that you took up to SLED to be
24 processed?

25 A Yes, it is.

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1 Q And what are those little white ties on it?

2 A We secure it for courtroom, what we call courtroom
3 ready just so it comes into evidence or comes into the
4 courtroom so that it's unloaded, so that it can be verified
5 that it's unloaded and it is a secure weapon.

6 Q Now, prior to court were those ties on it?

7 A No.

8 Q Okay. Who put those on there?

9 A I did.

10 Q Okay. Det. Zensen, is this the gun that was recovered
11 from the river near Bacon's Bridge that day?

12 MR. CHISOLM: Objection. Asked and answered, Your
13 Honor..

14 A Yes.

15 Q Thank you.

16 MR. HILTON: At this time -- I'm sorry.

17 THE COURT: I overruled the objection. You may proceed.

18 MR. HILTON: At this time we would offer State's Exhibit
19 No. 14 into evidence.

20 THE COURT: Any objection?

21 MR. CHISOLM: I'll just renew my objection, Your Honor,
22 on the same grounds.

23 THE COURT: Very well. Overruled.

24 MR. HILTON: Thank Your Honor. At this time we would
25 offer State's Exhibit No. 28 into evidence.

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1 THE COURT: It is -- oh, this is the cooler. The gun
2 was 27?

3 MR. HILTON: 14.

4 THE COURT: I'm sorry. Say again?

5 MR. HILTON: The gun was 14.

6 THE COURT: No. 14. 14. I'm sorry. And the cooler is
7 --

8 MR. HILTON: 28.

9 THE COURT: No. 28. Got it.

10 Any objection?

11 MR. CHISOLM: No objection, Your Honor.

12 THE COURT: Very well. In evidence without objection.

13 (State's Exhibit No. 28, cooler,
14 was marked and entered.)

15 BY MR. HILTON:

16 Q Det. Zensen --

17 THE COURT: This is probably a terrific --

18 MR. HILTON: One more minute, briefly.

19 THE COURT: Okay.

20 BY MR. HILTON:

21 Q Det. Zensen, I can't bring this to you, but State's
22 Exhibit No. 23, that I believe is in evidence.

23 MR. HILTON: Is that correct?

24 COURT REPORTER: Yes.

25 BY MR. HILTON:

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1 Q What is this item?

2 A That is the passenger side seat that was removed from a
3 Dodge Durango.

4 Q A Dodge Durango?

5 A No.

6 Q Whose Dodge Durango?

7 A A 2005, Mr. Chisolm's Dodge Durango.

8 Q And this seat cover, was that on the seat, as well?

9 A Yes, it was.

10 Q And let me show you State's Exhibit No. 7. State's
11 Exhibit 7, that's in evidence, is this a picture of that
12 seat with that cover?

13 A Yes, it is.

14 Q Please answer --

15 MR. HILTON: I think we're going to break. At this time
16 I would tender the witness, Your Honor.

17 THE COURT: Very well. And ladies and gentlemen, that
18 will conclude the work that we will do for today. You're
19 going to be going home and you know the curiosity is going
20 to be heightened. And just please be mindful not to discuss
21 this matter or allow anyone to discuss it with you. Blame
22 it on the judge. Don't you all take any upset. It would
23 not be permissible, allowed, a violation of my order to
24 discuss this matter or allow anyone to discuss it with you.
25 Should anyone try to do that I hope you would get their name

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1 time. I would ask that he be excused after his testimony.

2 THE COURT: Okay. Do y'all want to talk about that.
3 Any concerns about that?

4 MR. CHISOLM: I have no concerns, Your Honor.

5 THE COURT: Okay. Very well. All right.

6 All right. Let us have our jury.

7 (Jury in at 2:27 p.m.)

8 THE COURT: Oh, don't we need Zensen.

9 There you go. Have your seat. You have already been
10 sworn.

11 Very well. All right. Ladies and gentlemen, at this
12 time we will continue with the state's case and the
13 continued direct examination of Officer Zensen.

14 I didn't do that right. Officer Zensen?

15 MS. ZENSEN: Det. Zensen.

16 THE COURT: See. I knew that wasn't right.

17 Okay.

18 MR. HILTON: Actually, we were finished. This is cross
19 examination.

20 THE COURT: You did conclude. All right. Very well.

21 Go ahead. Take your time.

22 (Mr. Chisolm confers with Mr. Loy.)

23 JAMIE ZENSEN - CROSS-EXAMINATION

24 BY MR. CHISOLM:

25 Q How are you, Detective?

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1 A Fine. How are you?

2 Q Okay. All right. You testified yesterday you are a
3 detective in the field of forensics, correct?

4 A Yes. Crime scene.

5 Q All right. Did you take a detailed account of
6 definitive as well as potential crime scenes, correct?

7 A I do. Yes.

8 Q And you utilize various tools to record as accurately
9 as possible the scenes as they were found; correct?

10 A I do.

11 Q You also collect a wide range of items in terms of
12 potential evidence; correct?

13 A Yes, sir.

14 Q Okay. Would you say some of the various items range
15 from large items like weapons to smaller ones like bullets
16 or particles of blood undetectable to the human eye?

17 A Yes, I do.

18 Q Is the evidence then sent off for further processing if
19 it's needed?

20 A It is. Depending on what our lab capabilities are.

21 Q Could you tell me what your lab capabilities are?

22 A We do not have a DNA lab within our facility. We do
23 have latent or fingerprint capabilities.

24 Q So you all do not process the DNA -- you all do not
25 compare the DNA to samples?

1 A No.

2 Q That's -- sorry, go ahead.

3 A We collect it. We do presumptive test for blood, and
4 then when the presumptive test show positive then it is sent
5 off to SLED for their DNA analysis.

6 Q And who will receive these results from SLED?

7 A It comes back through crime scene, at which point it is
8 passed on to the detectives, solicitors, defense attorneys,
9 defense.

10 Q When doing these presumptive swabs, what techniques
11 would you usually use?

12 A We use two different types of techniques, actually we
13 can use up to three. We use something called
14 phenolphthalein test that test positive for protein. It
15 actually turns dark blue. We use an toluidine test that
16 also tests for protein that turns like a fuchsia to dark
17 purple and there's also a hemoglobin which actually tests to
18 tell human blood from any kind of animal blood, meaning that
19 we have hemoglobin in our red blood cells.

20 Q So when you do these presumptive swabs you know
21 definitively whether it's human blood, at that time, you
22 know whether it's human blood or possibly animal blood; is
23 that what you're saying?

24 A If the hemoglobin is used, yes.

25 Q Okay. How often is that test used?

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1 A It varies. It's a very temperamental test. I has to
2 be -- that test is usually done in a very controlled
3 environment. Where the toluidine and phenolphthalein can be
4 done out at the scene. It's not like light sensitive, it's
5 not temperature sensitive, it doesn't have the same
6 parameters as other tests have.

7 Q Can blood be easily washed away or easily cleaned from
8 a surface?

9 A If it is a non-porous surface, yes, I can say you can
10 wash it away. But if it is a porous surface it has a
11 tendency to seep in and cling onto, as I used the example if
12 you have a bloody nose and get it on your white t-shirt, you
13 can rinse it out, you can use some soaps and detergents,
14 depending on whether it breaks down that protein particle,
15 it's not going to get that blood out. You will still see a
16 small stain in it.

17 Q So what you're saying is if blood is on a white shirt
18 or white t-shirt, it's not going to get out?

19 A It will get out if the detergent is used or some type
20 of bleaching mechanism is used, but just to be rinsed out
21 with standard water it would have to be soaked in water for
22 a very long time in order for it to dissolve and come out
23 and you would still be able to see it.

24 Q All right. Could you give us an example of -- a couple
25 of examples of a porous surface?

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1 A A porous surface would be paper, anything that you --
2 if you were to pour water on this it would absorb into and
3 come through the other side. A non-porous would be a
4 counter top where the water would just sit and not actually
5 saturate or soak through.

6 Q How long can blood evidence potentially last on a
7 surface before it becomes undetectable or -- before it
8 become undetectable to where you all can't pull it off; is
9 that possible?

10 A Blood can come off. I'm not a DNA expert, but from my
11 understanding DNA stays around for quite some time even
12 though the blood is removed.

13 Q And you said blood does transfer from surface to
14 surface pretty easily?

15 A Just as water. Any form of liquid. That saturated
16 towel, you touch it again and when it touch it again it is
17 going to leak some form or water or moisture behind. Blood
18 being moisture, if you pick it up from one spot and move it
19 to another, even if you just touch it, swipe it, the idea of
20 transfer is very high and great.

21 Q So me touch -- if I have blood on my hands and I touch
22 that?

23 A That would be considered transference.

24 Q Okay. If blood was being pulled by gravity across a
25 surface at a downward angle would it be able to make it from

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1 Point A to Point B without leaving a definitive trail?

2 A I'm sorry?

3 Q If -- better example. If a person were bleeding from
4 here --

5 A Uh-huh. (Affirmative response.)

6 Q -- and it was coming down to here, would there be a
7 trail? Would you definitely be able to see a trail? Would
8 it just coming straight down?

9 A There would be factors involved.

10 Q Okay.

11 A Such as coming from up here to there -- /

12 Q Yes.

13 A -- is there a gap. In other words, on a breast of a
14 woman, it would come down and it would obviously have a void
15 area before it made contact again. Liquid will -- any form
16 of liquid, blood, water, that's part of civil engineering.
17 Water will always find or seek the lowest point. What trail
18 or path it will take, I can't determine.

19 Q So all in all, blood transfers easily, doesn't just
20 wash away, and can almost certainly be detected by
21 forensics; correct?

22 A No. I don't agree with that.

23 Q Okay.

24 A Blood. Okay, to answer your -- Say the first part
25 again?

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1 Q Blood transfers easily?

2 A It can. Yes.

3 Q Okay. It doesn't just wash away?

4 A It does with detergents and if you take the time to
5 scrub and wash and use bleach, it can wash away. That's not
6 what I'm saying. If I get blood on my shirt, and I don't
7 rinse it out or I allow dew, as in Mr. Canady's case, dew
8 settling each day that it comes and it pulls a little bit
9 more and a little bit more. As long as he's not saturated
10 with it or in any form of water or standing water, it is
11 going to stay verses had he been in standing water, then the
12 potential of it washing away is much greater than it now.
13 Him, unfortunately, laying in the ditch, didn't have the
14 opportunity to wash away.

15 Q So the condition -- would you say the condition that he
16 was found in with the apparent blood stains that he had,
17 those -- would those be an almost accurate depiction of the
18 condition he was likely in at that time, or the likely
19 pattern of the blood at that time?

20 A With his right shoulder --

21 Q Yes.

22 A -- being up on the -- with his right shoulder being in
23 the upward position and his left shoulder being down, to
24 have -- since the wound is on the left side, in order to get
25 it to this side he would actually have to be sitting or in

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1 an upward position in order for it to run down in order for
2 it to saturate the back -- in order to move around to the
3 front. If he was in the ditch at the time, being that the
4 wound is on the left side, it would be nearly impossible for
5 it to be on the right side because moisture doesn't flow up.
6 It flows down.

7 Q Okay. What I'm mainly asking, what I'm trying to say
8 --

9 A Yes, sir.

10 Q -- the blood pattern is that correct, where it's at.
11 Like -- you're saying it won't go away, so the stain is
12 there is a pretty accurate stain? No blood -- if -- where
13 the stain is that's where blood was?

14 A Yes.

15 Q Okay. I'm going to need your help with a couple of
16 visual aids, okay.

17 A That's okay.

18 Q Okay.

19 MR. CHISOLM: One second, Your Honor?

20 THE COURT: Sure.

21 (Mr. Chisolm confers with Mr. Loy.)

22 BY MR. CHISOLM:

23 Q Det. Zensen, I'm going to show you what's marked as
24 State's Exhibit No. 4.

25 A Okay.

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1 THE COURT: Mr. Hilton, is -- do you mind, and thank
2 you.

3 BY MR. CHISOLM:

4 Q All right. Is that an accurate depiction -- can you
5 tell me what this picture is?

6 A When I go out to a scene, like I said, we photograph
7 all around the scene. This particular photo that was taken
8 from the head facing back to where his feet were and how the
9 body was discovered.

10 Q Could you -- do you see where -- could you tell me
11 where the blood stain is -- or what -- let me be more
12 specific. Can you describe the blood stain?

13 A Okay.

14 Q The coloration. Could you describe the difference
15 between the blood stain and the victim's shirt?

16 A Yes. That would be in this area right here, down on his
17 back -- there.

18 MR. CHISOLM: Mr. Loy, if you could -- turn it around.
19 All right. Could you put your arms to the side. All right.

20 BY MR. CHISOLM:

21 Q Would you agree that from elbow to elbow on Mr. Loy,
22 that would be about the mid-back?

23 A Yes.

24 Q Okay. Could you draw a line from the defendant's elbow
25 to the beer can that's right next to him?

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1 A (Witness complies.)

2 Q All right. Is there a stain in that area?

3 A I would have to see the next picture in order to find
4 -- that's not a true -- it's a true depiction in the
5 downward, but in order to give you the correct answer I
6 would like to see the picture behind there, the next
7 picture, so that I can see the back of the shirt more, to
8 answer that question for you.

9 Q You can't see the back of the shirt from that picture?

10 A I can, but with the leaves and the disturbances there,
11 I would like to see the next picture behind there in order
12 to make that -- so say what you're asking.

13 Q All right. Would you also agree that from this area on
14 Mr. Loy, on the arm --

15 A Yes.

16 Q -- the upper back area.

17 A Yes.

18 Q All right.

19 MR. CHISOLM: Can we have those lines erased, please.

20 (Mr. Chisolm confers with Mr. Loy.)

21 BY MR. CHISOLM:

22 Q Would you agree that the blood stain is pretty much
23 contained in the area depicted with that line?

24 A Actually, when I drew my line I had it coming down a
25 little more like that.

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1 Q In that general area. So -- would that be somewhat
2 coming this way and then going to the downward angle to the
3 left?

4 A No, sir. It would be -- to me, the way it was observed
5 and the way it was taken, if you to come up from his top
6 shoulder of his right side, on his outside sleeve. Bring
7 your hand down --

8 Q Uh-huh. (Affirmative response.)

9 A -- start cutting across. That -- you're cutting too
10 far across. From the shoulder up again. Okay.

11 Q If you could show me on this --

12 A Yes.

13 DET. ZENSEN: Is that okay, Your Honor?

14 (Det. Zensen leaves witness stand.)

15 THE COURT: There you go. A mannequin. A live
16 mannequin. Ladies and gentlemen, can you all see. I've got
17 to be sure you can see. I'll stand up. If you can't see
18 just let me know, raise your hand. All right. And keep
19 your voice up because you don't have a microphone.

20 A Okay. It starts at this corner sleeve, and it's coming
21 down, like so. And it's right in through here. This is
22 where

23 BY MR. CHISOLM:

24 Q Okay.

25 A This is where you were saying that his elbows were, but

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1 as I'm saying it's coming up -- it's actually a wider range
2 than what you were putting it at.

3 Q Okay.

4 A And coming across.

5 Q And it's coming clearly across the left side.

6 A The left side.

7 Q And nothing in this general area, the mid-lower back?

8 A Correct. However, you do have some bleeding --

9 Q Yes.

10 A -- going around this front.

11 Q Okay. In the shoulder area, all of this -- You can take
12 that picture down.

13 A Okay.

14 Q This area has been stained?

15 A It's stained, yes.

16 Q Okay. But definitely there.

17 A Yes.

18 Q Okay.

19 MR. CHISOLM: Mr. Loy. Thank you.

20 One moment, Your Honor, confer with my notes.

21 THE COURT: Sure.

22 (Det. Zensen returns to witness stand.)

23 (Mr. Chisolm confers with Mr. Loy.)

24 BY MR. CHISOLM:

25 Q Okay. I'd like to show you what's marked as State's

1 Exhibit No. 6.

2 A Okay.

3 Q Is that an accurate depiction -- could you tell me what
4 that is?

5 A A 2005 Dodge Durango.

6 Q Is that an accurate depiction of the 2005 Dodge Durango
7 that you all performed -- executed a search warrant on, on
8 9/28/2007?

9 A Yes, sir.

10 Q Okay.

11 MR. CHISOLM: Your Honor, I'd like to have this photo
12 marked as -- I'd like to have this photo marked as an
13 exhibit.

14 THE COURT: Is it -- it's not already in evidence?

15 MR. CHISOLM: No, Your Honor.

16 MR. HILTON: It is, Your Honor. It's actually in
17 evidence as State's Exhibit No. 6.

18 MR. CHISOLM: This is a different --

19 MR. HILTON: Oh, I'm sorry. I thought he was referring
20 to this picture here.

21 THE COURT: Show the photograph, please, to Mr. Hilton.
22 Any objection?

23 MR. HILTON: No objection.

24 THE COURT: All right. So it will be Defense Exhibit 10
25 in evidence --

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1 COURT REPORTER: Six, Your Honor.

2 THE COURT: Six, in evidence without objection. It is a
3 photo.

4 (Defendant's Exhibit No. 6,
5 photo, was marked and entered.)

6 MR. CHISOLM: Thank you.

7 BY MR. CHISOLM:

8 Q Can you clearly see inside the car or do you need a
9 picture of the car -- do you need it in your hand? I want
10 you to be able to see the passenger seat is what I'm asking.
11 I don't know if you can see it being on the screen like that
12 or do I need to actually give you the picture?

13 A It's very -- it's very dark. It's dark outside, which
14 is contributing to the darkness on the inside of the
15 vehicle. I can make out the passenger seat along with the
16 driver's seat. But can I look at it close or clearly, no.

17 Q Can you see it fairly all right?

18 A Yes.

19 Q Can you see where the seat cushion is?

20 A Yes.

21 MR. CHISOLM: Can you take that down, please.

22 BY MR. CHISOLM:

23 Q I'm going to show you again, State's Exhibit No. 6.

24 MR. CHISOLM: Can you please do a close up on that to
25 where she can see the angle of the passenger seat, please.

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1 BY MR. CHISOLM:

2 Q Does that accurately depict the vehicle in the
3 condition that you all received it on 9/28/2007?

4 A Yes.

5 Q Okay. I'm going to adjust the seat close to that area
6 there --

7 (Mr. Chisolm confers with Mr. Loy.)

8 A Yeah, that's it.

9 Q I'm going to move it over some, too.

10 (Mr. Chisolm confers with Mr. Loy.)

11 BY MR. CHISOLM:

12 Q Is that fairly accurate -- I'll adjust the seat cushion
13 as you need me to. Tell me where you want it?

14 A It needs to come up and the head rest needs to come
15 down.

16 Q Okay.

17 (Mr. Chisolm confers with Mr. Loy.)

18 BY MR. CHISOLM:

19 Q Could you give me the comparison, I believe you
20 testified yesterday of a comparison of blood transfers like
21 a wet towel, similar to a wet towel?

22 A Yes. A wet towel or saturated clothes, they have a
23 tendency to -- well, they don't have a tendency to, they do
24 transfer the same. If I took a wet t-shirt, a towel,
25 anything that is porous that is saturated and set it down or

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1 touched it or moved it against something it would leave a
2 form of moisture, water, consistent with blood, whatever it
3 was saturated with.

4 MR. CHISOLM: I'm just going to move this up for one
5 second.

6 A Okay.

7 BY MR. CHISOLM:

8 Q Sorry. I'm going to move that up so you'll have a
9 clearer understanding. If a saturated shirt that transfers
10 easily came in contact with this area --

11 A Yes.

12 Q -- would that leave blood?

13 A Yes.

14 Q In your opinion, would this seat cushion be able to
15 cover this area?

16 A Yes, and then you would have what is considered a void
17 area where the seat cushion is absorbing the blood instead
18 of the actual seat. The problem is with that seat was not
19 in the vehicle at the time of the homicide.

20 Q Okay. Not saying -- you're saying the cushion would do
21 what, now?

22 A It would leave a void area because the seat cushion
23 would then take place of what is saturating the blood. It
24 would be as if when water runs down a drain, if it hits any
25 kind of bumps or curves or anything else, it's going to move

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1 around that and take the easiest flow of travel for it. So
2 when you take a wet towel you set on something you have two
3 items laying there and you lay it on this one, when you lift
4 this up, unless it is saturated through this one, it will
5 have a void area that you would have the wet around it.

6 Q Okay. What I'm trying to ask -- if the seat cushion
7 was not here, is what I'm asking. If the seat cushion was
8 not here, and blood came into contact with this entire
9 upward angle like this, this area would be covered in blood,
10 correct?

11 A Yes, sir.

12 Q Okay. And if this general area was covered in blood,
13 then this entire area would be covered in blood, correct?

14 A Yes.

15 Q Okay. Now, that's with the seat cushion not there?

16 A Correct.

17 Q Now, if someone went and purchased a seat cushion and
18 it's in the position that it's in as the vehicle was brought
19 to you, would this seat cushion be able to cover this area
20 that it's not covered in, is what I'm asking you?

21 A Not covered. Can you say it one more time for me?

22 Q Okay. Is this seat cushion large enough to conceal
23 this entire shoulder area?

24 A With the exception of, even in the photograph, the
25 parameters of the seat cushion, it does conceal the majority

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1 of the seat, yes.

2 Q This area. The top area.

3 A The top area. Yes. From the photograph and from that
4 demonstration it is, in my opinion, it appears to be
5 covering that top area, yes.

6 Q The whole space that I'm showing you, you're saying the
7 seat cushion is covering it?

8 A According to the photograph, and according to that,
9 there is a parameter that it is actually not covering.

10 Q Okay. This --

11 A The majority of the seat itself where the cushion is
12 covering, it is covering.

13 Q Okay, and majority, this line, this would be visible?

14 A Yes.

15 Q This would be seen?

16 A Yes, just as it is in the photograph.

17 Q Okay. Now, if blood was in the shoulder area as you
18 explained earlier, and the victim was shot in the head, yes?

19 A Yes.

20 Q What blood transfer, possibly transfer to any -- could
21 you show me any areas that the blood could possibly transfer
22 on the head rest?

23 A It would definitely to the side on the left side, and
24 depending on the movement of the head while it was in -- I
25 didn't draw a very good line. There would be more

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1 predominately on the left side, but depending on the
2 movement that was going on inside the vehicle, it could be
3 some distance because there was such a small area between
4 the head rest -- it could actually cover both side depending
5 on the movement of the vehicle, if the vehicle is moving to
6 the left, and if it is moving to the right, then the
7 shifting of the body, therefore shifting of the blood
8 shifting -- shifting of the liquid is going to definitely
9 cover both sides. I can't say it would cover one side more
10 than the other. But it would definitely predominate on that
11 left side.

12 Q So this area would be covered in blood, and this exposed
13 area would still have blood?

14 A Yes, sir.

15 Q And it wouldn't be concealed from anyone's view with
16 just this seat cover?

17 A No, sir.

18 MR. CHISOLM: You can take that picture down, please.

19 (Mr. Chisolm confers with Mr. Loy.)

20 BY MR. CHISOLM:

21 Q State's Exhibit No. 4.

22 MR. CHISOLM: Could you pass this, please.

23 MR. HILTON: Pass it to her?

24 MR. CHISOLM: Yes, pass it to her.

25 BY MR. CHISOLM:

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1 Q I'd like to show you State's Exhibit No. 4. On this
2 side of the victim is there apparent stains of blood?

3 A Are you talking about left side?

4 Q No, the left side?

5 A The right side, are you saying --

6 Q Not -- just the dowels --

7 A In the front?

8 Q Yes.

9 A There's no apparent -- it comes across the front
10 shoulder area, the clavicle area, right through here. And
11 into the back. Not down the front.

12 Q Okay. Thank you. Now, you testified earlier that you
13 thoroughly examined my vehicle, correct?

14 A On the 28th?

15 Q Yes.

16 A Yes.

17 Q Okay. Both driver's side and passenger side, correct?

18 A Yes, sir.

19 Q Did you by chance examine the driver's side seatbelt?

20 A Yes.

21 Q Okay. Would you say blood can be transferred to and
22 from the seatbelt pretty easily?

23 A Yes.

24 Q So any surface that the seatbelt would come into
25 contact with, it would possibly transfer from that surface

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1 -- it would possibly transfer to the next surface?

2 A Yes, sir.

3 Q Okay. When you examined my vehicle did you notice a
4 seatbelt guide was still in place?

5 A Yes, I did.

6 Q Okay. And seatbelts go through seatbelt guides,
7 correct?

8 A Yes, they do.

9 Q Rubbing against each other, yes?

10 A Yes.

11 Q Yesterday you testified performing a test for blood --
12 I'm sorry. You testified yesterday that you performed tests
13 for blood on numerous areas in my vehicle that were swabbed,
14 correct?

15 A Yes, they were swabbed.

16 Q Okay. Were 11 swabs taken from my vehicle?

17 A Yes, sir.

18 Q You said, yes?

19 A Yes, sir.

20 Q Were seven swabs taken from my center console area?

21 A I need my notes from that --

22 Q Your return notes, your SLED return notes?

23 A The return or the ones actually sent there.

24 (Mr. Chisolm confers with Mr. Loy.)

25 BY MR. CHISOLM:

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1 Q Do you have a copy of your notes or would you like one
2 to be provided for you?

3 A I've got a copy.

4 Q Okay. Seven swabs from the center console area,
5 correct?

6 A Yes, sir.

7 Q Okay. Did you photograph -- did you all detail -- I'm
8 sorry. When you all were doing -- conducting the execution
9 of the search warrant on the vehicle, in detailing, in
10 making sure you had an accurate recollection of the events
11 that had taken place, did you all photograph everything that
12 you all were doing?

13 A Yes.

14 Q Okay.

15 MR. CHISOLM: Your Honor, I'd like to mark this photo as
16 an exhibit.

17 THE COURT: Have you shown it to Mr. Hilton?

18 MR. CHISOLM: Yes, Your Honor.

19 THE COURT: All right. Very well.

20 (Defendant's Exhibit No. 7,
21 photo, was marked for ID only.)

22 BY MR. CHISOLM:

23 Q I'm going to show you Defense Exhibit No. 7.

24 A Okay.

25 Q Could you tell me what that is?

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1 A That is the side of the center console of the Dodge
2 Durango -- your Dodge Durango.

3 Q And could you tell me what the arrows represent?

4 A The arrows represent where with a magnifying glass we
5 looked, we were looking at points of interest. Anything
6 that appeared to be a dark speck or had blood like
7 tendencies to it. That is where each swab was taken from
8 each section.

9 Q Did you do the presumptive -- I believe it was the
10 toluidine; is that right?

11 A Toluidine.

12 Q Did you do that test to determine if those seven swabs
13 were blood?

14 A What we'll do is we'll do one or two to test to see if
15 the points of interest are blood. Once we get a positive, if
16 we get a positive and at that point we no longer continue
17 with the Toluidine, we just do collection at that point in
18 time for it to be sent to DNA for analysis.

19 (Mr. Chisolm confers with Mr. Loy.)

20 MR. CHISOLM: Your Honor, I move for Defense Exhibit No.
21 7 to go into evidence.

22 THE COURT: Any objection?

23 MR. HILTON: No objection.

24 THE COURT: Very well. Exhibit 7 in evidence without
25 objection.