

(M)

21615

ORIGINAL

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DON-SURVI CHISOLM,

APPELLANT.

APPELLATE CASE NO. 2011-200186

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

LARA M. CAUDY
Appellate Defender

VOLUME TWO OF TWO
PAGES 501 - 692

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General

MELODY J. BROWN
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

DAVID M. PASCOE, JR.
Solicitor, First Judicial Circuit
140 N. Main Street, Suite 102
Summerville, SC 29483-6443
(843) 871-2640

Attorneys for Respondent

JOHN W. MCINTOSH
Chief Deputy Attorney General

INDEX

INDEX	i
-------------	---

VOLUME ONE

PRE-TRIAL TRANSCRIPT (February 11, 2011) (Motion for Self-Representation)	1
---	---

PRE-TRIAL TRANSCRIPT (July 14, 2011)	40
--	----

PRE-TRIAL TRANSCRIPT (July 22, 2011)	72
--	----

MISTRIAL TRANSCRIPT (August 22-23, 2011)	86
--	----

TRIAL TRANSCRIPT (September 13-19, 2011)	132
--	-----

DEFENSE MOTION TO SUPPRESS HEARING	133
--	-----

TESTIMONY

MIKE GIGLIO

Direct Examination by Mr. Chisolm	142
---	-----

Cross-Examination by Mr. Hilton	161
---------------------------------------	-----

Redirect Examination by Mr. Chisolm	165
---	-----

OPENING STATEMENT BY MR. HILTON	177
---------------------------------------	-----

OPENING STATEMENT BY MR. CHISOLM	183
--	-----

TESTIMONY

TONIA PLATT

Direct Examination by Mr. Austin	186
--	-----

JOE BURNETTE

Direct Examination by Mr. Austin	189
--	-----

Cross-Examination by Mr. Chisolm	191
--	-----

JOSEPH BISTROMOWITZ

Direct Examination by Mr. Hilton	195
--	-----

Cross-Examination by Mr. Chisolm	205
--	-----

Continued Cross-Examination by Mr. Chisolm	216
--	-----

Redirect Examination by Mr. Hilton	219
Re-cross Examination by Mr. Chisolm	221

TAMEKKA WILLIAMS

Direct Examination by Mr. Hilton.....	223
Cross-Examination by Mr. Chisolm.....	226
Continued Cross-Examination by Mr. Chisolm.....	235
Redirect Examination by Mr. Hilton	241
Re-cross Examination by Mr. Chisolm	243

SHAKARA ROSE

Direct Examination by Mr. Hilton.....	244
Cross-Examination by Mr. Chisolm.....	246

SHAQUANDA LASHAY WHITE

Direct Examination by Mr. Hilton.....	251
Cross-Examination by Mr. Chisolm.....	259

DAVID WHITE

Direct Examination by Mr. Hilton.....	267
Cross-Examination by Mr. Chisolm.....	302
Continued Cross-Examination by Mr. Chisolm.....	319
Continued Cross-Examination by Mr. Chisolm.....	323
Redirect Examination by Mr. Hilton	344
Re-cross Examination by Mr. Chisolm	350

PATRICE MCKNIGHT

Direct Examination by Mr. Hilton.....	353
Cross Examination by Mr. Chisolm	355
Redirect Examination by Mr. Hilton	356
Re-cross Examination by Mr. Chisolm	357

SUSAN JOHNSON

Direct Examination by Mr. Hilton.....	358
Cross Examination by Mr. Chisolm	363
Redirect Examination by Mr. Hilton	369

ERIN PRESNELL

Direct Examination by Mr. Hilton.....	370
Cross Examination by Mr. Chisolm	378
Redirect Examination by Mr. Hilton	380
Re-cross Examination by Mr. Chisolm	381

RICHARD JONES

Direct Examination by Mr. Hilton.....	391
Cross Examination by Mr. Chisolm	395

GEORGE GALLARDO	
Direct Examination by Mr. Hilton.....	397
Cross Examination by Mr. Chisolm	405

THOMAS SIMONELLI	
Direct Examination by Mr. Hilton.....	411
Cross Examination by Mr. Chisolm	414

CHRIS CARREIRO	
Direct Examination by Mr. Hilton.....	416
Cross Examination by Mr. Chisolm	423

ALLISON GREER	
Direct Examination by Mr. Hilton.....	425
Continued Direct Examination by Mr. Hilton.....	437
Cross Examination by Mr. Chisolm	441
Redirect Examination by Mr. Hilton	447
Re-cross Examination by Mr. Chisolm	448

JAMIE ZENSEN	
Direct Examination by Mr. Hilton.....	450
Cross Examination by Mr. Chisolm	478

VOLUME TWO

JAMIE ZENSEN	
Cross Examination by Mr. Chisolm	501
Continued Cross-Examination by Mr. Chisolm.....	529
Redirect Examination by Mr. Hilton	532
Re-cross Examination by Mr. Chisolm	534

MIKE GIGLIO	
Direct Examination by Mr. Hilton.....	536
Cross Examination by Mr. Chisolm	567
Continued Cross Examination by Mr. Chisolm	593
Redirect Examination by Mr. Hilton	605
Re-cross Examination by Mr. Chisolm	607

IRA PARNELL	
Direct Examination by Mr. Austin	608
Cross Examination by Mr. Chisolm	614

MOTION FOR A DIRECTED VERDICT.....	616
------------------------------------	-----

TESTIMONY

DONSURVI CHISOLM (In Camera)	617
EJUHAVNA CHISOLM	
Direct Examination by Mr. Chisolm	619
Cross-Examination by Mr. Hilton	622
RENEWAL OF MOTION FOR DIRECTED VERDICT	628
STATE'S OPENING ON THE LAW	629
CLOSING ARGUMENT BY MR. CHISOLM	635
CLOSING ARGUMENT BY MR. HILTON.....	641
CHARGE ON THE LAW.....	666
VERDICT	686
SENTENCING	689
INDICTMENT	690
CERTIFICATE OF COUNSEL.....	692

State v. Chisolm 9/12/11 - 9/19/11

591

1 (Defendant's Exhibit No. 7, photo,
2 was marked and entered.)

3 BY MR. CHISOLM:

4 Q Did you also take one swab from my steering wheel?

5 A Yes, sir.

6 Q And you all took one swab from my seatbelt guide,
7 correct?

8 A Yes, sir.

9 Q And all of these swabs came back as blood, correct?

10 A Like I explained. Once we get to a point where when we
11 start to test an area we will take our first two swabs. If
12 we have a positive for blood, we do not, at that point in
13 time do not continue to do the presumptive test, because
14 that can interfere with DNA especially with a very minute or
15 a very tiny amount of blood, but the chemicals that are used
16 in it, especially hydrogen peroxide, which has been known
17 for taking blood out. It will diminish any form or DNA we
18 have. So once we have a positive test on it. We no longer
19 test at that point in time. We just take samples or swabs
20 and send that to the lab for testing rather than continue to
21 do the presumptive test on each swab.

22 COURT REPORTER: I'm sorry. On each what?

23 DET. ZENSEN: On each swab.

24 BY MR. CHISOLM:

25 Q And did all nine of these swabs get send to the SLED

State v. Chisolm 9/12/11 - 9/19/11

592

1 office for comparison against the DNA of the victim, Craig
2 Michael Canady?

3 A Yes.

4 Q Is it correct that most request and request returns are
5 through you?

6 A Yes.

7 Q Did those results come back to you on January 18, 2008?

8 A Yes.

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

10 BY MR. CHISOLM:

11 Q Is it a fact of that of all nine swabs sent in compared
12 to Mr. Canady's DNA came back as a negative match?

13 A Nine of them -- seven of the came back with a negative
14 match for his DNA. Actually, all nine came back with a
15 negative match for Mr. Canady's DNA, however, two of them
16 did come back, tested positive for blood, which meant that
17 it was such a minute or such a tiny little sample that not
18 enough DNA was there to be conclusive on the test on that,
19 along with the two that tested positive for presumptive
20 blood.

21 Q Did the report read, the partial DNA profile developed
22 from Item 25 is from an unidentified male individual. Craig
23 Canady, Jr., is excluded as a possible contributor to this
24 item, and that's Item 25?

25 A Yes, sir.

State v. Chisolm 9/12/11 - 9/19/11

593

1 Q Was Item 25 a swab from my seatbelt guide?

2 A Yes, sir.

3 Q Item 26.1 -- thank you. I'm sorry. Item 24, does the
4 report read, the DNA obtained from Items -- hold on a
5 second. I'm sorry. Okay. Items 15 through 21 are the
6 seven swabs from the center console, correct?

7 A Yes, sir, that's correct.

8 Q Okay. And Item 24 is from the steering wheel, correct?

9 A Yes, sir, it is.

10 Q Okay. Does the report read, the DNA obtained from Items
11 15 through 21 and 24 are mixtures of at least two
12 individuals, Craig Canady, Jr., is excluded as a contributor
13 to these mixtures?

14 A Yes, it does.

15 Q Could you tell me were there any other requests for DNA
16 comparison for Mr. Canady made in reference to this case?

17 A Other than the swabs and the -- we find the pacifier
18 out at the scene that was tested. That was tested that came
19 back as a positive match to Mr. Canady. We sent off the
20 swabs and the cigarette butt and that came back as a
21 negative match, also.

22 Q But nothing in my vehicle had Mr. Canady's DNA on it?

23 A No, sir, but the vehicle had also been altered.

24 Q The seatbelt guide was still in place, right?

25 A The seatbelt guide was in place, however, the seat belt

State v. Chisolm 9/12/11 - 9/19/11

594

1 which is the main contributor that would have been holding
2 the blood and the blood source is gone. A seatbelt guide is
3 easily cleaned off just like a counter is. I can't say --
4 the crime scene that I received was obviously altered. The
5 seat was gone, not only was the seatbelt cut, but the
6 seatbelt was actually -- the sidewall removed and it cut all
7 the way down to the extractor into the seatbelt retractor,
8 which means I would not expect to find any form of -- with
9 that much removal from the scene, I wouldn't find any DNA.

10 Q But you found DNA on the seatbelt guide and you
11 testified earlier that blood is not easily removed.

12 A Yes, sir. You were in the vehicle. You had other
13 people inside the vehicle. We only compared against Mr.
14 Canady. I never completely compared against the general
15 population. Anybody could have reached up and touched that.
16 Sneezing will leave DNA. Brush your hair with the hair
17 follicles coming out. Dandruff leaves DNA. Sloughing of
18 the skin, every day taking clothes on and off, you're
19 removing and taking clothes, which is contributing DNA left
20 and right. We leave little trails of DNA everywhere. Being
21 that you had the vehicle for as long as you did, we -- it
22 would only be natural that there would be your DNA as the
23 main contributor and his only would have been minute. We
24 did find blood in the vehicle. I just cannot say that it is
25 Mr. Canady's because the profile couldn't be developed.

State v. Chisolm 9/12/11 - 9/19/11

595

1 There was four swabs that did test positive, two from us,
2 two from SLED, just no DNA profile was able to be developed.

3 MR. CHISOLM: I'd like to mark the -- one second.

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

5 MR. CHISOLM: Your Honor, I would like this marked as
6 Defense Exhibit 8. I would like to introduce Defense
7 Exhibit No. 8, please.

8 MR. HILTON: Let me just take a look at it.

9 No objection.

10 BY MR. CHISOLM:

11 Q Now --

12 THE COURT: All right. Defense Exhibit No. 8 in evidence
13 without objection. How many pages are in that document?

14 MR. CHISOLM: Five, Your Honor.

15 THE COURT: All right. Five page document.

16 (Defendant's Exhibit No. 8,
17 document, was marked and entered.)

18 BY MR. CHISOLM:

19 Q You said DNA is not easily removed -- I'm sorry, blood
20 is not easily removed and we leave -- we can potentially
21 leave a lot of DNA?

22 A Yes. We have the potential to do that. Yes.

23 Q Okay. So if blood is not easily removed and we
24 potentially can leave a lot of DNA then someone else's DNA
25 could be there as well as Mr. Canady's because as you

State v. Chisolm 9/12/11 - 9/19/11

596

1 testified, blood is not easily removed. If blood touched
2 that seatbelt guide it would still be there.

3 A Okay. On a porous substance blood is very -- blood can
4 be very difficult to remove. Clothing, carpet. Even paper.
5 Anything that is considered porous, blood, like ink is very
6 hard to remove. However, on non-porous surfaces it's not. A
7 counter top, plastic guide to a seatbelt guide. Anyone can
8 take bleach, water, any kind of detergent that would break
9 down any form of blood. Dawn is an awesome product. It can
10 -- Windex. Anything can break that down. It is harder to
11 remove from a porous than it is from a non-porous.

12 Q Then the DNA would have been removed as well, correct?

13 A Yes.

14 THE COURT: We're going to stop here for just a moment
15 and take a comfort break.

16 Ladies and gentlemen please step to your jury room. Do
17 not discuss this matter or allow anyone to discuss it with
18 you. We'll take about 15. Of course, leave your note books
19 in your seats.

20 (Jury out at 11:45 a.m.)

21 THE COURT: All right. We'll make the note from the
22 juror. The reason I did it so quickly is I got a note from
23 a juror that said, restroom. I took that to be some
24 urgency. We'll mark that. Normally I try not to interrupt
25 right in the middle of what somebody's doing, Mr. Chisolm,

State v. Chisolm 9/12/11 - 9/19/11

597

1 but it seemed to be an urgency and I wanted the jurors to be
2 able to listen to you instead of being occupied with other
3 thoughts and concerns.

4 MR. CHISOLM: Thank you, Your Honor.

5 THE COURT: So of course don't talk about your testimony
6 during the break.

7 We'll take about 15, everyone.

8 (Court's Exhibit No. 12, juror
9 note, was marked.)

10 (Court in recess for morning break at 11:46 a.m.)

11 (Court in session after morning break at 12:10 p.m.)

12 (Defendant's Exhibit No. 9, photo,
13 was marked for ID only.)

14 (Defendant's Exhibit No. 10, photo,
15 was marked for ID only.)

16 (Defendant's Exhibit No. 11, photo,
17 was marked for ID only.)

18 (Defendant's Exhibit No. 12, photo,
19 was marked for ID only.)

20 (Defendant's Exhibit No. 13, photo,
21 was marked for ID only.)

22 (Defendant's Exhibit No. 14, photo,
23 was marked for ID only.)

24 (Defendant's Exhibit No. 15, photo,
25 was marked for ID only.)

State v. Chisolm 9/12/11 - 9/19/11

598

1 THE COURT: Thank you. Please be seated. Anything
2 before we bring the jury out from the state?

3 MR. HILTON: Nothing from the state.

4 THE COURT: From the defense?

5 MR. CHISOLM: Nothing, Your Honor.

6 THE COURT: Let us have the jury, please.

7 COURT REPORTER: We pre-marked some defense exhibits.

8 THE COURT: Say what?

9 COURT REPORTER: We pre-marked for ID some defense
10 exhibits, photographs, nine through 15.

11 THE COURT: You did?

12 COURT REPORTER: Yes, ma'am.

13 THE COURT: Brilliant.

14 COURT REPORTER: During the break.

15 THE COURT: Wonderful.

16 (Jury in at 12:11 p.m.)

17 THE COURT: All right. Ladies and gentlemen, at this
18 time, we will continue with the cross-examination of Det.
19 Zensen.

20 Mr. Chisolm.

21 MR. CHISOLM: Thank Your Honor.

22 THE COURT: Uh-huh. (Affirmative response.)

23 MR. CHISOLM: Your Honor, at this time I would like to
24 move into evidence Defense Exhibits nine through 15 without
25 objection.

State v. Chisolm 9/12/11 - 9/19/11

599

1 MR. HILTON: That's correct.

2 THE COURT: Very well. They are photos?

3 MR. CHISOLM: Yes, Your Honor.

4 THE COURT: Photographs nine through 16?

5 MR. CHISOLM: 15, Your Honor.

6 THE COURT: Nine through 15. In evidence without
7 objection. They are photos.

8 (Defendant's Exhibit No. 9, photo,
9 was marked and entered.)

10 (Defendant's Exhibit No. 10, photo,
11 was marked and entered.)

12 (Defendant's Exhibit No. 11, photo,
13 was marked and entered.)

14 (Defendant's Exhibit No. 12, photo,
15 was marked and entered.)

16 (Defendant's Exhibit No. 13, photo,
17 was marked and entered.)

18 (Defendant's Exhibit No. 14, photo,
19 was marked and entered.)

20 (Defendant's Exhibit No. 15, photo,
21 was marked and entered.)

22 JAMIE ZENSEN - CONTINUED CROSS-EXAMINATION

23 BY MR. CHISOLM:

24 Q I'm going to show you photos nine through 15.

25 A Okay.

State v. Chisolm 9/12/11 - 9/19/11

600

1 Q Can you tell me what that is a picture of?

2 A That is a picture of the passenger side of the console,
3 here. This is the passenger floor board where the seat had
4 been removed by Dorchester County.

5 Q And in this photograph, does the vehicle appear to be
6 very clean, the carpet?

7 A No.

8 Q Could you tell me what that is a photo of?

9 A Yes. That is the -- would be the seatbelt, I guess,
10 harness portion of where the seatbelt would come through
11 from here it would come out there in order to strap across.

12 Q I know on the screen, the glare is kind of hard, but
13 does that area look very clean? Would you like to see the
14 photo, close up?

15 A No. You're asking my interpretation. To me, I don't
16 feel it's clean. To some people it would be.

17 Q Is that another view of the vehicle, of the passenger
18 side of the vehicle?

19 A Yes, sir.

20 Q And once again, the area does not look highly clean,
21 correct?

22 A Once again, it doesn't appear to be clean to me, no.

23 MR. HILTON: Your Honor, those photos, the first one is
24 Defendant's Exhibit No. 9. The second one is Defendant's
25 Exhibit 10. The one that he is currently referring to is

State v. Chisolm 9/12/11 - 9/19/11

601

1 Defendant's Exhibit No. 11. This is Exhibit 12 --

2 THE COURT: All right.

3 BY MR. CHISOLM:

4 Q Could you tell me what that is a photo of?

5 A That appears to be the -- maybe a door frame of the
6 vehicle itself, the step up guard to go to get in the -- the
7 step into the Dodge Durango.

8 MR. CHISOLM: Can you show the next photo please.

9 MR. HILTON: Defendant's Exhibit No. 13.

10 MR. CHISOLM: Go to the next one.

11 MR. HILTON: Defendant's Exhibit No. 14?

12 BY MR. CHISOLM:

13 Q Could you tell me what that appears to be?

14 A That is the arm rest of the passenger side door.

15 MR. HILTON: Defendant's Exhibit No. 15.

16 BY MR. CHISOLM:

17 Q And could you tell me what that appears to be?

18 A That would be the arm rest of the passenger side where
19 the lock mechanism is.

20 Q And no swabs of DNA were pulled from any of those
21 areas, is that correct?

22 A No, sir.

23 Q Would you say you have processed quite a few scenes
24 with wounded individuals?

25 A Yes, I have.

1 Q And you've collected blood from these scenes, correct?

2 A Yes.

3 Q Would you say that in a small enclosed area, such as a
4 car, with numerous surfaces in every direction the potential
5 for evidence transfer is great?

6 A It would depend on the scene, itself. Unfortunately,
7 it was a small caliber, small discharge, very minimal, very
8 small amounts.

9 Q Is it likely a person who is bleeding heavily can move
10 or be moved without blood, without transferring blood to
11 another surface?

12 A Anything is possible. I'm not going to say something
13 is impossible.

14 Q If someone touched a wounded person with a large amount
15 of blood on them would it transfer to their hands?

16 A Are their hands covered? Once again, it's possible.
17 If their hands are covered or if they've got gloves on, then
18 I would say no. If they do not, then, yes, obviously, it
19 would transfer.

20 Q And if this person with blood on their hands in turn
21 touched numerous surfaces would that blood then transfer to
22 the surfaces touched?

23 A Human skin is very funny. We're back into that
24 although we're porous we're actually non-porous. We touch
25 water all the time but yet we absorb it to a certain degree.

State v. Chisolm 9/12/11 - 9/19/11

603

1 We don't absorb it like a towel, clothing, or anything else.
2 So if a blood hand was to touch something the next time it
3 touched it would obviously leave a hand impression, but as
4 you go on it's obviously going to leave less and less
5 because that's where the non-porous section of us as humans
6 comes from. Although we absorb the majority of it as we
7 move on or the more items we touch the less blood we will
8 leave behind.

9 Q So if the alleged -- so if it were alleged that the
10 person touched door handles inside and out, a gun, a
11 steering wheel, an arm rest, a cell phone, and maybe more
12 surfaces the pattern -- I'm sorry, the quantity of blood
13 left on those surfaces would diminish but it will
14 continually leave a trail?

15 A Not forever. It would diminish and eventually it would
16 be gone, and it would depend on how much blood was actually
17 touched or absorbed by the hand, itself. In other words, if
18 it was just a very minute amount it obviously a small amount
19 is less left behind. The larger the amount the more is
20 going to be left behind.

21 Q Now, if a person with blood on them, with the wound on
22 the front side of their body, was moved or pulled, would
23 there be a potential chance for blood to drip or transfer to
24 any surface it may come into contact with in its forward
25 path, if it's pulled forward?

1 A (No response.)

2 Q Do you --

3 A I don't understand. I'm sorry. You lost me for a
4 second.

5 Q If a wounded person who is bleeding heavily is pulled
6 forward would there be potential for blood to drip or
7 transfer to any surface it would come in contact with when
8 moved forward?

9 A I would say, yes.

10 Q Did you all send a carpet sample of my car to SLED?

11 A No.

12 MR. CHISOLM: One second.

13 THE COURT: All right.

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

15 BY MR. CHISOLM:

16 Q Det. Zensen, do you have a copy of your notes?

17 A Yes.

18 Q Do you have a copy of -- a three page report?

19 A Yes.

20 Q On the fifth line down, does it say carpet sample sent
21 to SLED?

22 A Okay. I mis-understood the question. We did not do a
23 carpet cutting, however, the sample that we sent was like a
24 little clip of an area at the top that we had in question,
25 but carpet sample would mean the actual cutting and removal

State v. Chisolm 9/12/11 - 9/19/11

605

1 of the bottom and the padding underneath it. In my type of
2 report I did put carpet sample when I should have put carpet
3 cutting.

4 Q I asked earlier were there any other items pertaining
5 to this case -- were there any other items under this case
6 number sent there for testing in comparison of the DNA of
7 Mr. Canady?

8 A Are you asking me if you asked that question?

9 Q I'm sorry. I'm asking the question again, I believe.

10 A I'm sorry. I'm sorry. I mis-understood the question
11 you were asking me.

12 Q It might have been me. I apologize. Did any other
13 items -- were there any other items marked under this case
14 number that were sent in for comparison against the DNA of
15 Craig Michael Canady?

16 A Yes. There were several items that were sent in. We
17 went over the swabs, including the swabs from the steering
18 wheel, the presumptive swabs. However, we did not go over
19 swabs from the pacifier, swabs from the handle of the baby
20 pacifier, swabs from the mouth portion of the baby's
21 pacifier, cigarette butts on the ground found near the body.
22 Hair removed from clothing, blood stained earth from Mr.
23 Canady and fingernail clippings from left hand of Mr. Canady
24 along with fingernail clippings from the right. Known hair
25 from Mr. Canady.

State v. Chisolm 9/12/11 - 9/19/11

606

1 Q Do you recall anything else being sent there?

2 A No.

3 Q On January 7, 2008, was a request sent in for 25
4 automatic handgun to be compared against the DNA of Craig
5 Michael Canady?

6 A Yes. That --

7 MR. HILTON: Objection, Your Honor. Relevance.

8 MR. CHISOLM: Items that were compared against the DNA
9 of Craig Michael Canady under this case law, Your Honor.
10 Under the case number, Your Honor.

11 THE COURT: I'll allow it on cross-examination as long
12 as it has to do with this matter.

13 A Okay. If the question is for DNA, that handgun was not
14 sent in for Craig Canady, Michael Craig Canady's DNA. It was
15 actually sent in for test firing to see -- to be compared
16 for that. As far as the DNA it was not sent in for DNA
17 purposes, no.

18 BY MR. CHISOLM:

19 Q It was not sent in to compare his DNA against the
20 handgun?

21 A No. It was located in water, sir.

22 Q No. I'm sorry. Not the 22 automatic that is the
23 alleged murder weapon.

24 A Okay.

25 Q On January 7, 2008, after the arrest of me and my co-

State v. Chisolm 9/12/11 - 9/19/11

607

1 defendant a 25 automatic handgun found on another person was
2 sent in --

3 MR. HILTON: Objection, Your Honor. Relevance.

4 THE COURT: Just a second.

5 MR. CHISOLM: Yes, Your Honor.

6 THE COURT: Ladies and gentlemen, there is a matter that
7 I must take up outside of your presence. Please do not
8 discuss this matter or allow anyone to discuss it with you.
9 (Jury out at 12:26 p.m.)

10 THE COURT: All right. The nature of the objection is?

11 MR. HILTON: Relevance. This gun was taken off of some
12 other individual at some other time. Has no connection to
13 the crime whatsoever.

14 THE COURT: I got it.

15 MR. HILTON: Unless I'm missing something.

16 THE COURT: I presumed that's what it was.

17 All right. Let me ask you this question. What evidence
18 or what issue, I should say, what fact which has any
19 consequence to this action would this evidence make more
20 probable or less probable?

21 MR. CHISOLM: I didn't hear the question, Your Honor. I
22 apologize.

23 THE COURT: Okay. You have asked about whether or not
24 this witness was involved in any DNA testing with regards to
25 another weapon found in another incident on another person

State v. Chisolm 9/12/11 - 9/19/11

608

1 many months later.

2 MR. CHISOLM: Uh-huh. (Affirmative response.)

3 THE COURT: And my question to you is this; why does her
4 response to this question have any tendency to make a fact
5 which is of consequences to this action more probable or
6 less probable. In other words, tell me what you're trying
7 to show and why?

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

9 MR. CHISOLM: Your Honor. Oh, I'm sorry.

10 THE COURT: Yes, go ahead.

11 MR. CHISOLM: Please the Court?

12 THE COURT: Uh-huh. (Affirmative response.)

13 MR. CHISOLM: Your Honor, I asked the question if a
14 weapon was sent for DNA comparison without objection. There
15 was no objection. And the answer was no, Your Honor. And
16 I'm holding the South Carolina Law Enforcement Division
17 Report -- that -- I'd like to mark the report as a Court's
18 Exhibit so I can demonstrate that the test was done like I
19 said. And since the question was not answered correctly I
20 would, at least, like to straighten out the mis-statement
21 and the false representation, Your Honor.

22 THE COURT: Let me see the report.

23 (Document passed to the Court.)

24 (Pause.)

25 THE COURT: All right. It -- as I understand your line

State v. Chisolm 9/12/11 - 9/19/11

609

1 of questioning up to this point, you have been questioning
2 this witness with regards to the -- to the vehicle and to
3 the items that were obtained in that September/October time
4 frame. And this involves a -- I gather, a gun that was
5 taken from someone sometime later. Over a year later, it
6 appears. And so I'm certainly not going to let you impeach
7 her with this, because of the fairness part of it. If you
8 think that you're impeaching her by her discussion of the
9 alleged murder weapon in this case, and the fact that she
10 said they didn't do the DNA analysis on this gun, that it
11 was sent for ballistics because it was under water, and
12 you're now going to impeach her on a test done on a gun over
13 a year later. I'm going to disallow that just on basic
14 fairness grounds. Just given the way that the testimony has
15 proceeded.

16 Now, if you intend to ask her at some later time on
17 another weapon was there DNA analysis that was performed,
18 we'll talk about that and we'll talk about the relevance
19 just to that, but just a sense of fairness your -- all of
20 your questioning, all of the solicitor's questioning has
21 related to the items taken close to the time of these
22 alleged events.

23 So tell me -- I don't know what you're doing. Tell me
24 what you're doing?

25 MR. CHISOLM: In actuality, Your Honor, the line of

State v. Chisolm 9/12/11 - 9/19/11

610

1 questioning I was recently on I was asking what -- after we
2 got through with the truck, Your Honor, I was asking what
3 further items were tested in comparison against his DNA.
4 The detective started to list pacifier, cigarette butts,
5 things on the scene.

6 THE COURT: Right.

7 MR. CHISOLM: That I asked in connection with this case
8 under this case number, were there any other items compared
9 to Craig Michael Canady's DNA. She said no. That's when I
10 attempted to introduce this in, as in there was another item
11 that was introduced.

12 THE COURT: And what is this case number?

13 MR. HILTON: Is he going by the SLED lab number, I
14 guess?

15 THE COURT: I don't know.

16 MR. HILTON: The SLED lab number is L0714150.

17 COURT REPORTER: I'm sorry?

18 MR. HILTON: I'm sorry, Bonnie. L0714150.

19 Sheriff's Office case number, I think, is 07008989.

20 MR. CHISOLM: I apologize, Your Honor. I'm going under
21 the SLED number of items tested on this case, under the SLED
22 number, because all other items in this case are under the
23 same number, L07-14150. Everything SLED tested in
24 connection with this case is under that same number.

25 THE COURT: I don't know that, because it's referred to

State v. Chisolm 9/12/11 - 9/19/11

611

1 in the report that I'm looking at, that number is called the
2 related case. Now, to -- what I would perceive that to be
3 is that -- it answers -- is this evidence related to another
4 lab number. To another lab number. This -- this -- what
5 are y'all showing me?

6 MR. CHISOLM: Your Honor, it's the lab number that the
7 weapon submitted into evidence was tested under.

8 THE COURT: Okay. The SLED number for the alleged
9 murder weapon is L0714150. This gun, the -- if you will,
10 the silver gun, with the white handle is case number L08-
11 00290. So I'm not going to let -- this jury has got to do a
12 search for the truth. This is absolutely not impeachment.
13 If you want to ask her directly was there another gun at
14 some later time that there was DNA testing done with regards
15 to the alleged victim, we'll talk about that, but this is
16 not impeachment.

17 It's a different, first of all, it's a different case
18 number. It's done over a year later. I don't know -- I
19 don't know the context out of which that came. It's
20 obviously taken from somebody. I don't know what the
21 circumstances are surrounding that. That may be a whole
22 different case. See what I'm saying.

23 MR. CHISOLM: Your Honor --

24 THE COURT: You're not going to use it for impeachment.
25 So if you wish to ask her that question then we'll talk

State v. Chisolm 9/12/11 - 9/19/11

612

1 about the relevance, but it's not impeachment. It's not fair
2 to lay this as impeachment.

3 MR. CHISOLM: I wish to ask the question, Your Honor.
4 If it's two months after my arrest. Two months after my
5 arrest and they're still investigating the case. That's --
6 that's --

7 THE COURT: I thought yours -- I thought we were talking
8 about September of '07. This is February of '08. So it's
9 not a year. September, October, November, December,
10 January, February. It's five months later.

11 MR. HILTON: I don't know the relevance, and if he can
12 articulate some reason of why this gun is relevant. I don't
13 see that.

14 THE COURT: It's not fair impeachment.

15 MR. CHISOLM: It's --

16 THE COURT: Tell me what other relevance?

17 MR. CHISOLM: I would like --

18 THE COURT: Because if -- let me be more articulate. If
19 your position is that you have asked her were there any
20 other DNA test done under this SLED case number, which is
21 where you started, this gun was not tested. The silver gun,
22 was not tested under the SLED number that you are referring
23 to. It was tested under a different SLED number. So based
24 on your argument it isn't impeachment.

25 MR. CHISOLM: I understand, Your Honor.

State v. Chisolm 9/12/11 - 9/19/11

613

1 THE COURT: Okay.

2 MR. CHISOLM: Can I have one moment to confer.

3 THE COURT: Okay.

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

5 MR. CHISOLM: Your Honor, I'm -- I believe when I
6 originally asked the question I asked under Craig Canady's
7 DNA, what items were tested against his DNA. Then her
8 answer -- I can't recall her answer, but then I believe I
9 may have said under the case number. The grounds I'm trying
10 to get it in under, Your Honor, with the original question
11 of -- under what other items were tested against the DNA of
12 Craig Michael Canady. The response was none. I'm sorry,
13 were there other items tested against Craig Michael Canady's
14 DNA. The response was none. I attempted to introduce that
15 to prove that another item was still tested against his DNA.
16 The item happened to be a weapon, but it was tested against
17 his DNA, Your Honor. I believe it's very relevant. I was
18 under arrest. My co-defendant -- I retract that statement,
19 Your Honor.

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

21 THE COURT: All right. I am not going to allow. I'll
22 say this again, I'm not going to allow questions about this
23 other weapon to be used as impeachment of this witness. And
24 the reason is this; if we assume that your question is what
25 other items were tested for DNA. The course of your

State v. Chisolm 9/12/11 - 9/19/11

614

1 interrogation up to that point had been items that this
2 witness had removed from your car and had been involved in
3 -- in this investigation. And there's no question in my
4 mind, but that was the focus of your questions. I do not
5 believe that it is fair impeachment for you to now ask her
6 about a DNA comparison that occurred some five, six months
7 later that I don't know the context of why that was done,
8 was it in this case, was it in another case. I don't know
9 that this witness has any involvement or what her
10 involvement would be. It's under a different case number at
11 SLED. I don't know if it's under the same case number or a
12 different case number at the Sheriff's Department. In my
13 mind it is not fair impeachment. So I'm not going to allow
14 you to ask her that question to show that she's being
15 untruthful with this jury, because I don't think it's fair
16 impeachment.

17 However, however, if you can show me, if you can
18 explain to me why it is relevant in this case, I will
19 certainly allow you, unless there's another objection, I
20 will allow you to ask that question. I'm just not going to
21 allow it for the purpose of impeaching this witness. It's
22 not fair impeachment. However, if there is some relevance
23 to these matter that this testing of this gun has, I don't
24 want to keep you from telling me that. I want you to tell
25 me that. But it isn't fair impeachment in my mind, but if

State v. Chisolm 9/12/11 - 9/19/11

615

1 it has some relevance to these issues other than
2 impeachment, please let me know.

3 MR. CHISOLM: My co-defendant's daughter, Shaquanda
4 White, who took the stand, who's testified already.

5 THE COURT: Yes.

6 MR. CHISOLM: Her boyfriend at the time was named Siquan
7 Moody (sp). That's who --

8 COURT REPORTER: Who?

9 MR. CHISOLM: Siquan Moody. The person that Tamekka
10 Williams got on the stand and said that Red was with the
11 last time she saw him on Thursday, and after he left Siquan,
12 Red came with me. I told detectives after Red left me he
13 went back to Azalea Park. Azalea Park is where Siquan Moody
14 stays at. The person that they recovered that gun from is
15 Pierre Moody, that's Siquan Moody's younger brother.
16 They're testing DNA from Craig Michael Canady against Pierre
17 Moody's gun and they're all in the Haven Oaks -- I'm sorry
18 -- they're all in the Azalea Park area, and this is after,
19 like I said, Your Honor, we're already under arrest. But
20 they're still investigating that Red went to Azalea Park and
21 Siquan Moody and Pierre Moody, and they're testing his DNA
22 exactly two to three months after David White said this
23 happened, I did this, after David White gave them a weapon
24 that has never been proven to be the murder weapon. If all
25 that was true, why are they still investigating Siquan

State v. Chisolm 9/12/11 - 9/19/11

616

1 Moody's little brother against Craig Michael Canady's DNA on
2 his gun. A 25 automatic, which is a similar caliber to a 22
3 automatic. Because the projectile that was recovered, it
4 doesn't say exactly if it's a 22 or a 25 projectile. It
5 could vary. I have the SLED reports on the projectile, as
6 well, Your Honor.

7 THE COURT: Let me see those.

8 (Documents pass to the Court.)

9 THE COURT: Thank you.

10 (Pause.)

11 MR. HILTON: Your Honor, is that the November 27th
12 report of Ira Parnell?

13 THE COURT: This is November 27, 2007. Nope. This is
14 Nicky Perry. Submitted by Jamie Zensen and received by
15 Nicky Perry. Not -- it's not a report -- well, wait a
16 minute, now -- let's see. November 27, 2007, signed -- the
17 one that I have is signed by Nicky Perry. Received by Nicky
18 Perry, submitted by Jamie Zensen. That's what it says.

19 MR. HILTON: May I see what you're looking at?

20 THE COURT: Of course.

21 MR. HILTON: I'm not --

22 THE COURT: He should have shown it to you first. Here,
23 let me give that to you before I look at it.

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

25 (Documents passed to Mr. Hilton.)

State v. Chisolm 9/12/11 - 9/19/11

617

1 MR. HILTON: I think we're dealing with the second page
2 is not the second page of the first one. It should be signed
3 by Ira Parnell.

4 MR. CHISOLM: Okay.

5 (Documents passed to the Court.)

6 THE COURT: Thank you.

7 (Pause.)

8 THE COURT: Where are those other two sheets that I had
9 on that other gun? I don't think I still have those up
10 here. I think I returned those. No, I don't.

11 MR. CHISOLM: There's a ballistics report, as well, that
12 weapon, Your Honor.

13 (Documents passed to Court.)

14 THE COURT: Great.

15 (Pause.)

16 THE COURT: Well, now tell me how you think the DNA
17 testing of the gun in February is connected to this
18 investigation?

19 MR. CHISOLM: Your Honor, they're alleging that the
20 victim got shot in the head, that the gun got put to his
21 head. They were testing another weapon to see if his DNA is
22 on that weapon. They're testing that weapon, clearly, to
23 see if Craig Michael Canady's DNA is on that weapon.

24 THE COURT: Well, according to the SLED report, the
25 weapon that's tested in the report in February of '08, that

State v. Chisolm 9/12/11 - 9/19/11

618

1 gun apparently is a 27 semi-automatic pistol which could not
2 fire the bullet that was removed from the body of this
3 alleged victim.

4 MR. CHISOLM: That's Item 27.

5 THE COURT: Yeah.

6 MR. CHISOLM: That's what you're reading that's saying
7 that that gun is not the murder weapon, Your Honor.

8 THE COURT: That's not what that's saying.

9 MR. CHISOLM: Well, it's saying --

10 THE COURT: That's not what that's saying. That clearly
11 isn't what that's saying, and if that's what you're saying,
12 you really need to go over that with Mr. Loy, because I'm
13 concerned that that is your interpretation of this report.

14 MR. CHISOLM: It's not conclusively saying that that is
15 the murder weapon, Your Honor.

16 THE COURT: That makes me much more comfortable. Thank
17 you.

18 There just isn't any connection between the two. I'm
19 sorry. I'm not going to let you cross-examine this witness,
20 certainly, about it, and if you and Mr. Loy can come up with
21 some way to make it relevant, I certainly want to hear from
22 you, because the bullet that was removed from the alleged
23 victim in this case, according to that report -- have you
24 got more reports, you've got expert testimony, I certainly
25 would suggest that you show it to me. But one thing that

State v. Chisolm 9/12/11 - 9/19/11

619

1 couldn't happened is that it couldn't have been fired from
2 that second weapon. So if I'm not going to allow it for
3 purposes of impeachment I -- I don't know what the relevance
4 is. I don't know what the relevance is.

5 All right. Anything further.

6 MR. HILTON: Nothing from the state.

7 THE COURT: Anything further?

8 MR. CHISOLM: Nothing further, Your Honor.

9 THE COURT: Okay. Let me have the jury back, please. I
10 know it's 1:00 o'clock, but if we can conclude this witness,
11 I'd like to be able to get that done. So would she.

12 (Jury in at 12:58 p.m.)

13 THE COURT: All right. You may continue Mr. Chisolm with
14 your cross-examination

15 MR. CHISOLM: One moment to confer, please, Your Honor.

16 THE COURT: Okay.

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

18 JAMIE ZENSEN - CONTINUED CROSS-EXAMINATION

19 BY MR. CHISOLM:

20 Q Have you in your profession ever dealt with the
21 collection of guns and ammunition at a crime scene?

22 A Yes, I have.

23 Q Would you say you have a vast amount of experience, a
24 vast amount of experience dealing with the detection -- I'm
25 sorry -- dealing with the collection of guns and ammunition

State v. Chisolm 9/12/11 - 9/19/11

620

1 or spent projectiles?

2 A (No response.)

3 Q Collection?

4 A Collection, yes.

5 Q Okay. Could you tell me some of the reasons you're
6 send a gun and a spent projectile together for processing?

7 A In Dorchester County, we have a policy, any gun that
8 comes into -- that we acquire, it doesn't matter what reason
9 we have it, from something as simple as a traffic stop all
10 the way up to a homicide. We sent that to what we call IBIS,
11 the Integrated Ballistics Identification System. We do it
12 for CDV, if a lady was to -- we had a young lady, her
13 husband passed away and she didn't want a firearm in her
14 residence. It also goes, even though it's being turned over
15 or recovered by Dorchester County. They all go and get put
16 into this Integrated Ballistics Identification System.
17 There's not a set standard for a gun that's going to be
18 entered into that.

19 Q Can a gun or a projectile or bullet be tested to
20 determine if a projectile was fired from a specific gun?

21 A I'm not a firearms expert, but from my understanding --
22 MR. HILTON: Objection, Your Honor, outside the scope of
23 expertise.

24 THE COURT: Sustained.

25 BY MR. CHISOLM:

State v. Chisolm 9/12/11 - 9/19/11

621

1 Q You said you helped with the recovery, correct?

2 A Yes.

3 Q Could you tell me if it was one or two people who moved
4 the body when you all --

5 MR. HILTON: Objection.

6 THE COURT: Let me hear the question again?

7 MR. CHISOLM: Could you tell me if it was one or two
8 people who moved the body?

9 THE COURT: At what point?

10 MR. CHISOLM: To remove him from the scene, Your Honor.

11 MR. HILTON: I mean, maybe he could just rephrase it.

12 THE COURT: Okay.

13 MR. CHISOLM: One second, Your Honor.

14 THE COURT: Okay.

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

16 BY MR. CHISOLM:

17 Q You were there when the body was removed, correct?

18 A Yes, I was.

19 Q Could you tell me how the body was removed from the
20 ditch to the coroner's wagon?

21 A In order for us to do that, we place the victim inside
22 a body bag. Zipped up. Being that it was such a slope we
23 had to life him up, obviously, over that and then placed him
24 on the gurney and placed him in the coroner's van, at that
25 point.

State v. Chisolm 9/12/11 - 9/19/11

622

1 Q Was that a team lift effort?

2 A (No response.)

3 Q Team lift. Two people?

4 A I can't give you exactly how many people. It was a
5 steep embankment that we had to get him up. I would assume
6 it would have been more than myself and the coroner. I
7 don't remember exactly how many people helped lift him from
8 that steep embankment up onto the embankment and then placed
9 him on the gurney.

10 Q But there was more than one person?

11 A Obviously, it was more than one person. Yes.

12 Q Were there any apparent drag -- you processed the
13 entire scene, correct?

14 A Yes.

15 Q Were there any apparent drag marks on the ground from
16 the street to where the body was found?

17 A Not to my recollection. No.

18 MR. CHISOLM: I have no further questions.

19 THE COURT: All right. Redirect?

20 MR. HILTON: Very briefly, Your Honor.

21 THE COURT: Okay.

22 JAMIE ZENSEN - REDIRECT EXAMINATION

23 BY MR. HILTON:

24 Q Det. Zensen, you talked with the defendant a good bit
25 about evidence transfer. Wouldn't transfer, I guess it

State v. Chisolm 9/12/11 - 9/19/11

623

1 assumes either drippage or contact, is that your
2 understanding of it?

3 A Yes.

4 Q And so would it be the case if a bloody shirt wasn't in
5 contact with the seat because of a body being slumped or
6 positioned a certain way that there would be no transfer?

7 A That's correct.

8 Q Now, changing the subject just a little bit. Mr.
9 Chisolm talked about some of the items on the SLED report
10 that's been introduced as Defendant's Exhibit No. 8. I
11 think it was a couple swabs that you could excluded the
12 victim, Craig Michael Canady as a contributor. What about
13 Items 26.1 and 26.2; can the victim be excluded from those
14 items?

15 A No, he could not.

16 Q And what were those items?

17 A Those were swabs from the center console that had blood
18 indicated on them.

19 Q And then, finally, Mr. Chisolm talked about drag marks
20 and so forth. About how many days was it between -- well,
21 let me just rephrase a little bit and ask, had the body been
22 there for some time?

23 A Yes, he had been there.

24 Q And as far as moving the body up the ditch and out of
25 the bank, is it easier going uphill or downhill?

State v. Chisolm 9/12/11 - 9/19/11

624

1 A It's easier to go downhill.

2 THE COURT: Recross?

3 MR. CHISOLM: I believe so, Your Honor.

4 JAMIE ZENSEN - RE-CROSS EXAMINATION

5 BY MR. CHISOLM:

6 Q Does the report say the partial DNA profile developed
7 for 26.2 was insufficient for reliable interpretation?

8 A That is correct.

9 Q No DNA profile was developed for Item 26.1?

10 A That is correct. It tested positive for blood, but no
11 DNA because of the small amount that was collected.

12 MR. CHISOLM: Thank you.

13 THE COURT: All right. Is this witness free to leave?

14 MR. HILTON: She is, Your Honor.

15 THE COURT: Any objection.

16 MR. CHISOLM: No objection, Your Honor.

17 THE COURT: Very well. You are free to go.

18 Ladies and gentlemen, we have now reached our lunch
19 hour, and I'm going to ask you, do you think you could be
20 back by 2:15, that give you a little over an hour?

21 Very well. Excellent.

22 Ladies and gentlemen, we will reconvene at 2:15. Do
23 not discuss this matter or allow anyone to discuss this
24 matter with you. Don't read anything or listen to anything
25 about this matter. No blogging, etcetera. No social media

State v. Chisolm 9/12/11 - 9/19/11

625

1 regarding this matter. I'll look forward to seeing you at
2 2:15. Have a good lunch.

3 (Jury out at 1:08 p.m.)

4 THE COURT: All right. Anything from the state before we
5 take our recess for lunch?

6 MR. HILTON: Nothing, Your Honor.

7 THE COURT: And from the defense?

8 MR. CHISOLM: I have nothing, Your Honor.

9 THE COURT: All right. I'll see you all about 10 minutes
10 after 2:00.

11 (Court in recess for lunch at 1:09 p.m.)

12 (Court in session after lunch at 2:26 p.m.)

13 THE COURT: All right. Anything from the state before we
14 begin?

15 MR. HILTON: Nothing from the state, Your Honor.

16 THE COURT: Mr. Chisolm?

17 MR. CHISOLM: Nothing, Your Honor.

18 THE COURT: All right. Very well. Let us have the jury.

19 (Jury in at 2:27 p.m.)

20 THE COURT: All right. Ladies and gentlemen, we will
21 continue with the state's case.

22 Please call your next witness.

23 MR. HILTON: Thank Your Honor. State would call Det.
24 Mike Giglio.

25 THE COURT: All right. Come along, please, and be sworn.

State v. Chisolm 9/12/11 - 9/19/11

626

1 THE CLERK: Please raise your right hand. State your
2 full name for the record.

3 MR. GIGLIO. First name is Michael. Middle initial is
4 J, for John. Last name is Giglio.

5 (WHEREUPON, Mike Giglio was sworn
6 to tell the truth.)

7 THE CLERK: Thank you.

8 THE COURT: Your witness.

9 MR. HILTON: Thank Your Honor.

10 THE COURT: Uh-huh. (Affirmative response.)

11 MIKE GIGLIO - DIRECT EXAMINATION

12 BY MR. HILTON:

13 Q Det. Giglio, where are you employed?

14 A Dorchester County Sheriff's Office.

15 Q And how long have you been working there?

16 A About nine and a-half years.

17 Q All right. And back in September of 2007, what position
18 did you hold in the Sheriff's Office?

19 A I was assigned to the detective division. I'm also a
20 general investigator.

21 Q Okay. What position do you hold now?

22 A I'm currently a patrol sergeant. I work the night
23 shift.

24 Q Was that a promotion?

25 A Yes, sir. I left investigation, transferred back to

State v. Chisolm 9/12/11 - 9/19/11

627

1 road for a promotion.

2 Q Were you assigned as one of the lead investigators
3 investigating the death of Mr. Michael Craig -- Craig
4 Michael Canady?

5 A Yes, sir. Myself and Det. Walsh.

6 Q And what does lead investigator mean?

7 A Basically, it's kind of like a checks and balance kind
8 of thing when we have two investigators. Like I said, Det.
9 Walsh and myself were both lead investigators on this case.
10 We were the two investigators assigned this case by Capt.
11 Marshall.

12 As a lead investigator we would, basically, as tasks or
13 information arose assign it to other investigators.
14 Basically, we wanted to resolve this case in a timely
15 fashion, therefore, as wealth of knowledge, information,
16 facts, evidence, things like progress throughout the case,
17 we can't be everywhere at once, so we'd ask other
18 investigators to assist us in that regard.

19 As a lead investigator we conduct interviews, we speak
20 with different people, gather as much information as we can
21 about the case.

22 Q All right. And with regard to this case, just kind of
23 give us a brief overview of how the case progress up until
24 the time Mr. Chisolm was arrested?

25 A Yes, sir.

State v. Chisolm 9/12/11 - 9/19/11

628

1 This was a rather lengthy investigation where we
2 exhausted a lot of leads. This case initially began on
3 September 15th for the Sheriff's Office, September 15, 2007,
4 the victims body was found in the Clubhouse community in
5 Dorchester County. That would have been a Saturday.

6 The on-call detectives at that time was Det. Greer and
7 Det. Bistromowitz. I believe you heard from them earlier in
8 testimony. Detectives Greer and Bistromowitz responded out
9 on September 15th. At that time, the victim's body was
10 later identified through the CVS card and some other
11 interviews conducted by initial investigators.

12 Once, again, the victim, Craig Michael Canady was
13 identified his body went for an autopsy. At the autopsy it
14 was determine that the cause or the manner of his death was
15 the result of a homicide, gunshot wound to the heard from a
16 small caliber. I believe it was a 22.

17 At that time, that was September 16, Sunday, Capt.
18 Marshall, who was the head of the detective division
19 contacted Det. Walsh and myself along with -- probably the
20 entire detective division at that point to come to the
21 Sheriff's Office and begin investigating this case. Det.
22 Walsh and I had worked homicide cases together in the past,
23 so he paired us up and therefore we became the lead
24 detectives.

25 Q What was one of the first things that y'all started to

State v. Chisolm 9/12/11 - 9/19/11

629

1 do after you identified the body, as far as location of the
2 victim?

3 A Well, like I said, the key piece of evidence is who is
4 the victim. That's how every homicide investigation begins
5 with. We know that at that time the victim was Craig Michael
6 Canady. Well, who was he. We needed to find out more
7 information about Mr. Canady. Where was he from, who did he
8 live with. Who were the last people with him. That's
9 basically a starting point for us.

10 Q Were y'all able to find that out?

11 A Yes, sir, we were.

12 Q And who were the two people who were the last people
13 with the victim?

14 MR. CHISOLM: Objection, hearsay, Your Honor.

15 A Okay. During the course of the investigation --

16 THE COURT: Slow down. There's an objection.

17 MR. HILTON: The testimony's been heard as to really how
18 they progressed in their investigation.

19 THE COURT: Rephrase your question.

20 BY MR. HILTON:

21 Q Did you learn who the last two folks were with the
22 victim?

23 A Yes, sir. The last two --

24 MR. CHISOLM: Objection.

25 BY MR. HILTON:

State v. Chisolm 9/12/11 - 9/19/11

630

1 Q Let me stop you right there.

2 Now, were you able to talk with -- were you able to
3 focus your investigation then on the folks that were last
4 involved with the victim?

5 A Yes, sir. As I was explaining. We started doing a
6 time line, known in advance, what could we verify, what
7 information did we have. And based on known verifiable
8 facts, information that we could proceed from; credible
9 witnesses, people in the community, people who knew Mr.
10 Canady, people who came forward and approached law
11 enforcement. That's how we basically -- it's a puzzle. We
12 built a time line. What do we know and from there it kind
13 of filled the pieces in.

14 Q How many people would you say you interviewed over the
15 course of your investigation?

16 A Probably 100 people or more.

17 Q Now, specifically, with David White and Donsurvi
18 Chisolm did you -- were you able to find out that they were
19 the last people with the victim?

20 A Yes, sir.

21 Q And after you found out that information what did you
22 do next in your investigation as far as starting to
23 corroborate some of that?

24 A Basically, we needed to build that time line. I keep
25 referring to this time line throughout my testimony,

State v. Chisolm 9/12/11 - 9/19/11

631

1 probably, but this whole case is based upon known and
2 verifiable facts that we can articulate.

3 Mr. Chisolm and Mr. White were the last two people
4 known to be with the victim when he was alive. We had no
5 other verifiable reported sightings of them. We had no
6 other information that the victim had been here or there or
7 contracted this person after September 13th.

8 Q Did you subpoena some phone records for the victim at
9 that time?

10 A Yes, sir. During a normal course of investigation of a
11 homicide and in this day and age everybody carries a cell
12 phone. Land lines are getting to be few and far between.
13 It's common practice that we subpoena phone records.

14 We know the victims phone number. We obtained that
15 information through his girlfriend, Ms. Tamekka Williams,
16 also other parties came forward and said, hey, Mr. Canady or
17 people called him Red, his cell phone number was such and
18 such. It was [REDACTED]. So one of the first phone
19 records we were going to get through an investigation at
20 that time was Mr. Canady's. We also subpoenaed Mr.
21 Chisolm's phone records, as well as other phone records.

22 I believe Det. Greer, who was one of the other
23 investigators assisting, that was one of her tasks, she
24 obtained a lot of the search warrants and contacted the
25 phone carriers, and daily we were getting phone records

State v. Chisolm 9/12/11 - 9/19/11

632

1 coming in, bombarded with paper work regarding this case.

2 Q Were you able to get any phone records for David White?

3 A Yes, sir. Mr. David White didn't actually have a cell
4 phone that belonged to him, but he told us through
5 interviews that he had a cell phone that belonged to a
6 friend of his named Jay Williams that he would use when Jay
7 was at his home in Evergreen. So we did subpoena those
8 phone records. That phone number was [REDACTED].

9 COURT REPORTER: Sorry?

10 A [REDACTED].

11 BY MR. HILTON:

12 Q Now, going back to David White and Donsurvi Chisolm as
13 being the last two individuals that were with the victim,
14 were y'all able to start checking on some of the stories
15 that they were giving at that time?

16 A Yes, sir. Initially, this investigation kind of got
17 sidelined. Mr. Chisolm initially approached officers and
18 provided some information and initially it was believed that
19 he was trying to be a helpful, you know, participant in this
20 investigation. In fact, it seemed like this investigation
21 kept getting mislead in a lot of different directions.
22 Through phone records which Mr. Chisolm suggested to
23 officers, we knew some of his information was incredible.
24 We also verified through sightings, through other third
25 parties, Mr. Siquan Moody, Shaquanda White that the victim

State v. Chisolm 9/12/11 - 9/19/11

633

1 was alive, was with Donsurvi Chisolm and David White in
2 Evergreen on September 13th, about 4:00 a.m.

3 Q Were you able to learn from the defendant's phone
4 records anything about the seat on his vehicle?

5 A Yes, sir.

6 Q And how -- what could you learn about a seat from phone
7 records?

8 A That the defendant's phone records, Mr. Chisolm's phone
9 records, upon exploring them or looking through them, like I
10 said, initially, our initial point of focus was the time of
11 death. The day of death, the time of death, around September
12 13, early morning hours. Once we verified and got
13 information basically between Mr. Chisolm's testimonies or
14 reports to law enforcement officers, between sightings from
15 other people we kind of locked in on where he was and who he
16 was with at that time.

17 When we began to explorer his phone records a little
18 bit further, days beyond the death --

19 MR. CHISOLM: Your Honor, that's a matter of law.

20 THE COURT: Okay. Ladies and gentlemen, will you please
21 step to your jury room. Do not discuss this matter with
22 anyone. Do not allow anyone to discuss it with you.

23 (Jury out at 2:38 p.m.)

24 THE COURT: All right. What is your matter of law?

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

State v. Chisolm 9/12/11 - 9/19/11

634

1 MR. CHISOLM: My phone records were conditionally
2 introduced and he said he would lay the foundation and that
3 hasn't been laid yet, and he's publishing the phone records,
4 Your Honor. They have not been introduced. Well, they were
5 conditionally introduced in to evidence. They've never
6 connected the dots so he should be able to publish them.

7 MR. HILTON: Can I just briefly respond, Your Honor.

8 MR. CHISOLM: Sure.

9 MR. HILTON: Det. Bistromowitz testified, I think he was
10 maybe the third witness in the case. He testified that they
11 were on Tamekka Williams apartment on September 15, 2007,
12 that was the day the body was discovered. It was at that
13 point that Mr. Chisolm came up to them and he ended up
14 volunteering his phone number of [REDACTED], maybe -- that
15 might be the number. I'm just going from memory, but he
16 volunteered his phone number. As a matter of fact,
17 subsequent to that we had Ms. Sue Johnson from T-Mobile, the
18 company that took over the defendant's phone records, and we
19 introduced records for telephone number -- I'm sorry, it was
20 [REDACTED], and those records were introduced at that time.
21 At that time, the motion was made that they be conditionally
22 relevant --

23 THE COURT: Conditionally admitted.

24 MR. HILTON: Conditionally admitted by the defendant.

25 When he made that objection I wasn't quite sure he was

State v. Chisolm 9/12/11 - 9/19/11

635

1 talking about the phone number. That phone number had been
2 established by the time Sue Johnson testified and otherwise.
3 So I think the fact that his phone number was given by him
4 to police and a statement, the fact that we had the
5 telephone person come down and authenticate records for the
6 phone number that he gave police. I think that they are
7 authenticated and that we can talk about it at this point in
8 time in the trial.

9 THE COURT: Additionally, to that, on cross-examination,
10 Mr. Chisolm refers to it as, my number.

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

12 MR. CHISOLM: Thank you, Your Honor.

13 THE COURT: All right. May I have my jury back.

14 It's no longer conditionally in evidence. They would
15 be in evidence.

16 (State's Exhibit No. 17, phone
17 records, was marked and entered.)

18 COURT REPORTER: State's 17.

19 THE COURT: Thank you.

20 (Jury in at 2:41 p.m.)

21 THE COURT: Okay, you may continue.

22 MR. HILTON: Thank Your Honor.

23 MIKE GIGLIO - CONTINUED DIRECT EXAMINATION

24 BY MR. HILTON:

25 Q Det. Giglio, just let me repeat the question again.

State v. Chisolm 9/12/11 - 9/19/11

636

1 Were you able to find out anything through the defendant's
2 telephone records anything about the seat in this vehicle?

3 A Through the utilization of his phone records, and like
4 I said, exploring them, we noticed on September 14, which
5 would have been the Friday, the day after the victim's
6 death, he called, I'd say junkyards, but one was a Dodge
7 Dealer, one was a salvage yard, LKQ Auto Parts. Basically
8 in a matter of several minutes he went from different --
9 calling different business all related to vehicle related
10 services, which kind of peeked my interest a little bit.

11 Q Okay. We're going to come back to that in a few
12 moments. But now what about the victim's phone; were y'all
13 ever able to actually locate the actual victim's phone?

14 A No, sir, we were not.

15 Q But you did get his records, correct?

16 A Yes, sir, that's correct.

17 Q And what telephone number did he have?

18 A The victim, Mr. Craig Michael Canady, he had a cellular
19 phone [REDACTED].

20 Q And who is Tabitha Polite?

21 A Tabitha Polite was a female acquaintance of him. The
22 phone was actually registered to her.

23 Q So these telephone records that say Tabitha Polite,
24 which are marked as State's Exhibit 16, is that, in fact,
25 the victim's phone records?

State v. Chisolm 9/12/11 - 9/19/11

637

1 A Yes, sir.

2 Q After finding out about the junkyards were you able to
3 go to some of those junkyards and verify whether the
4 defendant had been there or not?

5 A Yes, sir. Initially --

6 MR. CHISOLM: Objection, Your Honor. Calls for hearsay.

7 MR. HILTON: I'll come back to that, Your Honor.

8 THE COURT: Very well.

9 BY MR. HILTON:

10 Q Did you ever go out to LKQ Automotive?

11 A Yes, I did.

12 Q Is that one of the junkyards the defendant was calling
13 on his phone records?

14 A Yes, sir. That's one of the numbers that showed up on
15 Mr. Chisolm's phone records.

16 Q I'll show you what's marked as State's Exhibit No. 21.
17 Is that where you went?

18 A Yes, sir. I took that photograph.

19 Q Did you meet with Richard Johns or George Gallardo
20 there?

21 A Yes, sir, I did.

22 Q Okay. Were you able to inspect the junk car at LKQ
23 automotive?

24 A Yes, sir. It was a Dodge Durango, I believe it was a
25 dark color with gray interior.

1 Q Was it missing a seat?

2 A Yes, sir, it's missing the passenger side seat?

3 Q Were you able to get like a VIN number or a serial
4 number off of that car?

5 A Yes, sir. Basically, well, we photographed and
6 documented that car. We inspected the driver's side seat
7 and obtained the serial numbers. All the numbers listed on
8 the bottom. Some of them were electrical component numbers,
9 some numbers were specific to the trim code of the vehicle.
10 Some were specific to the seat itself for that vehicle.

11 Q At some point in time were you able to find the
12 passenger seat that was taken out of that Dodge Durango at
13 the junkyard?

14 A Yes, sir, we sure did.

15 Q Where was that located?

16 A Inside the 2005 Dodge Durango operated by Mr. Chisolm.

17 Q Were you able to match up serial numbers?

18 A Yes, sir.

19 Q And when you say the 2005 Dodge Durango, let me show
20 you State's Exhibit No. 6 and just ask you if that's what
21 you're referring to?

22 A Yes, sir.

23 Q And is that the defendant's car?

24 A It's the defendant's vehicle.

25 Q At some point in time did y'all find a weapon that was

State v. Chisolm 9/12/11 - 9/19/11

639

1 involved in this case?

2 A Yes, sir.

3 Q When was that?

4 A That was the latter part of November. I believe it was
5 November 19th, when Mr. Chisolm's co-defendant came forward
6 and voluntarily provided information that verified and
7 corroborated information that we had on this case.

8 Q And after Mr. White came forward were you able to find
9 the gun?

10 A Yes, sir, the murder weapon, what we believe to be the
11 murder weapon, described by Mr. David White, was recovered
12 from the Ashley River.

13 Q Is that State's Exhibit No. 14?

14 A Yes, sir, it is.

15 Q Did y'all tell him where that gun was?

16 A No, sir.

17 Q Did you even know where the gun was at the time?

18 A No, sir, I did not.

19 Q Now, also after David White came forward, I think
20 that's when you learned the location of the murder scene, is
21 that correct?

22 A Yes, sir.

23 Q And where is that?

24 A That was in the Azalea Park community of Orangeburg
25 Road in Dorchester County, roughly two blocks from Highway

State v. Chisolm 9/12/11 - 9/19/11

640

1 17-A and Orangeburg Road, right behind the BiLo area.

2 Q Did you all go out to that scene?

3 A Yes, we did.

4 Q And I'll show you what's been entered into evidence as
5 State's Exhibit No. 13 and just ask is this the area we're
6 talking about, marked as Azalea Park?

7 A Can I step down or you bring it to me?

8 Q I'll bring it to you.

9 A My eyes aren't --

10 Q Is that area labeled as Azalea Park?

11 A Yes, sir.

12 Q Did y'all go out to that scene?

13 A Yes, sir, we did.

14 Q Did you look around on the ground or anything for any
15 evidence?

16 A Yes, sir.

17 Q We canvassed Azalea Park, Haven Oaks, quite frequently.
18 Once we discovered the actual murder location was Azalea
19 Park we returned to that area, walked around to see if there
20 was any potential evidence. Now, granted this was now
21 November that this information came to us that this was the
22 exact incident location, when we returned. We know the time
23 of death was September 13th.

24 Q Detective, at some point in time in one of Mr.

25 Chisolm's statements, did y'all learn that according to him

State v. Chisolm 9/12/11 - 9/19/11

641

1 the victim had jumped a little canal, a ditch-way from Haven
2 Oaks to Azalea Park?

3 A Yes, sir. And actually to elaborate a little bit
4 further on that, I believe it was October 19th when Mr.
5 Chisolm flagged down Det. Greer and Det. Walsh, who was my
6 partner in this case, and actually pointed out the location
7 where the victim allegedly crossed over when he dropped him
8 off.

9 Q Let me show you what's been marked as State's No. 11,
10 for identification and ask if you recognize that?

11 A Yes, sir. That is the ditch between Azalea Park and
12 Haven Oaks.

13 Q Is that an accurate picture of that area?

14 A Yes, sir.

15 Q Is that an area that Mr. Chisolm was talking about?

16 A Yes, sir.

17 MR. HILTON: Your Honor, at this time, we'd offer
18 State's Exhibit No. 11 into evidence.

19 THE COURT: Did you show it to Mr. Chisolm?

20 MR. CHISOLM: I have no objection.

21 THE COURT: Very well. In evidence without objection.

22 (State's Exhibit No. 11, photo, was
23 marked and entered.)

24 (State's Exhibit No. 32, photo, was
25 marked for ID only.)

State v. Chisolm 9/12/11 - 9/19/11

642

1 BY MR. HILTON:

2 Q Let me show you what's been marked as State's Exhibit
3 No. 32 for identification and ask if you recognize this?

4 A Yes, sir. That's the same ditch area between Azalea
5 Park and Haven Oaks.

6 Q Is that picture a little closer picture of it?

7 A Yes, sir.

8 MR. HILTON: Your Honor, at this time, I'd offer State's
9 Exhibit No. 32 into evidence.

10 THE COURT: Have you shown it to --

11 MR. HILTON: I did.

12 MR. CHISOLM: I have no objection.

13 THE COURT: Very well. State's 32 entered without
14 objection.

15 (State's Exhibit No. 32, photo, was
16 marked and entered.)

17 BY MR. HILTON:

18 Q Det. Giglio, does this area stay pretty muddy?

19 A It changes with the weather. I can't say that it's
20 muddy nor do I live in the community to say that it's muddy
21 all the time. It's soft ground. It's not a concrete
22 surface.

23 Q During the course of your investigation were you able
24 to determine the weather conditions around the time of
25 September 13, 2007?

State v. Chisolm 9/12/11 - 9/19/11

643

1 A Yes, sir. And in the normal course of things that we
2 do during a homicide investigation is at least when Det.
3 Walsh and I work cases together, we pull the week's weather
4 chart, go to weather dot com. Go to an on-line site and
5 get the week's trend in weather, that way we have a weather
6 forecast and then what we did was later on when we went back
7 to explore the Haven Oaks Azalea Park ditch that Mr. Chisolm
8 reported the victim crossed, we picked a week when the
9 weather was similar in trend, you know, if it rained three
10 days before, we waited until the weather was consistent when
11 we returned out there.

12 Q Let me show you what's been marked for identification
13 as State's Exhibit No. 10. Just ask if you recognize this?

14 A Yes, sir. I sure do. That's my muddy shoe.

15 MR. HILTON: Your Honor, at this time, we'd offer
16 State's Exhibit No. 10, into evidence.

17 THE COURT: Have you showed it to Mr. Chisolm?

18 MR. HILTON: I did.

19 THE COURT: All right.

20 Any objection?

21 MR. CHISOLM: No objection, Your Honor.

22 THE COURT: All right. No objection, into evidence.

23 BY MR. HILTON:

24 Q This is the picture taken during similar conditions to
25 September 13th?

State v. Chisolm 9/12/11 - 9/19/11

644

1 A Yes, sir. What we did is Det. Walsh and myself, Det
2 Walsh actually took the photograph and I'm actually wearing
3 those shoes right now. Not muddy, of course, but we returned
4 out to the Haven Oaks community and attempted to walk across
5 and navigate through the ditch the same area that Mr.
6 Chisolm pointed out the victim crossed.

7 Q At some point in time around September 27, 2007, did
8 you -- excuse me, were you involved in a seizure and
9 execution of a search warrant on a 2005 Dodge Durango
10 belonging to the defendant?

11 A Yes, sir. On September 27, 2007, I obtained an arrest
12 warrant from the Chief Magistrate in Dorchester County, at
13 that time. It was Mr. Glen Stephens. The magistrate signed
14 a search warrant for the vehicle. At which time I contacted
15 Det. Natalie, who is one of our narcotics officers who was
16 in an unmarked vehicle able to conduct surveillance. Det.
17 Natalie was notified prior to me going to meet with the
18 judge, and let him know, hey, we may be obtaining a search
19 warrant on his vehicle, so he began surveillance. Once the
20 search warrant was obtained and signed I notified the
21 detective and said, we have a signed search warrant we need
22 to conduct a stop on this vehicle. We're going to seize
23 this vehicle as evidence.

24 Q Is that what happened?

25 A Yes, sir.

State v. Chisolm 9/12/11 - 9/19/11

645

1 Q All right. Did you arrive on scene once the vehicle was
2 stopped?

3 A Yes, sir, I did.

4 Q Okay. Did you have the search warrant with you?

5 A Yes, sir, I did.

6 Q And when you're executing a search warrant do you read
7 the search warrant to the defendant?

8 A Yes, sir, I do.

9 Q Do you read their Miranda rights to them?

10 A Yes, sir. At that time, on September 27th, I got out
11 with Mr. Chisolm. He was actually detained by the
12 Summerville Police Officer, at that point, placed in a
13 patrol car. Based on him being detained, I felt it was
14 appropriate that Mr. Chisolm be advised of his Miranda
15 rights. So upon my first meeting with him I advised him of
16 his Miranda rights.

17 Q And Miranda rights, that's the right to remain silent
18 and so forth?

19 A Yes, sir.

20 Q Okay. Did you read him that search warrant?

21 A Yes, sir. I sure did. Actually, I recall a
22 conversation where he basically said you don't have to, but
23 it's common practice, if I'm going to execute a warrant I'm
24 going to read it to the person. So I read him the entire
25 length of the warrant.

State v. Chisolm 9/12/11 - 9/19/11

646

1 Q At some point in time, did he stop you while you were
2 reading it?

3 A Yes, sir, he did.

4 Q When was that?

5 A Towards the end of the warrant, there's a paragraph
6 that details how Mr. Chisolm came into possession of a new
7 passenger side seat. At which time he kind of interrupted
8 and said, wait, what was that part. He seemed --

9 Q Did --

10 A -- I'm sorry. To me it seemed like he was alarmed or
11 surprised that we obtained that information.

12 MR. CHISOLM: Objection, Your Honor. Conclusion.

13 THE COURT: He can talk about what he saw, but he cannot
14 interpret. He can talk about what he saw.

15 BY MR. HILTON:

16 Q Did he give you any explanation at that time why he had
17 changed out his seat?

18 A No, sir. And I even asked him at that time, if he'd
19 like to come to the office and speak with me, but he
20 declined.

21 Q Now, during the course of your investigation would
22 y'all ever go out to the Haven Oaks community?

23 A Yes, sir. Quite frequently.

24 Q I mean, that's where the defendant lived, right?

25 A Yes, sir, but that's where the defendant lived, that's

State v. Chisolm 9/12/11 - 9/19/11

647

1 where the victim lived.

2 Q Okay. Did some of your witnesses live out there?

3 A Yes, sir.

4 Q And after talking with those witnesses did the
5 defendant do anything unusual?

6 A Yes, sir.

7 Q What was that?

8 A Well, local law enforcement can't sneak into the Haven
9 Oaks community unnoticed. A Crown Victoria is a pretty
10 common patrol car, so when a Crown Victoria comes into the
11 Haven Oaks area it -- it's not -- I'm not surprised to see
12 people move or scurry away. When we'd come into the Haven
13 Oaks community we'd often see Mr. Chisolm there. And we'd
14 go knock on a door to follow up with a witnesses or
15 basically bang on doors to try to get information. Who knew
16 Mr. Canady, anybody could tell us anything that happened to
17 his man. We'd often observe Mr. Canady -- I'm sorry, Mr.
18 Chisolm standing in the common areas kind of observing what
19 we were doing.

20 Q Would he ever go talk to the people afterwards?

21 A Yes, sir. I can recall on one occasion --

22 MR. CHISOLM: Objection. Leading, Your Honor.

23 THE COURT: Don't lead.

24 BY MR. HILTON:

25 Q What would he do after y'all finished talking to a

1 witness?

2 A I can't cite a specific instance when we met with a
3 young lady by the name of Jennifer Stallings during the
4 course of the investigation. Det. Walsh and myself went to
5 see Ms. Stallings to gather information regarding this case.
6 As soon as we left her doorstep and began walking down the
7 sidewalk, Mr. Chisolm began walking in our direction and
8 marched to the door that we'd just left.

9 Q I told you we would come back to some phone records and
10 I want to do that now. During your investigation and during
11 the trial, and you've been sitting here during the whole
12 trial.

13 A Yes.

14 Q Have we learned the cell tower locations that were the
15 subject in this case?

16 A Yes, sir, we did.

17 Q And that was from the defendant's record?

18 A Yes, sir.

19 Q Okay. And those towers, I think it was Ms. Sue Johnson
20 gave us were 400 Orangeburg Road, 516 Beach Hill Road, 1049
21 Beach Hill Road, and 132 Trolley Alley or Trolley Avenue.
22 Are you familiar with Dorchester County?

23 A Yes, sir.

24 Q I'm going to give you what's been marked as State's
25 Exhibit No. 12, and entered into evidence, and ask if you

State v. Chisolm 9/12/11 - 9/19/11

649

1 can plot those addresses on this map, again, the locations
2 of those towers? Do you need a pen?

3 A Yes, sir.

4 Q If you can just mark and label those and then we'll go
5 through them.

6 A You want me to put a dot and then a key -- or how do
7 you want me to write it down?

8 Q Just put a little X and the tower location.

9 A Okay.

10 (Witness complies.)

11 Q Finished?

12 A Yes, sir.

13 Q I'm going to hold this up and if you'll just tell the
14 jury what you've done here.

15 A This is Highway 61, also known as Beach Hill Road.
16 This is Bacon's Bridge Road, and this is Dorchester, just as
17 a reference. So if you're going to take Dorchester Road
18 heading down towards 61, this way would take you to
19 Charleston, this way would take you back towards the Legend
20 Oaks community. And then -- the first point here is 516
21 Beach Hill Road. That's roughly about where the 516 tower
22 was. This next point here is 1049 Beach Hill Road. That's
23 where another cell tower is located. Once again, back here
24 is the Haven Oaks Azalea Park community. Short distance
25 from that on Orangeburg Road, heading back towards Bacon's

State v. Chisolm 9/12/11 - 9/19/11

650

1 Bridge Dorchester Road corridor, White House Crossroads. The
2 DSS building, you may be familiar with that, it's 400
3 Orangeburg Road. And then this last one is 132 Trolley
4 Alley.

5 MR. CHISOLM: Your Honor, could the witness speak --

6 DET. GIGLIO: Mr. Chisolm, do you need me to repeat or

7 --

8 THE COURT: Just speak louder.

9 DET. GIGLIO: Okay.

10 MR. CHISOLM: I apologize, Your Honor.

11 A This last point here is 132 Trolley Alley. It's off of
12 Old Trolley Road in the area of -- across from the Briarwood
13 Subdivision. I believe Time Warner Cable used to be there
14 one point in time. There's a couple automotive body shops
15 back here. That's where the Trolley Alley is.

16 (State's Exhibit No. 33, phone
17 records, was marked for ID only.)

18 BY MR. HILTON:

19 Q Det. Giglio, have you had an opportunity to go through
20 during the course of your investigation and examine the
21 phone records of the defendant and the victim?

22 A Yes, sir.

23 Q Let me show you what's been marked for identification
24 as State's Exhibit No. 33, and just ask if you had an
25 opportunity to review that?

State v. Chisolm 9/12/11 - 9/19/11

651

1 A Yes, sir, I have.

2 Q Is that an accurate compilation, if you will, of the
3 phone records between Mr. Chisolm and the victim?

4 A Yes, sir, it is.

5 Q And is this just a little bit easier to read than the
6 phone records?

7 A Yes. Quite so.

8 MR. HILTON: Your Honor, at this time, we'd offer
9 State's Exhibit No. 33 into evidence.

10 THE COURT: All right. Any objection?

11 MR. CHISOLM: No objection, Your Honor.

12 THE COURT: Very well.

13 (State's Exhibit No. 33, phone
14 records, was marked and entered.)

15 BY MR. HILTON:

16 Q Let me hand you State's Exhibit No. 33, and we'll go
17 through some of these calls. Specifically, on September 13,
18 around 4:13, is there a call located at that time or was
19 there a call placed at that time?

20 A Yes, sir. On September 13, 2007, the victim's phone,
21 the [REDACTED] that Mr. Canady used a call was placed to a
22 Siqvan Moody. That call, in duration, lasted 34 seconds.

23 Q What was the activity of Mr. Chisolm's phone
24 immediately preceding that call and then immediately after
25 that call?

State v. Chisolm 9/12/11 - 9/19/11

652

1 A On September 13th at 3:51 a.m., Mr. Donsurvi Chisolm's
2 telephone number contacted his wife's telephone number and
3 the call lasted 2 minutes and 10 seconds.

4 Q And what cell tower did that hit off of?

5 A 516 Beach Hill Road.

6 Q And then we have the 4:13 call, and then what's the
7 next call?

8 A There's a -- between 3:51 and 4:41 there's no activity
9 on Mr. Chisolm's phone, and then at 4:41 Mr. Chisolm's phone
10 places a call to once again his wife, Natalia Chisolm, and
11 that call lasted one minute, 13 seconds in duration and
12 strikes off the 1049 Beach Hill Road tower.

13 Q And what time does he get back in the area of the
14 Trolley Alley in the 516 Beach Hill Road where it appears
15 that he's coming back towards the 400 Orangeburg Road area?

16 A (No response.)

17 Q Let me clarify a little bit.

18 A Yes, sir.

19 Q When was the next call that was made that pinged off of
20 the 400 Orangeburg Road tower after the ones that we've just
21 referred to?

22 A Mr. Chisolm's phone strikes off the 400 Orangeburg Road
23 tower at 6:19 a.m., and that call lasts five seconds.

24 Q And immediately, as far as his records go, what was the
25 call prior to that?

State v. Chisolm 9/12/11 - 9/19/11

653

1 A Mr. Chisolm's?

2 Q That's correct.

3 A Prior to that 4:54 a.m., Mr. Chisolm's phone placed a
4 call to a gentleman by the name of John Charles. That call
5 lasted 3 seconds.

6 Q And what tower did it hit off of?

7 A The 132 Trolley Alley.

8 Q And so were there any calls on Mr. Chisolm's phone from
9 4:54 to 6:19?

10 A No, sir, there's no activity where he's placed any
11 phone calls.

12 Q And getting into the daylight hours of September 13,
13 2007, around 7:56. Where did he call then?

14 A At 7:56 a.m., Mr. Chisolm's phone contacted a telephone
15 number in Florida, his telephone was striking off of 400
16 Orangeburg Road tower and that call lasted one minute and 19
17 seconds.

18 Q Were there any other calls to Florida on this chart?

19 A Yes, sir. Another call was placed at 9:13 a.m. Once
20 again, he was at the 400 Orangeburg Road tower, and that
21 call lasted one minute, 26 seconds.

22 Q And then finally at 12:44 who did he call?

23 A Mr. Chisolm's telephone contacted the Army recruiter in
24 Summerville and once again the 400 Orangeburg Road tower.

25 Q Det. Giglio, looking again at State's Exhibit No. 12,

State v. Chisolm 9/12/11 - 9/19/11

654

1 where was the body dumped in the ditch on that map?

2 A The body of Mr. Craig Canady was discarded on Clubhouse
3 Road about one miles from Highway 17-A, at just about the
4 same spot where Mr. David White has already marked and
5 initialed.

6 Q Did y'all escort Mr. David White out there?

7 A No, sir.

8 Q Det. Giglio, with regard to that number about how many
9 statements, how many interactions did Mr. Chisolm have with
10 police?

11 A If you'll give me a minute to refer to my notes. I
12 believe five actual face-to-face interactions between law
13 enforcement and him and then I know there was some telephone
14 contract where he contacted Det. Walsh on September 23rd.

15 Q And was he giving you information during this time?

16 A Yeah, he was providing us information, yes, sir.

17 Q Okay and prior to his arrest when was the last time
18 anyone investigating this case, as far as the Sheriff's
19 Office goes, talked to Mr. Chisolm?

20 A That last contact would be with Det. Walsh.

21 Q Do you know what date that was on?

22 A I'm sorry. October 23, 2007.

23 Q During that talk or any other talks with Mr. Chisolm
24 did he ever say anything about moving to Florida?

25 A Not that he disclosed to myself or Det. Walsh or that

State v. Chisolm 9/12/11 - 9/19/11

655

1 was conveyed to me through any of the other investigators.

2 Q Did he ever give you a forwarding address or any
3 contact information?

4 A No, sir.

5 Q When did y'all find out he'd moved to Florida?

6 A When he withdrew his children from school and re-
7 enrolled them in a Florida school district is how we found
8 him.

9 Q But when did you find out that he had moved to Florida?

10 A In November 2007.

11 Q And how were you able to find him?

12 A He withdrew his children, I believe it was the
13 Knightsville Elementary School and enrolled them in a school
14 in Florida.

15 Q Okay. And was it as simple as that?

16 A No, sir, it wasn't.

17 Q What else did you have to do?

18 A At that point in time we contacted the US Marshall's
19 Service. With the help of the US Marshall's Service and the
20 Jacksonville, I believe it was the Sheriff's Office --

21 MR. CHISOLM: Objection. Relevance.

22 MR. HILTON: Flight, Your Honor.

23 THE COURT: Overruled.

24 A As I was saying, with the assistance of the US
25 Marshall's Service, the Jacksonville Sheriff's Office the

State v. Chisolm 9/12/11 - 9/19/11

656

1 new information as far as telephone numbers that Mr. Chisolm
2 and his wife had provided to the school district, as well as
3 an address that was not registered to him, it was registered
4 to another family member in Florida that they were using for
5 the school enrollment, we had -- the Florida agencies
6 located Mr. Chisolm for us.

7 MR. HILTON: Please answer any questions Mr. Chisolm may
8 have for you.

9 MR. CHISOLM: If I may have one second, Your Honor?

10 THE COURT: Of course.

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

12 THE COURT: And I know my court reporter is going to
13 want me to tell you to remember --

14 DET. GIGLIO: To slow down.

15 THE COURT: Thank you.

16 MR. CHISOLM: Your Honor, I'd like these two maps marked
17 as Defense Exhibit, I believe 16 and 17.

18 THE COURT: Okay. Is it 16 or 17?

19 MR. CHISOLM: 16 and 17, Your Honor.

20 THE COURT: 16 and 17. Okay, for identification
21 purposes. Which one would you like him to look at first?

22 (Defendant's Exhibit No. 16, map,
23 was marked for ID only.)

24 (Defendant's Exhibit No. 17, map,
25 was marked for ID only.)

State v. Chisolm 9/12/11 - 9/19/11

657

MIKE GIGLIO - CROSS-EXAMINATION

BY MR. CHISOLM:

Q Do you recognize the map, Detective?

A Do I recognize --

Q Could you tell me what that map is a depiction of?

A Yes, sir. This appears to be Dorchester County to kind of summarize it. It looks like Trolley Road, Orangeburg Road, Beach Hill Road. Similar depiction of the map that the solicitor showed me earlier. The white map that I marked the tower locations on.

Q Would that be a pretty accurate depiction of the locations of the cell phone towers?

A Within reason. I believe the 1049 tower is a little bit closer to Summers Drive than what is depicted on here.

Q Is this a map that you all used during your investigation?

A This looks like one of the similar maps that was prepared by the Emergency Preparedness Division.

THE COURT: And would you give us the number on the back or the number exhibit that is, please.

DET. GIGLIO: Yes, ma'am. This is Defendant Exhibit No. 17.

A Yes, that appears to be one of the maps that was used.

BY MR. CHISOLM:

Q And you said it marks the cell phone towers, and does

State v. Chisolm 9/12/11 - 9/19/11

658

1 it also give an idea of the radius of the cell phone towers?

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 (Mr. Chisolm confers with Mr. Loy.)

7 BY MR. CHISOLM:

8 Q Do you know how far a phone can be away from a tower it
9 hits on?

10 A No, sir. I'm not a phone expert.

11 Q Okay.

12 MR. CHISOLM: Your Honor, I'd like to move this exhibit
13 in as Exhibit No. 18.

14 THE COURT: Show it to counsel, please. He's moving it
15 into evidence. I mean.

16 MR. HILTON: I thought he was just marking it at this
17 point?

18 THE COURT: No, he said I'm moving it into evidence.
19 Defendant's 18.

20 MR. HILTON: I would like a little foundation laid.

21 THE COURT: I understand.

22 MR. CHISOLM: Could you --

23 THE COURT: You want --

24 MR. CHISOLM: I'd like him to view --

25 (Defendant's Exhibit No. 18, cell

State v. Chisolm 9/12/11 - 9/19/11

659

1 phone test, was marked for ID only.)

2 THE COURT: Hand the witness the exhibit marked for ID.
3 Defendant's 18 for identification.

4 A Yes.

5 BY MR. CHISOLM:

6 Q Could you tell me what that is or what that appears to
7 be?

8 A Yes, sir. This is a photocopy of a -- appears to be a
9 test of cell phone records, prepared for cell phone number
10 [REDACTED]. It's on the Sheriff's Office letterhead. It has
11 the date of 10/30/07 at the top.

12 Q Can you tell me the date that was again, sir?

13 A On the top there's a note. I can't read through the
14 photocopy, but it's 10/30/07 noted at the top.

15 Q On 10/30/07, did you purchase a cell phone from Sun-Com
16 by the number of, I believe it's [REDACTED].

17 A Give me just a minute. I want to refer to notes to
18 verify.

19 (Pause.)

20 A No, sir, it was October 29th that Det. Walsh and myself
21 in reference to my notes, went to 975 Bacon's Bridge Road
22 and went to a Sun-Com store.

23 Q And who -- can you tell me what the purpose was in
24 purchasing this phone?

25 A Yes, sir. We were trying to replicate some of the cell

State v. Chisolm 9/12/11 - 9/19/11

660

1 phone tower locations based on information that we had
2 through the course of our investigation, trying to replicate
3 and seeing what towers we would hit. So we purchased a Sim
4 card for a telephone, and we -- knowing that Sun-Com was
5 your telephone provider at the time, we purchased a Sun-Com
6 Sim card and we conducted basically a rudimentary test, not
7 a true scientific experiment, but a test, and traveled
8 between Haven Oaks community, out to Clubhouse, and what we
9 thought would have been the route of travel back towards
10 Summerville after Mr. Canady's body was disposed of in the
11 Clubhouse community.

12 Q Did you have another cell phone with you when you
13 performed this test?

14 A I'd have to refer to my notes.

15 (Pause.)

16 A I don't recall.

17 MR. CHISOLM: If I could have just one second, Your
18 Honor. I apologize.

19 THE COURT: All right.

20 BY MR. CHISOLM:

21 Q Det. Giglio, were you -- when you all performed the
22 search and seizure on my vehicle on 9/27, I believe it was,
23 correct?

24 A Yes, sir.

25 Q Did you all recover a cell phone in that vehicle?

State v. Chisolm 9/12/11 - 9/19/11

661

1 A Yes, there was a cell phone inside the vehicle.

2 Q Could you tell me, did you inventory the cell phone,
3 did you inventory the contents of the cell phone, as in
4 termed the cell phone on to verify the number, text
5 messages, call log, things of that nature?

6 A Yes, sir. I believe that was conducted on September
7 28th before that data was lost.

8 Q Could you tell me that number of that cell phone, if
9 it's in your notes?

10 A It was telephone number, a cell phone with the
11 telephone number of [REDACTED] -- area code [REDACTED]. Also
12 inside that vehicle, I believe there was another Sim card.

13 Q At the time in question did you believe that cell phone
14 belonged to me?

15 A Yes, sir. That cell phone was in the vehicle at the
16 time the vehicle was stopped and you were operating it.

17 Q Was this cell phone taken with you on your test of the
18 [REDACTED] number?

19 A Yes, sir. That was the phone that we used with a new
20 Sim card.

21 Q You used the [REDACTED] number and the [REDACTED] number?

22 A We used the pink and blue cell phone that had a Sim
23 card registered to [REDACTED] --

24 Q So you just switched off the Sim card?

25 A Yes, sir.

State v. Chisolm 9/12/11 - 9/19/11

662

1 Q Okay. And you say you were just doing a test to
2 determine a route that you believed was traveled?

3 A Yes, sir. We theorized a route of travel between the
4 Haven Oaks community, Azalea Park community, out towards
5 Clubhouse. We weren't exactly sure which route of travel you
6 had taken on the way back from the Clubhouse community so we
7 were trying to verify either include or exclude you in this
8 investigation based on cell phone towers. So we stopped at
9 specific point, you know, every so many miles and then upon
10 completion of this test, we subpoenaed the phone records
11 just as we did the other phone records in this case, for
12 this phone card, this Sim card that we had just bought.

13 Q And if I provided you with that map, could you show me
14 the route that you believe you took on this test run?

15 A Yes, sir.

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

17 BY MR. CHISOLM:

18 Q Det. Giglio, if you could, when it's set up, show us
19 the route of travel that you took?

20 A Sure. Would you like to mark it or just draw it with a
21 laser pointer; how do you want me to do it, sir?

22 Q (No response.)

23 A Do you want me to use a marker and draw it or do you
24 want me to just point it out with the laser?

25 Q You can use a marker, if you would, Detective.

State v. Chisolm 9/12/11 - 9/19/11

663

1 A I'll use black ink so it doesn't get confused.

2 DET. GIGLIO: I'm sorry, Your Honor, does he want me to
3 call out each location and note it. I want to make sure
4 we're clear on --

5 BY MR. CHISOLM:

6 Q I'm sorry. I want you to start at the beginning and
7 tell me where you all started at for your test?

8 A Yes, sir.

9 Q And tell me where you started to drive to, and, yes,
10 each one of these stops could you mark or identify and tell
11 me what your presumptive test, the results were?

12 A Yes, sir. This test began at the Haven Oaks entrance
13 to the Haven Oaks community, the apartment complex, which is
14 right here on Orangeburg Road.

15 Do you want -- the next point of location that we
16 traveled to would be Orangeburg and Dorchester. So from
17 Haven Oaks traveled Orangeburg Road to Dorchester Road. So
18 we stopped at Orangeburg and Dorchester. From there we
19 traveled to what's known as Lighthouse Crossroads, which is
20 Bacon's Bridge and Dorchester. From there traveled to
21 Langley Drive in Bagwood (sp), which is in the Evergreen
22 community off of Bacon's Bridge Road. From there we went
23 back to Highway 17-A and Dorchester. So we left this
24 location, traveled back and went to Highway 17-A and
25 Dorchester. From there we went to Highway 17-A and 61.

State v. Chisolm 9/12/11 - 9/19/11

664

1 From there we went Highway 17-A to the Clubhouse community,
2 Clubhouse Road, continued down Clubhouse Road to the
3 location the body was found. We took Clubhouse Road, then,
4 to Summers Drive.

5 COURT REPORTER: Summers?

6 DET. GIGLIO: Summers Drive. S-u-m-m-e-r-s.

7 A We went about a mile down Summers Drive to the first
8 bridge. We went to the second bridge. At that time,
9 Summers Drive was a dirt road. When we got to about the
10 three mile point on Summers Drive we stopped again. We
11 stopped at the third bridge. We continued on Summers Drive
12 to Highway 61 and stopped again. From there we continued to
13 Beach Hill Elementary School here. Once we reached Beach
14 Hill Elementary to continued to Highway 61 to 165. Cooks
15 Crossroads.

16 COURT REPORTER: I'm sorry?

17 DET. GIGLIO: Cooks Crossroads.

18 A And returned back to the area of Orangeburg Road near
19 Embassy Drive. Turned -- and we also went to Highway 17-A
20 and Tupparway Drive. Okay, sir.

21 BY MR. CHISOLM:

22 Q Now, could you show me the route that David Leon White
23 said that was taken during the commission of this crime?

24 A Yes, sir.

25 Q Could you -- I guess in a different color?

State v. Chisolm 9/12/11 - 9/19/11

665

1 A Yes, sir.

2 Q Mark that and --

3 MR. HILTON: Your Honor, I'm going to object that it's
4 already on the board. It's already -- David White has
5 already mapped out the route.

6 THE COURT: Sustained. Your objection is cumulative.

7 BY MR. CHISOLM:

8 Q Are those routes, are there similarities in these
9 routes?

10 A (No response.)

11 Q Could you tell me what roads were traveled the same?

12 A What roads were traveled the same?

13 Q Yes?

14 A Orangeburg Road, Highway 17-A, a portion of Clubhouse,
15 Bacon's Bridge. I believe that's it.

16 Q Did you drive down 17-A?

17 A Yes, sir.

18 Q With the phone, you drove down 17-A?

19 A Yes, sir, we did.

20 Q You drove down Clubhouse Road?

21 A Yes, sir.

22 Q You turned on Summers Drive?

23 A Yes, sir. We turned on Summers Drive and conducted a
24 test. Yes, sir.

25 Q Uh-huh. (Affirmative response.) You went up Summers

State v. Chisolm 9/12/11 - 9/19/11

666

1 Drive?

2 A Yes, sir.

3 Q You turned onto, is that Beach Hill?

4 A Yes, sir.

5 Q From Beach Hill -- where did you turn at after Beach
6 Hill?

7 A Once we turned onto Beach Hill we continued on Beach
8 Hill Road. We stopped at the Beach Hill Elementary School,
9 because you're at Cooks Crossroads or Highway 165, also
10 known as Bacon's Bridge, continued on Bacon's Bridge Road.

11 Q And went back towards Evergreen?

12 A Went back towards Evergreen community.

13 Q Okay. And Mr. White, the route given to you by Mr.
14 White when you all -- when he gave you all his route, did he
15 say that we traveled down 17-A?

16 A Yes, sir. Mr. White said that you were operating the
17 motor vehicle at the time of the victim's death, and y'all
18 continued down 17-A following the victim's death to the
19 Clubhouse community.

20 Q Okay. Then he said we went down Clubhouse?

21 A Yes, sir.

22 Q Turned on Summers Road?

23 A No, sir. He never said you went on Summers Road. Mr.
24 White disclosed after you disposed of the victim's body and
25 dumped Mr. Canady in the ditch, y'all continued on a route

State v. Chisolm 9/12/11 - 9/19/11

667

1 to Clubhouse Road to Highway 165. He never reported Summers
2 Road. This was a speculation on the part of the Sheriff's
3 Office because that was the first road that led back towards
4 Haven Oaks, Summerville area. I wasn't aware at the time of
5 this test that you had continued to Delmar Highway, 165.

6 Q Allegedly continued. Where did he go after that?

7 A Right before you reach Highway 165, at the crossroads,
8 you continue on Highway 165 up towards Cooks Crossroads,
9 which is Highway 61 and 165.

10 Q And you all went to that same area. Did you all cross
11 that same area?

12 A Yes, we did.

13 Q Now, you say this was a presumptive test?

14 A Yes, sir.

15 Q Could you tell me the results of this test?

16 A Yes, sir. Actually you have the results there.

17 Q The towers?

18 A Yes, sir. It provides the tower locations that were
19 provided to us through Sun-Com when we subpoenaed the
20 records for the phones.

21 Q And could you tell me when you going down Highway 17-A
22 and Dorchester, what tower did you say you hit?

23 A At Highway 17-A and Dorchester, which is -- Highway 17-
24 A and Dorchester, if you -- if a phone was used, when this
25 phone was used at this location it would hit off the 162

State v. Chisolm 9/12/11 - 9/19/11

668

1 Checkerboard Lane's tower, or if a phone call was not
2 placed, it wouldn't hit off the 162 Checkerboard tower.

3 Q And could you tell me from Highway 17-A and Highway 61?

4 A That's at the location of Jabbo's convenience store.
5 Once again, if someone was using a Sun-Com phone and a call
6 was placed, it would hit the Checkerboard tower if a call
7 was placed.

8 Q Okay. We understand a phone call was placed, that's
9 why I'm trying to ask you what towers were hit.

10 A Yes, sir.

11 Q When you pass Highway 17-A and Clubhouse, could you
12 tell me what tower it was reported that you all hit?

13 A Highway 17-A and Clubhouse, we hit the 4500 US 17-A --
14 which is just beyond the Clubhouse community.

15 Q And Clubhouse Road where the victim was found at, could
16 you tell me what tower --

17 A Once again, when we did a test from this test phone we
18 hit the Clubhouse Road tower.

19 Q Okay. And then you said similar you came again at
20 Cooks? Was that Cooks Crossroads. I'm sorry, which road,
21 what is that?

22 A Cooks Crossroad, right here at Highway 61 and 165.

23 Q What's the tower for that?

24 A 516 Beach Hill Road.

25 Q Okay. In your presumptive test how many towers are

State v. Chisolm 9/12/11 - 9/19/11

669

1 hit? I'm sorry, not how many towers, how many stops were
2 made, how many test points on your test?

3 A 18.

4 Q 18?

5 A Yes, sir.

6 Q Anywhere inside of your presumptive test did you all
7 hit the Trolley Alley tower?

8 A No, sir, we did not.

9 Q And could you tell -- it should be in your notes, but
10 could you tell me if, at any time, from -- I'm sorry, if any
11 time period on 9/13 do my records reflect 162 Checkerboard
12 Lane tower or 4500 Highway 17-A, Clubhouse Road tower?

13 A No, sir, they do not. I can tell you that. That just
14 means that your phone was not placing a call in those areas.

15 Q Did Mr. White tell you I was on the phone when these
16 alleged events happened?

17 A Yes, sir.

18 Q Okay. So if I was on the phone and I -- I'll redirect
19 myself.

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

21 BY MR. CHISOLM:

22 Q If Mr. White's testimony is to be believed and I was on
23 the phone while these events were occurring, I would have
24 hit 4500 A -- I'm sorry -- Yes, 4500 17-A, Clubhouse Road
25 tower or 162 Checkerboard Lane, correct?

1 MR. HILTON: Objection.

2 THE COURT: Sustained.

3 BY MR. CHISOLM:

4 Q Now, you said you went to the Haven Oaks area and you
5 all took photos of the ditch?

6 A Yes, sir.

7 (Photos on overhead projector.)

8 MR. HILTON: State's Exhibit No. 32.

9 BY MR. CHISOLM:

10 Q All right. Now, you said I told you the defendant
11 crossed this ditch, correct?

12 A No, sir. You told Det. Walsh.

13 Q Oh, Det. Walsh. I apologize.

14 A You actually pointed out the location --

15 Q Okay.

16 A -- that's why we returned to that location.

17 Q Now, in your investigation of Haven Oaks, you said you
18 interviewed how many people?

19 A I didn't give a number for Haven Oaks. In the case --

20 Q In the case?

21 A -- we indicated over 100 people, but we spoke to people
22 at Haven Oaks.

23 Q Could you give me an idea of how many people you spoke
24 to in Haven Oaks?

25 A Roughly, 20, 30, off the top of my head, I'd have to go

State v. Chisolm 9/12/11 - 9/19/11

671

1 back and count.

2 Q Did you ask anyone at Haven Oaks any questions about
3 the ditch in reference to it being used as a passageway or
4 cut to Azalea Park?

5 A No, sir. I didn't.

6 Q Do you have any knowledge of that being used as the
7 usual passageway or cut to Azalea Park for the residents of
8 Haven Oaks?

9 A Yes, sir, I do, based on my patrol experience.

10 Q Okay. When you attempted to cross this ditch, did you
11 try to avoid the mud by possibly stepping on that branch or
12 the log that's sitting there or did you purposely just step
13 in the mud?

14 A Sir, that photo was taken after I took just a few steps
15 in towards the ditch. I didn't even get close to the log
16 before I received mud on my clothes.

17 Q And you didn't try to avoid it or anything?

18 A Based on the ground conditions there was no way to
19 avoid it.

20 Q Have you ever taken a short-cut before?

21 A Yes, sir.

22 Q Okay. And when you were younger have you ever played
23 in the woods?

24 A Yes, sir.

25 Q Have you ever had a favorite spot or a normal spot that

State v. Chisolm 9/12/11 - 9/19/11

672

1 you go to in the woods or have a normal short-cut that you
2 would use?

3 A Yes, sir.

4 Q And you knew it pretty well, correct?

5 A Yes, sir.

6 Q And you could possibly navigate it better than a person
7 would who -- better than a person would on their first time
8 coming to that -- on their first time going through that
9 passage?

10 A Correct.

11 Q Okay. If the residents -- is it possible that the
12 residents of Haven Oaks know this passage so well and use it
13 so often that we know how to cross this ditch, and since it
14 was your first time being there you just don't know how to
15 cross the ditch and you stepped in mud?

16 A As I stated earlier, when I took just a few steps
17 towards the ditch area I had mud on my clothes.

18 Q A few steps towards the ditch area?

19 A That's right.

20 Q So -- I'd like to show you State's Exhibit No. 11.

21 (Photo put up on overhead projector.)

22 Q Which part of the grassy area did you step on that
23 automatically put mud on your shoe?

24 A Okay. As I stated, we walked toward this ditch area,
25 and attempted to cross at this point. I can't -- from this

State v. Chisolm 9/12/11 - 9/19/11

673

1 photo, I can't view the actual log. I mean, but basically
2 from this vantage point to cross over the ditch line. So I
3 guess right about in here, once we get off the grass.

4 Q Before you were a detective you were on the patrol
5 division, yes?

6 A Yes, sir.

7 Q And did you ever patrol Haven Oaks?

8 A Yes, sir.

9 Q When you -- when police usually come to Haven Oaks, is
10 it a normal occurrence for suspicious people to start
11 running?

12 A Yes, sir.

13 Q Could you tell me some of the areas you've seen them
14 running to?

15 A From Haven Oaks?

16 Q Yes.

17 A They run towards apartments, they'll run towards common
18 areas, they'll run to the Azalea Park, they'll run to the
19 ditch area, they'll run towards the main road, towards the
20 Dollar Store.

21 Q And when they run they have no problem getting away
22 from you, they pretty much navigate through the ditch?

23 A Yes, sir, they're able to navigate the same as I was
24 able to navigate.

25 Q Now, before September 27th, when you seized my truck --

1 A Yes, sir?

2 Q -- did you ever serve any other search warrants on my
3 truck?

4 A Yes, sir, we did, on September 17th.

5 Q Could you tell me about that?

6 A Yes, sir. I obtained a search warrant for your vehicle
7 because that was the last know location the victim was alive
8 in. We responded to your home address at the Haven Oaks
9 community in Apartment D-1, and made contact with you at
10 your apartment.

11 MR. CHISOLM: Your Honor, I'd like to offer Defense
12 Exhibit 19.

13 MR. HILTON: Without objection.

14 THE COURT: All right. 19 in evidence without
15 objection.

16 (Defendant's Exhibit No. 19, photo,
17 was marked and entered.)

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

19 BY MR. CHISOLM:

20 Q Is that an accurate depiction of the vehicle that you
21 served the search warrant on?

22 A Yes, sir.

23 MR. CHISOLM: Your Honor, I'd like to move Defense
24 Exhibit No. 18 into evidence.

25 MR. HILTON: Without objection.

State v. Chisolm 9/12/11 - 9/19/11

675

1 THE COURT: Very well. Exhibit 18, Defendant's Exhibit
2 18 in evidence without objection.

3 (Defendant's Exhibit No. 18,
4 10/30/07 cell test, was marked and entered.)

5 BY MR. CHISOLM:

6 Q Det. Giglio -- I'm sorry. You said when you searched
7 this vehicle who helped you search this vehicle, can you
8 tell me?

9 A I didn't search this vehicle. That would be Lt. Asbell
10 and Lt. Van Doran. Lt. Asbell was head of crime scene.

11 Q And were any items of evidentiary value recovered at
12 that time, do you recall?

13 A No, sir. Lt. Asbell did not collect anything in
14 regards to that.

15 Q Okay, while this search was being conducted you were in
16 the general area?

17 A Yes, sir.

18 Q Did you notice the two brand new front tires on the
19 truck as you were there?

20 A No, sir, I did not.

21 Q If I showed -- Could you look at that picture and tell
22 me if you notice them now?

23 A I can tell you there's tires on the vehicle. I can't
24 attest to whether they were brand new or --

25 Q Could you tell the difference between the front tire

State v. Chisolm 9/12/11 - 9/19/11

676

1 that you're looking at and the back tire that you're looking
2 at?

3 A Yes, sir, they're different brands.

4 Q Okay. Can you describe -- are the back tires a more
5 faded shade of black and are the front tires a more shinier
6 version of black?

7 A From this photo I can't tell if it's Armorall or if
8 it's the condition of the tire. You're asking me to testify
9 to something I can't.

10 Q Are the tread patterns on the back tires seemingly
11 balding and are the tread patterns on the front tires newer
12 looking?

13 A From the angle of this photo, I can't attest to that.

14 MR. CHISOLM: Your Honor, I'd like to move --

15 BY MR. CHISOLM:

16 Q What's the number?

17 A That's No. 19.

18 MR. CHISOLM: -- Defense Exhibit No. 19 into evidence.

19 THE COURT: I thought it already was in evidence.

20 MR. CHISOLM: Okay.

21 THE COURT: If not, is there any objection?

22 MR. HILTON: No objection.

23 THE COURT: In evidence without objection.

24 BY MR. CHISOLM:

25 Q When you came the second time to serve this warrant, to

State v. Chisolm 9/12/11 - 9/19/11

677

1 serve another warrant on my vehicle, can you tell me --
2 could you go over that -- our conversation, could you go
3 over what happened that day after the Miranda Warnings?

4 A Yes, sir. The vehicle that you were operating. The
5 vehicle was stopped at the intersection, I believe, of
6 Ladson and Dorchester and pulled into the Tiger Express.

7 COURT REPORTER: I'm sorry. Tiger?

8 DET. GIGLIO: Tiger Express.

9 A I made contact with you, of course, at the Tiger
10 Express. I executed the Miranda Warnings and began to read
11 you the search warrant. Towards the bottom of the search
12 warrant there is a part that refers to how you obtained a
13 new passenger seat for the vehicle. At which time you
14 stopped me, basically, in reading it, and said, wait, what
15 was that part.

16 BY MR. CHISOLM:

17 Q On that part of the warrant does it say that a
18 passenger seat was purchased on 9/14/07?

19 A I'd have to refer to the warrant. Give me just a
20 second. Yes, sir, it does.

21 Q Could you tell me which day that purchase actually took
22 place?

23 A Yes, sir. It was a clerical error on my part in
24 regards to the affidavit. It was September 15th.

25 Q And do you think I noticed the discrepancy when you

1 read it to me?

2 A Are you asking my opinion?

3 MR. HILTON: I'm going to object.

4 THE COURT: Sustained.

5 BY MR. CHISOLM:

6 Q Now, you said you asked to speak with me if I wanted to
7 go to the LEC to discuss the case?

8 A Yes, if I recall correctly, that's correct.

9 Q And you said I declined?

10 A Yes, sir.

11 Q Do you recall exactly what I said?

12 A If you'll give me a minute I'll refer to my notes. I
13 don't want to quote you wrong. Would you like me to just
14 read the paragraph from my notes in regards to that
15 interaction?

16 Q Just the quote.

17 A Just the quote parts or --

18 Q Just the quote part of what I said, Page 37 of your
19 report?

20 A No, I'm going to speak to a lawyer.

21 Q And this was your second time searching my vehicle,
22 correct?

23 A Yes, sir, because the first time we were not aware that
24 you had changed the seat out on September 17th when the
25 first warrant was executed.

State v. Chisolm 9/12/11 - 9/19/11

679

1 Q But the first time no items of evidentiary value were
2 pulled?

3 A That was Lt. Asbell who conducted that search warrant,
4 it was upon further review of the photographs that he
5 obtained that I noticed the seat pattern had changed. I
6 also noticed that through the phone records that you began
7 searching junkyards and different salvage yards for a Dodge
8 Durango. Based on that information we felt the second
9 search warrant was warranted on the vehicle. This was
10 discussed at length in the detective division, to include my
11 detective Captain at the time, Tom Marshall.

12 Q Did I look upset from the fact that my truck was being
13 taken from me?

14 A I don't believe you were happy your vehicle was being
15 seized, no.

16 Q Did I mention to you while you were taking my vehicle
17 that you had already served a search warrant on my vehicle,
18 why are you taking my vehicle?

19 A I don't have any reference to that in my notes. I
20 don't recall.

21 Q Okay. Now, you said it was unusual for me to -- I'm
22 sorry, you said that I did unusual things when you all were
23 in Haven Oaks?

24 A You know, if I recall correctly what I stated earlier
25 you were observed standing in the common areas observing

State v. Chisolm 9/12/11 - 9/19/11

680

1 what law enforcement was doing. On one account you actually
2 approached the same door that we had just departed from and
3 basically marched towards that same door.

4 Q Did you do any -- how many interviews did you do with
5 Jennifer Stallings?

6 A I believe we spoke with her twice.

7 Q Through the course of your investigation was it ever
8 determined that I frequented that common area a lot?

9 A During the course of my investigation it was common to
10 see you -- to use the term loitering, I guess, in the Haven
11 Oaks community.

12 Q And do you see most people in the Haven Oaks community
13 loitering outside, 20 or 30 people at a time?

14 A Yes, sir. I do, but normally it's been my experience
15 when law enforcement enters the community most people stray
16 away from us and don't gawk or try to observe what we're
17 doing. Most people move the other way.

18 Q Most of them -- During the course of your investigation
19 did anyone verify for you -- I'm sorry -- did anyone confirm
20 information pertaining to the possibility of Red crossing
21 the ditch to Azalea Park?

22 MR. HILTON: Objection.

23 THE COURT: The objection is hearsay?

24 MR. HILTON: Yes.

25 THE COURT: Given the way it's asked, it is eliciting

State v. Chisolm 9/12/11 - 9/19/11

681

1 hearsay. Sustained.

2 BY MR. CHISOLM:

3 Q Now, you all said I moved to Florida, correct?

4 A Yes, sir.

5 Q And how did you -- could you go over that information
6 again, how did you find out that I was in Florida?

7 A Through the school records. Initially, I believe it
8 was Ms. Tamekka who -- from the Haven Oaks community who
9 told us that, basically, hearsay information that she heard
10 you were moving to New York or Florida, at which time the
11 school district, Dorchester County District 2 School
12 District was contacted because we knew you had minor
13 children. The school district confirmed, yes, the children
14 had been withdrawn, and under state law, I believe they're
15 required to notify what new schools the juvenile children
16 were going to be attending. So the school records were
17 forwarded to Florida.

18 Q Have you all -- You said I was in contact with law
19 enforcement at least five times throughout your
20 investigation?

21 A Yes, sir.

22 Q Do you recall one of the times that I was in contact
23 with law enforcement, deputies being sent to my house -- I'm
24 sorry -- do you recall during your nine -- I believe
25 September 24th interview with David White, asking him if he

State v. Chisolm 9/12/11 - 9/19/11

682

1 had heard of the death threats that I was getting?

2 MR. HILTON: Objection. Objection.

3 THE COURT: Sustained.

4 BY MR. CHISOLM:

5 Q What all information was obtain for my residence in
6 Florida?

7 A What information was obtained?

8 Q Who was the leaseholder -- you said the leaseholder --

9 A Give me just a minute I'll have to refer to my notes.

10 THE COURT: And while you refer to those notes, we'll
11 take a very short comfort break, ladies and gentlemen.
12 We'll start back about 4:15. Ladies and gentlemen, step to
13 your jury room. Do not discuss this matter and do not allow
14 anyone to discuss it with you. Smokers, if they go quickly,
15 they can smoke.

16 (Jury out for break at 4:01 p.m.)

17 MR. HILTON: Are we at ease, Your Honor?

18 THE COURT: We are. Enjoy your break. Fifteen minutes.

19 (Court in recess for afternoon break at 4:02 p.m.)

20 (Court in session after afternoon break at 4:12 p.m.)

21 THE COURT: All right. Is the state ready to begin?

22 MR. HILTON: Yes, ma'am.

23 MR. CHISOLM: Yes, Your Honor.

24 (Jury in at 4:12 p.m.)

25 MIKE GIGLIO - CONTINUED CROSS EXAMINATION

State v. Chisclm 9/12/11 - 9/19/11

683

1 BY MR. CHISOLM:

2 Q Det. Giglio, what contact information did you have for
3 me in Florida?

4 A We had no contact information for you in Florida. What
5 we got we obtained from the school district.

6 Q Okay. Did you have my sister's phone number in
7 Florida?

8 A Yes, sir, we did obtain your sister's phone number, and
9 we actually spoke to her, I believe.

10 Q Did I give you all my sister's phone number previously
11 in your investigation?

12 A Yes, sir, you did.

13 Q And she lives in Florida?

14 A That was my understanding.

15 Q So this one contact phone number you had for me in
16 Florida?

17 A Yes, sir.

18 Q Correct?

19 A Yes, sir.

20 Q You all put out a warrant for me and Mr. White's arrest
21 on November 6, correct?

22 A Yes, sir, an arrest warrant was obtained based on
23 probable cause.

24 Q On November 7th, you contacted Knightsville Elementary
25 in reference to my daughters being checked out and being

State v. Chisolm 9/12/11 - 9/19/11

684

1 enrolled in Gregory Elementary, is that correct?

2 A (No response.)

3 Q Gregory Elementary in Jacksonville, Florida, is that
4 correct?

5 A Yes, sir.

6 Q Okay. The school in Florida gave you the correct
7 address, yes?

8 A They gave me an address but couldn't verify an
9 apartment number.

10 Q Okay. Did they also give you the telephone numbers for
11 me and my sister?

12 A Yes, sir, they did.

13 Q And was my telephone number at the time [REDACTED]?

14 A That was the number that was provided to us from the
15 school district. Yes, sir.

16 Q That was the number to my job, is that correct?

17 A I don't recall what that number was for. That was one
18 of the numbers that was provided to us.

19 Q It was contact information for my phone number,
20 correct?

21 A That was the number that was provided to the school
22 that was relayed to us. That's the information we shared
23 with the US Marshall when we were trying to locate you.

24 Q You didn't call the number?

25 A No, sir. At that time we had an arrest warrant for

State v. Chisolm 9/12/11 - 9/19/11

685

1 you, and you were considered armed and dangerous. The
2 murder weapon had not been found.

3 Q Alleged murder weapon, Detective?

4 MR. HILTON: Objection, Your Honor.

5 THE COURT: Alleged murder weapon is fine. You may
6 proceed.

7 BY MR. CHISOLM:

8 Q On November 8th, US Marshalls and I believe Florida
9 Officers served -- arrested me in an effort to bring me back
10 to South Carolina, right?

11 A Yes, sir, they arrested you at a vacant apartment
12 registered to your sister's name Ejuhavna.

13 Q A vacant apartment?

14 A That's what they reported to me that the apartment
15 appeared vacant.

16 Q Registered in someone's name?

17 A Your sister's name.

18 Q How's it vacant if someone's renting it?

19 A Unfurnished was what was conveyed to me.

20 Q Did they give you a report of - an incident report to
21 further your knowledge of what happened, you said the
22 apartment was vacant, did they inform you if I was just
23 arriving home from work or if I had been inside the
24 apartment? Did they inform you of any struggle, any fights?
25 Did they --

State v. Chisolm 9/12/11 - 9/19/11

686

1 MR. HILTON: Objection. Just as to form. Compound
2 question.

3 THE COURT: It is several questions in one question.

4 MR. CHISOLM: Yes, Your Honor.

5 BY MR. CHISOLM:

6 Q Did they inform you of --

7 THE COURT: The first question that you asked was did
8 they give you some incident report.

9 BY MR. CHISOLM:

10 Q Yes. Did they provide you with an incident report?

11 A No, sir. I don't believe they did. The only
12 correspondence as far as the reports would be the Waiver of
13 Extradition and some documentation from the Jacksonville
14 Sheriff's Office. We corresponded via telephone and I also
15 sent them copies of the arrest warrants, as well as a
16 photograph of you, specifically your driver's license, DMV
17 photo and any information that I had at that time.

18 Q You all had -- I apologize.

19 A Along with the arrest warrant.

20 Q You all had a working phone number for me and an
21 apartment that was registered in someone's name, is that
22 correct?

23 A We had an apartment that was registered to your sister
24 and we had an address that the school provided. Like I
25 said, the school did not provide the exact apartment number.

State v. Chisolm 9/12/11 - 9/19/11

687

1 The Jacksonville Sheriff's Office and the US Marshalls
2 attempted to locate you there and through their research
3 identified the apartment belonging to your sister. It was
4 registered or leased in your sister's name, if you will.

5 Q All right. But you're sure -- I'm sorry -- Did they
6 give you any way of verifying who's name was on the lease?

7 A (No response.)

8 Q Did they provide you the two names on the lease, is
9 what I'm asking, that of Natalia Chisolm and Ejuhavna
10 Chisolm.

11 COURT REPORTER: I'm sorry?

12 MR. CHISOLM: Natalia -- oh --

13 COURT REPORTER: Spell the second.

14 MR. CHISOLM: E-j-u-h-a-v-n-a.

15 A I don't -- no, sir, I don't recall. I recall them
16 telling me it was in your sister's name. I don't recall
17 them telling me it was in Natalia's name also.

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

19 MR. CHISOLM: Your Honor, I'd like to mark this for
20 Defense Exhibit 20.

21 THE COURT: For identification?

22 MR. CHISOLM: Actually, I'd like to move it into
23 evidence, Your Honor, without objection.

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

25 THE COURT: All right. This is Defense Exhibit 20 in

State v. Chisolm 9/12/11 - 9/19/11
1 evidence without objection. All right.

688

2 (Defendant's Exhibit No. 20,
3 warrant, was marked and entered.)

4 BY MR. CHISOLM:

5 Q Do you have a copy of my -- me or David White's
6 original arrest warrants?

7 A Yes, sir, I should. I apologize, it's been,
8 apparently, used during this trial and I no longer have a
9 copy in this folder.

10 Q That was a copy of David White's but it's the same as
11 mine?

12 MR. HILTON: Your Honor, I just ask that he have a copy
13 of his and I have one of those.

14 THE COURT: You have a copy available. Very well.

15 Just show it to Mr. Chisolm.

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

17 BY MR. CHISOLM:

18 Q Would you say as a detective you rely heavily on the
19 expert opinions of forensic science to help solve crimes?

20 A It's a portion used in our investigation. I wouldn't
21 base my whole investigation based just on forensic science.

22 Q I'm sorry -- would you consider an expert's final
23 determination on a report after clear and careful review of
24 the evidence presented to them, a true and accurate
25 interpretation of the facts?

State v. Chisolm 9/12/11 - 9/19/11

689

1 A Can you make --

2 Q And an expert in any certain field, let's say would you
3 consider a forensic pathologist determination of cause of
4 death, time of death. Their expert opinion on those topics
5 are true and accurate interpretation of the facts as they
6 know it to their knowledge or to their opinion?

7 A From a pathologist, yes, sir.

8 Q Okay. On the warrants, could you tell me what you
9 listed as the time of death?

10 A Between the hours of 4:00 a.m. and 5:00 a.m.

11 Q And this was on November 6, 2007, right, that you
12 applied for this warrant?

13 A Yes, sir.

14 Q Was the time of death on November 6, 2007 that you
15 placed on this warrant given to you by a forensic
16 pathologist?

17 A I'd have to refer to the pathologist report. This is
18 cumulative with the course of the investigation, also with
19 any evidence and information we had.

20 Q Did the pathologist report determine -- did the
21 pathologist report list an undetermined time of death?

22 A I'd have to refer to the pathologist report. If you'd
23 give me just a minute.

24 (Pause.)

25 A Dr. Presnell's pathology report reports the date of

State v. Chisolm 9/12/11 - 9/19/11

690

1 death as September 13, 2007, the time unknown. As I
2 explained we determine the time of death based on the last
3 verifiable known facts when the victim was alive.
4 Information we obtained during the course of the
5 investigation based on the probable cause that we had.

6 Q So what you listed was not the opinion of an expert in
7 the field of regards to time of death, correct?

8 A The day is correct as far as September 13, reflects the
9 pathology report. The time of death as between 4:00 and
10 5:00 is based on when we know the victim was last alive and
11 the approximate time of death.

12 Q Can you answer the question?

13 A Can you repeat what you're --

14 Q Was the time of death that you provided on the report
15 an opinion given to you by an expert in the field in regards
16 to time of death?

17 A No. As I stated the pathologist report said the time of
18 death was unknown. This affidavit was based on probable
19 cause, based on facts and information we had that you and
20 Mr. David White were the last two people with the victim.
21 The victim succumbed to a gunshot wound to the head from a
22 22 caliber pistol, and on the 13th and had never been seen
23 or sighted after being with you or Mr. David White.

24 Q So what you listed was not a true and accurate correct
25 -- a true and accurate fact --

State v. Chisolm 9/12/11 - 9/19/11

691

1 MR. HILTON: Objection.

2 Q -- at that time, correct.

3 MR. HILTON: That's been asked and answered.

4 THE COURT: Sustained.

5 BY MR. CHISOLM:

6 Q You said you listed the means of death as a 22 caliber
7 handgun on this warrant, correct?

8 A Yes, sir.

9 Q Did you receive the test results from the projectile
10 removed from the deceased on November 27th, exactly three
11 weeks after you applied for the arrest warrant?

12 A I'll have to -- are you talking about a SLED report?

13 Q Yes.

14 A Yes, I would. State Law Enforcement Division did
15 return a copy of their result that would have went to our
16 crime scene and actually back to the investigators.

17 Q So on November 6, you had no scientific proof or
18 opinion from an expert to definitively say the projectile
19 was a 22 in caliber bullet, correct?

20 A That would be based on a cumulative number of things to
21 include --

22 Q Could you answer my question first and then explain?

23 A I'm trying research so I can give you the appropriate
24 response, sir.

25 (Pause.)

State v. Chisolm 9/12/11 - 9/19/11

692

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

2 A If I recall correctly the projectile was recovered from
3 the victim at the time of autopsy and was sent to SLED for
4 further exam and evaluation. I'm trying to find exactly in
5 the notes how we determined that caliber. I'm sure there's
6 some reflection in here. I apologize. We have quite a bit
7 of information.

8 Mr. Chisolm, I apologize. I can't find the answer to
9 your question at this time.

10 BY MR. CHISOLM:

11 Q Did you have expert opinion that a handgun was used at
12 that time?

13 A No, sir. I --

14 Q On this warrant did you report that a phone call was
15 made on my phone on the Summers Road area?

16 A Yes, I did.

17 Q Did you have an expert opinion to confirm that?

18 A Yes, sir. That was based on the presumptive test we
19 did with the test cell phone on what we perceived to be the
20 route of travel that was later corrected by Mr. David White
21 when he came forward voluntarily in November and clarified
22 that.

23 Q Is it correct that mostly everything on that warrant
24 was presumptions that was not confirmed and accurate?

25 A Mr. Chisolm, this warrant was obtained and signed by a

State v. Chisolm 9/12/11 - 9/19/11

693

1 judge based on probable cause on the facts and information
2 that we had at the time. A judge found probable cause to
3 obtain an arrest warrant for your arrest. This information
4 was later verified through the accounts of your co-
5 defendant, Mr. David White, who verified he was with you at
6 the time of this incident, witnessed you shot and kill the
7 victim, and then gave us further intimate details of the
8 crime to include the alleged, you would say, the alleged
9 murder weapon from the Ashley River that we later recovered.

10 Q Actually all the incidents are alleged, Detective. You
11 just said he confirmed the whole report, but then you -- did
12 you say that I was not on Summers Road two questions ago?

13 A Yes, sir. You were not on -- as far as I know you were
14 not on Summers Road. My response to that question was we
15 conducted a test and based on those tests, based on what we
16 perceived to be the route of travel prior to getting further
17 information from Mr. David White was when we were on Summers
18 Road we were able to replicate and hit a similar cell phone
19 tower that was reflected in your cell phone records.

20 Q And in your reports of the phone call that me and Red,
21 our alleged last phone calls when was the last time that you
22 reported we had contact?

23 A I can return to the phone records. I know that after
24 the victims death your telephone number never contacted the
25 victim after the morning of September 13th. Your phone never

State v. Chisolm · 9/12/11 - 9/19/11

694

1 contacted the victim as you told officers you were looking
2 for him.

3 Q What time was that?

4 A Give me just a second to find the phone record and I'll
5 find the time.

6 (Pause.)

7 A Do you have a copy of the phone records I could peruse,
8 sir?

9 (Reads document.)

10 A When was the last -- what was your question, when was
11 the last time you contacted the victim?

12 Q Yes.

13 A The last time your telephone corresponded with the
14 victim was on September 13th at 3:07 a.m.

15 Q At 3:07 a.m.

16 A Yes, sir.

17 Q And you said you searched my vehicle on 9/28/07, yes?

18 A Crime scene -- crime scene searched it. Yes, sir.

19 Q And you inventoried my telephone, correct?

20 A Yes, sir.

21 Q Could you turn to Page 37 of your report, please?

22 A Page 37 of my case notes?

23 Q Your case notes. I'm sorry.

24 A Sure. Yes, sir.

25 Q Dated 9/28/07 crime scene notes?

State v. Chisolm 9/12/11 - 9/19/11

695

1 A Yes, sir.

2 Q Could you read the portion on what you did with the
3 telephone or the information you received from the telephone
4 you recovered?

5 A 9/13/07, 9:27 p.m. to Red, your girl looking for you,
6 you might want to call her.

7 Q That was a text message from me to Red at 9:27 p.m. on
8 9/13/07, correct?

9 A Yes, sir.

10 Q That would be how many hours after I allegedly
11 committed this crime?

12 A 12, 15.

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

14 THE COURT: All right. Redirect.

15 MR. HILTON: Briefly.

16 THE COURT: All right.

17 MIKE GIGLIO - REDIRECT EXAMINATION

18 BY MR. HILTON:

19 Q Det. Giglio, you said that there were no calls to the
20 victim from the defendant's phone from September 13th, the
21 morning of, until ever, right?

22 A Correct.

23 Q On the tests of the cell phone towers that y'all did,
24 these calls when you're hitting 516 Beach Hill Road, 1049
25 Beach Hill Road, were y'all in the Haven Oaks area at that

State v. Chisolm 9/12/11 - 9/19/11

696

1 time?

2 A I'd have to look at it. No, sir. We were at the
3 Dorchester Road corridor. When I say Dorchester Road
4 corridor, I mean, Limehouse Crossroads, the Evergreen area.

5 Q And one last question. The search of the vehicle the
6 defendant asked you about, State's Exhibit 19, I think that
7 was -- well, what day was it, do you remember?

8 A September 17th.

9 Q September 17th?

10 A Yes, sir.

11 Q Did y'all even know that the victim had been killed in
12 the car at that point?

13 A No, sir, we didn't.

14 Q Did you know that a seat had been changed out at that
15 point?

16 A No, sir. It wasn't until after a review of Lt.
17 Asbell's photographs that I saw the difference in seat
18 patterns cumulative with the phone records really peaked my
19 interest.

20 Q And this text message on Page 37 of your report says,
21 Your girl looking for you. You might want to call her. Is
22 there any response from Red?

23 A No, sir, there's not. That's also from a different
24 cell phone number that Mr. Chisolm hadn't provided to us
25 earlier.

State v. Chisolm 9/12/11 - 9/19/11

697

1 MR. HILTON: No further questions.

2 THE COURT: All right. Recross?

3 MR. CHISOLM: Yes.

4 MIKE GIGLIO - RE-CROSS EXAMINATION

5 BY MR. CHISOLM:

6 Q During your investigation was it determined that the
7 [REDACTED] phone number was under the same [REDACTED] phone
8 number, it was just a switched Sim card?

9 A Yes, sir.

10 Q Okay. And did you -- could you confirm -- you
11 testified you were in the Evergreen area when you hit the
12 tower on 516 Beach Hill Road?

13 A Langley Drive and -- yes, sir. Which is in Evergreen.

14 Q Okay.

15 MR. CHISOLM: No further questions.

16 THE COURT: Very well. Is this witness --

17 Very well. Call your next witness.

18 MR. AUSTIN: State call Ira Parnell.

19 THE CLERK: Please raise your right hand. State your
20 full name for the record.

21 MR. PARNELL: Name's Ira Byrd Parnell, Jr.

22 THE CLERK: Could you spell your name, please?

23 MR. PARNELL: P-a-r-n-e-l-l.

24 (WHEREUPON, Ira Parnell was sworn
25 to tell the truth.)

State v. Chisolm 9/12/11 - 9/19/11

698

1 THE CLERK: Thank you.

2 THE COURT: Your witness, Mr. Austin.

3 MR. AUSTIN: Thank Your Honor.

4 IRA PARNELL - DIRECT EXAMINATION

5 BY MR. AUSTIN:

6 Q Mr. Parnell, what do you do for a living?

7 A I'm a firearm and tool mark examiner for the State of
8 South Carolina Law Enforcement Division, also known as SLED.

9 Q And how long have you been employed with SLED?

10 A 39 years.

11 Q What exactly are your duties with SLED?

12 A I examine guns, both shotguns, rifles and handguns.
13 Fired bullets, fired cartridge cases, unfired ammunition, as
14 well as tools; bolt cutter, pliers, wrenches, screw drivers,
15 etcetera, and marks that are sent into us by investigating
16 agencies around the state. And the general examination that
17 is asked for in the case of firearms is to determine if we
18 can whether it fired a cartridge case or fired a bullet was
19 fired in a particular firearm or not. And with the tools
20 it's basically the same thing, was a mark left at the crime
21 scene made by the tools that the officers bring to us.

22 Q What's your educational background?

23 A I'm a graduate of the University of South Carolina with
24 a degree in the area of Criminal Justice. I'm a graduate of
25 the FBI National Academy, our state academy and numerous

State v. Chisolm 9/12/11 - 9/19/11

699

1 other conferences and schools around the nation that are
2 attended by firearm and tool mark examiners for the purpose
3 of continuing education.

4 I underwent a three year internship program under three
5 course qualified firearm and tool mark examiners at SLED,
6 because at the time I was trained there was no degree
7 program that could be followed at any university or school,
8 so we had to do on the job training apprenticeship type
9 training under the tutelage of the qualified examiners
10 there. And during that time I assisted those examiners by
11 watching what they were doing, assisting them by test firing
12 guns, examining ammunition components and basically
13 continuing through that process to the point that they felt
14 I was ready to begin doing my own examinations.

15 Q Can you explain the process of firearms identification
16 and what makes that possible?

17 A A simple firearms examination can consist of a firearm,
18 whether, again, it be a handgun or a long gun, and some
19 fired components, whether it's a fired bullet, a shot shell
20 or a cartridge case. As I said earlier the general question
21 that's ask is was that fired component fired by the gun that
22 was brought in.

23 In order to make that determination certain testing is
24 done by the examiner. We first examine the firearm for
25 safety. We then examine the ammunition component to

State v. Chisolm 9/12/11 - 9/19/11

700

1 determine whether or not it's the correct caliber that could
2 have been fired in this gun or not. Once these things are
3 figured out we then continue with the examination process.
4 We test fire the gun using similar or the same ammunition.
5 We microscopically compare the test that we fire utilizing a
6 forensic comparison microscope. We test fire, by the way,
7 into a water tank. The water slows the bullet down and does
8 not add to or take away from the marks that are left on the
9 outside the bullet by the inside of the gun barrel.

10 Now, once we've established the fact or not that the
11 test that we fired are marked in the same fashion, we then
12 microscopically compare the evidence with the test. If
13 sufficient marks of agreement are found then we say in our
14 opinion that that ammunition component brought in as
15 evidence was fired by the gun that was submitted. If we
16 find sufficient differences then we also say that the fired
17 ammunition component was not fired by the gun brought in.

18 The way we determine this is by examining individual
19 random unintentional defects on the inside and various area
20 of the firearm. These defects happen during manufacture.
21 They're not intentionally done by the manufacturer, but they
22 nonetheless occur and they make our discipline possible.
23 These are reproducing marks that appear to a great degree on
24 every fired component that is fired in a particular gun, and
25 once we establish that this firearm marks each bullet or

State v. Chisolm 9/12/11 - 9/19/11

701

1 cartridge casing the same way, then we can say or offer an
2 opinion whether a particular fired bullet or cartridge case
3 was or was not fired in the gun submitted for comparison

4 Q Let me show you what's been marked as State's Exhibit
5 Nos. 14 and 18. Do you recognize these items?

6 Mr. Parnell, before you look at those how many times
7 have you testified in court?

8 A Approximately, 614.

9 MR. AUSTIN: Your Honor, at this time, I'd like to offer
10 Mr. Parnell as an expert in firearms and ballistics.

11 THE COURT: All right. Is there any voir dire?

12 MR. CHISOLM: No, Your Honor.

13 THE COURT: Any objection?

14 MR. CHISOLM: No, Your Honor.

15 THE COURT: Very well. He is so qualified.

16 A Yes, sir. I've examined these items, specifically
17 State's 14 and 18.

18 BY MR. AUSTIN:

19 Q And were you able to clean that up and actually fire
20 it?

21 A Yes, sir, I was.

22 Q And did it have a bullet in it when you first examined
23 it?

24 A There was an unfired cartridge, yes, sir.

25 Q Okay, but had you been advised that it had been under

1 water at some point before you received it?

2 A As I received it it was submerged in a small cooler of
3 the water in which it was recovered, because that is the way
4 that we recommend that our officers pick guns up and bring
5 them to us if they were found in water. If they cannot be
6 immediately cleaned using solvent and proper technique, then
7 we ask them to bring them in a container of that same water
8 which was done in this case.

9 Q Even though it had been in water you could still fire
10 it just fine?

11 A Well, not immediately.

12 Q Right.

13 A I had to do some cleaning and removal of dirt and other
14 debris, but yes, after it was photographed, documented and
15 checked for safety it was fired with no problem at all.

16 Q And it didn't have a magazine in it when you first
17 received the gun?

18 A No, sir.

19 Q That didn't affect the operation?

20 A No, sir. We were able to fire it singly.

21 Q Did you make a comparison of those two items?

22 A In reference to State's Exhibit 18, it's a fired 22
23 caliber bullet, and I know this because of its overall
24 physical characteristics and by the weight and a couple
25 years experience looking at them. This particular

State v. Chisolm 9/12/11 - 9/19/11

703

1 projectile, States Exhibit 18, is badly damaged. It's badly
2 flattened. It's not in the condition that it would be as
3 you would find an unfired cartridge. Of course, it's run
4 into several things since it was fired. I examined and
5 compared the tests that I fired in State's Exhibit 14, this
6 firearm there, against State's Exhibit 18, this bullet. The
7 bullet was in such bad condition that I could not tell
8 whether or not State's Exhibit 18, this bullet was or was
9 not fired in State's Exhibit 14, this firearm here.

10 Q You may have gone over this, but could you tell what
11 caliber brand the gun was?

12 A Yes. It's a 22 caliber firearm specifically made to
13 fire 22 long caliber rifle ammunition.

14 Q And that's what the projectile is?

15 A State's Exhibit 18 has all the physical characteristics
16 and the weight consistent with being a 22 long rifle caliber
17 bullet, correct.

18 Q And is that a handgun you'd typically see in criminal
19 cases?

20 A Not too often. The Browning Buck Mark is a good
21 quality handgun. We don't typically see them specifically
22 involved in too many cases. I've examined a few, but not
23 very many.

24 Q And so in your expert opinion is that handgun
25 consistent with one that had been under water for several

1 months?

2 A Yes, sir, based on the etching and the removal of the
3 blueing and the splotchiness, the rust. Yes, it's
4 definitely consistent with a firearm that's been under water
5 for a period of time.

6 Q Mr. Parnell, in your expert opinion is that projectile
7 consistent with one that would have been fired from that
8 handgun?

9 A Yes, it's consistent with it's overall characteristics
10 and in weight and so forth with a 22 long caliber bullet,
11 which is what State's Exhibit No. 14 is designed to fire.

12 Q Thank you. Please answer any questions that Mr. Chisolm
13 may have.

14 THE COURT: Cross-examination?

15 MR. CHISOLM: Yes, Your Honor.

16 IRA PARNELL - CROSS-EXAMINATION

17 BY MR. CHISOLM:

18 Q How are you doing, sir?

19 A Fine, sir.

20 Q 614.

21 A 15 with today.

22 Q You said that the weapon appears to have been under
23 water for several months?

24 A I can't tell you how long it was under water. It was a
25 period of time.

State v. Chisolm 9/12/11 - 9/19/11

705

1 Q Period of time?

2 A It's longer than a day.

3 Q Right.

4 A But according to whether it's brackish salt water or
5 fresh water, you know, it's been underwater, consistent with
6 having been under water for a period of time.

7 Q Okay. And what type of ammun -- what type of
8 projectile is that, again, you said a 22 long rifle bullet?

9 A State's Exhibit 18?

10 Q Yes.

11 A Yes. It's consistent in its weight and its overall --
12 what it looks like. It looks like a 22 long rifle, yes.

13 Q And how many -- could you tell me how many different --
14 what type of weapons are available that would fire a 22 long
15 rifle bullet; how many different versions of 22 are there?

16 A Hundreds.

17 Q Hundreds?

18 A A lot. I couldn't give you a number, but there are
19 many hundreds of 22 caliber firearms.

20 Q And it could be potentially fired from any of those?

21 A Correct.

22 MR. CHISOLM: I have no further questions.

23 THE COURT: Any redirect?

24 MR. AUSTIN: Nothing from the state, Your Honor.

25 THE COURT: All right. Is this witness free to leave?

State v. Chisolm 9/12/11 - 9/19/11

710

1 Thursday and, of course, this morning to go through, Mr.
2 Hilton and look at the evidence?

3 MR. HILTON: I did.

4 THE COURT: All right. And made me believe knowing that
5 that is your typical procedure that maybe your are close to
6 resting; is that correct?

7 MR. HILTON: That is correct, Your Honor.

8 THE COURT: And are you prepared to rest off the record
9 and then again in front of the jury?

10 MR. HILTON: I am, Your Honor.

11 THE COURT: Very well. And then the state would rest?

12 MR. HILTON: We do.

13 THE COURT: Very well. With that, I would then ask for
14 motions.

15 MR. CHISOLM: Your Honor, I make a motion for a directed
16 verdict.

17 THE COURT: Thank you so much. I would respectfully
18 deny your motion, Mr. Chisolm. It is the Court's duty to
19 view not the weight of the evidence, but whether or not
20 there is evidence on each and every element of the offense
21 from which the jury could make a determination of guilt is
22 for the jury to weigh the evidence, and I would find that
23 there is evidence on each and every element of the offense
24 of murder before the jury.

25 I would respectfully deny your motion, noting your

State v. Chisolm 9/12/11 - 9/19/11

711

1 exception thereto.

2 Now, let me -- here's -- now I would ask this question
3 of you, at this point, whether or not you're going to be
4 presenting witnesses?

5 MR. CHISOLM: Your Honor, I have an out-of-state witness
6 that I previously was just able to get in contract with.
7 They should be here. I haven't been allowed to use the
8 phone. If I could possibly call and see if they're in
9 route, if not, then I will not be presenting any witnesses.

10 THE COURT: All right. Let me ask you this question.
11 What I'd like to do then before -- and I'll afford you that
12 opportunity, certainly, but what I'd like to do before we do
13 that is to give you some -- talk to you about your right to
14 testify.

15 I'm going to ask you to raise your hand at this time,
16 your right hand. Thank you so much.

17 (WHEREUPON, Donsurvi Chisolm was
18 sworn to tell the truth.)

19 THE COURT: Very well. And state your full name for the
20 record.

21 MR. CHISOLM: Donsurvi Chisolm.

22 THE COURT: Thank you. Mr. Chisolm, at this time, I'm
23 going to explain to you certain of your rights. If you do
24 not understand anything that I say, please let me know. If
25 you want me to explain anything in more detail, please let

State v. Chisolm 9/12/11 - 9/19/11

719

1 Ejuhavna please stand at this time. I find no one standing.

2 Thank you so much.

3 Ladies and gentlemen, and thank you, Ms. Havna (sic).

4 Ladies and gentlemen, it is as you know -- well, at this
5 time I'll call on the state, Mr. Hilton.

6 MR. HILTON: Your Honor, I think it's Ms. Ejuhavna
7 Chisolm.

8 THE COURT: Ejuhavna Chisolm. Thank you.

9 MR. HILTON: And at this time the state would rest.

10 THE COURT: Thank you for that help. Okay. Chisolm is
11 her last name. Ejuhavna Chisolm, related by blood or
12 marriage, if so please stand. No one is standing.

13 All right. Ladies and gentlemen, the state has now
14 rested, which means you have heard the witnesses and
15 received the evidence, which you will from the state in the
16 state's case in chief, and next we will hear from Mr.
17 Chisolm.

18 Mr. Chisolm.

19 MR. CHISOLM: The defense would like to call to the
20 stand Ejuhavna Chisolm.

21 THE COURT: Very well. Yes, ma'am, if you'd come along
22 please and be sworn. Just come on around right here. Yes,
23 ma'am.

24 THE CLERK: Please raise your right hand and state your
25 full name for the record.

1 MS. CHISOLM: Ejuhavna Chisolm.

2 THE CLERK: Could you spell your name, please.

3 MS. CHISOLM: E-j-u-h-a-v-n-a.

4 (WHEREUPON, Ejuhavna Chisolm was
5 sworn to tell the truth.)

6 THE CLERK: Thank you.

7 THE COURT: Your witness, Mr. Chisolm.

8 MR. CHISOLM: Thank Your Honor.

9 EJUHAVNA CHISOLM - DIRECT EXAMINATION

10 BY MR. CHISOLM:

11 Q How are you doing, Eju?

12 A Good morning.

13 Q At the time I was arrested, do you know what type of
14 vehicle I was previously driving?

15 A The Durango.

16 Q Okay, could you be a little more specific?

17 A Gray, 2005 Dodge Durango.

18 Q Do you know where I got this vehicle?

19 A You purchased it from me.

20 Q Okay. Could you tell me around what time this purchase
21 or exchange took place?

22 A Sometime in 2005 or 2006.

23 Q Okay.

24 MR. CHISOLM: Your Honor, present recollection
25 refreshed. I'd like to show the witness --

1 THE COURT: A document.

2 MR. CHISOLM: A document.

3 THE COURT: Any objection, Mr. Hilton?

4 MR. HILTON: No objection.

5 THE COURT: Very well.

6 BY MR. CHISOLM:

7 Q Do you recognize this document, Ms. Chisolm?

8 A I do.

9 Q And could you tell me what this document is?

10 A It's a loan that Natalia Chisolm got in order to cover
11 the cost of the vehicle.

12 Q Could you tell me the date this vehicle was purchased?

13 A September 24, 2007.

14 Q Okay. Could you tell me the condition this vehicle was
15 in when it was purchased?

16 A It was in fair condition.

17 Q Okay, can you tell me the condition of the interior of
18 the vehicle, to your recollection?

19 A There were some burn spots on the passenger side, the
20 carpet was a little dirty. In the back where my kids were
21 they have like some piece of candy that melted and couldn't
22 get cleaned. The interior was just okay.

23 Q Okay.

24 A And --

25 Q Continue.

State v. Chisolm 9/12/11 - 9/19/11

722

1 A Okay. And I had the seat belt that I had cut out on
2 the passenger side.

3 Q Could you tell me why?

4 A Yeah, because I was in an abusive relationship and
5 because of that one of the things the person that I was in
6 the relationship with would do, I never would drive with
7 him. So he would drive, I'd be here, and so if it's he and
8 I in the car and we were arguing or whatever, he's always
9 put his hand up to stop me or -- my hair was longer than
10 this so he'd grab my hair and like it was just a way to
11 control -- he'd just control me on that side of the car.
12 And so I would jump out of the car sometimes, and one time
13 when I tried to jump out of the car, I kind of choked myself
14 so I snuck in and cut the seat belts on it when I need to
15 jump out the car, I could jump out the car.

16 Q Do you know where I was living at the time of my
17 arrest?

18 A In Jacksonville, Florida with me.

19 Q Okay. Could you tell me the living arrangements at the
20 time, as to your recollection?

21 A We had a four bedroom apartment. Two bedrooms on one
22 side and two bedrooms on the other side. We had got an
23 apartment at big because at the time, I had three kids and I
24 think y'all had two and one more on the way. This same
25 abusive relationship that I was in and I wanted my brother

State v. Chisolm 9/12/11 - 9/19/11

723

1 to come move in with me, because I had got a really good
2 job, and I didn't want to leave Jacksonville. I wanted to
3 stay in Jacksonville and him and his wife agreed to come.
4 They said they would help me out with my kids.

5 Q Do you recall furniture being in this apartment?

6 A Yes.

7 MR. CHISOLM: I have no further questions.

8 THE COURT: All right. Cross-examination.

9 EJUHAVNA CHISOLM - CROSS-EXAMINATION

10 BY MR. HILTON:

11 Q Ms. Chisolm, that abusive relationship, when did you
12 decide to cut out the seatbelt?

13 A I couldn't tell you exactly, but it was before my
14 brother moved.

15 Q It was before he bought the truck, is that what you're
16 saying?

17 A Yes.

18 Q And before -- excuse me -- when you went to cut out the
19 seatbelt how did you do that?

20 A With a knife?

21 Q You just cut the strap?

22 A Yes.

23 Q Okay. Do you remember where you cut it?

24 A I don't remember where.

25 Q You don't remember?

State v. Chisolm 9/12/11 - 9/19/11

724

1 A I mean, I cut this part, this part stays but I cut this
2 side off.

3 Q You just cut it near the little guide?

4 A I was in a hurry. I honestly cannot tell you where I
5 cut it. It was something that I snuck and did. Really,
6 quick to get it off so if that ever happened again, I could
7 just get out the car.

8 Q And the seatbelt, did it just reel up down in the
9 thing?

10 A I rolled up.

11 Q Do you remember talking to police --

12 MR. HILTON: Just one minute.

13 THE COURT: All right.

14 BY MR. HILTON:

15 Q Do you remember back on October 22, 2007, when police
16 were trying to get in touch with you in reference to this
17 case?

18 A If you'll talk about it a little more?

19 Q Do you remember talking to a Det. Mike Giglio, Det.
20 Linda Walsh?

21 A You've got to tell me a little bit more about the
22 conversation, please?

23 Q I'll tell you. Do you remember talking to them about
24 the seatbelt and the seat of the car?

25 A Oh, yeah. I remember talking to them about the

1 condition of the car.

2 Q And that was back in 2007, right?

3 A Right.

4 Q Much closer to the time when you sold the car, correct?

5 A But he had been -- I had two cars. The situation with
6 the cars was I had moved from Seattle to Florida in 2005.
7 One of the other cars that I had, it was in my name, but it
8 was for a friend, she stopped paying on it. Even though the
9 transaction didn't occur until 2007, he and his wife they
10 either would be driving the Durango or I had a gold Pontiac.
11 So we switched back and forth. I came to South Carolina
12 he's drive that. You know, just switched back and forth.
13 The people that I talked to, I had put in a claim with
14 Nationwide Insurance to get that side of the car fixed
15 because I wanted to turn the car over to my brother in good
16 condition, when I realized that they were going to -- when
17 Navy Federal approved them.

18 Q But my question, Ms. Chisolm, is do you remember
19 talking to Det. Walsh and Det. Giglio in reference to the
20 seat and seatbelt?

21 A I don't know.

22 Q Do you remember telling them that your boyfriend had
23 wrecked into a fence and messed up the seatbelt?

24 A No.

25 Q You don't remember telling them that?

State v. Chisolm 9/12/11 - 9/19/11

726

1 A No.

2 Q Do you remember telling them that the -- and the
3 seatbelt you were referring to, you told Det. Walsh and Det.
4 Giglio was the rear passenger seat and it was halfway messed
5 up. You don't remember that either?

6 A No. My boyfriend, he kicked the doors, there's a lot of
7 damage done to that car. So I don't. Car cosmetics, that
8 had to be repaired and at one point probably 2006 during
9 that time. It wasn't the seatbelt, it was the rear back was
10 like it was back into like a U-haul truck or something. So
11 the car had --

12 Q My question is do you remember telling the police that
13 the rear passenger seatbelt was halfway messed up and it was
14 messed up because your boyfriend wrecked into a fence?

15 A I do not telling them that --

16 Q Okay.

17 A -- but if I said it --

18 Q Do you remember in reference to the seat saying that
19 there were cigarette burns in the seat on the driver's side?

20 A No.

21 Q Okay.

22 A If we pulled -- I'm sure you have pictures on the
23 inside, you'll see that the cigarette burns were on the
24 passenger side.

25 Q And do you remember telling police that you're not sure

State v. Chisolm 9/12/11 - 9/19/11

727

1 about the passenger side having any damage?

2 A No.

3 Q You don't remember that?

4 A No, not at all.

5 Q I'm reading that from their report, that's made up?

6 A That's their report. That's not nothing that I put in
7 writing. Nothing was wrong with the driver's side. It was
8 the passenger side. I don't remember that.

9 Q Thank you, Ms. Chisolm.

10 A You're welcome, sir.

11 THE COURT: Redirect.

12 MR. CHISOLM: I have no more questions for this witness,
13 Your Honor.

14 THE COURT: And is this witness free to leave?

15 MR. CHISOLM: Yes, Your Honor.

16 THE COURT: No objection?

17 MR. HILTON: No objection, Your Honor.

18 THE COURT: You're free to go. Thank you.

19 MR. CHISOLM: Your Honor, I apologize. I wanted to
20 submit in evidence Defense Exhibit --

21 THE COURT: Whatever the next number is.

22 MR. CHISOLM: -- 21.

23 THE COURT: Any objection?

24 MR. CHISOLM: two page document, without objection.

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

State v. Chisclm 9/12/11 - 9/19/11

728

1 MR. HILTON: No objection, Your Honor.

2 THE COURT: Very well.

3 (Defendant's Exhibit No. 21, 2 page
4 document, was marked and entered.)

5 THE COURT: That'd be good. Excellent. Thank you.

6 All right. Call your next witness.

7 MR. CHISOLM: The defense rest, Your Honor.

8 THE COURT: Very well. Will there be any rebuttal or
9 reply?

10 MR. HILTON: There will not.

11 THE COURT: Very well. Ladies and gentlemen, you have
12 now heard the witnesses and received the evidence which you
13 will in this case. What remains for us are the arguments of
14 counsel and Mr. Chisolm and my charge or instruction on the
15 law. It also signifies to me that there are matters that I
16 must take up outside your presence. So ladies and
17 gentlemen, I'm going to ask you to step to your jury room.
18 Please do not discuss this matter or allow anyone to discuss
19 it with you. You've not heard the arguments or my charge on
20 the law. You are not prepared to deliberate, so please keep
21 that in mind.

22 If you will please go to your jury room. Anybody who
23 needs to smoke now is a good time to smoke. Take your
24 break, because when we return we will be getting into the
25 arguments and the charge.

State v. Chisolm 9/12/11 - 9/19/11

729

1 Thank you so much. Just step to your jury room.

2 (Jury out at 10:12 a.m.)

3 THE COURT: All right. Motions?

4 MR. CHISOLM: Your Honor, I just renew my earlier
5 motions for directed verdict.

6 THE COURT: Thank you so much. And again I find there
7 is evidence on each and every element of the offense for
8 which the jury could find guilt. I respectfully deny your
9 motion noting your exception thereto.

10 Now, what's going -- Mr. Chisolm, earlier I instructed
11 you regarding your ability to testify. Obviously you have
12 chosen not to testify. Is that correct?

13 MR. CHISOLM: Yes, Your Honor.

14 THE COURT: Obviously, at this moment if you were to
15 change your mind I'd have to have the jury come back and you
16 would have that opportunity. But we discussed it earlier
17 and I think you said you had one witness at that point, but
18 you do not intend to testify, do not wish to testify?

19 MR. CHISOLM: I do not wish to testify, Your Honor.

20 THE COURT: Thank you, sir. Now, what's going to be
21 handed to you are two things, number one, my proposed
22 charge.

23 MR. CHISOLM: Yes, Your Honor.

24 THE COURT: And the proposed verdict form. If you will
25 take a minute to look at that. In fact, I think what we'll

State v. Chisolm 9/12/11 - 9/19/11

735

1 After you have heard the closing arguments, then there
2 will be a very short break which you will understand when we
3 reach that point. And then I will deliver the instruction
4 on the charge to you which I think is probably going to take
5 me about 25 minutes. And then there will be another very
6 short break that I'll explain when we reach that point, and
7 then, ladies and gentlemen, you will receive this case for
8 your deliberations.

9 Ladies and gentleman, at this time, I ask that you
10 please draw close as we listen to the closing arguments.

11 Mr. Hilton.

12 MR. HILTON: Thank you, ladies and gentlemen, Mr.
13 Foreman. I want to thank y'all for being here through the
14 course of last week for being patient and listening to a
15 case that y'all had nothing to do with. Fortunately, that's
16 the way it is, and I say fortunate because that's what's
17 fair. I say fortunate because you can come in here and
18 render a verdict that's based on the facts of the case, not
19 based on my spin on things, not based on the defendant's
20 spin on things. You listen to the facts from that stand, see
21 the evidence that's presented and you render a verdict based
22 on that information.

23 As Judge mentioned to you a moment ago, I'm going to
24 talk to you about the law in the case. Then Mr. Chisolm is
25 going to get up and he'll have an opportunity to talk to you

State v. Chisolm 9/12/11 - 9/19/11

736

1 about his version of the facts. Not testifying, but what he
2 thought the facts were coming from the witness stand and the
3 facts that were introduced into evidence. After that, I'll
4 be able to get up and talk to you again.

5 So what's the law in this case. I mentioned that the
6 defendant's charged with murder. Murder is the unlawful
7 killing of another with malice aforethought. Either
8 expressed malice or implied malice.

9 The unlawful killing of another. September 13, 2011,
10 it was exactly four years from Tuesday when we started this
11 trial, Craig Michael Canady was killed. There is no
12 question about that. He's dead. There's pictures of him
13 dead. The pathologist testified that he died from a single
14 gunshot wound to the left side of the head.

15 There's no question about the killing of another. So
16 with malice. What is malice. There's couple of definitions
17 of malice. The Judge will give you some definitions. I'll
18 just read you a couple of them. Malice is the wrongful
19 intent to injure another. It indicates a wicked or depraved
20 spirit intent on doing wrong. An intentional or wrongful
21 act without just cause or excuse. Malice doesn't require
22 ill will towards the individual but rather signifies a
23 general malignant recklessness of the lives and safety of
24 others or a condition of mind which show a heart regardless
25 of social duty and fatally bent on mischief.

State v. Chisolm 9/12/11 - 9/19/11

737

1 That's one of those things. Y'all know what malice is.
2 Somebody takes a gun, puts it to somebody's head, pulls the
3 trigger and dumps their body in a ditch. That's malice.
4 That's malice.

5 So the unlawful killing of another with malice either
6 expressed or implied malice isn't a particular type of
7 malice, that's how you determine whether malice existed.

8 Express malice is a little more obvious. Somebody says
9 that, that is an expression of malice. That's not the only
10 way you get expressed malice. There's no evidence of that
11 here, but where there is evidence of expressed malice in
12 this case is right after the shot occurred, we heard
13 testimony about him mumbling something about, yeah, that MF-
14 er. And that was David White's testimony. That's evidence
15 of expressed malice.

16 And then there's inferred malice or implied malice.
17 Again, like I mentioned a moment ago when you put a gun to
18 somebody's head and you dump their body in a ditch after
19 shooting them. That's inferred malice. The Judge will
20 instruct you that malice can be inferred from the use of a
21 deadly weapon.

22 Folks, I submit to you, State's Exhibit 14 was the
23 deadly weapon on the night of September 13, 2007.

24 Craig Canady, Red, died almost immediately after being
25 shot in the head with this pistol on September 13, 2007. So

State v. Chisolm 9/12/11 - 9/19/11

738

1 if you believe beyond a reasonable doubt the defendant is
2 the one who did it, he's guilty of murder.

3 I mentioned reasonable doubt, and I want to talk to you
4 about what that is. A lot of times throughout the course of
5 the trial, Mr. Chisolm would try to hash out particular
6 points. You know, the gun was found at Scully's fishing
7 hole. There's a statement from George Gallardo, left one
8 time -- and he says in here left one time and says right the
9 other time. And he testified, he didn't know his right or
10 his left any better than I do, but he was sure about one
11 this, that is was the passenger seat, and he also hashed out
12 that, you know, Shakara Rose couldn't say for certain that
13 he was the one who said, in Haven Oaks, yeah, Red's in a
14 ditch stinking. And so all of these things, I suspect, he's
15 going to get up here and say that's reasonable doubt,
16 reasonable doubt, and you've got to find me not guilty.

17 I want you to be real clear on what reasonable doubt
18 it, and there's a couple of definitions, and the Judge will
19 charge you with those definitions. One of those definitions
20 is reasonable doubt is doubt that causes a juror to hesitate
21 to act. Folks, I hesitate to act when I pull out from a
22 stop sign. I hesitate to act before I make some big
23 purchase, and so while that is a definition, I submit to you
24 that definition is a little bit confusing, it's a little bit
25 misleading. This is a serious case, and you should hesitate

State v. Chisolm 9/12/11 - 9/19/11

739

1 to act.

2 The Judge will also charge you with another definition
3 and that's, after considering the evidence in the case if
4 you're firmly convinced of the defendant's guilt then you're
5 to find him guilty.

6 Keep in mind that proof beyond a reasonable doubt is
7 just that. It's not proof beyond a shadow of a doubt or
8 every possible doubt or every imagination of what could have
9 possibly happened that night. It's proof beyond a
10 reasonable doubt. There are very few things in life we know
11 with absolute certainty, and that's not required in a
12 criminal case. Proof beyond a reasonable doubt is a strong
13 burden and it should be a strong burden, but it's not an
14 impossible burden. If it were, nobody would ever get
15 convicted for anything.

16 Judge may charge you on several other areas of law, but
17 there's one more I want to talk to you about, and that's
18 direct verses circumstantial evidence.

19 Direct evidence is something that comes from our five
20 senses. I saw something, I smelled it, tasted it, heard it.
21 It's something that we have first hand knowledge of, or the
22 witness has first hand knowledge of.

23 David White's testimony in this case is direct
24 evidence. He said, I saw the flash, I heard the pop. The
25 dude took his last breath and slumped over. That's direct

State v. Chisolm 9/12/11 - 9/19/11

740

1 evidence. That's pretty clear. You've got an eye-witness
2 that says this is what happened.

3 Circumstantial evidence is generally everything else.
4 It's stuff that you can deduce from other facts that lead
5 you to a conclusion.

6 The Judge may or may not give you an example, but an
7 example of circumstantial evidence goes something like this.
8 You come into the courthouse this morning and it's cloudy
9 outside. You hear some thunder in the distance. You come
10 in and the shades are down much like they are now and you're
11 paying attention to me and Mr. Chisolm, you're not looking
12 out the window. Lunch time comes around and you go out to
13 your car. There's puddles on the sidewalk, your car has
14 droplets of water all over it. Your shoes get damp on your
15 way out to your car. You didn't have to see the rain fall
16 from the sky to know that it rained, and that's what
17 circumstantial evidence is. And that's true in criminal
18 cases as well.

19 The Judge will instruct you that circumstantial
20 evidence is just as good as direct evidence, and here we're
21 fortunate enough to have both, both an eye-witness and facts
22 and circumstances to know that the rain came down on
23 September 13, 2007.

24 Thank you.

25 THE COURT: Thank you, Mr. Hilton.

State v. Chisolm 9/12/11 - 9/19/11

741

1 Mr. Chisolm.

2 MR. CHISOLM: What is the truth. The truth is that
3 which will stand strong, that which will not falter and that
4 which will not change. The truth will stand through
5 confusion, stand through doubt and stand through accusations
6 and stand through lies.

7 In opening, I challenged you search for the light of
8 truth. Have you found it.

9 During opening statements you were offered the
10 intentions of both parties, but only one can prove to be
11 true. The state has offered you fear, doubt, confusion, and
12 lies. I have offered you truth.

13 Det. Bistromowitz, Tamekka Williams, Det. Greer, and
14 Det. Giglio have all testified to my initial interest in
15 helping and my continual willingness to bring forth
16 information in this case. At what point does it become
17 unusual for a friend to be concerned and want to help. Did
18 officers really insinuate in their testimony that they'd
19 rather a person run than help.

20 My initial statement was given and nothing was held
21 back. When detectives came upon entire discrepancy my
22 response was simple. Check the phone records. Science,
23 mathematics and technology, they don't lie.

24 Det. Giglio testified he made contact with me at least
25 five times. Det. Bistromowitz at least two times. Det.

State v. Chisolm 9/12/11 - 9/19/11

742

1 Greer, at least once over a two month time period. The
2 majority of the contact was initiated by me and ended with
3 me giving more information. The facts don't lie.

4 David White admits he was interrogated at length twice.
5 He admits this was done by four detectives and his own
6 mother was even brought in as a part of the detectives
7 questionable tactics. The facts don't lie. And after two
8 months we were both arrested. The facts don't lie, but
9 unfortunately people do.

10 Det. Giglio, through cross-examination admitted our
11 arrest warrants were more speculation than true and accurate
12 facts. The coroner did not give a time of death. The
13 ballistics expert didn't give a report until weeks after the
14 arrest and Det. Giglio, himself, admitted the claims of
15 phone calls on Summers Road were mere assumptions.

16 Yes, the warrant may have been officially signed, but
17 the information on it was not accurate and true.

18 According to David White, he withstood four detectives
19 and his mother with his ability to lie, but on cross-
20 examination his lies were proven in less than 30 minutes.

21 Phone records of both me and the deceased proved the
22 calls he claimed to be untrue and my phone on the opposite
23 side of town when the alleged events took place. The towers
24 drawn by Det. Giglio will show you that the Beach Hill tower
25 and Trolley Alley tower are at least six and a-half miles

1 apart.

2 The state's theory that I was on the far side of the
3 Beach Hill tower, but the phone records put me near Trolley
4 Alley in less than one minute and vise-versa. The question
5 is, can my vehicle travel at the 363 miles per hour needed
6 to cover 6.5 miles in one minute.

7 The arriving officers and forensic detectives testified
8 that the stain Mr. White claimed was not in accordance with
9 the facts they recall. Forensic science also proved that
10 the seat cushion would not have covered -- would have
11 covered little or nothing going against another claim of Mr.
12 White. The coroner did not confirm his claims of a close
13 range fire. She testified it could have been across a room.
14 The ballistics expert did not verify this handgun as the
15 murder weapon. In fact, this weapon was recovered with no
16 clip in the area of another weapon at a fishing hole he
17 admitted he frequented less than two miles from his home.

18 This weapon was found with one round in it, but no
19 clip. David White says it was allegedly in full view before
20 being thrown. The question is, how is a gun fired and
21 reloaded with no clip. When asked by the state if the gun
22 had been under water for several months the expert responded
23 with a yes. If it was under water at the time of these
24 alleged events how was it used? These were the lies.

25 The state gave you Shaquanda White, who agreed with

State v. Chisclm 9/12/11 - 9/19/11

744

1 both the state and the defense. This was the confusion.

2 The state gave you Shakara Rose, two LKQ employees and
3 Tom Simonelli. This was the doubt. Ms. Rose can remember
4 her own statements and claims she out of 30 people heard a
5 comment. Where are the other 29 people? The parts puller
6 who asked for two seats, who pulled one and was confused by
7 his own statement just like Ms. Rose. The manager couldn't
8 remember if the purchase took place, and Tom said he needed
9 to speak with his wife. It should be noted that Tom's
10 purchase never went through and neither LKQ employee
11 identified me as the purchaser even though I was a few feet
12 away from them. Why is that important? Because as Det.
13 Greer told you, they didn't have to. I told her and Det.
14 Walsh of my purchase. Where the old seat was and where and
15 when I changed the seat. I even put them in touch with the
16 witness to verify it giving them more information they did
17 not have.

18 I gave them the previous owner info and the insurance
19 claim info to verify the pre-dated claims, and Gerald's Tire
20 info. The question you should ask if why didn't Det. Walsh
21 come testify as to the investigative results on the
22 insurance claims or Gerald's Tires info. Did those results
23 go against their theory of guilt? Yes. The facts show
24 repairs were being made to my vehicle, but the facts show
25 that on two separate occasions my vehicle was cleared of any

State v. Chisolm 9/12/11 - 9/19/11

745

1 DNA evidence of the deceased.

2 This is a very important fact. The state's claim is
3 not one of minor injury. The state's claim is that someone
4 was shot in the head inside a closed in space. How could
5 this be -- how could this be done without leaving a trace of
6 blood? The state expects you to believe that forensic
7 science misses things and cannot detect at all. But the
8 opposite would be true and forensic science would praised in
9 a different set of circumstances.

10 Does the state expect us to leave our experiences at
11 home. Are we expected to become one-sided and one-minded.
12 Facts do not cease to exist because they are ignored. The
13 parts puller statement is clear, that the caller asked for a
14 left. Would we have had an entire trial about a left seat
15 if I was given time to change that out, as well?

16 Where is the motive? No one has gotten on the stand
17 and testified to any problems or altercations between me and
18 the deceased. It was said we went to rob someone. Does
19 that person exist? Why hasn't Siquan Moody testified to
20 being called to information pertaining to a robbery. Red
21 was allegedly killed in the early morning hours of September
22 13th. This left a whole day of unaccounted time. Has
23 anyone testified as to what I was doing on that day?
24 According to Det. Giglio's testimony I texted my friend at
25 9:30 at night to tell him his girl was looking for him.

State v. Chisolm 9/12/11 - 9/19/11

746

1 That's more than 12 hours after I allegedly committed this
2 crime. This was not volunteer information. This was found
3 out because the detectives took my phone. The question I
4 ask is why would someone text a person if they allegedly
5 knew they wouldn't answer.

6 The state has proven what I admitted of my own free
7 will. That I was fixing my truck. Science has proven that
8 I did not commit murder. In order for the state's
9 allegations to ring true, the laws of physics would have
10 stopped working on September 13, 2007. Facts do not cease
11 to exist simply because they are ignored.

12 In a final attempt to distract you from the truth, Det.
13 Giglio spoke of mud and a move to Florida two months later.

14 Ask yourself, would a person step in mud if they knew
15 an obvious way around it, and how does one avoid detection
16 when two contact numbers, kids registered in school, a job
17 and an apartment in a family name?

18 The state has not presented you with proof beyond a
19 reasonable doubt. The state has provided you with absolute
20 doubt.

21 I gave my recollection of events to detectives and
22 relied on technology to clear any discrepancy that may have
23 arisen. That is the truth.

24 That which is true need only be said once and it will
25 stand strong. That which is not true must be said a 1,000

State v. Chisolm 9/12/11 - 9/19/11

747

1 times to withstand the test of time.

2 We are all innocent until proven guilty, and I trust
3 you will make the right choice and come back with a verdict
4 of not guilty.

5 Thank you.

6 THE COURT: Thank you, Mr. Chisolm.

7 Mr. Hilton.

8 MR. HILTON: Thank you ladies and gentlemen.

9 Again, I told you in opening statements that a trial
10 was like a puzzle, and that you get that evidence a little
11 bit at the time and try to fit those pieces together. So
12 what I want to do for you now, is try to put that puzzle
13 together. And you've probably already done this in your
14 mind.

15 I marched up about 20 witnesses in this case, and every
16 one of them had something important to say. They told their
17 story in their own words, what happened on September 13,
18 2007, and the days just prior and just after, the senseless
19 killing of Craig Canady in this case, by that defendant,
20 Donsurvi Chisolm.

21 You heard those witnesses just like I did. So let's
22 talk about what some of them said.

23 Tonia Platt, first witness in the case. She said on
24 the 15th, they were out there hunting in the Clubhouse area.
25 She went to get in some dogs. Stopped, saw some buzzards in

State v. Chisolm 9/12/11 - 9/19/11

748

1 the creek. She found something then she will probably never
2 forget the rest of her life, a dead body laying in a ditch.
3 She got her kid out of there. She called her husband. He
4 called 911, the Sheriff's Office responded.

5 You then heard from Lt. Joe Burnette. He was one of
6 the people that responded out there initially. He roped off
7 the scene and secured it so that crime scene and detectives
8 could get out there.

9 Then you heard from Det. Bistromowitz. He was one of
10 the detectives in the case, and he told you, as well as,
11 Jamie Zensen, that at that time they weren't even sure what
12 they were dealing with. They didn't know how it was. They
13 didn't know if he'd been hit by a car. They didn't know
14 what they were dealing with. All they knew was they had a
15 body in a ditch, at that point.

16 And from those customer cards they were able to find
17 out the name of Tamekka Williams, and they went and talked
18 to her. And Tamekka didn't know what was going on when they
19 got there. She unfortunately had an argument with her
20 boyfriend, Red, he packed up his stuff, stacked it in her
21 house, and he left. Told her he was going to stay with
22 someone and that was the last time she heard from him. She
23 had mentioned something about Thursday and then said she
24 wasn't sure of the exact date. So Thursday, Friday,
25 Saturday. No Red. She called and he wouldn't answer. And

State v. Chisolm 9/12/11 - 9/19/11

749

1 she said that wasn't like him, even if he was mad at her he
2 would answer the phone.

3 Saturday afternoon, police came to visit after finding
4 out her name was on that CVS card. So what happens they go
5 to her apartment. Hey, Tamekka, we found someone dead in a
6 ditch with your CVS card, can you tell us who it is. And
7 she breaks down and realizes at that point that her
8 boyfriend, Craig Canady, had been killed. By who, she
9 doesn't know. She gives some names for the police to check.

10 Who comes in at this time, that man right over there,
11 the defendant, and he tells police, hey, by the way, the
12 last time I saw Red he was walking across a ditch over to
13 Azalea Park. Yeah, me, Red, Scully, we rode around and we
14 dropped off Scully. I brought him back to the apartments
15 and that's where he jumped the ditch, that was the last time
16 I saw him.

17 Folks, when you go back in your jury room take a look
18 at State's Exhibit No. 1 and State's Exhibit No. 10. Does
19 it look like he walked through any ditch. There's no mud on
20 his shoes. Look at Det. Giglio's shoes when he just walked
21 up to the ditch, and you'll have those in your jury room.

22 From that initial encounter with police that's where
23 Mr. Chisolm starts crafting his little web of lies. His big
24 web of lies.

25 You heard Tamekka testify. She said, to the

State v. Chisolm 9/12/11 - 9/19/11

750

1 defendant's question, she said, Haven Oaks, when police come
2 around most people take off. You heard Det. Bistromowitz
3 say that. It was rare to have any information out there.
4 If they had a motto, their motto would be see no evil, hear
5 no evil. But the defendant, he thinks he's smarter than the
6 rest of those folks out there, and he thought that he could
7 outsmart the police, and he thinks that he can outsmart you.

8 From day one, he started causing himself problems. Day
9 one, how did he even know that the police were out there
10 investigating a homicide. Remember, police don't even know
11 at this time whether it's a murder, whether he got hit by a
12 car, nothing. And he -- the police were at Tamekka's house.
13 He comes over. How does he know what they're doing there,
14 what they're there for? How does he even know that they
15 found Red, how does he know that they're not just looking
16 for him? How does he know that Red's even dead, at that
17 point. Yet, he's coming over there volunteering information
18 about the last time he saw the victim.

19 Now, you heard from Shaquanda White. She knows the
20 defendant and at one point was good friends with the
21 defendant and his wife, Natalia. What does she have to say?
22 She said around 3:00 o'clock or so Don showed up in his gray
23 Durango, Red was sitting in the front seat. Don got out and
24 went into the apartment, Scully comes out. Don gets back
25 into the driver's seat, Red's still in the passenger seat,

State v. Chisolm 9/12/11 - 9/19/11

751

1 Scully gets in the back seat behind the driver. At that
2 point in time they headed out. She said Scully came back
3 around 4:30, 5:00, somewhere in there. He stayed in bed the
4 next day. That night she was with Siquan Moody watching a
5 movie.

6 That confirms, just like the defendant said that Red,
7 Scully and the defendant were the last ones to be seen
8 together.

9 You heard from Shakara Rose. She said that she was in
10 a crowd of people in Haven Oaks, and she wouldn't commit to
11 it, but you heard what she said to the defendant's question.
12 She said, Don, I believe it was you that said something
13 about Red being in a ditch stinking. Don, I believe it was
14 you. And why is that important, because this was after he
15 went missing, yet, before his body is found. There were
16 only two, maybe three people that knew about this case, and
17 that's Scully, Don and maybe Natalia, that's Don's wife.
18 Scully wasn't in this group of people.

19 And then we get to David White. David White is the
20 person that the defendant has pointed out multiple times
21 that he has an eighth grade education, the person, according
22 to the defendant who was pressured by the police into giving
23 some statement, and what does he say? He came in, and he
24 told you what happened from about 3:00 o'clock on the
25 afternoon of the 12th right on through to Friday and really

1 past that.

2 He said about 3:00 o'clock on the afternoon of the
3 12th, he said he called Don to go to the hospital to go to
4 the hospital to visit his step-daughter who had had the
5 baby. Don picks him up from his brother's house and they
6 leave from there and go to pick up some gumbo seasoning from
7 Don's mom's house. At some point, he breaks out the cocaine
8 and that changes his mind about going to the hospital. They
9 ride around and meet some girl. They stop by the Exxon
10 station and Don takes him home. He also said there was
11 noting wrong with the seat or the seatbelt at that time. A
12 little while later he realizes he's got the change that Don
13 had given him when they stopped at the Exxon station. He
14 calls Don from Jay's phone and a little bit later Don calls
15 back. Hey, you want some more. It was at that point that
16 Don came back over there. When I say, Don, I'm talking
17 about the defendant, Mr. Chisolm. It's at that point the
18 defendant came back over there with Red. Shaquanda and
19 Siquan are outside. That's when the defendant and Red leave
20 with Scully.

21 And I think Scully told you he had only known the
22 defendant for a little while. He had met him just a little
23 while prior to this.

24 As soon as they get in the car Don starts talking about
25 someone to rob. Scully says, I'm not dressed for that.

State v. Chisolm 9/12/11 - 9/19/11

753

1 Said don't worry about that, all you got to do is drive.

2 Folks it was from that point that Scully got into
3 something he had no idea was going to take place on
4 September 13, 2007. And when they got back to Azalea Park,
5 they start making that loop. They start making that loop in
6 Azalea Park. They come around and go around again. When
7 they get about right here where he put that X, he saw a pop
8 -- he heard a pop, he saw a flash. He sees the defendant
9 with the gun, this gun. He hears the victims take his last
10 gasp of air and he slumps over. Never says another word
11 again. Defendant puts the gun down on the console and
12 starts mumbling something about, yeah, that MF-er. Yeah,
13 something about somebody's cousin, whoever they were going
14 to rob. I wish we knew exactly what he said that night.
15 And it's not because Scully didn't hear him. He heard him,
16 he just couldn't comprehend what he was saying in that
17 heated moment after he just witnessed with his own eyes
18 somebody get killed right in front of him. All it sounded
19 to him was a bunch of jumble.

20 And I thought about this when I was writing my closing
21 argument, if Scully was making up this story, and for some
22 reason trying to pin this on the defendant why would he just
23 come in here and say after he shot the guy, he said, yeah, I
24 shot him because he was selling drugs in Haven Oaks and I
25 told him to quit. Or why didn't he say -- or why didn't he

State v. Chisolm 9/12/11 - 9/19/11

754

1 make up some reason as to why? But that's not what Scully
2 said. Scully said, I could hear him talking, but I couldn't
3 make out what he was saying.

4 You know, on cross-examination of Scully, the defendant
5 tried to make some big point about whether Scully was
6 looking out the window or whether he was looking right at
7 him. How many times did Scully look at the defendant and
8 say, Don, I saw you shoot the man. I saw you shoot the man.
9 Whether that was peripheral or that was looking dead at him,
10 what difference does that really make? There was no
11 uncertainty. At the end of his testimony, I asked him, I
12 said, do you see the guy that shot Red and he pointed out
13 that man right there and he said, that's the man who shot
14 Red, that's the man who pulled the trigger, that's the man
15 who murdered Craig Canady. A shot perfectly consistent, the
16 angle of trajectory, just like Dr. Presnell said, coming
17 from the front seat of a vehicle.

18 It was from there that they left that Azalea Park area,
19 and you see the blue line on here. That's the line David
20 White drew. They start from Azalea Park and they leave and
21 they stop right here by the BiLo by Indian Springs. The
22 defendant gets out, says I'm going to dump the body right
23 here. Scully says, no, you can't do that. You can't do
24 that. I know a place out on Clubhouse. So they leave
25 there, they continue out on Clubhouse. They get about a

State v. Chisolm 9/12/11 - 9/19/11

755

1 mile down on Clubhouse where they dump the body on the right
2 side of the road. From there they continue on down to 165,
3 and throws out the victim's ear piece somewhere along the
4 way the defendant calls Siquan Moody from the victim's
5 phone. They get up to the bridge he throws this gun our the
6 window and more importantly the defendant comes up with a
7 story.

8 Scully didn't make up any story here, but there's one
9 person who did, and that's the defendant. He said, Scully,
10 this is what we'll say. We'll say Red and I dropped you off
11 and we went on back to Azalea Park and Haven Oaks. Sure
12 enough, that's what the defendant told police. And that's
13 what Scully told police. Both of them lied, but why did
14 Scully lie? He told you right there on that stand.
15 Defendant asked him something about being scared of him, and
16 he said, Don, after I saw what you had just done to that
17 man, I was deathly afraid of you. And you were still on the
18 street and I was scared for me and my family. I submit to
19 you, ladies and gentlemen, that's why Scully lied. It was
20 only a couple of days after the defendant was arrested that
21 Scully came forward and told the whole story.

22 Twice Scully tell police the story that the defendant
23 told him to say. The defendant made a big deal about an
24 eighth grade education and him giving in to peer pressure in
25 a two hour interview. Here's the problem with that, he

State v. Chisolm 9/12/11 - 9/19/11

756

1 never gave in to peer pressure or police pressure. He never
2 gave into police during those two hour interviews. He never
3 gave in to police when his mom came into the interview.
4 There was no pressure, no coercion. You saw the last
5 interview where Scully came in to police, and Det. Walsh
6 said, okay, Mr. White, I talked to your attorney, he says
7 you want to tell us what happened, tell us what happened,
8 and he lays it all out on the line.

9 The defendant is trying to hide a couple ways. First he
10 tells you in his opening that David White was pressured with
11 these long interviews and then during some of the testimony
12 he was suggest that the police made it up and told -- they
13 made up this whole story and are trying to pin it on him.
14 And then when that wasn't going his way, he introduced, he
15 introduced the affidavit and said, we gave this to David
16 White and that's how David White crafted this story. David
17 White the person with the eighth grade education that he
18 brought out multiple times, crafted some story that's
19 perfectly consistent with all the evidence.

20 And there's one other problem with that, is that he
21 told them the location of the gun. When you get back in
22 your jury room take a look at the affidavit. This is
23 Defense Exhibit No. 20. See if it says anything about where
24 the gun is on there. It doesn't say, because they didn't
25 even know at the time where the murder weapon was.

State v. Chisolm 9/12/11 - 9/19/11

757

1 Now, somehow after reading that warrant in November and
2 after learning it was a 22 that Scully had come up with some
3 story that made all this work, that had somebody toss the
4 gun in the river for him. Remember, he was incarcerated.
5 So he couldn't have done it. He would have had to have
6 somebody else toss this gun in the river after he learned
7 that it was a 22..

8 But you hear Ira Parnell, that was the expert from
9 SLED. You heard him say the gun was consistent with being
10 in water for months. Now, he couldn't tell you any specific
11 time, and that's why he told the defendant, look, it could
12 have been in there for a day, it could have been in there
13 for more, but he said it was consistent with being in there
14 for months.

15 And you'll have State's Exhibit No. 27. Take a look at
16 this picture when you go back there. Does it look like that
17 gun had been in there for a day or eight days. It had been
18 in there for months. Look at the blueing and the finish.
19 This is not a camouflage gun. This gun was all one color.
20 Agent Parnell testified that the blueing had started to come
21 off of this gun. It's not because it had been in the water
22 for one day. It's because it had been there for a period of
23 time consistent with about two months.

24 And remember, Scully is not the one changing out the
25 seat. Scully is not the one cutting out seatbelts. Scully

State v. Chisolm 9/12/11 - 9/19/11

758

1 is not the one moving to Florida. That's all the
2 defendant's doing.

3 And one other thing with regard to Scully making up
4 this story, even if you believe the defendant had absolutely
5 nothing to do with it like he claims why would Scully blame
6 this on him. They were friends, according to him. And
7 there has been absolutely no testimony from any witness, not
8 even his sister that testified at the end that there were
9 any problems between Scully and the defendant prior to
10 September 13, 2007, absolutely none.

11 Remember it was the defendant that stood up here at the
12 beginning and said that he was here to seek justice for all
13 three of them, Scully, Red, and himself. I submit to you,
14 ladies and gentlemen, that is exactly what we are here for
15 today.

16 Now, let's talk about these phone records for a few
17 minutes. State's Exhibit 33. You heard Sue Johnson from T-
18 Mobile. She got up here and she talked about the
19 defendant's records and cell phone tower information. I'm
20 not going to mislead you. I can't tell you where he was at
21 any particular time. I can't say that any call made at a
22 particular time was from this location or this location or
23 this location. But what am I trying to show with those
24 phone records? What I can tell you from the phone records
25 and what Sue Johnson testified to is that you can tell where

State v. Chisolm 9/12/11 - 9/19/11

759

1 somebody's not. And remember when Det. Bistromowitz got up
2 here and said in that second interview on the 17th when he
3 came in, he said, we stayed around the Haven Oaks Azalea
4 Park area. We stayed around the Haven Oaks Azalea Park
5 area.

6 Folks, when you're hitting towers over here at 1049
7 Beach Hill Road and 516 Beach Hill Road, you're not in the
8 Haven Oaks Azalea Park area. So he lied about that. We know
9 he lied about that. Remember the defendant said a few
10 minutes ago science doesn't lie. Science doesn't lie, but
11 he does.

12 We know that from 2:00 o'clock to 3:50 the defendant
13 was in that Haven Oaks area, but then he starts heading out
14 towards that Beach Hill area, he starts heading out towards
15 that Clubhouse area. Mysteriously enough hitting off the
16 same towers that are on the Clubhouse Road side down there.
17 That happens to be where the body was dumped. That happens
18 to be where David White, Scully, said that they were. Now
19 there some -- is there some bouncing around between the
20 towers? Yeah, there's some bouncing around. Once you get to
21 -- once you get to the calls in the 4:47, 4:48, 4:49 time
22 frame, remember that's when Scully said that they were
23 almost back home. He got home around that time. Well, if
24 he's up in this area -- remember Sue Johnson said the cell
25 phone is going to hit off the strongest signal. So if you're

State v. Chisclm 9/12/11 - 9/19/11

760

1 up in this area here, wouldn't it make sense to be bouncing
2 back on these two towers, the Trolley Alley tower and the
3 516 Beach Hill Road tower.

4 The bottom line of those phone records is he was not in
5 that Haven Oaks Azalea Park area on September 13, 2007 at
6 around the time the victim was killed. These phone records
7 don't have any ax to grind or have anybody to reward.
8 They're facts that are recorded down by those phone
9 companies who have absolutely no interest in this case
10 whatsoever.

11 Now, David White told us that the defendant's phone to
12 Siqun Moody. Why? To make it look like the victim was
13 still alive and that call is on these phone records. If you
14 take a look. At 4:13, 4:13, there's a call from Canady to
15 Sike, 34 seconds. And looks what it's sandwiched between,
16 it's sandwiched between a 50 minute gap in the defendant's
17 records to 3:51 to 4:41, there's absolutely no activity on
18 the defendant's phone. The only call made was on that call
19 that Scully got up there and testified he made that call
20 from Red's phone to make it look like Red was still alive.

21 Let's look at the rest of those phone records. Move on
22 down. I think in Mr. Chisolm's closing he said something
23 about, nobody knows what he was doing that next day. Well,
24 ladies and gentlemen, look at is phone records again, from
25 4:54 -- we know Scully was dropped off somewhere in this

State v. Chisolm 9/12/11 - 9/19/11

761

1 time frame in here. From 4:54 to 6:19, again, a huge gap in
2 time when the only activity in the victim's phone and the
3 defendant was the victim's phone being powered off. What do
4 you think he was doing around that hour and 20 minutes or
5 so. Do you think he was riding around cutting out a seat?
6 Think he was riding around cutting out a seatbelt, disposing
7 of that evidence? Getting rid of the victim's phone. That
8 would have been the perfect time to do it. He didn't have
9 time to talk to anybody on the phone he had work to do. And
10 when he gets that done who does he call? All of a sudden he
11 starts calling Florida, he starts calling the army
12 recruiter. He had to get out of there, and all that's
13 indicated right here on these records. Take a look at them
14 when you get back to your jury room.

15 Remember he's the one that told police that the last
16 call the victim made was to Siquan when he was with us.
17 That was the last call that he made. You can check the
18 phone records. That's what he told them. You can check the
19 phone records.

20 The defendant thinks he was outsmarting someone and
21 what was he trying to show? To me, that proves without a
22 doubt whatsoever, without any doubt that they were together
23 at 4:13 on the 13th. Otherwise how would he know that he was
24 calling Siquan. How else would he know that. He was either
25 with the victim or he had the victim's phone.

State v. Chisolm 9/12/11 - 9/19/11

762

1 David White, ladies and gentlemen, I submit to you is
2 right on point. That's exactly what happened that night.
3 He dumped the body out and he went and used the victim's
4 phone just like David White said to call Siquan Moody, not
5 to say anything, because you heard Mr. White say Siquan was
6 on the other end just saying, hello, hello, hello. Only to
7 make it appear that the victim was still alive at that time.
8 Part of his web of lies, part of his deception.

9 When Scully gets dropped off that night he said he got
10 out of the back seat, walked up to the driver's side and
11 looked in. He could see the blood, not on this seat, but on
12 the seat that was destroyed. He could see the blood in this
13 area in here and he demonstrated on the witness stand where
14 he was talking about. And the next day on Friday, he comes
15 back to Scully's again, the defendant comes back over there
16 again. And this time when he comes back he's got this seat
17 cover on his seat, and he says hey, come look here what I've
18 done. He pulls the seat cover up and Scully sees a hole
19 that he had cut right where the blood was.

20 You heard Det. Zensen talk about the blood on the back
21 of the victim's shirt. And this is it, right here. This is
22 State's Exhibit No. 4. You can see the blood in that
23 picture. Right in this area right here. And she said that
24 just like a towel, a wet towel or something it's going to
25 leave -- it's going to transfer that moisture, and that's

State v. Chisolm 9/12/11 - 9/19/11

763

1 exactly what happened. The victim was sitting right here
2 slumped over. On their way to Clubhouse, he bled out, it
3 ran down the back of his neck, it wicked around his shirt
4 and it got all over the seat. It may have gotten on the
5 seatbelt. In fact, if you look down his shoulder, and it's
6 a little bit clearer in the actual picture, but you can see
7 right through here. If he had on a seatbelt that would have
8 gotten on the seatbelt.

9 You don't have to be an expert in evidence transfer or
10 forensic science to know what happened here. The victim was
11 in the seat that he took out of this Dodge Durango, there
12 was a blood spot all over the seat, and the defendant in his
13 effort to destroy evidence, to thwart the investigation, he
14 cut out that seat, and he rode around from 5:00 until about
15 6:19, throwing out that seat all over the place, just like
16 he told David White.

17 The defendant made a big deal with Mr. Gallardo, he was
18 the one that pulled parts. He was the one that the
19 microphone messed up on and everybody covered their ears
20 when he testified. And the defendant made a big deal about
21 whether he said the left side of the seat or right side of
22 the seat. Folks, if I tell you to go sit on the left side
23 of the car, do you really know what I'm talking about. Oh,
24 yeah, and the defendant admitted to changing out his seat.
25 There is no question what seat we're talking about. This is

State v. Chisolm 9/12/11 - 9/19/11

764

1 it right here. It came out of his Durango. You heard Det.
2 Giglio say that they matched the serial number back to the
3 Dodge Durango at the auto parts place at LKQ. There's no
4 question that he pulled the passenger seat out of his truck.
5 And on the 27th, when they executed that second search
6 warrant, they stopped the defendant, they get him out,
7 they're reading the affidavit on the warrant. And he tells
8 Det. Giglio, I don't need you to read that. Det. Giglio
9 said he just reads it anyway, that's how he does things. So
10 when he gets to the part about the seat and the defendant
11 says, wait a minute, wait, what's that part again.

12 It was almost a month later when he flagged down police
13 in Haven Oaks and he told them, yeah, by the way I changed
14 out that seat because it had cigarette burns on it and he
15 was going to change out the other one, too.

16 If you could change out your seat for cosmetic reasons
17 why would you be frantically calling seven junkyards the day
18 after your friend goes missing? Why would you be trying to
19 arrange payment of a seat where you're going to pay the guy
20 back in cocaine or some sort of drugs. And I'm not
21 cigarette smoker but it seems to me that if you're getting
22 burn holes to the point that you need to change out your
23 seat, wouldn't it be on the bottom of the seat and not the
24 back?

25 Remember, it was Richard Johns and George Gallardo who

State v. Chisolm 9/12/11 - 9/19/11

765

1 said he was looking for the back of the seat, not the
2 bottom. He had to get the whole thing because they wouldn't
3 separate it. They would only sell the whole seat.
4 Meanwhile, he's also asking for the seatbelt and the trim.

5 And you heard Shaquanda White and David White say that
6 there was absolutely nothing wrong with that seat or the
7 seatbelt. And David White said there wasn't anything wrong
8 until after the murder.

9 Remember in opening I said, ask yourself if that
10 person's story makes sense. It is adding up, it is
11 corroborated by other evidence, other testimony. And what
12 about that seatbelt. He lied about that too. He said the
13 seatbelt was damaged when he got the car from his sister.
14 Yet, you heard the expert say that there was absolutely
15 nothing wrong with the seatbelt except for the strap being
16 cut. And look here where it's cut.

17 Let's talk about his sister for a minute, the last
18 witness you heard from this morning. She said, what did she
19 say, something about she had an abusive relationship, she
20 had to cut the seatbelt out so that she could jump out the
21 car on a moments notice. And she just took a knife and cut
22 it and it wrapped up around the spool.

23 Look at State's Exhibit 9. You heard Mr. Carriero
24 testify, the expert from Hoover Dodge. You just don't cut
25 the seatbelt. Look where it's cut. There's the spool right

State v. Chisolm 9/12/11 - 9/19/11

766

1 there. It's cut five, six inches from the spool. Who cut
2 the seatbelt? The defendant had to remove this trim and cut
3 way down in here. His sister didn't cut that seatbelt out.
4 He cut that seatbelt out and that's as obvious as I am
5 standing here today.

6 Why did the defendant do all this? Obvious, too. He
7 had to get rid of the evidence. You heard Det. Zensen
8 testify that they weren't able to get anything -- and I hate
9 to say of value, because they did get some stuff of value,
10 they got the fact that there was blood found in his car, and
11 I'm going to come back to that in just a moment. But she
12 wasn't able to examine that original seat, she wasn't able
13 to examine that original seatbelt. So it's no wonder they
14 didn't find massive blood in the car. And you heard her
15 testify that this wasn't a particularly bloody crime scene.
16 There wasn't blood everywhere. Just right on the back of
17 his shirt. Look he's got a white t-shirt on when you go
18 back there. There's not blood all over his body. There
19 wouldn't have been blood all in that car. There would have
20 been blood right in this area right here where David White
21 said it was.

22 And talking about the SLED report. It says,
23 Defendant's Exhibit No. 8, he's the one that put this into
24 evidence, and he said that there's a couple of things that
25 -- they said Craig Canady is excluded as a contributor from

State v. Chisolm 9/12/11 - 9/19/11

767

1 these mixtures. Craig Canady is excluded as a possible
2 contributor of DNA on this item.

3 The problem is, is he couldn't tell you that on Items
4 26.1 and 26.2, right here where it says blood indicated. He
5 can't be excluded from there. I find it a little bit
6 surprising that they didn't find any DNA in his car. He
7 admitted that the victim was riding in his car. So whether
8 there was any hair follicles or whatever, I'm surprised they
9 didn't find any evidence in his car, but they did find
10 specks of blood so small that they were unable to develop a
11 DNA profile for that had any suitable value. You think it
12 was because they were so small the defendant didn't see
13 those when he was making sure he had all the evidence out of
14 the car, and one more thing about -- if the police were
15 making up this story wouldn't have just said, oh, that was
16 Craig Michael Canady's blood in the car. If they were
17 making this up how easy would it have been for them to say,
18 the victim's blood was in his car.

19 There's no making up stories here. The only stories
20 that are made up are coming from that defendant right there
21 when he was telling police all this stuff from September
22 15th until his last statement.

23 You don't reward murderers for destroying evidence.
24 You don't reward murderers for cutting out the seat and
25 changing out the seat in his car and cutting out the

State v. Chisolm 9/12/11 - 9/19/11

768

1 seatbelt. He doesn't get a hall pass -- he doesn't get a
2 hall pass for lying to the police, and for changing out all
3 this evidence.

4 Now, folks you heard some testimony that he came in and
5 he was cooperative and all that stuff? Cooperating is when
6 you come in and give truthful information and information
7 that is helpful to the investigation, and all he did was
8 mislead them. He didn't cooperate with this investigation
9 any more than a man in the moon. And when the Sheriff's
10 Office starts turning up the heat what does he do. Takes
11 off to Florida. No forwarding numbers, he doesn't tell Det.
12 Giglio or Det. Walsh or Det. Bistromowitz or any of them, he
13 doesn't tell any of them. Oh, by the way if you need any
14 more information, if you need anything I'll be in Florida.
15 He didn't tell them that. He goes down and gets an
16 apartment in his sister's name.

17 He got up here at the beginning of this case and he
18 told you he was friends with the victim, friends with
19 Scully. That business about him being friends with the
20 victim, that's offensive. If he was such good friends with
21 the victim why are there no telephone calls, absolutely no
22 telephone calls from September 13th until -- The only
23 contact is one text message saying, hey, your girl was
24 looking for you, you better call her. That's interesting
25 because he wasn't looking for him. He wasn't looking for

State v. Chisolm 9/12/11 - 9/19/11

769

1 him. That was another effort in his little web of lies to
2 try to throw off police, to try to fool the investigation
3 and to try to fool you.

4 What kind of friend sits around waiting on their
5 missing buddy to call them? What kind of friend puts a gun
6 to the victim's head and pulls the trigger? What kind of
7 friend throws his buddy in the ditch and leaves him there
8 for the buzzards to eat?

9 They weren't friends. People may have thought they
10 were friends. They weren't friends.

11 The defendant mentioned something to you about, where's
12 the motive, where's the motive. Well, again, I told you at
13 the outset motive is not an element to murder. Motive is
14 not an element of murder. I do not have to prove motive to
15 you. But motive can be helpful. There is some indication
16 of motive here. You heard Tamekka Williams testify that
17 about a month prior to this the victim started selling drugs
18 in the Haven Oaks area. That was one of those things you
19 probably asked yourself about. About a month prior to this
20 he started selling drugs, and a month later, he's dead at
21 the hands of Mr. Chisolm who was also selling drugs in the
22 Haven Oaks area.

23 You heard Tom Simonelli tell you that. He was his drug
24 dealer. You think that had something to do with it? You
25 think maybe Mr. Chisolm's business got in the way of his so-

1 called friendship?

2 Now, I'd be foolish to get up here and tell you that
3 the victim in this case was some sort of angel. He had his
4 problems. Tamekka Williams said that he was a good person.
5 I never had the opportunity to meet him. Whether he was a
6 good person or the next biggest criminal you can think of,
7 no one deserves to have a gun put to their head and the
8 trigger pulled. Or as they say, two wrongs don't make a
9 right. And whether you approve of his lifestyle or not,
10 he's got family seated on the second row, and he's not the
11 one on trial today. That man is the one on trial today.

12 We know that Scully and the defendant were the last
13 people with the victim. The three of them left and only two
14 of them came back. There's no question about that.

15 You've heard two stories in this case. You've heard
16 David White's story and through the testimony and what he
17 told the officers, you've heard the defendant's story.
18 Again, ask yourself, which one of those stories makes sense?
19 Which one of those stories is corroborated by the evidence,
20 which one of those stories is corroborated by other
21 testimony in the case?

22 The defendant planned on a lot of things in this case.
23 He planned on him looking at the cell phone records. He
24 planned on them looking to see whether he had made any
25 contact with Red after he had seen him. He planned on all

State v. Chisolm 9/12/11 - 9/19/11

771

1 sorts of things but he didn't plan on David White coming
2 forward. He didn't plan on that.

3 When you get your verdict form there will be two
4 possible verdicts in this case, guilty or not guilty, but
5 there's only one verdict that speaks the truth. That's what
6 verdict means, to speak the truth. He came forward early on
7 and he tried to fool police. He didn't fool them. Now,
8 he's coming forward now trying to fool you. Don't let him
9 fool you. Don't let him fool you.

10 Find the defendant guilty of the murder of Craig Canady
11 on September 13, 2007, and give him the justice that he came
12 in there on the 13th and asked for, justice for him and
13 justice for the victim in the case.

14 Thank you.

15 THE COURT: Thank you, Mr. Hilton.

16 Ladies and gentlemen, the first break that we talked
17 about, just stand up where you are. Seriously just stand a
18 minute.

19 My next question is going to be, it's going to take me
20 probably 20 to 25 minutes to deliver the charge to you.
21 Anybody need to take a comfort break? That will be great.
22 Let me tell you how we're going to proceed. In a moment I'm
23 going to ask you to step to your jury room, take your
24 comfort break. We will be at ease until you guys have taken
25 your comfort break that you need. And then you'll just

State v. Chisolm 9/12/11 - 9/19/11

772

1 knock on the door and then at that point I will deliver the
2 charge, the instruction on the law to you, because I've not
3 done that you are not in a position to deliberate. So
4 please be mindful that you are not to discuss this matter or
5 allow anyone to discuss it with you.

6 You take your comfort break. Just knock on the door
7 when you all are ready to return. Thank you. Just step to
8 your jury room.

9 (Jury out at 11:40 a.m.)

10 THE COURT: All right. We will be at ease until we hear
11 from the jury, but please don't anybody go far, but do take
12 a comfort break if you need to.

13 Mr. Chisolm, do take a comfort break if you need to,
14 you can do that, but everyone please stay close so that we
15 can get right back started when the jury let's us know
16 they're ready.

17 (Court in recess for short break at 11:41 a.m.)

18 (Court in session after short break at 11:45 a.m.)

19 THE COURT: Thank you and please be seated.

20 We are still at ease y'all. We didn't want to make the
21 jury wait all day, so I figured I'd come wait on them.

22 (Pause.)

23 (Jury in at 11:55 a.m.)

24 THE COURT: Ladies and gentlemen, you have now heard the
25 evidence and received the exhibits and heard the arguments

State v. Chisolm 9/12/11 - 9/19/11

773

1 of both sides. It is now my duty to charge or instruct you
2 on the law applicable to this matter.

3 The indictment in this case charges the defendant, Mr.
4 Chisolm, with murder.

5 I remind you that the fact that he was arrested,
6 charged and indicted in this case is not evidence in this
7 case and cannot be considered by you as evidence as guilt in
8 this case, nor, does it create any presumption or inference
9 of guilt.

10 The indictment is simply the formal written instrument
11 which contains the charge made against Mr. Chisolm. It is
12 the formal document by which this case is brought into this
13 court.

14 Ladies and gentlemen, the indictment in this case,
15 Indictment 2008-18-0009, states in part, that the defendant,
16 Donsurvi Chisolm, did in Dorchester County on or about
17 September 13, 2007, with malice aforethought, kill one Craig
18 Michael Canady, Jr., by means of shooting the said victim,
19 and the victim did die as a proximate result thereof. This
20 being in violation of Section 16-3-10 of the South Carolina
21 Code of Law as Amended, and the Common Law of South
22 Carolina.

23 Ladies and gentlemen, the defendant, Mr. Donsurvi
24 Chisolm, has pled not guilty to this indictment and that
25 plea puts the burden on the state to prove the defendant

State v. Chisolm 9/12/11 - 9/19/11

774

1 guilty. To prove Mr. Chisolm guilty. When I say defendant,
2 I mean Mr. Chisolm.

3 A person charged with committing a criminal offense in
4 South Carolina is never required to prove himself innocent.
5 I charge you that it is an important rule of the law, that
6 the defendant in a criminal case no matter what the
7 seriousness of the charge will always be presumed to be
8 innocent of the crime for which the indictment was issued
9 unless guilt has been proven by evidence satisfying you of
10 that guilt beyond a reasonable doubt.

11 This presumption of innocence does not end when you
12 begin your deliberations, but it accompanies the defendant
13 throughout the trial until you reach a verdict of guilt
14 based on evidence satisfying you of that guilt beyond a
15 reasonable doubt.

16 The presumption of innocence of like a robe of
17 righteousness placed about the shoulders of the defendant,
18 which remains with him until it has been stripped from the
19 defendant by evidence satisfying you of the defendant's
20 guilt beyond a reasonable doubt.

21 The presumption of innocence is not a mere legal
22 theory. It is not just a legal phrase. It is a substantial
23 right to which every defendant is entitled unless you, the
24 jury, are satisfied from the evidence of the defendant's
25 guilt beyond a reasonable doubt.

State v. Chisolm 9/12/11 - 9/19/11

775

1 What then is reasonable doubt in the law? A reasonable
2 doubt is the kind of doubt that would cause a reasonable
3 person to hesitate to act. The state has the burden of
4 proving the defendant guilty beyond a reasonable doubt.
5 Some of you may have served as jurors where you were told
6 that it is only necessary to prove that a fact is more
7 likely true than not true, such as by the greater weight or
8 the preponderance of the evidence. In criminal cases the
9 state's proof must be more powerful than that, it must be
10 beyond a reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt. There are
13 very few things that we know with absolute certainty and in
14 criminal cases the law does not require proof that overcomes
15 every possible doubt.

16 If, based on your consideration of the evidence, you
17 are firmly convinced that the defendant is guilty of the
18 crime charged, you must find the defendant guilty. If, on
19 the other hand, you think there is a real possibility the
20 defendant is not guilty you must give the defendant the
21 benefit of the doubt and find him not guilty.

22 I remind you that during this trial you and I have had
23 certain duties to perform. As a trial judge it is my
24 responsibility to preside over the trial of this case, and I
25 also have the duty to rule on the admissibility of the

1 evidence offered during this trial.

2 You are to consider only the competent evidence before
3 you. If there was any testimony ordered stricken from the
4 record, in this case, during this trial, you must disregard
5 that testimony. You are to consider only the testimony
6 which has been presented from this witness stand and any
7 exhibits which have been made a part of the record of this
8 case.

9 Ladies and gentlemen, I have the additional duty to
10 charge you the law applicable to this case. As the
11 presiding judge I am the sole judge of the law in this case
12 and it is your duty as jurors to accept and apply the law as
13 I now state it to you. If you already have any ideas as to
14 what the law is or what the law ought to be and it does not
15 agree with what I now tell you the law is, you must abandon
16 your pre-conceived idea because you are sworn to accept and
17 to apply the law exactly as I state it to you.

18 Now, in every case tried in this Court before a jury,
19 the jury becomes the sole and the exclusive judge of the
20 facts in the case. A trial judge cannot intimate, state,
21 comment or make any statement to a trial jury about the
22 facts in a case since you the jury are the sole judges of
23 the facts in this case.

24 Ladies and gentlemen, if I have said or done anything
25 that you believe might be a comment on the facts in my task

State v. Chisolm 9/12/11 - 9/19/11

777

1 in ruling on the admissibility of evidence or otherwise, or
2 anything that I say now during this instruction to you, that
3 I have any opinions regarding the facts in this case, if I
4 do anything which you infer is a comment on the facts I ask
5 you to please disregard that, because ladies and gentlemen,
6 I have no opinion regarding these facts. That's a matter
7 solely, solely for you to determine.

8 Ladies and gentlemen, as jurors it is your duty to
9 determine the effect, the value, the weight and the truth of
10 the evidence presented during this trial.

11 Ladies and gentlemen, during the course of the trial,
12 there are two types of evidence which are generally
13 presented, direct evidence and circumstantial evidence.

14 Direct evidence is the testimony of a person who claims
15 to have actual knowledge of a fact. Such as an eye-witness.
16 It is evidence which immediately establishes the main fact
17 to be proved.

18 Circumstantial evidence is proof of a chain of facts
19 and circumstances indicating the existence of a fact. It is
20 evidence which immediately establishes collateral facts from
21 which the main fact may be inferred. Circumstantial
22 evidence is based on inference and not on personal knowledge
23 or observation.

24 Let's go over a couple of examples. Ladies and
25 gentlemen, it's February. It's cold, snow is forecast. You

1 walk outside, you look up, you look around, and it's
2 snowing. White stuff is falling from the sky. That is eye-
3 witness testimony direct evidence, direct evidence that it
4 is snowing. You see it snowing. If you testified, you
5 said, I saw it snowing. I saw it. This is what it looked
6 like, this is what it felt like. Ladies and gentlemen, that
7 is direct evidence that it is snowing. You saw it snow.

8 Ladies and gentlemen, let's go to another example.
9 It's February. It's cold. Snow is forecast. You look
10 outside at 11:00 o'clock before you turn in for the evening,
11 and it's still cold and you look at your poor, little,
12 pitiful grass and it's brown and crunchy. And then you go
13 to bed. You wake up in the morning the sun is shining, but
14 all over what was that brown crunchy grass is now white
15 snow. It's everywhere. It's all over your neighborhood.
16 It's everywhere you can see. Even though it isn't snowing
17 at that moment, it's February and it's cold and it's
18 forecast and although it wasn't there when you went to bed,
19 it's everywhere when you wake up. Those are proof of
20 collateral facts from which you may infer that it snowed
21 overnight. That it snowed overnight. Circumstantial
22 evidence that it snowed overnight.

23 The law makes absolutely no distinction between the
24 weight or value to be given to either direct or
25 circumstantial evidence nor is a greater degree required of

State v. Chisolm 9/12/11 - 9/19/11

779

1 circumstantial evidence than of direct evidence. You should
2 weigh all of the evidence in the case and after weighing all
3 the evidence in the case, if you are not convinced of the
4 guilt of the defendant beyond a reasonable doubt you must
5 find the defendant not guilty.

6 Now, necessarily, you must determine the credibility,
7 which simply means the believability of the witnesses who
8 have testified in this case, it becomes your duty as jurors
9 to analyze and evaluate the evidence and determine which
10 evidence convinces you of it's truth. In determining the
11 believability of witnesses who have testified in this case.
12 You may believe one witness as opposed to several witnesses
13 or several witnesses over one witness. You may believe a
14 part of a witnesses testimony and reject the remaining part
15 of the testimony of the same witness. You may believe the
16 testimony of a witness in its entirety or you may reject the
17 testimony of a witness in its entirety. You may consider
18 whether any witness has exhibited to you any interest, any
19 bias or prejudice, or other motives in this case, and you
20 may also consider the appearance and the manner of the
21 witness while on the witness stand.

22 Now, ladies and gentlemen in this case you have heard
23 testimony from one who was deemed to be an expert witness.
24 Our rules of evidence ordinarily do not permit witnesses to
25 testify regarding their opinions or conclusions, but there

State v. Chisolm 9/12/11 - 9/19/11

780

1 is an exception to this rule and that exist for witnesses
2 who are expert witnesses. A witness who by virtue of their
3 education and experience, profession or training or
4 knowledge has become an expert in some art or science or
5 profession or calling and they may state an opinion as to
6 relevant and material matters in which the witness claimed
7 to be an expert, and they may also state the reasons for
8 their opinions. You should consider any expert opinion
9 received in evidence in this case and like any other
10 evidence you give it the weight you think it deserves. If
11 you decide that the opinion of an expert witness is not
12 based on sufficient education and experience or if you
13 conclude the reasons given in support of the opinion are not
14 sound or that the opinion is outweighed by other evidence
15 you may disregard the opinion entirely. An expert witness's
16 testimony is to be no greater weight than other witness's
17 testimony simply because the witness is an expert. Further,
18 you are not required to accept an expert's opinion even
19 though it is not contradicted.

20 Ladies and gentlemen, I instruct you and I emphasize
21 that the fact that the defendant did not testify is not a
22 factor to be considered by you in any way in your
23 deliberations and in your consideration on the issue of
24 whether he is guilty or not guilty. It must not be
25 considered by you in any manner whatsoever. A defendant has

State v. Chisolm 9/12/11 - 9/19/11

781

1 the constitutional right to remain silent, and the assertion
2 of this right must not be considered by you in your
3 deliberations. I repeat, under your oath you are to draw no
4 conclusion whatsoever to the fact that the defendant, in
5 this case, did not testify. The fact that Mr. Chisolm did
6 not testify should not even be discussed in the jury room.

7 The burden of proof, as I have stated it to you is and
8 remains on the state. Mr. Chisolm is not required to prove
9 his is not guilty. The burden of proof is and remains on
10 the state to prove guilt beyond a reasonable doubt.

11 Now, ladies and gentlemen, in order to establish
12 criminal liability criminal intent is required. For
13 example, the mental state required to be proven by the state
14 for a particular crime might be purpose or intent,
15 knowledge. Criminal intent must be proven by the state
16 beyond a reasonable doubt. Criminal intent is always a
17 matter that must be determine by the jury from the
18 circumstances surrounding the situation. There is no way to
19 prove intent to a mathematical certainty. There is no way
20 that medical science can dissect a person's brain to
21 determine what that person had in mind. So the law says
22 that criminal intent may be inferred, may be inferred from
23 the circumstances show to have existed.

24 This is how you make a determination of whether or not
25 the element requiring intent was present. It is not

1 necessary to establish intent by direct evidence or positive
2 evidence, but intent may be established by inference in the
3 same way as any other fact by taking into consideration the
4 acts of the parties and all the facts and circumstances of
5 the case.

6 Criminal intent is a mental state. A conscious
7 wrongdoing. It is up to you to determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed. Criminal intent can arise from action or failure
10 to act or may arise from negligence, recklessness,
11 indifference to duty or to circumstances considered by the
12 law to be the equivalent of criminal intent.

13 Now, ladies and gentlemen, a -- the defendant in this
14 case, Mr. Chisolm, is charged with murder. The state must
15 prove beyond a reasonable doubt that the defendant killed
16 another person with malice aforethought. Now, the defendant
17 -- the elements of murder, again, are the defendant killed
18 another person with malice aforethought. This is what the
19 state must prove beyond a reasonable doubt.

20 Ladies and gentlemen, what is malice? What is malice?
21 Malice is an element of intent. It is hatred, ill will, or
22 hostility towards another person. Malice is the intentional
23 doing of a wrongful act without just cause or excuse and
24 with an intent to inflict an injury or under circumstances
25 that the law will infer an evil intent. Malice aforethought

State v. Chisolm 9/12/11 - 9/19/11

783

1 does not require that malice exist for any particular time
2 before the act is committed, but malice must exist in the
3 mind of the defendant just before and at the time that the
4 act is committed. Therefore, there must be a combination of
5 the previous evil intent and the act.

6 Malice aforethought may be expressed or inferred.
7 These terms expressed and inferred do not mean different
8 kinds of malice, but merely the manner in which malice may
9 be shown to exist. That is, either by direct evidence or
10 inference from facts and circumstances which are proved.
11 Expressed malice is shown when a person speaks words which
12 express hatred or ill will for another. Or when the person
13 prepared beforehand to do the act which was later
14 accomplished. For example, lying in wait for a person or
15 any other acts in preparation going to show that the deed
16 was in the defendant's mind would be expressed malice.
17 Malice may be inferred from conduct showing a total
18 disregard for human life. Inferred malice may also arise
19 with the deed is done with a deadly weapon.

20 A deadly weapon is any article, instrument or substance
21 which is likely to cause death or great bodily harm whether
22 an instrument has been used as a deadly weapon depends on
23 the facts and circumstances of each case. The following are
24 examples, examples, of instruments which may be deadly
25 weapons. A shotgun, a rifle, a dirk, a dagger, a knife, a

1 slingshot, metal knuckles, a razor, gasoline, a fire bomb or
2 Molotov cocktail may be deadly weapons. A gun may be a
3 deadly weapon even if it is not operating.

4 Now, ladies and gentlemen, I further remind you, as I
5 did in the beginning, ladies and gentlemen, that Mr.
6 Chisolm, as you now well know, represented himself
7 throughout this case, which he is entitled to do. It is his
8 right, and ladies and gentlemen, you certainly would, in no
9 way, hold it against him that he chose to represent himself,
10 because that is his right.

11 Now, ladies and gentlemen, in a moment we are going to
12 go over the verdict form. I'm going to come down there to
13 do that.

14 There are two things that I'm going to tell you before
15 we go over the verdict form.

16 First of all there are two possible verdict and they're
17 put on this piece of paper. Ladies and gentlemen, you are
18 to take no hidden meaning, no comment by the Court by the
19 virtue by the order in which these two possible verdicts
20 have been placed on this piece of paper. Guess what? I
21 could have just as legitimately put them in the other order.
22 It's just reality. People put things on paper, one's got to
23 be first and then the other's got to be second. Please take
24 no hidden meaning from the order in which these two possible
25 verdicts have been placed on this paper.

State v. Chisolm 9/12/11 - 9/19/11

785

1 Secondly, your verdict must be unanimous. It must be
2 unanimous. That means that this is the verdict of each and
3 every one of you. This is not the verdict of the majority
4 of you or any one of you, but this must be the verdict to
5 each and every one of you.

6 That should be a hint to the two of you. Ladies and
7 gentlemen, on this next occasion my alternates, y'all stick
8 with me, okay.

9 Ladies and gentlemen, we're now going to go over the
10 verdict form with you. There's a caption here and this says
11 verdict form. This says, as to the indictment alleging
12 murder, we the jury unanimously -- my children think I'm a
13 nag -- but the jury -- we the jury unanimously find the
14 defendant -- and there are two possible verdicts. Which
15 ever is the unanimous verdict of this jury, just circle one.
16 There are two possible verdicts, not guilty and guilty.
17 Which ever is the unanimous of this jury you will simply
18 circle that verdict.

19 Now, then says stop and end your deliberations, please
20 sign and date.

21 You know who you, Mr. Brown, you will sign as the
22 presiding juror. The date for your reference is the 19th of
23 September 2011.

24 Now, ladies and gentlemen, in just a moment I'm going
25 to be sending you to your jury room with this instruction.

1 Do not discuss this matter or allow anyone to discuss it
2 with you.

3 What you might say? What? You've been telling us this
4 is when we're going to begin our deliberations. So I'm
5 going to hasten to tell you what's going to happen when you
6 step to your jury room on this occasion. I'm going to turn
7 to these parties and I'm going to ask them have I given the
8 jury all the law that they may need for their deliberations
9 and have I stated it for them correctly.

10 Now, ladies and gentlemen, sometime, sometimes even
11 though it is unintended, sometimes something just comes out
12 wrong. And sometimes I need to bring jurors back out and
13 correct something that's I've told them that is not correct.
14 I ask you in advance, if I need to bring you back out for
15 that reason, please allow me to correct my error in your
16 minds. Sometimes I need to bring jurors back out because I
17 have failed to give a jury an instruction that they may need
18 for their deliberations. So in the event that I need to
19 bring you back out for that reason, I ask you in advance,
20 please don't consider that instruction with any emphasis.
21 Please note that this is my chance to get this right, to
22 give you all the law that you need for your deliberations
23 and to state it for you correctly.

24 Now, in the event that I do not need to bring you back
25 out, you will be brought the verdict form and the exhibits

State v. Chisolm 9/12/11 - 9/19/11

787

1 and your note pads and specific instruction to begin your
2 deliberations.

3 Now, Mr. Taylor, who probably the person who will be
4 bringing you these items, and he and I have been doing this
5 for a very long time. You might be the first jury that he
6 specifically doesn't tell begin your deliberations, but you
7 will not have the verdict form and the exhibits and note
8 pads unless you are ready to begin your deliberations.

9 Just a word or two about your notes. Your notes are
10 for you. They are for you to refresh your recollection to
11 allow you to deliberate. They are not to be shown to anyone
12 else and they certainly are not to be held up and pointed to
13 as a reason why you might be correct and someone else not
14 correct. They are not to be given any undue emphasis. They
15 are for you and for your eyes only to allow you to refresh
16 your recollections for your deliberations.

17 Now, ladies and gentlemen, I need to tell you that when
18 you begin your deliberations, if you need to take a break
19 for any reason, somebody needs to take a comfort break,
20 somebody needs to go smoke, whatever the reason might be,
21 stop your deliberations because all 12 of you must be
22 together for you to deliberations. So if you need to take a
23 break, stop your deliberations. Take your break. And then
24 you just reconvene your deliberations when all 12 of you are
25 together again. Just remember that all 12 of you must be

1 present for you to deliberate.

2 Now, ladies and gentlemen, I'm going to conclude my
3 comments to you with this. The word verdict comes from the
4 Latin phrase veredicto, which means to speak the truth. To
5 speak the truth. Ladies and gentlemen that is now your
6 task. To speak the truth.

7 Please step to your jury room. Do not discuss this
8 matter or allow anyone to discuss it with you. Except for
9 my alternates. Y'all stay right here with me.

10 (Jury out at 12:28 p.m.)

11 THE COURT: All right. Ms. Harrison and Ms. Marshall.
12 You are my alternates. I've imposed on so much of your
13 time, I'm going to ask you for just a tiny bit more, and let
14 me tell you why. I believe that if you will give me 15
15 minutes of your time, once the jury begins deliberations,
16 and that will be very shortly, if you'll do that for me --
17 here's -- if something should happen to one of our jurors as
18 deliberations begin, and that does happen from time to time.
19 Should something happen I believe I can stop the
20 deliberations seat one of you and then begin the
21 deliberations again and save the trial. Given the duration
22 that we've been at this now, you can understand why I'm
23 going to ask you for a little bit more time because I would
24 love to be able to save the trial not have to begin anew.
25 So once our jury has begun it's deliberations, they'll start

State v. Chisolm 9/12/11 - 9/19/11

789

1 the 15 minutes clock going. I don't mind sharing with you,
2 also, we've ordered lunch for the jury. We'd love to have
3 you stay and have lunch. You've been so good, giving us so
4 much of your time. We'd love to have you stay and have
5 lunch with us, as well, but I am going to ask you for the
6 additional 15 minutes. What's going to happen in just a
7 moment is these folks are going to take you to another jury
8 room so that you'll stay separate from the jury but you'll
9 be available if something should happen in that initial 15
10 minutes. And then I want to just speak to you and tell you
11 thank you so much. So when your 15 minutes is up I'm going
12 to come looking for you just to say thank you before you
13 leave it. So if you'll just go they're going to take you
14 somewhere else. Leave those notebooks right there.
15 Wonderful. Thank you so much.

16 (Alternates exit courtroom at 12:30 p.m.)

17 THE COURT: All right. Anything from the state?

18 MR. HILTON: Nothing.

19 THE COURT: With regard to charge? All right.

20 From the defense?

21 MR. CHISOLM: I have nothing, Your Honor.

22 THE COURT: Very well. Here's what I'm going to ask you
23 all to do for me. I want you to look at the exhibits,
24 actually, look at what's going back to the jury. I want you
25 to please look at the verdict form one more time so that you

State v. Chisolm 9/12/11 - 9/19/11

792

1 appropriate. I've got their notes here. I'll keep them
2 here unless they're needed.

3 Without further ado, you all take the exhibits and the
4 verdict form back to the jury. Please take them some gloves
5 so that they can have them in the event they wish to have
6 them as they handle the evidence.

7 We will be at recess.

8 Oh, there is one final thing, and I think that I did
9 it, that I put in as a Court's Exhibit, Mr. Chisolm's voir
10 dire questions. I did? I just wanted to be sure I did that
11 because I found my copy. I wanted to be sure I did that.

12 We'll be at recess.

13 (Evidence and verdict for to jury at 12:40 p.m.)

14 (Court in recess awaiting jury at 12:40 p.m.)

15 (Court in session for verdict at 2:16 p.m.)

16 THE COURT: Thank you. Please be seated. .

17 Where is Mr. Chisolm?

18 THE BAILIFF: He's on the way.

19 THE COURT: Okay. Thanks.

20 All right. It is my understanding that the jury has
21 reached its verdict. Anything before we bring the jury out;
22 from the state.

23 MR. HILTON: Nothing from the state.

24 THE COURT: From the defense?

25 MR. CHISOLM: Nothing from the defense.

State v. Chisolm 9/12/11 - 9/19/11

793

1 THE COURT: All right.

2 Ladies and gentlemen in our audience, I just want to
3 make a couple of preliminary remarks and I know that we have
4 members of the victim's family. We also have members of Mr.
5 Chisolm's family who have been present throughout. I don't,
6 obviously, at this point, I do not know what the verdict of
7 the jury is. Irrespective of what it is, though, it is --
8 it is important that you maintain your composure. This jury
9 is entitled to that. They've worked very long and very
10 hard. They must, of course, make their decision free from
11 any compassion or caprice. They must do that based on the
12 facts and the law. Therefore, they are entitled for the
13 courtroom to maintain composure. If you have any concerns,
14 and I certainly can understand if you would, given the
15 nature of a case such as this, I invite you to take your
16 leave now, because you must maintain your composure. I say
17 that for this jury.

18 I'm going to give you a moment now and if you believe
19 that you will not be able to maintain your composure
20 irrespective of what the verdict may be. I want you to take
21 your leave now.

22 (No one leaves courtroom.)

23 Very well. All right. Let's have the jury.

24 (Jury in with verdict at 2:18 p.m.)

25 THE COURT: All right. Mr. Brown, if the jury has

State v. Chisolm 9/12/11 - 9/19/11

794

1 reached its verdict if you'll please pass it to Ms.

2 Salisbury, she will pass it to the Court. Jury has reached

3 its verdict then, is that correct?

4 JURY FOREMAN: (Nods head in the affirmative.)

5 THE COURT: And you're nodding yes.

6 JURY FOREMAN: Yes. Yes, Your Honor.

7 THE COURT: All right. I find that the verdict is in
8 good form.

9 Madam Clerk, you may publish it.

10 THE CLERK: In the matter of State of South Carolina,
11 County of Dorchester verses Donsurvi Chisolm, Indictment
12 2008-GS-18-00009. As to the indictment alleging murder, we
13 the jury unanimously find the defendant guilty. Signed by
14 presiding juror, Joseph Brown.

15 THE COURT: Today's date?

16 THE CLERK: September 19, 2011.

17 THE COURT: Ladies and gentlemen, if this was your
18 verdict in your jury room and it remains your verdict here
19 in the courtroom, please indicate by raising your right
20 hand. Let me indicate that all our jurors have their right
21 hands raised. And you may put them down.

22 All right. Anything before we dismiss the jury; from
23 the state?

24 MR. HILTON: Nothing from the state.

25 THE COURT: From the defense?

State v. Chisolm 9/12/11 - 9/19/11

802

1 here. I've not had an opportunity, of course, to hear from
2 them. I have all the time in the world for them, if they
3 wish to speak. I'm delighted to hear from them.

4 MR. HILTON: You want to do that now?

5 THE COURT: I think so.

6 I guess I'll ask at this point if there are additional
7 motions at this point?

8 MR. CHISOLM: I have nothing additional.

9 THE COURT: Okay. Very well.

10 MR. CANADY: May I address the Court?

11 THE COURT: Yes, sir. All I need for you to do is
12 identify yourself for our record.

13 MR. CANADY: Craig Canady, Sr.

14 THE COURT: Oh, yes.

15 MR. CANADY: Craig's my son. My family has been through
16 a lot. Tormented. We've watched this trial. It hurts. To
17 stand before the Court and smile and gesture, no bit of
18 remorse. That doesn't make us proud at all. Two lives have
19 been lost, but at this time, we're just going to leave it in
20 the Lord's hands, and that's basically all I want to say.
21 Put my mother, grandmother, aunts, cousins, through a lot of
22 turmoil, anguish. I'm just a better person right now,
23 because otherwise, I don't think I could stand before you
24 and say something calmly. So I'm going to leave it at that.

25 THE COURT: Mr. Canady, I thank you so much, and I know

State v. Chisolm 9/12/11 - 9/19/11

803

1 that sitting through these trials, sitting through this
2 trial, the death of your son is -- must be unspeakable pain.
3 So I've certainly been aware that you all have been here
4 every moment. Thank you for that, sir, and thank you for
5 the decorum that your family has maintained throughout this
6 trial for some very painful things to have to see, to have
7 to relive, and I'm certainly mindful of that, as well. Your
8 family is obviously, has great grace, and I certainly thank
9 you for being here.

10 MR. CANADY: Thank you.

11 THE COURT: Yes, sir. Thank you so much.

12 MR. HILTON: Anybody else?

13 I think that would be all from the family, Your Honor.

14 THE COURT: Very well. Very well. All right.

15 Yes, Mr. Chisolm?

16 MR. CHISOLM: Your Honor, I'd just like to say I
17 disagree with the verdict. I do not concede guilt in this
18 case.

19 THE COURT: Very well. All right.

20 What is his record, Mr. Hilton?

21 MR. HILTON: He has a record, Your Honor, back -- while
22 he was in the military, looks like January 24, 2005, he
23 received a -- a military adjudication, I guess, for wrongful
24 use of cocaine, and then he had a carrying a concealed
25 weapon. I believe that was in 1999, July of 1999.

State v. Chisolm 9/12/11 - 9/19/11

804

1 THE COURT: Very well. All right.

2 Anything further from anyone before I pass sentence?

3 Very well. Hearing nothing.

4 Mr. Chisolm, for the crime of murder, I commit you to
5 the State Department of Corrections for the balance of your
6 life.

7 Very well. That would conclude these matters.

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

9 THE COURT: Yes.

10 MR. HILTON: If we're concluded in this matter, I'm
11 going to escort the family back over to our office at this
12 time, and they will be in there for a little while.

13 THE COURT: Certainly.

14 MR. HILTON: Thank you.

15 (This proceeding was concluded at 2:34 p.m.)
16
17
18
19
20
21
22
23
24
25

WITNESSES

Giglio, M.

DCSO

Agency Case #: 07-008989

ARREST WARRANT NUMBER

K308513

Arrested: Nov 13, 2007

ACTION OF GRAND JURY

TRUE BILL

DATE 1-14-08

Foreperson of Grand Jury

Date: January 14, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008GS18-0009

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

January 14, 2008 TERM

THE STATE

vs.

Donsurvi Chislom

Indictment for

MURDER

SC Code: 16-03-10 / 16-03-20

Class: FEL-X

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED-RECORDED
2008 JAN 15 AM 8:32
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

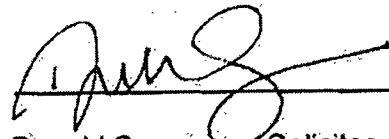
INDICTMENT
2008GS18-0009

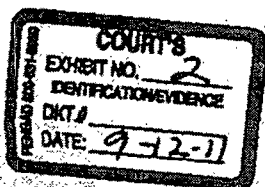
At a Court of General Sessions, convened on January 14, 2008 the Grand Jurors of Dorchester County present upon their oath:

MURDER

The defendant, Donsurvi Chislom, did in Dorchester County on or about September 13, 2007, with malice aforethought, kill one Craig Michael Canaday, Jr., by means of shooting the victim, and the said victim did die as a proximate result thereof, this being in violation of section 16-3-10 of the South Carolina Code of Laws, as amended and the common law of South Carolina.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


Donald Sorenson, Solicitor

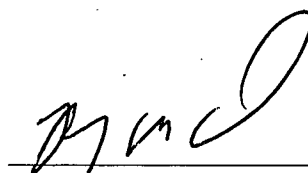


**THIS PAGE INTENTIONALLY
LEFT BLANK**

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

January 15th, 2015



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT