Volume II of III

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian M. Gibbons, Presiding Judge

Appellate Case No. 2018-000779
Lower Case No. 2013-CP-29-00951

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S.C. SUPREME COURT

VERNARD JEROME MATHIS, #297034 Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

APPENDIX

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Q AND WHAT'S THE DATE ON THOSE TICKETS?
A THE DATE ON THE FIRST TICKET IS FEBRUARY 16 OF 2000.
Q WHAT COUNTY?
A YORK COUNTY.
Q AND WHAT ABOUT THE SECOND TICKET?
A THE SECOND TICKET WAS ISSUED ON OCTOBER 14 OF 1999 IN LANCASTER COUNTY.
Q LANCASTER COUNTY?
A (WITNESS NODDING HEAD).

MR. JUSTICE: YOUR HONOR, WE'D MOVE INTRODUCTION OF THE TWO TICKETS, THE YORK COUNTY AND THE LANCASTER COUNTY TICKET, INTO EVIDENCE.

MR. CLARK: THEY WERE IN THE BOX, YOUR HONOR. I HAVE NO OBJECTION TO THEM AT THIS POINT.

THE COURT: ADMITTED WITHOUT OBJECTION. THAT WOULD BE #69 AND #70.

(STATE'S EXHIBIT #69, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TRAFFIC TICKET).

(STATE'S EXHIBIT #70, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TRAFFIC TICKET).

Q OKAY, I'M GOING TO HAND YOU A YELLOW PIECE OF PAPER WITH HANDWRITING ON IT. YOU TELL ME WHETHER OR NOT THIS PIECE OF PAPER WAS FOUND IN THE BOX.
A YES, SIR, THIS PIECE OF PAPER WAS FOUND IN THE BOX.

MR. JUSTICE: AND I'D MOVE THIS BE INTRODUCED AS

EVIDENCE, YOUR HONOR.

THE COURT (TO MR. CLARK) HAVE YOU INSPECTED IT?

MR. CLARK: YES.

THE COURT: ADMITTED WITHOUT OBJECTION, #71.

(STATE'S EXHIBIT #71, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, YELLOW PIECE OF PAPER).

Q MR. BLACKMON, THERE'S A LOT OF NUMBERS AT THE BOTTOM OF THIS PAGE, BUT THERE'S FOUR LINES AT THE TOP OF THIS PAGE. WOULD YOU PLEASE READ THOSE FOUR LINES TO THE JURY?

A ON THE TOP LINE IT'S GOT THE YELLOW NUMERAL "1" AND BESIDE IT "VAN". THE NEXT LINE HAS "WALKIE". THE THIRD LINE HAS THE NUMERAL 3 AND THEN THE WORD "TRUCKS". THE FOURTH LINE HAS THE NUMERAL 2 AND THE WORD "SCANNERS".

Q ONE VAN AND THEN "WALKIE", THREE VANS -- THREE TRUCKS, AND THEN SCANNERS, TWO SCANNERS?

A THAT'S CORRECT.

Q THANK YOU. PLEASE ANSWER ANY QUESTIONS ON YOUR TESTIMONY IN REGARDS TO THE CONTENTS OF THIS BOX THAT MR. CLARK MAY WANT TO ASK YOU.

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. BLACKMON, JUST ONE OR TWO QUESTIONS. ARE YOU QUALIFIED AS A HANDWRITING EXPERT?

A NO, SIR, I'M NOT.

Q YOU NEVER RECEIVED TRAINING ON THAT?

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A NO, SIR, I HAVE NOT.
Q DID YOU SEND ANY OF THESE ITEMS TO HAVE THEM ANALYZED TO DETERMINE WHETHER THEY -- WHO THEY WERE AUTHORED BY, WHETHER THEY WERE AUTHORED BY MR. MATHIS?
A THE ITEMS -- WHICH ITEMS ARE YOU REFERRING TO IN PARTICULAR?
Q STATE'S #71.
A YES, SIR, IT WAS SENT TO THE STATE LAW ENFORCEMENT DIVISION FOR HANDWRITING ANALYSIS.
Q IT WAS?
A YES, SIR, IT WAS.
Q AND DID YOU HAVE A REPORT BACK ON THAT?
A I DO NOT KNOW THAT WE HAVE THE REPORT BACK FROM THAT, BUT THEY WERE NOT ABLE TO IDENTIFY ANY PARTICULAR PERSON WITH THAT HANDWRITING.
Q SO WHEN YOU SENT #71, YOU SENT A SAMPLE OF MR. MATHIS' HANDWRITING?
A THAT IS CORRECT. WE HAD A LIMITED SUPPLY OF SIGNATURES OF MR. MATHIS AND WE SUBMITTED THOSE THINGS ALONG WITH A YELLOW SHEET OF PAPER TO SLED.
Q AND THOSE SIGNATURES COULD HAVE COME FROM HIS DRIVER'S LICENSE AND THOSE KINDS OF THINGS?
A DRIVER'S LICENSE AND FINGERPRINT CARDS, BOOKING REPORTS, THINGS ALONG THAT LINE.
Q BECAUSE YOU WANTED TO KNOW IF HE WROTE THIS DOCUMENT,

RIGHT?

A WE WANTED THE HANDWRITING COMPARISON TO BE MADE.

Q AND ONE PERSON, AT LEAST ONE PERSON, THAT YOU COMPARED IT TO WAS MR. MATHIS' HANDWRITING?

A THAT IS CORRECT.

Q DID YOU COMPARE IT TO ANYONE ELSE'S HANDWRITING?

A NO, SIR. THE ONLY STANDARD THAT WE SENT DOWN WAS VERNARD JEROME MATHIS.

Q SO YOU NEVER SENT ELTON WIGGINS' HANDWRITING?

A NO, SIR.

Q AND YOU KNOW, OF YOUR OWN PERSONAL KNOWLEDGE, THAT THE HANDWRITING EXPERT AT SLED WAS NOT ABLE TO GIVE AN OPINION THAT THIS WAS MR. MATHIS' HANDWRITING?

A BASED ON THE CONVERSATION I HAD WITH HIM, IT WAS THAT THERE WAS NOT ENOUGH STANDARD. HE DID NOT HAVE ENOUGH SAMPLES OF MR. MATHIS' HANDWRITING TO MAKE A COMPARISON.

Q ALL RIGHT, THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

MR. JUSTICE: THAT'S ALL I HAVE.

(TO WITNESS) YOU MAY BE CALLED AGAIN.

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, AT THIS TIME LET'S HAVE OUR AFTERNOON RECESS. DO NOT DISCUSS THE CASE. I'LL SEND FOR YOU IN JUST A FEW MOMENTS.

(JURY EXITS COURTROOM AT 3:38 P.M.).

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INTENTIONALLY LEFT

BLANK

(BRIEF RECESS)

THE COURT: (TO BAILIFF) BRING THE JURY IN, PLEASE.

(JURY ENTERS COURTROOM AT 3:55 P.M.).

THE COURT: ALL RIGHT, SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS. ALL OUR JURORS ARE PRESENT.

MR. JUSTICE: I CALL -- RECALL, AGENT LAROSA.

THE COURT: (TO WITNESS) COME FORWARD. YOU'RE STILL UNDER OATH.

(WHEREUPON, PAUL C. LAROSA, III, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q MR. LAROSA, YOU PREVIOUSLY TESTIFIED THAT YOU TOOK PHOTOGRAPHS, MEASUREMENTS AND THE LIKE IN REGARDS TO THE FOOT MARK ON THE DOOR, ON THE INTERIOR DOOR, AT MCDONALD AMUSEMENT WHERE, OBVIOUSLY, IT HAD BEEN KICKED OPEN. IS THAT CORRECT?

A YES, SIR, IT IS.

MR. JUSTICE: JUST ONE MOMENT. I'M ABOUT TO GET OVERRUN WITH EXHIBITS HERE.

Q AND I BELIEVE YOU HAD ALREADY IDENTIFIED STATE'S EXHIBITS #25, #26, #27, #28 THROUGH #31 AS BEING VARIOUS PICTURES OF THAT PARTICULAR FOOTPRINT?

A YES, SIR. IT'S THE SAME PHOTOGRAPH, THE SAME PIECE OF

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EVIDENCE, SAME FOOTWEAR ON THE DOOR, JUST SHOT AT DIFFERENT ANGLES AND WITH A SCALE TAPE AND WITHOUT A SCALE TAPE.

Q AND WHEN YOU WERE IN THE CRIME SCENE FINGERPRINT DIVISION AT SLED, DID THE FINGERPRINT PORTION OF THAT ALSO INCLUDE DOING EXAMINATIONS AND RENDERING OPINIONS IN REGARDS TO FOOTWEAR?

A YES, SIR, IT DID. THAT WAS PART OF MY DUTIES, ALSO.

Q AND BASICALLY IN DOING THAT, DID YOU DO THE SAME THING YOU WOULD DO WITH A FINGERPRINT, TAKE A LATENT OR A RECOVERED FOOTPRINT AND COMPARE IT TO KNOWN FOOTWEAR?

A YES, SIR. IT'S DIFFERENT THAN FINGERPRINTS, BUT THE SAME PRINCIPLE APPLIES. YOU'RE TRYING TO MATCH AN UNKNOWN IMPRESSION WITH A KNOWN IMPRESSION, SO IN THAT REGARD IT'S THE SAME THING AS A FINGERPRINT, SAME IDENTIFICATION PROCESS, JUST A DIFFERENT WAY TO GO ABOUT IT.

Q IN ATTEMPTING TO DO THAT, TO MATCH THE KNOWN WITH THE UNKNOWN, WHAT ARE THE VARIOUS PRINCIPLES AND CHARACTERISTICS YOU TAKE INTO ACCOUNT IN ORDER TO MAKE SUCH A MATCH?

A WELL, THE FIRST THING THAT YOU NEED TO DO WHEN YOU'RE DOING A FOOTWEAR EXAMINATION IS BE ABLE TO DETERMINE WHAT TYPE OF SHOE IT IS, IF POSSIBLE. IN THIS CASE, THERE ARE SEVERAL DIFFERENT BRANDS OF SHOES THAT WOULD HAVE THAT SAME LUG SOLE BOTTOM TO IT, SO WE COULD NOT TELL, WHEREAS IN SOME SCENES YOU MAY HAVE A FOOTPRINT IMPRESSION THAT HAS A BIG

NIKE SWOOSH IN IT. BUT THE MAJORITY OF THE TIME YOU ONLY HAVE A PARTIAL PART OF THE FOOTWEAR IMPRESSION, SO THAT YOU HAVE TO WAIT UNTIL YOU RECEIVE THOSE SHOES, THE KNOWN SHOES, BEFORE YOU CAN MAKE A DETERMINATION.

Q SO YOU'VE GOT BASICALLY WHAT YOU MIGHT CALL THE MANUFACTURER'S PATTERN ON THE SOLE? THAT'S ONE OF THE FIRST THINGS YOU LOOK FOR?

A YES, SIR. YOU'RE LOOKING FOR THE TREAD DESIGN, AND THEN WITHIN THE TREAD DESIGN YOU'RE LOOKING FOR SIZE, SHAPE AND OUTSOLE DESIGN, AND THEN MORE SPECIFICALLY YOU GET INTO LOOKING FOR RANDOM IDENTIFYING CHARACTERISTICS.

Q WHAT DO YOU MEAN BY THAT?

A WELL, WHEN YOU BUY A BRAND NEW PAIR OF SHOES, THEY'RE SLIGHTLY DIFFERENT FROM EACH ONE. IF YOU BUY TWO PAIRS OF SIZE 12 NIKE TENNIS SHOES THAT ARE THE SAME MAKE, SAME MODEL, THEY'RE GOING TO HAVE SLIGHT DIFFERENCES. THESE ARE MANUFACTURING FLAWS THAT COME IN A PAIR OF SHOES.

AND THEN AS AN INDIVIDUAL WALKING IN THESE SHOES, THEY WILL FORM WEAR CHARACTERISTICS. EACH PERSON WALKS DIFFERENTLY. EACH PERSON MIGHT WEIGH -- IF YOU HAVE TWO INDIVIDUALS WEARING THEM, ONE MIGHT BE HEAVIER, ONE MIGHT RUN IN THEM, ONE MIGHT HAVE A SLIGHT LIMP, SO THESE ARE WHERE THE WEAR CHARACTERISTICS COME IN. AND THEN YOU GET RANDOM IDENTIFYING CHARACTERISTICS BY PICKING UP PIECES OF GLASS, BY GETTING CUTS, BY WALKING ON THE SIDEWALK OR BY

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GETTING A PIECE OF GRAVEL STUCK IN THEM, AND THESE RANDOM IDENTIFYING CHARACTERISTICS ARE WHAT WILL MAKE A SHOE UNIQUE.

Q IN ORDER TO BE ABLE TO SAY FOR A FACT THAT THIS SHOE MADE THIS PRINT, YOU WOULD PRIMARILY NEED THOSE RANDOM CHARACTERISTICS, WOULD YOU NOT?

A YES, SIR, UNLESS YOU HAD A REAL SPECIFIC WEAR CHARACTERISTIC, WHICH WOULD BE IF YOU HAD A PAIR OF SHOES FOR 15 YEARS, AND YOU WORE THEM EVERY SINGLE DAY AND YOU WORE A HOLE IN THE BOTTOM. THAT COULD BE USED AS AN IDENTIFYING CHARACTERISTIC, BUT MORE OFTEN THAN NOT YOU HAVE TO HAVE A RANDOM IDENTIFYING CHARACTERISTIC TO RENDER A SHOE IDENTIFIABLE.

Q IF TWO PAIR OF SHOES ARE THE SAME MAKE AND MODEL, VIRTUALLY NEW, THEY WOULD NOT LIKELY GIVE YOU WHAT YOU NEED TO MAKE A POSITIVE I.D., WOULD THEY?

A I'M NOT QUITE SURE I UNDERSTAND.

Q TWO DIFFERENT PAIRS OF THE SAME MAKE AND MODEL SHOE, OF THE SAME SIZE, WITH LITTLE OR NO WEAR, WOULD HINDER YOUR ABILITY TO --

A YES, SIR. THOSE SHOES WOULD BE CONSISTENT WITH EACH OTHER. THERE WOULD BE TINY, MINUTE FLAWS IN THEM, BUT THESE ARE NOT THE KIND OF FLAWS THAT ARE GOING TO REPRODUCE WHEN YOU'RE LOOKING AT A FOOTWEAR IMPRESSION, AN UNKNOWN FOOTWEAR IMPRESSION.

Q DURING THE COURSE OF YOUR WORK IN THAT LAB, DID YOU HAVE AN OCCASION TO COMPARE FOOTWEAR TO THE IMPRESSION ON THE DOOR OF MCDONALD AMUSEMENTS?

A YES, SIR.

Q I SHOW YOU TWO BAGS, #67 AND #68, #67 BEING, I THINK, THE RIGHT FOOT, #68 BEING THE LEFT FOOT OF A PAIR OF NIKE AIR BLUE AND GRAY TENNIS SHOES TESTIFIED AS COMING FROM THE TRUNK OF THE CAR OF THE DEFENDANT, MR. MATHIS. DID YOU MAKE COMPARISONS OF THOSE AGAINST THE MARKS ON THE INTERIOR DOOR AT MCDONALD?

A YES, SIR, I DID.

Q AND WHAT CONCLUSIONS WERE YOU ABLE TO MAKE BASED ON YOUR EXAMINATIONS?

A THE ITEM 169, RIGHT SHOE OUTSOLE, DESIGN, SIZE AND SHAPE IS CONSISTENT WITH THE UNKNOWN IMPRESSION ON THE DOOR; HOWEVER, THE PHOTOGRAPH OF THE FOOTWEAR IMPRESSION LACKS DISCERNABLE INDIVIDUAL WEAR CHARACTERISTICS, WHICH PRECLUDES A POSITIVE IDENTIFICATION. BECAUSE THE OUTSOLE DESIGN IS CONSISTENT, IT IS CONCLUDED THAT THE RIGHT SHOE COULD HAVE MADE THE IMPRESSION REPRESENTED IN THE PHOTOGRAPH, OR ANOTHER SHOE OF LIKE MANUFACTURE.

Q SO AS FAR AS MANUFACTURE, TYPE AND SIZE, IT'S PERFECTLY CONSISTENT?

A YES, SIR, IT IS CONSISTENT WITH A PAIR OF NIKE AIR SIZE 9-1/2 SHOE.

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Q BUT THERE WASN'T SUFFICIENT RANDOM OR WEAR CHARACTERISTICS TO GO BEYOND THAT POINT?

A THAT IS CORRECT. IT IS CONSISTENT WITH THIS SHOE OR ONE OF LIKE FASHION, AND BY THAT MEANING ONE WOULD HAVE TO BE IN A SIMILAR CONDITION TO THIS SHOE TO MAKE THAT SAME IMPRESSION.

Q THANK YOU. PLEASE ANSWER ANY QUESTIONS COUNSEL MAY HAVE IN REGARDS TO THESE POINTS.

THE COURT: CROSS-EXAM?

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. LAROSA, THE BOTTOM LINE IS YOU CAN'T SAY WITH ANY DEGREE OF CERTAINTY THAT THESE SHOES MADE THAT IMPRESSION ON THE DOOR, CAN YOU?

A I CAN CONCLUDE THAT THEY WERE CONSISTENT WITH THEM.

Q AND THAT JUST MEANS THAT THEY'RE LIKE -- COULD HAVE BEEN MADE BY A SHOE LIKE THIS?

A THE EXACT SAME SHOE IN THE EXACT SAME CONDITION IN THE EXACT SAME SIZE COULD HAVE MADE THAT, YES, SIR.

MR. CLARK: MAY I OPEN THIS BAG, YOUR HONOR?

MR. JUSTICE: I HAVE NO OBJECTION.

THE COURT: YES.

Q DO YOU KNOW HOW MANY PAIRS OF SHOES NIKE MADE LIKE THIS?

A NO, SIR, I SURE DON'T, WOULDN'T HAVE AN EDUCATED GUESS.

Q OKAY. THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

THE COURT: THANK YOU.

(TO WITNESS) YOU MAY STAND DOWN. THANK YOU VERY MUCH.

MR. JUSTICE: (TO WITNESS) THANK YOU.

WE HAVE NO OTHER QUESTIONS OF MR. LAROSA AND ASK THAT HE BE EXCUSED.

THE COURT: ANY OBJECTION TO HIS BEING EXCUSED?

MR. CLARK: NO, SIR, YOUR HONOR.

THE COURT: (TO WITNESS) THANK YOU FOR ATTENDING. YOU'RE EXCUSED.

MR. JUSTICE: WE CALL OFFICER BILL MURPHY.

(WHEREUPON, WILLIAM C. MURPHY, JR., HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. JUSTICE:

Q STATE YOUR NAME, PLEASE, SIR.

A WILLIAM C. MURPHY, JR.

Q WHERE ARE YOU EMPLOYED, SIR?

A I WORK FOR THE LANCASTER COUNTY SHERIFF'S OFFICE.

Q HOW LONG HAVE YOU BEEN A DEPUTY?

A I'VE BEEN A DEPUTY SHERIFF FOR 10 YEARS AND BEEN IN LAW ENFORCEMENT FOR 15.

Q WHERE WERE YOU THE OTHER SIX?

A I WAS AT THE CITY POLICE DEPARTMENT. IN KERSHAW IS WHERE I

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STARTED OUT MY CAREER.

Q AND WHAT IS YOUR RANK OR POSITION WITH THE SHERIFF'S DEPARTMENT?

A I'M CURRENTLY A LIEUTENANT OF THE NARCOTICS -- DRUG TASK FORCE.

Q AND WHAT WAS YOUR JOB BACK IN JUNE OF THE YEAR 2000?

A I WAS AN AGENT ASSIGNED TO THE DRUG TASK FORCE.

Q EVEN THOUGH YOU WERE ASSIGNED TO THE DRUG TASK FORCE, WERE YOU MOBILIZED ALONG WITH MOST OF YOUR DEPARTMENT IN THE INVESTIGATION OF THE MURDER OF MELVIN STEELE AND OTHER CRIMES CONNECTED THERETO?

A YES, SIR, I WAS.

Q AFTER THE INVESTIGATORS HAD ESTABLISHED A POSSIBLE CONNECTION BETWEEN MR. MATHIS AND THIS CRIME AND A CONNECTION BETWEEN MR. MATHIS AND A WOMAN NAMED SYLVIA TALFORD, WHO HAD RENTED THE WHITE LINCOLN CONTINENTAL, DID YOU, ALONG WITH ANOTHER OFFICER, SET UP SURVEILLANCE ON THE HOME OF MS. TALFORD, I THINK, ON THE EVENING OF THE TWENTY-FIRST OF JUNE?

A YES, SIR, WE DID.

Q PLEASE TELL US WHAT OBSERVATIONS, IF ANY, YOU MADE AND, AS BEST YOU CAN RECALL, APPROXIMATELY WHEN YOU MADE THOSE OBSERVATIONS.

A I BELIEVE IT WAS ON THE TWENTY-FIRST OF JUNE, MYSELF AND AGENT WASHINGTON WENT TO [redacted] I BELIEVE YOU SAID IT WAS,

[redacted]TWOOD, WHICH IS RIGHT ACROSS FROM IRWIN SCHOOL ON [redacted] OR [redacted] AND SET UP SURVEILLANCE. WE EXITED OUR VEHICLES, PARKED OUR VEHICLES BEHIND IRWIN SCHOOL, AND WALKED DOWN BEHIND IRWIN SCHOOL.

AT THAT PARTICULAR TIME -- I DON'T KNOW IF THEY'RE STILL THERE OR NOT -- THEY HAD SEVERAL MOBILE UNITS THAT SAT BESIDE THE SCHOOL ACROSS FROM MS. TALFORD'S RESIDENCE. WE WALKED BEHIND THE SCHOOL AND SET UP SURVEILLANCE IN THE WOOD LINE ADJACENT TO THE FARTHEST CUBICLE CLOSEST TO THE ROAD DIRECTLY ACROSS FROM MS. TALFORD'S DRIVEWAY.

Q AND DID YOU SET UP THERE DURING THE DAYTIME OR NIGHT TIME?

A I BELIEVE OUR SURVEILLANCE ACTUALLY STARTED ABOUT 9:45 P.M.

Q SO IT WAS DARK BY THEN, EVEN IN JUNE?

A YES, SIR.

Q AND WERE YOU ALONE OR DID YOU HAVE ANOTHER OFFICER WITH YOU?

A AGENT WASHINGTON WAS WITH ME.

Q OKAY, MR. WASHINGTON. WHILE THERE, WHAT DID YOU NOTICE OR OBSERVE IN OR AROUND MS. TALFORD'S HOME?

A WE MADE NOTES OF WHAT WE OBSERVED. AT APPROXIMATELY 10:11 P.M., A BLACK OR DARK BLUE, LATER DETERMINED TO BE BLACK, PICKUP TRUCK PULLED UP IN FRONT OF MS. TALFORD'S RESIDENCE. THE DEFENDANT, MR. MATHIS, EXITED THE VEHICLE WEARING, I BELIEVE WHAT WAS NOTED AT THE TIME, A ROYAL BLUE SHIRT AND A PAIR OF WHITE SHORTS. HE EXITED THE TRUCK.

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WHEN THE INTERIOR LIGHT OF THE TRUCK CAME ON, WE COULD TELL THE INDIVIDUAL DRIVING THE TRUCK WAS A LARGE, BLACK MALE WEARING GLASSES. THAT'S ALL WE COULD TELL ABOUT HIM AT THAT PARTICULAR TIME. THE TRUCK WAS BLACK IN COLOR, HAD A PUSH BAR ON THE FRONT WITH RAILS AND APPEARED TO HAVE DUAL EXHAUSTS, AS IT WAS KIND OF LOUD. MR. MATHIS GOT OUT OF THE VEHICLE.

THE TRUCK WAS COMING FROM THE MAHAFFEY LINE, WHICH MEANS IT WOULD HAVE BEEN COMING FROM THE NORTH SIDE OF [redacted] TRAVELING SOUTH. IT WENT ON DOWN THE ROAD AFTER IT LET MR. MATHIS OUT. MR. MATHIS WENT INTO THE RESIDENCE AT APPROXIMATELY 10:11. AT 10:14 P.M. WE NOTICED HEADLIGHTS COME ON IN THE BACK YARD. THERE WAS NO -- UP UNTIL THAT POINT, WE HAD NO INDICATION THAT ANYBODY WAS AT HOME IN THE RESIDENCE.

WHEN HE CAME HOME -- OR CAME TO THE RESIDENCE AND WENT IN, SHORTLY AFTER HE WAS INSIDE, A PAIR OF HEADLIGHTS APPEARED IN THE BACK YARD, AND AT THAT TIME WE KNEW THAT THERE WAS A VEHICLE IN THE BACK YARD. THE VEHICLE PULLED UP TO WHERE WE COULD SEE THE MAJOR PORTION OF THE SIDE, FRONT SIDE OF THE VEHICLE, FROM ABOUT THE FRONT OF THE VEHICLE TO THE BEGINNING OF THE BACK DOOR, AND WE COULD TELL THAT IT WAS A WHITE LINCOLN.

AN INDIVIDUAL PULLED THE CAR UP FACING OUT AND THEN TURNED THE HEADLIGHTS OUT AND THEN WENT BACK IN THE HOUSE,

STAYED IN THE HOUSE JUST A BRIEF PERIOD OF TIME AND THEN CAME BACK OUT AND APPEARED TO BE PUTTING SOMETHING IN THE BACK SEAT. WE COULDN'T TELL FROM OUR VANTAGE POINT WHAT THAT MAY HAVE BEEN, PUT HE WENT INTO THE BACK SEAT OF THE VEHICLE AND THEN GOT BACK INTO THE -- WENT BACK IN THE HOUSE BRIEFLY, CAME BACK OUT, GOT IN THE DRIVER'S SIDE OF THE VEHICLE.

ABOUT THAT SAME TIME, THE BLACK PICKUP TRUCK PULLED BACK UP, THIS TIME COMING FROM SOUTH, HEADING NORTH ON LOCUSTWOOD.

Q IT HAD LEFT AND COME BACK?

A YES, SIR. MR. MATHIS CAME BACK OUT, GOT INTO THE LINCOLN. THE TRUCK WAITED AT THE END OF THE DRIVEWAY. MR. MATHIS EXITED THE DRIVEWAY IN THE LINCOLN, TRAVELING NORTH ON [redacted] FOLLOWED BEHIND THE TRUCK.

WE CONTACTED THE OTHER AGENTS THAT WERE ASSISTING IN THE SURVEILLANCE, AND THEY ATTEMPTED TO FOLLOW THE VEHICLES AS THEY LEFT THE AREA.

Q AND THIS PERSON WHO, ON TWO OR THREE OCCASIONS I THINK YOU DESCRIBED, WENT IN AND OUT OF THE HOUSE, WAS THE DEFENDANT, MR. MATHIS?

A YES, SIR. IT CERTAINLY APPEARED TO BE SO.

Q THANK YOU. PLEASE ANSWER ANY QUESTIONS MR. CLARK MAY HAVE.

THE COURT: (TO MR. CLARK) CROSS-EXAMINE?

CROSS-EXAMINATION

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BY MR. CLARK:

Q MR. MURPHY, THAT BLACK TRUCK THAT YOU SAW THAT CAME UP WITH THE BLACK MALE IN IT --

A YES, SIR.

Q LET ME WITHDRAW THAT QUESTION AND ASK YOU THIS QUESTION. ARE YOU FAMILIAR WITH THE TRUCK THAT INVESTIGATOR BOWERS DRIVES?

A CURRENTLY DRIVES?

Q THE BLACK TRUCK THAT HE DROVE ONE TIME.

A MR. BOWERS HAS NEVER DRIVEN A BLACK PICKUP TRUCK.

Q HE HAS NEVER DRIVEN A BLACK PICKUP TRUCK?

A NO, SIR.

Q IS THERE A BLACK PICKUP TRUCK IN THE SHERIFF'S DEPARTMENT'S FLEET OF VEHICLES?

A NOT AT THIS TIME. AT THAT PARTICULAR TIME THERE WAS.

Q THERE WAS A BLACK PICKUP TRUCK IN THE SHERIFF'S DEPARTMENT'S FLEET IN 2000?

A YES, SIR, THERE WAS.

Q AND ISN'T IT TRUE THAT THIS BLACK PICKUP TRUCK THAT DROVE UP WITH THE BLACK GENTLEMAN IN IT WAS SIMILAR TO THE SHERIFF'S DEPARTMENT'S BLACK PICKUP TRUCK?

A NO. THE BLACK PICKUP TRUCK WE HAD AT THAT PARTICULAR TIME WAS A FOUR-WHEEL DRIVE Z-71. THIS VEHICLE DID NOT APPEAR TO BE A FOUR-WHEEL DRIVE, AS IT DID NOT SIT THAT HIGH OFF THE GROUND, AND IT HAD A FRONT PUSH BAR ON IT, WHICH OURS

DID NOT.

Q WHAT IS A FRONT PUSH BAR? CAN YOU TELL ME ABOUT THAT? IS THAT ON THE FRONT OF THE VEHICLE?

A IT'S A FRONT -- A PUSH BAR IS THE ONLY WAY I KNOW HOW TO DESCRIBE IT, BUT IT'S UP ON THE FRONT OF THE VEHICLE, WHICH PROTECTS THE GRILL AND ALLOWS YOU TO, IF YOU CHOOSE TO -- DEPENDING ON WHAT KIND IT IS, YOU CAN PUSH THINGS WITH IT. THIS WAS MORE OF A DECORATIVE PUSH BAR THAT WAS FOR --

Q BUT IT WAS A PICKUP TRUCK, THE SAME COLOR AS THE ONE THAT WAS IN THE SHERIFF'S DEPARTMENT?

A YES, SIR.

Q BLACK?

A (WITNESS NODDING HEAD).

Q AND YOU COULDN'T SEE WHAT MR. MATHIS PUT IN THE CAR THAT NIGHT, COULD YOU?

A NO, I COULD NOT.

Q THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

THE COURT: THANK YOU.

MR. JUSTICE: (TO WITNESS) THANK YOU, MR. MURPHY. (TO THE COURT) THAT'S ALL WE HAVE. WE'D ASK THAT HE BE EXCUSED.

MR. CLARK: NO OBJECTION.

MR. JUSTICE: I'D ASK THAT HE STAY, YOUR HONOR. HE MAY POSSIBLY BE CALLED AGAIN.

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THE COURT: ALL RIGHT.

(TO WITNESS) PLEASE STAY WITH US.

MR. JUSTICE: IF I COULD STEP OUT JUST A MOMENT TO SEE IF SOMETHING IS READY, IF NOT, WE'LL MOVE TO ANOTHER ITEM.

I CALL OFFICER DONNIE WASHINGTON.

(WHEREUPON, DONNIE R. WASHINGTON, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. JUSTICE:

Q STATE YOUR NAME, PLEASE, SIR.

A MY NAME IS DONNIE R. WASHINGTON.

Q AND WHERE ARE YOU EMPLOYED, MR. WASHINGTON?

A I'M EMPLOYED AT RICHLAND COUNTY SHERIFF'S DEPARTMENT.

Q HOW LONG HAVE YOU BEEN AN OFFICER IN THE RICHLAND COUNTY SHERIFF'S DEPARTMENT?

A I'VE BEEN AT RICHLAND COUNTY FOR TWO YEARS.

Q TWO YEARS?

A YES, SIR.

Q AND WHERE WERE YOU AN OFFICER BEFORE THAT?

A CURRENTLY I WAS AT LANCASTER COUNTY SHERIFF'S DEPARTMENT. JUST BEFORE THAT I WAS WITH THE LANCASTER CITY POLICE DEPARTMENT.

Q IN JUNE OF THE YEAR 2000, WHERE WERE YOU WORKING AND WHAT WAS YOUR JOB?

A I WAS AN OFFICER AT THE CITY OF LANCASTER POLICE DEPARTMENT. I WAS ASSIGNED TO LANCASTER COUNTY SHERIFF'S OFFICE DRUG TASK FORCE.

Q SO YOU WERE ACTUALLY BEING PAID BY THE CITY BUT WORKING WITH THE DRUG TASK FORCE, ALONG WITH MR. MURPHY WHO JUST TESTIFIED?

A THAT'S CORRECT.

Q AND DID YOU HAVE AN OCCASION TO PARTICIPATE WITH MR. MURPHY ON THE NIGHT OF THE TWENTY-FIRST IN DOING SURVEILLANCE ON THE HOME OF SYLVIA TALFORD?

A YES, I DID.

Q AT A LATER TIME --

MR. JUSTICE: YOUR HONOR, COULD I HAVE COURT'S EXHIBIT #3, THE SEARCH WARRANT?

(OFF-THE-RECORD DISCUSSION)

Q AT A LATER TIME, SPECIFICALLY ON THE TWENTY-THIRD, DID YOU EXECUTE A SEARCH WARRANT ON THAT SAME RESIDENCE, A SEARCH WARRANT THAT'S ALREADY BEEN ACCEPTED AS COURT'S EXHIBIT #3, ON THE RESIDENCE OF MS. TALFORD?

A YES, I DID.

Q DO YOU REMEMBER HOW MANY OFFICERS PARTICIPATED IN THAT SEARCH?

A I WOULD HAVE TO LOOK AT THE SEARCH WARRANT ITSELF TO REMEMBER.

Q DO YOU REMEMBER RIGHT OFFHAND WHO SOME OF THEM WERE?

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A I REMEMBER WHO SOME OF THEM WERE, YES, SIR.
Q OKAY. LOOK AT THE SEARCH WARRANT, WHICH IS COURT'S EXHIBIT #3, AND SEE IF THAT TELLS YOU ANYTHING.
A (WITNESS REVIEWING DOCUMENT). OKAY, DO YOU WANT ME TO --
Q DO YOU REMEMBER WHO SOME OF THE OFFICERS WERE?
A YES, SIR. DO YOU WANT ME TO TELL YOU WHO THEY WERE?
Q YES, SIR, PLEASE TELL US.
A BESIDES MYSELF WAS LIEUTENANT HARRISON, CAPTAIN FAILE, MAJOR GHENT, DEPUTY ROGERS, MICHAEL GREEN, DETECTIVE JEFF HILTON, DETECTIVE BLACKMON, AND LIEUTENANT BOWERS AND LIEUTENANT MURPHY.
Q SO THERE WERE SEVERAL OF YOU?
A YES.
Q AND DURING THE COURSE OF SEARCHING THAT HOME, DID YOU SEIZE CERTAIN ITEMS THAT APPEARED TO HAVE EVIDENTIARY VALUE?
A YES, WE DID.
Q I'M GOING TO HAND YOU A NUMBER OF ITEMS ONE AT A TIME AND SEE WHETHER OR NOT YOU CAN IDENTIFY THEM AS BEING ITEMS TAKEN FROM THE HOME OF MS. TALFORD.

MR. CLARK: YOUR HONOR, I OBJECT AT THIS POINT.

THE COURT: ALL RIGHT, ON WHAT GROUNDS?

MR. CLARK: YOUR HONOR, THIS IS A RELEVANCE OBJECTION ON THE SEARCH OF MS. TALFORD'S RESIDENCE AGAINST MR. MATHIS.

THE COURT: YES, SIR, BUT HASN'T THERE BEEN

TESTIMONY THAT HE WAS AT THIS HOME AT THIS PARTICULAR TIME?

MR. CLARK: NO, SIR. THIS WAS DONE ON THE TWENTY-EIGHTH AND I BELIEVE THE SURVEILLANCE WAS ON THE TWENTY-FIRST. THIS WAS, LIKE, SEVEN DAYS LATER.

THE COURT: WAS IT THE TWENTY-EIGHTH OR THE TWENTY-THIRD?

MR. JUSTICE: IT LOOKS LIKE THE TWENTY-THIRD WAS THE EXECUTION OF THE WARRANT, YOUR HONOR.

THE COURT: THAT'S WHAT I THOUGHT.

MR. CLARK: I'M SORRY. YOUR HONOR, SURVEILLANCE WAS ON THE TWENTY-FIRST, WHICH WAS TWO DAYS BEFORE THIS.

THE COURT: THIS IS JUST TWO DAYS AFTER THE DEFENDANT HAS BEEN OBSERVED AT THIS HOME, TAKING ITEMS OUT. IS THAT CORRECT?

MR. CLARK: YES, SIR.

THE COURT: ALL RIGHT, I'M GOING TO OVERRULE THE OBJECTION. THANK YOU.

MR. JUSTICE: THANK YOU, YOUR HONOR.

MR. CLARK: YOUR HONOR, LOOKING AT IT AGAIN, IT WAS THE TWENTY-EIGHTH THAT THE SEARCH TOOK PLACE. LOOKING AT THE RETURN, IT SAYS IT WAS EXECUTED ON THE TWENTY-EIGHTH.

MR. JUSTICE: THE WARRANT WAS OBTAINED ON THE

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TWENTY-THIRD AND EXECUTED ON THE TWENTY-EIGHTH.

THE COURT: ALL RIGHT, I STILL OVERRULE YOUR OBJECTION.

MR. CLARK: THANK YOU, SIR.

Q MR. WASHINGTON, I'M GOING TO HAND YOU THESE ITEMS ONE AT A TIME, AND TELL ME IF YOU CAN IDENTIFY THEM AS COMING -- FROM THE OUTSIDE, IDENTIFY WHAT THE ITEMS WERE. THIS IS A BOX CONTAINING SOMETHING.

A THIS IS A MOTOROLA STARTACK DIGITAL CELL PHONE BOX THAT WE TOOK OUT OF THE RESIDENCE.

Q OKAY, IT'S A BOX THAT A CELL PHONE WOULD COME IN?

A YES, SIR, ALONG WITH A STANDARD CHARGER EQUIPPED FOR A PHONE AND, LIKE, AN EXTRA BATTERY PACK.

Q BUT NOT THE PHONE ITSELF?

A RIGHT, NOT THE PHONE ITSELF.

MR. JUSTICE: YOUR HONOR, I'D MOVE THE INTRODUCTION OF THIS AS THE STATE'S NEXT NUMBER.

THE COURT: STATE'S EXHIBIT #72.

MR. CLARK: SAME OBJECTION, YOUR HONOR.

THE COURT: ADMITTING IT OVER OBJECTION.

(STATE'S EXHIBIT #72, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, BOX FOR MOTOROLA PHONE).

Q MR. WASHINGTON, AT THIS TIME I'M GOING TO HAND YOU TWO VIRTUALLY IDENTICAL BOXES, AND WITH TAGS AND SUCH ON, AND TELL ME WHETHER OR NOT YOU CAN IDENTIFY THESE.

A THIS IS GOING TO BE -- BOTH BOXES ARE IDENTICAL. THEY'RE TWO-WAY RADIO BOXES.

Q WALKIE-TALKIE TYPE AFFAIRS?

A YES, SIR.

Q AND THEY WERE RECOVERED FROM THE HOUSE OF MS. TALFORD?

A THEY WERE ALSO RECOVERED FROM HER HOUSE.

MR. JUSTICE: YOUR HONOR, I'D MOVE THESE BE INTRODUCED INTO EVIDENCE AS THE NEXT TWO STATE'S EXHIBITS.

MR. CLARK: SAME OBJECTION.

THE COURT: ADMITTED OVER OBJECTION.

(STATE'S EXHIBIT #73, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, WALKIE-TALKIE).

(STATE'S EXHIBIT #74, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, WALKIE-TALKIE).

Q I SHOW YOU A SIMPLE WHITE PIECE OF PAPER WITH TYPEWRITING TYPE OR COMPUTER WRITING ON IT. DID THAT COME FROM THE HOUSE AS WELL? APPARENTLY A RECEIPT.

A YES, THIS IS A RECEIPT FROM OFFICE DEPOT AND IT WAS ALSO TAKEN FROM THE RESIDENCE.

Q WHAT IS THE DATE ON THAT RECEIPT?

A 5/29, 2000.

Q MAY 19 OF 2000?

A YES, SIR.

Q AND IT'S A RECEIPT FOR WHAT?

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A IT'S A RECEIPT FOR TWO WALKIE-TALKIE RADIOS.

MR. JUSTICE: MOVE FOR THE INTRODUCTION OF #75.

THE COURT: ADMITTED OVER THE SAME OBJECTION?

MR. CLARK: YES, SIR.

(STATE'S EXHIBIT #75, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, RECEIPT).

Q MR. WASHINGTON, I'M HANDING YOU NOW WHAT APPEARS TO BE A BELL SOUTH MOBILITY CORDLESS PHONE BOX.

A YES, THIS IS A CELL PHONE BOX. THERE ARE DIRECTIONS INSIDE IT. THIS ALSO CAME FROM THE RESIDENCE.

Q AND THERE'S NO CELL PHONE IN IT AT THIS TIME?

A NO CELL PHONE.

MR. JUSTICE: I'D MOVE THIS IN AS #76.

THE COURT: ADMITTED OVER OBJECTION, #76.

(TO MR. CLARK) SAME OBJECTION?

MR. CLARK: YES.

(STATE'S EXHIBIT #76, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE. BELL SOUTH CELL PHONE BOX).

Q OKAY, YET ANOTHER WHAT APPEARS TO BE A RECEIPT FROM CIRCUIT CITY STORES. DID THIS ALSO COME FROM MS. TALFORD'S HOUSE?

A YES, IT DID.

Q AND I KNOW IT'S RATHER LIGHT, BUT CAN YOU TELL WHAT THAT RECEIPT IS FOR?

A YES, IT'S FOR -- IT'S HARD TO SEE -- FOR A CELL PHONE.

Q DO YOU SEE A DATE? CAN YOU MAKE OUT A DATE ON THAT?
A 5/30, 2000.
Q THE THIRTIETH OF MAY OF 2000.
MR. JUSTICE: I'D MOVE THE INTRODUCTION.
THE COURT: ADMITTED OVER OBJECTION.
(STATE'S EXHIBIT #77, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, CIRCUIT CITY RECEIPT).
Q I SHOW YOU ANOTHER CELLULAR SERVICE ORDER TO BELL ATLANTIC MOBILE. DID THAT COME FROM MS. TALFORD'S HOME?
A YES, IT DID.
Q AND WHAT WAS THE DATE ON THAT DOCUMENT?
A (WITNESS REVIEWING DOCUMENT).
Q IF THERE IS ONE.
A THE DATE ON IT IS 5/30, 2000.
Q MAY 30 OF 2000?
A YES.
MR. JUSTICE: MOVE THE INTRODUCTION, YOUR HONOR.
THE COURT: OVER OBJECTION, ADMITTED INTO THE RECORD.
(STATE'S EXHIBIT #78, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, CELLULAR SERVICE ORDER).
Q I HAND YOU TWO APPARENTLY RELATED PIECES OF PAPER, ONE WHITE AND ONE YELLOW. TELL ME WHETHER OR NOT THESE CAME ALSO FROM THE SEARCH OF MS. TALFORD'S HOME.
A YES, BOTH OF THESE CAME FROM MS. TALFORD'S HOME.

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Q AND PLEASE JUST IDENTIFY WHAT THEY APPEAR TO BE.
A ONE IS A COUNTER CASH RECORD FROM HERTZ RENTALS. THE OTHER ONE IS ALSO FROM HERTZ RENTALS, FROM THE CHARLOTTE AIRPORT. THIS ONE IS FROM CHARLOTTE, TOO, I GUESS. BOTH OF THEM ARE FROM HERTZ RENTALS.

MR. JUSTICE: THE NEXT TWO EXHIBITS.

MR. CLARK: SAME OBJECTION.

THE COURT: THE NEXT TWO STATE'S EXHIBITS, #79 AND #80, ARE ADMITTED OVER OBJECTION, HERTZ RENTAL RECORDS.

(STATE'S EXHIBIT #79, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, HERTZ RECORDS).

(STATE'S EXHIBIT #80, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, HERTZ RECORDS).

Q I HAND YOU A COMPOSITION NOTEBOOK. DID THAT COME FROM MS. TALFORD'S HOME?
A YES, SIR, ALL OF THIS CAME FROM MS. TALFORD'S HOME.

MR. JUSTICE: I'D MOVE FOR THE INTRODUCTION, YOUR HONOR.

THE COURT: #81 ADMITTED OVER OBJECTION.

(STATE'S EXHIBIT #81, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, NOTEBOOK).

Q ALSO A SINGLE PIECE OF PAPER WITH NUMBERS AND LETTERS AND NOTES ON IT.
A YES, THIS ALSO CAME FROM MS. TALFORD'S HOME.

MR. JUSTICE: I'D MOVE THE INTRODUCTION, YOUR HONOR.

THE COURT: #82 ADMITTED OVER OBJECTION.

(STATE'S EXHIBIT #82, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, PIECE OF PAPER).

Q AND FINALLY A BAG CONTAINING TWO BOXES OF, APPARENTLY, CARTRIDGES. DID THAT COME FROM MS. TALFORD'S HOME?

A YES, IT DID.

MR. JUSTICE: YOUR HONOR, WE'D INTRODUCE THIS AS THE NEXT STATE'S EXHIBIT.

THE COURT: ADMITTED OVER OBJECTION.

(STATE'S EXHIBIT #83, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TWO CARTRIDGE BOXES).

Q MR. WASHINGTON, PLEASE ANSWER ANY QUESTIONS THAT COUNSEL FOR THE DEFENSE MAY HAVE.

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. WASHINGTON, PLEASE TELL THE LADIES AND GENTLEMEN OF THE JURY WHAT KIND OF CARTRIDGES THOSE ARE THAT YOU FOUND IN THE HOUSE.

A THESE ARE .25 CALIBER CARTRIDGES.

Q BOTH BOXES?

A YES, SIR.

Q NOT NINE MILLIMETER CARTRIDGES?

A .25 CALIBER.

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Q THANK YOU, SIR. NOW, IS IT TRUE THAT THE ONLY TIME THAT YOU SAW MR. MATHIS AT THAT RESIDENCE WAS FOR A SHORT PERIOD OF TIME ON JUNE 21?

A THAT'S CORRECT.

Q AND IT'S ALSO TRUE YOU'VE NEVER SEEN HIM STAY OVERNIGHT THERE, HAVE YOU?

A NO, I HAVEN'T.

Q HE WASN'T THERE ON THE TWENTY-EIGHTH WHEN THE SEARCH WARRANT WAS EXECUTED?

A NO, HE WAS NOT.

Q AND YOU'VE NEVER SEEN HIM TAKE ANY OF THESE ITEMS THAT HAVE BEEN INTRODUCED INTO THE RESIDENCE, HAVE YOU?

A NO, I DIDN'T.

Q IN FACT YOU HAVE NEVER SEEN ANY OF THESE ITEMS IN HIS POSSESSION, ISN'T THAT TRUE?

A THAT'S CORRECT.

Q AND, OFFICER WASHINGTON, YOU HAVE A COPY OF THE SEARCH WARRANT WITH YOU, DON'T YOU, SIR?

A YES, SIR.

Q AND YOU HAD A COPY OF IT WITH YOU WHEN YOU EXECUTED THE SEARCH WARRANT, DIDN'T YOU?

A YES, I DID.

Q AND YOU'RE REQUIRED TO TAKE ONE WITH YOU SO YOU CAN VERIFY TO THE HOMEOWNER OR TO THE PERSON LIVING THERE THAT YOU HAVE THIS LAWFUL SEARCH WARRANT, RIGHT?

A THAT IS CORRECT.
Q AND BEFORE YOU GET THE SEARCH WARRANT -- WELL, ALONG WITH THE SEARCH WARRANT IS AN AFFIDAVIT STATING WHAT YOU'RE LOOKING FOR, RIGHT?
A THAT'S CORRECT.
Q AND THE FIRST ITEM YOU WERE LOOKING FOR WHEN YOU WENT THERE WAS DUCT TAPE, IS THAT CORRECT?
A GIVE ME A SECOND. (WITNESS REVIEWING DOCUMENT).
Q UNDER "DESCRIPTION OF PROPERTY SOUGHT"?
A THAT'S CORRECT.
Q DUCT TAPE?
A YES.
Q YOU DIDN'T FIND ANY DUCT TAPE IN THAT RESIDENCE, DID YOU?
A NO, SIR.
Q THEN THE NEXT ITEM YOU WERE LOOKING FOR WAS HANDCUFFS, ISN'T THAT TRUE?
A THAT'S CORRECT.
Q YOU DIDN'T FIND ANY HANDCUFFS IN THAT RESIDENCE?
A NO, WE DIDN'T.
Q THEN THE NEXT ITEM WAS HANDCUFF KEYS, RIGHT?
A THAT'S CORRECT.
Q DID YOU FIND ANY HANDCUFF KEYS?
A NO, WE DIDN'T.
Q AND WHAT ABOUT A ONE-PIECE, DENIM, WOMAN'S JUMPSUIT? DID YOU FIND THAT?

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A I'M NOT SURE, BUT I DO HAVE LISTED SOMETHING AS BEING FOUND AS A BLUE-JEAN JUMPSUIT/MINISKIRT. I'M NOT SURE IF THAT'S THE SAME THING YOU'RE LOOKING FOR.

Q NOW, YOU'RE NOT CONTENDING THAT BELONGS TO MR. MATHIS, ARE YOU?

A EXCUSE ME?

Q YOU'RE NOT CONTENDING THE WOMAN'S JUMPSUIT BELONGS TO MR. MATHIS, ARE YOU?

A NO, I JUST SAID I --

Q THAT WAS ONE OF THE ITEMS YOU FOUND?

A YES.

Q AND YOU WERE LOOKING FOR BANDANAS, RIGHT?

A (WITNESS REVIEWING DOCUMENT).

Q RIGHT AFTER THE JUMPSUIT ON THE "DESCRIPTION OF PROPERTY SOUGHT", ON THE FIRST LINE THERE, SIR.

A THAT'S CORRECT.

Q AND YOU DIDN'T FIND ANY BANDANAS IN THAT HOUSE, DID YOU?

A NO, WE DID NOT.

Q THEN YOU WERE ALSO LOOKING FOR MASKS. DIDN'T FIND ANY MASKS, DID YOU?

A NO, WE DID NOT.

Q FIREARMS. DIDN'T FIND ANY FIREARMS, DID YOU?

A NO, WE DID NOT.

Q YOU WERE LOOKING FOR AMMUNITION AND YOU FOUND THESE .25 CALIBER CARTRIDGES, RIGHT?

A THAT'S CORRECT.
Q THEN YOU WERE LOOKING FOR DRIVER'S LICENSES OR I.D. CARDS, ON THE SECOND LINE THERE?
A THAT'S CORRECT.
Q DID YOU FIND ANY DRIVER'S LICENSES OR I.D. CARDS?
A YES, WE DID.
Q YOU FOUND DRIVER'S LICENSES AND I.D. CARDS?
A YES.
Q IS IT LISTED ON THE RETURN?
A YES, IT IS, ON THE BACK PAGE UNDER THE SECTION TO THE RIGHT, WHERE THE LINE IS KIND OF DRAWN.
Q CAN YOU SHOW IT TO ME?
A THAT'S IT (INDICATING).
Q DO YOU KNOW WHOSE DRIVER'S LICENSE AND I.D. CARD THAT WAS?
A I DON'T REMEMBER.
Q YOU DON'T REMEMBER?
A NO, I DON'T.
Q YOU DIDN'T FIND ONE FOR MR. MATHIS, DID YOU?
A I DON'T REMEMBER.
Q OKAY, SIR. THEN YOU WERE LOOKING FOR VAN SEATS, RIGHT?
A THAT'S CORRECT.
Q YOU DIDN'T FIND ANY VAN SEATS?
A NO, WE DIDN'T.
Q AND YOU LOOKED IN THE -- I'M SURE YOU LOOKED AROUND THE YARD, TOO, DIDN'T YOU, WHILE YOU WERE THERE?

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A I DIDN'T LOOK IN THE YARD.
Q BUT YOU HAD OTHER AGENTS WITH YOU, RIGHT?
A I'M NOT SURE WHAT EVERYBODY WAS DOING AT ONCE, BUT I KNOW I DIDN'T LOOK IN THE YARD.
Q BUT YOU KNOW BY THE RETURN NO VAN SEATS WERE FOUND THERE?
A THAT'S RIGHT.
Q ALL RIGHT, SIR. AND YOU LOOKED FOR SOME GLOVES. YOU DID FIND SOME WORK GLOVES, DIDN'T YOU?
A YES, I DID.
Q STAINED CLOTHING, YOU WERE LOOKING FOR STAINED CLOTHING. DID YOU FIND ANY?
A NO, WE DID NOT.
Q AND WHAT'S BEEN ADMITTED AS STATE'S EXHIBIT #75, RECEIPT FROM OFFICE DEPOT, DO YOU KNOW IF THIS WAS EVER FINGERPRINTED TO SEE IF MR. MATHIS' FINGERPRINTS WERE ON IT?
A I DON'T KNOW IF IT'S EVER BEEN FINGERPRINTED.
Q DO YOU KNOW WHO MADE THIS PURCHASE?
A EXCUSE ME?
Q DO YOU KNOW WHO MADE THIS PURCHASE?
A LET ME SEE IT.
Q (COUNSEL HANDING DOCUMENT TO WITNESS).
A NO, I DON'T KNOW WHO MADE THAT.
Q AND I SHOW YOU STATE'S EXHIBIT #78, A BELL ATLANTIC SERVICE ORDER. ISN'T THAT MADE OUT TO SYLVIA TALFORD?

A YES, IT IS.
Q AND I'M GOING TO SHOW YOU #77, WHICH IS A RECEIPT FROM CIRCUIT CITY STORES WHERE SOME CELL PHONES WERE PURCHASED. ISN'T THAT RECEIPT MADE OUT TO SYLVIA TALFORD?
A YES, IT IS.
MR. CLARK: I BEG THE COURT'S INDULGENCE, YOUR HONOR.
Q YOU FOUND SOME COMPUTER DISKS AS WELL, DIDN'T YOU?
A YES, WE DID.
Q CREDIT CARDS, DIGITAL CAMERA, THINGS LIKE THAT, RIGHT?
A THAT'S CORRECT.
Q AND WHO WAS PRESENT WHEN THIS SEARCH WAS EXECUTED?
A YOU MEAN THE OFFICERS?
Q OCCUPANTS OF THE HOME.
A MS. TALFORD.
Q MS. TALFORD WAS THERE?
A THAT'S CORRECT.
Q THANK YOU, OFFICER WASHINGTON.
MR. CLARK: THAT'S ALL I HAVE.
MR. JUSTICE: (TO WITNESS) THANK YOU.
(TO THE COURT) WE'D ASK THAT MR. WASHINGTON BE EXCUSED AS WELL.
THE COURT: ANY OBJECTION?
MR. CLARK: NO, SIR.
THE COURT: THANK YOU.

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(TO WITNESS) YOU'RE EXCUSED, NO OBJECTION.

MR. JUSTICE: I'D ASK MR. WASHINGTON BE EXCUSED.

THE COURT: I ALREADY DID IT.

MR. JUSTICE: MR. SETH GREGORY.

(WHEREUPON, SETH GREGORY, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. JUSTICE:

Q STATE YOUR NAME, PLEASE.

A SETH GREGORY.

Q AND, MR. GREGORY, WHERE DO YOU LIVE?

A IN ROCK HILL, SOUTH CAROLINA.

Q HAVE YOU LIVED THERE MOST OF YOUR LIFE?

A FOR THE LAST FIVE YEARS.

Q FIVE YEARS. WHERE DO YOU WORK NOW?

A AT THE U.N.C.C. OFFICE DEPOT.

Q OFFICE DEPOT?

A YES, SIR.

Q HOW LONG HAVE YOU WORKED AT THAT LOCATION?

A THAT LOCATION, ONE YEAR.

Q ONE YEAR AT U.N.C. OFFICE DEPOT?

A U.N.C.C.

Q U.N.C.C., THAT'S IN CHARLOTTE?

A YES, SIR.

Q HAD YOU PREVIOUSLY WORKED FOR OFFICE DEPOT ELSEWHERE?

A YES, SIR, FOR FOUR YEARS.
Q WHERE WERE YOU WORKING IN LATE MAY OF THE YEAR 2000?
A THE ROCK HILL OFFICE DEPOT.
Q AND WHERE IS THAT LOCATED?
A IT'S ON CHERRY ROAD. IT'S THE MAIN ROAD IN ROCK HILL.
Q DO YOU RECALL A TRANSACTION IN THE VERY LATE PART OF MAY WHEREUPON YOU OR YOUR BUSINESS, AT LEAST, SOLD A COUPLE OF FAIRLY EXPENSIVE WALKIE-TALKIES?
A YES, SIR, I DO.
Q WHAT DO YOU REMEMBER ABOUT THE INCIDENT?
A WE RARELY SELL THOSE PARTICULAR WALKIE-TALKIES, SO BECAUSE OF THAT, I HAD REMEMBERED EVERYTHING ABOUT IT.
Q WHEN YOU SAY "THOSE PARTICULAR WALKIE-TALKIES", LET ME SHOW YOU THESE TWO BOXES, STATE'S EXHIBITS #74 AND #73. ARE THESE THE KIND OF WALKIE-TALKIES YOU'RE MAKING REFERENCE TO?
A BEYOND JUST BEING THE KIND, THEY HAVE A STICKER SPECIFICALLY FOR MY STORE, FOR THE STORE THAT I PREVIOUSLY WORKED AT; #342 IS THE ROCK HILL OFFICE DEPOT STORE NUMBER. AND THIS STICKER RIGHT HERE (INDICATING) IS ACTUALLY ONLY USED BY THAT STORE. WE MADE THAT UP FOR LOSS PREVENTION PURPOSES.
Q AS SUCH, THEN, YOU CAN SAY THAT THESE TWO BOXES WERE MOST LIKELY PURCHASED AT YOUR STORE IN ROCK HILL?
A WITHOUT A SHADOW OF A DOUBT.

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Q WITHOUT A DOUBT, OKAY. AND I'LL SHOW YOU A RECEIPT WHICH IS STATE'S EXHIBIT #75. IS THIS A RECEIPT ISSUED BY OFFICE DEPOT IN ROCK HILL WHERE YOU WERE EMPLOYED?

A ONE HUNDRED PERCENT.

Q AND WHAT WAS THE COST ON THESE INSTRUMENTS?

A $179.99 EACH.

Q WHAT DO YOU RECALL? YOU SAY THE TRANSACTION STANDS OUT BECAUSE YOU VERY SELDOM SOLD THESE HIGH-PRICED MODELS. WHAT IS IT THAT YOU REMEMBER? HOW DO YOU REMEMBER THE TRANSACTION GOING DOWN OR TAKING PLACE?

A IN MY POSITION THERE, I HAVE A RESPONSIBILITY FOR LOSS PREVENTION, SO WHENEVER WE HAD HIGHER DOLLAR PURCHASES, IT WOULD BE UP TO ME TO MAKE SURE THAT CHECKS WEREN'T FRAUDULENT, THAT CREDIT CARDS WERE REAL CREDIT CARDS, SO I BECAME A PART OF THE TRANSACTION.

Q SO YOU GOT INVOLVED IN THE ACTUAL TRANSACTION?

A YES.

Q HOW DID THIS GO DOWN, ACCORDING TO YOUR RECOLLECTION?

A A DARK-SKINNED BLACK MAN, WHO I CAN STILL RECALL TO THIS DAY, AND A BLACK FEMALE CAME IN LOOKING VERY SPECIFICALLY FOR THE LONGEST-RANGE RADIOS THAT THEY COULD GET THEIR HANDS ON, THAT DIDN'T REQUIRE THEM TO BE REGISTERED. THOSE PARTICULAR ONES TURNED OUT TO BE THE LEAST EXPENSIVE ONES WITH THE GREATEST RANGE, WHICH IS WHAT THEY WANTED.

WE RANG THEM UP AND -- WHAT I MENTIONED BEFORE ABOUT

LOSS PREVENTION, THAT WAS ALL THROWN OUT THE WINDOW BECAUSE THEY PAID CASH.

Q SO THERE WERE NO CHECKS OR CREDIT CARDS?

A NO CHECKS OR CREDIT CARDS, BUT THAT WAS WHY I WAS INVOLVED TO BEGIN WITH. BUT I FOLLOWED THROUGH WITH THE TRANSACTION, AND THEY DIDN'T ACTUALLY HAVE THE CASH ON THEM. THEY HAD TO GO OUT TO THEIR CAR TO GET IT. I THOUGHT THAT WAS ODD, SO I WATCHED THEM OUT TO THE CAR, AND I'M A CAR FINATIC, SO I MEMORIZED THE CAR. THEY CAME BACK IN WITH CASH.

Q WHAT KIND OF CAR WAS IT?

A IT WAS A DARK BLUE, MID '90'S CADILLAC.

Q OKAY.

A THEY CAME BACK IN WITH CASH AND BOUGHT THEM AND LEFT, AND I NEVER SAW THEM AGAIN.

Q HAVE YOU EVER BEEN ASKED WHETHER OR NOT YOU COULD IDENTIFY THE MAN WHO ENTERED INTO THIS TRANSACTION?

A I WAS. MAJOR POWERS, ONE OF THE INVESTIGATORS, CAME IN WITH A PHOTO LINEUP, AND I WAS HONEST WITH HIM. I SAID, "THE PICTURES ARE TOO LIGHT. THE FELLOW I DEALT WITH WAS A DARKER-SKINNED BLACK MAN." I SAID, "THERE'S ONE OR TWO ON HERE THAT ARE LOOKING REAL CLOSE", BUT THE GENTLEMAN THAT I DEALT WITH WAS DARKER SKINNED THAN WHAT THESE LOOKED LIKE.

Q SO GOING BY THE PHOTOGRAPHS ALONE, YOU COULD NOT POSITIVELY I.D. ANYBODY?

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A I TOLD HIM I NEEDED TO SEE THEM IN LIFE.
Q HAVING BEEN IN THE COURTROOM THE LAST TWO DAYS, HAVE YOU OBSERVED THE DEFENDANT?
A YES, SIR.
Q AND DO YOU HAVE ANY IMPRESSIONS AS TO WHETHER OR NOT THAT'S THE INDIVIDUAL WHO MADE THIS PURCHASE?
A FOR MORE THAN ONE REASON, THAT IS THE GENTLEMAN I DEALT WITH. I DON'T SEE EYE-TO-EYE WITH VERY MANY PEOPLE, I'M SHORT, AND THAT'S THE GENTLEMAN I DEALT WITH THAT DAY.
Q AND YOU'RE SURE OF THAT TODAY?
A ONE HUNDRED PERCENT.
Q AND THE DATE OF THIS TRANSACTION WAS MAY 29 OF THE YEAR 2000?
A RIGHT. THAT, IN AND OF ITSELF -- WE WERE GOING TO OFFER TO LOOK UP THE TRANSACTION, WE HAVE SURVEILLANCE TAPES, BUT WE RECYCLE THE TAPES, SO BY THE TIME MR. BOWERS GOT TO ME, OUR TAPES HAD BEEN RECYCLED AND WE COULDN'T USE THEM.
Q THANK YOU VERY MUCH, MR. GREGORY. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

THE COURT: CROSS-EXAM?

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. GREGORY, THIS WAS THE LINEUP YOU WERE SHOWN? (INDICATING).
A YES, SIR.

Q AND YOU ADMIT YOU COULDN'T PICK ANYONE UP FROM THAT LINEUP?
A RIGHT.
Q OKAY. AND DO YOU THINK THAT MR. MATHIS LOOKS DARKER IN PERSON THAN HE DOES ON THIS PHOTOGRAPH?
A YES, SIR.
Q HE DOES?
A YES, SIR.
Q A WHOLE LOT DARKER?
A YES, SIR.
Q HE'S LIGHTER ON THIS PHOTOGRAPH?
A YES, SIR.
Q AND WHEN WAS IT THAT YOU WERE INTERVIEWED BY INVESTIGATOR BOWERS?
A IT WAS MONTHS AFTER ANY OF THIS.
Q MONTHS AFTER ANY OF THIS?
A AT LEAST SIX.
Q SIX MONTHS?
A (WITNESS NODDING HEAD).
Q AND YET YOU REMEMBER THIS TRANSACTION?
A IN MY LINE OF WORK, YOU MIGHT SELL TWO OF THOSE A YEAR.
Q OKAY, BUT YOU REMEMBER SIGNING A WRITTEN STATEMENT, SIR?
A YES, SIR.
Q AND AT THAT TIME, YOU WEREN'T EVEN SURE ABOUT THE TYPE OF CAR IT WAS AT THAT TIME.
A I WAS 100 PERCENT SURE AND I WROTE IT DOWN ON THERE.

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Q WELL, DO YOU THINK BEING 100 PERCENT SURE SAYS "NAVY BLUE OR BLACK"? DO YOU THINK THAT'S 100 PERCENT SURE, PICKING TWO DIFFERENT COLORS?

A I THINK THE DARKEST NAVY BLUE AND BLACK ARE THE SAME COLOR, YES, SIR.

Q WELL, THAT'S NOT WHAT YOU SAID ON THAT STATEMENT, THOUGH. YOU SAID "NAVY BLUE OR BLACK".

A MY EXACT WORDS TO MR. BOWERS IS, AS HE WILL RECALL, AS DARK A BLUE AS YOU CAN GET UNTIL YOU GET TO BLACK.

Q OKAY, MR. GREGORY, I'M NOT ASKING YOU ABOUT YOUR WORDS, I'M ASKING YOU ABOUT WHAT YOU WROTE. THAT'S YOUR HANDWRITING, ISN'T IT?

A IT IS.

Q AND THAT'S YOUR SIGNATURE AT THE BOTTOM?

A IT IS.

Q AND YOU SAID "NAVY BLUE OR BLACK", DIDN'T YOU?

A RIGHT.

Q MAY I SEE THAT AGAIN, PLEASE?

A (WITNESS HANDING DOCUMENT TO COUNSEL).

Q AND WHEN YOU WROTE THIS STATEMENT THAT'S UNDATED THAT YOU SAY WAS SEVERAL MONTHS AFTER THIS OCCURRED, THE ONLY DESCRIPTION YOU WERE ABLE TO GIVE OF THAT GENTLEMAN WAS THAT HE WAS A DARK-SKINNED BLACK MAN, RIGHT? DID YOU GIVE ANY OTHER DESCRIPTION AT THAT TIME?

A I WASN'T ASKED FOR ANY MORE DETAIL THAN THAT. I EXPLICITLY

TOLD HIM I COULD PICK HIM OUT IN PERSON.

Q WERE YOU EVER GIVEN AN OPPORTUNITY TO DO THAT?

A NO, SIR.

Q YOU NEVER PUT ON YOUR STATEMENT HERE HOW TALL THE PERSON WAS, DID YOU?

A I WASN'T ASKED FOR THAT MUCH DETAIL.

Q WELL, WHAT DID HE ASK YOU? HE JUST ASKED YOU TO TELL HIM WHETHER HE WAS A BLACK OR WHITE MAN? HE ASKED YOU WHAT HE LOOKED LIKE, DIDN'T HE?

A YES, SIR.

Q AND ALL YOU COULD TELL HIM WAS THAT HE WAS A BLACK MAN, RIGHT, WHEN YOU WROTE THIS STATEMENT OUT?

A AFTER OUR CONVERSATION, I WROTE AS BRIEF A STATEMENT AS I COULD SO THAT I COULD GO BACK TO WORK.

Q OH, SO YOU WERE PRESSED FOR TIME?

A CERTAINLY.

Q OKAY, BUT YOU ADMIT YOUR STATEMENT DOESN'T SAY ANYTHING ABOUT HOW TALL THE GUY IS, RIGHT? I'M GOING TO LET YOU LOOK AT IT. IT DOESN'T SAY ANYTHING ABOUT HOW TALL -- DO YOU NEED TO LOOK AT IT?

A NO.

Q DO YOU AGREE WITH ME WHEN I SAY THAT, THAT YOUR STATEMENT DOESN'T SAY ANYTHING ABOUT HOW TALL HE IS?

A I SAW EYE-TO-EYE WITH HIM.

Q I'M ASKING YOU ABOUT YOUR STATEMENT THAT YOU GAVE.

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A IT DOESN'T SAY THAT.
Q IT DOESN'T SAY ANYTHING ABOUT ANY IDENTIFYING MARKS OR CHARACTERISTICS OF THE PERSON, DOES IT?
A IT DOES NOT.
Q IT DOESN'T SAY ANYTHING ABOUT THE PERSON'S WEIGHT, DOES IT?
A IT DOES NOT.
Q IT DOESN'T SAY ANYTHING ABOUT HOW THEY WERE DRESSED?
A IT DOES NOT.
Q AND IT DOESN'T DESCRIBE THE WOMAN AT ALL, DOES IT?
A IT DOES NOT.
Q AND YOU THINK THAT YOUR MEMORY IS BETTER THREE YEARS AFTER AN INCIDENT THAN IT IS A COUPLE OF MONTHS AFTER AN INCIDENT?
A I THINK I REMEMBER THE EXACT SAME.
Q YOU JUST WEREN'T ABLE TO PUT IT ON THE STATEMENT THAT YOU WROTE AND YOU WEREN'T ABLE TO PICK HIM OUT OF THE LINEUP?
A RIGHT.
Q THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

MR. JUSTICE: (TO WITNESS) THANK YOU.

YOUR HONOR, I WOULD ASK THAT MR. GREGORY BE EXCUSED AND ALSO THAT MR. LAWRENCE BOYD, WHO WAS SUBPOENAED ON THIS SAME POINT, ALSO BE EXCUSED.

THE COURT: ANY OBJECTION?

MR. CLARK: NO, SIR, YOUR HONOR.

THE COURT: THANK YOU.

THE WITNESSES ARE EXCUSED.

MR. JUSTICE: YOUR HONOR, THE NEXT STATE WITNESS WILL PROBABLY BE VERY LENGTHY ON DIRECT AND CROSS.

THE COURT: LET ME SEE YOU ALL AT THE SIDE BAR.

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF JURY AND COURT REPORTER).

THE COURT: LADIES AND GENTLEMEN, PLEASE STEP INTO YOUR JURY ROOM A MOMENT. DO NOT DISCUSS THE CASE. I'LL SEND FOR YOU IN A FEW MOMENTS. THANK YOU.

(JURY EXITS COURTROOM AT 4:55 P.M.).

(BRIEF RECESS)

THE COURT: IS THE STATE READY? DEFENDANT READY?

MR. JUSTICE: THE STATE IS READY.

THE COURT: (TO BAILIFF) PLEASE BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 5:05 P.M.).

THE COURT: ALL RIGHT, SOLICITOR.

MR. JUSTICE: THE STATE CALLS MR. ELTON WIGGINS.

THE COURT: (TO WITNESS) PLEASE COME FORWARD.

(WHEREUPON, ELTON WIGGINS, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. JUSTICE:

Q TAKE A SEAT OVER THERE.

A (WITNESS TAKING STAND).

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Q STATE YOUR NAME, PLEASE, SIR.
A ELTON WIGGINS.
Q I'M GOING TO ASK YOU TO SPEAK A LITTLE BIT LOUDER THAN THAT.
A ELTON WIGGINS.
Q AND, MR. WIGGINS, WHERE IS YOUR HOME?
A WASHINGTON, D.C.
Q AND ARE YOU A NATIVE OF THE WASHINGTON, D.C. AREA?
A YES, SIR.
Q HOW OLD ARE YOU, SIR?
A I'M 37.
Q WHERE HAVE YOU BEEN RESIDING FOR THE LAST TWO AND A HALF YEARS OR SO?
A IN CHESTER COUNTY DETENTION CENTER.
Q MR. WIGGINS, HAVE YOU BEEN ARRESTED AND CHARGED WITH OFFENSES INVOLVED IN THE DEATH OF MR. MELVIN STEELE?
A YES, I HAVE.
Q HAVE YOU, WITH YOUR ATTORNEY, TALKED WITH ME ON TWO OCCASIONS CONCERNING YOUR WILLINGNESS TO TESTIFY IN REGARDS TO THE EVENTS OF THAT EVENING?
A YES, SIR, I HAVE.
Q AND OTHER THAN THE FACT THAT YOU'VE BEEN PROMISED THAT YOU WOULD NOT BE REQUIRED TO STAND TRIAL OR PLEAD GUILTY TO THE OFFENSE OF MURDER, HAVE ANY OTHER PROMISES BEEN MADE IN ORDER TO GET YOU TO TESTIFY?

A NO, SIR.
Q AND AS A MATTER OF FACT, DID YOU START COOPERATING WITH THE STATE BEFORE WE EVER MET, OR ANYBODY ON MY BEHALF?
A YES, SIR.
Q MR. WIGGINS, DO YOU KNOW THE DEFENDANT, MR. MATHIS?
A YES, SIR.
Q PLEASE TELL US APPROXIMATELY HOW LONG YOU'VE KNOWN HIM.
A I'VE KNOWN HIM SINCE AROUND MARCH OF 2000.
Q MARCH OF 2000? HOW DID YOU ALL MEET?
A I MET HIM THROUGH AN ACQUAINTANCE AT A SPORTING GOODS STORE IN WASHINGTON.
Q IN WASHINGTON. NOW, MR. WIGGINS, YOU HAD A PRIOR CRIMINAL RECORD, PRIOR TO THAT TIME, DID YOU NOT?
A YES, I DID.
Q PLEASE TELL US BASICALLY WHAT THAT RECORD IS.
A I HAD JUST FINISHED SERVING A SENTENCE, BEFORE I MET HIM, FOR ARMED ROBBERY AND ASSAULT WITH INTENT TO MAIM. THAT WAS, LIKE, THREE COUNTS, YOU KNOW, FROM ONE JURISDICTION TO ANOTHER.
Q AND WHEN YOU MET MR. MATHIS, YOU HAD JUST RECENTLY BEEN RELEASED FROM THAT SENTENCE?
A IN JANUARY. I GOT RELEASED JANUARY 10 OF 2000.
Q AND YOU MET MR. MATHIS IN MARCH?
A RIGHT.
Q DID YOU HAVE AN OCCASION TO ENTER INTO CONVERSATIONS WITH

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MR. MATHIS CONCERNING ASSISTING HIM IN PULLING A JOB IN LANCASTER COUNTY, SOUTH CAROLINA?

A YES, I DID.

Q DID YOU HAVE AN OCCASION TO COME TO LANCASTER ON MORE THAN ONE OCCASION PRIOR TO JUNE 20?

A YES, I DID.

Q PLEASE TELL THE JURY, TO THE BEST OF YOUR RECOLLECTION, HOW MANY TIMES YOU CAME DOWN FROM WASHINGTON AND HOW YOU GOT HERE.

A I CAME DOWN A COUPLE OF TIMES BY -- I FLEW FROM REAGAN NATIONAL OR DULLES. I HAD MR. MATHIS TO PICK ME UP IN CHARLOTTE. A FEW OTHER TIMES I CAME DOWN BY DRIVING. I DROVE DOWN -- WELL, ASSISTED IN DRIVING WITH MATHIS.

Q WHEN YOU WOULD FLY DOWN FROM WASHINGTON TO CHARLOTTE, WHO WOULD BUY THE TICKETS?

A ON ONE OCCASION I BOUGHT IT. ON ANOTHER OCCASION HE BOUGHT IT BECAUSE I DIDN'T HAVE THE MONEY.

Q AND EXACTLY WHAT KIND OF INVOLVEMENT DID MR. MATHIS ASK YOU TO HAVE IN WHATEVER HE WAS PLANNING IN LANCASTER?

A I DON'T REALLY UNDERSTAND.

Q EXACTLY WHAT WAS IT? WHAT WAS THE DEAL AS EXPLAINED TO YOU BY MR. MATHIS?

A WELL, APPARENTLY IT WAS A SITUATION WHERE IT WAS A LOT OF MONEY TO BE MADE. THERE WERE INDIVIDUALS THAT WASN'T INVOLVED, YOU KNOW, THAT I ACTUALLY TALKED TO, YOU KNOW, TO

MEET MATHIS BECAUSE IT WAS BROUGHT TO MY ATTENTION THERE WAS A BIG MONEY PLAN, AND I WANTED THE MONEY. I WANTED THE MONEY; I WANTED TO BE INVOLVED. AND WHAT ELSE DO YOU WANT TO KNOW, TO THAT QUESTION, BECAUSE I'M REALLY NOT -- I DON'T WANT --

Q WELL, ONCE YOU LINKED UP TO MR. MATHIS IN REGARDS TO THIS BIG MONEY DEAL, JUST TELL US WHAT HAPPENED FROM THERE FORWARD.

A ON A FEW OCCASIONS WHEN I CAME DOWN, IT WAS A FEEL-OUT PROCESS TO SEE IF I REALLY WANTED TO GO ALONG WITH IT. HE GAVE ME THE LAYOUT, YOU KNOW, TOOK ME TO DIFFERENT AREAS SO I WOULD KNOW WHERE EVERYTHING WAS LOCATED. THAT CONSISTED OF THE RESIDENCE OF THE VICTIM, THE BUSINESS, DIFFERENT ESCAPE ROUTES, YOU KNOW. WHEN THE PLAN WAS FINALLY FORMULATED -- I DON'T KNOW IF YOU WANT ME TO ANSWER THAT YET.

Q YES, SIR, GO AHEAD.

A OKAY. WHEN THE PLAN WAS FINALLY FORMULATED, MY JOB WAS TO GET WHOEVER OPENED THE DOOR JUST TO OPEN THE DOOR, WHICH IS WHAT I DID.

Q THAT WAS YOUR ASSIGNMENT, TO GET THE PERSON IN THE HOUSE TO OPEN THE DOOR?

A RIGHT.

Q HAD THERE BEEN A PREVIOUS TARGET DATE FOR THIS BIG SCORE?

A WELL, IT WAS A COUPLE OF DATES. IT WASN'T SPUR OF THE

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MOMENT OR ANYTHING LIKE THAT. THERE WAS A COUPLE OF TIMES WHERE THE PLAN WAS FORMULATED TO TAKE PLACE TONIGHT, BUT IT DIDN'T HAPPEN BECAUSE EITHER SOMEONE WASN'T AVAILABLE, WE COULDN'T FIND ONE OF THE PARTICIPANTS, OR WE WAS UNABLE TO RENT A U-HAUL.

Q PRIOR TO JUNE 20, THE NIGHT OF THE ACTUAL EVENT, WHEN DID YOU COME TO LANCASTER?

A PRIOR TO JUNE 20?

Q YES, SIR. DID YOU COME THAT DAY OR THE DAY BEFORE?

A I CAME THE DAY BEFORE.

Q THE DAY BEFORE, ON THE NINETEENTH?

A RIGHT.

Q AND HOW DID YOU GET DOWN HERE ON THAT PARTICULAR OCCASION?

A I DROVE.

Q YOU DROVE?

A RIGHT.

Q ALONG WITH WHOM?

A WITH MR. MATHIS AND ANOTHER INDIVIDUAL THAT WAS ALONG WITH THE RIDE. HE WAS INVOLVED WITH THE THING, TOO.

Q WHAT VEHICLE DID YOU RIDE IN? DO YOU RECALL?

A YES, IT WAS A 2000 LINCOLN CONTINENTAL.

Q A LINCOLN?

A RIGHT.

Q WHITE?

A RIGHT.

Q AND THE THIRD INDIVIDUAL, WHAT DO YOU KNOW HIM BY?
A I KNOW HIM BY "BILL".
Q DID YOU EVER KNOW A LAST NAME?
A NO, I DON'T KNOW THE LAST NAME.
Q HAVE YOU GIVEN THE POLICE ALL THE INFORMATION YOU KNOW ABOUT THE POSSIBLE WHEREABOUTS OF THIS "BILL"?
A YES.
Q ONCE YOU GOT DOWN HERE ON THE NINETEENTH, WHAT WAS THE PLAN AT THAT TIME?
A THE PLAN WAS TO BASICALLY PUT THE WHOLE -- EVERYTHING WAS ALREADY IN MOTION FOR THE NEXT DAY. THAT'S WHY I CAME DOWN ON THE NINETEENTH. YOU KNOW, IT WAS DISCUSSED PRIOR TO COMING DOWN, MAYBE A DAY OR TWO BEFORE THAT, THAT THIS WOULD BE THE DAY THAT IT WOULD GO IN EFFECT.
Q OKAY. WHEN YOU CAME DOWN ON THE NINETEENTH OR THE DAYTIME OF THE TWENTIETH, DID YOU MEET OTHER PEOPLE WHO WERE TO BE PARTICIPANTS?
A YES, I DID.
Q AND WHO DO YOU RECALL JOINING UP WITH DOWN HERE?
A WELL, IT WAS TWO INDIVIDUALS THAT WAS JUST TO BE LOOKOUTS, YOU KNOW, LIKE NORTH AND SOUTH.
Q YES, SIR.
A THOSE WERE THE ONLY TWO OTHER INDIVIDUALS WE WAS CONCERNED WITH GETTING IN CONTACT WITH. IT WASN'T REALLY HARD BECAUSE THEY WAS CLOSE FRIENDS OF MR. MATHIS, SO WE KNEW

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HOW TO GET IN TOUCH WITH THEM.

Q DID YOU HAVE NAMES YOU KNEW THEM BY?

A YES.

Q PLEASE TELL US.

A I ONLY KNEW ONE OF THEM AND THAT WAS FATS. THAT'S THE NAME I KNEW HIM BY.

Q FATS?

A RIGHT.

Q HAVE YOU LEARNED LATER WHAT HIS NAME WAS?

A RIGHT, I LEARNED LATER WHAT HIS NAME WAS.

Q AND WHAT WAS THAT?

A SPARKS.

Q MR. SPARKS?

A I DON'T REMEMBER THE FIRST NAME.

Q DID YOU EVER MEET A GUY NAMED WITHERSPOON?

A YES, I DID.

Q AND WAS HE ALSO ONE OF THE LOOKOUTS OR ASSISTANTS IN THIS AFFAIR?

A YES.

Q DID YOU GO TO THE HOME OF MR. AND MRS. STEELE THAT NIGHT?

A YES, I DID.

Q BEFORE GOING THERE, WHAT KIND OF PLANNING AND SETUP TOOK PLACE DURING THAT DAY?

A WELL, THERE WERE SEVERAL VEHICLES THAT WAS INVOLVED. THE VEHICLES HAD TO BE PLACED AT, BASICALLY, STRATEGIC POINTS

WHERE THE LOOKOUTS WOULD BE. YOU KNOW, THEY HAD TO KNOW THAT. THEY HAD TO KNOW WHAT THEIR JOB WAS. THE U-HAUL HAD TO BE PLACED IN A SPOT WHERE IT COULD BE RETRIEVED, YOU KNOW, IN A MATTER OF MINUTES, AND ALL OF THAT WAS SET UP, YOU KNOW, BEFORE NIGHTFALL CAME.

Q LET ME ASK YOU ABOUT THESE VEHICLES A MOMENT. THERE'S RECORDS ALREADY IN THE RECORD OF THIS CASE THAT ON OR ABOUT THE FIRST OF JUNE, THERE WERE THREE VEHICLES PURCHASED, TWO AEROSTAR VANS, ONE DARK BLUE SOLID, ONE GRAY AND SILVER, AND ALSO A STATION WAGON, FROM A USED CAR DEALER IN ROCK HILL. WERE YOU PRESENT DURING ANY OF THAT?

A YES, I WAS THERE.

Q YOU WERE THERE?

A RIGHT, I WAS THERE.

Q AND WHO MADE THOSE PURCHASES?

A MR. MATHIS.

Q DID YOU DRIVE ONE OF THE VEHICLES AWAY FROM THAT CAR LOT?

A YES, I DID.

Q ON THE TWENTIETH WHEN YOU WERE PRE-POSITIONING THE VEHICLES, DO YOU REMEMBER WHERE THE DARK BLUE VAN WAS PLACED?

A NO, I DON'T BECAUSE I DON'T REALLY KNOW THE STREETS OR ANYTHING.

Q WAS ONE OF THEM PLACED NEAR MCDONALD AMUSEMENTS?

A YES, IT WAS.

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Q AND WHICH VEHICLE WAS IT YOUR UNDERSTANDING THAT YOU WERE GOING TO USE FOR THE ACTUAL KIDNAPING OF MR. AND MRS. STEELE?
A THE SILVER AEROSTAR.
Q THE SILVER AEROSTAR?
A RIGHT.
Q WHO OF THE PARTICIPANTS ACTUALLY WENT TO THE STEELE HOME?
A ME, MR. MATHIS AND BILL.
Q YOU, MR. MATHIS AND BILL?
A RIGHT.
Q PRIOR TO GOING THERE, ARE YOU AWARE OF ANY OTHER ACTIVITY OF MR. MATHIS INVOLVING CREATING A DIVERSION FOR THE POLICE?
A WELL, THE DIVERSION WAS AN IDEA OF BASICALLY US ALL -- YOU KNOW, WE HAD TO THINK OF A WAY THAT WE COULD GET THE POLICE IN ONE AREA WHILE WE OPERATED IN ANOTHER.
Q YES, SIR.
A AND THAT WAS TO PLACE A FAKE DEVICE, YOU KNOW, SUPPOSEDLY A BOMB, AT A LOCATION WHERE THEY HAD TO RESPOND TO IT.
Q AND WAS THAT DONE, TO YOUR KNOWLEDGE?
A YES, IT WAS.
Q WHO PLACED THAT FAKE DEVICE?
A MR. MATHIS.
Q MR. MATHIS?
A (WITNESS NODDING HEAD).

Q AND WAS THAT CALLED IN AS A BOMB THREAT?
A YES, IT WAS.
Q WHO MADE THAT CALL?
A MR. MATHIS.
Q AND FROM WHERE WAS THAT CALL MADE?
A I HAVE NO IDEA.
Q YOU DON'T KNOW?
A I DON'T KNOW.
Q YOU WEREN'T PRESENT WITH HIM AT THE TIME?
A NO.
Q WHERE DID YOU AND MR. MATHIS AND BILL GET UP TOGETHER IN THE SILVER AEROSTAR?
A AFTER THE BOMB THREAT.
Q WHERE?
A YOU MEAN AFTER THE BOMB THREAT?
Q YES, AFTER THE BOMB THREAT.
A AT THE SPARKS RESIDENCE.
Q AT THE SPARKS RESIDENCE?
A RIGHT.
Q WHERE ONE OF THE CO-CONSPIRATORS LIVED?
A RIGHT.
Q AND WHERE WAS THE LINCOLN AUTOMOBILE DURING THE TIME WHEN THE THREE OF YOU ALL GOT IN THE SILVER AEROSTAR?
A THE LINCOLN WAS PARKED -- ALL I REALLY KNOW IS THAT WITH THE U-HAUL -- WHERE I LEFT THE U-HAUL WAS WHERE THE LINCOLN

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WAS AT. I DON'T KNOW THE STREET OR ANYTHING LIKE THAT. I JUST KNOW THE AREA FROM SEEING IT.

Q BUT IT WAS NEAR WHERE YOU ULTIMATELY LEFT THE U-HAUL THAT NIGHT?

A RIGHT. IT WAS RIGHT THERE WHERE I LEFT THE U-HAUL.

Q AND I THINK I ASKED YOU WHICH OF THE THREE, WHICH OF THE GROUP WENT TO THE STEELE RESIDENCE.

A RIGHT, I WENT TO THE STEELE RESIDENCE.

Q YOU, MR. MATHIS AND BILL?

A RIGHT.

Q WHAT WAS THE PLAN ON HOW TO GET THE DOOR OPEN AND ENTER?

A I WAS TO ACT LIKE I HAD A PACKAGE DELIVERED TO ME BY MISTAKE AT MY RESIDENCE.

Q WAS THERE ANY PARTICULAR REASON WHY YOU WERE ASSIGNED THAT ROLE?

A YES, BECAUSE I'M NOT FROM SOUTH CAROLINA. NOBODY KNEW ME, SO I DIDN'T HAVE TO USE A MASK.

Q SO YOU WENT TO THE DOOR WITHOUT A MASK?

A RIGHT.

Q AND WHERE WAS MR. MATHIS AND BILL WHEN YOU KNOCKED ON THE DOOR OR RANG THE DOORBELL?

A ON THE SIDE OF THE VAN.

Q AND WHERE WAS THAT IN PROXIMITY TO WHERE YOU WERE STANDING?

A IT WAS IN THE DRIVEWAY.

Q IN THE DRIVEWAY, RIGHT BEHIND YOU?

A YES, IT WAS BEHIND ME.
Q DID YOU KNOCK OR RING THE DOORBELL? DO YOU REMEMBER?
A I DON'T REMEMBER.
Q TELL ME THIS. AT THIS POINT IN TIME, WERE MR. MATHIS AND BILL WEARING MASKS?
A YES, THEY WERE.
Q WHAT KIND OF MASKS?
A NOT ACTUALLY MASKS. IT WAS LIKE A BANDANA.
Q A BANDANA COVERING THE MOUTH AND THE LOWER NOSE, LIKE THE OLD BANDITS?
A RIGHT.
Q AND WERE YOU ALL WEARING GLOVES?
A YES, WE WAS.
Q THAT WAS TO KEEP FROM LEAVING PRINTS?
A YES, SIR.
Q WHEN YOU RANG THE BELL OR KNOCKED ON THE DOOR, WHAT HAPPENED NEXT?
A WHEN I RANG THE DOORBELL -- WELL, WHEN I KNOCKED ON THE DOOR OR RANG THE BELL, THE LADY OF THE HOUSE ANSWERED, I GUESS. THAT WAS MRS. STEELE.
Q MRS. STEELE ANSWERED THE DOOR?
A RIGHT. AND I TOLD HER THAT I HAD A PACKAGE DELIVERED TO ME BY MISTAKE. SHE OPENED THE DOOR, YOU KNOW, WITH REALLY NO HESITATION.
Q YES?

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A AND THAT WAS WHEN MATHIS AND BILL RUSHED IN PAST ME.
Q THEY RUSHED PAST YOU, AND DID THEY OVERCOME MRS. STEELE?
A YES.
Q WHAT DID YOU DO AT THAT POINT?
A WELL, EVERYTHING -- FROM THAT POINT, EVERYTHING WAS ALREADY DONE, YOU KNOW. AFTER THEY WAS BOUND AND EVERYTHING, I JUST HELPED THEM TAKE THEM TO THE VAN.
Q WHO HANDCUFFED MRS. STEELE AND PUT TAPE OVER HER EYES?
A BILL.
Q BILL?
A RIGHT.
Q WHO HANDCUFFED MR. STEELE?
A MATHIS.
Q MR. MATHIS?
A (WITNESS NODDING HEAD).
Q DID YOU ALL ALL THEN GO TO THE VAN?
A YES. TO MY UNDERSTANDING, WE DID.
Q EXCUSE ME?
A TO MY UNDERSTANDING, WE DID.
Q WAS THERE ANY ATTEMPT TO FIND VALUABLES IN THE HOUSE?
A I BELIEVE -- YES, I DID. I DID GO TO THE BACK OF THE HOUSE. I WENT TO THE BACK OF THE HOUSE.
Q YOU WENT TO THE BACK OF THE HOUSE?
A YES, I DID.
Q WHAT DID YOU FIND, ANYTHING?

A A LITTLE, TINY GUN -- I DON'T KNOW WHAT IT WAS -- AND A LITTLE BIT OF MONEY THAT WAS IN A DRAWER OR SOMETHING AT THE TIME. I DON'T KNOW HOW MUCH IT WAS, EITHER, BECAUSE IT WAS -- I DON'T EVEN REALLY KNOW HOW MUCH MONEY IT WAS. IT WASN'T MUCH.

Q SO YOU TOOK THE SMALL PISTOL?

A RIGHT.

Q AND WHATEVER AMOUNT OF MONEY?

A RIGHT.

Q WHILE THE OTHER TWO WERE CUFFING AND BINDING AND TAPING MR. AND MRS. STEELE?

A RIGHT.

Q AND DID THE FIVE OF YOU THEN GO OUT TO THE VAN?

A YES.

Q ONCE YOU GOT TO THE VAN, WHAT HAPPENED THEN?

A WHEN WE GOT TO THE VAN, I DROVE FROM THAT POINT. UP UNTIL THAT POINT, MATHIS DROVE TO THE RESIDENCE.

Q SINCE MRS. STEELE WAS BLINDED BY THE DUCT TAPE AROUND HER EYES AND DUCT TAPE AROUND HER MOUTH, WAS SHE ABLE TO GET INTO THE VAN UNASSISTED?

A I BELIEVE I HELPED HER INTO THE VAN. I'M NOT CERTAIN, BUT I BELIEVE I DID.

Q AND ONCE YOU ALL GOT IN THE VAN, DID YOU PULL OFF AND HEAD TOWARD ANOTHER LOCATION?

A YES, WE DID.

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Q WHAT WERE THE MEANS OF COMMUNICATION BETWEEN THE THREE OF YOU AND THE TWO LOOKOUTS THAT WERE ELSEWHERE?
A WE USED CELL PHONES AND WALKIE-TALKIES.
Q DO YOU REMEMBER HOW MANY CELL PHONES WERE IN PLAY?
A IF I REMEMBER CORRECTLY, THERE WERE THREE CELL PHONES.
Q WAS ONE OF THE CELL PHONES YOURS, LISTED TO YOU IN YOUR NAME?
A YES, IT WAS.
Q WHO HAD THAT CELL PHONE, YOU OR SOMEBODY ELSE?
A SOMEBODY ELSE.
Q WHO HAD IT?
A MR. WITHERSPOON.
Q MR. WITHERSPOON?
A YES.
Q AND HE WAS ONE OF YOUR LOOKOUTS WHO WAS AWAY FROM WHERE THE THREE OF YOU WERE?
A RIGHT.
Q OKAY. DO YOU REMEMBER WHO HAD THE OTHER TWO CELL PHONES?
A MR. MATHIS HAD ONE PHONE AND BILL HAD THE OTHER PHONE.
Q OF YOUR OWN KNOWLEDGE, DO YOU KNOW WHAT NAMES THOSE PHONES WERE REGISTERED IN?
A NOT OF MY OWN KNOWLEDGE.
Q WHO PRODUCE THOSE PHONES, MR. MATHIS OR BILL?
A MR. MATHIS.
Q HE HAD BOTH OF THEM?

A RIGHT.
Q DID YOU HAVE ANY OTHER -- YOU HAD NONE OF THE THREE PHONES DURING THE ACTUAL EVENT?
A NO, I DIDN'T HAVE A PHONE.
Q WERE THERE ANY OTHER MEANS OF COMMUNICATION?
A WALKIE-TALKIE.
Q WALKIE-TALKIES?
A YES.
Q WHO HAD THOSE?
A I HAD ONE WALKIE-TALKIE AND MR. SPARKS HAD THE OTHER WALKIE-TALKIE.
Q SO YOU COULD TALK TO MR. SPARKS AND MR. SPARKS COULD TALK TO YOU?
A RIGHT, IF I NEEDED TO. I NEVER NEEDED TO TALK TO HIM, THOUGH.
Q SO YOU NEVER RECALL ACTUALLY USING IT?
A I DIDN'T USE IT TO COMMUNICATE WITH HIM AT ALL DURING THIS INCIDENT. IT WAS JUST FOR EMERGENCY PURPOSES.
Q I UNDERSTAND. WHAT WAS THE PLAN ONCE YOU GOT THESE PEOPLE SUBDUED AND TAPED AND SUCH AND IN THE VAN AND AWAY FROM THEIR HOME? WHAT WAS THE MATHIS PLAN?
A THE PLAN WAS TO GET THE COMBINATION TO THE ALARM AND THE SAFE COMBINATION.
Q FROM MR. STEELE?
A YES, SIR.

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Q PLEASE, IN YOUR OWN WORDS, DESCRIBE WHAT WENT DOWN WHEN YOU ALL WERE IN THE VAN AND RIDING AWAY.

A WHEN WE WAS RIDING AWAY, MR. MATHIS ASKED MR. STEELE FOR THE COMBINATION ON SEVERAL OCCASIONS. I HEARD HIM GIVE HIM A COMBINATION, BUT AT SOME POINT ONE OF THE NUMBERS WAS OFF, BECAUSE HE WAS ASKED SEVERAL TIMES, AND AT THAT POINT MR. MATHIS SHOT HIM.

Q MR. MATHIS SHOT MR. STEELE?

A MR. MATHIS SHOT HIM, BECAUSE BILL WAS BESIDE ME.

Q WHERE WERE YOU?

A I WAS DRIVING.

Q BILL WAS IN THE FRONT WITH YOU?

A RIGHT.

Q AND MR. MATHIS WAS IN THE BACK WITH THE HOSTAGES?

A RIGHT. AT THE TIME, NOBODY REALLY KNEW WHERE, OR ANYTHING LIKE THAT, UNTIL WE GOT TO THE DESTINATION, WHICH WAS ON #521 SOMEWHERE.

Q WHEN MR. MATHIS WAS ASKING FOR THE COMBINATIONS, WHAT WAS HE DOING WITH THAT INFORMATION WHILE YOU ALL WERE STILL IN THE VAN?

A HE WAS WRITING IT DOWN.

Q WRITING IT DOWN?

A (WITNESS NODDING HEAD).

Q DID HE AT ANY POINT COMMUNICATE FROM HIS CELL PHONE WITH ANY OF THE LOOKOUTS OR THE OTHER PEOPLE?

A NOT UNTIL WE GOT TO THE DESTINATION.
Q "THE DESTINATION", BY THAT YOU'RE REFERRING TO THE LOCATION WHERE MR. STEELE AND HIS WIFE WERE PUT OUT?
A RIGHT, RIGHT.
Q AND DID YOU ALL START MAKING CALLS OR MR. MATHIS START MAKING CALLS BACK AND FORTH?
A NO CALLS WAS ACTUALLY MADE UNTIL AFTER WE GOT TO -- EXCUSE ME, AFTER WE GOT TO THE AMUSEMENT COMPANY --
Q OKAY.
A -- BECAUSE WE WAS RIGHT THERE WITH EVERYBODY, IT WAS REALLY NO NEED, EXCEPT FOR THE TWO LOOKOUTS. YOU KNOW, THEY WASN'T GOING TO CALL UNLESS IT WAS NECESSARY.
Q WAS THERE ANY COMMUNICATION BETWEEN MR. MATHIS AND THE LOOKOUTS?
A NOT THAT I KNOW, NO.
Q COULD THERE HAVE BEEN?
A IT COULD HAVE BEEN.

MR. CLARK: OBJECTION, YOUR HONOR, ABOUT "COULD THERE HAVE BEEN?". HE'S ALREADY ANSWERED HIS QUESTION. THIS WOULD CALL FOR SPECULATION ON HIS PART.

THE COURT: ALL RIGHT, SUSTAINED.

(TO MR. JUSTICE) REPHRASE.

MR. JUSTICE: HIS PRIOR ANSWER WAS, "NOT THAT I KNOW", AND THAT'S WHY I FOLLOWED UP WITH THAT.

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THE COURT: WELL, REPHRASE YOUR QUESTION.

MR. JUSTICE: OKAY.

Q AT THE TIME MR. STEELE WAS TALKING, OBVIOUSLY GIVING THESE NUMBERS --

MR. CLARK: YOUR HONOR, I'M GOING TO OBJECT TO THE LEADING.

THE COURT: SUSTAINED. PLEASE DO NOT LEAD.

MR. JUSTICE: I'M JUST SUMMARIZING WHAT HE SAID AT THIS POINT.

THE COURT: I KNOW, BUT YOU CAN'T LEAD. SUSTAINED.

Q WAS MR. STEELE'S MOUTH TAPED AT THAT TIME?

A NO, IT WASN'T.

Q WAS HE TALKING?

A YES, HE WAS.

Q WHAT ABOUT MRS. STEELE?

A HER MOUTH WAS TAPED.

Q HER MOUTH WAS TAPED INITIALLY?

A I'M GOING TO HAVE TO SAY NO.

Q AS THE INCIDENT WENT ON, DID SHE GET LOOSE OF HER TAPED MOUTH WHERE SHE COULD TALK?

A I BELIEVE THAT -- WELL, BETWEEN THE RESIDENCE AND WHERE WE GOT OUT OF THE VAN, SOME KIND OF WAY I BELIEVE SHE WAS ABLE TO GET HER MOUTH FROM BEING TAPED BECAUSE I SPOKE WITH HER.

Q WHEN YOU GOT TO WHERE YOU WERE GOING, WHERE YOU PUT MR.

STEELE OUT AND YOU PUT MRS. STEELE OUT, DID YOU ALL REMAIN THERE FOR A PERIOD OF TIME PRIOR TO GOING ON OVER TO MCDONALD AMUSEMENTS?

A MAYBE, YES, WE DID, ABOUT FIVE MINUTES.

Q AT ANYTIME DURING THAT PERIOD OF TIME, DO YOU RECALL YOURSELF SPEAKING TO MRS. STEELE AS SHE WAS BLINDFOLDED?

A YES, I DID.

Q PLEASE TELL US WHAT YOU RECALL IN THAT REGARD.

A SHE WAS VISIBLY VERY SHAKEN, AND I ASKED HER WAS SHE COLD AND I TOLD HER THAT SHE WAS GOING TO BE ALL RIGHT, YOU KNOW, "JUST RELAX AND JUST DON'T SAY ANYTHING", THAT SHE WOULD BE ALL RIGHT. AND SHE SAID SOMETHING TO THE EFFECT OF, NO, SHE WAS JUST SCARED. THOSE WAS HER WORDS.

Q OKAY. WAS MR. STEELE APPARENTLY STILL ALIVE AT THAT POINT?

A YES, HE WAS STILL ALIVE.

Q NOW, YOU SAY YOU STAYED THERE ABOUT FIVE MINUTES, ROUGHLY, BEFORE MOVING ON?

A RIGHT.

Q OKAY. PLEASE TELL ME IN WHAT CONFIGURATION OR HOW DID THE THREE OF YOU LEAVE THAT LOCATION.

A THE THREE OF US DIDN'T LEAVE. ME AND MR. MATHIS LEFT.

Q YOU AND MATHIS LEFT?

A RIGHT. WE LEFT. WE LEFT IN THE SILVER VAN.

Q OKAY.

A AND WE WENT TO --

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Q WHO DROVE THE VAN?
A I DROVE THE VAN.
Q WHAT OTHER VEHICLE FOLLOWED THE VAN?
MR. CLARK: OBJECTION, YOUR HONOR. THAT'S ANOTHER LEADING QUESTION.
THE COURT: SUSTAINED.
Q IF HE DROVE THE VAN, HOW DID YOU GET AWAY FROM THE AREA?
A THE VAN WAS WHAT WE USED TO TAKE THEM TO THAT DESTINATION.
Q RIGHT.
A THE U-HAUL WAS JUST MAYBE 1,000 YARDS AWAY FROM THAT, YOU KNOW, PARKED RIGHT ON THE SIDE OF THE ROAD. I DROVE THE U-HAUL TO THE BUSINESS.
Q OKAY, MR. MATHIS DROVE THE VAN THAT YOU HAD EARLIER DRIVEN?
A RIGHT.
Q YOU DROVE THE U-HAUL THAT FOLLOWED?
A RIGHT.
Q AND APPROXIMATELY HOW FAR DID YOU GO BEFORE YOU GOT RID OF THE VAN?
A IT WAS VERY CLOSE. IT WASN'T FAR AT ALL. IT WAS SOME KIND OF AUTO PLACE THAT SAT ON THE CORNER. IT WAS RIGHT THERE, ACTUALLY.
Q A SHORT DISTANCE AWAY?
A RIGHT, IT WAS A SHORT DISTANCE.
Q AFTER YOU DITCHED THE GRAY VAN, WHERE DID YOU ALL GO FROM THERE?

A WE WENT TO THE AMUSEMENT COMPANY.
Q AND WHAT HAPPENED TO BILL ALL THIS TIME?
A BILL WAS STILL THERE WITH MR. AND MRS. STEELE.
Q AND WHAT WAS THE PLAN FOR BILL TO GET AWAY FROM THERE?
A HE WAS SUPPOSED TO GO -- IT'S A PATH THROUGH THE WOODS THAT LED TO ONE OF THE VEHICLES WHERE ONE OF THE LOOKOUTS WAS SITTING.
Q SO THERE WAS A LOOKOUT STATIONED ON THE NEXT ROAD OVER?
A RIGHT.
Q TO PICK UP BILL?
A RIGHT.
Q DO YOU REMEMBER WHICH LOOKOUT THAT WAS?
A YES, IT WAS SPARKS.
Q MR. SPARKS, OKAY. AND AFTER DITCHING THE GRAY VAN, YOU AND MR. MATHIS WERE THEN RIDING TOGETHER IN THE U-HAUL?
A RIGHT.
Q WHERE DID YOU ALL GO FROM THERE?
A WE WENT TO THE AMUSEMENT COMPANY.
Q MCDONALD AMUSEMENT?
A RIGHT.
Q WHEN YOU GOT TO MCDONALD AMUSEMENT, WHAT OCCURRED?
A WHEN WE GOT TO THE AMUSEMENT COMPANY, I GOT OUT AND I ENTERED THE CODE TO THE ALARM SYSTEM.
Q FIRST OF ALL, WHERE DID YOU PARK THE VAN?
A WHICH VAN?

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Q THE U-HAUL.
A RIGHT IN FRONT OF THE COMPANY.
Q WAS THERE A PARTICULAR REASON FOR THAT?
A WELL, YOU CAN'T SEE ANYTHING WITH A TRUCK THAT BIG.
Q IT BLOCKS THE VIEW?
A RIGHT, IT BLOCKS THE VIEW.
Q OKAY. SO WHEN YOU GOT THERE, WHAT HAPPENED?
A I PUNCHED THE CODE INTO THE ALARM. FOR SOME REASON, IT DIDN'T WORK.
Q OKAY.
A THEN MR. MATHIS CALLED BILL, BACK WHERE, YOU KNOW, MR. AND MRS. STEELE WAS AT, YOU KNOW, TELLING THEM THAT THE COMBINATION WAS WRONG, YOU KNOW, FIND OUT WHAT IT WAS, AND THAT WENT ON FOR A MINUTE OR TWO -- OR ACTUALLY A COUPLE OF CALLS WAS MADE BECAUSE THE SECOND COMBINATION DIDN'T WORK EITHER.
Q OKAY, AND WHAT HAPPENED NEXT?
A WELL, AFTER THAT MR. MATHIS GOT FRUSTRATED AND HE SNATCHED THE DOOR OPEN, WHICH ULTIMATELY SET THE ALARM OFF.
Q DID HE HAVE A KEY TO OPEN THE LOCK?
A THE TOP LOCK.
Q AND WHERE DID HE GET THAT KEY?
A FROM MR. STEELE. IT WAS ON A HOOK, YOU KNOW, INSIDE THE HOUSE. HE TOLD HIM WHERE THE KEYS WAS AT.
Q SO HE WENT IN AND OPENED THE DOOR EVEN THOUGH HE HAD NOT

DEACTIVATED THE ALARM?

A RIGHT.

Q SO WHAT HAPPENED AFTER -- DID YOU BOTH ENTER OR JUST MR. MATHIS?

A NO, I DIDN'T. I DIDN'T GO INSIDE, ONE, BECAUSE I KNEW THE ALARM HAD WENT OFF, AND I DIDN'T FEEL THAT TIME WOULD PERMIT TO GO THROUGH ALL OF THAT AND STILL THINK YOU'RE GOING TO GET AWAY. SO I DIDN'T GO IN.

Q WHAT DID MR. MATHIS DO?

A HE WENT IN AND TO THE LEFT, INSIDE THE BUILDING. HE KICKED THE DOOR. I GUESS THAT'S WHERE THE SAFE WAS AT. I NEVER SAW IT. THEN HE KIND OF -- HE WOUND UP RUNNING BACK OUT A MINUTE LATER, YOU KNOW, GOT IN THE U-HAUL, AND I PULLED OFF AND LEFT.

Q OKAY. BUT AFTER HE KICKED THE DOOR THAT LED TO THE SAFE, SHORTLY THEREAFTER HE CAME OUT AND YOU ALL BOTH JUMPED IN THE U-HAUL?

A RIGHT.

Q WERE YOU STILL DRIVING THE U-HAUL?

A YES, I WAS.

Q WHERE DID YOU GO FROM THERE?

A I WENT DOWN THE STREET AND TURNED AT THE LOT RIGHT THERE BY PIGGLY WIGGLY.

Q OKAY, AND WHAT DID YOU DO WITH THE U-HAUL TRUCK?

Q IT WAS A LITTLE PATH THAT LED DOWN THROUGH THE BACK, LIKE

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THE BACK OF A LITTLE AREA. THERE WERE A BUNCH OF WEEDS AND STUFF LIKE THAT, AND THAT'S WHERE I LEFT THE U-HAUL.

Q AND YOU LEFT IT AT THAT POINT?

A RIGHT.

Q DURING THIS TIME, WERE YOU ARMED WITH A FIREARM?

A NO, I DIDN'T HAVE A FIREARM.

Q WAS BILL ARMED WITH A FIREARM?

A YES.

Q WHAT KIND DID HE HAVE? DO YOU KNOW?

A IT WAS SILVER.

Q A SILVER FIREARM?

A THAT'S IT.

Q WELL, MR. MATHIS, WHAT KIND OF GUN DID HE HAVE?

A IT WAS A NINE MILLIMETER.

Q A NINE MILLIMETER?

A RIGHT.

Q ANYTHING SPECIAL ABOUT THAT NINE MILLIMETER?

A IT'S ONE OF THE LASER SIGHT NINE MILLIMETERS.

Q IT HAS A LASER SIGHT ON IT?

A RIGHT, BUT IT DIDN'T -- I DON'T THINK THAT WORKED, BUT THAT'S WHAT IT LOOKED LIKE.

Q ONE WAS THERE, IT JUST DIDN'T WORK?

A RIGHT.

Q WHAT, IF ANYTHING, DID MR. MATHIS DO ONCE YOU PARKED THE U-HAUL ON THIS LITTLE, DIRT PATH?

A HE STARTED DISCARDING THE BULLET-PROOF VEST AND THE HANDGUNS, YOU KNOW. I THOUGHT I SAW BOTH OF THEM DISCARDED, BUT --

Q YOU KNEW HE THREW A GUN?

A RIGHT.

Q AFTER YOU HAD DISPOSED OF THE U-HAUL AND DISPOSED OF THESE ITEMS AND MR. MATHIS HAD DISPOSED OF THESE ITEMS, WHAT DID YOU ALL DO NEXT?

A WE GOT IN THE CAR, IN THE LINCOLN.

Q WAS THE CAR NEARBY?

A THE LINCOLN WAS ABOUT FROM HERE TO WHERE THE DOOR IS.

Q SO THE LINCOLN WAS NEARBY. YOU KNEW WHERE YOU WERE GOING TO DITCH THE VAN ALL ALONG, THE U-HAUL?

A NO, I HAD NO IDEA. I DIDN'T EVEN KNOW WHERE THE LINCOLN WAS AT. I WAS DRIVING BASED ON INSTRUCTIONS BECAUSE I DIDN'T KNOW MY WAY AROUND THERE.

Q SO MR. MATHIS WAS TELLING YOU WHERE TO GO?

A RIGHT, RIGHT.

Q AND WHEN YOU STOPPED, THERE WAS THE --

A THE LINCOLN WAS RIGHT THERE.

Q THE CONTINENTAL WAS RIGHT THERE NEARBY?

A RIGHT.

Q ONCE THE TWO OF YOU GOT IN THE CONTINENTAL, WHERE DID YOU GO FROM THERE?

A WE WENT TO SOME APARTMENT COMPLEX, AND AT THAT POINT HE

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MADE A CALL SO THAT WE COULD GET, YOU KNOW, BILL BROUGHT TO WHERE WE WAS AT, AND MY CELL PHONE, BECAUSE, LIKE I SAID, WITHERSPOON HAD THE PHONE, SO WE HAD TO GIVE BILL MY PHONE AND HE CAME AND MET US OR HE WAS BROUGHT TO THAT LOCATION.

Q BILL WAS?

A RIGHT.

Q WHO BROUGHT HIM THERE?

A IT WAS THE YOUNG SPARKS. THE OLDER SPARKS AND BILL WAS IN THE TRUCK, AND HE JUST DROPPED THEM OFF AND LEFT.

Q THE YOUNGER SPARKS, HIS FATHER -- THE OLDER SPARKS -- AND BILL?

A RIGHT.

Q AND BILL GOT OUT THERE?

A RIGHT.

Q AND DID HE HAVE YOUR CELL PHONE?

A YES, HE DID.

Q SO WHAT DID THE THREE OF YOU DO THEN?

A WE WENT BACK TO WASHINGTON.

Q DRIVING THE CONTINENTAL?

A RIGHT.

Q AND YOU DROVE STRAIGHT THROUGH TO D.C.?

A YES.

Q AND WHAT DID MR. MATHIS DO AFTER -- OR WHAT DID YOU DO AFTER YOU GOT TO D.C.?

A AFTER I GOT TO D.C., I GOT OUT. I HAD -- I GOT OUT

SOMEWHERE AROUND FLORIDA AVENUE OR NEW YORK AVENUE. ONE OF THEM AVENUES, I KNOW I GOT OUT, AND THEY WENT THEIR WAY AND I WENT MINE.

Q ABOUT WHAT TIME OF MORNING DID YOU GET BACK TO D.C.? DO YOU RECALL?

A I GOT BACK TO D.C. AROUND 8:00.

Q EIGHT O'CLOCK IN THE MORNING?

A AROUND EIGHT O'CLOCK.

Q SO IT'S, WHAT, A SIX, SEVEN HOUR DRIVE?

A IT'S ABOUT EIGHT HOURS, EIGHT AND A HALF HOUR DRIVE.

Q YOU'VE MADE IT A COUPLE OF TIMES?

A YES.

Q AND THAT'S THE LAST YOU SAW OF VERNARD MATHIS?

A YES.

Q UNTIL NOW?

A YES.

Q ONE MOMENT. MR. WIGGINS, IF YOU CAN, TELL ME, THE FAKE BOMB, WHICH WAS ACTUALLY A SAFE -- DO YOU HAVE ANY KNOWLEDGE OF WHERE IT CAME FROM OR WHEN IT WAS ACQUIRED?

A WE HAD IT ABOUT TWO WEEKS. I DON'T REMEMBER WHETHER IT WAS A HOME DEPOT OR SOMETHING OR WAL-MART, BUT IT WAS PURCHASED, LIKE, TWO WEEKS BEFORE THAT.

Q SO IT WAS PURCHASED ON AN EARLIER TRIP DOWN?

A YES, IT WAS PURCHASED AROUND -- SAY AROUND THE FIRST WEEK OF THE MONTH.

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Q AND THE BOX THAT YOU USED AS THE RUSE TO GET MRS. STEELE TO OPEN THE DOOR, SUPPOSEDLY DELIVERED TO YOU BY MISTAKE, WHERE DID IT COME FROM? DO YOU KNOW?

A FROM A GAS STATION. IT WAS JUST --

Q A GAS STATION?

A YES. IT WAS JUST SITTING ON THE SIDE OF THE WALL.

Q AND THE TWO LOOKOUTS -- YOU SAID THERE WERE A NORTH AND A SOUTH LOOKOUT. DO YOU KNOW SPECIFICALLY WHERE THESE TWO PEOPLE WERE SUPPOSED TO BE?

A YES, I DO.

Q PLEASE TELL US THAT.

A IT'S A TRAFFIC LIGHT WHEN YOU COME OUT OF THE AMUSEMENT PARKING LOT AND GO TO THE RIGHT. ON THE OTHER SIDE OF THE STREET, MAYBE 500 YARDS, WAS WHERE THE FIRST LOOKOUT WAS SUPPOSED TO BE. THE SECOND ONE WAS SUPPOSED TO BE ON THE ROAD BEHIND THE WOODED AREA WHERE WE HAD LEFT MR. AND MRS. STEELE AT.

Q DO YOU KNOW WHICH VEHICLES WERE USED BY SPARKS AND WITHERSPOON FOR THOSE ROADS?

A I KNOW THAT THE STATION WAGON WAS USED BY WITHERSPOON. THE BLUE VEHICLE, THE ASTRO VAN, WAS USED BY SPARKS.

Q OKAY. DURING THE TIMES YOU CAME DOWN HERE, DID YOU NORMALLY STAY IN RESIDENCES OR MOTELS OR WHERE?

A YES, I STAYED IN MOTELS.

Q MOTELS?

A UH-HUH.
Q DID YOU EVER VISIT A HOME OF A MRS. SYLVIA TALFORD?
A I'VE ONLY BEEN THERE ONE TIME.
Q AND WHO CARRIED YOU THERE?
A MR. MATHIS.
Q PLEASE ANSWER ANY QUESTIONS COUNSEL FOR DEFENSE MAY HAVE.

THE COURT: CROSS-EXAMINATION?

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. WIGGINS, YOU ADMIT THAT YOU'VE BEEN CONVICTED OF ARMED ROBBERY BEFORE?
A YES, I HAVE.
Q AND I BELIEVE YOU SAID ASSAULT WITH INTENT TO MAIM?
A YES.
Q IN FACT YOU HAD JUST GOTTEN OUT OF PRISON IN JANUARY OF 2000?
A RIGHT.
Q AND THEN YOU GOT INVOLVED IN THIS CASE IN LESS THAN SIX MONTHS AFTER THAT?
A RIGHT.
Q AND WHEN MR. JUSTICE ASKED YOU ABOUT YOU AND YOUR LAWYER TALKING TO HIM ABOUT THIS CASE, WHAT HE REALLY MEANS IS THAT YOU TOOK A DEAL TO AVOID MURDER, DIDN'T YOU?
A (WITNESS PAUSING).
Q ISN'T THAT WHAT HE MEANS, MR. WIGGINS?

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A I DON'T KNOW HOW YOU WANT ME TO ANSWER THAT.
Q WELL, SIR, LET ME ASK YOU THIS. YOU ARE RESPONSIBLE FOR MELVIN STEELE'S DEATH, AREN'T YOU?

MR. JUSTICE: OBJECTION, YOUR HONOR. THAT'S THE JURY'S DETERMINATION.

MR. CLARK: WELL, IF HE'S INVOLVED -- HE ADMITS HE'S INVOLVED IN THIS INCIDENT.

THE COURT: NO, SIR. YOU REPHRASE YOUR QUESTION. I'LL SUSTAIN THE OBJECTION IN THAT FORM, BUT YOU CAN REPHRASE IT.

MR. CLARK: YES, SIR.

Q MR. WIGGINS, YOU'RE CHARGED WITH MURDER IN THIS CASE, AREN'T YOU?
A YES, I AM.
Q AND BY YOU GETTING UP ON THE STAND AND TESTIFYING, YOU'RE NOT GOING TO HAVE TO FACE MURDER, ISN'T THAT TRUE?
A THAT'S CORRECT.
Q AND THE SIGNIFICANCE OF THAT IS, YOU KNOW THAT MURDER CARRIES A LIFE SENTENCE, DON'T YOU?
A SO DOES EVERYTHING ELSE.
Q SO DOES EVERYTHING ELSE? ARMED ROBBERY CARRIES A LIFE SENTENCE, TOO?
A ARMED ROBBERY AND KIDNAPING. HOW MUCH TIME DO YOU THINK THEY CARRY?
Q WELL, YOU TELL ME.

A DID YOU CHECK MY RECORD?
Q DOES ARMED ROBBERY CARRY LIFE, TOO?
A DID YOU CHECK MY RECORD?
Q DID I CHECK YOUR RECORD?
A YES, YOU DID.
Q YES, I KNOW I CHECKED YOUR RECORD.
A THEN YOU KNOW IT CARRIES LIFE.
Q FROM YOUR RECORD?
A BASED ON MY RECORD, YOU KNOW WHAT IT CARRIES.
Q AND THAT'S IN D.C., IT CARRIES LIFE IN D.C.?
A THERE'S NO QUESTION ABOUT IT.
Q WELL, YOU'RE NOT IN D.C. NOW, ARE YOU? YOU'RE IN SOUTH CAROLINA, RIGHT?
A YES.
Q BUT YOU'RE TRYING TO AVOID THE MURDER CONVICTION, AREN'T YOU, AND THAT'S WHY YOU'RE ON THE STAND WEAVING THIS TALE THAT YOU'RE WEAVING, RIGHT?
A NO, SIR.
Q WELL, WHY ARE YOU DOING IT, SIR, OTHER THAN TO AVOID THE MURDER SENTENCE, MURDER CONVICTION?
A I'M NOT TESTIFYING TO AVOID ANYTHING.
Q BUT YOU ADMIT THAT'S THE DEAL THAT YOU GOT, RIGHT?
A THAT I WOULDN'T BE PROSECUTED FOR MURDER?
Q RIGHT.
A YES.

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Q AND YOU ADMIT THAT BEFORE THAT DEAL WAS OFFERED TO YOU, YOU TOLD ABOUT 25 DIFFERENT STORIES ABOUT HOW THIS THING OCCURRED, DIDN'T YOU?

A NO, THAT'S NOT CORRECT.

Q THAT'S NOT CORRECT? MR. WIGGINS, DO YOU DENY OR DO YOU REMEMBER -- YOU KNOW MR. BLACKMON HERE, DON'T YOU?

A YES, I DO.

Q DIDN'T HE COME TO WASHINGTON TO INTERVIEW YOU?

A I BELIEVE HE CAME TO ARREST ME. I DON'T THINK HE CAME TO INTERVIEW ME.

Q WELL, HE ARRESTED YOU, THEN HE INTERVIEWED YOU, DIDN'T HE?

A YES.

Q YOU KNOW WHAT "INTERVIEW" MEANS, DON'T YOU?

A YES.

Q THAT MEANS TALK TO YOU, RIGHT?

A YES.

Q SO WHEN HE CAME AND ARRESTED YOU, HE INTERVIEWED YOU, DIDN'T HE?

A YES, HE DID.

Q SO HE DID INTERVIEW YOU?

A YES, HE DID.

Q AND ISN'T IT TRUE THAT THE FIRST TIME HE INTERVIEWED YOU, HE ASKED YOU HAD YOU BEEN TO SOUTH CAROLINA, AND YOU TOLD HIM THAT IT HAD BEEN OVER A YEAR SINCE YOU HAD BEEN HERE?

A THAT'S WHAT I TOLD HIM.

Q YOU LIED TO HIM, DIDN'T YOU?
A THAT'S WHAT I TOLD HIM.
Q YOU LIED TO HIM, DIDN'T YOU?
A YES, I DID.
Q THEN HE ASKED YOU AGAIN WERE YOU SURE ABOUT THAT, AND THE SECOND TIME YOU TOLD HIM IT HAD BEEN YEARS SINCE YOU'D BEEN TO SOUTH CAROLINA, DIDN'T YOU?
A THAT'S WHAT I TOLD HIM.
Q AND THEN ISN'T IT TRUE, MR. WIGGINS, WHEN MR. BLACKMON CONFRONTED YOU WITH THIS CASE AND YOUR INVOLVEMENT IN THIS CASE, YOU TOLD HIM YOU DIDN'T EVEN KNOW MR. MATHIS?
A THAT'S WHAT I TOLD HIM.
Q THAT'S TRUE?
A THIS IS TRUE. NOW DO YOU WANT TO KNOW WHY IT'S TRUE?
Q WELL --
A BECAUSE I DIDN'T KNOW HIM BY "MR. MATHIS".
Q YOU DIDN'T KNOW HIM BY "MR. MATHIS"?
A THAT'S RIGHT. I NEVER KNEW HIS NAME.
Q YOU DIDN'T KNOW HIM BY "MR. MATHIS"?
A I DIDN'T KNOW HIS NAME AT ALL. I CALLED HIM "T".
Q WELL, YOU'RE TELLING THIS JURY THAT YOU CAME UP OR ENGAGED IN THIS ELABORATE SCHEME, SOMEBODY FLEW YOU DOWN HERE, YOU DROVE BACK AND FORTH TO WASHINGTON, D.C. ON SEVERAL OCCASIONS, AND YOU DIDN'T KNOW THE MAN'S NAME WHEN LIEUTENANT BLACKMON ASKED YOU ABOUT IT?

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A THAT'S CORRECT.
Q ALL RIGHT. NOW, YOU SAID YOU CALLED HIM "T", RIGHT?
A RIGHT.
Q WELL, WHY DID YOU TELL LIEUTENANT BLACKMON THAT YOU KNEW HIM AS "TONY"?
A BECAUSE "T" IS SHORT FOR TONY.
Q OKAY, SO YOU DID KNOW HIM?
A WHAT DO YOU MEAN, I DID KNOW HIM?
Q WELL, YOU TOLD HIM --
A I KNEW HIM BY THE NAME THAT HE WAS CALLED BY WHEN I MET HIM, WHICH WAS "T" OR "TONY", EITHER ONE.
Q ALL RIGHT, "T" OR "TONY". AND THEN DIDN'T YOU TELL LIEUTENANT BLACKMON THAT SOMEBODY NAMED "BA" AND "DRU" CAME DOWN TO SOUTH CAROLINA AND COMMITTED THIS OFFENSE? DIDN'T YOU TELL HIM THAT, TOO?
A DID I TELL HIM THAT? I DON'T RECALL.
Q YOU DON'T RECALL? IN FACT, YOU TOLD HIM SO MANY STORIES, YOU DON'T EVEN REMEMBER HOW MANY YOU TOLD HIM, DO YOU? IT'S JUST ADDING UP NOW. HOW MANY UNTRUTHS DO YOU THINK YOU'VE TOLD ABOUT THIS CASE SO FAR?
A IT'S ONLY ONE TRUTH, AND THAT'S WHAT I'M TELLING YOU.
Q WELL, I KNOW THERE'S ONLY ONE TRUTH, BUT I'M ASKING YOU, HOW MANY UNTRUTHS HAVE YOU TOLD ABOUT THIS CASE? ISN'T IT OVER 20 DIFFERENT STORIES, MR. WIGGINS, AT LEAST 20?
A IF YOU CAN STAND ON WHAT YOU JUST SAID, THEN YOU NEED TO

SHOW IT BECAUSE THAT'S INCORRECT.

Q ALL RIGHT, YOU WANT ME TO SHOW THAT, OKAY. WELL, ISN'T IT A FACT THAT YOU TOLD HIM THAT "BA" AND "DRU" CAME DOWN HERE AND DID THIS OFFENSE? ISN'T THAT A FACT, MR. WIGGINS?

A I DON'T RECALL TELLING HIM THAT.

Q YOU DON'T RECALL TELLING HIM THAT, OKAY. ARE YOU SURE YOU DON'T RECALL THAT?

A I DON'T RECALL TELLING HIM THAT THEY DID THE OFFENSE.

Q DO YOU RECALL TELLING HIM THAT "BA" TOLD YOU THAT SOMEBODY GOT KILLED? DO YOU RECALL TELLING HIM THAT?

A YES.

Q OKAY. SO YOU RECALL TELLING HIM THAT "BA" TOLD YOU THAT SOMEBODY GO KILLED, BUT YOU DON'T RECALL TELLING HIM THAT "BA" WAS INVOLVED IN IT?

A WHAT INCIDENT ARE YOU TALKING ABOUT?

Q WHAT INCIDENT DO YOU THINK WE'RE HERE FOR, MR. WIGGINS?

A I UNDERSTAND WHAT INCIDENT WE'RE HERE FOR.

Q WELL, THAT'S THE INCIDENT I'M TALKING ABOUT.

A WELL, I DON'T KNOW NOTHING ABOUT "BA" DOING NONE OF THIS. THE STATEMENT THAT I MADE ORIGINALLY, WHAT YOU'RE TALKING ABOUT, SOME OF IT I JUST DON'T REMEMBER. THE TRUTH IS THE TRUTH. I DID NOT SAY SOME OF THAT STUFF AND SOME OF IT I DID. WHATEVER YOU ASK ME, I'M GOING TO TELL YOU THE TRUTH, WHETHER I SAID IT OR NOT, IF I RECALL IT.

Q SO DO YOU ADMIT THAT YOU'VE TOLD SO MANY STORIES YOU CAN'T

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RECALL THEM NOW?
A NO, I'M NOT ADMITTING THAT.
Q YOU DENY TELLING HIM THAT "BA" COMMITTED THIS OFFENSE?
A I DENY TELLING HIM THAT, YES, I DO.
Q DO YOU DENY TELLING HIM THAT "BA" TOLD YOU THAT SOMEBODY WAS KILLED DOWN HERE?
A NO, I DON'T DENY THAT.
Q SO YOU DID TELL HIM THAT. IS THAT TRUE, MR. WIGGINS? IS THAT TRUE TODAY? IS THAT TRUE TODAY?
A ASK THE QUESTION AGAIN.
Q IS IT TRUE, YOU ADMIT THAT YOU TOLD MR. BLACKMON THAT "BA" CAME DOWN HERE AND TOLD YOU THAT SOMEBODY WAS KILLED IN AN INCIDENT? YOU ADMIT THAT, RIGHT, THAT THAT'S WHAT YOU TOLD MR. BLACKMON?
A YES, I DID.
Q ALL RIGHT, YOU ADMIT THAT AND NOW YOU REMEMBER THAT?
A I REMEMBER THAT.
Q WAS THAT TRUE THEN OR IS IT TRUE NOW?
A IT WASN'T TRUE THEN. IT'S NOT TRUE NOW.
Q IT'S NOT TRUE NOW?
A IT'S NOT TRUE.
Q BUT YOU TOLD HIM THAT, RIGHT?
A YES, I DID.
Q ALL RIGHT. THEN, DIDN'T YOU ALSO TELL HIM, MR. WIGGINS, THAT "BA" WANTED YOU TO COME DOWN HERE AND DUST SOMEBODY

OFF? DID YOU TELL HIM THAT?
A YES, I DID.
Q WHO IS "BA"?
A HE'S AN INDIVIDUAL THAT OWNS THE SPORTING GOODS STORE IN D.C.
Q AND HE'S IN D.C. NOW, ISN'T HE?
A I HAVE NO IDEA WHERE HE IS.
Q BUT HE OWNS A STORE IN D.C.?
A YES.
Q AND ISN'T IT TRUE, MR. WIGGINS, THAT "BA" IS BEHIND THIS WHOLE THING? ISN'T THAT TRUE, MR. WIGGINS?
A I DON'T KNOW IF THAT'S TRUE.
Q WELL, DIDN'T YOU TELL LIEUTENANT BLACKMON THAT "BA" FINANCED THIS WHOLE THING, OR CAN YOU REMEMBER THAT?
A I CAN REMEMBER TELLING MR. BLACKMON THAT.
Q ALL RIGHT, ANOTHER LIE, RIGHT, OR WAS THAT TRUE?
A IT WAS TRUE.
Q OKAY, THAT WAS TRUE. NOW, WHEN MR. JUSTICE WAS QUESTIONING YOU ON DIRECT -- LET ME WITHDRAW THAT QUESTION. WHEN YOU GOT ON THAT STAND, YOU PUT YOUR HAND ON THIS BIBLE, DIDN'T YOU?
A YES, I DID.
Q AND YOU SWORE TO THE JUDGE, THE JURY AND EVERYBODY ELSE, AND TO GOD IN HEAVEN, THAT YOU WERE GOING TO TELL THE TRUTH, RIGHT?

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A RIGHT.
Q BUT YOU DIDN'T TELL MR. JUSTICE ANYTHING ABOUT "BA" TODAY, DID YOU?
A HE DIDN'T ASK ME ABOUT "BA".
Q WELL, DIDN'T YOUR LAWYER AND MR. JUSTICE AND MR. BLACKMON ALL SIT DOWN AND TALK ABOUT THIS CASE?
A I DON'T KNOW IF THEY SAT DOWN AND TALKED ABOUT IT OR NOT. I DIDN'T SIT DOWN WITH THEM TO TALK ABOUT IT.
Q YOU DIDN'T TELL THEM ABOUT YOUR INVOLVEMENT IN THIS CASE?
A YES, I TOLD THEM ABOUT MY INVOLVEMENT.
Q BUT YOU JUST FORGOT THAT ONE, IMPORTANT DETAIL, DIDN'T YOU?
A YOU KNOW, I DID NOT SAY ANYTHING ABOUT THAT SIMPLY BECAUSE "BA" ISN'T ON TRIAL.
Q "BA" ISN'T ON TRIAL. WELL, DIDN'T THEY TELL YOU THEY WANTED YOU TO TELL THEM THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH?
A AND I DID.
Q YOU'RE STILL TELLING HALF TRUTHS AND UNTRUTHS, AREN'T YOU?
A (WITNESS PAUSING).
Q AREN'T YOU, SIR? YOU'RE STILL NOT TELLING THE TRUTH TO THIS JURY TODAY.

MR. JUSTICE: YOUR HONOR, I OBJECT. WE'RE GETTING TO THE POINT OF BADGERING.

MR. CLARK: I'M SORRY. I'LL LET HIM ANSWER THE QUESTION, YOUR HONOR. I'M SORRY.

Q BUT YOU DIDN'T TELL HIM ABOUT "BA", DID YOU?
A ORIGINALLY I TOLD MR. BLACKMON ABOUT "BA".
Q YOU DID?
A NOW, ONCE THE STATEMENT WAS MADE, WHETHER HE DECIDED TO USE IT OR NOT WAS TOTALLY ON HIM, NOT ME, BUT I MADE THE STATEMENT.
Q YOU AIN'T SAID NOTHING ABOUT IT TODAY?
A I WASN'T ASKED ABOUT IT TODAY UNTIL YOU ASKED.
Q DIDN'T MR. JUSTICE ASK YOU TO TELL HIM HOW THIS WHOLE THING WAS CREATED? WASN'T THAT ONE OF THE FIRST QUESTIONS HE ASKED YOU, MR. WIGGINS, TO TELL HIM HOW THIS WHOLE SCHEME WAS PLANNED? DIDN'T HE ASK YOU THAT?
A AND I TOLD HIM.
Q WELL, HOW CAN "BA" BE LEFT OUT OF THAT WHEN HE FINANCED IT? HOW CAN THAT BE THE CASE, MR. WIGGINS?
A MR. JUSTICE ASKED ME HOW THE PLAN WAS FORMULATED.
Q RIGHT.
A I TOLD HIM HOW THE PLAN WAS FORMULATED, JUST LIKE I EXPLAINED IT TO THE JURY. THAT DOESN'T CHANGE. WHAT I SAID THEN STANDS NOW. THE PLAN WAS FORMULATED WITH THE INDIVIDUALS THAT I SPOKE WITH, SPOKE ABOUT TODAY HERE IN COURT. "BA" DIDN'T SIT DOWN AT NONE OF THESE MEETINGS.
Q OKAY.
A HE DIDN'T SIT DOWN AT NONE OF THESE MEETINGS.
Q HE DIDN'T?

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A NO.
Q OKAY.
A BUT I'VE BEEN INVOLVED IN DIFFERENT THINGS IN MY LIFE.
Q RIGHT.
A I KNOW WHAT'S GOING ON AND WHO IS BEHIND THE SCENES IN ALL THE ABOVE. I TOLD YOU THE TRUTH. I DON'T KNOW WHAT YOU WANT FROM ME, BUT THE TRUTH AIN'T GOING TO CHANGE. I'M GOING TO TELL YOU WHAT I SAID ALL OVER AGAIN, IF THAT'S WHAT YOU WANT.
Q ARE YOU FINISHED WITH YOUR ANSWER?
A IT'S NO DOUBT ABOUT IT.
Q ARE YOU FINISHED WITH YOUR ANSWER?
A YES.
Q ALL RIGHT. IF "BA" WASN'T INVOLVED AND YOU NEVER SAT DOWN WITH HIM, EXPLAIN TO ME AND THIS JURY AND EVERYBODY ELSE, HOW DO YOU KNOW "BA" FINANCED IT IF YOU NEVER SAT DOWN AND TALKED WITH HIM, MR. WIGGINS?

MR. JUSTICE: NOW I OBJECT ON GROUNDS OF RELEVANCE.

THE COURT: OVERRULED. IF HE KNOWS THE ANSWER TO THAT, I'LL ALLOW HIM TO ANSWER.

A ASK THE QUESTION AGAIN.
Q THE QUESTION IS, IF YOU NEVER SAT DOWN WITH "BA", HOW IN THE WORLD DO YOU KNOW THAT HE FINANCED THIS WHOLE ARRANGEMENT?

A I DIDN'T SAY I NEVER SAT DOWN WITH "BA". I SAID "BA" WAS NEVER AT NONE OF THE MEETINGS. I MET "BA" LONG BEFORE I MET MR. MATHIS.

Q MR. WIGGINS, I'M NOT TALKING ABOUT ANYTHING THAT HAPPENED BEFORE THIS INCIDENT. DID I NOT HEAR YOU CORRECTLY WHEN YOU SAID YOU NEVER SAT DOWN AND TALKED WITH "BA" ABOUT THIS INCIDENT?

A YOU DIDN'T HEAR ME CORRECTLY.

Q YOU DIDN'T SAY THAT?

A NO, I DIDN'T. I SAID "BA" DID NOT SIT DOWN AT NONE OF THE MEETINGS. THAT'S WHAT I SAID.

Q DID YOU TALK WITH "BA" ABOUT THIS?

A I TALKED TO "BA", YES.

Q AND YOU KNEW HE WAS FINANCING THIS WHOLE THING?

A I DIDN'T KNOW THAT HE WAS FINANCING IT FROM THE BEGINNING. THESE INDIVIDUALS ARE INDIVIDUALS THAT I JUST MET IN 2000. AIN'T BUT SO MUCH INFORMATION GOING TO BE REVEALED TO ME.

Q MR. WIGGINS, YOU'RE TESTIFYING THAT YOU'RE GOING TO BE IN A KIDNAPING, ARMED ROBBERY, BURGLARY AND EVENTUALLY A MURDER, AND THAT YOU AIN'T GOING TO TALK TO THESE PEOPLE? THAT'S WHAT YOU'RE SAYING?

A NO, THAT AIN'T WHAT I SAID AT ALL. THAT'S WHAT YOU SAID.

Q OKAY, ALL RIGHT. NOW, ISN'T IT TRUE, MR. WIGGINS, THAT YOU COMING INTO LANCASTER COUNTY WAS INDEPENDENT OF MR. MATHIS AND OF YOUR OWN INTENTIONS AND PLANS, SIR? ISN'T THAT

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TRUE?
A NO, THAT'S NOT TRUE.
Q WELL, DO YOU DENY TELLING MR. BLACKMON THAT YOU CAME TO LANCASTER TO BRING DRUGS TO AN INDIVIDUAL BY THE NAME OF MIKE?
A I TOLD MR. BLACKMON THAT.
Q AND YOU DIDN'T SAY MR. MATHIS BROUGHT YOU HERE OR ANYTHING, DID YOU?
A NO, I DID NOT DURING THAT PARTICULAR QUESTIONING, NO.
Q BUT NOW YOU WANT TO SAY THAT MR. MATHIS BROUGHT YOU HERE?
A NOT "BUT NOW".
Q HUH?
A NOT "BUT NOW". WE'RE TALKING ABOUT THE SAME DAY. WE'RE NOT TALKING ABOUT MONTHS LATER.
Q MR. WIGGINS, YOU ADMIT THAT YOU TOLD MR. BLACKMON THAT YOU CAME TO LANCASTER COUNTY TO BRING DRUGS TO MIKE? YOU ADMIT YOU TOLD HIM THAT?
A I ADMIT I TOLD HIM THAT.
Q AND THAT WAS TRUE, WASN'T IT?
A THAT I TOLD HIM THAT, YES.
Q WAS THE STATEMENT TRUE?
A NO, IT WASN'T.
Q SO THAT'S ANOTHER LIE YOU TOLD HIM, RIGHT?
A YES.
Q ALL RIGHT. SO YOU DIDN'T BRING DRUGS TO MIKE?

A NO, I DIDN'T.
Q WELL, WHAT WERE YOU DOING WHEN YOU WERE FLYING DOWN HERE ALL THOSE TIMES, MR. WIGGINS? WHAT WERE YOU DOING? DO YOU HAVE RELATIVES HERE?
A NO, I DON'T.
Q DO YOU HAVE A JOB HERE?
A NO.
Q DO YOU KNOW ANYBODY HERE?
A THE PEOPLE THAT I'VE MET SINCE I'VE BEEN COMING DOWN.
Q SO TELL THE LADIES AND THE GENTLEMEN OF THE JURY, WHAT WAS YOUR PURPOSE FOR COMING DOWN ON THOSE TIMES YOU TALKED ABOUT FLYING DOWN OR DRIVING DOWN.
A WHY DID I COME DOWN ON THOSE OCCASIONS?
Q YES, SIR.
A I CAME DOWN TO MEET MR. MATHIS OR I CAME DOWN WITH MR. MATHIS TO FINISH FORMULATING THE PLAN.
Q OKAY, NOT TO BRING DRUGS TO MIKE?
A NO.
Q YOU JUST TOLD MR. BLACKMON A LIE?
A YES, I DID.
Q ALL RIGHT. AND ALSO DIDN'T YOU TELL MR. BLACKMON RIGHT AFTER HE ARRESTED YOU THAT "BA" HAD A BLUE MINIVAN? DID YOU TELL HIM THAT?
A I DON'T KNOW.
Q YOU CAN'T REMEMBER IT NOW?

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A I DON'T KNOW.
Q OKAY, ALL RIGHT. AND, NOW, MR. WIGGINS, YOU CAME IN HERE TODAY AND YOU TESTIFIED THAT YOU SAW MR. MATHIS WITH A NINE MILLIMETER WITH A LASER SIGHT SCOPE OR SOMETHING ON IT, DIDN'T YOU?
A YES, I DID.
Q WASN'T THAT YOUR TESTIMONY TODAY?
A YES, IT WAS.
Q DO YOU DENY THAT YOU TOLD MR. BLACKMON THAT YOU HAD NEVER, EVER SEEN THIS MAN WITH A GUN? DO YOU DENY SAYING THAT, SIR?
A I'M NOT -- I DON'T KNOW WHETHER I SAID THAT OR NOT.
Q TOO MANY INCONSISTENCIES. YOU CAN'T REMEMBER THEM, CAN YOU?
A (WITNESS PAUSING).
Q YOU CAN'T REMEMBER THEM NOW, CAN YOU?
A I DON'T REMEMBER WHETHER I SAID THAT TO HIM OR NOT.
Q THE FACT IS YOU'VE GIVEN SO MANY STORIES, YOU CAN'T KEEP UP WITH THEM. YOU CAN'T EVEN REMEMBER THEM. LET ME ASK YOU ANOTHER QUESTION, AND I'LL MOVE ON SINCE YOU CAN'T REMEMBER THAT ONE. YOU ALSO TOLD MR. BLACKMON THAT "BA" WAS THE ONE WITH THE NINE MILLIMETER. DIDN'T YOU TELL HIM THAT?
A I DON'T RECALL TELLING HIM THAT.
Q YOU CAN'T REMEMBER THAT? DO YOU DENY THAT YOU SAID THAT?
A YES, I DO. I DON'T RECALL.

Q YOU DON'T RECALL?
A I DON'T RECALL.
Q ALL RIGHT. NOW, MR. WIGGINS, YOU HAVE A HABIT OF USING FALSE NAMES, DON'T YOU?
A NO, I DON'T.
Q YOU HAVE A HABIT OF CARRYING FAKE I.D.'S THAT DON'T BELONG TO YOU, DON'T YOU?
A NO, I DON'T.
Q MR. WIGGINS, DO YOU DENY WHEN YOU WERE ARRESTED THAT YOU HAD IN YOUR POSSESSION A DRIVER'S LICENSE FOR JOHN ARTHUR WIGGINS?
A WHEN I GOT ARRESTED, I HAD MY LICENSE AND I HAD MY BROTHER'S -- ONE OF MY LITTLE COUSIN'S LICENSES.
Q IT WASN'T YOURS, WAS IT?
A I HAD JUST PICKED IT UP FROM HIM.
Q YOU HAD JUST PICKED IT UP FROM HIM?
A THAT'S RIGHT, I WENT AND PICKED IT UP.
Q AND YOU WERE GOING TO USE THAT?
A USE IT FOR WHAT?
Q CAN YOU TELL THE JURY WHY YOU HAD HIS LICENSE OTHER THAN TO DECEIVE PEOPLE?
A IF YOU LOOKED AT THE LICENSE, YOU'D KNOW THERE WAS NO WAY I COULD DECEIVE ANYBODY.
Q WELL, TELL ME WHY YOU HAD A LICENSE BELONGING TO SOMEBODY ELSE, THAT WASN'T YOURS.

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A I HAD MY LITTLE BROTHER'S. IT WASN'T ACTUALLY A LICENSE. IT WASN'T NOTHING BUT AN I.D. CARD.

Q RIGHT.

A I HAD HIS I.D. CARD BECAUSE HE HAD GOTTEN ARRESTED FOR SOMETHING, AND I WENT AND HE SIGNED HIS PROPERTY OUT TO ME. THAT'S WHY I HAD HIS I.D. IN MY CAR.

Q AND YOU WERE CARRYING IT IN YOUR POSSESSION, WEREN'T YOU?

A NO, I HAD IT IN MY CAR. IT WASN'T ON MY POSSESSION.

Q ALL RIGHT. AND, MR. WIGGINS, EVEN WHEN YOU GO TO THE HOSPITAL FOR TREATMENT, YOU LIE TO THEM ABOUT YOUR NAME, DON'T YOU?

A THE LAST TIME I WENT, I DID.

Q AND YOU WERE PATRICK JOHNSON THEN, WEREN'T YOU?

A YES, I WAS.

Q YOU DID THAT SO YOU COULD SKIP OUT ON THE BILL ON THEM, RIGHT?

A THAT WAS THE WHOLE PLAN.

Q RIGHT. SO DO YOU AGAIN DENY THAT YOU GO BY DIFFERENT NAMES?

A YOU KNOW, BELIEVE IT OR NOT, I WENT TO THE HOSPITAL WITH SOMEONE AND THEY ACTUALLY SIGNED ME IN UNDER THAT NAME. I JUST WENT ON AND WENT ALONG WITH IT BECAUSE IT WORKED, YOU KNOW. THAT'S WHY I WENT ALONG WITH IT.

Q SO EVEN THE PERSON YOU WENT TO THE HOSPITAL WITH GAVE YOU A FALSE NAME, RIGHT?

A THAT'S WHAT HAPPENED.
Q AND YOU KNEW THE PLAN AND YOU WENT ALONG WITH IT?
A THAT'S WHAT HAPPENED.
Q BUT THERE IS NO DENYING THAT YOU HAD AN I.D. IN YOUR POSSESSION THAT WASN'T YOURS? CAN'T DENY THAT?
A IT WAS A FAMILY MEMBER'S.
Q ALL RIGHT. THEN YOU TOLD MR. BLACKMON THAT YOU DIDN'T EVEN KNOW TONY'S CELL PHONE NUMBER. DIDN'T YOU TELL MR. BLACKMON THAT?
A I PROBABLY DID.
Q PROBABLY DID, OKAY. AND YOU TOLD HIM THAT YOU DIDN'T KNOW HIS CELL PHONE NUMBER BECAUSE YOU HADN'T SPOKEN WITH HIM IN OVER A MONTH, RIGHT?
A RIGHT.
Q AND WASN'T THAT THE TRUTH THEN AND IT'S THE TRUTH NOW, MR. WIGGINS?
A THAT I HADN'T SPOKEN WITH HIM IN OVER A MONTH? THAT'S THE TRUTH THEN, YES, AND THAT'S THE TRUTH NOW. WE'RE TALKING ABOUT AUGUST 10. I HADN'T SPOKEN WITH HIM SINCE JUNE 20.
Q ALL RIGHT. AND YOU TOLD MR. BLACKMON THAT WHEN YOU SPOKE WITH HIM, THIS MAN HAD HAD A HEART ATTACK AND WAS CALLING YOU FROM THE HOSPITAL. ISN'T THAT WHAT YOU TOLD HIM?
A YES, THAT'S WHAT HE TOLD ME. I DON'T THINK I SAID A HEART ATTACK.
Q YOU DON'T THINK YOU SAID A HEART ATTACK?

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A NO, I BELIEVE IT WAS A DRUG OVERDOSE.
Q DO YOU DENY THAT YOU TOLD HIM IT WAS A HEART ATTACK?
A I DENY IT BECAUSE I SAID IT WAS A DRUG OVERDOSE.
Q ALL RIGHT, SIR. NOW, ISN'T IT A FACT, MR. WIGGINS, THAT YOU WENT TO MRS. STEELE'S DOOR WITH THIS BOX? (INDICATING). YOU ADMIT THAT, DON'T YOU?
A I MEAN, IT WAS A BOX. I CAN'T SEE THAT BOX FROM HERE.
Q YOU WENT TO THAT DOOR, YOU DECEIVED HER TO COME TO THE DOOR, PUSHED HER DOWN, TAPED HER UP, DIDN'T YOU?
A NO.
Q YOU DIDN'T?
A NO.
Q BUT YOU ADMIT YOU WENT TO THE DOOR?
A YES, I DID.
Q ALL RIGHT. AND YOU WANTED MONEY. THAT'S WHY YOU DID THIS, RIGHT?
A THAT'S RIGHT.
Q YOU WANTED THE MONEY?
A THAT'S RIGHT.
Q NOW, YOU SAID THAT MATHIS AND BILL WAS INVOLVED IN THIS CASE, RIGHT?
A RIGHT.
Q BUT YOU DON'T KNOW WHO BILL IS, RIGHT?
A RIGHT.
Q AREN'T YOU STILL PROTECTING PEOPLE ABOUT THIS CASE, MR.

WIGGINS?

A NO. WHAT REASON WOULD I HAVE TO PROTECT THEM?

Q WELL, WHERE IS BILL FROM?

A D.C.

Q HE CAME DOWN HERE WITH YOU?

A YES, HE DID.

Q AND YOU DON'T EVEN KNOW HIS NAME?

A I KNOW HIS NAME IS BILL. I DIDN'T KNOW HIS NAME (INDICATING DEFENDANT).

Q WHERE IS HE FROM?

A HE'S FROM D.C.

Q WHERE?

A THE SOUTHEAST.

Q THAT'S ALL YOU KNOW?

A I'VE BEEN OVER TO HIS HOUSE.

Q YOU'VE BEEN OVER TO HIS HOUSE?

A YES.

Q WELL, WHY DIDN'T YOU TELL THEM WHERE HE'S AT?

A I DID TELL THEM WHERE HE'S AT.

Q YOU DID?

A I TOLD THEM WHAT I KNEW.

Q WELL, YOU WENT TO HIS HOUSE. YOU KNEW THAT FOR CERTAIN, DIDN'T YOU?

A WHERE HE LIVED?

Q UH-HUH

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A YES.
Q BECAUSE YOU HAD BEEN THERE, RIGHT?
A YES.
Q YOU'VE LIVED IN D.C. ALL YOUR LIFE?
A RIGHT.
Q SO YOU CERTAINLY KNEW HIS ADDRESS AND WHERE HE LIVED?
A I DIDN'T KNOW HOW TO GET THERE.
Q DID YOU EVER TAKE THEM THERE?
A NO.
Q ALL RIGHT. NOW, ACCORDING TO YOUR STORY, WHEN YOU HAD MR. STEELE AND MRS. STEELE IN THAT VAN, THERE WAS NOBODY IN MCDONALD AMUSEMENTS, RIGHT?
A THERE WAS NOBODY IN MCDONALD AMUSEMENTS?
Q YES, SIR.
A I MEAN, I DON'T UNDERSTAND THE QUESTION.
Q WELL, YOU TESTIFIED ON DIRECT EXAMINATION THAT THERE WERE NO PHONE CALLS MADE TO ANYBODY WHILE MRS. STEELE WAS IN THAT VAN. ISN'T THAT WHAT YOU SAID?
A I BELIEVE, YES, THAT'S WHAT I SAID. I DON'T RECALL NO CALLS BEING MADE AT ALL DURING THAT TIME.
Q OKAY, ALL RIGHT. SO NO CALLS WERE MADE. AND EVEN THOUGH YOU SAID "FAT" WAS INVOLVED, WHEN MR. BLACKMON SHOWED YOU A LINEUP YOU TOLD HIM YOU COULDN'T IDENTIFY "FAT", DIDN'T YOU?
A SHOWED ME A LINEUP? I DON'T REMEMBER THAT. I REMEMBER HIM

SHOWING ME A LINEUP OF SOMEONE ELSE.

Q AND YOU TOLD HIM YOU COULDN'T IDENTIFY HIM, RIGHT?

A NOT WHEN HE SHOWED ME THE LINEUP. I TOLD HIM WHO I COULD IDENTIFY. I POINTED OUT WHO IT WAS I WAS TALKING ABOUT.

Q ALL RIGHT. NOW, ISN'T IT A LITTLE -- DON'T YOU FIND IT STRANGE THAT YOU WERE INVOLVED IN THESE SERIOUS CRIMINAL MATTERS AND YOU DON'T KNOW ANYBODY? YOU'RE INVOLVED WITH THESE PEOPLE AND YOU DON'T KNOW THEIR LAST NAME OR THEIR FULL NAME?

A DO I FIND IT STRANGE?

Q YES, SIR.

A NO, I DON'T.

Q SO YOU JUST DO THESE MAJOR, SERIOUS FELONIES WITH ANYBODY AND EVERYBODY, RIGHT?

A NO.

Q BECAUSE YOU KNOW WHO THEY ARE, ISN'T THAT TRUE, BUT YOU'RE PROTECTING THEM?

A I'M PROTECTING THEM? NO, THAT'S NOT TRUE.

Q ALL RIGHT. AND YOU TOLD THIS JURY EARLIER THAT MR. MATHIS CALLED IN THE BOMB THREAT, DIDN'T YOU?

A YES, I DID.

Q BUT THEN YOU TESTIFIED THAT YOU DON'T KNOW WHERE HE CALLED IT IN FROM OR WHEN IT WAS CALLED IN? YOU TESTIFIED AFTER THAT THAT YOU DIDN'T KNOW WHERE THE CALL WAS MADE FROM?

A THAT'S WHAT I SAID.

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Q WELL, HOW IN THE WORLD DID YOU KNOW THAT HE CALLED IN A BOMB THREAT?
A BECAUSE I WAS OVER AT THE SPARKS' HOUSE, AND WE ALL DECIDED WHO WAS GOING TO TAKE CARE OF WHAT AND HE LEFT TO GO TAKE CARE OF THAT. AND WHEN HE CAME BACK --
Q OH, OKAY.
A -- I WAS THERE MONITORING THE SCANNER.
Q MONITORING THE SCANNER?
A YES, SO WHEN THE CALL WAS MADE, I KNEW IT WAS MADE AND I KNEW WHO WENT TO MAKE THE CALL. IT ISN'T LIKE HE SAID HE WAS GOING TO MAKE IT AND HE PULLED A STRANGER UP AND HAD THEM DO IT.
Q NOW, MR. JUSTICE ASKED YOU WHAT DID YOU DO WHILE INSIDE THE STEELE RESIDENCE. REMEMBER HE ASKED YOU THAT QUESTION?
A (WITNESS NODDING HEAD).
Q AND YOU SAID, "I THINK I WENT AND TOOK THIS LITTLE GUN AND SOME MONEY", RIGHT?
A I DID THAT, YES.
Q WELL, WHY DID YOU TESTIFY LATER, WHEN HE WAS QUESTIONING YOU, THAT YOU NEVER HAD A GUN?
A I TESTIFIED LATER?
Q YES, THAT YOU DIDN'T HAVE A WEAPON, THAT BILL AND MR. MATHIS HAD THE WEAPONS AND YOU DIDN'T HAVE ONE.
A I DID SAY THAT.
Q RIGHT.

A BUT I DID TAKE A LITTLE GUN FROM OUT OF THE RESIDENCE.
Q SO THAT WAS ANOTHER LIE YOU TOLD, WASN'T IT?
A NO, IT WASN'T A LIE. IT WAS JUST I ANSWERED THE QUESTION BEFORE I HAD THE OPPORTUNITY TO REALLY THINK ABOUT IT. THAT'S ALL IT WAS.
Q SO, MR. WIGGINS, YOU'RE INVOLVED IN THIS MAJOR KIDNAPING, A MAN GETS KILLED, AND YOU'VE GOT TO THINK ABOUT WHETHER YOU HAD A GUN?
A NO, I DIDN'T HAVE TO THINK ABOUT THAT. I'M TALKING ABOUT THE GUN THAT WAS TAKEN FROM THE RESIDENCE. WHEN I WENT THERE, I DIDN'T HAVE A GUN.
Q ALL RIGHT. AND NOW YOU WANT TO PUT ALL OF THE DIRTY WORK ON MATHIS AND BILL, RIGHT? YOU DIDN'T HANDCUFF ANYBODY?
A THERE WAS NO ONE FOR ME TO HANDCUFF.
Q EVEN THOUGH YOU WENT TO THE DOOR, YOU DENY THAT YOU PUSHED THIS LADY DOWN?
A YES, I DO DENY IT.
Q YOU DIDN'T PUSH HER DOWN?
A NO, I DIDN'T.
Q SOMEBODY ELSE DID IT?
A THERE'S NO QUESTION.
Q ALL RIGHT. NOW, ISN'T IT TRUE THAT YOU ACTUALLY OWN WALKIE-TALKIES, MR. WIGGINS?
A NO, IT'S NOT TRUE.
Q YOU'VE NEVER OWNED A WALKIE-TALKIE?

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A NEVER IN MY LIFE.
Q YOU SURE ABOUT THAT?
A I'M POSITIVE.
Q NOW, YOU SAY YOU WERE DRIVING THE VEHICLE, RIGHT?
A AT WHAT POINT?
Q AFTER YOU LEFT MR. STEELE'S RESIDENCE.
A RIGHT.
Q AND THAT MR. MATHIS SHOT MR. STEELE?
A RIGHT.
Q HOW COULD YOU SEE THAT IF YOU WERE DRIVING THE VEHICLE, SIR?
A BILL WAS SITTING BESIDE ME.
Q OH, BILL WAS SITTING BESIDE YOU?
A RIGHT. I WAS DRIVING; BILL WAS THE PASSENGER. HE DIDN'T SHOOT HIS SELF. IT WAS ONLY ONE PERSON IN THE BACK.
Q SO WHAT YOU'RE TELLING THE JURY TODAY IS THAT YOU AND BILL LEFT THIS MAN IN THE BACK WITH TWO INDIVIDUALS?
A IT'S NO QUESTION. THEY WAS ALREADY BOUND. WHAT WAS THEY GOING TO DO?
Q AND YOUR TESTIMONY IS THAT AFTER MR. STEELE WAS SHOT, FIVE MINUTES LATER HE WAS STILL ALIVE?
A YES, HE WAS STILL ALIVE.
Q HOW LONG AFTER THAT WAS HE STILL ALIVE, MR. WIGGINS?
A HE WAS STILL ALIVE WHEN WE LEFT TO GO TO THE AMUSEMENT COMPANY.

Q HOW LONG AFTER HE HAD BEEN SHOT WAS HE STILL ALIVE?
A I DON'T KNOW. I DON'T KNOW WHAT TIME HE WAS SUPPOSED TO DIE, OR WHATEVER.
Q WAS IT MORE THAN FIVE MINUTES?
A MORE THAN FIVE MINUTES WHAT?
Q AFTER HE GOT SHOT THAT HE WAS STILL ALIVE.
A YES, HE WAS.
Q HOW ABOUT 10 MINUTES?
A YES.
Q HOW ABOUT 15 MINUTES?
A YES.
Q HE WAS STILL ALIVE AND TALKING TO YOU ALL?
A YES.
Q AFTER HE GOT SHOT?
A YES, I'D SAY IT WAS LONGER THAN THAT.
Q OKAY. WAS HE BLEEDING THEN, TOO?
A YES, HE WAS.
Q AND ACCORDING TO YOUR TESTIMONY, MR. STEELE DIDN'T HAVE ANY TAPE ON HIS EYES OR ANYTHING, RIGHT?
A YES, HE DID. HE HAD TAPE ON HIS EYES.
Q WHAT ABOUT HIS MOUTH?
A NOT HIS MOUTH. NO, HIS MOUTH WASN'T TAPED BECAUSE YOU HAD TO GET THE INFORMATION FROM HIM.
Q HIS MOUTH WASN'T TAPED?
A NOT AT THE TIME. WHEN I WAS THERE, IT WASN'T TAPED.

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Q SO YOU HAD NEVER SEEN MR. MATHIS TAPE HIS MOUTH, DID YOU?
A I DIDN'T SEE HIM TAPE HIS MOUTH, NO.
Q NOW, YOU SAID THAT MR. MATHIS -- OR THAT WHEN YOU GOT INTO -- ONCE YOU PUSHED MRS. STEELE DOWN WITH THIS BIG BOX, HERE -- OH, YOU SAID YOU DIDN'T PUSH HER DOWN?
A THAT'S WHAT I SAID.
Q SO IS YOUR TESTIMONY YOU JUST STOOD THERE WITH THE BOX AND SHE STOOD THERE WHILE TWO OTHER PEOPLE RAN UP ON THE DOOR? THAT'S YOUR TESTIMONY?
A WHEN SHE OPENED THE DOOR, MATHIS AND BILL RAN PAST ME, AND THEN I STEPPED IN RIGHT AFTER.
Q SO YOU DIDN'T TOUCH HER?
A NO, I DIDN'T TOUCH HER -- WELL, I HELPED TAKE HER OUT TO THE VAN, YES.
Q YOU DIDN'T JUMP ON HER WHEN SHE WAS DOWN ON THE GROUND, ON THE FLOOR?
A NO, I DIDN'T JUMP ON HER. NO, I DIDN'T JUMP ON HER.
Q WELL, MR. WIGGINS, WHEN YOU WENT TO THE DOOR, WHERE WAS MATHIS AND BILL?
A ON THE SIDE OF THE TRUCK, THE VAN.
Q ON THE SIDE OF THE TRUCK?
A RIGHT.
Q HOW FAR AWAY FROM THE DOOR WERE THEY?
A FAIRLY CLOSE, ABOUT FROM HERE TO WHERE THE END OF THE WHITE BAR IS THERE.

Q TO THE END OF -- RIGHT THERE? SO THEY WERE THIS FAR AWAY? (INDICATING).
A THAT'S A LITTLE TOO FAR.
Q WELL, YOU TELL ME. I'M ASKING YOU HOW FAR AWAY WERE THEY WHEN MRS. STEELE OPENED THE DOOR AND YOU HAD THAT BOX IN YOUR HAND. HOW FAR AWAY WERE THEY?
A WHERE YOU ARE NOW, MAYBE A STEP OR TWO CLOSER BUT NO FARTHER.
Q NOW, WERE THEY DIRECTLY IN FRONT OF THE DOOR?
A NO.
Q WHERE WERE THEY?
A THEY WAS ON THE SIDE OF THE VAN.
Q ON THE SIDE OF THE VAN?
A YES.
Q SO THEY RAN FROM ABOUT WHERE I AM ALL THE WAY TO THE DOOR. SHE DIDN'T TRY TO CLOSE THE DOOR OR NOTHING? SHE JUST STOOD THERE?
A SHE DIDN'T SEE THEM.
Q WELL, HOW COME SHE DIDN'T SEE THEM, IF YOU KNOW?
A I DON'T KNOW WHY SHE DIDN'T SEE THEM.
Q AND YOU DIDN'T HAVE A BANDANA ON YOUR HEAD, IS WHAT YOU SAID, RIGHT?
A THAT'S RIGHT.
Q HOW MANY BANDANAS WERE USED IN THIS CASE?
A WELL, ALL OF US HAD BANDANAS, BUT I USED MY BANDANA

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BASICALLY JUST TO WIPE STUFF OFF.

Q WIPE STUFF OFF?

A YES.

Q WHAT WERE YOU WIPING OFF?

A I WIPED OFF, LIKE, WHEN I GOT OUT OF IT. THAT'S WHEN I WIPED OFF. I DIDN'T HAVE A BANDANA ON BECAUSE, I MEAN, WHO'S GOING TO OPEN THE DOOR FOR SOMEBODY STANDING THERE WITH A BANDANA ON THEIR FACE.

Q WELL, MR. WIGGINS, WERE YOU WEARING GLOVES?

A YES, I WAS, NOT WHILE I WAS IN THE LINCOLN, THOUGH.

Q NOT WHILE YOU WERE IN THE LINCOLN?

A RIGHT.

Q AND DIDN'T YOU TELL MR. BLACKMON THAT YOU SOLD DRUGS FOR "BA"?

A MR. WHO?

Q YOU KNOW THIS GENTLEMAN, DON'T YOU? (INDICATING).

A YES.

Q DIDN'T YOU TELL HIM THAT YOU SOLD DRUGS FOR "BA"?

A YES, I DID.

Q AND DIDN'T YOU TELL HIM SOMETHING ABOUT COMING TO SOUTH CAROLINA, TO MYRTLE BEACH FOR A BIKE SHOW OR SOMETHING LIKE THAT?

A YES.

Q ALL THAT WASN'T TRUE, WAS IT?

A THAT I CAME FOR IT?

Q RIGHT.
A I DIDN'T COME FOR IT.
Q BUT YOU TOLD HIM THAT ANYWAY?
A I DON'T KNOW IF I TOLD HIM I CAME FOR THE BIKE SHOW, BUT I TOLD HIM THAT I CAME, YOU KNOW, AND I DID TELL HIM ABOUT ME SELLING DRUGS. I DID SAY THAT.
Q AND THAT'S TRUE, ISN'T IT?
A YES, I SAID THAT.
Q ALL RIGHT. YOU ALSO TOLD HIM THAT YOU DIDN'T KNOW MR. MATHIS' PHONE NUMBER, RIGHT?
A YES.
Q YOU TOLD HIM YOU'D NEVER BEEN IN LANCASTER?
A YES.
Q AND YOU TOLD HIM THAT YOU DIDN'T GET BACK TO WASHINGTON, D.C. UNTIL ONE O'CLOCK THE NEXT AFTERNOON, RIGHT?
A I'M NOT SURE.
Q YOU'RE NOT SURE. AND, MR. WIGGINS, ISN'T IT TRUE THAT YOU HAVE DRIVEN THE BLUE CADILLAC THAT MR. MATHIS HAD?
A YES, I HAVE.
Q YOU'VE DRIVEN THAT BEFORE?
A YES, I HAVE.
Q WITHOUT HIM BEING WITH YOU, HAVEN'T YOU?
A NO.
Q HE WAS ALWAYS WITH YOU?
A YES, HE WAS.

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Q WELL, WHY WOULD YOU HAVE TO DRIVE HIS CAR IF HE WAS WITH YOU?

A WHY WOULD I HAVE TO DRIVE HIS CAR?

Q IF HE'S WITH YOU.

A DO YOU KNOW HOW LONG A RIDE IT IS FROM WASHINGTON, D.C. TO LANCASTER?

Q WELL, YOU'VE DRIVEN THE CAR IN LANCASTER, HAVEN'T YOU?

A I'VE NEVER DRIVEN THE CAR IN LANCASTER.

MR. CLARK: I BEG THE COURT'S INDULGENCE JUST BRIEFLY, YOUR HONOR. (COUNSEL CONSULTING WITH DEFENDANT).

Q SO, MR. WIGGINS, HAVE YOU TOLD THE WHOLE TRUTH AT THIS POINT?

A YES, I HAVE.

Q THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

THE COURT: REDIRECT?

MR. JUSTICE: JUST A COUPLE OF MORE QUESTIONS ON REDIRECT, YOUR HONOR.

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q FIRST, MR. WIGGINS, WHEN YOU AND MATHIS AND BILL HAD MR. AND MRS. STEELE IN THE VAN, YOU WERE DRIVING. IS THAT CORRECT?

A THAT'S CORRECT.

Q AND WHERE WAS BILL?
A BILL WAS IN THE PASSENGER SEAT.
Q AND WHERE WAS MATHIS?
A HE WAS IN THE BACK WITH MR. AND MRS. STEELE.
Q SO HE WAS IN THE BACK OF THE VAN?
A RIGHT.
Q WAS THERE TALKING GOING ON BETWEEN HIM AND MR. STEELE?
A YES, IT WAS.
Q ATTEMPTING TO GET INFORMATION?
A YES, IT WAS.
Q DID IT GET LOUD IN THERE?
A NOT REALLY LOUD. YOU KNOW, IT WAS JUST A LITTLE HOLLERING TO MAKE SURE -- YOU KNOW, TO KIND OF MAKE YOU KNOW THAT YOU'D BETTER DO WHAT'S TOLD. YOU KNOW WHAT I'M SAYING? LIKE THAT, NOT WHERE HE WAS COMMENTING BACK TO MR. MATHIS. NO, THAT WASN'T THE CASE.
Q GOING AHEAD, I BELIEVE YOU SAID YOU WERE ARRESTED IN D.C. OR THE D.C. AREA IN EARLY AUGUST OF 2000?
A YES.
Q DO YOU REMEMBER THE DATE?
A AUGUST 10.
Q THE TENTH, OKAY. AND WHEN DID YOU MEET MR. BLACKMON? WAS IT THAT DAY OR SOON AFTERWARDS?
A I MET HIM THAT DAY. I MET HIM THAT DAY. HE HAPPENED TO BE --

Q THE SAME DAY?
A HE HAPPENED TO BE RIGHT UP THE STREET FROM MY HOME.
Q AND DID YOU WAIVE EXTRADITION AND AGREE TO COME BACK TO SOUTH CAROLINA DURING THAT SAME PERIOD OF TIME?
A YES, I DID. YES, I DID.
Q SO ALL THESE CONVERSATIONS YOU HAD WITH MR. BLACKMON, WHEN DID THEY OCCUR?
A IN A 24-HOUR PERIOD, IN THAT ONE DAY.
Q THAT ONE DAY, DRIVING BACK FROM WASHINGTON --
A RIGHT.
Q -- AND AFTER YOU ARRIVED HERE THAT DAY?
A RIGHT.
Q FROM THEN ON -- AND THIS WAS IMMEDIATELY AFTER YOU HAD BEEN ARRESTED AND CHARGED WITH MURDER?
A RIGHT.
Q FROM THAT DAY ON, HAVE YOU TALKED ANY FURTHER TO MR. BLACKMON?
A I TALKED TO MR. BLACKMON A COUPLE OF DAYS AFTER I GOT TO LANCASTER.
Q OKAY.
A AND THEN I DIDN'T TALK TO HIM ANYMORE AFTER THAT.
Q SO AFTER AUGUST, ALL THESE STORIES THAT YOU SUPPOSEDLY TOLD WERE ALL IN A SHORT PERIOD OF TIME?
A RIGHT. ALL THE INITIAL STORIES AND EVERYTHING WAS FROM WHEN HE FIRST ARRESTED ME, BECAUSE MY THING WAS TRYING TO

FIGURE OUT A WAY TO, YOU KNOW, CONVINCE HIM, YES, I WAS IN LANCASTER, BECAUSE I COULDN'T GET AROUND IT, BUT I NEEDED SOME REASON FOR BEING IN LANCASTER OTHER THAN WHAT I WAS ACTUALLY HERE FOR. THAT'S WHY I MENTIONED THE DRUGS, ANYTHING THAT WOULD HAVE GOTTEN ME A BOND WAS ALL I NEEDED.

Q HE SHOWED YOU MOTEL RECEIPTS WHERE YOU WERE IN LANCASTER?

A YES.

Q THAT HE COULD PROVE YOU WERE IN LANCASTER?

A AND THE PHONE.

Q AND THE PHONE LOG?

A THE PHONE LOGS.

Q SO YOU WERE BASICALLY TRYING TO ADAPT YOUR STORY TO WHAT YOU KNEW HE COULD PROVE?

MR. CLARK: OBJECTION TO THE LEADING, YOUR HONOR.

THE COURT: SUSTAINED.

MR. JUSTICE: I WITHDRAW THAT.

Q DID YOU, LATER IN THE FALL, IN SEPTEMBER OR OCTOBER, OBTAIN THE SERVICES OF A LAWYER HIRED BY YOUR FAMILY?

A YES.

Q WHO WAS THAT LAWYER?

A MR. GEORGE SPEEDY.

Q AND SOMETIME IN LATE OCTOBER OR EARLY NOVEMBER, DID YOU RELAY SOME INFORMATION TO MR. SPEEDY WITH THE INTENT THAT HE RELAY IT TO LAW ENFORCEMENT?

A YES.

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Q AND WHAT WAS THE OBJECT OF THAT INFORMATION? WHAT WAS IT ABOUT?
A IT WAS ABOUT THE LOCATION OF THE FIREARM THAT WAS USED.
Q AND THAT WAS IN LATE OCTOBER OR EARLY NOVEMBER OF 2000?
A YES.
Q AND AT THAT POINT IN TIME, HAD YOU MADE ANY DEAL WITH ANYBODY?
A NO, SIR.
Q AT THAT POINT IN TIME, HAD YOU EVEN MET ME OR ANYBODY THAT WORKS FOR ME?
A NO, SIR.
Q AS A MATTER OF FACT, DID YOU MEET ME AND MY STAFF FOR THE FIRST TIME IN LATE MARCH OR EARLY APRIL OF 2001, IN THAT ROOM? (INDICATING JURY ROOM).
A YES, SIR.
Q THANK YOU, SIR.

THE COURT: (TO WITNESS) THANK YOU. YOU MAY STEP DOWN.

ALL RIGHT, MR. FOREMAN, LADIES AND GENTLEMEN, I BELIEVE WE'VE REACHED A CONVENIENT STOPPING PLACE FOR THIS AFTERNOON. WHILE YOU'RE AWAY, PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE. ALSO PLEASE DO NOT READ OR WATCH ANY NEWS ACCOUNTS OF THESE PROCEEDINGS.

PLEASE BE PRESENT IN THE MORNING IN YOUR JURY ROOM AT TEN O'CLOCK, AND HOPEFULLY WE WILL CONTINUE

THE TRIAL OF THE CASE. THANK YOU VERY MUCH. HAVE A NICE EVENING. ONLY THE JURORS MAY EXIT THE COURTROOM.

(JURY EXITS COURTROOM AT 6:20 P.M.).

THE COURT: ALL RIGHT, WE'LL BE IN RECESS UNTIL TOMORROW AT TEN O'CLOCK.

(WHEREUPON, THE TRIAL IS RECESSED AT 6:21 P.M., TO BE RECOMMENCED JUNE 5, 2003 AT 10:00 A.M.).

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STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, V. VERNARD JEROME MATHIS, DEFENDANT.	)	DOCKET NO. 00-GS-29-1418 01-GS-29-0250 03-GS-29-0524 03-GS-29-0525 03-GS-29-0526 TRANSCRIPT OF RECORD (JURY TRIAL) VOLUME IV

JUNE 2 - 6, 2003
LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

APPEARANCES:

FOR THE PLAINTIFF:	JOHN R. JUSTICE, SOLICITOR DOUGLAS A. BARFIELD, JR., SENIOR ASSISTANT SOLICITOR THOMAS J. HOLLAND, ASSISTANT SOLICITOR
FOR THE DEFENDANT:	JOHN D. CLARK, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

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THE COURT: IS THE STATE READY?

MR. JUSTICE: THE STATE IS READY.

THE COURT: MR. CLARK, IS THE DEFENSE READY?

MR. CLARK: YES, SIR.

THE COURT: PLEASE BRING THE JURY IN, MR. BAILIFF.

(JURY ENTERS COURTROOM AT 10:03 A.M.).

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN OF THE JURY. I TRUST ALL OF YOU HAD A NICE EVENING. I BELIEVE WE'RE READY TO PROCEED.

SOLICITOR, YOU MAY CALL THE NEXT WITNESS.

MR. JUSTICE: THE STATE CALLS -- OR RECALLS MR. BLACKMON.

THE COURT: (TO WITNESS) PLEASE COME FORWARD.

(WHEREUPON, LEE BLACKMON, HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q MR. BLACKMON, YOU'RE STILL UNDER OATH, AND YOU ALREADY IDENTIFIED YOURSELF AS BEING THE LEAD INVESTIGATOR IN THIS CASE. IS THAT CORRECT?

A YES, SIR.

Q MR. BLACKMON, I WANT YOU TO THINK. OF COURSE, THIS CASE ALL OCCURRED IN JUNE OF THE YEAR 2000. IN NOVEMBER OF THE YEAR 2000, DID YOU RECEIVE INFORMATION THAT YOU NOW KNOW TO

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HAVE ORIGINATED WITH MR. ELTON WIGGINS?

A YES, SIR, I DID.

Q PURSUANT TO THE INFORMATION YOU RECEIVED, WHAT ACTIONS OR OPERATIONS DID YOU ORGANIZE AND UNDERTAKE?

A WE CONDUCTED ANOTHER SEARCH OF THE CHANDLER BODY SHOP AREA.

Q THE AREA WHERE THE U-HAUL TRUCK HAD BEEN FOUND?

A THAT'S CORRECT.

Q NOW, I BELIEVE PREVIOUSLY, JUST RECAPPING TESTIMONY ALREADY IN THE RECORD, PREVIOUSLY SOME GYM BAGS, SOME LOOSE BULLETS, A PISTOL AND A BULLETPROOF VEST IN ONE OF THE GYM BAGS WAS ALL RECOVERED FROM THAT LOCATION?

A THAT'S CORRECT.

Q ALONG WITH THE U-HAUL?

A THAT'S RIGHT.

Q WHEN YOU WENT BACK, WHEN WAS THAT SECOND SEARCH COMMENCED?

A IT WAS ON NOVEMBER 13 OF 2000.

Q THE THIRTEENTH OF NOVEMBER. AND HOW MANY PEOPLE DID YOU EMPLOY TO MAKE THAT SECOND SEARCH?

A I HAD MYSELF AND I HAD A RESERVE. I HAD DEPUTIES ASSIST ME. DEPUTIES MIKE BURGESS AND TODD WALLACE ASSISTED IN THE SEARCH.

Q DID YOU LATER GET ADDITIONAL ASSISTANCE?

A YES, SIR.

Q AND WHAT WAS THAT ADDITIONAL ASSISTANCE?

A WE EMPLOYED OUR PUBLIC WORKS PEOPLE, WHO WERE INMATES AT

THE SHERIFF'S OFFICE, TO COME AND ASSIST US IN CLEARING OFF THE AREA.

Q I'LL SHOW YOU FIRST ONE OF THE PHOTOGRAPHS TAKEN BACK IN JULY. TELL ME WHETHER OR NOT YOU IDENTIFIED THIS AS PART OF THE AREA THAT YOU'RE TALKING ABOUT.

A YES, SIR, THIS IS THE AREA THAT WAS INCLUDED IN THE SEARCH ON NOVEMBER 13.

Q AND DOES THAT PICTURE ACCURATELY DEPICT IT AS IT APPEARED BACK IN JUNE?

A YES, SIR. THIS IS A PHOTOGRAPH THAT APPEARS TO BE TAKEN ON JUNE 21.

MR. JUSTICE: I'D MOVE THIS AS THE NEXT STATE'S EXHIBIT.

THE COURT: ANY OBJECTION?

MR. CLARK: NO OBJECTION, YOUR HONOR.

THE COURT: THE STATE'S NEXT APPROPRIATE EXHIBIT. PLEASE MARK IT AND ADMIT IT INTO EVIDENCE WITHOUT OBJECTION.

MR. JUSTICE: AND THAT WOULD BE #84, YOUR HONOR.

(STATE'S EXHIBIT #84, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPH).

Q MR. BLACKMON, I NOTICE IN STATE'S EXHIBIT #84, ONCE YOU LEAVE THE ROADWAY, THERE'S A LOT OF GROUND CLUTTER, BOTH JUNK AUTOMOBILES AS WELL AS TALL GRASS AND WEEDS. IS THAT CORRECT?

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A THAT'S CORRECT, SIR, A VERY BIG AREA.
Q AND WHEN YOU RETURNED THERE IN NOVEMBER, HAD IT IMPROVED ANY?
A NO, SIR.
Q I SHOW YOU SOME ADDITIONAL PHOTOGRAPHS ACTUALLY CONSISTING OF THREE PAGES WITH 15 DIFFERENT SHOTS. THIS IS THE MAGIC OF DIGITAL PHOTOGRAPHY. TELL ME WHETHER OR NOT YOU CAN IDENTIFY THESE AS BEING PHOTOGRAPHS ACTUALLY MADE DURING THE NOVEMBER SEARCH.
A THESE ARE PHOTOGRAPHS THAT I PERSONALLY MADE ON NOVEMBER 13.
Q DURING THIS PARTICULAR SECONDARY SEARCH?
A THAT'S CORRECT.

MR. JUSTICE: YOUR HONOR, I MOVE THIS BE INTRODUCED AS #85, #86 AND #87, I BELIEVE.

MR. CLARK: NO OBJECTION, YOUR HONOR.

THE COURT: ADMIT THEM WITHOUT OBJECTION, #85, 86 AND #87, PHOTOGRAPHS.

(STATE'S EXHIBIT #85, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPHS).

(STATE'S EXHIBIT #86, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPHS).

(STATE'S EXHIBIT #87, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPHS).

Q APPROXIMATELY HOW LONG DID YOU CONDUCT THIS NOVEMBER

SEARCH? HOW LONG DID THAT TAKE BEFORE YOU HAD SOME FRUITS OF YOUR LABOR?

A WE SEARCHED FOR APPROXIMATELY 2-1/2 HOURS, 2-1/2 TO 3 HOURS, BEFORE WE ACTUALLY FOUND SOMETHING.

Q AND WHAT, IF ANYTHING, DID YOU FIND AND SEIZE AS A RESULT OF THAT SEARCH?

A AT AROUND 11:15 THAT MORNING, DEPUTY MIKE BURGESS DISCOVERED A CLIP OR A MAGAZINE THAT APPEARED TO HAVE COME FROM A GUN.

Q WERE YOU CALLED TO VIEW THAT?

A YES, SIR. I DID. I ACTUALLY CAME OVER AND ULTIMATELY RECOVERED THAT ITEM.

Q YOU ACTUALLY RECOVERED IT. I SHOW YOU THIS ENVELOPE INCLUDING WHAT APPEARS TO BE AN AUTOMATIC GUN CLIP ALONG WITH A NUMBER OF BULLETS, EIGHT IN ALL. TELL ME WHETHER OR NOT YOU CAN IDENTIFY THAT ITEM.

A YES, SIR, THIS IS THE ITEM WE RECOVERED ON NOVEMBER 13 BEHIND CHANDLER'S BODY SHOP.

MR. JUSTICE: I'D MOVE THIS BE ADMITTED AS STATE'S EXHIBIT #88.

MR. CLARK: NO OBJECTION, YOUR HONOR.

THE COURT: ADMITTED WITHOUT OBJECTION.

(STATE'S EXHIBIT #88, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, GUN CLIP AND EIGHT BULLETS).

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Q IF YOU WILL, MR. BLACKMON, I'M GOING TO HAND YOU BACK #85, #86 AND #87, BEING THOSE DOZEN OR SO PHOTOGRAPHS, AND IF YOU CAN, LOOK AT THE BEST ONE AND POINT OUT TO THE JURY WHERE THAT CLIP AND AMMUNITION WAS LOCATED.

A YOU CAN SEE IN THIS PHOTOGRAPH, IN THE TOP RIGHT-HAND CORNER MR. --

THE COURT: EXCUSE ME, YOU NEED TO REFER TO THE EXHIBIT NUMBER, DEPUTY.

A IT'S STATE'S EXHIBIT #85. THE PHOTOGRAPH IN THE TOP, RIGHT-HAND CORNER SHOWS WHAT IS COMMONLY KNOWN AS A LOGGING TRAILER, A TRAILER THAT WILL HOLD UP LONG LOGS. IT'S POSITIONED RIGHT HERE (INDICATING). THE CLIP WAS FOUND HALFWAY UP IT, TO THE RIGHT SIDE OF IT IF YOU'RE STANDING ON THE ROAD. THE LOGGING TRAILER WAS FACING AT A PERPENDICULAR ANGLE TO THAT ROADWAY. HALFWAY DOWN THE LOGGING TRAILER WAS WHERE THE CLIP WAS FOUND AT. IT WAS LYING ON THE GROUND.

Q JUST HOLD ONTO THAT FOR A MOMENT.

A OKAY.

Q DID YOU CONTINUE YOUR SEARCH OF THAT AREA?

A YES, SIR, WE DID.

Q AND DID YOU MAKE ANY OTHER DISCOVERIES AND SEIZURES?

A YES, SIR, WE DID. AT APPROXIMATELY 1:10 I PERSONALLY DISCOVERED ANOTHER -- A FIREARM ON THE PROPERTY.

Q AND WHERE DID YOU FIND THAT FIREARM?

A THERE WAS A CRUSHED VEHICLE THAT WAS PARTIALLY UNDERNEATH THE CAB PART OF A SEMI TRUCK, AND IT WAS LYING PARTIALLY DOWN INSIDE OF THE CRUSHED CAR.

Q DID YOU SEIZE THAT GUN?

A YES, SIR, WE DID SEIZE THE GUN.

Q I'M GOING TO HAND YOU ONE MORE ENVELOPE WITH A LARGE -- WHAT APPEARS TO BE AN AUTOMATIC PISTOL WITH SOMETHING ATTACHED TO IT. TELL ME WHETHER OR NOT THAT'S THE GUN YOU FOUND PURSUANT TO THE NOVEMBER SEARCH.

A YES, SIR, THIS IS THE GUN WE RECOVERED.

MR. JUSTICE: YOUR HONOR, I'D MOVE THIS BE INTRODUCED AS THE NEXT STATE'S EXHIBIT.

MR. CLARK: NO OBJECTION.

MR. JUSTICE: #89, I BELIEVE.

THE COURT: STATE'S EXHIBIT #89 MOVED INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT #89, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, FIREARM).

Q AGAIN REFERRING TO #85, #86 AND #87, CAN YOU POINT OUT TO THE JURY APPROXIMATELY WHERE EXHIBIT #89, THE PISTOL, WAS FOUND?

A IN STATE'S EXHIBIT #85 YOU'LL SEE AGAIN THE TOP RIGHT-HAND CORNER PICTURE, A PHOTOGRAPH OF THE LOGGING TRAILER, AND AT AN ANGLE BEHIND IT IS THE BLUE PORTION OF THE SEMI TRUCK CAMPER PIECE THAT HAD BEEN LEFT ON THE PROPERTY. IT IS

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SITTING PARTIALLY ON TOP OF THE VEHICLE, THE CRUSHED VEHICLE, AND IN THE PHOTOGRAPH DIRECTLY BELOW THAT YOU CAN SEE, ACTUALLY, THE FRONT TIRE AND REAR TIRE OF THE CRUSHED VEHICLE. THE WEAPON WAS FOUND PARTIALLY DOWN INSIDE THE CRUSHED VEHICLE.

Q I'M GOING TO HAND YOU BACK #84, WHICH IS THE PHOTOGRAPH TAKEN IN JULY. IS THAT SAME AREA SHOWN IN THAT PHOTOGRAPH?

A YES, SIR, IT IS. IN STATE'S EXHIBIT #84 YOU CAN SEE THE FRONT PORTION OR A MAJORITY OF THE LOGGING TRAILER AND ALSO YOU CAN SEE THE TOP PORTION OF THE SEMI-TRUCK CAMPER OR THE CAB THAT'S SITTING PARTIALLY ON TOP OF THE CRUSHED VEHICLE.

Q AND, MR. BLACKMON, YOU STATED THAT YOU LEARNED THAT THE INFORMATION THAT LED TO THIS SEARCH ORIGINATED WITH ELTON WIGGINS?

A THAT'S CORRECT.

Q AND WHERE WAS HE AT THAT TIME?

A HE WAS INCARCERATED AT THE CHESTER COUNTY DETENTION CENTER.

Q THANK YOU, SIR. ON THIS POINT PLEASE ANSWER ANY QUESTIONS COUNSEL MAY HAVE. I MIGHT ADD, MR. BLACKMON, I INTEND TO CALL YOU PROBABLY ONE MORE TIME.

THE COURT: CROSS-EXAM, MR. CLARK?

MR. CLARK: YES, YOUR HONOR.

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. BLACKMON, ISN'T IT TRUE THAT FROM A FORENSIC STANDPOINT

AND A BALLISTICS STANDPOINT, THERE IS NO EVIDENCE THAT THAT WEAPON THAT WAS JUST INTRODUCED WAS INVOLVED IN THIS CASE? ISN'T THAT TRUE?

A I BELIEVE THERE IS SOME FORENSIC EVIDENCE, AGAIN, CONNECTED TO THE INCIDENT.

Q AND WHAT IS THAT FORENSIC EVIDENCE?

MR. JUSTICE: YOUR HONOR, THE STATE INTENDS TO CALL A FIREARMS EXPERT WITH SLED.

THE COURT: (TO MR. CLARK) ARE YOU GOING TO WITHDRAW THAT?

MR. CLARK: YES, SIR, I'LL WITHDRAW THAT QUESTION.

THE COURT: ALL RIGHT, THANK YOU.

Q AND, MR. BLACKMON, IT'S ALSO TRUE THAT ELTON WIGGINS POINTED YOU TO WHERE THIS GUN WAS?

A THAT IS MY UNDERSTANDING.

Q AND WHEN YOU WENT TO ARREST HIM IN AUGUST, HE DIDN'T TELL YOU ABOUT THIS GUN, DID HE? I MEAN -- IN AUGUST, RIGHT.

A NO, SIR, HE DID NOT.

Q HE DIDN'T TELL YOU ABOUT IT IN SEPTEMBER EITHER, DID HE?

A ME, PERSONALLY, NO, HE DID NOT.

Q NOR DID HE TELL YOU ABOUT IT IN OCTOBER?

A HE DID NOT PERSONALLY TELL ME WHERE THE FIREARM WAS.

Q AND THE INFORMATION HE PROVIDED DIDN'T COME UNTIL SOME THREE MONTHS, FOUR MONTHS AFTER HE WAS ARRESTED?

A THAT WOULD BE CORRECT, FROM AUGUST TO --

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Q NOVEMBER?
A -- OCTOBER, SEPTEMBER OR OCTOBER. IT WOULD HAVE BEEN A COUPLE OF MONTHS.
Q A COUPLE OF MONTHS, OKAY. AND ALTHOUGH MR. WIGGINS TOLD YOU WHERE THIS GUN WAS, HE DIDN'T TELL YOU WHO "BA" WAS, DID HE?
A MR. WIGGINS GAVE AN IDEA WHO "BA" WAS, YES, SIR.
Q BUT HE DIDN'T TELL YOU THAT WHILE YOU WERE IN WASHINGTON, DID HE?
A HE GAVE A STATEMENT INDICATING THERE WAS A "BA" PERSON INVOLVED, YES, SIR.
Q BUT YOU HAVEN'T INTERVIEWED "BA", HAVE YOU?
A NO, SIR, WE HAVE NOT.
Q AND HE DIDN'T EVEN TELL YOU BILL'S LAST NAME, DID HE?
A THAT'S CORRECT.
Q YOU HAVEN'T INTERVIEWED BILL?
A NO, SIR, WE DID NOT LOCATE BILL.
Q AND DRU COUNCIL, HE MENTIONED A DRU COUNCIL. YOU HAVEN'T INTERVIEWED DRU COUNCIL ABOUT THIS CASE?
A NO, SIR, WE HAVE NOT.
Q AND AS FAR AS YOU KNOW, ALL THREE OF THESE INDIVIDUALS ARE FROM THE WASHINGTON, D.C. AREA?
A YES, SIR. IT'S MY UNDERSTANDING THAT'S WHERE THEY RESIDE.
Q AND HE TOLD YOU ALSO THAT "FAT" WAS INVOLVED IN THIS CASE, DIDN'T HE?

A THAT'S CORRECT.
Q BUT WHEN YOU SHOWED HIM A LINEUP WITH "FAT'S" PICTURE IN IT, HE COULDN'T EVEN PICK "FAT" OUT, COULD HE?
A I DON'T RECALL THAT WE SHOWED HIM A LINEUP WITH "FAT", OR BERNARD SPARKS, IN IT.
Q YOU DIDN'T, ALL RIGHT. NOW, AS THE WHITE LINCOLN IS CONCERNED IN THIS CASE, YOU HAVE PHOTOGRAPHS OF THAT LINCOLN, DON'T YOU?
A WE HAVE PHOTOGRAPHS THAT WERE PROVIDED BY THE STATE LAW ENFORCEMENT DIVISION.
Q RIGHT. AND YOU'VE LOOKED AT THOSE PHOTOGRAPHS, HAVEN'T YOU?
A YES, SIR, I'VE REVIEWED PHOTOGRAPHS.
Q AND THE PHOTOGRAPHS SHOW THE INTERIOR OF THE VEHICLE AS WELL, DON'T THEY?
A YES, SIR, THEY DO.
Q AND ISN'T IT TRUE THAT THERE'S NO RED LIGHT ON THE DASHBOARD OF THAT LINCOLN, ACCORDING TO THE PHOTOS THAT YOU HAVE?
A THE PHOTOS I'VE SEEN DO NOT DEPICT A RED LIGHT OF ANY KIND ON THE DASH. I HAVEN'T SEEN A DIRECT PHOTOGRAPH OF THE DASH ITSELF.

MR. CLARK: I BEG THE COURT'S INDULGENCE, YOUR HONOR.

Q THANK YOU, MR. BLACKMON. THAT'S ALL.

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MR. JUSTICE: (TO WITNESS) THANK YOU.

THE STATE WILL RECALL MR. BLACKMON, I THINK, ONE MORE TIME.

THE COURT: ALL RIGHT.

MR. JUSTICE: NEXT IN THE CASE, YOUR HONOR, THE STATE WILL CALL MS. RITA STEELE.

THE COURT: (TO WITNESS) PLEASE COME FORWARD, MA'AM.

(WHEREUPON, RITA STEELE, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. JUSTICE:

Q STATE YOUR NAME, PLEASE, MA'AM.

A RITA STEELE.

Q AND, MS. STEELE, FOR YEARS I'VE ASKED WITNESSES TO SPEAK UP SO THE JURY CAN HEAR YOU. YOU HAVE PERMISSION TO ASK ME TO SPEAK UP BECAUSE MY VOICE IS JUST ABOUT GONE.

A OKAY.

Q WHERE IS YOUR HOME, MRS. STEELE?

A IN THE LAST THREE YEARS, I'VE BEEN LIVING WITH RELATIVES.

Q WITH RELATIVES?

A UH-HUH.

Q WHERE WERE YOU LIVING IN JUNE OF THE YEAR 2000?

A AT [redacted] ROAD HERE IN LANCASTER.

Q HOW LONG DID YOU LIVE IN THAT HOME, APPROXIMATELY?

A SINCE 1986, MARCH OF 1986.
Q UNTIL 2000?
A YES.
Q WHERE ARE YOU EMPLOYED?
A CUSTOMER SERVICE CENTER FOR SPRINGS INDUSTRIES.
Q SPRINGS CUSTOMER SERVICE?
A YES.
Q AND HOW LONG HAVE YOU BEEN AN EMPLOYEE OF CUSTOMER SERVICE?
A TWENTY-FIVE YEARS.
Q WHAT WAS YOUR RELATIONSHIP WITH MELVIN STEELE?
A HE WAS MY HUSBAND.
Q HOW LONG, AS OF JUNE OF 2000, HOW LONG HAD YOU AND MELVIN BEEN MARRIED?
A WE HAD BEEN MARRIED 16 YEARS MAY 12 IN 2000.
Q SO YOU WERE MARRIED IN 1984?
A RIGHT.
Q AND DID YOU AND HE HAVE CHILDREN?
A NO, SIR.
Q DID YOU HAVE A CHILD BY A PREVIOUS MARRIAGE?
A YES, SIR.
Q AND WHAT IS YOUR SON OR DAUGHTER'S NAME?
A THOMAS CHRISTOPHER ROBINSON, HE'S MY SON.
Q DO YOU CALL HIM CHRIS?
A CHRIS.
Q DOES CHRIS LIVE IN THE LANCASTER AREA, AS WELL?

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A HE DOES NOW, AND OFF AND ON BEFORE THEN.
Q AND HE'S AN ADULT? HE'S A GROWN CHILD?
A YES.
Q WHERE DID MELVIN WORK?
A HE WORKED FOR MCDONALD AMUSEMENTS ON SOUTH 200 HERE IN TOWN.
Q WHAT WAS HIS JOB AT MCDONALD?
A I CALLED HIM THE OFFICE MANAGER. I TOLD HIM HE MANAGED THE WHOLE OFFICE AND THAT THEY COULDN'T DO ANYTHING WITHOUT HIM.
Q SO THE ACTUAL STRUCTURE AND THE PEOPLE LOCATED DOWN IN THAT BUILDING ON 200, HE WAS IN CHARGE OF THAT?
A YES, SIR.
Q AND AS SUCH, DID HE HAVE, TO YOUR KNOWLEDGE, KEYS TO THE BUILDING, ACCESS CODES TO THE SECURITY ALARM AND COMBINATIONS TO THE SAFE?
A YES, SIR.
Q HOW LONG HAD HE WORKED FOR MCDONALD AMUSEMENT, APPROXIMATELY?
A APPROXIMATELY NINE OR TEN YEARS, I THINK.
Q IN ADDITION TO BEING THE OFFICE MANAGER, WAS HE ALSO RELATED TO THE FAMILY?
A YES, SIR.
Q IN WHAT WAY?
A MR. MCDONALD IS HIS BROTHER-IN-LAW AND MRS. MCDONALD IS HIS

SISTER.
Q SO THE MCDONALDS WERE HIS SISTER AND BROTHER-IN-LAW?
A YES, SIR.
Q I WANT YOU TO THINK BACK TO, I THINK, TUESDAY, THE TWENTIETH OF JUNE. AND I KNOW THE NEXT FEW MINUTES COULD BE PAINFUL, BUT I WANT YOU TO THINK BACK TO THAT EVENING. WHEN DID YOU GET OFF WORK THAT DAY?
A ABOUT -- BETWEEN 5:00 AND 5:30.
Q AND YOU WORK IN CUSTOMER SERVICE OUT ON THE BYPASS?
A YES, SIR.
Q AND AFTER YOU GOT OFF WORK, DID YOU GO HOME?
A YES, SIR.
Q DID MELVIN WORK THAT DAY?
A YES, SIR. MELVIN WORKED EVERY DAY.
Q AND THAT WOULD BE AT THE SOUTH 200 LOCATION?
A YES, SIR.
Q DO YOU RECALL APPROXIMATELY WHEN MELVIN CAME HOME?
A HE GOT HOME BETWEEN 7:00 AND 7:30. HE USUALLY WORKED A LITTLE LATE.
Q WE'RE TALKING JUNE 20, SO IT'S VIRTUALLY THE FIRST DAY OF SUMMER, SO THE DAYS ARE PRETTY LONG?
A YES, SIR.
Q SO IT'S STILL DAYLIGHT?
A YES, SIR.
Q WHEN HE GOT HOME, DID YOU ALL HAVE DINNER TOGETHER?

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A WE DID, PROBABLY AROUND 8:30, BETWEEN 8:00 AND 8:30.
Q AFTER DINNER, DID THE TWO OF YOU LEAVE THE HOUSE AT ANY POINT IN TIME?
A WE LEFT BEFORE DINNER.
Q BEFORE DINNER?
A YES.
Q WHEN DID YOU LEAVE AND FOR WHAT PURPOSE?
A IT WAS BETWEEN 7:30 AND EIGHT O'CLOCK, AND WE WENT TO LOOK AT AN APARTMENT THAT MELVIN HAD GONE BY AND GOTTEN THE KEY FOR FROM RANDY COLLINS FOR MY SON. HE WAS -- IT WAS A DUPLEX ON FICKLIN DRIVE.
Q SO YOU WERE TRYING TO HELP CHRIS FIND A PLACE?
A YES, SIR.
Q AND YOU ALL WENT TO LOOK AT IT?
A YES, SIR.
Q APPROXIMATELY HOW LONG WERE YOU GONE FROM YOUR HOME?
A I'D SAY 10 OR 15 MINUTES.
Q AND YOU GOT BACK. WHAT HAPPENED NEXT?
A WELL, CHRIS CALLED AND I TOLD HIM ABOUT THE APARTMENT. HE SAID HE WAS COMING TO GET THE KEY TO GO LOOK AT IT, AND HE WAS REAL TICKLED. AND THEN WE ATE SUPPER, AND THEN CHRIS CAME PROBABLY A QUARTER AFTER NINE.
Q HE CAME BY ABOUT A QUARTER AFTER?
A YES. WE JUST WATCHED TELEVISION, OR WHATEVER, UNTIL THEN.
Q AND DID CHRIS PICK UP THE KEYS FOR THE PURPOSE OF GOING TO

LOOK AT THE APARTMENT?

A I DON'T REMEMBER. THAT'S WHY HE CAME. HE CAME TO TALK ABOUT THE APARTMENT, I KNOW.

Q AND APPROXIMATELY HOW LONG DID HE STAY?

A NOT LONG, ABOUT 10 OR 15 MINUTES.

Q SO HE LEFT BY 9:30?

A YES.

Q WHEN HE LEFT -- NOW, HOW MANY DOORWAYS WERE THERE INTO YOUR HOUSE?

Q THAT WOULD BE, I ASSUME, A FRONT DOOR?

A YES, SIR, A BACK DOOR AND A SIDE DOOR TO THE CARPORT.

Q THE SIDE DOOR CAME IN OFF THE CARPORT?

A YES, SIR.

Q WHICH DOOR WAS THE ONE THAT YOU AND MELVIN MOSTLY CAME AND WENT THROUGH?

A THE SIDE DOOR.

Q THE SIDE DOOR?

A YES, SIR.

Q AND WHAT ABOUT CHRIS, YOUR SON?

A HE WENT OUT THE SIDE DOOR.

Q SORT OF LIKE MY KITCHEN DOOR? IT'S THE DOOR MOST EVERYBODY COMES IN AND OUT OF?

A YES, SIR.

Q OKAY, WHEN CHRIS LEFT, AFTER CHRIS LEFT, DID ANYTHING AROUSE YOUR ATTENTION?

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A WELL, CHRIS HAD BEEN GONE ABOUT FIVE MINUTES, IT WASN'T LONG, AND THE DOORBELL RANG. I HAD GOTTEN UP TO GO TO THE BACK DOOR TO LET MY DOGS IN. I HAD LET THEM OUT IN THE BACKYARD, IN THE FENCE. THE DOORBELL RANG. I OPENED THE DOOR BECAUSE I THOUGHT IT WAS CHRIS.

Q THAT WOULD BE THE BACK DOOR OR THE KITCHEN DOOR?

A THE KITCHEN DOOR.

Q OKAY.

A AND THE DOOR WAS PULLED OPEN, THE STORM DOOR WAS PULLED OPEN, AND A GUY WAS STANDING THERE WITH A BOX.

Q A GUY WITH A BOX?

A YES.

Q WHAT HAPPENED NEXT, AS BEST YOU RECALL?

A HE TOLD ME THAT HE HAD BEEN DELIVERED -- IT HAD BEEN DELIVERED TO HIS HOUSE BY MISTAKE, AND I'M THINKING, "OH, WHAT A NICE PERSON", YOU KNOW. I TURNED KIND OF TO THE LEFT, I THINK, TO CALL MELVIN, AND WHEN I DID, IT KIND OF ALL HAPPENED AT ONE TIME.

THE BOX CAME IN ON TOP OF ME, AND TWO BLACK MEN CAME IN ON EACH SIDE OF ME, WEARING BLUE AND WHITE BANDANAS, AND IT LOOKED LIKE NAVY BLUE TURBAN HATS, WOOL STOCKING CAPS, LIKE, THAT YOU WEAR IN THE WINTER. THEY HAD THEIR HANDS UP. IT LOOKED LIKE THEY WERE HOLDING GUNS, AND THAT'S WHEN I FELL AND THE BOX WAS ON TOP OF ME.

Q YOU FELL TO THE FLOOR?

A YES, SIR. THEN SOMEBODY TOLD ME NOT TO LOOK AND TO KEEP MY EYES CLOSED AND TO TURN OVER. HE FLIPPED ME OVER, AND THEY STARTED HANDCUFFING ME AND PUTTING DUCT TAPE AROUND MY EYES, AROUND MY MOUTH, AND I HELD MY HEAD UP AND THEY TOOK MY GLASSES OFF. AND WHEN I HELD MY HEAD UP, I LOOKED STRAIGHT INTO MR. MATHIS' EYES.

Q THAT'S MR. VERNARD MATHIS?

A YES, SIR.

Q HE WAS THE ONE WHO REMOVED YOUR GLASSES AND WAS TAPING YOU UP?

A YES, SIR.

Q AND YOU RECOGNIZE HIM AS BEING THE MAN DOING THAT?

A YES, SIR.

Q WHERE WAS MELVIN?

A MELVIN WAS IN THE LIVING ROOM, AND I HAD CALLED FOR HIM A LITTLE -- WHEN THEY PUSHED ME DOWN, AND I HEARD HIM SAY SOMETHING LIKE, "WHAT'S GOING ON?" OR SOMETHING LIKE THAT. AND THEN I KNOW THEY WENT INTO THE LIVING ROOM TO GET HIM. THEY ASKED HIM IF THERE WAS ANY MONEY IN THE HOUSE AND HE SAID, "A COUPLE OF THOUSAND DOLLARS IN THE TOP DRESSER DRAWER."

AND I GUESS SOMEBODY WENT IN THERE AND GOT IT. IT WAS FOOTSTEPS MOVING BACK AND FORTH.

Q BY THIS TIME YOU WERE BLINDFOLDED WITH THE DUCT TAPE?

A YES, AND IT WAS OVER MY MOUTH.

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Q OVER YOUR MOUTH AS WELL?
A IT WAS ABOUT ALL OVER MY FACE.
Q AND YOU WERE HANDCUFFED?
A YES, SIR.
Q WERE YOU STILL ON THE FLOOR?
A YES, SIR.
Q DID YOU AT ANY POINT BECOME AWARE OF MELVIN BEING BROUGHT TO WHERE YOU WERE?
A WHEN WE WENT TO THE VAN, I KNEW HE WAS THERE AT THAT TIME.
Q DURING THIS TIME, WERE ANY OF THE THREE MEN TALKING, EITHER TO YOU OR TO EACH OTHER?
A THERE WAS ONE MAN ORDERING EVERYBODY AROUND. HE WAS MEAN. HE WAS IN CHARGE. THERE WAS ONE MAN THAT WAS NICE. IT WAS CONFUSING. WHY WOULD THEY BE NICE TO ME AND NOT BE NICE TO MELVIN? BUT THEY WERE. ONE MAN SAID, "WE'RE NOT GOING TO HURT THE LADY, ARE WE?", AND THE MEAN GUY SAID, "WE'LL JUST HAVE TO TALK ABOUT THAT LATER."

AND THEY PICKED ME UP AND TOOK ME OUTSIDE, AND WE GOT IN THE VAN.

Q DID YOU GET IN THE VAN ON YOUR OWN OR DID YOU REQUIRE HELP?
A I COULDN'T -- I DIDN'T KNOW HOW TO GET IN.
Q BECAUSE YOU WERE BLINDFOLDED?
A YES, SIR.
Q AND DID SOMEBODY HELP YOU IN?
A YES, SIR, AND LAID -- TOLD US TO LAY DOWN ON THE FLOOR, AND

THEN THEY SLID THE DOORS SHUT AND WE LEFT.

Q IS THAT HOW YOU KNEW YOU WERE IN A VAN?

A YES, SIR.

Q WHAT HAPPENED NEXT, MRS. STEELE?

A THEY RODE US AROUND FOR AWHILE. I DON'T REALLY KNOW HOW LONG. IT SEEMED LIKE FOREVER. AND THEY STARTED ASKING MELVIN ABOUT WHAT THE CODES WERE TO MCDONALD AMUSEMENT TO GET IN THE DOOR, AND HE TOLD THEM AND THEY -- THERE WAS ONE, I KNOW, IN THE BACK WITH ME. THERE WAS SOMEBODY DRIVING. THERE WAS THE MEAN GUY IN THE BACK WITH US.

Q THE MEAN-TALKING ONE?

A (WITNESS NODDING HEAD). SOMEBODY SAT ME UP IN THE SEAT. I DON'T KNOW WHETHER THEY SAT MELVIN UP IN A SEAT OR NOT. AND WE RODE AROUND AND THEY CALLED -- SOMETHING RANG. THEY DID MAKE CALLS IN THE VAN, CALLS BACK AND FORTH, AND EVERY TIME MELVIN WOULD GIVE THEM A CODE, THE GUY THAT WAS SO MEAN WOULD JUST GET MADDER. AND THEN I HEARD A SHOT, AND THEN I HEARD SOMEBODY SAY, "OH, MY LORD."

Q WAS THAT MELVIN OR ONE OF THE THREE MEN?

A IT WAS ONE OF THE THREE MEN.

Q OKAY. AFTER THE SHOT -- YOU HEARD JUST ONE SHOT?

A JUST ONE.

Q AND AFTER THAT, WHAT OCCURRED NEXT?

A AFTER THAT, THEY KEPT ASKING ABOUT THE CODES AND THEY KEPT ASKING MELVIN WAS IT WORTH DYING OVER, AND MELVIN TOLD HIM

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THAT IT WASN'T, YOU KNOW, "MONEY CAN BE REPLACED". OKAY, THEN WE STOPPED AFTER THEY HAD BEEN ASKING FOR CODES AND THE COMBINATION TO THE SAFE AND EVERYTHING ELSE. MELVIN HAD TRIED TO TELL THEM, "JUST TAKE ME THERE, I'LL OPEN IT FOR YOU, IT'S OKAY", BUT THEY JUST KEPT TELLING HIM IT WOULD JUST MESS EVERYTHING UP, THE MEAN GUY DID. HE WAS REALLY THE ONLY ONE THAT --

Q WAS HE THE ONE DOING MOST OF THE TALKING?

A YES.

Q COULD YOU TELL WHETHER HE WAS IN THE FRONT OF THE TRUCK OR IN THE BACK?

A HE WAS IN THE BACK WITH US.

Q WITH YOU AND MELVIN?

A YES.

Q OKAY.

A HE WAS THE ONE THAT SHOT THE GUN. WHEN HE SHOT THE GUN, I STARTED GOING, "OH, GOD, OH, GOD", AND HE HIT ME, LIKE WITH AN ELBOW OR SOMETHING, UPSIDE THE HEAD, AND TOLD ME TO BE QUIET, SO I WAS. THEN THE VAN STOPPED AND THEY JUST KIND OF DUMPED US OUT ON THE GROUND -- WELL, THEY DUMPED ME.

Q YOU DIDN'T KNOW WHERE YOU WERE AT THAT POINT?

A NO, SIR. I HEARD THEM DRAGGING -- AND I GUESS IT WAS MELVIN. (WITNESS WEEPING).

Q JUST TAKE YOUR TIME. I KNOW, I KNOW.

A THEN THEY REALLY STARTED GETTING MEAN, AND THEY KEPT --

THEY HIT HIM. THEY HIT HIM HARD, AND I KNEW, BETWEEN THE VAN AND ON THE GROUND, EVERY TIME THAT THING RANG, THAT SOMETHING WAS GOING TO HAPPEN.

Q "THAT THING" BEING THIS COMMUNICATION DEVICE OF SOME SORT?

A YES, SIR.

Q OKAY. YOU HEARD IT RING OFTEN DURING THAT PERIOD OF TIME?

A OFF AND ON, YES. THE LAST TIME IT RANG, THE MEAN ONE HELD A GUN TO MY HEAD AND TOLD MELVIN THAT HIS WIFE WAS GOING TO DIE AND IT WAS ALL HIS FAULT, AND MELVIN SAID, "PLEASE DON'T HURT HER, PLEASE." (WITNESS WEEPING).

THEY KEPT WALKING OFF AND COMING BACK AND WALKING OFF AND COMING BACK, AND BY THEN I WAS PRETTY UPSET. ONE OF THEM ASKED ME IF I WAS COLD BECAUSE I WAS SHAKING AND I TOLD HIM NO, I WAS JUST SCARED. IT WAS THE SAME ONE THAT ASKED ME, SAID, "WE'RE NOT GOING TO HURT THE LADY, ARE WE?".

Q THIS WAS THE NICER-TALKING GUY THAT YOU MENTIONED EARLIER?

A YES.

Q AND AFTER A WHILE, WHAT HAPPENED AS FAR AS THE PEOPLE AROUND YOU, AS BEST YOU COULD TELL FROM HEARING?

A FROM HEARING, I KNOW THE MEAN ONE LEFT AND I KNOW THAT SOMEBODY CAME BACK. THEY WALKED OFF, THE MEAN ONE DIDN'T COME BACK, THERE WEREN'T AS MANY FOOTSTEPS AND HE DIDN'T RUN HIS MOUTH.

Q BUT YOU KNEW SOMEBODY WAS STILL THERE?

A YES. THEY TAPED MELVIN.
Q TAPED HIS MOUTH?
A BEFORE THEY TAPED HIS MOUTH, HE TOLD ME HE LOVED ME AND I TOLD HIM I LOVED HIM, AND THEN THEY TAPED HIM UP AND I COULDN'T HEAR HIM AND I COULDN'T FIND HIM. I STARTED TALKING AND --
Q LET ME STOP YOU JUST A SECOND. YOU HAD ORIGINALLY BEEN TAPED AROUND THE MOUTH. HAD YOU WORKED SOME OF THAT OFF?
A IT WORKED LOOSED IN THE VAN --
Q TO WHERE YOU COULD NOW TALK TO SOME EXTENT?
A -- BECAUSE I TRIED TO TELL THEM WHAT THE CODE WAS BECAUSE I KEPT GETTING IT WRONG, AND, YOU KNOW, I WAS JUST SCREAMING AT THEM THAT MELVIN WOULDN'T LIE. HE HAD NO REASON TO LIE ABOUT THAT. THEY HAD ASKED HIM HOW MUCH WAS IN THE SAFE AND HE TOLD THEM $10,000, $20,000 MAYBE, AND THEY GOT MAD ABOUT THAT.

AFTER THEY WALKED OFF AND I DECIDED THEY WERE GONE, I STARTED HOLLERING AND I STARTED WALKING.

Q YOU WERE ABLE TO GET TO YOUR FEET?
A YES, SIR.
Q AND BY THIS TIME, YOU DREW THE CONCLUSION THAT THERE WAS NOBODY ELSE STILL THERE?
A YES, SIR.
Q OKAY. WHEN YOU STARTED WALKING, DID YOU KNOW WHERE YOU WERE WALKING TO?

A NO, SIR.
Q AND YOU WERE STILL CUFFED?
A YES, SIR.
Q AND STILL BLINDFOLDED?
A YES, SIR.
Q OKAY. PLEASE DESCRIBE THE NEXT SEVERAL MINUTES.
A I DECIDED IF I COULD FIND A ROAD, I COULD FIND SOME HELP, AND I JUST KEPT WALKING AND HITTING STUFF AND FALLING DOWN. I FINALLY GOT THROUGH, AND I HEARD A CAR, AND I HOLLERED AND I HOLLERED, AND SOMEBODY HOLLERED BACK AT ME AND I SAID, "PLEASE, PLEASE HELP ME, PLEASE HELP ME. SOMEBODY SHOT MY HUSBAND. THEY SHOT MY HUSBAND. A MAN SHOT MY HUSBAND AND HE NEEDS HELP", GOD. (WITNESS WEEPING).

I WAS IN SOME BRIARS AND I COULDN'T GET OUT. WHEN I FINALLY GOT THROUGH, SOMEBODY TOOK ME INSIDE THEIR HOUSE. THEY WALKED ME UP THE STEPS, THEY TOOK THE TAPE OFF MY EYES AND I CALLED CLYDE, MELVIN'S DAD, FIRST, AND HE DID ANSWER, AND I CALLED MARVIN AND THEY ANSWERED.

Q MARVIN, MELVIN'S BROTHER, I BELIEVE?
A YES, SIR. THEN THE POLICE CAME, AND THEY TOOK THE HANDCUFFS OFF AND I JUST SAT THERE.
Q DID YOU LATER THAT NIGHT GET WORD THAT MELVIN, IN FACT, HAD DIED?
A YES, SIR.
Q ON THAT NIGHT OR THE FOLLOWING DAY, WERE YOU ABLE TO GIVE

THE POLICE ANY COHERENT DESCRIPTION OF THESE PEOPLE?

A I DON'T KNOW HOW COHERENT I WAS. I DID THE BEST I COULD.

Q YES, MA'AM. DID YOU EVENTUALLY RETURN TO YOUR HOME AND HAVE A CHANCE TO LOOK AROUND AND SEE WHAT MIGHT BE MISSING?

A YES, SIR.

Q IF YOU WOULD, TELL US, WAS THE MONEY THAT YOU HAD IN THE HOUSE MISSING?

A YES, SIR, THERE WAS NO MONEY LEFT IN THE DRAWERS.

Q AND DID YOU AND MELVIN KEEP A HANDGUN IN THE HOUSE?

A YES, SIR. IT WAS A .25 CALIBER HANDGUN.

Q AND WAS IT MISSING?

A YES, SIR.

Q YOU STATED THAT THESE INDIVIDUALS WHO CAME IN THE HOUSE WITH THE BANDANAS ON WERE WEARING BLUE BANDANAS WITH -- BLUE AND WHITE?

A YES, SIR.

Q I'LL FIND THE EXHIBIT NUMBER, #53. AMONG THE THINGS CONTAINED IN EXHIBIT #53 IS THIS BANDANA?

A YES, SIR.

Q DOES THIS APPEAR TO BE THE SAME TYPE OF THING THAT YOU SAW THESE MEN WEARING?

A YES, SIR.

Q NOW, MRS. STEELE, HAVE YOU HAD AN OCCASION IN COURT TO HEAR VERNARD MATHIS TALK?

A YES, SIR.

Q PRIOR TO YESTERDAY, HAD YOU EVER SEEN OR HEARD ELTON WIGGINS?
A NO, SIR -- WELL, NO, THAT'S NOT TRUE. I HAD SEEN HIM IN A BOND HEARING. I HAD NOT HEARD HIM TALK.
Q YOU HAD SEEN HIM ONE TIME?
A YES, SIR.
Q BUT NOT HEARD HIM TALK. HAVING HEARD BOTH OF THESE INDIVIDUALS TALK AND BASED UPON YOUR EXPERIENCE THAT NIGHT, WERE YOU ABLE TO FORM AN OPINION --
A YES, SIR.
Q -- AS TO WHO WAS THE HARSH OR MEAN-TALKING PERSON IN CHARGE AND WHO WAS THE SOFT-SPOKEN PERSON?
A MR. WIGGINS WAS THE SOFT-SPOKEN PERSON AND MR. MATHIS WAS THE MEAN ONE.
Q AND WAS IT THE MEAN ONE THAT WAS IN THE BACK OF THE TRUCK WITH YOU AND MELVIN?
A YES, SIR.

MR. JUSTICE: JUST ONE MOMENT, PLEASE.

Q THANK YOU, MRS. STEELE. PLEASE ANSWER ANY QUESTIONS COUNSEL FOR THE DEFENSE MAY ASK YOU.

THE COURT: CROSS-EXAMINATION, MR. CLARK?

MR. CLARK: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. CLARK:

Q MRS. STEELE, I KNOW YOU'VE BEEN THROUGH A LOT, AND I HAVE

TO ASK YOU A FEW QUESTIONS.
A I KNOW THAT.
Q I DON'T MEAN TO MAKE THE SITUATION WORSE.
A I KNOW.
Q I'M NOT HERE TO ATTEMPT TO CAUSE YOU ANY MORE PAIN. MRS. STEELE, YOU WILL ADMIT THAT ABOUT SIX DAYS OR SO AFTER THIS HAPPENED, YOU WERE SHOWN THIS LINEUP (INDICATING PHOTOGRAPH?
A YES, SIR.
Q AND YOU TOLD THE LANCASTER COUNTY SHERIFF'S OFFICE THAT MR. MATHIS WAS THE ONE THAT CAME TO YOUR DOOR. ISN'T THAT TRUE, MA'AM?
A THAT IS TRUE.
Q AND YOU BELIEVED THAT UP UNTIL YESTERDAY, DIDN'T YOU?
A I BELIEVED THAT IT WAS CONFUSING UP UNTIL YESTERDAY, YES, SIR. I COULDN'T PUT THE VOICE AT THE DOOR WITH THE VOICE THAT WAS IN MY FACE.
Q AND, MS. STEELE, YOU ALSO GAVE A STATEMENT. YOU SIGNED A WRITTEN STATEMENT AFTER ALL THIS HAPPENED, DIDN'T YOU?
A YES.
Q AND IN THAT STATEMENT YOU SAID THAT THE MAN WHO CAME TO THE DOOR WAS A BLACK MAN WITH A POINTED NOSE, SMOOTH SKIN AND A REAL SOFT VOICE?
A YES, SIR.
Q AND YOU THOUGHT IT WAS MR. MATHIS. YOU PICKED HIM OUT OF

THIS LINEUP, RIGHT?

A I THOUGHT THAT WAS THE MAN THAT I SAW, YES, SIR.

Q AND AT THAT TIME, SIX DAYS AFTER THIS HAPPENED, MRS. STEELE?

A YES, SIR, ON MY HUSBAND'S BIRTHDAY.

Q AND I'M VERY SORRY ABOUT THAT.

A THAT'S OKAY.

Q YOU WERE ASKED THE QUESTION WHETHER YOU SAW ANYONE ELSE THAT NIGHT. REMEMBER YOU WERE ASKED THAT QUESTION?

A YES, SIR.

Q AND YOU TOLD THE OFFICERS THAT THE OTHER PEOPLE YOU SAW HAD BANDANAS ON THEIR FACES?

A YES, SIR.

Q SO SIX DAYS AFTER THIS, YOU TOLD LAW ENFORCEMENT THAT THE ONLY PERSON THAT YOU SAW THAT NIGHT THAT YOU COULD GIVE A DESCRIPTION OF WAS THE MAN WHO CAME TO THE DOOR. IS THAT TRUE, MA'AM?

A YES, SIR, THAT'S TRUE.

Q AND YOU DIDN'T TELL THEM WHAT YOU SAID THIS MORNING, THAT YOU ROLLED OVER AND YOU LOOKED IN THIS MAN'S FACE? YOU DIDN'T TELL THEM THAT, DID YOU, MA'AM?

A IT'S NOT ON MY STATEMENT, NO. I DID CALL THEM AND ASK THEM TO DUST MY GLASSES FOR FINGERPRINTS BECAUSE ONE OF THE ASSAILANTS HAD TAKEN MY GLASSES OFF OF ME.

Q MA'AM, WAS IT THE MAN THAT CAME TO THE DOOR OR DO YOU KNOW

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WHO IT WAS?

A IT WAS MR. MATHIS.

Q AND THEN THEY ASKED YOU, "IS THERE ANYTHING ELSE YOU CAN THINK OF THAT WILL HELP US?", AND YOU TOLD THEM AT THAT TIME YOU TRIED TO REMEMBER, ONE OF THEM TALKED REAL BAD, BUT YOU JUST COULDN'T REMEMBER ANY MORE. ISN'T THAT TRUE, MS. STEELE?

A YES, THAT'S TRUE, BUT THAT'S NOT ALL I SAID DURING THAT WHOLE TIME.

Q YES, MA'AM, BUT ISN'T THAT ALL YOU SAID REGARDING IDENTIFYING THE PEOPLE THAT CAME TO YOUR HOUSE?

A YES, SIR.

Q AND YOU HEARD ELTON WIGGINS TESTIFY YESTERDAY, DIDN'T YOU, MA'AM?

A YES, I DID.

Q AND PRIOR TO HEARING ELTON WIGGINS TESTIFY YESTERDAY, YOU HAD NEVER MENTIONED THAT YOU TURNED OVER AND LOOKED IN MR. MATHIS' FACE, HAD YOU?

A YES, SIR, I HAD.

Q CAN YOU TELL ME WHEN YOU HAD DONE THAT, MA'AM?

A IT WAS LATER.

Q LATER? WHO DID YOU TELL THAT TO?

A I HAVE TOLD THAT TO MR. BLACKMON, IF I'M NOT MISTAKEN. EVEN THOUGH IT MIGHT NOT BE DOCUMENTED, I HAVE TOLD THAT TO MR. BARFIELD AND TO MR. JUSTICE.

Q AND PRIOR TO YESTERDAY, YOU WERE NEVER SHOWN A LINEUP WITH MR. WIGGINS, WERE YOU?
A NO, SIR, NOT THAT I REMEMBER.
Q AND, MRS. STEELE, YOU DON'T KNOW HOW "BA" LOOKS, DO YOU?
A NO, SIR. WHY WOULD I, SIR?
Q WELL, IF HE WAS INVOLVED IN THE CASE. THAT'S WHY I ASKED YOU THAT QUESTION.
A OH, OKAY. NO, I HAVE NO IDEA.
Q AND YOU DON'T KNOW HOW BILL LOOKS EITHER, DO YOU?
A NOT UNLESS HE WAS ONE OF THE OTHER MEN THAT CAME IN PAST ME, PAST THE PACKAGE THAT KNOCKED ME DOWN.
Q BUT THE MEN THAT CAME IN -- YOU SAID THEY HAD BANDANAS ON THEIR FACES, DIDN'T YOU?
A AT THAT TIME, YES.
Q NOW, YOU HEARD ELTON WIGGINS SAY THAT THE OTHER MEN THAT CAME IN KNOCKED YOU DOWN. YOU HEARD HIM SAY THAT YESTERDAY?
A I HEARD HIM SAY THAT.
Q BUT, MRS. STEELE, WHEN YOU GAVE YOUR STATEMENT, YOU SAID THAT THE MAN WHO CAME TO YOUR DOOR KNOCKED YOU DOWN, DIDN'T YOU?
A YES, SIR, I DID, AND I THINK THAT THEY WERE ALL THREE COMING IN AT THE SAME TIME. THE BOX WAS USED TO PUSH ME DOWN.
Q SO IS IT CORRECT THAT YOU'RE NOW CHANGING YOUR POSITION OR

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YOUR OPINION OR YOUR BELIEF THAT MR. MATHIS, OR A PERSON WHO LOOKED LIKE HIM, DIDN'T COME TO THE DOOR, BUT MR. WIGGINS DID?

A I POINTED OUT A MAN WITH SHINY SKIN -- I COULD SEE HIM REAL GOOD FROM HERE UP (INDICATING) -- THAT CAME TO THE DOOR BECAUSE OF THE BOX.

Q BUT AGAIN YOU --

A THAT'S THE ONE THAT I SAW UP CLOSE AND PERSONAL.

Q THE ONE THAT CAME TO THE DOOR?

A NO, THAT MAN (INDICATING ON PHOTOGRAPH).

Q WELL, CAN YOU TELL ME HOW YOU SAW HIM UP CLOSE AND PERSONAL?

A HE TOOK MY GLASSES OFF. WE WERE NOSE TO NOSE, SIR.

Q AND THEN HE TAPED YOU, TAPED YOUR EYES?

A (WITNESS NODDING HEAD).

Q AND ON JUNE 26, YOU SAID THAT THE MAN WHO PUSHED YOU DOWN WAS THE MAN THAT CAME TO THE DOOR AND THAT HE TOLD YOU TO TURN OVER AND CLOSE YOUR EYES, RIGHT?

A YES, SIR.

Q AND YOU DID THAT, DIDN'T YOU?

A UNTIL HE TOOK MY GLASSES OFF.

MR. CLARK: I BEG THE COURT'S INDULGENCE, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. CLARK: (CONFERRING WITH CLIENT).

Q THANK YOU, MRS. STEELE.

MR. CLARK: THAT'S ALL I HAVE.

MR. JUSTICE: JUST ONE OR TWO QUESTIONS, YOUR HONOR, ON REDIRECT.

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q THESE STATEMENTS THAT MR. CLARK WAS ASKING YOU ABOUT WERE MADE LESS THAN A WEEK AFTER THIS TRAUMA?

A YES, SIR.

Q AND EVEN LESS TIME THAN THAT AFTER MELVIN'S FUNERAL?

A YES, SIR.

Q WHAT WAS YOUR EMOTIONAL STATE DURING THAT PERIOD OF TIME?

A PRETTY BAD.

Q THANK YOU, MA'AM.

THE COURT: (TO WITNESS) YOU MAY STEP DOWN. THANK YOU, MA'AM. WATCH YOUR STEP, PLEASE. THANK YOU VERY MUCH.

(TO MR. JUSTICE) YOU MAY CALL YOUR NEXT WITNESS.

MR. JUSTICE: MR. BARFIELD HAS THE NEXT STATE'S WITNESS.

MR. BARFIELD: I CALL KENNETH WHITLER.

(WHEREUPON, KENNETH H. WHITLER, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

MR. BARFIELD: YOUR HONOR, GIVE ME JUST A MINUTE TO ORGANIZE SOME ITEMS BEFORE I START SO I DON'T HAVE

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TO STOP.

DIRECT EXAMINATION

BY MR. BARFIELD:

Q STATE YOUR NAME, PLEASE, SIR.

A KENNETH H. WHITLER.

Q MR. WHITLER, BY WHOM ARE YOU EMPLOYED?

A SOUTH CAROLINA LAW ENFORCEMENT DIVISION. IT'S ALSO KNOWN AS SLED.

Q HOW LONG HAVE YOU BEEN EMPLOYED BY SLED?

A SINCE 1997.

Q AND WHAT SECTION OF SLED DO YOU WORK IN?

A I WORK IN THE LABORATORY SECTION OF SLED. I AM IN THE FIREARMS TOOL MARKS SECTION. I AM A FIREARMS TOOL MARK EXAMINER.

Q AND HOW LONG HAVE YOU BEEN A FIREARMS TOOL MARK EXAMINER WITH SLED OR ANY OTHER AGENCY?

A I PREVIOUSLY WAS A FIREARMS TOOL MARK EXAMINER WITH THE F.B.I. LABORATORY, AND I RETIRED IN 1997 AND CAME TO WORK WITH THE SLED DEPARTMENT, DOING THE SAME JOB BASICALLY. I'VE BEEN A QUALIFIED EXAMINER SINCE 1991.

Q HOW LONG DID YOU WORK WITH THE F.B.I.?

A I RETIRED WITH 22 YEARS. I WAS IN THE LABORATORY FROM 1989 TO 1997.

Q HAVE YOU TESTIFIED IN THE COURTS OF THE STATE OF SOUTH CAROLINA, CIRCUIT COURT, SPECIFICALLY GENERAL SESSIONS, AND

BEEN QUALIFIED AS A FIREARMS IDENTIFIER?

A YES, I HAVE.

Q MANY TIMES?

A I'VE TESTIFIED OVER 130 TIMES AT VARIOUS STATE, LOCAL, AND FEDERAL COURTS AND SOME TERRITORIAL COURTS.

MR. BARFIELD: YOUR HONOR, AT THIS TIME I'D OFFER MR. WHITLER AS A FIREARMS IDENTIFICATION EXPERT.

THE COURT: (TO MR. CLARK) WOULD YOU LIKE TO CROSS-EXAMINE HIM?

MR. CLARK: NO, SIR, WE STIPULATE.

THE COURT: ALL RIGHT. THE COURT FINDS THE WITNESS TO BE AN EXPERT IN THE FIELD OF FIREARMS AND TOOL MARK ANALYSIS FOR IDENTIFICATION.

Q AGENT WHITLER, DID YOU GET INVOLVED IN THE EXAMINATION OF CERTAIN ITEMS SUBMITTED TO YOU EITHER BY OTHER AGENTS OF THE STATE LAW ENFORCEMENT DIVISION OR AGENTS OF THE LANCASTER COUNTY SHERIFF'S OFFICE CONCERNING A HOMICIDE INVOLVING A VICTIM NAMED MELVIN STEELE?

A YES, I DID.

Q I'M GOING TO HAND YOU SOME ITEMS WHICH HAVE BEEN INTRODUCED INTO EVIDENCE AND JUST ASK YOU IF YOU ARE FAMILIAR WITH THESE ITEMS. FIRST I'M HANDING YOU WHAT'S BEEN INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT #54. I ASK YOU TO EXAMINE THAT PACKAGE AND TELL US IF YOU'RE FAMILIAR WITH THAT ITEM.

A YES, I AM. STATE'S EXHIBIT #54 IS A FIRED BULLET THAT I

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EXAMINED AS ITEM 83 THAT WAS SUBMITTED BY, IN THIS CASE --

Q LET ME ASK YOU THIS. WE HAVE EXHIBIT NUMBERS IN THIS TRIAL. WHEN YOU GET AN ITEM FOR EXAMINATION AT THE STATE LAW ENFORCEMENT DIVISION IN YOUR LAB, DO YOU GIVE IT YOUR NUMBER?

A YES. WHEN EVIDENCE COMES IN, IT'S SEQUENTIALLY NUMBERED AS ITEM 1, 2, 3, 4, 5 AND SO ON, SO THAT WE CAN KEEP TRACK OF IT AND WHEN YOU'RE TRYING TO WRITE A REPORT YOU CAN KEEP NUMBERS TOGETHER.

Q ALL RIGHT.

A AND ALSO OUR SMALLER NUMBERS -- SOMETIMES SOME EVIDENCE NUMBERS ARE THE SAME AS THE ONES THE DEPARTMENT USES.

Q AND THE ITEM IN YOUR HAND, I BELIEVE YOU SAID YOU GAVE IT --

A ITEM 83. IF YOU'RE REFERRING TO THE REPORT, THIS WOULD BE ITEM 83 IN THE REPORT I ISSUED, AND IT'S EXHIBIT #54 FOR THIS COURT.

Q WHY DON'T YOU JUST KEEP THAT IN YOUR HAND FOR RIGHT NOW. I'M HANDING YOU STATE'S EXHIBIT #49. WILL YOU EXAMINE THE CONTENTS OF THAT ENVELOPE AND TELL US IF YOU'RE FAMILIAR WITH THOSE ITEMS?

A YES, SIR. ITEM #49 ARE FOUR NINE-MILLIMETER, UNFIRED CARTRIDGES THAT I EXAMINED AS ITEMS 57 THROUGH 60.

Q AND WHEN YOU GET AN ITEM, DO YOU GET SOME HISTORY WITH THE ITEM TO BE ABLE TO MAKE THE SAME REFERENCES THAT LOCAL LAW

ENFORCEMENT MIGHT MAKE TO IT? DO YOU KNOW WHERE THIS BULLET CAME FROM?

A IN SOME CASES I DO, SOME CASES I DON'T. FOR MY PURPOSES IT REALLY DOESN'T MAKE ANY DIFFERENCE.

Q YES, SIR.

A I AM JUST THERE TO SEE -- DETERMINE THE FACTS OF WHAT'S BEEN SUBMITTED, WHETHER BULLETS WERE FIRED BY THE SAME GUN OR SOMETHING.

Q AND IS THERE ANYTHING ON THE PACKAGING FOR THAT ITEM THAT TELLS YOU HOW LOCAL LAW ENFORCEMENT IDENTIFIED THAT AND WHERE IT CAME FROM?

A WELL, ON THE PACKAGING THEY CALLED IT NINE-MILLIMETER CARTRIDGE CASES, "P.M.C. 9-MM, 200 S".

Q STATE'S EXHIBIT #89, I HAND YOU THAT EXHIBIT, AND TELL US IF YOU'RE FAMILIAR WITH THAT.

A YES. STATE'S EXHIBIT #88 IS A PISTOL MAGAZINE, AND ALSO IN THE SAME PACKAGE THERE ARE, I THINK, NINE UNFIRED CARTRIDGES, NINE-MILLIMETER CARTRIDGES THAT I EXAMINED. ALL OF THESE SAY ITEM 192.

Q ALL RIGHT, SIR. NOW, ITEM 192, WHEN YOU RECEIVED IT, WERE THE CARTRIDGES IN THE MAGAZINE?

A YES, THEY WERE.

Q I'M GOING TO GO BACK NOW TO ITEM 83, AND AGAIN YOU'VE GOT THE EXHIBIT NUMBERS ON THE BACK. I THINK THAT WAS EXHIBIT #54, YOUR ITEM 83. IS THAT CORRECT?

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A OKAY.
Q DESCRIBE THAT FOR US AGAIN. TELL US WHAT THAT IS.
A ITEM 83 IS A FIRED COPPER-JACKETED BULLET THAT WAS FIRED FROM A CONVENTIONAL FIREARM WITH A SIX GROOVES RIGHT TWIST, AND ITS REMAINING PHYSICAL CHARACTERISTICS ARE MOST CONSISTENT WITH BULLETS THAT ARE LOADED INTO NINE-MILLIMETER LUGER CARTRIDGES.
Q ARE YOU ABLE TO TELL THE JURY DIFFERENT BRANDS OF GUNS THAT MIGHT WOULD HAVE FIRED THAT ITEM, STATE'S EXHIBIT #54?
A YES. BY MEASURING THE RIFLING CHARACTERISTICS ON THE BULLETS, WE CAN RUN A LIST OF POSSIBLE GUNS. WE DON'T CLAIM TO HAVE ALL THE GUNS IN THIS DATABASE, BUT THESE ARE THE ONES THAT HAVE SIMILAR RIFLING CHARACTERISTICS. I'VE PROVIDED A LIST TO THE SHERIFF'S DEPARTMENT. DO YOU WANT ME TO GO TO THE LIST?
Q I DON'T NEED THE LIST, BUT LET ME JUST ASK YOU THIS DIRECT QUESTION. IS A TAURUS FIREARM ONE OF THE BRANDS THAT COULD HAVE FIRED THAT BULLET?
A YES, SIR, IT IS.
Q NOW, WHAT BRAND OF FIREARM IS THE NINE-MILLIMETER PISTOL THAT YOU HAVE IN YOUR HAND, WHICH I BELIEVE IS STATE'S EXHIBIT #89?
A STATE'S EXHIBIT #89 IS A TAURUS PISTOL, NINE-MILLIMETER LUGER CALIBER.
Q THANK YOU, SIR. YOUR ITEM NUMBERS 57 TO 60, THE UNFIRED,

FOUR UNFIRED CARTRIDGES, WOULD YOU PUT THAT IN YOUR HAND? AND I HATE TO ASK YOU THIS QUESTION, BUT GIVE ME THAT EXHIBIT NUMBER, PLEASE.

A THE FOUR UNFIRED CARTRIDGES?

Q YES.

A STATE'S EXHIBIT #49, WHICH WERE MY ITEMS 57 THROUGH 60.

Q YES, SIR. ARE THEY ALSO CONSISTENT WITH NINE-MILLIMETER CARTRIDGES THAT COULD BE FIRED FROM A TAURUS NINE-MILLIMETER PISTOL?

A WELL, THEY'RE NINE-MILLIMETER LUGER CARTRIDGES. THEY COULD BE FIRED IN ANY FIREARM CHAMBER FOR NINE-MILLIMETER LUGER CARTRIDGES.

Q NOW, WHEN YOU RECEIVED ITEMS STATE'S EXHIBITS #88 AND #89, THE NINE-MILLIMETER TAURUS PISTOL AND THE CLIP WITH THE NINE UNFIRED CARTRIDGES IN IT, DESCRIBE FOR THE JURY -- AND IF YOU WANT TO SET ALL THAT STUFF DOWN AND PICK THOSE TWO UP, IF YOU WANT TO, THAT WILL BE FINE -- THE PISTOL AND THE MAGAZINE WITH THE UNFIRED CARTRIDGES, DESCRIBE FOR THE JURY THE GENERAL CONDITION OF THOSE ITEMS WHEN YOU RECEIVED THEM FROM THE LANCASTER COUNTY SHERIFF'S OFFICE.

A WELL, WHEN I RECEIVED THE PISTOL, IT WAS DIRTY AND RUSTED. I HAD TO TAKE IT APART, CLEAN IT AND REMOVE RUST IN ORDER TO FIRE THE GUN PROPERLY. THE MAGAZINE, I DON'T RECALL HOW DIRTY IT WAS, BUT IT WAS ALSO RUSTY, BUT I REMOVED THE CARTRIDGES FROM THE MAGAZINE MYSELF.

Q NOW, TO DO WHAT YOU DO WITH SLED WITH A FIREARM, DO YOU ACTUALLY TEST FIRE THE FIREARM?
A YES, WE DO.
Q AND DID YOU GET THIS FIREARM WITH THIS MAGAZINE IN WORKING ORDER PRIOR TO DOING YOUR TESTING ON IT?
A THAT'S CORRECT.
Q AND DID YOU, IN FACT, TEST FIRE THAT FIREARM USING THAT MAGAZINE?
A YES, I DID.
Q DID YOU MAKE ANY -- WELL, WAS THE MAGAZINE A CORRECT MAGAZINE TO BE FIRED IN THE TAURUS NINE-MILLIMETER PISTOL?
A YES, SIR. IT'S A MAGAZINE THAT'S DESIGNED -- THAT WILL FIT IN TAURUS AND OTHER BRANDS OF PISTOLS.
Q AND WHEN YOU CLEANED UP AND REASSEMBLED THE MAGAZINE INTO THAT PISTOL, DID EVERYTHING FIRE PROPERLY?
A YES, IT DID.
Q DID YOU MAKE ANY EFFORT TO DETERMINE WHETHER YOUR ITEM 83, STATE'S EXHIBIT, I BELIEVE, #54, WAS IN FACT FIRED FROM STATE'S EXHIBIT #89, THE NINE-MILLIMETER TAURUS PISTOL?
A I COMPARED THIS BULLET, EXHIBIT #54, WITH TEST FIRED BULLETS FROM THE PISTOL, AND WHILE STATE'S EXHIBIT #54 BULLET HAS SIMILAR RIFLING CHARACTERISTICS AND COULD HAVE BEEN FIRED BY THAT PISTOL, DUE TO A LACK OF SUFFICIENT CORRESPONDING MARKS AND VALUE, I WAS UNABLE TO POSITIVELY SAY THIS BULLET WAS FIRED FROM THIS GUN AND NO OTHER. SO

MY RESULTS WERE INCONCLUSIVE IN THAT THIS BULLET COULD HAVE BEEN FIRED BY THIS PISTOL OR IT COULD HAVE BEEN FIRED BY ANY OTHER PISTOL WITH SIMILAR RIFLING CHARACTERISTICS.

Q ALL RIGHT, SIR. DID YOU EXAMINE THE NINE UNFIRED NINE-MILLIMETER CARTRIDGES WHICH ARE PART OF STATE'S EXHIBIT #88, I BELIEVE, TO COMPARE THEM WITH STATE'S EXHIBIT #54, THE SINGLE FIRED BULLET?

A YES, I DID.

Q AND DID YOU MAKE ANY FINDINGS CONCERNING YOUR COMPARISON OF THOSE ITEMS?

A I DETERMINED THE PHYSICAL CHARACTERISTICS OF THE BULLET PORTION OF THOSE CARTRIDGES WERE CONSISTENT WITH THE BULLET THAT THE ITEM -- EXCUSE ME, STATE'S EXHIBIT #54.

Q SO THE FIRED BULLET IS CONSISTENT WITH THE --

A IT IS THE SAME STYLE OF BULLET. THEY HAVE THE SAME BASE AREA WITH THE SAME -- PHYSICALLY LOOKING AT THEM, THEY LOOK THE SAME.

Q WOULD YOU LOOK AGAIN AT THE TAURUS NINE-MILLIMETER PISTOL? I JUST WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT IT. THERE APPEARS TO BE SOME DEVICE AFFIXED TO THE BOTTOM PORTION OF THE FRAME OF THAT PISTOL UNDER THE BARREL, IN FRONT OF THE TRIGGER HOUSING.

A YES, SIR.

Q DESCRIBE FOR THE JURY WHAT THAT IS, PLEASE.

A THAT'S SUPPOSED TO BE A LASER SIGHT.

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Q AND TELL THE JURY WHAT A LASER SIGHT IS.
A WELL, A LASER SIGHT WOULD JUST THROW OUT A BEAM OF RED LIGHT, VERY CONCENTRATED. IT'S SUPPOSED TO BE CALIBRATED WITH THE PISTOL, SO WHEREVER THE LIGHT POINTS IS WHEREVER THE BULLET SHOULD STRIKE.
Q THANK YOU, SIR. ANSWER ANYTHING MR. CLARK ASKS.

THE COURT: ANY CROSS?

MR. CLARK: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. WHITLER, I'VE JUST GOT A FEW QUESTIONS FOR YOU. NOW, JUST TO SIMPLIFY THINGS, YOU WERE ONLY GIVEN ONE BULLET THAT HAD BEEN FIRED ALREADY. IS THAT CORRECT, SIR?
A THAT'S CORRECT.
Q AND THE WHOLE PURPOSE OF YOUR ANALYSIS WAS TO TRY TO DETERMINE IF THAT BULLET WAS FIRED BY THAT TAURUS NINE-MILLIMETER HAND GUN, ISN'T THAT TRUE, SIR?
A THAT'S CORRECT.
Q AND IS IT CORRECT THAT WHAT YOU DID IS YOU TOOK SOME CARTRIDGES THAT YOU WERE PROVIDED AND YOU FIRED THE HANDGUN INTO A WATER BARREL OR SOMETHING THAT YOU ALL USE, AND THEN YOU WENT TO THAT WATER BARREL AND YOU PULLED THAT FIRED BULLET OUT?
A THAT'S CORRECT.
Q AND THEN YOU TOOK THE ONE, THE BULLET THAT YOU FIRED, AND

YOU TOOK THE FIRED BULLET THAT YOU WERE PROVIDED, AND YOU PUT THEM SIDE BY SIDE AND YOU -- DID YOU PUT THEM UNDER A MICROSCOPE?

A THAT'S CORRECT.

Q AND WHAT YOU WERE LOOKING FOR IS THE SAME SCRAPING PATTERNS -- WHAT DO YOU CALL THEM?

A STRIATED.

Q -- STRIATED PATTERNS ON THE BULLETS?

A RIGHT.

Q AND IN YOUR PROFESSIONAL OPINION, IN YOUR EXPERT OPINION, YOU WERE UNABLE TO SAY THAT THE TAURUS HANDGUN THAT YOU WERE PROVIDED THAT YOU JUST DESCRIBED FIRED THE BULLET THAT YOU WERE GIVEN?

A THAT'S CORRECT.

Q AND YOU DID A REPORT, AND I THINK YOU SAID THAT THE BULLET THAT YOU WERE GIVEN -- AND I BELIEVE THIS IS ONE OF THE BULLETS THAT WAS RECOVERED FROM ONE OF THE VANS -- COULD HAVE BEEN FIRED BY THAT TAURUS NINE-MILLIMETER, RIGHT?

A THAT'S CORRECT.

Q BUT YOU ALSO SAID IT COULD HAVE BEEN FIRED BY A BERETTA, IS THAT CORRECT, SIR?

A YES.

Q AN S.W.D., INC. HANDGUN?

A THAT'S CORRECT.

Q A WALTHER?

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A YES, SIR.
Q A TARIK?
A YES.
Q A DANSWAY?
A YES.
Q A BENELLI?
A YES.
Q INTERTEC?
A THAT'S CORRECT, I GAVE A LIST OF THEM.
Q COBRAY?
A YES.
Q AND STERLING ARMS?
A YES.
Q SO YOU GAVE ABOUT NINE OTHER TYPES OF WEAPONS THAT COULD HAVE FIRED OR WAS CONSISTENT WITH FIRING THAT BULLET, IS THAT CORRECT?
A THEY HAVE THE SAME RIFLING CHARACTERISTICS, YES.
Q AND YOU ALSO COMPARED THAT FIRED BULLET TO A .38 CALIBER WEAPON THAT YOU WERE PROVIDED?
A THAT'S CORRECT.
Q AND I BELIEVE I'M CORRECT WHEN I SAY THAT YOU CONCLUDED THAT THAT BULLET WAS NOT FIRED BY THAT .38 CALIBER WEAPON?
A THAT'S CORRECT.
Q SO IN SUM, YOU'RE NOT HERE TO SAY THAT NINE-MILLIMETER FIRED THE BULLET THAT YOU WERE PROVIDED?

A I CAN ONLY SAY IT COULD HAVE BEEN FIRED BY THAT GUN OR SOME OTHER GUN WITH SIMILAR RIFLING CHARACTERISTICS.

Q THANK YOU, SIR.

MR. CLARK: THAT'S ALL I HAVE.

THE COURT: THANK YOU.

(TO WITNESS) YOU MAY STAND DOWN.

MR. BARFIELD: I ASK THAT HE BE EXCUSED.

THE COURT: ANY OBJECTION?

MR. CLARK: NO, SIR.

THE COURT: (TO WITNESS) THANK YOU FOR COMING. YOU'RE EXCUSED.

(TO MR. JUSTICE) NEXT WITNESS?

MR. JUSTICE: YOUR HONOR, AT THIS TIME THE STATE INTENDS, CERTAINLY HOPES, TO CONCLUDE ITS PRESENTATION WITH ONE LAST RECALL OF MR. BLACKMON TO WRAP UP SOME LOOSE ENDS AND A FEW NEW AREAS, MOSTLY DETAILS. IN ORDER TO DO THAT, TO ENSURE THAT WE CAN CONCLUDE, THE STATE WOULD NEED ABOUT 10 OR 15 MINUTES TO CONFER WITH MR. BLACKMON AND BE PREPARED TO GO FORWARD AND HOPEFULLY FINISH OUR CASE AT THAT POINT.

THE COURT: ALL RIGHT.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE STEP INTO YOUR JURY ROOM. TAKE THIS OPPORTUNITY TO TAKE YOUR MORNING RECESS. I'LL SENT FOR YOU IN JUST A FEW MOMENTS. DO NOT DISCUSS THE CASE, THANK YOU.

LASER SCRIPT FORM A

(JURY EXITS COURTROOM AT 11:10 A.M.).

THE COURT: SOLICITOR, THE STATE IS GOING TO HAVE ONE MORE WITNESS?

MR. JUSTICE: YES, THAT'S MY PLAN.

THE COURT: ALL RIGHT. WE'LL BE IN RECESS JUST A FEW MOMENTS, THANK YOU.

(BRIEF RECESS)

THE COURT: IS THE STATE READY?

MR. JUSTICE: THE STATE IS READY.

THE COURT: IS THE DEFENDANT READY, MR. CLARK?

MR. CLARK: YES, SIR, YOUR HONOR.

THE COURT: (TO BAILIFF) PLEASE BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 11:35 A.M.).

THE COURT: LET THE RECORD REFLECT ALL JURORS ARE PRESENT.

SOLICITOR, YOU MAY CALL YOUR NEXT WITNESS.

MR. JUSTICE: RECALL MR. BLACKMON.

THE COURT: (TO WITNESS) PLEASE COME FORWARD. YOU'RE ALREADY SWORN.

(WHEREUPON, LEE BLACKMON, HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q MR. BLACKMON, I'M SURE YOU WERE PRESENT IN THE COURTROOM TUESDAY, I BELIEVE, WHEN MR. MULLIS TESTIFIED ABOUT FINDING

THE U-HAUL BLOCKING THE WAY ACROSS THE LITTLE DIRT ROAD.

A THAT'S CORRECT.

Q AND I BELIEVE MR. MULLIS, SR. TESTIFIED WHEN HE CAME DOWN TO THE U-HAUL, THEY MOVED IT AND THEY FOUND A BIG GYM BAG OR DUFFLE BAG TYPE THING ON THE GROUND AND HE PUT IT IN HIS PICKUP TRUCK?

A YES, SIR, THAT'S CORRECT.

Q AND WAS THAT TURNED OVER TO THE SHERIFF'S DEPARTMENT?

A YES, SIR. THE BAG WAS ULTIMATELY PLACED IN THE BACK PORTION OF THE U-HAUL TRUCK AND WE RECOVERED IT FROM THERE.

Q I SHOW YOU THIS ITEM, AND TELL ME WHETHER OR NOT THIS IS THAT BAG.

A THIS IS THE BAG THAT WAS RECOVERED.

Q AND WAS IT EMPTY AT THE TIME?

A YES, SIR, IT WAS EMPTY.

MR. JUSTICE: YOUR HONOR, I'D MOVE THAT THIS BE INTRODUCED AS THE NEXT STATE'S EXHIBIT.

MR. CLARK: NO OBJECTION.

THE COURT: STATE'S EXHIBIT #90 ADMITTED INTO EVIDENCE WITHOUT OBJECTION.

(STATE'S EXHIBIT #90, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, GYM BAG).

Q YOU ALSO TESTIFIED YOURSELF ON YESTERDAY THAT YOU RECEIVED A BOX FILLED WITH PAPERS. I BELIEVE IT'S STATE'S EXHIBIT #62. THIS IS #62; I'M NOT SURE IT'S THE RIGHT ONE --

EXHIBIT #61, WHICH IS ONE OF THESE BOXES THAT WAS FILLED WITH PAPERS, AND YOU IDENTIFIED A NUMBER OF THINGS THAT CAME OUT OF THAT BOX.

A YES, SIR.

Q DO YOU RECALL?

A YES, SIR.

Q INCLUDING A COUPLE OF TRAFFIC TICKETS?

A THAT'S CORRECT.

Q IN ADDITION TO THOSE, YOU ALREADY IDENTIFIED TWO MORE TRAFFIC TICKETS, AND TELL ME WHETHER OR NOT THESE ALSO WERE RETRIEVED BY YOU FROM THE MATERIALS SENT TO YOU BY THE F.B.I. AGENTS.

A YES, SIR, THESE TRAFFIC TICKETS WERE FOUND IN THE ORANGE AND BROWN BOX.

Q THAT'S THIS ONE, #62?

A THAT'S CORRECT.

MR. JUSTICE: I'D ASK THAT THEY BE INTRODUCED AS THE NEXT TWO STATE'S EXHIBITS -- EXCUSE ME, THREE.

THE COURT: ANY OBJECTION?

MR. CLARK: NO, SIR, YOUR HONOR.

(STATE'S EXHIBIT #91, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TRAFFIC TICKET).

(STATE'S EXHIBIT #92, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TRAFFIC TICKET).

(STATE'S EXHIBIT #93, MARKED FOR IDENTIFICATION

AND ENTERED INTO EVIDENCE, TRAFFIC TICKET).

Q MR. BLACKMON, IN REGARDS TO EXHIBITS #91, #92 AND #93, LET'S TAKE THEM ONE AT A TIME. DOES #91 TELL US IN WHOSE NAME THAT TICKET WAS WRITTEN?

A STATE'S EXHIBIT #91 WAS ISSUED TO VERNARD J. MATHIS.

Q ON WHAT DATE?

A NOVEMBER 22, 1999.

Q IN WHAT COUNTY OR WHAT LOCATION?

A THIS WAS ISSUED IN CHESTER COUNTY.

Q DOES IT INDICATE WHAT VEHICLE HE WAS DRIVING?

A THE VEHICLE -- HIS MAKE OF VEHICLE -- THERE'S A PLACE FOR THIS ON THE TICKET -- IS A CADI. IT'S GOT "C-A-D-I", WHICH IS A COMMON ABBREVIATION FOR CADILLAC.

Q CADILLAC?

A THE YEAR MAKE IS A '95.

Q WOULD THAT BE CONSISTENT WITH THE CADILLAC THAT WE WERE DISCUSSING ON YESTERDAY?

A YES, SIR, IT WOULD BE.

Q DOES IT SHOW THE OWNER OF THE VEHICLE?

A IT SHOWS THE OWNER OF THE VEHICLE AS MICHAEL R. HAIRSTON, ADDRESS FORT WASHINGTON.

Q I SHOW YOU EXHIBIT #92, WHICH IS ALSO A UNIFORM TRAFFIC TICKET. PLEASE TELL US THE SAME INFORMATION. WHOSE NAME WAS IT IN?

A STATE'S EXHIBIT #92 IS A WARNING TICKET ISSUED BY THE SOUTH

CAROLINA DEPARTMENT OF PUBLIC SAFETY. THE NAME IT'S ISSUED TO IS VERNARD J. MATHIS, ON FEBRUARY 17 OF 2000.

Q AND IN WHAT COUNTY?

A IT WAS ISSUED IN LANCASTER COUNTY.

Q AND IT WAS A WHAT KIND OF VEHICLE?

A IT WAS A '95, AGAIN THE ABBREVIATIONS ARE "C-A-D-I", WHICH IS A COMMON ABBREVIATION FOR CADILLAC.

Q DOES IT MENTION THE NAME OF THE OWNER?

A IT DOES NOT ON THIS PARTICULAR WARNING.

Q OKAY. I SHOW YOU TICKET #93.

A STATE'S EXHIBIT #93 IS A UNIFORM TRAFFIC TICKET ISSUED TO VERNARD J. MATHIS.

Q ON WHAT DATE?

A FEBRUARY 17 OF 2000.

Q AND WHAT SORT OF VEHICLE -- WHAT COUNTY?

A LANCASTER COUNTY.

Q IN LANCASTER COUNTY. WHAT VEHICLE?

A IT IS AGAIN -- THE YEAR MAKE IS '95, BUT AGAIN THE MAKE VEHICLE APPEARS TO BE CADILLAC.

Q AND IS THE OWNER OF THE VEHICLE REFLECTED?

A THE OWNER OF THE VEHICLE IS LISTED AS M. R. HAIRSTON, AGAIN THE ADDRESS OF FORT WASHINGTON, MARYLAND.

Q THANK YOU. MR. BLACKMON, DID YOU GO TO WASHINGTON AT THE TIME OF THE ARREST OF MR. WIGGINS?

A YES, SIR, I DID.

Q WERE YOU ACTUALLY PRESENT WHEN HE WAS ARRESTED OR YOU WENT UP IMMEDIATELY AFTER HE WAS ARRESTED?

A WE WERE ACTUALLY PRESENT WHEN HE WAS PLACED UNDER ARREST.

Q AND DID YOU COME BACK TO LANCASTER THAT SAME DAY OR THE FOLLOWING DAY?

A TO MY RECOLLECTION, IT WAS THE FOLLOWING DAY WE ARRIVED BACK IN LANCASTER.

Q AND DID YOU QUESTION MR. WIGGINS ON THE WAY BACK?

A THERE WAS NO QUESTIONING ON THE WAY BACK. WE QUESTIONED HIM ONCE WE ARRIVED BACK AT THE LANCASTER COUNTY SHERIFF'S OFFICE.

Q WHILE IN WASHINGTON, DID HE EVER SPEAK WITH YOU AND TELL YOU SOME STORIES?

A IMMEDIATELY AFTER HIS ARREST, THERE WAS A TIME WE SAT DOWN AND SPOKE.

Q AND THEN AGAIN WHEN YOU ARRIVED IN LANCASTER?

A THAT'S CORRECT.

Q DURING THE COURSE OF HEARING THESE VARIOUS STORIES, DID HE MENTION SOMEONE NAMED "BA"?

A YES, HE DID.

Q AND WERE YOU ABLE TO DETERMINE WHO "BA" WAS?

A WE LOCATED A PERSON, BASED ON HIS INFORMATION, NAMED "BA-BA", BENJAMIN TUNGEE DAVIES.

Q "BA-BA", BENJAMIN TUNGEE DAVIES?

A THAT'S CORRECT.

Q AND WHAT LINE OF WORK OR BUSINESS DID YOU IDENTIFY WITH MR. "BA-BA" DAVIES?

A HE WAS AFFILIATED WITH SOLO SPORTS, WHICH IS A SMALL SPORTING GOODS STORE IN WASHINGTON, D.C.

Q GETTING BACK TO THE AUTOMOBILE, DID YOU ALSO, IN YOUR INVENTORY OF THE ITEMS SENT TO YOU BY THE F.B.I., RECOVER THE TWO-PIECE DOCUMENT THAT I'M NOW HANDING YOU, BEING A MONEY ORDER TRANSFER?

A YES, SIR, WE DID. IT WAS FOUND IN THE ORANGE AND BROWN EXHIBIT BOX --

Q EXCUSE ME, #62?

A EXHIBIT #62.

MR. JUSTICE: YOUR HONOR, I'D MOVE THIS BE INTRODUCED AS THE NEXT STATE'S EXHIBIT.

THE COURT: WELL, #62 IS ALREADY IN EVIDENCE WITHOUT OBJECTION. OH, I SEE, THE MONEY ORDER.

(TO MR. CLARK) ANY OBJECTION?

MR. CLARK: NO OBJECTION, YOUR HONOR.

THE COURT: MARK THAT #94 WITHOUT OBJECTION.

(STATE'S EXHIBIT #94, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, MONEY ORDER).

Q MR. BLACKMON, WOULD YOU LOOK AT STATE'S EXHIBIT #94, BEING THE WESTERN UNION MONEY TRANSFER, AND TELL ME WHO THE SENDER AND WHO THE RECEIVER OF THAT TRANSFER WAS?

A ON STATE'S EXHIBIT #94, THE SENDER IS JIMMY JONES. THE

RECEIVER IS A BA-BA DAVIES.

Q AND WHAT WAS THE DATE OF THAT?

A APRIL 27 OF 2000.

Q SO JIMMY JONES TO BA-BA DAVIES?

A THAT IS CORRECT.

Q AND IS THAT A RECEIPT THE SENDER WOULD HAVE OR THE RECEIVER WOULD HAVE?

A IT APPEARS TO BE A RECEIPT THAT THE SENDER WOULD HAVE.

Q AND IT WAS FOUND ON MR. MATHIS -- IN MR. MATHIS' CAR?

A THAT'S CORRECT.

Q ALSO FROM YOUR INVENTORY OF THE ITEMS AFFORDED YOU PURSUANT TO THE F.B.I. SEARCH, DID YOU RECOVER THIS PARTICULAR ITEM?

A YES, WE DID.

Q AND WHAT IS THAT?

A THIS APPEARS TO BE A PLASTIC SHOPPING BAG CONTAINING THE WORDS "SOLO SPORTS" WITH AN ADDRESS AND TELEPHONE NUMBER.

MR. JUSTICE: I WOULD MOVE THIS BE INTRODUCED AS THE NEXT STATE'S EXHIBIT.

MR. CLARK: NO OBJECTION, YOUR HONOR.

THE COURT: ADMITTED AS #95 WITHOUT OBJECTION.

(STATE'S EXHIBIT #95, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, SOLO SPORTS PLASTIC BAG).

Q AND YOU SAY IT'S A SOLO SPORTS BAG?

A THAT'S CORRECT.

Q AND I BELIEVE YOU JUST TOLD US THAT THIS "BA" DAVIES WAS

ASSOCIATED WITH A BUSINESS CALLED SOLO SPORTS?

A THAT IS CORRECT.

Q AND THIS WAS FOUND IN MR. MATHIS' CAR?

A THAT IS CORRECT.

Q MR. BLACKMON, ALSO EARLIER THIS WEEK THERE WAS TESTIMONY BY THE EMPLOYEES OF B & E AUTO WHO YOU INTERVIEWED BACK IN JUNE, THE TWENTY-FIRST, I BELIEVE, IN WHICH YOU WERE GIVEN COPIES OF SALES SLIPS?

A THAT'S CORRECT.

Q OR SALES CONTRACTS, BILLS OF SALE?

A YES, SIR.

Q AND THERE WAS A NAME AND A SOUTH CAROLINA DRIVER'S LICENSE NUMBER?

A THAT'S CORRECT.

Q IS THAT CORRECT?

A THAT'S CORRECT.

Q DO YOU RECALL WHAT THAT NAME WAS?

A MARK PATTERSON.

Q MARK PATTERSON?

A (WITNESS NODDING HEAD).

Q DID YOU RUN THROUGH THE FACILITIES AVAILABLE TO YOU IN LAW ENFORCEMENT THE NAME MARK PATTERSON AND THAT DRIVER'S LICENSE NUMBER TO ATTEMPT TO LOCATE A PERSON WITH THAT NAME AND THAT NUMBER?

A YES, SIR, WE DID. THE DRIVER'S LICENSE CAME BACK NOT ON

FILE.

Q NOT ON FILE?

A THAT'S CORRECT.

Q SO IF THERE WAS A DRIVER'S LICENSE THAT SAID "MARK PATTERSON" WITH THAT NUMBER, IT WAS A FAKE LICENSE?

MR. CLARK: OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

Q IT WAS NOT ON FILE?

A NOT ON FILE.

Q ALSO FROM YOUR INVENTORY OF THE BOXES SENT TO YOU BY THE F.B.I., DID YOU RECOVER THIS WHITE PIECE OF PAPER THAT APPEARS TO BE A LANCASTER MAILING CENTER COMMUNICATIONS PAGER CONTRACT? DID YOU RECOVER THAT FROM THE BOX?

A YES, SIR, WE DID.

Q AND I'M GOING TO SHOW YOU THIS BROCHURE COMPLETE WITH SERIAL NUMBERS FOR A PAGER. DID YOU RECOVER THAT ALSO FROM THE BOX?

A YES, SIR, WE DID.

MR. JUSTICE: YOUR HONOR, WE MOVE THAT THESE BE INTRODUCED AS THE NEXT STATE'S EXHIBITS.

THE COURT: ANY OBJECTION?

MR. CLARK: NO OBJECTION.

(STATE'S EXHIBIT #96, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, MANUAL).

(STATE'S EXHIBIT #97, MARKED FOR IDENTIFICATION

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AND ENTERED INTO EVIDENCE, PAGER CONTRACT).

Q AND, MR. BLACKMON, THE RECEIPT, THIS EXHIBIT #97, WHAT IS THE NAME OF THE PERSON TO WHOM THE RECEIPT IS WRITTEN?

A TIMMY JACKSON.

Q TIMMY JACKSON. AND WHAT IS THE RECEIPT FOR?

A THE RECEIPT IS -- IT'S ACTUALLY A PAGER CONTRACT.

Q AND WHAT'S THE DATE?

A THE DATE IS APRIL 28, 2000.

Q SO IT'S A RECEIPT FOR A PERSON WHO LEASED A PAGER ON THAT DATE?

A YES, IT APPEARS TO BE.

Q AND EXHIBIT #96, WHAT IDENTIFYING INFORMATION IS ON THAT BROCHURE?

A STATE'S EXHIBIT #96 APPEARS TO BE A MANUAL RELATED TO A PAGER AND THE SERIAL NUMBER HANDWRITTEN ON THE MANUAL IS IDENTICAL TO THE SERIAL NUMBER ON THE PAGER CONTRACT FROM LANCASTER MAILING CENTER, STATE'S EXHIBIT #97.

Q WERE YOU ABLE TO CORRELATE THAT PAGER NUMBER AND THAT CONTRACT TO THE PAGER THAT WAS ALSO INCLUDED IN THE ITEMS SENT TO YOU BY THE F.B.I.?

A YES, SIR, WE WERE.

Q AND WOULD THAT BE THE PAGER THAT IS SOMEWHERE LOCATED ON THIS TABLE?

A YES, SIR, IT IS.

Q SO THE SAME PAGER THAT'S LISTED ON THAT RECEIPT IN THE NAME

OF TIMMY JACKSON IS THE PAGER THAT WAS RECOVERED, I BELIEVE, OVER THE VISOR, IF I'M NOT MISTAKEN, IN MR. VERNARD MATHIS' CAR?

A THAT'S CORRECT.

Q IT'S BEEN PREVIOUSLY TESTIFIED TO BY MS. WHITMAN THAT SHE LEASED A CELL PHONE IN HER NAME FOR THE USE OF MR. MATHIS?

A THAT'S CORRECT.

Q AND THAT SHE TURNED OVER TO YOU ALL THE RECORDS FOR THAT CELL PHONE?

A YES, SIR, SHE DID.

Q WAS THAT CELL PHONE ITSELF EVER RECOVERED?

A NO, SIR, IT WAS NOT.

Q DID YOU ANALYZE THE NUMBERS GIVEN IN THE RECORDS OF THE USE OF THAT CELL PHONE ACTUALLY FROM JANUARY TO JUNE?

A YES, WE DID.

Q IN THOSE DID YOU FIND A CALL FROM THAT CELL PHONE TO THE LANCASTER SHERIFF'S DEPARTMENT, 911?

A YES, SIR, I DID.

Q AND AS A LIEUTENANT WITH -- IN LANCASTER WHO RUNS THE 911 SERVICE?

A THE LANCASTER COUNTY SHERIFF'S OFFICE IS RESPONSIBLE FOR THAT.

Q AND IT'S ACTUALLY KEPT RIGHT THERE IN THE SAME BUILDING WHERE YOU WORK, RIGHT AROUND THE CORNER?

A YES, SIR. OUR COMMUNICATIONS IS WITHIN THE SAME BUILDING.

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Q SO YOU HAVE CONSTANT ACCESS TO THE RECORDS AND FILES OF 911?

A THAT'S CORRECT.

Q AND DID YOU GO BACK AND CORRELATE A TRANSCRIPT OF A CALL TO THE NUMBER FOUND IN MS. WHITMAN'S RECORDS?

A YES, SIR, I DID.

Q I SHOW YOU A THREE-PAGE DOCUMENT. (HANDING DOCUMENT TO WITNESS). CAN YOU RECOGNIZE THAT AS BEING A TRANSCRIBED COPY OF THE TRANSCRIPT OF THAT CALL FROM MR. MATHIS' CELL PHONE TO LANCASTER 911?

A YES, SIR, THIS IS THE TRANSCRIPT THAT I MADE.

MR. JUSTICE: I'D MOVE THIS BE INTRODUCED AS #98.

MR. CLARK: YOUR HONOR, I HAVE AN OBJECTION TO THAT DOCUMENT.

THE COURT: ALL RIGHT.

MR. CLARK: FIRST OF ALL, YOUR HONOR, MR. BLACKMON IS NOT THE RECORDS CUSTODIAN AND THE TAPE WOULD SPEAK FOR ITSELF. THAT'S MR. BLACKMON'S INTERPRETATION OF WHAT'S ON THAT TAPE. AND FOR THOSE TWO REASONS, I WOULD OBJECT TO THAT DOCUMENT.

THE COURT: SOLICITOR?

MR. JUSTICE: YOUR HONOR, MR. BLACKMON HAS TESTIFIED HE'S A LIEUTENANT WITH THE SHERIFF'S DEPARTMENT. THE SHERIFF'S DEPARTMENT HAS CONTROL OF THE 911 OPERATION, AND HE HAS TOTAL ACCESS TO THEIR

RECORDS. AS FAR AS THE TYPING, THAT'S SIMPLY FOR CLARITY PURPOSE.

THE COURT: WELL, HE HASN'T TESTIFIED HE'S THE CUSTODIAN OF THE RECORDS, AND HE DIDN'T RECEIVE THE CALL. I'M GOING TO SUSTAIN THE OBJECTION.

MR. JUSTICE: OKAY, WE'LL GET BACK TO THAT ISSUE.

Q UPON FINDING THE TIMMY JACKSON CELL PHONE, OR, EXCUSE ME, PAGER AND CONTRACT, DID YOU OBTAIN BY WAY OF SUBPOENA TELEPHONE RECORDS IN THE NAME OF TIMMY JACKSON, CELL PHONE RECORDS?

A YES, SIR, I DID.

Q AND DID YOU RECEIVE, WITH PERMISSION, THE CELL PHONE RECORDS OF MR. ELTON WIGGINS?

A YES, SIR, I DID.

Q AND YOU ALREADY HAD MS. WHITMAN'S CELL PHONE NUMBER OR THE ONE BEING USED BY MR. MATHIS?

A YES, SIR, I DID.

Q DURING THE COURSE OF YOUR INVESTIGATION, CORRELATING THOSE THREE SETS OF CELL PHONE RECORDS, DID YOU PUT TOGETHER AN EXHIBIT FOR COURT SHOWING THE ACTIVITY WITHIN THOSE CELL PHONES AND/OR BEEPERS DURING THE CRITICAL PORTION OF THE NIGHT OF JUNE 20, 2000?

A YES, SIR, I DID.

MR. CLARK: OBJECTION, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE STEP INTO THE JURY ROOM. DO NOT DISCUSS THE CASE. I'LL SEND FOR YOU AS SOON AS I'M ABLE.

(JURY EXITS COURTROOM AT 11:55 A.M.).

THE COURT: ALL RIGHT, YOUR OBJECTION, MR. CLARK, SIR?

MR. CLARK: YES, YOUR HONOR. THE ONLY RECORDS THAT HAVE BEEN INTRODUCED ARE THE RECORDS OF MS. WHITMAN, AND I BELIEVE THE STATE IS NOW TRYING TO INTRODUCE TESTIMONY REGARDING THE RECORDS FROM AN ACCOUNT OWNED BY TIMMY JACKSON, AS WELL AS MR. WIGGINS.

MR. BLACKMON IS NOT THE PROPER WITNESS TO DO THAT, YOUR HONOR. HE'S NOT THE RECORDS CUSTODIAN FOR THE PHONE COMPANY. MR. WIGGINS HASN'T IDENTIFIED THESE AS BEING HIS RECORDS AND INTRODUCED THEM, SO I WOLD OBJECT TO ANY TESTIMONY REGARDING THE PHONE RECORDS THAT DO NOT COME FROM THE RECORDS THAT HAVE BEEN PROPERLY INTRODUCED BY MS. WHITMAN ON TUESDAY, I BELIEVE IT WAS.

THE COURT: SOLICITOR?

MR. JUSTICE: YOUR HONOR, THE JACKSON RECORDS, AS WELL AS THE WIGGINS RECORDS, WERE ACTUALLY OBTAINED BY SUBPOENA THAT MR. BLACKMON USED TO GET THE INFORMATION FROM BELL MOBILITY, OR BELLSOUTH.

THE COURT: WELL, THAT DOESN'T MAKE THEM ADMISSIBLE, DOES IT, JUST BECAUSE THEY'RE OBTAINED BY SUBPOENA?

MR. JUSTICE: I CONTEND IT DOES.

THE COURT: WELL, THEN, CITE ME A CASE OR A RULE OR SOMETHING.

MR. JUSTICE: THEY WERE OBTAINED IN THE NORMAL COURSE OF INVESTIGATION, SUBPOENAED DOCUMENTS FROM THE RECORDS OR FILES OF THESE PARTICULAR COMPANIES.

THE COURT: BUT YOU HAVE TO PUT SOMEONE IN TO AUTHENTICATE THEM, DON'T YOU?

MR. JUSTICE: I DON'T BELIEVE WE HAVE THAT PERSON AVAILABLE HERE THIS MORNING, YOUR HONOR.

THE COURT: I'M GOING TO SUSTAIN THE OBJECTION, THANK YOU.

MR. JUSTICE: YOUR HONOR, THAT'S ALL I HAVE OF MR. BLACKMON. I DO HAVE THE 911 PERSONNEL ON THEIR WAY TO VERIFY THE TAPE THAT WE HAVE PRESENT.

THE COURT: LET ME SEE YOU AT THE SIDE BAR, GENTLEMEN, ABOUT EXHIBITS.

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF COURT REPORTER).

THE COURT: LET THE RECORD REFLECT AT THE SIDE BAR THE COURT CALLED ATTENTION TO MR. CLARK AND MR. JUSTICE #61 WAS NOT IN EVIDENCE, IT WAS MARKED FOR

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IDENTIFICATION, BUT MR. CLARK HAD INDICATED HE WAS GOING TO HAVE AN OBJECTION. NOW AT THE SIDE BAR THE STATE CONTENDS THAT THEY'RE GOING TO WITHDRAW #61.

MR. CLARK: THANK YOU, YOUR HONOR.

(STATE'S EXHIBIT #61, PREVIOUSLY MARKED FOR IDENTIFICATION, WITHDRAWN, ENVELOPE WITH MISCELLANEOUS PAPERS).

THE COURT: (TO MR. CLARK) ARE YOU READY TO CROSS-EXAMINE MR. BLACKMON?

MR. JUSTICE: WELL, YOUR HONOR, I HAVEN'T COMPLETELY CONCEDED THE POINT OF TIMMY JACKSON.

THE COURT: I UNDERSTAND. I'M JUST RULING ON WHAT'S BEFORE ME AT THIS TIME.

MR. JUSTICE: DURING THIS TIME, WE WILL SEE IF THERE'S ANY CHANCE WE CAN GET A CUSTODIAN OF THOSE RECORDS. I DON'T KNOW THAT WE CAN, YOUR HONOR, ON NOTICE. I THOUGHT THE SUBPOENAS WERE SUFFICIENT, BUT WE'LL BE TRYING TO DO THAT WHILE THE REST OF THE TESTIMONY IS GOING FORWARD.

THE COURT: DO YOU INTEND TO CROSS THE WITNESS, MR. CLARK? THERE'S NO USE TO CALL HIM IN IF YOU'RE NOT. ARE YOU GOING TO CROSS THIS WITNESS?

MR. CLARK: YES, SIR.

THE COURT: BRING THE JURY IN, MR. BAILIFF.

MR. JUSTICE: BEFORE THE JURY COMES IN --

THE COURT: ALL RIGHT.

MR. JUSTICE: -- YOUR HONOR, IN ALL CANDOR, I DOUBT ON SHORT NOTICE I CAN GET ANYBODY FROM BELL SOUTH HERE TO VERIFY.

THE COURT: YES.

MR. JUSTICE: HOWEVER, I DO HAVE MR. WIGGINS AVAILABLE IN CHESTER WHO CAN COME AND TESTIFY THAT THESE ARE HIS CELL PHONE RECORDS UP UNTIL JUNE 20, AND THAT WOULD VERIFY TWO OF THE THREE, AND THROUGH TRIANGULATION THAT WOULD TAKE CARE OF THE JACKSON SITUATION. SO WE'RE SENDING FOR MR. WIGGINS FOR THAT PURPOSE.

THE COURT: YOU CAN SEND FOR HIM. THAT'S FINE.

MR. JUSTICE: WHAT I'M ASKING FOR IS A RULING FROM THE COURT. IF MR. WIGGINS SAYS, "THESE ARE MY CELL PHONE RECORDS --

THE COURT: I'M GOING TO ALLOW THOSE IN, BUT YOU HAD SOME OTHER PERSON'S RECORDS YOU WERE WANTING TO USE WHICH I'M NOT GOING TO ALLOW YOU TO USE UNLESS YOU AUTHENTICATE THOSE.

MR. JUSTICE: WHAT HAVE IS CALLS FROM EITHER THE WIGGINS PHONE OR THE MATHIS PHONE, MANY OF WHICH WENT TO THE JACKSON PHONE.

THE COURT: I'LL ALLOW YOU TO TESTIFY AS TO WHAT CALLS WERE MADE FROM THOSE PERSONS' PHONES THAT ARE

PRESENT THAT YOU CAN AUTHENTICATE, BUT, I MEAN, YOU'RE GOING TO HAVE TO PROFFER THEM BEFORE I CAN RULE ENTIRELY. I'M GOING TO GO AHEAD AND LET HIM CROSS, AND THEN UNLESS HE'S GOING TO CONCEDE --

MR. CLARK: NO, SIR, I'D LIKE TO CROSS-EXAMINE MR. WIGGINS ON THOSE POINTS IF THAT'S WHAT HE'S GOING TO TESTIFY TO.

MR. JUSTICE: I'D LIKE TO ASK PERMISSION FOR MR. BARFIELD TO SPEAK BRIEFLY WITH MR. BLACKMON SO HE CAN GO ABOUT HIS --

THE COURT: ANY OBJECTION?

MR. CLARK: I'LL LEAVE THAT TO THE COURT'S DISCRETION, YOUR HONOR.

THE COURT: ALL RIGHT, I'LL ALLOW IT. HE'S THE LEAD INVESTIGATOR IN THE CASE.

MR. CLARK: YES, SIR.

(BRIEF RECESS)

THE COURT: ARE YOU READY TO CROSS?

MR. CLARK: YES, SIR.

THE COURT: (TO WITNESS) COME ON BACK UP.

(TO BAILIFF) BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 12:05 P.M.).

THE COURT: LET THE RECORD REFLECT THE JURORS ARE ALL PRESENT.

MR. CLARK, YOU MAY CROSS-EXAMINE THE WITNESS.

MR. CLARK: THANK YOU, YOUR HONOR.

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. BLACKMON, YOU'VE TESTIFIED ABOUT TICKETS THAT WERE ADMITTED, TRAFFIC TICKETS THAT WERE ISSUED TO MR. MATHIS, I THINK STATE'S EXHIBITS #93, #92 AND #91. ISN'T IT A FACT THAT NONE OF THESE TICKETS INVOLVE EITHER OF THOSE VANS, THE TOYOTA CRESSIDA OR THE U-HAUL VEHICLE?

A THAT'S CORRECT. THOSE WERE CONCERNING THE CADILLAC AND OTHER VEHICLES.

Q AND THE PHONE THAT MS. WHITMAN, D'ANDREA WHITMAN -- SHE'S FROM NORTH CAROLINA. SHE TESTIFIED ABOUT SETTING UP THE CELL PHONE ACCOUNT FOR MR. MATHIS. ISN'T IT TRUE THAT THAT TELEPHONE WAS NOT IN HIS POSSESSION WHEN HE WAS ARRESTED IN WASHINGTON, D.C.?

A IT WAS NOT ON HIS PERSON AND IT WAS NOT LOCATED IN HIS VEHICLE.

Q SO YOU AGREE IT WASN'T IN HIS IMMEDIATE POSSESSION AT THAT POINT?

A I CAN ONLY SAY THAT IT WASN'T ON HIS PERSON AND IT WASN'T IN HIS VEHICLE.

Q AND AS A RESULT OF THE SEARCH OF MS. TALFORD'S RESIDENCE, IT WASN'T FOUND THERE EITHER, WAS IT?

A NO, SIR, IT WAS NOT.

Q NOW, THIS STATE'S EXHIBIT #95, WHICH IS THIS SOLO SPORTS

BAG, THE WESTERN UNION RECEIPT -- DID YOU EVER SUBMIT THESE DOCUMENTS OR THESE ITEMS FOR FINGERPRINTING?

A NO, SIR, THOSE ITEMS WERE NOT SUBMITTED TO THE STATE LAW ENFORCEMENT DIVISION.

Q AND ON THIS WESTERN UNION RECEIPT, THE "JIMMY JONES" SIGNATURE ON THE LINE DOWN HERE --

A YES, SIR.

Q YOU NEVER SUBMITTED THAT SIGNATURE LINE OR THESE OTHER WRITINGS ON HERE FOR HANDWRITING ANALYSIS WITH MR. MATHIS' HANDWRITING, DID YOU?

A NO, SIR, TO MY RECOLLECTION THOSE ITEMS WERE NOT SUBMITTED TO SLED.

Q AND WHAT ABOUT THE BILLS OF SALE THAT WERE TESTIFIED ABOUT AND ADMITTED FROM B & E AUTO SALES? THOSE WEREN'T SUBMITTED FOR FINGERPRINTS EITHER, WERE THEY?

A WE DID NOT RECEIVE THE ORIGINAL BILLS OF SALE FROM B & E AUTO SALES. WE RECEIVED COPIES OF THE BILLS OF SALE.

Q THEY DIDN'T HAVE THE ORIGINAL AVAILABLE?

A THEY DID HAVE THE ORIGINAL AVAILABLE. THEY WERE THEIR RECORDS FOR THE PURCHASE OF THE VEHICLES.

Q BUT YOU COULD HAVE GOTTEN A SUBPOENA AND GOTTEN THOSE, COULDN'T YOU?

A WE POSSIBLY COULD HAVE GOTTEN A SUBPOENA AND GOTTEN THEM.

Q BECAUSE YOU ISSUED OTHER SUBPOENAS IN THIS CASE?

A THAT'S CORRECT.

Q NOW, YOU DID AN INVENTORY OR YOU WERE PROVIDED AN INVENTORY OF THE ITEMS RECOVERED FROM THE VEHICLE THAT MR. MATHIS WAS DRIVING, THE '95 CADILLAC, RIGHT?

A THAT'S CORRECT.

Q AND ISN'T IT CORRECT, MR. BLACKMON, THAT THERE WERE SEVERAL OTHER PAIRS OF SHOES IN THAT VEHICLE?

A THAT'S CORRECT, THERE WERE SEVERAL SHOES.

Q HOW MANY PAIRS, IF YOU REMEMBER?

A I DON'T RECALL THE EXACT NUMBER.

Q IT WAS A BAG OF SHOES, THOUGH, WASN'T IT?

A IT WAS A BAG OF SHOES THAT WAS IN A BOX OF SHOES THAT WE HAVE.

Q AND THESE ARE THE ONLY TWO THAT WERE ADMITTED IN THIS CASE?

A THESE ARE THE ONLY TWO THAT WERE ADMITTED IN THIS CASE, YES, SIR.

Q NOW, YOU DID A REPORT OF YOUR CONVERSATION WITH MS. STEELE ON JUNE 26, DIDN'T YOU?

A (WITNESS PAUSING).

Q DIDN'T YOU WRITE A REPORT?

A YES, SIR.

Q AND IN THAT REPORT DIDN'T YOU SAY THAT SHE TOLD YOU THE PERSON WHO CAME TO THE DOOR WAS THE ONE WHO KNOCKED HER DOWN?

A I'LL HAVE TO SEE MY REPORT AND REFER TO IT.

Q (COUNSEL HANDING DOCUMENT TO WITNESS). I UNDERLINED IT FOR

YOU.

A YES, SIR, THAT'S CORRECT.

Q AND DIDN'T SHE ALSO SAY THAT SHE COULD NOT IDENTIFY THE OTHER TWO INDIVIDUALS?

A THAT'S CORRECT.

Q NOW, YOU HEARD MS. STEELE TESTIFY THAT SHE CALLED YOU AFTER SHE HAD SAID THAT, AND SHE SAID SOMETHING ABOUT IDENTIFYING SOMEONE ELSE. YOU HEARD HER TESTIFY TO THAT, DIDN'T YOU?

A YES, SIR.

Q DO YOU HAVE A RECOLLECTION OF THAT, SIR?

A OF WHAT PARTICULAR INSTANCE ARE YOU TALKING ABOUT?

Q WELL, YOU TALKED TO HER ON THE TWENTY-SIXTH AND SHE TOLD YOU, "THE MAN WHO CAME TO THE DOOR KNOCKED ME DOWN", AND SHE TOLD YOU, "THE OTHER TWO INDIVIDUALS I CAN'T IDENTIFY", RIGHT?

A YES, SIR, SHE TOLD ME THAT IN THE EARLY STAGES OF THE INVESTIGATION.

Q NOW, MY QUESTION IS DID SHE AT SOME POINT LATER TELL YOU, "I CAN IDENTIFY THE OTHER TWO PEOPLE"?

A WE HAD A CONVERSATION, A SUBSEQUENT CONVERSATION TO THAT, IN WHICH SHE EXPLAINED TO ME THE SITUATION SHE DESCRIBED TO YOU IN COURT, OF HER GLASSES BEING TAKEN OFF AND SEEING SOMEONE IN HER FACE AT THAT TIME.

Q NOW, YOU DID A THOROUGH JOB DOCUMENTING ALMOST EVERYTHING IN THIS CASE, DIDN'T YOU?

A I LIKE TO HOPE SO.
Q DID YOU DOCUMENT THAT CONVERSATION?
A AS FAR AS DOING A REPORT, I DON'T RECALL DOING A REPORT ON THAT CONVERSATION.
Q AND IT'S CORRECT THAT YOU DID A REPORT JUST ABOUT ON EVERYBODY THAT YOU TALKED TO IN THIS CASE, DIDN'T YOU?
A THERE WERE PEOPLE THAT WE SPOKE WITH THAT THERE MAY NOT BE A REPORT ON. THERE ARE CONVERSATIONS WE HAD THAT MAY NOT BE DOCUMENTED.
Q BUT HOW LONG HAVE YOU BEEN AN INVESTIGATOR?
A I'VE BEEN AN INVESTIGATOR SINCE 1997.
Q AND EVERYTHING THAT YOU FELT WAS IMPORTANT YOU CERTAINLY DID A REPORT ON?
A THERE WERE REPORTS MADE, YES, SIR. THERE WERE THINGS THAT MAY HAVE BEEN IMPORTANT THAT MAY NOT HAVE BEEN WRITTEN DOWN ON PAPER.
Q BUT YOU ADMIT THAT WAS NOT?
A THAT WAS NOT RECORDED OR REPORTED.
Q DO YOU KNOW WHEN THAT CONVERSATION TOOK PLACE?
A I DON'T KNOW THE EXACT DATE OF THAT.
Q DID YOU CALL HER OR DID SHE CALL YOU?
A MOST OF THE CONVERSATIONS I HAD WITH MS. STEELE AFTER A CERTAIN POINT WERE HER CALLING ME.
Q THANK YOU, MR. BLACKMON.
THE COURT: THANK YOU.

MR. JUSTICE: YOUR HONOR, IF IT PLEASE THE COURT, I MAY BE ABLE TO GET WHAT I WANT THROUGH WHAT YOU'VE ALREADY RULED IS ADMISSIBLE JUST BY ASKING MR. BLACKMON IN REGARDS TO PHONE CALLS TO OR FROM WHAT WE'VE CALLED THE WIGGINS PHONE OR THE WHITMAN PHONE, WHICH IS THE SAME PHONE.

MR. CLARK: I DON'T THINK THE WIGGINS PHONE AND THE WHITMAN PHONE IS THE SAME PHONE, YOUR HONOR.

MR. JUSTICE: YES, SIR, YOUR HONOR. THE TESTIMONY IS THAT MS. -- EXCUSE ME, NOT WIGGINS, MR. MATHIS, RATHER, FOR MR. MATHIS' USE, AND THAT IS IN THE RECORD.

MR. CLARK: AND ANY CALLS TO AND FROM MS. WHITMAN'S PHONE IS IN EVIDENCE.

THE COURT: YES, SIR.

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q MR. BLACKMON, EITHER USING THIS -- OF COURSE, WE'RE NOT GOING TO PUT THIS INTO EVIDENCE -- OR IF YOU HAVE A SMALLER NOTE, I WOULD LIKE FOR YOU TO RECITE TO US THE PHONE CALLS MADE ON JUNE 20 THAT INVOLVE BERNARD MATHIS' PHONE WHICH IS THE ONE LEASED BY MS. WHITMAN. DO YOU WANT TO USE THIS OR DO YOU HAVE A PIECE OF PAPER? JUST TELL ME --

THE COURT: WAIT A MINUTE. GENTLEMEN, LET ME SEE YOU ALL UP HERE JUST A MOMENT.

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF JURY AND COURT REPORTER).

THE COURT: (TO MR. JUSTICE) ALL RIGHT, YOU MAY CONTINUE.

Q MR. BLACKMON, THIS IS FOR YOUR USE ONLY. IF YOU WOULD, WHAT IS THE NUMBER OF THE VERNARD MATHIS PHONE, WHICH IS THE WHITMAN PHONE?

A THE NUMBER OF THE PHONE, FOR THE VERNARD MATHIS CELL PHONE, IS [redacted].

Q AND IF YOU WILL, FROM THAT CHART, READ TIME, DURATION AND PHONE NUMBER OF ANY CALL, INCOMING OUR OUTGOING, THAT INVOLVED VERNARD MATHIS' PHONE.

A JUNE 20, TIME 8:45, THE LENGTH OF CALL IS SEVEN SECONDS. IT APPEARS THIS IS FROM [redacted], VERNARD MATHIS' CELL PHONE, TO PHONE NUMBER [redacted], WHICH IS ELTON WIGGINS'.

MR. CLARK: OBJECTION, OBJECTION, YOUR HONOR.

THE COURT: SUSTAINED.

Q DON'T IDENTIFY ANY NUMBER OTHER THAN THE MATHIS --

THE COURT: EXCUSE ME JUST A MOMENT.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE DISREGARD THE LAST RESPONSE FROM THE WITNESS. LADIES AND GENTLEMEN, PLEASE STEP INTO YOUR JURY ROOM.

(JURY EXITS COURTROOM AT 12:16 P.M.).

THE COURT: ALL RIGHT, I BELIEVE WE NEED TO

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PROFFER THIS, SOLICITOR, BASED ON OUR CONVERSATION AT THE SIDE BAR. THE DOCUMENT HE'S USING TO REFRESH HIS MEMORY, MR. CLARK HAS CONCEDED HE CAN USE THAT SINCE THE WITNESS PREPARED THAT, BUT THIS IS NOT IN EVIDENCE AND I'VE RULED CERTAIN RECORDS OF MR. WIGGINS AND MR. JONES ARE NOT ADMISSIBLE, AND I THINK THE WITNESS IS GETTING CONFUSED, SO I NEED FOR YOU TO PROFFER WHAT YOU WANT THE JURY TO HEAR FROM THIS WITNESS.

MR. JUSTICE: OKAY, YOUR HONOR.

THE COURT: MAKE SURE NOTHING GOES IN THAT'S NOT IN EVIDENCE.

Q ON THE NUMBERS OTHER THAN MR. MATHIS' NUMBER, AND IF YOU WILL GIVE THE NUMBER ONLY WHICH APPEARS ON THE BILL, NOT ANY IDENTIFYING INFORMATION OR WHAT YOU FOUND OUT WHOSE THAT PHONE WAS -- DO YOU UNDERSTAND?

A YES, SIR. THE DATE WAS JUNE 20; 8:45 WAS THE TIME; THE LENGTH OF CALL WAS SEVEN SECONDS FROM [redacted]; FROM VERNARD MATHIS' CELL PHONE TO TELEPHONE NUMBER [redacted]

Q RIGHT, THAT'S WHAT I WANT, NOT ANY IDENTIFYING INFORMATION AS TO THE OTHER PHONE INVOLVED. JUST LIKE YOU JUST DID, THE NUMBER BUT NOT "THE MATHIS PHONE", "THE JACKSON PHONE" OR "THE WIGGINS PHONE", JUST THE NUMBER CALLED TO OR FROM --

THE COURT: GENTLEMEN, LET'S TAKE A SHORT RECESS

AND WE'LL CONTINUE IN ABOUT TWO MINUTES. THANK YOU.

(BRIEF RECESS)

THE COURT: BRING THE JURY IN, MR. BAILIFF.

(JURY ENTERS COURTROOM AT 12:25 P.M.).

THE COURT: (TO MR. JUSTICE) YOU MAY CONTINUE.

Q MR. BLACKMON, WHAT I'M ASKING YOU TO GIVE IS, ON THE NIGHT OF THE TWENTIETH, ANY PHONE CALLS THAT INVOLVE THE MATHIS PHONE, AND GIVE US THE NUMBER CALLED BUT NOT ANY IDENTIFYING INFORMATION YOU LEARNED OTHERWISE AS TO WHO THOSE NUMBERS BELONGED TO.

A OKAY. ON JUNE 20, 8:45, LENGTH OF CALL, SEVEN SECONDS, FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511.

Q 202 WAS THE AREA CODE?

A YES, SIR.

Q OKAY, GO AHEAD.

A ON JUNE 20, 8:50 P.M., LENGTH OF CALL APPEARS TO BE FIVE SECONDS, FROM TELEPHONE NUMBER 285-9918 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE.

Q THAT WOULD BE AN INCOMING CALL TO MR. MATHIS' PHONE?

A YES, SIR.

Q OKAY.

A JUNE 20, 9:32 P.M., 43 SECONDS, LENGTH OF CALL, FROM [redacted] VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 287-0595. JUNE 20, 9:42 P.M., LENGTH OF CALL, 30 SECONDS, FROM

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287-0595 TO [redacted], VERNARD MATHIS' CELL PHONE. JUNE 20, 9:54 P.M., THERE IS NO LENGTH OF CALL NOTED ON THE REPORT, [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE 287-0595.

AT 9:55 P.M., JUNE 20, LENGTH OF CALL, ONE MINUTE AND ONE SECOND, FROM PHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. JUNE 20, 9:57 P.M., LENGTH OF CALL IS 32 SECONDS, FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 287-0595. JUNE 20, 9:58 P.M., 20 SECOND PHONE CALL FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511.

JUNE 20, 9:59 P.M., LENGTH OF CALL IS 58 SECONDS, FROM TELEPHONE NUMBER 287-0595, TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. JUNE 20, 10:01 P.M., 51 SECOND PHONE CONVERSATION FROM TELEPHONE NUMBER 287-0595, MADE TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. AT 10:02 P.M., JUNE 20, 1 MINUTE, 19 SECOND TELEPHONE CALL MADE TO [redacted], VERNARD MATHIS' CELL PHONE, MADE TO TELEPHONE NUMBER 202-215-6511.

AT 10:03 P.M., LENGTH OF CALL IS ONE MINUTE, 38 SECONDS, FROM TELEPHONE NUMBER 287-0595 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 10:05 P.M., TWO MINUTE AND FIVE SECONDS, LENGTH OF CALL, MADE FROM TELEPHONE 287-0595 TO TELEPHONE NUMBER [redacted], VERNARD

MATHIS' CELL PHONE. JUNE 20, 10:09 P.M., 45 SECONDS, LENGTH OF CALL, FROM TELEPHONE NUMBER 287-0595, MADE TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE.

AT 10:10 P.M. ONE MINUTE, 21 SECOND CONVERSATION FROM TELEPHONE NUMBER [redacted] VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 10:13 P.M., ONE MINUTE AND TWO SECOND CONVERSATION FROM 287-0595 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 10:14 P.M., LENGTH OF CALL, 14 SECONDS, FROM 287-0595 TO [redacted], VERNARD MATHIS' CELL PHONE.

AT 10:15 P.M., ONE MINUTE, 19 SECOND CONVERSATION FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 10:16 P.M., LENGTH OF CALL IS ONE MINUTE, 56 SECONDS, FROM CELL PHONE NUMBER 287-0595 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 10:18 P.M., TWO MINUTES AND 26 SECONDS, LENGTH OF CALL, FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511.

A 10:23 P.M., SIX MINUTES AND 18 SECONDS, LENGTH OF CALL, FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 287-0595. 10:30 P.M., LENGTH OF CALL, 16 SECONDS, FROM TELEPHONE NUMBER 287-0595 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 10:31 P.M., LENGTH OF CALL, 29 SECONDS, FROM TELEPHONE NUMBER 287-0595 MADE TO TELEPHONE NUMBER [redacted], VERNARD

MATHIS' CELL PHONE.

AT 10:33 P.M., THREE MINUTES AND 14 SECONDS, LENGTH OF CALL, FROM CELL PHONE 287-0595, MADE TO [redacted], VERNARD MATHIS' CELL TELEPHONE. 10:36 P.M., 30 SECONDS, LENGTH OF CALL, FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 10:44 P.M., 52 SECOND CONVERSATION FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, MADE TO TELEPHONE NUMBER 202-215-6511.

AT 10:49 P.M., FIVE MINUTE AND 49 SECOND CONVERSATION FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 11:06 P.M., ONE MINUTE AND 37 SECOND CONVERSATION FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 11:11 P.M., JUNE 20, LENGTH OF CALL IS ONE MINUTE, 48 SECONDS, FROM 287-0780, VERNARD MATHIS' CELL PHONE, TO 202-215-6511.

AT 11:14 P.M., LENGTH OF CALL IS 40 SECONDS, FROM [redacted] VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 202-215-6511. 11:16 P.M., LENGTH OF CALL IS 22 SECONDS, FROM TELEPHONE NUMBER 287-0780, VERNARD MATHIS' CELL PHONE, TO TELEPHONE 202-215-6511. 11:35 P.M., ONE MINUTE TELEPHONE CALL FROM TELEPHONE NUMBER 804-1138 TO TELEPHONE NUMBER 287-0780, VERNARD MATHIS' CELL PHONE. 11:41 P.M., 20 SECOND TELEPHONE CALL FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 872-6623.

AT 11:44, 23 SECONDS, LENGTH OF CALL, TO 287 --

PARDON ME, FROM [redacted], VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 872-6623. 11:47 P.M., ONE MINUTE AND 17 SECONDS, LENGTH OF CALL, FROM TELEPHONE NUMBER 804-1138 TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 11:48, TWO MINUTE, EIGHT SECOND, LENGTH OF CALL, FROM [redacted] VERNARD MATHIS' CELL PHONE, TO TELEPHONE NUMBER 872-6623.

At 12:09 A.M., JUNE 21, LENGTH OF CALL IS FIVE MINUTES AND 34 SECONDS, FROM TELEPHONE NUMBER 285-5415 MADE TO TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE. 12:14 A.M., JUNE 21, SEVEN SECOND LENGTH OF CALL, FROM TELEPHONE NUMBER [redacted], VERNARD MATHIS' CELL PHONE, MADE TO TELEPHONE NUMBER 202-575-1151.

Q THANK YOU, MR. BLACKMON. JUST ONE OR TWO OTHER QUESTIONS. WHEN YOU LEASE A CELL PHONE, THE NUMBER AND AREA CODE ASSIGNED TO THAT PHONE, IS IT THE LOCAL NUMBER WHERE YOU LEASED IT?

MR. CLARK: OBJECTION, YOUR HONOR. I DON'T KNOW IF HE'S QUALIFIED TO ANSWER THAT.

THE COURT: SUSTAINED.

(TO MR. JUSTICE) YOU'RE GOING TO HAVE TO LAY SOME GROUND RULES.

MR. JUSTICE: I HAVE NO FURTHER QUESTIONS. WAIT JUST ONE MOMENT. (CONFERRING WITH CO-COUNSEL).

Q JUST ONE OTHER THING. YOU HAD MENTIONED EARLIER THAT A

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CALL CAME IN TO 911 IN LANCASTER?

A THAT'S CORRECT.

Q AND DID THAT TRACE BACK TO MR. MATHIS' PHONE?

A YES, SIR, IT DID.

Q WOULD YOU LOOK AT THE RECORDS ALREADY IN EVIDENCE AND TELL ME WHETHER THAT'S REFLECTED THERE?

A YES, SIR, ON JUNE 5 AT 10:21 P.M., THE TELEPHONE NUMBER THAT WAS CALLED WAS 803-283-3888, AND THE LENGTH OF CALL APPEARS TO BE APPROXIMATELY FOUR MINUTES, AND I HAVE PERSONAL KNOWLEDGE THAT THE 283-3888 IS THE LANCASTER COUNTY SHERIFF'S OFFICE NUMBER.

Q THANK YOU. ANSWER ANY QUESTIONS MR. CLARK MAY HAVE ON THIS POINT.

THE COURT: CROSS-EXAMINE?

CROSS-EXAMINATION

BY MR. CLARK:

Q MR. BLACKMON, THE CALL THAT WAS MADE ON JUNE 5, THAT WAS TWO WEEKS BEFORE THIS HAPPENED, CORRECT?

A JUNE 5 WOULD HAVE BEEN 15 DAYS BEFORE THE STEELES' --

Q SO A LITTLE MORE THAN TWO WEEKS, THEN?

A FOURTEEN DAYS IS TWO WEEKS, THEN 15 DAYS.

Q NOW, STATE'S EXHIBIT #24 IS MS. WHITMAN'S TELEPHONE RECORDS, CORRECT? I'LL LET YOU TAKE A LOOK AT THEM.

A THAT'S CORRECT.

Q AND WHAT YOU ARE ACTUALLY READING FROM IS SOMETHING YOU PUT

TOGETHER AS A RESULT OF READING THE RECORDS THAT HAVE BEEN ADMITTED, RIGHT?

A THAT'S CORRECT.

Q NOW, THIS WAS ACTUALLY A MOBILE PHONE, RIGHT?

A THAT'S CORRECT.

Q AND THAT MEANS THAT A PERSON COULD BE ANYWHERE WHEN THESE CALLS ARE MADE OR RECEIVED?

A ANYWHERE THAT THEY CAN RECEIVE SERVICE.

Q RIGHT. AND OF THE CALLS THAT YOU JUST READ OFF FROM YOUR LIST THERE, ISN'T IT TRUE THAT 16 OF THOSE CALLS WERE ACTUALLY MADE TO MR. MATHIS?

A (WITNESS REVIEWING DOCUMENT). IT APPEARS TO BE 39 CALLS AND APPROXIMATELY 16 CALLS MADE TO HIM.

Q AND SOME OF THOSE CALLS WERE RECEIVED BY HIM DURING THE TIME FRAME WHEN ALL OF THIS WAS SUPPOSED TO BE GOING ON?

A THAT'S CORRECT.

Q AND OF THE 39 CALLS THAT YOU MENTIONED, DON'T THOSE CALLS INVOLVE EIGHT DIFFERENT TELEPHONE NUMBERS? I KNOW IT MIGHT TAKE YOU A MINUTE TO LOOK AT THEM.

A IF YOU COUNTED THEM, I BELIEVE YOU.

Q SO THESE CALLS THAT YOU READ INVOLVED EIGHT DIFFERENT TELEPHONES?

A YES, SIR.

Q ALL RIGHT. THANK YOU, MR. BLACKMON.

THE COURT: (TO WITNESS) THANK YOU. YOU MAY STEP

DOWN.

(TO MR. JUSTICE) ARE YOU FINISHED WITH THE WITNESS?

MR. JUSTICE: JUST ONE FOLLOW-UP QUESTION ON REDIRECT.

THE COURT: ALL RIGHT.

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q ARE THERE ANY CALLS PROMINENT, BY THAT I MEAN WHERE THE SAME NUMBER WAS INVOLVED, OTHER THAN MR. MATHIS' NUMBER, SAY, MORE THAN THREE TIMES?

A YES, SIR.

Q AND WHICH NUMBERS WERE THEY?

A 872-6623.

Q AND ANY OTHER?

A REPEAT THE QUESTION.

Q WERE THERE ANY OTHER CALLS WHERE THE SAME NUMBER WAS INVOLVED MORE THAN THREE TIMES? YOU GAVE ME ONE. IS THERE ANOTHER NUMBER THAT WAS INVOLVED MORE THAN THREE TIMES?

A YES, SIR.

Q AND WHAT NUMBER WAS THAT?

A 202-215-6511.

Q "202" BEING AN AREA CODE?

A THAT'S CORRECT.

Q OF YOUR OWN PERSONAL KNOWLEDGE, ARE YOU FAMILIAR WITH THAT

AREA CODE?
A YES, SIR, I AM.
Q AND WHERE IS IT?
A WASHINGTON, D.C.
Q THANK YOU.

THE COURT: (TO WITNESS) YOU MAY STAND DOWN. THANK YOU.

MR. BARFIELD: I CALL SANDY CAUTHEN.

THE COURT: (TO WITNESS) PLEASE COME FORWARD.

(WHEREUPON, SANDRA CAUTHEN, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

DIRECT EXAMINATION

BY MR. BARFIELD:

Q STATE YOUR NAME, PLEASE, MA'AM.
A SANDRA CAUTHEN.
Q MS. CAUTHEN, BY WHOM ARE YOU EMPLOYED?
A THE LANCASTER COUNTY SHERIFF'S OFFICE.
Q HOW LONG HAVE YOU BEEN EMPLOYED BY THE LANCASTER COUNTY SHERIFF'S OFFICE?
A ABOUT 14 YEARS.
Q WHAT DO YOU CURRENTLY DO FOR THE LANCASTER COUNTY SHERIFF'S OFFICE?
A I'M THE E-911 COORDINATOR.
Q AND WERE YOU THE E-911 COORDINATOR BACK IN JUNE OF 2000?
A I WAS.

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Q AND NOT A NOT OF DETAIL, BUT WHAT IS YOUR JOB AS E-911 COORDINATOR? WHAT'S E-911?

A THAT'S EMERGENCY 911. I'M RESPONSIBLE FOR THE SUPERVISION OF ALL THE 911 CALLS THAT COME IN TO THE COUNTY AND ITS EMPLOYEES.

Q ARE 911 CALLS THAT COME INTO THE LANCASTER COUNTY SHERIFF'S OFFICE RECORDED?

A THEY ARE.

Q AND DO YOU ALL RETAIN THE TAPES OF THOSE RECORDINGS FOR SOME PERIOD OF TIME?

A WE DO.

Q ARE THEY ULTIMATELY RECYCLED OR DISCARDED IN SOME FASHION?

A YES, THEY ARE.

Q ARE YOU CUSTODIAN OF THE TAPES THAT COME IN TO THE E-911 SYSTEM, TO THE LANCASTER COUNTY SHERIFF'S OFFICE?

A YES, SIR, I AM.

Q NOW I'M GOING TO HAND YOU A LITTLE BOX AND A TAPE RECORDER WHICH HAS A LITTLE MICRO CASSETTE IN IT. JUST DON'T DO ANYTHING WITH ANY OF IT YET, BUT JUST LOOK AT THE STUFF I JUST HANDED YOU. ARE YOU FAMILIAR WITH THE TAPE BOX?

A I AM.

Q AND HAVE YOU EXAMINED THE MICRO CASSETTE, PHYSICALLY EXAMINED IT, THAT IS PRESENTLY IN THE TAPE RECORDER?

A YES, I HAVE.

Q AND ARE THOSE TWO ITEMS, THE BOX AND THE TAPE, FAMILIAR TO

YOU?

A YES, THEY ARE.

Q AND WHAT ARE THE TAPE AND THE BOX? WHAT ARE THEY?

A THESE ARE WHAT WE USE TO RECORD RECORDINGS FROM THE 911 TAPES.

Q AND THIS MORNING HAVE YOU ACTUALLY LISTENED TO THE MICRO CASSETTE TAPE THAT IS CURRENTLY IN THE TAPE RECORDER?

A YES, I HAVE.

Q AND WERE YOU ABLE TO IDENTIFY THAT TAPE?

A I WAS.

Q AND IS THAT THE LANCASTER COUNTY SHERIFF'S OFFICE E-911 TAPE WHICH RECORDS ONE OR MORE TELEPHONE CALLS MADE TO THE SYSTEM ON JUNE 5 OF 2000?

A YES, IT IS.

Q I DIDN'T TELL YOU I WAS GOING TO DO THIS, BUT I WANT YOU TO PLAY THAT TAPE IN JUST A MINUTE.

(OFF-THE-RECORD DISCUSSION)

MR. BARFIELD: PERMISSION FOR THE WITNESS TO STEP DOWN IN FRONT OF THE JURY.

THE COURT: CERTAINLY.

Q WHEN YOU LISTENED TO IT A MINUTE AGO, DID YOU ALL CUE IT BACK UP TO GET IT TO THE STARTING POINT IN THE CALL THAT'S RELEVANT HERE?

A I BELIEVE SO, YES.

Q IF YOU WOULD, STEP DOWN.

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MR. CLARK: YOUR HONOR --

THE COURT: NOW, BEFORE WE PUBLISH IT --

MR. BARFIELD: YOUR HONOR, AT THIS TIME I'D OFFER THE MICRO CASSETTE TAPE AND THE CASE THAT I HANDED MS. CAUTHEN AS A STATE'S EXHIBIT OF THE APPROPRIATE NUMBER.

THE COURT: STATE'S EXHIBIT #98, A TAPE RECORDING. ANY OBJECTION?

MR. CLARK: I DON'T THINK IT'S RELEVANT, YOUR HONOR. THAT WOULD BE OUR OBJECTION.

THE COURT: OVERRULED.

(TO MR. BARFIELD) ALL RIGHT, ADMITTED OVER OBJECTION. PUBLISH IT FOR THE JURY.

(STATE'S EXHIBIT #98, MARKED FOR IDENTIFICATION AND ENTERED INTO EVIDENCE, TAPE RECORDING).

THE COURT: IS THIS A PERMANENT RECORD OF SOME SORT? DO WE NEED TO ALLOW FOR SUBSTITUTION OF A COPY OF THIS TAPE?

Q DO YOU KNOW IF THIS IS THE ONLY ONE OR IS THERE ANOTHER ONE?

A THIS IS THE ONLY ONE.

THE COURT: ANY OBJECTION TO ALLOWING A COPY TO BE ADMITTED AT A LATER TIME?

MR. CLARK: NO, SIR.

THE COURT: SO ORDERED.

Q LET ME ASK ANOTHER QUESTION. OTHER THAN FOR THIS PROCEEDING, IS THIS A TAPE THAT THE LANCASTER COUNTY SHERIFF'S OFFICE HAS ANY FURTHER NEED FOR?

A NO.

MR. BARFIELD: NOT NECESSARY TO SUBSTITUTE A COPY.

THE COURT: ALL RIGHT.

Q IN A MINUTE I'M GOING TO ASK YOU TO PLAY THAT. YOU DO IT HOWEVER YOU NEED TO DO IT WITH THE MACHINE YOU'VE GOT IN YOUR HAND SO THAT YOU THINK IT WILL MAXIMIZE THEIR ABILITY TO HEAR IT. STOP IT WHEN IT'S YOUR UNDERSTANDING THAT THE END OF THE CALL IS, AND WE'LL GO FROM THERE, OKAY?

A OKAY.

Q THANK YOU, MA'AM. YOU MAY PLAY THE TAPE.

A (WITNESS ACTIVATING TAPE RECORDING. WITNESS DEACTIVATING TAPE RECORDER).

MR. BARFIELD: I BEG THE COURT'S INDULGENCE FOR A MOMENT.

THE COURT: (TO WITNESS) YOU MAY STEP BACK UP.

Q DID YOU HEAR REFERENCE TO "LINEBERGER'S DAUGHTER", AND "L.C.I." AND THOSE THINGS ON THAT CALL?

A YES, I DID.

MR. CLARK: YOUR HONOR, OBJECTION. YOUR HONOR, THE TAPE SPEAKS FOR ITSELF. I DON'T THINK SHE CAN INTERPRET WHAT'S ALREADY SAID.

THE COURT: I'M GOING TO OVERRULE YOUR OBJECTION

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TO THAT QUESTION BECAUSE IT'S JUST "DID YOU HEAR", BUT IT MAY BE APPROPRIATE FOR THE NEXT QUESTION. BUT I OVERRULE AS TO THAT QUESTION, "DID YOU HEAR".

Q DO YOU KNOW WHAT BUSINESS THAT'S REFERRING TO?

A I DO.

Q DO YOU KNOW WHERE THAT BUSINESS IS LOCATED WITHIN THE COUNTY OF LANCASTER?

A I DON'T KNOW THE NAME OF THE STREET. I BELIEVE IT'S OVER OFF OF KERSHAW-CAMDEN.

MR. CLARK: OBJECTION, YOUR HONOR. THAT CALLS FOR SPECULATION IF SHE DOESN'T KNOW.

THE COURT: SUSTAINED.

MR. BARFIELD: THAT'S ALL.

THE COURT: CROSS-EXAMINE?

MR. CLARK: NO, SIR.

(OFF-THE-RECORD DISCUSSION)

MR. BARFIELD: I'D ASK THAT THE WITNESS BE EXCUSED, YOUR HONOR.

MR. CLARK: NO OBJECTION.

THE COURT: NO, I DON'T BELIEVE I'M GOING TO EXCUSE THIS WITNESS AT THIS TIME. PLEASE HAVE A SEAT.

NEXT WITNESS FOR THE STATE?

MR. JUSTICE: I HATE TO DO IT, YOUR HONOR, BUT I'M GOING TO RECALL MR. BLACKMON FOR THE PURPOSE OF ASKING ONE QUESTION.

THE COURT: (TO WITNESS) PLEASE COME FORWARD. YOU'RE STILL UNDER OATH.

(WHEREUPON, LEE BLACKMON, HAVING PREVIOUSLY BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

REDIRECT EXAMINATION

BY MR. JUSTICE:

Q MR. BLACKMON, ARE YOU FAMILIAR WITH WHERE MR. LINEBERGER'S BUSINESS IS LOCATED?

A YES, I AM.

Q PLEASE TELL THE JURY.

A IT'S LOCATED ON KERSHAW-CAMDEN HIGHWAY APPROXIMATELY THREE-TENTHS OF A MILE FROM THE AREA ALREADY DESCRIBED AS BEING COOK'S GARAGE.

Q THANK YOU, SIR.

THE COURT: CROSS-EXAMINATION?

MR. CLARK: NO, SIR.

THE COURT: (TO WITNESS) THANK YOU. STAND DOWN.

MR. JUSTICE: YOUR HONOR, THAT'S THE CASE FOR THE STATE OF SOUTH CAROLINA.

THE COURT: THE STATE RESTS.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE GIVE ME YOUR ATTENTION. AT THIS TIME I'M GOING TO ALLOW YOU TO GO TO LUNCH. WHILE YOU'RE AWAY, DO NOT DISCUSS THE CASE OR ALLOW ANYONE TO DISCUSS THE CASE WITH YOU. PLEASE REPORT BACK AT TWO O'CLOCK AND WE WILL CONTINUE

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THE TRIAL OF THE CASE. I'LL SEE YOU THEN.

ONLY THE JURORS MAY EXIT THE COURTROOM AT THIS TIME, THANK YOU.

(JURY EXITS COURTROOM AT 12:52 P.M.).

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF COURT REPORTER).

THE COURT: WE'RE IN RECESS UNTIL TWO O'CLOCK. THANK YOU VERY MUCH.

(LUNCH RECESS)

THE COURT: BEFORE THE LUNCH HOUR, THE STATE HAD RESTED ITS CASE. ARE WE READY TO PROCEED, MR. CLARK, SIR?

MR. CLARK: YES, SIR, YOUR HONOR.

THE COURT: DOES THE DEFENDANT INTEND TO TESTIFY?

MR. CLARK: WOULD YOU ADVISE HIM OF HIS RIGHTS REGARDING THAT, YOUR HONOR?

THE COURT: CERTAINLY, CERTAINLY.

(WHEREUPON, VERNARD JEROME MATHIS, HAVING FIRST BEEN DULY SWORN, TESTIFIES AS FOLLOWS).

THE COURT: MR. MATHIS, WE HAVE NOW REACHED THE STAGE OF THE PROCEEDINGS WHERE THE DEFENSE HAS AN OPPORTUNITY TO PRESENT ITS CASE. AND YOU CERTAINLY HAVE A CONSTITUTIONAL RIGHT TO TESTIFY IN THIS CASE, BUT YOU ALSO HAVE A CONSTITUTIONAL RIGHT NOT TO TESTIFY. HAS YOUR ATTORNEY, MR. CLARK, EXPLAINED THAT

TO YOU?

MR. MATHIS: YES, SIR.

THE COURT: AND DO YOU FULLY UNDERSTAND YOUR RIGHT TO TESTIFY IN YOUR OWN DEFENSE AND YOUR ABSOLUTE RIGHT NOT TO TESTIFY?

MR. MATHIS: YES, SIR.

THE COURT: WILL YOU BE TESTIFYING IN YOUR OWN BEHALF IN THIS CASE?

MR. MATHIS: NO, I WON'T, SIR.

THE COURT: NOW, MR. MATHIS, HAS ANYONE PROMISED YOU ANYTHING OR HELD OUT ANY HOPE OF REWARD TO GET YOU NOT TO TESTIFY?

MR. MATHIS: NO, SIR.

THE COURT: HAS ANYONE THREATENED YOU OR USED ANY FORCE OR INTIMIDATION AGAINST YOU WHICH MIGHT CAUSE YOU NOT TO TESTIFY?

MR. MATHIS: NO, THEY HAVEN'T, SIR.

THE COURT: IS YOUR DECISION NOT TO TESTIFY YOUR DECISION, YOUR INDIVIDUAL DECISION, AND NOT THAT OF YOUR LAWYER?

MR. MATHIS: YES, IT IS, SIR.

THE COURT: IT'S YOUR DECISION AND YOUR DECISION ALONE?

MR. MATHIS: YES, SIR.

THE COURT: AND YOU'VE REACHED THAT VOLUNTARILY,

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ON YOUR OWN BEHALF?

MR. MATHIS: YES, I HAVE, SIR.

THE COURT: ARE YOU SATISFIED WITH THE SERVICES OF YOUR LAWYER, MR. CLARK?

MR. MATHIS: YES, SIR.

THE COURT: HAS HE DONE EVERYTHING YOU'VE ASKED HIM TO DO FOR YOU IN REGARD TO YOUR CASE?

MR. MATHIS: YES, SIR.

THE COURT: HAS HE REFUSED TO DO ANYTHING?

MR. MATHIS: NO, HE HASN'T.

THE COURT: THANK YOU. YOU MAY HAVE A SEAT.

MR. CLARK: THANK YOU, YOUR HONOR.

THE COURT: I FIND THE DEFENDANT'S DECISION NOT TO TESTIFY IS VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY MADE AND THAT HE HAS HAD THE ADVICE AND COUNSEL OF A COMPETENT LAWYER WITH WHOM HE SAYS HE'S SATISFIED.

ALL RIGHT, NOW, MR. CLARK, WILL YOU BE PRESENTING ANY OTHER TESTIMONY OR EVIDENCE?

MR. CLARK: NO, SIR, YOUR HONOR. AFTER DISCUSSING THAT OPTION WITH MY CLIENT, HE'S ADVISED ME THAT WE WILL NOT PRESENT ANY EVIDENCE.

THE COURT: ALL RIGHT. SO WE'RE READY TO GIVE CLOSING ARGUMENTS OF COUNSEL TO THE JURY?

MR. CLARK: YES, SIR.

MR. JUSTICE: ANY MOTIONS?

MR. CLARK: YOUR HONOR, I DO HAVE SOME JURY CHARGES.

THE COURT: JURY CHARGES, YES. YOU NEED TO SUBMIT THOSE UP, AND THEN WE'LL TAKE UP MOTIONS AND I'LL CONSIDER THOSE.

MR. CLARK: YOUR HONOR, I DO HAVE A MOTION.

THE COURT: YES, SIR, I'D BE GLAD TO HEAR FROM YOU.

MR. CLARK: YOUR HONOR, I'D MOVE FOR A DIRECTED VERDICT AT THIS TIME ON THE BASIS THAT THE EVIDENCE PRESENTED BY THE STATE TO THIS POINT IS INSUFFICIENT TO SUSTAIN A CONVICTION ON ANY OF THE COUNTS ALLEGED IN THE INDICTMENT.

THE COURT: ALL RIGHT, SOLICITOR?

MR. JUSTICE: THE STATE WOULD CONTEND THAT THE EVIDENCE, BOTH DIRECT AND CIRCUMSTANTIAL, IS MORE THAN SUFFICIENT TO SUBMIT THIS MATTER TO THE JURY.

THE COURT: ALL RIGHT, THANK YOU.

AFTER VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, WHICH I'M REQUIRE TO DO, I RESPECTFULLY DENY YOUR MOTION.

I WILL NEED TO REVIEW SOME OF YOUR REQUESTS. LET ME LOOK AT THOSE, SINCE I JUST GOT THOSE, MR. CLARK.

(BRIEF RECESS)

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THE COURT: DO YOU HAVE ANY SPECIFIC REQUESTS OTHER THAN THE STANDARD ONES?

MR. JUSTICE: NONE.

THE COURT: NUMBER ONE, I BELIEVE I'LL USE MY CHARGE IN REGARD TO THE FACT THAT THE DEFENDANT DID NOT TESTIFY.

ANY OBJECTION TO NUMBER TWO, SOLICITOR? I BELIEVE THAT'S COVERED IN MY GENERAL CHARGE, BUT I BELIEVE THAT'S AN APPROPRIATE CHARGE. I BELIEVE I'VE ALREADY CHARGED --

MR. JUSTICE: I BELIEVE YOUR CHARGE IS ACTUALLY SUPERIOR TO THIS.

THE COURT: WELL, IT'S A CORRECT STATEMENT OF THE LAW. I'LL CHARGE THAT.

NUMBER THREE, MALICE, I'LL BE CHARGING MY CHARGE. NUMBER FOUR, I DON'T SEE ANY PROBLEM WITH CHARGING HIS NUMBER FOUR, MR. SOLICITOR, MULTIPLE INDICTMENTS. THAT'S OBVIOUSLY A CORRECT STATEMENT OF THE LAW.

MR. JUSTICE: NO PROBLEM WITH THAT, YOUR HONOR.

THE COURT: NUMBER FIVE IS INCLUDED IN MY GENERAL CHARGE. NUMBER SIX IS INCLUDED IN MY GENERAL CHARGE. NUMBER SEVEN, I BELIEVE, MIGHT BE MY GENERAL CHARGE, MR. CLARK. I MAY HAVE A FEW THINGS ADDED TO MINE, BUT ALL OF THAT WHICH YOU'VE REQUESTED BE INCLUDED IS ALREADY IN MINE, BUT I'M PROBABLY GOING TO CHARGE

MINE. IT'S ALMOST, VERBATIM, EXACTLY THE SAME.

NUMBER EIGHT --

MR. JUSTICE: YOUR HONOR, ON NUMBER NINE, AND THIS IS A THING I'VE ENCOUNTERED A NUMBER OF TIMES IN MY CAREER -

THE COURT: NINE?

MR. JUSTICE: EXCUSE ME, SEVEN. IN THE LAST SENTENCE, WHEN IT GIVES YOU ALL THE THINGS TO TAKE INTO ACCOUNT AND ALL THAT'S BEEN DONE, THE LAST THING IN THAT CHARGE IS, AS WRITTEN BY MR. CLARK AND PROBABLY IN YOUR BOOK AS WELL, IT SAYS, "IF, AFTER EXAMINING THE TESTIMONY, YOU HAVE A REASONABLE DOUBT AS TO THE ACCURACY OF THE IDENTIFICATION, YOU MUST FIND THE DEFENDANT NOT GUILTY", WHEN IN FACT THE STATEMENT OF LAW SHOULD BE, "YOU SHOULD DISREGARD THAT EYE WITNESS IDENTIFICATION", BECAUSE YOU CAN CERTAINLY FIND SOMEONE GUILTY WHILE DISREGARDING AN EYEWITNESS TESTIMONY.

MR. CLARK: WE CONCEDE THAT POINT, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU. WELL, I THINK MAYBE IT JUST NEEDS TO BE STATED A DIFFERENT WAY.

MR. JUSTICE: YES, SIR.

THE COURT: THANK YOU.

NUMBER EIGHT, I'LL BE USING MY CHARGE ON THE CREDIBILITY OF WITNESSES. NUMBER NINE, MY CHARGE ON

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THE FACT THAT THE DEFENDANT DID NOT TESTIFY, THE SAME WITH NUMBER TEN, THE SAME WITH NUMBER ELEVEN, TWELVE -- WHAT ABOUT TWELVE, MR. JUSTICE?

MR. JUSTICE: IT'S PRETTY MUCH A STATEMENT OF "HAND OF ONE, HAND OF ALL".

THE COURT: NUMBER TWELVE ON MINE IS DESIGNATED AIDER OR ABETTOR.

MR. JUSTICE: YES, SIR, BUT THE BODY OF IT SAYS ALL PERSONS AIDING OR ABETTING OR ENCOURAGING OR INCITING ARE EQUALLY GUILTY. THAT'S THE "HAND OF ONE/ HAND OF ALL".

THE COURT: WELL, I UNDERSTAND THAT, AND I'M GOING TO CHARGE "HAND OF ONE", BUT I THINK NUMBER SIXTEEN WOULD BE A BETTER CHARGE ON THAT, WHICH I'M GOING TO USE MINE RATHER THAN HIS, BUT I BELIEVE MINE IS ABOUT LIKE HIS.

MR. CLARK: YES, SIR.

MR. JUSTICE: YES, SIR.

THE COURT: I DON'T THINK THIS IS AN AIDER OR ABETTOR CASE, IS IT -

MR. JUSTICE: NO, SIR.

THE COURT: -- FROM THE EVIDENCE THAT I'VE HEARD? OKAY, I'M NOT GOING TO CHARGE TWELVE, BUT I WILL BE CHARGING THE "HAND OF ONE", OBVIOUSLY.

THIRTEEN, I'LL BE USING MY CHARGE ON THE "HAND OF

ONE", WHICH IS VERY SIMILAR. WHAT ABOUT NUMBER FOURTEEN, SOLICITOR? THAT WOULD GO WITH THE "HAND OF ONE IS THE HAND OF ALL", WOULD IT NOT?

MR. JUSTICE: YES, YOUR HONOR. "HAND OF ONE/HAND OF ALL" COVERS THIS.

THE COURT: WELL, I'LL GIVE THEM THAT CHARGE. I THINK IT'S INCLUDED, BUT IF IT'S NOT, I'LL ADD THAT. I THINK THAT JUST FURTHER EXPLAINS IT.

FIFTEEN IS NOT APPLICABLE, IS IT, MR. JUSTICE?

MR. JUSTICE: THAT'S CORRECT, YOUR HONOR. HE'S NOT INDICTED FOR -- OR HE'S NOT BEING TRIED FOR CONSPIRACY.

THE COURT: SIXTEEN, I'LL BE USING MINE, WHICH IS BASICALLY ABOUT THE SAME AS YOURS. SEVENTEEN, I BELIEVE THAT'S INCLUDED IN MY GENERAL CHARGE.

ALL RIGHT, ANYTHING ELSE, MR. CLARK?

MR. CLARK: YOUR HONOR, I JUST WOULD REQUEST A CHARGE ON CIRCUMSTANTIAL EVIDENCE, CIRCUMSTANTIAL AND DIRECT.

THE COURT: OH, I AM CHARGING -- THERE ARE A LOT OF THINGS YOU ALL HAVEN'T REQUESTED THAT I'M CHARGING.

MR. CLARK: ALL RIGHT, SIR.

(COURT'S EXHIBIT #4, MARKED FOR IDENTIFICATION, REQUESTS TO CHARGE).

THE COURT: SINCE THE DEFENDANT DID NOT PRESENT

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ANY EVIDENCE, I BELIEVE THE STATE WOULD HAVE THE ARGUMENT THAT IT BE FIRST AND YOU WILL CLOSE, MR. CLARK.

MR. CLARK: YES, SIR, YOUR HONOR.

THE COURT: ARE YOU READY, SOLICITOR?

MR. JUSTICE: YES, SIR.

THE COURT: (TO BAILIFF) PLEASE BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 2:20 P.M.).

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, PLEASE GIVE ME YOUR ATTENTION. WE HAVE NOW REACHED THE STAGE OF OUR PROCEEDINGS WHEREIN YOU HAVE HEARD ALL OF THE TESTIMONY WHICH YOU WILL HEAR FROM THE WITNESS STAND, AND ALL OF THE EXHIBITS WHICH WILL BE ADMITTED INTO EVIDENCE HAVE COME IN.

IT IS NOW TIME, LADIES AND GENTLEMEN, FOR THE LAWYERS TO GIVE THEIR CLOSING ARGUMENTS TO YOU. I WOULD CAUTION YOU CLOSING ARGUMENTS OF COUNSEL ARE NOT EVIDENCE AND MUST NOT BE CONSIDERED BY YOU AS EVIDENCE IN THIS CASE. HOWEVER, THE CLOSING ARGUMENTS OF COUNSEL ARE A VERY IMPORTANT STAGE OF THIS PROCEEDING, AND I WOULD RESPECTFULLY REQUEST THAT YOU PLEASE GIVE THEM YOUR CLOSE ATTENTION.

SOLICITOR, FOR THE STATE.

MR. JUSTICE: MAY IT PLEASE THE COURT.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY,

I'M GOING TO DO WHAT ALL PUBLIC SPEAKING INSTRUCTORS TELL YOU NOT TO DO AND THAT'S OPEN WITH APOLOGIES. ONE, I APOLOGIZE FOR ANY TEDIUM YOU MAY HAVE SUFFERED THROUGH THIS. SOME OF THE TESTIMONY TAKEN BY ITSELF MAY HAVE SEEMED VERY TEDIOUS, BUT I THINK YOU'LL AGREE WHEN WE ARE THROUGH WITH EVERYTHING, THAT TAKEN AS A TOTALITY, IT ALL SUPPORTS EACH OTHER AND IT ALL SUPPORTS THE GUILT OF THE DEFENDANT.

SECOND, LET ME APOLOGIZE, AS I DID EARLIER, FOR MY VOICE. DURING THE COURSE OF THIS WEEK, IT HAS BECOME ERRATIC. IT MAY SOUND OKAY ONE MOMENT AND NOT ANOTHER. THE THIRD APOLOGY AND LAST APOLOGY -- I'VE BEEN PROSECUTING IN THIS COURTROOM FOR 25 YEARS AND I'VE BEEN COMPLAINING ABOUT THE SQUEAKY FLOOR FOR 25 YEARS. I'M SORRY IF IT'S A DISTRACTION, BUT I'M A PACER, SO YOU'RE JUST GOING TO HAVE TO LISTEN TO IT.

I TOLD YOU ON MONDAY THAT WE WOULD BE TOGETHER ABOUT ALL WEEK, I TOLD YOU ON MONDAY YOU WOULD HEAR FROM A NUMBER OF WITNESSES, AND I TOLD YOU ON MONDAY THAT YOU WERE CONCERNED IN THIS TRIAL WITH ONLY ONE THING AND THAT'S THE GUILT OR INNOCENCE OF THIS DEFENDANT, VERNARD MATHIS, CHARGED WITH MURDER IN THAT HE DID, WITH MALICE AFORETHOUGHT, KILL MELVIN STEELE BY MEANS OF SHOOTING HIM ON THE TWENTIETH OF JUNE OF THE YEAR 2000; TWO COUNTS OF THE OFFENSE OF

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KIDNAPING IN THAT ON THE TWENTIETH OF JUNE HE DID KIDNAP MELVIN AND RITA STEELE FROM THEIR HOME AT GUNPOINT; THE OFFENSE OF BURGLARY FIRST DEGREE IN THAT HE DID UNLAWFULLY ENTER THE HOME OF MELVIN AND RITA STEELE WITH THE INTENT TO COMMIT A CRIME THEREIN AND WHILE ARMED WITH A DEADLY WEAPON DURING THE NIGHTTIME; AND FINALLY ARMED ROBBERY IN THAT, USING FORCE OR THREAT OF FORCE, HE DID STEAL, TAKE AWAY AND CONVERT TO HIS OWN USES GOODS OF MELVIN AND RITA STEELE, PARTICULARLY A HANDGUN AND MONEY.

AND WE TOLD YOU ON MONDAY THAT YOU WOULD HEAR REFERENCES TO OTHER INDIVIDUALS WHO WERE ALSO INVOLVED IN THIS SAME CRIMINAL ACTIVITY, SOME OF WHOM ARE ARRESTED, AWAITING THEIR TURN IN COURT, AND SOME OF WHOM ARE NOT. I TOLD YOU THEN THAT YOU WOULD NOT BE CONCERNED WITH THOSE PEOPLE AT THIS TIME. THAT'S FOR ANOTHER DAY, ANOTHER TIME, ANOTHER JURY.

I ALSO TOLD YOU ON MONDAY THAT ALTHOUGH WE HAD SUBSTANTIAL EVIDENCE THAT VERNARD MATHIS NOT ONLY ENGINEERED AND LED THIS EFFORT, WHICH I BELIEVE IS CLEAR, BUT WE ALSO HAD SUBSTANTIAL EVIDENCE TO THE POINT OF REACHING OUR BURDEN OF PROVING THAT HE, IN FACT, WAS THE SHOOTER, THE GUNMAN, THE MAN WHO ACTUALLY KILLED MELVIN STEELE BY MEANS OF SHOOTING HIM.

NOW, YOU HAVE HEARD OVER THESE DAYS FROM MORE THAN 50 WITNESSES, SOME OF THEM MORE THAN ONE TIME. YOU HAVE BEEN SHOWN, AND YOU WILL HAVE AT YOUR DISPOSAL THROUGHOUT YOUR DELIBERATIONS, ALMOST 100 PIECES OF TANGIBLE EVIDENCE. AND ONCE AGAIN, A LOT OF IT TAKEN BY ITSELF MAY NOT MEAN MUCH, BUT WHEN YOU PUT IT ALL TOGETHER IT SPELLS GUILT ON ALL CHARGES FOR VERNARD MATHIS BEYOND A REASONABLE DOUBT.

THIS EVIDENCE NOT ONLY SPEAKS HIS GUILT, IT SHOUTS HIS GUILT. ALL THE CIRCUMSTANTIAL EVIDENCE DOES ONE OF TWO THINGS AND SOME OF IT BOTH. IT EITHER CORROBORATES EACH OTHER AND PROVES FACTS WHICH PROVES THE GUILT OF THE DEFENDANT OR/AND IT CORROBORATES THE TESTIMONY OF THE TWO DIRECT EVIDENCE WITNESSES, RITA STEELE HERSELF, THE SURVIVING VICTIM, AND ELTON WIGGINS, THE CO-DEFENDANT WHO DECIDED TO COME OVER AND TELL IT LIKE IT IS.

NOW, COUNSEL FOR THE DEFENSE WILL HAVE THE FINAL ARGUMENT IN THIS PARTICULAR CASE ONCE HE GETS UP. I CANNOT GET BACK UP, SO I HAVE TO TRY TO ANTICIPATE HIS ARGUMENTS, AND I'M SURE ONE OF HIS ARGUMENTS IS GOING TO BE, "DON'T BELIEVE ELTON WIGGINS. ELTON WIGGINS IS LYING. ELTON WIGGINS IS LYING TO HELP HIMSELF. ELTON WIGGINS TOLD DIFFERENT STORIES AT DIFFERENT TIMES."

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LADIES AND GENTLEMEN, IT'S TRUE THAT HE TOLD DIFFERENT STORIES, ALL WITHIN A 24 OR 36-HOUR PERIOD IMMEDIATELY AFTER BEING ARRESTED. ELTON WIGGINS HAS A CRIMINAL RECORD. HE IS A CRIMINAL. HE'S BEEN ONE FOR AWHILE. AND HIS FIRST REACTION WHEN CHARGED WITH A SERIOUS OFFENSE IS TO DENY HIS INVOLVEMENT AND THEN, AS THE POLICE SHOW HIM HOW THEY CAN PROVE HIS DENIAL IS NOT THE TRUTH, CHANGE THAT STORY AND TRY TO ADAPT THE STORY TO THE TRUTH OR TO THE EVIDENCE.

ELTON WIGGINS TRIED THAT FOR A FEW DAYS AND THEN THERE WAS NO FURTHER COMMUNICATION UNTIL HE HAD A HIRED LAWYER. AND ONCE HE GOT A HIRED LAWYER AND DISCUSSED THIS CASE WITH HIS LAWYER, HE SAW WHAT WAS IN HIS BEST INTERESTS AND THAT WAS TO COOPERATE. AND WAY BACK IN NOVEMBER OF THE YEAR 2000, MR. BLACKMON TOLD YOU, HE RECEIVED EVIDENCE, INFORMATION, THAT ORIGINATED WITH MR. WIGGINS THAT LED TO RECOVERY OF THE MURDER WEAPON, WHICH HAD PREVIOUSLY BEEN UNDISCOVERED, ALONG WITH THE MAGAZINE AND AMMUNITION FROM THAT WEAPON. THAT ALONE GIVES CREDIBILITY TO MR. WIGGINS' TESTIMONY.

THE POLICE, WHEN MR. WIGGINS WAS ARRESTED, BASICALLY HAD EVIDENCE AND COULD PROVE THAT MR. WIGGINS HAD SOME KIND OF INVOLVEMENT IN THIS CASE. THEY HAD INFORMATION, SOME OF WHICH HAS BEEN SHARED

WITH YOU AND SOME OF IT HAS NOT, IF IT DOESN'T RELATE TO MR. MATHIS -- THEY HAD EVIDENCE THAT MR. WIGGINS WAS INVOLVED. THE EXTENT OF THAT INVOLVEMENT WAS NOT KNOWN, WHETHER HE WAS A DRIVER OR A LOOKOUT OR WHAT HE WAS.

WHEN MR. WIGGINS DECIDED THAT IT WAS IN HIS BEST INTERESTS TO TELL THE TRUTH, HE PUT HIMSELF RIGHT IN THE MIDDLE, THE MAN RINGING THE DOORBELL, THE MAN CARRYING THE BOX, WHO THEN TOOK MELVIN STEELE AND RITA STEELE AWAY FROM THEIR HOME, THE MAN WHO WAS PRESENT WHEN MELVIN STEELE WAS SHOT AND LEFT IN THE WOODS. HE PUT HIMSELF IN DEEPER, WHICH I'D SUBMIT ALSO LENDS CREDIBILITY TO HIS TESTIMONY HERE ON YESTERDAY.

AND WHAT'S MORE, HIS TESTIMONY IS PERFECTLY CONSISTENT WITH ALL THIS OTHER EVIDENCE, INCLUDING THE TESTIMONY OF THE VICTIM, RITA STEELE. BY "PERFECTLY CONSISTENT", HE TELLS IT THE SAME WAY SHE DID TO THE POINT OF ASKING HER IF SHE WAS COLD. SHE REMEMBERS THAT BECAUSE IT WAS PROBABLY THE ONLY NICE THING ANYBODY DID OR SAID TO HER THAT NIGHT. HE REMEMBERS IT BECAUSE HE'S THE ONE THAT SAID IT.

SO THE ATTEMPTS TO GET YOU TO DISBELIEVE MR. WIGGINS, AND I IMAGINE COUNSEL WILL GO A STEP FURTHER AND TRY AND GET YOU TO BELIEVE THAT THIS WHOLE THING

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WAS AN ELTON WIGGINS OPERATION, ALL IS CONTRARY TO ALL THE OTHER EVIDENCE IN THIS CASE. THE LAW WILL DEAL WITH ELTON WIGGINS. ALL I ASK YOU TO DO AT THIS TIME IS TO BELIEVE THE TESTIMONY HE GAVE YESTERDAY AFTERNOON.

AND WHAT ABOUT ALL THE CIRCUMSTANTIAL EVIDENCE? I'M NOT GOING TO WASTE YOUR TIME AND GO THROUGH AND PICK UP AND TALK ABOUT EVERYTHING HERE. THERE'S PLENTY HERE FOR YOU TO LOOK AT IF YOU WISH TO DO SO. YOU HEARD THE SAME TESTIMONY I HEARD OVER THE COURSE OF TUESDAY, YESTERDAY AND THIS MORNING. THERE ARE A FEW THINGS I WANT TO CALL YOUR ATTENTION TO.

ONE WOULD BE THE VEHICLES. I WAS BORN AND RAISED OVER IN GREAT FALLS, AND MY MOTHER'S FAMILY WAS ALL FROM LANCASTER. SO AS A SMALL CHILD, SEVEN, EIGHT, NINE YEARS OLD, I SPENT A LOT OF SUNDAY AFTERNOONS WITH MY MOTHER VISITING UNCLES AND AUNTS IN LANCASTER. AND ONE OF THOSE CHILDHOOD MEMORIES -- IT BURNS IN MY BRAIN -- IS SITTING AROUND, LISTENING TO MY UNCLES AND MY OLDER COUSINS TALKING, AND IT ALWAYS STRUCK ME IN LANCASTER, MORE SO THAN IN GREAT FALLS WHERE I LIVED OR ANYWHERE ELSE I'VE EVER LIVED, IT SEEMS LIKE PEOPLE ARE IDENTIFIED BY THEIR AUTOMOBILES.

I CAN REMEMBER HEARING UNCLES TALK, AND ONE WOULD

SAY TO THE OTHER, "DO YOU KNOW JOHN SMITH?", AND THE SECOND ONE WOULD SAY, "WELL, I'M NOT SURE." AND INSTEAD OF SAYING, "HE'S TALL" OR "HE'S FAT" OR "HE'S OLD" OR "HE'S RED-HEADED", THE NEXT WORDS WOULD BE, "WELL, HE DRIVES A 1951 BLUE PLYMOUTH". AND THAT'S HOW PEOPLE SEEMED TO -- THAT WAS THE FIRST POINT OF IDENTIFICATION, AND IT JUST SEEMS STRANGE AFTER ALL THE YEARS BACK IN LANCASTER, THAT WHAT PEOPLE DRIVE AND THEIR VEHICLES BECOMES A MAJOR BUILDING BLOCK OF THE GUILT AGAINST VERNARD MATHIS.

WHAT ARE WE LOOKING AT, A HALF A DOZEN VEHICLES? A HALF A DOZEN VEHICLES. WE'VE GOT MR. MATHIS' 1995 DARK BLUE CADILLAC THAT, WHEN SEARCHED, RENDERED MUCH OF THIS EVIDENCE THAT TIES HIM DIRECTLY TO THE CAR, A CADILLAC THAT WE KNOW HE HAD IN LANCASTER COUNTY DURING THE MONTH PRECEDING THE CRIME. WE'VE GOT THE TRAFFIC TICKETS, WE'VE GOT THE TRAFFIC TICKET EVIDENCE, NOT TO SHOW YOU HE WAS A BAD DRIVER BUT TO SHOW YOU WHAT HE WAS DRIVING, THAT ON TWO OR THREE OF THOSE OCCASIONS HE WAS DRIVING A BLUE CADILLAC WHICH RENDERED ALL THIS EVIDENCE.

AT THE TIME OF HIS ARREST IN D.C., HE WAS DRIVING THE DARK BLUE CADILLAC. HE WAS IDENTIFIED BY MS. WHITMAN WHO KNEW HIM AS SOMETHING JOHNSON, AS DRIVING THIS DARK BLUE CADILLAC. SO THAT'S THE FIRST VEHICLE

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THAT TIES HIM INTO THIS CRIME.

THE SECOND ONE IS THE WHITE LINCOLN CONTINENTAL. NOW, JUST LIKE MS. WHITMAN AND THE TELEPHONE -- YOU KNOW, REMEMBER HE GOES TO MS. WHITMAN AND SAYS, "I'VE GOT BAD CREDIT. HOW ABOUT LEASING THE PHONE IN YOUR NAME FOR ME? I'LL MAKE THE PAYMENTS." AND MS. WHITMAN DID IT. THE SAME WAY WITH THE LINCOLN CONTINENTAL. HE GOES TO SYLVIA TALFORD, A RESIDENT OF LANCASTER, AND SAYS, "HOW ABOUT COMING TO CHARLOTTE WITH ME AND RENTING A HERTZ, GOING TO HERTZ AND RENTING ME A NEW CAR TO RIDE AROUND WITH?". MS. TALFORD DOES IT, BUT SHE PUTS HIM DOWN, VERNARD JEROME, AS THE SECONDARY DRIVER, AND THAT'S ON JUNE 1.

AND THROUGHOUT THE MONTH OF JUNE, UNTIL IT'S TURNED IN ON THE TWENTY-SECOND, THERE ARE NUMEROUS SIGHTINGS AROUND LANCASTER OF HIM DRIVING THAT VEHICLE. JUST SO I DON'T FORGET IT, ONE EXHIBIT I WILL REFER TO IS THE HERTZ RECEIPT THAT SYLVIA TALFORD RECEIVED WHEN SHE TURNED IN THE CAR WITH MR. MATHIS. THE PHOTOGRAPHS ARE THERE OF THEM TURNING IT IN ON THE TWENTY-SECOND.

AND THE THING THAT SORT OF JUMPS OFF THE PAGE AT YOU IS THAT DURING THE PERIOD OF TIME FROM THE FIRST OF JUNE TO JUNE 22, 6100 MILES WAS PUT ON THAT VEHICLE. NOW, LADIES AND GENTLEMEN, YOU DON'T PUT

6100 MILES ON A CAR JUST TOOLING AROUND LANCASTER. YOU PUT 6100 MILES ON A CAR BY MAKING ROUND TRIPS TO PLACES LIKE WASHINGTON, D.C. AND WE KNOW OF AT LEAST TWO, WHEN HE DROVE UP IN THE MIDDLE OF JUNE TO GET MR. WIGGINS AND BILL, LAST NAME UNKNOWN, AND DRIVE THEM BACK DOWN HERE. THAT'S OVER 1000 MILES.

AND IN THE LATE NIGHT HOURS OR EARLY MORNING HOURS OF JUNE 21, AFTER THE MURDER, AFTER THE KIDNAPING, AND AFTER THE ROBBERY AND MURDER, THEN HE DROVE BACK TO WASHINGTON TO DROP OFF AND GET RID OF ELTON WIGGINS AND BILL, LAST NAME UNKNOWN. HE THEN TURNED AROUND AND DROVE BACK TO LANCASTER, BACK TO LANCASTER WHERE HE WAS SEEN DRIVING THIS VEHICLE ON THE NIGHT OF JUNE 21, AND THEN HE TURNED IT IN WITH SYLVIA TALFORD THE NEXT MORNING. SIX THOUSAND MILES IN THREE WEEKS. THAT CAN ONLY BE EXPLAINED BY MAKING LONG DISTANCE TRIPS SUCH AS THIS.

AND THE THREE USED VEHICLES -- HE GOES TO B & E MOTORS ON THE SAME DAY HE RENTS THE CONTINENTAL, THE FIRST OF JUNE, AND HE WALKS IN WITH A COUPLE OF OTHER PEOPLE. HE DOES ALL THE TALKING. HE DOES ALL THE BUSINESS. "I WANT TO BUY THREE VEHICLES", PICKS OUT THREE SECOND-HAND VANS AND A STATION WAGON. THE FIRST ONE DOESN'T GET HARDLY OFF THE LOT, SO HE COMES BACK AND PICKS UP A SECOND ONE. WE'VE GOT PICTURES OF ALL

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THREE OF THEM, A STATION WAGON, A BLUE AEROSTAR VAN, A GRAY OR SILVER AND GRAY AEROSTAR VAN.

DOES HE BUY THEM IN HIS NAME? NO, HE BUYS THEM IN A FICTITIOUS NAME, A PATTERSON. I THINK THIS TIME HE'S MARK PATTERSON, SIGNS MARK PATTERSON, GIVES A PHONY DRIVER'S LICENSE WHICH IS NOT REGISTERED WITH THE STATE OF SOUTH CAROLINA, PAYS CASH AND DRIVES AWAY WITH THREE AUTOMOBILES JUNE 1.

OVER THE COURSE OF THE NEXT THREE WEEKS, OR UNTIL THE TWENTY-FIRST, THESE VEHICLES ARE SEEN VARIOUS PLACES AROUND TOWN, SOMETIMES IN CONJUNCTION WITH THE WHITE CONTINENTAL, TWO VEHICLES MEETING. AT ONE POINT SHERIFF'S DEPUTIES SEE OR GET A COMPLAINT ABOUT ONE OF THE VEHICLES PARKED BEHIND A CHURCH, GO OVER THERE TO INVESTIGATE, AND HE ROLLS UP IN THE CONTINENTAL, SEES THEY'RE POLICE, MAKES QUICK SMALL TALK AND SPEEDS OFF.

AND THEN WE STOP HIM, THE POLICE DO, AND CONFIRM HE'S VERNARD MATHIS. I BELIEVE THAT WAS THE BLUE VAN. BUT SEVERAL TIMES IN AND NEAR THESE LOCATIONS, AS THESE LOCATIONS ARE SCOUTED OUT, WE HAVE PUT UP WITNESS AFTER WITNESS THAT HAVE SEEN SOME COMBINATION OF VERNARD MATHIS' VEHICLES, VANS AND/OR THE CONTINENTAL TOGETHER, AS THEY PLANNED THIS GHASTLY AFFAIR.

WHERE DO THEY WIND UP? THE BLUE VEHICLE, THE BLUE VAN, WINDS UP IN A POSITION ON A PARALLEL ROAD CALLED SPRINGDALE EXTENSION, PARALLEL TO 200, AND DOWN A FIRE BREAK WHERE YOU CAN HAVE SURVEILLANCE OF MCDONALD AMUSEMENTS. IT'S THERE ALL DAY ON THE TWENTIETH, AND AS MR. WIGGINS TOLD YOU, IT WAS THERE AS A POTENTIAL BACKUP VEHICLE IF SOMETHING WENT WRONG. IT WAS AN ESCAPE ROUTE. THERE WAS A SAFETY VALVE.

THE STATION WAGON WAS FOUND ABANDONED ON THE TWENTY-FIRST NEARBY WHERE HIGHWAY 903 TURNS OFF OF THE LANCASTER BYPASS. THE SILVER AND GRAY VAN, WHICH MR. WIGGINS TOLD YOU IS THE ONE THAT WAS ACTUALLY USED TO KIDNAP MR. AND MRS. STEELE, THE ONE IN WHICH WIGGINS DROVE, BILL SAT IN THE FRONT SEAT, AND MATHIS SAT IN THE BACK DEMANDING THE SECURITY CODES, TALKING ON THE PHONE, RELAYING THOSE CODES TO ONE OF HIS CONFEDERATES AND GETTING FRUSTRATED BECAUSE APPARENTLY THEY WEREN'T WORKING BECAUSE HE WAS SCREWING THEM UP, AND GETTING ANGRY, BUT THEN ULTIMATELY SHOOTING MELVIN STEELE -- ALL OF THAT OCCURRED IN THE SILVER AND GRAY VAN.

WHERE WAS THAT LOCATED? THE NEXT AFTERNOON OR THE NEXT MORNING, THEY WERE SEEN AT COOK'S TRANSMISSION JUST DOWN THE ROAD FROM SOUTHERN TOOL &

DIE, PARKED IN THEIR PARKING LOT, AND UPON EXAMINATION WHAT DO WE LEARN? THERE WAS BLOOD IN IT, AND UPON FORENSIC EXAMINATION AT SLED, IT WAS LEARNED THAT THAT BLOOD WAS MELVIN STEELE'S BECAUSE THAT'S THE VEHICLE HE WAS RIDING IN WHEN HE WAS SHOT. WE ALSO FIND A BULLET CONSISTENT WITH THE BULLET THAT WENT THROUGH BOTH OF MELVIN STEELE'S LEGS AND EXITED, CAME TO REST ON THE FLOORBOARD OF THAT VEHICLE.

COUNSEL FOR THE DEFENSE WILL MOST LIKELY ARGUE, BECAUSE HE MADE A BIG DEAL OF IT ON CROSS-EXAMINATION, ABOUT THE LACK OF MATCHING FINGERPRINTS. FIFTEEN OR SO OTHERWISE IDENTIFIABLE PRINTS, NONE WERE MATCHED TO MR. MATHIS. I WOULD ONLY OBSERVE THAT NONE WERE MATCHED TO ANYBODY ELSE EITHER, BECAUSE A FINGERPRINT, WHILE GOOD EVIDENCE, IF YOU MAKE A MATCH, JUST BECAUSE YOU'RE INHABITING A VEHICLE OR A BUILDING OR AN OFFICE DOESN'T MEAN YOU'RE GOING TO LEAVE BEHIND USABLE PRINTS. NUMBER ONE, THEY ALL WORE GLOVES DURING THE COMMISSION OF THE CRIME AND AT NO OTHER TIME DID THEY LEAVE THEIR PRINTS IN THOSE VEHICLES.

LET ME ASK YOU TO THINK OF THIS. MELVIN AND RITA STEELE LIVED ON [redacted] OR LANE FOR SOME 15 YEARS OR MORE, YET WHEN THEY PROCESSED THEIR KITCHEN FOR FINGERPRINTS, THEY FOUND NONE OF RITA'S AND ONLY ONE OF MELVIN'S. WHEN THEY PROCESSED THE

OFFICE THAT MELVIN STEELE WORKED IN EVERY DAY FOR 15 YEARS, THEY FOUND NONE OF HIS FINGERPRINTS. THEREFORE, WHILE FINGERPRINT MATCHES ARE GOOD EVIDENCE, WE CAN DRAW NO CONCLUSIONS FROM THE LACK OF FINGERPRINT MATCHES. THE ONLY MATCHED FINGERPRINTS OTHER THAN THE ONE OF MR. STEELE IN HIS KITCHEN WOULD BE THE ONE IN THE LINCOLN CONTINENTAL MATCHED UP WITH VERNARD MATHIS.

ALL THROUGH THIS EVIDENCE YOU CAN FIND PIECE AFTER PIECE AFTER PIECE OF EVIDENCE THAT, WHEN PUT TOGETHER, SPELLS GUILT. THE WALKIE-TALKIES, ELTON WIGGINS SAYS HE WAS COMMUNICATING ON A WALKIE-TALKIE GIVEN TO HIM BY MATHIS. WE KNOW THAT VERNARD MATHIS BOUGHT TWO WALKIE-TALKIES THREE WEEKS EARLIER AND WAS IDENTIFIED IN THE COURTROOM AS BEING THE PERSON THAT BOUGHT THEM AND PAID CASH. THE BOXES ARE FOUND IN HIS FRIEND'S, MS. TALFORD'S, HOME.

WE'VE GOT PAPER WORK INDICATING AN INDIVIDUAL NAMED TIMMY JACKSON WHO ALSO DIDN'T EXIST, ANOTHER ALIAS. WE'VE GOT THE U-HAUL TRUCK, THE U-HAUL TRUCK RENTED ON THE VERY AFTERNOON OF THE CRIME, LATE IN THE AFTERNOON AFTER ORDINARY BUSINESS HOURS, SIX O'CLOCK OR AFTER, SCARCELY THREE HOURS BEFORE THE CHAIN OF EVENTS STARTED, IDENTIFIED -- OR HE CALLED HIMSELF JOE PATTERSON THIS TIME, JOE PATTERSON, BUT

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IDENTIFIED BY THE MAN HE RENTED THE TRUCK FROM AS VERNARD MATHIS.

AND THAT TRUCK BECOMES VERY SIGNIFICANT. IT IS SEEN LATER THAT AFTERNOON, SHORTLY AFTER BEING RENTED, ACROSS THE STREET, ACROSS THE HIGHWAY, FROM SOUTHERN TOOL & DIE, POINTED UP TOWARD TOWN, AND IT IS SEEN SOMETIME SHORTLY AFTER TEN O'CLOCK, PARKED SQUARE IN FRONT OF MCDONALD AMUSEMENT HEADQUARTERS, AND IT IS FOUND THE NEXT MORNING, EARLY, ABANDONED ON THE LITTLE CIRCULAR DIRT ROAD THAT RUNS AROUND THE DAM AND COMES OUT BEHIND CHANDLER'S GARAGE, JUST UP 200 FROM MCDONALD AMUSEMENTS.

AND IN OR AROUND IT, EITHER IN JUNE OR IN NOVEMBER, ARE FOUND TWO BIG DUFFLE BAGS SUFFICIENT TO CARRY THE LOAD OF MONEY MR. MATHIS THOUGHT HE WAS GOING TO GET THAT NIGHT, A BULLET-PROOF VEST, A NINE-MILLIMETER PISTOL AND AMMUNITION FOR IT, WITH A LASER SIGHT. MR. WIGGINS SAID THAT MR. MATHIS' GUN WAS A NINE-MILLIMETER WITH A LASER DEVICE, AGAIN, JUST PILING IT UPON PILING.

NOW, JUST BEFORE THE LUNCH BREAK, WE HAD THIS RATHER LENGTHY TESTIMONY CONCERNING CELL PHONE USE ON THE NIGHT OF THE TWENTIETH OF JUNE DURING THE TIME THE CRIME WAS BEING COMMITTED, 30 SOMETHING CALLS OR 20 SOMETHING CALLS INVOLVING ELTON WIGGINS' PHONE.

MR. CLARK: OBJECTION, YOUR HONOR.

MR. JUSTICE: EXCUSE ME, MR. MATHIS' PHONE.

(TO MR. CLARK) I ASSUME THAT WAS THE OBJECTION.

MR. CLARK: YES, SIR.

THE COURT: SUSTAINED.

MR. JUSTICE: MR. MATHIS' PHONE, THE PHONE THAT HAD BEEN LEASED BY THE YOUNG LADY, MS. WHITMAN, TO AND FROM WHITMAN AND TO AND FROM OTHER PEOPLE. THE REASON WE WENT INTO ALL THAT IS TO VERIFY WHAT RITA STEELE TOLD YOU THIS MORNING ABOUT THE PHONE CALLS SHE WAS HEARING IN THE VAN AND THEN WHEN THEY GOT OUT OF THE VAN, BETWEEN THE MEAN-TALKING GUY, MR. MATHIS, AND ONE OR MORE OF HIS ACCOMPLICES WHO WERE ELSEWHERE, ON OTHER PHONES. THAT'S WHAT ALL OF THAT IS ABOUT, VERIFYING WHAT SHE'S ALREADY TOLD YOU.

I ALSO TOLD YOU ON MONDAY THAT RITA STEELE WAS GOING TO TALK YOU THROUGH AN EXPERIMENT IN TERROR, HER OWN EXPERIMENT IN TERROR. JUST THINK, JUST LET YOUR MIND DRIFT A MOMENT. YOU'RE HOME AT NIGHT. IT'S 9:30. YOU'RE THROUGH FOR THE DAY. YOU AND YOUR WIFE OR YOUR HUSBAND HAVE HAD DINNER. YOU'VE BEEN VISITED BY YOUR SON OR ANOTHER FAMILY MEMBER. YOU'RE TRYING TO WATCH T.V. BEDTIME IS NOT FAR OFF. IT'S PART OF ANOTHER WORKING DAY.

THE DOORBELL RINGS. A MAN COMES TO THE DOOR WITH

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A BOX. HE'S A PLEASANT-TALKING MAN, A SOFT-TALKING MAN. HE SAYS, "I HAVE THIS BOX. I HAVE THIS BOX FOR MELVIN STEELE, DELIVERED TO MY HOUSE BY MISTAKE." "WELL, SURE, COME IN." UP TO THAT POINT, "COME IN", "MELVIN?" AND THEN HELL DESCENDS UPON THE LIFE OF RITA STEELE. AT THAT MOMENT, TWO MORE MEN CRASH INTO HER DOOR, WEARING BLUE BANDANAS JUST LIKE THE ONE RECOVERED BY THE U-HAUL TRUCK, PUT HER ON THE FLOOR, HANDCUFF HER, ROLL HER OVER AND TAKE HER GLASSES OFF.

AT THIS TIME SHE LOOKS ONE OF THEM SQUARE IN THE FACE AND HE SAYS, "DON'T LOOK AT ME", TAPES UP HER MOUTH, TAPES UP HER EYES, IS GONE TO GET HER HUSBAND, AND SHE SENSES HIM BEING BROUGHT IN. THEY'RE CARRIED OUTSIDE AND PUT IN A VAN ON THE FLOOR, AND THE MEAN VOICE KEEPS INTERROGATING MELVIN, GAINING FROM HIM INFORMATION HE WANTED, BUT IN HIS ENTHUSIASM OR HIS RUSH, KEEPS SCREWING IT UP, SHOOTS HIM, DUMPS MELVIN, WHO IS NOW DYING, AND RITA BEHIND THE SOUTHERN TOOL & DIE.

IT SEEMED LIKE AN ETERNITY, I BELIEVE SHE SAID. WE KNOW IT WAS PROBABLY NO MORE THAN 45 MINUTES, ALL TOGETHER, MAYBE LESS. WHEN ASKED A FEW DAYS LATER, SHE DID THE BEST SHE COULD TO TELL WHAT HAD HAPPENED. SHE KNEW SHE HAD SEEN VERNARD MATHIS. WHEN SHOWN SOME PICTURES SHE SAID, "YES, I RECOGNIZE THAT MAN."

AND IN HER MIND AT THAT TIME WAS, "HE MUST BE THE ONE THAT CAME TO MY DOOR." BUT THEN LATER, UPON REFLECTION, AFTER HEARING AND SEEING MORE VOICES AND OTHERWISE, SHE REALIZES, "NO, I REMEMBER THAT FACE FROM WHEN HE HAD ME ON THE FLOOR, TAKING OFF MY GLASSES, AND I WAS NOSE-TO-NOSE WITH HIM, EVEN IF HE'S GOT A BANDANA COVERING THE LOWER PART OF HIS FACE."

LADIES AND GENTLEMEN, YOU DON'T FORGET THE FACE OF TERROR. IT COMES BACK TO YOU. AND AFTER HEARING MR. MATHIS TALK IN COURT ON PREVIOUS OCCASIONS, SHE'S MORE CONVINCED THAN EVER THAT IS THE MEAN-TALKING MAN, THAT IS THE MAN WHO WAS GIVING ORDERS, THE MAN WHO WAS IN CHARGE, THE MAN THAT WAS IN THE BACK OF THAT VAN, "THE MAN WHO SHOT MY HUSBAND".

AND UPON HEARING MR. WIGGINS, SHE SAYS, "THAT'S THE MAN WHO CAME TO THE DOOR AND I RECOGNIZE THAT VOICE. THAT'S THE MAN WHO SAID, 'WE'RE NOT GOING TO HURT YOU.' THAT'S THE MAN WHO ASKED IF I WAS COLD." YOU DON'T FORGET THE LITTLE BIT OF KINDNESS IN THE MIDDLE OF HELL.

LADIES AND GENTLEMEN, AS I SAID, THE EVIDENCE IN THIS CASE NOT ONLY SPEAKS TO THE GUILT OF VERNARD MATHIS, IT SCREAMS HIS GUILT, AND I'M ASKING YOU, UPON LISTENING TO MR. CLARK'S SUMMATION AND LISTENING

TO THE LAW AS GIVEN TO YOU BY JUDGE SHORT, AND I ASK YOU TO PAY CLOSE ATTENTION, YOU SHOULD GO INTO THAT JURY ROOM AND COME BACK WITH THE ONLY JUST VERDICT ON EACH AND EVERY ONE OF THESE INDICTMENTS.

AND BEFORE I SIT DOWN -- AS I SAID, THIS IS THE ONLY CHANCE I'VE GOT TO TALK TO YOU. BEFORE I SIT DOWN, I WANT TO SHARE A LITTLE EXPERIENCE OF MINE FROM YEARS AGO THAT I'VE TOLD JURORS FROM TIME TO TIME OVER THE YEARS. WHETHER IT HAS ANY APPLICABILITY HERE, WHETHER IT APPLIES AT ALL, IS YOUR CALL. I'M NOT TRYING TO CHARACTERIZE ANY PERSON.

THE STORY GOES BACK TO WHEN MY MIDDLE DAUGHTER, WHO WAS MY YOUNGEST DAUGHTER AT THE TIME, WAS ABOUT THREE AND A HALF. WE WERE AT HOME, THE T.V. WAS ON, AND I WAS READING WHAT WAS THEN THE ROCK HILL EVENING HERALD -- IT'S NOW THE MORNING PAPER, BUT BACK THEN IT WAS A NIGHTTIME PAPER -- AND I'M READING THAT, NOT REALLY PAYING ATTENTION, AND SHE'S PLAYING THERE ON THE FLOOR. MY WIFE, I THINK, IS TAKING A BATH.

NINE O'CLOCK, AND I KNOW SHE PROBABLY SHOULD HAVE BEEN IN BED BY THEN, BUT AT NINE O'CLOCK A T.V. SHOW CAME ON, AND IT'S A SERIES SOME OF YOU MAY BE OLD ENOUGH TO REMEMBER CALLED "VEGAS". AND IT'S A STORY

ABOUT A PRIVATE DETECTIVE BASED IN A LAS VEGAS CASSINO, STARRING ROBERT URICH WHO PASSED AWAY THIS YEAR. AND THE VERY OPENING SCENE WAS SOMETHING LIKE THE ST. VALENTINE'S DAY MASSACRE, WHERE A BUNCH OF GUNMEN WITH TOMMY GUNS CAME INTO THIS RESTAURANT AND TOOK FOUR, FIVE OR SIX PEOPLE AND LINED THEM UP AGAINST THE WALL AND GUNNED THEM DOWN.

AND MY LITTLE GIRL STARTING CRYING UNCONTROLLABLY, UNUSUAL FOR THE HAPPIEST OF MY THREE DAUGHTERS, BUT SHE WAS CRYING WHEN SHE SAW THIS SCENE. AND I TOOK HER AND HUGGED HER, LIKE A DADDY WOULD. I WAS IN MY FIRST TERM AS SOLICITOR AT THE TIME. AND THROUGH HER SOBS, AND I'M TRYING TO CALM HER DOWN, SHE KEEPS SAYING OVER AND OVER, "BAD PEOPLE, DADDY, BAD PEOPLE." SHE SAID IT SEVERAL TIMES.

SO AFTER I GOT HER A LITTLE BIT CALMER -- SHE HATES FOR ME TO TELL THIS STORY BECAUSE SHE JUST FINISHED LAW SCHOOL HERSELF -- I GOT HER CALMED DOWN AND I SAID, "WELL, SWEETHEART, YOU KNOW WHAT'S GOING TO HAPPEN TO THESE BAD PEOPLE?" AND SHE LOOKED UP AND SURPRISED ME BY HER ANSWER. SHE SAID, "JAIL, DADDY, JAIL." AND I THOUGHT I'D TAKE IT A STEP FURTHER AND I SAID, KNOWING IN THE BEGINNING THE GOOD GUY IS GOING TO WIN IN THIS T.V. SHOW, I SAID, "DO YOU KNOW WHO'S GOING TO PUT THE BAD PEOPLE IN JAIL?",

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WONDERING IF SHE EVEN KNEW THE CONCEPT OF THE POLICE, AND DOWN DEEP MAYBE I WAS HOPING SHE'D SAY, "MY DADDY", BUT SHE GAVE THE ONE AND ONLY CORRECT ANSWER TO MY QUESTION, "WHO'S GOING TO PUT THE BAD PEOPLE IN JAIL?" SHE SAID, "THE GOOD PEOPLE, DADDY, THE GOOD PEOPLE".

AND I LEAVE THIS CASE TODAY WITH THE GOOD PEOPLE OF LANCASTER COUNTY. THANK YOU VERY MUCH.

THE COURT: THANK YOU, SOLICITOR.

MR. CLARK?

MR. CLARK: THANK YOU, YOUR HONOR. MAY IT PLEASE THE COURT.

THE COURT: YES, SIR.

MR. CLARK: SOLICITOR, FOREMAN AND THE JURY, MR. JUSTICE GAVE A VERY ELOQUENT CLOSING ARGUMENT, AND I HOPE THAT I'M ABLE TO MATCH HIS ELOQUENCE, BUT YOU PROBABLY CAN LOOK AT ME AND TELL I HAVEN'T BEEN DOING THIS FOR 25 YEARS LIKE HE HAS. BUT, LADIES AND GENTLEMEN, YOU'RE NOT PERMITTED TO DECIDED THIS CASE ON THE ELOQUENCE OF THE LAWYERS. YOU ARE REQUIRED TO DECIDE THIS CASE ON THE EVIDENCE THAT CAME FROM THIS WITNESS STAND AND THE EVIDENCE OR LACK OF EVIDENCE THAT WAS ADMITTED IN THIS CASE.

LADIES AND GENTLEMEN, IN THINKING ABOUT MY CLOSING STATEMENT TO YOU, I REALIZED THAT YOU HAVE A

VERY TOUGH -- YOU'RE IN A VERY TOUGH POSITION AND YOU'VE GOT A VERY TOUGH DECISION TO MAKE. YOUR DECISION IS TOUGH BECAUSE, AS I TOLD YOU FROM THE BEGINNING WHEN I STOOD RIGHT HERE ON MONDAY AFTERNOON, THIS IS AN EMOTIONAL CASE.

YOU'VE GOT WHO NO DOUBT WAS A GOOD MAN -- YOU'VE GOT A GOOD MAN THAT'S DEAD. NO DOUBT HE WAS A GOOD MAN. I MEAN, EVERYBODY IN THE COURTROOM BELIEVES THAT. I BELIEVE IT. A GOOD MAN DIED UNDER UTTERLY HORRIBLE CIRCUMSTANCES. YOU'VE GOT A GRIEVING WIDOW WHO OBVIOUSLY IS A NICE, FINE WOMAN, AND IT'S ONLY NATURAL TO BECOME ANGRY AND EMOTIONAL AND WANT TO MAKE SOMEONE PAY FOR WHAT HAPPENED. SO YOU'VE GOT A TOUGH DECISION. YOU'VE GOT A TOUGH JOB TO DO.

BUT, LADIES AND GENTLEMEN, I ASKED YOU FROM THE BEGINNING TO DECIDE THIS CASE ON THE EVIDENCE AND NOT THE EMOTION INVOLVED, NOT WHAT IS YOUR NATURAL FEELING, TO WANT TO PUNISH SOMEONE FOR WHAT HAPPENED. SOMEONE SHOULD BE PUNISHED FOR WHAT HAPPENED TO MELVIN STEELE AND RITA STEELE, NO QUESTION ABOUT IT, BUT, LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA, THROUGH THE COUNTY OF LANCASTER, HAS A DUTY TO PUNISH THE RIGHT PERSON. IF YOU PUNISH THE WRONG PERSON, THE ENDS OF JUSTICE HAVE NOT BEEN SERVED.

LADIES AND GENTLEMEN, YOU'VE GOT TO TAKE THIS

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EVIDENCE AND YOU'VE GOT TO TAKE THE LAW, AS THE JUDGE IS GOING TO TELL YOU, HE'S GOING TO CHARGE YOU IN A LITTLE WHILE, AND YOU'VE GOT TO MAKE YOUR DECISION. AND I WANT TO TALK TO YOU IN THE TIME THAT I HAVE ABOUT THE EVIDENCE AND THE LAW. I WANT TO BEGIN WITH THE LAW, THEN I'LL COME BACK TO THE EVIDENCE.

LADIES AND GENTLEMEN, WHEN YOU TOOK YOUR OATH AND WHEN YOU WERE QUESTIONED BY JUDGE SHORT, YOU SAID YOU COULD BE ABSOLUTELY FAIR IN THIS CASE. YOU SAID THAT WHATEVER YOU HEARD ABOUT THE CASE OR WHATEVER FEELINGS YOU MIGHT HAVE HAD ABOUT IT, YOU WOULD SET THEM ASIDE AND BE FAIR, AND YOU TOOK AN OATH THAT YOU WOULD DO THAT AND I BELIEVE YOU WILL.

LADIES AND GENTLEMEN, JUDGE SHORT TOLD YOU, IN SOME OF HIS OPENING REMARKS TO YOU, THAT YOUR JOB IS SO IMPORTANT BECAUSE NOTHING CAN BE DONE ABOUT AN ERROR IN A FACTUAL FINDING BY A JURY. NOTHING CAN BE DONE TO CORRECT THAT. IF A PROSECUTOR MAKES AN ERROR, IT CAN BE CORRECTED. IF A DEFENSE LAWYER MAKES AN ERROR, THERE'S A TIME AND PLACE TO CORRECT IT. IF A JUDGE MAKES AN ERROR, THERE'S A TIME AND PLACE TO CORRECT THAT. BUT IF YOU MAKE A FACTUAL FINDING ERROR, NOTHING IN OUR SYSTEM CAN CHANGE THAT. THAT'S WHY YOUR JOB IS SO IMPORTANT.

NOW, LADIES AND GENTLEMEN, IN ORDER FOR YOU TO

CONVICT VERNARD MATHIS OF THIS CRIME, YOU HAVE TO FIND THAT THE PROOF THAT HAS BEEN PUT TO YOU PROVES THAT HE DID IT, ALL THE ELEMENTS OF THE CRIME, BY PROOF BEYOND A REASONABLE DOUBT. IF YOU DON'T FIND THAT THIS EVIDENCE PROVES HIM GUILTY BEYOND A REASONABLE DOUBT, YOU HAVE JUST AS GREAT A DUTY TO FIND HIM NOT GUILTY, AND THAT'S WHAT MAKES OUR COUNTRY GREAT. WE DON'T CONVICT PEOPLE, IMPRISON THEM, ON WHAT WE SPECULATE MIGHT HAVE HAPPENED OR WHAT WE THINK MAY HAVE HAPPENED. WHAT MAKES THIS PLACE GREAT IS THAT WE REQUIRE PROOF BEYOND A REASONABLE DOUBT.

LADIES AND GENTLEMEN, I THINK JUDGE SHORT IS GOING TO TELL YOU THAT PROOF BEYOND A REASONABLE DOUBT IS THIS, A DOUBT THAT CAUSES A REASONABLE PERSON TO HESITATE TO ACT. SO AFTER CONSIDERING ALL THIS EVIDENCE, IF YOU HESITATE IN THINKING, "WELL, HE MIGHT HAVE DONE IT, BUT SOME THINGS MIGHT POINT TO HIS GUILT AND SOME ARE NOT SO CLEAR", THEN THAT'S A HESITATION TO ACT AND YOU ARE DUTY BOUND TO RETURN A VERDICT OF NOT GUILTY. IT'S A TOUGH JOB. YOU'RE IN A TOUGH POSITION, I'LL ADMIT THAT, BUT THAT'S THE DUTY THAT YOU HAVE. THAT'S WHAT YOU SAID YOU WOULD DO WHEN YOU SAT OVER THERE AND YOU WERE QUESTIONED ABOUT THE CASE. AND KNOWING THE FINE PEOPLE THAT YOU ARE, YOU'LL DO YOUR BEST TO DO THAT.

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LADIES AND GENTLEMEN, THERE REALLY ARE ONLY A COUPLE OF ISSUES IN THIS CASE. THERE'S A LOT -- THERE'S ABOUT 100 PIECES OF EVIDENCE BUT ONLY, REALLY, A COUPLE OF ISSUES. I'D LIKE TO NARROW THIS DOWN AS SIMPLE AS I CAN. WE CAN MAKE THIS AS COMPLICATED AS WE WANT, BUT I'D LIKE TO NARROW IT DOWN AS SIMPLE AS I CAN, AND THOSE TWO IMPORTANT ISSUES ARE IDENTITY AND CREDIBILITY.

AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT IN TRYING TO ESTABLISH THAT THIS MAN DID EVERYTHING THEY SAID HE DID, THEY JUST HAVE NOT ESTABLISHED IT BY PROVING IT BEYOND A REASONABLE DOUBT, AND I'LL TALK ABOUT THAT IN A MINUTE. AND ALSO, MOST OF THE TESTIMONY THAT WAS PRESENTED TO YOU ABOUT THIS CASE IS SO INCONSISTENT AND TANGLED THAT IT JUST DOESN'T MEET THAT BURDEN OF PROOF BEYOND A REASONABLE DOUBT FOR YOU TO CONVICT THIS MAN OF ONE OF THE WORST CRIMES, THE WORST CRIME IN MY OPINION, THAT WE HAVE ON THE BOOKS.

NOW, LADIES AND GENTLEMEN, I WOULD COMPARE THIS EVIDENCE IN THE STATE'S CASE TO A CHEF TRYING TO PUT TOGETHER SOME VEGETABLE SOUP. THAT MAY SEEM SIMPLE, BUT WHEN YOU MAKE VEGETABLE SOUP, YOU MIGHT CUT UP A FEW CARROTS, CUT UP A LITTLE CELERY, A LITTLE PEAS. WHATEVER VEGETABLES YOU WANT TO CUT UP, YOU PUT THEM

IN A POT OR A BOWL, BUT IN ORDER TO MAKE THAT DISH VEGETABLE SOUP, YOU'VE GOT TO HAVE SOME BROTH, SOME WATER OR SOMETHING, TO BRING IT TO A BOIL. AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, THIS EVIDENCE, CIRCUMSTANTIAL, COULD BE COMPARED TO BEING PARTS OF THE SOUP, BUT IT'S NOT ENOUGH TO BRING TOGETHER TO MAKE IT PROOF BEYOND A REASONABLE DOUBT.

LADIES AND GENTLEMEN, BEFORE I TALK ABOUT WHAT I THINK IS IMPORTANT IN THIS CASE, THAT YOU OUGHT TO FOCUS ON, I WANT TO RESPOND TO SOME OF THE THINGS THAT MR. JUSTICE HAS SAID WHILE THEY'RE STILL FRESH IN YOUR MIND. THE FIRST THINK I THINK HE SAID WAS THE EVIDENCE INDEPENDENTLY MIGHT NOT MEAN MUCH. WELL, LADIES AND GENTLEMEN, I AGREE WITH THAT. MOST OF THIS EVIDENCE, WHEN YOU LOOK AT IT, IT REALLY DOES NOT MEAN A WHOLE LOT IN REFERENCE TO THIS CASE.

AND I JUST RANDOMLY PICK UP WHAT'S BEEN MARKED AS STATE'S EXHIBIT #82. YOU'LL HAVE ALL THIS EVIDENCE WITH YOU. IT APPEARS TO ME TO BE JUST NOTES ON A SHEET. IT DOESN'T REALLY MEAN A WHOLE LOT. MOST OF IT DOESN'T MEAN A WHOLE LOT. IT JUST INDEPENDENTLY AND COLLECTIVELY -- IT JUST DOES NOT RISE TO THE LEVEL THAT IT SHOULD.

THE NEXT THING HE SAID WAS I WAS GOING TO ARGUE DON'T BELIEVE WIGGINS. WELL, LADIES AND GENTLEMEN, I

THINK MOST REASONABLE PEOPLE WOULD NOT BELIEVE WIGGINS. THERE'S A SAYING THAT WE ALL SAY, "I WOULDN'T TRUST HIM NO FARTHER THAN I COULD THROW HIM", OR, "IF I CAN'T SEE HIM, I AIN'T GOING TO TRUST HIM." LADIES AND GENTLEMEN, HOW IN THE WORLD CAN YOU TAKE A TWO-TIME LOSER, CONVICTED ARMED ROBBER, CONVICTED PERSON WHO'S ASSAULTED AND BATTERED AND ATTEMPTED TO MAIM SOMEBODY, WHO JUST GOT OUT OF PRISON, BACK IN PRISON -- HOW IN THE WORLD CAN YOU TAKE THEIR WORD AND BELIEVE IT, ESPECIALLY WHEN THEY'VE TOLD LIE AFTER LIE AFTER LIE AND ARE STILL NOT TELLING THE TRUTH.

NOW, LADIES AND GENTLEMEN, I SUBMIT TO YOU AT THIS POINT, THIS CASE IS NOT SOLVED. THIS CASE IS NOT SOLVED. I SUBMIT TO YOU THAT WHAT THIS EVIDENCE PROVES TO YOU AND EVERYONE HERE IS THAT THE REAL PERPETRATORS OF THIS CRIME INCLUDE WIGGINS AND OTHER PEOPLE AROUND, IN WASHINGTON, D.C. THAT'S WHAT THIS EVIDENCE PROVES. HE SAID IT HIMSELF. NOW, MR. JUSTICE SAYS ELTON WIGGINS -- YOU CAN BELIEVE HIM BECAUSE HE GAVE THOSE FALSE STATEMENTS WITHIN 24 HOURS AFTER HE WAS ARRESTED. WELL, LADIES AND GENTLEMEN, MR. BLACKMON TESTIFIED THAT EVEN WHEN HE GOT BACK TO SOUTH CAROLINA, AFTER BEING ARRESTED AND BROUGHT BACK, HE GAVE THOSE STATEMENTS THEN.

LADIES AND GENTLEMEN, I AGREE WITH MR. JUSTICE THAT ELTON IS DOING WHAT'S IN HIS BEST INTERESTS, AND HE'S TRYING TO AVOID A MURDER TRIAL BECAUSE HE FEELS THAT IF HE CAN AVOID THE MURDER CHARGE, SOME DAY HE WILL GET OUT OF JAIL. THINK ABOUT IT. HE HAS EVERY REASON TO COME IN HERE AND FABRICATE THIS STORY, AND I'LL POINT OUT ALL OF THE FABRICATIONS THAT HE'S MADE.

I SUBMIT TO YOU, HE'S STILL NOT TELLING THE TRUTH. HE JUST GOT ON THE STAND AND TESTIFIED THAT SOMEONE THAT HE COMMITTED THIS CRIME WITH, HE DOESN'T EVEN KNOW THEIR LAST NAME. THEN WHEN I PRESSED HIM ABOUT IT HE SAID, "WELL, I KNOW WHERE HE LIVES", "BILL", BUT DID HE TELL MR. BLACKMON ANY OF THIS? MR. BLACKMON WAS THERE IN WASHINGTON. ALL HE HAD TO DO WAS GO AND ARREST BILL THEN, THE SAME WAY HE GOT THE WARRANT FOR ELTON WIGGINS. LADIES AND GENTLEMEN, ELTON WIGGINS IS INCREDIBLE AND I'LL COME BACK TO THAT.

MR. JUSTICE TALKED ABOUT AUTOMOBILES BEING IDENTIFICATION FACTORS, AND I AGREE, SOMETIMES WE DO IDENTIFY SOMEONE BY THE AUTOMOBILE THEY DRIVE. WE DO THAT. THE ONLY PROBLEM WITH THAT BEING A CONCRETE ANSWER IS THAT DIFFERENT PEOPLE CAN DRIVE THE AUTOMOBILE AT DIFFERENT TIMES, AND I SUBMIT TO YOU

THAT'S WHAT HAPPENED IN THIS CASE. YOU ARE NOT ASKED TO CONVICT AN AUTOMOBILE, YOU ARE ASKED TO CONVICT THE PERSON DRIVING THE AUTOMOBILE. THAT'S WHERE THE DIFFICULTY COMES UP.

MR. WIGGINS TESTIFIED, "YES, I'VE DRIVEN THAT '95 CADILLAC." THAT RAISES THE QUESTION OF ALL THESE ACTS THAT THE STATE ALLEGES OCCURRED WITH THAT '95 CADILLAC. IF MR. WIGGINS WAS DRIVING THAT CAR, THEN HE'S THE GUILTY PARTY. HOW DO YOU KNOW THAT THIS MAN (INDICATING DEFENDANT) WAS, IN FACT, DRIVING IT? EVIDENCE JUST DOESN'T RISE TO THE LEVEL OF PROOF BEYOND A REASONABLE DOUBT.

MR. JUSTICE TALKED ABOUT THE VEHICLE, THE LINCOLN, HAVING 6100 MILES ON IT, AND, LADIES AND GENTLEMEN, HE SAID HE WAS DRIVING BACK AND FORTH TO WASHINGTON, D.D. WELL, MAYBE HE WAS, BUT WHAT THAT MEANS IS IF HE WAS DRIVING BACK AND FORTH TO D.C., WHEN DOES HE HAVE TIME TO COME UP WITH THIS PLAN AND HAVE ALL THESE PEOPLE WHO CLAIM THEY'VE SEEN HIM?

BUT YOU KNOW WHAT THE UNDENIABLE FACT IS ABOUT THAT? MR. WIGGINS TESTIFIED THAT THE NIGHT THAT THIS INCIDENT OCCURRED, HE AND MR. MATHIS AND BILL GOT IN THAT LINCOLN AND WENT BACK TO WASHINGTON, D.C., BUT THERE'S PROOF THAT THAT CANNOT POSSIBLY BE TRUE. AND WHY CAN'T IT POSSIBLY BE TRUE? BECAUSE OFFICER

WASHINGTON, TONY WASHINGTON, THE YOUNG BLACK GUY THAT WORKS IN COLUMBIA NOW, HE TESTIFIED, "I SAW MR. MATHIS ON THE TWENTY-FIRST IN LANCASTER AT SYLVIA TALFORD'S RESIDENCE AT NIGHT, AND HE WAS BY HIMSELF."

LADIES AND GENTLEMEN, WHAT MR. WIGGINS SAID -- IT'S VERY UNLIKELY THAT IT'S TRUE. IF YOU BELIEVE THIS CRIME WAS CONCLUDED SOMETIME AROUND ELEVEN OR MIDNIGHT ON THE TWENTIETH AND MR. MATHIS GOT IN HIS CAR AND DROVE TO WASHINGTON, D.C. AND WAS BACK HERE THE VERY NEXT NIGHT, IT JUST DOESN'T MAKE SENSE. MOST OF US HAVE BEEN TO WASHINGTON, D.C. AND NEW YORK AND UP 95, UP THERE, AND WE KNOW THAT FROM HERE I THINK IT'S AN EIGHT, TEN HOUR DRIVE, SO HOW CAN THAT BE TRUE? IF HE GOT IN THE CAR 12:00 OR 11:00, OR WHENEVER, AND DROVE UP THERE AND CAME RIGHT BACK, YOU'VE GOT TO ACCOUNT FOR TIME TO REFUEL THE VEHICLE. A MAN HAS GOT TO EAT. WHEN IS HE GOING TO REST? HE WOULD HAVE TO HAVE DRIVEN ALL NIGHT AND COME RIGHT BACK. THAT JUST DIDN'T HAPPEN, IT JUST DIDN'T HAPPEN. IT JUST DOESN'T MAKE SENSE, ANOTHER INCONSISTENCY.

LADIES AND GENTLEMEN, I'LL TELL YOU SOMETHING ELSE ABOUT WHAT MR. JUSTICE SAID. HE TALKED ABOUT THE B & E AUTO SALES AND HOW THE EVIDENCE PROVES HE BOUGHT THOSE VEHICLES. DO YOU KNOW WHAT THE PROBLEM WITH THAT IS, LADIES AND GENTLEMEN? MR. JUSTICE ARGUED

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THAT MR. MATHIS WENT TO CHARLOTTE AND RENTED THE CAR THE SAME DAY. NOW, YOU ASK YOURSELVES IF THIS IS REALLY POSSIBLE.

IF HE WENT TO CHARLOTTE, AND WE KNOW THAT SYLVIA TALFORD RENTED THE VEHICLE, WHAT THAT MEANS IS THEY HAD TO GO UP THERE IN ONE VEHICLE. THEY HAD TO GO IN ONE VEHICLE BECAUSE IT'S ONLY TWO PEOPLE. THEY CAN'T DRIVE THREE VEHICLES BACK. SO IF THE TWO OF THEM WENT TO CHARLOTTE AND GOT THAT VEHICLE, HOW IN THE WORLD DID THEY BRING BACK THE LINCOLN, THE VEHICLE THEY DROVE UP THERE IN, WHICH I BELIEVE THEY'RE CLAIMING WAS A MAZDA -- THAT'S TWO VEHICLES -- AND THE THREE OTHER VEHICLES THAT SOMEONE BOUGHT AT B & E AUTO IN THE SAME DAY? HOW COULD THAT HAVE HAPPENED?

NOW, WIGGINS SAYS, "I WAS THERE, BUT I DON'T KNOW BILL'S LAST NAME. I DON'T KNOW IF BILL WAS THERE." LADIES AND GENTLEMEN, HOW COULD IT HAPPEN? IT JUST DOESN'T ADD UP TO THE PROOF THAT YOU NEED TO FIND THIS MAN GUILTY.

LADIES AND GENTLEMEN, MR. JUSTICE TALKED ABOUT THEM BEING IN THE VAN AND CALLING THIS AND THAT. WELL, LADIES AND GENTLEMEN, ELTON WIGGINS, THE STAR WITNESS IN THIS CASE WHO HAS EVERYTHING TO LIE FOR AND WHO HAS LIED ALL HIS LIFE -- REMEMBER, THIS IS A GUY WHO DROVE TO THE HOSPITAL WHEN HE WAS SICK OR

INJURED AND WANTS HELP AND LIES ABOUT WHO HE IS. THEN WHEN HE'S ARRESTED, HE'S GOT SOMEBODY ELSE'S I.D. CARD WITH HIM. BUT MR. WIGGINS SAYS THERE WERE TWO LOOKOUTS AND THERE WERE NO CALLS MADE. MR. JUSTICE SAID THERE WERE CALLS MADE. THAT'S CONTRADICTORY TO WHAT THEIR OWN WITNESS SAYS.

LADIES AND GENTLEMEN, THEY SUBMITTED PHONE RECORDS TO YOU. THEY SUBMITTED THE PHONE THAT MR. MATHIS SUPPOSEDLY HAD AND THEY READ OFF A BUNCH OF CALLS, BUT DO YOU KNOW WHAT WAS BROUGHT OUT ON CROSS-EXAMINATION? SIXTEEN OF THOSE CALLS WERE MADE TO HIM. NOW, YOU EXPLAIN TO ME -- AND HE TOOK THE CALLS APPARENTLY BECAUSE IT HAS THE TIME, THEY READ THE TIMES TO YOU -- HOW IN THE WORLD CAN HE BE BREAKING INTO THE STEELE RESIDENCE, HANDCUFFING THEM, BLINDFOLDING THEM, PUTTING THEM IN THE VAN, BEATING ON MR. STEELE, SHOOTING MR. STEELE, DUMPING HIM OUT OF THE VAN AND TAKING 16 PHONE CALLS DURING THE SAME TIME. IT JUST DOESN'T SEEM LOGICAL.

AND YOU KNOW WHAT ELSE THEY FAILED TO DO? THEY FAILED TO DEMONSTRATE TO YOU WHERE THAT CELL PHONE WAS. NOW, LADIES AND GENTLEMEN, YOU DIDN'T HEAR ANY TESTIMONY FROM ANY REPRESENTATIVES OF ANY CELL PHONE COMPANY. AND I SUBMIT TO YOU THAT CELL PHONES GO THROUGH TOWERS. YOU TRAVEL FROM ONE TOWN AND IT PICKS

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UP ANOTHER TOWER. THEY CAN TELL YOU WHERE THIS PERSON WAS. DID THEY BRING EVIDENCE TO YOU TO TELL YOU HE WAS HERE WHEN THOSE CALLS WERE RECEIVED OR MADE?

MR. WIGGINS TESTIFIED HE GAVE HIS PHONE TO SOMEONE ELSE. DID THEY SUBMIT HIS PHONE RECORDS WHEN HE TESTIFIED ABOUT THAT? NO. IT MUST BE SOMETHING THAT DOESN'T ADD UP AGAIN. IT MUST BE SOMETHING THAT DOESN'T ADD UP AGAIN.

THEN THEY WERE TALKING ABOUT THE WALKIE-TALKIE BOXES. THEY MADE A BIG DEAL OUT OF THE WALKIE-TALKIE BOXES. WELL, LADIES AND GENTLEMEN, ASK YOURSELF THIS QUESTION. IF THREE PEOPLE ARE IN THE VAN -- ACCORDING TO WIGGINS, HE'S DRIVING, BILL IS IN THE PASSENGER SEAT, MR. MATHIS IS IN THE BACK -- WHY WOULD YOU NEED WALKIE-TALKIES IF YOU'RE IN THE SAME VAN?

NOW, THERE ARE TWO OTHER PEOPLE, ACCORDING TO THEIR THEORY. ONE IS A LOOKOUT ON THE SOUTH END, ONE IS A LOOKOUT ON THE NORTH. MR. WIGGINS SAID HE GAVE HIS CELL PHONE TO SOMEONE. HE DOESN'T KNOW WHO THAT IS. "I DON'T KNOW. I DON'T KNOW WHO I GAVE IT TO." I SUBMIT HE SAID THAT TO SHIELD HIMSELF. HE'S GOT TO SAY THAT OR ELSE HIS OWN RECORDS ARE GOING TO CONTRADICT HIM. BUT WHY WOULD THEY NEED WALKIE-TALKIES? HE SAID HE ALREADY GAVE THE PHONE TO SOMEONE ELSE. IT JUST DOESN'T ADD UP.

AND FURTHERMORE, LADIES AND GENTLEMEN, YOU WERE READ A LIST OF WITNESSES WHEN THIS CASE STARTED. ONE OF THOSE WITNESSES WAS SYLVIA TALFORD. DONNIE WASHINGTON TESTIFIED HE FOUND THESE IN SYLVIA TALFORD'S HOUSE. DID THEY TELL YOU WHY THEY DIDN'T SUBPOENA HER TO BE HERE TO TELL YOU WHO BROUGHT THESE PHONES TO HER HOUSE? THAT'S ANOTHER VOID IN THIS EVIDENCE.

MR. JUSTICE: YOUR HONOR, I OBJECT. I BELIEVE THE LAW SAYS THE WITNESSES ARE EQUALLY ACCESSIBLE TO ALL PARTIES.

MR. CLARK: WE DON'T HAVE THE BURDEN, YOUR HONOR.

THE COURT: WELL, I UNDERSTAND.

I'M GOING TO OVERRULE THE OBJECTION.

MR. CLARK: WOULDN'T YOU EXPECT IF THIS WERE FOUND IN YOUR HOUSE, YOU SHOULD GIVE AN ACCOUNT FOR WHY IT'S THERE?

AND ON ANOTHER MATTER, THEY TELL YOU, "WE SURVEILLED THAT HOUSE AND WE SAW MR. MATHIS PUT SOMETHING IN HIS CAR." WELL, DON'T YOU THINK IF HE HAD ALL THIS TO HIDE, HE WOULD HAVE BEEN PUTTING IT IN HIS CAR? HE DIDN'T BECAUSE THEY DIDN'T BELONG TO HIM. SYLVIA TALFORD, THEY'RE IN HER RESIDENCE. SHE'S NOT HERE, WASN'T CALLED AS A WITNESS.

AND THEY WANT YOU TO FIND THIS MAN GUILTY OF

MURDER. THEY SAY THEIR EVIDENCE IS PROOF BEYOND A REASONABLE DOUBT. CAN YOU SAY FOR CERTAIN WHAT THE DEAL IS ON THESE? (INDICATING WALKIE-TALKIES). DID THEY EVER FIND MR. MATHIS' WALKIE-TALKIES? NO.

ALSO, LADIES AND GENTLEMEN, THE PHONE THAT THEY TALKED ABOUT THAT THE YOUNG LADY FROM CHARLOTTE BOUGHT FOR MR. MATHIS TO USE, THE TELLING THING IS WHEN HE WAS CAUGHT, WHEN HE WAS FOUND, HE DIDN'T HAVE THAT PHONE. NOW, I WANT YOU TO THINK BACK TO WHAT SHE SAID. SHE SAID SHORTLY AFTER THE TWENTIETH, MAYBE EVEN THE NEXT DAY, "SOMEONE ELSE CALLED ME ABOUT THAT PHONE". SOMEONE ELSE CALLED ABOUT THAT PHONE. DOES THAT MEAN SOMEONE ELSE HAD IT? COULD BE.

LADIES AND GENTLEMEN, MR. JUSTICE TALKED ABOUT THE IDENTIFICATION OF MRS. STEELE. NOW, LADIES AND GENTLEMEN, I'M A DECENT INDIVIDUAL. I'M NOT INTERESTED IN CAUSING THIS WOMAN ANY MORE PAIN. MY HEART GOES OUT TO WHAT HAPPENED TO HER. I'M SORRY THAT THAT HAPPENED TO HER. I WOULD NEVER CONDONE ANYTHING LIKE THAT. BUT, LADIES AND GENTLEMEN, RITA STEELE DID NOT SEE THIS MAN (INDICATING DEFENDANT). EVIDENCE PROVES IT.

I THINK WHAT'S HAPPENED IS THIS. NATURALLY SHE WANTS THE PERSON RESPONSIBLE TO PAY FOR THIS. SHE DOES, AND I WOULD, TOO. BUT, LADIES AND GENTLEMEN,

RITA STEELE SAID FROM THE VERY BEGINNING, "THIS MAN CAME IN MY HOUSE (INDICATING DEFENDANT). THAT'S HIM, HE CAME IN MY HOUSE." BUT THE STATE'S OWN WITNESS TOLD YOU, "I DID THAT. I WENT TO HER DOOR", BUT SHE HAD ALREADY TOLD THEM THAT MR. MATHIS DID IT.

AND I DON'T THINK SHE INTENDED TO MISLEAD ANYONE. I DON'T THINK SHE HAD ANY BAD OBJECTIVE. I THINK SHE WAS TRYING TO DO WHAT SHE THOUGHT WAS RIGHT, BUT I THINK IT WAS INFLUENCED BY WHAT THE INVESTIGATORS HAD SAID TO HER AND ALL THE OTHER CIRCUMSTANCES. BUT WHAT SHE SAID FROM THE BEGINNING IS, "THIS MAN (INDICATING DEFENDANT) CAME IN MY HOUSE". THE STATE PUTS A WITNESS ON WHO SAYS, "I DID IT."

NOW, I ASK YOU TO LOOK AT THE DESCRIPTION. HERE'S WHY IT'S CLEAR SHE NEVER SAW THIS MAN. IT WAS READ INTO EVIDENCE. SHE SAID THAT SHE AT FIRST TOLD THE LAW ENFORCEMENT OFFICERS "A BLACK MAN WITH A POINTY NOSE, SMOOTH SKIN." THAT WAS ELTON WIGGINS. BUT GETTING CAUGHT UP IN THE EXCITEMENT AND THE ANXIETY AND THE HORROR THAT SHE WENT THROUGH, SHE PICKED HIM OUT. WHAT THAT IS, I DON'T KNOW, BUT SHE TOLD THEM, "LISTEN, I CAN'T IDENTIFY THE OTHER TWO." REMEMBER I ASKED HER THAT ON CROSS-EXAMINATION. REMEMBER I ASKED MR. BLACKMON DID SHE TELL HIM THAT.

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HE SAID YES.

NOW, I THINK WHAT HAPPENED -- THIS TESTIMONY ABOUT, "WELL, HE TURNED ME OVER AND I LOOKED DIRECTLY IN THE FACE", THAT WASN'T EVER SAID UNTIL THIS MORNING. AFTER ELTON WIGGINS HAD SAID HE WENT IN THE HOUSE, THEN THEY HAD TO FIND A WAY TO GET AROUND THAT. THEY HAD TO FIND A WAY TO GET AROUND IT. THEN SHE SAID, "WELL, I TURNED OVER AND LOOKED IN HIS FACE", BUT SHE HAD ALREADY TOLD MR. BLACKMON, "I CAN'T IDENTIFY THE OTHER TWO." LADIES AND GENTLEMEN, THAT'S NOT PROOF BEYOND A REASONABLE DOUBT, NOT PROOF BEYOND A REASONABLE DOUBT.

NOW, RITA STEELE'S TESTIMONY AND HER CIRCUMSTANCES LEAD ME TO TALK ABOUT THE I.D. THAT WAS MADE BY THESE OTHER WITNESSES. LADIES AND GENTLEMEN, THERE ARE SOME REAL PROBLEMS WITH THOSE IDENTIFICATIONS. FIRST LET'S TALK ABOUT MR. MCWATERS, THE GUY WHO RENTED THE U-HAUL. HE HAD GIVEN A STATEMENT, "I CAN'T REALLY TELL YOU WHO THE GUY IS", BUT AFTER HE COMES INTO COURT, HE SITS AND HE LISTENS TO THIS, HE STARTS TO FEEL SYMPATHETIC TOO. AND HE THINKS, NATURALLY, "WELL, IF HE'S ON TRIAL, HE MUST BE THE GUY WHO DID IT."

AND HE GETS UP AND HE TESTIFIES, "WELL, I COULDN'T SAY, I COULDN'T GIVE A DESCRIPTION TO THEM

BEFORE ABOUT IT, BUT THAT'S HIM AND HE HAD A FULL BEARD." WELL, LADIES AND GENTLEMEN, HOW CAN THAT GUY, IF IT'S HIM, HAVE A FULL BEARD? REMEMBER MR. JUSTICE REMINDED YOU THIS U-HAUL WAS RENTED, I THINK HE SAID, THREE HOURS BEFORE THE INCIDENT. HOW CAN HE HAVE A FULL BEARD THREE HOURS BEFORE, AT SIX O'CLOCK, AND THEN HAVE SMOOTH SKIN AT TEN O'CLOCK?

AND IF THAT'S NOT PERSUASIVE TO YOU, NONE OF THE OTHER WITNESSES THAT CLAIM THEY SAW THIS GUY SAID HE HAD A FULL BEARD. LADIES AND GENTLEMEN, I KNOW IT'S DIFFICULT, BUT YOU'VE GOT TO BE OBJECTIVE AND YOU'VE GOT TO LOOK AT THE EVIDENCE. SHEILA HUDSON, ANOTHER EXAMPLE OF HOW BEING IN HERE AND GETTING CAUGHT UP IN EMOTION CAN MAKE YOU WANT TO REMEMBER THINGS THAT YOU DIDN'T. SHE GAVE THE STATEMENT THAT SHE SAW A WHITE CONTINENTAL GO BY HER HOUSE. SHE COULDN'T TELL YOU WHO IT WAS. I THINK SHE EVEN SAID SOMETHING ABOUT A BLUE VAN IN HER STATEMENT IN 2000, RIGHT AFTER THIS HAPPENED.

BUT WHAT HAPPENED TO HER? SHE CAME IN HERE, SHE SAT BACK THERE, SHE LISTENED TO THIS CASE, SHE BECAME EMOTIONAL AND SHE JUMPED ON THE BANDWAGON, TOO. AND SHE GOT ON THIS STAND AND SHE SAID, "YEAH, I SAW THAT CAR. THERE WAS A BLACK MAN IN IT." I GAVE HER HER STATEMENT AND SHE GOES, "WELL, I DON'T KNOW." LADIES

AND GENTLEMEN, THIS MAN IS CHARGED WITH A SERIOUS CRIME WHICH YOU HAVE TO HAVE PROOF BEYOND A REASONABLE DOUBT TO CONVICT HIM OF. THAT'S AN EXAMPLE OF HOW THIS ATMOSPHERE CAN TAINT A PERSON'S TESTIMONY. IT IS NOT RELIABLE. AND I'M NOT SAYING THESE PEOPLE ARE DISHONEST OR BAD PEOPLE. I THINK IT'S A NATURAL REACTION.

THEN LET'S TALK ABOUT -- LET ME GET MY LIST HERE. LET'S TALK ABOUT JIMMY BOSWELL. JIMMY BOSWELL WANTED TO HELP, TOO. NOW, HE'S THE GUY WHO SAID THAT HE SAW A MAN IN A LINCOLN WATCHING THE MCDONALD BUSINESS. THAT'S WHAT HE TESTIFIED ABOUT. WELL, WHEN IT HAPPENED, HE TOLD MR. BLACKMON, THE INVESTIGATOR, "I CAN'T TELL YOU WHAT THE GUY LOOKS LIKE. YOU KNOW, I SEE A LOT OF PEOPLE EVERY DAY." HE GOT IN THIS COURTROOM AND ALL OF A SUDDEN HE KNOWS WHAT THE MAN LOOKS LIKE.

NOW, THINK ABOUT IT. JIMMY BOSWELL NEVER SAT AT OUR TABLE WITH US, BUT HE TESTIFIED THAT HE WALKED UP TO THE DOOR WHERE THE MAN WAS, AND HE WAS CLOSE. AT THAT TIME HE COULDN'T TELL YOU WHAT HE LOOKED LIKE. HE CAME IN THE COURT AND SAT OVER HERE, MORE OF A DISTANCE THAN HE WAS TO THE REAL GUY WHO WAS THERE, AND HE COULDN'T TELL YOU, AND NOW HE CAN TELL YOU. BUT MORE IMPORTANTLY, LADIES AND GENTLEMEN, JIMMY

BOSWELL ADMITTED, HE SAID, "WELL, YOU KNOW, I DID LOOK OVER AT THE STEELE FAMILY AND SMILE." I ASKED HIM, "DID YOU WINK"? HE SAID, "WELL, I DON'T REMEMBER." I JUST LEFT THAT POINT ALONE. THE POINT IS JIMMY BOSWELL'S IDENTIFICATION OF THIS MAN DOESN'T RISE TO THE LEVEL THAT IT NEEDS TO RISE TO.

LET'S TALK ABOUT JEFF WAYNE SNIPES. REMEMBER WHO JEFF WAYNE SNIPES WAS? HE WAS THE GUY WHO TESTIFIED THAT HE SAW A WHITE LINCOLN WITH A RED LIGHT ON THE DASH. THAT WAS PROVEN INACCURATE BY THEIR OWN WITNESS. MR. SMITH FROM HERTZ -- THEY BROUGHT THE REGIONAL SECURITY GUY WHO WOULD KNOW -- HE TESTIFIED THAT THESE CARS USUALLY COME FROM THE FACTORY. "WE DON'T HAVE A POLICY OF PUTTING A RED LIGHT ON THE DASH."

BUT EVEN MORE CONVINCING THAN THAT IS, DID YOU HEAR THE ANSWER WHEN I ASKED LIEUTENANT BLACKMON, "LIEUTENANT BLACKMON, DO YOU HAVE PHOTOS OF WHEN THAT CAR WAS SEARCHED?" NOW, KEEP IN MIND, NONE OF THOSE PHOTOS WENT INTO EVIDENCE, AND HE TESTIFIED, "I DON'T SEE A LIGHT ON THE TOP." ANOTHER EXAMPLE OF PEOPLE WANTING TO SEE THINGS THAT THEY DON'T.

LADIES AND GENTLEMEN, I HAD INTENTIONS OF PUTTING A BOARD UP AND WRITING OUT EVERY INCONSISTENCY AND LIE THAT ELTON WIGGINS HAS DONE. I WON'T BORE YOU WITH

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THAT. YOU HEARD HIS TESTIMONY. ANYTIME A MAN PUTS HIS HAND ON THE BIBLE AND GETS ON THE STAND AND SAYS, "WELL, I DON'T REMEMBER IF I SAID THAT OR NOT, IT MIGHT HAVE BEEN TRUE" -- YOU HEARD HIS TESTIMONY. WOULD YOU BASE A VERY IMPORTANT DECISION ON HIM? I DON'T THINK SO.

LADIES AND GENTLEMEN, THEY CAN SAY WHAT THEY WANT TO SAY ABOUT THIS FINGERPRINT EVIDENCE, BUT THE FACT OF THE MATTER IS IF THIS MAN DID ALL OF THIS, HIS PRINTS WOULD BE SOMEWHERE. NOW, MR. JUSTICE SAID MELVIN STEELE WORKED IN THIS PLACE FOR 15 YEARS AND THEY DIDN'T FIND HIS FINGERPRINTS. WELL, THAT'S A LITTLE MISLEADING BECAUSE THEY NEVER TOLD YOU WHERE MELVIN'S WORK AREA WAS. ALL THEY DUSTED WAS THE DOOR YOU GO IN AND AROUND THE SAFE, SO THEY DIDN'T DUST MELVIN'S DESK OR THEY WOULD HAVE FOUND HIS PRINTS, OR MELVIN'S PHONE. AND AT HIS RESIDENCE THEY ONLY DUSTED AROUND THE ENTRANCE AREA.

NOW, LADIES AND GENTLEMEN, LET'S TALK ABOUT THE LAW A LITTLE BIT. AS I SAID, PROOF BEYOND A REASONABLE DOUBT IS WHAT'S REQUIRED. JUDGE SHORT IS GOING TO TELL YOU WHAT THE LAW IS ON IDENTIFICATION TESTIMONY AND WITNESSES. YOU HAVE THE RIGHT TO LOOK AT THE MANNER IN WHICH THE WITNESS TESTIFIED, WHETHER THEY WERE ABLE TO GIVE A DESCRIPTION SHORTLY AFTER

THE INCIDENT, HOW ACCURATE THEY ARE AND WHETHER THEIR STATEMENTS ARE INCONSISTENT. AND I SUBMIT TO YOU THAT ANY I.D. EVIDENCE THAT'S PRESENTED FROM THIS STAND POINTING TO HIM (INDICATING DEFENDANT) IS INCONSISTENT. IT DOESN'T FIT WITH THE OTHER EVIDENCE.

AND, LADIES AND GENTLEMEN, YOU HAVE A TOUGH JOB TO DO. I KNOW YOU'LL DO IT. I KNOW YOU'LL BE FAIR, LIKE YOU TOOK YOUR OATH AND SAID YOU ARE. JUDGE SHORT IS GOING TO TELL YOU THAT YOU CAN'T CONVICT SOMEBODY ON SPECULATION OR PROBABILITY OR A HUNCH OR SOMETHING OF THAT NATURE. YOU HAVE TO HAVE PROOF BEYOND A REASONABLE DOUBT BECAUSE THERE'S NO CHANGING YOUR DECISION. AND I SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT THIS CASE IS NOT SOLVED, THAT THE REAL PERPETRATORS, "BA-BA" AND DRU AND BILL, HAVE BEEN RUNNING AROUND IN WASHINGTON, D.C. FOR YEARS. AND ELTON WIGGINS HOLDS THE KEY, AND IF HE HAD EXPRESSED THAT TO MR. BLACKMON AT THE RIGHT TIME, THEN MAYBE SOMETHING WOULD HAVE BEEN DONE ABOUT IT.

BUT I ASK YOU NOT TO CONVICT THIS MAN AND ALLOW MR. WIGGINS TO TELL YOU UNDER OATH THAT THESE ARE THE PEOPLE ACTUALLY WHO ARE INVOLVED IN THIS CASE AND THAT "BA" FINANCED IT ALL. I'VE BEEN PAYING ATTENTION TO YOU DURING THIS TRIAL AND I NOTICED THAT YOU'VE PAID ATTENTION AND WE APPRECIATE THAT. AND AT THIS POINT

I KNOW YOU'RE GOING TO BE HAPPY THAT'S ALL I HAVE. SO I ASK YOU TO LISTEN TO THE JUDGE'S INSTRUCTIONS, FOLLOW THE LAW, AND IF YOU FOLLOW THE LAW, THERE IS BUT ONE CONCLUSION AND THAT'S A "NOT GUILTY" VERDICT. IF YOU GET CAUGHT UP IN THE EMOTION, THEN, SURE, YOU CAN FIND HIM GUILTY, BUT YOU TOOK AN OATH NOT TO DO THAT, AND I PLEAD WITH YOU NOT TO. THANK YOU.

THE COURT: THANK YOU, MR. CLARK.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE STEP INTO YOUR JURY ROOM. DO NOT DISCUSS THE CASE. I'LL SEND FOR YOU IN A FEW MOMENTS. THANK YOU.

(JURY EXITS COURTROOM AT 3:40 P.M.).

(BRIEF RECESS)

THE COURT: MR. BAILIFF, PLEASE BRING JUST THE FOREMAN IN.

(BAILIFF ENTERS COURTROOM AT 3:55 P.M.).

THE COURT: MR. FOREMAN, PLEASE GIVE ME YOUR ATTENTION. MR. FOREMAN, WE'VE REACHED THE STAGE IN THIS PROCEEDING NOW WHERE IT'S TIME FOR THE COURT TO CHARGE AND INSTRUCT THE JURY ON THE APPLICABLE LAW IN THE CASE. I DON'T KNOW EXACTLY HOW LONG THAT WILL TAKE. I ANTICIPATE ABOUT 45 MINUTES. AFTER THAT, THE JURY WOULD BEGIN DELIBERATING THE VERDICT. ONCE THE COURT GIVES THE CHARGE TO THE JURY AND THE JURY BEGINS DELIBERATING, WE WILL BE HERE UNTIL THE END OF THE

PROCEEDINGS.

WHAT I WOULD LIKE FOR YOU TO DO, IF YOU WOULD, SIR, IS STEP INTO THE JURY ROOM, SPEAK WITH YOUR FELLOW JURORS AND DETERMINE WHETHER OR NOT THE MAJORITY OF YOU WOULD LIKE FOR THE COURT TO CHARGE THE JURY AND YOU DELIBERATE TODAY OR WOULD YOU RATHER TAKE A RECESS AND RETURN IN THE MORNING AT 10:00 AND LET THE COURT CHARGE YOU THEN, AND THEN YOU'D BEGIN DELIBERATION. I JUST NEED TO KNOW WHAT THE MAJORITY OF THE JURORS WOULD LIKE TO DO.

JUST STEP IN AND THEN ADVISE ME.

FOREMAN: YES, SIR.

(FOREMAN EXITS COURTROOM AT 3:57 P.M.).

MR. JUSTICE: YOUR HONOR, OUTSIDE THE PRESENCE OF THE JURY, THERE ARE A COUPLE OF MATTERS I WOULD LIKE TO PUT ON THE RECORD.

THE COURT: YES, SIR.

MR. JUSTICE: ONE IS THAT IN THE ORIGINAL WARRANTS MR. MATHIS WAS CHARGED WITH ONE COUNT OF KIDNAPING OF BOTH INDIVIDUALS AND HE WAS NOT CHARGED, FOR SOME REASON, THROUGH OVERSIGHT, WITH THE OFFENSE OF BURGLARY. THE STATE INDICTED, AT THE LAST MEETING OF THE GRAND JURY, FOR TWO COUNTS OF KIDNAPING, SEPARATING THE TWO VICTIMS AND ALSO ADDED THE FIRST DEGREE BURGLARY. THOSE INDICTMENTS WERE SERVED ON THE

DEFENDANT.

COUNSEL FOR THE DEFENSE WAS GIVEN NOTICE THAT WE WERE GOING TO DO THAT, AND IT DIDN'T CHANGE ANY EVIDENCE. I JUST WANTED TO PUT THAT ON THE RECORD.

THE SECOND THING IS -- I MEANT TO DO THIS YESTERDAY. IMMEDIATELY PRIOR TO MR. WIGGINS' TESTIMONY, HE MET WITH HIS ATTORNEY, MR. GEORGE SPEEDY, AND MR. SPEEDY WAS PRESENT IN THE COURTROOM THROUGHOUT MR. WIGGINS' TESTIMONY. I SAY THAT BECAUSE MR. WIGGINS HIMSELF IS ALSO UNDER SERIOUS INDICTMENTS.

THE COURT: YES, SIR, I NOTED THAT. I NOTED MR. SPEEDY'S PRESENCE DURING THE ENTIRE TESTIMONY OF THE WITNESS.

(TO COUNSEL) YOU ALL APPROACH THE BENCH WHILE WE'RE WAITING ON THE FOREMAN'S RETURN.

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF REPORTER).

(JURY FOREMAN ENTERS COURTROOM AT 4:00 P.M.).

THE COURT: YES, SIR, MR. FOREMAN, HAVE YOU CONSULTED WITH YOUR FELLOW JURORS?

FOREMAN: YES, SIR, I HAVE. THEY WOULD LIKE TO BE CHARGED IN THE MORNING.

THE COURT: ALL RIGHT.

(TO BAILIFF) PLEASE BRING THE OTHER LADIES AND GENTLEMEN IN.

FOREMAN: IT WAS UNANIMOUS, BY THE WAY.

THE COURT: I UNDERSTAND. YOU MAY REMAIN SEATED BECAUSE HE'S GOING TO BRING THE REST IN.

(JURY ENTERS COURTROOM AT 4:01 P.M.).

THE COURT: LET OUR RECORD REFLECT THAT ALL OUR JURORS, PLUS THE ALTERNATES, ARE PRESENT.

LADIES AND GENTLEMEN, IT'S MY UNDERSTANDING THE JURY HAS CONCLUDED THEY WOULD RATHER BE CHARGED IN THE MORNING, THEREFORE, WE'RE GOING TO COMPLY WITH YOUR WISH. YOU MAY BE HERE A LITTLE LONGER THIS AFTERNOON IF WE WERE TO BE GIVING THE CHARGE NOW, BUT WE RESPECT YOUR WISHES.

ONCE AGAIN, WHILE YOU'RE AWAY THIS EVENING, PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE OR ALLOW ANYONE TO DISCUSS THE CASE WITH YOU, AND PLEASE DO NOT WATCH, LISTEN TO OR READ ANY NEWS ACCOUNTS ABOUT THESE PROCEEDINGS. YOU'LL HAVE PLENTY OF TIME TOMORROW TO CATCH UP ON ALL YOUR NEWSPAPERS AND TELEVISION, T.V. NEWS COVERAGE AND RADIO NEWS COVERAGE. PLEASE JUST REFRAIN FROM THAT UNTIL TOMORROW.

PLEASE BE BACK IN YOUR JURY ROOM PROMPTLY AT TEN O'CLOCK IN THE MORNING, AND WE WILL CONCLUDE THE TRIAL OF THIS CASE. THANK YOU. YOU MAY EXIT THE COURTROOM AT THIS TIME. ONLY THE JURORS MAY LEAVE.

(JURY EXITS COURTROOM AT 4:02 P.M.).

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MR. JUSTICE: YOUR HONOR, MAY IT PLEASE THE COURT. IF THE COURT REPORTER WILL REMAIN JUST LONG ENOUGH WITH MR. CLARK AND MR. BARFIELD, THEY'RE GOING TO AUDIT THE EXHIBITS.

THE COURT: IT PROBABLY WOULD BE A GOOD IDEA. COULD YOU DO THAT, MR. CLARK?

MR. CLARK: YES, SIR.

THE COURT: THAT WOULD SAVE US A LOT OF TIME IN THE MORNING.

MR. JUSTICE: THAT WAS MY THINKING YOUR HONOR.

THE COURT: THERE'S A LOT OF EXHIBITS, GENTLEMEN. HOW MANY ARE THERE, MADAM REPORTER?

REPORTER: NINETY-NINE.

THE COURT: NINETY-NINE.

MR. JUSTICE: I TRIED, YOUR HONOR.

THE COURT: THAT WILL SAVE US A LOT OF TIME.

MR. CLARK: I'LL BE HAPPY TO DO THAT, YOUR HONOR.

THE COURT: THANK YOU, MR. CLARK.

MR. CLARK: THANK YOU, SIR.

THE COURT: WE WILL BE IN RECESS UNTIL 10:00 IN THE MORNING. THANK YOU.

(WHEREUPON, THE TRIAL WAS RECESSED AT 4:05 P.M., TO RECOMMENCE JUNE 6, 2003 AT 10:00 A.M.).

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, V. VERNARD JEROME MATHIS, DEFENDANT.	)	DOCKET NO. 00-GS-29-1418 01-GS-29-0250 03-GS-29-0524 03-GS-29-0525 03-GS-29-0526 TRANSCRIPT OF RECORD (JURY TRIAL) VOLUME V

BEFORE:

HONORABLE PAUL E. SHORT, JR.

APPEARANCES:

FOR THE PLAINTIFF: JOHN R. JUSTICE, SOLICITOR
DOUGLAS A. BARFIELD, SENIOR ASSISTANT SOLICITOR
THOMAS J. HOLLAND, ASSISTANT SOLICITOR

FOR THE DEFENDANT: JOHN D. CLARK, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

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THE COURT: IS THE STATE READY?

MR. JUSTICE: THE STATE IS READY, YOUR HONOR.

THE COURT: IS THE DEFENDANT READY?

MR. CLARK: YES, SIR, YOUR HONOR.

THE COURT: ALL RIGHT.

(TO BAILIFF) PLEASE BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 10:14 A.M.).

THE COURT: LET OUR RECORD REFLECT THAT ALL OUR JURORS ARE PRESENT.

MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE GIVE ME YOUR ATTENTION. YOU HAVE FOLLOWED VERY PATIENTLY AND LISTENED VERY ATTENTIVELY TO THE PRESENTATION OF THE TESTIMONY AND THE EVIDENCE IN THIS CASE AND TO THE ABLE ARGUMENTS MADE BY SOLICITOR JUSTICE ON BEHALF OF THE STATE OF SOUTH CAROLINA AND BY ATTORNEY CLARK ON BEHALF OF THE DEFENDANT, AND I THANK YOU FOR THAT.

IT NOW BECOMES MY DUTY AS THE TRIAL JUDGE, UNDER THE CONSTITUTION OF OUR STATE, TO CHARGE AND INSTRUCT YOU ON THE APPLICABLE LAW IN THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I WILL NOW STATE IT FOR YOU. AS JURORS, LADIES AND GENTLEMEN, IT IS YOUR EXCLUSIVE DUTY TO DECIDE ALL OF THE ISSUES OF FACT IN THIS CASE, FOR THAT PURPOSE AND TO THAT END, TO DETERMINE THE EFFECT, THE VALUE,

THE WEIGHT AND THE TRUTH OF THE EVIDENCE IN THIS CASE.

LADIES AND GENTLEMEN, BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU WILL CONSCIENTIOUSLY CONSIDER AND EVALUATE THE EVIDENCE AND APPLY THE LAW OF THE STATE THERETO, TO THE END THAT BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT WILL RECEIVE AND OBTAIN A FAIR AND IMPARTIAL TRIAL IN THIS CASE. NOW, LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA, BY THESE INDICTMENTS, CHARGES THE DEFENDANT, MR. VERNARD JEROME MATHIS, WITH THE OFFENSES OF MURDER, BURGLARY FIRST DEGREE, KIDNAPING IN TWO SEPARATE INDICTMENTS AND ARMED ROBBERY.

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU YOU ARE NOT TO TAKE INTO ACCOUNT THE FACT THAT THE DEFENDANT HAS BEEN CHARGED IN MORE THAN ONE INDICTMENT. THE DEFENDANT, LADIES AND GENTLEMEN, IS ENTITLED TO A FAIR AND IMPARTIAL DETERMINATION ON EACH INDICTMENT BASED ON YOUR DETERMINATION OF THE EVIDENCE ON EACH SEPARATE INDICTMENT. I CHARGE YOU THE DEFENDANT IS NOT TO BE PREJUDICED BY THE FACT THAT THERE IS MORE THAN ONE PENDING CHARGE OR INDICTMENT IN THIS CASE.

TO THESE CHARGES AND TO THESE INDICTMENTS THE DEFENDANT, MR. VERNARD JEROME MATHIS, HAS ENTERED A PLEA OF NOT GUILTY. THIS PLEA OF NOT GUILTY BY HIM

PLACES THE BURDEN OF PROOF ON THE STATE OF SOUTH CAROLINA TO PROVE BY EVIDENCE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU, THE JURY, COULD CONVICT THE DEFENDANT AND FIND HIM GUILTY. I CHARGE YOU THE DEFENDANT, MR. MATHIS, IS PRESUMED IN LAW INNOCENT OF THE CHARGES CONTAINED IN EACH OF THESE INDICTMENTS. LADIES AND GENTLEMEN, IT IS A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF EVIDENCE THAT A DEFENDANT, IRRESPECTIVE OF THE ENORMITY OF THE CHARGES AGAINST HIM, WILL ALWAYS BE PRESUMED INNOCENT OF THE CRIMES FOR WHICH HE IS INDICTED UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS BEEN PROVED BY EVIDENCE WHICH SATISFIES THE JURY OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. LADIES AND GENTLEMEN, THE PRESUMPTION OF INNOCENCE IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED. THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA HAS DECLARED THAT THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF A DEFENDANT, AND IT REMAINS WITH HIM AND ASSIGNS HIM TO THAT CLASS, THE INNOCENT, UNTIL AND UNLESS THAT PRESUMPTIVE ROBE OF RIGHTEOUSNESS HAS BEEN STRIPPED FROM HIS PERSON BY

EVIDENCE SATISFYING YOU, THE JURY, OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS APPEARANCE IN THIS COURTROOM AND CONTINUES WITH HIM THROUGHOUT EVERY STAGE OF THIS TRIAL AND CONTINUES WITH HIM, LADIES AND GENTLEMEN, AFTER YOU RETIRE TO YOUR JURY ROOM TO DELIBERATE YOUR VERDICT. THE PRESUMPTION OF INNOCENCE CONTINUES IN EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL AND UNLESS YOU, THE LADIES AND GENTLEMEN OF THE TRIAL JURY, REACH THE CONCLUSION THAT THE STATE OF SOUTH CAROLINA HAS PROVED THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

NOW, LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA IS NOT REQUIRED TO PROVE THE GUILT OF A DEFENDANT BEYOND ALL DOUBT OR BEYOND EVERY DOUBT BUT BEYOND A REASONABLE DOUBT. I CHARGE YOU, LADIES AND GENTLEMEN, A REASONABLE DOUBT IS THE KIND OF DOUBT WHICH WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT. I CHARGE YOU THAT THE DEFENDANT IS ENTITLED TO EVERY REASONABLE DOUBT IN THIS CASE. IF, UPON ANY ISSUE OF FACT ESSENTIAL TO A CONVICTION AND A VERDICT OF GUILTY, YOU HAVE REASONABLE DOUBT AS TO HOW THAT ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR DUTY TO RESOLVE THAT REASONABLE DOUBT IN FAVOR OF THE

DEFENDANT AND FIND HIM NOT GUILTY.

A DEFENDANT, LADIES AND GENTLEMEN, IS NOT REQUIRED TO PROVE HIS INNOCENCE, BUT THE STATE OF SOUTH CAROLINA IS REQUIRED IN LAW TO PROVE EVERY ESSENTIAL ELEMENT OF THE OFFENSE CHARGED AGAINST THE DEFENDANT BY EVIDENCE WHICH SATISFIES THE JURY OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU COULD CONVICT THE DEFENDANT AND FIND HIM GUILTY. IF THEN UPON THE WHOLE CASE YOU HAVE A REASONABLE DOUBT AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT, HE IS ENTITLED TO THAT REASONABLE DOUBT AND WOULD BE ENTITLED TO AN ACQUITTAL AND A VERDICT OF NOT GUILTY AT YOUR HANDS.

HOWEVER, ON THE OTHER HAND, LADIES AND GENTLEMEN, IF UPON THE WHOLE CASE YOU FIND THAT THE STATE OF SOUTH CAROLINA HAS PROVED THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN SUCH CIRCUMSTANCE, LADIES AND GENTLEMEN, IT WOULD EQUALLY BE YOUR DUTY TO CONVICT THE DEFENDANT AND FIND HIM GUILTY. I CHARGE YOU, LADIES AND GENTLEMEN, THAT THESE INDICTMENTS, WHICH YOU WILL HAVE WITH YOU IN JUST A FEW MOMENTS IN THE JURY ROOM, ARE NOT EVIDENCE AND MUST NOT BE CONSIDERED BY YOU AS EVIDENCE IN THIS CASE, AND THESE INDICTMENTS, LADIES AND GENTLEMEN, ARE SIMPLY THE FORMAL INSTRUMENTS WHICH CONTAIN THE CHARGES AGAINST

THE DEFENDANT, AND THEY SERVE AS THE FORMAL DOCUMENTS BY WHICH THIS CASE IS PROCESSED INTO THIS COURT.

DURING THIS TRIAL, LADIES AND GENTLEMEN, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THE CASE, AND I ALSO HAVE THE DUTY TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THE PROGRESS OF THIS TRIAL. I CHARGE YOU, YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU, AND YOU ARE TO DISREGARD AND DISABUSE FROM YOUR MIND ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD OF THE CASE DURING THE PROGRESS OF THIS TRIAL. AND, LADIES AND GENTLEMEN, YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ALONG WITH ALL OF THE EXHIBITS WHICH WERE ADMITTED INTO EVIDENCE DURING THE TRIAL OF THE CASE AND THE STIPULATIONS OF COUNSEL MADE INTO THE RECORD.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE APPLICABLE LAW IN THIS CASE. AS THE TRIAL JUDGE, I AM THE SOLE JUDGE OF THE LAW IN THIS CASE, AND IT IS YOUR DUTY TO ACCEPT THE LAW AS I STATE IT FOR YOU. IF YOU HAVE A PRECONCEIVED IDEA AS TO WHAT THE LAW IS OR AS TO WHAT THE LAW OUGHT TO BE IN THIS CASE AND IT SHOULD NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, LADIES AND GENTLEMEN, YOU ARE OBLIGATED TO ABANDON

THIS PRECONCEPTION ON YOUR PART BECAUSE, LADIES AND GENTLEMEN, YOU ARE OBLIGATED UNDER YOUR OATH TO ACCEPT AND APPLY THE LAW PRECISELY AS THE COURT NOW STATES IT FOR YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS OF THE CASE. YOU, THE LADIES AND GENTLEMEN OF THIS TRIAL JURY, ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE. THE CONSTITUTION OF THE STATE OF SOUTH CAROLINA HAS DECLARED THAT A TRIAL JUDGE SHALL NOT INTIMATE, STATE, COMMENT UPON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE.

SINCE YOU ARE THE SOLE JUDGES OF THE FACTS IN THIS CASE, LADIES AND GENTLEMEN, YOU ARE NOT TO INFER FROM ANYTHING THAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL, IN RULING UPON THE ADMISSIBILITY OF THE EVIDENCE OR OTHERWISE OR FROM ANYTHING THAT I NOW SAY TO YOU DURING THE COURSE OF MY CHARGE TO YOU, THAT I HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. LADIES AND GENTLEMEN, OUR LAW DOES NOT PERMIT ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE.

AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE, AS I HAVE STATED TO YOU, THE EFFECT, THE VALUE, THE WEIGHT AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THE COURSE OF THIS TRIAL. NECESSARILY, THEN, LADIES

AND GENTLEMEN, YOU MUST ASSESS THE CREDIBILITY OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY IS SIMPLY A LEGALISTIC WORD WHICH MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND TO DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

I CHARGE YOU THAT IN DETERMINING THE QUESTION OF THE CREDIBILITY OR THE BELIEVABILITY OF A WITNESS, YOU MAY BELIEVE ONE WITNESS AS AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES AS AGAINST ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR YOU MAY REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER A WITNESS HAS EXHIBITED ANY INTEREST, ANY BIAS, OR ANY PREJUDICE IN THIS CASE. AND, LADIES AND GENTLEMEN, YOU MAY CONSIDER THE DEMEANOR OF A WITNESS, THAT IS, THE APPEARANCE OF THE WITNESS ON THIS WITNESS STAND DURING THE TRIAL OF THIS CASE. AND YOU MAY ALSO CONSIDER THE OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE THINGS ABOUT WHICH A WITNESS TESTIFIED.

THESE CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY, BUT IF, IN YOUR GOOD JUDGMENT, THERE IS

SOUND REASON IN THE RECORD OF THIS CASE FOR SO DOING, BECAUSE, LADIES AND GENTLEMEN, YOUR OBJECTIVE IS TO FIND THE TRUTH REGARDLESS OF FROM WHOM OR FROM WHAT SOURCE IT MAY HAVE COME. AND IN SO DOING, IN EXERCISING YOUR MENTAL PROCESSES AND IN DETERMINING WHAT YOU CONSIDER TO BE TRUE, LADIES AND GENTLEMEN, OUR LAW SIMPLY REQUIRES THAT YOU EXERCISE YOUR GOOD, COMMON SENSE, YOUR GOOD JUDGMENT, YOUR SENSE OF LOGIC AND REASON AND YOUR EXPERIENCES IN LIFE.

YOU THEN TAKE AND APPLY THESE ATTRIBUTES OF ABILITY TO WHAT YOU CONSIDER TO BE THE TRUTHFUL EVIDENCE, AND AS TO THE TRUE STATE OF FACTS AS DETERMINED BY YOU, YOU THEN TAKE AND APPLY THE LAW, AS I WILL NOW STATE IT FOR YOU, AND THUS ARRIVE AT A VERDICT, A VERDICT WHICH DOES SPEAK THE TRUTH IN THIS CASE.

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU EVIDENCE MAY BE OF TWO KINDS, DIRECT EVIDENCE OR CIRCUMSTANTIAL EVIDENCE. BY THE TERM DIRECT EVIDENCE THE LAW MEANS THE TESTIMONY OF PERSONS WHO HAVE PERCEIVED ITS EXISTENCE BY MEANS OF THEIR SENSES, AS WHERE A PERSON SEES A CRIME COMMITTED AND COMES INTO COURT AND TESTIFIES AS TO WHAT HE OR SHE SAW. CIRCUMSTANTIAL EVIDENCE, ON THE OTHER HAND, MEANS THE PROOF OF SOME OTHER FACT OR FACTS FROM WHICH, TAKEN

EITHER SINGLY OR COLLECTIVELY, THE EXISTENCE OF THE PARTICULAR FACTS IN QUESTION MAY BE INFERRED AS A NECESSARY CONSEQUENCE.

LADIES AND GENTLEMEN, I CHARGE YOU CRIMES MAY BE PROVED BY CIRCUMSTANTIAL EVIDENCE, AS WELL AS BY THE DIRECT TESTIMONY OF EYE WITNESSES. CIRCUMSTANTIAL EVIDENCE IS PERMISSIBLE PROVIDED IT MEETS THE LEGAL TEST. TO THE EXTENT THAT THE STATE OF SOUTH CAROLINA RELIES ON CIRCUMSTANTIAL EVIDENCE, I CHARGE YOU IT MUST PROVE ALL OF THE CIRCUMSTANCES RELIED ON BEYOND A REASONABLE DOUBT, THAT IS, THEY MUST BE WHOLLY AND IN EVERY PARTICULAR PERFECTLY CONSISTENT WITH ONE ANOTHER, AND THEY MUST PROVE THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT.

NOW, LADIES AND GENTLEMEN, YOU HAVE HEARD TESTIMONY FROM PERSONS DESCRIBED AS EXPERTS. PERSONS WHO, BY EDUCATION AND EXPERIENCE, HAVE BECOME EXPERT IN SOME FIELD MAY STATE THEIR OPINION ON MATTERS IN THAT FIELD AND MAY ALSO STATE THEIR REASONS FOR THEIR OPINION. LADIES AND GENTLEMEN, I CHARGE YOU EXPERT OPINION TESTIMONY SHOULD BE JUDGED JUST LIKE ANY OTHER TESTIMONY. YOU CAN ACCEPT IT OR YOU MAY REJECT IT, AND YOU SHOULD GIVE IT SUCH WEIGHT AS YOU THINK IT DESERVES, CONSIDERING THE WITNESS'S EDUCATION AND EXPERIENCE, THE REASONS GIVEN FOR THE OPINION AND ALL

OF THE OTHER EVIDENCE IN THIS CASE.

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, ONE OF THE MOST IMPORTANT ISSUES IN THIS CASE IS THE IDENTIFICATION OF THE DEFENDANT AS THE PERPETRATOR OF THE CRIMES CHARGED. I CHARGE YOU, LADIES AND GENTLEMEN, THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROVING IDENTIFICATION BEYOND A REASONABLE DOUBT. IT IS NOT ESSENTIAL THAT A WITNESS HIMSELF OR HERSELF BE FREE FROM DOUBT AS TO THE CORRECTNESS OF THE STATEMENT, BUT YOU, THE JURY, MUST BE SATISFIED BEYOND A REASONABLE DOUBT OF THE ACCURACY OF THE IDENTIFICATION OF THE DEFENDANT BEFORE YOU CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY. IF YOU ARE NOT CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS THE PERSON WHO COMMITTED THE OFFENSE, IT WOULD BE YOUR DUTY TO FIND THE DEFENDANT NOT GUILTY.

I CHARGE YOU, IDENTIFICATION TESTIMONY IS AN EXPRESSION OF BELIEF OR IMPRESSION BY THE WITNESS. ITS VALUE DEPENDS ON THE OPPORTUNITY THE WITNESS HAD TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE AND TO MAKE A RELIABLE IDENTIFICATION LATER. IN APPRAISING THE IDENTIFICATION TESTIMONY OF A WITNESS, I CHARGE YOU YOU SHOULD CONSIDER WHETHER THE WITNESS HAD THE CAPACITY AND AN ADEQUATE OPPORTUNITY TO

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OBSERVE THE OFFENDER. WHETHER A WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE OFFENDER AT THE TIME OF THE OFFENSE WILL BE AFFECTED BY SUCH MATTERS AS HOW LONG OR SHORT A TIME WAS AVAILABLE, HOW FAR OR CLOSE THE WITNESS WAS, HOW GOOD WERE THE LIGHTING CONDITIONS, WHETHER THE DEFENDANT HAD HAD AN OCCASION TO SEE OR KNOW THE PERSON IN THE PAST.

IN GENERAL, LADIES AND GENTLEMEN, A WITNESS BASES ANY IDENTIFICATION HE OR SHE MAKES ON THEIR PERCEPTION THROUGH THE USE OF THEIR SENSES. USUALLY THE WITNESS IDENTIFIES AN OFFENDER BY THE SENSE OF SIGHT, BUT THAT IS NOT NECESSARILY SO, AND HE OR SHE MAY USE OTHER SENSES. I CHARGE YOU THAT YOU MUST BE SATISFIED THAT THE IDENTIFICATION MADE BY THE WITNESS AFTER THE OFFENSE WAS THE PRODUCT OF HIS OR HER RECOLLECTION. YOU MAY TAKE INTO ACCOUNT BOTH THE STRENGTH OF THE IDENTIFICATION AND THE CIRCUMSTANCES UNDER WHICH THE IDENTIFICATION WAS MADE.

IF THE IDENTIFICATION BY THE WITNESS MAY HAVE BEEN INFLUENCED BY THE CIRCUMSTANCES UNDER WHICH THE DEFENDANT WAS PRESENTED TO THEM FOR IDENTIFICATION, YOU SHOULD SCRUTINIZE THE IDENTIFICATION WITH GREAT CARE. I CHARGE YOU YOU MAY ALSO CONSIDER THE LENGTH OF TIME THAT ELAPSED BETWEEN THE OCCURRENCE OF THE CRIME AND THE NEXT OPPORTUNITY THE WITNESS HAD TO

SEE THE DEFENDANT AS A FACTOR BEARING ON THE RELIABILITY OF THE IDENTIFICATION. YOU MAY TAKE INTO ACCOUNT ANY OCCASION IN WHICH A WITNESS FAILED TO MAKE AN IDENTIFICATION OF THE DEFENDANT OR MADE AN IDENTIFICATION THAT WAS INCONSISTENT WITH HIS OR HER IDENTIFICATION AT TRIAL.

FINALLY, YOU MUST CONSIDER THE CREDIBILITY OF EACH IDENTIFICATION WITNESS IN THE SAME WAY AS ANY OTHER WITNESS, CONSIDERING WHETHER HE OR SHE IS TRUTHFUL AND WHETHER HE OR SHE HAD THE CAPACITY AND OPPORTUNITY TO MAKE A RELIABLE OBSERVATION ON THE MATTER COVERED IN HIS OR HER TESTIMONY. AGAIN, LADIES AND GENTLEMEN, I CHARGE YOU THE BURDEN OF PROOF IS ON THE STATE OF SOUTH CAROLINA TO PROVE EVERY ELEMENT OF THE OFFENSE CHARGED, AND THIS ALSO INCLUDES THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THE IDENTIFY OF THE DEFENDANT AS THE PERPETRATOR OF THE CRIME WITH WHICH HE NOW STANDS CHARGED.

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU WHEN SEVERAL PERSONS AGREE TO COMMIT A FELONY SUCH AS MURDER, GRAND LARCENY, ROBBERY OR BURGLARY, EACH OF THOSE PERSONS IS CRIMINALLY RESPONSIBLE FOR THE ACT OF HIS ASSOCIATES OR CONFEDERATES DONE IN FURTHERANCE OR IN PROSECUTION OF THE COMMON PURPOSE FOR WHICH THEY COMBINED. I CHARGE YOU COMMON PURPOSE MAY NOT HAVE

INCLUDED OR MAY NOT HAVE BEEN INVOLVED IN THE KILLING OR MURDER OF ANYONE, BUT IN EXECUTING THIS COMMON DESIGN AND UNLAWFUL PURPOSE, AS FOR INSTANCE IN BREAKING IN AND STEALING, A HOMICIDE IS COMMITTED BY ONE OF THE CONFEDERATES AND YOU, THE JURY, DETERMINE FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE HOMICIDE WAS A PROBABLE OR NATURAL CONSEQUENCE OF THE ACT DONE IN PURSUANCE OF THIS COMMON DESIGN, THEN ALL WHO ARE PRESENT, EITHER ACTUALLY OR CONSTRUCTIVELY, AND PARTICIPATE IN THE UNLAWFUL COMMON DESIGN ARE AS GUILTY AS THE SLAYER HIMSELF.

AND I CHARGE YOU IF A PERSON KILLS ANOTHER IN DOING OR ATTEMPTING TO DO AN ACT AMOUNTING TO A FELONY, THE KILLING IS A MURDER, AND IF A CULPABLE HOMICIDE RESULTS FROM THE PURSUANCE OF THIS COMMON PURPOSE OF THE CONSPIRATORS, ALL ARE ALIKE CRIMINALLY RESPONSIBLE. I CHARGE YOU IF BOTH OR MORE ARE ACTING TOGETHER, ASSISTING EACH OTHER IN THE COMMISSION OF THE OFFENSE, OUR LAW STATES THAT UNDER THOSE CIRCUMSTANCES, THE ACT OF ONE IS THE ACT OF ALL, THE HAND OF ONE IS THE HAND OF ALL. THIS IS WHAT WE COMMONLY REFER TO IN OUR LAW AS THE "HAND OF ONE IS THE HAND OF ALL" DOCTRINE. HOWEVER, I CHARGE YOU ONE IS NOT LIABLE FOR THE ACTS OF AN ACCOMPLICE UNLESS THE ACT IS A NATURAL OR PROBABLE CONSEQUENCE OF AN AGREED

TO PLAN.

NOW, LADIES AND GENTLEMEN, IN THE FIRST INDICTMENT THE DEFENDANT IS CHARGED WITH THE OFFENSE OF MURDER. THE FIRST INDICTMENT, INDICTMENT 00-GS-29-1418, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, READS, IN PERTINENT PART, AS FOLLOWS. "THAT VERNARD JEROME MATHIS DID, IN LANCASTER COUNTY, ON OR ABOUT JUNE 20, 2000, WITH MALICE AFORETHOUGHT KILL ONE MELVIN STEELE BY MEANS OF SHOOTING HIM IN THE LEFT THIGH, AND SAID VICTIM DIED AS A RESULT THEREOF."

NOW, LADIES AND GENTLEMEN, I WILL NOW READ TO YOU FROM § 16-3-10 OF THE 1976 CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED, WHICH READS AS FOLLOWS. "MURDER IS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED." LADIES AND GENTLEMEN, I CHARGE YOU IN ORDER TO CONVICT A PERSON OF MURDER, THE STATE OF SOUTH CAROLINA MUST NOT ONLY PROVE THE KILLING OF THE VICTIM BY THE DEFENDANT, IT MUST ALSO PROVE CRIMINAL INTENT AND THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT. ALL OF THESE FACTS MUST BE PROVED BEYOND A REASONABLE DOUBT. IN OTHER WORDS, THERE MUST BE A COMBINATION OF A PREVIOUS EVIL INTENT AND AN INFLICTION OF AN INJURY CALCULATED AND INTENDED TO PRODUCE DEATH.

I CHARGE YOU MALICE INDICATES A FORMED PURPOSE

AND DESIGN TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. MALICE IS A TERM OF ART, LADIES AND GENTLEMEN, THAT IMPORTS WICKEDNESS AND PRECLUDES A JUST CAUSE OR EXCUSE. IT IS SOMETHING THAT SPRINGS FROM WICKEDNESS, FROM DEPRAVITY OR FROM A DEPRAVED SPIRIT, FROM A SPIRIT BENT ON MISCHIEF AT THAT TIME AND FROM NOT HAVING A REGARD FOR THE SOCIAL OBLIGATIONS OR THE OBLIGATIONS WHICH REST UPON MANKIND.

THE WORDS "EXPRESS" AND "IMPLIED" DO NOT MEAN TWO DIFFERENT KINDS OF MALICE, RATHER THESE TERMS SIGNIFY THE WAY IN WHICH MALICE MAY BE PROVEN. EXPRESS MALICE IS WHERE A PERSON, BY WORD OF MOUTH, HAS EXPRESSED HATRED OR ILL WILL FOR ANOTHER, OR WHERE THE STATE PROVES BEYOND A REASONABLE DOUBT THE DEFENDANT WAS MAKING PREPARATION FOR THE EVENT TO ACCOMPLISH THE EVENT. THE JURY MAY ALSO CONCLUDE BY DEDUCTIVE REASONING THAT UNDER CIRCUMSTANCES MALICE MAY ARISE EVEN THOUGH THERE IS NO EXPRESS OR DIRECT EVIDENCE OF AN INTENT TO KILL.

I CHARGE YOU MALICE MAY BE IMPLIED OR INFERRED IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT THERE WAS A WILLFUL, DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR EXCUSE. THE PROOF OF THIS FACT, HOWEVER, IS MERELY A PIECE OF EVIDENCE

FROM WHICH THE INFERENCE OR IMPLICATION OF MALICE MAY ARISE. IN OTHER WORDS, THE INFERENCE WOULD BE SIMPLY AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH ALL OF THE OTHER EVIDENCE IN THE CASE AND SHOULD BE GIVEN SUCH WEIGHT AS THE JURY DETERMINES IT SHOULD RECEIVE.

FURTHERMORE, WHERE THERE IS AN ABSENCE OF A SPECIFIC, FIXED AND DELIBERATE INTENT TO TAKE THE LIFE OF A PARTICULAR PERSON OR OF ANY PERSON, OUR LAW STATES THAT IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT ONE INTENTIONALLY KILLED ANOTHER WITH A WEAPON OR WITH A DANGEROUS INSTRUMENTALITY, SUCH AS A GUN, AN IMPLICATION OF MALICE MAY ARISE. THE USE OF A DEADLY WEAPON PERMITS A JURY TO INFER MALICE, BUT IT DOES NOT REQUIRE THE JURY TO INFER MALICE.

I CHARGE YOU THAT IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO YOUR SATISFACTION, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY YOU, THE JURY, ALONG WITH ALL OF THE OTHER EVIDENCE IN THIS CASE, AND YOU SHOULD GIVE IT SUCH WEIGHT, IF ANY, AS YOU THINK IT SHOULD RECEIVE, CONSIDERING ALL OF THE OTHER EVIDENCE IN THIS CASE. IN OTHER WORDS, IF SUCH CONDUCT RESULTS DIRECTLY IN THE DEATH OF ANOTHER AND IF SUCH CONDUCT WAS SO

CULPABLE AND INEXCUSABLE, SO AGGRAVATED OR GROSSLY RECKLESS AS TO SHOW AN ACT OF INTENTIONAL DISREGARD OF THE CONSEQUENCES TO HUMAN LIFE, THUS DENOTING A MALIGNANT SPIRIT, A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF, AN IMPLICATION MAY ARISE.

FURTHERMORE, IT IS NOT JUST CARELESSNESS, NOR MERE RECKLESSNESS OR A PASSIVE INDIFFERENCE TO THE SAFETY OF OTHERS. THIS CONDUCT, WHICH SHOWS A DELIBERATE AND INTENTIONAL DESIGN TO USE OR EMPLOY OR HANDLE A DEADLY WEAPON OR DANGEROUS INSTRUMENTALITY SO AS TO ENDANGER THE LIFE OF ANOTHER OR OF OTHERS WITHOUT CAUSE OR EXCUSE MAY BE SUFFICIENT TO RAISE THIS IMPLICATION. HOWEVER, IT IS FOR THE JURY TO DECIDE BEYOND A REASONABLE DOUBT WHETHER, UPON ALL THE FACTS AND CIRCUMSTANCES OF THIS CASE, THE DEFENDANT'S ALLEGED USE OF A DEADLY WEAPON THEN DEMONSTRATES SUCH AN INTENTIONAL DISREGARD FOR HUMAN LIFE THAT MALICE MAY BE IMPLIED OR INFERRED FROM THAT USE OF A DEADLY WEAPON. ONCE AGAIN, LADIES AND GENTLEMEN, IT IS FOR THE JURY TO DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THAT FACT.

FURTHER, THERE MUST BE MALICE AFORETHOUGHT, LADIES AND GENTLEMEN, WHICH MEANS THAT THE MALICE MUST HAVE BEEN CONCEIVED IN THE MIND OF THE DEFENDANT PRIOR TO THIS ACT PRODUCING THE FATAL RESULTS. THE

LAW DOES NOT REQUIRE THAT THAT MALICE MUST EXIST FOR ANY APPRECIABLE LENGTH OF TIME BEFORE THE COMMISSION OF THE ACT. I CHARGE YOU MALICE, ONCE AGAIN, IS A WORD SUGGESTING WICKEDNESS, HATRED AND A DETERMINATION TO DO WHAT ONE KNOWS TO BE WRONG, WITHOUT JUST CAUSE OR EXCUSE OR LEGAL PROVOCATION.

NOW, IN THE SECOND INDICTMENT THE DEFENDANT IS CHARGED WITH THE OFFENSE OF BURGLARY IN THE FIRST DEGREE, IN INDICTMENT 03-GS-29-0524. I WILL NOW READ TO YOU FROM THAT INDICTMENT WHICH READS, IN PERTINENT PART, AS FOLLOWS. "THAT VERNARD JEROME MATHIS DID, IN LANCASTER COUNTY, ON OR ABOUT JUNE 20, 2000, ENTER THE DWELLING OF MELVIN AND RITA STEELE WITH THE INTENT TO COMMIT A CRIME AND, WHILE ARMED WITH A DEADLY WEAPON, DID CAUSE PHYSICAL INJURY TO THE PERSONS THEREIN AND DID SO IN THE NIGHTTIME WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME."

NOW, LADIES AND GENTLEMEN, I WILL NOW READ TO YOU § 16-11-311(A)(1) OF THE 1976 CODE OF SOUTH CAROLINA, WHICH READS IN PERTINENT PART AS FOLLOWS. "A PERSON IS GUILTY OF BURGLARY IN THE FIRST DEGREE IF THE PERSON ENTERS A DWELLING WITHOUT CONSENT AND WITH INTENT TO COMMIT A CRIME IN THE DWELLING AND, EITHER WHEN IN EFFECTING ENTRY OR WHILE IN THE

DWELLING OR IN IMMEDIATE FLIGHT, HE OR ANOTHER PARTICIPATE IN THE CRIME IS ARMED WITH A DEADLY WEAPON OR CAUSES PHYSICAL INJURY TO ANY PERSON WHO IS NOT A PARTICIPANT IN THE CRIME."

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU THERE ARE FOUR ESSENTIAL ELEMENTS TO THE REQUIREMENT THAT THE DEFENDANT ENTER INTO THE DWELLING HOUSE OF ANOTHER WITHOUT CONSENT AND WITH THE INTENT TO COMMIT A CRIME THEREIN AND THEY ARE AS FOLLOWS. FIRST, THERE MUST BE AN ENTERING. THE STATE OF SOUTH CAROLINA MUST PROVE THAT THERE WAS AN ENTERING, THAT IS, THAT A DEFENDANT ACTUALLY WENT INSIDE THE HOUSE OR SOME PART OF IT. NO FORCE NEED BE USED TO GAIN ENTRY.

TWO, THE ENTRY MUST BE WITHOUT CONSENT. ASIDE FROM THE USUAL AND NORMAL UNDERSTANDING OF THE PHRASE "WITHOUT CONSENT", THE TERM "ENTRY" ALSO MEANS TO ENTER A BUILDING BY USING DECEPTION, ARTIFICE, TRICK OR MISREPRESENTATION TO GAIN CONSENT TO ENTER FROM THE PERSON IN LAWFUL POSSESSION.

THREE, THE PLACE ENTERED MUST BE A DWELLING. I CHARGE YOU THE TERM "DWELLING HOUSE" MEANS ANY BUILDING INHABITED BY A PERSON OR PERSONS AND IN WHICH THEY CUSTOMARILY SLEEP.

AND, FOUR, THE DEFENDANT MUST HAVE INTENT TO

COMMIT A CRIME. THE MERE ENTRY INTO A DWELLING HOUSE WITHOUT CONSENT IS NOT A VIOLATION OF THE BURGLARY STATUTE. IT IS ONLY WHERE THERE IS AN INTENT TO COMMIT A CRIME, WHETHER IT BE A FELONY OR MISDEMEANOR, THAT THE CRIME IS COMPLETED. I CHARGE YOU, PROOF OF INTENT NECESSARILY RESTS ON INFERENCE FROM CONDUCT. IT IS ESSENTIAL THAT THE FELONIOUS INTENT EXISTS AT THE TIME OF THE ENTRY. IT IS NOT SUFFICIENT THAT THE FELONIOUS INTENT IS FORMED AFTERWARDS. ON THE OTHER HAND, WHERE THE INTENT EXISTS AT THE TIME OF THE ENTRY, IT IS NO DEFENSE THAT THE INTENT IS ABANDONED AFTER THE ENTRY. IT DOES NOT MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

NOW, LADIES AND GENTLEMEN, IN INDICTMENTS 03-GS-29-0525 AND 0526, THE DEFENDANT, MR. VERNARD JEROME MATHIS, IS CHARGED WITH THE OFFENSE OF KIDNAPING. I WILL NOW READ TO YOU PORTIONS OF THOSE INDICTMENTS. "THAT VERNARD JEROME MATHIS DID, IN LANCASTER COUNTY, ON OR ABOUT JUNE 20, 2000, BY ANY MEANS WHATSOEVER, UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY ANOTHER PERSON, THE VICTIM MELVIN STEELE, WITHOUT AUTHORITY OF LAW, IN VIOLATION OF THE LAW OF THIS STATE."

THE SECOND INDICTMENT, 03-GS-29-0526, IN PERTINENT PART READS EXACTLY THE SAME BUT ALLEGES THE

VICTIM IN THAT PARTICULAR CASE TO BE MS. RITA STEELE.

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU KIDNAPING IS THE INTENTIONAL TAKING -- EXCUSE ME. FIRST, LET ME READ TO YOU FROM THE 1976 CODE OF LAWS OF SOUTH CAROLINA, AS AMENDED, FROM § 16-3-910, WHICH READS IN PERTINENT PART AS FOLLOWS. "WHOEVER SHALL UNLAWFULLY SEIZE, CONFINE, INVEIGLE, DECOY, KIDNAP, ABDUCT OR CARRY AWAY ANY OTHER PERSON BY ANY MEANS WHATSOEVER, WITHOUT AUTHORITY OF LAW, IS GUILTY OF A FELONY."

I CHARGE YOU, MR. FOREMAN AND LADIES AND GENTLEMEN, KIDNAPING IS THE INTENTIONAL TAKING OF A PERSON AND COMPELLING HIM TO BE DETAINED AGAINST HIS OR HER WILL. IT IS THE WILLFUL AND UNLAWFUL SEIZING OF A PERSON AGAINST HIS OR HER WILL, WITH AN INTENT TO CAUSE HIM OR HER TO BE CONFINED, IMPRISONED OR DETAINED. THE ESSENCE OF THE OFFENSE OF KIDNAPING IS THE UNLAWFUL SECRET HOLDING OR IMPRISONMENT OF A PERSON. I CHARGE YOU KIDNAPING MEANS THE CARRYING AWAY OF A PERSON BY UNLAWFUL FORCE OR BY FRAUD AND AGAINST HIS OR HER WILL OR BY SEIZING AND DETAINING HIM OR HER FOR THE PURPOSE OF SO CARRYING THEM AWAY.

I CHARGE YOU THE ELEMENTS OF KIDNAPING WHICH THE STATE OF SOUTH CAROLINA MUST PROVE BEYOND A REASONABLE DOUBT ARE UNLAWFULLY SEIZING, CONFINING, KIDNAPING,

ABDUCTING OR CARRYING AWAY ANY OTHER PERSON, TWO, BY ANY MEANS WHATSOEVER, THREE, WITHOUT AUTHORITY OF LAW. I CHARGE YOU, "CONFINE" MEANS TO SHUT IN OR TO IMPRISON. THE GRAVAMEN OF THE OFFENSE OF KIDNAPING IS SOME FORM OF COMPULSION, BUT OUR LAW STATES THAT THE REQUISITE FORCE OR COMPULSION NEED NOT CONSIST OF THE USE OF ACTUAL PHYSICAL FORCE OR VIOLENCE OR OF EXPRESSED THREATS.

I CHARGE YOU AN ESSENTIAL ELEMENT OF THE OFFENSE OF KIDNAPING IS THAT THE TAKING OR DETENTION OF THAT PERSON KIDNAPED IS WITHOUT LAWFUL AUTHORITY. TO SUPPORT AN ALLEGATION OF UNLAWFUL TAKING OR DETENTION OF A PERSON, THE STATE OF SOUTH CAROLINA MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT HAD A RECKLESS INTENT TO COMMIT THE ALLEGED ACTS. I CHARGE YOU, TAKING, LEADING, CARRYING AWAY OR TRANSPORTATION OF THE VICTIM IS AN ESSENTIAL ELEMENT OF THE OFFENSE OF KIDNAPING. I CHARGE YOU THE OFFENSE OF KIDNAPING COMMENCES WHEN ONE IS WRONGFULLY AND UNLAWFULLY DEPRIVED OF HIS OR HER FREEDOM AND CONTINUES UNTIL HIS OR HER FREEDOM IS RESTORED.

AND, LADIES AND GENTLEMEN, IN INDICTMENT 01-GS-29-0250, THE STATE OF SOUTH CAROLINA CHARGES THE DEFENDANT, MR. VERNARD JEROME MATHIS, WITH THE OFFENSE OF ARMED ROBBERY. THAT INDICTMENT READS, IN PERTINENT

PART, AS FOLLOWS. "THAT VERNARD JEROME MATHIS DID, IN LANCASTER COUNTY, ON OR ABOUT JUNE 20, 2000, WHILE ARMED WITH A DEADLY WEAPON, FELONIOUSLY TAKE, IN THE PERSON OR PRESENCE OF MELVIN STEELE AND RITA STEELE, BY MEANS OF FORCE OR INTIMIDATION, GOODS OR MONIES FROM THE SAID MELVIN STEELE AND RITA STEELE, ALL IN VIOLATION OF THE LAW OF THIS STATE.

NOW, LADIES AND GENTLEMEN, § 16-11-330 OF THE 1976 CODE, AS AMENDED, READS IN PERTINENT PART AS FOLLOWS. "A PERSON WHO COMMITS ROBBERY WHILE ARMED WITH A PISTOL IS GUILTY OF A FELONY." LADIES AND GENTLEMEN, I WILL NOW DEFINE FOR YOU THE OFFENSE OF ARMED ROBBERY, AND IN ORDER THAT YOU MAY UNDERSTAND WHAT IS MEANT BY ARMED ROBBERY, I AM GOING TO FIRST DEFINE FOR YOU THE CRIME OF LARCENY AND THEN ROBBERY AND THEN WHAT CONSTITUTES ARMED ROBBERY, BECAUSE LARCENY IS EMBRACED WITHIN THE CRIME OF ROBBERY, AND HENCE ARMED ROBBERY, LADIES AND GENTLEMEN, IS AN AGGRAVATION OF THE CRIME OF ROBBERY.

WHAT IS LARCENY? I CHARGE YOU LARCENY IS THE FELONIOUS TAKING OR CARRYING AWAY BY ANY MEANS THE PERSONAL GOODS OF ANOTHER WITH THE INTENT TO DEPRIVE THEM -- WITH THE INTENT TO APPROPRIATE THEM TO ONE'S OWN USE AND TO DEPRIVE HIM PERMANENTLY OF THE POSSESSION OF HIS PROPERTY. THERE ARE FOUR ELEMENTS

WHICH MUST BE PRESENT AND ESTABLISHED BEYOND A REASONABLE DOUBT TO CONSTITUTE OR MAKE OUT THE CRIME OF LARCENY. THEY ARE AS FOLLOWS. THERE MUST BE A TAKING. SECOND, THE TAKING WAS OF THE PERSONAL PROPERTY OF ANOTHER. THIRD, THAT AFTER BEING TAKEN, THE PROPERTY WAS CARRIED AWAY, THAT IS, AN ASPORTATION, THE ACT OF CARRYING AWAY. THE ASPORTATION OF STOLEN PROPERTY IS AN INDISPENSABLE ELEMENT OF THE OFFENSE OF LARCENY. IT IS ORDINARILY ESTABLISHED BY THE SLIGHTEST REMOVAL OF THE GOODS WITH A FELONIOUS INTENT. AND, FOUR, THAT THE TAKING AND CARRYING AWAY OF THE PROPERTY WAS DONE WITH THE INTENT TO STEAL IT.

NOW, WHAT IS ROBBERY? ROBBERY, LADIES AND GENTLEMEN, IS LARCENY FROM THE PERSON OR IMMEDIATE PRESENCE OF ANOTHER BY VIOLENCE OR INTIMIDATION. TO CONSTITUTE ROBBERY, IN ADDITION TO THE ELEMENTS OF LARCENY, THERE MUST BE TWO ADDITIONAL ELEMENTS. THESE ARE THAT THE PROPERTY MUST BE TAKEN FROM THE PERSON OF ANOTHER OR IN HIS PRESENCE AND, TWO, THAT NOT ONLY MUST THE TAKING BE WITHOUT THE CONSENT OF THE OWNER, IT MUST BE ACCOMPLISHED BY VIOLENCE OR PUTTING THE PERSON IN FEAR. THIS VIOLENCE MUST BE ACTUAL, PERSONAL VIOLENCE OR THE THREAT OF IT. THE DEGREE OF FORCE USED IS IMMATERIAL SO LONG AS SUCH

FORCE OR THREAT OF FORCE IS ACTUALLY SUFFICIENT TO OVERCOME THE VICTIM'S RESISTANCE. THIS VIOLENCE OR INTIMIDATION MUST BE PERCEIVED TO BE OR BE CONTEMPORANEOUS WITH THE TAKING.

NOW, LADIES AND GENTLEMEN, IN ORDER FOR ONE TO BE GUILTY OF ROBBERY WHILE ARMED WITH A DEADLY WEAPON OR ARMED ROBBERY, OUR LAW REQUIRES THAT ONE MUST HAVE USED A DEADLY WEAPON TO ACCOMPLISH THE PURPOSE OF THE ROBBERY AS I HAVE DEFINED THOSE TERMS FOR YOU. I CHARGE YOU THAT A PISTOL IS A DEADLY WEAPON AS DEFINED BY THE STATUTE.

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH CRIME THAT MUST BE PROVED BY THE STATE OF SOUTH CAROLINA BEYOND A REASONABLE DOUBT. CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION. LADIES AND GENTLEMEN, THERE IS NO WAY TO PROVE INTENT TO A MATHEMATICAL CERTAINTY. THERE IS NO WAY MEDICAL SCIENCE CAN DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE HAD IN MIND. THEREFORE, OUR LAW STATES THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THAT IS HOW JURY MAKES A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT.

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I CHARGE YOU, CRIMINAL INTENT IS A STATE OF MIND WHICH OPERATES JOINTLY WITH AN ACT IN THE COMMISSION OF A CRIME. CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. THEREFORE, IT IS UP TO THE JURY TO DETERMINE WHAT A DEFENDANT INTENDS TO DO BASED ON THE CIRCUMSTANCES WHICH WERE SHOWN TO HAVE EXISTED. I CHARGE YOU THAT THE STATE OF SOUTH CAROLINA MUST PROVE CRIMINAL INTENT BEYOND A REASONABLE DOUBT, JUST AS THE STATE OF SOUTH CAROLINA MUST PROVE EVERY ELEMENT OF EVERY OFFENSE CHARGED BEYOND A REASONABLE DOUBT, AS I HAVE PREVIOUSLY EXPLAINED TO YOU.

MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU NOW AND EMPHASIZE TO YOU THAT THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY IN HIS OWN BEHALF IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATIONS AND IN YOUR CONSIDERATION OF THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER AGAINST THE DEFENDANT OR MITIGATE AGAINST HIM IN ANY MANNER WHATSOEVER.

MR. FOREMAN, LADIES AND GENTLEMEN, A DEFENDANT HAS A CONSTITUTIONAL RIGHT NOT TO TESTIFY, AND THE ASSERTION OF SUCH A CONSTITUTIONAL RIGHT CANNOT AND MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS.

UNDER YOUR OATH, YOU ARE TO REACH NO INFERENCE OR DRAW ANY CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS UPON THE STATE OF SOUTH CAROLINA. IT IS NOT INCUMBENT UPON THE DEFENDANT TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF ALWAYS REMAINS ON THE STATE OF SOUTH CAROLINA TO PROVE GUILT BEYOND A REASONABLE DOUBT.

NOW, LADIES AND GENTLEMEN, YOU ARE NOT PARTISANS OR ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR FOR THE DEFENDANT. YOU DO NOT SERVE AS JURORS TO REWARD YOUR FRIENDS OR PUNISH YOUR ENEMIES. OBVIOUSLY, SUCH A PERVERTED SYSTEM OF JUSTICE WOULD BE INTOLERABLE. YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS IN THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE THE RIGHT TO CRITICIZE YOUR VERDICT. YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS.

I CHARGE YOU, YOU SHOULD NOT BE INFLUENCED BY OPINIONS OR EXPRESSIONS OF OPINIONS, IF ANY YOU MAY HAVE HEARD OUTSIDE THE COURTROOM, BUT I CHARGE YOU, YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY IN EVIDENCE WHICH YOU HAVE HEARD FROM THE LIPS OF THE SWORN WITNESSES AND ALL OF THE EXHIBITS WHICH WERE

INTRODUCED AT THE TRIAL. I CHARGE YOU, IT IS YOUR DUTY, BY YOUR JOINT DELIBERATIONS, TO DETERMINE THE TRUTH IN THIS CASE, GIVING TO THE DEFENDANT THE BENEFIT OF EACH AND EVERY REASONABLE DOUBT.

THEN TO THE FACTS WHICH YOU, THE JURY, DETERMINE TO BE TRUE, YOU THEN TAKE AND APPLY THE LAW WHICH I HAVE JUST STATED FOR YOU AND THUS ARRIVE AT A VERDICT, A VERDICT WHICH DOES SPEAK THE TRUTH IN THIS CASE, FOR THE WORD "VERDICT", LADIES AND GENTLEMEN, HAS A LATIN DERIVATIVE WHICH MEANS A TRUE SAYING. AND WHEN YOU HAVE ACCOMPLISHED THESE RESPONSIBILITIES, YOU WILL HAVE SATISFIED YOUR OATH AS JURORS AND YOU WILL HAVE DISCHARGED YOUR DUTY TO THIS COURT.

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU, IF THE STATE OF SOUTH CAROLINA HAS FAILED TO PROVE THE GUILT OF THIS DEFENDANT BEYOND A REASONABLE DOUBT IN REGARD TO EACH INDICTMENT, YOUR VERDICT WOULD BE NOT GUILTY. I CHARGE YOU, IF THE STATE OF SOUTH CAROLINA HAS PROVED THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT IN REGARD TO EACH INDICTMENT, YOUR VERDICT WOULD BE GUILTY. THE VERDICT THAT YOU RENDER IN THIS CASE, LADIES AND GENTLEMEN, MUST BE THE VERDICT OF EACH AND EVERY JUROR. IT MUST BE YOUR UNANIMOUS VERDICT. ALL 12 JURORS MUST AGREE ON ANY VERDICT YOU AUTHORIZE YOUR FOREMAN TO WRITE FOR THE

JURY. JURY VERDICTS IN SOUTH CAROLINA MUST BE UNANIMOUS.

NOW, MR. CLERK, WOULD YOU PLEASE PASS THE INDICTMENTS OVER TO THE FOREMAN AND DIRECT HIS ATTENTION TO THE FIRST INDICTMENT FOR MURDER IN ORDER THAT I CAN INSTRUCT HIM ON HOW TO RECORD THE JURY'S UNANIMOUS VERDICT?

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, AS I JUST INFORMED AND CHARGED YOU, THERE ARE ONLY TWO POSSIBLE VERDICTS IN REGARD TO EACH INDICTMENT, NOT GUILTY OR GUILTY. WHATEVER THE JURY'S UNANIMOUS VERDICT IN REGARD TO ANY PARTICULAR INDICTMENT, YOU MUST SIMPLY WRITE THAT VERDICT ON THE BACK OF THE INDICTMENT WHERE I'VE INDICATED WITH A RED PEN. DO YOU SEE THAT ON THE BACK THERE, SIR?

FOREMAN: (NODDING HEAD).

THE COURT: AND SIGN YOUR NAME AS FOREMAN ON EACH INDICTMENT. DO YOU SEE THAT, SIR?

FOREMAN: YES, SIR.

THE COURT: THAT'S HOW YOU RECORD YOUR JURY'S UNANIMOUS VERDICT. ONCE AGAIN, YOUR VERDICT MUST BE UNANIMOUS.

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, AT THIS TIME I'M GOING TO ASK THAT YOU ALL STEP INTO THE JURY ROOM, BUT PLEASE DO NOT BEGIN DELIBERATING QUITE YET.

OUR LAW REQUIRES THAT I CONSULT WITH THE ATTORNEYS. IT MIGHT BE NECESSARY THAT I BRING YOU BACK IN AND GIVE YOU SOME ADDITIONAL INSTRUCTIONS ON THE LAW IN THIS CASE, BUT IF THAT IS NOT REQUIRED, LADIES AND GENTLEMEN, I WILL HAVE ONE OF THE BAILIFFS -- SEVERAL OF THE BAILIFFS BRING INTO THE JURY ROOM THE EXHIBITS WHICH WERE ADMITTED INTO EVIDENCE. ONCE THEY HAVE DONE SO, PLEASE BEGIN YOUR DELIBERATIONS.

MR. FOREMAN, ONCE THE JURY REACHES A UNANIMOUS VERDICT AND YOU HAVE RECORDED THE VERDICT ON THE BACK OF THE INDICTMENTS, PLEASE KNOCK ON THE DOOR, ADVISE THE BAILIFF, AND WE WILL BRING YOU BACK IN IMMEDIATELY TO RECEIVE YOUR VERDICT. YOU MAY RETIRE.

THE THREE ALTERNATES, PLEASE STAY WITH US. THANK YOU.

THE LADIES AND GENTLEMEN OF THE JURY MAY RETIRE.

(JURY EXITS COURTROOM AT 11:03 A.M.).

THE COURT: ANYTHING FURTHER FROM THE STATE OR THE DEFENDANT?

MR. JUSTICE: NOTHING FROM THE STATE, YOUR HONOR.

MR. CLARK: NOTHING FROM THE DEFENDANT, YOUR HONOR.

THE COURT: THANK YOU. GENTLEMEN, PLEASE MEET WITH -- I THINK YOU DID YESTERDAY, AND I APPRECIATE THAT, I THINK THAT WILL SAVE US SOME TIME -- AND MAKE

SURE WE HAVE ALL THE EXHIBITS.

NOW, MR. CLERK, PLEASE HAVE ONE OR TWO, OR HOWEVER MANY IT TAKES, OF THE BAILIFFS TAKE THOSE INTO THE JURY ROOM AND TELL THEM TO BEGIN DELIBERATING.

(TO COUNSEL) GENTLEMEN, I APPRECIATE YOUR EFFORTS. YOU'VE ALL BEEN VERY PROFESSIONAL IN REPRESENTING YOUR CLIENTS. THANK YOU VERY MUCH.

MR. CLARK: THANK YOU, YOUR HONOR.

THE COURT: IT'S GOOD TO HAVE GOOD ATTORNEYS IN OUR COURTS, THANK YOU. WE WILL NOW BE AT EASE AWAITING OUR VERDICT.

ALTERNATE JURORS, NO ONE BECAME ILL OR INJURED DURING THE TRIAL THIS WEEK, THEREFORE, YOU DIDN'T HAVE TO MOVE UP ON THE REGULAR JURY. ON BEHALF OF LANCASTER COUNTY AND SOUTH CAROLINA, I'D LIKE TO THANK ALL THREE OF YOU FOR YOUR JURY SERVICE. OUR SYSTEM OF JUSTICE COULD NOT FUNCTION WERE IT NOT FOR GOOD CITIZENS LIKE YOU, READY, WILLING, ABLE AND QUALIFIED TO SERVE AS JURORS.

WHEN I EXCUSE YOU IN JUST A MOMENT, YOU'RE FREE TO GO, IF YOU'D LIKE. YOU'RE WELCOME TO STICK AROUND WITH US AND AWAIT THE VERDICT, IF YOU'D LIKE. YOU'RE NOT REQUIRED TO DO SO, BUT YOU'RE WELCOME TO. IF YOU NEED A CERTIFICATE TO TAKE TO YOUR EMPLOYER,

CERTIFYING THAT YOU'VE BEEN IN COURT THIS WEEK, I THINK THEY'LL PROBABLY MAIL YOU ONE IN ABOUT A WEEK, BUT YOU CAN GO DOWNSTAIRS TO THE CLERK OF COURT'S OFFICE AND TELL WHOEVER IS ON DUTY DOWN THERE YOU'VE BEEN IN COURT ALL WEEK ON THE JURY AND YOU NEED SOMETHING TO TAKE TO YOUR EMPLOYER. THEY'LL BE GLAD TO PROVIDE THAT CERTIFICATION FOR YOU.

IF YOU STICK AROUND AND WE HAVE TO ORDER LUNCH FOR THE JURORS, I'LL BE DELIGHTED TO HAVE LANCASTER SPRING FOR YOUR LUNCH. ALTHOUGH IT WON'T BE AN ELABORATE LUNCH, I ASSURE YOU, IT WILL BE A LUNCH. THANK YOU VERY MUCH. WE'RE IN RECESS.

(RECESS AWAITING VERDICT)

THE COURT: (TO COUNSEL) THE FOREMAN OF THE JURY HAS SUBMITTED A NOTE TO THE COURT, WHICH I'LL ALLOW YOU TO INSPECT. THE NOTE READS, "(1) WE NEED A DEFINITIVE EXPLANATION OF THE CHARGE OF MURDER. (2) IS IT NECESSARY TO PROVE MATHIS WAS THE SHOOTER TO PROVE HIS GUILT ON THE CHARGE OF MURDER? (3) IS THE INDICTMENT CHARGING HIM WITH BEING THE SHOOTER OR SIMPLY BEING A PARTY TO THE SHOOTING?".

GENTLEMEN, WHAT I INTEND TO DO, IF THERE'S NO OBJECTION, IS BRING THE JURY IN, CHARGE THEM ON THE OFFENSE OF MURDER AGAIN, TWO, CHARGE THEM ON THE "HAND OF ONE IS THE HAND OF ALL" DOCTRINE AND, THREE,

I CAN'T ANSWER FACTUAL QUESTIONS FOR THEM, BUT I THINK I CAN, WITHOUT OBJECTION -- I THINK I COULD CHARGE THEM THAT THE INDICTMENT CHARGES THE DEFENDANT WITH THE OFFENSE OF MURDER. I HAVE INSTRUCTED THEM ON THE MANNER IN WHICH THE STATE IS REQUIRED TO PROVE MURDER BEYOND A REASONABLE DOUBT IN THE DIFFERENT WAYS THAT I'VE USED IN MY CHARGE.

ANY OBJECTION TO THAT?

MR. CLARK: NO, YOUR HONOR.

MR. JUSTICE: NO, SIR, NOT FROM THE STATE.

THE COURT: (TO BAILIFF) BRING THE JURY IN, PLEASE.

(JURY ENTERS COURTROOM AT 12:29 P.M.).

THE COURT: LADIES AND GENTLEMEN, I HAVE A NOTE FROM THE JURY, PRESUMABLY WRITTEN BY THE FOREMAN, WHICH READS AS FOLLOWS. "(1) WE NEED A DEFINITIVE EXPLANATION OF THE CHARGE OF MURDER. (2) IS IT NECESSARY TO PROVE MATHIS WAS THE SHOOTER TO PROVE HIS GUILT ON THE CHARGE OF MURDER? (3) IS HIS INDICTMENT CHARGING HIM WITH BEING THE SHOOTER OR SIMPLY BEING A PARTY TO THE SHOOTING?".

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, PLEASE GIVE ME YOUR ATTENTION. I CHARGE YOU, MURDER MAY BE DEFINED AS THE WILLFUL, FELONIOUS KILLING OF A HUMAN BEING BY A HUMAN BEING WITH MALICE AFORETHOUGHT,

THAT MALICE BEING EITHER EXPRESS OR IMPLIED. I CHARGE YOU § 16-3-10 OF THE 1976 CODE OF LAWS OF SOUTH CAROLINA DEFINES MURDER AS THE KILLING OF ANY PERSON WITH MALICE AFORETHOUGHT, EITHER EXPRESS OR IMPLIED.

IN ORDER TO CONVICT A PERSON OF MURDER, THE STATE OF SOUTH CAROLINA MUST NOT ONLY PROVE THE KILLING OF THE VICTIM BY THE DEFENDANT, IT MUST ALSO PROVE CRIMINAL INTENT AND THAT THE KILLING WAS DONE WITH MALICE AFORETHOUGHT. ALL OF THESE FACTS MUST BE PROVED BEYOND A REASONABLE DOUBT. IN OTHER WORDS, LADIES AND GENTLEMEN, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND AN INFLICTION OF INJURY CALCULATED AND INTENDED TO PRODUCE DEATH.

IF ONE INTENTIONALLY KILLS ANOTHER DURING THE COMMISSION OF A FELONY, AN IMPLICATION OF MALICE MAY ARISE. IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO THE SATISFACTION OF THE JURY, THIS INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH ALL THE OTHER EVIDENCE IN THE CASE, AND IT SHOULD BE GIVEN SUCH WEIGHT, IF ANY, AS THE JURY DETERMINES IT SHOULD RECEIVE.

I CHARGE YOU MALICE INDICATES A FORMED PURPOSE AND DESIGN TO DO A WRONGFUL ACT UNDER CIRCUMSTANCES THAT EXCLUDE ANY LEGAL RIGHT TO DO IT. MALICE IS A

TERM OF ART THAT IMPORTS WICKEDNESS AND EXCLUDES A JUST CAUSE OR EXCUSE. IT IS SOMETHING THAT SPRINGS FROM WICKEDNESS, FROM DEPRAVITY, FROM A DEPRAVED SPIRIT, FROM A SPIRIT BENT ON MISCHIEF AT THAT TIME, AND FROM NOT HAVING A REGARD FOR THE SOCIAL OBLIGATIONS OR THE OBLIGATIONS WHICH REST UPON MANKIND.

I CHARGE YOU THE WORDS "EXPRESS" AND "IMPLIED" MALICE DO NOT MEAN TWO DIFFERENT KINDS OF MALICE, RATHER THESE TERMS SIGNIFY THE WAY IN WHICH MALICE MAY BE PROVED. EXPRESS MALICE IS WHERE A PERSON, BY WORD OF MOUTH, EXPRESSES HATE OR ILL WILL FOR ANOTHER OR WHERE THE STATE OF SOUTH CAROLINA PROVES BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS MAKING PREPARATION BEFORE THE EVENT TO ACCOMPLISH THE EVENT.

I CHARGE YOU MALICE MAY BE IMPLIED OR INFERRED IF IT WAS PROVED BEYOND A REASONABLE DOUBT THAT THERE WAS A WILLFUL, DELIBERATE AND INTENTIONAL DOING OF AN UNLAWFUL ACT WITHOUT JUST CAUSE OR LEGAL EXCUSE. PROOF OF THIS ACT, HOWEVER, IS MERELY A PIECE OF EVIDENCE FROM WHICH THE INFERENCE OR IMPLICATION OF MALICE MAY ARISE. IN OTHER WORDS, THE INFERENCE WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH ALL OF THE OTHER EVIDENCE IN THE CASE AND SHOULD BE GIVEN SUCH WEIGHT,

IF ANY, AS THE JURY DETERMINES IT SHOULD RECEIVE.

I CHARGE YOU THAT EVEN WHERE THERE IS AN ABSENCE OF A SPECIFIC AND FIXED AND DELIBERATE INTENT TO TAKE THE LIFE OF A PARTICULAR PERSON OR PERSONS, OUR LAW STATES IF IT IS PROVED BEYOND A REASONABLE DOUBT THAT ONE INTENTIONALLY KILLED ANOTHER WITH A DEADLY WEAPON OR WITH A DANGEROUS INSTRUMENTALITY, AN INSTRUMENTALITY SUCH AS A GUN, AN IMPLICATION OF MALICE MAY ARISE. I CHARGE YOU, THE USE OF A DEADLY WEAPON PERMITS A JURY TO INFER MALICE, BUT IT DOES NOT REQUIRE A JURY TO INFER MALICE. I CHARGE YOU, IF FACTS ARE PROVED BEYOND A REASONABLE DOUBT SUFFICIENT TO RAISE AN INFERENCE OF MALICE TO THE JURY'S SATISFACTION, THIS INFERENCE ONCE AGAIN WOULD SIMPLY BE AN EVIDENTIARY FACT TO BE TAKEN INTO CONSIDERATION BY THE JURY ALONG WITH ALL OF THE OTHER EVIDENCE IN THE CASE AND IT SHOULD BE GIVEN SUCH WEIGHT, IF ANY, AS THE JURY DETERMINES IT SHOULD RECEIVE.

I CHARGE YOU, THERE MUST BE MALICE AFORETHOUGHT, WHICH MEANS THAT MALICE MUST HAVE BEEN CONCEIVED IN THE MIND OF THE DEFENDANT PRIOR TO THE FACT PRODUCING THE FATAL RESULT. HOWEVER, OUR LAW DOES NOT REQUIRE THAT MALICE EXIST FOR ANY APPRECIABLE LENGTH OF TIME BEFORE THE COMMISSION OF THE ACT.

NOW, MR. FOREMAN, LADIES AND GENTLEMEN, I'M NOW

GOING TO CHARGE YOU ONCE AGAIN IN REGARD TO "THE HAND OF ONE IS THE HAND OF ALL" DOCTRINE, WHICH I PREVIOUSLY EXPLAINED TO YOU. MR. FOREMAN, LADIES AND GENTLEMEN, I CHARGE YOU, IF SEVERAL PERSONS AGREE OR CONSPIRE TO COMMIT A FELONY, SUCH AS MURDER, BURGLARY, GRAND LARCENY, OR ANY OTHER FELONY, ALL OF THE PERSONS ARE CRIMINALLY RESPONSIBLE FOR THE ACTS OF THEIR ASSOCIATES OR CONFEDERATES DONE IN FURTHERANCE OR IN PROSECUTION OF THE COMMON PURPOSE FOR WHICH THEY HAVE COMBINED.

THE COMMON PURPOSE MAY NOT HAVE INCLUDED OR MAY NOT HAVE BEEN INVOLVED IN THE KILLING AND MURDER OF ANYONE, BUT IF, IN EXECUTING THIS COMMON DESIGN AND UNLAWFUL PURPOSE, AS FOR INSTANCE IN BREAKING IN AND STEALING, A HOMICIDE IS COMMITTED BY ONE OF THE CONFEDERATES, AND THE JURY DETERMINES FROM THE EVIDENCE BEYOND A REASONABLE DOUBT THAT THE HOMICIDE WAS A PROBABLE OR NATURAL CONSEQUENCE OF THAT ACT DONE IN PURSUANCE OF THIS COMMON DESIGN, THEN ALL WHO ARE PRESENT, EITHER ACTUALLY OR CONSTRUCTIVELY, AND PARTICIPATE IN THE UNLAWFUL COMMON DESIGN ARE AS GUILTY AS THE SLAYER HIMSELF.

IF A PERSON KILLS ANOTHER IN DOING OR ATTEMPTING TO DO AN ACT AMOUNTING TO A FELONY, THE KILLING IS MURDER, AND IF A CULPABLE HOMICIDE RESULTS FROM THE

PURSUANCE OF THE COMMON PURPOSE OF THIS CONSPIRACY, ALL ARE ALIKE CRIMINALLY RESPONSIBLE. I CHARGE YOU THAT IF TWO PERSONS ARE TOGETHER, ACTING TOGETHER AND ASSISTING EACH OTHER IN THE COMMISSION OF AN OFFENSE, OUR LAW STATES THAT UNDER THOSE CIRCUMSTANCES, THE ACT OF ONE IS THE ACT OF ALL, THE HAND OF ONE IS THE HAND OF ALL. I CHARGE YOU, HOWEVER, ONE IS NOT LIABLE FOR THE ACTION OF AN ACCOMPLICE UNLESS THE ACT IS NATURAL OR A PROBABLE CONSEQUENCE OF AN AGREED PLAN. THIS DOCTRINE OR THIS THEORY IS COMMONLY CALLED "THE HAND OF ONE IS THE HAND OF ALL" DOCTRINE IN OUR LAW.

NOW, LADIES AND GENTLEMEN, IN REGARD TO THE CHARGE OF MURDER STATED IN THE INDICTMENT, THE INDICTMENT CHARGES THE DEFENDANT WITH THE OFFENSE OF MURDER. I HAVE EXPLAINED TO YOU HOW THE STATE OF SOUTH CAROLINA MUST PROVE MURDER IN ANY PARTICULAR CASE, AND YOU CAN TAKE MY INSTRUCTIONS AS I HAVE PREVIOUSLY EXPLAINED THOSE TO YOU.

I BELIEVE I HAVE ANSWERED ALL OF YOUR QUESTIONS. IF YOU WOULD STEP BACK IN THE JURY ROOM AND CONTINUE DELIBERATING, WE'LL AWAIT YOUR VERDICT. THANK YOU.

(JURY EXITS COURTROOM AT 12:50).

THE COURT: ANYTHING FURTHER FROM THE STATE?

MR. JUSTICE: NOTHING FROM THE STATE.

THE COURT: FROM THE DEFENDANT?

MR. CLARK: NOTHING MORE, THANK YOU.

THE COURT: THANK YOU. WE WILL REMAIN IN RECESS.

(COURT'S EXHIBIT #5, MARKED FOR IDENTIFICATION, THREE QUESTIONS FROM JURY).

(RECESS AWAITING JURY VERDICT)

THE COURT: GENTLEMEN, I AM ADVISED BY THE CLERK OF COURT THAT WE HAVE A VERDICT.

BEFORE I BRING THE JURY IN, I ADVISE EVERYONE THAT THE COURT DOES NOT ALLOW ANY EMOTIONAL OUTBURSTS. IF ANYONE FEELS THAT HE OR SHE CANNOT CONTROL THEIR EMOTIONS, THIS WOULD BE A GOOD TIME TO EXIT THE COURTROOM RATHER THAN FACE A CONTEMPT OF COURT CITATION.

(TO BAILIFF) PLEASE BRING THE JURY IN.

(JURY ENTERS COURTROOM AT 12:50 P.M.).

THE COURT: MR. FOREMAN, HAS THE JURY BEEN ABLE TO REACH A UNANIMOUS VERDICT AND HAVE YOU RECORDED IT?

FOREMAN: YES, SIR, I HAVE.

THE COURT: THANK YOU. WOULD YOU PLEASE PASS THE INDICTMENTS TO THE CLERK OF COURT?

FOREMAN: (HANDING INDICTMENTS TO CLERK).

THE CLERK: (HANDING INDICTMENTS TO THE COURT).

THE COURT: YOU MAY PUBLISH THE VERDICT, MR.

CLERK.

THE CLERK: CASE 00-GS-29-1418, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, INDICTED FOR MURDER, "WE, THE JURY, FIND THE DEFENDANT GUILTY", SIGNED [redacted], JUNE 6, '03.

CASE 03-GS-29-0524, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, INDICTED FOR BURGLARY FIRST DEGREE, "WE, THE JURY, FIND THE DEFENDANT GUILTY", SIGNED [redacted], JUNE 6, '03.

CASE 03-GS-29-0525, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, INDICTED FOR KIDNAPING, "WE, THE JURY, FIND THE DEFENDANT GUILTY", SIGNED [redacted] JUNE 6, '03.

CASE 03-GS-29-0526, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, INDICTED FOR KIDNAPING, "WE, THE JURY, FIND THE DEFENDANT GUILTY", SIGNED [redacted] JUNE 6, '03.

CASE 01-GS-29-0250, STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, INDICTED FOR ARMED ROBBERY, "WE, THE JURY, FIND THE DEFENDANT GUILTY", SIGNED [redacted], JUNE 6, '03.

LADIES AND GENTLEMEN OF THE JURY, IF THIS BE YOUR VERDICT, SAY SO YOU ALL BY THE RAISING OF YOUR RIGHT HAND.

(JURY COMPLYING).

THE COURT: LET THE RECORD REFLECT EACH JUROR RAISED HIS OR HER RIGHT HAND.

ANYTHING FURTHER FROM THE STATE OR THE DEFENDANT BEFORE THE COURT IMPOSES SENTENCE IN THIS CASE?

MR. JUSTICE: AS TO SENTENCING, YOUR HONOR?

THE COURT: BEFORE SENTENCING.

MR. JUSTICE: NOT BEFORE SENTENCING. NOTHING FOR THE JURY.

MR. CLARK: NOTHING FOR THE JURY, YOUR HONOR. WE WOULD HAVE A MOTION THAT I DON'T THINK RELATES TO THE JURY.

THE COURT: ALL RIGHT.

MR. CLARK: SHOULD I DO THAT NOW?

THE COURT: YES.

MR. CLARK: WE WOULD MAKE A MOTION FOR A NEW TRIAL. ONE BASIS IN PARTICULAR IS THAT THE EVIDENCE, WE BELIEVE, IS SO CONTRADICTORY THAT IT COULDN'T POSSIBLY SUPPORT THE VERDICT OF THE JURY. THAT WOULD BE OUR MOTION.

THE COURT: ALL RIGHT, THANK YOU. WELL, AFTER DULY CONSIDERING THE MATTER, I RESPECTFULLY DENY YOUR MOTION. THANK YOU.

PLEASE BRING THE DEFENDANT FORWARD FOR SENTENCING.

MR. CLARK: I BEG THE COURT'S INDULGENCE.

THE COURT: YES, SIR, TAKE YOUR TIME.

MR. CLARK: YOUR HONOR, MR. MATHIS WOULD LIKE TO ADDRESS THE COURT.

THE COURT: WELL, AT THE APPROPRIATE TIME. WE'RE NOT QUITE TO THAT STAGE YET.

SOLICITOR, ON BEHALF OF THE STATE?

MR. JUSTICE: YES, YOUR HONOR, MAY IT PLEASE THE COURT. PRIOR TO 10 DAYS BEFORE TRIAL, SPECIFICALLY ON MAY 20, I SERVED NOTICE BY WAY OF BOTH EXPRESS MAIL AS WELL AS FACSIMILE TO COUNSEL THAT MR. MATHIS HAD A PRIOR CONVICTION OUT OF STATE FOR THE OFFENSE OF BURGLARY, THIS BEING IN THE STATE OF MARYLAND.

I AM ADVISED THAT IN THE STATE OF MARYLAND AT THAT TIME, BURGLARY DID NOT HAVE DEGREES. IT WAS MUCH LIKE WE WERE 10 OR 15 YEARS AGO. HOWEVER, THE FACTS OF THE CASE IN THE STATE OF MARYLAND, AS SET OUT IN THE INDICTMENT WHICH MR. MATHIS WAS CONVICTED OF, WOULD BE THE EQUIVALENT OF OUR FIRST DEGREE BURGLARY IN THAT IT IS SET OUT THAT IT IS A DWELLING HOUSE IN THE NIGHTTIME.

THE FACTS OF THE CASE, WHICH I HAVE THE CASE FILE, ALSO INDICATES IT WAS WHILE ARMED WITH A DEADLY WEAPON, WHICH ISN'T NECESSARY, BUT DWELLING IN THE NIGHTTIME IS SUFFICIENT TO SET OUT FIRST DEGREE BURGLARY. I HAVE A CERTIFIED COPY OF THAT

INDICTMENT SHOWING THAT CONVICTION AS COUNT THREE OF THE INDICTMENT, THEREFORE CONSTITUTING A PREVIOUS MOST SERIOUS OFFENSE.

UNDER § 17-25-45 OF THE SOUTH CAROLINA CODE OF LAWS, AS AMENDED, AND SUBSEQUENT SUBSECTIONS UNDER THAT, A MANDATORY LIFE SENTENCE IS REQUIRED FOR A SECOND CONVICTION OF A MOST VIOLENT OFFENSE, WHICH WOULD INCLUDE ALL FIVE INDICTMENTS, MURDER, BOTH COUNTS OF KIDNAPING, ARMED ROBBERY AND BURGLARY IN THE FIRST DEGREE.

THE COURT: ALL RIGHT. I'M GOING TO MARK THE PREVIOUS CONVICTIONS AS A COURT EXHIBIT.

MR. CLARK: A COURT EXHIBIT?

THE COURT: YES, SIR. YOU'VE SEEN IT BEFORE?

MR. CLARK: I'M FAMILIAR WITH IT, YOUR HONOR. YES, SIR, I HAVE.

THE COURT: WELL, IF YOU'D LIKE TO LOOK AT IT --

MR. CLARK: NO, SIR, I DON'T NEED TO.

THE COURT: (TO REPORTER) MARK THAT AS THE NEXT APPROPRIATE EXHIBIT AND PUT IT IN THE RECORD OF THE CASE.

MR. JUSTICE: ALSO, I'LL GIVE TO THE CLERK A COPY OF MY LETTER GIVING NOTICE OF THAT.

THE COURT: ALL RIGHT.

(COURT'S EXHIBIT #6, MARKED FOR IDENTIFICATION,

PREVIOUS MARYLAND CONVICTION).

(TO MR. CLARK) ANYTHING JUST IN THAT REGARD?

MR. CLARK: YES, YOUR HONOR. IT WOULD BE OUR POSITION THAT SINCE MARYLAND DID NOT CLASSIFY THE BURGLARY IN DEGREES, IT WOULD BE SPECULATIVE ON OUR PART TO SAY THAT THAT IS THE EQUIVALENT OF BURGLARY FIRST DEGREE, AND I WOULD MOVE THE COURT TO DISREGARD THAT INDICTMENT AS NOT A MOST SERIOUS BUT, AT THE VERY MOST, A SERIOUS OFFENSE, YOUR HONOR. THAT'S ALL I HAVE ON THAT.

THE COURT: SOLICITOR?

MR. JUSTICE: YOUR HONOR, THE ELEMENTS ARE THERE AND, THE WAY THE STATUE READS, IT'S A CRIME THAT WOULD, UNDER SOUTH CAROLINA LAW, BE CLASSIFIED AS MOST SERIOUS UNDER THE SECTION CITED. AND UNDER SOUTH CAROLINA LAW, BURGLARY IN THE FIRST DEGREE -- AMONG SEVERAL WAYS YOU CAN DEFINE THAT, ONE OF WHICH IS A DWELLING IN THE NIGHTTIME.

THE COURT: AFTER CAREFULLY REVIEWING COURT'S EXHIBIT #6 AND TAKING INTO CONSIDERATION THE STATUTE, I FIND THAT THE BURGLARY IN THE STATE OF MARYLAND IS COMPARABLE TO BURGLARY IN THE FIRST DEGREE UNDER OUR STATE STATUTE. THEREFORE, I RESPECTFULLY DENY YOUR MOTION, MR. CLARK, AND I DO FIND IT TO BE A SECOND CONVICTION OF A MOST SERIOUS OFFENSE THAT WOULD CARRY

AN AUTOMATIC LIFE SENTENCE.

SOLICITOR, ANYTHING BRIEFLY FROM THE STATE?

MR. JUSTICE: THE ONLY THING IS I THINK THE FATHER OF THE VICTIM, MR. STEELE, WISHES TO SPEAK. HE'LL BE THE SOLE SPOKESPERSON FOR THE FAMILY -- FATHER AND BROTHER, EXCUSE ME.

MR. STEELE: YOUR HONOR, I'D LIKE TO SAY FOR THE FAMILY TODAY THAT WE ELECTED NOT TO GO FOR THE DEATH PENALTY IN THIS CASE, BUT ONE THING I'D LIKE TO ASK YOU TO DO FOR ME AND THE FAMILY IS THAT YOU WOULD SENTENCE MR. MATHIS FOR EACH ONE OF THESE CRIMES CONSECUTIVE, IN A ROW.

AND THEN I'D LIKE TO SAY THAT I WOULD HOPE MR. MATHIS ONE DAY CAN REALIZE HOW MUCH HE HURT AND TOOK AWAY FROM OUR FAMILY, AND I HOPE HE SEES MELVIN AND RITA EVERY DAY AND EVERY NIGHT THE REST OF HIS LIFE. THANK YOU.

THE COURT: THANK YOU, SIR.

ANYTHING FURTHER?

MR. JUSTICE: NOTHING, YOUR HONOR.

THE COURT: MR. MATHIS, I'LL ALLOW YOU TO ADDRESS THE COURT.

MR. MATHIS: I DIDN'T DO THIS. THIS WAS NOT MY DOING. I'M ASKING FOR MERCY. I DID NOT DO THIS. I DEFINITELY WANT TO APPEAL THIS. THIS IS NOT MY DOING

AND THINGS ARE NOT WHAT IT SEEM TO BE. THIS IS NOT MY DOING. I'VE BEEN SET UP. THIS IS NOT MY DOING.

THE COURT: THANK YOU, SIR. MR. MATHIS, THE COURT WOULD ADVISE YOU THAT YOU HAVE THE RIGHT, UNDER OUR LAW, TO APPEAL ANY CONVICTION, BUT IN ORDER TO DO SO, YOU OR YOUR ATTORNEY MUST FILE A WRITTEN NOTICE OF INTENTION TO APPEAL WITHIN 10 DAYS FROM THIS DATE WITH THE CLERK OF COURT OF LANCASTER COUNTY.

ANYTHING FURTHER, MR. CLARK, SIR?

MR. CLARK: YOUR HONOR, WITH THE MANDATORY SENTENCES, IT'S KIND OF HARD FOR ME TO OFFER ANYTHING. THAT'S ALL WE HAVE, JUDGE.

THE COURT: YES, SIR.

WELL, THIS IS TRULY A TRAGIC EVENT. THERE'S BEEN ONE LIFE LOST, A PERSON SEVERELY INJURED, MENTALLY AND PHYSICALLY, ANOTHER PERSON STANDING BEFORE THE BAR OF THIS COURT FACING A MANDATORY LIFE SENTENCE.

IN REGARD TO 00-GS-29-1418, THE STATE V. VERNARD JEROME MATHIS, WHEREIN THE DEFENDANT HAS BEEN CONVICTED BY THE JURY OF MURDER, THE SENTENCE OF THE COURT IS THAT THE DEFENDANT, VERNARD JEROME MATHIS, BE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR THE REMAINDER OF HIS NATURAL LIFE.

IN REGARD TO INDICTMENTS 03-GS-29-0524 AND 0525 AND 0526 AND 01-GS-29-0250, WHEREIN THE DEFENDANT HAS

BEEN CONVICTED BY THE JURY OF OFFENSES OF BURGLARY IN THE FIRST DEGREE, KIDNAPING, KIDNAPING AND ARMED ROBBERY, IT IS THE SENTENCE OF THE COURT HE BE CONFINED TO THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS FOR THE BALANCE OF HIS NATURAL LIFE. THIS SENTENCE IS UNDER § 17-25-45. THANK YOU. GOOD LUCK TO YOU.

ANYTHING FURTHER, MR. SOLICITOR?

MR. JUSTICE: NO, SIR, YOUR HONOR.

THE COURT: MR. CLARK?

MR. CLARK: NO, SIR, YOUR HONOR.

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, ON BEHALF OF THE STATE OF SOUTH CAROLINA AND LANCASTER COUNTY, I THANK EACH OF YOU FOR YOUR JURY SERVICE. I KNOW IT'S A VERY DIFFICULT DUTY TO PERFORM BUT ONE THAT YOU'RE NOT CALLED UPON TO PERFORM VERY OFTEN. OUR SYSTEM OF JUSTICE COULD NOT FUNCTION WERE IT NOT FOR CITIZENS LIKE YOU, READY, WILLING, AND ABLE AND QUALIFIED TO SERVE AS JURORS IN THIS COURT. ONCE AGAIN I THANK YOU.

NOW, LADIES AND GENTLEMEN, ONCE I EXCUSE YOU TODAY, IF YOU SHOULD NEED A CERTIFICATE TO TAKE TO YOUR EMPLOYER TO CERTIFY YOUR ATTENDANCE IN COURT THIS WEEK, GO DOWNSTAIRS TO THE CLERK OF COURT'S OFFICE. THE CLERK ON DUTY WOULD BE GLAD TO PROVIDE

YOU WITH SUCH A CERTIFICATE.

IN A WEEK OR 10 DAYS YOU SHOULD RECEIVE A CHECK IN THE MAIL FOR YOUR JURY SERVICE. AS I TELL ALL OF MY JURORS, WHEN YOU SEE THE SMALL AMOUNT OF MONEY YOU'RE BEING PAID, REMEMBER YOU'RE NOT PAID WHAT YOU'RE WORTH, ONLY WHAT LANCASTER COUNTY CAN AFFORD TO PROVIDE FOR YOU. THERE IS NO WAY ANY COUNTY IN THIS STATE COULD AFFORD TO REIMBURSE JURORS FOR THE INVALUABLE SERVICE THEY RENDER.

NOW, LADIES AND GENTLEMEN, WHEN I RELEASE YOU, IF ANYONE SHOULD ATTEMPT TO APPROACH YOU AND WANT TO DISCUSS THE VERDICT WITH YOU, IF YOU CHOOSE TO DO THAT, THAT'S PERFECTLY ALL RIGHT. HOWEVER, IF YOU CHOOSE NOT TO DO THAT AND YOU DO NOT WANT TO DISCUSS YOUR VERDICT, JUST ADVISE THAT PERSON NO, YOU CHOOSE NOT TO DISCUSS THE VERDICT. IF THAT PERSON SHOULD PERSIST IN THEIR EFFORTS TO CONTINUE ATTEMPTING TO DISCUSS THIS CASE WITH YOU AND YOU DON'T WANT TO DISCUSS IT WITH THEM, YOU CONTACT THE CLERK OF COURT, AND HE WILL BRING THAT TO THE COURT'S ATTENTION AND I ASSURE YOU WE'LL TAKE CARE OF THAT MATTER RIGHT AWAY.

I'D LIKE TO THANK YOU ONCE AGAIN. YOU'VE BEEN A VERY ATTENTIVE JURY AND VERY PROMPT IN YOUR ATTENDANCE. I CERTAINLY THANK YOU. YOU ARE EXCUSED.

YOU DO NOT HAVE TO REPORT AGAIN. THANK YOU.

ONLY THE JURORS MAY EXIT THE COURTROOM AT THIS TIME.

(OFF-THE-RECORD DISCUSSION)

THE COURT: THANK YOU, WE ARE ADJOURNED SINE DIE.

(WHEREUPON, THE TRIAL IN THE ABOVE ACTION WAS CONCLUDED AT 1:07 P.M.).

STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF RICHLAND)

I, NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER AND OFFICIAL COURT REPORTER FOR THE SIXTH CIRCUIT, STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING REPRESENTS A TRUE, ACCURATE AND COMPLETE RECORD OF ALL THE TESTIMONY HAD AND EVIDENCE SUBMITTED IN THE CAPTIONED ACTION IN LANCASTER, SOUTH CAROLINA ON JUNE 2, 2003 THROUGH JUNE 6, 2003.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

SEPTEMBER 11, 2003

Nancy M. Monteith, C.V.R.

NANCY M. MONTEITH, C.V.R.
RESIDENT COURT REPORTER
SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER	)	
STATE OF SOUTH CAROLINA,	)	DOCKET NO. 00-GS-29-1418
	)	01-GS-29-0250
PLAINTIFF,	)	03-GS-29-0524
	)	03-GS-29-0525
V.	)	03-GS-29-0526
	)	
VERNARD JEROME MATHIS,	)	TRANSCRIPT OF RECORD
	)	(VOIR DIRE)
DEFENDANT.	)	
	)	

JUNE 2, 2003
LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

FOR THE PLAINTIFF: JOHN R. JUSTICE, SOLICITOR
DOUGLAS A. BARFIELD, JR., ASSISTANT SOLICITOR
THOMAS J. HOLLAND, ASSISTANT SOLICITOR

FOR THE DEFENDANT: JOHN D. CLARK, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

MR. JUSTICE: THE STATE CALLS THE CASE OF 00-GS-12-1418, STATE V. VERNARD JEROME MATHIS, INDICTED FOR MURDER ALONG WITH FOUR OTHER INDICTMENTS ARISING OUT OF THE SAME SET OF FACTS. MR. CLARK, FROM SUMTER, REPRESENTS THE DEFENDANT.

THE COURT: MR. CLARK IS PRESENT.

(TO MR. CLARK) ARE YOU READY TO PROCEED?

MR. CLARK: READY TO PROCEED, YOUR HONOR.

THE COURT: ALL RIGHT.

JUST A MOMENT, GENTLEMEN.

LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, PLEASE GIVE ME YOUR ATTENTION. WE ARE ABOUT TO COMMENCE THE TRIAL OF THE CASE ENTITLED STATE OF SOUTH CAROLINA V. VERNARD JEROME MATHIS, CHARGED IN THE BILLS OF INDICTMENT WITH THE OFFENSES OF MURDER, ARMED ROBBERY, BURGLARY FIRST DEGREE AND KIDNAPING. THE DEFENDANT IS REPRESENTED BY ATTORNEY JOHN CLARK OF THE SUMTER BAR.

MR. CLARK, SIR, PLEASE HAVE MR. MATHIS STAND AND FACE THE LADIES AND GENTLEMEN OF THE PETIT JURY PANEL.

(DEFENDANT STANDING).

THE COURT: THANK YOU, SIR. THANK YOU VERY MUCH. YOU MAY BE SEATED.

NOW, LADIES AND GENTLEMEN, THIS CASE INVOLVED AN INCIDENT WHICH ALLEGEDLY OCCURRED ON OR ABOUT JUNE 20,

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2000 HERE IN LANCASTER COUNTY. THE VICTIMS, MR. MELVIN AND RITA STEELE, WERE ALLEGEDLY KIDNAPED FROM THEIR HOME AS PART OF AN ALLEGED ROBBERY OF MCDONALD AMUSEMENT COMPANY, WHERE MR. STEELE HAD WORKED AS AN EMPLOYEE, AND MR. STEELE WAS KILLED DURING THE COMMISSION OF THIS OFFENSE.

AT THIS TIME, THIS COURT NOW DIRECTS THE FOLLOWING QUESTIONS TO EACH AND EVERY MEMBER OF THE PETIT JURY PANEL. ARE ANY MEMBERS OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH THE DEFENDANT, MR. VERNARD JEROME MATHIS? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: ARE ANY MEMBERS OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE WITH ANY OF THE VICTIMS IN THIS CASE, MR. MELVIN STEELE, DECEASED, OR MS. RITA STEELE? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: ARE ANY MEMBERS OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAVE ANY RELATIONSHIP WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE OF --

(JUROR STANDING).

THE COURT: YES, MA'AM?

JUROR: I WAS A PERSONAL FRIEND OF MELVIN AND A

BUSINESS ACQUAINTANCE.

THE COURT: YOUR NAME, MA'AM?

JUROR: VICKIE HANCOCK.

THE COURT: HANCOCK?

MS. HANCOCK: UH-HUH.

THE COURT: YOU WERE A FRIEND OF MR. MELVIN STEELE?

MS. HANCOCK: AND BUSINESS, YES, SIR.

THE COURT: WHAT TYPE BUSINESS ACQUAINTANCE?

MS. HANCOCK: MCDONALD AMUSEMENTS, HE WAS THE OFFICE MANAGER, AND WE HAVE A BUSINESS RELATED WITH MCDONALD'S.

THE COURT: (TO CLERK) WHAT NUMBER IS THE JUROR?

THE CLERK: 56.

THE COURT: DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

MS. HANCOCK: WELL, I REALLY LIKED MELVIN.

THE COURT: THAT WASN'T MY QUESTION.

MS. HANCOCK: I'M SORRY.

THE COURT: THE QUESTION WAS DO YOU BELIEVE YOU COULD PUT THAT ASIDE AND SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE, OR IS THAT CONNECTION TOO CLOSE, THAT IT WOULD PREVENT YOU FROM DOING THAT?

MS. HANCOCK: SIR, I'M NOT REALLY SURE.

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THE COURT: ALL RIGHT.

I'M GOING TO DISQUALIFY THE JUROR FROM SERVICE IN THIS CASE.

(TO MS. HANCOCK) PLEASE HAVE A SEAT. WE HAVE LOTS OF OTHER CASES.

(JUROR STANDING).

THE COURT: YES, MA'AM?

JUROR: I AM FRIENDS WITH A POTENTIAL WITNESS.

THE COURT: YOUR NAME?

JUROR: MY NAME IS KATHERINE KNIGHT, I'M SORRY.

THE COURT: MA'AM?

MS. KNIGHT: MY NAME IS KATHERINE KNIGHT.

THE COURT: WELL, LET'S WAIT UNTIL WE GET DOWN TO THE WITNESSES. THANK YOU, PLEASE BE SEATED.

LADIES AND GENTLEMEN, PLEASE LISTEN TO MY QUESTION AND RESPOND TO THAT.

(JUROR STANDING).

THE COURT: YES, SIR, YOUR NAME?

JUROR: A POTENTIAL WITNESS, THE VICTIM'S BROTHER, IS MY SUNDAY SCHOOL TEACHER.

THE COURT: ALL RIGHT, YOUR NAME?

JUROR: SCOTT SHERRER.

THE COURT: (TO CLERK) WHAT NUMBER IS THE JUROR?

THE CLERK: 116.

THE COURT: MR. SHERRER, YOU HAD A RELATIONSHIP

WITH MR. MELVIN STEELE?

MR. SHERRER: MARVIN STEELE, THE VICTIM'S BROTHER.

MR. JUSTICE: HE'S NOT A WITNESS ON THE STATE'S LIST.

THE COURT: (TO MR. SHERRER) DESPITE THAT FACT --

OH, THAT PERSON IS NOT A WITNESS FOR THE STATE, MR. SOLICITOR?

MR. JUSTICE: THAT'S CORRECT, YOUR HONOR.

THE COURT: THAT PERSON IS NOT A WITNESS, TO YOUR KNOWLEDGE, MR. CLARK?

MR. CLARK: THAT'S CORRECT, YOUR HONOR.

(TO MR. SHERRER) DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

MR. SHERRER: I GUESS.

THE COURT: WELL, LADIES AND GENTLEMEN, I NEED FOR YOU TO BE CERTAIN.

(TO MR. SHERRER) DO YOU BELIEVE YOU COULD LAY ASIDE ANY RELATIONSHIP YOU HAVE WITH THE VICTIM'S BROTHER AND SERVE AS A FAIR AND IMPARTIAL JUROR?

MR. SHERRER: YES.

THE COURT: THANK YOU.

I FIND JUROR #116 QUALIFIED.

IS ANY MEMBER OF THE PETIT JURY PANEL RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAVE ANY SPECIAL

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RELATIONSHIP WITH ANY OF THE POTENTIAL WITNESSES FOR THE STATE OF SOUTH CAROLINA?

SOLICITOR, WOULD YOU PLEASE READ YOUR PROPOSED WITNESS LIST?

IF THESE PERSONS ARE PRESENT, PLEASE STAND AND REMAIN STANDING.

(TO JURORS) PLEASE LISTEN, LADIES AND GENTLEMEN.

MR. JUSTICE: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: IF YOU'RE RELATED BY BLOOD OR MARRIAGE OR HAVE ANY SPECIAL RELATIONSHIP WITH ANY OF THESE, STAND WHEN THEIR NAME IS CALLED.

MR. JUSTICE: THE STATE VERY WELL MAY NOT CALL ALL THESE WITNESSES, BUT THIS IS A POTENTIAL LIST.

THE COURT: YES.

MR. JUSTICE: ONE, OF COURSE, IS THE VICTIM, MS. RITA STEELE. AND MOST OF THEM ARE NOT PRESENT IN THE COURTROOM TODAY, YOUR HONOR -- FROM THE LANCASTER COUNTY SHERIFF'S DEPARTMENT, LIEUTENANT LEE BLACKMON, THE LEAD INVESTIGATOR; DEPUTY DONNIE WASHINGTON; LIEUTENANT KEVIN WAITERS; DETECTIVE OR DEPUTY R. MCLEMORE; DEPUTY KEVIN WEBSTER; DEPUTY C. T. KIRKLEY; DEPUTY S. MARSHALL; CAPTAIN SNIPES; CAPTAIN BARRY FAILE; LIEUTENANT JEFF HILTON; DEPUTY J. T. BOWERS; DEPUTY C. T. HINSON; CAPTAIN CRAIG BAILEY; SERGEANT R. STEEN; AND NOT ON MY LIST, YOUR HONOR, OVERLOOKED,

YOUR HONOR, WAS DETECTIVE BILL MURPHY.

FROM THE STATE LAW ENFORCEMENT DIVISION, AGENT PHILIP KOONSFIELD; AGENT STEVE LAMBERT; AGENT PAUL LAROSA; AGENT RETIRED REID LONG; AGENT ADRIAN RILEY; AGENT KENNETH WHITLER; FROM THE F.B.I, SPECIAL AGENT DAVID RODEN; SPECIAL AGENT E. Q. RYAN; FROM THE MEDICAL UNIVERSITY OF SOUTH CAROLINA, DR. ERIC EASON AND DR. ERIN MCCONNELL.

NON-LAW ENFORCEMENT, MR. JIMMY BOSWELL -- AND MOST OF THESE ARE CITIZENS OF LANCASTER; A FEW ARE NOT. MR. JIMMY BOSWELL; MR. LAWRENCE BOYD; MR. JIM BRADY OF ROCK HILL; MR. SCOTT BRADY OF ROCK HILL; MS. CYNTHIA COOK; MS. RUBY CRAIG; MR. RONALD DONAHUE; MS. DIANE DRIVER; MS. ELAINE GILBREATH; MR. SETH GREGORY; MR. JOHN HUDSON; MS. SHEILA HUDSON; MS. MONICA MACKEY; MS. KATE OWENS; MS. JOYCE ROBERTS; MR. DEON ROBINSON; MR. RICHARD SIMS; MR. JERRY SMITH; MS. SYLVIA TALFORD; MR. JEFF WAYNE SNIPES; MR. TOMMY STEVENS; MS. PEGGY WHITE; MR. ANTONIO WITHERSPOON; MR. TIM CATLEDGE; MR. MICHAEL HAIRSTON; MS. ELAINE WATERS; MR. JIMMY MCWATERS; MR. JONATHAN MULLIS OR MULLS; MR. PHILIP MULLIS; AND MR. ELTON WIGGINS.

THE COURT: ANYONE RELATED BY BLOOD OR MARRIAGE OR HAVE A SPECIAL RELATIONSHIP WITH ANY OF THOSE PERSONS, PLEASE STAND.

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(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME?

JUROR: KATHERINE KNIGHT.

THE COURT: MS. KNIGHT, TO WHICH PERSON ARE YOU RELATED?

MS. KNIGHT: I'M NOT RELATED TO HER, BUT PEGGY WHITE.

THE COURT: PEGGY --

MS. KNIGHT: WHITE.

THE COURT: AND WHAT IS YOUR RELATIONSHIP TO MS. WHITE?

MS. KNIGHT: SHE'S MY LANDLORD, OR LANDLADY, AND ALSO A RELATIVELY CLOSE FRIEND.

THE COURT: ALL RIGHT. SHE'S YOUR LANDLORD?

MS. KNIGHT: UH-HUH.

THE COURT: DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE? I BELIEVE THAT PERSON IS A WITNESS IN THE CASE.

MS. KNIGHT: YES, SIR.

THE COURT: YOU THINK YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR?

MS. KNIGHT: YES, SIR.

THE COURT: (TO CLERK) WHAT NUMBER?

THE CLERK: 77.

THE COURT: THE COURT FINDS JUROR 77 TO BE QUALIFIED, THANK YOU.

WOULD YOU LIKE TO READ ANY POTENTIAL LIST, MR. CLARK?

MR. CLARK: YES, YOUR HONOR, IF IT PLEASE THE COURT.

THE COURT: IF ANY OF THESE PERSONS ARE PRESENT, PLEASE STAND AS YOUR NAME IS READ AND REMAIN STANDING.

MR. CLARK: NATALIE WALSTON AND RONNIE LAWRENCE -- LAWSON, I'M SORRY, RONNIE LAWSON.

THE COURT: ALL RIGHT.

ANYONE RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR HAVE A SPECIAL RELATIONSHIP WITH ANY OF THOSE PERSONS, PLEASE STAND.

(NO RESPONSE).

THE COURT: THANK YOU.

ARE ANY MEMBERS OF THE PETIT JURY PANEL CONSCIOUS OF ANY INTEREST OR ANY BIAS OR ANY PREJUDICE FOR OR AGAINST THE STATE OF SOUTH CAROLINA OR THE DEFENDANT, MR. VERNARD JEROME MATHIS? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAVE ANY MEMBERS OF THE PETIT JURY PANEL EVER BEEN THE VICTIMS OF A VIOLENT CRIME? IF SO, PLEASE STAND.

(NO RESPONSE).

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THE COURT: DO ANY MEMBERS OF THE PETIT JURY PANEL HAVE ANY RELATIONSHIP OR CONTACT WITH SOLICITOR JOHN REID JUSTICE OR ANY MEMBER OF THE SIXTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER HAD A BUSINESS RELATIONSHIP WITH MCDONALD AMUSEMENT COMPANY? IF SO, PLEASE STAND.

(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME AGAIN?

MS. HANCOCK: VICKIE HANCOCK.

THE COURT: MS. HANCOCK, AND YOUR JUROR NUMBER?

THE CLERK: 56.

THE COURT: I BELIEVE SHE'S BEEN EXCUSED FROM THE TRIAL OF THIS CASE.

(TO MS. HANCOCK) THANK YOU, PLEASE HAVE A SEAT.

HAS ANY MEMBER OF THE PETIT JURY PANEL DONE BUSINESS WITH CHANDLER'S AUTO SHOP OR DOES BUSINESS WITH CHANDLER'S AUTO SHOP? IF SO, PLEASE STAND.

(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME?

JUROR: JEAN WHITE.

THE COURT: MS. WHITE, WHAT'S THE NATURE OF YOUR BUSINESS WITH CHANDLER'S AUTO SHOP?

MS. WHITE: A CAR WRECK, AND THEY FIXED IT.

THE COURT: DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

MS. WHITE: YES.

THE COURT: (TO CLERK) WHAT NUMBER WAS THE JUROR?

THE CLERK: 143, YOUR HONOR.

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER DISCUSSED THIS CASE WITH ANY WITNESSES, INTERESTED PARTIES OR LAW ENFORCEMENT OFFICIALS? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER VISITED THE SPRINGDALE RECREATION COMPLEX IN LANCASTER FOR THE PURPOSES OF VISITING OR OBSERVING THE MELVIN L. STEELE MEMORIAL? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER BEEN EMPLOYED OR HAD ANY RELATIONSHIP WITH SOUTHERN TOOL & DIE MACHINE SHOP LOCATED ON U.S. 25 S., LANCASTER, SOUTH CAROLINA? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER BEEN EMPLOYED OR HAD ANY BUSINESS TYPE RELATIONSHIP WITH COOK'S TRANSMISSION? IF SO, PLEASE STAND.

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(JUROR STANDING).

THE COURT: MS. WHITE, SINCE I REMEMBER YOUR NAME, I GUESS YOUR CAR'S TRANSMISSION WAS BROKEN, TOO?

MS. WHITE: I THINK IT WAS A DIFFERENT CAR, BUT, YES, RIGHT.

THE COURT: YES, MA'AM, YOUR NAME IS MS. WHITE AND YOU ARE NUMBER 141?

MS. WHITE: 143.

THE COURT: WHAT RELATIONSHIP DID YOU HAVE WITH COOK'S TRANSMISSION?

MS. WHITE: THE CAR WAS REPAIRED, TRANSMISSION WAS REPAIRED OR CHECKED.

THE COURT: DO YOU HAVE ANY RELATIONSHIP WITH COOK'S TRANSMISSION NOW?

MS. WHITE: NO.

THE COURT: DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

MS. WHITE: YES.

THE COURT: THANK YOU, YOU MAY BE SEATED.

(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME?

JUROR: LOUISE ZALOUDEK, AND --

THE COURT: WAIT A MINUTE. I'LL HAVE TO HAVE SOMEONE FIND THAT FOR ME.

THE CLERK: 149.

THE COURT: (TO JUROR) YES, MA'AM?

MS. ZALOUDEK: MY HUSBAND'S CAR USED TO BE REPAIRED AT COOK'S TRANSMISSION.

THE COURT: DESPITE THAT FACT, MA'AM, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

MS. ZALOUDEK: YES, SIR.

THE COURT: THANK YOU.

I FIND THE JUROR QUALIFIED.

HAS ANY MEMBER OF THE PETIT JURY PANEL READ ANY NEWSPAPER ARTICLES, WATCHED ANY T. V. NEWS ACCOUNTS, OR LISTENED TO ANY RADIO NEWS COVERAGE ABOUT THE EVENTS THAT ARE THE SUBJECT MATTER OF THIS CASE? IF SO, PLEASE STAND.

(JURORS STANDING).

THE COURT: ALL RIGHT, I'M GOING TO ASK THOSE PERSONS TO PLEASE COME FORWARD AND HAVE A SEAT IN THE JURY BOX. PLEASE COME FORWARD.

(JURORS PROCEEDING TO JURY BOX).

(TO CLERK) GIVE ME A QUICK COUNT.

THE CLERK: 18.

THE COURT: TO MY REMAINING JURORS, I NEED TO TAKE A FEW MOMENTS TO TAKE UP SOME MATTERS AND I NEED TO DO THIS OUTSIDE OF YOUR PRESENCE. I DON'T LIKE TO KEEP

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YOU SITTING. I REALLY VALUE YOUR TIME, AND I'M GOING TO ALLOW THE REMAINING MEMBERS OF THE PETIT JURY PANEL TO BE AT EASE UNTIL, LET'S SAY, 4:20. WE'LL USE THE CLOCK ON THE REAR OF THE COURTROOM AS THE OFFICIAL TIMEPIECE. PLEASE BE BACK IN YOUR SEAT AT 4:20.

YOU DON'T HAVE TO LEAVE. YOU CAN STAY IN HERE IF YOU'D LIKE, BUT IF YOU WOULD LIKE, YOU MAY STEP OUTSIDE. IT'S A BEAUTIFUL DAY. GO DOWNSTAIRS. I BELIEVE WE HAVE RESTROOM FACILITIES ON THE FIRST FLOOR.

MR. CLERK?

THE CLERK: YES, SIR.

THE COURT: (TO JURY PANEL) DO ANYTHING YOU'D LIKE. JUST BE BACK IN YOUR SEAT PROMPTLY AT 4:20, THANK YOU.

(PETIT JURY PANEL EXITING COURTROOM).

THE COURT: MR. CLARK AND MR. SOLICITOR, I'M GOING TO TAKE A FEW MINUTES IN THE JURY ROOM. I'M GOING TO TAKE THEM IN ONE AT A TIME. IF YOU GENTLEMEN WOULD JOIN ME, ALONG WITH THE DEFENDANT, AND ANY OTHER PERSONS THAT ARE INTERESTED MAY ALSO COME. I JUST NEED TO TAKE THIS UP SO WE'RE NOT PREJUDICED.

(PARTIES RECONVENING IN JURY ROOM).

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF LANCASTER	)	
STATE OF SOUTH CAROLINA,	)	DOCKET NO. 00-GS-29-1418
	)	01-GS-29-0250
PLAINTIFF,	)	03-GS-29-0524
	)	03-GS-29-0525
V.	)	03-GS-29-0526
	)	
VERNARD JEROME MATHIS,	)	TRANSCRIPT OF RECORD
	)	(JURY TRIAL)
DEFENDANT.	)	VOLUME I
	)	

JUNE 2 - 6, 2003
LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

APPEARANCES:

FOR THE PLAINTIFF: JOHN R. JUSTICE, SOLICITOR
DOUGLAS A. BARFIELD, SENIOR ASSISTANT SOLICITOR
THOMAS J. HOLLAND, ASSISTANT SOLICITOR

FOR THE DEFENDANT: JOHN D. CLARK, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

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THE COURT: I BELIEVE WE HAD 18 JURORS RESPOND TO THE QUESTION THAT THEY MAY HAVE READ, WATCHED OR LISTENED TO NEWS COVERAGE CONCERNING THIS ALLEGED INCIDENT, ALLEGED CRIMINAL OFFENSE IN THIS CASE, THEREFORE, GENTLEMEN, WE ARE RECONVENED IN THE JURY ROOM HERE IN THE LANCASTER COUNTY COURTHOUSE, WITH THE DEFENDANT MR. MATHIS BEING PRESENT ALONG WITH HIS ATTORNEY, MR. CLARK. THE STATE IS REPRESENTED BY SOLICITOR JUSTICE.

THE CLERK OF COURT IS PRESENT ALONG WITH MY REPORTER. SEVERAL OTHER CIVILIANS AND COURT OFFICIALS ARE PRESENT. IT'S AN OPEN HEARING. THE REASON WE'RE IN HERE, MR. CLARK, IS SO -- WE DON'T KNOW WHAT ANY JUROR MIGHT RESPOND WHEN I ASK THEM WHAT I'VE READ OR HEARD OR SEEN, AND I DON'T WANT TO PREJUDICE THE OTHER MEMBERS OF THE PANEL. AND, OF COURSE, BASED ON WHAT THEIR RESPONSES ARE WILL DETERMINE WHETHER OR NOT THEY'RE QUALIFIED JURORS IN THE CASE.

SO WE WANT EVERYONE TO KNOW THIS IS AN OPEN PROCEEDING, BUT WE DON'T HAVE VERY MODERN FACILITIES HERE IN LANCASTER COUNTY. THIS IS ALL WE CAN WORK WITH.

MR. CLARK: I UNDERSTAND.

THE COURT: ALL RIGHT, MR. CLERK, JUST BRING A JUROR IN. WE NEED FOR YOU TO TELL ME THE JUROR'S

NUMBER WHEN YOU BRING HER IN, OR HIM, AND THEIR NAME, PLEASE.

THE CLERK: YOUR HONOR THIS IS JUROR #58, RHONDA HAIR.

THE COURT: MS. HAIR?

MS. HAIR: UH-HUH.

THE COURT: MS. HAIR, I APOLOGIZE TO YOU FOR HAVING TO BRING YOU BACK HERE. WE'RE GOING TO DO THIS TO EACH OF THE JURORS THAT ANSWERED THE QUESTION THAT THEY MAY HAVE READ, HEARD OR SEEN NEWS ACCOUNTS OF THIS ALLEGED INCIDENT, BUT WE NEED TO DO THAT SO -- I DON'T KNOW WHAT YOUR RESPONSE OR ANY OTHER JUROR'S RESPONSE WILL BE UNTIL I ASK YOU AND INQUIRE, BUT WE DIDN'T WANT TO DO THAT OUT THERE IN FRONT OF ALL THE OTHER MEMBERS OF THE PANEL WHO INDICATED THEY HAD NOT READ, HEARD OR SEEN ANY COVERAGE OF THESE PROCEEDINGS.

THAT'S THE ONLY REASON WE'RE IN HERE. THIS IS A PUBLIC HEARING, AND I JUST NEED TO ASK YOU -- YOU HAD INDICATED THAT YOU HAD READ, HEARD OR WATCHED A NEWS ACCOUNT OF THESE PROCEEDINGS. IS THAT CORRECT?

MS. HAIR: WELL, I'VE SEEN IT ON THE T.V. AND IN THE NEWSPAPER SOME. I HAVEN'T FOLLOWED THAT CLOSE.

THE COURT: COULD YOU BRIEFLY TELL ME WHAT YOU'VE SEEN OR HEARD?

MS. HAIR: I HEARD ON T.V. AND PROBABLY READ

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SOMETHING IN THE NEWSPAPER WHERE MR. STEELE WAS MURDERED AND THAT IT WAS SUPPOSEDLY A KIDNAPING, AND I REALLY DON'T KNOW ALL THE DETAILS TO IT, TO BE HONEST WITH YOU. I JUST HEARD ABOUT IT ON THE T.V.

THE COURT: OKAY.

MS. HAIR: AND THEN, OF COURSE, THIS MORNING IT WAS THE FIRST THING THAT WAS ON THE NEWS, AND I THOUGHT, "OH, NO, I HAVE JURY DUTY."

THE COURT: ALL RIGHT. HAVE YOU FORMED ANY OPINIONS AS A RESULT OF LISTENING OR VIEWING ANY OF THOSE NEWS ACCOUNTS OR READING ANY OF THOSE NEWS ACCOUNTS?

MS. HAIR: NO, SIR.

THE COURT: YOU HAVEN'T FORMED ANY OPINIONS AS TO THE GUILT OR INNOCENCE OF ANY POTENTIAL DEFENDANT?

MS. HAIR: NO, SIR.

THE COURT: ALL RIGHT, THANK YOU. DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

MS. HAIR: I DO.

THE COURT: ALL RIGHT, THANK YOU.

(TO CLERK) ONCE AGAIN, I NEED TO KEEP THESE FOLKS SEGREGATED, SO ONCE AGAIN I'LL LEAVE THAT UP TO YOU, MR. CLERK.

THE CLERK: YES, SIR.

THE COURT: TAKE MS. HAIR OUT AND BRING IN THE NEXT JUROR. THANK YOU.

THE CLERK: YOUR HONOR, THIS IS JUROR #1, JEAN ADAMS.

THE COURT: MS. ADAMS? PLEASE HAVE A SEAT, MS. ADAMS. MS. ADAMS, THERE'S NOTHING SPECIAL ABOUT US BEING IN HERE. OBVIOUSLY YOU, ALONG WITH SOME OTHER JURORS, INDICATED YOU MAY HAVE READ OR HEARD OR SEEN SOME MEDIA COVERAGE OF THE SUBJECT MATTER OF THIS CASE. I JUST NEED TO BRIEFLY INQUIRE WITH YOU JUST A MOMENT, OUTSIDE THE PRESENCE OF THE OTHER LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, BECAUSE OBVIOUSLY I DON'T KNOW WHAT YOUR RESPONSES WILL BE, AND I NEED TO DO THIS IN HERE OUTSIDE OF THEIR PRESENCE.

I BELIEVE YOU INDICATED YOU MAY HAVE READ OR SEEN OR LISTENED TO NEWS COVERAGE OF THE SUBJECT MATTER OF THESE PROCEEDINGS. COULD YOU BRIEFLY TELL ME WHAT YOU'VE READ -

MS. ADAMS: WELL --

THE COURT: -- AND WHERE YOU READ IT?

MS. ADAMS: I READ IT IN THE LANCASTER NEWS, AND I KEPT UP WITH IT BACK IN 2000 WHEN IT HAPPENED, AND HE WENT IN AND HE TOOK MR. AND MRS. STEELE OUT OF THE HOUSE -- IF THAT'S WHAT YOU WANT ME TO TELL -- THEY

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TOOK THEM OUT OF THE HOUSE AND PUT THEM IN THEIR VAN AND DUCT-TAPED THEIR EYES AND TOOK THEM TO GET A CODE NUMBER TO GET INTO THE MACHINES. AND HE PUT IN THE WRONG CODE NUMBER AND HE WAS SHOT, HE SHOT MR. STEELE.

THE COURT: AND THAT'S WHAT YOU RECALL?

MS. ADAMS: AND I RECALL READING THAT, AND I KEPT UP WITH IT.

THE COURT: AND YOU READ THAT IN THE NEWSPAPER?

MS. ADAMS: I DID.

THE COURT: BASED ON YOUR FOLLOWING THE NEWS COVERAGE AND THE PAPER OR ANY OTHER MEDIA ACCOUNTS, HAVE YOU FORMED AN OPINION AS TO THE GUILT OR INNOCENCE OF ANY DEFENDANT IN THIS?

MS. ADAMS: I HAVE FORMED AN OPINION.

THE COURT: AND WHAT IS YOUR OPINION?

MS. ADAMS: I THINK HE'S GUILTY.

THE COURT: ALL RIGHT, THANK YOU.

(TO CLERK) PLEASE TAKE THIS JUROR OUT AND KEEP HER IN ANOTHER GROUP. OKAY, THANK YOU.

(TO MS. ADAMS) OH, EXCUSE ME, ONE FURTHER QUESTION, MA'AM.

MS. ADAMS: UH-HUH?

THE COURT: HAVE YOU COMMUNICATED YOUR OPINION TO ANY OTHER MEMBERS OF THE PETIT JURY PANEL TODAY OR AT ANYTIME?

MS. ADAMS: NO, NO.

THE COURT: THANK YOU.

(TO CLERK) PLEASE TAKE THAT JUROR OUT AND KEEP HER IN A SEPARATE GROUP.

BRING THE NEXT ONE IN, PLEASE.

(TO MS. MORGAN) HI, HOW DO YOU DO, MA'AM? PLEASE HAVE A SEAT.

THE CLERK: JUROR #99, JEAN MORGAN.

THE COURT: MS. MORGAN, YOU HAD RESPONDED THAT YOU MAY HAVE READ, HEARD OR SEEN SOME NEWS COVERAGE OF THESE EVENTS, AND OBVIOUSLY I NEEDED TO FIND OUT YOUR RESPONSES TO THAT. THE REASON WE'RE DOING IT IN THIS MANNER IS BECAUSE SOME OF THE OTHER LADIES AND GENTLEMEN INDICATED THEY HAD NOT READ, SEEN OR HEARD ANY COVERAGE OF THESE EVENTS, SO I DIDN'T WANT THEM TO HEAR YOUR RESPONSES, ALTHOUGH I HAVE NO IDEA WHAT YOUR RESPONSES MAY BE, AND THAT'S WHY WE'RE DOING IT ONE JUROR AT A TIME, IN THIS MANNER.

YOU INDICATED YOU HAD SEEN, READ OR HEARD NEWS COVERAGE OF THESE EVENTS?

MS. MORGAN: READ IT IN THE PAPER, YES, SIR, LANCASTER NEWS.

THE COURT: WOULD YOU TELL ME BRIEFLY WHAT YOU READ AND WHERE YOU READ IT?

MS. MORGAN: I READ IT IN THE LANCASTER NEWS.

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THE COURT: YES, MA'AM, WHAT DID YOU READ?

MS. MORGAN: AND I JUST GLANCED OVER IT, ABOUT HOW HE WAS MURDERED, HOW HE WAS LEFT FOR DEAD.

THE COURT: FROM READING OR SEEING ANY COVERAGE OF THESE EVENTS, DID YOU FORM ANY OPINIONS IN THE MATTER?

MS. MORGAN: WELL, NOT REALLY.

THE COURT: DID YOU FORM ANY OPINION AS TO THE GUILT OF ANYONE FROM READING THOSE --

MS. MORGAN: WELL, NO, NOT REALLY. I MEAN, I HAVEN'T HEARD --

THE COURT: DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

MS. MORGAN: I CAN TRY, YES.

THE COURT: WELL, DO YOU BELIEVE THAT ANYTHING YOU MAY HAVE READ OR HEARD WOULD INFLUENCE YOUR OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE CHARGED WITH ANY OF THESE EVENTS?

MS. MORGAN: YES, IT COULD BE.

THE COURT: ALL RIGHT, THANK YOU. PLEASE STEP OUT.

(TO CLERK) PUT HER IN THE GROUP WITH MS. ADAMS, PLEASE.

THE NEXT ONE?

THE COURT: (TO MR. FULLER) PLEASE HAVE A SEAT.

(TO CLERK) WAS THAT ONE OF OUR 18?

THE CLERK: YES, SIR.

THE COURT: SO THERE'S 17?

THE CLERK: YES, SIR.

THE COURT: OKAY, THANK YOU.

(TO MR. FULLER) COME ON IN.

THE CLERK: JUROR #47, LEWIS FULLER.

THE COURT: MR. FULLER, PLEASE HAVE A SEAT.

MR. FULLER: THANK YOU.

THE COURT: MR. FULLER, YOU'D INDICATED YOU MAY HAVE READ, HEARD OR SEEN SOME NEWS ACCOUNTS OF THE SUBJECT MATTER OF THIS CASE. IS THAT CORRECT?

MR. FULLER: I'VE READ THE LOCAL, LANCASTER NEWS COVERAGE. I DON'T PLACE A LOT OF STOCK IN THE LANCASTER NEWS. I READ IT FOR ENTERTAINMENT VALUE. I RECALL VERY LITTLE OF WHAT WAS IN THE ARTICLE.

THE COURT: WELL, SIR, CERTAINLY, I UNDERSTAND. ALL I NEED TO KNOW IS AS A RESULT OF YOUR READING OR HEARING ANY NEWS ACCOUNTS OF THESE PROCEEDINGS, HAVE YOU FORMED ANY OPINIONS AS TO THE GUILT OR INNOCENCE OF ANYONE ALLEGEDLY INVOLVED IN THIS MATTER?

MR. FULLER: NONE WHATSOEVER.

THE COURT: HAVE YOU FORMED ANY OPINIONS WHATSOEVER?

MR. FULLER: NONE WHATSOEVER.

THE COURT: DO YOU THINK YOU COULD SERVE AS A

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FAIR AND IMPARTIAL JUROR?

MR. FULLER: WITHOUT A DOUBT.

THE COURT: THANK YOU.

(TO CLERK) PLEASE PLACE MR. FULLER WITH MS. HAIR, THANK YOU.

THE CLERK: THIS IS JUROR #96, RONALD MILLS.

THE COURT: WILLS?

THE CLERK: MILLS.

THE COURT: MR. MILLS, YOU HAD INDICATED THAT YOU MAY HAVE READ, SEEN OR HEARD NEWS ACCOUNTS OF THE SUBJECT MATTER OF THIS CASE. IS THAT CORRECT?

MR. MILLS: YES.

THE COURT: BRIEFLY, WOULD YOU TELL ME WHERE YOU'VE READ WHATEVER YOU'VE READ AND WHAT YOU READ AND WHAT YOU RECALL?

MR. MILLS: WELL, BASICALLY, JUST WHEN THE INCIDENT HAPPENED BACK IN 2000 UP TO ABOUT YESTERDAY, I READ IN THE NEWSPAPER -- I THINK IT WAS MONDAY OR SUNDAY'S PAPER, I READ JUST THAT THE TRIAL WAS GOING TO HAPPEN.

THE COURT: BASED ON THAT, DID YOU FORM ANY OPINION ABOUT THIS CASE, PARTICULARLY IN REGARD TO THE GUILT OR INNOCENCE OF ANYONE?

MR. MILLS: NO, NO.

THE COURT: DID YOU FORM ANY OPINIONS WHATSOEVER?

MR. MILLS: NO, SIR.

THE COURT: DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

MR. MILLS: YES, SIR.

THE COURT: DO YOU BELIEVE YOU COULD SET ASIDE ANYTHING YOU MAY HAVE READ IN THE NEWSPAPER IF THE EVIDENCE WAS CONTRARY?

MR. MILLS: ACTUALLY, I DIDN'T READ THE WHOLE ARTICLE. I JUST SEEN IT, THAT WAS IT.

THE COURT: THANK YOU. THANK YOU, MR. MILLS.

(TO CLERK) PLEASE PUT HIM IN MS. HAIR'S GROUP, THANK YOU.

THE COURT: (TO MS. HIBLER) YES, MA'AM, PLEASE COME ON IN AND HAVE A SEAT.

THE CLERK: THIS IS JUROR #66, NISI HIBLER.

THE COURT: SPELL THE LAST NAME, PLEASE.

THE CLERK: H-I-B-L-E-R.

THE COURT: MS. HIBLER?

THE CLERK: YES, SIR.

THE COURT: MS. HIBLER, YOU HAD INDICATED YOU MAY HAVE READ, HEARD OR SEEN SOME NEWS ACCOUNTS IN THE PAPER OR ON T.V. OR THE RADIO OF THE SUBJECT MATTER OF THIS CASE. IS THAT RIGHT?

MS. HIBLER: YES, SIR.

THE COURT: BRIEFLY, WHAT I NEED TO KNOW, MS.

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HIBLER, WHAT HAVE YOU READ CONCERNING THE CASE AND WHERE DID YOU READ IT OR SEE IT?

MS. HIBLER: I READ IT IN THE LANCASTER NEWS, BUT I DO HAVE A PROBLEM BECAUSE -- I'M NOT REALLY RELATED, BUT MY FIANCE'S SISTER IS MARRIED TO HIS UNCLE.

THE COURT: WAIT A MINUTE. I DON'T UNDERSTAND WHO "HE" IS.

MS. HIBLER: MATHIS.

THE COURT: ALL RIGHT.

MS. HIBLER: AND THE OTHER GUY THAT'S IN ON IT, THAT'S MY FIANCE'S NEPHEW. SO I FEEL LIKE I'VE JUST BEEN AROUND THEM FOR A LONG TIME, SO I FEEL JUST LIKE I'M RELATED TO THEM.

THE COURT: ALL RIGHT. YOU DO NOT BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN MR. MATHIS'S CASE --

MS. HIBLER: I DON'T THINK SO, NO, SIR.

THE COURT: -- BECAUSE OF THE RELATIONSHIP OF YOUR FIANCE'S?

MR. HIBLER: WELL, I KNOW HIM, TOO, BUT NOT KNOW, KNOW, JUST LIKE I DO THE OTHERS, BUT I'M SAYING IT'S JUST LIKE A FAMILY THING.

THE COURT: YOU DON'T BELIEVE YOU COULD PUT ASIDE ANY --

MS. HIBLER: I COULD MAKE A DECISION, BUT IT MIGHT

NOT BE THE RIGHT ONE. YOU KNOW WHAT I'M SAYING?

THE COURT: I UNDERSTAND THAT, BUT WHAT WE'RE LOOKING FOR IS FAIRNESS. DO YOU BELIEVE THAT YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE CASE?

MS. HIBLER: NO, SIR.

THE COURT: ALL RIGHT, THAT'S ALL I WANT TO KNOW. THANK YOU.

I'M GOING TO EXCUSE MS. HIBLER -

MS. HIBLER: I'LL BE GLAD TO SERVE IN AUGUST.

THE COURT: -- NOT BECAUSE OF PRETRIAL PUBLICITY, BUT -- PUT HER IN MS. ADAMS'S GROUP FOR THE TIME BEING.

(TO MS. HIBLER) WE'VE GOT MORE CASES. THIS IS NOT THE ONLY CASE WE MAY TRY THIS WEEK.

THE CLERK: THIS IS JUROR #143, JEAN WHITE.

THE COURT: MS. WHITE, YOU HAD INDICATED THAT YOU MAY HAVE READ, HEARD OR SEEN NEWS ACCOUNTS OF THE SUBJECT MATTER OF THIS CASE. IS THAT CORRECT?

MS. WHITE: THAT'S RIGHT.

THE COURT: BRIEFLY COULD YOU TELL ME WHAT YOU'VE READ OR WATCHED OR LISTENED TO, WHAT MEDIA YOU'VE READ IT IN AND WHAT YOU RECALL?

MS. WHITE: I READ IT IN THE LANCASTER NEWS, THAT THE ROBBERY OCCURRED, AND WHILE IN THE CAR MR. STEELE

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WAS SHOT IN THE LEG AND DIED LATER FROM LOSS OF BLOOD.

THE COURT: THANK YOU. AND THAT WAS IN THE LOCAL, LANCASTER PAPER?

MS. WHITE: RIGHT.

THE COURT: AND THAT'S THE ONLY SOURCE OF YOUR INFORMATION?

MS. WHITE: I THINK SO, YES.

THE COURT: DESPITE THAT, DID YOU FORM ANY OPINION AFTER READING THAT?

MS. WHITE: WELL, IT APPEARS FROM THE NEWSPAPER THAT THEY KNOW ALREADY WHO DID IT, BUT ACTUALLY, I MEAN, THEY CERTAINLY DON'T HAVE ALL THE FACTS. SO YOU REALLY HAVE TO LOOK AT ALL THE FACTS.

THE COURT: DID YOU FORM ANY OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE CHARGED IN THIS CASE?

MS. WHITE: WELL, I WOULD GIVE THE SAME ANSWER. I MEAN, SOMEONE HAS BEEN CHARGED, BUT UNTIL YOU HEAR ALL OF THE EVIDENCE -- I THINK THERE WERE SEVERAL PEOPLE INVOLVED. YOU WOULD HAVE TO KNOW ALL OF THAT.

THE COURT: HAVE YOU FORMED OR EXPRESSED AN OPINION IN REGARD TO THE GUILT OR INNOCENCE OF MR. MATHIS?

MS. WHITE: I WOULD GIVE THE SAME ANSWER. HE WAS ONE OF SEVERAL INVOLVED, AND UNTIL WE HEAR ALL THE EVIDENCE, I DON'T THINK I WOULD.

THE COURT: DO YOU THINK YOU COULD SET ASIDE ANYTHING YOU MAY HAVE READ, HEARD OR SEEN ABOUT THIS CASE AND ARRIVE AT A VERDICT BASED ON THE EVIDENCE AS PRESENTED IN COURT?

MS. WHITE: YES, I DO.

THE COURT: SO YOU BELIEVE THAT ANY VERDICT THAT YOU WOULD RETURN IN THIS CASE WOULD BE BASED ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THE PROCEEDINGS AND NOT BASED ON ANYTHING YOU MAY HAVE READ, HEARD OR SEEN IN ANY NEWSPAPER OR T.V. ACCOUNTS?

MS. WHITE: RIGHT.

THE COURT: THANK YOU, THANK YOU.

(TO CLERK) PLEASE PLACE HER WITH THE MS. HAIR CROWD.

THE CLERK: THIS IS JUROR #92, JANE MICHAELS.

THE COURT: MS. MICHAELS, YOU HAD INDICATED THAT YOU MAY HAVE READ, HEARD OR SEEN SOME OF THE COVERAGE OF THESE PROCEEDINGS -- OF THE SUBJECT MATTER OF THESE PROCEEDINGS. IS THAT CORRECT?

MS. MICHAELS: YES.

THE COURT: BRIEFLY, COULD YOU JUST TELL ME WHAT YOU READ AND WHERE YOU READ IT OR WHAT YOU'VE SEEN AND WHETHER YOU SAW IT OR HEARD IT ON T.V. OR RADIO?

MS. MICHAELS: WELL, YOU KNOW, THIS OCCURRED TWO YEARS AGO, WHATEVER WAS IN THE PAPER THEN, WHATEVER --

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LIKE, I DIDN'T EVEN RECOGNIZE THIS GENTLEMAN'S NAME WHENEVER --

THE COURT: YOU POINTED TO THE DEFENDANT, MR. MATHIS?

MS. MICHAELS: YES -- WHENEVER YOU SAID IT IN COURT, SO --

THE COURT: HAVE YOU FORMED ANY OPINION BASED ON ANYTHING YOU'VE READ AS TO THE GUILT OR INNOCENCE OF ANYONE ALLEGEDLY INVOLVED IN THIS CASE?

MS. MICHAELS: I HOPE NOT.

THE COURT: DO YOU BELIEVE THAT YOU COULD SERVE AS A JUROR IN THIS CASE AND RENDER A VERDICT BASED ON THE EVIDENCE PRESENTED IN THIS COURT AND NOT ON ANYTHING YOU MAY HAVE READ OR HEARD ABOUT THIS CASE ON ANY NEWS COVERAGE?

MS. MICHAELS: I COULD DO THAT, YES.

THE COURT: YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE CASE?

MS. MICHAELS: I'LL TRY.

THE COURT: THANK YOU, THANK YOU.

(TO CLERK) PLACE HER WITH MS. HAIR.

THE CLERK: JUROR #32, NANCY CRAIG.

THE COURT: MS. CRAIG, PLEASE HAVE A SEAT. YOU HAD INDICATED THAT YOU MAY HAVE READ, HEARD, WATCHED, LISTENED TO SOME NEWS ACCOUNTS OF THE SUBJECT MATTER

OF THIS CASE. IS THAT CORRECT?

MS. CRAIG: YES, SIR.

THE COURT: COULD YOU BRIEFLY TELL ME WHERE YOU MAY HAVE READ THAT OR SEEN THAT COVERAGE?

MS. CRAIG: ON THE NEWS AND IN THE LANCASTER NEWS, THE CHARLOTTE OBSERVER.

THE COURT: WHEN YOU SAY "ON THE NEWS", I ASSUME YOU MEAN --

MS. CRAIG: RIGHT, THE TELEVISION STATION, CHARLOTTE.

THE COURT: OKAY. AND WHEN WAS THAT, APPROXIMATELY?

MS. CRAIG: JUST YESTERDAY IN THE LANCASTER NEWS AND DURING ALL OF THE HAPPENINGS IN JUNE OF 2000 ALSO.

THE COURT: COULD YOU TELL ME WHAT YOU RECALL FROM READING THAT OR DO YOU HAVE ANY KNOWLEDGE -

MS. CRAIG: I FEEL LIKE I NEED TO TELL YOU THIS, TOO, THAT I SHOULD HAVE TOLD YOU OUT THERE AND DIDN'T REALIZE, BUT HE WAS MY SON'S SOCCER COACH FOR FOUR YEARS, AND I HAVE A CONNECTION, NOT THROUGH ME, BUT I HAVE A COUSIN WHO WORKED AT MCDONALD AMUSEMENTS FOR QUITE A WHILE, ALSO.

THE COURT: ALL RIGHT. MR. STEELE WAS YOUR SON'S SOCCER COACH?

MS. CRAIG: SOCCER COACH FOR ABOUT FOUR YEARS.

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THE COURT: WAS THAT AT THE TIME OF HIS DEATH OR WAS IT BEFORE THAT?

MS. CRAIG: OH, NO, NO. IT WAS PROBABLY -- IF MY SON WAS LIVING, WHICH HE'S NOT, HE WOULD BE 28 AND HE WAS PROBABLY ABOUT 10 THROUGH 14.

THE COURT: SO A NUMBER OF YEARS AGO?

MS. CRAIG: UH-HUH.

THE COURT: DESPITE THAT FACT, DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THIS CASE?

MS. CRAIG: I DON'T THINK SO.

THE COURT: ALL RIGHT, THANK YOU.

(TO CLERK) PLEASE PLACE MS. CRAIG WITH MS. ADAMS'S GROUP.

I'M GOING TO DISQUALIFY JUROR #32 FOR OTHER REASONS, OBVIOUSLY.

THE CLERK: YOUR HONOR, THIS IS JUROR #88, GARY MCCAIN.

THE COURT: MR. MCCAIN?

MR. MCCAIN: YES.

THE COURT: YOU INDICATE YOU MAY HAVE READ, SEEN OR HEARD NEWS COVERAGE OF THE SUBJECT MATTER IN THIS CASE. IS THAT RIGHT?

MR. MCCAIN: YES, SIR.

THE COURT: COULD YOU BRIEFLY TELL ME WHAT YOU MAY

HAVE READ OR SEEN OR WATCHED?

MR. MCCAIN: I WAS READING IN THE LANCASTER PAPER THE ACCOUNT OF THE THING WHEN IT FIRST HAPPENED, AND THAT WAS BASICALLY WHAT I HAD. AND THEN, OF COURSE, THEY HAD SOMETHING IN THE PAPER THIS PAST SUNDAY, I THINK, AND THEN, YOU KNOW, AFTER I HAD THIS NOTICE THAT SAID I WASN'T SUPPOSED TO BE READING UP ON THIS GOOD STUFF, SO I GOT DOWN TO THE PART WHERE I FOUND OUT WHAT WAS GOING ON. AND I SAW IT WAS A CASE I'D PROBABLY BE ON OR POSSIBLY BE ON, AND I FIGURED, WELL, I'D BETTER QUIT READING UP ON IT.

AND THEN THEY HAD IT ON THE NEWS ON T.V., SO --

THE COURT: DESPITE WHAT YOU MAY HAVE READ OR SEEN IN NEWS COVERAGE OF THE SUBJECT MATTER OF THIS CASE, DO YOU BELIEVE YOU COULD BASE YOUR VERDICT ON THE EVIDENCE AS IT WAS PRESENTED IN COURT?

MR. MCCAIN: I FEEL LIKE I COULD.

THE COURT: YOU FEEL LIKE YOU COULD SET ASIDE ANYTHING YOU MAY HAVE READ OR HEARD?

MR. MCCAIN: WELL, ANY OF THIS NEWS COVERAGE. I FIGURE ABOUT 20 PERCENT OF IT AIN'T RIGHT ANYWAY.

THE COURT: HAVE YOU FORMED ANY OPINION AS TO THE GUILT OF ANYONE CHARGED IN THIS CASE?

MR. MCCAIN: NO, SIR.

THE COURT: DO YOU FEEL YOU COULD SERVE AS A FAIR

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AND IMPARTIAL JUROR IN THE CASE?

MR. MCCAIN: I FEEL I COULD.

THE COURT: THANK YOU. THANK YOU, MR. MCCAIN. THANK YOU VERY MUCH.

(TO CLERK) PUT HIM WITH MS. HAIR'S GROUP.

THE CLERK: YOUR HONOR, THIS IS JUROR #42, ROBERT DUNCAN.

THE COURT: MR. DUNCAN, YOU INDICATED YOU MAY HAVE READ, HEARD OR WATCHED SOME NEWS COVERAGE OF THE SUBJECT MATTER OF THIS CASE. IS THAT CORRECT?

MR. DUNCAN: YES.

THE COURT: MR. DUNCAN, DO YOU BELIEVE YOU COULD SET ASIDE ANYTHING YOU MAY HAVE READ OR WATCHED ABOUT THIS CASE AND RETURN A VERDICT BASED JUST ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THIS CASE?

MR. DUNCAN: YES, I COULD.

THE COURT: ALL RIGHT. DO YOU BELIEVE THAT YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE CASE?

MR. DUNCAN: YES, I DO.

THE COURT: HAVE YOU FORMED AN OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE CHARGED IN THIS CASE THAT YOU KNOW OF?

MR. DUNCAN: NO, I HAVE NOT.

THE COURT: ALL RIGHT. SPECIFICALLY, DO YOU

BELIEVE THAT YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN REGARD TO THE TRIAL OF THE DEFENDANT, MR. MATHIS, IN THIS CASE?

MR. DUNCAN: YES, I COULD.

THE COURT: THANK YOU, THANK YOU, MR. DUNCAN, SIR.

(TO CLERK) HAVE MR. DUNCAN SIT WITH MS. HAIR'S GROUP.

THE CLERK: YOUR HONOR, THIS IS JUROR #6, TAMMY BAKER.

THE COURT: MS. BAKER, YOU HAD INDICATED THAT YOU MAY HAVE READ OR HEARD OR WATCHED SOME NEWS COVERAGE OF THE SUBJECT MATTER IN THIS CASE. IS THAT RIGHT?

MS. BAKER: YES, SIR.

THE COURT: DESPITE THAT FACT, MS. BAKER, DO YOU BELIEVE THAT YOU COULD LISTEN TO THE EVIDENCE IN THIS CASE AND TO THE INSTRUCTIONS FROM THE COURT ON THE LAW IN THIS CASE AND RETURN A VERDICT IN THE CASE BASED SOLELY ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THIS CASE?

MS. BAKER: YES, SIR.

THE COURT: WHAT HAVE YOU READ OR HEARD, MS. BAKER?

MS. BAKER: JUST WHAT'S IN THE PAPERS.

THE COURT: WHEN YOU SAY "THE PAPERS", DO YOU KNOW WHICH PAPER?

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MS. BAKER: LANCASTER NEWS.

THE COURT: DO YOU RECALL WHEN?

MS. BAKER: WHEN IT FIRST HAPPENED. AND MY FATHER WORKS FOR CRICKET HARPER ON GREAT FALLS HIGHWAY RIGHT BESIDE MCDONALD AMUSEMENTS.

THE COURT: YOUR FATHER WORKS FOR --

MS. BAKER: CRICKET HARPER.

THE COURT: CRICKET HARPER? IS THAT A BUSINESS?

MS. BAKER: IT'S THE CITY BODY SHOP, RIGHT BESIDE MCDONALD'S.

THE COURT: C.D. BODY SHOP?

MS. BAKER: CITY.

THE COURT: CITY BODY SHOP, ALL RIGHT. WELL, DO YOU THINK ANYTHING YOU MAY HAVE READ OR HEARD WOULD -- BECAUSE OF ANYTHING YOU'VE READ, ANY NEWS ACCOUNTS YOU'VE HEARD OR READ OF THESE PROCEEDINGS, HAVE YOU FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE?

MS. BAKER: NO, SIR.

THE COURT: DO YOU BELIEVE YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THE TRIAL OF THE CASE?

MS. BAKER: YES, SIR.

THE COURT: (TO CLERK) PLACE HER WITH MS. HAIR'S GROUP.

THE CLERK: YOUR HONOR, JUROR 38, JAMES DAVIS.

THE COURT: MR. DAVIS, YOU INDICATED YOU MAY HAVE READ, HEARD OR WATCHED SOME NEWS ACCOUNTS ON THE SUBJECT MATTER IN THIS CASE. IS THAT RIGHT, SIR?

MR. DAVIS: YES, SIR.

THE COURT: CAN YOU BRIEFLY TELL ME WHAT YOU MAY HAVE READ OR SEEN AND WHERE YOU SAW OR READ IT?

MR. DAVIS: WELL, IN THE LANCASTER NEWS THEY HAD ACCOUNTS OF THE INCIDENT AND --

THE COURT: DO YOU RECALL WHEN YOU READ THAT OR DO YOU RECALL?

MR. DAVIS: I THINK WHEN IT FIRST OCCURRED, THAT PARTICULAR INCIDENT AND THE ARREST, THE ARREST OF THE SUSPECTS.

THE COURT: MR. DAVIS, DO YOU BELIEVE THAT YOU COULD SERVE AS A FAIR AND IMPARTIAL JUROR IN THIS CASE?

MR. DAVIS: YES, SIR.

THE COURT: DO YOU BELIEVE YOU COULD SET ASIDE ANYTHING YOU MAY HAVE READ, ANY NEWS ACCOUNTS YOU MAY HAVE READ OR HEARD ABOUT THE CASE AND BASE YOUR VERDICT ON THE EVIDENCE AND THE LAW IN THIS CASE THAT YOU SAW PRESENTED IN THE CASE?

MR. DAVIS: YES, SIR.

THE COURT: AND HAVE YOU FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE CHARGED IN THE CASE,

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SPECIFICALLY MR. MATHIS?

MR. DAVIS: NO.

THE COURT: AND YOU BELIEVE YOU COULD BE A FAIR AND IMPARTIAL JUROR IN THE CASE?

MR. DAVIS: YES, SIR.

THE COURT: THANK YOU, SIR. THANK YOU. PLEASE RETURN TO MS. HAIR'S GROUP.

THE CLERK: THIS IS JUROR 77, CATHERINE KNIGHT.

THE COURT: MS. KNIGHT, YOU INDICATED THAT YOU MAY HAVE READ OR SEEN OR LISTENED TO NEWS COVERAGE OF THIS CASE. IS THAT CORRECT?

MS. KNIGHT: YES, SIR.

THE COURT: CAN YOU BRIEFLY TELL ME WHAT YOU MAY HAVE READ OR HEARD OR SEEN AND WHAT MEDIA IT WAS IN?

MS. KNIGHT: WELL, I WATCH CHANNEL 6 OR CHANNEL 36 AND THAT WAS THE FIRST THING I HEARD THIS MORNING, AND WHAT THEY HAD ON THERE WAS THAT THE COUPLE WAS KIDNAPED FROM THEIR HOME, AND MR. STEELE WAS SHOT AND BLED TO DEATH, AND THEY HAD THE NAME OF THE DEFENDANT.

THE COURT: DO YOU BELIEVE THAT YOU COULD SERVE AS A JUROR IN THIS CASE AND BASE YOUR VERDICT ON THE EVIDENCE THAT WAS PRESENTED DURING THE TRIAL OF THIS CASE AND DISREGARD ANY INFORMATION THAT YOU MAY HAVE WATCHED OR READ IN THE NEWSPAPER OR T.V.?

MS. KNIGHT: YES, SIR.

THE COURT: HAVE YOU FORMED OR EXPRESSED ANY OPINION AS TO THE GUILT OR THE INNOCENCE OF THE DEFENDANT, MR. MATHIS, IN THE CASE?

MS. KNIGHT: NO, SIR. I WASN'T THERE, SO I DON'T KNOW WHAT HAPPENED.

THE COURT: SO YOU BELIEVE YOU COULD BASE YOUR OPINION ON THE EVIDENCE AND LAW AS GIVEN TO YOU BY THE COURT?

MS. KNIGHT: YES, SIR.

THE COURT: AND DO YOU BELIEVE YOU COULD BE FAIR AND IMPARTIAL IN THE CASE?

MS. KNIGHT: YES, SIR.

THE COURT: THANK YOU.

(TO CLERK) PLEASE PLACE MS. KNIGHT WITH MS. HAIR'S GROUP.

THE CLERK: THIS IS JUROR #10, SANDRA BILSKI.

THE COURT: MS. BILSKI, YOU INDICATED YOU MAY HAVE READ OR HEARD OR WATCHED SOME NEWS COVERAGE OF THESE PROCEEDINGS. IS THAT CORRECT?

MS. BILSKI: YES.

THE COURT: COULD YOU BRIEFLY TELL ME IN WHICH MEDIA YOU MAY HAVE READ OR SEEN THOSE ACCOUNTS AND WHAT YOU RECALL?

MS. BILSKI: OF COURSE, I'VE READ IT IN THE

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LANCASTER NEWS, ON THE NEWS -- I CAN'T REMEMBER WHAT NEWS CHANNEL RIGHT NOW, I RECKON BECAUSE ALL OF YOU ALL ARE STANDING AROUND HERE, THAT I'VE SEEN IT ON. I'VE SEEN IT ON THE NEWS AND I'VE READ EVERY ARTICLE THAT'S BEEN IN THE NEWSPAPER AND EVERYTHING.

THE COURT: CAN YOU BRIEFLY RECALL WHAT YOU'VE SEEN OR HEARD, OR DO YOU RECALL THAT?

MS. BILSKI: LET'S SEE WHAT I RECALL, THE EVENTS OF WHAT HAPPENED WHEN THEY WERE TAKEN FROM THEIR HOME, THE NAME OF THE PERSON THAT WAS IN THE NEWSPAPER. I READ YESTERDAY'S PAPER ABOUT THAT THEY WERE GOING TO HAVE JURY SELECTION TODAY, JUST --

THE COURT: DO YOU RECALL THE NAME OF ANY PERSONS YOU READ?

MS. BILSKI: NO, SIR, I CAN'T RECALL RIGHT NOW. I APOLOGIZE.

THE COURT: NO, THAT'S OKAY. I UNDERSTAND. WHAT I NEED TO KNOW -- DO YOU BELIEVE YOU COULD PUT ASIDE ANY INFORMATION YOU MAY HAVE GLEANED FROM READING OR WATCHING ANY NEWS ACCOUNTS OF THESE PROCEEDINGS AND BASE YOUR VERDICT AS A JUROR ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THE CASE?

MS. BILSKI: I'M ASHAMED, BUT, NO, SIR, I DON'T THINK I COULD.

THE COURT: YOU DON'T BELIEVE YOU COULD SERVE AS

A FAIR AND IMPARTIAL JUROR BASED ON --

MS. BILSKI: NO, I DON'T.

THE COURT: OKAY, THANK YOU.

(TO CLERK) PLACE MS. BILSKI WITH MS. ADAMS. THANK YOU.

THE CLERK: YOUR HONOR, JUROR 14, CHERYL BLETHEN.

THE COURT: BLETHEN?

THE CLERK: B-L-E-T-H-E-N.

THE COURT: WHAT NUMBER?

THE CLERK: JUROR 14.

THE COURT: YES, MA'AM. YOU INDICATED YOU MAY HAVE READ, HEARD OR SEEN NEWS COVERAGE OF THESE EVENTS?

MS. BLETHEN: NOT RECENTLY.

THE COURT: BRIEFLY, DO YOU RECALL WHERE YOU READ OR SAW WHATEVER YOU READ OR SAW? WHAT MEDIA?

MS. BLETHEN: THE NEWS, IT WAS ON T.V.

THE COURT: CAN YOU BRIEFLY RECALL WHAT YOU SAW OR DO YOU REMEMBER ANYTHING SPECIFICALLY?

MS. BLETHEN: NO, NOT REALLY, JUST REAL VAGUE. I JUST REMEMBER -- WHEN YOU SAID "THE INCIDENT", I REMEMBER HEARING ABOUT IT ON THE NEWS.

THE COURT: DO YOU BELIEVE THAT YOU COULD PUT ASIDE ANYTHING YOU MAY HAVE WATCHED ON THE NEWS OR READ IN THE PAPER, IF YOU READ ANYTHING, AND RENDER

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A VERDICT BASED ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THIS CASE?

MS. BLETHEN: I DO.

THE COURT: HAVE YOU FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE INVOLVED IN THIS CASE?

MS. BLETHEN: NO.

THE COURT: THANK YOU.

(TO CLERK) PLEASE PLACE MS. BLETHEN, JUROR #14, WITH MS. HAIR'S GROUP.

THE CLERK: THIS IS JUROR 116, SCOTT SHERER.

THE COURT: MR. SHERER, YOU INDICATED YOU MAY HAVE READ, SEEN OR HEARD SOME NEWS COVERAGE OF THESE PROCEEDINGS?

MR. SHERER: I READ ONE ARTICLE IN THE NEWSPAPER YESTERDAY, THAT'S IT.

THE COURT: MR. SHERER, DO YOU THINK YOU COULD PUT ASIDE ANYTHING YOU MAY HAVE READ IN THE NEWSPAPER ABOUT THE SUBJECT MATTER OF THIS CASE AND BASE ANY VERDICT THAT YOU MAY COME TO BASED SOLELY ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THIS CASE?

MR. SHERER: YES, I COULD.

THE COURT: HAVE YOU FORMED ANY OPINION AS TO THE GUILT OR INNOCENCE OF ANYONE IN REGARD TO THIS CASE?

MR. SHERER: NO, I HAVE NOT.

THE COURT: AND DO YOU BELIEVE YOU COULD SERVE AS

A FAIR AND IMPARTIAL JUROR?

MR. SHERER: YES, I COULD.

THE COURT: THANK YOU, MR. SHERER.

(TO CLERK) PLACE HIM WITH MS. HAIR'S GROUP.

BRING THE CLERK IN.

THE CLERK: THAT'S IT.

THE COURT: ALL RIGHT. WE HAVE THOSE GROUPS SEGREGATED, IS THAT RIGHT?

THE CLERK: YES, SIR.

THE COURT: BASED ON THAT, THE COURT'S VOIR DIRE OF THE POTENTIAL JURORS, I'M GOING TO EXCLUDE JUROR #1, JUROR #99, JUROR #66 ON OTHER REASONS, OTHER THAN PRETRIAL PUBLICITY, JUROR #32 ON OTHER REASONS, AND JUROR #10 I'M GOING TO EXCLUDE AFTER VOIR DIRING HER ABOUT PRETRIAL PUBLICITY.

THE COURT AT THIS TIME FINDS JURORS 58, 47, 96, 143, 92, 88, 42, 6, 38, 77, 14 AND 116 QUALIFIED, BASED ON THEIR RESPONSES TO THE NEWS ACCOUNTS QUESTIONS.

(TO CLERK) NOW, BEFORE WE GO BACK IN THERE, YOU HAVE THOSE JURORS SEGREGATED, RIGHT?

THE CLERK: YES, SIR.

THE COURT: I NEED TO GET ALL THE QUALIFIED JURORS -- THAT WOULD BE THE HAIR GROUP -- IN HERE A MOMENT. I NEED TO TELL THEM SOMETHING.

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(QUALIFIED JURORS ENTERING JURY ROOM).

THE COURT: LADIES AND GENTLEMEN, ALL OF YOU HAD INDICATED THAT YOU MAY HAVE READ OR LISTENED TO OR HEARD SOME NEWS ACCOUNTS OF THE SUBJECT MATTER OF THIS CASE. I FOUND ALL OF YOU TO BE QUALIFIED SINCE YOU'VE ALL INDICATED THAT YOU COULD PUT ASIDE ANYTHING YOU MAY HAVE READ OR HEARD OR SEEN, ANY COVERAGE YOU MAY HAVE READ, HEARD OR SEEN ABOUT THE SUBJECT MATTER IN THIS CASE, AND BASE YOUR VERDICT ON THE EVIDENCE PRESENTED DURING THE TRIAL OF THIS CASE. I FIND YOU QUALIFIED.

THE REASON I'VE ASKED YOU TO STEP IN -- I'M GOING TO ASK YOU TO STEP BACK WITH THE REST OF THE PETIT JURY PANEL, BACK IN THE COURTROOM. PLEASE DO NOT DISCUSS ANYTHING YOU MAY HAVE READ, SEEN, HEARD OR LISTENED TO IN REGARD TO THE SUBJECT MATTER OF THIS CASE. I JUST WANTED TO GIVE YOU THAT INSTRUCTION, THANK YOU.

(TO CLERK) PLEASE LET THESE LADIES AND GENTLEMEN HAVE A SEAT WITH THE OTHER LADIES AND GENTLEMEN OF THE PETIT JURY PANEL.

(OFF-THE-RECORD DISCUSSION)

THE COURT: BEFORE WE GO BACK OUT THERE, I STILL HAVE A FEW QUESTIONS BEFORE I CAN CONCLUDE MY VOIR DIRE, MR. CLARK. BUT SINCE WE'RE IN HERE AND

CERTAINLY SO WE WOULDN'T PREJUDICE THE DEFENDANT IN ANY MANNER, WHAT I WANT TO PUT ON THE RECORD -- ALTHOUGH THERE MAY HAVE BEEN SOME MEDIA COVERAGE, AND THERE HAS BEEN SOME EXTENSIVE MEDIA COVERAGE OF THE PROCEEDINGS, THE JURORS THAT I HAVE NOT EXCLUDED AND HAVE FOUND QUALIFIED HAVE INDICATED THAT THEY HAD NOT FORMED OR EXPRESSED AN OPINION AS TO THE DEFENDANT'S GUILT AND THAT THEIR OBJECTIVITY HAD NOT BEEN POLLUTED BY ANY OUTSIDE INFLUENCES SUCH AS NEWS COVERAGE OR ANYTHING, AND, THEREFORE, THAT'S WHY I FOUND THEM QUALIFIED.

SO IF YOU HAVE ANYTHING YOU WANT TO PUT ON THE RECORD IN REGARD TO THAT, I WILL HEAR YOU NOW.

MR. CLARK: JUDGE, I WOULD, JUST WITH A FEW OF THE JURORS. NUMBER 143; MS. JEAN WHITE, SHE SAID SHE COULD BE FAIR, BUT IN HER COMMENTS IT APPEARED THAT SHE HAS FORMED AN OPINION. SHE SAID, "WELL, IT APPEARS THEY KNOW WHO DID IT", AND THEN SHE SAID IT APPEARED THEY KNEW WHO WAS INVOLVED, "THERE WERE SEVERAL OF THEM INVOLVED."

I JUST BELIEVE THAT THAT COMMENT -- I WOULD MOVE TO EXCLUDE HER. I THINK SHE'S ADOPTED THE OPINION THAT LAW ENFORCEMENT KNOWS WHO DID IT AND IT MUST BE MR. MATHIS, AND I'D MOVE TO EXCLUDE HER, JUDGE.

AND, JUDGE, MR. SHIRER, 116 --

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THE COURT: SHERER, I THINK THAT'S HOW HE PRONOUNCES HIS NAME.

MR. CLARK: YES, SIR. I'D MOVE TO EXCLUDE HIM AS WELL, JUDGE, WITH MR. STEELE'S BROTHER BEING HIS SUNDAY SCHOOL TEACHER. I KNOW MR. STEELE, MARVIN STEELE, IS NOT GOING TO BE A WITNESS, ACCORDING TO MR. JUSTICE. I JUST THINK THAT'S IN FAIRNESS TO MR. MATHIS, THAT MR. SHERER SHOULD BE EXCLUDED AS WELL, JUDGE.

NUMBER 6, JUDGE, TAMMY BAKER, SHE INDICATED HER FATHER WORKS NEXT DOOR TO WHERE MR. STEELE WAS EMPLOYED, MCDONALD AMUSEMENTS. THAT'S ALL I HAVE, JUDGE.

THE COURT: SOLICITOR?

MR. JUSTICE: YOUR HONOR, I TOTALLY DISAGREE WITH #116 AND ALSO WITH THE YOUNG LADY.

THE COURT: #6?

MR. JUSTICE: #6, MS. BAKER. THAT'S WHY THE STATE OF SOUTH CAROLINA GIVES THE DEFENSE 10 PEREMPTORY CHALLENGES.

I WOULD CONCEDE THAT 143, MS. WHITE, THAT HER ANSWER WAS A BIT IFFY BECAUSE SHE STARTED WITH, SORT OF LIKE, "THEY WOULDN'T HAVE CHARGED HIM IF HE HADN'T DONE IT", AND EVEN THOUGH SHE SAID SHE COULD SET THAT ASIDE, I WOULD CONCEDE THAT THAT WAS LESS THAN 100

PERCENT CLEAR.

BUT ON THE OTHER TWO, THEY WERE UNEQUIVOCAL THAT THEY COULD GIVE BOTH SIDES A FAIR AND IMPARTIAL TRIAL.

THE COURT: ALL RIGHT. WELL, BASED ON THAT, I WILL EXCLUDE MS. WHITE.

MR. CLARK, JUST BECAUSE SOMEONE IS EMPLOYED NEXT DOOR, I MEAN, SOMEONE'S RELATIVE, HER PARENT IS EMPLOYED NEXT DOOR TO WHERE THE DECEASED WORKED, I DON'T BELIEVE THAT, IN AND OF ITSELF, WOULD BE DISQUALIFYING. SHE HAD INDICATED SEVERAL TIMES, JUROR 6, THAT SHE COULD BE FAIR AND IMPARTIAL.

AND JUROR #116 ALSO, JUST BECAUSE HIS SUNDAY SCHOOL TEACHER WAS THE VICTIM'S BROTHER -- HE WAS ADAMANT THAT HE COULD PUT ALL OF THAT ASIDE AND BE FAIR AND IMPARTIAL. I'M GOING TO FIND HIM QUALIFIED. THANK YOU.

(TO CLERK) GO ASK MS. WHITE TO COME IN HERE. SHE'S JUROR #143. DO YOU REMEMBER WHAT SHE LOOKS LIKE, MR. CLERK?

THE CLERK: YES, SIR.

THE COURT: ASK HER TO COME IN HERE. I DON'T WANT TO EMBARRASS HER.

MR. CLARK, SIR, ANYTHING I NEED TO TAKE UP IN HERE BEFORE I GO OUT THERE?

MR. CLARK: NO, SIR, JUDGE.

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THE COURT: I HAVE JUST ONE OR TWO STANDARD QUESTIONS FROM HERE ON.

MR. CLARK: NOTHING, YOUR HONOR.

THE COURT: "ANY REASON YOU KNOW OF YOU CAN'T SERVE AS A FAIR AND IMPARTIAL JUROR AND BE FAIR TO MR. MATHIS AND TO THE STATE?", AND THEN I'M READY TO PROCEED.

MR. CLARK: YES, SIR.

THE COURT: I WANT TO ACCOMMODATE YOU, BUT, AS YOU CAN TELL, WE'VE GOT LIMITED FACILITIES.

MR. CLARK: I UNDERSTAND, JUDGE. I DON'T HAVE ANYTHING FURTHER.

MR. JUSTICE: YOUR HONOR, THE ONLY THING I WOULD HAVE IS AN OFFICIAL RULING FROM THE COURT, BASED ON THE INDIVIDUAL VOIR DIRE OF THESE 17 JURORS, THAT THE CHANGE OF VENUE MOTION, WHICH WAS BASED SOLELY ON PRETRIAL PUBLICITY, BE DENIED INASMUCH AS ONLY THREE -- AT MOST THREE PEOPLE WERE DISQUALIFIED FOR THAT PURPOSE.

THE COURT: I'M SORRY, GENTLEMEN, MAYBE I SHOULD HAVE STATED THAT, BUT I AM GOING TO, BASED ON MY FINDINGS ON VOIR DIRE I KNOW WE'VE CONDUCTED IN THE APPROPRIATE MANNER -- THAT'S WHY THIS IS THE BEST PRACTICE, TO WAIT TO RULE ON THE MOTION UNTIL THE COURT CAN HAVE THE BENEFIT OF VOIR DIRING THE

JURORS BASED ON THE COVERAGE THAT THEY'VE READ OR HEARD.

MS. WHITE? MS. WHITE IS PRESENT.

MS. WHITE: YES.

THE COURT: MS. WHITE, I AM GOING TO, OUT OF AN ABUNDANCE OF CAUTION, EXCUSE YOU AS A JUROR IN THIS CASE. WE'VE GOT LOTS OF OTHER CASES, SO STICK AROUND.

(TO CLERK) SHE NEEDS TO GO WITH MS. ADAMS' CROWD BECAUSE WE MAY USE THEM ON THE NEXT CASE. THANK YOU.

ALL RIGHT, AFTER WE DRAW A JURY AND GET THE JURY SEATED, DO WE THINK WE COULD TAKE A LITTLE BREAK AND DO OUR LITTLE OPENING STATEMENTS THIS EVENING SO WE COULD BEGIN THE TRIAL IN THE MORNING? I KNOW YOURS ISN'T EVER TOO LONG, SOLICITOR.

MR. CLARK: JUDGE, I HAD A FEW PRETRIAL MOTIONS.

MR. JUSTICE: THERE ARE SOME MOTIONS THAT I WAS GIVEN DURING JURY SELECTION.

THE COURT: I'LL TAKE THOSE UP BUT WANTED TO GIVE YOU ALL AN OPPORTUNITY -- I HAVEN'T TRIED A CASE, OR IF I HAVE, IT'S BEEN AWHILE, WITH YOU, MR. CLARK.

MR. CLARK: IT'S BEEN A LITTLE WHILE.

THE COURT: I'M SO OLD I CAN'T REMEMBER, BUT I DON'T THINK THE SOLICITOR WILL BE UNDULY LONG, AND I

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DOUBT YOU WILL IN YOUR OPENING, AND WE CAN GET STARTED FRESH IN THE MORNING.

MR. JUSTICE: ON THE OTHER MOTIONS, SOME OF THEM WE CAN ADDRESS IN A PRELIMINARY FASHION THIS AFTERNOON.

MR. CLARK: SOME CAN WAIT.

MR. JUSTICE: ON SOME OF THEM, MY WITNESSES AREN'T HERE THAT MAY BE NEEDED TO COVER THOSE.

MR. CLARK: RIGHT.

MR. JUSTICE: BUT AT LEAST WE'LL PUT THEM ON THE RECORD.

THE COURT: PUT THEM ON THE RECORD AND TAKE THEM UP BEFORE WE GO INTO THAT AREA.

MR. CLARK: DO YOU STILL WANT TO DO OPENINGS THIS AFTERNOON?

THE COURT: I'D LIKE TO, BUT I'LL GIVE YOU AN OPPORTUNITY TO REFRESH YOURSELF. BUT AS QUICKLY AS WE CAN REASSEMBLE -- IF THE DEFENDANT NEEDS A SHORT BREAK, WE CAN ACCOMMODATE HIM.

(BRIEF RECESS)

THE COURT: LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, PLEASE GIVE ME YOUR ATTENTION. CAN EACH AND EVERY MEMBER OF THE PETIT JURY PANEL GIVE BOTH THE STATE OF SOUTH CAROLINA AND THE DEFENDANT, MR. VERNARD JEROME MATHIS, A FAIR AND IMPARTIAL TRIAL IN

THIS CASE? IF NOT, PLEASE STAND.

(NO RESPONSE).

THE COURT: ANYTHING FURTHER FROM THE STATE?

MR. JUSTICE: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENDANT?

MR. CLARK: NO, SIR, YOUR HONOR.

THE COURT: THANK YOU.

(TO CLERK) GIVE US THE JURY.

LADIES AND GENTLEMEN, AS YOUR NAME IS CALLED, PLEASE STAND IMMEDIATELY, COME FORWARD THROUGH THE RAIL TO THE BAR, WHERE THE CLERK OF COURT IS SEATED, AND TURN AND FACE THE AUDIENCE. PLEASE BRING WITH YOU ANY PERSONAL BELONGINGS YOU MAY HAVE, SUCH AS YOUR POCKETBOOK, YOUR CAP, YOUR UMBRELLA, OR ANYTHING OF LIKE NATURE.

(TO CLERK) GIVE US THE JURY, PLEASE.

THE CLERK: JUROR 131, ERIC SWEENEY.

(ERIC SWEENEY, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. SWEENEY.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. SWEENEY.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR 102, MITCHELL PARKER.

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(MITCHELL PARKER, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. PARKER.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. PARKER.

THE CLERK: (TO JUROR) PLEASE TAKE A SEAT IN THE JURY BOX.

JUROR #142, LINDA WELLS.

(LINDA WELLS, A BLACK FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. WELLS.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MS. WELLS.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #119, JENNY SISTARE.

(JENNY SISTARE, A WHITE FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. SISTARE.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE EXCUSE MS. SISTARE FROM THIS TRIAL.

THE CLERK: YOU'RE EXCUSED, MS. SISTARE.

JUROR 105, WILLIAM PEEBLES.

(WILLIAM PEEBLES, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. PEEBLES.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. PEEBLES.

THE CLERK: PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #88, GARY MCCAIN.

(GARY MCCAIN, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. MCCAIN.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE EXCUSE MR. MCCAIN FROM THIS TRIAL.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR 94, BRENDA MILLER.

(BRENDA MILLER, A BLACK FEMALE, NOW COMES FORWARD).

MR. JUSTICE: WHAT NUMBER WAS IT?

THE CLERK: 94. WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. MILLER.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MS. MILLER.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE

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JURY BOX.

JUROR #84, SUSAN MCKINNON.

(SUSAN MCKINNON, A WHITE FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. BARFIELD: WHAT'S THAT NUMBER AGAIN, MR. CLERK?

THE CLERK: #84.

MR. JUSTICE: PRESENT MS. MCKINNON.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MS. MCKINNON.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #14, CHERYL BLETHEN.

(CHERYL BLETHEN, A WHITE FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. BLETHEN.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE EXCUSE MS. BLETHEN FROM THIS TRIAL.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR #42, ROBERT DUNCAN.

(ROBERT DUNCAN, A BLACK MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. DUNCAN.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. DUNCAN.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #111, RONNIE ROBERTS.

(RONNIE ROBERTS, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. ROBERTS.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. ROBERTS.

THE CLERK: (TO JUROR) HAVE A SEAT IN THE JURY BOX.

JUROR #16, JAMES BOONE.

(JAMES BOONE, A BLACK MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: EXCUSE MR. BOONE ON THIS CASE.

THE CLERK: YOU'RE EXCUSED, MR. BOONE.

JUROR #26, TIA CHAVIS.

(TIA CHAVIS, A BLACK FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. CHAVIS.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MS. CHAVIS.

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THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #46, TISHA FORD.

(TISHA FORD, A BLACK FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: EXCUSE MS. FORD ON THIS CASE.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR #98, ALAN MOBLEY.

(ALAN MOBLEY, A BLACK MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: EXCUSE MR. MOBLEY ON THIS CASE.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR #76, JOHN KNIGHT.

(JOHN KNIGHT, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. KNIGHT.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. KNIGHT.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #24, SHALINA CARTER.

(SHALINA CARTER, A WHITE FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. CARTER.

THE CLERK: DEFENDANT?

MR. CLARK: PRESENT MS. CARTER.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #80, EDDIE LEWIS.

(EDDIE LEWIS, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. LEWIS.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. LEWIS.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

THE COURT: ALL RIGHT, MR. CLERK, I WANT TO HAVE THREE ALTERNATES. THE STRIKES SHALL BE ONE FOR THE STATE, TWO FOR THE DEFENDANT IN REGARD TO EACH ALTERNATE JUROR.

THE CLERK: JUROR #20, LINDA BROWN.

(LINDA BROWN, A WHITE FEMALE, NOW COMES FORWARD).

THE COURT: NUMBER WHAT, MR. CLERK?

THE CLERK: #20.

WHAT SAY THE STATE?

MR. JUSTICE: EXCUSE MS. BROWN FROM THIS CASE, PLEASE.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR #120, MELVIN SMITH.

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(MELVIN SMITH, A BLACK MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: THE COURT'S INDULGENCE, YOUR HONOR.

(TO CLERK) MAY WE APPROACH THE BENCH, YOUR HONOR, WITH COUNSEL FOR THE DEFENSE?

THE COURT: ALL RIGHT.

(BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING OF JURY PANEL AND COURT REPORTER).

THE COURT: MR. CLERK, BRING THE JUROR FORWARD.

(BENCH CONFERENCE WITH COUNSEL AND JUROR OUTSIDE HEARING OF JURY PANEL AND COURT REPORTER).

THE COURT: AFTER CONFERRING WITH JUROR #120, THE COURT FINDS HIM TO BE STATUTORILY DISQUALIFIED BECAUSE OF A PREVIOUS RECORD. THANK YOU.

THE CLERK: JUROR #60, BILLY HAYES.

(BILLY HAYES, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. HAYES.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. HAYES.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #34, JAMES THERRELL.

(JAMES THERRELL, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MR. THERRELL.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MR. THERRELL.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

JUROR #75, CHRISTOPHER KNIGHT.

(CHRISTOPHER KNIGHT, A WHITE MALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: WHAT NUMBER, PLEASE?

THE CLERK: #75.

MR. JUSTICE: PLEASE EXCUSE THE JUROR.

THE CLERK: (TO JUROR) YOU'RE EXCUSED.

JUROR #6, TAMMY BAKER.

(TAMMY BAKER, A WHITE FEMALE, NOW COMES FORWARD).

THE CLERK: WHAT SAY THE STATE?

MR. JUSTICE: PRESENT MS. BAKER.

THE CLERK: DEFENDANT?

MR. CLARK: PLEASE SWEAR MS. BAKER.

THE CLERK: (TO JUROR) PLEASE HAVE A SEAT IN THE JURY BOX.

THE COURT: LADIES AND GENTLEMEN OF THE TRIAL JURY, PLEASE GIVE ME YOUR ATTENTION. AT THIS TIME I HAVE SOME MATTERS OF LAW I MUST TAKE UP WITH THE

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LAWYERS. UNDER OUR TRIAL PROCEDURE, I'M REQUIRED TO DO THIS OUTSIDE OF YOUR PRESENCE. PLEASE STEP INTO YOUR JURY ROOM AND DO NOT DISCUSS THE CASE. IF YOU WOULD LIKE ANY LIGHT REFRESHMENTS, I BELIEVE WE HAVE COCA-COLA, PEPSI, COFFEE, ANYTHING WITHIN REASON THAT LANCASTER COUNTY CAN AFFORD TO PROVIDE FOR YOU.

PLEASE STEP INTO YOUR JURY ROOM. I'LL SEND FOR YOU IN A MOMENT.

(JURY EXITS COURTROOM AT 5:24 P.M.).

THE COURT: ALL RIGHT, ANYTHING FROM THE STATE OR THE DEFENDANT IN REGARD TO THE SELECTION OF THE TRIAL JURY? FROM THE STATE?

MR. JUSTICE: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: FROM THE DEFENDANT?

MR. CLARK: NOTHING FROM THE DEFENSE, YOUR HONOR.

THE COURT: ALL RIGHT, THANK YOU.

(TO CLERK) HAVE THE JUROR, MR. SMITH, COME AROUND.

MR. SOLICITOR AND MR. CLARK, IN REGARD TO JUROR #120, MR. MELVIN SMITH, STANDING BEFORE THE BAR AT THE SIDE-BAR, HE HAD ADVISED THE COURT THAT HE HAD BEEN CONVICTED OF AN OFFENSE IN NORTH CAROLINA IN REGARD TO SOMETHING ABOUT TAKING A TAPE RECORDER OR SOMETHING IN NORTH CAROLINA.

MR. SMITH, IS THAT RIGHT?

MR. SMITH: YES, SIR.

THE COURT: AND YOU WERE SENTENCED TO A PROBATIONARY SENTENCE BUT COULD HAVE RECEIVED MORE THAN ONE YEAR, IS THAT CORRECT?

MR. SMITH: YES, SIR.

THE COURT: AND YOU ARE ON PROBATION FOR THAT OFFENSE?

MR. SMITH: YES, SIR.

THE COURT: AND BASED ON THAT, THE COURT EXCLUDED THE JUROR FROM SERVICE IN THIS CASE.

ANY EXCEPTION, SOLICITOR?

MR. JUSTICE: NONE FROM THE STATE, YOUR HONOR.

THE COURT: MR. CLARK?

MR. CLARK: NO, SIR, YOUR HONOR.

THE COURT: THANK YOU, MR. SMITH. YOU MAY HAVE A SEAT.

(OFF-THE-RECORD DISCUSSION)

THE COURT: LADIES AND GENTLEMEN OF THE PETIT JURY PANEL, PLEASE GIVE ME YOUR ATTENTION. SINCE YOU WERE NOT FORTUNATE ENOUGH TO HAVE BEEN SELECTED TO SERVE ON THIS PARTICULAR TRIAL JURY AND IT APPEARING THAT WE HAVE ENOUGH WORK TO TAKE UP AT LEAST THE REMAINDER OF THIS DAY, PERHAPS TOMORROW AND PERHAPS EVEN THE REMAINDER OF THE WEEK, I REALLY DON'T KNOW -- I'M GOING TO EXCUSE YOU.

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NOW, LADIES AND GENTLEMEN, NOT TOO LONG AGO WE USED TO HAVE TO BRING THE JURORS IN EVERY MORNING AND EVERY AFTERNOON FOR EACH SESSION OF COURT BECAUSE WE NEVER KNEW WHEN ONE CASE WAS GOING TO END AND ONE CASE WAS GOING TO BEGIN. AFTER OVER 30 YEARS, WE STILL DON'T KNOW WHEN ONE CASE IS GOING TO END AND ONE CASE IS GOING TO BEGIN. HOWEVER, FORTUNATELY, WE NOW HAVE A SYSTEM WHEREIN THE JURORS CAN CALL IN AND RECEIVE INSTRUCTIONS ON WHEN YOU ARE TO REPORT OR CALL AGAIN.

I BELIEVE ALL OF YOU HAVE THE LITTLE JUROR INFORMATION CARD WITH YOU. IF YOU DO NOT HAVE YOURS, IF YOU'VE LOST IT OR MISPLACED IT, WHEN I EXCUSE YOU IN JUST A MOMENT, THE BAILIFFS ON THE BACK DOOR WILL BE GLAD TO GIVE YOU ANOTHER ONE. THERE'S A TELEPHONE NUMBER ON THERE.

AN 800 NUMBER, MR. CLERK?

THE CLERK: YES, SIR.

THE COURT: THERE'S A 1-800 NUMBER ON THERE. I NEED FOR ALL OF YOU ALL, ALL THE MEMBERS OF THE PETIT JURY PANEL, TO CALL THAT NUMBER TOMORROW AT 1:30, AND YOU WILL BE GIVEN INSTRUCTIONS ON WHEN YOU ARE TO REPORT OR CALL AGAIN.

NOW, LADIES AND GENTLEMEN, THE MESSAGE MAY SIMPLY BE, "CALL AGAIN ON WEDNESDAY OR THURSDAY". I OBVIOUSLY DON'T KNOW WHAT THE MESSAGE WILL BE. YOU

NEED TO BE ABLE TO REPORT TO THIS COURTHOUSE WITHIN ONE HOUR AFTER YOU RECEIVE A MESSAGE ON THIS MACHINE. THEREFORE, IF YOU CAN GO TO WORK TOMORROW AND CALL AT WORK AND BE HERE AT 2:30, YOU CAN GO TO WORK, OR YOU CAN GO FISHING OR YOU CAN DO ANYTHING YOU WANT TO DO AS LONG AS YOU CAN CALL AND BE HERE WITHIN ONE HOUR.

NOW, LADIES AND GENTLEMEN, PLEASE DO NOT CALL THE NUMBER UNTIL 1:30 TOMORROW, 1:30 P.M. THERE WILL PROBABLY BE NO MESSAGE FOR YOU TO RECEIVE UNTIL 1:29-½ P.M. TOMORROW. YOU'LL JUST BE WASTING YOUR VALUABLE TIME IF YOU TRY TO CALL EARLY. THE SYSTEM IS DESIGNED SO ALL OF YOU CAN CALL AT 1:30 P.M. PRECISELY, AND NONE OF YOU SHOULD RECEIVE A BUSY SIGNAL IF YOU DIAL THE NUMBER CORRECTLY.

OF COURSE, YOU'RE WELCOME TO STAY WITH US THE REMAINDER OF THE DAY AND TOMORROW AND OBSERVE THE PROCEEDINGS OF THE COURT, BUT YOU'RE NOT REQUIRED TO DO SO. IF I DON'T SEE YOU AGAIN, IF THIS CASE SHOULD CARRY ON THROUGH THE WEEK, I'D LIKE TO THANK YOU FOR YOUR JURY SERVICE. YOU'RE NOT REQUIRED TO STAY WITH US. PLEASE CALL THE NUMBER TOMORROW AT 1:30 P.M. AND YOU'LL RECEIVE INSTRUCTIONS ON WHEN YOU ARE TO REPORT OR CALL AGAIN. THANK YOU VERY MUCH. YOU MAY RETIRE.

MR. CLARK, SIR, I BELIEVE YOU HAD SOME MOTIONS YOU NEEDED THE COURT TO TAKE UP.

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MR. CLARK: YES, YOUR HONOR.

THE COURT: OBVIOUSLY YOU'VE ALREADY MADE THE MOTION FOR CHANGE OF VENUE AND THE COURT HAS ALREADY RULED ON THAT. I DENIED YOUR MOTION FOR THE REASONS I STATED IN THE RECORD --

MR. CLARK: YES, SIR.

THE COURT: -- WHEN WE WERE EXAMINING JURORS, IS THAT CORRECT?

MR. CLARK: THAT'S CORRECT, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. CLARK: YOUR HONOR, WE HAVE BEEN ADVISED THAT ONE OF THE CO-DEFENDANTS, MR. ELTON WIGGINS, HAS BEEN ADDED TO THE STATE'S WITNESS LIST. WE WOULD RENEW OUR MOTION THAT WE FILED UNDER SOUTH CAROLINA CRIMINAL RULE 5, AS WELL AS OUR MOTION UNDER BRADY AND WOULD MOVE TO RECEIVE THE DEAL OR ARRANGEMENT THAT THE STATE HAS ENTERED WITH MR. WIGGINS. WE BELIEVE WE'RE ENTITLED TO THAT, YOUR HONOR. THAT WOULD BE THE FIRST MOTION THAT WE WOULD MAKE -- IF THERE IS ONE, JUDGE.

THE COURT: ALL RIGHT, SOLICITOR.

MR. JUSTICE: THE ONLY DEAL WITH MR. WIGGINS IS THAT UPON THE TRUTHFUL TESTIMONY IN THIS AND ANY OTHER PROCEEDINGS IN WHICH HE IS CALLED UPON, THE STATE WOULD ALLOW HIM TO PLEAD GUILTY TO A CRIME OTHER THAN THE CRIME OF MURDER, WHICH INCLUDES THE POSSIBILITY OF

ARMED ROBBERY, FIRST DEGREE BURGLARY, AND/OR KIDNAPING. THAT'S THE ONLY DEAL THAT'S BEEN MADE IN REGARDS TO MR. WIGGINS.

THE COURT: ALL RIGHT.

SO YOU HAVE THAT, MR. CLARK.

MR. CLARK: YES, SIR, YOUR HONOR. THANK YOU, YOUR HONOR.

YOUR HONOR, THE NEXT MOTION -- IN TALKING WITH MR. JUSTICE AND LISTENING TO HIS RESPONSE, HIS STATEMENT TO THE COURT EARLIER -- THERE'S A MOTION TO SUPPRESS EVIDENCE SEIZED DURING THE SEARCH OF A VEHICLE THAT MR. MATHIS MAY HAVE BEEN DRIVING. HOWEVER, I DON'T BELIEVE THAT CAN BE ADDRESSED BECAUSE THE WITNESSES AREN'T HERE, SO I'D SIMPLY MOVE THAT THERE BE NO REFERENCE TO ANY ARTICLES SEIZED DURING THAT VEHICLE SEARCH UNTIL THAT MOTION CAN BE HEARD OR THE COURT RULES ON THAT MOTION.

THE COURT: ALL RIGHT.

MR. JUSTICE: I WOULD AGREE WITH THAT, YOUR HONOR. THE STATE'S POSITION IS IT WAS A LEGAL SEARCH PURSUANT TO A STATE OF MARYLAND SEARCH WARRANT, DULY ISSUED BY A JUDGE IN THE STATE OF MARYLAND. THE SEARCH WAS CONDUCTED BY AGENTS OF THE F.B.I. WHO WILL BE ARRIVING IN LANCASTER LATE TOMORROW AND PROBABLY WILL NOT BE CALLED UPON BEFORE WEDNESDAY.

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THE COURT: ALL RIGHT, WELL, LET'S JUST -- I'M NOT GOING TO ALLOW YOU TO MAKE ANY REFERENCE TO THAT -

MR. JUSTICE: I KNOW OF NO REASON --

THE COURT: -- OR INDEED THAT THERE WAS A SEARCH.

MR. JUSTICE: YES, AND I HAVE NO REASON TO BELIEVE THAT WOULD HAPPEN.

THE COURT: ALL RIGHT, THANK YOU. YOU NEED TO NOTE WHEN WE CAN TAKE UP THAT MOTION, SOLICITOR.

MR. JUSTICE: YES, YOUR HONOR.

THE COURT: ANY PROBLEM WITH THAT, MR. CLARK?

MR. CLARK: NO, SIR, YOUR HONOR. THANK YOU, YOUR HONOR.

YOUR HONOR, WE ALSO MOVE IN LIMINE TO EXCLUDE ANY REFERENCE TO MR. MATHIS' PAROLE STATUS. I BELIEVE THE FACTS ARE THAT HE WAS ON PAROLE IN THE STATE OF MARYLAND AT THE TIME THAT THIS INCIDENT OCCURRED. WE BELIEVE ANY REFERENCE TO THAT WOULD NOT BE OF ANY PROBATIVE VALUE BUT WOULD BE HIGHLY PREJUDICIAL. WE'D MOVE TO EXCLUDE ANY REFERENCE TO HIM BEING ON PAROLE.

MR. JUSTICE: YOUR HONOR, I HAVE NO INTENTION OF MAKING REFERENCE -- IN AN OBLIQUE SORT OF FASHION POSSIBLY, INASMUCH AS LANCASTER COUNTY OFFICERS, UPON IDENTIFYING MR. MATHIS AS THE PRINCIPAL SUSPECT IN GOING TO THE STATE OF MARYLAND AND THE D.C. AREA TO ARREST HIM, DID MEET WITH HIS PAROLE OFFICER AND THE

PAROLE OFFICER, I THINK, POINTED HIM OUT OR TOOK THE OFFICERS TO WHERE HE WAS LOCATED, BUT WE CAN GET AROUND THAT WITHOUT MENTIONING PAROLE, JUST THAT THEY MADE CONTACT WITH MR. WHATEVER-HIS-NAME-WAS IN MARYLAND, WITHOUT MENTIONING WHAT HIS CAPACITY IS.

THE COURT: ALL RIGHT, SO YOU'RE GOING TO INSTRUCT YOUR WITNESSES NOT TO MENTION THAT?

MR. JUSTICE: YES, YOUR HONOR. I THINK THAT WILL PROBABLY BE MR. BLACKMON, WHO'S SITTING RIGHT HERE LISTENING TO US.

THE COURT: WELL, SOLICITOR, YOU MIGHT BETTER INSTRUCT YOUR OTHER WITNESSES, TOO.

OF COURSE, NOW, MR. CLARK, THAT DOOR COULD BE OPENED IF YOU OPEN THAT DOOR ON CROSS-EXAMINATION, BUT I'M GOING TO DIRECT HIM NOT TO REFER TO THE PAROLE STATUS OF THE DEFENDANT AT THIS TIME.

MR. CLARK: YES, SIR.

MR. JUSTICE: OF COURSE, IF THE DEFENDANT WERE TO TESTIFY IN HIS OWN BEHALF, THE STATE RESERVES THE RIGHT TO USE ANY AND ALL IMPEACHMENT EVIDENCE, INCLUDING ANY AND ALL PRIOR CONVICTIONS.

THE COURT: WELL, THAT WASN'T THE MOTION. ALL RIGHT, THANK YOU.

MR. CLARK: YOUR HONOR, WE HAVE ALSO FILED A MOTION TO EXCLUDE CERTAIN CRIME SCENE PHOTOGRAPHS,

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AND THE BASIS FOR THAT MOTION IS THAT THOSE PHOTOGRAPHS WOULD BE OF VERY LITTLE RELEVANCE, NO PROBATIVE VALUE, BUT WOULD ONLY INFLAME THE JURY. I DON'T THINK MR. JUSTICE INTENDED TO USE THOSE IN HIS OPENING, BUT --

THE COURT: HOW MANY OF THEM ARE THERE?

MR. JUSTICE: YOUR HONOR, THERE'S QUITE A FEW PHOTOGRAPHS ALTOGETHER. AS THE COURT, I'M SURE, IS AWARE, IT IS NOT MY PRACTICE TO SHOW INFLAMMATORY PICTURES OF A DEAD BODY TO A JURY. IF THERE IS ANY PICTURE THAT WOULD CONTAIN THE BODY OF THE LATE MELVIN STEELE, IT WOULD BE IN SUCH A FASHION AS NOT TO BE INFLAMMATORY.

WE DON'T HAVE THOSE PICTURES WITH US THIS AFTERNOON INASMUCH AS WE DIDN'T EXPECT TO GO FORWARD WITH EVIDENCE, BUT WE'LL, OF COURSE, SHOW WHATEVER WE INTEND TO INTRODUCE TO THE COURT WELL AHEAD OF ACTUALLY INTRODUCING IT. BUT ANY CLOSE-UP, BLOODY PICTURE THAT WOULD INFLAME PASSION -- I JUST DON'T DO THAT, YOUR HONOR, AND I WILL NOT DO THAT.

THE COURT: WELL, IF YOU HAVE ANY SUCH PHOTOGRAPHS, YOU NEED TO BRING THEM TO THE COURT'S ATTENTION BEFORE YOU PRESENT THEM TO A WITNESS --

MR. JUSTICE: OH, YES, CERTAINLY.

THE COURT: -- AND I'LL RULE ON YOUR MOTION AT

THAT TIME, MR. CLARK. THANK YOU.

MR. CLARK: YOUR HONOR, WE HAVE ALSO FILED A MOTION TO SUPPRESS THE RESULTS OF THE PHOTOGRAPHIC LINEUP, AS WELL AS TO SUPPRESS IN-COURT IDENTIFICATION, BUT I'M NOT SURE THAT CAN BE ADDRESSED AT THIS TIME, YOUR HONOR. I BELIEVE IT COULD BE ADDRESSED WHEN THE WITNESSES TESTIFY AND THAT WILL BE FINE WITH US, BUT WE HAVE FILED THAT MOTION.

MR. JUSTICE: YOUR HONOR, WE DON'T INTEND TO GO INTO THE BUSINESS OF THE PHOTOGRAPH LINEUP. WE DO INTEND TO ASK MOST OF THE PEOPLE ON MR. CLARK'S LIST WHETHER OR NOT THE PERSON THEY'RE REFERRING TO IS PRESENT IN THE COURTROOM, AND WE EXPECT THEM TO POINT OUT THIS DEFENDANT.

NOW, MOST OF THEM HAVE, AT ONE TIME OR ANOTHER, SEEN A PHOTOGRAPHIC LINEUP BUT NOT ONE THAT WOULD BE SO OVERLY SUGGESTIVE AS TO TAINT THEIR ABILITY TO MAKE AN IN-COURT IDENTIFICATION.

MR. CLARK: YOUR HONOR, I WOULD ASK YOU TO TAKE THAT UP ON AN INDIVIDUAL WITNESS BASIS.

THE COURT: WELL, WERE ALL OF THEM SHOWN THE SAME LINEUP?

MR. JUSTICE: YES, YOUR HONOR.

THE COURT: WELL, IF I CONDUCTED THE HEARING ON

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THE LINEUP, WOULD THAT NOT COVER EVERY WITNESS, MR. CLARK, IF EVERY WITNESS SAW THE SAME LINEUP?

MR. CLARK: I THINK, IF THAT'S THE CASE, YOUR HONOR. I WASN'T SURE IF EVERYONE SAW THE SAME LINEUP, BUT IF THEY DID --

THE COURT: WELL, THE SOLICITOR HAS INDICATED THEY DID.

MR. CLARK: -- THEN I THINK THE COURT COULD TAKE IT UP.

THE COURT: ALL RIGHT. I'LL HAVE A HEARING, AN IN CAMERA HEARING, ON THAT TO DETERMINE WHETHER OR NOT -- I SUPPOSE TO DETERMINE IF IT WAS UNDULY SUGGESTIVE. I SUPPOSE THAT'S WHAT YOU'RE ASKING.

MR. CLARK: YES, YOUR HONOR.

THE COURT: ANY PRIOR LINEUP THEY MAY HAVE SEEN BEFORE THEY IDENTIFIED THE DEFENDANT?

MR. JUSTICE: I DON'T UNDERSTAND THE QUESTION, YOUR HONOR.

THE COURT: I DON'T HAVE A QUESTION, MR. CLARK DOES.

MR. JUSTICE: OH, EXCUSE ME, YES, SIR.

THE COURT: HE CONTENDS THAT ALL THE WITNESSES' TESTIMONY THAT ARE GOING TO IDENTIFY THE DEFENDANT IN COURT WAS TAINTED BECAUSE ALL OF THEM WERE SHOWN AN UNDULY SUGGESTIVE LINEUP BEFORE THEIR IDENTIFICATION.

MR. JUSTICE: WE WILL PRESENT THAT LINEUP TO THE COURT TO RULE ON BEFORE ASKING ANYBODY TO MAKE AN IDENTIFICATION.

THE COURT: WELL, I UNDERSTAND WE'RE GOING TO HAVE TO HAVE SOME TESTIMONY AS TO HOW THEY FORMULATED THE LINEUP --

MR. JUSTICE: YES, YOUR HONOR.

THE COURT: -- BEFORE I COULD MAKE A RULING, BUT WE JUST NEED TO DO THAT BEFORE YOU PUT ANY WITNESSES ON THE STAND THAT MAY IDENTIFY THE DEFENDANT.

MR. JUSTICE: DO YOU WANT TO DO THAT NOW, YOUR HONOR?

THE COURT: WELL, WE CAN, BUT I DIDN'T KNOW IF YOU HAD YOUR WITNESSES.

MR. JUSTICE: I DON'T HAVE THE INDIVIDUAL WITNESSES. I HAVE THE OFFICERS WHO SHOWED THE LINEUP AND I BELIEVE WE HAVE PICTURES. WE HAVE THE LINEUP ITSELF IN OUR POSSESSION AT THE MOMENT.

MR. CLARK: YOUR HONOR, I BELIEVE THE COURT COULD RULE ON IT FROM THE LINEUP.

THE COURT: WELL, I'LL DO THAT, BUT, I MEAN, DO YOU ALL WANT TO DO THAT NOW OR DO YOU WANT TO --

MR. JUSTICE: I WOULD JUST AS SOON WAIT UNTIL IN THE MORNING. I WANT TO MAKE SURE I'VE GOT -- I'M NOT SURE MR. BLACKMON WAS PRESENT AT ALL THE SHOWINGS OF

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THE LINEUP, BUT WE COULD DO, CERTAINLY, MOST OF THEM THROUGH HIM IN FAIRLY SHORT ORDER OUTSIDE THE PRESENCE OF THE JURY TOMORROW.

THE COURT: WE'LL TAKE THAT UP IN THE MORNING AT 10:00.

MR. CLARK: THAT WILL BE FINE, YOUR HONOR.

THE COURT: CAN WE GIVE OUR OPENING STATEMENTS WITHOUT THAT OR DO YOU HAVE TO MAKE REFERENCE TO LINEUPS OR IDENTIFICATIONS?

MR. JUSTICE: THERE'S NO REFERENCE TO LINEUPS. I MAY MENTION THE STATE WILL OFFER BOTH CIRCUMSTANTIAL AND DIRECT EVIDENCE OF THE GUILT OF THE DEFENDANT.

THE COURT: I UNDERSTAND.

MR. CLARK: YOUR HONOR, ONE FURTHER MOTION. WE WOULD MOVE TO SUPPRESS PHONE RECORDS THAT WERE SUBPOENAED BY THE LAW ENFORCEMENT INVOLVED IN THIS CASE. THE BASIS FOR THAT MOTION IS THAT WE BELIEVE THOSE RECORDS WERE OBTAINED WITHOUT A SEARCH WARRANT, WITHOUT PROPER CAUSE AND WITH AN INVALID SUBPOENA. BUT AGAIN, I THINK THE COURT CAN TAKE THAT UP WHEN THEY'RE BEING INTRODUCED.

THE COURT: DO YOU WANT TO DO THAT IN THE MORNING, ALSO?

MR. JUSTICE: WE COULD DO THAT AT SOME POINT TOMORROW. THERE'S A WITNESS ON THAT SUBJECT, IF WE

HAVE TO GET INTO IT, THAT I WASN'T GOING TO CALL UNLESS I HAVE TO, BUT I COULD GET HIM HERE AT SOME POINT TOMORROW. THE PHONE RECORDS WOULDN'T BE INTRODUCED BY THE STATE UNTIL LATE IN THE TRIAL, AT LEAST THE SECOND DAY.

THE COURT: ALL RIGHT. WELL, JUST BEFORE WE GO INTO THAT, I'M GOING TO HEAR MR. CLARK'S MOTION IN FULL BEFORE I RULE ON IT, OBVIOUSLY.

MR. CLARK: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ALL RIGHT.

DO YOU ALL NEED A MOMENT BEFORE WE PROCEED?

MR. JUSTICE: IF WE COULD HAVE JUST A MOMENT BEFORE GIVING OPENING STATEMENTS --

THE COURT: WE'LL STAND AT EASE JUST A MOMENT BEFORE OPENING STATEMENTS.

BRIEF RECESS

THE COURT: (TO BAILIFF) PLEASE BRING THE JURY IN AND HAVE MR. ROBERTS TAKE THE FOREMAN'S SEAT.

(OFF-THE-RECORD DISCUSSION)

(JURY ENTERS COURTROOM AT 5:50 P.M.).

THE COURT: LET OUR RECORD REFLECT THAT ALL OUR JURORS PLUS THE ALTERNATES ARE PRESENT.

MR. ROBERTS, THE COURT HEREBY APPOINTS YOU FOREMAN OF THE TRIAL JURY. YOU WILL ALWAYS OCCUPY THE FOREMAN'S SEAT. OUR THREE ALTERNATE JURORS WILL

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ALWAYS OCCUPY THE ALTERNATE CHAIRS, AND THE OTHER LADIES AND GENTLEMEN OF THE JURY MAY SIT ANYWHERE YOU LIKE WHEN WE RETURN FROM A BREAK OR RECESS.

MR. CLERK, PLEASE ADMINISTER THE OATH TO THE JURY.

(THE CLERK SWEARING JURY EN MASSE).

THE COURT: MR. FOREMAN, LADIES AND GENTLEMEN, WHAT I WILL NOW SAY TO YOU IS INTENDED TO SERVE AS AN INTRODUCTION TO THE TRIAL OF THIS CASE. IT IS NOT A SUBSTITUTE FOR THE DETAILED INSTRUCTIONS ON THE LAW WHICH I WILL GIVE TO YOU AT THE CONCLUSION OF THE CASE AND BEFORE YOU RETIRE TO DELIBERATE YOUR VERDICT.

LADIES AND GENTLEMEN, THIS IS A CRIMINAL CASE COMMENCED BY THE STATE OF SOUTH CAROLINA, WHICH I SOMETIMES MAY REFER TO AS THE PROSECUTION, AND THIS CASE IS BASED UPON FIVE INDICTMENTS WHICH THE SOLICITOR WILL READ OR EXPLAIN TO YOU IN JUST A MOMENT, AFTER WHICH ATTORNEY CLARK, AS THE ATTORNEY FOR THE DEFENDANT, WILL ALSO BE GIVEN AN OPPORTUNITY TO MAKE A SHORT OPENING STATEMENT TO YOU IF HE SO DESIRES.

LADIES AND GENTLEMEN, YOU SHOULD UNDERSTAND THAT THESE INDICTMENTS ARE SIMPLY CHARGES AGAINST THE DEFENDANT AND THEY ARE NOT, IN ANY SENSE OF THE WORD, EVIDENCE OF THE ALLEGATIONS WHICH THEY CONTAIN. THE

DEFENDANT, MR. MATHIS, PLED NOT GUILTY TO EACH OF THE INDICTMENTS, THEREFORE, THE STATE OF SOUTH CAROLINA HAS THE BURDEN OF PROVING EACH OF THE ESSENTIAL ELEMENTS OF THE INDICTMENT BEYOND A REASONABLE DOUBT.

THE PURPOSE OF THIS TRIAL, LADIES AND GENTLEMEN, IS TO DETERMINE WHETHER OR NOT THE STATE OF SOUTH CAROLINA HAS MET THIS BURDEN. YOUR PURPOSE AS JURORS IS TO FIND AND TO DETERMINE THE FACTS IN THIS CASE. UNDER OUR SYSTEM OF CRIMINAL PROCEEDINGS, YOU, THE LADIES AND GENTLEMEN OF THE TRIAL JURY, ARE THE SOLE AND EXCLUSIVE JUDGES OF THE FACTS IN THIS CASE. IF AT ANYTIME I SHOULD MAKE ANY COMMENTS ON THE FACTS IN THIS CASE, YOU ARE AT LIBERTY TO DISREGARD THEM.

LADIES AND GENTLEMEN, IT IS VERY, VERY IMPORTANT THAT YOU PERFORM YOUR DUTY OF FINDING AND DETERMINING THE FACTS IN THIS CASE BOTH DILIGENTLY AND CONSCIENTIOUSLY, FOR ORDINARILY, LADIES AND GENTLEMEN, THERE IS NO MEANS OF CORRECTING AN ERRONEOUS DETERMINATION OF FACT BY A TRIAL JURY.

ON THE OTHER HAND AND WITH EQUAL EMPHASIS, I CHARGE YOU THAT THE LAW, AS GIVEN TO YOU BY THIS COURT, CONSTITUTES THE ONLY LAW FOR YOUR GUIDANCE AND FOR YOUR CONSIDERATION, AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW AS THE COURT WILL STATE IT FOR YOU.

LADIES AND GENTLEMEN, YOU ARE TO FIND AND TO

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DETERMINE THE FACTS IN THIS CASE FROM THE TESTIMONY WHICH YOU WILL HEAR FROM THIS WITNESS STAND, ALONG WITH ANY OTHER EVIDENCE WHICH IS PROPERLY ADMITTED IN THE TRIAL OF THE CASE. IT IS UP TO YOU AND YOU ALONE TO DETERMINE THE INFERENCES WHICH YOU FEEL MAY PROPERLY BE DRAWN FROM THE EVIDENCE.

YOU MUST NOT CONSIDER ANYTHING YOU MAY HAVE READ OR HEARD ABOUT THIS CASE OUTSIDE OF THIS COURTROOM, WHETHER BEFORE OR DURING THE TRIAL OF THIS CASE, AND UNTIL THIS CASE IS SUBMITTED TO YOU, LADIES AND GENTLEMEN, YOU MUST NOT DISCUSS IT WITH ANYONE, NOT EVEN WITH YOUR FELLOW JURORS. AFTER THE CASE IS SUBMITTED TO YOU, YOU MUST DISCUSS IT ONLY IN YOUR JURY ROOM WITH ALL OF YOUR FELLOW JURORS BEING PRESENT.

LADIES AND GENTLEMEN, IT IS VERY IMPORTANT THAT YOU KEEP AN OPEN MIND IN THE CASE AND THAT YOU NOT DECIDE ANY ISSUE IN THIS CASE UNTIL THE ENTIRE CASE HAS BEEN SUBMITTED TO YOU UNDER THE INSTRUCTIONS FROM THIS COURT.

IT IS YOUR ADDED DUTY, MR. FOREMAN, TO PRESIDE IN THE JURY ROOM AND TO SERVE AS THE SPOKESPERSON FOR THE TRIAL JURY.

SOLICITOR, YOU MAY OPEN.

MR. CLERK, DO YOU WANT TO PASS THE INDICTMENTS TO

HIM?

MR. JUSTICE: MAY IT PLEASE THE COURT.

MR. FOREMAN, LADIES AND GENTLEMEN OF THE JURY, THE JUDGE VERY KINDLY INTRODUCED ME EARLIER. I'LL DO IT AGAIN. I'M JOHN JUSTICE. I AM YOUR SOLICITOR. I'M THE SOLICITOR FOR WHAT WE CALL THE SIXTH JUDICIAL CIRCUIT, WHICH IS CHESTER COUNTY, LANCASTER COUNTY AND FAIRFIELD COUNTY, AND I LIVE OVER IN CHESTER COUNTY. I AM GOING TO BE THE PRIMARY PROSECUTING ATTORNEY FOR THE STATE OF SOUTH CAROLINA. ASSISTING ME WILL BE THE CHIEF ASSISTANT SOLICITOR, DOUG BARFIELD, IN THE OFFICE HERE IN LANCASTER, AND ALSO FROM TIME TO TIME MR. TOM HOLLAND AND MR. CHRIS TAYLOR, WHO ARE BOTH SEATED ACROSS THE ROOM, WILL ALSO BE ASSISTING.

LADIES AND GENTLEMEN, THE OFFENSES CHARGED IN THESE INDICTMENTS ARE THAT OF MURDER, BURGLARY IN THE FIRST DEGREE, TWO COUNTS OF KIDNAPING, ONE COUNT OF ARMED ROBBERY, ALL OCCURRING IN LANCASTER COUNTY ON THE NIGHT OF JUNE 20, 2000. THE TRIAL OF A CRIMINAL CASE IS AN ATTEMPT TO RECREATE THE COMMISSION OF A CRIME AND TO RECREATE THE INVESTIGATION THAT FOLLOWED THROUGH THE USE OF WITNESSES AND THE INTRODUCTION OF EVIDENCE.

OUR SYSTEM OF JUSTICE QUITE CORRECTLY DOES NOT ALLOW ME TO SIMPLY TELL YOU WHAT HAPPENED. THE

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VOIR DIRE

DATE: 6/2/03

COUNTY: Lancaster

SE NO.: CR-03-29-1418

PLF./STATE: A.C.

DEFENDANT: Vernard Jerome Mathis

JUDGE: Paul C. Ilgot Jr.

PLF./STATE ATTY.: John C. Justice
Gaylon Barfield

DEFENSE ATTY.: John D. Clark

COURT REPORTER: NANCY MOORE MONTEITH

JUROR NO.	NAME	SEX	RACE	*COURT	PLF.	DEF.	ACCEP
131	Eric Sweeney	M	W		✓	✓	✓
102	Mitchell Parker	M	W		✓	✓	✓
142	Linda Wells	F	B		✓	✓	✓
119	Jessy Sistare	F	W		✓	X	
105	William Peebles	M	W		✓	✓	✓
88	Gary McCain	M	W		✓	X	
94	Bredda Miller	F	B		✓	✓	✓
84	Susan McKinnon	F	W		✓	✓	✓
14	Cheryl Bleiker	F	W		✓	X	
42	Robert Duncan	M	B		✓	✓	✓
111	Ronnie Roberts	M	W		✓	✓	✓
16	James Boone	M	B		X		
26	Jim Chavis	F	B		✓	✓	✓
46	Lisa Ford	F	B		X		
98	Alan Mobley	M	B		X		
76	John Knight	M	W		✓	✓	✓
24	Galina Curtis	F	W		✓	✓	✓
80	Eddie Lewis	M	W		✓	✓	✓

*For the court column please indicate who made the motion to strike the jurors "for cause" with a C for Court, P for Plaintiff or D for Defense.

Alt.							
20	Linda Brown	897	W		X		
120	Melvin A. [illegible]	M	B	X			

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	2013 CP 29 00951
Vernard Jerome Mathis, #297034	)	
v.	)	**APPLICATION FOR**
State of South Carolina	)	**POST-CONVICTION RELIEF**

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899

2. Name and location of Court which imposed sentence: Lancaster County Court of General Sessions; 3888 Chester Highway, Lancaster, SC 29721.

3. Name(s) of co-defendant(s) (if any) N/A

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) 2000-GS-29-1418 - Murder

   (b) 2001-GS-29-250 - Armed Robbery

   (c) 2003-GS-29-524 - First Degree Burglary

   (d) 2003-GS-29-525 - Kidnapping

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OF COURT
JUL
CLERK OF COURT
LANCASTER, SC

(e) 2003-GS-29-526 - Kidnapping

5. The date upon which sentence was imposed and the terms of the sentence:

(a) June 6, 2003 Life sentence

(b) June 6, 2003 Life Sentence

(c) June 6, 2003 Life Sentence

(d) June 6, 2003 Life Sentence

(e) June 6, 2003 Life Sentence

6. Check whether a finding of guilty was made:

(a) after a plea of guilty ____

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes

8. If you answered **yes** to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. Supreme Court of South Carolina

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal Dismissed

ii. Petition for Writ of Certiorari Denied

iii. _____

(c) the date of each such result:

i. 6/13/2005

ii. 11/02/2006

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. 2005-UP-375

ii. Unpublished Order

iii. _____

9. If you answered **no** to (7), state your reasons for not so appealing:

(a) _____.

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.

(b) Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. *See,* Attachment A. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. *See,* Attachment B.The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:

Kershaw Police Department from June 26, 2000 through December 31, 2000.

York Police Department from July 14, 1998 until April 7, 2000.

Lake City Police Department from July 15, 1996 until July 13, 1998.

The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.

University of South Carolina Police Department starting in 1989.

Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit

continuously from his election in 1978 until his illness and death in 2006. *See,* Attachment C.

(b) Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

(c) The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.

(d) The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office. *See,* Attachment D.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? n/a

13. If you answered yes to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Application for Post-Conviction Relief

ii. Post-Conviction Relief Appeal

iii. Federal Habeas Corpus Petition

iv. Appeal to the Fourth Circuit Court of Appeals

(b) the name and location of the Court in which each was filed:

i. Lancaster County Court of Common Pleas

ii. Supreme Court of South Carolina

iii. United States District Court District of South Carolina

iv. Fourth Circuit Court of Appeals

(c) the disposition thereof:

i. Denied and Dismissed

ii. Certiorari Denied

iii. Denied

iv. Dismissed

(d) the date of each such disposition:

i. 10/14/2008

ii. 12/2/2010

iii. 08/22/2012

iv. 12/12/2012

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. Order of Dismissal, unpublished

ii. Order, unpublished

iii. Order, unpublished

iv. Judgment, unpublished

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) The Applicant only recently became aware of the facts and circumstances which are the foundation for his current claim. Counsel for the Applicant was not able to verify the facts relevant to claim until June 26, 2013.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea?

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered yes to one or more parts of (17), list:

i. the name and address of each attorney who represented you:

(a) n/a

(b) John D. Clark, Esq.; Clark Law Firm, LLC, P. O. Drawer 880, Sumter, SC 29151

(c) John D. Clark, Esq.; Clark Law Firm, LLC, P. O. Drawer 880, Sumter, SC 29151

(d) Robert M. Dudek, Chief Appellate Defender; South Carolina Commission on Indigent Defense, Division of Appellate Defense; 1330 Lady Street, Suite 401, Columbia, S.C. 29201

(e) Tricia A. Blanchette, Esq.; Law Office of Tricia A. Blanchette, Esq.; P. O. Box 12725, Columbia, SC 29211

(f) Tricia A. Blanchette, Esq.; Law Office of Tricia A. Blanchette, Esq.; P. O. Box 12725, Columbia, SC 29211

(g) Jeremy A. Thompson, Esq.; Law Office of Jeremy A. Thompson, LLC; P. O. Box 12891, Columbia, SC 29211.

(h) Jeremy A. Thompson, Esq.; Law Office of Jeremy A. Thompson, LLC; P. O. Box 12891, Columbia, SC 29211.

(ii) the proceedings at which each such attorney represented you:

(a) n/a

(b) Trial

(c) Sentencing

(d) Appeal

(e) Post-Conviction Relief

(f) Appeal from Post-Conviction Relief

(g) Writ of Habeas Corpus Petition under 28 U. S.C. § 2254

(h) Appeal to the Fourth Circuit Court of Appeals

19. State clearly the relief you seek in filing this application:

Vacation of judgments and sentences. Applicant seeks a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)
)
County of Lancaster)

VERIFICATION

I, Tara Dawn Shurling, *retained* counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Tara Dawn Shurling
S.C. Bar No. 5099
3614 Landmark Drive
Suite A
Columbia, SC 29204
(803) 738-8622
Fax (803) 738-1600
tdslaw@shurlinglaw.com

ATTORNEY FOR THE APPLICANT

SWORN to and subscribed before me this 2nd day of July, 2013.

Suzanne Graham (L.S.)
Notary Public

My Commission Expires: 2/28/2023

Attachment A

VOIR DIRE

DATE: 6/2/03

COUNTY: Lancaster

SE NO.: CC-03-29-1415 JUDGE: Paul C. Wyatt, Jr.

PLF./STATE: S.C. PLF./STATE ATTY.: John C. Justice
Gaylan Barfield

DEFENDANT: Vinard Jerome Mathis DEFENSE ATTY.: John D. Clark

COURT REPORTER: NANCY MOORE MONTEITH

JUROR NO.	NAME	SEX	RACE	*COURT	PLF.	DEF.	ACCEPT
131	Eric Sweeney	M	W		✓	✓	✓
102	Mitchell Parker	M	W		✓	✓	✓
142	Linda Wilds	F	B		✓	✓	✓
119	Jean Histand	F	W		✓	X	
105	William Peebles	M	W		✓	✓	✓
88	Mary McCain	M	W		✓	X	
94	Bridia Miller	F	B		✓	✓	✓
84	Susan McMinn	F	W		✓	✓	✓
14	Cheryl Bethea	F	W		✓	X	
42	Robert Duncan	M	B		✓	✓	✓
111	Ronnie Roberts	M	W		✓	✓	✓
16	James Boone	M	B		X		
26	Jim Chavis	F	B		✓	✓	✓
46	Tisha Ford	F	B		X		
98	Alan Motley	M	B		X		
76	John Knight	M	W		✓	✓	✓
24	Sabrina Carter	F	W		✓	✓	✓
80	Eddie Davis	M	W		✓	✓	✓

*For the court column please indicate who made the motion to strike the jurors "for cause" with a C for Court, P for Plaintiff or D for Defense.

alt.
72 Linda Brown W X

Attachment B
pg 1 of 2

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, V. VERNARD JEROME MATHIS, DEFENDANT.	)	DOCKET NO. 00-GS-29-1418 01-GS-29-0250 03-GS-29-0524 03-GS-29-0525 03-GS-29-0526 TRANSCRIPT OF RECORD (VOIR DIRE)

JUNE 2, 2003
LANCASTER, SOUTH CAROLINA

BEFORE:

HONORABLE PAUL E. SHORT, JR.

FOR THE PLAINTIFF: JOHN R. JUSTICE, SOLICITOR
DOUGLAS A. BARFIELD, JR., ASSISTANT SOLICITOR
THOMAS J. HOLLAND, ASSISTANT SOLICITOR

FOR THE DEFENDANT: JOHN D. CLARK, ESQUIRE

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

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Attachment B
pg. 2 of 2

THE COURT: DO ANY MEMBERS OF THE PETIT JURY PANEL HAVE ANY RELATIONSHIP OR CONTACT WITH SOLICITOR JOHN REID JUSTICE OR ANY MEMBER OF THE SIXTH JUDICIAL CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE STAND.

(NO RESPONSE).

THE COURT: HAS ANY MEMBER OF THE PETIT JURY PANEL EVER HAD A BUSINESS RELATIONSHIP WITH MCDONALD AMUSEMENT COMPANY? IF SO, PLEASE STAND.

(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME AGAIN?

MS. HANCOCK: VICKIE HANCOCK.

THE COURT: MS. HANCOCK, AND YOUR JUROR NUMBER?

THE CLERK: 56.

THE COURT: I BELIEVE SHE'S BEEN EXCUSED FROM THE TRIAL OF THIS CASE.

(TO MS. HANCOCK) THANK YOU, PLEASE HAVE A SEAT.

HAS ANY MEMBER OF THE PETIT JURY PANEL DONE BUSINESS WITH CHANDLER'S AUTO SHOP OR DOES BUSINESS WITH CHANDLER'S AUTO SHOP? IF SO, PLEASE STAND.

(JUROR STANDING).

THE COURT: YES, MA'AM, YOUR NAME?

JUROR: JEAN WHITE.

THE COURT: MS. WHITE, WHAT'S THE NATURE OF YOUR BUSINESS WITH CHANDLER'S AUTO SHOP?

MS. WHITE: A CAR WRECK, AND THEY FIXED IT.

Attachment C

Admissions
Current Students
Alumni & Development
Faculty & Staff
Legal Community

About the School
Academic Programs
Academic Success Program
Administrative Offices
Career Services
Conferences & Symposia
Events, Publications & Media Relations
Information Technology
Journals & Publications
Law Library
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Registrar
Student Affairs
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SEARCH

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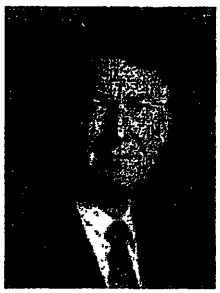
Memory Hold The Door

Memory Hold The Door
About Memory Hold The Door

Roll of Inductees
- Alphabetical
- By Year

Alumni Home
Orientation Displays

John R. Justice
1943 – 2006



The Honorable John R. Justice was born September 13, 1943, in Great Falls, South Carolina, to parents Kate Baker and John Justice. He graduated from Great Falls High School in 1961 and received his bachelor's degree from the University of South Carolina in 1965 and Juris Doctorate from the University of South Carolina School of Law in 1967.

Justice served as a member of the S.C. National Guard from 1967 to 1992 and retired with the rank of Lieutenant Colonel. He was elected to the S.C. House of Representatives in 1970 and 1972 and was elected solicitor for the Sixth Judicial Circuit in 1978, serving unopposed since that time.

Judge Justice served his profession in many ways. He served as a member and past president of the Solicitors' Association of South Carolina, as president and chairman of the board of the National District Attorneys Association from which he received the President's Award, the highest award given by the association, and served as chairman of the Board of Regents of the National College of District Attorneys at the time of his death.

Through his years of service and because of his commitment to helping others, Justice received numerous awards, including the Order of the Palmetto, awarded by former South Carolina Gov. James H. Hodges. In addition, Exit 55 along Interstate 77, which Justice referred to as the "crossroads of my life," was named the Solicitor John R. Justice Interchange.

He was a member of numerous civic and charitable organizations and a frequent speaker at continuing legal education programs of the South Carolina Bar, South Carolina Trial Lawyers Association and South Carolina Solicitors Association.

The Honorable John R. Justice died September 29, 2006. He is survived by his wife, Gracy Long Justice, and three children, Dolly L. Garfield, Ivy E. Justice and Tess C. Justice.

Attachment C

SC VOLUNTEER
LAWYERS FOR THE ARTS

701 Main Street · Columbia, SC 29208 · 803-777-4155 · lawweb@law.sc.edu
SITE INFORMATION
© University of South Carolina Board of Trustees

Attachment 9

JUROR INFORMATION CARD

FOR TERM BEGINNING: 06/02/2003 | JUROR NUMBER: 111

(PLEASE TYPE OR PRINT CLEARLY)

CITY, COUNTY, STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDREN
Kershaw / Lancaster Co. / SC	56	☒	☐	☐	☐	1

YOUR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS
Training Manager	Assurant Group	1
SPOUSE'S OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS
Education	USC	17

NAME OF SPOUSE: Rebecca M. Roberts

IF THE ADDRESS BELOW IS INCORRECT PLEASE X THE B- AND CORRECT THE ADDRESS ON THE BACK OF THIS CA

RONNIE E ROBERTS

HEATH SPRING, SC 29058

HAVE PREVIOUSLY SERVED ON A	IF SO WHEN?
CIVIL ☐ CRIMINAL ☐ JURY	
HAVE YOU EVER BEEN A PARTY TO A CIVIL LAWSUIT? YES ☐ NO ☒	HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☐ NO ☒

FORMAL EDUCATION COMPLETED:

B/A Degree USC

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)
)
VERNARD JEROME MATHIS , 297034)
☒ Applicant,)
)
v.)
)
The State Of South Carolina)
☐ Respondent.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2013 CP 29 00951

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Tara Dawn Shurling, Bar No. 5099 Address: 3614 Landmark Drive Suite D Columbia, South Carolina 29204 phone: 803-738-8622 fax: 803-738-1600 e-mail: other:	Suzanne H. White , Bar No. Address: P.O. Box 11549 Columbia, South Carolina phone: 803-734-4127 fax: e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Tara Dawn Shurling July 2, 2013
Signature of Attorney for ☒ Applicant / ☐ Respondent Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

FILED
OFFICE OF CLERK
OF COURT
JUL -9
CLERK OF COURT
LANCASTER, S.C.

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

2013-CP-29-051

MOTION FOR LEAVE TO CONDUCT DISCOVERY

FILED
OFFICE OF CLERK
OF COURT
2013 OCT -7 PM 1:51
CLERK OF COURT
LANCASTER, SC

NOW COMES the Applicant in the above captioned Post-Conviction Relief action asking this Court for leave to engage in discovery in this matter pursuant to S.C. Code Ann. §17-27-150 (A) (1996). Specifically, the Applicant requests permission to depose Ronnie E. Roberts, a juror from his trial, concerning his law enforcement connections, and the fact that they were not disclosed in response to *voir dire* questioning at the Applicant's trial. The Applicant additionally seeks leave of Court to depose Tom Holland, a member of the Sixth Circuit Solicitor's Office at the time of the Applicant's trial concerning his knowledge of this juror's background and the knowledge of others in that office concerning this juror at the time of the Applicant's trial.

The Applicant respectfully submits that the limited discovery requested herein will significantly aid the parties in determining the merits of the Applicant's pending Post-Conviction Relief Application. Further, given the age of the juror in question, a deposition is necessary in order to safeguard the Applicant's right to be fully heard in this matter. See attached juror selection information verifying this juror to currently be 66 years of age.

Respectfully submitted,

TARA DAWN SHURLING
Attorney and Counselor at Law

3614 Landmark Drive, Suite A
Columbia, South Carolina 29204
(803)738-8622
(803)738-1600 FAX

ATTORNEY FOR APPLICANT

This 4th day of October, 2013.

JUROR INFORMATION CARD

(PLEASE TYPE OR PRINT CLEARLY)

FOR TERM BEGINNING: 06/02/2003 JUROR NUMBER: 111

TY. COUNTY. STATE OF BIRTH	AGE	MARRIED	SINGLE	WIDOWED	DIVORCED	NO. OF CHILDR
Kershaw / Lancaster Co. / SC	56	☒	☐	☐	☐	1

OUR OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	NAME OF SPOUSE
TRAINING Manager	ASSURANT Group	1	Rebecca M. Roberts
SPOUSE'S OCCUPATION	PRESENT OR FORMER EMPLOYER	YEARS	IF THE ADDRESS BELOW IS INCORRECT PLEASE "X THE B AND CORRECT THE ADDRESS ON THE BACK OF THIS CA
Education	USC	17	

HAVE PREVIOUSLY SERVED ON A	IF SO, WHEN?	
IVIL ☐ CRIMINAL ☐ JURY		RONNIE E ROBERTS
AVE YOU EVER BEEN A PARTY TO A CIVIL AWSUIT? YES ☐ NO ☒	HAVE YOU EVER BEEN CONVICTED OF A CRIME (OTHER THAN A MINOR TRAFFIC OFFENSE)? YES ☐ NO ☒	HEATH SPRING, SC 29058
ORMAL EDUCATION COMPLETED: B/A Degree USC		

INFORMATION BELOW WILL BE MADE AVAILABLE ONLY TO OFFICERS OF THE COURT

ATTACHMENT TO MOTION FOR LEAVE TO CONDUCT DISCOVERY

LANCASTER CRIMINAL JURORS
Date to Report:06/02/2003
Time to Report:02:30P.M.

MMONS	JUROR NAME	JURY#	R	S	BIRTH	SOC SEC	JUROR OCCUPATION	SPOUSE OCCUPATION
19 X	RICHARDSON, SCOTT JR	35895	B	M		[redacted]		11762 Hamburg Rd
	INDIAN LAND, SC 29715							Fort Mill, SC 29715
10	ROACH, CORA A	36047	W	F		[redacted]		
	LANCASTER, SC 29720							
11	ROBERTS, RONNIE E	36274	W	M		[redacted]		
	HEATH SPRING, SC 29058							
12 X	ROBINSON, JOHN E	36635	W	M		[redacted]		1403 Clark Rd
	LANCASTER, SC 29720							Lancaster, SC 29720
13	ROBINSON, L FAYE	36671	W	F		[redacted]		
	LANCASTER, SC 29720							
14	RODRIGUEZ, PATRICIA M	49328	H	F		[redacted]		
	LANCASTER, SC 29720							
15	ROLLINGS, RANDAL W	37143	W	M		[redacted]		
	LANCASTER, SC 29720							
16	SHERRER, SCOTT R	49197	W	M		[redacted]		
	LANCASTER, SC 29720							
17	SHUTE, JANICE H	38673	W	F		[redacted]		
	LANCASTER, SC 29720							
18	SIMPSON, CARRIE J	38795	B	F		[redacted]		
	KERSHAW, SC 29067							
19	SISTARE, JENNIE B	39238	W	F		[redacted]		
	LANCASTER, SC 29720							
20	SMITH, MELVIN W	39715	B	M		[redacted]		
	LANCASTER, SC 29720							

915

ATTACHMENT TO MOTION FOR LEAVE TO CONDUCT DISCOVERY
PAGE 2 OF 2

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

2013-CP-29-051

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Motion for Leave to Conduct Discovery in the above matter has been served on opposing counsel this 3rd day of October, 2013, by mailing one (1) copy in a stamped envelope properly addressed to:

Suzanne H. White
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 3rd day
of October, 2013

Sharon T. McCollister (L.S.)
Notary Public for South Carolina
My Commission Expires: Jan 16, 2017

FILED
CLERK OF COURT
LANCASTER, SC
2013 OCT -7 PM 1:51
CLERK OF COURT
OF COURT

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Vernard Jerome Mathis, #297034, Applicant, v. State of South Carolina, Respondent.	)	2013-CP-29-0051 **RETURN TO MOTION FOR LEAVE TO CONDUCT DISCOVERY**

This matter comes before the Court by way of the Applicant's Motion for Leave to Conduct Discovery. The Applicant requests an Order allowing Applicant to depose a juror in his case and a former Assistant Solicitor for the Sixth Judicial Circuit.

I.

First, Respondent notes the Uniform Post-Conviction Procedure Act does not allow for discovery in a non-capital post-conviction relief case without good cause and order of the circuit court permitting discovery requests. S.C. Code Ann. § 17-27-150(A) states:

> A party in a non-capital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise. If necessary for the effective utilization of discovery procedures, counsel may be appointed by the judge for an applicant who qualifies for appointment pursuant to Section 17-27-60 or similar applicable provisions of law.

The conviction being challenged by the Applicant in this action arises from a non-capital offense. However, because of the allegation of newly discovered evidence of juror misconduct, Respondent has no objection to Applicant's request, with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at voir dire and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

III.

The Respondent therefore consents to the Motion for Leave to Conduct Discovery with the above stipulations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Deputy Attorney General

BY: _____
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737

October 17, 2013.

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)	IN THE COURT OF COMMON PLEAS SEVENTH JUDICIAL CIRCUIT
Vernard Jerome Mathis, Applicant, v. State of South Carolina, Respondent.	)	**2013-CP-29-0051** **CERTIFICATE OF SERVICE BY MAIL**

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Respondent's Return to Motion for Leave to Conduct Discovery in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

Anne Mueller
Anne A. Mueller
Legal Assistant for the Respondent

DATED this 17th day of October, 2013.

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS
Vernard Jerome Mathis, #297034, Applicant, v. State of South Carolina, Respondent.	)	2013-CP-29-0951 **RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief application filed July 9, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary – First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant was convicted of all offenses following a jury trial. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr., to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Applicant also submitted a *pro se* brief. The appeal was dismissed. State v. Mathis, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then

petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in and order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an application for post-conviction relief (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, at which Applicant was present and represented by Tricia Blanchette, Esquire. In an order dated October 14, 2008, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The Applicant's right to a fair trial, as guaranteed by the Fifth. Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had out him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.
    a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. *See,* Attachment A. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff this juror failed to respond. *See,* Attachment B. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31. 2000. His career included the following employment:
        i. Kershaw Police Department from June 26. 2000 through December 31, 2000.
        ii. York Police Department from July 14, 1 998 until April 7, 2000.
        iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
        iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
        v. University of South Carolina Police Department starting in 1989.
        vi. Lancaster Police Department starting in 1982.

    In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief

prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006. *See*, Attachment C.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.
c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.
d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office. *See*, Attachment D.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the appellate records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to –160. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offense(s) he challenges in this Application on June 6, 2003. The Remittitur was sent, after the Applicant's unsuccessful appeal, on November 6, 2006. Any application for PCR was therefore to be filed on or before November 7, 2007. This Application was filed on July 9, 2013, which was more than five (5) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

V.

The Court should also summarily dismiss the application for post-conviction relief under the equitable doctrine of laches. The Applicant has filed this application more than ten (10) years after he was convicted. The Respondent submits that the doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

> A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one year statute of limitations. See S.C. Code Ann.§17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. The solicitor who is the focus of Applicant's allegations is deceased. If the Applicant had sought post-conviction relief within a reasonable time after his trial, neither of these problems would exist. Therefore, the Court should summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired.

Respectfully submitted,

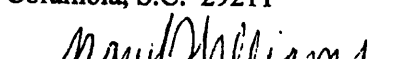
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By: 
Attorneys for the Respondents

Columbia, South Carolina
January 27, 2014

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Vernard Jerome Mathis, Applicant, v. State of South Carolina, Respondent.	)	**2013-CP-29-0951** **CERTIFICATE OF SERVICE**

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Respondent's Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
Law Offices of Tara Dawn Shurling, PA
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

Anne A. Mueller
Legal Assistant for the Respondent

DATED this 27th day of January, 2014.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER)

Vernard Jerome Mathis
☐ Plaintiff

v.

State of South Carolina
☒ Defendant.

CASE NO.
2013-CP-29-0951

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Tara D. Shurling, Bar No. Address: 3614 Landmark Drive, Suite D Columbia, South Carolina 29204 phone: fax: e-mail: other:	Mary S. Williams Bar No. Address: P.O. Box 11549 Columbia, SC 29211-11549 phone: (803) 734-3737 fax: (803) 734-4113 e-mail: other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached Return and Motion to Dismiss.

Mary S. Williams
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

January 27, 2014
Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT:
☒ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

_____
JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed:

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS
Vernard Jerome Mathis, #297034, Applicant,	)	2013-CP-29-0951
v.	)	**AMENDED RETURN AND MOTION TO DISMISS**
State of South Carolina, Respondent.	)	

In this amended response to the post-conviction relief application filed July 9, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary – First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant was convicted of all offenses following a jury trial. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr., to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Applicant also submitted a *pro se* brief. The appeal was dismissed. State v. Mathis, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then

petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in and order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an application for post-conviction relief (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, at which Applicant was present and represented by Tricia Blanchette, Esquire. In an order dated October 14, 2008, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Applicant filed this application for post-conviction relief on July 9, 2013, and subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at voir dire and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had out him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.
    a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. *See,* Attachment A. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff this juror failed to respond. *See,* Attachment B. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31. 2000. His career included the following employment:
        i. Kershaw Police Department from June 26. 2000 through December 31, 2000.
        ii. York Police Department from July 14, 1 998 until April 7, 2000.
        iii. Lake City Police Department from July 15, 1996 until July 13, 1998.
        iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
        v. University of South Carolina Police Department starting in 1989.
        vi. Lancaster Police Department starting in 1982.

        In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006. *See*, Attachment C.
    b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.
    c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.
    d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office. *See*, Attachment D.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the appellate records, the prior PCR records by reference, and the deposition transcripts. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the application for post-conviction relief because the testimony gathered by Applicant at the depositions of Mr. Holland and Mr. Roberts has failed to yield any evidence of juror misconduct. When allegations arise concerning a juror's failure to reveal information in response to *voir dire* questions, courts look to whether the concealment was intentional and consider the nature of the information concealed. State v. Woods, 345 S.C. 583, 587-88, 550 S.E.2d 282, 284 (2001). State v. Guillebeaux, 362 S.C. 270, 274, 607 S.E.2d 99, 101 (S.C. Ct. App. 2004). Provided a claim is timely raised, a new trial is warranted on the basis of juror misconduct if it is shown that (1) the juror intentionally concealed information; and (2) the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. See State v. Woods, 345 S.C. 583, 587–89, 550 S.E.2d 282, 284 (2001); McCoy v. State, 401 S.C. 363, 371, 737 S.E.2d 623, 627-28 (2013). The first part of the Woods test requires a showing of intentional concealment because it is not a juror's responsibility to anticipate what an attorney might be seeking by asking a particular question. Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). A determination that a juror did not intentionally conceal the information ends the court's inquiry. State v. Sparkman, 358 S.C. 491, 497, 596

S.E.2d 375, 377-78 (2004). "[I]ntentional concealment occurs when the question presented to the jury on *voir dire* is reasonably comprehensible to the average juror and the subject of the inquiry is of such significance that the juror's failure to respond is unreasonable." Woods, 345 S.C. at 588, 550 S.E.2d at 284. On the other hand, unintentional concealment occurs "where the question posed is ambiguous or incomprehensible to the average juror, or where the subject of the inquiry is insignificant or so far removed in time that the juror's failure to respond is reasonable under the circumstances." Id. Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014).

Roberts' deposition testimony failed to yield any evidence that he intentionally concealed information from the Court, the solicitor, or the defense attorney at trial. At the deposition, Roberts testified he was an officer with the Lancaster Police Department from 1975 until 1982. He testified that after he left the Lancaster Police Department, he went to work as the Director of Public Safety for the Lancaster branch of the University of South Carolina Police Department until 1986. Roberts testified that he served as the Chief of the University of South Carolina Police Department in Columbia from 1986 until 1989. From 1989 until 1996, Roberts was employed as an instructor with the South Carolina Criminal Justice Academy in Columbia. In 1996, Roberts left the Criminal Justice Academy to serve as the Chief of Police for Lake City, South Carolina. He testified he remained in Lake City until 1998 when he became the Police Chief for the city of York, South Carolina. Roberts testified he held that position until his retirement on April 7, 2000. Finally, Roberts testified he served as the Police Chief for the town of Kershaw from July, 2000 through December, 2000, at which point the town of Kershaw disbanded its police department and entered a service agreement with the Lancaster County Sheriff's Department. Roberts testified that after leaving the Kershaw Police Department, he

retired from law enforcement. (Roberts Dep. 6-10). Roberts testified that at the time of Applicant's trial in 2003, he was employed by a mortgage insurance company called Assurant Group in Florence, South Carolina. (Roberts Dep. 4:4-5.)

Roberts testified at the deposition that he did not disclose his background in law enforcement because he was never asked about it, and he was only asked about his present occupation. He further testified that he would have answered any question that was asked of him. He testified that jurors are "not supposed to volunteer a bunch of stuff you're not asked to do." (Roberts Dep. 11:16-23). Roberts testified at the deposition that at the time of Applicant's trial, he had no relationship with the Sixth Circuit Solicitor's Office. He testified that during his tenure as Kershaw Police Chief, he did not have any cases that went to the solicitor's office, and he had no contact with the solicitor's office. (Roberts Dep. 12:10-11, 16-17). He testified that during his time at with the Lancaster Police Department, he only met the Solicitor, John Justice, once. It was also the only time he testified as a witness during his tenure with the Lancaster Police Department. (Roberts Dep. 13:16-20). Roberts testified the trial and the meeting with Solicitor Justice took place over twenty (20) years before Applicant's trial. (Roberts Dep. 12:21-22). Roberts further testified at the deposition that during his tenure with the Lancaster branch of the USC Police Department, his department only dealt with parking and disorderlies. He testified that the Lancaster Police Department handled all criminal matters, and that nothing he was involved in ever went to court. He testified that at the time, his employees were security guards and had no arrest powers. (Roberts Dep. 14:3-8, 15-20).

Roberts testified that when he received his summons for jury duty, he called the Sixth Circuit Solicitor's Office and asked if his background would disqualify him from jury duty. (Roberts Dep. 15:18-22). Roberts testified he did not remember with whom he spoke. (Roberts

Dep. 16:2-3). Roberts testified he moved away from Lancaster in 1986. (Roberts Dep. 25:6-7). He testified he was living at the beach at the time of Applicant's trial (Roberts Dep. 18:9-10). Roberts testified he knew one of the officers who testified at the trial: Barry Faile, currently the Lancaster County Sheriff. He testified he did not recall being asked during *voir dire* if he knew any of the witnesses. (Roberts Dep. 16:13-14, 17: 1-2). Roberts testified he was not close friends with Barry Faile. (Roberts Dep. 21:4-5). He further testified he did not speak to anyone from the solicitor's office or any members of law enforcement during the trial. (Roberts Dep. 18:12-14). Roberts testified he did not disclose his background to anyone on the jury, but that he did know one juror. That juror, Eddie Lewis, did not discuss Roberts' background. (Roberts Dep. 18-19). Applicant attempted to ask Roberts about the jury's deliberation, to which Respondent objected. Roberts responded,

> "There wasn't a lot of deliberation in the room. Like I say, we asked for an explanation and we got that. We came back and voted. I think it was fairly quick. I can't – It's been a long time. I can't remember. I don't know, but I did not want to use my background to entice someone to vote my way, you know what I'm saying. So I didn't. I let everyone make up their own mind. Nobody was enticed to vote. I was the most fair person in that jury room."
>
> (Roberts Dep. 20:2-12).

Roberts subsequently testified that he knew who Solicitor Doug Barfield was, but he did not know him personally. He testified he knew him by sight, saying "I just – he dresses a certain kind of way. That's how I knew him. Everybody knows him ... He's got the mustache thing and all that going on. That's all I know ... I've just seen him around. I knew he worked in the Solicitor's office. I didn't know him that well. He knows some of my older family but he's older than I am." (Roberts Dep. 23:1-14). Roberts testified that he had no relationship with Barfield. (Roberts Dep. 24:12-15). He further testified that he had no relationship with anyone at the

solicitor's office. (Roberts Dep. 25:18-25). Roberts testified that his knowledge of law enforcement officials did not impact his ability to be a fair and impartial juror. (Roberts Dep. 29:1-3). Finally, Roberts testified that he would have disclosed his law enforcement background, had he been asked about it. (Roberts Dep. 33:15-18).

Applicant has failed to show any evidence of misconduct by Mr. Roberts. In order for his claim to be granted, Applicant must show that Roberts intentionally concealed information during *voir dire*. See State v. Kelly, 331 S.C. 132 (1998). Here, Roberts truthfully filled out the jury questionnaire, which only asked about his occupation and "Present or Former Employer" (Applicant's Attachment D). Additionally, at no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background, or if they were related to anyone involved in law enforcement. Roberts testified that he would have disclosed his background, if the question had been asked. A potential juror has no duty to disclose background information when he is not asked to do so; rather, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). Roberts testified that he retired from law enforcement when he left the Kershaw Police Department in 2000 and was working as a software training manager for a mortgage insurance company at the time of Applicant's trial. Certainly that would not qualify as any type of law enforcement work. Applicant argues that Roberts committed misconduct by not responding affirmatively when the petit jury panel was asked, "Do any members have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit Solicitor's Office? If so, please stand." (Applicant's Attachment B). However, Roberts had no relationship with the Solicitor's Office. The definition

of "relationship" denotes a "connection" between people. See *Webster's New World College Dictionary* 1209 (4th ed.2008) (defining "relationship" as "the quality or state of being related; connection" and "a continuing attachment or association between persons, firms, etc."); *The American College Dictionary* 1022 (1969) (defining "relationship" as "connection; a particular connection"). Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). Roberts testified repeatedly that the call was the only contact he had with the solicitor's office since he testified in a trial over twenty (20) years before. Roberts testified that he had no idea who he spoke to at the solicitor's office, and he further testified that once he was told to appear for jury duty, he did not have any more contact with the solicitor's office, nor did he ever raise the subject again. Roberts testified that when he was with the Kershaw Police Department, he did not have any cases that went to the solicitor's office. Before his stint with the Kershaw Police Department, the last time Roberts was employed in any law enforcement capacity within the Sixth Circuit was in 1986, when he was in charge of security guards at USC Lancaster. Certainly Roberts' assertion that he did not have any type of relationship or contact with the Sixth Circuit Solicitor's Office, or with any employee thereof, at the time of Applicant's trial was reasonable.

Roberts did not stand when the potential witnesses were named because he did not have a special relationship with any potential witnesses. See Supra. The question asked by the trial judge was, "Is any member of the petit jury panel related by blood or connected by marriage or have any special relationship with any of the potential witnesses for the state of South Carolina?" (Trial pp.6-7). When Barry Faile's name was read, Roberts did not stand up because he had no special relationship with Faile. Roberts testified he was not close friends with Faile. Applicant has failed to show the existence of any relationship between Roberts and Faile, much less a

special relationship. The fact that Faile and Roberts knew of each other is not evidence any kind of special relationship, and Roberts' decision not to stand up was completely reasonable.

Thus, Applicant failed to establish any evidence at Roberts' deposition to show that Roberts intentionally concealed any information during *voir dire*. Accordingly, Applicant's PCR application should be dismissed for failing to set forth any evidence of juror misconduct.

IV.

The Court should summarily dismiss the application for post-conviction relief because the testimony gathered by Applicant at the depositions of Mr. Holland and Mr. Roberts has failed to yield any evidence that anyone from the Sixth Circuit Solicitor's Office acted improperly. Even, assuming *arguendo*, that anyone involved in Applicant's prosecution was aware of Roberts' background, the solicitors involved in the case were under no duty to disclose Roberts' background to Applicant or to the Court. Rather, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). The holding in Brady v. Maryland requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." 373 U.S., at 87, 83 S.Ct., at 1196. See also Moore v. Illinois, 408 U.S. 786, 794–795, 92 S.Ct. 2562, 2567–2568, 33 L.Ed.2d 706 (1972). United States v. Bagley, 473 U.S. 667, 674, 105 S. Ct. 3375, 3379, 87 L. Ed. 2d 481 (1985). The prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to result in the denial of the defendant's right to a fair trial. United States v. Agurs, 427 U.S. 97, 108, 96 S. Ct. 2392, 2400, 49 L. Ed. 2d 342 (1976). The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of

the trial, does not establish "materiality" in the constitutional sense. See United States v. Agurs, 427 U.S. at 109-10 (1976).

The Applicant failed to elicit any testimony from the depositions to prove the prosecution's failure to disclose Roberts' background was improper. At his deposition, Thomas Holland testified he was employed as an Assistant Solicitor in the Sixth Circuit from 2001-2006. (Holland Dep. 4:8-9). Holland testified his only involvement in the case was to question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. (Holland Dep. 4-5). He testified John Justice and Doug Barfield prosecuted the case. (Holland Dep. 4:15-21). Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. (Holland Dep. 6:1-5). Holland testified he heard similar comments from other people in the courthouse, but there was never any long discussion of the fact. (Holland Dep. 6:20-25). Holland testified it is typical to ask how a jury looks. (Holland Dep. 18:8-11). He further testified Roberts' status as a juror was not the topic of the day. (Holland Dep. 22:2-7). Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts' background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire* and the jury questionnaire only asked about current employment. Thus, Holland testified Barfield said the law was followed. (Holland Dep. 9:1-19). Holland testified he

brought the subject up with Barfield out of an abundance of caution, and he did not remember whether he brought it up prior to the start of testimony in Applicant's trial. (Holland Dep. 10:1-9). Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. (Holland Dep. 10:15-19). Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. (Holland Dep. 12:1-6). Holland testified he was not aware that a potential juror had called the solicitor's office and asked if his background would disqualify him, and that he did not receive such a call. (Holland Dep. 19-20). He further testified he would never talk to anyone who called about jury duty; he would refer them to the clerk's office. (Holland Dep. 20:20-21). Holland further testified that seating a law enforcement officer on the jury is not always good for the prosecution. He testified that people involved in law enforcement could possibly overanalyze the prosecution's case. (Holland Dep. 21:3-10). Holland further testified that he did not know anything about Roberts. (Holland Dep. 29:23-24).

Because Holland's testimony failed to bring forth any evidence of wrongdoing by the prosecution, Applicant's PCR should be summarily dismissed. Clearly the prosecution's knowledge of Roberts' background and decision not to disclose it does not amount to a Brady violation. Not only is Roberts' background not evidence, but it is not material to Applicant's guilt or innocence. Furthermore, South Carolina jurisprudence clearly states that it is the duty of opposing counsel to ensure that the questions posed to the jury panel during *voir dire* are specific enough to elicit the desired background information. The fact that trial counsel did not request more specific questions during *voir dire* does not place an increased duty on the prosecution to reveal everything they know about the potential jurors to the defense. Furthermore, Applicant has failed to show any evidence that Applicant was denied his right to a fair trial. In fact,

Roberts' testimony that he was the fairest person on the jury is demonstrative of the opposite effect. Accordingly, Applicant has failed to prove that the prosecution had any duty to divulge Roberts' background to either the Court or to the defense, and Applicant has failed to show that Roberts' inclusion on the jury made any material difference in the outcome of Applicant's trial. As such, the PCR application should be denied.

V.

The Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of

showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

VI.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on June 6, 2003. The Remittitur was sent, after the Applicant's unsuccessful appeal, on November 6, 2006. Any application for PCR was therefore to be filed on or before November 7, 2007. This Application was filed on July 9, 2013, which was more than five (5) years after the statutory filing period had expired.

Furthermore, Applicant's allegations of newly-discovered juror and prosecutorial misconduct require that Applicant file his Application within one (1) year of discovering the alleged misconduct. S.C. Code Ann. § 17-27-45(C) reads as follows:

> If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter **within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.**

Thomas Holland testified at his deposition that he was taking a former client to enter a plea in Spartanburg when a discussion came up regarding jury selection. (Holland Dep. 23:1-9). Holland's former client was familiar with Applicant's case, and at some point handed Holland a cell phone with Applicant on the other end of the line, at which point Applicant apparently asked Holland about Roberts' seating on his jury.[1] (Holland Dep. 24: 9-13). Respondent submits at that point, or sometime prior to it, Applicant had knowledge of the facts on which he is basing the current PCR application.[2] Holland testified that subsequent to his conversation with Applicant, at some point he was contacted by Applicant's private investigator, Dave McDougal. Holland testified that his contact with McDougal took place one and a half to two (1.5-2) years prior to the deposition. (Holland Dep. 22:19-20, 22:23). Applicant's PCR application was filed on July 9, 2013. In order for his claim to be timely, Applicant's discovery of the new evidence would have to occur after July 9, 2012. Respondent submits that given the timeline of events testified to by Holland, Applicant's PCR application was not timely filed.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638

[1] Respondent notes that Applicant was incarcerated at the time of the cellular phone conversation.
[2] At the deposition, Respondent attempted to ascertain the name of Holland's client he was taking to plea in Spartanburg in order to identify the date of the conversation, but Applicant objected based on attorney-client privilege, and Holland would not disclose the client's name. (Holland Dep. 23:10-25, 24:1-3).

(1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

VII.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VIII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action, it was filed after the statute of limitations had expired, and Applicant has failed to prove any misconduct by the juror of the prosecution.

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By: _____
Attorneys for the Respondents

Columbia, South Carolina

_____, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SIXTH CIRCUIT
COUNTY OF LANCASTER	)	
	)	
VERNARD J. MATHIS	)	2013-CP-29-0951
	)	
	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Amended Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara Dawn Shurling
3614 Landmark Drive
Suite A
Columbia, SC 29204

DATED this 1st day of July, 2014

Troyeshi Brailey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)))	IN THE COURT OF COMMON PLEAS
VERNARD JEROME MATHIS, 297034 Applicant, v. THE STATE OF SOUTH CAROLINA, Respondent.	)))))))	**2013-CP-29-051** REPLY TO AMENDED RETURN

FILED
CLERK OF COURT
LANCASTER, SC
2013 AUG 11 PM 4:04

I.
PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (200-GS-29-1418), Armed Robbery (2001-GS-29-0250), Burglary- First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him on these charges. Following a jury trial Applicant was convicted of all these offenses. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr., to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to *Anders v. California,* 386 U.S. 738, 87 S. Ct. 1396 (1967). Applicant also submitted a *pro se* brief. The appeal was dismissed. *State v. Mathis*, Op. No. 2005-UP-375 (S.C. Ct. App. Filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in an order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an application for Post-Conviction Relief (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, at which Applicant was present and represented by Tricia Blanchette, Esquire. In an order dated October 14, 2008, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the

Remittitur was sent on January 7, 2011.

Applicant filed this application for Post-Conviction Relief on July 9, 2013. In his current PCR Application he alleged that:

1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.

a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:

> Kershaw Police Department from June 26, 2000 through December 31, 2000.
>
> York Police Department from July 14, 1998 until April 7, 2000.
>
> Lake City Police Department from July 15, 1996 until July 13, 1998.
>
> The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.
>
> University of South Carolina Police Department starting in 1989.
>
> Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

c. The Applicant has it upon information and belief that members of the Sixth

Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.

d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

Applicant subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consent to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire.

II

SUMMARY OF RELEVANT PORTIONS OF DEPOSITIONS

Ronnie Ellison Roberts

In 2003 he was employed by Assurant Group, a mortgage insurance company, in Florence, South Carolina. He described his position with that company as a training manager. Prior to that, he taught criminal law at Northeastern Technical College for two

years. Roberts Dep. p. 3, l. 25-p. 6, l. 14. When asked what job he held prior to that, Roberts initially responded that prior to that he retired as Police Chief for the City of York, on April 7, 2000. Roberts Dep. p. 6, ll. 15-20. When prompted by Applicant's Counsel, he acknowledged that after leaving the York Police Department he took the position as Chief of Police in the Town of Kershaw from approximately June, 2000 to December, 2000, when the City did away with its police department. Roberts Dep. p. 6, l. 21- p. 7, l. 25.

Roberts's lengthy history of employment in the field of law enforcement is documented by his deposition which establishes the following employment timeline:

- November 17, 1975 – February, 1982 He was with the Lancaster Police Department.
- 1982 – 1986 Director of Public Safety USC Police Department at USC Lancaster, South Carolina
- 1986 – 1989 Police Chief at USC Police Department in Columbia, S. C.
- 1989 – 1996 Instructor for the South Carolina Criminal Justice Academy
- July 1996 - July 1998 Chief of Police Lake City Police Department
- July 1998 – April 2000 York Police Department

Roberts Dep. p. 6, l. 15 – p. 10, l. 22. Roberts expressly recalled serving on Applicant's jury in June, 2008, and confirmed that he was appointed as foreman on that jury. Roberts Dep. p. 10, l. 25- p. 11, l. 6. When asked if he recalled being asked during *voir dire* whether he had any relationship with the Sixth Circuit Solicitor's Office, Roberts not only said "no" but added, "Of course I have no relationship with them." Roberts Dep. p. 12, ll. 5-11. He repeated his claim that he didn't recall being asked the question about his relationship with the Sixth Circuit Solicitor's Office, and claimed the only person he knew in that office was Solicitor Justice. Roberts Dep. p. 15, ll. 12-18.

In his deposition, Roberts admitted calling the Solicitor's Office after being summoned for jury service. He specifically stated, "I called and talked to someone and told them, you know, with my background would it not disqualify me. And they said as long as I could do a fair trial, you know, to come up, that they would not excuse me. So I

came up." Roberts Dep. p. 15, l. 18-22. Roberts stated that he could not recall who he spoke with at the Solicitor's Office. Roberts Dep. p. 15, l. 23- p. 16, l. 2. When asked if he knew any of the witnesses who testified in this case, Roberts replied, "The only one I knew was the one who is now the Sheriff. I knew him. I didn't know the others." Roberts Dep. p. 16, ll. 11-14 and 23-25. Roberts stated that he did not know who the witnesses were going to be at the time he was seated. He claimed that the list of potential witnesses was not read *during* jury selection. Roberts Dep. p. 16, ll. 15-22. The record of the *voire dire* of Applicant's jury very clearly reflects that the Court did ask if any of the members of the Petit Jury if they had any special relationship with any of the potential witnesses, and then had Solicitor Justice read the list of their potential witnesses to the jury pool. *Voire Dire* Tr. p. 6- p. 8. Next, the jury pool was expressly asked, "Do any members of the Petit Jury panel have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit's Solicitor's Office. If so stand." *Voire Dire* tr. p. 11. Roberts admitted that he knew Barry Faile, a law enforcement witness for the State. He also added, "But that's the only one I knew by name." Roberts Dep. p. 16, l. 23-p. 17, l. 5. Roberts claimed he knew Solicitor John Justice, but claimed he had only spoken with him one time, and that was in a case where he was a prosecution witness. Roberts Dep. p. 17, ll. 6-25.

When questioned more closely about knowing Officer Barry Faile, who testified at Applicant's trial, Roberts once again qualified his answer noting that, "As far as I can remember" he was the only witness he knew from this trial Roberts Dep. p. 18, ll. 3-6. Initially, Roberts claimed he *did not* discuss his law enforcement background with the members of Applicant's jury. Roberts Dep. p. 18, ll. 18-20. When pressed on this issue, however, he qualified his answer by stating, "I don't remember doing that." He also noted that one of the jurors knew him, "...but he knew I was also retired..." Roberts Dep. p. 18, ll. 21-25. He stated that the juror in question was Eddie Lewis. Roberts Dep. p. 19, l. 2-3.

Roberts acknowledged that State Witness, Barry Faile, knew of his career in law enforcement, and was himself on the law enforcement team in this case. Roberts Dep. p. 20, l. 14-p. 15, l. 4. He further acknowledged that fellow juror, Eddie Lewis, would have known his background in law enforcement. Roberts Dep. p. 21, ll. 6-8.

The deposition of Juror Roberts reflects that although he initially claimed Solicitor John Justice was the only person he knew from the Solicitor's Office, he

eventually admitted that he and Senior Assistant Solicitor, Doug Barfield, who tried Applicant's case with Solicitor John Justice. He acknowledged that they knew each other by sight. Roberts Dep. p. 21, l. 14- p. 22, l. 3. Interestingly, Roberts revealed that when he received the letter about this deposition, he called and spoke with Barfield about it. Roberts Dep. p. 22, ll. 17-23. Roberts went on to indicate that Barfield actually knew some of his family members. Roberts Dep. p. 23, ll 9-14. When questioned about his call to the Solicitor's Office after receiving the jury service notice, Roberts claimed he spoke with "whoever answered the phone." Roberts Dep. p. 23, ll. 23-25. He did, however, reveal the gender of the person he spoke with by saying, "I told him" I was retired. Roberts Dep. p. 24, ll. 3-7. See also, Roberts Dep. p. 26, l. 15-17. He also clearly stated, "I wasn't trying to get out of it" but noting he didn't "think anybody would let him sit anyway." Roberts Dep. p. 24, ll. 9-11. When asked specifically if he would have answered the question concerning knowing or having contact with the Solicitor's Office *if he had heard it*, he responded "yes" and once again noted that this issue was why he called the Solicitor's Office. Roberts Dep. p. 26, ll. 10-19.

When asked directly if he had any cases with the Solicitor's Office while he was Kershaw City Police Chief, he said "no". He subsequently once again, qualified his answer by saying, "I don't think we had any General Sessions or anything that came up through them." Roberts Dep. p. 28, ll. 15-17. Roberts indicated that he knew the Defense Attorney would not want a police officer on Applicant's jury. Roberts Dep. p. 30, ll. 2-5. He said that was why he called the Solicitor's Office when he got the jury notice. He made it clear he knew how the jury system worked and was aware that either side could use a peremptory strike to remove him from service. Roberts Dep. p. 30, ll. 2-16.

Although Roberts deposition testimony indicates he did not know who he spoke with when he called the Solicitor's Office about jury service, he specifically stated, "*He told me* to come up, *and he might could release me*, but *he* didn't he kept me all week." Roberts Dep. p. 29, ll. 8-21 (Emphasis added). *See also*, Roberts Dep. p. 31,l. 15-16. His statements during his deposition clearly indicate that while he went out of his way to let the prosecution know he would be in the jury pool that week, he did nothing to reveal the fact to Defense Counsel, but rather assumed "the defense attorneys did their own leg work and knew." Roberts Dep. p. 30, ll. 13-18. Despite acknowledging that he knew the defense lawyer wouldn't want him on their jury, Roberts did nothing to bring his long

history as a law enforcement office to the attention of the Court and Defense Counsel during the jury selection process. He admitted that he did nothing to try and be excused from jury service at Applicant's trial. Roberts Dep. p. 31, l 5- p. 32, l. 9. Roberts admitted that when the Court asked if any of the prospective jurors had contact with the Solicitor's Office he did not disclose his previous work with the Solicitor's Office, nor did he tell the Court and Defense Counsel about having called the Solicitor's Office about being called for jury service the week of this trial. Roberts Dep. p. 32, l. 13- p. 33, l 5.

Attorney Thomas William Holland

Attorney Holland was also deposed on April 22, 2014. He acknowledged having been an Assistant Solicitor in the Sixth Circuit at the time of Applicant's trial. Holland Dep. p. 4, ll. 1-9. He participated in the prosecution of Applicant although he recalled having only handled one witness; the SLED DNA witness. Holland Dep. p. 4, ll. 10-24. Holland stated that he was in and out of the courtroom during the jury selection, but recalled being told by either "a court person" or law enforcement that the jury looked good, and that the foreman was a former Chief [of Police] in Kershaw. Holland Dep. p. 5, l. 17- p. 6, l. 16. Holland admitted that he subsequently heard "other law enforcement officers connected with [Applicant's] case discussing the fact that Mr. Roberts was on the jury." Holland Dep. p. 6, l. 17-p. 7, l. 2. Holland recalled being shocked that Roberts was on the jury, and didn't understand why he wasn't struck. He said he heard multiple people, law enforcement and court personnel, discussing it. Holland Dep. p. 7, l. 3- p. 8, l. 12. He acknowledged that these individuals obviously thought it was significant enough to bring to his attention. Holland Dep. p. 8, ll. 14-18. Holland said he brought what he had been told to the attention of one of the two senior prosecutors; either Solicitor John Justice or Senior Assistant Solicitor Doug Barfield. He stated that he "would assume" he would have talked with Doug Barfield rather than Solicitor Justice. Holland Dep. p. 8, l 19- p. 9, l. 6. See also, Holland Dep. p. 10, l. 24- p. 11, l. 11. Holland recalled asking how Roberts could have gotten on the jury. He remembered questioning whether the defense lawyer ran out of strikes, and asking whether Defense Counsel knew the foreman was former law enforcement. His deposition confirms that he was told the defense did not run out of strikes and further, that the senior prosecutor response was "I don't know what he knew kind of thing." Holland Dep. p. 9, ll. 6-12.

When Holland asked if that was something they should disclose, or should have disclosed, he was told, "No, he answered all the questions." Holland Dep. p. 9, ll. 12-19. Holland explained his questioning the senior prosecutor by stating, " And it would have been a question because I didn't feel like anything was illegal, per se, or a violation of any rules, but, you know kind of more of a policy thing of how you want to run your office kind of thing." Holland Dep. p. 10, ll. 15-19. He acknowledged that with this being a murder case, there would have been 2-3 alternate jurors selected. Holland Dep. p. 11, ll. 12-18.

The record of the jury selection portion of Applicant's trial documents that three (3) alternate jurors were selected in this case. *Voir Dire* Tr. p. 53, l. 13- p. 55, l. 22. The record further documents that the defense had only used three (3) of its ten (10) strikes at the time Roberts was seated. *Voir Dire* p. 47, l. 9- p. 51, l. 12. The *Voir Dire* record in fact demonstrates that the defense used only three (3) strikes during the selection of the Applicant's jury. *Voir Dire* p. 47, l. 9- p. 53, l. 10. When asked if he ever considered disclosing the background of this juror to the defense team, Holland stated no, and went on to explain "it was their case..." Holland Dep. p. 11, l. 23- p. 12, l. 6. Although he tried to downplay how pleased the law enforcement officers involved in this case were about getting a former Chief of Police on this jury, he acknowledged that they were all happy about it. Holland Dep. p. 13, l. 13- p. 14, l. 18. He also acknowledged a defense attorney would be expected to use a peremptory strike to excuse a former law enforcement officer from service provided he had strikes available. Holland Dep. p. 14, l. 19- p. 15, l. 14.

Despite Holland's statements in his deposition which tended to convey that he didn't think there was anything wrong with the way Roberts ended up on Applicant's jury, the fact remains that after he left the Solicitor's Office he conveyed information about this situation to one of his clients who in turn set up a telephone conversation between Holland and Applicant. Holland Dep. p. 12, ll. 7-19. He acknowledged that after his telephone conversation with someone who identified himself as Applicant, he was contacted by the late Dave MacDougal, who identified himself as an investigator hired to investigate rumors that Roberts was former law enforcement. Holland Dep. p 13, ll. 2-9.

III

DISCUSSION

Our Courts have recognized that a juror who intentionally conceals information inquired into is not impartial. *State v. Stone*, 350 S.C. 442, 448, 567 S.E.2d 244, 247 (2002); *State v. Woods*, 345 S.C. 583, 587-88, 550 S.E.2nd 282, 284 (2001). Utilizing the analysis applied in *Woods, supra,* the initial inquiry is whether the identified concealment was intentional or unintentional. Once the intentional concealment of information is found, the second prong of the *Woods* standard is the question of whether the information at issue would have supported a challenge for cause *or would have been a material factor in the use of peremptory challenges.* Where both factors are present, a new trial should be granted. *Woods*, 345 S. C. at 587, 550 S.E.2d at 284. While *Woods* and *Stone* are the controlling authorities where juror concealment is involved arguably the decision in *Woods* did not negate the general due diligence standard expressed in the earlier case of *Thompson v. ORourke,* 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986).

In this case, Roberts obviously knew a defense attorney would not want him on their jury. He called the Solicitor's Office and reported that he had been summoned for jury duty despite his claim that he wasn't trying to get out of jury service. His deposition reveals that his assertions on this subject are not credible. He claims not to know who he spoke to when he called the Solicitor's Office, and yet recalls that although the person he spoke with had told him he might be able to release him when he came to Court, "*he kept me there all day.*" One can fairly infer from this statement that he knew the person he talked to about jury service *before the trial* was present *at the trial all day.* Roberts first stated that Solicitor Justice was the only person he knew from the Solicitor's Office. Later he admitted that he knew Senior Assistant Solicitor Doug Barfield, who prosecuted Applicant with John Justice, and said members of his family knew him as well. Roberts admitting knowing Officer Faile, but conveniently couldn't recall the long portion of the *voir dire* record when the trial judge asked the jury panel about knowing potential witnesses. He claimed that Faile was the only law enforcement officer involved in this case that he knew. In other places in the deposition, however he says Faile was the only one he knew *by name.* Roberts Dep. p. 16, l. 11- p. 17, l. 5. He later retreated further and stated, "*As far as I can remember* the witnesses he was the only one I knew when he came on the stand." Roberts Dep. p. 18, ll. 5-6. (Emphasis added).

While Roberts claims "*as far as he can recall*" that he didn't share information concerning his long law enforcement career with this jury, he admitted that he knew one of the other jurors, and that juror knew about his law enforcement background.

In his deposition, Roberts claimed that he wasn't particularly close friends with Officer Faile. His position, however, overlooks "the thin blue line" that is the inherent loyalty and bond between all law enforcement officers. He knew that Applicant's lawyer would not want him on this jury, and yet, in a move that reflects the natural biases and loyalties of a veteran law enforcement officer, he didn't call the Clerk of Court's Office or Defense Counsel about the potential problem with his jury service, he called the Solicitor's Office. Knowing that the defense would use a peremptory strike to excuse him from jury service, he ignored several opportunities to reveal himself to the Court and the defense. The fact that this juror intentionally concealed information that he knew would prompt Defense Counsel to use a strike to excuse him is clear.

The second prong of the *Woods* test is just as easily found. Both *Roberts* and *Holland* admit that they knew Defense Counsel would have utilized a strike to keep Roberts off this jury. As noted above, the trial record documents that the defense had seven (7) strikes left when Roberts was seated. Applicant has made a showing that evidence of Juror misconduct exists, and that he was prejudiced by it inasmuch as he would have been in the position to strike this juror had he been aware of his law enforcement background. Both this juror and a member of the prosecution team have effectively acknowledged that using a strike to remove a juror with his law enforcement history would have been a standard thing for the defense to do.

When considering a Motion for Summary Dismissal pursuant to S. C. Code Ann. § 17-27-70 (c), where no evidentiary hearing has been held, the PCR judge must assume facts presented by the Applicant are true, and view those facts in the light most favorable to the Applicant. *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005). Where, as here, a PCR application alleges facts that would establish just cause for review under recognized exceptions to the Statute of Limitation, or the Rule prohibiting successive applications, a hearing is necessary unless those facts are conclusively refuted by the record before the Court. Applicant respectfully submits that in his case a hearing is necessary and appropriate.

Our Supreme Court has found a Post-Conviction Relief action is the appropriate venue to raise his claims. *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623, (S. Ct., 2013)

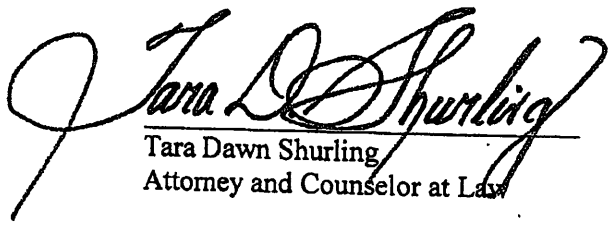
He submits that his application is timely pursuant to § 17-27-45(c), because it was filed within one year of his discovery and confirmation of the allegations raised in it. Likewise, he submits this successive application is proper where he can demonstrate that the grounds contained therein could not have been raised by him in his original application inasmuch as the information at the core of these claims was not disclosed to him until after his first PCR action was decided.

IV

CONCLUSION

Based upon all the foregoing facts and authorities, Applicant submits that Respondent's Motion for Summary Dismissal should be denied and this matter should be scheduled for a hearing pursuant to *McCoy, supra.*

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law

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Attorney for the Applicant

This 6th day of August, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034
Applicant,

v.

THE STATE OF SOUTH CAROLINA,
Respondent.

2013-CP-29-051

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to Amended Return in the above matter has been served on opposing counsel this 6th day of August, 2014, by email and mailing one (1) copy in a stamped envelope properly addressed to:

J. Croom Hunter
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211
chunter@scag.gov

Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 6th day of August, 2014

Notary Public for South Carolina (L.S.)
My Commission Expires: 2/28/24

FILED
OFFICE OF CLERK
2014 AUG 11 PM 4:13
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034
Applicant,

v.

THE STATE OF SOUTH CAROLINA,
Respondent.

2013-CP-29-051

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to Amended Return in the above matter has been served on the Honorable Brian M. Gibbons this 6th day of August, 2014, by email and mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable Brian M. Gibbons
Circuit Court Judge for the Sixth Circuit
P. O. Box 580
Chester, S. C. 29706
bgibbonslc@sccourts.org

Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 6th day of August, 2014

Notary Public for South Carolina (L.S.)
My Commission Expires: 2/28/24

FILED
OFFICE OF CLERK
2014 AUG 11 PM 4:13
CLERK OF COURT
LANCASTER, SC

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	)	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
Vernard Jerome Mathis, S.C.D.C. No. 297034, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2013-CP-29-0951 **MEMORANDUM OF LAW**

Pursuant to this Court's request for a condensed version of Applicant's case and why Respondent believes the Conditional Order of Dismissal should stand, Respondent submits the following:

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary – First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant was convicted of all offenses following a jury trial. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr., to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Applicant also submitted a *pro se* brief. The appeal was dismissed. State v. Mathis, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then

petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in and order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

Applicant initially filed an application for post-conviction relief (PCR) on March 8, 2007 (2007-CP-29-0300). An evidentiary hearing was convened on August 25, 2008, at which Applicant was present and represented by Tricia Blanchette, Esquire. In an order dated October 14, 2008, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Applicant filed this application for post-conviction relief on July 9, 2013, and subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations[1]:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at voir dire and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.
3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and

[1] All activity on this case leading up to the depositions occurred prior to the undersigned's involvement in the case. However, it is the undersigned's understanding that the depositions were consented to by this office with the understanding they were being held in order to determine whether a hearing would be necessary. It is now the State's position that no hearing is necessary based on the information gathered at the depositions.

represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire.

Subsequent to the depositions, the undersigned filed an Amended Return and Motion to Dismiss as well as a Conditional Order of Dismissal on July 1, 2014. On July 2, opposing counsel (Ms. Shurling) copied the undersigned on an email sent to the Court, in which she asked for thirty (30) days to file her reply prior to the Court signing the Conditional Order[2]. The Court responded by email the same day, stating simply "OK 30 days for a reply." On July 23, 2014 the undersigned received the signed Conditional Order of Dismissal in the mail. The Order was signed and dated on July 21, 2013. As the undersigned was unsure whether the Court meant opposing counsel would have thirty (30) days to respond to the signed Conditional Order, or if the Conditional Order had been signed inadvertently, the undersigned decided to refrain from filing the Conditional Order until the original thirty (30) days from opposing counsel's request had elapsed. Subsequently, on August 1, 2014, opposing counsel copied the undersigned on an email to the Court requesting additional time to complete her reply. At that point, the undersigned let opposing counsel know that this office was in receipt of, but had not yet filed, the signed Conditional Order. The Court then granted opposing counsel until August 5, 2014 to submit her reply to the Conditional Order. Opposing counsel subsequently filed her reply to the Conditional Order on August 5 and 6, 2014.

RELEVANT FACTS IN SUPPORT OF ARGUMENT

[2] Respondent notes that the standard practice is for the Applicant or opposing counsel to respond with their objections within twenty (20) days *after* the Conditional Order has been signed by the Court and filed, as the language in the Order states. Given opposing counsel's many years of experience handling PCR cases, her request to be given time to respond to the Conditional Order prior to it being signed and filed is highly unusual. After all, the judgment does not become final until the Court signs the Final Order, addressing the Applicant's objections to the Conditional Order.

In the Court's email requesting a condensed version of this case, your Honor has listed three areas, you would like each side to address:

1. What the issues are.

The Applicant claims that his PCR application should not be statutorily barred for failure to file within the statute of limitations and for being successive to his previous application because of alleged newly-discovered juror and prosecutorial misconduct. Applicant is alleging two areas of misconduct:

First, Applicant alleges juror misconduct by claiming that Ronnie E. Roberts, the jury foreman (Juror), intentionally concealed his law enforcement background in order to make his way onto the jury. Applicant further alleges Roberts committed misconduct by failing to disclose that he knew one of the witnesses, and that he called the Solicitor's Office prior to the trial to ask if he needed to report to jury duty.

Second, Applicant alleges prosecutorial misconduct by claiming that members of the Sixth Circuit Solicitor's Office were aware of Roberts' background, yet they did nothing to make the Court or the defense aware of it.

2. Why this Court properly signed the Conditional Order of Dismissal.

There are three reasons why the Court properly signed the Conditional Order: 1. Roberts' background was discoverable at the time of trial, 2. Applicant has not shown that he filed this application within one year of his actual discovery of Roberts' background, 3. The depositions did not reveal any evidence of juror or prosecutorial misconduct[3].

Initially, Respondent submits the Court properly signed the Conditional Order because Applicant has failed to show that he filed this application within one year of discovering the

[3] Respondent notes that these issues are covered in greater depth in the Amended Return and Motion to Dismiss that has already been filed with the Court. Respondent further notes that many citations to the deposition transcript have been omitted from this document in the interest of condensing the information.

alleged misconduct. Applicant's allegations of newly-discovered juror and prosecutorial misconduct require that Applicant file his Application within one (1) year of discovering the alleged misconduct, **or within one (1) year of the date the facts could have been discovered by the exercise of reasonable diligence.** S.C. Code Ann. § 17-27-45(C) reads as follows:

> If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter **within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.**

Respondent submits that because Roberts' law enforcement background was discoverable at the time of Applicant's trial, Applicant should have raised this issue at his first PCR hearing. Roberts' made no attempts to hide his background. At no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background. Nor did the jury questionnaire ask about their former occupations; it merely asked their current occupation. Roberts answered truthfully. The responsibility for obtaining sufficient background information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). Had trial counsel simply requested more thorough *voir dire*, Roberts' background would easily have been discovered. Just because no one thought to ask him what his background was does not mean the information was not discoverable. The fact that this issue was not raised at his first PCR is not a sufficient ground to grant Applicant a new hearing. As such, Respondent submits that Roberts' background could easily have been discovered by the exercise of reasonable diligence within one year of his conviction.

Second, assuming *arguendo* that the Court deems the information was not discoverable at the time of trial, Applicant still should not be granted a hearing because he has not satisfied his

burden of proving that he filed this application within one (1) year of discovering the information, or when it could have been discovered. Thomas Holland was an assistant solicitor in the Sixth Circuit during Applicant's trial. At his deposition, he testified that he did very little work on Applicant's case but that he and the other solicitors handling the case were made aware by court personnel that Roberts had a background in law enforcement. Holland testified at his deposition that some years later, after he entered private practice, he was taking a client to enter a plea in Spartanburg when a discussion came up regarding jury selection. Holland's former client was familiar with Applicant's case, and at some point the client handed Holland a cell phone with Applicant on the other end of the line. At that point Applicant apparently asked Holland about Roberts' seating on his jury.[4] Respondent submits that the date of that telephone conversation, or sometime prior to it, starts the timeline of when Applicant learned of the facts on which he is basing the current PCR application.[5] Holland testified that subsequent to his conversation with Applicant, at some point he was contacted by Applicant's private investigator, Dave McDougal. Holland testified that his contact with McDougal took place one and a half to two (1.5-2) years prior to the deposition. The deposition occurred on April 22, 2014. Applicant's PCR application was filed on July 9, 2013. In order for his claim to be timely, Applicant's discovery of the alleged new evidence would have to have occurred after July 9, 2012.

[4] Respondent notes that Applicant had to have been incarcerated at the time of the cellular phone conversation.
[5] At the deposition, Respondent attempted to ascertain either the name of Holland's client, or the date of the conversation, but Applicant objected based on attorney-client privilege. (Holland Dep. 23:10-25, 24:1-3). Respondent submits that pursuant to Rule 30(j)(3) SCRCP, Applicant has waived his objection by failing to move for a protective order within five (5) days of the termination of the deposition. Should the Court decide to grant Applicant a hearing, Respondent will move to reconvene the deposition to determine the date of the conversation. Respondent further submits that the information is not even covered by attorney-client privilege because a third-party was present, and Holland's mere representation, as well as the date of the conversation, are not privileged information anyway. Rather, this is material information that Applicant must prove in order to move forward with his application, assuming the Court deems Roberts' background was not discoverable at trial, which Respondent submits it was.

Respondent submits that given the timeline of events testified to by Holland, Applicant has failed to show that this PCR application was timely filed.

Finally, the third reason the Court properly signed the Conditional Order of Dismissal is because the depositions of Thomas Holland and Ronnie Roberts failed to uncover any evidence of juror or prosecutorial misconduct:

Juror Misconduct

Applicant has failed to uncover any evidence of misconduct by Mr. Roberts. In order for his claim to be granted, Applicant must show that Roberts intentionally concealed information during *voir dire*. See State v. Kelly, 331 S.C. 132 (1998). However, Roberts truthfully filled out the jury questionnaire, which only asked about his occupation and "Present or Former Employer". Additionally, at no point during *voir dire* were the members of the petit jury panel asked if they had any law enforcement background, or if they were related to anyone involved in law enforcement. Roberts testified at the deposition that he would have disclosed his background, if the question had been asked. A potential juror has no duty to disclose background information when he is not asked to do so; rather, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014). Roberts testified that he retired from law enforcement when he left the Kershaw Police Department in 2000 and was working as a software training manager for a mortgage insurance company at the time of Applicant's trial. Certainly that would not qualify as any type of law enforcement work.

Applicant further argues that Roberts committed misconduct by not responding affirmatively when the petit jury panel was asked, "Do any members have any relationship or

contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit Solicitor's Office? If so, please stand." However, Roberts testified he had no relationship with the Solicitor's Office. Roberts testified repeatedly that the call he made to the Solicitor's Office was the only contact he had with anyone form that office since he testified in a trial over twenty (20) years before. Roberts testified that he moved away from Lancaster in 1986 and was living at the beach at the time of the trial. Roberts testified that he had no idea who he spoke to at the solicitor's office, and he further testified that once he was told to appear for jury duty, he did not have any more contact with the solicitor's office, nor did he ever raise the subject again[6]. Applicant claims Roberts was involved in cases prosecuted by the Sixth Circuit Solicitor, but Roberts testified that when he was with the Kershaw Police Department, he did not have any cases that went to the solicitor's office. Before his brief stint with the Kershaw Police Department (July-December, 2000), the last time Roberts was employed in any law enforcement capacity within the Sixth Circuit was in 1986, when he was in charge of security guards at USC Lancaster. Certainly Roberts' testimony that he did not have any type of relationship or contact with the Sixth Circuit Solicitor's Office, or with any employee thereof, at the time of Applicant's trial was credible.

Applicant next alleges Roberts intentionally hid a relationship he had with one of the prosecution's witnesses (Barry Faile). However, Roberts did not stand when the potential witnesses were named because he did not have a special relationship with Faile. The question asked by the trial judge was, "Is any member of the petit jury panel related by blood or

[6] Applicant's Reply to the Conditional Order asserts as fact that Roberts admitted at the deposition that he spoke with Doug Barfield when he called the Solicitor's Office. However, that is simply not true. Roberts testified repeatedly that he did not know the identity of the person with whom he spoke. Applicant asserts that because Roberts referred to the person with whom he spoke as "He" and "Him" then that person must have been Barfield. Respondent submits that claim is tenuous, at best. Roberts further testified he knew who Doug Barfield was, but they had no relationship.

connected by marriage or have any **special** relationship with any of the potential witnesses for the state of South Carolina?" (Trial pp.6-7). When Barry Faile's name was read, Roberts did not stand up because he had no special relationship with Faile. At the deposition, Roberts testified he was not close friends with Faile; and they had no special relationship. As such, Applicant has failed to elicit any evidence supporting the existence of a relationship between Roberts and Faile, much less a special relationship[7]. The fact that Faile and Roberts knew of each other is not evidence any kind of special relationship, and Roberts' decision not to stand up was completely reasonable, given the wording of the question. Accordingly, Applicant has failed to show any intentional concealment by Roberts.

Prosecutorial Misconduct

Applicant claims the solicitors involved in the case committed misconduct by failing to divulge Roberts' background to the judge or the defense. Even, assuming *arguendo*, that anyone involved in Applicant's prosecution was aware of Roberts' background during jury selection, the solicitors involved in the case were under no duty to disclose Roberts' background to Applicant or to the Court. Again, the responsibility for obtaining such information falls on the attorneys to request precise *voir dire* questions that are reasonably comprehensible to the average juror. See Lynch v. Carolina Self Storage Centers, Inc., 2012-212109, 2014 WL 1230261 (S.C. Ct. App. Mar. 26, 2014).

Nor did the non-disclosure amount to a Brady violation. The holding in Brady v. Maryland requires disclosure only of evidence that is both favorable to the accused and "material either to guilt or to punishment." 373 U.S., at 87, 83 S.Ct., at 1196. The prosecutor will not have violated his constitutional duty of disclosure unless his omission is of sufficient significance to

[7] On page 10 of Applicant's Reply to the Conditional Order, Applicant claims that Roberts' testimony "overlooks 'the thin blue line' that is the inherent loyalty and bond between all police officers." Respondent submits this argument is totally without merit and lacks any factual support whatsoever.

result in the denial of the defendant's right to a fair trial. United States v. Agurs, 427 U.S. 97, 108, 96 S. Ct. 2392, 2400, 49 L. Ed. 2d 342 (1976). The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish "materiality" in the constitutional sense. See United States v. Agurs, 427 U.S. at 109-10 (1976).

Applicant failed to elicit any testimony at the depositions to show the prosecution's non-disclosure of Roberts' background was improper. At his deposition, Holland testified his only involvement in the case was to question one witness, who was a DNA expert from SLED, and that he did not otherwise participate in Applicant's trial. He testified he was not involved in jury selection. He testified John Justice and Doug Barfield prosecuted the case. Holland testified he asked someone who was either a bailiff or a law enforcement officer how the jury looked, and the person told him the jury looked good because the foreman was prior law enforcement. Holland testified he brought the subject up to either Justice or Barfield, but he could not remember which one. Holland testified it would likely have been Barfield with whom he spoke. Holland testified he thought he asked Barfield if the defense attorney knew of Roberts' background in law enforcement, to which Barfield replied that he was not aware if the defense attorney knew. Holland testified that he believed it was Barfield who told him they did not need to disclose Roberts' background because Roberts answered all of the questions that were asked of him during *voir dire,* and the jury questionnaire only asked about current employment. Holland testified he did not feel like the decision not to disclose Roberts' background to the defense was illegal or a violation of any rule. Holland further testified he did not consider informing defense counsel because he knew the decision not to disclose was not illegal. As such,

Holland's testimony failed to elicit any evidence of wrongdoing, and Applicant has provided no supporting case law in support of his argument that the non-disclosure was improper.

3. Why this case does not merit an evidentiary hearing.

As previously discussed, this case does not merit an evidentiary hearing for multiple reasons. Specifically,

1. Roberts' background was discoverable at the time of trial through the exercise of reasonable diligence.
2. Applicant has failed to show this application was filed within one (1) year of the discovery of the information, or when he **could have** discovered it.
3. Applicant has failed to show any evidence that Roberts intentionally concealed his background or committed any misconduct.
4. Applicant has failed to show any evidence that any of the solicitors on the case committed misconduct.

In short, Applicant's argument fails to satisfy the statutory requirements for a new PCR hearing, and it is entirely speculative. Because the deposition testimony failed to uncover any evidence of wrongdoing by Roberts or the prosecution, Applicant has not met the burden required to be granted a second PCR hearing. Clearly the prosecution's knowledge of Roberts' background and decision not to disclose it does not amount to a Brady violation. Not only is Roberts' background not evidence, but it is not material to Applicant's guilt or innocence. Furthermore, South Carolina jurisprudence clearly states that it is the duty of trial counsel to ensure that the questions posed to the jury panel during *voir dire* are specific enough to elicit the desired background information. The fact that trial counsel did not request more specific questions during *voir dire* does not place an increased duty on the prosecution to reveal everything they know about the

potential jurors to the defense. Nor does it provide this Court with grounds on which to grant a second PCR hearing on issues that should have and could have been raised at the first hearing. Furthermore, Applicant has failed to show any evidence that he was denied his right to a fair trial. In fact, Roberts' testimony that he was the fairest person on the jury and that he took his role as a juror very seriously is demonstrative of the opposite effect. Accordingly, Applicant has failed to clear the procedural hurdles for a successive PCR hearing, he has failed to show any evidence of intentional concealment or misconduct by Roberts, and he has failed to provide any support for his argument that the prosecution had a duty to divulge Roberts' background to either the Court or to the defense[8]. Finally, Applicant has failed to show that Roberts' inclusion on the jury made any material difference in the outcome of his trial.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549

[8] In his Reply to the Conditional Order, Applicant argues at the bottom of page 6, and on to page 7, that Roberts should have told the defense that he had a background in law enforcement, stating "he did nothing to reveal the fact to Defense Counsel." Applicant further states Roberts "admitted that he did nothing to try and be excused from jury service at Applicant's trial." Respondent submits Roberts not only had no duty to divulge any information not asked of him by the Court, but the actions suggested by Applicant would have been totally improper.

Columbia, SC 29211
Telephone: (803) 734-3737

8/28, 2013

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2013-CP-29-0951
VERNARD JEROME MATHIS, #297034	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Memorandum of Law** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Tara Dawn Shurling, Esquire
Law Ofc. Of Tara Dawn Shurling, PA
3614 Landmark Drive Suite A
Columbia, SC 29204

DATED this 28TH day of August, 2014.

Ashley Haworth

Ashley Haworth, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF LANCASTER	IN THE COURT OF COMMON PLEAS SIXTH JUDICIAL CIRCUIT
	2013-CP-29-0951
Vernard Jerome Mathis, SCDC No. 297034, Applicant, v. State of South Carolina, Respondent.	NOTICE OF MOTION AND MOTION TO RECONVENE DEPOSITION

The Respondent, making its Motion to reconvene the deposition of Applicant's witness Thomas W. Holland, Esquire, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lancaster County. The Applicant was indicted for Murder (2000-GS-291418), Armed Robbery (2001-GS-29-0250), Burglary – First Degree (2003-GS-29-0524), and two counts of Kidnapping (2003-GS-29-0525 & 0526). John D. Clark, Esquire, represented him. Applicant was convicted of all offenses following a jury trial. On June 6, 2003, he was sentenced by the Honorable Paul E. Short, Jr., to life imprisonment without the possibility of parole pursuant to S.C. Code §17-25-45.

Applicant filed an appeal, and a brief was submitted pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). Applicant also submitted a *pro se* brief. The appeal was dismissed. State v. Mathis, Op. No. 2005-UP-375 (S.C. Ct. App. filed June 13, 2005). Applicant filed a Petition for Rehearing. The Court of Appeals issued

orders denying the petition for rehearing and denying his petition for rehearing *en banc* on September 20, 2005. Applicant then petitioned the South Carolina Supreme Court for a writ of certiorari. His petition was denied in an order dated November 2, 2006. The Remittitur was sent on November 6, 2006.

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Applicant filed this application for post-conviction relief on July 9, 2013, and subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consented to Applicant's motion with the following stipulations[1]:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at voir dire and Assistant Solicitor's knowledge of such.
2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.

[1] All activity on this case leading up to the depositions occurred prior to the undersigned's involvement in the case. However, it is the undersigned's understanding that the depositions were consented to by this office with the understanding they were being held in order to determine whether a hearing would be necessary.

3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire.

After the close of the deposition, Respondent filed an Amended Return and Motion to Dismiss and proposed Conditional Order of Dismissal on July 1, 2014. Applicant filed his Reply to the Conditional Order on August 5 and 6, 2014. The Court subsequently requested both parties submit memoranda in support of their arguments. By Order signed October 25, 2014, the Court ordered an evidentiary hearing be held in Applicant's case.

II.

Applicant's allegations of newly-discovered juror and prosecutorial misconduct require that Applicant file his Application within one (1) year of discovering the alleged misconduct, or within one (1) year of the date the facts could have been discovered by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(C) reads as follows:

> If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter **within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.**

At the deposition of Thomas W. Holland, Esquire, the following exchange took place regarding when Applicant became aware that the jury foreman (Ronnie Roberts) was prior law enforcement:

> Ms. Shurling: Did there come a time after you left the Solicitor's office that you disclosed this information to Mr. Vernard Mathis?
> Mr. Holland: Yeah.
> Ms. Shurling: And actually you didn't – you didn't disclose it directly to Mr. Mathis, did you?
> Mr. Holland: Actually I had a conversation with Mr. Mathis, so the – It was through a client that I had. And he called – well, I guess let me back up. I had a conversation with somebody on the other side who said they were Vernard Mathis, you know. I had never seen – I'm assuming this is Mr. Mathis. I don't know him.
> ...
> Ms. Shurling: Were you subsequently contacted by, God rest his soul, Dave McDougal, an investigator that had been hired to investigate rumors to the effect that Mr. Roberts was former law enforcement?
> Mr. Holland: I did.
> Ms. Shurling: Did you report to Mr. McDougal essentially what you've told us here today?
> Mr. Holland: Yes.

(Holland Dep. pp. 12-13).

> Ms. Williams: Do you recall when you spoke to Mr. Mcdougal?
> Mr. Holland: A year and a half ago, two years, something like that.
> Ms. Williams: Okay. Did you talk to Mr. Mathis before or after that, do you recall?
> Mr. Holland: I believe it was before that.
> Ms. Williams: And your client then was before you talked to Mr. Mathis?
> Mr. Holland: Right. In fact, when I was talking to my client we were driving to Spartanburg. I was driving to – it was actually a plea. And I made a comment that I didn't like to go to other counties and try cases unless I knew somebody there just because, you know, I like to know the people on my jury. We were just doing a plea. I was like normally I wouldn't do a – I would investigate further before I went and did a trial in another county.
> Ms. Williams: Can you tell me the name of that client? I don't need to know anything specific about the case, if you recall?
> Mr. Holland: Yeah, I recall it. I just don't know that I can, you know – I guess it's public record.
> Ms. Williams: I think you can give me the name.
> Ms. Shurling: I think the fact of representation is covered by privilege so I would object.

Mr. Holland: Yeah and that's the reason I paused.
Ms. Shurling: Until if and when I would choose to use her as a witness.
Ms. Williams: That's okay. I can ask and you can say you're not going to say, that's fine.
Ms. Shurling: Until if and when I would use her as a witness I believe that's privileged.
Ms. Williams. Absolutely. So that representation was before you spoke to Mr. Mathis, which was before you spoke to Mr. McDougal?
Mr. Holland: Right. The client I had knew something about Mr. Mathis or one of his relatives or whatever. And then I met with my client and was handed a cell phone. And Mr. Mathis was purportedly on the other end of the cell phone.

(Holland Dep. pp. 22-24).

Respondent submits that in order for Applicant's PCR to be timely, he must have filed the application within one (1) year of his becoming aware that Mr. Roberts potentially had a background in law enforcement. Ignoring the argument that Mr. Roberts' prior law enforcement background was discoverable at the time of Applicant's trial through adequate *voir dire*, the burden is on Applicant to show that his application was timely filed within one (1) year of his discovery of the information. For this reason, Respondent moves the Court to reconvene Mr. Holland's deposition in order to determine the date of Mr. Holland's conversation with Applicant and the identity of Mr. Holland's client referenced at the deposition.

At the deposition, Respondent attempted to ascertain either the name of Holland's client, or the date of the conversation, but Applicant objected based on attorney-client privilege. (Holland Dep. 23:10-25, 24:1-3). Respondent submits that pursuant to Rule 30(j)(3) SCRCP, Applicant has waived his objection by failing to move for a protective order within five (5) days of the termination of the deposition. Respondent further submits that the information is not even covered by attorney-client privilege because a third-party was present, and Holland's mere representation is not privileged information.

Furthermore, the date of the conversation is not privileged information because Applicant was never Mr. Holland's client. Rather, this is material information that Applicant must prove in order to move forward with his application.

III.

WHEREFORE, having made its motion, the Respondent requests that the deposition be reconvened in order to determine, (1) the date of the conversation between Applicant and Mr. Holland and (2) the identity of Mr. Holland's client who put him in contact with Applicant. with Applicant responsible for all associated costs.

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CROOM HUNTER
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

December 30th, 2014

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LANCASTER	)	
	)	
	)	2013-CP-29-0951
	)	
VERNARD J. MATHIS, #297034,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Notice of Motion and Motion to Reconvene Deposition** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
Law Ofc. Of Tara Dawn Shurling, PA
3614 Landmark Drive Suite A
Columbia, SC 29204

DATED this the 30th day of December, 2014.

Ashley Haworth, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034
Applicant,

v.

THE STATE OF SOUTH CAROLINA,
Respondent.

2013-CP-29-051

REPLY TO MOTION TO RECONVENE DEPOSITION

FILED
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LANCASTER, SC

I.
PROCEDURAL HISTORY

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an order dated October 14, 2008, the Honorable Kenneth G. Goode denied and dismissed the application with prejudice. A Petition for Writ of Certiorari was then filed in the South Carolina Supreme Court. The Petition was denied on December 2, 2010, and the Remittitur was sent on January 7, 2011.

Applicant filed his current Application for Post-Conviction Relief on July 9, 2013. In this application he alleged that:

> 1. The Applicant's right to a fair trial, as guaranteed by the Fifth, Fourth, and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution, was violated in the trial court where a juror in his case, the foreman of his jury, failed to disclose a long history of employment in law enforcement including two positions which had put him in the position of working with the then Solicitor in Lancaster, John R. Justice, as well as his staff.
>
> a. Ronnie E. Roberts served as a juror at the Applicant's trial. This juror, juror no. 111, was ultimately selected as the foreman of the Applicant's jury. When the jury pool was asked if anyone in the group had any special relationship with Solicitor John R. Justice, or his staff, this juror failed to respond. The Applicant has recently been able to confirm that this individual worked in law enforcement from approximately 1982 through December 31, 2000. His career included the following employment:
>
> Kershaw Police Department from June 26, 2000 through December 31, 2000.
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>
> University of South Carolina Police Department starting in 1989.
>
> Lancaster Police Department starting in 1982.
>
> In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit

continuously from his election in 1978 until his illness and death in 2006.

b. Cases brought by both the Lancaster Police Department and the Kershaw Police Department during this juror's employment by those law enforcement agencies were prosecuted by the Sixth Circuit Solicitor's Office.

c. The Applicant has it upon information and belief that members of the Sixth Circuit Solicitor's Office involved directly in the Applicant's trial were aware of this juror's relationship with their office and failed to disclose this information either to the Court *or* Counsel for the Applicant.

d. The juror information form completed by this juror disclosed no facts which would have put the Applicant, or his Counsel, on notice of this juror's law enforcement background or his longstanding relationship with the Sixth Circuit Solicitor's Office.

2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

Applicant subsequently filed a Motion for Leave to Conduct Discovery on October 7, 2013. Respondent filed its Return to Motion for Leave to Conduct Discovery on October 18, 2013, in which Respondent consent to Applicant's motion with the following stipulations:

1. Deposition questions for witnesses are limited to those related to juror's law enforcement background and disclosure at *voir dire* and Assistant Solicitor's knowledge of such.

2. Respondent has the option to utilize live testimony from either witness if considered necessary for a hearing.

3. The costs of the depositions and copies of transcripts are paid for by Applicant.

Respondent subsequently filed its Return and Motion to Dismiss on January 30, 2014. On April 22, 2014, Applicant deposed Ronnie Ellison Roberts (Juror) and Thomas William Holland, Esquire (Assistant Solicitor) at the Lancaster County Courthouse. Applicant was present and represented by Tara Dawn Shurling, Esquire. Respondent was

represented by Mary S. Williams, Esquire and J. Croom Hunter, Esquire. Respondent served Applicant with his Amended Return on July 1, 2014. Applicant served his Reply to Respondent's Amended Return and Motion to Dismiss on August 6, 2014. On September 25, 2014, the parties were notified by email that the Court was denying the Respondent's Motion to Dismiss. By Order dated October 25, 2014, and filed October 29, 2014, the Court denied Respondent's Motion to Dismiss and directed that this matter be scheduled *"for hearing at the next practical term of Post-Conviction Relief hearings to be held in the Sixth Judicial Circuit."* **Order, filed October 29, 2014, p. 16.**

Respondent served Applicant with Notice of Motion and Motion to Reconvene Deposition on December 30, 2014. PCR Counsel's office was closed from December 31, 2014 until January 5, 2015. PCR Counsel therefore, did not receive this motion until January 5, 2015. Unfortunately, PCR Counsel contracted the flu early in January and was out of the office sick for most of the first two weeks of 2015. Applicant now responds to Respondent's motion and asks that it be denied.

II.

Respondent asserts that he objection raised by PCR Counsel during the deposition of Thomas W. Holland, Esquire, has been waived by PCR Counsel's failure to file a Motion for a Protective Order within five (5) days pursuant to Rule 30(j)(3), SCRCP. Applicant respectfully disagrees. Specifically, in a portion of the deposition expressly referenced by Respondent in its motion, PCR Counsel stated her belief that ***"until if and when I would use her as a witness I believe that is privileged."*** See, Holland Dep. p. 24, ll. 1 – 3, (Emphasis added) and Respondent's Motion to Reconvene, p. 5. Counsel for the Respondent then stated, ***"Absolutely".*** Holland Dep. p. 24, l. 4, (Emphasis added). Thus, Counsel for Respondent conceded that the response sought by the question in dispute was ***"absolutely"*** privileged. In light of that concession, there was no reason for PCR Counsel to seek a protective order pursuant to 30(j)(3), SCRCP. Applicant would

further note that the record of this deposition indicates that Attorney Holland shared PCR Counsel's view that the question called for a privileged response. See, Holland Dep. p. 23, l. 10 – 20. Applicant would further note that the deposition in question was taken on April 22, 2014. PCR Counsel would have been required to seek a protective order within five (5) business days of the termination of this deposition, April 22, 2014, pursuant to Rule 30(j)(3), SCRCP, had such an order have been needed. Thus, it was apparent that such a request by Applicant was not forthcoming by April 27, 2014. Rather than schedule this matter for an evidentiary hearing without further delay, Respondent waited ***eight (8) months*** to file its Motion to Reconvene this deposition. As previously noted, by Order filed October 29, 2014 this Honorable Court directed the Respondent to schedule this matter ***"for hearing at the next practical term of Post-Conviction relief hearings to be held in the Sixth Judicial Circuit."*** Rather than comply with that order, Respondent waited two more months, until December 30, 2014, to file the Motion to Reconvene currently before the Court.

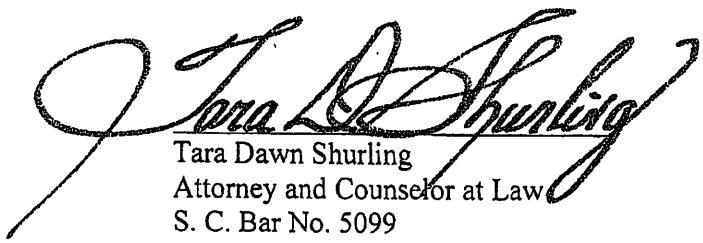
Our Supreme Court has found a Post-Conviction Relief action is the appropriate venue to raise Applicant's claims. *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623, (S. Ct., 2013) Applicant submits that his application is timely pursuant to § 17-27-45(C), because it was filed within one year of his discovery and confirmation of the allegations raised in it. This Honorable Court has already granted Applicant an evidentiary hearing which will afford him the opportunity to meet his burden of proof by presenting testimony and documentation which will conclusively prove the timeliness, and the merit, of his current application. Applicant asks that the Respondent's Motion to Reconvene the Deposition of Thomas W. Holland, Esquire, be denied and he requests that the Respondent, ***once again***, be directed to schedule this matter for an evidentiary hearing as soon as possible.

IV

CONCLUSION

Based upon all the foregoing facts and authorities, Applicant submits that Respondent's Motion to Reconvene the Deposition of Thomas W. Holland, Esquire, should be denied and this matter should be scheduled for an evidentiary hearing pursuant to *McCoy, supra.*

Respectfully submitted,



Tara Dawn Shurling
Attorney and Counselor at Law
S. C. Bar No. 5099

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3614 Landmark Dr., Suite A
Columbia, S.C. 29204
(803) 738-8622
(803) 738-1600 (fax)
tdslaw@shurlinglaw.com

ATTORNEY FOR THE APPLICANT

This 20th day of January, 2015.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

VERNARD JEROME MATHIS, 297034)
Applicant,)
)
v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)
)

2013-CP-29-051

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a copy of the Reply to Motion to Reconvene Deposition of Thomas W. Holland, Esquire, in the above matter has been served on opposing counsel, J. Croom Hunter, Assistant Attorney General, this 20th day of January, 2015, by mailing one (1) copy in a stamped envelope properly addressed to:

J. Croom Hunter
Assistant Attorney General
Office of the Attorney General
P. O. Box 11549
Columbia, SC 29211

Tara Dawn Shurling
Attorney and Counselor at Law

SWORN TO BEFORE me this 20th day of January, 2015.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

FILED
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LANCASTER, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF LANCASTER)

IN THE COURT OF COMMON PLEAS

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v.)
)
THE STATE OF SOUTH CAROLINA,)
Respondent.)

2013-CP-29-051

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The undersigned attorney hereby certifies that a copy of the Reply to Motion to Reconvene Deposition of Thomas W. Holland, Esquire, in the above matter has been served on the Honorable Brian M. Gibbons, Circuit Court Judge, this 20th day of January, 2015, by mailing one (1) copy in a stamped envelope properly addressed to:

The Honorable Brian M. Gibbons
Circuit Court Judge for the Sixth Circuit
P. O. Box 580
Chester, S. C. 29706

Tara Dawn Shurling.
Attorney and Counselor at Law

SWORN TO BEFORE me this 20th day of January, 2015.

Suzanne Graham (L.S.)
Notary Public for South Carolina
My Commission Expires: 2/28/24

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COUNTY OF LANCASTER)

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VERNARD JEROME MATHIS, 297034)
Applicant,)
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v.)
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THE STATE OF SOUTH CAROLINA,)
Respondent.)
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2013-CP-29-051

ORDER

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CLERK OF COURT
LANCASTER, SC

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iv. The South Carolina Criminal Justice Academy from April 3, 1989 until July 23, 1996.

v. University of South Carolina Police Department starting in 1989.

vi. Lancaster Police Department starting in 1982.

In at least two of these positions he would have worked on cases prosecuted by the Sixth Circuit Solicitor's Office where Solicitor John R. Justice was the chief prosecutor for that circuit continuously from his election in 1978 until his illness and death in 2006.

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2. Members of the Sixth Circuit Solicitor's Staff were aware that the foreman of the Applicant's jury was the retired Chief of Police for the Kershaw Police Department and failed to disclose this information to the Court or the Applicant.

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II

SUMMARY OF RELEVANT PORTIONS OF DEPOSITIONS

Copies of the April 22, 2014 depositions have been provided to this Court and are incorporated as part of the record in this matter. Relevant portions of these depositions reveal the following.

Ronnie Ellison Roberts

In 2003 he was employed by Assurant Group, a mortgage insurance company, in Florence, South Carolina. He described his position with that company as a training manager. Prior to that, he taught criminal law at Northeastern Technical College for two years. Roberts Dep. p. 3, l. 25-p. 6, l. 14. When asked what job he held prior to that, Roberts initially responded that prior to that he retired as Police Chief for the City of

York, on April 7, 2000. Roberts Dep. p. 6. ll. 15-20. When prompted by Applicant's Counsel, he acknowledged that after leaving the York Police Department he took the position as Chief of Police in the Town of Kershaw from approximately June, 2000 to December, 2000, when the City did away with its police department. Roberts Dep. p. 6, l. 21- p. 7, l. 25.

Roberts's lengthy history of employment in the field of law enforcement is documented by his deposition which establishes the following employment timeline:

- November 17, 1975 – February, 1982 He was with the Lancaster Police Department.
- 1982 – 1986 Director of Public Safety USC Police Department at USC Lancaster, South Carolina
- 1986 – 1989 Police Chief at USC Police Department in Columbia, S. C.
- 1989 – 1996 Instructor for the South Carolina Criminal Justice Academy
- July 1996 - July 1998 Chief of Police Lake City Police Department
- July 1998 – April 2000 York Police Department

Roberts Dep. p. 6, l. 15 – p. 10, l. 22. Roberts expressly recalled serving on Applicant's jury in June, 2008, and confirmed that he was appointed as foreman on that jury. Roberts Dep. p. 10, l. 25- p. 11, l. 6. When asked if he recalled being asked during *voir dire* whether he had any relationship with the Sixth Circuit Solicitor's Office, Roberts not only said "no" but added, "Of course I have no relationship with them." Roberts Dep. p. 12, ll. 5-11. He repeated his claim that he didn't recall being asked the question about his relationship with the Sixth Circuit Solicitor's Office, and claimed the only person he

knew in that office was Solicitor Justice. Roberts Dep. p. 15, ll. 12-18.

In his deposition, Roberts admitted calling the Solicitor's Office after being summoned for jury service. He specifically stated. "I called and talked to someone and told them, you know, with my background would it not disqualify me. And they said as long as I could do a fair trial, you know, to come up, that they would not excuse me. So I came up." Roberts Dep. p. 15, l. 18-22. Roberts stated that he could not recall who he spoke with at the Solicitor's Office. Roberts Dep. p. 15, l. 23- p. 16, l. 2. When asked if he knew any of the witnesses who testified in this case, Roberts replied, "The only one I knew was the one who is now the Sheriff. I knew him. I didn't know the others." Roberts Dep. p. 16, ll. 11-14 and 23-25. Roberts stated that he did not know who the witnesses were going to be at the time he was seated. He claimed that the list of potential witnesses was not read *during* jury selection. Roberts Dep. p. 16, ll. 15-22. The record of the *voir dire* of Applicant's jury very clearly reflects that the Court did ask if any of the members of the Petit Jury if they had any special relationship with any of the potential witnesses, and then had Solicitor Justice read the list of their potential witnesses to the jury pool. *Voir Dire* Tr. p. 6- p. 8. Next, the jury pool was expressly asked, "Do any members of the Petit Jury panel have any relationship or contact with Solicitor John Reid Justice or any member of the Sixth Judicial Circuit's Solicitor's Office. If so stand." *Voir Dire* tr. p. 11. Roberts admitted that he knew Barry Faile, a law enforcement witness for the State. He also added, "But that's the only one I knew by name." Roberts Dep. p. 16, l. 23-p. 17, l. 5. Roberts claimed he knew Solicitor John Justice, but claimed he had only spoken with him one time, and that was in a case where he was a prosecution witness. Roberts Dep. p. 17, ll. 6-25.

When questioned more closely about knowing Officer Barry Faile, who testified at Applicant's trial, Roberts once again qualified his answer noting that, "As far as I can remember" he was the only witness he knew from this trial Roberts Dep. p. 18, ll. 3-6. Initially, Roberts claimed he *did not* discuss his law enforcement background with the members of Applicant's jury. Roberts Dep. p. 18, ll. 18-20. When pressed on this issue, however, he qualified his answer by stating, "I don't remember doing that." He also noted that one of the jurors knew him, "...but he knew I was also retired..." Roberts Dep. p. 18, ll. 21-25. He stated that the juror in question was Eddie Lewis. Roberts Dep. p. 19, l. 2-3.

Roberts acknowledged that State Witness, Barry Faile, knew of his career in law enforcement, and was himself on the law enforcement team in this case. Roberts Dep. p. 20, l. 14-p. 15, l. 4. He further acknowledged that fellow juror, Eddie Lewis, would have known his background in law enforcement. Roberts Dep. p. 21, ll. 6-8.

The deposition of Juror Roberts reflects that although he initially claimed Solicitor John Justice was the only person he knew from the Solicitor's Office, he eventually admitted that he also knew Senior Assistant Solicitor, Doug Barfield, who tried Applicant's case with Solicitor John Justice. He acknowledged that they knew each other by sight. Roberts Dep. p. 21, l. 14- p. 22, l. 3. In his deposition, Roberts revealed that when he received the letter about his deposition, he called and spoke with Barfield about it. Roberts Dep. p. 22, ll. 17-23. Roberts went on to indicate that Barfield actually knew some of his family members. Roberts Dep. p. 23, ll. 9-14. When questioned about his call to the Solicitor's Office after receiving the jury service notice, Roberts claimed he spoke with "whoever answered the phone." Roberts Dep. p. 23, ll. 23-25. He did,

however, reveal the gender of the person he spoke with by saying, "I told him" I was retired. Roberts Dep. p. 24, ll. 3-7. See also, Roberts Dep. p. 26, l. 15-17. He also clearly stated, "I wasn't trying to get out of it" but noting he didn't "think anybody would let him sit anyway." Roberts Dep. p. 24, ll. 9-11. When asked specifically if he would have answered the question concerning knowing or having contact with the Solicitor's Office *if he had heard it*, he responded "yes" and once again noted that this issue was why he called the Solicitor's Office. Roberts Dep. p. 26, ll. 10-19.

When asked directly if he had any cases with the Solicitor's Office while he was Kershaw City Police Chief, he said "no". He subsequently once again, qualified his answer by saying, "I don't think we had any General Sessions or anything that came up through them." Roberts Dep. p. 28, ll. 15-17. Roberts indicated that he knew the Defense Attorney would not want a police officer on Applicant's jury. Roberts Dep. p. 30, ll. 2-5. He said that was why he called the Solicitor's Office when he got the jury notice. He made it clear he knew how the jury system worked and was aware that either side could use a peremptory strike to remove him from service. Roberts Dep. p. 30, ll. 2-16.

Although Roberts deposition testimony indicates he did not know who he spoke with when he called the Solicitor's Office about jury service, he specifically stated, "*He told me* to come up, *and he might could release me*, but *he* didn't he kept me all week." Roberts Dep. p. 29, ll. 8-21 (Emphasis added). *See also*, Roberts Dep. p. 31,l. 15-16. His statements during his deposition clearly indicate that while he went out of his way to let the prosecution know he would be in the jury pool that week, he did nothing to reveal the fact to Defense Counsel, but rather assumed "the defense attorneys did their own leg

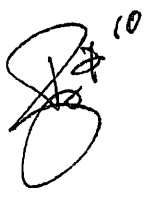
work and knew." Roberts Dep. p. 30, ll. 13-18. Despite acknowledging that he knew the defense lawyer wouldn't want him on their jury, Roberts did nothing to bring his long history as a law enforcement office to the attention of the Court and Defense Counsel during the jury selection process. He admitted that he did nothing to try and be excused from jury service at Applicant's trial. Roberts Dep. p. 31, l 5- p. 32, l. 9. Roberts admitted that when the Court asked if any of the prospective jurors had contact with the Solicitor's Office he did not disclose his previous work with the Solicitor's Office, nor did he tell the Court and Defense Counsel about having called the Solicitor's Office about being called for jury service the week of this trial. Roberts Dep. p. 32, l. 13- p. 33, l 5.

Attorney Thomas William Holland

Attorney Holland was also deposed on April 22, 2014. He acknowledged having been an Assistant Solicitor in the Sixth Circuit at the time of Applicant's trial. Holland Dep. p. 4, ll. 1-9. He participated in the prosecution of Applicant although he recalled having only handled one witness; the SLED DNA witness. Holland Dep. p. 4, ll. 10-24. Holland stated that he was in and out of the courtroom during the jury selection, but recalled being told by either "a court person" or law enforcement that the jury looked good, and that the foreman was a former Chief [of Police] in Kershaw. Holland Dep. p. 5, l. 17- p. 6, l. 16. Holland admitted that he subsequently heard "other law enforcement officers connected with [Applicant's] case discussing the fact that Mr. Roberts was on the jury." Holland Dep. p. 6, l. 17-p. 7, l. 2. Holland recalled being shocked that Roberts was on the jury, and didn't understand why he wasn't struck. He said he heard multiple people, law enforcement and court personnel, discussing it. Holland Dep. p. 7, l. 3- p. 8,

l. 12. He acknowledged that these individuals obviously thought it was significant enough to bring to his attention. Holland Dep. p. 8, ll. 14-18. Holland said he brought what he had been told to the attention of one of the two senior prosecutors; either Solicitor John Justice or Senior Assistant Solicitor Doug Barfield. He stated that he "would assume" he would have talked with Doug Barfield rather than Solicitor Justice. Holland Dep. p. 8, l 19- p. 9, l. 6. See also, Holland Dep. p. 10, l. 24- p. 11, l. 11. Holland recalled asking how Roberts could have gotten on the jury. He remembered questioning whether the defense lawyer ran out of strikes, and asking whether Defense Counsel knew the foreman was former law enforcement. His deposition confirms that he was told the defense did not run out of strikes and further, that the senior prosecutor response was "I don't know what he knew kind of thing." Holland Dep. p. 9, ll. 6-12. When Holland asked if that was something they should disclose, or should have disclosed, he was told, "No, he answered all the questions." Holland Dep. p. 9, ll. 12-19. Holland explained his questioning the senior prosecutor by stating, " And it would have been a question because I didn't feel like anything was illegal, per se, or a violation of any rules, but you know kind of more of a policy thing of how you want to run your office kind of thing." Holland Dep. p. 10, ll. 15-19. He acknowledged that with this being a murder case, there would have been 2-3 alternate jurors selected. Holland Dep. p. 11, ll. 12-18.

The record of the jury selection portion of Applicant's trial documents that three (3) alternate jurors were selected in this case. *Voir Dire* Tr. p. 53, l. 13- p. 55, l. 22. The record further documents that the defense had only used three (3) of its ten (10) strikes at the time Roberts was seated. *Voir Dire* p. 47, l. 9- p. 51, l. 12. The *Voir Dire* record in



fact demonstrates that the defense used only three (3) strikes during the selection of the Applicant's jury. *Voir Dire* p. 47, l. 9- p. 53, l. 10. When asked if he ever considered disclosing the background of this juror to the defense team, Holland stated no, and went on to explain "it was their case..." Holland Dep. p. 11, l. 23- p. 12, l. 6. Although he tried to downplay how pleased the law enforcement officers involved in this case were about getting a former Chief of Police on this jury, he acknowledged that they were all happy about it. Holland Dep. p. 13, l. 13- p. 14, l. 18. He also acknowledged a defense attorney would be expected to use a peremptory strike to excuse a former law enforcement officer from service provided he had strikes available. Holland Dep. p. 14, l. 19- p. 15, l. 14.

Holland's statements in his deposition tended to convey that he didn't think there was anything wrong with the way Roberts ended up on Applicant's jury, however, other portions of his deposition establish that after he left the Solicitor's Office he conveyed information about this situation to one of his clients who in turn set up a telephone conversation between Holland and Applicant. Holland Dep. p. 12, ll. 7-19. He acknowledged that after his telephone conversation with someone who identified himself as Applicant, he was contacted by the late Dave MacDougal, who identified himself as an investigator hired to investigate rumors that Roberts was former law enforcement. Holland Dep. p 13, ll. 2-9.

III

FINDINGS OF FACT AND RULINGS OF LAW

Our Courts have recognized that a juror who intentionally conceals information inquired into is not impartial. *State v. Stone*, 350 S.C. 442, 448, 567 S.E.2d 244, 247

(2002); *State v. Woods*, 345 S.C. 583, 587-88. 550 S.E.2nd 282, 284 (2001). Utilizing the analysis applied in *Woods, supra.* the initial inquiry is whether the identified concealment was intentional or unintentional. Once the intentional concealment of information is found, the second prong of the *Woods* standard is the question of whether the information at issue would have supported a challenge for cause *or would have been a material factor in the use of peremptory challenges.* Where both factors are present, a new trial should be granted. *Woods*, 345 S. C. at 587, 550 S.E.2d at 284. While *Woods* and *Stone* are the controlling authorities where juror concealment is involved arguably the decision in *Woods* did not negate the general due diligence standard expressed in the earlier case of *Thompson v. O'Rourke,* 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986).

In this case, Roberts has acknowledged that he knew a defense attorney would not want him on their jury. He admits that he called the Solicitor's Office and reported that he had been summoned for jury duty despite his claim that he wasn't trying to get out of jury service. Although during his deposition he claimed not to know who he spoke to when he called the Solicitor's Office, the deposition confirms that he recalled that although the person he spoke with had told him he might be able to release him when he came to Court, "*he kept me there all day.*" One can fairly infer from this statement that he knew the person he talked to about jury service *before the trial* was present *at the trial all day.* Roberts first stated that Solicitor Justice was the only person he knew from the Solicitor's Office. Later he admitted that he knew Senior Assistant Solicitor Doug Barfield, who prosecuted Applicant with John Justice, and said members of his family knew him as well. Roberts admitting knowing Officer Faile, but stated that he couldn't recall the long portion of the *voir dire* record when the trial judge asked the jury panel