

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

---

Appeal from Lexington County  
Honorable William P. Keesley, Circuit Court Judge

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Appellate Case No. 2019-001104

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S.C. SUPREME COURT

RON O'NEAL FINKLEA, SK6025,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

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APPENDIX

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DIANA L. HOLT  
DIANA HOLT, LLC  
P.O. Box 6454  
Columbia, South Carolina 29260-6454

JOHN H. BLUME, III  
Blume, Norris, Franklin-Best & Young, LLC  
900 Elmwood Avenue, Suite #200  
Columbia, South Carolina 29201

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Deputy Attorney General

MELODY J. BROWN  
Senior Assistant Deputy Attorney General  
No. 14244

W. JOSEPH MAYE  
Assistant Attorney General  
No. 100851

Post Office Box 11549  
Columbia, South Carolina 29211-1549  
(803) 734-6305

ATTORNEYS FOR RESPONDENT

ATTORNEYS FOR PETITIONER

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1 include the admission of out-of-court statements by  
2 a co-defendant, a nontestifying co-defendant. In  
3 this case, we have the opposite of that. We have  
4 the defendant bringing in evidence which otherwise  
5 would be inadmissible, that totally inculcates the  
6 defendant and points to his guilt.

7 The State objected to that on the basis that  
8 the -- on some perhaps appellate review of the  
9 issue, the court would have some concern involving  
10 ineffective assistance of counsel. The Court then  
11 went through a colloquy with the defendant on this  
12 issue.

13 And the defense has taken a few different  
14 stands, but ultimately decided to seek to bring in  
15 the statements of Mr. Davis, including putting in an  
16 exhibit which otherwise would not normally be  
17 admissible, the officer's investigative report which  
18 pinpoints Mr. Finklea as the shooter in this case  
19 and the person setting Mr. Sykes on fire.

20 So the credibility of Mr. Davis in making that  
21 statement is now an issue even though it's been put  
22 in issue through the -- what might be considered the  
23 strangest of circumstances. And we have to deal  
24 with that issue as we currently see it.

25 And I'm now revisiting in my mind whether or



1 not the defense in pursuit of the, quote, unquote,  
2 defense strategy should now be allowed to attack the  
3 credibility of Mr. Davis, credibility of their own  
4 -- in effect, they've made Mr. Davis their own  
5 witness through this officer. What says the State?

6 MR. MYERS: Still say that his prior record has  
7 no relevance to the crime. You can't try someone's  
8 character when they're not on trial. And you  
9 probably can't try their character when they are on  
10 trial. I can't try Mr. Finklea's character right  
11 now. So you can't try someone's character unless  
12 that relates to the particular crime.

13 His prior record, as in State versus Bell, is  
14 irrelevant unless it is associated somehow with the  
15 crime for which this case is on trial and it's not.  
16 It's not. So that takes it away from it.

17 Now, as long as they can connect something with  
18 this crime, then we couldn't object, but it's not  
19 connected. And all it is is a character  
20 assassination of the co-defendant who's not on  
21 trial.

22 THE COURT: Ms. Kimbrough.

23 MS. KIMBROUGH: Your Honor, I'll repeat myself  
24 again. We think it's important because it formed  
25 part of this investigation. Our whole theory is

DUANE RAY PEAKE (IN CAMERA) - EXAMINATION BY MS. KIMBROUGH

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1 that Theodore Davis is someone who has a history of  
2 violence and a history of blaming other people for  
3 his own violent acts. And we believe that --

4 THE COURT: What do you want to ask this  
5 officer about Theodore Davis?

6 MS. KIMBROUGH: Did you obtain an NCIC report  
7 on both Ron Finklea and Theodore Davis, Junior?

8 THE COURT: You can answer it.

9 THE WITNESS: Did I obtain an NCIC report?

10 EXAMINATION

11 BY MS. KIMBROUGH:

12 Q Or a rap sheet?

13 A Rap sheet, yes, ma'am.

14 Q And you ran that prior to going to Alabama?

15 A Yes, ma'am.

16 Q That was part of your investigation?

17 A That's correct.

18 Q Okay. And as a result of conducting that  
19 inquiry, what did you learn about Theodore Davis,  
20 Junior's criminal history?

21 A I can't be specific on his charges or  
22 convictions because I don't have it in front of me,  
23 but he has a prior record.

24 Q Do you have your file with you that would  
25 include information on Mr. Davis?

1           A     I'm sure we do, yes, ma'am.

2           MS. KIMBROUGH: Since this is just a proffer,  
3     at that point, I would ask Investigator Peake to  
4     discuss what is on that document.

5           THE COURT: Have you reviewed it?

6           MS. KIMBROUGH: Yes, I have.

7           THE COURT: What's on it?

8           MS. KIMBROUGH: Assault and battery with intent  
9     to kill, there were two, I believe it was in 1993 in  
10    Richland County.

11          THE COURT: All right.

12          BY MS. KIMBROUGH:

13         Q     And then I would ask, did you also run a  
14     criminal rap sheet on Ron Finklea?

15         A     Correct.

16         Q     And what did you learn from that inquiry?

17         A     That he had no record.

18         MS. KIMBROUGH: Those are the questions I would  
19     ask.

20         THE COURT: So you want to put Mr. Davis'  
21     character in issue and also put Mr. Finklea --  
22     establish through this witness that Mr. Finklea  
23     doesn't have a criminal record?

24         MS. KIMBROUGH: Well, I would ask about both of  
25     the defendants, yes.

1           THE COURT: Well, I understand. We already  
2 talked about you're asking about Davis, now we're  
3 focusing on Finklea. What makes that admissible?

4           MS. KIMBROUGH: Again, it's part of the  
5 investigation. We think that the investigation was  
6 flawed because any rational, reasonable person  
7 looking at the two histories of these two men might  
8 be kind of sceptical when a convicted felon, who's  
9 previously shot someone else in the head, says, Oh,  
10 it's all him.

11           I mean, I think that's unreasonable to adopt  
12 that focus in this investigation. That's our  
13 theory. We think that the investigation was flawed.  
14 We think their conclusions --

15           THE COURT: And the fact that Mr. Davis has a  
16 criminal record and Mr. Finklea does not, that tells  
17 us what happened at Selectron that night?

18           MS. KIMBROUGH: Absolutely not.

19           MR. MYERS: That's pretty much the answer right  
20 there as to relevancy, Your Honor.

21           MS. KIMBROUGH: No, it's -- actually, those are  
22 two separate questions. What happened at Selectron,  
23 that's for the jury to decide. How this  
24 investigation was conducted, that's relevant.

25           MR. MYERS: A rap sheet has nothing to do with

1 an investigation. It's one --

2 MS. KIMBROUGH: Then why was it run?

3 MR. MYERS: -- of the tools. If they had run a  
4 lie detector test, it wouldn't be admissible.

5 MS. KIMBROUGH: Your Honor, if it wasn't  
6 relevant to the investigation, then why was it done  
7 in connection with the investigation? It wasn't  
8 done as some independent project.

9 THE COURT: All right. Well, I agree with the  
10 Solicitor that it's not relevant, but given the  
11 posture of this case and the evidence that the  
12 defense has admitted, I must allow them to pursue  
13 this strategy by allowing the evidence that would  
14 otherwise be inadmissible in any other trial that I  
15 can imagine. So I'm going to allow that line of  
16 questioning.

17 MR. MYERS: The conviction, but certainly not  
18 the underlying details.

19 THE COURT: Well, absolutely. Counsel -- of  
20 course, you can't testify about someone shooting  
21 someone in the head, any -- but I'm going to allow  
22 in what you're seeking regarding the prior record of  
23 both parties.

24 MR. MYERS: Thank you.

25 MS. KIMBROUGH: Thank you, Your Honor.

DUANE RAY PEAKE - REDIRECT BY MR. HUBBARD

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1 THE COURT: All right. But, at this point, the  
2 State has the floor with redirect examination, I  
3 think. And we'll bring the jury in.

4 (The jury returns to the courtroom.)

5 THE COURT: Concerning the previous objection,  
6 Ms. Kimbrough.

7 MS. KIMBROUGH: It's withdrawn, Your Honor.

8 THE COURT: All right. Objection is withdrawn.  
9 Restate the question. You may answer.

10 BY MR. HUBBARD:

11 Q Detective, I want to show you what has been  
12 marked as Defense Exhibit Number 1. Can you take a  
13 look at that, sir?

14 A (Witness complies.)

15 Q Looking at Defense Exhibit Number 1, does that  
16 exhibit indicate a conversation with Mr. Davis,  
17 Theodore Davis?

18 A Yes, sir.

19 Q Does that report have Davis putting himself as,  
20 quote, the second man?

21 A That's correct.

22 Q Does that report also have Davis I.D.'ing Ron  
23 Finklea as the one who shot Officer Sykes and  
24 setting him on fire?

25 A That's correct.

1 Q Does that report indicate the search of the  
2 white Mustang?

3 A That's correct.

4 Q Does that report also indicate that a  
5 Leatherman tool was found in that Mustang?

6 A That's correct.

7 Q Does that report also indicate Davis said he  
8 used that tool to try to break into the ATM at  
9 Selectron?

10 A That's correct.

11 Q And does that report also indicate that a  
12 search was done and pants, an orange shirt and a cap  
13 were found?

14 A That's correct.

15 Q And that's in Alabama?

16 A That's correct.

17 MR. HUBBARD: Thank you. Detective.

18 THE COURT: Recross-examination.

19 MS. KIMBROUGH: Thank you. Your Honor.

20 RECROSS-EXAMINATION

21 BY MS. KIMBROUGH:

22 Q Good afternoon, again. Going back to the trip  
23 to Alabama, in your preparations in getting ready  
24 for your meetings with the two defendants, did you  
25 run any criminal history reports on Theodore Davis;

DUANE RAY PEAKE - RECROSS BY MS. KIMBROUGH

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1 Junior?

2 A Yes, we did.

3 Q And what did you learn as a result of that  
4 report?

5 A Learned that Theodore Davis had a prior  
6 criminal record.

7 Q And do you have a copy of that with you in your  
8 file?

9 A I don't have it up here.

10 Q Would it be helpful if I brought you your file?

11 MR. HUBBARD: Which notebook, Detective?

12 THE WITNESS: I'm not sure if it's in mine or  
13 yours.

14 MS. KIMBROUGH: Your Honor, may the witness  
15 step down to retrieve his file?

16 THE COURT: Yes.

17 (Pause.)

18 THE WITNESS: I apologize.

19 BY MS. KIMBROUGH:

20 Q No. Thank you, Investigator. I'm sorry, I  
21 took you by surprise. Have you had a chance to  
22 review the criminal record report on Theodore Davis,  
23 Junior?

24 A Yes, ma'am.

25 Q Okay. And what does it show?



1 A It shows he had -- convicted of assault and  
2 battery with intent to kill, appears to be 1995;  
3 convicted of possession of marijuana, if I'm reading  
4 correctly, in '99; in 2000, a prior, convicted for  
5 assault and battery with intent to kill.

6 Q Okay. Would that be the extent of his record?

7 A Yes, ma'am, the best I can read his, it's kind  
8 of confusing here.

9 Q These reports don't tend to be the easiest to  
10 decipher.

11 A That appears -- two prior assault and battery  
12 with intent to kill convictions and one prior drug  
13 conviction.

14 Q Okay. Thank you.

15 MS. KIMBROUGH: May I approach, Your Honor?

16 THE COURT: Yes.

17 MS. KIMBROUGH: I'd like to have this marked as  
18 Defense Exhibit 2.

19 MR. MYERS: No, the record doesn't go in. He's  
20 already testified to it.

21 THE COURT: It will be marked for  
22 identification only.

23 MS. KIMBROUGH: Thank you.

24 (Defendant's Exhibit Number 2, Theodore  
25 Davis' rap sheet, was marked for identification

DUANE RAY PEAKE - RE CROSS BY MS. KIMBROUGH

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1 purposes.)

2 BY MS. KIMBROUGH:

3 Q And, Investigator Peake, did you also run a  
4 criminal history report on Ron O'Neal Finklea?

5 A Yes, ma'am.

6 Q And do you recall what the results of that  
7 report were?

8 A If I recall correctly, he didn't have a record.

9 Q Do you want to take a look at that report or  
10 are you confident?

11 A I'm pretty confident.

12 Q I just want to make sure that it's clear on the  
13 record. So would you like to get a copy of that?

14 A Again, you're throwing this at me and I'm not  
15 in preparation for that, but my memory calls back he  
16 did not have a record.

17 Q All right. And you're confident of that?

18 A Pretty confident.

19 MS. KIMBROUGH: Okay. Thank you.

20 MR. HUBBARD: No more questions, Your Honor.

21 THE COURT: All right. Thank you. You may  
22 step down.

23 MR. HUBBARD: State calls Sherry Bolin.

24 \*\*\*\*

25 \*\*\*\*

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 SHERRY BOLIN,  
2 having been duly sworn, testified as follows:  
3 THE CLERK: Speak up loud and clear, state your  
4 full name, spelling your last name, please.

5 THE WITNESS: Sherry Bolin, B-O-L-I-N.

6 DIRECT EXAMINATION

7 BY MR. HUBBARD:

8 Q Ms. Bolin, where do you work?

9 A Saint Andrews Animal Clinic.

10 Q How long have you been there?

11 A Six years.

12 Q Do you know Theodore Davis?

13 A Yes.

14 Q What name do you know him by?

15 A Junior.

16 Q Junior?

17 A Uh-huh.

18 Q How long have you known him?

19 A About eight years.

20 Q And do you know Irena Fuller?

21 A Yes.

22 Q And who is she?

23 A She's my girlfriend.

24 Q Okay. And does she have any relationship or  
25 relation to Mr. Davis?

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 A That's her brother.

2 Q Her brother?

3 A Yes.

4 Q What about Teresa Fuller or Teresa Finklea?

5 A That's Irena's sister.

6 Q And what, if any, relationship does she have to  
7 -- Teresa Finklea, have to the defendant?

8 A Teresa is Ron's wife.

9 Q Are they still married?

10 A They're not.

11 Q Now, before I get into asking you a bunch of  
12 questions about all these people, I want to ask you  
13 something about you, something that happened a while  
14 back. Back in 1998, were you convicted of  
15 shoplifting?

16 A Yes.

17 Q Back in 1999, were you convicted of forgery?

18 A Yes, that happened, actually, the day my  
19 grandfather killed himself.

20 Q Now, we'll get back to why we're here. Where  
21 is Teresa Fuller, also known as Teresa Finklea,  
22 where is she now?

23 A She's in Iraq.

24 Q Is she in the armed forces?

25 A She's in the Army.

1 Q How many times has Teresa Fuller, Teresa  
2 Finklea, been to Iraq?

3 A Three. The second -- the last two times, it  
4 was on her choice.

5 Q Now, I've mentioned Ron Finklea. Do you know  
6 Ron Finklea?

7 A Yes.

8 Q What name do you call him?

9 A Ron.

10 Q And about how long have you known Ron Finklea?

11 A Approximately, eight years.

12 Q Do you know if Ron Finklea was ever in the  
13 Army?

14 A He was.

15 Q Now, Junior, Theodore Davis, was he ever in the  
16 armed forces?

17 A No.

18 Q Not in any branch, Army, Navy, Marines, Air  
19 Force?

20 A No, sir.

21 Q Did Ron Finklea and Teresa ever live with you  
22 and Irena?

23 A They did.

24 Q Do you remember about how long ago that was --  
25 or I tell you what, how long did they live with you?

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 That might be a better question.

2 A Three, four months.

3 Q Were they in or out of the Army at the time?

4 A They'd just gotten out of.

5 Q So both of them had been in the Army, they got  
6 out and then they lived with you and Irena?

7 A Correct.

8 Q Where were you and Irena living at the time?

9 A Creek Side Mobile Home Park in West Columbia.

10 Q Now, when Ron Finklea and Teresa moved out, did  
11 Teresa go back into the Army?

12 A She did.

13 Q And when she went back into the Army, at some  
14 point, did she go back to Iraq?

15 A She did.

16 Q Was that the second time she went Iraq?

17 A Correct.

18 Q And you say that was by choice?

19 A Right.

20 Q Did Ron Finklea go back in the Army?

21 A He did not.

22 Q Do you ever recall Ron Finklea living at [REDACTED]

23 [REDACTED] [REDACTED] [REDACTED]?

24 A Correct, that's where he went when he left our  
25 house when his wife went back to Iraq, so he lived

1           there.

2           Q     Was that in Calhoun County?

3           A     It was.

4           Q     I'm going to show you this map, which is marked  
5           State's Exhibit 46. Is this [REDACTED] [REDACTED] right  
6           here (indicating)?

7           A     It is.

8           Q     And does that pretty much indicate where he  
9           lived at that time?

10          A     It does.

11          Q     Is that where he was living in August of 2003?

12          A     Yes.

13          Q     [REDACTED] [REDACTED] was after they moved out of your  
14          residence?

15          A     Correct.

16          Q     And he moved to [REDACTED] [REDACTED]?

17          A     Yes.

18          Q     Now, when he lived there, was Teresa there,  
19          too, or had she gone back in the Army? Did she go  
20          there for a while or did she go back in the Army?

21          A     If she went there, it was maybe a couple of  
22          weeks, but not much.

23          Q     When Teresa went back in the Army, did she  
24          leave a car behind?

25          A     She did.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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- 1 Q What kind of car, if you remember?
- 2 A It's a black, four door Mercury Tracer.
- 3 Q After she went in the Army, who drove that car?
- 4 A Ron.
- 5 Q Ron Finklea?
- 6 A Yes.
- 7 Q Did you ever know Ron Finklea to rent cars?
- 8 A Yes.
- 9 Q Is this something that he did often or just
- 10 occasionally?
- 11 A Whenever he'd go out of town, he'd rent a car.
- 12 Q Do you ever recall seeing him in a white
- 13 Mustang?
- 14 A Yes.
- 15 Q On how many occasions?
- 16 A Once.
- 17 Q Do you remember about when this was?
- 18 A Yes. It was Thursday prior to the crime.
- 19 Q So that would be July 31st of 2003?
- 20 A Yes.
- 21 Q Do you remember him saying anything about
- 22 renting that car or how that took place?
- 23 A Well, he had said that he was going to Alabama.
- 24 He didn't say what kind of car he was going to rent.
- 25 And he came to our house to pick up Robin Gripper.



SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 Q And who is Robin Gripper?

2 A Irena and Teresa's sister,

3 Q So she's --

4 A Ron's sister-in-law.

5 Q So he had another sister?

6 A Yes.

7 Q So Ron comes to your residence and wants to  
8 pick up Robin?

9 A Correct.

10 Q And he said he wanted to rent a car?

11 A Yes. They were going to the airport. She  
12 wanted a beer and cigarettes and so she went with  
13 him. And so he came to our house in the Mercury  
14 Tracer and when he came back, he was in the white  
15 Ford Mustang.

16 Q And when you saw him in that white Ford  
17 Mustang, did you notice the tags?

18 A Yes, Florida license plates.

19 Q I want to show you State's Exhibit Number 56.  
20 Does that look like the Mustang and the license tags  
21 you saw?

22 A Yes.

23 Q And that's July 31st that you saw this?

24 A Yes..

25 Q Of 2003?

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 A Yes.

2 Q Did he say why he was going to Alabama?

3 A Not that trip.

4 Q Did he say anything about money, coming into  
5 money?

6 A He did. A couple of weeks prior, like maybe a  
7 week or so prior, he said that he was coming into  
8 some money and --

9 Q Okay. That's good. And so that's what he  
10 said. Let me ask you this, going back to the rental  
11 of the car, when he came by to pick up Robin, was  
12 Junior present?

13 A He was not.

14 Q Junior wasn't in the car?

15 A He was not.

16 Q Was he at your residence?

17 A No.

18 Q When Ron came back by and dropped Robin off in  
19 the white Mustang, was Junior present?

20 A He was not.

21 Q He wasn't at your house or in the car?

22 A (Witness shook head.)

23 THE COURT: Can't hear you, ma'am.

24 BY MR. HUBBARD:

25 Q You have to speak up so the court reporter can

1 write it down.

2 A Okay.. I'm sorry.

3 Q Was he present when Ron Finklea came back with  
4 Robin?

5 A He was not.

6 Q Do you recall another trip Ron Finklea made to  
7 Detroit, Michigan?

8 A I do.

9 Q Did he tell you why he was going to Detroit,  
10 Michigan?

11 A He was going to pick up his wife's gun.

12 Q His wife's gun?

13 A Yes.

14 Q Teresa's pistol?

15 A Yes.

16 Q Who lives in Detroit?

17 A Irena, Teresa and Robin's dad.

18 Q Is that Robert Fuller?

19 A It is.

20 Q Was there ever a time that Ron Finklea and  
21 Teresa lived up in Detroit?

22 A Yes, when they came back from Germany and it's  
23 where they lived right before they came to live with  
24 us.

25 Q Now, this trip that he took to Michigan, was

SHERRY BOLIN - DIRECT BY MR. HUBBARD.

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1 that before or after he rented that Mustang?

2 A It was before.

3 Q Do you know about how long before? And if you  
4 don't know the exact date, if you can just tell me  
5 what season was it, spring, summer, winter or fall.

6 A It was the same summer.

7 Q Did you ever see that gun?

8 A I did not.

9 Q Now, going back to the residence on Fort Motte  
10 Road, who all lived in that residence?

11 A Willy Gripper, which is Robin Gripper's  
12 estranged husband, Junior and Ron Finklea.

13 Q I want to show you what's been marked as  
14 State's Exhibit 48. Have you seen this diagram  
15 before?

16 A Yes. It's the mobile home that they lived in.

17 Q Now, let me just do this, is this the entrance?

18 A It is.

19 Q The bedroom down on this end, whose bedroom was  
20 that?

21 A That was Willy's bedroom.

22 Q Now, tell me a little bit about Willy, was he  
23 usually around?

24 A He wasn't. He had a new girlfriend at the  
25 time, and he was a truck driver, so he spent most of

1 his time at her house in Orangeburg.

2 Q So he pretty much wasn't around?

3 A Right. He was rarely home.

4 Q Now, coming down here to another room, whose  
5 room was that, right down here?

6 A That was Junior's room.

7 Q Junior being Theodore Davis?

8 A Correct.

9 Q The room on the far end, who lived in that  
10 room?

11 A Ron Finklea.

12 Q Okay. Now, just describe the layout, this big  
13 box here in this room, what is that?

14 A That's a single bed.

15 Q And this little box beside the bed, what is  
16 that?

17 A That was a little night table with a phone.

18 Q This little thing that's diagonally placed in  
19 the room right beside the doorway, what is that?

20 A It was a four or five chest of drawers with a  
21 T.V. on of it.

22 Q Does that explain the angle?

23 A It does.

24 Q Watch T.V. in bed?

25 A Right.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 Q This little box over here in this corner of the  
2 room on the opposite side from the bed, what is  
3 that?

4 A That was a computer desk with a computer and  
5 printer.

6 Q And whose computer and printer was that?

7 A It was Ron's and his wife's.

8 Q At the time he was living -- at the time of,  
9 say, August 2003, where was Teresa?

10 A She was in Iraq.

11 Q Okay. So it was just Ron living in this room  
12 at the time?

13 A Correct.

14 Q Now, do you recall the first time you heard  
15 about this murder that occurred at Selectron?

16 A I do.

17 Q Do you remember what day it was?

18 A It was Saturday. Irena and I had just gotten  
19 back from a friend's house watching a movie. Robin  
20 Gripper lived with us then and we pulled in our  
21 driveway and she comes running out with a knife  
22 screaming, Ron had killed a man.

23 MS. KIMBROUGH: Objection, Your Honor, hearsay.

24 THE COURT: The objection is sustained. The  
25 jury is to disregard the comment.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 BY MR. HUBBARD:

2 Q This was on a Saturday?

3 A Correct.

4 Q Was it morning, afternoon or evening?

5 A It was night.

6 Q Nighttime, August 2nd, 2003?

7 A Yes. I guess, technically, it would be Sunday  
8 because we got home around 2:00 in the morning.

9 Q When you heard about the incident at Selectron,  
10 this murder, what did y'all do?

11 A We went to Saint Matthews to the home that he  
12 lived in.

13 Q Okay. Was Ron Finklea at the house?

14 A No one was there.

15 Q Not Ron, not Junior and, of course, not Willy  
16 Gripper?

17 A Right.

18 Q Did you have to unlock the door to get in?

19 A It was lying on the floor.

20 Q Law enforcement had beat you to the house?

21 A Right.

22 Q Did you go on in to the residence?

23 A We did.

24 Q Did you go into Ron Finklea's room?

25 A We did.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 Q Who was with you when you went into the room?

2 A Myself, Irena Fuller and Robin Gripper.

3 Q While you were there, do you recall Irena  
4 finding something and showing you?

5 A Yes.

6 Q What did she show you?

7 A She found a K-Mart receipt for a gas can and  
8 gloves.

9 Q I'm going to show you a very faded receipt and  
10 see if you can recognize that.

11 A Yes, that's it.

12 MR. HUBBARD: Your Honor, I offer this into  
13 evidence.

14 MS. KIMBROUGH: Without objection.

15 THE COURT: It's admitted without objection.

16 MR. HUBBARD: Your Honor, this will be State's  
17 61.

18 (State's Exhibit Number 61, K-Mart receipt,  
19 admitted into evidence.)

20 BY MR. HUBBARD:

21 Q Let me ask you something about this receipt,  
22 too. I don't know if you can still make out the  
23 date, but if you can -- if you can't, that's quite  
24 all right, but if you can, your eyes are probably  
25 better than mine, if you can't, that's all right,



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1 but if you can make it out, please let me know.

2 A 7/31/03.

3 Q I knew your eyes were better than mine. Thank  
4 you.

5 A You're welcome.

6 Q So that would have been Thursday?

7 A Correct.

8 Q The murder was on a Saturday?

9 A Right.

10 Q Gas can and gloves?

11 A Correct.

12 Q Now, let me ask you this, were you ever given  
13 an opportunity to view the video of the murder that  
14 occurred August 2nd, 2003?

15 A Yes, I saw it.

16 Q And when did you see it?

17 A Last Wednesday.

18 Q And was Detective Peake present when you saw  
19 it?

20 A Yes, he was.

21 MS. KIMBROUGH: Your Honor, I believe we may  
22 have a matter of law that should be taken up at the  
23 bench.

24 MR. HUBBARD: I was just going to approach Your  
25 Honor about that.

1           (Whereupon, a bench conference was held off  
2           the record, in the presence of the jury, but out of  
3           the hearing of the jury.)

4           **THE COURT:** Ladies and gentlemen, I need you to  
5           go back to the jury room just one more time. Please  
6           do not discuss the case while you're there.

7           (The jury retires to the jury room.)

8           **THE COURT:** All right. Solicitor.

9           **MR. HUBBARD:** Your Honor, what the State  
10          intends to do at this time is go into the fact that  
11          Ms. Bolin has reviewed both the August 1st video and  
12          then the video from the early morning hours of  
13          August 2nd when the murder occurred. She will be  
14          able to identify the clothing she sees in both  
15          videos as belonging to Ron Finklea. And she can  
16          also identify the man she sees in that clothing as  
17          Ron Finklea.

18          **THE COURT:** You want to proffer -- and you  
19          object to that, Ms. Kimbrough?

20          **MS. KIMBROUGH:** Absolutely.

21          **THE COURT:** Do you want me to hear the  
22          testimony first?

23          **MR. HUBBARD:** We can do that, Your Honor.

24          **MS. KIMBROUGH:** Do you want me to state my  
25          basis after the presentation, after the proffer?

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1           THE COURT: Unless you want to state it in  
2 advance of me hearing it.

3           MS. KIMBROUGH: No.

4           (Whereupon, State's Exhibit Number 29 was  
5 played and the following occurred.)

6                           EXAMINATION

7           BY MR. HUBBARD:

8           Q     Ms. Bolin, have you seen the video that's  
9 playing right now from August 1st, 2003?

10          A     I have.

11          Q     I'm going to ask that you watch it and at some  
12 point, I may pause it and ask you some questions.

13          A     Okay.

14          Q     Ms. Fuller (sic), have you ever seen this  
15 jacket before?

16          A     I have.

17          Q     And this blue jacket with the black stripe and  
18 the two white stripes, who have you seen wearing  
19 that jacket before?

20          A     Ron Finklea.

21          Q     Have you ever seen anyone else, Theodore Davis  
22 or anyone else, wearing that jacket?

23          A     No.

24          Q     Just Ron Davis -- I mean, Ron Finklea?

25          A     Yes, just Ron Finklea.

1 Q All right. This hat that appears to have a  
2 logo right here and a little logo or something on  
3 the bill here, do you recognize that hat?

4 A Yes, it was an Army hat.

5 Q Is that what this logo right here says, Army?

6 A It does.

7 Q What is this right below?

8 A It's an A.

9 Q An A. And then there's some type of writing  
10 right here; is that correct?

11 A Right.

12 Q Who have you seen in that hat before?

13 A Ron Finklea.

14 Q Have you ever seen anybody else in that hat?

15 A I have not.

16 Q You've never seen Theodore Davis in that hat?

17 A Never.

18 Q Do you see something on the back of the hat  
19 like a strap or something right there?

20 A I do.

21 Q Do you recognize that?

22 A Yes. It's the tab that you pull on a cap to  
23 make it tighter.

24 Q So if you've got a big head, you can loosen it  
25 up, a small head, you can tighten it up or whatever?

1 A Right.

2 Q All right. At any point, do you notice any  
3 features of this individual?

4 A Yes, I recognize it as Ron Finklea.

5 Q How do you know this is Ron Finklea?

6 A His bone structure, the clothing, the way he  
7 walks, everything about him.

8 Q You've known him for how long?

9 A Approximately, eight years and he lived with me  
10 for several months.

11 Q Anything about facial features again?

12 A Yes. When he turn -- there's a picture of it  
13 when you can like see his profile and he has a  
14 distinctive bone structure.

15 Q You're mainly talking about his jaw?

16 A Yes, just his head in general, his head and his  
17 ears, his nose, his clothes.

18 Q Right there?

19 A Yes.

20 Q This jaw line?

21 A Yes.

22 MR. HUBBARD: Go ahead.

23 A Right there, too.

24 (State's Exhibit Number 29 was concluded.)

25 Q Okay. Now, Ms. Bolin, back in 2003, you were

SHERRY BOLIN (IN CAMERA) - EXAMINATION BY MR. HUBBARD

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1 shown still shots of this; is that correct?

2 A Yes.

3 Q And did you pick him out at that time?

4 A Yes, I did.

5 Q This is just a video playing the very thing  
6 that you picked out in 2003?

7 A Right.

8 MR. HUBBARD: Your Honor, that's all I need, I  
9 guess, for the purpose of this video.

10 THE COURT: Would you like to cross-examine her  
11 on that issue?

12 MS. KIMBROUGH: Not at this point, Your Honor.  
13 I -- quite frankly, I think the State is simply  
14 attempting to use this witness and her opinion as a  
15 way to bolster its theory and that it is improper;

16 There's been no evidence shown that Ms. Bolin  
17 has any particular expertise in the field of  
18 identifying things based on digital photography.  
19 It's her personal opinion, which is irrelevant,  
20 completely irrelevant to this trial.

21 Okay, in her view, the person on that video,  
22 she thinks is Ron Finklea, but that does not have  
23 any relevance to this trial. You can't -- I mean,  
24 maybe I just need some special glasses, but I've  
25 looked at this video numerous times. It's blurry,

1 it's fuzzy, it's obviously so. And to say that you  
2 can make a positive identification based on a video  
3 when you can't even see someone's eyes and nose and  
4 mouth clearly based on shadows, I think it's a  
5 ridiculous argument.

6 But putting that aside, I mean that's a matter  
7 of my opinion, which, of course, also isn't relevant  
8 here, but taking a lay witness and using them to  
9 make an identification on an issue of an ultimate  
10 fact is improper. It's beyond the scope of what a  
11 lay witness should be allowed to testify to.

12 We can all see the video, it will be up to the  
13 jury to decide whether or not Ron Finklea is the man  
14 both in the August 1st video, as well as in the  
15 crime scene video.

16 THE COURT: Solicitor.

17 MR. HUBBARD: Yes, sir, Your Honor. First of  
18 all, I have to begin by saying Ms. Bolin has shown  
19 that her eyesight is certainly better than mine.  
20 She was able to read a K-Mart receipt that's four  
21 years old and faded and get a date that I couldn't  
22 find, but be that as it may, she's also indicated  
23 she's known this man for eight years. She's lived  
24 with him in the same house for four months. She's  
25 interacted with him on a fairly regular basis.

1           Your Honor, if a layperson like myself were to  
2 see a video, no, I couldn't pick somebody out, but I  
3 tell you if I had lived with somebody for eight  
4 years or knew somebody for eight years, whether it  
5 was a family member or a friend, that's a different  
6 story. And if I'm comfortable enough with what I  
7 see saying, you know, that's my old roommate from  
8 college or from law school or whatever or that's the  
9 guy that, you know, his sister that I live with and  
10 I see this guy on a routine basis, that's very  
11 different.

12           You know, it's like if you saw a family member  
13 on that video, to most people, you'd say, well who  
14 is that, you can't make them out, but it is almost  
15 the undescrivable things, the way they move, facial  
16 features or just the shape of their heads that most  
17 people would not even be able to recognize. They  
18 wouldn't recognize, you know, Mr. Davis or  
19 Mr. Finklea or maybe other people in this courtroom  
20 if they walked in on that video, but somebody whose  
21 known this man for eight years, lived with him for  
22 four months, has interacted with him on a fairly  
23 routine basis, picked him out in a timely manner  
24 back in August right after this murder and now today  
25 saying that she has seen the video and the movement.



1 that occurs in that video and she also says now that  
2 is still, in her mind, Ron Finklea, Your Honor,  
3 that's admissible.

4 It is subject to the jury -- going to the jury  
5 and them giving whatever weight they want to to it.  
6 If they want to believe that that's just insane that  
7 this woman can pick out Ron Finklea from this blurry  
8 video, well that's their prerogative. And they can  
9 discount Ms. Bolin's testimony, they can -- it might  
10 hurt her testimony if they think that. That's up to  
11 them.

12 On the other hand, they might go back and say,  
13 you know, if I had lived with somebody for four  
14 months, known somebody for eight years, I bet I  
15 could pick them out even if I couldn't quite make  
16 out the face. And, Your Honor, it's a jury  
17 question.

18 THE COURT: Anything further on this issue?

19 MS. KIMBROUGH: Yes, Your Honor. Just to -- if  
20 there was any confusion, I just want to clarify it  
21 for the record. This is lay opinion testimony. It  
22 goes to an ultimate question of fact for the jury  
23 and it is improper.

24 THE COURT: What is the ultimate question of  
25 fact?

1 MS. KIMBROUGH: Who went into the Selectron  
2 plant and committed the murder and the robbery,  
3 that's what this jury is here to decide.

4 THE COURT: And is that what her testimony is,  
5 who went into the Selectron plant and committed this  
6 robbery and murder?

7 MS. KIMBROUGH: When she identifies the video  
8 of August 2nd, absolutely.

9 THE COURT: Or is that a piece of the puzzle,  
10 her testimony --

11 MS. KIMBROUGH: It's not a piece of the puzzle.  
12 It's the whole --

13 THE COURT: Or is there a puzzle?

14 MS. KIMBROUGH: I think there is, yes. And I  
15 think it's for the jury to solve that puzzle. And  
16 there are some cases that I'd like to cite.

17 THE COURT: Yes, ma'am, let me hear the cite.

18 MS. KIMBROUGH: Richmond versus Tecklenberg.

19 THE COURT: Tell me about that case.

20 MS. KIMBROUGH: Okay. I cite it primarily for  
21 its citation of State versus Moore, so I'll --  
22 actually, let me rely on State versus Moore.

23 THE COURT: All right. Tell me that cite.

24 MS. KIMBROUGH: The general rule is that  
25 opinion testimony which is determinative of the

1 ultimate fact in issue should be excluded as an  
2 invasion of the province of the fact finder, State  
3 versus Moore, 241 South Carolina 487, 1963.

4 And that's what we believe this is -- not the  
5 August 1st video insofar as the charges are  
6 concerned. The August 1st video of, you know, it's  
7 still a question of fact for the jury, but it is --  
8 but that does not go to the ultimate question of  
9 fact, which is whether or not Ron Finklea is the man  
10 seen going into the Selectron plant.

11 THE COURT: Which one did he just show her?

12 MS. KIMBROUGH: He just showed her August 1st.

13 THE COURT: And that one does not go to the  
14 ultimate issue?

15 MS. KIMBROUGH: No. It's, again, I think it's  
16 improper lay testimony because it's a question that  
17 this jury needs to answer on its own.

18 THE COURT: Well, based on it going to the  
19 ultimate issue as you stated or based on it being  
20 the August 1st video and does not go to the ultimate  
21 issue?

22 MS. KIMBROUGH: I'm sorry, can you restate your  
23 question?

24 THE COURT: You said you didn't have a concern  
25 about August the 1st or do you?

1 MS. KIMBROUGH: Yes, I do as to both, but the  
2 basis is a little different because one video is a  
3 crime scene video and one is simply a video of the  
4 day before.

5 THE COURT: And what about the video of the day  
6 before?

7 MS. KIMBROUGH: I think it speaks for itself.  
8 I don't think lay opinion testimony is appropriate  
9 when we have an item that doesn't need any  
10 explanation. They can see it.

11 THE COURT: So that's the same objection that  
12 you've been making all along to the officers and  
13 other people identifying various things in the video  
14 because the video speaks for itself.

15 MS. KIMBROUGH: Yes, Your Honor.

16 THE COURT: And I overruled that objection  
17 earlier. That's the one you wanted to have as a  
18 continuing objection.

19 MS. KIMBROUGH: Yes, sir.

20 THE COURT: All right. Now, this particular  
21 video that was shown to this witness was the August  
22 1st video, wasn't it?

23 MS. KIMBROUGH: It was. And, you know, my  
24 concern with that is, it's also very blurry and the  
25 whole point of having lay testimony is that there

1 has to be a firm foundation for their -- preceding  
2 the event. And this video is not clear. It's never  
3 been clear. And I realize that --

4 THE COURT: That's why they had the man who  
5 went to space --

6 MS. KIMBROUGH: NASA.

7 THE COURT: NASA and places like that to work  
8 on it.

9 MS. KIMBROUGH: Absolutely.

10 THE COURT: To make it clearer. And, of  
11 course, this screen appears clearer to me than that  
12 one by the way.

13 MS. KIMBROUGH: Yes, these are very clear.

14 THE COURT: Let's just stand for a moment.

15 (Pause.)

16 THE COURT: Thank you. Please be seated.

17 This issue is sort of an issue that's  
18 comparable with the Rule 901, authentication type  
19 standard, where primarily voice identification and  
20 other types of identification testimony is  
21 admissible if it's properly authenticated.

22 And I find that this testimony is admissible,  
23 that lay opinion is sufficient to establish the  
24 admissibility of the testimony where, in an instance  
25 such as this, the identification testimony may be

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1 helpful to the jury and relevant in determining the  
2 identity of the person depicted in the photograph,  
3 that the only basis needed to admit this testimony  
4 is the familiarity of the witness with the  
5 individual, a basis -- a basis on which the person  
6 believes in the accuracy of their identification,  
7 all of this goes to the weight of the testimony and  
8 not the admissibility of the testimony and I'm going  
9 to allow the testimony.

10 MS. KIMBROUGH: Note our objection for the  
11 record, please.

12 THE COURT: All right. If you'll bring the  
13 jury.

14 (The jury returns to the courtroom.)

15 THE COURT: All right. The jury is back.  
16 You may proceed.

17 MR. HUBBARD: Yes, sir, Your Honor.

18 BY MR. HUBBARD:

19 Q Ms. Bolin, were you given an opportunity to see  
20 the video from the night of the murder?

21 A I was.

22 Q And were you given an opportunity to see the  
23 video from the day before the murder, on August 1st?

24 A Correct.

25 Q And when did you view this video or the videos?

- 1       A     Last Wednesday.
- 2       Q     Now, had you talked with the sheriff's
- 3       department, Detective Peake, back in 2003?
- 4       A     I did. He showed me some still photos of these
- 5       tapes.
- 6       Q     From the video?
- 7       A     Correct.
- 8       Q     And, at that time, did you recognize somebody?
- 9       A     Yes, I did.
- 10      Q     Okay. Now, what I'd like you to do, this is
- 11      the video for August the 1st, and before we get into
- 12      that video, I want to ask you, now how long had you
- 13      known Ron Finklea?
- 14      A     Approximately, eight years.
- 15      Q     How long had you known Theodore Davis?
- 16      A     The same length of time.
- 17      Q     Had you had a lot of interaction with them?
- 18      A     Yes, more so with Ron.
- 19      Q     More so with Ron Finklea?
- 20      A     Yes. He lived with us.
- 21      Q     For how long?
- 22      A     For about four months.
- 23      Q     And, again, you were living with Davis' sister?
- 24      A     Irena.
- 25      Q     And Irena's sister, Teresa, was married to Ron?

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- 1       A     Correct.
- 2       Q     So you had plenty of opportunity to see Ron
- 3       Finklea come and go?
- 4       A     Yes.
- 5       Q     To see what he would wear?
- 6       A     Yes.
- 7       Q     Talk to him, see how he walked, how he moved,
- 8       how he held himself?
- 9       A     Correct.
- 10      Q     All right. If you will, we're going to watch
- 11      this August 1st video.
- 12               (Whereupon, State's Exhibit Number 29 was
- 13      played for the jury and the followed occurred.)
- 14      Q     Right here, Ms. Bolin, this jacket, have you
- 15      ever seen this jacket before?
- 16      A     Yes. I recognized it as Ron Finklea's.
- 17      Q     Have you ever seen anybody else wearing this
- 18      jacket?
- 19      A     No, I have not.
- 20      Q     Have you ever seen Theodore Davis wearing this
- 21      jacket?
- 22      A     No, I have not.
- 23      Q     Or wearing any jacket similar to this?
- 24      A     No.
- 25      Q     Right here, this hat with this logo and the



1 little something on the bill, does that hat look  
2 familiar to you?

3 A Yes. It's a white Army hat that Ron had.

4 Q You say Army, is that what this is right here?

5 A Yes. It says Army across the top and then A.

6 Q And that A right here?

7 A Right.

8 Q And then it's got some kind of writing right  
9 here?

10 A Right.

11 Q Is that just part of the hat?

12 A It is. It has something to do with the Army,  
13 too, but I forgot the exact words.

14 Q Right here, what is this right here that we're  
15 seeing?

16 A That is the tab on a baseball cap that you can  
17 tighten it.

18 Q So if it's pulled tight, it might hang down, or  
19 if it's just loose, it will hang down?

20 A Right.

21 Q Right here, these facial features, anything  
22 about this -- well, let me ask you this, this hat,  
23 who have you seen in that hat?

24 A Ron Finklea.

25 Q Have you ever seen anybody else in that hat?

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1 A I have not.

2 Q You ever see Teresa in that hat?

3 A No. I've never seen another hat like that one.

4 Q Or Mr. Davis, has he ever been in that hat?

5 A No.

6 Q Now, you notice face structure here, anything  
7 about this that looks familiar to you?

8 A Yes. Just him in general in the tape, I  
9 recognize. I mean, it's just, it's his facial  
10 features, the way he moves, his clothes --

11 MS. KIMBROUGH: Objection, Your Honor, based on  
12 our prior objection.

13 THE COURT: It's noted.

14 BY MR. HUBBARD:

15 Q Ms. Bolin, looking at this video, it looks  
16 pretty blurry, pretty dark, how can you be sure?

17 A I mean, he lived with us, he was part of the  
18 family. And, you know, I could recognize any one of  
19 my family members.

20 Q Even on a video like this?

21 A Yes.

22 Q And you're confident?

23 A Yes.

24 Q Does this look like Theodore Davis at all?

25 A Not at all.

1 Q And when you talk about facial structure, bone  
2 structure, you obviously have known him for eight  
3 years as well?

4 A Correct.

5 Q Does this look at all like Theodore Davis when  
6 you see him move around, when you see the face  
7 structure, the ears, the jawbone, cheek bones?

8 A No. That's, in my opinion, Ron Finklea.

9 Q Now, I know movements are choppy, but every  
10 movement in the whole picture looks like Ron  
11 Finklea?

12 MS. KIMBROUGH: Your Honor, he's leading the  
13 witness.

14 THE COURT: Don't lead the witness, please.  
15 Restate the question.

16 BY MR. HUBBARD:

17 Q Based on the movements that you see, is there  
18 anything that makes you question whether that is Ron  
19 Finklea or not?

20 A No.

21 MR. HUBBARD: That's all of that video. If we  
22 can, Your Honor, I'd like to go to the video from  
23 August the 2nd.

24 (Whereupon, State's Exhibit Number 30 was  
25 played for the jury and the following occurred.)

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1 Q Sherry, I want you to focus on the shirt and  
2 see if you've ever seen that shirt before.

3 A Yes, I have.

4 Q And who have you seen in that shirt?

5 A Ron Finklea, he used to wear that shirt a lot.

6 Q Did you ever see Theodore Davis wearing this  
7 shirt?

8 A No.

9 Q And again, right here, this hat, does that hat  
10 look familiar?

11 A It's the same hat that he always wore.

12 Q Does it look like the hat from August 1st to  
13 you?

14 A Yes, it does.

15 Q On the back side, no stripe on this orange  
16 shirt.

17 A Right.

18 Q Is that familiar as well?

19 A Yes.

20 Q Right here, do you see a better shot of that  
21 shirt?

22 A Yes, I do.

23 Q You see dark here and some white stripes here?

24 A Yes.

25 Q That hat, do you see that little tail hanging

1 off of the hat?

2 A Yes, it's the same hat and shirt.

3 Q Do you remember what kind of shirt that was?

4 A Um...

5 Q If you don't know, that's fine.

6 A I want to say it was Polo or Ralph Lauren.

7 Q Okay. And, again, the person you're seeing in  
8 this video?

9 A Is Ron Finklea.

10 Q Do you have any question about that?

11 MS. KIMBROUGH: Objection again, Your Honor.

12 THE WITNESS: Not at all.

13 THE COURT: Objection is overruled.

14 THE WITNESS: To me, this tape is actually a  
15 much, even clearer picture than the first tape. And  
16 I didn't have a question about the first tape  
17 either.

18 (State's Exhibit Number 30 was concluded.)

19 BY MR. HUBBARD:

20 Q Sherry, I want to show you a photograph that's  
21 already in evidence, State's Number 40. Do you  
22 recognize that photograph?

23 A Yes.

24 Q And who's in that photograph?

25 A Ron Finklea.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1499

1 Q And what's he wearing?

2 A He's wearing the blue jacket with stripes and  
3 the Army hat.

4 Q So this is from August the 1st?

5 A It is.

6 MS. KIMBROUGH: Same objection, Your Honor, as  
7 to the photograph.

8 THE COURT: It's noted.

9 BY MR. HUBBARD:

10 Q Now, it's a little hazier up there, but is that  
11 the photograph you were shown back in August of  
12 2003?

13 A Yes, it was.

14 Q And is that one of the photographs you looked  
15 at when you picked out who it was?

16 A Yes.

17 Q Who did you say it was back in August of 2003?

18 A Ron Finklea.

19 Q I'm going to show you some other photographs,  
20 see if you recognize these, three photographs of a  
21 hat. Do you recognize that hat?

22 A Yes. This is the hat that Ron used to wear.

23 Q And I'm going to show you two more photographs  
24 of a shirt. Does that shirt look familiar to you?

25 A Yes, it does.

1 Q How can you recognize it?

2 A Like I said, he always wore this shirt and so I  
3 just recognize it like anybody who wears clothes all  
4 the time.

5 MR. HUBBARD: Your Honor, I offer all five  
6 photographs into evidence at this time.

7 THE COURT: Any objection?

8 MS. KIMBROUGH: We have no objection to the  
9 photographs, but we renew our objection to --  
10 withdraw the objection.

11 THE COURT: He's offering the exhibit, do you  
12 have any objection to the admission of these  
13 exhibits into evidence?

14 MS. KIMBROUGH: Absolutely none, Your Honor. I  
15 misspoke.

16 THE COURT: They're admitted without objection.

17 MR. HUBBARD: Your Honor, these are State's  
18 Exhibits 62 through 66.

19 (State's Exhibit Numbers 62 through 66,  
20 photographs, admitted into evidence.)

21 BY MR. HUBBARD:

22 Q Sherry, I'm going to put these up here. This  
23 is State's Exhibit 62. Is this the hat you  
24 recognize in the videos?

25 A Yes, it is.

**Volume Four of Five**

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM LEXINGTON COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RON O. FINKLEA,

APPELLANT

## RECORD ON APPEAL

JOSEPH L. SAVITZ, III  
Chief Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER  
Attorney General

JOHN W. MCINTOSH  
Chief Deputy Attorney General

DONALD J. ZELENKA  
Assistant Deputy Attorney General  
Office of the Attorney General  
PO Box 11549  
Columbia, SC 29211

(803) 734-3727

DONALD V. MYERS  
Solicitor, Eleventh Judicial Circuit  
205 East Main Street

Lexington, SC 29072  
(803) 785-8352

Attorneys for Respondent



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IRENA DENISE FULLER

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JOHN LEAPHART

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\* NOTE: STATE'S EXHIBIT 109 (DVD OF SURVEILLANCE VIDEO), STATE'S EXHIBIT 111 (STILLS FROM SURVEILLANCE VIDEO), STATE'S EXHIBITS 119 THROUGH 165 (PHOTOGRAPHS) ARE ON FILE AT THE SOUTH CAROLINA SUPREME COURT

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1501

1 Q Army, established 17...

2 A '75.

3 Q And that's an A?

4 A Yes, it is.

5 Q Now, let me ask you, just looking at it, it  
6 looks pretty dirty.

7 A Yes.

8 Q When Ron was wearing it, was it that dirty?

9 A No. He would never wear a dirty hat.

10 Q Let me show you this photograph, which is  
11 State's 63. You see the writing on the bill?

12 A Yes.

13 Q Right here?

14 A Yes.

15 Q And what does that say?

16 A United States.

17 Q Is that the same writing that you saw and that  
18 you identified in the videos?

19 A Yes.

20 Q Here's yet another photograph of this hat.

21 A Same hat.

22 Q Same hat. Looking back at 62, I don't know if  
23 you can see it, but right back here, what is that?

24 A That's the tab on the back of the cap that I  
25 described earlier.



1 Q Okay. Let's look at State's 65. Does that  
2 look familiar?

3 A Yes, it does. It's the shirt from the video.

4 Q And who have you seen in this shirt?

5 A Ron Finklea.

6 Q And these stripes?

7 A Yes.

8 Q And what type of shirt is it?

9 A Ralph Lauren.

10 Q State's 66, what is that a photograph of?

11 A That's the back of the same shirt.

12 Q No stripe on the back?

13 A Correct.

14 Q Now, again, it looks pretty dirty right here.

15 A Right.

16 Q Would Ron Finklea wear dirty clothes?

17 A No, they weren't dirty and they were always  
18 name brand.

19 Q I want to show you this jacket that's in  
20 evidence, it is State's 49. Do you recognize this  
21 jacket?

22 A Yes, I do. It's Ron Finklea's jacket.

23 Q Is this the same jacket you saw on the video  
24 from August the 1st, 2003?

25 A Yes, it is.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1503

1 Q Stripe in the front?

2 A Yes, it is.

3 Q None in the back?

4 A Right.

5 Q Did you ever see anyone else in this jacket?

6 A I did not.

7 Q Just Ron Finklea?

8 A Just Ron Finklea.

9 Q Now, we talked a little bit about how Ron  
10 Finklea would dress and you said he would wear name  
11 brands. Was he fairly neat when he dressed? Or was  
12 he -- how would you characterize the way he dressed?

13 A He always had like the most expensive sneakers,  
14 the name brand clothes --

15 MS. KIMBROUGH: Your Honor, I'm going to object  
16 to the relevance of this.

17 THE COURT: Solicitor, the relevance?

18 MR. HUBBARD: I want to contrast this with the  
19 other person that's been mentioned in this case who  
20 she's known also for eight years and how he dressed.

21 THE COURT: Objection is overruled.

22 BY MR. HUBBARD:

23 Q So how would Ron dress?

24 A He would dress in name brand clothes. He  
25 always liked to look very put together, very in

1 style.

2 Q How about Junior, Theodore Davis?

3 A Junior didn't really have much of a wardrobe  
4 except for the clothes that Ron bought him later  
5 when he began to stay with Ron.

6 Q Okay.

7 A But what he had was just whatever he could get,  
8 you know. He didn't spend a lot on clothes.

9 Q Well, let me ask you this, have you ever known  
10 Ron Finklea and Junior to swap clothes or wear each  
11 other's clothes?

12 A No. Also, they were different sizes.

13 Q Was one guy bigger than the other?

14 A Yeah. Junior was kind of chunky and Ron was,  
15 you know, in shape. He was, you know, just gotten  
16 out of the military.

17 Q You would describe him as fit?

18 A Yes.

19 Q Junior, has he ever been fit?

20 A Not since I've known him.

21 Q Okay. Now -- and you've never seen them wear  
22 each other's clothes to your knowledge?

23 A Right, never.

24 Q How would you describe the relationship between  
25 Ron Finklea and Theodore Davis, or Junior? Was it

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1505

1 that of equals?

2 A No.

3 MS. KIMBROUGH: Objection, Your Honor. I don't  
4 see the relevance in this.

5 THE COURT: Objection sustained.

6 MR. HUBBARD: Your Honor, I just would note the  
7 defense exhibit talks about --

8 THE COURT: Which exhibit?

9 MR. HUBBARD: Defense Exhibit Number 1 talks  
10 about whose idea...

11 (Pause.)

12 THE COURT: Counsel approach.

13 (Whereupon, a bench conference was held off  
14 the record, in the presence of the jury, but out of  
15 the hearing of the jury.)

16 MR. HUBBARD: I'll withdraw that question, Your  
17 Honor.

18 BY MR. HUBBARD:

19 Q Let me ask you this, Ms. Bolin, you know  
20 Mr. Finklea and Mr. Davis pretty well?

21 A Yes.

22 Q Has Theodore Davis, in the entire time you've  
23 known him, ever been in a position of responsibility  
24 whether it's at work or in schooling?

25 A Never.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1506

1 Q How would you describe his personality, as far  
2 as is he a leader, is he docile, is he what?

3 MS. KIMBROUGH: Objection, Your Honor,  
4 relevance.

5 THE COURT: Objection is overruled.

6 THE WITNESS: He's a follower. He doesn't have  
7 much oomph to kind of make his own choice or think  
8 for himself. And he didn't have a lot then. He  
9 didn't have a place to live. He didn't have any  
10 money, a job, a car.

11 BY MR. HUBBARD:

12 Q Okay. Let me do this, was there someone in his  
13 life that did try to help him or that was there that  
14 would give him things and that he would hang out  
15 with?

16 A Yes.

17 Q And who was that person?

18 A That was Ron Finklea.

19 MR. HUBBARD: Sherry, I'm going to stop  
20 questioning you right now and let the defense lawyer  
21 ask you some questions and please just answer  
22 whatever they have for you.

23 THE WITNESS: Okay.

24

\*\*\*\*

25

\*\*\*\*

SHERRY BOLIN - CROSS BY MS. KIMBROUGH

1507

1 CROSS-EXAMINATION

2 BY MS. KIMBROUGH:

3 Q Good afternoon.

4 A Hi.

5 Q I guess it's evening. How are you doing?

6 A Okay.

7 Q Good. So it sounds like from your observation,  
8 that Ron was very generous with Theodore Davis? He  
9 gave him things?10 A I wouldn't say he just gave them to him,  
11 like --

12 Q Didn't you just say he bought clothes for him?

13 A Yeah, but he didn't ask me why he bought him  
14 clothes.

15 Q And I'm not asking you that question.

16 A Do you want to know?

17 Q No.

18 MR. HUBBARD: Your Honor, if there's going to  
19 be a question, we might want to take that up.20 MS. KIMBROUGH: Well, I didn't ask the  
21 question.22 THE COURT: All right. There's a question by  
23 the witness -- question by counsel.

24 MS. KIMBROUGH: Yes.

25 BY MS. KIMBROUGH:

1 Q My question is, did Ron Finklea provide  
2 clothing, was that your testimony that he gave  
3 things to Theodore Davis?

4 A Junior had to work for them. And do you want  
5 to know what he had to do?

6 Q No. I'm asking the question. You give the  
7 answer to my question.

8 A You have to be a little bit more specific.

9 Q Well, I am being specific. Was it your  
10 testimony that Ron Finklea bought clothing for  
11 Theodore Davis? I think you just testified to that.

12 THE COURT: That calls for a yes or no answer,  
13 ma'am.

14 THE WITNESS: Yes.

15 BY MS. KIMBROUGH:

16 Q Do you recall testifying to that about four  
17 minutes ago?

18 A Yes.

19 Q Thank you. Ms. Bolin, do you wear any special  
20 sorts of contacts that allow you to see a little  
21 more clearly than the rest of us?

22 A I have 20/20 vision.

23 Q All right. And I believe your relationship to  
24 Ron sort of stems through a relationship with -- is  
25 it Irena Fuller?

SHERRY BOLIN - CROSS BY MS. KIMBROUGH

1509

1 A Correct.

2 Q And Irena Fuller's brother is Theodore Davis?

3 A Correct.

4 Q Okay. And would it be fair to say that Irena  
5 is someone you care about?

6 A Yes.

7 Q Would it also be fair to say that because she's  
8 somebody you care about, you wouldn't want to do  
9 anything to hurt her?

10 A I wouldn't lie.

11 Q You wouldn't?

12 A No.

13 Q Do you consider yourself an honest person?

14 A Yes, I do.

15 Q Was it honest to go out and forge checks one  
16 after another? Was that an honest act?

17 A I was 17 --

18 MR. HUBBARD: Your Honor, one after-another,  
19 objection. There's been one conviction for forgery,  
20 unless defense counsel knows something else and we  
21 need to take it up.

22 MS. KIMBROUGH: I'm simply relying on the rap  
23 sheet that was provided to me.

24 MR. HUBBARD: And that's what it says. And if  
25 she needs to take it up, we can take it up outside



1 the courtroom.

2 THE COURT: Let me hear the question, counsel.

3 MS. KIMBROUGH: Yes, I do. Was that honest?

4 THE COURT: Restate the question, please, so  
5 that I can rule on the objection.

6 BY MS. KIMBROUGH:

7 Q When you went out and committed forgery, was  
8 that an act of honesty?

9 A That act was not.

10 Q When you shoplifted, was that honest?

11 A That act was also not honest.

12 Q Do you recall talking to a defense investigator  
13 by the name of Dave McDougall?

14 A I don't recall names, not on everyone. I've  
15 talked to so many people.

16 Q Do you recall talking to any defense  
17 investigator?

18 A No.

19 MS. KIMBROUGH: No further questions.

20 THE COURT: Any redirect?

21 MR. HUBBARD: No, sir, Your Honor.

22 THE COURT: All right. You may step down,  
23 ma'am.

24 Are y'all ready to quit for the day or you want  
25 to do another witness?

1           **MR. MYERS:** Whatever y'all want to do, it  
2           doesn't make any difference. We can stay a couple  
3           more hours or we can leave now.

4           **THE COURT:** All right. Let's try another  
5           witness.

6           **MR. HUBBARD:** Your Honor, this one may be about  
7           as lengthy as this one, just to let Your Honor know.

8           **THE COURT:** Well, let's get a start then and  
9           see what happens.

10          **MR. HUBBARD:** We may be able to take somebody  
11          out of order.

12          **MR. MYERS:** Your Honor, I tell you what, here's  
13          the situation, whenever there's items of evidence,  
14          we've got to put up everybody in the chain, as you  
15          know, just to say they touched it or gave it to  
16          somebody. We have a whole bunch of people from SLED  
17          and everywhere else, we'd like to take them out of  
18          order right now so they don't have to come back  
19          tomorrow. That will be a change in our case, but  
20          just to accommodate them. It may not make much  
21          sense right now, but we'd like to go ahead and put  
22          those up for the chain.

23          **THE COURT:** Very good.

24                 We'll take a 30 second stretch before you call  
25          that next witness.

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1512

1 (Pause.)

2 MR. GRAHAM: The State recalls Investigator  
3 Mike Phipps to the stand.

4 THE COURT: You're still under oath, sir.

5 MICHAEL STUART PHIPPS,  
6 having been previously duly sworn, resumed the  
7 witness stand and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q Investigator Phipps, in addition to processing  
11 the crime scene at Selectron on August 2nd of 2003,  
12 did you also have an occasion to attend to the  
13 autopsy of Mr. Sykes?

14 A I did.

15 Q And where did that happen and when was that?

16 A The autopsy occurred on the same day of the  
17 incident on the 2nd of '03 in Newberry.

18 Q And who was the autopsy performed by?

19 A Doctor Inas Yacoub.

20 Q And are you actually in the room with Doctor  
21 Yacoub when the autopsy is performed?

22 A Yes, sir, I am.

23 Q And, in fact, did you collect some items while  
24 you were there?

25 A I did.

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1513

1 Q One of the items was a bullet; is that correct?

2 A That's correct.

3 Q Showing you an item and ask if you recognize  
4 that?

5 A Yes, sir, I do.

6 Q And what do you recognize that as?

7 A It's a projectile recovered from the victim's  
8 body, Walter Sykes.

9 Q And what part of his body was it recovered  
10 from?

11 A I don't have any notes to that effect, that's  
12 in the pathologist report.

13 Q But that is the bullet that you observed  
14 removed from the victim's body by Doctor Yacoub that  
15 you took possession of?

16 A That's correct.

17 MR. GRAHAM: Your Honor, the State would offer  
18 this into evidence at this time.

19 MS. KIMBROUGH: No objection.

20 THE COURT: It's admitted, Number 67.

21 (State's Exhibit Number 67, projectile,  
22 admitted into evidence.)

23 BY MR. GRAHAM:

24 Q Investigator, I'll show you a photograph and  
25 ask you if you recognize that photograph?

1           A     Yes, sir, that's a photograph of the same  
2           projectile that was recovered from the body.

3           Q     And who took that photograph?

4           A     I believe I took that photograph.

5           Q     And is it a fair and accurate representation of  
6           the bullet as you observed it at the autopsy?

7           A     Yes, sir, it is.

8           MR. GRAHAM: Your Honor, the State would offer  
9           this photograph in evidence.

10          MS. KIMBROUGH: No objection.

11          THE COURT: Admitted without objection.

12                 (State's Exhibit Number 68, photograph,  
13           admitted into evidence.)

14          BY MR. GRAHAM:

15          Q     In addition to collecting the bullet that was  
16           taken from Mr. Sykes' body, were there also some  
17           other items that were taken from Mr. Sykes' body?

18          A     Yes, sir.

19          Q     And what would those be?

20          A     The pathologist collects sort of a postmortem  
21           kit containing forensic samples, tissue samples,  
22           blood samples, things like that.

23          Q     And were those items collected?

24          A     They were.

25          Q     And how were those items -- what are they put

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1515

1 into?

2 A The pathologist, Doctor Yacoub, will draw  
3 whatever samples, if they're tissue samples, they're  
4 usually placed in some type of small vial or bottle.  
5 Blood samples are drawn into a test tube you would  
6 normally see blood in. Those items are then labeled  
7 with the victim's information, then placed in a  
8 larger bag.

9 Q And you were present when the body fluids and  
10 other items were taken from Mr. Sykes?

11 A Yes, sir.

12 Q And I believe that you have up with you a bag  
13 that at one time contained those items?

14 A Yes, sir.

15 Q Would you bring it out for me, please?

16 A (Witness complies.)

17 Q I'll ask you to -- can you recognize what's  
18 inside that bag right now?

19 A Not the way it's folded.

20 Q Let me ask you to open that.

21 A (Witness complies.)

22 Q The clear plastic bag that has South Carolina  
23 Law Enforcement Evidence written on it, do you  
24 recognize that bag?

25 A I do.

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1516

1 Q And what is that bag?

2 A This would be the bag that the pathologist  
3 would have put the contents that we would have  
4 brought back to the sheriff's department to further  
5 take to SLED for toxicology. The label that's  
6 affixed to this bag is actually generated in  
7 Newberry by the pathologist with the victim's name,  
8 Walter Sykes. And this particular bag's labeled --  
9 it's designated going to serology.

10 MR. GRAHAM: Your Honor, at this time, the  
11 State would offer that bag and the other items that  
12 were contained in the outer bag with it into  
13 evidence.

14 MS. KIMBROUGH: No objection, Your Honor.

15 THE COURT: Admitted without objection.

16 (State's Exhibit 69, evidence bag, admitted  
17 into evidence.)

18 BY MR. GRAHAM:

19 Q Up here at the top of State's 69, Investigator,  
20 what is this up here?

21 A It's a heat seal and it's been labeled with  
22 someone's initials and a date.

23 Q Could that be an I and a Y for Doctor Inas  
24 Yacoub?

25 A Yes.

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1517

- 1 Q And the date on there, is that the date of the  
2 autopsy?
- 3 A It is.
- 4 Q And she put all of these bottles and test tubes  
5 into this bag and sealed it in your presence?
- 6 A She did.
- 7 Q And then the marking at the bottom, what does  
8 that refer to?
- 9 A That's a label they generate in the morgue  
10 there as the victim's information and a designation  
11 to where it needs to be routed when it arrives at  
12 SLED.
- 13 Q And included in here, was there a lavender test  
14 tube full of blood?
- 15 A There was.
- 16 Q And that's blood taken from Mr. Sykes?
- 17 A Yes, sir.
- 18 Q Once you took possession of this bag when it  
19 had all the contents in it, what did you do with it?
- 20 A It was transported back to our headquarters and  
21 submitted to our evidence unit.
- 22 Q And you would have turned it in to one of the  
23 evidence custodians?
- 24 A Yes, sir.
- 25 Q Subsequently, did you have an opportunity to go



1 with Detective Peake to Monroe, Alabama, to  
2 Monroeville, to the county sheriff's department on  
3 August the 7th of 2003?

4 A Yes. I was asked to accompany then Sergeant  
5 Frier and Detective Peake for the purpose of  
6 processing any evidence they may find during their  
7 investigation.

8 Q And did you come in contact with the defendant,  
9 Ron Finklea, at that time?

10 A I did.

11 Q What, if anything, did you take from Ron  
12 Finklea's body?

13 A He was wearing a pair of shoes without laces.  
14 We thought they may have some type of trace evidence  
15 that would be beneficial to the case, so I seized  
16 those items, placed them in a bag and sealed that  
17 bag.

18 Q And do you have those shoes with you today?

19 A Yes, sir, I do.

20 Q Would you bring those out please, sir?

21 A (Witness complies.)

22 Q Do you recognize this bag?

23 A Yes, sir, that's the bag that I placed the  
24 shoes in.

25 Q Inside the bag -- if you could, take the shoes

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1519

1 out for me, please.

2 A (Witness complies.)

3 Q Except for the writing that's done in marker on  
4 the shoes, are the shoes substantially in the same  
5 condition as when you took them off Mr. Finklea's  
6 feet?

7 A Yes, sir, they are.

8 MR. GRAHAM: Your Honor, the State would offer  
9 the Nike shoes and their containers into evidence at  
10 this time.

11 MS. KIMBROUGH: No objection.

12 THE COURT: Admitted without objection.

13 (State's Exhibit Number 70, Nike tennis  
14 shoes, admitted into evidence.)

15 BY MR. GRAHAM:

16 Q Investigator, referring to these shoes, what,  
17 if anything, did you personally do with them?

18 A Once we returned back to Lexington, they were  
19 taken out of the bag and inspected to see if any  
20 trace evidence was visible. In addition to that,  
21 they were photographed for reference.

22 Q And these were put into evidence as well at the  
23 sheriff's department?

24 A Correct.

25 Q Do you remember who you turned them into?

1       A     No, I do not. I have to look at the chain of  
2       custody.

3       Q     But it would have been one of the custodians  
4       again?

5       A     Yes.

6       Q     Did you, yourself, perform a phenolphthalein  
7       test on these shoes?

8       A     Yes. During the visual inspection of these  
9       shoes, there was a reddish stain noted around one of  
10      the lace holes. We swabbed that area with what  
11      amounts to a sterile Q-tip and applied a  
12      phenolphthalein test to that. Phenolphthalein's a  
13      presumptive field test for the presence of blood.

14      Q     And you conducted that test on these shoes?

15      A     Yes, sir, I did.

16      Q     And what were the results of your presumptive  
17      test?

18      A     The presumptive test was positive for blood.

19      Q     Let me show you a photograph and ask you if you  
20      recognize this photograph.

21      A     Yes, sir, I do.

22      Q     And is that a photograph that you took?

23      A     This is a photograph I took.

24      Q     And does it fairly and accurately depict what  
25      was happening at the time?

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1521

1 A Yes, sir, it does.

2 Q And does it relate to your phenolphthalein  
3 test?

4 A It does. It's showing the positive result of  
5 the phenolphthalein test.

6 MR. GRAHAM: Your Honor, the State would offer  
7 this photograph into evidence.

8 MS. KIMBROUGH: No objection.

9 THE COURT: It's admitted without objection.

10 (State's Exhibit Number 71, photograph,  
11 admitted into evidence.)

12 BY MR. GRAHAM:

13 Q Looking at State's 71 that's on the T.V.  
14 monitor, can you explain, again, what you did and  
15 what a phenolphthalein test is?

16 A Yes, sir. What initially drew our attention  
17 was a reddish staining that you see depicted there  
18 in the stitching above the lace holes. The swab  
19 that you see above that same location was wetted  
20 with the solution, swabbed and then there's more  
21 reagents that are applied to that swab. A positive  
22 result will be obtained just within several seconds  
23 after applying the reagent. Positive test results  
24 in either a purplish or pinkish discoloration to the  
25 swab.

1 Q Did you also, when you were down in Alabama on  
2 August 7th, 2003, have an opportunity to process a  
3 Ford Mustang?

4 A Yes, sir, I did.

5 Q Looking at State's 56, 57 and 58, I ask if you  
6 recognize that?

7 A Yes, sir. These are photographs of the Ford  
8 Mustang that I took.

9 Q And that was the Ford Mustang that was rented  
10 by Ron Finklea at the Columbia Airport?

11 A That's my understanding, yes, sir.

12 Q When you processed this car, did you take an  
13 any samples?

14 A Yes. Due to the nature of the crime, we  
15 already knew some aspects of the investigation that  
16 we were looking for, one of which would be any type  
17 of accelerants that may have been used to set the  
18 fire at the Selectron plant. In doing a visual exam  
19 of the vehicle -- well, first off, in just opening  
20 the car up, it was just the faintest smell of  
21 gasoline or a petroleum product that we smelled.  
22 And a visual exam, there was some discoloration to  
23 the carpet in the rear floorboard area, so samples,  
24 physical samples, were cut from those areas.

25 Q And do you have that sample with you?

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1523

1 A Yes, sir, I do.

2 Q Can you open that for me, please?

3 A (Witness complies.)

4 Q And is that the carpet sample that you removed  
5 from the Ford Mustang?

6 A Yes, sir, it is.

7 Q And do you know whether this carpet fabric was  
8 analyzed?

9 A Yes, it was sent to the lab for analysis.

10 Q And do you know the results of that analysis?

11 A Yes, sir. We received a positive result back  
12 for the presence of gasoline.

13 MR. GRAHAM: Your Honor, the State would offer  
14 this carpet sample and container into evidence at  
15 this time.

16 MS. KIMBROUGH: No objection.

17 THE COURT: Admitted without objection.

18 (State's Exhibit Number 72, vehicle carpet  
19 sample and arson can, admitted into evidence.)

20 BY MR. GRAHAM:

21 Q Investigator Phipps, let me show you a  
22 photograph and ask you if you recognize that?

23 A I do. It depicts the floorboard of the Ford  
24 Mustang in Alabama.

25 Q And does it depict you collecting that carpet

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1524

1 sample?

2 A Yes. It shows a numbered -- photo I.D. number  
3 in the photo after the sample has already been cut  
4 and removed and placed in a bag.

5 MR. GRAHAM: Your Honor, the State would offer  
6 this photograph into evidence.

7 MS. KIMBROUGH: No objection.

8 THE COURT: Admitted without objection.

9 (State's Exhibit Number 73, photograph,  
10 admitted into evidence.)

11 BY MR. GRAHAM:

12 Q Investigator Phipps, in addition to taking a  
13 carpet sample from the Ford Mustang in Alabama, did  
14 you also collect some kind of a tool?

15 A Yes. There was a, what's termed, a Leatherman  
16 tool. It's a multipurpose tool that was recovered,  
17 I believe, from the door pocket of the vehicle. I'd  
18 have to refer to my notes.

19 Q Do you have your notes with you?

20 A Actually, it was recovered from under the right  
21 front passenger seat.

22 Q And do you have that Leatherman tool with you  
23 here today?

24 A Yes, sir, I do.

25 Q Could you pull it out for me, please?

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1525

1 A (Witness complies.)

2 Q And is this the Leatherman tool that we've been  
3 discussing that you collected from the Mustang?

4 A Yes, sir, it is.

5 MR. GRAHAM: Your Honor, the State would offer  
6 the Leatherman tool into evidence at this time.

7 MS. KIMBROUGH: Without objection.

8 THE COURT: It's admitted.

9 (State's Exhibit Number 74, Leatherman tool,  
10 admitted into evidence.)

11 BY MR. GRAHAM:

12 Q Investigator Phipps, did you have an occasion  
13 to go back to Monroeville, Alabama in September of  
14 2003?

15 A Yes, sir, I did.

16 Q And do you remember the date of that trip?

17 A I believe we were there for a couple of days.  
18 I think it had started on the 22nd.

19 Q So September 22nd of 2003?

20 A Yes, sir.

21 Q Approximately, how long would that be after the  
22 crime of August the 2nd, 2003?

23 A A month.

24 Q When you went back that time, did you have  
25 reason to believe that you would find evidence in a



MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 kudzu patch?

2 A We had received information that items involved  
3 in this crime may have been disposed of in what we  
4 were told was a drainage ditch containing kudzu,  
5 yes, sir.

6 Q Let me show you a photograph and ask you if you  
7 recognize this.

8 A Yes, sir, I do.

9 Q And what does that picture depict?

10 A It depicts a property line on Limestone Road in  
11 Monroeville, Alabama.

12 Q And you know whose house that is?

13 A I was told that it belongs to the mother of  
14 Mr. Finklea.

15 MR. GRAHAM: Your Honor, the State would offer  
16 this photograph into evidence.

17 MS. KIMBROUGH: Without objection.

18 THE COURT: It's admitted without objection.

19 (State's Exhibit 75, photograph, admitted  
20 into evidence.)

21 BY MR. GRAHAM:

22 Q Looking at State's 75, Investigator Phipps,  
23 what does that picture show?

24 A It's a view from the roadway looking back to a  
25 clearing and behind that property there of -- the

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1527

1 topography of the land drops off right behind the  
2 house and it's a very thickly overgrown kudzu.

3 Q I see some, what appears to be, people to me  
4 right there. Do you know what that is?

5 A Yes. We were assisted by narcotics agents for  
6 the local jurisdiction there, which was the  
7 Monroeville, or Monroe County Sheriff's Department.

8 Q Let me show you another photograph and ask if  
9 you recognize this photograph.

10 A Yes, sir, I do.

11 Q And does that fairly and accurately show the  
12 kudzu ravine and I believe the -- a side of the  
13 house depicted in State's 75?

14 A Yes, sir, it does.

15 MR. GRAHAM: Your Honor, the State would offer  
16 this photograph into evidence.

17 MS. KIMBROUGH: Without objection.

18 THE COURT: Admitted without objection.

19 (State's Exhibit Number 76, photograph,  
20 admitted into evidence.)

21 BY MR. GRAHAM:

22 Q Referring to State's number 76 on the projector  
23 on the T.V. and using your laser pointer, would you  
24 describe what this photograph shows?

25 A Yes, sir. Right here is the side of this same

1 house that you see from the view on the front of the  
2 road right there (indicating). The backyard would  
3 be this area immediately to the right of it.  
4 Everyone's backyard, the front's on that road, backs  
5 up against this ravine, has a slight contour along  
6 the rim of it and then it drops off steeply right  
7 here, a very densely over grown kudzu.

8 Q And, approximately, how far does that kudzu  
9 continue?

10 A As far as we could see.

11 Q Let me show you another photograph,  
12 Investigator, and ask if you recognize that one.

13 A I do. That's myself and one of the Monroe  
14 County Sheriff's Department Narcotics Investigators.

15 MR. GRAHAM: Your Honor, the State would offer  
16 this photograph in evidence.

17 MS. KIMBROUGH: No objection.

18 THE COURT: Admitted without objection.

19 (State's Exhibit Number 77, photograph,  
20 admitted into evidence.)

21 BY MR. GRAHAM:

22 Q Investigator Phipps, to give the jurors' necks  
23 a break, how about using the projector screen over  
24 here. And what does that photograph show?

25 A It gives you a sense of how dense the kudzu is

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 and how deep it is. The area is used as sort of a  
2 dumping ground for the people that live on that  
3 upper lip of the ravine. Trash and large appliances  
4 and other things that were -- had been discarded had  
5 just been pushed to the edge of the ravine and  
6 dumped in. Some of the areas where we're standing  
7 there are waist deep, but there are some areas where  
8 you could actually step off the edge of something  
9 and be almost over your head in kudzu.

10 Q Did you actually collect something from this  
11 location?

12 A Yes, sir, I did.

13 Q Approximately, how far is that location away  
14 from the property line from Ron Finklea's mother's  
15 house?

16 A I took a tape measure, I'd have to review the  
17 photo I have that shows the tape measurement. I  
18 don't have any notes on that.

19 Q Let me show you another photograph and ask if  
20 you recognize this one.

21 A Yes, sir, I do recognize that.

22 Q And are those the items that you recovered at  
23 that location in that picture?

24 A Yes, sir, it is.

25 MR. GRAHAM: Your Honor, the State would offer

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 this photograph into evidence at this time.

2 MS. KIMBROUGH: No objection.

3 THE COURT: It's admitted.

4 (State's Exhibit Number 78, photograph,  
5 admitted into evidence.)

6 BY MR. GRAHAM:

7 Q What does this picture show? What did you  
8 find?

9 A Initially while searching this kudzu patch, we  
10 were looking for what we thought would be some type  
11 of weapon used in this crime, that's primarily what  
12 we were focusing on trying to locate. I passed over  
13 an area where I noticed a blue Wal-Mart bag and even  
14 though there was other trash in the area, it just  
15 appeared a little bit fresher than everything else.  
16 It was obvious it hadn't been there very long. I  
17 picked the blue Wal-Mart bag up, opened it up and  
18 inside that blue Wal-Mart bag right on top was a  
19 white ball cap that has Army across the top, a black  
20 A in the center and some printing along the edge of  
21 the bill. Also, in that same Wal-Mart bag was an  
22 orange shirt with the stripes you see there in the  
23 photo and a pair of blue jeans.

24 Q And did you collect those items?

25 A Yes, sir, I did.

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 Q And do you have them with you here in court  
2 today?

3 A I do.

4 Q I'm going to show you State's 62. Did you take  
5 that photograph?

6 A Yes. I took that after returning back to  
7 Lexington with those items.

8 Q And that's the hat that you recovered?

9 A Yes, sir, it is.

10 Q And referring to 65, do you recognize that?

11 A Yes, sir.

12 Q And what is that?

13 A That's the photo of the shirt that you see in  
14 the photo on the overhead.

15 Q And were both of those items, the hat and the  
16 shirt, were items that you collected from the kudzu  
17 patch?

18 A Yes, sir, they are.

19 Q And do you have those with you today?

20 A I do.

21 Q Let me show you an item and ask if you  
22 recognize that item.

23 A Yes, sir. This is the blue Wal-Mart bag that  
24 the clothing items were found in.

25 Q And does it appear to be in the same condition

1 it was when you collected it?

2 A Yes, sir.

3 MR. GRAHAM: Your Honor, the State would offer  
4 this in evidence.

5 MS. KIMBROUGH: No objection.

6 THE COURT: It's admitted.

7 (State's Exhibit Number 79, Wal-Mart bag,  
8 admitted into evidence.)

9 BY MR. GRAHAM:

10 Q Inside that Wal-Mart bag, let me show you a hat  
11 and ask if you recognize that.

12 A Yes, sir. This is the ball cap that was in the  
13 Wal-Mart bag.

14 MR. GRAHAM: Your Honor, the State would offer  
15 this in evidence at this time.

16 MR. SOLTIS: No objection.

17 THE COURT: It's admitted without objection.

18 (State's Exhibit Number 80, hat, admitted  
19 into evidence.)

20 BY MR. GRAHAM:

21 Q Let me show you a shirt and ask if you  
22 recognize that.

23 A Yes, sir. It's the same orange, short sleeve  
24 shirt that I found in the bag.

25 MR. GRAHAM: Your Honor, the State would offer

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 the shirt in evidence at this time.

2 MS. KIMBROUGH: No objection.

3 THE COURT: It's admitted without objection.

4 (State's Exhibit Number 81, shirt, admitted  
5 into evidence.)

6 BY MR. GRAHAM:

7 Q Finally, Investigator, did you also collect a  
8 pair of jeans from that Wal-Mart bag?

9 A Yes, sir.

10 Q Do you have those with you?

11 A Yes, I do, right here.

12 Q And looking inside that bag, are those the  
13 jeans that you collected?

14 A Yes, sir, they are.

15 MR. GRAHAM: Your Honor, the State would offer  
16 the jeans into evidence at this time.

17 MS. KIMBROUGH: Without objection.

18 THE COURT: They are admitted.

19 (State's Exhibit Number 82, jeans, admitted  
20 into evidence.)

21 BY MR. GRAHAM:

22 Q Investigator Phipps, once you collected the  
23 Wal-Mart bag, the hat, the shirt and the pants,  
24 what, if anything, did you do with those?

25 A They were secured. Of course, we continued



MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 searching the area, so they really weren't looked at  
2 or anything was done with them until we arrived back  
3 to Lexington with them.

4 Q At some point after you had them in your  
5 possession, did you transfer them to somebody else?

6 A Yes. After we did the presumptive test on the  
7 shoes and photographed those clothing items, they  
8 were submitted to our evidence unit.

9 Q Back at the Lexington County Sheriff's  
10 Department?

11 A Yes.

12 Q And, finally, Investigator Phipps, did you have  
13 the opportunity to be present when blood was drawn  
14 from the defendant, Ron Finklea?

15 A Yes, sir, I was.

16 Q And when was that done?

17 A The blood draw was done on July 10th of this  
18 year.

19 Q And where was that done at?

20 A It was done at the Lexington County Medical  
21 Center's Occupational Health on [REDACTED] [REDACTED].

22 Q And what was the name of the nurse who drew  
23 that blood?

24 A It was an LPN by the name of Celeste Brewner

25 (ph).

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1535

1 Q And were you physically present and able to  
2 observe Nurse Brewner take the blood from  
3 Mr. Finklea's body?

4 A Yes, sir. I was in the room, observed a blood  
5 draw using a needle from the defendant's arm, that  
6 blood was subsequently put into a test tube. The  
7 nurse prepared a label with her initials and date  
8 and affixed that label over the top of the test tube  
9 handing it to me. I then applied my own initials so  
10 that I could identify it.

11 Q And do you have the -- once you had the test  
12 tube with the label that was sealed over it with the  
13 nurse's initials and your initials, what did you do  
14 with it?

15 A I then took it back to our headquarters where I  
16 packaged it, I heat sealed it in a bag, that bag was  
17 then again initialed with -- over the seals my  
18 initials and the date. I then took that and  
19 submitted it to our evidence unit.

20 Q And do you have that bag with you today?

21 A Yes, I do.

22 Q Can I see that, please?

23 A (Witness complies.)

24 Q Now, there is no test tube in there, is there?

25 A No, sir, there is not.

1 Q Do you know where that test tube is?

2 A It's my understanding that SLED keeps the test  
3 tube whenever items are submitted to them for  
4 analysis.

5 Q There is an outer bag and inside there is an  
6 inner bag. Do you recognize the inner bag?

7 A The inner bag is the one that I originally  
8 placed the test tube in. It has my initials over  
9 the seals.

10 MR. GRAHAM: Your Honor, the State would offer  
11 the inner bag, its contents, and the outer bag into  
12 evidence.

13 MS. KIMBROUGH: Without objection.

14 THE COURT: Admitted without objection.

15 (State's Exhibit 83, blood sample of Ron  
16 Finklea, admitted into evidence.)

17 BY MR. GRAHAM:

18 Q I'm going to ask you to open the bag for me.

19 A (Witness complies.)

20 Q Referring to the inner bag on State's 83, what  
21 is that that we're looking at?

22 A That's the bag that I heat sealed the blood  
23 sample in and labeled it with my initials and the  
24 information on the case.

25 Q And I see a line with initials here and a line

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

1537

1 with initials there, what does that mean?

2 A Those were the two points where that tubing  
3 material was heat sealed at either end. It's  
4 originally on a tube, a roll, and we unroll as much  
5 as we need and cut it. And then the two ends are  
6 heat sealed with any evidence in between.

7 Q And what's the purpose of heat sealing it?

8 A You heat seal it and then label the point so  
9 that you can identify in court whether it's been  
10 tampered with after you submitted it.

11 Q Looking at this envelope, what, if anything, do  
12 you recognize about this label?

13 A That is the label the nurse or LPN originally  
14 affixed over the top of the test tube. It has her  
15 initials, a date and a time. It has my initials and  
16 a date, my name. And I also wrote the subject's  
17 name who the blood was drawn from.

18 Q Detective, once you took possession of the test  
19 tube and you put it inside this bag and sealed it at  
20 both ends and initialed it, what, if anything, did  
21 you do with it?

22 A It was then taken to our evidence unit, there's  
23 some additional paperwork that's filled out. And  
24 it's our protocol with a biological sample like  
25 that, of course, it needs to be refrigerated or

1 handed directly to an evidence custodian. In this  
2 case, it was handed directly to an evidence  
3 custodian.

4 MR. GRAHAM: Your Honor, I believe that's all  
5 the questions I have for Investigator Phipps.

6 THE COURT: Cross-examination?

7 CROSS-EXAMINATION

8 BY MR. SOLTIS:

9 Q Detective, I just have a few questions for you  
10 and I know it's after seven o'clock, we all want to  
11 get out of here. A couple of questions, first of  
12 all, you processed the car, the 2003 Mustang?

13 A Yes, sir.

14 Q And that you found at the Monroe County  
15 Sheriff's Department?

16 A Yes, sir, it was parked in the parking lot.

17 Q How long had it been sitting there?

18 A I don't know if I was told how long. It had  
19 been there since we arrived or prior to us arriving.

20 Q Was it locked or unlocked?

21 A My recollection -- I don't have a direct  
22 recollection. I couldn't tell you whether it was  
23 locked or unlocked.

24 Q The Leatherman that you found under the seat  
25 was sent out for fingerprint testing, was it not?

MICHAEL STUART PHIPPS - CROSS BY MR. SOLTIS

1539

1 A It was.

2 Q And there were, obviously, no fingerprints on  
3 it?

4 A No, sir.

5 Q The Wal-Mart bag that contained the cap that's  
6 been attributed to Ron Finklea, the red shoe -- the  
7 red shirt -- the orange shirt and the blue jeans,  
8 also been sent to SLED and were DNA tested, were  
9 they not?

10 A Yes, sir.

11 Q And, again, no evidence that they were Ron  
12 Finklea's DNA?

13 A I don't have any reports to -- I can't comment  
14 on the SLED analysis.

15 Q You don't know if they had been DNA tested or  
16 not?

17 A I do know that they have been DNA tested.

18 Q And the results of the DNA test are what?

19 A I don't have that report in front of me, sir.

20 Q You have all of the other DNA tests and all the  
21 other test results, but you don't have this one?

22 A I didn't submit anything else for DNA.

23 MR. SOLTIS: Thank you.

24 \*\*\*\*\*

25 \*\*\*\*\*

MICHAEL STUART PHIPPS - REDIRECT BY MR. GRAHAM

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1 REDIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Investigator Phipps, you're aware that DNA was  
4 done, you just don't know the results?

5 A That is correct.

6 THE COURT: Anything further of this witness?

7 MR. SOLTIS: Nothing further, Your Honor.

8 MR. GRAHAM: Your Honor, I think he may need to  
9 be recalled one more time, but that's it for now.

10 THE COURT: You may step down.

11 MR. GRAHAM: The State would call Candy Kyzer.

12 CANDY KYZER,

13 having been duly sworn, testified as follows:

14 THE CLERK: Have a seat, state your full name,  
15 spelling your last for the record, please.

16 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

17 DIRECT EXAMINATION

18 BY MR. GRAHAM:

19 Q Ms. Kyzer, where are you employed?

20 A Lexington County Sheriff's Department.

21 Q How long have you worked there?

22 A For 12 years.

23 Q And what do you do?

24 A I'm an evidence custodian.

25 Q What do you do as an evidence custodian?

CANDY KYZER- DIRECT BY MR. GRAHAM

1541

1       A     We get in all of the evidence that comes in on  
2       cases either from the deputies or investigators or  
3       crime scene techs, sign it in and then store it in  
4       its proper location until it's time for it to go to  
5       court.

6       Q     Let me show you what's been marked as item 70  
7       and ask if you recognize this.

8       A     Yes, I do.

9       Q     And what are they?

10      A     The white tennis shoes.

11      Q     And who did you receive these tennis shoes  
12      from?

13      A     Mike Phipps.

14      Q     And when did you receive them?

15      A     On August the 12th of 2003.

16      Q     And were they materially and substantially in  
17      the same condition as you see them now?

18      A     Yes.

19      Q     When you receive them into evidence, what does  
20      that mean?

21      A     We get them in. We sign the paperwork saying  
22      that we did get them, enter them into the computer,  
23      give them an item number and then store them in a  
24      location where it stays until it's necessary for it  
25      to go to court.



LINDA RAINES - DIRECT BY MR. GRAHAM

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1 Q And who has access to the evidence once it's  
2 stored in there?

3 A Just three of the evidence custodians, it's  
4 myself, Sergeant McMullen and Beth Harmon.

5 Q And is it fair to say that the -- what goes in  
6 and what comes out is controlled by you three and  
7 monitored?

8 A Yes.

9 MR. GRAHAM: No other questions, Your Honor.

10 MS. KIMBROUGH: No questions, Your Honor.

11 THE COURT: You may step down.

12 MR. GRAHAM: Your Honor, we would need to  
13 recall Ms. Kyzer later.

14 THE COURT: All right.

15 MR. GRAHAM: The State calls Linda Raines.

16 LINDA RAINES,

17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat, state your full name  
19 and spell your last for the record.

20 THE WITNESS: Linda Raines, R-A-I-N-E-S.

21 DIRECT EXAMINATION

22 BY MR. GRAHAM:

23 Q Ms. Raines, where are you employed?

24 A Lexington County Sheriff's Department.

25 Q And, at one time, did -- what do you currently

LINDA RAINES - DIRECT BY MR. GRAHAM

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1 do?

2 A I currently work in the personnel department.

3 Q And how long have you worked for the sheriff's  
4 department?

5 A Eighteen years.

6 Q Prior to working in the personnel department,  
7 did you have the opportunity to work in the evidence  
8 room?

9 A I did.

10 Q And referring to State's Exhibit Number 70,  
11 I'll ask if you recognize it.

12 A Yes, sir, I do.

13 Q And what are those?

14 A Shoes.

15 Q What, if anything, did you do with these shoes?

16 A I actually took them to SLED for processing.

17 Q They were taken in this bag?

18 A I took them in the bag.

19 Q When did you take them to SLED?

20 A August 21st of 2003.

21 Q And describe to me how the turning over of  
22 evidence from you with the Lexington County  
23 Sheriff's Department to SLED, how that works.

24 A They have a login, you just take it over there  
25 and actually one of the processors will take it and

1 log it into their computer and take it from there.  
2 Actually, we put the bag in this box at SLED and put  
3 the evidence tape across it and I initialed and  
4 dated it to where it would go up to be processed by  
5 a tech at SLED.

6 Q Looking on the top right there, is that what  
7 you're referring to?

8 A Yes, sir, that's my initials there.

9 Q And these shoes and the paper bag were placed  
10 in this box while you were present?

11 A At SLED, yes, sir.

12 Q And the tape was put over it and you witnessed  
13 that?

14 A It was.

15 Q And then you applied your initials to the tape?

16 A Right. We always initial and date items that  
17 we seal in a box over there.

18 Q And you turned this item over to SLED at that  
19 point?

20 A I did.

21 MR. GRAHAM: That's all the questions I have  
22 for this witness, Your Honor.

23 THE COURT: Any questions?

24 MS. KIMBROUGH: No cross-examination.

25 THE COURT: All right. Thank you. You may

BETTY WALKER BUTLER - DIRECT BY MR. GRAHAM

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1 step down.

2 MR. GRAHAM: Your Honor, she's going to need to  
3 be recalled as well.

4 THE COURT: We'll take one more witness for  
5 this day.

6 MR. GRAHAM: The State calls Betty Butler.

7 BETTY WALKER BUTLER,  
8 having been duly sworn, testified as follows:

9 THE CLERK: If you'll have a seat, state your  
10 full name, spelling your last for the record,  
11 please.

12 DIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q Good evening, Ms. Butler.

15 A Good evening. Betty Walker Butler,  
16 B-U-T-L-E-R.

17 Q Ms. Butler, where are you employed?

18 A South Carolina Law Enforcement Division, also  
19 known as SLED.

20 Q And how long have you worked there?

21 A Eleven years.

22 Q And what are your job duties there? What do  
23 you do?

24 A I'm a forensic technician now in the evidence  
25 processing department. At that time, in '03, I was

BETTY WALKER BUTLER - DIRECT BY MR. GRAHAM

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1 a forensic technician in the evidence control  
2 department.

3 Q And what is the evidence control department?

4 A The evidence control department is department  
5 where we receive evidence from the various agencies.  
6 Evidence that we receive has to come into -- on a  
7 SLED laboratory forensic service request. We log it  
8 in, the evidence into our system. We give it a  
9 tracking number and a lab number.

10 Q Referring to State's 70, do you recognize this?

11 A Yes, I do.

12 Q And it's actually assigned a number by SLED?

13 A Yes, it was. It was assigned a lab number,  
14 LO-308150. It also was given a container number for  
15 tracking, which is E-197997.

16 Q And you heard Ms. Raines testify. Did she put  
17 the shoes in the box in your presence?

18 A I put the shoes in the box and I sealed it with  
19 tape and had her initial and date the seal in her  
20 presence.

21 Q So did you ever touch the shoes?

22 A Only in the bag.

23 Q In fact, did you even know what was inside the  
24 bag?

25 A We work on, I said, to contained -- whatever it

BETTY WALKER BUTLER - DIRECT BY MR. GRAHAM

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1 says on our forensic evidence inventory sheet,  
2 that's what we go by.

3 Q So you didn't do anything to change or alter  
4 the contents of the bag?

5 A No, I did not.

6 Q Once you took that box, what did you do with  
7 it? What happened to that box?

8 A After I took this box and put the container and  
9 lab number on it, I kept it in my custody and I sent  
10 it to -- took it to the D-16, which is our evidence  
11 -- in our evidence processing department. We have a  
12 locked refrigerator that we physically open and put  
13 the evidence and lock it back.

14 Q And until this day, is that the last time you  
15 saw that box?

16 A Yes, it's the last time.

17 MR. GRAHAM: Your Honor, that would be all the  
18 questions we have for Ms. Butler. She would need to  
19 be recalled at a later time.

20 MS. KIMBROUGH: No questions. Thank you.

21 THE COURT: All right. You may step down.

22 All right. Ladies and gentlemen, I think we've  
23 gotten all we can get out of this day. We're going  
24 to quit now for this day and recess until 9:30  
25 tomorrow morning. Please do not discuss the case

1 with anyone, allow anyone to discuss it with you or  
2 in your presence. We'll reconvene at 9:30 tomorrow  
3 morning. I hope you have a good evening.

4 (The jury was excused for the day.)

5 **THE COURT:** Are there any other matters that we  
6 need to talk about today before we quit for the  
7 evening?

8 **MR. HUBBARD:** None from the State, Your Honor.

9 **MS. KIMBROUGH:** None from the defense.

10 **THE COURT:** All right. We'll be in recess  
11 until 9:30 a.m. tomorrow.

12 (Whereupon, the proceedings were concluded  
13 for August 30, 2007.)

14 (The following proceedings were held on  
15 August 31, 2007.)

16 **THE COURT:** Are there any matters before we  
17 bring in the jury?

18 **MR. MYERS:** No, sir.

19 **MS. KIMBROUGH:** No, Your Honor.

20 **THE COURT:** All right. Let's bring in the  
21 jury.

22 (The jury enters the courtroom at 9:42 a.m.)

23 **THE COURT:** Good morning. Welcome back, ladies  
24 and gentlemen. Continuing on with the State's case,  
25 prior to calling the first witness, I want to

CECIL BRADSTREET - DIRECT BY MR. GRAHAM

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1 inquire of the jury, however, whether you've been  
2 exposed to any information outside the courtroom  
3 concerning this case. If anyone has attempted to  
4 contact you or discuss it with you or if you've  
5 read, seen or heard anything about the case outside  
6 the courtroom, please let me know by raising your  
7 right hands.

8 Nothing affirmative indicated by the jury. You  
9 may proceed.

10 MR. GRAHAM: Thank you, Your Honor. The State  
11 calls Cecil Bradstreet.

12 CECIL BRADSTREET,  
13 having been duly sworn, testified as follows:

14 THE CLERK: Once you have a seat, state your  
15 full name, spelling your last.

16 THE WITNESS: Cecil Bradstreet,  
17 B-R-A-D-S-T-R-E-E-T.

18 DIRECT EXAMINATION

19 BY MR. GRAHAM:

20 Q Mr. Bradstreet, where are you employed?

21 A South Carolina Law Enforcement Division.

22 Q And what do you do there?

23 A Right now, I'm a statistical research analyst  
24 for the Intelligence in Homeland Security  
25 Department.



1 Q What does that mean?

2 A I'm a research analyst for an intelligence  
3 department. I help do background information for  
4 any pending criminal cases.

5 Q Prior to that, did you work over on the  
6 forensic side?

7 A Yes, sir, I did.

8 Q And what did you do over there?

9 A I was a forensic technician within the evidence  
10 processing department.

11 Q And how long total have you worked for SLED?

12 A Thirteen and a half years.

13 Q And of that time how long of that was as a  
14 forensic technician?

15 A Six and a half years.

16 Q And did you have an opportunity to work on this  
17 case?

18 A Yes, sir, I did.

19 Q I'm going to show you what's been marked as  
20 State's Exhibit Number 70 and ask if you recognize  
21 that?

22 A Yes, sir, I do.

23 Q Where did you first come in contact with that  
24 box?

25 A I received this box from our what's known as

CECIL BRADSTREET - DIRECT BY MR. GRAHAM

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1 D-16, which is a large walk-in refrigerator, which  
2 is housed within the evidence processing department.

3 Q And when you received that box, was it sealed  
4 or unsealed?

5 A It was sealed.

6 Q And was there any evidence that it had been  
7 tampered with?

8 A None at all.

9 Q Once you retrieved them, what did you do?

10 A I retrieved the box, took the box into my  
11 custody through our computer system, opened the box  
12 up and did a visual exam for the presence of blood.

13 Q And what, if anything, did you see as a result  
14 of your visual examination?

15 A I did a visual examination on two pairs of --  
16 on a pair of shoes. They were a pair of white Nike  
17 athletic shoes size ten and a half. I noticed three  
18 areas that were dark stained, which could have been  
19 a possibility of blood.

20 Q And at that point, when you saw those three  
21 possible stains, what, if anything, did you do?

22 A I did a chemical test known as phenolphthalein.  
23 Phenolphthalein reacts with hemoglobin, which is  
24 found in blood. I take a saline swab -- excuse me  
25 -- I take a cotton swab, wet it with saline, swab

1 the area. I'll take that swab, set it aside, take  
2 another swab, go back behind it, take the  
3 phenylthaleine, drop it on the swab and then use  
4 hydrogen peroxide. That produces a chemical  
5 reaction which will turn the swab bright pink, that  
6 means it's a presumptive test which -- it's a  
7 presumptive test, which means it's positive for  
8 blood. I will take the original swab that I made,  
9 set it back aside and send it to DNA for further  
10 testing.

11 Q Take a look inside that bag for me, please.

12 A (Witness complies.)

13 Q And, specifically, do you recognize those  
14 tennis shoes?

15 A Yes, sir, I do. These are my initials on the  
16 back of the shoes, along with the item number that  
17 was assigned by the intake department at SLED.

18 MR. GRAHAM: Your Honor, if I can get the  
19 witness to step down.

20 THE COURT: Yes.

21 (Witness leaves the witness stand.)

22 BY MR. GRAHAM:

23 Q And, Mr. Bradstreet, you can bring those shoes  
24 with you. There's marking on here in addition to  
25 the marking that you said were your initials on the

CECIL BRADSTREET - DIRECT BY MR. GRAHAM

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1 back. Was that present when you first received  
2 those shoes?

3 A No, sir, I actually made these markings.

4 Q And what was the purpose of making those  
5 markings?

6 A These are the areas that I tested for blood.  
7 This area right here was negative. This was this  
8 chemical test for phenolphthalein that I did. Right  
9 here is the negative sign that we use within  
10 evidence processing along with chemical.

11 This area right here on the tongue of the shoe,  
12 this area I swabbed, set my good swab aside, went  
13 back and did another one. The fact that it says 28  
14 point one, it was the first swab that I made that  
15 was presumptive positive for blood.

16 28 point two was the same scenario. I set the  
17 swab aside, tested it again, the chemical test came  
18 back positive. I set that swab aside to forward to  
19 DNA.

20 28 point three, again, I did the same chemical  
21 test, got the same reactions. I forwarded that one  
22 to DNA, also.

23 Q Explain -- slow down just a little bit and  
24 explain, you did a visual examination and you saw  
25 something that you thought was probable blood.

1 Referring to 28 point one, two and three, you take a  
2 swab, what is that first swab and what do you do  
3 with it?

4 A The first swab -- the reason I set the first  
5 swab aside is because it's going to have the most  
6 concentrated part of the sample. I go back with a  
7 second swab just to do a smaller -- take a small  
8 sample of it. Phenolphthalein is a very sensitive  
9 test. It can detect blood within about, you could  
10 have probably about 10,000 drops of water and one  
11 drop of blood and it will pick it up. So I take my  
12 first swab because it's the most concentrated  
13 because that's going to be the best evidence for  
14 that sample.

15 Q So you take the first swab and you would swab  
16 the area, set that swab aside, take a second swab,  
17 swab the area again and use the phenolphthalein test  
18 on the second swab?

19 A Yes, sir, that's correct.

20 Q And then if that second swab is positive, then  
21 what do you do with the first swab?

22 A My first swab, since it's the most  
23 concentrated, put that in a small, gold coin  
24 envelope with the request for a blood examination,  
25 tape the bag, put my initials on it and forward that

CECIL BRADSTREET - DIRECT BY MR. GRAHAM

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1 to DNA for further analysis.

2 Q If you can take a seat back up there, please.

3 A (Witness resumes the witness stand.)

4 Q Mr. Bradstreet, let me show you a bag and ask  
5 if you recognize the contents of that bag?

6 A Yes, sir, I do.

7 Q And what is that bag and what are its contents?

8 A These are my three swabs that I set aside from  
9 the shoes that I forwarded to DNA.

10 Q And how do you recognize them?

11 A On the back of each envelope, as I said, has my  
12 initials along with the date. On the front of the  
13 pouch, I've signed it here along with the date.  
14 I've also heat sealed the top, put my initials  
15 across the top along with the date that I sealed it.

16 Q And how many gold bags are inside that are gold  
17 envelopes?

18 A There are these gold envelopes.

19 Q And do each of those envelopes correspond with  
20 one of the swabs from the three different locations  
21 on the left shoe where you found blood?

22 A Yes, sir, that's correct.

23 Q Once you take the swab that goes with that  
24 shoe, each one goes in its own envelope?

25 A Yes, sir, that's correct.

1 Q And then how is it labeled and how did you seal  
2 it?

3 A On the outside of each envelope is going to  
4 have the corresponding lab number that is assigned  
5 the subitem number, which is either 28 point one, 28  
6 point two or 28 point three, the type of request for  
7 blood, the description, which it came from the left  
8 shoe, and that it is a swab. Once I've done that, I  
9 seal this pouch. I route this to DNA for further  
10 analysis.

11 Q What, if any, markings do you see on there to  
12 show that that bag was opened later by somebody  
13 else?

14 A There's another heat seal right here with  
15 someone else's initial.

16 Q And do you recognize those initials?

17 A They are M.G.F, which is Matt Fitts, the DNA  
18 analyst.

19 Q Other than his markings on the envelopes on the  
20 inside and the heat seal mark where he opened it and  
21 then closed it, do you see anything else different  
22 than from when you last put those items inside  
23 there?

24 A No, sir.

25 Q And is it materially and substantially in the

CECIL BRADSTREET - DIRECT BY MR. GRAHAM

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1 same condition as that time?

2 A Yes, sir, that's correct.

3 MR. GRAHAM: Your Honor, at this time, the  
4 State would offer these three swabs and the exterior  
5 packet back into evidence.

6 MS. KIMBROUGH: No objection.

7 THE COURT: They're admitted without objection.

8 (State's Exhibit Number 84, evidence bag  
9 with three swabs, admitted into evidence.)

10 BY MR. GRAHAM:

11 Q And after you sealed this, again, I'm sorry,  
12 Mr. Bradstreet, what did you do with it?

13 A I take this to a DNA drop box, which was  
14 located in evidence control, drop it in there. It's  
15 a locked refrigerator. It's kind of like a mail  
16 slot, you just drop it in there.

17 Q And then when you were done with these shoes,  
18 where did they go?

19 A I packaged the shoes back up, put evidence tape  
20 across the box, put it back in D-16, which is our  
21 large walk-in refrigerator and it's routed back to  
22 the submitting agency for return.

23 MR. GRAHAM: Thank you, Mr. Bradstreet. Please  
24 answer any questions the defense has for you.

25 MS. KIMBROUGH: No questions.



SHEREE BROWN - DIRECT BY MR. GRAHAM

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1 THE COURT: Thank you, sir. You may step down.

2 MR. GRAHAM: The State would call Sheree brown.

3 SHEREE BROWN,

4 having been duly sworn, testified as follows:

5 THE CLERK: Once you have a seat, please speak  
6 up loud and clear, state your full name and spell  
7 your last.

8 THE WITNESS: Sheree Brown, B-R-O-W-N.

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Ms. Brown, where are you employed?

12 A South Carolina Law Enforcement Division.

13 Q And how long have you been there?

14 A Thirteen years.

15 Q And what are your job duties there?

16 A I'm a forensic technician within the DNA  
17 department.

18 Q And what are your job responsibilities as a  
19 forensic technician?

20 A One of my jobs is to retrieve evidence from the  
21 evidence log-in for the DNA department and then  
22 route it where it needs to go.

23 Q And did you have some involvement in this case?

24 A Yes, I did.

25 Q Referring to the item in front of you that's

SHEREE BROWN - DIRECT BY MR. GRAHAM

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1 State's Exhibit Number 84, do you recognize that  
2 item?

3 A Yes, I do.

4 Q And what, if anything, did you do with that  
5 item?

6 A I retrieved it out of the DNA lock box within  
7 the evidence log-in. And then when I took it back  
8 upstairs, looked in the computer system, this case  
9 was already assigned to Matt Fitts, so it was just  
10 routed to him through the computer and the physical  
11 location in our locked secure area.

12 Q Other than physically moving that sealed  
13 envelope, did you do anything else with it?

14 A No, I didn't.

15 Q Did you go inside it?

16 A No.

17 Q Was there any evidence that it had been  
18 tampered with?

19 A No.

20 Q And is it materially and substantially in the  
21 same condition now as when you saw it before?

22 A Other than when Matt opened it up when he did  
23 his testing, that's something different.

24 MR. GRAHAM: Thank you. Please answer any  
25 questions the defense has.

BARBARA W. MCMULLEN - DIRECT BY MR. GRAHAM

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1 MS. KIMBROUGH: No questions.

2 THE COURT: Thank you, ma'am.

3 MR. GRAHAM: Your Honor, she will need to be  
4 recalled on another matter.

5 THE COURT: Okay.

6 MR. GRAHAM: The State calls Barbara McMullen.

7 BARBARA W. MCMULLEN,

8 having been duly sworn, testified as follows:

9 THE CLERK: Once you have a seat, state your  
10 full name, spelling your last.

11 THE WITNESS: Barbara W. McMullen,  
12 M-C-M-U-L-L-E-N.

13 DIRECT EXAMINATION

14 BY MR. GRAHAM:

15 Q Ms. McMullen, where are you employed?

16 A Lexington County Sheriff's Department.

17 Q And what do you do there?

18 A I'm the evidence and accreditation manager.

19 Q And how long have you been with the sheriff's  
20 department?

21 A Over seven years.

22 Q And how much total law enforcement experience  
23 do you have?

24 A Twenty-seven.

25 Q What are your job responsibilities as to the

BARBARA W. MCMULLEN - DIRECT BY MR. GRAHAM

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1 evidence room or the property room at the sheriff's  
2 department?

3 A I oversee the intake and disposal of property  
4 and evidence.

5 Q Let me show you what's been marked as State's  
6 69, ask if you recognize that?

7 A Yes.

8 Q And what, if anything -- where did you get  
9 that? Where have you seen that before?

10 A From CSI Mike Phipps, turned it in.

11 Q And do you remember the date that you received  
12 that from Investigator Phipps?

13 A On August 2nd, 2003.

14 Q That was the day of the autopsy?

15 A Yes.

16 Q Inside that bag, it's empty now, but was it  
17 empty when you received it?

18 A No.

19 Q And what was inside it?

20 A It had several test tubes of body samples taken  
21 from the autopsy.

22 Q And one of those test tubes was a lavender top  
23 test tube filled with blood?

24 A Yes.

25 Q Once you received that from Investigator

1 Phipps, what did you do with it?

2 A Logged it in and placed it in the evidence  
3 refrigerator.

4 Q And other than yourself, who would have had  
5 access to that?

6 A Myself and two other custodians.

7 Q If, at the time that that bag had come in, was  
8 there any evidence that -- was it sealed or unsealed  
9 when you received it?

10 A It was sealed.

11 Q And was there any evidence it had been tampered  
12 with when you received it?

13 A No.

14 MR. GRAHAM: Please answer any questions the  
15 defense has.

16 MS. KIMBROUGH: No questions.

17 THE COURT: Thank you. You may step down.

18 MR. GRAHAM: The State would call Linda Raines.

19 LINDA RAINES,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat. State your full name  
22 and spell your last, please.

23 THE WITNESS: My name is Linda Raines,  
24 R-A-I-N-E-S.

25 \*\*\*\*\*

LINDA RAINES - DIRECT BY MR. GRAHAM

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## 1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Ms. Raines, again, where are you employed?

4 A Lexington County Sheriff's Department.

5 Q Now, you're not currently working with the  
6 evidence room anymore, but were you at the time of  
7 this murder?8 A I was. I was working in the evidence room at  
9 that time.10 Q In front of you is an empty bag, State's  
11 Exhibit Number 69. And have you seen that bag  
12 before?

13 A Yes, I have.

14 Q And where did you get it from?

15 A I removed it from the refrigerator for the  
16 purpose of taking it to SLED for processing.17 Q And when you took it to SLED, was there any  
18 evidence that it had been tampered with?

19 A No, sir.

20 Q And inside that bag was there a lavender top  
21 test tube filled with blood?

22 A Yes, there was.

23 Q Once you removed that item from the property  
24 room at the sheriff's department, what did you do  
25 with it?

LINDA RAINES - DIRECT BY MR. GRAHAM

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1       A     Well, I transported it to SLED and Betty Butler  
2       who worked in log-in there helped process it into  
3       SLED.

4       Q     And that's kind of a coordinated effort between  
5       you and her as you're turning it over to SLED?

6       A     It is. The bag has to be opened and different  
7       parts of it sent to, you know, put in different  
8       packages to different departments.

9       Q     I see a slip in the top of the bag. Do you  
10      know when that slip was made?

11      A     It would have been made at that time when I  
12      took it to SLED.

13      Q     When that slip was made, that was done either  
14      by you or by Ms. Butler?

15      A     Ms. Butler, yes.

16      Q     And then what happened to the contents of it?

17      A     We placed it in another sealed bag, which I  
18      would have signed, and it would have been sent up to  
19      serology.

20      Q     Some of the samples inside would have gone to  
21      toxicology, but the lavender test top would have  
22      gone to DNA serology?

23      A     DNA. So I would have -- after we put it in a  
24      bag and sealed it for DNA, I would have put it in  
25      the refrigerator, which has a slot where you -- a

LINDA RAINES - DIRECT BY MR. GRAHAM

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1 drop box.

2 Q A refrigerator drop box at SLED where you would  
3 relinquish custody of it?

4 A Yes.

5 Q Let me show you the outside container of this  
6 and ask if you recognize it?

7 A I do.

8 Q And how do you recognize it?

9 A It has my signature here and also where it was  
10 sealed at the top.

11 Q So the inside bag that had been cut open that  
12 contained the lavender top test tube went inside  
13 this bag?

14 A It did.

15 Q And then the heat seal across the top with your  
16 initials right there?

17 A Yes, sir.

18 Q And what is the purpose of heat sealing it and  
19 putting your initials on it?

20 A For chain of custody, make sure it's not  
21 tampered with.

22 Q So when you left it, this bag was sealed and  
23 there was a test tube inside of it of blood?

24 A That's correct.

25 MR. GRAHAM: Please answer any questions the



BETTY WALKER BUTLER - DIRECT BY MR. GRAHAM

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1 defense has.

2 MS. KIMBROUGH: No questions. Thank you.

3 THE COURT: You may step down..

4 MR. GRAHAM: The State would recall Ms. Betty  
5 Butler.

6 BETTY WALKER BUTLER,  
7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat, ma'am. State your  
9 full name once you have a seat please.

10 THE WITNESS: Betty Walker Butler, B-U-T-L-E-R.

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q Good morning, Ms. Butler.

14 A Good morning.

15 Q Briefly again, where are you employed?

16 A I'm employed with the South Carolina Law  
17 Enforcement Division, also known as SLED.

18 Q And, specifically, at one time, did you work in  
19 the evidence receiving area for SLED?

20 A Yes, I did.

21 Q Looking at the item that's on the table in  
22 front of you, do you recognize that?

23 A Yes, I do.

24 Q And did you assist Linda Raines when she  
25 brought the evidence from the Lexington County

BETTY WALKER BUTLER - DIRECT BY MR. GRAHAM

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1 Sheriff's Department into processing it into SLED's  
2 custody?

3 A Yes, I did.

4 Q And could you briefly describe that process?

5 A When Linda Raines brought the contents in, all  
6 of the contents was in a big -- a larger bag. What  
7 we do, the lavender top tube has to go to DNA. The  
8 bag is opened up, put into a sealed pouch, which is  
9 this pouch right here. We seal it. Linda initials  
10 and dates across the seal and she signs and dates  
11 the seal. I, in turn, put the lab number on it.  
12 And this is a routing number, this is container  
13 number which is E197994. And I give it back to her  
14 and she drops it in the DNA box.

15 Q If there would have been -- the last time you  
16 saw that package, was it sealed?

17 A Yes, it was.

18 Q And if it had not been sealed properly, would  
19 you have accepted it into SLED?

20 A No, I would not have.

21 MR. GRAHAM: Please answer any questions the  
22 defense has.

23 MS. KIMBROUGH: No questions.

24 THE COURT: You may step down.

25 MR. GRAHAM: Jennifer Clayton.

JENNIFER LYNN CLAYTON - DIRECT BY MR. GRAHAM

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1 JENNIFER LYNN CLAYTON,  
2 having been duly sworn, testified as follows:

3 THE CLERK: Have a seat please, ma'am. State  
4 your full name, spell your last, please.

5 THE WITNESS: Jennifer Lynn Clayton,  
6 C-L-A-Y-T-O-N.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Ms. Clayton, where are you employed?

10 A I'm currently employed with the South Carolina  
11 Law Enforcement Division, also known as SLED.

12 Q And how long have you worked there?

13 A Approximately, five years.

14 Q And what did you do for SLED?

15 A I'm currently a DNA analyst, but at the time  
16 that the evidence for this case came in, I was a DNA  
17 technician for the DNA department.

18 Q And as part of your job as a DNA technician,  
19 were you responsible for the movement of items to  
20 the DNA department?

21 A Yes, I was.

22 Q Looking at State's 69 in front of you, did you  
23 at one time come in custody of that bag?

24 A Yes, I did.

25 Q And where did you receive it from?

JENNIFER LYNN CLAYTON - DIRECT BY MR. GRAHAM

1569

1       A     It had been placed in the DNA box down in  
2       evidence log-in. I retrieved it from that DNA box.

3       Q     And what condition was that package in when you  
4       received it?

5       A     It was heat sealed across the top and the  
6       evidence was inside.

7       Q     If it had not been sealed and it had been  
8       tampered with, would you have processed it forward  
9       in the chain?

10      A     No, I would not.

11      Q     Once you received it, what did you do with it?

12      A     I took it to the third floor DNA department and  
13      determined that this case was not yet assignable  
14      because at this time all we had was the blood, we  
15      didn't have any evidence to compare it to. So I  
16      placed it into a secure refrigerator on the third  
17      floor, transferred it in a computer electronically  
18      to track it and then it would later be either  
19      preserved on cloth or assigned if more evidence came  
20      in.

21      Q     So the last place you left it was the DNA  
22      refrigerator on what floor?

23      A     Third floor.

24           MR. GRAHAM: Please answer any questions the  
25      defense has.

SHEREE BROWN - DIRECT BY MR. GRAHAM

1570

1 MR. SOLTIS: No questions.

2 THE COURT: You may step down.

3 MR. GRAHAM: State would recall Sheree Brown.

4 THE COURT: Ms. Brown, you're still under oath.

5 THE WITNESS: Yes.

6 SHEREE BROWN,

7 having been previously duly sworn, resumed the

8 witness stand and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. GRAHAM:

11 Q Ms. Brown, looking at item State's Exhibit  
12 Number 69 in front of you, do you recognize that  
13 item?

14 A Yes, I do.

15 Q And when did you come in contact with it?

16 A Several days later we got the evidence that was  
17 28 point one, point two, point three and that, at  
18 this time, this case could be assigned. So I routed  
19 it with those items to Matt Fitts.

20 Q And you were in here earlier when Cecil  
21 Bradstreet testified?

22 A Yes.

23 Q When you're talking about 28 point one, two and  
24 three, are you talking about the swabs that he  
25 testified to?

SHEREE BROWN - DIRECT BY MR. GRAHAM

1571

1 A Yes.

2 Q When that case was assigned, who was it  
3 assigned to?

4 A Matt Fitts.

5 Q And where did you retrieve that package from?

6 A Location in our DNA department on the third  
7 floor, it's a secure refrigerator. We have to give  
8 it a name, so that's just...

9 Q When you retrieved that package from the DNA  
10 refrigerator on the third floor, was there any  
11 evidence it had been tampered with?

12 A No.

13 Q And would you have continued to pass it forward  
14 if it had been tampered with?

15 A No, I wouldn't.

16 Q Once you retrieved it, what did you do with it?

17 A Routed it through the computer system to DNA-R,  
18 which is another secure location. And within that  
19 refrigerator, is Matt's own personal box that his  
20 evidence goes into.

21 Q And that's the last place where you placed  
22 State's Exhibit 69?

23 A Yes.

24 MR. GRAHAM: Please answer any questions the  
25 defense has, Ms. Brown.

TROY CRUMP - DIRECT BY MR. GRAHAM

1572

1 MR. SOLTIS: No questions.

2 THE COURT: You may step down.

3 MR. GRAHAM: And Ms. Brown will need to be  
4 recalled one more time.

5 The State calls Troy Crump.

6 TROY CRUMP,

7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat please, sir. State  
9 your full name and spell your last, please.

10 THE WITNESS: Troy Crump, C-R-U-M-P.

11 DIRECT EXAMINATION

12 BY MR. GRAHAM:

13 Q Mr. Crump, where are you employed?

14 A Lexington County Sheriff's Department.

15 Q And what do you do for the Lexington County  
16 Sheriff's Department?

17 A I am a crime scene investigator.

18 Q On July 10th of this year, did you have the  
19 opportunity to be present when blood was drawn from  
20 Theodore Davis?

21 A Yes.

22 Q Can you explain how that process worked?

23 A He was transported to the Lexington County --  
24 or Lexington Medical Center Occupational Health  
25 where I met with him where a, I believe, it's an LPN

TROY CRUMP - DIRECT BY MR. GRAHAM

1573

1 nurse by the name of Nurse Newman and she used a  
2 syringe and drew the blood out of his arm and put it  
3 into a test tube.

4 Q And were you present for the entire time that  
5 that happened?

6 A Yes.

7 Q And you actually saw the blood, the needle and  
8 the blood go from there directly to the test tube?

9 A Yes.

10 Q What did Nurse Newman do with the test tube --  
11 or what did you do with the test tube?

12 A After she placed the label over the top with  
13 her name and date and the time, I took it back to  
14 headquarters, sealed it into a bag, initialed the  
15 seal and then turned it into the property room.

16 Q Let me ask you to cut this bag open for me.

17 A (Witness complies.)

18 Q When you were referring to a label, do you see  
19 the label you were talking about?

20 A That's the label right there.

21 Q And what was the purpose of that label?

22 A To make sure it wouldn't be tampered with  
23 between...

24 Q Where was that -- was the label on the package  
25 or on the test tube?



1       A     I'm sorry. It was on the top of the test tube  
2       over the rubber part where the syringe goes in to  
3       deposit the blood.

4       Q     So it went from one side of the glass around  
5       the top of the rubber part to the other side of the  
6       glass?

7       A     Yes, sir.

8       Q     And there's date, time and initials?

9       A     Yes, sir.

10      Q     And who wrote that on there?

11      A     The nurse.

12      Q     Once you took the test tube that had this label  
13      across the top, what did you do with it?

14      A     I took it back to headquarters, back to our lab  
15      and placed it into the sealed bag.

16      Q     And do you recognize this bag?

17      A     Yes.

18      Q     And how do you recognize that?

19      A     It's my initials and the date that I sealed it.

20      Q     And can you explain to the jury why there's two  
21      sets of initials and dates on it?

22      A     Because I sealed it on both ends where it  
23      couldn't be tampered with.

24      Q     Once you had the test tube with the label  
25      sealed across it with the nurse's initials in this

MARGARET ELIZABETH HARMON - DIRECT BY MR. GRAHAM

1575

1 bag with heat sealed and your initials, what did you  
2 do with it?

3 A I turned it into the property room and believe  
4 I handed it to Beth Harmon.

5 MR. GRAHAM: Your Honor, I believe that's all  
6 the questions I have for this witness.

7 MR. SOLTIS: No questions.

8 MR. GRAHAM: The State would recall (sic) Beth  
9 Harmon.

10 MARGARET ELIZABETH HARMON,  
11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat up there, state your  
13 full name.

14 THE WITNESS: Margaret Elizabeth Harmon,  
15 H-A-R-M-O-N.

16 DIRECT EXAMINATION

17 BY MR. GRAHAM:

18 Q Ms. Harmon, where are you employed?

19 A Lexington County Sheriff's Department.

20 Q And what do you do there?

21 A I'm currently an evidence custodian.

22 Q And how long have you worked for the Lexington  
23 County Sheriff's Department?

24 A Approximately, five years.

25 Q And did you have some involvement in this case?

MARGARET ELIZABETH HARMON - DIRECT BY MR. GRAHAM

1576

1       A     I did.

2       Q     Let's do these one at a time. Did you hear  
3       Officer Crump testify moments ago about taking the  
4       blood draw from Theodore Davis?

5       A     I did.

6       Q     And do you recognize that package or the  
7       contents of the inside of the package?

8       A     I do.

9       Q     And where did you get it? Where did you see  
10      it?

11      A     I received it from CSI Crump. He handed it  
12      directly to me and I signed it into evidence, placed  
13      the bar code label on it and placed it in the  
14      refrigerator.

15      Q     When you received the package that Investigator  
16      Crump gave you, was it sealed or unsealed?

17      A     It was sealed.

18           MR. GRAHAM: Your Honor, the State would offer  
19      this package and its contents in evidence.

20           MS. KIMBROUGH: Without objection.

21           THE COURT: It's admitted without objection.

22                   (State's Exhibit Number 85, blood sample of  
23      Theodore Davis, admitted into evidence.)

24      BY MR. GRAHAM:

25      Q     When you received -- referring to State's

MARGARET ELIZABETH HARMON - DIRECT BY MR. GRAHAM

1577

1 Exhibit Number 85, when you receive this into  
2 evidence, what does that mean? What did you do?

3 A We verify -- each deputy fills out paperwork,  
4 it's called an evidence property record. We verify  
5 that their property record is correct with a  
6 description and locations that they found the items  
7 in. They'll tell us what location they got it at,  
8 what the item is. We verify that we actually have  
9 that item in hand. We check to make sure that they  
10 have a chain of custody card. We sign that item  
11 into the computer by logging it in. The computer  
12 assigns it an item number and we print a bar code  
13 label on it. We'll put the bar code label on the  
14 evidence and also on the back of the chain of  
15 custody card.

16 Q In addition to that item, are you also familiar  
17 with the -- with State's Exhibit Number 83?

18 A I am.

19 Q And what is that?

20 A This is a package that contained a purple top  
21 test tube of blood that was collected from Ron  
22 Finklea.

23 Q And who gave you that test tube?

24 A CSI Mike Phipps.

25 Q And, again, was that in a sealed bag or was it

CANDY KYZER - DIRECT BY MR. GRAHAM

1578

1 in an unsealed bag or how did you receive that bag?

2 A It was a sealed bag.

3 Q And that would have been the bag that had his  
4 -- heat sealed with his initials across it?

5 A That's correct.

6 Q And did you take it in and do the exact same  
7 thing with that item as you did with Mr. Davis'  
8 blood?

9 A Yes.

10 MR. GRAHAM: Please answer any questions the  
11 defense has.

12 MS. KIMBROUGH: No questions.

13 THE COURT: You may step down.

14 MR. GRAHAM: The State would recall Candy  
15 Kyzer.

16 CANDY KYZER,

17 having been duly sworn, testified as follows:

18 THE CLERK: Have a seat, state your full name.

19 THE WITNESS: Candy Kyzer, K-Y-Z-E-R.

20 DIRECT EXAMINATION

21 BY MR. GRAHAM:

22 Q Ms. Kyzer, again, where are you employed?

23 A Lexington County Sheriff's Department.

24 Q And what do you do there?

25 A I'm an evidence custodian.

CANDY KYZER - DIRECT BY MR. GRAHAM

1579

1 Q And did you just hear Ms. Harmon testify?

2 A Yes.

3 Q Do you recognize State's Exhibit Number 83?

4 A Yes, I do.

5 Q And what is that?

6 A It is the SLED package that contained a purple  
7 top test tube blood sample.

8 Q The package inside, at some time, did you  
9 retrieve that from the Lexington County Sheriff's  
10 Department evidence room?

11 A Yes, I did.

12 Q And what did you do with it?

13 A I took it to SLED.

14 Q And when you took it to SLED, what did you do  
15 with it?

16 A When you get over there at SLED, they sit down  
17 and they will take the plastic bag that it was in  
18 and then put it in this bag, their SLED bag, and  
19 heat seal it and then I have to initial the seals  
20 and sign my name to the front of it.

21 Q The bag that you actually collected from the  
22 Lexington County Sheriff's Department evidence room,  
23 was there any evidence that it had been tampered  
24 with?

25 A No, it was not.

1 Q And the bag you're holding, the exterior bag  
2 you're holding in your hand, is that the SLED bag  
3 that you're referring to?

4 A Yes.

5 Q And, again, how do you recognize that?

6 A It has my initials right here and my signature  
7 right there.

8 Q And what's the purposes of your initials and  
9 the date across the top?

10 A To prove that it is sealed and that nobody can  
11 get into it.

12 Q So the bag that was sealed that you brought  
13 from the sheriff's department with the lavender test  
14 top tube in it, you placed or were in the presence  
15 of someone who placed it inside of this SLED bag?

16 A Yes.

17 Q And then that bag was heat sealed in your  
18 presence?

19 A Uh-huh.

20 Q And those are your initials showing that it was  
21 heat sealed in your presence?

22 A Yes.

23 Q After you heat sealed it and you signed your  
24 initials on it, what did you do with it?

25 A It is then signed into the computer system at

CANDY KYZER - DIRECT BY MR. GRAHAM

1581

1 SLED and then they send it up for testing or  
2 whatever.

3 Q So you release control of it to SLED at that  
4 time?

5 A Yes.

6 Q Looking at State's Number 85, showing you the  
7 inside bag there, do you recognize that?

8 A Yes, I do.

9 Q And what did that bag contain?

10 A It was the purple top test tube of blood from  
11 Theodore Davis.

12 Q And when you retrieved that bag from the  
13 Lexington County Sheriff's Department evidence room,  
14 was it sealed or unsealed?

15 A It was sealed.

16 Q Was there any evidence that it had been  
17 tampered with?

18 A No.

19 Q And what, if anything, did you do with that  
20 bag?

21 A I took it to SLED.

22 Q And did you follow the same process as you did  
23 on the -- as we discussed on the item before?

24 A Yes.

25 Q And looking at the exterior bag, do you



1 recognize it?

2 A Yes, I do.

3 Q And how do you recognize it?

4 A It has my initials at the top and my signature.

5 Q So, again, you went out to SLED with the test  
6 top test tube that was inside the bag inside here,  
7 took it to SLED, it got put inside this bag, heat  
8 sealed inside here?

9 A That's correct.

10 Q And you initialed the top and wrote your name  
11 on it?

12 A Yes.

13 Q And then relinquished control of it to SLED?

14 A Yes.

15 MR. GRAHAM: Please answer any questions the  
16 defense has.

17 MS. KIMBROUGH: No questions.

18 THE COURT: You may step down.

19 MR. GRAHAM: Nikki Perry.

20 NICOLE PERRY,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your full name,  
23 spell your last.

24 THE WITNESS: My name is Nicole Perry,

25 P-E-R-R-Y.

NICOLE PERRY - DIRECT BY MR. GRAHAM

1583

1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Ms. Perry, where are you employed?

4 A At the South Carolina Law Enforcement Division.

5 Q And how long have you been there?

6 A A little over a year now.

7 Q And what do you do there?

8 A I'm a forensic technician in the evidence  
9 control department.

10 Q What is the evidence control department?

11 A It's a department where agencies across the  
12 State of South Carolina bring in evidence and we log  
13 in the evidence into our computer. And, at that  
14 time, we will seal the evidence in a package, it  
15 could be a heat seal package or a box where we place  
16 our SLED evidence tape. The officer will initial  
17 and date either the seal on the heat sealed pouch or  
18 the box. Then we will place it into our locked  
19 evidence room where it will wait for either a  
20 technician in the forensic lab or an analyst to come  
21 down and pick it up for analyzation.

22 Q And did you assist Candy Kyzer with the  
23 Lexington County Sheriff's Department in her  
24 bringing some evidence to SLED?

25 A Yes, sir, I did.

1 Q Specifically, looking at State's Exhibit Number  
2 83, which at one time contained the test tube of  
3 blood from Ron Finklea, do you recognize that  
4 package?

5 A Yes, sir, I do.

6 Q And would you describe how Ms. Kyzer turned it  
7 over to you?

8 A She would bring in the tube of blood. It would  
9 be sealed and labeled. I would then place it in  
10 this heat sealed pouch and I will heat seal it where  
11 she will initial and date on the pouch and sign  
12 where it says sealing official and also place the  
13 date.

14 Q And did she do that with that item?

15 A Yes, sir, she did.

16 Q And then once that was done, what did you do?

17 A At that time, I placed it in our locked  
18 evidence room in a refrigerator that we call the DNA  
19 intake storage.

20 Q The last time you saw that bag, was there any  
21 evidence it had been tampered with?

22 A No, sir.

23 Q Referring to State's Exhibit Number 85, which  
24 at one time contained the blood of Theodore Davis,  
25 let me ask if you recognize that item?

NICOLE PERRY - DIRECT BY MR. GRAHAM

1585

1 A I do.

2 Q And, again, would you describe what you and Ms.  
3 Kyzer did with Mr. Davis' blood when it was brought  
4 to SLED?

5 A It would be the same process. She would bring  
6 it in in a lavender top tube and I would place it in  
7 a heat sealed pouch, heat seal it. And she would  
8 initial and date on the seal and then sign her name  
9 where it says sealing official on the bag and date.

10 Q And did she do that with that bag?

11 A Yes, sir, she did.

12 Q And what did you do with that bag?

13 A At that time, I will place it in our DNA intake  
14 refrigerator, which is located in our locked  
15 evidence room within the evidence control  
16 department.

17 Q And when you did that, was there any evidence  
18 that it had been tampered with?

19 A No, sir.

20 MR. GRAHAM: Please answer any questions the  
21 defense has.

22 MR. SOLTIS: No questions.

23 THE COURT: Thank you.

24 MR. GRAHAM: Selena Kinard.

25 \*\*\*\*\*

SELENA KINARD - DIRECT BY MR. GRAHAM

1586

1 SELENA KINARD,  
2 having been duly sworn, testified as follows:  
3 THE CLERK: Have a seat, ma'am. State your  
4 full name, spell your last.

5 THE WITNESS: My name is Selena Kinard,  
6 K-I-N-A-R-D.

7 DIRECT EXAMINATION

8 BY MR. GRAHAM:

9 Q Ms. Kinard, where are you employed?

10 A South Carolina Law Enforcement Division.

11 Q And what do you do there?

12 A I am a forensic technician within the evidence  
13 control room.

14 Q And did you have some contact with this case?

15 A Yes, sir, I did.

16 Q Specifically, looking at the two items in front  
17 of you, referring to State's Exhibit Number 85,  
18 what, if anything, did you do with that item?

19 A With this item, I -- it was in the DNA  
20 refrigerator, which is in our locked evidence room.  
21 And at that time, a forensic technician from DNA  
22 came down to the evidence log-in department to  
23 retrieve it. I took it out of the refrigerator, put  
24 it into my custody. And at that time, I handed it  
25 over to Sheree Brown, which is the DNA technician.

SELENA KINARD - DIRECT BY MR. GRAHAM

1587

1 Q So you physically took it out of the  
2 refrigerator in the evidence log-in room, signed it  
3 into your custody and handed it to Sheree Brown?

4 A Yes, sir.

5 Q Was there any evidence when you handled it, it  
6 had been tampered with?

7 A No, sir.

8 Q Was the bag sealed like it was supposed to be?

9 A Yes, sir.

10 Q Looking at State's Exhibit Number 83, which  
11 contained the blood of Ron Finklea, do you recognize  
12 that?

13 A Yes, sir, I do.

14 Q And did you do the same thing with that as you  
15 did with the previous item?

16 A Yes, sir. It was also in the DNA refrigerator  
17 within our locked evidence room and, again, took it  
18 into my custody and transferred it into Sheree  
19 Brown's custody.

20 Q And was there any indication that the bag that  
21 that blood was in was tampered with?

22 A No, sir.

23 Q Was it sealed like it was supposed to be?

24 A Yes, sir.

25 MR. GRAHAM: Please answer any questions the

1 defense has.

2 MR. SOLTIS: No questions.

3 THE COURT: You may step down.

4 MR. GRAHAM: The State recalls Sheree Brown.

5 SHEREE BROWN,

6 having been previously duly sworn, resumed the  
7 witness stand and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. GRAHAM:

10 Q Ms. Brown, again, briefly what do you do?

11 A I'm a forensic technician within the DNA  
12 department.

13 Q And looking at the two items in front of you,  
14 State's 84 -- 83 and 85, do you recognize those?

15 A Yes, I do.

16 Q Where did you receive them from?

17 A Just like Ms. Kinard said earlier, she put it  
18 in her custody -- it's SLED's policy now, she puts  
19 it in her custody, then transfers it to my custody.

20 Q She physically handed you both of those  
21 packages?

22 A Yeah.

23 Q And were each of those packages sealed on to  
24 itself?

25 A Yes.

SHEREE BROWN - DIRECT BY MR. GRAHAM

1589

1 Q And was there any evidence that either of those  
2 packages had been tampered with?

3 A None whatsoever.

4 Q And what did you do with those two packages?

5 A Once I got them up to the DNA department, I saw  
6 in the computer system this case had already been  
7 assigned to Matt Fitts. I just routed it through  
8 the computer and physically put it in his location.

9 Q And that would have been in his container  
10 inside a refrigerated locked area?

11 A Yes.

12 Q And that's the last time you saw those until  
13 now?

14 A Yes.

15 MR. GRAHAM: Please answer any questions the  
16 defense has.

17 MS. KIMBROUGH: No questions.

18 THE COURT: You may step down.

19 MR. GRAHAM: The State would call Matt Fitts to  
20 the stand.

21 MATTHEW GRAHAM FITTS,  
22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat, state your full name,  
24 spell your last.

25 THE WITNESS: Matthew Graham Fitts, F-I-T-T-S.



## 1 DIRECT EXAMINATION

2 BY MR. GRAHAM:

3 Q Mr. Fitts, where are you employed?

4 A South Carolina Law Enforcement Division in the  
5 forensic DNA serology department.6 Q And what do you do in the DNA serology  
7 department?8 A Our primary responsibilities are to accept  
9 evidence collected at crime scenes, attempt to  
10 identify biological fluids, which would be primarily  
11 blood or semen. And once identify those fluids, get  
12 a DNA profile, compare that DNA profile to blood  
13 standards submitted from victims and subjects in the  
14 attempt to include or exclude someone as a potential  
15 contributor to that stain.

16 Q Is it fair to say that you're a DNA scientist?

17 A Yes.

18 Q How long have you worked for SLED doing DNA  
19 extractions and comparisons?20 A I worked for nine years, accepted another job  
21 outside of SLED for three and I've been back for  
22 about a year with SLED now.

23 Q So your total time with SLED would be...

24 A Almost ten years.

25 Q And the three years when you left SLED, what

MATTHEW GRAHAM FITTS - DIRECT BY MR. GRAHAM

1591

1 were you doing?

2 A I was on faculty at Clemson University and  
3 supervising a molecular diagnostic lab in Clemson's  
4 Veterinary Diagnostic Center located here in  
5 Columbia.

6 Q What's your educational background?

7 A I received my BS in doctoral degrees from  
8 Clemson University in microbiology. I spent three  
9 years at Saint Jude Children's Research Hospital in  
10 the biomedical research in the immunology  
11 department, spent five years at the National  
12 Institutes of Health in the laboratory of molecular  
13 immunogenetics. And then in 1995 is when I joined  
14 SLED's forensic facility.

15 Q To become a SLED DNA expert, what, if any,  
16 training do you have to go through at SLED?

17 A Once I join, you go through about a year to a  
18 year and a half of training with a qualified analyst  
19 in their protocols so I can learn their protocols  
20 and requirements. So it's about a year to a year  
21 and a half of working under a qualified analyst.

22 Q And do you -- have you and do you attend  
23 classes related to DNA and serology?

24 A Yes, I do.

25 Q And do you stay current with publications

1 related to the field of DNA and serology?

2 A Yes, I do.

3 Q Have you testified in courts in South Carolina  
4 as an expert in DNA and serology before?

5 A Yes, I have.

6 Q And, approximately, how many times have you  
7 been qualified as an expert?

8 A I would estimate 15 to 20 times.

9 MR. GRAHAM: Your Honor, at this time, the  
10 State would offer Matt Fitts as an expert in DNA and  
11 serology.

12 MS. KIMBROUGH: We stipulate.

13 THE COURT: All right. Ladies and gentlemen,  
14 this witness is an expert witness in the field of  
15 DNA and serology. Ordinarily, witnesses cannot  
16 offer opinions and conclusions except under certain  
17 limited circumstances. An exception exists where a  
18 witness is an expert witness and that witness can  
19 offer opinions and conclusions provided that those  
20 opinions and conclusions comply with our rules of  
21 evidence.

22 You may proceed.

23 MR. GRAHAM: Thank you, Your Honor.

24 BY MR. GRAHAM:

25 Q Mr. Fitts, did you have an opportunity to work

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1 on the evidence in this case?

2 A Yes, I have.

3 Q Specifically, looking at State's Number 83, do  
4 you recognize that bag?

5 A Yes. It's the bag that contained the tube of  
6 blood from Ron Finklea.

7 Q Where did you retrieve this bag from?

8 A On the fourth floor of the forensic facility is  
9 the case work laboratory for DNA and serology. And  
10 we have a secured, refrigerated room where the  
11 evidence associated with these cases is transferred  
12 by a technician. And each analyst has a bin where  
13 that evidence is placed and I retrieved it from that  
14 bin.

15 Q When you retrieved Ron Finklea's blood, was  
16 there any evidence that the package that the blood  
17 was contained in had been tampered with?

18 A No.

19 Q And, in fact, would you have done anything with  
20 it if it had been?

21 A I would have notified the appropriate  
22 individuals.

23 Q Once you received this sealed package, what did  
24 you do?

25 A It's -- what I do is I open it up and it had a

1 lavender top tube of blood and the procedure is is  
2 to transfer the blood to cloth, in doing so, that  
3 preserves the DNA. Staying as a liquid, it would be  
4 susceptible to degradation. So when we get a liquid  
5 tube of blood, we transfer it to cloth for storage  
6 and preservation. And we transfer any labels that  
7 were on the tube, we transfer it to this envelope as  
8 well and then I date and initial the day that I  
9 actually did that. The tube itself is now a  
10 biohazard and it is discarded appropriately.

11 Q The label you're referring to on the back,  
12 again, where did that label come from?

13 A From the tube of blood.

14 Q Once you removed the tube from the package and  
15 removed this label, what did you do?

16 A I pour the contents of the blood on a piece of  
17 cloth to allow it to dry. Once dried, it is folded  
18 and placed into that envelope and the tube is  
19 discarded.

20 Q And so what am I holding right now?

21 A That is Ron Finklea's blood sample.

22 Q Referring to State's Exhibit Number 85, do you  
23 recognize that?

24 A Yes. This is the blood sample from Theodore  
25 Davis that I went through the exact same process.

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1 And it is with my date -- with my initials and the  
2 date that I put it on the cloth.

3 Q When you retrieved that bag, was there any  
4 evidence that it had been tampered with?

5 A No.

6 Q And so, again, you retrieved the bag, inside  
7 was the test tube of Mr. Davis' blood, you poured it  
8 on cloth and let it dry and that cloth is inside  
9 there?

10 A Yes, it is.

11 Q Let me show you what's been marked as State's  
12 Exhibit Number 69 and ask if you recognize that?

13 A Yes. This is the blood sample from Walter  
14 Sykes.

15 Q And, again, where did you receive that bag  
16 from?

17 A From my evidence bin in the refrigerated  
18 facility in our case work laboratory.

19 Q And was the bag that you're holding sealed  
20 properly when you retrieved it?

21 A Yes, it was.

22 Q Was there any evidence that it had been  
23 tampered with?

24 A No, there wasn't.

25 Q And, again, once you retrieved that bag, what

1 did you do with that test top tube of Mr. Sykes'  
2 blood?

3 A The same process of placing it on cloth,  
4 removing any labels that were on the tube and  
5 placing it on the envelope that the cloth now is  
6 contained within and discarding the tube.

7 Q Let me show you what's been marked as State's  
8 84 and ask if you recognize that?

9 A Yes. These are the envelopes that contained --  
10 three different envelopes that contained swabs from  
11 the shoes, the SLED lab numbers of 28 point one, 28  
12 point two and 28 point three.

13 Q And were you present when Cecil Bradstreet  
14 testified?

15 A Yes, I was.

16 Q And it's your understanding that 28 point one,  
17 point two and point three relate to swabs that were  
18 taken from Mr. Ron Finklea's tennis shoes?

19 A Yes.

20 Q When you retrieved those, was that in the same  
21 storage location?

22 A Yes.

23 Q And was there any evidence that that bag or its  
24 contents had been tampered with?

25 A No.

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1 Q Once you retrieved that bag, what did you do?

2 A The first thing I would do is, this was testing  
3 for the presence of blood, so I would examine each  
4 of the swabs. And in this particular case,  
5 examining the swabs, I did not see any obvious  
6 stain, which was telling me there's not much  
7 material here to work with.

8 So there are some -- I saw that in my notes  
9 that Cecil had done a phenolphthalein, a presumptive  
10 test for blood, so I decided not to do any further  
11 serological analysis with it because it would have  
12 consumed the entire sample. I decided to go  
13 straight to DNA with these swabs and I actually  
14 decided to combine the three swabs instead of  
15 keeping them separate. Since there was no real  
16 obvious stain to be seen, I wanted to maximize the  
17 amount of material that I could recover, or the  
18 amount of DNA I could recover.

19 Q When you talk about deciding not to do  
20 serology, what does that mean?

21 A We have an additional test -- phenolphthalein  
22 is a very sensitive presumptive test for the  
23 presence of blood, but any blood will turn it  
24 positive. It could be animal blood. There are some  
25 chemicals that could give you false positives, so



1 that's why it's a presumptive field test.

2 We have a serological test that would be more  
3 human specific where we use an antibody to look at  
4 human specific hemoglobin, but that would have, in  
5 my opinion, when I looked at these swabs, would have  
6 consumed the entire sample just to see if it was  
7 human blood. And we know that when we attempt to  
8 get a DNA profile, the DNA probes that we use are  
9 also human specific. So I felt it wasn't necessary  
10 to attempt to waste the sample on just saying  
11 whether human blood was there. I wanted to know if  
12 human DNA was there.

13 Q And so to determine whether there was human DNA  
14 there, what did you do?

15 A I extract -- took these swabs and you cut the  
16 tip, it looks like, you know, just a Q-tip, and you  
17 cut the ends of the swabs and place them in tubes  
18 and then you go through the extraction process to  
19 purify the DNA, any DNA that's present on those  
20 swabs.

21 Q And can you give us an idea of what you mean  
22 when you say the extraction process, what does that  
23 mean?

24 A In blood, there are cells that contain your  
25 DNA, and you can envision it as a balloon, the

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1 balloon is your cell, the DNA is inside that so you  
2 have to pop the balloon, but all kinds of other  
3 things are also present there. So you first have to  
4 pop the balloon to release the DNA and then the next  
5 step is to capture and purify the DNA away from  
6 everything else so that you'd have some pure DNA to  
7 attempt to get a DNA profile from.

8 Q And were you able to develop a DNA profile from  
9 those swabs?

10 A I was able to develop a partial DNA profile.  
11 And what I mean by a partial DNA profile is we  
12 attempt to look at nine different genetic sites and  
13 that's what we attempt to measure. Sometimes when  
14 the quality or quantity of DNA is not sufficient,  
15 we'll only get results from less than nine. And if  
16 we get results from less than nine, it's a partial  
17 DNA profile.

18 Q And that's what you were able to develop from  
19 the swabs of Mr. Finklea's shoes was a partial  
20 profile?

21 A That's correct.

22 Q Referring to Mr. Sykes' blood, we left it off  
23 where you had poured it on cloth. Once it's poured  
24 on cloth, what did you do with that?

25 A It's taken through the same extraction

1 procedure. A small cutting from that cloth is used,  
2 put in a similar tube and taken through the same  
3 identical extraction procedure to purify the DNA  
4 from Walter Sykes.

5 Q And were you able to develop a full DNA profile  
6 for Mr. Sykes?

7 A Yes, I was.

8 Q Referring to the test tube that contained  
9 Mr. Finklea's blood, what did you do with the cloth  
10 that that blood was dried on?

11 A At another date, I did the same thing. I  
12 received those blood samples at another date.  
13 Initially, what I was working with was Walter Sykes'  
14 blood and these. At another date, I received his  
15 and I took it through the same extraction process to  
16 purify DNA from him.

17 Q And did you develop a DNA profile for  
18 Mr. Finklea?

19 A Yes, I did.

20 Q Were you also able to develop a DNA profile  
21 from the paper that Mr. Theodore Davis' blood was  
22 on?

23 A Yes, I did.

24 Q Additionally, Mr. Fitts, did you also receive  
25 some cuttings from some clothing objects?

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1 A Yes, I did.

2 Q And is it your understanding that you received  
3 cuttings from a hat that's State's Number 80?

4 A Yes.

5 Q Did you also receive some cuttings from the  
6 orange shirt, 81?

7 A Yes, I did.

8 Q And did you also receive cuttings from State's  
9 Number 82, a pair of blue jeans?

10 A Actually, I believe I received swabbings on  
11 that. I didn't actually receive a cutting. I'm  
12 pretty sure it was swabs.

13 Q Referring to the swabs that were taken from the  
14 jeans on item 82, were you able to develop a DNA  
15 profile off of those?

16 A No, I was not.

17 Q When we say swabbings, what does that mean?

18 A I'm -- I would be speculating that someone in  
19 evidence processing, because the jeans and clothing  
20 went to evidence processing, when I looked at -- I'm  
21 speculating that they went to areas -- this is a  
22 relatively newer area for forensic DNA.

23 Since the DNA testing is so sensitive now, it's  
24 earned a nickname called Touch DNA. We're just  
25 looking for the transfer of skin cells to another

1 object. This could be an object that someone may  
2 have manipulated, handled with their hands, maybe  
3 clothing that they wore, that -- the chaffing or  
4 something like that that skin cells would actually  
5 transfer. So you really don't see anything, but  
6 you're attempting to get DNA from those skin cells  
7 that have transferred.

8 So in this situation, I would imagine that the  
9 swabbing was they would look at the areas where you  
10 would expect chaffing and skin exposure to be and  
11 you would swab those areas in the attempt to pick up  
12 any skin cells that may have been present.

13 Q And the swabs that were taken off those jeans,  
14 again, were you able to develop a profile?

15 A I was not.

16 Q Referring to the cuttings that came off of item  
17 81, do you remember how many cuttings there were?

18 A I was supplied with just one cutting. And what  
19 I did on that item was take three separate cuttings  
20 in the attempt to try to develop a profile from the  
21 cutting that was provided to me.

22 Q And do you know where that cutting was taken  
23 from?

24 A I do not.

25 Q Presumably in an area where there would have

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1       been some kind of a transfer of DNA?

2       A     Correct.

3       Q     When you say you took the cutting that you were  
4       supplied and you cut it into three different  
5       cuttings --

6       A     That's correct.

7       Q     -- what did you do with each of those cuttings?

8       A     Each cutting went through the same DNA  
9       extraction process in attempts to develop a profile.

10      Q     Approximately, how big were each of the three  
11      cuttings?

12      A     I'd say like half the size of a postage stamp.

13      Q     So when you take one of those cuttings, you're  
14      doing the same process for all three of the  
15      cuttings; is that correct?

16      A     That's correct.

17      Q     So you have a cutting that's half the size of a  
18      postage stamp, what do you do with that?

19      A     Again, place each cutting inside a tube and in  
20      the attempt -- if there's any cells present that we  
21      can lise (ph) those cells, capture the DNA, purify  
22      it and attempt to get a DNA profile.

23      Q     And did you attempt to do that for each of  
24      those three cuttings that you made?

25      A     Yes, I did.

1 Q And were you able to develop a DNA profile on  
2 that?

3 A I was not.

4 Q Looking at State's Number 80, did you also  
5 process cuttings from here?

6 A Yes.

7 Q And how many cuttings did you have from the  
8 baseball hat?

9 A I did the same process, these separate cuttings  
10 in an attempt to recover some DNA for testing.

11 Q And what were your results in trying to develop  
12 a profile off of the hat?

13 A One out of the three cuttings gave me a partial  
14 profile.

15 Q And a partial profile, again, means what?

16 A We attempt so many sites. And by this time, we  
17 have a new kit for testing, we're testing up to, I  
18 believe, for 13 different genetic sites and so we  
19 got less than 13. So we didn't get a complete  
20 profile, but we did develop a partial profile.

21 Q Let me show you an item and ask if you  
22 recognize this?

23 A Yes. This is a table that summarizes the DNA  
24 profiles that were recovered from the items 28 point  
25 one through point three, the three blood standards

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1 and the profile that was developed from one of the  
2 cuttings of the hat.

3 Q Let me ask you, some of those items are clearly  
4 labeled, I see -- what is item 42 labeled as?

5 A Item 42 is the profile developed from the blood  
6 of Theodore Davis.

7 Q And item 43?

8 A The DNA profile developed from the blood of Ron  
9 Finklea.

10 Q And number five?

11 A The DNA profile developed from the blood of  
12 Walter Sykes.

13 Q 39 point one, what is that?

14 A That's the DNA profile developed from one of  
15 the cuttings from the hat.

16 Q Could I get you to note under 39 point one that  
17 that is from the hat?

18 A (Witness complies.)

19 Q And, Mr. Fitts, 28 point one through point  
20 three, what does that represent?

21 A Those are the DNA profiles, the partial DNA  
22 profile developed from the swabbings of the shoe.

23 Q Could I get you to notate that, that those are  
24 swabs from Ron Finklea's shoes?

25 A (Witness complies.)



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1           MR. GRAHAM: Your Honor, the State would offer  
2 this into evidence.

3           MS. KIMBROUGH: Without objection.

4           THE COURT: It's admitted without objection,  
5 State's Exhibit Number 86.

6                   (State's Exhibit Number 86, DNA Chart,  
7 admitted into evidence.)

8                   (Witness leaves the witness stand.)

9 BY MR. GRAHAM:

10 Q    Mr. Fitts, looking at the first item up top,  
11 item number 42, again, what is that?

12 A    This is item 42, this is the entire DNA profile  
13 developed from the blood of Theodore Davis. Each  
14 column here is just the name of the genetic site  
15 that we're testing. And so these are one, two,  
16 three, four, five, six, seven, eight, nine, ten, 11,  
17 12, 13, 14, 15 different genetic sites. And the  
18 last site is an allogenic gene, which is located on  
19 the sex chromosomes X and Y and that's only used to  
20 identify the X and Y chromosome. So this is a full  
21 DNA profile of Theodore Davis.

22 Q    X and Y, what does it mean when you have an X  
23 and Y chromosome?

24 A    It's just the chromosome that determines your  
25 sex as a male or female.

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1 Q And is that a male or female?

2 A That's a male, X and Y.

3 Q In the boxes for Theodore Davis, in some of the  
4 boxes -- most of the boxes for him, I see two  
5 numbers and sometimes I see one number, what is  
6 that?

7 A You get half of your DNA from your mom and half  
8 from your dad. You get two copies of every  
9 chromosome. So this one number here, this is a DA,  
10 it means from chromosome A, Theodore Davis got a 14  
11 allele is what we call these, a 14 allele, and I  
12 believe that's a 16 allele. He got one from his mom  
13 and one from his dad. So an individual is going to  
14 have two copies that will either show up as this or  
15 the possibility over here, the one site, there's  
16 just a nine which means he got a nine from his mom  
17 and a nine from his dad.

18 Q Again, referring to the next item down your  
19 chart, number 43, is that the DNA profile for Ron  
20 Finklea?

21 A Yes. This is Ron Finklea's complete DNA  
22 profile.

23 Q And, again, I see an X and a Y in the last box,  
24 what does that denote?

25 A That it's male.

1 Q The next item down is the partial profile that  
2 you developed from the hat?

3 A It's right here.

4 Q I see some of the numbers -- some of the boxes  
5 are empty, what does that mean?

6 A When I told you we got a partial profile, we  
7 didn't get them all. The dashes mean that those  
8 sites did not show up.

9 Q Additionally, some of the numbers related to  
10 the hat are in parentheses. What does that mean?

11 A When we attempt to get a DNA profile, the data  
12 itself is quantitative and -- meaning if we had a  
13 mixture of two people and it was 90 percent one  
14 person, ten percent the other, you would see that in  
15 the profile. Ninety percent would be more than the  
16 ten percent, so it's quantitative.

17 If you're getting less and less and less DNA,  
18 what happens is we have interpretation guidelines  
19 depending on what the data's coming in as. As the  
20 quantity decreases, which is what the parentheses  
21 denote, meaning that the profile is starting to drop  
22 close to our threshold level which actually changes  
23 how we interpret the data.

24 Q In the last box for the partial profile you  
25 developed from the hat, what do I see over there?

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1 A I'm sorry?

2 Q The last box on the right, the sex --

3 A The presence of the X chromosome.

4 Q And what is -- there's not a Y there, what is  
5 that telling us?

6 A That there's -- if there was any Y there, that  
7 it fell below our threshold level of detection.

8 Q So what does that mean?

9 A Well, what this means is, as I told you before,  
10 that when you have a single individual, you'll  
11 either have one or two numbers and that the first  
12 thing you'll notice here is that some of these sites  
13 will have more than two. That tells you you've got  
14 a mixture of two individuals at least. There's  
15 nothing to say that there's a mixture of more than  
16 two, but there's a possibility that more than two  
17 have contributed to this because you could have --  
18 you could share alleles, have overlapping alleles.  
19 So this is a mixture of two individuals and one of  
20 the contributors is going to be a female and then --  
21 and I don't -- I can't talk about the other  
22 contributor.

23 Q Is it fair to say that the dominant contributor  
24 was a female?

25 A Yes.

1 Q And that's -- that partial profile was  
2 developed from one piece of the cuttings that you  
3 looked at?

4 A That's correct. The other two cuttings did not  
5 give me a profile.

6 Q Were you able to eliminate Theodore Davis as a  
7 contributor to the partial profile that you  
8 developed for the hat?

9 A Yes, I was. Once you've got the profiles  
10 developed, it's pretty simple in terms of  
11 comparison. You would look -- probably the best  
12 example would be here, the T-pox. Theodore Davis is  
13 an 11, Ron Finklea is eight, nine and it was a  
14 seven, eight that showed up on the hat. So, yes, I  
15 could exclude them as contributing to that partial  
16 profile.

17 Q So you excluded both Ron Finklea and Theodore  
18 Davis as being the contributor to the partial DNA  
19 profile you developed off the hat?

20 A That's correct.

21 Q Now, does that mean that Ron Finklea's DNA is  
22 not on that hat somewhere?

23 A It was not on the cutting I had. It does not  
24 mean that it couldn't be found anywhere else on the  
25 hat.

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1 Q Moving on to the next item, 28 point one  
2 through three, that was the swabs that were taken by  
3 Cecil Bradstreet from the shoes worn by Ron Finklea;  
4 is that correct?

5 A That's correct.

6 Q And what were you able to develop on that  
7 again? Was that a partial profile?

8 A This was a partial profile as well.

9 Q And I see that the last column again is an X  
10 and a Y, what does that tell us?

11 A That it's from a male.

12 Q And it looks like you have three locations that  
13 you were able to develop numbers?

14 A That's correct.

15 Q Comparing those partial profiles of the swabs  
16 of the blood taken from the tennis shoes that Ron  
17 Finklea wore, what, if any, opinion do you have as  
18 to whether that is Ron Finklea's DNA?

19 A This partial profile matches -- oh, I'm sorry  
20 -- you said Ron Finklea?

21 Q Yes, sir.

22 A Ron Finklea's excluded as a contributor to that  
23 profile.

24 Q So is it fair to say that that was not Ron  
25 Finklea's blood?

1       A     That's correct.

2       Q     Comparing the partial profile you developed  
3     from the swabs of the blood taken from Ron Finklea's  
4     shoes and comparing that to Theodore Davis, what, if  
5     any, conclusions were you able to reach?

6       A     He's also excluded as a contributor to that.

7       Q     Again, that's not his blood; is that correct?

8       A     Correct.

9       Q     Finally, comparing the partial profile you  
10    developed off of these swabs, collecting blood from  
11    Ron Finklea's tennis shoes and comparing that to  
12    Walter Sykes, as an expert in the field of DNA and  
13    serology, what, if any, opinion do you have to a  
14    reasonable degree of certainty?

15    A     It matches the profile developed from Walter  
16    Sykes.

17    Q     And when you say it matches it, what does that  
18    mean?

19    A     Well, initially, all you're -- if you look  
20    here, this is a 10, 16 for the evidence. This is a  
21    10, 16 for Walter Sykes. There's a 14, 15 at the  
22    VWA locus and Walter Sykes is a 14, 15. Here's a 12  
23    at this genetic site and a 12 here. So I could not  
24    exclude Walter Sykes as a contributor to that stain  
25    on the shoes.

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1 Q You can take a seat again, Mr. Fitts.

2 A (Witness resumes the witness stand.)

3 Q Once you determined that it was a match, were  
4 you able to develop any numbers to go along with  
5 that?

6 A Yes. To give some measure of weight to the  
7 significance of the match, an analogy I use a lot of  
8 times is if we were looking at the genetic sites  
9 that determine physical traits, for instance, you  
10 said the first genetic site determined eye color and  
11 we test for it and it said this person had blue  
12 eyes, so your statistic -- you would go back to a  
13 data base, which has already been established as one  
14 out of ten people have blue eyes. Then you look at  
15 the next genetic site and let's say it determines  
16 height and it says this person was six foot five.  
17 So now you're saying blue eyes and he's six foot  
18 five, so you say maybe one in 50 people in the  
19 population would fit that. And the more genetic  
20 sites you get, the more unique this profile is going  
21 to be.

22 And so what we do is these genetic sites, we  
23 look at the frequency of what they occur in the  
24 population and we use the accepted forensic  
25 calculations in determining how often that



1 particular profile would show up in the population.

2 Q And were you able to do this comparing the  
3 partial profile and the match to Mr. Sykes?

4 A Yes.

5 Q And what were you able to develop?

6 A The probability of randomly selecting an  
7 unrelated individual from the population is  
8 approximately one in 14,000.

9 Q So what does that mean?

10 A That means if I started randomly picking  
11 people, let's say a hundred thousand people, just  
12 started randomly picking them and doing their DNA  
13 profiles, on average one out of every 14,000 people,  
14 could match that partial profile.

15 MR. GRAHAM: Please answer any questions the  
16 defense has.

17 THE COURT: Ms. Kimbrough.

18 MS. KIMBROUGH: Thank you.

19 CROSS-EXAMINATION

20 BY MS. KIMBROUGH:

21 Q Good morning, Mr. Fitts. How are you?

22 A Good.

23 Q Good. Referring back to State's 86, I believe,  
24 you said you developed a partial profile?

25 A From which item?

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1615

1 Q I'm sorry. From both the -- from the shoes.

2 A That's correct.

3 Q Okay. And you had a full profile of Walter  
4 Sykes' blood?

5 A That's correct.

6 Q Okay. And you said there was a match. Can you  
7 explain the difference between a match with a  
8 partial profile and a full profile?

9 A Do you want me to use the table?

10 Q Absolutely, that will be great.

11 A (Witness leaves the witness stand.)

12 Walter Sykes' profile is on the bottom. And at  
13 the time, there's actually blanks here. This was  
14 done in 2003, so these sites weren't tested for.  
15 Now we have another kit we're testing for more  
16 sites. So these blanks weren't even attempted to  
17 test for on Walter Sykes. It's only where you see  
18 the numbers, those are the sites that were tested  
19 for.

20 So the sites, for instance, here we got no  
21 result from the evidence so there's no comparison  
22 here. And the same thing here, profile from Walter  
23 Sykes here is a 10 and there was no result here. So  
24 I have no ability to compare these. The only  
25 comparison I can make are the sites that gave us

1 results. And when I compare those sites, I cannot  
2 exclude Walter Sykes as a contributor.

3 Q When you say not exclude, in other words, the  
4 partial profile that you developed from the shoes is  
5 consistent with some of the DNA sites for Walter  
6 Sykes?

7 A That's correct.

8 (Witness resumes the witness stand.)

9 Q Okay. Thank you. So, again, going back to  
10 making comparisons of the likelihood of particular  
11 DNA being found within the population. When you say  
12 one in 14,000, do you have statistics on how many  
13 people, say, in South Carolina would possibly match  
14 that blood?

15 A Well, you can just take the population of South  
16 Carolina and divide it by 14,000.

17 Q Right. I didn't know if you actually had the  
18 number?

19 A No, I don't.

20 Q And going back to the baseball cap, obviously  
21 you weren't able to match it to any of the other  
22 samples that had been tested?

23 A That's correct.

24 Q Okay. The sample didn't match Theodore Davis,  
25 didn't match Ron Finklea. And, apparently, the

MATTHEW GRAHAM FITTS - CROSS BY MS. KIMBROUGH

1617

1 sample that did develop showed an X chromosome. And  
2 I believe you said that that means that that  
3 particular DNA came from a woman?

4 A This is a mixture and that the presence of the  
5 X indicates that a female is a contributor to this  
6 mixture.

7 Q Okay. We just don't know who the other one is?

8 A Correct.

9 MS. KIMBROUGH: That's all the questions I  
10 have. Thank you.

11 MR. GRAHAM: Nothing else from the State, Your  
12 Honor.

13 THE COURT: All right. Thank you, sir.  
14 Ladies and gentlemen, we'll give you a break  
15 for a short while. While you're in the jury room,  
16 I'm going to have you -- the jury select your own  
17 foreperson and from the first 12 jurors seated, any  
18 one of you will be eligible to serve as a  
19 foreperson. And the three alternates could not  
20 serve, none of the three alternates could serve as  
21 foreperson.

22 So if you will select a foreperson from your  
23 number during the break and let us know who that  
24 foreperson is when you come back. And the  
25 foreperson will take the first seat right here that

1 the lady in the denim jacket has on, that will be  
2 the foreperson's seat.

3 Please go to the jury room. Please do not  
4 discuss the case while you're there.

5 (The jury retires to the jury room.)

6 **THE COURT:** All right. We'll take about ten  
7 minutes.

8 **MR. HUBBARD:** Your Honor, before we leave, our  
9 next witness may require a hearing because there's  
10 also going to be an identification from the video  
11 tapes with this witness, so we may have to go  
12 through that hearing again if the defense requires  
13 it.

14 **THE COURT:** All right. We'll do that when we  
15 come back.

16 (Brief Recess.)

17 **MR. HUBBARD:** Your Honor, the next witness will  
18 be Irena Fuller. She's the sister of Theodore  
19 Davis, the sister of Teresa Finklea, the  
20 sister-in-law of Mr. Finklea -- or former  
21 sister-in-law. She will be, in her testimony,  
22 identifying Mr. Finklea in both the August 1st and  
23 August 2nd of 2003 videos. And we just wanted to  
24 bring that up at this time if we needed to have a  
25 hearing on that.

1619

1           **THE COURT:** All right. Ms. Kimbrough.

2           **MS. KIMBROUGH:** Your Honor, in the interest of  
3 not belaboring the point, I have a suggestion, which  
4 I've mentioned to Mr. Hubbard. I don't know if this  
5 is susceptible to the Solicitor's office, but if  
6 Your Honor would be willing to adopt, for purposes  
7 of this witness and any other witness who might  
8 provide the same type of testimony, the same  
9 arguments of counsel and your prior rulings along  
10 with our objection. It's in the nature of a  
11 continuing objection to this type of testimony and I  
12 realize you're reluctant to do a continuing  
13 objection.

14           **MR. MYERS:** This would be the same type witness  
15 as Ms. Bolin was. And if they want to incorporate  
16 their objections as was made to Ms. Bolin in this  
17 part right here for Ms. Fuller, I have no objection  
18 to that.

19           **THE COURT:** Of course, I can allow the  
20 arguments to be adopted, but I can't adopt the  
21 evidence. So I don't know what the evidence is, so  
22 we'll hear from her, maybe it won't take as long.

23           **MR. MYERS:** Do you want to go ahead with it in  
24 front of the jury and they can --

25           **THE COURT:** Outside the presence of the jury.

1 MR. HUBBARD: Irena Fuller.

2 IRENA DENISE FULLER,

3 having been duly sworn, testified as follows:

4 THE CLERK: Once you have a seat, state your  
5 full name and spell your last, please.

6 THE WITNESS: Irena Denise Fuller, F-U-L-L-E-R.

7 EXAMINATION

8 BY MR. HUBBARD:

9 Q Ms. Fuller, what is your relationship, if any,  
10 to Theodore Davis?

11 A He's my brother.

12 Q And by brother, do y'all have the same parents,  
13 mother and father?

14 A No, sir.

15 Q What parents do you share in common?

16 A Mother.

17 Q You both have the same mom, but different dads?

18 A Yes, sir.

19 Q But y'all have grown up together, you know  
20 Theodore very well, obviously?

21 A Yes, sir.

22 Q Teresa Finklea, Robin Gripper, those are some  
23 sisters?

24 A Yes, sir.

25 Q Ron Finklea, what is his relationship to you or

IRENA DENISE FULLER (IN CAMERA) - EXAMINATION BY MR. HUBBARD

1621

1        what was it?

2        A     Brother-in-law.

3        Q     And which sister was he married to?

4        A     Teresa Finklea.

5        Q     How long have you known Ron Finklea?

6        A     About ten years.

7        Q     Quite a long time?

8        A     Quite a while.

9        Q     Did you have a lot of interaction with him  
10       during that time? For instance, let me ask you  
11       this, did he live with you at some time?

12       A     Yes, sir.

13       Q     For about how long?

14       A     About four months.

15       Q     Is that when he was living -- he and Teresa  
16       were living with both you and Sherry?

17       A     Yes, sir.

18       Q     And when he moved out or when he lived outside  
19       of your house, did you still have occasion to have  
20       contact with him?

21       A     Yes, sir.

22       Q     He's somebody you knew quite well?

23       A     Yes, sir.

24       Q     And I want to ask you back in -- let's do this,  
25       were you given an opportunity to see videos that



1       took place that had material on them from August the  
2       1st and August the 2nd of 2003?

3       A     Yes, sir.

4       Q     Including the video from August the 2nd which  
5       showed a murder at Selectron?

6       A     Yes, sir.

7       Q     And a video from August the 1st that showed  
8       someone coming into that same facility the night  
9       before?

10      A     Yes, sir.

11      Q     In viewing the August 1st video, the night  
12      before or the day before the murder, do you recall  
13      if you noticed anybody that you knew when you  
14      watched that video?

15      A     Yes, sir.

16      Q     And who do you recall seeing?

17      A     Ron Finklea.

18      Q     And you feel comfortable with what you viewed  
19      and your assessment of who it was?

20      A     Yes, sir.

21      Q     Now, when you viewed it, was Detective Peake  
22      present as well?

23      A     Yes, sir.

24      Q     And how long ago was that when you viewed the  
25      video?

1       A     Wednesday.

2       Q     Of last week, obviously?

3       A     Yes, sir.

4       Q     All right. At this time, I'd like to show you  
5     that video again. And while that's being set up,  
6     are you familiar with the clothes that Ron would  
7     wear?

8       A     Yes, sir.

9       Q     The type of clothes and actually some of the  
10    specific items he would wear?

11    A     Yes, sir.

12    Q     At the same time, are you comfortable with what  
13    you would see your brother, Junior, wear?

14    A     Yes, sir.

15    Q     Now, Irena, this is the August 1st video, 2003,  
16    the day before the murder.

17           (Whereupon, State's Exhibit Number 29 was  
18    played and the following occurred.)

19    Q     Right here, Irena, this jacket that you see,  
20    have you ever see that jacket before?

21    A     Yes, sir.

22    Q     And who have you seen with that jacket?

23    A     Ron.

24    Q     Ron Finklea?

25    A     Yes, sir.

1 Q Is this the same jacket you see here in the  
2 courtroom today?

3 A Yes, sir.

4 Q You've had occasion to actually see Mr. Finklea  
5 in this jacket before?

6 A Yes, sir.

7 Q Have you ever seen Theodore Davis in that  
8 jacket?

9 A No, sir.

10 Q This hat right here, do you see an emblem here  
11 on the very front of that hat and some writing on  
12 the side?

13 A Yes, sir.

14 Q Does that hat look familiar to you?

15 A Yes, sir.

16 Q Have you ever seen anyone you know wearing this  
17 hat?

18 A Ron Finklea.

19 Q Do you have any idea what this emblem is on the  
20 front of the hat?

21 A Army.

22 Q Army right here written on the front?

23 A Yes, sir.

24 Q And there's some writing on the side?

25 A Yes, sir.

IRENA DENISE FULLER (IN CAMERA) - EXAMINATION BY MR. HUBBARD

1625

1 Q Have you ever seen your brother -- I believe  
2 you call him Junior?

3 A Yes, sir.

4 Q Have you ever seen Junior wearing that hat?

5 A No, sir.

6 Q Now, Irena, I want you to watch, when you see  
7 profiles of the face, notice very closely, the ears,  
8 the nose, the jaw line. And right here, this little  
9 bit on the back of this hat, does that look familiar  
10 to you?

11 A Yes, sir.

12 Q Who have you seen wearing a hat like this that  
13 also has the strap hanging down?

14 A Ron.

15 Q Ron Finklea --

16 A Finklea.

17 Q The face, anything about this face, the  
18 structure or anything that would tell you that  
19 that's Mr. Finklea?

20 A Yes, sir, his ears, his face structure.

21 Q The back side of his jacket, you'll notice has  
22 no stripe. Is that consistent with the jacket  
23 you've seen Mr. Finklea in?

24 A Yes, sir.

25 Q Irena, at this time, I think I want to go ahead

1 and jump into the August 2nd video.

2 (Whereupon, State's Exhibit Number 30 was  
3 played and the following occurred.)

4 Q All right. Irena, this is the August 2nd video  
5 and I want you to watch who comes through this glass  
6 door right here where I'm pointing to on the screen.  
7 Specifically, I want you to look at items of  
8 clothing. Irena, are you noticing anything about  
9 this orange shirt, the stripe? Have you ever seen  
10 that shirt before?

11 A Yes, sir.

12 Q And you notice there's no stripe on the back.  
13 And you'll get a better shot of it a little bit  
14 later. And, again, I want you to keep your eye on  
15 this hat, too, and if you see anything on the back  
16 side of that hat. And keep an awareness about the  
17 physical features of this person in this video as  
18 well.

19 Right here, all right, this shirt, have you  
20 ever seen that shirt before?

21 A Yes, sir.

22 Q You've seen this orange shirt with the dark  
23 stripe and the two little white stripes?

24 A Yes, sir.

25 Q Who have you seen wearing that shirt before?

1       A     Ron Finklea.

2       Q     Have you ever seen Theodore Davis, or Junior,  
3       as you call him, wearing that shirt?

4       A     No, sir.

5       Q     This hat, do you see something hanging off the  
6       back side of this hat?

7       A     Yes, sir.

8       Q     Does this hat appear to be a hat you've seen  
9       before?

10      A     Yes, sir.

11      Q     Is it the same hat from August the 1st that you  
12      just saw?

13      A     Yes, sir.

14      Q     Who have you seen wearing that hat?

15      A     Ron Finklea.

16      Q     Have you ever seen your brother, Junior,  
17      Theodore Davis, wearing that hat?

18      A     No, sir.

19      Q     I want you to look at these physical features  
20      here, ears, you can see a face, nose, jaw line.

21            MS. KIMBROUGH: Your Honor, I hate to object,  
22      but this is -- this witness has been led repeatedly.

23      These are yes, no questions. We just ask that

24      Mr. Hubbard rephrase this question.

25            THE COURT: All right. Mr. Hubbard.

1           **MR. HUBBARD:** Your Honor, I would argue they're  
2           not leading. I'm not giving her the answer. If  
3           it's a yes, no, that's not necessarily leading. I'm  
4           not suggesting an answer.

5           **THE COURT:** All right. The objection is  
6           overruled, but restate the question.

7           **BY MR. HUBBARD:**

8           **Q**     Ms. Fuller, looking at this face, looking at  
9           all of the features on the face from ears, face  
10          line, jaw line, nose, all of those feature, does  
11          that face look familiar to you?

12          **A**     Yes, sir.

13          **Q**     Who does that appear to be to you?

14          **A**     Ron Finklea.

15          **Q**     Does it have any semblance or bear any  
16          resemblance to your brother, Junior, Theodore Davis?

17          **A**     No, sir.

18          **Q**     Irena, are you positive?

19          **A**     I'm 100 percent that is Ron Finklea.

20          **MR. HUBBARD:** That's all I have at this time,  
21          Your Honor.

22          **THE COURT:** Any cross-examination?

23          **MS. KIMBROUGH:** Not at this point.

24          **THE COURT:** All right. You may step down,  
25          ma'am.

1 Any additional argument other than the  
2 arguments made yesterday regarding the other  
3 witness?

4 MS. KIMBROUGH: No. Would you like me to  
5 summarize or is Your Honor willing to simply allow  
6 me to adopt the exact --

7 THE COURT: If it's the same argument, you can  
8 adopt the argument. I remember what it was from  
9 yesterday.

10 MS. KIMBROUGH: Yes, Your Honor. We just think  
11 that this is an ultimate fact question.

12 THE COURT: Counsel, stand when you're  
13 addressing the Court.

14 MS. KIMBROUGH: Beg your pardon.

15 THE COURT: Yes, ma'am.

16 MS. KIMBROUGH: We believe it's an ultimate  
17 question of fact for the jury. And for all of the  
18 reasons stated yesterday, we would object. And ask  
19 Your Honor, at this time, whether or not we will be  
20 required to contemporaneously object during her  
21 testimony in front of the jury.

22 THE COURT: Well, the -- you do not have to  
23 object contemporaneous with the testimony before the  
24 jury since I'm ruling it admissible at this time  
25 over your objection. And you may adopt your.



1 argument from yesterday and supplement it with any  
2 additional arguments you would like to at this time.

3 MS. KIMBROUGH: We'll rest on the prior  
4 objection.

5 THE COURT: All right. I find that the  
6 testimony is admissible. The witness has testified  
7 that she is 100 percent certain that that is  
8 Mr. Finklea in the video. She's testified that  
9 she's familiar with him. She's his sister-in-law.  
10 She recognizes him based on his clothing, his bone  
11 structure, facial feature and recognizes him based  
12 on knowing him and having known him for a long  
13 period of time.

14 This is testimony that is helpful to the jury.  
15 It usually comes in cases where the, particularly  
16 these days, robberies of convenience stores and  
17 similar places where the defendant is on video and  
18 usually you have a family member come in testifying  
19 for the defense that that's not him because I know  
20 my boy and it isn't him or that ain't him. The  
21 converse is true in this instance. And it is  
22 admissible. And over the defense's objection, I  
23 will allow the testimony.

24 MR. MYERS: Your Honor, we only have one more  
25 matter and I've discussed this with Mr. Soltis.

1631

1 Yesterday when Detective Peake was testifying and he  
2 testified that he went out to Budget Rent-A-Car and  
3 that he was looking for some records from the  
4 defendant. There was also testimony that the  
5 defendant would go out to Budget and rent cars  
6 regularly. And Detective Peake says that he went  
7 out and he got the paperwork from Budget for July  
8 the 31st and we put in a document, but the document  
9 was July the 13th. And Mr. Hubbard, being a little  
10 dyslexic, put in the wrong one.

11 We talked with Mr. Soltis, he said he has no  
12 objection to keeping the one from the 13th in and no  
13 objection to us going ahead and marking the one for  
14 the 31st, also.

15 MR. SOLTIS: That's correct, Your Honor.

16 THE COURT: That can be marked and admitted  
17 with counsel's agreement.

18 MR. MYERS: The one from the 13th was marked  
19 State's Exhibit 54 and the one for the 31st will be  
20 marked 87.

21 (State's Exhibit Number 87, Budget  
22 Rent-A-Car receipt, admitted into evidence.)

23 MR. MYERS: Thank you. We're ready to proceed.

24 THE COURT: Okay. Let's bring them on.

25 (The jury returns to the courtroom.)

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1632

1           **THE COURT:** All right. The jury is back. It  
2 appears that the jury also picked my pick. Is it  
3 Mr. Lombardi?

4           **FOREPERSON:** Yes, sir.

5           **THE COURT:** Okay. You are the foreperson. And  
6 as foreperson, you will serve as the spokesperson  
7 for the jury to the extent that the jury needs a  
8 spokesperson aside from the jury deliberations, but  
9 it also will be your responsibility to preside over  
10 the jury deliberations and complete the verdict form  
11 representing the unanimous verdict of the jury when  
12 the jury reaches a unanimous verdict in these  
13 proceedings. Very good.

14           Your next witness, Mr. Hubbard.

15           **MR. HUBBARD:** Yes, sir, Your Honor, the State  
16 calls Irena Fuller.

17                       IRENA DENISE FULLER,  
18 having been duly sworn, testified as follows:

19           **THE CLERK:** Please state your name on the  
20 record and spell your last name.

21           **THE WITNESS:** Irena Fuller, F-U-L-L-E-R.

22                       DIRECT EXAMINATION

23           **BY MR. HUBBARD:**

24           **Q**     Ms. Fuller, where do you work?

25           **A**     McDonalds.

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1633

1 Q And do you know Theodore Davis?

2 A Yes, sir.

3 Q How do you know him?

4 A He's my brother.

5 Q Known him all your life?

6 A All my life.

7 Q What does your family call him?

8 A Junior.

9 Q Now, you and Theodore, y'all have the same  
10 mother?

11 A Yes, sir.

12 Q Same dad?

13 A No, sir.

14 Q So, technically, you're half brother, half  
15 sister?

16 A Yes, sir.

17 Q But you consider him a brother?

18 A Yes, sir.

19 Q Now, do you have some sisters?

20 A Yes, sir.

21 Q Who are your sisters?

22 A Teresa Finklea and Robin Gripper.

23 Q Teresa Finklea, is she married to Ron Finklea?

24 A Yes, sir.

25 Q Where is she now?

- 1       A     In Iraq.
- 2       Q     Do you know how many times she's been in Iraq?
- 3       A     Three.
- 4       Q     And do you know Ron Finklea, the defendant?
- 5       A     Yes, sir.
- 6       Q     How long have you known him?
- 7       A     Ten years.
- 8       Q     Do you remember when your sister informed you
- 9       she'd got married?
- 10      A     She just brought him home one day and say we
- 11      was married.
- 12      Q     So that's the first time you met Ron Finklea?
- 13      A     Yes, sir.
- 14      Q     Did you ever know Ron Finklea to be in the
- 15      Army?
- 16      A     Yes, sir.
- 17      Q     How about Junior, your brother?
- 18      A     No, sir.
- 19      Q     And y'all did call Theodore Davis, Junior?
- 20      A     Yes, sir.
- 21      Q     Now, was there a time when Ron Finklea and
- 22      Teresa lived with you and Sherry?
- 23      A     Yes, sir.
- 24      Q     And Sherry Bolin, the young lady that testified
- 25      yesterday, she lives with you?

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1635

1 A Yes, sir.

2 Q Y'all have been together how long?

3 A Eight years.

4 Q Do you ever recall -- well, let me ask you  
5 this, how long -- you say there was a time when Ron  
6 Finklea and Teresa lived with you and Sherry?

7 A Yes, sir.

8 Q About how long was that?

9 A About four months.

10 Q Do you ever recall Ron Finklea living at an  
11 address at [REDACTED] [REDACTED] [REDACTED]

12 A Yes, sir.

13 Q [REDACTED] [REDACTED] [REDACTED]

14 A Yes, sir.

15 Q I'm going to show you -- I think we still have  
16 a map of it. Do you see [REDACTED]

17 A Yes, sir.

18 Q Is this in Calhoun County?

19 A Yes, sir.

20 Q Does that appear about where that residence  
21 was?

22 A Yes, sir.

23 Q Now [REDACTED], way out in Calhoun County,  
24 was that in the country or was that in like a  
25 suburb?

1 A Country.

2 Q Country? Way out?

3 A Way out.

4 Q Were you familiar with the residence where he  
5 lived?

6 A Yes, sir.

7 Q Now, when he lived out there at [REDACTED] [REDACTED], was  
8 that before or after he lived with you and Sherry?

9 A That was -- that was after.

10 Q Do you know if Teresa ever lived at [REDACTED] [REDACTED]  
11 or do you know?

12 A For a little while.

13 Q Okay. Now, about the time he moved in, he and  
14 Teresa moved into the [REDACTED] [REDACTED] residence, where,  
15 if anywhere, did Teresa go?

16 A She went back in the service.

17 Q So she went back into the Army?

18 A Yes, sir.

19 Q And when she went back in, where did she end up  
20 going?

21 A Iraq.

22 Q Is that the second time she went back to Iraq?

23 A Yes, sir.

24 Q Do you recall what kind of car Teresa drove?

25 A It was a black Mercury.

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1637

1 Q After she went back into the military, do you  
2 recall who drove that car?

3 A Ron Finklea.

4 Q Did you ever know Ron Finklea to rent cars?

5 A Yes, sir.

6 Q Did you ever see him in a white Mustang?

7 A Yes, sir.

8 Q Did you know him to own one?

9 A No, sir.

10 Q But you've seen him in a rental?

11 A Yes, sir.

12 Q How many times did you see Ron Finklea in a  
13 white Mustang?

14 A Once.

15 Q Do you recall, using this murder as a point of  
16 reference, the murder being on August the 2nd on a  
17 Saturday of 2003, do you recall when you saw Ron  
18 Finklea in a white Mustang?

19 A He came to our house that Thursday.

20 Q Okay. So that would be like July 31st?

21 A Yes, sir.

22 Q When he came to your house, who was living with  
23 you then?

24 A Robin Gripper.

25 Q Your sister?



1 A Yes, sir.

2 Q And Sherry?

3 A Yes, sir.

4 Q When he came to your house, what was he  
5 driving?

6 A He was driving the black car.

7 Q And did he come in and talk?

8 A Yes, sir.

9 Q What did he say he was planning to do?

10 A He wanted to rent a car.

11 Q And did he take anybody with him?

12 A Robin Gripper.

13 Q At that time, did you see your brother, Junior,  
14 anywhere in the car he drove up in or was he at your  
15 house or did he go with them?

16 A No, sir.

17 Q Did you see Ron Finklea later that day?

18 A He brought Robin back.

19 Q So when he came back --

20 A He had the white Mustang.

21 Q And he was letting Robin back out?

22 A Yes, sir.

23 Q I'm going to show you some photographs, see if  
24 these look familiar, State's Exhibit 58 and 56.

25 Does this vehicle depicted in these two photographs

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1639

1 look familiar?

2 A Yes, sir.

3 Q Does that look like the white Mustang you saw  
4 that night?

5 A Yes, sir.

6 Q Now, again, when he got back in that white  
7 Mustang and let Robin out, was Junior in the car?

8 A No, sir.

9 Q Was Junior in your house?

10 A No, sir.

11 Q Do you recall another trip that Ron Finklea  
12 took up to Michigan out -- around Detroit somewhere?

13 A Yes, sir.

14 Q Do you recall him telling you what he was going  
15 up there for?

16 A He was going up there for a gun.

17 Q Who lived in Detroit at that time or still  
18 lives in Detroit?

19 A My father.

20 Q And who's your father?

21 A Robert.

22 Q Robert Fuller?

23 A Yes, sir.

24 Q Was there ever a time when Ron Finklea and his  
25 wife, your sister, Teresa, lived up in Michigan near

1 or with your father?

2 A Yes, sir.

3 Q Was this trip to get this gun before or after  
4 he rented this Mustang?

5 A It was before.

6 Q Do you know how long before? And if you don't  
7 remember, that's fine.

8 A No, sir.

9 Q If I remember to break it down in seasons,  
10 spring, summer, winter or fall, do you know what  
11 season it was?

12 A Summer.

13 Q So it was summer time when he went up to  
14 Michigan to get a gun?

15 A Yes, sir.

16 Q Did you ever see the gun?

17 A No, sir.

18 Q Now, going back to this resident on [REDACTED],  
19 were you familiar with the residence where  
20 Mr. Finklea lived?

21 A Yes, sir.

22 Q And this is where he was living at the time of  
23 the murder?

24 A Yes, sir.

25 Q Does this chart, which is State's 48,

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1 accurately depict the layout of the mobile home he  
2 was living in at the time?

3 A Yes, sir.

4 Q If you would, for this jury, will you please  
5 point out what room Ron Finklea lived in?

6 A The back room.

7 Q Okay. So if you come in the front door, turn  
8 right and walk down the hallway, he had the very end  
9 room?

10 A The very end.

11 Q Do you know Willie Gripper?

12 A Yes, sir.

13 Q Who's he?

14 A He's my brother-in-law.

15 Q Married to your sister, Robin?

16 A Robin Gripper.

17 Q Is he the one that owned this mobile home?

18 A Yes, sir.

19 Q What room did he sleep in?

20 A He slept on the left way down the hall.

21 Q On the far end of the mobile home, on the  
22 opposite end of Ron Finklea?

23 A Yes, sir.

24 Q And Junior, did he ever live in this mobile  
25 home?

- 1       A     Yes, sir.
- 2       Q     Where did he sleep?
- 3       A     He slept in that room.
- 4       Q     Kind of a middle room next to Ron's room?
- 5       A     Yes, sir. There's a bathroom in between.
- 6       Q     I want to ask you, do you recall when you first
- 7       heard about this murder, the murder from August the
- 8       2nd?
- 9       A     Yes, sir.
- 10      Q     Do you recall who told you about it first?
- 11      A     Robin Gripper.
- 12      Q     As a result of hearing this, did, at some
- 13      point, y'all go to this residence at Fort Motte?
- 14      A     Yes, sir.
- 15      Q     Was Ron Finklea there?
- 16      A     No, sir.
- 17      Q     Was your brother, Junior?
- 18      A     No, sir.
- 19      Q     How about Willie Gripper?
- 20      A     No, sir.
- 21      Q     Let me ask you about Willie Gripper. Was he
- 22      often home or where would you find Willie Gripper?
- 23      A     He wasn't home. He wasn't -- he was barely
- 24      there.
- 25      Q     And why was that?

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1       A     Because him and his wife was going through some  
2       things and he had a new woman.

3       Q     So he and Robin, your sister, were kind of on  
4       the outs?

5       A     Yes, sir.

6       Q     And he had someone else?

7       A     Yes, sir.

8       Q     Did that someone else live in this mobile home  
9       or were they somewhere else?

10      A     Somewhere else.

11      Q     So was it common or uncommon that when you show  
12      up, Willie wasn't there?

13      A     It was just common he was never there.

14      Q     Okay. Now, when you went to this residence at  
15      Fort Motte Road and you say Junior wasn't there and  
16      Ron wasn't there?

17      A     No, sir.

18      Q     Did you go inside?

19      A     Yes, sir.

20      Q     Did you have a key to get in?

21      A     No, sir.

22      Q     How did you get in?

23      A     Just walk in, the door was on the floor.

24      Q     Law enforcement had already been there?

25      A     Yes, sir.

1 Q When you walked in that residence, where did  
2 you go?

3 A To the back room, Ron Finklea's room.

4 Q While you were there, did you notice anything  
5 in Ron Finklea's room? By that, do you remember  
6 finding something and showing it to Sherry?

7 A Yes, sir.

8 Q What did you find?

9 A I found a receipt.

10 Q A receipt?

11 A Yes, sir.

12 Q Do you know what store it was from?

13 A K-Mart.

14 Q And where did you find that receipt? Can you  
15 point it out on this chart?

16 A The dresser.

17 Q Okay. So this thing that is at an angle here  
18 right by the doorway is a dresser and you found it  
19 by the dresser?

20 A Yes, sir, behind the dresser.

21 Q When you found that receipt, did you show it to  
22 Sherry?

23 A Yes, sir.

24 Q Anything on that cause you some concern?

25 A Gas can and gloves.

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1 Q At this point, had you heard about how this  
2 killing had taken place or about what had happened  
3 at this murder at Selectron?

4 A Yes, sir.

5 Q That it involved fire?

6 A Yes, sir.

7 Q At some point, were you given the opportunity  
8 to view two videos from this investigation?

9 A Yes, sir.

10 Q One from August 1st, the day before the murder?

11 A Yes, sir.

12 Q One from August 2nd, the day of the murder?

13 A Yes, sir.

14 Q How long ago was it that you saw those videos?

15 A Wednesday.

16 Q And was Detective Duane Peake present when you  
17 saw those videos?

18 A Yes, sir.

19 Q When you saw that August 1st video, was there  
20 anybody in that video that you recognized?

21 A Ron Finklea.

22 Q Did you recognize clothing?

23 A Yes, sir.

24 Q Belonging to who?

25 A Ron Finklea.



1 Q Irena, at this time, I want to show you a video  
2 from August 1st. Now, Irena, I'm going to direct  
3 you to this T.V. over here. I think it might be  
4 clearer, although I know it's hard for the jury to  
5 see.

6 (Whereupon, State's Exhibit Number 29 was  
7 played for the jury and the following occurred. )

8 Q Irena, I want you to watch who comes in this  
9 door here. Right here, clothing, do you notice any  
10 clothing garment right here, specifically this  
11 jacket, does that look familiar to you?

12 A Yes, sir.

13 Q Have you ever seen anyone you know in a jacket  
14 like that?

15 A Ron Finklea.

16 Q I want to show you this jacket that's already  
17 been marked into evidence, this blue jacket. Have  
18 you seen anybody in this jacket?

19 A Ron Finklea.

20 Q Have you ever seen Junior, your brother, in  
21 this jacket?

22 A No, sir.

23 Q Have you ever seen anyone else in that jacket?

24 A No, sir.

25 Q Now, I want you to watch and I want you to

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1 focus on the hat and, of course, any facial  
2 features. Right here, anything about this hat, see  
3 the logo and the little writing on the side, does  
4 that hat look familiar to you?

5 A Yes, sir.

6 Q Have you ever seen anyone in that hat?

7 A Ron Finklea.

8 Q I'm going to show you what's been marked  
9 State's Exhibit 62 and 64. Is this the hat?

10 A Yes, sir.

11 Q The same hat you see in the video?

12 A Yes, sir.

13 Q The same hat you've seen Ron Finklea wear?

14 A Yes, sir.

15 Q Have you ever known your brother, Junior, to  
16 wear this hat?

17 A No, sir.

18 Q All right. Now, I want you to watch for the  
19 back of this hat, but also continue to watch his  
20 face. Right there, right there, right here, the  
21 back of the hat, does that also look familiar to  
22 you?

23 A Yes, sir.

24 Q Same hat?

25 A Yes, sir.

- 1 Q All right. Continue to watch the facial  
2 features. Do you recognize this person?
- 3 A Yes, sir.
- 4 Q Who is this person that you see?
- 5 A Ron Finklea.
- 6 Q Now, Irena, pretty dark and blurry image here,  
7 how can you be sure it's Ron Finklea?
- 8 A I know Ron Finklea.
- 9 Q Could this be your brother, Junior?
- 10 A No, sir.
- 11 Q Why do you say that?
- 12 A Because if it was my brother, I would tell you.
- 13 Q Does your brother have a different facial jaw  
14 line, nose, ears, the whole works?
- 15 A Yes, sir, his face is bigger.
- 16 Q Are you sure this is Ron Finklea?
- 17 A One hundred percent sure it's Ron Finklea.
- 18 Q All right. And, Irena, were you given a chance  
19 to see the video from the night of the murder,  
20 August the 2nd?
- 21 A Yes, sir.
- 22 MR. HUBBARD: Larry, if you could que that up  
23 as well.
- 24 Q While he's queuing that up, let me ask you  
25 about that trip to Alabama. When he was renting

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1       that white Mustang, did he tell you that's where he  
2       was going?

3       A     Yes, sir.

4       Q     Did he say anything about money?

5       A     Said he was coming into some money.

6       Q     And that was before he went down?

7       A     Yes, sir.

8       Q     And, of course, this is before the murder?

9       A     Yes, sir.

10               (Whereupon, State's Exhibit Number 30 was  
11       played for the jury and the following occurred.)

12       Q     Again, Irena, I want you to watch, it may take  
13       a little while, but watch the person who comes in  
14       this door, who's let in this door. Specifically,  
15       again, look for items of clothing and then when  
16       there's a close up, look for those facial features.

17               Right here, you see, somebody's about to come  
18       in. This hat, are you noticing the hat? Do you see  
19       anything hanging down the back?

20       A     Yes, sir.

21       Q     Does that look familiar?

22       A     Yes, sir.

23       Q     What hat does that look like? Does it look  
24       like the one from the night before?

25       A     Yes, sir.

- 1 Q All right. Please continue to watch. Notice  
2 no stripes on the back, I just want you to watch the  
3 shirt and the clothing. Right here, notice these  
4 facial features?
- 5 A Yes, sir.
- 6 Q Notice that nose?
- 7 A Yes, sir.
- 8 Q Right here, that shirt...
- 9 A Yes, sir.
- 10 Q Right there, does that shirt look familiar to  
11 you?
- 12 A Yes, sir.
- 13 Q This hat, do you see anything on the back side  
14 of that hat?
- 15 A Yes, sir.
- 16 Q Does that shirt look familiar to you?
- 17 A Yes, sir.
- 18 Q Have you ever seen anyone in that shirt?
- 19 A No, sir.
- 20 Q You've never seen anyone wear that shirt  
21 before?
- 22 A Ron Finklea.
- 23 Q But anyone else?
- 24 A No, sir.
- 25 Q Just Ron Finklea?

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1 A Yes, sir.

2 Q Have you ever seen Theodore Davis wear that  
3 shirt?

4 A No, sir.

5 Q I want to show you what's been marked as  
6 State's 65 and 66, photographs of a shirt. Does  
7 that shirt look familiar to you?

8 A Yes, sir.

9 Q Is that the same shirt?

10 A Yes, sir.

11 Q And, again, you've only seen Ron Finklea in  
12 this shirt?

13 A Yes, sir.

14 Q Now, continue to watch the face here, Irena.  
15 Right here, jaw line, ears, nose, everything about  
16 that face, do you recognize who that is?

17 A Yes, sir.

18 Q Who is that?

19 A Ron Finklea.

20 Q Do you have any doubt about that?

21 A No, sir, not at all.

22 Q Could that be Junior?

23 A No, sir.

24 Q Are you positive?

25 A One hundred percent that is not Junior.

1 (State's Exhibit Number 30 was concluded.)

2 Q The clothing, any of the items of clothing  
3 you've seen in this video, have you ever seen Junior  
4 wearing anything like those items?

5 A No, sir.

6 Q When Ron would dress, how would you describe  
7 it? Was he neat, slob? How would you describe him?

8 A Neat and clean.

9 Q How about Junior?

10 A A slob.

11 Q Did you ever know Ron Finklea and your brother,  
12 Junior, to swap clothes or share clothes?

13 A No, sir.

14 Q Ever?

15 A No, sir.

16 Q Did you ever know Ron to purchase or give  
17 Junior some clothes?

18 A Yes, sir.

19 Q Now, I want to ask you how you would  
20 characterize the relationship between Ron Finklea  
21 and your brother, Junior?

22 MS. KIMBROUGH: Objection as to relevance.

23 MR. HUBBARD: Your Honor, I think it's clearly  
24 relevant. You've got two people involved in a  
25 crime.

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

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1 THE COURT: Objection is overruled.

2 MS. KIMBROUGH: Thank you, Your Honor.

3 THE WITNESS: Basically, when you see Ron,  
4 you'll see Junior.

5 BY MR. HUBBARD:

6 Q And between the two of them, did they act as  
7 brothers or as equals?

8 A No, sir.

9 Q How would you describe the way they interacted  
10 based on what you saw and what you knew?

11 A What I saw, Ron was just like over Junior, just  
12 his boss.

13 Q Okay. Now, let me ask you about Junior. Have  
14 you ever known Junior in your entire life to have a  
15 job or any sense of responsibility where he was in  
16 charge of other people?

17 A None at all.

18 Q Was Junior a leader?

19 A No, sir.

20 Q Was he a follower?

21 A Yes, sir.

22 Q As of the people in his life of August 2007 and  
23 the people he were with, you said he was with Ron  
24 Finklea?

25 A Yes, sir.



1 Q And you'd see them together?

2 A Yes, sir.

3 Q Did he look for anyone else to be with or to  
4 guide him?

5 A No, sir.

6 Q Just Ron Finklea?

7 A Yes, sir.

8 MR. HUBBARD: Irena, I believe that's all the  
9 questions I have at this time. Please answer any  
10 questions the defense counsel might have for you.

11 THE COURT: Ms. Kimbrough.

12 MS. KIMBROUGH: Thank you, Your Honor.

13 I'll try to speak up. I understand I'm not  
14 being well heard, just bear with me.

15 CROSS-EXAMINATION

16 BY MS. KIMBROUGH:

17 Q You've known Junior your whole life?

18 A Yes, ma'am.

19 Q Is he your older brother or your -- or is he  
20 younger?

21 A He's younger.

22 Q Okay. And Teresa Finklea is your sister?

23 A Yes, ma'am.

24 Q And Robin Gripper is also your sister?

25 A Yes, ma'am.

IRENA DENISE FULLER - CROSS BY MS. KIMBROUGH

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1 Q Okay. And you care for your brother, don't  
2 you?

3 A Yes, ma'am.

4 Q Okay. You love him?

5 A I love him, but he did it, so, you know.

6 Q Yes, ma'am. Now, you mentioned a trip that Ron  
7 took to Michigan?

8 A Yes, ma'am.

9 Q And you say -- I think you also testified that  
10 Ron and Teresa had lived in Michigan with your  
11 father, Mr. Fuller?

12 A Yes, ma'am.

13 Q Okay. And I think you said that the trip  
14 occurred in the summer time?

15 A Yes, ma'am.

16 Q Okay. But you didn't go on that trip, did you?

17 A No.

18 Q Okay. And when Ron got back, did you ever see  
19 him with a gun?

20 A No, ma'am.

21 Q Okay. All right. Were you aware of whose gun  
22 was housed in Michigan in your father's house? Did  
23 you know whose gun it was?

24 A Teresa Finklea.

25 Q All right. And she's now in Iraq?

1 A Yes, ma'am.

2 Q For the third time?

3 A Yes, ma'am.

4 Q She's a trooper. Now, I want to talk to you a  
5 little bit about after the crime occurred and you  
6 learned that Ron Finklea was a suspect?

7 A Yes, ma'am.

8 Q And I think you testified that you learned that  
9 from your sister, Robin?

10 A Yes, ma'am.

11 Q And I don't want to suggest the answer, but did  
12 you ever learn from Robin how she found out that Ron  
13 was a suspect?

14 A They came to the house.

15 Q Okay. They being law enforcement?

16 A Yes, ma'am.

17 Q Maybe Investigator Peake?

18 A Yes, ma'am.

19 Q All right. I don't want to tell you the  
20 answer. I was just wondering if you knew which  
21 person came and had that initial contact with Robin.  
22 You believe it's Investigator Peake?

23 A Yes, ma'am.

24 Q Okay. And before you and Robin went to the  
25 Fort Motte residence where Theodore and Ron lived,

IRENA DENISE FULLER - CROSS BY MS. KIMBROUGH

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1 were you given certain information or did you learn  
2 that certain pieces of evidence were wanted in  
3 connection with the crime?

4 A No, ma'am.

5 Q Okay. So why would you go over there?

6 A Why would I go down there?

7 Q Well, yes, I mean it's -- you didn't live  
8 there, did you?

9 A No, I didn't live there.

10 Q And Ron lived there and Junior lived there?

11 A Yes, ma'am.

12 Q So you and Sherry --

13 A Robin and Sherry went down there.

14 Q Yes, ma'am. Okay. Did you have a purpose to  
15 going?

16 A To see was they down there.

17 Q Well, what led you to search the house?

18 A The door was kicked down. It was a mess, so we  
19 just went down the hall.

20 Q Okay. Are you aware of the fact that prior to  
21 your inspection of the house, that it had been  
22 searched twice by law enforcement?

23 A No, ma'am.

24 Q You aren't aware of that?

25 A No, ma'am.

1 Q Okay. Now, I believe you characterized your  
2 brother as being someone who was not only a slob,  
3 but someone who was fairly irresponsible?

4 A Yes, ma'am.

5 Q And I think you characterized him as being a  
6 follower?

7 A Yes, ma'am.

8 Q Okay. And you've known Junior his whole life?

9 A Uh-huh.

10 Q And are you aware of the fact that he has two  
11 convictions involving assaults?

12 MR. HUBBARD: Your Honor, I object. Actually,  
13 there's only one on the record. The other was like  
14 a revocation from the same thing. There's only one  
15 conviction.

16 MS. KIMBROUGH: I apologize if I misread the  
17 record.

18 BY MS. KIMBROUGH:

19 Q Are you aware of that?

20 A Like I said, he's a follower. When he did  
21 that, he followed somebody, so he's a follower.

22 Q Were you there?

23 A No, ma'am.

24 Q Were you a witness to that crime?

25 A No, ma'am.

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 Q How do you know that he followed?

2 A It was my mom's house. I mean --

3 Q But you weren't there?

4 A No.

5 Q Okay. So you have no idea whether he was  
6 leading or following during that event, no personal  
7 knowledge?

8 A No.

9 MS. KIMBROUGH: That's all the questions I  
10 have. Thank you.

11 MR. HUBBARD: No further questions, Your Honor.

12 THE COURT: You may step down, ma'am.

13 MR. GRAHAM: State calls Tracy Thrower.

14 TRACY J. THROWER,

15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat please, sir. State  
17 your full name and spell your last please.

18 THE WITNESS: Tracy J. Thrower, T-H-R-O-W-E-R.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Mr. Thrower, where are you employed?

22 A I'm employed by the South Carolina Law  
23 Enforcement Division, also known as SLED.

24 Q And how long have you worked for SLED?

25 A A little over eight years.

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 Q And what do you do for SLED?

2 A I'm a firearm and tool mark examiner.

3 Q And what is your educational background?

4 A I have a bachelor of science degree with a  
5 major in biology. I have completed the South  
6 Carolina Criminal Justice Academy. I have completed  
7 the SLED firearm and tool mark identification course  
8 of instruction. This was approximately a three year  
9 course of instruction that was supervised by court  
10 qualified firearm examiners.

11 During this course of instruction, I was  
12 required to perform extensive reading and studying.  
13 I was given written and oral exams, practical  
14 problems. I had to assist examiners in preparing of  
15 their cases. I was required to perform extensive  
16 microscopic comparison. I had to attend various  
17 schools, seminars and conferences in the field of  
18 identification.

19 Upon completing that, I began working cases on  
20 my own. Since then, I have attended and completed  
21 the course taught by the Federal Bureau of  
22 Investigation on specialized techniques in firearm  
23 identification. I have completed the course taught  
24 by the Bureau of Alcohol, Tobacco and Firearms on  
25 serial number restoration. I've completed the

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 course taught by Murdock and Muran on scientifically  
2 defensible criteria for the identification of tool  
3 marks for consecutive matching stria, also known as  
4 CMS.

5 I've been through numerous armor courses on  
6 firearms, six hour Ruger, High Point, Glock, Smith  
7 and Wesson to name a few. I continually read  
8 journals in firearm identification in the  
9 identification field, among other things.

10 Q Does your experience with firearms also deal  
11 with the bullets and the projectiles involved in  
12 firearms?

13 A Yes, sir.

14 Q And have you been qualified in the courts of  
15 South Carolina as an expert before?

16 A Yes, sir, I have.

17 Q And in what field have you been qualified as an  
18 expert?

19 A As a firearm and tool mark examiner.

20 Q And, approximately, how many times have you  
21 been qualified as an expert?

22 A I believe I have now been qualified 23 times.

23 MR. GRAHAM: Your Honor, the State would offer  
24 Tracy Thrower as an expert in the field of firearms  
25 and tool marks.



TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 MR. SOLTIS: No objection.

2 THE COURT: He is admitted as an expert in that  
3 field.

4 BY MR. GRAHAM:

5 Q Mr. Thrower, did you have an opportunity to  
6 review some fragments of metal that were collected  
7 from the Selectron crime scene, as well as some  
8 cartridge cases and as well as an unfired bullet?

9 A Yes.

10 Q Looking at what's been marked as State's  
11 Exhibit Number 50, which is your item number 29,  
12 would you tell the jury what that is?

13 A State's Exhibit Number 50 is one unfired PMC  
14 brand nine millimeter Luger caliber cartridge which  
15 bears my case number, item number and initials.

16 Q Okay. You said -- describe it again, PMC, what  
17 did you say?

18 A The manufacturer of this cartridge is PMC and  
19 the caliber is nine millimeter Luger.

20 Q And is that somehow recorded, is that done by a  
21 visual examination or is it somehow actually on the  
22 bullet?

23 A The head stamp, which is on the rear or the  
24 head of the cartridge, bears the manufacturer's name  
25 PMC. It also bears a stamping of the caliber nine

TRACY J. THROWER - DIRECT BY MR. GRAHAM

1663

1 millimeter Luger. I also, during my examination,  
2 compared this cartridge with reference collection  
3 ammunition in our reference collection and made sure  
4 that it was the same.

5 Q Looking at the -- if I use the wrong  
6 terminology, correct me, please. What makes up a  
7 bullet?

8 A What makes up a -- what you see here is a  
9 cartridge. A cartridge is an unfired piece of  
10 ammunition that is made up of several components.  
11 One, the lower portion that you see, this area is  
12 considered to be the cartridge case. The cartridge  
13 case is simply the container that holds the other  
14 components in a piece of ammunition.

15 If you can see in the center of this rear  
16 portion there pointing up, is the primer. It's a --  
17 this one it was nickel colored or silver colored.  
18 The primer is the ignition component. When the  
19 firing mechanism, whether it be the hammer or the  
20 firing pin of a firearm, strikes the primer, the  
21 primer is what ignites the gunpowder which is  
22 located inside the chamber up here.

23 This forward portion you see right here is the  
24 bullet or the projectile. It is what travels down  
25 the barrel and towards the target.

1 Q And looking specifically at the projectile on  
2 this bullet, what, if anything, do you notice about  
3 it?

4 A The construction of this bullet is a copper  
5 jacketed bullet, which means that it has a thin  
6 layer of copper plating or copper jacketed material  
7 over a led core.

8 Q So the bullet itself is led and there's a thin  
9 layer of copper wrapped over it?

10 A That is correct.

11 Q Let me show you another item and ask if you  
12 recognize that item?

13 A State's Exhibit 15, which is my item 30, is one  
14 fired PMC brand nine millimeter Luger caliber  
15 cartridge case. It also bears my case number, item  
16 number and initials.

17 Q And let me show you what's been marked as  
18 State's Exhibit 16, 17 and 18 and ask if you  
19 recognize those?

20 A State's Exhibit 16 is my item number 31, which  
21 is one fired PMC brand nine millimeter Luger caliber  
22 cartridge case. Item -- State's Exhibit 17, which  
23 is my item 32, is also one fired PMC brand nine  
24 millimeter Luger caliber cartridge case. And  
25 State's Exhibit Number 24, which is my item 33, is

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 also one fired PMC brand nine millimeter Luger  
2 caliber cartridge case. All of these bear my case  
3 number, item number and initials.

4 Q Mr. Thrower, looking at items 15, 16, 17 and  
5 18, the four nine millimeter Luger fired cartridge  
6 cases, what, if any, similarities are there between  
7 those four?

8 A Based on the construction and the overall  
9 physical characteristics, they all have a brass  
10 colored cartridge case. They have a nickel colored  
11 boxer primer and red primer sealant around the  
12 primer.

13 Q What, if any, differences were you able to  
14 discern between those four fired cartridge cases?

15 A I did not notice any differences in their  
16 construction.

17 Q Comparing those four cartridge cases to the  
18 unfired bullet, which is State's Exhibit Number 50,  
19 what, if any, similarities do you notice between the  
20 unfired bullet and the four fired cartridge cases?

21 A State's Exhibit 50, the unfired cartridge,  
22 State's Exhibit 24, State's Exhibit 17, State's  
23 Exhibit 16 and State's Exhibit 15 all of these items  
24 have a brass colored cartridge case, a nickel  
25 primer, red primer sealant around the primer, they

1 are all PMC brand nine millimeter Luger caliber.

2 Q Were you able to discern any differences  
3 between the unfired bullet and the four fired  
4 cartridge cases?

5 A No, sir. The construction and markings on the  
6 unfired cartridge and the fired cartridge cases are  
7 the same.

8 Q Let me hand you another exhibit, State's  
9 Exhibit 14, and ask if you recognize that?

10 A State's Exhibit 14 is my item number 34. It is  
11 one fired bullet. It bears my case number, item  
12 number and initials.

13 Q What, if anything, in looking at State's  
14 Exhibit Number 14, are you able to discern about  
15 that fired bullet?

16 A State's Exhibit 14 has a copper jacket. It  
17 appears to have a led core and the general shape of  
18 what was to be a full metal jacket round nose.

19 Q Comparing that exhibit with State's Exhibit  
20 Number 50, the unfired nine millimeter Luger bullet,  
21 what, if anything, did you notice as far as that  
22 projectile and the projectile on the unfired bullet?

23 A The overall physical characteristics and  
24 constructions are similar. They both have a copper  
25 jacket, led core and general shape of full metal

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 jacket round nose.

2 Q Let me show you another object and ask if you  
3 recognize that?

4 A State's Exhibit Number 67, which is my item  
5 number 35, is one fired bullet and one fired bullet  
6 jacket fragment.

7 Q And in looking at that bullet and the bullet  
8 jacket fragment, what, if any, conclusions or  
9 opinions are you able to draw when compared to the  
10 unfired bullet that you looked at earlier?

11 A The construction and overall physical  
12 characteristics were similar in that they both have  
13 copper jacket, led core, full metal jacket round  
14 nose shape.

15 Q Looking at State's Exhibit Number 10, do you  
16 recognize that?

17 A State's Exhibit Number 10 is my item 36, which  
18 is one fired bullet jacket fragment.

19 Q And in comparing that fired bullet jacket  
20 fragment with the other two that's before you right  
21 now, specifically items 14 and 67, what, if any,  
22 similarities or differences were you able to  
23 discern?

24 A State's item number 10 is a copper jacket  
25 fragment from a bullet that has a open base, which

1 is consistent with State's Exhibit Number 67 and 14.

2 Q And, again, comparing the item in your hand  
3 with the unfired nine millimeter Luger bullet,  
4 State's Exhibit Number 50, what, if any, differences  
5 or similarities were you able to observe?

6 A State's Exhibit 10 and State's Exhibit 50 are  
7 similar in the fact that they are both -- the bullet  
8 or projectile in State's Exhibit 50 would also have  
9 a copper jacket with an open base.

10 Q Let me show you what's been marked as State's  
11 Exhibit Number 19 and ask if you recognize that?

12 A State's Exhibit 19, which is my item 38, was  
13 one led fragment.

14 Q And other than determining that it was one led  
15 fragment, were you able to do any other type of  
16 analysis to determine what it was?

17 A No, sir. It was unsuitable of identification.  
18 It bore no marks of value.

19 Q Looking at State's Exhibit number 25, let me  
20 ask you if you recognize that?

21 A State's Exhibit Number 25, which is my item  
22 number 37, is one fired bullet and two fired bullet  
23 jacket fragments.

24 Q Comparing State's Exhibit Number 25 to State's  
25 10, 14 and 67, what, if anything, were you able to

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 determine regarding similarities or differences?

2 A That State's Exhibit Number 25, the large  
3 portion of the bullet that remains, is a copper  
4 jacketed bullet with a led core. It has a distinct  
5 heel with a cup shaped base, which is consistent  
6 with the bullets that are loaded into PMC brand  
7 ammunition.

8 State's Exhibit Number 10 is a copper jacket  
9 from an open based bullet, which is consistent with  
10 the large jacket fragment and -- or the large bullet  
11 in the jacket fragments. In State's Exhibit 25,  
12 State's Exhibit Number 67, fired bullet, is a copper  
13 jacketed led core bullet open base with a distinct  
14 heel with a cup shaped base. And State's Exhibit 14  
15 was a fired bullet, had a copper jacket with a led  
16 core.

17 Q And again, Mr. Thrower, the fired bullets that  
18 we've all discussed, what differences or  
19 similarities are there to the unfired bullet that  
20 you analyzed?

21 A The unfired -- everything I've just described  
22 is similar to the unfired -- the bullet loaded in  
23 the unfired cartridge as a PMC brand. It has a  
24 copper jacket, led core, full metal jacket round  
25 nose shape, open based with distinct heel and a cup



TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 shaped base.

2 Q Were you able to determine any differences?

3 A No, sir.

4 Q In comparing the four bullet fragments which  
5 you've been discussing, State's 25, 10, 67 and 14,  
6 what, if anything, are you able to say in relations  
7 to those, to the fired cartridge cases, 15, 16, 17  
8 and 24?

9 A The bullets -- fired bullets that have enough  
10 of -- that enough of them is remaining that I can  
11 see the copper jacket, the cup shaped base, the  
12 distinct heel, those are all consistent with the  
13 bullets that are loaded into PMC brand ammunition  
14 and nine millimeter Luger caliber. The fired  
15 cartridge cases are PMC brand nine millimeter Luger  
16 caliber. I would expect those bullets to have been  
17 loaded in cartridge cases that are similar or are  
18 those cartridge cases.

19 Q Looking at State's Exhibit 25, which is your  
20 item 37, State's Exhibit 67, which is your item 35,  
21 State's Exhibit 10, which is your item 36, if I've  
22 done that correctly, what, if anything, are you able  
23 to determine from those bullet fragments as to the  
24 weapon that fired them?

25 A That State's Exhibit 10, State's Exhibit 25 and

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 State's Exhibit 67 were all fired by one firearm.

2 Q So those three projectiles, in your opinion,  
3 were all fired by the same gun?

4 A Yes, sir.

5 Q Referring to your State's Exhibit 34, what were  
6 you able to determine about the gun that fired that  
7 bullet?

8 A I compared State's Exhibit 14 to the other  
9 fired projectiles that I just discussed and my  
10 results were inconclusive. There were not enough  
11 markings present on item -- State's Exhibit 14 due  
12 to the large amount of damage to conclude that  
13 State's Exhibit 14 was fired by the same firearm as  
14 the other projectiles. However, the general class  
15 characteristics, such as caliber, type of rifling,  
16 all of these bullets were fired through a barrel  
17 that has conventional rifling with the same number  
18 of lands, with the -- the landing groove widths are  
19 the same, all the general class characteristics are  
20 the same.

21 Q Let me stop you for just a second. What is  
22 rifling? When you say rifling, what is that?

23 A Rifling is a series of spiralling grooves that  
24 is placed within the barrel of a firearm by the  
25 manufacturer. It is placed in the barrel of the

1 firearm to cause the bullet to spin as it goes down  
2 the bore and then towards the target.

3 The purpose of causing the bullet to spin is to  
4 give the bullet stability during its flight, much  
5 like throwing a football. If you've ever seen  
6 somebody throw a football, the football that has  
7 that nice tight spiral tends to go farther and more  
8 accurately where you wanted to throw. If you throw  
9 a football and it goes end over end and wabbles,  
10 it's not real accurate. That is why firearm  
11 manufacturers place this rifling in the barrel.

12 Rifling is made up of what is known as lands  
13 and grooves. A land is simply a raised area between  
14 the grooves and the rifle.

15 Q And, again, a land and a groove is what?

16 A The land is simply, if you could take the  
17 circle, which if you're looking down the barrel of a  
18 firearm, think of it as a circle, and open it up to  
19 a straight line, it would look like a series of  
20 teeth that grip the bullet and then they also cause  
21 it to spin as it goes down the barrel.

22 Q And the groove is what component of that?

23 A The groove is simply the recessed area between  
24 the higher raised portions known as the land.

25 Q So would it be fair to say that the land is the

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 raised area and the groove is the recessed area?

2 A Correct.

3 Q What, if any, marks does that make when a  
4 bullet is fired and the projectile travels down the  
5 barrel of a weapon?

6 A The barrel of a firearm will mark the bullet as  
7 the bullet travels through the firearm leaving  
8 microscopic, individual, reproducible, identifiable  
9 scratches on the outside of the bullet.

10 Q And when you said earlier that you were able to  
11 say that those three bullets were all fired by the  
12 same gun, what kind of markings did you use to be  
13 able to come to that conclusion?

14 A As I microscopically compared the scratches  
15 that were left in the land and groove impressions on  
16 all the different bullets, I used those markings --  
17 I used a comparison microscope where I literally,  
18 it's like two microscopes that sit by side and  
19 they're connected by an ocular bridge so that when  
20 I look in the eyepieces, it looks like a T.V. screen  
21 where you can just -- there's a hairline and I see  
22 images on both sides, one of the -- one item and  
23 then I see on the other side of the hairline is the  
24 other item.

25 And I can move and turn and manipulate these

1 items side by side under the same magnification and  
2 look for scratches, literally lining up scratches to  
3 see where they lineup and if they lineup. If I find  
4 enough similarity in these markings, then I can say  
5 they were fired by the same firearm.

6 Q Now, one of the items you said you were not  
7 able to conclusively say was fired by the same  
8 firearm; is that correct?

9 A That is correct.

10 Q What were you able to say about that one?

11 A That it bore similar general rifling  
12 characteristics. By that, once again, I mean  
13 caliber, the type of rifling, how many of these  
14 lands and grooves are in the barrel, some  
15 manufacturers use five, some use six and some use  
16 nine, they had the same number. The manufacturer  
17 can also determine how wide he wants a land and how  
18 wide he wants the groove. Different manufacturers  
19 use different widths per lands and grooves.

20 The land and groove widths on all of these  
21 projectiles was the same. The manufacturer used  
22 what is known as conventional rifling as opposed to  
23 polygonal rifling. Conventional rifling simply  
24 means that these lands have squared off edges, where  
25 polygonal rifling has smooth, looks like a wave.

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 The general rifling characteristics on all of these  
2 projectiles was the same.

3 Then I looked further and I found some similar  
4 individual characteristics, but they were not enough  
5 to say this was definitely a match, you know, that  
6 it had to be fired by the same gun. It could have  
7 been fired by another firearm with similar  
8 characteristics.

9 Q And the reason that you weren't able to find  
10 enough individual identifying characteristics was  
11 because why?

12 A Was due to the damage. A large portion of the  
13 bearing surface, which the bearing surface is that  
14 portion of the bullet that comes into contact with  
15 the inside of the barrel, had been damaged when it  
16 struck some object. A large portion of the jacket  
17 is missing or it's been completely flattened by some  
18 hard object that it came into contact with and  
19 simply removed the markings that I'm looking for.

20 Q Based on your review of the four projectiles,  
21 were you able to determine the type of weapon that  
22 fired those projectiles?

23 A Based on the general rifling characteristics, I  
24 placed caliber, number of lands and grooves, type of  
25 rifling, land and groove widths, I placed these

TRACY J. THROWER - DIRECT BY MR. GRAHAM

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1 measurements into a data base that is supplied to us  
2 by the Federal Bureau of Investigation and I did  
3 come up with a list of possible firearms that could  
4 have fired these bullets.

5 Q And in any of the possible list of firearms,  
6 were there any revolvers on there?

7 A In the list that I came up with, there were no  
8 revolvers.

9 Q What kind of weapons, not brand names, but type  
10 of weapons were there?

11 A Semiautomatic pistols, submachine guns and I  
12 believe there was one carbine, which is a short  
13 rifle.

14 MR. GRAHAM: Please answer any questions the  
15 defense has.

16 MS. KIMBROUGH: No questions. Thank you.

17 THE COURT: You may step down.

18 MR. GRAHAM: The State recalls Investigator  
19 Mike Phipps.

20 THE CLERK: Still under oath, Your Honor.

21 MICHAEL STUART PHIPPS,  
22 having been previously duly sworn, resumed the  
23 witness stand and testified as follows:

24 \*\*\*\*\*

25 \*\*\*\*\*

MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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## DIRECT EXAMINATION

BY MR. GRAHAM:

Q Investigator Phipps, did you have an opportunity to compare item 50, which is the unfired nine millimeter Luger bullet, to the shell casing in items 15, 16, 17 and 24?

A Yes, sir, I did.

Q And, in fact, did you take a photograph of the head stamps?

A That is correct. Part of our duties as a crime scene investigator, we do follow-up work in the lab which can involve either processing items further for latent prints or request for photography. In this case, it was a request to photograph the base of these cartridges and bullet to do a comparison composite image that I produced here.

Q And is that a fair and accurate representation of the photographs that you took?

A Yes, it is.

MR. GRAHAM: Your Honor, the State would offer this in evidence.

MS. KIMBROUGH: Without objection.

THE COURT: It's admitted without objection.

(State's Exhibit Number 88, photograph, admitted into evidence.)



MICHAEL STUART PHIPPS - DIRECT BY MR. GRAHAM

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1 BY MR. GRAHAM:

2 Q Investigator Phipps, when we talk about a head  
3 stamp, what are we talking about?

4 A It's the base of the cartridge, as already  
5 discussed, or the primer is visible and it carries  
6 the manufacturer's imprint.

7 Q In looking at these four fired cartridge cases  
8 that were collected from the crime scene, those are  
9 the ones that you collected; is that correct?

10 A That is correct.

11 Q Comparing them to each other what, if anything,  
12 do you notice about the head stamps?

13 A The head stamps on the four fired cartridges  
14 are all very similar. They carry the same  
15 manufacturer's mark and the same caliber  
16 designation. They all have the same primer  
17 coloration and sealant coloration.

18 Q And when you talk about the primer coloration,  
19 are you talking about the actual center?

20 A Yes. The silver disk you see right in the  
21 center is the primer and that's what ignites the  
22 rest of the powder. As you can tell, there are four  
23 on the right side that are dimpled indicating that  
24 the firing pin or hammer struck that area.

25 Q And you mentioned a sealant, what is a sealant?

MICHAEL STUART PHIPPS - CROSS BY MR. SOLTIS

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1       A     The primer is inserted into the cartridge case,  
2     the manufacturer has a material that they coat that  
3     area to prevent moisture from being absorbed into  
4     the powder and making the cartridge ineffective.

5       Q     And when you talk about a sealant, are you  
6     talking about the red circle around the primer?

7       A     Yes. It's in the recessed area between that  
8     brass circular rim you see with the letters and  
9     silver disk in the center, there's a very narrow  
10    band that has a red coloration to it and that's the  
11    sealant residue.

12      Q     Comparing the fired cartridge case that you  
13    collected at the Selectron crime scene to the  
14    unfired bullet that was recovered from Ron Finklea's  
15    bedroom, were you able to discern any differences  
16    from looking at that head stamp?

17      A     No, I could not.

18           MR. GRAHAM: Please answer any questions the  
19    defense has, Investigator Phipps.

20           THE COURT: Mr. Soltis.

21                   CROSS-EXAMINATION

22           BY MR. SOLTIS:

23      Q     Detective, PMC is a fairly common brand of nine  
24    millimeter bullet, is it not?

25      A     It is one of the more well known. I'm not sure

1        what percentage of the marketplace they sell them  
2        to.

3                MR. SOLTIS: Thank you.

4                MR. GRAHAM: No other questions, Your Honor.

5                THE COURT: You may step down.

6                MR. HUBBARD: Willie Gripper.

7                        WILLIE GRIPPER,

8        having been duly sworn, testified as follows:

9                THE CLERK: Have a seat right up there. Once  
10       you have a seat, state your full name and then spell  
11       your last.

12               THE WITNESS: My name is Willie Gripper,  
13       G-R-I-P-P-E-R.

14                        DIRECT EXAMINATION

15       BY MR. HUBBARD:

16       Q       Mr. Gripper, where do you work?

17       A       A&B Trucking.

18       Q       Trucking?

19       A       Yes, sir.

20       Q       Do you drive a truck?

21       A       I drive an 18 wheeler.

22       Q       Who is Robin Gripper?

23       A       That's my -- that was my wife.

24       Q       Y'all are kind of on the outs?

25       A       Yeah, we kind of -- we separated.

WILLIE GRIPPER - DIRECT BY MR. HUBBARD

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1 Q Who's Irena Fuller?

2 A That's my sister-in-law, Robin's sister.

3 Q Teresa Finklea?

4 A That was Robin's sister.

5 Q Theodore Davis?

6 A Robin's brother.

7 Q Ron Finklea?

8 A That was Teresa (sic) husband.

9 Q At one time, were Ron Finklea and Theodore  
10 Davis, did y'all know him as Junior?

11 A Yes, sir.

12 Q At one time, was Ron Finklea and Junior living  
13 with you around the time of the murder?

14 A Yes.

15 Q Is that around August of 2003?

16 A Yeah.

17 Q Now, this was your residence?

18 A Yes, sir.

19 Q Where is that -- where was that?

20 A At [REDACTED], Saint Matthews.

21 Q I want to ask you to look at this chart,  
22 State's Exhibit 48. Does this look like a diagram  
23 of the place you lived?

24 A Yes, it is.

25 Q And who owned this place?

- 1       A     Yeah, I owned it. I used to.
- 2       Q     You don't live there anymore?
- 3       A     I don't live there anymore, no.
- 4       Q     You see, how many bedrooms were in this
- 5       residence?
- 6       A     Three bedrooms.
- 7       Q     This bedroom down on this end, who slept on it?
- 8       A     I did, that's the master bedroom.
- 9       Q     And who slept in the master bedroom?
- 10      A     I did.
- 11      Q     This little middle bedroom, who slept in it?
- 12      A     That's...
- 13      Q     Around August of 2003 --
- 14      A     Junior.
- 15      Q     The one on the far end, that bedroom down
- 16      there, who stayed in there?
- 17      A     Ron Finklea.
- 18      Q     Ron Finklea?
- 19      A     (Witness nodded head.)
- 20      Q     Do you remember at some time back prior to this
- 21      murder when Ron Finklea and Teresa lived with you?
- 22      A     Yes.
- 23      Q     Do you remember how long they stayed?
- 24      A     Not right off...
- 25      Q     You can give me an approximate. You don't have

WILLIE GRIPPER - DIRECT BY MR. HUBBARD

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1 to be exact.

2 A Maybe seven or eight months or so.

3 Q During that time they were living with you,  
4 were they living in that same room that Ron Finklea  
5 stayed in?

6 A Yes, sir.

7 Q And during that time, do you ever recall seeing  
8 a pistol?

9 A Teresa, I seen hers once.

10 Q Now, this pistol, is this the type of pistol  
11 that would load from the bottom or was it like those  
12 cowboy guns with the spinning wheel and you put the  
13 bullets in it?

14 A Loaded from the bottom.

15 Q Loaded from the bottom. A semiautomatic?

16 A Um, so.

17 Q What color was this gun?

18 A Black.

19 Q And do you know what caliber it was?

20 A No, sir.

21 Q Now, at that time, did you own a pistol, too?

22 A Yes, I owned a .380.

23 Q A .380, that's what caliber it was?

24 A Yeah.

25 Q What color was your pistol?

1       A     Gray and black.

2       Q     Did you ever look at the bullets that went to  
3       Teresa's gun and compare them to your pistol?

4       A     Yes, I did, but hers was a little bigger than  
5       mine.

6       Q     The bullets that fit her pistol were too big to  
7       fit into yours?

8       A     To fit in mine.

9       Q     How many times did you see that pistol?

10      A     Just that once.

11      Q     Was that when Teresa and Ron were living there?

12      A     Yes, sir.

13      Q     Did you ever see it again?

14      A     I didn't see it anymore.

15      Q     Now, back in August of 2003 when Junior and Ron  
16      Finklea were living with you, do you remember where  
17      you were working?

18      A     I was working with CRG.

19      Q     Is that also a trucking company?

20      A     Yes.

21      Q     Doing the same type of thing?

22      A     I was recycling, just recycle go out there to  
23      pick up recycle steel.

24      Q     All right. About what time would you get home  
25      when you'd come back from work back around that

## WILLIE GRIPPER - DIRECT BY MR. HUBBARD

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1 time?

2 A Between 7:00 and 8:00.

3 Q And when you would get home, what would you  
4 typically do?

5 A I would check and see what kind of mail I have,  
6 go in my room, take me a shower, make a phone call.  
7 Then I'd make a phone call and I call my friend --

8 Q Who were you making a phone call to?

9 A Called my friend and I end up going to her  
10 house.

11 Q A girlfriend?

12 A A girlfriend.

13 Q Where did she live?

14 A Orangeburg.

15 Q Orangeburg. Was it uncommon for you to be gone  
16 at any length of time -- for any length of time?

17 A Mostly if I go, I end up spending the night.

18 Q Did you have much interaction with Ron Finklea  
19 or Junior while they were living with you?

20 A No, sir.

21 Q Did y'all just live in the same place?

22 A We just lived there.

23 Q I do want to ask you, though, about if you  
24 remember having a conversation with the defendant,  
25 Ron Finklea, about something that Ron was telling



1 you that his wife said?

2 A It was -- he tell me that she said she hoped  
3 that he ain't spend all the money out of the bank  
4 account.

5 Q And what -- all of the money out of her  
6 account?

7 A Yeah.

8 Q Where was she living at this time?

9 A She was in Iraq.

10 Q What was his response to that?

11 A He tell me, he said, well, if his wife leave  
12 him, he would kill his self.

13 MR. HUBBARD: I don't have any further  
14 questions, Willie. Please answer any questions the  
15 defense might have.

16 MS. KIMBROUGH: We have no questions for  
17 Mr. Gripper.

18 THE COURT: All right. Mr. Gripper, you may  
19 step down.

20 MR. HUBBARD: The State calls Brandon Anderson.

21 THE COURT: Let's stand for a moment as  
22 Mr. Anderson is coming.

23 BRANDON ANDERSON,  
24 having been duly sworn, testified as follows:

25 THE COURT: You may be seated and tell us your

BRANDON ANDERSON - DIRECT BY MR. HUBBARD

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1 full name and spell your last name for us.

2 THE WITNESS: Brandon Anderson,

3 A-N-D-E-R-S-O-N.

4 DIRECT EXAMINATION

5 BY MR. HUBBARD:

6 Q Brandon, how old are you?

7 A Twenty.

8 Q And who is your mother?

9 A Teresa.

10 Q Is that Teresa...

11 A Finklea.

12 Q Finklea?

13 A Yes, sir.

14 Q And who's your grandfather?

15 A Robert Fuller.

16 Q Is that who you're living with right now?

17 A Yes, sir.

18 Q Now, Brandon, before we get going, I want to  
19 ask you a little something about you. Do you have a  
20 conviction for entering without breaking with intent  
21 and petty larceny from December of 2003?

22 A Yes, sir.

23 Q Was that in juvenile court?

24 A Yes, sir.

25 Q Up in Michigan?

1 A Yes, sir.

2 Q And from April of 2006, do you have a  
3 misdemeanor of resisting arrest?

4 A Yes, sir.

5 Q Now, let's get to this case. I've asked you  
6 about your grandfather, Robert Fuller. Is he  
7 present in the courtroom today, too?

8 A Yes, sir.

9 Q He's from Michigan with you?

10 A Yes, sir.

11 Q Do you know Ron Finklea?

12 A Yes, sir.

13 Q What did you call Ron Finklea or what do you  
14 call Ron Finklea?

15 A Dad.

16 Q Dad?

17 A (Witness nodded head.)

18 THE COURT: You need to respond verbally to  
19 every question. I didn't hear your answer to the  
20 last question.

21 THE WITNESS: Oh, dad.

22 BY MR. HUBBARD:

23 Q Dad?

24 A Yeah.

25 Q Do you ever recall living at [REDACTED] [REDACTED]

BRANDON ANDERSON - DIRECT BY MR. HUBBARD

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1 [REDACTED]?

2 A Yes.

3 Q Who was living there at the time?

4 A Me, Ron and Junior.

5 Q And Junior. Junior's, Theodore Davis?

6 A Yes.

7 Q I'm going to show you this chart. At the time  
8 you were living there, looking at State's Exhibit  
9 48, who was living in this far end room over here on  
10 the left side once you'd come in?

11 A My Uncle Willie, Willie Gripper.

12 Q Willie Gripper, your uncle?

13 A (Witness nodded head.)

14 Q Who was living at the far end?

15 A Ron Finklea.

16 Q On the far other side of the residence?

17 A Yes.

18 Q At that time, who was living in this room  
19 (indicating)?

20 A That was my room.

21 Q Your room. Where was Junior staying?

22 A On the couch in the living room.

23 Q Now, do you remember some time in 2003 going to  
24 a funeral, a family funeral, of an uncle?

25 A Yes.

- 1 Q Do you remember what uncle that was?
- 2 A Um...
- 3 Q You've got a lot of uncles, don't you?
- 4 A Yeah, I forgot his name.
- 5 Q Uncle Eddie?
- 6 A Yeah, Uncle Eddie.
- 7 Q Do you remember your grandfather coming down
- 8 from Michigan?
- 9 A Yes, sir.
- 10 Q And at this time, are you still living at Fort
- 11 Motte?
- 12 A Yes.
- 13 Q But your grandfather came down from Michigan to
- 14 that funeral?
- 15 A Yes.
- 16 Q Were you in school or out of school at that
- 17 time?
- 18 A I was out.
- 19 Q Y'all were finished for the summer?
- 20 A Yes.
- 21 Q Did you go to summer school?
- 22 A Yes.
- 23 Q Were you in or out of summer school? Did you
- 24 finish summer school or had you not started?
- 25 A I finished.

BRANDON ANDERSON - DIRECT BY MR. HUBBARD

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1 Q So it was after the regular school year and  
2 after summer school that his funeral was?

3 A Right.

4 Q And that's in 2003?

5 A Yes.

6 Q And at this funeral, and I think I just asked  
7 you this, did your grandfather, Robert Fuller, come  
8 down for the funeral?

9 A Yes.

10 Q And in what part of Michigan does he live in?

11 A Ypsilanti.

12 Q Ypsilanti, am I pronouncing it right? How is  
13 it again?

14 A Ypsilanti.

15 Q Is that near Detroit?

16 A About 30 minutes.

17 Q The day of the funeral, that night after the  
18 funeral, do you recall riding with Ron Finklea  
19 somewhere?

20 A Yes.

21 Q Where was he taking you?

22 A You said the night of the funeral?

23 Q Yes.

24 A To my Auntie house.

25 Q Is that your Aunt Nadine?

1 A Yes.

2 Q Where did she live?

3 A Sandy Run.

4 Q So he took you from your Fort Motte Residence  
5 to Sandy Run?

6 A Yes.

7 Q And dropped you off there?

8 A Yes.

9 Q Was your grandfather there?

10 A Yes.

11 Q What was the purpose of him dropping you off at  
12 that time? What were your plans at that time?

13 A I was going to Michigan for the summer.

14 Q For the summer?

15 A Right.

16 Q Did you have plans to come back before school  
17 started?

18 A Yes.

19 Q Did you ever come back from Michigan after the  
20 Summer of 2003 to live in South Carolina?

21 A No.

22 Q You never came back after this murder in 2003  
23 to live?

24 A No.

25 Q Did you live and still live with your

BRANDON ANDERSON - DIRECT BY MR. HUBBARD

1693

1 grandfather?

2 A Yes.

3 Q The night that Ron Finklea dropped you off at  
4 your Aunt Nadine's in Sandy Run, did he give you  
5 something?

6 A Yes.

7 Q What did he give you?

8 A A sealed envelope.

9 Q Did you open that envelope?

10 A No.

11 Q Did you ever open that envelope?

12 A No.

13 Q Did that envelope stay down here in South  
14 Carolina or did it go with you to Michigan?

15 A To Michigan.

16 Q What, if anything, did Ron Finklea say when he  
17 gave you that envelope?

18 A If something happened to him, to give it to my  
19 mom.

20 Q If something happened to him, give it to your  
21 mom, Teresa?

22 A Yes.

23 Q And this was some time late summer, after  
24 summer school?

25 A Yes.



BRANDON ANDERSON - DIRECT BY MR. HUBBARD

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1 Q Would that be June or so?

2 A Right, June.

3 MR. HUBBARD: Thank you, sir. Please answer  
4 any questions the defense might have.

5 MS. KIMBROUGH: We have no questions.

6 THE COURT: All right, sir. You may step down.

7 All right. It's about lunchtime, you think?

8 Everyone thinks?

9 We will break for lunch at this time for about  
10 an hour or so. I hope you enjoy your lunch and  
11 we'll see you then. Please do not discuss the case.

12 (The jury retires to the jury room.)

13 THE COURT: Is there anything before we break?

14 MR. MYERS: If it please the Court, when we  
15 start back, we will rest our case within an hour or  
16 less.

17 THE COURT: All right. Then the defense will  
18 be ready?

19 MS. KIMBROUGH: Yes, Your Honor.

20 THE COURT: Do you all want me to start  
21 considering charges, request to charges, if you have  
22 anything to hand up to me to look at?

23 MR. MYERS: We do not have anything at this  
24 time.

25 THE COURT: Defense?

1 MS. KIMBROUGH: Nothing at this time.

2 THE COURT: All right. Very good. We'll take  
3 an hour break. That clock says six after 1:00, so  
4 we'll say 2:15.

5 MR. MYERS: Is the Court considering going into  
6 the night to get it to the jury?

7 THE COURT: Yes, sir.

8 MR. MYERS: Thank you.

9 (Whereupon, there was a luncheon recess.)

10 THE COURT: Are there any matters before the  
11 jury comes out?

12 MR. MYERS: Not from the State, Your Honor.

13 MS. KIMBROUGH: Not from the defense.

14 THE COURT: All right. Let's have them come  
15 out.

16 (The jury returns to the courtroom.)

17 THE COURT: Mr. Solicitor, your next witness.

18 MR. MYERS: Call Mr. Robert Fuller.

19 ROBERT FULLER,  
20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat up there, please, sir.  
22 Once you have a seat, state your full name and spell  
23 your last, please.

24 THE WITNESS: Robert Fuller, F-U-L-L-E-R.

25 \*\*\*\*\*

ROBERT FULLER - DIRECT BY MR. MYERS

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1

## DIRECT EXAMINATION

2

BY MR. MYERS:

3

Q Mr. Fuller, where do you live, sir?

4

A Ypsilanti, Michigan.

5

Q And, approximately, how far is that from

6

Detroit?

7

A Thirty-one miles.

8

Q And are you originally from Michigan?

9

A No. I'm originally from South Carolina here.

10

Q And where?

11

A Sandy Run.

12

Q Teresa Finklea, how are you related to her?

13

A That's my daughter.

14

Q All right, sir. And the young fellow that

15

testified just before lunch, Brandon, are you

16

related to him?

17

A My grandson.

18

Q Is that Teresa's son?

19

A Yes, sir.

20

Q Is Ron Finklea his father?

21

A No, sir.

22

Q Now, Teresa, it's been said she's in Iraq now;

23

is that correct, sir?

24

A Yes, sir, she is.

25

Q Did she -- she said that she's been to Iraq

ROBERT FULLER - DIRECT BY MR. MYERS

1697

1 several times. Has she always been in the Army?  
2 Was there time that she was out for a little while  
3 or what?

4 A When they came to live with me for a few  
5 months, she was out.

6 Q And where did she live with you?

7 A Ypsilanti.

8 Q And what about her husband, the defendant?

9 A He was there, too.

10 Q Are they still married?

11 A No, sir.

12 Q They're divorced?

13 A Sir?

14 Q They're divorced?

15 A Yes, sir, they are.

16 Q And you said that they lived with you some in  
17 Michigan?

18 A Yes, they did.

19 Q And when they left there, where did they go  
20 live?

21 A They came to South Carolina. I believe they  
22 moved with Mr. Gripper, I believe, so I'm not quite  
23 sure.

24 Q And then after that, she went back into the  
25 Army; is that correct?

1 A Yes, sir.

2 Q Now, in the Summer of 2003, around June of that  
3 time, did you have an occasion to come down to South  
4 Carolina, Mr. Fuller?

5 A Yeah, I came to a funeral.

6 Q And when you came down to the funeral, when you  
7 came down was Brandon living with you in Michigan at  
8 that time or not?

9 A No, sir, he wasn't.

10 Q Where was he living?

11 A I believe he was living with Ron and Willie  
12 and, I believe, Junior.

13 Q Now, after that funeral, when you went back to  
14 Michigan, what happened to Brandon?

15 A After the funeral, Ron brought Brandon up that  
16 night. I believe he supposed to go back with us for  
17 summer vacation. And after the incident, he didn't  
18 return, you know, we didn't let him come back.

19 Q So when you came down for the funeral, you took  
20 your grandson, Brandon, back to Michigan with you?

21 A Yes, sir.

22 Q And he's been with you ever since?

23 A Yes, sir.

24 Q Now, on up into July, did you ever see an  
25 envelope that Brandon had received from the

ROBERT FULLER - DIRECT BY MR. MYERS

1699

1 defendant, Ron Finklea?

2 A Yes, sir, he had one.

3 Q When you saw that envelope, was it open or was  
4 it still sealed?

5 A It was still sealed.

6 Q And what did you do with it?

7 A I took it away from him.

8 Q Okay. Now, I'll come back to that in just a  
9 minute. Later on in July, did the defendant ever  
10 come up to Michigan to see you?

11 A Ron, yes, he did.

12 Q And who was with him?

13 A My daughter, Robin.

14 Q Robin Gripper?

15 A Yes, sir.

16 Q And when they came up to Michigan to see you,  
17 what was the purpose for them coming up there?

18 A He came to retrieve a gun that I had took away  
19 from my daughter.

20 Q Whose gun was it?

21 A It was my daughter's.

22 Q Teresa's?

23 A Yes, sir.

24 Q And did you give that gun to the defendant, Ron  
25 Finklea?

1 A Yes, I did.

2 Q What color was that gun?

3 A I believe it was black.

4 Q Black. Was it a shotgun or was it a pistol or  
5 what?

6 A It was a pistol.

7 Q Do you know anything about the caliber of it?

8 A I believe it was a nine millimeter.

9 Q Now, how long did the defendant, Ron Finklea,  
10 stay up there when he came to get that nine  
11 millimeter black pistol?

12 A No more than 20 minutes.

13 Q Twenty minutes?

14 A Yes, sir.

15 Q Have much of a conversation?

16 A We spoke. He hugged me, said, I'll see you  
17 later.

18 Q Did he want anything else other than the  
19 pistol?

20 A No, sir.

21 Q Did you know why he wanted that pistol?

22 A No, sir, I did not.

23 Q When he left, did you have any thoughts about  
24 it?

25 A Yeah. I said, why would a person drive 750

ROBERT FULLER - DIRECT BY MR. MYERS

1701

1 miles to pick up a pistol.

2 Q How long would it take to drive up there from  
3 South Carolina?

4 A Approximately between 12 and 14 hours, 14 if  
5 you stopped..

6 Q Now, this was before the murder?

7 A Yes, sir.

8 Q Now, after the murder, did you ever get a call  
9 from the Lexington County Sheriff's Department?

10 A Yes, I did after the murder.

11 Q Did you tell them anything about that letter  
12 that you had taken from Brandon?

13 A Yes, sir, I did.

14 Q And by then, had you read that letter?

15 A Yes, sir, I read it.

16 Q And what did you do with that letter,  
17 Mr. Fuller?

18 A They gave me a fax number and asked me to fax  
19 it to them.

20 Q Here's the letter and it's got Fuller at the  
21 top with a telephone number and a date?

22 A Yes, sir, that's my telephone number, August  
23 the 3rd, probably the day I faxed it to them, at  
24 7:31 p.m..

25 Q And what was the date that you faxed it to the



1 sheriff's department?

2 A It's got August the 3rd, 2003.

3 Q August the 3rd of 2003. And I think it's got  
4 your name right up here, too?

5 A Yes, sir.

6 MR. MYERS: We offer this in evidence, Your  
7 Honor.

8 THE COURT: Any objection?

9 MS. KIMBROUGH: Your Honor, may we approach  
10 briefly?

11 THE COURT: Yes.

12 (Whereupon, a bench conference was held off  
13 the record, in the presence of the jury, but out of  
14 the hearing of the jury.)

15 THE COURT: It can be marked for  
16 identification.

17 (State's Exhibit Number 89, letter, was  
18 marked for identification purposes.)

19 BY MR. MYERS:

20 Q Now, Mr. Fuller, did the defendant, Ron  
21 Finklea, did he call your daughter, T [REDACTED] -- T [REDACTED]  
22 or was there a nickname, he called her something  
23 else, T [REDACTED] or T [REDACTED] or something like that?

24 A I think he called her T [REDACTED].

25 MR. MYERS: Thank you, sir. That's all we

ROBERT FULLER - CROSS BY MS. KIMBROUGH

1703

1 have. Please answer the questions they have.

2 THE COURT: Cross-examination.

3 MS. KIMBROUGH: Beg the Court's indulgence.

4 (Pause.)

5 CROSS-EXAMINATION

6 BY MS. KIMBROUGH:

7 Q I just wanted to follow up on one point. When  
8 Ron went to Michigan, did another family member come  
9 with him?

10 A When he came up, yeah, my daughter was with  
11 him.

12 Q Which one was it, R [REDACTED]

13 A R [REDACTED], yes.

14 Q All right. And so the firearm that Ron  
15 collected, I just want to make sure I'm  
16 understanding your testimony correctly, did you know  
17 what type of pistol it was?

18 A No, not really. My daughter told me what it  
19 was.

20 MS. KIMBROUGH: Okay. Thank you.

21 MR. MYERS: That's all we have, Your Honor.

22 THE COURT: All right, sir. You may step down.

23 MR. MYERS: Call Doctor Inas Yacoub.

24 \*\*\*\*\*

25 \*\*\*\*\*

INAS YACoub - DIRECT BY MR. MYERS

1704

1 INAS YACoub,  
2 having been duly sworn, testified as follows:

3 THE CLERK: Doctor, once you have a seat,  
4 please state your full name, spelling your last.

5 THE WITNESS: My name is Inas Yacoub, last name  
6 is spelled Y-A-C-O-U-B.

7 DIRECT EXAMINATION

8 BY MR. MYERS:

9 Q Doctor Yacoub, what is your profession, ma'am?

10 A I'm a forensic pathologist.

11 Q And if you would, tell the jury a little bit  
12 about your background and your education in forensic  
13 pathology.

14 A A forensic pathologist is a doctor, graduated  
15 from medical school like all of the other doctors.  
16 You get training in pathology, which is the study of  
17 disease and I did get that training at the  
18 University of Alabama in Birmingham. It's a five  
19 year program of training in anatomic and clinical  
20 pathology. We study various tissues and we study  
21 various lab tests and what do they mean and when to  
22 order them and give information to the clinician to  
23 help in his decision how to treat that patient.

24 In forensic pathology, we study why people die  
25 and did they die from natural causes or did they die

INAS YACOB - DIRECT BY MR. MYERS

1705

1 from traumatic causes or if there is more than one  
2 thing going on, which of them takes the upper hand.  
3 In order to do that, I had a whole year of forensic  
4 pathology training in the fellowship also at the  
5 University of Alabama at Birmingham. This enabled  
6 me to be eligible for the boards in anatomic and  
7 clinical and forensic pathology, which I passed.  
8 And I've been working in that field for about 12  
9 years now.

10 Q And as part of that, you perform autopsies, of  
11 course?

12 A Yes.

13 Q And you said that you had some training in  
14 Alabama. Where else have you practiced as a  
15 forensic pathologist?

16 A In South Carolina.

17 Q And where was that?

18 A With the Newberry Pathology Associates in  
19 Newberry, South Carolina.

20 Q Is that Doctor Joel Sexton?

21 A Yes, sir.

22 Q And I think at one time that y'all had a good  
23 many counties that y'all worked with?

24 A Yes, sir.

25 Q Approximately, how many counties have y'all

1 done work with?

2 A I'm going to say at least 20, maybe 30. We had  
3 arrangements with coroners' cases that they felt  
4 needed an autopsy for violent causes and cases that  
5 were difficult because of its complexity or because  
6 of the condition of the body. These are cases that  
7 can be sent to us.

8 Q And where are you presently practicing, Doctor?

9 A I'm currently at the Office of the Chief  
10 Medical Examiners in Oklahoma City.

11 Q Same type of work?

12 A Yes, sir.

13 Q Now, have you testified in criminal cases  
14 before as to forensic pathology and causes of death?

15 A Yes, sir.

16 Q Approximately, how many times, Doctor?

17 A At least 80 by my last count, which was like  
18 three years ago and I have not kept up my count over  
19 the past three years, but at least 80 in South  
20 Carolina.

21 MR. MYERS: Your Honor, we would offer Doctor  
22 Yacoub as an expert in forensic pathology.

23 MS. KIMBROUGH: Your Honor, we stipulate that  
24 the doctor is well qualified.

25 THE COURT: Okay. She is admitted as an expert

INAS YACoub - DIRECT BY MR. MYERS

1707

1 in the field of forensic pathology.

2 MR. MYERS: Thank you, Your Honor.

3 BY MR. MYERS:

4 Q Now, Doctor, on August the 2nd of 2003 about  
5 1:00 p.m., did you perform an autopsy at the request  
6 of a coroner of Lexington County on a gentleman,  
7 Walter Sykes?

8 A Yes, I have.

9 Q And when you receive one in for an autopsy, do  
10 you examine the body and the clothing before you  
11 start doing anything?

12 A Yes.

13 Q Could you describe the clothing that you  
14 examined on Mr. Sykes before you started?

15 A Mr. Sykes was fully clothed. He was wearing a  
16 uniform, short sleeve top and a belt and a pair of  
17 pants and socks and shoes. I observed blood on the  
18 front of the clothes and on the back. And I  
19 observed burns on the upper most part of the top and  
20 on the right and back aspect of the pants. And I  
21 could smell the odor of gasoline on them.

22 Q Now, was the odor of gasoline, was it on the  
23 clothing and the body or not?

24 A Yes.

25 Q And then you proceed with your autopsy, you

1 determine a cause of death?

2 A Yes.

3 Q Doctor, when you did your autopsy, did you also  
4 have a diagram indicating various burn marks, wounds  
5 and things of that nature?

6 A Yes.

7 Q And because of those, would that diagram assist  
8 you in explaining to the jury what you found during  
9 your autopsy?

10 A Yes.

11 MR. MYERS: Your Honor, we would offer this in  
12 evidence.

13 MS. KIMBROUGH: No objection.

14 THE COURT: It's admitted without objection  
15 (State's Exhibit Number 90, diagram,  
16 admitted into evidence.)

17 BY MR. MYERS:

18 Q Doctor, I'm going to put this near you where  
19 you won't have to leave and you can refer to your  
20 notes if you want to.

21 MR. MYERS: Referring to Exhibit Number 90,  
22 Your Honor.

23 Q Now, first of all, if you would, you mentioned  
24 something about burns. Now I've heard burns being  
25 in degrees, what does that mean?

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1       **A**     Depending on how severe the burn is if it's  
2     just -- like when people go to the sun and they get  
3     exposed to sun, they can get a sunburn, which is  
4     just redness and some swelling of the area that's  
5     exposed to the sun, that's first degree and it  
6     shouldn't leave scars or marks after it heals.

7             Second degrees are involving not just the  
8     superficial layer of the skin, it goes a little bit  
9     deeper. And it's associated with redness and  
10    blistering of the skin and it tends to be painful,  
11    just like the first degree burns can be painful also  
12    because the nerve endings are still there. And when  
13    they heal, they heal with no scars if they're just  
14    superficial and did not -- they did not involve the  
15    skin appendages or the deeper layers of the skin,  
16    they can regenerate with no marks left.

17            Third degrees can be a little bit deeper and  
18    they can scar if they heal. And they can be  
19    painful, but because of the depth of them, they may  
20    not be painful because the nerve endings are burned  
21    at that point.

22            And then fourth degrees if you have full  
23    thickness of the skin in the underlying subcutaneous  
24    tissue and can involve the muscles, also.

25            So this is just the background explanation of



INAS YACOB - DIRECT BY MR. MYERS

1710

1 the degrees of burns. Did you want me to explain  
2 the injuries on --

3 Q If you would, if you would go ahead and talk  
4 about the thermal burns, please, ma'am, and you can  
5 refer to Exhibit 90.

6 A In Exhibit 90, there were -- I observed thermal  
7 burns on the head involving the nose and mouth  
8 areas; in the hair; observed some of the burns on  
9 the neck area; on the upper most aspect of the chest  
10 front and back; observed some thermal burns on the  
11 extremities, mainly on the back of the extremities;  
12 observed thermal burns on the right buttock area and  
13 thigh. And these range from first to third degree  
14 burns with what I could see. Some areas looked red,  
15 some areas looked like they were blistering and some  
16 areas looked like the burn was to the extent that  
17 you can see kind of thickness and discoloration of  
18 the skin.

19 I also observed -- we do the exam kind of head  
20 to toe, front and back, and the extremities. I  
21 observed another type of injury, which is the  
22 gunshot wounds. And they were two gunshot wounds.  
23 One was on the head in the right side of the face,  
24 just to the right and above the upper lip. And I  
25 observed another one on the left side of the neck.

INAS YACOUN - DIRECT BY MR. MYERS

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1           The one to the head, it was a penetrating  
2 wound, meaning that the bullet entered and it did  
3 not come out, that entered the right side of the  
4 face. It fractured the jaws. And it went backwards  
5 to the left and lodged in the back of the head. It  
6 fragmented along its course, but it did not enter  
7 the cranium cavity where the brain was.

8           It did cause the break of a tooth in its back.  
9 It did cause bleeding also in the mouth. And if  
10 that person was conscious, he could have swallowed  
11 that blood or the blood could have come outwards.  
12 So it's a matter of how much blood he lost with  
13 that. And he can get into trouble with the amount  
14 of blood loss and can get into trouble because of  
15 the location of that -- the injury can be infected  
16 and that infection can go to the brain, if he lived  
17 long enough to have that.

18           The second wound was to the neck, to the left  
19 side of the neck and that wound was a perforating  
20 gunshot wound. The bullet passed through from the  
21 left to the right. In its path, it went through the  
22 tongue, the most backward portion of the tongue, and  
23 it passed through the epiglottis, which is the cover  
24 of the larynx which protects any food or fluids or  
25 any foreign material -- or any material from getting

1 into the airway with the swallowing process.

2 So the wound to the neck having injured that  
3 epiglottis, it was associated with the bleeding and  
4 the blood entered into the airway. So not only do  
5 we have external bleeding, but there is bleeding  
6 inside the airway which can essentially cause a  
7 person to drown in his own blood. So, basically,  
8 this is the injuries that I found on Mr. Sykes.

9 Q Can you step down here please, Doctor?

10 A (Witness leaves the witness stand.)

11 Q This wound right here that went in on the left  
12 side of the neck, came out on the right, that was  
13 through and through?

14 A Yes.

15 Q And if you would show on me, show the path that  
16 that went?

17 A It would be from here to here. And I think my  
18 fingers would show (indicating).

19 Q Now, was it level or did it go up or go down?

20 A Slightly downward, but -- slightly downward,  
21 but definitely from left to right.

22 Q On that other one that you've got over here,  
23 you said it was on the right upper lip?

24 A Correct.

25 Q About where?

INAS YACOB - DIRECT BY MR. MYERS

1713

1 A About here and it went through backwards,  
2 slightly to the left in the back of --

3 Q Where did it end up back here?

4 A (Indicating).

5 Q Okay. Thank you, ma'am.

6 A (Witness resumes the witness stand.)

7 Q Now, you also did some internal examinations,  
8 also?

9 A Right.

10 Q What about the internal organs?

11 A In the internal organs, we do that basically to  
12 find out if the external injury that was apparent  
13 was associated with the internal injury and this  
14 would explain why that person passed away and to  
15 find out any underlying natural diseases that was  
16 there.

17 Basically, I did not find a rapidly fatal  
18 disease in Mr. Sykes. He did have an enlarged  
19 prostate, but he could live with that for some time.  
20 I did not find coronary artery disease or emphysema  
21 or other processes going on with him.

22 Q Otherwise, he was healthy; is that correct?

23 A Right. He did not have a reason to die from  
24 natural causes at that point in time that I could  
25 find.

1 Q The color of the organs, was there anything  
2 unusual about the color that indicated anything?

3 A The color of the organs were pale. And when I  
4 have people who get injured from gunshot wounds or  
5 stab wounds or blunt trauma and there is excessive  
6 bleeding, that would show in the form of color of  
7 organs if there is enough blood loss to give that  
8 change in color.

9 Q Now, the one in the upper lip that went in and  
10 then the back, that's the one that you recovered; is  
11 that right?

12 A That's the bullet that I recovered, that's  
13 correct.

14 Q And there was a law enforcement officer there  
15 with you from the sheriff's department, he took  
16 possession of that projectile?

17 A Right.

18 Q And it's in one of these things up here. I'm  
19 not going to bother showing you. But that's the one  
20 that came in and you said fractured the jaw, broke a  
21 tooth?

22 A Right.

23 Q Now, you said something about the bullet  
24 fragmented and lodged in the back of his neck. What  
25 do you mean fragmented?

INAS YACOB - DIRECT BY MR. MYERS

1715

1       A     I could see on the x-ray little fragments, kind  
2       of when the bullet struck the jaws, portions of it  
3       broke off and a big portion of it with the jacket  
4       lodged in the back of the head and a small fragment  
5       of the jacket I could retrieve, but the other  
6       fragments were along the path of that bullet from it  
7       passing through bone.

8       Q     Now, when you have gunshots, do you look for  
9       gunpowder particles or tattooing?

10      A     Right.

11      Q     And what do you mean by tattooing?

12      A     The gunpowder when it -- okay, when the gun is  
13      fired, you have a bullet and you have the gunpowder  
14      with it. If the gun was close enough to the target  
15      that not only the bullet goes out, but the gunpowder  
16      particles also and deposits on the target, then we  
17      can see those in the form of either the particles  
18      themselves or if they're embedded into the tissue,  
19      we see kind of red marks and call this tattooing. I  
20      did not observe that on him on either of the wounds.

21      Q     And that would indicate the closeness of the  
22      barrel of the gun to the person where the wound was?

23      A     Right.

24      Q     But you did not see any gunpowder particles or  
25      tattooing?

1 A That's correct.

2 Q Which meant the gun was farther enough back not  
3 to leave any from the blast coming out of the  
4 barrel?

5 A Right. Or if there was some intermediate  
6 target that part of tattooing -- part of the  
7 particles deposited on it before hitting the target.

8 Q Doctor, please tell the jury what conclusion  
9 you reached as to the cause of death of Mr. Walter  
10 Sykes?

11 A After the examination of the body, it was my  
12 opinion that the probable cause of death was gunshot  
13 wounds to the head and neck. And it was also my  
14 opinion that the thermal burns were other  
15 significant conditions contributing to that death.

16 Q One gunshot wound or both gunshot wounds?

17 A Either of those gunshot wounds could have  
18 caused death because of the amount of the bleeding  
19 and because of their location.

20 Q And do you have some terminology other than  
21 gunshot wound? I forgot what you said in your  
22 report, something about the bleeding or aspiration.  
23 Would you explain that to the jury as a result of  
24 the gunshots?

25 A Right. The exsanguination or -- is that what

INAS YACoub - CROSS BY MS. KIMBROUGH

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1 you're referring to? I'm not clear on the question.

2 Q You have in your report that the shots resulted  
3 in bleeding and aspiration. I was wondering what  
4 that meant.

5 A Right. The gunshot wounds, because of their  
6 location, the one to the right side of the head,  
7 there was bleeding into the oral cavity and if that  
8 person was conscious, he could have swallowed the  
9 blood, but because of the damage to the epiglottis  
10 from the gunshot wound to the left side of the neck  
11 that blood entered the airway itself. So this  
12 resulted in aspiration of blood into the airway. So  
13 there was a combination of bleeding externally, as  
14 well as bleeding internally from the gunshot wounds.

15 MR. MYERS: Thank you, Doctor. If you would,  
16 answer any questions they may have.

17 CROSS-EXAMINATION

18 BY MS. KIMBROUGH:

19 Q Good afternoon, Mr. Yacoub. How are you?

20 A Good.

21 Q Did I pronounce that right?

22 A Yes.

23 Q Good. Just a couple of follow-up questions.

24 Tattooing, is that also called stippling?

25 A Right.



1 Q And it occurs when the shot is very close?

2 A Close enough that the gunpowder particles could  
3 be deposited on the target.

4 Q Okay. And about how close would you have to be  
5 in order to produce that tattooing effect?

6 A This has to be test fired with the same gun and  
7 the same ammunition at various distances to say how  
8 far is that gun able to deposit those particles,  
9 fired by a firearm expert he would do that.

10 Q So -- I'm sorry. I didn't mean to interrupt  
11 you. So, in this particular case, there's really no  
12 way to know how far away the gun was at the time it  
13 was shot?

14 A Well, as far as my end of the examination, it's  
15 my observation that I did not observe any gunpowder  
16 particles or any gunpowder tattooing. So how far  
17 this had to have been, I don't know what type of gun  
18 and what type of, you know, I did not observe those,  
19 so I don't know how -- it appeared that it was far  
20 enough that those particles could not be deposited  
21 that I could see.

22 Q Okay. And did I understand your testimony  
23 correctly that the cause of death was either or both  
24 of the combined gunshot wounds?

25 A I think I've said that the probable cause of

INAS YACOB - CROSS BY MS. KIMBROUGH

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1 death was the gunshot wounds to the head and neck.

2 So either --

3 Q So, in other words, it was the combination of  
4 the two shots?

5 A Right. Either of those wounds by themselves  
6 could cause the death, but he had both of them, so  
7 it was my opinion that both of them were the cause  
8 of death.

9 Q Okay. And the burns that you noticed, I think  
10 you said that they ranged from first to second to  
11 third in different locations on Mr. Sykes?

12 A Right.

13 Q Okay. Without the gunshot wounds, would those  
14 burns have caused death?

15 A Mr. Sykes was about 56 years old by the time I  
16 had this examination done. And by my estimation,  
17 they were at least 30 percent as far as the body  
18 surface area, at least that amount of skin was  
19 burned off of him. So these -- there are charts for  
20 survival with that extent of burns.

21 If the burns are involving the head area, the  
22 nose and the mouth and the hot gases are inside  
23 getting into the airway and causing swelling in the  
24 mouth and airway, that's not a good thing to have.  
25 He can die from them because of neurogenic shock

1 because of the amount of pain that's associated with  
2 first or second degree burns with that extent of  
3 skin involved. He can loose fluids and get into  
4 hypervolemic shock. He can get infections and die  
5 of complications of those wounds either by  
6 aspiration, pneumonia or by infection of the skin.

7 So he -- they are potentially fatal and him  
8 having that extent of burns, in addition to bleeding  
9 from the two other gunshot wounds, that's not a  
10 helpful thing to have, but without being able to  
11 treat and seeing if this treatment works or not,  
12 it's hard to say, but they are significant amount of  
13 burns in my opinion.

14 Q So he was badly burned, but it's impossible to  
15 know whether or not those particular burns would  
16 have been fatal. Is that what you're saying?

17 A Without trying to treat?

18 Q Yes, ma'am.

19 A It's hard for me as a forensic pathologist to  
20 say, but there are charts that say, you know, the  
21 prognosis of so much burns of the skin in somebody  
22 that age is you have so much chance of survival.  
23 And I have no way of knowing as a forensic  
24 pathologist. I'm examining at the end of the  
25 spectrum.

1 MS. KIMBROUGH: Thank you very much.

2 MR. MYERS: No further questions, Your Honor.

3 THE COURT: All right. You may step down.

4 Ladies and gentlemen, I'm going to have you go  
5 to the jury room for a moment. We need to discuss a  
6 matter outside of your presence.

7 (The jury retires to the jury room.)

8 THE COURT: All right. On the issue of this  
9 exhibit.

10 MR. MYERS: Yes, sir, Your Honor, we would  
11 submit that that letter that we offered through  
12 Mr. Robert Fuller, that the letter talks about the  
13 defendant being involved in a violent act. It talks  
14 about things not going quite the way I wanted them  
15 to. It says, I am laid up some where with a bullet  
16 in my head. I've made a lot of mistakes in my life  
17 and I've messed up again. No, it's nothing to do  
18 with a female, it's our money. I just can't face  
19 you like this.

20 And it goes on to talk about some other things  
21 within the letter. But we would say, Your Honor,  
22 that goes to premeditation. If you're going to  
23 break into a safe, obviously you're wanting money.  
24 There's been testimony about him using his wife's  
25 money, taking his wife's money.

1           And it goes on and it talks about some type of  
2           violence in the future. We think it's relevant as  
3           to it was written before the murder, a good while  
4           before the murder. So he's planning on doing  
5           something to get money and some violence is going to  
6           be involved.

7           So we submit that that's relevant for the  
8           elements of malice, premeditation, motive and it  
9           shows planning and organization to commit a violent  
10          act, which a month later or so, he did.

11          **THE COURT:** Ms. Kimbrough.

12          **MS. KIMBROUGH:** Thank you, Your Honor. May it  
13          please the Court.

14          The letter is written in very, I believe,  
15          general terms insofar as what Mr. Finklea may have  
16          been referring to as some event, some violent event  
17          or some occurrence that he anticipated might occur  
18          in the future. He says, If you get this, then  
19          things didn't go the way I planned. I'm not sure  
20          that it is sufficiently connected to the actual  
21          crime that occurred, that it is relevant and, you  
22          know, I would certainly point out that obviously  
23          it's subject to varying interpretation what was  
24          meant.

25          As Mr. Myers pointed out, it was written some

1 time before this. It's not clear if it was related  
2 to something else that never occurred or occurred  
3 that we don't know about. It seems a little vague  
4 in the sense of having a rational connection to this  
5 particular crime. So we would ask that it be  
6 excluded on that basis, the basis that it's not  
7 relevant.

8 **THE COURT:** Mr. Myers.

9 **MR. MYERS:** We submit that it is relevant  
10 because it talks about needing money and money being  
11 a big thing. You don't go to rob a safe unless  
12 you're wanting money and that's the connection right  
13 there written well ahead of time.

14 We submit it's admissible and the jury can give  
15 it whatever weight they want to in connection with  
16 all of the other evidence. I think Mr. Willie  
17 Gripper testified the defendant said about taking  
18 money from his wife and not being be able to face  
19 her, shows a need for money, which is a motive right  
20 there.

21 **MS. KIMBROUGH:** And, Your Honor, I would point  
22 out the State does not need to prove motive. It's  
23 not a necessary element for any of these crimes.

24 **MR. MYERS:** But malice is and this shows  
25 premeditation and malice to commit a violent act.

1           **MS. KIMBROUGH:** It may go to a violent act, but  
2           we're not here for some undefined act. We're here  
3           for the events of August 2nd. And, Your Honor,  
4           respectfully, we believe it's not sufficiently  
5           connected, it's undated, we don't know when it was  
6           written, we don't know what it refers to and its  
7           prejudicial value would be much higher than its  
8           probative value.

9           **THE COURT:** Mr. Myers.

10          **MR. MYERS:** It's not remote because it was  
11          delivered to his son before he went back to Michigan  
12          after summer school was over with and they went back  
13          up there. The father got it in July, so we're  
14          talking about a month before the murder.

15          **MS. KIMBROUGH:** Just briefly, I don't think  
16          there's been testimony as to the exact date that the  
17          letter was transferred. I thought it was late June  
18          or early July, some time in that period, but that's  
19          still quite a considerable time period before this  
20          event occurred.

21          **MR. MYERS:** Here's the frame of events. He  
22          wrote this letter. He delivered it to his son. He  
23          says, Give that to your mother if something happens  
24          to me. The son goes with grandfather back to  
25          Michigan. Shortly thereafter, the defendant shows

1 up in Michigan to get a nine millimeter pistol, his  
2 wife's pistol. He got it from his father-in-law.  
3 The father-in-law said, I wondered why he would  
4 drive 750 miles, 12 to 14 hours, to stay 20 minutes  
5 to Ypsilanti, Michigan to get a pistol, turn around  
6 and go back to South Carolina. And a week or so  
7 later, you have a murder. I think all of this  
8 neatly connects together.

9 THE COURT: Yes, ma'am.

10 MS. KIMBROUGH: Just briefly, Your Honor, I'm  
11 not sure that Mr. Myers' time line is completely...

12 THE COURT: Well, what is your time line?

13 MS. KIMBROUGH: I thought that the trip to  
14 Michigan was some time in June or July rather than a  
15 week before the crime, and perhaps I've confused  
16 dates, but I don't think it was that close in time  
17 to the August 2nd murder.

18 We know that the letter was given to Brandon  
19 some time in either late June or early July, but we  
20 certainly don't know the date that it was authored.  
21 The letter could have been two months old at that  
22 time. It could have been three hours old. It could  
23 have been four months ago and he just passed it on  
24 to his son. We don't know when it was written.

25 And I guess, again, we also -- it does not



1 specifically link itself to what happened at  
2 Selectron. So, again, Your Honor, we would just  
3 submit that it's not sufficiently connected so as to  
4 be relevant.

5 THE COURT: Anything else, Mr. Myers?

6 MR. MYERS: No, sir.

7 THE COURT: All right. We're going to take a  
8 couple of minutes, let me think about this issue.

9 MR. MYERS: Your Honor, Doctor Yacoub is our  
10 last witness.

11 THE COURT: All right. We'll take about five  
12 minutes and then come back.

13 (Brief Recess.)

14 THE COURT: Considering the testimony that I've  
15 heard in this case relating to the defendant's  
16 concern that his wife would be upset with him if he  
17 blows her money, also considering the closeness in  
18 time between the letter given to the son and to the  
19 murder, also considering contents of the letter  
20 which the jury could infer that it involved some  
21 planning to commit a criminal activity to get money,  
22 I find that the letter is relevant and also that the  
23 probative value outweighs its prejudicial effect to  
24 the defendant, with the exception of the phrase in  
25 the letter which says that, Brandon, son, please

1 change. You're headed down a dead end street. You  
2 are just like Tommy and I know if I came across you,  
3 I would put a bullet in your head. I find that that  
4 particular sentence would be inappropriate in this  
5 phase of this trial and would have to be redacted  
6 from the exhibit.

7 MR. MYERS: Would it be all right, Your Honor,  
8 if you just mark on there what you want taken out  
9 and we'll go over and remove it and make another  
10 copy?

11 THE COURT: Well, it's -- I guess, I'll do  
12 that.

13 MR. MYERS: All right. Thank you, sir.

14 THE COURT: Ms. Kimbrough.

15 MS. KIMBROUGH: Yes, Your Honor. I just wanted  
16 to make sure our objection to the admission of the  
17 letter is noted for the record. Thank you.

18 (Pause.)

19 THE COURT: I've written -- drawn a line  
20 through a copy of it, which the part I've taken out  
21 states, And I know if I came across you, I would put  
22 a bullet in your head.

23 MR. MYERS: Thank you, sir.

24 THE COURT: That, obviously, would introduce  
25 some unrelated crime or possible thought in his mind

1 about committing some other crime unrelated to this  
2 offense and it would be improper.

3 Now, Solicitor indicates -- I guess you may  
4 publish this letter in close or not publish it in  
5 close?

6 MR. MYERS: We'll get the redacted portion  
7 fixed up and then put it in as an exhibit and I will  
8 not publish it at this time.

9 THE COURT: All right. And that brings us to  
10 the defense. Once the State rests, the jury will be  
11 in here and will be ready to go with the defense.  
12 Are y'all ready?

13 MS. KIMBROUGH: Well, we'll have to make a  
14 motion for directed verdict.

15 THE COURT: All right. Do you want to do that  
16 now? All of the evidence is in except for the State  
17 resting in the presence of the jury.

18 MR. MYERS: Yes, sir.

19 MS. KIMBROUGH: Certainly, Your Honor. We can  
20 get that out of the way.

21 May it please the Court. Your Honor, on behalf  
22 of Ron Finklea, we move for a directed verdict as to  
23 all charges. And we would offer -- based on  
24 sufficiency of the evidence. And we also renew all  
25 of our prior objections.

1           And I would specifically like to address the  
2 arson charge.

3           **THE COURT:** All right.

4           **MS. KIMBROUGH:** The State has alleged arson in  
5 the first degree. And according to the statute,  
6 that's 16-11-110, the State has to show some burning  
7 or blistering or charring type of damage to the  
8 building structure or property.

9           And I believe that in that regard, there's been  
10 no testimony that any portion of the Selectron  
11 building was charred, discolored or burned. And  
12 based on my listening to the evidence as to what was  
13 burned, it appears that the closest thing to the  
14 building being burned was the carpeting.

15           However, there was absolutely no evidence that  
16 any permanent part of the structure was damaged.  
17 And we believe under the statute, there would have  
18 to be some showing that the wall was burned or the  
19 ceiling was burned or somehow the concrete flooring  
20 was burned or charred or damaged. And so in regard  
21 to the arson, Your Honor, I would just offer those  
22 specific thoughts. Thank you.

23           **THE COURT:** All right. What says the State?

24           **MR. MYERS:** Your Honor, we have photographs in  
25 evidence that shows charring and burning around in

1       there. As a matter of fact, when the lady who was  
2       the female officer there that night, when she came  
3       back in, she said there was a fire on the desk that  
4       was burning right there. And we have the  
5       photographs that the burn -- matter of fact, the  
6       firemen's testimony, they had to take some stuff  
7       outside because it was still burning and smoldering  
8       in the office and they had to take it outside for  
9       safety reasons.

10       So the evidence presented along with the  
11       fixtures, the property inside the security office,  
12       along with all of the charring on the victim, along  
13       with that chair he was in with the photographs, we  
14       submit it fits under the arson statute.

15       **THE COURT:** The charge on first degree arson is  
16       that the State must prove beyond a reasonable doubt  
17       that the defendant willfully and maliciously caused  
18       an explosion, set fire to, burned or caused to be  
19       burned, aid or counseled or procured the burning of  
20       certain property. Burning means actual combustion  
21       of some portion of a piece of property, it's not  
22       necessary that the property be consumed or  
23       destroyed. A charring of the material which the  
24       property is constructed or a change in the fiber or  
25       composition of the structure is required for a

1 burning.

2 The evidence in this case indicates a fire was  
3 set, that the -- is not totally clear as to the  
4 total extent of the damage done, the witness said  
5 that she thought there was an explosion. I believe  
6 that taking the evidence in the light most favorable  
7 to the State, that sufficient evidence is presented  
8 to present that charge to the jury and I  
9 respectfully deny the motion.

10 MS. KIMBROUGH: Thank you, Your Honor.

11 MR. MYERS: We have that part blacked out.

12 (Pause.)

13 THE COURT: Do you want to substitute this or  
14 how do you want to deal with this?

15 MR. MYERS: If we could just make it as a  
16 Court's Exhibit for the time being, Your Honor, 89  
17 for identification purposes, and then we can just  
18 give this 91.

19 (State's Exhibit Number 91, redacted letter,  
20 was marked for identification purposes.)

21 THE COURT: Anything further from the defense?

22 MS. KIMBROUGH: Not at this time, Your Honor.  
23 Thank you.

24 THE COURT: Would you like for me to inquire of  
25 the defendant concerning his right to testify or not

1 to testify at this time?

2 MS. KIMBROUGH: Your Honor, we...

3 THE COURT: Or do you have other witnesses to  
4 present?

5 MS. KIMBROUGH: We do have one witness.

6 THE COURT: All right. Well, we'll go  
7 according to order and bring the jury out and  
8 proceed.

9 (The jury returns to the courtroom.)

10 THE COURT: The jury is back.

11 Mr. Solicitor.

12 MR. MYERS: Your Honor, with Doctor Yacoub, the  
13 State would rest its case in chief at this time.

14 THE COURT: All right. And the Court admits  
15 State's Exhibit Number 91.

16 MR. MYERS: Thank you, sir.

17 (State's Exhibit Number 91, redacted letter,  
18 admitted into evidence.)

19 THE COURT: All right. Ladies and gentlemen,  
20 you have heard the State's case. It's now the  
21 defense's turn.

22 For the defense.

23 MS. KIMBROUGH: Thank you, Your Honor.

24 Mr. Finklea calls Robin Gripper to the stand.

25 THE COURT: Ms. Gripper.

ROBIN GRIPPER - DIRECT BY MS. KIMBROUGH

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1 ROBIN GRIPPER,  
2 having been duly sworn, testified as follows:

3 THE CLERK: Once you have a seat, speak up loud  
4 and clear, state your full name and spell your last  
5 please.

6 THE WITNESS: Robin Gripper, G-R-I-P-P-E-R.

7 DIRECT EXAMINATION

8 BY MS. KIMBROUGH:

9 Q Good afternoon, Ms. Gripper. How are you?

10 A Fine.

11 Q Robin, where do you live?

12 A [REDACTED].

13 Q Is that here in Lexington County?

14 A [REDACTED].

15 Q And, Ms. Gripper, who is your brother?

16 A Theodore Davis, Junior.

17 Q And who are your sisters?

18 A Irena Denise Fuller, Teresa Finklea and  
19 Veronica Bertail (ph) Davis.

20 Q And what is your relationship to Ron Finklea?

21 A That's my brother-in-law.

22 Q I just wanted to ask you, do you -- thinking  
23 back about four years now to the time period of  
24 around August 2003 and for several months prior to  
25 that, did you have occasion to spend any time around



1 Ron and Theodore?

2 A Yes. I used to go visit with my  
3 brother-in-law. We used to hang around.

4 Q And at that time, would you go to the Fort  
5 Motte Road home that they shared?

6 A Not too much, me and my husband wasn't getting  
7 along.

8 Q But would they come see you, also?

9 A If I needed to go somewhere, my brother-in-law  
10 took me, yes.

11 Q Okay. All right. So would you say that you  
12 are familiar with the relationship between your  
13 brother and Ron during that time period?

14 A They used to ride together.

15 Q Okay.

16 A But not so often. I saw them one time  
17 together.

18 Q Okay. And do you remember speaking with me and  
19 Dave McDougall?

20 A Yes, ma'am.

21 Q Okay. And insofar as Theodore and Ron sharing  
22 personal items, what can you tell us about that?

23 A When my brother didn't have clothes and stuff,  
24 my brother-in-law gave him clothes.

25 Q Do you recall them sharing certain items of

ROBIN GRIPPER - DIRECT BY MS. KIMBROUGH

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1 clothing?

2 A No, he's not that type. He don't wear stuff  
3 behind people. He would give them away.

4 Q So you don't recall telling Mr. McDougall and I  
5 that Ron and Theodore shared clothes; do you  
6 remember that?

7 A Well, I know he'd give him clothes and shoes  
8 and stuff because my brother didn't have anything.

9 Q Okay. I'm sorry. I just wanted to make sure I  
10 understood.

11 A Yeah.

12 Q So Ron would have things and he would share  
13 them with Theodore?

14 A Yes, ma'am.

15 Q Shoes and clothes?

16 A Uh-huh.

17 Q I wanted to ask you a little bit about your  
18 brother. Is he your younger brother or is he older  
19 than you?

20 A He's my baby brother.

21 Q He's your baby brother. Is he the baby out of  
22 all of y'all?

23 A Yes, ma'am.

24 Q How would you characterize your brother's  
25 personality?

1           **A**     The truth?

2           **MR. MYERS:** Objection, relevance.

3           **MS. KIMBROUGH:** Your Honor, there's been quite  
4 a bit of testimony from the Solicitor's witnesses  
5 concerning the relationship between Theodore Davis  
6 and Ron Finklea. And there have been numerous  
7 characterizations, I believe at least two of the  
8 witnesses characterized Theodore as being a  
9 follower.

10          **MR. MYERS:** I have no objection as to comparing  
11 him to the defendant, that wasn't the question.

12          **THE COURT:** The objection is overruled. You  
13 may answer, ma'am.

14          **THE WITNESS:** What's the question again?

15          **BY MS. KIMBROUGH:**

16          **Q**     How would you characterize your brother's  
17 personality? What's he like?

18          **A**     He's fun some time, but he's a great liar.

19          **Q**     He's a great liar?

20          **A**     Yeah, he never tells the truth.

21          **Q**     What sorts of circumstances have you seen your  
22 brother lie in?

23          **A**     Stealing, mostly, taking things that's not his.

24          **Q**     Okay. And, again, just referencing the  
25 conversation that we had with Mr. McDougall, would

ROBIN GRIPPER - CROSS. BY MR. MYERS

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1 your brother lie to get himself out of trouble?

2 A Yes.

3 Q You've seen this behavior?

4 A Yes.

5 MS. KIMBROUGH: Please answer any questions  
6 that the Solicitor may have.

7 CROSS-EXAMINATION

8 BY MR. MYERS:

9 Q Ms. Gripper, you said that you hung around with  
10 the defendant some, y'all would be together?

11 A Yeah. When I need to go like to DSS or  
12 something like that, he would come and take me.

13 Q As a matter of fact, you -- he came by and  
14 picked you up that Thursday to go to the airport to  
15 rent that car?

16 A Uh-huh.

17 Q And he rented the white Mustang with the  
18 Florida tags?

19 A Yes, sir.

20 Q You went there with him?

21 A Yes, sir.

22 Q And he used a Bank of America credit card to  
23 rent that car?

24 A I guess.

25 Q And then he took you to a store somewhere and

1       you got some beer or cigarettes or something?

2       A     Yes, sir, Exxon.

3       Q     Then he took you back home?

4       A     To my sister, yes.

5       Q     Your brother, Junior, wasn't with y'all at the  
6       airport?

7       A     No, sir.

8       Q     That was just you and the defendant?

9       A     Yes, sir.

10      Q     And, also, he took you on a trip to Michigan?

11      A     Yes, sir.

12      Q     The latter part of July, about a week and a  
13      half before the murder I think you said?

14      A     I think it was like around June, July or  
15      something.

16            THE COURT:  Speak louder, ma'am.

17            THE WITNESS:  I think it was like around in  
18      June or July.  I don't think it was around -- I  
19      don't know.

20      BY MR. MYERS:

21      Q     Well, when you said that you got that gun and  
22      he told you to put it in a glove compartment about a  
23      week and a half before the murder?

24      A     Well, I really don't remember the date and the  
25      time.

## ROBIN GRIPPER - CROSS BY MR. MYERS

1739

1 Q You disagree it was a week and a half before  
2 the murder?

3 A (No response.)

4 Q You just don't remember?

5 A I don't remember.

6 Q But he came and got you, said, Ms. Gripper, or  
7 Robin, let's go to Michigan?

8 A Me and my baby to go see my dad.

9 Q Right. Your father, Mr. Robert Fuller?

10 A Yes, sir.

11 Q And y'all left South Carolina -- where did  
12 y'all leave, [REDACTED] or where?

13 A Yes, sir.

14 Q You left [REDACTED]?

15 A Uh-huh.

16 Q Drove to Michigan?

17 A My dad's house.

18 Q To your dad's house?

19 A Uh-huh.

20 Q And you went in Teresa's black Mercury Tracer?

21 A Yes, sir.

22 Q And you went to your dad's?

23 A Yes, sir.

24 Q And the defendant, Ron Finklea, got that black  
25 nine millimeter pistol, which was your sister's?

1 A I don't know what color it was.

2 Q It was your sister's gun?

3 A Yes, sir, that's all I know.

4 Q And got that gun, told you to put it in a glove  
5 compartment?

6 A Uh-huh.

7 Q And then as soon as you get the gun, y'all turn  
8 around and drive all the way back to [REDACTED] [REDACTED]?

9 A Uh-huh.

10 Q Didn't spend the night anywhere?

11 A No, sir.

12 Q Just drove up there straight through?

13 A Yes, sir.

14 Q Got the pistol?

15 A Uh-huh.

16 Q Turned around and drove straight back?

17 A Yes, sir.

18 Q And, also, we talked with you about your  
19 sister, Teresa?

20 A Uh-huh.

21 Q Him spending her money?

22 A Uh-huh.

23 THE COURT: Please use words, yes or no,  
24 instead of uh-huh.

25 THE WITNESS: Okay. I'm sorry.

## ROBIN GRIPPER - CROSS BY MR. MYERS

1741

1 BY MR. MYERS:

2 Q Teresa said she knew about him taking all of  
3 her money while she was in Iraq?

4 A Yes, sir. She said she saw all of the bank  
5 statements.

6 Q And the defendant said he was worried about  
7 that, said he'd rob a bank to try to get the money  
8 back, didn't he?

9 A Yes.

10 Q And, also, after you found out about the  
11 murder, you went to his trailer in Fort Motte and  
12 y'all found that K-Mart receipt?

13 A Yes, sir.

14 Q For the gas can and the gloves that they had  
15 gotten on Thursday?

16 A Yes, sir.

17 Q That Ron had gotten?

18 A Yes, sir.

19 Q Did you go with Ron to K-Mart to get that gas  
20 can and those gloves?

21 A No, sir.

22 Q You wasn't there with him?

23 A No, sir.

24 Q That was on the Thursday after you rented the  
25 car with him?



1           A     I wasn't with them. They had dropped me back  
2           to my sister house.

3           Q     Ma'am?

4           A     The dropped me back to where I was living at  
5           with my sister.

6           Q     And then he went and got the gas can and  
7           gloves?

8           A     I don't know. He just said he had family  
9           matters, he had to go to Alabama.

10          Q     He was going to Alabama?

11          A     Yes, sir, and that was for that weekend and he  
12          said he would be back.

13          Q     He was going to Alabama in that white Mustang  
14          with the --

15          A     Yes, sir, he rented the car to go to Alabama.

16          Q     And you said something about Latisha Gilmore,  
17          that was somebody that would go to Alabama with him?

18          A     Yes. I guess for the -- the company for the  
19          ride, yes, sir.

20          Q     Sometimes Latisha Gilmore would go to Alabama  
21          with --

22          A     I only know she went one time, yes.

23          Q     But that was way before this?

24          A     Yes.

25          Q     But you went with him to rent the car?

ROBIN GRIPPER - REDIRECT BY MS. KIMBROUGH

1743

1 A Uh-huh.

2 THE COURT: Yes or no.

3 THE WITNESS: Oh, yes.

4 BY MR. MYERS:

5 Q You went with him to Michigan to get the  
6 pistol?

7 A Yes, sir.

8 Q And you went out there at the house and found  
9 that K-Mart receipt where he had gotten the gas can  
10 and the gloves?

11 A (No response.)

12 Q You went to his house out there after the  
13 murder and found that K-Mart receipt about the gas  
14 can and the gloves?

15 A Yes.

16 MR. MYERS: Thank you, ma'am.

17 THE WITNESS: You're welcome.

18 THE COURT: Any redirect?

19 MS. KIMBROUGH: Just a couple of quick  
20 questions.

21 REDIRECT EXAMINATION

22 BY MS. KIMBROUGH:

23 Q We talked about your impressions of your  
24 brother. Did you also form some impressions about  
25 Ron?

1       **A**       I never knew anything bad about him. He was  
2       always a great guy, a fun guy to be around. I never  
3       had no problems with my brother-in-law, never. I  
4       never seen a bad side. I didn't know he had one,  
5       but, no.

6       **MS. KIMBROUGH:** Thank you.

7       **THE WITNESS:** You're welcome.

8       **MR. MYERS:** Nothing further, Your Honor.

9       **THE COURT:** You may step down, ma'am.

10       Your next witness.

11       **MS. KIMBROUGH:** Your Honor, the defense would  
12       rest.

13       **THE COURT:** Ladies and gentlemen, before  
14       entertaining anything further from the defense, let  
15       me have you go to the jury room for a break. Please  
16       do not discuss the case

17       (The jury retires to the jury room.)

18       **THE COURT:** Ms. Kimbrough, I asked you whether  
19       you wanted me to inquire of the defendant as to his  
20       constitutional right to testify or not to testify  
21       prior to starting your defense, you said you had a  
22       witness ready. Before the Court can allow you to  
23       rest, I must communicate with the defendant  
24       concerning those constitutional rights.

25       **MS. KIMBROUGH:** Yes, Your Honor, I'm sorry. I

1 jumped ahead a step.

2 THE COURT: Mr. Finklea, if you'll come around,  
3 sir, and be sworn.

4 RON O'NEIL FINKLEA,  
5 having been duly sworn, testified as follows:

6 THE COURT: Mr. Finklea, at this time, I'm  
7 going to explain to you certain of your rights. If  
8 you do not understand anything that I say, please  
9 let me know. If you want me to explain anything in  
10 more detail, please let me know. Do you understand?

11 DEFENDANT FINKLEA: Yes, sir.

12 THE COURT: We've now reached the stage of the  
13 trial where you may present your defense as you have  
14 already started to present through your last  
15 witness. You have the right to claim the  
16 protections given to you by the Fifth Amendment to  
17 the Constitution of the United States.

18 This amendment states in part that no person  
19 shall be compelled in any criminal case to be a  
20 witness against himself. This means that you cannot  
21 be required to testify in this case. You do have  
22 the right to testify on your own behalf, however,  
23 but no one can make you testify. This is a personal  
24 right, personal to you, and no one can waive this  
25 right except you, Mr. Finklea.

1           Now, if you decide to testify, Mr. Finklea, you  
2 will be subject to the same rules that govern other  
3 witnesses and you may be examined and cross-examined  
4 on any relevant issue in this case. In addition, if  
5 you have any convictions involving dishonesty or  
6 false statements or for crimes punishable by more  
7 than one year and I determine that the probative  
8 value of admitting this evidence outweighs its  
9 prejudicial effect to you, the Solicitor will be  
10 able to introduce your record to attack your  
11 credibility.

12           Now, as I understand it, you have no criminal  
13 record. Is that right, Solicitor?

14           **MR. MYERS:** Yes, sir.

15           **THE COURT:** So there is no criminal record that  
16 would be introduced to attack your credibility. If  
17 you decide to testify, this decision on your part  
18 must be freely, voluntarily and intelligently made  
19 with knowledge of the protections given to you by  
20 the Fifth Amendment and the consequences of your  
21 decision to testify.

22           Now, if you decide not to testify, I will  
23 instruct the jurors that they cannot give the fact  
24 that you did not testify any consideration  
25 whatsoever, that there is to be absolutely no

1 prejudice to you because you did not testify. It is  
2 left entirely up to you whether or not you testify.

3 Now, you may talk with your attorneys again,  
4 with your family and friends or anyone else that you  
5 might want to talk to, but the final decision will  
6 be left entirely up to you. Do you understand what  
7 I've explained to you?

8 DEFENDANT FINKLEA: Yes, sir.

9 THE COURT: Do you have any questions about  
10 what I've explained to you?

11 DEFENDANT FINKLEA: No, sir.

12 THE COURT: Have you discussed with your  
13 lawyers whether or not you should testify in this  
14 case?

15 DEFENDANT FINKLEA: Yes, sir, I have.

16 THE COURT: Do you wish to talk with him  
17 anymore at this time?

18 DEFENDANT FINKLEA: No, sir, I don't.

19 THE COURT: Have you made up your mind as to  
20 whether or not you're going to testify?

21 DEFENDANT FINKLEA: Yes, sir, I have.

22 THE COURT: Have you had enough time to make up  
23 your mind as to whether or not you should or want to  
24 testify?

25 DEFENDANT FINKLEA: Yes, sir, I have.

1           **THE COURT:** Do you wish to testify?

2           **DEFENDANT FINKLEA:** No, sir, I don't.

3           **THE COURT:** All right. Very well, Mr. Finklea.

4           **MS. KIMBROUGH:** I was just going to ask Your  
5 Honor when the jury comes back in, would you like me  
6 to rest at the appropriate time?

7           **THE COURT:** Yes, in the presence of the jury  
8 after he has been advised of his right to testify.  
9 But when they come back, if you are going to rest,  
10 then we're about through with this case except for  
11 arguments and charge and deliberations, which is  
12 quite a bit -- but it's still relatively early.

13           Request to charges, if any?

14           **MR. MYERS:** None from the State, Your Honor.

15           **MS. KIMBROUGH:** Nor from the defense.

16           **THE COURT:** Well, let me ask you a few  
17 questions. Do you want me to charge the hand of one  
18 is the hand of all? What says the State or the  
19 defense?

20           **MR. MYERS:** Whatever the defense says, Your  
21 Honor.

22           **THE COURT:** From the defense, do you want me to  
23 charge hand of one is hand of all?

24           **MS. KIMBROUGH:** Yes.

25           **THE COURT:** All right. I'll charge that. Do

1       you want me to charge criminal intent?

2               **MR. MYERS:** Whatever the defendant says, Your  
3 Honor.

4               **THE COURT:** What do you say, that there's no  
5 way that the jury can dissect a person's mind and to  
6 determine what they intended to do, they must decide  
7 it based on the situation, the facts and  
8 circumstances?

9               **MS. KIMBROUGH:** Yes, Your Honor.

10              **THE COURT:** Do you want me to charge  
11 identification as being an issue in the case?

12              **MS. KIMBROUGH:** Yes, Your Honor.

13              **THE COURT:** What says the State?

14              **MR. MYERS:** Whatever they decide is fine.

15              **THE COURT:** We'll charge identification as  
16 well. Do you want me to submit the indictments to  
17 the jury and have them write on the back of the  
18 indictments guilty or not guilty as to each  
19 particular indictment?

20              **MR. MYERS:** Your Honor, on all of these, we  
21 take no position. Whatever the defense wants, we'll  
22 agree with them.

23              **THE COURT:** All right. Ms. Kimbrough, Mr.  
24 Soltis?

25              **MR. SOLTIS:** That's fine.



1           **THE COURT:** All right. It's either guilty or  
2 not guilty and there are no second offenses or  
3 anything of that nature on the indictment. So  
4 there's a place on the back of the indictment for  
5 the verdict of guilty or not guilty.

6           How many minutes do you all need before closing  
7 arguments?

8           **MR. MYERS:** Whatever time they want is fine  
9 with us, Your Honor.

10          **THE COURT:** Before we start closing arguments,  
11 do you need a break before closing arguments, Ms.  
12 Kimbrough?

13          **MS. KIMBROUGH:** Briefly, Your Honor.

14          **THE COURT:** Briefly, like five minutes?

15          **MS. KIMBROUGH:** That should be sufficient.

16          **THE COURT:** All right. Of course, Mr. Finklea  
17 has the right to make the final argument during this  
18 phase of the trial and also during the penalty  
19 phase, should we go there. That means he has a  
20 right to be the last one to address the jury; is  
21 that right, Solicitor?

22          **MR. MYERS:** He and his attorney can address the  
23 jury in this phase, Your Honor. And we would kind  
24 of like to know whether he's going to do that in  
25 this phase since we have to make the first argument.

1           **THE COURT:** When he and his attorney address  
2 the -- in this procedure, who goes first?

3           **MR. MYERS:** We go first.

4           **THE COURT:** Then the attorney goes, then  
5 Mr. Finklea has a right to final word?

6           **MR. MYERS:** If he chooses to do so.

7           **THE COURT:** Is that your understanding as well,  
8 Mr. Soltis and Ms. Kimbrough?

9           **MS. KIMBROUGH:** Yes, Your Honor.

10          **MR. SOLTIS:** That's correct, Judge.

11          **THE COURT:** Mr. Finklea, if you'll stand again  
12 please and you're still under oath. The law  
13 provides that you have the right in this case, since  
14 this is a case in which the State is seeking the  
15 death penalty, that you have a personal right to  
16 make the last argument to the jury in this case, in  
17 both phases of this trial. Do you understand that?

18          **DEFENDANT FINKLEA:** Yes, sir.

19          **THE COURT:** And have you talked with your  
20 lawyers about that?

21          **DEFENDANT FINKLEA:** Yes, sir.

22          **THE COURT:** And so you're fully -- you're  
23 familiar with the law that says you have the right  
24 to make the last argument? You're familiar with  
25 that right that you have?

1           **DEFENDANT FINKLEA:** Yes, sir.

2           **THE COURT:** And do you intend to make the last  
3 argument?

4           **DEFENDANT FINKLEA:** No, sir, I don't.

5           **THE COURT:** Do you intend to argue to the jury?

6           **DEFENDANT FINKLEA:** No, sir.

7           **THE COURT:** Do you want to waive your right to  
8 make the last argument to the jury in this guilt  
9 phase of this trial?

10          **DEFENDANT FINKLEA:** Yes, sir.

11          **THE COURT:** Anything else on that issue, State  
12 or the defense?

13          **MR. MYERS:** Not from the State, Your Honor.

14          **MS. KIMBROUGH:** Not from the defense.

15          **THE COURT:** And, Ms. Kimbrough and Mr. Soltis,  
16 you have discussed that with Mr. Finklea and he is  
17 fully informed, as he just indicated, that he has  
18 this right?

19          **MR. SOLTIS:** I've discussed it with him, yes,  
20 sir. He understands his right.

21          **THE COURT:** All right. Very good. We'll take  
22 about five minutes then.

23          **MR. MYERS:** Could you give us ten because we  
24 may have to get some stuff lined up here on the  
25 exhibits?

1           **THE COURT:** All right, we'll take ten.

2                   (Brief Recess.)

3           **THE COURT:** Ready for closing argument?

4           **MR. HUBBARD:** The State's ready.

5           **MS. KIMBROUGH:** Defense is ready.

6           **THE COURT:** Now, for the folks who are in the  
7 courtroom, movement will be restricted during  
8 closing arguments. While the lawyers are talking or  
9 while I am talking, there will be no one coming and  
10 going, so the bailiffs will secure the doors. In  
11 between, you may be able to get up and go if you  
12 need to. Bring in the jury.

13                   (The jury returns to the courtroom.)

14           **THE COURT:** The jury is back.

15           Ms. Kimbrough.

16           **MS. KIMBROUGH:** Thank you, Your Honor. The  
17 defense rests.

18           **THE COURT:** All right. Ladies and gentlemen,  
19 the defense has rested. Any reply by the State?

20           **MR. MYERS:** None from the State, Your Honor.

21           **THE COURT:** All right. Ladies and gentlemen,  
22 you've now heard all of the evidence in this case.  
23 It's now time to hear the closing arguments of the  
24 lawyers and the defense.

25                   First, the State, Mr. Hubbard.

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

3           THE COURT: Yes.

4           MR. HUBBARD: If that's me, I don't remember.  
5 Five days after one of the most brutal crimes you  
6 could ever envision or imagine, five days, If that's  
7 me, I don't remember. It's incredible. Of all the  
8 things that could have come from that man's mouth,  
9 that says it all.

10           How do you forget? How do you forget putting  
11 two rounds in a man, not one, two in the face,  
12 looking him square in the face, shooting him in the  
13 face and then in the neck and watching him bleed,  
14 then dousing him with gas and lighting him on fire?  
15 How do you forget that five days out?

16           All of the evidence, every single bit of  
17 evidence that we've paraded in here points to one  
18 man, all of it, that man, Ron Finklea. Everything,  
19 just walk through the evidence, ladies and  
20 gentlemen, just walk through it.

21           Whose credit card was found at the scene right  
22 out there at the front door? Why, it was Ron O.  
23 Finklea's. What business did he have there anymore?  
24 He used to work at Selectron three months, two  
25 months prior. What business did he have coming from

1 Calhoun, Calhoun County, to Selectron either August  
2 the 1st or August the 2nd? Who do we know worked at  
3 Selectron? Ron O. Finklea. Not Junior, not anyone  
4 else, Ron Finklea.

5 Of all the ATM's in the world, who knew about  
6 this one? Ron Finklea. And this badge, who had a  
7 badge that would let him into that building, that  
8 would give him access to that ATM where money was,  
9 who? Ron Finklea.

10 Who drove all the way to Michigan, all the way  
11 to Michigan? You heard how far that was, that's one  
12 heck of a drive. Even if you drove as fast as a law  
13 enforcement officer, and they usually go the speed  
14 limit, it would take you forever to get up there.  
15 And then, what, 15, 20 minutes. Was on a mission,  
16 one man. Was it Junior? No. Ron O. Finklea.

17 And what did he get? A pistol. What caliber?  
18 A nine millimeter. What kind of pistol was used in  
19 this case to commit this horrible crime to shoot  
20 Walter Sykes in the face and in the neck? A nine  
21 millimeter. And what color was it? Dark just like  
22 the one Mr. Finklea got. He was on a mission. Who  
23 had a bullet found in their bedroom, a nine  
24 millimeter bullet that was the exact same kind as  
25 the one used in this murder? Ron O. Finklea. Not

1 Junior, not Theodore Davis, not anyone else.

2 Who rented a white Mustang with Florida tags,  
3 you folks have seen this, who rented this? Ron  
4 Finklea, not Junior, not Theodore Davis. Who drove  
5 all the way from Calhoun County in that white car to  
6 Selectron and then to Alabama? Ron Finklea.

7 Who, prior to this crime, went to K-Mart and of  
8 all the things he could buy, what did he buy?  
9 Gasoline -- no -- gasoline can. What do you put in  
10 a gasoline can? Gasoline. Who did that? Was it  
11 Junior, Theodore Davis? Ron Finklea.

12 Who was identified by a security guard August  
13 the 1st of 2003 as being the man who asked those  
14 really unusual questions, how many cameras do you  
15 have, how do you watch all of those televisions, how  
16 many people are working here right now? A complete  
17 stranger looks at this man in the face not once, but  
18 twice, she focuses on those eyes more than any  
19 clothing or anything else, who's this man talking to  
20 me and asking me these questions? It's Ron Finklea.  
21 Ron Finklea.

22 Who, when he is -- they do a search warrant on  
23 their house. Whose room contains a jacket exactly  
24 like the one in the video from August the 1st? Is  
25 it Theodore Davis? No. Ron O Finklea. Who has

1 identified this man as being the only man they've  
2 ever seen in this jacket? People who know Ron  
3 Finklea, he wears this jacket, no one else wears the  
4 jacket.

5 And the hat, this distinctive hat. Who was in  
6 the Army? Was it Junior? No. No, not Junior, not  
7 the slob, not the follower. Who wore this hat that  
8 says Army on it? Ron O. Finklea. Who was  
9 identified in this orange shirt? Only one man,  
10 ladies and gentlemen, only one man, Ron Finklea.

11 And when you're thinking about that hat and  
12 that shirt, because you remember that hat from the  
13 first night and he was wearing the blue jacket, you  
14 can see this hat very clearly sometimes, this hat,  
15 this jacket were on only one man, Ron Finklea. Well  
16 that shirt used the next night, where is it found?  
17 Why it's found with that hat. And where is it  
18 found? In Alabama. And who is the only person in  
19 this case that's from Alabama? Why, it's Ron O.  
20 Finklea. And behind whose mama's house, what kudzu  
21 patch is this found? Ron O. Finklea.

22 Ladies and gentlemen, take this case, turn it  
23 sideways, turn it upside down, shake it, do whatever  
24 you wish, Ron O. Finklea will always, always come  
25 out being the answer as to the perpetrator of this



1 crime. No matter how hard you look at it, no matter  
2 how many questions you ask, the more you think about  
3 it, you're going to come back to the same answer.

4 And who, when he was arrested in Alabama, was  
5 wearing these shoes? Was it Junior? No, no. Why  
6 it's Mr. Finklea. And whose blood and DNA did they  
7 get off these shoes, these shoes that were in  
8 Alabama on the feet of that man? The poor soul who  
9 went to work and was working August the 2nd, 2003 at  
10 Selectron, who thought it might just be another  
11 shift at work, who had no reason to believe that  
12 life would not only change, it would end and end  
13 violently, the DNA of Walter Sykes. Ron O. Finklea.

14 Look at it, ladies and gentlemen, look at it.  
15 No matter how hard you look at it, Ron O. Finklea is  
16 the answer.

17 And, yet, when confronted with all of this, the  
18 initial, I don't know what you're talking abouts, he  
19 came back with that one statement, If that's me, I  
20 don't remember. How do you forget? How do you  
21 forget -- how do you forget this? How? You can't.  
22 You can't ever forget this, ladies and gentlemen.  
23 This was so brutal, so cold, so calculating and,  
24 yet, you can already hear the claims about this  
25 case, the accusations.

1759

1           Now, it may start with some of the smaller  
2 charges, the safe cracking. Well, ladies and  
3 gentlemen, the door's barely open. They didn't even  
4 get the safe open. Well, ladies and gentlemen, just  
5 because Mr. Finklea and his cohort are incompetent  
6 thieves and put little planning into the theft and  
7 put all the planning into a murder, doesn't mean  
8 they're not guilty of attempted safe cracking. They  
9 clearly tried.

10           In fact, if you look at Defense Exhibit Number  
11 1, there's a statement by Theodore Davis reported in  
12 there, he explains what tool he was going to use,  
13 that it was his mission to open that door.

14           Now, I don't think anybody's ever going to  
15 accuse him of being a rocket scientist thinking he  
16 can open up an ATM with a Leatherman tool. But did  
17 you hear where he said that tool was? Why it was in  
18 that white Mustang just where we found it, along  
19 with gas, gasoline in the carpet. That was the car,  
20 folks, that was the tool.

21           Arson, can you hear it now? Well, ladies and  
22 gentlemen, there wasn't much of a fire. Don't tell  
23 that to the Sykes family. Things did burn up in  
24 that office. You don't have to burn a building down  
25 to have arson, you don't. The Judge is not going to

1 tell you that there has to be a massive fire. That  
2 may be a common perception of the law, but this  
3 Judge will give you the law.

4 If you hear him say that it has to be a large,  
5 roaring fire, then, okay, set that charge aside, but  
6 you're not going to hear that because that's not the  
7 law. You're going to hear that if you set a fire  
8 and someone dies from that fire as a result or if  
9 that fire contributes to their death, that's arson,  
10 arson first.

11 Now, they may attack other things. Of course,  
12 they may attack Sherry and Irena. And, look, they  
13 may say, they have a motive to say that it's not  
14 Junior. Sherry's motive is to protect Irena who she  
15 loves. Irena's motive is to protect her brother.  
16 Although, did you hear her? Do you love your  
17 brother, Yes, but. Did you hear that from his  
18 sister's mouth, Yes, but. And she went on, she  
19 mumbled a few little words basically indicating  
20 she's not here to protect him. If he did it, he  
21 needs to pay, too.

22 You say, well, how can they see them on the --  
23 how can they identify Ron Finklea on that T.V.  
24 monitor or this screen? It's kind of hard to see,  
25 admittedly.

1           I want to ask y'all this, all of us, all of us  
2       in this room that have families, do you know someone  
3       so well, say, a spouse or a child, when you hear  
4       them walking down the hall, you know it's them just  
5       from the sound. Try proving that in court. All you  
6       can do is say it's so. I know them. When you hear  
7       a voice, you know who it is. Or, you look off in  
8       the distance and you see people, and this one little  
9       spec as far away as it is, you know that's my wife,  
10      that's my husband, my son, my brother. There's  
11      certain things you get to notice about a person,  
12      their movements, their features, you can't even  
13      describe it, it's just you know them because you  
14      dealt with them so much.

15           And, ladies and gentlemen, when they looked at  
16      that screen, they not only saw somebody they knew,  
17      they saw that it wasn't someone else. It was Ron  
18      Finklea. The clothing spoke to that.

19           Does he ever share his clothes? No. He might  
20      give away what he's through with. He might buy  
21      clothes for Junior, but share clothes, not Ron  
22      Finklea. He's neat, clean, a man like that's not  
23      going to share his clothes. He might if he was  
24      eight years old, but he's a grown man, he's not  
25      going to do that. Junior, he's a slob, he'll take a

1 freebie, particularly when it comes from Ron  
2 Finklea.

3 I don't know. What else will they talk about?  
4 Well, I'm sure, at some point, you're going to hear  
5 about that hat and the DNA. And they're going to  
6 say, ladies and gentlemen, this hat that links those  
7 two days together, the common item, besides the  
8 person who's been pointed out twice, the common item  
9 is that hat, throw that out, you don't have a case.  
10 But did you hear Matt Fitts from SLED say that it  
11 cannot possibly have been Ron Finklea? He said they  
12 tested three little squares, one came back a mixed  
13 sample to a female. Are we to believe that there's  
14 a female at Selectron? Does anybody believe that?

15 Remember when there was talk about CSI, the  
16 T.V., the videos, a lot of things that you just  
17 assume we can do, you just assume you see in a case,  
18 you just assume they're here in evidence is another  
19 example. He didn't test the entire hat. And,  
20 ladies and gentlemen, we know it wasn't a brand new  
21 hat and you know what it was with, it was with this  
22 shirt and a pair of jeans. Did he say he found  
23 anything off of this? (Attorney shook head.)

24 Now, somebody just didn't take a brand new  
25 Chaps, Ralph Lauren shirt that just happened to look

1 like the one you saw in that video, a brand new  
2 shirt and throw it out in the kudzu patch. And not  
3 only that, they just happened to do it after a  
4 murder that occurred in Lexington, South Carolina  
5 with a shirt that looked just like this. And of all  
6 the places they can throw it, they just happened to  
7 go down to Alabama and throw it behind Ron O.  
8 Finklea's house, his mama's house. And, again, this  
9 shirt, why, it was found with the hat.

10 You watch those videos, August the 1st the hat  
11 is the most clear, you can see it in the 2nd as  
12 well, the day of the murder. Day one, day two right  
13 there.

14 You want to know who made the link, well  
15 Mr. Finklea did it for you. Of all the evidence,  
16 ladies and gentlemen.

17 Now, they might pick and pull at different  
18 parts of this case, but no matter what you do, no  
19 matter how hard you look at it, it's just not going  
20 to make sense for anyone else to have done this,  
21 none at all.

22 Now, talking about this case, ladies and  
23 gentlemen, it's a brutal, brutal case. You know a  
24 lot of preparation went into this. It wasn't by  
25 rocket scientists, that's a given, but most of the

1 preparation clearly went into the murder, getting a  
2 gun, getting a car, getting gasoline. You've got  
3 the death weapon, you've got your vehicle to get  
4 there and get away and a fast one, too. A gun, car  
5 and gasoline.

6 Now, that security office, you were told there  
7 were T.V.'s and monitors and computers and all,  
8 maybe perhaps that gasoline was meant for that,  
9 maybe perhaps this man suffers from watching CSI,  
10 too, or too much T.V. and thinks that when you shoot  
11 somebody, they just die. They don't. Huh-huh. No.

12 And maybe after those stray shots, he realized  
13 he didn't have anymore bullets in that gun and maybe  
14 he realized, my gosh, I've got a man right here and  
15 he's just not going to die fast enough for me. I've  
16 got to be certain. So he does something so evil,  
17 something nobody else would do to a dying dog, he  
18 pours gasoline all over him and lights him up. It's  
19 amazing. It's absolutely amazing.

20 And here's a thought, when you see that head  
21 that's wearing the black mask pop up, notice about  
22 what time that pops up. When you see fire. Aren't  
23 you glad there's no audio on that tape? What do you  
24 think he heard that shocked him and scared him and  
25 made him leave, abandon Mr. Finklea, what do you

1 think he heard? Dear God in Heaven, what do you  
2 think he heard from this man who was just literally  
3 rolling with fire.

4 Murder requires malice. Ladies and gentlemen,  
5 the law's always said malice is an evil heart. Dear  
6 God, can you imagine anything more evil? This isn't  
7 just evil, this is malignant.

8 You know there's a smell of gasoline that  
9 people have testified to, well that's long since  
10 dissipated, but the smell of evil is still there.  
11 When you go back in the room, your jury room, and  
12 you handle this evidence, it's still there. You can  
13 almost feel it.

14 And the resolve it took for that malignant  
15 heart to commit that crime, it's a long drive from  
16 Calhoun County all the way from out in the country  
17 on Fort Motte Road out to Selectron and driving in  
18 the middle of the night, early morning hours,  
19 wouldn't you think some time along the way somewhere  
20 he could think, my God, what am I doing? No, this  
21 man had a mission. He wanted money. He didn't care  
22 how to get it. He knew where he could go.

23 Do you think when he pulled in that parking  
24 lot, he had a reality check, my gosh, this is -- all  
25 of a sudden this is real, I can't do this, what am I



1       doing? No, he went right on. And you would think  
2       walking down that walkway right to those glass doors  
3       he would say one last time, you know what in the  
4       world am I doing, but this man who had cased it out  
5       the night before had the resolve.

6               But the thing that's just the most incredible  
7       to me is when that guard comes out, Walter Sykes,  
8       and he had to actually look in the face of the man  
9       that he was going to kill. Walter Sykes, who's just  
10      doing his job, an unarmed guard doing his job, look  
11      at his badge, I'm not going to pull it out, it still  
12      has Walter's blood on it. There's still signs of  
13      the fire on it. Do you think when he put that on,  
14      he had any clue what was going to happen to him?  
15      Well, I tell you somebody that did, that man right  
16      there (indicating), Ron Finklea. Absolutely  
17      amazing.

18             You know, my colleague, Sean Graham, said when  
19      he stood up in front of you the other day, that  
20      death knocked on the door and Walter Sykes let him  
21      in. Isn't that so true now that you've heard and  
22      seen what you've heard and seen? That man wore the  
23      face of death. He came in with the hands of death  
24      and, ladies and gentlemen, he left having completed  
25      his mission on at least one count, murder. He may

1 have bumped the safe cracking, he may not have set  
2 the building on fire, but can you think of anything  
3 more horrible than what he did?

4 And, again, we come back to that interview in  
5 Alabama, August 7th, five days after this horrendous  
6 crime, and after denying it, he says, If that's me,  
7 I don't remember. If that's me, I don't remember.  
8 I'm going to ask you to do one thing, ladies and  
9 gentlemen, one thing, with your verdict, jog his  
10 memory.

11 **THE COURT:** Ms. Kimbrough.

12 **MS. KIMBROUGH:** Thank you, Your Honor. May it  
13 please the Court.

14 Good evening. It has been a very long week for  
15 each and every one of you and for everyone in this  
16 courtroom. And listening to Mr. Hubbard's close,  
17 it's hard not to get really emotional. What  
18 happened to Walter Sykes, there aren't words for it.  
19 And I hope you don't think that anyone in this  
20 courtroom, on either side of this courtroom, would  
21 question that. We don't.

22 And as I told you in the opening, the only  
23 thing Ron wants, and it's what he's entitled to,  
24 which is 12 fair-minded people coming together and  
25 looking at the evidence. And as I told you before

1 and I'll say it again, Ron had some involvement in  
2 this crime, he had some involvement. All we ask you  
3 to do is look at the evidence and hold the State to  
4 its burden of proof. It's proof beyond a reasonable  
5 doubt. And it's proof beyond a reasonable doubt as  
6 to each and every element of each and every charge.

7 Your job is not going to be easy. There are a  
8 lot of elements. There's a lot of facts. So all we  
9 ask you to do is please take the time you need, use  
10 your common sense and look at everything before you  
11 make a decision on each and every one of these  
12 charges. That's all we're going to ask you to do.

13 There were a lot of people who testified in  
14 this trial. And I think there were a few who really  
15 stand out as providing essentially the ingredients  
16 that each of you are going to need to get the right  
17 verdict.

18 First, there was Mary Ashley, she took the 911  
19 call. Based on what she heard, she contacted the  
20 fire service. And we heard from Artie Chavis, the  
21 very nice gentleman who used the word yonder a lot.  
22 And he went out and he did his job. And, yes, there  
23 was evidence of a fire.

24 David Fulmer came out and he conducted a  
25 slightly more advanced fire inspection. And I think

1        what we learned from Mr. Fulmer is that, yes,  
2        there'd been a fire, and I think he used the word  
3        flash fire or a quick burn. If I remember his  
4        testimony correctly, he said there was evidence of  
5        gasoline on a desk, a chair and then the floor. He  
6        found evidence of items that had been burned, not  
7        surprisingly, a flash fire, something's going to get  
8        burned. And, obviously, Mr. Sykes was burned.

9                I want to step away from that for the moment  
10       and focus on the items that were burned. And I  
11       believe Mr. Hubbard explained to you, and I would  
12       agree, you don't have to burn a building down to be  
13       guilty of arson.

14               The only point I'd like to make here is that  
15       not every act involving fire and the setting of fire  
16       is arson, they're elements. You don't have to burn  
17       the house down, but you do have to do a couple of  
18       things. There are a couple of requirements and I'm  
19       just going to ask you to give it the proper  
20       consideration it deserves.

21               Part of the building, part of the structure has  
22       got to be affected by the fire. I submit to you  
23       that when you review the evidence, when you keep in  
24       your mind's eye what you saw come from that witness  
25       stand, what the -- all the investigators testified

1 to is that there were various pieces of individual  
2 property, but not the structure itself. Those items  
3 included a mouse pad, they included the chair, they  
4 included some paper and they included some  
5 carpeting.

6 Obviously, the fire was set. We don't -- it is  
7 what it is. All I ask you to do is to consider the  
8 relevant testimony and to make an accurate and fair  
9 determination on that one particular charge as you  
10 will do with each and every charge. So while I  
11 agree with Mr. Hubbard that the house does not need  
12 to be burned down, I would just ask you to remember  
13 there's a rule of law, certain elements are  
14 required, and so please consider the evidence as to  
15 the fire.

16 I believe after Mr. Fulmer, we then heard from  
17 Mike Phipps. In fact, we heard from Mike Phipps  
18 quite a lot. He was clearly the -- driving the  
19 train when it came to the investigation, nice man  
20 who sat up there, calmly, politely went through his  
21 investigation and I submit to you he was very  
22 thorough. You heard his testimony, his credibility  
23 is for you to determine.

24 But what did he find? He said he found an ATM  
25 card, Mr. Finklea's ATM card. Well, obviously, it's

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1        laying outside the ground of the crime scene,  
2        naturally he became a suspect, that makes sense.  
3        He's a crime scene investigator, there's a piece of  
4        evidence, so he took it. And he found certain other  
5        items, snack items, a lighter and he began trying to  
6        process the scene.

7                What did he do? Well, obviously, he secured  
8        the scene and he picked up the Star card, the snack  
9        item, the lighter and he began looking for clues.  
10       Well, I think he testified that he took latent  
11       prints and he tried to match the latent prints with  
12       an individual. Well, we know based on the  
13       testimony, that that wasn't done, so that's not much  
14       help, but it was good police work and he did it.

15               Now, based on Mr. Phipps finding the ATM card,  
16       Ron became a suspect, logical. So then what  
17       happens?

18               At that point, it appears that law enforcement  
19       became involved. There were two investigators,  
20       Duane Peake and Scottie Frier. We didn't hear from  
21       Scottie, but we heard from the lead investigator,  
22       Duane Peake. Duane with, at that time, either 18,  
23       19, or 20 years experience, I'm not sure, but it was  
24       a lot, he began his investigation. Be on the look  
25       out, be on the look out, we found a card bearing the

1 name of Ron Finklea. Ron had worked at Selectron.  
2 Okay, yeah, let's go talk to him, let's go find him,  
3 but let's get our evidence.

4 Ladies and gentlemen, I submit to you that once  
5 the name Ron Finklea was developed, that there was a  
6 natural tendency to view him as sort of the lead dog  
7 in all of this. They knew they had two suspects,  
8 but he was the first name and he had the connection  
9 to Selectron. He had that connection, that's  
10 understandable.

11 And then, of course, there was the testimony of  
12 Angel Peters. She very clearly identified Ron  
13 Finklea as the man that she saw come into the plant  
14 August 1st, that made sense. However, I submit to  
15 you that that was the beginning of an investigation  
16 and that it should not have been the basis for  
17 developing a case theory from the start. I believe,  
18 and I said this in opening and I still believe it,  
19 you don't put the cart before the horse. They  
20 developed a suspect, they knew there were two men  
21 involved. Look at the evidence first.

22 But Duane Peake, being the thorough  
23 investigator that he is, did his job and discovered  
24 that Ron had a housemate, Theodore Davis. Learning  
25 that information, obviously the lights go off. Sure

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1 these two people, one of whom has been connected  
2 with this crime scene by a card, worked there, he  
3 and his roommate suddenly aren't anywhere to be  
4 found. It's logical.

5 So what does Duane do? He secures a search  
6 warrant for [REDACTED] [REDACTED] [REDACTED] [REDACTED], perfectly  
7 reasonable. Goes in, here it is, it's not to scale,  
8 but it's adequate for our job here, he said, We  
9 focused in on this room. This is Ron's room. He's  
10 our first named suspect, we focussed in on it. We  
11 looked for evidence. We found a piece of clothing,  
12 a jacket and we found an unused bullet there. They  
13 were looking for evidence. They were hot on the  
14 trail and they wanted it. It's the right thing to  
15 do.

16 They came back with a second search warrant and  
17 they searched again. Did they find a K-Mart receipt  
18 and gloves in Ron's room? Two search warrants. My  
19 memory serves, Investigator Peake wasn't alone in  
20 this search. There's three trained professional  
21 investigators go in looking for evidence. They  
22 didn't find gloves. They didn't find a K-Mart  
23 receipt.

24 Who brought that to us? Who? Irena Fuller and  
25 Sherry Bolin, two women who, according to their own



1 testimony, just decided to walk into somebody else's  
2 house. Of course, the doors had been busted down  
3 and it wasn't real hard. But they decided to do  
4 their own little crime scene investigation. They  
5 were curious. They knew these people.

6 But don't you find it a little curious that  
7 after two search warrants were executed with three  
8 trained professionals looking for evidence, that  
9 somehow it's Sherry Bolin who works at a veterinary  
10 clinic and Irena Fuller who works at a restaurant  
11 that they find this evidence? It's just laying  
12 there, the gloves, the receipt, it's just laying  
13 there. It's incredible.

14 Does it mean that these crimes didn't occur?  
15 Absolutely not. All I'm asking you to do is to  
16 think about the evidence critically.

17 And, you know, Mr. Hubbard's right, I am going  
18 to ask you to consider the personal bias of Ms.  
19 Fuller and Ms. Bolin. You saw the witnesses testify  
20 in this case, just use your common sense, does  
21 somebody have a motive to lie? It's Irena Fuller's  
22 brother charged with a horrendous crime. He has the  
23 same charges as Ron. Ron's life is at stake. What  
24 would you do for your brother? And what would you  
25 do for your lover?

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1 I submit to you I don't have a brother, but I  
2 have sons. I can't imagine what I wouldn't do to  
3 help them. I'd give my life for one of my kids. No  
4 question. That's what it means to be family. The  
5 expression of blood is thicker than water, it sounds  
6 trite, but it's true. So please, when you evaluate  
7 the testimony of some of these witnesses, in  
8 particular Ms. Bolin and Ms. Fuller, keep that in  
9 mind.

10 Now, ladies and gentlemen, there has been a lot  
11 of video evidence that's been presented and  
12 photographs. And in that regard, Ms. Bolin and Ms.  
13 Fuller took the witness stand and said, yes, I can  
14 tell that's Ron Finklea, his distinctive facial  
15 features. Ladies and gentlemen, you will have this  
16 evidence to view for yourself. If you can make out  
17 distinctive facial features in that video tape, your  
18 eyesight is better than mine. And mine's 20/20,  
19 too, but it's not bionic. You'd need bionic eyes to  
20 see what was on there and say, oh, yeah, his face  
21 shape, even the way he moved.

22 That was by far the most absurd because on the  
23 digital video, the whole timing is digitally  
24 manufactured, that wasn't the way he was really  
25 moving, that was the way the digital video captured

1 the images. Ladies and gentlemen, that's  
2 incredible.

3 Although, when I started thinking about it,  
4 even though I couldn't identify who those people  
5 were, even though I couldn't identify certain  
6 features, it occurred to me that these two women  
7 truly do care about Junior Davis. Would you want to  
8 believe that someone you cared about, your brother  
9 your friend, was the person who did this? I  
10 wouldn't.

11 Human beings are emotional. We're passionate.  
12 We care about those who are part of our family and  
13 part of our life. And sometimes we want to see the  
14 light, the light -- excuse me -- the facts in the  
15 light most favorable to them. It's normal.

16 But please take all of that into consideration  
17 when you consider the identification testimony, but  
18 more importantly, view it for yourself, view it  
19 again. You're the determiners of fact.

20 Ms. Bolin and Ms. Fuller took the witness stand  
21 and they gave you their opinion, that's who I think  
22 it is. And I believe there was some discussion  
23 about how, oh, no, Ron and his co-defendant, no,  
24 they don't look alike, they don't share any of the  
25 same features. Anyway, you'll have the pictures

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1 back there. I don't want to spend a whole lot of  
2 time discussing what I'd like you to look at, it  
3 will be back there.

4 Now, are they twins? No, of course not. But  
5 there are some similarities. There are some  
6 similarities. And I submit to you that when you  
7 take two people with similar features, similar  
8 complexions, both of their ears sort of stick out,  
9 that when you take people with similar features and  
10 you view a video tape that's fuzzy, you can't make  
11 out the clear identification based on that video. I  
12 don't think they can do it. I think they wanted to  
13 do it. They said they could. But, ultimately,  
14 please look at the video, please determine for  
15 yourself whether or not you believe the  
16 identification testimony was accurate, did it make  
17 sense.

18 Next I want to talk about Junior Davis. Let me  
19 start by saying this, we don't think, the defense  
20 doesn't believe that the fact Junior Davis was  
21 involved exonerates Ron Finklea, it doesn't, not at  
22 all. The Judge will instruct you on the law, the  
23 hand of one is the hand of all. Ron had no business  
24 being caught up in this. The results are tragic.  
25 But we ask you to give careful consideration to the

1 evidence you have about Theodore Davis, as well as  
2 the information that you have about Ron Finklea.

3 What do we know about Ron? He doesn't have a  
4 criminal record, honorably discharged from the  
5 United States Army. Theodore Davis? Convicted of  
6 assault and battery with intent to kill, it's an  
7 attempted murder, an attempted murder. But wait a  
8 minute, hold on, he's a follower. Ladies and  
9 gentlemen, a follower goes out and attempts to kill  
10 someone? I don't think so.

11 And then we have the testimony of Robin  
12 Gripper. While we did not have the burden and still  
13 don't have a burden to produce any evidence, I  
14 thought it was important for you to hear from  
15 another family member experienced with Theodore  
16 Davis. He's a liar, a ne'er-do-well. She loves her  
17 brother, she's not blinded by that love. She's seen  
18 it. And she's seen Ron.

19 Did she describe this follower/leader dynamic?  
20 No, that's not what she described. Ron gave things  
21 to Theodore Davis. Theodore Davis didn't have much,  
22 so Ron gave him things. And you heard her  
23 testimony, they lived in the same house and they  
24 shared personal items.

25 Now, there's been a great deal of testimony

1 about this is Ron's and only Ron's, these are Ron's  
2 and only Ron's, the cap was Ron's, the orange shirt  
3 was Ron's.

4 And Mr. Hubbard is again right, I am going to  
5 talk about DNA evidence. There's an expression, one  
6 I've never heard before from one of our scientists,  
7 touch DNA. Literally, if you touch something, you  
8 leave your DNA. It's amazing. It really does seem  
9 like forensic science is almost too good to be true.  
10 Touch DNA.

11 Now, according to the witnesses who testified  
12 about Ron, primarily Ms. Bolin and Ms. Fuller, Ron  
13 always wore that hat, that hat only Ron wore that  
14 hat.

15 Okay, a hat, what does a hat do? It goes right  
16 on top of your head, that's what it does, rubs up  
17 against your hair, against your skin. And I submit  
18 to you this was a thorough investigation. Did they  
19 find Ron's DNA? No. They found DNA from a woman.

20 Now, does that prove Ron wasn't wearing the  
21 hat? No. But it calls into question whether or not  
22 Ron was the exclusive wearer of that hat. Obviously  
23 somebody's DNA got on there and it wasn't Ron's and  
24 it wasn't Davis', but you heard Ms. Gripper, they'd  
25 share personal belongings and lived in the same

1 house. And the blue jacket and the shoes and the  
2 orange shirt, there's no DNA.

3 Does that mean Ron Finklea isn't guilty of some  
4 crime in connection with this? That's not what  
5 we're saying.

6 The point of all of this is the following: We  
7 think, we believe that the State had tunnel vision.  
8 In the moment they found that ATM card, they decided  
9 it was all Ron. Ron did it all. He was the  
10 planner. He was the one who put it together. And  
11 that theory guided them.

12 And low and behold, Theodore Davis, Mr. I don't  
13 take blame for my actions, Mr. I like to try to kill  
14 people, what does he do when he's questioned? He  
15 does what any smart con man who knows the system  
16 best, he gets there first. Okay, I was involved,  
17 but Ron did it, Ron's the trigger man. Start  
18 pointing fingers. He knows the system.

19 How do you know the system? Um, you get  
20 introduced to it by way of a conviction for  
21 attempting to kill someone.

22 And I submit to you that had the -- had law  
23 enforcement not taken off with this credit card and  
24 decided this was the lead suspect, that they would  
25 have stepped back for a moment and questioned

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1       whether or not Theodore Davis was the trigger man,  
2       but they didn't do it, didn't do it. Armed with the  
3       known histories, Ron Finklea, Theodore Davis, but  
4       they didn't -- they didn't stop to reevaluate their  
5       theory, that's what happens when you develop a  
6       theory before you have all of the evidence.

7       Please don't do that in this case. I know you  
8       won't. You've all paid such close attention. I  
9       don't think I've ever seen a jury more attentive, in  
10      some of these circumstances that the system works,  
11      attentive, conscientious jurors.

12      All we ask on behalf of Ron is that you listen  
13      very, very carefully to the Judge's instruction on  
14      the law. There are a lot of elements, there's been  
15      a lot of evidence presented and you need to  
16      carefully evaluate each charge standing  
17      independently on its own, then you need to start  
18      looking at the facts. Apply the facts to the law  
19      and you'll reach the right decision. A fair and  
20      unbiased assessment, that's all we ask. Thank you.

21      **THE COURT:** Ladies and gentlemen, let's stand  
22      for a moment.

23               (Pause.)

24      **THE COURT:** Mr. Foreman and members of the  
25      jury, you've heard the evidence and testimony and



1 arguments of counsel for the State and the  
2 defendant. I will now explain to you the law that  
3 applies to this case.

4 Under the Constitution and laws of the State of  
5 South Carolina, you are the finders of the facts in  
6 this case. I have no right to give any indication  
7 to you as to what I might think as to the facts of  
8 this case. I do not have the right to pass upon the  
9 facts or to express any opinion I may have as to  
10 them.

11 You are the sole judges, the sole judges of the  
12 credibility, the believability of the witnesses who  
13 have testified in this case. In passing upon the  
14 credibility, you may take into account many things,  
15 such as the demeanor or manner of testifying,  
16 whether the witness had reason to be biased or  
17 prejudiced, whether a witness' testimony was  
18 contradicted on the one hand or supported and  
19 corroborated on the other hand.

20 You certainly do not determine this credibility  
21 or believability by counting the number of witnesses  
22 for either side. You may believe a small portion of  
23 a witness' testimony and disregard the larger or  
24 vice versa. You may believe one witness against  
25 many or many against one. All of these things you

1 will consider bearing in mind that you should give  
2 the defendant the benefit of any reasonable doubt.

3 Now, the rules of evidence do not permit  
4 witnesses to testify as to their opinions or  
5 conclusions. An exception, however, to this rule  
6 does exist as to those whom we call expert  
7 witnesses. Expert witnesses are witnesses who by  
8 education and experience have become expert in some  
9 art, science, profession or calling. And these  
10 witnesses may state their opinions as to relevant  
11 and material matter in which they profess to be an  
12 expert and they may also state the reasons for the  
13 opinion.

14 You should consider expert opinion received  
15 into evidence in this case and give it such weight  
16 as you think it may deserve. If you should decide  
17 that the opinion of an expert is not based on  
18 sufficient education and experience or if you should  
19 conclude that the reasons given in support of the  
20 opinion are not sound or if you feel that it is  
21 outweighed by other evidence, you may disregard the  
22 opinion entirely.

23 Now, there have been some stipulations entered  
24 into this case. A stipulation is an agreement as to  
25 a fact. And once a fact is stipulated to, that fact

1 becomes established for purposes of the case and  
2 cannot be questioned or contradicted.

3 Now, by the same Constitution and law which  
4 makes you the finders of the facts and the evidence,  
5 as I've discussed with you, that same law as the  
6 Judge makes me the sole instructor in the law. You  
7 must accept as correct the law which I charge and  
8 apply it to the evidence as you find it and reach  
9 your verdict.

10 And, finally, I charge you in this regard that  
11 you should not be concerned by what you think the  
12 law ought to be, but rather what I charge you the  
13 law to be.

14 Now, there are two types of evidence which are  
15 generally presented during a trial, direct evidence  
16 and circumstantial evidence. Direct evidence is the  
17 testimony of a person who asserts or claims to have  
18 actual knowledge of a fact, such as an eyewitness.  
19 Circumstantial evidence is proof of a chain of facts  
20 and circumstances indicating the existence of a  
21 fact.

22 Now, the law makes absolutely no distinction  
23 between the weight or value to be given either  
24 direct or circumstantial evidence, nor is a greater  
25 degree of certainty required of circumstantial

1 evidence than of direct evidence.

2 You should weigh all of the evidence in this  
3 case. After weighing all of the evidence, if you  
4 are not convinced of the guilt of the defendant  
5 beyond a reasonable doubt, you must find the  
6 defendant not guilty. On the other hand, if you are  
7 convinced of the guilt of the defendant beyond a  
8 reasonable doubt, then you must find him guilty.

9 Now, the fact that the defendant was arrested,  
10 charged and indicted in this case is not evidence in  
11 this case and cannot be considered by you as  
12 evidence of guilt in this case, nor does it create  
13 any presumption or inference of guilt. The  
14 indictments are simply the formal, written  
15 instruments which contain the charge or charges made  
16 against a defendant. They serve as the formal  
17 document by which this case is processed and brought  
18 into court.

19 The defendant has pled not guilty to the  
20 indictments and that plea puts the burden on the  
21 State to prove a defendant guilty.

22 A person charged with committing a criminal  
23 offense in South Carolina is never required to prove  
24 himself innocent.

25 I charge you that it is an important rule of

1 the law that the defendant in a criminal trial no  
2 matter what the seriousness of the charge may be  
3 will always be presumed to be innocent of the crime  
4 for which the indictment was issued unless guilt has  
5 been proven by evidence satisfying you of that guilt  
6 beyond a reasonable doubt. This presumption of  
7 innocence does not end when you begin your  
8 deliberations, but it accompanies the defendant  
9 throughout the trial until you reach a verdict of  
10 guilt based on evidence satisfying you of that guilt  
11 beyond a reasonable doubt.

12 The presumption of innocence is like a robe of  
13 righteousness placed about the shoulders of the  
14 defendant which remains with the defendant until it  
15 has been stripped from the defendant by evidence  
16 satisfying you of the defendant's guilt beyond a  
17 reasonable doubt. And the presumption of innocence  
18 is not a mere legal theory, it's not just a legal  
19 phrase, but it is a substantial right to which every  
20 defendant is entitled unless you, the jury, are  
21 satisfied from the evidence of the defendant's guilt  
22 beyond a reasonable doubt.

23 Now, I instruct you and emphasize that the fact  
24 that the defendant did not testify is not a factor  
25 to be considered by you in any way in your

1 deliberations and in your consideration on the  
2 question of the guilt or innocence of the defendant.  
3 It must not be considered by you in any manner  
4 whatsoever. A defendant has the constitutional  
5 right to remain silent and the assertion of this  
6 right must not be considered by you in your  
7 deliberations.

8 I repeat, under your oath, you are to draw no  
9 conclusion whatsoever from the fact that the  
10 defendant in this case did not testify. The fact  
11 that this defendant did not testify should not even  
12 be discussed in the jury room.

13 The burden of proof, as I have stated to you,  
14 is on the State. The defendant is not required to  
15 prove his innocence. The burden of proof remains on  
16 the State to prove guilt beyond a reasonable doubt.

17 I have admitted into evidence in this case an  
18 oral statement alleged to have been made by the  
19 defendant. Before you may consider this statement  
20 as evidence for any purpose, you must answer two  
21 questions. The State must have proven beyond a  
22 reasonable doubt the answer is yes to both questions  
23 before you may consider the statement as evidence.  
24 If the State has failed to prove that both of the  
25 answers is yes, then you may not consider the

1 statement for any purpose whatsoever.

2 The questions are, first, did the defendant  
3 make the statement? And, second, was the statement  
4 given voluntarily.

5 The first question is whether the defendant  
6 made the statement? You may consider this statement  
7 only if you find that the State has proven beyond a  
8 reasonable doubt that the defendant did make the  
9 statement.

10 The second question is did the defendant give  
11 the statement voluntarily? The word voluntarily  
12 means that he freely chose to make the statement and  
13 it was not induced by pressure, force or  
14 intimidation.

15 If the statement was voluntarily given, it may  
16 be used against him. If the statement is not  
17 voluntary, it cannot be used against him. In  
18 determining whether or not the statement of the  
19 defendant was voluntary, you may consider all of the  
20 facts and circumstances surrounding the alleged  
21 statement.

22 As I indicated, the State must prove the  
23 defendant guilty beyond a reasonable doubt. Now,  
24 what is a reasonable doubt in the law? A reasonable  
25 doubt is a doubt which makes an honest, sincere,

1 conscientious juror in search of the truth in the  
2 case to hesitate to act.

3 Proof beyond a reasonable doubt must,  
4 therefore, be proof of such a convincing character  
5 that a reasonable person would not hesitate to rely  
6 and act upon it in the most important of his or her  
7 own affairs. Proof beyond a reasonable doubt can  
8 also be described as proof that leaves you firmly  
9 convinced of the defendant's guilt.

10 Now, there are very few things in this world  
11 that we know with absolute certainty. And in  
12 criminal cases, the law does not require proof that  
13 overcomes every possible doubt.

14 If, based on your consideration of the  
15 evidence, you are firmly convinced that the  
16 defendant is guilty of the crime charged, then you  
17 must find him guilty. If, on the other hand, you  
18 think that there is a real possibility that he is  
19 not guilty, you must give him the benefit of the  
20 doubt and find him not guilty.

21 Mr. Foreman and ladies and gentlemen, in this  
22 case, the State of South Carolina by the indictments  
23 has charged the defendant with the following  
24 offenses: Murder, arson in the first degree,  
25 attempt to commit safe cracking, criminal conspiracy



1 and possession of a firearm or knife during the  
2 commission of a violent crime. There are five  
3 separate indictments and you must determine  
4 separately as to each indictment whether or not the  
5 State has proven the elements of that particular  
6 crime. Your verdict does not have to be the same on  
7 each indictment.

8 The defendant is charged with murder. The  
9 State must prove beyond a reasonable doubt that the  
10 defendant killed another person with malice  
11 aforethought. Malice is hatred, ill will or  
12 hostility towards another person. It is the  
13 intentional doing of a wrongful act without just  
14 cause or excuse and with an intent to inflict an  
15 injury or under circumstances that the law will  
16 infer an evil intent.

17 Malice does not -- malice aforethought does not  
18 require that malice exist for any particular time  
19 before the act is committed, but malice must exist  
20 in the mind of the defendant just before and at the  
21 time of the act being committed, therefore, there  
22 must be a combination of the previous evil intent  
23 and the act.

24 Malice may be expressed or inferred. These  
25 terms expressed and inferred do not mean different

1 kinds of malice, but merely the manner in which  
2 malice may be shown to exist, that is either by  
3 direct evidence or by inference from the facts and  
4 circumstances which are proved.

5 Expressed malice is shown when a person speaks  
6 words which express hatred or ill will for another  
7 or when the person prepared beforehand to do the  
8 act, which was later accomplished, for example,  
9 lying in wait for a person or any other acts of  
10 preparation going to show that the deed was within  
11 the defendant's mind would be expressed malice.

12 Malice may be inferred from conduct showing a  
13 total disregard for human life. Inferred malice may  
14 also arise when the deed is done with a deadly  
15 weapon.

16 A deadly weapon is any article, instrument or  
17 substance which is likely to cause death or great  
18 bodily harm. And whether an instrument has been  
19 used as a deadly weapon depends on the facts and  
20 circumstances of each case.

21 If one intentionally kills another during the  
22 commission of a felony, the inference of malice may  
23 arise. If facts are proved beyond a reasonable  
24 doubt sufficient to raise an inference, this  
25 inference would simply be an evidentiary fact to be

1 taken into consideration by you along with all other  
2 evidence in the case and you should give it the  
3 weight that you decide it should receive.

4 The defendant is charged with arson in the  
5 first degree. In order to prove arson in the first  
6 degree, the State must prove beyond a reasonable  
7 doubt that the defendant willfully and maliciously  
8 caused an explosion, set fire to, burned, caused to  
9 be burned, aided, counselled or produced the burning  
10 of certain property.

11 Willfully means that it was not done by  
12 accident, but was done knowingly and intentionally  
13 or knowingly or intentionally. The State must show  
14 that the burning was by the willful act of some  
15 person and not as a result of a natural or  
16 accidental cause.

17 Maliciously means with hatred, ill will or  
18 hostility towards another person. The person who  
19 intentionally does a wrongful act without legal  
20 justification or excuse does the act maliciously. A  
21 malicious burning is an act done with a condition of  
22 mind that shows a heart bent on mischief showing a  
23 design to do an intentional wrong act toward another  
24 or toward the public without any legal justification  
25 or excuse. This malice need not be expressed, but

1       may be inferred.

2               Burning means actual combustion of some portion  
3       of a piece of property. It is not necessary that  
4       the property be consumed or destroyed. Charring of  
5       material of which the property is constructed or a  
6       change in the fiber or composition of a fiber is  
7       required for a burning. Singeing, smoking,  
8       blistering, scorching or discoloring by heat,  
9       however, is not enough to constitute a burning.

10              Next, the State must prove beyond a reasonable  
11       doubt that the property which was burned was a  
12       building, a structure, a building where business is  
13       conducted, an institutional facility or any  
14       structure designed for human occupancy.

15              Finally, the State must prove beyond a  
16       reasonable doubt that the explosion or burning  
17       directly or indirectly caused the death or serious  
18       bodily injury to a person.

19              The defendant is charged with safe cracking.  
20       The State must prove beyond a reasonable doubt that  
21       the defendant used explosive tools or any other  
22       implement in or about a safe used for keeping money  
23       or other valuables.

24              Let me restate that. That the State must prove  
25       beyond a reasonable doubt that the defendant used

1 explosive tools or any other implement in or about a  
2 safe used for keeping money or other valuables with  
3 the intent to commit larceny or any other crime.

4 Intent may be shown by acts and conduct of the  
5 defendant or other circumstances which you may  
6 naturally and reasonably infer intent.

7 Larceny is the taking and carrying away the  
8 goods or personal things of another person with the  
9 intent to permanently deprive the owner of the  
10 property and to convert it to the taker's use.

11 The defendant does not have to succeed in  
12 breaking into the safe for the conduct to be safe  
13 cracking.

14 An attempt is an effort to accomplish a crime  
15 which does not succeed. An attempt includes a  
16 specific intent to do a particular criminal act  
17 along with an act falling short of the act intended.  
18 The State must show more than mere preparation and  
19 intent, there must be some overt act committed in an  
20 effort to commit the crime.

21 The defendant is charged with conspiracy,  
22 criminal conspiracy. The State must prove beyond a  
23 reasonable doubt that the defendant combined with  
24 one or more persons for the purpose of committing an  
25 unlawful act or of committing a lawful act by

1 unlawful means. There must be a mutual  
2 understanding, agreement or common intention or in  
3 plan. Mere passive knowledge of or consent to the  
4 criminal conduct of another is not enough to make a  
5 person a conspirator. There must be guilty  
6 knowledge and participation.

7 Similarly, the mere fact that the defendant may  
8 have associated with another person or met with  
9 another person and discussed common aims and  
10 interest does not necessarily establish proof of  
11 existence of a conspiracy or that the defendant was  
12 involved in a conspiracy.

13 On the other hand, it is not necessary that the  
14 agreement be a formal one, that it be in writing,  
15 that the person hold a meeting and expressly state  
16 the terms of the common plan or that the agreement  
17 be stated in words between them. The agreement of a  
18 criminal conspiracy may come into being through an  
19 implied mutual understanding. The willful intention  
20 and a knowing adoption by two or more persons of a  
21 common plan is sufficient. No overt acts need to be  
22 shown to establish a conspiracy. A conspiracy may  
23 be shown by the circumstantial evidence -- be shown  
24 by circumstantial evidence and the conduct of the  
25 parties.

1           In order to convict the defendant of  
2       conspiracy, the State must prove beyond a reasonable  
3       doubt not only that the defendant knew of the  
4       underlying -- that the defendant knew of the  
5       unlawful conduct, but that the defendant agreed to  
6       combine with the other persons for the purpose of  
7       accomplishing the unlawful conduct.

8           The defendant is charged with possession of a  
9       weapon during the commission or attempt to commit a  
10      violent crime. The State must prove beyond a  
11      reasonable doubt that the defendant was in  
12      possession of a firearm or visibly displayed what  
13      appeared to be a firearm during the commission of a  
14      violent crime. A firearm means any weapon which is  
15      designed to or may be readily converted to expel a  
16      projectile.

17          In order to find the defendant guilty of  
18      possession of a weapon during the commission of a  
19      violent crime, you must first find the defendant  
20      guilty of either committing a violent crime or  
21      attempting to commit a violent crime. Murder and  
22      first degree arson are violent crimes.

23          Now, regarding the crimes charged, if the State  
24      proves beyond a reasonable doubt that two or more  
25      people are present and acting together with a common

1 plan or purpose in committing the crime and that in  
2 the course of that first crime, one participant  
3 commits a second crime, then all participants are  
4 guilty of the second crime as long as the act done  
5 by the other person is a natural consequence of  
6 their common plan or purpose in committing the first  
7 crime.

8 This is commonly referred to as the doctrine of  
9 the hand of one is the hand of all. For example,  
10 two people can be guilty of killing another person  
11 when only one of the two had a gun, there is only  
12 one bullet and only one of the two fired the shot  
13 that caused the death.

14 In order to convict the defendant under this  
15 doctrine, the State must prove that the defendant  
16 had the intent to commit the first crime and that  
17 the act constituting the second crime was committed  
18 by another participant in the first crime as a  
19 natural consequence of their common plan or purpose  
20 in committing the first crime.

21 However, mere presence at the scene of the  
22 crime is not sufficient to convict someone under  
23 this doctrine. Further, mere prior knowledge that a  
24 crime is going to be committed without more is not  
25 sufficient to convict someone under this doctrine.



1           Now, ladies and gentlemen, I have used the word  
2           intent in various stages throughout this charge.

3           And I tell you that criminal intent is a necessary  
4           element of the crime and it has to be proven by the  
5           State beyond a reasonable doubt. Criminal intent is  
6           always a matter that has to be determined by you,  
7           the jury, from the circumstances surrounding the  
8           situation.

9           There is no way to prove intent to a  
10          mathematical certainty. There is no way medical  
11          science can dissect a person's brain and determine  
12          what the person had in mind. So the law says that  
13          criminal intent may be inferred from the  
14          circumstances shown to have existed. This is how  
15          you make the determination of whether or not the  
16          element requiring intent was present.

17          It is not necessary to establish intent by  
18          direct and positive evidence, but intent may be  
19          established by inference in the same way as any  
20          other fact taking into consideration the acts of the  
21          parties and all of the facts and circumstances of  
22          the case.

23          Criminal intent is a mental state, a conscious  
24          wrongdoing. And it is up to you to determine what  
25          the defendant intended to do based on the

1 circumstances shown to have existed.

2 An issue in this case is the identification of  
3 the defendant as the person who committed the crime  
4 charged. The State has the burden of proving  
5 identity beyond a reasonable doubt. You must be  
6 satisfied beyond a reasonable doubt of the accuracy  
7 of the identification of the defendant before you  
8 may convict the defendant.

9 Identification testimony is an expression or  
10 belief or impression by a witness. You must  
11 determine the accuracy of the identification of the  
12 defendant. You must consider the believability of  
13 each identification witness in the same way as any  
14 other witness.

15 You may consider whether the witness had the --  
16 had an adequate opportunity to observe the offender  
17 at the time of the offense. And this will be  
18 affected by things like how long or how short a time  
19 was available, how far or how close the witness was,  
20 the lighting conditions and whether the witness had  
21 the chance to see or know the person in the past.

22 And once again, I instruct you that the burden  
23 of proof is on the State. The burden of proof on  
24 the State extends to every element of the crime  
25 charged and this, specifically, includes the burden

1 of proving beyond a reasonable doubt the identity of  
2 the defendant as the person who committed the crime.  
3 If, after examining the testimony, you have a  
4 reasonable doubt as to the accuracy of the  
5 identification, you must find the defendant not  
6 guilty.

7 Now, Mr. Foreman and members of the jury,  
8 you've been selected at the end of a long and  
9 grueling process by both the State and the defendant  
10 to be fair and impartial jurors. It is your duty  
11 then by your joint deliberations to determine the  
12 truth in this case, giving to the defendant the  
13 benefit of every reasonable doubt on each and every  
14 issue. And from the facts which you determine to be  
15 true, you take and apply the law which I have just  
16 given you and thus arrive at your verdict which  
17 speaks the truth of this case.

18 You've heard the evidence, you've now heard the  
19 law and, Mr. Foreman and ladies and gentlemen, you  
20 will deliberate and decide this case indicating your  
21 decision by writing it on the back of the  
22 indictments which will go to the jury room with you.  
23 And you will indicate your verdict by writing it on  
24 the back of the indictment under the section  
25 entitled verdict, back of each indictment.

1 I've told you the standards you have to apply  
2 to each of those particular charges on each of the  
3 indictments. Whatever your verdict as to each of  
4 these particular charges, Mr. Foreman, you will  
5 indicate it by writing guilty or not guilty on the  
6 back of each indictment under the section marked  
7 verdict. And there is no significance in the order  
8 which I state these possible verdicts of guilty or  
9 not guilty, simply one must be stated first. You  
10 will sign and date at the bottom of the verdict  
11 section.

12 Remember that although the foreman is the only  
13 juror who signs the verdict, it will not be his  
14 alone. The verdict has to be a unanimous verdict as  
15 to each charge.

16 Mr. Foreman, you're not authorized to write nor  
17 sign that verdict until all of you have agreed as to  
18 what the verdict should be.

19 Now, ladies and gentlemen, I'm going to send  
20 you to the jury room, but do not begin your  
21 deliberations until you receive a copy of this  
22 charge that I've just read to you, the exhibits and  
23 the indictments. Once you receive these things,  
24 that will be your signal to begin your  
25 deliberations.

1           Once you begin your deliberations, you will  
2           deliberate until you reached a verdict, at which  
3           time you will knock on the door, advise the bailiff  
4           and we will bring you out to receive your verdict.  
5           Please go to the jury room.

6           The three alternates if y'all will just stand  
7           right outside the door for a moment.

8           (The jury retires to the jury room.)

9           **THE COURT:** All right. Are there any additions  
10          or exceptions to the charge?

11          **MR. MYERS:** Not by the State, Your Honor.

12          **MR. SOLTIS:** No, sir.

13          **MS. KIMBROUGH:** None.

14          **THE COURT:** Well, let's see now, concerning  
15          those three alternates, what do we do with them?

16          **OFFICER:** Your Honor, we can take them  
17          downstairs to the jury room there.

18          **THE COURT:** All right. Let me hear from the  
19          Solicitor and the defense and then we'll make the  
20          decision.

21          **MR. MYERS:** I was getting ready to say whatever  
22          they want to do with them.

23          **THE COURT:** Sila, you have a plan for them, did  
24          you say?

25          **OFFICER:** Yes, sir.

1           **THE COURT:** So you'll take them around the way.  
2       I'll have them come in and then you'll take them  
3       this way if you can, but, first, I'll have to have  
4       them come into the courtroom to explain to them that  
5       they'll go with you. Then the alternates will be  
6       kept together until there's a verdict in this case.  
7       And what about if there's a guilty verdict, during  
8       the second phase, are they still kept together?

9           **MR. MYERS:** If there's a guilty verdict, Your  
10       Honor, they come back in and continue as they have  
11       been during the guilt phase.

12          **THE COURT:** They take their seats back with the  
13       rest of the crew?

14          **MR. MYERS:** Yes, sir.

15          **THE COURT:** All right. Let's bring them in.

16                (The alternates return to the courtroom.)

17          **THE COURT:** Ladies and gentlemen, we'll need to  
18       have you all go with the court personnel to a  
19       separate room while the jury is deliberating at this  
20       stage, so if you will follow the court official  
21       there.

22          **BAILIFF:** They have some stuff to get out the  
23       jury room.

24          **THE COURT:** They're not deliberating yet.  
25       We're still gathering the exhibits. You can get

1 that now and we'll see y'all a little later.

2 (The alternates leave the courtroom.)

3 **THE COURT:** All right. If you all will confer  
4 concerning exhibits, make sure whatever's going back  
5 is sufficient.

6 (Pause.)

7 **THE COURT:** Let's state for the record that you  
8 all have reviewed everything and are satisfied with  
9 all of the exhibits, in addition I'm sending the  
10 indictment and a copy of my jury charges.

11 **MR. MYERS:** Yes, sir, no objection from the  
12 State.

13 **MR. SOLTIS:** We have reviewed it and no  
14 objection to what's going in.

15 **THE COURT:** All right. Very good.

16 (The jury commences its deliberations at  
17 6:15 p.m.)

18 (A recess transpired.)

19 **THE COURT:** All right. I want to caution  
20 against any outbursts during the verdict.

21 You may bring the jury in.

22 (The jury returns to open court to report  
23 its verdict at 8:40 p.m.)

24 **THE COURT:** Mr. Foreman, if you'll stand for  
25 me, please. Mr. Foreman, have you reached a

1 verdict?

2 FOREMAN: Yes, we have, Your Honor.

3 THE COURT: Is it a unanimous verdict?

4 FOREMAN: It is unanimous.

5 THE COURT: Okay. If you'll pass it to the  
6 bailiff, who will pass it to me. And you may be  
7 seated.

8 (The bailiff hands the verdicts to the  
9 Judge.)

10 THE COURT: The defendant will rise.

11 Madame Clerk, you may publish the verdict.

12 THE CLERK: On indictment 2004-GS-32-2260, the  
13 State versus Ron O'Neal Finklea, indicted for  
14 murder, we, the jury, find the defendant guilty. It  
15 is so signed.

16 Indictment 2004-GS-32-2261, the State versus  
17 Ron O'Neal Finklea, indicted for arson first degree,  
18 we, the jury, find the defendant guilty. It is so  
19 signed.

20 Indictment 2004-GS-32-2259, State versus Ron  
21 O'Neal Finklea, indicted for attempting to commit  
22 safe cracking, we, the jury, find the defendant  
23 guilty. It is so signed.

24 Indictment 2004-GS-32-2263, State versus Ron  
25 O'Neal Finklea, indicted for criminal conspiracy,



1 we, the jury, find the defendant guilty. It is so  
2 signed.

3 Indictment 2004-GS-32-2264, State versus Ron  
4 O'Neal Finklea, indicted for possession of a firearm  
5 while in the commission of a violent crime, we, the  
6 jury, find the defendant guilty. It is so signed.

7 Ladies and gentlemen of the jury, if these are  
8 your verdicts and if they're still your verdicts,  
9 please indicate by raising your right hands.

10 All hands raised, Your Honor.

11 **THE COURT:** All right. Any additional polling  
12 requested of the jury?

13 **MS. KIMBROUGH:** Yes, Your Honor, please.

14 **THE COURT:** All right. Madame Clerk, if you'll  
15 individually poll the jurors.

16 **THE CLERK:** As I call your name, please  
17 indicate by raising your right hand.

18 Cari Moyer, was this your verdict and is this  
19 still your verdict?

20 **JUROR:** (Indicating.)

21 **THE CLERK:** Suzanne Patterson, was this your  
22 verdict and is it still your verdict?

23 **JUROR:** (Indicating.)

24 **THE CLERK:** Linda Brown, was this your verdict  
25 and is this still your verdict?

1 JUROR: (Indicating.)

2 THE CLERK: Rhonda Thompson, was this your  
3 verdict and is this still your verdict?

4 JUROR: (Indicating.)

5 THE CLERK: Jenifer Powers, was this your  
6 verdict and is it still your verdict?

7 JUROR: (Indicating.)

8 THE CLERK: Roxann Harris, was this your  
9 verdict and is it still your verdict?

10 JUROR: (Indicating.)

11 THE CLERK: John Lombardi, was this your  
12 verdict and is it still your verdict?

13 JUROR: (Indicating.)

14 THE CLERK: Michael Smith, was this your  
15 verdict and is it still your verdict?

16 JUROR: (Indicating.)

17 THE CLERK: Preston Floyd, was this your  
18 verdict and is it still your verdict?

19 JUROR: (Indicating.)

20 THE CLERK: Bobbie McGee, was this your verdict  
21 and still your verdict?

22 JUROR: (Indicating.)

23 THE CLERK: Margaret Gerstung, was this your  
24 verdict and still your verdict?

25 JUROR: (Indicating.)

1           **THE CLERK:** Donald Hare, was this your verdict  
2           and is it still your verdict?

3           **JUROR:** (Indicating.)

4           All jurors polled, Your Honor.

5           **THE COURT:** All right. The verdict appears to  
6           be the unanimous verdict of each and every juror.

7           Mr. Foreman and members of the jury, I'm going  
8           to ask that you go back to the jury room for just a  
9           few minutes while I -- we discuss scheduling and  
10          we'll have you come back soon. Please go to the  
11          jury room.

12          (The jury retires to the jury room.)

13          **THE COURT:** Ms. Kimbrough.

14          **MS. KIMBROUGH:** Thank you, Your Honor, at this  
15          time, the defense would make a motion for a new  
16          trial and renew all prior objections.

17          **THE COURT:** All right. Mr. Solicitor.

18          **MR. MYERS:** Your Honor, we think that the  
19          evidence was sufficient for a jury question and the  
20          jury has spoken.

21          **THE COURT:** I respectfully deny the motion.  
22          The issues were issues for the jury to determine and  
23          the jury has rendered its verdict. And I find that  
24          the verdict is supported by sufficient evidence for  
25          the verdict to stand.

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1 MS. KIMBROUGH: Thank you, Your Honor.

2 THE COURT: Now, regarding scheduling at this  
3 point, 24 hours from now will be ten till 9:00  
4 Saturday night. Hear from the parties regarding  
5 scheduling so that I can bring the jury in and let  
6 them know when they need to come back.

7 MR. MYERS: I would rather not start tomorrow  
8 night. And whatever the Court and defense counsel  
9 deems after that, that's fine with us.

10 THE COURT: Ms. Kimbrough.

11 MS. KIMBROUGH: I would concur with Solicitor  
12 Myers that ten till 9:00 tomorrow night would  
13 probably not be the best time to start. And we'll  
14 defer to Your Honor. Obviously, we would like to  
15 use the 24 hour period. Mr. Finklea is not going to  
16 waive that, so the Court's discretion.

17 THE COURT: Well, I'm thinking of not working  
18 on Sunday, number one. We can come back at 9:30 on  
19 Monday, which is Labor day is a possibility.  
20 Depending on the length of the case, it may be that  
21 we can start Tuesday and not Monday. I have to hear  
22 what you all think about it.

23 MR. MYERS: Tuesday's fine with us.

24 MS. KIMBROUGH: Your Honor, we would appreciate  
25 Tuesday.

1           **THE COURT:** I'm told by Judge Johnson that a  
2 term of common pleas court, a new jury is showing up  
3 Tuesday morning and this is the only room that's big  
4 enough for the jury to be qualified. And I think  
5 they come in at 9:30; is that right?

6           **THE CLERK:** Yes, sir.

7           **THE COURT:** And it takes about an hour, 9:30 to  
8 10:30, so we can start Tuesday at 11:00 or we can  
9 come in early and get an hour's worth and then take  
10 a break.

11          **MR. MYERS:** Anything suits us, Your Honor.

12          **THE COURT:** I think the most -- Ms. Kimbrough.

13          **MS. KIMBROUGH:** I was agreeing with the  
14 Solicitor, Your Honor.

15          **THE COURT:** I think we probably, if we were to  
16 attempt to get an hour in, there would be jurors  
17 coming in and there would be distractions. I think  
18 our best bet is to let them get through and maybe  
19 start Tuesday at 11:00.

20          **MS. KIMBROUGH:** Thank you, Your Honor.

21          **THE COURT:** Any special instructions that you  
22 all want me to give this jury panel between now and  
23 then?

24          **MR. MYERS:** No, sir, just what you've been  
25 giving them, I think, is certainly adequate.

1           **THE COURT:** Okay. Well, I'm going to have them  
2 come in and cut them loose to come back Tuesday at  
3 11:00. And then before we leave, we'll talk a  
4 little bit more before adjourning here concerning  
5 any problems or issues that we need to focus on  
6 between now and then.

7           All right. If you'll bring them back.

8           (The jury returns to the courtroom.)

9           **THE COURT:** Ladies and gentlemen, having found  
10 Mr. Finklea guilty, it is necessary for us to engage  
11 in additional proceedings relating to punishment.  
12 And we will adjourn for the weekend, and Monday is a  
13 holiday, we're going to -- through Monday and have  
14 you come back Tuesday morning. And we'll need you  
15 back Tuesday morning at 11:00 a.m., need you in the  
16 jury room Tuesday morning at 11:00.

17           And it is necessary that I emphasize now,  
18 perhaps more strongly than ever, the cautionary  
19 instructions that we have talked with you about from  
20 the time that you came into this case through now,  
21 and that is that you're not to discuss the case at  
22 all from this point on with anyone not involved with  
23 the case. You're not to discuss the matter further  
24 with your fellow jurors regarding what you have  
25 deliberated on and decided at this point. You're

1 not to read any newspapers or watch any T.V. or  
2 allow anyone to discuss it with you or in your  
3 presence.

4 It's a very odd thing and perhaps an unnatural  
5 thing for that to occur considering the significance  
6 of your responsibilities of serving on jury duty.  
7 Often times jurors are sequestered and it's easier  
8 to control that. You're not sequestered. You're  
9 allowed to be released to go about your lives, but  
10 you're still on jury duty. You're still serving on  
11 this case and it's important for you to comply with  
12 your oath and to refrain from violating that oath by  
13 discussing this case with others or allowing others  
14 to discuss it with you, watching television reports,  
15 reading newspapers, Internet information or the like  
16 and that's my continuing instruction to you  
17 concerning this matter.

18 And I want to thank you for your services up to  
19 this point. We're going to adjourn for the weekend  
20 and through the holiday and come back Monday morning  
21 at 11:00.

22 The reason we're coming back -- Tuesday morning  
23 not Monday, Tuesday morning at 11:00, I'm sure I  
24 would have gotten corrected pretty quickly if I  
25 didn't correct myself, Tuesday at 11:00. They have

1 another jury coming in for another term of court.  
2 Just as you reported Monday, they'll have a new crew  
3 of people summoned for jury duty for civil court,  
4 common pleas court, in this courtroom next Tuesday  
5 morning. And they've told me that they'll be  
6 through with needing the room by 11:00, so that's  
7 why we're coming in at 11:00 on Tuesday.

8 So we will have y'all to leave, excuse you for  
9 the weekend, the jurors only. Everyone else will  
10 stay in the courtroom. And the jury will be  
11 dismissed.

12 (Jurors were excused for the day.)

13 **THE COURT:** In anticipation of the next phase,  
14 sentencing phase of this trial, are there any  
15 matters that the Court needs to be concerned about?

16 **MR. MYERS:** None that I know of at this time,  
17 Your Honor.

18 **MS. KIMBROUGH:** None from the defense.

19 **THE COURT:** No prelude to any evidentiary  
20 issues?

21 **MS. KIMBROUGH:** None that we're aware of as of  
22 right now.

23 **THE COURT:** All right. Well, we're going to  
24 try to keep everyone in place, everyone in the  
25 courtroom. We're going to adjourn, but we want



1 everyone to stay in the courtroom with the  
2 assistance of court officials until the jurors get  
3 an opportunity to leave. So we'll keep everyone at  
4 bay for about five minutes and then we'll be  
5 dismissed.

6 I hope everyone has a good weekend. See y'all  
7 next week.

8 (Pause.)

9 **MR. MYERS:** Your Honor, there was a witness  
10 that we had been chasing for a good while and her  
11 name is Betrice Bryant. She was the security guard  
12 that was supposed to work that night that did not  
13 show up and Jane Gibson had to fill in to her  
14 space.

15 We finally traced her down last week, sat on  
16 her house, she didn't show up. And, fortunately, a  
17 highway patrolman lived close by, so we gave the  
18 highway patrolman the subpoena. The highway  
19 patrolman served the subpoena and served the return  
20 and he delivered it to her.

21 She was supposed to be in court this week and  
22 she still has not shown up. We would like a bench  
23 warrant to try to run her down between now and  
24 Tuesday when we start back.

25 **THE COURT:** And what are they going to do, pick

1 her up whenever they can pick her up and hold her  
2 or --

3 MR. MYERS: They're going to pick her up.  
4 They're going to bring her to me and I'm going to  
5 find out what's going on and we'll try to proceed  
6 from there.

7 THE COURT: The bench warrant is issued based  
8 on her not showing up.

9 MR. MYERS: Thank you, Your Honor.

10 (Whereupon, the proceedings were concluded  
11 for August 31, 2007.)

12 (The following proceedings were held on  
13 September 4, 2007.)

14 THE COURT: Are there any matters before we  
15 bring in the jury.

16 MR. MYERS: None from the State.

17 MS. KIMBROUGH: None from the defense at this  
18 time.

19 THE COURT: All right. You may bring in the  
20 jury.

21 (The jury enters the courtroom at 11:24  
22 a.m.)

23 THE COURT: Good morning. Welcome back, ladies  
24 and gentlemen.

25 Mr. Foreman and members of the jury, because

1 the offense of murder was among the offenses that  
2 you found Ron O'Neal Finklea guilty of last Friday,  
3 it is necessary that a separate sentencing  
4 proceeding be conducted. During this sentencing  
5 proceeding, the State and the defendant will have  
6 the opportunity to present additional evidence,  
7 evidence in extenuation, aggravation and mitigation.  
8 And both sides will have an opportunity to present  
9 arguments for and against the death penalty.

10 The burden of proof is on the State to prove  
11 the existence of at least one statutory aggravating  
12 circumstance beyond a reasonable doubt. The  
13 defendant has no burden of proof.

14 South Carolina code section 16-3-20 provides  
15 that if, during this sentencing proceeding, the  
16 State proves and you find beyond a reasonable doubt  
17 the existence of one statutory aggravating  
18 circumstance, you, the jury, will recommend the  
19 sentence of either life in prison or the death  
20 penalty.

21 The statute uses the word recommendation and it  
22 provides that the jury must recommend a sentence.  
23 Let me tell you, however, that it is not a  
24 recommendation, it is the imposition of a sentence.  
25 I am required to follow the recommendation that you

1 make when you find the existence of a statutory  
2 aggravating circumstance. So whatever  
3 recommendation you make, that will be the sentence  
4 that I impose.

5 Please do not begin to make up your mind until  
6 we go through all phases of this proceeding, until  
7 you have the opportunity to listen to all of the  
8 evidence, you receive my final instructions and you  
9 hear each others views on what the sentence should  
10 be. Only then will you be in the right position to  
11 begin to make up your mind.

12 Just as I instructed you last week, I also want  
13 to emphasize to you at this time that you're not to  
14 talk about this case in any way or expose yourself  
15 to any information about this case outside of the  
16 courtroom. And you're not to discuss it until I  
17 give you permission to begin your deliberations.

18 Now, has any juror been exposed to any  
19 information about this case outside of the courtroom  
20 since we left on Friday? If so, please indicate by  
21 raising your right hand.

22 No hands are raised.

23 Ladies and gentlemen, we'll now begin this  
24 phase of proceedings with the opening statement.

25 From the State, Mr. Myers.

1           **MR. MYERS:** Thank you, Your Honor.

2           Mr. Foreman, ladies and gentlemen of the jury,  
3           you're experiencing things that you've never  
4           experienced before. One of which, between 25 and 30  
5           feet sits a calculating, cold-blooded murderer.  
6           Your verdict was just and it was right.

7           And you recall when you were in the courtroom  
8           last Monday and Tuesday and we were asking you  
9           questions and we talked about two phases, the guilt  
10          phase, which is over with, and now the penalty  
11          phase, the punishment that fits the crime. That's  
12          why we're seeking the death penalty. There's one  
13          punishment for this horrendous act.

14          And another thing I imagine you experienced is  
15          never before did you see one calculating,  
16          cold-blooded human being take the life of another  
17          right in front of your eyes. That's pretty  
18          gruesome. There's but one punishment for one crime.

19          Now, the Judge talked a little bit a little  
20          while ago about statutory aggravating circumstances.  
21          And what that term means, statutory, it's in our  
22          statutes, it's our laws, in the law books. And  
23          there are a list of about ten or 12 statutory  
24          aggravating circumstances. And he told you we had  
25          to prove one to you for this to be a death penalty

1 case. We're relying on four.

2 That the murder of Walter Sykes was committed  
3 by the defendant while in the commission of  
4 burglary. Now, he didn't break into that place,  
5 Walter Sykes let him in, but the only reason Walter  
6 Sykes let him in was because of the defendant's  
7 deception, trickery, deceit. He tricked his way in  
8 for money and murder. That's burglary.

9 Number two, that when the defendant murdered  
10 Walter Sykes, it was done while in the commission of  
11 robbery while armed with a deadly weapon. He was  
12 there for that ATM machine, the money. He was there  
13 to rob. Walter was there to protect the place.  
14 Deadly weapon, that nine millimeter automatic pistol  
15 and that can of gasoline both are deadly weapons.

16 Number three that we're relying on is grand  
17 larceny while armed with a deadly weapon. Grand  
18 larceny is similar to robbery. The Judge will tell  
19 you all about that.

20 And then probably the most horrific one, the  
21 fourth one, that the murder of Walter Sykes by the  
22 offender was committed and accompanied by physical  
23 torture, the pain, the infliction of vile, inhumane  
24 pain. Folks, not only are shots to the face and  
25 neck vile and inhumane, but setting another human

1       being on fire, physical torture.

2               And we have to prove one to you, while I submit  
3       all four are present, we have to prove one. And if  
4       you find that during this phase, and you consider  
5       the first phase, too, that we have proved that, then  
6       it's within your power to return a death penalty  
7       verdict.

8               Now, the Judge also talked about mitigating  
9       circumstances, extenuating circumstances that can be  
10      shown to you, that's something favorable to the  
11      defendant. And that's for you to consider, that's  
12      for you to deliberate over and when it comes right  
13      down to it, what punishment fits the crime, that's  
14      what this case is all about.

15              I tell you now that this part of the case will  
16      not be as long as the first part. The first part we  
17      spent Wednesday, Thursday and Friday, we put up  
18      about 40 witnesses, some several times. We put in  
19      91 pieces of evidence. We won't put up that many  
20      witnesses in this phase, but you'll have some  
21      evidence that's not pretty again, folks, because the  
22      defendant didn't intend for this to be a pretty  
23      murder, money and murder.

24              We submit to you when you've heard it all, that  
25      you'll come to the conclusion that there's one

1 punishment that fits the crime, the reason we're in  
2 this second phase, and that's for the death penalty.

3 THE COURT: Defense.

4 MS. KIMBROUGH: Thank you, Your Honor.

5 THE COURT: Ms. Kimbrough.

6 MS. KIMBROUGH: Good morning, ladies and  
7 gentlemen. In my opening during the guilt phase, I  
8 went through a variety of steps trying to explain  
9 what the usual trial was like. And quite frankly,  
10 in the usual criminal trial, your job is very  
11 academic. You listen to the facts, you pass upon  
12 the credibility of the witnesses and the evidence,  
13 you listen to the law and you apply the two together  
14 and you come up with a verdict, guilty or not  
15 guilty. The usual trial, the usual criminal trial  
16 is, in that regard, not especially difficult.

17 I noticed when we were selecting all of you  
18 during the initial stages of this trial, that you're  
19 an extremely well-educated group. So that academic  
20 surprise was no doubt not particularly difficult.  
21 You use your brain, you use your mind and you use  
22 your common sense.

23 Now, intelligence and common sense were enough  
24 to reach a verdict and we certainly, the defense, we  
25 do not argue with your verdict. We do not take



1 issue with it. We believe you made the right  
2 verdict during that phase.

3 In this phase, however, you're going to have to  
4 engage an additional part of who you are. It's not  
5 just a matter of common sense or intelligence, did  
6 the State meet its burden of proving one aggravating  
7 circumstance, maybe they will, maybe they won't, but  
8 in our law as it relates to these types of cases,  
9 the Legislature has found that there isn't one  
10 correct answer at this phase. It's not easy. A  
11 square plus B square equals C square, pretty easy,  
12 pretty linear.

13 At this phase of the trial, there is no one  
14 correct answer. The law says you can give death if  
15 there's one aggravating circumstance proven or you  
16 can give life for any reason or for no reason at  
17 all.

18 And when we selected you all, it wasn't much  
19 fun to have to cross-examine you before we even got  
20 to know you, but the purpose of the voir dire, the  
21 purpose of that individual back and forth was to  
22 make sure that your mind would not be made up on  
23 punishment after the first phase. You all promised  
24 you could do it and so I'll just remind you to  
25 please keep an open mind, please remember your oath,

1 I'm sure you will.

2 But this phase of the trial will most likely be  
3 very emotional, sometimes it's hard to reach the  
4 correct outcome, the correct verdict when your  
5 emotions are high. So we ask you to please take a  
6 step back when things get difficult and examine the  
7 evidence in the same way you did during the first  
8 phase, but always remember this is not an academic  
9 exercise.

10 This is a chance for the State to try to prove  
11 to you that Ron Finklea is the worst of the worst,  
12 that's why we have the death penalty. Not every  
13 murder, not every aggravated murder deserves the  
14 death penalty.

15 Death is irreversible. It's final. And it's  
16 in your hands not just as a group, but individually  
17 and together you must make that determination.

18 So what will you hear from the defense? Well,  
19 I think you've already heard some of it. Ron has no  
20 prior record. Ron served the Army -- excuse me --  
21 served his country by way of service in the Army.  
22 And for almost three decades, stayed out of trouble,  
23 he served his country and then this horrific crime.

24 I do not profess to you to understand nor do I  
25 think I will be able to prove to you why this

1     happened or exactly how it happened. And so part of  
2     what you're going to hear, in addition to the good  
3     things about Ron, is you're going to hear something  
4     about his mental state.

5             We intend to show you that after this horrific  
6     crime, after he'd been fingered by the co-defendant  
7     as the shooter, Ron was brought back to South  
8     Carolina. We're going to show to you that Ron tried  
9     to take his own life and was nearly successful, tied  
10    a bed sheet to the rafters in jail, and you don't  
11    have to take my word for it, you'll hear from  
12    experts, and he was found hanging, blue, no pulse,  
13    no heartbeat. And the correctional officers, doing  
14    their job, as they should, cut him down. They  
15    performed CPR. They sent him to the hospital.

16            You'll hear that his prognosis was grave, it  
17    was grim. You're going to hear that no one expected  
18    him to survive, at least not the medical experts,  
19    but he did, he did survive, he's here today.

20            You're going to hear that he experienced, and  
21    I'm not a doctor so I hope I get this term right,  
22    you'll hear it from people who actually will explain  
23    it to you, but it's called anoxic brain injury,  
24    caused permanent brain damage. Anoxia is what  
25    happens when you don't get oxygen to your brain, in

1 lay terms. It's the only terms I can personally  
2 understand. But he didn't get oxygen to his brain.  
3 He killed off part of his brain.

4 And, ladies and gentlemen, Ron experienced as a  
5 result of that, some permanent side effects and  
6 you're going to hear about those, one of them is  
7 amnesia. In other words, he can't remember certain  
8 facts.

9 And during the first phase of this trial when  
10 you all were determining what the facts were, when  
11 the State was meeting its burden to prove to you  
12 what they believed the facts were that would  
13 establish the five crimes that Ron's been convicted  
14 of, I submitted to you what my theory of the case  
15 was. And I ask you now, if you disagreed with my  
16 theory, please don't hold that against Ron.

17 My theory was developed based on the evidence  
18 and as his advocate. He was unable to participate.  
19 And so any missteps I made in formulating my theory,  
20 I just ask you not to hold it against Ron. It  
21 wasn't him, it was me. I came up with the strategy  
22 based on the facts as I saw them in the light most  
23 favorable to Ron. It's my job. And Ron deserved a  
24 fair trial and I believe y'all gave it to him.

25 Now, again, I would just simply ask you when

1 the State begins presenting its evidence, both as to  
2 the aggravating circumstances under what they, I  
3 believe, will allege is character evidence, meaning  
4 what is Ron like, what is his character, part of  
5 their job is to try to show you that his character  
6 is terrible, that he falls into the category of  
7 being the worst of the worst. I submit to you they  
8 won't be able to do that.

9 But, again, when the witnesses take the witness  
10 stand, please use your common sense, do they have  
11 bias, is there somebody they want to protect, do  
12 they have any evidence, is there any basis for what  
13 they're saying. Please just pay the same attention  
14 you did in the first phase, that's all you got to  
15 do, common sense. Pay attention to what's being  
16 said, scrutinize the witness so that you get the  
17 right result.

18 I'm going to sit down now, but I want to submit  
19 to you that Ron's life is worth saving, life without  
20 the possibility of parole. We -- all of us here in  
21 this courtroom know what Ron's worst deed was, we  
22 know it, but I submit to you that none of us would  
23 want to be judged based on our worst deeds because  
24 it is not just our worst deeds alone, the worst  
25 things we've done that determine our worth, it's the

1 good things, too, it's how we lived our life, how we  
2 have lived our lives.

3 And, ladies and gentlemen, I submit to you as  
4 horrific as this crime was, and it was, that Ron is  
5 not among the worst of the worst and that when you  
6 look at his life, when you hear from his family and  
7 you hear from the experts and the others who will  
8 talk about who Ron is and who he was before this  
9 crime, you'll realize that he is not among the worst  
10 of the worst. He is someone who's deserving of  
11 mercy. And whether you find one mitigating  
12 circumstances or none at all, mercy is always an  
13 option. Thank you.

14 **THE COURT:** First witness.

15 **MR. HUBBARD:** The State calls Detective Eric  
16 Russell.

17 **ERIC REDMOND RUSSELL,**  
18 having been duly sworn, testified as follows:

19 **THE CLERK:** If you'll have a seat, state your  
20 full name, as well as spelling your last for the  
21 record, please.

22 **THE WITNESS:** Eric Redmond Russell,  
23 R-U-S-S-E-L-L.

24 \*\*\*\*\*

25 \*\*\*\*\*

## DIRECT EXAMINATION

1

2 BY MR. HUBBARD:

3 Q Detective Russell, can you please tell the jury  
4 where you work?

5 A The Lexington County Sheriff's Office.

6 Q And what do you do for the sheriff's  
7 department?

8 A I'm a major crimes detective.

9 Q How long have you been in the major crimes  
10 unit?

11 A A little over five years.

12 Q So back in August of 2003, were you in the  
13 major crimes unit?

14 A I was.

15 Q Now, on August the 4th, 2003, two days after  
16 the murder, did you have occasion to execute a  
17 search warrant related to this case?

18 A Yes, sir, I did.

19 Q And where was that search warrant executed?

20 A In Saint Matthews in Calhoun County at Saint  
21 Matthews Storage.22 Q And, specifically, were there one or more units  
23 that you were searching?

24 A There were two units to be searched.

25 Q What units were they?

ERIC REDMOND RUSSELL - DIRECT BY MR. HUBBARD

1829

1 A Unit six and 36, I believe.

2 Q And based on your investigation, in whose name  
3 were these units rented in?

4 A Ms. Teresa Finklea.

5 Q Did you search both of these units?

6 A Yes, sir, I did.

7 Q As to unit six, did you find anything?

8 A Nothing of any value was found in unit six.

9 Q As to unit 36, what, if anything, did you find?

10 A Various papers related to Mr. Finklea.

11 Q Related to Ron Finklea?

12 A Correct, Ron Finklea.

13 Q Let me see if you recognize this document that  
14 I'm handing you. Do you recognize that, sir?

15 A I do. That's a withholding --

16 Q I'm sorry. Let me ask you this, is that one of  
17 the documents you found during your search?

18 A That's correct. I took that out of unit 36.

19 Q And what is that document?

20 A That is a child support withholding notice from  
21 the State of Washington.

22 Q What department specifically from the State of  
23 Washington?

24 A Department of Social and Health Services  
25 Division of Child Support.



1 Q And does it mention what company it is directed  
2 to?

3 MS. KIMBROUGH: Your Honor, may we approach?

4 THE COURT: Yes, you may.

5 (Whereupon, a bench conference was held off  
6 the record, in the presence of the jury, but out of  
7 the hearing of the jury.)

8 MS. KIMBROUGH: Thank you, Your Honor.

9 BY MR. HUBBARD:

10 Q Again, who was that order to withhold income  
11 directed to, what company?

12 A Professional Facilities Management,  
13 Incorporated.

14 Q And where are they located?

15 A On Bell Circle in Montgomery, Alabama.

16 Q And does that order say it's in reference to a  
17 particular employee?

18 A Yes, sir. It is in reference to Ron O'Neal  
19 Finklea.

20 Q And does it reference a child?

21 A Yes, sir. It referenced to Ron O. Finklea,  
22 Junior.

23 Q And does it reference a date of birth for that  
24 child as well?

25 A Yes, sir, April the 1st of 1994.

ERIC REDMOND RUSSELL - DIRECT BY MR. HUBBARD

1831

1 Q Does the order indicate how much, if any, Ron

2 Finklea is in arrears on his child support?

3 A Yes, sir. It shows that he is in arrears for

4 \$21,800.

5 Q And does the order indicate how much the

6 company is to withhold from Mr. Finklea's income?

7 A Yes, sir, amount of \$870 per month.

8 MR. HUBBARD: Your Honor, at this time, I offer

9 these documents into evidence.

10 THE COURT: What says the defense?

11 MS. KIMBROUGH: No objection.

12 THE COURT: It's admitted without objection,

13 State's Number 92.

14 (State's Exhibit Number 92, child support  
15 withholding notice, admitted into evidence.)

16 BY MR. HUBBARD:

17 Q Now, Detective, based on your investigation,

18 did you also determine the time period in which

19 Mr. Finklea was employed for that company?

20 A Yes, sir. The time period he was employed

21 there would have been July through October of 2002.

22 Q I'm going to show you a board and see if this  
23 accurately indicates your testimony as to the order,

24 the child, the child's date of birth, the State and

25 the department and division it came from, the

1 company it was directed to, where the company's from  
2 and what the order says?

3 A Yes, sir, that's correct.

4 Q And the employment dates are correct as well?

5 A That's correct, also.

6 MR. HUBBARD: Your Honor, I'd like to publish  
7 this to the jury as well. Your Honor, I guess I  
8 should go ahead and offer this into evidence.

9 MS. KIMBROUGH: Your Honor, we have no  
10 objection to it being used as a demonstrative  
11 exhibit, but we don't think it's admissible.

12 MR. HUBBARD: That's fine. At this point, I'll  
13 use it for demonstrative purposes.

14 THE COURT: All right.

15 BY MR. HUBBARD:

16 Q So, again, Detective, child support order  
17 directed to Mr. Finklea in reference to Ron Finklea,  
18 Junior from Washington State, when he was employed  
19 at Professional Facilities Management and it's an  
20 amount in arrears of 21,800; is that correct?

21 A That's correct.

22 Q And they're going to withhold \$870 per month?

23 A Yes, sir, \$870 per month.

24 Q And his date of employment, again, July 2002  
25 through October 2002?

ELIZABETH BROWN - DIRECT BY MR. GRAHAM

1833

1           A     Correct.

2           MR. HUBBARD: Thank you, Detective. Please  
3 answer any questions the defense has.

4           THE WITNESS: Yes, sir.

5           MS. KIMBROUGH: We have no questions. Thank  
6 you.

7           THE COURT: You may step down.

8           MR. GRAHAM: The State calls Beth Brown.

9                     ELIZABETH BROWN,  
10       having been duly sworn, testified as follows:

11          THE CLERK: If you'll have a seat and state  
12 your name for the record, please.

13          THE WITNESS: Elizabeth Brown.

14                     DIRECT EXAMINATION

15       BY MR. GRAHAM:

16       Q     Ms. Brown, where are you employed?

17       A     I'm employed by Shealy Electrical Wholesalers.

18       Q     And what is Shealy Electrical Wholesalers?

19       A     We're an electrical distributor that  
20 distributes electrical components for -- in seven  
21 locations in South Carolina.

22       Q     And do you have a location in Columbia?

23       A     Yes, we do.

24       Q     And what does that location in Columbia do?

25       A     It distributes electrical components.

1 Q And what do you do for Shealy Electric?

2 A I'm the human resources manager.

3 Q And did Ron Finklea, at one time, work for the  
4 Columbia warehouse for Shealy Electric?

5 A Yes, sir.

6 Q And were you able to determine the dates that  
7 Mr. Finklea worked for Shealy Electric?

8 A Yes. He worked from November 11th, 2002 to  
9 March 4th of 2003.

10 Q During that approximate four month period that  
11 he worked with Shealy Electric, did you receive any  
12 orders or notice to withhold income for child  
13 support from Washington State?

14 A Yes, I did.

15 Q And let me show you a document and ask if you  
16 recognize it. And is that a fair and accurate copy  
17 of the notice that you received from Washington  
18 State?

19 A Yes, that is correct.

20 MR. GRAHAM: Your Honor, the State would offer  
21 this into evidence.

22 MS. KIMBROUGH: No objection.

23 THE COURT: It's admitted without objection,  
24 State's Number 93.

25 (State's Exhibit Number 93, child support

ELIZABETH BROWN - DIRECT BY MR. GRAHAM

1835

1 withholding notice, admitted into evidence.)

2 BY MR. GRAHAM:

3 Q Ms. Brown, looking at that document on State's  
4 Exhibit Number 93, who is that -- who is that order  
5 in reference to?

6 A Ron O'Neal Finklea.

7 Q And does it list the name of the child that the  
8 support is ordered for?

9 A It's R [REDACTED], [REDACTED].

10 Q And the date of birth for R [REDACTED], [REDACTED]

11 A [REDACTED] [REDACTED] [REDACTED].

12 Q And what is the date of the order?

13 A It's January 7th, 2003.

14 Q And how much money was the defendant, Ron  
15 Finklea, supposed to pay to his son for child  
16 support?

17 A Five hundred per month.

18 Q And during that time that he actually worked  
19 there, did Shealy Electric, did you actually  
20 withhold money and forward it to Washington State?

21 A Yes, we did.

22 Q Looking at item number two on here, let me ask  
23 you if that's the correct statement, Shealy  
24 Electrical Wholesale Columbia, South Carolina, order  
25 notice to withhold income for child support January

1 7th, 2003, \$500 to be withheld, employment dates  
2 November 11th, 2002 to March 4th of 2003?

3 A Yes, that's correct.

4 MR. GRAHAM: And I believe -- was this just for  
5 demonstrative purposes, Your Honor?

6 THE COURT: Yes.

7 MR. GRAHAM: I will publish this to the jury at  
8 this time.

9 BY MR. GRAHAM:

10 Q Ms. Brown, regarding the time that Mr. Finklea  
11 left, which you've got as his employment dates of  
12 March 4th, 2003, do you also have in his personnel  
13 file a letter written by his -- or a letter written  
14 by Dusty Phillips?

15 A Yes, sir, I do.

16 Q And who is Dusty Phillips?

17 A Dusty Phillips was his immediate supervisor.

18 Q And does that letter relate to Mr. Finklea  
19 actually ending his employment with Shealy Electric?

20 A Yes, it does.

21 Q And is that -- do you recognize Mr. Phillips'  
22 handwriting?

23 A Yes, that is his handwriting.

24 Q And do you remember receiving that letter?

25 A Yes.

ELIZABETH BROWN - CROSS BY MS. KIMBROUGH

1837

1           **MR. GRAHAM:** Your Honor, the State would offer  
2 this letter into evidence.

3           **THE COURT:** What says the defense?

4           **MS. KIMBROUGH:** We have no objection.

5           **THE COURT:** It's admitted without objection.

6           (State's Exhibit Number 94, letter, admitted  
7 into evidence.)

8           **BY MR. GRAHAM:**

9           **Q**     Ms. Brown, looking at State's Exhibit 94, would  
10 you read that out loud to the jury, please?

11          **A**     The date on it is 3/6/03. Ron Finklea came in  
12 early and stated to Don Boyd that he would not be  
13 back. He also stated that he was going to work at  
14 Selectron on Monday. He apparently did not think  
15 enough of me or Shealy Electric to give any notice.  
16 It all worked out for the best because he was very  
17 near getting fired. Dusty Phillips, warehouse  
18 manager.

19          **MR. GRAHAM:** Ms. Brown, please answer any  
20 questions the defense has.

21                               **CROSS-EXAMINATION**

22          **BY MS. KIMBROUGH:**

23          **Q**     Good morning. Did you bring the entire  
24 employment file with you?

25          **A**     Yes, I did.



1 Q Contained in that file, do you see a memo or an  
2 e-mail from David White to yourself?

3 A Yes.

4 Q Ms. Brown, while I'm getting an additional  
5 copy, would you please read to the jurors the memo  
6 dated November 5th, 2002 from David White to you?

7 A We have made an offer to Ron Finklea. He will  
8 be a new employee in Columbia. We felt he was too  
9 good to pass up. I'll send his résumé. He is  
10 taking a drug test today and will start on Monday  
11 assuming a negative result. His social security  
12 number is [REDACTED] We will pay him an hourly --  
13 hourly at a rate of 9.50 to work in our warehouse.  
14 In the next couple of days, we will be terminating  
15 an employee in the warehouse who is not working out  
16 making this a replacement, not an added resource.  
17 Paperwork is on the way. Please prepare a new hire  
18 kit to be delivered via the transfer truck. Thanks,  
19 David.

20 Q Anywhere in your file do you see where Ron  
21 Finklea flunked a drug test?

22 A No.

23 Q Anywhere in your file do you see any  
24 disciplinaries?

25 A No.

ELIZABETH BROWN - CROSS BY MS. KIMBROUGH

1839

1 Q Anywhere in your file do you see any evidence  
2 as to why Mr. Finklea was on the verge of being  
3 fired?

4 A No.

5 MS. KIMBROUGH: Your Honor, I'd like to have  
6 this memo read by Ms. Brown entered as Defense  
7 Exhibit Number 3.

8 MR. GRAHAM: Your Honor, we have no objection  
9 to it being in evidence.

10 MS. KIMBROUGH: Thank you.

11 THE COURT: It's admitted as Defense Number 3.

12 (Defendant's Exhibit Number 3, letter,  
13 admitted into evidence.)

14 BY MS. KIMBROUGH:

15 Q And just one final question, when he was  
16 employed at Shealy Electric, I just want to confirm  
17 that Mr. Finklea was enrolled to pay his child  
18 support?

19 A Correct.

20 MS. KIMBROUGH: Okay. Thank you.

21 THE COURT: Did you say you wanted the witness  
22 to read something?

23 MS. KIMBROUGH: Yes, Your Honor, she did. And  
24 we would move, I apologize, Defense Exhibit Number 3  
25 into evidence. I believe Ms. Brown just published

DUANE RAY PEAKE - DIRECT BY MR. HUBBARD

1840

1 it to the jury.

2 THE COURT: All right. Anything further of  
3 this witness?

4 MR. GRAHAM: No, Your Honor.

5 THE COURT: All right. You may step down,  
6 ma'am.

7 MR. HUBBARD: The State calls Detective Duane  
8 Peake.

9 DUANE RAY PEAKE,  
10 having been duly sworn, testified as follows:

11 THE CLERK: Have a seat and state your name for  
12 the record, please.

13 THE WITNESS: Duane Ray Peake, P-E-A-K-E.

14 DIRECT EXAMINATION

15 BY MR. HUBBARD:

16 Q Detective Peake, do you recall testifying about  
17 a search warrant you executed August 4th, 2003 on a  
18 1997 black Mercury Tracer?

19 A Yes, I do.

20 Q And whose car was that?

21 A Teresa Finklea.

22 Q And where did you locate that car?

23 A Columbia Airport.

24 Q Let me see if you recognize this document.

25 A Yes, I do.

DUANE RAY PEAKE - DIRECT BY MR. HUBBARD

1841

- 1 Q Is that one of the items you found in the car?
- 2 A That's correct.
- 3 Q And what is that document?
- 4 A It's an order or notice to withhold income for
- 5 child support from the State of Washington.
- 6 Q What date is that? What date was it sent?
- 7 A The date of the order was April 3rd, 2003.
- 8 Q And from the State of Washington?
- 9 A That's correct.
- 10 Q And, specifically, again, what department or
- 11 division was it from in Washington?
- 12 A It was from the Department of Social and Health
- 13 Services.
- 14 Q What company is that order directed to?
- 15 A Kelly Services, Incorporated.
- 16 Q And in reference to what employee?
- 17 A Ron O'Neal Finklea.
- 18 Q And is it in reference to a particular child?
- 19 A Yes, it is.
- 20 Q What's the child's name?
- 21 A R ■ ■ ■ ■ ■.
- 22 Q Does the order indicate how much money
- 23 Mr. Finklea is in arrears?
- 24 A Yes, sir.
- 25 Q And how much is that?

1       A     Twenty-one thousand five hundred three dollars  
2       and 31 cents.

3       Q     Does the order indicate how much is to be  
4       deducted from his paycheck while he's working with  
5       Kelly Services?

6       A     Yes, sir.

7       Q     How much is that?

8       A     Five hundred dollars per month.

9       MR. HUBBARD: Your Honor, I offer this document  
10      into evidence.

11      MS. KIMBROUGH: Without objection, Your Honor.

12      THE COURT: It's admitted without objection.

13           (State's Exhibit Number 95, child support  
14      withholding notice, admitted into evidence.)

15      BY MR. HUBBARD:

16      Q     Detective, I'm going to ask you to look at this  
17      board and see if the order you have up there and the  
18      testimony you've just given is accurately depicted  
19      on this board for Kelly Services, Incorporated at  
20      Selectron, order of notice to withhold income for  
21      child support, April 3rd, 2003; is that correct?

22      A     That's correct.

23      Q     The amount in arrears, \$21,503?

24      A     Correct.

25      Q     The amount to be withheld, \$500?

DUANE RAY PEAKE - CROSS BY MS. KIMBROUGH

1843

1       A     Correct.

2           MR. HUBBARD: No more questions, Detective.

3       Please answer anything the defense has, please.

4                   CROSS-EXAMINATION

5       BY MS. KIMBROUGH:

6       Q     Good morning, Detective. How are you?

7       A     Fine, ma'am.

8       Q     The document that you were just handed, State's

9       95 --

10       MS. KIMBROUGH: May I approach the witness?

11       THE COURT: Yes.

12       MS. KIMBROUGH: Thank you.

13       BY MS. KIMBROUGH:

14       Q     You found this in the Mercury Tracer; is that  
15       right?

16       A     That's correct.

17       Q     And that was at the airport?

18       A     It was searched at the Lexington County  
19       Sheriff's Department. I seized it at the airport.

20       Q     All right. So this notice that you found  
21       documents that Ron Finklea was having moneys  
22       withheld from his check at Selectron?

23       A     Moneys withheld while being paid through Kelly  
24       Services.

25       MS. KIMBROUGH: Okay. Thank you. That's all

GINA BERRY - DIRECT BY MR. GRAHAM

1844

1 the questions I have.

2 THE COURT: Anything further of this witness?

3 MR. HUBBARD: No, sir, Your Honor.

4 MR. GRAHAM: The State calls Gina Berry.

5 GINA BERRY,

6 having been duly sworn, testified as follows:

7 THE CLERK: If you'll have a seat and state  
8 your name for the record, please.

9 THE WITNESS: Gina Berry.

10 DIRECT EXAMINATION

11 BY MR. GRAHAM:

12 Q Ms. Berry, where are you employed?

13 A At Kelly Services.

14 Q And what do you do for Kelly Services?

15 A I'm the district manager for Columbia.

16 Q And as a district manager for Columbia, were  
17 you able to determine the employment dates for Ron  
18 Finklea as a Kelly Services employee when he was  
19 assigned to Selectron?

20 A Yes, sir.

21 Q And what were those dates?

22 A On March 6th of 2003 to May 30th of 2003.

23 Q And are those dates accurately reflected on  
24 this chart, Ms. Berry?

25 A Yes.

GINA BERRY - DIRECT BY MR. GRAHAM

1845

1           **MR. GRAHAM:** Your Honor, at this time, the  
2 State would move the completed board into evidence.

3           **THE COURT:** What says the defense?

4           **MS. KIMBROUGH:** Your Honor, it's inadmissible.  
5 It's a demonstrative exhibit, but we don't see how  
6 it's admissible.

7           **THE COURT:** What says the State?

8           **MR. GRAHAM:** Your Honor, I believe it's 1006,  
9 I'm not sure, that talks about summary charts and I  
10 would just say that it's a summary of the testimony  
11 and accurately reflects what was said.

12           **THE COURT:** The Court will have it marked for  
13 identification at this time.

14           (State's Exhibit Number 96, chart, was  
15 marked for identification purposes.)

16           BY MR. GRAHAM:

17           **Q**    Ms. Berry, in reviewing the file on  
18 Mr. Finklea, were you able to determine why he was  
19 -- why Kelly Services ended his employment at  
20 Selectron?

21           **A**    Yes. He no showed, no called for three days of  
22 work. And Kelly policy is to terminate employment.

23           **Q**    So after three days of missing work in a row,  
24 that Kelly Services and Ron Finklea in this case was  
25 terminated?



1 A Yes, sir.

2 MR. GRAHAM: Please answer any questions the  
3 defense has.

4 CROSS-EXAMINATION

5 BY MS. KIMBROUGH:

6 Q Good morning, Ms. Berry. How are you?

7 A Good morning. Thanks.

8 Q Relying on the chart here, tell me again, Ron's  
9 employment dates for Kelly Services were March 6th  
10 of '03 through May 30th of '03?

11 A Yes, ma'am.

12 Q Okay. And do you have his complete employment  
13 file?

14 A Yes, ma'am.

15 Q Okay. In that file, do you see any  
16 disciplinaries?

17 A No, ma'am.

18 Q Did you see any failed drug tests?

19 A No, ma'am.

20 Q Do you see any complaints about Ron?

21 A No, ma'am.

22 Q No demotions?

23 A No, ma'am.

24 Q So, in other words, until he failed to show  
25 three days in a row, he has an unblemished work

GINA BERRY - CROSS BY MS. KIMBROUGH

1847

1 record?

2 A Yes, ma'am.

3 MS. KIMBROUGH: Thank you so much, Ms. Berry.

4 THE COURT: Anything further of this witness?

5 MR. GRAHAM: No, Your Honor.

6 THE COURT: You may step down.

7 And the summary will be admitted under Rule

8 1006, South Carolina Rules of Evidence, State's

9 Exhibit Number 96.

10 (State's Exhibit Number 96, chart, admitted  
11 into evidence.)

12 MR. HUBBARD: Your Honor, the State calls  
13 Sherry Bolin.

14 SHERRY BOLIN,

15 having been duly sworn, testified as follows:

16 THE CLERK: If you'll have a seat and state  
17 your name for the record, please.

18 MS. KIMBROUGH: Your Honor, may we approach  
19 briefly?

20 (Whereupon, a bench conference was held off  
21 the record, in the presence of the jury, but out of  
22 the hearing of the jury.)

23 THE COURT: Ladies and gentlemen, I'm going to  
24 have you go to the jury room so that we can discuss  
25 a matter outside of your presence. Please do not

1 discuss the case while you're in the jury room.

2 (The jury retires to the jury room.)

3 **THE COURT:** Ms. Kimbrough.

4 **MS. KIMBROUGH:** Thank you, Your Honor. May it  
5 please the Court.

6 The objection we would like to lodge is  
7 anticipatory and, therefore, we appreciate the  
8 opportunity to do so outside the presence of the  
9 jury. Based on information that we received  
10 pursuant to your orders -- Your Honor's order that  
11 the State produce everything that they had in  
12 addition to the discovery, we've had a chance to  
13 review various witness statements, one of which is  
14 from Ms. Bolin. This information seems to suggest  
15 that Ron was involved in crimes involving drug  
16 dealing and, in fact, crack manufacturing.

17 The witness information we have is of a very  
18 general nature. It does not specify times, dates or  
19 places.

20 This conduct was never charged. It was never  
21 adjudicated. And we believe that under Gardner  
22 versus Florida, it would be a violation of Ron's  
23 Eighth Amendment Rights to be sentenced by a jury on  
24 the basis of information that he had neither the  
25 chance to deny, explain and rebut. And so, Your

1 Honor, we believe that any evidence of unadjudicated  
2 criminal conduct would violate that principle and so  
3 we would object to that type of testimony.

4 **THE COURT:** Mr. Solicitor, what do you say?

5 **MR. HUBBARD:** Your Honor, this witness is going  
6 to testify that the very first day Mr. Finklea and  
7 his wife moved in with them, they busted him selling  
8 drugs out of their front door. She's going to  
9 testify two weeks after that, they had another  
10 indication that he was still selling drugs and they  
11 had to approach him and talk to him again, that he  
12 was going to be kicked out of the house, along with  
13 his wife and stepson, if that did not cease. That's  
14 the testimony as to the drugs, Your Honor.

15 **THE COURT:** And that testimony is admissible  
16 under what principal, what case, what theory?

17 **MR. HUBBARD:** State v. Shuler, Your Honor,  
18 about the purpose of a sentencing phase in a capital  
19 trial is directing jury's attention to specific  
20 circumstances of the crime and characteristics of  
21 the defendant. Here, obviously this is bad  
22 character evidence.

23 Your Honor, on down, as far as the general  
24 standard what is essential is that the jury have  
25 before it all possible relevant information about

1 the individual defendant whose fate it must  
2 determine, that's State v. Skipper. In Skipper,  
3 they allowed details of a prior rape.

4 Your Honor, going further, the sentencing judge  
5 is charged with considering all possible relevant  
6 information about the individual defendant whose  
7 fate must be determined, State v. Hughes.

8 Your Honor, all of this is prior activity,  
9 behavior, characteristics of the defendant, drug  
10 dealing is one of those. We do not have to go  
11 forward and prove a prior conviction. We don't have  
12 to establish it by clear and convincing evidence  
13 either. Lyle doesn't apply. This is all character  
14 evidence, prior bad acts, prior activity the  
15 defendant was involved in, all relevant information  
16 for the jury to determine who this man was and who  
17 committed this crime August 3rd, 2003.

18 **THE COURT:** Ms. Kimbrough.

19 **MS. KIMBROUGH:** Thank you, Your Honor.  
20 Obviously, this testimony about alleged drug dealing  
21 has nothing to do with August 2nd, 2003. It's pure  
22 character evidence or, in this case, character  
23 assassination. And whether character evidence is  
24 admissible or not, my client's entitled to an  
25 opportunity to rebut the evidence against him and to

1 not be sentenced on the basis of evidence he had no  
2 opportunity to rebut.

3 We did receive, obviously, in advance,  
4 information that this was the sort of testimony that  
5 was going to be produced, but those witness  
6 interview notes didn't say anything about times,  
7 places. There's no way to show that this is just a  
8 bunch of nonsense and that's certainly our take on  
9 it.

10 **THE COURT:** Well, I'm not concerned about the  
11 fact that you're not made aware prior to trial of  
12 everything that every witness is going to testify  
13 to. I don't believe that's the determining factor  
14 with regard to this evidence.

15 I am concerned, however, with the admission of  
16 evidence regarding prior conduct that does not  
17 necessarily tend to show violence or something that  
18 would be indicative of one who would commit murder  
19 such as Mr. Finklea has been convicted of.

20 You pointed out State versus Shuler and another  
21 case where the -- some case where a person had been  
22 previously convicted of rape, that's a crime of  
23 violence. If the intent of this testimony is to say  
24 that Mr. Finklea was a drug dealer, so, therefore,  
25 he killed Mr. Sykes because he 's a drug dealer,

1           then this nexus has to be stronger in my opinion.

2           **MR. MYERS:** May I, Your Honor?

3           **THE COURT:** Yes, sir.

4           **MR. MYERS:** State versus Gaskins, 326 S.E.2d  
5           132, when Pee Wee Gaskins was tried, the trial judge  
6           did not err in allowing admission of evidence of  
7           theft of boat, a motor and a trailer for which the  
8           defendant was not convicted. Our case law holds  
9           that prior bad acts not the subject of the victim  
10          does not necessarily have to be related to the crime  
11          for which he's been convicted of, it goes to his  
12          character.

13          It was also in State versus Woomer, there had  
14          been a prior escape. Woomer is at 399 S.E.2d 317.  
15          There is State versus Paul Koon, 298 S.E.2d 769,  
16          1982, it was not error for prior attempts to commit  
17          a crime not the subject of conviction.

18          So we submit to Your Honor that this goes to  
19          character which this phase of the trial is a  
20          relevant issue, good and bad character in which  
21          those prior bad acts and prior crimes do not have to  
22          necessarily be related to the crime for which he was  
23          on trial for, which he was convicted for here.  
24          Evidence of similar crimes or other crimes would be  
25          admissible before and after the murder involved as

1       it goes to the defendant's character or  
2       characteristics, I believe, is the way the court  
3       says it.

4               **THE COURT:** Ms. Kimbrough.

5               **MS. KIMBROUGH:** Your Honor, I would point out  
6       that the relevant language in those opinions is that  
7       it was not error. That doesn't mean that to exclude  
8       it is error either. The Court simply found in those  
9       particular cases that they couldn't find the judge  
10      had committed reversible error.

11              And I would note that in Gaskins, you know, the  
12      evidence that he stole a boat, you know, is almost  
13      laughable in comparison to the additional character  
14      evidence that he had murdered seven other people and  
15      kept a vat of acid in his yard to destroy evidence.

16              As for Woomer, and I believe that the Solicitor  
17      would certainly correct me if I'm wrong on this, I  
18      believe he had been convicted of a prior rape. It  
19      was not a mere allegation of that violent conduct,  
20      but, in fact, he participated in it and was found to  
21      be guilty.

22              And while I understand that character evidence  
23      is relevant in this particular phase, we would  
24      submit that it was not a free-for-all where people  
25      can come in and discuss things that Mr. Finklea has



1 really no ability to rebut or confront simply  
2 because of its rather inarguable sort of amorphous  
3 nature, well he was a big drug dealer and around  
4 this time he did X and around this time he did Y.  
5 There's certainly nothing other than bare testimony  
6 and that's obviously almost impossible to confront.

7 **THE COURT:** All right. Let me hear the  
8 testimony that you're offering.

9 **MR. MYERS:** One more case, Your Honor, State  
10 versus Anthony Green, 392 S.E.2d 157, that was a  
11 case where Green would go to shopping malls in  
12 Charleston and rob ladies coming out and he robbed  
13 one and shot her. Now, the court said that it was  
14 not error for testimony to come in that the  
15 defendant broke into a car and stole a purse, which  
16 didn't involve another robbery. And it also says it  
17 goes to the defendant's character, which is what we  
18 submit this for.

19 **THE COURT:** Well, if someone's on trial for  
20 killing someone and they went to a mall at some  
21 other time and shot some other people and committed  
22 or attempted similar crimes, then I would have no  
23 problem with that, but to -- the question is whether  
24 or not there is sufficient nexus between this and  
25 what he's on trial for.

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9 THE COURT: Well, in Howard and Weldon, he was  
10 on trial for robbery and murder and the testimony  
11 was that he had committed 70 prior armed robberies  
12 and one murder. Those facts would be consistent  
13 with Green and many of the others, but the question  
14 is whether this case is the same. I'm going to hear  
15 the testimony then rule. You may proceed.

## EXAMINATION

17 BY MR. HUBBARD:

18 Q Ms. Bolin, in your prior testimony, you talked  
19 about Ron Finklea and Teresa, his wife, living with  
20 you and Irena at [REDACTED] [REDACTED] [REDACTED]?

21. A That's correct.

22 Q And, again, just to establish a time frame,  
23 were they in or out of the Army at this time?

24           **A**       They were out.

25 Q Was this before Teresa's second tour of duty?

1 A Yes, it was.

2 Q And this is obviously before the murder in  
3 August of 2003?

4 A Yes.

5 Q And what, if anything, do you recall the very  
6 first day they moved into your house, or your home?

7 A We caught him selling crack cocaine out of our  
8 house to the Mexicans in the neighborhood.

9 Q Okay. And what did you do about it?

10 A I talked to Irena and we decided to confront  
11 him. And she said to him, you know, you can't do  
12 this. We have to live here. And I was there. And  
13 he apologized for disrespecting our house, said he  
14 wouldn't do it again.

15 Q And at the time he was living with you that --  
16 when he first moved in, did he have a job?

17 A He did not.

18 Q He had no source of money?

19 A None.

20 Q What was his purpose, stated purpose, for doing  
21 what he did?

22 A For money.

23 Q And during this time that he and Teresa were  
24 living with you, was his son, Byron -- excuse me --  
25 Brandon Anderson also living with y'all?

SHERRY BOLIN (IN CAMERA) - EXAMINATION BY MR. HUBBARD

1857

1 A He was.

2 Q And, again, that's Teresa's son?

3 A Yes.

4 Q And his stepson?

5 A Correct.

6 Q A couple of weeks after they all three moved in  
7 with you, do you recall having a conversation with  
8 Brandon?

9 A Yes.

10 Q And what were y'all doing?

11 A Myself, Irena and Brandon were playing  
12 basketball in the driveway.

13 Q Was anybody else present?

14 A No.

15 Q And who started this conversation?

16 A Brandon.

17 Q And based on your conversation with Brandon,  
18 what did you do?

19 A I talked with Irena again. And I said that  
20 you've got to confront Ron again because he can't  
21 sell drugs out of our house.

22 Q During this time, two weeks after he was living  
23 with you, did he have a job?

24 A He did not.

25 Q Did he have a source of income?

1       A     No.

2       Q     What was his stated purpose for selling drugs?

3       A     For money.

4           MR. HUBBARD: Your Honor, that's the main  
5     purpose I'm getting into right here. I do have  
6     other questions.

7           THE COURT: All right. Any cross-examination?

8                               EXAMINATION

9     BY MS. KIMBROUGH:

10    Q     Ron was selling drugs out of your home the very  
11    first day?

12    A     Correct.

13    Q     Did you call the cops?

14    A     No. We wanted to talk with him, you know, just  
15    talk with him at first.

16    Q     What about the second time he was selling drugs  
17    out of your house again, did you call the cops?

18    A     No.

19    Q     Did you file any reports?

20    A     No.

21    Q     Did you throw him out of your house?

22    A     It eventually did come to that.

23    Q     You didn't file any reports, you didn't call  
24    the neighborhood crime watch, you didn't call the  
25    neighborhood drug task enforcement or anything like

SHERRY BOLIN (IN CAMERA) - EXAMINATION BY MS. KIMBROUGH

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1       that?

2       **A**     Huh-huh.

3               **MS. KIMBROUGH:** I have no further questions.

4               **MR. HUBBARD:** Your Honor, again, there are  
5       other questions, but the main purpose is to  
6       establish that, again, we're talking about money,  
7       Ron Finklea's need to make money and he's choosing  
8       an illegal way to make that money. It's really  
9       irrelevant what form of illegal conduct it is, he's  
10      showing -- the nexus is, the whole important part of  
11      this is he's not going out there and keeping a  
12      steady job, he's making money the wrong way.

13              And just like August the 2nd, 2003, when he  
14      needed money, he decided to break the law rather  
15      than following the law like the rest of us and make  
16      it honestly. That is probably the most blatant  
17      nexus, the most obvious nexus between all of his  
18      conduct, Your Honor, because everything is about  
19      money.

20              **THE COURT:** All right. We'll going to take a  
21      short break.

22              **MR. MYERS:** Your Honor, if I might refer you to  
23      Criminal Law of South Carolina Fourth Edition where  
24      it was written that, initially, the court allowed  
25      evidence of other crimes and circumstances so long

1 as they bore some logical relevance to the crime at  
2 issue. However, they said, Ultimately, the court  
3 reached the inevitable conclusion that some criminal  
4 acts in which the defendant was charged are  
5 admissible in the penalty phase as evidence of a  
6 defendant's character when it's no longer that they  
7 bore some nexus of the crime for which he is being  
8 tried.

9 That those go to the character and  
10 characteristics of the defendant for the jury to  
11 give them whatever weight. And that's where they  
12 came back later on and said that you have to give  
13 them a limiting charge that these are not offered to  
14 prove a statutory aggravating circumstance, just as  
15 to the defendant's character.

16 **THE COURT:** Proving what -- when you say  
17 character and characteristics, what characteristics  
18 would it tend to show?

19 **MR. MYERS:** In this case, we said bad  
20 character, he's committing crimes to get more money  
21 and dealing in drugs, so that goes to his character,  
22 that's not an upstanding citizen and we show that  
23 goes to his character. His prior bad acts, prior  
24 bad crimes, that goes to his characteristics, which  
25 our court said is admissible. And our Supreme Court

1 says that it goes to the defendant's character and  
2 characteristics for disregard of the laws and peace  
3 and good heart.

4 **THE COURT:** Anything else, Ms. Kimbrough?

5 **MS. KIMBROUGH:** Your Honor, I will rely on our  
6 prior arguments, but, again, I don't think the  
7 sentencing phase is intended to be a free-for-all  
8 where anybody can come up and say anything they want  
9 when there's no proof, it's just someone testifying  
10 without any evidence whatsoever.

11 **THE COURT:** All right. We'll take a short  
12 break.

13 (Brief Recess.)

14 **THE COURT:** I find the testimony is admissible  
15 testimony based on the prevailing case law that  
16 allows testimony during the penalty phase regarding  
17 -- to addressing the character of the defendant and  
18 that a limiting instruction will be given to the  
19 jury as to what this evidence can be considered for.

20 I also find that the introduction of this  
21 evidence is of no surprise to the defendant given  
22 the pretrial filings with the Court by the  
23 defendant.

24 You may take your seat back up here, ma'am.

25 (Witness resumes the witness stand.)



1 MS. KIMBROUGH: Subject to our objection of  
2 course, Your Honor.

3 THE COURT: Yes, ma'am.

4 (Pause.)

5 THE COURT: Bring the jury, please.

6 (The jury returns to the courtroom.)

7 THE COURT: The jury's back. You may proceed,  
8 sir.

9 MR. HUBBARD: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. HUBBARD:

12 Q Ms. Bolin, I want to ask you about your prior  
13 testimony. You said Ron Finklea and Teresa lived  
14 with you at one time?

15 A Yes, they did.

16 Q How long did they live with you?

17 A About three or four months.

18 Q And, again, what address was that you were  
19 living at the time?

20 A That was at [REDACTED] [REDACTED] [REDACTED] [REDACTED] in West  
21 Columbia.

22 Q West Columbia. And, again, for the jury, was  
23 this before or after Ron Finklea and Teresa got in  
24 the Army or out of the Army?

25 A They had just gotten out.

SHERRY BOLIN - DIRECT BY MR. HUBBARD

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1 Q What, if anything, do you recall about the very  
2 first day Ron Finklea and Teresa moved into your  
3 place at [REDACTED] [REDACTED]?

4 A He started selling crack cocaine out of our  
5 house to the Mexicans in the neighborhood.

6 Q What, if anything, did you do in response to  
7 this?

8 A I had a talk with Irena and I said that we need  
9 to confront him and tell him that he can't do that  
10 here.

11 Q And did y'all confront him?

12 A She did while I was there and she told him  
13 that, you know, we lived there and he --

14 MS. KIMBROUGH: Objection, Your Honor, hearsay.

15 THE COURT: Objection sustained.

16 BY MR. HUBBARD:

17 Q Let me ask you this, y'all did confront him?

18 A Yes.

19 Q And you were there when he was confronted?

20 A Yes.

21 Q What, if anything, did Mr. Finklea say?

22 A He apologized for disrespecting our home and  
23 said he wouldn't do it again.

24 Q On this day, this first day he moved in, did he  
25 have a job?

- 1       A     He did not.
- 2       Q     Did he have a stated purpose for selling drugs?
- 3       A     For money.
- 4       Q     He said he needed the money?
- 5       A     Yes.
- 6       Q     Now, during this time, was Brandon Anderson
- 7       also living with y'all?
- 8       A     He was.
- 9       Q     And, again, who is his mom?
- 10      A     Teresa.
- 11      Q     And what was his relationship to Ron Finklea?
- 12      A     That was his stepdad.
- 13      Q     A couple weeks after Ron Finklea, Teresa and
- 14      Brandon moved into your house, do you recall having
- 15      a conversation with Brandon?
- 16      A     Yes.
- 17      Q     What were y'all doing at the time?
- 18      A     Myself, Irena and Brandon were playing
- 19      basketball outside.
- 20      Q     Was anyone else present?
- 21      A     No.
- 22      Q     Who started this conversation?
- 23      A     Brandon.
- 24      Q     Now, based on your conversation with Brandon,
- 25      what did you do?

SHERRY BOLIN - DIRECT BY MR. HUBBARD

1865

1       A     I told Irena that she needed to have another  
2       talk with Ron and tell him that he can't sell drugs  
3       out of our house.

4       Q     Did you also let Ron or Irena know that if it  
5       didn't stop, what would happen?

6       A     He'd have to leave.

7       Q     Again, at this time, did Ron Finklea have a  
8       job?

9       A     He did not.

10      Q     And, again, what was his stated purpose for  
11      selling drugs?

12      A     Money.

13      Q     What was his response -- were you there when he  
14      was confronted?

15      A     Yes.

16      Q     What was his response at the time when you  
17      confronted him a second time?

18      A     He didn't have much of one.

19      Q     Let me ask you this, did you ever know Junior,  
20      Theodore Davis --

21      A     Yes.

22      Q     -- to deal drugs?

23      A     Yes.

24      Q     What, if anything, did Ron Finklea say about  
25      Junior's drug dealing?

1 A Junior worked for him.

2 Q Is that what Ron Finklea said?

3 A Yes.

4 Q When you say worked for him, what did Junior do  
5 for Ron Finklea?

6 A He sold drugs in return for a place to live and  
7 he got a cell phone and clothes and food and drugs.

8 Q Is that when Ron Finklea was living at [REDACTED]  
9 [REDACTED]?

10 A Yes.

11 Q Did Ron Finklea ever talk about anyone else  
12 dealing drugs on his behalf?

13 A Yes.

14 Q Who?

15 A Brandon.

16 Q Brandon Anderson, his stepson?

17 A Yes.

18 Q Did you have any independent knowledge of  
19 whether that was true or not?

20 A I did not.

21 Q But that's what Ron Finklea told you, or that's  
22 what Ron Finklea was talking about?

23 A Yes.

24 MR. HUBBARD: Please answer any questions the  
25 defense has.

SHERRY BOLIN - CROSS BY MS. KIMBROUGH

1867

## 1 CROSS-EXAMINATION

2 BY MS. KIMBROUGH:

3 Q Ms. Bolin, the very first day Ron Finklea came  
4 to live in your home, you're telling this jury he  
5 began selling crack?

6 A Yes, he did.

7 Q Did you call the police?

8 A I did not.

9 Q Did you call the drug enforcement task force in  
10 Lexington County?

11 A I did not.

12 Q And then you say you spoke to Irena and  
13 explained to her that she needed to explain to Ron  
14 that he couldn't be doing that in your house?

15 A That's right.

16 Q And then later on you learned, apparently, that  
17 he was still selling crack out of your house. Did  
18 you call the cops then?

19 A Not then, no.

20 Q Now, Ms. Bolin, you've been in trouble with the  
21 law before, didn't it concern you that as a  
22 convicted felon there was drug dealing going on out  
23 of your own house?

24 A It did concern me. It concerned me for my  
25 safety, also.

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1868

1 Q Where is the police report?

2 A There's not one.

3 Q So you let this go on in your house for four  
4 months even knowing that you were a convicted felon.

5 A I didn't let this go on. We confronted him.

6 Q Did you contact law enforcement ever?

7 A No, I didn't.

8 MS. KIMBROUGH: No further questions.

9 MR. HUBBARD: No more questions, Your Honor.

10 THE COURT: You may step down.

11 MR. HUBBARD: The State calls Irena Fuller.

12 IRENA DENISE FULLER,

13 having been duly sworn, testified as follows:

14 THE CLERK: If you'll have a seat, state your  
15 full name and spelling your last for the record,  
16 please.

17 THE WITNESS: Irena Denise Fuller, F-U-L-L-E-R.

18 DIRECT EXAMINATION

19 BY MR. HUBBARD:

20 Q Ms. Fuller, I want to revisit your prior  
21 testimony, back when Ron Finklea and your sister,  
22 Teresa, were living with you?

23 A Yes, sir.

24 Q Do you remember about how long they lived with  
25 you?

IRENA DENISE FULLER - DIRECT BY MR. HUBBARD

1869

1       A     About four months.

2       Q     In what residence?

3       A     ████ ██████████.

4       Q     Is that the █████ █████ █████ █████?

5       A     Yes, sir.

6       Q     And, at that time, was Ron and Teresa out of  
7     the Army, just out of the Army?

8       A     Yes, sir.

9       Q     Do you recall the first day they moved in? Or,  
10    do you recall something happening when they moved  
11    in?

12    A     Yes, sir.

13    Q     What do you recall?

14    A     Ron talking to the Mexicans.

15    Q     Do you recall anything else about him talking  
16    to the Mexicans?

17    A     He walked down the street.

18    Q     Okay. Did you witness anything with Ron  
19    Finklea and the Mexicans?

20    A     He was selling crack to them.

21    Q     And did Irena come to you -- I mean, did Sherry  
22    come to you and talk to you about that as well?

23    A     Yes, sir.

24    Q     What did you do as a result of Ron dealing  
25    drugs to the Mexicans?



- 1       A     I talked to him.
- 2       Q     What did you say to him?
- 3       A     I told him he couldn't do that.
- 4       Q     Did you tell him what would happen if he didn't
- 5       stop?
- 6       A     Yes, sir.
- 7       Q     What did you tell him?
- 8       A     I told him he would have to leave.
- 9       Q     And your sister as well?
- 10      A     Yes, sir.
- 11      Q     Now, at this time, did he have a job?
- 12      A     No, sir.
- 13      Q     What did he say when you confronted him about
- 14      selling drugs to the Mexicans in your neighborhood?
- 15      A     He said he was sorry and he would stop.
- 16      Q     And do you recall Brandon living with y'all at
- 17      the same time?
- 18      A     Yes, sir.
- 19      Q     Do you recall playing ball with Brandon and
- 20      Sherry a couple weeks after they moved in?
- 21      A     Yes, sir.
- 22      Q     And do you recall a conversation Brandon
- 23      started with y'all?
- 24      A     Yes, sir.
- 25      Q     Based on that conversation, did you have

IRENA DENISE FULLER - CROSS BY MS. KIMBROUGH

1871

1 another opportunity to confront Ron Finklea?

2 A I did.

3 Q And what did you tell him?

4 A I told him if he didn't stop, he would have to  
5 leave.

6 Q If he didn't stop what?

7 A Selling crack.

8 Q What was his response at that time?

9 A He didn't say anything.

10 Q Nothing at all?

11 A No, sir.

12 MR. HUBBARD: Irena, if you would, please  
13 answer any questions the defense may have.

14 CROSS-EXAMINATION

15 BY MS. KIMBROUGH:

16 Q Good morning, Ms. Fuller.

17 A Good morning.

18 Q So on the very first day that Ron and your  
19 sister moved into your home, you say he was going  
20 down the street and selling crack to the Mexicans?

21 A Yes, ma'am.

22 Q Did you call the cops?

23 A No, ma'am.

24 Q How about the neighborhood crime watch?

25 A We didn't have one, so, no, ma'am.

1 Q But you were part of Lexington County?

2 A Yes, ma'am.

3 Q You knew there was a sheriff's department  
4 around?

5 A Yeah.

6 Q Now, you say Ron went down the street and sold  
7 crack to the Mexicans. Were you there when he did  
8 this?

9 A Yes, ma'am.

10 Q So you saw it?

11 A Did I see him selling crack?

12 Q Yeah. I was a little confused by your  
13 testimony. Did you see him walk down the street and  
14 then later learn that he was selling crack or --

15 A They came --

16 Q -- you were an eyewitness to the selling?

17 A The Mexicans came to the house.

18 Q Okay. At first, I thought you had said he had  
19 gone down the street?

20 A He did.

21 Q Okay. So you're saying there's drug dealing  
22 going on out of your house the very first day and  
23 you did nothing?

24 A No, ma'am, I didn't do nothing.

25 Q You spoke to him, excuse me?

JOHN LEAPHART - DIRECT BY MR. GRAHAM

1873

1 A Yeah, I spoke to him.

2 Q Okay. And then you learned again that he was  
3 selling crack?

4 A Yes, ma'am.

5 Q Weren't you alarmed it was going on in your  
6 house?

7 A Yes, ma'am.

8 Q Did you call the cops then?

9 A Did not.

10 Q How about the sheriff's department?

11 A Did not.

12 MS. KIMBROUGH: No further questions.

13 MR. HUBBARD: Nothing further, Your Honor.

14 THE COURT: You may step down.

15 MR. GRAHAM: The State calls Jonathan (sic)  
16 Leaphart.

17 JOHN LEAPHART,

18 having been duly sworn, testified as follows:

19 THE CLERK: If you'll have a seat, stating your  
20 name and spelling your last for the record, please.

21 THE WITNESS: My name is John Leaphart,  
22 L-E-A-P-H-A-R-T.

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q Mr. Leaphart, where are you employed?

- 1       A    Selectron. .
- 2       Q    And how long have you worked for Selectron?
- 3       A    A little over seven years.
- 4       Q    And what currently do you do for Selectron?
- 5       A    I am now the shipping supervisor.
- 6       Q    Back in March and May of 2003, were you working  
7       for Selectron then?
- 8       A    Yes, sir.
- 9       Q    What did you do at that time for Selectron?
- 10      A    I was a team leader for the same department.
- 11      Q    What does a team leader do?
- 12      A    Coordinate the time, make sure everything is  
13      running smoothly.
- 14      Q    And do you know Ron Finklea?
- 15      A    Yes, sir.
- 16      Q    Back when you were the team leader between  
17      March 6th of 2003 and May 30th, 2003, what, if  
18      anything, did Ron Finklea do for you in the shipping  
19      department?
- 20      A    We packed everything up, put them on pallets,  
21      palletize them, put them on the truck and ship them  
22      out.
- 23      Q    At one time, do you remember -- what, if  
24      anything, do you know about a verbal altercation  
25      that happened between Ron Finklea and another

JOHN LEAPHART - DIRECT BY MR. GRAHAM

1875

1 employee named Jonathan Peoples?

2 A Well, him and -- Ron and Jonathan got into it  
3 and Ron got real upset. He had a hammer. He said,  
4 Well, this mother fucker don't know me. You know,  
5 and I calmed him down and then nothing ever happened  
6 of it.

7 Q So did you have to intervene or did Ron Finklea  
8 come to you? How did it --

9 A Yeah, he came to me and that's what he was  
10 telling me. I didn't actually see the altercation,  
11 but he was telling me he was upset.

12 Q So when he came to see you, what was in his  
13 hand?

14 A A hammer.

15 Q And what did he say?

16 A He said, I'll bust his mother fucker head with  
17 the hammer.

18 Q And you were able to calm him down?

19 A Yes, sir.

20 Q And did anything else happen as a result of  
21 that?

22 A No, sir.

23 Q During that time period, March to the end of  
24 May of 2003, what shift were you and Ron working on?

25 A Well, we called it tween shift because we

1 worked from 10:00 in the morning till 7:00 at night,  
2 so we just say tween shift.

3 Q What time would Ron Finklea normally leave  
4 then?

5 A Around seven, eight o'clock.

6 Q And how about you?

7 A A little after that because I had to make sure  
8 everything was ship confirmed and all the paperwork  
9 was correct.

10 Q What, if anything, did you notice about Ron  
11 Finklea and Walter Sykes when you left the building  
12 after seven o'clock back in the March and May of  
13 2003 time period?

14 A Well, I mean, it was several occasions that Ron  
15 would be at the security guard station standing  
16 there talking to Sykes.

17 Q And you know Walter Sykes?

18 A Yes, sir.

19 Q How many times would you say that Ron Finklea  
20 was at that front lobby area talking with Walter  
21 Sykes?

22 A Probably about seven, eight, ten times.

23 Q And how long did you know Walter Sykes?

24 A Since I'd been working at Selectron.

25 Q What kind of a man was Walter Sykes?

JOHN LEAPHART - CROSS BY MS. KIMBROUGH

1877

1       A     I mean, a good guy, military, you know, he  
2       played by the rules. Other than that, he was a good  
3       guy.

4           MR. GRAHAM: Please answer any questions the  
5       defense has.

6                           CROSS-EXAMINATION

7       BY MS. KIMBROUGH:

8       Q     Good morning, Mr. Leaphart.

9       A     Good morning.

10      Q     You say that during the time that you worked  
11     with Ron at Selectron, you learned of an incident  
12     between him and Jonathan Peoples?

13      A     Yes, ma'am.

14      Q     They got into a verbal altercation?

15      A     Yes, ma'am.

16      Q     To your knowledge, was a report ever filed  
17     concerning this altercation?

18      A     No.

19      Q     Now, when you say Ron had a hammer, he didn't  
20     threaten you with that hammer, did he?

21      A     No, ma'am.

22      Q     Never threatened you?

23      A     No, ma'am.

24      Q     Did you ever speak to Mr. Peoples?

25      A     Did I speak to him?



1 Q Yes, sir.

2 A Yes.

3 Q And during the time that you worked with Ron,  
4 did you ever have any trouble with him?

5 A No, ma'am.

6 Q Okay. Never had a reason to file an incident  
7 report or turn him in for a disciplinary action?

8 A No, ma'am.

9 MS. KIMBROUGH: Thank you, Mr. Leaphart.

10 THE WITNESS: You're welcome.

11 MR. GRAHAM: No other questions, Your Honor.

12 THE COURT: You may step down.

13 MR. GRAHAM: The State calls Latisha Gilmore.

14 LATISHA GILMORE,

15 having been duly sworn, testified as follows:

16 THE CLERK: If you'll have a seat, stating your  
17 name, spelling your last for the record, please.

18 THE WITNESS: Latisha Gilmore, G-I-L-M-O-R-E.

19 DIRECT EXAMINATION

20 BY MR. GRAHAM:

21 Q Ms. Gilmore, do you know Ron Finklea?

22 A Yes, sir.

23 Q And how long have you known him?

24 A Since, um -- a couple years.

25 Q Back in 2003, at the time of Mr. Sykes' murder

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1879

1 in August of 2003, how long had you known Ron  
2 Finklea then?

3 A About two or three years.

4 Q And how did you know him?

5 A My cousin.

6 Q And your cousin is who?

7 A Teresa.

8 Q So you knew him as Teresa's husband?

9 A Yes, sir.

10 Q Back in the Spring and early Summer of early  
11 2003, were you having some financial difficulties?

12 A Yes, sir.

13 Q And what, if any, conversation did you have  
14 with Ron Finklea about money problems?

15 A That he knew where I could get some money.

16 Q I'm sorry, what?

17 A He know where I could make some money.

18 Q What, if anything, did he say to you about him  
19 needing money or wanting money?

20 A He was having problems and we can help each  
21 other out.

22 Q I'm sorry?

23 A And we can help each other out.

24 Q When you had this conversation with him, what,  
25 if anything, did Ron Finklea say to you about how

1       these money problems could be cured?

2       A     He knew some people in Alabama.

3       Q     What kind of people did he know in Alabama?

4       A     Drug dealers.

5       Q     So what was he talking about? What was he  
6       going to -- what about the people in Alabama?

7       A     We was going to go down to Alabama, get some  
8       drugs, come back and sell them.

9       Q     Was that your idea or was that Ron Finklea's  
10      idea?

11      A     It was Ron idea.

12      Q     Were you going to help him out?

13      A     Yes, sir.

14      Q     At the end of May or the beginning of June of  
15      2003, did you and Ron Finklea go anywhere?

16      A     Yes, we went to Alabama.

17      Q     Prior to going to Alabama, did you all stop  
18      anywhere?

19      A     To the bank, Bank of America.

20      Q     And what was the purpose of going to the Bank  
21      of America?

22      A     To get the money out the bank.

23      Q     And who got the money out of the bank?

24      A     Ron.

25      Q     Do you know how much money Ron Finklea got out

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1881

1 of the bank?

2 A He said it was a lump sum, but I don't know.

3 Q But you do know that he did get out money --

4 A Yes, sir, he did --

5 Q -- from the bank?

6 A -- get some money out the bank.

7 Q After he got money out of the Bank of America,  
8 what did you and he do?

9 A Went to Alabama.

10 Q Was there anybody else with you at that time?

11 A No, sir, just me and Ron.

12 Q Once you got to Alabama, what happened there?

13 A We went to his grandmother house and his Aunt  
14 Flo.

15 Q During the drive down to Alabama, what, if  
16 anything, did Ron Finklea say to you about having  
17 people sell drugs for him?

18 A At that particular time, it was nothing about  
19 -- just was all about me and him being in it.

20 Q Once you got to Alabama, I think you said you  
21 went to his Aunt Flo's house?

22 A Yeah, and his grandmother house.

23 Q And his grandmama's house. After you went  
24 there, what happened?

25 A After we left there, we went to meet the men.

- 1 Q You went where, I'm sorry?
- 2 A To meet the men with the drugs.
- 3 Q Did you go with him when that happened?
- 4 A Yes, sir.
- 5 Q So who was driving the car? Were you driving
- 6 or was Ron Finklea driving?
- 7 A Ron was driving.
- 8 Q So as Ron Finklea was driving up and you were
- 9 in the car when you pulled up to this house, what
- 10 happened?
- 11 A Ron got out, talked to the people. Then he
- 12 told me to get out and come in. We went in the
- 13 backyard.
- 14 Q So after Ron had a conversation with these
- 15 people, you got out of the car and the two of you
- 16 went to the backyard?
- 17 A Yes, sir.
- 18 Q When you got to the backyard, what did you see?
- 19 A Drugs.
- 20 Q And when you say drugs, what kind of drugs did
- 21 you see?
- 22 A Cocaine.
- 23 Q And how did you see it? Where was it at?
- 24 A On a table.
- 25 Q It was on a table in the backyard?

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1883

1 A Yes, sir.

2 Q How much cocaine was it?

3 A I couldn't even tell you. It was a bunch of  
4 it.

5 Q After you and Ron Finklea went back there and  
6 you saw this table with cocaine, what happened next?

7 A I went back to the car.

8 Q And after you went back to the car, what  
9 happened?

10 A Then Ron came back.

11 Q And did Ron have anything with him when he came  
12 back?

13 A Yes, sir.

14 Q What did he have with him?

15 A Cocaine and weed.

16 Q And so he had cocaine. When you say weed, what  
17 do you mean?

18 A Reefer.

19 Q Marijuana?

20 A Yes, sir.

21 Q How much cocaine did he have?

22 A A Ziploc bag halfway full.

23 Q So when you say a Ziploc bag, are you talking  
24 about the little bitty Ziploc bags or are you  
25 talking about --

1. A No, sir, the --
- 2 Q -- the big gallon bags?
- 3 A -- the big ones.
- 4 Q The big gallon bags?
- 5 A Yes, sir.
- 6 Q And how much marijuana did he bring back?
- 7 A Ziploc bag.
- 8 Q After you got the cocaine and the marijuana,
- 9 what did you all do?
- 10 A Came back to Columbia, went to my house.
- 11 Q And when you got back to your house, what
- 12 happened?
- 13 A I bagged the powder and he bagged the reefer.
- 14 Q When you say you bagged the powder, what does
- 15 that mean?
- 16 A I cut the powder up and bagged it in the bags.
- 17 Q So you took the big gallon bag of cocaine?
- 18 A Yes, sir.
- 19 Q And when you say cut it up, you divided it up
- 20 into smaller bags?
- 21 A Yes, sir.
- 22 Q And then the marijuana, who split the marijuana
- 23 up?
- 24 A Ron did.
- 25 Q Once the cocaine and the marijuana were split

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1885

1 up, what happened next?

2 A I had five bags of powder at my house, two bags  
3 of marijuana. He put stuff in book bag and went to  
4 St. Matthews.

5 Q So out of all the smaller bags, you kept five  
6 bags of cocaine?

7 A Yes, sir.

8 Q And what happened to the rest of the small bags  
9 of cocaine?

10 A Ron took it with him.

11 Q And then the two bags of -- small bags of  
12 marijuana you had, what happened to the other small  
13 bags of marijuana?

14 A Ron took it with him.

15 Q What was -- what did he tell you that he was  
16 going to do with those other bags of cocaine and the  
17 other bags of marijuana?

18 A Sell it.

19 Q Did he tell you whether he was going to sell it  
20 by himself or somebody was going to sell it for him?

21 A He never did say.

22 Q The cocaine and the marijuana you had, what did  
23 you do with it?

24 A I sold it.

25 Q How much money did you sell the five bags of



- 1 cocaine and the two bags of marijuana for?
- 2 A All together it was 120 -- 140 -- 120.
- 3 Q And at some point, did Ron Finklea come back to
- 4 you?
- 5 A Yes, sir.
- 6 Q And what was his purpose for him coming back?
- 7 A To get the money for the one I sold and give me
- 8 some more.
- 9 Q So did you give him money for what you sold?
- 10 A Yes, sir.
- 11 Q Now, did you get to keep some of that money for
- 12 yourself?
- 13 A Yes, sir.
- 14 Q And then he gave you more?
- 15 A Yes, sir.
- 16 Q What more did he give you?
- 17 A He gave me five more bags of the powder and two
- 18 bags of weeds.
- 19 Q So the second round, when you had five more
- 20 bags of powder and two more bags of marijuana, what
- 21 did you do with those?
- 22 A Sold it.
- 23 Q After you sold it, what, if anything, did Ron
- 24 Finklea do?
- 25 A He came back to pick the money up.

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1887

1 Q And, again, did you get to keep some money for  
2 selling it?

3 A Yes, sir.

4 Q At that time, what, if anything, did Ron  
5 Finklea say to you about needing to go back to  
6 Alabama?

7 A It was time for another trip.

8 Q Did he tell you why it was time for another  
9 trip?

10 A We didn't accomplish his goal.

11 Q He didn't accomplish his goal. What was his  
12 goal?

13 A To make money.

14 Q At that time, did he tell you anything about if  
15 he was selling the drugs himself or whether other  
16 people were working for him?

17 A No, sir.

18 Q So did you go back with him a second time to  
19 Alabama?

20 A Yes, sir.

21 Q The second time you went back to Alabama, who  
22 went with you?

23 A Me, Ron and Marissa.

24 Q When you say Marissa, who is Marissa?

25 A My ex-girlfriend.

- 1 Q And what was her name, Marissa...
- 2 A Casey.
- 3 Q As you were driving to Alabama -- well, did
- 4 Marissa know why you all were going to Alabama?
- 5 A Yes, sir.
- 6 Q Did Ron Finklea know Marissa very well?
- 7 A Through me.
- 8 Q As you were driving down the road, who was
- 9 driving?
- 10 A Ron.
- 11 Q So Ron Finklea is driving. Where are you
- 12 sitting?
- 13 A In the front seat.
- 14 Q Front passenger seat?
- 15 A Yes, sir.
- 16 Q And then where is Marissa sitting?
- 17 A In the back seat.
- 18 Q During the drive to Alabama, at some point, did
- 19 you cross over a bridge and did Ron Finklea say
- 20 something to Marissa?
- 21 A Yes, sir.
- 22 Q What did Ron Finklea say to Marissa?
- 23 A He told her he would shoot her in the head,
- 24 burn her up and her family will never find her.
- 25 Q Ron Finklea said to Marissa that he was going

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1889

1 to shoot her in the head?

2 A Burn her up and throw her in the woods so  
3 nobody never find her.

4 Q Burn her up and throw her somewhere where  
5 nobody would ever find her?

6 A Yes, sir.

7 Q Do you know why he said that?

8 A No, sir, it was out the blue.

9 Q Once you got to Alabama, what happened?

10 A We went to his grandmother's house again. Then  
11 we went to his Aunt Flo house. And me and Marissa  
12 stayed at his Aunt Flo house this time while he  
13 went, take care of his business and he came back.  
14 It was a storm so we stayed at his grandma house.

15 COURT REPORTER: Can you slow down a little  
16 bit?

17 THE WITNESS: That's the way I talk.

18 COURT REPORTER: Well, I'm having trouble  
19 understanding you.

20 BY MR. GRAHAM:

21 Q Slow down just a little bit. When you got to  
22 Alabama, what happened?

23 A We went to his grandmother house, then we went  
24 to his Aunt Flo house. We stayed to his Aunt Flo  
25 house why he went, take care of his business. It

LATISHA GILMORE - DIRECT BY MR. GRAHAM

\* 1890

1 was a storm, so we stayed to his grandma house that  
2 night.

3 Q Do you know whether Ron Finklea had money with  
4 him again that time?

5 A Yes, sir. We went to a Bank of America before  
6 we went out, when we went to Alabama.

7 Q Did he tell you how much money he was taking?

8 A Again, I really can't say. He said an amount,  
9 but...

10 Q What did he say?

11 A A couple thousand, 10,000...

12 Q So you and Marissa stayed at --

13 A His Aunt Flo house.

14 Q -- his Aunt Flo's house and while you guys  
15 stayed there --

16 A He went to take care of his business.

17 Q When he came back, did you see the drugs at  
18 that time?

19 A No, sir.

20 Q So after you spent the night, what happened the  
21 next day?

22 A Me and Marissa went to Wal-Mart to get some  
23 change of clothes, went back to his aunt house, take  
24 a bath and came back to Columbia.

25 Q Who came back to Columbia?

LATISHA GILMORE - DIRECT BY MR. GRAHAM

1891

- 1       A     Me, Ron and Marissa.
- 2       Q     Once you got back to Columbia, what happened?
- 3       A     Went to my house and did the same thing.
- 4       Q     So when you made it back to Columbia and you
- 5       said you did the same thing, what does that mean?
- 6       A     Went to my house and bagged up the coke and
- 7       marijuana.
- 8       Q     Again, how much -- so that was the first time
- 9       that you saw the drugs that had been purchased from
- 10      the last trip to Alabama?
- 11      A     Yes, sir.
- 12      Q     Again, how much cocaine did Ron Finklea have
- 13      the second time?
- 14      A     I don't remember the second time how much it
- 15      was.
- 16      Q     How about the marijuana?
- 17      A     I don't remember.
- 18      Q     Theodore Davis, was he there the second time
- 19      when you came back?
- 20      A     Yes, sir.
- 21      Q     Where was he living at the time?
- 22      A     With me.
- 23      Q     So he was living with you?
- 24      A     Yes, sir.
- 25      Q     And what relation is he to you?

1       A     My first cousin.

2       Q     And, again, did you divide the cocaine and the  
3       marijuana up?

4       A     Yes, sir.

5       Q     You divided the cocaine?

6       A     Cocaine, yes, sir.

7       Q     Who divided the marijuana?

8       A     Ron.

9       Q     And, again, were drugs left with you to sell?

10      A     Yes, sir.

11      Q     How many bags of cocaine?

12      A     Five.

13      Q     And how many bags of marijuana?

14      A     Two.

15      Q     Junior, Theodore Davis, did he have any  
16      involvement in this?

17      A     Yes, sir.

18      Q     What was his involvement?

19      A     That's when him and Ron start hanging together  
20      then.

21      Q     Prior to them hanging together, what had  
22      Theodore Davis been -- had he been working?

23      A     Yes, sir. He was working at Bojangles'.

24      Q     Once he started hanging with Ron, what, if  
25      anything, did Ron Finklea do for Theodore Davis?

LATISHA GILMORE - CROSS BY MS. KIMBROUGH

1893

1       A     Um, was buying him clothes, took him to get  
2       haircuts.

3       Q     And then at some point, did Junior leave you  
4       and go leave -- go live --

5       A     Yes, sir, he went to stay with Ron.

6       Q     -- with Ron Finklea?

7       A     Yes, sir.

8       Q     What was the relationship between Theodore  
9       Davis and Ron Finklea?

10      A     He was -- Theodore Davis was selling for Ron.

11      Q     Theodore Davis was selling drugs for Ron  
12      Finklea?

13      A     Yes, sir.

14           MR. GRAHAM: Please answer any questions the  
15      defense has.

16           THE WITNESS: Yes, sir.

17                   CROSS-EXAMINATION

18      BY MS. KIMBROUGH:

19      Q     Good morning, Ms. Gilmore. How are you doing?

20      A     All right.

21      Q     Good. So based on what you've described here,  
22      you essentially described Ron as being a big time  
23      drug dealer?

24      A     He was trying to sell, yes, ma'am.

25      Q     You realize he lived in a rented mobile home



1 and drove a '97 Tracer?

2 A What do that got to do with anything?

3 Q I'm just asking if you knew it?

4 A Yeah.

5 Q Ms. Gilmore, how long have you been dealing  
6 drugs?

7 A I'm not a drug dealer.

8 Q And you say you went twice to Alabama?

9 A Yes, ma'am.

10 Q Did you meet any of Ron's family during that  
11 time?

12 A Yes, ma'am.

13 Q Okay. And you say you went to a house.

14 A Uh-huh.

15 Q And there was a bunch of drugs in the backyard.

16 A Uh-huh.

17 Q Do you remember meeting with law enforcement  
18 and the Solicitor's office?

19 A To who?

20 Q Either the Solicitor's office or law  
21 enforcement, do you remember meeting with them  
22 before you came and testified here today?

23 A Uh-huh.

24 THE COURT: Just answer yes or no, ma'am.

25 THE WITNESS: Yes, ma'am.

LATISHA GILMORE - CROSS BY MS. KIMBROUGH

1895

1 BY MS. KIMBROUGH:

2 Q Now, when you went to Alabama, who all did you  
3 meet there who was involved in this drug trade?

4 A I mean, I don't know them know them, but I know  
5 them if I see them.

6 Q You don't have any names?

7 A Street names, I mean that don't do any good.

8 Q Okay. And Junior Davis is your first cousin?

9 A Yes, ma'am.

10 Q And you care about him?

11 A I care about everybody.

12 Q That's a good quality.

13 A Uh-huh.

14 Q He lived with you?

15 A Yeah.

16 Q Tried to take care of him?

17 A I mean, during that time he was telling me he  
18 didn't have a place to stay.

19 Q So you were trying to help him out, he was down  
20 on his luck?

21 A Yeah, I do that for anybody.

22 Q And you described this trip where you're  
23 traveling to Alabama with your ex-girlfriend, is it  
24 Marissa Casey?

25 A Uh-huh, yes, ma'am.

1 Q And I think you said, out of the blue, Ron  
2 said, I'm going to kill you and burn you --

3 A He said, I'll shoot you in your head and burn  
4 you up and throw you where your family will never  
5 find you.

6 Q Out of the blue?

7 A Out of the blue.

8 Q When was the first time you ever told anybody  
9 that story?

10 A I told my mom and them about it.

11 Q Uh-huh.

12 A Yeah.

13 Q And you still continued, even after, out of the  
14 blue, Ron threatened your girlfriend, you still  
15 continued to hang with him and deal drugs with him?

16 A No, because after my door got kicked in and I  
17 called Ron and told him what was going on, I stopped  
18 dealing with Ron.

19 Q But he threatened your girlfriend's life and  
20 you continued on with this trip?

21 A I mean, we had to get back home. I mean, we  
22 went down there together. My mama don't --

23 Q Even though he threatens your life --

24 A -- know how to get to Alabama.

25 Q -- threatens the life of someone you love and

LATISHA GILMORE - CROSS BY MS. KIMBROUGH

1897

1       you continue to hang out with him?

2       **A**     I mean, I got back home.

3       **Q**     Evidently. Thank you.

4       **A**     Uh-huh.

5       **MR. GRAHAM:** No further questions, Your Honor.

6       **THE COURT:** All right. You may step down,  
7       ma'am.

8               Ladies and gentlemen, I'm going to give you a  
9       limiting instruction at this time concerning the  
10       evidence that you have heard concerning other  
11       crimes. I charge you that this evidence of these  
12       crimes should not be considered as substantive  
13       evidence of any aggravating circumstance, but if you  
14       are convinced that the defendant committed those  
15       crimes or any of them, you may consider them as  
16       evidence of his character, his characteristics. And  
17       these may be considered along with all of the other  
18       evidence that you have heard and will hear and you  
19       may give them whatever weight that you may deem  
20       proper under the circumstances of this case.

21               We're going to break now for lunch. We're  
22       going to break for about one hour. Please go to the  
23       jury room. Please do not discuss the case.

24               (The jury retires to the jury room.)

25       **THE COURT:** Regarding the Court's earlier

1 ruling referencing that the defense should not or  
2 was not surprised by the introduction of this type  
3 of evidence, the Court makes reference to the  
4 pretrial filing with the Court by the defense  
5 submitted in November of 2006 and filed under seal  
6 with the Court. Are there any other matters before  
7 we break for lunch?

8 MR. MYERS: None from the State, Your Honor.

9 MS. KIMBROUGH: None from the defense.

10 THE COURT: All right. We'll take one hour,  
11 looks like it's 1:30, be back at 2:30.

12 (Whereupon, there was a luncheon recess.)

13 THE COURT: I have a note from the jury that I  
14 want to make a part of the record in the case. The  
15 note says, Dates of when Ron and Teresa lived at the  
16 [REDACTED] [REDACTED] [REDACTED], dates of trip to Alabama,  
17 can I be given the following information? Juror  
18 number 36 sent the note to me.

19 What says the State?

20 MR. HUBBARD: Your Honor, it's my  
21 understanding, the Solicitor was out, but my  
22 understanding is that one juror sent you a note  
23 asking for those dates?

24 THE COURT: Yes. If you'd like to see the  
25 note, you can.

1           MR. HUBBARD: If I may, Your Honor.

2           THE COURT: If you will share it with the  
3 defense counsel as well.

4           MR. HUBBARD: Yes, sir.

5           MS. KIMBROUGH: Your Honor, obviously, the  
6 defense would like that information as well.

7           (Pause.)

8           MR. HUBBARD: Your Honor, I think our response  
9 would be that obviously the information that has  
10 come into evidence by way of testimony is the only  
11 evidence they can consider and that's basically it.

12          THE COURT: What says the defense?

13          MS. KIMBROUGH: Your Honor, I would certainly  
14 agree that unless the State can produce this  
15 evidence, then the jury can make its own inferences  
16 based on the lack of documentation as to dates.

17          MR. HUBBARD: Of course, Your Honor, we  
18 wouldn't say that they take -- basically, they take  
19 the evidence as it is. I don't think anymore  
20 comment upon that would be crossing that line of  
21 making a comment on the evidence and I think that  
22 would be improper. I think just simply take what  
23 they hear and what they've been given by way of  
24 evidence and that's it. I think going beyond that  
25 is going to be a problem.

1           **MS. KIMBROUGH:** Your Honor, in final argument,  
2 I believe we have the right to argue reasonable  
3 inferences based on the facts that have been  
4 presented in this case. And we would certainly  
5 point out to the jury that, you know, we've got the  
6 uncorroborated testimony of witnesses.

7           **THE COURT:** The question is, what do you want  
8 me to do with this note?

9           **MS. KIMBROUGH:** I don't think anything can be  
10 done.

11           **MR. HUBBARD:** I would agree with that. I  
12 wasn't trying to imply what the defense should do,  
13 but as far as looking at -- from the Court for  
14 direction on that issue, I believe there's nothing  
15 really, other than if Your Honor is inclined to tell  
16 them anything, it's the only thing they can consider  
17 is what's been presented.

18           **THE COURT:** All right. We'll make this note a  
19 Court's Exhibit.

20           (Court's Exhibit Number 3, jury note, was  
21 marked for identification purposes.)

22           **MS. KIMBROUGH:** Your Honor, before we get  
23 started, I would like to bring to the Court's  
24 attention three evidentiary issues that if we can  
25 take care of them now, I think it will make things

1 easier and the jury won't have to be sent back out.

2 Our first concern is there's a gigantic  
3 television I understand that's going to be used by a  
4 witness by the State at some point. We would ask  
5 that instead of having it here, that it slightly be  
6 moved so that the jury's view is not blocked from  
7 the client -- from our client.

8 I also understand that the State intends to  
9 introduce this item, which is essentially a -- it  
10 looks like a mannequin or a seamstress' form with  
11 the defendant -- excuse me -- the victim's clothing  
12 which has been pieced back together and it is on  
13 that form. We would object to that. We think it's  
14 prejudicial. It certainly -- I'm not really sure  
15 what the relevance would be, but the photographs  
16 will speak for themselves insofar as what the  
17 clothing looked like when it was on the victim.

18 We have several photographs of Mr. Sykes as he  
19 was found after his death and we don't think that  
20 this mannequin that's been pieced together as some  
21 sort of demonstrative exhibit does anything to help  
22 this jury understand the circumstances of the crime.  
23 They know what happened to him. They're going to  
24 see photographs. These are very obvious and it  
25 certainly doesn't go to any relevant issue for the



1 jury.

2 Insofar as the photographs of the victim are  
3 concerned, we are somewhat concerned that some of  
4 these photographs were taken after the body was  
5 altered. We understand that the State is entitled  
6 to present evidence concerning the circumstances of  
7 the crime again; however, the body's been turned  
8 over. Mr. Sykes was administered emergency  
9 treatment, certainly that was the right thing to do;  
10 however, the circumstances of the crime don't  
11 include what happened after his death.

12 **THE COURT:** What says the State?

13 **MR. MYERS:** Number one, as to the television  
14 we'll try to work with them as best we can. We  
15 certainly have no objection if they want to come  
16 around to view it.

17 Number two, the clothes that the victim was  
18 wearing when he was murdered and set on fire, we  
19 have those. And the only way we could display them,  
20 Your Honor, was to put them on a semi-mannequin that  
21 has no head or anything.

22 Your Honor, over here are the clothes that the  
23 victim was wearing when he was murdered. And we had  
24 to put them on to something. There's no head or  
25 anything, it's just a torso type thing.

1 We submit to you that would be relevant as to  
2 the circumstances of the crime. It shows the  
3 clothes that the victim had on. It shows some of  
4 the burning of the clothes. It would go to the  
5 manner in which the murder was carried out.

6 These are the clothes in which the officer here  
7 took from the autopsy, brought it back and they've  
8 been preserved. We submit to you that it would go  
9 to confirm the pathologist's testimony concerning  
10 the burn marks. It goes to the crime and the  
11 character of the defendant who committed it. We  
12 submit that its probative value is not substantially  
13 outweighed by any prejudicial effect.

14 **MS. KIMBROUGH:** Your Honor, I would submit to  
15 you that the clothing can be presented to the jury  
16 as clothing without this kind of macabre display of  
17 a partial human form. It's extremely prejudicial.  
18 There's been substantial testimony already by Doctor  
19 Yacoub as to the injuries suffered by the victim.

20 The clothing, absolutely, it's admissible, but  
21 to stick it on a form, a headless form, a legless --  
22 partially legless form, I mean, Your Honor, it's  
23 just, quite frankly, it's just improper. The jury's  
24 entitled to see the clothing, no question, that's  
25 evidence, but to dress it up.

1           **MR. MYERS:** We couldn't put it on a board  
2 because it wouldn't have shown the front and the  
3 back. We can't let the jury handle it because when  
4 this officer even handles it, he's got to use gloves  
5 as well.

6           **MS. KIMBROUGH:** Your Honor, the jury can handle  
7 it with gloves as well. I've seen evidence where  
8 jurors can be given rubber gloves just like anyone  
9 else handling evidence. And, certainly, this  
10 officer can hold the shirt this way, turn around and  
11 flip the shirt around and hold the shirt the other  
12 way without this form.

13           **THE COURT:** Well, I understand the defense's  
14 argument as to what could be done, but it's not the  
15 defense's case, it's the State's case and one of the  
16 aggravating circumstances the State is seeking to  
17 establish is -- is it torture?

18           **MR. MYERS:** Physical torture.

19           **THE COURT:** Physical torture and I find that  
20 the manner suggested is the probative value of it is  
21 not outweighed by the prejudicial effect to the  
22 defendant.

23           In a sentencing phase of a trial, the admission  
24 of color photographs of the victim's body taken at  
25 the crime scene and various autopsy photographs and

1 other evidence indicating physical torture is  
2 appropriate evidence to show the nature and  
3 circumstances of the crime and I overrule the  
4 objection to the admission of this evidence.

5 MR. MYERS: Your Honor, we have five --

6 MS. KIMBROUGH: Objection noted, Your Honor?

7 THE COURT: Yes.

8 MS. KIMBROUGH: Thank you.

9 MR. MYERS: We have five photographs taken by  
10 the same officer here. These are photographs at the  
11 scene at Selectron. There's already been testimony  
12 that the EMS person showed up, the firemen had to  
13 turn the victim over so he could put the pads on to  
14 check for any possible pulse, initially, the body  
15 was face down, so they did that, they took some  
16 photographs. Afterwards, when the body was turned  
17 back over face down as it originally was, a  
18 photograph of that.

19 We submit to you this is the manner in which  
20 the defendant left the victim. It shows the  
21 condition he was in when left by the defendant. It  
22 shows the wounds to the neck. It shows the burning  
23 patterns.

24 And for the previous reasons we've stated as to  
25 the circumstances of the crime, the character and

1 the characteristics of the defendant leaving the  
2 defendant (sic) in substantially this condition as  
3 depicted in the photographs, that they, too, would  
4 be admissible and the probative value would not be  
5 outweighed by the prejudicial effect. It goes,  
6 again, to the manner in which he was murdered and  
7 the condition that he was left. And, again, this is  
8 physical torture.

9 THE COURT: What says the defense?

10 MS. KIMBROUGH: Your Honor, I don't believe we  
11 have any objection to, it's not been marked, but  
12 there's a photograph of the bullet wound, obviously  
13 that was part of the manner in which Mr. Sykes died.

14 As far as -- our main concern would be this  
15 photograph where the victim was rolled over and is  
16 staring up and has wires attached to his body.  
17 Obviously, that was not the manner in which he was  
18 found.

19 Less object -- well, we would concede that  
20 that's how this victim was found. He was found face  
21 down and it shows the burning of the clothing, no  
22 objection to that, Your Honor. And I believe that  
23 the last two photographs also show the victim rolled  
24 over. I'm not really sure how these are not  
25 cumulative to one another.

1907

1 (State's Exhibit Numbers 97 through 101,  
2 photographs, were marked for identification  
3 purposes.)

4 MS. KIMBROUGH: Your Honor, just as one final  
5 matter, should Your Honor believe that the rolled  
6 over photographs are relevant to the jury's  
7 consideration, we would simply respectfully request  
8 that only one of those three photographs be admitted  
9 because they all tend to depict the same thing.

10 The one that is very close up of the face, we  
11 believe is extremely prejudicial, but we also  
12 understand that Your Honor may deem this relevant to  
13 show various injuries to the front that Mr. Sykes  
14 suffered to the front of his body. However, we  
15 believe that three rolled over photographs are  
16 unnecessary.

17 MR. MYERS: They've been marked now, Your  
18 Honor, for identification Number 97 is a picture of  
19 him lying face down.

20 THE COURT: All right. Number 97 is admitted.

21 MR. MYERS: Number 100, Your Honor, is of the  
22 defendant on the back and it's showing his left  
23 side. It shows the burns to his left arm. It  
24 shows, vaguely, the entrance wound of one of the  
25 gunshots. And it shows the manner of the left side

1 of the face.

2 THE COURT: Now, what is the white wire that's  
3 there?

4 MR. MYERS: That is what the EMS people put on  
5 him. As you recall, the EMS people said that the  
6 fireman had to turn him over so he could put those  
7 on him and he left those on as he always does for  
8 the coroner's purposes.

9 THE COURT: That's when they were doing the  
10 shock or --

11 MR. MYERS: That's when they were trying to see  
12 if they should shock him if they've got any pulse or  
13 anything like that to confirm that he was dead.

14 THE COURT: What says the defense about Number  
15 100?

16 MS. KIMBROUGH: Your Honor, we believe that 100  
17 or one of the other two front shots would be  
18 acceptable, but not all three.

19 THE COURT: Number 100 is admitted it shows the  
20 burns to the arms, among other things.

21 MR. MYERS: And then Number 101, Your Honor, it  
22 shows the right side. And on the right side, it  
23 shows the burning and torture on the right side and  
24 how he appears on the right side as compared with  
25 100 which showed the left side.

1909

1           **THE COURT:** What says the defense?

2           **MS. KIMBROUGH:** Your Honor, the same objection  
3 as to Number 100.

4           **THE COURT:** Number 101 is admitted. It shows a  
5 different injury than 100. It shows the left side  
6 as opposed to the right side.

7           **MR. MYERS:** Number 99, it shows the burning to  
8 the neck area, the top of the head. It also shows  
9 the entrance wound of the shot that went in just  
10 above the lip, the top of the lip on this side over  
11 here.

12           **THE COURT:** What says the defense?

13           **MS. KIMBROUGH:** Well, Your Honor, I believe  
14 between 100 and 101, the jury would have an  
15 opportunity to view both the right and the left  
16 sides.

17           **THE COURT:** They're saying that it shows the  
18 entrance wound shot to the face above the lip.

19           **MS. KIMBROUGH:** I do see a vague mark, Your  
20 Honor. I really can't make it out, but I'm sure  
21 they will have someone testify to it.

22           **THE COURT:** Is there any objection to that  
23 exhibit?

24           **MS. KIMBROUGH:** No, Your Honor.

25           **THE COURT:** It's admitted.



1           **MR. MYERS:** And then, lastly, Your Honor,  
2           Number 98, it shows the exit wound of the bullet on  
3           the right side of the neck.

4           **THE COURT:** And who's going to testify as to  
5           everything you're saying that they're showing?

6           **MR. MYERS:** The officer who took the  
7           photograph, the one who was just up here with the  
8           mannequin.

9           **THE COURT:** All right. What says the defense?

10          **MS. KIMBROUGH:** Your Honor, again, we would  
11          concede that 98 is relevant. It shows a bullet  
12          wound. I would assume that Doctor Yacoub would be  
13          testifying as to relevance of photographs, but I  
14          guess it's neither here nor there.

15          **THE COURT:** All right. All of the photographs  
16          are admitted.

17                   (State's Exhibit Numbers 97 through 101,  
18          photographs, admitted into evidence.)

19          **THE COURT:** Anything else before we bring the  
20          jury in?

21          **MR. MYERS:** Nothing from the State, Your Honor.

22          **MS. KIMBROUGH:** Nothing from the defense.

23          **THE COURT:** All right. Let's bring them back.

24                   (The jury returns to the courtroom.)

25          **THE COURT:** Ladies and gentlemen of the jury, I

1911

1 received a note from the jury -- from a juror  
2 requesting an answer to two questions. And, first,  
3 Mr. Foreman and members of the jury, was this note  
4 shared with other jurors?

5 **FOREMAN:** It was not, Your Honor.

6 **THE COURT:** That's an important response  
7 because as you're well aware, the jury cannot engage  
8 in any form of premature deliberations or discuss  
9 the matter with each other or with anyone else or  
10 allow anyone else to discuss it in your presence.  
11 So this note came from a specific juror to the Court  
12 and I appreciate that juror directing the question  
13 to me as opposed to directing it to another juror or  
14 anyone else.

15 Unfortunately, or fortunately, in our state,  
16 jurors cannot participate in asking questions. The  
17 jury must listen to and weigh the evidence based on  
18 the evidence presented.

19 I can certainly appreciate the position of the  
20 jury. As a former trial lawyer, there are many  
21 times when I hear certain questions or line of  
22 questions, I'm anxious and kind of hope that I can  
23 jump in and ask some questions myself, but that's  
24 the role of lawyers and the jury must take the  
25 evidence as it is presented and deliberate based on

1 the evidence that is presented. And jurors cannot  
2 participate in the questioning process, answering  
3 process or assist the parties with suggesting what  
4 questions the jury would like to have the answer to.  
5 That's simply our system.

6 But I certainly would not hesitate to provide  
7 information if I could, but in addition to all of  
8 the other factors that I've -- in consideration that  
9 I've just mentioned, an additional consideration is  
10 that the Court cannot comment upon the facts of the  
11 case. The facts are for the jury to determine and  
12 should I answer questions, then I'm commenting on  
13 the facts and that would take me beyond my role as  
14 the trial judge.

15 So with that, we'll proceed now with the next  
16 witness from the State.

17 **MR. MYERS:** David Dannels.

18 **THE COURT:** Before swearing him, any objections  
19 to the comments by the Court, by the State or the  
20 defense?

21 **MR. MYERS:** None by the State.

22 **MS. KIMBROUGH:** None by the defense.

23 **THE COURT:** You may proceed.

24 \*\*\*\*\*

25 \*\*\*\*\*

DAVID DANNELS - DIRECT BY MR. MYERS

1913

1                   DAVID DANNELS,  
2           having been duly sworn, testified as follows:

3           **THE CLERK:** If you'll have a seat, stating your  
4           name, spelling your last for the record, please.

5           **THE WITNESS:** My name is David Dannels,  
6           D-A-N-N-E-L-S.

7                   DIRECT EXAMINATION

8           BY MR. MYERS:

9           **Q**     Mr. Dannels, by whom are you employed?

10          **A**     The Lexington County Sheriff's Department.

11          **Q**     For how long?

12          **A**     Eight years.

13          **Q**     Were you with the sheriff's department when  
14          this murder occurred?

15          **A**     I was.

16          **Q**     Now, I'd like to ask you, I guess, on a Sunday,  
17          August the 3rd, did you have a conversation with a  
18          gentleman in Michigan by the name of Mr. Robert  
19          Fuller?

20          **A**     I did.

21          **Q**     And during that conversation, was there  
22          anything about he had a letter of some type?

23          **A**     Yes. He said he had a letter from Mr. Ron  
24          Finklea that was written -- that he had intercepted  
25          that was given to his grandson, Brandon.

1 Q And did you request Mr. Fuller to do anything  
2 concerning that letter?

3 A Yes. I asked him -- after he had read the  
4 contents of the letter to me, I asked him to fax  
5 that letter to the sheriff's department.

6 Q And how did he get the number for the fax at  
7 the sheriff's department?

8 A I provided it to him.

9 Q All right, sir. And did you receive anything  
10 from Mr. Fuller?

11 A Yes. We received a fax contain -- it contained  
12 the same information that he read over the phone to  
13 me.

14 Q I hand you what's been marked Number 89 for  
15 identification purposes. Can you identify that,  
16 sir?

17 A Yes, that's the letter that we received via fax  
18 from Mr. Fuller.

19 Q And that's the entirety of the letter?

20 A Correct.

21 MR. MYERS: Your Honor, we would now offer  
22 Number 89 in as an exhibit.

23 MS. KIMBROUGH: Subject to our prior objection,  
24 Your Honor, concerning relevance and prejudice.

25 THE COURT: All right. It is admitted over

DAVID DANNELS - DIRECT BY MR. MYERS

1915

1 objection.

2 (State's Exhibit Number 89, letter, admitted  
3 into evidence.)

4 BY MR. MYERS:

5 Q Now, I'd like to ask you please, Exhibit 89, up  
6 at the top, it's got -- what's the first thing it  
7 says up at the top?

8 A It says, Last words to you, Teak.

9 Q And could you read the first three lines of  
10 that letter, please, sir?

11 A It says, Hello, baby, if you're reading this,  
12 things did not -- didn't go quite the way I wanted  
13 them to. I am laid up somewhere with a bullet in my  
14 head. I have made a lot of mistakes in my life and  
15 I messed up again. No, it's nothing to do with a  
16 female, it's our money and I just can't face you  
17 like this.

18 Q Now, you said something about Mr. Fuller had a  
19 grandson named Brandon?

20 A Correct.

21 Q Would you look down, let's see, one, two,  
22 three, about four lines from the bottom where it  
23 says, Brandon, could you read that please, that line  
24 and the next one?

25 A Brandon, son, please change, you're headed down

1 a dead end street. You're just like Tommy. And I  
2 know if I came across you, I would put a bullet in  
3 your head.

4 MR. MYERS: Thank you. Please answer any  
5 questions they have.

6 CROSS-EXAMINATION

7 BY MS. KIMBROUGH:

8 Q Good afternoon, Mr. Dannels. How are you?

9 A Good. Thank you.

10 Q Good. The letter that you have, is it dated?

11 A There's a date upon it from the fax machine.

12 Q But it's not -- the letter itself is not dated?

13 A No, it's not.

14 Q Okay. Is it signed? Is there a signature?

15 A No.

16 MS. KIMBROUGH: Thank you, Mr. Dannels.

17 MR. MYERS: No further questions.

18 Mike Phipps.

19 THE COURT: You may step down, sir.

20 MICHAEL STUART PHIPPS,

21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat stating your name,  
23 spelling your last for the record, please.

24 THE WITNESS: My name is Michael Phipps,  
25 P-H-I-P-P-S.

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1917

## DIRECT EXAMINATION

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BY MR. MYERS:

Q Now, you've testified several times previously in the guilt part; is that correct?

A Yes, sir.

Q And you were one of the officers collecting evidence at Selectron for this case?

A That's correct.

Q While you were out there, did you take any video tape of the crime scene?

A Yes, sir. Standard protocol is we video tape and photograph on all death scenes or homicides.

Q Referring to State's Exhibit Number 4, did you take -- just tell us about where all you took video tape of what areas.

A Initially, we'll start outside the secured area to give a point of reference. In this case, it was out towards the parking lot looking back at the main entrance to the foyer there where the security office is located. I then walked through the crime scene more or less in a logical sequence coming through the doors showing the foyer and then showing back into the security office, going into the security office video taping from several corners of the room, again so you can get a good point of



1 reference as to where things are.

2 The field of view of the camera is fairly  
3 narrow so sometimes it's hard to tell what you're  
4 looking at in reference to things like the door and  
5 windows and that type of thing.

6 I then come back out into the foyer video tape  
7 into the main plant area and then down the hall to  
8 an area where we discovered one of the items that we  
9 collected.

10 Q One of the items you collected was down the  
11 hallway inside the plant?

12 A Yes, sir, it was a portion of a jacket of a  
13 bullet.

14 Q And what did you do with that video tape?

15 A It was secured, turned into our evidence unit  
16 where it remained until the time that I signed it  
17 out for court.

18 MR. MYERS: Your Honor, we would offer the  
19 crime scene video tape in evidence at this time.

20 THE COURT: What says the defense?

21 MS. KIMBROUGH: Without objection, Your Honor.

22 THE COURT: It's admitted without objection.

23 (State's Exhibit Number 102, crime scene  
24 video tape, admitted into evidence.)

25 (Pause.)

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1919

1 BY MR. MYERS:

2 Q While they're doing that, Mike, what is this  
3 right here that you have in front of you?

4 A This is the original VHS format video tape that  
5 was recorded at the crime scene that night, or  
6 morning.

7 MR. MYERS: For evidence, Your Honor.

8 THE COURT: What says the defense?

9 MS. KIMBROUGH: No objection, Your Honor.

10 THE COURT: The tape is in evidence.

11 BY MR. MYERS:

12 Q Now, State's Exhibit 102, would you put that  
13 in, please, and play it for the jury?

14 A Yes, sir. (Witness leaves the witness stand.)

15 (Whereupon, State's Exhibit Number 102 was  
16 played for the jury and the following occurred.)

17 We always start our videos with a card  
18 orientation showing the date, time and location.

19 Q What is this white thing right out here?

20 A The sheet here is covering the victim,  
21 Mr. Sykes. He was just off the paved area here on  
22 the grass. This is looking back at the main  
23 entrance to the security office and foyer. In this  
24 view, you can see the ATM machine in that area.

25 Q If you would, stand on this side over here.

1       A     Yes, sir. As the camera zooms in, you'll see a  
2       little better image of the ATM machine, the door on  
3       it slightly ajar. You can see a good indication of  
4       the blood staining on the concrete.

5       Q     This door right here, is that the door that  
6       Mr. Sykes came out?

7       A     Yes. This is the door. Security office is  
8       located immediately through this door and to the  
9       left. Here I was attempting to show some of the  
10      blood stains that are actually on glass on this  
11      door. Again, you can see the blood stains on the  
12      floor just inside the door as well.

13      Q     What's that number one?

14      A     This is the first item of evidence that we  
15      marked. The reason it has -- usually, we don't put  
16      down I.D. markers until after we video taped because  
17      we're trying to show the scene in as pristine a  
18      condition as possible. However, this item was  
19      located in a position where firefighters were coming  
20      in and out of the plant and we didn't want someone  
21      to inadvertently step on it or kick it, so we set  
22      the marker down more or less to flag it so they  
23      could be aware of it and can walk around it.

24      Q     And what is that card?

25      A     It's a gold in color military star, it's an ATM

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1921

1 type card and it's in the name of Ron O. Finklea.

2 Q Go ahead.

3 A Here, we're just inside the foyer area. This  
4 is the security office. This would have been the  
5 door that the victim left out of. On the ground  
6 here, you can see his radio and, of course, the  
7 blood staining on the linoleum floor right there.  
8 You can also see the fire alarm system still  
9 activated.

10 Q Where were you when you were taking that shot?

11 A That's located just inside the security office.

12 Q Stop it right there. Right here, what is --  
13 does that show?

14 A That is the main control point where the  
15 security officer would be seated. It gives you a  
16 vantage point out through a window that's in this  
17 wall, you'll see in a moment, so you can see  
18 employees as they pass in and out of the plant area.  
19 It also has the controls that operate most of the  
20 camera system.

21 Q Now, where was the fire? What area in there  
22 would we find charred or burned or fire marks?

23 A The majority of the burning is limited to this  
24 desk area in front of that seated position on the  
25 floor and on the desk.

1           This view is significant and it only appears  
2           for just a second, that's why I was taking the time  
3           to relocate it. The door jam here on the right side  
4           of the door on exit had a significant amount of  
5           blood spatter on it, which is consistent with what  
6           the pathologist was saying was his airway was  
7           obstructed from bleeding into the throat. We see a  
8           significant amount of staining on these blinds and  
9           the door edge here and it would have been at a  
10          height, you know, consistent with the head area.

11         Q     This chair back over here, is that just another  
12               work area back over there?

13         A     Yeah, there's another work position here. It  
14               has a computer monitor where they apparently log in  
15               activity where they go to log their progress for  
16               their security checks. And the screen was actually  
17               still up when we video taped this with some entries.

18               You'll see several items on the floor. There's  
19               a pair of glasses here that have already been put  
20               into evidence belonging to the victim. This is a  
21               mike cord off the radio that you see out in the  
22               foyer area.

23         Q     What's that on the carpet?

24         A     Blood stains that run from that position at the  
25               computer all the way out to where Mr. Sykes is

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1923

1        laying on the ground.

2                And these are general shots for reference we  
3        do. We'll stand at various points in the office and  
4        just pan around. At the time we taped this video,  
5        we're absolutely not sure what's significant, so we  
6        try to document everything.

7                We'll come back to this in just a moment, but  
8        this is the seated position, you can still see the  
9        controls for some of the video equipment. On these  
10       monitors here, which you can actually see some of  
11       the security views on the exterior of the plant,  
12       this is anyone seated at that position would be able  
13       to see cars coming and going from the parking lot  
14       and someone approaching from the outside.

15               Coming into view on the left here, this  
16       stainless rack (ph) system has these computer boxes  
17       and those are actually the hard drives for the  
18       digital video computer system they have at this  
19       location. There's five of those boxes.

20               Again, this is standing in that far corner  
21       where that logging system would have been looking  
22       back. This would have been the entrance to the  
23       security office.

24               Coming around the corner right here, there will  
25       be a close up in a little bit of this area here, a

1 significant pooling of blood right on the desk. The  
2 voided area you see on the desk here is that mass of  
3 papers that fire service said was still smoldering  
4 that needed to be moved from the office, so that's  
5 the reason it looks like something was taken from  
6 there because it was placed outside.

7 Adjacent to that, you can see the soot and the  
8 burn marks on the desk surface. In addition,  
9 there's going to be a mouse pad right here that's  
10 partially burned.

11 Right here is the chair for that seated  
12 position at the desk and you can see a blood stain  
13 on the cover of that seat, an imprint of someone's  
14 palm, hand. Again, glasses right here at the  
15 bottom.

16 Q That white metal thing on the floor, what was  
17 that?

18 A That was a broken antenna for the small T.V.  
19 set you see right here. Right here immediately to  
20 the right would be the entrance to the security  
21 office. There was a table next to the door, this  
22 small, low-lying partition and then the desk, work  
23 service and you'll see these two spent shell  
24 casings, which were nine millimeter Luger shell  
25 cases that were collected and have already been

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

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1 entered into evidence.

2 Again, the glass is on the floor. There's an  
3 item right here that we'll zoom in on and it's one  
4 of the most intact spent rounds or bullets that we  
5 recovered that's also already in evidence.

6 This is the pool of blood I was referring to.  
7 There's one small metal fragment that was recovered  
8 out of this pool of blood.

9 Close up of the working position. This is the  
10 joy stick control that operates the camera system.  
11 Again, the actual images are housed on those hard  
12 drives that are on the racks off to the left here.  
13 And as you can see it's still -- it was still  
14 functioning as we were there, so it's not damaged.

15 Q What are we zooming in on now?

16 A This is a point that we identified as a bullet  
17 having passed through the wall at that point. This  
18 is the round that goes through the wall, hits the  
19 conduit on the opposite side. And it's projected  
20 down the wall some 70, 80 feet. And, again, the  
21 hard drive systems for the video taping, recording  
22 system.

23 And, again, this is that second work position.  
24 It has a computer monitor up and it's a log file --  
25 a written log of security rounds and security checks



1       that they had made. And, again, not knowing the  
2       significance of what that may be is the reason we  
3       took some time to document it.

4             Again, this is the door to the security office.  
5       Right up here in the corner is the window I was  
6       speaking of that gives you a view out to the foyer.

7             This is the door to the security office here.  
8       That's the window I was speaking of, the seated  
9       position where that control is just on the other  
10      side of the window. And we're panning back into the  
11      main plant area.

12      Q     If you walked into the plant and you take a  
13      left or a right, go down that hallway?

14      A     As you come in the main doors from the outside,  
15      walk through the turnstiles and you'll turn right  
16      and you'll be looking down this hallway.

17      Q     What did you find down that hallway?

18      A     This far end right before you get to the doors  
19      was the jacket fragment from a bullet. There was  
20      also a point we identified where that bullet struck  
21      the wall.

22             Small nick you see here that's where the bullet  
23      or bullet fragment struck and then it's found on the  
24      carpeted floor just a little bit further down the  
25      hall. That's it right there (indicating).

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1           At this point, I've gone back outside. On my  
2 arrival, the victim was on his back because EMS had  
3 attempted to check him out and see if he was a  
4 viable patient. At this point, we've rolled him  
5 back over to document damage to his clothing on the  
6 back. The uniform is a tan in color uniform. It's  
7 actually melted away. You're looking at a white  
8 underlying T-shirt.

9           Q     What is that white cord around his head?

10          A     First responders, when they arrive, they place  
11 leads on his chest. It's a piece of medical  
12 equipment that can monitor the heart rate and also  
13 deliver an electrical shock to try to stimulate the  
14 heart and restore normal heart rhythm. It's their  
15 procedure just to leave that in place, that way  
16 there's no misunderstanding as to, you know, what  
17 went on.

18                If we see a voided area possibly where they had  
19 applied that patch and removed it, then we would,  
20 you know, be trying to make a connection of what was  
21 originally there. So any time they treat a patient,  
22 they usually just walk away leaving their equipment  
23 in place so that we can document that.

24                Again, significant damage to the clothing on  
25 the back and right side of the trousers.

1           This is a little bit later when it actually  
2           became daylight, we usually video tape again, our  
3           equipment's not the best for low light conditions,  
4           so we get a little bit better image in daylight.  
5           And then showing the leads that EMS placed on him.

6           Q     Do you see that entrance wound right there?

7           A     Yes. There's a bullet entrance wound, or exit  
8           wound. We document any physical injury to the  
9           victim and the pathologist will make a ruling as to  
10          what is an entrance wound, what is an exit wound.

11          Q     Anymore wounds there?

12          A     Yes, sir. It's a wound on the opposite side of  
13          the neck corresponding to the wound we saw on the  
14          other side.

15          Q     Now, while you're there, I want to refer to  
16          State's Exhibit Number 8, I noticed on your video, I  
17          didn't ask you to stop, but you got down low right  
18          in this area where the chair had the bloody palm  
19          print on it, you got down low looking under that  
20          desk, what were you looking for?

21          A     We noticed significant blood stain, blood  
22          spatter that was on the wall that this desk was  
23          pushed up against and actually on the supports  
24          directly under the work surface.

25          Q     Would that be where if you'd been in that

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1929

1 chair, you'd gone up under, your legs would have  
2 been under that chair up under there?

3 A Yes, sir. The significance of that is,  
4 obviously, blood that's deposited either on this  
5 opposite wall or up under this desk couldn't have  
6 been released from a location higher than the work  
7 surface of that desk. So the bloodletting would  
8 have had to occurred at a plane below the desk  
9 level.

10 Q Did you take some still photographs while you  
11 were out there?

12 A Yes, sir, I did.

13 Q I'm going to refer you to State's Exhibit 97.  
14 Could you explain to the jury what that is?

15 A This is the victim. He's face down in this  
16 scene. The white cord you see, again, is one of the  
17 leads from the chest that EMS or first responders  
18 applied. The uniform's completely burned away,  
19 melted towards the back area. You're seeing a white  
20 T-shirt that he was wearing underneath. The pocket,  
21 the right rear pocket of the uniform is also  
22 significantly damaged. I believe he had a white  
23 handkerchief in that pocket that actually fell  
24 through the opening.

25 Q Number 100, will you show us where any burn

1 marks or wounds are on this?

2 A Again, the clothing protected the actual skin  
3 in the chest area, so it's more significant around  
4 the neck line and the head. And being a short  
5 sleeved uniform shirt, both arms from about the  
6 elbow down were significantly burned and, of course,  
7 the heavy blood loss around these points of entry  
8 around the face and head.

9 Q Looking at Number 101?

10 A Here we're just documenting he still has his  
11 phone attached to the duty belt. You can see the  
12 two leads are in place. The right shoulder here  
13 heavy melting, it's, I guess, a polyester or some  
14 synthetic material for the uniform. The underlying  
15 T-shirt wasn't quite severely as damaged, but the  
16 uniform did melt and collect, again, a lot of blood  
17 stain to the uniform trousers as well.

18 Q Could you point to -- on the neck, the area of  
19 a gunshot wound?

20 A (Indicating).

21 Q Number 99?

22 A This is looking straight down. We usually do a  
23 facial shot for identification purposes also to show  
24 any detail injury to the face. On this one, there's  
25 a bullet hole or entry wound right here above the

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

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1 lip on the right side.

2 Q Burn marks?

3 A The burns extend, of course, just above the  
4 neck line of where the uniform would have been lying  
5 consuming the head, the arms, from the elbows down.

6 Q Now, not the one from the lip, but the one on  
7 the neck, does 98 show that?

8 A Yes, sir, it does. This is a close up of that  
9 injury right there (indicating).

10 Q Did you go to the autopsy?

11 A I did, sir.

12 Q And I'm handing you what's been marked State's  
13 67. Could you explain to the jury, again, what that  
14 is?

15 A This is a bullet fragment that was removed at  
16 autopsy by the pathologist, Doctor Yacoub. Whenever  
17 they recover an item, we usually have an opportunity  
18 to photograph that item at the autopsy. It's then  
19 placed in this vial here, that's placed in another  
20 sealed evidence container containing other materials  
21 that are going to SLED, the state lab, for  
22 toxicology. All of that is sealed in my presence.  
23 It's turned over to me, a chain of custody, signed  
24 for it. I'm responsible for bringing it back to our  
25 evidence unit, having it submitted and then filling

1 out the proper paperwork to have it submitted to  
2 SLED for analysis.

3 Q Will you show the jury where in that envelope  
4 the projectile which was removed from Mr. Sykes'  
5 body?

6 A Yes. It was placed at SLED. When they take  
7 the item, they'll remove it from this sealed  
8 container here. And there's actually two fragments,  
9 there's a larger fragment and a smaller jacket  
10 fragment right here, that's just loose in the bag.

11 MR. MYERS: We move into evidence photographs  
12 97 through 101.

13 THE COURT: What says the defense?

14 MS. KIMBROUGH: Subject to our prior motion,  
15 Your Honor.

16 THE COURT: They are admitted.

17 MR. MYERS: Thank you, Your Honor.

18 BY MR. MYERS:

19 Q Now, also at autopsy, were you able to retrieve  
20 the clothing that Mr. Sykes was wearing?

21 A Yes, sir, I did.

22 Q And have you put that on something so we can  
23 see the clothes that were removed from his body, the  
24 burned clothes, things like that?

25 A Yes, sir.

MICHAEL STUART PHIPPS - DIRECT BY MR. MYERS

1933

1 Q Would you bring that over?

2 A (Witness complies.)

3 MR. MYERS: We'd offer this into evidence, too,  
4 Your Honor.

5 MS. KIMBROUGH: Subject in our prior motion,  
6 Your Honor.

7 THE COURT: It's admitted over objection.

8 (State's Exhibit Number 103, victim's )  
9 clothes, admitted into evidence.)

10 BY MR. MYERS:

11 Q Now, over here on this side, you said something  
12 about a handkerchief?

13 A Yes, sir. The trousers on the right rear  
14 portion of his uniform were more severely damaged  
15 than the rest and it exposed the pocket or what he  
16 would have had in that pocket. Apparently, there  
17 was a handkerchief that's still fused to his uniform  
18 at that point.

19 Q Did the uniform have any odor to it?

20 A A strong odor of gasoline, yes, sir.

21 Q Could you turn it around and show us the back,  
22 please?

23 A (Witness complies.)

24 Q You said something about burning down the right  
25 leg, could you point that out, please?



1       A     Again, the back of the uniform, what you're  
2       looking at right here is the white T-shirt. The  
3       majority of what was originally a uniform shirt is  
4       missing on the rear. You can see a portion of it  
5       here where it was preserved because it was tucked  
6       into the belt line. Apparently, this area of the  
7       buttocks on the right side sustained more heat  
8       damage. This is part of the uniform pocket. You  
9       can see the shirt tail or uniform shirt tail here  
10      underlying that.

11     Q     And you assisted Doctor Yacoub at the autopsy  
12      collecting evidence, things of that nature?

13     A     Yes. When someone dies, they're placed in a  
14      body bag at the scene. We document the fact that  
15      that bag is sealed at the scene. When we go to  
16      autopsy, we verify that that seal is still intact,  
17      that way we can prove a chain from the scene of the  
18      crime to where we conduct the autopsy. That was  
19      done. We take the body out, we photograph it in  
20      place, the clothing's removed, it's photographed,  
21      documented and it's recovered.

22           MR. MYERS: If you would, have your seat back  
23      up there and answer any questions they have.

24           (Witness resumes the witness stand.)

25                                   \*\*\*\*\*

MICHAEL STUART PHIPPS - CROSS BY MS. KIMBROUGH

1935

## CROSS-EXAMINATION

BY MS. KIMBROUGH:

Q Good afternoon, Detective Phipps. When you were conducting the investigation, I just want to make sure I got you correct on this, that the main burn area was on the desk and on the floor?

A Correct. The desk surface, that one working position, also the carpet directly under the desk area had burn marks, pour pattern where some type of accelerant was poured.

Q And it's been a while since we first spoke since you first took the stand and you mentioned blood spatter. Have you been qualified as a blood spatter expert?

A No. I've had training. I've had an 80 hour course in blood spatter, but I've not been certified as an expert.

MS. KIMBROUGH: Thank you so much.

MR. MYERS: No further questions.

We call James Banks.

THE COURT: Before proceeding with this witness, we're going to take a short recess. Ladies and gentlemen, if you'll go to the jury room. Please do not discuss the case. Please leave all exhibits in the courtroom.

JAMES BERNARD BANKS - DIRECT BY MR. MYERS

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1 (The jury retires to the jury room.)

2 **THE COURT:** All right. We're going to take a  
3 short recess, about seven minutes.

4 (Brief Recess.)

5 **THE COURT:** Let's bring in the jury.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Call your next witness.

8 **MR. MYERS:** Mr. James Banks.

9 JAMES BERNARD BANKS,  
10 having been duly sworn, testified as follows:

11 **THE CLERK:** If you'll have a seat and state  
12 your name, spelling your last for the record,  
13 please.

14 **THE WITNESS:** James Bernard Banks, B-A-N-K-S.

15 DIRECT EXAMINATION

16 BY MR. MYERS:

17 **Q** Mr. Banks, tell us a little bit about you.  
18 Have you ever served in the military?

19 **A** Yes. I completed 30 years in the military  
20 spanning from 1969 to 1989 with various assignments  
21 in the Continental United States and Germany and  
22 Korea.

23 **Q** Any other countries?

24 **A** Bosnia, Kosovo, Panama, just a few.

25 **Q** Any other combat duties?